

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

FILED

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**SUPPLEMENTAL APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S
SUMMARY JUDGMENT FILING**

**VOLUME 3
(EXHIBITS 200-217)**

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020794

Attorneys for Coleman (Parent) Holdings Inc

1019

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MAFCO CONSOLIDATED GROUP INC.
 35 East 62nd Street New York, NY 10021

020797

CP 046317
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MS 188
 5-12-04 WDB

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CPH 1316960

16div-026546

PROJECT LASER

Exhibit A: Transaction Pricing Calculations

Deal Assumptions

Exchange Ratio 0.7450 x

	<u>CAMPFR Shares</u>	<u>LASKR Shares</u> (at .7450x)
Holding Company CAMPFR Shares	44,067,520	
Economic Cancellation of Shares: Debt	<u>(19,730,769) (a)</u>	
Holding Company Pro Forma CAMPFR Shares	24,336,751	18,503,379
Total Treasury Method Shares	95,126,147	
Holding Company Shares	<u>(44,067,520)</u>	
Public Shares	11,058,627	<u>8,239,677</u>
Total Shares entitled to consideration at .7450	35,895,378 (b)	26,742,056

Computation of LASER shares to be issued

LASER Shares Outstanding	85,530,031
19.9% of Shares Outstanding	17,020,476
Plus: Treasury Shares	<u>4,454,394</u>
Shares issuable without shareholder vote	21,474,870

Preferred Option

Face Value	\$300,000,000
Price	\$27.50
Share Underlying the Preferred	10,909,091

Breakdown of CAMPFR shares entitled to consideration

MAFCO	24,336,751	69.2%
Minority	<u>11,058,627</u>	30.8%
Total	35,895,378	

Footnotes

(a) Share cancellation calculation

Assumed Face Value	\$500,000,000
Assumed Price per Company Share	<u>\$26.00</u>
	19,230,769

(b) Shares entitled to consideration at .7450: 24,336,751 + 11,058,627 = 35,895,378

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PROJECT LASER

Exhibit A: Transaction Pricing Calculations

Basis of Agreement to convert to cash and stock

- Replicate economics of \$300,000,000 preferred delivered to MAFCO
- Deliver \$27.50 value to all shares underlying the preferred to deliver \$300,000,000 in value
- Deliver as much in LASER stock as can be permitted. Remainder in cash

	CAMPER Shares	LASER Shares (at .7450x)	Comments
Total CAMPER Shares entitled to consideration	35,895,378		
Preferred Shares	<u>10,909,091</u>		
Total Non-Preferred related shares entitled to consideration	24,986,287	18,614,784	
Maximum LASER shares remaining issuable without vote		<u>2,869,086</u>	
		21,474,870	
Value of Preferred	\$300,000,000		
Value of Remaining Issuable LASER Shares	\$120,123,631		at \$ 42.00 (42 * 2,860,086)
Cash Portion	\$179,876,369		

Allocation between MAFCO and Public

	MAFCO Affiliates	Public Shareholders	Total	
CAMPER Shares entitled to consideration	24,836,751	11,058,627	35,895,378	
% of Total	69.19%	30.81%		
LASER shares received	14,858,905	6,615,965	21,474,870	
Value of LASER Shares	\$824,073,998	\$277,870,549		at \$42.00
Total cash received (\$38.50 per share)	<u>\$124,469,162</u>	<u>\$55,416,297</u>	\$179,876,369	
Total Value Received	748,534,160	333,286,735		
Total Price received per CAMPER Share	\$30.14	\$30.14		

(1) Assumes similar treatment of CAMPER Holding Company shareholders and Minority shareholders

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MORGAN STANLEY & CO. INCORPORATED

INVESTMENT BANKING DIVISION



Mergers, Acquisitions & Restructuring Department
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CP 009659
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16div-026549

PROJECT LASER
Consideration Calculations

	<u>CAMPER</u>		<u>LASER</u>		
Holding Company Shares	44,067,520				
Debt Cancellation	<u>(19,230,769)</u>				
Net Holding Company Shares	24,836,751	72.543%			
Primary Shares	53,468,170				
Holding Company Shares	<u>(44,067,520)</u>				
Minority Shareholdings	9,400,650	27.457%			
Total CAMPER Shares	34,237,401				
Preferred-related Shares	<u>(10,202,091)</u>				
Non-Preferred CAMPER Shares	23,328,310	0.7450	17,379,591	STOCK	
 <u>Preferred-related Shares</u>					
Part 1	60.0000%	6,545,455	\$27.5000	\$180,000,002	CASH
Part 2	14.6916%	1,602,725	\$31.1969 (a)	\$50,000,000	CASH
Part 3	25.3084%	<u>2,760,912</u>	\$31.1969	\$86,131,819	STOCK
Total Preferred-related Shares		10,909,091		\$316,131,821	

LASERCash-out of the Option

Number of Options	3,282,930
Average Exercise	\$15.1447
Cash-out Price	<u>\$27.5000</u>
Total Cash Out Cost	\$40,561,585

Consideration Breakdown

	<u>Majority</u>	<u>Minority</u>	<u>Option</u>	<u>Total</u>
	<u>Shareholders</u>	<u>Shareholders</u>	<u>Holders</u>	
CASH	\$166,848,318	\$63,151,684	\$40,561,585	\$270,561,587
STOCK	14,099,749	5,336,721		19,436,470

(a) Calculation of per CAMPER share price

Thursday Closing Price	\$41.875
Exchange Ratio	0.7450
CAMPER per share equivalent	\$31.197

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16div-026550



MORGAN STANLEY & CO.
Incorporated

Mergers, Acquisitions and Restructuring Dept.
1585 Broadway
New York, NY 10036

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PROJECT LASER

Proposed Summary Transaction Terms

Acquisition of CAMPER Holding Company and Acquisition of CAMPER Publicly Held Shares

- Description:**
- LASER acquires all of the outstanding stock of CAMPER Holding Company from MAFCO Affiliates. Following the acquisition of CAMPER Holding Company, the publicly held CAMPER shares acquired in reverse subsidiary merger using a newly formed, wholly-owned subsidiary of CAMPER Holding Company

Acquisition of Holding Company

- Form of Consideration:**
- LASER Common Stock or LASER Common Stock and LASER Convertible Preferred Stock
- Consideration Package Choice:**
- MAFCO Affiliates will have the right, 30 days prior to closing, to elect to receive either of Consideration Package I or Consideration Package II
- Consideration Package I:**
- A. LASER Common Stock to MAFCO Affiliates¹
 - 18,503,379 LASER Common Shares issued to MAFCO Affiliates
 - Fixed number of shares, based on exchange ratio of .7450 LASER Common Shares per CAMPER Common Share
- Consideration Package II:**
- A. LASER Common Stock to MAFCO Affiliates¹
 - 10,376,107 LASER Common Shares issued to MAFCO Affiliates
 - Fixed number of shares, based on exchange ratio of .7450 LASER Common Shares per CAMPER Common Share
 - B. LASER Convertible Preferred Shares to MAFCO Affiliates¹
 - \$300,000,000 Liquidation Value
 - Fixed number of Convertible Preferred Shares, based on stated liquidation value per share
 - \$27.50 CAMPER Common Stock equivalent price
 - See LASER Convertible Preferred Shares (Current Market Indicative Terms)
- "Assumption" of Holding Company Debt:**
- "Assumption" of CAMPER Holding Company Debt
 - \$524.4MM of Discount Notes to be "assumed" by LASER, approximate accreted value as of the date of closing
 - All Early Redemption cost "assumed" by LASER
- LASER Convertible Preferred Shares (Current Indicative Market Terms):**
- 4.0% Coupon
 - \$48.125 Conversion Price (25% Conversion Premium over current LASER price) ✓ ^{N2}
 - 10 year maturity
 - One vote per share
- Collars:**
- None
- Walkaway Rights:**
- None
- Tax Treatment:**
- Expected to be tax free
- Closing Conditions:**
- Satisfaction of all merger conditions (other than purchase of CAMPER Holding Company), including LASER and CAMPER Shareholder Votes

¹ See attached explanation of share calculations. Calculated using the treasury shares method and assumes cashless exercise of options; assumes 53.425MM primary shares outstanding from the 9/30/97 10-Q and 3.018MM options outstanding at an average exercise price of \$15.84 from the 10/31/96 10-K and options proceeds of \$47.8MM resulting in treasury method shares outstanding of 54.776MM (1.666MM CAMPER shares repurchased at \$28.68); fully diluted shares are 56.442MM shares. Assumes CAMPER Holding Company owns 44.068MM shares of CAMPER (Operating Company) and that Public Shareholders own the remaining 10.708MM shares.

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PROJECT LASER

Proposed Summary Transaction Terms

Acquisition of CAMPER Holding Company and Acquisition of CAMPER Publicly Held Shares
(continued)

- Expected Closing: • 2Q98
- Shareholder Lockup: • MAFCO Affiliates agree to hold LASER Common Shares for one year after combination
- Due Diligence: • Execution of the Agreements upon completion of satisfactory due diligence
- Miscellaneous: • CAMPER Holding Company to vote its CAMPER shares in favor of the transaction
• No Shop clause with no fiduciary out
• Termination of affiliate (MAFCO) transactions

Acquisition of Publicly Held CAMPER Shares

- Form of Transaction: • Reverse subsidiary merger of newly formed, wholly-owned subsidiary of CAMPER Holding Company into CAMPER
- Form of Consideration: • LASER Common Stock²
- Consideration: • A. LASER Common Stock to Public Shareholders¹
 - 7,977,818 LASER Common Shares issued to Public Shareholders
 - Fixed number of shares, based on exchange ratio of .7450 LASER Common Shares per CAMPER Common Share• B. CAMPER Common Shares held by CAMPER Holding Company to remain outstanding
- Collars: • None
- Walkaway Rights: • None
- Termination Fee: • \$60MM payable to LASER by CAMPER if deal not consummated for any reason other than failure to obtain LASER shareholder approval or other LASER breach
 - Termination fee calculated as 3% of aggregate value
- Accounting Treatment: • Purchase
- Tax Treatment: • Expected to be tax free
- Closing Conditions: • CAMPER and LASER shareholder votes
• Redemption of LYONS/Completion of CAMPER Escrow Corp./CAMPER Holding Company merger
• Receipt of regulatory approvals
• Other customary conditions
- Expected Closing: • 2Q98

² Need to address issue of potential disparate treatment

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PROJECT LASER

Pricing Mechanism Overview

Transaction pricing assumes the following steps:

- I. Assumed CAMPER Holding Company debt balance of \$500,000,000 is offset by a portion of the existing Holding Company stock position in CAMPER at an assumed \$26.00 per CAMPER share valuation. The economic cancellation of the existing CAMPER Holding Company debt reduces the CAMPER Holding Company's CAMPER stock ownership position by 19,230,769 shares ($\$500,000,000/\$26.00=19,230,769$ shares)
- II. Each remaining CAMPER share owned by CAMPER Holding Company ($44,067,520^1-19,230,769=24,836,751$ shares) as well as all CAMPER shares held by public shareholders (10,708,480¹ shares) are valued at 0.7450 LASER Common Shares, at an approximate implied value of \$28.68 per CAMPER share as of February 19, 1998. MAFCO Affiliates to receive 18,503,379 LASER Common Shares ($24,836,751*0.7450=18,503,379$). Public shareholders to receive 7,977,818 LASER Common Shares ($10,708,480^1*0.7450=7,977,818$)
- III. MAFCO Affiliates have the right, 30 days prior to closing, to elect to take \$300,000,000 (at a \$27.50 per CAMPER share exchange ratio) or 10,909,091 CAMPER Shares ($\$300,000,000/\$27.50=10,909,091$ shares) equivalent of the net consideration for CAMPER Holding Company's CAMPER shares in the form of LASER Convertible Preferred Shares. In this case, the remaining 13,927,660 CAMPER shares ($24,836,751-10,909,091=13,927,660$ shares) held by CAMPER Holding Company will be exchanged for 10,376,107 LASER Common Shares at the .7450 exchange ratio

See Exhibit A

will - other holding company obligations?

¹ Exact number of shares subject to due diligence

PROJECT LASER

Exhibit A: Transaction Pricing Calculations

	CAMPER Shares	LASER Shares	Amount	Implied Price per CAMPER Share
<u>Debt Assumptions</u>				
Price per LASER Share			\$38.50	
Exchange Ratio			0.745	
Holding Company CAMPER Shares	44,067,520 (a)			
Economic Cancellation of Shares: Debt	<u>(19,230,769)</u>			
Holding Company Pro Forma CAMPER Holdings	24,836,751	18,503,379	\$712,380,104	\$28.68
Preferred Stock Election (if exercised)	<u>(10,909,091)</u>			
Pro Forma CAMPER Holdings (if exercised)	13,927,660	10,376,107	\$399,480,104	\$28.68
<u>Debt "Assumption"</u>				
Assumed Face Value	\$500,000,000		\$300,000,000	
Assumed Price per Camper Share	<u>\$26.00</u>			
	19,230,769			
<u>Preferred Stock</u>				
Face Value	\$300,000,000			
Stock Price Equivalency	<u>\$27.50</u>			
Preferred Shares (if election exercised)	10,909,091			
Total Treasury Method Shares	54,776,000 (a)	40,808,120	\$1,571,112,620	\$28.68
Holding Company Shares	<u>(44,067,520)</u>			
Public Shares	10,708,480 (a)	7,977,818	\$307,145,978	\$28.68

(a) Subject to due diligence

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020808



The COLEMAN COMPANY, INC.

February 4, 1998

Sunbeam Corporation
Sunbeam Corporate Center
1615 South Congress Avenue
Suite 200
Delray Beach, Florida 33445

Gentlemen:

You have expressed an interest in exploring a possible transaction (the "Transaction") with The Coleman Company, Inc. (together with its subsidiaries, collectively, the "Company") and have requested that the Company furnish you with certain information concerning the Company and its businesses (the "Business"). The term "you" is, for all purposes of this Agreement, deemed to include all of your affiliates.

As used herein, "Evaluation Material" means all information, whether in oral, written, electronic or other form, which the Company or any agents, representatives (including attorneys, accountants, bankers and financial advisors), directors, officers or employees (collectively, "Representatives") of the Company furnishes to you or your Representatives with respect to the Business, whether before or after the date hereof. The term "Evaluation Material" also includes all analyses, compilations, studies or other documents prepared by you or your Representatives containing or based in whole or in part on any information furnished by the Company or its Representatives or otherwise reflecting your review of, or interest in, the Business. The term "Evaluation Material" does not include information which (i) is or becomes generally available to the public other than as a result of a disclosure by you or your Representatives, (ii) was available to you on a non-confidential basis prior to its disclosure to you by the Company or its Representatives or (iii) becomes available to you on a non-confidential basis from a source other than the Company or its Representatives provided, however, that such source, insofar as is known to you after due inquiry, is not prohibited from transmitting the information to you or your Representatives by a contractual, legal, fiduciary or other obligation.

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Sunbeam Corporation
February 4, 1998
Page 2

You agree that the Evaluation Material will not be used by you in any way detrimental to the Company, will be kept confidential by you and your Representatives, and will not, except as hereinafter provided, without the prior written consent of the Company be disclosed by you or your Representatives or used by you other than for the purpose of evaluating the Transaction. Moreover, you agree to transmit Evaluation Material only to those of your Representatives who need to know such information for the purpose of evaluating the Transaction and who will be advised by you of this Agreement and agree to be bound by the provisions hereof. You will be responsible for any breach of this Agreement by your Representatives.

Without the prior written consent of the Company, you will not, and will direct your Representatives who are given access to the Evaluation Material not to, disclose to any person (other than a person authorized hereunder) the fact that the Evaluation Material has been made available to you, that this Agreement exists or the terms hereof, that discussions or negotiations between you and your Representatives and the Company and its Representatives are taking place or any of the terms, conditions or other facts with respect to the possible Transaction, including the status thereof, unless such disclosure is required under applicable provisions of the securities laws of the United States, in which event, you agree to so notify and consult with the Company and its counsel prior to making any such disclosure. It is expressly agreed by the parties that the mere disclosure of the fact that discussions between you and your Representatives and the Company are taking place is likely to be detrimental to the Company. The term "person" as used in this Agreement will be broadly interpreted to include, without limitation, any corporation, company, partnership, individual or other entity.

You acknowledge that the operation of the Business involves the utilization of highly confidential and proprietary information not protected by patent, copyright or other statutory rights of the Company, including unpatented process and manufacturing technology and know-how (collectively, "Know-How") and information regarding customers' orders and brokers, agents and representatives involved in the Business, disclosure or misappropriation of which by you or your Representatives would irreparably damage the Company. Accordingly, without limitation to any other provision of this Agreement, to protect the Company's

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NO. 016
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Sunbeam Corporation
February 4, 1998
Page 3

interests in such information and all other Evaluation Material, you agree that except as expressly approved by the Company in advance, unless and until the consummation by you of a Transaction, you will not without the prior written consent of the Company (i) communicate regarding the Business or its operations, prospects or finances with any employee of the Company or with any person identified by you in the course of your evaluation as being a customer, supplier, customer's or supplier's representative, or other person involved in the conduct of the Business, or (ii) directly or indirectly solicit for employment any employee, nor solicit, employ, retain or enter into business relations with any senior management or key employee of the Company who became known to you through the Evaluation Material or with whom you have had contact in the process contemplated by this Agreement. Solicitation through advertisements in periodicals of general circulation not specifically directed at employees of the Company shall be deemed not to be solicitation hereunder.

In the event that you, your Representatives or any person to whom you or your Representatives supply the Evaluation Material or disclose the existence of this Agreement or that discussions or negotiations are taking place concerning a possible Transaction, are requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, any informal or formal investigation by any government or governmental agency or authority or otherwise) to disclose any Evaluation Material or any information relating to a possible Transaction or such person's opinion, judgment, view or recommendation concerning the Business as developed from the Evaluation Material, you agree (i) to notify the Company immediately of the existence, terms and circumstances surrounding such request, (ii) to consult with the Company on the advisability of taking legally available steps to resist or narrow such request and (iii) if disclosure of such information is required, to furnish only that portion of the Evaluation Material which, in the opinion of your counsel, you are legally compelled to disclose and to cooperate with any action by the Company to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Evaluation Material. You agree to use your best efforts to limit the disclosure of any Evaluation Material.

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Sunbeam Corporation
February 4, 1998
Page 4

You agree that the Company is free (i) to conduct any process relating to a possible Transaction as it, in its sole discretion, determines (including, without limitation, by negotiating with any prospective buyer and entering into a preliminary or definitive agreement without prior notice to you or any other person) and (ii) in its sole discretion, to change the procedures relating to its consideration of a Transaction at any time without prior notice to you or to any other person, to reject any and all proposals made by you or any of your Representatives with regard to a Transaction, and to terminate discussions and negotiations with you or your Representatives at any time and for any reason.

Notwithstanding the preceding paragraph, the Company hereby agrees that for a period of 30 days from the date hereof, the Company shall negotiate solely and exclusively with you, and during such 30 day period (the "Exclusively Period"), the Company shall not negotiate, discuss or entertain any offers from any party other than you with regard to a Transaction nor shall the Company take any action with a view towards consummating a Transaction with any party other than you.

Promptly upon request from the Company, you will either redeliver to the Company or destroy all (including that maintained in any computer memory, storage media or similar form) Evaluation Material and any other material containing, prepared on the basis of, or reflecting any information in the Evaluation Material (whether prepared by you or your Representatives, the Company or its Representatives or otherwise) and will not retain any copies, extracts or other reproductions in whole or in part of such material. Any such destruction will be confirmed in writing to the Company by you or an authorized Representative supervising the same.

You understand that, except as may otherwise be agreed in writing, neither the Company nor its Representatives make any representation or warranty as to the accuracy or completeness of the Evaluation Material. You agree that neither the Company nor its Representatives will have any liability to you or any of your Representatives resulting from the use of the Evaluation Material by you or your Representatives. You agree that, except as provided in this Agreement or any definitive written agreement, unless and until a definitive written agreement between the Compa-

020813

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SASMF 17744
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16div-026559

Sunbeam Corporation
February 4, 1998
Page 5

ny and you with respect to a Transaction has been executed and delivered, neither the Company nor you will be under any legal obligation of any kind whatsoever with respect to the Evaluation Material or a possible Transaction.

You agree that you and your Representatives will direct all questions and requests for information, as well as all bids and proposals, to Jerry W. Levin or persons expressly designated by him and will not contact any other Representative or employee of the Company.

This Agreement will inure to the benefit of any successor in interest to the Company as well as any person that may acquire after the date hereof the Business or any subsidiary or division of the Company operating the Business with respect to Evaluation Material concerning the business or affairs of such subsidiary or division.

It is understood and agreed that no failure or delay by the Company in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other further exercise thereof or the exercise of any right, power or privilege hereunder.

You acknowledge and agree that the Evaluation Material, as well as the services performed and the information possessed by the Company's employees, are of a character giving them a special, unique and extraordinary value and that the Company would not have entered into this Agreement if you had not agreed to a three-year term (and an indefinite term as respects Know-How). You further acknowledge and agree that such a three-year term is reasonable under the circumstances. It is the desire and intent of the parties that the provisions of this Agreement be enforceable to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, you and the Company agree that, should a court or administrative body subsequently determine that the terms of any provision of this Agreement are more extensive than reasonably necessary to protect the Company's interest, to request that such court or administrative body reform this Agreement specifying the greatest time period, the greatest area or other limitation that would not render any such provision unenforceable.

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NO. 087
NO. 087

DAVID C FENNIN - 912127255597

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CONFIDENTIAL
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SASMF 17745
CPH0642929
16div-026560

Sunbeam Corporation
February 4, 1998
Page 6

You acknowledge that you are (i) aware that the United States securities laws prohibit any person who has material non-public information about a company from purchasing or selling securities of such company, or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities and (ii) familiar with the Securities Exchange Act of 1934, as amended (the "1934 Act") and the rules and regulations promulgated thereunder and agree that you will neither use, nor cause any third party to use, any Evaluation Material in contravention of such Act or any such rules and regulations, including Rules 10b-5 and 14e-3.

You agree that, unless specifically invited, suggested or approved in writing by the Company neither you nor your Representatives will for a period of two years from the date hereof, in any manner, directly or indirectly: (a) effect or seek, offer or propose (whether publicly or otherwise) to effect, or cause to participate in or in any way assist any other person to effect or seek, offer or propose (whether publicly or otherwise) to effect or participate in, (i) any acquisition of any securities (or beneficial ownership thereof) or assets of the Company or any of its subsidiaries, (ii) any tender or exchange offer or merger or other business combination involving the Company or any of its subsidiaries, (iii) any recapitalization, restructuring, liquidation, dissolution or other extraordinary transaction with respect to the Company or any of its subsidiaries, or (iv) any "solicitation" of "proxies" (as such terms are used in the proxy rules under the 1934 Act) or consents to vote any voting securities of the Company; (b) form, join or in any way participate in a "group" (as contemplated by Section 13(d)(3) of the 1934 Act), with respect to the securities of the Company; (c) otherwise act, alone or in concert with others, to seek to control or influence the management, Board of Directors or policies of the Company; (d) take any action which might force the Company to make public announcement regarding any of the types of matters set forth above; (e) enter into any discussions or arrangements with any third party with respect to any of the foregoing; or (f) request the Company, directly or indirectly, to amend or waive any provisions of this paragraph. You will promptly advise the Company of any inquiry or proposal made to you with respect to any of the foregoing. Notwithstanding the foregoing, in the event (i) the Company reaches a definitive agreement

NOT

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NO. 837

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SASMF 17746
CPH0642930
16div-026561

with any third party for a sale or merger of the Company or (ii) a third party (other than you or your affiliates) participates in any Transaction regarding the Company, on a solicited or unsolicited basis, which is publicly disclosed and involving 100% of the outstanding common shares of the Company, the provisions of this paragraph shall no longer apply to you provided that you make a proposal to acquire 100% of the outstanding common shares of the Company at a price per share which is greater than that proposed to be entered into with the third party.

You acknowledge and agree that in the event of any breach of this Agreement, the Company would be irreparably and immediately harmed and may not be made whole by monetary damages. It is accordingly agreed that the Company, in addition to any other remedy to which it may be entitled in law or equity, will be entitled to an injunction or injunctions to prevent breaches of this Agreement, and to compel specific performance of this Agreement, without the need for proof of actual damages. You agree to waive, and to cause your Representatives to waive, any requirement for securing or posting of any bond in connection with such remedy. You also agree to reimburse the Company for all expenses, including fees and disbursements of counsel, incurred by it in enforcing your or your Representatives' obligations hereunder.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended except in writing signed by the parties hereto. Neither party may assign any of its rights or obligations hereunder without the express prior written consent of the other party hereto.

This Agreement will be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of conflicts of laws thereof. The Company and you hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of the State of New York and the United States located in the City of New York for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby and agree not to commence any action, suit or proceeding relating thereto except in such courts. Each party further irrevocably and unconditionally waives and agrees not to plead or claim in any such court any objection to venue or that such court is

020816

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NO. 816
009

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CONFIDENTIAL

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CPH0642931

16div-026562

Sunbeam Corporation
February 4, 1998
Page 0

an inconvenient forum.

This Agreement will terminate and be of no further force and effect on the third anniversary of the date of this Agreement except as to the obligations of confidentiality with respect to Know-How, which will continue indefinitely.

If you are in agreement with the foregoing, please sign two copies of this Agreement and return one to the undersigned, whereupon this Agreement will constitute the agreement between the Company and you with respect to the subject matter hereof. This Agreement may be executed and delivered, including by facsimile transmission, in one or more counterparts, all of which together will constitute one and the same agreement.

Very truly yours.

THE COLEMAN COMPANY, INC.

By: Paul Shapiro
Name: PAUL SHAPIRO
Title: SVP

Confirmed and agreed to as of the date first above written:

SUNBEAM CORPORATION

By: [Signature]
David C. Fanning
Executive Vice President &
General Counsel

020817

NO. 816
D18

DAVID C FANNING - 912127353597

02/04/98 00:58

CONFIDENTIAL

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CPH0642932

16div-026563

SUNBEAM CORPORATION
Sunbeam Corporate Center
1615 South Congress Avenue
Suite 200
Delray Beach, Florida 33445

February 23, 1998

The Coleman Company, Inc.
3600 North Hydraulic
Wichita, KS 67219

Gentlemen:

You have expressed an interest in exploring a possible transaction (the "Transaction") with Sunbeam Corporation (together with its subsidiaries, collectively, the "Company") and have requested that the Company furnish you with certain information concerning the Company and its businesses (the Business"). The term "you" is, for all purposes of this Agreement, deemed to include all of your affiliates that are involved in the possible Transaction.

As used herein, "Evaluation Material" means all information, whether in oral, written, electronic or other form, which the Company or any agents, representatives (including attorneys, accountants, bankers and financial advisors), directors, officers or employees (collectively, "Representatives") of the Company furnishes to you or your Representatives with respect to the Business, whether before or after the date hereof. The term "Evaluation Material" also includes all analyses, compilations, studies or other documents prepared by you or your Representatives containing or based in whole or in part on any information furnished by the Company or its Representatives or otherwise reflecting your review of, or interest in, the Business. The term "Evaluation Material" does not include information which (i) is or becomes generally available to the public other than as a result of a disclosure by you or your Representatives, (ii) was available to you on a non-confidential basis prior to its disclosure to you by the Company or its Representatives or (iii) becomes available to you on a non-confidential basis from a source other than the Company or its Representatives provided, however, that such source, insofar as is known to you after due inquiry, is not prohibited from transmitting the information to you or your Representatives by a contractual, legal, fiduciary or other obligation.

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CONFIDENTIAL

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51204 WJZ

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CPH 1427533

16div-026564

You agree that the Evaluation Material will not be used by you in any way detrimental to the Company, will be kept confidential by you and your Representatives, and will not, except as hereinafter provided, without the prior written consent of the Company be disclosed by you or your Representatives or used by you other than for the purpose of evaluating the Transaction. Moreover, you agree to transmit Evaluation Material only to those of your Representatives who need to know such information for the purpose of evaluating the Transaction and who will be advised by you of this Agreement and agree to be bound by the provisions hereof. You will be responsible for any breach of this Agreement by your Representatives.

Without the prior written consent of the Company, you will not, and will direct your Representatives who are given access to the Evaluation Material not to, disclose to any person (other than a person authorized hereunder) the fact that the Evaluation Material has been made available to you, that this Agreement exists or the terms hereof, that discussions or negotiations between you and your Representatives and the Company and its Representatives are taking place or any of the terms, conditions or other facts with respect to the possible Transaction, including the status thereof, unless such disclosure is required under applicable provisions of the securities laws of the United States, in which event, you agree to so notify and consult with the Company and its counsel prior to making any such disclosure. It is expressly agreed by the parties that the mere disclosure of the fact that discussions between you and your Representatives and the Company are taking place is likely to be detrimental to the Company. The term "person" as used in this Agreement will be broadly interpreted to include, without limitation, any corporation, company, partnership, individual or other entity.

You acknowledge that the operation of the Business involves the utilization of highly confidential and proprietary information not protected by patent, copyright or other statutory rights of the Company, including unpatented process and manufacturing technology and know-how (collectively, "Know-How") and information regarding customers' orders and brokers, agents and representatives involved in the Business, disclosure or misappropriation of which by you or your Representatives would irreparably damage the Company. Accordingly, without limitation to any other provision of this Agreement, to protect the Company's interests in such information and all other Evaluation Material, you agree that except as expressly approved by the Company in advance, unless and until the consummation

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CP 039438
CONFIDENTIAL

by you of a Transaction, you will not without the prior written consent of the Company (i) communicate regarding the Business or its operations, prospects or finances with any employee of the Company or with any person identified by you in the course of your evaluation as being a customer, supplier, customer's or supplier's representative, or other person involved in the conduct of the Business, or (ii) directly or indirectly solicit for employment any employee, nor solicit, employ, retain or enter into business relations with any senior management or key employee of the Company who became known to you through the Evaluation Material or with whom you have had contact in the process contemplated by this Agreement. Solicitation through advertisements in periodicals of general circulation not specifically directed at employees of the Company shall be deemed not to be solicitation hereunder.

In the event that you, your Representatives or any person to whom you or your Representatives supply the Evaluation Material or disclose the existence of this Agreement or that discussions or negotiations are taking place concerning a possible Transaction, are requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, any informal or formal investigation by any government or governmental agency or authority or otherwise) to disclose any Evaluation Material or any information relating to a possible Transaction or such person's opinion, judgment, view or recommendation concerning the Business as developed from the Evaluation Material, you agree (i) to notify the Company immediately of the existence, terms and circumstances surrounding such request, (ii) to consult with the Company on the advisability of taking legally available steps to resist or narrow such request and (iii) if disclosure of such information is required, to furnish only that portion of the Evaluation Material which, in the opinion of your counsel, you are legally compelled to disclose and to cooperate with any action by the Company to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Evaluation Material. You agree to use your best efforts to limit the disclosure of any Evaluation Material.

You agree that the Company is free (i) to conduct any process relating to a possible Transaction as it, in its sole discretion, determines (including, without limitation, by negotiating with any prospective buyer and entering into a preliminary or definitive agreement without prior notice to you or any other person) and (ii) in its sole discretion, to change the procedures relating to its

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consideration of a Transaction at any time without prior notice to you or to any other person, to reject any and all proposals made by you or any of your Representatives with regard to a Transaction, and to terminate discussions and negotiations with you or your Representatives at any time and for any reason.

Notwithstanding the preceding paragraph, the Company hereby agrees that for a period of 30 days from the date hereof, the Company shall negotiate solely and exclusively with you regarding an acquisition transaction, and during such 30 day period (the "Exclusively Period"), the Company shall not negotiate, discuss or entertain any offers from any party other than you with regard to an acquisition transaction nor shall the Company take any action with a view towards consummating any acquisition transaction with any party other than you.

Promptly upon request from the Company, you will either redeliver to the Company or destroy all (including that maintained in any computer memory, storage media or similar form) Evaluation Material and any other material containing, prepared on the basis of, or reflecting any information in the Evaluation Material (whether prepared by you or your Representatives, the Company or its Representatives or otherwise) and will not retain any copies, extracts or other reproductions in whole or in part of such material. Any such destruction will be confirmed in writing to the Company by you or an authorized Representative supervising the same.

You understand that, except as may otherwise be agreed in writing, neither the Company nor its Representatives make any representation or warranty as to the accuracy or completeness of the Evaluation Material. You agree that neither the Company nor its Representatives will have any liability to you or any of your Representatives resulting from the use of the Evaluation Material by you or your Representatives. You agree that, except as provided in this Agreement or any definitive written agreement, unless and until a definitive written agreement between the Company and you with respect to a Transaction has been executed and delivered, neither the Company nor you will be under any legal obligation of any kind whatsoever with respect to the Evaluation Material or a possible Transaction.

You agree that you and your Representatives will direct all questions and requests for information, as well as all bids and proposals, to _____ or persons expressly designated by him and will not contact any other

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Representative or employee of the Company.

This Agreement will inure to the benefit of any successor in interest to the Company as well as any person that may acquire after the date hereof the Business or any subsidiary or division of the Company operating the Business with respect to Evaluation Material concerning the business or affairs of such subsidiary or division.

It is understood and agreed that no failure or delay in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other further exercise thereof or the exercise of any right, power or privilege hereunder.

You acknowledge and agree that the Evaluation Material, as well as the services performed and the information possessed by the Company's employees, are of a character giving them a special, unique and extraordinary value and that the Company would not have entered into this Agreement if you had not agreed to a three-year term (and an indefinite term as respects Know-How). You further acknowledge and agree that such a three-year term is reasonable under the circumstances. It is the desire and intent of the parties that the provisions of this Agreement be enforceable to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, you and the Company agree that, should a court or administrative body subsequently determine that the terms of any provision of this Agreement are more extensive than reasonably necessary to protect the Company's interest, to request that such court or administrative body reform this Agreement specifying the greatest time period, the greatest area or other limitation that would not render any such provision unenforceable.

You acknowledge that you are (i) aware that the United States securities laws prohibit any person who has material non-public information about a company from purchasing or selling securities of such company, or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities and (ii) familiar with the Securities Exchange Act of 1934, as amended (the "1934 Act") and the rules and regulations promulgated thereunder and agree that you will neither use, nor cause any third party to use, any Evaluation Material in contravention of such Act or any such rules and regula-

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CP 039441
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The Coleman Company
February 23, 1998
Page 6

tions, including Rules 10b-5 and 14e-3.

You acknowledge and agree that in the event of any breach of this Agreement, the Company would be irreparably and immediately harmed and may not be made whole by monetary damages. It is accordingly agreed that the Company, in addition to any other remedy to which it may be entitled in law or equity, will be entitled to an injunction or injunctions to prevent breaches of this Agreement, and to compel specific performance of this Agreement, without the need for proof of actual damages. You agree to waive, and to cause your Representatives to waive, any requirement for securing or posting of any bond in connection with such remedy. You also agree to reimburse the Company for all expenses, including fees and disbursements of counsel, incurred by it in enforcing your or your Representatives' obligations hereunder.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended except in writing signed by the parties hereto. Neither party may assign any of its rights or obligations hereunder without the express prior written consent of the other party hereto.

This Agreement will be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of conflicts of laws thereof. The Company and you hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of the State of New York and the United States located in the City of New York for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby and agree not to commence any action, suit or proceeding relating thereto except in such courts. Each party further irrevocably and unconditionally waives and agrees not to plead or claim in any such court any objection to venue or that such court is an inconvenient forum.

This Agreement will terminate and be of no further force and effect on the third anniversary of the date of this Agreement except as to the obligations of confidentiality with respect to Know-How, which will continue indefinitely.

If you are in agreement with the foregoing, please sign two copies of this Agreement and return one to the undersigned, whereupon this Agreement will constitute the agreement between the Company and you with respect to

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The Coleman Company
February 23, 1998
Page 7

the subject matter hereof. This Agreement may be executed and delivered, including by facsimile transmission, in one or more counterparts, all of which together will constitute one and the same agreement.

Very truly yours,

SUNBEAM CORPORATION

By: _____
Name:
Title:

Confirmed and agreed to as of
the date first above written:

THE COLEMAN COMPANY, INC.

By: _____

NOT A CERTIFIED COPY

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07:12am EST 20-Mar-98 Bear Stearns (Maneaty, C/Pahlavi, P 212/272-4249) SOC CLN
SOC: 4 1/2 Point Drop Unwarranted; Buy Reaffirmed; One Year Target Remains \$60

Constance M. Maneaty (212) 72-4249 cmaneaty@bear.com
3/19/98 Parinaz Pahlavi (212) 272-4026
ppahlavi@bear.com

Subject: Company Update
Industry: Household Appliances

BEAR, STEARNS & CO. INC.
EQUITY RESEARCH

Sunbeam (SOC-45) - BUY

4 1/2 Point Drop Unwarranted; Buy Reaffirmed; One Year Target
Remains \$60
1998 EPS Lowered to \$1.80 to Include Shares Issued in Transaction
No Change to 1999 Estimate of \$3.00

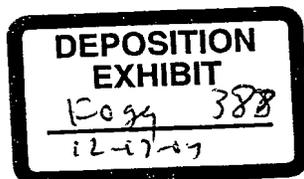
***Price Drop Unwarranted: We think that yesterday's price drop
of over 4 points was an over reaction and we reiterate our buy
rating on the shares. Our one year target remains \$60 as Sunbeam
integrates the acquisitions it has announced and 1999 earnings
approach \$3.00. At 15x 1999 estimates, the shares are valued at
a 30% discount to the market.

***1998 EPS Lowered to \$1.80 from \$2.05: We are lowering our
1998 Sunbeam estimates to \$1.80 from \$2.05 on the assumption that
the three transactions announced at the beginning of the month
(the acquisitions of Coleman, Signature Brands and First Alert,
with total sales of about \$1.6 billion) close in the near future.
As we wrote in our note of March 2, the acquisitions could dilute
EPS by \$0.05-\$0.07 in 1998. In addition, Sunbeam will issue 19.4
million shares to Coleman shareholders bringing the 1999 share
base to 108 million shares (which includes the options tied to
Mr. Dunlap's new employment agreement at the current stock
price); assuming a mid-year close, the 1998 share base would
increase to about 98 million. The combination of the new shares
and modest dilution create the estimate reduction; on our new
forecast EPS should increase about 30% over the \$1.41 recorded in
1997. (Reported EPS will also include the restructuring which is
expected to be announced after the transactions close.)

MARKET CAPITALIZATION \$4.0 (b)

DILUTED EPS	Q1	Q2	Q3	Q4	Year	P/E
	Mar	Jun	Sep	Dec		
Current 1996	\$0.08A	\$0.03A	\$(0.19)A	\$(0.03)A	\$(0.10)A	NC
Current 1997	\$0.24A	\$0.30A	\$ 0.39A	\$0.47A	\$ 1.41A	26.7x
Current 1998	\$0.31E				\$1.80E	18.4x

-- FIRST CALL --



BEAR STEARNS

0051

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CPH 1241513

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16div-026571

Previous 1998

52.05E

Current 1999

\$3.00E 14.2x

***Press Release Spooks the Stock: In conjunction with the pricing of a convertible offering, Sunbeam yesterday issued a press release that said that first quarter sales may be lower than analysts estimates of \$285-\$295 million. The notice sent the stock price into a tailspin with the suggestion that the tone of business might be weakening. We do not think this is the case. Rather, Sunbeam's order book at this point does not fully cover the growth expectations (12%-15%) that are implied by the estimated sales range. This is not unusual, even at this late stage in the quarter. March is the most important month of the quarter in terms of sales, and orders routinely come in with an expected turnaround time of as little as 72 hours. Sunbeam will continue to get orders and ship through the rest of the quarter and sales should be near the expected range. Nonetheless, we think the timing of the pricing of the convertible deal so close to the end of the quarter, coupled with orders now on the books prompted the company's press release.

***Current Tone of Business is Healthy: The press release prompted us to review the current tone of business, and it seems to be in good shape. So far, sales appear to be pretty close to budget. Last year, production did not meet demand in clippers, blenders, blankets and grills. The capacity issues have been solved, and Sunbeam believes that it is able to meet demand with improving levels of service. Grills are an important component of first quarter sales, and we think they were close to budget until the beginning of March when the weather turned abruptly cooler in many parts of the country. Sunbeam expects healthy grill sales during the last two weeks of March, but it is possible that some sales would slip into April. The cold snap has had a silver lining: electric blankets sold well at retail and there have been no significant returns. The new air and water filters started to ship in volume in March, a bit later than management had expected, and they should pick up steam in the June quarter. To accommodate all the moving pieces, we have lowered our Q1 total sales growth forecast to 12% (\$284 million) from 15% (\$295 million); our EPS estimate is \$0.31, a 29% increase.

Companies Mentioned: Sunbeam (SOC), Coleman (CLN); First Alert (ALRT); Signature Brands (SIGB)

First Call Corporation - all rights reserved. 617/345-2500

-> End of Note <-

-- FIRST CALL --

BEAR STEARNS

0052

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CPH 1241514

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*Sentram
Research*

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5-12-01 wB

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MER 08:43 Sunbeam

Don't Miss Consensus

SOC
Household Products
United States
John Gibbons

M E R R I L L L Y N C H

Research Bulletin
Reference Number 10102946
Jan/29/98 8 :43
(1) 212 449-8173

ACCUMULATE

Long Term
BUY

Reason for Report: Company Update

Price:	\$37 5/8	
Estimates (Dec)	1996A	1997E
EPS:	\$1.41	\$1.70-1.90
P/E:	26.7x	20.9x
EPS Change (YoY):		27.7%
Consensus EPS:	\$1.41	\$2.04
(First Call: 21-Jan-98)		
Cash Flow/Share:	\$1.85	\$2.32
Price/Cash Flow:	20.3x	16.2x
Dividend Rate:	\$0.04	\$0.04
Dividend Yield:	0.1%	0.1%

Opinion & Financial Data

Investment Opinion:	B-2-1-7
Mkt. Value / Shares Outstanding (mn):	\$3,311 / 88
Book Value/Share (Dec-97):	\$6.08
Price/Book Ratio:	6.2x
ROE 1998E Average:	27%
LT Liability % of Capital:	42.3%
Est. 5 Year EPS Growth:	15.0%

Stock Data

52-Week Range:	\$50 7/16-\$24 5/8
Symbol / Exchange:	SOC / NYSE
Options:	AMEX
Institutional Ownership-Spectrum:	77.8%
Brokers Covering (First Call):	8

ML Industry Weightings & Ratings**

Strategy; Weighting Rel. to Mkt.:	
Income:	Overweight (07-Mar-95)

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CP 02323

16djv-026574

CPH 1392481

Growth:	In Line	(07-Mar-95)
Income & Growth:	Overweight	(07-Mar-95)
Capital Appreciation:	In Line	(16-Jul-96)

Market Analysis; Technical Rating: Below Average (26-Aug-97)

**The views expressed are those of the macro department and do not necessarily coincide with those of the Fundamental analyst.
For full investment opinion definitions, see footnotes.

Investment Highlights:

- o We continue to recommend Sunbeam. SOC showed strong growth in Q4, hitting our estimate: sales were up 31% ex-divestitures; operating margins hit 20%.
- o But, the stock tumbled 9% yesterday because mgmt. broke a cardinal rule: Q4 EPS of \$0.47 missed consensus expectations by \$0.03.
- o Given that the Street's range of estimates for 1998 is still rather wide, we could envision further price volatility until estimates tighten.
- o Fundamentally, business is solid. For our 1998 est. of \$1.80, we assume 17% sales growth and a 19% op. margin, strong growth in our mind, but lower than consensus. Mgmt. is "not uncomfortable" with \$2.00.
- o At 20.9x our 1998 est., the stock is trading in line with its peers. i.e. there is almost no Dunlap premium.
- o We continue to think Mr. Dunlap will buy or merge with another company and create add'l shareholder value by restructuring the new entity. Although the cost to buy other companies has risen (see recent restructurings at RBD, BDK, TUP), we still think an accretive deal is doable this year. Mr. Dunlap indicated an eagerness to close one in H198.

Oops!

Al Dunlap has made a lot of money outwitting Wall St. In this case, however, expectations got ahead of reality, and the stock took a hard 9% tumble yesterday. This is because consensus expectations for the fourth quarter were \$0.03 higher than what was reported.

Lost in the turmoil is that business is pretty good. Fourth quarter sales jumped 31%, excluding divestitures, from last year's numbers. Sales growth has, in fact, accelerated all year. Fourth quarter results were broad-based with all businesses, except for blankets, showing healthy gains. Operating margins hit an unprecedented 20%. EPS were \$0.47 vs. \$(0.03). The results hit our estimate. We were satisfied.

But we also recognize that our numbers were lower than consensus, and understand the market's reaction. Given that the range of expectations for

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CP 02324

1998 is still rather wide, we could envision further stock price pressure until estimates tighten.

For 1998, we assume 17% sales growth and a 19% operating margin. This solid performance would result in a 28% EPS gain to \$1.80. Not shabby. However, management indicated yesterday that it is "not uncomfortable" with the consensus of \$2.00. To get there, you have to assume sales grow about 20% and a 20% operating margin. As Sunbeam has beaten our sales targets all last year, we would not rule out \$2.00.

Indeed, Sunbeam should benefit from a full year of benefits put in place in 1997, including the improved Neosho grill plant, distribution gains, and improved customer service levels. If the new air and water filtration products are half the successes management says they will be (mgmt. says they could be \$150 million in sales in 1998), a 20% sales gain doesn't seem out of the question.

We have chosen to be conservative because 1) much of the sales growth in the fourth quarter appears to be driven by grills. We assume that this represents distribution gains as Sunbeam has extended the selling season. This could make for tougher comparisons next year. 2) Management expects to grow international to a \$400 million business in 1998. Although doable, given the economic turmoil in Asia, we have chosen to be more conservative.

We have stuck with the stock because we are banking on Mr. Dunlap's reputation. He has a solid history of always being able to squeeze every ounce of shareholder value out of a company. We expect him to do the same with Sunbeam.

Interestingly, trading at 20.9x our 1998 estimate, the stock is trading virtually in line with its peers. That is to say the stock has virtually no Dunlap premium.

It is hard for us to believe Mr. Dunlap will sit still. We continue to believe an outright sale will be tough to accomplish. Perhaps, he could sell some of the pieces i.e. the grill business. More likely, we envision an acquisition of a company (or two) that could benefit from an Al Dunlap haircut. Indeed, the industry appears ripe for consolidation, given the large number of players and low profitability. Certainly, many of the likely candidates have been scrambling to determine their own destiny (see recent restructurings at Black & Decker, Rubbermaid, Tupperware), which has probably raised the price of acquisition. By our calculations, however, it is still possible to do an accretive acquisition this year. Management indicated an eagerness to close a deal in the first half of 1998. Stay tuned.

Opinion Key (X-a-b-c): Investment Risk Rating(X): A - Low, B - Average, C - Above Average, D - High. Appreciation Potential Rating (a: Int. Term - 0-12 mo., b: Long Term - >1 yr.): 1 - Buy, 2 - Accumulate, 3 - Neutral, 4 - Reduce, 5 - Sell, 6 - No Rating. Income Rating(c): 7 - Same/Higher, 8 - Same/Lower, 9

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CP 02325

- No Cash Dividend.

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Sunbeam Corporation : Trimmed Q1:98E/1998E on Potential Q1 Sales Shortfall;

RL
Goldman Sachs
Elisabeth Fontencelli
March 20, 1998

Goldman, Sachs & Co. Investment Research

Sunbeam Corporation

* * Trimmed Q1:98E/1998E on Potential Q1 Sales Shortfall; RL * *

Elisabeth Fontencelli (New York) 1-212 902-8192 - NY Equity Research

===== NOTE 12:06 PM March 20, 1998 =====

	Stk Rtg	Latest Close	52 Week Range	Mkt Cap (mm \$)	YTD Pr Change	Cur Yield
Sunbeam Corporation	RL	45.38	53-29	3947.6	7%	0.1%

SOC	Earnings Per Share								
	1999 FY	1998 FY	1997 FY(A)	Mar	Jun	Sep	Dec	FY	CY
		0.28				0.39	0.47	3.00	2.00
		0.24	0.30					1.41	
				-Abs P/E on- Cur Nxt		-Rel P/E on-- Cur Nxt		EV/NxtFY EBITDA	LT EPS Growth
SOC	FY	22.7X	15.1X			1.1X	0.8X	NA X	20%

DEPOSITION EXHIBIT
Kogut 389
127

* Continue to recommend purchase of SOC. 1998E reduced to \$2.00 fm \$2.05. 1999E of \$3.00 unchanged. Spoke with company. By our model, potential Q1 revenue shortfall could place Q1 EPS in \$0.25 to \$0.30 range. New est is \$0.28ps v. \$0.24, down from previous \$0.32 est. We continue to believe the long-term consolidation strategy should create significant value not reflected in SOC shares today. Price target on \$3.00 estimate in 1999 is unchanged at \$60-\$65. We believe short-term issues are far outweighed by the longer-term benefits.

* Q1:98 revenue estimates were in a range of \$285-\$295 million, about a 15% increase from Q1:97. Our new revenue target is 10% growth to \$275-\$280 million. The company stated that Q1 revenue 'MAY fall below Wall Street estimates of \$285 million to \$295 million, but should exceed year ago sales of \$253.4 million.' Reasons for the shortfall 'IF ANY, would be retail order patterns and inventory management', not point of sale related. March is the most significant contributor to first quarter sales and profits. As such, these last two weeks of the month will be crucial to determining Q1 results.

* Our rating on Sunbeam has been and remains a U.S. Recommended List rating. Within that rating we have, in the last year and a half, taken long and short-term postures at different points in time. Current events

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place our rating emphasis on the twelve-month view. We expect near-term volatility around these fundamental issues until Sunbeam reports earnings in late April.

=====
Important Disclosures (code definitions attached or available upon request)
SOC : M,CP

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Further Information =====

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03:14pm EST 28-Jan-98 CIBC Oppenheimer (Scott Graham 212-667-7256) SOC
SOC: 4Q Comes Up Short; Reducing Ests.; But Maintain Strong Buy P1-2

Part 1 of 2

CIBC Oppenheimer

Household Durables
Scott Graham
George Lee

(212) 667-7256
(212) 667-6376

January 28, 1998
Sunbeam Corporation
4Q Comes Up Short; Reducing
Ests.; But Maintain Strong Buy

Investment Conclusion

Sunbeam reported 4Q97 EPS of \$0.47 vs. a loss of \$0.03 a year ago. This was \$0.05 short of our estimate and \$0.03 lower than the Street average. Sales increased 26%. We had estimated a 34% increase. This variance was due to (1) poor electric blanket sales, which were adversely impacted by favorable winter weather and a mid-quarter distribution glitch (now fixed) and (2) cannibalization of non-new product sales by new products. The former restrained gross margin expansion. While the company offset some of this shortfall at the SG&A line, in part, by reducing blanket advertising when the weakness emerged, it was not enough to make up the total \$0.05 EPS shortfall, all of which was at the operating income line. Clearly, management's optimism that it could pull out the quarter late in December was excessive.

We are, however, maintaining our Strong Buy rating. The "bottom line" to this quarter is best put this way. We can live with blanket shortfall: management appears to have its arms around the issue. The only real issue we had with the quarter was that older products sales declined. This tells us that, at some retailers, shelf space for these products was reduced in favor of Sunbeam's new products. One of our thesis points on this stock has been that Sunbeam would gain share via new products (it is) and that even products that are not new would incrementally gain share as competitor products were eliminated in favor of the Sunbeam new products and as customer service improved. The latter did not occur this quarter.

FIRST CALL - ON CALL --

Rating: STRONG BUY

SOC-NYSE(1/27/98) \$37 3/4
52-week \$50 7/16-24 5/8
Shares Out 88 Million
Float 84 Million Shares
Market Cap \$3.3 Billion
Div/Yield \$0.04/0.1%
Fiscal Year December
Book Value \$6.07 per Share
1998E ROE 35.0%
LT Debt \$195 Million
Preferred Nil
Com Equity \$532 Million

Earnings per Share Prior Current
1996 --- (\$0.10)
1997 \$1.45 \$1.41
1998E \$2.22 \$2.10
1999E \$2.75 \$2.65

P/E Ratio

1996 --- NM
1997 26.0X 26.8X
1998E 17.0X 18.0X
1999E 13.7X 14.2X

*All EPS are operating (excl. one-time charges)

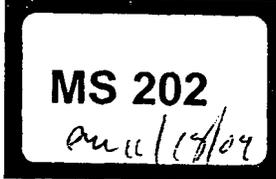
Company Description:

Sunbeam manufactures small electric appliances for the kitchen, and for health and personal care purposes. It also produces barbecue grills and accessories.

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But as Sunbeam displays more of a new product and service track record with retailers, we believe these gains will be realized in 1998. We are reducing our revenue EPS estimates by \$0.12 to \$2.10 in 1998 and by \$0.10 to \$2.65 in 1999, and our target price by \$7 to \$53. But while the story may not be moving at the velocity we thought it was, Sunbeam's fundamentals are still very positive: it was, overall, a good quarter and the balance sheet improved. Sunbeam has good earnings momentum heading into 1998. In light of this, the chairman's indication that a corporate transaction could occur in 1998 and the 20%+ pullback in this stock from its high, we believe our highest rating is still appropriate.

Quarter Fell Short of Our Estimate;
Reducing Estimates

Sales increased 26%, below our 34% forecast. The variance was due to poor electric blanket sales, which were a consequence of favorable winter weather and a mid-quarter distribution glitch. This glitch has been remedied. It was also due to some cannibalization of sales by new products of products which are not new. Gross margin increased 1000 bps to 29.4%. Yet, this too was below our forecast of 31.4% due to the negative mix associated with the weak blanket sales, which carry a high gross margin. The SG&A rate of 9.7% was over 1000bps lower than the year ago quarter and below our 11.2% forecast. The company reduced blanket advertising when the sales weakness emerged and also used more cable TV advertising (less expensive) than network TV advertising in the quarter. But this was not enough to offset the sales and gross income shortfall at the operating income line; this was \$0.05 below our forecast. Interest was a little higher than we expected and the tax rate lower.

Based on the foregoing, we are lowering our EPS estimates by \$0.12 to \$2.10 in 1998 and by \$0.10 to \$2.65 in 1999.

Key Points of the Quarter

We believe the quarter and conference call provided the following positives: Domestic sales increase 28%. This represents the fourth consecutive quarter the sales growth accelerated vs. the previous quarter. Sales to international markets increased 42%, a portion of which was to Japan and China. In our opinion, the Asian crisis has not had an impact on Sunbeam's plans. The balance sheet improved in the quarter. Inventories and receivable both declined from 3Q97 despite a sequential sales. Inventory and receivables increased faster than sales did for the full year, but the company (1) came into 1997 with inventory that was too low to support its customers and (2) there was a large sales concentration of sales in December. As we have noted previously, Sunbeam's balance sheet is a plus not a minus to this story. The company will shift more of its production overseas in 1998. Its target to manufacture 50% internal/50% external.

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Sunbeam recently signed an agreement with La Quinta Inns to provide their irons and hair dryers. It is about to sign an agreement with NuSkin to help them distribute its FreshSource water product in Asia. Project Fulltime, an internal program designed to increase its on-time, full-order delivery quotient, is fully on track. We believe this will be a market share driver in 1998. Even without this in 1997, the company increased its market share in all of its key product lines. Capacity utilization was 76% this year and should rise into the 80% in 1998.

On the negative side:

Sales to its top 10 customers were up 15%. This was a lower pace of growth than the last two quarters (+30%, +20%) and was indicative of the non-new product points we made in our investment conclusion.

The company indicated that it may not run at a 20% operating margin level for full year 1998. Rather, it may pour new dollars into advertising its new products.

The company gave no indication as to when it will be net debt free, a previously stated goal for year end 1997. However, the reason behind this change in direction was a good one: it elected to build working capital levels to support its customers. This is not new news.

We have discounted all of the above into our lower estimates.

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SOC: 4Q Comes Up Short; Reducing Ests.; But Maintain Strong Buy P2-2

Part 2 of 2

A Transaction is Close

Dunlap indicated that the acquisition/merger list is now short and expects to announce a transaction(s) in 1Q98. To this end, he did indicate that it could be one or more transactions. While we do not rule out a sale of Sunbeam, we are inclined to believe an acquisition/merger is the likely course. In our opinion, whatever the company does, it will only look to drive new value into the stock.

Valuation:

Very Attractive

Based on our revised estimates, we still believe the stock will reach \$53 over the next year. This is based on applying a market multiple to our 1999 estimate and adding an estimated \$4-\$5 in 1999 EOY estimate cash.

Our quarterly EPS estimates are shown below.

		1 Qtr.	2 Qtr.	3 Qtr.	4 Qtr.	Year
1996	Actual	\$0.21	\$0.09	(\$0.22)	(\$0.03)	(\$0.10)
1997	Prior	\$0.24A	\$0.30A	\$0.39A	\$0.52E	\$1.45E
1997	Actual	\$0.24	\$0.30	\$0.39	\$0.47	\$1.41
1998E	Prior	---	---	---	---	\$2.22E
998E	Current	---	---	---	---	\$2.10E
1999E	Prior	---	---	---	---	\$2.75E
1999E	Current	---	---	---	---	\$2.65E

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Household Products

PaineWebber

Sunbeam

Did Al show his hand too soon?

Buy

- Sunbeam closed out its dramatic 1997 turnaround with EPS of \$0.47 in the fourth quarter, finishing with \$1.41 in 1997 versus a \$0.10 loss in 1996.
- The market rewarded Sunbeam for this turnaround by driving SOC shares up over 65% in 1997.
- With shares down over 12% in 1998, the market is skeptical about whether an encore performance is possible.
- We see solid fundamental momentum through the first half of 1998, but the stock may lag until confidence in 40% EPS growth in 1998 is strengthened. We believe Sunbeam has strategies in place to restore this confidence in the near term. We reiterate our buy (1) rating.

Investment opinion

We continue to closely monitor Sunbeam's aggressive balance sheet management as well as the attainability of the company's international goals. While Sunbeam dismisses its high inventory and receivables levels as necessary "evils" to support its aggressive growth goals, we note that its strategy leaves little margin for error in an industry that oftentimes faces errors outside of its control (weather, economic cycles). On the international front, we have always modeled for slower growth than Sunbeam has internally modeled for, but we no longer believe there is much, if any, upside to our more conservative stance. We are also bothered by the departure of Dixon Thayer, VP of Sunbeam's International business, only one year into the international ramp-up. Thayer's as well as some other departures at the VP level have been attributed to the company's ongoing refinement. We find the timing to be a little suspect. While some "warning signs" persist and some others have cropped up, we believe this has already been reflected in Sunbeam's stock price, down nearly 25%

2/4 price \$37 NYSE — SOC 52-week range \$50 7/16 - 24 5/8

FY 12/31	1997	1998E	1999E
Q1	\$0.24	\$0.33	—
Q2	0.30	0.46	—
Q3	0.39	0.52	—
Q4	0.47	0.63	—
Year	\$1.41	\$1.95	\$2.50
P/E	—	19.0	14.8
Div	—	\$0.04	—
Yield	—	0.1%	—
Secular Growth Rate (1997-2001)			20%

since it reported its third quarter 1997 earnings in late October. At present, Sunbeam needs some new, positive news to stop its steady decline. This could come in the form of an acquisition announcement, as Chairman Al Dunlap has made it clear he intends to close an acquisition in the first half of 1998. At 19.0x our 1998 estimate of \$1.95, we believe there is limited downside in Sunbeam shares at this point and the consummation of an accretive transaction could give the shares a much-needed boost.

February 6, 1998
SOC0205 AS

Andrew Shore (212) 713-2452
Hari Chandra, Associate Analyst
R. T. Quinn, Associate Analyst

MS 138
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16div-026586

Table 1
Fourth quarter snapshot
Dollars in millions, except per share data

	Income Statement						
	Year-over-Year Comparison			Sequential Comparison			
	4Q97	4Q96	Pct. Change	4Q97	3Q97	Pct. Change	
Net Sales	338.1	268.9	25.7%	338.1	289.0	17.0%	
Cost of Goods Sold	238.7	217.0	10.0%	238.7	200.2	19.2%	
Gross Profit	99.4	51.9	91.5%	99.4	88.8	11.9%	
SG&A Expenses	32.7	51.6	(36.6%)	32.7	32.9	(0.5%)	
Operating Expenses	32.7	51.6	(36.6%)	32.7	33.9	(3.5%)	
Operating Income	66.7	0.3	22133.3%	66.7	54.9	21.5%	
Interest expense and other, net	4.1	4.0	2.5%	4.1	1.5	173.3%	
Total Other	4.1	4.0	2.5%	4.1	1.5	173.3%	
Pretax Income	62.6	(3.7)		62.6	53.4		
Taxes	20.9	(1.5)		20.9	18.9		
Net Income Cont. Oper.	41.7	(2.2)	NM	41.7	34.5	20.9%	
Earning (loss) from discont. oper. net	0.0	(11.9)		0.0	0.0		
Net Income	\$41.7	\$(14.1)		\$41.7	\$34.5		
EPS Cont. Oper., prim.	PW est. was \$0.48	\$0.37	(\$0.03)	NM	\$0.47	\$0.39	21.0%
Avg. Com. Shs. diluted	88.4	84.4	5.1%	88.4	88.2	0.2%	

Margin Analysis

	4Q97	4Q96	Change	4Q97	3Q97	Change
Gross Margin	29.4%	19.3%	10.1 pts.	29.4%	30.7%	(1.3) pts.
SG&A Exp.	9.7%	19.2%	(9.5) pts.	9.7%	11.7%	(2.1) pts.
Operating Margin	19.7%	0.1%	19.6 pts.	19.7%	19.0%	0.7 pts.
Pretax Income	18.5%	(1.4%)	19.9 pts.	18.5%	18.5%	0.0 pts.
Tax Rate	33.4%	40.7%	(7.3) pts.	33.4%	35.4%	(2.0) pts.
Net Margin	12.3%	(0.8%)	13.1 pts.	12.3%	11.9%	0.4 pts.

Source: PaineWebber Inc. and company reports.

	Balance Sheet					
	Versus Year-ended 1996			Sequential Comparison		
	4Q97	1996	Pct. Change	4Q97	3Q97	Pct. Change
ASSETS						
Current assets:						
Cash & equivalents	52.4	11.5	355.7%	52.4	22.8	129.8%
Receivables, net	295.5	213.4	38.5%	295.5	309.1	(4.4%)
Inventories	256.2	162.3	57.9%	256.2	290.9	(11.9%)
Net assets of discontinued ops.	0.0	102.8	-100.0%	0.0	2.9	-100.0%
Deferred income taxes	36.7	93.7	(60.8%)	36.7	56.8	(35.4%)
Prepaid exp. & other current assets	17.2	40.4	(57.4%)	17.2	10.0	72.0%
Total current assets	658.0	624.1	5.4%	658.0	692.5	(5.0%)
PP&E, net	240.9	220.1	9.5%	240.9	229.2	5.1%
Trademarks and tradenames, net	194.4	200.3	(2.9%)	194.4	195.9	(0.8%)
Other assets	27.0	28.2	(4.3%)	27.0	27.5	(1.8%)
	1,120.3	1,072.7	4.4%	1,120.3	1,145.1	(2.2%)
LIABILITIES & SHAREHOLDERS' EQUITY						
Current liabilities:						
Short-term & curr. portion of LT debt	0.0	0.9	-100.0%	0.0	0.7	-100.0%
Accounts payable	105.6	107.3	(1.6%)	105.6	132.7	(20.4%)
Restructuring accrual	10.9	63.8	(82.9%)	10.9	20.1	(45.8%)
Other current liabilities	81.6	99.2	(18.0%)	81.6	92.2	(11.8%)
Total current liabilities	198.1	271.5	(27.0%)	198.1	246.0	(19.5%)
Long-term debt	194.6	201.1	(3.2%)	194.6	199.9	(2.7%)
Deferred income taxes	54.6	52.3	4.4%	54.6	55.9	(2.3%)
Non-operating and other LT liabilities	141.1	152.5	(7.5%)	141.1	145.5	(3.0%)
Shareholders' equity	531.9	355.3	34.6%	531.9	497.8	6.9%
	1,120.3	1,072.7	4.4%	1,120.3	1,145.1	(2.2%)

Source: PaineWebber Inc. and company reports.

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MF 02958

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Fourth quarter EPS hits low end of range

Sunbeam reported fourth quarter EPS results of \$0.47, in line with the low end of Street estimates (\$0.47-0.55) and \$0.01 short of our estimate. The company estimates that a \$15 million shortfall in electric blankets cost \$0.04 in the quarter and the Neosho grill facility re-alignment another \$0.01. We believe that \$0.47 represents a strong close to a very strong year, but caution investors that going forward, the low end of the range may be a more relevant number to focus on when assessing Sunbeam's value. As the last couple of quarters have indicated, Sunbeam's goals are very aggressive, even at the low end of the range. Given the slight downside surprise in the latest quarter, we have trimmed our 1998 EPS estimate to \$1.95-2.00 from \$2.00-2.05, reflecting management's guidance that 40% EPS growth in 1998 is within reason. While we believe estimates beyond 1998 are less relevant as Sunbeam management stated it seeks to "close" a major acquisition in the first half of 1998, for now, we have shaved a dime off our 1999 range, to \$2.50-2.60. At 19.0x the low end of our 1998 range, we continue to believe Sunbeam is a good buy in the high-\$30s, provided it carries out its Phase III plans. Sticking with our revised "low-end" outlook, our 12- to 18-month price target is \$50, representing 20x the low end of our 1999 estimate.

Sales strong, led by grills

Sales in the quarter were up 25.7% on a reported basis, to \$338.1 million. This was about \$6 million short of our estimate, due to the previously mentioned blanket softness. As expected, the grill sales led the way in the quarter, but this growth was substantially ahead of our expectations. We are not bothered by the "grill blip" in the fourth quarter as long as the company hasn't stolen some first quarter 1998 upside to stretch to meet fourth quarter 1997 expectations. We will not really know this until we are further into the first quarter, but must note that we believe the receivable and inventory position is still a bit "heavy." The stakes are high as Sunbeam enters the peak grill season, as the company has already begun to seed the channel in the fourth quarter, grill inventory is high (according to strategy), and its product line-up is brand new. If it works, Sunbeam will likely gain substantial market share and have a blow-out first half in grills against an easy first half 1997 comparison. We are modeling for first half 1998 grill sales of around \$270 million, up 15-20% from the roughly \$230 million in last year's first half. We also expect grill margins to be around 5-6 points higher in 1998 than in 1997, but still below the company average. We believe that Sunbeam management under-

stands the importance of the grill turnaround and have no reason to doubt their execution capabilities. Regarding this matter, all the shorts can do is pray for rain.

20% operating margin—almost there

Sequential margin improvement continued, as the company registered a 19.7% operating margin in the quarter. Gross margin declined sequentially in the quarter, to 29.4% from 30.7% due to the higher grill mix (19% of sales in the fourth quarter versus 11% in the third), but the difference was more than made up for in operating margin as SG&A expenditures came in at only 9.7% of sales. We expect SG&A expenses to pick up again to around 13-14% of sales in the first half of 1998 as spending behind the enhanced grill line-up and the air & water products begins.

What about Phase III?

As we have stated previously, we believe Sunbeam will have a difficult time achieving second half 1998 growth targets without an accretive acquisition. We remain comfortable with our \$1.95-2.00 EPS estimate in 1998 without an acquisition, but we would certainly breathe a little easier if Sunbeam could actually consummate an accretive transaction. Sunbeam Chairman Al Dunlap expressed his desire to have a transaction closed in the first half. We continue to believe that time is the company's enemy and the sooner it can strike a deal, the better. We are also increasingly of the belief that Sunbeam doesn't need a multi-billion dollar acquisition to drive its stock price higher. Given its cost-cutting prowess, superior margin structure and relatively small sales base (\$1.2 billion), we believe a smaller acquisition might be enough to provide upside on the \$2.00 estimate in 1998 and return the stock to its old highs in the low \$50s. Furthermore, it may be easier to consummate a smaller transaction with cash/debt and save the stock for the "big one," when Sunbeam's multiple improves. Whether we see the "quantum leap" or not in the first half, we think one thing is clear: Al Dunlap is not likely to sit idle and watch his stock under-perform the market as well as the stocks of his perennial laggard competitors. We believe the consummation of some type of M&A deal in the first half is highly likely. The market is simply waiting to see at what cost this transaction will come. While Sunbeam certainly is well positioned to become the leading consolidator in an industry desperately in need of consolidation, we just do not believe Al Dunlap took this job a year and a half ago to pioneer this consolidation.

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Table 2
Sunbeam quarterly income statement
Dollars in millions, except per share data

	1996A	Q197A	Q297A	Q397A	Q497A	1997A	Q198E	Q298E	Q398E	Q498E	1998E	1999E
Net sales:												
U.S.	\$804.2	\$201.5	\$230.1	\$229.0	\$268.1	\$928.7	\$227.4	\$294.6	\$262.5	\$313.2	\$1,097.7	\$1,222.0
% growth						15.5%	12.9%	28.0%	14.6%	16.8%	18.2%	11.3%
International	180.0	52.0	57.5	60.0	70.0	239.5	65.0	80.0	96.0	112.0	353.0	500.0
% growth						33.1%	25.0%	39.1%	60.0%	60.0%	47.4%	41.7%
Total sales	\$984.3	\$253.5	\$287.6	\$289.0	\$338.1	\$1,168.2	\$292.4	\$374.6	\$358.5	\$425.2	\$1,450.7	\$1,722.0
% y-o-y sales growth	-3.2%	10.1%	13.1%	24.7%	25.7%	18.7%	15.4%	30.2%	24.1%	25.8%	24.2%	18.7%
% of annual sales	100.0%	21.7%	24.6%	24.7%	28.9%	100.0%	20.2%	25.8%	24.7%	29.3%	100.0%	100.0%
Cost of goods sold	808.3	185.7	213.1	200.2	238.7	837.7	204.7	258.4	240.2	289.1	992.5	1162.4
Gross profit	176.0	67.8	74.5	88.8	99.4	330.5	87.7	116.1	118.3	136.1	458.2	559.7
% margin	17.9%	26.7%	25.9%	30.7%	29.4%	28.3%	30.0%	31.0%	33.0%	32.0%	31.6%	32.5%
SG&A expenses	171.7	33.0	31.6	33.9	32.7	131.2	40.9	50.6	44.8	46.8	183.1	215.3
	17.4%	13.0%	11.0%	11.7%	9.7%	11.2%	14.0%	13.5%	12.5%	11.0%	12.6%	12.5%
Operating profit	\$4.3	\$34.8	\$42.9	\$54.9	\$66.7	\$199.3	\$46.8	\$65.5	\$73.5	\$89.3	\$275.1	\$344.4
% margin	0.4%	13.7%	14.9%	19.0%	19.7%	17.1%	16.0%	17.5%	20.5%	21.0%	19.0%	20.0%
Interest expense (income)	17.3	2.0	3.0	2.8	4.6	12.4	2.0	3.0	3.0	4.0	12.0	8.0
Other expense (income), net	0	0.1	-0.5	-1.3	-0.5	-2.2	-0.5	-0.5	-0.5	-0.5	2.0	-2.0
Pretax income	-13.0	32.7	40.4	53.4	62.6	189.1	45.3	63.0	71.0	85.8	265.1	338.4
% margin	-1.3%	12.9%	14.1%	18.5%	18.5%	16.2%	15.5%	16.8%	19.6%	20.2%	18.3%	19.1%
Income tax	-4.5	12.1	14.2	18.9	20.9	66.1	15.9	22.1	24.8	30.0	92.8	116.8
% av. rate	34.7%	37.0%	35.1%	35.4%	33.4%	34.9%	35.0%	35.0%	35.0%	35.0%	35.0%	34.5%
Net income (continuing operations)	-\$8.5	\$20.6	\$26.2	\$34.5	\$41.7	\$123.0	\$29.4	\$41.0	\$46.1	\$55.8	\$172.3	\$221.7
% margin	-0.9%	8.1%	9.1%	11.9%	12.3%	10.5%	10.1%	10.9%	12.9%	13.1%	11.9%	12.9%
Extraordinary items:												
Restructuring	-100.8											
Special charges	-87.8											
Earnings from discontinued operations	0.8	-13.7										
Loss on sale of discontinued operations	-32.4											
Total net income	-228.7	6.9	26.2	34.5	41.7	109.3	29.4	41.0	46.1	55.8	172.3	221.7
EPS (continuing operations)	-\$0.10	\$0.24	\$0.30	\$0.39	\$0.47	\$1.41	\$0.33	\$0.46	\$0.52	\$0.63	\$1.95	\$2.30
EPS (reported)	-\$2.76						<i>Growth</i>	<i>40.3%</i>	<i>34.6%</i>	<i>33.3%</i>	<i>33.6%</i>	<i>36.3%</i>
Shares outstanding	82.9	87.0	87.5	88.2	88.4	87.5	88.5	88.5	88.5	88.5	88.5	88.5

Source: PaineWebber Inc. estimates and company reports.

Sales Breakdown	1996E	Q197E	Q297E	Q397E	Q497E	1997E
Sales by Segment:						
Appliances	\$390	\$89	\$101	\$124	\$156	\$471
Outdoor Cooking	257	100	128	32	65	325
Health & Home	100	26	18	27	35	107
Personal Care & Comfort	192	19	21	90	65	194
Away from Home	56	19	19	16	17	71
Total Sales	\$984	\$253	\$288	\$289	\$338	\$1,168
Percent of Sales:						
Appliances	39%	35%	35%	43%	46%	40%
Outdoor Cooking	26%	40%	45%	11%	19%	28%
Health & Home	10%	10%	6%	9%	10%	9%
Personal Care & Comfort	19%	7%	7%	31%	19%	17%
Away from Home	6%	8%	7%	6%	5%	6%
Total Sales	100%	100%	100%	100%	100%	100%
% Growth:						
Appliances		15%	20%	28%	29%	24%
Outdoor Cooking		3%	11%	27%	247%	27%
Health & Home		4%	-10%	9%	18%	7%
Personal Care & Comfort		18%	13%	30%	-26%	1%
Away from Home		40%	22%	2%	57%	28%
Total Sales		10%	13%	25%	26%	19%

*Numbers may not sum precisely to subtotals & totals due to rounding allocation of outlier sales (around 1% of Q3 sales and 2% of sales in Q4) and rounding.

Source: PaineWebber Inc. estimates and company reports.

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We repeat our Sunbeam investment thesis (with some modest revisions)

- Solid momentum through the first half fueled by a new grill line-up and enhanced grill facility as well as its "Air & Water" offerings from the "secret room."
- Comparisons to get tougher in the second half, but likely to be clouded by Phase III (or perhaps smaller acquisition).
- Real potential for another round of meteoric stock price appreciation comes if Sunbeam can make a strategic acquisition, using Sunbeam stock as currency, at a modest premium that doesn't already factor in all of the cost-cutting potential. (A smaller cash/debt deal could also drive some less meteoric appreciation.)
- Patient Sunbeam investors may get two (or more) "Chainsaw" turnarounds for the price of one.

Valuation

As Table 3 illustrates, at its current depressed levels, Sunbeam's P/E valuation relative to some other leading consumer non-durable players is beginning to look quite reasonable.

Table 3
Consumer non-durable companies' valuations

Company	2/4 Close	98E*	99E*	98 P/E	99 P/E
Black & Decker	\$48 5/8	\$2.6 5	\$3.26	18.3x	14.9x
Fortune Brands	\$38 1/8	\$1.7 0	\$1.98	22.4x	19.3x
Newell	\$42 1/16	\$2.0 9	\$2.38	20.1x	17.7x
Rubbermaid	\$24 3/4	\$1.1 8	\$1.49	21.0x	16.6x
			Mean	20.5x	17.1x
Sunbeam	\$37	\$1.95	\$2.50	19.0x	14.8x

*First Call mean estimate, except for Sunbeam which is based on low-end of PaineWebber range.

We believe that over the next 12-18 months, as Sunbeam management takes the appropriate steps to restore confidence in the attainability of aggressive 1998/1999 esti-

mates, the stock can approach 20x our 1999 EPS estimate, or \$50, representing 33% upside from current levels. Until such steps are taken, we believe the stock may languish in its current \$37-40 trading range.

We should note that investor skepticism is nothing new for Sunbeam. Exactly one year ago, Sunbeam's stock closed at \$27 1/8, 19.2x what many viewed as a very aggressive \$1.40 estimate for 1997. A year later, the earnings have been delivered and Sunbeam stock is up nearly 40%. If Sunbeam management executes according to plan (40% EPS growth in 1998), January's skepticism may translate into an encore performance for investors in 1998.

Risks

Sunbeam has been and continues to be a very risky story. The company's EPS growth target of 40% in 1998 is very aggressive and comes in the face of a difficult economic climate in Asia and very solid growth in second half 1997. We also believe the company is employing a risky strategy to capture a larger share of the grill market. Execution is key to the company providing an encore to its stellar 1997 performance.

Additional information is available upon request.

Prices of companies mentioned as of 2/4/98:

- Black & Decker¹ BDK \$48 5/8
- Clorox¹ CLX \$78 1/2
- Honeywell¹ HON \$73 1/4
- Maytag¹ MYG \$40 1/4
- Newell NWL \$42 1/16
- Rubbermaid RBD \$24 3/4
- Sunbeam² SOC \$37
- Tupperware TUP \$26 7/16
- Whirlpool¹ WHR \$59 7/8

¹ A subsidiary of PaineWebber Incorporated acts as a specialist that makes a market in this security. At any given time the specialist may have a position, either long or short, in the security, and as a result of the associated specialist's function as a market maker, such a specialist may be on the opposite side of orders executed on the floor of a national securities exchange.

² PaineWebber Incorporated has acted in an investment banking capacity for this company.

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Phase III Update - Did Al Show his hand too soon?

Sunbeam Chairman Al Dunlap stated publicly on April 4, 1997 that Sunbeam was looking to hire an advisor to explore takeovers or a sale of the company. Dunlap claimed that Sunbeam could "easily spend \$5 billion on a buyout" and that he would "prefer making a hostile takeover of a poorly managed company to a friendly buyout." Nearly 10 months later, Sunbeam has made no such acquisition, but some potential targets have made some pre-emptive moves.

Table 4
Frequently mentioned Sunbeam targets that have recently announced restructurings

Company	Annual Sales (bil)	Date Restructuring Announced	Anticipated Charge (mm)	Anticipated Annual Savings (mm)	Full savings realized by
Whirlpool	\$8.6	9/18/97	\$350	\$180	by 2000
Tupperware	\$1.2	1/12/98	\$42	\$10	by 1998
Rubbermaid	\$2.4	1/21/98	\$200	\$200	by 2000
Black & Decker	\$4.9	1/27/98	\$250	\$100	by 2000
Also of note:					
Maytag	\$3.4	2/9/96	\$40	\$20	by 1997
Sunbeam	\$1.2	11/12/96	\$338	\$225	by 1998

Source: Company press releases and reports.

In many cases the stock prices of Sunbeam's restructuring counterparts have outperformed Sunbeam's stock price since the company's April 4 announcement and its October 23 announcement that Morgan Stanley had been hired to explore strategic alternatives.

Table 5
Relative stock price performance at announcement dates

Company	Stock Price	Stock Price	Current Stock Price	Return since	
	4/4/97	10/23/97	2/4/98	4/4/97	10/23/97
Whirlpool	\$46.25	\$62.50	\$59.88	29.5%	-4.2%
Tupperware	32.38	26.75	26.44	-18.3%	-1.2%
Rubbermaid	24.38	24.25	24.75	1.5%	2.1%
Black & Decker	30.63	40.63	48.63	58.8%	19.7%
Maytag	20.63	34.13	40.25	95.2%	17.9%
Sunbeam	\$32.88	\$48.88	\$37.00	12.5%	-24.3%
S&P 500	757.90	950.69	1006.9	32.9%	5.9%

As other companies have played "catch up," Sunbeam's valuation is beginning to look more reasonable

Table 6
Relative Valuation

Company	Current Stock Price 2/4/98	EPS estimates		Price/Earnings	
		1998*	1999*	1998	1999
Whirlpool	\$59.88	\$3.99	\$4.89	15.0x	12.2x
Tupperware	26.44	1.65	1.90	16.0x	13.9x
Rubbermaid	24.75	1.18	1.49	21.0x	16.6x
Black & Decker	48.63	2.65	3.26	18.3x	14.9x
Maytag	40.25	2.33	2.68	17.3x	15.0x
			Alean	17.5x	14.5x
Sunbeam#	\$37.00	\$1.95	\$2.50	19.0x	14.8x
S&P 500	1006.9	48.37	50.3	20.8x	20.0x

* First Call (earn estimates as of February 5, 1998.

PaineWebber Inc. estimates.

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Table 7
Water filtration devices (pitcher/faucet mount/counter-top & filters): Dollar share of type (FDM)

	1994	1995	Q196	Q296	Q396	Q496	1996	Q197	Q297	Q397	Q497	1997	4Q CHG.
CLOROX	50.4	63.2	69.7	73.9	76.3	76.2	74.6	75.9	74.2	71.5	73.2	73.5	-3.0
BRITA	50.4	63.2	69.7	73.9	76.3	76.2	74.6	75.9	74.2	71.5	73.2	73.5	-3.0
RECOVERY ENGINEERING		1.8	3.0	3.1	2.8	7.8	4.6	5.0	9.0	12.2	15.1	10.9	7.3
PUR		1.8	3.0	3.1	2.8	7.8	4.6	5.0	9.0	12.2	14.2	10.6	6.4
PUR PLUS (a)											0.8	0.3	0.8
TELEDYNE WATER PIK	26.4	19.8	15.5	13.4	12.1	9.4	12.1	11.2	8.7	8.5	5.1	8.0	-4.3
TELEDYNE INSTA PURE	16.6	11.9	7.9	6.7	6.1	5.3	6.3	6.1	5.4	5.2	3.1	4.8	-2.2
TELEDYNE WATER PIK	9.0	5.2	4.0	2.9	2.7	2.0	2.8	3.0	2.2	2.2	1.5	2.2	-0.9
TELEDYNE WATERPIK POUR THRU		1.5	2.8	3.2	2.6	1.7	2.5	1.7	0.8	0.7	0.3	0.8	-1.4
INSTAPURE 40	0.8	1.0	0.8	0.7	0.6	0.4	0.6	0.4	0.3	0.3	0.1	0.2	-0.3
TELEDYNE WATER PIK WATER FRESH		0.3											
OMNI CORP	11.5	8.4	7.0	6.1	6.1	4.0	5.5	4.5	4.2	4.2	2.8	3.8	-1.2
OMNI	10.2	7.0	6.5	5.7	5.8	3.7	5.2	4.3	4.0	4.2	2.7	3.7	-1.0
OMNI TOTAL II	1.3	0.9	0.5	0.4	0.3	0.3	0.3	0.2	0.2	0.1		0.1	-0.3
HONEYWELL											1.6	0.5	1.6
HONEYWELL (a)											1.6	0.5	1.6
HEALTH O METER (CULLIGAN J)						0.4	0.1	0.4	1.4	1.2	0.8	1.0	0.4
HEALTH O METER						0.4	0.1	0.4	1.4	1.2	0.8	1.0	0.4
RUBBERMAID									0.2	0.7	0.6	0.4	0.6
RUBBERMAID (a)									0.2	0.7	0.6	0.4	0.6
AMITEK/PLYMOUTH PRODS DIV (CULLIGAN)								1.0	0.8	0.5	0.3	0.6	-0.3
KLEEN PLS (a)								1.0	0.8	0.5	0.3	0.1	0.3
POLLENEX CORP	3.8	2.9	2.5	1.9	1.5	1.2	1.6	1.1	0.7	0.4	0.3	0.6	-0.9
POLLENEX	3.4	2.9	2.5	1.9	1.5	1.2	1.6	1.1	0.7	0.4	0.3	0.6	-0.9
INNOVA PURE WATER	2.0	2.6	2.0	1.4	1.0	0.5	1.1	0.5	0.4	0.4	0.2	0.4	-0.3
INNOVA CLEARWATER CHOICE	0.4	1.0	0.9	0.6	0.5	0.3	0.5	0.3	0.3	0.2	0.1	0.2	-0.2
INNOVA	1.6	1.5	1.2	0.7	0.5	0.2	0.5	0.2	0.2	0.1	0.1	0.1	-0.1
TOTAL CATEGORY (5 SIZE)	\$34.2	\$55.8	\$17.8	\$23.5	\$26.0	\$36.0	\$103.4	\$32.3	\$37.6	\$40.4	\$50.4	\$160.9	39.7%
FOOD	22.6	22.0	18.5	21.1	21.7	15.7	18.9	21.2	20.3	21.8	18.9	20.4	3.2
DRUG	12.9	17.8	17.7	14.1	15.7	19.8	17.1	16.9	15.5	14.4	17.7	16.2	-2.1
SIASS	64.5	60.2	63.8	64.9	62.7	64.5	64.0	61.9	64.2	63.7	63.3	63.4	-1.2

(a) New product.
Source: Information Resources, Inc. and PaineWebber estimates.

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Table 8
Water filtration devices (pitcher/faucet mount/counter-top & filters): Dollar share of type (FDM)

	1994	1995	Q196	Q296	Q396	Q496	1996	Q197	Q297	Q397	Q497	1997	4Q CHG.
INNOVA PURE WATER	4.79	4.11	4.02	4.10	4.04	4.02	4.05	4.00	3.99	4.16	4.17	4.07	3.2%
INNOVA CLEARWATER CHOICE	3.03	2.99	3.05	3.05	3.12	3.17	3.09	3.22	3.26	3.29	3.37	3.27	6.3%
INNOVA	5.69	5.33	5.16	5.81	5.78	6.33	5.61	6.49	6.36	7.06	7.14	6.68	12.8%
OMNI CORP	7.86	7.59	7.48	7.74	7.39	7.89	7.62	7.83	7.75	7.52	7.32	7.60	-7.2%
OMNI	7.08	6.85	7.03	7.31	7.04	7.40	7.19	7.52	7.49	7.40	7.28	7.42	-1.6%
OMNI TOTAL II	98.33	97.07	107.81	107.68	108.46	107.79	107.92	105.58	96.85	85.78	46.37	91.81	-57.0%
POLLENEX CORP	8.24	8.49	8.50	8.75	8.64	9.20	8.76	8.45	8.45	7.66	7.71	8.18	-16.2%
POLLENEX	8.24	8.49	8.50	8.75	8.64	9.20	8.76	8.45	8.45	7.66	7.71	8.18	-16.2%
TELEDYNE WATER PIK	10.82	10.20	9.74	9.55	9.38	9.06	9.41	9.30	8.99	9.11	8.82	9.07	-2.6%
TELEDYNE WATER PIK POUR THRU		8.97	7.86	8.07	7.76	7.84	7.89	7.11	6.16	6.16	6.22	6.54	-20.6%
TELEDYNE INSTA PURE	9.45	9.11	6.74	8.70	8.54	8.20	8.52	8.42	8.27	8.48	8.00	8.31	-2.5%
TELEDYNE WATER PIK	13.93	13.31	13.08	13.09	12.98	12.69	12.95	13.60	13.19	12.51	12.35	12.92	-2.6%
INSTA PURE R 40	21.12	28.87	32.53	30.45	30.76	22.28	28.42	22.05	20.10	15.63	13.10	18.23	-41.2%
TELEDYNE WATER PIK WATER FRESH		5.93											
HONEYWELL											10.37	10.37	
HONEYWELL (a)											10.37	10.37	
HEALTH O METER (CULLIGAN JV)						19.72	19.72	18.40	17.59	12.90	10.93	13.89	-44.6%
HEALTH O METER						19.72	19.72	18.40	17.59	12.90	10.93	13.89	-44.6%
RUBBERMAID									15.95	12.28	11.57	12.34	
RUBBERMAID (a)									15.95	12.28	11.57	12.34	
CLOROX	11.81	12.01	11.99	13.25	13.56	14.38	13.48	13.37	13.53	13.55	14.43	13.77	0.3%
BRITA	11.81	12.01	11.99	13.25	13.56	14.38	13.48	13.37	13.53	13.55	14.43	13.77	0.3%
AMTENT PLYMOUTH PRODS DIV (CULLIGAN)								19.53	18.46	16.34	14.89	17.60	
KLEEN PLUS (a)								19.53	18.46	16.34	14.89	17.60	
RECOVERY ENGINEERING		34.16	31.14	29.64	27.76	28.19	28.63	23.11	20.05	20.57	23.72	21.94	-15.8%
PUR		34.16	31.14	29.64	27.76	28.19	28.63	23.11	20.05	20.57	23.32	21.76	-17.3%
PUR PLUS (a)											33.49	33.49	
CATEGORY AVERAGE	10.46	10.59	10.79	11.84	12.07	13.42	12.19	12.43	12.77	12.90	14.16	13.14	3.5%
FOOD	9.81	9.87	9.67	10.45	11.19	11.51	10.80	11.56	11.93	12.27	12.95	12.22	12.5%
DRUG	12.91	13.45	12.59	13.41	14.16	16.05	14.37	14.89	14.42	14.46	15.94	15.02	-0.7%
NIASS	10.31	10.22	10.72	12.05	11.95	13.29	12.17	12.20	12.71	12.82	14.11	13.03	6.2%

(a) New product.

Source: Information Resources, Inc. and PaineWebber estimates.

February 6, 1998

Andrew Shore (212) 713-2452
Hari Chandra (212) 713-2434
R. T. Quinn (212) 713-3618

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CPH 1327721

16div-026593

10:22am EST 29-Jan-98 PaineWebber (Andrew Shore (212)713-2452) SOC
 SUNBEAM: SOLID CLOSE TO 1997; ENCORE IN 1998?

PW PW PW PW PW PaineWebber PW PW PW PW PW

Rating=1 (SOC)
 Closing Price=\$37 5/8
 Current FY EPS EST=\$1.97
 Next FY EPS EST=\$2.55
 FY End=December

Date: 29-JAN-98

MARKET CAPITALIZATION (\$ MM)

Stock Price \$37.63
 Shares Outstanding 85.2
 Total Equity Value \$3,204.4
 Plus: Debt, MI & Preferred 194.6
 Less: Cash & Equiv. -52.4
 Total Enterprise Value \$3,204.4

MARKET VALUATION

TEV MULTIPLES SOC
 TEV/LTM Sales 2.86x
 TEV/LTM EBITDA 14.1x
 P/E MULTIPLES
 Price/CY 1997 EPS 26.9x
 Price/CY 1998-EPS 19.3x

Annual
 YEAR Sales (\$MM)
 FYE 12/31/97A \$1,168
 FYE 12/31/98E \$1,451
 FYE 12/31/98E \$1,722

AR	EPS				YEAR	STREET
	Q1	Q2	Q3	Q4		
FYE 12/31/97A	0.24	0.30	0.39	0.47	1.41A	1.41A
FYE 12/31/98E	0.33	0.46	0.52	0.63	1.95E	2.04E
FYE 12/31/98E	-	-	-	-	2.50-2.60E	2.65E

Dividend Yield 0.1%
 Secular EPS Growth Rate 20%

KEY POINTS

1. Q4 EPS HITS LOW-END OF RANGE: Sunbeam** (SOC) reported Q4 EPS results of \$0.47, in-line with the low-end of Street estimates (\$0.47-\$0.55) and \$0.01 short of our estimate. The company estimates that a \$15 million shortfall in electric blankets cost them \$0.04 in the quarter and the Neosho grill facility re-alignment another \$0.01. We believe that \$0.47 represents a strong close to a very strong year, but caution investors that going forward, the low-end of the range may be a more relevant number to focus on when assessing Sunbeam's value. As the last couple of quarters have indicated, Sunbeam's goals are very aggressive, even at the low end of the range. Given the slight downside surprise in the latest quarter, we are trimming our 1998 estimate to \$1.95-\$2.00 from \$2.00-\$2.05, reflecting management's guidance that 40% EPS growth in 1998 is within reason. While we believe estimates beyond 1998 are less relevant as Sunbeam management stated they seek to "close" a major acquisition in the first half of 1998, for now, we are shaving a dime off our 1999 range to \$2.50-\$2.60. At 19.3 times the low-end of our 1998 range, we continue to believe Sunbeam is a good buy in the high-\$30s, provided it carries out its Phase III plans. Sticking with our revised "low-end" outlook, our 12-18 month price target is \$50, representing 20x the low-end of our 1999 estimate.

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2. SALES STRONG LED BY GRILLS: Sales in the quarter were up 25.7% on a reported basis to \$338.1 million. This was about \$6 million short of our estimate, due to the above mentioned blanket softness. As expected the grill sales led the way in the quarter, but this growth was substantially ahead of our expectations. We are not bothered by the "grill blip" in the fourth quarter as long as the company hasn't stolen some Q198 upside to stretch to meet Q497 expectations. We will not really know this until we are further into Q1, but must note that we believe the receivable and inventory position is still a bit "heavy." The stakes are high as Sunbeam enters the peak grill season, as the company has already begun to seed the channel in Q4, grill inventory is high (according to strategy) and it's product line-up is brand new. If it works, Sunbeam will likely gain substantial market share and have a blow-out 1H98 in grills against an easy 1H97 comparison. We are modeling for 1H98 grill sales of around \$270 million, up 15-20% from the roughly \$230 million in 1H97. We also expect grill margins to be around 5-6 points higher in 1998 than in 1997, but still below the company average. We believe that Sunbeam management understands the importance of the grill turnaround and have no reason to doubt their execution capabilities. Regarding this matter, all the shorts can do is pray for rain.

3. 20% OPERATING MARGIN - ALMOST THERE: Sequential margin improvement continued, as the company registered a 19.7% operating margin in the quarter. Gross margin declined sequentially in the quarter, 29.4% from 30.7% due to the higher grill mix (19% of sales in Q4 versus 11% in Q3), but the difference was more than made up for in operating margin as SG&A expenditures came in at only 9.7% of sales. We expect SG&A expenses to pick up again to around 13-14% of sales in the first half of 1998 as ending behind the enhanced grill line-up and the air & water products begins.

4. WHAT ABOUT PHASE III: As we have stated previously, we believe Sunbeam will have a difficult time achieving 2H98 growth targets without an accretive acquisition. We remain comfortable with our \$1.95-2.00 estimate in 1998 without an acquisition, but we would certainly breathe a little easier if Sunbeam could actually consummate an accretive transaction. Sunbeam Chairman, Al Dunlap, expressed his desire to have a transaction CLOSED in 1H98. We continue to believe that time is the company's enemy and the sooner it can strike a deal, the better. We are also increasingly of the belief that Sunbeam doesn't need a multi-billion dollar acquisition to drive its stock price higher. Given its cost-cutting prowess, superior margin structure and relatively small sales base (\$1.2 billion), we believe a smaller acquisition might be enough to provide upside on the \$2.00 estimate in 1998 and return the stock to its old highs in the low \$50s. Furthermore, it may be easier to consummate a smaller transaction with cash/debt and save the stock for the "big one," when Sunbeam's multiple improves. Whether we see the "quantum leap" or not in 1H98, we think one thing is certain, Al Dunlap is not going to sit idle and watch his stock underperform the market as well as the stocks of his perennial laggard competitors. We believe the consummation of some type of M&A deal in 1H98 is highly likely. The market is simply waiting to see at what cost this transaction will come. While Sunbeam certainly is well positioned to become the leading consolidator in an industry desperately in need of consolidation, we must do not believe Al Dunlap took this job a year and a half ago to pioneer this consolidation.

5. WE REPEAT OUR SUNBEAM INVESTMENT THESIS: (with some modest revisions)

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-- Solid momentum through 1H98 fueled by a new grill line-up and enhanced grill facility as well as its "Air & Water" offerings from the "secret room."

-- Comparisons to get tougher in 2H98, but likely to be clouded by Phase III (or perhaps smaller acquisition).

-- Real potential for another round of meteoric stock price appreciation comes if Sunbeam can make a strategic acquisition, using Sunbeam stock as currency, at a modest premium that doesn't already factor in all of the cost-cutting potential. (a smaller cash/debt deal could also drive some less meteoric appreciation).

-- Patient Sunbeam investors may get two (or more) "Chainsaw" turnarounds for the price of one.

6. VALUATION: As the table below illustrates, at its current depressed levels, Sunbeam's P/E valuation relative to some other leading consumer non-durable players is beginning to look quite reasonable.

COMPANY	1/28 CLOSE	1998E*	1999E*	1998 P/E	1999 P/E
Black & Decker	\$48 9/16	\$2.65	\$3.27	18.3x	14.9x
Fortune Brands	\$38 11/16	\$1.70	\$1.98	22.8x	19.5x
Newell	\$41 3/8	\$2.11	\$2.38	19.6x	17.4x
Rubbermaid	\$25 3/4	\$1.18	\$1.49	21.8x	17.3x
			Mean	20.6x	17.3x
Sunbeam	\$37 5/8	\$1.95	\$2.50	19.3x	15.1x

* First Call mean estimate, except for Sunbeam which is based on low-end of PaineWebber range.

We believe that over the next 12-18 months, as Sunbeam management takes the appropriate steps to restore confidence in the attainability of aggressive 1998/1999 estimates the stock can approach 20 times our 1999 estimate, or \$50, representing 33% upside from current levels. Until such steps are taken, we believe the stock may languish in its current \$37-40 trading range.

We should note that investor skepticism is nothing new for Sunbeam. Exactly one year ago, Sunbeam's stock closed at \$27 1/8, 19.2x what many viewed as a very aggressive \$1.40 estimate for 1997. A year later, the earnings have been delivered and Sunbeam stock is up nearly 40%. If Sunbeam management executes according to plan (40% EPS growth in 1998), January's skepticism may translate into an encore performance for investors in 1998.

RISKS

Sunbeam has been and continues to be a very risky story. The company's EPS growth target of 40% in 1998 is very aggressive and comes in the face of a difficult economic climate in Asia and very solid growth in 2H97. We also believe the company is employing a risky strategy to capture a larger share of the grill market. Execution is key to the company providing an encore to its stellar 1997 performance.

**PaineWebber Incorporated has acted in an investment banking capacity for this company.

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16div-026597

1 * * * CONFIDENTIAL * * *
2 IN THE FIFTEENTH JUDICIAL COURT
3 IN AND FOR PALM BEACH COUNTY, FLORIDA

4 COLEMAN (PARENT) HOLDINGS,)
5 INC.,)

6 Plaintiff,)

7 vs.)

No. CA 03-5045 7AI

8 MORGAN STANLEY & CO., INC.,)

9 Defendant.)

10 -----)
11 MORGAN STANLEY SENIOR)
12 FUNDING, INC.,)

13 vs.)

No. CA 03-5165 AI

14 McANDREWS & FORBES HOLDINGS,)
15 INC.,)

16 Defendant.)
17 -----)

18 CONFIDENTIAL VIDEOTAPED DEPOSITION

19 OF ANDREW CONWAY

20 New York, New York

21 Friday, June 4, 2004

22
23
24 Reported by:
25 SHAUNA STOLTZ-LAURIE
JOB NO. 160457

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1 Confidential - Conway
2 deposition before?
3 A. I've never given -- no, I've never
4 given a deposition before.
5 Q. Okay. Mr. Clare has probably
6 explained the process to you a little bit,
7 but let me just point out a few ground rules
8 that might guide us through the day.
9 First, if you don't understand one
10 of my questions, let me know; I'll try and
11 rephrase it. If you need to take a break at
12 any time, just let me know, and we'll try to
13 accommodate that. And you need to give your
14 answers audibly so that the court reporter,
15 the stenographer in particular, can write
16 down your answers. Nodding our head or
17 shrugging your shoulders don't show up on the
18 transcript.
19 A. Okay.
20 Q. What did you do to prepare for your
21 deposition today?
22 A. I met with Mr. Clare for an hour or
23 two Wednesday afternoon.
24 Q. Anything else?
25 A. Nope.

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1 Confidential - Conway
2 Q. Did you look at any documents?
3 A. I looked at a couple of documents
4 to refresh my memory from the time frame, the
5 time period.
6 Q. And which documents did you look at
7 to refresh your memory?
8 A. I looked at a capital markets
9 memorandum. I looked at a fax that was sent
10 to me by someone who worked with me at the
11 time, to refresh just the time frame.
12 Q. Is that Jim Dormer?
13 A. That is correct, that is correct.
14 And I looked at probably couple of
15 other capital markets in the process of
16 trying to be a part of the selling of the
17 convertible bond.
18 Q. Anything else you can remember?
19 A. No.
20 Q. Do you know who has given testimony
21 in this lawsuit so far?
22 A. I do not know who has given
23 testimony so far.
24 Q. Have you spoken with anyone other
25 than Mr. Clare or a family member about this

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1 Confidential - Conway
2 deposition?
3 A. My wife.
4 Q. Okay. A family member wouldn't
5 count there.
6 A. Tom and my wife.
7 Q. Did anyone from Morgan Stanley
8 contact you about this deposition?
9 A. Oh, and also our internal legal
10 department at CSFB is also of aware of today
11 also.
12 Q. Anyone else, anyone at Morgan
13 Stanley --
14 A. No.
15 Q. -- in particular?
16 A. No.
17 Q. So how did you first learn that a
18 deposition was requested of you in this case?
19 A. Tom called me in my office I'm
20 thinking late winter, early spring.
21 Q. Okay. Were you aware of the
22 lawsuit between McAndrews & Forbes and
23 Coleman (Parent) Holdings and Morgan Stanley
24 when you received the call?
25 A. No.

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1 Confidential - Conway
2 Q. Okay. Could you sketch out for us
3 for us your educational background from
4 graduating high school through the present?
5 A. Sure. I graduated Staples High
6 School in Westport, Connecticut, public high
7 school. Got a bachelor of science in finance
8 Lehigh University in Pennsylvania. Graduated
9 1987. Received an MBA from Emory Business
10 School in Atlanta in 1992.
11 Q. Can you tell me then what your
12 Lehigh major was?
13 A. Bachelor of science in finance.
14 Went to the College of Business and
15 Economics.
16 Q. And did you have any specialty or
17 specialization with respect to your MBA at
18 Emory?
19 A. I would probably say no, no
20 specific specialization, but concentration
21 probably in international marketing, finance,
22 security analysis.
23 Q. Okay. Do you hold any profession
24 licenses or designations?
25 A. Other than the Series 7 and 63

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1 Confidential - Conway
2 required of being a security analyst, and --
3 and the needed regulatory requirements, and
4 testing by the NASD, no.
5 Q. And if you could also take us
6 through briefly your employment experience
7 from your Lehigh degree to the present.
8 A. Sure. Graduated Lehigh. I went to
9 work for Drexel Burnham here in New York City
10 as a -- in their controller's division. I
11 spent about three to four years there, and as
12 the firm went bankrupt I had already applied
13 to business school, so moved down to Atlanta.
14 While I lived in Atlanta, worked for Coca
15 Cola as an intern on special projects, kind
16 of during business school. Upon graduation
17 from business school in '92 I was offered a
18 position with Salomon Brothers as a research
19 analyst covering the beverage industry. I
20 left Salomon Brothers in January of 1996 for
21 Morgan Stanley, covering beverages, and I
22 left Morgan Stanley in July-August of '01 for
23 Credit Suisse First Boston to cover beverages
24 as well.
25 Q. Okay, and you're at Credit Suisse

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1 Confidential - Conway
2 today?
3 A. I'm at Credit Suisse today,
4 correct.
5 And I cover beverages and tobacco.
6 Q. Any plans to leave CSFB any time
7 soon?
8 A. None that I know of. I love the
9 firm, so --
10 Q. Okay. When you joined Morgan
11 Stanley in '96 I think you said --
12 A. Yeah.
13 Q. -- what title did you have?
14 A. I had the title of Principal.
15 Q. And did you hold any other titles
16 at Morgan Stanley?
17 A. I did. I was elected a managing
18 director in December of 1998.
19 Q. And you were Managing Director when
20 you left.
21 A. That is correct.
22 Q. Okay.
23 A. And I'm a managing director at
24 CSFB.
25 Q. You came in to CSFB as Managing

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1 Confidential - Conway
2 Director.
3 A. Correct.
4 Q. You said already today on the
5 record that you are an analyst covering
6 beverages and now tobacco?
7 A. Um-hm.
8 Q. Can you tell us in simple terms
9 what you do on a daily basis --
10 A. Sure.
11 Q. -- in connection with those?
12 A. My job is to write research on
13 tobacco and beverage companies, to make
14 investment opinions on whether to -- whether
15 the -- the public companies will outperform,
16 meet, or underperform their sectors in the
17 S&P 500.
18 Q. Okay. So it's detailed analysis of
19 public companies.
20 A. It is a job that requires, yeah,
21 financial modeling, interaction with money
22 managers, and interaction with company
23 representatives.
24 Q. Okay. Do you have any kind of
25 termination or similar agreements with Morgan

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1 Confidential - Conway
2 Stanley that would be in effect today?
3 A. I'm not sure what that means.
4 Q. Okay. When you left Morgan Stanley
5 did you sign any contracts with them
6 governing your conduct towards them in any
7 way after you left the company?
8 A. Other than a simple employee code
9 of conduct that I would have signed as a
10 normal employee, I don't think there was
11 anything.
12 Q. Are you aware of any contract or
13 other agreement that would prevent you from
14 disparaging Morgan Stanley in any way?
15 A. No.
16 Q. Why did you leave Morgan Stanley?
17 A. I left Morgan Stanley for two
18 reasons primarily. Number one, I felt I
19 wasn't getting the mentorship and support
20 that I need as an analyst in research, that I
21 -- I wasn't sure that Management felt that I
22 was someone who could continue to succeed in
23 their organization and take on wider
24 responsibilities over time, and despite
25 attempts to reach out to my bosses and

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1 Confidential - Conway
2 colleagues -- you know, you always want to
3 know what your bosses think about you, so I
4 think the biggest reason or the reason I was
5 recruited to leave was I didn't know where I
6 stood.
7 Q. Did you feel any kind of pressure
8 to expand the industries that you were
9 covering?
10 A. No.
11 Q. Now, is it fair to say that you are
12 viewed as one of the leading analysts on Wall
13 Street?
14 A. I don't know. I would say that in
15 -- in the -- in the beverage area I would say
16 I would be among the leading analysts on Wall
17 Street.
18 Q. As a more general matter, you don't
19 have an opinion as to whether you're regarded
20 as a leading analyst?
21 A. I don't.
22 Q. And you were viewed as a leading
23 analyst in the beverage industry in 1998 as
24 well.
25 A. Correct. Yes.

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1 Confidential - Conway
2 Q. Is there any kind of ranking of
3 analysts by any kind of third parties, The
4 Journal, for example? Or Greenwich I think
5 is one I've seen.
6 A. Yes, there are a couple of rankings
7 whose importance I think has waned as of
8 late, but there is The Grant Survey, which is
9 a relatively small sample size. There is --
10 And you're talking about public
11 rankings.
12 Q. Correct.
13 A. There is your Wall Street Journal
14 ranks. Also stock picking. There's also
15 Institutional Investor, which probably -- the
16 magazine probably has gotten the most
17 recognition, which also ranks specialists
18 based on money managers' feedback.
19 Q. And you've been highly ranked since
20 prior to joining Morgan Stanley I assume.
21 A. That's correct.
22 Q. I wonder if you to tell us a little
23 bit on a large scale where the analyst fits
24 in a larger investment bank like Morgan
25 Stanley.

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1 Confidential - Conway
2 A. Well, the analyst's responsibility
3 is to accurately and strategically decipher
4 company's prospects, rate of revenue growth,
5 rate of earnings growth, rate of cash flow,
6 quality of Management, and our job is to be
7 as accurate as we can for our clients who
8 have a responsibility to make investments.
9 Q. So the analyst client is typically
10 an institutional investor?
11 A. That's correct. An analyst's
12 client is a mutual fund, a pension fund, a
13 state fund, anyone invested -- anyone
14 invested in the market, in my particular
15 case, who would have holdings in beverages.
16 It could be an Anheuser Busch. It could be a
17 Coca-Cola. It could be a Brown Forman.
18 Q. But the issuers themselves don't
19 pay you to cover the company; is that
20 correct.
21 A. That is correct.
22 Q. Is there any interaction between
23 analysts and investment bankers who, for
24 example, are involved in M&A work? And let's
25 say in the late 90s.

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1 Confidential - Conway
2 A. Are you asking me in like a
3 generalization --
4 Q. Yes?
5 A. -- or are you asking for my
6 specific experience?
7 Q. Let's start generally first.
8 A. Okay. I -- I would -- I would say
9 that I'm sure there have been instances where
10 a merger and acquisition transaction, based
11 upon reading the Wall Street Journal, of
12 analysts that have a pretty high profile,
13 that they have been involved in giving advice
14 to their own investment bankers on M&A
15 experience or strategic action. The most
16 prominent that comes to light is in the
17 telecom industry, you know, Jack Rudnick, et
18 cetera.
19 Q. Right, right.
20 In your own experience, though,
21 you've never felt pressure from the M&A side
22 of the investment bank to help garner, say,
23 IPO business?
24 A. No.
25 Nor -- nor have I ever given

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1 Confidential - Conway
2 specific M&A advice to any investment banker.
3 Q. You say you've never given specific
4 -- did you say M&A advice to any investment
5 banker?
6 A. That's right.
7 Q. Okay. So getting even more
8 specific in connection with the Sunbeam
9 transaction --
10 A. Um-hm.
11 Q. -- which brings us here today --
12 A. Um-hm.
13 Q. -- you don't recall having any
14 conversations with any of the M&A team about
15 whether the deal was a good one?
16 MR. CLARE: I object to the form
17 of the question.
18 And, Clark, it's your deposition,
19 but you talked about "the Sunbeam
20 transaction" and "the deal." There
21 are, obviously, a number of financial
22 transactions, and I would suggest maybe
23 just make sure we're all talking about
24 the same thing, clarify what we're
25 talking about.

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1 Confidential - Conway
2 MR. JOHNSON: That's a good
3 objection.
4 Q. Did you at any point have any
5 conversations with anyone on the Morgan
6 Stanley M&A team concerning whether Sunbeam's
7 acquisition of Coleman, First Alert and Mr.
8 Coffee was a good transaction?
9 A. No.
10 Q. No one ever asked your opinion on
11 that?
12 A. No.
13 Q. Did you have an opinion on that?
14 A. No.
15 Q. Did you receive any criticisms for
16 your involvement in the Sunbeam difficulties,
17 so to speak, in 1998?
18 A. Thankfully, no.
19 Q. When you say "Thankfully, no," are
20 you saying it wouldn't be a surprise had you
21 received criticisms?
22 A. No. I say thankfully in a way that
23 my role was -- my role was -- I didn't
24 actually cover the company, so -- and -- and
25 reputation to an analyst is important, and we

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2 pride ourselves in doing the best job and
3 being very rigorous. So when I say
4 thankfully, I mean that we work hard for our
5 reputation, and -- and it's important to keep
6 a reputation intact, and I believe my
7 reputation remained intact.
8 Q. So even within Morgan Stanley there
9 was no fallout, from your perspective, on
10 your career as a result of your involvement
11 with Sunbeam.
12 A. That's correct.
13 Q. Now, in '98 you were still a
14 beverage analyst.
15 A. Um-hm.
16 Q. How is it that you got involved
17 with Sunbeam?
18 A. My boss, Dennis Shea, came into my
19 office and asked me to play a role in selling
20 a convertible deal. As the kind of senior
21 consumer analyst, we did not have a household
22 product or personal care analyst at the time,
23 and so playing the role, if you will, of a
24 team player, was asked to play a role in the
25 process of selling the convertible

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1 Confidential - Conway
2 transaction to money managers.
3 Q. Okay. When you say play a "role in
4 selling" the subordinated debt, what do you
5 mean by that?
6 A. The -- the -- the -- there was a
7 convertible --
8 Q. Right.
9 A. -- bond deal.
10 Q. That's the one I'm referring to.
11 A. And the role -- the role that I
12 would traditionally play, as an analyst would
13 play in a new issue or an IPO would be if
14 there were any questions from potential
15 investors on the company, my role would be
16 there to answer those questions.
17 Q. In order to answer those questions
18 did you need to educate yourself about the
19 company?
20 A. Yes, I did.
21 Q. In that process did you form any
22 opinions about Sunbeam as a company either
23 pre or post acquisitions?
24 A. As part of that process I requested
25 some time with Sunbeam management to discuss

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2 their earnings growth prospects, company
3 fundamentals, cost structure, any -- the
4 responsibility of an analyst is to know the
5 business, and because this company was not
6 within the realm of my industry specialty, I
7 had to spend extra time with -- with company
8 management to *develop and understand* strategy
9 and -- and -- and growth targets.
10 Q. We'll probably come back to this in
11 a little bit more detail --
12 A. Sure.
13 Q. -- but I want to ask you right now,
14 do you remember which members of Sunbeam
15 management you met with?
16 A. I didn't meet with. I had
17 telephone conversations with. So never met
18 live with them in person. But yes, I had at
19 least one or two tele -- telephone meetings
20 with Russ Kersh, and I believe Mr. Fannin was
21 present for one of both of those, and the
22 sessions probably were, you know, an hour or
23 two.
24 Q. And do you remember when these
25 occurred?

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1 Confidential - Conway
2 A. I don't remember specifically.
3 Clark, I think, you know, they clearly would
4 have occurred before -- during or before the
5 trans -- the presentation to the Equity, or
6 the Debt Capital Committee on the
7 transaction.
8 Q. Right, right.
9 A. It was in early March of that year,
10 based upon getting refreshed on a time line.
11 Q. Any other Sunbeam management
12 besides Kersh and Fannin?
13 A. No.
14 Q. What -- did you review any
15 documents, a 10-K, anything like that?
16 A. I'm sure as part of my developing a
17 model quarterly I reviewed all financial
18 documents that were available to me.
19 Q. Okay. So that would include the
20 audited '97 financials?
21 A. It would have included a '97 10-K
22 or a '97 annual report.
23 Q. Okay. And when you reviewed that
24 '97 annual report or 10-K did anything jump
25 out as an obvious problem with the company?

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1 Confidential - Conway
2 A. No.
3 Q. So the revenue growth the company
4 was posting didn't strike you as unusual?
5 A. No.
6 Q. Okay. And the company's cash flow
7 didn't bother you?
8 A. No.
9 Q. Anything about accounts receivable
10 bother you?
11 A. No.
12 Q. Okay.
13 A. None that I can recall.
14 Q. Okay. Do you remember hearing in
15 the March -- February-March '98 time frame
16 that Sunbeam engaged in bill and hold
17 transactions?
18 A. No.
19 Q. Do you know what that term is?
20 A. No, not -- not -- not today.
21 Q. Okay. So today there's nothing
22 about that term that gives you any anxiety
23 or --
24 A. If -- if -- if -- if bill and hold
25 refers to, you know, booking revenues ahead

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1 Confidential - Conway
2 of shipping product, that -- that -- that
3 certainly is something that one would take
4 notice on, but I don't recall that discussion
5 or that issue coming up in my analysis.
6 Q. Is that something you would take
7 notice of?
8 A. I would query Management about.
9 Q. Okay. Okay, because of accounting
10 concerns or because of, you know, business
11 model concerns, or both?
12 A. Well, I would say just -- just --
13 just more about trying to understand the --
14 how the business functions from a working
15 capital on from a client relation, just to
16 understand is that the model the industry
17 traditionally works in, or is that an
18 exception.
19 Q. Okay. And would it impact future
20 results.
21 A. Sure. I mean absolutely.
22 Q. I apologize we're jumping around a
23 little bit here.
24 A. No, that's fine.
25 Q. I think you started out by saying

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1 Confidential - Conway
2 that Dennis Shea introduced you to the idea
3 of getting involved in selling the
4 convertible debt.
5 A. Yes.
6 Q. Okay. What's the next thing that
7 happened, that you can recall, after Dennis
8 Shea asked you to do this?
9 Did you say okay?
10 Did you think about it?
11 A. I probably thought about it. And
12 as -- as -- as Morgan Stanley is -- is -- you
13 know, always stresses culturally the
14 importance of -- of being a team player, I
15 made a decision to -- to play a role.
16 Q. And did you ask any of your
17 subordinates within the company to help you
18 out with the job?
19 Did Jim Dormer?
20 A. Jim Dormer, who would have been --
21 who would have worked with me, my associate
22 at the time, and is -- yes.
23 Q. Anyone besides Jim Dormer work on
24 something?
25 A. Not -- not that I know of, because

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1 Confidential - Conway
2 I believe he was the only one that worked
3 with me at the time, I believe, so I -- I
4 don't -- I don't recall anybody else.
5 Q. Were you aware, well, when you got
6 involved, that Sunbeam's CEO was a flamboyant
7 character?
8 MR. CLARE: I object to the form
9 of the question.
10 You can answer it.
11 MR. JOHNSON: Well, let me --
12 A. I -- I -- I -- I.
13 MR. CLARE: -- your objection, but
14 I'll withdraw the question.
15 MR. CLARE: I'm two for two today.
16 MR. JOHNSON: Not to encourage
17 you.
18 (Laughter).
19 MR. CLARE: I only make
20 meritorious objections.
21 MR. JOHNSON: "Laughter," please.
22 (Laughter.)
23 MR. JOHNSON: Sorry about that.
24 Q. You were aware that the CEO of
25 Sunbeam was Al Dunlap?

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1 Confidential - Conway
2 A. Yes, I was.
3 Q. Okay. And did you have any
4 understanding of his reputation?
5 A. I had a perception of his
6 reputation.
7 Q. And what was that?
8 A. That was that he -- I had recalled
9 reading about his successes with Scott Paper.
10 I think he was known as a successful cost
11 restructuring, pruner of businesses, making
12 them more nimble and more competitive.
13 Q. And do you have any understanding
14 of Mr. Dunlap's reputation today?
15 A. I -- I know that his reputation
16 today, you know, wasn't what it was several
17 years ago.
18 Q. Okay. It's much worse now.
19 A. I would -- yes. Particularly
20 after, you know, the events at Sunbeam.
21 Q. Right.
22 Did you do anything other than talk
23 to Mr. Kersh or Mr. Fannin to get a sense of
24 the business culture at Sunbeam in the first
25 quarter of 1998?

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1 Confidential - Conway
2 A. No.
3 Q. Is that something that as a general
4 matter is of importance to you and companies
5 that you're studying?
6 A. It is.
7 And culture on companies, just like
8 our sources within companies, are acquired
9 over time.
10 Q. Okay. So the only reason you
11 didn't get a sense of the culture at Sunbeam
12 is you had just gotten involved with the
13 company?
14 A. Right.
15 I think that culture, you know,
16 occurs, as an analyst, in visiting corporate
17 headquarters, spending time with Management,
18 with institutional investors and -- and --
19 and -- beyond Mr. Dunlap's reputation. So
20 culture is not something you -- you get as a
21 snapshot in a day or -- or -- it's something
22 that evolves over time.
23 Q. And given how events unfolded, you
24 never visited Sunbeam's headquarters?
25 A. That's correct.

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1 Confidential - Conway
2 Q. Did you perform any due diligence
3 on either Sunbeam or the targets that Sunbeam
4 was acquiring?
5 A. None beyond my conversations with
6 Russ Kersh and my industry reading, general
7 articles, information, 10-Q, 10-K.
8 Q. When you say "industry reading,"
9 were you reading about other household
10 products companies to get a sense of the
11 industry as a general matter?
12 A. Probably getting a sense to
13 whether, you know, targets are achievable,
14 margins are achievable.
15 But -- but -- but, again, a strong
16 part of that really comes from my
17 interaction, you know, with -- with senior
18 management.
19 Q. Sure.
20 But it would be customary to
21 review, say, the 10-Ks of Sunbeam's
22 competitors.
23 A. I would say yes, it -- it is.
24 Although, you know, there may not have been a
25 direct comparable, but I'm sure over time,

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1 Confidential - Conway
2 sure.
3 Q. Okay. Do you recall how the market
4 reacted to Sunbeam's announcement of the
5 acquisitions?
6 A. I do not.
7 Q. Okay. You don't recall any market
8 reaction suggesting that Coleman -- excuse
9 me, that Sunbeam was paying too much for the
10 companies it was acquiring?
11 A. No.
12 Q. I'm following the path of a drunken
13 sailor here. I'm jumping around.
14 A. No, that's fine. That's fine.
15 Q. Getting back to due diligence for a
16 second --
17 A. Sure.
18 Q. -- I want to show you a document,
19 see if it looks familiar to you. This has
20 been marked previously as Exhibit 128.
21 A. Okay. Okay.
22 Q. Mr. Conway, Exhibit 128 appears to
23 be a Morgan Stanley memo --
24 A. Um-hm.
25 Q. -- dated March 9, 1998 --

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1 Confidential - Conway
2 A. Um-hm.
3 Q. -- from John Tyree and Shani
4 Boone --
5 A. Um-hm.
6 Q. -- and you're one of the recipients
7 or listed recipients.
8 A. Correct.
9 Q. Do you recall receiving this memo?
10 A. I do not recall receiving this
11 memo, but I -- this is a document I saw with
12 Tom on Wednesday briefly.
13 Q. Okay. And who is Mr. Tyree, John
14 Tyree?
15 A. I believe John Tyree was one of the
16 investment bankers.
17 Q. Did you ever have any conversations
18 with Mr. Tyree?
19 A. I know I had conversations with one
20 or two bankers. I can't remember what their
21 name was.
22 Q. And Exhibit 128 doesn't refresh
23 your memory about maybe participating in due
24 diligence calls on First Alert or Signature
25 Brands (inaudible) --

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1 Confidential - Conway
2 (Discussion off the record.)
3 Q. -- which is Mr. Coffee?
4 A. Right. I would have certainly been
5 notified by the investment bankers that there
6 was a conference call going on. What I don't
7 remember, whether I was on this call or not,
8 or whether Jim Dormer was on this call or
9 not, the reason being I may have been
10 traveling during the time of this call.
11 Q. Okay.
12 A. So I would have received this, but
13 I don't remember -- don't remember it nor do
14 I remember playing a role on the conference
15 call.
16 Q. Did you look at your calendars from
17 '98 at all to get ready for the deposition?
18 A. We did -- we did on Wednesday.
19 And -- and I wasn't -- I know I was
20 in California, I believe, during this time.
21 I think.
22 Q. Okay.
23 A. The week of the first announcement
24 that came out about -- the public
25 announcement that Sunbeam had made I think on

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1 Confidential - Conway
2 sales forecasts --
3 Q. Right.
4 A. -- I think that was this week. I
5 was on the West Coast visiting institutional
6 clients --
7 Q. Okay.
8 A. -- on beverages.
9 Q. Okay.
10 A. So if it was that -- that week, I
11 -- if I was -- I was out of town.
12 Q. But as you sit here today, the only
13 things that you would describe as potentially
14 due diligence would be your calls with
15 Kersh --
16 A. Right.
17 Q. -- and reviewing the company's
18 public financial statements and/or reports
19 and industry materials.
20 A. That's right.
21 And -- and I would also include to
22 that if -- if I participated in any due
23 diligence calls that the firm would have --
24 would have held as well. I just don't recall
25 me playing a role in those.

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1 Confidential - Conway
2 Q. Okay. I'm going to give you the
3 names of a few of the investment bankers on
4 this transaction.
5 A. Sure.
6 Q. And what I'm getting at is whether
7 you spoke with any of them relating to the
8 Sunbeam transaction --
9 A. Okay.
10 Q. -- the acquisition or financing of
11 the acquisitions.
12 A. Okay.
13 Q. Bill Strong?
14 A. Did not speak to Bill Strong.
15 Q. Do you know who Bill Strong is?
16 A. I do know who Bill Strong is.
17 Q. Okay. Have you worked with him in
18 any other deals?
19 A. I have worked with him on another
20 at the time, going back a couple of years
21 before this, potential beverage company
22 issue.
23 Q. Okay.
24 A. Yes.
25 Q. How about Jim Stynes, did you deal

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1 Confidential - Conway
2 with him at all in connection with Sunbeam?
3 A. No.
4 Q. Bob Kitts?
5 A. No.
6 Q. Alex Fuchs?
7 A. No.
8 Although there are two bankers, and
9 I -- I -- Clark, I don't know whether it's
10 Fuchs or whether it's Tyree. I'm presuming
11 they were more junior, the ones I
12 communicated with. I just don't recall --
13 Q. Okay.
14 A. -- which one it was. So it could
15 have been Fuchs and it could have been Tyree.
16 I just can't picture them.
17 Q. Okay, let me just give you a few
18 more names.
19 A. Sure.
20 Q. Tyrone Chang?
21 A. No.
22 Q. Andy Savarie?
23 A. No.
24 Q. Lily Rafii?
25 A. No.

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1 Confidential - Conway
2 Q. Shani Boone?
3 A. No.
4 Q. Johannes Groeller?
5 A. No.
6 Q. Bram Smith?
7 A. If Shani worked with John, and he
8 was one of the junior bankers, it's possible
9 I spoke with her. I just don't remember.
10 Q. That's fine.
11 A. Sorry.
12 Q. That's fine.
13 Bram Smith?
14 A. No.
15 Q. Michael Hart?
16 A. No.
17 Q. Brooks Harris?
18 A. Maybe, because I know Brooks was a
19 convertible banker, so it's possible I had
20 communication with Brooks. I don't recall
21 it, but it's possible. I know -- I know
22 Brooks, which is why.
23 Q. Mitch Petrick?
24 A. No.
25 Q. Have you worked with Mr. Petrick

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1 Confidential - Conway
2 before?
3 A. No, not that I know of.
4 Q. Did you keep Mr. Shea posted on
5 your progress on Sunbeam?
6 A. Yes.
7 Q. And did you end up talking to any
8 institutional clients concerning the
9 convertible debt offering?
10 A. I spoke to I would say a small
11 handful, Clark, maybe two or three. It -- it
12 -- my role was -- I think the transaction
13 sold very well, and this wasn't a transaction
14 that needed a great deal of my time in the
15 selling process. So I would say it was
16 probably a handful -- it could have been two,
17 three, four investors -- that I probably
18 would have talked to.
19 Q. And who would those investors be?
20 A. I -- I don't recall specifically.
21 I saw in the one document that I
22 saw with Tom Clare on the Jim Dormer fax that
23 there was a client that had called and got a
24 fax to return the phone call, so that would
25 have been an example of a client.

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1 Confidential - Conway
2 Q. And that's Franklin?
3 A. Yes.
4 Q. Okay. Franklin was already a large
5 owner of Sunbeam at the time?
6 A. I -- I discovered that this past
7 Wednesday.
8 Q. You didn't know that previously.
9 A. I don't remember if -- I don't
10 remember.
11 Q. Michael Price is one of the
12 principals of Franklin?
13 A. Michael Price is one of the
14 principals.
15 Q. Is that correct?
16 A. I -- I -- I don't know.
17 Q. Okay.
18 A. I know he's a well-regarded
19 investor. I don't know --
20 Q. Whether he's associated in Franklin
21 in any way.
22 A. That's right.
23 Q. After the events at Sunbeam
24 unfolded did you have any conversations with
25 institutional investors about Sunbeam?

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1 Confidential - Conway
2 A. No, I did not.
3 I -- I had one conversation with an
4 investor on my trip out to California, with
5 an institutional investor, and who I believe
6 happened to be an owner, knew I was involved
7 in the convertible deal, and asked me, you
8 know, in a way maybe about the company
9 prospects or growth, but beyond -- that was
10 during the -- never any contact after the
11 transaction, so it was relatively -- he's the
12 only one I can recall.
13 Q. Okay. And what else do you recall
14 of that conversation?
15 A. He asked me why I was going to
16 cover the company, or why the beverage
17 analyst was playing a role, and I mentioned
18 to him that we don't have a household product
19 analysts, and my boss asked me to take on the
20 role, being a team player.
21 Q. And you didn't have any misgivings
22 at the time at all about the convertible
23 offering.
24 A. No.
25 Q. Did you have any sense that

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1 Confidential - Conway
2 Sunbeam's stock price was inflated in March
3 of '98?
4 A. No.
5 Q. You thought it was fairly valued
6 based on your work at that point?
7 A. I had not come to a conclusion yet
8 on the equity market valuation of Sunbeam,
9 because all that was asked of us was to put
10 together models, cash flow, balance sheet
11 adjustments, forecast earnings, and then
12 describe those to our investors, but not make
13 a valuation opinion. That would have come in
14 an initiation or an equity report.
15 Q. Okay. With the benefit of
16 hindsight, do you feel like you kind of stuck
17 your chin out on this transaction at all?
18 MR. CLARE: Object to the form of
19 the question.
20 You can answer if you understand
21 it.
22 A. I'm not sure I do understand it.
23 Q. Okay, let me try and rephrase it.
24 Well, let me put it differently.
25 Did anyone ever say you shouldn't

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1 Confidential - Conway
2 have stuck your chin out on Sunbeam?
3 A. No.
4 MR. CLARE: Same objection.
5 Q. You've already testified that an
6 analyst's reputation is of critical
7 importance, correct?
8 A. Um-hm.
9 Q. Okay, with the benefit of
10 hindsight, you wish your name hadn't been
11 associated in any way with the convertible
12 offering?
13 A. No, but -- but -- but with the
14 benefit of hindsight, you know, if -- if I
15 felt there was any impropriety or any issue
16 in the numbers, the cash flow, the story, you
17 know, as an equity analyst and a senior one,
18 had I had an inkling that, you know, what was
19 told to me by Sunbeam's management was, you
20 know, an outright falsehood, I would have
21 stopped the process right there.
22 Q. Sure.
23 A. That I could tell you. So that --
24 that's -- you know so from a reputation
25 standpoint if -- if I had discovered, you

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1 Confidential - Conway
2 know, that I was outright lied to, the
3 process would have stopped right there.
4 Q. So you're saying Mr. Kersh or Mr.
5 Fannin lied to you outright during your calls
6 with them.
7 A. Well, the -- the -- the postmortem
8 is that the revenues and the growth story did
9 not materialize.
10 Q. Right. So that's the basis of your
11 belief that you were lied to.
12 A. Yes.
13 Q. Okay. You said a few minutes ago
14 that the convertible sold very well, so you
15 as a result didn't need to talk to a lot of
16 institutional investors to try and help sell
17 the convertibles; is that correct?
18 A. That is correct.
19 Q. Okay. Do you recall the size of
20 the convertible offering initially or -- or
21 as it closed?
22 A. I don't.
23 Q. Okay. I'll represent that it was
24 initially \$500 million and then closed at
25 \$750 million. Does that refresh your memory

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1 Confidential - Conway
2 at all?
3 A. No.
4 Q. Now, you were involved in analyzing
5 synergies that might be attained from
6 Sunbeam's acquisition of the three targets;
7 is that correct?
8 A. That is correct.
9 Q. Okay. Tell me how you went about
10 doing that.
11 A. I think the majority or a hundred
12 percent of our feedback on synergies came
13 from our conversations with Russ Kersh.
14 Q. When you say "a hundred percent of
15 the feedback came from" --
16 A. Well, the -- the knowledge of the
17 capability to get the synergies --
18 Q. Okay.
19 A. -- either in any of the businesses
20 came from Russ Kersh articulating which
21 businesses, what part they were coming from,
22 a long history of Sunbeam's management
23 experiences at extracting synergies from
24 companies, and -- and where there were, you
25 know, perhaps even greater synergies going

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1 Confidential - Conway
2 forward.
3 Q. So the synergies analysis that you
4 or your staff performed were based entirely
5 on Mr. Kersh's thoughts about synergies that
6 might be attained?
7 A. Correct.
8 Q. And Mr. Kersh's ideas were based on
9 his knowledge of Sunbeam's operations and
10 past performance?
11 MR. CLARE: Objection, calls for
12 speculation.
13 A. I -- I -- I presume so.
14 Q. Okay.
15 A. Yes.
16 Q. By the way, did you sign a
17 protective order in this case?
18 MR. CLARE: Do you remember?
19 A. I don't -- I don't know.
20 Q. You don't recall doing that.
21 A. I don't recall doing that, no.
22 Q. Okay. And did you look at any of
23 your evaluations for Morgan Stanley?
24 A. My evaluations.
25 Q. Correct.

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1 Confidential - Conway
2 A. Which? Which type of evaluations?
3 Q. Well, I guess let's -- let me ask
4 it more specifically.
5 Do you recall how the evaluation
6 process worked at Morgan Stanley?
7 A. The evaluation for my
8 performance --
9 Q. Correct.
10 A. -- or the evaluation for this deal?
11 Q. For your performance.
12 A. I -- I would have -- I would have
13 been evaluated at the end of every year on my
14 performance.
15 Q. Did you fill out a self-evaluation?
16 A. I certainly did.
17 Q. Do you remember referring to
18 Sunbeam in any way in connection with your
19 1998 self-evaluation?
20 A. I don't remember.
21 Q. Do you think you would have done
22 that, given your work on the deal?
23 MR. CLARE: Objection to form.
24 A. I -- I know that the events
25 personally were upsetting, and because -- I

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1 Confidential - Conway
2 can tell you I communicated to my boss Dennis
3 Shea as the process was unfolding, you know,
4 my -- you know, my -- my view of here's an
5 analyst taking a role, and first announcement
6 goes out, sales a little bit less. But I --
7 it wouldn't surprise me whether I said
8 something in my 360. I just -- I don't know
9 if I did or if I didn't.
10 Q. When you say "360" you mean --
11 A. I mean self-evaluation. That --
12 that's part of the whole process --
13 Q. (Speaking simultaneously.)
14 A. Firm wide, exactly.
15 Q. Okay.
16 A. Exactly.
17 (Discussion off the record.)
18 MR. JOHNSON: I apologize.
19 Let me see what the record looks
20 like. (Reviewing real-time.)
21 Q. Mr. Conway, when you say "360," you
22 mean a firm-wide evaluation?
23 A. Correct.
24 Q. Do you know whether as part of the
25 firm wide evaluation anyone referenced your

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1 Confidential - Conway
2 work on Sunbeam?
3 A. I don't recall.
4 Q. And you didn't see your evaluation
5 forms in meetings with Mr. Clare?
6 A. No, I did not.
7 Q. You just mentioned that you were
8 upset as the process unfolded, and you had
9 conversations with Mr. Shea about that; is
10 that --
11 A. That's -- that's correct.
12 Q. Okay.
13 A. I mean my conversations with Mr.
14 Shea was informing him of the events.
15 Q. Okay.
16 A. Because he had approached me and
17 asked me to take a leadership role with it.
18 And to your point earlier about
19 reputation is important, and -- and -- and in
20 this process I didn't want, you know, my
21 hard-earned, you know, analytical rigor
22 reputation to be hurt by this event.
23 Q. Sure.
24 Did you say in words or substance
25 to Mr. Shea that analysts should keep focused

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1 Confidential - Conway
2 on their own industries?
3 A. No.
4 Q. Okay.
5 A. I don't believe I did.
6 Q. Did Mr. Shea have any reaction to
7 your communication of the events that
8 unfolded at Sunbeam?
9 A. I think his reaction was, you know,
10 let me look into it, and let me -- let me --
11 and let me, you know, get back to you.
12 Q. Okay. Did he do so?
13 A. I don't know that there was a, you
14 know, detailed postmortem where he and I sat
15 down together, but as events unfolded it
16 became clear and clearer through the, you
17 know, months ahead that, you know, the role
18 -- the role of myself and Sunbeam was -- you
19 know, was coming to -- wasn't going to be --
20 was coming to an end. And it's common
21 procedure in any transaction for an analyst
22 to let his bosses know if there are, you
23 know, events that -- that may affect the
24 offering, or events personally that, you
25 know, occur where an analyst just wants to

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1 Confidential - Conway
2 make sure the boss knows.
3 Q. What events in particular do you --
4 did you provide to Mr. Shea?
5 A. Well, I remember the first event
6 was -- because believe I was on the West
7 Coast when in March the first public
8 statement from Sunbeam that sales forecasts
9 in -- in -- in the quarter were going to be a
10 little less than expectation, so that was --
11 that would have been -- you know, I got that
12 news, and I would have put in a voice mail or
13 a phone call to Dennis Shea about that.
14 Q. Did that press release give you any
15 anxiety, for lack of a better term?
16 A. I don't -- I don't think it gave me
17 anxiety, no.
18 Q. Did you do anything to learn what
19 the actual sales and earnings numbers were
20 for Sunbeam at that point, in the first
21 quarter of '98?
22 A. Did I -- did I in terms of
23 forecast, or did I -- I'm not sure I
24 understand the question.
25 Q. Okay, sorry.

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1 Confidential - Conway
2 The press release you're referring
3 to --
4 A. Okay.
5 Q. -- I'll represent came out on March
6 19th.
7 A. Um-hm.
8 Q. Okay, my question is whether in
9 connection with that press release you did
10 anything to determine what Sunbeam's actual
11 sales for the quarter were, as of the date of
12 the press release.
13 A. I -- I probably after that point --
14 You mean whether I would have
15 changed my forecast or adjusted numbers or --
16 Q. I guess slightly -- we'll get to
17 that --
18 A. Okay.
19 Q. -- but slightly differently.
20 Did you do anything to find out
21 what the actual results were as of, say, mid
22 March?
23 A. No. No. I had no information
24 beyond what a public investor would have.
25 Q. Okay. Same question for earnings.

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1 Confidential - Conway
2 Did you do anything to find out where Sunbeam
3 was with its earnings as of mid March --
4 A. No.
5 Q. -- of the first quarter of '98?
6 A. No. The only thing I may have done
7 after that first announcement was request
8 another conversation with Mr. Kersh.
9 Q. Okay.
10 A. But no.
11 Q. But as you sit here you can't
12 recall actually doing that. You said it's
13 something you may have done.
14 A. Right.
15 Q. Okay. Do you recall how the market
16 reacted to the first press release, the March
17 19th press release?
18 A. I don't recall the exact, although
19 I know Sunbeam's shares dropped. I don't
20 know the amount. I can't remember that.
21 Q. Did you read what other analysts
22 were saying about Sunbeam?
23 A. No.
24 Q. Okay. That was a fairly emphatic
25 no.

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1 Confidential - Conway
2 Is that a practice, you don't watch
3 what other analysts are saying?
4 A. That's right. I think we -- we as
5 analysts have a -- have a -- have a -- well,
6 I can't speak for other analysts, but I think
7 that rarely a new coverage or -- or -- or new
8 companies do we read, you know, what other
9 analysts write, just for fear of, I think,
10 being prejudiced or -- or -- you know, the
11 only time I would ever read what other
12 analysts wrote would be if a client would
13 e-mail to me or would ask me, say, you know,
14 analyst X believes this, what do you think,
15 and that did not happen in this process.
16 Q. Okay. So as you sit here today you
17 don't know what other analysts said in the
18 wake of the March 19th press release?
19 A. That's correct.
20 Q. Okay. You mentioned the first
21 communication you had with Mr. Shea was the
22 March 19th, press release.
23 A. Um-hm.
24 Q. What was the next communication?
25 A. I believe the next communication --

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1 Confidential - Conway
2 and there may have been -- you know, he was
3 my boss, so we -- we talked pretty freely,
4 but I think the next communication was after
5 the next press release, which was a little
6 more -- I'm getting refreshed by Tom -- I
7 think descriptive about how the quarter would
8 move.
9 Q. And that's -- that's I'll represent
10 an April 3 press release.
11 A. Okay.
12 Q. Okay. And that was after the close
13 of the first quarter.
14 A. Okay.
15 Q. What do you recall about that press
16 release, your reaction to it, your
17 communication with Mr. Shea concerning it?
18 A. My communication with Mr. Shea
19 would have been describing the press release
20 and -- and -- and -- and the events within
21 the press release, and please advise, you
22 know, how I should handle my communication
23 with -- with investors now, or with -- with
24 -- with the bond deal. That would have been
25 more of a communication -- and he's my

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1 Confidential - Conway
2 boss -- how -- you know, what are next steps.
3 Q. That press release showed that the
4 for the first time Sunbeam would have a loss
5 for the first quarter of '98?
6 A. Yeah. It was a -- you know, as an
7 analyst involved, it was a stunning, you
8 know, press release.
9 Q. And you recall the stock took a
10 major hit as a result of that press release?
11 A. I remember it dropped. I don't
12 remember what percentage it dropped, nor do I
13 remember where I was.
14 Q. Meaning where physically you
15 were --
16 A. Right.
17 Q. -- in the country?
18 A. Right.
19 Because I remember the week before
20 I was in California. That I remember. But I
21 don't remember this week where I was.
22 Q. Okay.
23 A. I could have been in the office. I
24 just don't recall.
25 Q. Okay. Okay, so we've got the March

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1 Confidential - Conway
2 19th press release, the April 3 press
3 release.
4 A. Um-hm.
5 Q. What other events did you
6 communicate to Mr. Shea as the situation at
7 Sunbeam deteriorated?
8 A. I think -- I think that was pretty
9 much it, Clark. I think --
10 Q. Did you follow Sunbeam's stock
11 price through April and May?
12 A. I don't recall that I did, but I
13 remember that my activities regarding Sunbeam
14 were almost nonexistent beyond that point.
15 Q. Did you follow any of the Sunbeam
16 related litigation that followed the April 3
17 press release?
18 A. No.
19 Q. And you learned that Mr. Dunlap was
20 terminated at some point, I assume. Is that
21 correct?
22 A. I -- I guess that's correct, yes.
23 Q. Okay. Was the March 19th press
24 release the first inkling that you had of any
25 negative information concerning Sunbeam?

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1 Confidential - Conway
2 A. Yes.
3 Q. And did you know the press release
4 was going to issue before it came out?
5 A. No.
6 Q. Did you have any conversations with
7 anyone other than Mr. Shea at Morgan Stanley
8 concerning the press release?
9 A. No.
10 Q. As you sit here today do you know
11 what Sunbeam's sales in fact were through the
12 first two months of 1998?
13 A. I don't recall today --
14 Q. Okay.
15 A. -- what they were other than they
16 were lower than what was perceived to be.
17 Q. So Mr. Clare didn't show you any
18 comfort letters issued in connection with the
19 convertible offering?
20 A. I don't recall.
21 MR. CLARE: Whatever you remember.
22 Q. He's not allowed to testify --
23 A. Yeah, no, I -- I -- I --
24 Q. -- otherwise I would ask him.
25 A. I -- I -- I -- I -- I didn't know

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1 Confidential - Conway
2 the term -- you know, I'm not familiar with
3 the term comfort letter without looking a
4 time line that Tom presented to me Wednesday,
5 so I can tell you that I don't recall ever
6 seeing anything.
7 Q. Okay. The time line that Tom
8 presented to you, that's something that you
9 used to refresh your memory of the events?
10 A. Yes.
11 Q. Okay. Was that a single-page time
12 line or --
13 A. It was -- it was a couple of pages,
14 almost in one of these -- you know, like the
15 size of that framed picture, kind of just --
16 I'm not sure what you call them, but, you
17 know, you take the paper and you pull it over
18 when you're giving a presentation. You write
19 in marker pen.
20 Q. Right.
21 A. It was three -- three -- three
22 pages starting from I guess earlier in the
23 year all the way through, and trying to find
24 out where, you know, where --
25 Q. Where you fit --

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1 Confidential - Conway
2 A. Where my role fit in, exactly.
3 Q. We're going to come back to
4 synergies for a minute I guess.
5 A. Sure.
6 Q. I'm going to give you what's been
7 marked previously as Exhibit 129.
8 A. Okay, okay.
9 MR. CLARE: The drunken sailor
10 continues his walk.
11 MR. JOHNSON: That's an
12 Easterbrook reference.
13 MR. CLARE: I know the reference.
14 A. (Perusing document) Okay.
15 Q. Mr. Conway, I've given you
16 Exhibit 129, which I recognize is a 31-page
17 document.
18 A. Um-hm, um-hm.
19 Q. And I'm just going to call your
20 attention to a few sections of it.
21 A. Okay.
22 Q. But feel free to read any of it
23 that you'd like to.
24 A. Okay.
25 Q. Do you recognize Exhibit 129?

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1 Confidential - Conway
2 A. I recognize it because I may have
3 seen part of it on Wednesday with Tom, but I
4 -- I am realizing it's to Equity Commitment
5 Committee. I guess it's I guess a fairly
6 standard memorandum before a transaction.
7 Q. So you've seen memos like this on
8 many occasions.
9 A. I've seen -- I've seen memos like
10 this in my career over time. I would say not
11 on many occasions, because the beverage
12 industry, unlike telecom or communications,
13 is not an industry that's heavily banked.
14 Q. And by "heavily banked" you mean --
15 A. Heavily transaction oriented.
16 Q. Right.
17 Do you have a sense of the purpose
18 of Exhibit 129?
19 A. I believe the purpose -- yes. I
20 believe the purpose is to present to the
21 committee the potential transaction, and to
22 review it.
23 Q. And that in this instance is a
24 convertible offering.
25 A. Yes.

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1 Confidential - Conway
2 Q. I'm going to call your attention
3 first to page 13, which has the Bates stamp
4 MORGAN STANLEY CONFIDENTIAL 0000525.
5 A. Okay.
6 Q. Under the third major dash --
7 A. Um-hm.
8 Q. -- there's a provision that reads
9 "Realizable synergies of \$150 million from
10 combination."
11 A. Um-hm.
12 Q. And the first sub-bullet there is
13 "\$100 million from combination with Coleman."
14 A. Um-hm.
15 Q. Do you know what the basis for
16 those numbers is?
17 A. I believe these are -- well, I
18 recall that whatever synergy information I
19 had received came from Russ Kersh, and
20 perhaps this was the -- you know, the
21 breakout of that.
22 Q. Okay. And is this your work, or is
23 this work done independently by somebody else
24 at Morgan Stanley?
25 A. I don't -- I don't recall -- I

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1 Confidential - Conway
2 don't remember whether I had indicated the
3 breakout to the banker or the banker had put
4 these in. I don't recall which came first.
5 I do recall that -- that the amounts are
6 pretty similar to what I believe Mr. Kersh
7 communicated.
8 Q. Okay. O as you sit here and with
9 the benefit of Exhibit 129 in front of you--
10 A. Yeah.
11 Q. -- it's your understanding that
12 Morgan Stanley, the Equity Commitment
13 Committee of Morgan Stanley was anticipating
14 a hundred million dollars in synergies from
15 Coleman?
16 MR. CLARE: I'm sorry, could you
17 read that question back for me?
18 (Record read.)
19 MR. CLARE: Okay, I object. Calls
20 for speculation about the Equity
21 Committee's views. And lack of
22 foundation.
23 You can answer it if you can.
24 A. The only thing I would say is that
25 I believe a hundred and fifty million of

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1 Confidential - Conway
2 synergies was part of the expectation, you
3 know, in the forecast for earnings purposes.
4 Q. All right. And a hundred and fifty
5 million, was that from Coleman or from all
6 three acquisitions?
7 A. I believe it was from all three
8 acquisitions.
9 Q. Okay. Wonder if you could flip to
10 page 17 for me.
11 A. Um-hm.
12 Q. Which for the Bates -- for the
13 record, has the Bates stamp 529.
14 A. Okay.
15 Q. There's a question number five.
16 A. Okay.
17 Q. If you could just read that to
18 yourself.
19 A. Sure.
20 Q. I have a few questions about it.
21 A. (Reading) Okay. Okay.
22 Q. The -- the material under point
23 five --
24 A. Um-hm.
25 Q. -- refers to Coopers & Lybrand --

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1 Confidential - Conway
2 A. Um-hm.
3 Q. -- the special acquisition
4 consultants to Sunbeam?
5 A. Um-hm.
6 Q. Did you have any interaction with
7 Coopers & Lybrand?
8 A. No.
9 Q. Do you know what Coopers & Lybrand
10 was doing with Sunbeam?
11 A. No.
12 Q. Did you know that Coopers & Lybrand
13 was involved in assessing synergies?
14 A. No, not unless I probably read
15 point five here.
16 Q. Okay. The response here --
17 And, by the way, these questions or
18 concerns here, these are provided as answers
19 to potential investor concerns; is that
20 correct?
21 A. That is correct.
22 Q. The response notes that "Morgan
23 Stanley and Coopers & Lybrand had extensive
24 conversations with the management of
25 Coleman." Were you involved in any of those

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1 Confidential - Conway
2 discussions?
3 A. No.
4 Q. At any time did you speak with any
5 member of management of Coleman?
6 A. No.
7 Q. How about McAndrews & Forbes? Have
8 you ever spoken with anyone from McAndrews &
9 Forbes?
10 A. No.
11 Q. Can you identify any officer or
12 employee of McAndrews & Forbes?
13 A. The only one I know of is Mr.
14 Perelman.
15 Q. Have you ever met or had any
16 conversation with Mr. Perelman?
17 A. No.
18 Q. How about Coleman management, can
19 you identify any person who was a member of
20 Coleman management in March 1998?
21 A. No.
22 Q. So is it fair to say, then, that --
23 MR. JOHNSON: Strike that.
24 Q. The first sentence of the response
25 of question five doesn't relate to you --

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1 Confidential - Conway
2 MR. JOHNSON: Strike that.
3 Q. The first sentence of the response
4 of question five doesn't refer to any
5 conversations or discussions that you had.
6 A. Correct.
7 Q. Okay. And do you know who at
8 Morgan Stanley had had any extensive
9 discussions with the management of Coleman?
10 A. No.
11 Q. Okay. Do you know that Morgan
12 Stanley in fact had had extensive discussions
13 with the management of Coleman?
14 A. No.
15 Q. The last sentence of the response
16 of question five --
17 A. Um-hm.
18 Q. -- says "They," and that refers, I
19 believe, to Sunbeam management, "informed the
20 Sunbeam Board of Directors that the synergies
21 are likely to be in the 225 to 275
22 million-dollar pre-tax range." Did you have
23 any reaction to that information?
24 A. I didn't, Clark.
25 I -- I recall in my conversations

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1 Confidential - Conway
2 with Mr. Kersh that he felt that the synergy
3 number that he had articulated initially, I
4 guess around 150 million, was very, very
5 conservative.
6 Q. Okay.
7 A. And -- you know, and -- and that it
8 would be easily beatable. And that -- and
9 given their prior success at reducing cost
10 structure, it was probably left at that.
11 Q. Okay. Do you know how long Mr.
12 Kersh had been at Sunbeam as of March of '98?
13 A. No, I don't recall. I may have
14 known then, but I don't recall today.
15 Q. Okay. By the way, did you ever
16 talk to any of Sunbeam's customers in March
17 of 1998?
18 A. I did not.
19 Q. Do you know whether anyone from
20 Morgan Stanley had any conversations with any
21 of Sunbeam's major customers?
22 A. I -- no, I don't.
23 Q. Would you expect that to happen in
24 connection with due diligence on the
25 convertible offering?

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1 Confidential - Conway
2 MR. CLARE: Objection to form.
3 Incomplete hypothetical.
4 You could answer it.
5 A. I -- I don't know how common the
6 procedure would have been from an investment
7 banking perspective.
8 Q. Looks like another document here.
9 This one's already been marked as well, as --
10 A. Okay.
11 Q. -- Exhibit 183.
12 A. Okay. Exhibit 183? Okay.
13 (Perusing document) Okay.
14 Q. Mr. Conway, can you identify
15 Exhibit 183 for the record?
16 A. Sure.
17 What would you like me to --
18 Q. Just tell us what the document
19 appears to be.
20 A. The document appears to be a
21 selling memorandum of the convertible
22 subordinated debt offering for Sunbeam.
23 Q. And there's a fax cover sheet from
24 Shani Boone to you, dated March 12, 1998?
25 A. Correct.

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1 Confidential - Conway
2 Q. Do you have any recollection of
3 receiving this fax?
4 A. I -- I do not have any recollection
5 of receiving this fax, but it shows that
6 Shani Boone must have been one of the juniors
7 or one of the people working in -- in -- in
8 faxing us information.
9 Q. And can you tell us what a selling
10 memorandum is?
11 A. A selling memorandum is a document
12 meant to assist the analyst and -- and -- and
13 his or her potential sales force in aiding
14 the potential client or investor in the
15 particulars about the company, financial
16 forecasts, prior financial results, of that
17 -- of that ilk.
18 Q. Okay. So this would be used in
19 tandem with an offering memorandum for the
20 convertible.
21 A. I believe so, yes.
22 When was the date of the -- when
23 was the actual deal consummated?
24 Q. Well, the date of the offering
25 memorandum, I'll represent, is March 19th.

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1 Confidential - Conway
2 A. Is that when the investors -- is
3 that when the deal was completed and sold to
4 investors, the 19th?
5 Q. Well, unfortunately, I can't
6 answer. I'm the one who asks questions.
7 A. Okay. I'm sorry. I'm just trying
8 to place the time line here.
9 Q. No, I appreciate that.
10 A. Sorry.
11 Q. That's quite all right.
12 A. I'm just trying to figure out how
13 much -- how -- how far in advance. If it's
14 the 19th, it's the week before. I'm just
15 curious.
16 Q. Now, if you would look for me at --
17 We'll have to use the Bates stamp I
18 think on this.
19 A. Okay.
20 Q. -- MORGAN STANLEY CONFIDENTIAL
21 0063302 --
22 A. 302.
23 Q. -- and 303, this is in the key
24 selling points section?
25 A. Yes. Okay.

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1 Confidential - Conway
2 Q. Again, there's a listing of
3 realizable synergies of \$150 million?
4 A. Um-hm.
5 Q. And a hundred million dollars from
6 combination with Coleman?
7 A. Um-hm.
8 Q. Do you see that?
9 A. I do at the bottom of the page.
10 Q. Right.
11 And you're anticipating my next
12 question already I can see.
13 A. Yes.
14 Q. That's consistent with the
15 information you just looked at in Exhibit --
16 MR. CLARE: 129.
17 Q. -- 129?
18 MR. JOHNSON: Thanks.
19 A. Yes.
20 Q. If you'd now be kind enough to flip
21 to page 63309.
22 A. 63309, okay. Okay.
23 Q. There's a bullet that states
24 "Uncertainty of attaining synergies"?
25 A. Um-hm.

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1 Confidential - Conway
2 Q. The last sentence on that page
3 indicates -- I'll read it -- quote, "In
4 addition, while Andrew Conway has modeled
5 \$150 in synergies in 1998, he feels that
6 there could be upside to this figure." Do
7 you see that?
8 A. Yes, I do.
9 Q. Okay. You had in fact modeled
10 synergies of \$150 million in 1998?
11 A. That's correct.
12 Q. So this is a truthful statement.
13 A. That is correct.
14 Q. And you felt at that time that
15 there could be upside to that number.
16 A. I felt based upon the attitude or
17 excitement of -- of my conversations with --
18 with Mr. Kersh that his -- his view was that
19 given the track record of the Sunbeam
20 management and given their prior successes
21 that that number would prove to be very
22 conservative.
23 Q. And it was solely information
24 provided by Mr. Kersh that led you to the 150
25 million-dollar synergies in your model?

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1 Confidential - Conway
2 A. Correct.
3 And Mr. Kersh would have detailed
4 it, you know, clearly to me at the time,
5 where he thought they would come from, a
6 range, a dollar amount, whereas his initial
7 conservative expectations would be where he
8 thought he could actually reach.
9 Q. Okay, so he didn't say, Andrew,
10 we're going to have a hundred fifty million
11 dollars in synergies, period. He would break
12 it out item by item. Where the number came
13 from.
14 A. He would -- he would range it out,
15 absolutely.
16 Q. Okay. And I assume you would
17 review his breakout for reasonableness?
18 A. That's correct.
19 Q. And you did that.
20 A. I did that.
21 And he would have certainly, you
22 know, himself made comparisons to what they
23 were able to do with prior companies as well.
24 Q. Sure.
25 Do you know what companies Sunbeam

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1 Confidential - Conway
2 had acquired in, say, the preceding three
3 years?
4 A. I don't recollect today.
5 Q. Okay. If you could flip back to
6 Exhibit 129 for me --
7 A. Okay.
8 Q. -- the page we were looking at --
9 A. Okay.
10 Q. -- which has the Bates stamp 529.
11 A. Okay.
12 Q. I note that Exhibit 129, which
13 stated --
14 MR. JOHNSON: Strike that.
15 Q. The last sentence that we looked at
16 under paragraph five in Exhibit 529 (sic) --
17 A. Um-hm.
18 Q. -- which was Sunbeam's management's
19 statement to the board, Sunbeam board --
20 A. Um-hm.
21 Q. -- that doesn't appear in
22 Exhibit 183. Do you know why that is?
23 A. Exhibit -- I see. I do not know
24 why that is.
25 Q. Okay. Did you have any role in

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1 Confidential - Conway
2 drafting or revising either Exhibit 129 or
3 Exhibit 183?
4 A. I don't recall, but it would have
5 been normal operating procedure for me to
6 review, I'm pretty sure, Exhibit 183, but I
7 don't recall, you know, a major edit or a
8 major review today. I can't recollect it.
9 Q. And you say it would have been --
10 you expect that you would have reviewed
11 Exhibit 183. That's because your name is
12 being used in it?
13 A. That's correct. That's because I'm
14 getting a fax from the Client Services Group,
15 and maybe this was a final edition. I -- I
16 -- I don't recall. But it wouldn't be
17 uncommon to review the selling memorandum.
18 Q. And your name was being used in
19 connection with the synergies analysis
20 because of your reputation and, say, cache
21 for investors?
22 MR. CLARE: Objection to form. It
23 calls for speculation.
24 A. I think my -- I think that the
25 analysis of synergies, you know, synergies

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1 Confidential - Conway
2 are traditionally used in an M&A transaction
3 to show -- there's two ways an acquisition
4 can be positive from an investor standpoint.
5 You know, does it accelerate your revenue
6 growth, or can you maintain revenue and/or
7 and get more costs out of the business. So
8 in this instance I think it was they were
9 acquiring a business, but -- but this was
10 very much a part of kind of integrating
11 company sales force, headquarters, field
12 expense, if you will, and letting that drop
13 to the bottom line to provide a higher level
14 of earning space. So it would have been -- a
15 normal question from a potential investor
16 would have been, okay, Andrew, are there
17 synergies in this transaction, what are they,
18 what's reasonable.
19 Q. Okay. But the use of the name
20 Andrew Conway as opposed to Morgan Stanley is
21 meant to convey credibility to the number,
22 isn't it?
23 MR. CLARE: Same objections.
24 You can answer.
25 A. I -- I -- I -- I -- yes, I believe

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1 Confidential - Conway
2 that -- that I was asked to take on this
3 assignment because of my track record as a
4 consumer analyst.
5 Q. By the way, do you recall any
6 revisions to the synergies estimates that Mr.
7 Kersh was presenting to you?
8 A. No.
9 Q. Can you tell me with any more
10 specificity what Mr. Kersh told you about
11 synergies?
12 A. I can't beyond the telephone
13 conversation kind of earmarking where they
14 thought they would be able to achieve on a
15 conservative base level analysis, and that
16 they hoped to do, you know, much greater, and
17 then probably the descriptor of the different
18 areas of where they expect to get synergies,
19 but beyond that, no, there was --
20 Q. Okay. Was it here are 12 areas
21 where we're going to get synergies, here's --
22 or was it three or a hundred, or do you have
23 any sense of the range of areas?
24 A. There were several. There were
25 several areas.

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1 Confidential - Conway
2 Q. And did he assign a dollar value to
3 each of the areas?
4 A. I believe he probably assigned a
5 range --
6 Q. Okay.
7 A. -- to the areas, and I'm sure I
8 incorporated that in -- in my -- in my -- in
9 my models.
10 Q. Okay, and you accepted the range
11 that he provided as reasonable?
12 A. I did.
13 Q. Do you believe that Mr. Kersh
14 provided false information to you concerning
15 the synergies that could be achieved?
16 A. I -- I -- I don't know the answer
17 to that. I -- because I mean we know the
18 *business plan fell short of expectations,*
19 *number one, and it certainly seems as though*
20 *exceeding the hundred and fifty million would*
21 *have proved to be more of a challenge than I*
22 *thought at the time, but, you know, Mr. Kersh*
23 *and Sunbeam had a track record of executing*
24 *synergies at prior businesses and sometimes*
25 *even higher levels as a percentage of sales,*

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1 Confidential - Conway
2 so there wasn't any reason to doubt his
3 communication to me.
4 Q. I've got one more of these drafts
5 also previously marked. This one is --
6 A. Sure.
7 Q. -- Exhibit 100.
8 A. Okay. Thank you. Okay.
9 Q. Mr. Conway, Exhibit 100 appears to
10 be another version of the selling memorandum,
11 doesn't it?
12 A. It -- it does.
13 Q. Okay. And as you might imagine, I
14 want to compare that version to the version
15 that we were just looking at, which was
16 Exhibit 183.
17 A. Okay.
18 Q. And in particular, if you could be
19 good enough to flip to page 16 of
20 Exhibit 100.
21 A. 16 of 100, okay.
22 Q. Which has the Bates stamp 62876.
23 A. Okay.
24 Q. And if you would at the same time
25 lay that side by side with the Bates stamp

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1 Confidential - Conway
2 63303 of Exhibit 183.
3 A. Okay.
4 Q. And I'm going to ask a few
5 questions about the differences between the
6 last bullet point on each of those pages,
7 both of which concern synergies. Do you see
8 those?
9 A. Yes, I do.
10 Q. Okay. You'll note in Exhibit 100
11 the synergies are not broken out, as they are
12 in Exhibit 183 --
13 A. Correct.
14 Q. -- on a per target basis. Do you
15 see that?
16 A. Yes, I do.
17 Q. Why is that?
18 A. I don't know. Someone must have
19 made a decision to -- between 6:55 a.m. that
20 day and 3:19 p.m. that day to edit the sign
21 point.
22 Q. Okay. And you weren't involved in
23 that process at all.
24 A. I do not believe I was involved in
25 changing the bullet point here. No, I can't

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1 Confidential - Conway
2 recall.
3 Q. Another difference you'll note is
4 that the major bullet on page -- on
5 Exhibit 100 states "Conservatively estimated
6 synergies of a hundred and fifty million
7 dollars --
8 A. Sure.
9 Q. -- whereas the major bullet on 183
10 states "Realizable synergies of a hundred and
11 fifty million dollars.
12 A. Yes.
13 Q. What's the basis for that revision?
14 A. I don't know, except as a key
15 selling point to potential investors I think
16 making selling points a little more robust, a
17 little more accurate in the selling thesis,
18 and in informing potential investors of -- of
19 what's realistic, there's usually a fine
20 tuning process, and it looks as though from
21 realizable synergies that perhaps they can
22 get to one fifty versus what was described as
23 conservatively estimated at one fifty, which
24 -- which potentially made it look as though
25 there was more profitability to -- to

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1 Confidential - Conway
2 extract, was pretty similar to what Mr. Kersh
3 had echoed to me.
4 Q. Okay.
5 A. So that, to me, would be a fairly
6 common, you know, selling point.
7 Q. Okay. So you believe that the
8 statement in Exhibit 100 is more accurate at
9 the time than the statement in Exhibit 183.
10 A. But -- but based upon, you know, my
11 analysis and the conversations I had with Mr.
12 Kersh, at the margin, yeah.
13 Q. You said the desire is to make the
14 selling memorandum robust and accurate I
15 think are the two words that you used to
16 describe the goals with respect to the
17 selling point.
18 When you mean robust (sic), do you
19 mean to make the investment more attractive?
20 A. No. I mean to -- to make it
21 clearer for investors.
22 Q. Okay. Well --
23 A. As an example, you have an example
24 here of -- of more areas for which some of
25 the functional redundancies are available.

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2 Q. Actually, I think, if you flip over
3 to the next page of Exhibit 183, you'll see
4 the remainder of those functional --
5 A. Oh, okay.
6 Q. -- redundancies, so there's more
7 robust information there.
8 A. Oh, okay.
9 Q. And it seems that Exhibit 100 is
10 less robust with respect to specificity on
11 synergies, and I guess my question is, which
12 was already covered to some extent, whether
13 you have any idea why that is.
14 MR. CLARE: I object to the form
15 of the question.
16 MO Move to strike counsel's
17 characterization of the document.
18 You can answer.
19 A. I -- I think it's --
20 MR. CLARE: If you know.
21 A. (Continuing) I -- I -- I don't know
22 -- if the question is, you know, why were the
23 breakout of Coleman, First Alert and
24 Signature, as labeled here, removed in favor
25 of -- just -- just -- just removed, and then

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1 Confidential - Conway
2 the words changed, I don't know the answer to
3 that.
4 Q. Okay. Now we're going to flip
5 pages, if we could --
6 A. Sure.
7 Q. -- to page 22 of Exhibit 100 --
8 A. 22.
9 Q. -- which has the Bates stamp 62882.
10 A. Um-hm.
11 Q. And then the page 63309 of
12 Exhibit 183.
13 A. 63309, okay. Okay.
14 Q. Exhibit 100 refers to the "Ability
15 to attain synergies"; do you see that?
16 A. Yes.
17 Q. And there's a -- in Exhibit 183 the
18 bullet is "Uncertainty of attaining
19 synergies."
20 Were you involved in any way in
21 making that revision?
22 A. None that -- not that I could
23 recall, no.
24 Q. Okay.
25 A. That -- that would -- you know,

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1 Confidential - Conway
2 again, probably been altered by the bankers
3 in light of my conversations with Mr. Kersh.
4 Q. Okay. But at some point you could
5 have conveyed your conversations with Mr.
6 Kersh to the bankers?
7 A. Yes.
8 Q. And we kind of covered this
9 already, but maybe having spent a little more
10 time on these documents your memory will be
11 better.
12 Do you remember which banker or
13 bankers you conveyed your conversations with
14 Mr. Kersh to?
15 A. I don't. However, given that this
16 was emanating out of the Client Services
17 Group --
18 Q. Right.
19 A. -- it would seem -- and this looks
20 like they took responsibility for the selling
21 memorandum -- it -- probably they were
22 certainly one of the -- or the banker, you
23 know, involved in putting the document
24 together.
25 Q. So it probably --

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1 Confidential - Conway
2 A. But I don't recall who it was
3 specifically.
4 Q. Okay. But your assumption is that
5 someone in Client Services Group.
6 A. That would have been my assumption.
7 If -- if it was faxed to me, Clark, you know,
8 before 7:00 a.m., it's pretty early to start
9 the day to probably review and -- and -- and,
10 you know, read through it. I -- I -- I would
11 say that the selling points were more a
12 function of perhaps, you know, my due
13 diligence in talking to Management, and my
14 verbalizing the synergy revenue targets, and
15 my sense is the private -- you know, the
16 client bankers would take the information I
17 would verbalize and try to better encapsulate
18 them in the selling points.
19 Q. Okay. One other slight difference
20 between Exhibit 100 and Exhibit 183 is that
21 Exhibit 100 has added in a clause around the
22 middle of the paragraph -- response paragraph
23 that notes that "Management's confidence is,"
24 quote, "due to ten years' experience," close
25 quote. Do you see that?

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1 Confidential - Conway
2 A. Yeah.
3 Q. Okay. And the references to "ten
4 years' experience" doesn't appear in
5 Exhibit 183.
6 Do you have any recollection as to
7 why that revision was made?
8 A. Nope.
9 Q. Okay.
10 A. No, I don't.
11 Let me just see where this fits in
12 here. So -- (perusing document) "degree of
13 confidence" -- (reading). Oh, I see. So
14 that sentence -- okay, so they added yeah,
15 "due to ten years of experience."
16 Q. Is that information that you would
17 have conveyed to the Client Services Group?
18 Or do you know where that came
19 from?
20 A. I don't think that would have been
21 conveyed, because I think that would have
22 been more -- you know, the experience level
23 was known before I came onto the scene.
24 Q. Okay. Do you know whether, in
25 fact, somebody in Management did have ten

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1 Confidential - Conway
2 years' experience?
3 A. I don't recall, but I think, Clark,
4 by definition, you know, the upsizing of the
5 deal from 500 million and above, you know,
6 you know, had a lot to do with the reputation
7 or perceived reputation of Management's
8 ability to basically extract the synergies
9 and -- and provide the growth. So the
10 credibility factor, I think, if -- if -- if
11 there were investor questions -- and I don't
12 recall any -- about achieving ability, this
13 would certainly, again, underlie the fact
14 that they've been there, done that.
15 Q. Okay. And in Exhibit 100, like
16 some of the other drafts we saw, includes a
17 sentence that you, Andrew Conway, have
18 modeled a hundred and fifty million
19 dollars in synergies in 1998, and feels that
20 there could be an upside to this figure.
21 Did Mr. Kersh, when he gave you the
22 hundred and 50 million dollar figure, tell
23 you that he was relying on Coleman
24 management's ideas of synergies?
25 A. I don't recall that he gave any

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1 Confidential - Conway
2 specificity to documents, or who he was
3 relying on.
4 Q. So as you sit here today you don't
5 know with any specificity what information
6 Mr. Kersh was relying on in conveying to you
7 Management's perception that a hundred fifty
8 million dollars in synergies was realizable.
9 A. Correct.
10 Q. And you relied on Mr. Kersh's
11 estimates because he was particularly well
12 placed to determine what synergies could be
13 achieved?
14 A. That's correct. He -- he was the
15 chief financial officer of the company.
16 Q. And the company that would continue
17 going forward.
18 A. Correct.
19 MR. CLARE: Clark, are we at a
20 stopping point for five minutes, where
21 we could take a short break?
22 MR. JOHNSON: We could do that.
23 Let's see. Yeah, why don't we do that.
24 MR. CLARE: It's up to you.
25 MR. JOHNSON: That's fine. We

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1 Confidential - Conway
2 have been on for almost two hours.
3 THE VIDEOGRAPHER: The time is
4 10:43 a.m. We're going off the record.
5 The time is 10:43 on June 4, 2004.
6 This is the end of tape number four of
7 the videotaped deposition of Mr. Andrew
8 Conway.
9 (Recess taken.)
10 THE VIDEOGRAPHER: The time is
11 10:54 a.m. on June 4, 2002. This is
12 tape number two of the videotaped
13 deposition of Mr. Andrew Conway.
14 Q. All right, Mr. Conway, before the
15 break we were talking about synergies and
16 looking at some documents that referred to
17 synergies to be achieved from Sunbeam's
18 acquisitions.
19 Did anyone other than you at Morgan
20 Stanley model synergies to be attained from
21 the transactions?
22 A. No, not that I know of.
23 Q. So you didn't have any
24 conversations with any of the investment
25 bankers concerning modeling that they had

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1 Confidential - Conway
2 done on synergies.
3 A. That is correct. Not -- not that I
4 can recall.
5 Q. And did you understand that in
6 addition to the convertible offering, Morgan
7 Stanley was going to be leading a bank
8 syndicate to finance the acquisitions?
9 A. I don't recall whether I knew about
10 that at the time, because I was pretty
11 focused on the convertible deal when asked to
12 talk to clients, so I -- so I don't recall
13 the other financing roles that the Morgan
14 Stanley played.
15 Q. And so you didn't have any role in,
16 say, finding other lenders to participate.
17 A. No.
18 Q. Okay.
19 A. No.
20 Q. I give you what was marked
21 previously as Exhibit 145.
22 A. Okay. Okay, thanks. Okay.
23 Q. Mr. Conway, Exhibit 145 is a cover
24 memo from Bram Smith to the Leveraged Finance
25 Commitment Committee, and it encloses a memo

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2 from a number of individuals, including you,
3 to the Leveraged Finance Commitment Committee
4 dated March 20, 1998. Do you see that?
5 A. I've never seen this.
6 Q. You've never seen the cover page?
7 A. That's -- I don't recall ever
8 seeing the cover page.
9 Q. Okay. How about what follows the
10 cover page?
11 A. Um -- (perusing document) I don't
12 recall.
13 Q. So you don't recall getting any
14 drafts of this, or providing any comments on
15 it?
16 A. I don't recall, no.
17 Q. And you certainly didn't draft it
18 yourself?
19 A. That's correct.
20 But it looks like it was similar to
21 the other (inaudible), no?
22 (Discussion off the record.)
23 A. (Continuing) It looks like it was
24 similar to what prior --
25 Q. Maybe you said the selling

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2 memorandum?
3 A. Yeah, the selling memorandum.
4 But no, I can't recall ever seeing
5 this document.
6 Q. Okay. As you sit here today do you
7 have any idea what information the Morgan
8 Stanley Leveraged Finance Commitment
9 Committee relied on in deciding to extend
10 secured financing to somebody?
11 A. No, I'm unsure as to what
12 information they relied upon.
13 Q. And you didn't have any
14 conversations with anyone on that Leveraged
15 Finance Commitment Committee concerning
16 whether or not Morgan Stanley should lend
17 money to somebody.
18 A. Correct.
19 Q. Do you know what synergies Morgan
20 Stanley Senior Funding was expecting Sunbeam
21 to achieve in connection with the
22 acquisition?
23 A. No.
24 I'm not sure what you mean by
25 Morgan Stanley Senior Funding.

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2 Q. Have you heard of Morgan Stanley
3 Senior Funding?
4 A. No.
5 Q. You've never heard that term
6 before.
7 A. No.
8 Q. Did you understand that Morgan
9 Stanley had a business unit or affiliate that
10 provided secured financing in connection with
11 M&A deals that Morgan Stanley investment
12 bankers had put together?
13 A. I -- I may have been aware that we
14 -- we make loans to corporations.
15 Q. But you didn't know which Morgan
16 Stanley entity made loans to corporations.
17 A. That's correct.
18 Q. Okay. Did you perform any modeling
19 of the acquisitions that assumed that no
20 synergies would be attained from the
21 acquisitions?
22 A. I don't believe I did, no.
23 Q. Did you perform any modeling with
24 synergies assumed to be any number other than
25 one hundred and fifty for the three

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2 acquisitions?
3 A. I don't believe I did, no.
4 As an analyst, I would have done
5 sensitivities had they exceeded that, you
6 know, in terms of what that could have meant
7 potentially to earnings per share been proven
8 (sic).
9 Q. And as you sit here do you have any
10 sense of how the \$150 million in synergies is
11 apportioned among the three targets?
12 A. Other than reading the prior
13 selling memorandum in terms of how it was
14 split up among the three, I would not have
15 recalled other than being refreshed.
16 Q. Okay. And that was the document
17 that listed Coleman at \$100 million.
18 A. Correct.
19 Q. Have you ever had any dealings with
20 the Leveraged Finance Commitment Committee of
21 Sunbeam --
22 A. No.
23 Q. -- excuse me, of Morgan Stanley?
24 A. No.
25 Q. Okay. So you don't know what their

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1 Confidential - Conway
2 decision-making process is.
3 A. Correct.
4 Q. At any of the other investment
5 banks where you've worked have you been
6 involved in leveraged finance decision-
7 making?
8 A. No.
9 MR. JOHNSON: I think this is
10 previously marked, but unfortunately I
11 don't have a marked copy or know the
12 exhibit number, so I'm just going to
13 re-mark it. This will be CPH -- what
14 did I say, 217? Right.
15 (CPH Exhibit 217, memo describing
16 potential loan, marked for
17 identification, as of this date.)
18 (Handing.)
19 THE WITNESS: Oh, thank you.
20 Q. I'll start with an easy question.
21 Have you ever seen Exhibit 217
22 before?
23 A. I don't believe so. No.
24 Q. Can you determine what the purpose
25 of Exhibit 217 is?

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1 Confidential - Conway
2 A. I can't determine what it is, no.
3 It looks like a memorandum describing a
4 potential loan.
5 Q. I wonder if you would be kind
6 enough to look at the page marked 45692.
7 A. Okay.
8 Q. At the bottom of the page there's a
9 box entitled "Coleman Summary of Potential
10 Operating Deficiencies"; do you see that?
11 A. Um-hm, um-hm.
12 Q. Do you know where any of that
13 information came from?
14 A. Nope.
15 Q. Do you know one way or the other
16 whether any of this information is accurate?
17 A. (Reading) Well, it looks like on
18 the operational synergies some of that, you
19 know, we've seen before in a prior
20 memorandum, selling document. Some of the
21 revenue synergies could have been covered,
22 you know, in conversations I had with Mr.
23 Kersh. I don't recall. They're pretty
24 common. There's nothing -- they're pretty
25 broad. They're common.

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2 I don't recall these, though.
3 Q. Okay. And you don't recall
4 conveying to anyone on the leveraged financed
5 (sic) team any synergy information.
6 A. Absolutely.
7 Q. Absolutely not.
8 A. Absolutely not. I've never
9 communicated with anyone, that I can recall,
10 on the leveraged finance team at all.
11 Q. If you'd also then flip to page
12 45697.
13 A. Okay. Okay.
14 Q. In the middle of the page you see a
15 bullet, "Ability to Attain Synergies."
16 A. Um-hm.
17 Q. And this is similar to some of the
18 provisions we've looked at in other exhibits
19 today?
20 A. Yes.
21 Q. Did you have any knowledge that
22 your name was being used in connection with
23 seeking participants in the leveraged
24 financing?
25 A. No.

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1 Confidential - Conway
2 Q. No one consulted you --
3 A. No.
4 Q. -- prior to circulating this, to
5 your knowledge.
6 A. Correct.
7 Q. All right, I'm going to show you a
8 series of documents, Mr. Conway, and we might
9 pick up the pace here. Let's see. This has
10 been marked Exhibit 205 previously.
11 A. Okay.
12 Q. Have you ever seen Exhibit 205?
13 A. No.
14 Q. Okay. You'll note a fax header on
15 the first page, "Coopers & Lybrand," and it's
16 dated February 27, '98?
17 A. Yeah, I just noticed that.
18 Q. Okay. And I think you've already
19 testified to this. You had no interaction
20 whatsoever with Coopers & Lybrand?
21 A. Correct.
22 Q. Did anyone ever share with you the
23 synergies estimates that Coopers & Lybrand
24 put together?
25 A. No.

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1 Confidential - Conway
2 Q. Unless it was Mr. Kersh indirectly?
3 A. Correct.
4 Q. Okay. And I take it, then, that
5 you have no idea what information Coopers &
6 Lybrand relied on in its synergies analysis.
7 A. That's correct.
8 Q. Okay. Okay, this one's been marked
9 previously as Exhibit 97.
10 A. Exhibit 97? Okay.
11 MR. JOHNSON: If anyone has
12 highlighting on his copy, let me know.
13 THE WITNESS: Okay.
14 MR. CLARE: I do not.
15 MR. JOHNSON: Okay.
16 THE WITNESS: I do not either.
17 Q. Okay. Have you ever seen what's
18 been marked previously as Exhibit 97?
19 A. No.
20 Q. You know that Project Laser refers
21 to Sunbeam's M&A project with Morgan Stanley?
22 A. Okay. Do I know that?
23 Q. Yeah.
24 A. I don't believe I had, no.
25 Q. If you look at the three center

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2 columns, there's headings, "Original," "Rev,"
3 period, that's "December '97," and "Rev,"
4 period, "January '98"?
5 A. I'm sorry, I lost you.
6 Q. Sure. I'm looking at the three
7 center columns.
8 A. Yes.
9 Q. And the three headings --
10 A. Um-hm.
11 Q. -- on those columns --
12 A. Um-hm.
13 Q. -- and then the grand totals
14 associated with those three columns, those
15 appear to show a downward revision of
16 synergies; do they not?
17 A. Um-hm. They do.
18 Q. You had no discussions with anyone
19 at Morgan Stanley as to revising down the
20 synergies to seventy -- excuse me, \$67
21 million?
22 A. I did not.
23 Q. And no one at Morgan Stanley ever
24 told you that your 100 million-dollar synergy
25 figure for Coleman was inappropriate.

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2 A. Correct.
3 Q. Do you know the source of any of
4 the synergy information that appears in
5 Exhibit 97?
6 A. No, I don't.
7 Q. Let me show you what's been marked
8 previously as Exhibit 160.
9 Have you ever seen Exhibit 160
10 before?
11 A. No, I have not.
12 Q. Okay. So it's fair to say that you
13 didn't rely on Exhibit 160 in performing your
14 synergies analysis?
15 A. That's correct.
16 Q. Do you recognize any of the
17 handwriting on Exhibit 160?
18 A. I do not recognize any of the
19 handwriting on Exhibit 160.
20 Q. I'm going to show you a fax that I
21 think we already mentioned today.
22 A. Okay.
23 MR. JOHNSON: We'll mark this as
24 Exhibit 218.
25 (CPH Exhibit 218, Mr. Dormer fax

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2 to Mr. Conway, with attachments, marked
3 for identification, as of this date.)
4 (Handing.)
5 THE WITNESS: Okay, thank you.
6 Q. Mr. Conway, is this the fax you
7 were referring to earlier today?
8 A. Yes.
9 The cover page is.
10 Q. Okay.
11 Were the attachments different than
12 the ones that you looked at with Mr. Clare?
13 A. Did not see the attachments with
14 Mr. Clare.
15 Q. Okay. This is a fax to you from
16 Jim Dormer?
17 A. Um-hm.
18 Q. And it's faxed to a San
19 Francisco --
20 A. Um-hm.
21 Q. -- area code.
22 Do you know hat number that is?
23 A. It's probably my hotel number where
24 I was staying, visiting clients on the West
25 Coast.

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1 Confidential - Conway
2 Q. And that was the Ritz Carlton?
3 A. It could have been the Carlton or
4 the Mandarin Oriental. It was -- unless it
5 says here. I don't recall exactly where I
6 was staying.
7 Q. I'll represent I called the number
8 yesterday, and they answered -- (speaking
9 simultaneously).
10 A. The Ritz Carlton, okay. Very good.
11 Okay, I was staying at the Ritz Carlton.
12 Q. What were you doing in San
13 Francisco?
14 A. I was visiting my clients, my
15 institutional investor clients, who were
16 getting some color on the beverage industry.
17 Q. Did you talk about Sunbeam with
18 those clients?
19 A. I did not talk about Sunbeam with
20 those clients in San Francisco.
21 Q. Did you talk about Sunbeam with
22 those clients anywhere else?
23 A. I had a brief discussion with a
24 client in Portland who asked me much like we
25 talked about, you know, why I was taking lead

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2 coverage of Sunbeam. And then I probably
3 returned the phone call here stated on the
4 fax, from a client who was looking at I guess
5 the convertible deal, and our forecasts.
6 Q. Okay.
7 A. Pretty standard, you know, client
8 question.
9 Q. Okay. There's a number in
10 handwriting on the cover page of Exhibit 218.
11 A. Um-hm.
12 Q. Do you recognize that number?
13 A. I -- I don't recognize that number.
14 Q. I think 650 is a Silicon Valley
15 area code. Does that help you remember?
16 A. It does not look like my writing.
17 Q. Okay.
18 A. Interestingly.
19 Nor does the writing on the next
20 page. It doesn't look like my penmanship.
21 Q. Was anyone traveling with you when
22 you were in San Francisco?
23 A. No. I was traveling alone.
24 But I generally meet my -- we have
25 a branch office in San Francisco, and I was

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2 probably meeting my institutional sales
3 representatives, and visiting different
4 client accounts.
5 Q. Okay, was Mr. Strong in San
6 Francisco at the same time as you?
7 A. No, I don't believe so.
8 Q. So you didn't -- to your knowledge,
9 you didn't have any conversations with him
10 while you were in San Francisco?
11 A. I don't recall.
12 Q. Do you know what Mr. Strong's role
13 was on the Sunbeam transaction?
14 A. Not specifically, no.
15 Q. Do you have a general sense of his
16 involvement?
17 A. I have a general sense of he's --
18 was a very -- a very well-known relationship
19 investment banker in Morgan Stanley. Beyond
20 that, I don't know who his contacts or points
21 of contact were with Sunbeam.
22 Q. Okay. When you say he's a
23 well-known relationship investment banker,
24 that means he generates a lot of business for
25 Morgan Stanley?

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1 Confidential - Conway
2 A. I believe so, yes.
3 Q. Now, the message box on the cover
4 page here is a message from Jim Dormer to
5 you?
6 A. Yes.
7 Q. And it refers to Mitch Cone at
8 Franklin.
9 Can you tell us again who Mitch
10 Cone is at Franklin?
11 A. I don't remember Mitch Cone.
12 Q. Okay.
13 A. He was not a core beverage client
14 of mine, but -- but either an equity holder
15 in something or someone interested in playing
16 a role in placing an order to eventually buy
17 the convertible deal.
18 Q. The message box notes that Mr. Cone
19 would like a call concerning the top line
20 growth forecast for Sunbeam.
21 A. Um-hm.
22 Q. That's essentially Sunbeam revenue
23 forecast?
24 A. Um-hm. Yeah.
25 Q. Did you talk to Mr. Cone about that

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2 topic?
3 A. I -- I don't recall.
4 Maybe the number on here is
5 Franklin's telephone number.
6 I don't recall speaking to Mitch,
7 but being an analyst involved in the deal,
8 the likelihood that I certainly returned the
9 call to touch base on the business is
10 probably a good one.
11 Q. During that call, do you remember
12 anyone, either you or Mr. Cone or anyone
13 else, voicing any skepticism about the growth
14 forecast?
15 A. No, because I don't remember
16 actually making the call or speaking to him.
17 But I'm sure that as an analyst, part of my
18 responsibility was to return the call.
19 Q. Is part of your responsibility to
20 stand by the growth forecasts that the
21 investment bankers are including in any of
22 their documents?
23 MR. CLARE: Objection to form.
24 A. I -- I would say that part of the
25 responsibility would be to guide him through

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2 the revenue and earnings outlook based upon
3 the due diligence that I had done.
4 MR. CLARE: I think there may be
5 some miscommunication.
6 Are you still referring to Mr.
7 Cone in your answer?
8 THE WITNESS: Yes.
9 MR. CLARE: Okay. I'm not sure
10 the question called for your
11 conversation with Mr. Cone. I believe
12 Mr. Johnson was asking you a question,
13 and I'll let him ask his question as he
14 wants to, but I think he was asking a
15 question about Morgan Stanley
16 investment bankers.
17 THE WITNESS: Oh, OK.
18 MR. CLARE: I just want to make
19 sure there's no --
20 Q. I -- I missed the disconnect that
21 he seems to perceive, so I'm not sure --
22 A. I thought you were asking me in
23 response to backing up, or in my conversation
24 with Mr. Cone.
25 Q. Well, let's talk about more

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2 generally.
3 A. Okay.
4 Q. In your role to help sell the
5 convertible offering --
6 A. Yes.
7 Q. -- did you view it as your
8 responsibility to stand by the information
9 that your fellow investment bankers were
10 conveying to the market?
11 A. I don't know what my fellow
12 investment bankers were conveying to the
13 market.
14 Q. Okay.
15 A. I know I was standing by my view of
16 the revenue and outlook estimates as I was
17 able to ascertain through my own
18 communication with Mr. Kersh.
19 Q. Okay, so you --
20 A. If my -- I'm -- I wasn't privy to
21 other conversations with other potential
22 investors or what the sales force was maybe
23 communicating to investors.
24 Q. Okay. And no one at Morgan Stanley
25 conveyed to you the results of any due

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2 diligence that they had performed.
3 A. That's correct.
4 Q. And you don't know what due
5 diligence anyone else at Morgan Stanley
6 performed.
7 A. That is correct.
8 Q. Can you identify the attachments to
9 Mr. Dormer's fax to you?
10 A. In looking at them here, I don't
11 remember receiving the attachments, much like
12 I don't remember the event of receiving the
13 fax, but I certainly recognize the
14 attachments were probably sent in response to
15 answering the questions the client may have.
16 Now, the -- page two looks like historical
17 financials. Page three looks like a, you
18 know, warrant and the effect on EPS of adding
19 more shares on the convertible deal. Pretty
20 standard. Next page, again historical
21 earnings, more detailed, more easily
22 readable. And the next page would have been
23 also the actual reported accounting results
24 of -- looks like Sunbeam, Coleman, First
25 Alert and Signature.

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2 Q. Page two of the fax, which has the
3 Bates stamp MORGAN STANLEY CONFIDENTIAL 4725,
4 the pro forma income statement?
5 A. Okay. Oh, page two, okay.
6 Q. You've got it.
7 Do you know who prepared that pro
8 forma income statement?
9 A. I do not know who prepared that.
10 It -- it -- I don't know.
11 Q. And the subheading notes, "Camper
12 synergies of \$100 million"; do you see that?
13 A. Yes.
14 Q. Do you know what that refers to?
15 A. I'm assuming it refers to Coleman
16 synergies of a hundred million dollars.
17 Q. And do you know whether that is
18 based on your synergy analysis?
19 A. I don't know whether it's based on
20 my synergy analysis, but it's consistent with
21 my synergy analysis.
22 Q. Right.
23 Now, you didn't end up initiating
24 equity research coverage on Sunbeam; is that
25 correct?

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2 A. That is correct.
3 Q. And why is that?
4 A. Well, I don't -- I'm not -- I don't
5 know the answer to that except to say that my
6 contact with either, you know, investment
7 bankers or my boss Dennis Shea kind of on the
8 issue of Sunbeam ceased to exist I believe
9 after the larger earnings announcement. I
10 can't also recall my boss ever mentioning to
11 me, you know, that I would initiate on
12 Sunbeam, but clearly I saw it in -- in the
13 documents. And that may be standard, you
14 know, follow-up on -- on an equity, covering
15 a company from an equity investment role.
16 But I can tell you that shortly
17 after the -- I guess the bigger earnings
18 announcement, I don't know that Sunbeam came
19 into contact with me ever again other than
20 what I probably read in the papers.
21 Q. Okay. So prior to having --
22 A. And I don't know where the share
23 price went either.
24 Q. Okay.
25 A. Or the market cap.

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1 Confidential - Conway
2 That would have been a determinant,
3 too.
4 Q. So it if went below a certain
5 market cap, you wouldn't cover it?
6 A. I think there's a point at which --
7 you know, institutional investors have a
8 certain threshold for market caps, and, you
9 know, if it falls below that, it's -- from a
10 time effort and efficiency standpoint, you
11 know, is it worthwhile.
12 Q. Is there also a share price,
13 putting aside market cap?
14 A. I -- maybe.
15 But I think that the job of -- of
16 -- of -- if -- if it's -- if it's not within
17 your core coverage, the job of basically
18 writing on the company usually is a request,
19 as it was at this point, to take a role in
20 the convertible deal from Dennis Shea.
21 And all I -- I don't remember,
22 beyond the second earnings announcement
23 disappointment, that I was broached again to
24 ever, you know -- to continue the process of
25 initiating on Sunbeam. I don't recall ever

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1 Confidential - Conway
2 -- my role almost ceased to exist.
3 Q. Okay. Does it make sense from your
4 perspective to initiate coverage on a company
5 that is experiencing severe difficulties?
6 A. Well, sometimes I don't think
7 there's a clear qualm. I think our plan was
8 that perhaps Jim Dormer would have taken a
9 larger role covering the household product
10 space. As I said, a lead analyst and someone
11 who had a reputation, the -- the -- the -- my
12 sense is the way it -- I believe it would
13 have gone is I would have initiated coverage
14 and then probably been the lead analyst but
15 begun to hand it to an analyst, an analyst
16 that had a wider role in that type of space.
17 Q. I guess my question is slightly
18 different.
19 A. Okay.
20 Q. Could you imagine initiating
21 research on a company when you didn't
22 anticipate saying anything positive about the
23 company?
24 A. Yes.
25 MR. CLARE: Objection.

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1 Confidential - Conway
2 Go ahead. Sorry. I was going to
3 object to the form of the question.
4 THE WITNESS: Okay.
5 Q. And the answer yes?
6 A. Oh, yeah! Of course!
7 And -- and -- and -- and, you know,
8 the analysis outperformed neutral
9 underperformance as a function of your
10 strategic view, Management view, and
11 valuation of the cash flows of the business.
12 Q. So the only reason that equity
13 research was not initiated on Sunbeam, to
14 your knowledge, is that it fell below a
15 certain market cap?
16 A. No, that's not correct.
17 Q. Okay.
18 A. I don't know, I don't have a
19 recollection as to the answer as to why --
20 why I was not asked to initiate coverage on
21 Sunbeam.
22 What I do know is that after that
23 second earnings period my role with Sunbeam
24 ceased.
25 Q. Okay. And you don't know why that

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1 Confidential - Conway
2 is.
3 A. I don't know why that is.
4 Q. Okay.
5 A. I mean I -- I -- I have an idea
6 when things got tough, but I -- I don't --
7 there -- there was -- the fact that I wasn't
8 spending a lot of time and energy initiating
9 and building a model and, you know, trying to
10 get a hold of Mr. Kersh and the team, it
11 wasn't noticed -- in fact, I wasn't
12 disappointing my Management team. They
13 weren't saying, Andrew, we still need you to
14 stay on track. It just petered out.
15 Which is why when I saw the
16 leveraged finance documents I think July that
17 year I was literally -- by that April I --
18 that was -- that was the last time I played a
19 role.
20 Q. When you say you have an idea as to
21 why coverage -- well, you said you had an
22 idea as to why your role petered out, and I
23 guess I want to know what it is.
24 A. Well, to your point, I don't -- it
25 -- it either -- it wasn't important for my

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1 Confidential - Conway
2 franchise to cover Sunbeam, because I was a
3 beverage analyst, and it may not have been
4 the most efficient use of my time at that
5 juncture.
6 Q. Okay. And as far as what other
7 people would decide as to how to use your
8 time --
9 A. Um-hm.
10 Q. -- you don't know why, other than
11 general inefficient use of time, why they
12 didn't ask you to keep with Sunbeam.
13 A. Correct. You'd have to ask my boss
14 that.
15 You know, beyond, again, the points
16 of maybe the market cap or the size of the
17 business or -- or the timing wasn't right to
18 initiate for various, you know, difficulties
19 in their view. My view was that, all I know
20 is I continued to -- to perform my job as
21 best I could, and there was no effort made by
22 my superiors to continue to initiate on
23 Sunbeam.
24 Q. Well, I mean as a practical matter,
25 it would be difficult to release a report

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1 Confidential - Conway
2 severely criticizing Sunbeam within weeks of
3 underwriting a debt offering for Sunbeam,
4 wouldn't it?
5 MR. CLARE: Objection, incomplete
6 hypothetical.
7 A. Not necessarily, no. I -- I -- no.
8 I think, you know, analysts are objective,
9 and they -- they will, you know, mod -- you
10 know, as an analyst I was -- as I said, I
11 knew just my role with the convertible deal.
12 Q. I'm going to show you what we have
13 marked previously as Exhibit 17.
14 A. Okay.
15 MR. CLARE: Clark, reviewing this,
16 my copy has some handwriting on page
17 MS 0379. I don't know if that's part
18 of the original exhibit. Or this is
19 your markings?
20 MR. JOHNSON: Let me see the
21 handwriting.
22 Q. Why don't you stop looking at that.
23 A. I have it, too.
24 Q. Okay, let me have that back. I
25 think that's not intended to be on the

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1 Confidential - Conway
2 exhibit.
3 MR. JOHNSON: Do you have a clean
4 one? Great.
5 Do we have any extra copies?
6 MR. CLARE: For the record, beyond
7 seeing the handwriting, I did not read
8 the handwriting that was on it other
9 than recognizing it and passing it back
10 to counsel without having reviewed it.
11 MR. JOHNSON: Yeah, it's -- it's
12 not a problem. I'll note that the
13 handwriting does say "Through first 2
14 months running at half," and we'll get
15 to the significance of that in a
16 minute.
17 THE WITNESS: Okay.
18 MR. JOHNSON: So you can take that
19 back.
20 THE WITNESS: Okay.
21 MR. JOHNSON: Tom, I know you've
22 seen this document before, but you
23 can --
24 MR. CLARE: Do you have a clean
25 one for me?

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1 Confidential - Conway
2 MR. JOHNSON: No. It's not a
3 clean one. I don't mind if you have
4 it. You probably can't read my
5 handwriting anyway.
6 MR. CLARE: I don't want to read
7 your handwriting.
8 A. There's some check here toward the
9 end.
10 Q. That's fine. I think those are
11 auditors' marks.
12 You've never seen what's been
13 marked as Exhibit 17 prior to today; is that
14 correct?
15 A. Correct.
16 Q. Mr. Clare didn't show this to you?
17 A. Mr. Clare may have -- may have
18 showed me something like this on Wednesday.
19 I -- I can't remember if this is the exact
20 document.
21 Q. Okay. But you saw something from
22 Arthur Andersen?
23 A. I think I did.
24 Q. By the way, did you ever talk to
25 anyone from Arthur Andersen in connection

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1 Confidential - Conway
2 with Sunbeam?
3 A. No. Never.
4 Q. If you could look at page four of
5 the letter, which has the Bates stamp 378.
6 A. Okay.
7 Q. Actually, let's back up to 377, if
8 I could.
9 A. 377? Okay.
10 Q. Did you learn at any point during
11 the first quarter of 1998 that Sunbeam had
12 the sales and earnings information that's set
13 forth on page three of Exhibit 17?
14 A. Say that again?
15 Was I aware of this information?
16 Q. Correct.
17 A. No.
18 Q. Okay.
19 A. I've never seen this document.
20 Q. Were you aware of Sunbeam's sales
21 and earnings numbers through January in the
22 first quarter of 1998?
23 A. No.
24 I was not aware of any information
25 on earnings trends until the first public

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1 Confidential - Conway
2 announcement came, you know, in the
3 marketplace.
4 Q. Okay.
5 And I'll note for the record this
6 letter, Exhibit 17, is dated the same day as
7 the press release, the first public
8 announcement?
9 A. Okay.
10 Q. Does that information help you
11 remember in any way whether you requested
12 what Sunbeam's actual figures were during the
13 first quarter of 1998?
14 A. I don't believe I did. And it's
15 unusual for an analyst to request, you know,
16 -- unless this would be in the public
17 domain --
18 Q. Okay.
19 A. -- it's unusual for an analyst to
20 get information like this. But -- so --
21 Q. So the answer's no?
22 A. No. The answer's no.
23 Q. Okay. If you look at page 378 now.
24 That's page four of the letter.
25 A. Okay.

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1 Confidential - Conway
2 Q. Paragraph 6(b) explains that "Sales
3 have decreased as a result of an early buy
4 program," quote, "which accelerated outdoor
5 grill sales into the fourth quarter of fiscal
6 1997."
7 A. Um-hm.
8 Q. Were you aware that Sunbeam had
9 accelerated sales into the fourth quarter of
10 1997?
11 A. No, I was not.
12 Q. Was that information that you would
13 have deemed significant?
14 A. Yes, it would have been important
15 to know. You know, that -- that has a
16 bearing on seasonality. It has a bearing on
17 whether it's momentary, channel issue or a
18 more secular or more problematic issue.
19 Q. And by that you mean it would
20 inform the quality of the revenue the company
21 was receiving.
22 MR. CLARE: Objection to form.
23 A. Well, it -- it would -- it would --
24 it would -- depending upon -- it would -- the
25 -- the -- the -- the question is whether this

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1 Confidential - Conway
2 was more of a one-time inventory adjustment
3 or whether there was a more permanent
4 take-down of inventory levels.
5 Q. Okay.
6 A. Either way, those are important
7 pieces of information for an analyst.
8 Q. Okay. Now, if you'd flip to page
9 379, which is page five of the letter.
10 A. Yes.
11 Q. There is a subparagraph (c) which
12 contains sales information through the first
13 two months of the first quarter of 1998.
14 A. Um-hm.
15 Q. And that shows sales in 1998
16 running at approximately half of sales for
17 the prior year period; do you see that?
18 A. I do.
19 Q. That, I assume, is information that
20 would be important to an analyst?
21 A. Yes.
22 MR. CLARE: Objection to form.
23 Go ahead.
24 MR. JOHNSON: He answered.
25 MR. CLARE: Yeah.

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1 Confidential - Conway
2 A. (Continuing) The answer is yes.
3 Q. Okay. And you were -- you were not
4 aware of the sales situation at Sunbeam as of
5 March 19, 1998.
6 A. That -- that's correct.
7 Nor did my conversations with Mr.
8 Kersh ever, you know, talk about this
9 scenario.
10 Q. He conveyed positive, everything on
11 track type information during your calls?
12 A. Correct.
13 Q. Okay. Are you surprised to see
14 these numbers as you sit here today?
15 A. Very.
16 Q. I'm going to give you what's been
17 marked as Exhibit 112 previously.
18 A. (Perusing document) The first sheet
19 is just --
20 Q. I'll tell you for the record, the
21 first is an auditor's work sheet, cover
22 sheet.
23 A. Okay. (Perusing document.)
24 Q. Mr. Conway, have you ever seen the
25 document we've marked as Exhibit 112?

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1 Confidential - Conway
2 A. No, I haven't.
3 Q. Putting aside the cover sheet, you
4 haven't seen the accompanying letter; is that
5 correct?
6 A. Correct.
7 Q. And no one at Morgan Stanley
8 conveyed the information in this letter to
9 you; is that correct?
10 A. That is correct.
11 Q. If you look at the last page of
12 Exhibit 112.
13 A. What is 112?
14 Q. The last page of Exhibit 112.
15 A. Oh, okay. Last page of exhibit,
16 okay.
17 Q. Yeah. This shows a loss for the
18 two months, first two months of 1998 of \$41
19 million as compared to a profit for the first
20 two months of 1997 of \$9.7 millin; do you see
21 that?
22 A. I do.
23 Q. Did you have any of that
24 information at any point during the first
25 quarter of 1998?

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1 Confidential - Conway
2 A. No.
3 Q. Okay. And does that information
4 surprise you as you sit here today?
5 A. Yes, it does.
6 Q. That's information that would be
7 significant to any investor?
8 MR. CLARE: Objection. Calls for
9 speculation with regard to investors.
10 You can answer it.
11 A. Yes, it would be important for
12 investors to know the underlying business
13 trends.
14 Q. Okay. And given your experiences
15 as an analyst, it's safe to say, isn't it,
16 that the market would have a significant
17 reaction to that information?
18 MR. CLARE: Objection to form.
19 A. Yes, it would.
20 And it eventually did in some
21 manner.
22 Q. And when you say "it eventually
23 did," that's when the April press release
24 came out showing the loss?
25 A. Well, there were two press

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1 Confidential - Conway
2 releases. There was -- as I recall in
3 reviewing the time line, there was a March
4 press release and an April press release, so
5 I think in both instances the share price
6 traded off. I don't know the amounts, but --
7 Q. Right.
8 The March press release --
9 MR. JOHNSON: Let me strike that.
10 Q. Do you recall any of the substance
11 of the March press release?
12 A. I just recall a announcement that
13 sales were, in reviewing the time line, a
14 little lighter than Management thought.
15 Q. Okay. It didn't say sales were
16 half of the prior year period.
17 A. I don't recall, but I don't sense
18 that I remember that.
19 Q. And then the April press release
20 we've already mentioned, you remember the
21 substance of that is that Sunbeam would have
22 a loss for the quarter?
23 A. I just remember it was more
24 specific and more material in terms of
25 information.

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1 Confidential - Conway
2 Q. Okay. I'm going to show you what's
3 been marked previously as Exhibit 197.
4 A. Okay. Okay. (Perusing document).
5 Q. Have you ever seen Exhibit 197
6 before?
7 A. Never. No, I haven't.
8 Q. Okay. Did you have any
9 understanding that Morgan Stanley Senior
10 Funding has filed a lawsuit against McAndrews
11 & Forbes or Coleman (Parent) Holdings?
12 MR. CLARE: It's a yes or no
13 question.
14 A. Yes.
15 Q. Okay. And other than what you've
16 learned from counsel, do you have any
17 understanding about the nature of that
18 lawsuit?
19 A. No.
20 Q. Okay. Did you ever have the
21 opinion that Morgan Stanley was defrauded by
22 McAndrews & Forbes or Coleman (Parent)
23 Holdings?
24 MR. CLARE: Objection, lack of
25 foundation.

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1 Confidential - Conway
2 A. Yes.
3 Q. Okay. And who from McAndrews &
4 Forbes or Coleman (Parent) Holdings defrauded
5 anyone from Morgan Stanley?
6 A. I'm going to rephrase the question
7 I felt as an analyst -- okay? -- you know, in
8 terms of the -- the -- the projections and
9 the due diligence, that, you know, I was, you
10 know, completely, you know, lied to, so from
11 an assessment of -- of where the business is
12 versus where it should be, you know. Now,
13 whether that's -- I can't determine fraud or
14 not fraud, so I wasn't sure, but, you know,
15 given the events of how they transpired.
16 Q. Okay. And you mentioned Mr. Kersh
17 as someone who you thought gave you false
18 information; is that correct?
19 A. That is correct.
20 Q. Okay, anybody else?
21 A. Not that I know of. My only two
22 company contacts were Mr. Kersh and Mr.
23 Fannin.
24 Q. Okay.
25 A. I can't remember what information

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1 Confidential - Conway
2 specifically, you know, Mr. Fannin gave me.
3 Q. Right.
4 Now, you understand that Mr. Kersh
5 and Mr. Fannin were employees of Sunbeam, not
6 McAndrews & Forbes and Coleman (Parent)
7 Holdings.
8 A. I may have misjudged the question
9 then.
10 Q. I think that's maybe what may have
11 happened.
12 A. I may have, so if you could repeat
13 your questions.
14 Q. Let's -- yeah. Let's start with a
15 clean record.
16 Your testimony about being misled
17 concerned Sunbeam misleading Morgan Stanley;
18 is that correct?
19 A. Correct.
20 Q. Do you have any basis to believe
21 that anyone from McAndrews & Forbes or
22 Coleman misled anyone from Morgan Stanley?
23 A. No, I have no basis for that.
24 Q. I feel better now.
25 A. Okay. I'm sorry.

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1 Confidential - Conway
2 Q. No, it's okay.
3 MR. CLARE: I object and move to
4 strike.
5 (Laughter.)
6 Q. No, that's fine. A
7 misunderstanding.
8 A. Yeah, I --
9 Q. I understand.
10 McAndrews & Forbes later became a
11 substantial owner of Sunbeam, didn't it?
12 MR. CLARE: Did you know that?
13 A. I didn't know that.
14 Q. Okay. I thought maybe that was the
15 basis for the confusion, but anyway.
16 If you'd look at the first page of
17 Exhibit 197.
18 A. Um-hm.
19 Q. In the middle of the paragraph
20 number one there's a sentence that states "In
21 the course of these transactions Defendants"
22 -- and that's McAndrews & Forbes and Coleman
23 (Parent) Holdings -- "provided Sunbeam and
24 its lenders with a series of false
25 information about the," quote, "synergies,"

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1 Confidential - Conway
2 close quote, "that Sunbeam could expect to
3 achieve in the combination of Sunbeam and
4 Coleman." Do you know any facts supporting
5 that allegation?
6 A. No, I don't.
7 Q. Were you involved in any way in the
8 Sunbeam bankruptcy?
9 A. No.
10 Q. Okay. Do you have any idea what
11 Morgan Stanley recovered from the Sunbeam
12 bankruptcy?
13 A. No, I don't.
14 Q. If you'd look at page seven of the
15 document we've marked as Exhibit 197.
16 A. Okay.
17 Q. Paragraph number 21.
18 A. Okay.
19 Q. And that -- that paragraph 21
20 carries over onto page eight. If you would
21 read that for me.
22 A. (Reading) Okay.
23 Q. Do you know of any facts to support
24 the allegations contained in paragraph 21?
25 A. No.

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1 Confidential - Conway
2 Q. If you would look at paragraph 30,
3 which is on page 11, and the first sentence
4 states "Sunbeam and MS & Co. relied on
5 Defendants" -- and that's again McAndrews &
6 Forbes and Coleman (Parent) Holdings --
7 Defendants' fraudulent \$150 million synergy
8 figure to assess Coleman's fair acquisition
9 value." Do you know of any facts to support
10 that allegation?
11 A. No, I don't. (Reading.)
12 Q. If you look at --
13 Did you have something else to add
14 to your answer?
15 A. No. Just finishing the paragraph.
16 Q. Okay, if you could look at
17 paragraph 36, which is on page 13 of
18 Exhibit 197.
19 A. (Reading.)
20 Q. I want to focus in particular on a
21 sentence about midway through the --
22 A. Okay.
23 Q. -- paragraph. The sentence states
24 "While Sunbeam and MSSF" -- and that's Morgan
25 Stanley Senior Funding -- "discounted

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1 Confidential - Conway
2 Defendants" -- and again, that's McAndrews &
3 Forbes and Coleman (Parent) Holdings --
4 "Defendants' synergy figures by as much as a
5 third, they continued to believe based on the
6 strength of Defendants" -- and again that's
7 not Sunbeam, it's McAndrews & Forbes and
8 Coleman (Parent) Holdings -- "representations
9 that there was an upside to their own synergy
10 estimates, and that Sunbeam was likely to
11 achieve even greater synergies than those
12 included on their own conservative models."
13 And the question is, Mr. Conway,
14 whether you can identify any representations
15 by McAndrews & Forbes or Coleman (Parent)
16 Holdings that informed Morgan Stanley Senior
17 Funding's synergy estimates.
18 MR. CLARE: Objection, lack of
19 foundation based on prior testimony.
20 You can answer.
21 A. No, I -- I knew of nothing, no
22 conversation or no communication.
23 Q. The beginning of paragraph 36 says
24 "MSSF relied upon Defendants' false synergy
25 representations in proceeding with the bank

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1 Confidential - Conway
2 facility." Is that a truthful statement, to
3 your knowledge?
4 MR. CLARE: Objection --
5 A. I don't --
6 MR. CLARE: -- foundation.
7 A. (Continuing) I don't know.
8 Q. Okay. Do you know whether Morgan
9 Stanley relied on your synergy estimates in
10 deciding to proceed with the bank facility?
11 MR. CLARE: Same objection.
12 A. I don't know.
13 Q. Would you be surprised if anyone at
14 Morgan Stanley relied on your synergy
15 estimates?
16 MR. CLARE: Same objection, and to
17 form.
18 A. I -- I think it's -- I don't know.
19 It's -- it's -- it's a hypothetical. Because
20 my role kind of, you know, finished up in
21 early April. I have no way of knowing whose
22 synergy representations were -- were -- were
23 used.
24 Q. Okay. We saw documents today where
25 others within Morgan Stanley were touting --

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1 Confidential - Conway
2 touting your synergy model. Do you recall
3 seeing that, sir?
4 MR. CLARE: Objection to the form,
5 and mischaracterization of the
6 document.
7 A. I -- I recall that the selling
8 memorandum depicted upside to synergy beyond,
9 you know, the hundred and fifty million,
10 which -- which -- which was the
11 characterization of my due diligence in my
12 conversations with Sunbeam management.
13 Q. Okay. But those materials noted
14 that "Andrew Conway has modeled synergies at
15 \$150 million," correct?
16 A. Correct.
17 Q. And that's information that was
18 provided to third parties, correct?
19 MR. CLARE: Objection, calls for
20 speculation.
21 A. I don't know what third parties
22 received information.
23 Q. Okay. Do you have any reason to
24 believe that Morgan Stanley or anyone within
25 Morgan Stanley had discredited the 150

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1 Confidential - Conway
2 million-dollar synergy number that you
3 developed?
4 A. No, I don't know.
5 MR. JOHNSON: Okay. If you want
6 to the give me about five minutes, I
7 may be done, but let me confer with
8 my --
9 MR. CLARE: Sure.
10 MR. JOHNSON: -- smarter half
11 here.
12 THE WITNESS: Sure.
13 THE VIDEOGRAPHER: The time is
14 11:58 a.m. We're going off the record.
15 (Recess taken.)
16 THE VIDEOGRAPHER: The time is
17 12:02 p.m. We're back on the record.
18 MR. JOHNSON: I have no further
19 questions at this time.
20 EXAMINATION BY
21 MR. CLARE:
22 Q. Just a few questions, Mr. Conway.
23 You have in front of you what was
24 marked as CPH Exhibit 197?
25 A. Yes.

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1 Confidential - Conway
2 Q. And Mr. Johnson asked you some
3 questions about that exhibit.
4 A. Yes.
5 Q. Some of those questions related to
6 statements that were made by Coleman (Parent)
7 Holdings Company, formerly McAndrews &
8 Forbes. Do you remember those questions in
9 general?
10 A. I was asked some questions. I
11 don't -- you know.
12 Q. Did you have any contact with
13 McAndrews & Forbes during your involvement in
14 Sunbeam related work for Morgan Stanley?
15 A. No.
16 Q. How about with Coleman (Parent)
17 Holdings Company?
18 A. No.
19 Q. Do you know one way or the other
20 what either McAndrews & Forbes or Coleman
21 (Parent) Holdings Company stated to Sunbeam
22 on any occasion?
23 A. No.
24 Q. Were you involved in any way in the
25 lending decision that was made by Morgan

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1 Confidential - Conway
2 Stanley Senior Funding?
3 A. No.
4 Q. Do you have any understanding what
5 information Morgan Stanley Senior Funding
6 relied upon in making its lending decisions
7 to Sunbeam?
8 A. No.
9 MR. CLARE: I have no further
10 questions.
11 MR. JOHNSON: Nothing further.
12 MR. CLARE: We're done.
13 (Continued on the following page
14 to include jurat.)
15
16
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1 Confidential - Conway
2 THE VIDEOGRAPHER: The time is
3 12:03 p.m. on June 4, 2004. This is
4 the end of tape number two, and this
5 completes the videotaped deposition of
6 Mr. Andrew Conway.
7

8 _____
9 ANDREW CONWAY

10
11 Subscribed and sworn to before me
12 this ___ day of _____, 2004.
13
14 _____
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1 *** CONFIDENTIAL ***
2 ----- I N D E X -----
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1 *** CONFIDENTIAL ***
2 CERTIFICATE
3 STATE OF NEW YORK)
4 : ss.
5 COUNTY OF NEW YORK)
6

7 I, SHAUNA STOLTZ-LAURIE, a Notary
8 Public within and for the State of New
9 York, do hereby certify:

10 That ANDREW CONWAY, the witness
11 whose deposition is hereinbefore set
12 forth, was duly sworn by me and that
13 such deposition is a true record of the
14 testimony given by the witness.

15 I further certify that I am not
16 related to any of the parties to this
17 action by blood or marriage, and that I
18 am in no way interested in the outcome
19 of this matter.

20 IN WITNESS WHEREOF, I have
21 hereunto set my hand this 8th day of
22 June, 2004.
23

24 _____
25 SHAUNA STOLTZ-LAURIE

1 *** CONFIDENTIAL ***
2 *** ERRATA SHEET ***
3 ESQUIRE DEPOSITION SERVICES
4 NAME OF CASE: COLEMAN v. MORGAN STANLEY
5 DATE OF DEPOSITION: JUNE 4, 2004
6 NAME OF WITNESS: ANDREW CONWAY

7 Reason codes:
8 1. To clarify the record.
9 2. To conform to the facts.
10 3. To correct transcription errors.
11 Page _____ Line _____ Reason _____
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ANDREW CONWAY

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MS
DEPOSITION
EXHIBIT # 85
FOR ID TRN

4-8-04

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SUNBEAM CORPORATION

Discussion Materials

February 1998

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SUNBEAM CORPORATION

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Tab C	International Expansion
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Tab E	Marketing, Licensing and Merchandising

APPENDIX

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EXECUTIVE SUMMARY

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SUNBEAM CORPORATION

Investment Rationale

- Sunbeam represents an **attractive growth story** and investment opportunity
 - **Market share leadership** in all product segments (#1 in gas grills, electric blankets, and clippers; #1, 2 or 3 in appliances and healthcare products depending on product category)
 - **Aggressive penetration of new product markets, channels and geography**
 - **Sunbeam and Oster** are well recognized, leading consumer brand names, with 96% and 92% awareness respectively

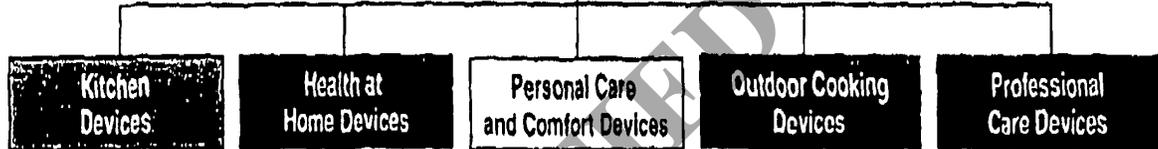
- Sunbeam has undergone a **profound transformation** since the arrival of new management in July 1996
 - Unprofitable businesses have been divested, costs have been removed and the organization has been restructured to maximize available resources
 - The Company has remade itself into a **branded consumer devices company**
 - **Renewed focus on profitability and growth**

- Tremendous **intrinsic value** in the Company
 - Growth and profitability that **out-pace the nearest competitors**
 - Key initiatives include international expansion, new product innovation and growth through existing channels
 - Very strong, well-known brands, both domestically and abroad
 - **Strong management team** that is opportunistic but disciplined

- Valuable opportunity to penetrate and become a global market leader of branded consumer devices
 - Leverage Sunbeam's existing international channel relationships and agreements

SUNBEAM CORPORATION

Business Overview



	Kitchen Devices	Health at Home Devices	Personal Care and Comfort Devices	Outdoor Cooking Devices	Professional Care Devices
Description	• Segment includes hand and stand mixers, blenders, toasters, coffee makers, breadmakers, irons and other small appliances	• Segment includes blood pressure monitoring devices, heating pads, massagers, dental care products, humidifiers, water filters and air cleaners	• Segment includes electric blankets, shower massagers, consumer hair clippers, heated throws and comforters	• Segment includes gas and kettle grills, charcoal smokers, tabletop grills and accessories	• Segment includes a line of professional barber and beauty equipment, including electric and battery clippers, replacement blades and other grooming accessories
Brands	- Mixmaster - Oster - Sunbeam - Osterizer	- Health at Home	- Cuddle-Up - Oster	- Sunbeam - Grillmaster	- Oster
Market Position	• #1, 2 or 3 depending on product category	• #1, 2 or 3 in most categories	• #1 in electric blankets • #1 in clippers	• #1 in gas grills	• #1 in clippers
Major Competitors	- Black & Decker - Hamilton Beach/Proctor Silex (Nasco) - KitchenAid (Whirlpool)	- Duracraft - Braun (Gillette) - Health O'Meter	- Wahl - Andis - Telecyme	- Charbroil - Thermos - Weber	- Wahl - Andis
Distribution	- Mass merchandisers - Department stores - Specialty stores	- Mass merchants - Drug stores	- Mass merchants - Drug stores	- Mass merchants - Hardware/Home centers	- Mass merchants - Drug stores - Specialty stores - Professional distributors
1996 Net Sales: (1)	\$383.9MM	\$98.4MM	\$187.0MM	\$255.9MM	\$59.1MM
% of Total	39%	10%	19%	26%	6%
1997 Net Sales: (1)	\$432.2MM	\$116.8MM	\$210.3MM	\$292.1MM	\$105.1MM (2)
% of Total	37%	10%	18%	25%	9%

Note: (1) Segment sales % estimated from PaineWebber research dated 7/28/97; 1997 sales breakdown from company and does not add to 100% due to outlet sales.

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SUNBEAM CORPORATION

Summary Descriptive Sheet

(\$MM, except per share amounts)

DESCRIPTION OF BUSINESS:

Company develops, makes, and sells small appliances, barbecue grills, electric blankets and heated throws, health and personal care products, barber and beauty equipment, hair clippers, and animal care products. Small appliances include mixers, blenders, coffee makers, toasters, irons, etc. Outdoor products include propane, natural gas, charcoal and electric barbecue grills, including kettle models. Health care products include blood pressure monitoring devices, heating pads, massagers, dental care products, humidifiers and air cleaners.

RECENT EVENTS:

- October 21, 1997 - The Company announced it has hired Morgan Stanley to explore strategic alternatives.
- October 23, 1997 - The Company reported positive Q3 earnings of \$0.39, exceeding Street estimates by a penny.
- October 8, 1997 - The Company announced the introduction of its new FreshSource water filtration system and AllergySmart air filtration system. The two products are expected to contribute \$100 MM in 1998 sales.
- June 25, 1997 - The Company announced the completion of five additional international distribution marketing agreements signed during the second quarter of 1997. This brings the total to 21 since Dunlap joined.
- June 17, 1997 - The Company entered into a partnership arrangement with United Family Communications for exclusive pan-regional advertising on Casa Club TV, the only network entirely dedicated to the home in Latin America.
- May 13, 1997 - The Company said it completed the sale of its Middleford, Maine textile factory to an investment group.

SELECTED INFORMATION:

State of Incorporation: Delaware
 Headquarters: Delfray Beach, FL
 Stock Symbol: SOX
 Listing: NYSE
 Fiscal Year End: December 28

SEGMENT SALES BREAKDOWN:

Industry (Estimated)		Geographic			
Kitchen Devices	\$455.0	39.0%	Domestic	\$801.0	81.4%
Health at Home	116.8	10.0%	International	183.3	18.6%
Pets Care & Comfort	222.0	19.0%			
Outdoor Cooking	303.7	26.0%			
Professional Care	70.1	6.0%			
Total	\$1,168.2	100.0%	Total	\$984.2	100.0%

SELECTED FINANCIAL INFORMATION:

	Fiscal Years Ended December 28,			3 Yr CAGR	Estimates (2)	
	1995	1996	1997		1998E	1999E
Revenues (1)	\$1,016.9	\$984.2	\$1,168.2	5.8%	\$1,363.4	\$1,361.0
% Change		-3.2%	18.7%		13.6%	23.3%
EBITDA (1)	114.2	89.2	218.0	44.3%	384.9	482.7
% Margin	11.2%	9.1%	18.7%		27.8%	35.3%
EBIT (1)	70.1	0.7	199.4	14.6%	319.4	404.7
% Margin	6.9%	0.1%	17.1%		20.3%	29.6%
Net Income (1)	37.6	(8.2)	123.1	N/A	199.4	251.2
% Margin	3.7%	-0.8%	10.5%		14.4%	18.3%
Capital Expenditures	94.3	75.3	58.3	N/A	78.0	95.0

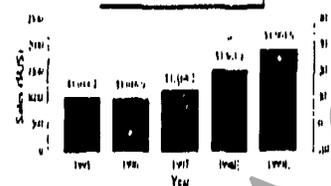
SELECTED MARKET INFORMATION:

Stock Price (12/28/97)	\$37.06
LTM Low / High	23.47 / 50.43
10-year High (02/09/97)	\$0.43
Shares Outstanding (MM)	84,400
Dividend	\$0.04
Dividend Payout	2.8%
Dividend Yield	0.1%

SELECTED VALUATION PARAMETERS:

	1999E	1998E (3)	1999E (3)	1998E (3)	1998E P/E	10 Growth
Adj. Mkt Cap / Sales (1)	167.7%	\$2.10	17.6			
Adj. Mkt Cap / EBIT (2)	8.1	2.65	14.0			
Adj. Mkt Cap / EBITDA (1)	6.8					
Market/Book (4)	2.8					
Discount to LTM High	(26.5)%					
Discount to 10-year High	(26.5)					

Historical and Projected Sales



FULLY DILUTED OWNERSHIP:

Significant Shareholders (b):	D&O Holdings (b):	
Total Insider Holdings	3.8%	
Franklin Mutual	19.2%	
Alliance Capital Management	14.0%	
Columbia Management	5.5%	
Other Institutional Ownership	11.9%	
Other	18.6%	
	100.0%	
D&O Holdings (b):		
Chair, CEO	Allen / Delfray (10)	3.4%
Other		1.4%
Total D&O Holdings		3.8%
ESOP		0.0%
Total Insider Holdings		3.8%

CAPITALIZATION:

	Book Capitalization at 12/28/97		Market Capitalization at 2/2/98	
	Amount	%	Amount	%
Short-Term Debt	\$0.0	100.0%	\$0.0	100.0%
Long-Term Debt	\$194.6	14.8%	\$194.6	5.8%
Preferred Stock	0.0	0.0%	0.0	0.0%
Shareholders Equity	1,120.3	85.2%	3,146.6	94.2%
Total Capitalization (7)	\$1,314.9	100.0%	\$3,341.2	100.0%
Cash and Cash Equivalents			\$32.4	
Adjusted Market Capitalization (1)			\$3,288.8	

SELECTED CREDIT STATISTICS:

LTM EBIT / Net Interest	19.5 x
LTM EBITDA / Net Interest	23.1
Total Debt / LTM EBITDA	0.8
Senior Debt Ratings	
- Moody's	NA
- S&P	NA

NOTES:

- Sales, EBIT, EBITDA and Net Income are for continuing operations before any extraordinary or non-recurring items, and cumulative effects of accounting changes.
- Estimates from Oppenheimer research report dated December 11, 1997 on Sunbeam Corporation.
- Adj. Market Cap consists of market value of equity (including preferred stock) plus total debt less cash and cash equivalents.
- Based on a closing market price of \$37.06 per share on 2/2/98 and 84.9 MM shares outstanding on 12/28/97.
- Oppenheimer earnings estimate as of 1/28/98, Long term growth from IIVES dated 2/2/98.
- Based on information from proxy dated 4/16/97, Institutional ownership from Technometrics run dated 9/11/97.
- Total Capitalization excludes short-term debt.

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SUNBEAM CORPORATION

Company Strengths

- Exceptional brand name awareness
 - *Sunbeam* and *Oster* command >90% brand awareness in North America
 - *Oster* brand strength in Latin America (stronger than *Pepsi*)
 - Brands supported by award-winning advertising and merchandising programs
- Market share leader in key product categories
 - Blenders, electric blankets, gas grills, heating pads and hair clippers
- Broad *Sunbeam* brand equity extendible into new categories
 - Global licensing opportunities
 - Ability to leverage instant brand recognition with distribution channels
- Good product line breadth with a history of innovation
 - Products in over 40 major product lines and approximately 2,000 SKUs
 - Emphasis on product development acceleration
 - Rapidly building non-traditional appliance products and segments
- Strong mass merchant base
 - Product pricing and service levels outperforming requirements
 - Utilizes the latest logistics technology
- Ample growth capacity
 - Requiring minimal investment; low labor wage rates
 - U.S. business running on J.D. Edwards enterprise-wide system
- Motivated employees with strong management team to execute strategy
 - Recently revamped and aggressive marketing and sales force

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SUNBEAM CORPORATION

Repositioning Highlights Combination of Cost Reduction and Growth Drive Shareholder's Value

Cost Related

Growth Related

- | | |
|---|---|
| <ul style="list-style-type: none"> • Majority of the restructuring plan completed in the first quarter of 1997 <ul style="list-style-type: none"> - Expected to result in cost savings of \$225MM, of which 75% are expected to be realized in 1997 and the balance in 1998 • Facility consolidation finished <ul style="list-style-type: none"> - Of 26 factories, eight remain (four in the US, three in Mexico and one in Venezuela) - Reduced the number of warehouses from 61 to 18 - Consolidated the number of headquarter locations from six to one • Workforce reduction to 6,000 from 12,000 employees <ul style="list-style-type: none"> - 3,000 positions related to businesses sold • Eliminate 88% of its Stock Keeping Units (SKUs) <ul style="list-style-type: none"> - From 12,500 items (of which 4,500 were furniture products) to about 2,000 - Elimination of product variations, not product lines; simplified ongoing business • Divested non-core businesses <ul style="list-style-type: none"> - Furniture, decorative bedding, time and temperature lines, gas logs & heaters and Biddeford, Maine textile mill sold; Counselor and Borg scales brands exclusively licensed to Signature Brands | <ul style="list-style-type: none"> • Implemented and integrated new systems and processes for all core business functions (e.g., new J.D. Edwards systems, product development, Demand Solutions forecasting, controllers, accounting, etc.) • Redesigned concurrent product development cycle from 2.5 years to 6 months <ul style="list-style-type: none"> - Plans to introduce 30 new products a year over the next several years • Initiated "Project Full Time" to improve customer service <ul style="list-style-type: none"> - Opportunity to further increase sales by eliminating supplier hedging, filling voids and being invited into new categories - Channel management expected to contribute \$200 MM in revenue by 1999 • Selectively targeting international markets for growth opportunities • Initiated extensive consumer and market research <ul style="list-style-type: none"> - Identify opportunities by addressing consumer issues and needs • Revamped advertising campaign <ul style="list-style-type: none"> - Award winning advertising and marketing campaign |
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SUNBEAM CORPORATION

Summary of Recent Analyst Estimates

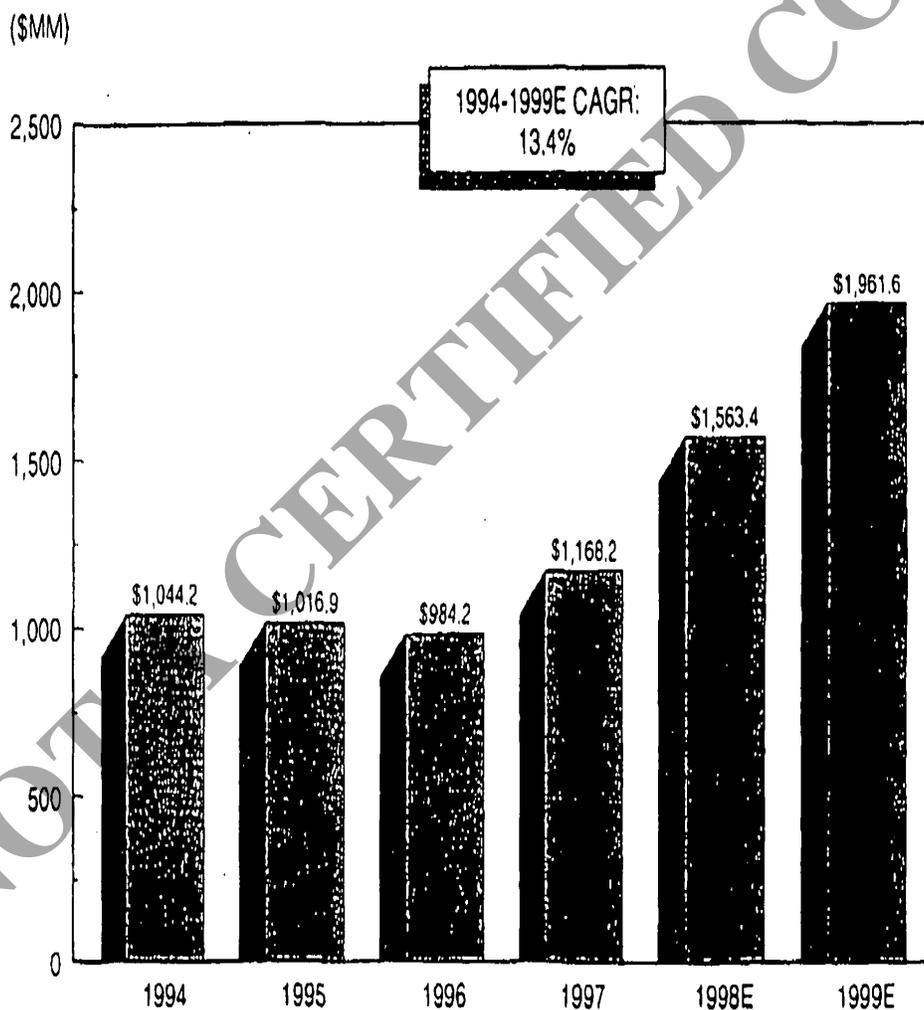
Date	Price	Firm/(Analyst)	Recomm.	Target Price	EPS		PE		Long Term	1998 PE/Growth
					1998E	1999E	1998E	1999E	EPS Growth	
01/29/98	\$37.63	Prudential Securities/ (Nicholas Heymann)	Buy	\$55 12 months	\$2.10	\$2.60	17.9x	14.5x	20 - 25%	.72 - .90
01/29/98	\$37.63	Buckingham Research/ (William H. Steele)	Neutral	\$43	2.00	2.40	18.8	15.7	21.0%	.90
01/29/98	\$37.63	PaineWebber/ (Andrew Shore)	NA	\$50 12 - 18 mo.	2.00	2.60	18.8	14.5	20.0%	.94
01/29/98	\$37.63	Merrill Lynch/ (John Gibbons)	Buy	NA	1.80	NA	20.9	NA	15.0%	1.4
01/28/98	\$37.75	CIBC Oppenheimer/ (Scott Graham)	Strong Buy	\$53 12 months	2.10	2.65	18.0	14.2	NA	NA
02/2/98	\$37.06	I/B/E/S			\$2.00	\$2.63	18.5x	14.1x	20.0%	0.93
02/2/98	\$37.06	First Call (Eight Estimates)			2.02	2.58	18.3	14.4	20.3%	1.80

- "[Sunbeam is] the most profitable player in the industry by a wide margin...(with 17% operating margins in 1997, almost three times the Housewares industry average of about 6%)." (Prudential Securities - 1/29/98)
- "[Sunbeam] is focusing on taking the best care of its major customers (to ensure further access to dominant shelf space), rapidly establishing the best global distribution for its current (and likely future additional) products in the industry and continuing to roll out the industry's most innovative products...its doing everything to serve every customer like royalty." (Prudential Securities - 1/29/98)
- "As Sunbeam displays more of a new product and service track record with retailers, we believe...gains will be realized in 1998." (CIBC Oppenheimer - 1/28/98)
- "Al Dunlap is not only restructuring Sunbeam, but enhancing its future growth opportunities. A recent tour through SOC's Neosho, MO grill plant confirms that investments have been made to strengthen operations." (Merrill Lynch - 12/10/97)
- "We believe that what has been accomplished to date is remarkable and that there is room for further improvement over the next couple of quarters." (PaineWebber - 10/23/97)
- "We continue to believe there is upside in Sunbeam shares as the company enters its fourth phase of shareholder value creation. Now focused on executing its growth plan, it is our view that Mr. Dunlap's desire to execute his tenth turnaround could find...enhanced flexibility in [Sunbeam's] yearend 1997E net debt free balance sheet and significant free cash flow." (Goldman Sachs - 10/9/97)

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SUNBEAM CORPORATION

Consolidated Net Sales, 1994-1998E ⁽¹⁾



Year	% growth
1994	12.6%
1995	(2.6)%
1996	(3.2)%
1997	18.7%
1998E	33.8%
1999E	25.5%

Source: Sunbeam Annual Report

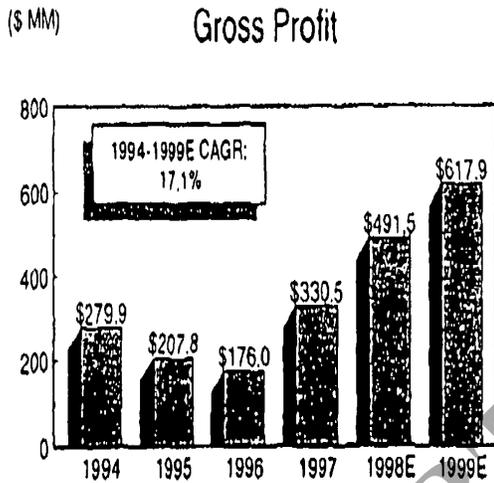
Note: (1) Projections from Oppenheimer research report dated December 11, 1997.

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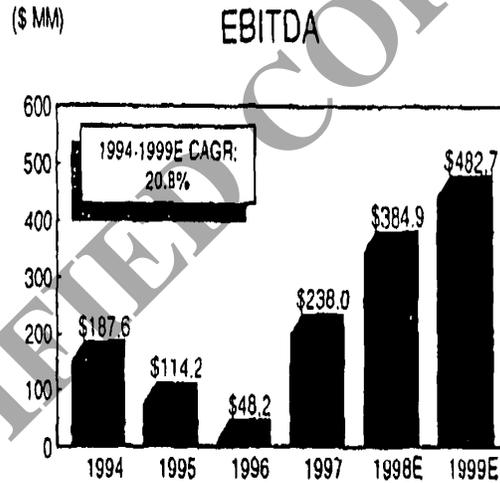
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SUNBEAM CORPORATION

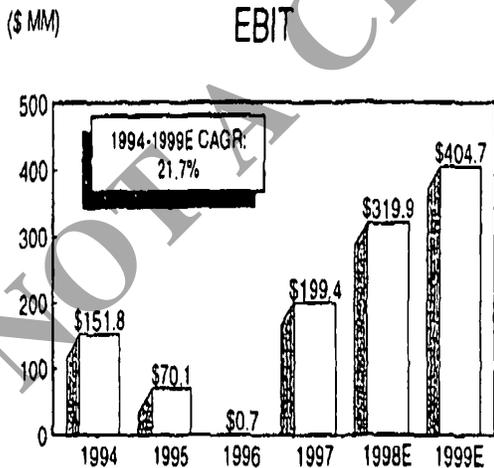
Consolidated Profitability Statistics ⁽¹⁾⁽²⁾



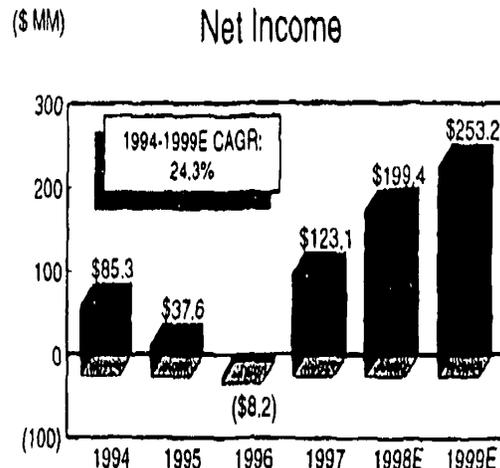
% Margin	1994	1995	1996	1997	1998E	1999E
% Margin	28.8%	20.4%	17.9%	28.3%	31.4%	31.5%



% Margin	1994	1995	1996	1997	1998E	1999E
% Margin	18.0%	11.2%	4.9%	20.4%	24.6%	24.6%



% Margin	1994	1995	1996	1997	1998E	1999E
% Margin	14.5%	6.9%	0.1%	17.1%	20.5%	20.6%



% Margin	1994	1995	1996	1997	1998E	1999E
% Margin	8.2%	3.7%	(1.7)%	10.5%	12.8%	12.9%

Notes: (1) Projections from Oppenheimer research dated December 11, 1997.

(2) Data excludes any one-time or extraordinary charges.

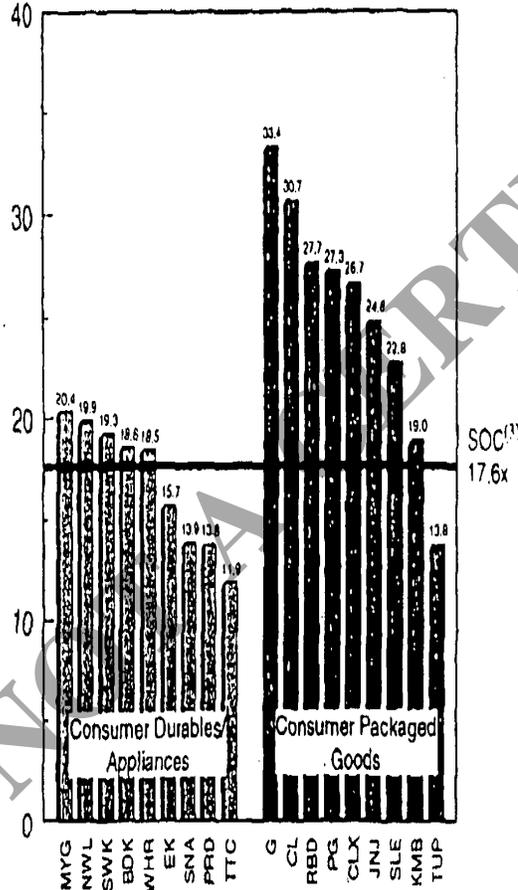
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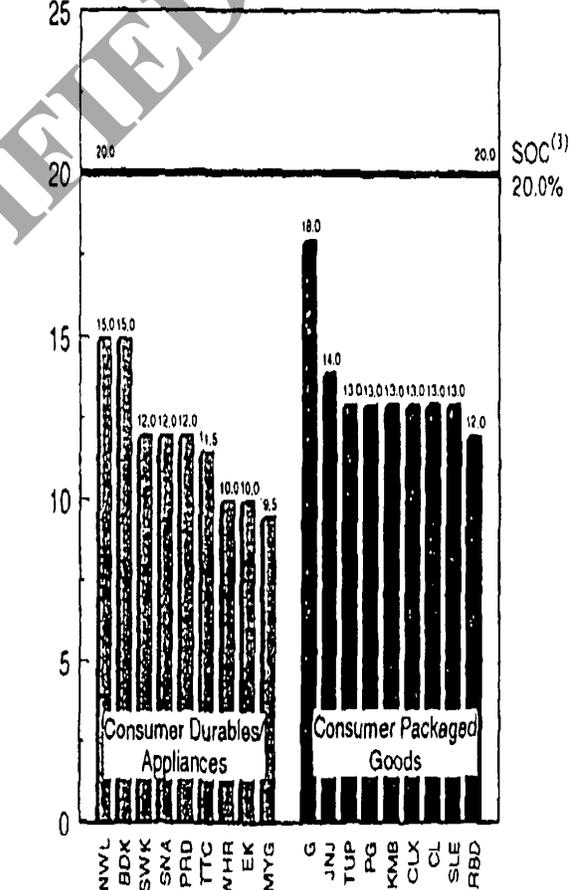
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Trading Statistics of Selected Consumer Products Companies

P/E (x) Price⁽¹⁾/1998E EPS⁽²⁾



EPS Growth (%) Long Term EPS Growth⁽²⁾



Notes: (1) Based on closing prices as of 2/2/98.

(2) Estimates based on median I/B/E/S estimates as of 2/2/98; 1998E estimates calendarized to a December 31 year end.

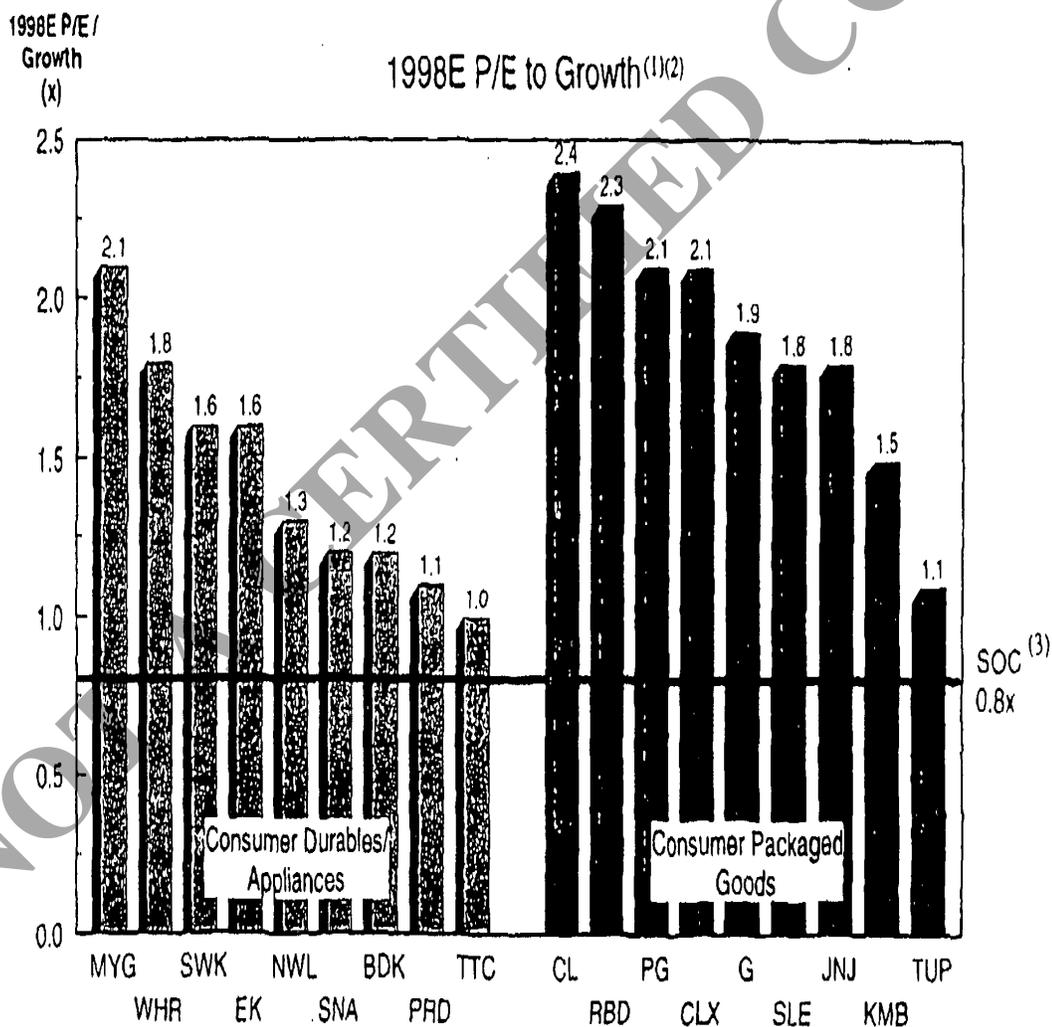
(3) SOC 1998E EPS from Oppenheimer report dated 1/28/98; Long-Term EPS Growth from I/B/E/S dated 2/2/98.

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Trading Statistics of Selected Consumer Products Companies



Notes: (1) Based on closing prices as of 2/2/98.
 (2) Estimates based on median 1/B/E/S estimates as of 2/2/98 calendarized to a December 31 year end.
 (3) SOC 1998E EPS from Oppenheimer report dated 1/28/98; Long-Term EPS Growth from 1/B/E/S dated 2/2/98.

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Business Overview

Sunbeam: Preeminent Branded Consumer Devices Company

What is a branded consumer device?

- Solves a chronic consumer complaint or fills a particular void with solutions that consumers value highly
- Strong brand recognition that conveys value, quality and functionality
- Numerous devices can be developed to address a variety of needs around the home

Key success factors

- Innovative technology that is clearly differentiated from competitive offerings
- Continuous stream of new product introductions that offer incrementally greater functionality and consumer value
- Strong distribution to ensure visibility and availability to the consumer

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SUNBEAM CORPORATION

Stated Growth Objectives

- Doubling of 1996 sales of about \$984 million to almost **\$2 billion by 1999**, without acquisitions
 - Implies CAGR of about 27%; Normalized sales up 19% for the nine months ended September versus last year
- Tripling of international sales from \$185 million to about \$600 million by 1999
 - Implied CAGR of about 48%; International sales up 51% for the third quarter of 1997 versus 1996
- Achieve an operating margin of at least 20% (from 16% over the last 9 months)
- Achieve 25% Return on Equity each year
- Cumulative free cash flow of about \$600 million generated over the next 3 years

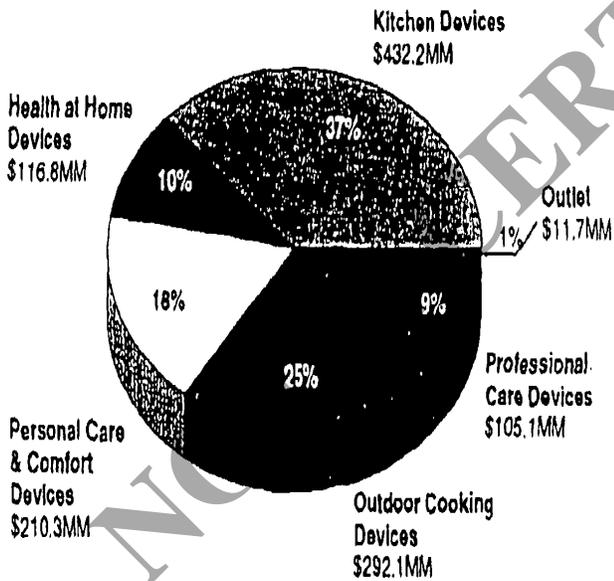
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1997E Dollar Share by Segment

Sunbeam: Preeminent Branded Consumer Devices Company

Broad presence in a number of categories

No single true competitor for *Sunbeam* across all product lines



Total 1997 Sales: \$1,168.2MM

Kitchen Devices

- SEB
- Braun
- Moulinex
- KitchenAid
- Matsushita
- Black & Decker
- Philips
- Hamilton-Beach

Health at Home Devices

- Holmes
- Duracraft
- Health-o-Meter
- Brita
- Pur
- Homedics

Personal Care & Comfort Devices

- Conair
- Teledyne
- Helen of Troy
- Norelco
- Wahl

Outdoor Cooking Devices

- Charbroil/Thermos
- Weber
- Fiesta

Professional Care Devices

- Wahl
- Heineger
- Hamilton-Beach
- Andis
- Lister
- Black & Decker

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SUNBEAM CORPORATION

Repositioning of *Sunbeam* and *Oster* Brand Names Relative Competitive Position

Core Business Focus:	Price	Value	Innovation	Quality/Performance	High
Consumer		New Sunbeam		New Oster	↑ Margins
Technology		Black & Decker			
Product				Kitchen Aid	↓ Margins
Production/Cost	Hamilton Beach				
Customer (retailer)		Old Sunbeam/Oster			Low

Low ← Margins → High
New Positioning Direction

Sunbeam

Oster

- Expand the value segment by combining strong appeal to women with female valued product innovation
 - Reinforce "female friendly," "good for the family" image (versus male tools) to the primary purchaser/user (women)
 - Shift from low shelf price value to high utility one functionality benefits
 - Strong advertising support of innovative products
 - Cleaner, higher quality packaging with greater impact and strong female appeal
 - Out innovate competitors in focus categories
 - Category management leadership
- *Sunbeam* will become the "minivan" of appliances
 - Simple, easy to use, but most innovative in key categories
 - Broad appeal but focus on female mix/working female
 - Emphasis on value

- Become the preferred premium brand, uniquely delivering professional quality and innovation (Sunbeam innovation applied to the premium segment)
 - Leverage internal innovations
 - Professional quality and design - "form follows function" with superior quality of materials and construction
 - Investment buying vs. impulse buying
 - Improve packaging to highlight premium image vs. competitors
- *Oster* will become the "luxury car" of household appliances
 - Innovation leadership
 - Engineered to delight (but not over engineered)
 - Best value in class
 - Long life
 - Functional excellence without unnecessary frills

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SUNBEAM CORPORATION

Future Growth Opportunities Where will growth come from?

International Growth: +\$400MM

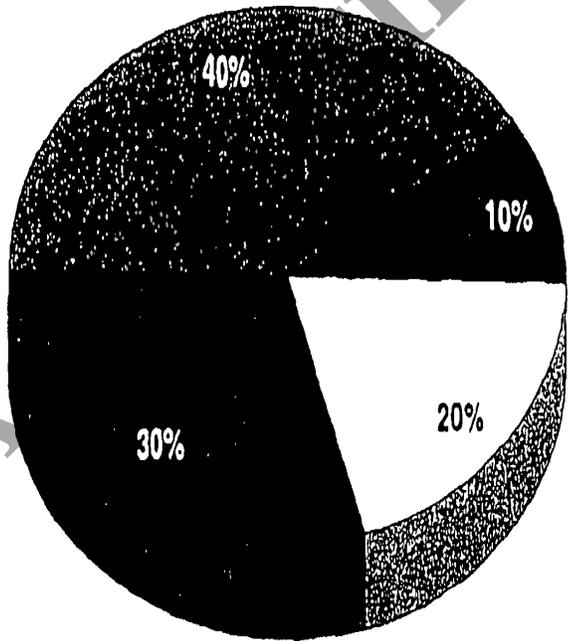
- Goal to triple international sales from \$185MM to \$600MM by 1999
 - 50% new geography
 - 40% new products
 - 10% core growth
- Aggressively pursue international distribution and licensing agreements

Core Growth: +\$100MM

- 3% industry growth from core products

New Products: +\$300MM

- Introduce 30 new products a year over the next several years in all five segments
- Shorten product development time to six months from 2.5 years



Channel Management: +\$200MM

- Includes new and existing channels
- Improve time/order fill complete rate to 95% ("Project Full Time")
- Leverage trend towards fewer suppliers in the mass merchandising channel
- Category management/new categories
- Filling product "voids"
- Mitigate business seasonality
- Penetrate alternative distribution channels (e.g., outlets, catalogs, Internet, etc.)

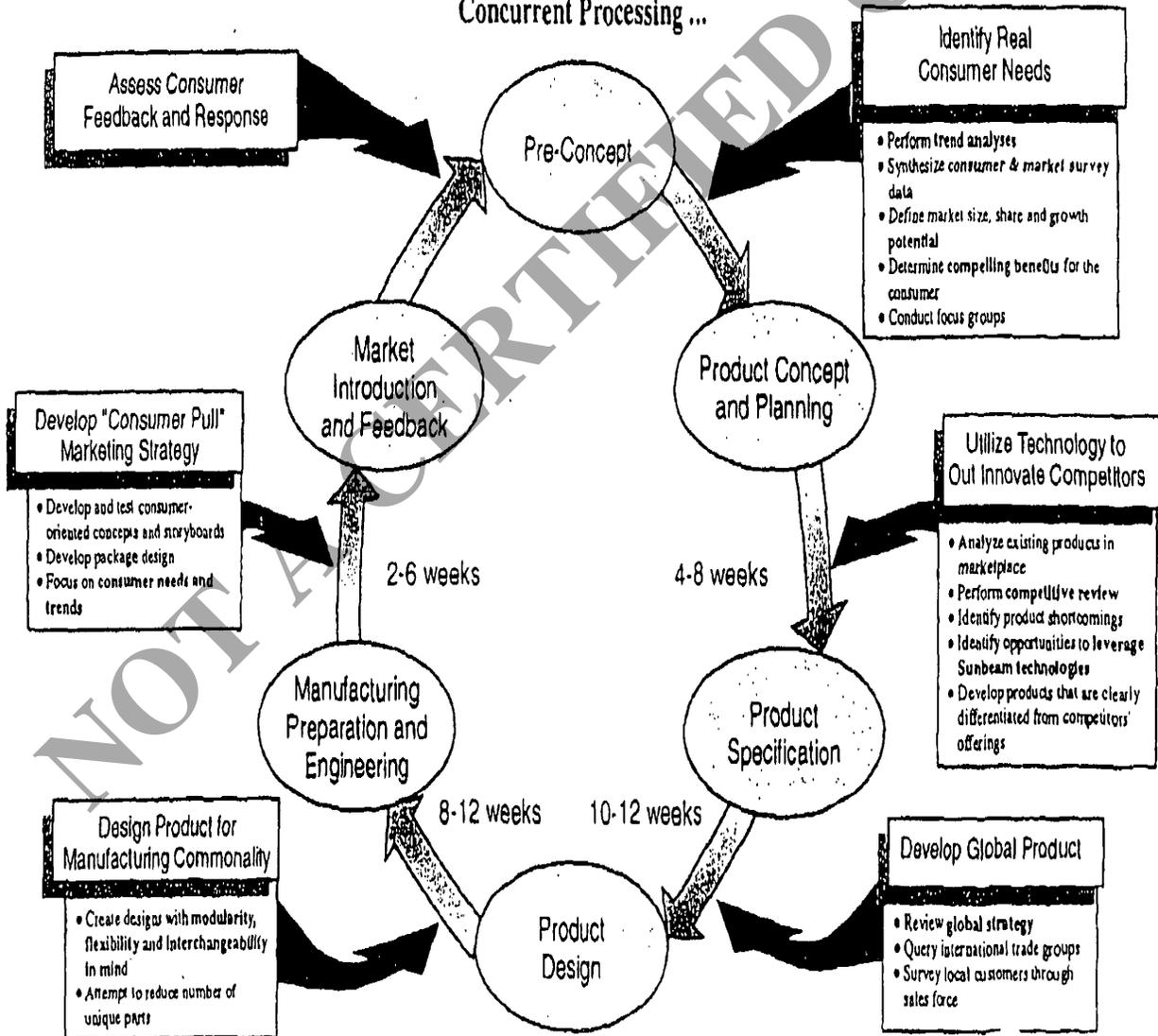
Total 1996-1999E
Revenue Growth: \$1 Billion

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Sunbeam New Product Initiatives

Redesigned New Products Development Process

Concurrent Processing ...



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Sunbeam New Product Initiatives

Recent and Planned Product Introductions

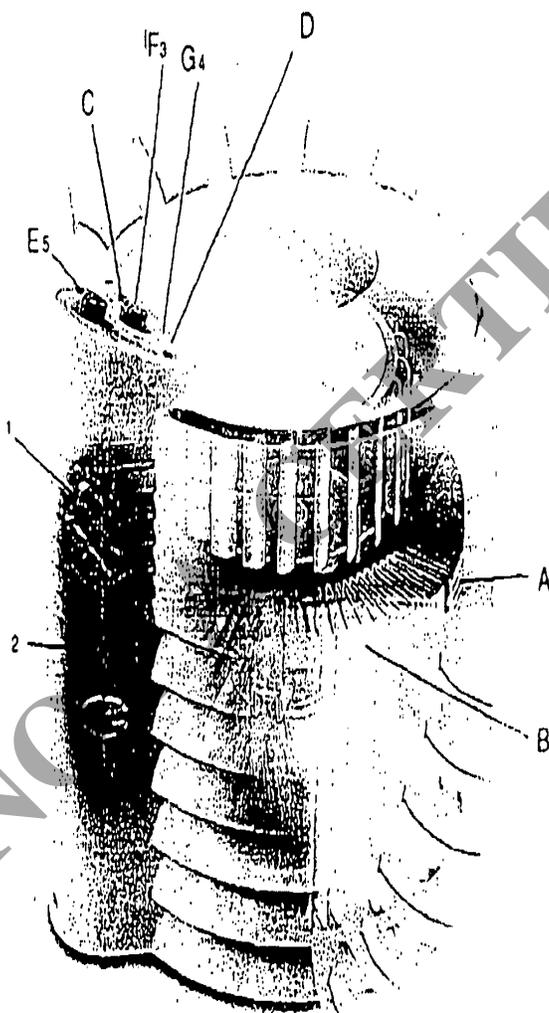
- Near term plans to introduce several new value added products in high growth markets
 - Focus on **Health Care** segment
- Introduce "Time Value," "Smart" and "Easy to Use" products
- All products designed for global application (e.g., voltage requirements)

1Q'97	2Q'97	3Q'97	4Q'97	...
Already Introduced		Remaining Introductions		
• Custom Blend Coffee*	• Digital Blood Pressure Monitor	• Redesigned Oster Blender	• 800 Series Grill*	
• Toast Logic Chrome*	• 4 Cup Coffee Maker*	• Redesigned Sunbeam Mixmaster	• Slow Cooker w/Stirring Arm*	
• New Breadmaker	• Hepa Air Cleaner*	• "Fry-Right" Deep Fryer*	• Wall Mount Hair Dryer w/Nightlight*	
• Distributor Line Grill*	• Titanium Clipper Bades*	• Toast Logic Toaster Ovens*	• New Retail Hair Clipper	
• Cordless Hair Trimmer	• Jumbo/Indiglo Thermometer*	• Soft Serve Ice Cream Maker*	• Basic Value Iron*	
• Cordless Hair Clipper	• 4 Slice Toast Logic Toaster*	• Rice Cooker*	• Water Filtration*	
• Digital Bath Scales	• 220 Volt Products	• Horizontal Breadmaker*	• Air Filtration*	
• Raised Dial Bath Scale			• 220 Volt Products	
• Outdoor Fireplace*				

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Allergysmart Air Cleaner with Allergen Detector



HOW IT WORKS

1. A small fan draws air into the sensor chamber.
2. A laser beam in the detector measures the level of allergen-sized particles (3 microns and larger) every 30 seconds and sends a signal to the air cleaner.
3. Sensitivity setting - allows running the air cleaner based on your own perceived sensitivity level. Choosing a setting (average, extra, super), the sensor automatically activates the air cleaner when the level of particles is too high. The unit shuts off only when the level is reduced.
4. Air quality indicator - when the detector is on, lights on the control panel constantly indicate the level of allergen-sized particles in the room.

FEATURES

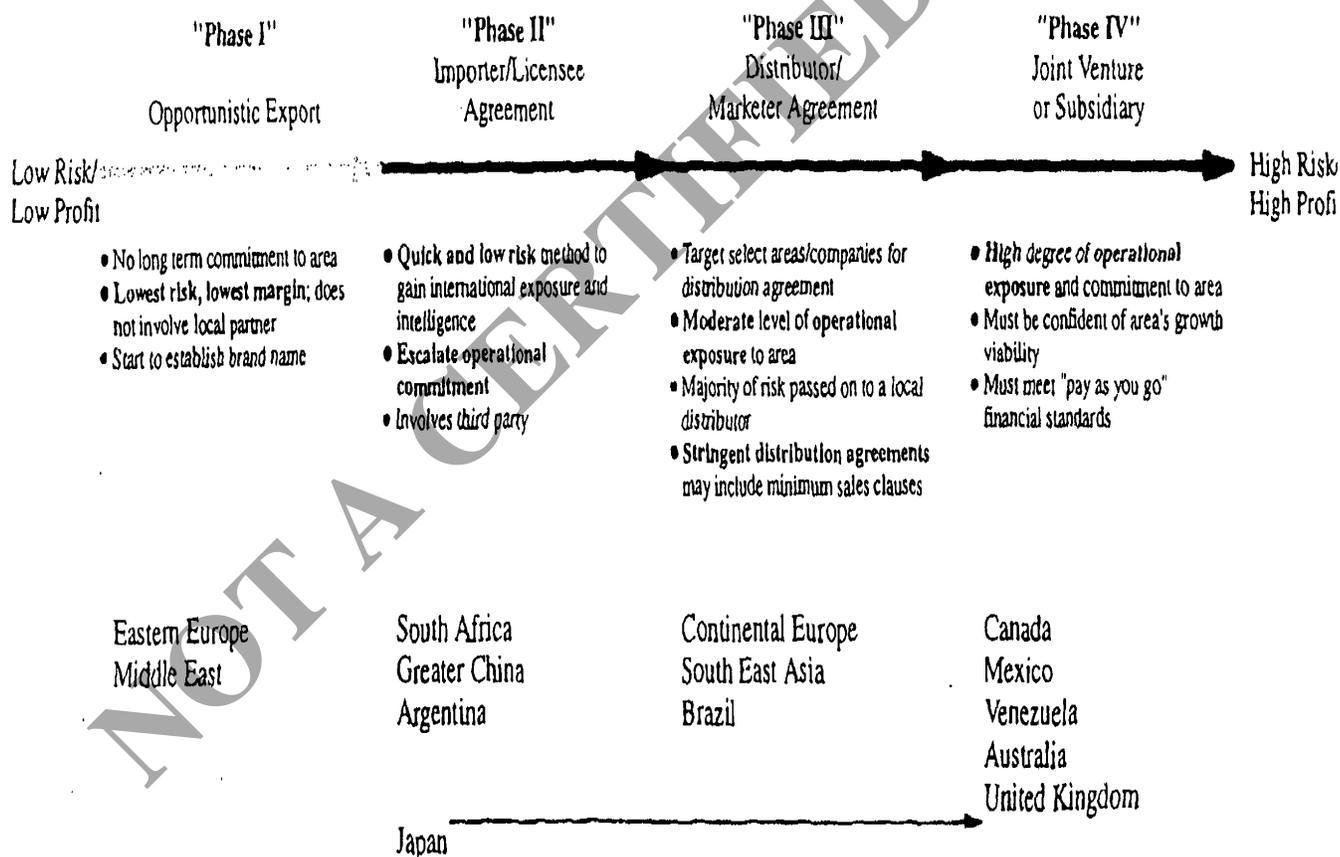
- A. Charcoal pre-filter
- B. HEPA filter
- C. Ionizer - added level of filtration
- D. Filter check light - for filter replacement
- E. Four speed fan control
- F. Sensitivity setting control
- G. Air quality indicator

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Sunbeam International Growth Strategies

Market Penetration Strategy



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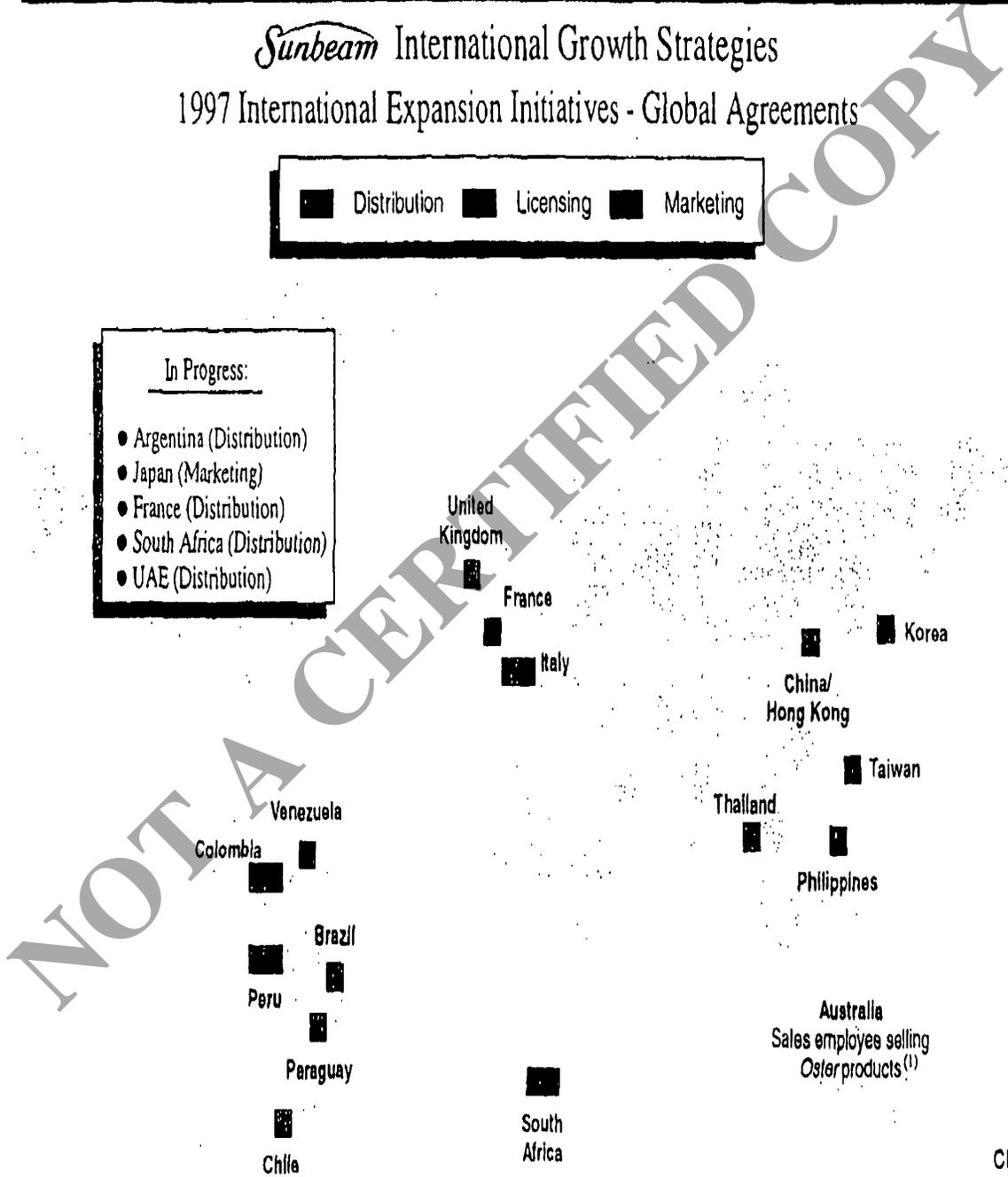
Sunbeam International Growth Strategies

1997 International Expansion Initiatives - Global Agreements

■ Distribution	■ Licensing	■ Marketing
----------------	-------------	-------------

In Progress:

- Argentina (Distribution)
- Japan (Marketing)
- France (Distribution)
- South Africa (Distribution)
- UAE (Distribution)



Australia
Sales employees selling
Oster products⁽¹⁾

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Note: (1) Sunbeam operations in Australia and New Zealand were sold by Allegbeny in 1988. Sunbeam may still market products under the Oster brand name in these regions.

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Sunbeam Operational Improvement Potential "Project Full Time"

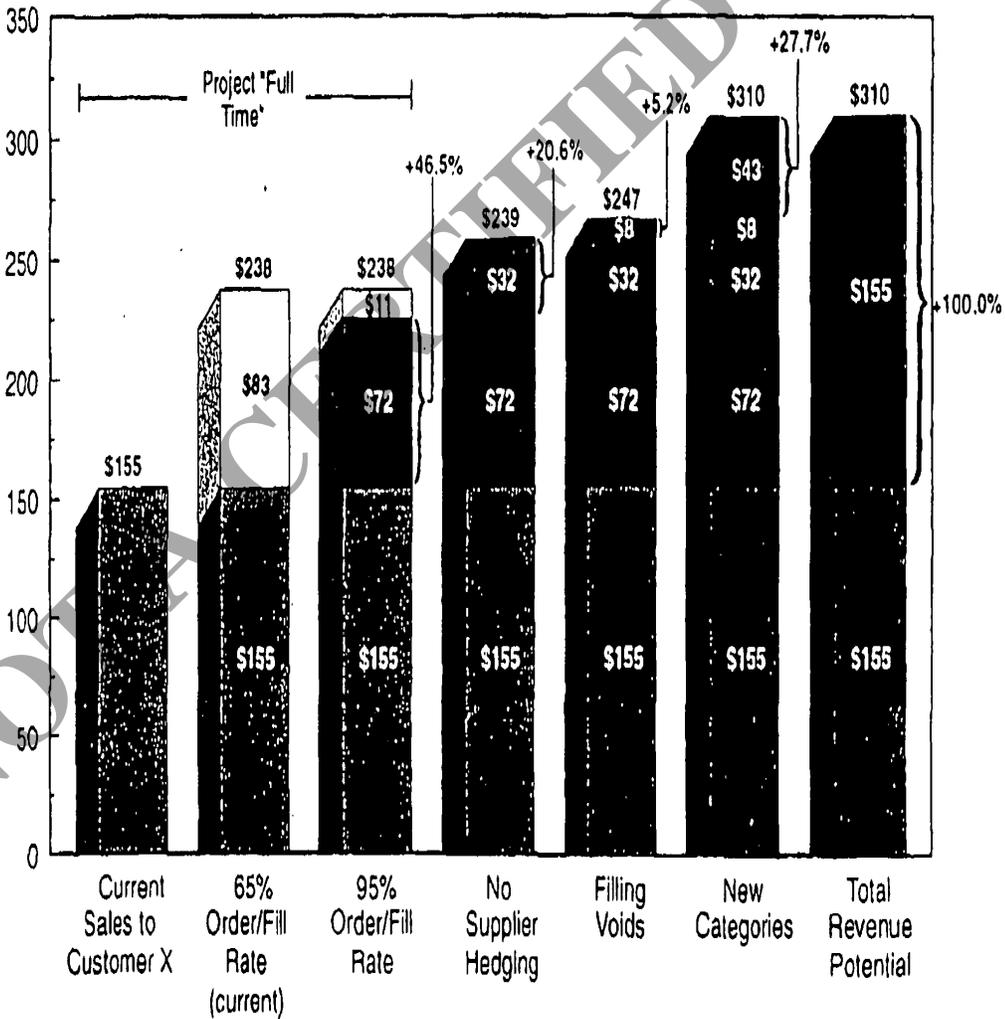
Enormous Potential to Increase Market Share and Sales
Through Service Improvements

- Sunbeam has a **window of opportunity** to raise the service standards of the industry
- Time/order fill complete rate in the small electrics business is only 60-65%
 - Versus >95% in the packaged goods industry
- Poor time/order fill complete rates force retailers to rely on multiple suppliers
- Industry trend in other consumer products sectors is towards fewer suppliers
 - Sunbeam stands to **gain considerable market share** if it can convince the channel that supplier hedging is no longer necessary
 - Eliminate product voids; expand breadth and depth of product lines
- Sunbeam has improved service with an important customer from 60% to 98%
- "Project Full Time" initiative in place
 - Attempts to **fill orders completely and on time** with the Company's **top 35 customers**
 - Account for approximately 80% of U.S. sales
- Potential for **additional cost savings** on top of revenue gains
 - Less costly to run a more efficient business

SUNBEAM CORPORATION

Channel Management Case Study - Revenue Potential

Significant Potential to Grow Revenues Through Existing Channels

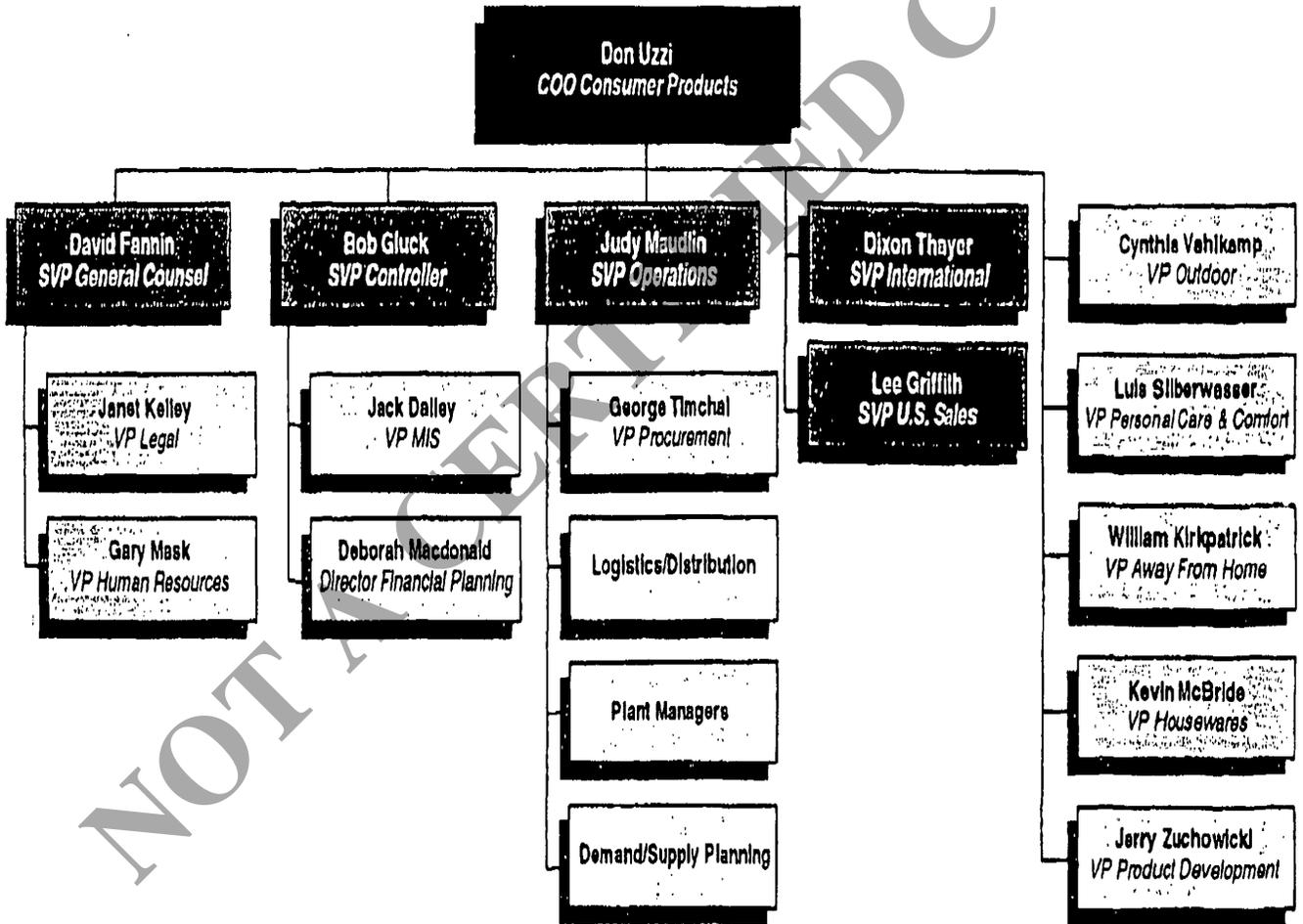


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Sunbeam Worldwide Organization Chart Post Merger



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Global Trends and Opportunities

Consumer Trends

Trend	Implications & Opportunities	Sunbeam Solutions
<p>Aging of the western population</p> <ul style="list-style-type: none"> • 55% of Americans over 45 by 2000 • 50% of Europeans over 50 by 2000 	<ul style="list-style-type: none"> • Focus on length and quality of life issues <ul style="list-style-type: none"> - Monitoring & maintenance; at-home care • Distinct needs (e.g., small kitchens; leftover storage; unique diet) • Age sensitive product design • Familiarity and trust of known brands • Homebound 	<ul style="list-style-type: none"> • Sunbeam for seniors <ul style="list-style-type: none"> - Easy to operate; address specific needs • Health at home products which provide monitoring and therapy • Target marketing of trusted Sunbeam and Oster brands to seniors • Alternate channels with shop at home accessibility
<p>Increasingly youthful population in developing economies</p> <ul style="list-style-type: none"> • Average Age in Latin America is 19 years old • One billion people worldwide are 10-19 years old • Average age in China is 20 years old and declining 	<ul style="list-style-type: none"> • Pursuit of Western lifestyle <ul style="list-style-type: none"> - Fast food; rock&roll; blue jeans; Hollywood; the Internet • More aware of current trends/media savvy • Combining of cultural influences (new food fads and cuisines) 	<ul style="list-style-type: none"> • Expansion of brands globally <ul style="list-style-type: none"> - Export product innovation; leverage strength of Oster in Latin America • Ethnic cuisine food preparation systems • Direct consumer access
<p>Sensitivity to health and sanitation issues</p> <ul style="list-style-type: none"> • 80% of U.S. consumers have great confidence in own ability to care for themselves • Only 53% have great confidence in doctors 	<ul style="list-style-type: none"> • Focus on air & water quality <ul style="list-style-type: none"> - U.S. bottled water per capita (1983 = 3 gal., 1994 = 10 gal.) • Health & fitness regimens shifting to home <ul style="list-style-type: none"> - Home fitness machines are a \$2Bn+ business • Consumers searching for healthier food preparation <ul style="list-style-type: none"> - Revisited cooking and roasting 	<ul style="list-style-type: none"> • Home water filtration • Home air filtration • Personal diagnostics providing monitoring, measurement, therapy • Healthy food preparation systems (e.g., rotisseries, steamers, grills, etc.)
<p>Increasing demands on time</p> <ul style="list-style-type: none"> • 60% of U.S. women are now working outside the home • 62% of kids under 13 prepare at least one meal themselves weekly • 70% of adults feel "stressed" during the average day 	<ul style="list-style-type: none"> • A need for appliances that "think for you" • Products that eliminate hassles & time-consuming work • Increased self-sufficiency for children • Combination appliances 	<ul style="list-style-type: none"> • "Smart" products <ul style="list-style-type: none"> - Blanket With a Brain, Custom Blend Coffee Maker, 3-Way Auto-Off Steam Master • Sunbeam Logic™ • "Less hassle" innovations <ul style="list-style-type: none"> - Cordless clippers, combination coffee grinder/brewer, pre-assembled grills • Functioning and safe appliances for children
<p>The home as a sanctuary</p> <ul style="list-style-type: none"> • 68% of people say home is "only place I can unwind" • Americans now spend 90% of their time indoors (EPA) • Home becoming a last refuge (24% U.S. H.H. own alarm, only 14% in 1990) 	<ul style="list-style-type: none"> • 30-50% of U.S. homes and offices have damp conditions, encouraging buildup of pollutants • 30 million Americans suffer from allergies; 64% of doctors recommend air cleaners for allergies • Air cleaners growing at 12% CAGR; only 10% of U.S. homes own one • Water filters growing at 10% CAGR; only 15% of U.S. homes own one 	<ul style="list-style-type: none"> • Expand health at home <ul style="list-style-type: none"> - Broadened product line; differentiated technologies • Broadly penetrate new channels broadly • Test retail impact <ul style="list-style-type: none"> - Joint advertising with retailers
<p>Retailer consolidation & globalization</p> <ul style="list-style-type: none"> • Largest retailers getting bigger, more efficient and global • Five largest retailers account for \$208B in 1995 sales, up from \$120B in 1980 & competition is intensifying • Wal-Mart sales outside the U.S. up from \$2MM in 1989 to \$12Bn projected for 1997 	<ul style="list-style-type: none"> • Retailers consolidating suppliers creating increased leverage • Growth in category management partnerships • Global consumers and global customers • Global growth opportunities for global suppliers • Emphasis on supplier efficiency 	<ul style="list-style-type: none"> • Build strong global brands (Sunbeam and Oster) -- consumer pull strategy <ul style="list-style-type: none"> - Global advertising agency partnership; 2-brand strategy; global products • International expansion (licensing, distribution and selling) <ul style="list-style-type: none"> - Partner with retailer expansion supported by category focus and structure - Alternate channel access to diversify portfolio - Partner with key retailers on new categories (e.g., fans, microwaves) - Fix and focus on supply chain management opportunities
<p>Growth & scale of alternative channels</p> <ul style="list-style-type: none"> • Home shopping now accounts for 28% of total U.S. retail sales • Manufacturer outlet store growth (+27% CAGR past 5 yrs.) • Worldwide catalog sales \$100 Bn in 1996 (projected to \$200 Bn in 2006) • Away from home (\$4 Bn business with 4% growth per year) 	<ul style="list-style-type: none"> • Opportunity to balance/diversify the customer mix • Can't afford to miss the emerging market trends • Requires non-traditional marketing & sales processes • Some opportunity to keep more of the available margin • Opportunity to flatten seasonality 	<ul style="list-style-type: none"> • "Shop@Home" market access strategy <ul style="list-style-type: none"> - Direct marketing; door to door; Internet; catalog; own catalog in 30 million boxes/year; TV/Infomercial; outbound telemarketing • Away from home strategy • Outlet store strategy

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OVERVIEW OF SUNBEAM CORPORATION

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PRODUCTS & MARKETS SUMMARY

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Summary of Recent Analyst Commentary

(continued)

International Opportunities:

- "[Sunbeam] is about to sign an agreement with NuSkin to help them distribute its FreshSource water product in Asia" (*CIBC Oppenheimer - 1/28/98*)
- "Sunbeam has 20 signed distribution and licensing agreements so far in 1997. By expanding into new SKUs in Latin America (toasters, mixers, etc.) the Company can leverage the Oster brand into new revenue streams through these new distributors and licensees. In Asia, the Company has identified an opportunity in the electric blanket market." (*Oppenheimer - 8/27/97*)
- "Key agreements committed to in the second quarter include an arrangement for the sale of grills in Europe and the U.K., a clipper agreement in Paraguay and Brazil and a joint marketing agreement in Venezuela. The Company remains committed to tripling international sales to \$600 million by 1999." (*PaineWebber - 7/28/97*)

New Channels/Distribution:

- "New distribution is being created by opening outlet stores. The Company currently has 11 stores open, and is on track to have 20 in operation by year end. It will open 20 per annum. Another business with strong new distribution potential is Away from Home." (*Oppenheimer - 1/28/98*)
- "The Company continues to roll out more Sunbeam Outlet stores, although they are not a crucial part of the Sunbeam growth plan." (*PaineWebber - 7/28/97*)

Advertising:

- "[Sunbeam] will double its consumer advertising in 1998, enabling it to spend more to generate customer demand for its innovative products that the rest of the housewares industry will spend collectively." (*Prudential Securities - 1/29/98*)
- "We expect Sunbeam to significantly out-spend its competitors over the next several years. In an industry fraught with co-op advertising, we believe advertising is long overdue in this category and will be effective." (*Oppenheimer - 8/27/97*)

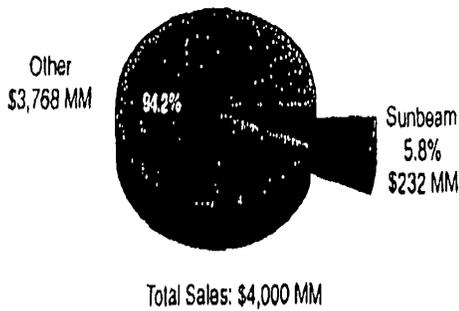
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SUNBEAM CORPORATION

Overview of the Kitchen Devices Industry

1996 North American Market



Growth Opportunities

- Need for speed, simplicity and reliability of use
- Need for healthy food preparation appliances
- Need for more ethnic food processing products
- Become the perceived category leader for innovation by key customers
- Rapidly expand innovation abroad, specifically in Latin America and Asia

Industry

- \$4 billion in North American sales, growing with inflation
- Highly fragmented across >30 categories
- Less than a dozen manufacturers with >\$100 million in sales
- Two major categories:
 - Broad penetration (e.g., irons, blenders, coffee makers)
 - Niche products (e.g., bread makers, waffle irons, pasta makers)

Competition

- Only *Black & Decker* (17%) has more than a 10% market share
- Most players dominate in one or two product lines
- Largest share players compete in >20 categories
- Premium end is most differentiated and brands well-recognized

Consumer Image

- Along with *Sunbeam*, *Black & Decker* (mid-price) and *KitchenAid* (premium price) are the most established competitive brands

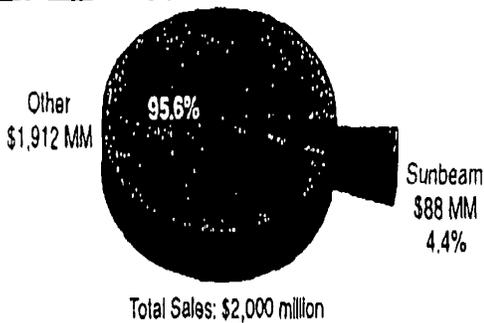
Channel

- Gift giving/holidays/weddings drive purchase behavior
- Consumers are price-sensitive but willing to pay for value-added products
- Customer base is predominantly mass merchant and department stores
- Mass merchant channel represents 40-50% of dollar sales

SUNBEAM CORPORATION

Overview of the Health at Home Devices Industry

1996 North American Market



Growth Opportunities

- Heightened consumer interest in health related products
- Growing market for health related products
- Immediately fill brand leadership void in air and water purification
- Export "health at home" concept to Latin America, Asia, Europe

Industry

- Domestic market is \$2 billion in sales
 - Includes air cleaners, water purifiers, humidification, heating pads, scales, massagers, thermometers, dental products and blood pressure monitors
 - United States is most developed, followed by Canada, Europe and Japan

Competition

- Competitors are fragmented with limited brand awareness
 - Sunbeam has #1 or #2 share in 3 out of 9 categories
- Sunbeam is the only brand with breadth of product in all 9 categories
- Holmes is #1 in air purification while Brita (Clorox) is #1 in water purification

Consumer

- 76% of consumers feel they should take primary responsibility for their health (not doctors)
- Consumer trust is shifting away from doctors towards pharmacists
- Sunbeam has a strong reputation and healthy brand halo
- Most purchasers are female

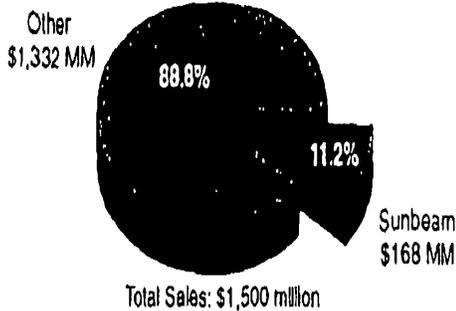
Channel

- Major mass merchandisers view this category as a growth opportunity
- No manufacturer has yet taken the lead
- Customers are seeking direction to exploit the healthcare "mega trend"

SUNBEAM CORPORATION

Overview of the Personal Care & Comfort Devices Industry

1996 North American Market



Growth Opportunities

- Growing market for relaxation and self-indulgence products
- Immediately establish Sunbeam through a dual branding strategy
- Establish a broad and highly differentiated product line
- Export personal care innovations on a global basis

Industry

- \$1.5 billion in sales, 5-year annual growth rate of 8%
- Three largest categories (shavers, hair dryers and shower massagers) account for 50% of business
- Focus on hair grooming and relaxation products
- Characterized by strong 4th quarter seasonality due to gift-giving

Competition

- One dominant player in each sub-category
 - Conair (hair dryers), Norelco (shavers) and Taldyne (shower massagers), etc.
- Clipper (Oster vs. Wahl) and mustache/beard trimmer categories (Wahl vs. Norelco) are most competitive for market share leadership
- In hair dryers, Conair's focus is price, Helen of Troy uses licensing (Revlon and Sassoon) and Braun strives for innovation (volumizer)
- Competitive market share appears to be driven by advertising

Consumer

- Styling and fashion orientation play an important category role
- Personal care purchasers are often different than the end users
 - Trimmers - women purchase, men use
 - Clippers - mothers purchase, children use
- 70% of women report some type of hair damage

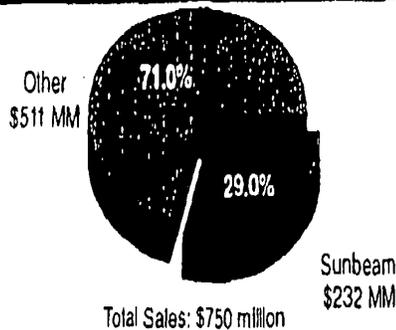
Channel

- Customer base is predominantly mass merchants, department stores and drug chains
 - Except Shower Massagers (home improvement centers, hardware)
- Accounts place a premium on innovation
- Traditionally an attractive, high margin category for retailers

SUNBEAM CORPORATION

Overview of the Outdoor Cooking Devices Industry

1996 North American Market



Growth Opportunities

- Establish *Grillmaster* as the dominant worldwide brand of gas grills and accessories
- Redefine "Grilling" as "Outdoor Cooking"
- Accelerate conversion from occasional/seasonal usage to year-round everyday usage
 - Broaden cooking versatility to make grills an extension of the kitchen
 - Retain retail visibility and supply chain savings
- Expand *Grillmaster* to higher price (and higher margin) segments

Industry

- Market includes gas, charcoal and electric grill and appliances
 - Global category is \$1.5 billion; Domestic market is \$750 million (11.4 million units)
- Gas grills represent 84% of sales, 51% of units
 - Segment growing at 9% per year
 - Charcoal declining at 6% per year

Competition

- Domestic competitors are privately held and focused on the grill business
- Weber is a "demand pull" brand
- Charbroil/Thermos is a key competitor
- Sunbeam has a 45% market share in gas grills

Consumer

- The "trade-up gas grill" consumer is experienced in grilling and has higher household income
- Consumers moving outdoors, making patios as sophisticated as their kitchens
- Consumers becoming more diverse in what they grill, how they grill
- Household penetration of grills is 84% in the United States

Channel

- Market is concentrated
- Top three customers represent 55% of the market; Top 10 represent 83%

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Source: Industry trade magazines.

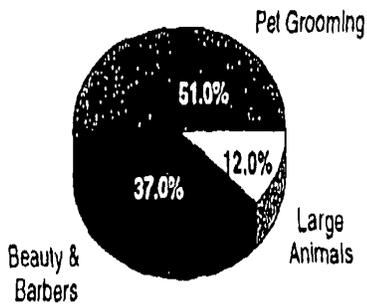
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Overview of the Professional Care Devices Industry

1996 North American Market



Growth Opportunities

- Immediately expand leadership by better meeting professional need for consistency and speed
- Extend Oster quality professional heritage into broadened product line for barbers, stylists and groomers

Industry

- Industry is comprised of three segments:
 - Beauty & Barbers (37%)
 - Pet grooming (51%)
 - Large animals (12%)

Competition

- Wahl and Andis are key competitors offering products in all segments
 - Wahl has a 27% market share in beauty & barber
- Wahl and Andis are small players in animals
- Heiniger and Lister are import competitors exclusively in the animal business

Consumer

- Professionals use Oster tools for income versus personal use
- Time is money
 - The more heads/pets groomed, the more revenue earned

Channel

- Three main distribution channels:
 - Direct catalog (38%)
 - Specialty retail (38%)
 - Distributors (24%)

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Future Growth Opportunities

Key Initiatives

- Continue to leverage *Sunbeam* and *Oster* brand equity throughout the home
- Accelerate introduction of innovative new products to the market using redesigned new product development process
 - Address unmet consumer needs
 - Rectify chronic consumer complaints about existing products in the market
- Successfully execute "Project Full Time"
- Fill product line "voids" using category management techniques
- Expand breadth and depth of product line where financially justified (e.g., appliances, personal care, etc.)
- Targeted international expansion into key growth areas that offer the greatest potential risk adjusted returns
- Selected category specific opportunities:
 - Appliances: Introduce easy-to-use, reliable products
 - Outdoor Cooking: Enter the high-end and higher margin grill business
 - Health Care: Introduce new value added water filtration and air purification products
 - Personal Care & Comfort: Capitalize on consumer need for convenience (e.g., cordless clippers)

SUNBEAM CORPORATION

Summary of Recent Analyst Commentary

(continued)

New Product Introductions:

- "Sunbeam enters 1998 with a potent combination: (1) two exciting and innovative new products, FreshSource and AllergySmart, which even if they are not absolute home runs will provide completely incremental sales at better than corporate average operating margins and (2) an enhanced grill line-up against a weak grill showing in 1H97." (PaineWebber - 10/23/97)
- "We, like SOC management, believe that both of Sunbeam's new products have "home run" potential. The products are timely, innovative and margin enhancing, a perfect complement to the new Sunbeam portfolio." (PaineWebber - 10/9/97)
- "In our view, its entries in the water and air purification markets lend significant credibility to Sunbeam's new product strategy, offer demonstrable value-added for consumers, and increase our confidence in estimated 20% plus sales growth and management's targeted 20% operating margin through 1999." (Goldman Sachs - 10/9/97)
- "The Allergysmart is a unique launch, introducing proprietary laser technology." (PaineWebber - 10/9/97)
- "This is the most important growth strategy. Driving it's fat pipeline is its enhanced new product development capability. By consolidating R&D into one location and reducing the number of facilities used to make a given product, Sunbeam has reduced new product to market time from 2.5 years to 6 months. It is also open to buying technologies and using outside experts to develop products and processes, and is doing more consumer research than ever before." (Oppenheimer - 8/27/97)
- "Finally, we believe several new products from its infamous Secret Room will be retail hits and the Company will begin developing new products in its Health at Home business." (Oppenheimer - 8/27/97)
- "After accounting for roughly 20% cannibalization, new products should contribute around \$100 million incrementally to 1997 sales with about 80% domestic and 20% international." (PaineWebber - 7/28/97)

"Project Full Time":

- "Project Full Time...is fully on track. We believe that this will be a market share driver in 1998." (CIBC Oppenheimer - 8/27/97)
- "We expect customer service to play an increasingly important role in the company's growth ... Its 'Project Full Time' focuses on achieving 100% delivery rate among its top 35 customers and top 400 SKUs. This encompasses over 50% of its sales ... The opportunity for Sunbeam here is to improve its own delivery-efficiency and become two-thirds of the retailers order equation and thus gain share." (Oppenheimer - 8/27/97)
- "The move to higher service levels should generate significant gains in market share. Even though share data in the small electrics industry is not tracked to the same degree as in packaged goods, there is some initial evidence that higher service levels generate higher sales." (Bear Stearns - 8/14/97)
- "Management noted that it filled 98% of the orders placed by the top ten accounts in the second quarter of 1997, up substantially from the disappointing 66% order-fill rate to these accounts in the first quarter of 1997." (PaineWebber - 7/28/97)

SUNBEAM CORPORATION



Segment Trends & Strategies Overview ⁽¹⁾

	Kitchen Devices	Health at Home Devices	Personal Care and Comfort Devices	Outdoor Cooking Devices	Professional Care Devices
Description	Segment includes hand and stand mixers, blenders, toasters, coffee makers, breadmakers, irons and other small appliances	Segment includes blood pressure monitoring devices, heating pads, massagers, dental care products, humidifiers and air cleaners	Segment includes electric blankets, shower massagers, consumer hair clippers, heated throws and comforters	Segment includes gas and kettle grills, charcoal smokers, tabletop grills and accessories	Segment includes a line of professional barber and beauty equipment, including electric and battery clippers, replacement blades and other grooming accessories
Brands	<ul style="list-style-type: none"> Micromaster Oster Sunbeam Calentor 	<ul style="list-style-type: none"> Health at Home 	<ul style="list-style-type: none"> Cuddle-Up Oster 	<ul style="list-style-type: none"> Sunbeam Orimaster 	<ul style="list-style-type: none"> Oster
Market Position	#1, 2 or 3 depending on product category	#1, 2 or 3 in most categories	<ul style="list-style-type: none"> #1 in electric blankets #1 in clippers 	#1 in gas grills	#1 in clippers
Major Competitors	<ul style="list-style-type: none"> Black & Decker Hamilton Beach/Proctor Siler (Nasco) KitchenAid (Whirlpool) 	<ul style="list-style-type: none"> Duracell Braun (Gillette) Health O'Water 	<ul style="list-style-type: none"> Wahl Andis Telepne 	<ul style="list-style-type: none"> Charcoal Thermos Waber 	<ul style="list-style-type: none"> Wahl Andis
Distribution	<ul style="list-style-type: none"> Mass merchandisers Department stores Specialty stores 	<ul style="list-style-type: none"> Mass merchants Drug stores 	<ul style="list-style-type: none"> Mass merchants Drug stores 	<ul style="list-style-type: none"> Mass merchants Hardware/Home centers 	<ul style="list-style-type: none"> Mass merchants Drug stores Specialty stores Professional distributors
Trends	<ul style="list-style-type: none"> Time pressure demands convenience and speed Need for speed, simplicity and reliability of use Sensitivity to health and sanitation Need for healthy food preparation appliances Broadening taste profiles Need for more ethnic food processing products Emphasis on leisure and value Opportunity to make cooking "fun" Develop products for all types of cooks 	<ul style="list-style-type: none"> Health conscious lifestyle Heightened consumer interest in health related products Aging population Growing market for health related products Value consciousness Drives business to mass merchant channels where Sunbeam has strong presence Home as a sanctuary/Self-care Sunbeam brand has strong equity in the home vs. other lesser known medical brands 	<ul style="list-style-type: none"> Healthy lifestyle Opportunity to improve personal appearance and "slow down" the aging process "Do-it-Yourself"/Value Need to save time and money Self-indulgence Desire to pamper oneself and relax Time crunch Opportunity for professional quality and service with at-home convenience 	<ul style="list-style-type: none"> Time shortage Leads to more gas grilling, meat simplification and speed-scratch cooking Home as a sanctuary People are spending more time at home with family and friends Baby Boomer demographics Creates shopping behavior favoring cost/quality/convenience combination and trade-up from charcoal to gas 	<ul style="list-style-type: none"> Quality/Durability Product usage is expected to be 7 to 10 years Ergonomics/Styling Comfortable grip and unique styling Ease of use/Speed Power to cut healthy hair grown without styling
Strategies	<ul style="list-style-type: none"> Reposition and differentiate the Sunbeam and Oster trademarks Expand the strategic breadth of product line through a consistent stream of new products built off consumer needs Become the perceived category leader for innovation by key customers Rapidly expand innovation abroad, specifically in Latin America and Asia 	<ul style="list-style-type: none"> Establish Sunbeam as the premiere brand in health at home market by owning consumer on numerous fronts Deepen Sunbeam's consumer relevance through a consistent stream of new and enhanced benefit-driven products Immediately fill brand leadership void in air and water purification Establish a defensible category leader position on numerous channel fronts Export "Health at Home" concept to Latin America, Asia, Europe 	<ul style="list-style-type: none"> Immediately establish Sunbeam as a leading competitor in personal care appliances through a dual branding strategy Establish a broad and tightly differentiated product line Export personal care innovations on a global basis 	<ul style="list-style-type: none"> Establish Orimaster from Sunbeam as the dominant worldwide brand of gas grills and accessories Grow category by redefining "Grilling" as "Outdoor Cooking" Dramatically increase the profit importance of Orimaster and "Outdoor Cooking" to the trade Establish worldwide design and technology network to maximize product innovation 	<ul style="list-style-type: none"> Immediately expand leadership in all business segments by better meeting professional need for consistency and speed Extend Oster quality professional heritage into broadened product line for barbers, stylists and groomers

1997 Net Sales: ⁽¹⁾ \$432.2MM 37% \$116.8MM 10% \$210.3MM 18% \$292.1MM 25% \$105.1MM 9%

Note: (1) 1997 sales breakdown % from company and does not add to 100% due to outlet sales.

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FUTURE GROWTH OPPORTUNITIES

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SUNBEAM CORPORATION

Stated Growth Objectives

- Doubling of 1996 sales of about \$984 million to almost \$2 billion by 1999, without acquisitions
 - Implies CAGR of about 27%; Normalized sales up 19% for the nine months ended September versus last year
- Tripling of international sales from \$185 million to about \$600 million by 1999
 - Implied CAGR of about 48%; International sales up 51% for the third quarter of 1997 versus 1996
- Achieve an operating margin of at least 20% (from 16% over the last 9 months)
- Achieve 25% Return on Equity each year
- Cumulative free cash flow of about \$600 million generated over the next 3 years

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SUNBEAM CORPORATION

Global Environment Trends

Consumerism

- Increasing focus on the consumer's needs
- Drive for value

Brands

- Growing international acceptance
- Premium price and image
- Represent "Western" lifestyle and ideals

Globalization

- Increasing affluence of consumers in emerging markets
- Greater interaction between different countries, cultures and ethnicities leads to a convergence of consumer purchasing patterns

Consolidation

- Emergence of recognized sector leaders
- Cycle whereby the strongest continue to grow

Shopping Channels

- Proliferation of alternate channels
 - Catalogs
 - Door-to-door
 - Internet
 - Direct response



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NEW PRODUCT INITIATIVES

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SUNBEAM CORPORATION

Sunbeam New Product Initiatives

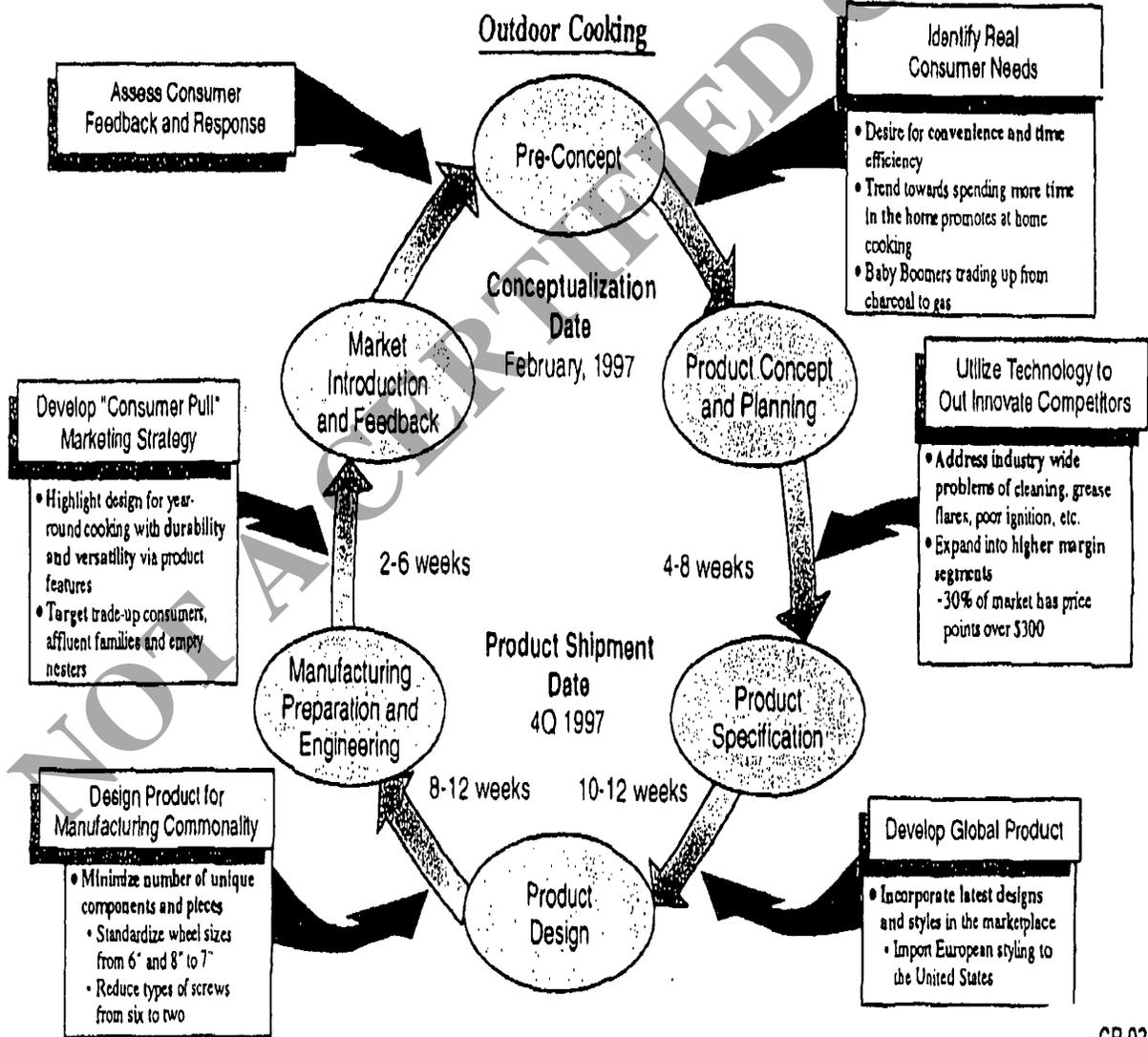
Focus on Accelerated New Product Development

- Shorten product development timeframe from 2.5 years to 6 months
 - Focus on smaller number of more promising projects
 - High reliance on consumer research
 - R&D department reports to Marketing department instead of Chairman
 - One R&D department, instead of separate staffs for the various product lines
 - Agreement with the Stevens Institute
 - Willingness to purchase technology when efficient (AllergySmart Sensor)
- Innovate in existing product lines (e.g., air purification, Grillmaster)
 - Only effective method to gain pricing leverage/enhanced margins
 - Successful new products help drive market share gains and increased shelf space
 - Enable gains in manufacturing efficiency and drive improved profitability
- Innovate in new product lines and develop distinctive entries into new high growth markets (e.g., ethnic niches - Arepa maker, water purification)
 - Capitalize on technological innovation
 - Focus on value to the customer; fix chronic consumer complaints
 - Leverage strong distribution to gain shelf space
- Launch up to 30 distinct new products a year over the next several years
- Build brand equity from product differentiation (e.g., Blanket With a Brain, FreshSource Water Purifier, AllergySmart Air Purifier, Toast Logic Toaster, Custom Blend Coffee Maker, Cordless Clippers)
 - "Smart" and time efficient products that emphasize speed, convenience and ease-of-use

SUNBEAM CORPORATION

Sunbeam New Product Initiatives

Case Study: Continued Innovation of Existing Products



946020 Expected incremental revenue in the first year: \$53 MM

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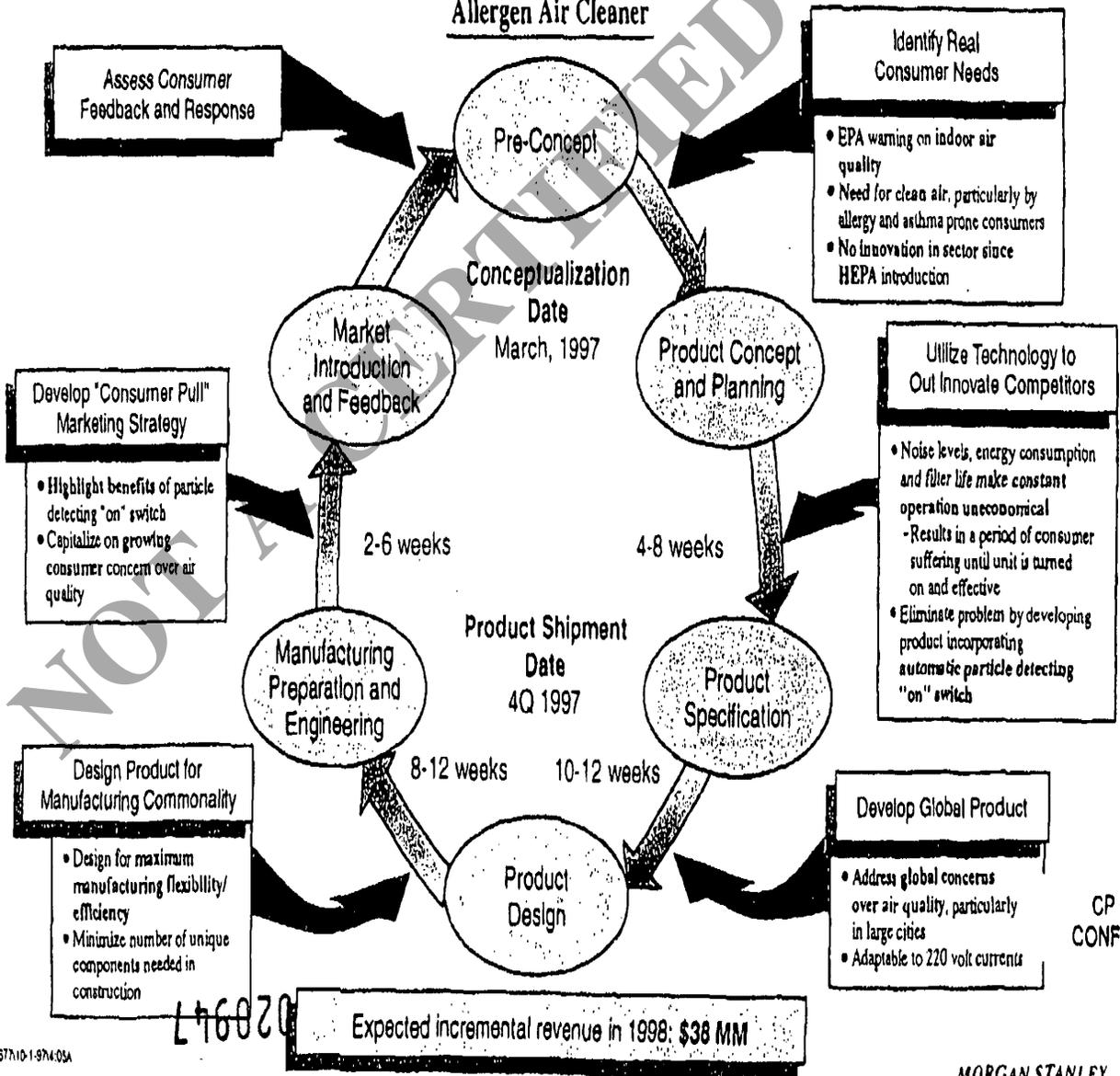
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Sunbeam New Product Initiatives

Case Study: Continued Innovation of Existing Products

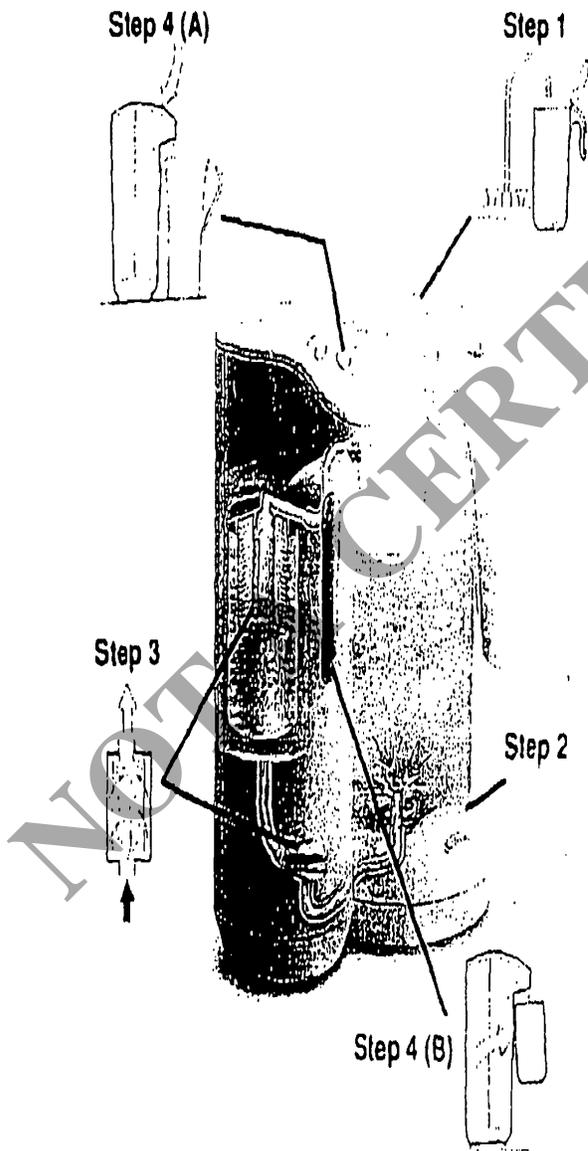
Allergen Air Cleaner



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SUNBEAM CORPORATION

Freshsource+. Water Purifier



HOW IT WORKS

1. Fill reservoir with cold tap water
2. Replace reservoir on base
3. A powerful motor and pump force water through a micro-line filter, reducing chemicals and microorganisms
- 4(A). Volume dispensing
- 4(B). Glass at a time

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SUNBEAM CORPORATION

Analyst Reaction to New Air and Water Products

- "We, like SOC management, believe that both of Sunbeam's new products have "home run" potential. The products are timely, innovative and margin enhancing, a perfect complement to the new Sunbeam portfolio...These products should help to deliver the 20% top-line growth we are modeling for in 1998." (*PaineWebber - 10/9/97*)
- "In our view, [Sunbeam's] entries in the water and air purification markets lend significant credibility to Sunbeam's new product strategy, offer demonstrable value-added for consumers, and increase our confidence in estimated 20% plus sales growth and management's targeted 20% operating margin through 1999." (*Goldman Sachs - 10/9/97*)
- "Sunbeam has added visibility to its new product sales goals with [the new product] launches. It is tapping into consumers' desires for clean water and air in their homes. Each product introduces new technology into the small electric market and Freshsource effectively creates a new category...Our estimates seem destined to increase again." (*Oppenheimer - 10/8/97*)
- "Consumer response is very strong for [AllergySmart's] feature/benefit/value proposition. These products are positioned to grow the market as well as to establish a leading position for Sunbeam." (*Goldman Sachs - 10/9/97*)
- "Both products have global applications, high long term growth potential, and fit well within Sunbeam's Health at Home business." (*Bear Stearns - 10/9/97*)
- "The AllergySmart is a unique launch, introducing proprietary laser technology." (*PaineWebber - 10/9/97*)
- "While other water purification products are on the market today, there is no product that purifies water with FreshSource's effectiveness and speed." (*Oppenheimer - 10/8/97*)

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INTERNATIONAL EXPANSION

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SUNBEAM CORPORATION

Sunbeam International Growth Opportunities

Enormous Upside Potential for International Growth

- Sunbeam's international sales currently account for **only 18.6%** of worldwide sales
 - Only 10% of sales are derived outside of North America
 - Significant portion of Latin American sales come from blenders
- Greatest opportunity lies in developing economies (primarily **Latin America and Asia**)
 - Growth in developing markets is outpacing growth in the United States and Europe
 - Increasing consumer purchasing power
 - U.S. brands are the preferred brands in developing markets, especially Asia
- Management goal to **triple international sales** from \$185MM to \$600MM by 1999

Strengths

- Strong market share in Northern Latin America
- Strong *Oster* international image and awareness in Latin America and Europe
- Established manufacturing and assembly base in Mexico and Venezuela
- European beach-heads in grills and clippers business

Opportunities

- Worldwide distributor and licensee interest in *Sunbeam* products
- Broader product category penetration/distribution in strong *Oster* markets (Latin America)
- Clippers and grills expansion in Asia, Latin America and Europe
- Export "Health at Home" concept to Latin America
- Export air and water products to Latin America and Asia
- Electric blankets in Europe and Asia
- Transfer expertise in growth from Latin America to Asia

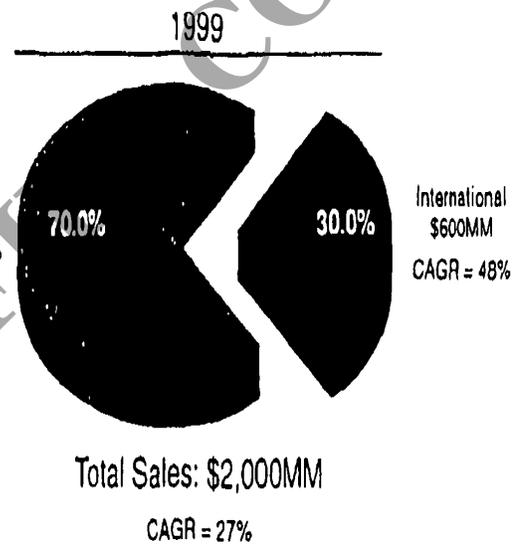
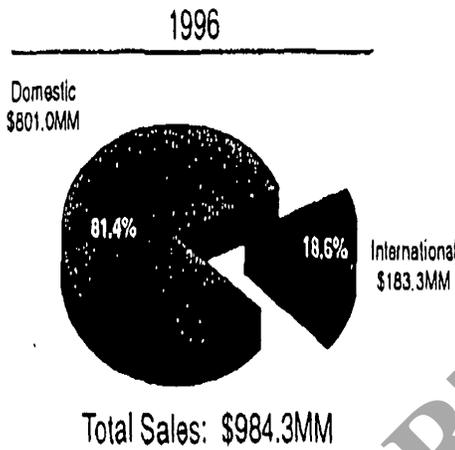
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Sunbeam International Growth Strategies



- Three key sources of growth:
 - Expansion of existing franchise
 - New product introduction
 - Geographic expansion
- Reorganize product development and salesforce to maximize global opportunities
 - Global perspective on product development
 - Support global category marketing
 - Uniform global brand development and advertising

- Profit center mentality (vs. investment mentality)
 - Focus on bottom line growth as well as top line growth
 - International operations already at 20% operating margins
- Target situations that offer the greatest potential risk-adjusted returns based on:
 - Ease of entry
 - Existing relationships
 - Tangible opportunities
 - Distinct product differentiation
- Capitalize on strong brand equity overseas

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International Growth Strategies Expansion of Existing Franchise

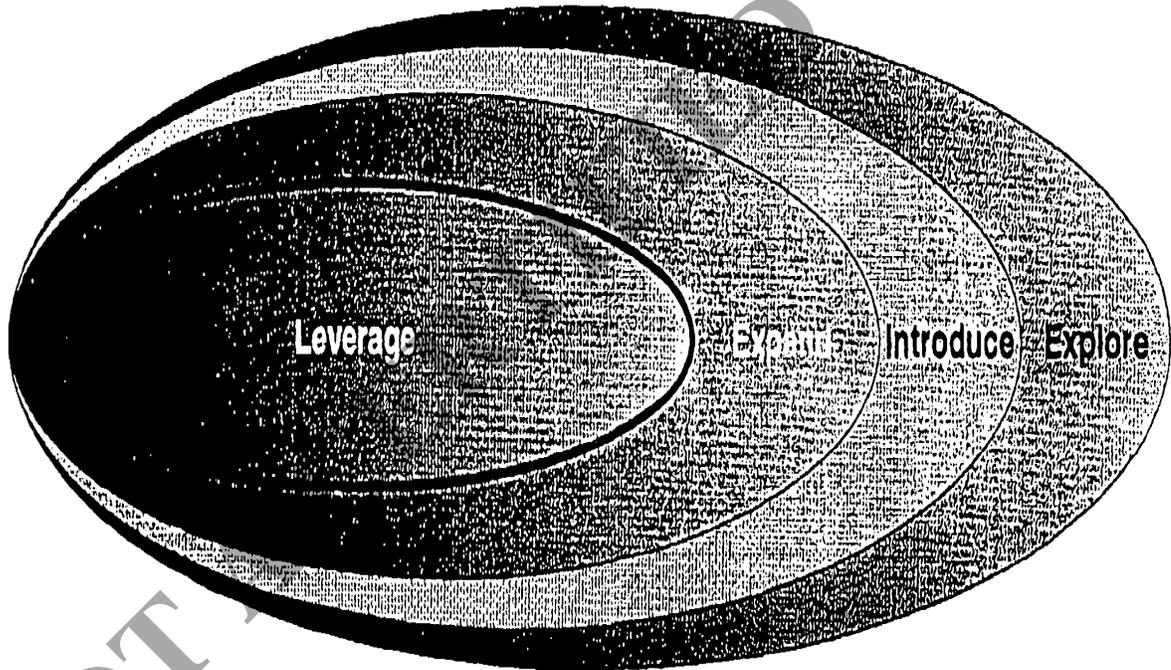
- Expand into new categories and new distribution channels
 - Grills, electric blankets, clippers, air and water, health at home, ethnic products
 - Do-It-Yourself/Home centers, professional and retail stores, drug stores, home shopping, catalog, Internet
- Regenerate brand awareness and demand
 - Television advertising
 - Publicity, promotion
 - Shop-at-home marketing
 - Latin America: Family Channel sponsorship
 - UK: QVC, blanket advertising
- Price Realization
 - Brand leadership and product differentiation enables price increases
 - Contracts in U.S. dollars minimizes currency exposure
 - Waterfall reduction

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SUNBEAM CORPORATION

Sunbeam International Growth Strategies

Geographic Expansion



- Strategy:**
- Build from currently existing Sunbeam strongholds
 - Continue to grow Sunbeam sales and brand recognition
 - Leverage strong base to expand sales growth
 - Geographical expansion to surrounding areas
 - Channel expansion within region

- Targeted expansion into key growth markets with tangible opportunities
- Leverage strong Latin American position to penetrate Brazil and Argentina
- Expand key Asian markets (Japan, Korea and Taiwan) through strong relationships and product distinctiveness

- Initiate business opportunistically in regions with specific situations
- Introduce Sunbeam brands and stimulate brand awareness
- Need flexibility to enter and exit markets quickly as situations change
- "Pay as you go" risk management and financial standards

- Explore other possibilities for future geographic expansion
- Typically areas presenting higher risk but also higher growth potential
- Enter only if there are valid distribution/product opportunities that meet financial standards

- Regions:**
- Central America
 - Chile
 - Colombia
 - Ecuador
 - Mexico
 - Peru
 - Venezuela
 - U.K.

- Argentina
- Brazil
- Australia
- Hong Kong
- Japan
- Korea
- Taiwan
- Spain
- South Africa

- China
- New Zealand
- Germany
- Italy
- Middle East

- Poland
- Russia
- Scandinavia
- India
- Indonesia
- Malaysia

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SUNBEAM CORPORATION

Sunbeam International Growth Strategies Specific Global Opportunities and Market Potential

Canada

- Re-launch electric blanket business
 - Goal to achieve S/capital figures similar to the U.S.
- Strengthen gas grill business (900/800/500/400 Series)
- Relaunch health at home business off of new air & water products
- Strengthen leadership position in professional clippers
 - Cordless products; low heat products; elite blade

Europe

- Strengthen leadership position in professional clippers

Revenues	
1996	\$20MM
1997E	\$18MM
1998E	\$30MM
1999E	\$50MM

 - Cordless products; low heat products; elite blade
 - Launch electric blanket business (low EMF PTC technology)
 - Regenerate significant gas grill business
 - Selectively launch distinctive high margin new appliances (e.g., roisserie, air filter with allergen detector, slow cooker)
 - Opportunistically export to Middle East, Eastern Europe and South Africa
- | Key Products |
|--------------|
| Blankets |
| Clippers |
| Grills |

Latin America

- Broaden existing strong leadership position in core markets (Mexico, Venezuela, Central America, Peru, Ecuador, Colombia)

Revenues	
1996	\$132MM
1997E	\$171MM
1998E	\$230MM
1999E	\$300MM

 - Air & water business launches (health at home)
 - New grills "Samba" series
 - Regenerate market leadership position in blenders (remain the best)
 - Launch business in Brazil and Argentina
 - Air, water, blenders, and unique small appliances (roisserie, etc.)
- | Key Products |
|------------------|
| Blenders |
| Arepa Maker |
| Water Filtration |
| Grills |
| Clippers |

Asia

- Launch electric blankets, water filtration and beehive blenders (chrome line) in:

Revenues	
1996	\$3MM
1997E	\$10MM
1998E	\$70MM
1999E	\$150MM

 - Japan
 - Korea
 - Taiwan
 - Australia/New Zealand
- Opportunistically export to:

Key Products
Blenders
Water Filtration
Air Filtration
Clippers
Blankets

 - Greater China
 - Indo China
 - Philippines

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SUNBEAM CORPORATION

Sunbeam International New Product Initiatives

- Introduce 54 new products representing \$26MM in revenue in 1997
 - Introduce new 220 volt products aggressively
 - Introduce distinctive existing U.S. products (Blanket with a Brain, Beehive Blender, etc.)
 - Introduce new globally designed products and categories simultaneously to the United States (clippers, air, water and grills)
- All new product development initiatives have a global perspective
 - Maximize ethnicity value of new products
 - Sandwich maker adaptation to Arepa maker in Venezuela
 - Slow cooker with paddle adaptation to Polenta maker in Italy
 - Maximize total potential market
- Emphasize distinctive Sunbeam technologies and product differentiation
 - All-metal drive/higher output motors on blenders and mixers
 - PTC wire in blankets and carpets
 - Titanium coated clipper blades
 - Air cleaner utilizing laser technology
 - Power water filtration
- Capitalize on strong brand equity
 - Strong demand for U.S. brands in Asia
 - Retail and consumer familiarity via exposure to the U.S. marketplace
 - WalMart's "Made in America" brand focus expanded into China (electric blankets)
 - Oster well entrenched as the premium brand in Latin America (higher brand awareness than Pepsi)

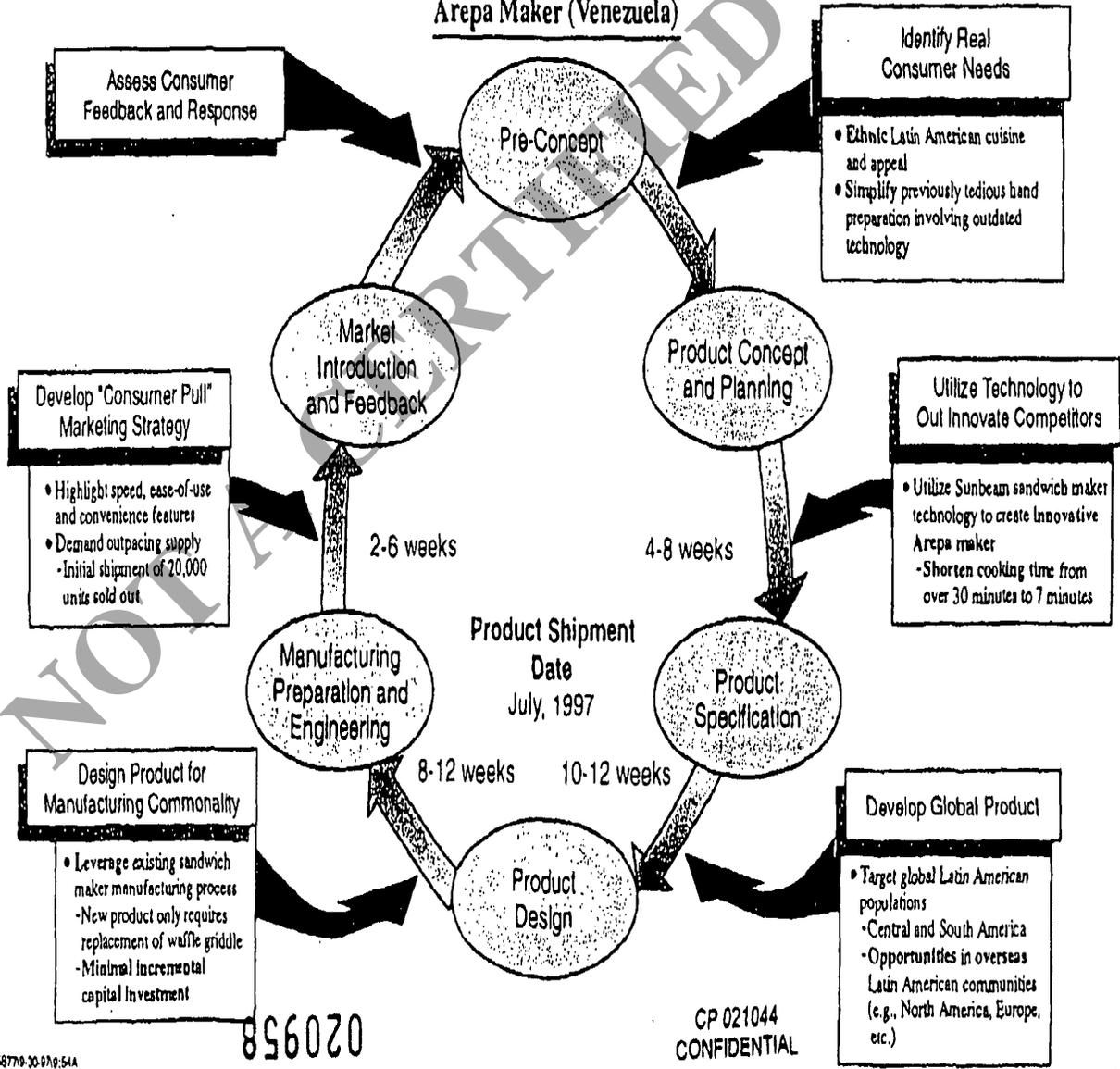
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Sunbeam New Product Initiatives

Case Study: Innovative International New Product Development

Arepa Maker (Venezuela)



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CHANNEL MANAGEMENT

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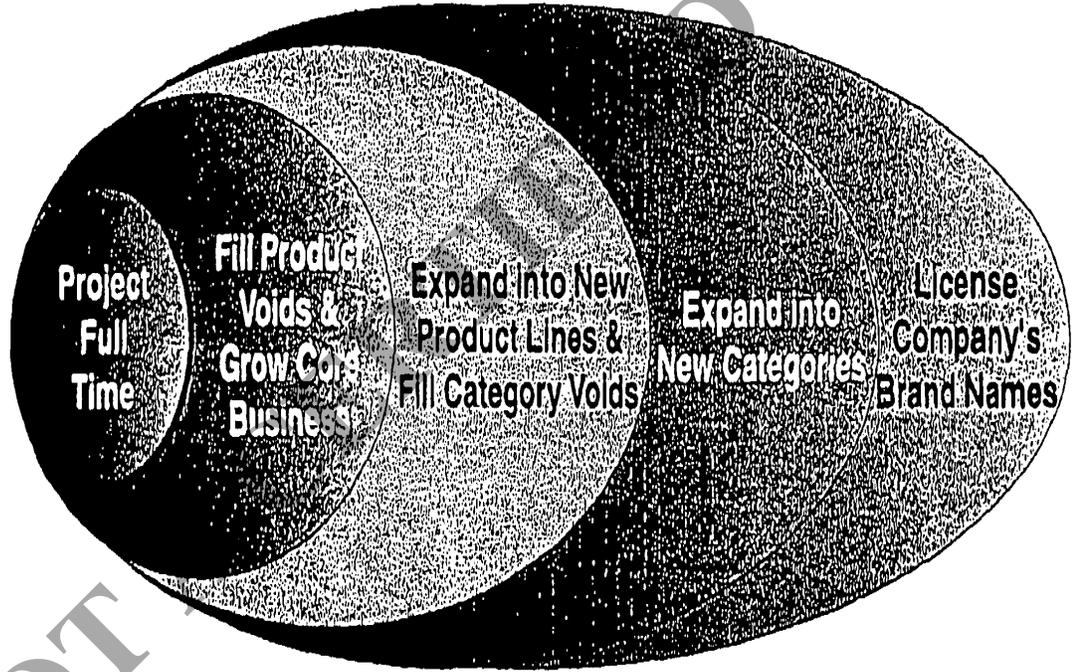
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SUNBEAM CORPORATION

Sunbeam Channel Management Opportunities

Improve Customer Service to Catalyze Channel and Category Growth



Concurrent Profit Maximization Opportunities

Price Realization

- Price increases through differentiated product functionality (e.g., Blanket with a Brain, Carousel Rotisserie, Stand Mixer)
- Waterfall
 - Work with channel to improve efficiency and drive costs out of the system
 - Eliminate chargebacks, rebates, allowances and other hidden charges
- Improvements in service quality and new product introductions increase leverage over distribution channels

Mitigate Business Seasonality

- Increase revenue and profit in first half of calendar year
 - Exploit holidays (e.g., Valentine's Day, Mother's Day, Father's Day, etc.)
 - Employ account-specific marketing plans
 - Direct selling to extend selling season
 - Expand "away from home" business

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Sunbeam Channel Management Opportunities Filling Product Voids

- Opportunity to leverage relationships with customers as a result of improved service levels through "Project Full Time"
- Two levels of product voids within a category which can be filled
 - Sell existing Sunbeam products not already sold to customer
 - Enter new product lines which the customer purchases but Sunbeam does not yet produce
 - Could possibly license the Sunbeam brand name and outsource manufacturing
- Capture valuable shelf space with minimal investment
- Build presence and strengthen relationship with customers

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SUNBEAM CORPORATION

Channel Management - Filling Product Voids Opportunities to Expand Breadth and Depth of Product Line

	Current Sunbeam Distribution	Sunbeam Product Lines	Customer X Product Lines	Customer X Product Line Size (\$MM)	Sunbeam Share/Potential Share		Total Opportunity (\$MM)
					Penetration (%)	Revenue (\$MM)	
Blenders	•	•	•	\$45.0	35% / 50%	\$15.8 / \$22.5	+\$25.0
Stand Mixers	•	•	•	20.0	20% / 35%	4.0 / 7.0	
Breadmakers	•	•	•	10.0	50% / 65%	5.0 / 6.5	
Rouisserie	•	•	•	5.0	50% / 65%	2.5 / 3.3	
Irons and Steamers	•	•	•	60.0	30% / 45%	17.5 / 27.0	
Hand Mixers	•	•	•	10.0	15% / 30%	1.5 / 3.0	
Can Openers	•	•	•	\$10.0	-- / 15%	-- / \$1.5	+\$17.6
Coffee Makers	•	•	•	50.0	-- / 15%	-- / 7.5	
Toasters	•	•	•	20.0	-- / 15%	-- / 3.0	
Waffle Makers	•	•	•	5.0	-- / 15%	-- / 0.8	
Vegetable Steamers	•	•	•	60.0	-- / 15%	-- / 0.9	
Toaster Ovens	•	•	•	12.0	-- / 15%	-- / 1.8	
Frying Pans	•	•	•	5.0	-- / 15%	-- / 0.8	
Food Processors	•	•	•	5.0	-- / 15%	-- / 0.8	
Rice Cookers/Steamers	•	•	•	N.A.	-- / 15%	N.A.	
Indoor Grills	•	•	•	3.0	-- / 15%	-- / 0.5	
Juice Extractors	•	•	•	N.A.	-- / 15%	N.A.	
Citrus Juices	•	•	•	N.A.	-- / 15%	N.A.	
Ice Crusher	•	•	•	N.A.	-- / 15%	N.A.	
Tea/Hot Beverage Maker	•	•	•	N.A.	-- / 15%	N.A.	
Electric Woks	•	•	•	N.A.	-- / 15%	N.A.	
Crock Pots/Slow Cookers	•	•	•	N.A.	-- / 15%	N.A.	
Deep Fryers	•	•	•	N.A.	-- / 15%	N.A.	
Meat Slicer	•	•	•	N.A.	-- / --	N.A.	N.A.
Electric Knives	•	•	•	N.A.	-- / --	N.A.	
Pasta Maker	•	•	•	N.A.	-- / --	N.A.	
Meat Grinders	•	•	•	N.A.	-- / --	N.A.	
Kitchen Gadgets	•	•	•	N.A.	-- / --	N.A.	
Electric Knife Sharpener	•	•	•	N.A.	-- / --	N.A.	

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Sunbeam Channel Management Opportunities Filling Category Voids

- Critical to implement category management techniques with mass merchant channel in light of vendor consolidation trend
- Directly affected by service levels ("Project Full Time")
- Demonstrate "Retailer ROI Improvement" via total category business propositions (versus individual product propositions)
- Maximize category profit per cubic shelf foot
 - Develop relative profitability statistics
 - Secure key customer commitments
- Shift retailer focus to "menu pricing" for services
 - Develop menu parameters and values
 - Establish with top customers

SUNBEAM CORPORATION

Channel Management / Filling Category Voids

Success with "Project Full Time" Leads to Elimination of Category Voids with Key Customers

 Strong Sales
  Marginal Sales
  Category Void Opportunity

	Appliances	Bedding	Clippers & other Personal Care	Health Care	Outdoor Cooking
Wal-Mart					
Kmart					
Target Stores					
Price Costco					
Service Merchandise					
Home Depot					
Sears Roebuck					
J.C. Penney					
Lowe's					
Menards					

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Sunbeam Other Operating Initiatives

- Execute a "Health at Home" concept and extend it to "Healthy Homes"
 - Exploit "health conscious," "home as a sanctuary" and "self care trends"
 - Leverage demographic trend towards an aging population
 - **Joint marketing and merchandising opportunities** with leading health organizations

- Fix and aggressively transform the grill business to "Outdoor Cooking"
 - Take the **kitchen outdoors**
 - Reposition gas grills as the **healthy option to charcoal**
 - **Globalization of business** (import European styles and trends)

- Leverage 100% market share in electric blankets
 - Build category awareness
 - Go global with our proprietary position
 - Raise prices to fund market development

- Develop both **new market access opportunities** and new ways to **penetrate established channels**
 - Exploit the **shop at home alternative channel trend** and shift the mix from mass merchant dependence
 - Catalogs, Amway, QVC, direct sales, Internet, etc.
 - Establish JVs in categories with no presence
 - Explore **institutional sales opportunities** (e.g., food service, assisted living centers and lodgings distributors)

- Continue opening **outlet stores**
 - Opened four stores in the 2nd quarter, bringing U.S. total to 10
 - Profitable channel to move slow-moving products

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MARKETING, LICENSING AND MERCHANDISING

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SUNBEAM CORPORATION

Advertising and Brand Management

- Renewed commitment to advertising has significantly improved consumers' latent perceptions of Sunbeam's brands
 - Continued use of new advertising campaign is becoming increasingly effective in creating lasting impressions with consumers
- The *Sunbeam* brand has been steadily gaining strength
 - Unaided brand awareness has reached new highs
 - Association with value has increased in 10 out of 10 key brand imagery categories
- Differentiation between *Sunbeam* and *Oster* brands has widened
 - *Sunbeam*: good value for the money
 - *Oster*: professionally designed products

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SUNBEAM CORPORATION

Advertising Opportunity
Repositioning the *Sunbeam* Brands



Increased Brand
Relevance

New, Consistent
Package Design

Differentiated
In-Store
Merchandising

Sunbeam ...Now There's A Bright Idea!

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SUNBEAM CORPORATION

The New *Sunbeam* Brand

Capitalizing on increasing brand loyalty to build demand for products...

- When asked "What is the brand for you," consumers identified *Sunbeam* as #2 (second to *Black & Decker*) among the top 5 brands in its peer group, a jump from the #4 position
- USA Today's annual "What's In, What's Out" identified *Sunbeam* as "in" and *Black & Decker* as "out"
- *Sunbeam* was rated a top 10 favorite household brand according to a September 1997 HFN survey; brands such as *Braun*, *Cuisinart*, *Rival*, and *Toastmaster* did not even make the top 50

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SUNBEAM CORPORATION

Consumer Brand Ratings

Consumers Asked, "What Brand Is for Me?"

	November 1996	January 1997	Change
Black & Decker	64%	71%	+7
<i>Sunbeam</i>	44%	56%	+12
Braun	51%	49%	-2
KitchenAid	48%	43%	-5
Proctor Silex	40%	43%	+3

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SUNBEAM CORPORATION

Current Consumer Perceptions of *Sunbeam* and *Oster* Brand Names

	<i>Sunbeam</i>	<i>Oster</i>
Awareness	Exceptionally high (96%)	Very high (92%)
Associations	High quality, but dormant	High quality, some link to Sunbeam
Appeal	Broad scale, for women > 40	Strongest in blenders & clippers
Marketing Strategy	Pull	Pull
Price	Mid-priced	Premium to Sunbeam
Channel	Mass merchandiser focused	Mass merchandiser, department store
Positioning	Seen as good quality and value	Close to Sunbeam, linked to Osterizer heritage
Key Competitor	Black & Decker	Kitchen Aid
Product	Good quality, modest innovation	Good quality, modest innovation
Leadership	#1 in blenders, blankets & grills	#1 in blenders & clippers, U.S. and Latin America
Personality	Friendly, warm, female	. . .

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SUNBEAM CORPORATION

Marketing, Licensing and Merchandising Opportunities

- **Make vs. license decision**
 - Licensing presents immediate profit opportunities
 - Strong *Sunbeam* brand name provides opportunities for licensing
 - Cookware, flatware, kitchen gadgets, lighting, etc.
 - Heritage items can be licensed immediately
 - Razors, kitchen/cooking products, grills, etc.
 - Other products may require image development prior to licensing
 - Decision based upon distribution, manufacturing and other core competencies
 - The Company is constantly evaluating new licensing opportunities
- **Advertising opportunity**
 - Ability to out-spend the competition due to high level of expected free cash flows
 - Well designed advertising campaign is overdue in the industry and impact is expected to be high
 - Industry marketing is usually centered around co-op advertising

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APPENDIX

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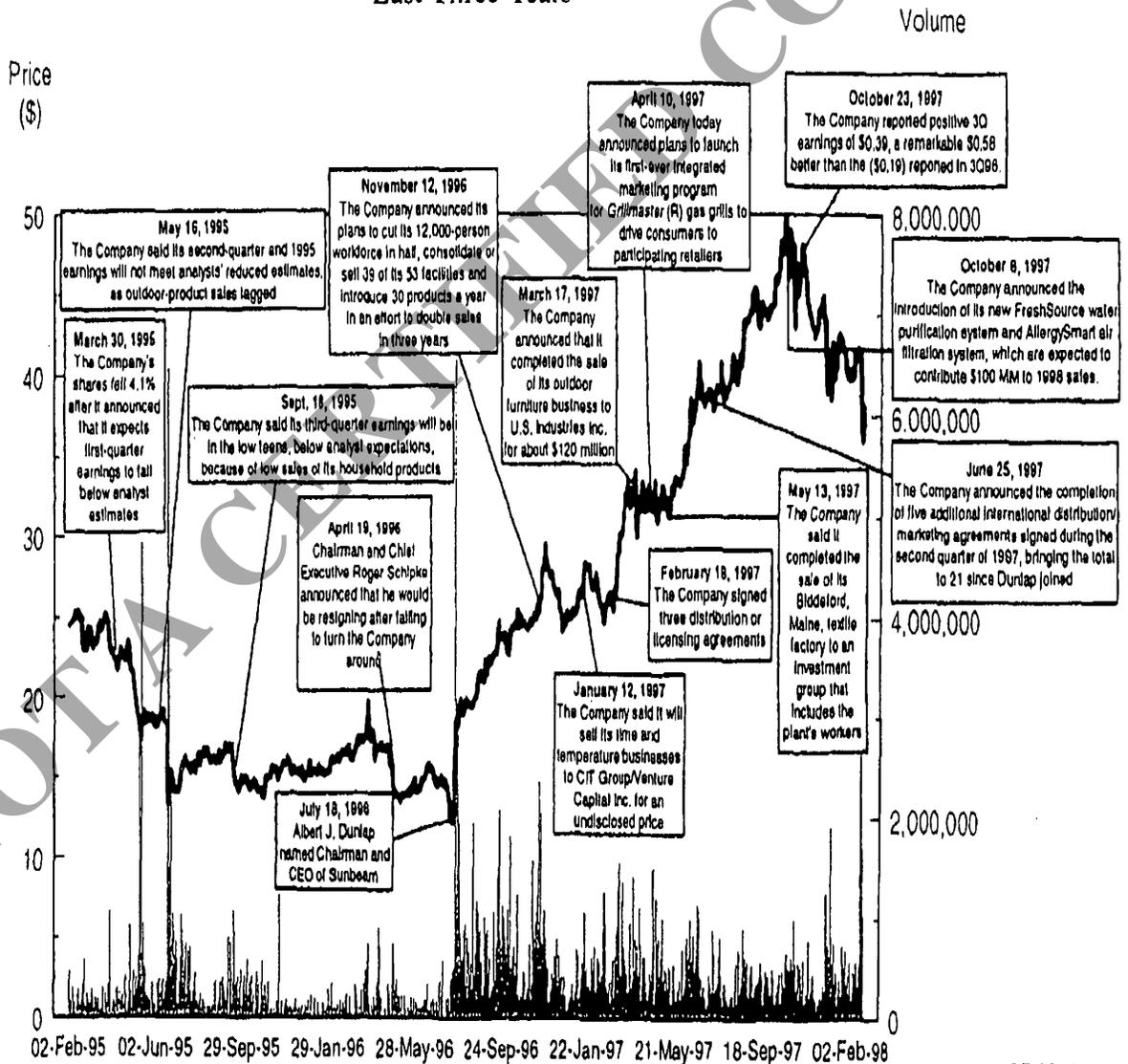
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SUNBEAM CORPORATION

Annotated Closing Share Price and Volume Analysis Last Three Years



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SUNBEAM CORPORATION

Directors and Officers

Name (Age)	Appointed	Committee(s)	Positions with Company and Other	Shares (including options) ⁽¹⁾
<u>Inside Directors</u>				
Albert J. Dunlap (60)	1996	Executive	Chairman of the Board of Directors and Chief Executive Officer of Sunbeam Corporation since July 18, 1996.	2,158,231 ⁽²⁾
Russell A. Kersh (44)	1996	Executive	Executive Vice President, Finance and Administration of Sunbeam Corporation since July 22, 1996, and has been a Director since August 6, 1996.	307,484 ⁽²⁾
<u>Outside Directors</u>				
Charles M. Elson (37)	1996	Audit and Compensation	Director since his appointment to the Board on September 25, 1996. Mr. Elson has been a Professor of Law at Stetson University College of Law since 1990 and serves as Of Counsel to the law firm of Holland & Knight (since May 1995).	7,500
Howard G. Kristol (59)	1996	Executive and Audit	Director since his appointment on August 6, 1996. He has been a partner of the law firm of Reboul, MacMurray, Hewitt, Maynard & Kristol since 1976.	7,500
Peter A. Langerman (41)	1990	Executive and Compensation	Director of the Company since 1990 and served as Chairman of the Board from May 22, 1996 until July 18, 1996. Since November 1996, Mr. Langerman has been a Senior Vice President of Franklin Mutual Advisers, Inc.	0
William T. Rutler (66)	1997	Audit	Director since his appointment on April 8, 1997. He is a Senior Vice President/Managing Director, Private Banking, First Union National Bank of Florida, a position he has held since 1986.	2,000
Faith Whittlesey (58)	1996	Compensation	Member of the Board of Directors since her appointment in December 1996. Mrs. Whittlesey has served as the Chief Executive Officer of the American Swiss Foundation since 1991.	3,500

Notes: (1) Common shares and options exercisable within 60 days, including those held beneficially, disclosed in the 4/17/97 proxy statement.

(2) Includes 686,767 and 100,000 restricted shares held by Messrs. Dunlap and Kersh respectively.

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SUNBEAM CORPORATION

Analysis of Shareholdings (000s)

	Holdings	%		Holdings	%
Institutions (1)			Insiders (2)		
Franklin Mutual Advisers, Inc.	17,541	19.2%	Albert J. Dunlap (Chairman & CEO)	2,158	2.4%
Alliance Capital Management L.P.	10,080	11.0%	Russell A. Kersh (EVP - Finance & Admin.)	307	0.3%
Columbia Management Company	5,050	5.5%	David C. Fannin (EVP - General Counsel)	69	0.1%
Fred Alger Management Inc.	2,643	2.9%			
Fidelity Management & Research Co.	2,353	2.6%	Other Directors & Executive Officers	978	1.1%
TIAA-CREF Investment Management I	2,170	2.4%			
Alex. Brown Investment Management	2,095	2.3%	Total Insider Holdings	3,513	3.8%
Wells Fargo Bank, N.A.	1,552	1.7%			
Columbus Circle Investors	1,540	1.7%			
New York State Common Retirement F	1,489	1.6%	Other Holdings	10,741	11.7%
Strong Capital Management, Inc.	1,258	1.4%			
Husic Capital Management	1,215	1.3%			
Top 12 Institutions	48,987	53.6%	Total Common Shares Outstanding (3)	85,166	93.1%
Other Institutions (148 in total)	21,925	24.0%	Options Outstanding (12/31/96)	6,272	
Total Institutions (160 in total)	70,912	77.6%	Fully Diluted Shares Outstanding	91,437	100.0%

Notes: (1) Based on Technimetrics ownership run dated 9/11/97.
 (2) Based on Proxy dated 4/17/97; includes options exercisable within 60 days and restricted shares.
 (3) From 10-Q dated 6/29/97.

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SUNBEAM CORPORATION

Market Statistics for Selected Comparable Companies

Company	(Dollars, except per share data)			Market Value		EPS ⁽¹⁾			P/E			Proj. 5 yr. EPS ⁽⁴⁾		
	Price ⁽¹⁾	LTM Price		Equity	Aggregate ⁽²⁾	Calendar			Calendar			CY98 PE/ Growth	CY99 PE/ Growth	EPS ⁽⁴⁾ growth ⁽⁴⁾
		High	Low			LTM	1998E	1999E	LTM	1998E	1999E			
Consumer Durables/Appliances														
Black & Decker	\$49.25	\$50.13	\$29.63	\$4,669.3	\$6,324.0	\$2.25	\$2.65	\$3.25	21.9 x	18.6 x	15.2	1.2 x	1.0	15.0 %
Snap-On	39.56	46.31	35.25	2,408.7	2,622.9	2.38	2.84	3.18	16.6	13.9	12.4	1.2	1.0	12.0
Stanley Works	46.25	47.38	35.50	4,128.7	4,393.3	2.04	2.40	2.75	22.7	19.3	16.8	1.6	1.4	12.0
Toro	38.56	46.31	33.00	467.2	754.9	2.90	3.25	3.57	13.3	11.9	10.8	1.0	0.9	11.5
Newell Companies	41.81	43.81	32.13	6,654.6	8,081.8	1.77	2.10	2.38	23.6	19.9	17.6	1.3	1.2	15.0
Maytag	38.75	39.25	20.00	1,680.3	4,391.2	1.62	1.90	2.28	23.9	20.4	17.0	2.1	1.8	9.5
Polaroid	41.31	60.31	36.25	1,854.5	2,479.5	2.25	3.00	3.75	18.4	13.8	11.0	1.1	0.9	12.0
Eastman Kodak	65.25	94.75	53.31	21,199.8	22,290.3	3.93	4.15	4.82	16.6	15.7	13.5	1.6	1.4	10.0
Whirlpool	58.19	69.50	45.25	4,364.7	7,565.7	2.90	3.15	4.15	20.1	18.5	14.0	1.8	1.4	10.0
					Median:				20.1 x	18.5 x	14.0 x	1.3 x	1.2 x	12.0 %
					Mean:				19.7	16.9	14.3	1.5	1.2	11.9
Consumer Packaged Goods														
Rubbermaid	\$25.75	\$30.50	\$22.88	\$3,857.2	\$4,197.4	\$0.81	0.93	1.18	31.8 x	27.7 x	21.8 x	2.3 x	1.8	12.0 %
Gillette	100.19	106.38	72.00	86,112.7	58,270.7	2.43	3.00	3.55	41.2	33.4	28.2	1.9	1.6	18.0
Tupperware	26.00	49.38	22.50	1,586.3	1,803.7	2.27	1.88	1.79	11.5	13.8	14.5	1.1	1.1	13.0
Procter & Gumble	79.50	83.44	56.63	106,847.4	109,042.4	2.53	2.91	3.28	31.4	27.3	24.2	2.1	1.9	13.0
Clorox	78.13	80.38	55.00	8,073.0	9,115.5	2.50	2.93	3.30	31.3	26.7	23.7	2.1	1.8	13.0
Kimberly-Clark	54.19	56.88	43.25	29,661.8	31,865.2	2.43	2.85	3.25	22.3	19.0	16.7	1.5	1.3	13.0
Johnson & Johnson	68.81	69.44	51.13	92,461.6	91,741.7	2.42	2.78	3.15	28.4	24.8	21.8	1.8	1.6	14.0
Colgate-Palmolive	74.50	78.69	46.81	22,037.6	24,997.7	2.36	2.43	2.77	31.6	30.7	26.9	2.4	2.1	13.0
Sara Lee	54.56	59.94	38.50	26,188.3	29,345.3	2.02	2.40	2.72	27.0	22.8	20.1	1.8	1.5	13.0
					Median:				31.3 x	26.7 x	21.8 x	1.9 x	1.6 x	13.0 %
					Mean:				28.5	25.1	22.0	1.9	1.6	13.6
Sunbeam ⁽⁵⁾	\$37.06	\$50.44	\$24.63	\$3,167.5	\$3,345.3	\$0.80	\$2.10	\$2.65	N.M. x	17.6 x	14.0 x	0.9 x	0.7	20.0 %

Notes:

- (1) Closing prices as of 2/2/98. High and low represent the latest 52 week figures
- (2) Aggregate value equals market value of equity plus short-term debt, long-term debt, minority interests and any capital leases and underfunded pensions, as appropriate
- (3) IBES median EPS estimates as of 2/2/98 and calendarized to December 31st for 1998 and 1999
- (4) IBES median long-term growth estimates as of 2/2/98
- (5) 1998E from Oppenheimer research dated 1/28/97; 1999E and long term growth estimates based on median of IBES median long-term growth estimates as of 2/2/98

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SUNBEAM CORPORATION

Analysis of Institutional Shareholdings

Institution	Equity Orientation	Total Assets Under Management		Current Holdings	% TSO	Cumulative % TSO	Report Date
			Change				
Franklin Mutual Advisors, Inc.	Growth	n/a	0	17,541,398	19.2%	19.2%	6/30/97
Alliance Capital Management L.P.	Growth, Value	173.7	(4,21,88N)	10,080,299	11.0%	30.2%	6/30/97
Columbia Management Company	Growth, Value	18.5	1,010,600	5,049,500	5.5%	35.7%	6/30/97
Fred Alger Management Inc.	Index	6.8	784,100	2,643,415	2.9%	38.6%	6/30/97
Fidelity Management & Research Co.	Growth, Value, Income	437.8	(4,195,88N)	2,352,800	2.6%	41.2%	6/30/97
TIAA-CREF Investment Management Inc.	Growth, Index	63.3	(508,900)	2,169,900	2.4%	43.6%	6/30/97
Alex. Browns Investment Management	Growth	2.9	586,600	2,094,800	2.3%	45.9%	6/30/97
Wells Fargo Bank, N.A.	Index	n/a	91,077	1,552,169	1.7%	47.6%	6/30/97
Columbus Circle Investors	Growth	14.1	(52,70N)	1,540,100	1.7%	49.2%	6/30/97
New York State Common Retirement Fd.	Index	n/a	(272,490)	1,489,100	1.6%	50.9%	7/11/97
Strong Capital Management, Inc.	Growth, Value	21.8	1,221,300	1,258,150	1.4%	52.2%	6/30/97
Husic Capital Management	Growth	4.1	737,500	1,215,400	1.3%	53.6%	6/30/97
Brown Brothers Harriman & Co.(Asset)	Growth	n/a	(194,519)	1,122,583	1.2%	54.8%	6/30/97
Valenzuela Capital Management, Inc.	Growth	0.5	211,700	1,098,000	1.2%	56.0%	6/30/97
ARCO Investment Management Co.	Growth	n/a	180,000	1,070,000	1.2%	57.2%	6/30/97
Duncan-Hurst Capital Management	Growth	2.9	482,460	915,760	1.0%	58.2%	6/30/97
Smith Barney Investment Advisors	Growth, Value	13.0	140,510	878,637	1.0%	59.1%	6/30/97
Sloat, Weisman, Murray & Co., Inc.	Value	1.2	(27,450)	877,055	1.0%	60.1%	6/30/97
Barclays Global Investors, N.A.	Growth, Value, Index, Quant.	n/a	(28,002)	750,122	0.8%	60.9%	6/30/97
Nicholas-Applegate Capital Mgmt.	Growth	32.0	245,449	738,749	0.8%	61.7%	6/30/97
California Public Employees Rtmnt.	Growth	n/a	0	723,800	0.8%	62.5%	6/30/97
Founders Asset Management, Inc.	Growth, Value	4.3	90,175	677,325	0.7%	63.3%	6/30/97
Neuberger & Berman, LLC	Value, Growth	42.9	(114,534)	632,630	0.7%	63.9%	6/30/97
Dean Witter InterCapital Inc.	Growth, Value	2.6	597,000	597,000	0.7%	64.6%	6/30/97
Cadence Capital Management	Growth	3.0	570,300	570,300	0.6%	65.2%	6/30/97
Chancellor LQT Asset Management, Inc	Growth, Value, Index	n/a	(378,300)	555,100	0.6%	65.8%	6/30/97
Bankers Trust Company (Invt. Mgmt.)	Index, Growth, Value	n/a	(172,752)	526,700	0.6%	66.4%	6/30/97
General Electric Investment Corp.	Growth, Value	n/a	5,000	516,800	0.6%	67.0%	6/30/97
California State Teachers Retirement	Index	n/a	181,371	498,294	0.5%	67.5%	6/30/97
CoreStates Bank, N.A. (PA)	Income	n/a	(62,075)	473,575	0.5%	68.0%	6/30/97
SBC Warburg Inc.	n/a	n/a	442,500	442,500	0.5%	68.3%	6/30/97
Eagle Asset Management, Inc.	Growth, Value	2.5	35,140	414,575	0.5%	69.0%	6/30/97
N.Y. State Teachers' Retirement	Index	n/a	58,500	362,900	0.4%	69.4%	3/31/97
Marvin & Palmer Associates, Inc.	Value	3.3	0	357,600	0.4%	69.8%	6/30/97
Perpetual plc	n/a	n/a	340,000	340,000	0.4%	70.1%	5/31/97
Top 35 Institutions			1,559,522	64,127,036	70.1%		
Remaining 125 Institutions			161,497	6,785,183	7.4%		
Total Institutional Holdings			1,721,019	70,912,219	77.6%		
Other Holdings				20,525,127	22.4%		
Total Fully Diluted Shares Outstanding				91,437,346	100.0%		

Summary of Latest 13F Reports
 20 Institutions increased holdings, of which 4 were new investors or first time filers
 12 Institutions decreased holdings, of which 0 eliminated their positions
 3 Institutions held their positions.
 Index funds representing 16.4% of Total Institutional Shares Outstanding.

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MORGAN STANLEY

MINUTES OF A MEETING OF
THE BOARD OF DIRECTORS OF
THE COLEMAN COMPANY, INC.
Held on Friday, February 27, 1998 at 9:30 a.m. (EST)
35 East 62nd Street, New York, New York

Directors in Attendance:

Jerry W. Levin, Chairman
Donald G. Drapkin
Frank Gifford
Lawrence M. Jones
Ann D. Jordan
John A. Moran (by telephone)
Ronald O. Perelman
James D. Robinson III
Bruce Slovin
William H. Spoor (by telephone)

Others in Attendance:

From The Coleman Company, Inc.
Joseph P. Page, Executive Vice President and Chief Financial Officer
Paul E. Shapiro, Executive Vice President and General Counsel
Steven R. Isko, Vice President - Legal and Assistant Secretary
From MacAndrews & Forbes
Howard Gittis
James Maher
William Nesbitt
From Wachtell, Lipton, Rosen & Katz
Adam O. Emmerich
Paul K. Rowe
Michael S. Katzke
From Credit Suisse First Boston
Gordon Rich
Robert Duffy

Chairman Levin called the meeting to order at 9:30 a.m. and asked Mr. Isko to act as Secretary of the meeting. Mr. Levin thanked everyone for attending and reviewed with the Board the status of the negotiations, noting that in the course of the negotiations the cash component of the consideration has been increased to \$6.44 per Company share, and that the exchange ratio for the Sunbeam stock to be received has been decreased to .5677, the effect of which was subsequently described by Mr. Rich. Mr. Levin then asked Adam Emmerich of Wachtell, Lipton, Rosen and Katz ("Wachtell") to review the proposed transaction structure and the consideration to be received.

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February 27, 1993
Board Meeting Minutes

Mr. Emmerich reviewed with the Board the transaction structure, utilizing a chart which was distributed to the Board (a copy of which is attached to these minutes), and the consideration to be received by the public stockholders of the Company and by MacAndrews & Forbes Holdings Inc. ("M&F") for the sale of CLN Holdings Inc. ("CLN Holdings"), a parent company of the Company and by the Company's public stockholders.

Mr. Emmerich then reviewed the terms of the principal documents for the transaction, utilizing a summary of such documents delivered to the Board (a copy of which is attached to these minutes). Mr. Emmerich reviewed with the Board the conditions to the first step, the merger of CLN Holdings, and the conditions to the second step, the merger of the Company and the exchange of its common stock held by the public. Mr. Emmerich reviewed again with the Board their duties under Delaware law. Mr. Emmerich then responded to questions from the directors.

Mr. Levin then introduced Mr. Gordon Rich of Credit Suisse First Boston ("First Boston"). Mr. Rich reviewed the financial terms of the proposed transaction, noting the differences from the terms that existed on Wednesday, in particular the increase in the cash component of the consideration to \$6.44 per Company share and the decrease in the exchange ratio of Sunbeam shares per Company share to .5677. Mr. Rich reviewed with the Board revised pages to the First Boston presentation delivered on Wednesday (a copy of such pages are attached to these minutes). Mr. Rich stated that the revised financial terms, based on Wednesday's closing price per Sunbeam share, has \$0.31 less value per Company share than the previous financial terms, but that based on yesterday's closing price for Sunbeam's common stock the value to the stockholders of the cash and stock to be received in the merger was approximately the same as on Wednesday. Mr. Rich then responded to question from the directors.

Mr. Rich then stated that it was First Boston's opinion that the consideration to be received by the public stockholders of the Company is fair from a financial point of view.

A discussion then ensued about Sunbeam's pending acquisitions, and Mr. Maher reviewed for the Board Sunbeam's contemplated acquisitions of Signature Brands (which owns the Mr. Coffee brand of coffee makers) and First Alert.

Mr. Levin reviewed with the Board the terms of the proposed transaction that relate to employee severance and benefits. Mr. Levin described for the Board the principal terms of the Executive Severance Policy to be adopted by the Board, the severance policy to be offered to employees that are not participants in the Executive Severance Policy, and the acceleration of stock options upon the closing of the acquisition of CLN Holdings.

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February 27, 1998
Board Meeting Minutes

Mr. Levin then introduced Paul Shapiro, General Counsel of the Company, who reviewed with the Board the proposed resolutions to be adopted.

A motion was duly made and seconded to approve the following resolutions.

WHEREAS, it is proposed that CLN Holdings enter into an Agreement and Plan of Merger (the "Holdings Merger Agreement") with Sunbeam, a newly formed subsidiary of Sunbeam ("Laser Merger Sub") and Coleman (Parent) Holdings Inc., pursuant to which CLN Holdings would be merged with Laser Merger Sub, with CLN Holdings as the surviving entity (the "Holdings Merger");

WHEREAS, in the Holdings Merger, the shares of Holdings Common Stock, par value \$1.00 per share ("Holdings Common Stock"), issued and outstanding immediately prior to the effective time of the Holdings Merger will be converted into the right to receive in the aggregate 14,099,749 shares of Sunbeam common stock, par value \$0.01 per share ("Sunbeam Common Stock"), and \$159,956,756 in cash, without interest thereon; and each share of Laser Merger Sub common stock issued and outstanding immediately prior to such time will be converted into one share of Common Stock, par value \$1.00 per share, of the surviving corporation in the Holdings Merger; and

WHEREAS, it is proposed that, concurrently with the execution and delivery of the Holdings Merger Agreement, the Company enter into an Agreement and Plan of Merger (the "Coleman Merger Agreement") with Sunbeam and a newly formed subsidiary of Laser ("Coleman Merger Sub"), pursuant to which the Company would be merged with Coleman Merger Sub, with the Company as the surviving entity (the "Coleman Merger"); and

WHEREAS, in the Coleman Merger, each share of the Company's Common Stock, par value \$0.01 per share ("Coleman Common Stock"), issued and outstanding immediately prior to the effective time of the Coleman Merger (other than (i) shares of Coleman Common Stock owned by the Company, Sunbeam or any subsidiary of the Company and (ii) Dissenting Shares (as defined in the Coleman Merger Agreement)) will be converted into the right to receive (A) 0.5677 shares of Sunbeam Common Stock, with cash paid in lieu of fractional shares, and (B) \$6.44 in cash, without interest thereon; and each share of Coleman Merger Sub common stock issued and outstanding immediately prior to such time will be converted into one share of Common Stock, par value \$0.01 per share, of the surviving Company in the Coleman Merger; and

WHEREAS, First Boston, financial adviser to the Board of Directors, has made a presentation to the Board of Directors regarding the Holdings Merger and the Coleman Merger and has advised the Board of Directors that, as of the date of hereof, the consideration to be received by the public stockholders of the Company in the Coleman Merger is fair to such stockholders from a financial point of view; and

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Board Meeting Minutes

WHEREAS, upon careful consideration of the information presented by management of the Company, First Boston and the Company's other advisers, and after full discussion of those matters which the Board of Directors believes are necessary or appropriate to enable it to evaluate and reach an informed decision regarding the fairness and advisability of the Coleman Merger and the respective transactions contemplated thereby, including the Holdings Merger, the Board of Directors has determined that it is advisable and in the best interests of the Company and its stockholders to approve the Coleman Agreement and the consummation of each of the transactions contemplated by such agreement, including the Holdings Merger; and

WHEREAS, it is proposed that the Company adopt and implement an Executive Severance Policy in substantially the form provided to the Board of Directors and that the Company enter into certain employment arrangements with Jerry W. Levin, Chairman of the Board and Acting Chief Executive Officer of the Company, and Paul E. Shapiro, General Counsel, substantially in the form of the agreements presented to the Board of Directors; and

WHEREAS, Coleman Worldwide Company ("Worldwide") intends to redeem all of its outstanding Liquid Yield Option Notes due 2013 on May 27, 1998 or as soon as practicable thereafter and following such redemption intends to merge with and into Holdings with Holdings as the surviving Company (the "Worldwide-Holdings Merger");

NOW, THEREFORE, BE IT:

Approval of Coleman Merger and Coleman Merger Agreement

RESOLVED, that the Coleman Merger is advisable and fair to and in the best interests of the Company and its stockholders; and

RESOLVED, that the form, terms and provisions of the Coleman Merger Agreement, in substantially the form attached hereto, and the consummation of the transactions contemplated thereby, including the Coleman Merger and the Holdings Merger, be, and they hereby are, authorized, approved and adopted in all respects, and that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to execute, acknowledge, certify and deliver the Coleman Merger Agreement with such amendments and/or supplemental or additional related agreements as are contemplated by the Coleman Merger Agreement, and as the officer or officers executing the same shall approve, such approval to be evidenced by execution and delivery thereof; and

RESOLVED, that the Board of Directors does hereby recommend that the stockholders of the Company approve the Coleman Merger Agreement, as the same may be executed and acknowledged on its behalf by its officers; and that the Company perform its obligations in

1 Shapiro file: JWB/ky: 2/27/98

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Board Meeting Minutes

accordance with the Coleman Merger Agreement and the other instruments and agreements contemplated thereby; and

Delaware Business Combination Statute

RESOLVED, that the Holdings Merger and the transactions contemplated by the Coleman Merger Agreement, including the Holdings Merger, are hereby approved for purposes of Section 203 of the Delaware General Company Law (the "DGCL") which transactions may result in any of Sunbeam, Laser Merger Sub or Coleman Merger Sub becoming an "interested stockholder" within the meaning of paragraph (a)(2) of Section 203 of the DGCL and by any other similar laws that may be deemed applicable to the Company; and

RESOLVED, that the Board of Directors hereby approves the Worldwide-Holdings Merger solely for purposes of Section 203 of the DGCL which transaction may result in any of Sunbeam, Laser Merger Sub or Coleman Merger Sub becoming an "interested stockholder" within the meaning of (a)(2) of Section 203 of the DGCL and by any other similar laws that may be deemed applicable to the Company; and

Adoption of Executive Severance Policy

RESOLVED, that the form, terms and provisions of the Executive Severance Policy, in substantially the form presented to the Board of Directors, and the consummation of the transactions contemplated thereby, be, and hereby are, approved and adopted in all respects; and that any officer of the Company, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to take, or cause to be taken any and all such actions as in such officer's judgment shall be necessary, desirable, appropriate or advisable to implement, carry out and effectuate the Executive Severance Policy; and

Increases In Target Bonus

RESOLVED, that the target bonuses for the following persons under the Company's Management Incentive Plan are hereby approved and adopted in all respects:

Hiro Suzuki	50%
Anthony Lenders	60%
James Rasmus	50%
Gwen Wisler	50%
Kyle Wendt	25%
Bobby Jenkins	50%
Karen Clark	50%
Gary Patten	40%

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Approval of Certain Employment Arrangements

RESOLVED, that upon information provided to the Board of Directors and upon such other matters as are deemed relevant to the Board of Directors, the Board of Directors finds that the form, terms and provisions of the agreements with Messrs. Levin and Shapiro are fair to and in the best interests of the Company and its stockholders and hereby approves and adopts each of such agreements, substantially in the forms provided to the Board of Directors as of the date hereof; and

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to execute and deliver such employment agreements substantially in the form provided to the Board of Directors as of the date hereof, with such changes therein as the officers executing the same may approve, the execution thereof by any such officer conclusively to evidence the due authorization, approval, and adoption thereof by the Board of Directors; and

Securities and Exchange Commission Filings

RESOLVED, that in order for the Company to comply with all applicable requirements of the Securities Act of 1933, as amended, and all rules and regulations thereunder (the "Securities Act"), the Securities Exchange Act of 1934, as amended, and all rules and regulations thereunder (the "Exchange Act"), and the rules and regulations of the New York Stock Exchange (the "NYSE"), any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, with the assistance of counsel, to prepare, execute, deliver and file with the Securities and Exchange Commission (the "SEC"), the NYSE or other relevant body any and all reports, statements, documents and information required to be filed (the "SEC Filings") by the Company pursuant to the Securities Act, the Exchange Act and the rules of the NYSE, including, without limitation, to the extent deemed necessary or appropriate by any officer, after consultation with counsel, preliminary and definitive proxy materials (including an information statement meeting the requirements of Schedule 14C under the Exchange Act) and any amendments or supplements thereto or other documents required in connection therewith as such officer deem necessary or appropriate in connection with the approval of the Coleman Merger Agreement and the consummation of the transactions contemplated thereby, including the Holdings Merger; and

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to (i) appear before and respond to inquiries of officials of the SEC and the NYSE in connection with the SEC Filings, (ii) pay any fees and expenses incurred in connection with the preparation and filing of the SEC Filings, and

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Board Meeting Minutes

(iii) take such other actions in connection with the SEC Filings as the officer or officers taking the same shall deem necessary, appropriate or advisable; and

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to take all action necessary or appropriate to mail or cause to be mailed to the Company's stockholders definitive proxy materials together with such other documents (including without limitation a cover letter to stockholders) as such officers, upon the advice of counsel, deem necessary or appropriate in connection therewith; and

Engagements

RESOLVED, that the Board of Directors hereby approves the engagement of First Boston as financial advisor in connection with the transactions contemplated by the Coleman Merger Agreement on the terms reflected in the form of engagement letter provided to the Board of Directors, and any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to enter into an engagement letter and indemnity arrangements with First Boston in connection therewith, all in such form as the officers executing the same may approve, the execution thereof by any such officer conclusively to evidence the due authorization thereof by the Board of Directors, and to take such actions as may be necessary or advisable to comply with the terms of said agreement and to consummate the transactions contemplated thereby; and

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to engage such other advisors and other agents as may be necessary or advisable in connection with the Coleman Merger and the other transactions contemplated by the Coleman Merger Agreement, including the Holdings Merger, and enter into engagement agreements with such firms on such terms as the officers executing the same may approve, the execution thereof by any such officer conclusively to evidence the due authorization thereof by the Board of Directors, and to take such actions as may be necessary or advisable to comply with the terms of said agreement and to consummate the transactions contemplated thereby; and

Actions by Subsidiaries

RESOLVED, that any officer of the Company and its various subsidiaries be, and each of them individually hereby is, authorized, in the name and on behalf of the Company and such subsidiaries, to cause any of such subsidiaries to enter into any agreement and any transaction relating thereto, and to consummate such transactions, as may be necessary or advisable in

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Board Meeting Minutes

connection with and in furtherance of the Coleman Merger Agreement and the transactions contemplated thereby, including the Holdings Merger; and

Regulatory Filings

RESOLVED, that, in order for the Company to comply with all applicable requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and the rules and regulations thereunder, including, but not limited to, the filing requirements thereunder, any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, with the assistance of counsel, to prepare, execute, deliver and file or cause to be prepared, executed, delivered and filed all reports, statements, documents, and information required to be filed by the Company pursuant to the HSR Act and to respond to all requests for additional information and to meet or confer with, or to cause counsel to meet or confer with, officials of the Federal Trade Commission or the Antitrust Division of the Department of Justice relating to any transactions contemplated by the Coleman Merger Agreement, including the Holdings Merger; and

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized to cooperate with Laser in the preparation, execution, delivery and filing of any other reports, statements, applications and information which may be required to be filed by Sunbeam, the Company or any of their respective subsidiaries in connection with the transactions contemplated by the Coleman Merger Agreement, including the Holdings Merger, or any other agreement contemplated thereunder, pursuant to the statutes, rules and regulations of the federal government or any applicable state, local or foreign authority or regulatory body; and

Certificate of Merger

RESOLVED, that in order for the Company to comply with all applicable requirements of the DGCL, the appropriate officers of the Company be, and each of them hereby is, authorized and directed, in the name and on behalf of the Company, with the assistance of counsel, to prepare, execute, deliver or cause to be prepared, executed, delivered and, at the appropriate time as contemplated by the Coleman Merger Agreement following the approval thereof by the Company's stockholders in accordance with the provisions of the DGCL, file or cause to be filed with the Secretary of State of the State of Delaware, a certificate of merger as required by the DGCL in order to effect the Coleman Merger, and any and all additional documents and information required to be filed therewith; and

Delisting of Coleman Common Stock from the NYSE

RESOLVED, that subject to the consummation of the Coleman Merger, any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of

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the Company, (i) to take all steps necessary or appropriate, upon the advice of counsel, to cause the Coleman Common Stock to cease to be listed on the NYSE, (ii) to appear before and respond to inquiries of officials of the NYSE in connection with the foregoing, and (iii) to take such other actions and do such other things in connection therewith as the officers taking or doing the same shall deem necessary, appropriate or advisable; and

Payment of Necessary Fees

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to pay all fees incurred by the Company in connection with the transactions, including, without limitation, fees and expenses of the Company's financial advisors, fees and expenses of the Company's legal counsel, filing fees and printing expenses, and to make all payments as they, or any of them individually, shall determine to be necessary or appropriate, such payment to be conclusive evidence of their determination; and

Litigation

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to take any steps in connection with initiating, defending or settling legal proceedings in any federal or state court or agency as they, upon the advice of counsel, deem necessary or appropriate in connection with the transactions contemplated by the foregoing resolutions; and

Expenses

RESOLVED, that any officer be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to pay any and all expenses and fees arising in connection with the matters contemplated by these resolutions; and

General

RESOLVED, that any officer of the Company or any person or persons authorized in writing by any of them be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to enter into, execute, deliver and perform any and all agreements, amendments, consents, certificates, instruments, documents, notices, requests, directions, approvals, instructions, reports, schedules, statements, information and other communications as any of such officers or such other authorized persons may determine to be required by, or otherwise necessary, advisable or appropriate in connection with, the Coleman Merger or contemplated in connection with the matters authorized in this and the preceding resolutions, and to make any filings pursuant to federal, state and foreign laws and to take all other actions that

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February 27, 1998
Board Meeting Minutes

any of such officers or such other authorized persons may determine to be necessary, desirable, appropriate or advisable in order to comply with the applicable laws and regulations of any jurisdiction (domestic or foreign), or otherwise to effectuate and carry out the purposes of the foregoing resolutions and to permit the transactions contemplated thereby to be consummated lawfully, and to take any and all such other actions, including, without limitation, filings with the SEC, the National Association of Securities Dealers or other entities, as any of such officers or such other authorized persons may determine to be necessary, advisable or appropriate in connection with any of the foregoing or for the purpose of otherwise carrying into effect the purposes of this and the preceding resolutions, such determination conclusively to be evidenced by such entry, execution, delivery, performance, or the taking of such action, by and of such officers or such other authorized persons; and

RESOLVED, that the Board of Directors hereby adopts, as if expressly set forth herein, the form of any and all resolutions required by any authority to be filed in connection with any applications, reports, filings, consents to service of process, powers of attorney, issuer's covenants and other papers, instruments and documents if in the opinion of an officer of the Company executing the same, the adoption of such resolutions is necessary, desirable, appropriate or advisable, and that the Secretary or an Assistant Secretary of the Company be, and each of them individually hereby is, authorized to evidence such adoption by inserting in this these resolutions copies of such resolutions, which will thereupon be deemed to be adopted by the Board of Directors with the same force and effect as if originally set forth herein.

RESOLVED, that all actions previously taken by any officer, director, representative or agent of the Company, in the name or on behalf of the Company or any of its affiliates in connection with the transactions contemplated by the foregoing resolutions be, and each of the same hereby is, adopted, ratified, confirmed and approved in all respects as the act and deed of the Company; and

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to take or cause to be taken any and all such further actions and to prepare, execute and deliver or cause to be prepared, executed and delivered all such further agreements, documents, certificates and undertakings, and to incur all such fees and expenses, as in his or her judgment shall be necessary, desirable, appropriate or advisable to carry out and effectuate the purpose and intent of any and all of the foregoing resolutions.

Following Mr. Shapiro's presentation, the directors asked questions and a discussion ensued.

Mr. Levin then stated that Sunbeam is holding its Board meeting during this afternoon, and that this meeting of the Company's Board would continue through the time of the conclusion

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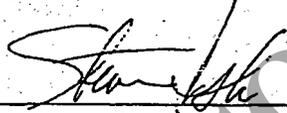
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February 27, 1998
Board Meeting Minutes

of the Sunbeam meeting.

Following the conclusion of the Sunbeam Board meeting, the directors unanimously approved the resolutions presented earlier in the day (which resolutions are included herein).

At 10:30 p.m. (EST), the meeting was adjourned.


Secretary

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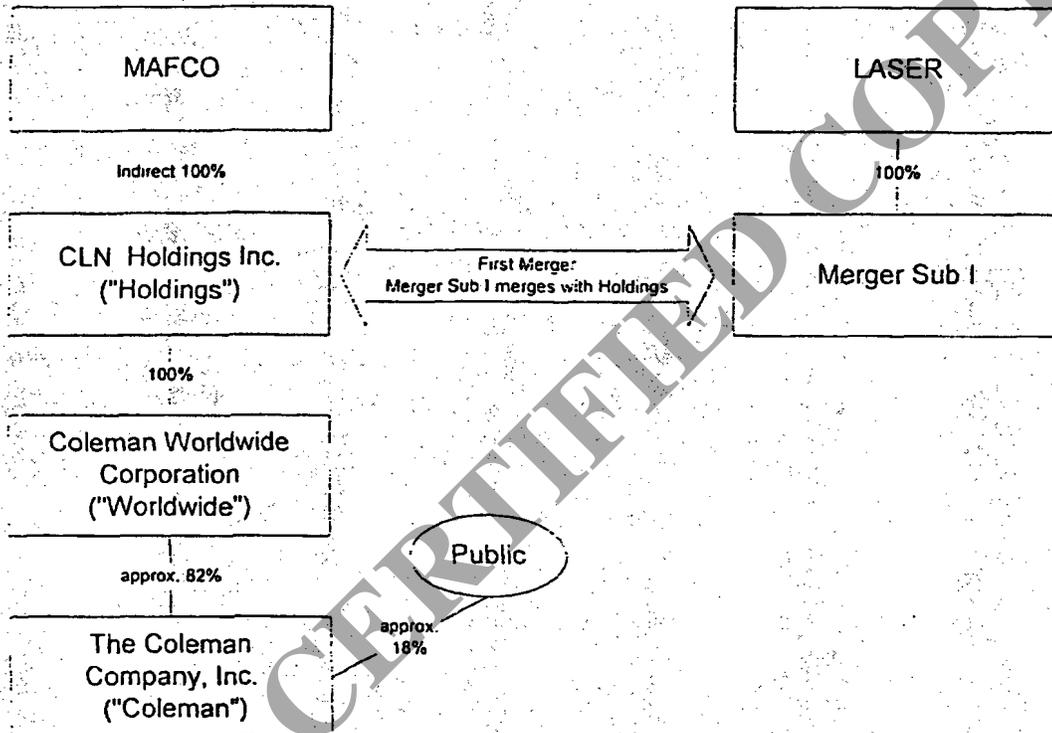
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16div-026729

PROJECT LASER PROPOSED TRANSACTION STRUCTURE



PRE-TRANSACTION STRUCTURE:
 MAFCO owns Coleman Holding Companies, and indirectly 82% of Coleman
 Public owns 18% of Coleman
 Laser forms Merger Sub I to acquire CLN Holdings

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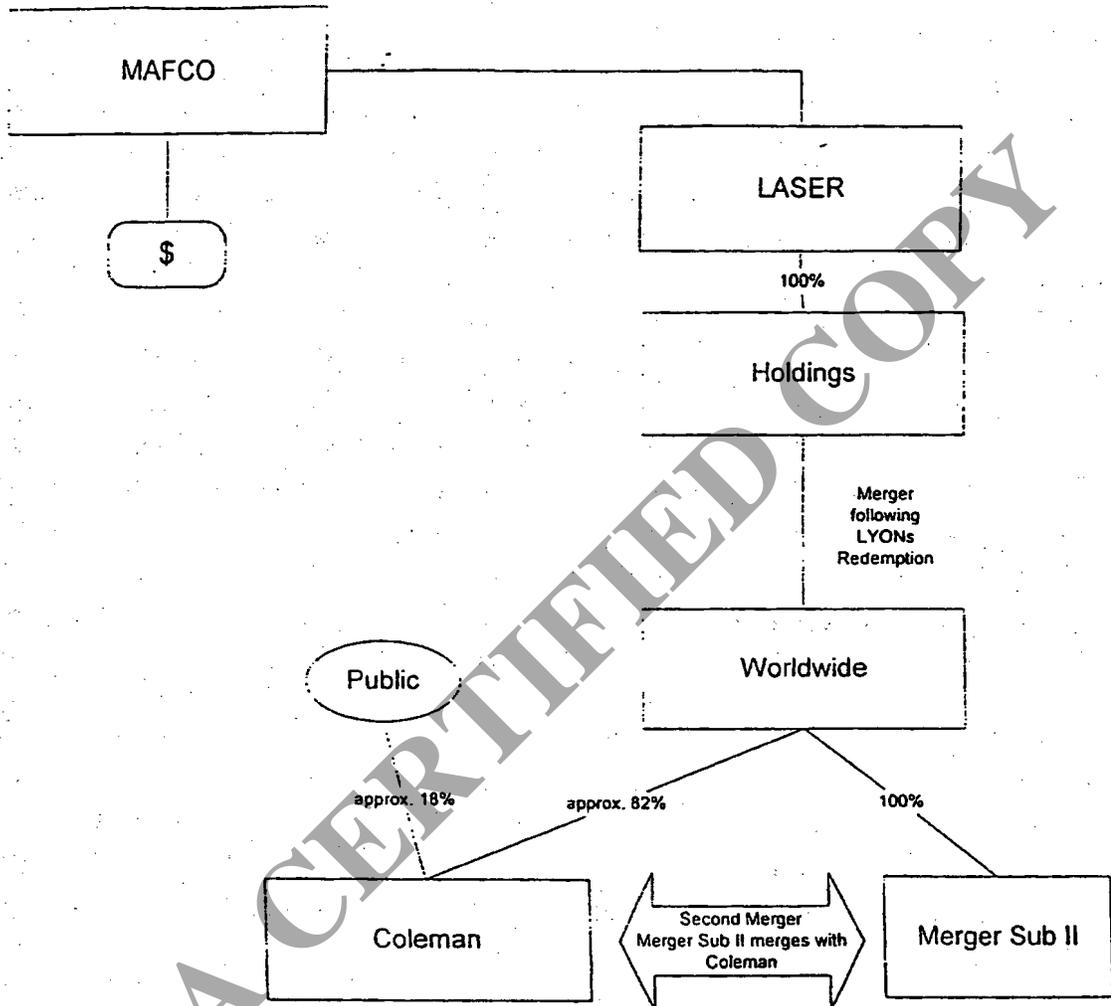
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16div-026730

PROJECT LASER PROPOSED TRANSACTION STRUCTURE



AFTER FIRST MERGER:
 MAFCO receives Laser stock and cash for Holdings shares
 Laser owns Coleman Holdings chain
 Public continues to own 18% of Coleman
 LYONs redeemed; Worldwide merges with Holdings
 Merger Sub II formed for second merger

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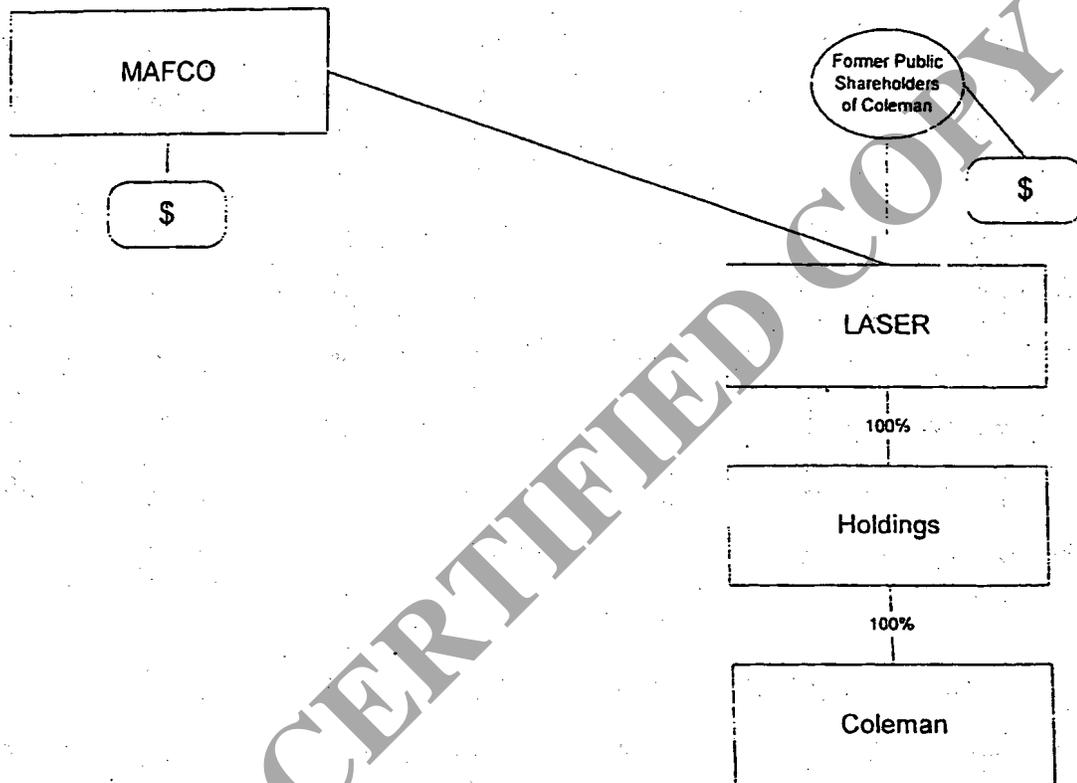
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**PROJECT LASER
PROPOSED TRANSACTION STRUCTURE**



AFTER SECOND MERGER:
Public receives Laser stock and cash for Coleman shares in the second merger
Coleman 100% owned by Laser

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16div-026732

SUMMARY OF PROPOSED TRANSACTION DOCUMENTS

<p><u>Transaction Structure</u></p>	<p>The proposed transaction is structured as two-step acquisition in which (i) first, a Laser subsidiary will be merged with a MacAndrews Holding company (the "First Merger"), with a the stockholder of such holding company receiving Laser shares and cash and Laser receiving all shares of the MacAndrews Holding company (so that such holding company and Worldwide become subsidiaries of Laser) and (ii) second, a Laser subsidiary will be merged with the Company (the "Second Merger"), with public shareholders receiving Laser shares and cash.</p>
<p><u>Consideration</u></p>	<p>Proposed transaction is structured so that (i) as to MacAndrews and public, the public shareholders receive as much as or more consideration from Laser per Company share and (ii) all Company shareholders receive the same proportions of Laser shares and cash.</p>
<p><u>Fairness Opinion</u></p>	<p>In connection with its approval of the proposed transaction, CS First Boston, the Company's financial advisor, shall deliver its opinion to the Company's Board of Directors to the effect that, the Per Share Merger Consideration is fair to the holders of shares of Company Common Stock (other than Worldwide) from a financial point of view.</p>
<p><u>Conditions</u></p>	<p>The First Merger is conditioned on the expiration of applicable antitrust waiting period and other customary conditions, including the accuracy of representations and warranties concerning Laser and the Company. The Second Merger is conditioned on the consummation of the First Merger, the</p>

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	<p>registration and NYSE listing of Laser shares to be issued to the public and certain other conditions, provided that the accuracy of representations and warranties concerning the Company (including the occurrence of a material adverse effect with respect to the Company) is not a condition to the Second Merger.</p>
<p><u>Termination</u></p>	<p>The First Merger agreement is terminable by mutual written consent of the MacAndrews Holding company and Laser, upon reaching an outside date, in the case of final, non-appealable injunction or similar decree or in the event of an incurable breach. The Second Merger agreement will terminate automatically if the First Merger does not occur.</p>
<p>Covenants</p>	<p>Customary for transactions of such type, including with respect to the conduct of business, preparation of securities law and regulatory filings, cooperation and reasonable best efforts, list of shares on NYSE and obtaining consents. In the First Merger agreement, Laser has covenanted to perform its obligations under the Second Merger agreement.</p>
<p>Representations and Warranties</p>	<p>Customary for transactions of such type, including with respect to organization, capitalization, authority, securities law filings, absence of certain changes, litigation, tax and ERISA matters and contracts.</p>
<p>Lockup</p>	<p>The stockholder of the MacAndrews Holding company has agreed to certain lockup restrictions with respect to the timing of its sales of Laser shares.</p>
<p>Indemnity</p>	<p>The stockholder of the MacAndrews Holding company has agreed to grant certain</p>

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	indemnification with respect to the MacAndrews Holding company and Worldwide liabilities.
Amendment/Waiver	The Second Merger agreement may be amended, and conditions and obligations therein waived, by agreement of the parties, but only until consummation of the First Merger.

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The Coleman Company, Inc.

Preliminary Financial Terms of Transaction

Terms	Description
Form of Transaction	"Two Step" Merger
Approximate Consideration Per CLN Share	
Public	<ul style="list-style-type: none"> 0.5677 SOC shares and \$6.44 in cash for each CLN share (Taxable)
MacAndrews Consideration	<p>Sell control of Coleman Worldwide (44.1mm CLN shares) in exchange for:</p> <ul style="list-style-type: none"> Assumption of First and Second Priority Notes (\$496 million of accreted value 11/15/97; \$525 million of accreted value 5/15/98) 14.1 million SOC shares and \$160 million in cash (Tax Free)

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The Coleman Company, Inc.

Key Transaction Multiples

Total Consideration to be Paid to CLN Shareholders	
SOC Common Share Price	\$40.625 ⁽¹⁾
Shares To Be Issued	19.4mm
	\$790mm
+ \$6.44 x 34.2mm shares	\$221mm
+ Assumed Zero-Coupon Debt	\$525mm
+ Net Consideration to Option Holders	\$ 48mm ⁽²⁾
"Common" Equity Value	\$1,583mm
+ Net Debt	\$440mm ⁽³⁾
Adjusted Market Value	\$2,023mm

Relevant Statistics		
	Price	Premium ⁽⁷⁾
CLN Last Twelve Months High ⁽⁴⁾ (2/24/98)	\$20 11/16	42.6%
CLN Last Twelve Months Low ⁽⁴⁾ (1/27/98)	\$12 1/2	136.0%
% Premium to Current Stock Price (2/24/98)	\$20 11/16	42.6%
% Premium to IPO Price (2/26/92)	\$9 3/4 ⁽⁵⁾	202.6%
Adjusted Market Value		
1997P EBITDA	\$99	20.4x
1998E EBITDA	\$164	12.4x
Price as a Multiple of		
1997 E.P.S.	\$0.44	67.1x
1998E E.P.S. ⁽⁶⁾	\$1.18	25.1x

(1) Based on SOC closing price as of 2/24/98.
 (2) Difference between \$29.50 (0.5677 SOC shares at \$40.63 per SOC share plus \$6.44 in cash) and average strike price of \$15.14 on 3.3 million options.
 (3) CLN Management estimates of 1997 Year-end Net Debt less \$90 million of estimated after-tax proceeds from the sale of the safety and security products unit.
 (4) Based on CLN closing prices through 2/24/98.
 (5) \$19.50 IPO Price adjusted for a 2-for-1 stock split.
 (6) CLN Management estimates including income from its safety and security products unit for three months.
 (7) Premium to \$29.50 (0.5677 SOC shares at \$40.63 per share plus \$6.44 in cash).

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The Coleman Company, Inc.

CLN Transaction Multiples

Valuation Sensitivity of SOC Proposal
(Dollars in Millions)

	SUNBEAM SHARE PRICE					
	\$34.00	\$36.00	\$38.00	\$40.00	\$42.00	\$44.00
Implied Consideration for Public (0.5677 SOC Shares and \$6.44 in Cash)	\$25.74	\$26.88	\$28.01	\$29.15	\$30.28	\$31.42
Common Equity Value	\$1,442	\$1,484	\$1,527	\$1,569	\$1,612	\$1,655
Net Debt ⁽¹⁾	440	440	440	440	440	440
Adjusted Value	\$1,882	\$1,924	\$1,967	\$2,010	\$2,052	\$2,095
Adjusted Value as a Multiple of:						
1997P EBITDA ⁽²⁾ \$99	19.0x	19.4x	19.9x	20.3x	20.7x	21.2x
1998E EBITDA ⁽²⁾ \$164	11.5x	11.7x	12.0x	12.3x	12.5x	12.8x
Implied Consideration as a Multiple of:						
1997 E.P.S. ⁽³⁾ \$0.44	58.5x	61.1x	63.7x	66.2x	68.8x	71.4x
1998E E.P.S. ⁽³⁾ \$1.18	21.9x	22.8x	23.8x	24.8x	25.7x	26.7x

(1) CLN Management estimate of 1997 Year-end Net Debt less \$90 million of estimated after-tax proceeds from the sale of the safety and security products unit.
 (2) Based on CLN Management estimates assuming the sale of the safety and security products unit.
 (3) 1997 actual EPS. 1998E EPS based CLN Management estimates and includes income from the safety and security products unit for the first quarter.

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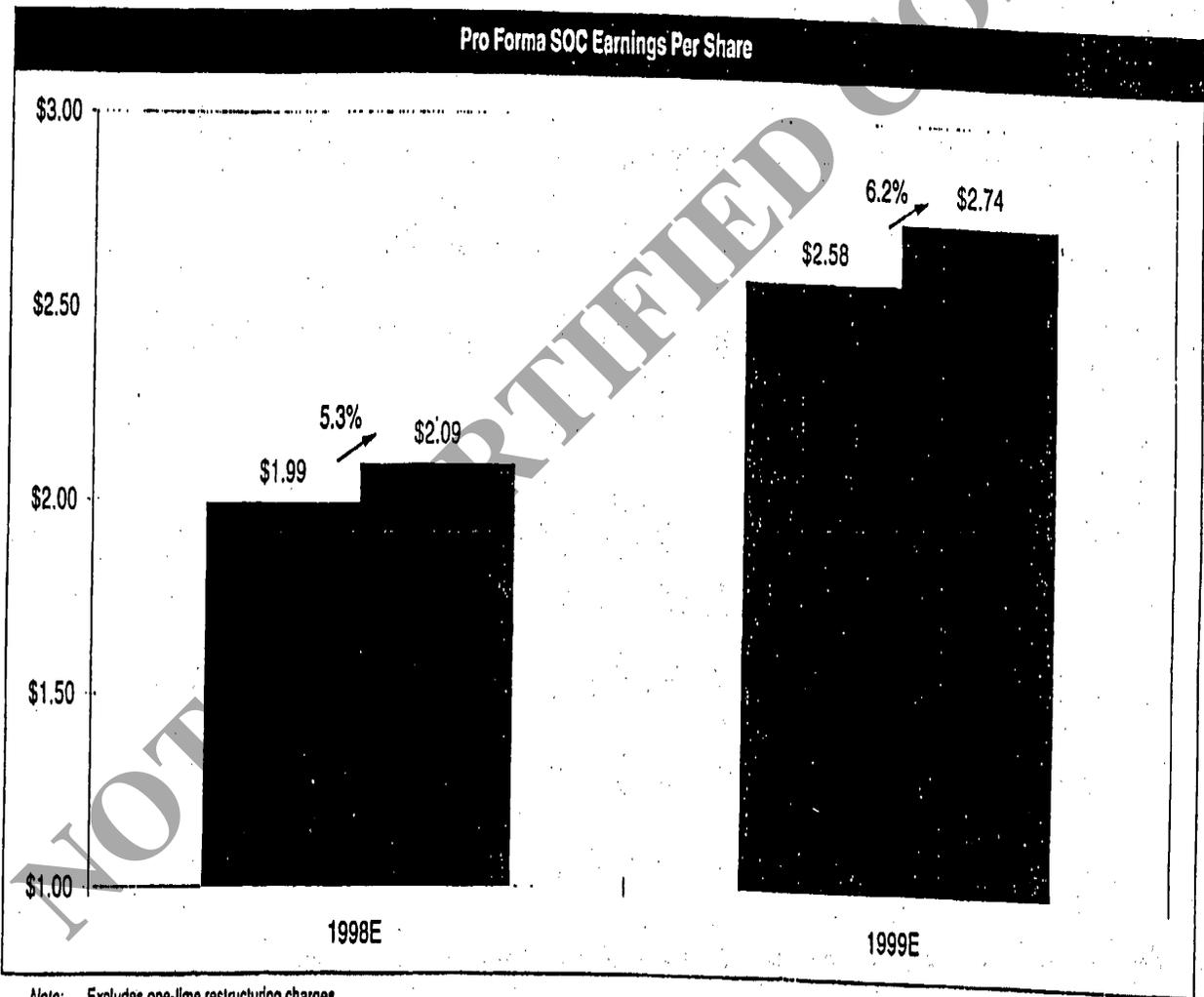
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The Coleman Company, Inc.

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Pro Forma Analysis



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Sunbeam

Roadshow Presentation
Speaking Points
March 15, 1998

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Board Meeting
→ what we accomplished
• The Transition
of Sunbeam
→ what we have set out
to do
• Can solidify the
durable goods industry

CPH EXHIBIT 130
FOR I.D. 1-22-04

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CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

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Sunbeam

Management Presentation

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Summary Terms of the Offering

Issuer:	Sunbeam Corp.
Principal Amount:	\$500MM
Issue:	Zero Coupon Convertible Subordinated Debentures Due 2018
Maturity:	20 Years
Call Provision:	NC-5
Distribution Method:	Rule 144A with Registration Rights
Targeted Pricing:	March 19
Sole Manager:	Morgan Stanley Dean Witter

• Morgan Intro

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CONFIDENTIAL TREATMENT
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Sunbeam

Management Team

Albert J. Dunlap	<i>Chairman & CEO</i>
Russell A. Kersh	<i>Vice Chairman & CFO</i>
David C. Fannin	<i>EVP & General Counsel</i>
Rich P. Goudis	<i>VP, Investor Relations & Corporate Planning</i>

• Morgan Intro

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

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Sunbeam

Summary of Acquisitions

Coleman

- \$2.2Bn Aggregate Value
- Cash & Stock Transaction
- Ron Perelman 13% ownership in SOC
- Brands (Coleman®, Camping Gaz®, Eastpak®, Powermate®)

1997 Revenues

\$1,066MM

Signature

- \$253MM Aggregate Value
- All Cash Transaction
- Brands (Mr. Coffee®, Health o meter®, Pelouze®)

\$279MM

First Alert

- \$178MM Aggregate Value
- All Cash Transaction
- Brands (First Alert®, Family Guard®, BRK®)

\$187MM

- As you know several weeks ago we embarked upon the acquisition of three publicly held companies.

- The Coleman transaction has an aggregate value of \$2.2 billion of which approximately \$815 million in stock and the remainder in cash and assumed debt. Coleman is the leader in outdoor camping & recreation, with great brand names such as Coleman, Powermate, Eastpak in the U.S. and Japan and Camping Gaz throughout Europe.
- With this transaction, Ron Perelman becomes our second largest shareholder behind Michael Price. Both men are brilliant investors and they see the potential to make a lot of money with Sunbeam.
- The Signature brands transaction is all cash and has an aggregate value of approximately \$253 million. They have two great brands, Mr. Coffee and Health o meter and are dominant in North America
- The First Alert transaction is also all cash with an aggregate value of approximately \$178 million. First Alert is the leader in home fire and carbon monoxide detectors in the U.S. and the U.K.
- With the acquisition of these three companies we essentially triple our annual revenues and take Sunbeam's market capitalization from about a billion, when I arrived, to almost \$7 billion.

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Sunbeam

Sunbeam Vision Statement

**"BECOME THE GLOBAL LEADER IN
DURABLE CONSUMER PRODUCTS
THROUGH THE CONSOLIDATION OF
LEADING CONSUMER BRANDS"**

- Back in October of 1997 we engaged Morgan Stanley to advise us on how we could create the greatest amount of shareholder value for our investors. We concluded, jointly, that the best way to create additional value at Sunbeam was to take the leadership position in the consolidation of the industries in which we compete.
- Our strategy is to become the global leader in durable consumer products. In my view we will become the P&G of our industry.
- The announcement of these three acquisitions represents merely the initiation of our new strategy.

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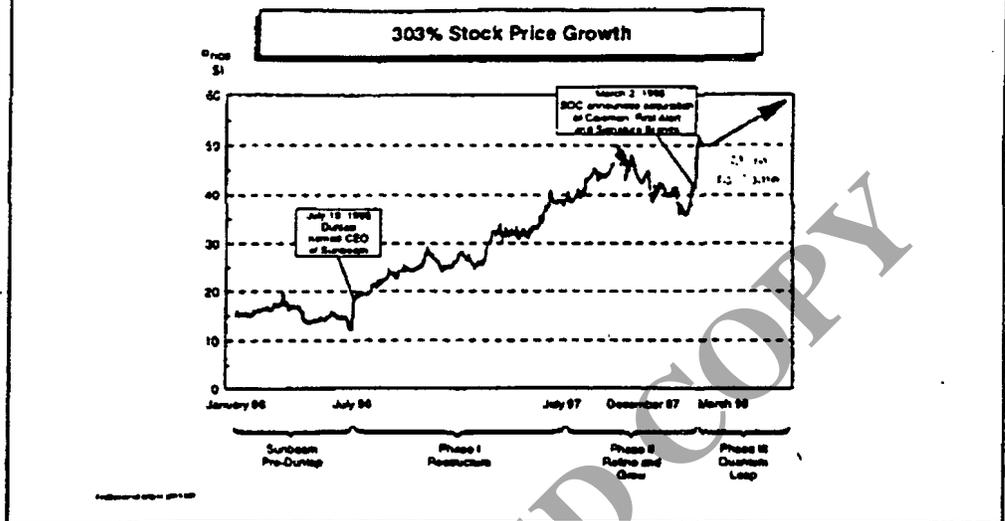
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Dunlap Value Creation Model



- I have always had the philosophy that there are 3 fundamental phases to creating shareholder value.
- The first phase, the restructuring, is when you change the management team, cut the costs, divest non-core businesses and develop a strategy for growth. I believe that if a restructuring is to be successful it needs to be completed in 12 months. People will give you a chance to make things better and are willing to change if they can see and share in the results. At Sunbeam we made all of our employees shareholders and we completed the restructuring in July of 1997 - just 12 months from when I started with the company.
- The second phase, the refinement and growth phase, begins when the restructuring initiatives are completed. It is important to continually refine the organization to ensure that you have the most competitive cost structure and that you are properly leveraging the strengths of the organization. In Sunbeam's case for example, we went from 26 factories to 8 during the restructuring, but that didn't mean that our 8 remaining factories were in world class shape. So we went back in and made the necessary investments to relay out and fix our plants.
- The third phase is the quantum leap. When you merge, acquire or sell a company you unleash an enormous amount of hidden value. I believe we did that with these three acquisitions. We'll now start the process over as we restructure and consolidate these companies into Sunbeam.

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Sunbeam

Sunbeam When I Arrived

	<u>When I Arrived</u>
Sales	\$984MM
EBITDA	\$48MM
Operating Margin %	0.1%
Market Cap	\$1,026MM
# Factories	26
# of Headquarters	6
# of Warehouses	61
# of Employees	12,000
# of SKUs	11,400

- When I arrived the company was losing market share in just about every one of their major product lines (grills, blenders, mixers and scales). The top line, excluding acquisitions, was actually declining during the previous three years. And, more importantly to note was that this revenue decline came during a period where the company invested over \$300 million in new capital.
- I firmly believe that this company had 9-12 months left before it went bust!
- There was tremendous excess capacity along with underutilized assets and factories. They had too many SKU's, had no budgetary control and had too many people.
- Additionally, margins were essentially non existent and worse of all there was no strategy to fix the company!
- That's why the Board hired me. They knew I would make the necessary difficult decisions to fix the company and restore its profitability.

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Sunbeam Phase I-Restructuring (18 Months)

Purchasing	Manufacturing	SKUs/Dist. & Warehouse	Administration	Setting/Marketing	Annualized Total
\$54	\$79	\$10	\$24	\$58	\$225
<ul style="list-style-type: none"> • Consolidate Procurement • Rationalize vendor base • Pursue Cost Reductions 	<ul style="list-style-type: none"> • Facility Reorganization • Plant specific Cost reduction • Change in Product Sourcing 	<ul style="list-style-type: none"> • Reduce Working Capital • Reduce Inventory • Rationalize Warehouse 	<ul style="list-style-type: none"> • Headquarters Consolidation • Reduce Controllable Expenses 	<ul style="list-style-type: none"> • SKU Reduction • Maximum Price Realization • Establish "One" Settlement 	Process and Systems Improvements To Support Operating and Cost Effectiveness
Sizing the Business Right and Outsourcing Non-Core Work					
Improved Supply Chain Management Install Quality System Develop Make-Buy Process Shorten New Product Cycle Time					

- As I mentioned earlier there are four key elements of the restructuring and repositioning of a company. While it is important that all four occur simultaneously, the ability to identify and implement a cost reduction and profit improvement program is critical.
- At Sunbeam we identified \$225 million of profit enhancement opportunities. About 60% of the savings was realized in the first year and the balance will be achieved in 1998.
- As you can see the scope of the cost cutting and profit improvement is quite broad.
 - We consolidated the supplier base and used that leverage to obtain lower pricing and improve the overall supply chain
 - We consolidated and rationalized our factories, creating focus factories, which yielded the largest dollar savings
 - We consolidated 6 headquarters into one, reduced redundant functions and outsourced non-core responsibilities (payroll, collections, information systems, etc.)
 - And we enhanced margins by eliminating low margin SKU's and improved pricing by reducing unnecessary give-aways (volume rebates, co-op advertising, allowances, etc.) and in select cases we actually raised prices.
- As you can see it was quite a comprehensive plan to improve our cost structure. And it was all implemented within the first 12 months.

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Sunbeam

Sunbeam Phase II - Refine and Grow

	1997			
	1Q	2Q	3Q	4Q
Sales Growth (% vs 97)	+13%	+17%	+28%	+31%
Operating Margin	14%	15%	19%	20%
# of New Products**	+4	+12	+17	+16
# of New Int'l Distributors	+16	+5	+0	+4

Note: (1) Excludes non U.S. and International product operations.

- The second phase, the refinement and growth, is the fun phase. Once all the massive moves and changes were completed, we were able to focus on refining the remaining operations.
- As you can see by both the top and bottom line percentage improvements, we were successful at accelerating the growth and improvement throughout the year. Both on a year over year basis and on a sequential basis. (Our top line was up 13%, 17%, 28% and 31%, respectively during 1997). Most importantly, in the 4th quarter we proved to ourselves that we could achieve a 20% operating margin (this was our three year goal!)
- In addition to the cost savings associated with the restructuring, the addition of 89 new products and 25 new international distribution agreements helped drive double digit sales increases and they favorably enriched the margins as a percentage of sales.
- Once we felt comfortable that the underlying business was fixed and able to support further growth, we engaged Morgan Stanley and began our quest for the third phase - the quantum leap.

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Where Are We Today?

Strong Market Share		Strong International Growth Platform	
Products	Market Position		
On-demand Cooking Appliances	#1	Sunbeam Oster	Latin America
Coffee Makers	#1	Coleman	Japan
Blenders	#1	Camping Gaz.	Europe
Bread Makers	#1	First Alert	U.K.
Mixers	#1		
Hair Clippers	#1		
Electric Blankets	#1		
Heating Pads	#1		
Smoke Alarms	#1		
CO Detectors	#1		
Rechargeable Flashlights	#1		
Scales	#1		

- I learned working for Sir James Goldsmith that tremendous shareholder value is typically locked-up within companies because they fail to pursue strategic acquisitions or mergers. I have seen countless times that when companies merge or acquire they are able, through synergies, to unlock tremendous shareholder value.

- We'll continue to unlock shareholder value when we restructure, reposition, refine and grow these companies.

- Look at the chart, this is just a short list of the product lines which we are now number one in the industry. The leadership positions in these categories, both in the U.S. and abroad will enable us to leverage numerous synergies that will accelerate our top and bottom line growth rates.

- Not only do we plan to consolidate these three companies into Sunbeam, we will also take advantage of the geographic synergies. We will use Sunbeam's strength in Latin America to sell Coleman, First Alert, Mr. Coffee and Health o meter products. And we'll use Coleman's strength in Europe and Japan to sell Sunbeam, First Alert, Health o meter and Mr. Coffee products.

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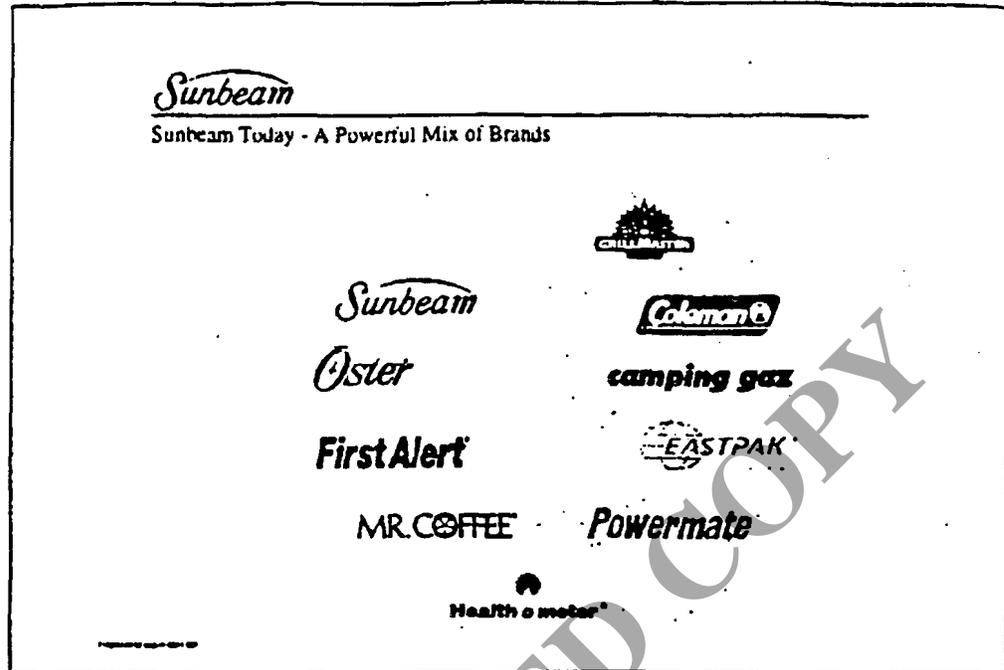
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Sunbeam

Sunbeam Today - A Powerful Mix of Brands



- I truly believe Sunbeam is quickly becoming the P&G of the durable consumer products industry. We have a tremendous brand name that is accepted across many different products throughout the house.
- The acquisition of Coleman enables us to add a second leg to the company. We believe the Coleman name is widely accepted outside the home and can be used to brand many different product lines.
- First Alert, Mr. Coffee, Health o meter, Powermate, Eastpak, Oster, Grillmaster and Sunbeam are very strong brands on their own, but the opportunity to cross brand increases the amount of leverage we have within our existing distribution channels.
- For example: we will now be able to put the Sunbeam and Health o meter name on smoke alarms and carbon monoxide detectors, we'll be able to put Oster, Sunbeam or Mr. Coffee names on Coffee makers around the world and we'll be able to put Grillmaster, Camping Gaz and Coleman on gas grills. This will provide us with a tremendous opportunity to better manage the retail channels of distribution.
- As you can see, Sunbeam has become a powerful house of brands virtually overnight!

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Sunbeam

Initial Synergies
1997 Actual (\$MM)

	Coleman ¹⁾	First Alert	Signature Brands	Total	Sunbeam
Sales	\$1,083	\$177	\$256	\$1,516	\$1,168
EBITDA (before synergies)	74	(2)	30	102	238
Op. Margin % (before synergies)	3.0%	(4.8%)	7.2%	2.8%	17.1%
# of Factories	14	3	2	19	8
# of Warehouses	5	4	1	10	18
# of Employees	7,000	2,125	995	10,120	7,000
# of SKUs	3,000	401	1,600	5,001	2,000

\$150MM in synergies

Note: (1) Represents pro forma Sunbeam for the sale of the equity and non-restructuring.

- When we looked at these companies we quickly determined that there was enormous opportunity to reduce costs through the consolidation of the three companies into Sunbeam. The opportunity to eliminate duplicate SG&A functions is the easy upside to create meaningful EPS accretion in 1999.
- The previous management at Coleman said they completed a restructuring. What they did doesn't begin to approach what I consider a restructuring. In fact I believe that Coleman is very similar to the old Sunbeam. Too many factories, too many SKU's and underperforming product lines and very weak management. Rest assured we'll fix all of that very quickly!
- First Alert and Signature Brands will be rapidly assimilated into Sunbeam as new product lines. We'll be able to quickly eliminate a large portion of their SG&A expenses.
- We have identified approximately \$150 million of synergies. During our due diligence we visited many of the facilities, talked with existing management and we feel good about the \$150 million in savings. There may be upside potential. Remember what we did at Sunbeam (we identified \$225 million on a \$1.2 billion business - and these three companies are about \$1.5 billion).

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Sunbeam

Potential Upside

- Cost:
 - Factory(ies) Rationalization
 - Procurement Savings
 - Distribution/Logistics
 - SG&A
- Revenue:
 - Cross Branding/Gain Shelf space
 - International leverage
 - Sunbeam's Latin America for Coleman, Signature Brands, and First Alert
 - Coleman's Japanese for Sunbeam, First Alert
 - Camping Gaz Europe for Sunbeam, First Alert

- Since the announcement two weeks ago, we have already established teams which have been in the field to look at the factories and we are comfortable that we'll identify additional opportunities which will create upside to our initial estimates for synergies.
- We'll conduct an in depth study of all the potential synergies, including the consolidation of factories along with procurement and distribution savings.
- Additionally, we'll assess the potential revenue and margin benefits such as cross branding and expanded international sales using the strength of each individual company we acquired.
- I expect that we'll be in a better position to communicate these opportunities, and their impact on earnings, within a few months after we close these transactions.

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Sunbeam

Substantial Consolidation Opportunity

- Competition/Acquisition Candidates
 - Strong Brands
 - Poor Management
 - Poor Cost Structure
 - Synergistic with Sunbeam
- Customers Want Consolidation
 - Cost Effective to Deal With Fewer Suppliers
 - Benefit Dealing with Financially Stronger Suppliers
 - Benefit From Outsourcing Category Management

- These three acquisitions mark the beginning of our strategy to grow through acquisitions and consolidate these fragmented industries along the way.
- Our criteria for evaluating acquisition targets is the following: companies with strong brand names, but weak management and poor cost structures, and companies which are synergistic with one or more of our core businesses.
- We can fix the cost structure of any company we acquire, thereby improving margins and generating re-investable returns. We'll then be able to invest in new products and strengthen the brand.
- As we continue to do this, we'll become stronger and stronger and our competition will become weaker. Many of our competitors are smaller and under capitalized and several of our competitors are divisions of larger companies. In either case they will be unable to attract the right resources, financial or human, to effectively compete with us. Interesting to note is that since we made the announcement of these three acquisitions, we have received numerous calls from smaller companies asking us to buy them.
- Our customers have applauded our decision to take the lead in consolidating the industry. When we talked with the President of WalMart he said, "I love what you guys did, I'm glad you guys finally listened to me".
- Our customers want to deal with fewer suppliers. They want suppliers to be financially capable of investing in the business; such as brand building and strengthening their infrastructure (EDI, information technology, just in time, etc.). And most importantly they want suppliers to help them manage their categories and improve their profitability.
- We are extremely well positioned to take the leadership role in this consolidation.

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Sunbeam

The Right Team Is In Place

- New 3-Year Contracts for Senior Executives
- Sunbeam Management has Turnaround Experience
- Some good Managers at recently acquired Companies
- Will go outside for Special Talent

- And finally, what makes this all work is having the right management team.
- I am fortunate at Sunbeam to have a very supportive Board. Michael Price plays a very active role in the Company through his representative on our Board. Michael was the catalyst in renegotiating new three year contract for myself, Russ and David. Michael and I both agreed that the only way we would launch on an acquisition strategy was if the Board and I were both committed to see it all the way through.
- Not only does the existing management team have experience in turning around Sunbeam, but there are about 20-25 people in the company that have worked for me in the past, at Scott or in other companies over the past 15 years.
- We will also find some good people in these newly acquired companies once we remove all the bureaucracy. And we'll go to the outside hire special talent such as marketing or product development people, where necessary.
- I view a management team like a sports team. Let me put the best athletes on the field and I'll win the game. I believe we have a winning team in place at Sunbeam.
- Let me now turn the presentation over to Russ Kersh. Russ has been with me the better part of 14 years and he is my most trusted business advisor.

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Sunbeam

1997 Balance Sheet (SMM)

	Sunbeam Pre-Acquisitions	Adjustments for Acquisitions	New Sunbeam
Cash	\$52.4	\$26.5	\$78.9
Assets	1,067.9	2,900.0	3,967.9
Total Assets	\$1,120.3	\$2,926.5	\$4,046.8
Liabilities	\$393.8	\$337.6	\$731.4
Debt	194.6	1,842.3	2,036.9
Equity	531.9	746.6	1,278.5
Total Liabilities plus Equity	\$1,120.3	\$2,926.5	\$4,046.8

Key Ratios

Debt/Book Capital	26%	61%
Debt/Market Capital	5%	38%

- Let me take a few minutes to review with you the pro forma financials.
- As you can see in this slide, we are adding a good amount of debt to finance the transactions. We are very confident that we'll quickly grow EBITDA and have the capability to pay down the debt.
- As Al said earlier, we expect to raise the performance of these companies up to the Sunbeam standard. This will provide us with a lot of flexibility to pay down debt and still have enough cash to invest in the business.
- At closing of the companies, the debt to cap will be around 61% and we believe we can get that to approximately 50% within the first 12 months. And we are comfortable that we'll still have the necessary resources to continue our acquisition strategy.

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Sunbeam

Sources and Uses
(\$ in millions)

Sources			Uses		
	Amount	% of Total		Amount	% of Total
Bank Debt	\$1,573	55%	Purchase Equity & Options Proceeds Cost	\$1,295	45%
Equity	814	28	Assumption of Debt/Refinancing Debt	1,287	45
Zero Coupon Convertible	500	17	Working Cap. Investment & Others	155	5
Cash	0	0	Cash Restructuring Costs	150	5
Total	\$2,887	100%	Total	\$2,887	100%

- As you can see in this chart, the financing that we are seeking will enable us to acquire these three companies and give us the resources to take a restructuring charge and invest in working capital.
- We will pay down and refinance the debt that we are assuming from these three companies. This will enable us to take advantage of lower interest rates that are at historically low levels.
- In addition we will have a \$500 million revolver that can be used to make further acquisitions.

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Sunbeam

1997 Pro Forma Income Statement
(SMM)

	<u>Sunbeam</u>	<u>Coleman</u>	<u>First Alert</u>	<u>Signature Brands</u>	<u>Pro Forma</u>
Sales	\$1,168.2	\$1,082.8	\$177.0	\$255.8	\$2,595.4
Gross Margin	330.5	306.0	41.3	67.1	716.7
% Sales	28.3%	28.3%	23.3%	26.2%	27.6%
Op. Margin	199.4	32.6	(8.5)	18.5	207.1
% Sales	17.1%	3.0%	(4.8%)	7.2%	8.0%

* All three acquired companies could achieve 20% op. margins

- We believe that the operating margins for each of these three companies can be raised up to the Sunbeam level very quickly.
- We believe the ability to increase operating margins to our levels is readily achievable.
- Based upon on 1997 sales, if we were to raise the operating margins to 10% for these three companies, that would generate an additional \$80 million in EBITDA and if we were able to achieve 15% operating margins that would create an additional \$155 million in EBITDA. And, we could generate an additional \$185 million in EBITDA if we get their margins up to Sunbeam's 17%. The leverage is quite impressive. (w/FLAT SALES)
- Now you can see why we feel very comfortable with our ability to service the debt, continue our acquisition strategy and invest in the business at the same time.

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Sunbeam

Target Financials

	1997 Combined	2000* Target
Sales	\$2.6Bn	\$4 - \$5Bn
Annual Sales Growth	--	48 - 85%
Gross Margin (%)	27.6%	30 - 35%
Operating Margin (%)	8.0%	15 - 20%

* Acquisitions accelerate top line & bottom line growth rates

- Our strategy to acquire companies and consolidate the industry will enable us to accelerate our top and bottom line growth rates.
- We believe that it is quite possible to have revenues of \$4 to \$5 billion by the year 2000 and to achieve operating margins approaching 20%.
- We'll continue to use our "acquire, restructure and grow" strategy to fold in additional acquisitions and raise their margins to those of Sunbeam.
- As we continue to get bigger and bigger we'll get stronger and stronger.

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Sunbeam

Where We Go From Here

- Consolidate Acquisitions into SOC Operating Model
- Reinvest in the Businesses and Brands
- Continue to Acquire Leading Brand Names
- Become Leader in Durable Consumer Products

- Where to we go from here? Strictly onward and upward.
- We plan to continue our selective acquisition of leading branded durable consumer product companies.
- We'll consolidate those acquisitions into the Sunbeam operating model thereby accelerating our growth rates.
- The synergies that we identify will be used to pay down debt, reinvest in the business and increase shareholder value.
- We believe we are in a unique position to consolidate our industry. The industry remains very fragmented with smaller and financially weaker players fighting for survival.
- We have just started.....stay tuned the best is yet to come!

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Incorporated

Client Services Group (CSG)

1585 Broadway

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New York, NY 10036-8293

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COMPANY:	<i>MS</i>	PHONE:	
FAX:	<i>X 0048</i>		
FROM:	<i>Shani Bone</i>	PHONE:	<i>X 9941</i>
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March 12, 1998

Sunbeam

\$500MM Rule 144A Zero Coupon Convertible Subordinated Debt Offering

SELLING MEMORANDUM

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Morgan Stanley Contacts

CFD - Chicago		MARD		CSG	
WHStrong	3-726-4400	RWKitts	x4822	WHWright	x7922
ABSavaria	3-726-4412	JBStynes	x7772	JDTyrec	x7738
		AJPuchs	x6094	JGroeller	x7314
		GKYoo	x7937	BDerito	x4303
		JDWebber	x4570	SBoone	x4941
		TChang	x8571		
		LRafii	x8179		
ECMS		Credit		Equity Research	
RKauffman	x5399	CMWhelan	x4241	AJConway	x6394
RMPorat	x5430	JCKunreuther	x4981	JDorner	x6293
WBHarris	x5462				
JMWoodworth	x5464				
SSPrasad	x5468				

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Sunbeam, Corp.

Section I

Offering Summary

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SUNBEAM, CORP.

\$500MM Rule 144A Zero Coupon Convertible Subordinated Debt Offering

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COMPANY DESCRIPTION

Sunbeam, with 1997 sales of \$1,168MM, is one of the largest manufacturers and marketers of household and specialty consumer products. The Company's products are sold through mass retailers, including Walmart, Kmart and Home Depot, and other distributors in the U.S. and internationally. The Company also sells its products to commercial end-users such as hotels.

The Company has five core product categories: Kitchen Devices, Health or Home Devices, Personal Care and Comfort Devices, Outdoor Cooking, and Professional Care Devices. An international group is responsible for selling to countries other than the U.S.

Restructuring:
In the fall of 1996, Sunbeam announced a major restructuring and growth plan under newly appointed chairman Albert Dunlap. It included the redefinition of Sunbeam's core products, divestiture of non-core businesses, hiring a new management team, closing of warehouses and consolidation of headquarters, elimination of production facilities, and a large reduction in unprofitable products. Cost reductions are expected to result in annual savings of \$225MM, most of which were already realized in 1997.

Acquisitions:
On Monday, March 2, the Company announced three acquisitions in the consumer non-durables sector: Coleman, Signature Brands and First Alert. The total aggregate value of these acquisitions is \$250m. With these acquisitions, the Company is endeavoring to take the first step in the consolidation of the consumer non-durables sector.

KEY CONTACTS

CTD - Chicago		MARD		CSG	
VHStrong	3-776-4400	RWKies	4412	WfrWright	4772
AB Swank	3-776-4412	JADynes	4777	IDTyson	4778
		AJPacks	4694	JDovler	4714
		OKYon	4797	BDerle	4483
		IDWebster	4570	SBorne	4491
		TChang	4571		
		LSchli	4179		
ECOI		Credit		Equity Research	
MLKoufman	4519	CMWhelan	4941	AJCanamy	4574
BJPons	4540	KRogers	4941	IDorner	4629
WBShurt	4467				
RMWoodward	4564				
SSPruitt	4448				
Management Team					
Albert J. Dunlap		Chairman & CEO			
Russell A. Marsh		Vice Chairman & CFO			
David C. Peaslee		BVP & General Counsel			
Ruth P. O'Connell		VP, Investor Relations & Corporate Planning			

SUMMARY FINANCIAL INFORMATION
(Estimate based on Company Reports and Corporate Finance)

(\$ in thousands)

	1997 Actual				Pro Forma		
	1993	1996	Sunbeam	Colman	First Alert	1997	1998
Revenue	11,044.9	10,842.3	11,144.2	31,064.0	11,874.0	17,119.0	18,708.1
% Growth	NM	-3.5%	12.7%	-12.4%	-8.0%	1.1%	0.4%
EBIT	518.1	502.7	530.7	363.9	199.0	323.3	338.9
% Growth	NM	NM	NM	NM	NM	NM	217.0
% Margin	4.9%	4.1%	4.7%	3.7%	-1.6%	1.9%	1.8%
Net Income from continuing operations	127.6	124.3	125.1	114.3	147.7	91.3	99.1
% Growth	NM	NM	NM	NM	NM	NM	94
% Margin	1.7%	1.1%	1.1%	0.4%	-1.1%	0.5%	0.5%
EPS	10.45	10.10	11.43	10.34	10.31	6.80	7.43
% Growth	NM	NM	NM	14.7%	NM	NM	11.2%

CAPITALIZATION
((\$ in thousands)

As of December 31, 1997

	Actual		Pro Forma As Adjusted ⁽¹⁾	
	Dollars	Percent	Dollars	Percent
Short-Term Debt	\$ 0.7	0.1%	\$ 0.7	0.0%
Long-Term Debt	194.6	26.8%	2,008.8	61.1%
Shareholder's Equity	531.9	73.1%	1,278.5	38.9%
Total Capitalization	\$ 727.2	100.0%	\$ 3,288.0	100.0%
Cash & Cash Equivalents	\$ 52.4	7.2%	\$ 78.9	2.4%

(1) Adjusted for the offering and the recent acquisitions.

OFFERING STRUCTURE

Issuer: Sunbeam Corp.
 Fictitious Name: Morgan Stanley Dean & Wrentham
 NYSE Symbol: SBC
 Estimated Proceeds: \$500 million (plus 1% over-allotment option)
 Maturity: 20 Yr.
 Price T/B: \$100
 Coupon: 0%
 Issue Price: 115.1916
 Yield To Maturity: 4.7, 3.7, 2.8
 NYSE Conversion Proceeds: 75-245
 Call Protection: NC-5Yr/5
 Use of Proceeds: Acquisition financing
 Green Sheet: 15%
 Bidding Period: None
 System: Manual
 Underwriting: Subordinated to all Senior Secured Liabilities, and pari passu with all Senior Unsecured Liabilities (less of Market Adjusted Liabilities)
 Lock-Up: 90 days. The shares issued in this offering will be "locked-up" in the following manner: 25% can be sold after 3 months, a second 25% can be sold after 6 months, and the remaining 50% can be sold after 9 months.
 Bidding Through: Not used
 Reported Ratings: BBB- (The issue has not been rated and is subject to the best and current ratings from the agencies in which the issue is being sold.)
 Order System: 3B
 Reported Time to Issue: Tuesday, March 13
 Launch Session: Launch Session
 Research Analyst Presentations: 4:15 p.m.
 Conference call presentation to SLS subscribers: 4:30 p.m.
 Monday - Thursday, March 16 - 19
 Distribution Pro Rata Offering Memoranda
 Redishes
 Thursday, March 19
 Pricing
 Tuesday, March 24
 Closing
 Company Counsel: Skadden, Arps, Slate, Meagher & Flom
 Underwriter's Counsel: Citicorp, Paine & Webber
 Company Auditor: Arthur Andersen

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SUNBEAM, CORP.

\$500MM Rule 144A Zero Coupon Convertible Subordinated Debt Offering

(continued)

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KEY SELLING POINTS

Problems

- Successful Restructuring; Creation of a Growth Company
 - During 1997, Sunbeam completed its restructuring program and initiated a growth strategy which resulted in double-digit sales growth with operating margins reaching 30% in 4Q 97, up from 22% before the turnaround
 - The Company exited all of its non-core businesses; closed 10 factories, 43 warehouses and 1 headquarters, and reduced employment by 30%
 - The Company exited 13 international distribution/licensing agreements which added \$130M in revenues, introduced 83 new products (13 U.S., 54 international) which added \$150M in revenues
 - Sunbeam gained market share in every product category in 1997
- Experienced and Committed Management Team
 - Al Dunlap has brought to an experienced management team with a history in similar turnarounds of Sunbeam
 - Market has strongly endorsed the turnaround and acquisitions through strong stock price appreciation, which is expected to continue as the market competition is interrupted
- Realizable Synergies of \$150M From Combinations
 - \$100M from combination with Coleman
 - \$25M from combination with West Alert
 - \$25M from combination with Signature Brands

The Coleman Acquisition

- Strong, Established Brand Equity Value
 - Has 40% market share in industry, market competitor for only 10%
 - Unmatched strength in the Coleman brand name accounting for strong over distribution channels
- Opportunity to Leverage Operations and Utilize Expertise in Cost Cutting
 - Current operations are operating efficiently, however, operational rationalization will result in the potential to realize substantial synergies
 - Coleman has proven highly synergistic acquisition without operational operations rationalization, bringing significant opportunity for further re-engineering

The Signature Brands Acquisition

- Accelerated Growth in Revenue and Earnings
 - This product line acquisition will be easily assimilated into the Sunbeam system, allowing for immediate recognition of significant synergies
 - Strong brand names will complement existing brands and provide major competition in certain areas (*Health & Hair*)
- Complement to New Strategic Plan
 - The transaction provides the synergies by Sunbeam to make field in acquisitions
 - Will lead to additional strategic acquisition opportunities

The West Alert Acquisition

- Enhance Existing Portfolio of Home Division Products
 - Diversify the home division device segment by capitalizing on complementary distribution channels
 - Strong brand recognition and 81 market share in water alarms and carbon monoxide alarms
- Significant Growth Potential of Home Safety Market
 - Strong momentum in alarm replacement with \$150M un tapped retail market for replacing existing 10-year old alarms
- Opportunity for Business Re-engineering and Cost Cutting
 - Sunbeam's experience in assimilating operations opens up significant re-engineering and cost cutting opportunities
 - Redundancies in business model create the opportunity to realize significant potential synergies
 - Better purchasing power to improve margins

POTENTIAL INVESTOR CONCERNS

- Significant Dependence on Management Team Particularly Al Dunlap
 - Al Dunlap and his senior management team recently signed new three year employment contracts. These agreements are primarily stock and option based, and incorporate a vesting feature which encourages management teams. In addition, Dunlap has publicly stated his commitment to Sunbeam.
- Fourth Quarter Earnings Below Street Expectations
 - Last in the history of this earnings announcement was the first that business has shown significant improvement from the recent restructuring very quickly. Fourth quarter sales jumped 31%, including diversions, from last year's numbers. Sales growth had, in fact, accelerated all year. Operating margins hit an unprecedented 30%. EPS was \$2.47 vs. \$2.00 in 4Q97.
- Growth Highly Dependent on Its Ability to Expand Internationally
 - International sales grew 17% from 3Q97 to 4Q97, representing a 42% increase from 4Q96. The growth resulted from Sunbeam's superior technology (R&D) technology in electric shavers in Japan, "laser" razors, etc., as well as a focused effort to strengthen the Oster brand name through direct response print advertising, in-store and trade demonstrations, etc.
- Integration of Recent Acquisitions and Future Acquisitions
 - Sunbeam management plans to integrate these acquisitions with immediate focus on cost synergies and brand development. Their acquisition strategy essentially involves acquiring undervalued, unmarketed brand names, and bringing this established brand equity while combining administration, marketing, finance and other corporate functions more efficiently.
- Uncertainty of A Changing Strategy
 - Sunbeam management has expressed a high degree of confidence in their ability to achieve the stated synergies of approximately \$150M by the end of 1999. They, in fact, have stated that it is not unlikely that they could achieve even greater synergies in a shorter period of time.
- Dependence on One Major Customer, Wal-Mart
 - Wal-Mart is widely recognized as the largest retailer in mass retailing. In addition, Wal-Mart offers all of the types of products manufactured by all five of Sunbeam's primary product lines, and Wal-Mart (like Sunbeam) is aggressively expanding overseas. These characteristics make Wal-Mart an excellent partner for the Company. However, Sunbeam is also aggressively expanding its distribution channels with other key retailers such as K-Mart, Target, Costco and Home Depot, and the Company now advertises on QVC.

VALUATION OF COMPARABLE COMPANIES (AS OF 1/31/98)

Company	3/31 Close	Rankings			P/E Ratios	
		1992	1993	1994	1992	1993
Black & Decker	\$49,250	\$2.61	\$3.09	18.7x	13.7x	
Permatex Brands	48,562	1.70	1.94	23.9	20.9	
Revel	47,973	2.10	1.37	21.0	20.2	
Reckitt Benckiser	28,437	1.18	1.64	24.1	19.2	
				Mean	18.2x	
Sunbeam	\$41,398 ⁽¹⁾	\$1.80	\$2.73	24.9x	13.7x	
Pre-Forest Goodson ⁽²⁾	49,376	1.80	2.88	27.4	18.1	

Notes: (1) Closing share price before the announcement of the recent acquisition.
 (2) Adjusted for 100% premium over synergies in 1998, and \$150M annual pro forma synergies in 1999.

VALUATION ISSUES

- As of February 27, 1998, Sunbeam shares were trading at \$41.73 per share and were valued at the low end of the comparable range
 - 26.9x 1998 median (P/E) estimate of \$2.60 (versus 27.4x for comparables)
 - 11.2x 1997 median (P/E) estimate of \$2.73 (versus 19.2x for comparables)
 - The low valuation was driven in part by the announcement of 4Q97 earnings 30% below street expectations
- After the restructuring announcement, Sunbeam's share price has experienced an increase of \$9.73, rising from \$41.73 to \$49.37, or 19% increase.
- The Company's current trading levels (60 percent upside potential) give the level of expected synergies (\$150M, pre-tax) and increases confidence in Sunbeam's management team and proven ability to turn around companies and to bring under-valued brand names.

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SUNBEAM, CORP.

Offering Structure and Timing

Issuer: Sunbeam Corp.

Sole-lead Manager: Morgan Stanley Dean Witter

NYSE Symbol: SOC

Estimated Proceeds: \$500 million (plus 15% over-allotment option)

Maturity: 20 Yr.

Price Talk

Coupon: 0%

Issue Price: 35.5-39.1%

Yield To Maturity: 4 ³/₄-5 ¹/₄%

Initial Conversion Premium: 22-26%

Call Protection: NC-5/Full

Use of Proceeds: Acquisition financing

Green Shoe: 15%

Sinking Fund: None

Subordination: Subordinated to all Senior Secured Indebtedness, and *pari passu* with all Senior Unsecured Indebtedness (same as Network Associates Structure)

Lock-Up: 90 days; The shares issued to MAFCO will be "locked-up" in the following manner: 25% can be sold after 3 months, a second 25% can be sold after 6 months, and the remaining 50% can be sold after 9 months

Existing Ratings: Not rated

Expected Ratings: B1/B+ (Pro forma for the acquisitions and as adjusted for the bank and convertible transactions); expected to receive rating within 4-6 weeks of the Offering

Gross Spread: 3%

Expected Timetable:

Thursday, March 12

Launch transaction

Research Analyst Presentation to salesforce (4:15pm)

Conference call presentation to MS salesforce (4:30pm)

Monday - Thursday, March 16 - 19

Distribute Preliminary Offering Memoranda

Roadshow

Thursday, March 19

Pricing

Tuesday, March 24

Closing

Company Counsel: Skadden, Arps, Slate, Meagher & Flom

Underwriter's Counsel: Davis, Polk & Wardwell

Company Auditors: Arthur Andersen

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Sunbeam, Corp.

Section II

Company Description

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SUNBEAM, CORP.

Company Description

II. COMPANY OVERVIEW

General

Sunbeam, with 1997 sales of \$1,168MM, is one of the largest manufacturers and marketers of household and specialty consumer products. The Company's products are sold through mass retailers, including WalMart, KMart and Home Depot, and other distributors in the U.S. and internationally. The Company also sells its products to commercial end-users such as hotels.

The Company has five core product categories: Kitchen Devices, Health at Home Devices, Personal Care and Comfort Devices, Outdoor Cooking, and Professional Care Devices. An international group is responsible for selling to countries other than the U.S..

Sunbeam - 1997 Sales Breakdown (\$ in MM)					
Business Segment			Geographic		
Kitchen Devices	\$ 467.3	40.0%	Domestic	\$ 950.9	81.4%
Health at Home	105.1	9.0	International	217.3	18.6
Personal Care & Comfort	186.9	16.0			
Outdoor Cooking	327.1	28.0			
Professional Care	70.1	6.0			
Outlet Sales	11.7	1.0			
Total	\$1,168.2	100.0%	Total	\$1,168.2	100.0%

Business Divisions

Kitchen Devices

- Segment includes hand and stand mixers, blenders, toasters, coffee makers, breadmakers, irons and other small appliances
- Brands: *Mixmaster, Oster, Sunbeam, Osterizer*
- Market Position: #1, 2 or 3 depending on product category
- Major competitors include Black & Decker, Hamilton Beach/Proctor Silex (Nacco), and KitchenAid (Whirlpool)

SUNBEAM, CORP.

Company Description (continued)

Health at Home Devices

- Segment includes blood pressure monitoring devices, heating pads, massagers, dental care products, humidifiers, water filters and air cleaners
- Brand: *Health at Home*
- Market Position: #1, 2 or 3 in most categories
- Major competitors include Duracraft, Braun (Gillette) and Health O'Meter

Personal Care and Comfort Devices

- Segment includes electric blankets, shower massagers, consumer hair clippers, heated throws and comforters
- Brands: *Cuddle-Up, Oster*
- Market Position: #1 in electric blankets, #1 in clippers
- Major competitors include Wahl, Andis and Teledyne

Outdoor Cooking Devices

- Segment includes gas and kettle grills, charcoal smokers, tabletop grills and accessories
- Brands: *Sunbeam, Grillmaster*
- Market Position: #1 in gas grills
- Major competitors include Charbroil, Thermos and Weber

Professional Care Devices

- Segment includes a line of professional barber and beauty equipment, including electric and battery clippers, replacement blades and other grooming accessories
- Brand: *Oster*
- Market Position: #1 in clippers
- Major competitors include Wahl and Andis

Restructuring

In the fall of 1996, after several years of disappointing results, Sunbeam announced a major restructuring and growth plan under newly appointed chairman Albert Dunlap. The restructuring portion of the plan has been substantially completed with only the final "refinement" stage remaining. It included the redefinition of Sunbeam's core products, divestiture of non-core businesses, hiring a new management team, closing of warehouses and consolidation of headquarters, elimination of production facilities, and a large reduction in unprofitable products. The actions led to a reduction of approximately half the work force (about 6,000 jobs). Cost

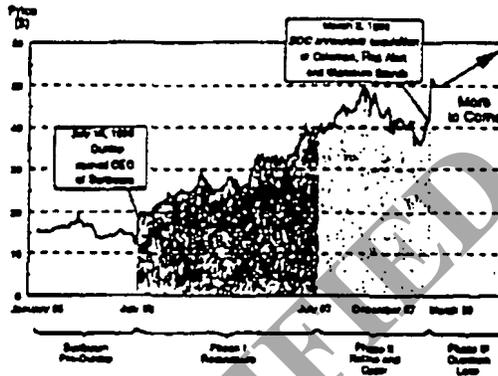
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SUNBEAM, CORP.

Company Description

(continued)

reductions are expected to result in annual savings of \$225MM, most of which were already realized in 1997.



The restructuring resulted in double-digit sequential sales growth throughout 1997 with annual sales growth of 18.7% and an operating margin improvement from 0.2% in 1996 to 17.1% in 1997, and with operating margins reaching 20% by the fourth quarter of 1997. Sunbeam's share price increased from the \$15 range before the appointment of Al Dunlap to \$41.75 before the announcement of the recent acquisitions.

Pre-Acquisition Strategy/Goals

Prior to the acquisition announcements, Sunbeam management outlined the following goals for growth in 1998:

- 25% top line and 40% EPS growth based on new innovative products, successful roll out of air and water filtration products, higher advertising levels and increased penetration of international markets
- Expansion of global distribution by adding 30 new global products as well as international distribution/licensing agreements
- Project Full Time: Strategic initiative to improve customer service levels and therefore enhance growth (initiated 2Q 1997)
- Merger or acquisitions: Management will continue to examine strategic alternatives to strengthen the business and create shareholder value

Following the acquisition, the Company is going to pursue a strategy focused on the consolidation of the consumer non-durables sector. With the significant number of underperforming companies in this, the Company believes it will have a significant opportunity to make additional future acquisitions.

SUNBEAM, CORP.

Company Description

(continued)

III RECENT ACQUISITION ANNOUNCEMENTS

General

On Monday, March 2, the Company announced three acquisitions in the consumer non-durables sector: Coleman, Signature Brands and First Alert. The total aggregate value of these acquisitions is \$2.5Bn. With these acquisitions, the Company is endeavoring to take the first step in the consolidation of the consumer non-durables sector.

Structure

The transaction will be financed with \$2.0Bn of Bank Debt, \$814MM in Sunbeam common equity (issued to MAPCO (Ron Perelman) as part of Coleman purchase) and \$500MM in Zero Coupon Convertible debt. The bank debt will consist of \$1.5Bn in term debt and a \$500MM revolver (only \$50-\$100MM drawn down initially). The transactions will be structured as follows:

- Coleman Acquisition: The transaction, valued at \$2,051MM aggregate value, will be consummated in two steps (i) acquisition of Coleman Holdings (owner of 82.4% of Coleman Operating Co. stock) from MAPCO affiliates and (ii) minority repurchase of Operating Co. public shareholders
 - The shares issued to MAPCO (14.1MM shares, \$589MM) will be "locked-up" in the following manner: 25% can be sold after 3 months, a second 25% can be sold after 6 months, and the remaining 50% can be sold after 9 months. The minority shareholders will also receive the same mix of 21% cash and 79% stock.
- Signature Brands Acquisition: Cash acquisition of all outstanding stock of Signature Brands by Sunbeam resulting in aggregate value of \$239MM. The transaction is treated according to purchase accounting and expected to close in the first week of April 1998
- First Alert Acquisition: Cash acquisition of all outstanding stock of First Alert by Sunbeam resulting in aggregate value of \$175MM. The transaction is treated according to purchase accounting and expected to close in the first week of April 1998

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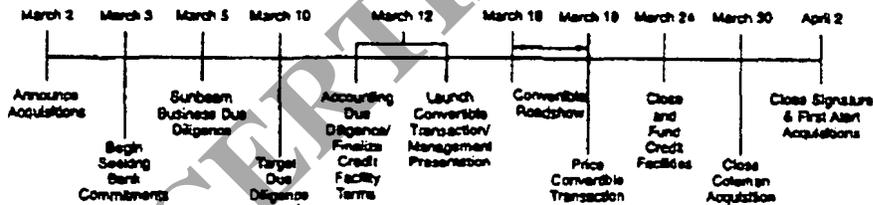
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SUNBEAM, CORP.

Company Description (continued)

SOURCES			USES		
	(\$MM)			(3MM)	
	Amount	% of Total		Amount	% of Total
Cash	\$0.0	0.0%	Purchase Equity	\$1,270.3	44.0%
Bank Debt	1,573.1	54.5	Option (Proceeds) Costs	24.8	0.9
Zero Coupon Convertible	500.0	17.3	Assumption of Debt	679.0	23.5
Equity	813.9	28.2	HoldCo Debt & Premium	607.7	21.1
			Cash Restructuring Costs	150.0	5.2
			Working Cap. Investment	105.1	3.6
			Transaction Fees	50.0	1.7
TOTAL	\$2,887.0	100.0 %	TOTAL	\$2,887.0	100.0 %

Transaction Timeline



Target Descriptions

Coleman ("CLN")

- Coleman is a leading manufacturer and marketer of consumer products for the outdoor recreation and hardware markets on a global basis. Its products have been sold domestically and internationally under the *Coleman* brand name since 1920s. Coleman attributes its market position to the strength of its brand name, the breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise
- *Outdoor Recreation*: This business segment includes lanterns and stoves, fuel, coolers and jugs, recreational soft goods, outdoor furniture, electric lights, spas and camping accessories. Products sell under the *Coleman* and *Camping Gaz* brand names in a highly competitive market

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SUNBEAM, CORP.

Company Description

(continued)

- **Hardware:** After the recent divestiture of the safety and security products business on 2/18/98, this business segment includes portable generators, air compressors and pressure washers. Products sell under the *Coleman* brand name in a highly competitive market

Business Segment			Geographic		
Outdoor Recreation	\$ 815.5	76.5%	Domestic	\$ 867.7	81.4%
Hardware	250.5	23.5	Europe	159.9	15.0
			ROW	191.9	18.0
			Eliminations	(153.5)	-14.4
Total	\$1,066.0	100.0%	Total	\$1,066.0	100.0%

	Fiscal Years Ended December 31,		
	1995	1996	1997
Revenues	\$933.6	\$1,220.2	\$1,066.0
% Change	62.2%	30.7%	-12.6%
EBITDA	127.9	99.0	99.0
% Margin	13.7%	8.1%	9.3%
EBIT	101.4	62.6	62.8
% Margin	10.9%	5.1%	5.9%
Net Income	50.0	11.3	14.3
% Margin	5.4%	0.9%	1.3%
Capital Expenditures	29.1	41.3	27.0

Signature Brands ("SIGB")

- Signature Brands designs, manufactures, markets and distributes a comprehensive line of consumer and professional products. It purchased certain operating assets of Pelouze Scale Co. in 1992 and acquired all of the outstanding shares of common stock of Mr. Coffee, Inc. in 1994

SUNBEAM, CORP.

Company Description

(continued)

- **Consumer Products:** This division includes coffeemakers, hot and iced teamakers, coffee filters, replacement decanters and accessories and consumer scales under the *Mr. Coffee* and *Health O'Meter* trademarks
- **Professional Products:** This business segment includes professional scales (medical, office, food) and commercial coffee brewers. Products are sold under the *Pelouze* and *Health O'Meter* trademarks

Signature Brands - 1997 Sales Breakdown (\$ in MM)					
Business Segment			Geographic		
Consumer Products	\$ 236.0	85.6%	Worldwide	\$ 275.7	100.0%
Professional Products	39.7	14.4			
Total	\$ 275.7	100.0%	Total	\$ 275.7	100.0%

Signature Brands - Selected Financial Information (\$ in MM)			
	Fiscal Years Ended September 29,		
	1995	1996	1997
Revenues	\$267.9	\$283.0	\$275.7
% Growth	NA	5.6%	-2.6%
EBITDA	32.5	37.4	31.0
% Margin	12.1%	13.2%	11.2%
EBIT	22.6	26.6	19.7
% Margin	8.5%	9.4%	7.1%
Net Income	1.0	2.7	0.1
% Margin	0.4%	1.0%	0.1%
Capital Expenditures	4.6	4.4	5.7

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SUNBEAM, CORP.

Company Description

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First Alert ("ALRT")

- First Alert manufactures and markets a broad range of residential safety products. It distributes its products through leading retailers mainly under the *Sentinel* premium brand name and the complementary *Family Gard* value brand name. Products are also distributed through electrical wholesalers under the *BRK* brand name for sale to professional contractors
- *Smoke Detectors*: This segment includes smoke detectors for residential application. Products are sold under the *First Alert*, *Family Gard* and *BRK* brand names and hold the #1 market share (75%) with American Sensor, Fymetics/Kidde and Coleman (as mentioned earlier sold 2/18) being the main competitors
- *Carbon Monoxide Detectors*: This segment includes carbon monoxide detectors with biometrics sensor sold under the *First Alert* and *Family Gard* brand names. The company holds #1 market position (49%) with Nighthawk (Kidde), American Sensor and Jameson as main competitors
- *Fire Extinguishers*: This segment includes fire extinguishers for use in kitchen, garage, workshop, auto and boat. Products are sold under the *Sure Grip* brand name and hold #2 market share (31%) behind Kidde (63%)
- Other manufacturing activities include miscellaneous product lines, including #4 market position in flashlights

Business Segment			Geographic		
Smoke Detectors	\$ 75.7	40.5%	US	\$ 148.8	79.6%
CO Detectors	36.2	19.4	International	38.1	20.4
Fire Extinguishers	15.1	8.1			
Other - US	21.8	11.7			
International	38.1	20.4			
Total	<u>\$ 186.9</u>	<u>100.0%</u>	Total	<u>\$ 186.9</u>	<u>100.0%</u>

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SUNBEAM, CORP.

Company Description

(continued)

First Alert - Selected Financial Information (\$ in MM)			
	Fiscal Years Ended December 31,		
	1995	1996	1997
Revenues	\$246.3	\$205.6	\$186.9
% Change	-0.9%	-16.5%	-9.1%
EBITDA	27.9	(18.3)	(2.7)
% Margin	11.3%	-8.9%	-1.4%
EBIT	20.5	(24.6)	(9.5)
% Margin	8.3%	-12.0%	5.1%
Net Income	11.4	(17.3)	(7.8)
% Margin	4.6%	-8.4%	-4.2%
Capital Expenditures	10.6	5.3	NA

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Sunbeam, Corp.

Section III

Key Selling Points

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SUNBEAM, CORP.

Key Selling Points

KEY SELLING POINTS

Sunbeam

- **Successful Restructuring; Creation of a Growth Company**
 - During 1997, Sunbeam completed its restructuring program and initiated a growth strategy which resulted in double-digit sales growth, with operating margins reaching 20% in 4Q 97, up from 0.2% before the turnaround
 - The Company exited all of its non-core businesses, closed 18 factories, 43 warehouses and 5 headquarters, reduced employment by 50% and significantly reduced its number of SKU's offered (by about 80%)
 - The Company added 25 international distribution/licensing agreements which added \$35MM in revenue, introduced 89 new products (35 U.S., 54 international) which added \$150MM in revenue
 - Significant expansion of distribution with key retailers such as WalMart, KMart, Target, Costco and Home Depot
 - The Company improved capacity utilization to 75% in 1997 (50% in 1996) and increased factory productivity by over 20% as a result of more efficient manufacturing process
 - New product development time was decreased to 6 months from over 2 years (e.g. AllergySmart)
 - Sunbeam gained market share in every product category in 1997
- **Experienced and Committed Management Team**
 - AJ Dunlap has brought in an experienced management team with a history in similar turnaround situations
 - Management incentive systems, including the newly signed management employment agreements, are designed to ensure commitment to the turnaround process
 - Market has strongly endorsed the turnaround and acquisitions through strong stock price appreciation, which is expected to continue as the recent acquisitions are integrated
- **Realizable Synergies of \$150MM from Combination**
 - \$100MM from combination with Coleman
 - \$28MM from combination with First Alert
 - \$25MM from combination with Signature Brands
 - Substantial Functional Redundancies/Cost Savings
 - Sales and Marketing
 - Finance and Administration Management

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SUNBEAM, CORP.

Key Selling Points (continued)

- Information Systems
- Consumer Research
- Product Development
- Operational Functional Redundancies
 - Distribution & Warehousing
 - Operations Management
 - Procurement Savings
 - Quality/Inspection
- The combined company sales will also benefit from dual branding of product lines as well as complementary strengths in specific European, Asian and emerging markets
- Unmatched Market Share Strength
 - In addition to the creation of a strong, international growth platform, these three acquisitions greatly enhance Sunbeam's already robust market positions.

Products	Market Position
Outdoor Cooking	#1
Coffee Makers	#1
Blenders	#1
Bread Makers	#1
Mixers	#1
Hair Clippers	#1
Electric Blankets	#1
Heating Pads	#1
Smoke Alarms	#1
CO Detectors	#1
Rechargeable Flashlights	#1
Scales	#1

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Key Selling Points (continued)

The Coleman Acquisition

- **Strong, Established Brand Equity Value**
 - Near 40% market share in industry, nearest competitor has only 10%
 - Untapped strength in the *Coleman* brand name
 - Increased leverage over distribution channels
- **Opportunity to Streamline Operations and Utilize Expertise in Cost Cutting**
 - Current businesses are operating efficiently, however, operational redundancies will result in the potential to realize substantial synergies
 - Capacity available at current facilities to absorb significant production responsibilities of Coleman
 - Coleman has grown rapidly through acquisitions without associated operations rationalization, leaving significant opportunity for business re-engineering
- **Consolidation of Outdoor Recreational Presence**
 - Combination results in less seasonal product mix in outdoor segment
 - Acquired brands expected to maintain sales levels during economic downturns
 - Increased critical mass for major innovation and advertising initiatives

The Signature Brands Acquisition

- **Accelerated Growth in Revenues And Earnings**
 - This product line acquisition will be easily assimilated into the Sunbeam system, allowing for immediate recognition of significant synergies
 - Strong brand names will complement existing brands and remove major competitors in certain areas (*Health o Meter*)
 - Strong parent will be able to strengthen relationship with major retailers and help to gain additional shelf space
- **Commitment to New Strategic Plan**
 - The transaction proves the willingness by Sunbeam to make fold-in acquisitions
 - Will lead to additional attractive acquisition opportunities

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SUNBEAM, CORP.

Key Selling Points (continued)

The First Alert Acquisition

- **Enhances Existing Portfolio of Home Devices Products**
 - Strengthens the home/kitchen device segment by capitalizing on complementary distribution channels
 - Strong brand recognition and #1 market share in smoke alarms and carbon monoxide alarms
 - Long-term relationship with major retailers
- **Significant Growth Potential of Home Safety Market**
 - Strong momentum in alarms replacement with \$850MM untapped retail market for replacing existing 10-year old alarms
- **Opportunity for Business Re-Engineering and Cost Cutting**
 - Unsatisfactory performance mainly due to manufacturing inefficiency, poor customer service and shipping delays
 - Sunbeam's experience in streamlining operations opens up significant re-engineering and cost cutting opportunities
 - Redundancies in business model create the opportunity to realize significant potential synergies
 - Better purchasing power to improve margins
 - Strong parent to build relationships with major retailers and gain additional shelf space

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Sunbeam, Corp.

Section IV

Potential Investor Concerns

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SUNBEAM, CORP.

Potential Investor Concerns

POTENTIAL INVESTOR CONCERNS

- **Significant Dependence on Management Team; Particularly Al Dunlap**

Sunbeam's recent turnaround performance appears to be due more to the capability of its management team in cost-cutting than to the innate strength of the Company's core business or growing demand for Sunbeam's products. What if the CEO and his team do not stay to fully implement Phase III of the Company's strategic plan?

Response: Al Dunlap and his senior management team recently signed new, three year employment contracts. These agreements are primarily stock and option based, and incorporate a vesting feature which encourages management tenure. In addition, Al Dunlap has publicly stated (on several occasions) that he is committed to Sunbeam and "this new employment agreement will put to rest any rumors that I [he] would leave the Company." Finally, the Company has already begun to search for other managers from within the industry who would add further depth and operational expertise to this team.

- **Fourth Quarter Earnings Below Street Expectations**

The Company recently reported fourth quarter earnings that were \$0.03 below consensus expectations, resulting in a 9% share price decline on the day of the announcement. Is this indicative of a slowdown in the double digit growth that Al Dunlap has declared is his ongoing goal?

Response: Lost in the turmoil of this earnings announcement was the fact that business has shown significant improvement from the recent restructuring very quickly. Fourth quarter sales jumped 31%, excluding divestitures, from last year's numbers. Sales growth had, in fact, accelerated all year. Fourth quarter results were broad-based with all businesses, except for blankets, showing healthy gains. Operating margins hit an unprecedented 20%. EPS were \$0.47 vs. \$(0.03) in 4Q97. In short, the Sunbeam management team sets extremely high goals and, even when they fall slightly short, it is still a significant achievement.

- **Growth Highly Dependent on its Ability to Expand Internationally**

Pre-acquisition, Sunbeam is forecasting 25-35% growth in the international business. Given the recent departure of Dixon Thayer, VP of Sunbeam's international business, and potential currency/business deterioration in Asia, aren't these growth projections a bit high?

Response: International sales grew 17% from 3Q98 to 4Q98, representing a 42% increase from 4Q97. The growth resulted from Sunbeam's superior technology (EMF technology in electric blankets in Japan, "smart" toasters, etc.), as well as a focused effort to strengthen the brand equity of the Oster brand name through direct response print advertising, in-store and trade demonstrations, etc. In addition, the recent currency turmoil in Asia is not expected to

SUNBEAM, CORP.

Potential Investor Concerns

(continued)

have a significant impact as Sunbeam has nearly all of its distribution agreements denominated in U.S. dollars with a relatively small portion of pro-forma sales from non-Japan Asia.

- **Integration of Recent Acquisitions and Future Acquisitions**

The Company is facing a significant challenge in integrating three separate companies concurrently. In addition, given the Company's new strategy of adopting the role of industry consolidator, it is likely that the Company will make additional acquisitions in the future. How can the Company be sure this integration effort will be successful?

Response: Sunbeam management plans to integrate these acquisitions with immediate focus on cost synergies and brand development. Their acquisition strategy essentially involves acquiring undervalued, unmarketed brand names, and leveraging this established brand equity while combining administration, marketing, finance and other corporate functions more efficiently. This is a strategy that Al Dunlap and his team have successfully utilized at a number of companies before Sunbeam, including Scott Paper. In addition, revenue synergies derived from increasing geographical breadth, greater penetration of product offerings to major customers (i.e. WalMart) and the potential for dual branding will also generate substantial benefits through the combination.

- **Uncertainty of Attaining Synergies**

The synergies anticipated from these combinations are sizable (over \$150MM in the first full year). How attainable are these synergies? What will be the cost of achieving these synergies?

Response: Morgan Stanley and Coopers & Lybrand (special acquisition consultants to Sunbeam) have had extensive discussions with the management of Coleman, Signature Brands and First Alert, as well as the Sunbeam management regarding the potential synergies. Following these discussions and the subsequent due diligence performed prior to the announcement of these transactions, the Sunbeam management has expressed a high degree of confidence in their ability to achieve the stated synergies of approximately \$150MM by the end of 1999. They, in fact, have stated that it is not unlikely that they could achieve even greater synergies in a shorter period of time. In addition, while Andrew Conway has modeled \$150MM in synergies in 1998, he feels that there could be upside to this figure.

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SUNBEAM, CORP.

Potential Investor Concerns

(continued)

- **Dependence on One Major Customer, WalMart**

The Company presently attributes over 20% of its total revenues to WalMart. Following the acquisition, this concentration will increase to approximately 25%. Isn't this dependence on one major customer dangerous for the Company?

Response: WalMart is widely recognized as the industry leader in mass retailing. In addition, WalMart offers all of the types of products manufactured by all five of Sunbeam's primary product lines, and WalMart (like Sunbeam) is aggressively expanding overseas. These characteristics make WalMart an excellent partner for the Company. However, Sunbeam is also aggressively expanding its distribution channels with other key retailers such as KMart, Target, Costco and Home Depot, and the Company now advertises on QVC. Sunbeam also has 22 factory outlet stores which are designed to sell surplus or discontinued merchandise. Moreover, these acquisitions also seem to make Sunbeam an increasingly important supplier to all the major retailers.

Sunbeam, Corp.

Section V

Valuation Considerations

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SUNBEAM, CORP.

Valuation Considerations

VALUATION CONSIDERATIONS

- As of February 27, 1998, Sunbeam shares were trading at \$41.75 per share and were valued at the low end of its comparable range.
 - 20.9x 1998 median 1/B/E/S estimate of \$2.00 (versus 22.4x for comparables)
 - 15.2x 1999 median 1/B/E/S estimate of \$2.75 (versus 19.2x for comparables)
 - The low valuation was driven in part by the announcement of 4Q97 earnings \$0.03 below street expectations
- After the transaction announcement, Sunbeam's share price has experienced an increase of \$9.75, rising from \$41.75 to \$49.38, an 18% increase.
- The Company's current trading levels are warranted given the level of expected synergies (\$150MM, pre-tax) and investors' confidence in Sunbeam's management team and proven ability to turn around companies and leverage undervalued brand names.
- Investors also view there to be other, significant acquisition opportunities for Sunbeam to capitalize on in its new role as an industry consolidator.
- Investors focus on the 1999 P/E multiple (the first full year of ownership and full cost savings), and currently price Sunbeam at a discount reflecting execution risk for the integration.

Company	3/11 Close	Earnings		Price/Earnings	
		1998E	1999E	1998E	1999E
Black & Decker	\$49.250	\$2.61	\$3.09	18.9x	15.9x
Fortune Brands	40.562	1.70	1.94	23.9	20.9
Newell	47.875	2.10	2.37	22.8	20.2
Rubbermaid	28.437	1.18	1.44	24.1	19.7
			Mean	22.4x	19.2x
Sunbeam	\$41.750 ⁽¹⁾	\$2.00	\$2.75	20.9x	15.2x
Pro Forma Sunbeam ⁽²⁾	49.375	1.80	2.85	27.4	18.1

Notes: (1) Closing share price before the announcement of the recent acquisitions.
 (2) Adjusted for \$66MM pre-tax synergies in 1998, and \$150MM annual pre-tax synergies in 1999.

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Sunbeam, Corp.

Section VI

Pro Forma Financials

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SUNBEAM CORPORATION

Pro Forma Financials

INCOME STATEMENT DATA

	1997 Actual					Pro Forma	
	Restated	Consolidated	Post Acq	Signature Brands	Adjustments	1997	1998
Sales	8,468.3	23,888.8	2284.8	1278.9	39.1	21,786.1	23,456.4
% of Sales	100%	-28%	-2.7%	1.5%	0.5%	100%	100%
Cost of Goods Sold	177.7	788	348.1	188.2	84.4	1,488.2	2,111.3
% of Sales	2.1%	3.3%	1.5%	1.5%	1.0%	7.3%	9.0%
Gross Profit	8288.3	23100.8	1936.7	1090.7	(44.3)	20297.9	21345.1
% of Sales	97.9%	96.7%	84.8%	84.8%	-0.5%	92.7%	91.0%
SG&A Expenses	171.1	1484.4	39.2	89.2	84.4	415.7	464.3
% of Sales	2.0%	6.2%	1.7%	7.0%	0.4%	1.9%	2.0%
Advertising & Promotion	0.0	81.4	0.0	0.0	81.4	81.4	81.4
% of Sales	0.0%	1.0%	0.0%	0.0%	1.0%	0.4%	0.3%
Research & Development	0.0	17.0	0.0	0.0	0.0	0.0	14.3
% of Sales	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%	0.1%
Operating Income	8117.2	21616.4	1897.6	1001.5	(128.7)	19870.1	20880.8
% of Sales	95.9%	90.5%	83.1%	78.4%	-0.5%	91.2%	89.1%
% of Group	64.8.18	1.3%				288.3%	37.0%
Net Non-Government Advertising					231.3	231.3	231.3
Old Creative Advertising	0.0	18.3	1.1	3.2	(21.6)	15.3	18.2
Promoting Pro-Incentive			0.0	0.0	0.0	0.0	0.0
Industry Trade Associations					21.2	1.1	1.1
Other Sponsorships	0.0	1	1.0	0.0	0.0	1.5	0.7
% of Sales	-0.1%	0.0%	0.0%	-0.1%	0.0%	0.0%	0.0%
Pro-Tax Provisions	0.0	0.0	0.0	0.0	(246.2)	(246.2)	(246.2)
% of Sales	0.0%	0.0%	0.0%	0.0%	-2.9%	-1.1%	-1.0%
EBIT	296.7	48.8	94.0	28.3	212.7	288.8	482.9
% of Sales	3.5%	0.2%	4.1%	2.2%	2.5%	1.3%	2.1%
Depreciation & Amortization	24.4	26.2	0.0	11.2	243.7	133.2	148.1
EBITDA	281.3	75.0	94.0	39.5	266.9	422.0	631.0
Net Income	11.4	49.0	3.8	12.1	29.7	121.7	150.1
Debtors' Period Taxes	149.3	23.8	(27.1)	2.8	(232.9)	149.2	129.8
Tax Provisions	94.2	7.7	(5.2)	1.7	84.8	77.2	127.1
Effective Tax Rate	21.3%	32.6%	14.1%	13.4%	44.8%	44.8%	49.5%
Adjusted Tax Rate			11.2%	11.7%		21.0%	23.0%
Net Income	1123.3	916.0	(27.8)	28.3	(632.2)	288.8	504.4
% of Sales	13.3%	3.8%	-1.2%	0.2%	-2.9%	1.3%	2.1%
Minority Interest	0	1.2	0	0	0.0	1.2	0.0
Preferred Dividends	0	0	0	0	0.0	0	0
Net Income Available to Common	1123.3	914.8	(27.8)	28.3	(632.2)	287.6	504.4
% of Sales	13.3%	3.8%	-1.2%	0.2%	-2.9%	1.3%	2.1%
% of Group	-1041.3%	11.0%	-11.2%	-13.0%		11.0%	112.0%
Bank S.P.A.	0.0	0.0	0.0	0.0	0.0	0.0	0.0
% of Group	-1241.3%	11.0%	-11.2%	-13.0%		11.0%	112.0%
Wtd Avg Share Outstanding (1)	39.8	33.8	24.77	1.07		194.8	197.8
% of Group	0.3%	0.1%	0.1%	0.0%		0.9%	0.8%
Preferred S.P.A.	0.0	0.0	0.0	0.0		0.0	0.0
% of Group	-1241.3%	11.0%	-11.2%	-13.0%		11.0%	112.0%
Wtd Avg Share Outstanding (1)	10.3	10.3				111.0	111.0
% of Group	0.1%	0.0%				0.5%	0.5%

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SUNBEAM CORPORATION

OMB STATEMENT DATA

	Actual			Projections	
	1996	1996	1997	1998	1999
Sales	\$1,716.9	\$1,864.3	\$1,168.3	\$1,433.2	\$1,851.5
% Growth		-3.2%	18.7%	22.7%	29.3%
Cost of Goods Sold	809.1	808.3	837.7	978.9	1,262.7
% of Sales	79.6%	82.1%	71.7%	68.3%	68.2%
Gross Profit	207.8	176.0	330.5	454.3	588.8
% of Sales	30.4%	17.9%	28.3%	31.7%	31.8%
SG&A Expense	137.5	173.6	131.1	170.5	218.5
% of Sales	12.5%	17.6%	11.2%	11.9%	11.8%
Advertising & Promotion	0.0	0.0	0.0	0.0	0.0
% of Sales	0.0%	0.0%	0.0%	0.0%	0.0%
Research & Development	0.0	0.0	0.0	0.0	0.0
% of Sales	0.0%	0.0%	0.0%	0.0%	0.0%
Operating Income	70.2	2.3	199.4	283.8	370.3
% of Sales	6.9%	0.2%	17.1%	19.8%	20.0%
% Growth		-91.7%	845.1%	42.3%	30.3%
Goodwill Amortization	0.0	0.0	0.0	0.0	0.0
Other Expenses/(Income)	0.2	1.6	(1.2)	(1.2)	(1.2)
% of Sales	0.0%	0.2%	-0.1%	-0.1%	-0.1%
EBIT	70.1	0.7	200.7	285.0	371.5
% of Sales	6.9%	0.1%	17.2%	19.9%	20.1%
Depreciation & Amortization	47.4	47.4	38.6	55.0	72.7
EBITDA	117.5	48.1	239.3	340.0	444.3
Net Interest	9.4	13.6	11.4	6.7	(0.7)
Earnings Before Taxes	60.6	(12.9)	189.3	278.3	372.2
Tax Provision	23.0	(6.7)	66.2	97.4	130.3
Effective Tax Rate	38.0%	36.4%	34.9%	35.0%	35.0%
Net Income	\$37.6	\$(8.3)	\$123.1	\$180.9	\$241.9
% of Sales	2.7%	-0.8%	10.5%	12.6%	13.1%
Minority Interest	0	0	0	0	0
Preferred Dividends	0	0	0	0	0
Net Income Avail. to Common	\$37.6	\$(8.3)	\$123.1	\$180.9	\$241.9
% of Sales	2.7%	-0.8%	10.5%	12.6%	13.1%
% Growth		-121.8%	-1407.6%	46.9%	33.7%
Basic E.P.S.	\$0.45	\$(0.10)	\$1.45	\$2.06	\$2.72
% Growth		-121.8%	-1563.9%	42.1%	31.9%
Wtd Avg Shares Outstanding (1)	82.9	82.9	84.9	87.9	89.0
% Growth		0.0%	2.4%	3.4%	1.3%
Petty Dividend E.P.S.	\$0.45	\$(0.10)	\$1.41	\$2.00	\$2.64
% Growth		-121.8%	-1522.4%	42.2%	31.0%
Wtd Avg Shares Outstanding (1)	82.8	82.9	87.5	90.5	91.6
% Growth		0.1%	5.6%	3.3%	1.3%

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Sunbeam, Corp.

Section VII

Comparable Company Analysis

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SUNBEAM CORPORATION
Market Statistics for Selected Comparable Companies

Table with columns: Company, Price, P/E, Market Value, EPS, Dividend, Payout, etc. Lists companies like Sunbeam, Sunbeam Foods, Sunbeam Products, etc.

Notes:
(1) Change prices as of 3/11/98.
(2) All figures are based on the most recent data available.
(3) All figures are based on the most recent data available.

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Sunbeam, Corp.

Section VIII

Share Price Performance

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SUNBEAM CORPORATION

Annotated Closing Share Price and Volume Analysis

March 06, 1995 - March 06, 1998

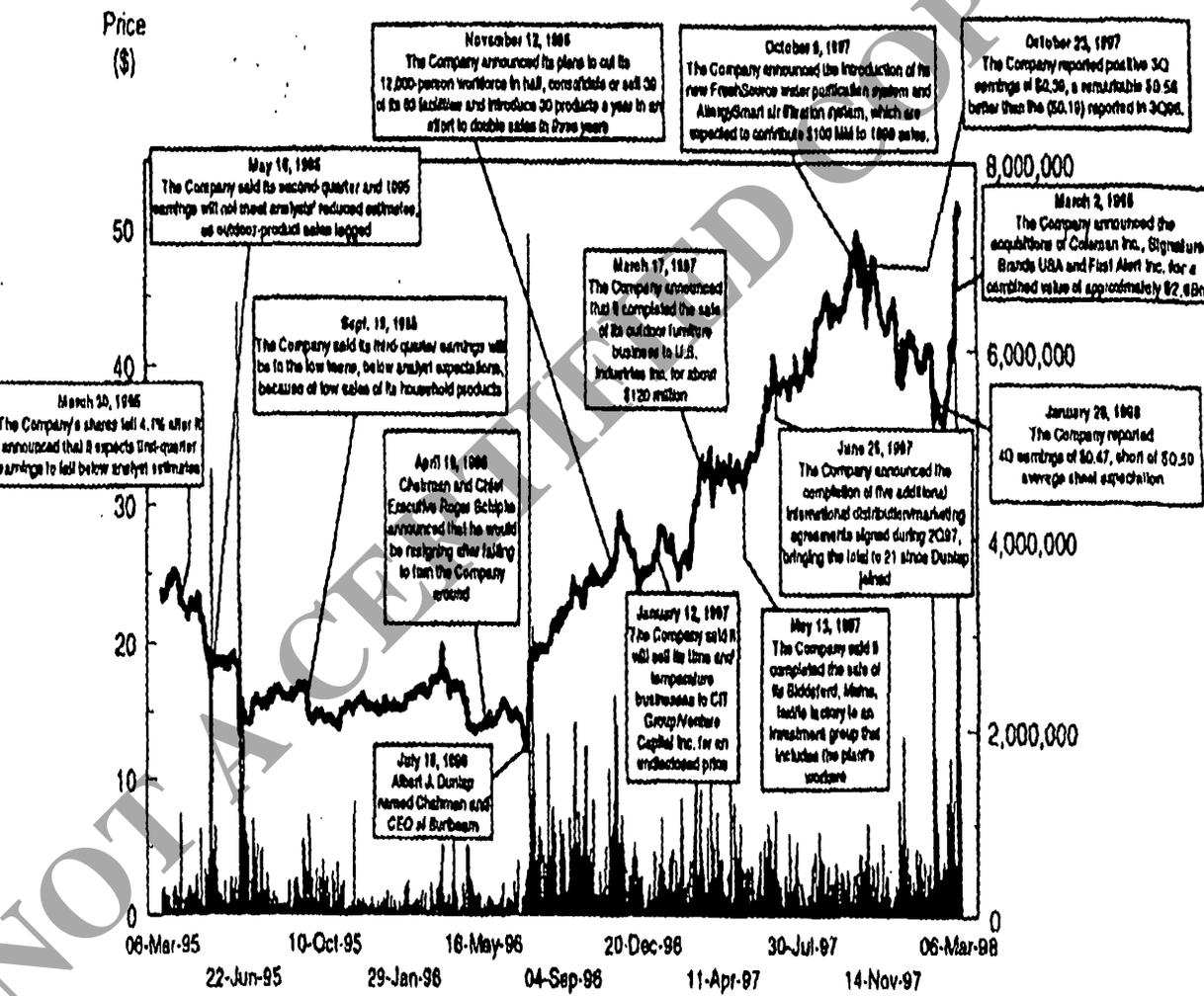
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Sunbeam, Corp.

Section IX

Institutional Shareholder Analysis

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SUNBEAM CORPORATION

Analysis of Institutional Shareholdings for Sunbeam Corporation

Institution	Equity Orientation	Total Assets Under Management		Current Holdings	Compliance		Report Date
		Change	Change		STO	PTO	
Fidelity Mutual Adviser, Inc.	Growth	nh	0	17,341,298	20.5%	20.5%	12/31/97
Alliance Capital Management L.P.	Growth, Value	173.7	(734,549)	8,831,134	10.1%	10.6%	12/31/97
Columbia Management Company	Growth, Value	18.5	(241,630)	4,137,203	4.8%	35.5%	12/31/97
Frost Alger Management, Inc.	Index	6.8	461,820	4,031,741	4.7%	40.2%	12/31/97
Stetshardt Management Company, Inc.	nh	nh	0	3,589,199	4.2%	44.4%	9/30/96
Alta. Brown Investment Management	Growth	2.9	(16,300)	2,074,300	2.4%	46.4%	9/30/97
New York State Common Retirement Fd.	Index	nh	2,300	1,544,300	1.8%	48.4%	9/30/97
Active Investment Management, Inc.	Growth, Value	11.9	444,800	1,490,800	1.7%	30.7%	12/31/97
Putnam Investment Management	Growth, Value	160.1	70,000	1,412,000	1.7%	52.0%	12/31/97
Strong Capital Management, Inc.	Growth, Value	21.8	144,430	1,404,800	1.6%	53.4%	9/30/97
Smith Barney Investment Adviser	Growth, Value	13.0	83,300	1,399,732	1.5%	55.2%	12/31/97
Cohen & Stebbins	Growth	14.1	(234,500)	1,246,000	1.5%	56.4%	12/31/97
Brown Brothers Harriman & Co (Asset)	Growth	nh	91,899	1,233,317	1.4%	58.1%	12/31/97
TIAA-CREF Investment Management, Inc.	Growth, Index	43.3	(113,700)	1,118,300	1.3%	59.4%	12/31/97
Valentia Capital Partners, Inc.	Growth	0.5	113,300	1,091,800	1.3%	60.4%	12/31/97
Phoenix Investment Counsel, Inc.	Growth, Value	19.9	902,800	1,012,800	1.2%	61.8%	9/30/97
Burdys Global Investor, N.A.	Growth, Value, Index, Quot.	nh	144,747	919,993	1.1%	62.9%	12/31/97
Hovis Capital Management	Growth	4.1	(107,830)	918,830	1.1%	64.9%	12/31/97
Founders Asset Management, Inc.	Growth, Value	4.5	219,794	917,171	1.1%	65.1%	9/30/97
Wells Fargo Bank, N.A.	Index	nh	(177,899)	907,276	1.1%	66.2%	12/31/97
Provident Investment Counsel, Inc.	Growth	18.0	(40,000)	871,000	1.0%	67.2%	12/31/97
California State Teachers Retirement	Index	nh	(40,000)	852,394	1.0%	68.1%	12/31/97
Prudential Mutual Fund Inv. Mgmt.	Value, Growth	68.7	719,300	791,000	0.9%	69.1%	12/31/97
American Express Financial Adviser	Growth, Value, Index	128.0	550,897	749,401	0.9%	70.0%	12/31/97
Nichols Applegate Capital Mgmt.	Growth	32.0	(116,100)	733,443	0.9%	70.4%	12/31/97
California Public Employees Assoc.	Growth	nh	0	723,800	0.8%	71.7%	9/30/97
Baillie Asset Management, Inc.	Growth, Value	2.3	149,160	630,320	0.7%	71.4%	12/31/97
Bankers Trust Company (Inv. Mgmt.)	Index, Growth, Value	nh	(33,900)	621,700	0.7%	73.1%	12/31/97
State, Williams, Murray & Co., Inc.	Value	1.2	(91,825)	613,206	0.7%	73.9%	12/31/97
Endeavor Capital Management	Growth	3.0	25,400	547,400	0.7%	74.3%	12/31/97
General Electric Investment Corp.	Growth, Value	nh	48,330	543,370	0.7%	75.2%	12/31/97
Fidelity Management & Research Co.	Growth, Value, Income	433.8	(943,200)	560,100	0.7%	75.8%	12/31/97
Duckworth Capital Management	Growth	2.9	(347,600)	510,140	0.6%	76.3%	12/31/97
First Union Nat. Bank/Capital Mgmt.	Index, Value, Growth	54.7	164,711	501,674	0.6%	77.0%	12/31/97
Covestor Bank, N.A. (PA)	Income	nh	(42,875)	473,375	0.6%	77.4%	6/30/97
Frank Russell Company	Growth	8.8	252,800	427,800	0.5%	78.1%	9/30/97
Neuberger & Berman, LLC	Value, Growth	42.9	23,272	394,942	0.5%	78.4%	12/31/97
Dean Witter (Inv. Capital) Inc.	Growth, Value	2.6	(171,800)	388,000	0.4%	79.0%	12/31/97
ARCQ Investment Management Co.	Growth	nh	113,300	353,300	0.4%	79.4%	12/31/97
Mitchell Hammett Asset Mgmt., Inc.	Growth	43.8	103,847	340,425	0.4%	79.8%	12/31/97
Top 40 Institutions				741,871	68,223,048	79.8%	
Remaining 133 Institutions				(184,290)	7,001,130	8.2%	
Total Institutional Holdings				557,581	75,224,178	88.0%	
Other Holdings					10,245,149	12.0%	
Total Shares Outstanding					85,471,000	100.0%	

Summary of Latest 13F Reports

71 Institutions increased holdings, of which 0 were new investors or first time filers
 16 Institutions decreased holdings, of which 0 eliminated their positions
 3 Institutions held their positions.

Institutional funds represented by 18.6% of Total Institutional Shares Outstanding.

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SUNBEAM CORPORATION

Analysis of Institutional Shareholdings for Coleman Co.

Institution	Equity Organization	Total Assets Under Management		Current Holdings	Completed		Report Date
		Change			9/30	6/30	
Coleman Holdings	N/A	0	44,097,510	12.5%	12.5%	3/10/97	
Manning & Napier Advisors, Inc.	Value	3.3	101,350	1,551,147	2.9%	85.4%	12/31/97
General Motors Inv. Mgmt. Corp.	N/A	(30,000)	590,000	1.1%	16.5%	12/31/97	
California Public Employees Ret.	Growth	0	537,600	1.0%	17.5%	9/30/97	
Long-Term Capital Partners, L.P.	Growth	292,300	501,100	0.9%	14.4%	12/31/97	
Kingdon Capital Management Corp.	Growth	350,000	470,000	0.9%	11.3%	12/31/97	
Kaysons Investment Management Co.	Growth, Value	11.8	(5,000)	275,000	0.7%	10.0%	12/31/97
Cadence Capital Management	Growth	3.0	315,000	323,000	0.6%	10.6%	12/31/97
Standard Pacific Capital LLC	Diversified	0.3	74,116	294,910	0.6%	11.2%	12/31/97
STI Capital Management	Growth, Index, Value	11.0	0	279,940	0.5%	11.7%	12/31/97
Wether King Capital Management	Growth, Value	0.9	(50,000)	240,000	0.4%	12.1%	12/31/97
New Jersey Division of Investment	N/A	(10,000)	204,000	0.4%	12.9%	11/30/97	
Bearley Global Investors, N.A.	Growth, Value, Index, Quasi	0.6	(25,073)	184,494	0.3%	12.9%	12/31/97
The Florida State Board of Admin.	N/A	0	180,000	0.3%	12/31/97		
Medina Bank, N.A.	Index, Value	25.4	(17,900)	110,260	0.3%	12.4%	12/31/97
The Vanguard Group	Growth, Value, Index	22.7	(37,400)	97,300	0.2%	11.6%	12/31/97
Pandgeist S.p.A.	N/A	0	93,600	93,600	0.2%	11.8%	4/30/97
AIM Capital Management Inc.	Growth, Value	57.1	48,300	90,000	0.2%	12/31/97	
Northern Trust Qualitative Advisors	Growth, Value	23.5	(840)	87,480	0.2%	14.1%	12/31/97
Cohen and Grossberg, L.L.C.	Growth	2.1	(1,200)	75,000	0.1%	14.2%	12/31/97
Teachers' Retirement System of Texas	Value	N/A	(15,000)	75,000	0.1%	14.4%	9/30/97
LaSalle National Bank	N/A	0	5,700	67,700	0.1%	14.5%	12/31/97
World Asset Management	Index	9.9	0	54,100	0.1%	14.6%	9/30/97
Donaldson Leitch & Jenrette, Inc.	N/A	0	50,000	50,000	0.1%	14.7%	9/30/97
BFA Associates	Value	31.3	(7,100)	49,200	0.1%	14.8%	12/31/97
TTA-CREF Investment Management Inc.	Growth, Index	45.3	(7,370)	43,400	0.1%	14.9%	12/31/97
First Investors Management Co., Inc.	Growth	4.1	41,400	41,400	0.1%	11.0%	9/30/97
Neville, Rodie & Shaw, Inc.	Diversified	N/A	(5,000)	39,650	0.1%	15.1%	12/31/97
Grandham, Mayn, via Ontario LLC	Growth, Value, Quasi	23.8	4,400	34,100	0.1%	15.1%	12/31/97
State Street Bank and Tr. Co. Boston	Growth, Value	232.4	1,084	32,884	0.1%	15.2%	12/31/97
Smith Barney Investment Advisors	Growth, Value	13.0	3,800	32,783	0.1%	15.3%	12/31/97
Charles Schwab Investment Management	N/A	0	3,400	27,700	0.1%	15.3%	9/30/97
Scottish Mutual Investment Managem	N/A	0	24,500	24,500	0.0%	15.3%	12/31/97
Finn Asset Management	Index, Value	34.0	0	19,071	0.0%	15.4%	12/31/97
Legg Mason Wood Walker, Inc.	Value	0.6	1,600	17,400	0.0%	15.4%	9/30/97
Commerce Bank - Detroit	Growth	0.6	0	15,000	0.0%	11.4%	9/30/97
Dimensional Fund Advisors, Inc.	Index, Value	13.2	14,800	14,800	0.0%	15.5%	12/31/97
Berkley Trust Company (Inv. Mgmt.)	Index, Growth, Value	0.6	0	13,900	0.0%	11.5%	12/31/97
Morgan Stanley Asset Management Inc.	Growth, Value	64.7	0	13,076	0.0%	15.5%	12/31/97
Montgomery Asset Management, LLC	Growth, Value	7.3	10,000	10,000	0.0%	11.5%	9/30/97
Top 40 Institutions			1,104,350	31,078,260	12.5%		
Remaining 16 Institutions			(1,100,339)	31,078	0.1%		
Total Institutional Holdings			(3,989)	31,049,880	12.4%		
Other Holdings				7,355,112	4.4%		
Total Shares Outstanding				33,415,000	100.0%		

Summary of Latest 13F Reports

18 Institutions increased holdings, of which 7 were new investors or first time filers
 13 Institutions decreased holdings, of which 0 eliminated their positions
 9 Institutions held their positions.

Index funds representing 1.7% of Total Institutional Shares Outstanding.

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SUNBEAM CORPORATION

Analysis of Institutional Shareholdings for First Alert

Institution	Equity Orientation	Total Assets		Current Holdings	%TSO	Cumulative %TSO	Report Date
		Under Management	Change				
Thomas H. Lee	Value, Growth	2.9	0	12,664,490	52.4%	52.4%	12/31/97
Dimensional Fund Advisors, Inc.	Index, Value	13.2	2,500	1,083,200	4.5%	56.8%	12/31/97
Heartland Advisors Inc.	Growth, Value	2.7	0	750,000	3.1%	59.9%	12/31/97
Barclays Global Investors, N.A.	Growth, Value, Index, Quant.	n/a	850	463,582	1.9%	61.9%	12/31/97
TIAA-CREF Investment Management Inc.	Growth, Index	63.3	0	260,700	1.1%	62.9%	12/31/97
New Jersey Division of Investment	n/a	n/a	0	250,000	1.0%	64.0%	11/30/97
The Vanguard Group	Growth, Value, Index	223.7	7,500	91,600	0.4%	64.4%	12/31/97
UMB Investment Advisors	Growth	9.8	(4,700)	77,600	0.3%	64.7%	12/31/97
California Public Employees Retmt.	Growth	n/a	(125,800)	35,200	0.2%	64.9%	9/30/97
Mellon Bank, N.A.	Index, Value	25.4	(7,000)	45,400	0.2%	65.1%	12/31/97
Smith Barney Investment Advisors	Growth, Value	13.0	28,820	34,292	0.1%	65.2%	12/31/97
Northern Trust Quantitative Advisors	Growth, Value	23.5	0	31,000	0.1%	65.4%	12/31/97
World Asset Management	Index	9.9	0	20,700	0.1%	65.4%	9/30/97
AFA Financial Inc.	Value, Income	0.2	(5,600)	15,900	0.1%	65.5%	9/30/97
Maverick Capital, Ltd.	n/a	n/a	0	15,700	0.1%	65.6%	12/31/97
Dawson-Sarberg Capital Mgmt. Inc.	Growth	2.4	0	10,000	0.0%	65.6%	12/31/97
Investments Technology, Inc.	n/a	n/a	0	6,400	0.0%	65.6%	9/30/97
American National Bk & Tr (Chicago)	Index	n/a	0	1,000	0.0%	65.7%	9/30/97
Fleet Investment Advisors (Mass)	Growth, Income, Index	42.2	0	50	0.0%	65.7%	9/30/97
Wells Fargo Bank, N.A.	Index	n/a	(500)	0	0.0%	65.7%	12/31/97
Top 20 Institutions			(103,930)	15,876,814	65.7%		
Remaining 0 Institutions			0	0	0.0%		
Total Institutional Holdings			(103,930)	15,876,814	65.7%		
Other Holdings				8,306,186	34.3%		
Total Shares Outstanding				24,183,000	100.0%		

Summary of Latest 13F Reports

- 4 Institutions increased holdings, of which 0 were new investors or first time filers
- 5 Institutions decreased holdings, of which 1 eliminated their positions
- 11 Institutions held their positions.

Index funds representing 12.4% of Total Institutional Shares Outstanding.

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SUNBEAM CORPORATION

Analysis of Institutional Shareholdings for Signature Brands

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Institution	Equity Orientation	Total Assets		Current Holdings	% TSO	Cumulative % TSO	Report Date
		Under Management	Change				
Thomas H. Lee	Value, Growth	2.9	0	3,381,256	37.2%	37.2%	12/31/97
Dimensional Fund Advisors, Inc.	Index, Value	13.2	0	490,900	5.4%	42.6%	12/31/97
Barclays Global Investors, N.A.	Growth, Value, Index, Quar.	n/a	(508)	154,381	1.7%	44.3%	12/31/97
Mellon Bank, N.A.	Index, Value	23.4	(4,300)	25,600	0.3%	44.6%	12/31/97
PNC Bank, N.A. (Inv. Mgmt.)	Growth, Income	n/a	0	10,000	0.1%	44.7%	12/31/97
Northern Trust Quantitative Advisors	Growth, Value	23.5	(3,400)	1,700	0.0%	44.7%	12/31/97
The Benchmark Company	n/a	n/a	(10,000)	0	0.0%	44.7%	12/31/97
Top 7 Institutions				(18,208)	4,063,837	44.7%	
Remaining 0 Institutions				0	0	0.0%	
Total Institutional Holdings				(18,208)	4,063,837	44.7%	
Other Holdings					5,018,163	55.3%	
Total Shares Outstanding					9,082,000	100.0%	

Summary of Latest 13F Reports

0 Institutions increased holdings, of which 0 were new investors or first time filers
 4 Institutions decreased holdings, of which 1 eliminated their positions
 3 Institutions held their positions.

Index funds representing 16.5% of Total Institutional Shares Outstanding.

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Sunbeam, Corp.

Section X

Transaction Structure

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SUNBEAM BUSINESS OVERVIEW



	Kitchen Devices	Health at Home Devices	Personal Care and Comfort Devices	Outdoor Cooking Devices	Professional Care Devices
Description	• Segment includes hand and stand mixers, blenders, toasters, coffee makers, breadmakers, irons and other small appliances.	• Segment includes blood pressure monitoring devices, heating pads, massagers, dental care products, humidifiers, water filters and air cleaners.	• Segment includes electric blankets, shower massagers, consumer hair clippers, heated throws and comforters.	• Segment includes gas and kaffe grills, charcoal smokers, tabletop grills and accessories.	• Segment includes a line of professional barber and beauty equipment, including electric and battery clippers, replacement blades and other grooming accessories.
Brands	-Wixmaster -Oster -Sunbeam -Osterizer	-Health at Home	-Cuddle-Up -Oster	-Sunbeam -Grillmaster	-Oster
Market Position	- #1, 2 or 3 depending on product category	- #1, 2 or 3 in most categories	- #1 in electric blankets - #1 in clippers	- #1 in gas grills	- #1 in clippers
Major Competitors	- Black & Decker - Hamilton Beach/Procter Siler (Nasco) - KitchenAid (Whirlpool)	- Duramont - Braun (Gillette) - Health O'Meter	- Wahl - Andis - Toleadyne	- Charbroil - Thermax - Weber	- Wahl - Andis
Distribution	- Mass merchandisers - Department stores - Specialty stores	- Mass merchants - Drug stores	- Mass merchants - Drug stores	- Mass merchants - Hardware/Home centers	- Mass merchants - Drug stores - Specialty stores - Professional distributors
1998 Net Sales: ⁽¹⁾	\$383.8MM	\$98.4MM	\$187.0MM	\$265.0MM	\$59.1MM
% of Total	39%	10%	19%	26%	6%
1997 Net Sales: ⁽¹⁾	\$465.6MM	\$104.0MM	\$180.4MM	\$325.9MM	\$72.4MM ⁽²⁾
% of Total	40%	9%	16%	28%	6%

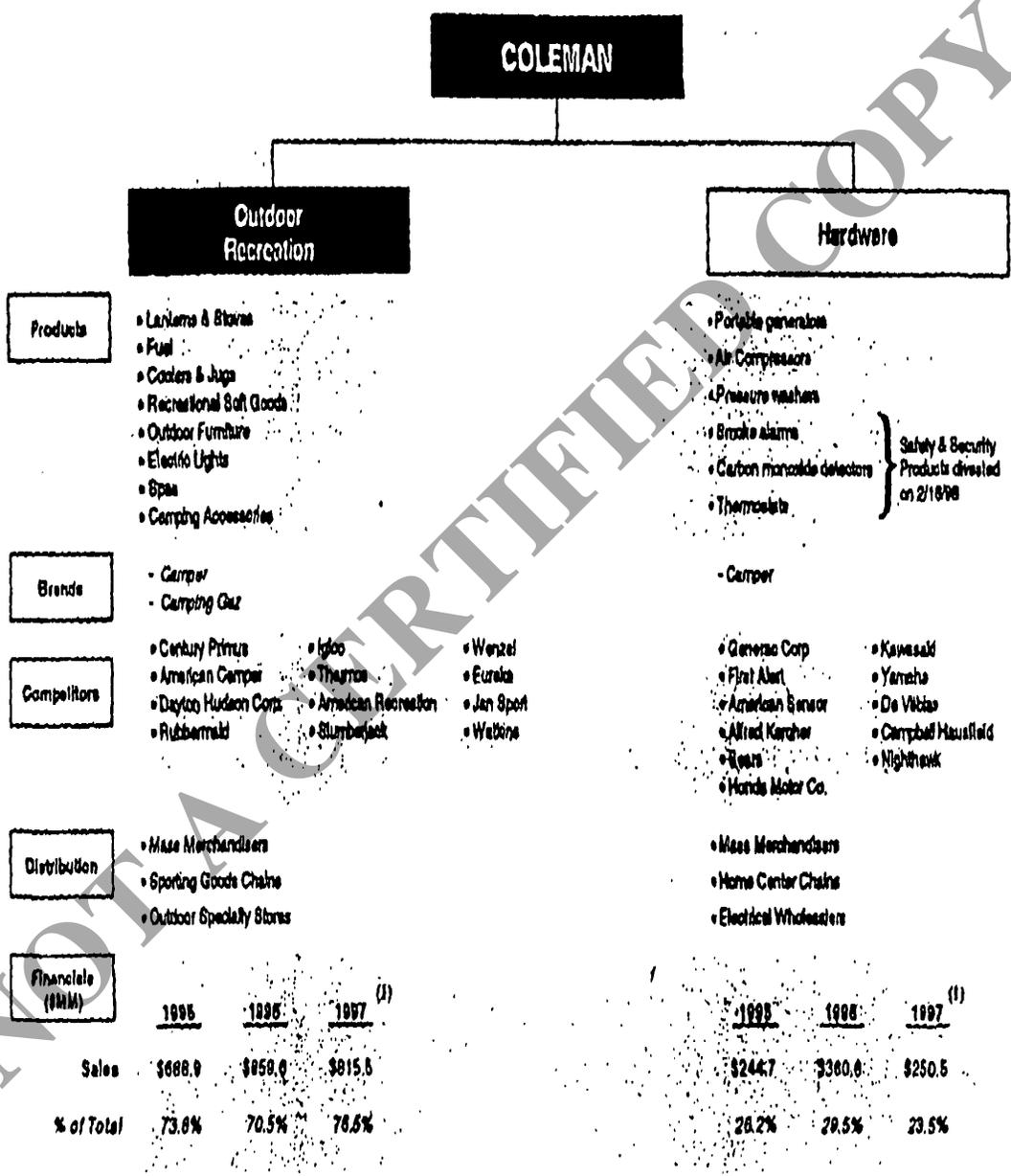
Notes: (1) 1997 sales breakdown from company and does not add to 100% due to outlet sales.
 (2) 1997 sales includes the away-from-home category.

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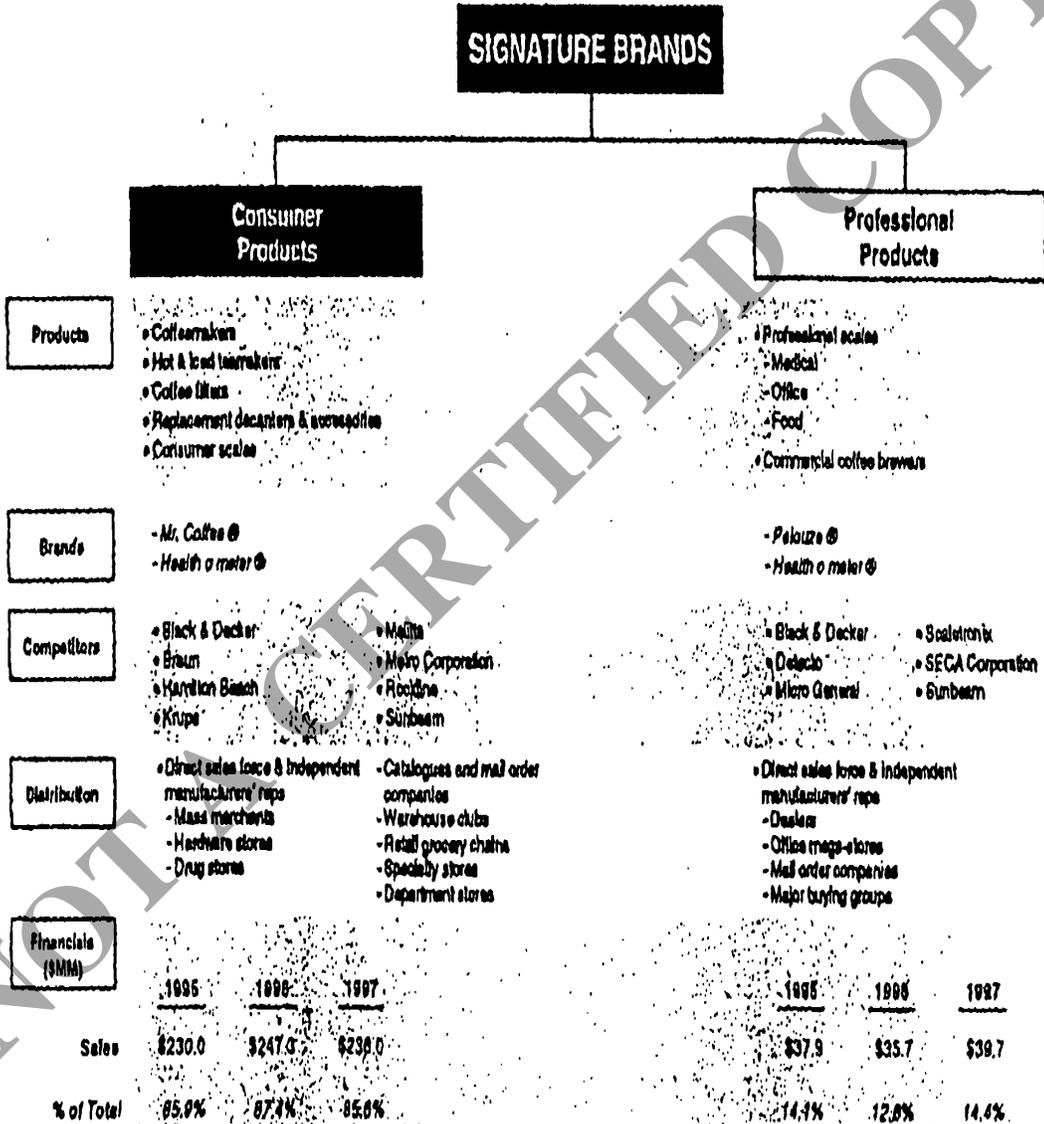
COLEMAN BUSINESS OVERVIEW



Note: (1) Percentage breakdowns of 1997 regional sales based on Prudential Securities research report dated 11/14/97.

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SIGNATURE BRANDS BUSINESS OVERVIEW



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FIRST ALERT BUSINESS OVERVIEW

FIRST ALERT

	Smoke Detectors	Carbon Monoxide Detectors	Fire Extinguisher	All Others
Description	• Segment includes smoke detectors product line for residential application.	• Segment includes carbon monoxide detectors with biometric sensor	• Segment includes fire extinguishers product line for use in kitchen, garage, workshop, auto, & boat.	• Segment includes all other miscellaneous product lines including rechargeable flashlights, electronic timers, nightlights, fire gates and child safety products
Brands	- First Alert - Family Guard - BRK	- First Alert - Family Guard	- Sure Grip	
Market Position	#1 with 76% market share	#1 with 49% market share	#2 with 31% market share	#4 in flashlight and various for other products
Major Competitors	- American Sensors - Fymatica/Kiddie - Coleman	- Highhand (Kiddie) - American Sensor - Jameson	- Kiddie with 63% market share	- Black & Decker - Coleman - Eveready
Distribution	- Mass Merchants - Drug Stores - Home Centers	- Mass Merchants - Home Centers - Discount / Dept.	- Mass Merchants - Home Centers	- Mass Merchants - Home Centers
1996 Net Sales: (1)	\$76.8MM	\$61.1MM	\$12.8MM	\$19.9MM
% of U.S. Total	45.0%	35.8%	7.5%	11.7%
1997 Net Sales: (1)	\$75.7MM	\$36.2MM	\$15.1MM	\$21.8MM
% of U.S. Total	50.9%	24.3%	10.1%	14.7%

Note: (1) Excludes international sales.

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REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT, dated as of March 29, 1998 (the "Agreement"), among SUNBEAM CORPORATION, a Delaware corporation ("Laser"), and COLEMAN (PARENT) HOLDINGS INC., a Delaware corporation ("Parent Holdings").

WHEREAS, pursuant to the Agreement and Plan of Merger, dated as of February 27, 1998 (the "Holdings Merger Agreement"), by and among Laser, LASER ACQUISITION CORP., a Delaware corporation and wholly owned subsidiary of Laser ("Laser Merger Sub"), CLN HOLDINGS INC., a Delaware corporation and wholly owned subsidiary of Parent Holdings ("Holdings"), and Parent Holdings, Laser Merger Sub will be merged immediately after the execution of this Agreement with the surviving corporation becoming an indirect wholly owned subsidiary of Laser, upon the terms and subject to the conditions set forth in the Holdings Merger Agreement (the "Holdings Merger"); and

WHEREAS, upon consummation of the Holdings Merger, the shares of Holdings Common Stock (as defined herein) issued and outstanding immediately prior to the effective time of the Holdings Merger shall be converted into the right to receive an aggregate of (A) 14,099,749 fully paid and nonassessable shares of Laser Common Stock (as defined herein) and (B) \$159,956,756 in cash, without interest hereon; and

WHEREAS, it is a condition to the obligations of Holdings to consummate the Holdings Merger that this Agreement be duly executed and delivered by each of the parties hereto; and

WHEREAS, in order to induce Holdings to enter into the Holdings Merger Agreement, Laser has agreed to provide registration rights with respect to the shares of Laser Common Stock to be issued to Parent Holdings upon consummation of the Holdings Merger.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

Section 1.1 *Definitions.*

As used in this Agreement, the following terms shall have the following meanings:

The term "Affiliate" shall have the meaning ascribed to it in Rule 12b-2 of the General Rules and Regulations under the Exchange Act.

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The term "Agreement" shall have the meaning ascribed to it in the first paragraph of the Preamble.

The term "Camper" shall mean The Coleman Company, Inc., a Delaware corporation.

The term "Effective Date" shall have the meaning ascribed to it in Section 2.2.

The term "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

The term "Holdings" shall have the meaning ascribed to it in the second paragraph of the Preamble.

The term "Holdings Common Stock" shall mean common stock, par value \$1.00 per share, of Holdings.

The term "Holdings Merger" shall have the meaning ascribed to it in the second paragraph of the Preamble.

The term "Holdings Merger Agreement" shall have the meaning ascribed to it in the second paragraph of the Preamble.

The term "Laser" shall have the meaning ascribed to it in the first paragraph of the Preamble.

The term "Laser Common Stock" shall mean common stock, par value \$0.01 per share, of Laser.

The term "Laser Merger Sub" shall have the meaning ascribed to it in the second paragraph of the Preamble.

The term "Laser Offering" shall mean the sale of equity securities of Laser, or securities convertible into or exchangeable or exercisable for equity securities of Laser, pursuant to a registration statement filed by Laser under the Securities Act (other than a registration statement filed on Form S-8 or any successor form) respecting an underwritten offering, whether primary or secondary, that is declared effective by the SEC.

The term "Losses" shall have the meaning ascribed to it in Section 2.6(a).

The term "Parent Holdings" shall have the meaning ascribed to it in the first paragraph of the Preamble.

The term "Person" shall mean an individual, trustee, corporation, partnership, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, union, business association, firm or other entity.

The term "Registrable Securities" shall mean the shares of Laser Common Stock to be issued to Parent Holdings upon consummation of the Holdings Merger and any other securities issued or issuable upon or in respect of such securities by way of conversion, exchange, dividend, split or combination, recapitalization, merger, consolidation, other reorganization or otherwise. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when such securities have been sold or otherwise transferred by Parent Holdings pursuant to the Shelf Registration Statement or pursuant to Rule 144 under the Securities Act.

The term "Registration Expenses" shall have the meaning ascribed to it in Section 2.5.

The term "Rule 144" shall mean Rule 144 promulgated under the Securities Act (or any successor rule).

The term "Rule 415 Offering" shall have the meaning ascribed to it in Section 2.1(a).

The term "SEC" shall mean the United States Securities and Exchange Commission.

The term "Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

The term "Shelf Registration Statement" shall have the meaning ascribed to it in Section 2.1(a).

The term "Transfer" shall mean any attempt to, directly or indirectly, sell, transfer, pledge, assign or otherwise dispose of or otherwise transfer any of the Registrable Securities.

ARTICLE II

REQUIRED REGISTRATION

Section 2.1 *Required Registration.*

(a) *Form S-3.* Laser shall prepare and file with the SEC a registration statement (the "Shelf Registration Statement") on Form S-3 or another appropriate form permitting registration of the Registrable Securities so as to permit the resale of the Registrable Securities by Parent Holdings pursuant to an offering on a delayed or continuous basis pursuant to Rule 415 (or any successor rule) under the Securities Act (a "Rule 415 Offering") and shall use reasonable best efforts to cause the Shelf Registration Statement to be declared effective by the SEC on or before the date on which any of the Registrable Securities may be

transferred by Parent Holdings pursuant to Article VII of the Holdings Merger Agreement. Laser shall use reasonable best efforts to permit the Shelf Registration Statement to be used by Affiliates of Camper for resales of shares of Laser Common Stock issued to such Affiliates in the merger of a wholly owned subsidiary of Laser with Camper; provided, however, that any such Affiliate using the Shelf Registration Statement shall agree in writing to be bound by all of the restrictions, limitations and obligations of Parent Holdings contained in this Agreement.

(b) *Effectiveness.* Laser shall use reasonable best efforts to keep the Shelf Registration Statement continuously effective under the Securities Act until the date that is the earliest to occur of (i) the date by which all Registrable Securities covered by the Shelf Registration Statement have been sold and (ii) the second anniversary of the consummation of the Holdings Merger.

(c) *Amendments/Supplements.* Laser shall amend and supplement the Shelf Registration Statement and the prospectus contained therein if required by the rules, regulations or instructions applicable to the registration form used by Laser for such Shelf Registration Statement, if required by the Securities Act.

(d) *Offerings.* At any time from and after the date on which the Shelf Registration Statement is declared effective by the SEC (the "Effective Date"). Parent Holdings, subject to the restrictions and conditions contained herein and in the Merger Agreement, and subject further to compliance with all applicable state and federal securities laws, shall have the right to dispose of all or any portion of the Registrable Securities.

Section 2.2 *Holdback Agreement.*

From and after the Effective Date, upon the request of Laser, Parent Holdings shall not effect any public sale or distribution (including sales pursuant to Rule 144) of Registrable Securities that are equity securities of Laser, or any securities convertible into or exchangeable or exercisable for such securities (other than any such sale or distribution of such securities pursuant to registration of such securities on Form S-8 or any successor form) during the period commencing on the date on which Laser commences a Laser Offering through the sixty (60)-day period immediately following the closing date of such Laser Offering; provided, however, that Parent Holdings shall not be obligated to comply with this Section 2.2 on more than two (2) occasions in any twelve (12)-month period; and provided, further, that notwithstanding anything to the contrary in this Section 2.2 or Section 2.3, in no event shall Parent Holdings be disabled from effecting offers or sales of Registrable Securities for more than one-hundred-and-fifteen (115) days during any twelve (12)-month period.

Section 2.3 *Blackout Provisions.*

In the event that, at any time while the Shelf Registration Statement remains effective, Laser determines in its reasonable judgment and in good faith that the sale of Registrable Securities would require disclosure of material information which Laser has a bona

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vide business purpose for preserving as confidential. Parent Holdings shall, upon receiving written notice from Laser of such good faith determination, suspend sales of the Registrable Securities for a period beginning on the date of receipt of such notice and expiring on the earlier of (i) the date upon which such material information is disclosed to the public or ceases to be material or (ii) forty-five (45) days after the receipt of such notice from Laser: provided, however, that Parent Holdings shall not be obligated to comply with this Section 2.3 on more than two (2) occasions in any twelve (12) month period; and provided, further, that notwithstanding anything to the contrary in this Section 2.3 or Section 2.2, in no event shall Parent Holdings be disabled from effecting offers or sales of Registrable Securities for more than one-hundred-and-fifteen (115) days during any twelve (12)-month period.

Section 2.4 *Registration Procedures.*

(a) *Procedures.* In connection with the registration of the Registrable Securities pursuant to this Agreement, Laser shall use reasonable best efforts to effect the registration and sale of the Registrable Securities in accordance with Parent Holdings' intended method of disposition thereof and, in connection therewith, Laser shall:

(1) prepare and file with the SEC the Shelf Registration Statement and use reasonable best efforts to cause the Shelf Registration Statement to become and remain effective in accordance with Sections 2.1(a) and (b) above;

(2) prepare and file with the SEC amendments and supplements to the Shelf Registration Statement and the prospectuses used in connection therewith in accordance with Section 2.1(c) above;

(3) before filing with the SEC the Shelf Registration Statement or prospectus or any amendments or supplements thereto, Laser shall furnish to one (1) counsel selected by Parent Holdings and one (1) counsel for the underwriter or sales or placement agent, if any, in connection therewith, drafts of all such documents proposed to be filed and provide such counsel with a reasonable opportunity for review thereof and comment thereon, such review to be conducted and such comments to be delivered with reasonable promptness;

(4) promptly (i) notify Parent Holdings of each of (w) the filing and effectiveness of the Shelf Registration Statement and each prospectus and any amendments or supplements thereto, (x) the receipt of any comments from the SEC or any state securities law authorities or any other governmental authorities with respect to any such Shelf Registration Statement or prospectus or any amendments or supplements thereto, (y) any oral or written stop order with respect to such registration, any suspension of the registration or qualification of the sale of the Registrable Securities in any jurisdiction or any initiation or threatening of any proceedings

with respect to any of the foregoing, and (z) of the happening of any event that requires the making of any changes in such Shelf Registration Statement, prospectus or documents incorporated or deemed to be incorporated therein by reference so that they will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and (ii) use reasonable best efforts to obtain the withdrawal of any order suspending the registration or qualification (or the effectiveness thereof) or suspending or preventing the use of any related prospectus in any jurisdiction with respect thereto:

(5) furnish to Parent Holdings, the underwriters or the sales or placement agent, if any, and one (1) counsel for each of the foregoing, a conformed copy of the Shelf Registration Statement and each amendment and supplement thereto (in each case, including all exhibits thereto) and such additional number of copies of such Shelf Registration Statement, each amendment and supplement thereto (in such case, without such exhibits), the prospectus (including each preliminary prospectus) included in such Shelf Registration Statement and prospectus supplements and all exhibits thereto and such other documents as Parent Holdings, its underwriters, agent or such counsel may reasonably request in order to facilitate the disposition of the Registrable Securities by Parent Holdings;

(6) in connection with a sale of Registrable Securities by or through an underwriter, if requested by Parent Holdings or the managing underwriter or underwriters of a Rule 415 Offering, subject to approval of counsel to Laser in its reasonable judgment, promptly incorporate in a prospectus, supplement or post-effective amendment to the Shelf Registration Statement such information concerning underwriters and the plan of distribution of the Registrable Securities as such managing underwriter or underwriters or Parent Holdings reasonably shall furnish to Laser in writing and such request to be included therein, including, without limitation, information with respect to the number of Registrable Securities being sold by Parent Holdings to such underwriter or underwriters, the purchase price being paid therefor by such underwriter or underwriters and with respect to any other terms of the underwritten offering of the Registrable Securities to be sold in such offering; and make all required filings of such prospectus, supplement or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such prospectus, supplement or post-effective amendment;

(7) use reasonable best efforts to register or qualify the Registrable Securities for offer and sale under such securities or "blue sky" laws of such jurisdictions as Parent Holdings reasonably requests and

do any and all other acts and things which may be reasonably necessary or advisable to enable Parent Holdings to consummate the disposition in such jurisdictions in which the Registrable Securities are to be sold and keep such registration or qualification in effect for as long as the Shelf Registration Statement remains effective under the Securities Act (provided that Laser shall not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this paragraph. (ii) subject itself to taxation in any such jurisdiction where it would not otherwise be subject to taxation but for this paragraph or (iii) consent to the general service of process in any jurisdiction where it would not otherwise be subject to general service of process but for this paragraph);

(8) notify Parent Holdings, at any time when a prospectus relating to the Shelf Registration Statement is required to be delivered under the Securities Act, upon the discovery that, or of the happening of any event as a result of which, the Shelf Registration Statement, as then in effect, contains an untrue statement of a material fact or omits to state any material fact required to be stated therein or any fact necessary to make the statements therein not misleading, and promptly prepare and furnish to Parent Holdings a supplement or amendment to the prospectus contained in the Shelf Registration Statement so that the Shelf Registration Statement shall not, and such prospectus as thereafter delivered to the purchasers of such Registrable Securities shall not, contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(9) cause all of the Registrable Securities to be listed on each national securities exchange and included in each established over-the-counter market on which or through which the Laser Common Stock is then listed or traded;

(10) in connection with a sale of Registrable Securities by or through an underwriter, make available for inspection by Parent Holdings, any underwriter participating in any disposition pursuant to the Shelf Registration Statement, and any attorney, accountant or other agent retained by Parent Holdings or its underwriter, all financial and other records, pertinent corporate documents and properties of Laser as shall be reasonably necessary to enable either of them to exercise their due diligence responsibility, and cause Laser's officers, directors, employees, attorneys and independent accountants to supply all information reasonably requested by Parent Holdings, its underwriters, attorneys, accountants or agents in connection with the Shelf Registration Statement; information

which Laser determines, in good faith, to be confidential shall not be disclosed by such persons unless (i) the disclosure of such information is required by applicable federal securities laws or is necessary to avoid or correct a misstatement or omission in such Shelf Registration Statement or (ii) the release of such information is ordered pursuant to a subpoena or other order from a court of competent jurisdiction; Parent Holdings agrees, on its own behalf and on behalf of all of its underwriters, accountants, attorneys and agents, that the information obtained by any of them as a result of such inspections shall be deemed confidential unless and until such is made generally available to the public; Parent Holdings further agrees, on its own behalf and on behalf of all of its underwriters, accountants, attorneys and agents, that Parent Holdings will, upon learning that disclosure of such information is sought in a court of competent jurisdiction, give notice to Laser and allow Laser, at Parent Holdings' expense, to undertake appropriate action to prevent disclosure of the information deemed confidential; nothing contained herein shall require Laser to waive any attorney-client privilege or disclose attorney work product.

(11) use reasonable best efforts to comply with all applicable laws related to the Shelf Registration Statement and offering and sale of securities and all applicable rules and regulations of governmental authorities in connection therewith (including, without limitation, the Securities Act and the Exchange Act, and the rules and regulations promulgated by the SEC) and make generally available to its security holders as soon as practicable (but in any event not later than fifteen (15) months after the effectiveness of the Shelf Registration Statement) an earnings statement of Laser and its subsidiaries complying with Section 11(a) of the Securities Act;

(12) in connection with a sale of Registrable Securities by or through an underwriter, use reasonable best efforts to furnish to Parent Holdings a signed counterpart of (x) an opinion of counsel for Laser (including a "Rule 10b-5" opinion) and (y) a "comfort" letter signed by the independent public accountants who have certified Laser's financial statements included or incorporated by reference in such registration statement, covering such matters with respect to such registration statement and, in the case of the accountants' comfort letter, with respect to events subsequent to the date of such financial statements as are customarily covered in opinions of issuer's counsel and in accountants' comfort letters delivered to the underwriters in underwritten public offerings of securities for the account of, or on behalf of, an issuer of common stock, such opinion and comfort letters to be dated the date that such opinion and comfort letters are customarily dated in such transactions; and

(13) take other actions as Parent Holdings or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of the Registrable Securities.

(b) *Further Agreements.* Without limiting any of the foregoing, in the event that the sale of Registrable Securities is to be made by or through an underwriter, Laser shall enter into an underwriting agreement with a managing underwriter or underwriters selected by Parent Holdings containing representations, warranties, indemnities and agreements customarily included (but not inconsistent with the agreements contained herein) by an issuer of common stock in underwriting agreements with respect to offerings of common stock for the account of, or on behalf of, such issuers: provided, however, that Parent Holdings shall not utilize the Shelf Registration Statement for more than two (2) underwritten offerings during the term of this Agreement. In connection with the sale of Registrable Securities hereunder, Parent Holdings may, at its option, require that any and all representations and warranties by, and the other agreements of, Laser to or for the benefit of such underwriter or underwriters (or which would be made to or for the benefit of such an underwriter or underwriter if such sale of Registrable Securities were pursuant to a customary underwritten offering) be made to and for the benefit of Parent Holdings and that any or all of the conditions precedent to the obligations of such underwriter or underwriters (or which would be so for the benefit of such underwriter or underwriters under a customary underwriting agreement) be conditions precedent to the obligations of Parent Holdings in connection with the disposition of Parent Holdings' securities pursuant to the terms hereof. In connection with any offering of Registrable Securities registered pursuant to this Agreement, Laser shall, upon receipt of duly endorsed certificates representing the Registrable Securities, (i) furnish to the underwriter, if any (or, if no underwriter, Parent Holdings), unlegended certificates representing ownership of Registrable Securities being sold, in such denominations as requested, and (ii) instruct any transfer agent and registrar of the Registrable Securities to release any stop transfer order with respect thereto.

Parent Holdings agrees that upon receipt of any notice from Laser of the happening of any event of the kind described in paragraph (8) of Section 2.4(a), Parent Holdings shall forthwith discontinue its disposition of Registrable Securities pursuant to the Shelf Registration Statement and prospectus relating thereto until Parent Holdings' receipt of the copies of the supplemented or amended prospectus contemplated by paragraph (8) of Section 2.4(a) and, if so directed by Laser, deliver to Laser all copies, other than permanent file copies, then in Parent Holdings' possession of the prospectus current at the time of receipt of such notice relating to the Registrable Securities.

Section 2.5 *Registration Expenses.*

All expenses incidental to Laser's performance of, or compliance with, its obligations under this Agreement including, without limitation, all registration and filing fees, all fees and expenses of compliance with securities and "blue sky" laws (including, without limitation, the fees and expenses of counsel for underwriters or placement or sales agents in

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connection therewith), all printing and copying expenses, all messenger and delivery expenses, all fees and expenses of underwriters and sales and placement agents in connection therewith (excluding underwriters' discounts and commissions and the fees and expenses of counsel therefor), all fees and expenses of Laser's independent certified public accountants and counsel (including, without limitation, with respect to "comfort" letters and opinions) and other Persons retained by Laser in connection therewith (collectively, the "Registration Expenses"), shall be borne by Laser. Laser shall not be responsible for and shall not pay underwriters' discounts and commissions and the fees and expenses of counsel therefor and fees and expenses of legal counsel, accountants, agents or experts retained by Parent Holdings in connection with the sale of the Registrable Securities. Laser will pay its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties, the expense of any annual audit and the expense of any liability insurance) and the expenses and fees for listing the Registrable Securities on the New York Stock Exchange or, if the Laser Common Stock is then not so listed, included in an established over-the-counter market.

Section 2.6 *Indemnification.*

(a) *By Laser.* Laser agrees to indemnify Parent Holdings and Parent Holdings' directors, officers, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) Laser or such other indemnified Person to the fullest extent lawful, against all losses, claims, damages, liabilities, judgments, and reasonable costs (including, without limitation, reasonable attorneys' fees and expenses) (collectively, the "Losses") as incurred, caused by, arising out of, resulting from or relating to any untrue or alleged untrue statement of material fact contained in the Shelf Registration Statement, any prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as the same are based upon any information furnished in writing to Laser by Parent Holdings or its underwriter or other agent expressly for use therein or by Parent Holdings' failure to deliver, or its underwriter's or other agent's failure to deliver, a copy of the Shelf Registration Statement or prospectus or any amendments or supplements thereto after Laser has furnished Parent Holdings with the requested number of copies of the same. In connection with an underwritten offering and without limiting any of Laser's other obligations under this Agreement, Laser shall indemnify such underwriters, their officers, directors, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriters or such other indemnified Person to the same extent as provided above with respect to the indemnification of Parent Holdings.

(b) *By Parent Holdings.* In connection with the Shelf Registration Statement, Parent Holdings shall furnish to Laser in writing information regarding Parent Holdings' ownership of Registrable Securities and Parent Holdings' intended method of distribution thereof and shall indemnify Laser, its directors, officers, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the

Exchange Act) Laser or such other indemnified Person against all Losses caused by, arising out of, resulting from or relating to any untrue or alleged untrue statement of material fact contained in the Shelf Registration Statement, any prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission or alleged untrue statement or omission (i) is caused by, arises out of, results from or relates to, or is alleged to be omitted from, such information so furnished in writing by Parent Holdings or (ii) arises out of or results from Parent Holdings' failure to deliver, or Parent Holdings' underwriter's or other agent's failure to deliver, a copy of the Shelf Registration Statement or prospectus or any amendments or supplements thereto after Laser has furnished Parent Holdings with the requested number of copies of the same. In connection with an underwritten offering and without limiting any of Parent Holdings' other obligations under this Agreement, (i) Parent Holdings shall indemnify such underwriters, their officers, directors, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriters or such other indemnified Person to the same extent as provided above with respect to the indemnification of Laser and (ii) Parent Holdings shall cause each underwriter of an underwritten offering to indemnify Laser, its directors, officers, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) Laser or such indemnified Person, on terms and subject to conditions customary for such indemnification by nationally known investment banking firms, against all Losses caused by, arising out of, resulting from or relating to any untrue or alleged untrue statement of material fact contained in the Shelf Registration Statement, any prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission or alleged untrue statement or omission (x) is caused by, arises out of or results from information furnished in writing by such underwriter specifically for inclusion in the Shelf Registration Statement or (y) arises out of or results from such underwriter's failure to deliver a copy of the Shelf Registration Statement or prospectus or any amendments or supplements thereto after Laser has furnished such underwriter with the requested number of copies of the same.

(c) *Notice.* Any Person entitled to indemnification hereunder shall give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification; provided, however, the failure to give such notice shall not release the indemnifying party from its obligation, except to the extent that the indemnifying party has been prejudiced by such failure to provide such notice.

(d) *Defense of Actions.* In any case in which any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein, and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party, and after notice from

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the indemnifying party to such indemnified party of its election so to assume the defense thereof. the indemnifying party shall not (so long as it shall continue to have the right to defend, contest, litigate and settle the matter in question in accordance with this paragraph) be liable to such indemnified party hereunder for any legal or other expense subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation, supervision and monitoring (unless such indemnified party reasonably objects to such assumption on the grounds that there may be defenses available to it which are different from or in addition to the defenses available to such indemnifying party, in which event the indemnified party shall be reimbursed by the indemnifying party for the reasonable expenses incurred in connection with retaining one separate legal counsel). An indemnifying party shall not be liable for any settlement of an action or claim effected without its consent. The indemnifying party shall lose its right to defend, contest, litigate and settle a matter if it shall fail to diligently contest such matter (except to the extent settled in accordance with the next following sentence). No matter shall be settled by an indemnifying party without the consent of the indemnified party unless such settlement contains a full and unconditional release of the indemnified party.

(e) *Survival.* The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified Person and will survive the transfer of the Registrable Securities.

(f) *Contribution.* If recovery is not available under the foregoing indemnification provisions for any reason or reasons other than as specified therein, any Person who otherwise would be entitled to indemnification by the terms thereof shall nevertheless be entitled to contribution with respect to any Losses with respect to which such Person would be entitled to such indemnification but for such reason or reasons. In determining the amount of contribution to which the respective Persons are entitled, there shall be considered the Persons' relative knowledge and access to information concerning the matter with respect to which the claim was asserted, the opportunity to correct and prevent any statement or omission, and other equitable considerations appropriate under the circumstances. It is hereby agreed that it would not necessarily be equitable if the amount of such contribution were determined by pro rata or per capita allocation. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not found guilty of such fraudulent misrepresentation.

ARTICLE III

TRANSFERS OF REGISTRABLE SECURITIES

Section 3.1 *Transferability of Registrable Securities*

Parent Holdings may not Transfer the Registrable Securities except in accordance with Article VII of the Holdings Merger Agreement and under the following circumstances:

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MORGAN STANLEY CONFIDENTIAL
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

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- (a) pursuant to Rule 144;
- (b) pursuant to the Shelf Registration Statement; or
- (c) upon receipt by Laser of an opinion of counsel, reasonably satisfactory to Laser, that such Transfer is exempt from registration under the Securities Act.

Section 3.2 *Restrictive Legends.*

Parent Holdings hereby acknowledges and agrees that, during the term of this Agreement, each of the certificates representing Registrable Securities shall be subject to stop transfer instructions and shall include the legend set forth in Section 7.2 of the Holdings Merger Agreement.

ARTICLE IV

MISCELLANEOUS

Section 4.1 *Effectiveness of Agreement.*

The provisions of this Agreement shall be effective as of the date hereof.

Section 4.2 *Recapitalization.*

In the event that any capital stock or other securities are issued as a dividend or distribution on, in respect of, in exchange for, or in substitution of, any Registrable Securities, such securities shall be deemed to be Registrable Securities for all purposes under this Agreement.

Section 4.3 *Notices.*

All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, by mail (certified or registered mail, return receipt requested), by reputable overnight courier or by facsimile transmission (receipt of which is confirmed):

- (a) If to Laser, to:

Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445
Attention: General Counsel
Facsimile: (561) 243-2191

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with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Attention: Richard L. Easton, Esq.
Facsimile: (302) 651-3001

(b) If to Parent Holdings, to:

Coleman (Parent) Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Attention: General Counsel
Facsimile: (954) 772-3352

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019-6150
Attention: Adam O. Emmerich, Esq.
Facsimile: (212) 403-2000

or to such other person or address as any party shall specify by notice in writing, given in accordance with this Section 4.3, to the other parties hereto. All such notices, requests, demands, waivers and communications shall be deemed to have been given on the date on which so hand-delivered, on the third business day following the date on which so mailed, on the next business day following the date on which delivered to such overnight courier and on the date of such facsimile transmission and confirmation, except for a notice of change of person or address, which shall be effective only upon receipt thereof.

Section 4.4 *Entire Agreement.*

This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings, oral and written, with respect to its subject matter.

Section 4.5 *Binding Effect; Assignment.*

This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, successors and permitted assigns, but, except as expressly contemplated herein, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, directly or indirectly, by Laser or Parent Holdings without the prior written consent of the other; provided, that in con-

nection with a bona fide pledge of any Registrable Securities to secure indebtedness or other obligations. Parent Holdings may assign its rights, interests and obligations hereunder to the beneficiary of such pledge. Upon any permitted assignment (other than in connection with any such bona fide pledge), this Agreement shall be amended to substitute the assignee as a party hereto in a writing reasonably acceptable to the other party.

Section 4.6 *Amendment, Modification and Waiver.*

This Agreement may be amended, modified or supplemented at any time by written agreement of the parties hereto. Any failure by Parent Holdings, on the one hand, or Laser, on the other hand, to comply with any term or provision of this Agreement may be waived by Laser or Parent Holdings, respectively, at any time by an instrument in writing signed by or on behalf of Laser and Parent Holdings, but such waiver or failure to insist upon strict compliance with such term or provision shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply.

Section 4.7 *Third-Party Beneficiaries.*

Except with respect to Affiliates which have agreed to be bound in accordance with Section 2.1(a), this Agreement is not intended, and shall not be deemed, to confer upon or give any person except the parties hereto and their respective successors and permitted assigns, any remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Agreement.

Section 4.8 *Counterparts.*

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 4.9 *Interpretation.*

The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

Section 4.10 *Governing Law.*

This Agreement shall be governed by the laws of the State of New York, without regard to the principles of conflicts of law thereof.

Section 4.11 *Termination; Restrictive Legend.*

Subject to the provisions of Section 2.1(b) hereof, this Agreement shall terminate on the second anniversary of consummation of the Merger; provided, however, that the provisions of Section 2.6 hereof shall survive termination of this Agreement. It is understood and agreed that any restrictive legends set forth on any Registrable Securities shall be re-

moved by delivery of substitute certificates without such legends and such Registrable Securities shall no longer be subject to the terms of this Agreement, upon the resale of such Registrable Securities in accordance with the terms of this Agreement or, if not theretofore removed, on the third anniversary of the date hereof.

[SIGNATURE PAGE FOLLOWS]

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MORGAN STANLEY CONFIDENTIAL
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

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IN WITNESS WHEREOF, the undersigned hereby agree to be bound by the terms and provisions of this Registration Rights Agreement as of the date first above written.

SUNBEAM CORPORATION

By: *Russell A. Kersh*
Name: Russell A. Kersh
Title: Vice Chairman and Chief Financial Officer

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name:
Title:

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MORGAN STANLEY CONFIDENTIAL
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

0009150

CPH 1094234

16div-026822

IN WITNESS WHEREOF, the undersigned hereby agree to be bound by the terms and provisions of this Registration Rights Agreement as of the date first above written.

SUNBEAM CORPORATION

By: _____
Name:
Title:

COLEMAN (PARENT) HOLDINGS INC.

By: Glenn P. Dickes
Name: Glenn P. Dickes
Title: Vice President

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Page 1

1 IN THE FIFTEENTH JUDICIAL CIRCUIT
 2 IN AND FOR PALM BEACH COUNTY, FLORIDA
 3
 4 COLEMAN(PARENT)HOLDINGS, INC.,
)
 Plaintiff,) No. CA 03-5045 AI
 5)
 vs.)
 6)
 MORGAN STANLEY & CO., INC.,)
 7)
 Defendant.)
 8)
 MORGAN STANLEY SENIOR FUNDING,))
 9 INC.,)
)
 Plaintiff,) No. CA 03-5165 AI
 10)
 vs.)
 11)
 MACANDREWS & FORBES HOLDINGS,))
 12 INC.,)
)
 Defendant.)
 13)
 14)
 15
 16 VIDEOTAPED DEPOSITION OF
 17 THOMAS F. BURCHILL
 18 New York, New York
 19 Friday, August 27, 2004
 20
 21
 22
 23 Reported by:
 Jane Watson
 24 JOB NO. 163614
 25

Page 3

1 APPEARANCES:
 2
 3 JENNER & BLOCK, L.L.P.
 4 Attorneys for: Coleman (Parent) Holdings,
 5 Inc. and MacAndrews & Forbes Holdings, Inc.
 6 One IBM Plaza
 7 Chicago, Illinois 60611-7603
 8 BY: CLARK C. JOHNSON, ESQ.
 9 THALIA MYRIANTHOPOULOS, ESQ.
 10
 11 KIRKLAND & ELLIS, L.L.P.
 12 Attorneys for: Morgan Stanley & Co., Inc.,
 13 and Morgan Stanley Senior Funding, Inc.
 14 655 Fifteenth Street, N.W.
 15 Washington, D.C. 20005
 16 BY: LARISSA PAULE-CARRES, ESQ.
 17
 18 ALSO PRESENT:
 19 Reuben Martinez, Videographer
 20
 21
 22
 23
 24
 25

Page 2

1
 2
 3
 4
 5 August 27, 2004
 6 10:00 a.m.
 7
 8 Videotaped Deposition of
 9 THOMAS F. BURCHILL, held at the offices of
 10 Esquire Deposition Services, 216 East 45th
 11 Street, New York, New York 10017,, before
 12 Jane D. Watson, a Notary Public of the State
 13 of New York.
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Page 4

1 IT IS HEREBY STIPULATED AND AGREED,
 2 by and between counsel for the respective
 3 parties hereto, that the filing, sealing and
 4 certification of the within deposition shall
 5 be and the same are hereby waived;
 6 IT IS FURTHER STIPULATED AND AGREED
 7 that all objections, except as to the form
 8 of the question, shall be reserved to the
 9 time of the trial;
 10 IT IS FURTHER STIPULATED AND AGREED
 11 that the within deposition may be signed
 12 before any Notary Public with the same force
 13 and effect as if signed and sworn to before
 14 the Court.
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Page 5

1 THE VIDEOGRAPHER: Will counsel
 2 please introduce themselves.
 3 MR. JOHNSON: Yes. Clark Johnson and
 4 Thalia Myrianthopoulos, Jenner & Block,
 5 L.L.P., Chicago for Coleman (Parent)
 6 Holdings and MacAndrews & Forbes Holdings,
 7 Inc.
 8 Larissa Paule-Carres of Kirkland &
 9 Ellis, L.L.P., on behalf of the Morgan
 10 Stanley entities and the witness.
 11 THE VIDEOGRAPHER: Will the Court
 12 Reporter please swear in the witness.
 13 THOMAS F. BURCHILL, having been
 14 duly sworn by the Notary Public, was
 15 examined and testified as follows:
 16 EXAMINATION BY
 17 MR. JOHNSON:
 18 Q. Good morning.
 19 A. Good morning.
 20 Q. Would you please state your full name
 21 for the record.
 22 A. Thomas Francis Burchill, IV.
 23 Q. And where do you reside today?
 24 A. New Canaan, Connecticut.
 25 Q. Have you ever given a deposition

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1 before?
 2 A. I have not.
 3 Q. Have you testified in court or any
 4 kind of proceeding?
 5 A. Never.
 6 Q. Well, let me cover a few background
 7 rules for you --
 8 A. Okay.
 9 Q. -- so we can maybe have an expedited
 10 process today. I'm going to ask you a series of
 11 questions. And if at any point you don't
 12 understand one of my questions or need me to
 13 rephrase it for some reason, just let me know
 14 that, and I'll try to accommodate it. You need
 15 to give your responses orally. Our Court
 16 Reporter here cannot take down nods of the head
 17 or shrugs of the shoulder. And "uh-hums" and
 18 "uh-huhs" are kind of unclear on the written
 19 record. So if you would be kind enough to do
 20 that.
 21 If you need to take a break at some
 22 point, let me know, and we can try to accommodate
 23 that as well.
 24 Have you ever been named as a party
 25 in any litigation?

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1 A. No.
 2 Q. Why don't you walk me through your
 3 educational background from graduating from high
 4 school up to the present.
 5 A. Sure. I graduated Garden City High
 6 School in Garden City, Long Island, in 1983;
 7 graduated from Holy Cross College in Wooster,
 8 Massachusetts, in 1987 and graduated from
 9 Northwestern University's Kellogg Graduate School
 10 of Management in 1994.
 11 Q. What was your area of -- it was an
 12 M.B.A. from Kellogg?
 13 A. Yes, it was an M.B.A.
 14 Q. And what was your area of
 15 concentration in business school?
 16 A. Finance and general management
 17 strategy.
 18 Q. And did you receive any honors at
 19 Kellogg?
 20 A. No.
 21 Q. And what was your major at Holy
 22 Cross?
 23 A. Political science.
 24 Q. Same exercise for your employment
 25 history between Holy Cross and Kellogg.

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1 A. Between Holy Cross and Kellogg, my
 2 first job out of school was as a legal assistant
 3 at Skadden, Arps. Then I went over to the Hong
 4 Kong and Shanghai Bank. And that was here in
 5 Manhattan. Stayed in Manhattan with the Hong
 6 Kong and Shanghai Bank a year later. So that was
 7 -- let's see. Started that in June of '89. So
 8 it was about a year and a half. And then started
 9 an M&A advisory firm called Connecticut Capital
 10 Advisers in late '89, early 1990, in Stamford,
 11 Connecticut; then went to business school.
 12 Q. And you were at the New York office
 13 of Skadden, Arps?
 14 A. Yes.
 15 Q. And what was your title at Hong Kong,
 16 Shanghai Bank?
 17 A. I was an associate.
 18 Q. And could you just generally sketch
 19 your responsibilities as an associate there.
 20 A. I worked in both the mergers and
 21 acquisitions department and in the leverage
 22 lending group. And, as an associate, I supported
 23 any transaction that a senior banker wanted to
 24 conduct.
 25 Q. And in Connecticut Capital Advisers

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1 -- was that the title?
 2 A. Yes. Exactly.
 3 Q. You indicated you started that
 4 entity?
 5 A. I was the most junior of three senior
 6 guys, the spreadsheet jockey, if you will, but I
 7 was one of the founding members.
 8 Q. What was the business function of
 9 that entity?
 10 A. To advise middle market companies
 11 primarily in the sale of those companies,
 12 represent them in the sale.
 13 Q. Okay. And then on to Kellogg in '93,
 14 maybe?
 15 A. Started in '92.
 16 Q. Okay.
 17 A. Graduated in '94.
 18 Q. Did you summer at any firm while in
 19 business school?
 20 A. At Chemical Venture Partners, which
 21 is part of Chemical Banking Corporation at the
 22 time.
 23 Q. Okay. Let's trace out your
 24 employment from graduating from Kellogg to the
 25 present.

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1 A. Sure. Started -- got an offer to go
 2 back to Chemical and worked again with Chemical
 3 Venture Partners for a part of the time and then
 4 another part of the time as a rotating associate
 5 in their leverage lending group. They call it
 6 the acquisitions finance group. Spent two years
 7 there, then went to Morgan Stanley summer of 2004
 8 -- I'm sorry -- summer of 1996, where I was an
 9 associate in the high yield group.
 10 After being at Morgan Stanley New
 11 York and then London, I left Morgan Stanley in
 12 the summer of 2000 to go to First Boston to be in
 13 the high yield group as a director. Left very
 14 quickly after DLJ was purchased. And they made
 15 massive layoffs due to the merger. I went over
 16 to Bank of America Securities. I was there a
 17 year and a half before I left to start my own
 18 firm.
 19 Q. And what is the name of your firm?
 20 A. It's the Silvermine Group.
 21 Silvermine, one word.
 22 Q. And what titles did you hold in the
 23 approximately four years you were at Morgan
 24 Stanley?
 25 A. Senior associate and then vice

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1 president.
 2 Q. And you were based in New York and in
 3 London?
 4 A. Correct. First, New York from '96
 5 until I started working in London in September of
 6 1997. And I was essentially commuting back and
 7 forth and then permanently moved to London in
 8 March of 1998 with my family.
 9 Q. And when did you return from London?
 10 A. In July of 2000.
 11 Q. And that was in connection with
 12 joining Credit Suisse?
 13 A. No. Actually, Morgan Stanley wanted
 14 me to come back, and I did.
 15 Q. Why did you leave Morgan Stanley?
 16 A. I got a great offer from First
 17 Boston.
 18 Q. Okay. I take that to mean more
 19 money, more responsibility?
 20 A. Yes.
 21 Q. Okay. Do you serve as a director of
 22 any company today?
 23 A. I do.
 24 Q. What companies do you serve as a
 25 director?

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1 A. Just one now: Epals Classroom
 2 Exchange, Incorporated.
 3 Q. How long have you been a director of
 4 Epals?
 5 A. Two-and-a-half years.
 6 Q. Are you affiliated with any entity
 7 that's provided lending to Epals?
 8 A. No.
 9 Q. What other companies have you served
 10 as a director for?
 11 A. Verticore Technologies, Incorporated.
 12 And that's it.
 13 Q. When did you cease serving as a
 14 director of Verticore?
 15 A. May 2004.
 16 Q. Did anything cause you to resign that
 17 directorship?
 18 A. The company went bankrupt. I'm in
 19 the venture capital business. So it's just --
 20 the investment was over.
 21 Q. Par for the course?
 22 A. Exactly.
 23 Q. So Verticore is in Chapter 7
 24 bankruptcy now?
 25 A. They're still working on a plan. I

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1 don't recall if it's 11 or 7.
 2 Q. Okay. Do you have any connection
 3 with an entity called 24/7 Media?
 4 A. No longer.
 5 Q. I take that to mean that at some
 6 point you did have a connection to that entity --
 7 A. As a shareholder.
 8 Q. And how about Viridian Capital
 9 Partners? Do you have any connection to that
 10 entity?
 11 A. No longer. We tried to raise a fund,
 12 but it didn't work.
 13 Q. When you say you tried to raise a
 14 fund, you were attempting to put together a --
 15 A. A venture fund.
 16 Q. And tell me about your current
 17 business.
 18 A. I seek out venture investment
 19 opportunities for a Seattle-based investor. And
 20 when we make investments, we sit on the board of
 21 the company. And we're just beginning that
 22 operation right now.
 23 Q. When you say "make investments," does
 24 that include both equity and debt?
 25 A. Equity.

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1 Q. Equity only?
 2 A. Yes.
 3 Q. When did you first learn that your
 4 deposition was requested in this case?
 5 A. A few months ago. I can't recall the
 6 exact date, but I would say it was June or July.
 7 Q. You received a phone call?
 8 A. Yes.
 9 Q. From? From whom?
 10 A. From Tom Claire. Actually, I take
 11 that back. I first received a -- I got a voice
 12 message from someone in Morgan Stanley's legal
 13 department telling me that Tom Claire would be
 14 calling me.
 15 Q. And at that point, were you aware
 16 that there was litigation between Morgan Stanley
 17 and MacAndrews & Forbes?
 18 A. No.
 19 Q. That's the first you had heard about
 20 this lawsuit?
 21 A. Yes.
 22 Q. And have you spoken with anyone other
 23 than family members and Kirkland & Ellis lawyers
 24 about your deposition?
 25 A. No.

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1 Q. Have you kept in contact with any of
 2 your colleagues from Morgan Stanley?
 3 A. Yes.
 4 Q. Have you spoken with any of them
 5 about this deposition?
 6 A. No.
 7 Q. When was the last time you spoke to
 8 Bram Smith?
 9 A. It was November 2002.
 10 Q. That's a fairly precise answer. Can
 11 you attach that to an event?
 12 A. It was my wife's funeral.
 13 Q. Oh. I'm sorry to hear that.
 14 How about Michael Hart?
 15 A. What about Michael Hart?
 16 Q. I'm sorry. When was the last time
 17 that you spoke with Michael Hart?
 18 A. It was when I left Morgan Stanley.
 19 So summer of 2000.
 20 Q. When was the last time you spoke with
 21 Ishaan Seth?
 22 A. Briefly on the phone in -- just this
 23 past June 2004.
 24 Q. And did you talk about depositions or
 25 this lawsuit in any way?

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1 A. No.
 2 Q. Did you talk about Sunbeam at all?
 3 A. No. And before that I had not spoken
 4 with him since I left Morgan Stanley. So...
 5 Q. Did you talk to him in connection
 6 with some business you are working with him on
 7 now?
 8 A. No. He called to say hi. I ran into
 9 a friend that said he was in New York City. I
 10 didn't know that. So we were pretty close at
 11 Morgan Stanley. He worked for me -- directly for
 12 me. So...
 13 Q. How about Simon Rankin? When was the
 14 last time you spoke with him?
 15 A. Summer of 2000, when I left Morgan
 16 Stanley.
 17 Q. Do you think that anyone misled
 18 Morgan Stanley in connection with Morgan
 19 Stanley's work for Sunbeam?
 20 A. I don't know.
 21 Q. You don't have an opinion one way or
 22 the other on that?
 23 A. I really don't.
 24 Q. You understand that Sunbeam went
 25 through Chapter 11 bankruptcy?

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1 A. I read about it in the newspaper.
 2 Q. Did you read about the termination of
 3 Mr. Dunlap and the SEC investigations that
 4 followed?
 5 A. I read about it in the newspapers,
 6 yeah.
 7 Q. So you were aware that it happened?
 8 A. Yes. At the time, I was in London
 9 working on business over there.
 10 Q. As you sit here today, you can't
 11 think of any false statement that was given to
 12 you in connection with your work on the financing
 13 for Sunbeam?
 14 MS. PAULE-CARRES: Objection;
 15 foundation.
 16 A. My role was very limited in the
 17 transaction. I had started working in London in
 18 September of 1997, was asked to attend a single
 19 meeting down in Florida, and did so at Bram
 20 Smith's request. And, to my knowledge, that was
 21 the limit of my involvement. So it's virtually
 22 impossible for me to have an opinion one way or
 23 another whether someone tried to mislead or not.
 24 BY MR. JOHNSON:
 25 Q. You mentioned that you were at Morgan

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1 Stanley for about four years?
 2 A. Uh-huh.
 3 Q. Which Morgan Stanley entity was your
 4 employer?
 5 A. Morgan Stanley & Company.
 6 Q. Did you have any titles or positions
 7 with Morgan Stanley Senior Funding?
 8 A. I can't recall exactly, but I think I
 9 might have been an officer of Morgan Stanley
 10 Senior Funding.
 11 Q. The entire time you were at Morgan
 12 Stanley?
 13 A. To the best of my knowledge, I was.
 14 Q. Do you know who the president of
 15 Morgan Stanley Senior Funding was at any time?
 16 A. No.
 17 Q. Do you know who any of the other
 18 officers of the company were?
 19 A. I know that Michael McLoughlin and
 20 Mike Hart were. And I don't know about any
 21 others.
 22 Q. Do you know who any -- or can you
 23 name any of the directors of Morgan Stanley
 24 Senior Funding?
 25 A. I can't.

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1 Q. Did you have an understanding of the
 2 business purpose of Morgan Stanley Senior
 3 Funding?
 4 A. Yes.
 5 Q. And what was the purpose?
 6 A. To make loans to companies, to use
 7 the firm's capital to make loans to companies.
 8 Q. And was it directed primarily to
 9 leveraged finance?
 10 A. It was virtually any lending
 11 opportunity that Morgan Stanley had where Morgan
 12 Stanley would be using its own capital. And
 13 there are many times where capital was used for
 14 leveraged lending and many instances where the
 15 capital is used for investment grade lending
 16 purposes as well.
 17 Q. Did you have any understanding of
 18 Morgan Stanley Senior Funding being positioned to
 19 help the firm be a one-stop-shop, so to speak?
 20 A. Prior --
 21 MS. PAULE-CARRES: Objection. Vague
 22 as to what a one-stop-shop is.
 23 BY MR. JOHNSON:
 24 Q. Are you familiar with that term?
 25 A. The term is used a lot and in many

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1 different ways.
 2 Q. Did you have a sense of Morgan
 3 Stanley Senior Funding presenting cross-selling
 4 opportunities within Morgan Stanley?
 5 A. My understanding of the purpose of
 6 Morgan Stanley Senior Funding was that the firm,
 7 prior to Morgan Stanley Senior Funding, did not
 8 have a lending business or function and simply
 9 would be losing business if it did not fill that
 10 hole in its product suite.
 11 Q. And that's -- you say they would be
 12 losing money if they didn't offer that product.
 13 That's because Morgan Stanley's M&A clients would
 14 go elsewhere for financing?
 15 MS. PAULE-CARRES: Objection to the
 16 extent it mischaracterizes testimony.
 17 A. It's hard to say. I mean, it's hard
 18 to say. I wasn't involved in setting strategy at
 19 the firm. It was simply my understanding that
 20 this was a function that the bank, prior to
 21 Morgan Stanley Senior Funding, did not have and
 22 wanted to have it.
 23 BY MR. JOHNSON:
 24 Q. Obviously -- well, let me not say
 25 obviously. Not so obviously perhaps. The term

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1 "senior" in Morgan Stanley Senior Funding
 2 signifies a status of the loans that Senior
 3 Funding would be providing; is that correct?
 4 A. I was not involved in the naming of
 5 the organization. And I know that the naming of
 6 -- or the entity, rather, was a subject to great
 7 debate. So what it actually implied I don't
 8 know.
 9 Q. When you say the naming was subject
 10 to great debate, what do you mean by that?
 11 A. We -- well, for the reason that you
 12 just hit upon: One can take great creativity in
 13 structuring a debt financing. And it was not
 14 clear whether or not the name implied that one
 15 element to the structure was always going to be
 16 the same, in other words, a senior debt
 17 instrument, or could it be not senior. So there
 18 were those who felt that having the word "senior"
 19 there limited the creativity of the structuring
 20 that could be done. So it just was subject to
 21 debate that way.
 22 Q. Did you consider yourself while at
 23 Morgan Stanley part of both the bond business and
 24 the loan business?
 25 A. Yes.

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1 Q. Did you work on the convertible
 2 offering for Morgan Stanley?
 3 MS. PAULE-CARRES: Objection; vague.
 4 MR. JOHNSON: Good objection.
 5 BY MR. JOHNSON:
 6 Q. Did you work on the convertible
 7 offering that Morgan Stanley underwrote for
 8 Sunbeam?
 9 A. No.
 10 Q. Other than Sunbeam, can you recall
 11 any entities where you helped Morgan Stanley
 12 establish a secured financing arrangement?
 13 A. Yes.
 14 Q. Can you name some of those entities
 15 for me?
 16 A. Doubletree Hotels when they purchased
 17 Red Lion Inns; Telex Company, which was a
 18 leverage buyout financing. I mean, there were a
 19 lot of them.
 20 Q. Can you focus on the 1998 time frame
 21 and think of some of the clients in that time
 22 frame?
 23 A. They were all in Europe.
 24 Q. Okay.
 25 A. Because I had started segueing to the

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1 London office in September and then physically
 2 was on the ground there as of September -- March
 3 21st on a full-time basis.
 4 Q. Do you recall Regal Cinemas in the
 5 1998 time frame? Did you work on that?
 6 A. I provided minimal assistance on that
 7 one, again because I was in London.
 8 Q. How about Omniquip?
 9 A. I worked on that transaction.
 10 Q. Would you characterize your
 11 involvement as minimal, or was that --
 12 A. No. Very extensive.
 13 Q. How about United Artists?
 14 A. I was very involved in that one.
 15 Q. Those were all leverage finance
 16 situations?
 17 A. Those both were leverage finance
 18 situations, yes.
 19 Q. You talked about the idea of
 20 creativity in structuring a financing package.
 21 A. Uh-huh.
 22 Q. Can you tell me -- let me strike
 23 that. Let me say this differently.
 24 What's, as a general manner, an
 25 economic rationale for having different kinds of

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1 debt in a financing package?
 2 A. Boy, there are lots of
 3 considerations. Among them are probability of
 4 repayment, first and foremost; the timing of a
 5 company's ability to generate cash flows; the
 6 market's appetite for certain types of debt
 7 structures; and Morgan Stanley's risk tolerance
 8 for certain types of debt structures.
 9 Q. How about -- would the value of
 10 collateral and availability of collateral be
 11 another consideration?
 12 A. Uh-huh. Absolutely.
 13 Q. Do you recall, in general terms, the
 14 structure of Sunbeam's financing for its
 15 acquisitions in March of '98?
 16 A. I don't recall.
 17 Q. Okay. I'll represent to you that
 18 there was a convertible debt offering that closed
 19 at \$750 million and then a secured loan as well
 20 led by Morgan Stanley Senior Funding.
 21 What's the purpose of having both a
 22 convertible debt and a conventional senior loan?
 23 A. I don't know why they structured it
 24 that way for Sunbeam. I was not involved in the
 25 structuring.

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1 Q. You weren't involved at all in that
 2 decision-making process?
 3 A. No.
 4 Q. Is it fair to say that the
 5 convertible debt is junior to the senior secured
 6 debt?
 7 A. In most cases, it is.
 8 Q. In the context of the Sunbeam
 9 transaction, you just don't recall --
 10 A. Yeah, I just wasn't that involved. I
 11 was very focused on the business in London,
 12 trying to find schools for the kids in London,
 13 finding an exorbitantly priced house in London,
 14 that sort of stuff, and then hitting the ground
 15 running there in March.
 16 Q. Did you have any discussions with
 17 anyone at Morgan Stanley concerning why Sunbeam's
 18 financing was structured the way it was?
 19 A. No.
 20 Q. Do you have any sense of the interest
 21 expense to Sunbeam in structuring the financing
 22 with a convertible offering and a secured loan?
 23 MS. PAULE-CARRES: Can you have that
 24 read back.
 25 (Record read.)

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1 A. I don't know why they wanted it that
 2 way, if that's your question.
 3 BY MR. JOHNSON:
 4 Q. Let me put it slightly differently.
 5 Do you know whether the interest
 6 expense would be cheaper with that structure as
 7 opposed to a straight secured financing?
 8 A. Again, as a structuring matter, there
 9 are many considerations that go into how the debt
 10 -- how debt typically in a leveraged transaction
 11 is spliced up. Among them, as you mentioned, are
 12 collateral. So I'm sure that was a
 13 consideration. And this is conjecture on my part
 14 at this point. The ability to pay cash interest
 15 versus noncash interest; the ability to pay
 16 amortizing debt versus nonamortizing debt; the
 17 desire of the company to hedge -- floating versus
 18 fixed rate instruments. All of that -- all of
 19 those are considerations in structuring. And
 20 also market appetite to purchase the securities.
 21 Q. Can you think of any occasion where
 22 Morgan Stanley Senior Funding declined to provide
 23 financing for one of Morgan Stanley's M&A
 24 clients?
 25 A. Yes. Many times.

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1 Q. Can you give me some examples of
 2 that.
 3 THE WITNESS: Is that -- I mean, is
 4 that public information that --
 5 BY MR. JOHNSON:
 6 Q. We have a protective order in the
 7 case. So...
 8 A. Okay. I mean -- yeah. I mean, I can
 9 think of an instance where Morgan Stanley Senior
 10 Funding declined a financing for a company that
 11 Morgan Stanley Capital Partners, the private
 12 equity group, had a major stake in the Italian
 13 American Pasta Company. One of the senior guys
 14 over at Morgan Stanley Capital Partners requested
 15 that we make a loan to the company. And that
 16 loan was declined. And when another bank stepped
 17 up under a much more conservative structure, we
 18 committed a tiny token piece to it, with the
 19 other bank still leading the transaction.
 20 Whew, going back in time -- yes.
 21 There were several utility transactions at the
 22 time which we declined to fund which were
 23 actively engaged Morgan Stanley M&A clients. I
 24 can't recall actual names, but there were a lot
 25 of big utility deals being done at the time.

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1 Another transaction that I can recall
 2 is the duty-free stores. Chuck Feeney and that
 3 organization wanted to do a leverage transaction
 4 of that entity. And Morgan Stanley's M&A
 5 department was engaged to assess opportunities
 6 and, for various appetite of risk reasons,
 7 declined the financing.
 8 There are others I just -- it's a
 9 while back at this point.
 10 Q. At any point did you hear any
 11 complaints within Morgan Stanley concerning the
 12 quality of the entities to which Senior Funding
 13 was lending money?
 14 A. That's an issue we assessed with
 15 every lending opportunity.
 16 Q. I guess my question is a little
 17 different.
 18 Did anyone complain that the quality
 19 of Morgan Stanley Senior Funding's debtors was
 20 too low?
 21 MS. PAULE-CARRES: Objection; vague.
 22 A. Yeah. I just don't understand the
 23 question.
 24 BY MR. JOHNSON:
 25 Q. Did you ever hear any general

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1 cushion. I've heard equity cushion. But I want
 2 to make sure I understand what the question is.
 3 Q. When you hear the term "equity
 4 cushion," what do you understand that to mean?
 5 A. What -- if you want to define it for
 6 me, I can tell you --
 7 Q. Sure. The amount of market
 8 capitalization represented by the equity in the
 9 company.
 10 A. Okay. I wasn't aware of the numbers
 11 at the time.
 12 Q. When did you first get involved with
 13 the Sunbeam financing?
 14 A. Well, again, I was commuting back and
 15 forth beginning to London -- between London and
 16 New York beginning in September. And Bram Smith
 17 asked me to attend a meeting with him because
 18 Mike Hart could not, the meeting being a meeting
 19 down in Florida. And I think -- he just -- there
 20 were other banks being represented at that
 21 meeting: Bank of America and First Union. I
 22 think he didn't want to be the only one there
 23 from Morgan Stanley, the firm leading the
 24 transaction. So he asked me to come with him.
 25 And when that was -- it was February or March

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1 time frame before I left permanently.
 2 Q. Was it after the acquisitions had
 3 been announced that you were asked to do this?
 4 A. I really don't know.
 5 Q. Before you went down to Florida, did
 6 you do any background or anything on Sunbeam?
 7 A. I can't recall at the time.
 8 Q. Would you expect that you would do a
 9 little homework before attending a meeting?
 10 A. It would always depend. Again, my
 11 understanding -- Bram asked me to attend this
 12 meeting. He knew I was leaving. And Mike Hart
 13 was on the case. And as a newly appointed vice
 14 president, I knew that Mike and I couldn't be on
 15 the same transaction. We just didn't staff two
 16 vice presidents on the same transaction. So if I
 17 thought it was going to be a long-standing
 18 engagement, I probably would have. I knew it was
 19 going to be short, and I didn't know how short.
 20 So -- how much homework, I really don't remember
 21 doing much of any.
 22 Q. Did you talk to anyone from the M&A
 23 side of Morgan Stanley about the company to
 24 prepare for this meeting?
 25 A. No.

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1 Q. At any point, did you talk with
 2 anyone from the M&A side about Sunbeam?
 3 A. Can you refresh my memory as to who
 4 in the M&A department worked on this --
 5 Q. Sure. How about Bob Kitt?
 6 A. Did not talk to him.
 7 Q. Jim Steins?
 8 A. No.
 9 Q. Alex Fuchs?
 10 A. No.
 11 Q. Bill Strong?
 12 A. No.
 13 Q. Andy Savarie?
 14 A. No.
 15 Q. Shani --
 16 A. I talked to him --
 17 Q. I'm sorry?
 18 A. No. Not before that meeting, no.
 19 Q. Shani Boone?
 20 A. No. I don't even remember who that
 21 is.
 22 Q. Johann Groeller (phonetic)?
 23 A. No.
 24 Q. Ben Derito?
 25 A. No.

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1 Q. Let me ask this. Maybe this will
 2 save us a lot of time.
 3 Did you talk to any of those
 4 individuals at any point during your work on the
 5 Sunbeam financing?
 6 A. No.
 7 Q. And, again, maybe this will be a time
 8 saver. Tell me who besides Bram Smith you dealt
 9 with at Morgan Stanley in connection with the
 10 financing.
 11 MS. PAULE-CARRES: The Sunbeam
 12 financing?
 13 MR. JOHNSON: Yes.
 14 A. I think I went to that one meeting,
 15 and I was gone. And Mike -- I don't remember the
 16 reason why Mike could not make that meeting, but
 17 he was -- as the engaged vice president on it, I
 18 just let him go with it.
 19 BY MR. JOHNSON:
 20 Q. Did you have any interaction at all
 21 with Ishaan Seth on this financing?
 22 A. No.
 23 Q. Simon Rankin?
 24 A. No.
 25 Q. Did you deal with any of the client

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1 services group personnel in connection with this
 2 financing?
 3 A. Can you remind me who's --
 4 Q. Sure. John Tyree?
 5 A. He was at the meeting in Florida.
 6 Q. Other than attending a meeting where
 7 John Tyree was present, did you have any other
 8 dealings with him?
 9 A. No.
 10 Q. How about Bill Wright? Any dealings
 11 with him on Sunbeam?
 12 A. No.
 13 Q. I'm going to show you a few documents
 14 and see if they look at all familiar to you.
 15 A. Sure.
 16 Q. This has been marked previously as
 17 CPH Exhibit 187 (handing). And off the record,
 18 it's -- the first page states "Sunbeam Long Range
 19 Strategic Plan."
 20 Mr. Burchill, do you recall ever
 21 seeing this document?
 22 A. No, I don't recall ever seeing this
 23 document.
 24 Q. Do you have any idea who prepared it?
 25 A. I don't know who prepared it.

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1 Q. Did you receive any financial
 2 projections from anyone concerning Sunbeam as
 3 part of your work on this transaction?
 4 A. Again, I attended that one meeting.
 5 I don't recall seeing projections at that
 6 meeting. So, no.
 7 Q. Let's try another one.
 8 A. Okay. Do you want this back?
 9 Q. You can set it in front of you.
 10 Thank you.
 11 This has been marked previously as
 12 CPH Exhibit 9. It's a fairly lengthy document.
 13 If you want to take a minute to flip through it.
 14 For the record, this is entitled Sunbeam
 15 Preparation Discussion Materials February 1998.
 16 Does CPH Exhibit 9 look familiar to
 17 you at all?
 18 A. I have not seen it before.
 19 Q. Do you have any idea who prepared
 20 this document?
 21 A. I don't.
 22 Q. Does it appear to be --
 23 A. I mean, it says "Morgan Stanley."
 24 It's on the first page. So...
 25 Q. Does the format look familiar to

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1 you --
 2 A. Yes. It's definitely Morgan Stanley,
 3 yeah.
 4 Q. Did you -- but you don't know who, if
 5 anyone, within Morgan Stanley actually put this
 6 together?
 7 A. I don't know.
 8 Q. Do you have any idea whether anyone
 9 did anything to confirm the accuracy of the
 10 information in this document?
 11 A. Yeah, I would have no idea.
 12 Q. Would you have any expectation as to
 13 the accuracy of the information in the document?
 14 MS. PAULE-CARRES: Objection.
 15 A. Yeah. I -- can you repeat the
 16 question again.
 17 BY MR. JOHNSON:
 18 Q. Sure. Let me back up and give you a
 19 slightly different one.
 20 A. Yeah. Thanks.
 21 Q. I believe you testified this appears
 22 to be a Morgan Stanley document?
 23 A. Uh-huh.
 24 Q. Do you have any expectation, given
 25 your experience at Morgan Stanley, as to whether

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1 the information contained in this document would
 2 be accurate?
 3 A. Yeah. I don't know who prepared it,
 4 you know. I -- there were some folks at Morgan
 5 Stanley who were really good, some who were not
 6 as good. And so I would always -- I mean, Morgan
 7 Stanley as a firm is a good firm. But even
 8 within Morgan Stanley, you've got to be aware of
 9 who is giving you what and under what
 10 circumstances. Yeah. And, you know, it would
 11 take me a while to go through the contents to
 12 assess it.
 13 Q. But as a general rule, you said
 14 Morgan Stanley is a good firm?
 15 A. Yes.
 16 Q. So based on your experience, you
 17 think the reputation of Morgan Stanley would give
 18 you some comfort as to the accuracy of the
 19 information?
 20 A. Again, it just depends --
 21 MS. PAULE-CARRES: Objection.
 22 A. Yeah. It just depends on the
 23 circumstance. It depends on what stage a
 24 transaction is in and whether it's adequately
 25 staffed, how high profile versus not -- there are

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1 just a lot of circumstances that would never lead
 2 me to simply take a piece of paper and assume
 3 that I could have a high confidence in it. My
 4 hope is there are a lot of other people at Morgan
 5 Stanley with a similar view. And that's one of
 6 the things that makes it a good firm.
 7 BY MR. JOHNSON:
 8 Q. Had you ever worked with Bill Strong
 9 -- strike that.
 10 Did you ever work with Bill Strong at
 11 all in connection with your employment at Morgan
 12 Stanley?
 13 A. Never directly. Whether he was the
 14 relationship manager for a company or two, it
 15 might have been the case, but I wouldn't know him
 16 if I bumped into him. Put it that way.
 17 Q. You never had any direct
 18 communications with Bill Strong?
 19 A. No.
 20 Q. Did you ever learn anything about his
 21 reputation?
 22 MS. PAULE-CARRES: Objection; vague.
 23 A. No.
 24 BY MR. JOHNSON:
 25 Q. I show you another document.

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1 MR. JOHNSON: We'll mark this one as
 2 CPH Exhibit 266.
 3 (CPH Exhibit 266, memo dated 3/3/98
 4 from Mr. Burchill to Mr. Derito, marked for
 5 identification, as of this date.)
 6 BY MR. JOHNSON:
 7 Q. Mr. Burchill, I've given you a
 8 document we've marked as CPH 266. And for the
 9 record, it has the Bates stamp CPH 1349253
 10 through '82. And I'll give you a few moments to
 11 flip through it.
 12 Mr. Burchill, is Exhibit 266 a cover
 13 letter from you to several individuals enclosing
 14 Sunbeam information?
 15 A. Yes. Yeah, it is.
 16 Q. And who are the recipients of that
 17 memo?
 18 A. I'm trying to figure that out. I
 19 don't know. I don't recall who.
 20 Q. Do you recall who the other agents on
 21 the secured lending were?
 22 A. First Union and Bank of America.
 23 Q. Do any of those names ring a bell
 24 based on the names of those agents?
 25 A. I don't recall who they are.

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1 Q. Who is Ben Derito, your coauthor?
 2 A. He was an analyst at the time, but he
 3 was not in our group. He was in the M&A group, I
 4 believe, at the time. He worked -- he worked in
 5 our group very briefly. But he was in other
 6 groups. And I don't recall whether he was in our
 7 group at the time or with the M&A group --
 8 Q. Can you please -- one of the rules I
 9 forgot to tell you, if I accidentally interrupt
 10 you, let me know you are not finished with your
 11 answer --
 12 A. Sure.
 13 Q. Have you ever seen this Exhibit 266
 14 before?
 15 A. I'm trying to recall it.
 16 MS. PAULE-CARRES: In the form, which
 17 it's -- in Exhibit 266 (indicating).
 18 MR. JOHNSON: Correct. Obviously
 19 without the fax header.
 20 A. Well, I'm assuming if my name is on
 21 it, I must have seen it before.
 22 BY MR. JOHNSON:
 23 Q. Counsel didn't show it to you to get
 24 ready for the deposition?
 25 A. No.

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1 Q. Did you meet with counsel to get
 2 ready for the deposition?
 3 A. Yes. I met with Larissa yesterday
 4 afternoon.
 5 Q. And did she show you any documents as
 6 part of the prep session?
 7 A. A few.
 8 Q. Did any of those bring back your
 9 memory on any of these events?
 10 A. Some did, yes.
 11 Q. Which ones helped you recall some of
 12 the events?
 13 MS. PAULE-CARRES: If you can recall.
 14 Only provide answers to those that refreshed
 15 your recollection.
 16 THE WITNESS: Right. I'm trying to
 17 recall which documents you showed me
 18 yesterday.
 19 A. Each of the documents sort of brought
 20 back the memory of the transaction on the whole,
 21 but there wasn't any one thing that Larissa
 22 showed me that made me --
 23 BY MR. JOHNSON:
 24 Q. Did she show you any emails?
 25 A. No.

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1 Q. Did you have email at Morgan Stanley?
 2 A. Yes.
 3 Q. And if you had it, I assume you used
 4 it?
 5 A. I did, yes, even back then.
 6 Q. And even in '98?
 7 A. Yeah.
 8 MS. PAULE-CARRES: He used email in
 9 1998?
 10 MR. JOHNSON: Yes.
 11 A. Yeah.
 12 BY MR. JOHNSON:
 13 Q. Do you -- can you place Exhibit 266
 14 in time? Was this before you went to Florida or
 15 after you went to Florida?
 16 A. Do you know the date of the meeting
 17 in Florida?
 18 Q. I do. But I'm --
 19 A. Okay.
 20 Q. -- I'm trying to see if you can
 21 recall.
 22 A. I don't recall.
 23 Q. We're going to get to the Florida
 24 meeting in just a minute.
 25 A. Yeah. Okay.

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1 Q. If you could --
 2 A. If I had to guess, this was before
 3 (indicating).
 4 Q. Why do you say that?
 5 A. Because I can't imagine not -- Bram
 6 wanting to have a meeting without other banks
 7 having some basic information like this.
 8 Q. If you could look at the third page
 9 of this document.
 10 A. Page 7?
 11 Q. That's correct. Which -- so that we
 12 have a Bates number, it's CPH 1349295.
 13 MS. PAULE-CARRES: It's '55, point of
 14 clarification.
 15 MR. JOHNSON: I'm sorry. Thank you.
 16 1349255 and continuing on to '256.
 17 BY MR. JOHNSON:
 18 Q. Can you tell me who selected the key
 19 dates set forth on those two pages?
 20 A. No. I don't know.
 21 Q. Does that schedule seem particularly
 22 accelerated?
 23 MS. PAULE-CARRES: Objection.
 24 A. Yeah. I don't -- given my limited
 25 involvement, I wouldn't be in a position to

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1 comment on that.
 2 BY MR. JOHNSON:
 3 Q. The entry for March 5 provides
 4 initial business due diligence.
 5 Do you see that?
 6 A. I do.
 7 Q. And that applies both to the zero
 8 offering and the senior credit facilities.
 9 Do you see that?
 10 A. Yes. As indicated by the lines
 11 (indicating) --
 12 Q. That's what --
 13 A. -- crossing both columns?
 14 Q. Yes.
 15 Were you involved in that business
 16 due diligence?
 17 A. I went to the meeting in Florida. Is
 18 that the date of the meeting in Florida?
 19 Q. Well, I'll tell you, it's the day
 20 after.
 21 A. March 5th is the day after?
 22 Q. Yeah. The Florida trip was --
 23 appears to be the 4th and the 5th.
 24 A. 4th and 5th, okay. I don't recall
 25 staying overnight. But yeah.

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1 Q. But -- let me see if we can cut
 2 through this.
 3 A. Yeah.
 4 Q. Other than your trip to Florida, did
 5 you conduct any other business due diligence on
 6 Sunbeam?
 7 A. I did not, given my role in the
 8 transaction.
 9 Q. Do you know who did conduct business
 10 due diligence on Sunbeam?
 11 A. There were many people working on the
 12 transaction from different departments at Morgan
 13 Stanley. So I don't know.
 14 Q. You assume they did do due diligence?
 15 A. Yeah. I just don't know how it was
 16 conducted and when it was conducted and who was
 17 conducting it.
 18 Q. And what it involved?
 19 A. And what it involved.
 20 Q. Did you ever speak to Sunbeam's
 21 auditors?
 22 A. No.
 23 Q. When you were at Morgan Stanley and
 24 more intensively involved in a financing, would
 25 you typically speak to a borrower's auditors?

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1 A. It depended upon the situation. And
 2 I had in the past in certain circumstances.
 3 Q. And what circumstance would dictate a
 4 call with the auditors?
 5 A. When we as a group deemed it
 6 necessary to have the auditors' blessing on the
 7 numbers.
 8 Q. I guess what I'm getting at, when
 9 would you deem that appropriate?
 10 A. Oh, I'm sorry. Well, I would say in
 11 most circumstances that would be deemed
 12 appropriate for financings of these size and this
 13 kind of complexity.
 14 Q. Did you have any understanding as to
 15 whether Morgan Stanley intended to syndicate the
 16 secured credit facility?
 17 A. Our basic business framework was such
 18 that we intended to syndicate most every
 19 financing that we underwrote.
 20 Q. And why is that?
 21 A. Well, it was deemed important that in
 22 order to show a proper return on the capital that
 23 we deploy, and recognizing that we would always
 24 have to keep in this particular -- with this sort
 25 of financing a piece of the financing on the

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1 books as Morgan Stanley's original capital, it
 2 was just the way the market worked to have others
 3 come in and take pieces of it.
 4 Q. And reduce exposure --
 5 A. And reduce Morgan Stanley's and the
 6 other agent's exposure.
 7 Q. Does this syndication typically occur
 8 before or after the closing?
 9 A. It really -- it depends on the
 10 circumstance. There are examples of before and
 11 after.
 12 Q. The preference, I assume, would be to
 13 syndicate before closing?
 14 MS. PAULE-CARRES: Objection to the
 15 --
 16 A. It really depended upon the -- on the
 17 situation. Many instances it's just not an
 18 option simply because of timing.
 19 BY MR. JOHNSON:
 20 Q. Did you ever gain an understanding as
 21 to when Morgan Stanley intended to syndicate the
 22 Sunbeam credit facility?
 23 A. I wasn't a part of those
 24 discussions. In the weekly meetings that I was
 25 part of, you know, I heard that at a certain

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1 point the intention was to syndicate, as with
 2 most financing.
 3 Q. Did you understand the syndication to
 4 be delayed?
 5 A. Yeah. I don't know. Because I don't
 6 know what the original syndication plan was.
 7 Q. But the weekly meetings, you didn't
 8 hear anyone discuss problems in completing the
 9 syndication?
 10 A. I honestly don't recall.
 11 Q. If you could flip to the page which
 12 has the -- it's Page 15 of 30 in the fax header
 13 and has the Bates page CPH 1349267. And the
 14 title is "Project Laser" "Laser Stand-alone
 15 Income Statements."
 16 A. Page 15 of 30 in the --
 17 Q. In the fax --
 18 A. -- top right-hand corner?
 19 Q. Yeah. Maybe 16. Let's go with the
 20 Bates stamp.
 21 A. Sorry.
 22 Q. 1349267.
 23 A. Sorry. Yeah. Okay. Got it.
 24 Q. Do you know who prepared this income
 25 statement?

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1 A. I do not.
 2 Q. Do you know whether anyone at Morgan
 3 Stanley tested the reasonableness of the
 4 projections set forth on this income statement?
 5 A. I don't know. I mean, the entire
 6 contents of this package were prepared and -- I'm
 7 assuming that Bram simply asked me to get
 8 something out to these guys before the meeting.
 9 So I did not have the time or the
 10 inclination to, within that time period,
 11 establish how reasonable or not they were.
 12 Q. And you don't know whether anyone at
 13 Morgan Stanley did that?
 14 A. Again, it was a large team. I just
 15 don't know.
 16 Q. But you couldn't tell me -- you
 17 couldn't name an individual who tested the
 18 reasonableness of the projections?
 19 A. I can't --
 20 MS. PAULE-CARRES: Objection; asked
 21 and answered.
 22 BY MR. JOHNSON:
 23 Q. Let's flip a few more pages into this
 24 document with the CPH Bates stamp ending in
 25 '271. This is proforma income statements.

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1 A. Uh-huh.
 2 Q. You'll see under the heading a series
 3 of base case synergy numbers.
 4 Do you see those, including Kemper
 5 base case synergies of a hundred million dollars?
 6 A. On the second line of the subtitle?
 7 Q. Exactly.
 8 A. Okay.
 9 Q. Do you have any idea where those
 10 synergy numbers came from?
 11 A. I don't know.
 12 Q. Did you perform any synergies
 13 analysis in connection with this transaction?
 14 A. I did not.
 15 Q. Do you know who at Morgan Stanley was
 16 responsible for analyzing synergies?
 17 A. Again, it was a large team. And I
 18 know that a lot happened on this transaction
 19 prior to my involvement. So I just don't know.
 20 Q. When you say you know a lot happened
 21 prior to your involvement, how did you know that?
 22 A. Because there was -- by the time I
 23 was asked to attend this meeting there were -- it
 24 was just volumes of data.
 25 Q. That Morgan Stanley had collected?

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1 A. Had collected or had. And just to
 2 have a model just implies a lot of work had gone
 3 into it.
 4 Q. What was the purpose of Morgan
 5 Stanley's trip to Florida where you were one of
 6 the participants?
 7 A. Well, as I've been refreshed through
 8 my meeting yesterday and -- yeah.
 9 MS. PAULE-CARRES: Objection to the
 10 point -- to the extent it calls for
 11 privileged information.
 12 BY MR. JOHNSON:
 13 Q. Well, hold on a second. I just asked
 14 what the purpose of your meeting -- of going to
 15 Florida was.
 16 A. It was to have the other banks meet
 17 with management, was my understanding.
 18 MS. PAULE-CARRES: If we're going
 19 into a new area, can we take a quick break?
 20 MR. JOHNSON: Sure.
 21 MS. PAULE-CARRES: Thanks.
 22 THE VIDEOGRAPHER: We're going off
 23 the record.
 24 (Recess taken.)
 25 THE VIDEOGRAPHER: We're back on

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1 record. The time is 11:18.
 2 BY MR. JOHNSON:
 3 Q. Before the break, Mr. Burchill, we
 4 were talking about your one trip to Florida on
 5 this financing.
 6 Do you recall which members of
 7 Sunbeam management were present during your trip
 8 to Florida?
 9 A. I don't recall.
 10 Q. Did you ever meet Al Dunlap?
 11 A. Did not.
 12 Q. Russ Kersh?
 13 A. Did not.
 14 Q. Do you remember the position or title
 15 of any of Sunbeam management who participated in
 16 your meetings in Florida?
 17 A. I don't recall positions or titles.
 18 Q. Any names?
 19 A. Certainly not names.
 20 Q. How many members of management do you
 21 think you spoke with during your visit?
 22 A. There were two or three managers
 23 there.
 24 Q. And from Morgan Stanley, it was just
 25 you and Bram Smith?

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1 A. I believe that's correct.
 2 Q. Did Morgan Stanley have any counsel
 3 present?
 4 A. I can't recall.
 5 Q. Do you know who Morgan Stanley's
 6 counsel was on the financing?
 7 A. I don't know.
 8 Q. Did Morgan Stanley have a particular
 9 counsel typically -- a counsel it typically used
 10 on financing?
 11 A. We had a couple of firms that we
 12 worked with.
 13 Q. And Davis, Polk was one of them?
 14 A. Davis, Polk was certainly one of
 15 them.
 16 Q. But you don't recall Davis, Polk
 17 being at your Florida meeting?
 18 A. I don't recall if they were on the
 19 transaction or not or whether or not they were at
 20 the meeting.
 21 Q. And this meeting was part of business
 22 due diligence?
 23 A. Yes.
 24 Q. And the purpose of the due diligence
 25 from the financing perspective was to get a

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1 better understanding of the company and its
 2 prospects?
 3 A. That's correct. And to -- and to
 4 understand what diligence had been conducted up
 5 to that point.
 6 Q. Because you didn't need to do that
 7 diligence over again?
 8 A. Correct. And the banks wanted to
 9 know what had been done up to that point to
 10 therefore determine what remained to be done.
 11 Q. What had been done up to that point?
 12 A. I really don't recall.
 13 Q. Did you have any discussions, either
 14 at that meeting or otherwise, concerning how
 15 Sunbeam was doing in the first quarter of 1998?
 16 A. I don't know.
 17 Q. Would you expect that that would be a
 18 topic of discussion as part of the business due
 19 diligence?
 20 A. Typically, that would be a topic of
 21 discussion.
 22 Q. How is the quarter looking?
 23 A. Typically, the current quarter would
 24 be a topic of discussion.
 25 Q. You just don't recall whether it was

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1 in this case or not?
 2 A. Yes, I just don't recall.
 3 Q. Do you recall hearing any information
 4 that was negative or unsettling as part of your
 5 work on Sunbeam?
 6 MS. PAULE-CARRES: Objection; vague.
 7 A. No. I don't recall any unsettling
 8 aspect of it.
 9 BY MR. JOHNSON:
 10 Q. Have you ever worked on a public
 11 offering of securities?
 12 MS. PAULE-CARRES: Could you repeat
 13 the question.
 14 (Record read.)
 15 A. Of high-yield bonds.
 16 BY MR. JOHNSON:
 17 Q. Have you been involved in
 18 underwriters due diligence for such an offering?
 19 A. Yes.
 20 Q. How does that due diligence differ
 21 from due diligence performed by the financing
 22 side of a transaction?
 23 A. I don't understand the question.
 24 Q. Well, let me back up. Maybe --
 25 that's a bad question.

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1 Did the due diligence performed by
 2 Morgan Stanley Senior Funding have a different
 3 focus than the due diligence performed by the
 4 Morgan Stanley entities involved in the
 5 convertible offering?
 6 MS. PAULE-CARRES: Objection;
 7 foundation.
 8 A. I had never worked -- that was a
 9 different group that would do the convertible
 10 offering. So I just don't know.
 11 BY MR. JOHNSON:
 12 Q. And you don't have a sense as a
 13 general matter as to whether there would be
 14 different focuses?
 15 A. I just don't know.
 16 Q. Do you have any sense as to whether
 17 or not Morgan Stanley has an obligation to
 18 reasonably fact check information given to it by
 19 management before that information is conveyed to
 20 third parties?
 21 MS. PAULE-CARRES: Objection. Vague
 22 as to what is reasonable and to the extent
 23 it calls for speculation.
 24 A. Can you repeat the question again.
 25 BY MR. JOHNSON:

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1 Q. Sure. We can have the Reporter read
 2 it.
 3 (Record read.)
 4 MS. PAULE-CARRES: Same objection.
 5 A. With Morgan Stanley Senior Funding
 6 and the high-yield group, our job was to try to
 7 issue into the markets securities that were well
 8 underwritten and therefore had an adequate amount
 9 of diligence behind -- and analysis behind the
 10 underwriting.
 11 A lot of factors would play into
 12 this, such as whether a company was a public
 13 company or a nonpublic company. Obviously,
 14 there's a lot more information with public
 15 companies than nonpublic companies. So the level
 16 of work that was done would be dictated by the
 17 complexity of the transaction, again public or
 18 nonpublic. There are just so many factors that
 19 would determine the level of diligence that would
 20 be done.
 21 BY MR. JOHNSON:
 22 Q. It's transaction specific?
 23 A. Agreed, yes.
 24 Q. Would you agree that when an
 25 underwriter comes across anomalous information,

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1 that would inform additional diligence that might
 2 be appropriate?
 3 MS. PAULE-CARRES: Objection.
 4 A. By "anomalous," what do you mean?
 5 BY MR. JOHNSON:
 6 Q. Something inconsistent with
 7 management's representations.
 8 A. But what question are you asking me?
 9 Q. Does -- strike that.
 10 If an underwriter comes across
 11 information inconsistent with management
 12 representations, would that inform what
 13 additional diligence might be appropriate?
 14 MS. PAULE-CARRES: Objection to the
 15 extent that the question is hypothetical,
 16 and Mr. Burchill is being served as --
 17 offered as a fact witness.
 18 A. Generally, yes.
 19 BY MR. JOHNSON:
 20 Q. Do you know whether anyone at Morgan
 21 Stanley spoke with Sunbeam's customers as part of
 22 Morgan Stanley's work on the financing
 23 transactions?
 24 A. Again, it was such a large team
 25 working at many different levels. And given my

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1 level of involvement, I just don't know.
 2 Q. Do you have any expectation as to
 3 whether someone from Morgan Stanley spoke with
 4 major customers of Sunbeam?
 5 A. I don't have any expectation.
 6 Q. Do you know the phrase "highly
 7 confident letter"?
 8 A. Yes, I've heard that phrase.
 9 Q. Did you have an understanding that
 10 Morgan Stanley issued a highly confident letter
 11 to Sunbeam in connection with this financing?
 12 A. I wasn't aware of it until we saw the
 13 letter yesterday afternoon.
 14 Q. You weren't aware of it even at the
 15 time --
 16 A. I wasn't aware of it at the time.
 17 Q. You just learned about it?
 18 A. Yes.
 19 Q. Did Morgan Stanley have any
 20 procedures in place governing the circumstances
 21 in which it would issue a highly confident
 22 letter?
 23 A. There were certainly an understanding
 24 at the time. Whether or not there were written
 25 policy and procedures, I'm not aware.

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1 Q. What was the understanding at the
 2 time?
 3 A. And it's been so long, I really don't
 4 recall the key elements of decision-making that
 5 went behind the issuing of a highly confident
 6 letter or the weight of this kind of a letter. I
 7 just don't recall what the weight was and when we
 8 got to the point of issuing them.
 9 Q. When you say the "wait," is that
 10 W-A-I-T or W-E-I-G-H-T --
 11 A. E-I-G-H-T.
 12 Q. What do you mean by that?
 13 A. I just don't recall the substance of
 14 the letter. There is a term called "highly
 15 confident letter." I just don't recall the
 16 implication of issuing a highly confident letter.
 17 Q. Let me show you an example. This has
 18 been marked previously as 74.
 19 I take it prior to yesterday, if
 20 ever, you had never seen this document before?
 21 A. Correct.
 22 Q. Have you seen highly confident
 23 letters on other transactions at Morgan Stanley?
 24 A. I have.
 25 Q. Does this appear to be consistent

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1 with that format?
 2 A. It does.
 3 Q. And I think you testified you can't
 4 recall the details of the protocols for getting
 5 one of these issues.
 6 Was there a certain level of
 7 authority that needed to be obtained before
 8 issuing such a letter?
 9 A. I can't recall.
 10 Q. Can any managing director of the
 11 company issue such a letter?
 12 A. I don't know.
 13 Q. And what's the purpose of issuing a
 14 highly confident letter?
 15 MS. PAULE-CARRES: Objection;
 16 foundation.
 17 A. In general terms, the purpose would
 18 be to give the company comfort that given certain
 19 conditions being completed, that a financing was
 20 possible.
 21 BY MR. JOHNSON:
 22 Q. And doesn't it as well secure Morgan
 23 Stanley's position as arranger and underwriter
 24 for the financing?
 25 A. In general terms, sometimes it did

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1 and sometimes it did not.
 2 Q. In the context of the Sunbeam
 3 transaction, though, it did. So if you look at
 4 the second page of the letter --
 5 A. Yeah. I mean, as I'm reading it, I
 6 looks like this gave Morgan Stanley a role in the
 7 transaction.
 8 Q. Had Morgan Stanley substantially
 9 completed its due diligence at the time this
 10 highly confident letter was issued?
 11 A. I don't know.
 12 Q. Would you have any expectation on
 13 that?
 14 A. Well, again, just from reading it, it
 15 looks like diligence had not been done
 16 completely. At the top of Page 2 -- if diligence
 17 had been completed, I'm sure that the company
 18 would have negotiated that out.
 19 Q. By "the company," you mean Sunbeam?
 20 A. I'm sorry. Sunbeam.
 21 Q. Do you know anything about the
 22 negotiation of this letter?
 23 A. I do not.
 24 Q. And I take it you have no idea who
 25 Bram Smith talked to prior to signing this

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1 letter?
 2 A. I don't.
 3 Q. And no idea who he typically would
 4 talk to before signing a highly confident letter
 5 in 1998?
 6 A. I don't recall, no.
 7 Q. Mr. Burchill, this has been marked
 8 previously as Exhibit 217. And, again, I
 9 recognize this is a lengthy document. I'll pose
 10 a question and then give you an opportunity to
 11 flip through the document.
 12 The question is whether you had any
 13 role in preparing this document.
 14 A. I did not.
 15 Q. Do you know who prepared the
 16 document?
 17 A. I don't know exactly, but my guess is
 18 that it would be a large group of people over a
 19 number of departments of Morgan Stanley.
 20 Q. So preparation of a document like
 21 this --
 22 A. Some of whom are listed here, some of
 23 whom aren't listed here.
 24 Q. So it would be a team effort to
 25 prepare a document like this?

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1 A. Correct. Yes.
 2 Q. Is the same true of the offering
 3 memorandum for the convertible offering? Would
 4 that be a team effort?
 5 A. I don't know what it was in this
 6 case. But, typically, a memorandum of that kind
 7 would be a team effort, yes.
 8 Q. I take it from your answer that you
 9 personally had no involvement whatsoever with the
 10 preparation of the offering memorandum?
 11 A. That's correct.
 12 Q. Do you have an understanding that the
 13 amount of the credit facilities was reduced from
 14 two billion to one point seven billion?
 15 A. I learned about that on one of these
 16 weekly calls when I was in London.
 17 Q. What was the reason for the reduction
 18 in the amount of the facilities?
 19 MS. PAULE-CARRES: Objection;
 20 foundation.
 21 A. I don't recall.
 22 BY MR. JOHNSON:
 23 Q. Was the reason discussed, or was it
 24 just mentioned that there was a reduction?
 25 A. I think it was -- all I can recall is

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1 that it was mentioned it was reduced. Again, it
 2 was a very summary call covering a number of
 3 companies.
 4 Q. Did you have any view as to whether
 5 that was a good development from Morgan Stanley's
 6 perspective?
 7 A. I didn't have a view on it.
 8 Q. Did anyone at any time discuss
 9 whether the reduction in the amount of the
 10 facilities was a beneficial development for
 11 Morgan Stanley?
 12 A. I don't recall.
 13 Q. Did you understand the size of the
 14 convertible offering increased from five hundred
 15 million to seven-fifty?
 16 A. I didn't know. That the convertible
 17 was never a topic -- it was never a part of our
 18 group's discussion, to my recollection.
 19 Q. Have you seen confidential -- let me
 20 strike this.
 21 Have you ever seen Exhibit 217 prior
 22 to today?
 23 A. I believe it was one of the documents
 24 I saw yesterday, but prior to yesterday, no.
 25 Q. I take it, though, you've seen

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1 similar confidential information memoranda; is
 2 that correct?
 3 A. On other transactions, yes.
 4 Q. What is the purpose of a document of
 5 this nature?
 6 A. To inform potential lenders to the
 7 transaction about the transaction.
 8 Q. And from your perspective, does
 9 Morgan Stanley have any obligation of any sort to
 10 satisfy itself that the information contained in
 11 such a document is accurate?
 12 A. My recollection is that management
 13 would have to sign off on the document as its
 14 information. And my recollection is that there
 15 is language in the beginning of documents like
 16 these indicating that.
 17 Q. Disclaimers?
 18 A. Disclaimers.
 19 Q. Right. So I take your answer to mean
 20 that you did not view Morgan Stanley as having
 21 any obligation to satisfy itself that the
 22 information is accurate?
 23 MS. PAULE-CARRES: Objection to the
 24 extent it mischaracterizes testimony.
 25 A. Again, our view, as I recall it, was

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1 that we had two clients. It was the borrower and
 2 also the lenders who would be partaking in the
 3 transaction. And we did what we thought was
 4 necessary to make sure that the information was
 5 as accurate as possible and that management
 6 represented it as such.
 7 BY MR. JOHNSON:
 8 Q. When you say you had two clients, the
 9 borrower here, Sunbeam, and the lender, that
 10 would be people involved in the syndication?
 11 A. Uh-huh.
 12 Q. Okay.
 13 A. As a general matter, yeah.
 14 Q. And I take it from your testimony --
 15 A. Oh. And also given the fact that we
 16 were a principal in the transaction that we were
 17 satisfied that the capital risk we were taking
 18 was a good one.
 19 Q. Sure. I take it from your testimony
 20 today, though, that you can't tell me specific
 21 acts that Morgan Stanley undertook to satisfy
 22 itself that the information contained in the
 23 information memorandum was accurate?
 24 A. Again, based upon my level of
 25 involvement, I can't comment on that.

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1 Q. And as a general matter, the steps
 2 that Morgan Stanley would undertake would vary
 3 depending on the circumstances of the
 4 transaction?
 5 A. Yes.
 6 Q. Do you know who Andrew Conway is?
 7 A. I don't know.
 8 Q. Did you know anything about
 9 Mr. Dunlap's reputation when you got involved
 10 with the Sunbeam financing?
 11 A. Very little.
 12 Q. Did you understand he had been at
 13 Scott Paper prior to Sunbeam?
 14 A. I believe I knew that at the time,
 15 yeah.
 16 Q. I'm going to point you to a few
 17 portions of this information memorandum. And I'm
 18 afraid I'm going to be a little redundant on some
 19 of our questions today. But I just want to
 20 confirm your understanding on a few of these
 21 facts.
 22 If you could look at the Bates stamp
 23 Morgan Stanley confidential 0045681.
 24 A. Uh-huh. I'm there.
 25 Q. There's a section towards the bottom

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1 entitled "Restructuring and Growth Plan"?
 2 A. I see it.
 3 Q. This refers to the turnaround that
 4 Mr. Dunlap spearheaded at Sunbeam.
 5 To your knowledge, did anyone at
 6 Morgan Stanley attempt to verify the authenticity
 7 of the turnaround?
 8 A. I don't know.
 9 Q. Did you have any opinion as to how
 10 the market valued Sunbeam?
 11 A. I didn't -- I don't know.
 12 Q. Was it viewed as a growth company?
 13 A. I don't know.
 14 Q. If you'd look at Page '45697. The
 15 subtitle of this section is called "Investment
 16 Considerations." There is a bullet "ability to
 17 obtain synergies."
 18 A. I see it.
 19 Q. And the last sentence of that section
 20 refers to Andrew Conway, who I mentioned
 21 previously.
 22 Did you have any understanding as to
 23 who at Morgan Stanley had been involved in
 24 modeling synergies?
 25 A. I wasn't aware of who was doing this.

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1 Q. And you don't know whether Andrew
 2 Conway was affiliated with Morgan Stanley at that
 3 time or not?
 4 A. This is a completely new name to me.
 5 Q. And I take it, the dollar volume of
 6 synergies set forth here is information that you
 7 were not involved with analyzing?
 8 A. Correct.
 9 Q. And you personally didn't put any
 10 reliance on any synergies figures in connection
 11 with this financing?
 12 A. I did not.
 13 MS. PAULE-CARRES: Could you please
 14 repeat the last question and answer.
 15 (Record read.)
 16 BY MR. JOHNSON:
 17 Q. Almost done with this document. On
 18 Page 45735 -- '735 in the last digits, there's a
 19 series of bullets under the title "Preacquisition
 20 Strategies/Goals."
 21 I take it from your testimony today
 22 that you personally had no involvement in
 23 analyzing the reasonableness or attainability of
 24 these goals?
 25 A. Given my limited involvement, I did

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1 not.
 2 Q. Would you expect someone at Morgan
 3 Stanley to, in fact, analyze these strategies or
 4 goals?
 5 A. You know, it was a large deal team on
 6 a complex deal. I didn't have expectations or
 7 views on that.
 8 Q. Would these goals or strategies be an
 9 important consideration from the senior secured
 10 lending perspective?
 11 A. I'm not aware of these goals. So I
 12 don't know the extent to which they would be or
 13 not.
 14 Q. And then last, on Page 45756 -- '756 --
 15 A. Oh sorry.
 16 Q. -- there is a text box that states
 17 "Coleman Synergies Rationale \$118 million."
 18 Do you have any idea where that
 19 number came from?
 20 A. I do not.
 21 Q. Do you know whether there were any
 22 accounting or financial advisory firms involved
 23 in quantifying synergies from the Coleman
 24 acquisition?
 25 A. I wasn't aware of those sorts of

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1 activities.
 2 Q. Before you moved to London -- I think
 3 you said that was March 21?
 4 A. That was the day that I -- we passed
 5 through Heathrow as a family to permanently be
 6 there.
 7 Q. Prior to the passing through
 8 Heathrow, had you heard any information
 9 concerning Sunbeam's first quarter 1998 financial
 10 performance?
 11 A. Not prior to that. For a week to ten
 12 days prior to that, I was out of the office on
 13 vacation with the family making the transition.
 14 Q. So prior to March 21, you had heard
 15 nothing to the effect that Sunbeam was performing
 16 in a manner inconsistent with analysts'
 17 expectations for the quarter?
 18 A. I had not.
 19 Q. Had you heard that Sunbeam's sales
 20 for the first two months of the quarter were
 21 running at half of the sales for the prior year
 22 period?
 23 MS. PAULE-CARRES: Objection; asked
 24 and answered.
 25 A. I wasn't aware of that.

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1 BY MR. JOHNSON:
 2 Q. Had you heard through the first two
 3 months of the quarter Sunbeam was showing a loss
 4 as opposed to a profit?
 5 A. I wasn't aware of that.
 6 Q. Had you heard prior to, again, March
 7 21 that Sunbeam had accelerated sales from the
 8 first quarter of 1998 into the fourth quarter of
 9 1997?
 10 A. Isn't that decelerating sales?
 11 Q. Accelerated from first quarter of
 12 1998 into the fourth quarter of 1997?
 13 A. Is that accelerating sales?
 14 Q. Well, let's -- so we're on the same
 15 page --
 16 A. Oh, yeah.
 17 Q. Sunbeam -- let me then ask a full
 18 question here.
 19 A. Sure.
 20 Q. Had you heard prior to March 21,
 21 1998, that Sunbeam had recognized as income in
 22 the fourth quarter of 1997 sales that otherwise
 23 would have been recognized in the first quarter
 24 of 1998?
 25 A. I see. I can't recall. I wasn't

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1 aware of it.

2 Q. Would that be information that would

3 have been significant to you had you continued

4 your involvement on the financing?

5 MS. PAULE-CARRES: Objection; calls

6 for speculation.

7 A. It's hard to say. Again, with my

8 limited involvement, I would have needed a

9 context to put that in. I just don't have that

10 context.

11 BY MR. JOHNSON:

12 Q. Would the fact that Sunbeam's sales

13 had been running to the first two months of the

14 quarter at half the prior year period be

15 information that you would want to dig down on,

16 so to speak, if you were still involved at the

17 financing at that point?

18 A. I just don't have the context to make

19 that sort of judgment.

20 Q. Maybe, maybe not?

21 A. Maybe, maybe not.

22 Q. When was the first time that you did

23 hear about a problem with Sunbeam's first quarter

24 1998 performance?

25 A. I don't recall that I ever knew there

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1 was a problem. I was in London focused on other

2 things.

3 Q. Did you understand that Sunbeam

4 issued a press release on March 19, 1998,

5 concerning its first quarter performance?

6 A. I wasn't aware of that.

7 Q. I take it, then, you had no

8 discussions with anyone as to whether a press

9 release would be appropriate?

10 A. I had no such discussions.

11 Q. Or what a press release might say?

12 A. Or what a press release might say.

13 Q. Prior to yesterday, had you ever seen

14 any comfort letters issued by Arthur Andersen in

15 connection with the convertible offering for

16 Sunbeam?

17 A. I had not.

18 Q. You saved yourself many hours of

19 deposition by those answers.

20 Let me just confirm a few things.

21 MS. PAULE-CARRES: Can we take a

22 short break while you are confirming?

23 MR. JOHNSON: Sure.

24 THE VIDEOGRAPHER: We're going off

25 the record. The time is 11:55.

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1 (Recess taken.)

2 THE VIDEOGRAPHER: We're back on the

3 record. This begins tape number two.

4 BY MR. JOHNSON:

5 Q. Mr. Burchill, we were discussing

6 whether you had any information concerning the

7 sale shortfall, first quarter of 1998. I want to

8 finish up on that topic, if we could.

9 I'll show you what's been marked

10 previously as CPH Exhibit 16. Prior to

11 yesterday, have you ever seen this document?

12 A. I have not.

13 Q. Did you have any discussions

14 concerning a schedule by Sunbeam directed to

15 magnifying sales level in the first quarter of

16 1998?

17 A. No.

18 Q. Do you know who Alan Dean is?

19 A. I don't.

20 Q. Ruth Porat?

21 A. I know she used to be at Morgan

22 Stanley. She may still be there.

23 Q. Did you have any interaction with her

24 whatsoever on the Sunbeam financing?

25 A. Did not.

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1 Q. Did you attend any of the road shows

2 on the convertible offering?

3 A. I did not.

4 Q. Did you ever have any discussions

5 with anyone concerning what happened at the road

6 shows?

7 A. I did not.

8 Q. Did the lender presentations occur

9 separate from the road shows?

10 A. As a general matter, they do.

11 Q. Did you attend any of the lender

12 presentations for this financing?

13 A. I did not.

14 Q. Do you know who did?

15 A. I don't know.

16 Q. Do you know -- do you have any idea

17 who from Sunbeam attended those presentations?

18 A. I do not.

19 Q. Do you have any understanding as to

20 what happened at any of those presentations?

21 A. No.

22 Q. Have you ever had any dealings of any

23 sort with anyone from MacAndrews & Forbes

24 Holdings?

25 MS. PAULE-CARRES: In general or in

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1 conjunction with Sunbeam?
 2 MR. JOHNSON: Ever.
 3 A. I can't recall ever having any
 4 dealings with anyone there.
 5 BY MR. JOHNSON:
 6 Q. Do you know who James Maher is?
 7 A. Do not know.
 8 Q. How about Will Nesbitt?
 9 A. Is that the same person as Chip
 10 Nesbitt?
 11 Q. I don't know the answer to that.
 12 A. I know a Chip Nesbitt who worked at
 13 Morgan Stanley in the real estate department.
 14 Q. But Will Nesbitt doesn't ring a bell?
 15 A. No.
 16 Q. How about Howard Gittis?
 17 A. I know the name, but I have not met
 18 him.
 19 Q. How about Ronald Perelman?
 20 A. I know of him.
 21 Q. But no dealings with him?
 22 A. No dealings with any of them.
 23 Q. Were you involved in presenting the
 24 proposed Sunbeam financing to the leverage
 25 finance commitment committee?

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1 A. I was not.
 2 Q. You didn't attend any meeting or
 3 telephone conference where the financing was laid
 4 out for the committee?
 5 A. I don't recall ever being part of a
 6 committee meeting, no.
 7 Q. Have you on other transactions been
 8 involved with presentations to the leverage
 9 finance commitment committee?
 10 A. I have.
 11 Q. Do you know who presented the
 12 proposed Sunbeam financing to the committee?
 13 A. I don't know.
 14 Q. I'm going to show you what's been
 15 marked previously as Exhibit 76.
 16 Mr. Burchill, I've given you Exhibit
 17 CPH Exhibit 76, which I recognize is a lengthy
 18 document.
 19 A. Yes.
 20 Q. Prior to today, had you ever seen
 21 this document with or without the marginalia?
 22 A. I can't recall. I don't think I ever
 23 got a copy of it, because I was gone over in
 24 London at that point.
 25 Q. Putting aside the cover page --

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1 A. Uh-huh.
 2 Q. -- starting on the second page, there
 3 is a memo listing you as one of a number of
 4 authors.
 5 A. Yes.
 6 Q. Did you ever see any drafts of this
 7 document?
 8 A. I don't recall seeing any drafts of
 9 this document.
 10 Q. Do you have any idea who had primary
 11 responsibility for putting this document
 12 together?
 13 A. I don't know who that was.
 14 Q. Do you have a sense of which
 15 department within Morgan Stanley would be
 16 responsible for putting together this memo?
 17 A. It would be a combination of
 18 responsibilities among folks who are listed as
 19 authors in those groups.
 20 Q. Would any one of those groups in
 21 particular have responsibility for finalizing the
 22 document and getting it out?
 23 A. It was a collaborative effort when,
 24 in general, a document like this was put
 25 together.

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1 Q. So you have no idea who actually
 2 maintained a final version on his or her computer
 3 and made the last edits?
 4 A. I don't know.
 5 Q. And you don't have a sense even which
 6 department that person would reside in?
 7 MS. PAULE-CARRES: Objection; calls
 8 for speculation.
 9 A. I don't know.
 10 BY MR. JOHNSON:
 11 Q. Did you ever speak with anyone
 12 concerning what was discussed at the leverage
 13 finance commitment committee meeting?
 14 A. Regarding Sunbeam, no.
 15 Q. You have no idea whether Sunbeam's
 16 first quarter sales situation was discussed at
 17 the meeting?
 18 A. No. I don't know.
 19 Q. Do you know who Don Uzzi is?
 20 A. No.
 21 Q. If you look at Page 4 of this
 22 document for me.
 23 A. Marked Page 4?
 24 Q. Yes. Actually, before I get to
 25 that: Do you have any idea whose handwriting

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1 appears on this document?
 2 MS. PAULE-CARRES: On the first
 3 page?
 4 MR. JOHNSON: Let's start there.
 5 Sure.
 6 A. No.
 7 BY MR. JOHNSON:
 8 Q. Okay. On marked Page 4 there is a
 9 Roman numeral IV "Due Diligence." The last
 10 sentence, the first paragraph states, "In that
 11 regard, the M&A group has gained an extremely
 12 sound knowledge of the company."
 13 Do you see that sentence?
 14 A. I do.
 15 Q. Do you have any reason to disbelieve
 16 that sentence?
 17 A. I would have no reason to disbelieve
 18 it.
 19 Q. How about reasons to believe it? Do
 20 you have any reasons to believe that sentence?
 21 A. I don't have any reasons to believe
 22 it. I didn't have any prior knowledge.
 23 Q. I believe you told me already today
 24 that you were not -- you were not aware that
 25 Sunbeam issued a press release on March 19th

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1 concerning its sales situation?
 2 A. Correct.
 3 Q. Do you recall an April 3rd press
 4 release at the close of the quarter indicating
 5 what Sunbeam's first quarter results were?
 6 A. I was not aware of the press release.
 7 Q. Do you remember what Sunbeam's first
 8 quarter results were or learning of that
 9 information shortly after the close of the
 10 quarter?
 11 A. No. At that point I no longer
 12 considered Sunbeam my transaction.
 13 Q. I guess that was getting to my next
 14 question.
 15 A. Yes.
 16 Q. Upon permanently moving to London on
 17 March 21st, you essentially cut the cord with the
 18 Sunbeam financing?
 19 A. Even before that. I would say after
 20 that meeting, that one meeting in -- I had not
 21 even considered myself a part of the team until I
 22 was requested to go to Florida with Bram Smith.
 23 And quickly after that, my understanding was my
 24 part was going to be working on transactions.
 25 Q. So your perspective other than

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1 substituting for Mike Hart at one meeting this
 2 was not your project?
 3 A. It was not my project.
 4 Q. Other than the weekly meetings,
 5 telephone meetings that we've talked about after
 6 March 21st, did you have any discussions with
 7 anyone concerning Sunbeam?
 8 A. Not to my knowledge.
 9 Q. Can you identify anything that Morgan
 10 Stanley should have done differently in
 11 connection with the Sunbeam financing?
 12 MS. PAULE-CARRES: Objection; calls
 13 for speculation.
 14 A. I didn't know enough about the
 15 transaction to pass that kind of judgment.
 16 BY MR. JOHNSON:
 17 Q. With the benefit of hindsight, do you
 18 have an opinion as to whether Morgan Stanley
 19 should have done something differently than it
 20 did?
 21 MS. PAULE-CARRES: Objection to the
 22 extent it's a hypothetical.
 23 A. I'm still not fully aware of all of
 24 the circumstances. So I just don't have
 25 knowledge to pass that kind of judgment.

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1 BY MR. JOHNSON:
 2 Q. So you would also be unable to
 3 identify any lessons that Morgan Stanley learned
 4 from the engagement?
 5 A. My role was simply too small and for
 6 a limited period of time.
 7 Q. Have you ever heard anyone voice any
 8 regret over the engagement?
 9 A. I don't recall anyone -- any such
 10 conversation.
 11 MR. JOHNSON: Why don't you give me
 12 two minutes. I may be finished.
 13 THE VIDEOGRAPHER: We're going off
 14 the record. It's 12:15.
 15 (Recess taken.)
 16 THE VIDEOGRAPHER: We're back on the
 17 record. The time is 12:20.
 18 BY MR. JOHNSON:
 19 Q. Mr. Burchill, at any point during the
 20 work on Sunbeam financing did anyone discuss the
 21 possibility of delaying the closing of the
 22 financing?
 23 MS. PAULE-CARRES: Objection;
 24 foundation.
 25 A. Yeah, I wasn't aware of any such

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1 discussions.
 2 BY MR. JOHNSON:
 3 Q. Did anyone at Morgan Stanley discuss,
 4 to your knowledge, monitoring Sunbeam's sales on
 5 a daily basis in the last two weeks of March of
 6 1998?
 7 MS. PAULE-CARRES: Same objection;
 8 foundation.
 9 A. I wasn't aware of this.
 10 MR. JOHNSON: No further questions.
 11 MS. PAULE-CARRES: I have one short
 12 question.
 13 EXAMINATION BY
 14 MS. PAULE-CARRES:
 15 Q. Mr. Burchill, during your testimony
 16 today you reviewed several documents and were
 17 asked several questions about fact checking the
 18 figures in those documents.
 19 Do you recall that?
 20 A. Yes.
 21 Q. In general, do you believe it's
 22 Morgan Stanley's responsibility to fact check the
 23 figures of companies that you are dealing with?
 24 MR. JOHNSON: Objection to form;
 25 leading.

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1 Go ahead.
 2 MS. PAULE-CARRES: Let me rephrase
 3 the question.
 4 BY MS. PAULE-CARRES:
 5 Q. Are you familiar with the role of an
 6 independent auditor?
 7 A. I am.
 8 Q. Can you please explain what that is.
 9 A. The role of an independent auditor is
 10 as an audit -- as an auditing firm to fact check
 11 the financial statements and results of a
 12 company.
 13 Q. Was Morgan Stanley an independent
 14 auditor?
 15 A. No, it was not.
 16 Q. Is due diligence the same as
 17 performing an audit of the financial numbers?
 18 A. It is not.
 19 Q. Do you know whether publicly traded
 20 companies -- do you know whether Sunbeam had an
 21 independent auditor reviewing its financials?
 22 A. I wasn't aware with respect to the
 23 Sunbeam transaction whether or not an independent
 24 auditor had been hired. It was my assumption
 25 that Sunbeam had an auditor, as all public

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1 companies do -- I believe are required to have.
 2 Q. And do you recall providing testimony
 3 regarding the syndication of the loan -- of the
 4 loan to Sunbeam?
 5 A. Only that I didn't recall the
 6 syndication, yes.
 7 Q. In general, in your experience at
 8 Morgan Stanley, does Morgan Stanley syndicate 100
 9 percent of a loan?
 10 A. In my experience, Morgan Stanley
 11 never syndicated 100 percent of a syndicated
 12 loan, primarily for the reason that no lending
 13 institution would partake in a loan that was
 14 fully syndicated out. As a general matter,
 15 participating lenders want to know that the lead
 16 underwriter has a holding portion of the loan and
 17 --
 18 MS. PAULE-CARRES: Thank you. I have
 19 no further questions.
 20 A. -- that was our practice.
 21 MR. JOHNSON: Okay. Naturally, that
 22 leads to one more follow-up for me. At
 23 least one more.
 24 FURTHER EXAMINATION BY
 25 MR. JOHNSON:

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1 Q. Do you have an understanding as to
 2 the role of auditors in assessing financial
 3 projections of a company?
 4 A. It depends on the circumstances.
 5 Q. Let me ask it slightly differently.
 6 You understand the auditing process
 7 to concern past financial results. Is that fair
 8 to say?
 9 A. Yes.
 10 Q. And so audited financials are
 11 different from financial projections, correct?
 12 A. That's correct.
 13 Q. And did you understand the auditors
 14 of Sunbeam to have any role in assessing the
 15 reasonableness or attainability of Sunbeam's
 16 financial projections?
 17 A. I wasn't aware of what the auditors'
 18 roles in general were with Sunbeam, because I
 19 just wasn't that involved.
 20 Q. Would you, as a general matter, think
 21 it appropriate to ask auditors their perspective
 22 on the reasonableness or attainability of the --
 23 a company's future financial projections?
 24 A. What would be reasonable would be to
 25 request auditors to review and fact check issues

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1 such as synergies or proforma adjustments to
 2 financial statements.
 3 Q. Do you have any idea whether that was
 4 done in the context of the Sunbeam financing?
 5 A. I just don't know.
 6 Q. Would you be interested in the
 7 auditors' perspective on attainability of
 8 financial projections?
 9 MS. PAULE-CARRES: Objection; calls
 10 for speculation.
 11 A. I myself never asked auditors to
 12 review future forecasts based upon management.
 13 So I just don't have the context within which to
 14 answer that question.
 15 BY MR. JOHNSON:
 16 Q. And you yourself haven't asked
 17 auditors to comment on projections, because
 18 auditors look historically?
 19 A. I've asked auditors on other
 20 transactions to look at adjustments that would be
 21 made to financial results regarding future events
 22 that would then be applied to adjustments to
 23 historical financial statements.
 24 Q. Other than with respect to specific
 25 adjustments, though, you haven't yourself asked

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1 auditors to comment on the attainability of
 2 projections?
 3 A. To the extent that synergies,
 4 "synergies" as an original term, would be part
 5 of projections, we would ask them their view on
 6 that as a general matter.
 7 Q. Do you understand auditors to have
 8 different expertise than investment bankers?
 9 A. Yes.
 10 Q. And how would you contrast those
 11 areas of expertise?
 12 A. Auditors check facts and investment
 13 bankers in general assess markets.
 14 Q. When you say "assess markets," what
 15 do you mean by that?
 16 A. The appetite of certain investors to
 17 invest in certain securities.
 18 Q. And so that involves a read of the
 19 current situation and an assessment of the future
 20 likely situation.
 21 Is that fair to say?
 22 A. Repeat the question.
 23 Q. Sure. It was a bad question. Let me
 24 strike it and give you another one.
 25 What I'm trying to understand is your

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1 view of the difference in roles of the auditor
 2 and the investment banker. And I believe you
 3 testified that investment bankers are concerned
 4 with the market. And we were exploring what that
 5 meant. I think that's a fair summary of our line
 6 of questioning. Tell me if you disagree.
 7 A. I think that's fair.
 8 Q. What I'm getting at is what you are
 9 attempting to convey by saying that investment
 10 bankers are experts in the market. And let me
 11 back up and ask this as an open-ended question.
 12 What do you mean by saying that
 13 investment bankers are experts in the market?
 14 A. Well, there are different markets,
 15 obviously, for different securities of different
 16 types of firms and markets for the firms
 17 themselves. And it's my understanding that
 18 investment bankers are expected to understand the
 19 prices of those securities, their value and the
 20 level of liquidity and appetite in those markets
 21 in general.
 22 Q. Do investment bankers in connection
 23 with that work need a skill set that enables them
 24 to understand the value of a company that they
 25 are working for?

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1 MS. PAULE-CARRES: Objection; vague.
 2 A. It's my understanding that investment
 3 bankers are not fact checkers but take facts and
 4 try to assess value based on that, yes.
 5 MR. JOHNSON: I have no further
 6 questions.
 7 THE WITNESS: Okay.
 8 THE VIDEOGRAPHER: The time is
 9 12:30. This completes the videotaped
 10 deposition of Mr. Thomas Burchill.
 11
 12
 13 THOMAS F. BURCHILL
 14
 15 Subscribed and sworn to before me
 16 this ____ day of _____, 2004.
 17
 18
 19
 20
 21
 22
 23
 24
 25

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1 CERTIFICATE
 2 STATE OF NEW YORK)
 3 : ss.
 4 COUNTY OF WESTCHESTER)
 5
 6 I, JANE WATSON, a Shorthand
 7 Reporter and Notary Public within and for
 8 the State of New York, do hereby certify:
 9 That, the witness THOMAS F. BURCHILL
 10 whose deposition is hereinbefore set forth,
 11 was duly sworn by me and that such
 12 deposition is a true record of the
 13 testimony given by the witness.
 14 I further certify that I am not
 15 related to any of the parties to this
 16 action by blood or marriage, and that I am
 17 in no way interested in the outcome of this
 18 matter.
 19 IN WITNESS WHEREOF, I have hereunto
 20 set my hand this 27th day of August, 2004.
 21
 22 _____
 23 JANE WATSON
 24
 25

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1 *** ERRATA SHEET ***
 2 ESQUIRE DEPOSITION SERVICES
 216 EAST 45th STREET
 3 NEW YORK, NEW YORK 10017
 (212) 687-8010
 4 NAME OF CASE: Coleman V Morgan Stanley
 DATE OF DEPOSITION: August 27, 2004
 5 WITNESS: Thomas F. Burchill
 6 PAGE LINE FROM TO
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21 _____
 THOMAS F. BURCHILL
 22 Subscribed and sworn to before me
 this _____ day of _____, 2004.
 23
 24 _____
 (Notary Public) My Commission Expires:
 25

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1 ----- I N D E X -----
 2 WITNESS EXAMINATION BY PAGE
 3 Thomas F. Burchill Mr. Johnson 5, 92
 4 Ms. Paule-Carres 89
 5
 6
 7 ----- EXHIBITS -----
 8 CPH FOR ID.
 9 CPH Exhibit 266, memo dated 3/3/98 from Mr.
 10 Burchill to Mr. Derito..... 42
 11
 12
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

FILED

Jan 11 2005
SHARON E. BOCK
CLERK & COMPTROLLER
BY *[Signature]*
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

**SUPPLEMENTAL APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S
SUMMARY JUDGMENT FILING**

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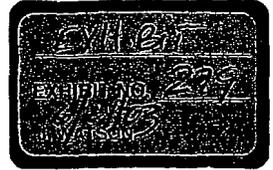
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THE COLEMAN COMPANY, INC.
NOTICE OF MERGER
AND APPRAISAL RIGHTS
AND INFORMATION STATEMENT



SUNBEAM CORPORATION
PROSPECTUS

On or about January 6, 2000, Coleman plans to merge with a subsidiary of Sunbeam Corporation. Under the February 1998 agreement relating to the merger, you will receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed. In addition, under a court-approved litigation settlement, you will receive warrants each entitling you to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003. You will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed (assuming no further increase in the number of outstanding Coleman shares).

As a result of the merger, Coleman will become a wholly owned subsidiary of Sunbeam. A copy of the merger agreement is attached as Annex I at the back of this document. You are urged to read the merger agreement carefully as it is the legal document that governs the merger.

The merger was approved by Coleman's board of directors and majority stockholder, a subsidiary of MacAndrews & Forbes Holdings Inc., on February 27, 1998. As a result, no further action by you or any other stockholder of Coleman is required to complete the merger.

At the same time that Coleman's board and majority stockholder approved the merger, Sunbeam agreed to acquire indirectly about 81% of the then outstanding Coleman common stock from the MacAndrews & Forbes subsidiary. That transaction was completed on March 30, 1998, and Sunbeam now owns indirectly about 79% of the outstanding Coleman common stock. As a result of a purchase by Sunbeam of shares of a newly created series of Coleman voting preferred stock in July 1999, Sunbeam now has the right to exercise just over 80% of the total voting power of Coleman's outstanding capital stock.

Instead of receiving cash, Sunbeam stock and warrants upon completion of the merger, you have the right to dissent from the merger and have the fair value of your Coleman shares appraised by a court and paid to you in cash. These appraisal rights are granted to you by Delaware law and were not affected by the litigation settlement. In order to pursue your appraisal rights, you must submit a written demand to Coleman on or before December 27, 1999 and satisfy the other requirements outlined in the attached document.

Sunbeam common stock trades on the New York Stock Exchange under the symbol "SOC." Coleman common stock trades on the New York Stock Exchange, the Pacific Stock Exchange and the Chicago Stock Exchange under the symbol "CLN."

This document contains important information about the merger, Coleman, Sunbeam, your Delaware law appraisal rights and the litigation settlement, including the terms of the warrants you will receive. This document is the prospectus of Sunbeam for the common stock to be issued in the merger and the common stock to be issued when the warrants are exercised. As required by Delaware law, this document also is Coleman's notice to you of your appraisal rights.

You should read this entire document carefully, including the Annexes which are found at the back of the document and the documents referred to under the caption "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155 which tells you where you can find additional information about Coleman and Sunbeam.

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CPH 1398266

16div-026863

Stockholders of Sunbeam and Coleman should carefully consider the risks and uncertainties affecting Sunbeam's business described in this document under the caption "RISK FACTORS" beginning on page 18.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the Sunbeam common stock to be issued under this document or determined if this document is accurate or adequate. Any representation to the contrary is a criminal offense.

This document is dated December 6, 1999 and was first mailed to you and the other stockholders of Coleman on or about December 7, 1999.

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CPH 1398269

16div-026866

SUMMARY

This summary highlights information that may be found in greater detail elsewhere in this document. In this summary, we have attempted to describe those matters which we believe will be of the greatest importance to you in considering the merger. This summary may not, however, contain all information that is important to you. For that reason, we urge you to read this document carefully in its entirety, including the Annexes at the back of this document and the additional documents we refer you to under "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155. In particular, you are urged to read carefully the information contained in this document under the caption "RISK FACTORS," beginning on page 18.

Q: What will I receive in the merger?

A: Under the February 1998 agreement relating to the merger, you will receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed. In addition, under a court-approved litigation settlement, you will receive warrants each entitling you to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003. You will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed (assuming no further increase in the number of outstanding Coleman shares). For further information regarding the terms of the settlement, including the terms of the warrants, see "LITIGATION SETTLEMENT AND WARRANTS" beginning on page 60.

You will not receive fractional shares of Sunbeam common stock in the merger. Instead, you will receive a check in payment for any fractional share based on the closing share price of Sunbeam common stock on the day the merger is completed. Nor will you receive any fractional warrants under the litigation settlement. Any fractional warrant will be rounded up or down to the nearest whole number.

Q: What choice do I have?

A: Your basic choice is whether to receive the cash, stock and warrants Sunbeam proposes to give you when the merger is completed, or to take action to pursue your Delaware law appraisal rights to have a court determine the value of your Coleman shares and to receive that value as determined by the court entirely in cash.

Q: What risks should I consider?

A: First, you should understand that you are receiving a fixed number of Sunbeam shares in the merger (0.5677 of a share for each Coleman share you own) and no more than a fixed number of Sunbeam warrants in the settlement (0.381 of a warrant for each Coleman share you own). Since the merger was approved, negative developments affecting Sunbeam have caused the market price of the Sunbeam shares to decline sharply (from \$41.75 per share on February 27, 1998 to \$4.75 per share on December 3, 1999). The market price per Sunbeam share may further decrease before or after the merger.

Second, please understand that the financial advisor which advised the then Coleman board on February 27, 1998 that the merger was fair to you has since indicated that its opinion, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam. Moreover, no other financial advisor has been asked to provide a fairness opinion with respect to the consideration you will receive in the merger. As a result, you do not have the benefit of an independent evaluation of the fairness of the merger consideration in deciding whether to accept the merger consideration or pursue your Delaware law appraisal rights. In addition, Sunbeam's financial advisor has advised Sunbeam that its opinion regarding the fairness to Sunbeam of the consideration payable to you under the merger agreement, although correct when given, should no longer be relied upon.

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You also should realize that Sunbeam faces the following risks that could negatively affect the value of the shares and warrants you receive:

- Sunbeam is highly leveraged which impairs its ability to obtain financing and limits cash flow available for Sunbeam's operations and may limit its competitiveness in the market place,
- Sunbeam's bank credit facility contains covenants which Sunbeam may not be able to satisfy and default provisions it may not be able to avoid, and if Sunbeam cannot, the banks could demand immediate repayment of Sunbeam's bank debt,
- Sunbeam's bank debt could become due on April 10, 2000, if Sunbeam does not get another waiver from the banks or refinance its bank debt by then, and there can be no assurance that Sunbeam would be able to repay the bank debt on that date,
- Sunbeam may not be able to service its large debt burden, which may force it to restructure or refinance its debt,
- Sunbeam's outside auditors determined that Sunbeam's 1997 internal controls were inadequate and Sunbeam cannot assure you that the corrective measures it has adopted or will adopt to address these inadequacies will be effective,
- Sunbeam had significant losses and its operations consumed significant amounts of cash in the first nine months of 1999 and in fiscal year 1998 and Sunbeam cannot assure you that it will be able to generate profits or positive cash flow from operations in the future,
- Major lawsuits have been brought against Sunbeam, including lawsuits under federal and state securities laws, and the SEC is conducting a formal investigation of Sunbeam; Sunbeam cannot predict the outcome of these lawsuits or the SEC investigation, but if Sunbeam were to lose the lawsuits, the resulting judgments would likely have a negative effect on its financial position, results of operations and cash flow,
- Sunbeam's 1998 acquisitions have increased the size of the operations Sunbeam has to manage and Sunbeam's failure to manage its operations effectively would likely cause Sunbeam to have poor operating results,
- Sunbeam's international operations expose Sunbeam to uncertainties and risks from abroad, which could negatively affect its operations and sales,
- The nature of Sunbeam's businesses requires Sunbeam to successfully develop new and innovative products on a consistent basis in order to regain profitability and increase revenues and Sunbeam may not be able to do so,
- Sunbeam's businesses are very sensitive to the strength of the U.S. retail market and any weakness in this market could adversely affect Sunbeam's financial results,
- Sunbeam operates in a highly competitive market and Sunbeam's inability to compete effectively could cause it to lose market share and could adversely affect its financial results,
- Sunbeam's sales are highly dependent on purchases from several large customers and any significant decline in these purchases or pressure from these customers to reduce prices could have a negative effect on Sunbeam's future financial performance; Sunbeam has no long-term supply contracts with any of its customers,
- Raw materials and components are critical inputs for Sunbeam's products and price hikes or problems with their supply could adversely affect Sunbeam,
- Sunbeam's operations are dependent upon third-party suppliers and service providers whose failure to perform adequately could disrupt Sunbeam's business operations,
- Sunbeam is subject to several production-related risks which could jeopardize its ability to realize anticipated sales and profits,

- The effects of Sunbeam's prior management's outsourcing of critical operating tasks and sales policies may continue to cause Sunbeam substantial difficulty,
- Weather conditions can hurt sales of some of Sunbeam's products,
- Sunbeam remains vulnerable to Year 2000 compliance problems in its systems and those of its suppliers and customers which could potentially disrupt Sunbeam's operations and may require greater than anticipated remedial expenses,
- Sunbeam's debt covenants currently do not allow Sunbeam to pay cash dividends on Sunbeam common stock.
- Negative developments since March 1998 have caused Sunbeam's common stock price to drop significantly, and the risks described in the "RISK FACTORS" section of this document may cause further declines in the price of Sunbeam common stock,
- Because many members of Sunbeam's current management and board of directors recently joined Sunbeam and do not have a long history of managing Sunbeam, there can be no assurance that Sunbeam's current management and board of directors will be able to successfully manage Sunbeam, and
- Sunbeam relies on its key personnel and the loss of one or more of those personnel could have a material adverse effect on Sunbeam's business, financial condition and results of operations.

For more detail about these and other risks, please carefully read "RISK FACTORS" beginning on page 18 and "RECENT DEVELOPMENTS AFFECTING SUNBEAM" beginning on page 26.

Q: When do you expect the merger to be completed?

A: We plan to complete the merger on or about January 6, 2000, which is the twenty-first business day following the date on which this document was first mailed to you.

Q: What are the tax consequences of the merger to Coleman stockholders?

A: Your receipt of cash, Sunbeam common stock and warrants to purchase Sunbeam common stock in exchange for the shares of Coleman common stock you own when the merger is completed is expected to be a taxable transaction for United States Federal income tax purposes and may also be a taxable transaction under applicable state, local, foreign and other tax laws. However, the tax consequences of the merger are subject to a number of qualifications, as discussed below under the caption "UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS" beginning on page 60.

The tax consequences to you of the merger will depend on your own situation. You should consult your own tax advisor for a full understanding of these tax consequences.

Q: Am I being asked to vote on the merger?

A: No. The merger agreement was approved on February 27, 1998 by Coleman's former board of directors and majority stockholder, a MacAndrews & Forbes subsidiary. As a result, no further action by you or any other Coleman stockholder is required to complete the merger.

Q: What if I want to accept the cash, stock and warrants Sunbeam proposes to give me? Should I send in my Coleman common stock certificates now?

A: If you wish to accept the cash, stock and warrants described above in exchange for the shares of Coleman common stock you own when the merger is completed, you need not take any action now. After the merger is completed, you will receive written instructions on how to surrender your Coleman common stock certificates in exchange for the merger consideration.

Q: What if I do not wish to accept the cash, stock and warrants Sunbeam proposes to give me?

A: If you object to the merger and do not wish to accept the cash, stock and warrants described above in exchange for the shares of Coleman common stock you own when the merger is completed, you have the right to dissent from the merger and have the fair value of your Coleman shares appraised by a

court and the amount determined by the court will be paid to you in cash by Coleman. If you wish to exercise this right, you must submit a written demand to Coleman on or before December 27, 1999. You must also satisfy the other requirements outlined under "APPRAISAL RIGHTS" beginning on page 62. Failure to take any of the required steps on a timely basis may result in the loss of your appraisal rights.

Q: Where should I send my written demand for appraisal?

A: You should send your written demand for appraisal to the following address:

The Coleman Company, Inc.
2111 East 37th Street North
P.O. Box 2931
Wichita, Kansas 67201
Attention: Corporate Secretary
Phone number: (316) 832-2700

Q: Does Sunbeam currently pay dividends?

A: No. Sunbeam stopped paying dividends after the first quarter of 1998 and has no present intention to pay any dividends for the foreseeable future. In addition, Sunbeam's bank credit agreement prohibits Sunbeam from paying cash dividends.

Q: Who can help answer further questions?

A: If you would like additional copies of this document, or if you have questions about the merger, you should contact either Sunbeam or Coleman at the following addresses:

Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, Florida 33431
Attention: Corporate Secretary
Phone number: (561) 912-4100

The Coleman Company, Inc.
2111 East 37th Street North
P.O. Box 2931
Wichita, Kansas 67201
Attention: Corporate Secretary
Phone number: (316) 832-2700

If you would like more general information about Sunbeam or Coleman, please visit our websites at the following web addresses:

Sunbeam:
<http://www.sunbeam.com>

Coleman:
<http://www.colemanco.com>

For more details on where to find more information about the merger, please see "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155.

The Companies

Sunbeam. Sunbeam's primary business is the manufacturing, marketing and distribution of durable household and outdoor leisure consumer products through mass market and other distribution channels in the United States and internationally. Sunbeam also sells its products to professional and commercial end users, such as small businesses, health care providers, hotels and other institutions. Sunbeam's principal products include household kitchen appliances; health monitoring and care products for home use; scales for consumer and professional use for weight management and business uses; electric blankets and throws; clippers and trimmers for consumer, professional and animal uses; smoke and carbon monoxide detectors; outdoor barbecue grills; camping equipment such as tents, lanterns; sleeping bags and stoves; coolers; backpacks and book bags; and portable generators and compressors. In 1998, Sunbeam's net sales, including sales by Coleman from March 30, 1998, were about \$1,800 million, and Sunbeam's net sales for the nine months ended September 30, 1999, including sales by Coleman, were about \$1,786 million.

Sunbeam's principal executive offices are located at 2381 Executive Center Drive, Boca Raton, Florida 33431, and its telephone number is (561) 912-4100. For further information concerning Sunbeam, see "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155.

Coleman. Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Coleman's products have been sold under the Coleman® brand name since the 1920s. Coleman had net revenues in 1998 of about \$1,015 million and net revenues for the nine months ended September 30, 1999 of about \$1,018 million.

Coleman's principal executive offices are located at 2111 East 37th Street North, Wichita, Kansas 67219, and its telephone number is (316) 832-2700. For further information concerning Coleman, see "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155.

Recent Developments Affecting Sunbeam

Sunbeam has experienced significant changes and events since January 1, 1998, including:

- acquisition of control of Coleman and acquisitions of Signature Brands USA, Inc. and First Alert, Inc.,
- substantial borrowings resulting in a large debt burden and high leverage,
- major changes in Sunbeam's management and board of directors,
- restatement of Sunbeam's 1996, 1997 and first quarter 1998 financial results,
- large losses and negative cash flow in 1998 and the first nine months of 1999,
- a change in Sunbeam's auditors,
- amendments and waivers relating to Sunbeam's bank credit facility,
- filing of several lawsuits against Sunbeam, including lawsuits brought under federal and state securities laws, and commencement of a formal SEC investigation of Sunbeam,
- a review of Sunbeam's continued eligibility for listing on the New York Stock Exchange,
- acquisition of shares of a newly created series of Coleman voting preferred stock to enable Sunbeam and Coleman to file consolidated income tax returns prior to the completion of the merger, and
- announcement of plans to sell Coleman's Eastpak business and certain non-essential assets for expected net proceeds of approximately \$200 million.

We urge you to carefully read "RECENT DEVELOPMENTS AFFECTING SUNBEAM" beginning on page 26 and "RISK FACTORS" beginning on page 18.

Recent Developments Affecting Coleman

In addition to Sunbeam's acquisition of control of Coleman, Coleman has experienced significant changes and events since January 1, 1998, including:

- a review of Coleman's continued eligibility for listing on the New York Stock Exchange,
- revisions to Coleman's note payable to Sunbeam and the pledge of Coleman's assets to secure the note, and
- issuance to Sunbeam of shares of a newly created series of Coleman voting preferred stock to enable Sunbeam and Coleman to file consolidated income tax returns prior to the completion of the merger.

We urge you to carefully read "RECENT DEVELOPMENTS AFFECTING COLEMAN" beginning on page 35 and "RISK FACTORS" beginning on page 18.

The Merger

The merger agreement is attached as Annex I at the back of this document. We encourage you to read the merger agreement carefully as it is the legal document that governs the merger.

Merger Consideration. Under the February 1998 agreement relating to the merger, you will receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed. In addition, under a court-approved litigation settlement, you will receive warrants each entitling you to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003. You will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed (assuming no further increase in the number of outstanding Coleman shares). On March 30, 1998, in connection with the acquisition by Sunbeam of about 81% of the then outstanding shares of Coleman common stock from a subsidiary of MacAndrew & Forbes, all outstanding Coleman employee stock options vested and became exercisable. Accordingly, holders of Coleman employee stock options now have the choice of exercising their options prior to the merger or having their options cashed out in the merger at a price equal to \$27.50 minus the per share exercise price of the option. Under the terms of the settlement, the pool of warrants available to Coleman minority stockholders will be distributed pro rata based on the number of Coleman shares held by Coleman minority stockholders at the time of the merger. The number of warrants available for distribution will not be increased in the event that additional Coleman shares are issued to Coleman minority stockholders prior to the completion of the merger. Therefore, if Coleman employee stock option holders were to exercise their options prior to the merger, the outstanding number of Coleman shares would increase and the fraction of a warrant you would receive in the merger for each of your Coleman shares would be reduced. Sunbeam and Coleman do not anticipate that Coleman employee stock option holders will exercise their options prior to the merger, however, because the exercise prices of these options are substantially above the current market price of Coleman common stock. For further information regarding the terms of the settlement, including the terms of the warrants, see "LITIGATION SETTLEMENT AND WARRANTS" beginning on page 60.

You will not receive fractional shares of Sunbeam common stock in the merger. Instead, you will receive a check in payment for any fractional share based on the closing share price of Sunbeam common stock on the day the merger is completed. Nor will you receive any fractional warrants under the terms of the litigation settlement. Any fractional warrant will be rounded up or down to the nearest whole number.

Instead of receiving the cash, stock and warrants Sunbeam proposes to give you, you may exercise your Delaware law appraisal rights if you follow the procedures and satisfy the other requirements outlined below under the caption "APPRAISAL RIGHTS" beginning on page 62.

Ownership of Sunbeam After the Merger. In the merger, Sunbeam will issue about 6,676,135 shares of Sunbeam common stock, assuming all currently outstanding options to acquire Coleman common stock are cashed out in the merger and no Coleman stockholders exercise their Delaware law appraisal rights. See "THE MERGER—Ownership Interest of Coleman Stockholders in Sunbeam After the Merger" beginning on page 58. These 6,676,135 shares of Sunbeam common stock will constitute about 6.2% of the outstanding Sunbeam shares after the merger.

On March 30, 1998, Sunbeam issued 14,099,749 shares of Sunbeam common stock to a MacAndrews & Forbes subsidiary in the transaction in which Sunbeam acquired indirectly about 81% of the then outstanding Coleman common stock (the "M&F Transaction"). These 14,099,749 shares will constitute about 13.1% of the outstanding Sunbeam shares after the merger.

In addition, under a court-approved litigation settlement, Sunbeam will issue warrants expiring August 24, 2003 to purchase about 4.98 million Sunbeam shares at a cash price of \$7 per share when the merger is completed, assuming no Coleman stockholders exercise their Delaware law appraisal rights. Sunbeam has already issued a warrant expiring August 24, 2003 to purchase 23 million Sunbeam shares at a cash price of \$7 per share to a MacAndrews & Forbes subsidiary in settlement of claims relating to the M&F Transaction. The warrants to be issued to you will have the same terms as the warrant issued to the MacAndrews & Forbes subsidiary except that the warrants issued to you, unlike the warrants issued to the MacAndrews & Forbes subsidiary, will be freely tradeable upon issuance. See "RECENT DEVELOPMENTS

AFFECTING SUNBEAM—Settlement of Claims Relating to the M&F Transaction” beginning on page 32 and **“LITIGATION SETTLEMENT AND WARRANTS”** beginning on page 60. If all these warrants were exercised promptly after the merger, the shares owned by the former Coleman minority stockholders would represent about 8.6% of the then outstanding Sunbeam shares, and the shares owned by the MacAndrews & Forbes subsidiary would represent about 27.4% of the then outstanding Sunbeam shares.

The current stockholders of Sunbeam, other than the MacAndrews & Forbes subsidiary, will own about 81% of the outstanding Sunbeam shares after the merger, or about 64% if all the warrants are exercised promptly after the merger.

Conditions. The completion of the merger was originally subject to the following conditions contained in the merger agreement:

- this document had to be declared effective by the SEC;
- the shares of Sunbeam common stock to be issued in the merger had to be listed for trading on the NYSE; and
- the M&F Transaction had to be completed.

All of these conditions have already been satisfied. Therefore, assuming no court order is entered which prevents the merger from being completed, we expect that the merger will be completed on or about January 6, 2000, which is the twenty-first business day following the date on which this document was first mailed to you.

Accounting Treatment. The merger will be accounted for under the “purchase” method in accordance with generally accepted accounting principles. Therefore, the aggregate consideration paid by Sunbeam to Coleman stockholders in the merger and in the M&F Transaction will be allocated to Coleman’s assets and liabilities based upon their fair market value with any excess being treated as goodwill.

Coleman’s Financial Advisor. Credit Suisse First Boston Corporation acted as Coleman’s financial advisor in connection with the merger. On February 27, 1998, when the merger agreement was approved by Coleman’s former board of directors, Credit Suisse First Boston delivered to Coleman’s former board an oral opinion, which was subsequently confirmed in writing, to the effect that, as of that date and based upon and subject to the matters described in the opinion, the cash and stock consideration you will receive under the merger agreement was fair to you from a financial point of view. Because Sunbeam did not plan to issue the warrants at the time the merger agreement was signed, Credit Suisse First Boston did not take the warrants into account when evaluating the fairness of the merger agreement consideration.

Since the date of the Credit Suisse First Boston opinion, numerous events have occurred that significantly adversely affected the price of Sunbeam common stock. When Credit Suisse First Boston was engaged by Coleman, they were not asked to render an updated opinion as of the date of this document and neither Sunbeam nor Coleman has requested that they do so. Moreover, Credit Suisse First Boston has advised Sunbeam that its opinion, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam. See **“RECENT DEVELOPMENTS AFFECTING SUNBEAM”** beginning on page 26.

For its services to Coleman, Credit Suisse First Boston has received fees of about \$4 million. See **“SPECIAL FACTORS—Financial Advisors’ Opinions”** beginning on page 42.

Sunbeam’s Financial Advisor. Morgan Stanley & Co., Incorporated acted as Sunbeam’s financial advisor in connection with its acquisition of Coleman. On February 27, 1998, when the merger agreement was approved by Sunbeam’s board of directors, Morgan Stanley rendered to Sunbeam’s board of directors an oral opinion, which was subsequently confirmed in writing, to the effect that, as of that date and based upon and subject to certain matters described in the opinion, the cash and stock consideration payable in the M&F Transaction and under the merger agreement was fair to Sunbeam from a financial point of view. Because Sunbeam did not plan to issue the warrants at the time the merger agreement was signed, Morgan Stanley did not take the warrants into account when evaluating the fairness to Sunbeam of the consideration payable in the M&F Transaction and under the merger agreement.

Since the date of the Morgan Stanley opinion, a number of negative developments have occurred affecting Sunbeam and the price of Sunbeam common stock. When Morgan Stanley was engaged by Sunbeam, they were not asked to render an updated opinion as of the date of this document and neither Sunbeam nor Coleman has requested that they do so. Moreover, Morgan Stanley has advised Sunbeam that its opinion, although correct when given, should no longer be relied upon because of the subsequent negative developments affecting Sunbeam. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM" beginning on page 26.

For its services to Sunbeam in connection with the Coleman acquisition, Morgan Stanley has received fees from Sunbeam totaling about \$9.6 million. The amended engagement letter between Sunbeam and Morgan Stanley provides for the payment to Morgan Stanley of an additional transaction fee of \$680,000 when the merger is completed, based on the average market price of Sunbeam common stock on the last trading day prior to the date of this document. Sunbeam's obligation to pay this additional transaction fee to Morgan Stanley will not be affected by the fact that Sunbeam is no longer entitled to rely on Morgan Stanley's fairness opinion. See "SPECIAL FACTORS—Financial Advisors' Opinions" beginning on page 42.

Interests of Certain Persons in the Merger. You should be aware that a number of persons, including current directors and executive officers of Sunbeam and former directors and executive officers of Coleman, some of whom have subsequently rejoined Coleman, have interests in the merger that are different from or in addition to yours. See "THE MERGER—Interests of Certain Persons in the Merger" beginning on page 50. These interests include:

- the accelerated vesting, as a result of the M&F Transaction, of options to purchase Coleman common stock held by Coleman employees, officers and directors, including options exercised as a result of such accelerated vesting by two current executive officers of Sunbeam and Coleman, one of whom is a current director of Sunbeam and Coleman and a former director and executive officer of Coleman, as described below,
- the right under the merger agreement of holders of Coleman employee stock options—including one former director of Coleman and three current executive officers of Sunbeam and Coleman, as described below—to have their options to purchase shares of Coleman common stock cashed out in the merger at a price equal to \$27.50 per share minus the per share exercise price of the options,
- the right of Coleman's current and former officers, directors, employees and consultants to continued indemnification,
- the right of Coleman's officers, directors, employees and consultants—including two current executive officers of Sunbeam and Coleman and one former executive officer of Coleman, as described below—to receive severance payments as a result of the M&F Transaction, and
- the right of the MacAndrews & Forbes subsidiary from which Sunbeam acquired a controlling interest in Coleman in the M&F Transaction and former directors and executive officers of Coleman to require the registration under the federal and state securities laws of the shares of Sunbeam common stock held by them and the warrants held by the MacAndrews & Forbes subsidiary and the shares issuable upon exercise of that warrant.

Immediately after the completion of the M&F Transaction, two current executive officers of Sunbeam and Coleman exercised options which vested as a result of the M&F Transaction. Jerry W. Levin, the then Chairman and Chief Executive Officer of Coleman and the current Chairman and Chief Executive Officer of Sunbeam and Coleman, exercised 500,000 Coleman stock options at per share exercise prices ranging from \$12.25 to \$14.00 and Mr. Levin received net proceeds upon the sale of such shares of about \$9.94 million. Bobby G. Jenkins, the current Executive Vice President and Chief Financial Officer of Sunbeam and Executive Vice President of Coleman, exercised 20,000 Coleman stock options at per share exercise prices ranging from \$16.125 to \$16.434 and Mr. Jenkins received net proceeds upon the sale of such shares of about \$288,360.

Ronald O. Perelman, the sole stockholder of MacAndrews & Forbes and a member of the Coleman board at the time the agreement relating to the M&F Transaction and the merger agreement were executed, holds 500,000 Coleman stock options with an exercise price of \$14.00 per share. Paul E. Shapiro, the current Executive Vice President and Chief Administrative Officer of Sunbeam and Coleman, holds 62,500 Coleman stock options with an exercise price of \$17.062 per share and 15,000 Coleman stock options with an exercise price of \$16.125 per share. Karen K. Clark, the current Senior Vice President, Finance of Sunbeam and Senior Vice President, Finance of Coleman, holds 10,000 Coleman stock options with an exercise price of \$17.062 per share and 15,000 Coleman stock options with an exercise price of \$16.125 per share. Steven R. Isko, the current Senior Vice President and General Counsel of Sunbeam and Senior Vice President and General Counsel of Coleman, holds 10,000 Coleman stock options with an exercise price of \$17.062 per share, 7,500 Coleman stock options with an exercise price of \$16.125 per share and 2,500 Coleman stock options with an exercise price of \$12.937 per share. Upon completion of the merger, in settlement of their Coleman stock options, Messrs. Perelman, Shapiro and Isko and Ms. Clark will receive cash payments of \$6,750,000, \$823,000, \$226,009 and \$275,005, respectively.

In connection with the change in control resulting from the completion of the M&F Transaction, Sunbeam has paid, or has caused Coleman to pay or recognize as payable, a total of \$7,903,765 in severance compensation and related benefits for approximately 117 former Coleman employees. Of that amount, \$7,597,936 was in respect of base salary and related benefits, and \$305,829 was in respect of extra pension credits. In addition, Coleman paid \$454,277 for management incentive bonuses to 37 former Coleman employees. The only principal executive officer of Coleman to receive severance compensation from Coleman as a result of the change in control was Joseph Page, the former Chief Financial Officer of Coleman, who received severance payments totaling \$280,000. Bobby G. Jenkins, the current Executive Vice President and Chief Financial Officer of Sunbeam and Executive Vice President of Coleman, received severance payments totaling \$18,583 as a result of his resignation from Coleman following the M&F Transaction, and prior to his being rehired by both Sunbeam and Coleman in the capacities mentioned above. Steven R. Isko, the current Senior Vice President and General Counsel of Sunbeam and Senior Vice President and General Counsel of Coleman, received severance payments totaling \$185,634 as a result of his resignation from Coleman following the M&F Transaction, and prior to his being rehired by both Sunbeam and Coleman in the capacities mentioned above.

Governmental and Regulatory Approvals. Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, Sunbeam and Coleman were required to make filings with the Federal Trade Commission and the Antitrust Division of the Department of Justice about the merger and observe a waiting period before completing the merger. These filings were made and the waiting period was terminated in March 1998.

United States Federal Income Tax Considerations

Your receipt of cash, Sunbeam common stock and warrants to purchase Sunbeam common stock in exchange for the shares of Coleman common stock you own when the merger is completed is expected to be a taxable transaction for United States Federal income tax purposes and may also be a taxable transaction under applicable state, local, foreign and other tax laws. In general, for United States Federal income tax purposes, you will recognize gain or loss equal to the difference between:

- the sum of the cash and the fair market value of the Sunbeam common stock and warrants you receive, and
- your adjusted tax basis in the shares of Coleman common stock you exchange in the merger.

This gain or loss will be capital gain or loss if you hold the shares of Coleman common stock as a capital asset and will be long-term capital gain or loss if you have held the shares for more than twelve months.

However, the tax consequences of the merger are subject to a number of qualifications, discussed below under the caption "UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS" beginning on page 60.

The tax consequences to you of the merger will depend on your own situation. You should consult your own tax advisor for a full understanding of all of these tax consequences.

Litigation Settlement and Warrants

On October 21, 1998, Sunbeam announced that it had entered into a memorandum of understanding to settle class action and derivative lawsuits brought by minority stockholders of Coleman challenging the merger. A stipulation of settlement was executed on August 6, 1999. The Court of Chancery of the State of Delaware held a hearing on September 29, 1999 to consider approving the settlement. The court approved the settlement on November 12, 1999.

Under the terms of the settlement, unless you have demanded your Delaware law appraisal rights, you will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed (assuming no further increase in the number of outstanding Coleman shares). Each warrant will entitle you to purchase one share of Sunbeam common stock at a cash price of \$7 per share until August 24, 2003. The total number of warrants you receive will be based on the number of shares of Coleman common stock outstanding and the number of shares you own at the time of the merger and will be equal to the product of (A) 4,979,663, less the 497,966 warrants awarded by the court to counsel for the Coleman minority stockholders in the litigation as their fee multiplied by (B) a fraction, the numerator of which is the number of shares of Coleman common stock you hold when the merger is completed (other than any shares with respect to which Delaware law appraisal rights have been demanded) and the denominator of which is the total number of shares of Coleman common stock outstanding and owned by Coleman stockholders other than Sunbeam and its subsidiaries at the time of the merger (approximately 11,759,970 shares, assuming no further exercises of Coleman employee stock options). Sunbeam does not anticipate any further exercises of Coleman employee stock options. The warrants will be subject to anti-dilution adjustments. No fractional warrants will be issued. Instead, the number of warrants to which you are entitled will be rounded up or down to the closest whole number. Thus, for example, if there are no further exercises of Coleman options and no anti-dilution adjustments, a Coleman stockholder who holds 100 shares of Coleman common stock at the time of the merger and does not demand Delaware law appraisal rights would be entitled to receive 38 warrants, calculated as follows:

$$(4,979,663 - 497,966) \times (100 / 11,759,970) = 38.109$$

total # of warrants available	-	total # of warrants paid to plaintiffs' counsel	X	# of shares owned	/	total # of shares owned by the Coleman minority stockholders at the time the merger is completed	=	# of warrants to be received
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The result of this equation would then be rounded down from 38.109 to 38, the closest whole number. However, because of the possibility (although unlikely) that Coleman options will be exercised prior to the completion of the merger, you will not be able to determine the precise number of warrants you will be entitled to receive in the merger before December 27, 1999, the date by which you must submit to Coleman a written demand for your appraisal rights under Delaware law if you wish to exercise those rights. See "APPRAISAL RIGHTS" beginning on page 62. However, for a description of the warrants, see "LITIGATION SETTLEMENT AND WARRANTS" beginning on page 60.

Material Contacts Between Coleman and Sunbeam and Its Affiliates

Financial Transactions Between Coleman and Sunbeam. In connection with the M&F Transaction, Coleman repaid substantially all of its outstanding indebtedness with the proceeds of borrowings from Sunbeam. Since then, Coleman has borrowed from, and repaid funds to, Sunbeam. Through April 15, 1999, Coleman's obligations to Sunbeam were evidenced by an unsecured subordinated demand note payable by

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Coleman to Sunbeam. This note was pledged by Sunbeam to its lenders as security for Sunbeam's obligations under its bank credit facility.

In connection with the April 15, 1999 amendment to Sunbeam's bank credit facility, the Coleman note was revised to, among other things:

- lower the interest rate,
- make the note payable on April 15, 2000 rather than on demand,
- add customary representations, warranties, covenants and events of default, and
- provide that an event of default under Sunbeam's bank credit facility would constitute an event of default under the Coleman note.

As security for the revised Coleman note, Coleman pledged:

- substantially all of its domestic assets, other than real property,
- 66% of its ownership interests in its direct foreign subsidiaries and in its domestic holding companies for its foreign subsidiaries (but not the assets of these subsidiaries), and
- all of its ownership interests in its other direct domestic subsidiaries (but not the assets of these subsidiaries).

The revised Coleman note had an unpaid principal balance of \$303.2 million on September 30, 1999. Sunbeam pledged the revised Coleman note as security for Sunbeam's obligations to its lending banks under its bank credit facility and assigned to these lending banks the security pledged by Coleman for the revised Coleman note. Coleman also gave the lending banks a direct pledge of the assets securing the revised Coleman note to secure the obligations under Sunbeam's bank credit facility, subject to a cap equal to the balance due from time to time on the revised Coleman note. The revision of the Coleman note and the pledge of Coleman's assets were approved on behalf of Coleman by A. Whitman Marchand, Coleman's only disinterested director, acting as a duly authorized independent committee of the Coleman board of directors.

Under Sunbeam's bank credit facility, an event of default will occur if this document is not declared effective by the SEC on or before January 10, 2000, if the merger is not completed within 25 business days after the effectiveness of this document or if Sunbeam has to pay more than \$87.5 million in cash (excluding expenses) to complete the merger (including any amounts paid with respect to appraisal rights). An event of default of this kind would also constitute an event of default under the Coleman note, and Sunbeam's lenders would be entitled to foreclose on the Coleman note and the Coleman assets pledged as security for the Coleman note. The Coleman note, by its terms, will not be affected by the merger and will remain outstanding. For more information concerning Sunbeam's bank credit facility, including the aggregate amount of borrowings outstanding thereunder, the amount available for future borrowings and the maturity date, see "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION" beginning on page 64. See also "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Financial Transactions Between Coleman and Sunbeam" beginning on page 68.

M&F Transaction. In the M&F Transaction, which was completed on March 30, 1998, Sunbeam acquired indirectly about 81% of the then outstanding Coleman common stock (reduced to about 79% as a result of the exercise of Coleman employee stock options immediately following the M&F Transaction). As a result of a purchase by Sunbeam of shares of a newly created series of Coleman voting preferred stock in July 1999, Sunbeam now has the right to exercise just over 80% of the total voting power of Coleman's outstanding capital stock.

In the M&F Transaction, a subsidiary of MacAndrews & Forbes received 14,099,749 shares of Sunbeam common stock, which represent about 14% of the currently outstanding Sunbeam common stock, and about \$160 million in cash. In addition, in connection with the M&F Transaction, Sunbeam assumed about \$1,016 million in debt of Coleman and its parent corporations, including \$497 million of indebtedness of Coleman.

Immediately following the M&F Transaction, all the directors of Coleman resigned, the number of directors constituting the Coleman board of directors was fixed at five, and five designees of Sunbeam were

elected as directors of Coleman. In addition, Sunbeam designees were appointed to senior management positions at Coleman. Subsequently, as a result of changes in Sunbeam's management and board of directors, in June 1998, Jerry W. Levin, the current Chairman and Chief Executive Officer of Sunbeam and Coleman, was reelected to the Coleman board. In addition, Paul E. Shapiro, the current Executive Vice President and Chief Administrative Officer of Sunbeam and Coleman, was elected to the Coleman board. The other members of the Coleman board resigned or were removed by Sunbeam. In April 1999, the size of the Coleman board was fixed at three members and A. Whitman Marchand, who is not otherwise affiliated with either Sunbeam or Coleman, was elected to the Coleman board. In July 1999, the size of the Coleman board was fixed at four and John H. Klein, an outside director of Sunbeam, was elected to the Coleman board. See "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Appointments of Former Coleman and MacAndrews & Forbes Officers to Sunbeam's Management and Board," "—Settlement of Claims Relating to the M&F Transaction" and "—Services Provided by MacAndrews & Forbes" beginning on pages 71, 71 and 72, respectively.

Registration Rights Agreement. The shares of Sunbeam common stock issued to a subsidiary of MacAndrews & Forbes in the M&F Transaction were not registered under federal or state securities laws. Accordingly, in connection with the issuance, Sunbeam entered into a registration rights agreement with the MacAndrews & Forbes subsidiary. Under the registration rights agreement, the MacAndrews & Forbes subsidiary can require Sunbeam to register under federal and applicable state securities laws the shares of Sunbeam common stock it received in the M&F Transaction. The registration rights agreement was amended in August 1998 to provide that the MacAndrews & Forbes subsidiary can also require Sunbeam to register under federal and applicable state securities laws the warrant, and the shares of Sunbeam common stock issuable upon exercise of the warrant, issued to the MacAndrews & Forbes subsidiary in settlement of legal claims related to the M&F Transaction.

Directors, officers and other affiliates of Coleman who receive shares of Sunbeam common stock in the merger can also require Sunbeam to register those shares under federal and applicable state securities laws. To exercise this right, these individuals must agree to be bound by the terms of the registration rights agreement.

Appointments of Former Coleman and MacAndrews & Forbes Officers to Sunbeam's Management and Board. In June 1998, following the removal of Sunbeam's former Chief Executive Officer and Chief Financial Officer, Sunbeam announced that Jerry W. Levin of MacAndrews & Forbes had been elected as Sunbeam's Chief Executive Officer. Mr. Levin and other Sunbeam executives that were affiliated with MacAndrews & Forbes later signed three-year employment agreements with Sunbeam. The other executives include Paul E. Shapiro, Executive Vice President and Chief Administrative Officer of Sunbeam, and Bobby G. Jenkins, Executive Vice President and Chief Financial Officer of Sunbeam. Mr. Levin and Howard Gittis of MacAndrews & Forbes also were elected to the Sunbeam board. For a description of the terms of the employment agreements entered into by Messrs. Levin, Shapiro and Jenkins, see "MANAGEMENT—Executive Compensation—Employment Agreement with Mr. Levin"; "Employment Agreements with Executives Shapiro, Jenkins and Clark" beginning on pages 142 and 143, respectively. For a further discussion of the events leading up to the appointment of Mr. Levin as Sunbeam's Chief Executive Officer and the appointment of Messrs. Levin and Gittis to the Sunbeam board, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Changes in Sunbeam's Management and Board" beginning on page 30.

Settlement of Claims Relating to the M&F Transaction. On August 12, 1998, Sunbeam announced that, following investigation and negotiation by a special committee of the Sunbeam board consisting of four directors not affiliated with MacAndrews & Forbes, Sunbeam had entered into a settlement agreement with a MacAndrews & Forbes subsidiary. The settlement:

- released Sunbeam from threatened claims of MacAndrews & Forbes and its affiliates arising from the M&F Transaction,
- enabled Sunbeam to retain the services of executive personnel affiliated with MacAndrews & Forbes who had been managing Sunbeam since mid-June of 1998, including Jerry W. Levin, Sunbeam's Chairman and Chief Executive Officer, Paul E. Shapiro, Sunbeam's Executive Vice President and

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Chief Administrative Officer, and Bobby G. Jenkins, Sunbeam's Executive Vice President and Chief Financial Officer, and

- provided for the continuing management assistance and other support by MacAndrews & Forbes and its affiliates to Sunbeam described in "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Services Provided by MacAndrews & Forbes" beginning on page 72.

As part of the settlement, the MacAndrews & Forbes subsidiary received from Sunbeam a warrant expiring August 24, 2003 to purchase 23 million shares of Sunbeam common stock at a cash exercise price of \$7 per share, subject to anti-dilution adjustments. For a description of the settlement agreement and the terms of the warrant issued to the MacAndrews & Forbes subsidiary, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Settlement of Claims Relating to the M&F Transaction" beginning on page 32.

Services Provided by MacAndrews & Forbes. Under Sunbeam's August 1998 settlement agreement with a MacAndrews & Forbes subsidiary, in addition to the services of MacAndrews & Forbes' former executive personnel who have been managing Sunbeam since mid-June 1998, MacAndrews & Forbes agreed to provide management assistance and other support to Sunbeam at its request in a wide variety of areas. Sunbeam does not pay MacAndrews & Forbes and its affiliates for the services of their employees, but does reimburse them for out-of-pocket expenses. See "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Services Provided by MacAndrews & Forbes" beginning on page 72.

Acquisition of Coleman Preferred Stock. On July 12, 1999, one of Sunbeam's wholly owned subsidiaries acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock for an aggregate purchase price of approximately \$31 million. These shares, together with the shares of Coleman common stock already indirectly owned by Sunbeam, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock as of July 12, 1999. This class of preferred stock was created by Coleman and acquired by Sunbeam in order to enable Sunbeam and Coleman to file consolidated federal income tax returns and, in certain jurisdictions, consolidated state income tax returns, prior to the completion of the merger. In connection with the acquisition of these shares, Sunbeam entered into a tax sharing agreement with Coleman pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had Coleman not been included in the consolidated income tax return of Sunbeam. The terms of the voting preferred stock, the per share issue price and the terms of the tax sharing agreement were approved on Coleman's behalf by Coleman's then sole independent director. The net proceeds from the sale of the preferred stock to Sunbeam were used by Coleman to make a partial repayment on Coleman's note payable to Sunbeam. For further information regarding the terms of the preferred stock issued to Sunbeam's subsidiary, see "DESCRIPTION OF COLEMAN CAPITAL STOCK—Coleman Preferred Stock beginning on page 154."

SUMMARY HISTORICAL AND PRO FORMA FINANCIAL INFORMATION

The following summary historical financial information is derived from Sunbeam's audited consolidated financial statements and unaudited condensed consolidated financial statements. The following summary pro forma financial information is derived from Sunbeam's unaudited pro forma condensed consolidated financial statements beginning on page 72. The summary unaudited pro forma financial information gives effect to the following "Pro Forma Transactions":

- the corporate acquisitions Sunbeam made in 1998, excluding the acquisition of First Alert, Inc., the effect of which is not significant;
- the proposed acquisition by Sunbeam of the Coleman common stock held by the Coleman minority stockholders upon completion of the merger for cash, shares of Sunbeam common stock and warrants;
- the initial borrowing of approximately \$1,325 million under Sunbeam's bank credit facility;
- the original offering of an aggregate principal amount at maturity of \$2,014 million of Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures due 2018 on March 25, 1998, for net proceeds of about \$730 million; and

- the use of most of the net proceeds of the original bank borrowing and the original offering of the debentures to acquire Coleman and Signature Brands and to refinance indebtedness.

The summary unaudited pro forma financial information is not necessarily indicative of what Sunbeam's results would have been if the Pro Forma Transactions actually had occurred as of the dates indicated or of what Sunbeam's future operating results will be.

This summary historical and pro forma financial information should be read in conjunction with Sunbeam's audited consolidated financial statements beginning on page F-1, "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS" beginning on page 86 and "UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS" beginning on page 72.

While reviewing the summary historical and pro forma financial information, please note the following:

- Sunbeam accounted for the March 30, 1998 acquisition of a controlling interest in Coleman and the April 6, 1998 acquisitions of First Alert and Signature Brands under the purchase method of accounting. Accordingly, Sunbeam's consolidated financial statements include the financial position and results of operations of each of the acquired companies from the respective dates of acquisition.
- For the fiscal year ended December 31, 1998, Sunbeam took an extraordinary charge of \$122.4 million related to the early extinguishments of debt and took other charges of:
 - \$70.0 million related to the issuance of warrants to a MacAndrews & Forbes subsidiary;
 - \$62.5 million related to the write-off of goodwill;
 - \$39.4 million related to fixed asset impairments;
 - \$31 million related to compensation expense for the new employment agreements with Sunbeam's former Chairman and Chief Executive Officer and two other former senior officers; and
 - \$95.8 million related to write-downs of inventory.

See Notes 2, 3 and 11 to Sunbeam's audited consolidated financial statements.

- For the fiscal year ended December 28, 1997, Sunbeam reversed \$28.0 million of pre-tax liabilities no longer required and \$13.3 million of tax liabilities no longer required.
- For the fiscal year ended December 29, 1996, Sunbeam took restructuring, asset impairment and other charges of \$239.2 million before taxes. See Notes 12 and 13 to Sunbeam's audited consolidated financial statements.
- The unaudited pro forma condensed consolidated balance sheet as of September 30, 1999 gives pro forma effect to the proposed acquisition of the shares of Coleman common stock held by the Coleman minority stockholders as if it had occurred on September 30, 1999. The unaudited pro forma condensed consolidated statement of operations for the fiscal year ended December 31, 1998 and the nine months ended September 30, 1999 give effect to the Pro Forma Transactions, as if they had occurred on December 29, 1997, the beginning of Sunbeam's 1998 fiscal year. Also, pro forma net losses are from continuing operations and do not include extraordinary items.
- In computing the ratio of earnings to fixed charges:
 - earnings represent income (loss) from continuing operations before income taxes and fixed charges (exclusive of interest capitalized); and
 - fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense.

For the fiscal years ended December 29, 1996 and December 31, 1998, historical earnings were insufficient to cover fixed charges by \$262.2 million and \$797.1 million, respectively. For the nine months ended September 30, 1998 and 1999, historical earnings were insufficient to cover fixed charges by \$476.7 million and \$130.1 million, respectively. For the fiscal year ended December 31,

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1998 and for the nine months ended September 30, 1999, on a pro forma basis, earnings were insufficient to cover fixed charges by \$834.9 million and \$139.1 million, respectively.

- At September 30, 1999, Sunbeam had goodwill and other intangible assets of \$1,809.9 million.

	Fiscal Years Ended					Nine Months Ended			
	January 1, 1995	Dec. 31, 1995	Dec. 29, 1996	Dec. 28, 1997	Dec. 31, 1998	Dec. 31, 1998 Pro Forma	September 30, 1998	September 30, 1999	September 30, 1999 Pro Forma
(in millions, except ratio and per share data)									
Statement of Operations Data:									
Net sales	\$1,044.3	\$1,016.9	\$ 984.2	\$1,073.1	\$1,836.9	\$2,098.7	\$1,322.1	\$1,786.4	\$1,786.4
Operating earnings (loss)	151.0	70.3	(244.5)	104.1	(670.0)	(697.4)	(391.7)	3.0	(0.5)
Net earnings (loss)	107.0	50.5	(208.5)	38.3	(897.9)	(824.1)	(587.1)	(155.0)	(150.7)
Earnings (loss) per share:									
Basic	1.30	0.62	(2.51)	0.45	(9.25)	(7.68)	(6.12)	(1.54)	(1.40)
Diluted	1.30	0.61	(2.51)	0.44	(9.25)	(7.68)	(6.12)	(1.54)	(1.40)
Weighted average shares outstanding:									
Basic	82.6	81.6	82.9	84.9	97.1	107.3	95.9	100.7	107.4
Diluted	82.6	82.8	82.9	87.5	97.1	107.3	95.9	100.7	107.4
Other Data:									
Ratio of earnings to fixed charges	14.4x	4.7x	—	7.2x	—	—	—	—	—
Balance Sheet Data (at period end):									
Working capital	\$ 294.8	\$ 411.7	\$ 359.9	\$ 369.1	\$ 488.5	N/A	\$ (666.5)	\$ (946.8)	\$ (1,029.5)
Total assets	1,008.9	1,158.7	1,059.4	1,058.9	3,405.5	N/A	3,503.7	3,318.0	3,436.7
Long-term debt	124.0	161.6	201.1	194.6	2,142.4	N/A	778.8	817.1	817.1
Shareholders' equity	454.7	601.0	415.0	472.1	260.4	N/A	449.6	94.7	155.1

Comparative Per Share Data

The tables below show comparative per share data for Sunbeam (on a historical and consolidated pro forma basis) and for Coleman (on a historical and pro forma equivalent basis). Historical information for Sunbeam and Coleman has been derived from the respective selected financial data for the two companies which can be found elsewhere in this document. Pro forma information for Sunbeam was derived from the Unaudited Pro Forma Condensed Consolidated Financial Statements of Sunbeam as of and for the year ended December 31, 1998 and the nine months ended September 30, 1999 which are included in "UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS" beginning on page 72. Pro forma equivalent information for Coleman was calculated by multiplying the pro forma per share amounts for Sunbeam by 0.5677, the exchange ratio of Coleman common stock for Sunbeam common stock in the merger.

	As of and for the Year Ended December 31, 1998			
	Sunbeam Historical	Coleman Historical	Pro Forma Consolidated	Coleman Pro Forma Equivalent
Cash dividends per common share	\$0.01	\$0.00	\$0.01	\$0.01
Loss per common share from continuing operations before extraordinary charge	(7.99)	(0.73)	(7.68)	(4.36)
Book value per common share	2.59	4.27	2.99	1.70

As of and for the Nine Months Ended September 30,
1999

	Sunbeam Historical	Coleman Historical	Pro Forma Consolidated	Coleman Pro Forma Equivalent
Cash dividends per common share	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
(Loss) income per common share from continuing operations before extraordinary charge	(1.54)	1.09	(1.40)	(0.79)
Book value per common share	0.94	5.17	1.44	0.82

Market Prices and Dividends

Market Prices. Sunbeam common stock is traded on the NYSE under the symbol "SOC." Coleman common stock is traded on the NYSE, the Pacific Stock Exchange and the Chicago Stock Exchange under the symbol "CLN." The table below shows:

- the closing sale prices of Sunbeam common stock and Coleman common stock, as reported on the NYSE Composite Transactions Tape, on February 27, 1998, the last trading day prior to the signing of the merger agreement,
- the closing sale prices of Sunbeam common stock and Coleman common stock, as reported on the NYSE Composite Transactions Tape, on December 3, 1999, the last trading day prior to the date of this document, and
- the equivalent pro forma prices of Coleman common stock on those dates, as determined by multiplying the last reported sale prices of Sunbeam common stock by 0.5677 and adding \$6.44.

The table below does not reflect any value attributable to the warrants to be issued to Coleman minority stockholders in settlement of the litigation relating to the merger.

	Sunbeam Common Stock	Coleman Common Stock	Coleman Equivalent
February 27, 1998	\$41.750	\$20.875	\$ 30.14
December 3, 1999	<u>4.750</u>	<u>9.313</u>	<u>9.14</u>

The number of shares of Sunbeam common stock to be received by Coleman stockholders in the merger is fixed at 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock. This number will not be adjusted in the event of any increase or decrease in the price of either Sunbeam common stock or Coleman common stock between February 27, 1998 and the day on which the merger is completed. Since February 27, 1998, the market price of Sunbeam common stock reached a high of \$53 on March 4, 1998 and a low of \$4.125 on November 5 and 8, 1999. It was \$4.750 on December 3, 1999, the last trading day prior to the date of this document, and may increase or decrease between the date of this document and the date on which the merger is completed. Stockholders of Coleman are urged to obtain current market quotations for Sunbeam common stock and Coleman common stock. See "RISK FACTORS" beginning on page 18.

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The following table shows, for the periods indicated, the range of the high and low sale prices of Coleman common stock and Sunbeam common stock, respectively, as reported on the NYSE Composite Transactions Tape.

	Coleman Common Stock		Sunbeam Common Stock	
	High	Low	High	Low
1997				
First Quarter.....	\$16.125	\$11.500	\$34.500	\$24.625
Second Quarter.....	19.125	12.875	40.750	30.000
Third Quarter.....	18.000	15.188	45.750	35.375
Fourth Quarter.....	16.813	12.375	50.438	37.000
1998				
First Quarter.....	\$35.563	\$12.063	\$53.000	\$35.438
Second Quarter.....	31.750	10.812	45.563	8.188
Third Quarter.....	12.000	8.938	10.375	5.125
Fourth Quarter.....	10.188	7.438	7.313	4.625
1999				
First Quarter.....	\$10.625	\$ 8.188	\$ 7.500	\$ 5.500
Second Quarter.....	9.563	6.625	9.125	5.125
Third Quarter.....	9.750	8.875	8.000	5.625
Fourth Quarter (through December 3, 1999).....	9.812	8.687	6.250	4.125

As of December 3, 1999, the last trading day prior to the date of this document, there were 55,827,490 shares of Coleman common stock outstanding, which were held of record by 548 holders, and 100,902,392 shares of Sunbeam common stock outstanding, which were held of record by 4,529 holders.

The shares of Sunbeam common stock to be issued in the merger have been listed for trading on the NYSE. Sunbeam intends to file an application with the NYSE to list the shares of Sunbeam common stock issuable upon exercise of the warrants. For a discussion of matters relating to Sunbeam's continued listing on the NYSE, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—New York Stock Exchange Listing" beginning on page 34.

For a discussion of matters relating to Coleman's continued listing on the NYSE, see "RECENT DEVELOPMENTS AFFECTING COLEMAN" beginning on page 35. Following the completion of the merger, the Coleman common stock will be delisted from all of the stock exchanges on which it is listed and deregistered under the Exchange Act.

Sunbeam Dividend Policy. Through the first quarter of 1998, Sunbeam's practice had been to pay a dividend at a quarterly rate of \$.01 per share. Sunbeam discontinued paying dividends after the first quarter of 1998 and has no present intention to pay any dividends for the foreseeable future. Moreover, Sunbeam's bank credit facility, as amended, prohibits Sunbeam from paying cash dividends.

Coleman Dividend Policy. Coleman has not declared a cash dividend on its common stock since its initial public offering in February 1992. Under the merger agreement, Coleman is prohibited from paying any cash dividends prior to the completion of the merger.

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RISK FACTORS

In reviewing the information contained in this document and in deciding whether to accept the cash, stock and warrants Sunbeam proposes to give you, or to dissent from the merger and have the fair value of your shares appraised by a court and paid to you in cash, you should consider the following:

The number of Sunbeam shares and warrants you receive for each Coleman share has not been and will not be adjusted

Unless you pursue your appraisal rights, you will receive \$6.44 in cash, 0.5677 of a share of Sunbeam common stock and 0.381 of a Sunbeam warrant (assuming no further increase in the number of outstanding Coleman shares), for each share of Coleman common stock you own when the merger is completed. The number of Sunbeam shares and warrants you will receive has not been adjusted to reflect the decrease in the market price of Sunbeam common stock and will not be adjusted to reflect any future changes in the market price of either Sunbeam common stock or Coleman common stock. Since February 27, 1998, the market price of Sunbeam common stock reached a high of \$53 on March 4, 1998 and a low of \$4.125 on November 5 and 8, 1999. It was \$4.75 on December 3, 1999, the last trading day prior to the date of this document, and may increase or decrease between the date of this document and the date on which the merger is completed. Variations in the price of Sunbeam common stock may be the result of changes in the business, operations or prospects of Sunbeam or Coleman, general market and economic conditions and other factors. See "—Negative developments since March 1998 have caused Sunbeam's common stock price to drop significantly, and the risks described in the "RISK FACTORS" section of this document may cause further declines in the price of Sunbeam common stock." Stockholders of Coleman are urged to obtain current market quotations for Sunbeam common stock and Coleman common stock. See "SUMMARY—Market Prices and Dividends."

Coleman's financial advisor has advised Coleman that its opinion as to the fairness of the consideration to be paid to you under the February 1998 merger agreement upon completion of the merger should no longer be relied upon and no other financial advisor has been asked to provide a fairness opinion. Therefore, you do not have the benefit of an independent evaluation of the fairness of the merger to you from a financial point of view in deciding whether to accept the cash, stock and warrants Sunbeam proposes to give you or pursue your Delaware law appraisal rights

As a result of the adverse developments affecting Sunbeam described in the section of this document captioned "RECENT DEVELOPMENTS AFFECTING SUNBEAM" beginning on page 26, Coleman's financial advisor, Credit Suisse First Boston, has advised Coleman that its February 1998 opinion as to the fairness of the consideration payable to you under the merger agreement should no longer be relied upon. Therefore, you should no longer rely on the Credit Suisse First Boston opinion or on the February 1998 determination of the then Coleman board that the consideration payable under the merger agreement was fair to you from a financial point of view, since that determination was based, at least in part, on the Credit Suisse First Boston opinion. As a result, you do not have the benefit of an independent evaluation of the fairness of the merger to you from a financial point of view in deciding whether to accept the cash, stock and warrants Sunbeam proposes to give you or pursue your Delaware law appraisal rights.

Sunbeam is highly leveraged which impairs its ability to obtain financing and limits cash flow available for Sunbeam's operations and may limit its competitiveness in the market place

Sunbeam is highly leveraged, with indebtedness that is very large when compared to its stockholders' equity. Much of its indebtedness was incurred to finance three corporate acquisitions in 1998. At September 30, 1999, Sunbeam's consolidated indebtedness was approximately \$2,322.7 million and its stockholders' equity was approximately \$94.7 million, including approximately \$1,809.9 million of goodwill and other intangible assets. If required, Sunbeam may incur additional indebtedness under the bank credit facility or, subject to restrictions in the bank credit facility, through other borrowings. The indenture governing Sunbeam's zero coupon convertible senior subordinated debentures does not limit Sunbeam's ability to incur additional indebtedness. You should carefully read Sunbeam's audited consolidated financial statements beginning on page F-1.

Sunbeam's high leverage has important consequences. For example:

- Sunbeam's ability to obtain additional financing for working capital, capital expenditures, acquisitions or general corporate purposes is and may continue to be impaired.
- all or a substantial portion of Sunbeam's cash flow from operations must be dedicated to the payment of principal and interest on Sunbeam's indebtedness; therefore cash available for its operations and other purposes will be limited.
- Sunbeam may be substantially more leveraged than some of its competitors, which may place it at a competitive disadvantage.
- Sunbeam may be less able to adjust rapidly to changing market conditions, and
- Sunbeam's results of operations could be adversely affected, particularly in the event of a downturn in general economic conditions or Sunbeam's business.

Sunbeam's bank credit facility contains covenants which Sunbeam may not be able to satisfy and default provisions it may not be able to avoid, and, if Sunbeam cannot, the banks could demand immediate repayment of Sunbeam's bank debt

As of September 30, 1999, Sunbeam had incurred about \$1,500 million in borrowings and had availability to borrow about \$200 million under the bank credit facility. The bank credit facility contains covenants which require Sunbeam to meet financial tests and ratios relating to Sunbeam's future performance which it may not be able to satisfy. If Sunbeam cannot satisfy these tests and ratios it would be in default. The bank credit facility also provides that the occurrence of any of the following events, which Sunbeam may not be able to avoid, would be an event of default:

- if Sunbeam fails to have the SEC declare this document effective by January 10, 2000,
- if Sunbeam fails to complete the merger within 25 business days after this document is declared effective by the SEC, or
- if Sunbeam has to pay more than \$87.5 million in cash to complete the merger, including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses.

An event of default would give the banks the right to demand immediate repayment—a demand Sunbeam might not be able to meet.

Sunbeam's bank debt could become due on April 10, 2000, if Sunbeam does not get another waiver from the banks or refinance its bank debt by then, and there can be no assurance that Sunbeam would be able to repay the bank debt on that date

In 1998, Sunbeam was in violation of some of the covenants of the bank credit facility, but the banks waived these violations first until December 31, 1998, then until April 10, 1999, then until April 15, 1999 and now until April 10, 2000. However, if Sunbeam does not get another waiver or refinance the bank debt by April 10, 2000, the banks would have the right to demand immediate repayment—a demand which Sunbeam might not be able to meet.

Sunbeam may not be able to service its large debt burden, which may force it to restructure or refinance its debt

To meet its debt service requirements, Sunbeam must be able to successfully implement its business strategy and integrate into its operations the three companies Sunbeam acquired in 1998. In addition, Sunbeam's future financial and operating performance will affect its ability to repay or to refinance its indebtedness. Sunbeam's future financial and operating performance is subject to prevailing economic and competitive conditions and to financial, business and other factors which may be beyond Sunbeam's control.

Sunbeam cannot assure you that its operating cash flow and capital resources will be sufficient to meet its debt service requirements. For the nine months ended September 30, 1999 and the year ended December 31, 1998 Sunbeam's earnings were insufficient to cover its fixed charges by approximately \$130.1 million

and \$797.1 million, respectively. If Sunbeam does not have enough cash flow and capital resources to meet its debt service obligations, Sunbeam may be forced to reduce or delay capital expenditures, sell assets, or seek to obtain additional equity capital. Sunbeam also might be forced to refinance or restructure its debt, including its zero coupon convertible subordinated debentures. Although Sunbeam does not have any firm plans or arrangements to restructure its debt, a restructuring, if Sunbeam decided to pursue one, could involve one or more exchange offers, tender offers or consent solicitations involving the debentures.

Sunbeam's outside auditors determined that Sunbeam's 1997 internal controls were inadequate and Sunbeam cannot assure you that the corrective measures it has adopted or will adopt to address these inadequacies will be effective

In October 1998, Sunbeam's auditors at the time, Arthur Andersen LLP, told Sunbeam that the design and effectiveness of its internal controls were inadequate to detect material misstatements in the preparation of Sunbeam's 1997 annual and quarterly financial statements. As described further in "CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE" beginning on page 118, Sunbeam has restated its financial results for a six-quarter period from the fourth quarter of 1996 through the first quarter of 1998. Sunbeam cannot assure you that any interim or final corrective measures Sunbeam has adopted or will adopt to address the inadequacies in its internal controls will be effective.

Sunbeam had significant losses and its operations consumed significant amounts of cash in the first nine months of 1999 and in fiscal year 1998 and Sunbeam cannot assure you that it will be able to generate profits or positive cash flow from operations in the future

For the nine months ended September 30, 1999 and the year ended December 31, 1998, Sunbeam had consolidated net losses of approximately \$155.0 million and \$897.9 million, respectively, and net cash used in operations of \$73.2 million and \$190.4 million, respectively. Sunbeam cannot assure you that it will be able to generate profits or positive cash flow from operations in the future. See "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS" beginning on page 86 for a further discussion.

Major lawsuits have been brought against Sunbeam, including lawsuits under federal and state securities laws, and the SEC is conducting a formal investigation of Sunbeam; Sunbeam cannot predict the outcome of these lawsuits or the SEC investigation, but if Sunbeam were to lose the lawsuits, the resulting judgments would likely have a negative effect on its financial position, results of operations and cash flow

Litigation. Beginning in April 1998 many lawsuits alleging claims arising under Delaware law, Texas law and federal and state securities laws have been filed against Sunbeam and some of its former directors and officers, some of its current directors and its former auditor in various federal and state courts. Many of these lawsuits relate to Sunbeam's financial performance from the second quarter of 1997 through the second quarter of 1998. Many plaintiffs are claiming that Sunbeam's prior management misrepresented and omitted material information in its public filings and in their statements concerning its historical and expected future results of operations for the purpose of artificially inflating the market price of Sunbeam common stock. Currently Sunbeam cannot predict the outcome of these lawsuits, evaluate the likelihood of Sunbeam's success in any particular case, or evaluate the range of potential loss. If Sunbeam were to lose these lawsuits, judgments would likely have a material adverse effect on Sunbeam's financial position, results of operations and cash flows.

Sunbeam's insurers are attempting to have the directors' and officers' liability policies it has with them voided or canceled or have advised Sunbeam that they do not intend to provide coverage with respect to these lawsuits. Failure by Sunbeam to obtain insurance recoveries from its liability insurers following an adverse judgment against Sunbeam or any persons it is obligated to indemnify in any of the lawsuits discussed above could have a material adverse effect on Sunbeam's financial position, results of operations and cash flow.

SEC Investigation. In July 1998, the SEC commenced a formal investigation of Sunbeam after informing Sunbeam in the previous month of an informal investigation. Although Sunbeam believes that it

has cooperated with the SEC and furnished the SEC with documents they requested, Sunbeam has, however, declined to provide the SEC with material that Sunbeam believes is subject to the attorney-client privilege and the work product immunity. Sunbeam cannot predict how long this investigation will last or its outcome. In addition, Sunbeam cannot at this time determine what actions, if any, the SEC might take against it or what effect any action might have on Sunbeam. For further information regarding the SEC investigation of Sunbeam, please see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—SEC Investigation" beginning on page 32.

Product-Related Liabilities. As a consumer goods manufacturer and distributor, Sunbeam faces the constant risks of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. These claims could result in liabilities that could have a material adverse effect on Sunbeam's financial position and results of operations. Some of the product lines Sunbeam acquired in the 1998 acquisitions have increased its exposure to product liability and related claims.

See "BUSINESS OF SUNBEAM—Litigation and Other Contingent Liabilities" beginning on page 126 for more information about lawsuits Sunbeam is involved in, the SEC investigation and other contingent liabilities.

Sunbeam's 1998 acquisitions have increased the size of the operations Sunbeam has to manage and Sunbeam's failure to manage its operations effectively would likely cause Sunbeam to have poor operating results

The 1998 acquisitions of Coleman, First Alert, and Signature Brands have resulted in a substantial increase in the size of Sunbeam's operations. As a result, Sunbeam must effectively use its employees and management, operational, and financial resources to manage its expanded operations. A failure on Sunbeam's part to successfully integrate and effectively manage its expanded operations would likely cause Sunbeam to have poor operating results.

Sunbeam's international operations expose Sunbeam to uncertainties and risks from abroad which could negatively affect its operations and sales

Sunbeam currently has sales in countries where economic growth has slowed, primarily Japan and Korea; or where economies have been unstable or hyperinflationary in recent years, primarily Mexico and Venezuela. The economies of other foreign countries important to Sunbeam's operations, including other countries in Latin America and Asia, could also suffer slower economic growth or instability in the future.

The following are among the risks that could negatively affect Sunbeam's operations and sales in foreign markets:

- new restrictions on access to markets,
- currency devaluation,
- new tariffs,
- adverse changes in monetary and/or tax policies,
- inflation, and
- governmental instability.

Should any of these risks occur, it could impair Sunbeam's ability to export its products and result in a loss of sales from its international operations.

The nature of Sunbeam's businesses requires Sunbeam to successfully develop new and innovative products on a consistent basis in order to regain profitability and increase revenues and Sunbeam may not be able to do so

Sunbeam must develop new and innovative products to regain profitability and increase revenues. In the past Sunbeam has experienced difficulties in developing and introducing quality new products on a timely basis. Sunbeam may not be able to meet its schedules for future product development. Failure to develop and

manufacture successful new products could have a material adverse effect on Sunbeam's future financial performance.

Sunbeam's businesses are very sensitive to the strength of the U.S. retail market and any weakness in this market could adversely affect Sunbeam's financial results

The strength of the retail economy in the United States has a significant impact on Sunbeam's performance. Weakness in consumer confidence and poor financial performance by retail outlets, including the financial weakness or bankruptcy of retail outlets, especially mass merchants, may adversely impact Sunbeam's future financial results.

Sunbeam operates in a highly competitive market and Sunbeam's inability to compete effectively could cause it to lose market share and could adversely affect its financial results

Sunbeam operates in a highly competitive environment. Sunbeam has numerous domestic and foreign competitors, and many of them are financially strong and capable of competing effectively with Sunbeam. Competitors may take actions to match Sunbeam's new product introductions and other initiatives. Some competitors may be willing to reduce prices and accept lower profit margins to compete with Sunbeam. As a result of this competition, Sunbeam could lose market share and sales and suffer losses, which could have a material adverse effect on Sunbeam's future financial performance.

Sunbeam's future success will significantly depend upon its ability to remain competitive in the areas of price, quality, marketing, product development, manufacturing, distribution, order processing and customer service. Sunbeam cannot assure you that it will be able to compete effectively in all these areas in the future.

Sunbeam's sales are highly dependent on purchases from several large customers and any significant decline in these purchases or pressure from these customers to reduce prices could have a negative effect on Sunbeam's future financial performance; Sunbeam has no long-term supply contracts with any of its customers

Due to the consolidation of the U.S. retail industry, Sunbeam's customer base has become relatively concentrated. Wal-Mart Stores, Inc., Sunbeam's largest single customer, accounted for 18% of Sunbeam's net sales in 1998, and its five largest customers combined accounted for 38% of its 1998 net sales.

Sunbeam has no long-term supply contracts with any of its customers. As a result, Sunbeam must receive a continuous flow of new orders from its large, high-volume retailing customers. Sunbeam has responded to the challenges of its markets by pursuing strategic relationships with large, high-volume merchandisers. However, Sunbeam cannot assure you that it can continue to successfully meet the needs of Sunbeam's customers. In addition, failure to obtain anticipated orders or delays or cancellations of orders or significant pressure to reduce prices from key customers could have a material adverse effect on Sunbeam's future financial performance.

Raw materials and components are critical inputs for Sunbeam's products and price hikes or problems with their supply could adversely affect Sunbeam

Raw materials and components constitute a significant portion of the cost of Sunbeam's goods. Factors which are largely beyond Sunbeam's control, such as movements in commodity prices for the specific materials Sunbeam requires, may affect the future cost of such raw materials and components. In addition, any inability of Sunbeam's suppliers to timely deliver raw materials and components or any unanticipated change in Sunbeam's suppliers could be disruptive and costly to Sunbeam.

A significant failure by Sunbeam to contain raw material or component costs could have a material adverse effect on its future financial performance. In addition, delays or cancellations by suppliers could adversely affect results.

Sunbeam's operations are dependent upon third-party suppliers and service providers whose failure to perform adequately could disrupt Sunbeam's business operations

Sunbeam currently manufactures many of its products, but it sources many of its parts and products from third parties. Sunbeam's ability to select reliable vendors who provide timely deliveries of quality parts

and products will impact its success in meeting customer demand for timely delivery of quality products. Any inability of Sunbeam's suppliers to timely deliver quality parts and products or any unanticipated change in suppliers or pricing of products could be disruptive and costly to Sunbeam.

Sunbeam has entered into various arrangements with third parties for the provision of back-office administrative services that it used to perform internally. Sunbeam now outsources accounts payable, collection of accounts receivable, customer service and some necessary computer systems servicing, among other things. If any of these third-party service providers failed to perform adequately, Sunbeam's normal business operations could be disrupted. Among other things, this could hurt Sunbeam's sales, collections, customer service, cash flow and profitability.

Sunbeam is subject to several production-related risks which could jeopardize its ability to realize anticipated sales and profits

To realize sales and operating profits at anticipated levels, Sunbeam must manufacture, source and deliver in a timely manner products of high quality. Among others, the following factors can have a negative effect on Sunbeam's ability to do these things:

- labor difficulties,
- scheduling and transportation difficulties,
- management dislocation,
- substandard product quality, which can result in higher warranty, product liability and product recall costs,
- delays in development of quality new products,
- changes in laws and regulations, including changes in tax rates, accounting standards, environmental laws and occupational health and safety laws, and
- changes in the availability and costs of labor.

The effects of Sunbeam's prior management's outsourcing of critical operating tasks and sales policies may continue to cause Sunbeam substantial difficulty

Sunbeam's prior management substantially reduced the number of its employees and hired third parties to perform many of its critical operating tasks, including handling of accounts payable, computer support, customer service and collection of accounts receivable. Sunbeam is currently evaluating the effectiveness of outsourcing these activities and are hiring personnel to perform some of these tasks in-house once again. Sunbeam may experience disruption in critical services and other difficulties while it implements necessary staff increases and changes in prior management's outsourcing policy.

Sunbeam's prior management increased sales of products in some prior periods by providing retailers with substantial price discounts or attractive payment terms to induce them to purchase more products than they needed at the time. Sunbeam believes this caused many of its customers to build up inventory in its products which reduced Sunbeam's sales and profitability through 1998. Although Sunbeam believes that the excess inventory maintained by retailers has been eliminated, Sunbeam may not have correctly evaluated the amount of or the impact of such inventory practices, which may continue to negatively impact its sales and profitability.

Weather conditions can hurt sales of some of Sunbeam's products

Weather conditions may negatively impact sales of some of Sunbeam's products. For instance, Sunbeam may not sell as many portable generators as anticipated if there are fewer natural disasters such as hurricanes and ice storms; mild winter weather may negatively impact sales of electric blankets, some health products and smoke detectors; and the late arrival of summer weather may negatively impact sales of outdoor camping equipment and grills.

Sunbeam remains vulnerable to year 2000 compliance problems in its systems and those of its suppliers and customers which could potentially disrupt Sunbeam's operations and may require greater than anticipated remedial expenses

Sunbeam is preparing for the impact of the Year 2000 on its operations. Year 2000 issues could include potential problems in Sunbeam's information technology and other systems that it use in its operations. Year 2000 system failures could affect routine but critical operations such as:

- forecasting,
- purchasing,
- production,
- order processing,
- inventory control,
- shipping, and
- billing and collections.

In addition, system failures could affect security, payroll operations and employee safety. Third parties who fail to adequately address their own Year 2000 issues could also expose Sunbeam to potential risks.

Systems and applications that Sunbeam had identified as not Year 2000 ready and which are critical to its operations include:

- financial software systems, which process:
 - order entry,
 - purchasing,
 - production management,
 - general ledger,
 - accounts receivable,
 - accounts payable functions, and
 - payroll applications, and
- critical applications in Sunbeam's manufacturing and distribution facilities, such as warehouse management applications.

Sunbeam has largely implemented the corrective work described above and expects to complete final testing and implementation of such systems in the fourth quarter of 1999.

Sunbeam's failure to timely complete its Year 2000 compliance work could have a material adverse impact on Sunbeam. In addition, the failure of its third-party suppliers and customers to become Year 2000 compliant could have a material adverse impact on Sunbeam.

At this time, Sunbeam believes that the most likely "worst-case" scenario relating to Year 2000 involves potential disruptions in areas in which its operations must rely on third parties, such as suppliers, whose systems may not work properly after January 1, 2000. While these system failures could significantly affect some of Sunbeam's important operations, currently it cannot estimate either the likelihood or the potential cost of such failures. If Sunbeam does not develop appropriate contingency plans before January 1, 2000, the impact on its operations could be material.

Sunbeam currently estimates that the total cost of addressing and remedying Year 2000 issues and enhancing its operating systems is about \$64 million. Through the first nine months of 1999, including costs incurred in 1998, Sunbeam spent about \$60 million to address Year 2000 issues, with approximately \$41 million of these expenditures occurring in the first nine months of 1999. As Sunbeam completes its

assessment of the Year 2000 issues, it may determine that the actual expenditures it must incur may be materially higher than its current estimates. The bank credit facility does not permit Sunbeam to spend more than \$50 million on Year 2000 testing and remediation during 1999.

See "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—Year 2000 Readiness Disclosure" beginning on page 113 for more details of its Year 2000 assessment and compliance efforts.

Sunbeam's debt covenants currently do not allow Sunbeam to pay cash dividends on Sunbeam common stock

The bank credit facility prohibits Sunbeam from paying cash dividends on Sunbeam common stock. Accordingly, Sunbeam cannot assure you that Sunbeam will be able to pay dividends on Sunbeam common stock. In any event, Sunbeam currently does not intend to pay dividends on Sunbeam common stock. Sunbeam discontinued paying dividends beginning in the second quarter of 1998. See the "SUMMARY—Comparative Per Share Data" section beginning on page 15 for information concerning the history of Sunbeam's dividend payments.

Negative developments since March 1998 have caused Sunbeam's common stock price to drop significantly, and the risks described in the "RISK FACTORS" section of this document may cause further declines in the price of Sunbeam common stock

The price of Sunbeam common stock has dropped significantly since March 1998. Sunbeam believes this was the result of many of the negative developments described in the "RECENT DEVELOPMENTS AFFECTING SUNBEAM" section beginning on page 26. On March 18, 1998, the last trading day prior to former management's announcement of lower than expected net sales for the first quarter of 1998, the last reported sale price of Sunbeam common stock was \$50.625 per share. On December 3, 1999, the last reported sale price of Sunbeam common stock was \$4.750 per share. Sunbeam cannot assure you that the market price of Sunbeam common stock will not experience further declines as a result of the risks described in this "RISK FACTORS" section or otherwise. See the "SUMMARY—Market Prices and Dividends" section beginning on page 16 for details of Sunbeam common stock's recent trading prices.

Because many members of Sunbeam's current management and board of directors recently joined Sunbeam and do not have a long history of managing Sunbeam, there can be no assurance that Sunbeam's current management and board of directors will be able to successfully manage Sunbeam

Sunbeam's board of directors replaced several members of Sunbeam's management in June of 1998, including Albert J. Dunlap, Sunbeam's Chairman and Chief Executive Officer. Since that time, six new directors have been appointed or elected to the Sunbeam board. Although Sunbeam's current management has significant experience in the consumer products industry, including working at Coleman, most of Sunbeam's current management and many members of its board of directors had no direct exposure to Sunbeam's operations prior to June 1998. Accordingly, there can be no assurance that Sunbeam's current management and board of directors will be able to successfully manage Sunbeam.

Sunbeam relies on its key personnel and the loss of one or more of those personnel could have a material adverse effect on Sunbeam's business, financial condition and results of operations.

Sunbeam's operations and prospects depend in large part on the performance of its senior management team. There can be no assurance that Sunbeam would be able to find qualified replacements for any of these individuals if their services were no longer available. The loss of the services of one or more members of Sunbeam's senior management team could have a material adverse effect on Sunbeam's business, financial condition and results of operations. For further information regarding Sunbeam's senior management team, see the discussion below under the caption "MANAGEMENT" beginning on page 133.

RECENT DEVELOPMENTS AFFECTING SUNBEAM

The 1998 Acquisitions

On March 2, 1998, in addition to announcing its agreement to acquire Coleman, Sunbeam announced that it had entered into separate agreements to acquire Signature Brands and First Alert, companies not affiliated with Coleman or MacAndrews & Forbes.

In the M&F Transaction, which was completed on March 30, 1998, Sunbeam acquired about 81% of the then outstanding shares of Coleman common stock from Coleman (Parent) Holdings, Inc., a subsidiary of MacAndrews & Forbes. This represented MacAndrews & Forbes' entire interest in Coleman. In exchange, the MacAndrews & Forbes subsidiary received about 14% of the currently outstanding shares of Sunbeam common stock and about \$160 million in cash. Sunbeam also assumed about \$1,016 million of debt, including \$497 million of indebtedness of Coleman. Immediately after the M&F Transaction, as a result of the exercise of Coleman employee stock options, Sunbeam's ownership of Coleman decreased to about 79% of the outstanding shares of Coleman common stock.

At the same time Sunbeam agreed to acquire the Coleman shares from the MacAndrews & Forbes subsidiary, Sunbeam also agreed to acquire the remaining shares of Coleman common stock in the merger and the MacAndrews & Forbes subsidiary voted its shares to approve the merger. Under the February 1998 merger agreement, you will receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed. In addition, unless you exercise and perfect your Delaware law appraisal rights, you will receive warrants each entitling you to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003, under a court-approved settlement of litigation relating to the merger. Under the terms of the settlement, you will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed, assuming the number of outstanding shares of Coleman common stock does not increase prior to the completion of the merger as a result of further exercises of Coleman employee stock options. In the aggregate, the Coleman minority stockholders will receive about 6.7 million shares of Sunbeam common stock, about \$87 million in cash, including cash outs of Coleman's remaining employee stock options, and warrants to purchase about 4.98 million shares of Sunbeam common stock (less the warrants awarded by the court to plaintiffs' counsel as their fee), assuming no Coleman stockholders exercise their Delaware law appraisal rights. See "Settlement of Claims Relating to the M&F Transaction" for information regarding the settlement of legal claims of a subsidiary of MacAndrews & Forbes relating to the M&F Transaction. See "LITIGATION SETTLEMENT AND WARRANTS" for information regarding the settlement of legal claims of Coleman stockholders relating to the merger.

On April 3, 1998, Sunbeam acquired more than 90% of the stock of each of Signature Brands and First Alert in cash tender offers. On April 6, 1998, Sunbeam acquired the remaining shares of each of Signature Brands and First Alert in merger transactions. Signature Brands is a leading manufacturer of a comprehensive line of consumer and professional products, including coffee makers marketed under the Mr. Coffee® brand name and consumer health products marketed under the Health-o-Meter®, Counselor® and Borg® brand names. Signature Brands had revenues of about \$279 million in 1997. First Alert is the worldwide leader in residential fire safety equipment, including smoke and carbon monoxide detectors marketed under the First Alert® brand name. First Alert had revenues of about \$187 million in 1997. Sunbeam paid about \$255 million in cash, including the paying down of debt, to acquire Signature Brands. Sunbeam paid about \$133 million in cash and assumed about \$49 million in debt—a total consideration of about \$182 million—to acquire First Alert.

On July 12, 1999, one of Sunbeam's wholly owned subsidiaries acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock for an aggregate purchase price of approximately \$31 million. These shares, together with the shares of Coleman common stock already indirectly owned by Sunbeam, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock. Coleman created these shares and Sunbeam acquired them in order to enable Sunbeam and Coleman to file consolidated federal income tax returns and, in certain jurisdictions, consolidated state income tax returns, prior to the completion of the merger. In connection with the acquisition of these shares,

Sunbeam entered into a tax sharing agreement with Coleman pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had Coleman not been included in the consolidated income tax return of Sunbeam. The terms of the voting preferred stock, the per share issue price and the terms of the tax sharing agreement were approved on Coleman's behalf by Coleman's then sole independent director. The net proceeds from the sale of the preferred stock to Sunbeam were used by Coleman to make a partial repayment on Coleman's note payable to Sunbeam.

On November 9, 1999, Sunbeam announced its intention to divest Coleman's Eastpak business, as well as certain non-essential assets. Sunbeam anticipates that these asset sales will produce net proceeds of approximately \$200 million, which will be used primarily to pay down its bank debt.

Issuance of Debentures and Bank Credit Facility

In order to finance the 1998 acquisitions and to refinance substantially all of the indebtedness of Sunbeam, Coleman and its parent corporations, CLN Holdings and Coleman Worldwide, First Alert and Signature Brands, Sunbeam completed an offering of an aggregate principal amount at maturity of \$2,014 million of its Zero Coupon Convertible Senior Subordinated Debentures Due 2018 on March 25, 1998, for net proceeds of about \$730 million, and borrowed about \$1,325 million under a new bank credit facility.

The debentures are due March 25, 2018, are subject to earlier repurchase at the option of the holders on specified dates beginning in 2003 and are convertible into up to 13,242,050 shares of Sunbeam common stock, subject to adjustment in certain events.

The bank credit facility, as amended, allows Sunbeam to borrow up to \$1,700 million under:

- a \$400 million revolving credit facility maturing on March 30, 2005, of which \$52.5 million may be used only to complete the merger,
- up to \$800 million in term loans maturing on March 30, 2005, of which \$35 million may be used only to complete the merger, and
- a \$500 million term loan maturing on September 30, 2006, of which \$5.0 million has already been repaid through September 30, 1999.

Unless Sunbeam further amends its bank credit facility or refinances its bank debt by April 10, 2000, Sunbeam's lenders will be able to accelerate the maturities listed above at any time after April 10, 2000.

Until March 31, 2000, Sunbeam has agreed to limit the total amount of revolving loans (other than those used to fund the merger) at the end of each month as follows:

<u>Month</u>	<u>Amount</u>
April, 1999	\$290,400,000
May, 1999	\$303,700,000
June, 1999	\$279,100,000
July, 1999	\$281,400,000
August, 1999	\$264,200,000
September, 1999	\$257,300,000
October, 1999	\$277,000,000
November, 1999	\$224,200,000
December, 1999	\$185,200,000
January, 2000	\$201,500,000
February, 2000	\$217,800,000
March, 2000	\$234,100,000

Borrowings under the bank credit facility are secured by, among other things, substantially all of Sunbeam's assets, including a pledge of Sunbeam's stock in Coleman, First Alert, Signature Brands and its other material subsidiaries. See "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION—Security and Guarantees."

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This credit facility accrues interest, at Sunbeam's option:

- at LIBOR, or
- at the base rate of the administrative agent which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%,

in each case, plus an interest rate margin which varies depending on the occurrence of specified events. The interest rate margin is currently 4.00% for LIBOR loans and 2.50% for base rate loans, and is subject to potential decreases in the future, including a decrease to 3.00% for LIBOR loans and 1.75% for base rate loans upon consummation of the merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the bank credit facility. See "Covenants Under Bank Credit Facility."

Under an April 15, 1999 amendment to the bank credit facility, Sunbeam agreed to pay the bank lenders a loan commitment fee of between 0.25% to 1.00% of the commitments under the bank credit facility as of April 15, 1999. The percentage used to calculate the fee will be determined by reference to the bank lenders' aggregate commitments and loan exposure under the bank credit facility as they may be reduced on or before September 30, 2000. The fee is payable on the earlier of September 30, 2000 and the date the commitments are terminated and the loans and other amounts payable under the bank credit facility are repaid.

At September 30, 1999, Sunbeam owed about \$1,500 million under the bank credit facility (including \$200 million of outstanding revolving credit facility borrowings) and had about \$200 million available for borrowing. See "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION."

Covenants Under Bank Credit Facility

Sunbeam's bank credit facility contains a number of covenants, including covenants requiring Sunbeam to meet various financial tests and ratios. As a result of Sunbeam's operating losses, among other things, at June 30, 1998 Sunbeam was not in compliance with these financial covenants of the bank credit facility. As of June 30, 1998, Sunbeam entered into an agreement with its bank lenders which waived Sunbeam's compliance with these covenants and terms through December 31, 1998. On October 19, 1998, Sunbeam's bank lenders agreed to extend this waiver through April 10, 1999, then until April 15, 1999. In April 1999, the waiver was extended to April 10, 2000, and the bank credit facility was amended to, among other things:

- require Sunbeam to meet new financial tests and ratios,
- decrease the interest rate margins to 3.75% for LIBOR loans and 2.50% for base rate loans,
- further reduce the interest rate margins to 3.25% for LIBOR loans and 2.00% for base rate loans as a result of Sunbeam's satisfaction on May 14, 1999 of the agreed upon conditions to this reduction. However, such margins increased to 3.50% for LIBOR loans and 2.25% for base rate loans on September 1, 1999 as a result of the merger not occurring by such date and increased to 4.00% for LIBOR loans and 2.50% for base rate loans on October 1, 1999 as a result of the merger not occurring by such date,
- defer until April 10, 2000 principal payments of \$69.3 million otherwise due September 30, 1999 and principal payments of \$69.3 million otherwise due March 31, 2000, as a result of Sunbeam's satisfaction on May 14, 1999 of the agreed upon conditions to this deferral,
- provide that the following events relating to the merger will be events of default under the bank credit facility:
 - if Sunbeam fails to have the SEC declare this document effective by October 30, 1999 (which was subsequently amended to January 10, 2000),
 - if Sunbeam fails to complete the merger within 25 business days after this document is declared effective by the SEC, or

- if Sunbeam has to pay more than \$87.5 million in cash to complete the merger, including any payments on account of the exercise of appraisal rights, but excluding related legal, accounting and other customary fees and expenses,
- require Sunbeam and Coleman to amend Coleman's note payable to Sunbeam and to have Coleman secure the note, which is pledged by Sunbeam to secure the obligations under the bank credit facility, with substantially all of Coleman's assets other than real property.
- impose restrictions on the total amount of revolving loans (other than those used to fund the merger) permitted to be outstanding at the end of each month under the bank credit facility,
- require Sunbeam to maintain a concentration cash management system and to repay to the banks (subject to reborrowing) revolving loans to the extent that cash on hand in Sunbeam's concentration accounts on any business day exceeds \$15 million,
- require Sunbeam to prepay term loans under the bank credit facility on December 31, 1999 to the extent that cash on hand in Sunbeam's concentration accounts plus the total amount of unused revolving loan commitments on this date exceeds \$125 million, but Sunbeam is not required to prepay more than \$69.3 million in total as a result of this provision,
- require Sunbeam to reserve \$52.5 million of availability under the revolving credit facility for use solely to pay the required cash portion of the merger consideration,
- limit the amount that Sunbeam may spend on Year 2000 testing and remediation to \$50 million in total during the fiscal year ending December 31, 1999,
- require Sunbeam to obtain the bank lenders' consent to any litigation settlement concerning the restatement of Sunbeam's 1996 and 1997 fiscal year and first quarter 1998 financial statements if such settlements require the payment of money, not paid by insurance carriers or other third parties, of more than \$1 million in total,
- impose new informational reporting requirements, and
- provide Sunbeam with a \$40 million foreign currency revolving loan subfacility.

See "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION."

Delayed Filing of Registration Statement

On March 25, 1998, Sunbeam entered into a registration rights agreement with Morgan Stanley relating to the original issuance of the debentures. The registration rights agreement required Sunbeam to file a registration statement with the SEC by June 23, 1998 to register the debentures and the shares of Sunbeam common stock issuable upon conversion of the debentures for resale by the holders. However, Sunbeam did not file that registration statement until February 4, 1999 and the SEC did not declare the registration statement effective until November 8, 1999. The delay resulted from Sunbeam's need to review and restate its historical financial statements following the refusal of its former independent auditors, Arthur Andersen, to consent to the inclusion in that registration statement of their opinion on Sunbeam's 1997 financial statements.

Sunbeam's failure to file that registration statement by June 23, 1998 did not constitute a default under the debentures. However, from June 23, 1998 until the day on which that registration statement was declared effective, cash liquidated damages payable to the holders of the debentures accrued:

- on a daily basis at a rate per annum equal to 0.25% during the first 90 days, and
- on a daily basis at a rate per annum equal to 0.50% thereafter,

multiplied, in each case, by the sum of the issue price of the debentures plus the accrued original issue discount on the debentures on each day for which damages are calculated. Sunbeam has made total payments for liquidated damages since June 23, 1998 of \$4.5 million, of which \$1.5 million related to damages for the period through December 31, 1998. A final payment of approximately \$0.5 million, representing liquidated

damages from September 26, 1999 until the registration statement was declared effective, will be payable on March 25, 2000.

Press Releases Relating to Sunbeam's First Quarter 1998 Results

On March 19, 1998, Sunbeam's prior management issued a press release stating that Sunbeam's net sales for the first quarter of 1998 might be lower than the range of Wall Street analysts' estimates of \$285 million to \$295 million, but that net sales for the quarter were expected to exceed 1997 first quarter net sales of \$253.4 million. On April 3, 1998, Sunbeam's prior management issued a press release announcing that net sales for the first quarter of 1998 were expected to be about 5% lower than those achieved in the first quarter of 1997 and, due to the lower sales and significant one-time charges, a loss was expected for the quarter.

On May 11, 1998, Sunbeam's prior management announced 1998 first quarter results and made forecasts for the remainder of 1998 and beyond. They reported net sales of \$244.3 million for the quarter, as compared to \$253.4 million in the first quarter of 1997. Before one-time charges of \$36.8 million for early retirement of debt and compensation expense relating to new employment agreements with three former Sunbeam executives, they reported a net loss from continuing operations of \$7.8 million in the first quarter of 1998 versus net income from continuing operations of \$20.6 million in the first quarter of 1997. After one-time charges of \$0.43 per share, Sunbeam lost \$0.52 per share in the 1998 quarter, compared with earnings per share of \$0.08 in the comparable 1997 period. Sunbeam's prior management also stated that it expected earnings per share in the range of \$1.00 for 1998 and \$2.00 for 1999. On June 15, 1998, Sunbeam's new management announced that these previously announced forecasts should not be relied upon.

Following each of these press releases, the market price of Sunbeam common stock fell substantially. On October 20, 1998, Sunbeam issued a press release restating operating results for fiscal years 1996 and 1997, as well as the first quarter of fiscal 1998. See "—Restatement of Financial Results," "—Changes in Sunbeam's Management and Board" and "RISK FACTORS."

Changes in Sunbeam's Management and Board

On June 15, 1998, Sunbeam's board of directors removed Albert J. Dunlap as Sunbeam's Chairman and Chief Executive Officer. Three days later, Sunbeam's board of directors removed Russell A. Kersh as Sunbeam's Vice Chairman and Chief Financial Officer. The Sunbeam board took these steps because Sunbeam's outside directors had lost confidence in Mr. Dunlap's leadership. On June 15, 1998, the Sunbeam board elected Peter A. Langerman as non-executive Chairman of the board and Jerry W. Levin as Sunbeam's new Chief Executive Officer. Mr. Langerman, an outside director of Sunbeam since 1990, is President and Chief Executive Officer of Franklin Mutual Advisers, Inc., the investment adviser to Franklin Mutual Series Fund, which owns about 17% of Sunbeam's common stock. Mr. Levin is an Executive Vice President of MacAndrews & Forbes. A subsidiary of MacAndrews & Forbes owns about 14% of Sunbeam's common stock and a warrant which, if exercised in full, would increase its ownership to about 29% of Sunbeam's outstanding common stock. Mr. Levin was Chairman and Chief Executive Officer of Coleman at the time of the M&F Transaction and previously was the Chairman and Chief Executive Officer of Revlon, Inc., an affiliate of MacAndrews & Forbes.

On June 16, 1998, Paul E. Shapiro was appointed as Sunbeam's Executive Vice President and Chief Administrative Officer. Mr. Shapiro also serves as a director and Executive Vice President of Coleman. Mr. Shapiro was the Executive Vice President and General Counsel of Coleman at the time of the M&F Transaction. Bobby G. Jenkins was appointed as Sunbeam's Executive Vice President and Chief Financial Officer on June 15, 1998. Mr. Jenkins also serves as Executive Vice President of Coleman. On April 24, 1998, Karen K. Clark was appointed as Sunbeam's Vice President, Operations Finance. Since April 1999, Ms. Clark has served as Sunbeam's Senior Vice President, Finance. Ms. Clark also serves as Senior Vice President, Finance of Coleman. Jack D. Hall joined Sunbeam on October 1, 1998 as President, International. Steven R. Isko was appointed as Sunbeam's Senior Vice President and General Counsel on June 1, 1999. Mr. Isko also serves as Senior Vice President and General Counsel of Coleman.

In June 1998, Mr. Levin, Howard Gittis of MacAndrews & Forbes, and Lawrence Sondike of Franklin Mutual Advisers, Inc. were elected to the Sunbeam board. William T. Rutter resigned from the Sunbeam

board effective July 8, 1998, and Faith Whittlesey was elected to fill the vacancy on the Sunbeam board of directors' audit committee resulting from Mr. Rutter's resignation. Messrs. Dunlap and Kersh resigned from the Sunbeam board of directors effective August 5, 1998. In January 1999, Mr. Sondike resigned from the Sunbeam board of directors; in February 1999, John H. Klein, Chairman and Chief Executive Officer of Bi-Logix, Inc., was elected to the Sunbeam board of directors; and on June 29, 1999, Philip E. Beekman, President of Owl Hollow Enterprises, Inc., was elected to the Sunbeam board of directors at its annual stockholders meeting.

In March 1999, Mr. Levin became Chairman of the Sunbeam board of directors, succeeding Mr. Langerman, who remains a director of Sunbeam.

Restatement of Financial Results; Change of Auditors

On June 25, 1998, Sunbeam announced that its former independent auditors, Arthur Andersen, would not consent to the inclusion of their opinion on Sunbeam's 1997 financial statements in a registration statement Sunbeam was then planning to file with the SEC. On June 30, 1998, Sunbeam announced that the audit committee of its board of directors would review the accuracy of Sunbeam's prior financial statements and, therefore, those financial statements should not be relied upon. Sunbeam also announced that Deloitte & Touche LLP had been retained to assist the audit committee and Arthur Andersen in this review. On August 6, 1998, Sunbeam announced that the audit committee had determined that Sunbeam would be required to restate its financial statements for 1997, the first quarter of 1998, and possibly 1996, and that the adjustments, while not then quantified, would be material.

On October 20, 1998, Sunbeam announced the restatement of its financial results for a six-quarter period from the fourth quarter of 1996 through the first quarter of 1998. Sunbeam had to restate these financial results because its previously issued financial statements generally overstated losses for 1996, overstated profits for 1997 and understated losses for the first quarter of 1998. The audit committee concluded that Sunbeam had incorrectly recognized revenue during these periods from "bill and hold" and guaranteed sales transactions. The audit committee also concluded that some costs and allowances for sales returns, co-op advertising, customer deductions and reserves for product liability and warranty expense were not accrued or were incorrectly recorded. Finally, the audit committee concluded that various costs were incorrectly included in and charged to restructuring, asset impairment and other costs.

On November 20, 1998, Sunbeam announced that its audit committee had recommended, and its board of directors had approved, the appointment of Deloitte & Touche to replace Arthur Andersen as Sunbeam's independent auditors for fiscal year 1998. Arthur Andersen will continue to provide Sunbeam with limited professional services. For further information regarding Sunbeam's independent auditors, see "CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE."

Reporting of Results for First Nine Months of 1999 and Fiscal Year 1998

On November 9, 1999, Sunbeam reported that for the first nine months of 1999 Sunbeam had net sales of \$1,786.4 million and a net loss of \$155.0 million, or a loss per diluted share of \$1.54. Results for the nine months ended September 30, 1998 include Coleman, Signature Brands and First Alert from their respective acquisition dates. After adjusting 1998 sales to include sales of the acquired companies for the periods from the beginning of 1998 through the respective dates of acquisition, 1999 net sales increased approximately \$162 million or approximately 10% over 1998 combined historical net sales of \$1,624.0 million. Sunbeam also announced that net cash used in operations was \$73.2 million for the first nine months of 1999 as compared to \$224.7 million during the same period in the prior year.

On April 21, 1999, Sunbeam reported that, for the full year 1998, Sunbeam had net sales of \$1,800 million and a net loss of \$898 million, or a loss of \$9.25 per diluted share. Excluding sales of Coleman, First Alert and Signature Brands, comparable sales declined 23% to \$828 million in 1998 from about \$1,100 million in 1997. Sunbeam also announced net cash provided by operations of about \$30 million for the fourth quarter of 1998, compared with net cash used in operations of about \$220 million during the first three quarters of 1998.

Litigation Involving Sunbeam

Since prior management's issuance of the April 3, 1998 press release concerning Sunbeam's 1998 first quarter results, many lawsuits alleging legal claims arising under federal and state securities and other laws have been filed against Sunbeam, some of Sunbeam's former directors and officers, some of Sunbeam's current directors and Arthur Andersen. Sunbeam is currently defending these lawsuits in a number of courts. Many of these suits relate to Sunbeam's financial performance from the second quarter of 1997 through the second quarter of 1998. Many plaintiffs are claiming that Sunbeam's prior management misrepresented and omitted material information in its public filings and in its statements concerning Sunbeam's historical and expected future results of operations. In many of these cases, the plaintiffs claim that the alleged actions were intended to artificially inflate the market price of Sunbeam's common stock. Sunbeam's insurers have also attempted to have Sunbeam's directors' and officers' liability policies voided or canceled or have advised Sunbeam that they do not intend to provide coverage with respect to these lawsuits. Sunbeam is unable to predict the outcome of these lawsuits or its potential exposure to damages. However, if Sunbeam were to lose these lawsuits, the judgments would likely have a material adverse effect on Sunbeam's financial condition, results of operations and cash flow. For a more detailed description of these and other lawsuits, see "BUSINESS OF SUNBEAM—Litigation and Other Contingent Liabilities."

SEC Investigation

The staff of the Division of Enforcement of the SEC advised Sunbeam in a letter dated June 17, 1998 that it was conducting an informal inquiry into Sunbeam's accounting policies and procedures. On July 2, 1998, the SEC advised Sunbeam that it had issued a formal order of investigation. The order indicates that the SEC is investigating whether Sunbeam, certain of its current or former officers, directors, employees and certain other persons and entities violated the federal securities laws and regulations by:

- filing or causing to be filed inaccurate reports with the SEC,
- failing to maintain accurate books, records and accounts,
- failing to create or maintain adequate internal accounting controls, or circumventing such controls,
- knowingly or recklessly making false or misleading statements in reports filed with the SEC or in other public statements, or
- making false or misleading statements to an accountant in connection with audits or examinations of Sunbeam's financial statements or reports filed with the SEC.

At the time the formal order of investigation was issued, the SEC also subpoenaed various documents from Sunbeam. On November 4, 1998, Sunbeam received another SEC subpoena requiring the production of additional documents. Sunbeam has cooperated with the SEC and has furnished the SEC with documents they requested. Sunbeam has, however, declined to provide the SEC with material Sunbeam believes is subject to the attorney-client privilege and the work product immunity. Sunbeam cannot predict how long the SEC investigation will continue or its outcome.

Settlement of Claims Relating to the M&F Transaction

On August 12, 1998, Sunbeam announced that it had entered into an agreement to settle threatened claims of the MacAndrews & Forbes subsidiary that sold Sunbeam a controlling interest in Coleman in the M&F Transaction in March 1998, in exchange for consideration which included about 14 million shares of Sunbeam common stock. These shares had a market value of about \$580 million when the MacAndrews & Forbes subsidiary agreed to the M&F Transaction, but their market value was less than \$100 million at the time of the settlement.

The claims of the MacAndrews & Forbes subsidiary were substantially the same as the claims made in a number of the stockholder lawsuits filed in the second and third quarters of 1998 alleging that Sunbeam, in 1997 and the first quarter of 1998 under its prior management, made material misstatements and omissions of fact that artificially inflated the market price of Sunbeam common stock. The MacAndrews & Forbes

subsidiary also alleged that Sunbeam had breached representations made in the agreement relating to the M&F Transaction. The settlement:

- released Sunbeam from threatened claims arising out of Sunbeam's acquisition of the MacAndrews & Forbes subsidiary's controlling interest in Coleman,
- enabled Sunbeam to retain the services of executive personnel affiliated with MacAndrews & Forbes who had been managing Sunbeam since mid-June of 1998, including Jerry W. Levin, Sunbeam's Chairman and Chief Executive Officer, Paul E. Shapiro, Sunbeam's Executive Vice President and Chief Administrative Officer, and Bobby G. Jenkins, Sunbeam's Executive Vice President and Chief Financial Officer, and
- provided for continuing management assistance and other support by MacAndrews & Forbes to Sunbeam at its request.

In exchange, Sunbeam issued to the MacAndrews & Forbes subsidiary a warrant expiring August 24, 2003 to purchase 23 million shares of Sunbeam common stock at a cash exercise price of \$7 per share, subject to anti-dilution adjustments. Sunbeam has agreed that the MacAndrews & Forbes subsidiary can require Sunbeam to register under federal and applicable state securities laws the warrant and the shares of Sunbeam common stock issuable upon exercise of the warrant. See "BUSINESS—Litigation and Other Contingent Liabilities."

The terms of the settlement and warrant were negotiated and approved on Sunbeam's behalf by a special committee of four of Sunbeam's outside directors, none of whom has any affiliation with MacAndrews & Forbes. The members of the special committee were Howard Kristol (Chairman), Charles Elson, Peter Langerman and Faith Whittlesey. They were assisted by independent financial advisors and legal counsel.

For their services as members of the special committee in connection with the settlement, Mr. Kristol received additional compensation of \$50,000 and Messrs. Elson and Langerman and Mrs. Whittlesey each received additional compensation of \$35,000. Sunbeam also agreed to indemnify each of the members of the special committee to the fullest extent allowed by applicable law and Sunbeam's certificate of incorporation and by-laws for any liabilities arising out of their services on the special committee.

The settlement normally would have required approval by Sunbeam's stockholders under the rules of the NYSE because of the issuance of the warrant as part of the settlement. However, Sunbeam's audit committee determined that the delay that would be necessary to secure stockholder approval prior to issuing the warrant would:

- be lengthy due to the SEC's ongoing investigation of Sunbeam's accounting practices and policies and the need to complete the restatement of Sunbeam's historical financial statements,
- inhibit Sunbeam's ability to reach a settlement with the MacAndrews & Forbes subsidiary and to retain and hire essential senior management personnel, and
- seriously jeopardize Sunbeam's financial viability.

Based on these determinations, Sunbeam's audit committee, relying on an exception provided in the applicable NYSE stockholder approval policy, expressly approved Sunbeam's omission to seek stockholder approval. The NYSE accepted Sunbeam's application of the exception.

In connection with the settlement agreement, Messrs. Levin, Shapiro and Jenkins each signed three-year employment agreements with Sunbeam. See "MANAGEMENT."

Options Exchange

In August 1998, Sunbeam approved an exchange plan for outstanding options held by its employees to purchase shares of Sunbeam common stock. The exchange plan, which has been completed, provided for the outstanding options with exercise prices in excess of \$10.00 per share to be valued by reference to the generally accepted Black-Scholes option pricing model, and permitted Sunbeam employees to exchange old

options for new options with an exercise price of \$7.00 per share having a value equivalent to the value of the old options. See Note 9 to Sunbeam's Consolidated Financial Statements.

New York Stock Exchange Listing

In May 1998, the NYSE advised Sunbeam that it did not meet the NYSE's continuing listing standards because Sunbeam did not have tangible net assets of at least \$12 million at December 31, 1997 and average annual net income of at least \$600,000 for 1995, 1996 and 1997. Sunbeam representatives met with NYSE officials, and in March 1999, the NYSE informed Sunbeam that Sunbeam common stock would not be delisted at that time, although the NYSE would continue to monitor Sunbeam's financial condition and operating performance. On August 5, 1999, the NYSE advised Sunbeam that the NYSE had revised its continuing listing standards, and that Sunbeam is in compliance with the revised standards.

Matters Involving Former Management

In early August 1998, Sunbeam entered into a six-month agreement with Messrs. Dunlap and Kersh in which the parties agreed not to assert claims against each other and to exchange information relating to the pending stockholder lawsuits. Sunbeam also agreed to pay a portion of the accrued vacation and employment benefits of Messrs. Dunlap and Kersh.

After the agreement expired, by letters dated February 9, 1999, Messrs. Dunlap and Kersh submitted demands for arbitration to the American Arbitration Association alleging that Sunbeam terminated their employment without cause. Messrs. Dunlap and Kersh are seeking lump sum payments of about \$5,250,000 and \$2,296,875, respectively. Messrs. Dunlap and Kersh also are seeking:

- amounts for accrued but unused vacation,
- amounts in respect of certain benefit plans,
- a ruling that their options to acquire shares of Sunbeam common stock are fully vested and that they will receive the economic equivalent of their participation in Sunbeam's program for repricing of options, and
- in the case of Mr. Kersh, more than \$3 million, including tax gross-ups, with respect to his restricted stock.

Sunbeam is vigorously contesting the claims of Messrs. Dunlap and Kersh. To date, Sunbeam has not made any severance payments to either of Messrs. Dunlap or Kersh.

On March 23, 1999, Messrs. Dunlap and Kersh filed a complaint in the Court of Chancery of the State of Delaware seeking an order directing Sunbeam to advance attorneys' fees and other expenses incurred in connection with the defense of the stockholder lawsuits and the SEC investigation. A trial of this summary proceeding was held on June 15 and 16, 1999, and the court ordered Sunbeam to advance Messrs. Dunlap and Kersh about \$1.4 million for their expenses incurred through the date of their complaint and to advance expenses reasonably incurred by them in the future. Messrs. Dunlap and Kersh have agreed to repay to Sunbeam all amounts reimbursed or advanced if it is ultimately determined that they are not entitled to indemnification under Delaware law.

Acquisition of Coleman Preferred Stock

On July 12, 1999, one of Sunbeam's wholly owned subsidiaries acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock, for an aggregate purchase price of approximately \$31 million. These shares, together with the shares of Coleman common stock already indirectly owned by Sunbeam, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock. Coleman created these shares and Sunbeam acquired them in order to enable Sunbeam and Coleman to file consolidated federal income tax returns and, in certain jurisdictions, consolidated state income tax returns, prior to the completion of the merger. In connection with the acquisition of these shares, Sunbeam entered into a tax sharing agreement with Coleman pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had

Coleman not been included in the consolidated income tax return of Sunbeam. The terms of the voting preferred stock, the per share issue price and the terms of the tax sharing agreement were approved on Coleman's behalf by Coleman's then sole independent director. The net proceeds from the sale of the preferred stock to Sunbeam were used by Coleman to make a partial repayment on Coleman's note payable to Sunbeam.

For information concerning the terms of the new preferred stock issued to Sunbeam, see "DESCRIPTION OF COLEMAN CAPITAL STOCK—Coleman Preferred Stock."

Proposed Sale of Coleman Eastpak Business

On November 9, 1999, Sunbeam announced its intention to divest Coleman's Eastpak business, as well as certain non-essential assets. Sunbeam anticipates that these asset sales will produce net proceeds of approximately \$200 million, which will be used primarily to pay down its bank debt.

RECENT DEVELOPMENTS AFFECTING COLEMAN

In April 1999, the NYSE advised Coleman that it did not meet the NYSE's continuing listing standards because Coleman did not have tangible net assets of at least \$12 million at September 30, 1998 and average annual net income of at least \$600,000 for fiscal years 1997, 1996 and 1995. At that time, Coleman requested the NYSE to continue to list the Coleman common stock until completion of the merger. The NYSE subsequently advised Coleman that Coleman also failed to satisfy certain non-financial continuing listing standards. On August 5, 1999, the NYSE advised Coleman that the NYSE had revised its continuing listing standards, and that Coleman is in compliance with the revised financial standards. Coleman and the NYSE have agreed upon a program whereby Coleman will correct the deficiencies in its non-financial continuing listing standards by the end of 1999. Coleman is currently complying with such program. If Coleman were to be delisted from the NYSE, it could adversely affect the market price of Coleman's common stock and Coleman's ability to sell its capital stock to third parties. However, Sunbeam's bank credit facility currently restricts Coleman from taking such action.

Following the M&F Transaction, Sunbeam caused Coleman to repay substantially all of its outstanding indebtedness (which had been assumed by Sunbeam in the M&F Transaction) with the proceeds of borrowings from Sunbeam. Since the completion of the M&F Transaction, Coleman has borrowed additional funds from Sunbeam. During 1998 and through April 15, 1999, these borrowings were evidenced by an unsecured subordinated demand note payable by Coleman to Sunbeam. This note was pledged by Sunbeam to its lenders as security for Sunbeam's obligations under its bank credit facility. In April 1999, Coleman's note payable to Sunbeam was revised and secured by a pledge of Coleman assets in favor of Sunbeam's lending banks. The revised Coleman note had an unpaid principal amount of \$303.2 million on September 30, 1999. See "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Financial Transactions Between Coleman and Sunbeam."

As described above, on July 12, 1999, Coleman issued 3,000,000 shares of a newly created series of Coleman voting preferred stock to one of Sunbeam's wholly owned subsidiaries. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Acquisition of Coleman Preferred Stock."

SPECIAL FACTORS

Background of the Merger

In the spring of 1997, as part of a long-term strategic planning process, Sunbeam's prior management began exploring a possible sale of Sunbeam or the making of one or more major acquisitions. On April 22, 1997, representatives of Morgan Stanley & Co., Incorporated, Sunbeam's financial advisor, met with Albert J. Dunlap, Sunbeam's then Chairman and Chief Executive Officer, and Russell A. Kersh, Sunbeam's then Vice Chairman and Chief Financial Officer, to discuss, among other things, the retention of Morgan Stanley as Sunbeam's financial advisor in connection with a possible sale of Sunbeam or one or more major acquisitions by Sunbeam.

On September 11, 1997, Morgan Stanley was formally retained by Sunbeam to assist in connection with a possible sale of Sunbeam, one or more possible acquisitions by Sunbeam and the consideration of other strategic alternatives. Thereafter, representatives of Morgan Stanley contacted five companies in the branded consumer products business to determine whether any of these companies would be interested in exploring a possible acquisition of Sunbeam. Morgan Stanley contacted only those companies which it believed were large enough to finance an acquisition of Sunbeam and to successfully integrate Sunbeam's operations. In addition, Morgan Stanley selected only companies with product lines and operations which it believed were compatible with or complementary to those of Sunbeam. One of the companies contacted was MacAndrews & Forbes, which Morgan Stanley from time to time advises on a variety of business and financial matters. None of the companies contacted by Morgan Stanley expressed interest in acquiring Sunbeam at a price which would have constituted a premium over the then current market price of the Sunbeam common stock. Based on Morgan Stanley's initial contacts with potential acquirors of Sunbeam, Sunbeam's then senior management concluded that it was unlikely that any major consumer products company would be likely to pursue an acquisition of Sunbeam at a price or on terms that would be acceptable to Sunbeam. Morgan Stanley then explored the impact on Sunbeam of various other strategic alternatives, including a sale of one or more of Sunbeam's businesses, a spin-off of one or more of Sunbeam's subsidiaries or a recapitalization of Sunbeam. These strategic alternatives were rejected by Sunbeam's former management because of former management's stated belief that one or more acquisitions by Sunbeam would have a more positive impact on stockholder value. Former management then directed Morgan Stanley to shift its focus to one or more possible major acquisitions.

On December 12, 1997, Mr. Kersh, David C. Fannin, Sunbeam's then Executive Vice President, General Counsel and Secretary, and Peter A. Langerman, a director of Sunbeam, met with Jerry W. Levin, then Chairman and Chief Executive Officer of Coleman, Paul E. Shapiro, then Coleman's Executive Vice President and General Counsel, and Joseph P. Page, then Executive Vice President and Chief Financial Officer of Coleman, and discussed Coleman's businesses and the potential cost savings, efficiencies and other benefits that could result from a combination of Sunbeam and Coleman. The December 12 meeting was initiated by Morgan Stanley on Sunbeam's behalf. Notwithstanding MacAndrews & Forbes' previous rejection of Sunbeam's overtures regarding an acquisition of Sunbeam by MacAndrews & Forbes, both Morgan Stanley and Sunbeam believed that the complementary nature of the product offerings of Sunbeam and Coleman, the asset base of Coleman, including its ownership of various brand names which enjoy substantial consumer recognition, the potential revenue and operational benefits associated with a Sunbeam/Coleman combination and the then current trading prices of Coleman's common stock all favored an acquisition of Coleman by Sunbeam.

At that time, MacAndrews & Forbes indirectly owned about 81% of the Coleman common stock through various subsidiaries, including Coleman (Parent) Holdings. Other stockholders then owned about 19% of the outstanding Coleman common stock. For further information regarding the organizational structure of MacAndrews & Forbes and the structure of the M&F Transaction, see "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—M&F Transaction."

On December 18, 1997, Mr. Dunlap and Michael Price, the then President and Chief Executive Officer of Franklin Mutual Advisers, Inc., Sunbeam's largest stockholder, met with Ronald O. Perelman, MacAndrews & Forbes' Chairman, Chief Executive Officer and sole stockholder, and another senior executive of MacAndrews & Forbes. Mr. Dunlap suggested a possible transaction in which Sunbeam would

acquire Coleman for consideration valued in the range of \$18 to \$22 per share of Coleman common stock. Mr. Perelman advised Mr. Dunlap that the price range was too low and indicated that he would not support a transaction in that price range.

On or about January 22, 1998, in an effort to revive a possible transaction, a representative of Morgan Stanley contacted a representative of MacAndrews & Forbes and indicated that Sunbeam might consider a possible transaction involving both cash and shares of Sunbeam common stock at a price higher than the price range suggested by Mr. Dunlap at the December 18 meeting. MacAndrews & Forbes' representative indicated his willingness to discuss a possible transaction on those terms. On January 23, 1998, representatives of Morgan Stanley met with representatives of MacAndrews & Forbes to begin discussions regarding a possible transaction between Sunbeam and Coleman. On January 29, 1998, representatives of Sunbeam and Morgan Stanley met with representatives of Coleman and MacAndrews & Forbes, as well as representatives of Credit Suisse First Boston Corporation, Coleman's financial advisor. During the meeting, the parties discussed the potential cost savings, revenue and operational efficiencies and other benefits that might be associated with a business combination of Sunbeam and Coleman and a preliminary schedule for mutual due diligence. During the week of February 2, 1998, Morgan Stanley submitted to MacAndrews & Forbes an outline of a possible transaction structure which focused on Sunbeam's acquisition of Coleman in a one-step merger of a wholly owned Sunbeam subsidiary with and into Coleman in which all outstanding shares of Coleman common stock, including the shares owned indirectly by MacAndrews & Forbes, would be exchanged for consideration consisting solely of Sunbeam common stock. The proposal was rejected because it did not contemplate the assumption by Sunbeam of the indebtedness of two subsidiaries of MacAndrews & Forbes which were corporate parents of Coleman holding MacAndrews & Forbes' interest in Coleman—CLN Holdings (the subsidiary of Coleman (Parent) Holdings) and Coleman Worldwide (the subsidiary of CLN Holdings)—or the payment of any cash consideration. At that time, Coleman Worldwide and CLN Holdings had aggregate outstanding indebtedness of about \$518.7 million.

On February 6, 1998, representatives of Morgan Stanley met with representatives of MacAndrews & Forbes and Credit Suisse First Boston to again discuss a possible acquisition of Coleman by Sunbeam. At this meeting, the possibility of Sunbeam's acquisition of MacAndrews & Forbes' interest in Coleman, including Sunbeam's assumption of the indebtedness of Coleman Worldwide and CLN Holdings, as the first step in an acquisition of Coleman was discussed. Although the parties had not yet reached agreement on price or the value of Coleman, the parties began to discuss this structure.

On February 13, 1998 and February 19, 1998, representatives of Sunbeam and Morgan Stanley participated in conference calls with a representative of MacAndrews & Forbes and discussed the terms of a possible transaction, including structure and price. The parties tentatively agreed that the transaction would be structured as a stock purchase in which Sunbeam would acquire all of the outstanding capital stock of CLN Holdings from Coleman (Parent) Holdings, an indirect subsidiary of MacAndrews & Forbes. Under this structure, Sunbeam in effect would assume the indebtedness of CLN Holdings and Coleman Worldwide. The consideration payable by Sunbeam was not, however, agreed upon. Due diligence meetings were held at various times on and after February 21, 1998 during which representatives of Sunbeam and Morgan Stanley, as well as Sunbeam's accountants and consultants, met with representatives of Coleman, MacAndrews & Forbes and Credit Suisse First Boston, as well as Coleman's accountants, to discuss Coleman's financial results for fiscal year 1997, strategic plans and financial projections for fiscal year 1998.

Due diligence meetings were also held on February 23 and 24, 1998 during which representatives of Sunbeam met with representatives of Coleman, along with representatives of MacAndrews & Forbes and Credit Suisse First Boston, to discuss Sunbeam's long-term strategic plan and financial projections for fiscal years 1998 through 2000.

On February 24, 1998, Messrs. Kersh and Fannin and representatives of Morgan Stanley participated in conference calls with representatives of MacAndrews & Forbes to finalize the transaction structure and negotiate the remaining terms of the transaction. During these conference calls, the parties reached agreement on the type of consideration payable by Sunbeam in the acquisition, although neither the amount of cash consideration nor the precise exchange ratio of Sunbeam common stock for Coleman common stock was agreed upon. On February 25 and 26, 1998, meetings and conference calls were held between representatives

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of Sunbeam and its legal advisors, representatives of Coleman and its legal advisors, and representatives of MacAndrews & Forbes and its legal advisors. During the February 26, 1998 meetings and conference calls, the parties agreed that the final transaction structure would consist of a merger of CLN Holdings and a wholly owned Sunbeam subsidiary, followed by a second-step merger of a wholly owned Sunbeam subsidiary with Coleman. At that time, the parties also reached final agreement on the consideration payable by Sunbeam in the acquisition, including the amount of cash consideration and the precise exchange ratio of Sunbeam common stock for Coleman common stock. The parties and their advisors then finalized definitive agreements reflecting the agreed upon transaction structure and consideration.

On February 25, 1998, Coleman's then board of directors met and received and considered the presentations of the management of Coleman, Credit Suisse First Boston and Coleman's legal counsel regarding the transactions. The presentation of Credit Suisse First Boston was addressed, primarily, to the fairness to the Coleman minority stockholders of the consideration payable under the merger agreement. As part of this presentation, representatives of Credit Suisse First Boston evaluated the following factors:

- the proposed structure of the transaction;
- the type and amount of consideration payable to the Coleman minority stockholders in the merger and to the MacAndrews & Forbes subsidiary, Coleman (Parent) Holdings, in the M&F Transaction, including the assumption by Sunbeam of the indebtedness of Coleman Worldwide, CLN Holdings and Coleman;
- the premium represented by the then value of the merger consideration when compared to:
 - historical trading prices of the Coleman common stock;
 - Coleman's EBITDA for fiscal years 1997 and 1998; and
 - Coleman's earnings per share for fiscal years 1997 and 1998; and
- the value of Coleman, as measured by:
 - an analysis of the then present value of Coleman's future unlevered cash flows generated by its then current assets;
 - the public market trading values of comparable companies; and
 - the prices paid in recent acquisitions of comparable companies.

On Friday, February 27, 1998, meetings of the boards of directors of Coleman and Sunbeam were held to consider and act upon the proposed transactions. At the meeting of the Coleman board Credit Suisse First Boston delivered its opinion to the Coleman board to the effect that, as of that date, the consideration of 0.5677 of a share of Sunbeam common stock and \$6.44 in cash, without interest thereon, in exchange for each share of Coleman common stock, was fair, from a financial point of view, to the stockholders of Coleman, other than MacAndrews & Forbes and its subsidiaries.

At the meeting of the Sunbeam board, the directors of Sunbeam received and considered presentations of Morgan Stanley regarding the transactions. The presentation of Morgan Stanley was addressed to the fairness to Sunbeam of the consideration payable under the merger agreement. As part of this presentation, representatives of Morgan Stanley, among other things, discussed with the Sunbeam board the following factors:

- the strategic rationale for the transaction, including:
 - the strength of Coleman's brand names and the potential revenue benefits they presented to Sunbeam;
 - the benefits associated with an acquisition by Sunbeam in terms of market expectations, Sunbeam's ability to remain a market leader and the increased leverage over distribution channels associated with increased size; and
 - the potential for synergies and cost savings as a result of the merger;
- the proposed structure of the transaction;

- the financial condition of Coleman and Sunbeam;
- the nature of Coleman's and Sunbeam's business operations and their future prospects;
- estimates of the revenue and operational benefits expected to be realized as a result of the transaction as prepared by the management of Sunbeam;
- an analysis of the present value of Coleman's projected cash flows with a terminal value applied;
- the public market trading values of comparable companies with a projected control premium included; and
- prices paid in recent acquisitions of comparable companies.

In addition, at the February 27, 1998 Sunbeam board meeting, Morgan Stanley delivered its opinion to the Sunbeam board to the effect that, as of that date, the consideration payable in the merger and the M&F Transaction was fair, from a financial point of view, to Sunbeam.

Following the receipt of the respective fairness opinions, the boards of directors of Sunbeam and Coleman each approved the merger and the M&F Transaction. Definitive agreements were executed by the parties late that night and a press release announcing the transactions was issued before the opening of trading on the NYSE on Monday, March 2, 1998.

On February 27, 1998, Coleman Worldwide, as the owner of about 81% of the then outstanding shares of Coleman common stock, executed a written consent and voted its shares to approve the merger agreement and the merger. As a result, no further action on the part of any stockholder of Coleman is required to complete the merger.

As described above under the caption "RECENT DEVELOPMENTS AFFECTING SUNBEAM," since the merger agreement was approved and signed in February 1998 and the M&F Transaction was completed in March 1998, adverse developments affecting Sunbeam have caused a substantial decrease in the market value of the Sunbeam common stock. As a result, the value of the consideration paid to the MacAndrews & Forbes subsidiary in the M&F Transaction and the value of the consideration to be paid to Coleman's other stockholders under the merger agreement have also declined substantially. Coleman and Sunbeam have not considered amending or terminating the merger agreement because the merger agreement, by its terms, cannot be amended or terminated. Instead, Coleman and Sunbeam determined to provide additional consideration to the Coleman minority stockholders in connection with the settlement of the Coleman minority stockholders' litigation claims.

Coleman's Reasons for the Merger and Approval of the Coleman Board

At its meetings on February 25 and 27, 1998, the then Coleman board received and considered the presentations of Coleman management, Credit Suisse First Boston and Coleman's legal counsel regarding the merger agreement and the merger. At its February 27 meeting, the then Coleman board unanimously approved and adopted the merger and approved the merger agreement and the transactions contemplated by the merger agreement. See "—Background of the Merger."

In reaching its determination to approve the merger, the then Coleman board considered a number of factors. Listed below are the material factors, both positive and negative, considered. In view of the number and variety of factors considered in connection with its evaluation of the merger, the then Coleman board did not consider it practicable to, nor did it attempt to, quantify or otherwise assign relative weights to the specific factors considered in reaching its determination. In addition, individual members of the then Coleman board may have given different weight to the different factors.

The then Coleman board identified and considered a variety of positive factors in its deliberations concerning the merger, including those set forth below.

Coleman's Business, Condition and Prospects. The Coleman board reviewed Coleman's business, its then current financial condition and results of operations and its future prospects, including Coleman's ability to maintain its position in the consumer products business at its present size, and the current and anticipated developments in Coleman's business. The Coleman board received and reviewed presentations from, and

discussed the terms and conditions of the merger agreement with, executive officers of Coleman and Coleman's financial and legal advisors. The Coleman board considered the views of its management and financial advisor regarding recent trends in the industry in which Coleman operates, including recent acquisitions and business combinations. Based on its familiarity with the business, current financial condition and results of operations and future prospects of Coleman, and in light of the various presentations it received, the Coleman board concluded that a business combination of Coleman with Sunbeam would be in the best interests of Coleman and its stockholders.

Terms and Structure of the Transaction. The Coleman board of directors considered the fact that the merger agreement does not contain any provisions that either (1) limit the effect of changes in the market price of the Sunbeam common stock prior to the completion of the merger on the value of the consideration to be received by Coleman stockholders in the merger or (2) permit Coleman or Sunbeam to terminate the merger agreement based upon changes in stock price and that, accordingly, the value of the consideration could change based on the performance of the Sunbeam common stock between the execution of the merger agreement and the completion of the merger. While recognizing that the absence of these provisions exposed Coleman's stockholders to market risk, the Coleman board considered this risk to be mitigated to some extent by the trading history of Sunbeam common stock during the period from January 1, 1997 through February 24, 1998 and the fact that the Sunbeam common stock had outperformed both the Coleman common stock and the Standard and Poor's 500 Stock Index during that period.

The Coleman board reviewed the economic terms of the transaction based upon the closing prices of the Coleman common stock and the Sunbeam common stock on February 24, 1998 and February 26, 1998, the days prior to each of the meetings of the Coleman board. As reported on the NYSE Composite Transactions Tape, the closing prices of Sunbeam common stock and Coleman common stock were \$40.625 and \$20.688, respectively, on February 24, 1998, and \$41.875 and \$20.188, respectively, on February 26, 1998. The Coleman board considered that, in each case, the merger consideration implied a per share premium of about 44.2% when the market value of the merger consideration was compared to the then market price per share of Coleman common stock. The Coleman board also considered that the merger consideration was higher than the value implied by the historical stock market prices of the Coleman common stock and Sunbeam common stock.

The Coleman board also considered the fact that the transaction was structured as a two-step acquisition which, among other things, would enable Sunbeam to acquire control of Coleman as quickly as possible in order to reduce disruption to Coleman's business. The two-step structure would enable Sunbeam to acquire control of Coleman more quickly than in a one-step transaction, since Sunbeam could issue shares of its common stock to the MacAndrews & Forbes subsidiary that owned the shares of Coleman common stock without having to register the Sunbeam shares under the federal securities laws, thereby avoiding the delay inherent in the registration process. The agreement relating to the M&F Transaction was signed on February 27, 1998 and the transaction was completed thirty days later on March 30, 1998. As described below under "—Purposes and Effects of the Merger," Sunbeam believed that it was in the best interests of its stockholders that Sunbeam acquire Coleman for consideration consisting, at least in part, of shares of its common stock. Accordingly, Sunbeam believed that a cash tender offer for all outstanding shares of Coleman common stock, which also would have avoided the registration process, was not an acceptable alternative.

Opinion of Credit Suisse First Boston. The Coleman board considered the oral opinion delivered by Credit Suisse First Boston at the meeting of the Coleman board on February 27, 1998, which was subsequently confirmed in writing, to the effect that, as of that date and based upon and subject to the matters described in the opinion, the cash and stock consideration payable in the merger was fair from a financial point of view to Coleman's minority stockholders. When Credit Suisse First Boston was engaged by Coleman, they were not asked to render an updated opinion as of the date of this document and neither Sunbeam nor Coleman has requested that they do so. Moreover, Credit Suisse First Boston has advised Sunbeam that its opinion, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam.

Ability of Coleman's Stockholders to Obtain a Continuing Interest in Sunbeam. The Coleman board considered that, under the terms of the merger agreement, Coleman's stockholders will receive equity

securities of Sunbeam, thus enabling Coleman's stockholders to participate in increases in the value of Sunbeam, including any value that may be generated through Sunbeam's acquisition of Coleman's businesses. The Coleman board also noted that the price of the Sunbeam common stock had more than doubled since the time Mr. Dunlap had become Chief Executive Officer of Sunbeam.

Ownership of Coleman Voting Stock. The Coleman board considered the fact that prior to the merger the Coleman minority stockholders were stockholders in a company controlled by MacAndrews & Forbes, but that following the merger they would be stockholders in a public company without any controlling stockholder and therefore the Coleman minority stockholders, as stockholders of Sunbeam, may be able to obtain a control premium with respect to their Sunbeam common stock in the future. The ability of Coleman's stockholders to receive dividends or other distributions declared and paid by Coleman was not considered material by the Coleman board because Coleman had not declared a dividend since its initial public offering in February 1992 and at the time of the approval of the merger, the then Coleman board had no plans to declare any dividends.

Availability of Appraisal Rights. The Coleman board considered the fact that the Coleman minority stockholders would have the right to pursue appraisal rights under Delaware law. Accordingly, any Coleman public stockholder who did not wish to accept the cash and stock consideration payable under the merger agreement would have the right to dissent from the merger and have the fair value of his Coleman shares determined by a court and paid to him in cash.

In addition, the then Coleman board identified and considered a variety of potentially negative factors, including those set forth below.

Failure to Realize Expected Benefits. The then Coleman board considered the possibility that the operational and revenue benefits expected to be realized as result of the transaction might not be fully realized. For example, some of the benefits of the transaction projected by the then Coleman board depended upon the ability of Sunbeam to cut costs, streamline operations and capitalize on the revenue and operational benefits derived from a combination of the two companies and the unrealized potential of Coleman's assets. Any such projected benefits are inherently subject to risks and uncertainties beyond the control of either Sunbeam or Coleman. The then Coleman board considered that any failure by Sunbeam to successfully implement its business strategies and cost-saving initiatives could have a material adverse effect on the market price of the Sunbeam common stock and thereby adversely affect former Coleman stockholders who receive Sunbeam shares in the merger.

Possible Failure to Complete the Transaction. The then Coleman board considered that the M&F Transaction was subject to customary closing conditions and, therefore, was subject to the risk that the M&F Transaction and the merger would not be completed. The then Coleman board considered that non-consummation of the two transactions could negatively affect the market price of the Coleman common stock and the financial community's perception of the stability and future prospects of Coleman. Moreover, a failure to complete the two transactions following their public announcement could negatively affect Coleman's sales and operating results, its ability to attract and retain key management and marketing personnel and its ability to successfully complete long-term strategic projects.

Substantial Charges Incurred in Connection with the Transaction. The then Coleman board considered that Coleman would be required to incur significant expenses in order to complete the M&F Transaction and the merger. These expenses include costs of integrating the businesses of Coleman and Sunbeam, fees of Coleman's legal and financial advisors and the expenditure of corporate resources in support of the transaction generally. The then Coleman board recognized that these expenses would be borne solely by Coleman in the event that the transaction was not completed.

Possible Loss of Key Personnel. The then Coleman board considered that, despite the efforts of the combined company, key management and marketing personnel might not remain employed by Coleman or Sunbeam. The loss of any such key personnel could have a material adverse effect on Coleman's financial position, results of operations and cash flow.

Tax Treatment. The Coleman board considered the fact that the merger is expected to be a taxable transaction for United States Federal income tax purposes and may be taxable under state, local or foreign

laws as well. For a discussion of the tax consequences of the merger to Coleman minority stockholders, see "UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS."

The then Coleman board believed, however, that the foregoing negative factors were outweighed by the projected benefits of the transactions.

The terms of the merger were arrived at through arms'-length negotiations between two unaffiliated parties, MacAndrews & Forbes and Sunbeam. The then Coleman board believed that the interests of MacAndrews & Forbes, as the then indirect owner of about 81% of the outstanding Coleman common stock, were substantially aligned with the interests of Coleman's minority stockholders. The merger agreement also contains provisions designed to protect Coleman's minority stockholders. The merger agreement prevents Sunbeam from altering the consideration payable to Coleman's minority stockholders in the merger or otherwise amending or terminating the merger agreement after completion of the M&F Transaction. Furthermore, the merger is subject to very few conditions, consisting only of (1) this document had to be declared effective by the SEC, (2) the Sunbeam common stock to be issued in the merger had to be listed on the NYSE, (3) the M&F Transaction had to be completed and (4) there can be no preliminary or permanent injunction preventing the merger. In addition, the merger agreement was approved by a unanimous vote of the Coleman board, including by those members of the Coleman board who were not employees or affiliates of Coleman or MacAndrews & Forbes. In light of the foregoing, the then Coleman board did not deem it necessary to institute additional procedural safeguards such as a requirement that the merger be approved by a majority of Coleman's minority stockholders or the formation of a special committee of Coleman's outside directors to negotiate the terms of the merger.

Financial Advisors' Opinions

Coleman's Financial Advisor. Credit Suisse First Boston acted as Coleman's financial advisor in connection with the merger at the time the merger agreement was signed. Credit Suisse First Boston was selected by Coleman based on Credit Suisse First Boston's experience, expertise and familiarity with Coleman and its business. Credit Suisse First Boston is an internationally recognized investment banking firm and is regularly engaged in the valuation of businesses and securities in connection with mergers and acquisitions, leveraged buyouts, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and valuations for corporate and other purposes.

On February 27, 1998, Credit Suisse First Boston delivered to the Coleman board an oral opinion, which was subsequently confirmed in writing, to the effect that, as of that date and based upon and subject to the matters described in the opinion, the cash and stock consideration payable under the merger agreement was fair from a financial point of view to Coleman's minority stockholders. However, since the date of Credit Suisse First Boston's opinion, numerous events have occurred that significantly affected the price of Sunbeam common stock. When Credit Suisse First Boston was engaged by Coleman, they were not asked to render an updated opinion as of the date of this document and neither Sunbeam nor Coleman has requested that they do so. Moreover, Credit Suisse First Boston has advised Sunbeam that its opinion, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam. Because Sunbeam did not plan to issue the warrants at the time the merger agreement was signed, Credit Suisse First Boston did not take the warrants into account when evaluating the fairness of the merger consideration.

Terms of Credit Suisse First Boston's Engagement. Under the letter agreement dated December 10, 1997 between Coleman and Credit Suisse First Boston, Coleman agreed to pay Credit Suisse First Boston for services rendered in connection with the merger a fee of about \$4 million. Coleman also agreed to reimburse Credit Suisse First Boston for all reasonable out-of-pocket expenses, including the reasonable fees and expenses of its legal counsel and any other advisor retained by Credit Suisse First Boston, resulting from or arising out of the engagement. Coleman further agreed to indemnify Credit Suisse First Boston and related persons and entities for losses, claims, damages or liabilities (including related actions or proceedings) related to or arising out of, among other things, its engagement as Coleman's financial advisor.

In the past, Credit Suisse First Boston has performed investment banking services for Coleman and MacAndrews & Forbes and their affiliates and has received customary fees for these services. In the ordinary

course of its business, Credit Suisse First Boston and its affiliates may actively trade the debt and equity securities of Coleman, MacAndrews & Forbes and its affiliates and Sunbeam for their own accounts and for the accounts of customers and, accordingly, may at any time hold a long or short position in those securities.

Sunbeam's Financial Advisor. Morgan Stanley was retained by Sunbeam to assist in connection with a possible sale of Sunbeam, one or more possible acquisitions by Sunbeam and/or other strategic alternatives. As part of that engagement, Morgan Stanley acted as Sunbeam's financial advisor in connection with its acquisition of Coleman. Sunbeam retained Morgan Stanley based on its qualifications, expertise and reputation, as well as upon its prior investment banking relationships with Sunbeam and its familiarity with Sunbeam and its business.

On February 27, 1998, Morgan Stanley rendered to the Sunbeam board an oral opinion, which was later confirmed in writing, to the effect that, as of that date and based upon and subject to the matters described in the opinion, the cash and stock consideration payable in the M&F Transaction and under the merger agreement was fair from a financial point of view to Sunbeam. When Morgan Stanley was engaged by Sunbeam, they were not asked to render an updated opinion as of the date of this document and neither Sunbeam nor Coleman has requested that they do so. Moreover, Morgan Stanley has advised Sunbeam that its opinion, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam. Because Sunbeam did not plan to issue the warrants at the time the merger agreement was signed, Morgan Stanley did not take the warrants into account when evaluating the fairness to Sunbeam of the consideration payable in the merger. On the basis of Morgan Stanley's advice, the Sunbeam board has determined not to rely on the opinion of Morgan Stanley as a basis for its plans to complete the merger.

Terms of Morgan Stanley's Engagement. Under an amended engagement letter between Sunbeam and Morgan Stanley, Sunbeam agreed to pay Morgan Stanley (1) an exposure fee equal to 25% of the estimated transaction fee referred to below, payable upon execution of the agreement relating to the M&F Transaction and the merger agreement, and (2) a transaction fee equal to a percentage of the aggregate value of the consideration payable by Sunbeam in the M&F Transaction and the merger (including the amount of any debt assumed or repaid by Sunbeam), payable, as to the M&F Transaction, upon its completion and, as to the merger, upon its completion. For purposes of calculating the transaction fee, the value of the Sunbeam common stock issued in the M&F Transaction and the merger will be the average of the closing sale prices for the Sunbeam common stock for the ten trading days prior to the completion of the M&F Transaction and the merger, respectively. For its services to Sunbeam in connection with the Coleman acquisition, Morgan Stanley has received fees from Sunbeam totaling about \$9.6 million. The amended engagement letter between Sunbeam and Morgan Stanley provides for the payment to Morgan Stanley of an additional transaction fee of \$680,000 when the merger is completed, based on the average market price of Sunbeam common stock on the last trading day prior to the date of this document. Sunbeam's obligation to pay this additional transaction fee to Morgan Stanley will not be affected by the fact that Sunbeam is no longer entitled to rely on Morgan Stanley's fairness opinion. Sunbeam has also agreed to reimburse Morgan Stanley for its expenses, including fees and expenses of its counsel, and to indemnify Morgan Stanley and related parties against various liabilities and expenses, which may include liabilities under the federal securities laws, arising out of its engagement. Morgan Stanley also acted as an initial purchaser for the private placement of the Sunbeam debentures and an affiliate of Morgan Stanley is a lender under Sunbeam's bank credit facility. Morgan Stanley also advised Sunbeam in connection with its acquisitions of Signature Brands and First Alert.

Sunbeam's Reasons for Acquiring Coleman and Approval of the Sunbeam Board

Sunbeam's Reasons for Acquiring Coleman. While Sunbeam's current management does not know all the reasons why prior management agreed to acquire Coleman, Sunbeam's current management believes that the following reasons were provided by prior management to the then Sunbeam board.

As part of its 1997 review of strategic alternatives, Sunbeam's then management team concluded that it was unlikely that Sunbeam could be sold at a price or on terms that would be acceptable to Sunbeam. Sunbeam shifted its strategic focus to identify underperforming companies with strong brand names that Sunbeam could acquire. Sunbeam's former management intended to capitalize on its perceived capability in cost containment and operational improvement by acquiring one or more of these companies and their

premier brand names, thereby broadening the Sunbeam product offering spectrum and presenting opportunities to eliminate redundant or inefficient operations.

Sunbeam acquired its current interest in Coleman and agreed to acquire the remaining equity interest in Coleman primarily due to Coleman's strong and established brand names, the potential opportunity to streamline operations, the diversification these brand names provide to Sunbeam's product base and the potential for revenue and operational benefits associated with a combination of Sunbeam and Coleman. In addition, Sunbeam believed that its existing international geographic marketing and distribution strengths and those of Coleman would significantly complement each other. Sunbeam's former management believed that the acquisition of Coleman would give Sunbeam a platform from which to capitalize on the fragmentation and potential consolidation of the durable household consumer products sector.

Approval of the Sunbeam Board. In February 1998, the then Sunbeam board approved the agreement relating to the M&F Transaction and the merger agreement and determined that the terms of the agreements were fair to Sunbeam's stockholders. The then Sunbeam board identified and considered a variety of positive factors in its deliberations concerning the merger, including, but not limited to, the following:

- the opinion of Sunbeam's financial advisor, Morgan Stanley, to the effect that the consideration to be paid by Sunbeam for Coleman was fair to Sunbeam from a financial point of view; Morgan Stanley has since advised Sunbeam that its opinion, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam;
- the terms of the agreements, including the fact that the exchange ratio of Sunbeam common stock for Coleman common stock would not change even in the event of a decrease in the market price of the Sunbeam common stock;
- the then Sunbeam board's belief that the then per share premium of about 44.2% implied by the then current value of the consideration compared to the then market price per share of Coleman common stock was reasonable in light of other comparable transactions involving companies in the consumer products and sporting goods industries;
- the belief of Sunbeam's prior management that Coleman presented unrealized potential which could be exploited once Coleman's operations were added to those of Sunbeam;
- the anticipated operational efficiencies and revenue benefits associated with the acquisition of Coleman's product lines; and
- the belief of Sunbeam's prior management that Coleman's operations could be streamlined to enhance efficiency.

In addition, the Sunbeam board identified and considered a variety of potentially negative factors, including the following:

- the possibility that the operational and revenue benefits expected to be realized as result of the transaction might not be fully realized;
- the difficulties associated with integrating Coleman's operations with those of Sunbeam and managing the combined enterprise;
- the fact that the M&F Transaction was subject to customary closing conditions and, therefore, was subject to the risk that the M&F Transaction and the merger would not be completed; the Sunbeam board considered that non-consummation could negatively affect the market price of the Sunbeam common stock and the financial community's perception of the stability and future prospects of Sunbeam;
- the significant expenses Sunbeam would be required to incur in order to complete the M&F Transaction and the merger, including costs of integrating the businesses of Coleman and Sunbeam, fees of Sunbeam's legal and financial advisors and the expenditure of corporate resources in support of the transaction generally;
- the risks associated with managing a highly leveraged business; and

- the risks associated with managing operations at different locations.

The Sunbeam board believed, however, that the foregoing negative factors were outweighed by the projected benefits of the transactions.

Purposes and Effects of the Merger

The purpose of the merger is to enable Sunbeam to acquire the entire equity interest in Coleman. In the M&F Transaction, which was completed on March 30, 1998, Sunbeam acquired indirectly about 81% of the then outstanding shares of Coleman common stock. Sunbeam's ownership interest in Coleman was immediately thereafter reduced to about 79% as a result of the exercise of Coleman employee stock options immediately following the M&F Transaction. As a result of the merger, Sunbeam will acquire the remaining equity interest in Coleman, and Coleman will become an indirect, wholly owned subsidiary of Sunbeam.

In addition, under the April 15, 1999 amendment to Sunbeam's bank credit facility, it is an event of default under the bank credit facility:

- if Sunbeam fails to have the SEC declare this document effective by October 30, 1999 (which was subsequently amended to January 10, 2000)
- if Sunbeam fails to complete the merger within 25 business days after this document is declared effective by the SEC, or
- if Sunbeam has to pay more than \$87.5 million in cash to complete the merger including any amounts paid with respect to appraisal rights, but excluding related legal, accounting and other customary fees and expenses.

If an event of default were to occur, a default would also occur under the Coleman note payable to Sunbeam and, among other things, the lenders under Sunbeam's credit agreement would be entitled to foreclose on the Coleman note and the Coleman assets pledged under the Coleman note. The Coleman note, by its terms, will not be affected by the merger and will remain outstanding. See "MATERIAL CONTACTS BETWEEN SUNBEAM AND COLEMAN AND ITS AFFILIATES—Financial Transactions Between Coleman and Sunbeam."

The interest rate margins on Sunbeam's bank credit facility increased to 3.50% for LIBOR loans and 2.25% for base rate loans on September 1, 1999 as a result of the merger not occurring by such date and increased to 4.00% for LIBOR loans and 2.50% for base rate loans on October 1, 1999 as a result of the merger not occurring by such date. The interest rate margins will be decreased to 3.00% for LIBOR loans and 1.75% for base rate loans upon consummation of the merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the bank credit facility.

Coleman and Sunbeam adopted a two-step acquisition structure for several reasons, including to enable Sunbeam to acquire control of Coleman as quickly as possible. Alternative transaction structures were considered by Sunbeam and Coleman, including a one-step merger without first completing the M&F Transaction and a direct purchase by Sunbeam of Coleman Worldwide's equity interest in Coleman prior to completion of the merger. MacAndrews & Forbes rejected these transaction structures. The parties agreed that the final transaction would be structured as a merger of CLN Holdings and a wholly owned Sunbeam subsidiary, followed by a second-step merger of another wholly owned Sunbeam subsidiary with Coleman. See "—Background of the Merger."

Sunbeam also considered paying alternative types of consideration to Coleman stockholders. Sunbeam initially proposed consideration consisting exclusively of Sunbeam common stock. Sunbeam's prior management believed that the use of Sunbeam common stock as consideration would enhance stockholder value by allowing Sunbeam to capitalize on the then recent rise in Sunbeam's stock price. This consideration, however, was rejected by MacAndrews & Forbes. Other types of consideration were also briefly discussed, including the use of Sunbeam preferred stock instead of the cash portion of the merger consideration. This type of consideration was not seriously considered by the parties.

As a result of the merger, the minority stockholders of Coleman:

- will cease to hold any direct equity interest in Coleman,
- will no longer directly share in the profits and losses of Coleman, but will indirectly share in such profits and losses as stockholders of Sunbeam,
- will not be entitled to receive dividends or other distributions, if any, declared and paid by Coleman, and
- will not be entitled to vote or otherwise participate in the corporate governance of Coleman, except through their ability to vote and participate in the corporate governance of Sunbeam through their ownership of Sunbeam common stock.

As a result of the M&F Transaction and the merger, Sunbeam will have the entire indirect interest in the net book value and net earnings of Coleman. Sunbeam will also be entitled to all benefits resulting from that interest, including all income generated by Coleman's operations, any future increase in Coleman's value and the right to elect all members of the Coleman board of directors. Similarly, Sunbeam will bear the entire risk of losses generated by Coleman's operations and any decrease in the value of Coleman after the merger. The minority stockholders of Coleman will have only an indirect interest in the net book value and net earnings of Coleman and future increases, if any, in the value of Coleman through their holdings of Sunbeam common stock to be received in the merger and upon any exercise of the warrants.

Upon completion of the merger, there will no longer be any publicly held shares of Coleman common stock and the Coleman common stock will be delisted from the NYSE, the Pacific Stock Exchange and the Chicago Stock Exchange and deregistered under the Exchange Act.

The tax consequences of the merger are subject to a number of qualifications, as discussed below under the caption "UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS."

Sunbeam's Plans and Proposals for Coleman

On May 11, 1998, Sunbeam's former management announced its plans to commence a restructuring intended to integrate Sunbeam's operations with those of Coleman, First Alert and Signature Brands. The planned restructuring was also intended to centralize the operations of the four companies, close or divest some of Sunbeam's plants and reduce Sunbeam's workforce. Following the changes in Sunbeam's management that were announced in June 1998, plans for the proposed restructuring were postponed pending further review of Sunbeam's organizational structure. On August 24, 1998, Sunbeam's new management announced a revised organizational structure which provided for some plant closings and reductions in workforce, but eliminated the previously announced centralization of Sunbeam's operations.

Upon completion of the M&F Transaction, which occurred on March 30, 1998, all of the members of the Coleman board resigned, the number of directors constituting the Coleman board of directors was fixed at five, and five designees of Sunbeam were elected as directors of Coleman. In addition, Sunbeam designees were appointed to senior management positions at Coleman. Subsequently, as a result of changes in Sunbeam's management and board of directors, Jerry W. Levin, the current Chairman and Chief Executive Officer of Sunbeam and Coleman, was reelected to the Coleman board. In addition, Paul E. Shapiro, the current Executive Vice President and Chief Administrative Officer of Sunbeam and Coleman, was elected to the Coleman board of directors. The other members of the Coleman board of directors resigned or were removed by Sunbeam. In April 1999, the size of the Coleman board of directors was fixed at three members and A. Whitman Marchand, who is not affiliated with either Sunbeam or Coleman, was elected to the Coleman board of directors. In July 1999, the size of the Coleman board was fixed at four and John H. Klein, an outside director of Sunbeam, was elected to the Coleman board. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Changes in Sunbeam's Management and Board" and "—Settlement of Claims Relating to the M&F Transaction" and "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Appointments of Former Coleman and MacAndrews & Forbes Officers to Sunbeam's Management and Board" and "—Services Provided by MacAndrews & Forbes."

Following the completion of the M&F Transaction, Sunbeam prepaid substantially all of the \$1,016 million aggregate outstanding indebtedness of Coleman, Coleman Worldwide, CLN Holdings and certain of Coleman's subsidiaries with a portion of the net proceeds from the offering of the debentures and borrowings under Sunbeam's bank credit facility. See "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION."

Position of Sunbeam and Coleman on the Fairness of the Merger and the Settlement

Sunbeam's interest is to complete the merger as soon as possible on terms beneficial to Sunbeam, and Coleman is controlled by Sunbeam. Therefore, the Coleman minority stockholders should not necessarily rely on any views of Sunbeam or Coleman regarding the fairness of the merger.

The original February 1998 merger agreement, which provided for consideration of \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock, was negotiated at arms'-length between parties that were unaffiliated at the time; was unanimously approved by the then Coleman board; and was approved by written consent of Coleman's then majority stockholder. These approvals constituted all the approvals required by Delaware law in connection with the merger. Following these approvals and the completion of the M&F Transaction, the merger agreement by its terms could not be amended or terminated, and the only unfulfilled condition to the merger was the effectiveness with the SEC of this document.

Thereafter, major adverse developments affecting Sunbeam caused a substantial decrease in the market value of Sunbeam's stock and, therefore, the value of the consideration to be paid to the Coleman minority stockholders under the merger agreement. The Coleman minority stockholders instituted litigation in the Delaware Court of Chancery claiming that the consideration payable to them under the merger agreement was inadequate. In October 1998, the litigation claims of the Coleman minority stockholders were settled in arms'-length negotiations between counsel to plaintiffs and counsel to Sunbeam. The settlement, which was approved by the Court on November 12, 1999, effectively increased the consideration payable to the Coleman minority stockholders in connection with the merger by providing them with warrants, each entitling them to purchase one Sunbeam share at \$7 per share, at the rate of 0.381 of a warrant for each Coleman share (after deducting the warrants to be issued to counsel for the Coleman minority stockholders as their legal fees), in addition to their receiving \$6.44 in cash and 0.5677 of a Sunbeam share for each Coleman share, upon completion of the merger.

Sunbeam and Coleman believe that the transaction consisting of the merger and the settlement is substantively fair to the Coleman minority stockholders, and that the process which arrived at the transaction was procedurally fair to them. This belief is based solely on the following considerations:

- (1) The merger agreement was negotiated at arms'-length between parties that were unaffiliated at the time—Sunbeam, on the one hand, and, on the other hand, Coleman and its then 81% stockholder, MacAndrews & Forbes.
- (2) The merger agreement provides that it cannot be amended (whether to change the merger consideration, to add conditions to the merger or otherwise) or terminated.
- (3) The settlement of the litigation claims of the Coleman minority stockholders was negotiated at arms'-length between parties that were and are unaffiliated—counsel to Sunbeam and counsel to the Coleman minority stockholders.
- (4) The settlement was approved by the Delaware Court of Chancery on November 12, 1999 as being fair, reasonable and in the best interests of the Coleman minority stockholders after a hearing on September 29, 1999 at which all Coleman minority stockholders had an opportunity to be heard and only one stockholder objected to the settlement.
- (5) Notwithstanding the settlement, any Coleman minority stockholder who objects to the terms of the merger agreement and settlement can pursue his Delaware law appraisal rights and seek payment in cash of the judicially determined fair value of his Coleman shares.

In transactions such as the merger, the SEC has stated that certain factors normally are considered to be important when reaching a determination regarding the fairness of the proposed transaction to unaffiliated security holders. However, for the reasons set forth below, Sunbeam and Coleman believe that none of these factors is relevant to an evaluation of the fairness of the consideration payable to Coleman minority stockholders under the merger agreement and in the settlement:

- *Current Market Prices.* The trading price of Coleman common stock has been linked to the trading price of Sunbeam common stock since the execution of the merger agreement and the announcement of the merger in February 1998. Therefore, the Coleman common stock has no market value independent of its relationship to the Sunbeam common stock and the value of the consideration payable under the merger agreement and in the settlement;
- *Historical Market Prices.* The trading price of Coleman common stock has been linked to the trading price of Sunbeam common stock since the execution of the merger agreement and the announcement of the merger in February 1998. Sunbeam and Coleman do not believe that market prices prior to February 1998—more than 20 months ago—provide any indication of the current value of Sunbeam or Coleman;
- *Net Book Value.* Sunbeam and Coleman believe that net book value is not a true indication of the value of Sunbeam or the value of Coleman on a stand-alone basis;
- *Prior Coleman Common Stock Repurchases.* Coleman has not repurchased any of its common stock since March 1996 and Sunbeam and Coleman do not believe that the prices paid in connection with any such transactions more than three and one half years ago provide any indication of the current value of Coleman;
- *Going Concern Value; Liquidation Value.* Any current estimate of the going concern value or liquidation value of Sunbeam or Coleman would require a detailed financial analysis by an appraiser, financial advisor or other outside party. No such analysis was requested or obtained and it was considered impractical to request or obtain such an analysis;
- *Reports, Opinions or Appraisals.* Coleman's financial advisor, Credit Suisse First Boston, has advised Sunbeam that its February 1998 opinion regarding the fairness to the Coleman minority stockholders from a financial point of view of the consideration payable under the merger agreement, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam. Moreover, Sunbeam's financial advisor, Morgan Stanley, has advised Sunbeam that its February 1998 opinion regarding the fairness to Sunbeam from a financial point of view of the consideration payable under the merger agreement, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam. No other report, opinion or appraisal was requested or obtained by Sunbeam or Coleman in connection with the merger or the settlement and it was considered impractical to request or obtain any such report, opinion or appraisal; and
- *Offers or Proposals by Unaffiliated Persons.* During the past 18 months, neither Sunbeam nor Coleman has received any offer or proposal from an unaffiliated person regarding a merger or consolidation involving, or the acquisition of all or any substantial part of the assets of, or the acquisition of securities conferring control of, Sunbeam or Coleman.

Sunbeam and Coleman have not performed, and (as stated above) have not requested or obtained from any financial advisor or other outside expert, any current valuation of Coleman or the minority stockholders' interest in Coleman based on any of the analyses typically employed in such a valuation (such as a comparable company or comparable transaction analysis or an analysis of the discounted present value of projected future cash flows and terminal values). Nor have they performed, or requested or obtained, any current valuation of the warrants which are part of the consideration to be paid to the Coleman minority stockholders upon completion of the merger.

The Delaware Court of Chancery, in its November 12, 1999 opinion approving the settlement, accepted a September 1999 valuation of the warrants by plaintiffs' expert based on the Black-Scholes option-pricing model of \$2.475 per warrant. Based on such valuation (which may no longer be applicable because it

assumed a \$6.00 per share Sunbeam stock price), and assuming a market price of \$4.75 per Sunbeam share (the NYSE closing price on December 3, 1999), the consideration to be received by the Coleman minority stockholders upon completion of the merger would have a value of approximately \$10.08 per Coleman share (\$6.44 in cash, \$2.70 in Sunbeam stock and \$0.94 in Sunbeam warrants). However, Sunbeam and Coleman cannot and will not try to predict the prices at which the Sunbeam shares and warrants will trade upon completion of the merger, or whether an active trading market for the warrants will develop.

Because the merger agreement was approved by all action of the Coleman board and stockholders required under Delaware law and by its terms cannot be amended, Sunbeam and Coleman have not considered amending the merger agreement to add procedural safeguards as conditions to the merger, such as a condition that the merger be approved by a majority of Coleman's minority stockholders or by independent Coleman directors or a condition requiring a favorable opinion of a financial advisor on the fairness of the consideration to be received by stockholders upon completion of the merger. Instead, Sunbeam and Coleman decided to settle the claims of the Coleman minority stockholders challenging the fairness of the consideration provided under the merger agreement through arms'-length negotiations with their litigation counsel on terms that the Delaware Court of Chancery would approve as being fair to the Coleman minority stockholders. Notwithstanding the absence of the procedural safeguards discussed in the first sentence of this paragraph, based solely on the factors listed under items (1) through (5) above, Sunbeam and Coleman believe that the transaction consisting of the merger and the settlement is procedurally fair to the Coleman minority stockholders.

Camper Acquisition Corp. is a wholly owned subsidiary of Sunbeam which was formed solely for the purpose of acting as an acquisition vehicle in connection with the merger. Camper Acquisition Corp expressly adopts the foregoing statements of Sunbeam.

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THE MERGER

The description of the merger and the merger agreement contained in this document does not purport to be complete and is qualified in its entirety by reference to the merger agreement, a copy of which is attached as Annex I at the back of this document and is incorporated in this document by reference.

General

The merger will become effective when a certificate of merger is filed with the Secretary of State of the State of Delaware. It is currently anticipated that the certificate of merger will be filed, and the merger will become effective, on or about January 6, 2000, which is the twenty-first business day following the date on which this document was first mailed to you.

Prior to the completion of the merger, the outstanding capital stock of Camper Acquisition Corp., all of which is currently owned directly by Sunbeam, will be contributed to Coleman Worldwide Corporation. In the merger, Camper Acquisition Corp., which will then be directly owned by Coleman Worldwide Corporation, will be merged into Coleman, which is currently 80.01% directly owned by Coleman Worldwide Corporation.

Interests of Certain Persons in the Merger

In considering the approval of the merger by the former Coleman board of directors, you should be aware that a number of persons, including current and former directors and executive officers of Coleman, have interests in the merger that are different from or in addition to yours, as described below.

Coleman Options. Under the merger agreement, after the completion of the M&F Transaction, which occurred on March 30, 1998, all of the then outstanding options to purchase shares of Coleman common stock under Coleman's stock option plans became fully vested and exercisable. During the period between the completion of the M&F Transaction and the completion of the merger, Sunbeam is obligated, under the merger agreement, to cause Coleman to maintain a broker-dealer cashless exercise procedure for the exercise of the Coleman stock options. Upon the completion of the merger, each outstanding Coleman stock option that has not been exercised will be cancelled and each holder of an unexercised Coleman stock option will be paid an amount in cash equal to the product of (1) the total number of shares of Coleman common stock subject to the Coleman stock option, multiplied by (2) the excess of \$27.50 over the exercise price per share of Coleman common stock subject to the Coleman stock option, less any applicable withholding taxes.

Immediately after the completion of the M&F Transaction, two current executive officers of Sunbeam and Coleman exercised options that vested as a result of the M&F Transaction. Jerry W. Levin, the then Chairman and Chief Executive Officer of Coleman and the current Chairman and Chief Executive Officer of Sunbeam and Coleman, exercised 500,000 Coleman stock options at per share exercise prices ranging from \$12.25 to \$14.00 and Mr. Levin received net proceeds upon the sale of such shares of about \$9.94 million. Bobby G. Jenkins, the current Executive Vice President and Chief Financial Officer of Sunbeam and Executive Vice President of Coleman, exercised 20,000 Coleman stock options at per share exercise prices ranging from \$16.125 to \$16.434 and Mr. Jenkins received net proceeds upon the sale of such shares of about \$288,360.

Ronald O. Perelman, the sole stockholder of MacAndrews & Forbes and a member of the Coleman board at the time the agreement relating to the M&F Transaction and the merger agreement were executed, holds 500,000 Coleman stock options with an exercise price of \$14.00 per share. Paul E. Shapiro, the current Executive Vice President and Chief Administrative Officer of Sunbeam and Coleman and a director of Coleman, holds 62,500 Coleman stock options with an exercise price of \$17.062 per share and 15,000 Coleman stock options with an exercise price of \$16.125 per share. Karen K. Clark, the current Senior Vice President, Finance of Sunbeam and Senior Vice President, Finance of Coleman, holds 10,000 Coleman stock options with an exercise price of \$17.062 per share and 15,000 Coleman stock options with an exercise price of \$16.125 per share. Steven R. Isko, the current Senior Vice President and General Counsel of Sunbeam and Senior Vice President and General Counsel of Coleman, holds 10,000 Coleman stock options with an

exercise price of \$17.062 per share, 7,500 Coleman stock options with an exercise price of \$16.125 and 2,500 Coleman stock options with an exercise price of \$12.937 per share. Upon completion of the merger, in settlement of their Coleman stock options, Messrs. Perelman, Shapiro and Isko and Ms. Clark will receive cash payments of \$6,750,000, \$823,000, \$226,009 and \$275,005 respectively.

Severance Arrangements. The M&F Transaction constituted a "change in control" of Coleman under the terms of some Coleman employee benefit plans and various employment, severance, termination, consulting and retirement agreements to which Coleman was a party. As a result, at the effective time of the M&F Transaction, Coleman became obligated to pay all amounts provided under those plans and agreements as a result of the change in control. Under the merger agreement, Sunbeam agreed that after completion of the M&F Transaction it would honor, and cause Coleman to honor, all employment, severance, termination, consulting and retirement agreements to which Coleman was a party on that date. Accordingly, all rights and obligations of Coleman under these agreements have become rights and obligations of Sunbeam and except as noted below with respect to the former employment agreements between Coleman and Messrs. Levin and Shapiro, Sunbeam has agreed to cause Coleman to pay all amounts provided under these employee benefit plans and agreements as a result of the change in control of Coleman in accordance with their respective terms and to honor, and to cause Coleman to honor, all rights, privileges and modifications to or with respect to any such employee benefit plans of Coleman or agreements which become effective as a result of the change in control. However, neither Sunbeam nor Coleman has any responsibility for Coleman's obligations under the former employment agreements between Coleman and Jerry W. Levin, Coleman's then Chairman and Chief Executive Officer, and Paul E. Shapiro, Coleman's then Executive Vice President and General Counsel, except, in the case of Mr. Levin, for an incentive payment in the amount of \$1.5 million due from Coleman (and subsequently paid) related to the sale of Coleman Safety & Security Products, Inc. to an unrelated third party, which transaction was pending at the time the merger agreement was signed. The former employment agreements with Messrs. Levin and Shapiro were terminated upon completion of the M&F Transaction.

In connection with the change in control resulting from the completion of the M&F Transaction, Sunbeam has paid, or has caused Coleman to pay or recognize as payable, a total of \$7,903,765 in severance compensation and related benefits for approximately 117 former Coleman employees. Of that amount, \$7,597,936 was in respect of base salary and related benefits, and \$305,829 was in respect of extra pension credits. In addition, Coleman paid \$454,277 for management incentive bonuses to 37 former Coleman employees. The only principal executive officer of Coleman to receive severance compensation from Coleman as a result of the change in control was Joseph Page, the former Chief Financial Officer of Coleman, who received severance payments totaling \$280,000. Bobby G. Jenkins, the current Executive Vice President and Chief Financial Officer of Sunbeam and Executive Vice President of Coleman, received severance payments totaling \$18,583 as a result of his resignation from Coleman following the M&F Transaction, and prior to his being rehired by both Sunbeam and Coleman in the capacities mentioned above. Steven R. Isko, the current Senior Vice President and General Counsel of Sunbeam and Senior Vice President and General Counsel of Coleman, received severance payments totaling \$185,634 as a result of his resignation from Coleman following the M&F Transaction, and prior to his being rehired by both Sunbeam and Coleman in the capacities mentioned above.

Indemnification. The merger agreement provides that all rights to indemnification existing in favor of any director or officer of Coleman in office at or prior to the completion of the merger, as provided in Coleman's Certificate of Incorporation, Coleman's By-laws, as amended, or indemnification agreements in effect as of February 27, 1998, will survive the merger and continue in full force and effect for a period of six years after the effective time of the merger (and during the period from the completion of the M&F Transaction to the completion of the merger), to the extent these rights are consistent with Delaware law. In addition, Sunbeam agreed that, from and after the completion of the M&F Transaction and for a period of six years following the completion of the merger, Sunbeam or Coleman, as the surviving corporation in the merger, will cause to be maintained a liability insurance policy for the benefit of Coleman's former directors and officers providing coverage substantially similar to the policies in effect as of February 27, 1998. Neither Sunbeam nor Coleman will be required to pay an annual premium for such insurance in excess of 200% of the last annual premium paid by Coleman prior to the date of the merger agreement, but in such case will

purchase as much coverage as possible for such amount. See "THE MERGER—Continuation of Existing Indemnification Rights."

Registration Rights Agreement. The shares of Sunbeam common stock issued to the MacAndrews & Forbes subsidiary from which Sunbeam acquired indirectly about 81% of the then outstanding Coleman common stock in the M&F Transaction were not registered under federal or state securities laws. Accordingly, in connection with the completion of the M&F Transaction, Sunbeam entered into a registration rights agreement with the MacAndrews & Forbes subsidiary, permitting the MacAndrews & Forbes subsidiary and other affiliates of Coleman to require Sunbeam to register their shares of Sunbeam common stock under federal and applicable state securities laws. The registration rights agreement was subsequently amended in August 1998 to provide that the MacAndrews & Forbes subsidiary can also require Sunbeam to register the warrant and the shares of Sunbeam common stock issuable upon exercise of the warrant issued to the MacAndrews & Forbes subsidiary in connection with the settlement of legal claims related to the M&F Transaction. See "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Registration Rights Agreement."

Conversion of Coleman Common Stock

Upon completion of the merger, each outstanding share of Coleman common stock—other than shares held indirectly by Sunbeam and shares, if any, with respect to which Delaware appraisal rights are sought and perfected—will no longer be outstanding and will automatically be cancelled. After completion of the merger, you will no longer have any rights under the certificate representing your shares of Coleman common stock, except the right to receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed, a cash payment equal to the value of any fractional shares of Sunbeam common stock you would otherwise be entitled to receive upon surrender of the certificate, and warrants entitling you to purchase one share of Sunbeam common stock at a cash price of \$7 per share until August 24, 2003 to be issued under the recent settlement of litigation relating to the merger. Under the terms of the settlement, you will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed, assuming no further increase in the number of outstanding shares of Coleman common stock prior to the completion of the merger as a result of further exercises of Coleman employee stock options. The number of warrants you will receive will be rounded up or down to the nearest whole number to avoid the issuance of fractional warrants. See "LITIGATION SETTLEMENT AND WARRANTS."

Upon completion of the merger, all shares of Coleman common stock held indirectly by Sunbeam through Coleman Worldwide will remain outstanding and unchanged as a result of the merger. Each share of Coleman common stock, if any, held in the treasury of Coleman, by any subsidiary of Coleman, by Sunbeam or by any subsidiary of Sunbeam (other than Coleman Worldwide) immediately prior to the completion of the merger will be automatically cancelled. In addition, upon completion of the merger, each outstanding share of common stock of Camper Acquisition Corp., the wholly owned subsidiary of Sunbeam that will be merged with Coleman in the merger, will be automatically cancelled.

Exchange of Coleman Common Stock

The exchange of the shares of Coleman common stock you own when the merger is completed will occur as follows:

- upon completion of the merger, Sunbeam will deposit, with an exchange agent selected by Sunbeam, (1) certificates for the shares of Sunbeam common stock to be issued to you in the merger; (2) cash sufficient to pay the cash portion of the merger consideration and any fractional share payments you are entitled to receive; and (3) warrants to purchase Sunbeam common stock at a cash price of \$7 per share to which you are entitled under the court-approved settlement of litigation relating to the merger;
- as soon as reasonably practicable after the completion of the merger, Sunbeam will cause the exchange agent to mail a letter of transmittal and exchange instructions to you;

- upon surrender of your Coleman common stock certificate(s) for cancellation to the exchange agent, together with a properly completed and duly executed letter of transmittal, you will receive, in exchange for your Coleman certificate(s), (1) a certificate for the shares of Sunbeam common stock you are entitled to receive in the merger, (2) a cash payment in respect of the cash portion of the merger consideration, after giving effect to any required withholding tax, and any fractional share payment you are entitled to receive, and (3) warrants to purchase Sunbeam common stock at a cash price of \$7 per share to which you are entitled under the court-approved litigation settlement relating to the merger based on the number of shares of Coleman common stock you own when the merger is completed; your certificate(s) will then be cancelled;
- until you surrender your Coleman stock certificates, you will not be entitled to vote the shares of Sunbeam common stock you are entitled to receive in the merger or receive any dividends or distributions with a record date after the completion of the merger with respect to such Sunbeam common stock, although any such dividends or distributions will accrue and be payable to you, without interest, upon surrender of your certificate(s); it should be noted, however, that Sunbeam does not pay, and is prohibited from paying under the bank credit facility, cash dividends;
- any merger consideration and warrants that remain undistributed for six months after the completion of the merger will be delivered to Sunbeam, upon demand, and any holders of unsurrendered Coleman common stock certificates may thereafter look only to Sunbeam, as general creditors, for payment of the merger consideration and warrants. In no event will Sunbeam, Coleman or the exchange agent be liable to any holder of unsurrendered certificates for any merger consideration or warrants that are delivered to a public official under applicable escheat laws; and
- upon completion of the merger, the stock transfer books of Coleman will be closed and no further transfer of shares of Coleman common stock will be made; if, after the completion of the merger, Coleman common stock certificates are presented to Coleman, they will be cancelled and exchanged for the merger consideration and warrants.

You should not forward your certificates to the exchange agent until you receive a letter of transmittal and exchange instructions.

No Fractional Shares or Warrants

No fractional shares of Sunbeam common stock or warrants will be issued to you, and no dividend, stock split or other change in the capital structure of Sunbeam will relate to any fractional shares. Any Coleman stockholder who would otherwise be entitled to fractional shares will not be entitled to vote or to exercise any rights of a security holder with respect to such fractional shares.

Instead of any fractional shares of Sunbeam common stock, each Coleman stockholder who would otherwise be entitled to a fraction of a share of Sunbeam common stock will be paid cash, without interest, in an amount equal to the fraction of a share of Sunbeam common stock to which such stockholder would otherwise be entitled, multiplied by the closing sale price of one share of Sunbeam common stock on the NYSE Composite Transactions Tape on the day of the completion of the merger, or, if shares of Sunbeam common stock are not so traded on that day, the closing sale price on the next preceding day on which the shares were traded on the NYSE. Shares of Coleman common stock of any holder represented by two or more certificates will be aggregated, and in no event will any holder of Coleman common stock be paid an amount of cash for fractional shares in respect of one or more than one share of Sunbeam common stock.

Instead of any fractional warrants, each Coleman stockholder who would otherwise be entitled to a fraction of a warrant will receive a number of whole warrants determined by rounding up or down to the nearest whole number.

Conditions

Under the terms of the merger agreement, the completion of the merger was subject to the following conditions: (1) this document had to be declared effective by the SEC, (2) the shares of Sunbeam common stock to be issued by Sunbeam in the merger had to be listed for trading on the NYSE, and (3) the M&F

Transaction had to be completed. All of these conditions have already been satisfied. Therefore, assuming that no court order is entered which prevents the merger from being completed, the merger will be completed on or about January 6, 2000, which is the twenty-first business day following the date on which this document was first mailed to you.

Governmental And Regulatory Approvals

Completion of the M&F Transaction was conditioned on the expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. On March 4, 1998, Sunbeam and Ronald O. Perelman, as the then ultimate parent of Coleman, filed notifications and report forms under the HSR Act with the Federal Trade Commission and the Antitrust Division of the Department of Justice relating to the M&F Transaction and the merger. The applicable waiting period under the HSR Act was terminated on March 27, 1998. However, notwithstanding the termination of the waiting period under the HSR Act, the FTC, the Antitrust Division, a state or a private person or entity could seek under federal or state antitrust laws, among other things, to enjoin or rescind the M&F Transaction or the merger. Although Sunbeam and Coleman believe that the M&F Transaction and the merger do not violate United States antitrust laws, there can be no assurance that if such a challenge is made, it would not be successful.

In addition to the filings under the HSR Act, Sunbeam and Coleman filed a pre-merger notification form with the German Federal Cartel Office relating to the M&F Transaction and the merger, which was approved by the Federal Cartel Office on March 20, 1998. Neither Sunbeam nor Coleman is aware of any other material approval or other action by any governmental, administrative or regulatory agency or authority, domestic or foreign, that would be required in order to complete the merger.

Employee Matters

Sunbeam agreed that, from and after the completion of the M&F Transaction, it would honor, and cause Coleman to honor, all employment, severance, termination, consulting and retirement agreements to which Coleman was a party on that date. Accordingly, all rights and obligations of Coleman under these agreements became rights and obligations of Sunbeam. However, neither Sunbeam nor Coleman has any responsibility for Coleman's obligations under the former employment agreements between Coleman and Jerry W. Levin, Coleman's then Chairman and Chief Executive Officer, and Paul E. Shapiro, Coleman's then Executive Vice President and General Counsel, except in the case of Mr. Levin for an incentive payment in the amount of \$1.5 million due from Coleman (and subsequently paid) related to the sale of Coleman Safety & Security Products, Inc. to an unrelated third party, which transaction was pending at the time the merger agreement was signed. The former employment agreements with Messrs. Levin and Shapiro were terminated upon completion of the M&F Transaction. Sunbeam agreed to cause Coleman to allow Coleman employees to participate in Sunbeam employee benefit plans; from and after the completion of the M&F Transaction, on substantially the same basis as similarly situated Sunbeam employees. With respect to welfare benefit plans, Sunbeam also agreed to waive any pre-existing condition limitations and give effect, in determining any deductible and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and reimbursed to, those employees with respect to similar plans maintained by Coleman. Sunbeam has, or has caused Coleman to, give Coleman employees full credit for purposes of eligibility and vesting of benefits and benefit accrual for service with Coleman and its affiliates prior to the completion of the M&F Transaction under each employee benefit plan, so long as such crediting of service did not result in duplication of benefits. See "—Interests of Certain Persons in the Merger."

The M&F Transaction constituted a "change in control" of Coleman under some Coleman employee benefit plans and employment, severance, termination, consulting and retirement agreements. Except as noted above with respect to the employment agreements of Messrs. Levin and Shapiro, Sunbeam agreed to cause Coleman to pay all amounts provided under these employee benefit plans and agreements as a result of the change in control of Coleman in accordance with their respective terms and to honor, and to cause Coleman to honor, all rights, privileges and modifications to or with respect to any such employee benefit plans of Coleman or agreements which became effective as a result of the change in control. See "—Interests of Certain Persons in the Merger."

Sunbeam caused Coleman to continue Coleman's Annual Incentive Plan for Management Employees for the remainder of 1998, and participants in the Management Incentive Plan were not eligible to participate in Sunbeam's incentive plan in respect of 1998. Under the terms of the Management Incentive Plan, participants were eligible for cash bonuses payable upon the attainment of certain performance goals, which performance goals were determined by reference to (1) earnings before interest, taxes and amortization, (2) operating working capital per sales dollar and (3) other quantitative goals as approved from time to time. Cash bonuses paid were equal to a percentage of a participant's base salary, depending on the percentage of the target attained by Coleman. Coleman paid a total of about \$2.9 million to participants in the Management Incentive Plan with respect to 1998. Eligible participants include select employees of Coleman and its subsidiaries who are (1) designated to participate by the Chief Executive Officer of Coleman, (2) are employed prior to the start of the last fiscal quarter in the plan year and (3) are not participants in another short-term incentive program of Coleman.

Sunbeam will honor, and will cause Coleman to honor, Coleman's Executive Severance Policy without any amendments adverse to participants. The Coleman Executive Severance Policy applies to certain terminations of employment of employees of Coleman and its subsidiaries who are participants in Coleman's Management Incentive Plan or who are in the position of country general manager/president and above. Participation in the Executive Severance Policy is limited to those participants in the Management Incentive Plan described above. Benefits are payable to a participant in the event of a termination of the participant's employment by Coleman within three years following the M&F Transaction other than for Cause (as defined in the Executive Severance Policy) or by the participant with Good Reason (as defined in the Executive Severance Policy). The benefits payable under the Executive Severance Policy generally include the following:

- salary continuation for twelve, nine or six months, depending on the participant's level of participation in the Management Incentive Plan;
- medical and/or dental coverage under COBRA until the end of the severance period at the same contribution level in effect for active participants, with Coleman paying the portion of the premiums it was paying for such participant prior to the M&F Transaction;
- in the event of a termination prior to December 31, 1998, a pro rata payment under the Management Incentive Plan through the date of such termination;
- a lump sum cash payment in an amount equal to the aggregate benefit that the participant would have accrued had he or she remained employed during the severance period under Coleman's qualified defined benefit retirement plans and its excess or supplemental defined benefit retirement plans, less any actual vested benefit of the participant under such plans;
- a lump sum payment in an amount equal to the value of the participant's accrued vacation, determined in accordance with Coleman's vacation policy; and
- an additional payment to hold the participant harmless from the excise taxes imposed by sections 280G and 4999 of the tax code, if the severance payments and benefits payable under the Executive Severance Policy exceed certain minimum thresholds.

In addition, any participant who was a party to an employment contract or other written agreement with Coleman was entitled to choose between the severance benefits, if any, payable under such contract and the severance benefits payable under the Executive Severance Policy.

Since the ninety-first day following completion of the M&F Transaction, some of the participants in the Executive Severance Policy have been entitled to voluntarily terminate their employment with Coleman and to have such termination deemed to be for Good Reason under the Executive Severance Policy, as a result of the completion of the M&F Transaction.

Since the date of the M&F Transaction, Coleman has paid or become obligated to pay about \$4.2 million to participants under the Executive Severance Policy.

For the benefit of those employees of Coleman who were not participants in the Executive Severance Policy and who did not have employment agreements with Coleman, Sunbeam provided severance benefits under Sunbeam's Severance Pay Plan on substantially the same basis as similarly situated Sunbeam employees. To date, Sunbeam has made aggregate payments of about \$470,000 to former Coleman employees under the Sunbeam Severance Pay Plan. Under the terms of the Severance Pay Plan, a participant who is a Coleman employee and whose employment is terminated as the direct result of the closure of a facility or the elimination of the participant's position will be entitled to receive the following severance benefits:

- a lump sum cash payment in an amount equal to (1) six months', three months' or six weeks' base pay, depending on the number of years of service, in the case of an exempt employee or (2) one week of base pay for each completed year of service, in the case of a non-exempt employee; and
- health coverage under COBRA until the end of the severance pay period at the same contribution level in effect for active participants, with Sunbeam paying the same portion of the premiums that it would pay for active participants.

Continuation of Existing Indemnification Rights

For a period of six years after the completion of the merger, and during the period between the completion of the M&F Transaction and the completion of the merger, Sunbeam agreed to indemnify directors and officers of Coleman in office at or prior to the completion of the merger in connection with any threatened or actual legal proceeding to the fullest extent allowed by Delaware law, the Coleman Certificate of Incorporation, the Coleman By-laws and any indemnification agreement in effect at the date of the merger agreement, including any provisions relating to advancement of expenses. This indemnification does not, however, extend to any legal proceeding initiated against Coleman by an indemnified person unless the proceeding was (1) authorized by the Coleman board of directors or (2) brought by an indemnified person to enforce his or her right to indemnification under the merger agreement. In addition, the right to indemnification under the merger agreement extends only to legal proceedings arising from:

- the fact that the indemnified person was a director or officer of Coleman or was serving at the request of Coleman as a director, officer, employee or agent of another entity, or
- the agreement relating to the M&F Transaction, the merger agreement or any of the transactions contemplated by those agreements.

Moreover, the right to indemnification provided by the merger agreement extends only to claims which pertain to matters arising, existing or occurring prior to or at the completion of the merger. To give rise to an indemnification right, however, the claim need not have been asserted prior to the completion of the merger. If any claim is asserted against an indemnified person within the period during which indemnification is provided, all rights to indemnification under the merger agreement continue until disposition of the claim. In the event any indemnified person becomes involved in a legal proceeding after the completion of the merger, Sunbeam will, or will cause Coleman to, periodically advance legal and other expenses to the indemnified person, including the cost of any investigation and preparation incurred in connection with the legal proceeding. However, as a condition to advancement of expenses, the indemnified person must provide Sunbeam with an undertaking to reimburse all amounts so advanced in the event that the indemnified person is determined not to be entitled to indemnification.

Sunbeam and Coleman also agreed that all rights to indemnification, and all limitations with respect to indemnification, existing in favor of any indemnified person, as provided in the Coleman Certificate of Incorporation, the Coleman By-Laws or any indemnification agreement in effect at the date of the merger agreement, will survive the merger and will, to the extent permitted by Delaware law, continue in full force and effect, without any amendment, for a period of six years after the completion of the merger and during the period from the completion of the M&F Transaction to the completion of the merger. If any claim is asserted against any indemnified person within that period, all rights to indemnification will continue until final disposition of the legal proceeding. Any determination required to be made with respect to whether an indemnified person's conduct complies with the standards set forth under Delaware law, the Coleman

certificate of incorporation, the Coleman by-laws or any agreement, as the case may be, will be made by independent legal counsel selected by the indemnified person and reasonably acceptable to Sunbeam.

Sunbeam also agreed that, from and after the completion of the M&F Transaction, Sunbeam or Coleman will maintain, for a period of not less than six years after the completion of the merger, a liability insurance policy for the benefit of Coleman's former directors and officers providing coverage substantially similar to the policies in place prior to the completion of the M&F Transaction. However, neither Sunbeam nor Coleman will be required to pay an annual premium for this insurance which exceeds 200% of the last annual premium paid by Coleman prior to the date of the merger agreement. In the event that the premium does exceed that amount, Sunbeam or Coleman will purchase as much coverage as possible for such amount.

Accounting Treatment

The merger will be accounted for under the "purchase" method of accounting in accordance with generally accepted accounting principles. Therefore, the aggregate consideration paid by Sunbeam in the merger and in the M&F Transaction will be allocated to Coleman's assets and liabilities based upon their fair market value with any excess being treated as excess of investment over net assets acquired or "goodwill". The assets and liabilities and results of operations of Coleman have been consolidated for financial accounting (but not tax) purposes with the assets and liabilities and results of operations of Sunbeam since the completion of the M&F Transaction.

Stock Exchange Listing

The NYSE has approved for listing on the NYSE the shares of Sunbeam common stock to be issued to Coleman stockholders in the merger, subject to official notice of issuance. Sunbeam intends to file an application with the NYSE to list the shares of Sunbeam common stock that will be issued when the warrants are exercised. For a description of matters relating to the continued listing of Sunbeam common stock on the NYSE, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—New York Stock Exchange Listing."

Delisting and Deregistration of Coleman Common Stock

Upon completion of the merger, there will no longer be any publicly held shares of Coleman common stock and the Coleman common stock will be delisted from the NYSE, the Pacific Stock Exchange and the Chicago Stock Exchange and deregistered under the Exchange Act. For a description of matters relating to the continued listing of Coleman common stock on the NYSE, see "RECENT DEVELOPMENTS AFFECTING COLEMAN."

Ownership of Coleman Common Stock

At the close of business on December 3, 1999, there were outstanding 55,827,490 shares of Coleman common stock held by about 548 holders of record. In the M&F Transaction, which was completed on March 30, 1998, Sunbeam became the indirect beneficial owner of 44,067,520 shares of Coleman common stock, representing about 81% of the then outstanding shares of Coleman common stock. As a result of option exercises by employees and former employees of Coleman immediately following the completion of the M&F Transaction, these shares represent about 79% of the currently outstanding shares of Coleman common stock. On July 12, 1999, Sunbeam acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock. These shares, together with the shares of Coleman common stock acquired by Sunbeam in the M&F Transaction, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock.

The table below shows the number of shares of Coleman common stock owned by each of the current directors and officers of Coleman and the percentage of the outstanding Coleman common stock which these shares represent.

<u>Name of Beneficial Owner</u>	<u>Amount and Nature of Beneficial Ownership</u>	<u>Percentage of Common Stock</u>
Directors:		
Jerry W. Levin	—	—
A. Whitman Marchand	—	—
Paul E. Shapiro	77,500(1)	*
John H. Klein	—	—
Executive Officers:		
Bobby G. Jenkins	—	—
Steven R. Isko	20,000(1)	*
Karen K. Clark	25,000(1)	*
William L. Phillips	—	—
Gwen C. Wisler	—	—
Barbara L. Allen	20	*
All Directors and Executive Officers as a Group (10 persons)	122,520(1)	*

* Less than 1%

(1) Represents shares of common stock which these individuals have the right to acquire upon exercise of employee stock options that are currently exercisable and may be exercised within the next 60 days.

At its February 27, 1998 meeting, the then Coleman board of directors unanimously approved the merger agreement. See "—Coleman's Reasons for the Merger and Approval of the Coleman Board." Since the completion of the M&F Transaction, however, the composition of Coleman's management and board of directors has changed significantly. See "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—M&F Transaction." Mr. Levin voted on February 27, 1998 as a member of the Coleman board of directors to approve the merger agreement. However, neither Mr. Levin nor any other director or officer of Coleman is currently making any recommendation to Coleman stockholders regarding the merger.

Since January 1, 1996, Coleman has completed one purchase of Coleman common stock. On March 1, 1996, Coleman purchased 50,000 shares of Coleman common stock (or 100,000 shares, adjusted for the two-for-one stock split of Coleman common stock on June 28, 1996) in the open market at a purchase price of \$46.54 per share (\$23.26 per share, as adjusted), or an aggregate of \$2.33 million. On May 23, 1997, Coleman Worldwide commenced an offer to accept for exchange its Liquid Yield Option™ Notes due 2013 ("LYONs") for cash at a price equal to their redemption price of \$343.61 per \$1,000 principal amount at maturity. The LYONs were exchangeable for shares of Coleman common stock at the rate of 15.706 shares for each \$1,000 principal amount at maturity of LYONs. The holders of \$545,053,000 aggregate principal amount at maturity of LYONs out of the \$561,553,000 aggregate principal amount at maturity then outstanding accepted Coleman Worldwide's offer, which expired on June 20, 1997. On April 20, 1998, Coleman Worldwide gave notice of its intention to redeem all LYONs remaining outstanding on May 27, 1998 for cash at their redemption price of \$343.61 per \$1,000 principal amount at maturity, unless, prior to that date, the holders of the LYONs elected to exchange their LYONs for shares of Coleman common stock. All of the LYONs that remained outstanding on May 27, 1998 were redeemed by Coleman Worldwide.

Ownership Interest of Coleman Stockholders in Sunbeam After the Merger

Based on the number of shares of Sunbeam common stock and Coleman common stock outstanding on December 3, 1999 and assuming no Coleman stockholders exercise their Delaware law appraisal rights, upon completion of the merger there will be about 107,578,527 shares of Sunbeam common stock outstanding, of which the former stockholders of Coleman, including a subsidiary of MacAndrews & Forbes, will own about

19.3%. The former holders of Coleman common stock will own about 36% of the outstanding Sunbeam common stock after the merger, assuming the exercise of (1) the warrant issued to a MacAndrews & Forbes subsidiary in settlement of threatened legal claims related to the M&F Transaction and (2) the warrants to be issued to the Coleman minority stockholders upon completion of the merger under the recent settlement of litigation related to the merger.

Expenses

All costs and expenses incurred in connection with the M&F Transaction and the merger will be paid by the party incurring such expenses.

Sunbeam and Coleman have incurred, and will incur, fees and expenses in connection with the M&F Transaction and the merger, including filing fees in connection with the registration of the shares to be issued in connection with the merger and upon exercise of the warrants and other required filings, fees of counsel, accountants' fees and printing costs. These expenses are estimated to be as follows:

Financial advisory fees	\$13,600,000
Legal fees and expenses	2,000,000
Accounting fees and expenses	700,000
Filing fees	67,669
Printing and mailing	350,000
Miscellaneous	20,000
TOTAL	<u>\$16,737,669</u>

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UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following discussion is a summary of the anticipated material United States Federal income tax consequences of the merger to a holder of Coleman common stock (a "holder"). The discussion is based on laws, regulations, rulings and decisions in effect on the date of mailing of this document, all of which are subject to change, possibly with retroactive effect. This discussion deals only with holders who hold their shares of Coleman common stock as capital assets and does not address all aspects of United States Federal taxation that may be relevant to particular holders in light of their personal circumstances or to holders (1) who are not citizens or residents of the United States, (2) who may be subject to special tax rules, such as rules relating to financial institutions and banks, tax-exempt organizations, insurance companies, dealers in securities, and persons who hold Coleman common stock as part of a hedge, conversion or constructive sale transaction, straddle or other risk reduction transaction (3) who perfect their appraisal rights under Delaware law, or (4) who acquired their shares of Coleman common stock pursuant to the exercise of employee stock options or other compensation arrangements with Coleman. In addition, the discussion does not address the tax consequences of the merger arising under the laws of any state, local or foreign jurisdiction.

Each holder of Coleman common stock is urged to consult its own tax advisor with respect to the particular tax consequences of the merger to such holder.

The receipt of the cash, Sunbeam common stock and warrants to purchase Sunbeam common stock upon completion of the merger is expected to be a taxable transaction for United States Federal income tax purposes and may also be a taxable transaction under applicable state, local, foreign and other tax laws. In general, for United States Federal income tax purposes, a holder will recognize gain or loss equal to the difference between (1) the sum of cash, the fair market value of the Sunbeam common stock received in exchange for such holder's shares of Coleman common stock, and the fair market value of the warrants to purchase additional shares of Sunbeam common stock and (2) the adjusted tax basis of such shares of Coleman common stock. This gain or loss will be capital gain or loss and will be long-term capital gain or loss if the shares have been held for more than twelve months.

LITIGATION SETTLEMENT AND WARRANTS

Beginning on June 25, 1998, several class action lawsuits were filed in the Court of Chancery of the State of Delaware by minority stockholders of Coleman against Coleman, Sunbeam and several of Coleman's former officers and directors. These actions were later consolidated into a single class action lawsuit. The class action alleged, among other things, that the consideration to be paid to the minority stockholders of Coleman under the February 1998 merger agreement was no longer fair as a result of the decline in the market price of Sunbeam's common stock. See "BUSINESS OF SUNBEAM—Litigation and Other Contingent Liabilities."

On October 21, 1998, Sunbeam announced that it had entered into a memorandum of understanding to settle the class action, subject to court approval. On August 6, 1999, a stipulation of settlement was executed and on August 25, 1999, notice of the settlement and of a September 29, 1999 hearing in the Court of Chancery of the State of Delaware to consider approval of the settlement was mailed to the members of the class (consisting of all Coleman stockholders owning shares at any time from February 27, 1998 until the date of the merger other than Coleman Worldwide). The Court held a hearing on September 29, 1999 and approved the settlement on November 12, 1999.

Under the terms of the settlement, Sunbeam will issue to the Coleman minority stockholders and their litigation counsel warrants expiring August 24, 2003 to purchase about 4.98 million shares of Sunbeam common stock at a cash exercise price of \$7 per share, subject to anti-dilution adjustments. Each Coleman minority stockholder will receive 0.381 of a warrant for each share of Coleman common stock owned by such stockholder when the merger is completed, assuming the number of outstanding shares of Coleman common stock does not increase prior to the completion of the merger as a result of further exercises of Coleman employee stock options. Warrants will be issued when the merger is completed to all Coleman stockholders of record as of the completion of the merger, other than Coleman Worldwide and those

stockholders who choose to dissent from the merger and have the fair value of their shares appraised by a court, and to counsel for the Coleman minority stockholders in the litigation as their court-awarded fee.

The warrants will be freely transferrable and are exempt from registration under the Securities Act. The shares of Sunbeam common stock to be issued upon exercise of the warrants will be freely transferrable and will be registered under the Securities Act. Sunbeam intends to file an application with the NYSE to list the shares of Sunbeam common stock issuable upon exercise of the warrants. In the settlement, all members of the class released Coleman, Sunbeam, MacAndrews & Forbes and its affiliates and the former and present directors of Coleman from all claims arising out of or relating to the merger, other than their Delaware law appraisal rights.

The number of warrants that each Coleman minority stockholder will receive will be based on the number of shares of Coleman common stock owned by the stockholder at the time of the merger and will be equal to the product of (A) 4,979,663, less the 497,966 warrants awarded by the court to counsel for the Coleman minority stockholders in the litigation as their fee and (B) a fraction, the numerator of which is equal to the number of shares of Coleman common stock held by such stockholder immediately prior to the merger (other than any shares with respect to which Delaware law appraisal rights have been exercised) and the denominator of which is equal to the total number of shares of Coleman common stock outstanding and owned by Coleman minority stockholders at the time of the merger (approximately 11,759,970 shares assuming no further exercises of Coleman options).

The warrants to be issued under the settlement will have the same terms as the warrant issued to Coleman (Parent) Holdings, a subsidiary of MacAndrews & Forbes, in August 1998 in the settlement of its claims against Sunbeam. The number of warrants to be issued in the settlement (4,979,663) was determined by multiplying the number of shares issuable upon exercise of the warrant received by Coleman (Parent) Holdings (23,000,000) by a fraction of which the numerator is the number of Coleman shares owned by its minority stockholders on February 27, 1998 (9,540,930) and the denominator is the number of Coleman shares then owned by Coleman (Parent) Holdings (44,067,520). Since February 27, 1998, the number of Coleman shares held by the Coleman stockholders entitled to receive warrants in the settlement has increased to 11,759,970 through exercises of previously granted Coleman employee stock options, but the settlement did not provide for any increase in the number of warrants to be issued thereunder as a result of the issuance of Coleman shares after February 27, 1998.

No fractional warrants will be issued in the merger. A Coleman public stockholder who would otherwise be entitled to receive fractional warrants will receive a number of warrants determined by rounding up or down to the nearest whole number of warrants.

General. The warrants to be issued in the merger will be issued under a Warrant Agreement to be entered into prior to the completion of the merger by Sunbeam and The Bank of New York, as Warrant Agent. The description of the Warrant Agreement contained in this document does not purport to be complete and is qualified in its entirety by reference to the form of Warrant Agreement, a copy of which, including the form of warrant certificate, is included as an exhibit to the registration statement of which this document forms a part.

Each warrant issued in the merger will be evidenced by a warrant certificate which will entitle the warrant holder, at any time prior to August 24, 2003, to purchase one share of Sunbeam common stock at a cash exercise price of \$7 per share. Warrants that are not exercised prior to that date will expire and become void.

Exercise of Warrants. In order to exercise any or all of your warrants, you will be required to surrender to The Bank of New York, as Warrant Agent: (1) the warrant certificate, (2) a duly executed copy of the exercise subscription form set forth in the warrant certificate and (3) payment in full of the exercise price for each share of Sunbeam common stock as to which the warrants are exercised. Payment may be made in cash (including wire transfer of immediately available funds) or by certified or official bank check or bank cashier's check payable to the order of Sunbeam Corporation.

Upon the exercise of any warrants in accordance with the Warrant Agreement, Sunbeam will transfer the appropriate number of shares of Sunbeam common stock to the warrant holder or to a designee specified by

the warrant holder. All shares of Sunbeam common stock issued upon the exercise of warrants will be validly issued, fully paid and nonassessable.

Antidilution Provisions. The number of shares of Sunbeam common stock issuable upon exercise of each warrant is subject to adjustments in the event that Sunbeam, among other things: (1) pays a dividend or makes any other distribution in shares of Sunbeam common stock, (2) subdivides the Sunbeam common stock, (3) combines the Sunbeam common stock into a smaller number of shares, (4) issues any shares of Sunbeam common stock in a reclassification (including any reclassification in connection with a merger, consolidation or other business combination in which Sunbeam is the continuing corporation), (5) distributes, by dividend or otherwise, options, rights or warrants to purchase any such securities, cash or other assets, (6) issues non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of Sunbeam or options, rights or warrants to purchase any of such securities) at a price per share that is lower (at the record date for the issuance) than the fair market value of the shares or other securities issued, (7) repurchases, by self-tender offer or otherwise, any shares of Sunbeam common stock (or options, rights or warrants to purchase shares of Sunbeam common stock or any securities convertible into or exchangeable for Sunbeam common stock) at a price per share that is higher (at the record date for the issuance) than the then current market value per share of Sunbeam common stock or (8) repurchases, by self-tender offer or otherwise, any non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of Sunbeam or options, rights or warrants to purchase any of such securities) at a price per share that is higher (at the record date for the issuance) than the fair market value of the shares or other securities repurchased.

No fractional shares will be issued upon exercise of warrants. In the event of any transaction in which Sunbeam stockholders receive stock, securities, cash or other assets in exchange for their Sunbeam common stock, each warrant holder will, upon exercise of the warrant at any time after the transaction, have the right to the stock, securities, cash or other assets the warrant holder would have been entitled to receive if the warrant had been exercised immediately prior to the transaction.

No Stock Rights. Prior to the exercise of his or her warrants, no warrant holder will be entitled to vote or be deemed the holder of the shares of Sunbeam common stock issuable upon exercise of the warrants and will have no rights of a stockholder of Sunbeam.

APPRAISAL RIGHTS

Under Delaware law, Coleman stockholders have appraisal rights in connection with the merger. Any stockholder who is eligible to exercise appraisal rights and properly does so will be paid in cash the "fair value" (exclusive of any element of value arising from the accomplishment or expectation of the merger) for his or her shares of Coleman common stock as determined by the Court of Chancery of the State of Delaware. Any shares of Coleman common stock for which a written demand for appraisal is properly filed and not withdrawn in accordance with the procedures set forth under Delaware law, except any shares as to which the holder effectively withdraws or loses the right to appraisal and payment for such shares prior to the effective time of the merger, are referred to in this document as "Dissenting Shares."

Any holder of Dissenting Shares will be paid the "fair value" of the shares, as described below, and will not receive, upon completion of the merger, cash, shares of Sunbeam common stock and warrants payable in the merger, as described in "THE MERGER—Conversion of Coleman Common Stock."

Only holders of record of Coleman common stock who are eligible for appraisal rights and comply with the applicable statutory procedures summarized in this document will be entitled to appraisal rights under Delaware law. A person having a beneficial interest in shares of Coleman common stock held of record in the name of another person, such as a broker or nominee, must act promptly to cause the record holder to follow the steps summarized below properly and in a timely manner to perfect appraisal rights.

The following discussion is not a complete statement of the law pertaining to appraisal rights under Delaware law and is qualified in its entirety by the full text of Section 262 of the general Corporation Law of the State of Delaware which is reprinted in its entirety as Annex II at the back of

this document. All references in Section 262 and in this summary to a "stockholder" or "holder" are to the record holders of Dissenting Shares.

Under Delaware law, when a merger is approved by written consent in lieu of a stockholders meeting under Section 228 of Delaware law, as the merger was, each constituent corporation, either before the effective date of the merger or within ten days after that date, must notify each holder of any class or series of stock of the constituent corporation that is entitled to appraisal rights of the approval of the merger and the availability of appraisal rights for any or all shares of that class or series of stock, and must include in the notice a copy of Section 262 of Delaware law.

This document constitutes the required notice to the stockholders of Coleman and the applicable statutory provisions of Delaware law are attached as Annex II at the back of this document. Any stockholder who wishes to exercise his or her appraisal rights or who wishes to preserve his or her right to do so should review the following discussion and Annex II carefully, because failure to timely and properly comply with the procedures specified will result in the loss of appraisal rights under Delaware law.

A Coleman stockholder wishing to exercise appraisal rights must deliver to Coleman, within twenty days after the date of mailing of this document, or by December 27, 1999, a written demand for appraisal of such holder's shares of Coleman common stock. Written demands received after that date will be disregarded. This demand must reasonably inform Coleman of the identity of the stockholder and of the stockholder's intent to demand appraisal of his or her shares of Coleman common stock. A holder of Coleman common stock wishing to exercise his or her appraisal rights must be the holder of record of the Coleman common stock on the date the written demand for appraisal is made and must continue to hold the Coleman common stock until the completion of the merger. Accordingly, a Coleman stockholder who is the holder of record of Coleman common stock on the date the written demand for appraisal is made, but who subsequently transfers the Coleman common stock prior to completion of the merger, will lose any right to appraisal of such holder's shares of Coleman common stock. Similarly, any person who acquires Coleman common stock after December 27, 1999 will not be entitled to appraisal rights.

Only a stockholder of record is entitled to assert appraisal rights for the Coleman common stock registered in that holder's name. A demand for appraisal should be executed by or on behalf of the holder of record, fully and correctly, as the holder's name appears on the holder's stock certificates. If the Coleman common stock is held of record in a fiduciary capacity, such as by a trustee, guardian or custodian, execution of the demand should be made in that capacity. If the Coleman common stock is held of record by more than one owner, as in a joint tenancy or tenancy in common, the demand should be executed by or on behalf of all joint owners. An authorized agent, including one or more joint owners, may execute a demand for appraisal on behalf of a holder of record. However, the agent must identify the holder of record and expressly disclose the fact that, in executing the demand, the agent is agent for the holder. A holder of record, such as a broker who holds Coleman common stock as nominee for several beneficial owners, may exercise appraisal rights with respect to the Coleman common stock held for one or more beneficial owners while not exercising appraisal rights with respect to the Coleman common stock held for other beneficial owners. In that case, the written demand should set forth the number of shares of Coleman common stock as to which appraisal is sought. When no number of shares of Coleman common stock is expressly mentioned, the demand will be presumed to cover all shares of Coleman common stock in brokerage accounts or other nominee forms. Those stockholders whose shares of Coleman common stock are held in brokerage accounts or other nominee forms who wish to exercise appraisal rights under Delaware law are urged to consult with their brokers or nominees to determine the appropriate procedures for the making of a demand for appraisal.

All written demands for appraisal should be sent or delivered to The Coleman Company, Inc., 2111 E. 37th Street North P.O. Box 2931, Wichita, Kansas 67201, Attention: Corporate Secretary.

Within 120 days after the completion of the merger, but not after that date, the surviving corporation in the merger, or any stockholder who has complied with the statutory requirements summarized above, may file a petition in the Court of Chancery of the State of Delaware demanding a determination of the fair value of the Dissenting Shares. Coleman, as the surviving corporation in the merger, is under no obligation, and Coleman has no present intention, to file a petition for the appraisal of the fair value of the Dissenting

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

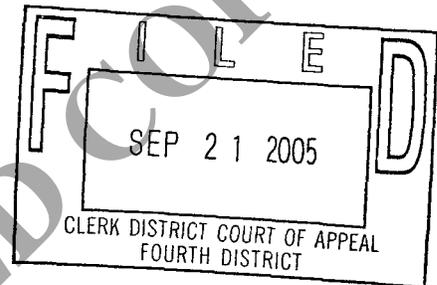
CASE NO. 502003CA005045XXOCAI

FOURTH DISTRICT CASE NO. 4D05-2606

MORGAN STANLEY & CO. INCORPORATED

VS.

COLEMAN(PARENT) HOLDINGS INC.



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INDEX TO RECORD ON APPEAL

VOLUME ONE-HUNDRED & SEVEN

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DISTRICT COURT OF APPEAL
FOURTH DISTRICT

Shares. Accordingly, it is the obligation of stockholders wishing to assert appraisal rights to initiate all necessary action to perfect their appraisal rights within the time prescribed in Section 262 of Delaware law.

Within 120 days after the completion of the merger, any stockholder who has complied with the requirements for exercise of appraisal rights will be entitled, upon written request, to receive from Coleman a statement setting forth the aggregate number of Dissenting Shares as to which demands for appraisal have been received and the aggregate number of holders of those Dissenting Shares. Such statements must be mailed within ten days after a written request therefor has been received by Coleman.

If a petition for an appraisal is timely filed, after a hearing on the petition, the Court of Chancery of the State of Delaware will determine the stockholders entitled to appraisal rights and will appraise the "fair value" of their Dissenting Shares, exclusive of any element of value arising from the accomplishment or expectation of the merger, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. Stockholders considering seeking appraisal should be aware that the fair value of their Dissenting Shares as determined under Section 262 of Delaware law could be more than, the same as or less than the value of the merger consideration they are entitled to receive under the merger agreement if they do not seek appraisal of their shares of Coleman common stock and that investment banking opinions as to fairness from a financial point of view are not necessarily opinions as to fair value under Section 262 of Delaware law. The Supreme Court of the State of Delaware has stated that "proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court" should be considered in the appraisal proceedings.

The Court of Chancery of the State of Delaware will determine the amount of interest, if any, to be paid upon the amounts to be received by stockholders whose Dissenting Shares have been appraised. The costs of the action may be determined by the Court of Chancery of the State of Delaware and imposed upon the parties as the Court of Chancery of the State of Delaware deems equitable. The Court of Chancery of the State of Delaware may also order that all or a portion of the expenses incurred by any stockholder in connection with an appraisal, including reasonable attorneys' fees and the fees and expenses of experts utilized in the appraisal proceeding, be charged pro rata against the value of all of the Dissenting Shares entitled to appraisal.

Any holder of Coleman common stock who has duly demanded an appraisal in compliance with Section 262 of Delaware law will not, after the completion of the merger, be entitled to vote the Dissenting Shares for any purpose or be entitled to the payment of dividends or other distributions on those Dissenting Shares.

If any stockholder who properly demands appraisal of Coleman common stock under Section 262 of Delaware law fails to perfect, or effectively withdraws or loses, the right to appraisal, as provided in Section 262 of Delaware law, the shares of Coleman common stock owned by such stockholder upon completion of the merger will be converted into the right to receive the cash, stock and warrants referred to above. A stockholder will fail to perfect, or effectively lose or withdraw, the right to appraisal if, among other things, no petition for appraisal is filed within 120 days after the completion of the merger, or if the stockholder delivers to Coleman a written withdrawal of the demand for appraisal. Any attempt to withdraw an appraisal demand more than sixty days after the completion of the merger will require the written approval of Coleman.

SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION

General. The total amount of funds and other consideration required by Sunbeam to complete the merger and to pay related expenses is about \$103,737,669 in cash, 6,676,135 shares of Sunbeam common stock and warrants to purchase about 4.98 million shares of Sunbeam common stock, assuming all outstanding Coleman stock options are cashed out in the merger and no Coleman stockholders exercise their Delaware law appraisal rights.

Bank Credit Facility. Sunbeam expects to obtain the cash portion of the merger consideration and amounts necessary to pay related expenses from cash on hand and additional borrowings under its bank credit facility. Sunbeam's bank credit facility, as amended, provides for aggregate borrowings of up to \$1,700 million under: (1) a revolving credit facility in an aggregate principal amount of up to \$400 million, maturing

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on March 30, 2005, of which \$52.5 million may be used only to complete the merger; (2) up to \$800 million in Tranche A term loans maturing on March 30, 2005, of which \$35 million may be used only to complete the merger; and (3) a Tranche B \$500 million term loan maturing on September 30, 2006, of which \$5.0 million has already been repaid through September 30, 1999. Absent a further extension by Sunbeam's bank lenders of the April 15, 1999 waiver or a refinancing of the bank credit facility, the foregoing maturities could be accelerated by Sunbeam's bank lenders at any time after April 10, 2000.

Under the bank credit facility, interest accrues, at Sunbeam's option: (1) at LIBOR; or (2) at the base rate of the administrative agent, which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%, in each case, plus, an interest rate margin which varies depending upon the occurrence of specified events. These events relate to:

- the execution and delivery by Coleman and its domestic subsidiaries of guarantees and related security documents which will become effective upon the completion of the merger;
- the filing with the SEC of this document;
- the completion of the merger; and
- the reduction of the bank lenders' commitment and loan exposure under the bank credit facility.

The interest rate margin is currently 4.00% for LIBOR loans and 2.50% for base rate loans and is subject to potential decreases in the future, including a decrease to 3.00% for LIBOR loans and 1.75% for base rate loans upon consummation of the merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the bank credit facility.

Security and Guarantees. Borrowings under the bank credit facility are secured by a pledge of the stock of Sunbeam's material subsidiaries, including Coleman and by a security interest in substantially all of the assets of Sunbeam and its material domestic subsidiaries, other than Coleman and its subsidiaries except as described below. Currently, Coleman's inventory and related assets are pledged to secure its obligations for letters of credit issued for its account under the bank credit facility. Additionally, as security for Coleman's note payable to Sunbeam, Coleman pledged substantially all of its domestic assets, other than real property, including 66% of its ownership interests in Coleman's direct foreign subsidiaries and domestic holding companies for its foreign subsidiaries and all of its ownership interests in other direct domestic subsidiaries (but not the assets of any of these subsidiaries). The pledge runs in favor of Sunbeam's lending banks, to which the Coleman note has been pledged as security for Sunbeam's obligations to them. The Coleman note, by its terms, will not be affected by the completion of the merger. Upon completion of the merger, substantially all of Coleman's assets and the assets of Coleman's domestic subsidiaries will be pledged to secure the obligations under the bank credit facility.

Borrowings under the bank credit facility are guaranteed by a number of Sunbeam's wholly owned material domestic subsidiaries and these subsidiary guarantees are secured as described above. Upon completion of the merger, Coleman and each of its domestic subsidiaries will become guarantors of the obligations under the bank credit facility. To the extent extensions of credit are made by any subsidiaries of Sunbeam, the obligations of these subsidiaries are guaranteed by Sunbeam.

Repayment and Refinancing. Sunbeam has made no decision with respect to the repayment or refinancing of indebtedness incurred or to be incurred under the bank credit facility and may repay this indebtedness out of its internally generated funds or from proceeds of a subsequent financing. Any decisions with respect to such repayment or refinancing will be made based on a review from time to time of the advisability of particular transactions, as well as on prevailing interest rates and financial and economic conditions.

Covenants. The bank credit facility contains covenants customary for credit facilities of a similar nature, including limitations on the ability of Sunbeam and its subsidiaries, including Coleman, to, among other things:

- declare dividends or repurchase stock;
- prepay, redeem or repurchase debt, incur liens and engage in sale-leaseback transactions;

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- make loans and investments;
- incur additional debt, including revolving loans under the bank credit facility;
- amend or otherwise alter material agreements or enter into restrictive agreements;
- make capital and Year 2000 compliance expenditures;
- engage in mergers, acquisitions and asset sales;
- engage in certain transactions with affiliates;
- alter its fiscal year or accounting policies;
- enter into hedging agreements;
- settle certain litigation;
- alter its cash management system; and
- alter the businesses they conduct.

Sunbeam is also required to comply with specified financial covenants and ratios. As a result of Sunbeam's operating losses, among other things, at June 30, 1998 Sunbeam was not in compliance with these financial covenants and other terms of its bank credit facility. As of June 30, 1998, Sunbeam entered into an agreement with its bank lenders which waived Sunbeam's compliance through December 31, 1998. On October 19, 1998, Sunbeam's bank lenders agreed to extend this waiver through April 10, 1999. In April 1999, the waiver was extended to April 10, 2000, and the bank credit facility was amended to, among other things:

- require Sunbeam to meet new financial tests and ratios;
- decrease the interest rate margins to 3.75% for LIBOR loans and 2.5% for base rate loans;
- further reduce the interest rate margins to 3.25% for LIBOR loans and 2.00% for base rate loans as a result of Sunbeam's satisfaction on May 14, 1999 of the agreed upon conditions to this reduction. However, such margins increased to 3.50% for LIBOR loans and 2.25% for base rate loans on September 1, 1999 as a result of the merger not occurring by such date and increased to 4.00% for LIBOR loans and 2.50% for base rate loans on October 1, 1999 as a result of the merger not occurring by such date;
- defer until April 10, 2000 principal payments of \$69.3 million otherwise due September 30, 1999 and principal payments of \$69.3 million otherwise due March 31, 2000, as a result of the satisfaction by Sunbeam on May 14, 1999 of the agreed upon conditions to this deferral;
- provide that the following events relating to the merger will be events of default under the bank credit facility:
 - if Sunbeam fails to have the SEC declare this document effective by October 30, 1999 (which was subsequently amended to January 10, 2000);
 - if Sunbeam fails to complete the merger within 25 business days after this document is declared effective by the SEC; or
 - if Sunbeam has to pay more than \$87.5 million in cash to complete the merger, including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses;
- require Sunbeam and Coleman to amend Coleman's note payable to Sunbeam and to have Coleman secure the note, which is pledged by Sunbeam to secure the obligations under Sunbeam's bank credit facility, with substantially all of Coleman's domestic assets other than real property including 66% of its ownership interests in Coleman's direct foreign subsidiaries and domestic holding companies for its foreign subsidiaries, and all of its ownership interests in other direct domestic subsidiaries;

- impose restrictions on the aggregate revolving loan (other than loans used to fund the merger) principal balance permitted to be outstanding at the end of each month under the bank credit facility;
- require Sunbeam to maintain a concentration cash management system and to repay revolving loans, which may be reborrowed subject to satisfaction of the bank credit facility's borrowing conditions, to the extent that cash on hand in the concentration accounts on any business day exceeds \$15 million;
- require Sunbeam to prepay term loans under the bank credit facility on December 31, 1999 to the extent that cash on hand in Sunbeam's concentration accounts plus the aggregate amount of unused revolving loan commitments on this date exceeds \$125 million, but Sunbeam is not required to prepay more than \$69.3 million in the aggregate as a result of this provision;
- require Sunbeam to reserve \$52.5 million of availability under the revolving credit facility for use solely to pay required cash portion of the merger consideration;
- limit the amount that Sunbeam and its subsidiaries may spend on Year 2000 compatibility testing and remediation to \$50 million in the aggregate during the fiscal year ending December 31, 1999;
- require Sunbeam to obtain the bank lenders' consent to any litigation settlement concerning the restatement of Sunbeam's 1996 and 1997 fiscal year and first quarter 1998 financial statements if such settlements require the payment of money, not paid by insurance carriers or other third parties, of more than \$1 million in total;
- impose new informational reporting requirements; and
- provide Sunbeam with a \$40 million foreign currency revolving loan subfacility.

At September 30, 1999, approximately \$1,500 million was outstanding and approximately \$200 million was available for borrowing under the credit facility. Of the approximately \$1,500 million outstanding under the new credit facility, \$1,300 million was outstanding under the Tranche A and Tranche B term loans and \$200 million was outstanding under the revolving credit facility.

Defaults. The bank credit facility provides for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, material adverse change arising from compliance with ERISA, material adverse judgments, entering into guarantees and change of ownership and control. It is also an event of default under the bank credit facility if this document is not declared effective by the SEC on or before January 10, 2000 or if the merger does not occur within 25 business days of the effectiveness of this document or if the cash consideration—including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses—to consummate the merger exceeds \$87.5 million. Although there can be no assurance, Sunbeam anticipates that it will satisfy these conditions.

Issuance of Sunbeam Common Stock in the Merger and upon Exercise of the Warrants. The stock portion of the merger consideration and the shares of stock to be issued upon exercise of the warrants will consist of newly issued shares of Sunbeam common stock. The issuance of the shares of Sunbeam common stock in the merger and upon exercise of the warrants is being registered under the registration statement of which this document forms a part.

**MATERIAL CONTACTS BETWEEN
COLEMAN AND SUNBEAM AND ITS AFFILIATES**

Financial Transactions Between Coleman and Sunbeam

In connection with the M&F Transaction, Coleman repaid substantially all of its outstanding indebtedness with the proceeds of borrowings from Sunbeam. These borrowings, together with loans made by Sunbeam to Coleman after March 30, 1998, were evidenced by an unsecured subordinated demand note payable by Coleman to Sunbeam. The note bore interest at a floating rate equivalent to the weighted average interest rate incurred by Sunbeam on borrowings under its bank credit facility and on its debentures (about 5.9% per annum during the first half of 1999). The note was pledged by Sunbeam as security for its obligations under its bank credit facility.

In connection with the April 15, 1999 amendment to Sunbeam's bank credit facility, the Coleman note payable to Sunbeam was revised to, among other things:

- lower the interest rate to 4% if the three-month LIBOR quoted on the telerate system is less than 6%, or 5% if the three-month LIBOR quoted on the telerate system is 6% or higher,
- make the note payable on April 15, 2000 rather than on demand,
- add customary representations, warranties, covenants and events of default, and
- provide that an event of default under Sunbeam's bank credit facility would constitute an event of default under the Coleman note.

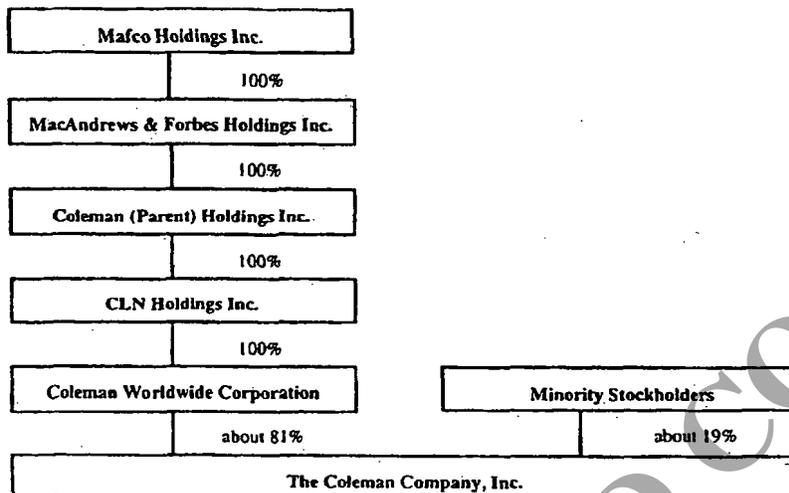
The revised Coleman note had an unpaid principal amount of \$303.2 million on September 30, 1999. As security for the revised Coleman note, Coleman pledged substantially all of its domestic assets, other than real property, including 66% of its ownership interests in its direct foreign subsidiaries and in its domestic holding companies for its foreign subsidiaries, and all of its ownership interests in its other direct domestic subsidiaries, but Coleman's subsidiaries have not pledged their assets or the stock of their subsidiaries. Sunbeam pledged the revised Coleman note as security for Sunbeam's obligations to its lending banks and Sunbeam assigned to these lending banks the security pledged by Coleman for the revised Coleman note. Coleman also gave the lending banks a direct pledge of the assets securing the revised Coleman note to secure the obligations under Sunbeam's bank credit facility, subject to a cap equal to the balance due from time to time on the revised Coleman note. The Coleman note, by its terms, will not be affected by the completion of the merger. The revision of the Coleman note and the pledge of Coleman assets were approved on behalf of Coleman by A. Whitman Marchand, Coleman's then only disinterested director, acting as a duly authorized independent committee of the Coleman board of directors. Coleman paid Mr. Marchand \$25,000 for his services as an independent director and agreed to indemnify him to the fullest extent permitted by Delaware law.

Since the Sunbeam bank credit facility provides that Sunbeam will not contribute capital to Coleman or, with some exceptions, permit Coleman to borrow money from any source other than Sunbeam, Coleman's ability to meet its cash operating requirements, including working capital requirements, capital expenditures and other obligations, is dependent upon its cash flow from operations and loans from Sunbeam. Sunbeam intends, and believes it will have the ability, to fund any Coleman requirements for borrowed funds through April 10, 2000. All loans from Sunbeam to Coleman will be added to the Coleman note payable to Sunbeam.

M&F Transaction

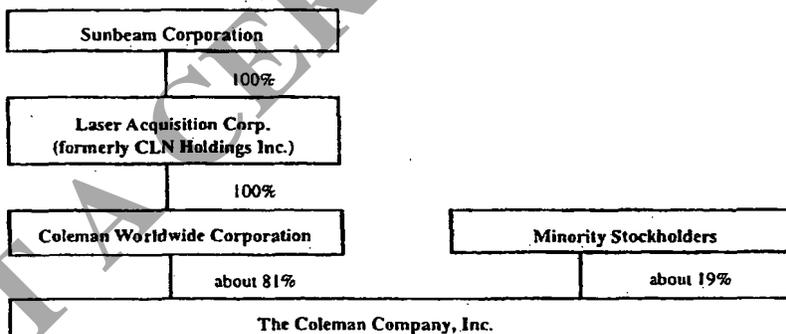
Prior to the M&F Transaction, MacAndrews & Forbes indirectly owned about 81% of the issued and outstanding Coleman common stock through various subsidiaries, including Coleman (Parent) Holdings, CLN Holdings and Coleman Worldwide.

Ownership Structure Before the M&F Transaction



In the M&F Transaction, which was completed on March 30, 1998, CLN Holdings merged with Laser Acquisition Corp., a subsidiary of Sunbeam, and Sunbeam, through its then indirect ownership of Coleman Worldwide, became the owner of MacAndrews & Forbes' shares of Coleman common stock. In exchange for the Coleman shares, Coleman (Parent) Holdings received 14,099,749 shares of Sunbeam common stock and \$159,956,756 in cash. In addition, in the M&F Transaction, Sunbeam assumed about \$1.016 billion in debt of Coleman and its parent corporations, including \$497 million of indebtedness of Coleman.

Ownership Structure After the M&F Transaction



Sunbeam's ownership interest in Coleman was reduced to about 79% as a result of the exercise of Coleman employee stock options immediately following the M&F Transaction. On July 12, 1999, Sunbeam acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock. These shares, together with the shares of Coleman common stock acquired by Sunbeam in the M&F Transaction, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock. Following the completion of the M&F Transaction, Coleman (Parent) Holdings remained a wholly owned subsidiary of MacAndrews & Forbes.

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As a result of the M&F Transaction, MacAndrews & Forbes, as the indirect parent corporation of Coleman (Parent) Holdings, became Sunbeam's second largest stockholder with shares representing about 14% of the currently outstanding Sunbeam common stock. As part of the August 1998 settlement with MacAndrews & Forbes of threatened claims related to the M&F Transaction, Coleman (Parent) Holdings received from Sunbeam a warrant expiring August 24, 2003 to purchase an additional 23 million shares of Sunbeam common stock at a cash exercise price of \$7 per share, subject to anti-dilution adjustments. Accordingly, MacAndrews & Forbes may now be deemed to be the beneficial owner of 29.9% of the total number of shares of Sunbeam common stock that would be outstanding following the exercise of the warrant. See "—Settlement of Claims Relating to the M&F Transaction."

Under the agreement relating to the M&F Transaction, upon completion of the M&F Transaction, all the directors of Coleman resigned, the number of directors constituting the board of directors of Coleman was fixed at five, and five designees of Sunbeam were elected as directors of Coleman. In addition, Sunbeam designees were appointed to senior management positions at Coleman. Subsequently, as a result of changes in Sunbeam's management and board of directors, Jerry W. Levin, the current Chairman and Chief Executive Officer of Sunbeam and Coleman, was reelected to the Coleman board. In addition, Paul E. Shapiro, the current Executive Vice President and Chief Administrative Officer of Sunbeam and Coleman, was elected to the Coleman board. The other members of the Coleman board resigned or were removed by Sunbeam. In April 1999, the size of the Coleman board was fixed at three members and A. Whitman Marchand, who is not affiliated with either Sunbeam or Coleman, was elected to the Coleman board. In July 1999, the size of the Coleman board was fixed at four and John H. Klein, an outside director of Sunbeam, was elected to the Coleman board. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Changes in Sunbeam's Management and Board," "—Settlement of Claims Relating to the M&F Transaction" and "—Services Provided by MacAndrews & Forbes."

Under the agreement relating to the M&F Transaction, Coleman (Parent) Holdings agreed not to transfer the shares of Sunbeam common stock it received in the M&F Transaction (other than to specified affiliates) for a period of nine months from and after the completion of the M&F Transaction, subject to certain exceptions. This nine-month period expired on November 30, 1998. Notwithstanding the lapse of these restrictions, to date Coleman (Parent) Holdings has not transferred any such shares.

The agreement relating to the M&F Transaction has been filed as an exhibit to the Registration Statement of which this document forms a part and is incorporated in this document by reference.

Registration Rights Agreement

The shares of Sunbeam common stock issued to Coleman (Parent) Holdings in the M&F Transaction were not registered under federal or state securities laws. Accordingly, in connection with the issuance, Sunbeam entered into a Registration Rights Agreement with Coleman (Parent) Holdings. Under the Registration Rights Agreement, Coleman (Parent) Holdings can require Sunbeam to register under federal and applicable state securities laws the shares of Sunbeam common stock it received in the M&F Transaction. The Registration Rights Agreement was amended in August 1998 to provide that Coleman (Parent) Holdings can also require Sunbeam to register under federal and applicable state securities laws the warrant, and the shares of Sunbeam common stock issuable upon exercise of the warrant, issued to Coleman (Parent) Holdings in connection with a settlement of legal claims related to the M&F Transaction.

Sunbeam has also agreed to use its reasonable best efforts to permit any registration statement filed by Sunbeam in connection with the Registration Rights Agreement to be used by former affiliates of Coleman for resales of Sunbeam common stock received by those affiliates in the merger. Any affiliate seeking to register shares of Sunbeam common stock for resale must agree in writing to be bound by the terms of the Registration Rights Agreement.

The Registration Rights Agreement, and the August 1998 amendment thereto, have been filed as exhibits to the Registration Statement of which this document forms a part and are incorporated in this document by reference.

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Appointments of Former Coleman and MacAndrews & Forbes Officers to Sunbeam's Management and Board

In June 1998, concurrently with the removal of Sunbeam's former Chief Executive Officer and Chief Financial Officer, Sunbeam announced that Jerry W. Levin of MacAndrews & Forbes had been elected as Sunbeam's Chief Executive Officer. Mr. Levin and other Sunbeam executives who were affiliated with MacAndrews & Forbes later signed three-year employment agreements with Sunbeam. The other executives include Paul E. Shapiro, Executive Vice President and Chief Administrative Officer of Sunbeam, and Bobby G. Jenkins, Executive Vice President and Chief Financial Officer of Sunbeam. Mr. Levin and Howard Gittis of MacAndrews & Forbes also were elected to the Sunbeam board of directors. For a description of the terms of the employment agreements entered into by Messrs. Levin, Shapiro and Jenkins, see "MANAGEMENT—Executive Compensation." For a further discussion of the events leading up to the appointment of Mr. Levin as Sunbeam's Chief Executive Officer and the election of Messrs. Levin and Gittis to the Sunbeam board of directors, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Changes in Sunbeam's Management and Board."

Settlement of Claims Relating to the M&F Transaction

On August 12, 1998, Sunbeam announced that, following investigation and negotiation by a special committee of the Sunbeam board, Sunbeam had entered into a settlement agreement with Coleman (Parent) Holdings, the MacAndrews & Forbes subsidiary from which Sunbeam acquired a controlling interest in Coleman in the M&F Transaction. The settlement:

- released Sunbeam from threatened claims of MacAndrews & Forbes and its affiliates arising from the M&F Transaction,
- enabled Sunbeam to retain the services of executive personnel affiliated with MacAndrews & Forbes who had been managing Sunbeam since mid-June 1998, including Jerry W. Levin, Sunbeam's Chairman and Chief Executive Officer, Paul E. Shapiro, Sunbeam's Executive Vice President and Chief Administrative Officer, and Bobby G. Jenkins, Sunbeam's Executive Vice President and Chief Financial Officer, each of which signed a three-year employment agreement with Sunbeam in connection with the settlement, and
- provided for continuing management assistance and other support by MacAndrews & Forbes and its affiliates to Sunbeam, at its request, as described below.

As part of the settlement, Coleman (Parent) Holdings received from Sunbeam a warrant expiring August 24, 2003 to purchase 23 million shares of Sunbeam common stock at a cash exercise price of \$7 per share, subject to anti-dilution adjustments. Accordingly, MacAndrews & Forbes may now be deemed to be the beneficial owner of 29.9% of the total number of shares of Sunbeam common stock that would be outstanding following the exercise of the warrant. In connection with the settlement agreement, Sunbeam and Coleman (Parent) Holdings entered into an amendment to the Registration Rights Agreement executed in connection with the M&F Transaction. Under this amendment, Coleman (Parent) Holdings can require Sunbeam to register under federal and applicable state securities laws the warrant received by Coleman (Parent) Holdings in the settlement and the shares of Sunbeam common stock issuable upon exercise of the warrant. For a description of the settlement agreement and the terms of the warrant issued to Coleman (Parent) Holdings, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Settlement of Claims Relating to the M&F Transaction."

The special committee that negotiated and approved the terms of the settlement agreement with Coleman (Parent) Holdings, including the terms of the warrant issued to Coleman (Parent) Holdings, consisted of four outside directors, none of whom has any affiliation with MacAndrews & Forbes. The members of the special committee were Howard Kristol (Chairman), Charles Elson, Peter Langerman and Faith Whittlesey. They were assisted by independent financial advisors and independent legal counsel. The special committee considered the services of Messrs. Levin, Shapiro and Jenkins and MacAndrews & Forbes' commitment to provide assistance and support to Sunbeam to be essential and of substantial (although incalculable) value to Sunbeam.

In connection with the settlement agreement with Coleman (Parent) Holdings, Messrs. Levin, Shapiro and Jenkins each signed three-year employment agreements with Sunbeam. See "MANAGEMENT."

Services Provided by MacAndrews & Forbes

Under Sunbeam's August 1998 settlement agreement with Coleman (Parent) Holdings, in addition to the services of MacAndrews & Forbes' former executive personnel who have been managing Sunbeam since mid-June 1998, MacAndrews & Forbes agreed to provide management assistance and other support to Sunbeam at its request in a wide variety of areas. Although the nature and extent of this assistance and support had not been determined at the time of the settlement, Sunbeam has significantly benefited from this assistance and support in connection with the following areas:

- negotiations with Sunbeam's lending banks;
- the defense of the many lawsuits brought against Sunbeam and certain of its present and former directors and officers;
- the prosecution of claims against Sunbeam's liability insurance providers;
- the defense of claims against Sunbeam by its former Chief Executive Officer and Chief Financial Officer;
- the restatement of certain of Sunbeam's historical financial statements;
- the preparation of various SEC filings by Sunbeam and Coleman; and
- various other insurance, regulatory, litigation and executive compensation matters.

MacAndrews & Forbes employees provide this assistance and support to Sunbeam. Sunbeam does not pay MacAndrews & Forbes and its affiliates for the services of its employees, but does reimburse them for out-of-pocket expenses. Execution of the settlement agreement was a condition to Sunbeam's continued employment of Messrs. Levin, Shapiro and Jenkins as officers of Sunbeam.

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

The following unaudited pro forma condensed consolidated financial statements were prepared to give effect to the following "Pro Forma Transactions":

- Sunbeam's acquisition on March 30, 1998 of about 81% of the then outstanding shares of Coleman common stock in exchange for 14,099,749 shares of Sunbeam's common stock and approximately \$160 million in cash. Immediately thereafter, as a result of the exercise of Coleman employee stock options, Sunbeam's beneficial ownership of Coleman decreased to approximately 79% of the total number of outstanding shares of Coleman common stock;
- Sunbeam's acquisition on April 6, 1998 of all of the outstanding stock of Signature Brands in exchange for approximately \$255 million in cash;
- Sunbeam's proposed acquisition of the shares of Coleman common stock held by the Coleman minority stockholders, in exchange for about 6.7 million shares of Sunbeam common stock, about \$87 million in cash, including cash-outs of Coleman options and warrants to purchase up to approximately 4.98 million shares of Sunbeam common stock at \$7 per share;
- the initial borrowing of approximately \$1,325 million under Sunbeam's bank credit facility;
- the original offering of the debentures producing net proceeds of approximately \$730 million; and
- the use of most of the net proceeds from the original bank borrowing and offering of the debentures.

The bank credit facility, as amended, consists of:

- a revolving credit facility in an aggregate principal amount of up to \$400 million maturing March 30, 2005, of which \$52.5 million may only be used to complete the merger;
- up to \$800 million in term loans maturing on March 30, 2005, of which \$35.0 million may only be used to complete the merger; and
- a \$500 million term loan maturing September 30, 2006, of which \$5.0 million has already been repaid through September 30, 1999.

Interest accrues, at the Company's option:

- at LIBOR, or
- at the base rate of the administrative agent which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%;

in each case, plus an interest margin which is currently 4.00% for LIBOR borrowings and 2.50% for base rate borrowings and is subject to potential decreases in the future, including a decrease to 3.00% for LIBOR borrowings and 1.75% for base rate borrowings upon consummation of the merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the bank credit facility. Past defaults have been waived through April 10, 2000.

The original offering in March 1998 of \$2,014 million aggregate principal amount of the debentures at a yield to maturity of 5.0% resulted in net proceeds of approximately \$730 million. The debentures are exchangeable for shares of Sunbeam common stock at an initial conversion rate of 6.575 shares for each \$1,000 principal amount at maturity of the debentures, subject to adjustment upon occurrence of certain events. The debentures are subordinated in right of payment to all of our existing and future senior indebtedness. The debentures are not redeemable by Sunbeam prior to March 25, 2003.

Proceeds from the initial bank borrowing and the original offering of debentures of \$1,176 million, \$255 million and \$182 million were used to acquire and repay the debt of Coleman and its parent corporations, CLH Holdings and Coleman Worldwide, Signature Brands and First Alert, respectively. Also, approximately \$300 million of Sunbeam's outstanding indebtedness was repaid from such proceeds. In addition, the financing provided funds to pay the \$106.9 million of redemption premiums associated with debt extinguishments and also provided working capital and funds for general corporate purposes.

The unaudited pro forma condensed consolidated balance sheet as of September 30, 1999 gives pro forma effect to Sunbeam's proposed acquisition of the shares of Coleman common stock held by the Coleman minority stockholders as if it had occurred on September 30, 1999. The unaudited pro forma condensed consolidated statements of operations for the year ended December 31, 1998 and the nine months ended September 30, 1999 give effect to the Pro Forma Transactions as if they had occurred on December 29, 1997, the beginning of Sunbeam's 1998 fiscal year.

The unaudited pro forma condensed consolidated financial statements do not include pro forma adjustments relating to the acquisition of First Alert because the effects of that acquisition are not significant.

Sunbeam's consolidated historical results of operations for the year ended December 31, 1998 includes Coleman and Signature Brands from the respective acquisition dates and has been derived from the audited financial statements of Sunbeam as of and for the year ended December 31, 1998. The results of operations of the acquired entities from the beginning of the period through the respective acquisition dates have been derived from the unaudited statements of operations of the acquired entities for the three months ended March 31, 1998. The acquisitions have been accounted for under the purchase method of accounting.

Reclassifications were made to the net sales, cost of goods sold and selling, general and administrative expense as reported in the historical financial statements of Coleman and Signature Brands. These reclassifications were made to conform to the classifications of Sunbeam and consist of promotional allowances and cooperative advertising expenses. Sunbeam classifies these amounts as a deduction to arrive at net sales.

Included in the historical statement of operations of Coleman for the three months ended March 31, 1998, are certain pretax charges for costs relating to the acquisition of Coleman by Sunbeam in the amount of \$7.1 million, a \$3.6 million write-off of capitalized costs associated with the installation of a company-wide computer software system which was abandoned following its acquisition by Sunbeam and \$2.2 million to cancel a licensing agreement with an affiliate. Additionally, the expense of the early extinguishment of debt of \$1.2 million shown as an extraordinary charge on Coleman's historical statement of operations for the three months ended March 31, 1998, has been excluded from the unaudited pro forma condensed consolidated statement of operations for the year ended December 31, 1998.

The pro forma adjustments are based upon available information and certain assumptions that Sunbeam believes are reasonable under the circumstances.

The unaudited pro forma condensed consolidated financial statements should be read in conjunction with "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS" and the financial statements of Sunbeam and the notes thereto, and the other financial information included elsewhere in this document. These unaudited pro forma condensed consolidated financial statements are provided for informational purposes only and do not purport to be indicative of the financial position or results of operations which would have been obtained had the Pro Forma Transactions been completed as of the dates indicated above or the results of operations for any future period.

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UNAUDITED PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET

As of September 30, 1999

(in thousands)

	Historical Sunbeam	Coleman Merger(I)	Pro Forma After Coleman Merger
ASSETS			
Current assets			
Cash and cash equivalents	\$ 29,088		\$ 29,088
Receivables, net	443,223		443,223
Inventories	507,821	\$ 4,280	512,101
Prepaid expenses and other current assets	70,681		70,681
Total current assets	1,050,813	4,280	1,055,093
Property, plant and equipment, net	457,293	12,640	469,933
Trademarks, tradenames, goodwill and other, net	1,809,868	101,849	1,911,717
	<u>\$3,317,974</u>	<u>\$118,769</u>	<u>\$3,436,743</u>
LIABILITIES AND SHAREHOLDERS' EQUITY			
Current liabilities:			
Short-term debt and current portion of long-term debt	\$1,505,576	\$ 87,000	\$1,592,576
Accounts payable	188,899		188,899
Other current liabilities	303,075		303,075
Total current liabilities	1,997,550	87,000	2,084,550
Long-term debt, less current portion	817,128		817,128
Other long-term liabilities	231,898		231,898
Deferred income taxes	111,516	36,600	148,116
Minority interest	65,195	(65,195)	
Shareholders' equity:			
Common stock	1,007	67	1,074
Additional paid-in capital	1,122,896	60,297	1,183,193
Accumulated deficit	(965,036)		(965,036)
Accumulated other comprehensive loss	(64,180)		(64,180)
Total shareholders' equity	94,687	60,364	155,051
	<u>\$3,317,974</u>	<u>\$118,769</u>	<u>\$3,436,743</u>

See Notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS

For the Year Ended December 31, 1998
(in thousands, except per share data)

	Historical Sunbeam	Signature Brands(a)	Coleman(s)	Pro Forma Adjustments	Pro Forma Before Coleman Merger	Coleman Merger	Pro Forma After Coleman Merger
Net sales	\$1,836,871	\$55,482	\$244,499	\$(23,346)(b)	\$2,098,706		\$2,098,706
Cost of goods sold	1,788,819	39,098	175,777	(14,800)(c) (10,954)(b) (10,700)(c) 1,554 (d)	1,983,594	\$ 1,440 (i)	1,985,034
Amortization of goodwill and identifiable intangibles	43,830	1,032	2,934	6,537 (d)	54,333	3,009 (j)	57,342
Selling, general and administrative expense	674,247	20,392	74,855	(12,392)(b) (3,700)(c) 173 (d)	753,575	160 (i)	753,735
Operating loss	(670,025)	(5,040)	(9,067)	(8,664)	(692,796)	(4,609)	(697,405)
Interest expense, net	131,091	4,654	9,044	13,019 (e) 701 (f)	158,509	7,439 (i)	165,948
Other income (expense)	4,768	173	(1,861)		3,080		3,080
Gain on sale of business			26,137		26,137		26,137
(Loss) earnings from continuing operations before income taxes, minority interest and extraordinary charge	(796,348)	(9,521)	6,165	(22,384)	(822,088)	(12,048)	(834,136)
Income taxes (benefit)	(10,130)	(3,062)	7,518	(4,400)(g)	(10,074)		(10,074)
Minority interest	(10,681)		61	(297)(h)	(10,917)	10,917 (i)	
Loss from continuing operations before extraordinary charge	\$ (775,537)	\$ (6,459)	\$ (1,414)	\$ (17,687)	\$ (801,097)	\$ (22,965)	\$ (824,062)
Basic loss per share of common stock from continuing operations	\$ (7.99)				\$ (7.96)		\$ (7.68)
Weighted average common shares outstanding	97,121			3,525 (j)	100,646	6,700 (j)	107,346
Ratio of earnings to fixed charges	— (l)				— (l)		— (l)

See Notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS

For the Nine Months Ended September 30, 1999
(in thousands, except per share data)

	Historical Sunbeam	Coleman Merger	Pro Forma After Coleman Merger
Net sales	\$1,786,428		\$1,786,428
Cost of goods sold	1,334,177	\$ 1,080 (i)	1,335,257
Amortization of goodwill and identifiable intangibles	38,401	2,257 (i)	40,658
Selling, general and administrative expense	410,862	120 (i)	410,982
Operating loss	2,988	(3,457)	(469)
Interest expense, net	136,631	5,579 (i)	142,210
Other income, net	(4,619)		(4,619)
Loss from continuing operations before income taxes and minority interest	(129,024)	(9,036)	(138,060)
Income taxes	12,661		12,661
Minority interest	13,354	(13,354) (i)	
Net (loss) earnings	\$ (155,039)	\$ 4,318	\$ (150,721)
Basic loss per share	\$ (1.54)		\$ (1.40)
Weighted average common shares outstanding	100,743	6,700 (k)	107,443
Ratio of earnings to fixed charges	(l)		(l)

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See Notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

NOTES TO UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

As of September 30, 1999 and for the Year Ended December 31, 1998
and the Nine Months Ended September 30, 1999
(in thousands, except percentages, share data and as noted)

- (a) Represents the historical statements of operations of Coleman and Signature Brands for the three months ended March 31, 1998.
- (b) Represents the reclassifications made to net sales, cost of goods sold and selling, general and administrative expense as reported in the historical financial statements of Coleman and Signature Brands for the three months ended March 31, 1998. These reclassifications were made to conform to the classifications of Sunbeam and consist of promotional allowances and cooperative advertising. Sunbeam classifies these amounts as a deduction to arrive at net sales, as follows:

	Decrease in		
	Net Sales	Cost of Goods Sold	Selling, General and Administrative Expense
Coleman	\$(17,115)	\$(10,954)	\$ (6,161)
Signature Brands	(6,231)		(6,231)
	<u>\$(23,346)</u>	<u>\$(10,954)</u>	<u>\$(12,392)</u>

- (c) Represents the elimination of Coleman's net sales, cost of goods sold and selling, general and administrative expense for the two days ended March 31, 1998. These amounts are included in the Coleman historical statement of operations for the three months ended March 31, 1998 and are also reflected in the Sunbeam historical statement of operations since March 30, 1998.
- (d) Represents the increase in depreciation and amortization to reflect the pro forma effect of the acquisitions occurring at the beginning of the period. In each acquisition, the purchase price paid has been allocated to the fair value, as determined by independent appraisals, of tangible and identified intangible assets acquired and liabilities assumed as follows (in millions):

	Coleman	Signature Brands
Value of common stock issued	\$ 607	
Cash paid including expenses and mandatory redemption of debt, net of cash acquired	160	\$255
Cash received from sale of Coleman Spas, Inc.	(17)	
Cash received from stock option proceeds	(9)	
Net cash paid and equity issued	741	255
Fair value of total liabilities assumed, including debt	1,455	83
	2,196	338
Fair value of assets acquired	1,113	191
Excess of purchase price over fair value of net assets acquired	<u>\$1,083</u>	<u>\$147</u>

The value of approximately \$44 per share for the Sunbeam common stock issued at the date of the M&F Transaction was derived by using the average closing stock price for the day before and day of the public announcement of the M&F Transaction. Subsequent to the M&F Transaction, Coleman Spas, Inc. was sold for \$17 million and the related proceeds are therefore presented above as a deduction to arrive at the net cash paid and equity issued for the businesses retained. The \$17 million is similarly excluded from the amount of \$1,113 million described as "fair value of assets acquired." Immediately after the M&F Transaction, employee stock options were exercised generating proceeds of \$9 million.

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This amount is presented above as a reduction to arrive at the net cash paid for the M&F Transaction and a proportionate corresponding increase is included in the minority interest liability assumed.

The pro forma amounts are derived as follows:

	<u>Coleman</u>	<u>Signature Brands</u>	<u>Average Life</u>	<u>Quarterly Depreciation/Amortization</u>
Increase in property, plant and equipment to reflect fair value	\$50,560	\$3,871	7.9 years	<u>\$1,727</u>
Amount attributable to:				
Cost of goods sold				<u>\$1,554</u>
Selling, general and administrative expense				<u>\$ 173</u>

The pro forma purchase price allocation to the acquired property, plant and equipment of Coleman and Signature Brands represents the aggregate amount recorded for financial statement purposes as detailed by an independent appraisal. The remaining economic useful lives for the acquired property, plant and equipment range from 17 to 34 years for buildings, 6 to 12 years for machinery and equipment and 1 to 5 years for tooling and other depreciable assets. The average life of 7.9 years represents the weighted average of the depreciable lives used for financial reporting purposes.

Amortization of goodwill and identifiable intangibles:

	<u>Coleman</u>	<u>Signature Brands</u>	<u>Life</u>	<u>Quarterly Depreciation/Amortization</u>
Goodwill	\$1,083,259	\$147,151	40 years	\$7,690
Trademarks	279,920	53,900	40 years	2,086
Assembled workforce	12,880	3,000	8 years	496
Patents	5,600	1,800	8 years	231
				<u>10,503</u>
Less: historical amortization				<u>(3,966)</u>
				<u>\$6,537</u>

- (e) Represents the net increase in interest expense to reflect the pro forma effect of acquisition and refinancing borrowings as if such transactions occurred at the beginning of the period. Amounts are derived as follows:

<u>Acquisition</u>	<u>Acquisition and Refinancing Borrowings</u>	<u>Effective Rate</u>	<u>Quarterly Interest on Acquisition and Refinancing Borrowings</u>	<u>Less: Quarterly Interest on Pre-Acquisition Borrowings</u>	<u>Increase in Interest Expense</u>
Coleman	\$1,176,000	7.47%	\$21,962	\$9,044	\$12,918
Signature Brands	254,600	7.47%	4,755	4,654	101
					<u>\$13,019</u>

The assumed effective interest rate was derived using the 1998 effective rates, including amortization of deferred financing costs, of 9.05% for the term loan borrowings, which represent approximately 59% of Sunbeam's acquisition and refinancing borrowings, and 5.20% for the debentures, which represent approximately 41% of Sunbeam's acquisition and refinancing borrowings. The effect on operations of a 1/8% variance in interest rates on the acquisition and refinancing borrowings would be approximately \$1.1 million per year and \$0.3 million per quarter.

- (f) Represents the net increase in interest expense to reflect the pro forma effect of higher interest rates on the new financing compared with historical financing. The amount is derived as follows:

	Average Pre-Refinancing Borrowings	Effective Rate	Quarterly Interest at Refinancing Borrowings Rate	Quarterly Interest at Pre-Refinancing Borrowings Rate	Increase in Interest Expense
Historical Sunbeam	\$242,500	7.47%	\$4,529	\$3,828	\$701

- (g) Represents the domestic income tax provision accrued by Coleman of \$4.4 million for the three months ended March 31, 1998. On a pro forma basis this accrual would not have been required as a consequence of the net operating losses generated by Sunbeam for the year ended December 31, 1998. No adjustment is required to the Signature Brands tax benefit since the Signature Brands loss in the first quarter of 1998 was available for carryback. No tax benefit is provided on the pro forma adjustments since the adjustments for depreciation and amortization are not deductible for income tax purposes and the deferred tax asset resulting from the remaining pro forma adjustments results in an additional valuation allowance since it is more likely than not that such deferred tax assets will not be realized from future taxable income.
- (h) Represents approximately 21% of the loss from continuing operations before extraordinary charge of Coleman for the three months ended March 31, 1998.
- (i) Represents the pro forma effects associated with completing the merger and acquiring the remaining Coleman shares outstanding. The total consideration is derived as follows:

Cash	\$ 87,000
Sunbeam common stock	45,225
Sunbeam warrants	15,139
	<u>\$147,364</u>

The portion of the consideration consisting of approximately 6.7 million shares of Sunbeam common stock is valued at \$6.75 per share, the closing price of Sunbeam's common stock on October 21, 1998, the date the Company announced the terms of the Memorandum of Understanding. The warrants to purchase approximately 4.98 million shares of Sunbeam common stock at \$7 per share are valued at \$3.04 per warrant, the same value ascribed to the warrant issued to a subsidiary of MacAndrews & Forbes in August 1998 based on a valuation performed by an independent consultant. The pro forma allocation of the consideration is based on independent appraisals prepared in connection with the M & F transaction. Allocation of the total consideration and its effect on the pro forma condensed consolidated financial statements is as follows:

	Life	Allocation	Year Ended December 31, 1998 Pro Forma Effect on:		
			Cost of Goods Sold	Amortization of Goodwill and Identifiable Intangibles	Selling, General and Administrative Expense
Inventories	—	\$ 4,280			
Property, plant and equipment	7.9 years	12,640	\$1,440		\$160
Trademarks	40 years	69,980		\$1,750	
Assembled workforce	8 years	3,220		403	
Patents	8 years	1,400		175	
Minority interest	—	65,195			
Deferred income taxes	—	(36,600)			
Goodwill	40 years	27,249		681	
		<u>\$147,364</u>	<u>\$1,440</u>	<u>\$3,009</u>	<u>\$160</u>
Pro forma effect on Nine Months Ended September 30, 1999			<u>\$1,080</u>	<u>\$2,257</u>	<u>\$120</u>

The pro forma adjustment for the nine months ended September 30, 1999, assumes that the depreciation and amortization are charged to operations ratably over the year.

In deriving the above pro forma adjustments, Sunbeam assumed that the fair values used in connection with the acquisition of the initial 79% interest in Coleman were reasonable approximations of the appropriate fair values to be used in connection with the second half of this step acquisition. Accordingly, the purchase price amounts allocated above to inventories, property, plant and equipment, trademarks, assembled workforce and patents reflect 21% of the fair values used in the acquisition of the initial 79% interest of Coleman.

The pro forma adjustment to deferred income taxes represents the recording in purchase accounting of the deferred income tax effects of the temporary differences which result from the allocation of \$91.5 million of the consideration to tangible and identifiable intangible assets. The deferred income taxes have been established based on an estimated federal, state and foreign income tax rate of approximately 40%.

The pro forma adjustments also reflect:

- additional interest expense of \$7.439 million and \$5.579 million for the year ended December 31, 1998 and nine months ended September 30, 1999, respectively, on the \$87 million portion of the consideration which is expected to be funded from Sunbeam's revolving credit facility at an interest rate of 8.55% (the rate in effect at December 31, 1998). The effect on operations of a 1/8% variance in interest rates on these borrowings would be approximately \$109,000 per year and \$27,000 per quarter.
 - the elimination of the minority interest in the loss on Coleman in the pro forma statement of operations.
- (j) Represents the increase in the weighted average shares of Sunbeam common stock outstanding as of December 31, 1998, adjusted for the 14,099,749 shares issued in connection with the acquisition of Coleman as if it had occurred at the beginning of the period and the approximately 6.7 million shares of Sunbeam common stock to be issued in connection with the acquisition of the remaining Coleman shares outstanding. Since the Coleman acquisition occurred at the end of the first quarter of 1998, the weighted average shares outstanding would have increased on a pro forma basis by one quarter of the 14,099,749 shares issued, or 3,524,937 shares. The shares of common stock issuable upon conversion of the debentures, the MacAndrews & Forbes warrants, and the warrants to be issued in connection with the merger have not been included, as they would be anti-dilutive.
- (k) Represents the increase in the weighted average shares of Sunbeam common stock outstanding as of September 30, 1999, adjusted for the approximately 6.7 million shares of Sunbeam common stock to be issued in connection with the acquisition of the remaining Coleman shares outstanding. The shares of common stock issuable upon conversion of the debentures, the MacAndrews & Forbes warrants, and the warrants to be issued in connection with the merger have not been included, as they would be anti-dilutive.
- (l) In computing the ratio of earnings to fixed charges: (a) earnings represents income (loss) from continuing operations before income taxes and fixed charges, exclusive of capitalized interest; and (b) fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense. For the fiscal year ended December 31, 1998 and the nine months ended September 30, 1999, historical earnings were insufficient to cover fixed charges by \$797.1 million and \$130.1 million, respectively. For the fiscal year ended December 31, 1998 and the nine months ended September 30, 1999, on a pro forma basis, earnings were insufficient to cover fixed charges by \$834.9 million and \$139.1 million, respectively.

SELECTED CONSOLIDATED FINANCIAL INFORMATION OF SUNBEAM

The following selected historical financial information has been derived from the consolidated financial statements and the condensed consolidated financial statements of Sunbeam. This information should be read in conjunction with Sunbeam's consolidated financial statements and related notes, which are included elsewhere in this prospectus.

While reviewing the following selected historical financial information, please note the following:

- All amounts in the table are expressed in millions, except per share and ratio data.
- On March 30, 1998, Sunbeam acquired approximately 81% of the then outstanding shares of common stock of Coleman, which immediately thereafter was reduced to about 79% through exercises of Coleman employee stock options. On April 6, 1998, Sunbeam completed the cash acquisitions of First Alert and Signature Brands. The acquisitions were accounted for under the purchase method of accounting and, accordingly, the financial position and results of operations of each acquired entity are included in the Consolidated Financial Statements from the respective dates of acquisition.
 - For the fiscal year ended December 31, 1998, Sunbeam took an extraordinary charge of \$122.4 million related to the early extinguishments of debt and took other charges of:
 - \$70.0 million related to the issuance of warrants;
 - \$62.5 million related to the write-off of goodwill;
 - \$39.4 million related to fixed asset impairments;
 - \$31 million related to compensation expense for the new employment agreements with Sunbeam's former Chairman and Chief Executive Officer and two other former senior officers; and
 - \$95.8 million related to write-downs of inventory.

See Notes 2, 3 and 11 to Sunbeam's Consolidated Financial Statements.

- For the fiscal year ended December 28, 1997, Sunbeam reversed \$28.0 million of pre-tax liabilities no longer required and \$13.3 million of tax liabilities no longer required.
- For the fiscal year ended December 29, 1996, Sunbeam took restructuring, asset impairment and other charges of \$239.2 million before taxes. See Notes 12 and 13 to Sunbeam's consolidated financial statements included in this prospectus.
- The "earnings (loss) from discontinued operations, net of taxes" and "loss on sale of discontinued operations, net of taxes" represent results from Sunbeam's furniture business, net of taxes and the estimated loss on disposal. See Note 13 to Sunbeam's consolidated financial statements included in this prospectus.
- In computing the ratio of earnings to fixed charges:
 - earnings represent income (loss) from continuing operations before income taxes and fixed charges (exclusive of capitalized interest); and
 - fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense.

For the fiscal year ended December 29, 1996 and the fiscal year ended December 31, 1998, historical earnings were insufficient to cover fixed charges by \$262.2 million and \$797.1 million, respectively. For the nine months ended September 30, 1998 and 1999, historical earnings were insufficient to cover fixed charges by \$476.7 million and \$130.1 million, respectively. For the fiscal year ended December 31, 1998 and for the nine months ended September 30, 1999, on a pro forma basis, earnings were insufficient to cover fixed charges by \$834.9 million and \$139.1 million, respectively.

- At September 30, 1999, total assets include goodwill and other intangible assets of \$1,809.9 million.

	Fiscal Years Ended					Nine Months Ended			
	January 1, 1995	December 31, 1995	December 29, 1996	December 28, 1997	December 31, 1998	December 31, 1998 Pro Forma	September 30, 1998	September 30, 1999	September 30, 1999 Pro Forma
Statement of Operations									
Data:									
Net sales	\$1,044.3	\$1,016.9	\$ 984.2	\$1,073.1	\$1,836.9	\$2,098.7	\$1,322.1	\$1,786.4	\$ 1,786.4
Cost of goods sold	764.4	809.1	896.9	831.0	1,788.8	1,985.0	1,273.4	1,334.2	1,335.3
Selling, general and administrative expenses	128.9	137.5	221.7	152.6	718.1	811.1	440.4	449.2	451.6
Restructuring, and asset impairment charge (benefit)	—	—	110.1	(14.6)	—	—	—	—	—
Operating earnings (loss)	\$ 151.0	\$ 70.3	\$ (244.5)	\$ 104.1	\$ (670.0)	\$ (697.4)	\$ (391.7)	\$ 3.0	\$ (0.5)
Earnings (loss) from continuing operations before extraordinary charge	\$ 85.3	\$ 37.6	\$ (170.2)	\$ 52.3	\$ (775.5)	\$ (824.1)	\$ (475.4)	\$ (155.0)	\$ (150.7)
Earnings (loss) from discontinued operations, net of taxes	21.7	12.9	0.8	—	—	—	—	—	—
Loss on sale of discontinued operations, net of taxes	—	—	(39.1)	(14.0)	—	—	—	—	—
Extraordinary charge	—	—	—	—	(122.4)	—	(111.7)	—	—
Net earnings (loss)	\$ 107.0	\$ 50.5	\$ (208.5)	\$ 38.3	\$ (897.9)	\$ (824.1)	\$ (587.1)	\$ (155.0)	\$ (150.7)
Ratio of earnings to fixed charges	14.4x	4.7x	—	7.2x	—	—	—	—	—
Earnings (Loss) Per Share Data:									
Weighted average shares outstanding:									
Basic	82.6	81.6	82.9	84.9	97.1	107.3	95.9	100.7	107.4
Diluted	82.6	82.8	82.9	87.5	97.1	107.3	95.9	100.7	107.4
Earnings (loss) per share from continuing operations before extraordinary charge:									
Basic	\$ 1.03	\$ 0.46	\$ (2.05)	\$ 0.62	\$ (7.99)	\$ (7.68)	\$ (4.96)	\$ (1.54)	\$ (1.40)
Diluted	1.03	0.45	(2.05)	0.60	(7.99)	(7.68)	(4.96)	(1.54)	(1.40)
Earnings (loss) per share:									
Basic	1.30	0.62	(2.51)	0.45	(9.25)	(7.68)	(6.12)	(1.54)	(1.40)
Diluted	1.30	0.61	(2.51)	0.44	(9.25)	(7.68)	(6.12)	(1.54)	(1.40)
Cash dividends declared per share	0.04	0.04	0.04	0.04	0.02	0.02	—	—	—
Balance Sheet Data (at period end):									
Working capital	\$ 294.8	\$ 411.7	\$ 359.9	\$ 369.1	\$ 488.5	N/A	\$ (666.5)	\$ (946.8)	\$ (1,029.5)
Total assets	1,008.9	1,158.7	1,059.4	1,058.9	3,405.5	N/A	3,503.7	3,318.0	3,436.7
Long-term debt	124.0	161.6	201.1	194.6	2,142.4	N/A	778.8	817.1	817.1
Shareholders' equity	454.7	601.0	415.0	472.1	260.4	N/A	449.6	94.7	155.1

SELECTED CONSOLIDATED FINANCIAL INFORMATION OF COLEMAN

The following selected consolidated historical financial information of Coleman with respect to each year in the five-year period ended December 31, 1998 and for the nine-month periods ended September 30, 1998 and September 30, 1999 is derived from the consolidated financial statements of Coleman. The balance sheet data as of September 30, 1999 and December 31, 1998, 1997, 1996 and 1995 and the statement of operations data for the nine-month periods ended September 30, 1999 and September 30, 1998 and each of the three years in the periods ended December 31, 1998, 1997 and 1996 are included in documents incorporated by reference in this document. The balance sheet data as of September 30, 1998 and December 31, 1994, have been derived from Coleman's consolidated financial statements previously filed with the SEC but not incorporated by reference in this document. The selected consolidated historical financial information should be read in conjunction with the consolidated financial statements and the related notes of Coleman which are incorporated by reference in this document. See "WHERE TO FIND MORE INFORMATION" and "INCORPORATION OF DOCUMENTS BY REFERENCE."

While reviewing the following selected historical financial information, please note the following:

- All amounts are expressed in thousands, except per share data.
- For the fiscal year ended December 31, 1998, Coleman took restructuring and other charges of \$31.6 million before taxes, which have been recorded as follows:
 - \$13.7 million in selling, general and administrative expense
 - \$17.9 million in restructuring charges (credits)
- For the fiscal year ended December 31, 1997, Coleman took restructuring and other charges of \$34.4 million before taxes, which have been recorded as follows:
 - \$8.1 million in cost of sales
 - \$3.6 million in selling, general and administrative expense
 - \$22.7 million in restructuring charges (credits)
- For the fiscal year ended December 31, 1996, Coleman took restructuring and other charges of \$66.2 million before taxes, which have been recorded as follows:
 - \$31.4 million in cost of sales
 - \$4.1 million in selling, general and administrative expense
 - \$30.7 million in restructuring charges (credits)
- The asset impairment charge in 1995 is related to Coleman's Brazilian operations which had not performed to Coleman's expectations since acquisition of this operation in 1994 and reflects charges taken in connection with the adoption of SFAS No. 121.
- Restructuring charges in 1994 reflect primarily the non-recurring charges taken in connection with the restructuring of Coleman's German operations and which include severance costs, commitments to third parties and write-downs of leasehold improvements and other assets to estimated realizable values.

	Year Ended December 31,					Nine Months Ended September 30,	
	1994	1995	1996	1997	1998	1998	1999
Statement of Operations							
Data:							
Net revenues	\$751,580	\$933,574	\$1,220,216	\$1,154,294	\$1,015,373	\$816,230	\$1,017,516
Cost of sales	<u>535,710</u>	<u>649,427</u>	<u>917,947</u>	<u>828,107</u>	<u>748,295</u>	<u>587,232</u>	<u>691,699</u>
Gross profit	215,870	284,147	302,269	326,187	267,078	228,998	325,817
Selling, general and administrative expense	128,466	174,688	271,541	255,785	255,071	192,158	201,705
Asset impairment charge	—	12,289	—	—	—	—	—
Restructuring charges (credits)	18,456	—	30,678	22,722	17,892	16,867	(165)
Interest expense, net	13,374	24,545	38,727	40,852	33,213	26,403	16,406
Amortization of goodwill and deferred charges	6,209	7,745	10,473	11,338	19,584	8,313	7,189
Gain on sale of business	—	—	—	—	(32,411)	(25,098)	—
Other expense (income), net	1,138	334	1,151	1,867	170	33	(2,721)
Earnings (loss) before income taxes, minority interest and extraordinary item	48,227	64,546	(50,301)	(6,377)	(26,441)	10,322	103,403
Income tax expense (benefit)	14,747	24,479	(10,927)	(5,227)	13,846	13,315	39,810
Minority interest	—	—	1,872	1,386	276	332	1,404
Earnings (loss) before extraordinary item	33,480	40,067	(41,246)	(2,536)	(40,563)	(3,325)	62,189
Extraordinary loss on early extinguishment of debt, net of income taxes	(677)	(787)	(647)	—	(17,538)	(17,538)	—
Net earnings (loss)	<u>\$ 32,803</u>	<u>\$ 39,280</u>	<u>\$ (41,893)</u>	<u>\$ (2,536)</u>	<u>\$ (58,101)</u>	<u>\$ (20,863)</u>	<u>\$ 62,189</u>
Basic earnings (loss) per common share	<u>\$ 0.61</u>	<u>\$ 0.74</u>	<u>\$ (0.79)</u>	<u>\$ (0.05)</u>	<u>\$ (1.05)</u>	<u>\$ (0.38)</u>	<u>\$ 1.09</u>
Balance Sheet Data (at end of period):							
Total assets	\$712,265	\$844,487	\$1,160,086	\$1,041,764	\$ 933,257	\$945,476	\$ 997,534
Long-term debt (including current portions)	291,175	355,257	583,613	477,799	365,535	381,318	303,743
Stockholders' equity	253,363	292,342	252,945	240,469	238,615	270,998	320,112

**MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION
AND RESULTS OF OPERATIONS**

The following discussion should be read in conjunction with the accompanying Consolidated and Condensed Consolidated Financial Statements (and related notes), Selected Consolidated Financial Information of Sunbeam and Unaudited Pro Forma Condensed Consolidated Financial Statements appearing elsewhere in this document.

On March 30, 1998, Sunbeam, through a wholly owned subsidiary, acquired approximately 81% of the outstanding shares of common stock of Coleman from a subsidiary of MacAndrews & Forbes in exchange for 14,099,749 shares of Sunbeam's common stock and approximately \$160 million in cash. In addition, Sunbeam assumed approximately \$1,016 million in debt. Immediately afterwards, as a result of the exercise of Coleman employee stock options, Sunbeam's indirect beneficial ownership of Coleman decreased to approximately 79%. Sunbeam's agreement for the acquisition of the remaining publicly held Coleman shares in a merger transaction provides that the remaining Coleman shareholders will receive:

- approximately 6.7 million shares of Sunbeam common stock—0.5677 of a share for each outstanding Coleman share; and
- approximately \$87 million in cash—\$6.44 for each outstanding Coleman share and cash outs of unexercised Coleman employee stock options equal to the difference between \$27.50 per share and the exercise price of the options.

Sunbeam expects to complete the merger in the fourth quarter of 1999 or early in the first quarter of 2000, although there can be no assurance that the merger will occur during that time. See Notes 2 and 15 to Sunbeam's Consolidated Financial Statements and "LITIGATION SETTLEMENT AND WARRANTS" for information regarding the settlement of claims relating to the Coleman acquisition, the terms of which provide for the issuance at the time of the merger of warrants to purchase up to approximately 4.98 million shares of Sunbeam's common stock at \$7 per share.

On April 6, 1998, Sunbeam completed the cash acquisitions of First Alert, a leading manufacturer of smoke and carbon monoxide detectors, and Signature Brands, a leading manufacturer of consumer and professional products. The First Alert and the Signature Brands acquisitions were valued at approximately \$182 million, including \$133 million of cash and \$49 million of assumed debt, and \$255 million, reflecting cash paid, including the required retirement or defeasance of debt, respectively.

The acquisitions were recorded under the purchase method of accounting and accordingly, the financial position and results of operations of each acquired entity are included in the Consolidated Financial Statements from the respective dates of acquisition. The purchase prices of the acquired entities have been allocated to individual assets acquired and liabilities assumed based on estimates of fair values determined by independent appraisals at the dates of acquisition.

Fiscal Year

To standardize the fiscal period ends of Sunbeam and the acquired entities, effective with its 1998 fiscal year, Sunbeam has changed its fiscal year end from the Sunday nearest December 31 to a calendar year. See Note 1 to Sunbeam's Consolidated Financial Statements.

Asset Impairment and Other Charges

Goodwill

When changes in circumstances indicate that the carrying value of goodwill may not be recoverable, Sunbeam estimates future cash flows using the recoverability method—undiscounted future cash flows and including related interest charges—as a basis for recording any impairment loss. An impairment loss is then recorded to adjust the carrying value of goodwill to the recoverable amount. The impairment loss taken is no greater than the amount by which the carrying value of the net assets of the business exceeds its fair value. Due to First Alert's financial performance in 1998 and its prospects for 1999 and beyond, Sunbeam

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determined that the goodwill relating to this acquisition was impaired. Accordingly, based on its determination of fair value, Sunbeam has written off the net carrying value of goodwill of \$62.5 million in the fourth quarter of 1998.

Fixed Asset Impairment and Excess and Obsolete Inventory Reserves

In the second quarter of 1998, Sunbeam decided to outsource or discontinue a substantial number of products—principally breadmakers, toasters and certain other appliances, air and water filtration products, and the elimination of certain stock keeping units ("SKUs") within existing product lines, primarily relating to appliances, grills and grill accessories—previously made by Sunbeam, resulting in some facilities and equipment that will either no longer be used or will be utilized in a significantly different manner. Accordingly, a charge of \$29.6 million was recorded in Cost of Goods Sold to write some of these assets down to their estimated fair market value. Approximately 80% of this charge related to machinery, equipment and tooling at Sunbeam's Mexico City and Hattiesburg, Mississippi manufacturing plants, the estimated fair value for which was derived through an auction process. The remainder of this charge related to tooling and equipment at various other facilities, which either had a nominal value or the fair market value of which was derived through an auction process. These assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. The net carrying value of these assets after the write-down approximated \$2.2 million and these assets are expected to be disposed of by September 30, 1999. Depreciation expense associated with these assets approximated \$2.6 million in 1998, \$4.2 million in 1997 and \$3.5 million in 1996.

Personnel at the Mexico City facility were notified in the second quarter of 1998 that the plant was scheduled for closure at year-end 1998; accordingly, at that time a liability of \$1.8 million was recorded in Cost of Goods Sold primarily for employee severance. The employee severance was related to approximately 1,200 positions of which approximately 1,100 were terminated, and \$1.4 million paid in severance, as of December 31, 1998. Substantially all of the remaining positions were eliminated and severance payments were paid by July 31, 1999. In the third quarter of 1998, Sunbeam recorded in Cost of Goods Sold an additional provision for impairment of fixed assets of \$3.1 million in an acquired entity relating to assets taken out of service for which there was no remaining value. The asset impairment resulted from management's decision, during the third quarter, to discontinue certain SKU's within product lines, principally generators, compressors and propane cylinders. These fixed assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. Depreciation expense associated with these assets approximated \$0.8 million in 1998. In the fourth quarter of 1998, Sunbeam recorded a \$7.1 million charge as a result of management's decision, during the fourth quarter, to outsource the production of some appliances (principally irons). This charge to Cost of Goods Sold primarily consists of a provision for certain tooling and equipment (\$6.7 million) and severance and related benefits (\$0.4 million). This tooling and equipment, which had no remaining value, was written off and depreciation of this equipment was discontinued at the time of the write-down. Depreciation expense associated with these assets approximated \$2.4 million in 1998, \$2.3 million in 1997 and \$0.9 million in 1996. The severance costs related to approximately 45 production employees, none of whom was terminated as of December 31, 1998. It is anticipated that these employees' positions will be eliminated and the severance obligation paid by December 31, 1999.

During 1997 and the first half of 1998, Sunbeam built inventories in anticipation of 1998 sales volumes which did not materialize. As a result, it has been and will continue to be necessary to dispose of some portions of excess inventories at amounts less than cost. Accordingly, during 1998, when it became evident that the anticipated sales volumes would not materialize, Sunbeam recorded \$58.2 million in charges (of which \$46.4 million, \$2.2 million and \$9.6 million, were recorded during the second, third and fourth quarters, respectively) to properly state this inventory at the lower-of-cost-or-market. This inventory primarily related to some appliances, grills and grill accessories. Sunbeam also recorded a charge of \$11.0 million during the second quarter for excess inventories for raw materials and work in process which will not be used due to outsourcing the production of breadmakers, toasters and some other appliances. In addition, during 1998, Sunbeam made the decision to exit some product lines, primarily air and water filtration products, and to eliminate some SKUs within existing product lines, primarily relating to appliances, grills

and grill accessories. As a result of this decision, a \$26.6 million charge was recorded during the second quarter to properly state this inventory at the lower-of-cost-or-market. Total charges for excess inventories recorded at the lower-of-cost-or-market based upon management's best estimate of net realizable value, amounted to approximately \$95.8 million at December 31, 1998. See Note 12 to Sunbeam's Consolidated Financial Statements for asset impairment and other charges recorded in conjunction with a 1996 restructuring plan.

Restatements

On June 30, 1998, Sunbeam announced that the audit committee of its board of directors was initiating a review into the accuracy of Sunbeam's prior financial statements. The audit committee's review has since been completed and, as a result of its findings, Sunbeam has restated its previously issued consolidated financial statements for 1996 and 1997 and the first quarter of 1998. Based upon the review, it was determined that some revenue had been inappropriately recognized, some costs and allowances had not been accrued or were improperly recorded, and some costs were inappropriately included in, and subsequently charged to, restructuring, asset impairment and other costs within the Consolidated Statement of Operations for the years ended December 29, 1996 and December 28, 1997 and the three months ended March 31, 1998. The financial statements for the years ended December 28, 1997 and December 29, 1996 were restated, audited and filed on Form 10-K/A with the SEC on November 9, 1998. The accompanying 1996 and 1997 Consolidated Financial Statements and 1998 Condensed Consolidated Financial Statements of Sunbeam present the restated results.

In connection with the restatements referred to above, Arthur Andersen advised Sunbeam that it believed there were material weaknesses in Sunbeam's internal controls. In order to address these material weaknesses, Sunbeam has increased the number of senior financial personnel and has implemented comprehensive review procedures of operating and financial information. Additionally, as explained in more detail under "Year 2000 Readiness Disclosure" below, Sunbeam is in the process of significantly enhancing its operating systems. Sunbeam anticipates that its systems enhancements will be completed in 1999. See "CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE."

Nine Months Ended September 30, 1999 Compared to Nine Months Ended September 30, 1998

Net sales for the nine months ended September 30, 1999 and 1998 were \$1,786.4 million and \$1,322.1 million respectively, an increase of \$464.3 million. Results for the nine months ended September 30, 1998 include Coleman, Signature Brands and First Alert from their respective acquisition dates. After adjusting 1998 sales to include sales of the acquired companies for the periods from the beginning of 1998 through the respective dates of acquisition, combined historical net sales would be \$1,624.0 million. 1999 net sales increased approximately \$162 million or approximately 10% over 1998 combined historical net sales. Information that adjusts for the results of the acquisitions prior to the actual acquisition dates (the "combined historical" information) is provided for informational purposes only and is to enhance comparability of the period presented. This information is not necessarily indicative of what the combined results would have been had these acquisitions occurred at the beginning of the periods presented or the results for any future period. The increase in net sales is driven by the Outdoor Leisure group which had an increase of approximately \$123 million in 1999 as compared to the combined historical net sales in the same period in the prior year. This increase over combined historical net sales was largely due to sales of outdoor recreation products and Powermate® generators. The higher level of sales of these products is believed to be partially attributable to heightened consumer sensitivity to the need for emergency preparedness. Sunbeam believes that this heightened sensitivity is reflective of a combination of factors, including weather conditions and Year 2000 considerations. Household net sales in 1999 increased approximately \$11 million compared to 1998 combined historical net sales. Sunbeam believes that the decrease in shipments in the prior year in order to allow trade inventories to return to a normal level is primarily responsible for this increase. This factor affects the year to year comparisons for each of the operating groups. Excluding the effect on 1998 of loading, Sunbeam believes that Household net sales in 1999 were approximately the same as in the prior year. Within the Household segment, net sales of personal care products increased as a result of a strengthening retail

environment largely offset by decreases in sales of appliances. International net sales in 1999 increased \$30.3 million over 1998 combined historical net sales. Higher sales in Canada, Europe and Japan resulted predominantly from strong retail demand of Powermate® and outdoor recreation products. This increase was partially offset by the impact of weak economic conditions in Latin America.

Gross margin for the first nine months of 1999 was \$452.3 million or \$403.6 million higher than the comparable period in 1998. During 1998, Sunbeam recorded a number of largely non-recurring charges which affect the comparability of gross margin in the first nine months of 1999 over the same period in the prior year. These charges are summarized below:

- In the second and third quarters of 1998, Sunbeam recorded charges totaling \$86.2 million relating to fixed asset impairments and provisions for excess and obsolete inventory totaling \$32.7 million. These charges, which were recorded in Cost of Goods Sold, are discussed above in the section "Fixed Asset and Excess Obsolete Inventory Reserves."

In addition to the charge taken in 1998, the excess and obsolete inventory referenced above has impacted Sunbeam's operating results in several ways, with two primary effects. First, gross margins have been impacted by sales, at below normal prices, of obsolete inventory into non-traditional channels and excess inventory into traditional channels. In addition, due to the high levels of excess inventory at the end of 1998, Sunbeam's usage of its manufacturing facilities has been lower than normal, resulting in lower fixed cost absorption, which in turn, reduced gross margins in 1999.

- Cost of Goods Sold for the first nine months of 1998 also reflects the non-recurring impact (\$28.1 million) of Sunbeam recording the 1998 acquisitions using the purchase method of accounting. In accordance with this accounting method, inventory pertaining to acquisitions was recorded at fair value. The fair value of the inventory exceeded the book value reflected on the balance sheets of the acquired companies as of the respective acquisition dates. The excess of the fair value of inventory over its pre-acquisition book value was recorded in cost of sales as the inventory was sold.

Adjusting for the combined results of the acquired companies and excluding the effects of 1998 non-recurring items, which are summarized above, gross margin for the first nine months of 1999 increased approximately \$182 million over the 1998 combined historical gross margin. As a percentage of net sales, gross margin improved to approximately 25% in the first nine months of 1999 as compared to approximately 4% in the 1998 period. The gross margin percentage for the 1998 period adjusted for the non-recurring charges and for the effect of the acquired companies was approximately 17% of combined historical net sales. The Household group contributed approximately 30% of the 1999 gross margin improvement over the 1998 combined historical gross margin. The improvement in the Household group's gross margin resulted primarily from lower sales deduction rates, improved manufacturing processes and controls, additional sales volume, and improved product mix. The Outdoor Leisure group contributed approximately 50% of the 1999 gross margin improvement over the 1998 combined historical gross margin. Approximately 80% of the improvement in the Outdoor Leisure group's gross margin resulted from additional volume and related improved manufacturing overhead absorption, as well as improvements in manufacturing. The balance of the increase resulted from improved product mix. The International group contributed approximately 20% of the 1999 gross margin improvement over 1998 combined historical gross margin. Approximately 40% of the improvement in the International group's gross margin resulted from the shut down of the Mexico City manufacturing facility which had experienced high material usage costs and employee benefit costs in the prior year. The remaining improvement resulted from increased sales volume, a lower level of product returns and improved product mix.

SG&A expense for the first nine months of 1999 was \$449.3 million, an increase of \$8.9 million or 2.0% over the same period in the prior year. After adjusting 1998 SG&A expense to include the acquired companies' SG&A expense for the period from the beginning of 1998 through the respective dates of acquisition (\$100.9 million), combined historical SG&A expense was \$541.3 million. Since the combined historical 1998 SG&A expenses were derived by adding the acquired companies' pre-acquisition period costs to the reported nine months' results of Sunbeam, the combined historical SG&A expenses include \$30.4 million of amortization of intangibles expense representing both pre- and post-acquisition periods, as well as approximately \$12 million of transaction costs incurred by the acquired companies relating to them being

purchased by Sunbeam. Excluding these costs and the effects of the following, adjusted 1998 SG&A expenses were approximately \$378 million.

- \$70.0 million recorded in the third quarter of 1998 related to the issuance of a warrant to a subsidiary of MacAndrews & Forbes, as discussed below,
- approximately \$31 million of 1998 compensation expense recorded in connection with the new February 1998 employment agreement with Sunbeam's former Chairman and Chief Executive Officer and two other senior officers of Sunbeam and approximately \$3.8 million of severance for former employees. The new employment agreements provided for, among other items, the acceleration of vesting of restricted stock and the forfeiture of unvested restricted stock that had been granted under the executives' prior employment agreements, new restricted stock grants and options to purchase common shares. In addition, the new employment agreements provided for income tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock. (See Note 8 to the Condensed Consolidated Financial Statements);
- \$10.8 million, \$4.0 million, and \$2.1 million of costs recorded in 1998 related to expenses associated with the restatement efforts (principally representing legal, accounting and auditing costs of \$6.1 million and \$4.7 million, respectively), a corporate office relocation and Year 2000 compliance efforts, respectively.

Excluding amortization of intangibles expense of \$38.4 million for the first nine months of 1999 and \$18.7 million of costs related to Year 2000 compliance efforts, adjusted 1999 SG&A costs were \$392.2 million, an increase of approximately \$14 million over adjusted 1998 SG&A expense. As previously discussed, this increase is primarily attributable to higher levels of selling and administrative costs driven by increased net sales, headcount increases to support future growth and costs associated with certain redundant operations resulting from Sunbeam's 1998 acquisitions which operations Sunbeam is integrating and the decision to bring in-house certain functions that had previously been outsourced. Sunbeam is in the process of fully integrating certain of these functions and expects that when this process has been completed consolidated SG&A expense for these functions will be reduced. Partially offsetting these increases in SG&A expense are certain 1998 expenses which did not reoccur in 1999. These 1998 expenses include increases associated with restructuring reserve at Coleman (approximately \$7 million) and higher bad debt expense (approximately \$5 million).

On August 12, 1998, Sunbeam announced that, following investigation and negotiation conducted by a Special Committee of the Board of Directors consisting of four outside directors not affiliated with M&F, Sunbeam had entered into a settlement agreement with a subsidiary of M&F pursuant to which Sunbeam was released from certain threatened claims of M&F and its subsidiaries arising from the Coleman acquisition and M&F agreed to provide certain management personnel and assistance to Sunbeam in exchange for the issuance to the M&F subsidiary of a warrant expiring August 24, 2003 to purchase up to 23 million shares of the Company's common stock at a cash exercise price of \$7.00 per share, subject to anti-dilution adjustments. Sunbeam concluded that the agreement to issue this warrant did not result in a new measurement date for the purposes of determining the purchase price for Coleman and accounted for the issuance of this warrant in the third quarter of 1998 as a cost of settling a potential claim. Accordingly, a \$70.0 million non-cash SG&A expense was recorded in the third quarter of 1998, based upon a valuation performed as of August 1998 using facts existing at that time. The valuation was conducted by an independent consultant engaged by the special committee of the board of directors.

Operating results for the first nine months of 1999 and 1998, were a profit of \$3.0 million in 1999 and a loss of \$391.7 million in 1998. Adjusted for the historical results of the acquired companies and excluding non-recurring charges, as previously described, operating results for the 1999 and 1998 periods were a profit of \$21.7 million and a loss of \$149.2 million, respectively. This change resulted from the factors discussed above.

Interest expense increased from \$88.5 million in 1998 to \$136.6 million in 1999. Approximately 75% of the change related to higher borrowing levels in 1999 resulting primarily from borrowings for the acquisitions that were outstanding for the entire 1999 nine-month period as compared to only a portion of the 1998

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period. The balance of this increase was primarily driven by the amortization of the loan commitment fee (approximately \$2 million) Sunbeam is obligated to pay under the terms of Sunbeam's bank credit facility and the expense related to liquidated damages payable to debenture holders (approximately \$3 million).

Other income, net of \$4.6 million in 1999 included a gain of approximately \$4 million relating to the sale of the Mexico City facility. This gain was partially offset by losses from other miscellaneous asset sales of approximately \$0.3 million. The remaining other income, net in 1999 resulted from favorable foreign exchange rates, primarily from Sunbeam's operations in Japan. Other income, net of \$4.1 million in 1998 included \$8.0 million from the settlement of a lawsuit partially offset by net foreign exchange losses, primarily from Mexico.

The minority interest reported in 1999 and 1998 relates to the minority interest held in Coleman by public shareholders.

Approximately \$6 million of the \$12.7 million income tax expense recorded in 1999 related to U.S. tax liability generated by Coleman as a separate U.S. tax filing entity. As previously discussed, in July 1999, Sunbeam acquired a sufficient ownership interest in Coleman to permit it to file consolidated U.S. tax returns with Coleman for all future periods. The remaining tax expense recorded in 1999 related to taxes on foreign income and was partially offset by the favorable resolution of an income tax audit. Tax expense recorded in 1998 was nearly all related to foreign taxes. No net tax benefit was recorded on Sunbeam's losses in either year as it is management's assessment that Sunbeam cannot demonstrate that it is more likely than not that deferred tax assets resulting from these losses would be realized through future taxable income.

On July 12, 1999, Sunbeam acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock for an aggregate purchase price of approximately \$31 million. These shares, together with the shares of Coleman common stock Sunbeam owns, enable Sunbeam to exercise 80.01% of the total voting power of Coleman's outstanding capital stock as of July 12, 1999. This class of preferred stock was created by Coleman and acquired by Sunbeam in order to enable Coleman and Sunbeam to file consolidated federal income tax returns, and in certain jurisdictions, consolidated state income tax returns, prior to the consummation of the Coleman merger. In connection with the issuance of the shares of preferred stock, Sunbeam entered into a tax sharing agreement with Coleman, pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had Coleman not been included in the consolidated income tax return of Sunbeam. The net proceeds from the issuance of the shares by Coleman of its voting preferred stock to Sunbeam were used by Coleman to make a partial repayment of loans outstanding from Sunbeam under Coleman's intercompany note. (See Note 8 to the Condensed Consolidated Financial Statements.)

In March 1998, Sunbeam prepaid a \$75.0 million 7.85% industrial revenue bond related to its Hattiesburg facility originally due in 2009. In connection with the early extinguishment of this debt, Sunbeam recognized an extraordinary charge in the first quarter of 1998. As a result of repayment of certain indebtedness assumed in the Coleman acquisition, Sunbeam also recognized an extraordinary charge in the second quarter of 1998. The debt assumed in connection with the Coleman acquisition was repaid as a result of the requirements under the terms of Sunbeam's bank credit facility. These extraordinary charges consisted of redemption premiums (\$106.9 million), unamortized debt discount (\$13.8 million) and unamortized deferred financing costs (\$1.7 million) and were net of income taxes (\$10.7 million).

On November 9, 1999, Sunbeam announced a plan to divest Eastpak and also plans to divest certain non-essential assets. Proceeds from these assets sales are estimated to be \$200 million and will be primarily used to pay down debt.

Year Ended December 31, 1998 Compared to Year Ended December 28, 1997

Results of operations for the year ended December 31, 1998 include the results of Coleman from March 30, 1998 and of Signature Brands and First Alert from April 6, 1998, the respective dates of the acquisitions. The acquired companies generated net sales of \$1,009.0 million from the acquisition dates noted above through December 31, 1998, with corresponding gross margin of \$205.1 million, or 20% of sales.

SG&A costs recorded by the acquired companies were \$329.9 million in the period, yielding an operating loss of \$124.8 million.

For the acquired companies, net sales from the dates of the acquisitions through fiscal year-end were approximately \$152 million lower than the same period in the prior year. This decline was caused by lower net sales at Coleman (\$81.5 million), Signature Brands (\$31.2 million) and First Alert (\$39.2 million). Excluding the effects of Coleman's sale of its safety and security business in March 1998 and the discontinuation of its pressure washer business during 1997, Coleman's 1998 sales would have been approximately \$4 million lower than in 1997. Sunbeam believes that Signature Brands' decline, primarily in its coffee and tea products, resulted largely from lost distribution and insufficient attention to the business during part of 1998. Sunbeam believes that all of the acquired businesses were, to some extent, impacted by the disruption that arose from the integration with Sunbeam and the related management changes, both at the acquired companies and at Sunbeam. First Alert's sales decline related predominantly to increased inventory positions in the domestic channel in 1997 as compared to 1998 with the remaining decrease primarily related to more favorable weather conditions in the fourth quarter of 1997 as compared to the same period in 1998 which affected consumer shopping patterns. Excluding the effects from purchase accounting and the write-off of First Alert's goodwill, as discussed in Note 2 to the Consolidated Financial Statements, operating profit for these three companies declined by approximately \$45 million since the acquisitions in 1998 as compared to the same period in the prior year, resulting primarily from lower net sales. Although there can be no assurance, management anticipates that results from the acquired companies will significantly improve during 1999 due to, among other things, the absence of the factors causing disruption and insufficient focus at these three companies during 1998.

Consolidated net sales for the year ended December 31, 1998 were \$1,836.9 million, an increase of \$763.8 million versus the year ended December 28, 1997. After excluding:

- \$1,009.0 million of sales generated by the acquired companies;
- \$5.5 million of sales in 1998 resulting from the change in fiscal year end, as described in Note 1 to the Consolidated Financial Statements;
- \$12.7 million in 1998 and \$31.3 million in 1997 from sales of excess or discontinued inventory for which the inventory carrying value was substantially equivalent to the sales value;
- \$4.2 million from 1997 sales relating to divested product lines which are not classified as discontinued operations - time and temperature products and Counselor and Borg branded scales; and
- a \$5.4 million benefit in 1997 from the reduction of cooperative advertising accruals no longer required (cooperative advertising costs are recorded as deductions in determining net sales);

net sales on an adjusted basis ("Adjusted Sales") of \$809.7 million in 1998 decreased approximately 22% from Adjusted Sales of \$1,032.2 million in 1997. Product sales were adversely impacted by a number of factors, with the largest being changes in retail inventory levels from channel loading which took place in 1997. Sunbeam believes the year-to-year effect of these inventory reductions amounted to over \$100 million. Additionally, losses in distribution of outdoor cooking products estimated at approximately \$60 million, the estimated effect of price discounting on appliance and grill products of approximately \$14 million, and estimated higher provisions for customer returns and allowances of approximately \$30 million contributed to the lower sales in 1998. The increase in customer returns and allowances resulted from:

- increased returns of approximately \$16 million principally resulting from channel loading and other aggressive sales practices (estimated at approximately \$9 million) which began in the fourth quarter of 1997 and continued in the first quarter of 1998, a blanket recall (\$3.0 million) and the discontinuance of certain product lines (approximately \$4 million) principally air and water products; and
- additional customer allowances of approximately \$14 million primarily to induce sales during the first quarter of 1998.

The remaining sales decline was due in part to exiting some product SKUs.

Domestic Adjusted Sales declined approximately 21% or \$170 million from 1997. Sunbeam believes more than half of the sales decline was due to increased retail inventory levels in 1997 versus decreased inventory positions at customers in 1998. Excluding this effect, sales were still lower than the prior year throughout the business, with the most significant decline occurring in outdoor cooking products sales. During 1997, Sunbeam lost a significant portion of its outdoor cooking products distribution, including the majority of its grill parts and accessories products distribution. The outdoor cooking products sales decline was attributable predominantly to this lost distribution and to price discounting. The majority of the remaining sales decline was due to higher provisions for customer returns and allowances.

International Adjusted Sales, which represented 22% of Adjusted Sales for 1998, decreased approximately 24% compared with the International Adjusted Sales for the same period a year ago. Sunbeam believes this sales decline was primarily attributable to decreasing customer inventory levels as compared with the prior year. Sales were also adversely impacted by a decision to stop selling to some export distributors in Latin America and by poor economic conditions in that region. In addition, lost distribution in Canada contributed to the sales decline from the prior year.

Excluding the effects of:

- the gross margin generated from the inclusion of the acquired companies' operations in the period of \$205.1 million;
- \$0.8 million from the impact of the change in fiscal year-end;
- \$128.4 million in 1998 in charges recorded in the second and fourth quarters related to excess inventory and fixed assets impairments;
- \$15.8 million from the benefit in 1997 from the reversal of reserves no longer required, including \$5.4 million of cooperative advertising accruals; and
- a \$2.8 million benefit recorded in the second quarter of 1997 resulting from capitalizing some manufacturing supplies inventories which were previously expensed;

there was a negative gross margin of \$29.4 million for 1998 versus a gross margin of \$223.5 million for 1997. This reduction in gross margin was principally attributable to the following:

- approximately \$145 million related to lower sales volume and unfavorable manufacturing efficiencies resulting from lower production levels associated with the lower sales volumes and high inventory levels in 1998;
- approximately \$65 million related to lower price realization, higher costs of customer returns and allowances, and adverse sales mix in 1998;
- approximately \$12 million related to higher costs in 1998 associated with warranty, of which \$3.0 million related to a blanket recall, with the remaining increase attributable to increased provisions in response to higher overall warranty expense experiences; and
- approximately \$20 million related to unfavorable inventory adjustments, of which the most significant single factor was physical inventory adjustments in the domestic business.

Adverse product sales mix was due to the loss of a majority of the grill accessory products distribution as accessories generate significantly better margins than the average margins on sales of most of Sunbeam's other products.

Excluding the effects of the following, SG&A expenses were approximately \$254 million in 1998, approximately \$105 million, or 70% higher than in 1997:

- \$329.9 million of SG&A charges in the acquired companies, including the \$62.5 million goodwill write-off related to First Alert;
- \$70.0 million recorded in the third quarter of 1998 related to the issuance of a warrant to a subsidiary of MacAndrews & Forbes, as discussed below;

- \$2.3 million of SG&A expense in 1998 from the change in the fiscal period;
- a \$3.0 million benefit in 1998 and a \$12.1 million benefit in 1997 from the reversal of reserves no longer required. The 1998 benefit consists of a \$3.0 million reversal in the first quarter of 1998 of environmental reserves which are no longer required as a result of a favorable development at a remediation site. The 1997 benefit consists primarily of a \$8.1 million reversal of litigation reserves, established in 1996, which were no longer required in the fourth quarter of 1997 due to a favorable settlement during 1997. The remaining \$4.0 million 1997 benefit consists of reversals of other accruals primarily relating to consulting fees, health insurance and advertising. For further information see Note 17 to the Consolidated Financial Statements;
- approximately \$31 million of 1998 compensation expense recorded in connection with new February 1998 employment agreements with Sunbeam's former Chairman and Chief Executive Officer and two other former senior officers and approximately \$3 million of severance in 1998 for some former employees. The new employment agreements provided for Sunbeam to pay these former employees amounts which reimbursed them for their personal tax liabilities resulting from shares issued in connection with the accelerated vesting of restricted stock granted under their July 1996 agreements (\$6.9 million), as well as on the new unrestricted stock grants under the February 1998 agreements (\$9.8 million). The charge also includes the value, at approximately \$39 per share, of 300,000 restricted shares and 45,000 restricted shares which vested in February 1998 for Sunbeam's then Chairman and Chief Executive Officer and two other then senior officers, respectively (\$13.6 million). In addition, \$0.4 million was expensed during 1998 relating to the amortization of the 1996 restricted stock awards. See Note 8 to Sunbeam's Consolidated Financial Statements for information regarding the terms of these employment agreements;
- \$20.4 million, \$6.1 million and \$4.0 million of costs recorded in 1998 related to costs associated with the restatement efforts, principally representing legal, accounting and auditing, and consulting costs of \$14.1 million, \$5.7 million and \$0.6 million, respectively, Year 2000 compliance efforts and a corporate office relocation, respectively; and
- \$15.8 million of restructuring related charges recorded in 1997, charged to operations as incurred, represent employee relocation and recruiting (\$6.2 million), equipment relocation and installation (\$5.6 million) and package redesign costs (\$4.0 million).

The increase of approximately \$105 million in SG&A expense in 1998 over 1997 is principally due to several factors:

- Corporate administrative costs increased by approximately \$47 million, reflecting additional personnel and related relocation, travel and other costs, as well as increased outside provider fees, telecommunications expense and insurance.
- Higher allowances for accounts receivable in 1998, accounting for approximately \$20 million of the increase, related primarily to collection issues with customers in the United States and in Latin America, including several major customers who have filed and/or threatened bankruptcy.
- Advertising, marketing and selling expenses increased by approximately \$13 million, reflecting a national television campaign for grills and increased activity in market research, package design and sales efforts. Higher inventory levels in 1998 and costs associated with outsourcing small parts fulfillment led to higher distribution and warehousing costs of approximately \$12 million.
- Increased environmental reserves for divested and closed facilities added approximately \$5 million. Approximately half of the environmental reserve increase reflected revisions to estimates of costs to remediate existing sites. These revisions were based on obtaining additional information in the fourth quarter of 1998 about costs of planned remediation actions and costs associated with additional remediation actions. The remaining amount was to provide for revisions to reserves for estimated losses for damages related to environmental sites. These revisions were based on obtaining additional information in the fourth quarter of 1998 regarding the level of damages sought and the costs and probability of defending Sunbeam's position in these actions.

- *Settlement of a patent infringement action resulted in additional expense of approximately \$4 million. Remaining legal expenses recorded in the year of approximately \$1 million for investigation, defense and settlement of both new and previously existing issues were nearly equal to amounts incurred for similar items in 1997. Additionally, as described above, SG&A includes \$14.1 million of legal costs recorded in 1998 associated with the restatement efforts. Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and claims and related anticipated legal fees. The costs are accrued when it is both probable that an asset has been impaired or a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon Sunbeam's assessment, after consultation with counsel, of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the plaintiff, and other significant factors which vary by case. When it is not possible to estimate a specific expected amount of loss to be incurred, Sunbeam evaluates the range of possible losses and records the minimum end of the range. As of December 31, 1998 and December 28, 1997, Sunbeam had established accruals for litigation matters of \$31.2 million (representing \$17.5 million and \$13.7 million for estimated damages or settlement amounts and legal fees, respectively) and \$9.9 million (representing \$3.0 million and \$6.9 million for estimated damages or settlement amounts and legal fees, respectively), respectively. It is anticipated that the \$31.2 million accrual will be paid as follows: \$22.4 million in 1999, \$7.5 million in 2000 and \$1.3 million in 2001. Sunbeam believes, based on information known to it on December 31, 1998, that anticipated probable costs of litigation matters existing as of December 31, 1998 have been adequately reserved to the extent determinable.*

During 1997, Sunbeam determined that the amounts accrued at December 29, 1996 for Restructuring and Asset Impairment Charges recorded in fiscal 1996 exceeded amounts ultimately required. Accordingly, the 1997 Consolidated Statement of Operations reflects the reversal of accruals no longer required, resulting in a Restructuring and Asset Impairment Benefit of \$14.6 million. This reversal was reflected in the third (\$5.8 million) and fourth (\$8.8 million) quarters of 1997 when it became evident that such accruals were no longer required.

On August 12, 1998, Sunbeam announced that, following investigation and negotiation conducted by a special committee of the board of directors consisting of four outside directors not affiliated with MacAndrews & Forbes, Sunbeam had entered into a settlement agreement with a subsidiary of MacAndrews & Forbes, pursuant to which Sunbeam was released from certain threatened claims of MacAndrews & Forbes and its affiliates arising from the Coleman acquisition and MacAndrews & Forbes agreed to provide certain management personnel and assistance to Sunbeam in exchange for the issuance to the MacAndrews & Forbes subsidiary a warrant expiring August 24, 2003 to purchase up to 23 million shares of Sunbeam's common stock at a cash exercise price of \$7.00 per share, subject to antidilution adjustments. Sunbeam concluded that the agreement to issue this warrant did not result in a new measurement date for the purposes of determining the purchase price for Coleman and has accounted for the issuance of this warrant as a cost of settling a potential claim. Accordingly, a \$70.0 million non-cash SG&A expense was recorded in the third quarter of 1998, based on a valuation performed as of August 1998 using facts existing at that time. The valuation was conducted by an independent consultant engaged by the special committee of the board of directors.

Operating results for 1998 and 1997, on an adjusted basis as described above, were a loss of approximately \$283 million in 1998 and a profit of approximately \$74 million in 1997. This change resulted from the factors discussed above.

Interest expense increased from \$11.4 million for the twelve months of 1997 to \$131.1 million for the same period in 1998. Approximately 70% of the change related to higher borrowing levels in 1998 for the acquisitions, with the remainder due to increased borrowings to fund working capital, capital expenditures and the operating losses.

Other income, net increased in 1998 by \$4.8 million due to approximately \$8 million from the settlement of a lawsuit, and approximately \$4 million of increased net gains from foreign exchange in the period. The foreign exchange net gains were primarily from Mexico. Increased losses on sales of fixed assets

of approximately \$5 million and increased expenses related to the bank credit facility partially offset the above mentioned income. The increased credit facility expenses largely related to unused facility fees.

The minority interest reported in 1998 relates to the minority interest held in Coleman by minority stockholders.

During 1998, the current tax provision arose largely from taxes on the earnings of foreign subsidiaries as well as franchise taxes. Deferred tax benefits were recognized in 1998 principally due to net operating losses incurred subsequent to the acquisitions. These benefits were realized through the use of deferred tax credits that were established in connection with the acquisitions to the extent that such credits are expected to be realized in the loss carryforward period. Throughout 1998, Sunbeam increased the income tax valuation allowance on deferred tax assets to \$290.5 million. This increase reflects management's assessment that it is more likely than not that these deferred tax assets will not be realized through future taxable income. This assessment, which was initially made in the fourth quarter of 1997, resulted from the significant leverage undertaken by Sunbeam in connection with its acquisitions and the continuing decline in Sunbeam's net sales and earnings, as well as the operating losses incurred throughout the 1998 year. The 1997 effective tax rate was higher than the federal statutory income tax rate primarily due to state taxes, the effects of foreign earnings and dividends taxed at other rates and the impact of providing a valuation allowance on deferred tax assets.

In 1998, Sunbeam prepaid debt assumed in the acquisitions and prepaid an industrial revenue bond related to its Hartiesburg facility. The debt assumed in connection with the Coleman acquisition was repaid as a result of the requirements under the terms of Sunbeam's new credit facility. In connection with these early extinguishments of debt, Sunbeam recognized an extraordinary charge of \$122.4 million, consisting of redemption premiums (\$106.9 million), unamortized debt discount (\$13.8 million) and unamortized deferred financing costs (\$1.7 million).

Sunbeam's discontinued furniture business, which was sold in March 1997, had revenues of \$51.6 million in the first quarter of 1997 prior to the sale and nominal earnings for that period. As a result of the sale of Sunbeam's furniture business assets (primarily inventory, property, plant and equipment), Sunbeam received \$69.0 million in cash, retained approximately \$50 million in accounts receivable and retained some liabilities. The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the sale agreement and in the first quarter of 1997, after completion of the sale, Sunbeam recorded an additional loss on disposal of \$14.0 million net of applicable income tax benefits of \$8.5 million.

Year Ended December 28, 1997 Compared to Year Ended December 29, 1996

1996 Restructuring Plan and Other Charges and Benefits

In November 1996, Sunbeam announced the details of a restructuring plan. The plan included:

- the consolidation of administrative functions;
- the reduction of manufacturing and warehouse facilities;
- the centralization of Sunbeam's procurement function;
- the reduction of Sunbeam's product offerings and SKUs; and
- the elimination of some businesses and product lines.

As part of the restructuring plan, Sunbeam consolidated six divisional and regional headquarters functions into a single worldwide corporate headquarters and outsourced some back office activities resulting in a reduction in total back-office/administrative headcount. Overall, the restructuring plan called for a reduction in the number of production facilities from 26 to 8 and the elimination of over 6,000 positions from Sunbeam's workforce, including 3,300 from the disposition of some business operations and the elimination of approximately 2,800 other positions, some of which were outsourced. Sunbeam completed the major phases of the restructuring plan by July 1997.

The 1996 restructuring plan was unable to improve earnings over the long term for a number of reasons, including, but not limited to, its failure to realize some of the anticipated costs savings and the negative impact that implementation of the restructuring plan had on sales, product quality, customer service, research and development and the introduction of new products. Sunbeam's current strategy is to create innovative new products that anticipate consumer needs, develop effective marketing and advertising programs, build relationships, create the right culture and choose the right people.

In conjunction with the implementation of the restructuring plan, Sunbeam recorded a pre-tax charge of \$239.2 million in the fourth quarter of 1996. This amount is recorded as follows in the Consolidated Statements of Operations:

- \$110.1 million recorded in Restructuring and Asset Impairment Charges, as further described below;
- \$60.8 million in Cost of Goods Sold related principally to inventory write-downs to net realizable value as a result of a reduction in SKUs and costs of inventory liquidation programs;
- \$10.1 million in SG&A expense, for period costs, which were charged to operations as incurred, principally relating to employee relocation and recruiting, equipment relocation and installation (\$3.2 million), transitional fees relating to outsourcing arrangements (\$4.9 million) and package redesign costs (\$2.0 million); and
- \$58.2 million (\$39.1 million net of taxes) in Loss on Sale of Discontinued Operations related to the divestiture of its furniture business.

In 1997, upon completion of the sale of the furniture business, Sunbeam recorded an additional pre-tax loss of \$22.5 million from discontinued operations (\$14.0 million net of taxes) due primarily to lower than anticipated sales proceeds relating to the post closing adjustment that was part of the sale agreement.

Amounts included in Restructuring and Asset Impairment Charges in 1996 in the accompanying Consolidated Statements of Operations included anticipated cash charges such as severance and other employee costs of \$24.7 million, lease obligations of \$12.6 million and other exit costs associated with facility closures and related to the implementation of the restructuring plan of \$4.1 million, principally representing costs related to clean-up and restoration of owned and leased facilities for either sale or return to the landlord.

Included in Restructuring and Asset Impairment Charges of \$110.1 million in 1996 was \$68.7 million of non-cash charges principally consisting of:

- asset write-downs to net realizable value of \$22.5 million for disposals of excess facilities and equipment and product lines;
- write-offs of redundant computer systems of \$12.3 million from the administrative back-office consolidations and outsourcing initiatives;
- write-off of intangibles of \$10.1 million relating to discontinued product lines;
- write-off of capitalized product and package design costs and other expenses of \$9.0 million related to exited product lines and SKU reductions. Prior to 1996, Sunbeam had capitalized certain costs related to international product development and package design, which were amortized over the period of related benefit. The product development costs (\$1.9 million) related to international operations and represented the costs necessary to modify products for introduction to the international markets. As the restructuring plan included the closure of the International Group office and elimination of a number of products to which these costs pertained, the related capitalized costs were written off. Additionally, in connection with the restructuring plan, as a result of the elimination of many products and SKUs, Sunbeam updated its package designs. Accordingly, the unamortized balance of the capitalized package design costs which had been capitalized prior to 1996 (\$5.0 million) was written off. Sunbeam discontinued incurring costs of a significant nature relating to these items and consequently has discontinued capitalizing such costs subsequent to 1995; and
- asset write-downs of \$14.8 million related to the divestiture of some non-core products and businesses.

The asset write-downs of \$22.5 million and write-offs of \$12.3 million discussed above included equipment taken out of service in 1996 (either abandoned in 1996 or sold in 1997) and, accordingly, depreciation was not recorded subsequent to the date of the impairment charge. The asset write-downs of \$14.8 million related to the divestiture of non-core products and businesses resulted from divesting the time and temperature business in March 1997 and Counselor and Borg scale product lines in May 1997 and the sale of the textile mill in Biddeford, Maine in May 1997. These charges primarily represented the estimated non-cash losses resulting from the sale or abandonment of facilities and equipment, based on the estimated net proceeds from the sale of these assets compared to their recorded net book value, related to exiting these product lines.

The \$24.7 million for severance and other employee costs, including COBRA and other fringe benefits, related to approximately 3,700 positions that were planned to be eliminated as a result of the restructuring plan, excluding approximately 2,400 employees terminated from the furniture business for which severance was included in Loss on Sale of Discontinued Operations. See Note 13 to Sunbeam's Consolidated Financial Statements. The furniture business was sold in 1997. In 1996 and 1997, approximately 1,200 employees and 1,800 employees, respectively, were terminated from continuing operations. Due largely to attrition, the remaining planned terminations were not required. In 1997, Sunbeam determined that its severance and employee benefit costs were less than originally accrued principally due to lower than expected COBRA and workers compensation costs and, accordingly, reversed accruals of \$7.9 million in the third (\$2.1 million) and fourth (\$5.8 million) quarters. At December 31, 1997, the balance accrued of \$1.2 million represented the remaining severance and employee benefit costs for some employees terminated during 1997. During 1998, all amounts were expended.

The amounts accrued at December 29, 1996 for Restructuring and Asset Impairment Charges recorded in fiscal 1996, exceeded amounts ultimately required principally due to reductions in anticipated severance and employee benefit costs of \$7.9 million, as discussed above, and reductions in estimated lease payments of \$6.7 million (\$3.7 million and \$3.0 million recognized in the third and fourth quarters, respectively) resulting from better than anticipated rentals received under sub-leases and favorable negotiation of lease terminations. Accordingly, the fiscal 1997 Consolidated Statement of Operations included \$14.6 million of benefit (\$5.8 million in the third quarter and \$8.8 million in the fourth quarter of 1997) related to the reversal of accruals no longer required, which were recorded as these reduced obligations became known.

In 1996, in conjunction with the initiation of the restructuring plan, Sunbeam recorded additional charges totaling \$129.1 million, reflected in Cost of Goods Sold, SG&A expense, and Loss on Sale of Discontinued Operations. The charge included in Cost of Goods Sold of \$60.8 million principally represented inventory write-downs to net realizable value and anticipated losses on the disposition of the inventory as a result of the significant reduction in SKUs provided for in the restructuring plan. The write-down to net realizable value, based upon management's best estimates, included \$26.9 million related to raw materials, work-in process and finished goods for discontinued outdoor cooking products, principally grills and grill accessories and the balance related to raw materials, work-in process and finished goods for other discontinued products including appliances (\$27.8 million), clippers (\$1.0 million) and blankets (\$5.1 million). For inventory which management determined was saleable, the estimated write-down was based upon the difference between the expected net sales proceeds of the inventory, depending upon distribution channel, and the recorded value of the inventory. In the case of abandoned inventory, the write-down was equal to the recorded value of the inventory. The resulting difference between carrying value and estimated net realizable value represented the \$60.8 million write-down necessary to record the inventory at its net realizable value. SG&A expense included period costs, charged to operations as incurred, in 1997 and 1996 of \$15.8 million and \$10.1 million, respectively, relating to employee relocation and recruiting and equipment installation and relocation (\$11.8 million in 1997 and \$3.2 million in 1996) transitional fees relating to outsourcing arrangements (\$4.9 million in 1996), and package redesign costs (\$4.0 million in 1997 and \$2.0 million in 1996) expended as a result of the implementation of the restructuring plan. The 1996 Loss on Sale of Discontinued Operations related to the divestiture of Sunbeam's furniture business. In 1996, Sunbeam decided to divest its furniture operations and recorded an estimated pre-tax loss of \$58.2 million related to the sale of assets, primarily fixed assets and inventory. In 1997, Sunbeam recorded an additional pre-tax loss of \$22.5 million due primarily to lower than anticipated sales proceeds resulting from the post closing

adjustment as provided for in the sale agreement. See Notes 12 and 13 to Sunbeam's Consolidated Financial Statements.

At December 28, 1997, Sunbeam had \$5.2 million in liabilities accrued related to the 1996 restructuring plan, including \$1.2 million of severance related costs and \$4.0 million related to facility closures, which principally represented future lease payments, net of sub-leases, on exited facilities. During 1998, this liability was reduced by \$4.0 million as a result of cash expenditures. At December 28, 1997, Sunbeam had \$3.0 million of warranty liabilities related to the discontinued furniture operations. During 1998, \$2.5 million of this liability was liquidated.

The charges and benefit described above are included in the following categories in the 1997 and 1996 Consolidated Statements of Operations (in millions):

	<u>1997</u>	<u>1996</u>
Restructuring and impairment (benefit) charge	\$(14.6)	\$110.1
Cost of goods sold	—	60.8
Selling, general and administrative expense	15.8	10.1
Loss on sale of discontinued operations	22.5	58.2
	<u>\$ 23.7</u>	<u>\$239.2</u>

These charges and benefit consisted of the following (in millions):

	<u>1997</u>	<u>1996</u>
Write-downs:		
Fixed assets held for disposal, not in use	\$ —	\$ 34.8
Fixed assets held for disposal, used until disposed	—	14.8
Inventory on hand	—	60.8
Other assets, principally trademarks and intangible assets	—	19.1
	<u>—</u>	<u>129.5</u>
Restructuring accruals (including amounts expended in 1996):		
Employee severance pay and fringes	(7.9)	24.7
Lease payments and termination fees	(6.7)	12.6
Other exit activity costs, principally facility closure expenses	—	4.1
	<u>(14.6)</u>	<u>41.4</u>
Other related period costs, charged to operations as incurred:		
Employee relocation; equipment relocation and installation and other	11.8	3.2
Transitional fees related to outsourcing arrangements	—	4.9
Package redesign	4.0	2.0
	<u>15.8</u>	<u>10.1</u>
Charges included in continuing operations	1.2	181.0
Loss on sale of discontinued operations	22.5	58.2
	<u>\$ 23.7</u>	<u>\$239.2</u>

At December 29, 1996, the net realizable value of the remaining inventory written-down as part of the restructuring and asset impairment charges was approximately \$37.3 million. During 1997, this inventory, a portion of which was product of discontinued operations, was sold for amounts substantially equivalent to its net carrying value.

As further discussed in Note 15 to the Consolidated Financial Statements, during the fourth quarter of 1996, Sunbeam charged SG&A for increases of \$9.0 million in environmental reserves and \$12.0 million in litigation reserves. In the fourth quarter of 1996, Sunbeam performed a comprehensive review of all environmental exposures in an attempt by the then new senior management team to accelerate the resolution and settlement of environmental claims. As a result, upon the conclusion of the review, Sunbeam recorded additional environmental reserves of \$9.0 million in the fourth quarter of 1996. The litigation charge of \$12.0 million was recorded due to an unfavorable court ruling in January 1997, which held that Sunbeam

was liable for environmental remediation costs related to the operations of a successor company. As a result of this ruling, Sunbeam provided for this liability in the fourth quarter of 1996. In the fourth quarter of 1997, this case was settled and, as a result, \$8.1 million of the charge was reversed into income, primarily in the fourth quarter of 1997.

As described in Note 8 to the Consolidated Financial Statements, Sunbeam also charged \$7.7 million to SG&A expenses in 1996 for compensation costs associated with restricted stock awards and other costs related to the employment of the then new senior management team.

During the first, second, third and fourth quarters of 1997, approximately \$0.5 million, \$4.5 million, \$1.5 million and \$21.5 million, respectively, of pre-tax liabilities provided in prior years and determined to be no longer required were reversed and taken into income. These amounts were primarily related to:

- the litigation reserve of \$8.1 million discussed above, resulting in a reduction in SG&A expenses;
- inventory valuation allowances of \$7.0 million, resulting in a reduction in Costs of Goods Sold;
- cooperative advertising allowances of \$5.4 million, resulting in an increase in net sales;
- liabilities for exiting of facilities and plant consolidations provided for prior to 1996 of \$3.5 million, resulting in a decrease in Cost of Goods Sold; and
- consulting fee accruals of \$1.3 million, which resulted in a decrease in SG&A expenses.

These liabilities were provided for by Sunbeam, principally in 1996, based upon its best available estimate at the time of the probable liabilities. When information became available that the amounts provided were in excess of what was required, Sunbeam reduced the applicable reserves and recorded increases in Net Sales of \$5.4 million, reductions in Cost of Goods Sold of \$10.5 million and reductions in SG&A expenses of \$12.1 million.

Additionally, effective in the second quarter of fiscal 1997, Sunbeam changed its method of accounting to capitalize manufacturing supplies inventories, whereas, previously these inventories were charged to operations when purchased. This change reduced Cost of Goods Sold in fiscal 1997 by \$2.8 million.

Results of Operations for 1997 Compared to 1996

Net sales for 1997 were \$1,073.1 million, an increase of \$88.9 million or 9% over 1996. After excluding the following, Adjusted Sales increased 8% over the prior year to \$1,032.2 million from \$953.4 million in 1996:

- \$4.2 million and \$30.8 million in 1997 and 1996, respectively, related to divested product lines which were not classified as discontinued operations (time and temperature products, decorative bedding and Counselor and Borg branded scales);
- \$31.3 million of sales in 1997 of discontinued inventory which resulted primarily from the reduction of SKUs as part of the 1996 restructuring plan and for which the inventory carrying value was substantially equivalent to the sales value; and
- a \$5.4 million benefit from the reduction of cooperative advertising accruals no longer required in 1997.

Adjusted Sales, on a worldwide basis, increased during 1997 primarily from new product introductions, expanded distribution, particularly with Sunbeam's top ten customers, international geographic expansion and increased inventory positions at some customers. Adjusted Sales growth was approximately 19% for appliances and approximately 12% in outdoor cooking. Adjusted Sales for health products increased approximately 5% while Adjusted Sales of personal care products and blankets decreased approximately 13% during 1997.

Sales increases in appliances of approximately \$69 million were driven by new products, such as redesigned blenders and mixers, coffeemakers, irons, deep fryers and toasters, and by increased distribution with large national mass retailers, combined with higher inventory levels at some customers. Sales of outdoor

cooking products increased approximately \$30 million in 1997 attributed to increased merchandising and advertising programs, new distribution and higher inventory levels at some customers. During 1997, Sunbeam lost a significant portion of its outdoor cooking products distribution, including the majority of its grill accessory products distribution. Accessories, which accounted for just over 10% of the outdoor cooking sales volume in 1997, generate significantly better margins than the average margins on sales of grills. These distribution changes are expected to adversely impact outdoor cooking sales and margins in the future, until such time as the distribution is regained.

Sales of personal care products and blankets suffered during the fourth quarter of 1997 as a result of lower than expected retail sell through of electric blankets in key northern markets in late 1997 coupled with the inability to service demand for king and queen sized blankets due to shortages of blanket shells. Sunbeam shifted to a more level production for blankets in 1998 in order to more adequately service the seasonal demand for bedding products. Sales of health products as well as personal care and bedding products were impacted by increased inventory positions at customers in 1997.

International sales, which represented 21% of total revenues in 1997, grew 25% during the year. This sales growth was driven primarily by 54 new 220 volt product introductions and a general improvement in demand in export operations and in Mexico. Net sales growth of approximately 35% was achieved in the Latin American export sales organization. Most of this growth came from increased business with three exporters. In Mexico and Venezuela, sales grew 30% and 24%, respectively. Canada accounted for the majority of the remaining international sales growth.

Excluding the effects of:

- charges of \$60.8 million to Cost of Goods Sold related to the restructuring plan in 1996;
- the \$15.9 million benefit of reducing reserves no longer required in 1997; and
- the \$2.8 million benefit in 1997 of capitalizing manufacturing supplies inventories;

gross margin as a percent of Adjusted Sales would have been approximately 22% in 1997, an improvement of approximately 6 percentage points from 16% in 1996. This increase reflects the results of lower overhead spending, improved factory utilization and labor cost benefits resulting from Sunbeam's restructuring plan, coupled with reductions in materials costs. The lower overhead spending resulted from a reduction in the number of facilities operated by Sunbeam. With fewer facilities used for production purposes, the capacity of the remaining plants was more fully utilized. The labor cost benefits were realized principally from shifting production to Mexico. In addition, a broad based program to obtain lower costs for materials contributed to the 1997 margin improvement.

Excluding the impact of:

- the restructuring and asset impairment period costs to SG&A expense of \$15.8 million in 1997 and \$10.1 million in 1996;
- the 1996 charges for the environmental accrual of \$9.0 million, litigation accrual of \$12.0 million and restricted stock grant compensation of \$7.7 million; and
- the 1997 benefit from the reversal of reserves no longer required of \$12.1 million;

SG&A improved to 14% of Adjusted Sales in 1997, down 5 percentage points from 19% in 1996. This improvement was partially the result of benefits from the consolidation of six divisional and regional headquarters into one corporate headquarters and one administrative operations center, reduced staffing levels, a reduction in the number of warehouses, and Company-wide cost control initiatives. Higher expenditures in 1996 for market research, new packaging and other discretionary charges and higher bad debt expenses associated with some of Sunbeam's customers also contributed to the decrease in SG&A expense from 1996 to 1997. The expense for doubtful accounts and cash discounts was \$17.3 million in 1997 as compared to \$27.1 million in 1996. The principal factor in the decrease in bad debt expenses during this period was the acceleration of the consolidation of the U.S. retail industry and the related competitive environment, which resulted in a number of troubled retailers and related bankruptcies during 1996. This resulted in the significant amount of bad debt write-offs—\$19.9 million—in 1996.

The restructuring accrual, which existed at January 1, 1996 (\$13.8 million), was initially established as part of a "rightsizing program" during fiscal 1992. During 1996, approximately \$3 million of this accrual was utilized and the remaining \$10.8 million became part of the reserve requirements of the 1996 restructuring plan. In effect, in 1996, Sunbeam reversed the \$10.8 million prior year accrual determined to be no longer required and provided a corresponding amount in connection with the 1996 restructuring charge.

Operating results for 1997 and 1996, on a comparable basis as described above, were earnings of \$74.5 million in 1997 and a loss of \$34.8 million in 1996. On the same basis, operating margin increased 11 percentage points to 7% of Adjusted Sales in 1997 versus a loss of 4% in 1996. This improvement resulted from the factors discussed above.

Interest expense decreased from \$13.6 million in 1996 to \$11.4 million in 1997 primarily as a result of lower average borrowing levels in 1997.

The 1997 effective income tax rate for continuing operations was higher than the federal statutory income tax rate primarily due to state taxes plus the effect of foreign earnings and dividends taxed at other rates and the increase to the valuation reserve for deferred tax assets, offset in part by the reversal of tax liabilities no longer required. During the fourth quarter of 1997, approximately \$13.3 million of tax liabilities related to the 1993 and 1994 tax years were determined to be no longer required and were reversed and taken into income. These accruals were no longer required because during the fourth quarter of 1997 Sunbeam reached a resolution with the Internal Revenue Service on its audits of the 1993 and 1994 tax years. Additionally, in the fourth quarter of 1997, Sunbeam increased the valuation allowance by \$23.2 million reflecting management's assessment that it was more likely than not that the deferred tax asset will not be realized through future taxable income. Of this amount, \$18.9 million related to deferred tax assets, the majority of which was recognized as a benefit in the first three quarters of 1997. The remainder related to minimum pension liabilities and was therefore recorded as an adjustment to shareholders' equity. This assessment was made as a result of the significant leverage incurred by Sunbeam to finance the acquisitions and the significant decline in net sales and earnings from anticipated levels during the fourth quarter of 1997 and the first quarter of 1998. For 1996, the effective income tax rate for continuing operations equaled the federal statutory income tax rate.

Sunbeam's diluted earnings per share from continuing operations was \$0.60 per share in 1997 versus a loss per share from continuing operations in 1996 of \$2.05. Sunbeam's share base utilized in the diluted earnings per share calculation increased approximately 6% during 1997 as a result of an increase in the number of shares of common stock outstanding due to the exercise of stock options in 1997 and the inclusion of common stock equivalents in the 1997 calculation.

Sunbeam's discontinued furniture business, which was sold in March 1997, had revenues of \$51.6 million in the first quarter of 1997 prior to the sale and nominal earnings. In 1996, the discontinued furniture business had net income of \$0.8 million on revenues of \$227.5 million and an estimated loss on disposal of the business of \$39.1 million, net of applicable income tax benefits. The sale of Sunbeam's furniture business assets—primarily inventory, property, plant and equipment—was completed in March 1997. Sunbeam received \$69.0 million in cash, retained approximately \$50.0 million in accounts receivable and retained some liabilities related to the furniture business. The final purchase price for the furniture business was subject to a post-closing adjustment under the terms of the sale agreement, and in the first quarter of 1997, after completion of the sale, Sunbeam recorded an additional pre-tax loss on disposal of \$22.5 million. Although the discontinued furniture business was profitable, net income had declined from \$21.7 million in 1994 to \$0.8 million in 1996. This decline, along with Sunbeam's announcement that it intended to divest this line of business contributed to the loss on the sale. See discussion of restructuring and asset impairment (benefit) charges in Note 12 and discontinued operations in Note 13 to the Consolidated Financial Statements for further information regarding sale of the furniture business.

Summary of (Loss) Earnings from Continuing Operations

A reconciliation of operating (loss) earnings to adjusted (loss) earnings from continuing operations for 1998, 1997 and 1996, on a comparable basis follows (in millions):

	1998	1997	1996
Operating (loss) earnings, as reported	\$(670.0)	\$104.1	\$(244.5)
Add (deduct):			
Loss from acquisitions	124.8	—	—
Issuance of warrants to MacAndrews & Forbes subsidiary	70.0	—	—
Restructuring, asset impairment and other related charges	—	1.2	181.0
Fixed asset and inventory charges	128.4	—	—
Environmental reserve increase principally related to divested operations	—	—	9.0
Litigation reserve increase relating to divested operation	—	—	12.0
Restricted stock and other management compensation/severance	34.4	—	7.7
Reversals of accruals no longer required	(3.0)	(28.0)	—
Capitalization of manufacturing supplies inventories	—	(2.8)	—
Restatement related expenses	20.4	—	—
Year 2000 and systems initiatives expenses	6.1	—	—
Change in fiscal year-end effect and office relocation expense	5.5	—	—
Adjusted operating (loss) earnings from continuing operations before income taxes, minority interest and extraordinary charge	(283.4)	74.5	(34.8)
Interest expense	131.1	11.4	13.6
Other (income) expense, net	(4.8)	—	3.7
Adjusted (loss) earnings from continuing operations before income taxes and minority interest	(409.7)	63.1	(52.1)
Adjusted income tax (benefit) expense	(10.1)	56.3	(18.2)
Minority interest	(10.7)	—	—
Adjusted (loss) earnings from continuing operations	<u>\$(388.9)</u>	<u>\$ 6.8</u>	<u>\$(33.9)</u>

After consideration of the adjustments above, 1998 and 1996 results from continuing operations reflect losses and 1997 continuing operations are marginally profitable. Due to a variety of factors, including increased inventory positions at some customers and manufacturing and sourcing activities during 1997 and the first half of 1998 which increased Sunbeam's inventory position, the results for each of 1998 and 1997 are not indicative of future results. Results for 1999 are expected to be impacted by the continuing effects of Sunbeam's excess inventory position, as well as costs related to Year 2000 compliance efforts.

Foreign Operations

Approximately 75% of Sunbeam's business is conducted in U.S. dollars, including domestic sales, U.S. dollar denominated export sales, primarily to Latin American markets; Asian sales and the majority of European sales. Sunbeam's non-U.S. dollar denominated sales are made principally by subsidiaries in Europe, Canada, Japan, Latin America and Mexico. Mexico reverted to a hyperinflationary status for accounting purposes in 1997; therefore, translation adjustments related to Mexican net monetary assets are included as a component of net (loss) earnings. Mexico is no longer considered hyperinflationary as of January 1, 1999. This change in Mexico's hyperinflationary status is not expected to have a material effect on Sunbeam's financial results. Translation adjustments resulting from Sunbeam's non-U.S. denominated subsidiaries have not had a material impact on Sunbeam's financial condition, results of operations or cash flows.

While revenues generated in Asia have traditionally not been significant, economic instability in this region is expected to have a negative effect on earnings. Economic instability and the political environment in Latin America have also affected sales in that region. It is anticipated that sales in and exports to these regions will continue to decline so long as the economic environments in those regions remain unsettled.

On a limited basis, Sunbeam selectively uses derivatives—foreign exchange option and forward contracts—to manage foreign exchange exposures that arise in the normal course of business. No derivative contracts are entered into for trading or speculative purposes. The use of derivatives has not had a material impact on Sunbeam's financial results. See Note 4 to the Consolidated Financial Statements.

Exposure to Market Risk

Qualitative Information

Sunbeam uses a variety of derivative financial instruments to manage its foreign currency and interest rate exposures. Sunbeam does not speculate on interest rates or foreign currency rates. Instead, it uses derivatives when implementing its risk management strategies to reduce the possible effects of these exposures.

With respect to foreign currency exposures, Sunbeam is most vulnerable to changes in rates between the United States dollar/Japanese yen, Canadian dollar, German deutschemark, Mexican peso and Venezuelan bolivar exchange rates. Sunbeam principally uses forward and option contracts to reduce risks arising from firm commitments, intercompany sales transactions and intercompany receivable and payable balances. Sunbeam generally uses interest rate swaps to fix some of its variable rate debt. Sunbeam manages credit risk related to these derivative contracts through credit approvals, exposure limits and threshold amounts and other monitoring procedures.

Quantitative Information

Below are tables of information related to Sunbeam's investments in market risk sensitive instruments. All of the instruments in the following tables have been entered into by Sunbeam for purposes other than trading purposes.

Interest Rate Sensitivity. The table below provides information about Sunbeam's derivative financial instruments and other financial instruments that are sensitive to changes in interest rates, including interest rate swaps and debt obligations.

For debt obligations, the table presents principal cash flows by expected maturity date and related (weighted) December 31, 1998 average interest rates. Included in the debt position are the debentures, which carry no intervening cash flows but mature in 2018. For interest rate swaps, the table presents notional amounts and weighted average interest rates for the contracts at the current time. Notional amounts are used to calculate the contractual payments to be exchanged under the contracts.

	December 31, 1998	Expected Maturity Date					Total	Fair Value(1)
		1999	2000	2001	2002	2003			Thereafter
(US\$ Equivalent in Millions)								
Domestic Liabilities								
Debentures(2)	\$ 779	\$—	\$ —	\$ —	\$ —	\$ —	\$2,014	\$ 240
Other	80	71	1	1	1	1	5	80
Total fixed rate debt (US\$)	859	71	1	1	1	1	2,019	319
Average interest rate	5.64%							
Variable rate debt: US\$....	\$1,357	\$ 3	\$1,354(3)	\$ —	\$ —	\$ —	\$ —	\$1,357
Average interest rate	8.47%							
Interest Rate Derivatives								
Interest rate swaps:								
Variable to fixed (US\$)	\$ 325	\$—	\$ —	\$150	\$ —	\$ 175	\$ —	\$ 325
Average pay rate	5.70%							(7)
Average receive rate	5.21%							

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- (1) The fair value of fixed rate debt is estimated using either reported transaction values or discounted cash flow analysis. The carrying value of variable rate debt is assumed to approximate market value based on the periodic adjustments of the interest rates to the current market rates in accordance with the terms of the agreements. The fair value of the interest rate swaps is based on estimates of the cost of terminating the swaps.
- (2) The total amount of debentures maturing in future periods exceeds the balance as of December 31, 1998 due to the accretion of the debentures. See Note 3 to Sunbeam's Consolidated Financial Statements.
- (3) Represents bank credit facility debt. See "—Liquidity and Capital Resources" and Note 3 to the Consolidated Financial Statements.

Exchange Rate Sensitivity. The table below provides information about Sunbeam's derivative financial instruments, other financial instruments and forward exchange agreements by functional currency and presents such information in U.S. dollar equivalents. The table summarizes information on instruments and transactions that are sensitive to foreign currency exchange rates, including foreign currency variable rate credit lines, foreign currency forward exchange agreements and foreign currency purchased put option contracts. For debt obligations, the table presents principal cash flows and related weighted average interest rates by expected maturity dates. For foreign currency forward exchange agreements and foreign currency put option contracts, the table presents the notional amounts and weighted average exchange rates by expected (contractual) maturity dates. These notional amounts generally are used to calculate the contractual payments to be exchanged under the contract. None of the instruments listed in the table have maturity dates beyond 1999.

	December 31, 1998	Fair Value
	(US\$ Equivalent in Millions)	
On Balance Sheet Financial Instruments		
US\$ Functional Currency		
Short-term debt:		
Variable rate credit lines (Europe, Japan and Asia)	\$ 45.8	\$45.8
Weighted average interest rate	2.8%	
US\$ Functional Currency		
Forward Exchange Agreements		
(Receive US\$/pay DM)		
Contract amount	\$ 12.0	\$12.2
Average contractual exchange rate	1.62	
(Receive US\$/pay JPY)		
Contract amount	\$ 14.9	\$14.2
Average contractual exchange rate	116.11	
(Receive US\$/pay GBP)		
Contract amount	\$ 4.0	\$ 4.1
Average contractual exchange rate	1.68	
Purchased Put Option Agreements		
(Receive US\$/pay DM)		
Contract amount	\$ 18.4	\$ 0.1
Average strike price	1.80	
(Receive US\$/pay JPY)		
Contract amount	\$ 12.4	\$ 0.2
Average strike price	125.0	
(Receive US\$/pay GBP)		
Contract amount	\$ 1.5	\$ —
Average strike price	1.62	

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Euro Conversion

On January 1, 1999, certain member countries of the European Union established fixed conversion rates between their existing currencies and the European Union's common currency (the "Euro"). The transition period for the introduction of the Euro is between January 1, 1999 and January 1, 2002. Sunbeam has been preparing for the introduction of the Euro and continues to evaluate and address the many issues involved, including the conversion of information technology systems, recalculating currency risk, strategies concerning continuity of contracts, and impacts on the processes for preparing taxation and accounting records. Based on the work to date, Sunbeam believes the Euro conversion will not have a material impact on its results of operations.

Seasonality

Sunbeam's consolidated sales are not expected to exhibit substantial seasonality; however, sales are expected to be strongest during the second quarter of the calendar year. Furthermore, sales of a number of products, including warming blankets, vaporizers, humidifiers, grills, First Alert products, camping and generator products may be impacted by unseasonable weather conditions.

Liquidity and Capital Resources

Debt Instruments

In order to finance the acquisition of Coleman, First Alert and Signature Brands and to refinance substantially all of the indebtedness of Sunbeam and the three acquired companies, Sunbeam consummated an offering of debentures at a yield to maturity of 5%—approximately \$2,014 million principal amount at maturity—in March 1998, which resulted in approximately \$730 million of net proceeds and borrowed about \$1,325 million under its new bank credit facility.

The debentures are exchangeable for shares of Sunbeam's common stock at an initial conversion rate of 6.575 shares for each \$1,000 principal amount at maturity of the debentures, subject to adjustments upon occurrence of specified events. The debentures are subordinated in right of payment to all existing and future senior indebtedness of Sunbeam. The debentures are not redeemable by Sunbeam prior to March 25, 2003. On or after such date, the debentures are redeemable for cash with at least 30 days notice, at the option of Sunbeam. Sunbeam is required to purchase debentures at the option of the holder as of March 25, 2003, March 25, 2008 and March 25, 2013, at purchase prices equal to the issue price plus accrued original discount to such dates. Sunbeam may, at its option, elect to pay any such purchase price in cash or common stock or any combination thereof. However, the bank credit facility prohibits Sunbeam from redeeming or repurchasing debentures for cash. Sunbeam was required to file a registration statement with the SEC to register the debentures by June 23, 1998. This registration statement was filed on February 4, 1999 and, as amended, was declared effective on November 8, 1999. Sunbeam's failure to file the registration statement by June 23, 1998 did not constitute default under the terms of the debentures. From June 23, 1998 until the registration statement was declared effective, Sunbeam was required to pay to the debenture holders cash liquidated damages accruing, for each day during such period, at a rate per annum equal to 0.25% during the first 90 days and 0.50% thereafter multiplied by the total of the issue price of the debentures plus the original issue discount thereon on such day. Sunbeam has made total payments for liquidated damages since June 23, 1998 of \$4.5 million, of which \$1.5 million related to damages for the period through December 31, 1998. A final payment of approximately \$0.5 million, representing liquidated damages from September 26, 1999 until the registration statement was declared effective, will be payable on March 25, 2000.

Concurrent with the acquisitions, Sunbeam replaced its \$250 million syndicated unsecured five-year revolving credit facility with the bank credit facility. The bank credit facility provided for aggregate borrowings of up to \$1.7 billion and in addition to other customary covenants, required Sunbeam to maintain specified consolidated leverage, interest coverage and fixed charge coverage ratios as of the end of each fiscal quarter occurring after March 31, 1998 and on or prior to the latest stated maturity date for any of the borrowings under the bank credit facility.

As a result of, among other things, its operating losses incurred during the first half of 1998, Sunbeam did not achieve the specified financial ratios for June 30, 1998 and it appeared unlikely that Sunbeam would achieve the specified financial ratios for September 30, 1998. Consequently, Sunbeam and its lenders entered into an agreement dated as of June 30, 1998 that waived through December 31, 1998 all defaults arising from the failure of Sunbeam to satisfy the specified financial ratios for June 30, 1998 and September 30, 1998. Pursuant to an agreement with Sunbeam dated as of October 19, 1998, Sunbeam's lenders extended all of the waivers under the June 30 agreement through April 10, 1999 and also waived through such date all defaults arising from any failure by Sunbeam to satisfy the specified financial ratios for December 31, 1998. As part of the October 19, 1998 agreement, Sunbeam agreed to a minimum monthly earnings before interest, taxes, depreciation and amortization ("EBITDA") covenant for each of February, March and April of 1999, which covenant Sunbeam was able to satisfy.

On April 10, 1999, among other things, the lenders extended all of the waivers set forth in the October 19, 1998 agreement through April 15, 1999. On April 15, 1999, Sunbeam and its lenders entered into a comprehensive amendment to the bank credit facility that, among other things, extended all of the waivers under the April 10, 1999 agreement until April 10, 2000 and waived until such date all defaults arising from any failure by Sunbeam to satisfy the specified financial ratios for any fiscal quarter end occurring during 1999 and for March 31, 2000. As part of the April 15, 1999 amendment, Sunbeam agreed to a minimum cumulative EBITDA covenant that is based on post-December 31, 1998 consolidated EBITDA and is tested at the end of each month occurring on or prior to March 31, 2000, as well as a covenant limiting the amount of revolving loans (other than those used to fund the merger) that may be outstanding under the bank credit facility as of the end of each such month. The minimum cumulative EBITDA was initially \$6.3 million for the period January 1, 1999 through April 30, 1999 and generally grows on a monthly basis until it reaches \$121 million for the period from January 1, 1999 through March 31, 2000. The following description of the bank credit facility reflects the terms of the bank credit facility as amended to date.

The bank credit facility provides for aggregate borrowings of up to \$1.7 billion through:

- a revolving credit facility in an aggregate principal amount of up to \$400.0 million maturing March 30, 2005, \$52.5 million of which may be used only to complete the merger;
- up to \$800.0 million in term loans maturing on March 30, 2005, of which \$35.0 million may be used only to complete the merger; and
- a \$500.0 million term loan maturing September 30, 2006 (of which \$5.0 million has already been repaid through June 30, 1999).

As of September 30, 1999, approximately \$1.5 billion was outstanding and approximately \$0.2 billion was available for borrowing under the bank credit facility.

Under the bank credit facility, interest accrues, at Sunbeam's option:

- at LIBOR; or
- at the base rate of the administrative agent which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%;

in each case plus an interest margin which is currently 4.00% for LIBOR borrowings and 2.50% for base rate borrowings. The current interest rates reflect an increase of 0.25% for LIBOR loans and base rate loans which occurred on September 1, 1999 as a result of the merger not occurring by such date and an increase of 0.50% for LIBOR and 0.25% for base rate loans which occurred on October 1, 1999 as a result of the merger not occurring by such date. The applicable interest margin is subject to downward adjustment upon the occurrence of specified events, including a decrease to 3.00% for LIBOR borrowings and 1.75% for base rate borrowings upon completion of the merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the bank credit facility.

Under an April 15, 1999 amendment to the bank credit facility, Sunbeam agreed to pay the bank lenders a loan commitment fee of between 0.25% to 1.00% of the commitments under the bank credit facility as of April 15, 1999. The percentage used to calculate the fee will be determined by reference to the bank lenders'

aggregate commitments and loan exposure under the bank credit facility as they may be reduced on or before September 30, 2000. The fee is payable on the earlier of September 30, 2000 and the date the commitments are terminated and the loans and other amounts payable under the bank credit facility are repaid. See Note 15 to the Consolidated Financial Statements.

Borrowings under the bank credit facility are secured by a pledge of the stock of Sunbeam's material subsidiaries, including Coleman, and by a security interest in substantially all of the assets of Sunbeam and its material domestic subsidiaries, other than Coleman and its material subsidiaries except as described below. Currently, Coleman's inventory and related assets are pledged to secure its obligations for letters of credit issued for its account under the bank credit facility. Additionally, as security for Coleman's note payable to Sunbeam, Coleman pledged substantially all of its domestic assets, other than real property, including 66% of the stock of its direct foreign subsidiaries and domestic holding companies for its foreign subsidiaries and all of the stock of its other direct domestic subsidiaries but not the assets of Coleman's subsidiaries. The pledge runs in favor of Sunbeam's lending banks, to which the Coleman note has been pledged as security for Sunbeam's obligations to them. Upon completion of the merger, substantially all of Coleman's assets and the assets of Coleman's domestic subsidiaries will be pledged to secure the obligations under the bank credit facility.

In addition, borrowings under the bank credit facility are guaranteed by a number of Sunbeam's wholly owned material domestic subsidiaries and these subsidiary guarantees are secured as described above. Upon completion of the merger, Coleman and each of its United States subsidiaries will become guarantors of the obligations under the bank credit facility. To the extent extensions of credit are made to any subsidiaries of Sunbeam, the obligations of such subsidiaries are guaranteed by Sunbeam.

In addition to the above described financial ratios and tests, the bank credit facility contains covenants customary for credit facilities of a similar nature, including limitations on the ability of Sunbeam and its subsidiaries, including Coleman, to, among other things:

- declare dividends or repurchase stock;
- prepay, redeem or repurchase debt, incur liens and engage in sale-leaseback transactions;
- make loans and investments;
- incur additional debt, including revolving loans under the bank credit facility;
- amend or otherwise alter material agreements or enter into restrictive agreements;
- make capital and Year 2000 compliance expenditures;
- engage in mergers, acquisitions and asset sales;
- engage in certain transactions with affiliates;
- settle certain litigation;
- alter its cash management system; and
- alter the businesses they conduct.

Sunbeam is also required to comply with specified financial covenants and ratios.

The bank credit facility provides for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, material adverse change arising from compliance with ERISA, material adverse judgments, entering into guarantees and change of ownership and control. It is also an event of default under the bank credit facility, as amended November 16, 1999, if Sunbeam's registration statement in connection with the merger is not declared effective by the SEC on or before January 10, 2000 or if the merger does not occur within 25 business days of the effectiveness of the registration statement or if the cash consideration—including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses—to consummate the merger exceeds \$87.5 million. Although there can be no assurance, Sunbeam anticipates that it will satisfy these conditions. Furthermore, the bank credit facility requires Sunbeam to prepay term loans

under the bank credit facility on December 31, 1999 to the extent that cash on hand in Sunbeam's concentration accounts plus the aggregate amount of unused revolving loan commitments on this date exceeds \$125 million, but Sunbeam is not required to prepay more than \$69.3 million in the aggregate as a result of the provision.

Unless waived by the bank lenders, the failure of Sunbeam to satisfy any of the financial ratios and tests contained in the bank credit facility or the occurrence of any other event of default under the bank credit facility would entitle the bank lenders to (a) receive a 2.00% increase in the interest rate applicable to outstanding loans and increase the trade letter of credit fees to 1.00% and (b) accelerate the maturity of the outstanding borrowings under the bank credit facility and exercise all or any of their other rights and remedies. Any such acceleration or other exercise of rights and remedies would likely have a material adverse effect on Sunbeam.

The bank credit facility also includes provisions for the deferral of the September 30, 1999 and March 31, 2000 scheduled term loan payments of \$69.3 million due on each such date until April 10, 2000 as a result of the satisfaction by Sunbeam on May 14, 1999 of the agreed upon conditions to the deferral. See Note 3 to the Consolidated and Condensed Consolidated Financial Statements.

Cash Flows

As of September 30, 1999, Sunbeam had cash and cash equivalents of \$29.1 million and total debt of \$2.3 billion. Because the waivers granted by Sunbeam's lenders expire on April 10, 2000, the borrowings under the bank credit facility, as well as other debt containing cross-default provisions, are classified as current in the September 30, 1999 Condensed Consolidated Balance Sheet. Cash used in operating activities during the first nine months of 1999 was \$73.2 million compared to \$224.7 million in the first nine months of 1998. This change is primarily attributable to improved operating results after giving effect to non-cash items, partially offset by increased working capital needs during the 1999 period. The increase in cash used for working capital during the 1999 period was primarily driven by accounts receivable, which increased \$159.4 million as compared to the 1998 period, primarily attributable to Sunbeam's Outdoor Leisure division which experienced stronger second and third quarters sales in 1999 than in 1998. Additionally, working capital for the 1998 period was positively affected by the timing of Sunbeam's acquisition of Coleman, which was at the peak of its inventory build for the 1998 selling season. Cash used for this acquired inventory is not reflected in working capital for the 1998 period. As a result of the effect of Company's management of inventory levels in 1999, cash flow improved approximately \$81 million as compared to 1998 despite the favorable impact of the inventory acquired in connection with the 1998 acquisitions. Increases in accounts payable of approximately \$30 million in the first nine months of 1999 positively impacted cash flow whereas payables used approximately \$76 million of cash in the same period of 1998, resulting in an improvement in cash flow period-to-period of approximately \$106 million. The increase in payables in the current period resulted from payable balances having been reduced to a low level by year-end 1998. This reduction in payables, which included an effort to reduce delinquent payables, began in the second quarter of 1998. Decreases in other liabilities, primarily accrued interest, account for the majority of the balance of the cash used for working capital in 1999. Sunbeam participates in an accounts receivable securitization program to finance a portion of its accounts receivable. See Note 4 to the Condensed Consolidated Financial Statements.

In the first nine months of 1999, cash used in investing activities was driven by capital expenditures of \$63.2 million, primarily for information systems, including expenditures for Year 2000 readiness and equipment and tooling for new products. Capital spending in the comparable 1998 period was \$32.8 million and was primarily for several manufacturing efficiency initiatives, equipment and tooling for new products and management information systems and software licenses. The new product capital spending in the 1998 period principally related to the appliance category and included costs related to water and air filtration products which were discontinued in the second quarter, blenders, standmixers and irons. Cash used in investing activities in the first nine months of 1998 also reflects \$379.2 million for the acquisitions of the shares of Coleman from a subsidiary of MacAndrews & Forbes, as well as the acquisitions of Signature Brands and First Alert. Sunbeam anticipates 1999 capital spending to be less than 5% of net sales. Capital expenditures in the current year are expected to primarily relate to information systems and related support, including expenditures for Year 2000 readiness, new product introductions and capacity additions.

Cash provided by financing activities totaled \$99.2 million in the first nine months of 1999 and reflected net borrowings under Sunbeam's bank credit facility. Cash provided by financing activities in the first nine months of 1998 was \$636.1 million and reflected net proceeds from the debentures of \$729.6 million, the cancellation and repayment of all outstanding balances under Sunbeam's \$250 million September 1996 revolving credit facility, the repayment of certain debt assumed in connection with the Coleman, Signature Brands and First Alert acquisitions, and the early extinguishment of the \$75.0 million Hattiesburg industrial revenue bond. In addition, cash provided by financing activities in 1998 is net of \$26.2 million of financing fees related to Sunbeam's \$1.7 billion bank credit facility and \$19.6 million of proceeds from the exercise of stock options. See Note 3 to the Condensed Consolidated Financial Statements.

As of December 31, 1998, Sunbeam had cash and cash equivalents of \$61.4 million, working capital excluding cash and cash equivalents of \$427.1 million and total debt of \$2,261 million. Cash used in operating activities during 1998 was \$190.4 million compared to \$6.0 million used in operating activities in 1997. This change is primarily attributable to lower earnings after giving effect to non-cash charges partially offset by improvements in working capital. During 1998, \$184.2 million in cash was generated by reducing receivables, including through the revolving trade accounts receivable securitization program described below, and reducing inventories, which was partially offset by a \$68.2 million reduction in accounts payable levels. In the fourth quarter of 1998, cash provided by operating activities totaled \$34.3 million, principally due to cash generated by reducing receivables and inventories of \$181.9 million. The decrease in cash provided by operations from 1996 to 1997 is primarily attributable to increased inventory levels in 1997 and spending in 1997 related to the restructuring initiatives accrued for in 1996, largely offset by an increase in cash generated by earnings in 1997 and an income tax refund (net of payments) in 1997. Cash used in operating activities reflects proceeds of \$200.0 million in 1998 and \$58.9 million in 1997 from Sunbeam's revolving trade accounts receivable securitization program, described below.

Cash used in investing activities in 1998 reflects \$522.4 million for the acquisitions. In 1997, cash provided by investing activities reflected \$91.0 million in proceeds from the sales of divested operations and other assets. Capital spending totaled \$53.7 million in 1998 and was primarily for manufacturing efficiency initiatives, equipment and tooling for new products, and management information systems hardware and software licenses. The new product capital spending principally related to the air and water filtration products which were discontinued in the second quarter of 1998, electric blankets, grills, clippers and appliances. Capital spending in 1997 was \$60.5 million and was primarily attributable to manufacturing capacity expansion, cost reduction initiatives and equipment to manufacture new products. The new product capital spending in 1997 principally related to appliances and included costs related to blenders, toasters, stand mixers, slow cookers and a soft serve ice cream product. Capital spending in 1996 was \$75.3 million, including \$14.5 million related to the discontinued furniture business, and was primarily attributable to equipment for new product development and cost reduction initiatives. As discussed above, Sunbeam's capital and Year 2000 compliance expenditures are limited under the terms of the bank credit facility.

Cash provided by financing activities totaled \$766.2 million in 1998 and reflects:

- the net proceeds from the sale of debentures of \$729.6 million;
- the cancellation and repayment of all outstanding balances under Sunbeam's \$250 million September 1996 revolving credit facility;
- the repayment of debt in connection with the acquisitions;
- the early extinguishment of the \$75.0 million Hattiesburg industrial revenue bond; and
- net borrowings under the bank credit facility.

In addition, cash provided by financing activities during 1998 includes \$19.6 million of proceeds from the exercise of stock options.

During 1997, cash provided by financing activities of \$16.4 million reflected:

- net borrowings of \$5.0 million under Sunbeam's September 1996 revolving credit facility;
- \$12.2 million of debt repayments related to the divested furniture business and other assets sold; and

- \$26.6 million in cash proceeds from the exercise of stock options.

During 1996, cash provided by financing activities of \$45.3 million primarily reflected:

- revolving credit facility borrowings of \$30.0 million to support working capital and capital spending requirements;
- \$11.5 million in new issuances of long-term debt; and
- \$4.6 million in proceeds from the sale of treasury shares to certain executives of Sunbeam.

In December 1997, Sunbeam entered into a revolving trade accounts receivable securitization program, which as amended expires in March 2000, to sell without recourse, through a wholly owned subsidiary, up to a maximum of \$70 million in trade accounts receivable. Sunbeam, as agent for the purchaser of the receivables, retains collection and administrative responsibilities for the purchased receivables. For the nine months ended September 30, 1999 and for the year ended December 31, 1998, Sunbeam sold approximately \$228.4 million and \$200 million of accounts receivable, respectively, under this program. At September 30, 1999 and December 31, 1998, Sunbeam had reduced accounts receivable by \$36.9 million and \$20.0 million, respectively, for receivables sold under this program. Sunbeam expects to continue to utilize the securitization program to finance a portion of its accounts receivable. See Note 4 to the Condensed Consolidated Financial Statements and Note 5 to the Consolidated Financial Statements.

At September 30, 1999, standby and commercial letters of credit aggregated \$68.9 million and were predominantly for insurance, pension, environmental, workers' compensation, and international trade activities. In addition, as of September 30, 1999, surety bonds with a contract value of \$67.5 million were outstanding largely for Sunbeam's pension plans and as a result of litigation judgments that are currently under appeal.

For additional information relating to the debentures, the bank credit facility and the repayment of debt, see Note 3 to the Consolidated and Condensed Consolidated Financial Statements.

Sunbeam expects to acquire the remaining equity interest in Coleman in a merger transaction in which the existing Coleman minority stockholders will receive 0.5677 share of Sunbeam's common stock and \$6.44 in cash for each share of Coleman common stock outstanding. In addition, under a court-approved litigation settlement, Coleman minority stockholders (other than those who exercise and perfect their Delaware law appraisal rights) will receive for each share of Coleman common stock 0.381 of a warrant, entitling them to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003 (assuming no further increases in the number of outstanding shares of Coleman common stock). Furthermore, unexercised options under Coleman's stock option plans will be cashed out at a price per share equal to \$27.50 minus the per share exercise price of such options. Sunbeam expects to issue approximately 6.7 million shares of common stock and expend approximately \$87 million in cash, including cash paid to option holders, to complete the Coleman transaction. See Note 2 to the Unaudited Condensed Consolidated and Consolidated Financial Statements. Also, see Note 15 to the Consolidated Financial Statements. Although there can be no assurance, it is anticipated that the merger will occur late in the fourth quarter of 1999 or early in the first quarter of 2000.

Sunbeam believes its borrowing capacity under the bank credit facility, cash flow from the combined operations of Sunbeam and its acquired companies, existing cash and cash equivalent balances, and its receivable securitization program will be sufficient to support working capital needs, capital expenditure and Year 2000 compliance spending, and debt service through April 10, 2000. Sunbeam intends to negotiate with its lenders on an amendment to the bank credit facility, negotiate with its lenders on further waiver of such covenants and other terms or refinance the bank credit facility. Any decisions with respect to such amendment, waiver, or refinancing will be made based on a review from time to time of the advisability of particular transactions. There can be no assurance that an amendment, further waiver of existing covenants and other terms, or refinancing will be entered into by April 10, 2000. The failure to obtain such an amendment, further waiver or debt refinancing would likely result in violation of existing covenants and non-compliance with other terms, which would permit the bank lenders to accelerate the maturity of all outstanding borrowings under the bank credit facility, and could otherwise have a material adverse effect on

Sunbeam. Accordingly, debt related to the bank credit facility and all debt containing cross-default provisions is classified as current in the Unaudited Condensed Consolidated Balance Sheet at September 30, 1999.

In May 1998, the NYSE advised Sunbeam that it did not meet the NYSE's continuing listing standards because Sunbeam did not have tangible net assets of \$12.0 million at December 31, 1997 and average annual net income of at least \$0.6 million for fiscal years 1997, 1996 and 1995. Sunbeam representatives met with NYSE officials, and in March 1999, the NYSE informed Sunbeam that Sunbeam common stock would not be delisted at that time, although the NYSE would, however, continue to monitor Sunbeam's financial condition and operations. On August 5, 1999, the NYSE advised Sunbeam that the NYSE had revised its continuing listing standards, and that Sunbeam is in compliance with the revised standards.

In April 1999, the NYSE advised Coleman that it did not meet the NYSE's continuing listing standards because Coleman did not have tangible net assets of at least \$12.0 million at September 30, 1998 and average annual net income of at least \$0.6 million for fiscal years 1997, 1996 and 1995. At that time, Coleman requested the NYSE to continue to list the Coleman common stock until completion of the merger. The NYSE subsequently advised Coleman that Coleman also failed to satisfy certain non-financial continuing listing standards. On August 5, 1999, the NYSE advised Coleman that the NYSE had revised its continuing listing standards, and that Coleman is in compliance with the revised financial standards. Coleman and the NYSE have agreed upon a program whereby Coleman will correct the deficiencies in its non-financial continuing listing standards by the end of 1999. Coleman is currently complying with such program. If Coleman were to be delisted from the NYSE, it could adversely affect the market price of Coleman's common stock and Coleman's ability to sell its capital stock to third parties. However, Sunbeam's bank credit facility currently restricts Coleman from taking such actions.

By letter dated June 17, 1998, the staff of the Division of Enforcement of the SEC advised Sunbeam that it was conducting an informal inquiry into Sunbeam's accounting policies and procedures and requested that Sunbeam produce documents. On July 2, 1998, the SEC issued a Formal Order of Private Investigation, designating officers to take testimony and pursuant to which a subpoena was served on Sunbeam requiring the production of documents. On November 4, 1998, Sunbeam received another SEC subpoena requiring the production of additional documents. Sunbeam has provided numerous documents to the SEC staff and continues to cooperate with the SEC staff. Sunbeam has, however, declined to provide the SEC with material that Sunbeam believes is subject to the attorney-client privilege and the work product immunity. Sunbeam cannot predict the term of such investigation or its potential outcome.

Sunbeam is involved in significant litigation, including class and derivative actions, relating to events which led to the restatement of its consolidated financial statements, the issuance of the MacAndrews & Forbes warrant, the sale of the debentures and the employment agreements, of Messrs. Dunlap and Kersh. Sunbeam intends to vigorously defend each of the actions, but cannot predict the outcome and is not currently able to evaluate the likelihood of Sunbeam's success in each case or the range of potential loss. However, if Sunbeam were to lose these suits, judgments would likely have a material adverse effect on Sunbeam's financial position, results of operations and cash flows. Additionally, Sunbeam's insurance carriers have filed various suits requesting a declaratory judgment that the directors' and officers' liability insurance policies for excess coverage was invalid and/or had been properly canceled by the carriers or have advised Sunbeam of their intent to deny coverage under such policies. Sunbeam intends to pursue recovery from all of its insurers if damages are awarded against Sunbeam or its indemnified officers and/or directors under any of the foregoing actions and to recover attorneys' fees covered under those policies. Sunbeam's failure to obtain such insurance recoveries following an adverse judgment against Sunbeam on any of the foregoing actions could have a material adverse effect on Sunbeam's financial position, results of operations and cash flows.

Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and claims and related anticipated legal fees. The costs are accrued when it is both probable that an asset has been impaired or a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon Sunbeam's assessment, after consultation with counsel, of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the

plaintiffs, and other significant factors which vary by case. When it is not possible to estimate a specific expected cost to be incurred, Sunbeam evaluates the range of probable loss and records the minimum end of the range. As of September 30, 1999, Sunbeam had established accruals for litigation matters of \$22.6 million (representing \$11.3 million and \$11.3 million for estimated damages or settlement amounts and legal fees, respectively). As of December 31, 1998, Sunbeam had established accruals for litigation matters of \$31.2 million (representing \$17.5 million and \$13.7 million for estimated damages or settlement amounts and legal fees, respectively) and \$9.9 million as of December 28, 1997, (representing \$3.0 million and \$6.9 million for estimated damages or settlement amounts and legal fees, respectively). It is anticipated that the \$22.6 million accrual will be paid as follows: \$5.2 million in 1999, \$14.9 million in 2000, and \$2.5 million in 2001. Sunbeam believes, based on information known to Sunbeam on September 30, 1999, that anticipated probable costs of litigation matters existing as of September 30, 1999 have been adequately reserved to the extent determinable.

As a consumer goods manufacturer and distributor, Sunbeam faces the constant risks of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. These claims could result in liabilities that could have a material adverse effect on Sunbeam's financial position, results of operations and cash flows. Some of the product lines Sunbeam acquired in the 1998 acquisitions have increased its exposure to product liability and related claims.

Sunbeam and its subsidiaries are also involved in various lawsuits from time to time that Sunbeam considers to be ordinary routine litigation incidental to its business. In the opinion of Sunbeam, the resolution of these routine matters, and of matters relating to prior operations, individually or in the aggregate, will not have a material adverse effect on the financial position, results of operations or cash flows of Sunbeam.

For additional information relating to litigation, see "BUSINESS OF SUNBEAM—Litigation and Other Contingent Liabilities."

New Accounting Standards

In March 1998, the American Institute of Certified Public Accountants ("AICPA") issued Statement of Position 98-1, Accounting for the Costs of Computer Software Developed or Obtained for Internal Use ("SOP 98-1"). SOP 98-1 requires computer software costs associated with internal use software to be expensed as incurred until certain capitalization criteria are met. Sunbeam adopted SOP 98-1 effective January 1, 1999. Adoption of this statement did not have a material impact on Sunbeam's consolidated financial position, results of operations, or cash flows. Actual charges incurred due to systems projects may be material.

In April 1998, the AICPA issued Statement of Position 98-5, Reporting on the Cost of Start-up Activities ("SOP 98-5"). SOP 98-5 requires all costs associated with pre-opening, pre-operating and organization activities to be expensed as incurred. Sunbeam adopted SOP 98-5 beginning January 1, 1999. Adoption of this statement did not have a material impact on Sunbeam's consolidated financial position, results of operations, or cash flows.

In June 1998, the FASB issued SFAS No. 133, Accounting for Derivative Instruments and Hedging Activities, which is effective for fiscal years beginning after June 15, 2000. SFAS No. 133 requires the recognition of all derivatives in the Consolidated Balance Sheets as either assets or liabilities measured at fair value. Sunbeam has not yet determined the impact SFAS No. 133 will have on its consolidated financial position, results of operations or cash flows.

Year 2000 Readiness Disclosure

Sunbeam is preparing for the impact of the Year 2000 on its operations. Year 2000 issues could include potential problems in the information technology ("IT") and non-IT systems that Sunbeam uses in its operations and problems in Sunbeam's products. Year 2000 system failures could affect routine but critical operations such as forecasting, purchasing, production, order processing, inventory control, shipping, billing and collection. In addition, system failures could affect Sunbeam's security, payroll operations, or employee

safety. Sunbeam may also be exposed to potential risks from third parties with whom Sunbeam interacts who fail to adequately address their own Year 2000 issues.

Sunbeam's Approach to Year 2000 Issues

While Sunbeam's Year 2000 readiness planning has been underway for over one year, during the third quarter of 1998 Sunbeam established a cross-functional project team consisting of senior managers, assisted by three external consulting firms which were retained to provide consulting services and to assist Sunbeam in implementing its Year 2000 strategy. This team is headed by Sunbeam's Chief Financial Officer who reports directly to Sunbeam's Chief Executive Officer on this issue. The audit committee of the board of directors is advised periodically on the status of Sunbeam's Year 2000 readiness program.

The Year 2000 project team has developed a phased approach to identify and resolve Year 2000 issues with many of these activities conducted in parallel. Sunbeam's approach and the anticipated timing of each phase are described below.

Phase 1—Inventory and Assessment. During the first phase of Sunbeam's Year 2000 readiness program, Sunbeam established a Year 2000 program management office to centralize the management of all of Sunbeam's Year 2000 projects. Through this office, Sunbeam developed a corporate-wide, uniform strategy for assessing and addressing the Year 2000 issues.

Sunbeam has completed an inventory of its hardware and software systems, manufacturing equipment, electronic data interchange, telecommunications and other technical assets potentially subject to Year 2000 problems, such as security systems and controls for lighting, air conditioning, ventilation and facility access. This inventory was then entered into Sunbeam's Year 2000 database along with a determination of the item's level of criticality to operations. For those inventory items anticipated to have a significant effect on the business if not corrected, Sunbeam's Year 2000 program envisions repair or replacement and testing of such items. All information relative to each item is being tracked in Sunbeam's Year 2000 database. Sunbeam completed most of this phase during the third and fourth quarters of 1998. Sunbeam has completed a review of the readiness of embedded microprocessors in its products and determined that none of Sunbeam's products have Year 2000 date sensitive systems.

Phase 2—Correction and Testing. The second phase of Sunbeam's Year 2000 readiness program is structured to replace, upgrade or remediate, as necessary, those items identified during Phase 1 as requiring corrective action.

Sunbeam relies on its IT functions to perform many tasks that are critical to its operations. Significant transactions that could be impacted by not being ready for any Year 2000 issues include, among others:

- purchases of materials;
- production management;
- order entry and fulfillment;
- payroll processing; and
- billing and collections.

Systems and applications that have been identified by Sunbeam to date as not currently Year 2000 ready and which are critical to Sunbeam's operations include:

- financial software systems, which process:
 - order entry;
 - purchasing;
 - production management;
 - general ledger;
 - accounts receivable; and

- accounts payable functions;
- payroll applications; and
- critical applications in Sunbeam's manufacturing and distribution facilities, such as warehouse management applications.

Recognizing how dependent the entire company is on IT, Sunbeam decided in 1997 to replace its primary business applications with a uniform international business and accounting information system to address the systems or applications listed above as well as to improve internal reporting processes. Based upon representations from the manufacturer that the current version of this uniform information system is Year 2000 ready, Sunbeam upgraded its business sites that currently utilize this uniform system to the Year 2000 ready version. In addition to the pre-acquisition Sunbeam locations which had already utilized an earlier non-Year 2000 ready version of this uniform business and accounting information system, Eastpak, Mr. Coffee, Health-o-Meter, and Sunbeam Latin America replaced their current non-Year 2000 ready systems with this new uniform system. In addition, Coleman Europe also has replaced key business components with this new system.

Sunbeam is also actively replacing and/or upgrading a number of business systems that are not Year 2000 ready, including those that use localized business system packages which were not candidates to be replaced by the uniform business and accounting information system. For example, at Coleman approximately 2,000 mainframe software programs that are used in lieu of Sunbeam's uniform business and accounting information system have been remediated and tested to be Year 2000 ready. With respect to Sunbeam's non-IT systems, including time and attendance, security, and in-line manufacturing hardware, Sunbeam has analyzed these items to assess any Year 2000 issues, and is testing and correcting such items, if necessary.

Phase 3—Customers, Suppliers and Business Partners. The third phase of Sunbeam's Year 2000 readiness program which was initiated during the third and fourth quarters of 1998 is designed to assess and interact with Sunbeam's customers, suppliers, and business partners. As part of this effort, Sunbeam surveyed 1,100 vendors and suppliers, a portion of which did not provide an initial response. During the first half of 1999, "high risk" vendors were contacted directly and the number of non-respondents has since decreased substantially. In fact, currently only 7% of Sunbeam's vendors who were surveyed are categorized as "high risk," which includes non-respondents. Based on the most recent responses to the survey and continued evaluation, Sunbeam believes that there is only a low to a medium risk of Year 2000 issues for the remaining vendors. Sunbeam will continue to monitor the Year 2000 progress of the "high risk" vendors and has resurveyed these companies to determine the appropriate course of action. Furthermore, Sunbeam has contacted alternate vendors who are Year 2000 ready to replace critical vendors deemed "high risk" in the event that these vendors are not found to be Year 2000 ready. Sunbeam is in the process of completing a verification of the Year 2000 survey responses for the most critical vendors to Sunbeam.

Sunbeam has responded to numerous customer inquiries about Sunbeam's Year 2000 readiness. Sunbeam has verified that all of Sunbeam's major customers have planned programs to deal with Year 2000 issues and is currently completing the process of contacting its major customers to confirm they are implementing their planned programs to address Year 2000 issues. In order to improve Sunbeam's communication with its customers, suppliers and business partners, Sunbeam has set up a Sunbeam Year 2000 telephone number and is providing Year 2000 information on a Company web site.

Phase 4—Contingency Planning. This phase involves contingency planning for unresolved Year 2000 issues, particularly any issues arising with third party suppliers. Sunbeam has designed and documented its Year 2000 contingency plan and is in the process of implementing it. The development of the contingency plan included a process whereby Sunbeam's critical IT and non-IT systems were evaluated for Year 2000 readiness. As a result of this evaluation, Sunbeam does not expect to require additional operational equipment or significant process contingency measures. Although Sunbeam does not currently believe there is significant risk associated with its third party suppliers, the contingency plan includes the continuing evaluation of the readiness of Sunbeam's suppliers and minor increases in Sunbeam's inventory requirements to protect against supply disruption.

The Risks of Sunbeam's Year 2000 Approach

The independent consultants assisting Sunbeam in its Year 2000 readiness program have reviewed and concurred with Sunbeam's approach, have assisted in developing cost estimates and have monitored costs for the largest single component (upgrade or installation of Sunbeam's uniform system) of Sunbeam's Year 2000 program. Since Sunbeam's Year 2000 program was developed and is monitored with the help of independent consultants, Sunbeam did not engage another independent third party to verify the program's overall approach or total cost; based on this, Sunbeam believes that Sunbeam's exposure in this regard is mitigated. In addition, through the use of external third-party diagnostic software packages that are designed to analyze the Year 2000 readiness of business software programs, Sunbeam was able to identify potential Year 2000 issues at Coleman. Given this, Sunbeam believes that it has also mitigated its risk by validating and verifying key program components.

Management believes that, although there are significant systems that are being modified or replaced, including the uniform business and accounting information system, Sunbeam's information systems environment will be made Year 2000 ready prior to January 1, 2000. Sunbeam's failure to timely complete such corrective work could have a material adverse impact on Sunbeam.

With respect to customers, suppliers and business partners, the failure of some of these third parties to become Year 2000 ready could also have a material adverse impact on Sunbeam. For example, the failure of some of Sunbeam's principal suppliers to have Year 2000 ready internal systems could impact Sunbeam's ability to manufacture and/or ship its products or to maintain adequate inventory levels for production.

At this time, Sunbeam believes that the most likely "worst-case" scenario relating to Year 2000 involves potential disruptions in areas in which Sunbeam's operations must rely on third parties, such as suppliers, whose systems may not work properly after January 1, 2000. While such system failures could either directly or indirectly affect important operations of Sunbeam and its subsidiaries in a significant manner, Sunbeam cannot at present estimate either the likelihood or the potential cost of such failures. Subject to the nature of the goods or services provided to Sunbeam by third parties whose operations are not made ready for Year 2000 issues, the impact on Sunbeam's operations could be material. However, Sunbeam believes that it has mitigated such risks through the development and implementation of the contingency plans discussed above.

The nature and focus of Sunbeam's efforts to address the Year 2000 problem may be revised periodically as interim goals are achieved or new issues are identified. In addition, it is important to note that the description of Sunbeam's efforts and assessments necessarily involves estimates and projections with respect to activities required in the future. These estimates and projections are subject to change as work continues, and such changes may be substantial.

The Costs to Address Sunbeam's Year 2000 Issues

Through the first nine months of 1999, including costs incurred in 1998, Sunbeam had expended approximately \$60 million to address Year 2000 issues of which approximately 50% was recorded as capital expenditures and the remainder as SG&A expense. Sunbeam's current assessment of the total costs to address and remedy Year 2000 issues and enhance its operating systems, including costs for the acquired companies, is approximately \$64 million.

This estimate includes the following categories:

• uniform international business and accounting system	\$44 million
• localized business system software upgrades and remediation	\$9 million
• Year 2000 readiness assessment and tracking	\$6 million
• upgrade of personal computers and related software	\$5 million

The amount to be incurred for Year 2000 issues during 1999 of approximately \$44 million represents over 50% of Sunbeam's total 1999 budget for information systems and related support, including Year 2000 costs. A large majority of these costs are expected to be incremental expenditures that will not recur in the

Year 2000 or thereafter. Fees and expenses related to third party consultants, who are involved in the program management office as well as the modification and replacement of software, represent approximately 75% of the total estimated cost. The balance of the total estimated cost relates primarily to software license fees and new hardware, but excludes the costs associated with company employees. Sunbeam expects these expenditures to be financed through operating cash flows or borrowings, as applicable. A significant portion of these expenditures will enhance Sunbeam's operating systems in addition to resolving the Year 2000 issues. As Sunbeam completes its assessment of the Year 2000 issues, the actual expenditures incurred or to be incurred may differ materially from the amounts shown above. The bank credit facility does not permit Sunbeam to spend more than \$50 million on Year 2000 testing and remediation during 1999.

Because Year 2000 readiness is critical to the business, Sunbeam has redeployed some resources from non-critical system enhancements to address Year 2000 issues. In addition, due to the importance of IT systems to Sunbeam's business, management has deferred non-critical systems enhancements as much as possible. Sunbeam does not expect these redeployments and deferrals to have a material impact on Sunbeam's financial condition, results of operations or cash flows.

Effects of Inflation

For each of the three years in the period ended December 31, 1998, and in the nine-month period ended September 30, 1999, Sunbeam's cost of raw materials and other product remained relatively stable. To the extent possible, Sunbeam's objective is to offset the impact of inflation through productivity enhancements, cost reductions and price increases.

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**CHANGES IN AND DISAGREEMENTS WITH
ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

On November 20, 1998, the audit committee recommended and Sunbeam's board approved the appointment of Deloitte & Touche as its independent auditors for 1998, to replace Arthur Andersen, Sunbeam's former auditor. Arthur Andersen is continuing to provide certain professional services to Sunbeam.

On June 25, 1998, Sunbeam announced that Arthur Andersen would not consent to the inclusion of its opinion on Sunbeam's 1997 financial statements in a registration statement Sunbeam was planning to file with the SEC. On June 30, 1998, Sunbeam announced that the audit committee of its board of directors would conduct a review of Sunbeam's prior financial statements and that, therefore, those financial statements should not be relied upon. Sunbeam also announced that Deloitte & Touche had been retained to assist the audit committee and Arthur Andersen in their review of Sunbeam's prior financial statements. On August 6, 1998, Sunbeam announced that the audit committee had determined that Sunbeam would be required to restate its financial statements for 1997, the first quarter of 1998 and possibly 1996, and that the adjustments, while not then quantified, would be material. On October 20, 1998 Sunbeam announced the restatement of its financial results for a six-quarter period from the fourth quarter of 1996 through the first quarter of 1998. On November 12, 1998, Sunbeam filed a Form 10-K/A for the year ended December 28, 1997, which contains an unqualified opinion by Arthur Andersen on Sunbeam's restated consolidated financial statements as of December 29, 1996 and December 28, 1997 and for each of the three years in the period ended December 28, 1997.

Arthur Andersen's report on Sunbeam's financial statements for the two fiscal years of Sunbeam ended December 28, 1997 contained no adverse opinion or disclaimer of opinion and was not qualified or modified as to uncertainty, audit scope or accounting principles. In connection with its audits for those periods and through November 20, 1998, there were no disagreements with Arthur Andersen on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of Arthur Andersen would have caused Arthur Andersen to make reference thereto in their report on the financial statements for such years. Sunbeam has not consulted with Deloitte & Touche on any matter that was either the subject of a disagreement or a reportable event between Sunbeam and Arthur Andersen.

In connection with the restatements referred to above, in a letter dated October 16, 1998, Arthur Andersen advised Sunbeam that there existed the following conditions that Arthur Andersen believed to be material weaknesses in Sunbeam's internal controls:

"In our opinion, [Sunbeam's] design and effectiveness of its internal control were inadequate to detect material misstatements in the preparation of [Sunbeam's] 1997 annual (before audit) and quarterly financial statements."

As part of its audit of Sunbeam's 1997 consolidated financial statements that led to the restatement of these financial statements, Arthur Andersen was required to consider Sunbeam's internal controls in determining the scope of its audit procedures. Arthur Andersen has advised management of its concerns regarding Sunbeam's internal controls. Management is addressing these concerns and although Sunbeam has not yet fully implemented all additional planned controls, management believes that the interim measures Sunbeam has adopted to prevent material misstatements in its financial statements will be effective until the remainder of the additional controls can be implemented.

BUSINESS OF SUNBEAM

General

Sunbeam is a leading designer, manufacturer and marketer of branded consumer products. Sunbeam's primary business is the manufacturing, marketing and distribution of durable household and outdoor leisure consumer products through mass market and other distribution channels in the United States and internationally. Sunbeam also sells its products to professional and commercial end users such as small businesses, health care providers, hotels and other institutions. Sunbeam's principal products include household kitchen appliances; health monitoring and care products for home use; scales for consumer and professional use for weight management and business uses; electric blankets and throws; clippers and trimmers for consumer, professional and animal uses; smoke and carbon monoxide detectors; outdoor barbecue grills; camping equipment such as tents, lanterns, sleeping bags and stoves; coolers; backpacks and book bags; and portable generators and compressors.

Sunbeam was organized in 1989 as Sunbeam-Oster Company, Inc., and in September 1990, Sunbeam acquired the assets and assumed certain liabilities, through a reorganization, of Allegheny International, Inc., an entity operating as a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code since 1988. In August 1992, Sunbeam completed a public offering of 20,000,000 shares of its common stock. In May 1995, Sunbeam changed its name from Sunbeam-Oster Company, Inc. to Sunbeam Corporation.

In 1998, Sunbeam acquired an indirect controlling interest in Coleman and all the outstanding common stock of Signature Brands and First Alert.

Products And Operations

Sunbeam's operations are managed through four groups: Household, Outdoor Leisure, International and Corporate. The Household and Outdoor Leisure operating groups encompass the following products:

- In the Household group:

- (1) Appliances—including mixers, blenders, food steamers, breadmakers, rice cookers, coffee makers, toasters, irons and garment steamers;
- (2) Health products—including vaporizers, humidifiers, air cleaners, massagers, hot and cold packs and blood pressure monitors;
- (3) Scales;
- (4) Personal care—including hair clippers and trimmers and related products for the professional beauty, barber and veterinarian trade and sales of products to commercial and institutional channels;
- (5) Blankets—including electric blankets, heated throws and mattress pads; and
- (6) First Alert—including smoke and carbon monoxide detectors, fire extinguishers and home safety equipment.

- In the Outdoor Leisure group:

- (1) Outdoor recreation products—including tents, sleeping bags, coolers, camping stoves, lanterns and outdoor heaters;
- (2) Outdoor cooking products—including gas and charcoal outdoor grills and grill parts and accessories;
- (3) Powermate products—including portable power generators and air compressors; and
- (4) Eastpak products—including backpacks and bags.

Sunbeam's International group is managed through the following regional subdivisions:

- (1) Europe—manufacture, sales and distribution of Campingaz® products and sales and distribution in Europe, Africa and the Middle East of other Sunbeam products;
- (2) Latin America—manufacture, sales and distribution throughout Latin America of small appliances, and sales and distribution of personal care products, professional clippers and related products, camping products and Powermate products;
- (3) Japan—sales and distribution of primarily outdoor recreation products;
- (4) Canada—sales and distribution of substantially all Sunbeam's products; and

(5) East Asia—sales and distribution in all areas of East Asia other than Japan of substantially all Sunbeam's products.

Sunbeam's Corporate group provides certain management, accounting, legal, risk management, treasury, human resources, tax and management information services to all operating groups and also includes the operation of Sunbeam's retail stores and the conduct of Sunbeam's licensing activities.

See Note 14 to the Consolidated Financial Statements and Note 9 to the Condensed Consolidated Financial Statements for financial data concerning Sunbeam's operating segments.

Household

Sunbeam's Household group includes appliances, health products, scales, personal care products, blankets and First Alert products. Net sales of Household group products accounted for approximately 50%, 73% and 74% of Sunbeam's consolidated net sales in 1998, 1997 and 1996, respectively. Except as discussed below, there were no Household group products or group of similar products with sales that accounted for 10% or more of consolidated net sales in any of the last three fiscal years.

Appliances. Small kitchen appliances include Mixmaster® stand mixers, hand mixers, Osterizer® blenders, food processors, rice cookers, food steamers, toasters, can openers, breadmakers, waffle makers, ice cream makers, frying pans, deep fryers and culinary accessories, which are sold primarily under the Sunbeam® and Oster® brand names. In addition, Sunbeam sells coffee makers under the Mr. Coffee®, Sunbeam and Oster brand names and, with respect to coffee and tea products, the Mr. Coffee brand name. Other brand names or trademarks used in marketing include: Toast Logic®, Details® by Mr. Coffee for high end coffeemakers sold in department and specialty stores, Mrs. Tea™, and Iced Tea Pot™, Oster Designer® and Pause N Serve®. Sunbeam holds the number one or two market positions in coffee makers, mixers, and breadmakers. Appliances also encompass garment care appliances consisting of irons and steamers. Sunbeam manufactures a portion of its appliances in its United States and Mexico plants and sources the balance of its appliance products from domestic and foreign manufacturers.

Health. Sunbeam markets many of its health products under the Sunbeam® name and the trademark Health at Home®. These products include heating pads, bath scales, blood pressure and other health-monitoring instruments, massagers, vaporizers, humidifiers and dental care products. Sunbeam assembles and/or manufactures its vaporizers, humidifiers and heating pads at its United States and Mexico facilities. Sunbeam's other personal health products are sourced from manufacturers primarily located in China.

Scales. Sunbeam also designs, manufactures and markets scales for consumer, office and professional use. Sunbeam manufactures a complete line of analog and digital floor scales, waist-high and eye-level scales for use in weight monitoring by consumers. These consumer scales are sold under the brand names Health o Meter®, Sunbeam, Counselor® and Borg®. Other trademarks used in marketing the scales are BigFoot® and Precious Metals®. Sunbeam also markets professional scales such as traditional balance beam scales, pediatric scales, wheelchair ramp scales, chair and sling scales and home healthcare scales using the Pro Series® and Pro Plus Series® trademarks in addition to the Health o Meter brand. Sunbeam's line of scales also includes letter and parcel scales for office use, marketed under the Pelouze® brand name. Sunbeam has a commanding share of the office scale market with its Pelouze scales. Sunbeam's Pelouze food scales include analog and digital portion control scales, thermometers and timers for commercial and non-commercial applications. Sunbeam manufactures approximately one-half of its scales at a United States plant and sources the remaining scales from both domestic and foreign suppliers.

Personal Care. Sunbeam's personal care products include a broad line of hair clippers and trimmers for animals and humans which are sold through retail channels. Sunbeam holds the number one or two position in its clipper and trimmer product lines. Sunbeam also markets a line of professional barber, beauty and animal grooming products, including electric and battery clippers, replacement blades and other grooming accessories sold to both conventional retailers and through professional distributors. These products are manufactured at Sunbeam's United States and Mexico facilities.

Blankets. Sunbeam's blanket products include electric blankets, Cuddle-Up® heated throws and heated mattress pads. Sunbeam holds the number one market position in each of electric blankets, heated throws and heated mattress pads. These products are manufactured at Sunbeam's United States and Mexico facilities. In 1996, sales of electric blankets accounted for approximately 12% of consolidated net sales.

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First Alert. Sunbeam is a leading manufacturer and marketer of a broad range of residential safety products, including residential use ionization and photoelectric smoke detectors in which Sunbeam has the leading market share. Other products include carbon monoxide detectors, fire extinguishers, rechargeable flashlights and lanterns, electric and electromechanical timers, night lights, radon gas detectors, fire escape ladders and motion sensing lighting controls. Sunbeam's smoke detectors are battery-operated and carbon monoxide detectors are available in both plug in and battery operated units and in a combination unit. These products are marketed primarily under the First Alert® brand name. Sunbeam also uses the brand names Family Gard® and Sure Grip® for certain of its products. Sunbeam markets certain of these products under the BRK® brand for the electrical wholesale markets. Sunbeam manufactures its smoke and carbon monoxide detectors in its Mexico plant, manufactures fire extinguishers in its United States plant and sources other products from domestic and foreign suppliers.

In 1996, Sunbeam's furniture business accounted for approximately 23% of consolidated net sales. See Note 13 to the Consolidated Financial Statements for information relating to the divestiture of Sunbeam's furniture business.

Outdoor Leisure

Sunbeam's Outdoor Leisure group includes products for outdoor recreation and outdoor cooking, as well as the Powermate and Eastpak product lines. Net sales of the Outdoor Leisure group accounted for approximately 50%, 25% and 26% of Sunbeam's consolidated net sales in 1998, 1997 and 1996, respectively. Except as discussed below, there were no other Outdoor Leisure products or groups of similar products with sales that accounted for 10% or more of consolidated net sales in any of the last three fiscal years.

Outdoor Recreation. Principal outdoor recreation products include a comprehensive line of lanterns and stoves for outdoor recreational use, fuel-related products such as disposable fuel cartridges, a broad range of coolers and jugs, sleeping bags, backpacks, tents, outdoor folding furniture, portable electric lights, camping accessories and other products. These products are used predominantly in outdoor recreation, but many products have applications in emergency preparedness and some are also used in home improvement projects. The products are distributed predominantly through mass merchandisers, home centers and other retail outlets. Sunbeam believes it is the leading manufacturer of lanterns and stoves for outdoor recreational use in the world. Sunbeam's liquid fuel appliances include single and dual fuel-powered lanterns and stoves and a broad range of propane- and butane-fueled lanterns and stoves. These products are manufactured at Sunbeam's facilities located in the United States and are marketed under the Coleman® and Peak One® brand names.

Sunbeam manufactures and sells a wide variety of insulated coolers and jugs and reusable ice substitutes, including personal coolers for camping, picnics or lunch box use; large coolers; beverage coolers for use at work sites and recreational and social events; and soft-sided coolers. Sunbeam's cooler products are manufactured predominantly at Sunbeam's facilities located in the United States and are marketed under the Coleman brand name worldwide. Sunbeam designs, manufactures or sources, and markets textile products, including tents, sleeping bags, backpacks and rucksacks. Sunbeam's tents and sleeping bags are marketed under the Coleman and Peak One brand names. Sunbeam manufactures and markets aluminum- and steel-framed, portable, outdoor, folding furniture under the Coleman and Sierra Trails® brand names. These products are manufactured predominantly at Sunbeam's facilities located in the United States. Sunbeam designs and markets electric lighting products that are manufactured by others and sold under the Coleman, Powermate and Job-Pro® brand names. These products include portable electric lights such as hand held spotlights, flashlights and fluorescent lanterns and a line of rechargeable lanterns and flashlights. Sunbeam designs, sources and markets a variety of small accessories for camping and outdoor use, such as cookware and utensils. These products are manufactured by third-party vendors to Coleman's specifications and are marketed under the Coleman brand name.

Outdoor Cooking. Sunbeam is a leading supplier of outdoor barbecue grills. Sunbeam has one of the leading market share positions in the gas grill industry. Outdoor barbecue grills consist of gas, electric and charcoal models which are sold by Sunbeam primarily under the Sunbeam and Grillmaster® brand names. Sunbeam's outdoor cooking products also include smokers and replacement parts for grills and various accessories such as cooking utensils, grill cleaning products and barbecue tools. Almost all of Sunbeam's grills are manufactured at Sunbeam's United States facility. Sunbeam sources practically all of its accessories and a portion of its replacement parts from various manufacturers, many of which are in East Asia. A

licensee of Sunbeam produces gas barbecue grills under the Coleman name. In 1997 and 1996, sales of gas grills accounted for approximately 13% and 19%, respectively, of consolidated net sales.

Powermate. Sunbeam's principal Powermate products include portable generators and portable and stationary air compressors. Sunbeam is a leading manufacturer and distributor of portable generators in the United States. Generators are used for home improvement projects, small businesses, emergency preparedness and outdoor recreation. These products are manufactured by Sunbeam at its United States facilities using engines manufactured by third parties, are marketed under the Coleman Powermate® brand name and are distributed predominantly through mass merchandisers and home center chains. Sunbeam also produces advanced, light-weight generators incorporating proprietary technology. Sunbeam's air compressors are manufactured at its facilities located in the United States, are marketed under the Coleman Powermate brand name and are distributed predominantly through mass merchandisers and home center chains.

Eastpak. Sunbeam designs, manufactures and distributes book bags, backpacks and related goods throughout the United States under the Eastpak and Timberland® brand names. Sunbeam manufactures the majority of its products in its plants located in Puerto Rico. On November 9, 1999, Sunbeam announced a plan to divest Eastpak.

International

Sunbeam markets a variety of products outside the United States. While Sunbeam sells many of the same products domestically and internationally, it also sells products designed specifically to appeal to foreign markets. Sunbeam, through its foreign subsidiaries, has manufacturing facilities in France, Indonesia, Italy, Mexico, and Venezuela, and sales administration offices, warehouse and distribution facilities in Canada, Europe, the Mideast, Asia and Latin America. Sunbeam also sells its products directly to international customers in certain other markets through Sunbeam sales managers, independent distributors and commissioned sales representatives. The products sold by the international group are sourced from Sunbeam's manufacturing operations or from vendors primarily located in Asia. International sales accounted for approximately 23%, 21% and 19% of Sunbeam's consolidated net sales in 1998, 1997 and 1996, respectively. Sunbeam's international operations are managed through the following geographic areas:

Europe. Sunbeam's European operations are managed from Lyon, France and the sales are dominated by the product lines acquired by Sunbeam as part of the Coleman acquisition, including the Campingaz product lines and Eastpak products. Sunbeam's European office also manages the sale and distribution of Sunbeam products throughout Africa and the Middle East.

Japan. Sunbeam's sales in Japan are almost exclusively sales of camping equipment such as tents, stoves, lanterns, sleeping bags and accessories.

Latin America. The activities of Sunbeam outside the United States were primarily focused in Mexico and Latin America prior to the 1998 acquisition of Coleman. Sunbeam enjoys a strong market position in a number of product lines in Latin America. The Oster brand has the leading market share in small appliances in a number of Latin American countries. Sunbeam's sales in Latin America are derived primarily from household appliances, particularly the Oster blender and the recently introduced Oster arepa maker.

Canada. Sunbeam sells substantially all of its products in Canada through a distribution sales office located in Toronto.

East Asia. During 1998, Sunbeam's sales in East Asia were hampered by the economic downturn particularly in South Korea where Sunbeam had developed a strong market for Eastpak bags, and in Indonesia where Sunbeam sells Campingaz products. Sunbeam has established a sales office in Australia, from which it sells primarily clippers and appliances, and distributes First Alert products in Australia and New Zealand. Sales offices have also been established in Manila and Hong Kong.

Sunbeam has sales and facilities in countries where economic growth has slowed, primarily Japan, Korea and Latin America. The economies of other foreign countries important to Sunbeam's operations could also suffer instability in the future. The following are among the factors that could negatively affect Sunbeam's operations in foreign markets: (1) access to markets; (2) currency devaluation; (3) new tariffs; (4) changes in monetary and/or tax policies; (5) inflation; and (6) governmental instability. See "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—Foreign Operations."

Corporate

Retail. Sunbeam sells many of its products through its retail outlet stores which are operated under the Sunbeam, Oster and Camp Coleman® names. In addition, Sunbeam currently has 37 retail outlet stores in the United States and Canada which primarily carry discontinued, overstock and refurbished products for retail sale to consumers. Net sales from retail stores were not significant in any of the last three fiscal years.

Licensing. Sunbeam licenses the Sunbeam name and the Coleman name and logo under two types of licensing arrangements: general merchandise licenses and licenses to purchasers of businesses divested by Sunbeam. Sunbeam's general merchandise licensing activities involve licensing the Sunbeam and/or Coleman name and logo, for a royalty fee, to certain companies that manufacture and sell products that complement Sunbeam's product lines. Revenue from licensing activities in 1998 in the amount of \$4 million was generated primarily from the license of the Coleman name. In addition, Sunbeam licenses trade names from third parties for use in connection with Sunbeam's products. Revenue from licensing activities was not significant in 1997 and 1996.

Competition

The markets in which Sunbeam operates are generally highly competitive, based primarily on product quality, product innovation, price and customer service and support, although the degree and nature of such competition vary by location and product line. Sunbeam believes that no other company produces and markets the breadth of household appliance, camping and outdoor recreation products marketed by Sunbeam.

Sunbeam competes with various manufacturers and distributors with respect to its household appliances. Primary competitors in the kitchen appliance area have been Black & Decker (which recently sold its appliance division to Windmere), Hamilton Beach/Procter Silex, West Bend, Melita, Salton-Maxim, Cuisinart, Regal, Krups, Kitchen Aid, Braun and Rival. Sunbeam's primary competitor in the consumer scale market is Metro Corporation. Sunbeam's health care products compete with those of numerous small manufacturers and distributors, none of which dominates the home health care market. Sunbeam has limited domestic competition for its electric blankets and heated throws and enjoys a market share in excess of 90% for these products. Sunbeam's primary competitors for retail clippers and trimmers are Wahl and Conair; the primary competitors in the professional products lines are Wahl and Andis. Sunbeam enjoys a leading market share with respect to its smoke and carbon monoxide detectors where Ranco, American Sensor, Nighthawk and Siebe are the primary competitors. Sunbeam competes with Micro General with respect to its Pelouze scales.

Sunbeam's Outdoor Leisure products compete with numerous products sold by other manufacturers. Lanterns and stoves compete with, among others, products offered by Century Primus, American Camper and Dayton Hudson Corporation, while Desa & Schau and Mr. Heater are the primary competitors for heaters. The primary competitors for Sunbeam's portable furniture are a variety of import companies. Sunbeam's insulated cooler and jug products compete with products offered by Rubbermaid Incorporated, Igloo Products Corp. and The Thermos Company. Sunbeam's sleeping bags compete with, among others, American Recreation, Slumberjack, Academy Broadway Corp. and MZH Inc., as well as certain private label manufacturers. In the tent market, Sunbeam competes with, among others, Wenzel, Eureka and Mountain Safety Research, as well as certain private label manufacturers. Sunbeam competes with W.C. Bradley, Meco, Fiesta, Ducane, Weber and Keanall for sales of outdoor grills and accessories. Sunbeam's backpack products compete with, among others, American Camper, JanSport, Nike, Outdoor Products, The North Face, and Kelty, as well as certain private label manufacturers. Sunbeam's competition in the electric light business includes, among others, Eveready and Rayovac Corporation. Sunbeam's camping accessories compete primarily with Coughlan's. Sunbeam's primary competitors in the generator business are Generac Corporation, Honda Motor Co., Ltd., Kawasaki and Yamaha. Primary competitors in the air compressor business include DeVilbiss and Campbell Hausfield. In addition, Sunbeam competes with various other entities in international markets.

Customers

Sunbeam markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogues, Sunbeam-owned outlet stores, television shopping channels, hardware stores, home improvement centers, office products centers, drug and grocery stores, and pet supply retailers, as well as independent distributors and military post exchange outlets. In

1998, Sunbeam sold products to virtually all of the top 100 U.S. retailers, including Wal-Mart/Sam's Club, Kmart, Price Costco, Target Stores and Home Depot. Sunbeam's largest customer, Wal-Mart, accounted for approximately 18%, 20% and 19% of consolidated net sales in 1998, 1997 and 1996, respectively. Sunbeam has the majority of its U.S. customer sales on electronic data interchange (EDI) systems.

Backlog

The amount of backlog orders at any point in time is not a significant factor in Sunbeam's business.

Patents and Trademarks

Sunbeam believes that an integral part of its strength is its ability to capitalize on the Sunbeam®, Coleman®, Oster®, Eastpak®, Mr. Coffee®, Health-o-Meter®, First Alert® and Campingaz®, trademarks which are registered in the United States and in numerous foreign countries. Widely recognized throughout North America, Latin America and Europe, these registered trademarks, along with Powermate®, Pelouze®, Peak One®, Osterizer®, Mixmaster®, Toast Logic®, Steammaster®, Oskar®, Grillmaster® and "Blanket with a Brain®" brands are important to the success of Sunbeam's products. Other important trademarks within Sunbeam include Oster Designer®, Cuddle-Up® and A5®. The loss of any single trademark would not have a material adverse effect on Sunbeam's business; however, the Sunbeam, Coleman and Mr. Coffee trademarks are integral to certain of Sunbeam's continuing operations and Sunbeam aggressively monitors and protects these and other brands.

Sunbeam holds numerous design and utility patents covering a wide variety of products, the loss of any one of which would not have a material adverse effect on Sunbeam's business taken as a whole.

Research and Development

New products and improvements to existing products are developed based upon the perceived needs and demands of consumers. Research and development expenditures are expensed as incurred. The amounts charged to operations for the nine months ended September 30, 1999 and 1998 and for the fiscal years ended 1998, 1997 and 1996 were \$18.8 million, \$13.2 million, \$18.7 million, \$5.7 million and \$6.5 million, respectively.

Employees

As of September 30, 1999, Sunbeam had approximately 13,700 full-time and part-time employees of which approximately 8,700 are employed domestically. Sunbeam is a party to collective bargaining agreements with its hourly employees located at the Aurora, Illinois, Glenwillow, Ohio and Bridgeview, Illinois plants. Sunbeam's Canadian warehouse employees are represented by a union, as are all of the production employees at Sunbeam's operations in France and Italy. Sunbeam has had no material labor-related work stoppages and, in the opinion of management, relations with its employees are generally good.

Seasonality

Sunbeam's consolidated sales are not expected to exhibit substantial seasonality; however, sales are expected to be strongest during the second quarter of the calendar year. Furthermore, sales of a number of products, including warming blankets, vaporizers, humidifiers, grills, First Alert products, camping and generator products, may be impacted by unseasonable weather conditions.

Raw Materials/Suppliers

The raw materials used in the manufacture of Sunbeam's products are available from numerous suppliers in quantities sufficient to meet normal requirements. Sunbeam's primary raw materials include aluminum, steel, plastic resin, copper, electrical components, various textiles or fabrics and corrugated cardboard for cartons. Sunbeam also purchases a substantial number of finished products. Sunbeam is not dependent upon any single supplier for a material amount of such sourced products.

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Properties

Sunbeam's principal properties as of September 30, 1999 are as follows:

<u>Building Location</u>	<u>Principal Use</u>	<u>Square Footage</u>	<u>Owned/Leased</u>
<u>United States</u>			
Aurora, IL	First Alert offices, manufacture of fire extinguisher	236,000	Leased
Boca Raton, FL	Corporate headquarters	100,626	Leased
Bridgeview, IL	Offices and manufacture of scales	157,000	Owned
Glenwillow, OH	Manufacture of Mr. Coffee products, distribution warehouse and offices	458,000	Leased
Hattiesburg, MS	Manufacture of molded plastic parts, humidifiers, vaporizers, warehouse/distribution, and offices	725,000	Owned
Haverhill, MA	Office and warehouse/distribution	111,750	Leased
Kearney, NE	Manufacture/assembly of portable generators; office and warehouse	155,000	Leased(1)
Lake City, SC	Manufacture of sleeping bags	168,000	Owned
Maize, KS	Manufacture of propane cylinders and machined parts	232,760	Leased
McMinville, TN	Manufacture of clippers, trimmers and blades	169,400	Leased
Neosho, MO	Manufacture of outdoor barbecue grills	669,700	Owned
New Braunfels, TX	Manufacture of insulated coolers and other plastic products	338,000	Owned
Pocola, OK	Manufacture of outdoor folding furniture and warehouse	186,000	Owned
Springfield, MN	Manufacture of air compressors	166,000	Owned
Waynesboro, MS	Manufacture of electric blankets	853,714	Leased
Wichita, KS	Manufacture of lanterns and stoves and insulated coolers and jugs; research and development and design operations; office and warehouse	1,197,000	Owned
Morovis and Orocovis, Puerto Rico	Manufacture of daypacks, sports bags, and related products; office and warehouse	110,000	Leased
<u>International</u>			
Acuna, Mexico	Manufacture of appliances	110,000	Owned
Barquisimeto, Venezuela	Manufacture of appliances	75,686	Owned
Centenaro di Lonato, Italy	Manufacture of butane lanterns, stoves, heaters and grills; office and warehouse	77,000	Owned
Juarez, Mexico	Manufacture of smoke and carbon monoxide detectors	109,000	Leased
Matamoros, Mexico	Manufacture of controls	91,542	Owned
Mississauga, Canada	Sales and distribution office	19,891	Leased
St. Genis Laval, France	Manufacture of lanterns and stoves, filling of gas cylinders, and assembly of grills; office and warehouse.	2,070,000	Owned(2)
Tlalnepanitla, Mexico	Manufacture of appliances	297,927	Owned

(1) The owned facilities at Kearney, Nebraska reside on land leased under three leases that expire in 2007 with options to extend each for three additional ten-year periods.

(2) The warehouse portion of St. Genis Laval, France is leased for terms that expire in 2004; the remaining facility is owned.

Sunbeam also maintains leased sales and administrative offices in the United States, Europe, Asia and Latin America, among other sites. Sunbeam leases various warehouse facilities and/or accesses public warehouse facilities as needed on a short term lease basis. Sunbeam also maintains gas filling plants in Indonesia, the Philippines and the United Kingdom. Sunbeam also leases a total of 172,469 square feet for the operation of its retail outlet stores. Sunbeam management considers Sunbeam's facilities to be suitable for

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Sunbeam's operations, and believes that Sunbeam's facilities provide sufficient capacity for its production requirements.

Litigation and Other Contingent Liabilities

On April 23, 1998, two class action lawsuits were filed on behalf of purchasers of Sunbeam common stock in the U.S. District Court for the Southern District of Florida against Sunbeam and some of its present and former directors and former officers alleging violations of the federal securities laws as discussed below. After that date, approximately fifteen similar class actions were filed in the same Court. One of the lawsuits also named as defendant Arthur Andersen, Sunbeam's independent accountants for the period covered by the lawsuit.

On June 16, 1998, the court entered an order consolidating all these suits and all similar class actions subsequently filed (collectively, the "Consolidated Federal Actions") and providing time periods for the filing of a consolidated amended complaint and defendants' response thereto. On June 22, 1998, two groups of plaintiffs made motions to be appointed lead plaintiffs and to have their selection of counsel approved as lead counsel. On July 20, 1998, the court entered an order appointing lead plaintiffs and lead counsel. This order also stated that it shall apply to all subsequently filed actions that are consolidated with the other actions. On August 28, 1998, plaintiffs in one of the subsequently filed actions filed an objection to having their action consolidated pursuant to the June 16, 1998 order, arguing that the class period in their action differs from the class periods in the originally filed consolidated actions. On December 9, 1998, the court entered an order overruling plaintiffs' objections and affirming its prior order appointing lead plaintiffs and lead counsel.

On January 6, 1999, plaintiffs filed a consolidated amended class action complaint against Sunbeam, some of its present and former directors and former officers, and Arthur Andersen. The consolidated amended class action complaint alleges that, in violation of section 10(b) of the Exchange Act and SEC Rule 10b-5, defendants made material misrepresentations and omissions regarding Sunbeam's business operations, future prospects and anticipated earnings per share, in an effort to artificially inflate the price of Sunbeam common stock and call options, and that, in violation of section 20(a) of the Exchange Act, the individual defendants exercised influence and control over Sunbeam, causing Sunbeam to make material misrepresentations and omissions. The consolidated amended complaint seeks an unspecified award of money damages. On February 5, 1999, plaintiffs moved for an order certifying a class consisting of all persons and entities who purchased Sunbeam common stock or who purchased call options or sold put options with respect to Sunbeam common stock during the period April 23, 1997 through June 30, 1998, excluding the defendants, their affiliates, and employees of Sunbeam. Defendants' response to the motion for class certification was filed on May 6, 1999. On March 8, 1999, all defendants who had been served with the consolidated amended class action complaint moved to dismiss it. Under the Private Securities Litigation Reform Act of 1995, all discovery in the consolidated action is stayed pending resolution of the motions to dismiss.

On April 7, 1998, a purported derivative action was filed in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida against Sunbeam and some of its present and former directors and former officers. The action alleged that the individual defendants breached their fiduciary duties and wasted corporate assets when Sunbeam granted stock options on or about February 2, 1998 at an exercise price of \$36.85 to three of its officers and directors who were subsequently terminated by Sunbeam. On June 25, 1998, all defendants filed a motion to dismiss the complaint for failure to make a pre-suit demand on Sunbeam's board of directors. On October 22, 1998, the plaintiff amended the complaint against all but one of the defendants named in the original complaint. On February 19, 1999, plaintiffs filed a second amended derivative complaint nominally on behalf of Sunbeam against some of its present and former directors and former officers and Arthur Andersen. The second amended complaint alleges, among other things, that Messrs. Dunlap and Kersh, Sunbeam's former Chairman and Chief Executive Officer and former Chief Financial Officer, respectively, caused Sunbeam to employ fraudulent accounting procedures in order to enable them to secure new employment contracts, and seeks a declaration that the individual defendants have violated fiduciary duties, an injunction against the payment of compensation to Messrs. Dunlap and Kersh or the imposition of a constructive trust on such payments, and unspecified money damages. The defendants have each moved to dismiss the second amended complaint in whole or in part.

On June 25, 1998, four purported class actions were filed in the Court of Chancery of the State of Delaware in New Castle County by minority stockholders of Coleman against Coleman, Sunbeam and certain of Sunbeam's and Coleman's present and former officers and directors. An additional class action was filed on August 10, 1998, against the same parties. The complaints in these class actions alleged, in essence, that the existing exchange ratio for the proposed merger is no longer fair to Coleman minority stockholders as a result of the decline in the market value of Sunbeam common stock. On October 21, 1998, Sunbeam announced that it had entered into a memorandum of understanding to settle, subject to court approval, the class actions. The court approved the settlement on November 12, 1999. Under the terms of the settlement, Sunbeam will issue to Coleman minority stockholders and plaintiffs' counsel in this action warrants to purchase up to approximately 4.98 million shares of Sunbeam common stock at \$7 per share, subject to anti-dilution adjustments. Coleman minority stockholders who elect an appraisal under Delaware law will not receive warrants. These warrants will generally have the same terms as the warrant issued to the MacAndrews & Forbes subsidiary and will be issued when the merger is consummated, which is now expected to occur during the fourth quarter of 1999 or early in the first quarter of 2000.

During the months of August and October 1998, purported class action and derivative lawsuits were filed in the Court of Chancery of the State of Delaware in New Castle County and in the U.S. District Court for the Southern District of Florida by stockholders of Sunbeam against Sunbeam, MacAndrews & Forbes and some of Sunbeam's present and former directors. These complaints allege that the defendants breached their fiduciary duties when Sunbeam entered into a settlement agreement with the MacAndrews & Forbes subsidiary that sold Sunbeam a controlling interest in Coleman. In the settlement agreement the MacAndrews & Forbes subsidiary released Sunbeam from threatened claims arising out of Sunbeam's acquisition of its interest in Coleman, and MacAndrews & Forbes agreed to provide management support to Sunbeam. Under the settlement agreement, the MacAndrews & Forbes subsidiary was granted a warrant expiring August 24, 2003 to purchase up to an additional 23 million shares of Sunbeam's common stock at an exercise price of \$7 per share, subject to anti-dilution provisions. The plaintiffs have requested an injunction against the issuance of stock to MacAndrews & Forbes upon the exercise of its warrant and unspecified money damages. These complaints also allege that the rights of the minority stockholders have been compromised, as the settlement would normally require stockholder approval under the rules and regulations of the NYSE. The audit committee of Sunbeam's board of directors determined that obtaining such stockholder approval would have seriously jeopardized the financial viability of Sunbeam which is an allowable exception to the NYSE stockholder approval requirements. By order of the Delaware Court of Chancery dated January 7, 1999, the derivative actions filed in that court were consolidated, and Sunbeam and other defendants have moved to dismiss these actions. The action filed in the U.S. District Court for the Southern District of Florida has been dismissed.

On September 16, 1998, an action was filed in the 56th Judicial District Court of Galveston County, Texas alleging various claims in violation of the Texas Securities Act and Texas Business and Commercial Code as well as common law fraud as a result of Sunbeam's alleged misstatements and omissions regarding Sunbeam's financial condition and prospects during a period beginning May 1, 1998 and ending June 16, 1998, in which the U.S. National Bank of Galveston, Kempner Capital Management, Inc. and Legacy Trust Company engaged in transactions in Sunbeam common stock on their own behalf and on behalf of their respective clients. Sunbeam is the only named defendant in this action. The complaint requests recovery of compensatory damages, punitive damages and expenses in an unspecified amount. This action was removed to the U.S. District Court for the Southern District of Texas and subsequently transferred to the Southern District of Florida and consolidated with the Consolidated Federal Actions. Plaintiffs in this action have objected to the consolidation and have sought reconsideration by the Southern District of Florida of the order of the Southern District of Texas denying plaintiffs' motion to remand the case to state court and transferring it to Florida. A similar suit was brought by the same group of plaintiffs in the above action against Arthur Andersen. In that action, the plaintiffs allege that Arthur Andersen violated the Texas Securities Act, committed statutory and common law fraud and was negligent in its audits of Sunbeam's 1996 and 1997 financial statements. On September 29, 1999, Arthur Andersen had filed a motion for leave to join Sunbeam and certain of its former officers as responsible third parties and contribution defendants. Their motion was denied.

On October 30, 1998, a class action lawsuit was filed on behalf of certain purchasers of the debentures in the U.S. District Court for the Southern District of Florida against Sunbeam and some of Sunbeam's former officers and directors, alleging violations of the federal securities laws and common law fraud. The complaint alleges that Sunbeam's offering memorandum used for the marketing of the debentures contained false and misleading information regarding Sunbeam's financial position and that the defendants engaged in a plan to inflate Sunbeam's earnings for the purpose of defrauding the plaintiffs and others. The plaintiffs seek a declaration that defendants violated federal securities laws and either unspecified monetary damages or rescission of their purchase of the debentures. The parties have negotiated a proposed coordination plan in order to coordinate proceedings in this action with those in the Consolidated Federal Actions.

Sunbeam has been named as a defendant in an action filed in the District Court of Tarrant County, Texas, 48th Judicial District, on November 20, 1998. Sunbeam was served in this action through the Secretary of State of Texas on January 15, 1999. The plaintiffs in this action are purchasers of the debentures. The plaintiffs allege that Sunbeam violated the Texas Securities Act and the Texas Business & Commercial Code and committed state common law fraud by materially misstating the financial position of Sunbeam in connection with the offering and sale of the debentures. The complaint seeks rescission, as well as compensatory and exemplary damages in an unspecified amount. Sunbeam specially appeared to assert an objection to the Texas court's exercise of personal jurisdiction over Sunbeam, and a hearing on this objection took place on April 15, 1999. On April 23, 1999, the court entered an order granting Sunbeam's special appearance and dismissing the case without prejudice. The plaintiffs moved for reconsideration of the court order, which motion the court denied on May 24, 1999. The plaintiffs have appealed the order dismissing the case to the Texas Court of Appeals, and the appeal is pending.

On April 12, 1999, a class action lawsuit was filed in the U.S. District Court for the Southern District of Florida. The lawsuit was filed on behalf of persons who purchased debentures during the period of March 20, 1998 through June 30, 1998, inclusive, but after the initial offering of such debentures. The complaint asserts that Sunbeam made material omissions and misrepresentations that had the effect of inflating the market price of the debentures. The complaint names as defendants Sunbeam, its former auditor, Arthur Andersen, and two former Sunbeam officers, Messrs. Dunlap and Kersh. The plaintiff is an institution which allegedly acquired in excess of \$150,000,000 face amount of the debentures and now seeks unspecified money damages. Sunbeam was served on April 16, 1999 in connection with this pending lawsuit. Sunbeam has requested that this action be coordinated with the Consolidated Federal Actions.

On February 9, 1999, Messrs. Dunlap and Kersh filed with the American Arbitration Association demands for arbitration of claims under their respective employment agreements with Sunbeam. Messrs. Dunlap and Kersh are requesting a finding by the arbitrator that Sunbeam terminated their employment without cause and that they should be awarded certain benefits based upon their respective employment agreements. On March 12, 1999, Sunbeam asked the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida to issue an injunction prohibiting Messrs. Dunlap and Kersh from pursuing their arbitration proceedings against Sunbeam on the grounds, among others, that the simultaneous litigation of the action filed in that court on April 7, 1998, described above, and the arbitration proceedings would subject Sunbeam to the threat of inconsistent adjudications with respect to certain rights to compensation asserted by Messrs. Dunlap and Kersh and would cause irreparable harm to Sunbeam and its stockholders. On March 19, 1999, the plaintiff in the April 7, 1998 action discussed above moved for an injunction on similar grounds. On May 11, 1999, the court denied the motions for a preliminary injunction filed by Sunbeam and the plaintiff. Sunbeam has answered the arbitration demands of Messrs. Dunlap and Kersh and has filed counterclaims seeking, among other things, the return of all consideration paid, or to be paid, under the February 1998 Employment Agreements between Sunbeam and Messrs. Dunlap and Kersh. An answer was filed by Messrs. Dunlap and Kersh generally denying Sunbeam's counterclaim. Discovery is pending.

On May 24, 1999, an action naming Sunbeam as defendant was filed in the Circuit Court for Ozaukee County, Wisconsin. Prior to service of the complaint, the plaintiff dismissed its claims, voluntarily, without prejudice. The plaintiff in this action was a purchaser of the debentures. The plaintiff alleged that Sunbeam violated the Wisconsin Uniform Securities Act and committed acts of false advertising and misrepresentation in connection with the offering and sale of the debentures. The plaintiff sought rescission, as well as compensatory and exemplary damages in an unspecified amount.

On September 13, 1999, an action naming Sunbeam and Arthur Andersen as defendants was filed in the Circuit Court for Montgomery County, Alabama. The plaintiffs in this action are purchasers of Sunbeam common stock during the period March 19, 1998 through May 6, 1998. The plaintiffs allege, among other things, that the defendants violated the Alabama Security Laws and SEC Rule 10b-5. The plaintiffs seek compensatory and punitive damages in an unspecified amount. Sunbeam has removed this case to the U.S. District Court for the District of Alabama. In addition, Arthur Andersen has filed a cross claim against Sunbeam for contribution and indemnity. Sunbeam has filed a motion with the Judicial Panel on Multidistrict Litigation to consolidate this action with the Consolidated Federal Actions.

Sunbeam intends to vigorously defend each of the foregoing lawsuits other than those as to which a memorandum of understanding to settle has been reached, but cannot predict the outcome and is not currently able to evaluate the likelihood of Sunbeam's success in each case or the range of potential loss. However, if Sunbeam were to lose these lawsuits, judgments would likely have a material adverse effect on Sunbeam's consolidated financial position, results of operations and cash flows.

On March 23, 1999, Messrs. Dunlap and Kersh filed a complaint in the Court of Chancery of the State of Delaware seeking an order directing Sunbeam to advance attorneys' fees and other expenses incurred in connection with various state and federal class and derivative actions and an investigation instituted by the SEC. The complaint alleges that such advancements are required by Sunbeam's by-laws and by a forbearance agreement entered into between Sunbeam and Messrs. Dunlap and Kersh in August, 1998. A trial of this summary proceeding was held on June 15 and 16, 1999. On June 23, 1999, the court issued a memorandum opinion directing Sunbeam to pay about \$1.4 million on account of expenses incurred to date and to advance the reasonable future expenses in those actions and investigations. Messrs. Dunlap and Kersh have agreed to repay all amounts advanced to them if it is ultimately determined that they are not entitled to indemnification under Delaware law.

On July 2, 1998, the American Alliance Insurance Company filed suit against Sunbeam in the U.S. District Court for the Southern District of New York requesting a declaratory judgment of the court that the directors' and officers' liability insurance policy for excess coverage issued by American Alliance was invalid and/or had been properly canceled by American Alliance. American Alliance has filed a motion for summary judgment on the ground that coverage was never bound. Sunbeam has opposed that motion. As a result of a motion made by Sunbeam, this case has been transferred to the U.S. District Court for the Southern District of Florida for coordination and consolidation of pre-trial proceedings with the various actions pending in that court. On October 20, 1998, an action was filed by Federal Insurance Company in the U.S. District Court for the Middle District of Florida requesting the same relief as that requested by American in the previously filed action as to additional coverage levels under Sunbeam's directors' and officers' liability insurance policy. This action has been transferred to the U.S. District Court for the Southern District of Florida and is currently in discovery. Sunbeam is seeking a stay of discovery to coordinate discovery in this action with any discovery that may occur in the Consolidated Federal Actions. Plaintiff has moved to compel production of various documents. On December 22, 1998, an action was filed by Executive Risk Indemnity, Inc. in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida requesting the same relief as that requested by American and Federal in their previously filed actions as to additional coverage levels under Sunbeam's directors' and officers' liability insurance policy. On April 15, 1999, Sunbeam filed an action in the U.S. District Court for the Southern District of Florida against National Union Fire Insurance Company of Pittsburgh, PA, Gulf Insurance Company and St. Paul Mercury Insurance Company requesting, among other things, a declaratory judgment that National Union is not entitled to rescind its directors' and officers' liability insurance policies to Sunbeam and a declaratory judgment that Sunbeam is entitled to coverage from these insurance companies for the various lawsuits described herein under directors' and officers' liability insurance policies issued by each of the defendants. In response to Sunbeam's complaint, defendants St. Paul and Gulf have answered and asserted counterclaims seeking rescission and declaratory relief that no coverage is available to Sunbeam. Sunbeam has denied the allegations of Gulf's and St. Paul's counterclaims. Defendant National Union has filed a motion to dismiss or stay the claims filed by Sunbeam against National Union on the basis, among others, that Sunbeam must submit the dispute to arbitration or mediation. Sunbeam has filed a response opposing that motion. Sunbeam intends to pursue recovery from all of its insurers if damages are awarded against Sunbeam or its indemnified officers and/or directors under any of the foregoing actions and to recover attorneys' fees covered under those policies. Sunbeam's failure to

obtain such insurance recoveries following an adverse judgment in any of the actions described above could have a material adverse effect on Sunbeam's financial position, results of operations and cash flows.

By letter dated June 17, 1998, the staff of the Division of Enforcement of the SEC advised Sunbeam that it was conducting an informal inquiry into Sunbeam's accounting policies and procedures and requested that Sunbeam produce certain documents. On July 2, 1998, the SEC issued a Formal Order of Private Investigation, designating SEC officers to take testimony and pursuant to which a subpoena was served on Sunbeam requiring the production of certain documents. On November 4, 1998, another SEC subpoena requiring the production of additional documents was received by Sunbeam. Sunbeam has provided numerous documents to the SEC staff and continues to cooperate with the SEC staff. Sunbeam has, however, declined to provide the SEC with material that Sunbeam believes is subject to the attorney-client privilege and the work product immunity.

The SEC has not commenced any civil or administrative proceedings as a result of its investigation, and Sunbeam cannot predict at this time whether the SEC will seek to impose any monetary or other penalties against Sunbeam. Under these circumstances, Sunbeam cannot estimate the duration of the investigation or its outcome.

Sunbeam and its subsidiaries are also involved in various other lawsuits arising from time to time which Sunbeam considers to be ordinary routine litigation incidental to its business. In the opinion of Sunbeam, the resolution of these routine matters, and of certain matters relating to prior operations, individually or in the aggregate, will not have a material adverse effect upon the financial position, results of operations or cash flows of Sunbeam.

Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and claims and related anticipated legal fees for defending such actions. The costs are accrued when it is both probable that an asset has been impaired or a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon Sunbeam's assessment, after consultation with counsel, of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the plaintiffs and other significant factors which vary by case. When it is not possible to estimate a specific expected cost to be incurred, Sunbeam evaluates the range of probable loss and records the minimum end of the range. As of September 30, 1999, Sunbeam had established accruals for litigation matters of \$22.6 million (representing \$11.3 million and \$11.3 million for estimated damages or settlement amounts and legal fees, respectively.) As of December 31, 1998 Sunbeam had established accruals for litigation matters of \$31.2 million (representing \$17.5 million and \$13.7 million for estimated damages or settlement amounts and legal fees, respectively) and \$9.9 million as of December 28, 1997 (representing \$3.0 million and \$6.9 million for estimated damages or settlement amounts and legal fees, respectively). It is anticipated that the \$22.6 million accrual will be paid as follows: \$5.2 million in 1999, \$14.9 million in 2000, and \$2.5 million in 2001. Sunbeam believes, based on information known to Sunbeam on September 30, 1999, that anticipated probable costs of litigation matters existing as of September 30, 1999 have been adequately reserved to the extent determinable.

Products Liability

As a consumer goods manufacturer and distributor, Sunbeam faces the constant risks of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. These claims could result in liabilities that could have a material adverse effect on Sunbeam's consolidated financial position, results of operations or cash flows. Some of the product lines Sunbeam acquired in the 1998 acquisitions have increased its exposure to product liability and related claims.

BRK Brands, Inc., a wholly owned subsidiary of Sunbeam, is a defendant in an ongoing products liability case in which the plaintiff alleged, among other things, that the plaintiff's smoke detector (which had been manufactured by a predecessor company to BRK Brands, Inc.) did not alarm quickly enough. In July 1999, the jury in the case awarded \$20 million in compensatory damages and \$30 million in punitive damages. This case has been settled and BRK Brands, Inc.'s obligation under the settlement is limited to payment of the balance of its self-insured retention.

Sunbeam is party to various personal injury and property damage lawsuits relating to its products and incidental to its business. Annually, Sunbeam sets its product liability insurance program based on Sunbeam's current and historical claims experience and the availability and cost of insurance. Sunbeam's program for 1999 was comprised of a self-insurance retention of \$3.5 million per occurrence, and was limited to \$28.0 million in the aggregate.

Cumulative amounts estimated to be payable by Sunbeam with respect to pending and potential claims for all years in which Sunbeam is liable under its self-insurance retention have been accrued as liabilities. Such accrued liabilities are necessarily based on estimates (which include actuarial determinations made by independent actuarial consultants as to liability exposure, taking into account prior experience, numbers of claims and other relevant factors); thus, Sunbeam's ultimate liability may exceed or be less than the amounts accrued. The methods of making such estimates and establishing the resulting liability are reviewed continually and any adjustments resulting therefrom are reflected in current operating results.

Historically, product liability awards have rarely exceeded Sunbeam's individual per occurrence self-insured retention. There can be no assurance, however, that Sunbeam's future product liability experience will be consistent with its past experience. Based on existing information, Sunbeam believes that the ultimate conclusion of the various pending product liability claims and lawsuits of Sunbeam, individually or in the aggregate, will not have a material adverse effect on the financial position, results of operations or cash flows of Sunbeam.

Environmental Matters

Sunbeam's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations in addition to laws and regulations regarding labeling and packaging of products and the sales of products containing certain environmentally sensitive materials. Sunbeam believes it is in substantial compliance with all environmental laws and regulations which are applicable to its operations. Compliance with environmental laws and regulations involves certain continuing costs; however, such costs of ongoing compliance have not resulted, and are not anticipated to result, in a material increase in Sunbeam's capital expenditures or to have a material adverse effect on Sunbeam's results of operations, financial condition or competitive position.

In addition to ongoing environmental compliance at its operations, Sunbeam also is actively engaged in environmental remediation activities many of which related to divested operations. As of December 31, 1998, Sunbeam has been identified by the United States Environmental Protection Agency ("EPA") or a state environmental agency as a potentially responsible party ("PRP") in connection with seven sites subject to the federal Superfund Act and five sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which Sunbeam has been designated (or expects to be designated) as a de minimis (less than 1%) participant.

The Superfund Act, and related state environmental remediation laws, generally authorize governmental authorities to remediate a Superfund site and to assess the costs against the PRPs or to order the PRPs to remediate the site at their expense. Liability under the Superfund Act is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, Sunbeam recognizes its responsibility to determine whether other PRPs at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever Sunbeam has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize Sunbeam's potential liability with respect to the Environmental Sites, Sunbeam has actively participated in steering committees and other groups of PRPs established with respect to such sites. Sunbeam currently is engaged in active remediation activities at 11 sites, six of which are among the Environmental Sites referred to above, and five of which have not been designated as Superfund sites under federal or state law. The remediation efforts in which Sunbeam is involved include facility investigations, including soil and groundwater investigations, corrective measure studies, including feasibility studies, groundwater monitoring, extraction and treatment, soil sampling, excavation and treatment relating to environmental clean-ups. In certain instances, Sunbeam has entered into agreements with governmental authorities to undertake additional investigatory activities and in other instances has agreed to implement appropriate remedial actions. Sunbeam has also established reserve amounts for certain non-compliance matters including those involving air emissions.

Sunbeam has established reserves to cover the anticipated probable costs of investigation and remediation, based upon periodic reviews of all sites for which Sunbeam has, or may have remediation responsibility. Sunbeam accrues environmental investigation and remediation costs when it is both probable that a liability has been incurred and the amount can be reasonably estimated and Sunbeam's responsibility is established. Generally, the timing of these accruals coincides with the earlier of formal commitment to an investigation plan, completion of a feasibility study or Sunbeam's commitment to a formal plan of action. As of September 30, 1999, December 31, 1998 and 1997, Sunbeam's environmental reserves were \$23.3 million (representing \$21.6 million for the estimated costs of facility investigations, corrective measure studies, or known remedial measures, and \$1.7 million for estimated legal costs), \$25.0 million (representing \$22.9 million for the estimated costs of facility investigations, corrective measure studies, or known remedial measures, and \$2.1 million for estimated legal costs) and \$24.0 million (representing \$21.8 million for the estimated costs of facility investigations, corrective measure studies, or known remedial measures, and \$2.2 million for estimated legal costs), respectively. It is anticipated that the \$23.3 million accrual at September 30, 1999 will be paid as follows: \$5.2 million in 1999, \$3.9 million in 2000, \$1.8 million in 2001, \$2.0 million in 2002, \$0.6 million in 2003 and \$9.8 million thereafter. Sunbeam has accrued its best estimate of investigation and remediation costs based upon facts known to Sunbeam at such dates and because of the inherent difficulties in estimating the ultimate amount of environmental costs, which are further described below, these estimates may materially change in the future as a result of the uncertainties described below. Estimated costs, which are based upon experience with similar sites and technical evaluations, are judgmental in nature and are recorded at undiscounted amounts without considering the impact of inflation and are adjusted periodically to reflect changes in applicable laws or regulations, changes in available technologies and receipt by Sunbeam of new information. It is difficult to estimate the ultimate level of future environmental expenditures due to a number of uncertainties surrounding environmental liabilities. These uncertainties include the applicability of laws and regulations, changes in environmental remediation requirements, the enactment of additional regulations, uncertainties surrounding remediation procedures including the development of new technology, the identification of new sites for which Sunbeam could be a PRP, information relating to the exact nature and extent of the contamination at each site and the extent of required cleanup efforts; the uncertainties with respect to the ultimate outcome of issues which may be actively contested and the varying costs of alternative remediation strategies. Sunbeam continues to pursue the recovery of some environmental remediation costs from certain of its liability insurance carriers; however, such potential recoveries have not been offset against potential liabilities and have not been considered in determining Sunbeam's environmental reserves.

Due to uncertainty over remedial measures to be adopted at some sites, the possibility of changes in environmental laws and regulations and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, Sunbeam's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved as of September 30, 1999.

Sunbeam believes, based on existing information for sites where costs are estimable, that the costs of completing environmental remediation of all sites for which Sunbeam has a remediation responsibility have been adequately reserved and that the ultimate resolution of these matters will not have a material adverse effect upon Sunbeam's financial condition, results of operations or cash flows.

Regulatory Matters

Sunbeam is subject to various laws and regulations in connection with its business operations, including but not limited to laws related to relations with employees, maintenance of safe manufacturing facilities, truth in packaging and advertising, regulation of medical products and safety of consumer products. Sunbeam does not anticipate that its business or operations will be materially adversely affected by compliance with any of these provisions.

MANAGEMENT

Directors and Executive Officers of Sunbeam, Camper Acquisition Corp. and Coleman

The following tables set forth information regarding the directors and executive officers of Sunbeam, Camper Acquisition Corp. (the wholly owned Sunbeam subsidiary that will be merged with Coleman in the merger) and Coleman, respectively. The name, age, present principal occupation or employment and five-year employment history of each individual is set forth in each individual's biography below. The term of office of each of the directors of Sunbeam, Camper Acquisition Corp. and Coleman will expire after a period of one year from their previous date of election or at the time each such director's successor is duly elected and shall have qualified. Unless otherwise indicated in each individual's biography, the business address of each of the directors and executive officers is: 2381 Executive Center Drive, Boca Raton, Florida 33431. Each of the directors and executive officers is a citizen of the United States.

Current Sunbeam Directors and Executive Officers

<u>Name</u>	<u>Age</u>	<u>Position</u>
Jerry W. Levin	55	Chairman of the Board, President, Chief Executive Officer and Director
Paul E. Shapiro	58	Executive Vice President and Chief Administrative Officer
Bobby G. Jenkins	37	Executive Vice President and Chief Financial Officer
Karen K. Clark	39	Senior Vice President, Finance
Steven R. Isko	35	Senior Vice President and General Counsel
Ronald H. Dunbar	62	Senior Vice President, Human Resources
Barbara L. Allen	44	Secretary
Jack D. Hall	55	President, International
Philip E. Beekman	68	Director
Charles M. Elson	40	Director
Howard Gittis	65	Director
John H. Klein	53	Director
Howard G. Kristol	62	Director
Peter A. Langerman	44	Director
Faith Whittlesey	60	Director

Current Camper Acquisition Corp. Directors and Executive Officers

<u>Name</u>	<u>Age</u>	<u>Position</u>
Jerry W. Levin	55	President, Chief Executive Officer and Director
Paul E. Shapiro	58	Executive Vice President, Chief Administrative Officer and Director
Bobby G. Jenkins	37	Executive Vice President
Karen K. Clark	39	Senior Vice President, Finance
Ronald R. Richter	55	Vice President and Treasurer
Steven R. Isko	35	Senior Vice President and General Counsel
Barbara L. Allen	44	Secretary

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Current Coleman Directors and Executive Officers

<u>Name</u>	<u>Age</u>	<u>Position</u>
Jerry W. Levin	55	Chairman, Chief Executive Officer and Director
Paul E. Shapiro	58	Executive Vice President, Chief Administrative Officer and Director
Bobby G. Jenkins	37	Executive Vice President
Karen K. Clark	39	Senior Vice President, Finance
Steven R. Isko	35	Senior Vice President and General Counsel
Barbara L. Allen	44	Secretary
William L. Phillips	47	President, Outdoor Recreation Division
Gwen C. Wisler	40	Executive Vice President and Chief Financial Officer
A. Whitman Marchand	63	Director
John H. Klein	53	Director

Jerry W. Levin was appointed Chief Executive Officer, President and a director of Sunbeam in June 1998 and was elected Chairman of the Sunbeam board in March 1999. Mr. Levin was also appointed to serve as Chairman of the Board and Chief Executive Officer of Coleman since August 1998 and as Chief Executive Officer of Coleman from June 1998 to August 1998. Mr. Levin has served as a director of Camper Acquisition Corp., a wholly owned subsidiary of Sunbeam, since June 1998 and as President, Chief Executive Officer and director since January 1999. Mr. Levin previously held the position of Chairman and Chief Executive Officer of Coleman from February 1997 until its acquisition by Sunbeam in March 1998. Mr. Levin was also the Chairman of Coleman from 1989 to 1991. Mr. Levin was Chairman of the board of Revlon, Inc. from November 1995 until June 1998, Chief Executive Officer of Revlon, Inc. from 1992 until January 1997, and President of Revlon, Inc. from 1991 to 1995. Mr. Levin has been Executive Vice President of MacAndrews & Forbes since March 1989. For 15 years prior to joining MacAndrews & Forbes, Mr. Levin held various senior executive positions with the Pillsbury Company. Mr. Levin is also a member of the boards of directors of Revlon, Inc., Ecolab, Inc. and U.S. Bancorp. For a description of certain arrangements entered into by Sunbeam and MacAndrews & Forbes relating to the appointment of Mr. Levin as an officer of Sunbeam, see "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Appointments of Coleman Executive Officers to Sunbeam's Management and Board" and "—Services Provided by MacAndrews & Forbes."

Paul E. Shapiro joined Sunbeam as Executive Vice President and Chief Administrative Officer in June 1998. Mr. Shapiro was appointed Executive Vice President and Chief Administrative Officer and a director of Coleman in June 1998. Mr. Shapiro served as President of Camper Acquisition Corp. from June 1998 to January 1999, and has served as Executive Vice President and Chief Administrative Officer of Camper Acquisition Corp. since January 1999. Mr. Shapiro previously held the position of Executive Vice President and General Counsel of Coleman from July 1997 until its sale in March 1998. Before joining Coleman, he was Executive Vice President, General Counsel and Chief Administrative Officer of Marvel Entertainment Group, Inc. Marvel and several of its subsidiaries filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code in 1996. Mr. Shapiro served as an executive officer of Marvel at the time of such filing. He had previously spent over 25 years in private law practice and as a business executive, most recently as a shareholder in the law firm of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel. Mr. Shapiro is also a member of the board of directors of Toll Brothers, Inc. For a description of arrangements entered into by Sunbeam and MacAndrews & Forbes relating to the appointment of Mr. Shapiro as an officer of Sunbeam, see "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Appointments of Coleman Executive Officers to Sunbeam's Management and Board" and "—Services Provided by MacAndrews & Forbes."

Bobby G. Jenkins joined Sunbeam as Executive Vice President and Chief Financial Officer in June 1998 and has served as Executive Vice President of Camper Acquisition Corp. since January 1999. Mr. Jenkins was appointed Executive Vice President of Coleman in August 1998. Mr. Jenkins previously held the position of Chief Financial Officer of Coleman's Outdoor Recreation division from September 1997 to May 1998.

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Mr. Jenkins was Executive Vice President and Chief Financial Officer of Marvel from December 1993 through June 1997. Mr. Jenkins served as an executive officer of Marvel at the time of the 1996 Chapter 11 filings of Marvel and several of its subsidiaries. Mr. Jenkins was Assistant Vice President of Finance at Turner Broadcasting System from August 1992 to November 1993. Prior to that, Mr. Jenkins was with Price Waterhouse, last serving as Senior Audit Manager. For a description of arrangements entered into by Sunbeam and MacAndrews & Forbes relating to the appointment of Mr. Jenkins as an officer of Sunbeam, see "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Appointments of Coleman Executive Officers to Sunbeam's Management and Board" and "—Services Provided by MacAndrews & Forbes."

Karen K. Clark joined Sunbeam in April 1998 as Vice President, Operations Finance and served as Vice President, Finance from June 1998 until her appointment as Senior Vice President, Finance in April 1999. Ms. Clark served as Vice President, Finance of Coleman from 1997, and as Vice President, Finance of Camper Acquisition Corp. from January 1999 until her appointment as Senior Vice President, Finance of Coleman and Camper Acquisition Corp. in November 1999. She was Corporate Controller for Precision Castparts Corp. from 1994 to 1997 and prior to that held various positions in public accounting and industry.

Steven R. Isko joined Sunbeam in June 1999 as Senior Vice President and General Counsel. Mr. Isko served as Vice President, General Counsel and Secretary of Camper Acquisition Corp. and Coleman from June 1999 until his appointment as Senior Vice President and General Counsel of Coleman and Camper Acquisition Corp. in November 1999. From May 1998 to December 1998, Mr. Isko was Senior Vice President, General Counsel and Secretary of The Cosmetic Center, Inc. From June 1997 to April 1998, Mr. Isko was Vice President, Legal for Coleman and from June 1996 to July 1997 was Vice President—Law and Corporate Secretary of Marvel Entertainment Group. Prior to June 1996, Mr. Isko was an associate at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP in New York, New York.

Ronald H. Dunbar was appointed Senior Vice President, Human Resources in August 1998. Mr. Dunbar also serves as Senior Vice President, Human Resources of Coleman. Mr. Dunbar was Senior Vice President, Human Resources of Revlon, Inc. from 1992 until 1998. Mr. Dunbar was Vice President and General Manager of Arnold Menn and Associates, a career management consulting and executive outplacement firm, from 1989 to 1991 and Executive Vice President and Chief Human Resources Officer of Ryder System, Inc., a highway transportation firm, from 1978 to 1989. Prior to that, Mr. Dunbar served in senior executive human resources positions at Xerox Corporation and Ford Motor Company.

Barbara L. Allen joined Sunbeam in June 1999 as Secretary. Ms. Allen has also served as Secretary of Camper Acquisition Corp. and Coleman since June 1999. From April 1998 to June 1999, Ms. Allen was a consultant to Coleman. From April 1997 to March 1998, Ms. Allen was Secretary of Coleman. Prior to April 1997, Ms. Allen served in various capacities at Coleman, including as Assistant Secretary from December 1991 to April 1997. Ms. Allen's business address is The Coleman Company, Inc., 3600 North Hydraulic Street, P.O. Box 2931, Wichita, Kansas 67201.

Jack D. Hall joined Sunbeam in October 1998 as President, International. Prior to joining Sunbeam, Mr. Hall held various positions with Revlon, Inc., most recently serving as Executive Vice President, Worldwide Sales and Marketing Development. Prior to joining Revlon, he spent six years with International Playtex Inc. in a variety of sales positions.

William L. Phillips serves as the President of Coleman's Outdoor Recreation division, and was Vice President and General Manager for the hard goods business of Coleman's Outdoor Recreation division until August 1998. From 1985 to 1998, Mr. Phillips held various positions in the sales and marketing area of Coleman, and has been with Coleman since 1978. Mr. Phillips' business address is The Coleman Company, Inc., 3600 North Hydraulic Street, P.O. Box 2931, Wichita, Kansas 67201.

Ronald R. Richter joined Sunbeam in March 1998 as Vice President and Treasurer. From July 1996 to March 1998, Mr. Richter was a Group Vice President at ABN AMRO NV, a Dutch multinational bank. Prior to that, he held various positions at Continental Bank and Bank of America since 1972 and was a Managing Director of Bank of America from 1992 until 1996.

Gwen C. Wisler was appointed Executive Vice President and Chief Financial Officer of Coleman in March 1999, President of Coleman's Eastpak division in July 1999, and was Senior Vice President and Chief Financial Officer from July 1998 to March 1999. Ms. Wisler was appointed Senior Vice President and Chief Financial Officer—Outdoor Leisure Group and International for Sunbeam in March 1999, and was Senior Vice President and Chief Financial Officer—Outdoor Leisure Group for Sunbeam from July 1998 to March 1999. Ms. Wisler joined Coleman in January 1997 as Vice President and Chief Financial Officer—International. Prior to that, Ms. Wisler was Vice President and Chief Accounting Officer for New World Communications Group Incorporated from February 1994 to January 1997, and Chief Financial Officer for Cobb Partners from May 1993 to February 1994.

Philip E. Beekman was elected to the Sunbeam board of directors in June 1999. Mr. Beekman is President of Owl Hollow Enterprises Inc., a position he has held since July 1994. From December 1986 to July 1994, he was Chairman and Chief Executive Officer of Hook SUPERX, a retail drug store chain. Mr. Beekman also is a member of the Boards of Directors of General Chemical Group, Inc., Linens 'N Things, Inc. and The Kendle Company.

Charles M. Elson has been a director of Sunbeam since his election to the Sunbeam board in September 1996. Mr. Elson was a director of Coleman from March 30, 1998 until June 24, 1998. Mr. Elson has been a Professor of Law at Stetson University College of Law since 1990 and serves as Of Counsel to the law firm of Holland & Knight (since May 1995). He was a Visiting Professor at the University of Maryland School of Law from August 1998 to December 1998. Mr. Elson is also a member of the American Law Institute and the Advisory Council and Commissions on Director Compensation, Director Professionalism, CEO Succession and Audit Committees of the National Association of Corporate Directors. He is trustee of Talledega College and a Salvatori Fellow of the Heritage Foundation. Mr. Elson also is a director of Nuevo Energy Company. Mr. Elson's business address is Stetson University College of Law, 1401 61st Street South, St. Petersburg, Florida 33707.

Howard Gittis was elected to the Sunbeam board in June 1998. Mr. Gittis has been a director, Vice Chairman and Chief Administrative Officer of MacAndrews & Forbes and several of its affiliates since 1985. Mr. Gittis also is a member of the board of directors of Golden State Bancorp Inc., Golden State Holdings Inc., Jones Apparel Group, Inc., Loral Space & Communications Ltd., M & F Worldwide Corp., Panavision Inc., Revlon Consumer Products Corporation, Revlon, Inc., REV Holdings Inc. and Rutherford-Moran Oil Corporation.

John H. Klein was elected to the Sunbeam board in February 1999 and to the Coleman board in July 1999. Mr. Klein is Chairman and Chief Executive Officer of Bi-Logix, Inc. and Strategic Business and Technology Solutions LLC and Chairman of CyBear, positions he has held since mid-1998. From April 1996 to May 1998, he was Chairman and Chief Executive Officer of MIM Corporation, a provider of pharmacy benefit services to medical groups. Prior to that, he served as President of IVAX North American Multi-Source Pharmaceutical Group (from January 1995) and as President and Chief Executive Officer of Zenith Laboratories, a generic pharmaceutical manufacturer (from May 1989 to 1995).

Howard G. Kristol has been a director of Sunbeam since his election to the Sunbeam board in August 1996. Mr. Kristol has been a partner in the law firm of Reboul, MacMurray, Hewitt, Maynard & Kristol since 1976. Mr. Kristol's business address is Reboul, MacMurray, Hewitt, Maynard & Kristol, 45 Rockefeller Plaza, New York, New York 10111.

Peter A. Langerman has been a director of Sunbeam since 1990 and served as the Chairman of the Sunbeam board from May 1996 until July 1996 and from June 1998 until March 1999. Since November 1998, Mr. Langerman has been President and Chief Executive Officer of Franklin Mutual Advisers, Inc., a registered investment advisor and a wholly owned subsidiary of Franklin Resources, Inc., a diversified financial services organization. Previously, Mr. Langerman had (since November 1996) served as Senior Vice President and Chief Operating Officer of Franklin Mutual Advisers, Inc. Mr. Langerman was a Senior Vice President of Heine Securities Corporation, an investment advisory service company, from 1986 to November 1996, and a Vice President of Mutual Series Fund from 1988 until its acquisition by Franklin Resources, Inc. in 1996. He has been a director of Franklin Mutual Series Fund, Inc. (previously Mutual Series Fund Inc.) since 1988. Franklin Mutual Series Fund, Inc. is currently the Company's largest shareholder.

Mr. Langerman's business address is Franklin Mutual Advisers, Inc., 51 John F. Kennedy Parkway, Short Hills, New Jersey 07078.

A. *Whitman Marchand* was elected to the Coleman board in April 1999. Mr. Marchand was Managing Director and Group Head for the Special Loan Group of Bankers Trust Company from 1982 to 1998. Prior to 1982, Mr. Marchand held various positions within the national banking department at Bankers Trust, including head of the Real Estate Investment Trust Group. Mr. Marchand is also a member of the board of directors of RainTree Healthcare Corporation.

Faith Whittlesey has been a director of Sunbeam since her election to the Sunbeam board in December 1996. Mrs. Whittlesey has served as the Chief Executive Officer of the American Swiss Foundation, a charitable and educational foundation, since 1991. She is also a member of the board of directors of Valassis Communications, Inc., a publishing and printing company. Mrs. Whittlesey's business address is American Swiss Foundation, Charitable and Educational Foundation, 232 East 66th Street, New York, New York 10021.

Compensation of Sunbeam Directors

The Amended and Restated Sunbeam Corporation Stock Option Plan (the "Option Plan") provides that each director of Sunbeam who is not an employee of Sunbeam or an affiliate of Sunbeam ("Outside Directors"), is automatically granted 1,500 shares of restricted Sunbeam common stock upon his or her initial election or appointment to the Sunbeam board and upon each subsequent re-election to the Sunbeam board of directors (prorated in case of an election or appointment at any time other than at an annual meeting of stockholders). Such restricted Sunbeam common stock vests immediately upon the Outside Director's acceptance of his or her election or appointment.

In addition to the grant of restricted stock, effective as of June 29, 1999, Outside Directors are paid a \$10,000 annual retainer and \$1,000 for each meeting of the board of directors or its committees that they attend, whether in person or by telephone.

Sunbeam directors do not receive any other fees, but are reimbursed for all ordinary and necessary out-of-pocket expenses incurred by them in attending meetings of the Sunbeam board or its committees. Pursuant to Sunbeam's by-laws and Delaware law, Sunbeam is either providing a defense, or reimbursing certain current and former directors of Sunbeam for defense costs incurred by them, in connection with pending litigation against Sunbeam in which certain of such directors have been named as defendants. See "BUSINESS OF SUNBEAM—Litigation and Other Contingent Liabilities."

In addition to the foregoing, during 1998, the Chairman of the special committee of the Sunbeam board of directors, Mr. Kristol, was paid \$50,000 for his services on the committee and the other members of the committee (Messrs. Langerman and Elson and Mrs. Whittlesey) each were paid \$35,000 for their services on the committee.

Compensation of Sunbeam Executives

Summary Compensation Table

The following table sets forth for the years ended December 31, 1998, December 28, 1997 and December 29, 1996, the compensation for services rendered to Sunbeam in all capacities of those persons who, during 1998:

- (1) served as chief executive officer of Sunbeam;
- (2) were among the four most highly compensated executive officers of Sunbeam, other than the CEO, as of Sunbeam's fiscal year end; and
- (3) were among the four most highly compensated executive officers during 1998, but who were not executive officers of Sunbeam as of year end.

The individuals referred to in clauses (1), (2) and (3) are collectively referred to as the "Named Executives." Each of Messrs. Levin, Shapiro and Jenkins and Ms. Clark joined Sunbeam during 1998. The employment of each of Messrs. Dunlap and Kersh was terminated by Sunbeam in June 1998; Mr. Fannin's employment terminated by mutual agreement in August 1998; and Ms. Kelley resigned from Sunbeam effective May 31, 1999.

Name and Principal Position	Year	Annual Compensation Award			Long Term Compensation		
		Salary	Bonus	Other Annual Compensation(1)	Restricted Stock(2)	Securities Underlying Options/SARs Award(3)	All Other Compensation(4)
Officers							
Jerry W. Levin, Chairman and Chief Executive Officer	1998	\$ 541,667	\$541,667	\$ 122,549(5)	\$ 0	2,750,000	\$ 980
Paul E. Shapiro, Executive Vice President & Chief Administrative Officer	1998	339,298	243,750	—	0	600,000	588
Bobby G. Jenkins, Executive Vice President & Chief Financial Officer ...	1998	238,986(6)	239,102(7)	55,540(8)	0	450,000	18,633(9)
Karen K. Clark, Senior Vice President, Finance	1998	190,157(6)	180,124(7)	133,457(10)	0	175,000(11)	0
Former Officers							
Albert J. Dunlap, Former Chairman & Chief Executive Officer	1998	12,772,756(12)	0	13,917,409(13)	0	3,750,000	840(14)
	1997	1,115,385(12)	0	282,888(13)	0	0	4,750(14)
	1996	507,054(12)	0	63,850(13)	12,500,000	2,500,000	4,750(14)
Russell A. Kersh, Former Vice Chairman & Chief Administrative Officer	1998	428,154(15)	0	2,123,267(17)	5,527,500	1,125,000	653(14)
	1997	425,000	0	—	0	0	4,750(14)
	1996	190,384	125,000(16)	240,598(17)	1,812,500	500,000	2,098(14)
David C. Fannin, Former Executive Vice President & Chief Legal Officer	1998	449,891(18)	0	315,067(19)	1,105,500	750,000(20)	1,261,546(22)
	1997	313,233	0	—	0	0	4,750(14)
	1996	272,112	0	—	191,250	175,000(21)	4,750(14)
Janet G. Kelley, Former Senior Vice President & General Counsel	1998	218,000	112,500	—	0	146,250	363
	1997	144,500	30,000	—	0	5,000	0
	1996	140,000	19,463	—	0	42,500	0

(1) Does not include perquisites or other personal benefits, securities or property, the aggregate value of which is less than \$50,000 or 10% of the Named Executive's salary and bonus.

(2) Represents the value of the restricted Sunbeam common stock holdings of Messrs. Dunlap, Kersh and Fannin, as follows: The restricted Sunbeam common stock holdings granted in 1996 were valued based on the 1996 grants and the closing market price of \$12.500, \$18.125 and \$19.125 per share as of the respective grant dates of July 18, 22 and 29, 1996 for each of Messrs. Dunlap, Kersh and Fannin. The restricted 1998 common stockholdings were valued based on the market price of \$36.875 as of February 1, 1998, the date of such grants to Messrs. Kersh and Fannin. Mr. Dunlap's 1998 employment agreement provided for the grant of 300,000 shares of non-restricted Sunbeam common stock and also provided that, of the 1,000,000 shares of restricted Sunbeam common stock granted to him in 1996, 133,334 were canceled and the remaining 866,666 were fully vested. Mr. Kersh's 1998 employment

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agreement provided that of the 100,000 shares of restricted Sunbeam common stock granted to him in 1996, 26,667 shares were canceled and the remaining 73,333 shares were fully vested. In addition, Mr. Kersh's 1998 employment agreement provided for the grant of 150,000 shares of restricted Sunbeam common stock of which 37,500 shares were to vest on grant and the remaining shares were to vest in equal increments on the first, second and third anniversary of the grant date if he remained employed by Sunbeam through such dates or upon the occurrence of certain events. Sunbeam is currently involved in disputes with Messrs. Dunlap and Kersh over some of the stock grants made to them. See "—Employment Agreement with Mr. Dunlap—Dispute with Mr. Dunlap" and "—Employment Agreements with Messrs. Kersh and Fannin—Dispute with Mr. Kersh" for information concerning disputes between Sunbeam and Messrs. Dunlap and Kersh over equity grants and other matters. Under Mr. Fannin's agreement with Sunbeam in connection with his termination, all unvested shares of restricted Sunbeam common stock granted to him in 1998 and held by him were canceled, leaving him with 14,883 shares of vested Sunbeam common stock, which were previously restricted. Dividends were paid on all restricted shares prior to Sunbeam's discontinuance of dividend payments in the second quarter of 1998. At December 31, 1998, none of the other Named Executives held restricted Sunbeam common stock.

- (3) The option grants to Messrs. Levin, Shapiro and Jenkins were provided for in their respective employment agreements.
- (4) For 1998, represents premiums paid by Sunbeam for term life insurance coverage for Messrs. Levin, Shapiro, Dunlap and Kersh and Ms. Kelley.
- (5) Includes \$82,616 for reimbursement of country club fees, the value of a Sunbeam-provided automobile, relocation expenses of \$37,560 and taxes paid by Sunbeam on the value of such relocation expenses.
- (6) Includes each of Mr. Jenkins's and Ms. Clark's salary from Coleman from the date of the acquisition of the MacAndrews & Forbes subsidiary's interest in Coleman by Sunbeam to their respective terminations of employment with Coleman and their respective salaries from Sunbeam, from the date of employment by Sunbeam. In the case of Mr. Jenkins, includes \$12,327 paid for accrued vacation in 1998 upon Mr. Jenkins' termination from employment with Coleman.
- (7) Includes the entire amount of bonuses paid to Mr. Jenkins and Ms. Clark in 1999 for services rendered to Coleman and Sunbeam during 1998.
- (8) Includes a car allowance, reimbursement of relocation expenses of \$37,692 and taxes paid by Sunbeam on such relocation payments.
- (9) Severance payments made to Mr. Jenkins in connection with the termination of his employment with Coleman.
- (10) Includes reimbursement of relocation expenses of \$64,506, taxes paid by Sunbeam on such relocation payments, a car allowance and bonuses of \$40,467 paid upon acceptance of employment with Sunbeam and relocation.
- (11) Includes 75,000 options granted to Ms. Clark during 1998 which were subsequently canceled in exchange for 50,000 options granted under Sunbeam's stock option repricing program.
- (12) For 1998, includes \$11,887,500 which represents the value of the 300,000 shares of Sunbeam common stock granted to Mr. Dunlap in connection with his 1998 employment agreement, based upon the closing market price on the grant date of \$39.625. Also includes \$51,923, \$115,385 and \$51,923 paid in 1998, 1997 and 1996, respectively, in lieu of vacation. See "—Employment Agreement with Mr. Dunlap—Dispute with Mr. Dunlap" for information concerning disputes between Sunbeam and Mr. Dunlap over equity grants and other matters.
- (13) For 1998, includes \$13,698,561 for taxes paid by Sunbeam on the value of the vesting of restricted Sunbeam common stock granted to Mr. Dunlap and other Sunbeam benefits, including health and dental

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care premiums, spouse travel costs and security costs, amounts reimbursed for financial and legal consulting services and the value of a Sunbeam-provided automobile. The 1997 and 1996 amounts include \$14,355 and \$17,250, respectively, for the value of a Sunbeam—provided automobile, \$115,665 and \$27,345, respectively, for taxes paid by Sunbeam on the value of such automobile and other Sunbeam—provided benefits, including financial consulting services, health and dental care premiums and membership in a country club and \$41,348 as reimbursement for financial planning services in 1997.

- (14) Sunbeam adopted an Executive Benefit Replacement Plan (the "Replacement Plan") in 1994 to restore the amount of benefits payable to certain highly compensated employees of Sunbeam who would otherwise be subject to certain limitations on the amount of benefits payable under Sunbeam's 401(k) Savings and Profit Sharing Plan. The Replacement Plan was terminated as of December 31, 1998. Amounts of "All Other Compensation" include amounts accrued for Messrs. Dunlap, Kersh and Fannin, respectively, in 1997 and 1996 under the Replacement Plan, including Sunbeam's profit sharing allocation. Each of Messrs. Dunlap, Kersh and Fannin was paid the amount of their respective accounts in the Replacement Plan in connection with the termination of their employment with Sunbeam. Does not include amounts which the 1998 employment agreements with Messrs. Dunlap and Kersh provided would be payable to them upon termination other than for "Cause," as defined in the respective employment agreements. Sunbeam has taken the position that such amounts are not payable by Sunbeam. See "--Employment Agreement with Mr. Dunlap—Dispute with Mr. Dunlap" and "--Employment Agreements with Messrs. Kersh and Fannin—Dispute with Mr. Kersh" for information concerning disputes between Sunbeam and Messrs. Dunlap and Kersh.
- (15) Includes \$61,298 paid in lieu of vacation. See "--Employment Agreements with Messrs. Kersh and Fannin—Dispute with Mr. Kersh" for information concerning disputes between Sunbeam and Mr. Kersh.
- (16) One-time bonus paid when Mr. Kersh's employment began.
- (17) For 1998, represents taxes paid by Sunbeam on the value of the vesting of restricted Sunbeam common stock granted to Mr. Kersh. For 1996, represents a discount on the purchase price of shares of Sunbeam common stock from Sunbeam in the amount of \$239,800 and premiums paid by Sunbeam for health and dental insurance coverage.
- (18) Includes \$77,808 paid in lieu of vacation for the years 1996, 1997 and 1998 in accordance with Mr. Fannin's termination agreement.
- (19) Represents taxes paid by Sunbeam on the value of the vesting of restricted Sunbeam common stock granted to Mr. Fannin.
- (20) All of these options have been canceled pursuant to Mr. Fannin's termination agreement.
- (21) Includes options awarded in exchange for the cancellation of certain outstanding options; a portion of which were granted in 1995. Shares underlying option grants previously made which were canceled in exchange for new option awards are also included.
- (22) Includes the following amounts payable under Mr. Fannin's termination agreement: (a) \$825,000 severance payment of which \$575,001 was paid in 1998 and the balance of which is payable in monthly installments of \$16,667; (b) consulting payments of \$250,000, of which \$41,667 was paid in 1998 and the balance of which is payable in monthly installments of \$13,889; (c) \$50,000 payable for the three year extension of Mr. Fannin's non-compete agreement, of which \$8,334 was paid in 1998 and the balance of which is payable in equal monthly installments of \$2,778; (d) \$7,785 for health and dental care premiums paid or payable, of which \$1,795 was paid in 1998; and (e) \$127,801, which represents the total amount of Mr. Fannin's account in the Replacement Plan. See "--Subsequent Arrangements with Messrs. Dunlap, Kersh and Fannin."

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Option Grants in Last Fiscal Year

The following table sets forth information with respect to the options to purchase shares of Sunbeam common stock granted to the Named Executives during 1998. The option grants made to Messrs. Levin, Shapiro and Jenkins were approved by Sunbeam's stockholders at Sunbeam's 1999 annual meeting of stockholders held on June 29, 1999. The option grants made to Messrs. Dunlap, Kersh and Fannin were approved by Sunbeam's stockholders at Sunbeam's 1998 annual meeting of stockholders held on May 12, 1998. All other option grants were made under the Option Plan. See "—Employment Agreement with Mr. Dunlap—Dispute with Mr. Dunlap" and "—Employment Agreements with Messrs. Kersh and Fannin—Dispute with Mr. Kersh" for information concerning disputes between Sunbeam and Messrs. Dunlap and Kersh over equity grants and other matters.

Name	Number of Securities Underlying Options Granted(1)	% of Total Options Granted to Employees in Fiscal Year	Exercise or Base Price (\$/Share)	Grant Date Market Price (\$/Share)	Expiration Date	Date Grant Value(8)
Officers						
Jerry W. Levin	1,750,000(2)	10.6%	\$ 7.00	\$ 6.88	8/11/2008	\$6,457,500
	500,000(2)	3.0%	10.50	6.88	8/11/2008	1,470,000
	500,000(2)	3.0%	14.00	6.88	8/11/2008	1,205,000
Paul E. Shapiro	600,000(2)	3.6%	7.00	6.88	8/11/2008	2,214,000
Bobby G. Jenkins	450,000(2)	2.7%	7.00	6.88	8/11/2008	1,660,500
Karen K. Clark	75,000(3)(4)	.5%	25.08	25.08	5/11/2008	906,750
	50,000(2)	.3%	7.00	7.50	8/30/2008	208,000
	50,000(2)	.3%	7.00	7.50	8/30/2008	208,000
Former Officers						
Albert J. Dunlap	3,750,000(5)	22.7%	36.85	36.85	2/01/2008	78,600,000
Russell J. Kersh	1,125,000(6)	6.8%	36.85	36.85	2/01/2008	23,580,000
David C. Fannin	750,000(6)	4.5%	36.85	36.85	2/01/2008	15,720,000
Janet G. Kelley	75,000	.5%	38.34	38.34	2/18/2008	1,296,000
	11,250	.1%	24.03	24.03	5/18/2008	129,375
	60,000(7)	.4%	7.00	5.94	12/15/2008	161,800

- (1) All options have a term of ten years from their respective grant dates.
- (2) These options become exercisable at a predetermined date as specified in the employees' respective employment agreements. See "—Employment Agreement with Mr. Levin—Equity Grants" and "—Employment Agreements with Executives Shapiro, Jenkins and Clark—Equity Grants."
- (3) These options become exercisable over three years in equal annual increments commencing on the first anniversary of the grant date.
- (4) These options have been canceled in exchange for one of the grants of 50,000 options set forth in the table above.
- (5) Mr. Dunlap's employment agreement provided that one-third of these options vested as of the grant date and that an additional one-third of such options were to vest on each of the first and second anniversaries of the grant dates.
- (6) The options granted to Messrs. Kersh and Fannin provided for vesting in equal installments on the grant date and the first, second and third anniversaries of the grant date. The entire option grant to Mr. Fannin was canceled upon the termination of his employment by mutual agreement.
- (7) These options became fully exercisable on June 13, 1999 in connection with Ms. Kelley's resignation from Sunbeam. At the same time, Ms. Kelley forfeited 68,583 exercisable options having exercise prices ranging from \$20.30 per share to \$38.34 per share.

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- (8) Grant date values were calculated using the Black-Scholes options pricing model which has been adjusted to take dividends into account for the period prior to announced discontinuance of dividends. Use of this model should not be viewed in any way as a forecast of the future performance of the common stock. The estimated present value of each stock option as set forth above is based on the following inputs:

Valuation Dates	2/01/98	2/19/98	5/12/98	5/19/98	8/12/98	8/31/98	12/16/98
Risk Free Interest Rate	5.51%	5.57%	5.79%	5.72%	5.37%	4.95%	4.60%
Stock Price Volatility	36.10%	36.00%	40.30%	40.30%	49.60%	49.80%	52.80%
Dividend Yield	0.10%	0.10%	0.20%	0.20%	0.00%	0.00%	0.00%

The model assumes: (a) an expected option term of six years; (b) a risk-free interest rate based on closing six-year U.S. Treasury strip yield on the date of valuation; and (c) no forfeitures. Stock price volatility is calculated using weekly stock prices for a period of five years ended as of the valuation date and believed to reflect volatility in the absence of unusual corporate transactions. Notwithstanding the fact that these options are, with limited exceptions, non-transferable, no discount for lack of marketability was taken.

Aggregated Option Exercises in Last Fiscal Year and Fiscal Year-End Option Values

The following table sets forth information with respect to option exercises occurring during 1998 and the number of options held by the Named Executives at Sunbeam's fiscal year end. The option grants to Messrs. Levin, Shapiro and Jenkins were approved by Sunbeam's stockholders at Sunbeam's 1999 annual meeting of stockholders held on June 29, 1999. Sunbeam and Messrs. Dunlap and Kersh are disputing the amounts and benefits paid and payable to each of them under their respective employment agreements, and Sunbeam is contesting the validity of options granted to them. The following table includes the entire amount of the options granted by Sunbeam which Messrs. Dunlap and Kersh assert are vested. See "—Employment Agreement with Mr. Dunlap—Dispute with Mr. Dunlap" and "—Employment Agreement with Messrs. Kersh and Fannin—Dispute with Mr. Kersh" for information concerning disputes between Sunbeam and Messrs. Dunlap and Kersh over equity grants and other matters.

Name	Shares Acquired on Exercise	Value Realized	Number of Securities Underlying Unexercised Options Held at December 31, 1998		Value of Unexercised In-the-Money Options at December 31, 1998(1)	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Officers						
Jerry W. Levin	0	0	0	2,750,000	0	0
Paul E. Shapiro	0	0	0	600,000	0	0
Bobby G. Jenkins	0	0	0	450,000	0	0
Karen K. Clark	0	0	0	100,000	0	0
Former Officers						
Albert J. Dunlap	0	0	6,250,000	0	0	0
Russell A. Kersh	0	0	1,625,000	0	0	0
David C. Fannin	0	0	200,000	0	0	0
Janet G. Kelley	0	0	52,766	173,484	0	0

Employment Agreement with Mr. Levin

On August 12, 1998, Sunbeam entered into an employment agreement with Mr. Levin (the "Levin Agreement") in which Sunbeam has agreed to employ Mr. Levin as Chief Executive Officer, and Mr. Levin has agreed to serve in such capacity, for an initial period ending June 14, 2001.

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Compensation

Under the Levin Agreement, Mr. Levin will be paid a base salary at an annual rate of not less than \$1,000,000. Effective April 1, 1999, Mr. Levin's base compensation was increased to \$1,150,000. Additionally, Mr. Levin was paid a guaranteed bonus for 1998 of \$541,667 and, thereafter, is eligible to receive a performance-based target annual bonus of 100% of his base salary and, if specified performance objectives are met, up to a bonus of 200% of his base salary under Sunbeam's incentive plan subject to a maximum award of \$2,000,000. Mr. Levin participates in the other benefit plans available generally to employees or other senior executives of Sunbeam. Sunbeam also reimburses Mr. Levin for the cost of membership in a country club.

Equity Grants

Mr. Levin received grants effective as of August 12, 1998 of options to purchase 1,750,000 shares of Sunbeam common stock at a price of \$7.00 per share; 500,000 shares of Sunbeam common stock at a price of \$14.00 per share; and 500,000 shares of Sunbeam common stock at a price of \$10.50 per share (the "Levin Options"). The term of each of the Levin Options is ten years, and they will vest and become exercisable in full on June 14, 2001 if Mr. Levin remains employed by Sunbeam as of such date. In addition, effective March 29, 1999, Mr. Levin received grants of options under the Option Plan to purchase 250,000 shares of Sunbeam common stock at \$5.57 per share. These options will vest equally on the first, second and third anniversaries of the grant date. Upon the occurrence of a "Change in Control" of Sunbeam as defined in the Option Plan, all of the options granted to Mr. Levin will vest in full.

Termination and Change in Control Provisions

Sunbeam may terminate Mr. Levin's employment under the Levin Agreement due to his disability, or for Cause. As defined in the Levin Agreement, "Cause" means (1) gross neglect of his duties, (2) his conviction for a felony or any lesser crime or offense involving the property of Sunbeam, (3) willful misconduct in connection with the performance of any material portion of his duties, (4) willful breach of any material provision of the Levin Agreement, or (5) any conduct on Mr. Levin's part which would make his continued employment materially prejudicial to the best interests of Sunbeam. In addition, he may terminate his employment following a Company Breach upon 60 days' written notice to Sunbeam. As defined in the Levin Agreement, "Company Breach" means (1) any material breach of the Levin Agreement by Sunbeam, including the failure to obtain stockholder approval of the grant of the Levin Options, or (2) a "Change in Control" of Sunbeam, as defined in the Levin Agreement.

The Levin Agreement provides that, if Sunbeam terminates Mr. Levin's employment for Cause or if he voluntarily terminates his employment, all obligations, other than accrued obligations, of Sunbeam will cease and all unvested Levin Options will be immediately forfeited. If a Company Breach occurs, and Mr. Levin terminates the Levin Agreement, Sunbeam is obligated to continue to pay Mr. Levin's base salary and target bonus for the balance of the term and continue his benefits until his reemployment. In addition, all of the Levin Options vest and remain exercisable for three years.

The Levin Agreement provides that, if Mr. Levin's employment is terminated due to his death or his continued disability for six months, his legal representatives or designated beneficiary, or Mr. Levin, will receive continued payments in an amount equal to 60% of base salary until the longer of 12 months or the end of the term in effect at the time of his death or termination due to disability. The Levin Options will become vested and remain exercisable for three years thereafter.

Employment Agreements with Executives Shapiro, Jenkins and Clark

Sunbeam entered into employment agreements with Messrs. Shapiro and Jenkins and Ms. Clark in August 1998. Messrs. Shapiro and Jenkins and Ms. Clark are referred to as the "Executives." The agreements with Messrs. Shapiro and Jenkins are for an initial period of approximately three years ending on June 14, 2001; and the agreement with Ms. Clark has a term ending on June 14, 2000. The Executives' agreements are referred to individually as an "Executive Agreement" and collectively as the "Executive Agreements."

Compensation

Under the Executive Agreements, Messrs. Shapiro and Jenkins and Ms. Clark will be paid a base salary at annual rates not less than \$600,000, \$365,000 and \$270,000, respectively. Effective April 1, 1999, the annual base salary for each of Messrs. Shapiro and Jenkins was increased to \$750,000 and \$425,000, respectively. Effective June 1, 1999, the annual base salary of Ms. Clark was increased to \$297,000. Additionally, under the Executive Agreements, Messrs. Shapiro and Jenkins and Ms. Clark were paid a guaranteed bonus for 1998 equal to \$243,750, \$118,625 and \$73,125, respectively, and, thereafter, are eligible to receive a performance-based annual target bonus equal to 75%, 60% and 50% of their respective annual salaries. The Executives also participate in the other benefit plans available generally to employees or other senior executives of Sunbeam.

Equity Grants

Under the Executive Agreements, Messrs. Shapiro and Jenkins and Ms. Clark also received grants effective as of June 15, 1998, June 15, 1998 and August 31, 1998, respectively, of options to purchase 600,000 shares, 450,000 shares and 50,000 shares, respectively, of Sunbeam common stock at a price of \$7.00 per share (the "Executive Options"). The term of each of the Executive Options is ten years, and they will vest and become exercisable in full on June 14, 2001, June 14, 2001 and June 14, 2000, respectively, if the Executive remains employed as of such date. Mr. Jenkins was also granted an option, effective March 29, 1999, to acquire 100,000 shares of Sunbeam common stock at a purchase price of \$5.57 per share. This option will vest in equal increments on the first, second and third anniversaries of the grant date. Upon the occurrence of a "Change in Control" of Sunbeam, as defined in the Option Plan, the Executive Options will vest in full. In addition, under her employment agreement, Ms. Clark exchanged 75,000 options she had previously received upon joining Sunbeam for 50,000 options with an exercise price of \$7.00 per share, as part of Sunbeam's option exchange program.

Termination and Change in Control Provisions

Sunbeam may terminate an Executive's employment under his or her Executive Agreement due to disability, or for Cause. As defined in the Executive Agreements, "Cause" means (1) gross neglect of duties, (2) conviction for a felony or any lesser crime or offense involving the property of Sunbeam, (3) willful misconduct in connection with the performance of any material portion of the Executive's duties, (4) willful breach of any material provision of the agreement by Executive, or (5) any conduct on the Executive's part which would make continued employment materially prejudicial to the best interests of Sunbeam. The Executive may terminate his or her employment under the Executive Agreement at any time. In addition, he or she may terminate his or her employment for Company Breach upon 60 days' written notice to Sunbeam. As defined in the Executive Agreements, "Company Breach" means any material breach of the Executive Agreement by Sunbeam. In the case of the agreements with Messrs. Shapiro and Jenkins, a material breach includes the failure to obtain stockholder approval of the grants of the Executive Options to Messrs. Shapiro and Jenkins and a "Change of Control" of Sunbeam, as defined in their respective Executive Agreements.

The Executive Agreements provide that, if Sunbeam terminates an Executive's employment for Cause or if the Executive voluntarily terminates his or her employment, all obligations, other than accrued obligations of Sunbeam will cease and all unvested Executive Options shall be immediately forfeited. If a Company Breach occurs, and an Executive terminates his or her Executive Agreement, Sunbeam is obligated to continue to pay the Executive's base salary and target bonus for the balance of the term and continue the Executive's benefits until his reemployment. In addition, all of the Executive Options will vest and remain exercisable for three years.

The Executive Agreements provide that, if an Executive's employment is terminated due to death, his or her legal representatives or designated beneficiary will receive continued payments in an amount equal to 60% of base salary until the longer of 12 months or the end of the term in effect at the time of death. Upon an Executive's death, the Executive Options will be vested upon such death and will remain exercisable for three years thereafter.

Employment Agreement with Mr. Dunlap

As of February 1, 1998, Sunbeam entered into an employment agreement with Mr. Dunlap (the "Dunlap Agreement") in which Sunbeam agreed to continue to employ Mr. Dunlap as Chairman of the board of directors and Chief Executive Officer, and Mr. Dunlap agreed to serve in such capacities, for a period of three years ending January 31, 2001, and for successive one-year renewal periods unless advance notice of termination was given by either party by no later than August 1 of the immediately preceding year. The Dunlap Agreement was not renewable beyond January 31, 2003. The Dunlap Agreement replaced and superseded Mr. Dunlap's prior employment agreement.

Dispute with Mr. Dunlap. On June 13, 1998, the Sunbeam board of directors removed Mr. Dunlap as Chairman and Chief Executive Officer. The Sunbeam board took this step because Sunbeam's outside directors had lost confidence in Mr. Dunlap's leadership. Mr. Dunlap has asserted that Sunbeam terminated his employment without cause in breach of the Dunlap Agreement, and Sunbeam is vigorously contesting these claims, including claims regarding the validity of grants of Sunbeam common stock and stock options to him. Nothing in this prospectus should be construed to support his claims or to limit or otherwise affect Sunbeam's claims against Mr. Dunlap, including claims with respect to his entitlement to equity grants.

Compensation. Under the Dunlap Agreement, Mr. Dunlap was to be paid a base salary at an annual rate of \$2,000,000. Sunbeam could increase Mr. Dunlap's base salary, but could not reduce it after any such increase. Mr. Dunlap was eligible to participate in the other benefit plans available generally to employees or other senior executives of Sunbeam. However, he was not eligible to participate in any incentive plan of Sunbeam. Sunbeam also provided Mr. Dunlap with various perquisites on a grossed-up basis. Upon Mr. Dunlap's termination, he did not receive any compensation from Sunbeam. Sunbeam subsequently agreed to pay \$52,000 of the accrued vacation and employment benefits of Mr. Dunlap as part of a six-month agreement with Mr. Dunlap in which the parties agreed not to assert claims against each other and to exchange information relating to the pending stockholder lawsuits.

Equity Grants. The Dunlap Agreement provided that all of Mr. Dunlap's then outstanding options to purchase shares of Sunbeam common stock, which were granted under Mr. Dunlap's prior employment agreement, vested as of February 20, 1998; 40% of Mr. Dunlap's shares of restricted Sunbeam common stock were canceled as of such date; and all of Mr. Dunlap's remaining shares of restricted Sunbeam common stock vested as of such date. The Dunlap Agreement also provided that Sunbeam reimburse Mr. Dunlap on a grossed-up basis with respect to any income tax assessed in connection with the vesting of such shares of restricted Sunbeam common stock.

Mr. Dunlap received a grant as of February 1, 1998 of 300,000 shares of Sunbeam common stock. Mr. Dunlap also received a grant effective as of February 1, 1998 of options to purchase 3,750,000 shares of Sunbeam common stock at a price of \$36.85 per share (the "Dunlap Options"), which grant was approved by Sunbeam's stockholders at the 1998 annual meeting. The Dunlap Options provided for a term of ten years, and for vesting with respect to one-third of the shares subject thereto on the grant date and for an additional one-third to vest on each of the first and second anniversaries of the grant date if Mr. Dunlap had remained employed by Sunbeam. The Dunlap Agreement provided that upon the occurrence of a "Change in Control" of Sunbeam, as defined in the Option Plan, the Dunlap Options would have vested in full.

Termination and Change in Control Provisions. The Dunlap Agreement provided that Sunbeam could terminate Mr. Dunlap's employment at any time, or due to his disability, or for Cause. The Dunlap Agreement defined "Cause" to mean (1) willful failure substantially to perform Mr. Dunlap's duties under the Dunlap Agreement, except if such failure results from disability, or (2) his conviction for a felony or a plea of guilty or no contest thereto.

The Dunlap Agreement provided that, if Sunbeam terminated Mr. Dunlap's employment other than for Cause and not due to his disability, or if he terminated his employment for a "Good Reason," as defined in the Dunlap Agreement:

- (1) he would receive as liquidated damages a lump sum payment in an amount equal to the base salary that would have been payable through the period ending January 31, 2001, or any then applicable renewal period;

(2) the Dunlap Options would become fully vested, and he would be entitled to exercise the Dunlap Options as well as previously granted options for the balance of their original ten-year term; and

(3) he would be entitled to continue participating in the employee benefit plans in which he had been entitled to participate before termination, for three years after termination, or to receive substantially equivalent benefits.

The Dunlap Agreement provided that, if Sunbeam terminated Mr. Dunlap's employment for Cause or if he terminated his employment other than for Good Reason, all obligations, other than accrued obligations, of Sunbeam would cease, except that Mr. Dunlap would be able to exercise the Dunlap Options as well as previously granted options which were exercisable on the date of termination within 90 days, if the termination were for Cause, and within one year, if it were by Mr. Dunlap without Good Reason.

In addition, the Dunlap Agreement provided that Mr. Dunlap would be entitled to receive a gross-up with respect to any excise tax applicable under the Internal Revenue Code of 1986, as amended, to "excess parachute payments."

Employment Agreements with Messrs. Kersh And Fannin

Sunbeam entered into employment agreements with each of Messrs. Kersh and Fannin as of February 1, 1998. Messrs. Kersh and Fannin are referred to herein as the "Prior Executives." The employment agreements with Messrs. Kersh and Fannin had terms ending on January 31, 2001. The employment agreements with Messrs. Kersh and Fannin (referred to individually as a "Prior Executive Agreement" and collectively as the "Prior Executive Agreements") replaced and superseded their respective previous employment agreements with Sunbeam.

Dispute with Mr. Kersh. On June 16, 1998, the Sunbeam board of directors terminated Mr. Kersh as Vice Chairman and Chief Financial Officer. Mr. Kersh has asserted that Sunbeam terminated his employment without cause in breach of his Prior Executive Agreement, and Sunbeam is vigorously contesting these claims, including claims regarding the validity of grants of restricted Sunbeam common stock and options to him. Nothing in this prospectus should be construed to support his claims or to limit or otherwise affect Sunbeam's claims against Mr. Kersh, including claims with respect to his entitlement to equity grants.

Compensation. Under their respective Prior Executive Agreements, Messrs. Kersh and Fannin were each to be paid a base salary at annual rates of \$875,000 and \$595,000, respectively. The Prior Executives were also eligible to participate in those benefit plans available generally to employees or other senior executives of Sunbeam. However, the Prior Executives were not eligible to participate in any cash incentive plan of Sunbeam. Upon Mr. Kersh's termination, he did not receive any compensation from Sunbeam. Sunbeam subsequently agreed to pay \$68,000 of the accrued vacation and employment benefits of Mr. Kersh as part of a six-month agreement with Mr. Kersh in which the parties agreed not to assert claims against each other and to exchange information relating to the pending stockholder lawsuits.

Equity Grants. The Prior Executive Agreements provided that all of Mr. Kersh's then outstanding options to acquire shares of Sunbeam common stock, which were granted under Mr. Kersh's previous employment agreement, and all of Mr. Fannin's then outstanding options to acquire shares of Sunbeam common stock vested as of February 20, 1998; 40% of each of Mr. Kersh's and Mr. Fannin's shares of restricted Sunbeam common stock were canceled as of such date; and all of Mr. Kersh's and Mr. Fannin's remaining shares of restricted Sunbeam common stock vested as of such date. The Prior Executive Agreements provided that Sunbeam was to reimburse Messrs. Kersh and Fannin on a grossed-up basis with respect to any income tax assessed in connection with the vesting of such shares of restricted Sunbeam common stock.

As of February 1, 1998, Messrs. Kersh and Fannin each received a grant of 150,000 and 30,000 shares of restricted Sunbeam common stock (the "Prior Executive Restricted Shares"), respectively. These Prior Executive Restricted Shares provided for vesting in four equal installments on each of February 1, 1998 and the first, second and third anniversaries of February 1, 1998. Messrs. Kersh and Fannin also received grants, effective as of February 1, 1998, of options to purchase 1,125,000 and 750,000 shares of Sunbeam common stock, respectively, at a price of \$36.85 per share which were approved by Sunbeam's stockholders at the 1998 annual meeting (the "Prior Executive Options"). These Prior Executive Options provided for vesting in

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four equal installments on the grant date of February 1, 1998 and the first, second and third anniversaries of February 1, 1998.

Termination and Change in Control Provisions. The Prior Executive Agreements with Messrs. Kersh and Fannin provided that Sunbeam may terminate either Prior Executive's employment at any time, or due to the Prior Executive's disability, or for "Cause," as defined in the Prior Executive Agreement.

Each Prior Executive Agreement provided that, if Sunbeam terminated the Prior Executive's employment other than for Cause and not due to his disability, or if the Prior Executive terminated his employment for "Good Reason," as defined in the Prior Executive Agreements, or following a "Change in Control," as defined in the Prior Executive Agreements:

- (1) such Prior Executive would receive as liquidated damages a lump sum payment in an amount equal to the base salary that would have been payable to him through the end of the employment term;
- (2) the Options and Executive Restricted Shares granted to such Prior Executive would become fully vested, and the Prior Executive will be entitled to exercise his Prior Executive Options and previously granted options for the balance of their original ten-year term; and
- (3) the Prior Executive would be entitled to continue participating in the employee benefit plans in which he had been entitled to participate before termination, through the end of the employment term, or to receive substantially equivalent benefits.

Each Prior Executive Agreement provided that if Sunbeam terminated the Prior Executive's employment for Cause or if the Prior Executive terminated his employment other than for Good Reason or following a Change in Control, all obligations, other than accrued obligations, of Sunbeam would cease, except that such Prior Executive would be able to exercise Prior Executive Options and previously granted options granted to him which were exercisable on the date of termination or within 90 days thereof, if the termination were for Cause, and within one year thereof, if the termination were by the Executive other than for Good Reason or following a Change in Control.

In addition, each Prior Executive Agreement provided that the Prior Executive would be entitled to receive a gross-up with respect to any excise tax applicable under the Internal Revenue Code to "excess parachute payments."

Employment Agreement with Ms. Kelley

Sunbeam entered into an employment agreement with Ms. Kelley in December 1998. The agreement had an initial term extending until December 31, 2000, but expired upon her resignation from employment effective May 31, 1999. In 1999, while this agreement was in effect, Ms. Kelley's annual base salary rate was \$275,000. In addition, Ms. Kelley was paid a guaranteed bonus of \$112,500 for 1998. Under the agreement, Ms. Kelley received a grant effective as of December 16, 1998 of options to purchase 60,000 shares of common stock at a price of \$7.00 per share.

Ms. Kelley's agreement provided that if Sunbeam terminated her employment for Cause (as defined in Ms. Kelley's agreement) or if she voluntarily terminated her employment, all obligations of Sunbeam, other than accrued obligations, would cease and all unvested stock options would be immediately forfeited. If a Company Breach (as defined in Ms. Kelley's agreement) occurred, and Ms. Kelley terminated her employment, under the agreement, Sunbeam was obligated to pay Ms. Kelley's base salary and target bonus for the balance of the term and continue her benefits until her reemployment. In addition, all of Ms. Kelley's options would have vested and remained exercisable for three years.

In connection with her resignation, the options to purchase 60,000 shares of common stock at \$7.00 per share were made fully exercisable on June 13, 1999 in exchange for the forfeiture by Ms. Kelley of 68,583 exercisable options having exercise prices ranging from \$20.30 per share to \$38.34 per share.

Subsequent Arrangements with Messrs. Dunlap, Kersh and Fannin

In early August 1998, Sunbeam entered into a six-month agreement with Messrs. Dunlap and Kersh in which all parties agreed not to assert claims against each other and to exchange information relating to the various lawsuits in which Sunbeam and Messrs. Dunlap Kersh are named as defendants. Sunbeam also agreed

to pay, and has paid, to Messrs. Dunlap and Kersh amounts related to accrued vacation and employment benefits and to advance litigation defense costs subject to the receipt of an undertaking from each of them, which Sunbeam has received, to repay all amounts so advanced if it is determined that they did not meet the applicable standard of conduct for indemnification under Delaware law. This agreement has expired and Messrs. Dunlap and Kersh have commenced an arbitration action against Sunbeam claiming recovery of amounts they allege are payable to them under their agreements. Sunbeam is vigorously contesting these claims and is seeking the return of all amounts they received under their February 1998 employment agreements. Messrs. Dunlap and Kersh have obtained an order from the Court of Chancery of the State of Delaware requiring Sunbeam to advance reasonable litigation defense costs to each of them.

In connection with the termination of Mr. Fannin's employment by mutual agreement, Sunbeam entered into an agreement with him providing that, under the terms of his employment agreement and in consideration of the execution of the agreement, including a release and covenant not to sue contained therein, he would receive the following payments, all subject to applicable withholding taxes:

(a) \$825,000 in severance payments, of which \$575,001 was paid in 1998 and the balance of which is payable in monthly installments of \$16,667;

(b) consulting payments of \$250,000 of which \$41,667 was paid in 1998 and the balance of which is payable in monthly installments of \$13,889; and

(c) \$50,000 payable for the three year extension of Mr. Fannin's non-compete agreement, of which \$8,334 was paid in 1998 and the balance of which is payable in equal monthly installments of \$2,778.

In addition, Mr. Fannin received the value of his accrued vacation for 1996, 1997 and 1998, continuation of health, dental and life insurance coverage, on the same basis as prior to termination of employment for an additional 18 months or until his earlier employment providing such benefits. The termination agreement with Mr. Fannin also provided for a three-year term for his outstanding vested stock options, confirmed the amount of his unrestricted Sunbeam common stock grants and provided for the mutually agreed cancellation of all other equity awards.

Other Transactions

Settlement of Claims; Issuance of Warrant

On August 12, 1998, Sunbeam announced that, following investigation and negotiation conducted by a special committee of the Sunbeam board of directors, consisting of four outside directors not affiliated with MacAndrews & Forbes, Sunbeam had entered into the settlement agreement with the MacAndrews & Forbes subsidiary from which Sunbeam had acquired a controlling interest in Coleman in March 1998. Under the settlement agreement, Sunbeam was released from threatened claims arising from that acquisition, and MacAndrews & Forbes agreed to provide management personnel and assistance to Sunbeam, in exchange for the issuance to the MacAndrews & Forbes subsidiary of a warrant expiring August 24, 2003 to purchase 23 million shares of Sunbeam common stock at an exercise price of \$7 per share, subject to anti-dilution provisions.

Services Provided by MacAndrews & Forbes

Under the settlement agreement referred to in the previous paragraph, in addition to making the services of Messrs. Levin, Shapiro and Jenkins available to Sunbeam, MacAndrews & Forbes agreed to provide management assistance to Sunbeam with respect to specified matters. Sunbeam does not reimburse MacAndrews & Forbes for these services or for expenses incurred in providing these services to Sunbeam, other than reimbursement of out-of-pocket expenses paid to third parties. Execution of the settlement agreement was a condition to Sunbeam's continued employment of Messrs. Levin, Shapiro and Jenkins as officers of Sunbeam.

Registration Rights

Sunbeam and the MacAndrews & Forbes subsidiary which sold Sunbeam its controlling interest in Coleman have entered into a registration rights agreement. Under the registration rights agreement, the MacAndrews & Forbes subsidiary can require Sunbeam to register under the federal and applicable state

securities laws the shares of Sunbeam common stock the subsidiary received when it sold its controlling interest in Coleman to Sunbeam. Sunbeam has also agreed to permit former affiliates of Coleman that received Sunbeam common stock in the March 1988 acquisition to join the MacAndrews & Forbes subsidiary in any registration of the subsidiary's shares of Sunbeam common stock.

The registration rights agreement was amended in August 1998 to permit the MacAndrews & Forbes subsidiary to require Sunbeam to also register (1) the warrant issued to it by Sunbeam under its settlement agreement with Sunbeam and (2) the shares of Sunbeam common stock issuable upon exercise of the warrant.

Settlement of Coleman Options

Under Sunbeam's agreement providing for the merger, the unexercised options under Coleman's stock option plans will be cashed out at a price per share equal to the difference between \$27.50 and the exercise price of the options. Ronald O. Perelman, the sole stockholder of MacAndrews & Forbes, holds 500,000 options for which he will receive a net payment of \$6,750,000 upon completion of the merger. Messrs. Shapiro and Isko and Ms. Clark, executive officers of Sunbeam, hold 77,500, 20,000 and 25,000 options, respectively, for which they will receive net payments of \$823,000, \$226,099 and \$275,005, respectively.

Arrangements with Coleman

Coleman and a subsidiary of MacAndrews & Forbes are parties to a cross-indemnification agreement in which Coleman has agreed to indemnify the subsidiary, its officers, directors, employees, control persons, agents and representatives against all past, present and future liabilities, including product liability and environmental matters, related to the initial assets of Coleman, which Coleman acquired from such affiliate in December 1991. In addition, under this cross-indemnification agreement, the MacAndrews & Forbes subsidiary has agreed to indemnify Coleman and its officers, directors, employees, agents and representatives against all other liabilities of this MacAndrews & Forbes subsidiary or any of its subsidiaries, including liabilities relating to the assets it did not transfer to Coleman in December 1991. This cross-indemnification agreement will survive the merger.

Coleman previously was included in the consolidated tax group for the MacAndrews & Forbes companies and was a party to a tax sharing agreement with a MacAndrews & Forbes subsidiary, under which Coleman paid to this subsidiary the amount of taxes which would have been paid by Coleman if it were required to file separate Federal, state or local income tax returns. The obligations of MacAndrews & Forbes under the tax sharing agreement were terminated when Sunbeam bought a controlling interest in Coleman in March 1998. As described under the section titled "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Acquisition of Coleman Preferred Stock," one of Sunbeam's wholly owned subsidiaries recently acquired shares of a newly created series of Coleman voting preferred stock. These shares were created and purchased in order to enable Sunbeam and Coleman to file consolidated federal income tax returns prior to the completion of the merger. In connection with the acquisition of these shares, Sunbeam entered into a tax sharing agreement with Coleman pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had Coleman not been included in the consolidated income tax return of Sunbeam.

Office Space

During 1998, Sunbeam sublet office space in New York City from an affiliate of MacAndrews & Forbes. The expense for such rent during 1998 was approximately \$130,000. The lease was terminated in 1999.

Employment of Law Firms

Sunbeam employed the law firms of Reboul, MacMurray, Hewitt, Maynard and Kristol, of which Mr. Kristol is a partner, and Holland & Knight, of which Mr. Elson is Of Counsel, to perform some legal services for Sunbeam during 1998. The total fees paid to these firms during 1998 were less than \$20,000. Neither Mr. Kristol nor Mr. Elson was involved in the provision of legal services to Sunbeam.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS

The following table shows, with respect to beneficial ownership of the Sunbeam common stock by all persons known by Sunbeam to be the record or beneficial owner of more than 5% of the outstanding common stock, the number of shares of Sunbeam common stock owned by each such person or group as of December 3, 1999, the percentage of the outstanding Sunbeam common stock those holdings represented on that date, and the percentage of the outstanding Sunbeam common stock that those holdings will represent after the merger.

<u>Name</u>	<u>Amount and Nature of Beneficial Ownership</u>	<u>Percentage of Sunbeam Common Stock Prior to Merger</u>	<u>Percentage of Sunbeam Common Stock After Merger(5)</u>
Ronald O. Perelman	37,099,749(1)	29.9%(1)	28.4%
Franklin Mutual Advisers, Inc	17,541,398(2)	17.4%	16.3%
Albert J. Dunlap	7,741,564(3)	7.2%(3)	6.8%
Invista Capital Management, LLC/Principal Mutual Holding Company	7,440,200(4)	7.4%	6.9%

- (1) Represents shares of Sunbeam common stock received by a subsidiary of MacAndrews & Forbes in the M&F Transaction and 23 million shares of Sunbeam common stock which may be acquired by MacAndrews & Forbes pursuant to the warrant issued to it by Sunbeam. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Settlement of Claims Relating to the M&F Transaction." The address of Coleman (Parent) Holdings is 35 E. 62nd Street, New York, New York 10021. Ronald O. Perelman is the indirect beneficial owner of all of the outstanding capital stock of Coleman (Parent) Holdings. Accordingly, Mr. Perelman may be deemed to be the beneficial owner of all of the shares of Sunbeam common stock owned by Parent Holdings. Mr. Perelman's address is 35 E. 62nd Street, New York, New York 10021.
- (2) Information reflected in this table and the notes thereto with respect to Franklin Mutual Advisers is derived from the Schedule 13D, dated November 1, 1996, filed by Franklin Mutual Advisers or its predecessors with the SEC, as thereafter amended, most recently on March 1, 1999. The address of Franklin Mutual Advisers is 51 John F. Kennedy Parkway, Short Hills, New Jersey 07078. The shares listed above are beneficially owned by one or more open-end investment companies or other managed accounts which, pursuant to advisory contracts, are advised by Franklin Mutual Advisers. Franklin Mutual Advisers disclaims beneficial ownership of these shares.
- (3) Information reflected in this table and the notes thereto with respect to Mr. Dunlap is based upon filings made by him with the SEC. Mr. Dunlap's holdings include certain stock grants for 1,166,667 shares and options to acquire an additional 6,250,000 shares of Sunbeam common stock granted by Sunbeam which are a matter of dispute between Sunbeam and Mr. Dunlap. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Matters Involving Former Management."
- (4) Information reflected in this table and the notes thereto with respect to Invista Capital Management and Principal Mutual Holding Company is derived from the Form 13G jointly filed with the SEC by Invista and Principal on February 16, 1999. The address of Invista Capital Management is 1900 Hub Tower, 699 Walnut Street, Des Moines, Iowa 50392. Invista Capital Management and Principal Mutual Holding Company exercise shared voting power and investment discretion with respect to all of the shares of Sunbeam common stock beneficially owned by them.
- (5) Assumes (1) the issuance by Sunbeam in the merger of 6,676,135 shares of Sunbeam common stock, (2) the issuance of 23 million shares of Sunbeam common stock to a MacAndrews & Forbes subsidiary upon exercise of the warrant issued in connection with the settlement of threatened legal claims relating to the M&F Transaction, (3) the issuance of about 4.98 million shares of Sunbeam common stock to Coleman minority stockholders upon the exercise of warrants issued in connection with the settlement of litigation relating to the merger and (4) no further issuances of Sunbeam common stock (whether by exercise of Sunbeam employee stock options or otherwise) prior to the completion of the merger.

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SECURITY OWNERSHIP OF MANAGEMENT

The following table sets forth the beneficial ownership, reported to Sunbeam as of December 3, 1999, of Sunbeam common stock, including shares as to which a right to acquire ownership exists, of: (1) each director of Sunbeam; (2) each of the Named Executives; and (3) the directors and current executive officers of Sunbeam as a group. In addition, the following table sets forth, as of December 3, 1999, the beneficial ownership of three former directors and two former Named Executives, based on information filed by them with the SEC and available to the public. With respect to (1) each current director of Sunbeam and (2) all directors and officers of Sunbeam as a group, the following table also shows the percentage of the outstanding Sunbeam common stock which such person's or group's holdings will represent after the merger.

Name	Amount and Nature of Beneficial Ownership(1)	Percentage of Sunbeam Common Stock Prior to Merger(2)	Percentage of Sunbeam Common Stock After Merger(8)
Directors			
Philip E. Beckman	1,500(3)	*	*
Charles M. Elson	12,000(3)	*	*
Howard Gittis	—(5)	0	0
John H. Klein	1,915(3)	*	*
Howard G. Kristol	12,000(3)	*	*
Peter A. Langerman	—(4)	0	0
Jerry W. Levin	—(5)	0	0
Faith Whittlesey	8,390(3)	*	*
Former Directors			
Albert J. Dunlap	7,741,564(2)	7.2%	N/A
Russell A. Kersh	1,889,150(2)	1.8%	N/A
Lawrence A. Sondike	—	0	N/A
Other Named Executives			
Karen K. Clark	—	0	0
Bobby G. Jenkins	—	0	0
Paul E. Shapiro	—(5)	0	0
Former Named Executives			
Janet G. Kelley	78,000(6)	*	N/A
David C. Fannin	220,433(2)	*	N/A
All directors and current executive officers as a group (15 persons)	85,805(7)	*	*

* Less than one percent.

(1) All present and former directors and Named Executives have the sole power to vote and to dispose of the shares of Sunbeam common stock listed above except as follows: (1) Mr. Dunlap is believed to hold 1,491,564 of the listed shares jointly with his wife; (2) 151,600 shares listed as owned by Mr. Kersh are believed to be held by the Russell A. Kersh Irrevocable Trust of which Mr. Kersh is the sole beneficiary, and Mr. Kersh is believed to hold 5,000 of the listed shares jointly with his spouse; (3) Mr. Fannin holds 20,433 shares of stock jointly with his wife; and (4) Ms. Kelley holds 100 shares jointly with her spouse.

(2) Includes shares of Sunbeam common stock which present and former directors of Sunbeam and Named Executives have the right to acquire under options which are currently exercisable, including options which will become exercisable within the next sixty days. This includes 200,000 and 77,900 shares in the case of Mr. Fannin and Ms. Kelley, respectively, upon the exercise of options which are currently exercisable. Options which are not currently exercisable and will not become exercisable within sixty days are not included in the table. The figures also include stock awards and options to acquire 6,250,000 and 1,625,000 shares in the case of Messrs. Dunlap and Kersh, respectively. Sunbeam is disputing the.

(Footnotes continued on next page)

(Footnotes continued from previous page)

- status of these stock awards and options. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Matters Involving Former Management" for information concerning these disputes.
- (3) Includes shares of restricted Sunbeam common stock granted to each of directors Beekman, Elson, Klein, Kristol and Whittlesey upon their respective elections, appointments and subsequent reelections to the Sunbeam board, all of which shares were immediately vested.
 - (4) Does not include shares of Sunbeam common stock owned by Franklin Mutual Advisers as to which Mr. Langerman disclaims beneficial ownership. See "SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS."
 - (5) Does not include shares of Sunbeam common stock owned by MacAndrews & Forbes and its affiliates, as to which Messrs. Gittis, Levin and Shapiro disclaim beneficial ownership. See "SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS."
 - (6) In connection with Ms. Kelley's resignation from Sunbeam effective May 31, 1999, 60,000 options previously granted to Ms. Kelley became immediately exercisable on June 13, 1999 and Ms. Kelley forfeited exercisable options to purchase another 68,583 shares.
 - (7) Includes 50,000 shares of Sunbeam common stock which all current executive officers of Sunbeam have a right to acquire under options which are currently exercisable, including options which will become exercisable within the next sixty days.
 - (8) Assumes (1) the issuance by Sunbeam in the merger of 6,676,135 shares of Sunbeam common stock, (2) the issuance of 23 million shares of Sunbeam common stock to a MacAndrews & Forbes subsidiary upon exercise of the warrant issued in connection with the settlement of threatened legal claims relating to the M&F Transaction and (3) the issuance of about 4.98 million shares of Sunbeam common stock to Coleman minority stockholders upon the exercise of warrants issued in connection with the settlement of litigation relating to the merger.

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DESCRIPTION OF SUNBEAM CAPITAL STOCK

The following statements are summaries of provisions of Sunbeam's capital stock.

Sunbeam Common Stock

Sunbeam's authorized capital stock currently consists of 500,000,000 shares of Sunbeam common stock, par value \$.01 per share, and 2,000,000 shares of preferred stock, par value \$.01 per share. As of December 3, 1999, there were 100,902,392 shares of Sunbeam common stock outstanding. Each share of Sunbeam common stock entitles its holder to one vote on all matters upon which Sunbeam stockholders are entitled or permitted to vote, including the election of directors. There are no cumulative voting rights. Shares of Sunbeam common stock would participate ratably in any distribution of assets in a liquidation, dissolution or winding up of Sunbeam, subject to prior distribution rights of any shares of preferred stock then outstanding. The Sunbeam common stock has no preemptive rights or conversion rights nor are there any redemption or sinking fund provisions applicable to the Sunbeam common stock. Holders of Sunbeam common stock are entitled to participate in dividends as and when declared by the Sunbeam board out of funds legally available therefor. Sunbeam's ability to pay cash dividends is subject to restrictions under Delaware law. In addition, Sunbeam's bank credit facility prohibits Sunbeam from paying cash dividends.

The transfer agent and registrar for the Sunbeam common stock is The Bank of New York.

Sunbeam Preferred Stock

There are no shares of Sunbeam preferred stock currently outstanding. Sunbeam's Certificate of Incorporation provides that the Sunbeam board of directors may authorize the issuance of one or more series of preferred stock having such rights, including voting, conversion and redemption rights, and such preferences, including dividend and liquidation preferences, as the Sunbeam board may determine without any further action by the stockholders of Sunbeam.

Warrants

Sunbeam currently has outstanding one warrant which entitles the holder to purchase up to 23 million shares of Sunbeam common stock. This warrant was issued on August 24, 1998 under the terms of the Settlement Agreement, dated August 12, 1998, by and between Sunbeam and Coleman (Parent) Holdings, Inc., the MacAndrews & Forbes subsidiary from which Sunbeam acquired about 81% of the then outstanding Coleman common stock in the M&F Transaction. In the merger, Sunbeam will issue warrants which will entitle their holders to purchase up to 4.98 million shares of Sunbeam common stock. These warrants will be issued under a Warrant Agreement to be entered into by Sunbeam and The Bank of New York, as Warrant Agent, prior to the completion of the merger.

The warrant to be issued in the merger will be substantially similar to the warrant issued to Coleman (Parent) Holdings.

The warrant issued to Coleman (Parent) Holdings and each of the warrants to be issued in the merger will be exercisable at a cash exercise price of \$7 per share and will expire on August 24, 2003. In addition, the warrant issued to Coleman (Parent) Holdings and each of the warrants to be issued in the merger is subject to anti-dilution adjustments in the event that Sunbeam completes one or more transactions having a dilutive effect on its existing stockholders. Under the settlement with Coleman (Parent) Holdings, Sunbeam has agreed that Coleman (Parent) Holdings can require Sunbeam to register under the federal and applicable state securities laws the shares of Sunbeam common stock issuable upon exercise of the warrant. The shares of Sunbeam common stock issuable upon exercise of the warrants to be issued in the merger are being registered under the registration statement of which this document forms a part.

For further information regarding the warrant issued to Coleman (Parent) Holdings, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Settlement of Claims Relating to the M&F Transaction." For further information regarding the terms of the warrants to be issued in the merger, see "SETTLEMENT OF LITIGATION AND WARRANTS."

DESCRIPTION OF COLEMAN CAPITAL STOCK

The following statements are summaries of provisions of Coleman's capital stock.

Coleman Common Stock

The authorized capital stock of Coleman consists of 100,000,000 shares of capital stock, 80,000,000 of which are common stock, par value \$.01 per share, and 20,000,000 of which are preferred stock, par value \$.01 per share. Of these authorized shares, as of December 3, 1999, 55,827,490 shares of Coleman common stock were issued and outstanding and 923,670 shares of Coleman common stock were issuable upon exercise of Coleman stock options outstanding under Coleman's employee stock option plans (all of which options are currently exercisable).

Subject to the rights of holders of any Coleman preferred stock then outstanding, holders of Coleman common stock are entitled to receive dividends as may from time to time be declared by the Coleman board subject to certain limitations under Delaware law. The merger agreement prohibits Coleman from paying dividends and Sunbeam's credit facility only permits Coleman to pay dividends in additional shares of its capital stock until the merger is completed. Holders of Coleman common stock are entitled to one vote per share on all matters on which the holders of Coleman common stock are entitled to vote. Because holders of Coleman common stock do not have cumulative voting rights, the holders of a majority of the shares of Coleman common stock represented at a meeting can elect all of the directors. In the event of liquidation, dissolution or winding up of Coleman, holders of Coleman common stock would be entitled to share ratably in assets of Coleman available for distribution to the holders of Coleman common stock.

Holders of Coleman common stock are not liable for any liabilities of Coleman. There are no preemptive rights for the Coleman common stock. The outstanding shares of Coleman common stock are fully paid and nonassessable.

American Stock Transfer & Trust Co. acts as transfer agent and registrar for the Coleman common stock.

Coleman Preferred Stock

As of December 3, 1999, there were 3,000,000 shares of Coleman preferred stock issued and outstanding. Coleman's Certificate of Incorporation authorizes the Coleman board of directors to provide for the issuance, from time to time, of shares of preferred stock in series, to establish from time to time the number of shares to be included in any such series and to fix the designation, powers, preferences and rights of the shares of each such series and any qualifications, limitations or restrictions thereof.

On July 12, 1999, Coleman issued to Coleman Worldwide Corporation 3,000,000 shares of a newly created series of voting preferred stock, par value \$.01 per share, denominated as "Series A Participating Preferred Stock." Each share of Series A Participating Preferred Stock entitles the holder thereof to one vote on all matters submitted to a vote of the stockholders of Coleman. Except as required by law, the holders of the Series A Participating Preferred Stock vote together as a single class with the holders of Coleman common stock on all matters submitted to a vote of the Coleman stockholders. The Series A Participating Preferred Stock is entitled to an annual dividend. Dividends on the Series A Participating Preferred Stock will accrue and be payable at the earlier of (1) the time any liquidating distribution is made to the holders of the Series A Participating Preferred Stock and (2) the time the shares of Series A Participating Preferred Stock are exchanged or changed into other stock or securities, cash and/or any other property, in connection with a consolidation, merger, combination or other transaction involving Coleman (other than the merger of a wholly owned Sunbeam subsidiary with Coleman). However, Sunbeam's credit facility only permits Coleman to pay dividends in additional shares of its capital stock until the merger is completed. The holders of shares of Series A Participating Preferred Stock share ratably in all other dividends and distributions received by the holders of Coleman common stock. In addition, the holders of shares of Series A Participating Preferred Stock are entitled to a per share liquidation preference equal to the price the Series A Participating Preferred Stock was initially issued to Sunbeam and, once the holders of shares of Coleman common stock have received a like per share amount, the holders of shares of Series A Participating Preferred Stock will share ratably with the holders of shares of Coleman common stock in all remaining amounts available for distribution upon liquidation of Coleman.

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EXPERTS

The Consolidated Financial Statements of Sunbeam Corporation and its consolidated subsidiaries (except The Coleman Company, Inc. and its subsidiaries) as of December 31, 1998 and for the year then ended, and the related financial statement schedule included in this document have been audited by Deloitte & Touche LLP as stated in their report appearing herein. The consolidated financial statements of The Coleman Company, Inc. (consolidated with those of Sunbeam) have been audited by Ernst & Young LLP as stated in their report included herein. The Consolidated Financial Statements of Sunbeam Corporation and its subsidiaries are included herein in reliance upon the respective reports of such firms, in each case given upon their authority as experts in accounting and auditing. Deloitte & Touche LLP, and Ernst & Young LLP, are independent auditors.

The Consolidated Financial Statements and schedule of Sunbeam Corporation included in this document and in the corresponding registration statement as of December 28, 1997 and for the years ended December 28, 1997 and December 29, 1996 have been audited by Arthur Andersen LLP, independent certified public accountants, as indicated in their report with respect thereto, and are included herein in reliance upon the authority of said firm as experts in giving said report.

Ernst & Young LLP, independent auditors, have audited Coleman's consolidated financial statements included in its Annual Report on Form 10-K, as amended, for the year ended December 31, 1998, as set forth in their report, which is included in this document and is incorporated by reference elsewhere in the registration statement. Coleman's financial statements are incorporated by reference in this document in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

LEGAL OPINIONS

The validity of the shares of Sunbeam common stock being offered hereby is being passed upon for Sunbeam by Steven R. Isko, Senior Vice President and General Counsel of Sunbeam.

WHERE YOU CAN FIND MORE INFORMATION

Sunbeam is distributing this document to you to provide you with information about the merger, your Delaware appraisal rights and the litigation settlement. This document also serves as Sunbeam's prospectus in connection with the issuance of the shares of Sunbeam common stock you will receive in the merger and upon exercise of the settlement warrants after the merger. This document is also part of a registration statement filed by Sunbeam with the SEC to register those shares under the Securities Act of 1933. The registration statement, including the attached exhibits and schedules, contains additional relevant information about Sunbeam. Under the rules and regulations of the SEC, however, some information included in the registration statement is not required to be included in this document. You are urged to read carefully the registration statement and the attached exhibits and schedules.

This document also serves as Coleman's information statement in connection with the merger. This document has been filed by Coleman with the SEC to comply with Coleman's disclosure obligations under the Securities Exchange Act of 1934. Under the rules and regulations of the SEC, however, some information concerning Coleman is not required to be included in this document. Instead, the SEC allows Coleman to "incorporate by reference" the omitted information. This means that Coleman can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be a part of this document, except for any information that has been directly superseded by information contained in this document. You are urged to read carefully the documents to which we have referred you.

You can inspect and copy reports, proxy statements and other information about Sunbeam and Coleman at the NYSE office located at 20 Broad Street, New York, New York 10005.

You may read publicly available information about Sunbeam and Coleman, including the registration statement and the documents concerning Coleman to which we have referred you, at the following locations of the SEC:

Public Reference Room
450 Fifth Street, N.W.
Room 1024
Washington, D.C. 20549

Midwest Regional Office
Citicorp Center
500 West Madison Street
Suite 1400
Chicago, Illinois 60661

New York Regional Office
7 World Trade Center
Suite 1300
New York, New York 10048

You may also obtain copies of this information by mail from the Public Reference Section of the SEC, 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549, at prescribed rates. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

The SEC also maintains an Internet world wide web site that contains reports, proxy statements and other information about issuers, like Sunbeam and Coleman, who file electronically with the SEC. The address of that site is <http://www.sec.gov>.

This document incorporates by reference the documents listed below that Coleman has previously filed with the SEC. They contain important information about Coleman and its financial condition.

1. Coleman's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 1999;
2. Coleman's Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 1999, as amended;
3. Coleman's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 1999, as amended;
4. Coleman's Annual Report on Form 10-K for the fiscal year ended December 31, 1998, as amended;
5. Coleman's Annual Reports on Form 10-K for the fiscal years ended December 31, 1997 and 1996; and
6. Coleman's Information Statement under Section 14(f) of the Exchange Act mailed to Coleman stockholders on or about March 18, 1998.

Coleman also incorporates by reference any additional documents it may file with the SEC between the date of this document and the completion of the merger. These documents include periodic reports, such as Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, as well as proxy statements.

You can obtain any of the documents incorporated by reference in this document through Coleman or from the SEC through the SEC's web site at the address described above. Documents incorporated by reference are available from Coleman without charge, excluding any exhibits to those documents unless the exhibit is specifically incorporated by reference as an exhibit in this document. You can obtain documents incorporated by reference in this document by requesting them in writing or by telephone from Coleman at the following address:

The Coleman Company, Inc.
2111 East 37th Street North
P.O. Box 2391
Wichita, Kansas 67201
Attention: Corporate Secretary
Telephone: (316) 832-2700

If you would like to request documents, please do so by December 30, 1999 to receive them before the completion of the merger. If you request any documents from Coleman, we will mail them to you by first-class mail, or another equally timely means, promptly after we receive your request.

We have not authorized anyone to give any information or make any representation about the merger or our companies that is different from, or in addition to, that contained in this document or in any of the materials that we have incorporated by reference into this document. Therefore, if anyone does give you information of this sort, you should not rely on it. If you are in a jurisdiction where offers to exchange or sell, or solicitations of offers to exchange or purchase, the securities offered by this document are unlawful, or if you are a person to whom it is unlawful to direct these types of activities, then the offer presented in this document does not extend to you. The information contained in this document speaks only as of the date of this document unless the information specifically indicates that another date applies.

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* All other schedules for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission are not required under the related instructions or are inapplicable, and therefore not included herein.

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INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Shareholders of
Sunbeam Corporation and subsidiaries:

We have audited the accompanying consolidated balance sheet of Sunbeam Corporation and subsidiaries (the "Company") as of December 31, 1998, and the related consolidated statements of operations, shareholders' equity, and cash flows for the year then ended. Our audit also included the financial statement schedule as of and for the year ended December 31, 1998, listed in the Index to Financial Statements. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audit. We did not audit the consolidated financial statements of The Coleman Company, Inc. and subsidiaries (consolidated subsidiaries), which statements reflect total assets constituting 27% of consolidated total assets as of December 31, 1998, and total revenues constituting 40% of consolidated total revenues for the year then ended. Those consolidated financial statements were audited by other auditors whose report has been furnished to us, and our opinion, insofar as it relates to the amounts included for The Coleman Company, Inc. and subsidiaries, is based solely on the report of such other auditors.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit and the report of the other auditors provide a reasonable basis for our opinion.

In our opinion, based on our audit and the report of the other auditors, such consolidated financial statements present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 31, 1998, and the results of their operations and their cash flows for the year then ended in conformity with generally accepted accounting principles. Also, in our opinion, based on our audit and (as to the amounts included for The Coleman Company, Inc. and subsidiaries) the report of other auditors, such financial statement schedule as of and for the year ended December 31, 1998, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

DELOITTE & TOUCHE LLP
Certified Public Accountants
Fort Lauderdale, Florida
April 16, 1999

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REPORT OF INDEPENDENT AUDITORS

Stockholders and Board of Directors
The Coleman Company, Inc.

We have audited the consolidated balance sheets of The Coleman Company, Inc. and subsidiaries as of December 31, 1998 and 1997, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 1998 (not presented separately herein). These financial statements are the responsibility of Sunbeam's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of The Coleman Company, Inc. and subsidiaries at December 31, 1998 and 1997, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 1998, in conformity with generally accepted accounting principles.

/s/ ERNST & YOUNG LLP

Wichita, Kansas
April 15, 1999

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REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Board of Directors and Shareholders of
Sunbeam Corporation:

We have audited the accompanying consolidated balance sheet of Sunbeam Corporation (a Delaware corporation) and subsidiaries as of December 28, 1997 and the related consolidated statements of operations, shareholders' equity and cash flows for each of the two fiscal years in the period ended December 28, 1997. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 28, 1997, and the results of their operations and their cash flows for each of the two fiscal years in the period ended December 28, 1997 in conformity with generally accepted accounting principles.

Our audits were made for the purpose of forming an opinion on the basic financial statements taken as a whole. Schedule II for each of the two years in the period ended December 28, 1997 is presented for the purpose of complying with the Securities and Exchange Commission's rules and is not part of the basic financial statements. This Schedule has been subjected to the auditing procedures applied in the audits of the basic financial statements and, in our opinion, fairly states in all material respects the financial data required to be set forth therein in relation to the basic financial statements taken as a whole.

ARTHUR ANDERSEN LLP

Fort Lauderdale, Florida,
October 16, 1998

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in thousands, except per share amounts)

	Fiscal Year Ended		
	December 31, 1998	December 28, 1997	December 29, 1996
Net sales	\$1,836,871	\$1,073,090	\$ 984,236
Cost of goods sold	1,788,819	830,956	896,938
Selling, general and administrative expense	718,077	152,653	221,655
Restructuring and asset impairment (benefit) charges	—	(14,582)	110,122
Operating (loss) earnings	(670,025)	104,063	(244,479)
Interest expense	131,091	11,381	13,588
Other (income) expense, net	(4,768)	12	3,738
(Loss) earnings from continuing operations before income taxes, minority interest and extraordinary charge	(796,348)	92,670	(261,805)
Income taxes (benefit):			
Current	8,667	1,528	(22,419)
Deferred	(18,797)	38,824	(69,206)
	(10,130)	40,352	(91,625)
Minority interest	(10,681)	—	—
(Loss) earnings from continuing operations before extraordinary charge	(775,537)	52,318	(170,180)
Earnings from discontinued operations, net of taxes	—	—	839
Loss on sale of discontinued operations, net of taxes	—	(14,017)	(39,140)
Extraordinary charge from early extinguishments of debt	(122,386)	—	—
Net (loss) earnings	<u>\$ (897,923)</u>	<u>\$ 38,301</u>	<u>\$ (208,481)</u>
(Loss) earnings per share:			
(Loss) earnings from continuing operations before extraordinary charge:			
Basic	<u>\$ (7.99)</u>	<u>\$ 0.62</u>	<u>\$ (2.05)</u>
Diluted	<u>(7.99)</u>	<u>0.60</u>	<u>(2.05)</u>
(Loss) from sale of discontinued operations:			
Basic	<u>\$ —</u>	<u>\$ (0.17)</u>	<u>\$ (0.46)</u>
Diluted	<u>—</u>	<u>(0.16)</u>	<u>(0.46)</u>
Extraordinary charge:			
Basic	<u>\$ (1.26)</u>	<u>\$ —</u>	<u>\$ —</u>
Diluted	<u>(1.26)</u>	<u>—</u>	<u>—</u>
Net (loss) earnings:			
Basic	<u>\$ (9.25)</u>	<u>\$ 0.45</u>	<u>\$ (2.51)</u>
Diluted	<u>(9.25)</u>	<u>0.44</u>	<u>(2.51)</u>
Weighted average common shares outstanding:			
Basic	97,121	84,945	82,925
Diluted	97,121	87,542	82,925

See Notes to Consolidated Financial Statements.

SUNBEAM CORPORATION AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(Amounts in thousands)

	December 31, 1998	December 28, 1997
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 61,432	\$ 52,298
Restricted investments	74,386	—
Receivables, net	361,774	228,460
Inventories	519,189	304,900
Prepaid expenses and other current assets	74,187	16,584
Total current assets	1,090,968	602,242
Property, plant and equipment, net	455,172	249,524
Trademarks, tradenames, goodwill and other, net	1,859,377	207,162
	<u>\$3,405,517</u>	<u>\$1,058,928</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Short-term debt and current portion of long-term debt	\$ 119,103	\$ 668
Accounts payable	162,173	108,374
Other current liabilities	321,185	124,085
Total current liabilities	602,461	233,127
Long-term debt, less current portion	2,142,362	194,580
Other long-term liabilities	248,459	154,300
Deferred income taxes	100,473	4,842
Minority interest	51,325	—
Commitments and contingencies (Notes 3 and 15)		
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized, none outstanding)	—	—
Common stock (100,739,053 and 89,984,425 shares issued)	1,007	900
Additional paid-in capital	1,123,457	479,200
(Accumulated deficit) retained earnings	(809,997)	89,801
Accumulated other comprehensive loss	(54,030)	(33,063)
Other shareholders' equity	—	(1,714)
	260,437	535,124
Treasury stock, at cost (4,454,394 shares in 1997)	—	(63,045)
Total shareholders' equity	260,437	472,079
	<u>\$3,405,517</u>	<u>\$1,058,928</u>

See Notes to Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(Amounts in thousands, except per share amounts)

	Common Stock	Additional Paid-In Capital	(Accumulated Deficit) Retained Earnings	Accumulated Other Comprehensive (Loss) Income	Unearned Compensation	Treasury Stock	Total Shareholders' Equity
Balance at January 1, 1996	\$ 878	\$ 441,786	\$ 266,698	\$(24,483)	\$ (397)	\$(83,449)	\$ 601,033
Comprehensive loss:							
Net loss	—	—	(208,481)	—	—	—	(208,481)
Minimum pension liability (net of tax of \$2,672)	—	—	—	4,963	—	—	4,963
Translation adjustments	—	—	—	1,246	—	—	1,246
Comprehensive loss							(202,272)
Common dividends (\$0.04 per share)	—	—	(3,318)	—	—	—	(3,318)
Exercise of stock options	6	7,313	—	—	—	—	7,319
Grant of restricted stock	—	(1,120)	—	—	(14,346)	15,466	—
Amortization of unearned compensation	—	—	—	—	7,707	—	7,707
Retirement and sale of treasury shares	—	(31)	—	—	—	4,595	4,564
Balance at December 29, 1996	884	447,948	54,899	(18,274)	(7,036)	(63,388)	415,033
Comprehensive income:							
Net earnings	—	—	38,301	—	—	—	38,301
Minimum pension liability	—	—	—	(14,050)	—	—	(14,050)
Translation adjustments	—	—	—	(739)	—	—	(739)
Comprehensive income							23,512
Common dividends (\$0.04 per share)	—	—	(3,399)	—	—	—	(3,399)
Exercise of stock options	16	30,496	—	—	—	—	30,512
Amortization of unearned compensation	—	—	—	—	5,322	—	5,322
Other stock issuances	—	756	—	—	—	343	1,099
Balance at December 28, 1997	900	479,200	89,801	(33,063)	(1,714)	(63,045)	472,079
Comprehensive loss:							
Net loss	—	—	(897,923)	—	—	—	(897,923)
Minimum pension liability	—	—	—	(21,795)	—	—	(21,795)
Translation adjustments	—	—	—	828	—	—	828
Comprehensive loss							(918,890)
Common dividends (\$0.02 per share)	—	—	(1,875)	—	—	—	(1,875)
Exercise of stock options	9	18,383	—	—	—	—	18,392
Grant of restricted stock	4	18,880	—	—	(32,500)	—	(13,616)
Cancellation of restricted stock	(1)	(5,228)	—	—	10,182	(2,250)	2,703
Amortization of unearned compensation	—	—	—	—	24,032	—	24,032
Acquisition of Coleman	95	541,428	—	—	—	65,200	606,723
Warrants issued	—	70,000	—	—	—	—	70,000
Other stock issuances	—	794	—	—	—	95	889
Balance at December 31, 1998	<u>\$1,007</u>	<u>\$1,123,457</u>	<u>\$(809,997)</u>	<u>\$(54,030)</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 260,437</u>

See Notes to Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in thousands)

	Fiscal Year Ended		
	December 31, 1998	December 28, 1997	December 29, 1996
Operating Activities:			
Net (loss) earnings	\$ (897,923)	\$ 38,301	\$(208,481)
Adjustments to reconcile net (loss) earnings to net cash (used in) provided by operating activities:			
Depreciation and amortization	107,865	39,757	47,429
Non-cash interest charges	32,531	—	—
Restructuring and asset impairment (benefit) charges	—	(14,582)	110,122
Other non-cash special charges	—	—	10,047
Loss on sale of discontinued operations, net of taxes	—	14,017	39,140
Deferred income taxes	(18,797)	38,824	(69,206)
Minority interest	(10,681)	—	—
Loss on sale of property, plant and equipment	3,260	—	—
Provision for fixed assets	39,404	—	—
Provision for excess and obsolete inventory	95,830	—	60,800
Goodwill impairment	62,490	—	—
Issuance of warrants	70,000	—	—
Non-cash compensation charge	13,118	—	—
Extraordinary charge from early extinguishments of debt	122,386	—	—
Changes in operating assets and liabilities, exclusive of impact of divestitures and acquisitions:			
Receivables, net	147,045	1,044	(845)
Inventories	37,112	(140,555)	11,289
Accounts payable	(68,187)	4,261	11,029
Restructuring accrual	(3,894)	(31,957)	—
Prepaid expenses and other current assets and liabilities	50,622	(16,092)	39,657
Income taxes payable	15,758	52,052	(21,942)
Change in other long-term and non-operating liabilities	13,994	(1,401)	(27,089)
Other, net	(2,347)	10,288	12,213
Net cash (used in) provided by operating activities	<u>(190,414)</u>	<u>(6,043)</u>	<u>14,163</u>
Investing Activities:			
Capital expenditures	(53,686)	(60,544)	(75,336)
Proceeds from sale of divested operations and other assets	9,575	90,982	—
Purchases of businesses, net of cash acquired	(522,412)	—	—
Other, net	(139)	—	(860)
Net cash (used in) provided by investing activities	<u>(566,662)</u>	<u>30,438</u>	<u>(76,196)</u>
Financing Activities:			
Issuance of convertible senior subordinated debentures, net of financing fees	729,622	—	—
Net borrowings under revolving credit facility	1,205,675	5,000	30,000
Issuance of long-term debt	—	—	11,500
Payments of debt obligations, including prepayment penalties	(1,186,796)	(12,157)	(1,794)
Proceeds from exercise of stock options	19,553	26,613	4,684
Sale of treasury stock	—	—	4,578
Payments of dividends on common stock	(1,875)	(3,399)	(3,318)
Other, net	31	320	(364)
Net cash provided by financing activities	<u>766,210</u>	<u>16,377</u>	<u>45,286</u>
Net increase (decrease) in cash and cash equivalents	9,134	40,772	(16,747)
Cash and cash equivalents at beginning of year	52,298	11,526	28,273
Cash and cash equivalents at end of year	<u>\$ 61,432</u>	<u>\$ 52,298</u>	<u>\$ 11,526</u>

See Notes to Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Operations and Significant Accounting Policies

Organization

Sunbeam Corporation ("Sunbeam" or the "Company") is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacturing, marketing and distribution of durable household and outdoor leisure consumer products through mass market and other distribution channels in the United States and internationally. The Company also sells its products to professional and commercial end users such as small businesses, health care providers, hotels and other institutions. The Company's principal products include household kitchen appliances; health monitoring and care products for home use; scales for consumer and professional use for weight management and business uses; electric blankets and throws; clippers and trimmers for consumer, professional and animal uses; smoke and carbon monoxide detectors; outdoor barbecue grills; camping equipment such as tents, lanterns, sleeping bags and stoves; coolers; backpacks and book bags; and portable generators and compressors.

In 1998 the Company acquired an indirect controlling interest in The Coleman Company, Inc. ("Coleman") and all the outstanding common stock of Signature Brands USA, Inc. ("Signature Brands") and First Alert, Inc. ("First Alert").

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and all majority-owned subsidiaries that it controls. All material intercompany balances and transactions have been eliminated.

Presentation of Fiscal Periods

To standardize the fiscal period ends of the Company and its acquired entities, effective with its 1998 fiscal year, the Company has changed its fiscal year end from the Sunday nearest December 31 to a calendar year. The impact of this change in fiscal period on net sales for 1998 was to increase sales by approximately \$5.5 million, and the impact on operating results for the period was to increase the net loss by approximately \$1.5 million.

Fiscal years 1997 and 1996 ended on December 28, 1997 and December 29, 1996, respectively, which encompassed 52-week periods.

Use of Estimates

The preparation of the consolidated financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates. Significant accounting estimates include the establishment of the allowance for doubtful accounts, tax valuation allowances, reserves for sales returns and allowances, product warranty, product liability, excess and obsolete inventory, litigation and environmental exposures.

Cash and Cash Equivalents

The Company considers highly liquid investments purchased with an original maturity of three months or less to be cash equivalents.

Concentrations of Credit Risk

Substantially all of the Company's trade receivables are due from retailers and distributors located throughout the United States, Europe, Latin America, Canada, and Japan. Approximately 38% of the Company's sales in 1998 were to its five largest customers. The Company establishes its credit policies based on an ongoing evaluation of its customers' creditworthiness and competitive market conditions and establishes its allowance for

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

1. Operations and Significant Accounting Policies—(Continued)

doubtful accounts based on an assessment of exposures to credit losses at each balance sheet date. The Company believes its allowance for doubtful accounts is sufficient based on the credit exposures outstanding at December 31, 1998. However, certain retailers filed for bankruptcy protection in the last several years and it is possible that additional credit losses could be incurred if other retailers seek bankruptcy protection or if the trends of retail consolidation continue.

Inventories

Inventories are stated at the lower-of-cost-or-market with cost being determined principally by the first-in, first-out method.

In certain instances, the Company receives rebates from vendors based on the volume of merchandise purchased. Vendor rebates are recorded as reductions in the price of the purchased merchandise and are recognized in operations as the related inventories are sold.

Effective in fiscal 1997, as a consequence of the initial outsourcing of the supplies inventories management function, the Company began capitalizing the cost of manufacturing supplies, whereas previously the cost of these supplies was charged to operations when purchased. This change, which management believes is preferable in that it provides for a more appropriate matching of revenues and expenses, increased pre-tax operating earnings in fiscal 1997 by \$2.8 million. Additional disclosures pursuant to Accounting Principles Board ("APB") Opinion No. 20, *Accounting Changes*, are not provided since supplies inventories were not monitored for financial reporting purposes prior to the initial outsourcing of the inventory management function and, consequently, the information is not available.

Property, Plant and Equipment

Property, plant and equipment are stated at cost. The Company provides for depreciation using primarily the straight-line method in amounts that allocate the cost of property, plant and equipment over the following useful lives:

Buildings and improvements	5 to 45 years
Machinery, equipment and tooling	3 to 15 years
Furniture and fixtures	3 to 10 years

Leasehold improvements are amortized on a straight-line basis over the shorter of its estimated useful life or the term of the lease.

Long-lived Assets

The Company accounts for long-lived assets pursuant to Statement of Financial Accounting Standards ("SFAS") No. 121, *Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of*. The Company periodically evaluates factors, events and circumstances which include, but are not limited to, the historical and projected operating performance of the business operations, specific industry trends and general economic conditions to assess whether the remaining estimated useful lives of long-lived assets may warrant revision or whether the remaining asset values are recoverable through future operations. When such factors, events or circumstances indicate that long-lived assets should be evaluated for possible impairment, the Company uses an estimate of cash flows (undiscounted and without interest charges) over the remaining lives of the assets to measure recoverability. If the estimated cash flows are less than the carrying value of the asset, the loss is measured as the amount by which the carrying value of the asset exceeds fair value.

With respect to enterprise level goodwill, the Company reviews impairment when changes in circumstances, similar to those described above for long-lived assets, indicate that the carrying value may not be recoverable. Under these circumstances, the Company estimates future cash flows using the recoverability method

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

I. Operations and Significant Accounting Policies—(Continued)

(undiscounted and including related interest charges), as a basis for recording any impairment loss. An impairment loss is then recorded to adjust the carrying value of goodwill to the recoverable amount. The impairment loss taken is no greater than the amount by which the carrying value of the net assets of the business exceeds its fair value.

Derivative Financial Instruments

The Company enters into interest rate swap agreements and foreign exchange rate contracts as part of the management of its interest rate and foreign currency exchange rate exposures. The Company has no derivative financial instruments held for trading purposes and none of the instruments is leveraged. All financial instruments are put into place to hedge specific exposures. To qualify as a hedge, the item to be hedged must expose the Company to price, interest rate or foreign currency exchange rate risk and the hedging instrument must reduce that exposure. Any contracts held or issued that do not meet the requirements of a hedge are recorded at fair value in the Consolidated Balance Sheets and any changes in that fair value recognized in operations.

Interest rate swap agreements—Interest rate differentials to be paid or received as a result of interest rate swap agreements are accrued and recognized as an adjustment of interest expense related to the designated debt. Amounts receivable or payable under the agreements are included in receivables or other current liabilities in the Consolidated Balance Sheets. The fair value of the swap agreements and changes in the fair value as a result of changes in market interest rates are not recognized in the financial statements. Related premiums are amortized to interest expense ratably during the life of the swap agreement.

Gains and losses on termination of interest rate swap agreements are deferred and amortized as an adjustment to interest expense over the original period of interest exposure, provided the designated liability continues to exist. Realized and unrealized changes in the fair value of interest rate swaps designated with liabilities that no longer exist are recorded as a component of the gain or loss arising from the disposition of the designated liability.

Foreign currency options and forward contracts—Foreign currency contracts designated and effective as hedges are marked to market with realized and unrealized gains and losses deferred and recognized in operations when the designated transaction occurs. Foreign currency contracts not designated as hedges, failing to be hedges or failing to continue as effective hedges are included in operations as foreign exchange gains or losses.

Discounts or premiums on forward contracts designated and effective as hedges are accreted or amortized to expense using the straight-line method over the term of the related contract. Discounts or premiums on forward contracts not designated or effective as hedges are included in the mark to market adjustment and recognized in income as foreign exchange gains or losses. Initial premiums paid for purchased option contracts are amortized over the related option period.

Capitalized Interest

Interest costs for the construction of certain long-term assets are capitalized and amortized over the related assets' estimated useful lives. Total interest costs during 1998, 1997 and 1996 amounted to \$131.9 million, \$12.3 million and \$14.0 million, respectively, of which \$0.8 million, \$0.9 million and \$0.4 million, respectively, was capitalized as a cost of the related long-term assets.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

I. Operations and Significant Accounting Policies—(Continued)

Deferred Financing Costs

Costs incurred in connection with obtaining financing are deferred and amortized as a charge to interest expense over the terms of the related borrowings using the interest method.

Amortization Periods

Trademarks, tradenames and goodwill are being amortized on a straight-line basis over 20 to 40 years.

Revenue Recognition

The Company recognizes sales and related cost of goods sold from product sales at the latter of the time of shipment or when title passes to the customers. In some situations, the Company has shipped product with the right of return where the Company is unable to reasonably estimate the level of returns and/or the sale is contingent upon the resale of the product. In these situations, the Company does not recognize revenue upon product shipment, but rather when the buyer of the product informs the Company that the product has been sold. Net sales is comprised of gross sales less provisions for estimated customer returns, discounts, promotional allowances, cooperative advertising allowances and costs incurred by the Company to ship product to customers. Reserves for estimated returns are established by the Company concurrently with the recognition of revenue. Reserves are established based on a variety of factors, including historical return rates, estimates of customer inventory levels, the market for the product and projected economic conditions. The Company monitors these reserves and makes adjustments to them when management believes that actual returns or costs to be incurred differ from amounts recorded.

Warranty Costs

The Company provides for warranty costs in amounts it estimates will be needed to cover future warranty obligations for products sold during the year. Estimates of warranty costs are periodically reviewed and adjusted, when necessary, to consider actual experience.

Product Liability

The Company provides for product liability costs it estimates will be needed to cover future product liability costs for product sold during the year. Estimates of product liability costs are periodically reviewed and adjusted, when necessary, to consider actual experience, and other relevant factors.

Legal Costs

The Company records charges for the costs it anticipates incurring in connection with litigation and claims against the Company when management can reasonably estimate these costs.

Income Taxes

The Company accounts for income taxes under the liability method in accordance with SFAS No. 109, *Accounting for Income Taxes*. The provision for income taxes includes deferred income taxes resulting from items reported in different periods for income tax and financial statement purposes. Deferred tax assets and liabilities represent the expected future tax consequences of the differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. The effects of changes in tax rates on deferred tax assets and liabilities are recognized in the period that includes the enactment date.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

1. Operations and Significant Accounting Policies—(Continued)

Advertising Costs

Media advertising costs included in Selling, General and Administrative Expense ("SG&A") are expensed as incurred. Allowances provided to customers for cooperative advertising are charged to operations, as earned, based on revenues and are included as a deduction from gross sales in determining net sales. The amounts charged to operations for media and cooperative advertising during 1998, 1997 and 1996 were \$124.5 million, \$55.7 million and \$78.7 million, respectively.

Research and Development

Research and development expenditures are expensed in the period incurred. The amounts charged against operations during 1998, 1997 and 1996 were \$18.7 million, \$5.7 million and \$6.5 million, respectively.

Foreign Currency Translation

The assets and liabilities of subsidiaries, other than those operating in highly inflationary economies, are translated into U.S. dollars with resulting translation gains and losses accumulated in a separate component of shareholders' equity. Income and expense items are converted into U.S. dollars at average rates of exchange prevailing during the year.

For subsidiaries operating in highly inflationary economies (Venezuela and Mexico), inventories and property, plant and equipment are translated at the rate of exchange on the date the assets were acquired, while other assets and liabilities are translated at year-end exchange rates. Translation adjustments for those operations are included in Other (Income) Expense, Net in the accompanying Consolidated Statements of Operations. Effective January 1, 1999, Mexico will no longer be considered highly inflationary.

Stock-Based Compensation Plans

SFAS No. 123, *Accounting for Stock-Based Compensation* allows either adoption of a fair value method for accounting for stock-based compensation plans or continuation of accounting under APB Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations with supplemental disclosures.

The Company has chosen to account for its stock options using the intrinsic value based method prescribed in APB Opinion No. 25 and, accordingly, does not recognize compensation expense for stock option grants made at an exercise price equal to or in excess of the fair market value of the stock at the date of grant. Pro forma net income and earnings per share amounts as if the fair value method had been adopted are presented in Note 9. SFAS No. 123 does not impact the Company's results of operations, financial position or cash flows.

Basic and Diluted (Loss) Earnings Per Share of Common Stock

Basic (loss) earnings per common share calculations are determined by dividing (loss) earnings available to common shareholders by the weighted average number of shares of common stock outstanding. Diluted (loss) earnings per share are determined by dividing (loss) earnings available to common shareholders by the weighted average number of shares of common stock and dilutive common stock equivalents outstanding (all related to outstanding stock options, restricted stock, warrants and the Zero Coupon Convertible Senior Subordinated Debentures).

For the years ended December 31, 1998 and December 29, 1996, respectively, 1,902,177 and 1,552,684 shares related to stock options, were not included in diluted average common shares outstanding because their effect would be antidilutive. Diluted average common shares outstanding as of December 29, 1996 also excluded (78,654) shares related to restricted stock. Diluted average common shares outstanding as of December 31, 1998 also excluded 13,242,050 shares related to the conversion feature of the Zero Coupon Convertible Senior Subordinated Debentures (see Note 3) and 23,000,000 shares issuable on the exercise of warrants, due to

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

1. Operations and Significant Accounting Policies—(Continued)

antidilution. For the year ended December 28, 1997, the dilutive effect of 2,718,649 equivalent shares related to stock options and (120,923) equivalent shares of restricted stock were used in determining the dilutive average shares outstanding.

New Accounting Standards

In March 1998, the American Institute of Certified Public Accountants ("AICPA") issued Statement of Position 98-1, *Accounting for the Costs of Computer Software Developed or Obtained for Internal Use* ("SOP 98-1"). SOP 98-1 requires computer software costs associated with internal use software to be expensed as incurred until certain capitalization criteria are met. The Company will adopt SOP 98-1 on January 1, 1999. Adoption of this statement is not expected to have a material impact on the Company's consolidated financial position, results of operations, or cash flows. Actual charges incurred due to systems projects may be material.

In April 1998, the AICPA issued Statement of Position 98-5, *Reporting on the Cost of Start-Up Activities* ("SOP 98-5"). SOP 98-5 requires all costs associated with pre-opening, pre-operating and organization activities to be expensed as incurred. The Company will adopt SOP 98-5 beginning January 1, 1999. Adoption of this statement is not expected to have a material impact on the Company's consolidated financial position, results of operations, or cash flows.

In June 1998, the FASB issued SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, which is effective for fiscal years beginning after June 15, 1999. SFAS No. 133 requires the recognition of all derivatives in the Consolidated Balance Sheets as either assets or liabilities measured at fair value. The Company will adopt SFAS No. 133 for the 2000 fiscal year. The Company has not yet determined the impact SFAS No. 133 will have on its consolidated financial position, results of operations or cash flows.

Reclassification

Certain prior year amounts have been reclassified to conform with the 1998 presentation.

2. Acquisitions

On March 30, 1998, the Company, through a wholly-owned subsidiary, acquired approximately 81% of the total number of then outstanding shares of common stock of Coleman from an affiliate of MacAndrews & Forbes Holdings, Inc. ("M&F"), in exchange for 14,099,749 shares of the Company's common stock and approximately \$160 million in cash. In addition, the Company assumed approximately \$1,016 million in debt. The value of the common stock issued at the date of acquisition was derived by using the average closing stock price as reported on the New York Stock Exchange Composite Tape for the day before and day of the public announcement of the acquisition. Immediately thereafter, as a result of the exercise of employee stock options, Sunbeam's indirect beneficial ownership of Coleman decreased to approximately 79% of the total number of the outstanding shares of Coleman common stock.

On August 12, 1998, the Company announced that, following investigation and negotiation conducted by a Special Committee of the Board consisting of four outside directors not affiliated with M&F, the Company had entered into a settlement agreement with an affiliate of M&F pursuant to which the Company was released from certain threatened claims of M&F and its affiliates arising from the Coleman acquisition and M&F agreed to provide certain management personnel and assistance to the Company in exchange for the issuance to the M&F affiliate of a five year warrant to purchase up to 23 million shares of the Company's common stock at a cash exercise price of \$7.00 per share, subject to antidilution adjustments. The Company concluded that the agreement to issue this warrant did not result in a new measurement date for the purposes of determining the purchase price for Coleman and has accounted for the issuance of this warrant as a cost of settling a potential claim. Accordingly, a \$70.0 million non-cash SG&A expense was recorded in the third quarter of 1998, based on a

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

2. Acquisitions—(Continued)

valuation performed as of August 1998 using facts existing at that time. The valuation was conducted by an independent consultant engaged by the Special Committee of the board of directors.

The Company expects to acquire the remaining equity interest in Coleman pursuant to a merger transaction in which the existing Coleman minority shareholders will receive 0.5677 shares of the Company's common stock and \$6.44 in cash for each share of Coleman common stock outstanding. In addition, unexercised options under Coleman's stock option plans will be cashed out at a price per share equal to the difference between \$27.50 and the exercise price of such options. The Company expects to issue approximately 6.7 million shares of common stock and expend approximately \$87 million in cash to complete the Coleman acquisition. Although there can be no assurance, it is anticipated the Coleman merger will occur in the second half of 1999. The acquisition of the remaining outstanding shares of Coleman common stock will be accounted for under the purchase method of accounting on the date of consummation of the Coleman merger. (Also see Note 15 for information regarding the proposed issuance of warrants related to this transaction.)

On April 6, 1998, the Company completed the acquisitions of First Alert, valued at approximately \$182 million (including \$133 million of cash and \$49 million of assumed debt) and Signature Brands valued at \$255 million, (reflecting cash paid, including the required retirement or defeasance of debt).

All of these acquisitions were accounted for by the purchase method of accounting. Accordingly, the results of operations of the acquired entities are included in the accompanying Consolidated Statements of Operations from their respective dates of acquisition.

In each acquisition, the purchase price paid has been allocated to the fair value (determined by independent appraisals) of tangible and identified intangible assets acquired and liabilities assumed as follows (in millions):

	Coleman	Signature Brands	First Alert	Total
Value of common stock issued	\$ 607	\$ —	\$ —	\$ 607
Cash paid including expenses and mandatory redemption of debt, net of cash acquired	160	255	133	548
Cash received from sale of Coleman Spas, Inc	(17)	—	—	(17)
Cash received from stock option proceeds	(9)	—	—	(9)
Net cash paid and equity issued	741	255	133	1,129
Fair value of total liabilities assumed, including debt	1,455	83	103	1,641
	2,196	338	236	2,770
Fair value of assets acquired	1,113	191	172	1,476
Excess of purchase price over fair value of net assets acquired	<u>\$1,083</u>	<u>\$147</u>	<u>\$64</u>	<u>\$1,294</u>

The excess of purchase price over the fair value of net assets acquired has been classified as goodwill. Goodwill related to the Coleman and Signature Brands acquisitions is being amortized on a straight-line basis over 40 years. During the fourth quarter of 1998, as a result of the significant loss incurred by First Alert, as well as its future prospects, the Company determined that the goodwill relating to this acquisition was impaired and, based on the determination of fair value, has written-off the net carrying value of goodwill approximating \$62.5 million. This one-time charge is reflected in SG&A expense in the Consolidated Statements of Operations.

As of the date of the acquisition of Coleman, management of the Company determined approximately 117 employees of Coleman would need to be involuntarily terminated in order to eliminate duplicate activities and functions and fully integrate Coleman into Sunbeam's operations. The Company recognized a liability of approximately \$8 million representing severance and benefit costs related to 117 employees pursuant to the termination plan. This liability was included in the allocation of purchase price. As of December 31, 1998, the

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

2. Acquisitions—(Continued)

Company had paid severance benefits of approximately \$5 million and 8 employees remained to be terminated. Remaining termination costs are expected to be paid by December 31, 2000 and no additional charges are anticipated in future periods related to this issue.

The following unaudited pro forma financial information for the Company gives effect to the Coleman and Signature Brands acquisitions as if they had occurred at the beginning of the periods presented. No pro forma adjustments have been made for the First Alert acquisition as its effects are not significant. These pro forma results have been prepared for informational purposes only and do not purport to be indicative of the results of operations which actually would have occurred had the acquisitions been consummated on the dates indicated, or which may result in the future. The unaudited pro forma results follow (in millions, except per share data):

	Fiscal Years Ended	
	December 31, 1998	December 28, 1997
Net sales	\$2,098.7	\$2,408.9
Net loss from continuing operations before extraordinary charge	(801.1)	(23.6)
Basic and diluted loss per share from continuing operations before extraordinary charge	(7.96)	(0.24)

3. Debt

Debt at the end of each fiscal year consists of the following (in thousands):

	1998	1997
Term loans, due in installments through 2006, average interest rate of 8.47% for 1998	\$1,262,500	\$ —
Revolving credit facility, average interest rate of 8.55% for 1998 and 5.99% for 1997	94,000	110,000
Zero coupon convertible senior subordinated debentures, net of unamortized discount of \$1,234,845, due 2018	779,155	—
Senior subordinated notes, bearing interest at 13.0%, payable semiannually, due August 1999	70,000	—
Hattiesburg industrial revenue bond due 2009, fixed interest rate of 7.85%	—	75,000
Other lines of credit, including foreign facilities	45,803	—
Other long-term borrowings, due through 2012, weighted average interest rate of 3.89% and 3.92%, at December 31, 1998 and December 28, 1997, respectively	10,007	10,248
	<u>2,261,465</u>	<u>195,248</u>
Less short-term debt and current portion of long-term debt	119,103	668
Long-term debt	<u>\$2,142,362</u>	<u>\$194,580</u>

Concurrent with the acquisitions, the Company replaced its \$250 million syndicated unsecured five-year revolving credit facility with a revolving and term credit facility (the "New Credit Facility"). The New Credit Facility provided for aggregate borrowings of up to \$1.7 billion and in addition to other customary covenants, required Sunbeam to maintain specified consolidated leverage, interest coverage and fixed charge coverage ratios as of the end of each fiscal quarter occurring after March 31, 1998 and on or prior to the latest stated maturity date for any of the borrowings under the New Credit Facility.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

3. Debt—(Continued)

As a result of, among other things, its operating losses incurred during the first half of 1998, Sunbeam did not achieve the specified financial ratios for June 30, 1998 and it appeared unlikely that Sunbeam would achieve the specified financial ratios for September 30, 1998. Consequently, Sunbeam and its lenders entered into an agreement dated as of June 30, 1998 that waived through December 31, 1998 all defaults arising from the failure of Sunbeam to satisfy the specified financial ratios for June 30, 1998 and September 30, 1998. Pursuant to an agreement with Sunbeam dated as of October 19, 1998, Sunbeam's lenders extended all of the waivers under the June 30, 1998 agreement through April 10, 1999 and also waived through such date all defaults arising from any failure by Sunbeam to satisfy the specified financial ratios for December 31, 1998. As part of the October 19, 1998 agreement, Sunbeam agreed to a minimum monthly earnings before interest, taxes, depreciation and amortization ("EBITDA") covenant for each of February, March and April of 1999, which covenant Sunbeam was able to satisfy.

On April 10, 1999, among other things, the lenders extended all of the waivers set forth in the October 19, 1998 agreement through April 15, 1999. On April 15, 1999, Sunbeam and its lenders entered into a comprehensive amendment to the New Credit Facility that, among other things, extended all of the waivers under the April 10, 1999 agreement until April 10, 2000 and waived until such date all defaults arising from any failure by Sunbeam to satisfy the specified financial ratios for any fiscal quarter end occurring during 1999 and for March 31, 2000. As part of the April 15, 1999 amendment, Sunbeam agreed to a minimum cumulative EBITDA covenant that is based on post-December 31, 1998 consolidated EBITDA and is tested at the end of each month occurring on or prior to March 31, 2000, as well as a covenant limiting the amount of revolving loans (other than those used to fund the Coleman merger) that may be outstanding under the New Credit Facility as of the end of each such month. The minimum cumulative EBITDA was initially \$6.3 million for the period January 1, 1999 through April 30, 1999 and generally grows on a monthly basis until it reaches \$121 million for the period from January 1, 1999 through March 31, 2000. The following description of the New Credit Facility reflects the terms of the New Credit Facility as amended.

The New Credit Facility provides for aggregate borrowings of up to \$1.7 billion pursuant to: (i) a revolving credit facility in an aggregate principal amount of up to \$400 million maturing March 30, 2005 (\$52.5 million of which may only be used to complete the Coleman merger); (ii) up to \$800 million in term loans maturing on March 30, 2005 (of which \$35.0 million may only be used to complete the Coleman merger) and (iii) a \$500 million term loan maturing September 30, 2006 (of which \$5.0 million has already been repaid through March 31, 1999). As of December 31, 1998, \$1.4 billion was outstanding and \$0.3 billion was available for borrowing under the New Credit Facility.

Pursuant to the New Credit Facility, interest accrues, at the Company's option: (i) at the London Interbank Offered Rate ("LIBOR"), or (ii) at the base rate of the administrative agent which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%, in each case plus an interest margin which is currently 3.75% for LIBOR borrowings and 2.50% for base rate borrowings. The applicable interest margin is subject to upward or downward adjustment upon the occurrence of certain events. Borrowings under the New Credit Facility are secured by a pledge of the stock of the Company's material subsidiaries, including Coleman, and by a security interest in substantially all of the assets of Sunbeam and its material domestic subsidiaries, other than Coleman and its material subsidiaries except as described below. Currently, Coleman's inventory and related assets are pledged to secure its obligations for letters of credit issued for its account under the New Credit Facility. Additionally, as security for Coleman's note payable to the Company, Coleman pledged substantially all of its domestic assets, other than real property, including 66% of the stock of its direct foreign subsidiaries and domestic holding companies for its foreign subsidiaries, and all of the stock of its other direct domestic subsidiaries (but not the assets of Coleman's subsidiaries). The pledge runs in favor of Sunbeam's lending banks, to which the Coleman note has been pledged as security for Sunbeam's obligations to them. Upon completion of the Coleman merger, substantially all of Coleman's assets and the assets of Coleman's domestic subsidiaries will be pledged to secure the obligations under the New Credit Facility. In

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

3. Debt—(Continued)

addition, borrowings under the New Credit Facility are guaranteed by a number of the Company's wholly owned material domestic subsidiaries and these subsidiary guarantees are secured as described above. Upon completion of the Coleman merger, Coleman and each of its United States subsidiaries will become guarantors of the obligations under the New Credit Facility. To the extent extensions of credit are made to any subsidiaries of the Company, the obligations of such subsidiaries are guaranteed by the Company.

In addition to the above described ratios and tests, the New Credit Facility contains covenants customary for credit facilities of a similar nature, including limitations on the ability of Sunbeam and its subsidiaries, including Coleman, to, among other things, (i) declare dividends or repurchase stock, (ii) prepay, redeem or repurchase debt, incur liens and engage in sale-leaseback transactions, (iii) make loans and investments, (iv) incur additional debt, including revolving loans under the New Credit Facility, (v) amend or otherwise alter material agreements or enter into restrictive agreements, (vi) make capital and year 2000 compliance expenditures, (vii) engage in mergers, acquisitions and asset sales, (viii) engage in certain transactions with affiliates, (ix) settle certain litigation, (x) alter its cash management system and (xi) alter the businesses they conduct. Sunbeam is also required to comply with specified financial covenants and ratios. The New Credit Facility provides for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, material adverse change arising from compliance with ERISA, material adverse judgments, entering into guarantees and change of ownership and control. It is also an event of default under the New Credit Facility if Sunbeam's registration statement in connection with the Coleman merger is not declared effective by the Securities and Exchange Commission ("SEC") on or before October 30, 1999 or if the merger does not occur within 25 business days of the effectiveness of the registration statement or if the cash consideration (including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses) to consummate the Coleman merger exceeds \$87.5 million. Although there can be no assurance, the Company anticipates that it will satisfy these conditions. Unless waived by the bank lenders, the failure of Sunbeam to satisfy any of the financial ratios and tests contained in the New Credit Facility or the occurrence of any other event of default under the New Credit Facility would entitle the bank lenders to (a) receive a 2.00% increase in the interest rate applicable to outstanding loans and increase the trade letter of credit fees to 1.00% and (b) accelerate the maturity of the outstanding borrowings under the New Credit Facility and exercise all or any of their other rights and remedies. Any such acceleration or other exercise of rights and remedies would likely have a material adverse effect on Sunbeam. The New Credit Facility also includes provisions for the deferral of the 1999 scheduled term loan payments of \$69.3 million, subject to delivery of certain collateral documents and the filing of an amendment to the Company's registration statement on Form S-4 relating to the Coleman merger. If these conditions are met, and there are no events of default, the scheduled loan payments will be extended until April 10, 2000. The Company anticipates that it will satisfy these conditions and, accordingly, has classified these amounts as long-term in the Consolidated Balance Sheet.

In March 1998, the Company completed an offering of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures") at a yield to maturity of 5.0% (approximately \$2,014 million principal amount at maturity) which resulted in approximately \$730 million of net proceeds. The Debentures are exchangeable for shares of the Company's common stock at an initial conversion rate of 6.575 shares for each \$1,000 principal amount at maturity of the Debentures, subject to adjustment upon occurrence of certain events. The Debentures are subordinated in right of payment to all existing and future senior indebtedness of the Company. The Debentures are not redeemable by the Company prior to March 25, 2003. On or after such date, the Debentures are redeemable for cash with at least 30 days notice, at the option of the Company. The Company is required to purchase Debentures at the option of the holder as of March 25, 2003, March 25, 2008 and March 25, 2013, at purchase prices equal to the issue price plus accrued original discount to such dates. The Company may, at its option, elect to pay any such purchase price in cash or common stock, or any combination thereof. The Company was required to file a registration statement with the SEC to register the Debentures by June 23, 1998. This registration statement was filed February 4, 1999 and the SEC has not declared the registration statement effective. Sunbeam's failure to file the registration statement by June 23, 1998 did not constitute a default under

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

3. Debt—(Continued)

the terms of the Debentures. As part of the normal review process by the SEC, a number of comments have been made by the staff of the division of Corporation Finance relating to the registration statement and the restated 1996 and 1997 financial statements included therein. The Company expects to resolve these comments when it files an amendment to the registration statement. From June 23, 1998 until the registration statement is declared effective, the Company is required to pay to the Debenture holders cash liquidated damages accruing, for each day during such period, at a rate per annum equal to 0.25% during the first 90 days and 0.50% thereafter multiplied by the total of the issue price of the Debentures plus the original issue discount thereon on such day. The Company made its first payment of approximately \$0.5 million to the Debenture holders on September 25, 1998. As of December 31, 1998 the Company had accrued additional payments totaling \$1.0 million. The Company made a payment to Debenture holders in March 1999 of approximately \$2.0 million. This amount included liquidated damages that accrued during the first quarter of 1999.

In connection with the acquisition of Signature Brands, the Company was required to defease \$70.0 million of acquired debt. Cash was placed with a trustee to provide for the defeasance, including the related prepayment penalty. This cash was used to purchase Treasury Notes. Accordingly, \$74.4 million of restricted investments held by the trustee for the August 1999 liquidation of this acquired debt are reflected as an asset and \$70.0 million is reflected as short-term debt in the Consolidated Balance Sheet at December 31, 1998. The prepayment penalty is reflected as part of the acquisition price of Signature Brands.

In March 1998, the Company prepaid the \$75.0 million 7.85% industrial revenue bond related to its Hattiesburg facility originally due in 2009. In connection with the early extinguishment of this debt, the Company recognized an extraordinary charge of \$7.5 million. As a result of repayment of certain indebtedness assumed in the Coleman acquisition, the Company also recognized an extraordinary charge of \$114.9 million. The debt assumed in connection with the Coleman acquisition was repaid as a result of the requirements under the terms of the New Credit Facility Credit Agreement. These extraordinary charges consisted of redemption premiums (\$106.9 million), unamortized debt discount (\$13.8 million) and unamortized deferred financing costs (\$1.7 million).

During 1997, the Company repaid \$12.2 million of long-term borrowings related to the divested furniture operations and other assets sold.

At December 31, 1998, the aggregate annual maturities on short-term and long-term debt in each of the years 1999-2003, and thereafter, were \$119 million, \$1,355 million, \$1 million, \$1 million, \$1 million, and \$5 million, respectively. In addition, the fully accreted Debenture amount of \$2,014 million matures in 2018. The total of annual debt maturities for all years presented does not agree to the balance of debt outstanding at December 31, 1998 as a result of the accretion of discount on the Debentures. The outstanding balances relating to the New Credit Facility are included in the maturity schedule in 2000, consistent with the expiration of the covenant waiver. Sunbeam has made no decision with respect to the repayment or refinancing of indebtedness incurred or to be incurred under the New Credit Facility and may repay such indebtedness out of its internally generated funds or from proceeds of a subsequent financing. Any decisions with respect to such repayment or refinancing will be made based on a review from time to time of the advisability of particular transactions, as well as on prevailing interest rates and financial and economic conditions.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

4. Financial Instruments

Fair Value of Financial Instruments

The fair value of the Company's financial instruments as of December 31, 1998 and December 28, 1997 was estimated based upon the following methods and assumptions:

Cash and Cash Equivalents—The carrying amount of cash and cash equivalents is assumed to approximate fair value as cash equivalents include all highly liquid, short-term investments with original maturities of three months or less.

Short and Long Term Debt—The fair value of the Company's fixed rate debt is estimated using either reported transaction values or discounted cash flow analysis. The fair value of the Company's fixed rate debt was \$319 million as of December 31, 1998 as compared to the carrying value of \$859 million. The carrying value of the Company's variable rate debt is assumed to approximate market based upon periodic adjustments of the interest rate to the current market rate in accordance with the terms of the debt agreements. The carrying value of the Company's various debt outstanding as of December 28, 1997 approximated market.

Letters of Credit and Surety Bonds—The Company utilizes stand-by letters of credit to back certain financing instruments and insurance policies and commercial letters of credit guaranteeing various international trade activities. In addition, the Company also entered into surety bonds largely as a result of litigation judgements that are currently under appeal. The contract amounts of the letters of credit and surety bonds approximate their fair values. The contract value of letters of credit were \$82.3 million and \$29.0 million as of December 31, 1998 and December 28, 1997, respectively. Contract values for surety bonds as of December 31, 1998 were approximately \$26.5 million and were not significant at December 28, 1997.

Derivative Financial Instruments—The Company utilizes interest rate swap agreements to reduce the impact on interest expense of fluctuating interest rates on its floating rate debt. The use of derivatives did not have a material impact on the Company's operations in 1998, 1997 and 1996. At December 31, 1998, the Company held three floating to fixed interest rate swap agreements, one with a notional value of \$25 million and two with notional amounts of \$150 million each. The swap agreements are contracts to exchange floating rate for fixed interest payments periodically over the lives of the agreements without the exchange of the underlying notional principal amounts. The swaps expire in January 2003, June 2001 and June 2003, respectively. Under these agreements, the Company received an average floating rate of 5.64%, 5.59% and 5.59%, respectively, and paid an average fixed rate of 6.12%, 5.75% and 5.58%, respectively, during 1998. The fair value of the interest rate swaps at December 31, 1998 is estimated to be \$7.3 million. This estimate is based upon quotes received from the Company's lending institutions and represents the cash requirement if the existing agreements had been terminated at the end of the year. Interest rate swaps are off-balance-sheet instruments and therefore have no carrying value. The Company had no swap agreements outstanding at December 28, 1997.

In order to mitigate the transaction exposures that may arise from changes in foreign exchange rates, the Company purchases foreign currency option and forward contracts to hedge specific transactions, principally the purchases of inventories. The option contracts typically expire within one year. The options are accounted for as hedges pursuant to SFAS No. 52, *Foreign Currency Translation*, accordingly gains and losses thereon are deferred and recorded in operations in the period in which the underlying transaction is recorded. At December 31, 1998, the Company held purchased option contracts with a notional value of \$32.3 million and a fair value of \$0.3 million and forward contracts with a notional value of \$30.9 million and a fair value of \$30.5 million. The Company did not hold any such contracts at December 28, 1997.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

4. Financial Instruments—(Continued)

The table below summarizes by currency, the contractual amounts, carrying amounts and related unrealized gain (loss) of the Company's forward exchange and option contracts at December 31, 1998 (in millions):

December 31, 1998	Forward Contracts	Purchased Option Contracts	Total Contracts	Carrying Amount Asset (Liability)	Recognized Unrealized Gain (Loss)	Deferred Unrealized Gain (Loss)
Currency:						
Deutschemark	\$12.0	\$18.4	\$30.4	\$ 0.3	\$ 0.2	\$—
Yen	\$14.9	\$12.4	\$27.3	\$(0.3)	\$(0.7)	\$—
Pound sterling	\$ 4.0	\$ 1.5	\$ 5.5	\$ 0.1	\$ 0.1	\$—
Total	<u>\$30.9</u>	<u>\$32.3</u>	<u>\$63.2</u>	<u>\$ 0.1</u>	<u>\$(0.4)</u>	<u>\$—</u>

The fair values of the Company's foreign currency contracts were based on quoted market prices of comparable contracts, adjusted through interpolation where necessary for maturity differences.

Exposure to market risk on interest rate and foreign currency financial instruments results from fluctuations in interest and currency rates, respectively, during the periods in which the contracts are outstanding. The counterparties to the Company's interest rate swap agreements and currency exchange contracts consist of a diversified group of major financial institutions, each of which is rated investment grade A or better. The Company is exposed to credit risk to the extent of potential nonperformance by counterparties on financial instruments. The Company believes the risk of incurred losses due to credit risk is remote.

5. Accounts Receivable Securitization

In December 1997, the Company entered into a receivable securitization program, that expires March 2000, to sell without recourse, through a wholly owned subsidiary, certain trade accounts receivable, up to a maximum of \$70.0 million. During 1998, the Company has received approximately \$200.0 million under this arrangement. At December 31, 1998, the Company had reduced accounts receivable by \$20.0 million for receivables sold under this program. At December 28, 1997, the Company had received \$58.9 million under this arrangement, of which \$39.1 million related to sales recorded in fiscal 1997 and the balance related to sales to be recognized in the first quarter of 1998. During 1997, the Company sold \$19.8 million of receivables related to bill and hold and consignment sales that had been initially recognized in its Consolidated Financial Statements and were subsequently reversed in the restatement process. The conditions for recognizing these sales were met in the first quarter of 1998. Accordingly, at December 28, 1997, the accompanying Consolidated Balance Sheet reflects a reduction in accounts receivable of \$39.1 million and an increase in other current liabilities of \$19.8 million. Proceeds from the sales of receivables were used to reduce borrowings under the Company's revolving credit facility or to provide cash flow for working capital purposes, thereby reducing the need to borrow under the credit facility. Costs of the program, which primarily consist of the purchaser's financing cost of issuing commercial paper backed by the receivables, totaled \$2.3 million and \$0.2 million during 1998 and 1997, respectively, and have been classified as interest expense in the accompanying Consolidated Statements of Operations. The Company, through a wholly-owned subsidiary, retains collection and administrative responsibilities for the purchased receivables. This agreement contains cross-default provisions that provide the purchaser of the receivables an option to cease purchasing receivables from the Company if the Company is in default under the New Credit Facility.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

6. Income Taxes

(Loss) earnings from continuing operations before income taxes, minority interest and extraordinary charge for each fiscal year is summarized as follows (in thousands):

	<u>1998</u>	<u>1997</u>	<u>1996</u>
Domestic	\$(723,179)	\$80,946	\$(244,255)
Foreign	(73,169)	11,724	(17,550)
	<u>\$(796,348)</u>	<u>\$92,670</u>	<u>\$(261,805)</u>

Income tax provisions include current and deferred taxes (tax benefits) for each fiscal year as follows (in thousands):

	<u>1998</u>	<u>1997</u>	<u>1996</u>
Current:			
Federal	\$ 1,203	\$(3,421)	\$(22,924)
State	275	3,266	(202)
Foreign	7,189	1,683	707
	<u>8,667</u>	<u>1,528</u>	<u>(22,419)</u>
Deferred:			
Federal	(6,343)	30,554	(57,211)
State	(1,316)	3,962	(11,050)
Foreign	(11,138)	4,308	(945)
	<u>(18,797)</u>	<u>38,824</u>	<u>(69,206)</u>
	<u>\$(10,130)</u>	<u>\$40,352</u>	<u>\$(91,625)</u>

The effective tax rate on earnings (loss) before income taxes, minority interest and extraordinary charges varies from the current statutory federal income tax rate as follows:

	<u>1998</u>	<u>1997</u>	<u>1996</u>
(Benefit) provision at statutory rate	(35.0)%	35.0 %	(35.0)%
State taxes, net	—	5.1	(2.8)
Amortization of intangible assets and goodwill	4.3	—	—
Warrants issued in settlement of claim	3.1	—	—
Foreign earnings and dividends taxed at other rates	2.7	2.0	2.3
Valuation allowance	23.6	20.4	—
Reversal of tax liabilities no longer required	—	(14.4)	—
Other, net	—	(4.6)	0.5
Effective tax rate (benefit) provision	<u>(1.3)%</u>	<u>43.5 %</u>	<u>(35.0)%</u>

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

6. Income Taxes—(Continued)

Significant components of the Company's deferred tax liabilities and assets are as follows:

	December 31, 1998	December 28, 1997
Deferred tax assets:		
Receivables	\$ 19,180	\$ 10,516
Postretirement benefits other than pensions	22,714	11,430
Reserves for self-insurance and warranty costs	40,765	33,426
Pension liabilities	16,334	2,811
Inventories	27,822	14,437
Net operating loss carryforwards	322,273	—
Tax credits	13,510	12,955
Other, net	<u>89,577</u>	<u>33,388</u>
Total deferred tax assets	552,175	118,963
Valuation allowance	<u>290,520</u>	<u>23,215</u>
Net deferred tax assets	<u>261,655</u>	<u>95,748</u>
Deferred tax liabilities:		
Depreciation	43,377	22,532
Acquired intangible assets	244,378	68,311
Other, net	<u>19,850</u>	<u>9,747</u>
Total deferred tax liabilities	<u>307,605</u>	<u>100,590</u>
Net deferred tax liabilities	<u>\$ (45,950)</u>	<u>\$ (4,842)</u>

The Company establishes valuation allowances in accordance with the provisions of SFAS No. 109. The Company continually reviews the adequacy of the valuation allowances and recognizes tax benefits when it is more likely than not that the benefits will be realized. In the fourth quarter of 1997, the Company increased the valuation allowance by \$23.2 million, reflecting management's assessment that it was more likely than not that the deferred tax assets would not be realized through future taxable income. Of this amount, approximately \$18.9 million related to deferred tax assets, the majority of which was recognized as a benefit in the first three quarters of 1997. The remainder related to minimum pension liabilities and was therefore recorded as an adjustment in shareholders' equity. This assessment was made as a result of the significant leverage undertaken by the Company as part of the acquisitions (see Note 2) and the significant decline in net sales and earnings from anticipated levels during the fourth quarter of 1997 and the first quarter of 1998.

Throughout 1998, the Company increased the valuation allowance to \$290.5 million, which increase reflects management's assessment that it is more likely than not that the deferred tax asset will not be realized through future taxable income. As described above, this assessment was made as a result of the significant leverage undertaken by the Company and the continuing decline in Sunbeam's net sales and earnings, as well as the operating losses incurred throughout the 1998 year. At December 31, 1998, the Company had net operating loss carryforwards ("NOL's") of approximately \$725 million for domestic income tax purposes and \$169 million for foreign income tax purposes. The domestic NOL's begin expiring in 2018. Of the foreign tax NOL's, \$3 million, \$4 million, \$19 million, \$18 million and \$16 million expire in the years ending December 31, 1999 through 2003, respectively, and \$91 million of such NOL's have an unlimited life.

The Company has not provided U.S. income taxes on undistributed foreign earnings of approximately \$32 million at December 31, 1998, as the Company intends to permanently reinvest these earnings in the future growth of the business. Determination of the amount of unrecognized deferred U.S. income tax liability is not practicable because of the complexities associated with its hypothetical calculation.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

7. Employee Benefit Plans

Pension and Other Postretirement Benefit Plans

The Company sponsors several defined benefit pension plans covering eligible U.S. salaried and hourly employees. Benefit accruals under such plans covering all U.S. salaried employees were frozen, effective December 31, 1990. Accordingly, no credit in the pension formula is given for service or compensation after that date. However, these employees continue to earn service toward vesting in their interest in the frozen plans as of December 31, 1990. The Company also provides health care and life insurance benefits to certain former employees who retired from the Company prior to March 31, 1991. The Company has consistently followed a policy of funding the cost of postretirement health care and life insurance benefits on a pay-as-you-go basis.

As a result of the Company's acquisitions of Coleman and First Alert (see Note 2), the liabilities for their respective defined benefit pension plans (the "Plans") were assumed and have been accounted for in accordance with Accounting Principles Board Opinion No. 16 ("APB 16"), *Accounting for Business Combinations*. Effective January 1, 1999, the Coleman and First Alert salaried pension plans were amended to change the pension benefit formula to a cash balance formula from the existing benefit calculation. The benefits accrued under these plans as of December 31, 1998 were frozen and converted to the new cash balance plan using a 7.0% interest rate assumption. The effect of the amendment of the Plans is reflected in the projected benefit obligation as of the date of acquisition as required by APB 16. Under the cash balance plan, the Company will credit certain participants' accounts annually. At the date of acquisition the pension benefit obligation and the fair value of the plan assets attributable to these Plans were \$43.4 million and \$27.7 million, respectively, and are reflected in the table below.

In addition, Coleman provided certain unfunded postretirement health and life insurance benefits for certain retired employees. At the date of acquisition the postretirement benefit obligation associated with this plan was \$19.5 million as reflected in the table below, and has been accounted for in accordance with APB 16.

The Company funds all pension plans in amounts consistent with applicable laws and regulations. Pension plan assets include corporate and U.S. government bonds, corporate stocks, mutual funds, fixed income securities, and cash equivalents.

Employees of non-U.S. subsidiaries generally receive retirement benefits from Company sponsored plans or from statutory plans administered by governmental agencies in their countries. The assets, liabilities and pension costs of the Company's non-U.S. defined benefit retirement plans are not material to the consolidated financial statements.

On January 1, 1998, the Company adopted SFAS No. 132, *Employers' Disclosures About Pensions and Other Postretirement Benefits* ("SFAS No. 132"). This statement revises employers' disclosures about pension and other postretirement benefit plans. SFAS No. 132 does not change the method of accounting for such plans.

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

7. Employee Benefit Plans—(Continued)

The following table includes disclosures of the funded status and amounts recognized in the Company's Consolidated Balance Sheets at the end of each fiscal year as required by SFAS No. 132 (in thousands):

	Pension Benefits		Postretirement Benefits	
	1998	1997	1998	1997
Change in Benefit Obligation:				
Benefit obligation at beginning of year	\$127,229	\$122,754	\$ 14,220	\$ 14,555
Acquisitions	43,404	—	19,477	—
Service cost	1,551	157	689	—
Interest cost	10,875	8,970	2,088	996
Amendments	—	84	—	—
Actuarial loss	20,456	10,630	4,069	—
Settlement	—	(1,732)	—	—
Benefits paid	(15,018)	(13,634)	(1,677)	(1,331)
Benefit obligation at end of year	<u>\$188,497</u>	<u>\$127,229</u>	<u>\$ 38,866</u>	<u>\$ 14,220</u>
Change in Plan Assets:				
Fair value of plan assets at beginning of year	\$116,485	\$116,522	\$ —	\$ —
Acquisitions	27,657	—	—	—
Actual return on plan assets	6,424	12,511	—	—
Employer contributions	8,889	2,818	1,677	1,331
Settlement	—	(1,732)	—	—
Benefits paid	(15,018)	(13,634)	(1,677)	(1,331)
Fair value of plan assets at end of year	<u>\$144,437</u>	<u>\$116,485</u>	<u>\$ —</u>	<u>\$ —</u>
Reconciliation of Funded Status:				
Funded status	\$ (44,060)	\$ (10,744)	\$ (38,866)	\$ (14,220)
Unrecognized net actuarial loss/(gain)	48,616	25,192	3,829	(240)
Unrecognized prior service cost	—	—	(12,991)	(15,934)
Net amount recognized	<u>\$ 4,556</u>	<u>\$ 14,448</u>	<u>\$ (48,028)</u>	<u>\$ (30,394)</u>
Amount Recognized in the Consolidated Balance Sheets				
Consist of:				
Accrued benefit liability	\$ (42,431)	\$ (10,744)	\$ (48,028)	\$ (30,394)
Accumulated other comprehensive income	46,987	25,192	—	—
Net amount recognized	<u>\$ 4,556</u>	<u>\$ 14,448</u>	<u>\$ (48,028)</u>	<u>\$ (30,394)</u>

In determining the actuarial present value of the benefit obligation, the weighted average discount rate was 6.75% and 7.25% as of December 31, 1998 and December 28, 1997, respectively; the expected return on plan assets ranged from 6.75% to 9.00% for 1998 and was 7.25% for 1997. The expected increase in future compensation levels was 4.00% for Coleman for 1998.

The assumed health care cost trend rates used in measuring the accumulated postretirement benefit obligation were 7.0% to 8.0% for the plans for 1999 and were assumed to decrease gradually to 5.0% by 2003 and remain at that level thereafter.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

7. Employee Benefit Plans—(Continued)

Assumed health care cost trend rates have a significant effect on the amounts reported for the health care plan. A one-percentage-point change in assumed health care cost trend rates would have the following effects:

	<u>1-Percentage- Point Increase</u>	<u>1-Percentage- Point Decrease</u>
Effect on total of service and interest cost components	\$ 508	\$ (424)
Effect on the postretirement benefit obligation	\$6,035	\$(5,144)

Net pension expense and periodic postretirement benefit include the following components (in thousands):

	<u>Pension Benefits</u>			<u>Postretirement Benefits</u>		
	<u>1998</u>	<u>1997</u>	<u>1996</u>	<u>1998</u>	<u>1997</u>	<u>1996</u>
Components of net periodic pension benefit cost:						
Service cost	\$ 1,551	\$ 157	\$ 411	\$ 689	\$ —	\$ —
Interest cost	10,875	8,970	9,071	2,088	996	1,041
Expected return of market value of assets	(10,127)	(8,586)	(816)	—	—	—
Amortization of unrecognized prior service cost	—	—	—	(2,943)	(2,942)	(2,942)
Recognized net actuarial loss (gain)	735	414	(7,518)	—	—	—
Net periodic benefit cost (benefit)	3,034	955	1,148	(166)	(1,946)	(1,901)
Settlement charge	—	615	—	—	—	—
Curtailment charge	—	106	—	—	—	—
Total expense (benefit)	<u>\$ 3,034</u>	<u>\$ 1,676</u>	<u>\$ 1,148</u>	<u>\$ (166)</u>	<u>\$(1,946)</u>	<u>\$(1,901)</u>

The projected benefit obligation, accumulated benefit obligation and fair value of plan assets for the plans with accumulated benefit obligations in excess of plan assets were \$186.4 million, \$161.6 million and \$125.5 million at December 31, 1998 and \$127.2 million, \$127.2 million and \$116.5 million at December 28, 1997, respectively.

Defined Contribution Plans

As a result of the Company's acquisitions of Coleman, First Alert and Signature Brands, the Company amended its Savings & Investment and Profit Sharing Plan ("Savings Plan") to assume the assets of the respective savings plans at each of the acquired companies and establish parity with the benefits provided by Sunbeam. Effective January 1, 1999, all eligible employees could participate in the Savings Plan. Company contributions to these plans include employer matching contributions as well as discretionary contributions depending on the performance of the Company, in an amount up to 10% of eligible compensation. The Company provided \$1.9 million in 1998, \$1.8 million in 1997 and \$1.7 million in 1996 for its defined contribution plans.

8. Shareholders' Equity

Common Stock

At December 31, 1998, the Company had 500,000,000 shares of \$0.01 par value common stock authorized and there were 14,094,158 shares of common stock reserved for issuance upon the exercise of outstanding stock options.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

8. Shareholders' Equity—(Continued)

Compensatory Stock Grants

In July 1996, the Company granted 1,100,000 shares of restricted stock in connection with the employment of a then new Chairman and Chief Executive Officer and two other senior officers of the Company. Compensation expense attributable to the restricted stock awards was amortized to expense beginning in 1996 over the periods in which the restrictions lapse (which in the case of 333,333 shares, was immediately upon the date of grant, in the case of 666,667 shares, was to be amortized equally over two years from the date of grant and in the case of the remaining 100,000 shares, was equally over three years from the date of grant). These restricted stock awards resulted in a \$7.7 million charge to SG&A expense in 1996.

On February 20, 1998, the Company entered into new three-year employment agreements with its then Chairman and Chief Executive Officer and two other then senior officers of the Company. These agreements replaced previous employment agreements entered into in July 1996 that were scheduled to expire in July 1999.

The new employment agreement for the Company's then Chairman and Chief Executive Officer provided for, among other items, the acceleration of vesting of 200,000 shares of restricted stock and the forfeiture of the remaining 133,334 shares of unvested restricted stock granted under the July 1996 agreement, a new equity grant of 300,000 shares of unrestricted stock, a new grant of a ten-year option to purchase 3,750,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in three equal annual installments beginning on the date of grant and the acceleration of vesting of 833,333 outstanding stock options granted under the July 1996 agreement, as further described in Note 9. In addition, the new employment agreement with the then Chairman and Chief Executive Officer provided for income tax gross-ups with respect to any tax assessed on the equity grant and acceleration of vesting of restricted stock.

The new employment agreements with the two other then senior officers provided for, among other items, the grant of a total of 180,000 shares of restricted stock that were to vest in four equal annual installments beginning on the date of grant, the acceleration of vesting of 44,000 shares of restricted stock and the forfeiture of the remaining 29,332 shares of unvested restricted stock granted under the July 1996 agreements, new grants of ten-year options to purchase a total of 1,875,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in four equal annual installments beginning on the date of grant and the acceleration of vesting of 383,334 outstanding stock options granted under the July 1996 agreements. In addition, the new employment agreements provided for income tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock.

Compensation expense attributed to the equity grant, the acceleration of vesting of restricted stock and the related income tax gross-ups was recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups was amortized to expense beginning in the first quarter of 1998 with amortization to continue over the period in which the restrictions lapse. Total compensation expense recognized in 1998 related to these items was approximately \$31 million.

On June 15, 1998, the Company's board of directors announced the removal of the then Chairman and Chief Executive Officer and subsequently announced the removal or resignation of other senior officers, including the Company's then Chief Financial Officer. In connection with the removal or resignation of the senior officers and the termination of their restricted stock grants, the unamortized portion of the deferred compensation expense attributable to the restricted stock grants was reversed. The Company and certain of its former officers are in disagreement as to the Company's obligations to these individuals under prior employment agreements and arising from their terminations. (See Note 15.)

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

8. Shareholders' Equity—(Continued)

Accumulated Other Comprehensive Loss

The components of accumulated other comprehensive loss consist of the following (in thousands):

	Currency Translation Adjustments	Minimum Pension Liability	Total
Balance at December 29, 1996	\$(12,111)	\$ (6,163)	\$(18,274)
Balance at December 28, 1997	(12,850)	(20,213)	(33,063)
Balance at December 31, 1998	(12,022)	(42,008)	(54,030)

The accumulated other comprehensive loss associated with the minimum pension liability is net of deferred income taxes of approximately \$5.0 million in 1998, 1997 and 1996.

9. Employee Stock Options and Awards

The Company has one stock-based compensation plan, the Amended and Restated Sunbeam Corporation Stock Option Plan (the "Plan"). Under the Plan, all employees are eligible for grants of options to purchase up to an aggregate of 16,300,000 shares of the Company's common stock at an exercise price equal to or in excess of the fair market value of the stock on the date of grant. The term of each option commences on the date of grant and expires on the tenth anniversary of the date of grant subject to earlier cancellation. Options generally become exercisable over a three to five year period.

The Plan also provides for the grant of restricted stock awards of up to 200,000 shares, in the aggregate, to employees and non-employee directors. The Plan provides that each non-employee director of the Company is automatically granted 1,500 shares of restricted common stock upon his or her initial election or appointment and upon each subsequent re-election to the Company's board of directors. In the event of an election or appointment to the Company's board of directors at any time other than at the annual meeting of stockholders, the director receives a prorated amount of restricted common shares. These restricted common shares vest immediately upon the non-employee director's acceptance of his or her election or appointment to the Company's board of directors. The Company granted 6,000, 6,000, and 7,818 shares of restricted stock to non-employee directors in 1998, 1997 and 1996, respectively, and recognized compensation expense related to these grants of \$0.2 million in each of 1998, 1997 and 1996. See Note 8 for a discussion of restricted stock awards made outside the Plan.

In July 1996, options to purchase an aggregate of 3,000,000 shares (of which 2,750,000 options were outstanding at December 28, 1997) were granted outside of the Plan at exercise prices equal to the fair market value of the Company's common stock on the dates of grant in connection with the employment of a then new Chairman and Chief Executive Officer and two other senior officers of the Company. These outstanding options have terms of ten years and, with respect to options for 2,500,000 shares, were exercisable in three annual installments beginning July 17, 1996. Options for the remaining 250,000 shares still outstanding were exercisable in three annual installments beginning on the first anniversary of the July 22, 1996 grant date. On February 20, 1998 the vesting provisions of the options granted outside the Plan were accelerated. Additional stock option grants outside the Plan were made in February 1998, with a portion thereof subsequently terminated in connection with the removal of the then Chairman and Chief Executive Officer. The then Chairman and Chief Executive Officer and another senior officer are disputing termination of their stock option grants. (See Notes 8 and 15.)

In the third and fourth quarters of 1998, options to purchase an aggregate of 4,200,000 shares were granted outside of the Plan in connection with the employment of the new Chief Executive Officer and certain members of the new senior management team. The options were granted to certain senior executives at exercise prices equal to or greater than the fair market value of the Company's common stock on the dates of the grant. The senior officers were granted options to purchase 3,200,000 shares of common stock at a price of \$7.00 per share; 500,000 shares of common stock at a price of \$10.50 per share and 500,000 shares at a price of \$14.00 per share.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

9. Employee Stock Options and Awards—(Continued)

All of these outstanding options have terms of ten years and become fully exercisable at the end of two to three year periods if the executive remains employed by the Company as of such date. These grants are subject the shareholder approval at the 1999 Annual Meeting. A measurement date pursuant to APB Opinion No. 25 will be established for these grants upon shareholder approval. These options have been included in the following tables summarizing the Company's stock option activity for the year ended December 31, 1998.

In August 1998, the Company approved a plan to exchange outstanding common stock options held by the Company's employees. The exchange program, which has been completed, provided for outstanding options with exercise prices in excess of \$10.00 per share to be exchanged for new options on a voluntary basis in an exchange ratio ranging from approximately two to three old options for one new option, (as determined by reference to a Black-Scholes option pricing model) with the exercise price of the new options set at \$7.00 per share. These options were repriced at an exercise price approximating the market value of the Company's common stock at the date of the repricing and, consequently, there was no related compensation expense.

The Company applies APB Opinion No. 25 and related interpretations in accounting for its stock options. Accordingly, no compensation cost has been recognized for outstanding stock options. Had compensation cost for the Company's outstanding stock options been determined based on the fair value at the grant dates for those options consistent with SFAS No. 123, the Company's net (loss) earnings and basic and diluted (loss) earnings per share would have differed as reflected by the pro forma amounts indicated below (in thousands except per share amounts):

	<u>1998</u>	<u>1997</u>	<u>1996</u>
Net (loss) earnings:			
As reported	\$ (897,923)	\$38,301	\$(208,481)
Pro forma	(1,023,932)	14,524	(218,405)
Basic (loss) earnings per share:			
As reported	(9.25)	0.45	(2.51)
Pro forma	(10.54)	0.17	(2.63)
Diluted (loss) earnings per share:			
As reported	(9.25)	0.44	(2.51)
Pro forma	(10.54)	0.17	(2.63)

The Company's pro forma net loss for 1998 includes approximately \$68 million of compensation cost relating to options issued to the former Chairman and Chief Executive Officer (3,750,000) and a former senior officer (1,125,000) in connection with their February 1998 employment agreements. These options are included in the outstanding and exercisable options issued outside the plan in the following table. The Company and these individuals are in dispute regarding the status of these options.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions:

	<u>1998</u>	<u>1997</u>	<u>1996</u>
Expected volatility	52.80%	34.19%	36.78%
Risk-free interest rate	4.68%	6.36%	6.34%
Dividend yield	0.0%	0.1%	0.1%
Expected life	6 years	6 years	5 years

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

9. Employee Stock Options and Awards—(Continued)

A summary of the status of the Company's outstanding stock options as of December 31, 1998, December 28, 1997 and December 29, 1996, and changes during the years ended on those dates is presented below:

	1998		1997		1996	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Plan options						
Outstanding at beginning of year ..	6,654,068	\$25.61	6,271,837	\$19.43	4,610,387	\$16.67
Granted	6,663,998	17.13	3,105,263	32.40	4,061,450	20.39
Exercised	(879,088)	22.25	(1,549,196)	17.20	(622,994)	7.51
Canceled	(6,826,070)	27.75	(1,173,836)	21.10	(1,777,006)	18.64
Outstanding at end of year	<u>5,612,908</u>	\$13.32	<u>6,654,068</u>	\$25.61	<u>6,271,837</u>	\$19.43
Options exercisable at year-end	1,717,545	\$20.91	1,547,198	\$19.13	1,655,450	\$16.13
Weighted-average fair value of options granted during the year		\$10.47		\$15.46		\$14.76
Options outside plan						
Outstanding at beginning of year ..	2,750,000	\$12.43	2,750,000	\$12.43	692,500	\$16.70
Granted	9,825,000	24.62	—	—	3,000,000	12.65
Canceled	(750,000)	36.85	—	—	(942,500)	16.27
Outstanding at end of year	<u>11,825,000</u>	\$21.01	<u>2,750,000</u>	\$12.43	<u>2,750,000</u>	\$12.43
Options exercisable at year-end	7,625,000	\$28.04	1,750,000	\$12.35	833,333	\$12.25
Weighted-average fair value of options granted during the year		\$13.71		N/A		\$ 5.99

Included in the outstanding and exercisable options issued outside the plan, as presented above, are options issued to the former Chairman and Chief Executive Officer (3,750,000) and a former senior officer (1,125,000) in connection with their February 1998 employment agreements. The Company and these individuals are in a dispute regarding the status of these options.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

9. Employee Stock Options and Awards—(Continued)

The following table summarizes information about stock options outstanding at December 31, 1998:

<u>Range of Exercise Prices</u>	<u>Options Outstanding</u>		
	<u>Number Outstanding at 12/31/98</u>	<u>Weighted-Average Remaining Contractual Life (Years)</u>	<u>Weighted-Average Exercise Price</u>
\$5.00 to 7.00	6,076,805	9.2	\$ 6.91
\$7.01 to \$14.00	4,048,200	8.3	11.80
\$14.01 to \$15.00	642,124	7.6	14.43
\$15.01 to \$23.15	697,697	7.2	19.47
\$23.16 to \$26.71	733,714	8.3	25.07
\$26.72 to \$36.85	4,951,590	9.1	36.55
\$36.86 and over	287,778	8.9	40.32
\$5.00 to \$50.77	<u>17,437,908</u>	<u>8.7</u>	<u>18.49</u>

<u>Range of Exercise Prices</u>	<u>Options Exercisable</u>	
	<u>Number Exercisable at 12/31/98</u>	<u>Weighted-Average Exercise Price</u>
\$5.00 to \$7.00	95,895	\$ 5.01
\$7.01 to \$14.00	2,500,000	12.25
\$14.01 to \$15.00	571,290	14.41
\$15.01 to \$23.15	627,488	19.30
\$23.16 to \$26.71	540,055	25.10
\$26.72 to \$36.85	4,906,961	36.62
\$36.86 and over	100,856	40.60
\$5.00 to \$50.77	<u>9,342,545</u>	<u>26.62</u>

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

10. Supplementary Financial Statement Data

Supplementary Balance Sheet data at the end of each fiscal year is as follows (in thousands):

	<u>1998</u>	<u>1997</u>
Receivables:		
Trade	\$ 407,452	\$250,699
Sundry	7,347	7,794
	<u>414,799</u>	<u>258,493</u>
Valuation allowance	(53,025)	(30,033)
	<u>\$ 361,774</u>	<u>\$228,460</u>
Inventories:		
Finished goods	\$ 370,622	\$193,864
Work in process	39,143	25,679
Raw materials and supplies	109,424	85,357
	<u>\$ 519,189</u>	<u>\$304,900</u>
Prepaid expenses and other current assets:		
Deferred income taxes	\$ 40,756	\$ —
Prepaid expenses and other	33,431	16,584
	<u>\$ 74,187</u>	<u>\$ 16,584</u>
Property, plant and equipment:		
Land	\$ 10,664	\$ 1,793
Buildings and improvements	168,685	98,054
Machinery and equipment	395,763	248,138
Furniture and fixtures	18,208	7,327
	<u>593,320</u>	<u>355,312</u>
Accumulated depreciation and amortization	(138,148)	(105,788)
	<u>\$ 455,172</u>	<u>\$249,524</u>
Trademarks, tradenames, goodwill and other:		
Trademarks and tradenames	\$ 597,515	\$237,095
Goodwill	1,254,880	24,687
Deferred financing costs	47,325	983
Other intangible assets	28,012	424
	<u>1,927,732</u>	<u>263,189</u>
Accumulated amortization	(101,783)	(56,880)
	<u>1,825,949</u>	<u>206,309</u>
Other assets	33,428	853
	<u>\$1,859,377</u>	<u>\$207,162</u>

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

10. Supplementary Financial Statement Data—(Continued)

	<u>1998</u>	<u>1997</u>
Other current liabilities:		
Payrolls, commissions and employee benefits	\$ 61,294	\$ 12,227
Advertising and sales promotion	56,288	34,749
Product warranty	50,287	21,498
Accounts receivable securitization liability	—	19,750
Sales returns	16,972	7,846
Interest	26,202	941
Other	<u>110,142</u>	<u>27,074</u>
	<u>\$321,185</u>	<u>\$124,085</u>
Other long-term liabilities:		
Accrued postretirement benefit obligation	\$ 48,028	\$ 30,394
Accrued pension	42,431	10,744
Product liability and workers compensation	71,868	41,901
Other	<u>86,132</u>	<u>71,261</u>
	<u>\$248,459</u>	<u>\$154,300</u>

Supplementary Statements of Operations and Cash Flows data for each fiscal year are summarized as follows (in thousands):

	<u>1998</u>	<u>1997</u>	<u>1996</u>
Other (income) expense, net:			
Interest income	\$ (2,897)	\$ (2,561)	\$ (1,255)
Other, net	<u>(1,871)</u>	<u>2,573</u>	<u>4,993</u>
	<u>\$ (4,768)</u>	<u>\$ 12</u>	<u>\$ 3,738</u>
Cash paid (received) during the period for:			
Interest	<u>\$ 81,291</u>	<u>\$ 13,058</u>	<u>\$ 13,397</u>
Income taxes (net of refunds)	<u>\$(17,358)</u>	<u>\$(44,508)</u>	<u>\$ (540)</u>

11. Asset Impairment and Other Charges

In the fourth quarter of 1998, the Company recorded a \$62.5 million charge for the write-off of the carrying value of First Alert's goodwill (see Note 2).

In the second quarter of 1998, as a result of decisions to outsource or discontinue a substantial number of products previously made by the Company (principally breadmakers, toasters and certain other appliances, air and water filtration products and the elimination of certain stock keeping units ("SKU's") within existing product lines, primarily relating to appliances, grills and grill accessories), certain facilities and equipment will either no longer be used or will be utilized in a significantly different manner. Accordingly, a charge of \$29.6 million was recorded in Cost of Goods Sold to write certain of these assets down to their estimated fair market value. Approximately 80% of this charge related to machinery, equipment and tooling at the Company's Mexico City and Hattiesburg, Mississippi manufacturing plants, the estimated fair value for which was derived through an auction process. The remainder of this charge related to tooling and equipment at various other facilities, which either had a nominal value or the fair market value of which was derived through an auction process. These assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. The net carrying value of these assets after the write-down approximated \$2.2 million and these assets are expected to be disposed of by September 30, 1999. Depreciation

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

11. Asset Impairment and Other Charges—(Continued)

expense associated with these assets approximated \$2.6 million in 1998, \$4.2 million in 1997 and \$3.5 million in 1996.

Personnel at the Mexico City facility were notified in the second quarter of 1998 that the plant was scheduled for closure at year-end 1998, accordingly, at that time, a liability of \$1.8 million was recorded in Cost of Goods Sold primarily for employee severance. The employee severance related to approximately 1,200 positions of which approximately 1,100 were terminated, and \$1.4 million paid in severance, as of December 31, 1998. It is anticipated that the remaining 100 employees will be terminated and the balance of the severance obligation (\$0.4 million) paid by July 31, 1999. In the third quarter of 1998, the Company recorded as Cost of Goods Sold, an additional provision for impairment of fixed assets of \$3.1 million in an acquired entity, relating to assets taken out of service for which there was no remaining value. The asset impairment resulted from management's decision, during the third quarter, to discontinue certain SKU's within product lines (principally generators, compressors and propane cylinders) subsequent to the acquisition. These fixed assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. Depreciation expense associated with these assets approximated \$0.8 million in 1998. In the fourth quarter of 1998, the Company recorded a \$7.1 million charge as a result of management's decision, during the fourth quarter, to outsource the production of certain appliances (principally irons). This charge to Cost of Goods Sold primarily consists of a provision for certain tooling and equipment (\$6.7 million) and severance and related benefits (\$0.4 million). This tooling and equipment, which had no remaining value, was written off. These fixed assets were taken out of service at the time of the write-down, and consequently depreciation was discontinued at the time of the write-down. Depreciation expense associated with these assets approximated \$2.4 million in 1998, \$2.3 million in 1997 and \$0.9 million in 1996. The severance costs related to approximately 45 production employees, none of whom were terminated, as of December 31, 1998. It is anticipated that these employees will be terminated and the severance obligation paid by September 30, 1999.

During 1997 and the first half of 1998, the Company built inventories in anticipation of 1998 sales volumes which did not materialize. As a result, it has been and will continue to be necessary to dispose of some portions of excess inventories at amounts less than cost. Accordingly, during 1998, when the facts and circumstances were known that such sales volume would not materialize, the Company recorded \$58.2 million in charges (of which \$46.4 million, \$2.2 million and \$9.6 million, were recorded during the second, third and fourth quarters, respectively) to properly state this inventory at the lower-of-cost-or-market. This inventory primarily related to certain appliances, grills and grill accessories. The Company also recorded a charge of \$11.0 million during the second quarter for excess inventories for raw materials and work in process that will not be used due to outsourcing the production of breadmakers, toasters and certain other appliances. In addition, during 1998, the Company made the decision to exit certain product lines, primarily air and water filtration products and eliminate certain SKU's within existing product lines, primarily relating to appliances, grills and grill accessories. As a result of this decision, a \$26.6 million charge was recorded during the second quarter to properly state this inventory at the lower-of-cost-or-market. Total charges for excess inventories recorded at the lower-of-cost-or-market, based on management's best estimate of net realizable value, amounted to approximately \$95.8 million at December 31, 1998. (See Note 12 for asset impairment and other charges recorded in conjunction with a 1996 restructuring plan.)

12. Restructuring

In November 1996, the Company announced the details of a restructuring plan. The plan included the consolidation of administrative functions within the Company, the reduction of manufacturing and warehouse facilities, the centralization of the Company's procurement function, and reduction of the Company's product offerings and SKU's. The Company also announced plans to divest several lines of business (see Note 13).

As part of the restructuring plan, the Company consolidated six divisional and regional headquarter's functions into a single worldwide corporate headquarters and outsourced certain back office activities resulting in

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

12. Restructuring—(Continued)

a reduction in total back-office/administrative headcount. Overall, the restructuring plan called for a reduction in the number of production facilities from 26 to 8 and the elimination of over 6,000 positions from the Company's workforce, including 3,300 from the disposition of certain business operations and the elimination of approximately 2,800 other positions, some of which were outsourced. The Company completed the major phases of the restructuring plan by July 1997.

In conjunction with the implementation of the restructuring plan, the Company recorded a pre-tax charge of \$239.2 million in the fourth quarter of 1996. This amount is recorded as follows in the accompanying Consolidated Statements of Operations: \$110.1 million in Restructuring and Asset Impairment Charges, as further described below; \$60.8 million in Cost of Goods Sold related principally to inventory write-downs to net realizable value as a result of a reduction in SKU's and costs of inventory liquidation programs; \$10.1 million in SG&A expense, for period costs which were charged to operations as incurred, principally relating to employee relocation and recruiting and equipment relocation and installation (\$3.2 million), transitional fees relating to outsourcing arrangements (\$4.9 million) and package redesign costs (\$2.0 million), and \$58.2 million (\$39.1 million net of taxes) in Loss on Sale of Discontinued Operations related to the divestiture of its furniture business. In 1997, upon completion of the sale of the furniture business, the Company recorded an additional pre-tax loss of \$22.5 million from discontinued operations (\$14.0 million net of taxes) due primarily to lower than anticipated sales proceeds relating to the post closing adjustment process that was part of the sale agreement.

Amounts included in Restructuring and Asset Impairment Charges in 1996 in the accompanying Consolidated Statements of Operations included cash items such as severance and other employee costs of \$24.7 million, lease obligations of \$12.6 million and other exit costs associated with facility closures and related to the implementation of the restructuring plan of \$4.1 million, principally representing costs related to clean-up and restoration of facilities owned and leased for either sale or return to the landlord.

Included in Restructuring and Asset Impairment Charges in 1996 was \$68.7 million of non-cash charges (classified within the \$110.1 million restructuring charge) principally consisting of: (a) asset write-downs to net realizable value for disposals of excess facilities and equipment and certain product lines (\$22.5 million); (b) write-offs of redundant computer systems from the administrative back-office consolidations and outsourcing initiatives (\$12.3 million); (c) write-off of intangibles relating to discontinued product lines (\$10.1 million); (d) write-off of capitalized product and package design costs and other expenses related to exited product lines and SKU reductions (\$9.0 million) (Prior to 1996, Sunbeam had capitalized certain costs related to international product development and package design, which were amortized over the period of related benefit. The product development costs (\$1.9 million) related to international operations and represented the costs necessary to modify products for introduction to the international markets. As the restructuring plan included the closure of International Group office and elimination of a number of products to which these costs pertained, the related capitalized costs were written off. Additionally, in connection with the restructuring plan, as a result of the elimination of many products and SKU's, Sunbeam updated its package designs. Accordingly, the unamortized balance of the capitalized package design costs which had been capitalized prior to 1996, (\$5.0 million) was written off. Sunbeam discontinued incurring costs of a significant nature relating to these items and consequently has discontinued capitalizing such costs subsequent to 1995 and (e) asset write-downs related to the divestiture of certain non-core products and businesses (\$14.8 million). The asset write-downs of \$34.8 million (representing (a) and (b) discussed above) included equipment taken out of service in 1996 (either abandoned in 1996 or sold in 1997) and accordingly, depreciation was not recorded subsequent to the date of the impairment charge. The asset write-downs of \$14.8 million related to the divestiture of non-core products and businesses resulted from divesting of the time and temperature business (sold in March 1997) and Counselor® and Borg® scale product lines (sold in May 1997) and the sale of the textile mill in Biddeford, Maine in May 1997. These charges primarily represented the estimated non-cash losses resulting from the sale or abandonment of facilities and equipment related to exiting these product lines. The Company continued to record depreciation expense on these fixed assets, based on historical rates, until such time that the assets were disposed of. For these fixed assets, the

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

12. Restructuring—(Continued)

impairment charges represented write-downs to net realizable values (based on the estimated net proceeds from the sale of these assets compared to their recorded net book value), less estimated depreciation expense at historical rates through the period of estimated use. The net carrying value of these assets at December 29, 1996 approximated \$42.5 million.

The \$24.7 million for severance and other employee costs, including COBRA and other fringe benefits, related to approximately 3,700 positions that were planned to be eliminated as a result of the restructuring plan, excluding approximately 2,400 employees terminated from the furniture business for which severance was included in Loss on Sale of Discontinued Operations (see Note 13). The furniture business was sold in 1997. In 1996 and 1997, approximately 1,200 employees and 1,800 employees, respectively, were terminated from continuing operations. Due largely to attrition, the remaining planned terminations were not required. In 1997, the Company determined that its severance and employee benefit costs were less than originally accrued principally due to lower than expected COBRA and workers compensation costs, and accordingly reversed accruals of \$7.9 million in the third quarter (\$2.1 million) and fourth quarter (\$5.8 million). At December 31, 1997, the balance accrued of \$1.2 million represented the remaining severance and employee benefit costs for certain employees terminated during 1997. During 1998, all amounts were expended.

The amounts accrued at December 29, 1996, for Restructuring and Asset Impairment Charges recorded in fiscal 1996, exceeded amounts ultimately required principally due to reductions in anticipated severance and employee benefit costs of \$7.9 million, as discussed above, and reductions in estimated lease payments of \$6.7 million (\$3.7 million and \$3.0 million recognized in the third and fourth quarters, respectively) resulting from better than anticipated rentals received under sub-leases and favorable negotiation of lease terminations. Accordingly, the fiscal 1997 Consolidated Statement of Operations included \$14.6 million of benefit (\$5.8 million in the third quarter and \$8.8 million in the fourth quarter of 1997) related to the reversal of accruals no longer required, which were recorded as these reduced obligations became known.

In 1996, in conjunction with the initiation of the restructuring plan, the Company recorded additional charges totaling \$129.1 million, reflected in Cost of Goods Sold; SG&A expense and Loss on Sale of Discontinued Operations. The charge included in Cost of Goods Sold (\$60.8 million) principally represented inventory write-downs to net realizable value, based upon management's best estimates, and anticipated losses on the disposition of the inventory as a result of the significant reduction in SKU's provided for in the restructuring plan. The write-down included \$26.9 million related to raw materials, work-in process and finished goods for discontinued outdoor cooking products, principally grills and grills accessories and the balance related to raw materials, work-in-process and finished goods for other discontinued products including appliances (\$27.8 million), clippers (\$1.0 million) and blankets (\$5.1 million). For inventory which management determined was salable, the estimated write-down was based upon the difference between the expected net sales proceeds of the inventory, depending on distribution channel, and the recorded value of the inventory. In the case of abandoned inventory, the write-down was equal to the recorded value of the inventory. The resulting difference between carrying value and estimated net realizable value represented the \$60.8 million write-down necessary to record the inventory at its net realizable value. SG&A expense included period costs, charged to operations as incurred; in 1997 and 1996 of \$15.8 million and \$10.1 million, respectively, relating to employee relocation and recruiting and equipment relocation and installation (\$11.8 million in 1997 and \$3.2 million in 1996), transitional fees related to outsourcing arrangements (\$4.9 million in 1996) and package redesign costs (\$4.0 million in 1997 and \$2.0 million in 1996) expended as a result of the implementation of the restructuring plan. The Loss on Sale of Discontinued Operations of \$58.2 million is discussed further in Note 13.

At December 28, 1997, the Company had \$5.2 million in liabilities accrued related to the 1996 restructuring plan, including \$1.2 million of severance related costs and \$4.0 million related to facility closures, which principally represented future lease payments (net of sub-leases) on exited facilities. During 1998, this liability was reduced by \$4.0 million as a result of cash expenditures. At December 28, 1997, the Company had

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

12. Restructuring—(Continued)

\$3.0 million of warranty liabilities related to the discontinued furniture operations. During 1998, \$2.5 million of this liability was liquidated.

The following table sets forth the details and the activity from the charges (in millions):

	Accrual Balance January 1, 1996	Additions Charged to Income	Cash Reductions	Non-cash Reductions	Accrual Balance December 29, 1996
Write-downs:					
Fixed assets, held for disposal, not in use.....	\$ —	\$ 34.8	\$ —	\$ 34.8	\$ —
Fixed assets, held for disposal, used until disposed.....	11.3	14.8	—	11.3	14.8
Inventory on hand.....	—	60.8	—	60.8	—
Other assets, principally trademarks and intangible assets.....	—	19.1	—	18.0	1.1
	<u>11.3</u>	<u>129.5</u>	<u>—</u>	<u>124.9</u>	<u>15.9</u>
Restructuring accruals:					
Employee severance pay and fringes.....	—	24.7	5.6	—	19.1
Lease payments and termination fees.....	2.5	12.6	2.5	—	12.6
Other exit activity costs, principally facility closure expense.....	—	4.1	—	—	4.1
	<u>2.5</u>	<u>41.4</u>	<u>8.1</u>	<u>—</u>	<u>35.8</u>
Total restructuring and asset impairment accrual.....	<u>13.8</u>	<u>170.9</u>	<u>8.1</u>	<u>124.9</u>	<u>51.7</u>
Other related period costs charged to operations as incurred:					
Employee relocation; equipment relocation and installation and other.....	—	3.2	3.2	—	—
Transitional fees related to outsourcing arrangements.....	—	4.9	4.9	—	—
Package redesign.....	—	2.0	2.0	—	—
	<u>—</u>	<u>10.1</u>	<u>10.1</u>	<u>—</u>	<u>—</u>
Total included in continuing operations.....	13.8	181.0	18.2	124.9	51.7
Total included in discontinued operations.....	—	58.2	—	—	58.2
	<u>\$13.8</u>	<u>\$239.2</u>	<u>\$18.2</u>	<u>\$124.9</u>	<u>\$109.9</u>

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

12. Restructuring—(Continued)

	Accrual Balance December 30, 1996	Additions Charged to Income	Cash Reductions	Non-cash Reductions	Reversals	Accrual Balance December 28, 1997
Write-downs:						
Fixed assets, held for disposal, used until disposed	\$ 14.8	\$ —	\$ —	\$14.8	\$ —	\$ —
Other assets, principally trademarks and intangible assets	1.1	—	—	1.1	—	—
	<u>15.9</u>	<u>—</u>	<u>—</u>	<u>15.9</u>	<u>—</u>	<u>—</u>
Restructuring accruals:						
Employee severance pay and fringes	19.1	—	10.0	—	7.9	1.2
Lease payments and termination fees	12.6	—	2.6	—	6.7	3.3
Other exit activity costs, principally facility closure expenses	4.1	—	3.4	—	—	0.7
	<u>35.8</u>	<u>—</u>	<u>16.0</u>	<u>—</u>	<u>14.6</u>	<u>5.2</u>
Total restructuring and asset impairment accrual	51.7	—	16.0	15.9	14.6	5.2
Discontinued operations	58.2	22.5	6.1	71.6	—	3.0
	<u>\$109.9</u>	<u>\$22.5</u>	<u>\$22.1</u>	<u>\$87.5</u>	<u>\$14.6</u>	<u>\$8.2</u>

	Accrual Balance December 29, 1997	Cash Reductions	Accrual Balance December 31, 1998
Restructuring accruals:			
Employee severance pay and fringes	\$1.2	\$1.2	\$ —
Lease payments and termination fees	3.3	2.1	1.2
Other exit activity costs, principally facility closure expenses	0.7	0.7	—
Total restructuring accrual	<u>5.2</u>	<u>4.0</u>	<u>1.2</u>
Discontinued operations	3.0	2.5	0.5
	<u>\$8.2</u>	<u>\$6.5</u>	<u>\$1.7</u>

The restructuring accrual, which existed at January 1, 1996 (\$13.8 million), was initially established as part of a "rightsizing program" during fiscal 1992. During 1996 approximately \$3 million of this accrual was utilized and the remaining \$10.8 million became part of the reserve requirements of the 1996 restructuring plan. In effect, in 1996, the Company reversed the \$10.8 million prior year accrual determined to be no longer required and provided a corresponding amount in connection with the 1996 restructuring charge.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

13. Discontinued Operations

As part of the 1996 restructuring plan, the Company also announced the divestiture of the furniture business, by a sale of assets. In February 1997, the Company entered into an agreement to sell the business to U.S. Industries, Inc. in a transaction that was completed on March 17, 1997. In connection with the furniture divestiture, the Company recorded a provision for estimated losses to be incurred on the sale of \$39.1 million in 1996, net of applicable income tax benefits of \$19.9 million. Although the discontinued furniture operations were profitable, net income had declined from \$21.7 million in 1994 to \$0.8 million in 1996. This decline, along with the Company's announcement that it intended to divest this line of business contributed to the loss on sale. Revenues for the discontinued furniture business were \$51.6 million in the first quarter of 1997, \$227.5 million in 1996 and \$185.6 million in 1995. Results of operations were nominal in 1997 and 1996, down from \$12.9 million (net of \$7.9 million in taxes) in 1995. In connection with the sale of these assets (primarily inventory, property, plant and equipment), the Company received \$69.0 million in cash. The Company retained accounts receivable related to the furniture business of approximately \$50 million as of the closing date and retained certain liabilities. The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the asset purchase agreement and in the first quarter of 1997, after completion of the sale, the Company recorded an additional loss of \$14.0 million, net of applicable income tax benefits of \$8.5 million.

In addition to the furniture business divestiture, the Company also completed the sale of other product lines and assets in 1997 as part of its restructuring plan, including time and temperature products, Counselor® and Borg® scales and a textile facility. Losses incurred on the disposal of these assets, which consist primarily of write-downs of assets to net realizable value, are included in Restructuring and Asset Impairment Charges in 1996 in the Consolidated Statements of Operations.

14. Segment, Customer and Geographic Data

Throughout 1998 Sunbeam's operations were managed through four reportable segments: Household, Outdoor Leisure, International and Corporate. Reportable segments are identified by the Company based upon the distinct products manufactured (Household and Outdoor Leisure) or based upon the geographic region in which its products are distributed (International). The Company's reportable segments are all separately managed.

The Household group consists of appliances (including mixers, blenders, food steamers, bread makers, rice cookers, coffee makers, toasters, irons and garment steamers), health products (including vaporizers, humidifiers, air cleaners, massagers, hot and cold packs and blood pressure monitors), scales, personal care products (including hair clippers and trimmers and related products for the professional beauty, barber and veterinarian trade and sales of products to commercial and institutional channels), blankets (including electric blankets, heated throws and mattress pads) and First Alert® products (smoke and carbon monoxide detectors, fire extinguishers and home safety equipment).

The Outdoor Leisure group includes outdoor recreation products (which encompass tents, sleeping bags, coolers, camping stoves, lanterns and outdoor heaters), outdoor cooking products (including gas and charcoal outdoor grills and grill parts and accessories), Powermate® products (including portable power generators and air compressors), and Eastpak® products (including backpacks and bags).

The International group is managed through five regional subdivisions: Europe, Latin America, Japan, Canada and East Asia. Europe includes the manufacture, sales and distribution of Campingaz® products and sales and distribution in Europe, Africa and the Middle East of other Company products. The Latin American region includes the manufacture, sales and distribution throughout Latin America of small appliances, and sales and distribution of personal care products, professional clippers and related products, camping products and Powermate products. Japan includes the sales and distribution of primarily outdoor recreation products. Canada includes sales of substantially all the Company's products and East Asia encompasses sales and distribution in all areas of East Asia other than Japan of substantially all the Company's products.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

14. Segment, Customer and Geographic Data—(Continued)

The Company's Corporate group provides certain management, accounting, legal, risk management, treasury, human resources, tax and management information services to all operating groups and also includes the operation of the Company's retail stores and the conduct of the Company's licensing activities.

The accounting policies of the operating segments are the same as those described in the summary of significant accounting policies (see Note 1) except that certain bad debt expense is recorded at a consolidated level and included in the Corporate group. Sunbeam evaluates performance and allocates resources based upon profit or loss from operations before amortization, income taxes, minority interest, interest expense, non-recurring gains and losses and foreign exchange gains and losses. Intersegment sales and transfers are primarily recorded at cost.

The following tables include selected financial information with respect to Sunbeam's four operating segments. Business segment information for prior years has been reclassified to conform to the current year presentation.

	<u>Household</u>	<u>Outdoor Leisure</u>	<u>International</u>	<u>Corporate</u>	<u>Total</u>
Year Ended December 31, 1998					
Net sales to unaffiliated customers.....	\$714,568	\$ 677,526	\$413,864	\$ 30,913	\$1,836,871
Intersegment net sales	62,971	111,583	98,120	—	272,674
Segment operating loss	(66,376)	(71,612)	(29,941)	(150,975)	(318,904)
Segment assets.....	864,745	1,782,994	413,755	344,023	3,405,517
Segment depreciation expense	24,086	32,759	2,448	4,742	64,035
Year Ended December 28, 1997					
Net sales to unaffiliated customers.....	\$568,921	\$ 258,484	\$229,572	\$ 16,113	\$1,073,090
Intersegment net sales	100,355	3,520	64,549	—	168,424
Segment operating earnings (loss)	73,210	8,205	43,793	(42,915)	82,293
Segment assets.....	510,183	141,332	167,591	239,822	1,058,928
Segment depreciation expense	15,358	9,494	3,204	3,872	31,928
Year Ended December 29, 1996					
Net sales to unaffiliated customers.....	\$555,215	\$ 245,600	\$183,267	\$ 154	\$ 984,236
Intersegment net sales	48,961	8,940	30,012	—	87,913
Segment operating (loss) earnings	(37,598)	39,970	5,567	(62,355)	(54,416)
Segment assets.....	352,253	215,757	89,360	402,078	1,059,448
Segment depreciation expense	25,950	9,180	2,464	741	38,335

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

14. Segment, Customer and Geographic Data—(Continued)

Reconciliation of selected segment information to Sunbeam's consolidated totals for the years ended:

	<u>December 31, 1998</u>	<u>December 28, 1997</u>	<u>December 29, 1996</u>
Net sales:			
Net sales for reportable segments	\$2,109,545	\$1,241,514	\$1,072,149
Elimination of intersegment net sales	(272,674)	(168,424)	(87,913)
Consolidated net sales	<u>\$1,836,871</u>	<u>\$1,073,090</u>	<u>\$ 984,236</u>
Segment (loss) earnings:			
Total (loss) earnings for reportable segments	\$ (318,904)	\$ 82,293	\$ (54,416)
Unallocated amounts:			
Interest expense	(131,091)	(11,381)	(13,588)
Other (income) expense, net	4,768	(12)	(3,738)
Amortization of intangible assets	(43,830)	(7,829)	(9,094)
Provision for inventory (Notes 11 and 12)	(95,830)	—	(60,800)
Asset impairment (Notes 2 and 11)	(101,894)	—	—
Issuance of warrants (Note 2)	(70,000)	—	—
Former employees deferred compensation and severance (Note 8)	(30,688)	—	—
Restructuring benefit (charges) (Note 12)	—	14,582	(110,122)
Restructuring related charges (Note 12)	—	(15,800)	(10,047)
Reversals of reserves no longer required (Note 17)	—	27,963	—
Other (charges) benefit	(8,879)	2,854	—
	<u>(477,444)</u>	<u>10,377</u>	<u>(207,389)</u>
Consolidated (loss) earnings from continuing operations before income taxes, minority interest and extraordinary charge	<u>\$ (796,348)</u>	<u>\$ 92,670</u>	<u>\$ (261,805)</u>

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

14. Segment, Customer and Geographic Data—(Continued)

Enterprise-Wide Disclosures

Net sales from the Company's Household products represented 50%, 73% and 74% of consolidated net sales in 1998, 1997 and 1996, respectively. Net sales from the Company's Outdoor Leisure products category represented 50%, 25% and 26% of consolidated net sales in 1998, 1997 and 1996, respectively.

	Fiscal Years Ended		
	1998	1997	1996
Geographic Area Data			
Net sales to unaffiliated customers:			
United States	\$1,423,007	\$ 843,518	\$ 800,969
Europe	170,910	17,415	18,872
Latin America	158,670	164,044	125,072
Other	84,284	48,113	39,323
Total net sales	\$1,836,871	\$1,073,090	\$ 984,236
Identifiable assets:			
United States	\$2,991,762	\$ 891,337	\$ 970,088
Europe	244,670	9,703	15,476
Latin America	80,943	127,036	54,921
Other	88,142	30,852	18,963
Total identifiable assets	\$3,405,517	\$1,058,928	\$1,059,448

Revenue from one retail customer in the United States in Sunbeam's Household and Outdoor Leisure segments accounted for approximately 18%, 20% and 19% of consolidated net sales in 1998, 1997 and 1996, respectively. Receivables from this customer approximated \$62.6 million and \$51.9 million at December 31, 1998 and December 27, 1997, respectively. The Company establishes its credit policies based on an ongoing evaluation of its customers' creditworthiness and competitive market conditions and establishes its allowance for doubtful accounts based on an assessment of exposures to credit losses at each balance sheet date. The Company believes its allowance for doubtful accounts is sufficient based on the credit exposures outstanding.

15. Commitments and Contingencies

SEC Investigation

By letter dated June 17, 1998, the staff of the Division of Enforcement of the SEC advised the Company that it was conducting an informal inquiry into the Company's accounting policies and procedures and requested that the Company produce certain documents. On July 2, 1998, the SEC issued a Formal Order of Private Investigation, designating officers to take testimony and pursuant to which a subpoena duces tecum was served on the Company requiring the production of certain documents. On November 4, 1998, the Company received another SEC subpoena duces tecum requiring the production of further documents. The Company has provided numerous documents to the SEC staff and continues to cooperate with the SEC staff. The Company has, however, declined to provide the SEC with material that the Company believes is subject to the attorney-client privilege and the work product immunity. The Company cannot predict the term of such investigation or its potential outcome.

Litigation

On April 23, 1998, two class action lawsuits were filed on behalf of purchasers of the Company's common stock in the U.S. District Court for the Southern District of Florida against the Company and some of its present and former directors and former officers alleging violations of the federal securities laws as discussed below.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

After that date, approximately fifteen similar class actions were filed in the same Court. One of the lawsuits also named as defendant Arthur Andersen LLP, the Company's independent accountants for the period covered by the lawsuit.

On June 16, 1998, the Court entered an Order consolidating all these suits and all similar class actions subsequently filed (collectively, the "Consolidated Federal Actions") and providing time periods for the filing of a consolidated amended complaint and defendants' response thereto. On June 22, 1998, two groups of plaintiffs made motions to be appointed lead plaintiffs and to have their selection of counsel approved as lead counsel. On July 20, 1998, the Court entered an Order appointing lead plaintiffs and lead counsel. This Order also stated that it "shall apply to all subsequently filed actions which are consolidated herewith." On August 28, 1998, plaintiffs in one of the subsequently filed actions filed an objection to having their action consolidated pursuant to the June 16, 1998 Order, arguing that the class period in their action differs from the class periods in the originally filed consolidated actions. On December 9, 1998, the Court entered an Order overruling plaintiffs' objections and affirming its prior Order appointing lead plaintiffs and lead counsel.

On January 6, 1999, plaintiffs filed a consolidated amended class action complaint against the Company, some of its present and former directors and former officers, and Arthur Andersen LLP. The consolidated amended class action complaint alleges that, in violation of section 10(b) of the Exchange Act and SEC Rule 10b-5, defendants made material misrepresentations and omissions regarding the Company's business operations, future prospects and anticipated earnings per share, in an effort to artificially inflate the price of the common stock and call options, and that, in violation of section 20(a) of the Exchange Act, the individual defendants exercised influence and control over the Company, causing the Company to make material misrepresentations and omissions. The consolidated amended complaint seeks an unspecified award of money damages. On February 5, 1999, plaintiffs moved for an order certifying a class consisting of all persons and entities who purchased Sunbeam common stock or who purchased call options or sold put options with respect to Sunbeam common stock during the period April 23, 1997 through June 30, 1998, excluding the defendants, their affiliates, and employees of Sunbeam. Defendants have filed a response to the motion for class certification. On March 8, 1999, all defendants who had been served with the consolidated amended class action complaint moved to dismiss it. Under the Private Securities Litigation Reform Act of 1995, all discovery in the consolidated action is stayed pending resolution of the motions to dismiss.

On April 7, 1998, a purported derivative action was filed in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida against the Company and some of its present and former directors and former officers. The action alleged that the individual defendants breached their fiduciary duties and wasted corporate assets when the Company granted stock options at an exercise price of \$36.85 to three of its officers and directors (who were subsequently terminated) on or about February 2, 1998. On June 25, 1998, all defendants filed a motion to dismiss the complaint for failure to make a presuit demand on Sunbeam's board of directors. On October 22, 1998, the plaintiff amended the complaint against all but one of the defendants named in the original complaint. On February 19, 1999, plaintiffs filed a second amended derivative complaint nominally on behalf of Sunbeam against some of its present and former directors and former officers and Arthur Andersen LLP. The second amended complaint alleges, among other things, that Messrs. Dunlap and Kersh (the Company's former Chairman and Chief Executive Officer and Chief Financial Officer, respectively) caused Sunbeam to employ fraudulent accounting procedures in order to enable them to secure new employment contracts, and seeks an award of damages and other declaratory and equitable relief. The plaintiff has agreed that defendants need not respond to the second amended complaint until May 14, 1999. As described below, the Company and the plaintiffs have moved the Court for injunctive relief against Messrs. Dunlap and Kersh with respect to the arbitration action brought by them.

On June 25, 1998, four purported class actions were filed in the Court of Chancery of the State of Delaware in New Castle County by minority shareholders of Coleman against Coleman, the Company and some of the Company's and Coleman's present and former officers and directors. An additional class action was filed on

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

August 10, 1998, against the same parties. The complaints in these class actions allege, in essence, that the existing exchange ratio for the proposed Coleman merger is no longer fair to Coleman's public shareholders as a result of the decline in the market value of the common stock. On October 21, 1998, the Company announced that it had entered into a Memorandum of Understanding to settle, subject to court approval, the class actions. Under the terms of the proposed settlement, if approved by the court the Company will issue to the Coleman public shareholders, and plaintiff's counsel in this action, warrants to purchase up to approximately 4.98 million shares of the Company's common stock at a cash exercise price of \$7 per share, subject to certain anti-dilution provisions. These warrants will generally have the same terms as the warrants issued to an affiliate of M&F (see Note 2) and will be issued when the Coleman merger is consummated, which is now expected to be during the second half of 1999. As a consequence of entering the Memorandum of Understanding and agreeing to issue additional consideration in the form of warrants to purchase Sunbeam common stock, a new five year measurement date was established. The total consideration to be paid (cash, Sunbeam common stock, and Sunbeam warrants) to the Coleman shareholders will therefore be measured as of October 21, 1998. There can be no assurance that the Court will approve the settlement as proposed.

During the months of August and October 1998, purported class action and derivative lawsuits were filed in the Court of Chancery of the State of Delaware in New Castle County and in the U.S. District Court for the Southern District of Florida by shareholders of the Company against the Company, M&F and certain of the Company's present and former directors. These complaints allege that the defendants breached their fiduciary duties when the Company entered into a settlement agreement whereby M&F and its affiliates released the Company from certain claims they may have had arising out of the Company's acquisition of M&F's interest in Coleman, and M&F agreed to provide management support to the Company. Under the settlement agreement, M&F was granted a five year warrant to purchase up to an additional 23 million shares of Sunbeam's common stock at an exercise price of \$7 per share, subject to certain anti-dilution provisions. The plaintiffs have requested an injunction against issuance of stock to M&F pursuant to exercise of the warrants and unspecified money damages. These complaints also allege that the rights of the public shareholders have been compromised, as the settlement would normally require shareholders' approval under the rules and regulations of the New York Stock Exchange ("NYSE"). The Audit Committee of the Company's board of directors determined that obtaining such shareholders' approval would have seriously jeopardized the financial viability of the Company, which is an allowable exception to the NYSE shareholders' approval requirements. By Order of the Court of Chancery dated January 7, 1999, the derivative actions filed in that Court were consolidated and the Company has moved to dismiss such action. The action filed in the U.S. District Court for the Southern District of Florida has been dismissed.

On September 16, 1998, an action was filed in the 56th Judicial District Court of Galveston County, Texas alleging various claims in violation of the Texas Securities Act and Texas Business & Commercial Code as well as common law fraud as a result of the Company's alleged misstatements and omissions regarding the Company's financial condition and prospects during a period beginning May 1, 1998 and ending June 16, 1998, in which the plaintiffs engaged in transactions in the Company's common stock. The Company is the only named defendant in this action. The complaint requests recovery of compensatory damages, punitive damages and expenses in an unspecified amount. This action was removed to the U.S. District Court for the Southern District of Texas and subsequently has been transferred to the Southern District of Florida, the forum for the Consolidated Federal Actions.

On October 30, 1998, a class action lawsuit was filed on behalf of certain purchasers of the Debentures in the U.S. District Court of the Southern District of Florida against the Company and some of the Company's former officers and directors, alleging violations of the federal securities laws and common law fraud. The complaint alleges that the Company's offering memorandum used for the marketing of the Debentures contained false and misleading information regarding the Company's financial position and that the defendants engaged in a plan to inflate the Company's earnings for the purpose of defrauding the plaintiffs and others. This action has

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

been transferred to the Southern District of Florida, the forum for the Consolidated Federal Actions, and the parties have negotiated a proposed coordination plan in order to coordinate proceedings in this action with those in the Consolidated Federal Actions.

The Company has been named as a defendant in an action filed in the District Court of Tarrant County, Texas, 48th Judicial District, on November 20, 1998, which was served on the Company through the Secretary of State of Texas on January 15, 1999. The plaintiffs in this action are purchasers of the Debentures. The plaintiffs allege that the Company violated the Texas Securities Act and the Texas Business & Commercial Code and committed state common law fraud by materially misstating the financial position of the Company in connection with the offering and sale of the Debentures. The complaint seeks rescission, as well as compensatory and exemplary damages in an unspecified amount. The Company specially appeared to assert an objection to the Texas Court's exercise of personal jurisdiction over the Company, and a hearing on this objection was held on April 15, 1999. The Court has issued a letter ruling advising the parties that it would grant the Company's special appearance and sustain the challenge to personal jurisdiction. The plaintiffs have moved for reconsideration of this decision. Plaintiffs had also moved for partial summary judgment on their Texas Securities Act claims, but, in light of the Court's decision on the special appearance, the hearing on the summary judgment motion has been cancelled.

On April 12, 1999, a class action lawsuit was filed in the U.S. District Court for the Southern District of Florida. The lawsuit was filed on behalf of persons who purchased the Debentures during the period of March 20, 1998 through June 30, 1998, inclusive, but after the initial offering of such Debentures. The complaint asserts that Sunbeam made material omissions and misrepresentations that had the effect of inflating the market price of the Debentures. The complaint names as defendants the Company, its former auditor, Arthur Andersen LLP and two former Sunbeam officers, Messrs. Dunlap and Kersh. The plaintiff is an institution which allegedly acquired in excess of \$150,000,000 face amount of the Debentures and now seeks unspecified money damages. The Company was served on April 16, 1999 in connection with this pending lawsuit. The Company will advise the Court of the pending Consolidated Federal Actions and request transfer of the action.

On February 9, 1999, Messrs. Dunlap and Kersh filed with the American Arbitration Association demands for arbitration of claims under their respective employment agreements with Sunbeam. Messrs. Dunlap and Kersh are requesting a finding by the arbitrator that they were terminated by the Company without cause and should be awarded the corresponding benefits set forth in their respective employment agreements. On March 12, 1999, Sunbeam asked the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida to issue an injunction prohibiting Messrs. Dunlap and Kersh from pursuing their arbitration proceedings against Sunbeam on the ground that the simultaneous litigation of the April 7, 1998 action and these arbitration proceedings would subject Sunbeam to the threat of inconsistent adjudications with respect to certain rights to compensation asserted by Messrs. Dunlap and Kersh. On March 19, 1999, the plaintiff in the April 7, 1998 action discussed above moved for a similar injunction on the ground that the arbitration proceedings threatened irreparable harm to Sunbeam and its shareholders. On March 26, 1999, Messrs. Dunlap and Kersh filed a response in opposition to the motions for injunctive relief. A hearing on the motions for injunctive relief has been held and, as a result of Sunbeam's motion for preliminary injunction, administration of the arbitrations has been suspended until May 10, 1999.

On March 23, 1999, Messrs. Dunlap and Kersh filed a complaint in the Court of Chancery of the State of Delaware seeking an order directing Sunbeam to advance attorneys' fees and other expenses incurred in connection with various state and federal class and derivative actions and an investigation instituted by the SEC. The complaint alleges that such advancements are required by Sunbeam's by-laws and by a forbearance agreement entered into between Sunbeam and Messrs. Dunlap and Kersh in August 1998. The Company has filed its answer to the complaint and the Court of Chancery has scheduled a trial of this summary proceeding to be held on June 15, 1999.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

The Company intends to vigorously defend each of the foregoing lawsuits other than those as to which a Memorandum of Understanding to settle has been reached, but cannot predict the outcome and is not currently able to evaluate the likelihood of the Company's success in each case or the range of potential loss. However, if the foregoing actions were determined adversely to the Company, such judgements would likely have a material adverse effect on the Company's financial position, results of operations and cash flows.

On July 2, 1998, the American Insurance Company ("American") filed suit against the Company in the U.S. District Court for the Southern District of New York requesting a declaratory judgment of the Court that the directors' and officers' liability insurance policy for excess coverage issued by American was invalid and/or had been properly canceled by American. The Company's motion to transfer such action to the federal district court in which the Consolidated Federal Actions are currently pending was recently denied. The case is now in discovery. On October 20, 1998, an action was filed by Federal Insurance Company in the U.S. District Court for the Middle District of Florida requesting the same relief as that requested by American in the previously filed action as to additional coverage levels under the Company's directors' and officers' liability insurance policy. This action has been transferred to the U.S. District Court for the Southern District of Florida and is currently in discovery. On December 22, 1998, an action was filed by Executive Risk Indemnity, Inc. in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida requesting the same relief as that requested by American and Federal in their previously filed actions as to additional coverage levels under the Company's directors' and officers' liability insurance policy. On April 15, 1999, the Company filed an action in the U.S. District Court for the Southern District of Florida against the National Union Fire Insurance Company of Pittsburgh, PA, Gulf Insurance Company and St. Paul Mercury Insurance Company requesting, among other things, a declaratory judgment that National Union is not entitled to rescind its liability insurance policy to the Company and a declaratory judgment that the Company is entitled to coverage from these insurance companies for various lawsuits described herein under liability insurance policies issued by each of the defendants. The Company intends to pursue recovery from all of its insurers if damages are awarded against the Company or its indemnified officers and/or directors under any of the foregoing actions. The Company's failure to obtain such insurance recoveries following an adverse judgement in any of the foregoing actions could have a material adverse effect on the Company's financial position, results of operations and cash flows.

The Company and its subsidiaries are also involved in various lawsuits arising from time to time that the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these routine matters, and of certain matters relating to prior operations, individually or in the aggregate, will not have a material adverse effect upon the financial position, results of operations, or cash flows of the Company.

In the fourth quarter of 1996, the Company recorded a \$12.0 million charge related to a case for which an adverse development arose near year-end. In 1997, this case was favorably resolved and, as a result, \$8.1 million of the charge established in 1996 was reversed into income primarily in the fourth quarter of 1997.

Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and claims and related anticipated legal fees. The costs are accrued when it is both probable that an asset has been impaired or a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon the Company's assessment, after consultation with counsel, of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the plaintiffs, and other significant factors which vary by case. When it is not possible to estimate a specific expected cost to be incurred, the Company evaluates the range of probable loss and records the minimum end of the range. As of December 31, 1998 Sunbeam had established accruals for litigation matters of \$31.2 million (representing \$17.5 million and \$13.7 million for estimated damages or settlement amounts and legal fees, respectively) and \$9.9 million as of December 28, 1997 (representing \$3.0 million and \$6.9 million for estimated damages or settlement amounts and legal fees, respectively). It is anticipated that the \$31.2 million accrual will be paid as follows: \$22.4 million in

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

1999, \$7.5 million in 2000, and \$1.3 million in 2001. The Company believes, based on information known at December 31, 1998, that anticipated probable costs of litigation matters existing as of December 31, 1998 have been adequately reserved to the extent determinable.

Environmental Matters

The Company's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations in addition to laws and regulations regarding labeling and packaging of products and the sales of products containing certain environmentally sensitive materials ("Environmental Laws"). The Company believes it is in substantial compliance with all Environmental Laws which are applicable to its operations. Compliance with Environmental Laws involves certain continuing costs; however, such costs of ongoing compliance have not resulted, and are not anticipated to result, in a material increase in the Company's capital expenditures or to have a material adverse effect on the Company's results of operations, financial condition or competitive position.

In addition to ongoing environmental compliance at its operations, the Company also is actively engaged in certain environmental remediation activities many of which relate to divested operations. As of December 31, 1998, the Company has been identified by the United States Environmental Protection Agency ("EPA") or a state environmental agency as a potentially responsible party ("PRP") in connection with seven sites subject to the federal Superfund Act and five sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a *de minimis* (less than 1%) participant.

The Superfund Act, and related state environmental remediation laws, generally authorize governmental authorities to remediate a Superfund site and to assess the costs against the PRPs or to order the PRPs to remediate the site at their expense. Liability under the Superfund Act is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, the Company recognizes its responsibility to determine whether other PRPs at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRPs established with respect to such sites. The Company currently is engaged in active remediation activities at 12 sites, seven of which are among the Environmental Sites referred to above, and five of which have not been designated as Superfund sites under federal or state law. The remediation efforts in which the Company is involved include facility investigations, including soil and groundwater investigations, corrective measure studies, including feasibility studies, groundwater monitoring, extraction and treatment, soil sampling, excavation and treatment relating to environmental clean-ups. In certain instances, the Company has entered into agreements with governmental authorities to undertake additional investigatory activities and in other instances has agreed to implement appropriate remedial actions. The Company has also established reserve amounts for certain non-compliance matters including those involving air emissions.

The Company has established reserves, in accordance with SFAS No. 5, *Accounting for Contingencies*, to cover the anticipated probable costs of investigation and remediation, based upon periodic reviews of all sites for which the Company has, or may have remediation responsibility. The Company accrues environmental investigation and remediation costs when it is both probable that a liability has been incurred and the amount can be reasonably estimated and the Company's responsibility is established. Generally, the timing of these accruals coincides with the earlier of formal commitment to an investigation plan, completion of feasibility study or the Company's commitment to a formal plan of action. As of December 31, 1998 and 1997, the Company's environmental reserves were \$25.0 million (representing \$22.9 million for the estimated costs of facility investigations, corrective measure studies and known remedial measures and \$2.1 million for estimated legal

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

costs) and \$24.0 million, (representing \$21.8 million for the estimated cost of facility investigations, corrective measure studies and known remedial measures and \$2.2 million for estimated legal costs), respectively. It is anticipated that the \$25.0 million accrual at December 31, 1998 will be paid as follows: \$5.3 million in 1999, \$4.9 million in 2000, \$3.2 million in 2001, \$1.0 million in 2002, \$1.0 million in 2003 and \$9.6 million thereafter. The Company has accrued its best estimate of investigation and remediation costs (based upon a range of exposure of \$13.0 million to \$46.3 million) based upon facts known to the Company and because of the inherent difficulties in estimating the ultimate amount of environmental costs, which are further described below, these estimates may materially change in the future as a result of the uncertainties described below. Estimated costs, which are based upon experience with similar sites and technical evaluations, are judgmental in nature and are recorded at undiscounted amounts without considering the impact of inflation and are adjusted periodically to reflect changes in applicable laws or regulations, changes in available technologies and receipt by the Company of new information. It is difficult to estimate the ultimate level of future environmental expenditures due to a number of uncertainties surrounding environmental liabilities. These uncertainties include the applicability of laws and regulations, changes in environmental remediation requirements, the enactment of additional regulations, uncertainties surrounding remediation procedures including the development of new technology, the identification of new sites for which the Company could be a PRP, information relating to the exact nature and extent of the contamination at each site and the extent of required cleanup efforts, the uncertainties with respect to the ultimate outcome of issues which may be actively contested and the varying costs of alternative remediation strategies. The Company continues to pursue the recovery of some environmental remediation costs from certain of its liability insurance carriers; however, such potential recoveries have not been offset against potential liabilities and have not been considered in determining the Company's environmental reserves. Due to uncertainty over remedial measures to be adopted at some sites, the possibility of changes in Environmental Laws and regulations and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, the Company's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved as of December 31, 1998.

In the fourth quarter of 1996, the Company performed a comprehensive review of all environmental exposures in an attempt by the then new senior management team to accelerate the resolution and settlement of environmental claims. As a result, upon conclusion of the review, the Company recorded additional environmental reserves of approximately \$9.0 million in the fourth quarter of 1996.

The Company believes, based on existing information, that the costs of completing environmental remediation of all sites for which the Company has a remediation responsibility have been adequately reserved, and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition, results of operations or cash flows.

Product Liability Matters

As a consumer goods manufacturer and distributor, the Company faces the constant risks of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. These claims could result in liabilities that could have a material adverse effect on Sunbeam's financial position, results of operations and cash flows. Some of the product lines Sunbeam acquired in the 1998 acquisitions have increased its exposure to product liabilities and related claims.

The Company is party to various personal injury and property damage lawsuits relating to its products and incidental to its business. Annually, the Company sets its product liability insurance program based on the Company's current and historical claims experience and the availability and cost of insurance. The Company's program for 1998 was comprised of a self-insurance retention of \$2.5 million per occurrence.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

Cumulative amounts estimated to be payable by the Company with respect to pending and potential claims for all years in which the Company is liable under its self-insurance retention have been accrued as liabilities. Such accrued liabilities are necessarily based on estimates taking into account prior experience, numbers of claims and other relevant factors; thus, the Company's ultimate liability may exceed or be less than the amounts accrued. The methods of making such estimates and establishing the resulting liability are reviewed periodically and any adjustments resulting therefrom are reflected in current operating results.

Historically, product liability awards have rarely exceeded the Company's individual per occurrence self-insured retention. There can be no assurance, however, that the Company's future product liability experience will be consistent with its past experience. Based on existing information, the Company believes that the ultimate conclusion of the various pending product liability claims and lawsuits of the Company, individually or in the aggregate, will not have a material adverse effect on the financial position, results of operations or cash flows of the Company.

Commitment Fee

Under the terms of the April 15, 1999 amendment to the New Credit Facility, the Company is obligated to pay a loan commitment fee of between \$4.2 million and \$17.0 million. The ultimate amount of the fee is determined based on multiplying the sum of the outstanding borrowings and amounts available for borrowings as of April 15, 1999 by a factor that is determined at the earlier of September 30, 2000 or upon repayment of the New Credit Facility. This fee is payable at the earlier of September 30, 2000 or upon repayment of the New Credit Facility. At a minimum, the Company is obligated under these terms to pay \$4.2 million. The ultimate amount due could be as high as \$17.0 million if the sum of the outstanding borrowings and amounts available for borrowings at September 30, 2000 (the "aggregate availability") exceeds \$1.2 billion. If the aggregate availability is between \$1.0 billion and \$1.2 billion, a fee of \$8.4 million will be due. If the aggregate availability is \$1.0 billion or less, the \$4.2 million minimum will be due. Under any circumstances, the \$4.2 million will be due; therefore, the Company will accrue the minimum liability and record an offsetting asset in the second quarter of 1999, which will be amortized and included in interest expense through April 10, 2000, the term of the current amendment extension period.

The Company will not accrue for amounts in excess of the \$4.2 million as there are numerous uncertainties which may individually or in the aggregate impact the level of aggregate availability at September 30, 2000. These uncertainties include, but are not limited to: the ability to obtain an amendment or further waiver of existing covenants from the lenders under the New Credit Facility for the period beyond April 10, 2000; proceeds from the sales of assets or businesses, if any; changes in debt structure, including the effects of refinancing, if any; and cash flows generated or used by future operations. Given these uncertainties, the Company is currently not able to predict the probable level of aggregate availability at September 30, 2000. As events develop, the Company will periodically review the expected aggregate availability at September 30, 2000. If it becomes likely that an amount in excess of \$4.2 million will be paid, the Company will recognize that change in estimate over the remaining period of the New Credit Facility Amendment.

Leases

The Company rents certain facilities, equipment and retail stores under operating leases. Rental expense for operating leases amounted to \$28.1 million in 1998, \$7.4 million for 1997 and \$8.0 million for 1996. The minimum future rentals due under noncancelable operating leases as of December 31, 1998 aggregated to \$167.6 million. The amounts payable in each of the years 1999-2003 and thereafter are \$34.6 million, \$33.7 million, \$17.1 million, \$13.5 million, \$9.7 million and \$59.0 million, respectively.

In connection with a warehouse expansion related to the electric blanket business, the Company entered into a \$5 million capital lease obligation in 1996.

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

Certain Debt Obligations

Responsibility for servicing certain debt obligations of the Company's predecessor were assumed by third parties in connection with the acquisition of former businesses, although the Company's predecessor remained the primary obligor in accordance with the respective loan documents. Such obligations, which amounted to approximately \$17.3 million at December 31, 1998, and the corresponding receivables from the third parties, are not included in the Consolidated Balance Sheets since these occurred prior to the issuance of SFAS No. 76, Extinguishment of Debt. Management believes that the third parties will continue to meet their obligations pursuant to the assumption agreements.

Purchase and other Commitments

In conjunction with the sale of the Biddeford, Maine textile mill in 1997, the Company entered into a five-year agreement to purchase blanket shells from the mill. The agreement provides for a minimum purchase commitment each year of the contract. As of December 31, 1998, the Company had remaining minimum commitments under the contract of approximately \$104 million.

In connection with Coleman's 1995 purchase of substantially all of the assets of Active Technologies, Inc. ("ATI"), the Company may be required to make payments to the predecessor owner of ATI of up to \$18.8 million based on the Company's sales of ATI related products and royalties received by the Company for licensing arrangements related to ATI patents. As of December 31, 1998, the amounts paid under the terms of this agreement have been immaterial.

16. Related Party Transactions

Services Provided by M&F

Pursuant to the settlement agreement with M&F, M&F agreed to make certain executive management personnel available to the Company and to provide certain management assistance to Sunbeam. The Company does not reimburse M&F for such services, other than reimbursement of out-of-pocket expenses paid to third parties. (See Note 2.)

Liquidation of Options

The Company expects to acquire the remaining approximately 20% equity interest in Coleman in the second half of 1999. Upon the consummation of the merger transaction, the unexercised options under Coleman's stock option plans will be cashed out at a price per share equal to the difference between \$27.50 per share and the exercise price of such options. Ronald O. Perelman, the sole stockholder of M&F, holds 500,000 options for which he will receive a net payment of \$6,750,000. Mr. Shapiro and Ms. Clark, executive officers of the Company, hold 77,500 and 25,000 options, respectively, for which they will receive net payments of \$823,000 and \$275,005, respectively.

Arrangements Between Coleman and M&F

Coleman and an affiliate of M&F are parties to a cross-indemnification agreement pursuant to which Coleman has agreed to indemnify such affiliate, its officers, directors, employees, control persons, agents and representatives against all past, present and future liabilities, including product liability and environmental matters, related to the initial assets of Coleman, which Coleman acquired from such affiliate in December 1991. In addition, pursuant to this cross-indemnification agreement, the M&F affiliate has agreed to indemnify Coleman and its officers, directors, employees, agents and representatives against all other liabilities of such M&F affiliate or any of its subsidiaries, including liabilities relating to the assets it did not transfer to Coleman in December 1991. This cross-indemnification agreement will survive the Coleman merger.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

16. Related Party Transactions—(Continued)

Coleman previously was included in the consolidated tax group for the M&F companies and was a party to a tax sharing agreement with a M&F affiliate, pursuant to which Coleman paid to such affiliate the amount of taxes which would have been paid by Coleman if it were required to file separate federal, state or local income tax returns. The tax sharing agreement was terminated upon the acquisition of Coleman; however, the acquisition agreement provides for certain tax indemnities and tax sharing payments among the Company and the M&F affiliates relating to periods prior to the acquisition.

Lease of Office Space

During 1998, the Company sublet office space in New York City from an affiliate of M&F. The expense for such rent during 1998 was approximately \$130,000. The lease was terminated in 1999.

17. Unaudited Quarterly Financial Data

	Fiscal 1998(a)			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	(Dollars in millions, except per share data)			
Net sales	\$ 247.6	\$ 578.5	\$ 496.0	\$ 514.8
Gross profit (loss)	33.8	(52.5)	67.4	(0.6)
Operating loss	(37.4)	(193.3)	(161.0)	(278.3)
Loss from continuing operations before extraordinary charge	(45.6)	(241.0)	(188.9)	(300.0)
Basic and diluted loss per share from continuing operations before extraordinary charge	(0.53)	(2.39)	(1.88)	(2.98)
Extraordinary charge	(8.6)	(103.1)	—	(10.7)
Net loss	(54.1)	(344.1)	(188.9)	(310.8)
Basic and diluted loss per share	(0.63)	(3.41)	(1.88)	(3.09)
	Fiscal 1997(a)(b)			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	(Dollars in millions, except per share data)			
Net sales	\$ 252.5	\$ 271.4	\$ 286.8	\$ 262.4
Gross profit	58.3	55.3	76.5	52.1
Operating earnings	17.1	16.8	45.1	25.1
Earnings from continuing operations	9.0	8.7	27.5	7.1
Basic earnings per share from continuing operations	0.11	0.10	0.32	0.08
Diluted earnings per share from continuing operations	0.11	0.10	0.31	0.08
(Loss) on sale of discontinued operations, net of taxes	(13.7)	—	(2.7)	2.4
Net (loss) earnings	(4.7)	8.7	24.8	9.5
Basic (loss) earnings per share	(0.06)	0.10	0.29	0.11
Diluted (loss) earnings per share	(0.06)	0.10	0.28	0.11

(a) Due to the net loss incurred, earnings per share calculations exclude common stock equivalents for all four quarters and for the year in 1998 and for the first and third quarters in 1997. Earnings (loss) per share are computed independently for each of the quarters presented. Therefore, the sum of the quarterly earnings (loss) per share in 1998 and 1997 does not equal the total computed for the year.

(b) Each quarter consists of a 13-week period.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

17. Unaudited Quarterly Financial Data—(Continued)

During 1998, significant unusual charges affected the respective quarters as follows:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Compensation agreements with former senior officers (Note 8)	\$31.2	\$ —	\$ —	\$ —
Excess and obsolete inventory reserves (Note 11)	—	84.0	2.2	9.6
Facilities impairment charges (Note 11)	—	29.6	3.1	6.7
Warrants issued to M&F (Note 2)	—	—	70.0	—
Costs associated with financial statement restatement	—	—	10.8	9.6
Goodwill impairment (Note 2)	—	—	—	62.5
Total	<u>\$31.2</u>	<u>\$113.6</u>	<u>\$86.1</u>	<u>\$88.4</u>

During the first, second, third and fourth quarters of fiscal 1997, approximately \$0.5 million, \$4.5 million, \$1.5 million and \$21.5 million, respectively, of pre-tax liabilities no longer required were reversed and taken into income. Included in these reserves is the \$8.1 million litigation reserve reversal discussed in Note 15. Also, during the third and fourth quarters of fiscal 1997, approximately \$5.8 million and \$8.8 million, respectively, of restructuring reserves no longer required were reversed and taken into income, as discussed in Note 12. Additionally, during the fourth quarter of fiscal 1997, approximately \$13.3 million of tax liabilities related to the 1993 and 1994 tax years were determined to be no longer required and were reversed and taken into income. These accruals were no longer required because during the fourth quarter of 1997 the Company reached a resolution with the Internal Revenue Service on its audits of the 1993 and 1994 tax years.

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**SUNBEAM CORPORATION AND SUBSIDIARIES
SCHEDULE II**

VALUATION AND QUALIFYING ACCOUNTS

**Fiscal Years 1998, 1997 and 1996
(Dollars in thousands)**

<u>Description</u>	<u>Balance at Beginning of Period</u>	<u>Additions Charged to Costs and Expenses</u>	<u>Reserves from Acquisitions</u>	<u>Deductions</u>	<u>Balance at End of Period</u>
Allowance for doubtful accounts and cash discounts:					
Fiscal year ended December 31, 1998.....	<u>\$30,033</u>	<u>\$32,919</u>	<u>\$15,216</u>	\$25,050 (b) 93 (c)	<u>\$53,025</u>
Fiscal year ended December 28, 1997.....	<u>\$19,701</u>	<u>\$17,297</u>	<u>\$ —</u>	\$ (2,000)(a) 8,948 (b) 17 (c)	<u>\$30,033</u>
Fiscal year ended December 29, 1996.....	<u>\$12,326</u>	<u>\$27,053</u>	<u>\$ —</u>	\$ (233)(a) 19,911 (b) — (c)	<u>\$19,701</u>

Notes: (a) Reclassified to/from accrued liabilities for customer deductions.
 (b) Accounts written off as uncollectible.
 (c) Foreign currency translation adjustment.
 (d) Reserve balances of acquired companies at acquisition date.

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)
(Amounts in thousands, except per share amounts)

	Nine Months Ended	
	September 30, 1999	September 30, 1998
Net sales	\$1,786,428	\$1,322,129
Cost of goods sold	1,334,177	1,273,424
Selling, general and administrative expense	449,263	440,381
Operating income (loss)	2,988	(391,676)
Interest expense, net	136,631	88,476
Other income, net	(4,619)	(4,065)
Loss before income taxes, minority interest and extraordinary charge	(129,024)	(476,087)
Income tax provision (benefit):		
Current	1,370	3,995
Deferred	11,291	(1,280)
	12,661	2,715
Minority interest	13,354	(3,447)
Loss before extraordinary charge	(155,039)	(475,355)
Extraordinary charge from early extinguishments of debt	—	(111,715)
Net loss	<u>\$ (155,039)</u>	<u>\$ (587,070)</u>
Basic and diluted loss per share:		
Loss from continuing operations before extraordinary charge	\$ (1.54)	\$ (4.96)
Extraordinary charge	—	(1.16)
Net loss	<u>\$ (1.54)</u>	<u>\$ (6.12)</u>
Basic and diluted weighted average common shares outstanding	100,743	95,919

See Notes to Condensed Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)
(Amounts in thousands)

	<u>September 30,</u> 1999	<u>December 31,</u> 1998
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 29,088	\$ 61,432
Restricted investments	—	74,386
Receivables, net	443,223	361,774
Inventories	507,821	519,189
Prepaid expenses, deferred income taxes and other current assets	70,681	74,187
Total current assets	1,050,813	1,090,968
Property, plant and equipment, net	457,293	455,172
Trademarks, tradenames, goodwill and other, net	1,809,868	1,859,377
	<u>\$3,317,974</u>	<u>\$3,405,517</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Short-term debt and current portion of long-term debt	\$1,505,576	\$ 119,103
Accounts payable	188,899	162,173
Other current liabilities	303,075	321,185
Total current liabilities	1,997,550	602,461
Long-term debt, less current portion	817,128	2,142,362
Other long-term liabilities	231,898	248,459
Deferred income taxes	111,516	100,473
Minority interest	65,195	51,325
Commitments and contingencies		
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized, none outstanding)	—	—
Common stock (100,746,400 and 100,739,053 shares issued)	1,007	1,007
Additional paid-in capital	1,122,896	1,123,457
Accumulated deficit	(965,036)	(809,997)
Accumulated other comprehensive loss	(64,180)	(54,030)
Total shareholders' equity	94,687	260,437
	<u>\$3,317,974</u>	<u>\$3,405,517</u>

See Notes to Condensed Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)
(Amounts in thousands)

	Nine Months Ended	
	September 30, 1999	September 30, 1998
Operating Activities:		
Net loss	\$(155,039)	\$ (587,070)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	93,917	70,123
Non-cash interest charges	34,120	19,387
Deferred income taxes	11,291	(1,280)
Minority interest	13,354	(3,447)
(Gain) loss on sale of property, plant and equipment	(3,405)	2,406
Provision for fixed assets	—	32,642
Provision for excess and obsolete inventory	—	86,167
Warrants charged to expense	—	70,000
Non-cash compensation charge	—	23,359
Extraordinary charge from early extinguishments of debt	—	111,715
Changes in working capital and other, net of acquisitions	(67,409)	(48,697)
Net cash used in operating activities	<u>(73,171)</u>	<u>(224,695)</u>
Investing Activities:		
Capital expenditures	(63,205)	(32,766)
Purchases of businesses, net of cash acquired	—	(379,159)
Other	4,838	307
Net cash used in investing activities	<u>(58,367)</u>	<u>(411,618)</u>
Financing Activities:		
Issuance of convertible subordinated debentures, net of financing fees	—	729,622
Net borrowings under revolving credit facilities	105,025	1,353,041
Payments of debt obligations, including prepayment penalties	(2,940)	(1,464,245)
Proceeds from exercise of stock options	35	19,553
Other	(2,926)	(1,875)
Net cash provided by financing activities	<u>99,194</u>	<u>636,096</u>
Net decrease in cash and cash equivalents	(32,344)	(217)
Cash and cash equivalents at beginning of period	61,432	52,298
Cash and cash equivalents at end of period	<u>\$ 29,088</u>	<u>\$ 52,081</u>

See Notes to Condensed Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Operations and Basis of Presentation

Organization

Sunbeam Corporation ("Sunbeam" or the "Company") is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacturing, marketing and distribution of durable household and outdoor leisure consumer products through mass market and other distribution channels in the United States and internationally. The Company also sells its products to professional and commercial end users such as small businesses, health care providers, hotels and other institutions. The Company's principal products include household kitchen appliances; health monitoring and care products for home use; scales for consumer and professional use for weight management and business uses; electric blankets and throws; clippers and trimmers for consumer, professional and animal uses; smoke and carbon monoxide detectors; outdoor barbecue grills; camping equipment such as tents, lanterns, sleeping bags and stoves; coolers; backpacks and book bags; and portable generators and compressors.

In 1998 the Company acquired an indirect controlling interest in The Coleman Company, Inc. ("Coleman") and all the outstanding common stock of Signature Brands USA, Inc. ("Signature Brands") and First Alert, Inc. ("First Alert").

Basis of Presentation

The Condensed Consolidated Balance Sheet of the Company as of September 30, 1999 and the Condensed Consolidated Statements of Operations and Cash Flows for the nine months ended September 30, 1999 and 1998 are unaudited. The unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions of Form 10-Q and Rule 10-01 of Regulation S-X. The December 31, 1998 Condensed Consolidated Balance Sheet was derived from the consolidated financial statements contained in the Company's Annual Report on Form 10-K/A for the year ended December 31, 1998. The condensed consolidated financial statements contained herein should be read in conjunction with the consolidated financial statements and related notes contained in the Company's 1998 Annual Report on Form 10-K/A. In the opinion of management, the unaudited condensed consolidated financial statements contained herein include all adjustments (consisting of only recurring adjustments) necessary for a fair presentation of the results of operations for the interim periods presented. These interim results of operations are not necessarily indicative of results for the entire year or future periods.

Basic and Diluted Loss per Share of Common Stock

Loss per common share calculations are determined by dividing loss attributable to common shareholders by the weighted average number of shares of common stock outstanding. Loss per share for the nine months ended September 30, 1999 and 1998, is based only on the weighted average number of common shares outstanding, as potential common shares have been excluded as a result of the loss during the periods presented. Loss per share for the nine months ended September 30, 1999 excluded 78,562 shares related to stock options, as their effect would have been anti-dilutive. Stock options to purchase 19,420,292 common shares for the nine months ended September 30, 1999, were excluded from potential common shares as the option exercise prices were greater than the average market price of the Company's common stock during the period. The nine months ended September 30, 1998 loss per share excluded 3,017,516 shares related to stock options, as their effect would have been anti-dilutive. The nine month 1998 period also excluded 63,016 shares related to restricted stock. Stock options to purchase 9,609,033 common shares for the nine months ended September 30, 1998 were excluded from potential common shares as the option exercise prices were greater than the average market price of the Company's common stock during the period. Diluted average common shares outstanding for all periods presented excluded 13,242,050 shares issuable upon the conversion of the Zero Coupon Convertible Senior

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

1. Operations and Basis of Presentation—(Continued)

Subordinated Debentures due 2018 (the "Debentures"). In addition, diluted average common shares outstanding for the period ended September 30, 1999 excluded 23,000,000 shares issuable on the exercise of warrants.

New Accounting Standards

Effective January 1, 1999, the Company adopted Statement of Position 98-1, *Accounting for the Costs of Computer Software Developed or Obtained for Internal Use* ("SOP 98-1"). SOP 98-1 requires computer software costs associated with internal use software to be expensed as incurred until certain capitalization criteria are met. Adoption of this statement did not have a material impact on the Company's consolidated financial position, results of operations, or cash flows.

In June 1998, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 133 ("SFAS No. 133"), *Accounting for Derivative Instruments and Hedging Activities*, which, as amended, is effective for fiscal years beginning after June 15, 2000. SFAS No. 133 requires the recognition of all derivatives in the Consolidated Balance Sheets as either assets or liabilities measured at fair value. The Company has not yet determined the impact SFAS No. 133 will have on its consolidated financial position, results of operations, or cash flows.

Reclassifications

Certain prior year amounts have been reclassified to conform with the 1999 presentation.

2. Acquisitions

On March 30, 1998, the Company, through a wholly-owned subsidiary, acquired approximately 81% of the total number of then outstanding shares of common stock of Coleman from a subsidiary of MacAndrews & Forbes Holdings, Inc. ("M&F"), in exchange for 14,099,749 shares of the Company's common stock and approximately \$160 million in cash. In addition, the Company assumed approximately \$1,016 million in debt. The value of the common stock issued at the date of acquisition was derived by using the average closing stock price as reported on the New York Stock Exchange ("NYSE") Composite Tape for the day before and day of the public announcement of the acquisition. Immediately thereafter, as a result of the exercise of employee stock options, Sunbeam's indirect beneficial ownership of Coleman decreased to approximately 79% of the total number of the outstanding shares of Coleman common stock. (See Note 10.)

On August 12, 1998, the Company announced that, following investigation and negotiation conducted by a Special Committee of the Board consisting of four outside directors not affiliated with M&F, the Company had entered into a settlement agreement with a subsidiary of M&F pursuant to which the Company was released from certain threatened claims of M&F and its subsidiaries arising from the Coleman acquisition and M&F agreed to provide certain management personnel and assistance to the Company in exchange for the issuance to the M&F subsidiary of a warrant expiring August 24, 2003 to purchase up to 23 million shares of the Company's common stock at a cash exercise price of \$7.00 per share, subject to anti-dilution adjustments. The Company concluded that the agreement to issue this warrant did not result in a new measurement date for the purposes of determining the purchase price for Coleman and has accounted for the issuance of this warrant in the third quarter of 1998 as a cost of settling a potential claim. Accordingly, a \$70.0 million non-cash SG&A expense was recorded in the third quarter of 1998, based upon a valuation performed as of August 1998 using facts existing at that time. The valuation was conducted by an independent consultant engaged by the special committee of the board of directors.

The Company expects to acquire the remaining equity interest in Coleman pursuant to a merger transaction in which the existing Coleman minority shareholders will receive 0.5677 of a share of the Company's common stock and \$6.44 in cash for each share of Coleman common stock outstanding. In addition, unexercised options

SUNBEAM CORPORATION AND SUBSIDIARIES

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)**

2. Acquisitions—(Continued)

under Coleman's stock option plans will be cashed out at a price per share equal to the difference between \$27.50 and the exercise price of such options. The Company expects to issue approximately 6.7 million shares of common stock and expend approximately \$87 million in cash to complete the Coleman acquisition. Although there can be no assurance, it is anticipated the Coleman merger will occur in the fourth quarter of 1999 or early in the first quarter of 2000. The acquisition of the remaining outstanding shares of Coleman common stock will be accounted for under the purchase method of accounting from the date of consummation of the Coleman merger.

On October 21, 1998, the Company announced that it had entered into a Memorandum of Understanding to settle class action claims made by minority shareholders of Coleman relating to the Coleman merger. Under the terms of the settlement, the Company will issue to the Coleman public shareholders, and plaintiff's counsel in this action, warrants to purchase up to 4.98 million shares of the Company's common stock at a cash exercise price of \$7.00 per share, subject to certain anti-dilution provisions. These warrants would generally have the same terms as the warrants issued to a subsidiary of M&F and will be issued when the Coleman merger is consummated. Issuance of these warrants will be accounted for as additional purchase consideration. As a consequence of entering into the Memorandum of Understanding and agreeing to issue additional consideration in the form of warrants to purchase Sunbeam common stock, a new measurement date was established for the remaining equity interest in Coleman. The total consideration to be paid (cash, Sunbeam common stock and Sunbeam warrants) to the Coleman shareholders will therefore be measured as of October 21, 1998.

On April 6, 1998, the Company completed the acquisitions of First Alert, valued at approximately \$182 million (including \$133 million of cash and \$49 million of assumed debt) and Signature Brands, valued at approximately \$255 million (reflecting cash paid, including the required retirement of defeasance of debt).

As of the date of the acquisition of Coleman, management of the Company determined approximately 117 employees of Coleman would need to be involuntarily terminated in order to eliminate duplicate activities and functions and fully integrate Coleman into Sunbeam's operations. The Company recognized a liability of approximately \$8 million representing severance and benefit costs related to 117 employees pursuant to the termination plan. This liability was included in the allocation of purchase price. As of September 30, 1999, 113 employees were terminated and paid benefits of approximately \$7 million. The four remaining employees are expected to be terminated by March 31, 2000. Remaining termination costs are expected to be paid by December 31, 2000 and no additional charges are anticipated in future periods related to this issue.

All of these acquisitions were accounted for by the purchase method of accounting. Accordingly, the results of operations of the acquired entities are included in the accompanying Condensed Consolidated Statements of Operations from their respective dates of acquisition.

The following pro forma financial information for the Company gives effect to the Coleman and Signature Brands acquisitions as if they had occurred at the beginning of the period presented. No pro forma adjustments have been made for the First Alert acquisition as its effects are not significant. These pro forma results have been prepared for informational purposes only and do not purport to be indicative of the results of operations which actually would have occurred had the acquisitions been consummated on the date indicated, or which may result in the future. The pro forma results follow (in millions, except per share data):

	Nine Months Ended September 30, 1998
Net sales	\$1,584.0
Loss before extraordinary charge.....	(498.1)
Basic and diluted loss per share from continuing operations before extraordinary charge	(4.78)

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued) (Unaudited)

3. Debt

In order to finance the acquisitions described in Note 2 and to refinance substantially all of the indebtedness of the Company and the acquired companies, the Company consummated an offering of the Debentures at a yield to maturity of 5.0% (approximately \$2.014 million principal amount at maturity) in March 1998, which resulted in approximately \$730 million of net proceeds and entered into a revolving and term credit facility ("New Credit Facility").

The Debentures are exchangeable for shares of the Company's common stock at an initial conversion rate of 6.575 shares for each \$1,000 principal amount at maturity of the Debentures, subject to adjustment upon occurrence of specified events. The Debentures are subordinated in right of payment to all existing and future senior indebtedness of the Company. The Debentures are not redeemable by the Company prior to March 25, 2003. On or after such date, the Debentures are redeemable for cash with at least 30 days' notice, at the option of the Company. The Company is required to purchase Debentures at the option of the holder as of March 25, 2003, March 25, 2008 and March 25, 2013, at purchase prices equal to the issue price plus accrued original discount to such dates. The Company may, at its option, elect to pay any such purchase price in cash or common stock, or any combination thereof. However, the New Credit Facility prohibits the Company from redeeming or repurchasing Debentures for cash. The Company was required to file a registration statement with the SEC to register the Debentures by June 23, 1998. This registration statement was filed on February 4, 1999 and, as amended, was declared effective on November 8, 1999. The Company's failure to file the registration statement by June 23, 1998 did not constitute default under the terms of the Debentures. From June 23, 1998 until the registration statement was declared effective, the Company was required to pay to the Debenture holders cash liquidated damages accruing, for each day during such period, at a rate per annum equal to 0.25% during the first 90 days and 0.50% thereafter multiplied by the total of the issue price of the Debentures plus the original issue discount thereon on such day. The Company has made total payments for liquidated damages since June 23, 1998 of \$4.5 million, of which \$1.5 million related to damages for the period through December 31, 1998. A final payment of approximately \$0.5 million, representing liquidated damages from September 26, 1999 until the registration statement was declared effective, will be payable on March 25, 2000.

Concurrent with the acquisitions, the Company replaced its \$250 million syndicated unsecured five-year revolving credit facility with the New Credit Facility. The New Credit Facility provided for aggregate borrowings of up to \$1.7 billion and in addition to other customary covenants, required the Company to maintain specified consolidated leverage, interest coverage and fixed charge coverage ratios as of the end of each fiscal quarter occurring after March 31, 1998 and on or prior to the latest stated maturity date for any of the borrowings under the New Credit Facility.

As a result of, among other things, its operating losses incurred during the first half of 1998, the Company did not achieve the specified financial ratios for June 30, 1998 and it appeared unlikely that the Company would achieve the specified financial ratios for September 30, 1998. Consequently, the Company and its lenders entered into an agreement dated as of June 30, 1998 that waived through December 31, 1998 all defaults arising from the failure of the Company to satisfy the specified financial ratios for June 30, 1998 and September 30, 1998. Pursuant to an agreement with the Company dated as of October 19, 1998, the Company's lenders extended all of the waivers under the June 30, 1998 agreement through April 10, 1999 and also waived through such date all defaults arising from any failure by the Company to satisfy the specified financial ratios for December 31, 1998. As part of the October 19, 1998 agreement, the Company agreed to a minimum monthly earnings before interest, taxes, depreciation and amortization ("EBITDA") covenant (as defined in the New Credit Facility) which covenant the Company has been able to satisfy.

On April 10, 1999, among other things, the lenders extended all of the waivers set forth in the October 19, 1998 agreement through April 15, 1999. On April 15, 1999, the Company and its lenders entered into a comprehensive amendment to the New Credit Facility that, among other things, extended all of the waivers under the April 10, 1999 agreement until April 10, 2000 and waived until such date all defaults arising from any failure

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

3. Debt—(Continued)

by the Company to satisfy the specified financial ratios for any fiscal quarter end occurring during 1999 and for March 31, 2000. The Company intends to negotiate with its lenders an amendment to the New Credit Facility, or to negotiate further waiver of such covenants and other terms beyond April 10, 2000, or to refinance the New Credit Facility. There can be no assurance that an amendment, further waiver of existing covenants and other terms, or refinancing will be entered into by April 10, 2000. The failure to obtain such an amendment, further waiver or debt refinancing would likely result in violation of the existing covenants and compliance with other terms, which would permit the bank lenders to accelerate the maturity of all outstanding borrowings under the New Credit Facility and could otherwise have a material adverse effect on the Company. Accordingly, debt related to the New Credit Facility and all debt containing cross-default provisions is classified as current in the September 30, 1999 Condensed Consolidated Balance Sheet.

As part of the April 15, 1999 New Credit Facility amendment, the Company agreed to a minimum cumulative EBITDA covenant that is based on post-December 31, 1998 consolidated EBITDA and is tested at the end of each month occurring on or prior to March 31, 2000, as well as a covenant limiting the amount of revolving loans (other than those used to fund the Coleman merger) that may be outstanding under the New Credit Facility as of the end of each such month. The minimum cumulative EBITDA was initially \$6.3 million for the period January 1, 1999 through April 30, 1999 and generally grows on a monthly basis until it reaches \$121.0 million for the period from January 1, 1999 through March 31, 2000.

The following description of the New Credit Facility reflects its significant terms as amended April 15, 1999.

The New Credit Facility provides for aggregate borrowings of up to \$1.7 billion through: (i) a revolving credit facility in an aggregate principal amount of up to \$400.0 million maturing March 30, 2005 (\$52.5 million of which may only be used to complete the Coleman merger); (ii) up to \$800.0 million in term loans maturing on March 30, 2005 (of which \$35.0 million may only be used to complete the Coleman merger); and (iii) a \$500.0 million term loan maturing September 30, 2006 (of which \$5.0 million has already been repaid through September 30, 1999). As of September 30, 1999, approximately \$1.5 billion was outstanding and approximately \$0.2 billion was available for borrowing under the New Credit Facility.

Under the New Credit Facility, interest accrues, at the Company's option: (i) at the London Interbank Offered Rate ("LIBOR"); or (ii) at the base rate of the administrative agent which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%; in each case plus an interest margin which is currently 4.00% for LIBOR loans and 2.50% for base rate loans. The current interest rates reflect an increase of 0.25% for LIBOR loans and base rate loans which occurred on September 1, 1999 as a result of the merger not occurring by such date and an increase of 0.50% for LIBOR loans and 0.25% for base rate loans which occurred on October 1, 1999 as a result of the merger not occurring by such date. The interest margin is subject to potential decreases in the future, including a decrease to 3.00% for LIBOR loans and 1.75% for base rate loans upon consummation of the Coleman merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the New Credit Facility. Borrowings under the New Credit Facility are secured by a pledge of the stock of the Company's material subsidiaries, including Coleman, and by a security interest in substantially all of the assets of the Company and its material domestic subsidiaries, other than Coleman and its material subsidiaries except as described below. Currently, Coleman's inventory and related assets are pledged to secure its obligations for letters of credit issued for its account under the New Credit Facility. Additionally, as security for Coleman's note payable to the Company, Coleman pledged substantially all of its domestic assets, other than real property, including 66% of the stock of its direct foreign subsidiaries and domestic holding companies for its foreign subsidiaries, and all of the stock of its other direct domestic subsidiaries (but not the assets of Coleman's subsidiaries). The pledge runs in favor of the Company's lending banks, to which the Coleman note has been

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

3. Debt—(Continued)

pledged as security for the Company's obligations to them. Upon completion of the Coleman merger, substantially all of Coleman's assets and the assets of Coleman's domestic subsidiaries will be pledged to secure the obligations under the New Credit Facility. In addition, borrowings under the New Credit Facility are guaranteed by a number of the Company's wholly-owned material domestic subsidiaries and these subsidiary guarantees are secured as described above. Upon completion of the Coleman merger, Coleman and each of its United States subsidiaries will become guarantors of the obligations under the New Credit Facility. To the extent extensions of credit are made to any subsidiaries of the Company, the obligations of such subsidiaries are guaranteed by the Company.

In addition to the above described ratios and tests, the New Credit Facility contains covenants customary for credit facilities of a similar nature, including limitations on the ability of the Company and its subsidiaries, including Coleman, to, among other things, (i) declare dividends or repurchase stock, (ii) prepay, redeem or repurchase debt, incur liens and engage in sale-leaseback transactions, (iii) make loans and investments, (iv) incur additional debt, including revolving loans under the New Credit Facility, (v) amend or otherwise alter material agreements or enter into restrictive agreements, (vi) make capital and year 2000 compliance expenditures, (vii) engage in mergers, acquisitions and asset sales, (viii) engage in certain transactions with affiliates, (ix) settle certain litigation, (x) alter its cash management system and (xi) alter the businesses they conduct. The Company is also required to comply with specified financial covenants and ratios. The New Credit Facility provides for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, material adverse change arising from compliance with ERISA, material adverse judgments, entering into guarantees and change of ownership and control. It is also an event of default under the New Credit Facility, as amended November 16, 1999, if the Company's registration statement in connection with the Coleman merger is not declared effective by the SEC on or before January 10, 2000, or if the merger does not occur within 25 business days of the effectiveness of the registration statement or if the cash consideration (including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses) to consummate the Coleman merger exceeds \$87.5 million. Although there can be no assurance, the Company anticipates that it will satisfy these conditions. Furthermore, the New Credit Facility requires the Company to prepay term loans on December 31, 1999 to the extent that cash on hand in the Company's concentration accounts plus the aggregate amount of unused revolving loan commitments on this date exceeds \$125 million, but the Company is not required to prepay more than \$69.3 million as a result of the provision. Unless waived by the bank lenders, the failure to satisfy any of the financial ratios and tests contained in the New Credit Facility or the occurrence of any other event of default under the New Credit Facility would entitle the bank lenders to (a) receive a 2.00% increase in the interest rate applicable to outstanding loans and increase the trade letter of credit fees to 1.00% and (b) accelerate the maturity of the outstanding borrowings under the New Credit Facility and exercise all or any of their other rights and remedies. Any such acceleration or other exercise rights and remedies would likely have a material adverse effect on the Company. The New Credit Facility also includes provisions for the deferral of the September 30, 1999 and the March 31, 2000 scheduled term loan payments of \$69.3 million each until April 10, 2000 as a result of the satisfaction by the Company of the agreed upon conditions to the deferral.

In March 1998, the Company prepaid a \$75.0 million 7.85% industrial revenue bond related to its Hattiesburg facility originally due in 2009. In connection with the early extinguishment of this debt, the Company recognized an extraordinary charge in the first quarter of 1998. As a result of repayment of certain indebtedness assumed in the Coleman acquisition, the Company also recognized an extraordinary charge in the second quarter of 1998. The debt assumed in connection with the Coleman acquisition was repaid as a result of the requirements under the terms of the New Credit Facility. These extraordinary charges consisted of redemption premiums (\$106.9 million), unamortized debt discount (\$13.8 million) and unamortized deferred financing costs (\$1.7 million) and were net of an income tax benefit (\$10.7 million).

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

3. Debt—(Continued)

In connection with the acquisition of Signature Brands, the Company was required to defease \$70.0 million of acquired debt. Cash was placed with a trustee to provide for the defeasance, including the related prepayment penalty. This cash was used to purchase Treasury Notes. Accordingly, \$74.4 million of restricted investments held by the trustee for the August 1999 liquidation of this acquired debt are reflected as an asset at December 31, 1998. The prepayment penalty is reflected as part of the acquisition price of Signature Brands. This debt was redeemed in August 1999 utilizing the proceeds from investments restricted for this purpose.

4. Accounts Receivable Securitization

The Company has entered into a receivables securitization program that expires in March 2000. The Company has received \$228.4 million and \$130.6 million in the first nine months of each 1999 and 1998, respectively, for the sale of trade accounts receivable. Trade accounts receivable at September 30, 1999 and 1998 reflect a reduction of \$36.9 million and \$10.5 million, respectively, for receivables sold under this program. Costs of the program, which primarily consist of the purchaser's financing cost of issuing commercial paper backed by the receivables, totaled \$1.7 million and \$1.9 million in the first nine months of 1999 and 1998, respectively, and have been classified as interest expense in the accompanying Condensed Consolidated Statements of Operations. The Company, through a wholly-owned subsidiary, retains collection and administrative responsibilities for the purchased receivables. This agreement contains cross-default provisions that provide the purchaser of the receivables an option to cease purchasing receivables from the Company if the Company is in default under the New Credit Facility.

5. Comprehensive Loss

The components of the Company's comprehensive loss are as follows (in thousands):

	Nine Months Ended	
	September 30, 1999	September 30, 1998
Net loss	\$(155,039)	\$(587,070)
Foreign currency translation adjustment, net of taxes	(10,150)	154
Change in minimum pension liability	—	(266)
Comprehensive loss	<u>\$(165,189)</u>	<u>\$(587,182)</u>

As of September 30, 1999 and December 31, 1998, "Accumulated other comprehensive loss," as reflected in the Condensed Consolidated Balance Sheets, is comprised of the following:

	Currency Translation Adjustments	Minimum Pension Liability	Total
Balance at September 30, 1999	\$(22,172)	\$(42,008)	\$(64,180)
Balance at December 31, 1998	(12,022)	(42,008)	(54,030)

The accumulated other comprehensive loss associated with the minimum pension liability is net of deferred taxes of approximately \$5 million as of September 30, 1999 and December 31, 1998.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

6. Supplementary Financial Statement Data

Supplementary Balance Sheet data at the end of each period is as follows (in thousands):

	<u>September 30, 1999</u>	<u>December 31, 1998</u>
Receivables:		
Trade	\$475,595	\$407,452
Sundry	10,090	7,347
	<u>485,685</u>	<u>414,799</u>
Valuation allowance	(42,462)	(53,025)
	<u>\$443,223</u>	<u>\$361,774</u>
Inventories:		
Finished goods	\$353,561	\$370,622
Work in process	46,191	39,143
Raw materials and supplies	108,069	109,424
	<u>\$507,821</u>	<u>\$519,189</u>

Supplementary Statements of Cash Flows data is as follows (in thousands):

	<u>Nine Months Ended</u>	
	<u>September 30, 1999</u>	<u>September 30, 1998</u>
Cash paid (received) during the period for:		
Interest	\$ 125,642	\$ 37,796
Income taxes, net of refunds	\$ 2,145	\$(13,077)

7. Asset Impairment and Other Charges

In the second quarter of 1998, decisions were made to outsource or discontinue a substantial number of products previously made by the Company (principally breadmakers, toasters and certain other appliances, air and water filtration products and the elimination of certain stock keeping units ("SKU's") within existing product lines, primarily relating to appliances, grills and grill accessories). As a result, certain facilities and equipment would either no longer be used or would be utilized in a significantly different manner. Accordingly, a charge of \$29.6 million was recorded in Cost of Goods Sold to write certain of these assets down to their estimated fair market value. Approximately 80% of this charge related to machinery, equipment and tooling at the Company's Mexico City, Mexico and Hattiesburg, Mississippi manufacturing plants, the estimated fair value for which was derived through an auction process. The remainder of this charge related to tooling and equipment at various other facilities, which either had a nominal value or the fair market value of which was derived through an auction process. These assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. The net carrying value of these assets after the write-down approximated \$2.2 million and these assets are expected to be substantially disposed of by December 31, 1999. Depreciation expense associated with these assets approximated \$2.6 million in the first half of 1998.

Personnel at the Mexico City facility were notified in the second quarter of 1998 that the plant was scheduled for closure at year-end 1998, accordingly, at that time, a liability of \$1.8 million was recorded in Cost of Goods Sold primarily for employee severance. The employee severance related to approximately 1,200 positions of which 100 employees, representing a \$0.4 million severance obligation, remained to be terminated at December 31, 1998. Substantially all of these remaining positions had been eliminated and the severance payments had been made as of June 30, 1999. Subsequent to the decisions made in conjunction with the

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

7. Asset Impairment and Other Charges—(Continued)

acquisitions, management decided to discontinue certain SKU's within product lines (principally generators, compressors and propane cylinders). As a result, in the third quarter of 1998, the Company recorded as Cost of Goods Sold, an additional provision for impairment of fixed assets of \$3.1 million in an acquired entity, relating to assets taken out of service for which there was no remaining value. These fixed assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. Depreciation expense associated with these assets approximated \$0.8 million in 1998.

During 1997 and the first half of 1998, the Company built inventories in anticipation of 1998 sales volumes which did not materialize. As a result, it has been and will continue to be necessary to dispose of some portions of excess inventories at amounts less than cost. Accordingly, during 1998, when the facts and circumstances were known that such sales volume would not materialize, the Company recorded \$48.6 million in charges (of which \$46.4 million and \$2.2 million were recorded in the second and third quarters, respectively) to properly state this inventory at the lower-of-cost-or-market. This inventory primarily related to certain appliances, grills and grill accessories.

The Company also recorded a charge during the second quarter of 1998 of \$11.0 million for excess inventories for raw material and work in process that will not be used due to outsourcing the production of breadmakers, toasters, and certain other appliances. In addition, during the second quarter of 1998, the Company made the decision to exit certain product lines, primarily air and water filtration products and eliminate certain SKU's within existing product lines, primarily relating to appliances, grills and grill accessories. As a result of this decision, a \$26.6 million charge was recorded during the second quarter to properly state this inventory at the lower-of-cost-or-market. Total charges for excess inventory recorded at the lower-of-cost-or-market, based upon management's best estimate of net realizable value, amounted to \$86.2 million through September 30, 1998.

In the fourth quarter of 1998, in connection with management's decision to outsource the production of certain appliances (principally irons) the Company recorded \$0.4 million of severance costs related to the elimination of approximately 45 production positions. During the nine months ended September 30, 1999, 8 positions were eliminated and \$0.1 million of the severance was paid. The remaining positions are expected to be eliminated by December 31, 1999.

At December 31, 1998, the Company had \$1.7 million of restructuring accruals relating to its 1996 restructuring plan. This \$1.7 million was comprised of \$1.2 million relating to lease payments and termination fees and \$0.5 million relating to discontinued operations. During the nine months ended September 30, 1999, the Company expended \$0.2 million for lease payments and termination fees and \$0.4 million relating to discontinued operations, respectively. It is anticipated that the remaining restructuring accrual of \$1.1 million (\$1.0 million relating to lease payments and termination fees and \$0.1 million relating to discontinued operations) will be paid through 2006.

8. Shareholders' Equity

Compensatory Stock Grants

On February 20, 1998, the Company entered into new three-year employment agreements with its then Chairman and Chief Executive Officer and two other senior officers of the Company (the "February 1998 Employment Agreements"). These agreements replaced previous employment agreements entered into in July 1996 that were scheduled to expire in July 1999. The new employment agreements provided for, among other items, the acceleration of vesting of restricted stock and the forfeiture of unvested restricted stock that had been granted under the July 1996 agreement, new restricted stock grants and options to purchase the Company's common stock. In addition, the new employment agreements provided for income tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

8. Shareholders' Equity—(Continued)

Compensation expense attributed to the equity grant, the acceleration of vesting of restricted stock and the related income tax gross-ups was recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups was amortized to expense beginning in the first quarter of 1998 with amortization to continue over the period in which the restrictions lapse. Total compensation expense recognized in the first quarter of 1998 related to these items was approximately \$31 million.

On June 15, 1998, the Company's Board of Directors announced the removal of the then Chairman and Chief Executive Officer and subsequently announced the removal or resignation of other senior officers, including the Company's then Chief Financial Officer. The Company and certain of its former officers are in litigation as to the Company's obligations to these individuals under prior agreements and arising from their termination. (See Note 10).

Purchase of Coleman Preferred Stock

On July 12, 1999, the Company acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock for an aggregate purchase price of approximately \$31 million. These shares, together with the shares of Coleman common stock the Company owns, enable Sunbeam to exercise 80.01% of the total voting power of Coleman's outstanding capital stock as of July 12, 1999. This class of preferred stock was created by Coleman and acquired by the Company in order to enable Coleman and the Company to file consolidated federal income tax returns, and in certain jurisdictions, consolidated state income tax returns, prior to the consummation of the Coleman merger. The issue price per share of the voting preferred stock was equal to 110% of the average closing price per share of common stock of Coleman over the five trading days prior to the date of issuance of the voting preferred stock. Except as required by law, the holders of the voting preferred stock vote as a single class with the holders of the Coleman common stock on all matters submitted to a vote of the holders of Coleman common stock, with each share of voting preferred stock and each share of Coleman common stock having one vote. The voting preferred stock has an annual dividend equal to 7% of \$10.35 per share, the issue price per share of the voting preferred stock, which accrues but will not be paid in cash unless a liquidation of Coleman occurs or certain transactions are consummated as described below. In addition, the voting preferred stock will participate ratably with the Coleman common stock in all other dividends and distributions (other than liquidating distributions) made by Coleman to the holders of its common stock. The voting preferred stock will participate with the Coleman common stock in any merger, consolidation, or any other transaction (other than a merger of a wholly owned subsidiary of the Company with Coleman, including the Coleman merger) and will receive on a per share basis the same type and amount of consideration as the Coleman common stock. On liquidations of Coleman: (1) the holders of the voting preferred stock would receive a preferential distribution equal to \$10.35 per share, plus accrued and unpaid dividends, (2) next, the holders of the Coleman common stock would receive an amount equal to \$10.35 per share of Coleman common stock and (3) any assets remaining after such distributions would be shared by the holders of voting preferred stock and the Coleman common stock on a share for share basis. In connection with the issuance of the shares of preferred stock, Coleman entered into a tax sharing agreement with the Company pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had Coleman not been included in the consolidated income tax return of the Company. The terms of the voting preferred stock, their issue price and the terms of the tax sharing agreement were approved on Coleman's behalf by Coleman's then sole independent director. The net proceeds from the issuance of the shares by Coleman of its voting preferred stock to the Company were used by Coleman to make a partial repayment of loans outstanding from Sunbeam under the Intercompany Note.

9. Segment, Customer and Geographic Data

The following tables include selected financial information with respect to Sunbeam's four operating segments. Corporate expenses include, among other items, expenses for services which are provided in varying

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

9. Segment, Customer and Geographic Data—(Continued)

levels to the three operating groups and for Year 2000 efforts. The increase from 1998 to 1999 is largely due to an expansion of centralized services related to the acquisitions, Year 2000 expenses and increased costs associated with outside services and insurance.

	Household	Outdoor Leisure	International	Corporate	Total
Nine Months Ended September 30, 1999					
Net sales to unaffiliated customers.....	\$555,207	\$ 774,698	\$444,305	\$ 12,218	\$1,786,428
Intersegment net sales	57,070	126,681	6,896	—	190,647
Segment earnings (loss)	22,363	71,877	41,021	(93,872)	41,389
Segment depreciation expense	19,436	27,654	4,034	4,392	55,516
Nine Months Ended September 30, 1998					
Net sales to unaffiliated customers.....	\$454,974	\$ 524,409	\$328,628	\$ 14,118	\$1,322,129
Intersegment net sales	50,103	76,538	53,143	—	179,784
Segment (loss) earnings	(29,608)	(41,520)	11,541	(78,425)	(138,012)
Segment depreciation expense	19,778	18,260	3,812	3,087	44,937
Segment Assets					
September 30, 1999	\$787,956	\$1,771,883	\$403,609	\$354,526	\$3,317,974
December 31, 1998	864,745	1,782,994	413,755	344,023	3,405,517

Reconciliation of selected segment information to Sunbeam's consolidated totals:

	Nine Months Ended	
	September 30, 1999	September 30, 1998
Net sales:		
Net sales for reportable segments	\$1,977,075	\$1,501,916
Elimination of intersegment net sales	(190,647)	(179,787)
Consolidated net sales	<u>\$1,786,428</u>	<u>\$1,322,129</u>
Segment earnings (loss):		
Total earnings (loss) for reportable segments	\$ 41,389	\$ (138,012)
Unallocated amounts:		
Interest expense	(136,631)	(88,476)
Other income, net	4,619	4,065
Amortization of intangible assets	(38,401)	(25,186)
Former employees deferred compensation (Note 8) and severance	—	(34,410)
Provision for inventory (Note 7)	—	(86,167)
Asset impairment (Note 7)	—	(32,642)
Issuance of warrants (Note 2)	—	(70,000)
Office relocation expense	—	(4,011)
Other charges	—	(1,248)
	<u>(170,413)</u>	<u>(338,075)</u>
Consolidated loss before income taxes, minority interest and extraordinary charge	<u>\$ (129,024)</u>	<u>\$ (476,087)</u>

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

10. Commitments and Contingencies

Litigation

On April 23, 1998, two class action lawsuits were filed on behalf of purchasers of the Company's common stock in the U.S. District Court for the Southern District of Florida against the Company and some of its present and former directors and former officers alleging violations of the federal securities laws as discussed below. After that date, approximately fifteen similar class actions were filed in the same Court. One of the lawsuits also named as defendant Arthur Andersen, the Company's independent accountants for the period covered by the lawsuit.

On June 16, 1998, the court entered an order consolidating all these suits and all similar class actions subsequently filed (collectively, the "Consolidated Federal Actions") and providing time periods for the filing of a consolidated amended complaint and defendants' response thereto. On June 22, 1998, two groups of plaintiffs made motions to be appointed lead plaintiffs and to have their selection of counsel approved as lead counsel. On July 20, 1998, the court entered an order appointing lead plaintiffs and lead counsel. This order also stated that it shall apply to all subsequently filed actions that are consolidated with the other actions. On August 28, 1998, plaintiffs in one of the subsequently filed actions filed an objection to having their action consolidated pursuant to the June 16, 1998 order, arguing that the class period in their action differs from the class periods in the originally filed consolidated actions. On December 9, 1998, the court entered an order overruling plaintiffs' objections and affirming its prior order appointing lead plaintiffs and lead counsel.

On January 6, 1999, plaintiffs filed a consolidated amended class action complaint against the Company, some of its present and former directors and former officers, and Arthur Andersen. The consolidated amended class action complaint alleges that, in violation of section 10(b) of the Exchange Act and SEC Rule 10b-5, defendants made material misrepresentations and omissions regarding the Company's business operations, future prospects and anticipated earnings per share, in an effort to artificially inflate the price of the Company's common stock and call options, and that, in violation of section 20(a) of the Exchange Act, the individual defendants exercised influence and control over the Company, causing the Company to make material misrepresentations and omissions. The consolidated amended complaint seeks an unspecified award of money damages. On February 5, 1999, plaintiffs moved for an order certifying a class consisting of all persons and entities who purchased the Company's common stock or who purchased call options or sold put options with respect to the Company's common stock during the period April 23, 1997 through June 30, 1998, excluding the defendants, their affiliates, and employees of the Company. Defendants' response to the motion for class certification was filed on May 6, 1999. On March 8, 1999, all defendants who had been served with the consolidated amended class action complaint moved to dismiss it. Under the Private Securities Litigation Reform Act of 1995, all discovery in the consolidated action is stayed pending resolution of the motions to dismiss.

On April 7, 1998, a purported derivative action was filed in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida against the Company and some of its present and former directors and former officers. The action alleged that the individual defendants breached their fiduciary duties and wasted corporate assets when the Company granted stock options on or about February 2, 1998 at an exercise price of \$36.85 to three of its officers and directors who were subsequently terminated by the Company. On June 25, 1998, all defendants filed a motion to dismiss the complaint for failure to make a pre-suit demand on the Company's board of directors. On October 22, 1998, the plaintiff amended the complaint against all but one of the defendants named in the original complaint. On February 19, 1999, plaintiffs filed a second amended derivative complaint nominally on behalf of the Company against some of its present and former directors and former officers and Arthur Andersen. The second amended complaint alleges, among other things, that Messrs. Dunlap and Kersh, the Company's former Chairman and Chief Executive Officer and former Chief Financial Officer, respectively, caused the Company to employ fraudulent accounting procedures in order to enable them to secure new employment contracts, and seeks a declaration that the individual defendants have violated fiduciary

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

10. Commitments and Contingencies—(Continued)

Litigation—(Continued)

duties, an injunction against the payment of compensation to Messrs. Dunlap and Kersh or the imposition of a constructive trust on such payments, and unspecified money damages. The defendants have each moved to dismiss the second amended complaint in whole or in part.

On June 25, 1998, four purported class actions were filed in the Court of Chancery of the State of Delaware in New Castle County by minority shareholders of Coleman against Coleman, the Company and certain of the Company's and Coleman's present and former officers and directors. An additional class action was filed on August 10, 1998 against the same parties. The complaints in these class actions allege, in essence, that the existing exchange ratio for the proposed Coleman merger is no longer fair to Coleman minority shareholders as a result of the decline in the market value of the Company's common stock. On October 21, 1998, the Company announced that it had entered into a memorandum of understanding to settle, subject to court approval, the class actions. The court approved the settlement on November 12, 1999. Under the terms of the settlement, the Company will issue to Coleman minority shareholders and plaintiffs' counsel in this action warrants to purchase up to approximately 4.98 million shares of the Company's common stock at \$7 per share, subject to anti-dilution adjustments. Coleman minority shareholders who elect an appraisal under Delaware law will not receive warrants. These warrants will generally have the same terms as the warrant issued to the MacAndrews & Forbes subsidiary and will be issued when the Coleman merger is consummated, which is now expected to occur in the fourth quarter of 1999 or early in the first quarter of 2000. Issuance of the warrants will be accounted for as additional purchase consideration.

During the months of August and October 1998, purported class action and derivative lawsuits were filed in the Court of Chancery of the State of Delaware in New Castle County and in the U.S. District Court for the Southern District of Florida by shareholders of the Company against the Company, MacAndrews & Forbes and some of the Company's present and former directors. These complaints allege that the defendants breached their fiduciary duties when the Company entered into a settlement agreement with the MacAndrews & Forbes subsidiary that sold the Company a controlling interest in Coleman. In the settlement agreement the MacAndrews & Forbes subsidiary released the Company from threatened claims arising out of the Company's acquisition of its interest in Coleman, and MacAndrews & Forbes agreed to provide management support to the Company. Under the settlement agreement, the MacAndrews & Forbes subsidiary was granted a warrant expiring August 24, 2003 to purchase up to an additional 23 million shares of the Company's common stock at an exercise price of \$7 per share, subject to anti-dilution provisions. The plaintiffs have requested an injunction against the issuance of stock to MacAndrews & Forbes upon the exercise of its warrant and unspecified money damages. These complaints also allege that the rights of the minority shareholders have been compromised, as the settlement would normally require shareholder approval under the rules and regulations of the NYSE. The audit committee of the Company's board of directors determined that obtaining such shareholder approval would have seriously jeopardized the financial viability of the Company which is an allowable exception to the NYSE shareholder approval requirements. By order of the Delaware Court of Chancery dated January 7, 1999, the derivative actions filed in that court were consolidated, and the Company and the other defendants have moved to dismiss these actions. The action filed in the U.S. District Court for the Southern District of Florida has been dismissed.

On September 16, 1998, an action was filed in the 56th Judicial District Court of Galveston County, Texas alleging various claims in violation of the Texas Securities Act and Texas Business and Commercial Code as well as common law fraud as a result of the Company's alleged misstatements and omissions regarding the Company's financial condition and prospects during a period beginning May 1, 1998 and ending June 16, 1998, in which the U.S. National Bank of Galveston, Kempner Capital Management, Inc. and Legacy Trust Company engaged in transactions in the Company's common stock on their own behalf and on behalf of their respective clients. The Company is the only named defendant in this action. The complaint requests recovery of compensatory damages, punitive damages and expenses in an unspecified amount. This action was removed to

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

10. Commitments and Contingencies—(Continued)

Litigation—(Continued)

the U.S. District Court for the Southern District of Texas and subsequently transferred to the Southern District of Florida and consolidated with the Consolidated Federal Actions. Plaintiffs in this action have objected to the consolidation and have sought reconsideration by the Southern District of Florida of the order of the Southern District of Texas denying plaintiffs' motion to remand the case to state court and transferring it to Florida. A similar suit was brought by the same group of plaintiffs in the above action against Arthur Andersen. In that action, the plaintiffs allege that Arthur Andersen violated the Texas Securities Act, committed statutory and common law fraud and was negligent in its audits of the Company's 1996 and 1997 financial statements. On September 29, 1999, Arthur Andersen filed a motion for leave to join the Company and certain of its former officers as responsible third parties and contribution defendants. Their motion was denied.

On October 30, 1998, a class action lawsuit was filed on behalf of certain purchasers of the Debentures in the U.S. District Court for the Southern District of Florida against the Company and some of the Company's former officers and directors, alleging violations of the federal securities laws and common law fraud. The complaint alleges that the Company's offering memorandum used for the marketing of the Debentures contained false and misleading information regarding the Company's financial position and that the defendants engaged in a plan to inflate the Company's earnings for the purpose of defrauding the plaintiffs and others. The plaintiffs seek a declaration that defendants violated federal securities laws and either unspecified monetary damages or rescission of their purchase of the Debentures. The parties have negotiated a proposed coordination plan in order to coordinate proceedings in this action with those in the Consolidated Federal Actions.

The Company has been named as a defendant in an action filed in the District Court of Tarrant County, Texas, 48th Judicial District, on November 20, 1998. The Company was served in this action through the Secretary of State of Texas on January 15, 1999. The plaintiffs in this action are purchasers of the Debentures. The plaintiffs allege that the Company violated the Texas Securities Act and the Texas Business & Commercial Code and committed state common law fraud by materially misstating the financial position of the Company in connection with the offering and sale of the Debentures. The complaint seeks rescission, as well as compensatory and exemplary damages in an unspecified amount. The Company specially appeared to assert an objection to the Texas court's exercise of personal jurisdiction over the Company, and a hearing on this objection took place on April 15, 1999. On April 23, 1999, the court entered an order granting the Company's special appearance and dismissing the case without prejudice. The plaintiffs moved for reconsideration of the court order, which motion the court denied on May 24, 1999. The plaintiffs have appealed to the Texas Court of Appeals the order dismissing the case and that appeal is pending.

On April 12, 1999, a class action lawsuit was filed in the U.S. District Court for the Southern District of Florida. The lawsuit was filed on behalf of persons who purchased Debentures during the period of March 20, 1998 through June 30, 1998, inclusive, but after the initial offering of such Debentures. The complaint asserts that the Company made material omissions and misrepresentations that had the effect of inflating the market price of the Debentures. The complaint names as defendants the Company, its former auditor, Arthur Andersen, and two former Company officers, Messrs. Dunlap and Kersh. The plaintiff is an institution which allegedly acquired in excess of \$150,000,000 face amount of the Debentures and now seeks unspecified money damages. The Company was served on April 16, 1999 in connection with this pending lawsuit. The Company has requested that this action be coordinated with the Consolidated Federal Actions.

On February 9, 1999, Messrs. Dunlap and Kersh filed with the American Arbitration Association demands for arbitration of claims under their respective employment agreements with the Company. Messrs. Dunlap and Kersh are requesting a finding by the arbitrators that the Company terminated their employment without cause and that they should be awarded certain benefits based upon their respective employment agreements. On March 12, 1999, the Company asked the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County,

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

10. Commitments and Contingencies—(Continued)

Litigation—(Continued)

Florida to issue an injunction prohibiting Messrs. Dunlap and Kersh from pursuing their arbitration proceedings against the Company on the grounds, among others, that the simultaneous litigation of the action filed in that court on April 7, 1998, described above, and the arbitration proceedings would subject the Company to the threat of inconsistent adjudications with respect to certain rights to compensation asserted by Messrs. Dunlap and Kersh and would cause irreparable harm to the Company and its shareholders. On March 19, 1999, the plaintiff in the April 7, 1998 action discussed above moved for an injunction on similar grounds. On May 11, 1999, the court denied the motions for a preliminary injunction filed by the Company and the plaintiff. The Company has answered the arbitration demands of Messrs. Dunlap and Kersh and has filed counterclaims seeking, among other things, the return of all consideration paid, or to be paid, under the February 1998 Employment Agreements between the Company and Messrs. Dunlap and Kersh. An answer was filed by Messrs. Dunlap and Kersh generally denying the Company's counterclaims. Discovery is pending.

On May 24, 1999, an action naming the Company as defendant was filed in the Circuit Court for Ozaukee County, Wisconsin. Prior to service of the complaint, the plaintiff dismissed its claims, voluntarily, without prejudice. The plaintiff in this action was a purchaser of the Debentures. The plaintiff alleged that the Company violated the Wisconsin Uniform Securities Act and committed acts of false advertising and misrepresentation in connection with the offering and sale of the Debentures. The plaintiff sought rescission, as well as compensatory and exemplary damages in an unspecified amount.

On September 13, 1999, an action naming the Company and Arthur Andersen as defendants was filed in the Circuit Court for Montgomery County, Alabama. The plaintiffs in this action are purchasers of the Company's common stock during the period March 19, 1998 through May 6, 1998. The plaintiffs allege, among other things, that the defendants violated the Alabama Security Laws and SEC Rule 10b-5. The plaintiffs seek compensatory and punitive damages in an unspecified amount. The Company has removed this case to the U.S. District Court for the District of Alabama. In addition, Arthur Andersen has filed a cross claim against the Company for contribution and indemnity. The Company has filed a motion with the Judicial Panel on Multidistrict Litigation to consolidate this action with the Consolidated Federal Actions.

The Company intends to vigorously defend each of the foregoing lawsuits other than those as to which a memorandum of understanding to settle has been reached, but cannot predict the outcome and is not currently able to evaluate the likelihood of the Company's success in each case or the range of potential loss. However, if the Company were to lose these lawsuits, judgments would likely have a material adverse effect on the Company's consolidated financial position, results of operations and cash flows.

On March 23, 1999, Messrs. Dunlap and Kersh filed a complaint in the Court of Chancery of the State of Delaware seeking an order directing the Company to advance attorneys' fees and other expenses incurred in connection with various state and federal class and derivative actions and an investigation instituted by the SEC. The complaint alleges that such advancements are required by the Company's by-laws and by a forbearance agreement entered into between the Company and Messrs. Dunlap and Kersh in August, 1998. A trial of this summary proceeding was held on June 15 and 16, 1999. On June 23, 1999, the court issued a memorandum opinion directing the Company to pay about \$1.4 million on account of expenses incurred to date and to advance the reasonable future expenses in those actions and investigations. Messrs. Dunlap and Kersh have agreed to repay all amounts advanced to them if it is ultimately determined that they are not entitled to indemnification under Delaware law.

On July 2, 1998, the American Alliance Insurance Company filed suit against the Company in the U.S. District Court for the Southern District of New York requesting a declaratory judgment of the court that the directors' and officers' liability insurance policy for excess coverage issued by American Alliance was invalid and/or had been properly canceled by American Alliance. American Alliance has filed a motion for summary

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

10. Commitments and Contingencies—(Continued)

Litigation—(Continued)

judgment on the ground that coverage was never bound. The Company has opposed that motion. As a result of a motion made by the Company, this case has been transferred to the U.S. District Court for the Southern District of Florida for coordination and consolidation of pre-trial proceedings with the various actions pending in that court. On October 20, 1998, an action was filed by Federal Insurance Company in the U.S. District Court for the Middle District of Florida requesting the same relief as that requested by American Alliance in the previously filed action as to additional coverage levels under the Company's directors' and officers' liability insurance policy. This action has been transferred to the U.S. District Court for the Southern District of Florida and is currently in discovery. The Company is seeking a stay of discovery to coordinate discovery in this action with any discovery that may occur in the Consolidated Federal Actions. Plaintiff has moved to compel production of various documents. On December 22, 1998, an action was filed by Executive Risk Indemnity, Inc. in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida requesting the same relief as that requested by American and Federal in their previously filed actions as to additional coverage levels under the Company's directors' and officers' liability insurance policy. On April 15, 1999, the Company filed an action in the U.S. District Court for the Southern District of Florida against National Union Fire Insurance Company of Pittsburgh, PA, Gulf Insurance Company and St. Paul Mercury Insurance Company requesting, among other things, a declaratory judgment that National Union is not entitled to rescind its directors' and officers' liability insurance policies to the Company and a declaratory judgment that the Company is entitled to coverage from these insurance companies for the various lawsuits described herein under directors' and officers' liability insurance policies issued by each of the defendants. In response to the Company's complaint, defendants St. Paul and Gulf have answered and asserted counterclaims seeking rescission and declaratory relief that no coverage is available to the Company. The Company has denied the allegations of Gulf's and St. Paul's counterclaims. Defendant National Union has filed a motion to dismiss or stay the claims filed by the Company against National Union on the basis, among others, that the Company must submit the dispute to arbitration or mediation. The Company has filed a response opposing that motion. The Company intends to pursue recovery from all of its insurers if damages are awarded against the Company or its indemnified officers and/or directors under any of the foregoing actions and to recover attorneys' fees covered under those policies. The Company's failure to obtain such insurance recoveries following an adverse judgment in any of the actions described above could have a material adverse effect on the Company's financial position, results of operations and cash flows.

By letter dated June 17, 1998, the staff of the Division of Enforcement of the SEC advised the Company that it was conducting an informal inquiry into the Company's accounting policies and procedures and requested that the Company produce certain documents. On July 2, 1998, the SEC issued a Formal Order of Private Investigation, designating SEC officers to take testimony and pursuant to which a subpoena was served on the Company requiring the production of certain documents. On November 4, 1998, another SEC subpoena requiring the production of additional documents was received by the Company. The Company has provided numerous documents to the SEC staff and continues to cooperate with the SEC staff. The Company has, however, declined to provide the SEC with material that the Company believes is subject to the attorney-client privilege and the work product immunity.

The SEC has not commenced any civil or administrative proceedings as a result of its investigation, and the Company cannot predict at this time whether the SEC will seek to impose any monetary or other penalties against the Company. Under these circumstances, the Company cannot estimate the duration of the investigation or its outcome.

The Company and its subsidiaries are also involved in various other lawsuits arising from time to time which the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these routine matters, and of certain matters relating to prior operations, individually

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

10. Commitments and Contingencies—(Continued)

Litigation—(Continued)

or in the aggregate, will not have a material adverse effect upon the financial position, results of operations or cash flows of the Company.

Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and claims and related anticipated legal fees for defending such actions. The costs are accrued when it is both probable that an asset has been impaired or a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon the Company's assessment, after consultation with counsel, of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the plaintiffs and other significant factors which vary by case. When it is not possible to estimate a specific expected cost to be incurred, the Company evaluates the range of probable loss and records the minimum end of the range. As of September 30, 1999, the Company had established accruals for litigation matters of \$22.6 million (representing \$11.3 million and \$11.3 million for estimated damages or settlement amounts and legal fees, respectively.) As of December 31, 1998, the Company had established accruals for litigation matters of \$31.2 million (representing \$17.5 million and \$13.7 million for estimated damages or settlement amounts and legal fees, respectively). It is anticipated that the \$22.6 million accrual will be paid as follows: \$5.2 million in 1999, \$14.9 million in 2000, and \$2.5 million in 2001. The Company believes, based on information known to the Company on September 30, 1999, that anticipated probable costs of litigation matters existing as of September 30, 1999 have been adequately reserved, to the extent determinable.

Products Liability

As a consumer goods manufacturer and distributor, the Company faces the constant risks of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. These claims could result in liabilities that could have a material adverse effect on the Company's consolidated financial position, results of operations, or cash flows. Some of the product lines the Company acquired in the 1998 acquisitions have increased its exposure to product liability and related claims.

BRK Brands, Inc., a wholly owned subsidiary of the Company, was a defendant in the case Gordon v. BRK Brands, Inc., et al. in the Circuit Court for the City of St Louis. In Gordon, the plaintiff alleged, among other things, that the plaintiff's smoke detector (which had been manufactured by a predecessor of BRK Brands) did not alarm quickly enough. In July 1999, the jury in the Gordon case awarded \$20 million in compensatory damages and \$30 million in punitive damages. This case has been settled and BRK's obligation under the settlement is to pay the balance of its self-insured retention.

The Company is party to various personal injury and property damage lawsuits relating to its products and incidental to its business. Annually, the Company sets its product liability insurance program based on the Company's current and historical claims experience and the availability and cost of insurance. The Company's program for 1999 was comprised of a self-insurance retention of \$3.5 million per occurrence, and was limited to \$28.0 million in the aggregate.

Cumulative amounts estimated to be payable by the Company with respect to pending and potential claims for all years in which the Company is liable under its self-insurance retention have been accrued as liabilities. Such accrued liabilities are necessarily based on estimates (which include actuarial determinations made by independent actuarial consultants as to liability exposure, taking into account prior experience, numbers of claims and other relevant factors); thus, the Company's ultimate liability may exceed or be less than the amounts accrued. The methods of making such estimates and establishing the resulting liability are reviewed continually and any adjustments resulting therefrom are reflected in current operating results.

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

10. Commitments and Contingencies—(Continued)

Products Liability—(Continued)

Historically, product liability awards have rarely exceeded the Company's individual per occurrence self-insured retention. There can be no assurance, however, that the Company's future product liability experience will be consistent with its past experience. Based on existing information, the Company believes that the ultimate conclusion of the various pending product liability claims and lawsuits of the Company, individually or in the aggregate, will not have a material adverse effect on the financial position, results of operations or cash flows of the Company.

Environmental Matters

The Company's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations in addition to laws and regulations regarding labeling and packaging of products and the sales of products containing certain environmentally sensitive materials. The Company believes it is in substantial compliance with all environmental laws and regulations which are applicable to its operations. Compliance with environmental laws and regulations involves certain continuing costs; however, such costs of ongoing compliance have not resulted, and are not anticipated to result, in a material increase in the Company's capital expenditures or to have a material adverse effect on the Company's results of operations, financial condition or competitive position.

In addition to ongoing environmental compliance at its operations, the Company also is actively engaged in environmental remediation activities many of which are related to divested operations. As of December 31, 1998, the Company has been identified by the United States Environmental Protection Agency ("EPA") or a state environmental agency as a potentially responsible party ("PRP") in connection with seven sites subject to the federal Superfund Act and five sites subject to state Superfund laws comparable to the federal law (collectively, the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a de minimis (less than 1%) participant.

The Superfund Act, and related state environmental remediation laws, generally authorize governmental authorities to remediate a Superfund site and to assess the costs against the PRPs or to order the PRPs to remediate the site at their expense. Liability under the Superfund Act is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, the Company recognizes its responsibility to determine whether other PRPs at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRPs established with respect to such sites. The Company currently is engaged in active remediation activities at 11 sites, six of which are among the Environmental Sites referred to above, and five of which have not been designated as Superfund sites under federal or state law. The remediation efforts in which the Company is involved include facility investigations, including soil and groundwater investigations, corrective measure studies, including feasibility studies, groundwater monitoring, extraction and treatment, soil sampling, excavation and treatment relating to environmental clean-ups. In certain instances, the Company has entered into agreements with governmental authorities to undertake additional investigatory activities and in other instances has agreed to implement appropriate remedial actions. The Company has also established reserve amounts for certain non-compliance matters including those involving air emissions.

The Company has established reserves to cover the anticipated probable costs of investigation and remediation, based upon periodic reviews of all sites for which the Company has, or may have, remediation responsibility. The Company accrues environmental investigation and remediation costs when it is both probable

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

10. Commitments and Contingencies—(Continued)

Environmental Matters—(Continued)

that a liability has been incurred and the amount can be reasonably estimated and the Company's responsibility is established. Generally, the timing of these accruals coincides with the earlier of formal commitment to an investigation plan, completion of a feasibility study or the Company's commitment to a formal plan of action. As of September 30, 1999 and December 31, 1998, the Company's environmental reserves were \$23.3 million (representing \$21.6 million for the estimated costs of facility investigations, corrective measure studies or known remedial measures, and \$1.7 million for estimated legal costs) and \$25.0 million (representing \$22.9 million for the estimated costs of facility investigations, corrective measure studies or known remedial measures, and \$2.1 million for estimated legal costs), respectively. It is anticipated that the \$23.3 million accrual at September 30, 1999 will be paid as follows: \$5.2 million in 1999, \$3.9 million in 2000, \$1.8 million in 2001, \$2.0 million in 2002, \$0.6 million in 2003 and \$9.8 million, thereafter. The Company has accrued its best estimate of investigation and remediation costs based upon facts known to the Company at such dates and because of the inherent difficulties in estimating the ultimate amount of environmental costs, which are further described below, these estimates may materially change in the future as a result of the uncertainties described below. Estimated costs, which are based upon experience with similar sites and technical evaluations, are judgmental in nature and are recorded at undiscounted amounts without considering the impact of inflation and are adjusted periodically to reflect changes in applicable laws or regulations, changes in available technologies and receipt by the Company of new information. It is difficult to estimate the ultimate level of future environmental expenditures due to a number of uncertainties surrounding environmental liabilities. These uncertainties include the applicability of laws and regulations, changes in environmental remediation requirements, the enactment of additional regulations, uncertainties surrounding remediation procedures including the development of new technology, the identification of new sites for which the Company could be a PRP, information relating to the exact nature and extent of the contamination at each site and the extent of required cleanup efforts; the uncertainties with respect to the ultimate outcome of issues which may be actively contested and the varying costs of alternative remediation strategies. The Company continues to pursue the recovery of some environmental remediation costs from certain of its liability insurance carriers; however, such potential recoveries have not been offset against potential liabilities and have not been considered in determining the Company's environmental reserves.

Due to uncertainty over remedial measures to be adopted at some sites, the possibility of changes in environmental laws and regulations and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, the Company's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved as of September 30, 1999.

The Company believes, based on existing information for sites where costs are estimable, that the costs of completing environmental remediation of all sites for which the Company has a remediation responsibility have been adequately reserved and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition, results of operations or cash flows.

Commitment Fee

Under the terms of the April 15, 1999 amendment to the New Credit Facility, the Company is obligated to pay a loan commitment fee of between \$4.2 million and \$17.0 million. The ultimate amount of the fee is determined based on multiplying the sum of the outstanding borrowings and amounts available for borrowings as of April 15, 1999 by a factor that is determined at the earlier of September 30, 2000 or upon repayment of the New Credit Facility. This fee is payable at the earlier of September 30, 2000 or upon repayment of the New Credit Facility. At a minimum, the Company is obligated under these terms to pay \$4.2 million. The ultimate amount due could be as high as \$17.0 million if the sum of the outstanding borrowings and amounts available for borrowings at September 30, 2000 (the "aggregate availability") exceeds \$1.2 billion. If the aggregate

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

10. Commitments and Contingencies—(Continued)

Commitment Fee—(Continued)

availability is between \$1.0 billion and \$1.2 billion, a fee of \$8.4 million will be due. If the aggregate availability is \$1.0 billion or less, the \$4.2 million minimum will be due. Under any circumstances, the \$4.2 million will be due; therefore, the Company has accrued the minimum liability and an offsetting asset which is being amortized and included in interest expense through April 10, 2000, the term of the current amendment extension period.

The Company has not accrued for amounts in excess of the \$4.2 million, as there are numerous uncertainties which may individually or in the aggregate impact the level of aggregate availability at September 30, 2000. These uncertainties include, but are not limited to: the ability to obtain an amendment or further waiver of existing covenants from the lenders under the New Credit Facility for the period beyond April 10, 2000; proceeds from the sales of assets or businesses, if any; changes in debt structure, including the effects of refinancing, if any; and cash flows generated or used by future operations. Given these uncertainties, the Company is currently not able to predict the probable level of aggregate availability at September 30, 2000. As events develop, the Company will periodically review the expected aggregate availability at September 30, 2000. If it becomes likely that an amount in excess of \$4.2 million will be paid, the Company will recognize that change in estimate over the remaining period of the New Credit Facility Amendment.

11. Subsequent Event

On November 9, 1999, the Company announced a plan to divest Eastpak and certain non-essential assets. Net proceeds from these assets sales are estimated to be \$200 million and will be primarily used to pay down debt.

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ANNEX I

AGREEMENT AND PLAN OF MERGER

among

**SUNBEAM CORPORATION
CAMPER ACQUISITION CORP.**

and

THE COLEMAN COMPANY, INC.

Dated as of
February 27, 1998

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CONFIDENTIAL

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CP 008344
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1398503

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of February 27, 1986, between SUNBEAM CORPORATION, a Delaware corporation ("Laser"), CAMPER ACQUISITION CORP. (Merger Sub"), a Delaware corporation and a wholly owned subsidiary of Laser, and THE COLEMAN COMPANY INC., a Delaware corporation (the "Company").

WHEREAS, the Boards of Directors of Laser, Merger Sub and the Company deem it advisable and in the best interests of their respective stockholders that Merger Sub merge with and into the Company (the "Company Merger"), and such Boards of Directors have approved the Company Merger, upon the terms and subject to the conditions set forth herein; and

WHEREAS, as a condition to the Company Merger, a newly formed, wholly owned subsidiary of Laser will merge with and into CLN Holdings Inc. ("Holdings") with Holdings continuing as the surviving corporation and a wholly owned subsidiary of Laser (the "Holdings Merger") pursuant to an Agreement and Plan of Merger (the "Holdings Merger Agreement"), dated as of the date hereof, among Laser, Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Laser, Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings"), and Holdings; and

WHEREAS, the Board of Directors of the Company has approved the Holdings Merger solely for purposes of rendering Section 203 of the DGCL inapplicable to the transactions contemplated hereby; and

WHEREAS, Laser, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Company Merger and also to prescribe certain conditions to the Company Merger.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings, the definitions to be applicable to both the singular and plural forms of each term defined to the extent that such forms of such terms are used in this Agreement.

"Affiliate" shall mean, as to any Person (as hereinafter defined), any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interest, by contract or otherwise.

"Affiliate Agreements" shall mean any Contract, agreement or understanding between the Company and any of its subsidiaries, on the one hand, and Worldwide and any of its Affiliates (other than the Company and its subsidiaries), on the other hand.

"Certificate of Incorporation" shall have the meaning ascribed to it in Section 2.4.

"Certificate of Merger" shall have the meaning ascribed to it in Section 2.3.

"Claim" shall have the meaning ascribed to it in Section 7.8(a).

"Closing" shall have the meaning ascribed to it in Section 2.2.

"Closing Date" shall have the meaning ascribed to it in Section 2.2.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commonly Controlled Entity" shall have the meaning ascribed to it in Section 4.13(a).

"Company Balance Sheet Date" shall have the meaning ascribed to it in Section 4.6(c).

"Company Business Personnel" shall have the meaning ascribed to it in Section 4.12.

"Company Common Stock" shall mean the common stock, par value \$.01 per share, of the Company.

"Company Disclosure Schedule" shall have the meaning ascribed to it in the Introduction to Article IV.

"Company Effective Time" shall have the meaning ascribed to it in Section 2.3.

"Company Licenses" shall have the meaning ascribed to it in Section 4.11.

"Company Material Adverse Effect" shall have the meaning ascribed to it in Section 4.1.

"Company Merger" shall have the meaning ascribed to it in the Recitals.

"Company Plans" shall have the meaning ascribed to it in Section 4.13(a).

"Company Preferred Stock" shall mean the preferred stock, par value \$.01 per share, of the Company.

"Company Rule 145 Affiliates" shall have the meaning ascribed to it in Section 7.5.

"Company SEC Reports" shall have the meaning ascribed to it in Section 4.6(a).

"Company Stock Option Plans" shall mean The Coleman Company, Inc. 1996 Stock Option Plan, The Coleman Company, Inc. 1993 Stock Option Plan and The Coleman Company, Inc. 1992 Stock Option Plan.

"Competition Laws" shall mean foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other foreign Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, lessening of competition or restraint of trade.

"Contract" shall mean any note, bond, mortgage, indenture, license, contract, agreement or other instrument or obligation.

"Conversion Number" shall have the meaning ascribed to it in Section 3.1(a)(i).

"Credit Suisse First Boston" shall mean Credit Suisse First Boston Corporation, the Company's financial advisor.

"DGCL" shall mean the General Corporation Law of the State of Delaware.

"D&O Insurance" shall have the meaning ascribed to it in Section 7.8(c).

"Dissenting Shares" shall have the meaning ascribed to it in Section 3.8.

"Employee Stock Options" shall mean all employee and non-employee director stock options issued pursuant to the Company Stock Option Plans.

"Environmental Claim" shall mean any claim, action, investigation or written notice to the Company or any of its subsidiaries by any person or entity alleging potential liability (including, without limitation, potential liability for investigatory costs, cleanup costs, governmental response costs, natural resource damages, personal injuries, or penalties) arising out of, based on, or resulting from, (a) the presence, or release into the environment, of any Hazardous Substance at any location, whether or not owned or operated by the Company or any of its subsidiaries or (b) circumstances forming the basis of any violation, or alleged violation of any applicable Environmental Law.

"Environmental Laws" shall mean all federal, state, local and foreign Laws and regulations, as in effect and as interpreted as of the date of this Agreement, relating to pollution or protection of the environment, including, without limitation, Laws and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

"Environmental Permits" shall have the meaning ascribed to it in Section 4.14(a).

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

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"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Exchange Agent" shall have the meaning ascribed to it in Section 3.2(a).

"Exchange Fund" shall have the meaning ascribed to it in Section 3.2(a).

"Filed Company SEC Reports" shall have the meaning ascribed to it in Section 4.6(a).

"Filed Laser SEC Reports" shall have the meaning ascribed to it in Section 5.6(a).

"GAAP" shall mean United States generally accepted accounting principles and practices in effect from time to time, consistently applied.

"Governmental Entity" shall mean any court, arbitral tribunal, administrative agency or commission or other governmental or regulatory authority or agency.

"Hazardous Substance" shall mean all substances defined as Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. section 300.5, or defined as such by, or regulated as such under, any Environmental Law, including any radon, asbestos and oil and petroleum products, by-products and fractions.

"Holdings" shall have the meaning ascribed to it in the Recitals.

"Holdings Disclosure Schedule" shall mean the Disclosure Schedule being delivered by Holdings concurrently with the execution of the Agreement and Plan of Merger relating to the Holdings Merger.

"Holdings Effective Time" shall mean the date and time on which the Holdings Merger is effected.

"Holdings Merger" shall have the meaning ascribed to it in the Recitals.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"Information Statement" shall have the meaning ascribed to it in Section 4.9.

"Indemnified Person" shall have the meaning ascribed to it in Section 7.8(a).

"Intellectual Property" shall mean all domestic and foreign patents, patent applications, written invention disclosures to be filed or awaiting filing determinations, trademark and service mark applications, registered trademarks, registered service marks, registered copyrights, trademarks, service marks and trade names.

"Laser Balance Sheet Date" shall have the meaning ascribed to it in Section 5.6(c).

"Laser Common Stock" shall mean the common stock, par value \$.01 per share, of Laser.

"Laser Licenses" shall have the meaning ascribed to it in Section 5.11.

"Laser Material Adverse Effect" shall have the meaning ascribed to it in Section 5.1.

"Laser Preferred Stock" shall mean the preferred stock, par value \$.01 per share, of Laser.

"Laser SEC Reports" shall have the meaning ascribed to it in Section 5.6(a).

"Laser Shares" shall mean the shares of Laser Common Stock to be issued in the Company Merger.

"Laser Stock Option Plans" shall have the meaning ascribed to it in Section 5.2.

"Laser Stock Options" shall have the meaning ascribed to it in Section 5.2.

"Laws" shall mean any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree, administrative order or decree, administrative or judicial decision, and any other executive or legislative proclamation.

"Liens" shall mean all pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever.

"LYONs" shall mean the Liquid Yield Option™ Notes due 2013 of Worldwide.

"Merger Sub Common Stock" shall mean the common stock, par value \$.01 per share, of Merger Sub.

"Morgan Stanley" shall mean Morgan Stanley & Co. Incorporated, Laser's financial advisor.

"NYSE" shall mean the New York Stock Exchange, Inc.

"PBGC" shall mean the Pension Benefit Guaranty Corporation.

"Pension Plan" shall have the meaning ascribed to it in Section 4.13(a).

"Per Share Merger Consideration" shall have the meaning ascribed to it in Section 3.1(a)(i).

"Person" shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization.

"Plans" shall have the meaning ascribed to it in Section 7.7(e).

"Properties" shall have the meaning ascribed to it in Section 4.14(c).

"Registration Statement" shall have the meaning ascribed to it in Section 4.9.

"Release" shall mean any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including, without limitation, ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

"Schedule 13E-3" shall have the meaning ascribed to it in Section 4.9.

"Section 14(f) Notice" shall have the meaning ascribed to it in Section 4.9.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Subsidiary" shall mean, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other subsidiary of such party is a general partner or (ii) at least 50% of the securities or other interests having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization or at least 50% of the value of the outstanding equity is directly or indirectly owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"Surviving Corporation" shall have the meaning ascribed to it in Section 2.1.

"Tax" (and, with correlative meaning, "Taxes" and "Taxable") shall mean (i) any federal, state, local or foreign net income, gross income, receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any governmental authority; and (ii) any liability of Laser or any Laser subsidiary or the Company or any of its subsidiaries, as applicable, for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation of Laser or any Laser subsidiary or the Company or any of its subsidiaries, as the case may be, under any arrangement to share liability for taxes or indemnify any other entity or person for taxes.

"Tax Return" shall mean any return, report or statement required to be filed with respect to any Tax (including any attachments thereto), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

"Welfare Plan" shall have the meaning ascribed to it in Section 4.13(a).

"Worldwide" shall mean Coleman Worldwide Corporation, a Delaware corporation and a wholly owned subsidiary of Holdings.

ARTICLE II

THE COMPANY MERGER

Section 2.1 The Company. Upon the terms and subject to the conditions set forth herein, and in accordance with the DGCL, at the Company Effective Time, Merger Sub shall be merged with and into the Company. Following the Company Effective Time, the Company shall continue as the surviving corporation (the "Surviving Corporation"), and the separate corporate existence of Merger Sub shall cease. The Company Merger shall have the effects set forth in Section 259 of the DGCL.

Section 2.2 Closing. The closing of the Company Merger (the "Closing") will take place at 10:00 a.m. on a date to be specified by the parties (the "Closing Date"), which shall be no later than the third NYSE trading day after satisfaction or waiver of the conditions set forth in Section 8.1, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, unless another time, date or place is agreed to in writing by the parties hereto.

Section 2.3 Company Effective Time of the Company Merger. The Company Merger shall become effective on the date and at the time at which a properly executed certificate of merger (the "Certificate of Merger") is duly filed with the Secretary of State of the State of Delaware. The Certificate of Merger shall be filed as soon as practicable on or after the Closing Date. When used in this Agreement, the term "Company Effective Time" shall mean the date and time on which the Certificate of Merger is so filed.

Section 2.4 Certificate of Incorporation. From and after the Company Effective Time, the certificate of incorporation of the Company as in effect at the Company Effective Time (the "Certificate of Incorporation") shall be the certificate of incorporation of the Surviving Corporation until amended as provided by Law and the Certificate of Incorporation.

Section 2.5 By-Laws. From and after the Company Effective Time, the by-laws of Merger Sub as in effect at the Company Effective Time shall be the by-laws of the Surviving Corporation until amended as provided by the DGCL, the Certificate of Incorporation and the terms thereof.

Section 2.6 Directors. The directors of Merger Sub at the Company Effective Time shall be the initial directors of the Surviving Corporation and shall hold office from the Company Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation or as otherwise provided by the DGCL (it being understood that the directors of the Company shall resign upon the later of (i) the Holdings Effective Time and (ii) the eleventh (11th) day following the date on which the Section 14(f) Notice shall have been filed with the SEC and mailed to all stockholders of record of the Company in accordance herewith).

Section 2.7 Officers. The officers of the Company at the Company Effective Time shall be the initial officers of the Surviving Corporation and shall hold office from the Company Effective Time until their respective successors are duly elected or appointed and qualifies in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation, or as otherwise provided by Law.

ARTICLE III

CONVERSION OF SHARES

Section 3.1 Effect on Capital Stock. At the Company Effective Time, by virtue of the Company Merger and without any action on the part of any holder thereof:

(a) Conversion of Company Common Stock.

(i) Subject to Section 3.1(b) hereof, each share of Company Common Stock issued and outstanding immediately prior to the Company Effective Time (other than Dissenting Shares and Company Common Stock to be cancelled in accordance with Section 3.1(c) hereof) shall be converted into the right to receive (A) 0.5677 (the "Conversion Number") of a fully paid and nonassessable share of Laser Common Stock and (B) \$6.44 in cash, without interest thereon (the consideration

referred to in this Section 3.1(a) being sometimes referred to herein as the "Per Share Merger Consideration").

(ii) If, prior to the Company Effective Time, Laser shall (A) pay a dividend in, subdivide, combine into a smaller number of shares or issue by reclassification of its shares, any shares of Laser Common Stock, the Conversion Number shall be adjusted appropriately or (B) pay a dividend (other than regular quarterly dividend payments, consistent with past practice), whether in cash or property, the amount of the cash portion of the Per Share Merger Consideration shall be appropriately adjusted such that the amount of cash to be received with respect to each share of Company Common Stock, or if a dividend shall have been paid in other property, cash and other property to be received with respect to each share of Company Common Stock, shall be equal to that which would have been received in the aggregate with respect to each share of Company Common Stock (on a per share equivalent basis) had the dividend been paid following the Company Effective Time at a time when the Laser Shares to be issued pursuant hereto had been issued to the holders of the shares of Company Common Stock.

(iii) Each of the shares of Company Common Stock converted in accordance with paragraph (i) of this Section 3.1(a) shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate representing any such shares of Company Common Stock shall cease to have any rights with respect thereto, except the right to receive the Per Share Merger Consideration and cash in lieu of any fractional share of Laser Common Stock (determined in accordance with Section 3.4 hereof), to be issued or paid in consideration therefor upon the surrender of such certificate in accordance with Section 3.2 hereof, without interest.

(b) Company Common Stock Held by Worldwide or Holdings to Remain Outstanding. Notwithstanding Section 3.1(a) hereof, at the Company Effective Time all shares of Company Common Stock held by Worldwide or Holdings shall remain outstanding and unchanged as a result of the Company Merger.

(c) Cancellation of Treasury Stock and Company Common Stock Held by Laser and Company Subsidiaries. Each share of Company Common Stock, if any, held in the treasury of the Company, by any subsidiary of the Company, by Laser or by any subsidiary of Laser (other than Worldwide or Holdings) immediately prior to the Company Effective Time shall be cancelled and retired and cease to exist.

(d) Cancellation of Merger Sub Common Stock. Each share of Merger Sub Common Stock issued and outstanding immediately prior to the Company Effective Time shall be cancelled and retired and cease to exist.

Section 3.2 Exchange of Certificates Representing Shares.

(a) As of the Company Effective Time, Laser shall deposit, or shall cause to be deposited, with an exchange agent selected by Laser and reasonably satisfactory to the Company (the "Exchange Agent"), for the benefit of the holders of shares of Company Common Stock, for exchange in accordance with this Article III: (i) certificates representing the number of Laser Shares issuable in the Company Merger to be issued in respect of all shares of Company Common Stock outstanding immediately prior to the Company Effective Time and which are to be exchanged pursuant to the Company Merger (exclusive of shares to remain outstanding pursuant to Section 3.1(b) hereof or to be canceled pursuant to Section 3.1(c) hereof); and (ii) cash in an amount sufficient to make any cash payment due under Sections 3.1(a)(i)(B) and 3.4 hereof (such cash and certificates for Laser Shares being hereinafter referred to collectively as the "Exchange Fund").

(b) As soon as reasonably practicable after the Company Effective Time, Laser shall cause the Exchange Agent to mail (or deliver to its principal office) to each holder of record of a certificate or certificates representing shares of Company Common Stock (i) a letter of transmittal which shall specify that delivery shall be effected, and risk of loss and title to the certificates for shares of Company Common Stock shall pass, only upon delivery of the certificates for such shares of Company Common Stock to the Exchange Agent and which shall be in such form and have such other provisions, including appropriate provisions with respect to back-up withholding, as Laser may reasonably specify, and (ii) instructions for use in effecting the surrender of the certificates for shares of Company Common Stock. Upon surrender of a

certificate for shares of Company Common Stock for cancellation to the Exchange Agent, together with such letter of transmittal, duly executed and completed in accordance with the instructions thereto, the holder thereof shall be entitled to receive in exchange therefor that portion of the Exchange Fund which such holder has the right to receive pursuant to the provisions of this Article III, after giving effect to any required withholding Tax, and the certificate for shares of Company Common Stock so surrendered shall forthwith be cancelled. No interest will be paid or accrued on the cash portion of the Exchange Fund. In the event of any transfer of ownership of shares of Company Common Stock which has not been registered in the transfer records of the Company, certificates representing the proper number of shares of Laser Common Stock, if any, and a check in an amount equal to the proper amount of the cash component, if any, of the Exchange Fund, will be issued to the transferee of the certificate representing the transferred shares of Company Common Stock, only upon presentation to the Exchange Agent of a certificate or certificates representing such shares of Company Common Stock, accompanied by all documents required to evidence and effect the prior transfer thereof and to evidence that any applicable stock transfer Taxes associated with such transfer were paid.

Section 3.3 Dividends; Transfer Taxes. No dividends that are declared on Laser Common Stock will be paid to persons entitled to receive certificates representing shares of Laser Common Stock until such persons surrender their certificates representing shares of Company Common Stock. Upon such surrender, there shall be paid to the person in whose name the certificates representing such shares of Laser Common Stock shall be issued, any dividends which shall have become payable with respect to such shares of Laser Common Stock between the Company Effective Time and the time of such surrender. In no event shall the person entitled to receive such dividends be entitled to receive interest on such dividends. If any certificates for any shares of Laser Common Stock are to be issued in a name other than that in which the certificate representing shares of Company Common Stock surrendered in exchange therefor is registered, it shall be a condition of such exchange that the person requesting such exchange shall pay to the Exchange Agent any transfer or other Taxes required by reason of the issuance of certificates for such shares of Laser Common Stock in a name other than that of the registered holder of the certificate surrendered or shall establish to the satisfaction of the Exchange Agent that such Tax has been paid or is not applicable. Notwithstanding the foregoing, (i) neither the Exchange Agent nor any party hereto shall be liable to a holder of shares of Company Common Stock for any shares of Laser Common Stock or dividends thereon, any cash payments to be made pursuant to Section 3.1(a)(i)(B) hereof or, in accordance with Section 3.4 hereof, any cash in lieu of fractional share interests, in each case, delivered to a public official pursuant to applicable escheat Laws and (ii) any shares of Laser Common Stock held by the Exchange Agent prior to surrender of certificates representing shares of Company Common Stock shall not be deemed issued.

Section 3.4 No Fractional Shares. No certificates or scrip representing fractional shares of Laser Common Stock shall be issued upon the surrender for exchange of certificates representing shares of Company Common Stock pursuant to this Article III, and no dividend, stock split or other change in the capital structure of Laser shall relate to any fractional security, and such fractional interests shall not entitle the owner thereof to vote or to any rights of a security holder. In lieu of any such fractional shares of Laser Common Stock, each holder of shares of Company Common Stock who would otherwise have been entitled to a fraction of a share of Laser Common Stock upon surrender of stock certificates for exchange pursuant to this Article III will be paid cash upon such surrender in an amount equal to the product of such fraction multiplied by the closing sale price of one share of Laser Common Stock on the NYSE on the day of the Company Effective Time, or, if shares of Laser Common Stock are not so traded on such day, the closing sale price of one such share on the next preceding day on which such share was traded on the NYSE. For purposes of this Section 3.4, shares of Company Common Stock of any holder represented by two or more certificates shall be aggregated, and in no event shall any holder be paid an amount of cash pursuant to this Section 3.4 in respect of more than one share of Laser Common Stock.

Section 3.5 Termination of Exchange Fund. Any portion of the Exchange Fund which remains undistributed to the holders of the Company Common Stock for six (6) months after the Company Effective Time shall be delivered to Laser, upon demand, and any holders of the Company Common Stock who have not theretofore complied with this Article III shall thereafter look only to Laser for payment of their claim for the shares of Laser Common Stock and cash and dividends or other distributions, if any, pursuant to this Article III.

Section 3.6 Investment of Exchange Fund. Without prejudice to the rights of any holder of Company Common Stock to receive the Per Share Merger Consideration, the Exchange Agent shall invest any cash

included in the Exchange Fund, as directed by Laser, on a daily basis. Any interest and other income resulting from such investments shall be paid to Laser.

Section 3.7 Closing of Company Transfer Books. At the Company Effective Time, the stock transfer books of the Company shall be closed and no transfer of shares of Company Common Stock shall thereafter be made. If, after the Company Effective Time, certificates representing shares of Company Common Stock are presented to the Surviving Corporation, they shall be cancelled and exchanged for the Per Share Merger Consideration applicable thereto.

Section 3.8 Dissenting Shares. Each outstanding share of Company Common Stock as to which a written demand for appraisal is filed in accordance with Section 262 of the DGCL and not withdrawn, and with respect to which a consent is not given in favor of the Company Merger shall not be converted into or represent a right to receive the Per Share Merger Consideration unless and until the holder thereof shall have failed to perfect, or shall have effectively withdrawn or lost, the right to appraisal of and payment for each such share of Company Common Stock under Section 262, at which time each such share shall be converted into the right to receive the Per Share Merger Consideration. All such shares of Company Common Stock as to which such a written demand for appraisal is so filed and not withdrawn and with respect to which a consent is not given in favor of the Company Merger, except any such shares of Company Common Stock the holder of which, prior to the Company Effective Time, shall have effectively withdrawn or lost such right to appraisal and payment for such shares of Company Common Stock under Section 262, are herein referred to as "Dissenting Shares." The Company shall give Laser prompt notice upon receipt by the Company of any written demands for appraisal rights, withdrawal of such demands, and any other written communications delivered to the Company pursuant to Section 262, and the Company shall give Laser the opportunity, to the extent permitted by Law, to participate in all negotiations and proceedings with respect to such demands. Except with the prior written consent of Laser, the Company shall not voluntarily make any payment with respect to any demands for appraisal rights and shall not settle or offer to settle any such demands. Each holder of Dissenting Shares who becomes entitled, pursuant to the provisions of Section 262, to payment for such shares of Dissenting Shares under the provisions of Section 262 shall receive payment therefor from the Surviving Corporation and such shares of Company Common Stock shall be cancelled thereafter.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as otherwise disclosed to Laser in a schedule delivered to Laser prior to the execution hereof (which schedule shall contain appropriate references to identify the representations and warranties herein to which the information in such schedule relates) (the "Company Disclosure Schedule"), the Company represents and warrants to Laser and Merger Sub as follows:

Section 4.1 Organization. The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted. The Company is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a material adverse effect on the business, results of operations or financial condition of the Company and its subsidiaries, taken as a whole (a "Company Material Adverse Effect").

Section 4.2 Capitalization. The authorized capital stock of the Company consists of 80,000,000 shares of Company Common Stock and 20,000,000 shares of Company Preferred Stock. As of February 23, 1998, (i) 53,488,170 shares of Company Common Stock were issued and outstanding; (ii) 3,282,930 shares of Company Common Stock were issuable upon exercise of Employee Stock Options to acquire 3,282,930 shares of Company Common Stock outstanding under the Company Stock Option Plans (of which options to acquire 2,399,380 were vested); and (iii) no shares of Company Preferred Stock were issued or outstanding. As of such date, no shares of Company Common Stock were held as treasury shares. All of the issued and outstanding shares of Company Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. As of the date hereof, except as set forth above, there are no shares of capital stock of the Company issued or outstanding or any

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options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating the Company to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities. There are no notes, bonds, debentures or other indebtedness of the Company having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of the Company may vote.

Section 4.3 Subsidiaries. All the outstanding shares of capital stock of, or other ownership interests in, each of the Company's subsidiaries have been validly issued and are fully paid and nonassessable and such shares (other than directors' qualifying shares and similar interests) are owned directly or indirectly by the Company, free and clear of all Liens. Except for the capital stock of the Company's subsidiaries and except as set forth in Section 4.3 of the Company Disclosure Schedule, the Company does not own, directly or indirectly, any capital stock or other ownership interest in any corporation, partnership, limited liability company, joint venture or other entity. Each of the Company's subsidiaries that is a corporation is a corporation duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation. Each of the Company's subsidiaries that is a partnership or a limited liability company is duly formed and validly existing under the Laws of its jurisdiction of formation. Each of the Company's subsidiaries has the corporate power or the partnership power, as the case may be, to carry on its business as it is now being conducted or presently proposed to be conducted. Each of the Company's subsidiaries that is a corporation is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a Company Material Adverse Effect. Each of the Company's subsidiaries that is a partnership is duly qualified as a foreign partnership authorized to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a Company Material Adverse Effect. Except as set forth in Section 4.2 hereof, there are no outstanding options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating the Company or any of its subsidiaries to issue, transfer or sell any securities of any Company subsidiary. There are no voting, stockholder or other agreements or understandings to which the Company or any of the Company's subsidiaries is a party or is bound with respect to the voting of the capital stock of the Company or any of the Company's subsidiaries.

Section 4.4 Authority Relative to this Agreement. The Company has the corporate power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly authorized by the Board of Directors of the Company, and no other corporate actions or proceedings on the part of the Company (including any action on the part of its stockholders) are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization and valid execution and delivery by Laser and Merger Sub, constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and to general principles of equity.

Section 4.5 Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws and state securities or blue sky Laws, and the filing and recordation of the Certificate of Merger as required by the DGCL, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by the Company of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not individually or in the aggregate have a Company Material Adverse Effect. Except as set forth in Section 4.5 of the Company Disclosure Schedule, neither the execution and delivery of this Agreement by the Company, nor the consummation by the Company of the transactions contemplated hereby, nor compliance by the Company with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of the Company or the certificate of incorporation or by-laws of any of the Company's subsidiaries; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or

both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material (as defined for purposes of Form 10-K) Contract to which the Company or any of the Company's subsidiaries is a party or by which any of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company, any of the Company's subsidiaries or any of their properties or assets, except in the case of clauses (b) and (c) for violations, breaches or defaults which would not individually or in the aggregate have a Company Material Adverse Effect.

Section 4.6 Reports and Financial Statements.

(a) The Company has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Company SEC Reports"). As of their respective dates, the Company SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Company SEC Report has been amended, revised or superseded by a later Company SEC Report filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by a later Company SEC Report filed and publicly available prior to the date of this Agreement, the "Filed Company SEC Reports"), none of the Filed Company SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements of the Company included in the Filed Company SEC Reports complied as to form in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto have been prepared in accordance with GAAP (except, in the case of the unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present the consolidated financial position of the Company and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(c) Except as set forth in the Filed Company SEC Reports and except for liabilities and obligations incurred in the ordinary course of business consistent with past practice since the date of the most recent consolidated balance sheet included in the Filed Company SEC Reports (the "Company Balance Sheet Date"), neither the Company nor any of its subsidiaries has any material liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be recognized or disclosed on a consolidated balance sheet of the Company and its consolidated subsidiaries or in the notes thereto.

Section 4.7 Absence of Certain Changes or Events. Except as set forth in the Filed Company SEC Reports, since the Company Balance Sheet Date, the business of the Company and its subsidiaries has been conducted only in the ordinary course of business consistent with past practice, and there has not been any event, change or development which individually or in the aggregate has had or would reasonably be expected to have a Company Material Adverse Effect or would impair or delay the ability of the Company to consummate the transactions contemplated by, or to satisfy its obligations under, this Agreement. Except as set forth in Section 4.7 of the Company Disclosure Schedule, during the period from the Company Balance Sheet Date through the date of this Agreement, neither the Company nor any of its subsidiaries has:

(i) declared, set aside or paid any distributions (whether in cash, stock or property) with respect to its capital stock or (y) split, combined, or reclassified any of its capital stock or issued or authorized the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock (other than dividends or stock issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(ii) issued, delivered, sold, pledged or otherwise encumbered any shares of its capital stock, any other voting securities or any securities convertible into, or any options, warrants or rights to acquire, any such shares, voting securities or convertible securities (other than the issuance of Company

Common Stock upon the exercise of Employee Stock Options in accordance with their terms and issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(iii) in the case of the Company, amended its certificate of incorporation or by-laws;

(iv) acquired or agreed to acquire by merging or consolidating with, or in purchasing a substantial portion of the assets of, or in any other manner, any business or any corporation, limited liability company, partnership, association or other business organization or division thereof material to the Company;

(v) other than in the ordinary course of business, (x) incurred any indebtedness or (y) made any loans, advances or capital contributions to, or investments in, any other person (other than the Company or a subsidiary of the Company), in any case in an amount material to the Company;

(vi) other than in the ordinary course of business or consistent with the Company's capital budgets heretofore disclosed to Laser, made or agreed to make any capital expenditure or capital expenditures;

(vii) other than in the ordinary course of business, made any Tax election or settled or compromised any material income Tax liability;

(viii) except in the ordinary course of business or except as would not reasonably be expected to have a Company Material Adverse Effect, entered into any Contracts or amended or terminated any material Contract or agreement to which the Company or any of its subsidiaries is a party or waived, released or assigned any material rights or claims thereunder;

(ix) except as required by Law or contractual obligation or in the ordinary course of business consistent with past practice, (a) increased the compensation of any of its employees, (b) entered into any Contract with any of its employees regarding his or her employment, compensation or benefits, or (c) adopted any plan, arrangement or policy which would become a Company Plan or amended any Company Plan to the extent such adoption or amendment would create or increase any material liability or obligation on the part of the Company or its subsidiaries;

(x) entered into any transaction or Contract with, or (except pursuant to the Affiliate Agreements) made any payment to, any Affiliate of the Company (other than to the Company's subsidiaries or its or their officers or directors in the ordinary course of business consistent with past practice); or

(xi) agreed to do any of the foregoing.

Section 4.8 Litigation. Except as disclosed in the Filed Company SEC Reports and as set forth in Section 4.8 of the Company Disclosure Schedule, as of the date hereof, to the Company's knowledge there is no suit, action, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its subsidiaries that individually or in the aggregate would reasonably be expected to (i) have a Company Material Adverse Effect (taking into account any reserve therefor as of the Company Balance Sheet Date), or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement, nor is there any judgment, order, decree, statute, Law, ordinance, rule or regulation of any Governmental Entity or arbitrator outstanding against the Company or any of its subsidiaries having, or which would reasonably be expected to have, any effect referred to in clause (i) or (ii) above.

Section 4.9 Information in Disclosure Documents and Registration Statement. None of the information to be supplied by the Company for inclusion or incorporation by reference in the information statement to be distributed in connection with the Company Merger (as amended or supplemented, the "Information Statement") or the related filing on Schedule 13E-3 (as amended or supplemented, the "Schedule 13E-3") or the notice to be provided to the Company's stockholders pursuant to Section 14(f) of the Exchange Act (as amended or supplemented, the "Section 14(f) Notice") or the registration statement on Form S-4 under the Securities Act for the purpose of registering the shares of Laser Common Stock to be issued in the Company Merger (as amended or supplemented, the "Registration Statement") will, in the case of the Registration

Statement, at the time it becomes effective and at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or, in the case of the Information Statement, the Schedule 13E-3, the Section 14(f) Notice, at the time of the mailing thereof and, in the case of the Information Statement, the Schedule 13E-3 at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Information Statement, the Schedule 13E-3 and the Section 14(f) Notice will comply as to form in all material respects with the provisions of the Exchange Act, and the rules and regulations promulgated thereunder.

Section 4.10 Taxes. Except as would not have a Company Material Adverse Effect or as set forth in Section 4.10 of the Company Disclosure Schedule:

(a) Each of the Company and each of its subsidiaries has (i) filed (or there has been filed on its behalf) with the appropriate Governmental Entities all Tax Returns required to be filed by it, and all such Tax Returns are true, correct and complete and (ii) has paid all Taxes due by it;

(b) there is no action, suit, investigation, audit, claim or assessment pending or proposed in writing or threatened in writing with respect to Taxes of the Company or any of its subsidiaries and, to the best of the Company's knowledge, no basis exists therefor;

(c) there are no Liens for Taxes upon the assets of the Company or any of its subsidiaries except Liens relating to current Taxes not yet due;

(d) the United States federal income Tax Returns which include the Company and the Company's subsidiaries have been examined, and such examinations have been completed, by the Internal Revenue Service (or the applicable statutes of limitation for the assessment of federal income Taxes for such periods have expired) for all periods through and including 1985.

Section 4.11 Compliance with Applicable Law. Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries have received such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances from appropriate Governmental Entities (the "Company Licenses") as are necessary to own or lease and operate their respective properties and to conduct their respective businesses substantially in the manner described in the Company SEC Reports and as currently owned or leased and conducted, and all such Company Licenses are valid and in full force and effect, except for any such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances which the failure to have or to be in full force and effect would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as disclosed in Filed Company SEC Reports, the Company and the Company's subsidiaries are in compliance with their respective obligations under the Company Licenses, with only such exceptions as, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect. Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries are in compliance with all judgments, orders, decrees, statutes, Laws, ordinances, rules and regulations of any Governmental Entity applicable to them, except for such noncompliance which individually or in the aggregate would not have a Company Material Adverse Effect.

Section 4.12 Labor Matters. Except as disclosed in the Filed Company SEC Reports, neither the Company nor any of the Company's subsidiaries has any labor contracts, collective bargaining agreements or material employment or consulting agreements with any persons employed by or otherwise performing services primarily for the Company or any of the Company's subsidiaries (the "Company Business Personnel") or any representative of any Company Business Personnel. Except as set forth in the Filed Company SEC Reports, neither the Company nor any of its subsidiaries has engaged in any unfair labor practice with respect to Company Business Personnel, and there is no unfair labor practice complaint pending against the Company or any of its subsidiaries with respect to Company Business Personnel which, in either such case, would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as set forth in the Filed Company SEC Reports, there is no material labor strike, dispute, slowdown or stoppage pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries, and neither the Company

nor any of its subsidiaries has experienced any material primary work stoppage or other material labor difficulty involving its employees during the last three (3) years.

Section 4.13 ERISA Compliance.

(a) The Company has delivered to Laser or will deliver to Laser prior to the Company Effective Time each "employee pension benefit plan" (as defined in Section 3(2) of ERISA) (a "Pension Plan"), each "employee welfare benefit plan" (as defined in Section 3(1) of ERISA) (a "Welfare Plan"), each material bonus, stock option, stock purchase, stock ownership, stock bonus, restricted stock, deferred compensation plan or arrangement and each other material employee fringe benefit plan or arrangement maintained, contributed to or required to be maintained or contributed to by the Company or any of its subsidiaries or any other person or entity that, together with the Company, is or was treated as a single employer under Section 414(b), (c), (m) or (o) of the Code (each, a "Commonly Controlled Entity") which is currently in effect for the benefit of any current or former directors, officers, employees or independent contractors of the Company or any of its subsidiaries (collectively, the "Company Plans"). The Company has delivered to Laser or will deliver to Laser prior to the Company Effective Time true, complete and correct copies of (x) the two most recent annual reports on Form 5500 filed with the Internal Revenue Service with respect to each Company Plan (if any such report was required), (y) the most recent summary plan description for each Company Plan for which such summary plan description is required and (z) each currently effective trust agreement, insurance or group annuity contract and each other material funding or financing arrangement relating to any Company Plan.

(b) No Commonly Controlled Entity has incurred any liability under Title IV of ERISA, other than for contributions not yet due to a defined benefit pension plan subject to Title IV of ERISA and other than for the payment of premiums to the PBGC not yet due, and no condition exists that presents a material risk of incurring any such liability, which liability, to the extent currently due, has not been fully paid as of the date hereof and would individually or in the aggregate be reasonably likely to result in a Company Material Adverse Effect.

(c) Except as set forth in Company SEC reports or in Section 4.13 of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries has any obligation to provide any welfare benefits to employees or former employees following termination of employment except (i) for benefits the cost of which is borne entirely by the employee or former employee, (ii) as required under Section 4980 of the Code or other applicable law or (iii) obligations to provide such benefits to Company employees employed in non-U.S. jurisdictions.

(d) No Commonly Controlled Entity has engaged in a transaction described in Section 4069 of ERISA that could subject the Company or any of its subsidiaries or Laser to liability at any time after the date hereof, which liability would be reasonably likely to result in a Company Material Adverse Effect.

(e) No Commonly Controlled Entity has withdrawn from any multiemployer plan where such withdrawal has resulted in any actual or potential "withdrawal liability" (as defined in Section 4201 of ERISA) that has not been fully paid, which liability would be reasonably likely to result in a Company Material Adverse Effect.

(f) Except as set forth in Section 4.13 of the Company Disclosure Schedule or as specifically provided in this Agreement, the transactions contemplated by this Agreement will not, either alone or in connection with another event, cause there to be paid or become payable any additional benefits or any acceleration of the time of payment or vesting of any benefits under any Company Plan or under any employment, severance, termination or compensation agreement to which the Company is a party as of the Company Effective Time.

Section 4.14 Environmental Matters.

(a) Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries are in compliance with all applicable Environmental Laws, which compliance includes the possession of permits and governmental authorizations required under applicable Environmental Laws ("Environmental

Permits') and compliance with the terms and conditions thereof, except where such non-compliance would not result in a Company Material Adverse Effect.

(b) Except as disclosed in the Filed Company SEC Reports, there are no Environmental Claims pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries that would reasonably be expected to result in a Company Material Adverse Effect.

(c) Except as disclosed in the Filed Company SEC Reports, the properties presently or to the knowledge of the Company formerly owned, leased or operated by the Company or its subsidiaries (including groundwater under the properties) (the "Properties") do not contain any Hazardous Substance other than as permitted under applicable Environmental Law; provided, however, that with respect to Properties formerly owned, leased or operated by the Company or its subsidiaries, such representation is limited to the period prior to the disposition of such Properties by the Company or its subsidiaries.

(d) Except as disclosed in the Filed Company SEC Reports, to the knowledge of the Company, no Hazardous Substance has been disposed of or transported from any of the Properties during the time any such Property was owned, leased or operated by the Company or any of its subsidiaries, other than as permitted under applicable Environmental Law and in effect at the time of such disposal or transportation.

(e) Except as disclosed in the Filed Company SEC Reports, to the knowledge of the Company, the Company and its subsidiaries have not become obligated, whether by operation of Law or through contractual agreement, to indemnify any other person or otherwise to assume liability for any claim brought pursuant to any Environmental Law which could reasonably be expected to have a Company Material Adverse Effect.

Section 4.15 Intellectual Property. The Company has previously delivered to Laser a list, which, to the knowledge of the Company, is true and correct as of the date hereof in all material respects, of all material issued patents and registered trademarks of the Company. Except as set forth in Section 4.15 of the Company Disclosure Schedule, the Company and its subsidiaries own or have sufficient rights to use all material Intellectual Property used in connection with the business of the Company and its subsidiaries as currently conducted. As used in this Section 4.15, the term "material," when applied to Intellectual Property, means that such Intellectual Property is used in a significant manner to conduct the business of the Company and its subsidiaries as it is currently conducted.

Section 4.16 Contracts. Except as set forth in Section 4.16 of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries is a party to or bound by any material Contract, other than (i) the Affiliate Agreements listed in Section 4.10 of the Holdings Disclosure Schedule, (ii) any Contract filed or incorporated by reference as an exhibit to any Filed Company SEC Report or (iii) any Contract (other than the Affiliate Agreements listed in Section 4.10 of the Holdings Disclosure Schedule) entered into in the ordinary course of business consistent with past practice.

Section 4.17 Opinion of Financial Advisor. The Board of Directors of the Company has received the opinion of Credit Suisse First Boston, dated the date hereof to the effect that the Per Share Merger Consideration is fair to the holders of shares of Company Common Stock (other than Worldwide) from a financial point of view.

Section 4.18 Takeover Statute. The Board of Directors of the Company has approved the Holdings Merger solely for the purpose of rendering inapplicable, and such approval is sufficient to render inapplicable, to the Company Merger and the other transactions contemplated by this Agreement the provisions of Section 203 of the DGCL. To the best of the Company's knowledge, no other state takeover statute or similar statute or regulation applies or purports to apply to the Company Merger, this Agreement or any of the transactions contemplated hereby, and no provision of the certificate of incorporation or by-laws of the Company or certificates of incorporation or by-laws (or comparable organizational documents) of any subsidiary of the Company would, directly or indirectly, restrict or impair the ability of Laser to vote, or otherwise to exercise the rights of a stockholder with respect to, shares of capital stock of the Company or any of its subsidiaries that may be acquired or controlled by Laser.

Section 4.19 Brokers. No broker, investment banker or other person, other than Credit Suisse First Boston, the fees and expenses of which will be paid by the Company (as reflected in an agreement between Credit Suisse First Boston and the Company, a copy of which has been furnished to Laser), is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF LASER
AND MERGER SUB

Laser and Merger Sub represent and warrant to the Company as follows:

Section 5.1 Organization. Laser is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted. Laser is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a material adverse effect on the business, results of operations or financial condition of Laser and its subsidiaries, taken as a whole (a "Laser Material Adverse Effect").

Section 5.2 Capitalization. The authorized capital stock of Laser consists of 200,000,000 shares of Laser Common Stock, and 2,000,000 shares of Laser Preferred Stock. As of February 23, 1998, (i) 85,988,627 shares of Laser Common Stock were issued and outstanding; (ii) 16,129,197 shares of Laser Common Stock were issuable upon exercise of employee and non-employee stock options (the "Laser Stock Options") outstanding under all stock option plans of Laser (the "Laser Stock Option Plans") or granted pursuant to employment agreements; and (iii) no shares of Laser Preferred Stock were issued and outstanding. As of such date, 4,568,959 shares of Laser Common Stock were held as treasury shares. All of the issued and outstanding shares of Laser Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. All of the shares of Laser Common Stock issuable as consideration in the Company Merger at the Company Effective Time in accordance with this Agreement will be, when so issued, duly authorized, validly issued, fully paid and nonassessable and free of preemptive rights. As of such date, except as set forth above, there are no shares of capital stock of Laser issued or outstanding or, as of such date or as of the date hereof, except as set forth above, any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Laser to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities, or the capital stock or securities of Laser. There are no notes, bonds, debentures or other indebtedness of Laser having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of Laser may vote.

Section 5.3 Merger Sub. Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Merger Sub is a newly incorporated company formed solely for purposes of consummating the transactions contemplated by this Agreement and has engaged in no activity other than as provided in, or contemplated by, this Agreement. The authorized capital stock of Merger Sub consists of 1,000 shares of Merger Sub Common Stock, all of which are validly issued, fully paid and nonassessable and are owned by Laser. Except as set forth above there are no shares of capital stock of Merger Sub issued or outstanding or any options, warrants, subscription, calls, rights, convertible securities or other

agreements or commitments obligating Merger Sub to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

Section 5.4 Authority Relative to this Agreement. Each of Laser and Merger Sub has the corporate power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Laser and Merger Sub and the consummation by Laser and Merger Sub of the transactions contemplated hereby have been duly authorized by the Boards of Directors of Laser and Merger Sub, and no other corporate action or proceedings on the part of Laser or Merger Sub (including any action on the part of its stockholders) is necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by Laser and Merger Sub and, assuming it is a valid and binding obligation of the Company, constitutes a valid and binding agreement of Laser and Merger Sub, enforceable against Laser and Merger Sub in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and other forms of equitable relief may be subject to equitable defenses and the discretion of the court before which any proceedings therefor may be brought.

Section 5.5 Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws, and state securities or blue sky Laws, and the filing of the Certificate of Merger in such form as required by, and executed in accordance with the relevant provisions of, the DGCL, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Laser or Merger Sub of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not (i) individually or in the aggregate have a Laser Material Adverse Effect or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement. Neither the execution and delivery of this Agreement by Laser or Merger Sub nor the consummation by Laser or Merger Sub of the transactions contemplated hereby, nor compliance by Laser with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Laser or Merger Sub; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material (as defined for purposes of Form 10-K) Contract to which Laser, Merger Sub or any of their subsidiaries is a party or by which any of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Laser, Merger Sub, any of their subsidiaries or any of their properties or assets, except, in the case of clauses (b) and (c), for violations, breaches or defaults which would not individually or in the aggregate have a Laser Material Adverse Effect.

Section 5.6 Reports and Financial Statements

(a) Laser has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Laser SEC Reports"). As of their respective dates, the Laser SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Laser SEC Report has been amended, revised or superseded by a later Laser SEC Report filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by a later filed Laser SEC Report to the date of this Agreement, the "Filed Laser SEC Reports"), none of the Filed Laser SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements of Laser included in the Filed Laser SEC Reports complied as to form in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except, in the case of the unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present the consolidated financial position of Laser and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(c) Except as set forth in the Filed Laser SEC Reports and except for liabilities and obligations incurred in the ordinary course of business consistent with past practice since the date of the most recent consolidated balance sheet included in the Filed Laser SEC Reports (the "Laser Balance Sheet Date"), neither Laser nor any of the Laser subsidiaries has any material liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be recognized or disclosed on a consolidated balance sheet of Laser and its consolidated subsidiaries or in the notes thereto.

Section 5.7 Absence of Certain Changes or Events. Except as set forth in the Filed Laser SEC Reports, since the Laser Balance Sheet Date, the business of Laser and its subsidiaries has been conducted only in the ordinary course of business consistent with past practice, and there has not been any event, change or development which individually or in the aggregate has had or would reasonably be expected to have a Laser Material Adverse Effect or would impair or delay the ability of Laser to consummate the transactions contemplated by, or to satisfy its obligations under, this Agreement.

Section 5.8 Litigation. Except as disclosed in the Filed Laser SEC Reports, there is no suit, action, proceeding or investigation pending or, to the knowledge of Laser, threatened against or affecting Laser or any of its subsidiaries that individually or in the aggregate would reasonably be expected to (i) have a Laser Material Adverse Effect (taking into account any reserve therefor as of the most recent balance sheet included in the Filed Laser SEC Reports) or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement, nor is there any judgment, order, decree, statute, Law, ordinance, rule or regulation of any Governmental Entity or arbitrator outstanding against Laser or any of its subsidiaries having, or which would reasonably be expected to have, any effect referred to in clause (i) or (ii) above.

Section 5.9 Information in Disclosure Documents and Registration Statement. None of the information to be supplied by Laser for inclusion or incorporation by reference in (a) the Registration Statement or (b) the Information Statement, the Schedule 13E-3 or the Section 14(f) Notice will, in the case of the Registration Statement, at the time it becomes effective and at the Company Effective Time contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or, in the case of the Information Statement, the Schedule 13E-3 and the Section 14(f) Notice, at the time of the mailing thereof and, in the case of the Information Statement and the Schedule 13E-3, at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Registration Statement will comply as to form in all material respects with the provisions of the Securities Act and the rules and regulations promulgated thereunder. The Schedule 13E-3 will comply as to form in all material respects with the provisions of the Exchange Act and the rules and regulations promulgated thereunder.

Section 5.10 Taxes.

(a) Laser and its subsidiaries have filed (or there have been filed on their behalf) with the appropriate governmental authorities all material Tax Returns required to be filed by them and such Tax Returns are true, correct and complete in all material respects and disclose all Taxes required to be paid by them for the periods covered thereby; and

(b) all material Taxes (whether or not shown on any Tax Return) owed by Laser and its subsidiaries and required to be paid on or before the Closing Date have been (or will be) timely paid or, in the case of Taxes which Laser or any of its subsidiaries is presently contesting in good faith, an adequate reserve has been established for such Taxes in accordance with GAAP.

Section 5.11 Compliance with Applicable Law. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries have received such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances from appropriate Governmental Entities (the "Laser Licenses") as are necessary to own or lease and operate their respective properties and to conduct their respective businesses substantially in the manner described in the Laser SEC Reports and as currently owned or leased and conducted, and all such Laser Licenses are valid and in full force and effect, except for any such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances which the failure to have or to be in full force and effect would not reasonably be expected to have, individually or in the aggregate, a Laser Material Adverse Effect. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries are in compliance in all material respects with their respective obligations under the Laser Licenses, with only such

exceptions as, individually or in the aggregate, would not reasonably be expected to have a Laser Material Adverse Effect. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries are in compliance with all judgments, orders, decrees, statutes, Laws, ordinances, rules and regulations of any Governmental Entity applicable to them, except for such noncompliance which individually or in the aggregate would not have a Laser Material Adverse Effect.

Section 5.12 Brokers. No broker, investment banker or other person, other than Morgan Stanley, the fees and expenses of which will be paid by Laser (as reflected in an agreement between Morgan Stanley and Laser) is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Laser.

ARTICLE VI

COVENANTS RELATING TO CONDUCT OF BUSINESS

Section 6.1 Conduct of Business by the Company. During the period from the date of this Agreement to the Holdings Effective Time, except as expressly permitted by this Agreement or with the prior written consent of Laser or as set forth in Section 6.1 of the Company Disclosure Schedule, the Company shall, and shall cause its subsidiaries to, carry on the business of the Company and its subsidiaries in the usual, regular and ordinary course in substantially the same manner as heretofore conducted and in compliance in all material respects with all applicable Laws and regulations and, to the extent consistent therewith, use all reasonable efforts to preserve intact the current business organizations of the Company and its subsidiaries, and to preserve its relationships with those persons having business dealings with the Company and its subsidiaries to the end that the goodwill and ongoing businesses of the Company and its subsidiaries shall be unimpaired at the Holdings Effective Time. Without limiting the generality of the foregoing, during the period from the date of this Agreement to the Holdings Effective Time, the Company agrees as to itself and its subsidiaries that, except as expressly permitted by this Agreement or with the prior written consent of Laser or as set forth in Section 6.1 of the Company Disclosure Schedule:

(i) Neither the Company nor any of its subsidiaries shall (x) declare, set aside or pay any distributions (whether in cash, stock or property) with respect to its capital stock or (y) split, combine, or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock (other than dividends or stock issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(ii) Neither the Company nor any of its subsidiaries shall issue, deliver, sell, pledge or otherwise encumber any shares of its capital stock, any other voting securities or any securities convertible into, or any options, warrants or rights to acquire, any such shares, voting securities or convertible securities (other than the issuance of Company Common Stock upon the exercise of Employee Stock Options in accordance with their terms and issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(iii) The Company shall not amend its certificate of incorporation or by-laws;

(iv) Other than as would not be material to the Company, the Company and its subsidiaries shall not acquire or agree to acquire (x) by merging or consolidating with, or by purchasing a substantial portion of the assets of, or in any other manner, any business or any corporation, limited liability company, partnership, joint venture, association or other business organization or division thereof or (y) any assets that individually or in the aggregate are material to the Company and its subsidiaries;

(v) Other than as would not be material to the Company, the Company and its subsidiaries shall not sell, lease, license or otherwise encumber or subject to any Lien or otherwise dispose of any of the properties or assets of the Company and its subsidiaries, other than in the ordinary course of business consistent with past practice or pursuant to existing contractual obligations, if any, set forth in Section 6.1 of the Company Disclosure Schedule;

(vi) Other than in the ordinary course of business or as would not be material to the Company, the Company and its subsidiaries shall not (x) incur any indebtedness or (y) make any loans, advances or capital contributions to, or investments in, any other person (other than the Company or a subsidiary of the Company), other than to officers and employees of the Company and its subsidiaries for travel, business or relocation expenses in the ordinary course of business;

(vii) Other than in the ordinary course of business or consistent with the Company's 1998 capital budget;

(viii) Other than in the ordinary course of business, the Company and its subsidiaries shall not make any material Tax election or settle or compromise any material income Tax liability;

(ix) Except in the ordinary course of business or except as would not reasonably be expected to have a Company Material Adverse Effect, the Company and its subsidiaries (i) shall not enter into any Contracts and (ii) shall not modify, amend or terminate any material Contract or agreement to which the Company or any of its subsidiaries is, or as of the Company Effective Time will be, a party or waive, release or assign any material rights or claims thereunder;

(x) Except as required by Law or previously existing contractual arrangements, in the ordinary course of business consistent with past practice or as disclosed or otherwise provided in this Agreement, the Company will not, nor will it permit any of its subsidiaries to, (a) increase the compensation of any of its employees, (b) enter into any Contract with any of its employees regarding his or her employment, compensation or benefits, or (c) adopt any plan, arrangement or policy which would become a Company Plan or amend any Company Plan to the extent such adoption or amendment would create or materially increase any material liability or obligation on the part of the Company or its subsidiaries;

(xi) The Company and its subsidiaries shall not make any change to their accounting methods, principles or practices, except as may be required by GAAP or Regulation S-X promulgated by the SEC or by Law;

(xii) The Company shall not, and shall not permit any of its subsidiaries to, create, incur, suffer to exist or assume any material Lien on any of their assets, except as would not have a Company Material Adverse Effect or materially impair the Company's conduct of the business and operations of the Company and its subsidiaries, as presently conducted;

(xiii) The Company shall not, and shall not permit any of its subsidiaries to enter into any transaction or contract with, or (except pursuant to the Affiliate Agreements) make any payment to, any Affiliate of the Company (other than the Company's subsidiaries or its or their officers or directors in the ordinary course of business consistent with past practice); and

(xiv) The Company and its subsidiaries shall not authorize, or commit or agree to take, any of the foregoing actions.

Section 6.2 Other Actions. During the period from the date hereof to the Holdings Effective Time, the Company and Laser shall not, and shall not permit any of their respective subsidiaries to, take any action that would, or that could reasonably be expected to, result in (i) any of the representations and warranties of such party set forth in this Agreement that are qualified as to materiality becoming untrue, (ii) any of such representations and warranties that are not so qualified becoming untrue in any material respect or (iii) any of the conditions to the Company Merger set forth in Article VIII hereof not being satisfied.

Section 6.3 Advice of Changes. Upon obtaining knowledge of any such occurrence, the Company and Laser shall promptly advise the other party orally and in writing of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect, (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement or (iii) any change or event (x) having, or which, insofar as can reasonably be foreseen, would have, in the case of Laser, a Laser Material Adverse Effect and, in the case of the Company, a Company Material Adverse Effect, (y) having, or which, insofar as can reasonably be foreseen, would have, the effect set forth in clause (i) above or (z) which has resulted, or which, insofar as can reasonably be foreseen, would result, in any of the conditions set forth in Article VIII hereof not being satisfied; provided, however, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

Section 6.4 Conduct of Business of Merger Sub. From the date hereof to the Company Effective Time, Merger Sub shall not (i) engage in any activities of any nature, (ii) acquire any assets, or (iii) incur any indebtedness or assume any liabilities or obligations, in each case, except as provided in or contemplated by this Agreement.

Section 6.5 Section 14(f) Notice. Promptly after the date hereof, Laser shall provide to the Company in writing the information with respect to the Laser Designees (as defined in the Holdings Merger Agreement) required by Section 14(f) of the Exchange Act and Rule 14f-1 of the SEC. Promptly after its receipt of such information, the Company shall file with the SEC and mail to all stockholders of record of the Company the Section 14(f) Notice.

ARTICLE VII

ADDITIONAL AGREEMENTS

Section 7.1 Preparation of the Registration Statement, the Information Statement, the Schedule 13E-3 and the Section 14(f) Notice. As soon as reasonably practicable following the date of this Agreement, Laser and the Company shall prepare and file with the SEC the Information Statement and Laser shall prepare and file with the SEC the Registration Statement, in which the Information Statement will be included as a prospectus (including the financial statements and pro forma financial information required to be set forth therein), and the Schedule 13E-3 and the Section 14(f) Notice. Laser shall use all reasonable best efforts to have the Registration Statement declared effective under the Securities Act and the Schedule 13E-3 and the Section 14(f) Notice cleared by the SEC and mailed as promptly as practicable after such filing. The Company will use all reasonable best efforts to cause the Information Statement and the Schedule 13E-3 and the Section 14(f) Notice to be mailed to the Company's stockholders as promptly as practicable after it has been cleared by the SEC. Each of Laser and the Company shall also take any action (other than qualifying to do business in any jurisdiction in which it is not now so qualified or to file a general consent to service of process) required to be taken under any applicable state securities Laws in connection with the issuance of Laser Common Stock in connection with the Company Merger and the Holdings Merger. The Company shall furnish all information concerning the Company, its subsidiaries and the holders of the Company Common Stock and Laser shall furnish all information concerning Laser and its subsidiaries, in each case, as may be reasonably requested in connection with any such action.

Section 7.2 Access and Information; Confidentiality. The Company and Laser shall each afford to the other and to the other's financial advisors, legal counsel, accountants, consultants and other representatives full access at all reasonable times throughout the period prior to the Company Effective Time to all of its books, records, properties, plants and personnel (provided that all such access shall be on reasonable advance notice and shall not disrupt normal business operations) and, during such period, each shall furnish promptly to the other (a) a copy of each report, schedule and other document filed or received by it pursuant to the requirements of federal or state securities Laws, and (b) all other information as such other party may reasonably request, provided that no investigation pursuant to this Section 7.2 shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the Company Merger. Each party and their respective affiliates, representatives and agents shall hold in confidence all nonpublic information in accordance with the terms of the Confidentiality Agreements between Laser and the Company dated February 4, 1998 and February 23, 1998.

Section 7.3 Comfort Letters.

(a) The Company shall use its reasonable best efforts to cause to be delivered to Laser "comfort" letters of Ernst & Young, LLP, the Company's independent public accountants, dated the date on which the Registration Statement shall become effective and as of the date on which the Information Statement is mailed to the Company's stockholders, and addressed to Laser and the Company, in form and substance reasonably satisfactory to Laser and as is reasonably customary in scope and substance for letters delivered by independent public accountants in connection with transactions such as those contemplated by this Agreement.

(b) Laser shall use its reasonable best efforts to cause to be delivered to the Company "comfort" letters of Arthur Andersen, LLP, Laser's independent public accountants, dated the date on which the Registration Statement shall become effective and as of the date on which the Information Statement is mailed to the Company's stockholders, and addressed to the Company and Laser, in form and substance reasonably satisfactory to the Company and as is reasonably customary in scope and substance for letters delivered by independent public accountants in connection with transactions such as those contemplated by this Agreement.

Section 7.4 Listing Application. Laser shall prepare and submit to the NYSE a listing application covering the Laser Shares to be issued in connection with the Company Merger, and shall use its reasonable best

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efforts to obtain, prior to the Company Effective Time, approval for the listing of such Laser Shares, subject to official notice of issuance.

Section 7.5 Affiliates. Prior to the Company Effective Time, the Company shall cause to be prepared and delivered to Laser a list (reasonably satisfactory to counsel for Laser) identifying each person who, at the time the Information Statement is mailed to the Company's stockholders, may be deemed to be an "affiliate" of the Company, as such term is used in paragraphs (c) and (d) of Rule 145 under the Securities Act (the "Company Rule 145 Affiliates"). The Company shall use its reasonable best efforts to cause such person who is identified as a Company Rule 145 Affiliate in such list to deliver to Laser on or prior to the Company Effective Time a written agreement, in customary form, that such Company Rule 145 Affiliate will not (i) sell, pledge, transfer or otherwise dispose of, or in any other way reduce such Company Rule 145 Affiliate's risk relative to, any Laser Shares issued to such Company Rule 145 Affiliate in connection with the Company Merger, except pursuant to an effective registration statement or in compliance with such Rule 145 or another exemption from the registration requirements of the Securities Act or (ii) sell or in any other way reduce such Rule 145 Affiliate's risk relative to any Laser Shares received in the Company Merger (within the meaning of Section 201.01 of the SEC's Financial Reporting Release No. 1) during the period commencing thirty (30) days prior to the Company Effective Time and ending at such time as the financial results (including combined sales and net income) covering at least thirty (30) days of post-Merger operations have been published, except as permitted by Staff Accounting Bulletin No. 76 issued by the SEC.

Section 7.6 HSR Act; Competition Laws. As soon as reasonably practicable, the Company, Laser and Merger Sub shall make or cause to be made all filings and submissions under the HSR Act (if applicable) and any other applicable Competition Laws as may be reasonably required to be made in connection with this Agreement and the transactions contemplated hereby. Subject to Section 7.2 hereof, the Company will furnish to Laser and Laser will furnish to the Company, such information and assistance as the other may reasonably request in connection with the preparation of any such filings or submissions. Subject to Section 7.2 hereof, the Company will provide Laser, and Laser will provide the Company, with copies of all correspondence, filings or communications (or memoranda setting forth the substance thereof) between such party or any of its representatives, on the one hand, and any governmental agency or authority or members of their respective staffs, on the other hand, with respect to this Agreement and the transactions contemplated hereby. The Company and Laser shall consult with one another with respect to any such correspondence, filings or communications and shall engage in discussions with any Governmental Entity on a joint basis.

Section 7.7 Employee Matters.

(a) From and after the Holdings Effective Time, Laser shall honor, and shall cause the Company to honor, all employment, severance, termination, consulting and retirement agreements to which the Company is a party as of the Holdings Effective Time; provided, however, that (i) neither Laser nor the Company shall have any responsibility for the Company's obligations under that certain employment agreement entered into as of October 1, 1997, between the Company and Jerry W. Levin (except for the incentive payment provided for in section 3.2(b) thereof (relating to the divestiture of Coleman Safety & Security Products, Inc.), which shall be the responsibility of the Company and paid in accordance with the terms of section 3.2(b) thereof), and (ii) neither Laser nor the Company shall have any responsibility for the Company's obligations under that certain employment agreement entered into as of July 1, 1997, between the Company and Paul E. Shapiro. Except as provided in the first sentence of Section 7.7(b) or the proviso to this sentence, from and after the Holdings Effective Time, Laser will cause the Company to allow Company employees to participate in Laser employee benefit plans on substantially the same basis as similarly situated Laser employees; provided, however, that Laser will cause the Company to continue the Company Plans for at least six (6) months following the Holdings Effective Time. Laser will or will cause the Company to give Company employees full credit for purposes of eligibility and vesting of benefits and benefit accrual for service with the Company and its affiliates prior to the Holdings Effective Time under each Laser employee benefit plan; provided, however, that no such crediting of service results in duplication of benefits. With respect to any welfare benefit plans maintained for the benefit of Company employees from and after the Holdings Effective Time, Laser shall (i) cause there to be waived any pre-existing condition limitations and (ii) give effect, in determining any deductible and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and amounts reimbursed to, such employees with respect to similar plans maintained by the Company for such employee's benefit immediately prior to the Holdings Effective Time. Laser acknowledges that, for the purposes of certain of such Company Plans and certain of such

other employment, severance, termination, consulting and retirement agreements to which the Company is currently a party, the consummation of the Holdings Merger will constitute a "change in control" of the Company (as such term is defined in such plans and agreements). Laser agrees to cause the Company, after the Holdings Effective Time, to pay all amounts provided under such Company Plans and agreements as a result of a change in control of the Company in accordance with their respective terms and to honor, and to cause the Company to honor, all rights, privileges and modifications to or with respect to any such Company Plans or agreements which become effective as a result of such change in control.

(b) Laser shall cause the Company to continue the Company's Executive Annual Incentive Policy for the remainder of 1998, and participants therein shall not be eligible for participation in an analogous Laser incentive plan in respect of 1998. Laser shall honor, and shall cause the Company to honor, the Company's Executive Severance Policy without any amendment adverse to participants. Laser shall provide severance benefits for employees of the Company, who are not participants in Company's Executive Severance Policy and who do not have employment agreements with the Company, under the Laser severance policy on the same basis as similarly situated Laser employees provided that severance benefits shall be no less than those set forth on Schedule 7.7(b).

(c) Effective as of the ninety-first (91st) day following the Holdings Effective Time, the participants in the Executive Severance Policy set forth on Schedule 7.7(c) may voluntarily terminate their employment, which termination will be deemed to be for "Good Reason" under the Executive Severance Policy as a result of the consummation of the Holdings Merger.

(d) Laser and the Company agree to take all necessary action to provide that, effective as of the Holdings Effective Time, all outstanding Employee Stock Options shall be vested and exercisable as of the Holdings Effective Time, and between the Holdings Effective Time and the Company Effective Time, Laser shall cause the Company to maintain a broker-dealer cashless exercise procedure for the exercise of Employee Stock Options. Laser and the Company agree to take all other actions necessary to provide for the cancellation, effective at the Company Effective Time, of each outstanding Employee Stock Option and, in settlement therefor, a payment to the holder of the Employee Stock Option in cash by Laser or the Company at the Company Effective Time equal to the product of (i) the total number of shares of Company Common Stock subject to such Employee Stock Option, and (ii) the excess of \$27.50 over the exercise price per share of Company Common Stock subject to such Employee Stock Option, less any applicable withholding taxes.

(e) Laser agrees that, at or prior to the Holdings Effective Time, Holdings may cause the Company to (i) assume sponsorship of the pension, retirement, savings, retiree health care and life insurance and other plans maintained by New Coleman Holdings, Inc. that are reflected in footnotes 7 and 12 to the 1996 financial statements included in the Company's 1996 Annual Report on SEC Form 10-K (as such plans may have been changed in the ordinary course of business since December 31, 1996) (the "Plans"), and (ii) assume the liabilities and obligations of New Coleman Holdings, Inc. under the Plans to the extent reflected in such footnotes (as such liabilities and obligations may have changed in the ordinary course of business since December 31, 1996). The documents used to effect such assumption shall be in form and substance reasonably satisfactory to Parent Holdings and Laser.

Section 7.8 Continuance of Existing Indemnification Rights.

(a) For six (6) years after the Company Effective Time (and during the period following the Holdings Effective Time but prior to the Company Effective Time), Laser shall, or shall cause the Surviving Corporation to, indemnify, defend and hold harmless any person who is now, or has been at any time prior to the date hereof, or who becomes prior to the Company Effective Time, a director or officer of the Company (an "Indemnified Person") against all losses, claims, damages, liabilities, costs and expenses (including attorneys' fees and expenses), judgments, fines, losses and amounts paid in settlement in connection with any actual or threatened action, suit, claim, proceeding or investigation (each, a "Claim") to the extent that any such Claim is based on, or arises out of: (i) the fact that such Indemnified Person is or was a director or officer of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise; or (ii) this Agreement or the Holdings Merger Agreement or any of the transactions contemplated hereby or thereby, in each case to the extent that any such Claim pertains to any matter or fact arising, existing or occurring prior to or at the Company Effective Time, regardless of whether such Claim is asserted or claimed prior to, at or after the Company Effective Time, to the full extent permitted under the DGCL, the Company's certificate of incorporation or by-laws or any indemnification agreement in effect at the date hereof, including provisions relating to advancement of expenses incurred in the defense of any

such Claim; provided, however, that neither Laser nor the Surviving Corporation shall be required to indemnify any Indemnified Person in connection with any proceeding (or portion thereof) involving any Claim initiated by such Indemnified Person against the Company unless the initiation of such proceeding (or portion thereof) was authorized by the Board of Directors of the Company or unless such proceeding is brought by an Indemnified Person to enforce rights under this Section 7.8; and provided further that in the event any Claim is asserted or made within such period, all such rights, liabilities and limitations in respect of any such Claim shall continue until disposition thereof. Without limiting the generality of the preceding sentence, in the event any Indemnified Person becomes involved in any Claim after the Company Effective Time, Laser shall, or shall cause the Surviving Corporation to, periodically advance to such Indemnified Person its legal and other expenses (including the cost of any investigation and preparation incurred in connection therewith), subject to the providing by such Indemnified Person of an undertaking to reimburse all amounts so advanced in the event of a final non-appealable determination by a court of competent jurisdiction that such Indemnified Person is not entitled thereto.

(b) Laser and the Company agree that all rights to indemnification, and all limitations with respect thereto, existing in favor of any Indemnified Person, as provided in the Company's certificate of incorporation or by-laws and any indemnification agreement in effect at the date hereof, shall survive the Holdings Merger and the Company Merger and shall continue in full force and effect, without any amendment thereto, for a period of six (6) years from the Company Effective Time (and during the period following the Holdings Effective Time but prior to the Company Effective Time) to the extent such rights and limitations are consistent with the DGCL; provided, however, that in the event any Claim is asserted or made within such period, all such rights, liabilities and limitations in respect of any such Claim shall continue until disposition thereof; provided further that any determination required to be made with respect to whether an Indemnified Person's conduct complies with the standards set forth under the DGCL, the Company's certificate of incorporation or by-laws or any such agreement, as the case may be, shall be made by independent legal counsel selected by such Indemnified Person and reasonably acceptable to Laser; and provided further that nothing in this Section 7.8 shall impair any rights or obligations of any current or former director or officer of the Company.

(c) Laser or the Surviving Corporation shall use reasonable best efforts to obtain a liability insurance policy ("D&O Insurance") for the benefit of the Company's existing and former directors and officers commencing at the Holdings Effective Time and for a period of not less than six (6) years after the Company Effective Time providing substantially similar coverage in amounts and on terms no less advantageous than that currently provided to such existing and former directors and officers; provided further that neither Laser nor the Surviving Corporation shall be required to pay an annual premium for D&O Insurance in excess of 200% of the last annual premium paid prior to the date hereof, but in such case shall purchase as much coverage as possible for such amount.

(d) The provisions of this Section 7.8 are intended to be for the benefit of, and shall be enforceable by, each Indemnified Person, his or her heirs and his or her personal representatives.

Section 7.9 Expenses. Whether or not the Company Merger is consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses.

Section 7.10 Public Announcements. Laser and the Company shall consult with each other before issuing their respective initial press releases to be issued with respect to the transactions contemplated by this Agreement and the Holdings Merger.

Section 7.11 Reasonable Best Efforts. Upon the terms and subject to the conditions set forth in this Agreement, each of the parties hereto agrees to use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable, to consummate and make effective, in the most expeditious manner practicable, the Company Merger and the other transactions contemplated by this Agreement, including, but not limited to: (i) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from all Governmental Entities and the making of all necessary registrations and filings with, and the taking of all other reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Entity (including those in connection with the HSR Act, if applicable); (ii) the obtaining of all necessary consents, approvals or waivers from persons other than Governmental Entities; (iii) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the

consummation of the transactions contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Entity vacated or reversed; and (iv) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to require any party hereto to enter into any agreement with any Governmental Entity or to consent to any order, decree or judgment requiring such party to hold, separate or divest, or to restrict the dominion or control of such party or any of its Affiliates over, any of the assets, properties or businesses of such party or its Affiliates in existence on the date hereof.

ARTICLE VIII

CONDITIONS TO CONSUMMATION OF THE MERGER

Section 8.1 Conditions to Each Party's Obligation to Effect the Company Merger. The respective obligations of each party to effect the Company Merger shall be subject to the satisfaction or waiver, to the extent permitted by Law, at or prior to the Company Effective Time of the following conditions:

(a) The Registration Statement shall have become effective in accordance with the provisions of the Securities Act and no stop order suspending the effectiveness of the Registration Statement shall be in effect and no proceeding for such purpose shall be pending before or threatened by the SEC; and all applicable time periods required under the Securities Act and the Exchange Act following the mailing of the Information Statement to the Company's stockholders shall have lapsed.

(b) The Laser Shares shall have been approved for listing on the NYSE, subject to official notice of issuance.

(c) No preliminary or permanent injunction or other order by any federal or state court in the United States of competent jurisdiction which prohibits the consummation of the Company Merger shall have been issued and remain in effect.

(d) The Holdings Merger shall have been consummated in accordance with its terms and the applicable provisions of the DGCL.

ARTICLE IX

TERMINATION, AMENDMENT AND WAIVER

Section 9.1 Termination. This Agreement shall terminate automatically upon the termination of the Holdings Merger Agreement in accordance with its terms.

Section 9.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 9.1 hereof, this Agreement shall forthwith become void and there shall be no liability on the part of any of the parties; provided that the provisions of Sections 7.2 and 7.9 and of this Article IX shall continue and that nothing herein shall relieve any party from liability for any willful breach hereof.

Section 9.3 Amendment. This Agreement may be amended by the parties pursuant to a writing adopted by action taken by all of the parties at any time prior to (but not following) the consummation of the Holdings Merger. This Agreement may not be amended except by an instrument in writing signed by all the parties hereto.

Section 9.4 Extension; Waiver. At any time prior to (but not following) the consummation of the Holdings Merger any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only as against such party and only if set forth in an instrument in writing signed by such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

ARTICLE X
GENERAL PROVISIONS

Section 10.1 No Survival of Representations and Warranties. No representations or warranties contained herein shall survive beyond the Company Effective Time. This Section 10.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Company Effective Time.

Section 10.2 Notices. All notices or other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended, if delivered by registered or certified mail, return receipt requested, or by a national courier service, or if sent by telecopier; provided that the telecopy is promptly confirmed by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

(a) If to Laser, to:

Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, Florida 33445
Facsimile: (561) 243-2191
Attention: David C. Fannin, Esq.

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Facsimile: (302) 651-3001
Attention: Richard L. Easton, Esq.

(b) If to the Company, to:

CLN Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Facsimile: (954) 772-3352
Attention: General Counsel

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Facsimile: (212) 403-2000
Attention: Adam O. Emmerich, Esq.

Any such notification shall be deemed delivered (i) upon receipt, if delivered personally, (ii) on the next business day, if sent by national courier service for next business day delivery or (iii) the business day received, if sent by telecopier.

Section 10.3 Descriptive Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 10.4 Entire Agreement; No Third-Party Beneficiary. This Agreement (including the Exhibits, Disclosure Schedules and other documents and instruments referred to herein) (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties or any of them, with respect to the subject matter hereof; (b) except for the provisions of Sections 7.7(c) and 7.8 hereof, is not intended to confer upon any other person any rights or remedies hereunder.

Section 10.5 Interpretation. When a reference is made in this Agreement to an Article, Section or Annex, such reference shall be to an Article or Section of, or an Annex to, this Agreement unless otherwise indicated.

Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The phrase "made available" in this Agreement shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available. All terms defined in this Agreement shall have the defined meanings used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

Section 10.6 Severability. If any provision of this Agreement or the application thereof to any person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon any such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect original intent of the parties.

Section 10.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of Law or otherwise by any of the parties without the prior written consent of the other parties. Any assignment in violation of the preceding sentence shall be void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 10.8 Disclosure Schedules. Matters reflected on the Company Disclosure Schedule are not necessarily limited to matters required by this Agreement to be reflected therein and the inclusion of such matters shall not be deemed an admission that such matters were required to be reflected on the Company Disclosure Schedule. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. Capitalized terms used in the Company Disclosure Schedule but not otherwise defined therein shall have the respective meanings assigned to such terms in this Agreement.

Section 10.9 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware without giving effect to the provisions thereof relating to conflicts of Law.

Section 10.10 Specific Performance. The parties hereto agree that irreparable damage would occur in the event any of the provisions of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at Law or equity.

Section 10.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

Section 10.12 Certain Terms. As used herein, (i) the term "material adverse effect" (including as used in any definition), with respect to any Person, shall exclude any change, event, effect or circumstance (a) arising in connection with the announcement or performance of the transactions contemplated by this Agreement or the Holdings Merger Agreement and (b) affecting the United States economy generally or such Person's industries generally; and (ii) "to the knowledge of the Company" shall mean to the actual knowledge of Paul E. Shapiro, Jerry W. Levin and Steven R. Isko.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf by its officers thereunto duly authorized, all as of the date first above written.

SUNBEAM CORPORATION

By: /s/ RUSSELL A. KERSH

Name: Russell A. Kersh

Title: *Executive Vice President*

CAMPER ACQUISITION CORP.

By: /s/ RUSSELL A. KERSH

Name: Russell A. Kersh

Title: *Executive Vice President*

THE COLEMAN COMPANY, INC.

By: /s/ PAUL E. SHAPIRO

Name: Paul E. Shapiro

Title: *Executive Vice President*

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ANNEX II

262 APPRAISAL RIGHTS. (a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to Section 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word "stockholder" means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and the words "depository receipt" mean a receipt or other instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to section 251 (other than a merger effected pursuant to section 251(g) of this title), section 252, section 254, section 257, section 258, section 263, or section 264 of this title:

(1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders to act upon the agreement of merger or consolidation, were either (i) listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in subsection (f) of section 251 of this title.

(2) Notwithstanding paragraph (1) of this subsection, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to sections 251, 252, 254, 257, 258, 263 and 264 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a. and b. of this paragraph; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a., b. and c. of this paragraph.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under section 253 of this title is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as is practicable.

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(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for such meeting with respect to shares for which appraisal rights are available pursuant to subsections (b) or (c) hereof that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section. Each stockholder electing to demand the appraisal of his shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of his shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of his shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to Section 228 or Section 253 of this title, each constituent corporation, either before the effective date of the merger or consolidation or within ten days thereafter, shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section; provided that, if the notice is given on or after the effective date of the merger or consolidation, such notice shall be given by the surviving or resulting corporation to all such holders of any class or series of stock of a constituent corporation that are entitled to appraisal rights. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) hereof and who is otherwise entitled to appraisal rights, may file a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder shall have the right to withdraw his demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) hereof, upon written request, shall be entitled to receive from the corporation

surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after his written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) hereof, whichever is later.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

(h) After determining the stockholders entitled to an appraisal, the Court shall appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. In determining the fair rate of interest, the Court may consider all relevant factors, including the rate of interest which the surviving or resulting corporation would have had to pay to borrow money during the pendency of the proceeding. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, permit discovery or other pretrial proceedings and may proceed to trial upon the appraisal prior to the final determination of the stockholder entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted his certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that he is not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Interest may be simple or compound, as the Court may direct. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court's decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded his appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of his demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

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-----BEGIN PRIVACY-ENHANCED MESSAGE-----

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COMPANY DATA:

COMPANY CONFORMED NAME:

COLEMAN CO INC

CENTRAL INDEX KEY:

0000021627

STANDARD INDUSTRIAL CLASSIFICATION:

ELECTRIC LIGHTING & WIRING EQUIPMEN

IRS NUMBER:

133639257

STATE OF INCORPORATION:

DE

FISCAL YEAR END:

1231

FILING VALUES:

FORM TYPE: 10-Q

SEC ACT:

SEC FILE NUMBER: 001-00988

FILM NUMBER: 98624727

BUSINESS ADDRESS:

STREET 1: 2111 E 37TH STREET NORTH

STREET 2: SUITE 300

CITY: WICHITA

STATE: KS

ZIP: 67219

BUSINESS PHONE: 3032022400

MAIL ADDRESS:

STREET 1: 2111 E 37TH STREET NORTH

STREET 2: SUITE 300

CITY: WICHITA

STATE: KS

ZIP: 67219

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

[X] Quarterly Report Pursuant to Section 13 or 15 (d) of the Securities
Exchange Act of 1934

For the quarterly period ended MARCH 31, 1998

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OF

Transition Report Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934
 For the transition period from _____ to _____
 Commission File Number: i-988

THE COLEMAN COMPANY, INC.

 (Exact name of registrant as specified in its charter)

DELAWARE ----- (State or other jurisdiction of incorporation or organization)	13-3639257 ----- (I.R.S. Employer Identification No.)
---	---

2111 E. 37th Street North, Wichita, Kansas ----- (Address of principal executive offices)	67219 ----- (Zip Code)
---	------------------------------

316-832-2700

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirement for the past 90 days. Yes No

The number of shares outstanding of the registrant's par value \$.01 common stock was 55,827,410 shares as of May 5, 1998, of which 44,067,520 shares were held by Coleman Worldwide Corporation, an indirect wholly-owned subsidiary of Sunbeam Corporation.

Exhibit Index on Page 14.

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THE COLEMAN COMPANY, INC. AND SUBSIDIARIES

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THE COLEMAN COMPANY, INC. AND SUBSIDIARIES

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except share data)
(Unaudited)

<TABLE>
<CAPTION>

	Three Ended	
	1998	

<S>	<C>	
Net revenues	\$ 244,499	✓
Cost of sales.	175,777	✓

Gross profit	68,722	✓
Selling, general and administrative expenses	74,948	74,855
Interest expense, net.	23702	9,044
Amortization of goodwill and deferred charges.	3853	2,934
Gain on sale of business		(26,137) ✓
Other expense, net	1312	1,861

Earnings before income taxes, minority interest and extraordinary item.	(8,950)	6,165
Income tax expense	21,418	7,518
Minority interest.	(394)	61

(Loss) earnings before extraordinary item.	(29,980)	(1,414)
Extraordinary loss on early extinguishment of debt, net of income tax benefit		(1,232)

Net (loss) earnings.	\$ (2,640)	9

Basic and diluted (loss) earnings per share:		
(Loss) earnings before extraordinary item	\$ (0.03)	
Extraordinary item.	(0.02)	

Net (loss) earnings	\$ (0.05)	

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Weighted average common shares outstanding:	
Basic	53,731,639
Dilutive.	53,731,639

</TABLE>

See Notes to Condensed Consolidated Financial Statements

<PAGE>

THE COLEMAN COMPANY, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands)
(Unaudited)

<TABLE>
<CAPTION>

	March 31, 1998

ASSETS	
Current assets:	
Cash and cash equivalents	\$ 21,498
Accounts and notes receivable, less allowance of \$8,051 in 1998 and \$8,930 in 1997.	215,098
Inventories	246,343
Deferred tax assets	26,196
Prepaid assets and other.	22,210

Total current assets.	531,345
Property, plant and equipment, net	161,138
Intangible assets related to businesses acquired, net.	291,860
Deferred tax assets and other.	37,636

	\$1,021,979

LIABILITIES AND STOCKHOLDERS' EQUITY	
Current liabilities:	
Accounts and notes payable.	\$ 151,315
Affiliate debt.	90,711
Other current liabilities	86,360

Total current liabilities	328,386
Long-term debt	360,231
Other liabilities.	65,096
Minority interest.	1,224
Contingencies.	
Stockholders' equity:	
Common stock.	552
Additional paid-in capital.	203,860
Retained earnings	77,649

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Accumulated comprehensive income	13,013
Total stockholders' equity	267,042
	<u>\$1,021,979</u>

See Notes to Condensed Consolidated Financial Statements

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THE COLEMAN COMPANY, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Thr Ende
	1998
<S>	<C>
CASH FLOWS FROM OPERATING ACTIVITIES:	
Net (loss) earnings	\$ (2,646)
Adjustments to reconcile net (loss) earnings to net cash flows from operating activities:	
Depreciation and amortization	9,508
Gain on sale of business	(26,137)
Extraordinary loss on early extinguishment of debt	2,038
Minority interest in earnings of Camping Gaz	61
Change in assets and liabilities:	
Increase in receivables	(34,531)
Increase in inventories	(31,043)
Increase in accounts payable	4,177
Other, net	(5,036)
	<u>(80,963)</u>
Net cash used by operating activities	(83,609)
CASH FLOWS FROM INVESTING ACTIVITIES:	
Capital expenditures	(9,698)
Net proceeds from sale of business and fixed assets	98,264
Net cash provided (used) by investing activities	88,566
CASH FLOWS FROM FINANCING ACTIVITIES:	
Net payments of revolving credit agreement borrowings	(52,578)
Net change in short-term borrowings	(3,352)
Repayment of long-term debt	(63,416)
Increase in borrowings from affiliate	90,711
Debt refinancing costs	---
Proceeds from stock options exercised including tax benefits	31,805
Net cash provided by financing activities	<u>3,170</u>
Effect of exchange rate changes on cash	340
Net increase (decrease) in cash and cash equivalents	8,467
Cash and cash equivalents at beginning of the period	13,031

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Cash and cash equivalents at end of the period \$21,498

</TABLE>

See Notes to Condensed Consolidated Financial Statements

<PAGE>

THE COLEMAN COMPANY, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(In thousands, except share data)
(Unaudited)

1. BACKGROUND

The Coleman Company, Inc. ("Coleman" or the "Company") is a leading manufacturer and marketer of consumer products for outdoor recreation and home hardware use on a global basis.

Coleman is a subsidiary of Coleman Worldwide Corporation ("Coleman Worldwide"). Coleman Worldwide is a subsidiary of Laser Acquisition Corp. ("Laser"), a wholly-owned subsidiary of Sunbeam Corporation ("Sunbeam"). Coleman Worldwide owns 44,067,520 shares of the common stock of Coleman which represent approximately 80% of the outstanding Coleman common stock as of March 31, 1998.

On February 27, 1998, CLN Holdings Inc. ("CLN Holdings") and Coleman (Parent) Holdings Inc. ("Parent Holdings"), the parent company of CLN Holdings, entered into an Agreement and Plan of Merger (as amended, the "Holdings Merger Agreement") with Sunbeam and Laser. On March 30, 1998, pursuant to the Holdings Merger Agreement, CLN Holdings was merged with and into Laser, with Laser continuing as the surviving corporation and as a wholly owned subsidiary of Sunbeam (the "Holdings Merger"). In the Holdings Merger, Parent Holdings received 14,099,749 shares of Sunbeam Common Stock and \$159,957 in cash in exchange for all of the outstanding shares of CLN Holdings. As a result of the Holdings Merger, Sunbeam became the indirect owner of the 44,067,520 shares of Coleman common stock held by Coleman Worldwide (the "Sunbeam Acquisition").

Coincident with the execution of the Holdings Merger Agreement, the Company, Sunbeam and Camper Acquisition Corp. ("CAC"), a wholly-owned subsidiary of Sunbeam, entered into an Agreement and Plan of Merger (the "Coleman Merger Agreement" and with the Holdings Merger Agreement, collectively, the "Merger Agreements"), providing that, among other things, CAC will be merged with and into Coleman, with Coleman continuing as the surviving corporation (the "Coleman Merger"). Pursuant to the Coleman Merger Agreement, each share of the Company's common stock issued and outstanding immediately prior to the effective time of the Coleman Merger (other than shares held indirectly by Sunbeam and dissenting shares, if any) will be converted into the right to receive (a) 0.5677 of a share of Sunbeam common stock, with cash paid in lieu of fractional shares, and (b) \$6.44 in cash, without interest.

Upon consummation of the Coleman Merger, Coleman will become an indirect wholly-owned subsidiary of Sunbeam. Per the terms of the Merger Agreements, certain arrangements with Parent Holdings and its affiliates have been or may be altered or terminated. In addition, outstanding, unvested stock options of Coleman immediately vested upon consummation of the Holdings Merger and will be cashed out at a price per share equal to the difference between \$27.50 and the exercise price of such option.

2. BASIS OF FINANCIAL STATEMENT PRESENTATION

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The accompanying unaudited condensed consolidated financial statements of Coleman include the accounts of the Company and its subsidiaries after elimination of all material intercompany accounts and transactions, and have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals and one-time adjustments related to the acquisition of Coleman by Sunbeam) considered necessary for a fair presentation have been included. Operating results for the three months ended March 31, 1998 are not necessarily indicative of the

<PAGE>

THE COLEMAN COMPANY, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)
(In thousands, except share data)
(Unaudited)

results that may be expected for the year ended December 31, 1998. The balance sheet at December 31, 1997 has been derived from the audited financial statements for that date but does not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. For further information, refer to the consolidated financial statements and footnotes thereto included in the Company's annual report on Form 10-K for the year ended December 31, 1997.

3. INVENTORIES

The components of inventories consist of the following:

<TABLE>
<CAPTION>

	March 31, 1998	December 31, 1997
<S>	<C>	<C>
Raw material and supplies	\$ 54,369	\$ 59,406
Work-in-process	9,207	7,813
Finished goods	182,767	169,108
	\$246,343	\$236,327

</TABLE>

4. LONG-TERM DEBT

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In March 1998, as a result of the Sunbeam Acquisition, the Company repaid all outstanding indebtedness under the Company's credit agreement and the credit agreement was terminated. In connection with the termination of this agreement, the Company recorded an extraordinary loss of \$2,038 (\$1,232 after tax, or \$0.02 per share) which represents a write-off of the related unamortized financing costs associated with the credit agreement.

In addition, the Company's various senior notes, aggregating \$360,000 at March 31, 1998, were redeemed on April 21, 1998 at a cost of \$383,395. The \$23,395 of redemption costs in excess of carrying value will be reflected as additional extraordinary loss on early extinguishment of debt in the second quarter of 1998 along with the write-off of the related unamortized financing

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costs associated with these senior note issuances in the amount of \$2,694.

The Company relies upon loans from Sunbeam for the Company's liquidity needs. Amounts advanced from Sunbeam are due on demand and bear interest at the rate of 6% per annum as of March 31, 1998 and are reflected as affiliate debt in the condensed consolidated balance sheet.

5. SALE OF BUSINESS

On March 24, 1998, the Company sold Coleman Safety & Security Products, Inc. ("CSS"), a wholly-owned subsidiary of the Company which manufactured and sold safety and security products, to Ranco Incorporated of Delaware ("Ranco") and Siebe plc, the parent of Ranco, for approximately \$97,937, net of fees and expenses. In connection with the sale of CSS, the Company recorded a pre-tax gain of \$26,137. The net proceeds from the sale of CSS are subject to post-closing adjustments and could result in an adjustment to the gain.

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THE COLEMAN COMPANY, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)
(In thousands, except share data)
(Unaudited)

6. OTHER CHARGES

During the three months ended March 31, 1998, the Company recorded certain pre-tax charges totaling \$12,931 which included (i) \$7,128 of costs associated with the acquisition of Coleman by Sunbeam, (ii) the write-off of \$3,578 of capitalized costs associated with the installation of a company-wide enterprise resource computer software system which was abandoned following the Sunbeam Acquisition, and (iii) \$2,225 of costs to terminate a licensing services agreement with an affiliate of Parent Holdings. During the three months ended March 31, 1997, the Company recorded certain other pre-tax charges totaling \$3,928, primarily related to severance costs associated with certain executive changes.

7. COMPREHENSIVE INCOME

As of January 1, 1998, the Company adopted Statement of Financial Accounting Standards ("SFAS") No. 130, "Reporting Comprehensive Income." SFAS No. 130 establishes new rules for the reporting and display of comprehensive income and its components; however, the adoption of this Statement had no impact on the Company's net income or shareholders' equity. SFAS No. 130 requires foreign currency translation adjustments and minimum pension liability adjustments, which prior to adoption were reported separately in shareholders' equity, to be included in other comprehensive income. The Company's comprehensive loss was \$5,232 and \$5,773 for the three months ended March 31, 1998 and 1997, respectively.

8. BASIC AND DILUTED EARNINGS (LOSS) PER COMMON SHARE

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In February 1997, the Financial Accounting Standards Board ("FASB") issued SFAS No. 128, "Earnings Per Share," which establishes new standards for computing and presenting basic and diluted earnings per share. As required by SFAS No. 128, the Company adopted the provisions of the new standard with retroactive effect beginning in 1997. Accordingly, all net earnings (loss) per common share amounts for all prior periods have been restated to comply with SFAS No. 128.

The basic earnings (loss) per common share has been computed based upon the weighted average shares of outstanding common stock. Diluted earnings (loss) per common share has been computed based upon the sum of the weighted average shares of outstanding common stock and the weighted average incremental shares

021414

1997 1998 have been outstanding assuming dilutive potential common stock had been issued. The Company's outstanding common stock options represent the only dilutive potential common stock. The amounts of earnings (loss) used in the calculations of basic and diluted earnings (loss) per common share were the same for all periods presented. The number of shares used in the calculation of diluted earnings per common share included 52,399 incremental shares for the three month period ended March 31, 1997 to recognize the effect of dilutive stock options. The number of shares used in the calculation of diluted loss per common share for the three month period ended March 31, 1998 does not include any incremental shares that would have been outstanding assuming the exercise of any stock options because the effect of these shares would have been antidilutive.

9. RECENTLY ISSUED ACCOUNTING STANDARDS

In June 1997, the FASB issued SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information". SFAS No. 131 establishes standards for reporting information about operating segments in

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THE COLEMAN COMPANY, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)
(In thousands, except share data)
(Unaudited)

annual financial statements and requires those enterprises report selected information about operating segments in interim financial reports. It also establishes standards for related disclosures about products and services, geographic areas, and major customers. The Company will apply the provisions of SFAS No. 131 beginning January 1, 1998; however, financial statement disclosures for interim periods in 1998 are not required to be presented in interim financial statements issued in 1998.

10. SUBSEQUENT EVENT

On May 11, 1998, Sunbeam announced a comprehensive growth and restructuring plan that includes certain initiatives involving Coleman's operations. The restructuring initiatives related to Coleman include, among other things, (i) combining the Company's headquarters with Sunbeam's headquarters in Florida, (ii) the consolidation of factories, warehouses, and sales offices, and (iii) the divestiture of the Eastpak related businesses and the compressor and spa businesses.

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THE COLEMAN COMPANY, INC. AND SUBSIDIARIES

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

RESULTS OF OPERATIONS

On February 27, 1998, CLN Holdings Inc. ("CLN Holdings") and Coleman (Parent) Holdings Inc. ("Parent Holdings"), the parent company of CLN Holdings, entered into an Agreement and Plan of Merger (as amended, the "Holdings Merger Agreement") with Sunbeam and Laser. On March 30, 1998, pursuant to the Holdings Merger Agreement, CLN Holdings was merged with and into Laser, with Laser continuing as the surviving corporation and as a wholly owned subsidiary of

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Sunbeam (the "Holdings Merger"). In the Holdings Merger, Parent Holdings received 14,099,749 shares of Sunbeam Common Stock and \$160.0 million in cash in exchange for all of the outstanding shares of CLN Holdings. As a result of the Holdings Merger, Sunbeam became the indirect owner of the 44,067,520 shares of Coleman common stock held by Coleman Worldwide (the "Sunbeam Acquisition").

Coincident with the execution of the Holdings Merger Agreement, the Company, Sunbeam and Camper Acquisition Corp. ("CAC"), a wholly-owned subsidiary of Sunbeam, entered into an Agreement and Plan of Merger (the "Coleman Merger Agreement" and with the Holdings Merger Agreement, collectively, the "Merger Agreements"), providing that, among other things, CAC will be merged with and into Coleman, with Coleman continuing as the surviving corporation (the "Coleman Merger"). Pursuant to the Coleman Merger Agreement, each share of the Company's common stock issued and outstanding immediately prior to the effective time of the Coleman Merger (other than shares held indirectly by Sunbeam and dissenting shares, if any) will be converted into the right to receive (a) 0.5677 of a share of Sunbeam common stock, with cash paid in lieu of fractional shares, and (b) \$6.44 in cash, without interest.

Upon consummation of the Coleman Merger, Coleman will become an indirect wholly-owned subsidiary of Sunbeam. Per the terms of the Merger Agreements, certain arrangements with Parent Holdings and its affiliates have been or may be altered or terminated. In addition, outstanding, unvested stock options of Coleman immediately vested upon consummation of the Holdings Merger and will be cashed out at a price per share equal to the difference between \$27.50 and the exercise price of such option.

Three months ended March 31, 1998 compared with the three months ended March 31, 1997

Net revenues of \$244.5 million in 1998 were \$51.0 million or 17.2% less than in 1997 with outdoor recreation products decreasing \$40.0 million or 18.4% and hardware products decreasing \$11.0 million or 14.1%. Geographically, United States and Canadian revenues decreased 14.9% while international revenues decreased 21.3%.

Outdoor recreation products revenues decreased \$40.0 million or 18.4%. The sales decrease occurred in nearly all product categories, primarily reflecting the effects of the SKU reduction program in 1997, softness in demand resulting from the domestic retail channel's efforts to lower inventory levels, and adverse economic conditions in Japan and Southeast Asia. The hardware products revenues decrease of \$11.0 million reflects an increase in generator revenues as a result of winter storms which were more than offset by a decline in compressor revenues due to general softness in the industry and the loss of pressure washer revenues due to exiting this business in 1997.

Gross margins increased as a percent of sales by 0.7 percentage points to 28.1% in 1998. The increase is driven by an improvement in the mix of products sold, in part, due to the SKU reduction program which removed low or no-margin SKUs, and greater licensing revenues in 1998.

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THE COLEMAN COMPANY, INC. AND SUBSIDIARIES

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Selling, general and administrative ("SG&A") expenses were \$74.9 million in 1998 compared to \$65.9 million in 1997, an increase of \$9.0 million. SG&A expenses in 1998 include (i) \$7.1 million of costs associated with the acquisition of Coleman by Sunbeam, (ii) the write-off of \$3.6 million of capitalized costs associated with the installation of a company-wide enterprise resource computer software system which was abandoned following the Sunbeam Acquisition, and (iii) \$2.2 million of costs to terminate a licensing services agreement with an affiliate of Parent Holdings.

Interest expense was \$9.0 million in 1998 compared with \$10.7 million in 1997, a decrease of \$1.7 million. This decrease was primarily the result of lower borrowings resulting from improvements in managing working capital.

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On March 24, 1998, the Company sold Coleman Safety & Security Products, Inc. ("CSS"), a wholly-owned subsidiary of the Company which manufactured and sold safety and security products, to Ranco Incorporated of Delaware ("Ranco") and Siebe plc, the parent of Ranco, for approximately \$98.0 million, net of fees and expenses. In connection with the sale of CSS, the Company recorded a pre-tax gain of \$26.1 million. The net proceeds from the sale of CSS are subject to post-closing adjustments and could result in an adjustment to the gain.

Minority interest represents the interest of minority shareholders in certain subsidiary operations of Camping Gaz.

The Company recorded a provision for income tax expense of \$7.5 million in 1998 compared to a provision for income tax expense of \$0.5 million in 1997. The 1998 income tax provision reflects, among other things, (i) the write-off of approximately \$1.7 million deferred tax assets that became unrealizable as a result of the change of control in the Company at the time of the Sunbeam Acquisition, (ii) \$0.4 million of tax expense due to the impact of decreased foreign tax rates on deferred tax assets, and (iii) the impact of \$7.1 million non-deductible costs associated with the Sunbeam Acquisition. Excluding these items, the 1998 effective income tax rate would have been approximately 40.8%.

In March 1998, as a result of the Holdings Merger, the Company repaid all outstanding indebtedness under the Company's credit agreement and the credit agreement was terminated. In connection with the termination of this agreement, the Company recorded an extraordinary loss of \$2.0 million (\$1.2 million after tax, or \$0.02 per share) which represents a write-off of the related unamortized financing costs associated with the credit agreement.

LIQUIDITY AND CAPITAL RESOURCES

The Company's operating activities used \$83.6 million and \$41.0 million of cash during the three months ended March 31, 1998 and 1997, respectively. During the 1998 period, receivables increased \$34.5 million as a result of the seasonality of the Company's sales. Inventories increased approximately \$31.0 million primarily as a result of unanticipated softness in the first quarter's demand for the Company's products. The Company's capital expenditures were \$9.7 million in the three months ended March 31, 1998. During the three months ended March 31, 1998, the \$31.8 million of proceeds from stock option exercises along with \$90.7 million of borrowings from Sunbeam and the proceeds from the sale of the Company's safety and security business and sales of fixed assets of \$98.3 million of cash were used to, among other things, repay the \$116.0 million outstanding indebtedness under the Company's credit agreement and fund the Company's operating activities and capital expenditures.

The Company's various senior notes, aggregating \$360.0 million at March 31, 1998, were redeemed on April 21, 1998 at a cost of \$383.4 million. The \$23.4 million of redemption costs in excess of carrying value

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THE COLEMAN COMPANY, INC. AND SUBSIDIARIES

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will be reflected as additional extraordinary loss on early extinguishment of debt in the second quarter of 1998 along with the write-off of the related unamortized financing costs associated with these senior note issuances in the amount of \$2.7 million.

During 1997 and 1996, the Company undertook several restructuring initiatives to strengthen its business operations, including (i) exiting various low-margin products, including pressure washers, (ii) closing and relocating certain administrative and sales offices, and (iii) closing several manufacturing facilities. In connection with those initiatives, Coleman recorded a total of \$110.6 million pre-tax restructuring and other charges during the years ended December 31, 1996 and 1997. During the first quarter of

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1998, the Company revised its estimate of costs to complete the previously announced restructuring initiatives and recorded an additional \$0.7 million of charges. An analysis of the reserves for restructuring and other charges is outlined in the following table (dollars in millions):

<TABLE>
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	Balance at 12/31/97	1998 Additional Reserves	Charges Du Quarter En 3/31/98
<S>	<C>	<C>	<C>
Impairment of fixed assets	\$ 8.1	\$ --	\$ (0.4)
Inventory and other asset impairments.	8.4	--	(1.8)
Termination costs.	2.8	0.5	(1.2)
Idle facilities, relocation and other exit costs	8.7	0.2	(3.0)
	-----	-----	-----
	\$28.0	\$0.7	\$ (6.4)
	-----	-----	-----

</TABLE>

In connection with the Sunbeam Acquisition, the Company expects to incur additional restructuring charges as the operations of Coleman are integrated into Sunbeam's existing business structure. On May 11, 1998, Sunbeam announced a comprehensive growth and restructuring plan that includes certain initiatives involving Coleman's operations. The restructuring initiatives related to Coleman include, among other things, (i) combining the Company's headquarters with Sunbeam's headquarters in Florida, (ii) the consolidation of factories, warehouses, and sales offices, and (iii) the divestiture of the Eastpak related businesses and the compressor and spa businesses.

The Company's ability to meet its current cash operating requirements, including projected capital expenditures and other obligations is dependent upon a combination of cash flows from operations and capital contributions or loans to the Company from Sunbeam or its affiliates.

The Company periodically uses a variety of derivative financial instruments to manage its foreign currency and interest rate exposures. The Company does not speculate on interest rates or foreign currency rates. Instead it uses derivatives when implementing its risk management strategies to reduce the possible effects of these exposures.

With respect to foreign currency exposures, the Company principally uses forward and option contracts to reduce risks arising from firm commitments, anticipated intercompany sales transactions and intercompany receivable and payable balances. The Company generally uses interest rate swaps and interest rate caps to fix certain of its variable rate debt. The Company manages credit risk related to these derivative contracts through credit approvals, exposure limits and other monitoring procedures.

SEASONALITY

The Company's sales generally are highest in the second quarter of the year and lowest in the fourth quarter. As a result of this seasonality, the Company has generally incurred a loss in the fourth quarter. The Company's sales may be affected by weather conditions, especially during the second and third quarters of the year. The Company's annual results are generally dependent on its results during the second quarter. The acquisition of a majority ownership of the Company by Sunbeam occurred on March 30, 1998, immediately

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THE COLEMAN COMPANY, INC. AND SUBSIDIARIES

preceding the beginning of the Company's second quarter. As a result, the Company is being integrated with Sunbeam's operations. There can be no assurance as to the success of this integration or assurance that the

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Integration or integration-related activities will not be adverse to future results.

FORWARD-LOOKING STATEMENTS

The Private Securities Litigation Reform Act of 1995 provides a "safe harbor" for certain forward-looking statements. The forward-looking statements contained in this Form 10-Q are subject to certain risks and uncertainties. Actual results could differ materially from current expectations. The factors that could affect the Company's actual results and could cause results to differ materially from those contained in the forward-looking statements include, but are not limited to (i) unanticipated costs or delays in developing new products, (ii) a decrease in the public's interest in camping and related activities, (iii) economic softness in Japan, Korea, and other Asian countries, (iv) weather conditions which are adverse to the specific businesses of the Company, (v) significant adverse market or economic conditions which negatively affect demand for the Company's products, (vi) disruptions or delays resulting from the transactions contemplated by the Merger Agreements with Sunbeam for the acquisition of CLN Holdings and the Company, and (vii) changes in operating philosophy following the consummation of the Holdings Merger and the Company Merger. Other factors could also cause actual results to vary materially from the future results covered in such forward-looking statements.

IMPACT OF YEAR 2000

Some of the Company's older computer programs were written using two digits rather than four to represent the applicable year. As a result, those computer programs recognize a date represented by "00" as the year 1900 rather than the year 2000. This situation, known as the "Year 2000" issue, could cause a system failure or miscalculations causing disruptions of operations, including, among other things, a temporary inability to process transactions, send invoices, or engage in similar normal business activities.

Based on ongoing assessments of the Company's operations, the Company has determined it will be required to modify or replace portions of its computer software so the computer systems will function properly with respect to dates in the year 2000 and thereafter. The Company believes that, in most instances, with minor modifications to existing software, the Year 2000 issue will not pose significant operational problems for its computer systems. The Company has identified one location with significant Year 2000 software issues. Failure to complete a timely conversion of this location to a Year 2000 compliant system could have a material impact on the operations of the Company. The Company is unable to estimate the costs of becoming Year 2000 compliant.

The Company has initiated formal communications with some of its significant suppliers and large customers to determine the extent to which the Company's interface systems are vulnerable to those third parties' failure to remediate their own Year 2000 issues. There can be no guarantee that the systems of other companies on which the Company's systems rely will be timely converted and would not have an adverse effect on the Company's systems.

In 1996, the Company began a project to select and install a Company-wide enterprise resource computer software system designed to improve operational efficiency. In March 1998, as a result of decisions made following the Holdings Merger, this project was terminated and previously capitalized costs of \$3.6 million were written off. Sunbeam is completing preliminary plans for the integration of the Company's systems into its own, and, likewise, is assessing the Year 2000 computer issues. The timing and cost of this integration process are not yet determined.

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THE COLEMAN COMPANY, INC. AND SUBSIDIARIES

PART II. OTHER INFORMATION

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ITEM 1. LEGAL PROCEEDINGS

None.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits

Exhibit No.	Description
4.1X	Intercompany Note dated April 6, 1998 between The Coleman Company, Inc. and Sunbeam Corporation.
27 X	Financial Data Schedule

X Filed herewith

(b) Reports on Form 8-K

A Current Report on Form 8-K was filed on March 3, 1998 to disclose certain information with regard to the acquisition of CLN Holdings and the Company by Sunbeam Corporation.

A Current Report on Form 8-K/A was filed on March 5, 1998 to amend and restate the Company's Current Report on Form 8-K filed on March 3, 1998.

A Current Report on Form 8-K was filed on April 3, 1998 to disclose that Sunbeam Corporation had acquired indirect beneficial ownership of the 44,067,520 shares of common stock of the Company.

A Current Report on Form 8-K was filed on April 3, 1998 to disclose that the Company had completed the sale of all of the outstanding shares of capital stock of Coleman Safety & Security Products, Inc., a wholly-owned subsidiary of the Company, to Ranco Incorporated of Delaware, a wholly-owned subsidiary of Siebe plc, as of March 24, 1998.

A Current Report on Form 8-K/A was filed on April 9, 1998 to amend the Company's Current Report on Form 8-K filed on April 3, 1998 to include the pro forma financial information regarding the sale of all of the outstanding shares of capital stock of Coleman Safety & Security Products, Inc.

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THE COLEMAN COMPANY, INC SUBSIDIARIES

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

THE COLEMAN COMPANY, INC.
(Registrant)

Date: May 15, 1998

By: /s/ Russell A. Kersh

Russell A. Kersh
President and Chief Financial Officer

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INTERCOMPANY NOTE

Dated: April 6, 1998

FOR VALUE RECEIVED, the undersigned, The Coleman Company, Inc., a Delaware corporation (the "PAYOR"), hereby promises to pay to the order of Sunbeam Corporation, a Delaware corporation (the "PAYEE"), on demand, any and all Indebtedness (as defined in the Credit Agreement referred to below) (including interest thereon) owed to the Payee by the Payor from time to time.

The undersigned agrees that the accounts of the Payee shall be "prima facie" evidence of Indebtedness (including interest thereon) owed to the Payee by the undersigned and the amounts repaid by the undersigned to the Payee. All advances made by the Payee to the Payor hereunder, and all payments made on account of principal and interest hereof, shall be recorded by the Payee, and, prior to any transfer hereof, shall be endorsed on the schedule attached hereto which is part of this Intercompany Note.

The undersigned also agrees to pay on demand all costs and expenses (including reasonable fees and expenses of counsel) incurred by the Payee in enforcing this Intercompany Note.

This Note is one of the Intercompany Agreements referred to in a Pledge and Security Agreement (as defined in, and entered into pursuant to the Credit Agreement dated as of March 30, 1998 (as amended, supplemented or modified from time to time, the "CREDIT AGREEMENT") among Sunbeam Corporation, the Subsidiary Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., as Syndication Agent, Bank of America National Trust and Savings Association, as Documentation Agent and First Union National Bank, as Administrative Agent). Capitalized terms used in this Intercompany Note and not otherwise defined have the respective meanings assigned to them in such Pledge and Security Agreement or the Credit Agreement.

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If at any time demand is made against the Payor under, and pursuant to the terms of, any guaranty executed by the Payor in connection with the Secured Obligations (as defined in the Pledge and Security Agreement), this Intercompany Note, and the payment obligations of the Payor evidenced hereby, shall therewith be null and void and the Payee shall be deemed to have contributed such obligations to the capital of the Payor.

The Indebtedness evidenced by this Intercompany Note is subordinate and subject in right of payment to the prior payment in full of the Secured Obligations in the manner and to the extent set forth below:

(a) In the event of (i) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other

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similar case or proceeding in connection therewith, relative to the Payor or to its creditors as such, or to its properties or assets, or (ii) any liquidation, dissolution or other winding-up of the Payor, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (iii) any assignment for the benefit of creditors or any other marshaling of assets or liabilities of the Payor, then and in any such event the holders of Secured Obligations shall be entitled to receive payment in full of all amounts due on or to become due on or in respect of Secured Obligations then outstanding, in cash or in any other manner acceptable to the holders of Secured Obligations, before the holder is entitled to receive any payment or distribution of any kind or character on account of principal of or interest on this Intercompany Note, and to that end the holders of Secured Obligations shall be entitled to receive, for application to the payment thereof, any payment or distribution of assets of the Payor of any kind or character including, without limitation, securities that are subordinated in right of payment to all Secured Obligations to substantially the same extent as, or to a greater extent than, this Intercompany Note, that may be payable or deliverable in respect of this Intercompany Note in any such case, proceeding, dissolution, liquidation or other winding-up or event referred to in clauses (i) through (iii) above.

(b) In the event that the Payee shall receive any payment or distribution of assets of the Payor of any kind or character in respect of principal of or interest on this Intercompany Agreement in contravention of subsection (a) hereof, then and in such event such payment or distribution shall be received and held by the Payee in trust for the holders of the Secured Obligations and shall be paid over or delivered forthwith to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment

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or distribution of assets of the Payor in trust for the holders of, and for application to the payment of, all Secured Obligations remaining unpaid, to the extent necessary to pay all Secured Obligations in full, in cash or in any other manner acceptable to the holders of Secured Obligations, after giving effect to any concurrent payment or distribution to or for the holders of Secured Obligations.

The undersigned hereby waives presentment for payment, demands, notice of dishonor and protest of this Intercompany Note and further agrees that none of its terms or provisions may be waived, altered, modified or amended except as the Payee may consent in a writing duly signed for and on its behalf.

No failure or delay on the part of the Payee in exercising any of its rights, powers or privileges hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The remedies provided herein are cumulative and are not exclusive of any remedies provided by law.

THIS PROMISSORY NOTE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

The Coleman Company, Inc.

Address:

By: /s/ Robert Totte

Title: Vice President

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Sunbeam

Contacts: *Investment Community* *Media*
Marc R. Shiffman George Sard/Maureen Bailey
Sunbeam Corporation Sard Verbinnen & Co.
(561) 243-2142 (212) 687-8080

SUNBEAM DELAYS SEC FILING RELATING TO DEBENTURES Company in Talks With Lenders on Covenant Waivers

Delray Beach, FL, June 25, 1998 – Sunbeam Corporation (NYSE: SOC) announced that it is delaying filing with the Securities and Exchange Commission a registration statement for its previously issued Zero Coupon Convertible Senior Subordinated Debentures due 2018 for resale by the holders thereof. The delay is necessary to enable the Company to continue its review of certain issues regarding Sunbeam's 1997 financial statements. Arthur Andersen LLP, the Company's auditor, notified the Company yesterday that it will not provide its consent to the inclusion in the registration statement of its opinion on the 1997 financial statements, pending completion of the review.

Sunbeam confirmed news reports that the SEC has informed the Company of an informal inquiry into Sunbeam's accounting policies and practices and has requested various documents. Sunbeam intends to cooperate with the SEC.

Delay in filing the registration statement covering the Debentures will not constitute a default. The Company will be required to pay a small charge to the Debenture holders for each day the filing is delayed past June 23, 1998.

Sunbeam also said that it is continuing talks with bank lenders concerning a waiver of certain financial covenant measurements in its bank credit agreement. The covenants would normally require Sunbeam to meet certain financial tests at the end of each quarter. The Company will not meet these tests as of June 30, 1998 because of its anticipated loss for the second quarter. Sunbeam is seeking the waiver to give its new management time to complete a full review of Sunbeam's businesses and develop a new operating plan.

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The three lenders are Morgan Stanley Senior Funding, Bank of America and First Union. The credit agreement provides for an \$800 million 7-year term loan, a \$500 million 8.5-year term loan and a \$400 million 7-year revolving credit facility. Sunbeam currently has approximately \$1.4 billion in outstanding debt and approximately \$300 million of availability under the credit agreement.

Sunbeam Corporation is a leading consumer products company that designs, manufactures and markets, nationally and internationally, a diverse portfolio of consumer products under such world-class brands as Sunbeam^(R), Oster^(R), Grillmaster^(R), Coleman^(R), Mr. Coffee^(R), First Alert^(R), Powermate^(R), Health o meter^(R), Eastpak^(R) and Campingaz^(R).

Cautionary Statement

Certain statements in this press release constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance, or achievements of Sunbeam to be materially different from any future results, performance, or achievements expressed or implied by such forward-looking statements. These forward-looking statements were based on various factors and were derived utilizing numerous important assumptions and other important factors that could cause actual results to differ materially from those in the forward-looking statements. Important assumptions and other important factors that could cause actual results to differ materially from those in the forward-looking statements include, but are not limited to: (i) risks associated with leverage, including cost increases due to rising interest rates; (ii) risks associated with Sunbeam's ability to continue its strategy of growth through acquisitions; (iii) risks associated with Sunbeam's ability to successfully integrate all of its recent acquisitions; (iv) risks associated with Sunbeam's ability to increase revenues by leveraging sales of Sunbeam's Signature Brands and First Alert's products through Coleman's existing distribution channels, and by leveraging sales of Coleman's Signature Brands' and First Alert's products, through Sunbeam's existing distribution channels, particularly in foreign markets; (v) risks associated with Sunbeam's ability to realize the anticipated costs savings of its restructuring program, including the timing thereof; (vi) risks associated with Sunbeam's ability to implement its planned divestitures, including the amount of the net proceeds to be realized and the timing thereof; (vii) Sunbeam's ability to make effect acquisitions in the future and to successfully integrate newly acquired businesses into existing operations and the risks associated with such newly acquired businesses; (viii) Sunbeam's ability to maintain and increase market share for its products at anticipated margins; (ix) Sunbeam's ability to successfully introduce new products and to provide on-time delivery and a high level of customer service; (x) changes in laws and regulations, including changes in tax rates, accounting standards, environmental laws, occupational, health and safety laws; (xi) access to foreign markets together with foreign economic conditions, including currency fluctuations; (xii) uncertainty as to the effect of competition in existing and potential future lines of business; (xiii) fluctuations in the cost and availability of raw materials and/or products in relation to historical levels; (xiv) changes in the availability and relative costs of labor; (xv) effectiveness of advertising and marketing programs; (xvi) the effect of, or changes in, general economic conditions; (xvii) economic uncertainty in Japan, Korea and other Asian countries, as well as Mexico, Venezuela and other Latin American countries; and (xviii) weather conditions that are adverse to the specific businesses of Sunbeam. Other factors and assumptions not identified above were also involved in the derivation of these forward-looking statements, and the failure of such other assumptions to be realized as well as other factors may also cause actual results to differ materially from those projected. Sunbeam assumes no obligation to update these forward-looking statements to reflect actual results, changes in assumptions or changes in other factors affecting such forward-looking statements.

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021427

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

FILED

Jan 11 20 05
SHARON R. BOCK
CLERK & CONTROLLER

BY *Holly Maus*
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

**SUPPLEMENTAL APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S
SUMMARY JUDGMENT FILING**

**VOLUME 5
(EXHIBITS 221-229)**

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Attorneys for Coleman (Parent) Holdings Inc

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY FLORIDA

Coleman (Parent) Holdings, Inc.

Plaintiff

v.

Morgan Stanley & Co., Inc.

Defendant

Case No. 2003 CA 005045 AI

EXPERT REPORT OF PROFESSOR MARK GRINBLATT

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Date:
December 17, 2004

Prepared by:

Dr. Mark Grinblatt
Professor of Finance
Anderson School at UCLA
110 Westwood Plaza
Los Angeles, CA 90095-1481
(310) 825-1098

021431

Overview

- (1) On March 30, 1998, Sunbeam acquired Coleman for cash, stock, and the assumption of debt.¹ Under the terms of the Merger Agreement, Plaintiff gave up the Coleman stock it owned, as well as its obligations to repay the debt of its subsidiary CLN Holdings (collectively, the "CLNH equity") in exchange for cash and shares of Sunbeam stock. After the consummation of the merger, Sunbeam's price declined substantially. In its Complaint, filed May 8, 2003, CPH alleges that no later than March 18, 1998, Morgan Stanley possessed detailed and specific information about Sunbeam's first quarter 1998 sales and earnings up to that point, and that it assisted Sunbeam in concealing that information. Plaintiff alleges that it suffered damages as a consequence of the concealment of this information.
- (2) This report provides my opinions on the damages suffered by CPH, assuming that Morgan Stanley is found liable for concealing material information about 1998 first quarter sales and earnings. I express no opinion about such liability. For the purpose of calculating damages, I assume that Morgan Stanley is liable for concealing this information. I accept Plaintiff's position that it would have cancelled the merger had Morgan Stanley's information been disclosed.
- (3) Given that in the "but-for" world CPH would have cancelled the merger, I measure out-of-pocket damages as the difference between the value of the CLNH equity that CPH gave up in the merger and the value of cash and Sunbeam stock that it received in exchange. My analysis of the consolidated balance sheet of CLNH and its subsidiaries indicates that the damages suffered by CPH are determined by the values (defined later) of four items exchanged in the merger:
 - a. The shares of common stock of The Coleman Company, Inc. ("Coleman") received by Sunbeam in the merger;

¹ This consummated the February 27, 1998 Merger Agreement between the Sunbeam Corporation ("Sunbeam"), Laser Acquisition Corporation, CLN Holdings, Inc. ("CLNH"), and Coleman (Parent) Holdings ("CPH" or "Plaintiff"), an event referred to as the merger.

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- b. The zero-coupon debt of CLNH (“CLN Holdings Notes” or “Holdings Notes”) that Sunbeam assumed in the merger;
 - c. The shares of Sunbeam stock received by CPH in the merger; and
 - d. The cash consideration received by CPH in the merger.
- (4) As a practical matter, CPH gave up its shares of Coleman (item 3a above) in exchange for cash, stock, and the assumption of a subsidiary’s debt (items 3b-d above). My opinion regarding damages is that the cash, Sunbeam stock, and assumption of debt have a net aggregate true value to CPH that far exceeds the true value of the Coleman stock, even after accounting for the impact of Morgan Stanley’s alleged fraud. Hence, CPH did not suffer any damages as a consequence of consummating the merger.
- (5) My opinion that there are no damages in this matter is robust to my modeling assumptions. The methodology in the initial portion of my report focuses on a set of assumptions, each of which is chosen to maximize damages to the Plaintiff without being so biased in favor of the Plaintiff that they are clearly implausible. However, the terms of the Merger Agreement are so favorable to the Plaintiff that even damage-maximizing assumptions cannot generate a single dollar of damages. The reasons are straightforward.
- a. The CLNH equity had a relatively low true value because it was encumbered by the CLN Holdings Notes. The amount of debt, more than \$732 million in promised payments, was so high in comparison to the value of its collateral, CLNH’s equity stake in Coleman, that the Holdings Notes qualified for junk status. Junk status indicates a high risk of default. Were default on the Holdings Notes to occur, CLNH equity, which is the only asset the Plaintiff gave up in the merger, would be worthless.
 - b. The CLNH equity was not worthless but the Holdings Notes severely diminished its value. Hence, even low true values for the Sunbeam stock received by CPH, along with the cash consideration received, more than compensate CPH for the CLNH equity that it gave up in the merger.

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- (6) Assumptions that are fair to both sides in this matter indicate that the true value of the property given up by the Plaintiff in the merger was at least \$200 million to over \$300 million less than the true value of what the Plaintiff received.
- (7) My report also comments on the opinions of Plaintiffs experts Nye, Kursh and Wagner, as expressed in their reports dated December 7, 2004. These reports contradict one another as to the theory of damages, the proper methods for valuation and the actual valuations they propose. A summary of the specific issues in each report is as follows:
- a. Dr. Nye's report advances a damage estimate of over \$600 million.
 - i. His analysis is seriously flawed because it is based on an "expectations theory of damages," and I understand that this theory of damages is not applicable in this case. Rather, an out-of-pocket standard should be applied. The out-of-pocket standard also makes more sense to me as an economist.
 - ii. Dr. Nye also implements his flawed damage methodology by cherry-picking parameters to maximize damages.
 - iii. Finally, Dr. Nye erroneously values Sunbeam at the date when it entered bankruptcy, and falsely assumes that trading restrictions make it impossible to estimate Sunbeam's true value at March 30, 1998.
 - b. Dr. Kursh's report advances an out-of-pocket methodology that is appropriate, albeit inconsistent with Dr. Nye's methodology. Dr. Kursh does not, however, implement his methodology to derive a damage estimate. Rather, Dr. Kursh's report only purports to analyze the true value of a share of Coleman. His report advances the hypothesis that actual transactions are the best way to measure true value. I concur with this.
 - i. However, two of his three transaction-based approaches are really fraud-based approaches, as they rely on Sunbeam's fraud, not legitimate market prices, to value Coleman. Hence, they are not valid measures of Coleman's value.

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- ii. Dr. Kursh's third transaction-based approach is not subject to this criticism and shares many similarities with my approach for obtaining the true value of a share of Coleman. Here, Dr. Kursh starts with the stock market's assessment of Coleman's value on February 27, 1998. He claims that February 27, 1998 is relevant because after this date, Coleman's stock price is influenced (and therefore inflated) by the Merger Agreement. I share his belief that Coleman's stock price on a date before the Merger Agreement was announced is the best starting point for a true value estimate of Coleman. My disagreement with Dr. Kursh on this third approach will require the Court to weigh the evidence that he and I present in support of my arguments. I believe that the stock price of Coleman on February 27, 1998 was already inflated by merger rumors.
 - iii. Moreover, I believe that the so-called "control premium" Dr. Kursh uses has no economic justification given the facts in this case.
- c. Mr. Wagner neither espouses a theory of damages nor provides an estimate of damages. Rather, he attempts to estimate the value of Coleman as of March 30, 1998. In doing so, Mr. Wagner uses methodologies that, if used correctly, are only capable of estimating a wide range of values with any scientific validity. They are not capable of estimating a single best value for Coleman. As such his report provides no reliable estimate of the value of Coleman. Among the specific flaws in Mr. Wagner's analysis are:
- i. He cherry-picks years for deriving Coleman's estimated future costs;
 - ii. The weights he assigns to his widely varying estimates of Coleman's value are arbitrary; and
 - iii. He improperly and inconsistently applies what he calls a "control premium" and compounds this error by factoring in "synergies" on top of it.
- (8) The report, contained below, discusses these opinions in more detail and provides the bases for them.

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I. Qualifications

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- (9) My qualifications are provided in detail on the attached curriculum vitae in Appendix A. I highlight a few details here.
- a. I hold a Ph.D. and two master's degrees in economics from Yale University.
 - b. I am currently a Full Professor of Finance at the University of California at Los Angeles ("UCLA") Anderson School of Management
 - c. I have been a finance professor at UCLA's Anderson School of Management since July 1, 1981. The finance group at UCLA is widely recognized as one of the premier finance groups in the world and I am one of its most senior and distinguished members.
 - d. I have taught more than 1,000 graduate students in nearly every subject in finance over more than two decades of teaching. Many M.B.A. students that I have trained are now high-level finance executives in major corporations and investment banks. The dozens of courses in which I have acted as the primary instructor cover a wide range of topics in the fields of investments, corporate finance, fixed income securities, asset and equity valuation, derivatives, debt issuance and valuation, portfolio management, risk and return, credit risk, market efficiency, financial institutions, mergers and acquisitions, credit risk, bankruptcy, information and stock prices, event studies, performance evaluation, cost of capital, and discount rates.
 - e. I chaired or served on the committees that grant doctoral degrees to numerous Ph.D. students. Many of the recipients of the Ph.D. doctoral degrees that were granted under my auspices and guided by my tutelage are now well-known scholars in their own right at major universities. My students have ended up as professors at the University of Chicago, INSEAD (the premier business school in continental Europe), the London Business School (the premier European business school), the Ohio State University, the University of Virginia, the University of Maryland, the University of Colorado, and the Hong Kong University of Science and Technology (which is the premier Asian business school), among other places.

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- f. I currently serve or have served as an associate editor of four scholarly journals: *The Journal of Finance* (the premier finance journal), the *Journal of Financial and Quantitative Analysis*, the *Review of Financial Studies*, and the *Journal of Applied Finance*. I also serve on the editorial board of the *Journal of Economics and Business*. In these positions, and in my capacity as an ad hoc reviewer for virtually every major journal in finance and economics, I oversee what passes for scholarly science in my field.
- g. I was elected vice-president of the Western Finance Association for 2003–2004 and am serving as President-Elect and Program Chairman of the Western Finance Association for the current academic year July 2004–June 2005. This association hosts an intellectual gathering of more than 500 of the most distinguished finance academics from around the world. It is sponsored, in part, by contributions from the New York Stock Exchange, NASDAQ, Goldman Sachs, Barclay's Global Investors, the *Journal of Investment Management*, and the Center for Research in Security Prices. The presidential position to which I have been elected is the second highest office one can hold in the field of finance research.
- h. The membership of the American Finance Association has elected me as a director of their association for the 2005–2006 academic year.
- i. I routinely am asked to write letters to evaluate candidates for their prospective promotions to tenured positions, full professorships, and chaired professorships at the most distinguished universities in the world. I have written dozens of such letters in my career.
- j. I have conducted research on a broad range of topics in finance, having written approximately 40 research papers, books, and articles. Among the topics I have written on are mergers and acquisitions, asset valuation, event study methodology, capital structure, fixed income securities, hedging instruments, option valuation, derivatives, portfolio management, liquidity, and risk and return.

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- k. I have extensive consulting and practical experience. I currently serve on the board of Salomon Swapco, Inc., which is affiliated with Citigroup, Inc., the largest U.S. bank holding company. I have been a consultant to numerous corporations and individuals, and have served as an expert witness in several cases involving merger valuation and securities fraud. While on a leave of absence from UCLA in 1989 and 1990, I worked as a vice-president for arbitrage support at Salomon Brothers, Inc. My primary duties at Salomon involved the valuation of complex securities.
- l. I have been invited to speak at numerous scholarly colloquia, conferences, and panel discussions. The list of places at which I have spoken about my scientific research is extensive, including dozens of conferences all over the globe and multiple appearances at nearly every major university. I have been invited to speak before the faculty at the University of Chicago four times, Columbia University four times, the University of California at Berkeley five times, and Yale University on seven separate occasions, to name a few.
- m. I have been the recipient of numerous awards and honors. Among these are the Smith-Breeden distinguished paper prize, the Anbar Citation of Excellence, and a finalist prize from the Q-group. I have been on nominating committees for the President of the American Finance Association and have been asked to nominate candidates for the Nobel Prize in Economic Sciences. I am an elected Research Associate of the National Bureau of Economic Research, the nation's official arbiter of recessions. My research is well-known throughout the world, placing me among the top one percent of most cited finance faculty of all time.
- n. In the preceding four years, I have given expert testimony by deposition, trial, or arbitration in the following:
- i. Pending Case, deposition testimony, September 17, 2004, subject to a confidentiality condition.

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- ii. Microsoft Corporation v. Franchise Tax Board, Superior Court of the State of California, court testimony, May 22, 2003, and deposition testimony, February 19, 2003.
- iii. Jack Green v. Nuveen Advisory Corp., Case No. 97 C 255, United States District Court for the Northern District of Illinois, deposition testimony, November 16, 2000 and January 18, 2001.

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**II. Background and
Scope of
Testimony**

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II.1. Factual Background

- (10) On March 30, 1998, Plaintiff CPH sold its 100% equity interest in CLNH for consideration that included cash, stock of Sunbeam, and Sunbeam's assumption of debt owed by a CPH subsidiary.² Shares of Sunbeam stock subsequently dropped in price after a series of negative news events about the company, including missed financial targets and restatements of financial filings with the Securities and Exchange Commission ("SEC"). Sunbeam eventually entered bankruptcy in February 2001, ultimately eliminating all remaining value in the Sunbeam equity component of the consideration CPH received in the merger.³ Sunbeam was reorganized and emerged from bankruptcy as American Household, Inc. late in 2002.⁴ Affiliates of the Plaintiff effectively controlled and managed Sunbeam from June 15, 1998 until the company entered bankruptcy more than two and a half years later.
- (11) Defendant Morgan Stanley, an investment banking and financial services firm, provided financial advisory services to Sunbeam from April 1997 through the consummation of the merger on March 30, 1998.⁵ Plaintiff alleges that Morgan Stanley had information in its possession prior to March 30, 1998 that it withheld from the financial markets. This information allegedly showed that Sunbeam's financial health was significantly poorer than was implied by the information actually disseminated to the Plaintiff and to the financial markets prior to the merger. Plaintiff accuses Defendant of fraudulent misrepresentation, aiding and abetting fraud, conspiracy and negligent misrepresentation and Plaintiff further alleges that it suffered economic damages that the release of the information allegedly known by the Defendant would have prevented.⁶ Morgan Stanley denies all wrongdoing.⁷

² Feb. 27, 1998 Agreement and Plan of Merger among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings, Inc. and Coleman (Parent) Holdings, Inc. ("Merger Agreement"), § 3.1.

"Sunbeam completes Coleman buy, sees 1999 accretion," Reuters News, March 30, 1998.

³ "Sunbeam Corporation Announces Plan to Reorganize Under Chapter 11," Sunbeam Corporation Press Release, February 6, 2001.

⁴ "Sunbeam Corp. Emerges From Bankruptcy" AP Online, December 18, 2002.

⁵ Undated, Project Laser: Chronology of Events ("Morgan Stanley Chronology").

⁶ May 8, 2000 Complaint of Coleman (Parent) Holdings Inc. ("Complaint").

⁷ Sept. 21, 2004 Amended Answer of Morgan Stanley & Co. Inc.; Oct. 15, 2004 Attachment to Morgan Stanley's Motion to Leave to Amend Pleadings.

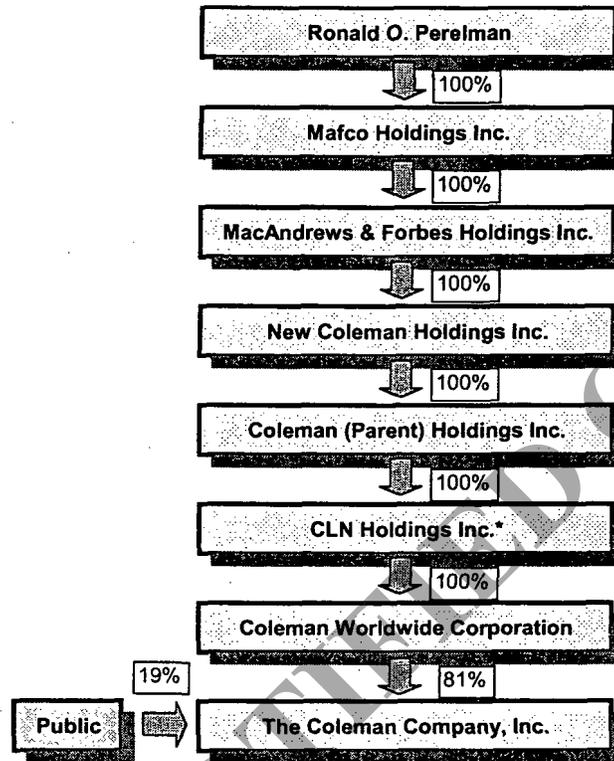
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- (12) Before the merger, CPH was a holding company. Its activities were limited to owning 100% of the capital stock of its subsidiary, CLNH. CLNH was another holding company, with no operations of its own, and one significant liability: two series of zero-coupon notes that were coming due in May 2001, at which time CLNH equity owners would owe the noteholders over \$732 million. CLNH also owned one asset: 100% of the capital stock of its subsidiary, Coleman Worldwide Corporation ("Coleman Worldwide"). Coleman Worldwide was yet another holding company with no operations of its own, but with one significant set of assets: it owned over 80% of The Coleman Company, Inc. ("Coleman"), a well-known, publicly-traded company in the outdoor recreation industry. The remaining Coleman shares were publicly traded.⁸
- (13) CPH was itself the subsidiary of two holding companies, the "topmost" of which was owned by a single individual: the well-known financier, Ronald O. Perelman. Exhibit 1 depicts the chain of holding companies as of March 30, 1998.

⁸ Mar. 24, 1998 CLN Holdings Inc. 1997 Form 10-K405 ("CLN Holdings 1997 10-K"), p. 3.

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Exhibit 1: The Coleman family of companies



* Formerly known as Coleman Holdings Inc. and Coleman Escrow Corp.

Source: Holding company structure: Oct. 6, 1997 Coleman Escrow Corp. form S-1/A, p. 6. Percentage of Coleman ownership shown is as of March 30, 1998, and differs slightly from the ratio depicted in the S-1/A.

Thus, a single individual, Mr. Perelman, controlled over 80% of Coleman shares, and had the power to select the company's Board, its officers and directors, and to direct key decisions for the company, such as whether to merge with another corporation, and if so, on what terms.

- (14) Sunbeam, the beneficial counterparty to the Merger Agreement with CPH, was a well-known company in such industries as small appliances, outdoor cooking, and electric blankets. It had no corporate parents or controlling shareholders. Its CEO was a colorful and prominent member of the business community, Albert Dunlap. Mr. Dunlap had achieved fame as the architect of a number of turnarounds of troubled businesses, including Scott Paper, Lily-Tulip, Diamond International and Crown-Zellerbach, often through drastic cost-cutting and workforce reduction, which resulted in his acquiring the nickname "Chainsaw

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Al.”⁹ Mr. Dunlap arrived at Sunbeam on July 18, 1996, when the company was trading at \$12.50 per share, and immediately engaged in an aggressive restructuring program. As of December, 1997, Sunbeam common stock was trading at over \$40.00 per share.¹⁰ Coleman, which had undergone a restructuring of its own in 1996–1997, was then trading around \$13–16 per share.¹¹

- (15) Part of Mr. Dunlap’s strategy for increasing shareholder value at Sunbeam was to grow the company through combinations with another firm. During much of 1997, Sunbeam worked with Morgan Stanley on identifying potential acquirers for Sunbeam, or targets that might be suitable for acquisition. Morgan Stanley identified Coleman, among other companies, as a potential acquisition target.¹²
- (16) In late 1997 Sunbeam management spoke with Coleman about a possible acquisition. After initial meetings and negotiations in mid-December, talks broke off, but were revived again in late January 1998.¹³ Discussions continued through February 1998, culminating on February 27, 1998, when the parties signed an Agreement and Plan of Merger (“Merger Agreement”),¹⁴ and obtained the approval of their respective Boards of Directors to complete the transaction.¹⁵
- (17) The terms of the Merger Agreement were first announced to the public before the financial markets opened on the morning of Monday, March 2, 1998, three days after it was formally

⁹ Laing, Jonathan R. “High Noon at Sunbeam: Does Chainsaw Al have a truly revised operation or something else in his sights?” *Barrons*, June 16, 1997.

¹⁰ Unless otherwise noted, all stock prices displayed in this report or used in analysis are ©200410 CRSP®, Center for Research in Security Prices. Graduate School of Business, The University of Chicago used with permission. All rights reserved. www.crsp.uchicago.edu (“CRSP”). In addition, all stock prices are rounded to two decimals for display purposes, but all calculations and analyses employing stock prices are performed at full precision.

¹¹ CRSP.

¹² Morgan Stanley Chronology, p. 1.

¹³ *Id.* at 4.

¹⁴ Merger Agreement, *supra* note 2.

¹⁵ Feb. 27, 1998 Minutes of a Meeting of the Board of Directors of The Coleman Company, Inc.
Feb. 27, 1998 Minutes of a Special Meeting of the Board of Directors of Sunbeam Corporation.

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ratified by the boards of the companies that were parties to the transaction.¹⁶ By the terms of the agreement with CPH, Sunbeam paid CPH approximately \$160 million in cash and approximately 14.1 million shares of Sunbeam common stock. In exchange, Sunbeam acquired 100% of the stock of CLNH, which effectively gave it 44 million shares of Coleman common stock, along with liabilities consisting of the two tranches of CLN Holdings Notes. Sunbeam, under the terms of the Merger Agreement, thus assumed responsibility for paying off a substantial amount of debt.¹⁷

- (18) As depicted in Exhibit 2, at then-prevailing equity market prices CPH received some \$749 million for assets and liabilities with a net value of only \$403 million. This represents a premium of \$346 million, or 86%, over the value of the property CPH gave up in the merger. In other words, the deal was so favorable to CPH that the value of the Sunbeam shares CPH received in the merger could decline by hundreds of millions dollars and CPH would suffer no out-of-pocket damages—in fact, it would still *benefit* from the deal.

¹⁶ "Sunbeam Acquires Three Publicly Traded Consumer Products Companies: Coleman, Signature Brands and First Alert," Sunbeam Press Release, Mar. 2, 1998.

¹⁷ The debt assumed by Sunbeam can be regarded as either part of the consideration paid by Sunbeam, or as part of the complete package of assets and liabilities given up by CPH. These two ways of thinking about the debt are mathematically equivalent.

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Exhibit 2: Assets and liabilities exchanged in the transaction

Transaction details at date of board ratification (February 27, 1998)		
CPH effectively gave to Sunbeam		
Assets		
Coleman stock		
Number of Coleman shares	44,067,520	
Closing price, 2/27/98	\$ 20.88	
Coleman stock market value, 2/27/98		\$ 919,909,480
Liabilities		
CLN Holdings Notes		\$ 512,145,432
(1) Given up in Merger by CPH at 2/27/98 ratification		\$ 407,764,048
CPH effectively received from Sunbeam		
Assets		
Sunbeam stock		
Number of Sunbeam shares	14,099,749	
Closing price, 2/27/98	\$ 41.75	
Sunbeam stock market value, 2/27/98		\$ 588,664,521
Cash		\$ 159,956,756
Total assets		\$ 748,621,277
(2) Received in Merger by CPH at 2/27/98 ratification		\$ 748,621,277
Amount received less amount given up by CPH		
Premium, total (\$) [(2) - (1)]:		\$ 340,857,229
Premium, as % of (1):		84%
Notes		
I have omitted reference to a small amount of debt of Coleman Worldwide Corp., and the funds deposited in escrow to repay that debt. The amounts are small, effectively net out against each other, and have no material effect on my calculations.		
CLN Holdings Notes are valued at book, or "accreted," value as of February 27, 1998.		

Sources: Cash amount and share quantities: Merger Agreement; CLN Holdings Notes: Indenture, Coleman Escrow Corp., May 20, 1997; stock prices: CRSP

- (19) When the Merger Agreement was announced, shares of Sunbeam jumped from \$41.75 to \$45.63 and traded as high as \$52 (on March 4, 1998). Sunbeam shares generally traded around \$50 per share until March 19, 1998, the day Sunbeam issued a press release warning

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that its first quarter 1998 sales might be lower than analysts' expectations.¹⁸ Morgan Stanley is alleged to have possessed information from which it knew or should have known that Sunbeam's actual financial results were likely to be much worse than the press release suggested and of having improperly allowed Sunbeam to issue the press release. In response to the March 19th press release, Sunbeam's stock price dropped almost 10%.

- (20) On March 30, 1998, the day that Sunbeam completed the merger, Sunbeam stock closed at \$43.94 per share. Sunbeam traded in the \$44-\$45 range until April 3, 1998, the day an influential research analyst named Andrew Shore downgraded the stock.¹⁹ On the same day, Sunbeam issued another negative press release announcing a senior executive departure, poor first quarter 1998 sales, and an expected loss for the quarter.²⁰ Official first quarter 1998 financial results were announced on May 11, 1998, at an analyst meeting during which Sunbeam also announced detailed restructuring plans.²¹ These results were then reported in Sunbeam's Form 10-Q, filed with the SEC on May 15, 1998.
- (21) As more negative information about Sunbeam reached the market, its stock continued its downward slide. A June 8, 1998 *Barron's* article accused Sunbeam of a wide range of questionable accounting and management practices, and cast doubt on many dimensions of Dunlap's highly-touted turnaround of the company.²² The article precipitated inquiries by Sunbeam's own Board of Directors that led to the termination of Dunlap and Chief Financial Officer Russell Kersh, to the employment of former Coleman CEO Jerry Levin as Sunbeam's new chief, and to a re-examination of Sunbeam's previously filed financial statements. On June 30, 1998 Sunbeam announced that it was reviewing the 1997 financial

¹⁸ "Sunbeam States That First Quarter Revenues May Be Lower Than Street Estimates," Sunbeam Press Release, Mar. 19, 1998.

¹⁹ "Sunbeam: Downgrade to Neutral from Buy," Andrew Shore (PaineWebber), Apr. 3, 1998, 9:15 AM.

²⁰ "Sunbeam Corporation Lowers First Quarter Sales and Earnings Expectations; Names Lee Griffith President of Household Products Business," Sunbeam Press Release, Apr. 3, 1998.

²¹ "Sunbeam Reports 1st Quarter Results; Expects 1998 EPS in \$1.00 Range Before Charges, 1999 EPS in \$2.00 Range; Outlines Comprehensive Growth Plan Building on Six No. 1 Brands," Sunbeam Press Release, May 11, 1998.

"Strategy for Growth: Analyst Meeting, May 11, 1998," Sunbeam Presentation, p. 5.

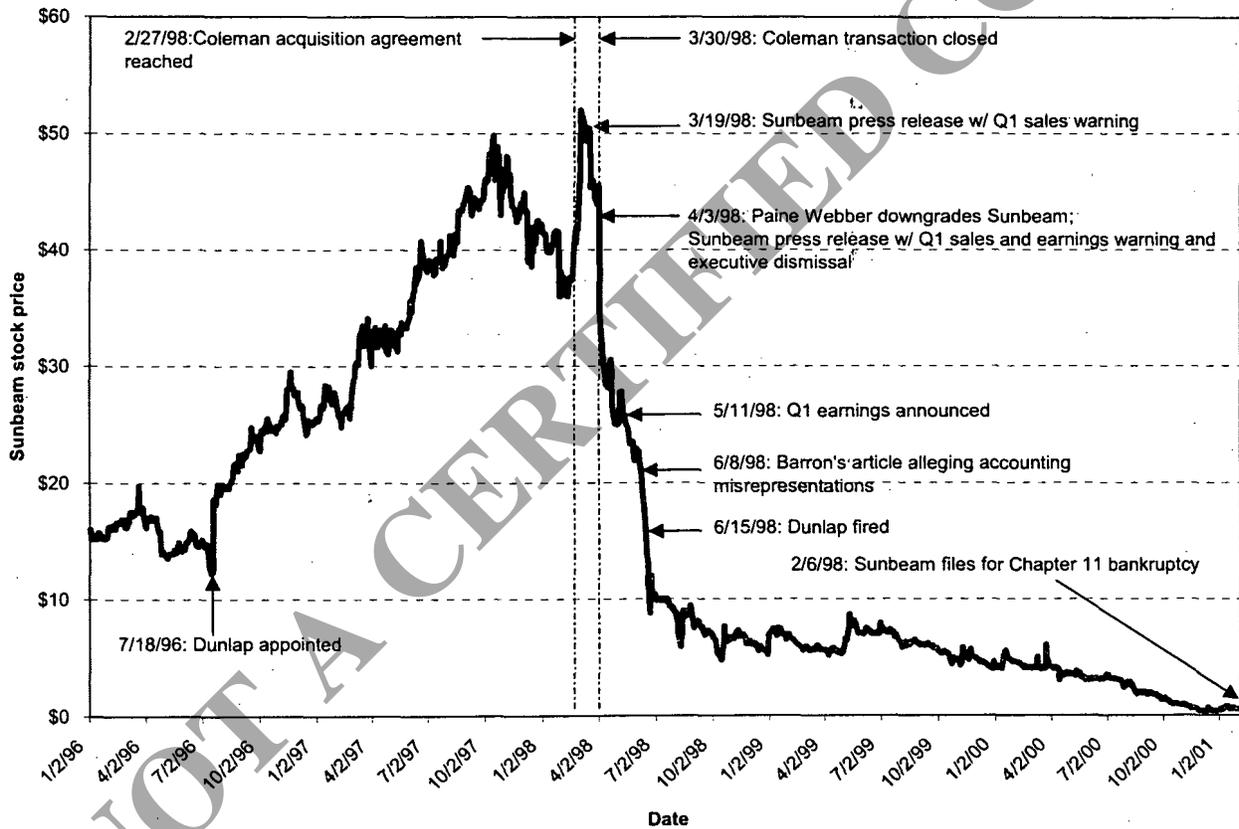
²² "Dangerous Games: Did 'Chainsaw Al' Dunlap manufacture Sunbeam's earnings last year?" *Barron's*, June 8, 1998, pp. 17-19.

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statements prepared by auditors Arthur Andersen LLP, and that pending review, those statements could no longer be relied upon.²³ The company ultimately had to restate its results for the fourth quarter of 1996, full year 1997, and the first quarter of 1998. Sunbeam's stock price never recovered and the company declared bankruptcy on February 6, 2001.

(22) Sunbeam's decline can be readily seen in its price history in Exhibit 3.

Exhibit 3: Sunbeam stock price and key events, January 1996–February 2001



Sources: Articles as listed in Appendix J; stock prices: CRSP

²³ "Sunbeam Audit Committee to Conduct Review of Company's 1997 Financial Statements," Sunbeam Corporation Press Release, June 30, 1998.

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II.2. Scope of Testimony

- (23) I have been asked to offer my opinion about the magnitude of the economic damages suffered by CPH and attributable to Morgan Stanley. For purposes of rendering this opinion, I assume that Morgan Stanley is liable but have no knowledge or opinion about such legal liability. I further assume that Morgan Stanley had a duty to disclose, or cause others to disclose, more accurate information about Sunbeam's first quarter 1998 financial performance prior to the March 30, 1998 merger date. I will refer to this disclosure as the Defendant's "curative action." By definition, what I am assuming to be the curative action would have absolved Morgan Stanley of liability had it occurred.
- (24) Plaintiff's position is that it would not have executed the merger had Defendant undertaken the curative action.²⁴ I estimate damages due to Morgan Stanley's alleged failure to take the curative action assuming that, had it done so, Plaintiff would not have consummated the merger.
- (25) After reviewing my assumptions and methodology in Section III, I present two sets of analyses.
- a. The first set of analyses, in Section IV, makes assumptions that maximize Plaintiff's estimated damages. The key assumptions in this section are biased in Plaintiff's favor and lie on the boundary of being unreasonably biased in Plaintiff's favor.
 - b. The second set of analyses, in Section V, provides damage estimates based on more reasonable assumptions. Since Section IV's damage estimate (using damage-maximizing assumptions) is zero, the reductions to the damages estimate in Section V are largely a superfluous exercise. These reductions are

²⁴ "Morgan Stanley knew that CPH would exercise its right and walk away from the transaction if CPH became aware of the extent and reasons for Sunbeam's disastrous first quarter results." Complaint, ¶ 65. Plaintiff's owner testified recently that he would "absolutely not" have done the transaction had he known about Sunbeam's first quarter financial performance. Nov. 17, 2004 Perelman Dep. at 291. The Chief Administrative Officer for MacAndrews & Forbes, one of Plaintiff's parent companies, likewise testified that had he known about Sunbeam's first quarter 1998 performance, MacAndrews & Forbes would "absolutely not" have closed the deal. Nov. 19, 2004 Gittis Dep. at 169.

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relevant only if the Court finds that the assumptions, methodology, or calculations in my first set of analyses (in Section IV) underestimate damages for reasons that I have not considered in this report.

- (26) I have also been asked by counsel for the Defendant to review the December 7, 2004 reports of Plaintiff's experts Nye, Kursh and Wagner. My analysis of these reports, their methodologies, and conclusions are found in Section VI.
- (27) In arriving at these opinions, I rely upon the materials listed in Appendix B. My opinions also rely on my detailed knowledge of finance from my recollections and readings of textbooks, the research literature, and expertise about the application of finance in a variety of practical settings, and research and analysis I performed in conjunction with this litigation, as outlined in this report. I was assisted in some of this research by staff at Bates White, LLC, who worked at my sole direction.
- (28) I reserve the right to revise my opinions if additional information becomes available. My work is ongoing and I have had only ten days to consider three expert reports, which total several hundred pages (including exhibits and appendices). I may consider additional information produced through the date of trial to determine whether such information impacts my opinions. In addition, I will consider criticisms of my opinions or bases for my opinions brought to my attention at my deposition or offered by experts retained by Plaintiff. Any of this additional information or work may cause me to revise or supplement my opinions.

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**III. Summary of
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III.1. Methodology and Assumptions

- (29) This section describes my methodology and assumptions, and explains why they are appropriate for this matter based on economic theory, the facts of the case, and the applicable law.
- (30) I have been asked to calculate the portion of Plaintiff's out-of-pocket damages attributable to Morgan Stanley and to assume that Defendant is not responsible for damages due to third parties. Specifically, any declines in Sunbeam stock price due to allegations of accounting fraud, which were not known to Defendant, do not count towards damages.
- (31) I measure damages on an out-of-pocket basis because my objective is to determine the damages that will compensate Plaintiff for its actual losses. Because Plaintiff claims it would not have completed the merger in the absence of the alleged fraud, I estimate the amount needed to put the Plaintiff in the position it would have been in had it, in fact, walked away from the transaction. Stated differently, I determine the position Plaintiff would have been in "but for" the alleged fraud, and compare that with the economic position that Plaintiff was actually in as a result of doing the transaction. To the extent that Plaintiff's actual position was worse than its "but-for" position, that difference is a measure of damages.
- (32) I value each of these positions on an "ex-ante," or forward-looking basis, as of the date of the merger—March 30, 1998. I use only information that actually was, or should have been (in the absence of Defendant's misconduct) available to the parties (or to the stock market, as the case may be, when valuing securities).
- (33) Ex-ante valuation makes far more sense economically than a hindsight-based "ex-post" approach, because my task is to value securities. The assumption of risk—but not fraud—is inherent to any securities transaction. To own a security is, by definition, to bear its risk. Security prices incorporate the market's assessment of that risk.
- (34) Therefore, to value a security as of March 30, 1998, I evaluate its risks as they looked to the market on that date. Valuing the security based on hindsight—by the price it came to be traded at later—would, in the context of this damages assessment, make each party (since each exchanged stock with the other) assume the risks intended to be borne by the other. Each would, in effect, be treated as the other's insurer. Since the parties did not intend such

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an arrangement when they entered into the transaction, it makes no sense to impose this relationship after the fact.

- (35) When performing an ex-ante valuation, information (such as market prices) arising after the valuation date can be used if it provides information about what market prices on the valuation date would have been but for the Defendant's alleged wrongful conduct. Using ex-post prices to infer ex-ante valuations does pose a challenge, however. This is because the impact of economic events that have nothing to do with Defendant's conduct has to be filtered out of post-transaction prices.
- (36) Filtering out fraud—but not risk - from securities prices leaves one with what courts and financial experts refer to as "true" or "intrinsic" value.²⁵ To arrive at true value securities should be valued *as if* the Defendant had not acted unlawfully. This standard prevents either party from benefiting from the fraud and is, I understand, frequently used in securities litigation to calculate damages.
- (37) Therefore, I find that if the Plaintiff would not have completed the merger but for Defendant's wrongful conduct, then its out-of-pocket, "but-for" damages are the true value of the property it gave up in the merger less the true value of the property (including cash) it received in exchange, all calculated as of the date of the merger.

$$\text{Plaintiff's damages} = \text{True value of property given up} - \text{True value of property received}$$

- (38) My analysis of the consolidated balance sheet of CLNH and its subsidiaries indicates that the property Plaintiff gave up in the merger ultimately consisted of 44,067,520 shares of Coleman stock, and a liability to pay off the Holdings Notes, that Plaintiff's wholly owned subsidiary, CLNH, would otherwise have had to repay no later than 2001.²⁶ What Plaintiff received in exchange was \$159,956,756 in cash, and 14,099,749 shares of Sunbeam stock.²⁷

²⁵ Academic and legal literature use both terms, but for simplicity I use the term "true value" exclusively in this report.

²⁶ CLN Holdings 1997 10-K. As noted in Exhibit 2, there was also a small amount of debt at the Coleman

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What CPH gave up
 Coleman stock
 Obligation to pay Holdings Notes

What CPH received
 Sunbeam stock
 Cash

- (39) I compute the true value of all of these items as of March 30, 1998. The true values for Coleman stock and Holding Notes are computed as if the merger were cancelled prior to March 30, 1998. The true value for the Sunbeam stock is computed by removing from its market price the artificial inflation due to Morgan Stanley (i.e. as if Morgan Stanley has made a curative disclosure).
- (40) My valuations all assume that capital markets, particularly the New York Stock Exchange (“NYSE”) on which both Sunbeam and Coleman were traded, are “efficient.” This means that securities markets—and market prices—respond almost instantly to all publicly available information about securities. “Information” is defined broadly: it includes hard facts, rumors, and even speculation about future events.
- (41) Because markets are efficient, and because information can be false, a security’s market price can differ from its true value. In the absence of fraud or misinformation, efficiency causes a security’s market price and true value to be the same. In other words, the market price of a security is generally the best measure of its true value. (The former Chairman and CEO of Coleman at the time of the merger agrees with this principle.)²⁸ I therefore use market prices as the basis for my own estimates of true value whenever this historical information is not contaminated by fraud or misinformation arising from the Defendant’s actions or failure to act. In some cases, such as modeling hypothetical “but-for” situations, it is impossible to use actual market prices. In such cases I use well-established techniques, often employing market prices from other dates as inputs, to estimate the market price that *would have*

Worldwide Corp. level, but because there was an equal amount of cash set aside in an escrow fund to repay that debt, I exclude it from my analysis.

²⁷ Merger Agreement, supra note 14.

²⁸ Mr. Levin testified that in his view, in 1998 the approximate value per share of Coleman stock was “[w]hatever it said in the Wall Street Journal every morning. . . . I’m a University of Chicago MBA. The market price is the value of the stock.” Aug. 27, 2002 Levin Dep., *Prescott Group Small Cap, L.P. v. The Coleman Co., Inc.* (Del. Ch. Ct.), p. 58–59.

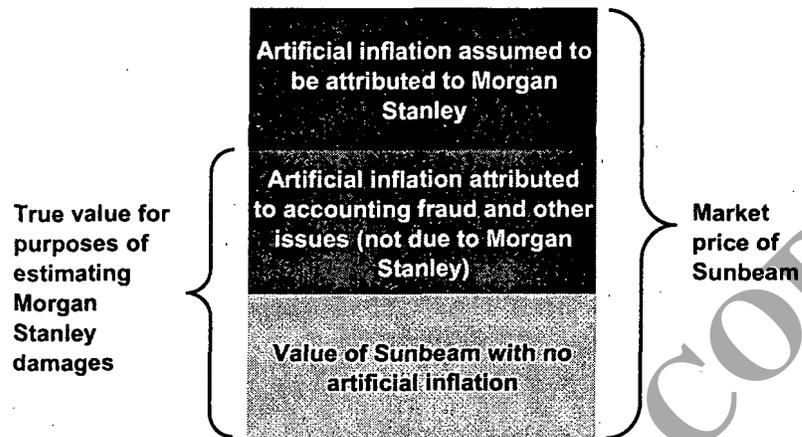
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prevailed under those hypothetical, "but-for" conditions. I use these techniques in my valuations of both Coleman and Sunbeam.

- (42) First, I use these techniques to value Coleman's stock. The true value of the Coleman stock that CPH gave up is a hypothetical value. It is derived from the price at which Coleman stock *would have* traded on March 30, 1998 *if* CPH had cancelled the merger in response to a curative action, and retained its Coleman shares. I start with the actual market price for Coleman stock on a date *before* the market had any information about a merger with Sunbeam (a date when Coleman's market price and true value were the same). I then adjust this price to reflect all the factors that could have affected Coleman's stock price between that date and March 30, 1988, including information specific to Coleman (such as changes in Coleman's fundamental business outlook and CPH's hypothetical decision to proceed with, but then cancel, the merger) and movements in the stock market as a whole.
- (43) Next, I use these techniques to value Sunbeam's stock. Here, I estimate the price that Sunbeam *would have* traded at on March 30, 1998 *if* Morgan Stanley had disclosed the information it allegedly suppressed. Presumably, that price will be lower than the market price observed on that date, when Morgan Stanley's alleged misconduct was causing the Sunbeam stock price to be "artificially inflated"—i.e., priced above its true value.
- (44) As I did for Coleman, I start my analysis on a date when Sunbeam's observed share price and true value were the same for that date. In this case, I start on a date in May 1998 when the market price of Sunbeam's shares did, in fact, reflect the information that Morgan Stanley is alleged to have concealed. I then adjust that price to estimate what Sunbeam's market price would have been on March 30, 1998 if the information available to the financial markets on that date in May 1998 had actually been released before March 30, 1998. This adjustment includes a market adjustment and an adjustment for any changes in Sunbeam's fundamental prospects between the two dates that are not tied to the alleged malfeasance of the Defendant.
- (45) The damages owed by Morgan Stanley should not be based on artificial inflation that is unrelated to Morgan Stanley's conduct. My true value calculation is consistent with this principle. My true value for Sunbeam's stock price could contain inflation from the misdeeds of others, but it contains no inflation from the actions of Morgan Stanley, as outlined in Exhibit 4.

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Exhibit 4: Sources of inflation in Sunbeam's stock price²⁹



- (46) My analysis assumes that Morgan Stanley would not have known of falsehoods in Sunbeam's audited financial statements, or the underlying accounting misconduct that required the company's financial results for the fourth quarter of 1996, all of 1997 and the first quarter of 1998 to be restated. If such falsehoods or misconduct by other parties artificially inflated Sunbeam's market price, Morgan Stanley has no liability for such inflation.
- (47) I assume that Morgan Stanley's misconduct consists of its failure to have the market learn no later than March 30, 1998:
- a. That Sunbeam was forecasted to post a loss (negative net earnings) for the first quarter of 1998.
 - b. That Sunbeam's first quarter loss would be approximately \$0.09 per share, excluding approximately \$0.36 per share in extraordinary charges for executive compensation contracts.
 - c. That Sunbeam's first quarter sales would be approximately \$224.5 million.
- (48) The specific sales and earnings figures that I assume for the curative action outlined above are those which were disclosed no later than May 15, 1998, when Sunbeam's Form 10-Q for the first quarter of 1998 was filed with the SEC.^{30, 31}

²⁹ This exhibit is intended only to illustrate a concept; the boxes are not drawn to scale.

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- (49) I have also assumed that the market's reaction to the negative information in Defendant's hypothetical curative action would have been identical to the reaction that the market actually had to the release of the same information in May 1998. Damages would be lower if I accounted for the likelihood that the market's reaction to a pessimistic *forecast* is not as severe as its reaction to an *actual* negative earnings report.
- (50) There are other valuation methods—discounted cash flow (DCF), comparable company analysis, and comparable transaction analysis—which I shall call “practitioner methods.” These practitioner methods should be distinguished from a pure efficient markets approach. Practitioner methods rely indirectly on the efficient market approach. Instead of using the actual market price of the stock they wish to value, they use the market prices of dozens of *other* securities to infer a range of possible values for it. Practitioner methods are commonly employed in situations where a market price does not exist (e.g., for a private company, or to value expected synergies) or where the desired output is a wide range of possible values as opposed to a single best estimate. Investment banks commonly use these methods in fairness opinions. CSFB and Morgan Stanley used them in this case to estimate a range of per-share values for Coleman as a stand-alone entity. CSFB's valuations ranged from \$13.27 to \$29.62, and Morgan Stanley's ranged from \$13.99 to \$39.05 respectively.
- (51) There are two main reasons why these methods are not appropriate for estimating the value of Coleman in this case.³² First, practitioner methods inevitably generate a range of values, which by itself is not a problem. The problem arises because there is no objective set of criteria for selecting any particular point in that range. This is not a problem in fairness opinions where a range of acceptable values is the desired output, but it is a fatal flaw for

³⁰ Sunbeam reported first quarter sales of \$244.3 million. However, Sunbeam extended its fiscal quarter by two days (so as to end on Tuesday, March 31 rather than Sunday, March 29), which allowed it to report both \$5 million in additional Sunbeam sales, and \$14.8 million in Coleman sales. I subtract both of these from Sunbeam's reported sales to arrive at a disclosure based on Sunbeam's non-extended quarter.

³¹ Sunbeam's first quarter sales and earnings were actually first disclosed on May 11, 1998, in a press release (see *supra*, note 21) and at a presentation to equity analysts (see *supra*, note 21), but I work from May 15 (when Sunbeam filed its 10-Q), and the Sunbeam stock price on that date, which increases estimated damages.

³² Plaintiff's experts Kursh and Wagner rely on these methods extensively, which is a flaw in their analysis that I discuss in Section VI.

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use in matters where a single best estimate is the desired output and where relevant market-based prices are available. Second, the range of values estimated by practitioner methods depends critically on multiple assumptions, each of which is a matter of subjective judgment.³³

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³³ A number of practitioner textbooks share my sentiments. For example, New York University professor Aswath Damodaran writes: "Valuation is neither the science that some of its proponents make it out to be nor the objective search for true value that idealists would like it to become. The models that we use in valuation may be quantitative, but the inputs leave plenty of room for subjective judgments. Thus, the final value that we obtain from these models is colored by the bias that we bring into the process. In fact, in many valuations, the price gets set first and the valuation follows." See Damodaran, Aswath, "Investment Valuation: Tools and Techniques for Determining the Value of *Any* Asset," John Wiley & Sons, Inc. (2002), p. 2.

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III.2. Summary of Conclusions

- (52) In my opinion, the net true value of the property and cash actually received by Plaintiff in the merger far exceeds the true value of the property Plaintiff gave up in the merger. Thus there are no damages in this case.
- (53) The best estimate of damages, based on the most reasonable set of assumptions, is actually negative. Since the best damage number is negative, I considered whether there were any other assumptions that were not too unreasonable, that might generate a positive damage number. I considered other assumptions, all of which were less likely than the assumptions yielding the best estimate, and all of which were designed to maximize damages. The highest damage number that I could come up with was still negative.
- (54) The different sets of assumptions that I considered in an attempt to see if there was any way that damages might be positive, led to 24 different damage estimates. The highest, lowest, and median estimates across all 24 calculations are provided in Exhibit 5 below. The figures are in millions. All of the figures are highly negative, as indicated by the parentheses.

Exhibit 5: High, median and low damage estimates, in millions of dollars

Damage Scenario	Estimate
High	(\$110)
Median	(\$290)
Low	(\$376)

- (55) I also made minor assumptions for each of these 24 damage calculations that bias the damages in favor of the Plaintiff (and in this case, make the estimates in Exhibit 5 less negative). Alternative assumptions that are less biased in favor of exaggerating damages reduce each of these damage estimates (make them more negative) by tens of millions of dollars.

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III.3. Report Structure

- (56) The rest of the report discusses my opinions and provides the data and analysis upon which they are based. It is organized as follows:
- (57) My analysis proceeds in three main stages:
 - a. Section IV explores the consequences of assumptions that, at each turn, are selected to maximize damages, and lie on the boundary of being implausibly biased in favor of the Plaintiff.
 - b. Section V discusses more realistic valuations for what CPH gave up and received in the transaction.
 - c. Section VI discusses the reports of Plaintiff's experts Nye, Kursh and Wagner.

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**IV. The True Value
of the Property
Exchanged in the
Merger Under
Damage-
Maximizing
Assumptions**

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(58) This section provides my damage-maximizing valuation of the assets and liabilities that CPH gave up and received in the merger. Their values are netted against one another to arrive at a maximum damage figure.

- a. The maximum net true value for the property that CPH gave up in the merger (CLNH equity) is \$382 million, which is the difference between the maximum true value of the Coleman common stock and the minimum true value of the CLN Holdings Notes.
- b. The minimum net true value of the property that CPH received in the transaction, which is the minimum true value of the Sunbeam stock received plus the cash consideration, is \$491 million.
- c. The maximum damages owed to the Plaintiff are zero because the minimum true value of the property received in the merger exceeds the maximum true value of the property and cash CPH gave up in the merger by \$110 million³⁴.

(59) The rest of this section provides the bases for this opinion. It is organized as follows:

- a. Section IV.1 estimates the damage-maximizing true value per share of Coleman stock on March 30, 1998. This estimate of the true value of Coleman's share price borders on being implausibly high.
- b. Section IV.2 estimates the damage-maximizing valuation of the CLN Holdings Notes on March 30, 1998. As this is an obligation to make payments, the damage-maximizing valuation is the lowest true value of the Holdings Notes. This estimate borders on being implausibly low.
- c. Section IV.3 estimates the true value of Sunbeam stock on March 30, 1998 under damage-maximizing assumptions. This estimate of Sunbeam's share price borders on being implausibly low.

³⁴ Arithmetic difference is due to rounding. All of my calculations are performed at full precision, however for presentation purposes throughout this report I often show dollar figures rounded to the nearest million.

- d. Section IV.4 does the arithmetic. It derives the maximum estimate of damages by netting these separate estimates against one another and against the approximately \$160 million cash consideration.

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IV.1. The Damage-Maximizing True Value of the Coleman Stock Given Up in the Merger

- (60) This section of the report analyzes the damage-maximizing true value of the 44,067,520 shares of Coleman common stock that CPH would have retained if it had called off the merger. The March 30, 1998 valuation is based on careful study of Coleman's stock price and trading history prior to the merger, in conjunction with well-established techniques for adjusting stock prices to reflect market movements, and from an academic study of cancelled mergers whose findings are applied to this analysis. My estimate of true value is designed to maximize damages: When faced with a range of assumptions or choices, I choose the one most favorable to the Plaintiff, even if it is clearly less reasonable than other choices.
- (61) I use two steps to estimate the true value of Coleman stock on March 30, 1998 in the "but-for" world in which CPH cancels the merger:
- a. First, I compute the "stand-alone value" of Coleman stock: This is the value that the Coleman stock would have had on March 30, 1998 if there had never been a merger proposal by Sunbeam.
 - b. Then, I adjust the stand-alone value for the impact on Coleman's stock price that announcing, but thereafter terminating, the Merger Agreement would have had. This adjustment can be positive or negative depending on the change in the market's perception of the likelihood that another company will acquire Coleman.
- (62) I estimate the March 30, 1998 stand-alone value from Coleman's stock prices several weeks prior to March 30 because the actual closing price of Coleman on March 30, 1998 reflects the fact that the merger actually occurred, and because Coleman's price before that date was affected by merger expectations. To estimate what Coleman's stand-alone value would have been on March 30, 1998, I proceed as follows:
- a. First, I identify the latest date on which the market was arguably valuing Coleman on a stand-alone basis; that is, the date *beyond* which the market price of Coleman appears to be inflated by news or rumor of its impending

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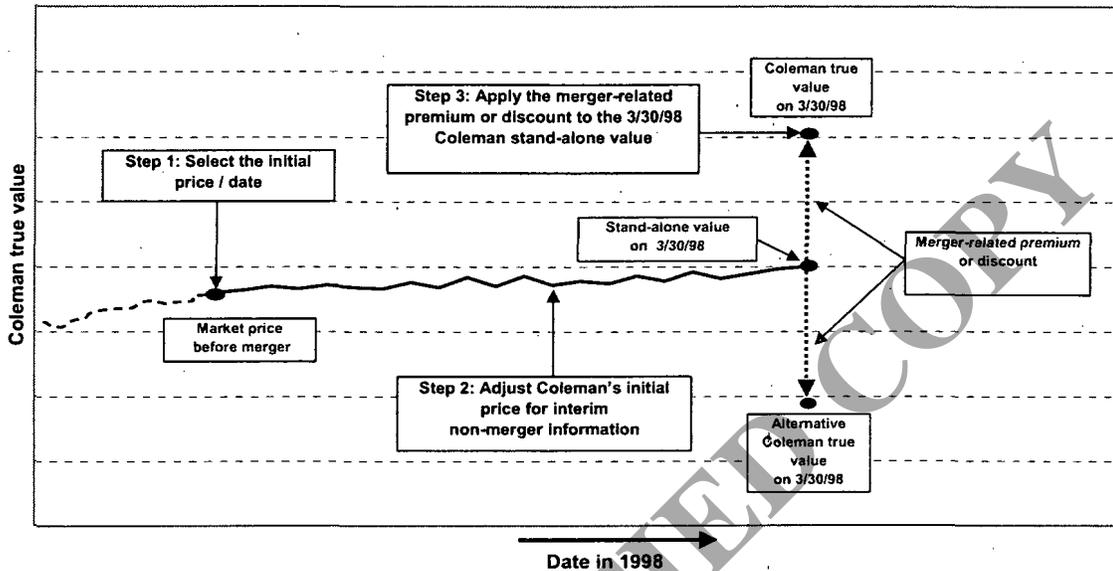
merger. This is depicted as "Step 1" in Exhibit 6, which illustrates my procedure.

- i. In this section of the report (IV), I use the damage maximizing (i.e. highest) choice of start dates—which is February 23, 1998.
 - ii. In later sections, I review the evidence indicating that the most likely start date is much earlier, when the price of Coleman was much lower, and I provide damage estimates based on that alternative start date.
- b. Next, I adjust Coleman's price on the start date to reflect any non-merger related information pertinent to Coleman's March 30, 1998 true value that appeared between the start date and March 30, 1998. This adjustment generates Coleman's March 30, 1998 "stand-alone value," which is depicted in Exhibit 6 as "Step 2." (The details of the adjustment are in Appendix E.)
- i. This section (IV) of the report calculates these adjustments under damage-maximizing assumptions about the starting date.
 - ii. Section V discusses estimates made under more reasonable assumptions about the starting date.

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Exhibit 6: Methodology for deriving Coleman's true value



(63) I then adjust the estimate of Coleman's March 30, 1998 stand-alone value for pertinent merger-related information that could affect Coleman's true value in the "but-for" scenario. This accounts for the price impact of the prior announcement of the Merger Agreement with Sunbeam, and the announcement by CPH that the merger was terminated. This adjustment, which I term the "merger-related premium," yields an estimate of Coleman's true value on March 30, 1998 and is depicted in Exhibit 6 as Step 3. The merger-related premium reflects the market's typical reaction to an announcement and subsequent termination of a merger.³⁵

³⁵ As stated earlier in this report, I am assuming that the curative action takes place after the March 2, 1998 merger announcement. The Step 3 adjustment would not be appropriate if the curative action took place prior to the announcement of the merger on February 27, 1998 and resulted in a "but-for" scenario where there simply was no announcement of a merger between Coleman and Sunbeam. Coleman's true value is lower if this is the case.

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- a. This section (IV) of the report uses a damage-maximizing premium of 5.79%.³⁶ This is the largest applicable value that I could find in the academic literature on terminated mergers.
- b. Section V discusses the evidence in favor of a lower premium and provides damage estimates based on it.

IV.1.1. Step 1: Selection of Initial Date

IV.1.1.1. The Contaminating Impact of Merger Rumors on Coleman's Stock Price Justifies a Start Date Sufficiently Prior to the Date of the Merger Announcement

- (64) Step 1 of my analysis of the true value of Coleman requires selection of an appropriate starting date from which the March 30, 1998 stand-alone value is generated. The best starting date is the date before the date at which Coleman's stock price first became inflated by rumors or "leaked" news of a suspected merger. Plaintiff's expert Kursh applies a similar logic to his analyses.³⁷ In many instances, one can ascertain a date by which we know with certainty that a stock's price is inflated by merger rumors. For the purposes of damage-maximization, that date suffices as the first date of inflation. However, we cannot say that such rumors did not cause inflation sooner. Often, one can infer from the weight of the evidence that the first date was sooner with high probability.
- (65) Market efficiency indicates that rumors of a merger are a form of information that one would expect to have an impact on a stock's price. Academic research on mergers finds that the target firm's price increases prior to a merger announcement. These run-ups can be

³⁶ Sullivan, Michael J., Marlin R.H. Jensen, and Carl D. Hudson. "The Role of Medium of Exchange in Merger Offers: Examination of Terminated Merger Proposals." *Financial Management* 23.3 (1994) ("Sullivan et al., Terminated Merger Proposals"): 51-62.

³⁷ Kursh acknowledges that Morgan Stanley's "control premium analysis," which compared merger prices with market prices 28 days before announcement, "may eliminate any market impact that might be attributed to information leakage prior to formal merger announcement." Dec. 7, 2004 Expert Report of Samuel J. Kursh, D.B.A. ("Kursh Report").

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attributed to leakage of information.³⁸ This research also finds that the run-up in a company's stock price from such merger-related inflation starts anywhere from days to weeks before the official merger announcement. Recent analyses of mergers in the U.S. conclude that for the average firm, otherwise unexplained price increases prior to the actual merger announcement are significant and in the range of 11 to 14 percent, with the variation accounted for by different studies and different pre-announcement periods over which the run-up is calculated.³⁹ On a firm-by-firm basis, the stock price run-up prior to the merger can vary far more than this. In Coleman's case, the stock price increased by nearly 60% in the month prior to the merger announcement, throughout which merger talks took place.⁴⁰ This is highly unusual when the average return for most stocks in a given month is on the order of 1%.⁴¹

- (66) My own research, performed in conjunction with this litigation, also confirms the findings of prior academic research studies. I analyzed 627 announced mergers occurring around the time of the Sunbeam-Coleman merger and found that, on average, the target company's price rose 8.3% in the four weeks leading up to the formal merger announcement.⁴² This is a statistically significant increase. My study shows not only that news of mergers often leaks out prior to their formal announcement, but that such leakage can occur weeks in advance.

³⁸ The academic literature suggests two channels through which information leaks into the market: insider trading and investor anticipation of the merger. For a summary, see Sanders, Ralph W., Jr. and John S. Zdanowicz. "Target Firm Abnormal Returns and Trading Volume Around the Initiation of Change in Control Transaction." *The Journal of Financial and Quantitative Analysis* 27.1 (1992): 109-129 ("Sanders and Zdanowicz").

³⁹ Ascioğlu, N. Asli, Thomas H. McInish, and Robert A. Wood. "Merger Announcements and Trading." *The Journal of Financial Research* 25.2 (2002): 263-278.

Sanders and Zdanowicz, supra note 38.

Schwert, G. William. "Markup Pricing in Mergers and Acquisitions." *Journal of Financial Economics* 41 (1996) ("Schwert, Markup Pricing"): 153-192.

Schwert, G. William. "Hostility in Takeovers: In the Eyes of the Beholder?" *The Journal of Finance* 55.6 (2000): 2599-2640.

⁴⁰ Coleman was trading at \$13.25 at the end of January, and at \$20.875 at the end of February.

⁴¹ Ibbotson Associates, "Valuation Edition: 2004 Yearbook," large company stocks: total return 1926-2003.

⁴² My sample consisted of 627 announced merger transactions with target market capitalizations of \$250MM-\$10B four weeks prior to announcement, involving U.S. public companies, that were announced during the period January 1, 1996-December 31, 2000. Data source: Thomson Financial.

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Such leakage generated artificial inflation in the price of Coleman that needs to be eliminated when constructing an economically valid damage calculation.

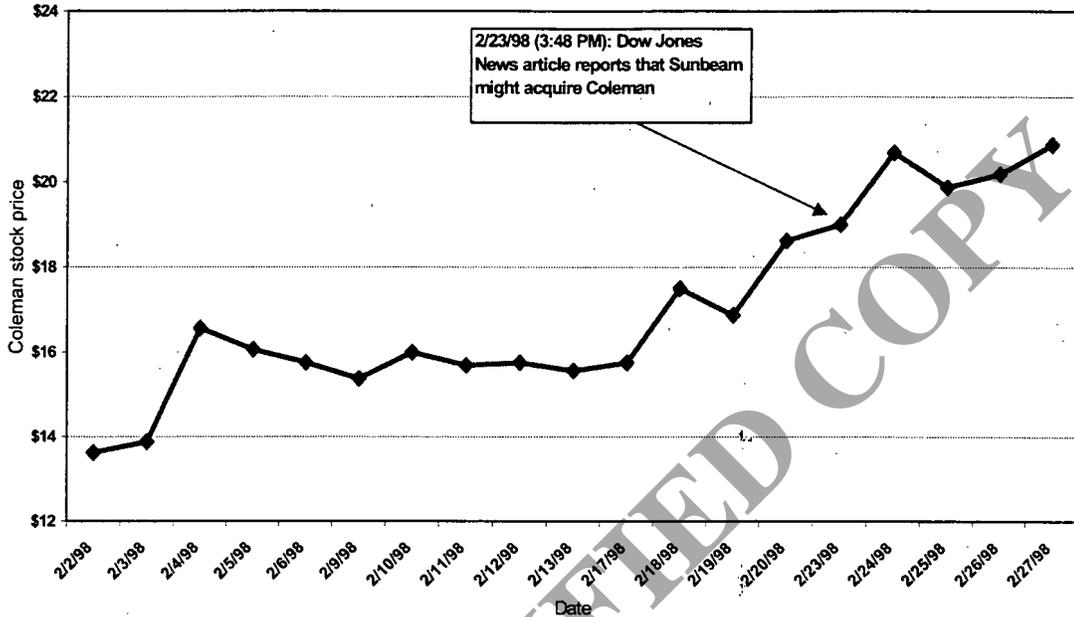
IV.1.1.2. February 23, 1998, About 10 Minutes Before the Closing Bell, Is the Damage-Maximizing Starting Point

- (67) I conducted research to determine when the market first suspected that Coleman was the target of an acquisition. I analyzed Coleman's stock price and trading activity in the weeks leading up to the merger announcement and reviewed all available news stories about Coleman during this period. I concluded that there were alternative start dates. In this section (IV) of the report, I use the one that maximizes damages—February 23, 1998. However, as discussed in more detail in Section V, there is a more likely starting date which generates significantly lower damages than February 23.
- (68) As can readily be seen in Exhibit 7, the price of Coleman rose fairly consistently over the month before the merger announcement. Thus, the later the date I use for my starting point, the higher my estimate of damages tends to be, and the more likely it is that what I *call* a stand-alone value for Coleman is, in fact, a value that is affected by merger expectations.

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Exhibit 7: Coleman's daily stock price during February 1998



Source: CRSP

- (69) On February 23, 1998, approximately ten minutes before the close of trading, the Dow Jones News Service reported that “takeover speculation” related to an acquisition by Sunbeam was “*still* following Coleman,” (emphasis added) and mentioned that the “implied volatilities” of options on Coleman stock had started increasing the previous week, “ostensibly in advance of a sale.”⁴³ Thus, certainly by the time of the February 23, 1998 Dow Jones news announcement, if not much earlier, Coleman was rumored to be in talks with Sunbeam. The rumors were sufficiently widespread to be discussed (and further disseminated) by Dow Jones.
- (70) While there may be a basis for believing that Coleman’s price was affected by merger speculation *before* February 23 (the article’s own words suggest as much), there is no basis at all for believing that Coleman’s price was untainted by merger speculation *after* that date.

⁴³ “Coleman’s Volatilities Attracts Traders,” *Dow Jones News Service*, February 23, 1998, 3:48 PM.

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February 23 is the latest, and given Coleman's price increase during February most damage-maximizing, date on which to begin Step 1 of my analysis. It is the last date (and therefore highest price) on which Coleman's price was arguably untainted by news or rumors of the impending merger. The price of Coleman stock on February 23, 1998, just before the Dow Jones story of the merger was released, was \$18.94 per share.⁴⁴

IV.1.2. Step 2: The March 30, 1998 Valuation of Coleman as a Stand-Alone Entity Is Obtained by Analyzing the Price Impact of Interim Non-Merger Information

- (71) Next, I convert the actual market price of Coleman on the start date (in this case, February 23, 1998) into a hypothetical stand-alone value at March 30, 1998. This is my computation of Coleman's market price under the assumption that Coleman has never been the target of a merger with Sunbeam. I researched whether there had been any events having a significant impact on Coleman's share price during that period, and found none (other than news and speculation concerning the merger itself, as I discuss in more detail in Section V.1).
- (72) This does not mean that the price of Coleman would have stayed the same between February 23 and March 30. The same forces that affected the general stock market between those dates would also have affected Coleman. I therefore arrive at Coleman's stand-alone value on March 30, 1998 by making a "market adjustment." A market adjustment is a widely accepted method in financial modeling to account for changes in the stock market as a whole and the historical relationship between such changes and those of a specific company. The "market model" I use for this purpose is described in Appendix E. My application of this model increased the February 23 price by \$0.69, to arrive at a March 30, 1998 stand-alone value of \$19.63 per share for Coleman. I note that this \$19.63 price is within the ranges estimated for Coleman by both CSFB and Morgan Stanley.⁴⁵

⁴⁴ Source: Tick Data.com (adjusted to correct for rounding).

⁴⁵ Feb. 25, 1998, "Draft Materials Prepared for the Board of Directors: The Coleman Company, Inc.," ("CSFB Board Presentation").

Feb. 27, 1998, "Project Laser: Presentation to the Board of Directors: Camper," ("Morgan Stanley Board

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IV.1.3. Step 3: Adjustment of Stand-Alone Value to Reflect Merger Announcement and Merger Cancellation

- (73) Assuming that Coleman would have called off the merger as a result of Morgan Stanley's curative action, Coleman's price on March 30, 1998 would likely have differed from its stand-alone value on that day. To account for the effect of the merger announcement and subsequent cancellation, I adjust Coleman's stand-alone value by adding a merger-related premium. This section (IV.1.3) assumes a damage-maximizing premium of 5.79%, which yields an estimate of Coleman's true value on March 30, 1998 of \$20.76 per share. This is the maximum possible true value of Coleman on March 30, 1998, incorporating the maximum starting price, the market adjustment, and the maximum merger-related premium.
- (74) The merger-related premium quantifies the combined effect of a merger announcement and subsequent cancellation on the target's stock price. Sullivan et al. (1994) calculated this premium as 5.79% by comparing the stock prices of merger targets prior to their merger announcements with their stock prices after the termination of their mergers for a sample of 84 terminated mergers.⁴⁶ The sample includes New York Stock Exchange and American Stock Exchange-listed target firms involved in terminated merger proposals between 1980 and 1988. The Sullivan study found a statistically significant increase in the stock returns of these targets from 10 trading days prior to the announcement of the merger proposal to 10 trading days after the announcement of the merger termination.
- (75) Of all of the papers with comparable merger samples, the 5.79% premium in the Sullivan paper is the largest, and thus most damage-maximizing adjustment I could make for the impact of merger-related news in the "but-for" scenario.⁴⁷ Because this study uses data from the 1980s, I also carried out my own study of merger-related premia, using a time period that

Presentation").

⁴⁶ Sullivan et al., *Terminated Merger Proposals*, supra note 36 at 51-62.

⁴⁷ Other studies either estimate lower premiums or use a sample of mergers that is not comparable. Asquith, Paul. "Merger Bids, Uncertainty, and Stockholder Returns." *Journal of Financial Economics* 11 (1983) ("Asquith, Merger Bids"): 51-83.

Dodd, Peter. "Merger Proposals, Management Discretion and Stockholder Wealth." *Journal of Financial Economics* 8 (1980) ("Dodd, Merger Proposals"): 105-137.

Schwert, Markup Pricing, supra note 39, at 153-192.

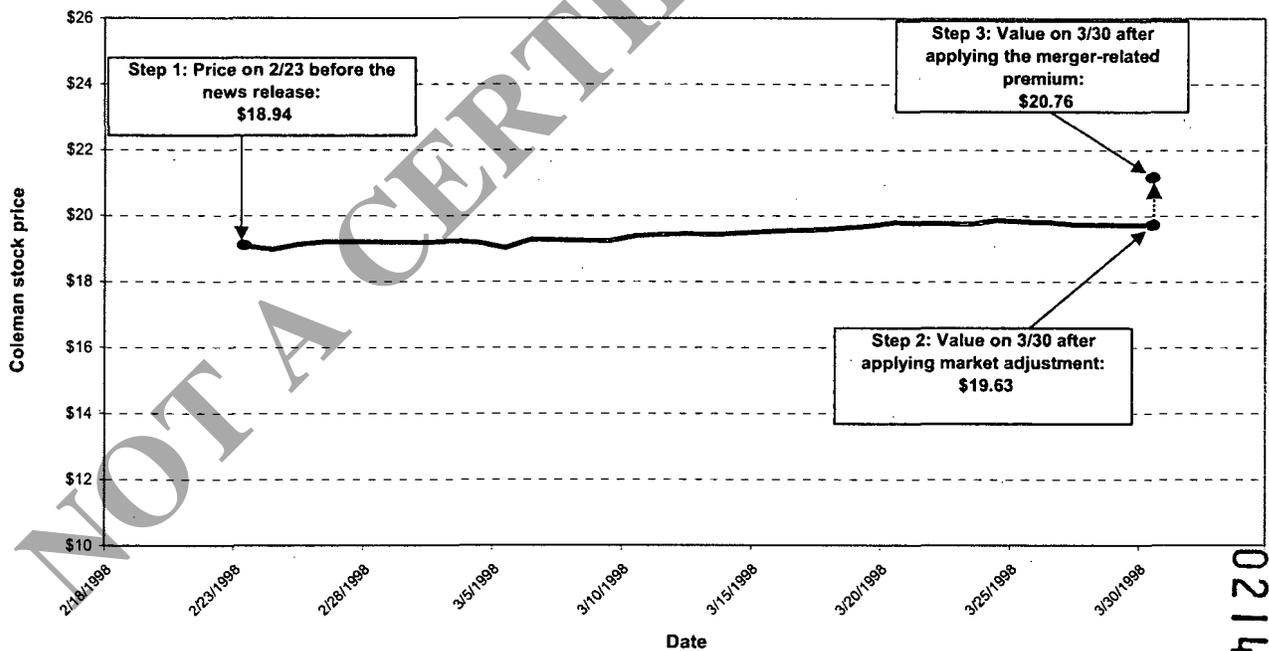
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is a better match for the purpose at hand than the time period in the Sullivan study. My study, performed for this report, suggests that the premium is modestly lower than the premium found by Sullivan. I discuss damage estimates using this more appropriate premium in Section V.

IV.1.4. Translating the Market Price of Coleman on February 23 to the True Value of What CPH Gave Up in the Merger

(76) Exhibit 8 summarizes the steps used to arrive at the damage-maximizing true value of Coleman on a per share basis. Starting with Coleman's value of \$18.94 on February 23, 1998 (step 1), I applied a market adjustment to arrive at a stand-alone value of \$19.63 on March 30 (step 2), and then applied a merger-related premium to arrive at Coleman's true value of \$20.76 per share on March 30, 1998 (step 3).

Exhibit 8: Calculation of true value of Coleman at March 30, 1998



(77) Thus, the total damage-maximizing true value of Plaintiff's 44,067,520 shares of Coleman given up in the merger was \$915,049,864.

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IV.2. Valuing the CLN Holdings Notes

- (78) In the merger, Sunbeam assumed responsibility for paying off the owners of the CLN Holdings Notes (the "Noteholders"). Had CPH cancelled the merger, it would have continued to own Coleman stock via its subsidiaries, but it also would have continued to owe money to the Noteholders. Therefore, the true value of the Holdings Notes must be subtracted from the true value of CPH's Coleman stock to arrive at the net true value of the property CPH would have retained in the "but-for" world. As with Coleman stock, the "but-for" value of the Holdings Notes should be calculated as of March 30, 1998 under the assumption that the curative action has taken place and that the merger has been called off. The curative action and merger cancellation would have lowered the true value of the Holdings Notes relative to the price at which they traded historically at the time of the merger. Because the Holdings Notes are a liability to CPH, every \$1 reduction in my estimate of the true value of the Holdings Notes represents a \$1 increase in my estimate of Plaintiff's damages.

IV.2.1. Background

- (79) On May 20, 1997, CLNH issued \$732 million in principal amount of Senior Secured Discount Notes (the "Holdings Notes") due 2001. These were zero coupon notes, meaning that the issuer was not obligated to make any payments prior to the maturity date of the notes. The entire principal amount, \$732 million, was to be paid all at once upon maturity. In return, on the date the Holdings Notes were issued, CLNH received a heavily discounted amount of net proceeds totaling \$455 million.⁴⁸ The proceeds of the Holdings Notes were used to retire (1) approximately \$187 million of debt previously issued by its subsidiary Coleman Worldwide, and (2) approximately \$262 million of debt previously issued by CLNH.⁴⁹ The Holdings Notes consisted of two series, or "tranches," of notes whose key characteristics are described in Exhibit 9 below:

⁴⁸ Gross proceeds, before fees, were \$470 million.

⁴⁹ The remaining \$6 million was held in escrow to fund the completion of the Coleman Worldwide LYONs

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Exhibit 9: CLN Holdings Notes characteristics

CLN Holdings Notes Tranches	Principal Amount	Proportion of total	Yield to Maturity at issue	Moody's Rating ⁵⁰
First Priority	\$600,475,000	82%	11.125%	B3
Second Priority	\$131,560,000	18%	12.875%	Caa1
Total	\$732,035,000	100%		

IV.2.2. Holdings Notes Valuation Methodology

- (80) The value of corporate debt depends on the amount and timing of payments, and the risk associated with those payments (the likelihood that the note issuer will actually pay them). The higher the risk, the larger the discount rate one uses in calculating their present value, and the lower the value of the notes. If two notes have the same payments due on the same dates, the less risky note will have a higher market price than the more risky note.⁵¹ In the case of the CLN Holdings Notes, the Second Priority notes are riskier because they have a less senior claim to the collateral with which the Holdings Notes are secured, and thus have a lower value per dollar of principal owed than the First Priority notes.
- (81) Nevertheless, both tranches of Holdings Notes have substantial default risk according to the ratings assigned to them by Moody's, a bond rating agency. The default risk is primarily tied to the value of their collateral, which is the Coleman stock ultimately owned by CLNH. The more valuable the Coleman stock, the more valuable the collateral, and the lower the risk of default, which ultimately leads to a higher value of the Holdings Notes.
- (82) The actual prices at which CLN Holdings Notes traded generally confirm this theoretical relationship between the value of Coleman stock and the value of the Notes. Leakage of news of the Merger Agreement caused both a run-up in the stock price of Coleman, and a

retirement in May 1998. Any remaining escrow funds were earmarked as a dividend to MacAndrews & Forbes Holdings Inc. Form S-1 Amended, filed by Coleman Escrow Corp. on October 6, 1997, p. 14. "Coleman Escrow Corp." and "Coleman Holdings Inc." are both prior names of CLN Holdings Inc. See also Coleman Worldwide Form 25, filed October 3, 1998.

⁵⁰ Moody's Investors Service ratings as of March 4, 1998.

⁵¹ The price-yield relationship in bonds is extensively discussed in numerous textbooks. See, for example, Frank J. Fabozzi, "Bond Markets, Analysis and Strategies," Third Edition, Prentice Hall, 1996, at 22-24.

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general increase in the price of the First Priority Notes, with a corresponding decrease in their yield to maturity (“YTM” or “yield”). The effect is most noticeable on March 2, 1998, when announcement of the Merger Agreement caused a dramatic rise in the value of the notes: the sharp increase in the value of the collateral made the notes less risky and therefore more valuable. Prices and yields for the First Priority Notes on dates for which data were available are shown in Exhibit 10. Observe that prices and yields move inversely to one another in the exhibit. The yield is the discount rate that makes the discounted promised future cash flows of the note equal to its market price.

Exhibit 10: CLN Holdings Notes (First Priority tranche) pricing information on select dates

Date	Coleman stock price	CLN Holdings debt price	Debt principal return	Debt YTM
20-FEB-98	\$18.63	69.75	+0.72	11.50%
23-FEB-98	\$19.00	70.25	+1.08	11.20%
24-FEB-98	\$20.69	72.00	+2.86	10.48%
26-FEB-98	\$20.19	73.00	+0.69	10.08%
2-MAR-98	\$30.94	78.00	+7.59	7.79%

Source: The Wall Street Journal, February 20, 1998–March 2, 1998.⁵²

IV.2.3. Valuation Mechanics

- (83) I value the Holdings Notes as of March 30, 1998, under the assumption that CPH would have cancelled the merger. Although I have information on the market prices of the First Priority Holdings Notes for various dates in late February and early March of 1998, I do not have Holdings Notes market prices for late March for a hypothetical scenario in which the merger is cancelled. Thus, I must estimate what these prices would have been.
- (84) My damage-maximizing estimate of the true value of the First Priority Holdings Notes proceeds as follows.

⁵² The Wall Street Journal reported the price of the CLN Holdings Notes only on select days when it was one of the “key gainers” among high yield corporate bonds, and only reported the First Priority values. The dates shown are the only ones for which I have been able to locate prices for the notes. Coleman stock price data: ©200410 CRSP®, Center for Research in Security Prices. Graduate School of Business, The University of Chicago used with permission. All rights reserved. www.crsp.uchicago.edu.

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- a. I value the First Priority Holdings Notes using their yield to maturity on February 26, 1998. This is the latest day for which I have data prior to the merger announcement. On that date, Coleman was trading at \$20.19 and the First Priority Holdings Notes had a yield to maturity of 10.08%.⁵³ The market price of Coleman on February 26 was lower than the \$20.76 true value of Coleman that I estimated as of March 30, 1998 so my use of a lower stock price here generates a higher damage estimate: the lower the stock price, the less valuable the Holdings Notes, and the greater Plaintiff's damages.
- b. I assume that the yield to maturity of the First Priority Holdings Notes did not change between late February and late March 1998. This assumption maximizes damages because there is strong reason to believe that the yields on most high yield bonds would have declined in the month of March 1998 in the "but-for" world due to overall market conditions, as explained in Section V.
- c. At March 30, 1998, I discount the promised future payments of the CLN Holdings Notes (First Priority) at the same (pre merger announcement) yield to maturity that they had on February 26, 1998. At this discount rate, 10.08%, the First Priority Holdings Notes have a March 30, 1998 true value of \$442 million.⁵⁴

(85) I have no market data with which to price the Second Priority Holdings Notes. However, modern bond valuation methodologies tell us that their yield to maturity is highly correlated with the yield to maturity of the first tranche.⁵⁵ It is my opinion, using my knowledge of

⁵³ The yield of 10.08% is 1.045% below the yield to maturity of the notes at issue, reflecting changes in the market's perception of the required yield to maturity associated with the risk of these notes.

⁵⁴ Calculated by discounting back the principal amount using the 10.08% YTM, assuming semi-annual accrual date and geometric compounding using a 360 day (30 day per month) year.

⁵⁵ A zero coupon bond can be viewed as an option on the firm's assets. See Fischer Black and Myron Scholes, "The Pricing of Options and Corporate Liabilities," *Journal of Political Economy* 81, no. 2 (May-June 1973) ("Black and Scholes"), pp. 637-654. In this particular case, the Holdings Notes can be valued as call option with different strike prices on Coleman stock. Black and Scholes prove that these are perfectly

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how to apply this valuation methodology, that the yield to maturity of the Second Priority Notes in the "but-for" world would be no larger than 11.83%. The reasons for this follow:

- a. 11.83% is 1.045% below the 12.875% yield these notes had at issue. This decline in yield to maturity is the same as the assumed decline in the yield to maturity of the First Priority notes from issue to March 30, 1998. It is also a yield that maintains the same spread between the yields to maturity of the First and Second Priority Holdings Notes.
- b. Modern junk bond valuation techniques, derived from the Black-Scholes option pricing model,⁵⁶ tell us that that the decline in the yield on the second-tranche notes would be larger, and the spread in yields between the two tranches should narrow, if the yields on the bonds decline because of credit quality improvements arising from an increase in the value of the underlying collateral (here, Coleman stock).
- c. The yield to maturity of 11.83%, being higher than modern bond valuation techniques suggest it should be, generates a lower value for the Second Priority notes and greater damages than an unbiased estimate of their true value.

(86) A discount rate of 11.83%, applied (as of March 30, 1998) to the promised future payments of the Second Priority Holdings Notes, generates a March 30, 1998 true value of \$92 million for the Second Priority Notes in the "but-for" world. The aggregate true value of both tranches of Holdings Notes is therefore \$533 million.⁵⁷

correlated.

⁵⁶ Black and Scholes, supra note 55. My analysis about the change in the yield to maturity is based on my knowledge of the effect of bond duration, coupled with the partial derivative of the logarithm of the value of a call option with respect to a change in the stock price as a function of the strike price. Building blocks for the partial derivative calculation are found, for example, in Dan Galai and Ronald W. Masulis, "The Option Pricing Model and the Risk Factor of Stock," *Journal of Financial Economics* Volume 3 (1976), pp. 53-81.

⁵⁷ The cost to Sunbeam of assuming this debt was much higher than its true value. After the merger closed, during the second quarter of 1998 Sunbeam retired the Holdings Notes, paying the Noteholders approximately \$625 million: \$524 million in accreted value as of May 15, 1998, plus an approximately \$100

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IV.3. The Damage-Maximizing Estimate of the True Value of Sunbeam Stock Received by CPH in the Merger

- (87) This section of the report estimates the true value of the Sunbeam stock received by CPH in the merger. The true value of Sunbeam stock is the market price for Sunbeam common shares that would have prevailed on March 30, 1998 if Morgan Stanley's information had been released to the market (the curative action), and the merger had been completed.⁵⁸ It is equal to the value at which Sunbeam would have traded on March 30, 1998 after all of the artificial inflation attributed to Morgan Stanley's conduct was removed. As in prior sections, whenever there is an element of uncertainty in the appropriate choice of options, I choose the option that minimizes Sunbeam's value and therefore maximizes damages for the Plaintiff, even if other more reasonable choices exist.
- (88) To estimate the true value of Sunbeam on March 30, 1998, I first identify the date closest to March 30 on which Sunbeam's stock price was not artificially inflated due to Morgan Stanley's conduct. The damage maximizing choice here is May 26, 1998. I then adjust the stock price on May 26 back to March 30.
- a. In this section (IV), I adopt a methodology for this adjustment that maximizes damages by attributing all of the fall in Sunbeam stock price between March 30 and May 26 to Morgan Stanley.

million prepayment penalty. Indenture, Coleman Escrow Corp., May 20, 1997, p. 2; Sunbeam Corp. Form 10-Q for Q2 1998, filed December 22, 1998.

⁵⁸ I am ignoring any discount due to the lock-up provisions of the Merger Agreement or the fact that the Sunbeam shares were unregistered. Accounting for these issues fairly would *decrease* damages. First, modern utility theory suggests that the discount that should be applied to CPH's holdings of Sunbeam should be close to zero. Second, restrictions on unregistered stock only delay sale to the public. An active Rule 144A market exists for such shares among qualified investors. Third, CPH's overall liquidity increased in the merger transaction. Its ownership percentage of Coleman (over 80%) was much larger than its holdings in Sunbeam (14%) and, given its controlling status, would have been more difficult to sell at market prices, even accounting for the relative difference in legal restriction on sales. Fourth, any sale of the Coleman shares would have been encumbered by the debt covenants of the Holdings Notes. Fifth, a major part of the consideration received in the merger was cash and the assumption of the Holdings Notes, which clearly enhanced the liquidity of CPH's position. As such, applying the liquidity discount to every aspect of the transaction where it is a legitimate consideration would substantially reduce damage estimates for the Plaintiff.

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- b. Section V.3 discusses a more proper apportionment of the March 30 to May 26 fall in Sunbeam's stock price between the release of the information allegedly concealed by Morgan Stanley and the revelation of other adverse information that should not contribute to Morgan Stanley's damages.

(89) The rest of this subsection proceeds as follows. In Section IV.3.1 I discuss the concepts of "true value" and "artificial inflation" as the terms are applied to Sunbeam and how artificial inflation attributable to Morgan Stanley's alleged concealment of material information can be distinguished from artificial inflation attributable to other sources. In section IV.3.2, I provide my estimate of the true value of Sunbeam on March 30, 1998 and indicate why this estimate is biased in the direction of increasing damages for the Plaintiff.

IV.3.1. True Value and Artificial Inflation When Multiple Parties Have Liability for Damages

(90) Sunbeam traded in an efficient market, which means that, as discussed in Section III.1, the market price of Sunbeam always reflected the information available to the public about the company, including potentially false or incomplete information. False or incomplete information can artificially inflate a stock's market price. I have been asked to calculate damages attributable to Morgan Stanley and not to third parties. For purposes of this analysis I have been asked to assume that Defendant is only responsible for inflation-related damages arising from the Defendant's failure to take the curative action. Therefore, the true value of Sunbeam, for the purpose of calculating damages, is defined to be what its market price would have been in the absence of artificial inflation caused only by the Defendant's alleged malfeasance.

- (91) There were at least two sources of artificial inflation in Sunbeam's stock price on March 30:
- a. One source is Morgan Stanley's alleged failure to undertake the curative action and cause more accurate information about Sunbeam's first quarter sales and earnings to prevail in the market for Sunbeam stock.
 - b. The other source is a large number of allegedly fraudulent accounting and auditing practices perpetrated by Sunbeam's management and Arthur Andersen, including those that ultimately required Sunbeam to restate its

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financial results for the fourth quarter of 1996, all of 1997, and the first quarter of 1998.⁵⁹

(92) Plaintiff's Complaint argues that these two sources of malfeasance are inseparable and that Morgan Stanley could have prevented the stock of Sunbeam from being artificially inflated by the accounting and auditing fraud alluded to above.

- a. I have come across no evidence in my analysis that would suggest that Morgan Stanley could have achieved this. Moreover, I have been asked by Defendant's counsel to assume that Morgan Stanley, having no knowledge of accounting or auditing fraud, cannot be held legally responsible for the consequences of the accounting and auditing fraud allegedly perpetrated on the Defendant.
- b. It is also my expert opinion that the curative action I assume in my report would not have led to the elimination of artificial inflation in the March 30, 1998 stock price of Sunbeam arising from the accounting and auditing fraud alleged by the Plaintiff.

IV.3.2. The Damage-Maximizing Estimate of Sunbeam's True Value

IV.3.2.1. The Starting Point for Estimating Sunbeam's True Value

(93) My overall objective is to estimate the price at which Sunbeam stock would have traded on March 30 in the absence of Morgan Stanley's misconduct. As with Coleman's true value estimate, I start by looking for the first date on or after March 30 when there is no longer inflation in Sunbeam's stock price from the Defendant's alleged malfeasance. In this case, I was able to identify a date by which the information that should have been included in the curative action was known to the market. This date meets my damage-maximization

⁵⁹ Sunbeam Amended 1997 10-K, filed November 12, 1998 (restating results for the fourth quarter of 1996 and all of 1997), and Amended first quarter 1998 10-Q, filed November 25, 1998, p. 5.

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objectives for two reasons. First, shortly after the merger, the stock price of Sunbeam suffered a general decline en route to that date; thus, while the choice of an earlier date might have been justified, my selection maximizes damages. Second, I make no adjustments to the stock price on that date to remove the impact of adverse information for which the Defendant is not liable. Had I chosen an earlier date, or adjusted the stock price to reflect "bad news" unrelated to Defendant's conduct, my estimated damages would be lower, as discussed in Section V.

- (94) I assume, as I did for Coleman's true-value analysis, that Morgan Stanley's wrongdoing consists of its failure to release a more accurate forecast of Sunbeam's sales and earnings performance for the first quarter of 1998. First quarter sales and earnings information was first released on May 11, 1998. On that date, Sunbeam reported first quarter 1998 results in a press release before the markets opened,⁶⁰ and later hosted a 9:00 AM live conference with some 200 "major investors and Wall Street analysts"⁶¹ in which it discussed the results at great length.
- (95) On May 15, 1998 Sunbeam filed its first quarter 1998 Form 10-Q with the SEC. This report included, among other financial information, detailed first quarter 1998 sales and earnings figures consistent with those announced on May 11, but with much more supporting information and detail.⁶²
- (96) Thus, all material non-public information that Morgan Stanley is alleged to have withheld from the market in March 1998 would have been fully in the public domain as a result of Sunbeam's own disclosures no later than May 15, 1998.⁶³

⁶⁰ Sunbeam Press Release, supra note 21.

⁶¹ "How Al Dunlap Self-Destructed," Business Week, July 6, 1998 at 58.

⁶² May 15, 1998 Sunbeam Form 10-Q.

⁶³ Arguably, my analysis should begin on May 11, since the most salient information was released on that date. My choice of May 15, however, is more conservative: Sunbeam closed at \$25.75 on May 11, 1998, but had declined to \$25.00 by May 15, 1998.

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IV.3.2.2. Extending the Window

- (97) The release of new information about a company can have a cascading effect, causing additional inquiry and investigation by investors and analysts, resulting in more information being disclosed. I have valued Coleman as if the market had 11 days between March 19, 1998 (when Morgan Stanley received a letter from Arthur Andersen which, allegedly, should have prompted Morgan Stanley to undertake a curative action) and March 30, 1998 (the date on which the merger was executed) to generate additional information. My damage-maximizing estimation procedure therefore adds an additional 11 calendar days to May 15, 1998, the date of the SEC 10-Q filing, to allow time for additional information to come out about Sunbeam's first quarter earnings and sales. This yields May 26, 1998 as the starting point.
- (98) Sunbeam was under heightened scrutiny after the events of April 3, 1998, making it very likely that the pace of additional information discovery would have been much greater in May than it was in March. It is also likely that after the merger, far fewer than 11 days would have generated the information collection and price reaction that would have been observed in the 11 days following a curative action in March. Because Sunbeam declined between May 15 and May 26, this section's employment of an 11-day window extension, as opposed to a justifiable shorter window extension, results in a lower true value and greater damages for the Plaintiff.

IV.3.2.3. Adjusting Sunbeam's May 26 Price Back to March 30

- (99) Just as I did for Coleman, I apply a market adjustment to the price of Sunbeam on my starting date to account for movements in the market as a whole between that date and March 30. The technique was essentially the same, although applied in a different direction: backwards from May 26, rather than forwards from February 23. I detail the logic in Appendix C and show its application in Exhibit 11 below. In essence, it involves dividing Sunbeam's price on May 26 by the value that a dollar, invested in the market on March 30, would have grown to by May 26. The market had a slight positive return over this time period (from March 30 through May 26). Because I am working backwards in time, applying the market adjustment to Sunbeam stock reduces its estimated value (though only by a small

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amount) and increases overall damages somewhat. This is consistent with my goal in this section (IV) of maximizing Plaintiff's estimated damages.

Exhibit 11: Market adjustment to Sunbeam's stock price on May 26, 1998

Sunbeam stock price on May 26, 1998	Market movement between March 30, 1998 and May 26, 1998	Market-adjusted Sunbeam price on March 30, 1998
(A)	(B)	$= A / (1 + B)$
\$23.50	0.04%	\$23.49

- (100) As shown in Exhibit 11, my damage-maximizing estimate for the true value of a share of Sunbeam on March 30, 1998 is \$23.49, which is the price that Sunbeam traded at on May 26, 1998, market adjusted back to March 30, 1998. It is my opinion that lower estimates of Sunbeam's true value are implausible and that there is no scientific basis for a larger damage estimate from any lower value of Sunbeam's true value per share.
- (101) My damage maximizing estimate attributes to Morgan Stanley the entire decline in Sunbeam's stock price between March 30 and May 26. However, as discussed in Section V.3, the information released in April and May about Sunbeam was overwhelmingly negative. It included many negative (and no substantially positive) news stories unrelated to the matters that Morgan Stanley should have disclosed. Thus, this estimate is likely to attribute to Morgan Stanley not only all of the artificial inflation it is alleged to have caused, but also some of the artificial inflation from other sources. Therefore, the true value estimate for Sunbeam derived in this section is likely to overestimate damages. As a matter of principle, the true value of Sunbeam should be adjusted for all Sunbeam's stock price movements between March 30 and May 26 that are not due to the revelation of information allegedly concealed by Morgan Stanley. Section V addresses this issue.

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IV.4. Damages: Netting the True Values of Property (Including Cash) Exchanged in the Merger

(102) I estimate the maximum amount of damages by taking my damage-maximizing estimates for each of the three major items exchanged in the transaction—the largest true value of Coleman stock, the smallest true values of the Holdings Notes and Sunbeam stock, and netting them against each other and against the \$160 million in cash given to CPH by Sunbeam. Exhibit 12 summarizes my estimate of maximum damages.

Exhibit 12: Maximum damages

Transaction details (damage-maximizing true values) at date of merger		
CPH effectively gave to Sunbeam		
CLNH assets		
Coleman stock		
Number of shares	44,067,520	
Maximum true value per share	\$ 20.76	
Maximum true value		\$ 915,049,864
CLNH liabilities		
Holdings Notes minimum true value		\$ 533,461,690
1) Maximum given up in merger by CPH		\$ 381,588,174
CPH effectively received from Sunbeam		
Sunbeam assets		
Sunbeam stock		
Number of shares	14,099,749	
Minimum true value per share	\$ 23.49	
Minimum true value		\$ 331,203,104
Cash		\$ 159,956,756
2) Minimum received in merger by CPH		\$ 491,159,860
Amount received less amount given up by CPH		
Minimum premium received by CPH based on true values [(2) - (1)]:		\$ 109,571,686
Maximum damages based on true values [(1) - (2)]:		\$ (109,571,686)

(103) The estimates presented in this section (IV) are intended to test the boundaries of maximum damages with assumptions that that are all likely to be biased in the direction of

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overestimating damages. In the following section (V), I provide less biased and more reasonable estimates for each of these components of damages, and for overall damages.

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**V. Alternative
Scenarios and
Sensitivity Tests**

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(104) Section IV concluded that the minimum true value of what CPH received in the merger far exceeded the maximum true value of what it gave up. Thus, my damage maximizing estimate is zero damages for the Plaintiff. This section (V) provides my opinions on more reasonable true values of what CPH gave up and received in the merger. These true values employ more reasonable, balanced, and scientifically-justified assumptions. Section V also provides additional explanations as to why the assumptions in Section IV were biased in favor of the Plaintiff and why the assumptions used to compute damages in this section (V) are more justified. The outline of this section follows:

- a. Section V.1 discusses more reasonable true values of the Coleman stock that CPH gave up in the transaction.
- b. Section V.2 discusses more reasonable true values for the burden of paying off the CLN Holdings Notes that Sunbeam assumed in the merger.
- c. Section V.3 discusses more reasonable true values for the Sunbeam stock that CPH received in the transaction.
- d. Section V.4 presents more reasonable damage estimates based upon these alternative true values for the property and cash exchanged in the merger.

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V.1. More Reasonable Estimates of the True Value of Coleman

(105) Section IV.1 provided my damage-maximizing estimate of the true value of the Coleman stock that CPH gave up in the transaction. This section of the report discusses more reasonable estimates and explains why they offer a more appropriate basis for a damage calculation. I proceed as follows:

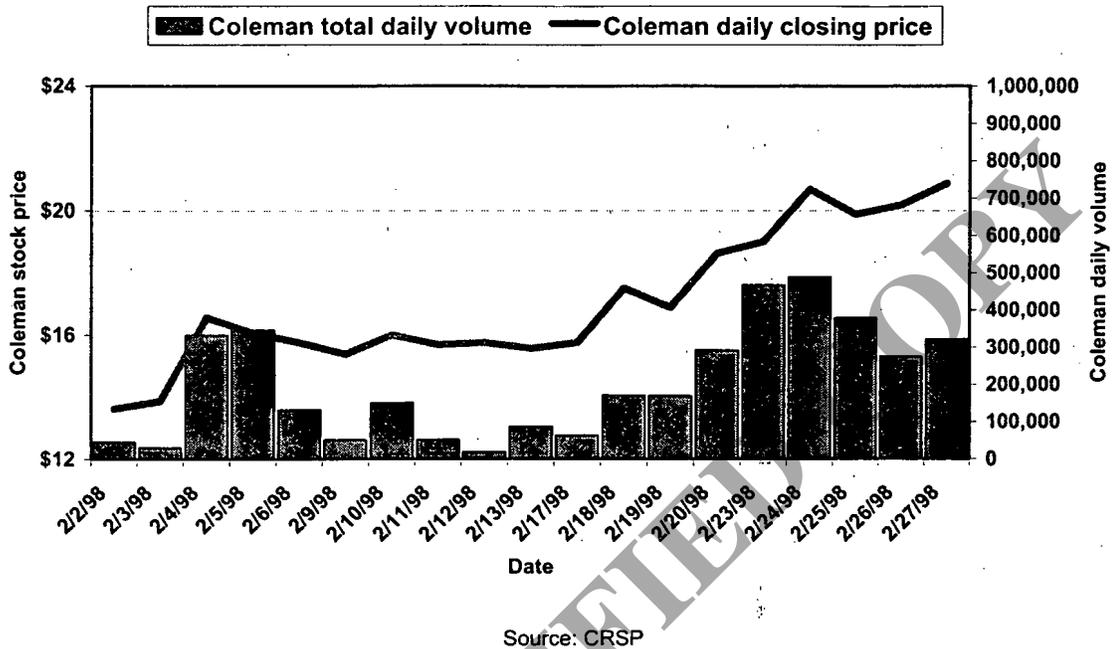
- a. Section V.1.1 discusses a more reasonable starting date, February 3, 1998, for step 1 in the estimation of the true value of Coleman stock at the merger.
- b. Section V.1.2 discusses two more reasonable adjustments for the impact of interim non-merger related information that comes out between the alternative start date of February 3, 1998 and March 30, 1998 (i.e. step 2).
- c. Section V.1.3 discusses a more reasonable estimate for the merger-related premium.
- d. Section V.1.4 combines these estimates to produce more reasonable estimates of the true value of the Coleman stock that CPH gave up in the transaction.

V.1.1. Alternative Start Date of February 3, 1998 for Step 1 of Coleman's True Value Computation

(106) In February 1998, as seen in Exhibit 13, Coleman experienced a run-up in its stock price and a surge in the volume of shares traded. The price run-up was literally unprecedented in the company's five-year history.

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Exhibit 13: The run-up in Coleman's price and volume before announcement of the merger



(107) Section IV entirely attributed the approximately 37% run-up in Coleman's stock price between its close on February 3, 1998 (when it traded for \$13.88 per share) and the February 23, 1998 price of \$18.94 at 3:47PM (used for the maximum damage calculation) to an increase in Coleman's stand-alone value. Because further adjustments that transform the starting point value to the true value on March 30, 1998 are multiplicative, Coleman's estimated true value is approximately 37% greater if one uses February 23 as the starting point, rather than February 3.⁶⁴ However, if leakage of news about merger discussions was the cause of the run-up, assigning this 37% increase to Coleman's true value greatly exaggerates damages.

(108) I believe that leakage of news of the merger is the most likely explanation for the approximately 37% increase in Coleman's stock price that started on February 4 and continued to February 23 and beyond. The evidence for my conclusion that the 37%

⁶⁴ It is only approximate because the market adjustment is different. Moreover, it may also be affected by news about Coleman's fundamental prospects between February 3 and 23.

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increase in Coleman's stock price between February 3 and February 23, 1998 was due to leakage of merger-related information, and that the February 3 closing price should be used in Step 1 of Coleman's true value calculation, comes from four analyses that I performed:

- a. I studied all of the available news announcements about Coleman in the month of February 1998 and found that none could explain Coleman's February price run-up. See Section V.1.1.1 for details.
- b. I studied the price run-up of Coleman after February 3 and compared it to previous price run-ups. I found that the February price run-up was unprecedented in Coleman's entire five-year trading history, and could not be explained by changes in the economic fundamentals of Coleman that were unrelated to merger information. See Section V.1.1.2 for details.
- c. I compared the magnitude of Coleman's daily returns, trading volumes, and number of trades in February 1998, to the rest of its trading history. I found that the trading patterns in February were unprecedented and consistent with leakage of news of the merger. See Section V.1.1.3 for details.
- d. I studied the correlations between the hour-by-hour returns of Coleman and Sunbeam stock both before and after February 3. The differences suggested to me that news of the merger leaked to the markets in February 1998. See Section V.1.1.4 for details.

I will review each of these in turn.

V.1.1.1. The Nature of the News in February Supports an Earlier Start Date for Step 1 of the True Value Calculation for Coleman

- (109) There were events beginning February 2, 1998 that could have initiated merger-related price reactions in Coleman stock in early February 1998. On February 2, 1998, Morgan Stanley had a conference call with Sunbeam officials to discuss tactics, numbers, and status of the

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Coleman acquisition.⁶⁵ On February 3, 1998, Arthur Andersen⁶⁶ met with Sunbeam officials to discuss the financial impact on Sunbeam of a potential acquisition of Coleman.⁶⁷ Following this meeting, on February 4, Sunbeam and Coleman entered into a confidentiality agreement about the merger.⁶⁸ On February 5, 1998, there was another conference call between Morgan Stanley and Sunbeam to discuss the Coleman transaction.⁶⁹ These "insider events" do not have to cross the news wires to affect stock prices.

- (110) On February 4, 1998, Coleman experienced the largest one-day price increase in its entire pre-merger-announcement history. This increase was 19.4% (from \$13.88 on February 3 at the closing bell to \$16.56 on February 4).⁷⁰ There is no dispute that this price increase took place amidst the backdrop of merger-related meetings and the knowledge of many individuals that Coleman and Sunbeam were in merger discussions at this point. The size of the Coleman price increases in February, coupled with the absence of any other news explaining the Coleman run-up in February (as discussed below), strongly suggests that the increase beginning on February 4 and continuing throughout the month is likely to be related to information about the merger circulating among some market participants.
- (111) The minute-by-minute chart of Coleman's stock price between February 3 and 5 shows just how suddenly, and dramatically, price and volume increased within the first two hours of trading on February 4:

⁶⁵ Morgan Stanley Chronology, p. 5.

⁶⁶ Sunbeam's auditor and a party to another lawsuit by the Plaintiff.

⁶⁷ April 28, 1998 Chronology of Skadden, Arps, Slate, Meagher & Flom, LLP ("Skadden Chronology"), p. 5.

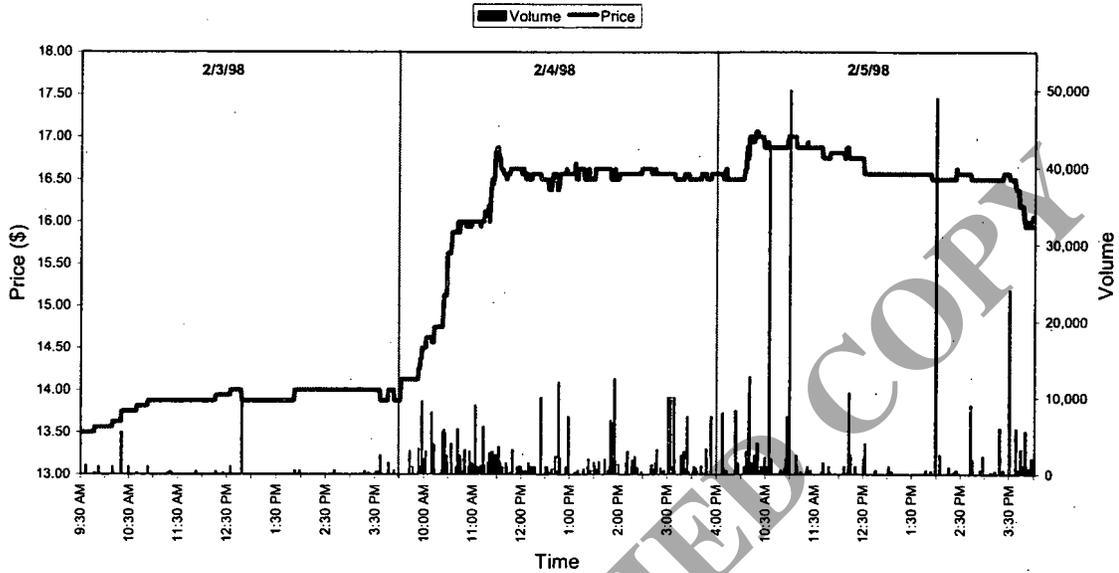
⁶⁸ Skadden Chronology, p. 5.

⁶⁹ Morgan Stanley Chronology, p. 5.

⁷⁰ CRSP.

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Exhibit 14: Coleman price and volume, February 3–5, 1998



Source: CRSP

(112) I have reviewed all readily available news related to Coleman during the month of February 1998 and there does not appear to be an explanation for the 37% stock price run-up between February 3, 1998 and February 23, 1998, other than leakage of the merger news. A comprehensive overview of all the stories I found is presented in Appendix H. The highlights of those news items, discussed below, demonstrate that none of the non-merger-related stories is a likely explanation for any significant portion of the unprecedented increase in Coleman's stock price during the month of February 1998.

- a. February 2: On this date, a *Barron's* article reported that JP Morgan's high-yield bond research department had picked Coleman as one of its favorites for 1998 the previous week.⁷¹ Since markets are efficient, this news cannot account for the price jump on February 4 because the market had two full trading days (February 2 and 3) to incorporate the information from the report into Coleman's stock price.

⁷¹ "Bruno's bonds take a beating on rumors it may shelve payment plans," *Barron's*, February 2, 1998.

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- b. February 4: Coleman CEO Jerry Levin made a presentation at a Morgan Stanley high yield conference. An article about the event acknowledged that Levin's presentation was not "substantial company news" in the light of the largest ever (to date) increase in the price of Coleman stock.⁷² This article was released at 3:16 PM, many hours *after* the nearly 20% (February 4) surge in Coleman's stock price had ended.
- c. February 4 (just after the close of trading): Dow Jones News Service reported that traders believed that "something could be in the works" for Coleman.⁷³ This Dow Jones news release, titled "Options Report: Rumorstrage Heavy In The Market," (a reference to merger arbitrage based on rumors), refers to companies about which "the day's action appears to be founded on takeover rumors. Coleman is one of four companies mentioned, all of which experienced recent large stock price increases.
- d. February 4 (after the close of trading): Some analysts attributed the day's rise in Coleman to speculation that Coleman might be selling its Safety & Security Products unit.^{74,75} However, this cannot be the case for two reasons. First, Safety and Security Products was a relatively small, non-core asset of Coleman, accounting for 10% and 5% of Coleman's sales and earnings, respectively.⁷⁶ Secondly, it was sold on February 18, 1998 for \$105 million,⁷⁷ and there is no evidence that this amount was a surprise to the market. Substituting a unit worth approximately \$105 million for the same amount of cash could not have made Coleman 20% more valuable (about \$150 million) in one day and certainly not nearly 40% more valuable (about \$300 million) over approximately the next three weeks. Analysts later came to the

⁷² "Analysts Point To Technical Factors," *Dow Jones News Service*, February 4, 1998, 3:16 PM.

⁷³ "Options Report: Rumorstrage Heavy In The Market," *Dow Jones News Service*, February 4, 1998, 4:03 PM.

⁷⁴ "Coleman Shares Rise On Speculation Company Could Sell Unit," *Bloomberg*, February 4, 1998, 6:43 PM.

⁷⁵ "Coleman, Long Island Bancorp Signals Right-On," *Dow Jones News Service*, February 19, 1998, 2:21 PM.

⁷⁶ McDonald & Co First Call Note, February 23, 1998, 8:31 AM.

⁷⁷ "HY Lights: Part Two of Four," Merrill Lynch Global Securities Research, February 23, 1998.

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conclusion, which I share, that the February 4 run-up could not have been due to the anticipated sale of Safety and Securities Product Unit.⁷⁸

- e. February 18: Dow Jones News Service reported that Coleman “continues to trade on rumors . . . though no new information is out” and that “implied volatilities are higher than average.”⁷⁹ This is further evidence that the market did not think the run-up in Coleman’s price was explained by any official news.
- f. February 18 (after the close of trading): The sale of Coleman’s Safety and Security Products unit, already expected for two weeks, was announced.⁸⁰
- g. February 19 (after the close of trading): Coleman reported a negative earnings surprise, lower sales, some positive news about its operating performance, and made optimistic assertions about its future.⁸¹ I find it very unlikely that Coleman’s stock price increased due to this news and will present evidence in support of this conclusion in Section V.1.2.2.
- h. February 20 (before the market opened): Investment bank CSFB issued an equity research note discussing Coleman’s fourth quarter and full year results for 1997.⁸² Despite optimism regarding Coleman’s future prospects, the analyst reduced Coleman’s 1998 earnings estimate from \$1.10 per share to \$0.95 per share. I do not believe this report increased Coleman’s stock price substantially. Please see Section V.1.2.2 for a fuller discussion.
- i. February 23 (before the market opened): An ABN AMRO analyst discussed Coleman’s fourth quarter and 1997 results. His 1998 estimates for Coleman

⁷⁸ Id. McDonald noted that CLN “shares have climbed 45% over the last three weeks, presumably in anticipation of much more significant news” than the sale of the S&SP unit.

⁷⁹ “Rolls And Straddles Lead Quiet Session,” *Dow Jones News Service*, February 18, 1998, 3:22 PM.

⁸⁰ “Siebe Plc/Coleman: Sale Completion Seen By March—CLN,” *Dow Jones News Service*, February 18, 1998, 6:09PM.

⁸¹ “Coleman Reports Full Year and Fourth Quarter Results,” Coleman Press Release, February 19, 1998, 4:43 PM.

⁸² CSFB First Call Note, February 20, 1998, 8:25 AM.

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remained unchanged.⁸³ As there was little new information in this note, I conclude that this note had a neutral effect on Coleman's stock price.

- j. February 23: CSFB issued a research note on Coleman.⁸⁴ It contained the same information as the CSFB research note of February 20, not new information. The information itself, as I noted above, consisted of both positive and negative elements, which would have had no significant impact on Coleman.
- k. February 23: Dow Jones News Service reported that "takeover speculation is still following Coleman ... Stock traders are reportedly speculating that Sunbeam ... could buy Coleman."⁸⁵ For the first time, Sunbeam is specifically identified as a potential acquirer of Coleman in a public press release. Thus, after the release of this news, it is impossible to ignore the impact of merger news and rumors on Coleman's stock price, but there is good reason to believe that such news was inflating the stock price of Coleman for several weeks.
- l. February 23: A CIBC Analyst Report on Coleman claimed that the company "recently completed the last significant part of its restructuring program"⁸⁶ and reduced its Coleman 1998 earnings estimate. The positive restructuring news might have offset the negative earnings revision and I conclude that this report likely had a neutral effect on Coleman's stock price.
- m. February 24: McMillan Analysis Corp. reports about Coleman takeover rumors.⁸⁷ This likely fueled further speculation that Coleman could be an acquisition target.

⁸³ ABN AMRO First Call Note, February 23, 1998, 8:57 AM.

⁸⁴ CSFB First Call Note, February 23, 1998, 5:04 PM.

⁸⁵ "Coleman's Volatilities Attracts Traders," *Dow Jones News Service*, February 23, 1998, 3:48 PM.

⁸⁶ CIBC Analyst Report, February 23, 1998.

⁸⁷ McMillan Analysis Corp. First Call Note, February 24, 1998.

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(113) My attribution of the February run-up in Coleman's stock to merger rumors, and my characterization of the news about Coleman as negative, are both substantiated by the deposition testimony of analyst Andrew Shore. In his July 9, 2001 deposition, he responds to a question about the reason for Coleman's February run-up: "Because there was speculation in the marketplace that Coleman was a takeover candidate." Later, in response to questions about Coleman's financial condition in March 1998, he notes, "I was aware that Coleman's fundamentals had started to deteriorate." He explained, "You know, the business had started to slow, sales, margins, balance sheet, started getting uglier."⁸⁸ Thus, a widely followed analyst appears to have viewed Coleman as a company in decline. He apparently would dispute the notion that the increase in Coleman's stock price in February 1998 was a consequence of its improved business outlook.

V.1.1.2. A Cumulative Returns Analysis Points to Inflation in Coleman's Stock Price from Merger Speculation in the Period after February 3

(114) In the 13 trading days from February 3 through February 23 (the trading day used for damage-maximization), Coleman's price rose about 37%. No other period of similar length in Coleman's history saw such a dramatic surge in its stock price. The next three largest "spikes" in Coleman's price over a 13-day trading window were all substantially smaller than the February 3–23 spike, as seen here in Exhibit 15. The exhibit shows the cumulative increase in Coleman's stock price between its closing price on the beginning date of the period, and the closing price on the last date of the period.

Exhibit 15: Highest 13-trading-day price increases in Coleman's history

Period	Cumulative Return
2/3/98–2/23/98	37%
12/2/97–12/19/97	26%
2/9/96–2/29/96	25%
4/3/97–4/22/97	24%

Source: CRSP

⁸⁸ July 9, 2001 Shore Dep., *In Re Sunbeam Securities Litigation*, ("Shore Dep."), pp. 242–243.

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- (115) The 37% increase between February 3 and 23 is significantly larger than the increase in any other similar-sized period. In the absence of any news events (other than news of the merger) that could explain it, this increase is strong evidence that news of the merger was leaking out to financial market participants during the 13 trading day period.

V.1.1.3. The Size of the Returns and Volume in February Requires an Extraordinary Explanation and Supports a February 3 Start Date for Step 1 of the True Value Calculation for Coleman

- (116) Coleman's 19.4% price increase on February 4 was the highest single-day increase in its entire five-year history (prior to the merger announcement). Moreover, four of Coleman's all-time ten highest daily returns before the official merger announcement occurred after February 3, 1998. I have little doubt, given the magnitude of the price movement in February and the absence of news, that the approximately 37% increase in Coleman's stock price between February 3 and February 23, 1998 was driven by the leakage of private information about the merger to some market participants.
- (117) A formal analysis of daily returns and trading provides additional evidence of this. I analyzed three important trading statistics over Coleman's entire five year history:
- a. Trading volume (number of shares traded on a given day);
 - b. Daily stock returns; and,
 - c. Number of individual stock trades.

I found anomalies that cannot be explained by any non-merger-related information that was publicly released. These anomalies are consistent with the market anticipating a merger.

- (118) My analysis is presented in Exhibit 16:

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Exhibit 16: Table of key Coleman trading statistics

Trading activity, 2/4/98-2/27/98						
Date	Coleman trading data			Rank of Coleman trading data over 1,303 trading days (1/4/93-2/27/98)		
	Daily volume	% Change in closing stock price	Total number of trades	Daily volume	% Change in closing stock price	Total number of trades
04-Feb-98	331,900	19.4 %	243	38	1	14
05-Feb-98	346,000	(3.0)%	144	36	1,246	25
06-Feb-98	131,800	(1.9)%	62	194	1,180	147
09-Feb-98	51,800	(2.4)%	68	552	1,214	117
10-Feb-98	149,600	4.1 %	75	157	32	90
11-Feb-98	51,900	(2.0)%	60	550	1,181	158
12-Feb-98	18,700	0.4 %	25	1,001	471	630
13-Feb-98	87,400	(1.2)%	66	337	1,060	126
17-Feb-98	63,400	1.2 %	68	457	250	117
18-Feb-98	170,800	11.1 %	190	134	6	19
19-Feb-98	169,700	(3.6)%	177	138	1,260	20
20-Feb-98	291,600	10.4 %	306	56	7	8
23-Feb-98	466,100	2.0 %	437	24	133	1
24-Feb-98	487,200	8.9 %	392	22	10	4
25-Feb-98	378,200	(3.9)%	362	32	1,267	6
26-Feb-98	275,200	1.6 %	259	60	194	12
27-Feb-98	320,300	3.4 %	263	41	51	11

Red indicates top 5% of all 1,303 trading days (in the top 65 trading days)

Note: Volume is adjusted for stock splits; closing price is adjusted for stock splits and dividends.

Sources: Daily trades: Tickdata.com. Daily stock price and volume: CRSP.

(119) The left half of Exhibit 16, labeled "Coleman trading data," shows the February 1998 portion of the data that I analyzed (my complete dataset includes 1,303 trading days, going back to January, 1993). It shows the day's trading volume, the daily return, and the number of separate trades executed on that day. The right half of Exhibit 16 ranks each data point relative to all 1,303 trading days and highlights (in red) all ranks that are in the top 5%, a standard threshold for statistical significance.

(120) The right panel not only shows that the daily returns on February 4 ranked number one in the entire sample, but that many other days had highly ranked returns as well. Another interesting pattern, seen in the right panel, is the remarkable number of days with high ranks for the sheer number of trades. A large number of trades can be indicative of insider

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trading. Placing a large number of trades, each involving a small numbers of shares, is a common trading strategy for disguising stock accumulation, and anyone trading on insider information would want to conceal their activities. Trading on insider information is one mechanism through which market prices may come to reflect the knowledge that a major event, such as a merger, is imminent.

- (121) The sheer number of red values is extremely unusual. Exhibit 16 displays only 17 days out of five years of trading history, yet many of the highest values for absolute trading volumes, daily returns, and number of trades are concentrated in this period. Of the 51 data points in this sample (3 variables measured \times 17 days), 24 of the values are high enough to be in the highest 5% of all 3,909 data points in all years. Outside of February 1998, the greatest number of such extreme values in a 17-day period is 16.
- (122) Such a high concentration of abnormal price movements and trades in a month in the absence of other significant news is highly unusual. It certainly is not due to random variation. These patterns strongly suggest that merger-related information started to leak just after February 3, 1998.

V.1.1.4. Correlation Analysis: Before and After February 3, 1998

- (123) I also performed a test to compare the correlation between the returns of Sunbeam and Coleman before and after February 4. During the first period, over the 13 months from January 1, 1997 to February 3, 1998, the hourly returns of the two stocks show a mildly positive correlation (that is, they tend to move in the same direction at the same time). This is to be expected from any two independent, unrelated companies affected by the same general economic trends and market forces, and participating in the same or similar industries.
- (124) One expects the correlation between the stock returns of two such companies to decline once a small number of market participants suspect that a merger of the two companies is "in the works." Knowing that it is customary for the acquirer to pay a premium for the target, and for the deal to be better for the target than the acquirer, stock traders known as

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“merger arbitrageurs” typically buy shares in the target company (anticipating that their shares will be purchased at a premium), and sell (or “short”) the stock of the acquirer. This kind of behavior can generate negative correlations in hourly returns.⁸⁹

- (125) When I examined the correlation for the second period, from February 4, 1998 to February 27, 1998, I found this pattern - the correlations between the hourly returns of the two stocks were negative. The two correlations, separated by the date of February 3, 1998 are documented in Exhibit 17:

Exhibit 17: Correlation of Sunbeam and Coleman hourly returns

Period	Correlation	Sample Size
Jan 1, 1997–Feb 3, 1998	8.3%	1,845
Feb 4, 1998–Feb 27, 1998	(18.3%)	118
Difference	26.6%	

- (126) This pattern is consistent with merger expectations originating right after February 3, 1998. The difference in correlations of 26.6% is significant at the 1% level, meaning that there is less than a 1% chance that this difference is due to random chance. Usually, differences are considered statistically significant if there is less than a 5% chance that they are due to random chance, so this result is very strong.

V.1.1.5. Conclusions–Choice of Starting Date

- (127) For all of these reasons, I conclude that February 3 is most likely to be the last day before Coleman’s price was inflated by merger rumors. While Section IV’s damage estimate excludes

⁸⁹ To understand this, recognize that purchases of Coleman at its ask price and a simultaneous short sale of Sunbeam at its bid price would tend to make the product of hourly returns of the two companies negative. Moreover, if this type of trade were occurring in a given hour, the analogous product over the immediately prior and subsequent hours would also be negative if there were no merger-related trades of this type in the prior or subsequent hour. Over a short time interval, like an hour, the average cross-product of the returns of the acquirer and target is going to approximate the correlation to a high degree. Since the former is negative around the hours during which merger-related arbitrage is present, firms for which merger rumors exist experience trading action that tends to reduce the typical positive correlation between the hourly returns of two companies. If this trading action is particularly strong, one will observe a negative correlation between the hourly returns of the two companies that are rumored to be in merger talks.

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the price run up between February 24, 1998 and March 2, 1998 as being merger-related inflation in the price of Coleman, it does not treat the period between February 3, 1998 and February 23, 1998 the same way. It is neither plausible, nor fair to the Defendant, to allow these striking February 1998 price movements to contribute to the damages Defendant owes.

V.1.2. Alternative Step 2 Adjustments to Estimate Coleman's Stand-Alone Value on March 30, 1998 Based on the February 3 Market Price

(128) Section IV.1.2 estimated the stand-alone true value for Coleman by adjusting Coleman's price on February 23, 1998 to March 30, 1998 using a market adjustment. This section makes a similar adjustment for the more reasonable starting date of February 3, 1998. I provide two stand-alone price estimates.

- a. The first makes only market adjustments to obtain Coleman's stand-alone value on March 30, 1998 as Step 2 of the computation of Coleman's true value. I discuss this in Section V.1.2.1.
- b. The second accounts for the unlikely possibility that a Coleman press release on February 19, 1998 caused a 10% increase in Coleman's stand-alone value, which, if true, would increase damages. I discuss these adjustments and the merit of increasing damages because of Coleman's February 20 stock price increase in Section V.1.2.2.

V.1.2.1. Step 2: The March 30 Valuation of Coleman as a Stand-Alone Entity Using February 3 as the Step 1 Starting Date, and Assuming that Coleman's February 20 Price Increase Is Related to Merger Rumors

(129) The stand-alone value for Coleman's shares on March 30, 1998 based on the February 3, 1998 starting price requires that I adjust the February 3, 1998 starting price only for the overall trend in the stock market between February 3 and March 30. There is no other interim news besides the increase in the overall level of the stock market that warrants an increase in the estimate of Coleman's stand-alone value on March 30, 1998.

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- (130) The "market model" I use for this purpose is described in Appendix E and, except for the change in the start date, is identical to the adjustment used in Section IV.1.2. My application of this model increased the February 3 price of \$13.88 by \$0.81, to arrive at a March 30, 1998 stand-alone value of \$14.69 per share for Coleman. I note that this price is within the ranges estimated for Coleman by both CSFB and Morgan Stanley.⁹⁰

V.1.2.2. Accounting for the Impact of the News on February 19 in the Step 2 Adjustment for Stand-Alone Value

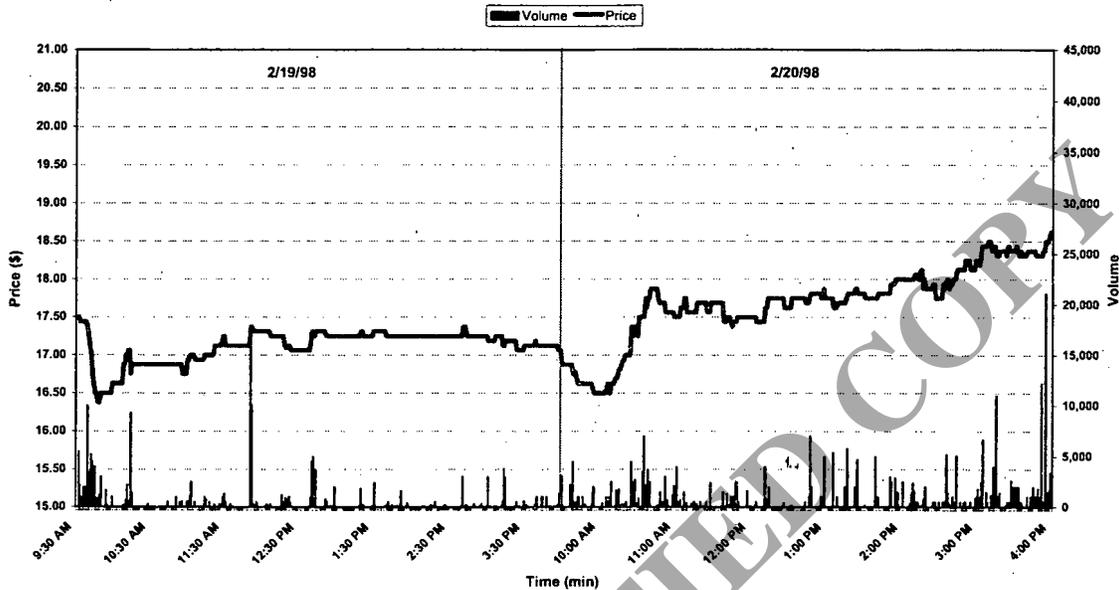
- (131) Below, I provide an alternative estimate of Coleman's stand-alone value, assuming that a February 19, 1998 press release by Coleman⁹¹ warrants an approximately 10% increase in Coleman's stand-alone value. However, I believe that this adjustment is most likely unwarranted, for reasons discussed below.
- a. First, the market's reaction to the press release was negative. The press release was issued after the close of trading on February 19. As shown in Exhibit 18, when markets opened on the morning of February 20 (after the market had 17 hours to digest the news), Coleman's price was unchanged. Then, in the first 30 minutes of trading, the price of Coleman *declined* by over 2%, hitting a low of \$16.50 at 9:54AM, and staying at that level for more than ten minutes. Although Coleman ultimately closed at \$18.63 on February 20, for a gain of 10%, the gain cannot be attributed to the press release. To make that connection, I would need to ignore the concept of market efficiency, and disregard the clear evidence of the market's actual reaction to the news when the market opened.

⁹⁰ CSFB Board Presentation and Morgan Stanley Board Presentation, supra note 45.

⁹¹ "Coleman Reports Full Year and Fourth Quarter Results," Coleman Co. Press Release, February 19, 1998, 4:43 PM.

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Exhibit 18: Coleman stock price and volume, February 19 and 20, 1998



b. Second, the content of the press release does not appear to warrant a 10% stock price increase. The press release reported a greater-than-expected loss for the fourth quarter of 1997 on sales that were slightly lower than the fourth quarter of 1996, and presented various other measures of the company's financial performance for the quarter and the full year. The release also stated some positive facts. It claimed that Coleman's restructuring was virtually complete, and that the company's operating performance had improved. Coleman said that it expected to continue to benefit in 1998 from the cost saving measures it had already taken, and its CEO asserted that "all of Coleman's remaining businesses have a very sharp strategic focus and are well positioned to support our goal of growth through innovation and globalization." The press release went on to discuss some of Coleman's new products. Overall, the press release was a mix of positive and negative information.

c. The reaction of stock analysts, summarized in Exhibit 19, supports my conclusion of how to balance the various positive and negative elements of Coleman's February 19 press release. Though many analysts purported to

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express optimism about Coleman, of the five analysts who issued reports about Coleman shortly after this press release, none were optimistic enough to raise their ratings. Four of the five actually lowered their earnings per share ("EPS") estimates for Coleman in 1998, and none increased their estimates. In addition, one lowered its 1999 earnings estimate but, oddly, raised its price target. News organizations did not view the press release information as predominantly positive either. On February 19, Dow Jones News Service reported that Coleman missed the consensus earnings estimate.⁹² On February 20, before the market opened, *The Wall Street Journal* declared "Loss Posted for 4th Period as Sales in Asia Weaken," and reported that Coleman posted a "wider fourth-quarter loss than Wall Street expected."⁹³

Exhibit 19: Reaction of Coleman analysts following February 19 press release

Institution	Rating change	1998 EPS change	1999 EPS change	Price target change
CIBC	Same	Negative		
CSFB	Same	Negative	Same	
Prudential	Same	Negative	Negative	Positive
McDonald & Co.	Same	Negative		
ABN AMRO	Same	Same		

Sources: CIBC Analyst Report, February 23, 1998; CSFB First Call Note, February 23, 1998, 5:04 PM; Prudential First Call Note, February 20, 1998, 11:48 AM; McDonald First Call Note, February 23, 1998, 8:31 AM; ABN AMRO First Call Note, February 23, 1998, 8:57 AM

(132) The alternative stand-alone value, based on the assumption that the gain on February 20 was reflective of Coleman's stand-alone value is computed as follows: I take Coleman's February 3 starting price of \$13.88 and apply the market model, except for the February 20 adjustment, where I apply Coleman's 10.4% gain on that day to arrive at Coleman's

⁹² "Earnings Surprise Summary: Noon - 5:00 P.M.," *Dow Jones News Service*, February 19, 1998.

⁹³ "Loss Posted for 4th Period as Sales in Asia Weaken," *The Wall Street Journal*, February 20, 1998.

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alternative stand-alone price on March 30. This yields \$16.15 as an alternative measure of Coleman's stand-alone value on March 30, 1998. I note that this price is within the ranges estimated for Coleman by both CSFB and Morgan Stanley.⁹⁴

V.1.3. Alternative Merger-Related Premium Applied to Coleman's Stand-Alone Value for Step 3 of Coleman's True Value Calculation

- (133) Section IV.1.3 calculated damages using a merger-related premium of 5.79%, which was from a published academic study of terminated mergers. That study used data on terminated mergers from 1980 to 1988. Since mergers in the late 1990s could exhibit different characteristics than those in the 1980s, I undertook an independent study of terminated mergers from the 1990s.
- (134) This subsection provides an alternative estimate of the merger-related premium based on my independent study. This estimate is more reasonable to apply to Coleman since it is based on contemporaneous terminated mergers. When applied to Coleman's stand-alone value, this alternative yields a more reasonable true value per share for Coleman than the true value presented in Section IV.1.
- (135) I estimated the Step 3 adjustment to the stand-alone value from an analysis of 106 terminated mergers occurring between 1996 and 2000. These 106 terminated mergers represent all terminated mergers with broadly similar characteristics to the Sunbeam-Coleman merger from this time period. Please see Appendix F for details of my sample selection criteria and data sources.
- (136) I calculated the merger-related premium by comparing the prices of merger targets prior to their merger announcements with their prices after their mergers were terminated, using an event-study methodology described in Appendices D and G. The percentage adjustment I calculated was 5.55%.

⁹⁴ CSFB Board Presentation and Morgan Stanley Board Presentation, supra note 45.

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- (137) Exhibit 20 shows the two different merger-related premia that can be used for damage calculations.

Exhibit 20: Alternate merger-related premia

Source	Merger-related premium
Academic literature	5.79%
Terminated mergers, 1996-2000 (damage-maximizing window)	5.55%

V.1.4. Alternative Estimates of the True Value of the Coleman Stock CPH Gave Up in the Merger

- (138) Given the alternative starting dates, merger-related premia, and different interpretations of the February 20 price increase, there are six possible values for the Coleman stock given up by CPH, as seen here in Exhibit 21:

Exhibit 21: Alternative March 30, 1998 Coleman true values

Alternative March 30, 1998 Coleman true values				
		Coleman March 30, 1998 stand-alone price and corresponding starting dates		
		Date: 2/3/1998	Date: 2/3/1998 (2/20 adjustment)	Date: 2/23/1998
		\$14.69	\$16.15	\$19.63
Merger-related premium	Terminated mergers from 1996-2000: 5.55%	\$15.51	\$17.05	\$20.72
	Academic literature: 5.79%	\$15.55	\$17.09	\$20.76

Sources: Thomson Financial and CRSP.

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V.2. Alternative True Value for the CLN Holdings Notes

- (139) Section IV.2 described my damage-maximizing methodology for obtaining the value of the CLN Holdings Notes.
- a. I used the actual quoted yield to maturity of the First Priority Notes immediately before the merger was announced.
 - b. Then, I valued the First Priority Holdings Notes as of March 30, 1998, the day the merger closed, by discounting (to March 30, 1998) the promised cash flows of the First Priority Notes at the yield to maturity prevailing on February 26, 1998.
 - c. I applied the same yield spread that existed at the issue date of the two tranches of Holding Notes to obtain a February 26, 1998 yield to maturity for the Second Priority Holdings Notes. I then discounted (to March 30, 1998) the promised cash flows of the Notes at their inferred February 26, 1998 yield to maturity.
 - d. I then added the two discounted values. This gave me a true value of \$533 million for the Holdings Notes, an amount which benefited CPH in the merger.
- (140) However, for a variety of reasons, this \$533 million true value for the Holdings Notes is too low, thus overstating damages. There is strong reason to believe that the yields on these two classes of Holdings Notes would have declined in the month of March, 1998 in the “but-for” world due to overall market conditions.
- a. The Citigroup High-Yield Market Index had a return for the month of March of 1.08%.⁹⁵ The returns on this index are negatively related to changes in the yields of most high yield bonds that are not in default.

⁹⁵ See Edward I. Altman with Rohit Kumar, “The Investment Performance and Market Size of Defaulted Bond and Bank Loans in 2003: Outlook for 2004/2005,” NYU Salomon Center Special Report, February 2004, Appendix A.

Because this index rose in March 1998, there is reason to believe that the yields to maturity of the Holdings Notes declined.

- b. The Standard and Poor's 500 index, whose returns are inversely related to changes in the credit spread embedded in the yields to maturity of high yield bonds, rose 5.12%⁹⁶ in March 1998. The yield to maturity on Treasury notes, the benchmark against which this credit spread is computed, did not change over this period.⁹⁷ These two factors together support the conclusion that bonds with high yields should have seen their yields decline in March, 1998.

(141) At the time of the issuance of the Holding Notes, Moody's rated their two tranches as B3 and Caa1. The substantial rise in Coleman's stock price in February 1998 and a sustained value around or above the late February price would justify credit ratings at these levels or higher. Exhibit 22 reports the prevailing (end-of) March 30, 1998 yields to maturity for 7-year debt, classified by credit quality. At the B3 and Caa1 yields to maturity of 9.57% (for the First Priority tranche) and 11.20% (for the Second Priority tranche), the Holdings Notes have a March 30, 1998 true value of \$542 million.

⁹⁶ Id.

⁹⁷ The 3-year Treasury Note yields changed only 1 basis point, from 5.57% on March 1, 1998 to 5.58% on April 1, 1998. I looked at 3-year Treasury Notes because CLN Holdings Notes matured in 2001, meaning that in 1998 they had just over 3 years of maturity left.

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Exhibit 22: Yields for corporate notes of various debt ratings in March 1998

Bond Rating	Yield	Bond Rating	Yield
Aaa	6.26%	Baa3	6.85%
Aa1	6.42%	Ba1	7.30%
Aa2	6.48%	Ba2	7.75%
Aa3	6.33%	Ba3	8.17%
A1	6.42%	B1	8.65%
A2	6.43%	B2	9.12%
A3	6.47%	B3	9.57%
Baa1	6.66%	Caa	11.20%
Baa2	6.69%		

Source: Moody's Investors Service, 7-year maturity median corporate bond yields.⁹⁸

- (142) Exhibit 22's 9.57% yield to maturity for the B3 bonds is fairly consistent with the more than 1% increase in the Citigroup High Yield Market Index and the 10.08% yield to maturity for the First Priority Holdings Notes on February 26, 1998. Hence, I consider discounting with the B3 and Caa yields to maturity from Exhibit 22 to be as valid or more valid than discounting with the rates used in Section IV.
- (143) The discount rates from Exhibit 22 used here in Section V may still be too large, thereby exaggerating damages, for a variety of reasons.
- a. The rates are derived from 7-year maturity high-yield bonds which will have larger yields-to-maturity than high yield bonds that match the lower effective maturity of the Holding Notes. This is both because Treasury notes of lower maturity tended to have lower yields to maturity in March 1998 and because the credit spreads embedded in the yields of shorter term high yield bonds almost always tend to be lower than those of comparable longer maturity high yield bonds.

⁹⁸ I was not able to obtain corresponding quotes for debt with a 3-year maturities. However, I note that on April 1, 1998 3-year Treasury Notes had a yield of 5.58% while 7-year Treasury Notes had a yield of 5.70%. This means that the yields I use for my calculations should be approximately 12 basis points lower than those quoted in this exhibit, apart from any drop due to a decline in the credit spread that took place in March, 1998.

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b. The discount rates are not appropriate discount rates for a potential acquirer of Coleman. The impact of potential acquirers on Coleman's true value substantially raised the damages for CPH. Therefore, it is reasonable to think about how potential acquirers might affect the value of the Holdings Notes. For example, Sunbeam paid approximately \$625 million in the second quarter of 1998 to pay down the Holdings Notes.⁹⁹ The excess of approximately \$90 million over the true value per share, paid to liquidate the Holdings Notes, effectively raised the price Sunbeam paid for the Coleman stock by about \$2 per share above the publicly quoted premium. Moreover, the announcement of the merger raised the market price of the Holdings Notes, overnight, by an amount that is approximately equivalent to paying an extra \$1 per share for the Coleman stock. Were I to charge CLNH for the likely effect of the Holding Notes on both the likelihood and size of a merger-related premium, the discount rates of the Holdings Notes would have to be lower than those given in Exhibit 22.

(144) I have attributed a 5%–6% merger-related premium to Coleman arising from the Sunbeam merger announcement and merger termination. To the extent that the prepayment penalty on the Holdings Notes deters alternative bids or generates lower bids than would otherwise have occurred around the time of the merger termination, one must account for this as a burden to CPH for canceling the merger. I have not accounted for this, but the premium from an alternative bidder should be at least \$1 lower per Coleman share acquired from CLNH as a consequence of the prepayment penalties of the Holdings Notes and enhancement of the credit of the Notes by an acquirer. This fact suggests that the \$542 million alternative true value gained by CPH from transferring the Notes to Sunbeam may still be too low.

⁹⁹ The Notes Indenture establishes the book value of the Holdings Notes at \$524 million as of May 15, 1998 and the Sunbeam 10-Q for Q2 1998 shows a prepayment penalty of \$100 million.

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V.3. An Alternative Approach to Valuing Sunbeam

- (145) Section IV.3 computed Sunbeam's damage-maximizing true value based on Sunbeam's May 26, 1998 closing share price. Section IV's damage calculation thereby attributes the entire Sunbeam share price decline between March 30 and May 26, 1998 to the disclosure of information that Morgan Stanley concealed. However, as discussed below, the news in April and May was overwhelmingly negative for Sunbeam. The negative news included information about many negative events that are not attributable to Morgan Stanley. Thus, my estimate of Sunbeam's true value in Section IV.3 is biased downwards and, accordingly, my damage estimate in that section of the report is biased upwards.
- (146) This subsection presents a more reasonable and less biased estimate for Sunbeam's true value. It is organized in the following manner:
- a. Section V.3.1 discusses the Sunbeam-related news events in April and May 1998. It shows that many negative news events did not reflect the disclosure of information allegedly concealed by the Defendant.
 - b. Section V.3.2 describes my application of the event study methodology to Sunbeam.
 - c. Section V.3.3 shows the results of my event study.

V.3.1. The News About Sunbeam in April and May 1998 was Overwhelmingly Negative, but not Always due to Defendant's Alleged Malfeasance

- (147) Section IV's damage estimate attributed all price drops in the event window from March 30, 1998 to May 26, 1998 to Morgan Stanley's malfeasance. Sunbeam's stock price drop over this period includes the effect of the following negative information for which Morgan Stanley is wholly or largely not responsible:¹⁰⁰

¹⁰⁰ Appendix J lists all significant, publicly known events during April and May, as well as other key events in

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- a. On the morning of April 3, 1998, Andrew Shore, a widely followed Sunbeam analyst, had a morning call with the sales staff at the investment-banking house of PaineWebber in which he said that he was downgrading Sunbeam. This news was quickly and widely disseminated over news wires. Many of the details of the morning call, which led to a substantial decline in the value of Sunbeam, are not related to the Defendant's alleged concealment of earnings and sales information. In his July 7, 2001 deposition, Mr. Shore describes what he said in that morning call: "...I think I said something like, it smells bad, really bad. And here are the four things that are happening and here is the latest thing. Don Uzzi is gone. Rich Goudis is gone. Dixon Thayer is gone. The balance sheet is terrible ... They had to go out and make these acquisitions. A new restructuring reserve. Unbelievably liberal account—a million things."¹⁰¹ The departures of the executive chiefly responsible for the day-to-day activities of Sunbeam and the executive chiefly responsible for its public relations are no small matter. My analysis of the intraday prices of Sunbeam stock on April 3, 1998 suggests (i) that these departures had a shattering effect on the confidence of the investment community in Sunbeam and (ii) their effect on Sunbeam's share price was separate from the effect of disappointing earnings and sales news that came out later in the day in a press release that contained official confirmation of one of the two key executive departures from Sunbeam. Yet Morgan Stanley has no damage liability arising from stock price declines owing to executive departures.
- b. Between March 30 and May 26, 1998 Sunbeam was targeted in eight investor-class-action lawsuits for which the class period started well before March 19, 1998, the first date on which Morgan Stanley arguably possessed information indicating that its client's representations about first quarter performance

Sunbeam's history, in chronological order.

¹⁰¹ Shore Dep. at 186.

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were false and should be corrected.¹⁰² Seven lawsuits had class periods from October 22, 1997 to April 3, 1998 and one ran from January 28, 1998 to April 3, 1998. These complaints against Sunbeam each allege that the company made false and misleading statements regarding its fourth quarter 1997 operating results. These lawsuits are important for two reasons: First, they provided the market with new negative information about Sunbeam's operations and accounting practices that was unrelated to Morgan Stanley's conduct. This information would have depressed Sunbeam's share price, but the resulting decline in Sunbeam's share price from information of this type should not increase the damages of Morgan Stanley. Second, the lawsuits were themselves a form of new negative information: Sunbeam's potential liability and litigation costs would have further depressed the company's stock price. Thus, Section IV's computation of Sunbeam's true value from a minor adjustment of Sunbeam's May 26, 1998 share price allows the cumulative impact of these lawsuits to overstate the damages owed to the Plaintiff by Morgan Stanley.

- c. On April 8, 1998 a Sunbeam shareholder sued CEO Al Dunlap and other officers and directors of the company, claiming that the defendants wasted company assets by granting or accepting stock options as part of new employment contracts for Dunlap and two other officers. Morgan Stanley was not involved in the lawsuit or the underlying conduct.¹⁰³
- d. On April 16, 1998, it was reported that Coleman CEO Jerry Levin had sold a large block of stock in his company in March of 1998. The sale was valued at approximately \$13 million and is listed as one of the 15 largest insider transactions during that time period. Sales by insiders often signify negative information about the company being sold.¹⁰⁴ Since at this point Coleman

¹⁰² Two other lawsuits define the class period as March 19 through April 3, which therefore overlaps with the period when Morgan Stanley allegedly withheld information. All of the lawsuits are listed in Appendix J.

¹⁰³ "Sunbeam Chiefs Sued Over Options," *Palm Beach Post*, April 8, 1998, p. 12B.

¹⁰⁴ "Our evidence is consistent with insider trades exhibiting both significant anticipation of high and low

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was part of Sunbeam, this sale effectively communicated negative information about Sunbeam. Mr. Levin is not accused of possessing any of the negative information that Morgan Stanley is accused of failing to disclose, so his sale of Coleman stock was unrelated to anything for which Morgan Stanley is plausibly responsible.¹⁰⁵

- e. On May 11, 1998 Sunbeam CEO Dunlap had a physical altercation with PaineWebber analyst Andrew Shore at an analysts' meeting. The incident was reported in the public press in July 1998. However, it is likely to have been known to the market much earlier, given the large number of attendees at the event. While I know of no formal study on this topic, common sense dictates that erratic behavior by a CEO in a public forum can generate a decline in a company's share price. Again, Morgan Stanley has no responsibility for this action.¹⁰⁶
- f. On May 15, 1998 Sunbeam warned that its barbecue-grill sales were not expected to revive in the second quarter from a slump that caused the household-products company to report a first-quarter loss; it said that it might curtail production earlier than planned at a factory that produces barbecue grills, which could lead to higher overhead and inventory costs. Morgan Stanley could not have had any knowledge of second quarter sales prior to March 30, 1998 as the second quarter had not yet started.¹⁰⁷

returns and significant reaction after them. Notably, our strongest results are driven by the tendency for information-based insider trades to be executed through security sales rather than purchases." R.R. Petit and P.C. Venkatesh, "Insider Trading and Long-Run Return Performance," *Financial Management* 24, no. 2 (Summer 1995): 88-103.

¹⁰⁵ "Insiders: Top Sellers and Buyers for the week ended April 10," *Bloomberg News*, April 16, 1998.

¹⁰⁶ "Not everyone felt reassured, least of all Shore, who had several contentious exchanges with Dunlap at the meeting. Afterward, as Shore was heading out the door, Dunlap made a beeline for him. 'I saw this wild man coming forward,' recalls Shore. 'He grabbed me by my left shoulder, put his hand over his mouth and near my left ear and said: "You son of a bitch. If you want to come after me, I'll come after you twice as hard."' One Sunbeam adviser corroborates Shore's account." "How Al Dunlap Self-Destructed: The inside story of what drove Sunbeam's board to act," *Business Week*, July 6, 1998.

¹⁰⁷ Sunbeam Form 10-Q for the first quarter of 1998, filed May 15, 1998, p. 10.

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- (148) The only positive news about Sunbeam that circulated in April or May related to the information that Morgan Stanley had an alleged duty to disclose. There was some positive speculation anticipating the outcome of the May 11, 1998 analysts meeting.¹⁰⁸ It was at this meeting that Sunbeam disclosed the information that Morgan Stanley is accused of withholding. Thus, there are no positive news events between March 30, 1998 and May 26, 1998 that would suggest that Sunbeam's May 26, 1998 price is an overestimate of true value per share on March 30, 1998, beyond the general rise in the stock market that took place over that period. I adjust for that market movement. Hence, using a market-adjusted May 26, 1998 price for Sunbeam's true value estimate not only maximizes damages, but exaggerates them because it includes the impact of post-merger news, which is not a liability of the Defendant.
- (149) Next, I provide an overview of an alternative methodology, based on the commonly used technique known as "event study analysis" and summarize my key results. A detailed description of how event studies are conducted appears at Appendix D, and my application of it to Sunbeam is further discussed in Appendix I.

V.3.2. Using an Event Study to Estimate the True Value of Sunbeam on March 30, 1998

- (150) In order to correct the bias in Section IV's approach for obtaining the true value of Sunbeam stock received by the Plaintiff, I performed an alternate estimation using event study methodology. Event studies are a widely accepted econometric tool, often used to remove artificial inflation from the price of a stock.¹⁰⁹ They are appropriate for stocks that trade in an efficient market, which is the case with Sunbeam.

¹⁰⁸ "Sunbeam up 6.5% In Hope of Good News From Mon. Meeting," *Dow Jones News Service*, May 5, 1998.

¹⁰⁹ Tabak, David I., and Frederick C. Dunbar, "Materiality and Magnitude: Event Studies in the Courtroom," *Litigation Services Handbook The Role of the Financial Expert*, Third Edition, 2001, (Ed. Roman L. Weil, Michael J. Wagner and Peter B. Frank) ("Tabak and Dunbar"), Chapter 19.

See also: Cornell, Bradford and R. Gregory Morgan, "Using Finance Theory to Measure Damages in Fraud on the Market Cases," *UCLA Law Review*, June 1990 ("Cornell and Morgan").

- (151) In this context, the event study functions by identifying drops in Sunbeam's price due to the release of the information that I assume Morgan Stanley withheld. As discussed in paragraph (97), this information was released to the market no later than May 26, 1998. The sum of the price drops identified by the event study between March 30, 1998 and May 26, 1998 equals the amount of artificial inflation in Sunbeam's price due to Morgan Stanley as of March 30, 1998. I calculate the true value of Sunbeam on March 30, 1998 by subtracting this artificial inflation from the actual price of Sunbeam on that day.
- (152) My assumption about which price drops to regard as Morgan Stanley-related in this event study is likely to bias my damage estimate upwards. The more price drops I assign to Morgan Stanley, the larger the artificial inflation I calculate, and the larger the damages. Generally, in securities fraud litigation, price drops are only considered as part of the artificial inflation if they meet two criteria:
- a. They are statistically significant—that is, they are unlikely to be due to mere chance; and
 - b. They are materially associated with events or releases of information linked to the artificial inflation generated by the Defendant's malfeasance.
- (153) I counted *all* of the statistically significant price drops between March 30 and May 26, 1998 as part of the artificial inflation. I did not require that those price drops be plausibly linked to the release of information related to Morgan Stanley's conduct. In fact, I have reason to believe that significant portions of the price drops I attribute to Morgan Stanley are actually due to other causes. Thus, my estimate of artificial inflation and damages in this section will still be biased upwards in favor of the Plaintiff, but not to the same extent as in Section IV.
- (154) Later in this document, I discuss in greater detail the concepts of the market model (Appendix C), the event study (Appendix D), and its application to Sunbeam (Appendix I).

V.3.3. Event Study—Summary of Results

- (155) Exhibit 23 lists, in column 2, the closing prices for Sunbeam on every trading day from the close of the transaction, March 30, 1998, to the date on which I am certain there was no artificial inflation due to Morgan Stanley in Sunbeam's stock price, May 26, 1998. Column 3

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calculates the percentage change in price from the previous day, called the return. When a return was statistically significant and negative, I have highlighted the row in yellow. These highlighted days are the days on which the event study methodology attributes the price drop to Morgan Stanley.

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Exhibit 23: Significant Sunbeam price drops, March 30, 1998 to May 26, 1998

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Date	Sunbeam Closing Price	Actual Sunbeam Return	Constructed Return	True Value	Artificial Inflation	Artificial Inflation / Price
30-Mar-98	\$43.94	(1.26%)	(1.26%)	\$25.39	\$18.55	42.21%
31-Mar-98	\$44.13	0.43%	0.43%	\$25.50	\$18.62	42.21%
1-Apr-98	\$44.00	(0.28%)	(0.28%)	\$25.43	\$18.57	42.21%
2-Apr-98	\$45.56	3.55%	3.55%	\$26.33	\$19.23	42.21%
3-Apr-98	\$34.38	(24.55%)	0.24%	\$26.39	\$7.98	23.22%
6-Apr-98	\$32.25	(6.18%)	(0.12%)	\$26.36	\$5.89	18.25%
7-Apr-98	\$31.44	(2.52%)	(2.52%)	\$25.70	\$5.74	18.25%
8-Apr-98	\$30.38	(3.38%)	(3.38%)	\$24.83	\$5.54	18.25%
9-Apr-98	\$30.00	(1.23%)	(1.23%)	\$24.52	\$5.48	18.25%
13-Apr-98	\$28.38	(5.42%)	(0.09%)	\$24.50	\$3.87	13.65%
14-Apr-98	\$30.00	5.73%	5.73%	\$25.91	\$4.09	13.65%
15-Apr-98	\$29.44	(1.88%)	(1.88%)	\$25.42	\$4.02	13.65%
16-Apr-98	\$28.13	(4.46%)	(4.46%)	\$24.29	\$3.84	13.65%
17-Apr-98	\$29.75	5.78%	5.78%	\$25.69	\$4.06	13.65%
20-Apr-98	\$30.56	2.73%	2.73%	\$26.39	\$4.17	13.65%
21-Apr-98	\$30.13	(1.43%)	(1.43%)	\$26.01	\$4.11	13.65%
22-Apr-98	\$29.00	(3.73%)	(3.73%)	\$25.04	\$3.96	13.65%
23-Apr-98	\$26.75	(7.76%)	(0.97%)	\$24.80	\$1.95	7.29%
24-Apr-98	\$25.88	(3.27%)	(3.27%)	\$23.99	\$1.89	7.29%
27-Apr-98	\$25.00	(3.38%)	(3.38%)	\$23.18	\$1.82	7.29%
28-Apr-98	\$25.94	3.75%	3.75%	\$24.05	\$1.89	7.29%
29-Apr-98	\$25.56	(1.45%)	(1.45%)	\$23.70	\$1.86	7.29%
30-Apr-98	\$25.13	(1.71%)	(1.71%)	\$23.29	\$1.83	7.29%
1-May-98	\$24.94	(0.75%)	(0.75%)	\$23.12	\$1.82	7.29%
4-May-98	\$25.13	0.75%	0.75%	\$23.29	\$1.83	7.29%
5-May-98	\$27.75	10.45%	10.45%	\$25.73	\$2.02	7.29%
6-May-98	\$27.13	(2.25%)	(2.25%)	\$25.15	\$1.98	7.29%
7-May-98	\$27.63	1.84%	1.84%	\$25.61	\$2.01	7.29%
8-May-98	\$27.81	0.68%	0.68%	\$25.78	\$2.03	7.29%
11-May-98	\$25.75	(7.42%)	(0.14%)	\$25.75	--	0.00%
12-May-98	\$25.25	(1.94%)	(1.94%)	\$25.25	--	0.00%
13-May-98	\$25.75	1.98%	1.98%	\$25.75	--	0.00%
14-May-98	\$25.31	(1.70%)	(1.70%)	\$25.31	--	0.00%
15-May-98	\$25.00	(1.23%)	(1.23%)	\$25.00	--	0.00%
18-May-98	\$24.63	(1.50%)	(1.50%)	\$24.63	--	0.00%
19-May-98	\$24.13	(2.03%)	(2.03%)	\$24.13	--	0.00%
20-May-98	\$23.69	(1.81%)	(1.81%)	\$23.69	--	0.00%
21-May-98	\$23.31	(1.58%)	(1.58%)	\$23.31	--	0.00%
22-May-98	\$23.50	0.80%	0.80%	\$23.50	--	0.00%
26-May-98	\$23.50	0.00%	0.00%	\$23.50	--	0.00%

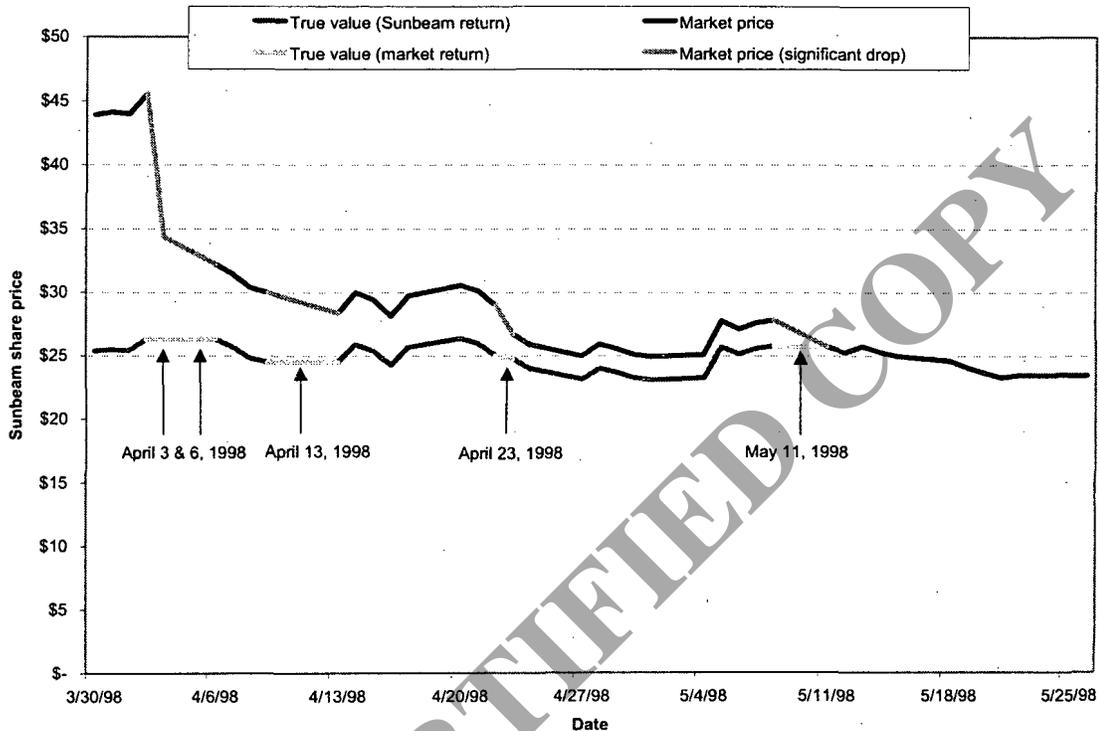
Source, historical stock prices: CRSP.

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- (156) Column 4 shows each day's "constructed return" for Sunbeam shares. The constructed return is the Sunbeam return one would expect on a day between March 30 and May 26, 1998 if it had never been artificially inflated to begin with. It is equal to the actual return of Sunbeam stock on that day, except for days with price drops attributed to Morgan Stanley. On the latter days, the ones highlighted in yellow, the constructed return is equal to the return that one would expect based on the movement of the overall market on that day. (That is, they are based on the market model, discussed in more detail in Appendix I.)
- (157) The true value of Sunbeam on each day is given in column 5. It is calculated starting from the last day of the event window, May 26, 1998, which has a Sunbeam share price equal to its true value for that May 26 date. I obtain true values for each date by working backwards in time. Starting with May 26, I sequentially discount that day's true value using the constructed return in column 4 for that date. This generates the prior day's true value. This process continues sequentially until I arrive at the March 30, 1998 true value.
- (158) Artificial inflation is calculated in Column 6 as the difference between the actual price (2) and the true value (5). Note that artificial inflation goes down over time as information is released. The percentage of Sunbeam's price on each day that is due to artificial inflation attributable to Morgan Stanley's conduct is listed in column 7, which is simply the ratio of column 6 to column 2.
- (159) These results are graphically represented in Exhibit 24 below:

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Exhibit 24: True value and price lines for Sunbeam March 30, 1998 to May 26, 1998



Source: CRSP.

(160) The top blue line represents the closing prices for Sunbeam during the event window.¹¹⁰ The bottom red line is the “true value line” constructed from column (5) above. Days on which the price drop is attributed to Morgan Stanley-related artificial inflation are highlighted in green in the price line, and yellow in the true value line. Notice that the price drops (green) are much larger than the true value movements on those days (yellow). Over time, this causes the price line to move closer to the true value line, until eventually the two meet. The true value of Sunbeam on March 30, 1998 is given by the height of the true value line on that day. All of the difference between the true value line and the price line on March 30, 1998 is considered artificial inflation due to Morgan Stanley and contributes to my estimate of damages.

■ March 30, 1998–May 26, 1998.

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- (161) In Section IV.3, I estimated the March 30, 1998 true value of Sunbeam to be \$23.49 using the damage-maximizing assumption that all changes in Sunbeam's price from March 30, 1998 until May 26, 1998, except those due to market movements, were due to the Defendant's malfeasance. Using event study methodology, which I consider to be more scientific, I estimate the true value of Sunbeam at March 30 to be \$25.39. This estimate still exaggerates the damages owed to the Plaintiff because of my assumption about which price drops I assign to Morgan Stanley.

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V.4. Conclusions and Discussion

(162) The various alternative assumptions for the starting date of the Coleman valuation, the appropriate merger-related premium, the Holdings Notes, and Sunbeam valuation can be combined to form 24 distinct estimates of Plaintiff's damages. These are in Exhibit 25 below.

Exhibit 25: Damage estimates

			Sunbeam March 30, 1998 true value per share*			
			\$ 25.39	\$ 23.49		
			CLN Holdings debt value (in millions)			
Merger-related premium	Coleman start date	Stand-alone share price 3/30/98	\$ 542	\$ 533	\$ 542	\$ 533
Terminated mergers 1996 - 2000: 5.55%	Feb. 3, 1998	\$ 14.69	\$ (376)	\$ (368)	\$ (350)	\$ (341)
	Feb. 3, 1998 (adjusted for 2/20/98)	\$ 16.15	\$ (309)	\$ (300)	\$ (282)	\$ (273)
	Feb. 23, 1998	\$ 19.63	\$ (147)	\$ (138)	\$ (120)	\$ (112)
Academic literature: 5.79%	Feb. 3, 1998	\$ 14.69	\$ (375)	\$ (366)	\$ (348)	\$ (340)
	Feb. 3, 1998 (adjusted for 2/20/98)	\$ 16.15	\$ (307)	\$ (298)	\$ (280)	\$ (271)
	Feb. 23, 1998	\$ 19.63	\$ (145)	\$ (136)	\$ (118)	\$ (110)

* Sunbeam May 26, 1998 market adjusted closing price (\$23.49) or March 30, 1998 event study market adjusted closing price (\$25.39)

Sources: Thomson Financial & CRSP.

(163) Under the most reasonable set of assumptions, the true value of the cash and property received by the Plaintiff in the merger exceeds the value of the property it gave up by over \$300 million. Under every combination of assumptions, the value Plaintiff received exceeded the value it surrendered by over \$100 million.

(164) It is quite obvious from this exhibit that the terms of the merger were so favorable to CPH that even a major fraud does not generate out-of-pocket damages. It is also quite obvious that unless my estimates for true value are grossly miscalculated, or my methodology unfounded, there can be no damages in this matter.

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**VI. Analysis of
Reports by
Plaintiff's
Experts**

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- (165) This section presents my opinions of the expert reports submitted by Plaintiff's experts Nye, Kursh, and Wagner. Here, I summarize these opinions and discuss concerns that apply to the reports collectively. The subsections that follow present my comments on each report individually.
- (166) Plaintiff's experts present contradictory opinions, use flawed methodology, and appear to have mutually exclusive theories of damages. Dr. Nye estimates damages from an expectations theory of damages, analyzing the Sunbeam stock consideration alone. Dr. Kursh espouses an out-of-pocket-loss theory of damages, but presents no damage estimate, and estimates the value of Coleman alone. Mr. Wagner neither espouses a theory of damages nor presents a damage estimate, but does estimate the value of Coleman. However, Mr. Wagner's methodology is substantially different than Dr. Kursh's methodology and he estimates a substantially different value for Coleman than does Dr. Kursh.
- (167) Dr. Nye claims that the Sunbeam shares Plaintiff received in the merger were worth nothing. However, upon completion of the merger, Sunbeam became the owner of Coleman. If the analyses of Dr. Kursh and Mr. Wagner are to be believed, Coleman was then worth well over \$1.15 billion (though they disagree on the amount). Even if Sunbeam were worth zero prior to the merger, it would have been worth a substantial amount afterwards, if one accepts either Dr. Kursh's or Mr. Wagner's valuation of Coleman. Thus, not only are Dr. Nye's methods contrary to those of Plaintiff's other experts, his conclusions are likewise irreconcilable with theirs.
- (168) Plaintiff, putting forth the collective opinions of these three experts, appears to argue that Sunbeam's stock price was improperly inflated; yet it wants to recover damages as if Coleman's high stock price—which was entirely dependant on Sunbeam's inflation—was legitimate. Thus, Plaintiff argues on the one hand that Sunbeam's stock's price was "fraudulently inflated," and that Sunbeam's strategy was to use its inflated stock price as "currency" to buy Coleman in furtherance of a scheme to delay discovery of its fraud.¹¹¹

¹¹¹ Complaint, ¶¶ 34–35.

Yet, on the other hand, Plaintiff wants to recover damages as if Coleman were really worth what Sunbeam was willing to "pay" (with phony money) to disguise its misconduct.

- (169) The rest of this section offers my opinions on the reports of Dr. Nye, Mr. Wagner, and Dr. Kursh in turn.

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VI.1. Dr. Nye's Expert Report

VI.1.1. Dr. Nye Incorrectly Uses Expectation Damages

- (170) Dr. Nye estimates total damages at \$680 million before the application of prejudgment interest, mitigation or offsets. His damage calculation is the difference between what Dr. Nye estimates as the Plaintiff's "reasonable expectation" of the value of Sunbeam and what Dr. Nye estimates Sunbeam was worth. He makes no attempt to value the Coleman stock of CLN Holdings debt.
- (171) Dr. Nye's estimate of Sunbeam's expected value is based on market prices for Sunbeam during March 1998. "Plaintiff could reasonably expect that the total value of the shares it would receive in the Exchange was approximately \$680 million." This figure is the number of Sunbeam shares Plaintiff received multiplied by \$48.26, Sunbeam's average closing price in the weeks before March 30, 1998. Dr. Nye claims all of this as Plaintiff's "losses" because "such shares were cancelled or became worthless when Sunbeam declared bankruptcy on February 5, 2001."¹¹²
- (172) Dr. Nye's expectation measure of damages is inappropriate in a case alleging fraud and similar torts. I am aware that the usual measure of damages in such cases is out-of-pocket loss. This would appear to be consistent with Plaintiff's position that in the absence of fraud, it would have terminated the transaction.
- (173) Plaintiff and Plaintiff's other damage experts also appear to invoke an out-of-pocket loss theory of damages. Plaintiff's response to Defendant's second interrogatory question 6 invokes an out-of-pocket loss standard by asserting that the value of the Coleman shares surrendered in the transaction is an element of its losses.¹¹³ Further, Plaintiff's experts Kursh and Wagner both provide estimates of the value of the Coleman shares surrendered in the transaction.¹¹⁴ But under an expectations theory of damages, the value of the

¹¹² Report of Blaine F. Nye, Ph.D. ("Nye Report"), p. 10.

¹¹³ Oct. 12, 2003 CPH's Resp. to MS's 2nd Set of Interrog., Resp. No. 6.

¹¹⁴ Report of Samuel J. Kursh, D.B.A. ("Kursh Report"), p. 15. & Report of Michael J. Wagner, M.B.A., J.D.

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Coleman shares is not relevant. Plaintiff's expert Dr. Kursh acknowledges that the out-of-pocket measure is correct, and that he is valuing the Coleman stock because it is an element of out-of-pocket loss. He asserts "Specifically, I have been asked to determine the value of the Coleman shares as of the transaction closing date, March 30, 1998. Holdings' out-of-pocket loss is equal to the value of the consideration provided to Sunbeam less the consideration received from Sunbeam."¹¹⁵

- (174) Expectation damages have no economic validity when expectations are based on fraudulently inflated values. Consider the following hypothetical example. Imagine that Bob and Alice contract to exchange Bob's diamond, which Bob represents as being worth \$1 million, for Alice's candy bar. Alice takes Bob at his word and gives Bob the candy bar. In exchange, Bob hands Alice his diamond, which, as Bob knows, is fake. Bob clearly defrauded Alice but it would be hard to convince even a child that Alice had lost \$1 million rather than just a candy bar. Moreover, if the goal of damages is to put Alice in the position she would have been in had there been no fraud, an award of \$1 million will grossly overcompensate her, regardless of her "expectations" or how "reasonable" they were.
- (175) Suppose further that third parties knew about Bob's offer to Alice. They might be willing to bid up to \$1 million for the candy bar, thinking that they could buy it from Alice and then sell it to Bob for his diamond, which they think is worth \$1 million. So there might be a "market" for the candy bar, with bid and ask prices near \$1 million. The market price is then said to be artificially inflated by the fraud. This price clearly bears no relationship to the actual value of the candy bar, as it is entirely based on Bob's intended fraud. Typically, an expert in a securities fraud case estimates the true value of a security by removing its artificial inflation; he does not value the security as if the false information were true.
- (176) The expectations approach to damages is particularly egregious in this circumstance. It takes a transaction that (based on the evidence that I have presented) appears to be highly favorable to the Plaintiff, even with Morgan Stanley's alleged fraud properly factored in. It

("Wagner Report"), p. 1.

¹¹⁵ Kursh Report, p. 3.

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then manages to generate a damage estimate that would enrich Plaintiff by *another* billion dollars or more. Clearly, something is amiss.

- (177) In my hypothetical example above, imagine that Bob had agreed to pay \$100,000 in cash and deliver his diamond, which he represented as being worth \$900,000 in exchange for the candy bar. Suppose that he gave Alice \$100,000 in cash and the fake diamond. According to the expectations approach to damages, Alice, having just pocketed \$100,000 in real money, is now entitled to \$900,000 in additional compensation.

VI.1.2. Dr. Nye “Cherry Picks” High Values for Sunbeam’s Market Value

- (178) I disagree not only with Dr. Nye’s theory of damages, but with his application of it. Dr. Nye invokes the efficient market hypothesis to explain why it is reasonable for Plaintiff to have expected Sunbeam to be worth \$680 million, but violates that hypothesis in valuing Sunbeam.
- (179) Dr. Nye correctly observes that market prices are relevant to Sunbeam’s worth. I agree that stocks listed on the NYSE trade in an efficient market and that, in the absence of fraud, the correct measure of an efficiently traded stock’s value is its market price. However, Dr. Nye disregards the notion of market efficiency entirely when he sets the Plaintiff’s “reasonable expectation” at the average of the Sunbeam closing prices in the weeks before March 30, a figure he calculates at \$48.26. If markets are efficient, then one need only look to a single day’s price to get reasonable expectations for a stock’s value measured at that day.
- a. If Dr. Nye calibrates expectations on February 27, 1998, when the parties signed the agreement, he cannot use later market prices to estimate expectations, since the parties could not have known what those closing prices would be.
 - b. If Dr. Nye sets expectations on March 30, 1998, then prices prior to that date are irrelevant.

In no case is taking an average consistent with the efficient market hypothesis that Dr. Nye espouses.

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- (180) On February 27, 1998, Sunbeam closed at \$41.75,¹¹⁶ which is what Plaintiff may have expected the stock to be worth on that date, assuming Plaintiff was unaware of the accounting fraud and other problems at Sunbeam. Alternatively, if one sets expectations on March 30, 1998, then one would use the closing price on March 30, 1998 of \$43.94. Both estimates, \$41.75 and \$43.94, are substantially below Dr. Nye's estimate of \$48.26. Thus, even assuming that expectation damages are an acceptable standard, and that expectations based on a fraudulently inflated price can ever be "reasonable," Dr Nye's method of averaging is unjustified and produces a substantially higher value than is justified by any principle of finance.

VI.1.3. There Is No Basis for Dr. Nye's Position that Sunbeam's True Value Should be Set at Zero

- (181) The date at which the consideration for the merger must be valued is the transaction date itself, March 30, 1998. Again, Dr. Kursh recognizes this,¹¹⁷ but Dr. Nye does not. Dr. Nye values CPH's Sunbeam's shares at February 5, 2001, when they became worthless due to Sunbeam's bankruptcy.¹¹⁸ But Sunbeam's ultimate demise, occurring after two and a half years of control *by Plaintiff's owner*, Mr. Perelman, was not known, predicted, or predictable at March 30, 1998. Dr. Nye applies an ex-post standard, which counsel advises me is not applicable here. Indeed, the Delaware Court of Chancery explicitly rejected hindsight-based valuation in litigation concerning this very merger, and concluded that Sunbeam's bankruptcy was *not* foreseeable as late as January 6, 2000 (let alone on March 30, 1998).¹¹⁹ Damages must be measured as of the time of the transaction.¹²⁰
- (182) Dr. Nye's position that we must wait until February 5, 2001 to learn of Sunbeam's true value is also inconsistent with his espoused principle of market efficiency. I have presented

¹¹⁶ Nye Report, Exhibit 6B, p. 6.

¹¹⁷ Kursh Report, p. 3.

¹¹⁸ Nye Report at 10.

¹¹⁹ Prescott Group, p. 10.

¹²⁰ Alexander, Janet Cooper, "The Value of Bad News in Securities Class Actions," 41 UCLA L. Rev. 1421 (1994), 1428.

evidence suggesting that all of Morgan Stanley's information (and more) about the first quarter earnings and sales was released no later than May 26, 1998. Under the principle of market efficiency, and Dr. Nye's own flawed theory of damages, he should not have computed damages greater than those based on the difference between the March 30, 1998 price of Sunbeam and the May 26, 1998 price of Sunbeam. These damages, under Nye's flawed theory amount to \$288 million. Moreover, if the damages are measured from expectations on February 27, 1998, at which Sunbeam's price was \$41.75, they can be no larger than \$257 million under Dr. Nye's theory of damages.

- (183) Dr. Nye's discussion of the impact of the sales restrictions and audit delays on Sunbeam's true value contradicts the principle of market efficiency. One need not look years down the road to establish a true value for Sunbeam stock just because it cannot be sold today. An efficient market price factors expectations about the future into today's stock price. Restricted stock may force the owner of the stock to assume some additional risks, which can be priced into the stock's value at the time. The stock's price, and hence its value, is obviously not the future outcome that can be known only with hindsight.
- (184) Dr. Nye's treatment of the sales restriction improperly alters the allocation of risk between the parties. The buyer of a restricted security, not the seller, bears the risk for price fluctuations over the restricted period. Yet, Dr. Nye's approach to damage computation makes the seller of the security bear all risk over the restricted period. If the security declines in value over the restricted period, damages are greater; if it appreciates, damages are less. When a seller of a security continues to bear the risk of all economic events beyond the date of sale, as Dr. Nye's damage calculation implies, the seller is in the economic position of continuing to own the security. The sale has in effect been negated. Restricted securities exist because the buyer is willing to bear the risk of future economic events. They are priced and traded with this transfer of risk in mind. Clearly, the buyer can be damaged by fraud, but the compensatory damages for that fraud in an efficient market would not vary with the length of the restricted sales period. Nor would such damages include compensation for the risks, not associated with fraud, that are willingly born.
- (185) Dr. Nye's discussion of the impact of the sales restrictions and audit delays on Sunbeam's true value contradicts his own estimate of Plaintiff's expectation of Sunbeam's value on March 30, 1998. If the restrictions could have caused Plaintiff to suffer a greater loss than

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unrestricted shares, the Plaintiff's expectations about the value of the shares it owned should have been *less* than the market value of unrestricted shares. Dr. Nye implicitly assumes that these restrictions have no effect on valuation, since he employs no liquidity discount in estimating Plaintiff's expectations about the value of their restricted shares.

- (186) Dr. Nye's report also misleads the Court in suggesting that there was no way for the Plaintiff to capture all or part of the value of Sunbeam stock in cash before the February 5, 2001 bankruptcy. Financial institutions, such as investment banks and insurance companies, routinely enter into financial agreements (e.g., total return swaps, insurance policies, or options) to relieve customers of some of the risk of holding restricted stock. Hence, the date at which the restrictions were lifted, or the auditor certified the financial statements, is not relevant to the damage calculation.
- (187) Moreover, even if these restrictions prevented sales, Dr. Nye's calculations of the impact of the restriction on damages are inconsistent with modern asset pricing theory.

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VI.2. Mr. Wagner's Expert Report

- (188) Mr. Wagner provides no estimate of damages and provides no theory upon which such damages might be based. He states that his opinions are limited to "the fair value of Coleman on March 30, 1998" and "the investment value of Coleman on March 30, 1998."¹²¹
- (189) Mr. Wagner's analysis as described in his expert report is based on a methodology that is not appropriate for this case, and as such provides no reliable estimate of the value of Coleman on March 30, 1998. Mr. Wagner fails to use Coleman's actual market prices to value Coleman and, instead, inappropriately relies on practitioner methods. The limited circumstances under which it is proper to use practitioner methods are discussed in Section III.1 of my report. Mr. Wagner's methodology relies on the market prices of *other* securities to estimate the value of Coleman. This reliance is unnecessary and illogical since market prices for Coleman exist. Mr. Wagner provides no justification for relying on the market prices of *other* securities while completely ignoring market prices for Coleman itself.
- (190) In addition to its theoretical shortcomings, Mr. Wagner's methodology is in conflict with that of Dr. Kursh. First, Dr. Kursh relies, in part, on Coleman's actual market prices to value Coleman. Second, Mr. Wagner's estimates are substantially different from Dr. Kursh's, even though both are ostensibly estimating the same thing—Coleman's value on March 30, 1998. Mr. Wagner estimates Coleman's "fair value" on March 30, 1998 as \$26.18 per share¹²² and Dr. Kursh estimates "fair market value at control" as \$29.50 per share.¹²³
- (191) Leaving aside Mr. Wagner's inappropriate use of practitioner methods, he commits a variety of other mistakes. These include cherry-picking years for deriving Coleman's estimated future costs and assigning arbitrary weights to his widely varying estimates of Coleman's value. In addition he improperly and inconsistently applies what he calls a "control premium" and compounds this error by factoring in "synergies" on top of it.

¹²¹ Wagner Report, p. 1.

¹²² Wagner Report, p. 4.

¹²³ Kursh Report, p. 15.

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VI.3. Dr. Kursh's Expert Report

- (192) My rebuttal opinions in this section focus on Dr. Kursh's use of market prices, as he understands them, to value Coleman. Mr. Kursh also discusses and critiques the fairness opinions of Morgan Stanley and Credit Suisse. I have given my opinions about the use of these methods for damage estimation in this case in my discussion of Mr. Wagner's report and I do not repeat them here.
- (193) I also point to the significance of Dr. Kursh's statement, "Holdings' out-of-pocket loss is equal to the value of the consideration provided to Sunbeam less the consideration received from Sunbeam."¹²⁴ The statement, which I agree with, is the only reference in Dr. Kursh's report to a methodology for damage calculation. It suggests that he and I share a common approach to scientific damage estimation in this case. It is distinct from the approach taken by Plaintiff's expert Dr. Nye. Moreover, I agree with Dr. Kursh that the value of Coleman's shares should be determined as of the merger's closing date, March 30, 1998.¹²⁵ Finally, I endorse Dr. Kursh's use of Coleman-related market prices to estimate the true value of Coleman, and his assertion that alternative valuation approaches that do not focus on subject company transactions are inferior. Our agreement here also stands in sharp contrast to the approach taken by Plaintiff's expert Mr. Wagner. Mr. Wagner employs a variety of methods to estimate Coleman's "fair value," but none of them are directly based on market transactions in Coleman.
- (194) Although I agree with Dr. Kursh's preference for using Coleman's market price to value Coleman, I disagree with Dr. Kursh's estimate of Coleman's "fair market value at control" from his transaction-based estimates. My disagreements are founded in Dr. Kursh's implementation of his methodology. In several critical aspects, his implementation betrays his own stated principles, and ignores some of the pitfalls he warns about. Sometimes, the errors in his implementation bias Coleman's value downward, but on balance, these errors grossly overstate Coleman's true value. These errors include the following:

¹²⁴ Kursh Report, p. 3.

¹²⁵ Kursh Report, p. 3.

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- a. Dr. Kursh relies heavily on the price at which Coleman executives “cashed out” their stock options, at a time when Coleman’s market price was largely a function of Sunbeam’s. I discuss this in Section VI.3.1.
- b. Dr. Kursh makes much of the fact that the parties to the merger agreed to treat Sunbeam’s assumption of the Holdings Notes as equivalent in value to 19.2 million Coleman shares, despite the fact that the value “given” to the debt by the parties is meaningless out of context. I discuss this in Section VI.3.2.
- c. Dr. Kursh asserts that the stock option cash-outs and “implied” value of the Holdings Notes provide independent verification of the validity of his true value assessment. In actuality, they are different parts of a single transaction, and thus do not provide independent estimates of the true market price of Coleman. I discuss this in Section VI.3.3.
- d. When Dr. Kursh does use actual market prices to value Coleman, he selects a starting date at which the price of Coleman was inflated by news of the merger. This is inconsistent with his acknowledgment that leakage of news of a merger can occur weeks before a merger announcement. It is also inconsistent with his argument that inflation from such leakage should invalidate a subject company transaction as a basis for true value. I discuss this in Section VI.3.4.
- e. Dr. Kursh fails to adjust the Coleman February 27 market price he selects for the impact of news events and changes in overall market prices between that date and the date of the transaction. I discuss this in Section VI.3.5.
- f. Dr. Kursh incorrectly applies a control premium to obtain the true value of a share of Coleman stock from a pre-merger transaction price. I see no economic argument that would support the use of a control premium. I discuss this in Section VI.3.6.
- g. Dr. Kursh misinterprets the effect of the merger announcement on Sunbeam’s stock price.

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- (195) I explain each error in turn below.

VI.3.1. Dr. Kursh Inappropriately Cites the Option Cash-Out Opportunities of Coleman Executives as the Basis for a Market Valuation of Coleman

- (196) Dr. Kursh notes that in exchange for paying an option exercise price, some Coleman executives chose to receive a \$27.50 cash payment as part of the merger agreement. Others exercised their stock options and received Coleman stock. He then states that if these executives sold the stock received from exercising their options in March 1998, they would have earned the Coleman stock price prevailing in the stock market on the date they sold, which was above \$27.50 during this period.
- (197) The \$27.50 cash-out price set in the merger agreement is not a “market indicator of value” for two reasons. First, \$27.50 is not a transaction price in the traditional sense of a competitive market. Rather, it is one component of a larger transaction, which must be considered in its entirety. I discuss this point further in the next subsection. Second, Sunbeam’s willingness to exchange inflated Sunbeam stock for Coleman stock renders meaningless the terms of the merger as indicators of Coleman’s true value. Drawing on an earlier analogy in my rebuttal of Dr. Nye’s report, Bob’s stated willingness to pay Alice \$1 million in diamonds for a piece of candy with the intention of paying \$1 million in fake diamonds does not imply that the candy has a true value of \$1 million.
- (198) The fact that some executives sold Coleman stock acquired through option exercise in March 1998 provides no information at all about the true value of Coleman. Dr. Kursh himself states: “Coleman’s stock price following the announcement of the Sunbeam Acquisition became a proxy of Sunbeam’s stock price with some arbitrage component ... After February 27, 1998, therefore, Coleman’s publicly traded price is not a reliable indicator of the Company’s stand-alone minority value but includes the effect of the merger.”¹²⁶ I

¹²⁶ Kursh Report, p. 11. Once the terms of the merger were announced, the market price of a Coleman share was almost entirely a function of the cash and Sunbeam stock into which it could be converted, rather than a reflection of Coleman’s value on a stand-alone basis.

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agree. For the reasons stated clearly by Dr. Kursh himself, his estimate of Coleman's value based on these transactions, all of which occurred after February 27, 1998, is "not reliable."

VI.3.2. Dr. Kursh's Use of Credit Suisse's Characterization of the Exchange of Debt for Stock Is Irrelevant to Coleman's True Value

- (199) Dr. Kursh makes similarly egregious errors in his discussion of the Holdings Notes as an indicator of Coleman's true value. His argument is based entirely on a single document prepared by Plaintiff's financial advisors, Credit Suisse First Boston, which characterizes this element of the transaction as Sunbeam's "[a]ssumption of \$525 million of zero coupon debt for 19.2 million CLN shares."¹²⁷ Dividing \$525 by 19.2, Dr. Kursh concludes that he has evidence that Coleman shares were worth \$27.34.
- (200) Dr. Kursh's reasoning is unsound. The assumption of the Holdings Notes was one piece of a total transaction, meaningless when taken out of context. The various components of the exchange—the assumption of debt, cash, and Sunbeam stock—were negotiated as a whole and can only be valued as a whole. The Merger Agreement itself treats the elements of the exchange in this way. It assigns no particular value to the CLN Holdings Notes, and does not equate their value to any particular number of Coleman shares.
- (201) Consider the example of buying a new car while trading in an old one. The car dealer may (a) offer to sell the new car for \$25,000 while offering to buy the trade-in for \$5,000 or (b) offer to sell the new car for \$30,000 while buying the trade-in for \$10,000. Since both the trade-in and new car price were negotiated simultaneously, neither has any real economic meaning alone—only the net transfer (\$20,000 + old car for new car) matters. Similarly, the individual components of the entire merger transaction are irrelevant, since they too were all negotiated together. As in the car example, one cannot use any individual part of the transaction as evidence as to what either party to the larger transaction thought the individual part was worth, let alone a third party's opinion of the same. And in this particular case, as in my car example, the parties themselves appear to have described the

¹²⁷ Kursh Report, p. 14, citing CSFBC 0001550. The characterization is questionable.

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Holdings Notes in a way that is different from the Credit Suisse document: a Morgan Stanley document shows the *same* debt being exchanged for the *same* shares, this time valued at \$500 million, for a share price of about \$26.00.¹²⁸

VI.3.3. Dr. Kursh Incorrectly Cites Two Components of This Single Transaction As If Each Was an Independent “Market Indicator of Value”

- (202) Dr. Kursh erroneously cites the option cash-out¹²⁹ and the assumption of debt¹³⁰ as two independent methods for ascertaining a “market indicator of value” for Coleman shares.¹³¹ But for reasons alluded to in the previous discussion, they are not independent. Both were aspects of the larger merger that were all negotiated together. It is no more valid to consider the option cash-out and the assumption of debt as *two* independent examples of a “market indicator of value” than it would be to consider the purchase of the Coleman shares as being *44 million* independent examples of a “market indicator of value.”

VI.3.4. Dr. Kursh Selects an Inflated Market Price for Coleman

- (203) Dr. Kursh appears to agree with me that in selecting a market price for Coleman as the basis for valuation, one must be careful to select a price that is not affected by news of the merger.¹³² Dr. Kursh selects February 27, 1998 as the starting price for one of his estimations of the value of Coleman and states, “After February 27, 1998, therefore, Coleman’s publicly traded price is not a reliable indicator of the Company’s stand-alone minority value but includes the expected effect of the merger.”¹³³

¹²⁸ Undated, Project Laser: Summary of Pro Forma Combination Methodology (“500MM assumed value of holding debt at \$26 per share”).

¹²⁹ Kursh Report, p. 13.

¹³⁰ Kursh Report, p. 14.

¹³¹ Kursh Report, p. 11.

¹³² I discuss this issue at length in Sections IV.1.1 and V.1.1.

¹³³ Kursh Report, p. 11.

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- (204) While I agree that this statement is true, it is not sufficient. As I explain in Sections IV and V, Coleman's price was inflated by rumors prior to February 27, probably as early as February 4, 1998. Thus, the price on February 27, 1998 is not an appropriate starting point for Dr. Kursh's analysis since it includes the very effects he is seeking to avoid. The correct choice of a starting point to value Coleman, according to Dr. Kursh's methodology, would be the price on February 4, 1998.
- (205) What is most surprising about Dr. Kursh's use of the February 27, 1998 price is that he is aware that merger leakage often occurs. He cites a Morgan Stanley study that explicitly accounts for the possibility of leakage of merger news. Dr. Kursh writes, "Morgan Stanley's control premium analysis was based on price comparisons between merger price and market price 28 days prior to merger announcement. This method may eliminate any market price impact that might be attributed to information leakage prior to formal merger announcement."¹³⁴

VI.3.5. Dr. Kursh Fails to Apply a Market Adjustment

- (206) In addition to selecting the wrong date on which to use the market price for Coleman as a basis for valuing the Coleman stock, Dr. Kursh fails to adjust this price to a value for Coleman as a stand-alone entity as of March 30, 1998. In this case, Dr. Kursh's error leads him to underestimate the true value of Coleman on March 30, 1998 because the stock market appreciated approximately 5% in March 1998.

VI.3.6. Dr. Kursh Incorrectly Applies a Control Premium to Value Coleman Stock

- (207) Dr. Kursh argues that the February 27, 1998 market price of Coleman—which he calls the "actual stock price at minority"—must be adjusted upwards by a 30-35% "control premium," (which, in his view, still "understates" its value).¹³⁵ I did not see justification for

¹³⁴ Kursh Report, p. 8.

¹³⁵ Kursh Report, p. 15.

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this rather hefty adjustment in Dr. Kursh's report, which was notably lacking in citations and economic reasoning. My concept of true value derives from a standard that has been at the core of basic economic theory for the last 150 years. This standard, found in every general economics and microeconomics textbook, is the concept of opportunity cost.

(208) It is difficult for a trained economist like myself to understand the justification for a 30–35% control premium as an opportunity cost. I would employ a premium of this magnitude if the Plaintiff could show that such a control premium was lost on March 30, 1998 by entering into the merger with Sunbeam. Since Sunbeam, in committing the fraud alleged by the Plaintiff, was not really offering a 30–35% premium to minority value, it is incumbent on the Plaintiff to show how this premium could be realized on March 30, 1998 from some other source. I believe that there can only be one source for this, which is an alternative acquirer. Neither Drs. Kursh and Nye, nor Mr. Wagner, present any evidence that such an acquirer was waiting in the wings or would be willing to pay the same price that Sunbeam appeared to offer.

(209) When a merger offer is made, it is unusual but not entirely uncommon to see a premium of 30–35% being paid by the acquirer. However, this is not a justification for a control premium of this magnitude unless the 30–35% premium represents a 30–35% lost opportunity that would have occurred with certainty. That is, a control premium of this size is not warranted unless there would have been a change of control in the but-for scenario. The willingness of an alternative acquirer to pay this premium has to derive from (i) the benefit of better management of Coleman, or (ii) synergies with Coleman.

(210) Thus, what Dr. Kursh labels a “control premium” is more appropriately called an “acquisition premium” that must be paid to split the spoils of the synergies or the improvements in the efficiency of the target as part of a bilateral negotiation. Other authorities concur. Dr. Kursh cites Shannon Pratt as a business valuation authority in footnotes 14 and 15 on page 10 of his report.¹³⁶ According to Pratt:

¹³⁶ Kursh Report, p. 10.

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- a. "It is now well recognized that many 'control premiums' are actually 'acquisition premiums' reflecting synergistic values that may not be part of fair market value (for tax purposes) or stand-alone value (for dissent and dissolution purposes)." ¹³⁷
- b. "Appraisers can no longer blindly apply control premiums to public market value indicators to derive control value." ¹³⁸
- c. "For example, the unfortunately named 'control premium' (better would be 'acquisition premium') is not a measure of the value of control simply because people began calling it a control premium instead of an acquisition premium." ¹³⁹
- d. "It is also the reason why I stated that the term 'control premium' was an unfortunate, and misleading, choice of words." ¹⁴⁰

(211) The Delaware Court of Chancery, also cited by Dr. Kursh as supportive of his Coleman appraisal, stated that its own statutory mandate was to "appraise the shares, determining their fair value *exclusive of any element of value arising from the accomplishment or expectation of the merger...*" (emphasis added).¹⁴¹ The statutory requirement that valuation *exclude* synergies specific to a particular buyer makes good economic sense. Unless Dr. Kursh can show that his "control premium" is not—as I contend—simply Sunbeam-specific synergies in disguise, it has no place in the valuation of Coleman.

(212) I, too, apply a premium in my analysis of Coleman's true value in Section IV and V of my report. However, no other acquisition involving Coleman was imminent or even rumored around the time of the merger.¹⁴² Therefore, an acquisition premium of the magnitude

¹³⁷ Pratt, Shannon P., "Business Valuation: Discounts and Premiums," John Wiley & Sons, Inc., 2001 ("Pratt, 'Discounts and Premiums'"), p. 321.

¹³⁸ Pratt, "Discounts and Premiums," p. 318.

¹³⁹ Pratt, "Discounts and Premiums," p. 36.

¹⁴⁰ Pratt, "Discounts and Premiums," p. 38.

¹⁴¹ Prescott Group, p. 11, citing 8 Del. C. § 262(h).

¹⁴² Coleman's owner, Mr. Perelman, was quite insistent that in 1997, Coleman was "not for sale," and that it

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applied by Dr. Kursh, which is attached to the certainty of an alternative merger involving Coleman around March 30, 1998, would be inappropriate. The correct premium to apply, as I explain in Section IV.1.3 is a “merger-related premium” which incorporates the market’s assessment of the likelihood of an acquisition, the terms it might offer, when it would be offered, and the discount factor that should be applied to value it. Using results on this market inference from peer-reviewed finance publications and my own independent research, I identified a merger-related premium of about 5–6% that should be applied to the March 30, 1998 stand-alone value of Coleman.¹⁴³ This 5–6% premium represents the market’s wise and fair assessment of the increased likelihood of an alternative merger for Coleman given that it had an acquisition attempt (by Sunbeam) in its past.

VI.3.7. Dr. Kursh Misinterprets the Effect of the Merger Announcement on Sunbeam’s Stock Price

- (213) Dr. Kursh states “[t]he upward revision of Sunbeam’s stock price following the merger announcement suggests that the market believed that the merger consideration was advantageous to Sunbeam; in other words, that the value of Coleman exceeded the value of the merger consideration.”¹⁴⁴ This interpretation is the most favorable to the Plaintiff in generating a high estimate for the value of Coleman. It also makes no sense. It contradicts the efficient market hypothesis and hence Dr. Nye’s report, not to mention most of modern financial theory. It also renders nonsensical Dr. Kursh’s previously discussed use of market prices for estimating the value of Coleman.
- (214) The market price for Coleman is the market’s appraisal of the value of Coleman. If the market thought Coleman were worth more, it would bid up the price until the price equaled Coleman’s supposed value. There are other interpretations that do not conflict with the efficient market hypothesis. First, the market could have expected larger synergies than the deal price represented. Synergies are not part of the value of Coleman, but are specific to

was “highly unlikely” that anyone else would have bid for it. Likewise, he was unaware of any bidders for Coleman in 1998. Nov. 17, 2004 Perelman Dep. at 291–296.

¹⁴³ The stand-alone value is what Dr. Kursh refers to as the minority value.

¹⁴⁴ Report of Dr. Kursh, p. 12.

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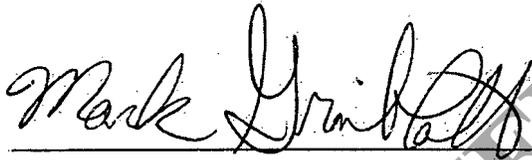
Sunbeam's acquisition of Coleman. Second, the market could have thought that Al Dunlap might manage Coleman better than Perelman's team was managing Coleman, and, since Coleman was going to be part of Sunbeam, that Sunbeam was worth more. Third, the market could also have revised its opinions about Sunbeam upon learning of the terms of the merger. It could have believed that Sunbeam was healthier than previously thought since it could offer so much in cash and assume so much debt. And finally, it may have been a reaction to Sunbeam's acquisitions of First Alert and Signature Brands, announced simultaneously with the Coleman acquisition. None of these explanations imply that the market thought that Coleman by itself was worth more than its price, and none require us to pretend that financial markets are grossly inefficient.

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Signature

This report is submitted by:



Dr. Mark Grinblatt

December 17, 2004

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VII. Appendices

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VII.1. Appendix A: Curriculum Vitae of Professor Mark Grinblatt

CURRICULUM VITAE

December 10, 2004

PERSONAL INFORMATION

Dr. Mark Grinblatt
Anderson School at UCLA
110 Westwood Plaza
Los Angeles, CA 90095-1481
(310) 825-1098

EMPLOYMENT HISTORY AND TEACHING APPOINTMENTS

1996- UCLA, Professor of Finance, Anderson Graduate School of Management
1987-96 UCLA, Associate Professor of Finance (with tenure)
1989-90 Salomon Brothers, Inc., Vice President, Arbitrage Support
1987-89 The Wharton School, Visiting Associate Professor
1982-87 UCLA, Assistant Professor of Finance
1981-82 UCLA, Acting Assistant Professor of Finance
1979-80 Yale University, Teaching Assistant
1979 Economist, Board of Governors of the Federal Reserve, Washington, D.C.
1978 Economist, Glassman-Oliver Economic Consultants, Washington, D.C.
1977 Yale College, Math and Economics Tutor
1977 Amity Tutoring Institute, Math and Economics Tutor
1976 Actuary (summer intern), Equitable Life Assurance Society, New York

EDUCATION

Ph.D. 1982 Yale University, Economics
M.Phil. 1979 Yale University, Economics

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- M.A. 1978 Yale University, Economics
A.B. 1977 University of Michigan, Ann Arbor, Economics and Mathematics
1976 Visiting Student, Amherst College

BOOKS PUBLISHED OR UNDER CONTRACT

- Financial Markets and Corporate Strategy* (with S. Titman), Burr-Ridge, IL, Irwin/McGraw-Hill, copyright 1998 (1st edition), 2002 (2nd edition).
Solutions Manual to Accompany Financial Markets and Corporate Strategy (with S. Titman), Burr Ridge, IL, Irwin/McGraw-Hill, 1998, 2002.
Investments: A Global Approach (with P. Jorion, S. Titman), New York, Wiley, due January 2004.

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RESEARCH ARTICLES PUBLISHED OR FORTHCOMING

- “Prospect Theory, Mental Accounting, and Momentum” (with B. Han), September 2004, *Journal of Financial Economics*, forthcoming.
- “Predicting Stock Price Movements from Past Returns: The Role of Consistency and Tax-Loss Selling,” (with T. Moskowitz), 2004, *Journal of Financial Economics*, 71 (3), pp. 541-579.
- “Tax-loss Trading and Wash Sales,” (with M. Keloharju), 2004, *Journal of Financial Economics*, 71 (1), pp. 51-76.
- “Information Aggregation, Security Design, and Currency Swaps,” (with B. Chowdhry and D. Levine), 2002, *Journal of Political Economy*, 110 (3), pp. 609-633.
- “How Distance, Language, and Culture Influence Stockholdings and Trade” (with M. Keloharju), 2001, *The Journal of Finance*, 56 (3), pp. 1053-1073.
- “What Makes Investors Trade?” (with M. Keloharju), 2001, *The Journal of Finance*, 56 (2), pp. 589-616. (2001 Smith-Breedon Distinguished Paper Prize), reprinted in *International Capital Markets*, René Stulz and Andrew Karolyi (eds.), Sydney, Edward Elgar Publishing, Ltd.
- “An Analytic Solution for Interest Rate Swap Spreads,” 2001, *International Review of Finance*, 2 (3), pp. 113-149.
- “Financial Innovation and the Role of Derivative Securities: An Empirical Analysis of the Treasury Strips Program,” (with F. Longstaff), 2000, *Journal of Finance* 55 (3), pp. 1415-1436, published abstract, *The Journal of Finance*, (1996) 51, pp. 1043-1044.
- “The Investment Behavior and Performance of Various Investor-Types: A Study of Finland’s Unique Data Set” (with M. Keloharju), 2000, *Journal of Financial Economics* 55, 43-67.
- “Futures vs. Forward Prices: Implications for Swap Pricing and Derivatives Valuation” (with N. Jegadeesh), 2000, in N. Jegadeesh and B. Tuckman (eds.), *Advanced Fixed-Income Valuation Tools for Professionals*, New York, Wiley, pp. 58-79.
- “Do Industries Explain Momentum?” (with T. Moskowitz), 1999, “*Journal of Finance*,” 54 (4) August, pp. 1249-1290.

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- “Stock Splits and Stock Returns for OTC Stocks: The Effects of Investor Trading and Bid-Ask Spreads on Ex-Date Returns,” (with D. Keim), 1999, in Keim, D. and W. Ziemba (eds.), *Security Market Imperfections in World Wide Equity Markets*, Cambridge University Press, pp. 276-293.
- “Measuring Mutual Fund Performance with Characteristic-Based Benchmarks,” 1997, (with K. Daniel, S. Titman, and R. Wermers),” *The Journal of Finance*, 52 (3) July, pp. 1035-1058, Published abstract (1997): *The Journal of Finance*, 52, pp. 1217-1218.
- “The Relative Pricing of Eurodollar Futures and Forward Contracts,” (with N. Jegadeesh), 1996, *The Journal of Finance*, 51 No. 4 (Sept), .pp. 1499-1522.
- “Momentum Investment Strategies, Portfolio Performance, and Herding: A Study of Mutual Fund Behavior,” (with S. Titman and R. Wermers), 1995, *American Economic Review*, 85, pp. 1088-1105. Published abstract (1994): *The Journal of Finance*, 49, pp. 1069-1070.
- “Performance Evaluation,” (with S. Titman), 1995, in *Handbook in Operations Research and Management Science, Vol. 9: Finance*, Jarrow, R., Maksimovic, V., And Ziemba, W. (Eds.), Elsevier Science, pp. 581-609.
- “A Study of Monthly Mutual Fund Returns and Performance Evaluation Techniques,” (with S. Titman), 1994, *Journal of Financial and Quantitative Analysis*, 29, pp. 419-444.
- “Performance Measurement without Benchmarks: An Examination of Mutual Fund Returns,” (with S. Titman), 1993, *Journal of Business*, 66, pp. 47-68. Published extended abstract (1993): *The CFA Digest*, 23 (Spring), pp. 65-67.
- “The Persistence of Mutual Fund Performance,” (with S. Titman), 1992, *Journal of Finance*, 47, pp. 1977-1984.
- “Performance Evaluation,” 1992, in *The New Palgrave Dictionary of Money and Finance*, Newman, P., Milgate, M., and Eatwell, J. (Eds.), Stockton Press, Volume 3 (N-Z), pp. 133-135.
- “How to Avoid Games Portfolio Managers Play,” (with S. Titman), 1989, *Institutional Investor*, 23, 14 (Nov.), pp. 35-36.

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- “Portfolio Performance Evaluation: Old Issues and New Insights,” (with S. Titman), 1989, *Review of Financial Studies*, 2, pp. 393-421, reprinted in *Asset Pricing and Portfolio Performance: Models Strategy and Performance Metrics*, R. Korajczyk (ed.), London, Risk Publications, June 1999.
- “Adverse Risk Incentives and the Design of Performance-Based Contracts,” (with S. Titman), 1989, *Management Science*, 35, pp. 807-822.
- “Signaling and the Pricing of New Issues,” (with C. Hwang), 1989, *Journal of Finance*, 44, pp. 393-420
- “Mutual Fund Performance: An Analysis of Quarterly Portfolio Holdings,” (with S. Titman), 1989, *Journal of Business*, 62, pp. 393-416.
- “How Clients Can Win the Gaming Game,” (with S. Titman), 1987, *Journal of Portfolio Management*, Summer, 14-23. Reprinted in Fabozzi, Frank (ed.), 1989, *The Institutional Investor Focus on Investment Management*, pp. 239-250.
- “A Put Option Paradox,” (with H. Johnson), 1988, *Journal of Financial and Quantitative Analysis*, 23, pp. 23-26.
- “How to Evaluate a Portfolio Manager,” 1986/1987, *Financial Markets and Portfolio Management*, 1, No. 2, pp. 9-20.
- “The Relation Between Mean-Variance Efficiency and Arbitrage Pricing,” (with S. Titman), 1987, *Journal of Business*, 60, pp. 97-112.
- “Approximate Factor Structures: Interpretations and Implications for Empirical Tests,” (with S. Titman), 1985, *Journal of Finance*, 40, pp. 1367-1373.
- “The Valuation Effects of Stock Splits and Stock Dividends,” (with R. Masulis and S. Titman), 1984, *Journal of Financial Economics*, 13, pp. 461-490.
- “Market Power in a Securities Market with Endogenous Information,” (with S. Ross), 1985, *Quarterly Journal of Economics*, 100, pp. 1143-1167.
- “Factor Pricing in a Finite Economy,” (with S. Titman), 1983, *Journal of Financial Economics*, 12, pp. 497-507.

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WORKING PAPERS

- “Interpersonal Effects in Consumption: Evidence from the Automobile Purchases of Neighbors,” (with M. Keloharju, S. Ikaheimo), September 2004 (submitted to the *American Economic Review*).
- “Debt Policy, Corporate Taxes, and Discount Rates,” (with J. Liu), September, 2004 (submitted to the *Journal of Economic Theory*).
- “Positive Portfolio Factors” (with S. Brown and W. Goetzmann), NBER working paper 6412, February 1998.
- “The Evaluation of Mutual Fund Performance: An Analysis of Monthly Returns,” (with S. Titman), March 1988.
- “On the Regulation of Insider Trading,” November 1987.

DOCTORAL STUDENTS SUPERVISED AND THEIR ACADEMIC AFFILIATIONS

Chairman:

- Juhani Linnainmaa, UCLA, in progress
- Selale Tuzel, UCLA, in progress.
- Bing Han, Ph.D. UCLA, 2002, Ohio State University.
- Tobias Moskowitz, Finance Ph.D. UCLA, 1998, University of Chicago.
- Mark Britten-Jones, Finance Ph.D. UCLA, 1996, London Business School.
- Russell Wermers, Finance Ph.D. UCLA, 1995, University of Maryland and University of Colorado.
- Chuan-Yang Hwang, Finance Ph.D. UCLA, 1988, University of Pittsburgh and Hong-Kong University of Science and Technology.

Committee Member:

- Tyrone Callahan, Ph.D., UCLA 1999, University of Texas.
- Laura Field, Finance, Ph.D., UCLA 1997, Penn State.
- Taychang Wang, Finance, Ph.D. Wharton, 1988, Taiwan National University.
- Pierre Hillion, Finance, Ph.D. UCLA, 1988, INSEAD.
- Ross Levine, Economics, Ph.D. UCLA, 1987, University of Virginia
- Lorraine Glover, Ph.D. Economics, UCLA, 1987.
- Maxim Engers, Ph.D. Economics, UCLA, 1984, University of Virginia.

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OTHER WORK IN PROGRESS

Sensation Seeking and Investment Portfolio Risk (with M. Keloharju, I. Welch)

Valuation Theory for Damages in Securities Litigation

FELLOWSHIPS, GRANTS, HONORS, CERTIFICATES, AWARDS

Grant: Harold Price Center for Entrepreneurial Studies, October 2002

2002 Distinguished Paper Prize Finnish Foundation for Advancement of Securities Markets

2001 Smith-Breeden Distinguished Paper Prize The Journal of Finance, January 2002

Research Associate (elected), National Bureau of Economic Research, October 2001-

One percent most cited faculty in finance, SSRN, 2001

Bank of America Fellowship Designate, UCLA, July 2000-

Fellow, International Center for Finance, Yale University, June 2000-

Visiting Fellow, Yale University, September 1999-June 2000

Grant: Center for International Business and Economics Research, February 1998

Anbar Citation of Excellence and Highest Quality Rating: Sept. 96 Journal of Finance article

Nominator, 1996 Nobel Prize in Economic Sciences

Teacher of the Year, 1993 Fully-Employed MBA Program

UCLA Academic Senate Grants, 1982-87, 91-03

AGSM Research Committee Work Study Awards, 1982-87, 92-96

Registered Representative (Series 7 and NY State Blue Sky Exams, 1989-90).

Grant: Geewax Terker Research Program in Financial Instruments, 1988-89

3rd Prize: Q-group competition, 1985

Grant: Institute for Quantitative Research in Finance, 1984

UCLA Career Development Award, 1983

Finalist: Berkeley Doctoral Prize Competition, 1980

Yale University Fellowship, 1977-81

Charles Hickox Fellowship, 1979-80

Phi Beta Kappa, 1978

Degree with High Distinction and High Honors in Economics, 1977

Regents - Alumni Scholar, 1974

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ACADEMIC PROFESSIONAL ACTIVITIES

Associate Editor

- Journal of Finance
- Journal of Financial and Quantitative Analysis
- Review of Financial Studies 1998-2001
- Journal of Applied Finance

Editorial Advisory Board

- Journal of Economics and Business

Officer

- Western Finance Association Vice President: 2003-2004,
- President Elect and Program Chairman 2004-2005.

Executive Committee

- Western Finance Association 2003-06

Conference Organizer

- Southern California Finance Conference, Rancho Bernardo, CA, May 1997.
- UCLA Symposium on Portfolio Performance Evaluation: March 1984.
- Western Finance Association, June 2004, June 2005

Conference Program Committee

- Western Finance Association, 1993-2002
- Society for Financial Studies Conference on Theoretical and Empirical Issues in Corporate Finance, 1998.

Conference Session Chair

- American Finance Association: January 2000, 1997
- Utah Winter Finance Conference, March 2002
- Western Finance Association: June 1994

Conference Panel Discussion Moderator

- Financial Management Association, October 1997

Conference Panel Discussant and Panel Organizer

- Financial Management Association, October 2002

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Conference Presentations of Papers

- Berkeley Program in Finance, Monterey, CA, October 2002
- Burrigge Conference, Beaver Creek, CO, September 2000
- Wharton Conference on Behavioral Finance, March 2000
- Financial Management Association, Chicago, ILL, October 1998
- Southern California Finance Conference, Rancho Bernardo, CA, May 1997
- American Finance Association: January 2003 (co), 2000, 1999 (2 papers), 1997, 1996, 1994, December 1986, 1985
- Western Finance Association: June 2002, 1999, 1998, 1996, 1995 (2 papers), 1994, 1987, 1983
- NBER Conference on Financial Risk Assessment and Management, May 1995
- 5th European CEPR/ESF Financial Markets Summer Symposium, July 1994
- UCLA Symposium on Interest Rate Derivatives: April 1994
- European Finance Association: September 1987, August 1985
- Second International Finance Conference of the Centre HEC-ISA: July 1988
- Conference on the Arbitrage Pricing Theory, USC: November 1985
- Institute for Quantitative Research in Finance: May 1985
- UCLA seminar for Chief Financial Officers: July 1983

Conference Discussant

- Utah Winter Finance Conference, February 2000
- Society for Financial Studies Conference on Theoretical and Empirical Issues in Corporate Finance, April 1998
- UCLA Symposium on Behavioral Finance, April 1998
- UCLA Symposium on Corporate Risk Management, March 1996
- American Finance Association: Jan. 2004, 1996, 1994, Dec. 1988, 1986, 1985
- Western Finance Association: June 1999, 1995, 1994, 1993, 1987, 1983 (2 papers)
- 5th European CEPR/ESF Financial Markets Summer Symposium, July 1994
- Research Conference in Financial Economics & Accounting, Rutgers, October 1990
- European Finance Association: September 1987, August 1985

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- Econometric Society: December 1986 (2 papers)

Nominating Committee

- American Finance Association (elected): Vice President, Fellows, and Directors, 2003
- Society for Financial Studies: Secretary/Treasurer, February-March 2000

Special Conference Participation

- NBER Asset Pricing, Corporate, and Behavioral Finance Meetings, April 2003, 2004
- Utah Winter Finance Conference, February 2003
- NBER Summer Institute, July 2002
- Financial Management Association Doctoral Consortium, October 1999
UCLA, UCI, USC Annual Finance Conference, May 1998
- 5th European CEPR/ESF Financial Markets Summer Symposium, July 1994
- 1st Bridge University Conference of Business School Use of Financial Data, St. Louis, September 1992
- Conference on International Capital Structure, UCLA, Fall 1991
- American Iron and Steel Institute Conference, UCLA, February 1985

Annotated Streaming Video

- MGT 230 Lectures, Spring 2002

Radio and TV Interviews

- Glass-Steagall Repeal, KPCC Talk of the City, November 1999.

Reviewer for

- Academic Press
- Addison-Wesley Publishing
- American Economic Review
- Econometrica
- Economics Bulletin
- European Physical Journal B
- Financial Management
- Financial Practice and Education
- Global Finance Journal
- Hong Kong Research Grants Council

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- International Economic Review
- International Review of Economics and Finance
- Irwin Publishing
- Journal of Applied Finance
- Journal of Banking and Finance
- Journal of Business
- Journal of Economics and Business
- Journal of Economic Theory
- Journal of Empirical Finance
- Journal of Finance
- Journal of Financial and Quantitative Analysis
- Journal of Financial Economics
- Journal of Financial Markets
- Journal of Financial Services Research
- Journal of International Money and Finance
- Journal of International Financial Management and Accounting
- Management Science
- McGraw-Hill Publishing
- Omega: The International Journal of Management Science
- National Science Foundation Grant Proposals
- Review of Derivatives Research
- Review of Financial Studies
- Tenure, Full Professor, Associate Professor, and Chair Level Promotions at Various Universities

Presentations at Colloquia

Arizona	September 2002
Arizona State	May 2003
.....	April 1999
Boston College	October 1994
Carnegie-Mellon	February 1981
Chicago	April 2000
.....	April 1994

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..... March 1985
..... January 1981
Claremont April 1983
Colorado November 1994
Columbia November 2003
..... March 1989
..... December 1987
..... May 1984
Cornell October 1999
..... November 1986
Dartmouth May 1983
DePaul/Chicago Federal Reserve Bank April 1999
Duke March 1987
..... April 1998
Emory September 2001
Harvard January 1981
Houston April 1999
Illinois April 2003
Kansas State April 1995
Kentucky November 2002
M.I.T. November 1999
Michigan March 1985
Minnesota May 1996
New York University April 2000
Notre Dame April 2000
Northwestern December 1999
..... March 1985
..... January 1981
Penn State November 1994
..... April 1994
Quantitative Investment Association
and Jonathan Club of LA March 1996
Rutgers November 1999

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Stanford October 1994
..... May 1992
..... September 1983
Stockholm School of Economics June 1999
Texas at Austin May 1993
University of British Columbia April 1996
..... February 1981
U.C. Berkeley October 2003
..... October 1994
..... May 1992
..... February 1987
..... February 1981
U.C. Davis February 1981
U.C. Irvine April 1986
..... May 1996
U.C.L.A. March 2004
..... November 2002
..... May 1999
..... June 1996
..... January 1991
..... July 1986
..... August 1984
..... October 1983
..... May 1982
..... February 1981
U.C. Riverside May 1995
U.C. Santa Barbara February 1981
University of Southern California November 2003
Washington May 1997

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.....
Washington StateNovember 2000
WhartonOctober 1988
.....March 1987
.....March 1981
VanderbiltApril 1995
Virginia TechMarch 2000
YaleMarch 2000
.....January 2000
.....October 1994
.....April 1988
.....October 1986
.....May 1983
.....December 1980
YorkOctober 1986

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CLASSROOM TEACHING

UCLA: MBA, FEMBA, Doctoral, and Exec Ed Courses

- Intensive Introductory Finance
- Introductory Investments
- Managerial Finance
- Theory of Finance
- Portfolio Management
- Independent Study
- Field Study (Advisor and Technical Advisor)
- Investment Under Uncertainty
- Empirical Research in Finance
- Advanced Topics in Finance and Information Economics
- International Hedging
- Currency Swaps
- Finance for Non-financial Managers: Interest Rate Mathematics
- Raising Capital for Firms in the People's Republic of China

Wharton: MBA, Undergrad, and Executive Courses

- Portfolio Theory
- Performance Evaluation
- Speculative Markets
- Investment Management
- Advanced Study Project
- Independent Study

Yale: MBA and Undergrad Teaching Assistance

- Microeconomic Theory
- Economic Analysis

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UNIVERSITY SERVICE

- 2002- Proposal Development: Weston Institute for Dynamic Finance
- 2002 Informal Ad Hoc Committee Chairman for the Appointment of Mark Garmaise
- 2001 Ad Hoc Committee for the Appointment of Alan Carsrud
- 2001 Ad Hoc Committee for the Promotion of Shlomo Benartzi
- 2001- 03 MBA Curriculum Committee (elected position)
- 2001 Finance Area Curriculum Review Committee
- 2001 Teaching Evaluator of Pedro Santa Clara
- 2001 University Ad Hoc Committee for the Committee on Academic Personnel
- 2000-01 Chair of Ad Hoc Committee for Appointment of Rory Knight
- 2000 Ad Hoc Committee for Promotion of Olav Sorenson
- 2000- Faculty Liaison to Knapp Venture Competition
- 1998-99 Developer of Turbo Finance Curriculum Initiative in Finance
- 1998 AGSM Ad Hoc Committee for the Promotion of David Porter
- 1997-99 Fund Raising: Ctr. for Frontiers of Finance & Behavioral Finance Conference
- 1997 AGSM Ad Hoc Committee for the Promotion of Michael Darby
- 1997-99 Chairman, UCLA Finance Area
- 1997 AGSM Ad Hoc Committee for the Promotion of Steve Hansen
- 1997 Teaching Evaluator of Bhagwan Chowdhry and Pedro Santa Clara
- 1996-97 Chair of AGSM Doctoral Research Paper Committee
- 1996-97 Finance Recruiting Coordinator
- 1996- 97 Finance Seminar Coordinator
- 1996 Participant in Teaching Improvement Program
- 1996 University Ad Hoc Committee for the Committee on Academic Personnel
- 1996 Chair of AGSM Ad Hoc Committee for the Promotion of A. Subrahmanyam
- 1994-96 AGSM Doctoral Research Paper Committee Member
- 1993-94 AGSM Finance Recruiting Committee
- 1993-99 Finance Faculty Supervisor-AGSM Student Investment Fund
- 1992-93 Teaching Evaluator of Ivo Welch, Siew Hong Teoh, and Sushil Bikchandani
- 1993-94 AGSM Field Study Task Force
- 1992- AGSM Representative to Bridge Systems
- 1992 Participant in HP Grant Preparation
- 1991-92 AGSM IT Committee and Data Subcommittee

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1991-92 Ad Hoc Committee for Yoon Suh
1987 Lead Program, Finance Lecturer
1986-87 Faculty Supervisor of the program for the Provident Investment Counsel Gift
1986-87 Graduate School of Management Research Committee
1985-86 Ad Hoc Committee for the Appointment of Eduardo Schwartz
1985-87 Fund Raising for UCLA with STRS
1984-85 Graduate School of Management Doctoral Board
1984-85 Graduate School of Management Doctoral Admissions Committee
1983-87 Staff Supervisor for Finance and Business Economics Units
1983-85 Legislative Assembly Representative of Management Department
1982-83 Curriculum Revision Committee of Finance Unit

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RECENT DEPOSITION AND COURT TESTIMONY

Microsoft Corporation vs. Franchise Tax Board, Superior Court of the State of California, court testimony, May 22, 2003.

Microsoft Corporation vs. Franchise Tax Board, Superior Court of the State of California, deposition testimony, February 19, 2003.

Jack Green vs. Nuveen Advisory Corp., Case No. 97 C 5255, United States District Court for the Northern District of Illinois, deposition testimony, November 16, 2000 and January 18, 2001.

BOARDS:

Salomon Swapco, Inc., 1993-

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VII.2. Appendix B: Materials Relied on in Preparing this Report

Date	Author	Title	Publication	Document Type	Beginning Bates #	Page #
1-Feb-04	Altman, Edward I. & Rohit Kumar	The Investment Performance and Market Size of Defaulted Bond and Bank Loans in 2003: Outlook for 2004/2005	NYU Salomon Center Special Report, Appendix A	Academic paper	N/A	N/A
2002	Ascioglu, Asli N., Thomas H. McInish, and Robert A. Wood	Merger Announcements and Trading	The Journal of Financial Research 25.2	Academic paper	N/A	263-278
1983	Asquith, Paul	Merger Bids, Uncertainty, and Stockholder Returns	Journal of Financial Economics	Academic paper	N/A	11, 51-83
3-Apr-98	Bear, Stearns & Co. via Street Software Technology Inc.	Treasury Bonds, Notes & Bills	The Wall Street Journal	Data	N/A	C25
May-June 1973	Black, Fischer and Myron Scholes	The Pricing of Options and Corporate Liabilities	Journal of Political Economy 81, no. 2	Academic paper	N/A	637-654
5-Oct-04	Board of Governors of the Federal Reserve System	3-Year Treasury Constant Maturity Rate	H.15 Selected Interest Rates	Data	N/A	N/A
5-Oct-04	Board of Governors of the Federal Reserve System	7-Year Treasury Constant Maturity Rate	H.15 Selected Interest Rates	Data	N/A	N/A
15-Jun-98	Brannigan, Martha and James R. Hagerty	Chain-Sawed: Sunbeam, its Prospects Looking Ever Worse, Fires CEO Dunlap	The Wall Street Journal	Article	N/A	N/A
30-Jun-00	Brannigan, Martha and Susan Carey	AirTran Terminates Preliminary Discussions With TWA About a Possible Acquisition	The Wall Street Journal	Article	N/A	N/A
26-Mar-98	Browning, E.S.	Coleman Completes Sale of Unit	The Wall Street Journal	Article	N/A	N/A
19-Mar-98	BT Alex. Brown	Leisure Industry Overview	BT Alex. Brown Research	Analyst report	N/A	N/A
23-Feb-98	Burnson, Beth	CLN Coleman - 4Q Slightly Lower Than Expected, Maintain 98 EPS Est. and Hold Rating	ABN Amro First Call Note	Analyst report	N/A	N/A
6-Jul-98	Byrne, John A.	How Al Dunlap Self-Destructed, the Inside Story of What Drove Sunbeam's Board to Act	Business Week	Article	N/A	N/A
23-Feb-98	Byrne, Richard J.	Fixed Income Research: HY Lights: Part Two Of Four	Merrill Lynch First Call Note	Analyst report	N/A	N/A

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Date	Author	Title	Publication	Document Type	Beginning Bates #	Page #
1997	Campbell, John Y., Andrew W. Lo, and Craig A. MacKinlay	Event-Study Analysis	The Econometrics of Financial Markets, Second Printing, 1997	Book	N/A	149-180
24-Mar-98	CLN Holdings Inc.	1997 10-K	SEC filing	SEC	N/A	N/A
8-May-03	Coleman (Parent) Holdings Inc.	Complaint of Coleman (Parent) Holdings Inc.	Case No. 2003 CA 005045 AI	Legal	N/A	N/A
27-Feb-98	Coleman Co.	Minutes of a Meeting of the Board of Directors of The Coleman Company, Inc.	N/A	Legal	CPH1025943	N/A
19-Feb-98	Coleman Co.	Coleman Reports Full Year and Fourth Quarter Results	N/A	Press release	N/A	N/A
18-Mar-98	Coleman Co.	SC 14F-1	SEC filing	SEC	N/A	N/A
20-May-97	Coleman Escrow Corp.	Indenture	N/A	Legal	DPW0001503	1
6-Oct-97	Coleman Escrow Corp.	S-1/A, Third Amendment	SEC filing	SEC	N/A	14
3-Oct-98	Coleman Worldwide Corp.	Form 25	SEC filing	SEC	N/A	N/A
5-Mar-98	Coleman Worldwide Corp.	Form 8-K/A	SEC filing	SEC	N/A	N/A
Jun-90	Cornell, Bradford and Gregory R. Morgan	Using Finance Theory to Measure Damages in Fraud on the Market Cases	UCLA Law Review	Academic paper	N/A	N/A
8-Sep-04	Court of Chancery of Delaware	Prescott Group Small Cap, L.P. v. The Coleman Co. Inc.	No. Civ. A. 17802, 2004 WL 2059515 (Del. Ch. 2004)	Legal	N/A	3
N/A	CRSP	SOC stock data (daily closing price and volume)	©200410 CRSP®, Center for Research in Security Prices. Graduate School of Business, The University of Chicago used with permission. All rights reserved. www.crsp.uchicago.edu. ("CRSP")	Data	N/A	N/A
N/A	CRSP	CLN stock data (daily closing price and volume)	CRSP	Data	N/A	N/A
N/A	CRSP	S&P 500 index data (closing index value)	CRSP	Data	N/A	N/A
28-Oct-04	CRSP	CRSP Stock Series for Targets of Terminated Mergers (1 of 5)	CRSP	Data	N/A	N/A
16-Nov-04	CRSP	CRSP Stock Series for Targets of Terminated Mergers (2 of 5)	CRSP	Data	N/A	N/A
22-Nov-04	CRSP	CRSP Stock Series for Targets of Terminated	CRSP	Data	N/A	N/A

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		Mergers (3 of 5)				
23-Nov-04	CRSP	CRSP Stock Series for Targets of Terminated Mergers (4 of 5)	CRSP	Data	N/A	N/A
23-Nov-04	CRSP	CRSP Stock Series for Targets of Terminated Mergers (5 of 5)	CRSP	Data	N/A	N/A
25-Feb-98	CSFB	Draft Materials Prepared for the Board of Directors: The Coleman Company, Inc.	Presentation	Presentation	CPH1326927	N/A
2002	Damodaran, Aswath	Investment Valuation: Tools and Techniques for Determining the Value of Any Asset	John Wiley & Sons, Inc., Second Edition, 2002	Book	N/A	2
2002	Damodaran, Aswath	Investment Valuation: Tools and Techniques for Determining the Value of Any Asset	John Wiley & Sons, Inc., Second Edition, 2002	Book	N/A	5
4-Feb-98	Davis, Sean	Coleman Rises 19%; Analysts Point to Technical Factors – CLN	Dow Jones News Service	Article	N/A	N/A
1980	Dodd, Peter	Merger Proposals, Management Discretion and Stockholder Wealth	Journal of Financial Economics	Academic paper	N/A	105-137
2-Feb-98	Doherty, Jacqueline	MARKET WEEK – Capital Markets Bruno's Bonds Take a Beating, On Rumors It May Shelve Payment Plans	Barron's	Article	N/A	N/A
23-Feb-98	Eisenberg, Steven	Coleman Company, Q4 Results Below Consensus as Korea Stays Weak; Reducing 1998 EPS Estimate	CIBC Analyst Report	Analyst report	N/A	N/A
24-Feb-98	Eisenberg, Steven	CLN: Q4 Results Below Consensus As Korea Stays Weak; Reducing 1998 Estimate	CIBC First Call Note	Analyst report	N/A	N/A
1996	Fabozzi, Frank J.	Bond Markets, Analysis and Strategies	Prentice Hall, Third Edition, 1996	Book	N/A	22-24
1976	Galai, Dan and Ronald W. Masulis	The Option Pricing Model and the Risk Factor of Stock	Journal of Financial Economics Volume 3	Academic paper	N/A	53-81
19-Nov-04	Gittis, Howard	Deposition of Howard Gittis	Case No. CA 03-5045 AI	Deposition	N/A	169
20-Feb-98	Heymann, Nicholas and Lawrence Feiler	4Q97 EPS Loss Larger Than Expected; Safety and Security Products Sold	Prudential Securities First Call Note	Analyst report	N/A	N/A
23-Feb-98	Hyman, Lynne R.	Industry: Cosmetics and Household Products	CSFB Equity Research - Americas	Analyst report	N/A	N/A

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		Coleman				
23-Feb-98	Hyman, Lynne R.	CLN: Reducing Our 1998 Estimate To \$0.95 Per Share-Pt 1-2 FBC	CSFB First Call Note	Analyst report	N/A	N/A
1996-2003	Ibbotson Associates	Large Company Stocks: Total return 1926-2003.	Valuation Edition 2004 Yearbook	Data	N/A	N/A
2-Mar-98	Jones, Huw	Dow Ekes Out Fourth Straight Record High Close	Reuters News	Article	N/A	N/A
7-Dec-04	Kursh, Samuel J.	Expert report of Samuel J. Kursh, D.B.A.	Case No. 2003 CA 005045 AI	Legal	N/A	N/A
8-Jun-98	Laing, Jonathan R.	Dangerous Games: Did 'Chainsaw AI' Dunlap manufacture Sunbeam's earnings last year?	Barron's	Article	N/A	N/A
27-Aug-02	Levin, Jerry	Deposition of Jerry Levin	No. Civ. A. 17802, 2004 WL 2059515 (Del. Ch. 2004)	Deposition	CPH 1012678	58-59
2-Mar-98	Lipin, Steven	Sunbeam Plans \$1.9 Billion in Acquisitions	The Wall Street Journal	Article	N/A	N/A
3-Apr-98	Mamera, Jeff	Sunbeam Scorched After Q1 Warning	Reuters News	Article	N/A	N/A
23-Feb-98	Maurer, Justin C.	CLN; 4Q97 as Expected; Adjusting FY98 Estimate; \$0.90 Is an Achievable Number	McDonald First Call Note	Analyst report	N/A	N/A
12-Nov-04	Moody's Investor Services	7-Year Maturity Median Corporate Bond Yields	Moody's Investors Service	Data	N/A	N/A
23-Jun-03	Morgan Stanley & Co., Inc.	Answer of Morgan Stanley & Co., Inc.	Case No. 2003 CA 005045 AI	Legal	N/A	N/A
27-Feb-98	Morgan Stanley & Co., Inc.	Project Laser: Presentation to the Board of Directors: Camper	Presentation	Presentation	MS 0021902	N/A
8-Feb-98	Morgan Stanley & Co., Inc.	Project Laser: Chronology of Events	Presentation	Presentation	MS 0044813	2
undated	Morgan Stanley & Co., Inc.	Project Laser: Summary of Pro Forma Combination Methodology	Presentation	Presentation	MS 0033508	3
11-Feb-98	Murkowski, Sen. Frank H.	Testimony February 11, 1998 Frank H. Murkowski Chairman Senate Energy & Natural Resources National Trails Light House Preservation	Federal Document Clearing House Congressional Testimony	Testimony	N/A	N/A
7-Dec-04	Nye, Blaine F.	Expert report of Blaine F. Nye, Ph.D.	Case No. 2003 CA 005045 AI	Legal	N/A	N/A
17-Nov-04	Perelman, Ronald O.	Deposition of Ronald O. Perelman	Case No. CA 03-5045 AI	Deposition	N/A	291-296
Summer 1995	Petit, R.R. and P.C. Venkatesh	Insider Trading and Long-Run Return Performance	Financial Management 24, no. 2	Academic paper	N/A	88-103

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2001	Pratt, Shannon P.	Business Valuation: Discounts and Premiums	John Wiley & Sons, Inc., 2001	Book	N/A	Chapter 20, 318-321
2001	Pratt, Shannon P.	Business Valuation: Discounts and Premiums	John Wiley & Sons, Inc., 2001	Book	N/A	Chapter 2, 36-38
Mar-98	Salomon Smith Barney	High Yield Bonds	The Wall Street Journal	Data	N/A	N/A
1992	Sanders, Ralph W., Jr. and John S. Zdanowicz	Target Firm Abnormal Returns and Trading Volume Around the Initiation of Change in Control Transaction	The Journal of Financial and Quantitative Analysis 27.1	Academic paper	N/A	109-129
1996	Schwert, William G.	Markup Pricing in Mergers and Acquisitions	Journal of Financial Economics 41	Academic paper	N/A	153-192
2000	Schwert, William G.	Hostility in Takeovers: In the Eyes of the Beholder?	The Journal of Finance 55.6	Academic paper	N/A	2599-2640
4-Feb-98	Sears, Steven M.	Options report: Rumor-trage Heavy in the Market	Dow Jones News Service	Article	N/A	N/A
18-Feb-98	Sears, Steven M.	Options Report: Rolls And Straddles Lead Quiet Session	Dow Jones News Service	Article	N/A	N/A
19-Feb-98	Sears, Steven M.	Options Report: Coleman, Long Island Bancorp Signals Right-On	Dow Jones News Service	Article	N/A	N/A
9-Jul-01	Shore, Andrew S.	Deposition of Andrew S. Shore	In Re Sunbeam Securities Litigation, 98-8258-Civ., 98-8275-Civ., (S.D.FL 2001)	Deposition	CPH1040508	242-243
28-Apr-98	Skadden, Arps	Skadden Chronology	Skadden, Arps, Slate, Meagher & Flom, LLP	Legal	CPH0642414	5
4-Mar-98	Stumpp, Pamela	Moody's Places Debt Ratings of CLN Holdings, Inc. and Coleman Company Inc. Under Review	Moody's Investors Service	Analyst report	N/A	N/A
1994	Sullivan, Michael J., Marlin R.H. Jensen and Carl Hudson	The Role of Medium of Exchange in Merger Offers: Examination of Terminated Merger Proposals	Financial Management 23.3	Academic paper	N/A	51-62
6-Feb-01	Sunbeam Corporation	Sunbeam Corporation Announces Plan to Reorganize Under Chapter 11	N/A	Press release	CPH1349881	N/A
27-Feb-98	Sunbeam Corporation	Minutes of a Special Meeting of the Board of Directors of Sunbeam Corporation	N/A	Legal	CPH0633988	N/A

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Date	Author	Title	Publication	Document Type	Beginning Bates #	Page #
2-Mar-98	Sunbeam Corporation	Sunbeam Acquires Three Publicly Traded Consumer Products Companies Coleman Signature Brands and First Alert	N/A	Press release	MS 0001309	N/A
3-Apr-98	Sunbeam Corporation	Sunbeam Corporation Lowers First Quarter Sales and Earnings Expectations: Names Lee Griffith President of Household Products Business	N/A	Press release	MS 0026223	N/A
11-May-98	Sunbeam Corporation	Sunbeam Reports 1st Quarter Results; Expects 1998 EPS in \$1.00 Range Before Charges, 1999 EPS in \$2.00 Range; Outlines Comprehensive Growth Plan Building on Six No. 1 Brands	N/A	Press release	MS 0005084	N/A
30-Jun-98	Sunbeam Corporation	Sunbeam Audit Committee to Conduct Review of Company's 1997 Financial Statements	N/A	Press release	BA0005473	N/A
27-Feb-98	Sunbeam Corporation	Agreement and Plan of Merger Among Sunbeam Corporation Laser Acquisition Corp. CLN Holdings Inc. and Coleman (Parent) Holdings Inc.	N/A	Legal	MS 0007946	N/A
11-May-98	Sunbeam Corporation	Strategy for Growth: Analyst meeting	Presentation	Presentation	CPH1046880	5
15-May-98	Sunbeam Corporation	Q1-1998 10-Q	SEC filing	SEC	N/A	N/A
9-Mar-98	Sunbeam Corporation	Schedule 13D	SEC filing	SEC	N/A	N/A
11-Mar-98	Sunbeam Corporation	Schedule 13D / First Amendment	SEC filing	SEC	N/A	N/A
22-Dec-98	Sunbeam Corporation	Q2-1998 10-Q	SEC filing	SEC	N/A	N/A
12-Nov-98	Sunbeam Corporation	1997 10-K/A Amended	SEC filing	SEC	N/A	N/A
25-Nov-98	Sunbeam Corporation	Q1-1998 10-Q/A Amended	SEC filing	SEC	N/A	5
19-Mar-98	Sunbeam Corporation	Sunbeam States That First Quarter Revenues May Be Lower Than Street Estimates	N/A	Press release	CPH1008237	N/A
2001	Tabak, David I., and Frederick C. Dunbar	Materiality and Magnitude: Event Studies in the Courtroom	Litigation Services Handbook The Role of the Financial Expert, Third Edition, 2001	Book	N/A	N/A

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14-Dec-04	Thomson Financial	Thomson Financial Merger Research 2.xls	Thomson Financial	Data	N/A	N/A
14-Dec-04	Thomson Financial	Thomson Financial Merger Research - Target Stock Data.xls	Thomson Financial	Data	N/A	N/A
14-Dec-04	Thomson Financial	Thomson Financial Merger Research. 1.xls	Thomson Financial	Data	N/A	N/A
1997-1998	Tick Data.com	CLN intraday prices	Tick Data.com	Data	N/A	N/A
20-Feb-98	Trivella, Tom	CSFB AM CALL: First Edition Summary	CSFB First Call Note	Analyst report	N/A	N/A
7-Dec-04	Wagner, Michael J.	Expert report of Michael J. Wagner	Case No. 2003 CA 005045 AI	Legal	N/A	N/A
16-Mar-98	Waresch, Julie	Market Agrees: Coleman Worth Price	Palm Beach Post	Article	N/A	N/A
16-Feb-98	Welling, Kathryn M.	Price Conscious: Predator? Mutual Shares' main man says he's just prospecting for value	Barron's	Article	N/A	30
18-Dec-02	N/A	Sunbeam Corp. Emerges from Bankruptcy	Associated Press	Article	N/A	N/A
6-Feb-01	N/A	Sunbeam Plans to File for Chapter 11 Bankruptcy Protection	Associated Press	Article	N/A	N/A
2-Mar-98	N/A	Sunbeam buys makers of camping gear, coffee makers and fire detectors	Associated Press	Article	N/A	N/A
16-Apr-98	N/A	Insiders: Top Sellers and Buyers for the Week Ended in April 10	Bloomberg News	Article	N/A	N/A
4-Feb-98	N/A	Coleman Shares Rise on Speculation Company Could Sell Unit	Bloomberg News	Article	N/A	N/A
5-Feb-98	N/A	Perelman's Thrift to Buy Golden State for \$2.5 bln	Bloomberg News	Article	N/A	N/A
18-Feb-98	N/A	Siebe to Acquire Coleman Co.'s Safety & Security Products Unit	Bloomberg News	Article	N/A	N/A
19-Feb-98	N/A	U.K. Equity Preview: Oil Shares, British Aerospace, Glaxo	Bloomberg News	Article	N/A	N/A
20-Feb-98	N/A	Coleman Co. Inc. Reiterated 'Buy' at Credit Suisse Fist Boston	Bloomberg News	Article	N/A	N/A
2-Mar-98	N/A	Sunbeam to Buy Coleman, 2 Others for \$2.5 Billion	Bloomberg News	Article	N/A	N/A
2-Mar-98	N/A	Coleman Options Trading Surged Before News of Sunbeam Bid	Bloomberg News	Article	N/A	N/A
19-Mar-98	N/A	Largest Short Interest Percent Increases on	Bloomberg News	Article	N/A	N/A

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		NYSE in Mid-March				
3-Apr-98	N/A	Sunbeam Corp. Cut to Neutral at PaineWebber	Bloomberg News	Article	N/A	N/A
23-Apr-98	N/A	Notice of Pendency of Class Action Filed Against Sunbeam	Business Wire	Article	N/A	N/A
4-May-98	N/A	Shareholder Represented by Berger & Montague, P.C. Files Class Action Lawsuit Against Sunbeam -- NYSE:SOC--, Albert Dunlap and Other Insiders for Securities Fraud	Business Wire	Article	N/A	N/A
7-May-98	N/A	Class Action Sunbeam: Class Action Filed Against Sunbeam (Schiffrin Craig & Barroway)	Business Wire	Article	N/A	N/A
15-May-98	N/A	Class Action Filed Against Sunbeam Corp. and its Officers and Directors Alleging Misrepresentations and False Financial Statements (Applestein v. Sunbeam Corp.)	Business Wire	Article	N/A	N/A
19-May-98	N/A	Savett Frutkin Podell & Ryan P.C. Files Class Action Suit Against Sunbeam Corp. --'SOC'-- and its Officers and Directors Alleging Misrepresentations and False Financial Statements	Business Wire	Article	N/A	N/A
22-May-98	N/A	Lowey Dannenberg: Notice of Filing of Class Action Against Sunbeam Corporation	Business Wire	Article	N/A	N/A
18-Feb-98	N/A	Siebe Plc to Acquire Home Safety and Security Business From Coleman	Business Wire	Press release	N/A	N/A
15-May-98	N/A	Bernstein Litowitz Berger & Grossmann LLP Files Class Action Against Sunbeam Corporation	Business Wire	Article	N/A	N/A
23-Feb-98	N/A	Coleman's Volatilities Attracts Traders	Dow Jones News Service	Article	N/A	N/A
18-Jul-96	N/A	Sunbeam Corp., Dunlap Gets Stock-Based Pay Package	Dow Jones News Service	Article	N/A	N/A
2-Mar-98	N/A	Sunbeam - Acquisitions: Signature Hldrs To Get	Dow Jones News Service	Article	N/A	N/A

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		\$8.25/Shr				
5-May-98	N/A	Sunbeam Up 6.5% in Hope of Good News from Mon. Meeting -- SOC	Dow Jones News Service	Article	N/A	N/A
12-May-98	N/A	Sunbeam Corp. Shareholders File Suit vs. Co. -- SOC	Dow Jones News Service	Article	N/A	N/A
18-Feb-98	N/A	Siebe PLC/Coleman: Sale Completion Seen By March -- CLN	Dow Jones News Service	Article	N/A	N/A
19-Feb-98	N/A	CLN Downside Earnings Alert: 4Q (10c); First Call (7c)	Dow Jones News Service	Article	N/A	N/A
19-Feb-98	N/A	Earnings Surprise Summary: Noon - 5:00 P.M. Upside Surprises	Dow Jones News Service	Article	N/A	N/A
4-Mar-98	N/A	CLN Holdings - Moody's Cites Acquisition By Sunbeam	Dow Jones News Service	Article	N/A	N/A
17-Mar-98	N/A	Two CLN Insiders Sell Shares	Insiders' News Wire	Article	N/A	N/A
24-Feb-98	N/A	McMillan First Call Note	McMillan First Call Note	Analyst report	N/A	N/A
25-Feb-98	N/A	McMillan First Call Note	McMillan First Call Note	Analyst report	N/A	N/A
7-Feb-98	N/A	Coleman Co., Inc. (The) (New) - History & Debt	Moody's Investors Service	Analyst report	N/A	N/A
28-Mar-98	N/A	Coleman Co., Inc., (The) (New) - History & Debt	Moody's Investors Service	Analyst report	N/A	N/A
30-Mar-98	N/A	Coleman Co., Inc., (The) (New) - History & Debt	Moody's Investors Service	Analyst report	N/A	N/A
3-Apr-98	N/A	Sunbeam: Downgrade to Neutral from Buy	PaineWebber	Analyst report	N/A	N/A
8-Apr-98	N/A	Sunbeam Chiefs Sued Over Options	Palm Beach Post	Article	N/A	N/A
23-Apr-98	N/A	Abbey, Gardy & Squitieri Announces Suit Against Sunbeam	PR Newswire	Press release	N/A	N/A
3-Mar-98	N/A	CLN Holdings Still Watch Negative; Signature Brands Watch Positive	PR Newswire	Press release	N/A	N/A
25-Mar-98	N/A	Coleman Successfully Completes Sale of Safety and Security Business to Siebe plc	PR Newswire	Press release	N/A	N/A
19-Mar-98	N/A	Sunbeam Says Revenues May Fall Short of Estimates	Reuters News	Article	N/A	N/A

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30-Mar-98	N/A	Sunbeam Completes Coleman Buy, Sees 1999 Accretion	Reuters News	Article	N/A	N/A
3-Apr-98	N/A	Research Alert - Sunbeam Downgraded	Reuters News	Article	N/A	N/A
11-May-98	N/A	Sunbeam Q1, Jobs Cuts Among Revamp	Reuters News	Article	N/A	N/A
2-Mar-98	N/A	US Corp Bonds - Most Prices Down, Coleman Debt Up	Reuters News	Article	N/A	N/A
10-Mar-98	N/A	US Corp Bonds - Northrop Widens on Merger Doubts	Reuters News	Article	N/A	N/A
24-Feb-98	N/A	Coleman Co. (CLN,N) Reports Earnings for Qtr to Dec 31	The New York Times	Article	N/A	N/A
19-Feb-98	N/A	Coleman Co. to Sell Unit to Siebe	The Wall Street Journal	Article	N/A	N/A
20-Feb-98	N/A	Coleman Co.: Loss Posted for 4th Period As Sales in Asia Weaken	The Wall Street Journal	Article	N/A	N/A
3-Mar-98	N/A	Heard on the Street Coleman, First Alert, Signature Brands Surged Before Sunbeam Disclosure, Raising Questions	The Wall Street Journal	Article	N/A	N/A

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VII.3. Appendix C: Market Model—General Description

- (215) This appendix introduces the concept of market models and explains how they are estimated. The market model estimation framework presented here and employed in this expert report is well established in the academic finance literature.¹⁴⁵ I also have seen this methodology employed by experts in securities litigation and have employed the methodology myself, both in prior expert testimony and in my research.
- (216) Movements in stock prices of individual companies are partly driven by market-wide trends. Market models characterize “normal returns,” which are the returns of the company attributable only to market-wide trends. We expect a company’s stock price to be largely driven by the returns of the overall stock market in the absence of important firm-specific events such as merger bids, dividend initiations, bankruptcy announcements, major management changes, and earnings announcements.
- (217) Market model estimates for a given company use data on the company’s stock returns and the market’s returns during a chosen time period. This time period is often called the “estimation window.” Typically, daily returns are used. Daily returns on a company’s stock are defined as the percentage change in the closing price of the stock from one trading day to the next. Similarly, daily returns on the market are defined as the percentage change in the closing value of a market index from one trading day to the next. The market index I use is the S&P 500 Index, which is widely used as a proxy for the stock market as a whole.
- (218) The market model is estimated using a statistical technique called ordinary least squares. Returns for a company (the dependent variable) are regressed on the corresponding market return (the independent variable) over the estimation window. The coefficients generated by these regressions are generally called the “alpha” and the “beta,” where the alpha is the regression intercept and the beta is the regression slope coefficient. With the ordinary least squares technique, these estimates are selected to best fit the data within the estimation window.

¹⁴⁵ Campbell, John Y., Andrew W. Lo, and A. Craig MacKinlay, “Event-Study Analysis,” *The Econometrics of Financial Markets*, 1997.

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- (219) One interprets a beta of one as suggesting that when the general level of the stock market goes up by one percent, the stock tends to gain one percent more than if the market return were zero on that day. If the market declined by two percent, the stock of a company with a beta of one is expected to have a return that is two percent less what it would be expected to earn if the market return was zero, etc. If the beta is two, returns on the stock (both negative and positive returns) vary about twice as much as the market returns on the average. Betas between zero and one imply that the company's stock price responds (sluggishly) to market movements. Negative beta companies, which are rare, have stock returns that vary inversely with the market.
- (220) Once the market model has been estimated, predicted normal returns on the stock can be generated. The estimation window can overlap with, entirely contain, or be entirely separate from the period in which one applies the market model to obtain predicted normal returns. The choice of estimation window depends on the particular issue being analyzed, but is not arbitrary, and requires a careful assessment by the researcher of how the window influences several competing statistical objectives. For any given day, the stock return predicted by the market model is obtained by multiplying the estimated market model beta and the actual market return on that day and adding the estimated alpha to the product. These predicted normal returns are useful for analyzing the effect of major events on a company's stock price. For example, the market model can be used to predict how the stock price would have behaved in the absence of such events, but adjusted for normal movement in the overall market.
- (221) Market-adjusted returns are the difference between the actual return of the stock on a given day and the predicted normal return obtained from the market model.

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VII.4. Appendix D: Event Study—General Description

- (222) Since their introduction almost 40 years ago, event studies have gained immense popularity and wide-spread acceptance in the academic finance community. Event studies are used to identify and measure the impact of events such as mergers or to remove artificial inflation from the price of a stock.¹⁴⁶
- (223) The first step of an event study is defining the event of interest and an event window. The event window covers the period of time during which the event takes place. For example, if we want to examine the combined effect of merger announcements and their subsequent terminations on stock prices, the event window for each company should cover both the merger proposal announcement and the merger termination announcement. The event window may cover different periods of calendar time for different companies if several companies are included in the event study and if they experience the event at different times.
- (224) Once the event and the event window have been identified, the researcher has to choose a model of normal returns, the “normal model,” which describes the behavior of stock returns in the absence of the event. In other words, the normal model predicts expected stock returns if there is no event. Probably the most popular normal return model is the market model, which is explained in Appendix C.
- (225) Because the normal models describe the behavior of stock returns in the absence of important events, the difference between actual returns and predicted returns from the normal model reflects the effect of the event on stock returns. This difference is called the abnormal return. If abnormal returns are approximately zero during the event, the event study suggests that the event has a negligible effect on stock prices. On the other hand, if the event causes large abnormal returns, that is, large deviations from the predicted normal returns, the event study suggests that the event has a large effect on stock prices. This is how an event study can identify and quantify the effect of events on stock prices.

¹⁴⁶ Campbell, John Y., Andrew W. Lo, and A. Craig MacKinlay, “Event-Study Analysis,” *The Econometrics of Financial Markets*, 1997. See also, Tabak and Dunbar, Cornell and Morgan, supra note 109.

- (226) My report uses the event study methodology to measure and remove artificial inflation from Sunbeam's stock price and to evaluate the combined effect of merger announcements and their subsequent terminations on stock prices.

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VII.5. Appendix E: The Market Model Adjustment Used to Obtain Coleman's March 30, 1998 Stand-Alone Value

- (227) To arrive at Coleman's stand-alone value on March 30, 1998, I make a market adjustment to account for the change in the general level of stock prices between the Coleman start date (step 1) and March 30, 1998. When the start date is February 3, 1998, (see Section V) there is the possibility of another adjustment for the February 20 Coleman price increase. Having described this adjustment in some detail in Section V.1.2 the discussion below omits reference to this second adjustment.
- (228) The market adjustment uses the market model described in Appendix C, and the historical relationship between market changes and changes in Coleman's stock price. Beginning with the start date (February 3 or 23), the next day's "market adjusted price" is the product of the start date price, (e.g., \$18.94 when February 23 is the start date) and the "market adjustment factor" for that day. More generally, day t 's market-adjusted price is the product of the prior day's market-adjusted price and the market adjustment factor for day t . The "market adjustment factor" is defined as follows:

$$\text{Market adjustment factor} = 1 + \alpha + \beta \times (\text{market return for day } t)$$

I sequentially apply this adjustment procedure for all trading days from the start date through March 30, 1998 to arrive at the stand-alone price per share on March 30, 1998.

- (229) I estimated Coleman's alpha and beta in two ways. First, I estimated both from historical stock return data, using the ordinary least squares regression technique. This generated a slightly negative alpha. Alternatively, I set the alpha to zero and used the beta estimated in the previously discussed regression. The second alternative has the effect of increasing damages, but very negligibly. I explored this "zero alpha" alternative because alpha estimates tend to have more estimation error than beta estimates and one theory, the Capital Asset Pricing Model ("CAPM"),¹⁴⁷ implies that unless the company has a beta above one, the alpha

¹⁴⁷ The CAPM is the standard and most basic asset pricing model in use today. It is described in every major finance textbook and was the reason William Sharpe, one of the inventors of the CAPM, shared the first Nobel Prize awarded for finance research.

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should not be negative. If one does not rely on historical data to estimate alpha, the alternative is to use the alpha of the average company, which is zero.

- (230) Exhibit 26 shows Coleman's alpha and beta parameter values for the market adjustment factor formula, as generated by the two alpha alternatives, and the results they produce based on the February 23, 1998 starting price. My report uses alternative 2, which sets the alpha to zero, because it maximizes damages.

Exhibit 26: Estimates of alpha and beta from two alternatives

Model	Alpha	Beta	Coleman stand-alone price 3/30/98
Alternative 1: Alpha and Beta estimated	(0.0001)	0.6858	\$19.58
Alternative 2: Alpha set to zero, Beta estimated	0.0000	0.6858	\$19.63

- (231) To apply the market model to Coleman, I made the following assumptions.
- a. The estimation window was February 1, 1997–January 31, 1998;
 - b. I used daily returns on Coleman and on the market; and
 - c. My market index was the S&P 500.

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VII.6. Appendix F: Terminated Mergers Analysis—Data Sources and Sample Selection

- (232) This appendix outlines the data sources and sample selection criteria used in the calculation of the merger-related premium.
- (233) Data sources:
- a. Sample of Terminated Mergers: Thomson Financial, SDC Mergers & Acquisitions Database (“SDC database”)
 - b. Stock price series for targets of terminated mergers and S&P 500 Index: CRSP.
- (234) I first identified mergers and acquisitions meeting the following criteria in the SDC database:
- a. Merger proposal announced between January 1, 1996 and December 31, 2000
 - b. Deal status of “Withdrawn” (Terminated)
 - c. Both acquirer and target were U.S. public companies
 - d. Target market capitalization between \$250 million and \$10 billion (four weeks prior to proposal of merger)
 - e. Deal types of the following values:
 - i. Disclosed Value M&A
 - ii. Undisclosed Value M&A
 - iii. Tender Offers
- (235) This search resulted in a sample of 115 terminated mergers. For each of these transactions I downloaded detailed information from the SDC database.
- (236) Using this information along with my general knowledge of mergers, I excluded seven of the 115 terminated mergers from my final sample. I eliminated two terminated mergers due to simultaneous announcement of both the merger proposal and termination. Of the

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remaining 113 terminated mergers, another five were dropped because they were acquisitions of remaining interest or leveraged buyouts. These exclusions resulted in a final sample of 108 terminated mergers for my estimation of a merger-related premium.

- (237) Based on my general knowledge, I observed that the SDC database had mistakenly interchanged the acquirer and the target in the AirTran Holdings Inc/Trans World Airlines Inc merger. News articles confirmed my observation, and I corrected this mistake in my sample.¹⁴⁸
- (238) Additionally, I adjusted the announcement dates of the 108 terminated mergers in my sample to account for previously announced bids for the same target company. To do this, I used the SDC database to identify the forty-six terminated mergers that had other bids announced anytime between the announcement date of the terminated merger in my sample and one-year prior. In this search I included bids of all deal types and excluded bids that had an acquirer company name of "Seeking buyer." Of these forty-six terminated mergers with other bids, twenty-two terminated mergers had bids that were all terminated or completed more than sixty trading days before the original announcement. Four terminated mergers only had other bids where the acquirer and target were the same company. For each of the remaining twenty terminated mergers, I used the earliest announcement date of the other bids as the announcement date for the terminated merger in my sample.

¹⁴⁸ "AirTran Terminates Preliminary Discussions With TWA About a Possible Acquisition," *The Wall Street Journal*, June 30, 2000.

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VII.7. Appendix G: Terminated Mergers Analysis— Methodology and Results

- (239) This appendix discusses my terminated mergers analysis. Section VII.7.1 summarizes the methodology I used to calculate the merger-related premium for target companies in my sample of terminated mergers. Section VII.7.2 provides the detailed description of my procedure. Section VII.7.3 summarizes the results of the analysis.

VII.7.1. Summary of Methodology

- (240) The procedure I use to estimate the merger-related premium is consistent with procedures described in the academic literature.¹⁴⁹ In particular, I follow the literature on merger analysis that focuses on terminated mergers, of which Asquith (1983) and Sullivan et al. (1994) are typical examples.¹⁵⁰
- (241) The framework for my analysis is the event study methodology, described in Appendix D and widely used in financial analysis. I compared the stock price of merger targets prior to the announcement of the merger with the stock price after the termination of the merger and computed the cumulative effect of a merger announcement and subsequent cancellation on the target's stock price. I calculated the merger-related premium as the average cumulative effect across all targets. In calculating this effect, I controlled for changes in the target stock price due to changes in the overall market. Details of my procedure follow.

¹⁴⁹ Note that this literature does not use the terminology of a “merger-related premium” to discuss the combined effect of the merger announcement and termination. Instead, it discusses the effect in terms of the cumulative abnormal return and gains/losses for the target. The literature also uses the concept of target stock price revaluation based on information released to the market as a result of the merger announcement and termination. I capture the same concept with the merger-related premium and find this terminology simpler to use in this context.

¹⁵⁰ Asquith, *Merger Bids*, supra note 47, at 11, 51–83.

Sullivan et al., *Terminated Merger Proposals*, supra note 36, at 23(3), 51–62.

Both of these papers analyze the effect of two events—merger announcement and merger cancellation—on the stock prices of target companies involved in merger bids.

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VII.7.2. Methodology in Detail

- (242) I denote trading days measured relative to the merger proposal announcement day by “P” and trading days measured relative to the merger termination announcement day by “T.” The merger proposal and termination announcement days are denoted by 0P and 0T, respectively. A time window from x days before the merger proposal announcement day to y days after the merger termination announcement day (including both the start and end days of the window) is denoted by [-xP, yT]. This time window is called the event window and it includes two events, the merger announcement and the merger termination for each target in my sample. I used several alternate event windows, that is, event windows with several alternate values of x and y in my analysis. The results for these alternate windows will be presented in the next section.
- (243) I used the earliest announcement date of any bid for each target to determine the event window. Appendix F describes in detail how I identified these other bids. If there was another such bid, I defined the announcement day 0P relative to the announcement day of this other bid rather than the announcement day of the merger bid in my sample. This definition accounts for target companies that were already in play when the merger bid in my sample was announced. The procedure is likely to increase the estimated value of the merger-related premium and bias the results in Plaintiff’s favor.
- (244) For each target company, I used daily closing stock prices to calculate daily stock returns. I used the S&P 500 Index as a proxy for the overall stock market and calculated daily market returns using the daily closing value of the Index. I estimated a market model¹⁵¹ separately for each target company. The market models were estimated using 120 trading days of stock returns from the time period immediately preceding the event window, if available.
- (245) Depending on the event window, two or three target companies did not have complete stock price data for the event window. I had to exclude these companies from my analysis. For my [-10P, 10T] event window, three companies had insufficient stock price data and the final

¹⁵¹ Market models are discussed in Appendix C.

sample size was 105. For all other event windows, two target companies had insufficient stock price data resulting in a final sample size of 106.

- (246) For each target company, I calculated predicted stock returns on every trading day within the chosen event window using the estimated market model and actual realized market returns. On every event window day, I calculated the daily abnormal return on the company in question by subtracting the predicted normal return from the actual return on the stock. For each company, I then computed the cumulative abnormal returns (“CARs”) by aggregating the daily abnormal returns over the event window. Finally, I calculated the merger-related premium as the mean cumulative abnormal return of the target companies.

VII.7.3. Results for Alternate Event Windows

- (247) The academic literature on terminated mergers suggests that the average merger-related premium is modestly positive for targets of terminated mergers (or slightly negative).¹⁵² My findings are consistent with the academic literature. Exhibit 27 below shows my estimates of the merger-related premium for five event windows. Sullivan et al. (1994), whose estimate is employed in Section IV, used the third event window: [-10P, 10T]. All other event windows end two trading days after merger termination (at 2T). If markets are efficient, target stock prices reflect all relevant information about the merger and its termination at that point.¹⁵³

Exhibit 27: Merger-related premiums for various event windows

Event window

¹⁵² Schwert, Markup Pricing, supra note 39, at 153–192.

Sullivan et al., Terminated Merger Proposals, supra note 36 at 23.3 (1994): 51–62.

Asquith, Merger Bids, supra note 47, at 51–83.

Dodd, Merger Proposals, supra note 47, at 105–137.

¹⁵³ Consistently with this statement, the merger-related premiums for the [-10P, 10T] and [-10P, 2T] event windows are very close to each other as shown in Exhibit 27.

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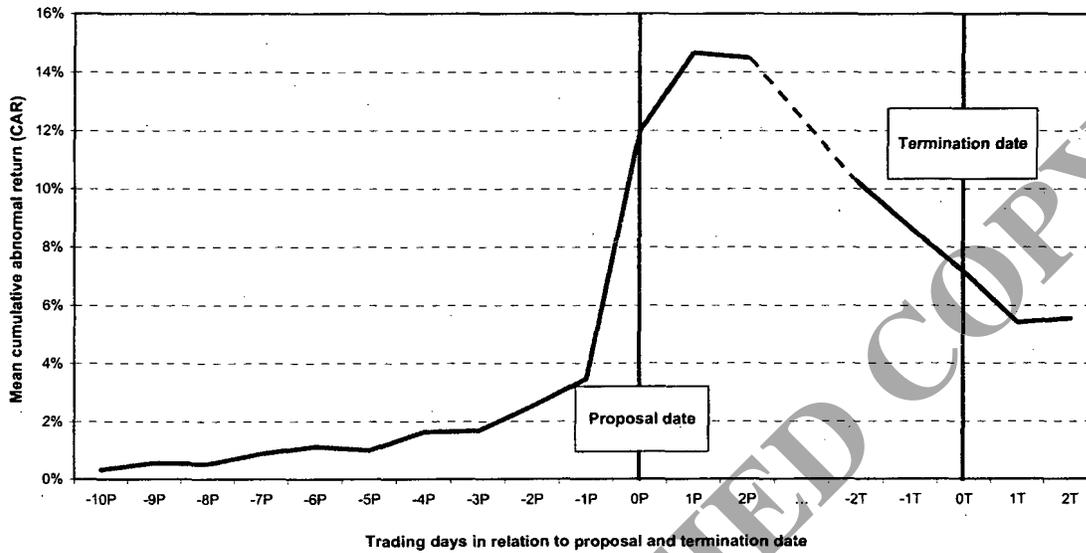
	[-18P, 2T]	[-10P, 2T]	[-10P, 10T]	[-5P, 2T]	[-1P, 2T]
Merger-related premium	1.88%	5.55%	5.21%	4.34%	0.47%
<i>The estimated premiums here are not statistically significant at the 5% level. Data source: Thomson Financial & CRSP.</i>					

- (248) The start days of the event windows other than -10P reflect the timeline of the Sunbeam-Coleman merger and account for possible run-ups in target stocks' prices prior to their merger announcements.¹⁵⁴ February 3 and 23 were 18 and 5 trading days, respectively, before the Sunbeam-Coleman merger announcement that took place on March 2, 1998. The last start day of the event windows (one day prior to merger announcement) corresponds to a case where there is no pre-merger run-up and the stand-alone value of the target company can be observed immediately before the merger announcement.
- (249) I chose the event window with the largest merger-related premium. In other words, my event window choice is [-10P, 2T] and my merger-related premium estimate is 5.55%. This choice maximizes the damages and biases the results in Plaintiff's favor.
- (250) Exhibit 28 graphs the average CARs for the chosen event window. The merger proposal and termination announcement dates are marked by the vertical lines. Because the time between merger announcement and termination is not the same for every terminated merger, the mean CARs are drawn up to 2P and then continued at -2T. The dashed line between these two days shows the average CAR in [2P, -2T].
- (251) The Exhibit shows that an average target company in a terminated merger earned a positive cumulative abnormal return around the proposal announcement date. However, by two trading days after merger termination (at the right end of the graph), the average target company lost most of the cumulative abnormal return earned around the proposal announcement date and retained a merger-related premium of 5.55%.

¹⁵⁴ I consider -10P and 10T as event window endpoints since they are the endpoints used by Sullivan, et. al., Terminated Merger Proposals, supra note 36.

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Exhibit 28: Graph of damage-maximizing CARs



Source: Thomson Financial, CRSP

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VII.8. Appendix H: Coleman Events, 2/1/98 to 3/30/98

Date	Publication	Headline	Abstract
2/2/98	Barron's	MARKET WEEK -- Capital Markets	JP Morgan's high-yield research picks Coleman as one of its favorites for 1998
2/4/98	Dow Jones News Service	Coleman Rises 19%; Analysts Point To Technical Factors--CLN	Levin presents at a high-yield conference - not considered substantial news
2/4/98	Dow Jones News Service	Options Report: Rumor of Heavy In The Market	Speculators are chasing takeover rumors as traders suggest something could be in the works
2/4/98	Bloomberg	Coleman Shares Rise On Speculation Company Could Sell Unit	Coleman shares rise on speculation company could sell unit
2/5/98	Bloomberg	Perelman's Thrift To Buy Golden State For \$2.5 Bln	Perelman agrees to buy Golden State Bancorp for \$2.5 Bln
2/7/98	Moody's	Company Report	Coleman debt report
2/11/98	Federal Document Clearing House	Testimony February 11, 1998 Frank H. Murkowski Chairman Senate Energy & Natural Resources National Trails Light House Preservation	Mentions Coleman Co. supports the "National Discovery Trails Act of 1997"
2/18/98	Bloomberg	Siebe To Acquire Coleman Co.'s Safety & Security Products Unit	Siebe PLC agrees to buy Coleman's Safety & Security Products Inc unit
2/18/98	Dow Jones News Service	Options Report: Rolls And Straddles Lead Quiet Session	Coleman continues to trade on rumors while no new information is out; implied volatilities are higher than average
2/18/98	Dow Jones News Service	Siebe Plc/Coleman -2: Sale Completion Seen By March -- CLN	Siebe PLC agrees to buy Coleman's Safety & Security Products Inc unit for \$105 million
2/18/98	Business Wire	Siebe plc to Acquire Home Safety and Security Business From Coleman	Siebe PLC agrees to buy Coleman's Safety & Security Products Inc unit
2/19/98	Dow Jones News Service	CLN Downside Earnings Alert: 4Q (10c); First Call (7c)	Coleman reports a negative earnings surprise
2/19/98	Dow Jones News Service	Options Report: Coleman, Long Island Bancorp Signals Right-On	Coleman's sale to Siebe might explain why Coleman's implied volatilities and trading patterns are higher than normal
2/19/98	Corporate Release	Corporate Press Release	Coleman reports 4Q and full year results; restructuring complete, (\$.03) negative earnings surprise
2/19/98	Bloomberg	U.K. Equity Preview: Oil Shares, British Aerospace, Glaxo	Siebe PLC agrees to buy Coleman's Safety & Security Products Inc unit

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Date	Publication	Headline	Abstract
2/19/98	Dow Jones News Service	Earnings Surprise Summary: Noon - 5:00 P.M.	Coleman is one of many companies that reported a negative earnings surprise
2/19/98	Wall Street Journal	Coleman Co. to Sell Unit to Siebe	Siebe PLC agrees to buy Coleman's Safety & Security Products Inc unit
2/20/98	Bloomberg	Coleman Co Inc. Reiterated 'buy' at Credit Suisse First Boston	Coleman reiterated "buy" at CSFB
2/20/98	CSFB First Call Note	AM CALL: First Edition summary - 2/20/98-Pt 1-3 FBC	Summarizes Coleman's results; restructuring complete but lowering 1998 expectations
2/20/98	Prudential First Call Note	4Q97 EPS Loss Larger Than Expected; Safety And Security Products Sold	Summarizes Coleman's results; lowers 1998 and 1999 EPS numbers
2/20/98	Wall Street Journal	Coleman Co.: Loss Posted for 4th Period As Sales in Asia Weaken	Coleman posts 4Q loss as sales in Asia weaken
2/23/98	Dow Jones News Service	Options Report -2: Coleman's Volatilities Attracts Traders	Takeover speculation is still following Coleman; reports that Sunbeam could be interested
2/23/98	McDonald First Call Note	CLN MCDAM CLN; 4Q97 as Expected; Adjusting FY98 Estimate; \$0.90 Is an Achievable Number	Anticipates much more substantial news, cites stock increase of 45% does not justify the sale to Siebe
2/23/98	ABN AMRO First Call Note	CLN Coleman - 4Q Slightly Lower Than Expected, Maintain 98 EPS Est. and Hold Rating	Details Coleman's results; attributes negative earnings surprise to weak Eastpak division
2/23/98	CSFB First Call Note	CLN: Reducing Our 1998 Estimate To \$0.95 Per Share-Pt 1-2 FBC	Summarizes Coleman's results; restructuring complete but lowering 1998 expectations
2/23/98	CSFB Analyst Report	CSFB Equity Research-- Americas, Coleman	Summarizes Coleman's results; restructuring complete but lowering 1998 expectations; same material as First Call Note
2/23/98	CIBC Analyst Report	Coleman Company, Q4 Results Below Consensus as Korea Stays Weak; Reducing 1998 EPS Estimate	Summarizes Coleman's results; attributes negative earnings surprise to weaker than expected results in Korea
2/23/98	Merrill Lynch	Fixed Income Research: High Lights: Part Two Of Four	Siebe PLC agrees to buy Coleman's Safety & Security Products Inc unit
2/24/98	McMillan First Call Note	First Call Note	Coleman subject of somewhat vague takeover rumors; options trading at a moderately heavy level
2/24/98	CIBC First Call Note	CLN: Q4 Results Below Consensus As Korea Stays Weak; Reducing 1998 Estimate P1	4Q results lower than expected as Korea stays weak; restructuring complete
2/24/98	New York Times	Coleman Co. (CLN,N) Reports Earnings for Qtr to Dec 31	Coleman reports 4Q results

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Date	Publication	Headline	Abstract
2/25/98	McMillan First Call Note	First Call Note	Second day of takeover rumors; this may be the real thing, but it's too overbought to chase
3/2/98	Associated Press	Sunbeam buys makers of camping gear, coffee makers and fire detectors	Sunbeam agreed to buy Coleman as part of Dunlap's restructuring plan (Sunbeam is also buying Mr. Coffee machines and First Alert smoke alarms)
3/2/98	Bloomberg	Sunbeam to Buy Coleman, 2 Others for \$2.5 Billion	Sunbeam agreed to buy Coleman
3/2/98	Reuters	Dow Ekes Out Fourth Straight Record High Close	Sunbeam agreed to buy Coleman
3/2/98	WSJ	Sunbeam Plans \$1.9 Billion in Acquisitions	Sunbeam agreed to buy Coleman
3/2/98	Reuters	US Corp Bonds - Most Prices Down, Coleman Debt Up.	Coleman's zero coupon bonds traded up on news of the merger
3/2/98	Bloomberg	Coleman Options Trading Surged Before News of Sunbeam Bid	Coleman options trading surged before news of the Sunbeam bid
3/3/98	WSJ	Heard on the Street Coleman, First Alert, Signature Brands Surged Before Sunbeam Disclosure, Raising Questions	Possibility of information leakage of the mergers news to the market before the announcement date, due to the run-up in both companies stock prices
3/3/98	PR Newswire	CLN Holdings Still Watch Negative; Signature Brands Watch Positive	Coleman Holdings remain on Creditwatch with negative implications
3/4/98	Dow Jones News Service	CLN Holdings - Moody's -2: Cites Acquisition By Sunbeam - CLN	Moody's placed Coleman's debt rating under review
3/5/98	SEC	Securities and Exchange Commission, Form 8-K/A	8-K filing for Sunbeam and Coleman merger
3/9/98	SEC	Securities and Exchange Commission, Schedule 13D (Rule 13d-101)	Sunbeam acquires ownership of 44,067,520 shares of Mafco.
3/10/98	Reuters	US Corp Bonds - Northrop Widens on Merger Doubts	News that Revlon Inc.'s junk bonds will benefit from the Sunbeam - Coleman merger
3/11/98	SEC	Securities and Exchange Commission, Amendment No. 1 to Schedule 13D (Rule 13d-101)	Supplementary material for Sunbeam's 13-d filing to acquire Coleman shares.
3/16/98	Palm Beach Post	Market Agrees: Coleman Worth Price	Article on the market agreement on the price Sunbeam paid for Coleman.
3/17/98	Insiders' News Wire	Two CLN Insiders Sell Shares	News that two insiders sold their Coleman shares on February 24 th .
3/18/98	SEC	Information Statement Pursuant to Section 14(F) of the Securities Exchange Act of 1934, as Amended, and Rule 14F-1 There under	14(f) filing for Coleman

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Date	Publication	Headline	Abstract
3/19/98	BT Alex Brown Research	Leisure Industry Overview	Coleman acquired Camping Gas (date not clear).
3/19/98	Bloomberg	Largest Short Interest Percent Increases on NYSE in Mid-March	Coleman is listed on the NYSE as one of largest short interest position changes in mid-March
3/24/98	SEC	Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934	10-K filed for Coleman
3/25/98	PR Newswire.	Coleman Successfully Completes Sale of Safety and Security Business to Siebe PLC	Coleman completes the sale of Safety and Security business to Siebe plc
3/25/98	WSJ	Coleman Completes Sale of Unit	Coleman completes the sale of Safety and Security business to Siebe plc
3/28/98	Moody's	Moody's Investors Service, Coleman Co., Inc., (The) (New) - History & Debt	Report detailing Coleman history and debt
3/30/98	Moody's	Coleman Co., Inc., (The) (New)	Coleman financial summary
3/30/98	Reuters	Sunbeam Completes Coleman Buy, Sees 1999 Accretion.	Sunbeam completes Coleman buy

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VII.9. Appendix I: Sunbeam Event Study and Market Model

- (252) Section V.3 used the event study methodology to calculate the true value of Sunbeam on March 30, 1998. This section provides additional technical details of my procedure.
- (253) In the event study I make the following assumptions and definitions:
- a. All event windows were one trading day long (i.e. the time between successive market closes); and
 - b. The standard deviation of Sunbeam's daily returns used for determining which price drops were significant was calculated over the one-year period preceding the merger announcement (February 28, 1997 to February 27, 1998).¹⁵⁵
- (254) I used a market model (described previously in Appendix C) on daily data to predict Sunbeam's expected return between March 30, 1998 and May 26, 1998 where I set alpha to 0 and beta to 1. I did not use calculated parameter values for several reasons.
- a. First, Sunbeam was a fundamentally different company after its merger with Coleman, and it is likely that Sunbeam's alpha and beta changed after March 30, 1998. Therefore, using the alpha and beta from a prior period would not be appropriate.
 - b. Likewise, Sunbeam was a company in turmoil for much of this event window (March 30–May 26) and the alpha and beta calculated during this period were, predictably, not statistically significant.¹⁵⁶
- (255) Instead, I used an alpha of 0 and a beta of 1 in my model of normal returns between March 30 and May 26 because the average alpha and beta for all stocks must be 0 and 1 respectively.

¹⁵⁵ Sunbeam's pre-merger standard deviation was 2.51%.

¹⁵⁶ Aside from a small sample size, Sunbeam shares traded based on company-specific news and not on general market conditions.

VII.10. Appendix J: Sunbeam Events, 7/18/96 to 2/6/01

Date	Publication	Headline	Abstract
7/18/96	Dow Jones News Service	Sunbeam Corp., Dunlap -2: gets stock-based pay package	Sunbeam hires Al Dunlap as Chairman and CEO
3/2/98	Dow Jones News Service	Sunbeam - Acquisitions -3: Signature Hldrs To Get \$8.25/Shr	Sunbeam and Coleman formally announce merger
3/19/98	Reuters	Sunbeam says revenues may fall short of estimates.	Sunbeam issues Q1 sales warning
3/30/98	Reuters	Sunbeam completes Coleman buy, sees 1999 accretion.	Sunbeam closes the Coleman transaction
4/3/98	Reuters	Sunbeam downgraded	Andrew Shore of PaineWebber downgrades Sunbeam
4/3/98	Reuters	Sunbeam scorched after Q1 warning.	Sunbeam issues Q1 sales and earnings warnings; announces executive dismissal
4/8/98	Palm Beach Post	Sunbeam, chiefs sued over options	Sunbeam shareholder sued CEO Al Dunlap and other officers and directors of the company, claiming that the defendants wasted company assets by granting or accepting stock options as part of new employment contracts for Dunlap and two other officers.
4/16/98	Bloomberg News	Insiders: Top sellers and buyers for the week ended in April 10	Article details Jerry Levin's insider sales of Coleman stock before the merger.
4/23/98	Business Wire	Notice of pendency of class action filed against Sunbeam.	Lawsuit against Sunbeam filed alleging that the company made false and misleading statements regarding its fourth quarter 1997 operating results.
4/23/98	PR Newswire	Gardy & Squitieri announces suit against Sunbeam	Lawsuit against Sunbeam filed alleging that the company made false and misleading statements regarding its fourth quarter 1997 operating results.
5/4/98	Business Wire	Shareholder represented by Berger & Montague, P.C. files class action lawsuit against Sunbeam -- NYSE:SOC--, Albert Dunlap and other insiders for securities fraud.	Lawsuit against Sunbeam filed alleging that the company made false and misleading statements regarding its fourth quarter 1997 operating results.
5/5/98	Dow Jones News Service	Sunbeam up 6.5% in hope of good news from Mon. meeting -- SOC	Sunbeam stock up on anticipation of 5/11/98 analysts meeting.

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Date	Publication	Headline	Abstract
5/7/98	Business Wire	Class action Sunbeam: Class action filed against Sunbeam	Lawsuit against Sunbeam filed alleging that the company made false and misleading statements regarding its fourth quarter 1997 operating results.
5/11/98	Reuters	Sunbeam Q1, jobs cuts among revamp.	Sunbeam announces Q1 results
5/12/98	Dow Jones News Service	Sunbeam Corp. shareholders file suit vs. Co. -- SOC	Lawsuit against Sunbeam filed alleging that the company made false and misleading statements regarding its fourth quarter 1997 operating results.
5/15/98	Business Wire	Class action filed against Sunbeam Corp. and its officers and directors alleging misrepresentations and false financial statements.	Lawsuit against Sunbeam filed alleging that the company made false and misleading statements regarding its fourth quarter 1997 operating results.
5/15/98	Business Wire	Bernstein Litowitz Berger & Grossmann LLP Files Class Action Against Sunbeam Corporation	Lawsuit against Sunbeam filed alleging that the company made false and misleading statements regarding its fourth quarter 1997 operating results.
5/19/98	Business Wire	Savett Frutkin Podell & Ryan P.C. files class action suit against Sunbeam Corp. -- 'SOC'-- and its officers and directors alleging misrepresentations and false financial statements.	Lawsuit against Sunbeam filed alleging that the company made false and misleading statements regarding its fourth quarter 1997 operating results.
5/22/98	Business Wire	Notice of Filing of Class Action Against Sunbeam Corporation	Lawsuit against Sunbeam filed alleging that the company made false and misleading statements regarding its fourth quarter 1997 operating results.
6/8/98	Barron's	Dangereous games: did "Chainsaw Al" Dunlap manufacturer Sunbeam's earnings last year?	Barron's article alleging accounting misrepresentations.
6/15/98	WSJ	Chain-sawed: Sunbeam, its prospects looking ever worse, fires CEO Dunlap	Sunbeam fires Al Dunlap
7/6/98	Business Week	How Al Dunlap self-destructed, The inside story of what drove Sunbeam's board to act.	Article detailing the downfall of Al Dunlap at Sunbeam. Includes description of incident involving Andrew Shore.
2/6/01	Associated Press	Sunbeam plans to file for Chapter 11 bankruptcy protection	Sunbeam announces that it plans to file for Chapter 11 bankruptcy

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

INFORMATION STATEMENT
PURSUANT TO SECTION 14(F) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND RULE 14F-1 THEREUNDER

THE COLEMAN COMPANY, INC.
(EXACT NAME OF REGISTRANT AS SPECIFIED IN CHARTER)

DELAWARE
(STATE OR OTHER JURISDICTION OF
INCORPORATION)

1-988
(COMMISSION FILE NUMBER)

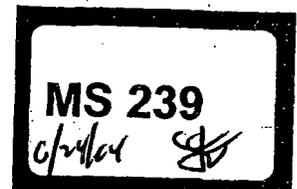
13-3639257
(IRS EMPLOYER
IDENTIFICATION NO.)

2111 EAST 37TH STREET NORTH
WICHITA, KANSAS 67219
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

(316) 832-2700
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

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16div-027326

THE COLEMAN COMPANY, INC.
2111 EAST 37TH STREET NORTH
WICHITA, KANSAS 67219

INFORMATION STATEMENT PURSUANT TO SECTION 14(F) OF THE
SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND RULE 14F-1 THEREUNDER

This Information Statement is being mailed on or about March 18, 1998 to holders of record as of March 18, 1998 of shares of Common Stock, par value \$.01 per share ('Company Common Stock' or 'Coleman Common Stock'), of The Coleman Company, Inc., a Delaware corporation (the 'Company' or 'Coleman'), in connection with (i) the election of persons designated by Sunbeam Corporation, a Delaware corporation ('Sunbeam'), as directors of the Company otherwise than at a meeting of the stockholders of the Company and (ii) the resignation of the current directors of the Company, in each case, pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the 'Holdings Merger Agreement'), among Sunbeam, Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Sunbeam ('LAC'), Coleman (Parent) Holdings Inc., a Delaware corporation ('Parent Holdings'), and CLN Holdings Inc., a Delaware corporation and a wholly owned subsidiary of Parent Holdings ('CLN Holdings'). CLN Holdings is an indirect wholly owned subsidiary of Mafco Holdings Inc., a corporation wholly owned by Ronald O. Perelman ('Mafco'), and is the indirect beneficial owner of 44,067,520 shares of Company Common Stock, representing approximately 82.4% of the total number of outstanding shares.

Pursuant to the Holdings Merger Agreement, LAC will be merged with CLN Holdings (the 'Holdings Merger'). In the Holdings Merger, all of the outstanding shares of capital stock of CLN Holdings will be converted into the right to receive (i) 14,099,749 fully paid nonassessable shares of common stock, par value \$.01 per share, of Sunbeam ('Sunbeam Common Stock') and (ii) \$159,956,756 in cash, without interest thereon. As a result of the Holdings Merger, CLN Holdings will become a wholly owned subsidiary of Sunbeam and Sunbeam will become the indirect owner of approximately 82.4% of the outstanding Company Common Stock.

At the same time that it entered into the Holdings Merger Agreement, Sunbeam also entered into an Agreement and Plan of Merger, dated as of February 27, 1998 (the 'Company Merger Agreement'), with the Company and Camper Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Sunbeam ('CAC'). Pursuant to the Company Merger Agreement, following the consummation of the Holdings Merger, CAC will be merged with the Company (the 'Company Merger'). In the Company Merger, each outstanding share of Company Common Stock (other than shares held indirectly by Sunbeam including through Coleman Worldwide Corporation ('Coleman Worldwide') and dissenting shares, if any) will be converted into the right to receive (i) 0.5677 of a share of Sunbeam Common Stock and (ii) \$6.44 in cash, without interest thereon. Upon consummation of the Company Merger, the Company will become a wholly owned subsidiary of Sunbeam.

Consummation of the Holdings Merger is subject to the expiration of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the satisfaction of certain other customary conditions.

It is currently anticipated that the Holdings Merger will be completed later this month or early next month. Consummation of the Company Merger is subject to the completion of the Holdings Merger and the filing of certain definitive documents required in connection therewith with the Securities and Exchange Commission. It is anticipated that the Company Merger will be consummated later this Spring. Neither the Holdings Merger nor the Company Merger is conditioned upon approval of Sunbeam's or the Company's stockholders.

Additional information with respect to the Holdings Merger and the Company Merger and the shares of Sunbeam Common Stock to be received by the Company's stockholders in the Company Merger will be contained in an Information Statement and Prospectus to be mailed to all holders of Company Common Stock prior to the consummation of the Company Merger.

Pursuant to the Holdings Merger Agreement, all current members of the Company's board of directors will remain as directors until the consummation of the Holdings Merger, at which time they will resign from their positions as directors of the Company, and up to six individuals designated by Sunbeam will become directors of

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the Company. Sunbeam has elected to designate five individuals to become directors of the Company (the 'Sunbeam Designees'), and information with respect to the Sunbeam Designees is set forth below.

No action is required on the part of the stockholders of the Company in order to effect the election of the Sunbeam Designees. Nevertheless, Section 14(f) of the Securities Exchange Act of 1934, as amended (the 'Exchange Act'), requires the mailing to the Company's stockholders of the information set forth in this Information Statement at least ten days prior to a change in a majority of the Company's directors otherwise than at a meeting of the Company's stockholders. As of March 3, 1998, there were 53,610,950 shares of Company Common Stock outstanding, the holders of which shares are entitled to cast one vote per share on all matters submitted to a vote of stockholders.

The information contained in this Information Statement concerning the Sunbeam Designees and the information set forth in the section entitled 'Source and Amount of Funds for Change in Control' has been furnished to the Company by Sunbeam and the Company assumes no responsibility for such information. The principal executive offices of the Company are located at 2111 East 37th Street North, Wichita, Kansas 67219, and the principal executive offices of Sunbeam are located at 1615 South Congress Avenue, Suite 200, Delray Beach, Florida 33445.

INFORMATION REGARDING DIRECTORS TO BE DESIGNATED BY SUNBEAM

As described below, the Sunbeam Designees are officers and/or directors of Sunbeam. None of the Sunbeam Designees is a director of, or holds any position with, the Company, and none of the Sunbeam Designees owns any shares of Company Common Stock. The name, age, present principal occupation or employment and five-year employment history of each of the Sunbeam Designees are set forth below. Each Sunbeam Designee's term of office as a director of the Company will expire after a period of one year or at the time such Sunbeam Designee's successor is duly elected and shall have qualified. Unless otherwise indicated, the business address of each of the Sunbeam Designees is Sunbeam Corporation,

1615 South Congress Avenue, Suite 200, Delray Beach, Florida 33445. Each of the Sunbeam Designees is a citizen of the United States.

Albert J. Dunlap, age 60, has been Chairman and Chief Executive Officer of Sunbeam since July 18, 1996. From April 1994 to December 1995, he was Chairman and Chief Executive Officer of Scott Paper Company. From 1991 to 1993, Mr. Dunlap was the Managing Director and Chief Executive Officer of Consolidated Press Holdings Limited (an Australian media, chemicals and agricultural operation).

Charles M. Elson, age 38, has been a Director of Sunbeam since his appointment to the Sunbeam Board of Directors on September 25, 1996. Mr. Elson has been a Professor of Law at Stetson University College of Law since 1990 and serves as Of Counsel to the law firm of Holland & Knight (since May 1995). He is also a Member of the American Law Institute and Advisory Council and Commission on Director Compensation and Director Professionalism of the National Association of Corporate Directors. Mr. Elson is a Trustee of Talledega College and a Salvatori Fellow of the Heritage Foundation. Mr. Elson has served as a Director of Ciron Corporation (a medical manufacturer) since October, 1997. Mr. Elson's business address is Stetson University College of Law, 1401 61st Street South, St. Petersburg, Florida 33707.

David C. Fannin, age 52, has been Executive Vice President, General Counsel and Secretary of Sunbeam since January 1994. From 1979 until 1993, Mr. Fannin was a partner in the law firm of Wyatt, Tarrant & Combs, Louisville, Kentucky.

Russell A. Kersh, age 44, has been Vice Chairman and Chief Financial Officer of Sunbeam since February 1, 1998, and has been a Director of Sunbeam since his appointment on August 6, 1996. He served as Executive Vice President, Finance and Administration of Sunbeam from July 22, 1996 to January 1998. From June 1994 to December 1995 he was Executive Vice President, Finance and Administration of Scott Paper Company. Mr. Kersh served as Chief Operating Officer of Adidas America from January 1993 to May 1994.

Peter A. Langerman, age 42, has been a Director of Sunbeam since 1990 and served as the Chairman of the Board of Directors of Sunbeam from May 22, 1996 until July 18, 1996. Since November 1996, Mr. Langerman has been Senior Vice President and Chief Operating Officer of Franklin Mutual Advisers, Inc., a registered investment advisor and a wholly owned subsidiary of Franklin Resources, Inc., a diversified financial services

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organization. Mr. Langerman was a Senior Vice President of Heine Securities Corporation, an investment advisory service company, from 1986 to November 1996, and a Vice President of Mutual Series Fund from 1988 until its acquisition by Franklin Resources, Inc. in 1996. He has been a Director of Franklin Mutual Series Fund, Inc. (previously Mutual Series Fund Inc.) since 1988 and a Director of Metallurg Inc. (a metals and related materials manufacturer) since 1997. Mr. Langerman's business address is Franklin Mutual Advisers, Inc., 51 John F. Kennedy Parkway, Short Hills, New Jersey 07078.

INFORMATION REGARDING CURRENT DIRECTORS OF COLEMAN

The name, age, present principal occupation or employment, five-year employment history, selected biographical information, and period of service as a director of the Company of each of the current directors of the Company are set forth below.

Ronald O. Perelman, age 55, a director of the Company since 1989, has been Chairman of the Board and Chief Executive Officer of Maico, MacAndrews & Forbes Holdings Inc. and various of its affiliates since 1980. Mr. Perelman is also Chairman of the Executive Committee of the Board of Consolidated Cigar Holdings Inc. ('Cigar Holdings'), M&F Worldwide Corporation, and Revlon, Inc. ('Revlon') and Chairman of the Board of Meridian Sports Incorporated ('Meridian'). Mr. Perelman is also a director of the following corporations which file reports pursuant to the Exchange Act: California Federal Bank, A Federal Savings Bank, CLN Holdings, Coleman Worldwide, Cigar Holdings, First Nationwide Holdings Inc., First Nationwide (Parent) Holdings Inc., Meridian, M&F Worldwide Corporation, Revlon Consumer Products Corporation ('Revlon Products'), Revlon, and REV Holdings Inc. ('REV Holdings'). (On December 27, 1996, Marvel Holdings Inc., Marvel (Parent) Holdings Inc. and Marvel Entertainment Group, Inc. ('Marvel'), of which Mr. Perelman was then a director, and Marvel III Holdings Inc., of which Mr. Perelman is a director, and several of the subsidiaries of Marvel filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.)

Donald G. Drapkin, age 50, a director of the Company since 1989, has been a director and Vice Chairman of MacAndrews & Forbes Holdings Inc. and various of its affiliates since 1987. Mr. Drapkin was a partner in the law firm of Skadden, Arps, Slate, Meagher & Flom in New York for more than five years prior to 1987. Mr. Drapkin is also a director of the following corporations which file reports pursuant to the Exchange Act: Coleman Worldwide, The Cosmetic Center, Inc., Revlon Products, Revlon, Algos Pharmaceutical Corporation, Black Rock Asset Investors, Cardio Technologies, Inc., Genta, Inc., Playboy Enterprises, Inc., VIMRx Pharmaceuticals Inc., and Weider Nutrition International Inc. (On December 27, 1996, Marvel Holdings Inc., Marvel (Parent) Holdings Inc., and Marvel, of which Mr. Drapkin is a director, and several of their subsidiaries and Marvel III Holdings Inc., of which Mr. Drapkin is a director, filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.)

Frank Gifford, age 67, has been a Director of the Company since 1997. Mr. Gifford has been a commentator with ABC Sports since 1997. (On December 27, 1996, Marvel, of which Mr. Gifford was a director, and several of its subsidiaries filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.)

Lawrence M. Jones, age 66, has been a director of the Company since 1989. Mr. Jones was Chairman and Chief Executive Officer of the Company from October 1990 to December 1993 and has been associated with the Company for more than 36 years, including serving as President and Chief Executive Officer from July 1989 to September 1990. Prior to rejoining the Company in 1989, Mr. Jones was Vice Chairman and Chief Financial Officer of Fleming Companies, Inc. (distributor of food products, health and beauty items) from December 1987 to June 1989. Mr. Jones presently serves as a director of Union Pacific Resources, and was a director of Fourth Financial Corporation until January 1996, of Fleming Companies, Inc. until December 1996, and of Prince Sports Group, Inc. until March 1997. Mr. Jones also served as Chairman of Rollerblade, Inc. from February 1996 to April 1997.

Ann D. Jordan, age 63, has been a director of the Company since June 1997. Ms. Jordan is a consultant and a director of Johnson & Johnson, Automatic Data Processing, Inc., The Travelers Corporation, and Salant Corporation. Ms. Jordan also serves on the Board of Directors of the National Symphony Orchestra, Sloan

Kettering Memorial Medical Center, Child Welfare League, Sasha Bruce Youthworks, University of Chicago, Spellman College, The John F. Kennedy Center for the Performing Arts and the SEC Consumer Affairs Advisory Commission. She was formerly a Field Work Associate Professor at the School of Social Service Administration of the University of Chicago and served as Director of the Department of Social Services for the University of Chicago Medical Center.

Jerry W. Levin, age 53, has been Chairman and Chief Executive Officer of the Company since February 1997, and a past Chairman of the Company from 1989 to 1991, and a director since 1989. Mr. Levin has been Chairman of the Board of Revlon and of Revlon Products since their respective formations in 1992 and Chairman of the Board of The Cosmetic Center, Inc., since April 1997. Mr. Levin served as Chief Executive Officer of Revlon and of Revlon Products from 1992 until January 1997, and President of Revlon and of Revlon Products from their respective formations in 1992 to November 1995. Mr. Levin has been Executive Vice President of MacAndrews & Forbes Holdings Inc. since March 1989. For 15 years prior to joining MacAndrews & Forbes Holdings Inc. he held various senior positions with The Pillsbury Company ('Pillsbury!'). Mr. Levin is also a director of the following corporations which file reports pursuant to the Exchange Act: Coleman Worldwide, The Cosmetic Center, Inc., Ecolab Inc., U.S. Bancorp Inc., Meridian, Revlon, Revlon Products, and REV Holdings.

John A. Moran, age 65, has been a director of the Company since July 1996. Mr. Moran currently serves as Chairman of Rutherford-Moran Oil Corporation. From 1967, Mr. Moran was affiliated with Dyson-Kissner-Moran Corporation, a private holding company, serving in various executive positions including Chairman of the Board, President and Chief Executive Officer, and Executive Vice President. He is a director of Bessemer Securities Corporation. He is a member and former Chairman of the National Advisory Council of the University of Utah, as well as a member of World Presidents Organization, the Chief Executives Organization and The Foreign Policy Association. He is a former director of the United Nations Association and trustee of the Brooklyn Museum.

James D. Robinson, age 62, has been a director of the Company since June 1997. Mr. Robinson is Chairman and Chief Executive Officer of RRE Investors, LLC, a private venture investment firm, and Chairman of Violy, Byorum & Partners Holdings, LLC, a private firm specializing in financial advisory and investment banking activities in Latin America. He previously served as Chairman, and Chief Executive Officer of the American Express Company from 1977 to 1993. Mr. Robinson is a Director of Bristol-Myers Squibb Company, Cambridge Technology Partners, Inc., The Coca-Cola Company, First Data Corporation and Union Pacific Corporation.

Bruce Slovin, age 62, a director of the Company since 1993, has been President of MacAndrews & Forbes Holdings Inc., and various of its affiliates since 1980. Mr. Slovin is also a director of the following corporations which file reports pursuant to the Exchange Act: Cantel Industries, Inc., Coleman Worldwide, Continental Health Affiliates, Inc., Infu-tech, Inc., Meridian and M&F Worldwide Corporation.

William H. Spoor, age 75, has been a director of the Company since May 1992. Mr. Spoor retired in September 1985 as Chairman and Chief Executive Officer of Pillsbury after 14 years in that position and 36 years with Pillsbury. He returned to Pillsbury as Chairman of the Executive Committee in September 1987, and resumed as Chairman, Chief Executive Officer and President of Pillsbury in March 1988, from which he retired in August 1988. Mr. Spoor now serves as Chairman Emeritus of Pillsbury and is in the business of personal investments. He is a director of L & L Holdings and Inner City Tennis.

BOARD OF DIRECTORS AND ITS COMMITTEES

During 1997, the Board of Directors of Coleman met five times. The average attendance of all directors at Board and Committee meetings during 1997 was 95%. During 1997, Mr. Hammes, former Chief Executive Officer of the Company, missed the one board meeting held while he was still a director.

The Committees established by the Board to assist it in the discharge of its responsibilities are the Executive Committee, the Audit Committee, and the Management Compensation and Stock Option Committee, all of which are described below. The Company does not have a Nominating Committee.

The Executive Committee consists of four members, Messrs. Perelman, Drapkin, Levin, and Slovin. The Executive Committee is authorized and empowered to act on behalf of and in place of the Board of Directors to

exercise all the power and authority of the Board of Directors consistent with the Certificate of Incorporation and By-laws of the Company and the General Corporation Law of the State of Delaware. The Executive Committee took action by unanimous written consent seven times during 1997 and did not meet during 1997.

The Audit Committee consists of three members, Messrs. Moran, Jones, and Spoor, all of whom are directors who are not receiving compensation as employees of the Company or its affiliates. The Audit Committee provides assistance to the Board in fulfilling its responsibilities to the stockholders, potential stockholders, and the investment community relating to corporate accounting and reporting practices, and the quality and integrity of the financial reports. In carrying out these responsibilities, the Audit Committee reviews and recommends the selection of the Company's independent public accountants to the Board, meets with the independent public accountants and management to review proposed audits, reviews adequacy and effectiveness of accounting and financial controls of the Company, and gives recommendations for the improvement of such internal control procedures. The Audit Committee met five times during 1997.

The Management Compensation and Stock Option Committee (the 'Compensation Committee') consists of four members, Ms. Jordan and Messrs. Robinson, Drapkin, and Slovin, none of whom is an officer or employee of the Company and each of whom is ineligible to participate in any of the Company's executive compensation plans. The Compensation Committee's responsibilities include approving compensation policies and determining compensation for all of the Company's Board-elected officers, except junior officers; determining the eligibility of participants and the amount of all stock options and/or stock appreciation rights granted to any employee of the Company pursuant to the terms of the Company's stock option plans, as well as administering and interpreting those plans; and administering and overseeing The Coleman Company, Inc. Executive Annual Incentive Plan (the 'Incentive Plan'). The Compensation Committee took action by unanimous written consent four times and met seven times during 1997.

COMPENSATION OF DIRECTORS

Directors who are not currently receiving compensation as employees of the Company or any of its affiliates are paid an annual retainer fee of \$25,000 and are reimbursed for reasonable out-of-pocket expenses incurred in connection with Company business. In addition, such directors receive a fee of \$1,000 for each meeting of the Board of Directors or any committee meetings they attend.

EXECUTIVE OFFICERS AND MANAGEMENT

The following table sets forth as of the date hereof the executive officers of the Company.

NAME	POSITION
Jerry W. Levin.....	Chairman and Chief Executive Officer
Mark Goldman.....	Executive Vice President (Chairman--Eastpak)
Patrick McEvoy.....	Executive Vice President (President--Coleman Safety & Security Products)
Joseph P. Page.....	Executive Vice President and Chief Financial Officer
David A. Razon.....	Executive Vice President (President--Outdoor Recreation Group)
Paul B. Shapiro.....	Executive Vice President and General Counsel
David E. Stearns.....	Executive Vice President (President--Coleman Powermate)
James L. Rasmus.....	Senior Vice President--Human Resources
Karen Clark.....	Vice President--Finance

The following sets forth the age, position with the Company, and selected biographical information for the executive officers of the Company who are not directors.

Mark Goldman, age 43, has been Executive Vice President since April 1995 and President of Eastpak since 1978. He joined Eastpak in 1976.

Patrick McEvoy, age 47, has been Executive Vice President since March 1996 and President of Coleman Safety & Security Products, Inc. since January 1996. He joined Coleman in April 1994 as the Senior Vice President of Product Development and Operations for the Company's North American Recreation business unit. Prior to joining Coleman, he served as Vice President of Black & Decker Corporation from 1990 to 1994, and Vice President for the Chrysler Corporation from 1988 to 1990.

Joseph P. Page, age 44, joined the Company in August 1997 as Executive Vice President and Chief Financial Officer. Since December 1993, Mr. Page has served as Executive Vice President and Chief Financial Officer of Andrews Group Incorporated ('Andrews Group'). From December 1993 through January 1997, Mr. Page was Executive Vice President and Chief Financial Officer of New World Communications Group. Prior to his employment with Andrews Group, Mr. Page was a partner in the accounting firm of Price Waterhouse for more than five years.

David A. Ramon, age 42, has been Executive Vice President since May 1997. Prior to joining the Company, Mr. Ramon was a Director, President, and Chief Operating Officer for New World Television Incorporated from 1995 to 1997, and Executive Vice President and Chief Financial Officer for Gillett Holdings, Inc. from 1985 to 1994.

Paul E. Shapiro, age 56, has been Executive Vice President and General Counsel of the Company since July 1997. Mr. Shapiro has been an Executive Vice President of Andrews Group since 1994, and from January 1994 to June 1997, served as the Executive Vice President and General Counsel of Marvel. Prior to January 1994, Mr. Shapiro was a shareholder in the law firm of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quental from 1991 to 1993, and is currently Of Counsel to that firm. Mr. Shapiro is a director of Toll Brothers, Inc. (On December 27, 1996, Marvel, of which Mr. Shapiro was an executive officer and director, and several of subsidiaries of Marvel, filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.)

David K. Stearns, age 50, has been Executive Vice President since January 1995, and Senior Vice President--Marketing from October 1991 to January 1995. He joined the Company in 1976 and has served in various positions, including Vice President/General Manager--Import Division from 1985 to 1990.

James L. Rasmus, age 45, joined the Company in April 1997 as Senior Vice President--Human Resources. Prior to joining Coleman, Mr. Rasmus was the Executive Project Director, Shared Services for Tenneco. He has also held senior human resource positions with Case Corporation, United Technologies and Xerox Corporation.

Karen Clark, age 37, has been Vice President--Finance since July 1997. Prior to joining Coleman, Ms. Clark served as Corporate Controller for Precision Castparts Corp. from 1994 to 1997. She was also Manager--Corporate Planning for Tektronix from 1990 to 1994. Ms. Clark is a member of the Financial Executives Institute and the American Institute of Certified Public Accountants.

All of the executive officers serve at the pleasure of the Board.

SUMMARY COMPENSATION TABLE

The following table sets forth information concerning annual, long term and other compensation of the Company's Chief Executive Officer and the next four most highly-compensated executive officers, and three of its former executive officers.

NAME AND PRINCIPAL POSITION	YEAR	ANNUAL COMPENSATION			LONG TERM COMPENSATION		
		SALARY	BONUS	OTHER ANNUAL COMPENSATION	AWARDS	PAYOUTS	
					SECURITIES UNDERLYING OPTIONS	LTP PAYOUTS	ALL OTHER COMPENSATION
Jerry W. Levin (1) Chairman and Chief Executive Officer	1997	\$300,000	\$300,000	\$ 2,567	500,000	0	\$ 0
David A. Ramon (2) Executive Vice President	1997	400,000	125,000	2,912	100,000	0	0
Mark Goldman (3) Executive Vice President	1997	250,000	0	6,300	40,000	0	4,230
	1996	250,000	0	0	0	0	4,270
	1995	250,000	0	0	20,000	0	4,432
David K. Stearns (4) Executive Vice President	1997	240,000	134,844	105,930	20,000	0	6,212
	1996	222,500	0	16,893	25,000	0	4,455
	1995	189,996	159,425	121,880	40,000	0	3,877
Patrick McEvoy (5) Executive Vice President	1997	200,000	0	72,675	0	0	4,064
	1996	200,000	0	190,114	15,000	0	3,717
	1995	190,000	159,290	38,305	20,000	0	794
Michael N. Hames (6) Former Chief Executive Officer	1997	116,668	0	27,441	0	0	1,212,035
	1996	625,000	0	0	80,000	0	3,270
Frederik van den Bergh (7) Former Executive Vice President	1997	250,000	0	163,590	100,000	0	3,117
	1996	333,333	233,333	22,769	10,000	0	641,409
	1995	333,333	233,333	204,266	130,000	0	2,124
Steven Kaplan (8) Former Executive Vice President	1997	186,666	180,666	1,713	10,000	0	175,686
	1996	116,667	50,000	31,592	125,000	0	501

(1) 'Bonus' in 1997 includes \$300,000 paid in January 1998 for 1997 performance. 'Other Annual Compensation' in 1997 includes \$2,567 for Company-paid parking expenses.

(2) 'Bonus' in 1997 includes \$125,000 paid in March 1998 for 1997 performance. 'Other Annual Compensation' in 1997 includes Company-paid expense of \$2,912 related to relocation.

(3) 'Other Annual Compensation' in 1997 includes \$6,300 for car allowance. 'All Other Compensation' in 1997 includes \$3,230 for the Company's 401(k) match and \$1,000 for premiums paid for term life insurance.

(4) 'Bonus' in 1997 includes \$60,000 bonus paid for relocation during 1997, and \$74,844 paid in March 1998 for 1997 performance. 'Other Annual Compensation' includes (i) for 1997, \$82,500 ordinary income realized upon the exercise/sale of certain stock options during 1997, \$4,284 interest differential housing allowance, \$8,700 car allowance, \$5,455 relocation expenses and \$4,991 tax gross-up thereon, (ii) for 1996, \$10,155 for interest differential housing allowance, \$3,844 for personal use of Company vehicle, \$2,900 for car allowance, and (iii) for 1995, includes \$113,561 for relocation costs. 'All Other Compensation' includes (i) for 1997, \$3,230 and \$2,982, respectively, for the Company's 401(k) match and premiums paid for term life insurance, (ii) for 1996, \$3,164 and \$1,291, respectively, for the Company's 401(k) match and premiums paid for term life insurance, and (iii) for 1995, \$3,077 and \$800, respectively, for the Company's 401(k) match and premiums paid for term life insurance.

(Footnotes continued on next page)

(Footnotes continued from previous page)

(5) 'Bonus' for 1995 includes \$159,290 paid in February 1996 for 1995 performance. 'Other Annual Compensation' includes (i) for 1997, \$42,222 forgiveness of a loan, \$21,753 interest differential housing allowance, \$8,700 car allowance, (ii) for 1996, \$141,376 reimbursement of capital loss due to relocation (\$45,877 of which is a tax gross-up), \$20,844 for other payments related to relocation (\$3,510 of which is a tax gross-up), \$19,194 interest differential housing allowance, \$8,700 car allowance, and (iii) for 1995, \$25,513 (which includes a \$4,402 tax gross-up) related to the forgiveness of a loan, \$8,700 car allowance, and \$4,092 related to various gifts (\$1,410 of which is a tax gross-up on the gifts). 'All Other Compensation' includes (i) for 1997, \$3,230 and \$834, respectively, for the Company's 401(k) match and premiums paid for term life insurance, (ii) for 1996, \$3,183 and \$534, respectively, for the Company's 401(k) match and premiums paid for term life insurance, and (iii) for 1995, \$0 and \$794, respectively, for the Company's 401(k) match and premiums paid for term life insurance.

(6) Mr. Hammes ceased to be an employee of the Company in February 1997. 'Bonus' includes \$591,103 paid in February 1996 for 1995 performance pursuant to a predecessor incentive plan and a \$300,000 special bonus paid in 1995 pursuant to Mr. Hammes' employment agreement. 'Other Annual Compensation' includes (i) for 1997, \$13,663 for personal use of a Company vehicle, \$10,853 for relocation costs (\$4,912 of which is a tax gross-up), and \$2,925 interest differential housing allowance, and (ii) for 1995, \$137,703 for relocation costs. 'All Other Compensation' includes (i) for 1997, \$2,380 and \$0, respectively, for the Company's 401(k) match and premiums paid for term life insurance, and \$1,209,655 for termination of employment payments including but not limited to severance payments, lump sum payments, and the value of benefits received pursuant to a severance agreement entered into with Mr. Hammes as of February 28, 1997 (see 'Employment Agreements and Termination of Employment Arrangements'), (ii) for 1996, \$3,230 and \$40, respectively, for the Company's 401(k) match and premiums paid for term life insurance and (iii) for 1995, \$3,077 and \$40, respectively, for the Company's 401(k) match and premiums paid for term life insurance.

(7) Mr. van den Bergh ceased to be an employee of the Company in June 1997. 'Bonus' for 1996 includes \$233,333 guaranteed incentive payment made in 1996 pursuant to Mr. van den Bergh's employment agreement. 'Other Annual Compensation' includes (i) for 1997, \$9,630 for Company vehicle expenses, \$5,493 for tax preparation expenses, \$6,822 for housing allowance, and \$824 for representation allowance, and (ii) for 1996, includes a \$153,100 payment made to Mr. van den Bergh to compensate him for the loss of stock option price appreciation upon leaving his former employer. 'All Other Compensation' includes (i) for 1997, \$641,409 for termination of employment payments including, but not limited to, severance payments, lump sum payments, and the value of benefits received pursuant to a severance agreement entered into with Mr. van den Bergh as of June 30, 1997 (see 'Employment Agreements and Termination of Employment Arrangements'), and (ii) for 1996, \$2,124 for premiums paid for term life insurance.

(8) Mr. Kaplan ceased to be an employee of the Company in October 1997. 'Bonus' includes (i) for 1997, \$130,666 guaranteed incentive and \$50,000 (final installment) signing bonus payments made in 1997 pursuant to Mr. Kaplan's employment agreement and (ii) for 1996, \$50,000 payment made during 1996 for first installment of signing bonus pursuant to Mr. Kaplan's employment agreement. 'Other Annual Compensation' includes (i) for 1997, \$1,416 for the personal use of a Company car, and \$297 for relocation costs, and (ii) for 1996, \$31,592 for relocation costs (\$14,103 of which is a tax gross-up). 'All Other Compensation' includes (i) for 1997, \$174,812 for payments including, but not limited to, severance payments, lump sum payments and value of benefits received pursuant to a termination agreement entered into with Mr. Kaplan as of August 31, 1997 (see 'Employment Agreements and Termination of Employment Arrangements'), and \$874 for premiums paid for term life insurance and (ii) for 1996, \$501 for premiums paid for term life insurance.

OPTION GRANTS IN LAST FISCAL YEAR

The following table sets forth information concerning individual grants of stock options during 1997 to the Company's Chief Executive Officer and the next four most highly-compensated executive officers, and three of its former executive officers. Pursuant to the Company Merger Agreement, each outstanding option to acquire Company Common Stock will vest and become exercisable at the effective time of the Holdings Merger and, to the extent not exercised prior to the effective time of the Company Merger, will be converted into the right to receive cash in an amount equal to the excess, if any, of \$27.50 over the per share exercise price of such option.

NAME	OPTIONS GRANTED	% OF TOTAL OPTIONS GRANTED TO EMPLOYEES IN FISCAL YEAR	EXERCISE PRICE	EXPIRATION DATE OF OPTIONS	GRANT DATE PRESENT VALUE (7)
Jerry W. Levin (1)	200,000	9.27%	\$ 12.25	02/11/07	\$1,257,120
	100,000	13.91	14.00	04/15/07	2,150,825
David A. Ramon (2)	62,500	2.89	12.25	02/11/07	392,850
	37,500	1.71	14.875	05/13/07	214,558
Mark Goldman (3)	20,000	.92	15.00	02/12/07	100,432
	20,000	.92	16.125	12/17/07	160,930
David K. Stearns (4)	20,000	.92	16.125	12/17/07	158,532
Patrick McEvoy	0	0	0	0	0
Michael H. Bumes	0	0	0	0	0
Frederik van den Bergh (5)	10,000	.46	14.00	04/15/07	67,527
Steven F. Kaplan (6)	10,000	.46	14.00	04/15/07	67,527

- (1) Mr. Levin's options were granted on February 11, 1997 and April 15, 1997, respectively. The February 11, 1997 and 200,000 of the April 15, 1997 options were granted pursuant to the 1996 Stock Option Plan. The remainder of the April 15, 1997 option was granted pursuant to the 1993 Stock Option Plan. The options are exercisable in installments of 50%. The earlier option vested on April 15, 1997 and December 31, 1997. The later option vested on April 15, 1997 and is scheduled to vest again on April 15, 1998.
- (2) Mr. Ramon's options were granted on February 11, 1997 and May 13, 1997, respectively. The February 11, 1997 and May 13, 1997 options were granted pursuant to the 1996 Stock Option Plan. The options are exercisable in installments of 50%. The earlier option vested on April 15, 1997 and December 31, 1997. The later option vested on May 13, 1997 and December 31, 1997.
- (3) Mr. Goldman's options were granted on February 12, 1997 and December 17, 1997, respectively. The February 12, 1997 option was granted pursuant to the 1996 Stock Option Plan and the December 17, 1997 option was granted pursuant to the 1993 Stock Option Plan. The February 12, 1997 option is exercisable in installments of 33%, 33%, and 34%. This option is scheduled to vest on February 12, 2000, February 12, 2001, and February 12, 2002, respectively. The December 17, 1997 option is exercisable in installments of 50%. This option is scheduled to vest on June 17, 1998 and December 17, 1998.
- (4) Mr. Stearns's options were granted on December 17, 1997 pursuant to the 1996 Stock Option Plan. The option becomes exercisable in installments of 25%. The option is scheduled to vest on December 17, 1998, December 17, 1999, December 17, 2000, and December 17, 2001, respectively.
- (5) Mr. van den Bergh's options were granted on April 15, 1997 pursuant to the 1996 Stock Option Plan. Pursuant to an agreement entered into with Mr. van den Bergh as of June 30, 1997, Mr. van den Bergh's options expired unexercised.
- (6) Mr. Kaplan's options were granted on April 15, 1997 pursuant to the 1996 Stock Option Plan. Pursuant to an agreement entered into with Mr. Kaplan as of August 31, 1997, Mr. Kaplan's options expired unexercised.
- (7) The grant date present values were estimated using the Black-Scholes option pricing model and the following weighted-average assumptions: risk-free interest rates from 5.84% to 6.89%, dividend yield of 0%, volatility of the expected market price of Company Common Stock from 27.25% to 35.43%, and a weighted-average expected life of the options from 4.5 to 8.5 years.

AGGREGATED OPTION EXERCISES IN LAST FISCAL YEAR
AND FISCAL YEAR-END OPTION VALUES

The following table sets forth aggregated option exercises in the last fiscal year and fiscal year-end option values for the Company's Chief Executive Officer and the next four most highly-compensated executive officers, and three of its former executive officers.

NAME	SHARES ACQUIRED ON EXERCISE (#)	VALUE REALIZED (\$)	NUMBER OF UNEXERCISED OPTIONS AT FY-END (#)		VALUE OF UNEXERCISED IN-THE-MONEY OPTIONS AT FY-END (\$)
			EXERCISABLE/ UNEXERCISABLE	EXERCISABLE/ UNEXERCISABLE (1)	
Jerry W. Levin.....	0	0	350,000/ 150,000		\$ 1,071,875/ 309,375
David A. Ramon.....	0	0	100,000/ 0		238,281/ 0
Mark Goldman.....	0	0	0/ 60,000		0/ 21,250
David K. Stearns.....	15,000	\$ 82,500	28,720/ 110,280		41,790/ 46,253
Patrick McEvoy.....	0	0	21,900/ 63,100		35,989/ 39,923
Michael N. Hammes.....	0	0	0/ 580,000(2)		0/ 0
Frederik van den Bergh.....	0	0	0/ 130,000(3)		0/ 0
Steven F. Kaplan.....	0	0	0/ 135,000(4)		0/ 0

-
- (1) Market closing price of \$16.0625 per share on December 31, 1997 was used in computing year-end values.
 - (2) Mr. Hammes' right to exercise the options expired on May 29, 1997, pursuant to the agreement entered into with Mr. Hammes on February 28, 1997. The options expired by their terms unexercised on May 29, 1997.
 - (3) Mr. van den Bergh was paid in lieu of the vested options that were in-the-money on August 27, 1997, pursuant to the agreement entered into with Mr. van den Bergh as of June 30, 1997. The options were allowed to expire by their terms unexercised on September 30, 1997.
 - (4) Mr. Kaplan's right to exercise the options expired on November 30, 1997, pursuant to the agreement entered into with Mr. Kaplan as of August 31, 1997. The options expired by their terms unexercised on November 30, 1997.

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EMPLOYMENT AGREEMENTS AND TERMINATION OF
EMPLOYMENT ARRANGEMENTS

The Company has an employment agreement with Mr. Levin effective for the term October 1, 1997 through December 31, 2000. Pursuant to the Company Merger Agreement, the Company will not have any responsibility for the Company's obligations under Mr. Levin's employment agreement following consummation of the Holdings Merger, except for payment of the transaction bonus described below. The employment agreement provides for a base salary of \$1,000,000 per annum, and participation in the Incentive Plan with a 100% target bonus opportunity. The employment agreement with Mr. Levin also provides for, among other things, participation in the Company's other benefit plans, certain pension benefits and payments upon death, disability, termination without cause and change of control of the Company. Upon a termination of employment without cause, Mr. Levin would be entitled, among other things, to receive payments equal to base salary for the balance of the term of the agreement (but in any event not less than one year). Upon a change of control, Mr. Levin would be entitled to a lump sum payment equal to base salary and target bonus payable for the remainder of the term. In addition, Mr. Levin's employment agreement provides for a gross-up for certain excise taxes resulting from payments and benefits under the employment agreement. Pursuant to the employment agreement, Mr. Levin is entitled to a transaction bonus equal to 1.5% of the enterprise value of certain divestitures, up to a maximum aggregate amount of \$1.5 million. The consummation of the sale of Coleman Safety & Security Products, Inc. would result in a transaction bonus payable to Mr. Levin of \$1.5 million.

The Company has an employment agreement with Mr. Shapiro effective for the term July 1, 1997 through June 30, 2000. Pursuant to the Company Merger Agreement, the Company will not have any responsibility for the Company's obligations under Mr. Shapiro's employment agreement following consummation of the Holdings Merger. The employment agreement provides for a base salary of \$350,000 per annum, and participation in the Incentive Plan with a 70% target bonus opportunity. The employment agreement with Mr. Shapiro also provides for, among other things, participation in the Company's other benefit plans and payments upon death, disability, termination without cause and change of control of the Company. Upon a termination of employment without cause, Mr. Shapiro would be entitled, among other things, to receive payments equal to base salary for the balance of the term of the agreement (but in any event not less than one year). Upon a change of control, Mr. Shapiro would be entitled to a lump sum payment equal to base salary and target bonus payable for the remainder of the term. In addition, Mr. Shapiro's employment agreement provides for a gross-up for certain excise taxes resulting from payments and benefits under the employment agreement.

The Company has an employment agreement with Mr. McEvoy effective for the term January 1, 1996 through December 31, 1998. Pursuant to the employment agreement, Mr. McEvoy is paid a base salary of \$200,000 per annum, and is entitled to participate in the Incentive Plan with a 70% target bonus opportunity. The employment agreement with Mr. McEvoy also provides for, among other things, participation in the Company's other benefit plans and payments upon death, disability, termination without cause and, subject to certain conditions, change of control of the Company. Upon a termination of employment without cause, or termination of employment upon a change of control, Mr. McEvoy

would be entitled, for two years, among other things, to receive payments equal to base salary and target bonus and to participate in the Company's medical plans. In addition, Mr. McEvoy's employment agreement provides for a gross-up for certain excise taxes resulting from payments and benefits under the employment agreement. In addition, in connection with the sale of Coleman Safety & Security Products, Inc., the Company and Mr. McEvoy entered into a retention agreement. Pursuant to such retention agreement, Mr. McEvoy will receive, among other things, a special bonus for one year in an amount equal to Mr. McEvoy's base salary, provided that if Mr. McEvoy becomes entitled to severance payments under his employment contract as a result of a termination of employment within three months of a sale of Coleman Safety & Security Products, Inc., the severance payments to Mr. McEvoy under his employment agreement will be reduced by the payments of the special bonus.

Mr. Goldman had two employment agreements with the Company which became effective November 1, 1994 and terminated December 31, 1997. Under the agreements, which had identical material terms, Mr. Goldman's base salary was \$250,000 per year, and Mr. Goldman was eligible for a discretionary incentive payment each year.

Mr. Hammes had an employment agreement with the Company effective January 1, 1996, which provided for, among other things, a base salary of \$700,000 per annum. Mr. Hammes' employment was terminated

February 28, 1997. Effective such date, Mr. Hammes' entered into a severance agreement with the Company having a severance period of two years. Pursuant to the severance agreement, Mr. Hammes is entitled to, among other things, severance payments during the severance period at the rate of \$700,000 per annum, and continued participation in the Company's medical plans during the severance period, and is entitled to certain pension payments beginning March 1, 1999. In addition, pursuant to the severance agreement, Mr. Hammes was paid a lump sum payment during 1997 of \$450,000 and is entitled to another \$450,000 lump sum payment at the end of the severance period.

Mr. van den Bergh had an employment agreement with the Company effective as of May 1, 1996, which provided for, among other things, a base salary of \$500,000 per annum. Mr. van den Bergh's employment was terminated effective June 30, 1997. Effective such date, Mr. van den Bergh entered into a severance agreement with the Company having a severance period of one year. Pursuant to the severance agreement, Mr. van den Bergh was paid two lump sum payments during 1997 totaling \$550,000 and is entitled to, among other things, continued participation in the Company's medical plans during the severance period.

Mr. Kaplan had an employment agreement with the Company effective as of August 1, 1996, which provided for, among other things, a base salary of \$280,000 per annum. Mr. Kaplan's employment was terminated effective August 1, 1997. Effective such date Mr. Kaplan entered into a severance agreement with the Company having a severance period of two years. Pursuant to the severance agreement, Mr. Kaplan is entitled to, among other things, severance payments during the severance period at the rate of \$426,000 per annum, and continued participation in the Company's medical plans during the severance period.

REPORT ON EXECUTIVE COMPENSATION BY THE COMPENSATION COMMITTEE

The Compensation Committee is comprised entirely of directors who are not officers or employees of the Company. The Compensation Committee is composed of Messrs. Robinson (Chairman), Drapkin and Slovin, and Ms. Jordan. The Compensation Committee is responsible for:

- o Reviewing and approving the salary and annual incentive compensation of the Company's executive officers;
- o Reviewing, approving or modifying performance standards against which annual incentive compensation awards will be made for executive officers;
- o Reviewing, approving or modifying annual incentive compensation awards for executive officers;
- o Reviewing, approving or modifying stock option awards for all employees, including executive officers;
- o Reviewing, approving or modifying supplemental benefit or compensation plans which are available to designated executives;
- o Reviewing and recommending to the Board of Directors changes to current executive officer benefit plans or the adoption of new executive compensation programs requiring shareholder approval; and
- o Reviewing and acting as appropriate on any other issues relating to executive compensation and brought to the Compensation Committee by the Chairman for its consideration.

COMPENSATION PHILOSOPHY

In 1994, the compensation philosophy for the Company was developed and adopted. The philosophy includes the following principles:

- o Support the achievement of the Company's desired financial performance and return to shareholders;
- o Provide compensation that will attract and retain the required high level talent; and
- o Align executive officers' interests with the Company's success by linking both annual incentive compensation and long-term incentive compensation, in the form of stock option and/or stock appreciation rights awards, with the Company's success in achieving performance goals.

The executive compensation philosophy for the Company, as approved and adopted by the Compensation Committee, provides for an overall level of potential compensation opportunity that, if aggressive financial goals are achieved and superior shareholder returns are realized, will be at a 75th percentile level of competitiveness with consumer products companies of comparable size. To determine pay level opportunities, the Compensation Committee consulted with outside consultants and with the Company's officer responsible for human resources.

The Compensation Committee intends, over time, to set salaries in a manner consistent with the foregoing. Annual incentive and stock option opportunities are intended to be set above predicted competitive norms. Actual individual compensation levels may be greater or lesser than median competitive levels, based upon annual and long-term Company performance. The Compensation Committee, at its discretion, sets executive compensation at levels which it judges are justified by external, internal and other circumstances.

COMPLIANCE WITH FEDERAL TAX LEGISLATION

The Omnibus Budget Reconciliation Act of 1993 added Section 162(m) to the Internal Revenue Code of 1986, as amended (the 'Code'), which generally precludes the Company and other public companies from taking a tax deduction for compensation over \$1 million which is not 'performance-based' and is paid, or otherwise taxable, to executives named in the Summary Compensation Table and employed by the Company at the end of the applicable tax year. The Company attempts to preserve as much deduction as possible without undercutting the compensation objectives set forth above. Each director on the Compensation Committee is an 'outside director' within the meaning of Section 162(m) of the Code.

BASE COMPENSATION

During 1997, the base compensation of each executive officer was reviewed and compared to median levels of competitiveness for similarly sized consumer products companies. The Company has adopted the practice of base compensation increases for executive officers based on an annual review of the executive performance and to adjust compensation to keep it approximately to the standard described above.

ANNUAL CASH INCENTIVE COMPENSATION

The Chief Executive Officer was paid a bonus based on the targets in the Incentive Plan, even though a certain condition to payment of the target bonus was not satisfied. The other named executive officers who were employed by Coleman at the end of the year were also paid a bonus based on the same criteria. During 1997, no bonus was paid to the former Chief Executive Officer. The bonuses were paid to recognize the substantial progress made in the restructuring of Coleman.

LONG TERM INCENTIVES

In 1997, the Compensation Committee approved option grants to the Chief Executive Officer of 200,000 shares on February 11, 1997, at an exercise price of \$12.25 and 300,000 shares on April 14, 1997 at an exercise price of \$14.00. It also approved grants totaling in the aggregate 160,000 shares to the other named executive officers employed by the Company at the end of 1997. The Compensation Committee believes that these grants, which were primarily made in the first half of 1997, provide an appropriate link between the interests of executives with those of the Company's shareholders.

OTHER BENEFITS

The Company provides medical and retirement benefits to executive officers that are generally available to Company salaried employees, including participation in medical and dental benefit plans, a qualified 401(k) employee savings plan and a qualified defined benefit retirement plan. In addition, the Company provides certain executive officers and key management employees a nonqualified benefit equalization plan which is designed to make up for benefits that would otherwise be lost due to various tax limitations. The Company's benefit plans are intended to provide a median level of benefits when compared to similarly sized consumer products companies. The Company also provides certain executive officers with certain executive perquisites which may be deemed to be a personal benefit or constitute compensation to such executive officers, including (for example) car allowances and reimbursements, and club membership dues.

The Compensation Committee believes the executive compensation philosophy and programs are appropriate and serve the interests of the shareholders and the Company.

Compensation Committee:
James D. Robinson, Chairman
Donald G. Drapkin
Ann D. Jordan
Bruce Slovin

CUMULATIVE SHAREHOLDER RETURN PERFORMANCE GRAPH

The graph set forth below presents a comparison of cumulative shareholder return for the Company Common Stock for the five year period December 31, 1992 through December 31, 1997, on an indexed basis, as compared with the S&P Midcap 400 stock index and a selected peer group of companies.

The group of companies selected for the peer group represents a portfolio of companies which share certain characteristics considered relevant to the earnings performance and related cumulative shareholder return for the Company Common Stock. Selection of the peer group for the performance line was impacted by the fact that many of the Company's direct competitors are privately held or are subsidiaries of much larger public companies. Selection criteria applied in formulating the group of 12 companies, each of whose stock is publicly traded, required each company to share one or more of the following characteristics representative of the Company: (a) competitors with the Company in one or more of its product lines; (b) companies which serve mass merchandisers and their customers; (c) companies offering strong brand name consumer products; and (d) companies serving recreational products consumers.

The 12 companies selected as the peer group are as follows: Johnson Worldwide Associates, Inc.; Anthony Industries, Inc.; Huff Corporation; Kellwood Company (parent of American Recreation Products, Inc.); Russell Corporation; Snap-on Tools Corporation; Sunbeam; Brunswick Corporation; V.F. Corporation (parent of JanSport, Inc.); Newell Co.; Rubbermaid Incorporated; and Cooper Industries, Inc.

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STOCK PRICE PERFORMANCE GRAPH

[GRAPH]

	1992	1993	1994	1995	1996	1997
Coleman (NYSE:CLN)	100	98	123	123	96	113
S&P MidCap 400	100	114	110	143	171	226
Peer Group	100	107	100	106	124	160

PENSION PLANS

Retirement Plan. The Company participates in the New Coleman Company, Inc. Retirement Plan for Salaried Employees (the 'Salaried Pension Plan') which replaced a prior plan that was terminated on June 30, 1989. Participants in the Salaried Pension Plan include participants under the prior plan and certain salaried exempt employees who are at least 21 years old and have completed at least one year of service with the Company.

Benefits to participants vest fully after five years of Vesting Service (as defined in the Salaried Pension Plan) and such benefits are determined primarily by a formula based on the average of the five consecutive years of greatest compensation earned during the last ten years of the participant's service to the Company, and the number of years of service attained by the individual participant. Such compensation is composed primarily of regular base salary and contributions to qualified deferred compensation plans and does not include amounts paid pursuant to the Company's annual cash incentive compensation plans. Participants make no contributions to the Salaried Pension Plan.

Excess Benefit Plan. The Company participates in the New Coleman Holdings Inc. Excess Benefit Plan (the 'Excess Benefit Plan') for designated employees who are participants in the Salaried Pension Plan and whose retirement income from the Salaried Pension Plan in the form of payment to be made under the Salaried Pension Plan exceeds the maximum permissible under the Employee Retirement Income Security Act, as amended, and certain Code provisions. The Excess Benefit Plan supplements the Salaried Pension Plan by providing additional retirement benefits to its participants in excess of the maximum amount permitted under the Salaried Pension Plan, which benefits generally are payable in conjunction with payments made under the Salaried Pension Plan. Benefits payable under the Excess Benefit Plan have been included in the estimated annual benefits payable listed on the table following discussion of the Consolidated Supplemental Retirement Plan. The Excess Benefit Plan was amended and restated effective January 1, 1995 to add a provision allowing annual cash incentive compensation plan payments to designated participants to be included as compensation in the formula used to determine benefits under the Excess Benefit Plan. Thirteen executives participated in this feature of the Excess Benefit Plan during 1997.

Consolidated Supplemental Retirement Plan. In addition to the obligation of the Company under the Salaried Pension Plan and the Excess Benefit Plan, the Company had committed to provide other supplemental retirement benefits solely for Mr. Hammes, including credit for additional years of service and certain other

formula changes. Pursuant to an agreement entered into with Mr. Hammes in February 1997, discussed above, Mr. Hammes is no longer a participant in the Consolidated Supplemental Retirement Plan.

The following table shows estimated annual benefits payable under the Salaried Pension Plan and the Excess Benefit Plan, and reflects the straight life benefit form of payment for employees, assumes normal retirement at age 65, and reflects deductions for Social Security and other offset amounts:

FINAL AVERAGE EARNINGS	ESTIMATED ANNUAL PENSION			
	10 YEARS OF SERVICE	20 YEARS OF SERVICE	30 YEARS OF SERVICE	35 YEARS OF SERVICE
\$ 100,000	\$ 15,896	\$ 31,792	\$ 47,688	\$ 55,636
200,000	35,896	71,792	107,688	125,636
300,000	55,896	111,792	167,688	195,636
400,000	75,896	151,792	227,688	265,636
500,000	95,896	191,792	287,688	335,636
600,000	115,896	231,792	347,688	405,636
700,000	135,896	271,792	407,688	475,636
800,000	155,896	311,792	467,688	545,636
900,000	175,896	351,792	527,688	615,636
1,000,000	195,896	391,792	587,688	685,636
1,100,000	215,896	431,792	647,688	755,636
1,200,000	235,896	471,792	707,688	825,636
1,300,000	255,896	511,792	767,688	895,636
1,400,000	275,896	551,792	827,688	965,636
1,500,000	295,896	591,792	887,688	1,035,636
1,600,000	315,896	631,792	947,688	1,105,636
1,700,000	335,896	671,792	1,007,688	1,175,636
1,800,000	355,896	711,792	1,067,688	1,245,636

Benefits under the Salaried Pension Plan are payable upon normal retirement at age 65, and at age 55 following vested termination, disability, and death. A participant may elect to commence early benefit payments at any time after the participant's 55th birthday or may retire with 30 years of Vesting Service at amounts reduced from those payable upon normal retirement age. As of December 31, 1997, credited years of service for each of the individuals listed on the Summary Compensation Table are as follows: Mr. Levin, 8.7 years; Mr. Ramon, 4.6 years; Mr. Goldman, 4 years; Mr. Stearns, 21.2 years; Mr. McEvoy, 3.8 years; Mr. Hammes, 3.4 years; Mr. van den Bergh, zero years; and Mr. Kaplan, 1.1 years. In accordance with Mr. Hammes' termination of employment agreement (see Employment Agreements and Termination of Employment Arrangements), discussed above, Mr.

Hammes will be entitled to receive a pension of \$15,110 per month commencing March 1, 1999.

Pursuant to the Company Merger Agreement, from and after the effective time of the Holdings Merger, Sunbeam has agreed to allow Company employees to participate in Sunbeam benefit plans on substantially the same basis as similarly situated Sunbeam employees, and has also agreed to cause the Company to continue its employee benefit plans for a period of at least six (6) months following such date. Sunbeam has also agreed to give Company employees full credit for purposes of eligibility and vesting of benefits and benefit accrual for service with the Company and its affiliates prior to the effective time of the Holdings Merger, provided, however, that no such crediting of service results in duplication of benefits.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information concerning beneficial ownership, as of the close of business on March 3, 1998, of the Company's Common Stock by its 5% beneficial owners, directors, Chief Executive Officer and the next four most highly-compensated executives, and of directors and executive officers as a group.

NAME AND ADDRESS OF BENEFICIAL OWNER	SHARES OF COMPANY COMMON STOCK BENEFICIALLY OWNED	PERCENTAGE OF CLASS OUTSTANDING
Ronald O. Perelman 35 East 62nd Street New York, New York 10021	44,067,520 (1)	82%
Sunbeam Corporation 1615 South Congress Avenue, Suite 200 Delray Beach, Florida 33445	44,067,520 (2)	82%
Donald G. Drapkin	30,000 (3)	.
Frank Gifford	0	.
Lawrence M. Jones	40,512	.
Ann D. Jordan	0	.
Jerry W. Levin	373,000 (4)	.
John A. Moran	10,000	.
James D. Robinson	0	.
Bruce Slovin	52,600 (5)	.
William H. Spoor	6,000 (6)	.
David A. Ramon	100,000 (7)	.
Mark Goldman	0	.
David K. Stearns	25,342 (8)	.
Patrick McEvoy	0	.
Michael N. Hammes	0 (9)	.
Steven Kaplan	0 (9)	.
Frederik van den Bergh	11,000 (9)	.
All Directors and Executive Officers as a Group (21 persons)	44,768,474 (10)	83%

* Less than 1%.

- (1) Substantially all of the shares owned are pledged to secure obligations of Coleman Worldwide and CLN Holdings and shares of intermediate holding companies are or from time to time may be pledged to secure obligations of MacAndrews & Forbes Holdings Inc. or its affiliates.
- (2) The Statement on Schedule 13D filed by Sunbeam on March 9, 1998 indicates that Sunbeam may be deemed to be the beneficial owner of 44,067,520 shares by reason of its execution of the Holdings Merger Agreement.
- (3) Includes 10,000 shares owned by trusts for the benefit of Mr. Drapkin's children and as to which beneficial ownership is disclaimed.
- (4) Includes 2,000 shares owned by trusts for the benefit of Mr. Levin's children and as to which beneficial ownership is disclaimed. Includes 350,000 shares which may be acquired within 60 days pursuant to stock options.
- (5) Includes 46,300 shares held in trust for family members and as to which beneficial ownership is disclaimed.
- (6) Includes 4,000 shares held in trust for the benefit of Mr. Spoor pursuant to the IDS Bank & Trust, Trustee, The Pillsbury Company 401(k) Savings Plan.
- (7) Includes 100,000 shares which may be acquired within 60 days pursuant to stock options.
- (8) Includes 520 shares held by Mr. Stearns' spouse and as to which beneficial ownership is disclaimed. Includes 20,720 shares which may be acquired within 60 days pursuant to stock options.
- (9) No current information is available as to share ownership. Reflects information in the Company's records as of the date of termination of employment.
- (10) Includes an additional 52,500 shares which may be acquired by directors and executive officers as a group within 60 days pursuant to stock options. Excludes 1,002,380 shares which may be acquired by directors and executive officers pursuant to stock options which will vest and become exercisable upon consummation of the Holdings Merger.

SOURCE AND AMOUNT OF FUNDS FOR CHANGE IN CONTROL

Upon consummation of the Holdings Merger, Sunbeam will have acquired control of the Company. The total amount of funds and other consideration required by Sunbeam to consummate the Holdings Merger is \$159,956,756 in cash and 14,099,749 shares of Sunbeam Common Stock (collectively, the 'Holdings Merger Consideration'). Sunbeam expects to obtain the cash portion of the Holdings Merger Consideration from a combination of new revolving and term credit facilities and the issuance of other debt securities that are expected to be issued by Sunbeam concurrently with the closing of the Holdings Merger. Sunbeam has made no decision with respect to repayment or refinancing of such indebtedness and may repay such indebtedness out of its internally generated funds or from proceeds of a subsequent financing. Any decisions with respect to such repayment or refinancing will be made based on a review from time to time of the advisability of particular transactions, as well as on prevailing interest rates and financial and economic conditions.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Relationship with MacAndrews & Forbes. Ronald O. Perelman, through MacAndrews & Forbes Holdings Inc. ('MacAndrews Holdings') which is wholly owned by Mafco (together with MacAndrews Holdings, 'MacAndrews & Forbes'), beneficially owns indirectly approximately 82% of Coleman's Common Stock. Due to its stock ownership, MacAndrews & Forbes controls Coleman and is able to elect the entire board of directors. On February 27, 1998, the Holdings Merger Agreement and the Company Merger Agreement were executed as described in further detail above. As a result of the Holdings Merger, CLN Holdings will become a wholly owned subsidiary of Sunbeam and Sunbeam will become the indirect owner of approximately 82% of the outstanding Coleman Common Stock. Additionally, upon consummation of the Holdings Merger, all of the current members of Coleman's board of directors will resign from their positions as directors and the five Sunbeam Designees will become directors of the Company.

MacAndrews & Forbes is a diversified holding company with interests in several industries. The principal executive offices of MacAndrews & Forbes are located at 35 East 62nd Street, New York, New York 10021.

Cross-Indemnification Agreement. Coleman and New Coleman Holdings Inc. ('New Coleman Holdings') are parties to a cross-indemnification agreement (the 'Cross-Indemnification Agreement'), pursuant to which Coleman has agreed to indemnify New Coleman Holdings against all liabilities related to the outdoor products business transferred to Coleman, and New Coleman Holdings has agreed to indemnify Coleman and its immediate corporate parent against all liabilities of New Coleman Holdings other than liabilities related to the outdoor products business transferred to Coleman. The liabilities that Coleman will indemnify New Coleman Holdings against include (i) asserted and potential product liability claims arising out of products manufactured or sold by the outdoor products business, and (ii) asserted and potential environmental claims and liabilities related to facilities currently or formerly owned or used by the outdoor products business.

Tax Sharing Agreement. Coleman is included in the consolidated tax group of which Mafco is the common parent and Coleman's tax liability will be included

in the consolidated Federal income tax liability of Mafco. Coleman is also included in certain state and local tax returns of Mafco or its affiliates. Coleman participates in a Tax Sharing Agreement (the 'Tax Sharing Agreement') pursuant to which it pays to Coleman Worldwide amounts equal to the taxes that Coleman would otherwise have to pay if it were to file separate Federal, state or local income tax returns (including any amounts determined to be due as a result of a redetermination of the tax liability of Mafco arising from an audit or otherwise). Under Federal law, Coleman is subject to liability for the consolidated Federal income tax liabilities of the consolidated group of which Mafco is the common parent, for any taxable period during which Coleman or a subsidiary is a member of that consolidated group. Mafco has agreed, however, to indemnify Coleman for any such Federal income tax liability (and certain state and local tax liabilities) of Mafco or any of its subsidiaries that Coleman is actually required to pay. Because the payments to be made by Coleman under the Tax Sharing Agreement are determined by the amount of taxes that Coleman would otherwise have to pay if it were to file separate Federal, state or local income tax returns, the Tax Sharing Agreement will benefit Mafco to the extent that Mafco can offset the taxable income generated by Coleman against losses and tax credits generated by Mafco and its other subsidiaries.

Following the consummation of the Holdings Merger, Coleman will no longer be included in the Mafco consolidated tax group. The Tax Sharing Agreement will be terminated on the date of the Holdings Merger. The Holdings Merger Agreement provides for certain tax indemnities and tax sharing payments with respect to Mafco, Coleman and their respective affiliates.

Insurance Programs. Coleman is insured under policies maintained by MacAndrews & Forbes or its affiliates, including health and life insurance, workers compensation, and liability insurance. The Company's expense represents its expected costs for self-insured retentions and premiums for excess coverage insurance. For 1997, such expense, including the Company's allocable share of premiums for such insurance, was approximately \$13.3 million. Management believes that the terms for such insurance are at least as favorable as terms that could be obtained by the Company were it separately insured.

Services Provided by and to Other Affiliates. From time to time, Coleman purchases from affiliates, at negotiated rates, specialized accounting and other services. Coleman also provides at negotiated rates specialized accounting services and other services to an affiliate. The net expense for such services was approximately \$400,000 during 1997. Coleman believes that the terms of such arrangements are at least as favorable to Coleman as those it could have negotiated with nonaffiliated parties. In addition, certain employees of the Company have been paid by MacAndrews & Forbes or other affiliates of the Company, and the Company reimburses such affiliates for the compensation expense for such employees.

Purchases of Inactive Subsidiaries. During the first quarter of 1997, Coleman purchased an inactive subsidiary from an affiliate for approximately \$1.0 million, plus a portion of certain tax benefits to the extent such benefits are realized by Coleman. During the fourth quarter of 1997, Coleman purchased an inactive subsidiary from an affiliate for which the Company agreed to pay 50% of the tax benefits realized by Coleman when and if such benefits are realized.

Coleman expects to realize certain tax benefits from the tax losses of such subsidiaries.

Office Lease. Coleman subleases its office space in New York City from an affiliate. The rent paid by Coleman represents the allocable portion, based on the space leased, of the rent paid by the affiliate to its third party landlord. The expense for such rent during 1997 was approximately \$158,000. Coleman believes that the terms of the sublease are at least as favorable to Coleman as those it could have negotiated with nonaffiliated parties.

Pension Plans. New Coleman Holdings maintains pension and other retirement plans in various forms covering employees of Coleman who meet eligibility requirements. New Coleman Holdings also has an unfunded excess benefit plan covering certain of Coleman's U.S. employees whose benefits under the plans described above are limited by provisions of the Code. Coleman pays to New Coleman Holdings its allocable costs of maintaining such plans for Coleman's employees. As part of the consummation of the Holdings Merger, such pension and other benefits plans will be assigned to and assumed by Coleman.

Other Arrangements. At the beginning of 1995, Mr. McEvoy, an Executive Vice President of Coleman, had a noninterest-bearing loan from Coleman in the amount of \$63,333. At the end of 1997, the principal balance of the loan was \$0.

During 1997, Coleman purchased licensing services from an affiliate, for which it paid approximately \$650,000.

During 1997, Coleman sold products to an affiliate, for which it received approximately \$900,000.

During 1997, Coleman used an airplane owned by a corporation of which a director of Coleman is a stockholder, for which Coleman paid approximately \$158,000.

During 1997, a subsidiary of Coleman paid approximately \$254,000 for warehouse space leased from a real estate partnership in which Mr. Goldman, an Executive Vice President of Coleman, and three other immediate family members of Mr. Goldman's are partners. A manufacturing business owned by Mr. Goldman's father contracted with Coleman's subsidiary for the manufacture of goods sold to the subsidiary, for which the subsidiary paid approximately \$2.6 million during 1997. Pursuant to the agreement by which Coleman acquired the Eastpak business, Mr. Goldman is entitled to certain additional payments from Coleman upon Eastpak

achieving certain operating targets. In accordance with such agreement, a final additional payment of \$12.0 million was paid to Mr. Goldman for 1997 financial performance.

SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Exchange Act requires the Company's directors and executive officers, and persons who own more than 10 percent of the Company Common Stock, to file reports of ownership and changes in ownership with the Securities and Exchange Commission.

Based solely on the Company's review of the reporting forms received by it, the Company believes that for 1997 all such filing requirements were satisfied.

THE COLEMAN COMPANY, INC.

March 18, 1998

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This Preliminary Offering Memorandum and the information contained herein are subject to completion of the offering. Under certain circumstances there may be any sale of these securities in any jurisdiction. Under certain circumstances there may be any sale of these securities in any jurisdiction. Under certain circumstances there may be any sale of these securities in any jurisdiction.

OFFERING MEMORANDUM (Subject to Completion)
Issued March 16, 1998

STRICTLY CONFIDENTIAL

\$1,300,000,000

TO: Jim
FR: Gordon Rich

Sunbeam

11 Madison Blvd Har

ZERO COUPON CONVERTIBLE SENIOR SUBORDINATED DEBENTURES DUE 2018

The Debentures are convertible at any time after 90 days following the latest date of original issuance thereof and prior to maturity, unless previously redeemed or otherwise purchased, into shares of the Company's common stock, \$0.01 par value (the "Common Stock"), at a conversion rate of _____ shares per \$1,000 principal amount at maturity. The conversion rate will not be adjusted for accrued Original Issue Discount (as defined), but will be subject to adjustment in certain events. See "Description of Debentures—Conversion of Debentures." The Company's Common Stock is listed on the New York Stock Exchange under the symbol "SOC." The reported last sale price of the Company's Common Stock as reported on the New York Stock Exchange Composite Tape on March 13, 1998 was \$50 1/2 per share.

The Debentures are being issued at an original price of \$ _____ per \$1,000 principal amount at maturity (the "Issue Price"), which represents an original issue discount of _____ % from the principal amount thereof payable at maturity (the "Original Issue Discount"). The Issue Price represents a yield to maturity of _____ % per annum (computed on a semi-annual bond equivalent basis).

Prior to March _____, 2003, the Debentures are not redeemable at the option of the Company. On or after such date, the Debentures are redeemable on at least 30 days' notice at the option of the Company, in whole or in part at any time, at redemption prices equal to the Issue Price plus accrued Original Issue Discount to the date of redemption. See "Description of Debentures—Redemption of Debentures at the Option of the Company."

The Debentures may be purchased by the Company, at the option of the holder, as of March _____, 2003, March _____, 2008 and March _____, 2013 for purchase prices equal to the Issue Price plus accrued Original Issue Discount to such dates. Subject to certain conditions, the Company may elect to pay any such purchase price in cash or Common Stock, or any combination thereof. See "Description of Debentures—Purchase of Debentures at the Option of the Holder." The Debentures may also be redeemed at the option of the holder if there is a Fundamental Change (as defined) at redemption prices equal to the Issue Price plus accrued Original Issue Discount to the date of redemption, subject to adjustment in certain circumstances as described herein. See "Description of Debentures—Redemption at Option of the Holder Upon a Fundamental Change." The Debentures will be subordinated in right of payment to all existing and future Senior Indebtedness (as defined) of the Company and effectively subordinated in right of payment to all indebtedness and other liabilities of the Company's subsidiaries. At December 28, 1997, on a pro forma basis after giving effect to the Acquisitions (as defined), the Bank Financing (as defined), the offering of the Debentures and the application of the net proceeds therefrom, approximately \$1,537 million of Senior Indebtedness would have been outstanding and the total indebtedness and other liabilities of the Company's subsidiaries would have been approximately \$731 million.

The Debentures are expected to be eligible for trading in Private Offerings, Resales and Trading through Automated Linkages ("PORTAL") Market.

SEE "RISK FACTORS" BEGINNING ON PAGE 12 FOR A DISCUSSION OF CERTAIN FACTORS THAT SHOULD BE CONSIDERED BY PROSPECTIVE PURCHASERS.

THE DEBENTURES AND THE COMMON STOCK ISSUABLE UPON CONVERSION OF THE DEBENTURES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. ACCORDINGLY, THE DEBENTURES MAY BE OFFERED AND SOLD ONLY TO (i) "QUALIFIED INSTITUTIONAL BUYERS" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN COMPLIANCE WITH RULE 144A AND (ii) A LIMITED NUMBER OF OTHER INSTITUTIONAL "ACCREDITED INVESTORS" (AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT) THAT, PRIOR TO THEIR PURCHASE OF THE DEBENTURES, DELIVER TO THE INITIAL PURCHASER A LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS. FOR A DESCRIPTION OF CERTAIN RESTRICTIONS ON RESALE OR TRANSFER, SEE "TRANSFER RESTRICTIONS."

PRICE - _____ % AND ACCRUED ORIGINAL ISSUE DISCOUNT, IF ANY

The Company has granted Morgan Stanley & Co. Incorporated (the "Initial Purchaser") an option to purchase up to an additional \$195,000,000 aggregate principal amount at maturity of Debentures to cover over-allotments, if any. See "Plan of Distribution."

The Debentures are offered, subject to prior sale, when, as and if accepted by the Initial Purchaser and subject to approval of certain legal matters by Davis Polk & Wardwell, counsel for the Initial Purchaser. It is expected that delivery of the Debentures will be made on or about March _____, 1998 at the office of Morgan Stanley & Co. Incorporated, New York, N.Y., against payment therefor in immediately available funds.

MORGAN STANLEY DEAN WITTER

March _____, 1998

021621

THIS OFFERING MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL, OR A SOLICITATION OF AN OFFER TO BUY, ANY OF THE SECURITIES OFFERED HEREBY BY ANY PERSON IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL FOR SUCH PERSON TO MAKE SUCH AN OFFERING OR SOLICITATION. NEITHER THE DELIVERY OF THIS OFFERING MEMORANDUM NOR ANY SALE MADE HEREUNDER OF THE SECURITIES DESCRIBED HEREIN SHALL UNDER ANY CIRCUMSTANCES IMPLY THAT THE INFORMATION HEREIN IS CORRECT AS OF ANY DATE SUBSEQUENT TO THE DATE HEREOF.

This Offering Memorandum is highly confidential and has been prepared by the Company solely for use in connection with the proposed private placement of the Debentures described herein. The Company and the Initial Purchaser reserve the right to reject any offer to purchase Debentures, in whole or in part, for any reason and to sell less than the principal amount at maturity of the Debentures offered hereby. This Offering Memorandum is personal to each offeree and does not constitute an offer to any other person or to the public generally to subscribe for or otherwise acquire the Debentures or the Common Stock issuable upon conversion of the Debentures. Distribution of this Offering Memorandum to any person other than the offeree and those persons, if any, retained to advise such offeree with respect thereto is unauthorized, and any disclosure of any of its contents without the prior written consent of the Company is prohibited. Offerees represent that they are basing their investment decision solely on this Offering Memorandum and their own examination of the Company and the terms of the offering. Each prospective purchaser, by accepting delivery of this Offering Memorandum, agrees to the foregoing and, if the offeree does not purchase Debentures or this offering is terminated, to return this Offering Memorandum and all documents delivered herewith to: Morgan Stanley & Co. Incorporated, 1585 Broadway, New York, New York, 10036, Attention: Syndicate Department.

Each person receiving this Offering Memorandum acknowledges that (i) such person has been afforded an opportunity to request from the Company and to review all additional information considered by it to be necessary to verify the accuracy of or to supplement the information herein, (ii) it has not relied on the Initial Purchaser or any person affiliated with the Initial Purchaser in connection with its investigation of the accuracy of such information or its investment decision and (iii) no person has been authorized to give any information or to make any representation concerning the Company or the Debentures or the Common Stock issuable upon conversion of the Debentures offered hereby other than as contained or incorporated by reference herein and information given by duly authorized officers and employees of the Company in connection with investors' examination of the Company and the terms of the offering, and, if given or made, such other information or representation should not be relied upon as having been authorized by the Company or the Initial Purchaser.

No representation or warranty, express or implied, is made as to the accuracy or completeness of the information contained or incorporated by reference herein, and nothing contained in this Offering Memorandum, or incorporated by reference herein, is, or shall be relied upon as, a promise or representation. The Initial Purchaser assumes no responsibility for its accuracy or completeness.

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE COMPANY AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

CERTAIN PERSONS PARTICIPATING IN THIS OFFERING MAY ENGAGE IN TRANSACTIONS THAT STABILIZE, MAINTAIN OR OTHERWISE AFFECT THE PRICE OF THE DEBENTURES AND COMMON STOCK OF THE COMPANY. SPECIFICALLY, THE INITIAL PURCHASER MAY OVERALLOT IN CONNECTION WITH THE OFFERING AND MAY BID FOR AND PURCHASE DEBENTURES AND SHARES OF COMMON STOCK IN THE OPEN MARKET. FOR A DISCUSSION OF THESE ACTIVITIES, SEE "PLAN OF DISTRIBUTION."

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AVAILABLE INFORMATION

The Company is subject to the informational requirements of the Securities Exchange Act of 1934 (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). Such reports, proxy statements and other information filed with the Commission by the Company can be inspected and copied at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549, and at the Commission's regional offices located at 500 West Madison Street, Room 1400, Chicago, Illinois 60661 and at 7 World Trade Center, Suite 1300, New York, New York 10048. Copies of such material can be obtained from the Public Reference Section of the Commission at 450 Fifth Street, Washington, D.C. 20549, at prescribed rates, or the Commission's site on the World Wide Web at <http://www.sec.gov>. Copies of other materials concerning the Company can be inspected at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

The Company has entered into definitive agreements to acquire CLN Holdings Inc. ("CLN Holdings"), the parent of The Coleman Company, Inc. ("Coleman"), Signature Brands USA, Inc. ("Signature Brands") and First Alert, Inc. ("First Alert"), subject to various customary closing conditions. Each of CLN Holdings, Coleman, Signature Brands and First Alert is subject to the informational requirements of the Exchange Act and in accordance therewith files reports, proxy statements and other information with the Commission. The information contained herein with respect to CLN Holdings, Coleman, Signature Brands and First Alert is derived from such filings with the Commission or from information supplied by them for inclusion herein. Neither the Company nor the Initial Purchaser warrant that there have not occurred events, not yet publicly disclosed by CLN Holdings, Coleman, Signature Brands and First Alert which would affect the accuracy of the statements concerning CLN Holdings, Coleman, Signature Brands and First Alert included herein. Investors are referred to each of CLN Holdings', Coleman's, Signature Brands' and First Alert's complete filings with the Commission which are available from the sources described in the immediately preceding paragraph.

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INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following document has been filed by the Company with the Commission (File No. 1-52) pursuant to the Exchange Act and is incorporated herein by reference: the Company's Annual Report on Form 10-K for the fiscal year ended December 28, 1997. All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Offering Memorandum but prior to the termination of the offering to which this Offering Memorandum relates shall be deemed to be incorporated by reference in this Offering Memorandum and to be part hereof from the date of filing of such documents. Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Offering Memorandum to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as modified or superseded, to constitute a part of this Offering Memorandum. The Company will provide without charge to each person, including any beneficial owner, to whom this Offering Memorandum is delivered, upon written or oral request of such person, a copy of any and all of the documents that have been or may be incorporated by reference herein (other than exhibits to such documents unless such exhibits are specifically incorporated by reference into such documents). Requests for such documents should be directed to Rich Goudis, at the principal executive offices of the Company in writing at Sunbeam Corporation, 1615 South Congress Avenue, Suite 200, Delray Beach, Florida 33445 or by telephone at (561) 243-2100.

FORWARD-LOOKING STATEMENTS

This Offering Memorandum, including the documents incorporated by reference herein, contains forward-looking statements that involve risks and uncertainties. The statements contained in this Offering Memorandum or incorporated by reference herein that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act, including without limitation statements regarding the expectations, beliefs, intentions, plans or strategies of the Company, Coleman, Signature Brands and First Alert, or their directors or officers regarding the future. All forward-looking statements included in this document or incorporated by reference herein are based on information available to the Company on the date hereof or thereof, and the Company assumes no obligation to update any such forward-looking statements. Prospective investors are cautioned that any such forward looking statements are not guarantees of future performance and involve risks and uncertainties and that actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors. The information included in this Offering Memorandum, including without limitation the information set forth under the headings "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business" identifies important factors that could cause such differences.

Except as otherwise indicated, (i) all references to the "Company" or "Sunbeam Corporation" refer to Sunbeam Corporation and its subsidiaries, unless the context otherwise requires, and (ii) all information in this Offering Memorandum assumes that the Initial Purchaser's over-allotment option will not be exercised.

021624

SUMMARY

The following information does not purport to be complete and is qualified in its entirety by the more detailed financial and other information appearing elsewhere in this Offering Memorandum and in the documents incorporated by reference herein. The offering of the Debentures is referred to herein as the "Offering." For a discussion of certain important factors that should be considered by prospective purchasers of the Debentures, see "Risk Factors" beginning on page 12.

THE COMPANY

The Company is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacture, marketing and distribution of durable household consumer products through mass merchandisers, home centers and other channels (such as Wal-Mart, Kmart and Home Depot) in the United States and internationally. The Company also sells its products to commercial end users such as hotels and other institutions. Sunbeam products enjoy a long-standing reputation for quality, and a majority of the Company's sales are from products which hold the number one or two market share in their respective product categories. In 1997, the Company's net sales were approximately \$1,168 million.

The Company's five product categories are: (1) Appliances (mixers, blenders, food steamers, bread makers, rice cookers, coffee makers, toasters, irons and garment steamers); (2) Health at Home (vaporizers, humidifiers, air cleaners, water filters, massagers and scales); (3) Personal Care and Comfort (shower massagers, hair clippers and trimmers, electric warming blankets); (4) Outdoor Cooking (electric, gas and charcoal grills and grill accessories); and (5) Away From Home (clippers and related products for professional beauty, barber and veterinarian trade and sales of products to commercial and institutional channels). The International Group is responsible for sales (primarily of small appliances, personal care, grills and comfort products, professional clippers and related products) in all countries other than the United States.

The Company has a management team with extensive consumer products experience and proven expertise in cost containment and operational improvement. On February 20, 1998, each of the Company's Chairman and Chief Executive Officer, Mr. Dunlap; the Vice Chairman and Chief Financial Officer, Mr. Kersh; and the Executive Vice President, General Counsel and Secretary, Mr. Fannin, signed new three year employment contracts with the Company which include substantial equity-based compensation.

Competitive Strengths

Sunbeam competes in markets with well-established United States and foreign companies on the basis of various strengths, depending on the country, product category and distribution channels. The Company believes that it is well-positioned to pursue continued growth as a result of these competitive strengths, which include the following:

Market Leadership. The majority of Sunbeam sales are from products in which the Company holds the number one or two market share position. The Company believes that this combination of leading brand-name products and breadth of product offerings makes Sunbeam an attractive vendor to all retailers, particularly those who are consolidating their suppliers.

Brand Name Recognition. The Sunbeam® and Oster® brands have been household names for generations. The Company believes that these brands, along with its other well-known secondary brand names such as Mixmaster®, Osterizer® and Grillmaster®, draw customers into retail stores specifically to purchase products bearing these brand names. During 1997, the Company spent over \$56 million, or approximately 5% of its 1997 net sales, for advertising and sales promotion to support brand recognition.

Distribution Network. The Company has one of the premier mass merchant distribution networks serving large national retailers in the United States. The Company also has a strong network of well-established distributors and service organizations in Latin America. The Company supports its customers' needs with strong warehousing and distribution capabilities, a broad, high-quality product portfolio, electronic data interchange and just-in-time product delivery capabilities. The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogues, Company-owned outlet stores and pet supply retailers, as well as independent distributors and military post exchange outlets.

Strong Position in Consolidating Retail Environment. The consolidation trend in the retail industry has resulted in the emergence and global expansion of large mass merchandisers. These merchandisers demand financially strong, efficient suppliers who offer a broad range of innovative, quality products, have the ability to make timely shipments in large volumes and provide strong customer, promotional and merchandising support. The Company continues to benefit from this trend and believes it has the opportunity to further expand distribution with a number of major retailers while increasing its penetration of existing accounts. In 1997, the Company sold products to virtually all of the top 100 U.S. retailers, including Wal-Mart, Price Costco, Kmart, Target Stores, Home Depot and Sears.

Restructuring and Growth Plan

In the fall of 1996, Sunbeam announced a major restructuring and growth plan under newly appointed Chairman and Chief Executive Officer Albert Dunlap. The restructuring, which was recently completed, included the redefinition of Sunbeam's core products, divestiture of non-core businesses, assembling a new management team, and the closing of 18 factories, 43 warehouses and 5 headquarters offices. The Company also consolidated all purchasing functions, reduced the number of stock keeping units ("SKU's") from approximately 11,400 to 2,000 and outsourced certain of the administrative, manufacturing and distribution activities. These actions led to a reduction of nearly half the work force (approximately 6,000 jobs). In 1997, net sales grew 18.7% and operating margin improved to 17.1% from 0.5% (excluding the impact of special charges) in 1996, with operating margins reaching 20% in the fourth quarter of 1997.

The Acquisitions

Following the successful restructuring of the Company, the management team has extended its strategic focus to identify underperforming companies with strong brand names. The Company intends to capitalize on its proven capability in cost containment and operational improvement by acquiring such companies and their premier brand names, thereby broadening the Sunbeam product offering spectrum and presenting opportunities to eliminate redundant or inefficient operations.

On March 2, 1998, the Company announced that it had entered into separate agreements to acquire Coleman, Signature Brands and First Alert (collectively, the "Acquisitions"). The Company is acquiring these companies primarily due to their strong and established brand names, the potential opportunity to streamline operations, the diversification they provide to the Company's product base and the potential for revenue and operational synergies. In addition, the Company believes that its existing international geographic marketing and distribution strengths and those of the acquired companies will significantly complement each other. The Company's management team believes that these Acquisitions will give the Company a platform from which to capitalize on the fragmentation and potential consolidation of the durable household consumer products sector.

Coleman. With 1997 net revenues of approximately \$1.154 million, Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically and internationally under the Coleman brand name since the 1920s. Coleman attributes its leading market position to the strength of its brand name, the breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise.

- **Outdoor Recreation:** This product category includes lanterns and stoves, propane and butane fuel, coolers and jugs, recreational soft goods (including tents, sleeping bags, backpacks and duffel bags), outdoor furniture, electric lights, spas and camping accessories. Coleman believes it is the leading worldwide manufacturer of lanterns and stoves for outdoor recreational use and a leading supplier to the worldwide camping and outdoor recreation market of propane and butane cartridges and camping fuel. Coleman's products are marketed under the brand names Coleman®, Camping Gas® and East Pak®.
- **Hardware:** This product category includes portable generators and air compressors marketed under the Powermate® brand name. Coleman is a leading worldwide manufacturer and distributor of portable generators. These products are distributed predominantly through mass merchandisers and home center chains.

Based on the assumption that all presently exercisable Coleman options will be exercised prior to the closing of the Coleman acquisition, the Company expects to issue and deliver approximately 21.3 million shares of

Common Stock (with an aggregate value of approximately \$1 billion based on current market prices) and to pay an aggregate of \$221 million in cash in connection with the Coleman acquisition. On such basis, the Coleman acquisition is valued at approximately \$2.2 billion (including the assumption of approximately \$976 million of indebtedness). If none of the presently exercisable Coleman options are exercised prior to closing of the Coleman acquisition, the Company would expect to issue and deliver approximately 19.4 million shares of Common Stock and pay aggregate cash consideration of \$261 million in connection with the Coleman acquisition.

Signature Brands. With net sales of approximately \$276 million for its fiscal year ended September 28, 1997, Signature Brands is a leading manufacturer of a comprehensive line of consumer and professional products. Signature Brands attributes its leading market position to its strong brand name recognition, distribution in major domestic high volume retail outlets, marketing and sales promotion efforts, electronic data interchange capabilities, merchandise flow systems and established relationships with its retail customers.

- **Consumer Products:** Signature Brands markets its consumer products under the *Mr. Coffee*[®], *Health o meter*[®], *Counselor*[®] and *Borg*[®] brand names. Signature Brands produces and markets an extensive line of *Mr. Coffee*[®] brand automatic drip coffeemakers, espresso/cappuccino makers and iced and hot teamakers. *Mr. Coffee, Inc.* has been the leading producer of automatic drip coffeemakers in the U.S. since 1975. In addition, *Mr. Coffee*[®] is the leading brand of basket-type coffee filters in the United States. Other consumer products marketed under the *Mr. Coffee*[®] brand name include water filtration products, coffeemaker related accessories such as replacement decanters and mug warmers, and other kitchen countertop appliances such as food dehydrators. Signature Brands manufactures a comprehensive line of *Health o meter*[®] brand analog (mechanical) and digital (electronic) floor scales and waist-high and eye-level scales. Capitalizing on the recently acquired rights to the *Borg*[®] and *Counselor*[®] brand names, Signature Brands intends to introduce in 1998 a new line of *Borg*[®] scales that are distinctly European in design for department and specialty stores. *Counselor*[®] scales, to be introduced in 1998, will represent opening price point scales for the mass market.
- **Professional Products:** Professional products include the *Pelouze*[®] and *Health o meter*[®] brands of office, foodservice and medical scales and *Mr. Coffee*[®] brand commercial coffeemakers. Products sold as professional products include analog and digital scales for a full range of medical uses, including traditional balance beam scales, pediatric scales, wheelchair ramp scales, chair and sling scales for non-ambulatory patients, and home healthcare scales. Signature Brands' office products, marketed under the *Pelouze*[®] brand name, include analog and digital scales designed to provide mailing solutions for small, commercial establishments, home offices and departments within larger companies that process a small to medium volume of letters and packages daily. *Pelouze*[®] foodservice products include analog and digital portion control scales, thermometers and timers for commercial and non-commercial applications.

The Signature Brands transaction is valued at approximately \$253 million, consisting of approximately \$84 million in cash and the assumption of approximately \$169 million of indebtedness.

First Alert. With 1997 net sales of approximately \$187 million, First Alert is the market leader in smoke and carbon monoxide detectors in the United States. First Alert's market position is supported by the strength of the *First Alert*[®] brand name, which First Alert believes is the most widely recognized consumer brand in the home safety market. First Alert has capitalized on the *First Alert*[®] brand name and its leading smoke detector market share to develop and market a broad range of residential safety products.

- **Smoke Detectors:** First Alert's smoke detector product line consists of UL listed photoelectric and ionization smoke detectors. First Alert has the leading U.S. market share for these products. First Alert markets its smoke detectors under three principal brand names: the *First Alert*[®] premium brand name, which is featured in media and public relations promotional campaigns; the *Family Guard*[®] brand name, which is marketed as a lower priced, functional alternative for those consumers who are price sensitive; and the *BRK*[®] brand name, which is sold to the wholesale electrical market.
- **Carbon Monoxide Detectors:** These products include carbon monoxide detectors, first introduced by First Alert in September 1993, with biomimetic sensors sold under the *First Alert*[®] and *Family Guard*[®] brand names. First Alert holds the leading market position in the carbon monoxide detector market.
- **Fire Extinguishers:** First Alert's disposable fire extinguisher product line was introduced in 1985 to complement its *First Alert*[®] brand smoke detectors. First Alert currently markets a full range of fire

extinguisher products for use by the consumer, including fire extinguishers for use in the kitchen, garage, workshop, automobiles and boats. These products are sold under the *Sure Grip*® brand name which is one of the leading brand names in the U.S. retail fire extinguisher market.

The First Alert transaction is valued at approximately \$178 million, consisting of approximately \$133 million in cash and the assumption of approximately \$45 million of indebtedness.

Although the Company has entered into separate definitive agreements to acquire Coleman, Signature Brands and First Alert, subject to various customary closing conditions, including the receipt of required regulatory approvals, there can be no assurance that any or all of such transactions will be consummated.

For further information with respect to the effects of the Acquisitions, see "Capitalization," "Unaudited Pro Forma Condensed Financial Statements" and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources."

Financing Plan

In order to finance the cash portion of the Acquisitions and the repayment of all or substantially all of the outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert, the Company intends to negotiate a new bank credit facility (the "New Credit Facility") and to issue the Debentures offered hereby. See "Risk Factors—New Credit Facility Not Yet Committed." For a summary description of the expected terms of the New Credit Facility, see "Description of Other Indebtedness—New Credit Facility."

The Company intends to repay all or substantially all of the currently outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert as promptly as practicable following consummation of each Acquisition, subject to applicable notice provisions and other prepayment terms of the applicable indebtedness. Such repayments are expected to be funded with borrowings under the New Credit Facility and from the net proceeds of the Offering of the Debentures. See "Risk Factors—New Credit Facility Not Yet Committed," "Financing Plan and Use of Proceeds" and "Description of Other Indebtedness—New Credit Facility."

The following table sets forth the expected sources and uses of cash in connection with the financing of the Acquisitions:

Sources	Uses
(in millions)	
New Credit Facility(a)	Repayment of existing indebtedness(b)
\$1,536.9	\$1,504.3
Debentures offered hereby	Cash Acquisition consideration(c)
500.0	477.6
	Fees and expenses(d)
	55.0
Total	Total
<u>\$2,036.9</u>	<u>\$2,036.9</u>

(a) The New Credit Facility is expected to consist of a \$1.5 billion term-debt facility, and a \$500 million revolving credit facility, only \$36.9 million of which is expected to be initially drawn down. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

(b) Represents the repayment of existing indebtedness of the Company, CLN Holdings, Signature Brands and First Alert of \$202.2 million, \$1,077.2 million, \$179.9 million and \$45.0 million, respectively. Existing indebtedness reflects amounts outstanding as of December 28, 1997, except for indebtedness of CLN Holdings issued at an original issue discount which reflects principal accreted through an assumed repayment date of May 15, 1997. The foregoing amounts include \$7.0 million, \$100.3 million and \$5.5 million of estimated prepayment premiums related to the early retirement of indebtedness of the Company, CLN Holdings and Signature Brands, respectively. As of the actual date of repayment, the outstanding amount of existing indebtedness to be repaid may be greater than the amount shown above due to increased borrowings to finance working capital requirements. The Company intends to refinance any such additional indebtedness using its unused borrowing capacity under the New Credit Facility. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

(c) Represents the estimated net cash consideration payable (including the cash-out of options) in connection with the Acquisitions in the amounts of \$261.1 million, \$83.8 million and \$132.8 million for Coleman, Signature Brands and First Alert, respectively.

(d) Represents estimated transaction costs in connection with the Acquisitions and debt refinancing, including financial advisory fees, Initial Purchaser's commissions, bank fees, and legal and accounting fees and expenses.

SUMMARY HISTORICAL PRO FORMA FINANCIAL INFORMATION

The summary historical financial data of the Company for each of the fiscal years listed below have been derived from the Company's audited financial statements. The pro forma financial information has been derived from, and should be read in conjunction with, the unaudited pro forma condensed financial statements, including the notes thereto, appearing elsewhere in this Offering Memorandum. The summary unaudited pro forma financial information is presented for illustrative purposes only and is not necessarily indicative of the operating results or financial position that would have occurred had the Acquisitions, the initial borrowings under the New Credit Facility used to fund a portion of the Acquisitions (the "Bank Financing") and the Offering been consummated as of the dates indicated, nor is the summary unaudited pro forma financial information necessarily indicative of future operating results or financial position. This summary should be read in conjunction with the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum and the information set forth under "Capitalization," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Unaudited Pro Forma Condensed Financial Statements."

	Fiscal Year Ended					
	January 2, 1994	January 1, 1995	December 31, 1995	December 29, 1996(a)	December 28, 1997	December 28, 1997 Pro Forma(b)
	(unaudited)					
	(in millions, except percentage, ratio and per share data)					
Statement of Operations Data(a):						
Net sales	\$ 927.5	\$ 1,044.3	\$ 1,016.9	\$ 984.2	\$ 1,168.2	\$ 2,595.4
Operating earnings (loss)	134.0	151.0	70.3	(285.2)	199.4	207.0
Earnings (loss) from continuing operations	76.9	85.3	37.6	(196.7)	123.1	28.0
Net earnings (loss)	88.8	107.0	50.5	(228.3)	109.4	N/A
Diluted earnings (loss) per share of common stock(c)	1.01	1.30	0.61	(2.75)	1.25	0.26
Average number of common and common equivalent shares outstanding (c)	87.9	82.6	82.8	82.9	87.5	107.0
Other Data:						
Gross margin	27.3%	26.8%	20.4%	8.5%	28.3%	27.6%
Operating margin	14.4	14.5	6.9	N/A	17.1	8.0
Ratio of earnings to fixed charges(d) (e)	16.2x	14.9x	5.3x	—	14.5x	2.5x
	As of December 28, 1997					
	Actual		Pro Forma(f)			
			(unaudited)			
Balance Sheet Data:						
Cash and cash equivalents	\$ 52.4		\$ 78.9			
Working capital	459.9		949.6			
Total assets	1,120.3		4,046.8			
Total long-term debt	194.6		2,036.9			
Stockholders' equity	531.9		1,278.5			

(a) Includes special charges of \$337.6 million before taxes. See Notes 8 and 9 to Notes to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(b) Gives pro forma effect to (i) the Acquisitions, (ii) the Bank Financing, (iii) the Offering and (iv) the use of net proceeds from the Offering and the Bank Financing as described under "Financing Plan and Use of Proceeds" (collectively, the "Pro Forma Transactions"), as if they had occurred on December 30, 1996.

(c) Reflects the adoption of SFAS No. 128, *Earnings Per Share*. See Note 1 to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(d) In computing the ratio of earnings to fixed charges: (a) earnings represent income from continuing operations before income taxes and fixed charges (exclusive of interest capitalized); and (b) fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense.

(e) For the fiscal year ended December 29, 1996, earnings were insufficient to cover fixed charges by \$285.6 million.

(f) Gives pro forma effect to the Pro Forma Transactions as if they had occurred as of December 28, 1997.

THE OFFERING

Securities Offered	\$1,300,000,000 principal amount at maturity (plus up to an additional \$195,000,000 principal amount at maturity if the Initial Purchaser's over-allotment option is exercised in full) of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures"). There will be no periodic interest payments on the Debentures. See "Description of Debentures—General."
Yield to Maturity of Debentures	% per annum (computed on a semi-annual bond equivalent basis) calculated from March , 1998.
Conversion	The Debentures are convertible, at the option of the holder, at any time after 90 days following the latest date of original issuance thereof and prior to maturity, unless previously redeemed or otherwise purchased by the Company, into Common Stock at the rate of shares per \$1,000 principal amount at maturity of the Debentures (the "Conversion Rate"). The Conversion Rate will not be adjusted for accrued Original Issue Discount (as defined), but will be subject to adjustment upon the occurrence of certain events. Upon conversion, the holder will not receive any cash payment representing accrued Original Issue Discount; such accrued Original Issue Discount will be deemed paid by the Common Stock received upon conversion. See "Description of Debentures—Conversion of Debentures."
Subordination	The Debentures will be subordinated in right of payment to all existing and future Senior Indebtedness (as defined) of the Company and effectively subordinated in right of payment to all indebtedness and other liabilities of the Company's subsidiaries. The Debentures will rank <i>pari passu</i> with liabilities owed to trade creditors of the Company. At December 28, 1997, on a pro forma basis after giving effect to the Acquisitions, the Bank Financing, the Offering and the application of the net proceeds therefrom, approximately \$1,537 million of Senior Indebtedness and the Company's subsidiaries would have had approximately \$731 million of indebtedness and other liabilities outstanding (excluding intercompany liabilities and liabilities of a type not required to be reflected on a balance sheet in accordance with generally accepted accounting principles) to which the Debentures would have been effectively subordinated. See "Description of Debentures—Subordination of Debentures."
Original Issue Discount	The Debentures are being issued at an Original Issue Discount for Federal income tax purposes equal to the excess of the stated redemption price at maturity of the Debentures (which is expected to be the principal amount at maturity) over the amount of their issue price (which is expected to be the Issue Price). Prospective purchasers of Debentures should be aware that, although there will be no periodic payments of interest on the Debentures, accrued Original Issue Discount will be included periodically in a holder's gross income for Federal income tax purposes prior to conversion, redemption, other disposition or maturity of such holder's Debentures, whether or not such Debentures are ultimately converted, redeemed, sold (to the Company or otherwise) or paid at maturity. See "Certain United States Federal Income Tax Considerations."

Sinking Fund	None.
Redemption	The Debentures will not be redeemable by the Company prior to March , 2003. On or after such date, the Debentures will be redeemable for cash on at least 30 days' notice, at the option of the Company, in whole at any time or in part from time to time, at redemption prices equal to the Issue Price plus accrued Original Issue Discount to the date of redemption. See "Description of Debentures—Redemption of Debentures at the Option of the Company."
Fundamental Change	The Debentures may be redeemed for cash at the option of the holder if there is a Fundamental Change (as defined) at a price equal to the Issue Price plus accrued Original Issue Discount to the date of redemption, subject to adjustment in certain circumstances. See "Description of Debentures—Redemption at Option of the Holder Upon a Fundamental Change."
Purchase at the Option of the Holder ...	The Company will purchase Debentures at the option of the holder as of March , 2003, March , 2008 and March , 2013, at purchase prices equal to the Issue Price plus accrued Original Issue Discount to such dates. The Company may, at its option, elect to pay any such purchase price in cash or Common Stock, or any combination thereof. See "Description of Debentures—Purchase of Debentures at the Option of the Holder."
Financing Plan and Use of Proceeds ...	The net proceeds from the Offering, together with the Bank Financing, will be used to finance the Acquisitions and related transactions. "See Financing Plan and Use of Proceeds."
Registration Rights	The Company will, for the benefit of the holders, file with the Commission as soon as practicable, but in any event within 90 days after the first date of original issuance of the Debentures, a shelf registration statement (the "Shelf Registration Statement") covering resales of the Debentures and the Common Stock issuable upon conversion of the Debentures (the "Registrable Securities"). The Company will use its best efforts to cause the Shelf Registration Statement to become effective as promptly as is practicable, but in any event within 180 days after such first date of original issuance, and to keep the Shelf Registration Statement effective until the earlier of (i) the sale pursuant to the Shelf Registration Statement of all the securities registered thereunder and (ii) the expiration of the holding period applicable to such securities held by non-affiliates of the Company under Rule 144(k) of the Securities Act, or any successor provision, subject to certain permitted exceptions. See "Registration Rights."
Transfer Restrictions	The Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act and are subject to restrictions on transfer. See "Transfer Restrictions."

NOT A CERTIFICATE

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RISK FACTORS

An investment in the Debentures offered hereby involves a high degree of risk. Prospective investors should carefully consider the following risk factors, in addition to the other information set forth in this Offering Memorandum, in connection with an investment in the Debentures offered hereby.

Substantial Leverage; Ability to Service Indebtedness. Following the Acquisitions, the Bank Financing and the Offering, the Company will be highly leveraged, with indebtedness that is very substantial in relation to its shareholders' equity. After giving pro forma effect to the Acquisitions, the Bank Financing and the Offering, as of December 28, 1997, the Company's aggregate outstanding indebtedness would have been \$2,037 million and the Company's shareholders' equity would have been \$1,278 million. The Company expects that the New Credit Facility will permit the Company to incur or guarantee additional indebtedness, subject to certain limitations. The Indenture does not restrict the ability of the Company to incur additional Indebtedness. See "Unaudited Pro Forma Condensed Financial Statements," "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources," "The Acquisitions," "Description of Other Indebtedness" and "Description of Debentures."

The Company's high degree of leverage could have important consequences to holders of the Debentures, including but not limited to the following: (i) the Company's ability to obtain additional financing for working capital, capital expenditures, acquisitions or general corporate purposes may be impaired in the future; (ii) a substantial portion of the Company's cash flow from operations must be dedicated to the payment of principal and interest on its indebtedness, thereby reducing the funds available to the Company for its operations and other purposes; (iii) the Company may be substantially more leveraged than certain of its competitors, which may place the Company at a competitive disadvantage; (iv) the Company may be hindered in its ability to adjust rapidly to changing market conditions; and (v) the Company's substantial degree of leverage could make it more vulnerable in the event of a downturn in general economic conditions or its business.

The Company's ability to repay or to refinance its obligations with respect to its indebtedness will depend on its future financial and operating performance, which, in turn, will be subject to prevailing economic and competitive conditions and to financial, business and other factors, many of which are beyond the Company's control. These factors could include operating difficulties, increased operating costs, product pricing pressures, the response of competitors, and delays in implementing strategic projects. The Company's ability to meet its debt service and other obligations will depend in significant part on the extent to which the Company can implement its business strategy and successfully integrate the Acquisitions. There can be no assurance that the Company will be able to implement its strategy fully, that the anticipated results of its strategy will be realized or that the Acquisitions will be successfully integrated.

If the Company's cash flow and capital resources are insufficient to fund its debt service obligations, the Company may be forced to reduce or delay capital expenditures, sell assets, or seek to obtain additional equity capital, or to refinance or restructure its debt. There can be no assurance that the Company's cash flow and capital resources will be sufficient for payment of principal of, and premium, if any, and interest on, its indebtedness in the future, or that any such alternative measures would be successful or would permit the Company to meet its scheduled debt service obligations. In addition, because the Company's obligations under the New Credit Facility will bear interest at floating rates, an increase in interest rates could adversely affect, among other things, the Company's ability to meet its debt service obligations.

Holding Company Structure; Subordination. The Debentures will be exclusively the obligations of Sunbeam Corporation and not of any of its subsidiaries. The Company is a holding company that conducts substantially all of its operations through its subsidiaries. As a holding company, the Company holds no significant assets other than its investments in and advances to its subsidiaries. The Company is, therefore, dependent upon its receipt of sufficient funds from its subsidiaries to meet its own obligations, including its obligation to pay the accreted value of the Debentures upon maturity or earlier redemption or repurchase. The ability of the Company's subsidiaries to pay dividends or to make other payments or advances to the Company will depend on the operating results of its subsidiaries and any restrictions on paying such dividends or making such payments as may be applicable to such subsidiaries, including those expected to be contained in the New Credit Facility.

The Debentures will be unsecured and subordinated in right of payment to all existing and future Senior Indebtedness of the Sunbeam Corporation. As a result of such subordination, in the event of bankruptcy, liquidation or reorganization of the Company and in certain other events, the assets of the Company will be available to pay its obligations with respect to the Debentures only after all Senior Indebtedness has been paid in full, and there may not be sufficient assets remaining to pay amounts due on any or all of the Debentures then outstanding. The Debentures will be expressly subordinated to borrowings under the New Credit Facility and will be also effectively subordinated to all existing and future indebtedness and other liabilities and commitments of the Company's subsidiaries. The Company expects that the New Credit Facility will permit the Company to incur or guarantee additional indebtedness, subject to certain limitations. The Indenture does not prohibit or limit the incurrence of Senior Indebtedness by the Company or the incurrence of other indebtedness and other liabilities by the Company or its subsidiaries, and the incurrence of additional indebtedness and other liabilities by the Company or its subsidiaries could adversely affect the Company's ability to pay its obligations with respect to the Debentures. After giving pro forma effect to the Acquisitions, the Bank Financing and the Offering, as of December 28, 1997 the Company would have had \$1,537 million Senior Indebtedness outstanding, and as of the same date the Company's subsidiaries would have had approximately \$731 million of indebtedness and other liabilities outstanding (excluding intercompany liabilities and liabilities of a type not required to be reflected on a balance sheet in accordance with generally accepted accounting principles) to which the Debentures would have been effectively subordinated. The Company anticipates that from time to time it will incur indebtedness, including Senior Indebtedness, and that it and its subsidiaries will from time to time incur other additional indebtedness and liabilities. See "Description of Debentures—Subordination of Debentures."

The Company expects that borrowings under the New Credit Facility will be, and the Company's and its subsidiaries' future indebtedness may be, secured by liens and other security interests over the assets of the Company's subsidiaries and the Company's equity interests in the Company's subsidiaries. Moreover, the Company expects the New Credit Facility will be guaranteed by each of the Company's wholly-owned U.S. subsidiaries and that such subsidiary guarantees will be secured as described above. The ability of the Company, and therefore the holders of the Debentures to benefit from distributions of assets of the Company's subsidiaries may be limited to the extent that the outstanding shares of any of its subsidiaries and such subsidiary's assets are pledged to secure other debt of the Company or its subsidiaries. Any right of the Company to receive assets of any subsidiary upon such subsidiary's liquidation or reorganization will be structurally subordinated to the claims of that subsidiary's creditors.

Risks Associated with Acquisitions. The Company faces significant risks associated with the recently announced acquisitions of Coleman, Signature Brands and First Alert. The Company must, among other things, return these companies to profitable operations; realize synergies from combining these companies with the Company's current operations; integrate the products manufactured by these companies into its existing product lines; consolidate duplicate facilities, systems and personnel; improve the operating efficiencies of such companies; develop new products; and shorten the product development cycle of the acquired companies. This process will require substantial attention from the Company's management team. The diversion of the attention of management from the day-to-day operations of the Company or difficulties encountered in the integration process could have an adverse effect on the Company's business, financial condition and results of operations, which effect could be material. In addition, consummation of the Acquisitions will result in a substantial increase in the size of the Company's operations placing challenges on the Company to effectively use its employees, management, operational and financial resources to manage the expanded operations of the Company. Failure to use such resources effectively could have a material adverse effect on the Company. Other potential risks of the Acquisitions include the presence of unknown liabilities and the possibility of the incurrence of significant charges associated with write-downs of the recorded values of assets acquired or restructurings of the acquired companies. Accordingly, there can be no assurance that the Company will realize the desired benefits of these acquisitions.

Although the Company has entered into separate definitive agreements to acquire Coleman, Signature Brands and First Alert, subject to various customary closing conditions, there can be no assurance that any or all of such transactions will be consummated in a timely manner, if at all.

New Credit Facility Not Yet Committed. The Company has been advised by an affiliate of the Initial Purchaser that, subject to customary qualifications, it is highly confident that under current market and economic conditions the New Credit Facility can be successfully syndicated to financial institutions, and the Company is

currently discussing the terms of the New Credit Facility with prospective lenders. While the Company is confident that it will be able to obtain the New Credit Facility on a timely basis to complete the Acquisitions, the Company has no commitments yet from lenders to provide the New Credit Facility. The offering of the Debentures is not conditioned upon the availability of the New Credit Facility and the Acquisitions are not conditioned on the availability of adequate financing. If the Company were unable to secure the New Credit Facility on a timely basis, the Company would be required to secure alternative financing sources to fund the Acquisitions or to delay the closing of the Acquisitions until funds became available.

Risks of International Operations and Expansion. The Company currently manufactures some products and has sales in countries such as Mexico and Venezuela whose economies have been unstable or hyperinflationary in recent years. The economies of other foreign countries important to the Company's expansion plans, including other countries in Latin America and Asia, could suffer similar instability in the future. Such factors as currency devaluation, new tariffs, changes in monetary policies, inflation, governmental instability and similar matters could negatively affect the Company's operations in foreign markets. Although the Company plans to take advantage of recent economic and currency fluctuations in certain Asian countries by increasing the Company's purchase of products from such countries at a lower price, there is no guarantee that such purchasing advantage will be fulfilled or will fully overcome any lost sales opportunities in those same countries. As a result, the economic conditions discussed above or any of these circumstances could have an adverse effect on future financial performance, which effect could be material.

The Company's goal is to substantially increase the amount of business conducted by it outside North America. If the Company fails to achieve anticipated market penetration in areas of the world into which the Company currently expects to expand its sales, such event is likely to have an adverse effect on the Company's future financial performance, which effect could be material. Expansion of the Company's sales in foreign markets depends upon many factors, including economic conditions in foreign countries, the strength of consumer demand in those countries for products which the Company sells (or expects to sell in those markets), the strength of competition from other global consumer product companies and other factors which may negatively affect the Company's anticipated performance in those markets. Although the recent financial instability in Asia has not currently had any material impact on the Company, if such conditions continue and/or worsen they could negatively impact the Company's ability to achieve anticipated sales growth in such countries, the effect of which could be material to the Company's future financial performance.

Risks Associated with New Product Development. The Company's plans to increase its revenues depend on its ability to develop new and innovative products. The Company anticipates that it will be able to rapidly develop and introduce a substantial number of new and innovative products in the future. However, the Company may prove unable to meet its aggressive schedules for future product development. Failure to develop and manufacture new products that achieve market acceptance in the amounts and with the quality required by its customers would likely have an adverse effect on future financial performance, which effect could be material.

Dependence on Key Personnel. The Company depends heavily on the services of its senior management, including Albert J. Dunlap, the Company's Chairman and Chief Executive Officer, Russell A. Kersh, the Company's Vice Chairman and Chief Financial Officer, David C. Fannin, the Company's Executive Vice President, General Counsel and Secretary, and Donald R. Uzzi, the Company's Executive Vice President, Consumer Products Worldwide. The loss of any member of the Company's senior management, including Mr. Dunlap, Mr. Kersh, Mr. Fannin or Mr. Uzzi, could have an adverse effect on the Company, which effect could be material. On February 20, 1998, each of Mr. Dunlap, Mr. Kersh and Mr. Fannin signed new three year employment contracts with the Company which include substantial equity-based compensation.

Economic Conditions. The Company's performance should be expected to be affected by the strength of the retail economy, primarily in the United States, but also in Canada, Latin America and Asia and, subsequent to the consummation of the acquisition of Coleman, Europe. Weakness in consumer confidence and retail outlets (including the financial weakness or bankruptcy of retail outlets, especially mass merchants) should be expected to adversely impact the Company's future financial results. In addition, the extended credit terms provided by the Company in connection with its "early buy" program increase the Company's risk of collection of related accounts receivable.

Competition. The Company operates in a highly competitive environment with numerous domestic and foreign competitors which are financially strong and capable of competing effectively with the Company in the marketplace. Such competitors may take actions to meet the Company's new product introductions and other initiatives. Some competitors may be willing to accept lower margins and to reduce prices to compete with the Company. As a result, the Company could fail to achieve anticipated sales increases, to realize anticipated price increases, or otherwise fail to meet its anticipated goals. Any of such circumstances would likely have an adverse effect on future financial performance, which effect could be material. The Company's future success will depend to a significant extent upon its ability to remain competitive in the areas of price, quality, marketing, product development, manufacturing, distribution and order processing. There can be no assurance that the Company will be able to compete effectively in all such areas in the future.

The Company anticipates realizing price increases from time to time for certain of its products. The Company operates in a highly competitive industry, and its ability to realize price increases may be limited due to competitive pressures. If there is a material failure to realize anticipated price increases, margins likely will be lower than anticipated by the Company, and this will likely have an adverse effect on future financial performance, which effect could be material.

The Company's profitability may be negatively impacted by under-absorption of manufacturing costs resulting from underutilization of manufacturing capacity if the Company's sales growth is less than anticipated.

No Long Term Contracts with Customers. The Company markets its products through virtually every category of retailer including mass merchandisers, warehouse clubs, department stores, home centers and hardware stores. Due to the consolidation of the U.S. retail industry, the Company's customer base is relatively concentrated with its largest customer Wal-Mart Stores, Inc. accounting for 21%, and its five largest customers accounting for 36%, of 1997 net sales. The Company's customers, including all of its large retail customers, place orders for products on an as-needed basis and have no long term supply contracts with the Company. As a result, the Company relies on its ability to obtain a continuing flow of new orders from its large, high-volume retailing customers. While the Company has positioned itself to respond to the challenges of its markets by pursuing strategic relationships with large high-volume merchandisers, there can be no assurance that the Company will continue to be able to successfully meet the needs of its customers.

Raw Material Costs. A significant portion of the cost of goods manufactured by the Company in North America is the cost of raw materials and/or components. The Company has implemented changes in its purchasing function which have enabled the Company to purchase materials more efficiently and economically than it has in the past. The future success of the Company's purchasing initiatives may be affected by many factors beyond the Company's control, such as commodity pricing generally and higher prices for the specific materials required by the Company. Although there are numerous suppliers available for the materials and components sourced by the Company, any unanticipated change in suppliers could be disruptive and costly to the Company. In addition, the Company's future initiatives to reduce the cost of materials simply may not achieve savings in amounts comparable to those previously obtained by the Company. A significant failure by the Company to maintain material costs as anticipated would likely have an adverse effect on anticipated future financial performance, which effect could be material.

Dependence on Third-Party Suppliers and Service Providers. The Company currently manufactures approximately 70% of its products. One of the Company's goals for 1998 is to source approximately 50% of the Company's parts and/or products from third parties. The Company's ability to realize sales and operating profits at anticipated levels is dependent upon its ability to timely manufacture, source and deliver products which may be sold for a profit. Labor difficulties, delays in delivery or pricing of raw materials and/or sourced products, scheduling and transportation difficulties, management dislocation and delays in development and manufacture of new products can negatively affect operating profits. Although the Company will use its best efforts to select suppliers for sourced products which are reliable and dependable, the Company's planned increase in the percentage of sourced products will decrease the Company's immediate control of products and, if such suppliers fail to deliver products as anticipated, could have an adverse effect on future financial performance, which effect could be material.

The Company has entered into various arrangements with third parties for the provision of back-office administrative services previously provided with internal resources, including provision of all necessary

computer systems. Failure of any of these third-party service providers to perform in accordance with their respective agreements with the Company could result in disruptions of the Company's normal business operations with a consequent impact on sales, collections, cash flow and/or profitability.

Seasonality. Sales of certain of the Company's products can be negatively impacted by unseasonable weather conditions during different seasons and quarters of the year. For instance, the Company's sales of warming blankets were negatively impacted in the fourth quarter of 1997 by moderate temperatures in the northern states. The Company has attempted to levelize production, marketing and other activities related to seasonal products by implementing an "early buy" program; such a program shifts certain of the weather related risks of negative sales impact for such seasonal products to later months of the season and, as result, could have a negative impact on future financial performance.

Litigation. As a consumer goods distributor, the Company's results of operations can be negatively impacted by product liability lawsuits, product recall actions and/or by higher than anticipated rates of warranty returns or other returns of goods. Certain of the product lines to be acquired in the Acquisitions may increase the Company's potential exposure to litigation.

Limitations on Repurchases and Redemptions of Debentures. On March 1, 2003, March 1, 2008 and March 1, 2013 (each, a "Purchase Date"), the Company will become obligated to purchase, at the option of the holder thereof, outstanding Debentures, subject to certain conditions. In addition, upon a Fundamental Change, each holder of the Debentures will have the right, at the holder's option, to require the Company to redeem all or a portion of such holder's Debentures. There can be no assurance that the Company will have sufficient funds to pay the repurchase price on any Purchase Date (in which case, the Company could be required to issue shares of Common Stock to pay the repurchase price at valuations based on then prevailing market prices) or, in the event of a Fundamental Change, the redemption price for all the Debentures tendered by the holders thereof. The New Credit Facility is expected to contain, and future agreements relating to other indebtedness (including Senior Indebtedness) to which the Company becomes a party may contain, restrictions or prohibitions on the repurchase or redemption of the Debentures. It is also expected that the New Credit Facility will prohibit the purchase of the Debentures by the Company in the event of a Fundamental Change, unless and until such time as the indebtedness under the New Credit Facility is paid in full. In addition, it is expected that the New Credit Facility will prohibit the Company's right to purchase Debentures on a Purchase Date for cash, but will not prohibit the purchase of Debentures with Common Stock. If a Purchase Date occurs at a time when the Company is prohibited from repurchasing the Debentures for cash or the Company is prohibited from redeeming the Debentures after the occurrence of a Fundamental Change, the Company could seek the consent of its then existing lenders to repurchase or redeem the Debentures or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company would remain prohibited from repurchasing the Debentures for cash or redeeming the Debentures. In such case, the Company's failure to repurchase or redeem Debentures required to be repurchased or redeemed under the terms of the Indenture would constitute an Event of Default under the Indenture and would likely constitute a default under the New Credit Facility and may also constitute a default under any other indebtedness of the Company outstanding at such time. In addition, it is expected that the occurrence of a Fundamental Change would constitute a default under the New Credit Facility and might constitute a default under other future indebtedness of the Company. In such circumstances, the subordination provisions in the Indenture would likely prohibit or restrict payments to the holders of Debentures. The inability to repay the indebtedness under the New Credit Facility, if accelerated, would have a material adverse effect on the Company and the holders of the Debentures. The term "Fundamental Change" is limited to certain specified transactions and does not include all events that could adversely affect the Company's financial condition or operating results. The requirement that the Company offer to redeem the Debentures upon a Fundamental Change will not necessarily protect holders of the Debentures in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving the Company. See "Description of Debentures - Redemption at Option of the Holder Upon a Fundamental Change."

Proposed Tax Legislation. On February 2, 1998, the Clinton Administration announced a legislative proposal (the "Administration Proposal") generally to defer interest deductions for original issue discount on convertible debt, such as the Debentures, until such interest is paid in cash or other property. Payment would not include the conversion of such debt into equity of the issuer or the payment of an amount which is determined by reference to the value of the Common Stock. The Administration Proposal would be effective for convertible debt issued on or after the date of "first committee action." If enacted in its current form and if "first committee

action" is taken with respect to the Administration Proposal on or before the date on which the Debentures are issued, such legislation would apply to the Debentures and the original issue discount accruing in respect of the Debentures would not be deductible by the Company for federal income tax purposes. Nevertheless, it is not possible to predict when or if the Administration Proposal will be enacted, or, if enacted, what form it may take. The federal income tax treatment of holders of Debentures would not be affected by the Administration Proposal if enacted in its current form.

Certain Tax Consequences to the Company. Section 279 of the Internal Revenue Code of 1986, as amended (the "Code") limits the deductibility of interest paid or incurred with respect to certain convertible debt incurred to finance the acquisition of stock of another corporation if such debt constitutes "corporate acquisition indebtedness." It is possible that the Internal Revenue Service could take the position that, as a result of the Acquisitions, the Debentures should be treated as "corporate acquisition indebtedness," which position, if sustained, could limit the Company's ability to deduct all or a portion of the original issue discount on the Debentures. Although the issue is not free from doubt, the Company believes that, if challenged, section 279 of the Code should not limit the Company's ability to deduct original issue discount.

Absence of a Public Market. Prior to the Offering, there has been no trading market for the Debentures. Although the Initial Purchaser has advised the Company that it currently intends to make a market in the Debentures, it is not obligated to do so and may discontinue such market making at any time without notice. In addition, such market making activity will be subject to the limits imposed by the Securities Act and the Exchange Act. Accordingly, there can be no assurance that any market for the Debentures will develop or, if one does develop, that it will be maintained. If an active market for the Debentures fails to develop or be sustained, the trading price of the Debentures could be adversely affected.

The Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act and, unless and until so registered, may not be offered or sold except pursuant to an exemption from, or in a transaction not subject to, registration under the Securities Act and applicable state securities laws. See "Registration Rights," "Plan of Distribution" and "Transfer Restrictions."

Initial Ratings Risks. The Company believes it is likely that one or more rating agencies may rate the Debentures. There can be no assurance that any such agency or agencies will rate the Debentures or, if they do, what rating or ratings they will assign to the Debentures. If one or more rating agencies assign the Debentures a rating lower than generally expected by investors, such event would likely have an adverse effect on the market price of the Debentures.

Restrictions on Ability to Pay Dividends. The New Credit Facility is expected to restrict the payment of dividends unless certain financial ratios are achieved. In addition, the Company may in the future issue additional indebtedness which contains similar restrictions.

In addition to the limitations imposed on the payment of dividends by the New Credit Facility and any future agreements governing indebtedness of the Company, under Delaware law the Company is permitted to pay dividends on its capital stock only out of its surplus or, in the event that it has no surplus, out of its net profits for the year in which a dividend is declared or for the immediately preceding fiscal year. Surplus is defined as the excess of a company's total assets over the sum of its total liabilities plus the par value of its outstanding capital stock. In order to pay dividends in cash, the Company must have surplus or net profits equal to the full amount of cash dividend at the time such dividend is declared. In determining the Company's ability to pay dividends, Delaware law permits the board of directors of the Company to revalue the Company's assets and liabilities from time to time to their fair market values in order to create surplus. The Company cannot predict what the value of its assets or the amount of its liabilities will be in the future and, accordingly, there can be no assurance that the Company will be able to pay cash dividends on the Common Stock.

THE ACQUISITIONS

On March 2, 1998, the Company announced the signing of separate definitive agreements to acquire Coleman, Signature Brands and First Alert. The three transactions are subject to customary conditions, including the receipt of required regulatory approvals, and are expected to close early this spring of 1998.

The Company is acquiring these companies primarily due to their strong and established brand names, the potential opportunity to streamline operations, the diversification they provide to the Company's product base and the potential for revenue and operational synergies. In addition, the Company believes that its existing international geographic marketing and distribution strengths and those of the acquired companies will significantly complement each other. The Company's management team believes that these Acquisitions give the Company a platform from which to capitalize on the fragmentation and potential consolidation of the durable household consumer products sector.

Coleman

With 1997 net revenues of approximately \$1.154 million, Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically and internationally under the Coleman brand name since the 1920s. Coleman attributes its leading market position to the strength of its brand name, and breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise.

- *Outdoor Recreation:* This product category includes lanterns and stoves, propane and butane fuel, coolers and jugs, recreational soft goods (including tents, sleeping bags, backpacks and duffle bags), outdoor furniture, electric lights, spas and camping accessories. Coleman believes it is the leading worldwide manufacturer of lanterns and stoves for outdoor recreational use and is a leading supplier to the worldwide camping and outdoor recreation market of propane and butane cartridges and camping fuel. Coleman's products are marketed under the brand names *Coleman*[®], *Camping Gaz*[®] and *East Pak*[®].
- *Hardware:* Following the divestiture of the safety and security products business anticipated in March 1998, this product category will include portable generators and air compressors marketed under the *Powermate*[®] brand name. Coleman is a leading worldwide manufacturer and distributor of portable generators. These products are distributed predominantly through mass merchandisers and home center chains.

The following table summarizes Coleman's net revenues for the year ended December 31, 1997 by product category and geographic area (in millions):

<u>Product Category</u>	<u>Amount</u>	<u>%</u>	<u>Geographic Area</u>	<u>Amount</u>	<u>%</u>
Outdoor Recreation	\$ 859.7	74.5%	Domestic	\$ 933.5	80.1%
Hardware	294.6	25.5	Europe	217.9	18.9
			Other Foreign	167.2	14.5
			Eliminations	(164.3)	(13.5)
Total	<u>\$1,154.3</u>	<u>100.0%</u>	Total	<u>\$1,154.3</u>	<u>100.0%</u>

Signature Brands

With net sales of approximately \$276 million for its fiscal year ended September 28, 1997, Signature Brands is a leading manufacturer of a comprehensive line of consumer and professional products. Signature Brands attributes its leading market position to its strong brand name recognition, distribution in major domestic high volume retail outlets, marketing and sales promotion efforts, electronic data interchange capabilities, merchandise flow systems and established relationships with its retail customers. Signature Brands, founded in 1919, is one of the oldest and largest domestic manufacturers of scales for home and medical use.

- *Consumer Products:* Signature Brands markets its consumer products under the *Mr. Coffee*[®], *Health o meier*[®], *Counselor*[®] and *Borg*[®] brand names. Signature Brands produces and markets an extensive line of

Mr. Coffee® brand automatic drip coffeemakers, espresso/cappuccino makers and iced and hot teamakers. Sales of automatic drip coffeemakers accounted for approximately 43% of Signature Brands' net revenues in 1997. Mr. Coffee, Inc. has been the leading producer of automatic drip coffeemakers in the U.S. since 1975. Mr. Coffee® is the leading brand of basket-type coffee filters in the United States. Other consumer products marketed under the Mr. Coffee® brand name include water filtration products, coffeemaker related accessories such as replacement decanters and mug warmers, and other kitchen countertop appliances such as food dehydrators. Under the Health o meter® brand name, Signature Brands manufactures a comprehensive line of analog (mechanical) and digital (electronic) floor scales and waist-high and eye-level scales, and offers a range of health and wellness therapeutic products. Capitalizing on the recently acquired rights to the Borg® and Counselor® brand names, Signature Brands intends to introduce in 1998 a new line of Borg® scales that are distinctly European in design for department and specialty stores. Counselor® scales, to be introduced in 1998, will represent opening price point scales for the mass market. Sales of consumer scales accounted for approximately 19% of Signature Brands' net sales in fiscal 1997. Signature Brands offers its consumer products through a combination of direct sales and independent manufacturers' representatives to distributors and major retail outlets, including mass merchants, national hardware chains, drugstore chains, catalogue showrooms, warehouse clubs, retail grocery chains, specialty stores, department stores and various mail-order companies.

- **Professional Products:** Professional products include the Pelouze® and Health o meter® brands of office, foodservice and medical scales and Mr. Coffee® brand commercial coffeemakers. Signature Brands' reputation for quality and its Health o meter® brand name recognition have been based on its participation in the medical scale market for over 75 years. Products sold as professional products include analog and digital scales for a full range of medical uses, including traditional balance beam scales, pediatric scales, wheelchair ramp scales, chair and sling scales for non-ambulatory patients, and home healthcare scales. Signature Brands' office products, marketed under the Pelouze® brand name, include analog and digital scales designed to provide mailing solutions for small, commercial establishments, home offices and departments within larger companies that process a small to medium volume of letters and packages daily. Pelouze® foodservice products include analog and digital portion control scales, thermometers and timers for commercial and non-commercial applications. Professional scale products are marketed through a combination of direct sales and independent manufacturers' representatives to distributors, dealers, office megastores, mail order companies and major buying groups.

The following table summarizes Signature Brands' net sales for its fiscal year ended September 28, 1997 by product category (in millions):

<u>Product Category</u>	<u>Amount</u>	<u>%</u>
Consumer Products	\$236.0	85.6%
Professional Products	39.7	14.4
Total	<u>\$275.7</u>	<u>100.0%</u>

First Alert

With 1997 net sales of approximately \$187 million, First Alert is the market leader in smoke and carbon monoxide detectors in the United States. First Alert's market position is supported by the strength of the First Alert® brand name, which First Alert believes is the most widely recognized consumer brand in the home safety market. First Alert has capitalized on the First Alert® brand name and its leading smoke detector market share to develop and market a broad range of residential safety products. First Alert is also one of the leading participants in the United States retail fire extinguisher market. The markets for residential smoke and carbon monoxide detectors outside the United States are in a much earlier stage of development than the United States. First Alert's market penetration is greatest in the United Kingdom and Canada. First Alert sells its products to mass merchants, home center and hardware chains, catalog showrooms, warehouse clubs, and electrical wholesale distributors. First Alert also supplies its products to its wholly-owned, non-U.S. subsidiaries and to independent foreign distributors.

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- **Smoke Detectors:** First Alert's smoke detector product line consists of UL listed photoelectric and ionization smoke detectors. First Alert has the leading U.S. market share for their products. First Alert markets its smoke detectors under three principal brand names: the *First Alert*® premium brand name which is featured in media and public relations promotional campaigns; the *Family Gard*® brand name, which is marketed as a lower priced, functional alternative for those consumers who are price sensitive; and the *BRK*® brand name which is sold into the wholesale electrical market.
- **Carbon Monoxide Detectors:** These products include carbon monoxide detectors, first introduced by First Alert in 1993, with biomimetic sensors sold under the *First Alert*® and *Family Gard*® brand names. First Alert holds the leading market position in the carbon monoxide detector market.
- **Fire Extinguishers:** First Alert's disposable fire extinguisher product line was introduced in 1985 to complement its *First Alert*® brand smoke detectors. First Alert currently markets a full range of fire extinguisher products for use by the consumer, including fire extinguishers for use in the kitchen, garage, workshop, automobiles and boats. These products are sold under the *Sure Grip*® brand name which is one of the leading brand names in the U.S. retail fire extinguisher market.

The following table summarizes First Alert's total sales for the year ended December 31, 1997 by product category and geographic area (in millions):

<u>Product Category</u>	<u>Amount</u>	<u>%</u>	<u>Geographic Area</u>	<u>Amount</u>	<u>%</u>
Smoke Detectors	\$101.6	54.4%	U.S.	\$169.0	90.4%
CO Detectors	40.4	21.6	Europe	20.2	10.8
Fire Extinguishers	17.1	9.1	Other	17.8	9.5
Other	27.8	14.9	Eliminations	(20.1)	(10.7)
Total	<u>\$186.9</u>	<u>100.0%</u>	Total	<u>\$186.9</u>	<u>100.0%</u>

Acquisition Structures and Agreements

The Acquisitions will be accounted for by the Company using the purchase method of accounting.

Coleman. Pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Holdings Merger Agreement"), among the Company, Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of the Company ("LAC"), Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings"), and CLN Holdings Inc., a Delaware corporation and a wholly owned subsidiary of Parent Holdings ("CLN Holdings"), LAC will be merged with and into CLN Holdings (the "Holdings Merger"). CLN Holdings is an indirect wholly owned subsidiary of Mafco Holdings, Inc., a corporation wholly owned by Ronald O. Perelman ("Mafco"), and is the indirect beneficial owner of 44,067,520 shares of common stock of Coleman, representing approximately 82.4% of the total number of outstanding shares of common stock of Coleman.

In the Holdings Merger, all of the outstanding shares of capital stock of CLN Holdings will be converted into the right to receive (i) 14,099,749 fully paid and nonassessable shares of Common Stock of the Company and (ii) \$159,956,756 in cash, without interest thereon. As a result of the Holdings Merger, CLN Holdings will become a wholly owned subsidiary of the Company and the Company will become the indirect owner of 82.4% of the outstanding common stock of Coleman.

At the same time that it entered into the Holdings Merger Agreement, the Company also entered into an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Coleman Merger Agreement"), with Coleman and Camper Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of the Company ("CAC"). Pursuant to the Coleman Merger Agreement, following the consummation of the Holdings Merger, CAC will be merged with and into Coleman (the "Coleman Merger"), with Coleman continuing as the surviving corporation. In the Coleman Merger, each outstanding share of Coleman common stock (other than shares held indirectly by the Company and dissenting shares, if any) will be converted into the right to receive (i) 0.5677 of a share of Common Stock of the Company and (ii) \$6.44 in cash, without interest thereon. Upon consummation of the Coleman Merger, Coleman will become an indirect wholly owned subsidiary of the Company.

Consummation of the Holdings Merger is subject to the expiration of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and the satisfaction of certain other customary conditions. It is currently anticipated that the Holdings Merger will be completed in early this spring of 1998. Consummation of the Coleman Merger is subject to the completion of the Holdings Merger and the preparation and filing of definitive documents with the Commission. It is anticipated that the Coleman Merger will be consummated this spring of 1998. Parent Holdings (the direct holder of all outstanding stock of CLN Holdings) and Coleman Worldwide Corporation (the direct holder of 82.4% of the outstanding common stock of Coleman) have approved the Holdings Merger and the Coleman Merger, respectively, and no other stockholder approvals will be required in connection therewith.

Based on the assumption that all presently exercisable Coleman options will be exercised prior to the closing of the Coleman acquisition, the Company expects to issue (and deliver from its treasury) approximately 21.3 million shares of Common Stock (with an aggregate value of approximately \$1 billion based on current market prices) and to pay an aggregate of \$221 million in cash in connection with the Coleman acquisition. On such basis, the Coleman acquisition is valued at approximately \$2.2 billion (including the assumption of approximately \$976 million of indebtedness). If none of the presently exercisable Coleman options are exercised prior to closing of the Coleman acquisition, the Company would expect to issue and deliver approximately 19.4 million shares of Common Stock and pay aggregate cash consideration of \$261 million in connection with the Coleman acquisition.

Signature Brands. Pursuant to the Agreement and Plan of Merger, dated as of February 28, 1998 (the "Signature Brands Merger Agreement"), among the Company, Java Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of the Company ("Java Acquisition"), and Signature Brands, Java Acquisition commenced a tender offer (the "Signature Brands Tender Offer") on March 6, 1998 to acquire all of the outstanding shares of common stock of Signature Brands (the "Signature Brands Common Stock") for \$8.25 per share in cash. Java Acquisition's obligation to purchase shares of Signature Brands Common Stock is subject to there being validly tendered and not withdrawn prior to the expiration of the Signature Brands Tender Offer that number of shares which when added to any shares owned by the Company or Java Acquisition represents at least 51% of the outstanding shares of Signature Brands Common Stock (assuming exercise of all outstanding options and warrants) on the date shares are accepted for payment. In addition, Java Acquisition's obligation to purchase shares of Signature Brands Common Stock is conditioned upon the expiration or termination of the applicable waiting period under the HSR Act prior to the expiration of the Signature Brands Tender Offer and certain other customary conditions.

Pursuant to the Signature Brands Merger Agreement, following the expiration of the Signature Brands Tender Offer, which is initially scheduled to expire at midnight on April 2, 1998, unless extended, and any necessary Signature Brands stockholder approval and provided that Java Acquisition has purchased shares of Signature Brands Common Stock in the Signature Brands Tender Offer and certain other customary conditions are met, Java Acquisition will be merged with and into Signature Brands (the "Signature Brands Merger"), with Signature Brands as the surviving corporation. As a result of the Signature Brands Merger, Signature Brands will become a wholly owned subsidiary of the Company and each outstanding share of Signature Brands Common Stock, which is not owned by Signature Brands or any of its subsidiaries or the Company or any of its subsidiaries, other than shares with respect to which dissenter's rights have been exercised and perfected, will be converted into the right to receive \$8.25 in cash.

Timing of consummation of the Signature Brands Merger is dependent, among other things, upon whether the Signature Brands Tender Offer is extended beyond its initial expiration date and whether, depending on the number of shares tendered and accepted for payment, Signature Brands stockholder approval of the Signature Brands Merger will be required. It is anticipated, however, that the Signature Brands Merger will be consummated early this spring of 1998.

First Alert. Pursuant to an Agreement and Plan of Merger, dated as of February 28, 1998 (the "First Alert Merger Agreement"), among the Company, Sentinel Acquisition Corp., a Delaware corporation and an indirect wholly owned subsidiary of the Company ("Sentinel Acquisition"), and First Alert, Sentinel Acquisition commenced a tender offer (the "First Alert Tender Offer") on March 6, 1998 to acquire all of the outstanding shares of common stock of First Alert (the "First Alert Common Stock"), for \$5.25 per share in cash.

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Sentinel Acquisition's obligation to purchase shares of First Alert Common Stock is subject to there being validly tendered and not withdrawn prior to the expiration of the First Alert Tender Offer that number of shares which when added to any shares owned by the Company or Sentinel Acquisition represents at least a majority of the outstanding shares of First Alert Common Stock (assuming exercise of all outstanding options) on the date shares are accepted for payment. In addition, Sentinel Acquisition's obligation to purchase shares of First Alert Common Stock is conditioned upon the expiration or termination of the applicable waiting period under the HSR Act prior to the expiration of the First Alert Tender Offer and certain other customary conditions.

Pursuant to the First Alert Merger Agreement, following the expiration of the First Alert Tender Offer, which is initially scheduled to expire at midnight on April 2, 1998, unless extended, and any necessary First Alert stockholder approval, and provided that Sentinel Acquisition has purchased shares of First Alert Common Stock in the First Alert Tender Offer and certain other customary conditions are met, Sentinel Acquisition will be merged with and into First Alert (the "First Alert Merger"), with First Alert as the surviving corporation. As a result of the First Alert Merger, First Alert will become a wholly owned subsidiary of the Company and each outstanding share of First Alert Common Stock, which is not owned by First Alert or any of its subsidiaries or the Company or any of its subsidiaries, or other than shares with respect to which dissenter's rights have been exercised and perfected, will be converted into the right to receive \$5.25 in cash.

Timing of consummation of the First Alert Merger is dependent, among other things, upon whether the First Alert Tender Offer is extended beyond its initial expiration date and whether, depending on the number of shares tendered and accepted for payment, First Alert stockholder approval will be required, which would require the preparation and filing of definitive documents with the Securities and Exchange Commission. It is anticipated, however, that the First Alert Merger will be consummated early this spring of 1998.

Although the Company has entered into separate definitive agreements to acquire Coleman, Signature Brands and First Alert, subject to various customary closing conditions, there can be no assurance that any or all of such transactions will be consummated.

For further information with respect to the effects of the Acquisitions, See "Capitalization," "Unaudited Pro Forma Condensed Financial Statements" and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources."

Each of CLN Holdings, Coleman, Signature Brands and First Alert is subject to the informational requirements of the Exchange Act. The information contained herein with respect to CLN Holdings, Coleman, Signature Brands and First Alert is derived from filings by Coleman, Signature Brands and First Alert with the Commission or from information supplied by them for inclusion herein. Neither the Company nor the Initial Purchaser warrants that there have not occurred events, not yet publicly disclosed by CLN Holdings, Coleman, Signature Brands and First Alert, which would affect the accuracy of the statements concerning CLN Holdings, Coleman, Signature Brands and First Alert included herein. See "Available Information."

FINANCING PLAN AND USE OF PROCEEDS

The net proceeds from the Offering are expected to be \$484.0 (\$556.8 if the Initial Purchaser's overallotment option is exercised in full), after deducting discounts and commissions and expenses related to the sale of the Debentures. The net proceeds from the Offering, together with the Bank Financing, will be used to finance the Acquisitions and related transactions.

The Company intends to repay all or substantially all of the currently outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert as promptly as practicable following consummation of each Acquisition, subject to applicable notice provisions and other prepayment terms of the applicable indebtedness. Such repayments are expected to be funded with borrowings under the New Credit Facility and from the net proceeds of the Offering. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

The following table sets forth the expected sources and uses of cash in connection with the financing of the Acquisitions:

Sources		Uses	
(in millions)			
New Credit Facility(a)	\$1,536.9	Repayment of existing indebtedness(b) ...	\$1,504.3
Debentures offered hereby	500.0	Cash Acquisition consideration(c).....	477.6
		Fees and expenses(d)	55.0
Total	<u>\$2,036.9</u>	Total	<u>\$2,036.9</u>

- (a) The New Credit Facility is expected to consist of a \$1.5 billion term debt facility, and a \$500 million revolving credit facility, only \$36.9 million of which is expected to be initially drawn down. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."
- (b) Represents the repayment of existing indebtedness of the Company, CLN Holdings, Signature Brands, and First Alert in the amount of \$202.2 million, \$1,077.2 million, \$179.9 million and \$45.0 million, respectively. Existing indebtedness reflects amounts outstanding as of December 28, 1997, except for indebtedness of CLN Holdings issued at an original issue discount which reflects principal accreted through an assumed repayment date of May 15, 1997. The foregoing amounts include \$7.0 million, \$100.3 million and \$5.5 million of estimated prepayment premiums related to the early retirement of indebtedness of the Company, CLN Holdings and Signature Brands, respectively. As of the actual date of repayment, the outstanding amount of existing indebtedness to be repaid may be greater than the amount shown above due to increased borrowings to finance working capital requirements. The Company intends to refinance any such additional indebtedness using its unused borrowing capacity under the New Credit Facility. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."
- (c) Represents the estimated net cash consideration payable (including the cash-out of options) in connection with the Acquisitions in the amounts of \$261.1 million, \$83.8 million and \$132.7 million for Coleman, Signature Brands and First Alert, respectively.
- (d) Represents estimated transaction costs in connection with the Acquisitions and debt refinancing, including financial advisory fees, Initial Purchaser's commissions, bank fees, and legal and accounting fees and expenses.

For a description of the expected terms of New Credit Facility and other indebtedness of the Company, see "Description of Other Indebtedness—New Credit Facility" and the Notes to the Consolidated Financial Statements included elsewhere in this Offering Memorandum. See also "Risk Factors—New Credit Facility Not Yet Committed."

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PRICE RANGE OF COMMON STOCK AND DIVIDEND POLICY

The Company's Common Stock is listed and traded on the New York Stock Exchange (the "NYSE") under the symbol "SOC."

The following table sets forth the reported high and low sale prices per share for the Common Stock on the NYSE Composite Tape and the cash dividends declared on the Common Stock for the calendar quarters indicated:

	Price Range		Dividends Per Common Share
	High	Low	
1996			
First Quarter	\$19 ³ / ₄	\$15 ¹ / ₈	\$.01
Second Quarter	17 ¹ / ₈	13 ¹ / ₂	.01
Third Quarter	24 ³ / ₄	12 ¹ / ₄	.01
Fourth Quarter	29 ¹ / ₂	22 ³ / ₄	.01
1997			
First Quarter	\$34 ¹ / ₂	\$24 ⁵ / ₁₆	\$.01
Second Quarter	40 ³ / ₄	29 ³ / ₄	.01
Third Quarter	45 ³ / ₄	35 ³ / ₈	.01
Fourth Quarter	50 ⁷ / ₁₆	37	.01
1998			
First Quarter (through March 13, 1998)	\$52	\$36	—

On March 13, 1998, the last reported sale price of Common Stock on the NYSE was \$50.50 per share. On February 27, 1998, there were approximately 1,311 shareholders of record of Common Stock.

The Company presently intends to continue to pay cash dividends at a quarterly rate of \$.01 per share; however, future payments of cash dividends will be at the discretion of the Company's Board of Directors and dependent upon the Company's results of operations, financial condition and other relevant factors, including restrictions expected to be contained in the New Credit Facility.

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CAPITALIZATION

The following table sets forth the capitalization of the Company as of December 28, 1997 on a historical basis and on a pro forma basis after giving effect to (i) the Acquisitions, (ii) the initial borrowings under the New Credit Facility, (iii) the Offering and (iv) the use of the net proceeds from the Offering and from the initial borrowings under the New Credit Facility as described under "Financing Plan and Use of Proceeds." This table should be read in conjunction with "Financing Plan and Use of Proceeds," "Unaudited Pro Forma Condensed Financial Statements," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and the notes thereto of the Company, CLN Holdings, Signature Brands and First Alert included elsewhere in this Offering Memorandum.

	As of December 28, 1997	
	Actual	Pro Forma (unaudited)
	(in millions)	
Cash and cash equivalents	\$ 52.4	\$ 78.9
Short-term debt and current portion of long-term debt	\$ 0.7	\$ —
Long-term debt, net of current portion:		
New Credit Facility	\$ —	\$1,536.9
Existing Revolving Credit Facility(a)	109.3	—
Industrial Revenue Development Notes due 2009	75.0	—
Debentures offered hereby(b).....	—	500.0
Other	10.2	—
Total long-term debt	<u>194.5</u>	<u>2,036.9</u>
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized, none outstanding)	—	—
Common stock (200,000,000 shares authorized; actual shares—89,984,425; issued, unaudited pro forma shares—109,420,895)	0.9	1.1
Paid-in capital	483.4	1,229.7
Retained earnings	141.1	141.1
Other	(30.4)	(30.4)
	<u>595.0</u>	<u>1,341.5</u>
Treasury stock, common stock at cost (4,454,394 shares)	(63.0)	(63.0)
Total shareholders' equity	<u>532.0</u>	<u>1,278.5</u>
Total capitalization	<u>\$727.2</u>	<u>\$3,315.4</u>

(a) Excludes approximately \$59 million from the sale of trade accounts receivable through a revolving trade accounts receivable securitization program. The proceeds from the sale were used to reduce borrowings under the Existing Revolving Credit Facility. The maximum amount of receivables that can be sold under the program is \$70 million.

(b) Represents an assumed aggregate \$500 million issue price for the Zero Coupon Convertible Senior Subordinated Debentures.

UNAUDITED PRO FORMA CONDENSED FINANCIAL STATEMENTS

The following unaudited pro forma condensed balance sheet as of December 28, 1997 was prepared to illustrate the estimated effects of (i) the Acquisitions, accounted for under the purchase method of accounting, (ii) the Bank Financing, (iii) the Offering and (iv) the use of net proceeds from the Offering and from the Bank Financing as described under "Financing Plan and Use of Proceeds" (collectively, the "Pro Forma Transactions"), as if the Pro Forma Transactions had occurred on December 28, 1997. The following unaudited pro forma statement of operations for the year ended December 28, 1997 was prepared to illustrate the estimated effects of the Pro Forma Transactions as if they had occurred as of December 30, 1996.

The fiscal year of the Company ended on December 28, 1997 and the fiscal years of CLN Holdings and First Alert ended on December 31, 1997. The fiscal year of Signature Brands ended on September 28, 1997. The unaudited pro forma condensed financial statements have been derived from the audited financial statements of the Company as of and for the year ended December 28, 1997, the audited financial statements of CLN Holdings and First Alert as of and for the year ended December 31, 1997 and the unaudited financial statements of Signature Brands as of and for the year ended December 31, 1997. The unaudited statement of operations of Signature Brands for the year ended December 31, 1997 has been derived from the audited statement of operations for the year ended September 28, 1997 and the unaudited statements of operations from the three months ended December 31, 1997 and December 31, 1996 in order to present Signature Brands operating results on a basis consistent with the Company's fiscal year.

The pro forma condensed financial statements were prepared utilizing the accounting principles of the respective entities as outlined in each entity's historical financial statements. Certain reclassifications were made to sales, cost of sales and selling, general and administrative expenses as reported in the historical financial statements of CLN Holdings, First Alert and Signature Brands to conform to the classifications of the Company as follows:

	Decrease		
	Sales	Cost of Sales	Selling, General and Administrative
	(in thousands)		
CLN Holdings	\$(71,458)	\$(63,886)	\$(7,602)
First Alert	(9,902)	(4,760)	(5,142)
Signature Brands	(23,171)	(3,725)	(19,446)

Included in the historical Statement of Operations of CLN Holdings are cash and non-cash restructuring charges totaling \$36.4 million and related tax benefits of \$13.9 million. These costs have been allocated to cost of goods sold and selling, general and administration expense in the amounts of \$19.5 million and \$16.9 million, respectively. These costs primarily relate to closing and relocating certain administrative and sales offices, closing several manufacturing facilities, write-down of inventory and fixed assets, as well as severance costs. Additionally, the expense of the early extinguishment of debt of \$15.2 million shown on the CLN Holdings' historical statement of operations has been excluded from the unaudited pro forma condensed statement of operations.

The pro forma adjustments are based upon available information and certain assumptions that the Company believes are reasonable under the circumstances. For purposes of developing the unaudited pro forma condensed financial statements, the assets and liabilities of CLN Holdings, First Alert and Signature Brands have been recorded at historical cost. The allocation of purchase price for the Acquisitions is subject to revision when additional information concerning asset and liability valuations is obtained. Adjustments, which could be significant, will be made during the allocation period based on detailed reviews of the fair values of assets acquired and liabilities assumed and could result in a substantial increase in goodwill. The pro forma condensed financial statements do not include a one-time after-tax \$30 million first quarter 1998 charge by the Company related to the execution of new employment contracts with the Company's Chairman and Chief Executive Officer and two other senior officers of the Company as further discussed in Note 14 of the Company's audited financial statements for the year ended December 28, 1997 or any adjustments for potential synergies or cost savings as a result of the Acquisitions.

The unaudited pro forma financial statements should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations," the financial statements of each of the Company, CLN Holdings, First Alert and Signature Brands and the notes thereto, and the other financial information included elsewhere or incorporated by reference in this Offering Memorandum. This pro forma financial information is provided for informational purposes only and does not purport to be indicative of the results of operations or financial position which would have been obtained had the Pro Forma Transactions been completed on the dates indicated or the financial condition or results of operations for any future date or period.

UNAUDITED PRO FORMA CONDENSED BALANCE SHEET

As of December 28, 1997
(in thousands)

	The Company	The Acquisitions			Adjustments for Acquisitions, Bank Financing and Offering	Adjustments for Disposition of Safety/Security(a)	Pro Forma
		First Alert	Signature Brands (unaudited)	Coleman			
Cash and cash equivalents	\$ 52,378	\$ 2,996	\$ 4,118	\$ 19,362	\$ —	\$ —	\$ 78,854
Receivables, net	295,550	53,678	67,998	179,756	—	(16,335)	580,647
Inventories	256,180	40,285	37,851	236,327	—	(17,624)	553,019
Prepaid expenses and other current assets	53,897	10,680	7,707	47,815	67,779 (b)	(1,655)	186,223
Total current assets	658,005	107,639	117,674	483,260	67,779	(35,614)	1,398,743
Property, plant and equipment, net	240,897	28,181	16,820	175,494	—	(10,746)	450,646
Other intangibles	169,622	6,496	—	—	(973)(d)	—	175,145
Goodwill	24,750	22,045	134,921	338,989	1,364,215 (e) (458,081)(d)	(37,874)	1,888,965
Other assets	27,010	—	5,663	100,126	44,781 (f) (44,722)(d)(c)	469	133,327
Total assets	<u>\$1,120,284</u>	<u>\$164,361</u>	<u>\$275,078</u>	<u>\$1,097,869</u>	<u>\$ 1,472,999</u>	<u>\$ (83,765)</u>	<u>\$4,046,826</u>
Short-term debt and current portion of long-term debt	\$ 668	\$ 45,026	\$ 5,000	\$ 67,233	\$ 117,847 (g)	\$ 80	\$ —
Other current liabilities	197,431	33,002	51,494	189,529	13,317 (c)	9,010	449,129
Total current liabilities	198,099	78,028	56,494	256,762	131,164	9,090	449,129
Long-term debt	194,580	—	164,060	980,447	1,250,050 (g) (2,036,938)(h)	89,037	2,036,938
Other long-term liabilities	195,668	4,933	6,539	117,309	42,150 (i)	—	282,299
Shareholders' equity	531,937	81,400	47,985	(256,649)	(112,902)(j) (746,523)(k)	(14,362)	1,278,460
Total liabilities and shareholders' equity	<u>\$1,120,284</u>	<u>\$164,361</u>	<u>\$275,078</u>	<u>\$1,097,869</u>	<u>\$ (1,472,999)</u>	<u>\$ 83,765</u>	<u>\$4,046,826</u>

See Notes to Unaudited Pro Forma Condensed Financial Statements.

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UNAUDITED PRO FORMA CONDENSED STATEMENT OF OPERATIONS

As of December 28, 1997
(in thousands, except per share data)

	The Company	The Acquisitions			Adjustments for Acquisitions, Bank Financing and Offering	Adjustments for Disposition of Safety/Security(l)	Pro Forma
		First Alert	Signature Brands (unaudited)	Coleman			
Net sales	\$1,168,182	\$ 177,039	\$255,766	\$1,082,806	\$ —	\$ 83,413	\$2,595,380
Cost of goods sold	837,683	135,731	188,669	776,445	—	(59,886)	1,878,642
Amortization of goodwill and intangibles	7,829	704	3,925	14,704	46,605 (m) (19,366)(n)	(992)	53,409
Selling, general and administrative expense	123,227	49,071	44,646	259,033	—	(19,608)	456,369
Operating earnings (loss)	199,443	(8,467)	18,526	32,624	27,239	7,927	206,960
Interest expense, net and other expense	10,163	4,593	18,115	93,693	136,139 (o)(p) (125,483)(q)(i)	(4,344)	132,876
Earnings (loss) from continuing operations before income taxes	189,280	(13,060)	411	(61,069)	37,895	3,583	74,084
Income taxes (benefit)	66,152	(5,224)	1,889	(24,162)	8,816(r)	(1,362)	46,109
Earnings (loss) from continuing operations before extraordinary items	\$ 123,128	\$ (7,836)	\$ (1,478)	\$ (36,907)	\$ 46,711	\$ 2,221	\$ 27,975
Earnings (loss) per share of common stock from continuing operations:							
Basic	\$ 1.45						\$ 0.27
Diluted	\$ 1.41						\$ 0.26
Weighted average common shares outstanding:							
Basic	84,945						104,381 (s)
Diluted	87,542						106,978 (s)

See Notes to Unaudited Pro Forma Condensed Financial Statements.

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NOTES TO UNAUDITED PRO FORMA CONDENSED FINANCIAL STATEMENTS

- (a) Represents the elimination of the assets and liabilities related to the announced sale of CLN Holdings' Safety/Security Division as of December 31, 1997 and reflects the net proceeds from the sale as a reduction of long-term debt. The sale of this division is expected to be completed prior to the acquisition of CLN Holdings.
- (b) Represents the tax benefit at 37.6% of (1) the cash out of stock options as a result of the Acquisitions and (2) the prepayment penalty on refinanced indebtedness of the Company, Coleman and Signature Brands.
- (c) Represents the elimination of an intercompany tax receivable and payable on the financial statements of CLN Holdings relating to a tax sharing agreement with Mafco that will be cancelled in connection with the Holdings Merger. The net tax receivable will be assigned to Mafco in connection with the Holdings Merger.
- (d) Represents the elimination of the historical goodwill and organizational costs of First Alert, Signature Brands and CLN Holdings in amounts of \$23,018, \$139,005 and \$306,358, respectively.
- (e) Represents the excess of cost over book value of the net assets acquired of First Alert, Signature Brands and CLN Holdings in the amounts of \$73,457, \$181,954 and \$1,604,436, respectively and an additional \$4,368 relating to the Company's debt prepayment penalty. No estimate has been made in these pro forma statements of the one-time expenses that will be incurred in the rationalization of the businesses that will result from these Acquisitions. The amount of goodwill will change once the Company completes the final allocation of purchase price.
- (f) Represents the estimated capitalizable debt issuance costs.
- (g) Represents the repayment of the existing indebtedness of the Company, CLN Holdings, Signature Brands and First Alert in the amount of \$195,248, \$958,563, \$169,060 and \$45,026, respectively.
- (h) Represents the issuance of new long-term debt to fund the Acquisitions and the refinancing of outstanding indebtedness in the amounts of \$202,248, \$1,338,263, \$263,531 and \$177,896 for the Company, CLN Holdings, Signature Brands, and First Alert, respectively, and to fund approximately \$55 million in transaction costs. This new debt will be funded by borrowings of \$1,530,000 under the New Credit Facility at an assumed interest rate of LIBOR plus 1.25% (6.9325% at March 13, 1998) and the Debentures offered hereby at an assumed yield to maturity of 5% (or approximately \$1,300,000 principal amount at maturity).
- (i) Represents the elimination of the minority interest of Coleman's equity held by the public shareholders. Amount also includes the elimination of the minority interest loss for the period ended December 31, 1997.
- (j) Represents the elimination of the historical equity balances of First Alert, Signature Brands and CLN Holdings.
- (k) Includes the 14,099,749 and 5,366,721 shares held by Mafco and public shareholders, respectively, with a total equity value of \$756.7 million less estimated transactions costs of approximately \$10.2 million. This equity value was derived by using the average ending stock price as reported by the NYSE Composite Tape for the day before and day of the public announcement of the acquisition. Additionally, the shares held by Mafco have been discounted 15% due to the restrictive nature of the securities.
- (l) Represents the elimination of the 1997 results of operations relating to the sale of CLN Holdings' Safety/Security Division. The Unaudited Pro Forma Condensed Statement of Operations reflects the sale of CLN Holdings' Safety/Security Division as of January 1, 1997. The sale of this division is expected to be completed prior to the acquisition of CLN Holdings.
- (m) Represents amortization, on a straight-line basis, for goodwill (see Note (e)) over a period of forty-years.
- (n) Represents the reduction in amortization expense resulting from the elimination of the historical goodwill and organizational costs as discussed in Note (d) above.

NOTES TO UNAUDITED PRO FORMA CONDENSED FINANCIAL STATEMENTS—(Continued)

- (o) Represents interest expense on \$2,037,000 estimated borrowing under the New Credit Facility and the Debentures at the assumed rates set forth in Note (h) above in the aggregate amount of \$136,139 (\$106,625 with respect to the New Credit Facility and \$25,000 with respect to the Debentures). Amount also includes estimated debt issuance costs aggregating \$4,514 related to the New Credit Facility amortized on a straight-line basis over a period of seven-years and the Debentures amortized on a weighted average accreted basis over a twenty-year period.
- (p) The interest rate on borrowings under the New Credit Facility and the yield to maturity of Debentures may differ from the assumptions set forth in Note (h) above. The effect on income of a $\frac{1}{8}$ percent variance in interest rate is approximately \$1.9 million with respect to the borrowings under the New Credit Facility and \$0.6 million with respect to the Debentures.
- (q) Represents the reduction in interest expense resulting from the debt refinancing as discussed in Note (g) above.
- (r) Represents the incremental change in the consolidated entity's provision for income taxes at 37.6% as a result of the pre-tax earnings of First Alert, Signature Brands and Coleman, and all pro forma adjustments as described above.
- (s) Represents basic and diluted weighted average shares outstanding of the Company as of December 28, 1997 plus the additional equity issued in connection with the acquisition of CLN Holdings as discussed in Note (k) above. The incremental shares relating to the Debentures have not been included, as they would be anti-dilutive.

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**MANAGEMENT'S DISCUSSION AND ANALYSIS OF
FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

Year Ended December 28, 1997 Compared to the Year Ended December 29, 1996

In November 1996, the Company initiated a major restructuring and growth plan designed to substantially reduce its cost structure and grow the business in order to restore higher levels of profitability for the Company. By July 1997, the Company completed the major phases of the restructuring plan. The \$225.0 million of annualized cost savings anticipated from the restructuring results primarily from the consolidation of administrative functions within the Company, the rationalization of manufacturing and warehouse facilities (including a reduction in the number of production facilities from 26 to 8 and warehouses from 61 to 18), the elimination of over 6,000 positions (including 3,300 from the divestiture of non-core businesses described below and approximately 2,800 other positions), the centralization of the Company's procurement function and re-negotiation of supply contracts resulting in procurement savings for raw materials, components and sourced finished products and the reduction of the Company's product offerings and stock keeping units ("SKU's"). The restructuring and growth plan also included a redefinition of the Company's core product categories and the elimination of those businesses and product lines that did not fit the core categories. Sunbeam's core product categories are Appliances, Health at Home, Personal Care and Comfort, Outdoor Cooking and Away From Home. Product categories and businesses determined to be non-core were divested in 1997, including the Company's furniture business and its time and temperature, decorative bedding and Counselor® and Borg® scale product lines. In addition, the Company sold its textile mill in Biddeford, Maine in 1997.

Net sales from continuing operations for 1997 were \$1,168.2 million, an increase of \$183.9 million or 18.7% over 1996. Net sales on a normalized basis, after excluding divested product lines which are not classified as discontinued operations (time and temperature products, decorative bedding and Counselor® and Borg® branded scales), increased 22.4% during the year.

Global sales, on a normalized basis, increased during 1997 in all five of the Company's product categories primarily from new product introductions, improved distribution (particularly with the Company's top ten customers), international geographic expansion and improved price realization for certain products. Global sales growth on a normalized basis exceeded 25% in the Appliance, Outdoor Cooking and Away From Home categories with sales increases of 26.8%, 27.2% and 28.6%, respectively. Sales in the Health at Home category increased 10.7% on a normalized basis and sales in the Personal Care and Comfort category increased 3.4% during 1997.

The Company's Appliance category sales increases were driven by new products, such as re-designed blenders and mixers, coffeemakers, irons, deep fryers and toasters, and by increased distribution with large national mass retailers. Sales of Outdoor Cooking products increased in 1997 after three straight years of declines as a result of increased merchandising and advertising programs, new distribution and the introduction of an entirely new line of grills and accessories for the 1998 season that began to ship in the fourth quarter of 1997 under a new "early buy" marketing program that included, among other things, extended credit terms with due dates in the second quarter of 1998. The Company sold approximately \$50.0 million of Outdoor Cooking Products under this program in the fourth quarter of 1997. The early buy program for Outdoor Cooking products is designed to improve customer service levels and production efficiencies with more level seasonal production and distribution activities that have historically peaked in the first half of each year and to drive additional retail sell-through of Outdoor Cooking products by reducing the likelihood of retail stock-outs during the important first and second quarter 1998 selling season.

Sales of Personal Care and Comfort products were up over 30% through September 1997, but suffered during the fourth quarter as a result of lower than expected retail sell-through of electric blankets in key northern markets in late 1997 coupled with the inability to service demand for king and queen sized blankets due to shortages of blanket shells. The Company anticipates shifting to a more level production for blankets in 1998 in order to more adequately service the seasonal demand for bedding products. Health at Home category sales increased as a result of new products and improved distribution in the drug channels. Away From Home sales increased in 1997 as a result of new products, including cordless clippers and titanium blades, coupled with increased distribution of commercially rated appliances. Also contributing to the Company's sales growth in 1997 were its new retail outlet stores, of which 22 were open by the end of 1997.

International sales, which represented 21% of total revenues in 1997, grew 31.2% during the year. This sales growth was driven primarily by 54 new 220 volt product introductions and the execution of 25 new international

distribution and license agreements. Revenue growth of approximately 34% was achieved both in Mexico and by the Company's Latin American export sales organization, and sales in Venezuela and Canada increased approximately 23% each. European sales fell slightly in 1997, however the Company expects that expanded electric blanket and clipper sales along with the help of additional new distribution agreements will benefit European sales in 1998.

The gross margin percentage for 1997 increased 19.8 percentage points to 28.3%. This increase reflects the results of many cost savings and margin enhancement initiatives undertaken as part of the Company's restructuring plan coupled with the incremental margin attributable to new products and higher revenues associated with the Company's growth plan. The Company initiated a manufacturing refinement program in the second quarter of 1997 targeted at aggressively improving factory productivity at all of its remaining operations, including the Neosho, Missouri Outdoor Cooking Products facility which suffered from poor productivity and operating inefficiencies during the 1997 grill season. The benefits of the refinement program began to favorably impact factory productivity in several factories during the third quarter of 1997. The refinement of the Neosho facility, which was completed prior to the initiation of production for the 1998 grill season in the fourth quarter, included a revised plant layout to improve material flow, increased usage of common parts in the manufacturing process and modifications to the paint system to increase capacity and throughput.

Operating earnings for 1997 were \$199.4 million, an increase of \$195.0 million over 1996, excluding the impact of the 1996 special charge. As a percentage of sales, the operating margin of 17.1% increased 16.6 percentage points above last year's operating margin, excluding 1996 special charges. The operating margin improvements for 1997 were the result of the improved gross margin discussed above and lower selling, general and administrative ("SG&A") costs in 1997 associated with the consolidation of six divisional and regional headquarters into one corporate headquarters and one administrative operations center, reduced staffing levels, the outsourcing of certain administrative and distribution functions, a reduction in the number of warehouses, and Company wide cost control initiatives. In addition, SG&A during 1996 included incremental compensation costs associated with restricted stock awards and other costs related to the employment of a new senior management team, higher than normal expenditures for market research, packaging and other initiatives related to the launch of the Company's growth plan, and higher bad debt expenses associated with certain of the Company's customers. The cost reduction initiatives and one time items in 1996 coupled with increased sales in 1997 resulted in SG&A decreasing as a percentage of sales from 17.4% in 1996 (excluding the impact of special charges) to 11.2% for 1997.

Interest expense decreased from \$13.6 million in 1996 to \$11.4 million in 1997 primarily as a result of lower average borrowing levels in 1997 due to improved cash flows.

The effective income tax rate of 35% for 1997 and 1996 for earnings (loss) from continuing operations was lower than the statutory federal and state rates as a result of lower foreign taxes from the utilization of foreign tax credits and loss carryforwards and lower state income taxes as a result of certain state income tax credits.

The Company's diluted earnings per share from continuing operations was \$1.41 per share versus a loss per share from continuing operations in 1996 of \$2.37. The Company's share base utilized in the diluted earnings per share calculation increased approximately 6% during 1997 as a result of an increase in the number of shares of common stock and common stock equivalents outstanding due to the exercise of stock options and a higher market value of the Company's common stock in 1997.

The Company's discontinued furniture operations, which were sold in March 1997, had revenues of \$51.6 million in the first quarter of 1997 prior to the sale and break-even earnings. In 1996, the discontinued furniture operations had net income of \$.8 million on revenues of \$227.5 million and an estimated loss on disposal of the business of \$32.4 million, net of applicable income tax benefits. The sale of the Company's furniture business assets (primarily inventory, property, plant and equipment) was completed in March 1997.

The Company received \$69 million in cash and retained accounts receivable related to the furniture business of approximately \$50.0 million as of the closing date. The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the Asset Purchase Agreement and in the first quarter of 1997, after completion of the sale, the Company recorded an additional loss on disposal of \$13.7 million, net of income tax benefits. See discussion of Restructuring, Impairment and Other Costs in Note 8 and Discontinued Operations and Assets Held For Sale in Note 9 to the Company's consolidated financial statements for further information regarding the individual components of the 1996 special charge and details of the 1997 activity in the Company's restructuring accrual.

Year Ended December 29, 1996 Compared to the Year Ended December 31, 1995

The Company's operating results for 1996 include the effects of a pre-tax special charge of \$337.6 million recorded in conjunction with the implementation of its restructuring and growth plan announced in November 1996. Approximately 20% of the charge was for cash items primarily for severance costs and lease and other facility exit costs. The special charge to earnings in 1996 is included in the following categories on the consolidated statement of operations:

	Pre-tax Dollar Amount	After-tax Per Share Amount
	(in millions)	
Restructuring, impairment and other costs	\$154.9	\$(1.21)
Cost of sales	92.3	(0.72)
Selling, general and administrative	42.5	(0.33)
Estimated loss from discontinued operations	47.9	(0.39)
Total	<u>\$337.6</u>	<u>\$(2.65)</u>

Net sales from continuing operations of \$984.2 million for 1996 represents a decrease of \$32.7 million, or 3.2%, from 1995. The Company experienced a loss from continuing operations of \$196.7 million or \$2.37 per share for 1996 versus earnings from continuing operations of \$37.6 million or \$.45 per share (diluted) in 1995 primarily as a result of the restructuring activities discussed above. The net loss for 1996 was \$228.3 million, or \$2.75 per share, compared to net earnings of \$50.5 million, or \$0.61 per share (diluted), for 1995. Excluding the impact of special charge items for 1996, earnings from continuing operations before income taxes decreased from \$60.6 million in 1995 to a loss of \$12.9 million in 1996.

Domestic sales represented approximately 80% of total sales of the Company in 1996 and decreased \$28.5 million or 3.4% from 1995. This sales decline was driven by lower sales of outdoor cooking products, which declined 7.3% and lower sales of bedding products which declined 9.0% from 1995, primarily as a result of lower decorative bedding sales (divested in December 1996). Domestic sales of appliance products were flat with sales increases from new products such as vegetable steamers and toaster ovens being offset by reduced pricing on breadmakers. Sales of other product categories such as health and personal care products and time and temperature products (divested in March 1997) were either flat or declined slightly from 1995 levels.

International sales decreased \$4.2 million or 2.2% from 1995 primarily as a result of lower sales in Latin America due to political and/or economic instability in several countries such as Ecuador, Peru, Columbia and Venezuela (which suffered a bolivar devaluation in April 1996), a sales decline of 11.2% in Canada as a result of the bankruptcy filing of the Company's then largest Canadian customer offset by a 55.0% increase in sales in Mexico as a result of a more stable economic environment in 1996.

The Company's gross margin percentage, excluding the impact of special charges, was 17.9% of sales in 1996, down from 20.4% in 1995, primarily from the underabsorption of higher manufacturing costs and excess manufacturing capacity that has been realigned for 1997 and beyond by the Company's restructuring and growth plan cost reduction initiatives.

SG&A expenses, excluding the impact of special charges described above, were 17.6% of sales in 1996 primarily as a result of an inflated cost structure that has been realigned for 1997 and beyond. In addition, a \$12.0 million fourth quarter 1996 media advertising campaign and one-time expenditures for market research, new packaging, and other growth plan initiatives resulted in higher than normal SG&A spending in 1996. Also included in 1996 SG&A costs were \$7.7 million of compensation expense resulting from restricted stock awards made in connection with the employment of a new senior management team.

Interest expense for 1996 increased from \$9.4 million in 1995 to \$13.6 million as a result of increased indebtedness of the Company for working capital requirements and non-recurring capitalized interest in 1995 related to the construction of the Hattiesburg manufacturing and distribution center.

The effective income tax rate for 1996 decreased 3 percentage points from 1995 to 35.0% as a result of certain foreign and state operating losses for which no tax benefits were recorded and the non-deductibility of compensation expense related to restricted stock awards.

The Company's discontinued furniture operations had revenues of \$227.5 million in 1996, up 22.6% from \$185.6 million in 1995. This revenue growth was the result of the acquisition of the Samsonite® furniture business in November 1995. Excluding the impact of this acquisition, furniture business sales declined 2.1%. Earnings from the discontinued furniture operations, net of taxes, declined from \$12.9 million in 1995 to \$3.8 million in 1996 primarily as a result of lower gross margins from reduced pricing, underabsorption of higher manufacturing costs and higher raw material costs. In addition, SG&A costs increased due to the inclusion of the Samsonite® furniture business, higher distribution and warehousing costs, particularly with resin furniture products and higher bad debt expenses.

Foreign Operations

During 1997 approximately 90% of the Company's business was conducted in U.S. dollars (including both domestic sales, U.S. dollar denominated export sales primarily to certain Latin American markets, Asian sales and the majority of European sales). The Company's exposure to market risk from changes in foreign currency and interest rates is generally insignificant. The Company's non-U.S. dollar denominated sales are made principally by subsidiaries in Mexico, Venezuela and Canada. Venezuela is considered a hyperinflationary economy for accounting purposes for 1995, 1996 and 1997 and Mexico reverted to hyperinflationary status for accounting purposes in 1997; therefore, translation adjustments related to Venezuelan and Mexican net monetary assets are included as a component of net earnings. Such translation adjustments were not material to 1995, 1996 and 1997 operating results.

On a limited basis, the Company selectively uses derivatives (foreign exchange option and forward contracts) to manage foreign exchange exposures that arise in the normal course of business. No derivative contracts are entered into for trading or speculative purposes. The use of derivatives did not have a material impact on the Company's financial results in 1995, 1996 and 1997. See Note 4 to the Company's consolidated financial statements.

Liquidity and Capital Resources

As of December 28, 1997, the Company had cash and cash equivalents of \$52.4 million and total debt of \$195.2 million. Cash used in operating activities during 1997 was \$8.2 million compared to \$14.2 million provided by operating activities in 1996. This decrease is primarily attributable to an increase in earnings before non-cash charges in 1997 and the utilization of tax benefits generated from the implementation of the Company's restructuring plan, offset by higher accounts receivable due to increased sales in 1997 and certain seasonal dating terms, increased inventory levels in 1997 necessary to support continued anticipated sales growth and the Company's initiatives to improve customer service levels and 1997 cash expenditures required to implement the restructuring plan. In addition, cash used in operating activities reflects \$59 million of proceeds from the sale of trade accounts receivable under the Company's revolving trade accounts receivable securitization program entered into in December 1997 as more fully described in Note 3 to the Company's consolidated financial statements.

Capital spending totaled \$58.3 million in 1997 and was primarily for new products, cost reduction and capacity expansion initiatives. Capital spending in 1996 was \$75.3 million (including \$14.5 million related to the discontinued furniture operations) and was primarily attributable to new product development, cost reduction initiatives and a \$5.0 million warehouse expansion financed with a capital lease. Capital spending in 1995 reflected approximately \$59.4 million associated with the Hattiesburg facility, \$27.4 million related to new product development and \$10.8 million attributable to the discontinued furniture business. The remaining 1995 capital spending was related to cost reduction projects, productivity initiatives and environmental compliance including \$14.4 million for a powder coat paint system for Outdoor Cooking products. The Company anticipates 1998 capital spending to be approximately 5% of sales and primarily related to new product introductions, capacity additions and certain facility rationalization initiatives.

Cash provided by investing activities also reflects \$91.0 million in proceeds from sales of businesses, assets and product categories determined to be non-core to the Company's ongoing operations in conjunction with the 1996 restructuring plan. Cash used in investing activities for 1995 includes the purchase of a portion of the Company's furniture business, which was subsequently divested in full in March 1997.

Cash provided by financing activities totaled \$16.4 million in 1997 and reflects net borrowings of \$5.0 million under the Company's revolving credit facility, \$12.2 million of debt repayments related to the divested furniture operations and other assets sold and \$26.6 million in cash proceeds from the exercise of stock

options, substantially all by former employees of the Company. In 1996, cash provided by financing activities of \$45.3 million was primarily from increased revolving credit facility borrowings to support working capital and capital spending requirements, \$11.5 million in new issuances of long-term debt and \$4.6 million in proceeds from the sale of treasury shares to certain executives of the Company. In July 1997, the Company reduced the amount of available borrowings under its September 1996 unsecured five year revolving credit facility from \$500 million to \$250 million.

The Company is a party to various environmental proceedings, substantially all related to previously divested operations. In connection with the Company's restructuring plan a comprehensive review of environmental exposures was undertaken and the Company accelerated its strategy for the resolution and settlement of certain environmental claims. This review and change in strategy resulted in additional environmental reserves being recorded in 1996 as more fully described in Note 12 to the consolidated financial statements. In management's opinion, the ultimate resolution of these environmental matters will not have a material adverse effect upon the Company's financial condition.

On March 2, 1998, the Company announced the signing of definitive agreements to acquire Coleman, Signature Brands and First Alert which are subject to various customary conditions including regulatory approvals. The Company's ability to complete the Acquisitions, which is expected in the early spring of 1998, is contingent on acquisition debt issuances. In connection with the Acquisitions, the Company plans to refinance existing indebtedness of the acquired companies as well as all or substantially all of its existing long-term debt. The Company expects to finance the cash portion of the Acquisitions and all debt refinancings through a combination of the Bank Financing and the Offering. For additional information regarding the Acquisitions, see Note 14 to the Company's Consolidated Financial Statements of the Company included elsewhere in this Offering Memorandum.

The Company believes its cash flow from operations, existing cash and cash equivalent balances, its receivable securitization program, together with expected available borrowings under the revolving credit portion of the New Credit Facility, will be sufficient to support working capital needs, capital spending, debt service and acquisition related cash requirements for the foreseeable future.

The Company is currently discussing the terms of the New Credit Facility. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

New Accounting Standards

See Note 1 to the Company's consolidated financial statements for a discussion of Statement of Financial Accounting Standards ("SFAS") No. 130, *Reporting Comprehensive Income* and SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*, both of which are required to be adopted for fiscal years beginning after December 15, 1997. The adoption of these standards will not impact the Company's consolidated results of operations, financial position, or cash flows.

Year 2000

The Company has assessed and continues to assess the impact of the Year 2000 issue on its operations, including the development and implementation of project plans and cost estimates required to make its information systems infrastructure Year 2000 compliant. Based on existing information, the Company believes that anticipated spending necessary to become Year 2000 compliant will not have a material effect on the financial position, cash flows or results of operations of the Company, nor will the Year 2000 issues cause any material adverse effect on the future business operations of the Company.

Subsequent Events

For a discussion of the Acquisitions and the new three year employment contracts between the Company and each of Mr. Dunlap, Mr. Kersh and Mr. Fannin, see Note 14 to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

BUSINESS

General

The Company is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacture, marketing and distribution of durable household consumer products through mass merchandisers, home centers and other channels (such as Wal-Mart, Kmart and Home Depot) in the United States and internationally. The Company also sells its products to commercial end users such as hotels and other institutions. Sunbeam products enjoy a long-standing reputation for quality, and a majority of the Company's sales are from products which hold the number one or two market share in their respective product categories. In 1997, the Company's net sales were approximately \$1,168 million.

The Company's five product categories are: (1) Appliances (mixers, blenders, food steamers, bread makers, rice cookers, coffee makers, toasters, irons and garment steamers); (2) Health at Home (vaporizers, humidifiers, air cleaners, water filters, massagers and scales); (3) Personal Care and Comfort (shower massagers, hair clippers and trimmers, electric warming blankets); (4) Outdoor Cooking (electric, gas and charcoal grills and grill accessories); and (5) Away From Home (clippers and related products for professional beauty, barber and veterinarian trade and sales of products to commercial and institutional channels). The International Group is responsible for sales (primarily of small appliances, personal care, grills and comfort products, professional clippers and related products) in all countries other than the United States.

The Company was organized in 1989 (as Sunbeam-Oster Company, Inc.) and in September 1990, Sunbeam acquired the assets and assumed certain liabilities, through a reorganization, of Allegheny International, Inc. (the "Predecessor"). In August 1992, the Company completed a public offering of 20,000,000 shares of its common stock. In May 1995, the Company changed its name from Sunbeam-Oster Company, Inc. to Sunbeam Corporation.

The Company has a management team with extensive consumer products experience and proven expertise in cost containment and operational improvement. On February 20, 1998, each of the Company's Chairman and Chief Executive Officer, Mr. Dunlap; the Vice Chairman and Chief Financial Officer, Mr. Kersh; and the Executive Vice President, General Counsel and Secretary, Mr. Fannin, signed new three year employment contracts with the Company which include substantial equity-based compensation. See "Management—New Employment Contracts."

Restructuring and Growth Plan

In the Fall of 1996, under newly elected Chairman, Albert J. Dunlap, the Company announced a major restructuring and growth plan. The restructuring portion of the plan was completed during 1997, resulting in a significant reduction in employees, facilities and costs, all of which is anticipated to generate approximately \$225 million in annual savings for the Company. As a part of the restructuring plan, the Company divested its non-core business and assets, including furniture, time and temperature, decorative bedding, gas heaters and logs, Counselor® and Borg® scale business and the Company's Biddeford, Maine textile mill.

The Company's restructuring plan included the closure of 18 factories, 43 warehouses and 5 headquarters, resulting in the consolidation of all corporate offices into a single headquarters office located in Delray Beach, Florida and an operations facility at its Hattiesburg, Mississippi manufacturing and distribution facility. The number of manufacturing facilities has been reduced from twenty-six to eight (four in the US and four international). See "Properties" below.

The Company has also consolidated all purchasing functions, substantially reduced the number of stock keeping units maintained by the Company and outsourced certain administrative, manufacturing and distribution activities.

The Company has developed a comprehensive three year growth plan for its core business. Sunbeam's goal is for revenues to double, reaching \$2 billion by 1999, with operating margins improving to 20% of sales. This revenue growth is anticipated to be derived, in large part, by the development of new innovative products and the globalization of the Company. Domestically, the goal is to introduce at least 30 new products each year; during 1997, the Company introduced 35 new domestic products and 54 new international products. In its international business, the Company has a goal to triple international sales to \$600 million by 1999. During 1997, the

Company entered into 25 new international distribution/license agreements. The Company has also identified new channels of distribution as additional sales growth opportunities, including commercial organizations and "direct to the consumer" channels such as catalogs, the Internet and Sunbeam® factory outlet stores. The foregoing contains certain forward-looking statements that involve risks and uncertainties, see "Forward-Looking Statements" and "Risk Factors" for cautionary remarks concerning these statements.

Both international expansion and new product introductions will be supported by a significant investment in a major new advertising program that is geared to strengthen the Sunbeam®, Oster® and Grillmaster® brands in the marketplace.

Products

The Company's core product categories are as follows:

Appliances

Small kitchen appliances including Mixmaster® stand mixers, hand mixers, Osterizer® blenders, food processors, rice cookers, food steamers, toasters, can openers, coffee makers, bread makers, waffle makers, ice cream makers, frying pans, deep fryers and culinary accessories, are sold primarily under the Sunbeam® and Oster® brand names. The Company holds the number one or two market positions in blenders, mixers and bread makers. The Appliance category also encompasses garment care appliances consisting of irons and steamers. Sales of appliances accounted for approximately 32% of the Company's domestic net sales in 1997.

Health at Home

The Company markets its home health products under the Sunbeam® name and the trademark Health at Home®. These products include heating pads, bath scales, blood pressure and other health-monitoring instruments, massagers, vaporizers, humidifiers and dental care products. This product category also includes the recently introduced AllergySmart™ air detector and air cleaner and the FreshSource™ power water filter. Sales of health care products accounted for approximately 10% of the Company's domestic net sales in 1997.

Personal Care and Comfort

The Company's Personal Care and Comfort products include a broad line of electric blankets, comforters and Cuddle-Up® heated throws, shower massagers, and hair clippers and trimmers for animals and humans which are sold through retail channels. The Company holds the number one market position in electric blankets, heated throws and retail hair clippers. Sales of Personal Care and Comfort products accounted for approximately 18% of the Company's domestic net sales in 1997.

Outdoor Cooking

Sunbeam is a leading supplier of outdoor barbecue grills. Sunbeam has the leading market share position in the gas grill industry. Barbecue grills consist of propane, natural gas, electric and charcoal models sold primarily under the Sunbeam® and Grillmaster® brand names. Sales of outdoor cooking products accounted for approximately 34% of the Company's domestic net sales in 1997.

Away from Home

The Company markets a line of professional barber, beauty and animal equipment, including the electric and battery clippers, replacement blades and other grooming accessories sold to both conventional retailers and through professional distributors. In addition, the Company is expanding the market of its appliances, scales and Personal Care and Comfort products to institutional and commercial channels. Sales of Away from Home products described above accounted for approximately 6% of the Company's domestic net sales in 1997.

International

The Company markets a variety of products (primarily small kitchen appliances, Personal Care and Comfort products, grills, professional clippers and related products) outside the U.S. While the Company sells many of the same products domestically and internationally, it also sells products designed specifically to appeal to foreign markets. The Company, through its foreign subsidiaries, has manufacturing facilities in Mexico and Venezuela.

and sales offices in Canada, the United Kingdom, Hong Kong and Australia. The Company's international products are sourced from the Company's United States, Mexican or Venezuelan manufacturing operations or from vendors primarily located in Asia. International sales accounted for approximately 21% of the Company's total net sales in 1997.

To date, the Company's activities outside the United States have been primarily focused in Mexico, Latin America and Canada. The Company enjoys a strong market position in a number of product categories in Latin America. The Oster® brand has the leading market share in small appliances in a number of Latin American countries.

The Company's pending acquisitions of Coleman, Signature Brands and First Alert are anticipated to provide new opportunities for international expansion of the Company's activities. See "The Acquisitions."

Competitive Strengths

Sunbeam competes in markets with well-established United States and foreign companies on the basis of various strengths, depending on the country, product category and distribution channels. The Company believes that it is well-positioned to pursue continued growth as a result of these competitive strengths, which include the following:

Market Leadership. The majority of Sunbeam sales are from products in which the Company holds the number one or two market share position. The Company believes that this combination of leading brand-name products and breadth of product offerings makes Sunbeam an attractive vendor to all retailers, particularly those who are consolidating their suppliers.

Brand Name Recognition. The Sunbeam® and Oster® brands have been household names for generations. The Company believes that these brands, along with its other well-known secondary brand names such as Mixmaster®, Osterizer® and Grillmaster®, draw customers into retail stores specifically to purchase products bearing these brand names. During 1997, the Company spent over \$56 million, or approximately 5% of its 1997 net sales, for advertising and sales promotion to support brand recognition.

Distribution Network. The Company has one of the premier mass merchant distribution networks serving large national retailers in the United States. The Company also has a strong network of well-established distributors and service organizations in Latin America. The Company supports its customers' needs with strong warehousing and distribution capabilities, a broad, high-quality product portfolio, electronic data interchange and just-in-time product delivery capabilities. The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogues, Company-owned outlet stores and pet supply retailers, as well as independent distributors and military post exchange outlets.

Strong Position in Consolidating Retail Environment. The consolidation trend in the retail industry has resulted in the emergence and global expansion of large mass merchandisers. These merchandisers demand financially strong, efficient suppliers who offer a broad range of innovative, quality products, have the ability to make timely shipments in large volumes and provide strong customer, promotional and merchandising support. The Company continues to benefit from this trend and believes it has the opportunity to further expand distribution with a number of major retailers while increasing its penetration of existing accounts. In 1997, the Company sold products to virtually all of the top 100 U.S. retailers, including Wal-Mart, Price Costco, Kmart, Target Stores, Home Depot and Sears.

Customers

The rapid growth of large mass merchandisers and warehouse clubs and changes in customer shopping patterns have contributed to a significant consolidation of the U.S. retail industry and formation of dominant multi-category retailers. Sunbeam has positioned itself to respond to the challenges of this changing retail environment by pursuing strategic relationships with large, high-volume merchandisers. The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, hardware stores, catalogues, television shopping channels, home centers, drug and grocery stores, and pet supply retailers, as well as independent distributors and military post exchange

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services. The Company's largest customer, Wal-Mart Stores, Inc., accounted for approximately 21% of the sales in 1997.

Retailers are pursuing a number of strategies in their competition to deliver the highest-quality, lowest-cost brand name products. A growing trend among retailers is to purchase on a "just-in-time" basis in order to reduce inventory cost and increase returns on investment. This trend has required increased working capital investments for manufacturers and requires manufacturers to more closely monitor consumer buying patterns as retailers shorten their lead times for orders. Currently, most Sunbeam products sold to U.S. retailers are manufactured at the Company's own facilities in North America. However, one of the Company's goals for 1998 is to "source" approximately 50% of parts and/or products from others, including suppliers in Asia, in order to reduce capital investment in plants while growing sales volume and to improve operating margins. The Company intends to continue to support its retail partners' "just-in-time" inventory strategies through investments in, among other things, improved forecasting systems, more responsive manufacturing and distribution capabilities and electronic communications. Currently, Sunbeam has approximately 90% of its U.S. customer sales on electronic data interchange (EDI) systems.

The amount of backlog orders at any point in time is not a significant factor in the Company's business.

Patents and Trademarks

Sunbeam believes that an integral part of its strength is its ability to capitalize on the Sunbeam[®] and Oster[®] trademarks which are registered in the United States and in numerous foreign countries. Widely recognized throughout North America, South and Central America and Europe, these registered trademarks, along with Osterizer[®], Mixmaster[®], Toast Logic[®], Steammaster[®], Oskar[®], Grillmaster[®] and Blanket with a Brain[®] brands are important to the success of the Company's products. Other important trademarks within Sunbeam include Oster Designer[®] line, Cuddle-Up[®] and AS[®].

Sunbeam holds numerous patents covering a wide variety of products, the loss of any one of which would not have a material adverse effect on the Company's business taken as a whole.

Employees

The Company currently has approximately 3,300 full-time domestic employees and 4,200 international employees. None of the Company's domestic full-time workforce has union representation. Sunbeam has had no material labor-related work stoppages and, in the opinion of management, relations with its employees are generally good.

Seasonality

On a consolidated basis, Sunbeam sales do not exhibit substantial seasonality. However, sales of outdoor cooking products are strong in the first half of the year, while sales of appliances and Personal Care and Comfort products are strongest in the second half of the year. In addition, sales of an number of Company's products, including warming blankets, vaporizers, humidifiers and grills may be impacted by unseasonable weather conditions. During 1997, the Company initiated early buy programs for highly seasonal products such as grill and warming blankets in order to more levelize promotion and distribution activities.

Raw Materials

The raw materials used in the manufacture of the Company's products are available from numerous suppliers in quantities sufficient to meet normal requirements. The Company's primary raw materials include aluminum, steel, resin, copper, and corrugated cardboard for cartons.

Environmental Matters

The Company's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations in addition to laws and regulations regarding labeling and packaging of products and the sale of products containing certain environmentally sensitive materials ("Environmental Laws"). The Company believes it is in substantial compliance with all Environmental Laws which are applicable to its operations. Compliance with Environmental Laws involves certain continuing costs; however, such costs of ongoing compliance have not resulted, and are not anticipated to result, in a material

increase in the Company's capital expenditures or to have a material adverse effect on the Company's results of operations, financial condition or competitive position.

In addition to ongoing environmental compliance at its operations, the Company also is actively engaged in certain environmental remediation activities relating primarily to divested operations. As of December 31, 1997, the Company had been identified by the United States Environmental Protection Agency ("EPA") or a state environmental agency as a potentially responsible party ("PRP") in connection with seven (7) sites subject to the federal Superfund law and two (2) sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a de minimis (less than 1%) participant.

The Superfund Act, and related state environmental remediation laws, generally authorize governmental authorities to remediate a Superfund site and to assess the costs against the PRPs or to order PRPs to remediate the site at their expense. Liability under the Superfund Law is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, the Company recognizes its responsibility to determine whether other PRPs at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRPs established with respect to such sites. The Company currently is engaged in active remediation activities at nine (9) sites, four (4) of which are among the Environmental Sites referred to above, and five (5) of which have not been designated as Superfund sites under federal or state law.

In addition, the Company is engaged in environmental remediation activities at a site located in Newburgh Heights, Ohio, where a subsidiary formerly conducted operations. The Company has been actively cooperating with the United States Nuclear Regulatory Commission and state regulatory authorities in developing and implementing a plan for remediation of this site; which remediation is anticipated to be substantially completed in 1998.

The Company's costs for environmental remediation activities have not had a material adverse effect on the Company's results of operations, financial conditions or competitive position. The Company has established reserves to cover the anticipated probable costs of remediation, based upon periodic review of all sites for which the Company has, or may have, remediation responsibility. As of December 28, 1997, the amount of such reserves was approximately four percent (4%) of the Company's total liabilities as set forth in the consolidated financial statements. Such environmental reserves do not anticipate any offsets for potential insurance recoveries from certain of the Company's liability insurance carriers which the Company continues to pursue.

Due to uncertainty over the remedial measures to be adopted at some sites, the possibility of changes in Environmental Laws, and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, the Company's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved at fiscal year end 1997. In addition, the Company may be required to incur costs relating to remediation of other properties currently or previously owned or leased, including the properties to be acquired in the Acquisitions, as well as properties at which the Company and each of Coleman, Signature Brands and First Alert have disposed of waste. However, the Company believes, based on existing information, that the costs of completing the environmental remediation of all sites for which the Company has a remediation responsibility have been adequately reserved and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition.

In December 1996, the Company reached a negotiated settlement with the EPA with regard to a notice of violation concerning the construction and operation of two paint lines at the Company's Neosho, MO facility prior to obtaining the necessary permits for construction and operation. The negotiated settlement amount of \$829,825 was agreed upon in connection with the Company's implementation of the "supplemental environmental project" which consisted of the Company's installation of nominal emission powder coating lines to replace solvent paint lines. In October 1997, the Company executed a Consent Decree documenting the settlement and is awaiting the EPA's execution of the Consent Decree; the Company anticipates formal resolution of this matter by the second quarter of 1998.

The Company is not a party to any other administrative or judicial proceedings to which a governmental authority is a party and which involves potential monetary sanctions, exclusive of interest and costs, of \$100,000 or more.

Properties

Active United States and International manufacturing, warehouse, and office locations are set forth below. In addition to the facilities set forth below, the Company leases warehouse space on a short-term basis when needed. Except as otherwise noted, each location is used for manufacturing, warehousing and related administrative office space.

<u>United States</u>	<u>Square Feet</u>	<u>Title</u>
Brownsville, Texas	48,000	Leased (a)
Delray Beach, Florida	51,073	Leased (b)
Del Rio, Texas	10,560	Leased (a)
Hattiesburg, Mississippi	725,000	Owned
Hattiesburg, Mississippi	300,000	Leased (a)
McMinnville, Tennessee	169,400	Leased
Neosho, Missouri	887,200	Owned/Leased
Waynesboro, Mississippi	853,714	Leased
Total	3,044,947	

<u>International</u>	<u>Square Feet</u>	<u>Title</u>
Acuna, Mexico	110,000	Owned
Barquisimeto, Venezuela	75,686	Owned
Caracas, Venezuela	9,867	Leased (c)
Hong Kong	20,550	Leased (d)
Matamoros, Mexico	91,542	Owned
Milton Keynes, England	2,000	Leased (c)
Mississauga, Canada	19,891	Leased (c)
Tlalneantla, Mexico	297,927	Owned
Total	627,463	

- (a) Warehouse only
- (b) Corporate headquarters
- (c) Administration
- (d) Warehouse and administration

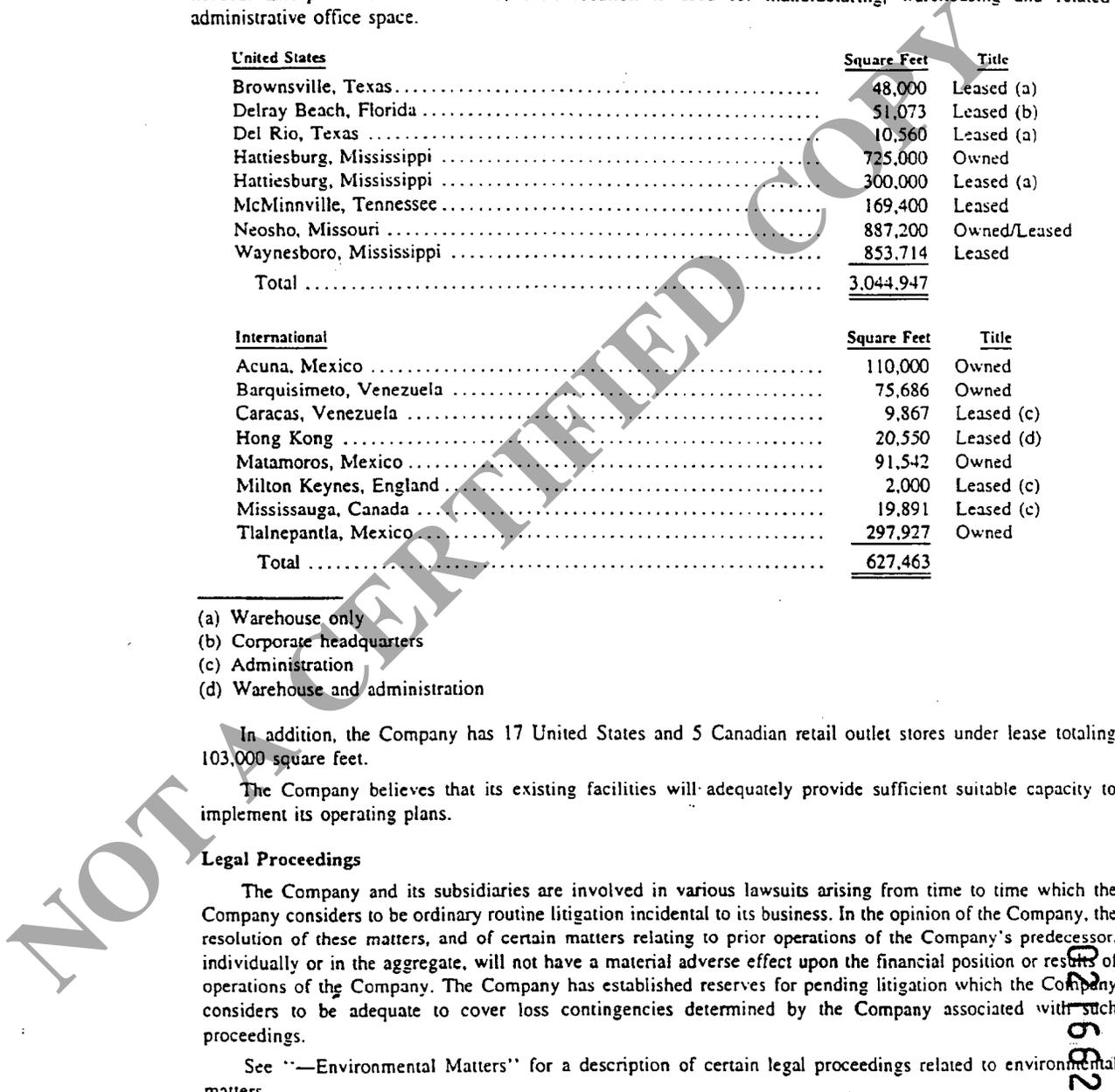
In addition, the Company has 17 United States and 5 Canadian retail outlet stores under lease totaling 103,000 square feet.

The Company believes that its existing facilities will adequately provide sufficient suitable capacity to implement its operating plans.

Legal Proceedings

The Company and its subsidiaries are involved in various lawsuits arising from time to time which the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these matters, and of certain matters relating to prior operations of the Company's predecessor, individually or in the aggregate, will not have a material adverse effect upon the financial position or results of operations of the Company. The Company has established reserves for pending litigation which the Company considers to be adequate to cover loss contingencies determined by the Company associated with such proceedings.

See "—Environmental Matters" for a description of certain legal proceedings related to environmental matters.



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MANAGEMENT

Executive Officers and Directors

The following table sets forth certain information regarding the directors and executive officers of the Company as of February 1, 1998.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Albert J. Dunlap	60	Chairman, Chief Executive Officer and Director.
Russell A. Kersh	44	Vice Chairman and Chief Financial Officer
David C. Fannin	52	Executive Vice President, General Counsel and Secretary
Donald R. Uzzi	45	Executive Vice President, Consumer Products Worldwide
Charles M. Elson	38	Director
Howard G. Kristol	60	Director
Peter A. Langerman	42	Director
William T. Rutter	67	Director
Faith Whittlesey	59	Director

Albert J. Dunlap has been Chairman and Chief Executive Officer of the Company since July 18, 1996. From April 1994 to December 1995, he was Chairman and Chief Executive Officer of Scott Paper Company. From 1991 to 1993, Mr. Dunlap was the Managing Director and Chief Executive Officer of Consolidated Press Holdings Limited (an Australian media, chemicals and agricultural operation).

Russell A. Kersh has been Vice Chairman and Chief Financial Officer of the Company since February 1, 1998, and has been a Director of the Company since his appointment on August 6, 1996. He served as Executive Vice President, Finance and Administration of the Company from July 22, 1996 to January 1998. From June 1994 to December 1995 he was Executive Vice President, Finance and Administration of Scott Paper Company. Mr. Kersh served as Chief Operating Officer of Adidas America from January 1993 to May 1994.

David C. Fannin has been Executive Vice President, General Counsel and Secretary since January 1994. From 1979 until 1993, he was a partner in the law firm of Wyatt, Tarrant and Combs.

Donald R. Uzzi has been Executive Vice President, Consumer Products Worldwide since January 1997. From November 1996 to January 1997, he held the position of Senior Vice President, Global Marketing. Mr. Uzzi joined the Company in September 1996 as Vice President, Marketing and Product Development. From January 1993 to July 1996, Mr. Uzzi served as President of the Beverage Division of Quaker Oats. During 1990 to 1992, Mr. Uzzi was employed by Pepsi Cola as Senior Vice President for North America (1992) and Vice President and General Manager of the Mid-Atlantic Division (1990-1991).

Charles M. Elson has been a Director of the Company since his appointment to the Board of Directors on September 25, 1996. Mr. Elson has been a Professor of Law at Stetson University College of Law since 1990 and serves as Of Counsel to the law firm of Holland & Knight (since May 1995). He is also a Member of the American Law Institute and the Advisory Council and Commission on Director Compensation and Director Professionalism of the National Association of Corporate Directors. Mr. Elson is Trustee of Talldega College and a Salvatori Fellow of the Heritage Foundation. Mr. Elson has served as a Director of Circon Corporation (a medical manufacturer) since October 1997.

Howard G. Kristol has been a Director of the Company since his appointment on August 6, 1996. Mr. Kristol has been a partner in the law firm of Reboul, MacMurray, Hewitt, Maynard & Kristol since 1976.

Peter A. Langerman has been a Director of the Company since 1990 and served as the Chairman of the Board of Directors from May 22, 1996 until July 18, 1996. Since November 1996, Mr. Langerman has been Senior Vice President and Chief Operating Officer of Franklin Mutual Advisers, Inc., a registered investment

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advisor and a wholly owned subsidiary of Franklin Resources, Inc., a diversified financial services organization. Mr. Langerman was a Senior Vice President of Heine Securities Corporation, an investment advisory service company, from 1986 to November 1996, and a Vice President of Mutual Series Fund from 1988 until its acquisition by Franklin Resources, Inc. in 1996. He has been a Director of Franklin Mutual Series Fund, Inc. (previously Mutual Series Fund Inc.) since 1988 and a Director of Metallurg Inc. (a metals and related materials manufacturer) since 1997.

William T. Rutter has been a Director of the Company since his appointment on April 8, 1997. Mr. Rutter is a Senior Vice President/Managing Director, Private Banking of First Union National Bank of Florida, a position he has held since 1986.

Faith Whittlesey has been a Director of the Company since her appointment in December 1996. Mrs. Whittlesey has served as the Chief Executive Officer of the American Swiss Foundation, a charitable and educational foundation, since 1991. She is a member of the Board of Directors of Valassis Communications, Inc. (a publishing and printing company).

New Employment Contracts

On February 20, 1998, each of the Company's Chairman and Chief Executive Officer, Mr. Dunlap; the Vice Chairman and Chief Financial Officer, Mr. Kersh; and the Executive Vice President, General Counsel and Secretary, Mr. Fannin, signed new three-year employment contracts with the Company, which include substantial equity-based compensation. These employment contracts replaced previous employment contracts entered into in July 1996 that were scheduled to expire in July 1999.

The new employment contract with Mr. Dunlap provides for, among other items, the acceleration of vesting of 200,000 shares of restricted stock and the forfeiture of the remaining 133,333 shares of unvested restricted stock granted under the July 1996 agreement as further described in Note 2 to the Company's Consolidated Financial Statements, a new equity grant of 300,000 shares of unrestricted stock, a new grant of a ten-year option to purchase 3,750,000 shares of Common Stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in three equal annual installments beginning on the date of grant and the acceleration of vesting of 833,333 outstanding stock options granted under the July 1996 agreement as further described in Note 5 to the Company's Consolidated Financial Statements. In addition, the new employment contract with Mr. Dunlap provides for tax gross-ups with respect to any tax assessed on the equity grant and acceleration of vesting of restricted stock.

The new employment contracts with Mr. Kersh and Mr. Fannin provide for, among other items, the grant of a total of 180,000 shares of restricted stock that vest in four equal annual installments beginning on the date of grant, the acceleration of vesting of 44,000 shares of restricted stock and the forfeiture of the remaining 29,332 shares of unvested restricted stock granted under their July 1996 employment contracts, new grants of ten-year options to purchase a total of 1,875,000 shares of Common Stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in four equal annual installments beginning on the date of grant and the acceleration of vesting of 383,334 outstanding stock options granted under the July 1996 employment contracts. In addition, the new employment contracts with Mr. Kersh and Mr. Fannin provide for tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock.

Compensation expense attributed to the equity grant, the acceleration of vesting of restricted stock and the related tax gross-ups will be recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups will be amortized to expense beginning in the first quarter of 1998 over the period in which the restrictions lapse. Total after-tax compensation expense to be recognized in the first quarter of 1998 related to these items is expected to be approximately \$30 million.

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SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS

The following table sets forth information as of February 27, 1998, with respect to beneficial ownership of the Company's Common Stock by all persons known by the Company to be the record or beneficial owner of more than 5% of the outstanding Common Stock. Except as otherwise noted, all beneficial owners listed below have sole voting and investment power with respect to the shares owned by them.

<u>Name</u>	<u>Amount and Nature of Beneficial Ownership</u>	<u>Percentage of Common Stock</u>
Franklin Mutual Series Fund Inc.	17,541,398(a)	20.3%
including:		
Mutual Shares Fund	11,260,174(a)	13.3%
Mutual Qualified Fund	4,800,554(a)	5.5%
Franklin Mutual Advisers, Inc.	17,541,398(a)	20.3%
Franklin Resources, Inc.		
Charles B. Johnson		
Rupert H. Johnson, Jr.	17,541,398(a)	20.3%
AXA Assurances I.A.R.D. Mutuelle	8,598,784(b)	9.9%
including:		
AXA Assurances Vie Mutuelle		
Alpha Assurances Vie Mutuelle		
AXA Courtage Assurance Mutuelle		
AXA-UAP and The Equitable Companies Incorporated		
Fred Alger Management, Inc.		
including:		
Fred M. Alger III	4,424,098(c)	5.1%

- (a) Information reflected in this table and the notes thereto with respect to Franklin Resources, Inc., Charles B. Johnson, Rupert H. Johnson, Jr., Franklin Mutual Advisers, Inc., and Franklin Mutual Series Fund Inc., Mutual Shares Fund and Mutual Qualified Fund (collectively, the "Funds Group") is derived from the Schedule 13D, dated November 1, 1996, filed by them. The address of the Franklin Mutual Series Fund Inc. and of Franklin Mutual Adviser, Inc. is 51 John F. Kennedy Parkway, Short Hills, NJ 07078. The address of Franklin Resources, Inc. and each of Charles B. Johnson and Rupert H. Johnson, Jr. is 777 Mariners Island Blvd., San Mateo, California 94404. Shares of Common Stock beneficially owned by Franklin Mutual Series Fund Inc. include shares owned by Mutual Shares Fund and Mutual Qualified Fund, series of portfolios of Franklin Mutual Series Fund Inc. The aggregate number of shares owned by all of the series of Franklin Mutual Series Fund Inc. is 17,541,398. These same shares are also listed as being beneficially owned by (i) Franklin Mutual Advisers, Inc., the investment manager of Franklin Mutual Series Fund Inc., (ii) Franklin Resources, Inc., the sole stockholder of Franklin Mutual Advisers, Inc. and (iii) Charles B. Johnson and Rupert H. Johnson, Jr., the principal stockholders of Franklin Resources, Inc., each of whom owns in excess of 10% of that corporation's common stock. Franklin Mutual Advisers, Inc. has sole voting and dispositive power over the listed shares of Common Stock. Franklin Mutual Advisers, Inc., Franklin Resources, Inc., Charles B. Johnson, and Rupert H. Johnson, Jr. each disclaim beneficial ownership of these shares.
- (b) Information reflected in this table and the notes thereto with respect to AXA Assurances I.A.R.D. Mutuelle, AXA Assurances Vie Mutuelle, Alpha Assurances Vie Mutuelle, AXA Courtage Assurance Mutuelle (collectively, the "Mutuelles AXA Group"), AXA-UAP ("AXA-UAP") and The Equitable Companies Incorporated ("Equitable") is derived from the Schedule 13G/A, dated February 17, 1998, filed jointly by the Mutuelles AXA Group, AXA-UAP and Equitable. In the aggregate, Mutuelles AXA Group, AXA-UAP and Equitable own 8,598,784 shares of Common Stock. The members of the Mutuelles AXA Group, AXA-UAP and Equitable each have sole voting power over 5,670,794 of such shares, shared voting power over 1,373,600 such shares, sole dispositive power over 8,591,384 such shares and shared dispositive power over 7,400 such shares. The address of AXA Assurances I.A.R.D. Mutuelle and AXA Assurances Vie Mutuelle is 21 rue de Chateaudun, 75009 Paris, France. The address of Alpha Assurances Vie Mutuelle is 100-101 Terrasse Boieldieu, 92042 Paris La Defense, France. The address of AXA Courtage Assurance Mutuelle is 26, rue Louis le Grand, 75002 Paris, France. The address of AXA-UAP is 23, avenue Matignon, 75008 Paris, France. The address of The Equitable Companies, Incorporated is 1290 Avenue of the Americas, New York, NY 10104.
- (c) Information reflected in this table and the notes thereto with respect to Fred Alger Management, Inc. and Fred M. Alger III is derived from the Schedule 13G, dated January 15, 1998, filed by and on behalf of Fred Alger Management, Inc. and Fred M. Alger III. Fred M. Alger III is the Chairman of Fred Alger Management, Inc. The address of Fred Alger Management, Inc. and Fred M. Alger III is 75 Maiden Lane, New York, NY 10038. Fred Alger Management, Inc. and Fred M. Alger III have sole dispositive power over 4,409,498 of the shares listed above, sole voting power over 38,413 of such shares and shared voting power over 4,112,985 of such shares.

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SECURITY OWNERSHIP OF MANAGEMENT

The following table sets forth the beneficial ownership, reported to the Company as of February 27, 1998, of the Company's Common Stock, including shares as to which a right to acquire ownership exists, of: (1) each Director of the Company; (2) the three most highly compensated executive officers of the Company, other than the Chief Executive Officer (collectively, the "Named Executives"); and (3) the Directors and the Named Executives of the Company as a group.

<u>Name</u>	<u>Amount and Nature of Beneficial Ownership(a)(b)</u>	<u>Percentage of Common Stock(b)</u>
Directors		
Albert J. Dunlap	5,241,564	6.06%
Charles M. Elson	9,000(d)	*
Russell A. Kersh	1,045,400(c)	1.21%
Howard G. Kristol	9,000(d)	*
Peter A. Langerman	0(e)	0
William T. Rutter	3,500(d)	*
Faith Whittlesey	5,390(d)	*
Named Executives		
David C. Fannin	371,433(c)	*
Donald R. Uzzi	116,666	*
Lee Griffith	60,543	*
All Directors and Named Executives as a group (9 persons)	6,764,496(f)	7.9%

* Less than one percent.

- (a) All Directors and Named Executives have the sole power to vote and to dispose of the shares of Common Stock listed above except as follows: (i) Mr. Dunlap holds 1,491,564 of the listed shares jointly with his wife, Judy Dunlap; (ii) 151,600 shares listed as owned by Mr. Kersh are held by the Russell A. Kersh Irrevocable Trust as to which Mr. Kersh is the sole beneficiary (the power to vote and to dispose of such shares is held by Howard G. Kristol, Trustee of such Trust) and Mr. Kersh holds 5,000 of the listed shares jointly with his spouse and children; (iii) Mr. Fannin holds 20,433 shares jointly with his wife; and (iv) 5,000 of the shares listed as owned by Mr. Griffith are owned by Mr. Griffith's wife and minor children.
- (b) Includes shares which Directors and Named Executives have an option to acquire if such option is currently exercisable (including options which may be exercised within the next sixty days). Includes 3,750,000, 781,250, 328,500, 116,666 and 50,000 shares which may be acquired by Messrs. Dunlap, Kersh, Fannin, Uzzi and Griffith, respectively, upon the exercise of options which are currently exercisable. Options which are not currently exercisable and will not be exercisable within sixty days are not included in the table.
- (c) Includes 112,500 and 22,500 restricted shares held by Messrs. Kersh and Fannin, respectively, that are subject to restrictions.
- (d) Includes 3,000 restricted shares granted to each of Directors Elson, Kristol, Rutter and Whittlesey upon their respective elections, appointments and subsequent reelections to the Company's Board of Directors, all of which were immediately vested.
- (e) Does not include shares owned by the Funds Group as to which Mr. Langerman disclaims beneficial ownership. See "Security Ownership of Certain Beneficial Owners."
- (f) Includes shares which all executive officers and Directors of the Company have the right to acquire under options which are currently exercisable (including options which may be exercised within the next sixty days) and shares which are subject to restrictions.

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DESCRIPTION OF OTHER INDEBTEDNESS

New Credit Facility

The Company is currently negotiating the terms of the New Credit Facility with a group of banks which the Company expects will provide for borrowings by the Company or one or more of its subsidiaries in the aggregate principal amount of \$2.0 billion. The New Credit Facility is being arranged by an affiliate of the Initial Purchaser who has advised the Company that it is, subject to customary qualifications, highly confident that under current market and economic conditions a \$2.0 billion credit facility can be successfully syndicated to financial institutions. It is expected that the facility will provide for one or more term loans in the aggregate principal amount of \$1.5 billion which, together with the net proceeds of the Offering, will be used to finance the cash portion of the Acquisitions (see "Financing Plan and Use of Proceeds") and a \$500 million revolving credit facility which will be available for general corporate purposes. It is expected that the term borrowings under the New Credit Facility will mature based on an amortization schedule to be negotiated, subject to certain mandatory earlier repayments customary for facilities of a similar nature, and that the revolving credit borrowings will mature seven years from the closing date of the New Credit Facility. It is expected that interest will accrue, at the Company's option, at LIBOR plus a spread margin to be negotiated or at the Agent's (as defined below) Base Rate (generally the higher of the Agent's prime rate or the Federal Funds Rate plus 1/2 of 1%) plus a spread to be negotiated. The Company does not yet have commitments from lenders to provide the New Credit Facility and, in any event, the New Credit Facility is subject to the negotiation and execution of definitive documentation and other customary conditions.

Securities and Guarantees. Borrowings under the New Credit Facility may be secured by (i) a pledge of the stock of each of the Company's subsidiaries and (ii) security interests in substantially all of the assets of the Company and its subsidiaries. The Company expects the New Credit Facility will be guaranteed by each of the Company's wholly-owned U.S. subsidiaries and that such subsidiary guarantees will be secured as described above. To the extent borrowings are made by any subsidiaries of the Company, the obligations of such subsidiaries will be guaranteed by the Company.

Covenants. The Company expects that the definitive New Credit Facility will contain various covenants customary for facilities of this type, including (among others) covenants restricting the incurrence of indebtedness, the payment of dividends and other restricted payments, the incurrence of liens, dispositions of assets, mergers and acquisitions, capital expenditures and loans and investments. In addition, it is expected that the New Credit Facility will require the Company to maintain various financial ratios, including a maximum leverage ratio, a minimum interest coverage ratio and a maximum fixed charge coverage ratio.

Defaults. The Company expects that the New Credit Facility will provide for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, ERISA, judgments and change of ownership and control (including for this purpose a Fundamental Change.)

Other Debt

The Company intends to repay all or substantially all of the currently outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert as promptly as practicable following consummation of each Acquisition, subject to applicable notice provisions and other prepayment terms of the applicable indebtedness. Until such indebtedness is repaid, the Company will continue to be subject to the covenants and restrictions and limitations contained in the terms of such indebtedness. For additional information concerning outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert see the consolidated financial statements set forth elsewhere herein.

DESCRIPTION OF DEBENTURES

The Debentures are to be issued under an indenture to be dated as of March 1, 1998 (the "Indenture"), between the Company and The Bank of New York, as trustee (the "Trustee"). A copy of the form of Indenture will be available from the Trustee upon request by a registered holder of the Debentures. The following summary of certain provisions of the Debentures and the Indenture does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the Debentures and the Indenture including the definitions therein of certain terms that are not otherwise defined in this Offering Memorandum. Wherever particular provisions or defined terms of the Indenture (or of the form of Debenture which is a part thereof) are referred to, such provisions or defined terms are incorporated herein by reference. As used in this "Description of Debentures," the "Company" refers to Sunbeam Corporation only and does not, unless the context otherwise indicates, include its subsidiaries.

Holders of the Debentures will also have the benefit of a Registration Rights Agreement between the Company and the Initial Purchaser. Under the Registration Rights Agreement, the Company will agree to file the Shelf Registration Statement with the Commission covering resales of the Debentures and the Common Stock issuable upon conversion thereof. See "Registration Rights."

General

The Debentures will be unsecured general obligations of the Company subordinate in right of payment to the New Credit Facility and certain other secured obligations of the Company as described under "Subordination of Debentures" and convertible into Common Stock as described under "Conversion of Debentures." The Debentures will be limited to \$1,495,000,000 aggregate principal amount at maturity (including \$195,000,000 aggregate principal amount at maturity if the Initial Purchaser's over-allotment option is exercised in full) and will mature on March 1, 2018.

The Indenture does not contain any financial covenants or restrictions on the payment of dividends, the incurrence of indebtedness, including Senior Indebtedness (as defined below under "Subordination of Debentures"), or the issuance or repurchase of securities of the Company. The Indenture contains no covenants or other provisions to afford protection to holders of the Debentures in the event of a highly leveraged transaction or a change in control of the Company except to the extent described under "Redemption at Option of the Holder Upon a Fundamental Change."

The Debentures are being issued at a substantial discount from their stated redemption price at maturity. For U.S. federal income tax purposes, the excess of the stated redemption price at maturity of each Debenture over its issue price (which is expected to be the Issue Price) constitutes Original Issue Discount ("OID"). See "Certain United States Federal Income Tax Considerations." Maturity, conversion, purchase by the Company at the option of a holder or redemption of a Debenture will cause Original Issue Discount and interest, if any, to cease to accrue on such Debenture, under the terms and subject to the conditions of the Indenture. The Company may not reissue a Debenture that has matured or been converted, purchased by the Company at the option of a holder, redeemed or otherwise canceled (except for registration of transfer, exchange or replacement thereof).

The principal amount at maturity of each Debenture will be payable at the office or agency of the paying agent, initially the Trustee, in the Borough of Manhattan, The City of New York, or any other office of the paying agent maintained for such purpose. Debentures may be presented for conversion into Common Stock at the office of the conversion agent and Debentures in definitive form may be presented for exchange for other Debentures or registration of transfer at the office of the registrar, each such agent initially being the Trustee. The Company will not charge a service charge for any registration of transfer or exchange of Debentures; however, the Company may require payment by a holder of a sum sufficient to cover any tax, assessment or other governmental charge payable in connection therewith.

Form, Denomination and Registration

The Debentures will be issued in fully registered form, without coupons, in denominations of \$1,000 principal amount at maturity and whole multiples thereof.

Global Debenture; Book-Entry Form. Debentures held by "qualified institutional buyers," as defined in Rule 144A under the Securities Act ("QIBs"), will be evidenced by a global Debenture (the "Global Debenture"), which will be deposited with, or on behalf of, The Depository Trust Company, New York, New York ("DTC") and registered in the name of Cede & Co. ("Cede"), as DTC's nominee. Except as set forth

below, the Global Debenture may be transferred, in whole or in part, only to another nominee of DTC or to a successor of DTC or its nominee.

QIBs may hold their interests in the Global Debenture directly through DTC, or indirectly through organizations which are participants in DTC (the "Participants"). Transfers between Participants will be effected in the ordinary way in accordance with DTC rules. The laws of some states require that certain persons take physical delivery of securities in definitive form. Consequently, the ability to transfer beneficial interests in the Global Debenture to such persons may be limited.

QIBs who are not Participants may beneficially own interests in the Global Debenture held by DTC only through Participants or certain banks, brokers, dealers, trust companies and other parties that clear through or maintain a custodial relationship with a Participant, either directly or indirectly ("Indirect Participants"). So long as Cede, as the nominee of DTC, is the registered owner of the Global Debenture, Cede for all purposes will be considered the sole holder of the Global Debenture. Except as provided below, owners of beneficial interests in the Global Debenture will not be entitled to have certificates registered in their names, will not receive or be entitled to receive physical delivery of certificates in definitive form, and will not be considered the holders thereof.

Payment of the redemption price and the purchase price of the Global Debenture as well as any Liquidated Damages (as defined) due on the Global Debenture arising out of the Company's failure to meet its obligations under the Registration Rights Agreement will be made to Cede, the nominee for DTC, as the registered owner of the Global Debenture by wire transfer of immediately available funds. Neither the Company, the Trustee nor any paying agent will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the Global Debenture or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

The Company has been informed by DTC that, with respect to payment of Liquidated Damages (if any) on and the redemption price or the purchase price of the Global Debenture, DTC's practice is to credit Participants' accounts on the payment date therefor with payments in amounts proportionate to their respective beneficial interests in the Debentures represented by the Global Debenture as shown on the records of DTC (adjusted as necessary so that such payments are made with respect to whole Debentures only), unless DTC has reason to believe that it will not receive payment on such payment date. Payments by Participants to owners of beneficial interests in Debentures represented by the Global Debenture held through such Participants will be the responsibility of such Participants, as is now the case with securities held for the accounts of customers registered in "street name."

Holders who desire to convert their Debentures into Common Stock should contact their brokers or other Participants or Indirect Participants to obtain information on procedures, including proper forms and cut-off times, for submitting such request.

Because DTC can only act on behalf of Participants, who in turn act on behalf of Indirect Participants and certain banks, the ability of a person having a beneficial interest in the Debentures represented by the Global Debenture to pledge such interest to persons or entities that do not participate in the DTC system, or otherwise take actions in respect of such interest, may be affected by the lack of a physical certificate evidencing such interest.

Neither the Company nor the Trustee (or any registrar, paying agent or conversion agent under the Indenture) will have any responsibility for the performance by DTC or its Participants or Indirect Participants of their respective obligations under the rules and procedures governing their operations. DTC has advised the Company that it will take any action permitted to be taken by a holder of Debentures (including, without limitation, the presentation of Debentures for conversion as described below) only at the direction of one or more Participants to whose account with DTC interests in the Global Debenture are credited and only in respect of the principal amount of the Debentures represented by the Global Debenture as to which such Participant or Participants has or have given such direction.

DTC has advised the Company as follows: DTC is a limited purpose trust company organized under the laws of the State of New York, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act. DTC was created to hold securities for its Participants and to facilitate the clearance and settlement of securities transactions between Participants through electronic book-entry changes to

accounts of its Participants, thereby eliminating the need for physical movement of certificates. Participants include securities brokers and dealers, banks, trust companies and clearing corporations and may include certain other organizations such as the Initial Purchaser. Certain of such Participants (or their representatives), together with other entities, own DTC. Indirect access to the DTC system is available to others such as banks, brokers, dealers and trust companies that clear through, or maintain a custodial relationship with a Participant, either directly or indirectly.

Although DTC has agreed to the foregoing procedures in order to facilitate transfers of interests in the Global Debenture among participants of DTC, DTC is under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. If DTC is at any time unwilling or unable to continue as depository and a successor depository is not appointed by the Company within 90 days, the Company will cause Debentures to be issued in definitive form in exchange for the Global Debenture.

Conveyance of notices and other communications by DTC to Participants, by Participants to Indirect Participants and Indirect Participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements that may be in effect from time to time. Redemption notices shall be sent to Cede. If less than all of the Debentures are being redeemed, DTC will reduce the amount of the interest of each Participant in such Debentures in accordance with its procedures.

Certificated Debentures. Debentures sold to investors that are not QIBs will be issued in definitive registered form and may not be represented by the Global Debenture. QIBs may request that any Debentures they hold in definitive registered form be exchanged for interests in the Global Debenture. Certificated Debentures may be issued in exchange for Debentures represented by the Global Debenture if a depository is unwilling or unable to continue as a depository for the Global Debenture as set forth above under "Global Debenture; Book-Entry Form."

Restrictions on Transfer; Legends. The Debentures will be subject to certain transfer restrictions as described below under "Transfer Restrictions" and certificates evidencing the Debentures will bear a legend to such effect.

Conversion of Debentures

A holder of a Debenture may convert it into Common Stock of the Company at any time after 90 days following the latest date of original issuance of the Debentures through the close of business on March 31, 2018; provided that if a Debenture is called for redemption, the holder may convert it only until the close of business on the last trading day prior to the Redemption Date unless the Company defaults in the payment of the redemption price. A Debenture in respect of which a holder has delivered a Purchase Notice exercising the option of such holder to require the Company to purchase such Debenture may be converted only if such notice is withdrawn in accordance with the terms of the Indenture. Similarly, a Debenture in respect of which a holder is exercising its option to require redemption upon a Fundamental Change may be converted only if such holder withdraws its election to exercise its option in accordance with the terms of the Indenture. A holder may convert such holder's Debentures in part so long as such part is \$1,000 principal amount at maturity or a whole multiple thereof.

The initial Conversion Rate is _____ shares of Common Stock per \$1,000 principal amount at maturity of Debentures, subject to adjustment upon the occurrence of certain events, as described below. A holder entitled to a fractional share of Common Stock shall receive cash equal to the then current market value of such fractional share.

On conversion of a Debenture, a holder will not receive any cash payment representing accrued Original Issue Discount. The Company's delivery to the holder of the fixed number of shares of Common Stock into which the Debenture is convertible (together with the cash payment, if any, in lieu of fractional Common Stock) will be deemed to satisfy the Company's obligation to pay the principal amount of the Debenture including the accrued Original Issue Discount attributable to the period from the Issue Date to the Conversion Date. The accrued Original Issue Discount is deemed to be paid in full rather than canceled, extinguished or forfeited. The Conversion Rate will not be adjusted at any time during the term of the Debentures for such accrued Original Issue Discount.

To convert a certificated Debenture into Common Stock, a holder must (i) complete and manually sign the conversion notice on the back of the Debenture (or complete and manually sign a facsimile thereof) and deliver such notice to the conversion agent, (ii) surrender the Debenture to the conversion agent, (iii) if required, furnish appropriate endorsements and transfer documents, and (iv) if required, pay all transfer or similar taxes. The

procedure for converting a Global Debenture is described above under "Form, Denomination and Registration—Global Debenture; Book-Entry Form." Pursuant to the Indenture, the date on which all of the foregoing requirements have been satisfied is the Conversion Date.

The Common Stock issuable upon conversion of the Debentures has not been registered under the Securities Act and is subject to certain restrictions on transfer. See "Registration Rights" and "Transfer Restrictions."

The Conversion Rate is subject to adjustment under formulae as set forth in the Indenture in certain events, including: (i) the issuance of Common Stock of the Company as a dividend or distribution on the Common Stock; (ii) certain subdivisions and combinations of the Common Stock; (iii) the issuance to all holders of Common Stock of certain rights or warrants to purchase Common Stock; (iv) the distribution to all holders of Common Stock of capital stock (other than Common Stock), of evidences of indebtedness of the Company or of assets (including securities (other than Common Stock), but excluding those rights and warrants referred to in clause (iii) above or paid in cash); (v) distributions consisting of cash, excluding any quarterly cash dividend on the Common Stock to the extent that the aggregate cash dividend per share of Common Stock in any quarter does not exceed the greater of (x) the amount per share of Common Stock of the next preceding quarterly cash dividend on the Common Stock to the extent that such preceding quarterly dividend did not require an adjustment of the Conversion Rate pursuant to this clause (v) (as adjusted to reflect subdivisions or combinations of the Common Stock), and (y) 3.75 percent of the average of the last reported sales price of the Common Stock during the ten trading days immediately prior to the date of declaration of such dividend, and excluding any dividend or distribution in connection with the liquidation, dissolution or winding up of the Company; (vi) payment in respect of a tender offer or exchange offer by the Company or any Subsidiary of the Company for the Common Stock to the extent that the cash and value of any other consideration included in such payment per share of Common Stock exceeds the Current Market Price (as defined) per share of Common Stock on the trading day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer; and (vii) payment in respect of a tender offer or exchange offer by a person other than the Company or any Subsidiary (as defined) of the Company in which, as of the closing date of the offer, the Board of Directors is not recommending rejection of the offer. If an adjustment is required to be made as set forth in clause (v) above as a result of a distribution that is a quarterly dividend, such adjustment would be based upon the amount by which such distribution exceeds the amount of the quarterly cash dividend permitted to be excluded pursuant to clause (v) above. If an adjustment is required to be made as set forth in clause (v) above as a result of a distribution that is not a quarterly dividend, such adjustment would be based upon the full amount of the distribution. The adjustment referred to in clause (vii) above will only be made if the tender offer or exchange offer is for an amount that increases the offeror's ownership of Common Stock to more than 25% of the total shares of Common Stock outstanding, and if the cash and value of any other consideration included in such payment per share of Common Stock exceeds the Current Market Price per share of Common Stock on the business day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer. The adjustment referred to in clause (vii) above will generally not be made, however, if as of the closing of such offer, the offering documents with respect to such offer disclose a plan or an intention to cause the Company to engage in a consolidation or merger of the Company or a sale of all or substantially all of the Company's assets.

No adjustment in the Conversion Rate will be required unless such adjustment would require a change of at least 1% in the rate then in effect; provided that any adjustment that would otherwise be required to be made shall be carried forward and taken into account in any subsequent adjustment. Except as stated above, the Conversion Rate will not be adjusted for the issuance of Common Stock or any securities convertible into or exchangeable for Common Stock or carrying the right to purchase any of the foregoing.

In the case of (i) any reclassification of the Common Stock, or (ii) a consolidation or merger involving the Company or a sale or conveyance to another corporation of the property and assets of the Company as an entirety or substantially as an entirety, in each case as a result of which holders of Common Stock shall be entitled to receive stock, securities, other property or assets (including cash) with respect to or in exchange for such Common Stock, the holders of the Debentures then outstanding will be entitled thereafter to convert such Debentures into the kind and amount of shares of stock, securities or other property or assets (including cash) which they would have owned or been entitled to receive upon such reclassification, consolidation, merger, sale or conveyance had such Debentures been converted immediately prior to such reclassification, consolidation, merger, sale or conveyance assuming that a holder of Debentures would not have exercised any rights of election as to the stock, securities or other property or assets (including cash) receivable in connection therewith.

In the event of a taxable distribution to holders of Common Stock or in certain other circumstances requiring an adjustment to the Conversion Rate, the holders of Debentures may, in certain circumstances, be deemed to have received a distribution subject to United States income tax as a dividend; in certain other circumstances, the absence of such an adjustment may result in a taxable dividend to the holders of Common Stock. See "Certain United States Federal Income Tax Considerations."

The Company from time to time may, to the extent permitted by law, increase the Conversion Rate by any amount for any period of at least 20 days, in which case the Company shall give at least 15 days' notice of such increase, if the Company's Board of Directors has made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. The Company may, at its option, make such increases in the Conversion Rate, in addition to those set forth above, as the Board of Directors deems advisable to avoid or diminish any income tax to holders of Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes. See "Certain United States Federal Income Tax Considerations."

Redemption of Debentures at the Option of the Company

No sinking fund is provided for the Debentures. Prior to March , 2003, the Debentures will not be redeemable at the option of the Company. Beginning on March , 2003, the Company may (subject to applicable contractual restrictions including under agreements governing Senior Indebtedness) redeem the Debentures for cash as a whole at any time, or from time to time in part, upon not less than 30 days' nor more than 60 days' notice of redemption given by mail to holders of Debentures. The Debentures will be redeemable in whole multiples of \$1,000 principal amount at maturity.

The table below shows Redemption Prices of a Debenture per \$1,000 principal amount at maturity thereof, at March , 2003 and at each March , thereafter prior to maturity and at maturity on March , 2018, which prices reflect the accrued Original Issue Discount calculated to each such date. The Redemption Price of a Debenture redeemed between such dates would include an additional amount reflecting the additional Original Issue Discount accrued since the next preceding date in the table to the actual Redemption Date.

Redemption Date	(1)	(2)	(3)
	Debenture Issue Price	Accrued Original Issue Discount At %	Redemption Price (1)+(2)
March , 2003			
March , 2004			
March , 2005			
March , 2006			
March , 2007			
March , 2008			
March , 2009			
March , 2010			
March , 2011			
March , 2012			
March , 2013			
March , 2014			
March , 2015			
March , 2016			
March , 2017			
March , 2018			1,000.00

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If less than all of the outstanding Debentures held in certificated form are to be redeemed, the Trustee shall select the Debentures held in such form to be redeemed in principal amounts at maturity of \$1,000 or whole multiples thereof by lot, pro rata or by another method the Trustee considers fair and appropriate (as long as such method is not prohibited by the rules of any stock exchange on which the Debentures are then listed, if any). If a portion of a holder's certificated Debentures is selected for partial redemption and such holder converts a portion of such certificated Debentures, such converted portion shall be deemed to be the portion selected for redemption. Debentures registered in the name of DTC or its nominee will be redeemed pro rata as described under "—Form, Denomination and Registration—Global Debenture; Book-Entry Form."

Redemption at Option of the Holder Upon a Fundamental Change

If a Fundamental Change (as defined) occurs at any time prior to March 31, 2018, each holder of Debentures shall have the right, at the holder's option, to require the Company to redeem any or all of such holder's Debentures on the date (the "Repurchase Date") that is 45 days after the date of the Company's notice of such Fundamental Change. The Debentures will be redeemable in whole multiples of \$1,000 principal amount at maturity at their accreted value on the Repurchase Date.

The Company shall redeem such Debentures at a price equal to the Issue Price plus accrued Original Issue Discount to, but excluding, the Repurchase Date, provided that if the Applicable Price (as defined) in connection with the Fundamental Change is less than the Reference Market Price (as defined), the Company shall redeem such Debentures at a price equal to the foregoing Redemption Price multiplied by the fraction obtained by dividing the Applicable Price by the Reference Market Price.

The Company shall mail to all holders of record of the Debentures a notice of the occurrence of a Fundamental Change and of the redemption right arising as a result thereof on or before the tenth day after the occurrence of such Fundamental Change. The Company shall deliver to the Trustee a copy of such notice. To exercise the redemption right, holders of Debentures must deliver, on or before the 30th day after the date of the Company's notice of a Fundamental Change (the "Fundamental Change Expiration Time"), the Debentures to be so redeemed, duly endorsed for transfer, together with the form entitled "Option to Elect Redemption Upon a Fundamental Change" on the reverse thereof duly completed, to the Company (or an agent designated by the Company for such purpose). Payment for Notes surrendered for redemption (and not withdrawn) prior to the Fundamental Change Expiration Time will be made promptly following the Repurchase Date.

The term "Fundamental Change" means the occurrence of any transaction or event in connection with which all or substantially all of the Common Stock shall be exchanged for, converted into, acquired for or constitute solely the right to receive consideration (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise) which is not all or substantially all common stock of a company listed (or, upon consummation of or immediately following such transaction or event, which will be listed) on a United States national securities exchange or approved for quotation on the Nasdaq National Market or any similar United States system of automated dissemination of quotations of securities prices.

The term "Applicable Price" means (i) in the event of a Fundamental Change in which the holders of the Common Stock receive only cash, the amount of cash received by the holder of one share of Common Stock and (ii) in the event of any other Fundamental Change, the average of the reported last sale price for the Common Stock during the ten trading days prior to the record date for the determination of the holders of Common Stock entitled to receive cash, securities, property or other assets in connection with such Fundamental Change, or, if there is no such record date, the date upon which the holders of the Common Stock shall have the right to receive such cash, securities, property or other assets in connection with the Fundamental Change.

The term "Reference Market Price" shall initially mean \$ (which is equal to 66 2/3% of the last sale price of the Common Stock as reflected on the cover page of this Offering Memorandum) and in the event of any adjustment to the Conversion Rate pursuant to the provisions of the Indenture, the Reference Market Price shall also be adjusted so that the Reference Market Price shall be equal to the initial Reference Market Price multiplied by a fraction the numerator of which is the Conversion Rate specified on the cover of this Offering Memorandum (without regard to any adjustment thereto) and the denominator of which is the Conversion Rate following such adjustment.

The Company will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act which may then be applicable in connection with the redemption rights of Debenture holders in the event of a Fundamental Change.

The redemption rights of the holders of Debentures could discourage a potential acquiror of the Company. The Fundamental Change redemption feature, however, is not the result of management's knowledge of any specific effort to obtain control of the Company by means of a merger, tender offer, solicitation or otherwise, or part of a plan by management to adopt a series of anti-takeover provisions.

The term "Fundamental Change" is limited to certain specified transactions and may not include other events that might adversely affect the financial condition of the Company, nor would the requirement that the Company offer to repurchase the Debentures upon a Fundamental Change necessarily afford the holders of the Debentures protection in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving the Company.

No Debentures may be redeemed at the option of holders upon a Fundamental Change if there has occurred and is continuing an Event of Default described under "—Events of Default; Notice and Waiver" below (other than a default in the payment of the Fundamental Change Redemption Price with respect to such Debentures). In the event of a Fundamental Change and exercise by holders of the Debentures of their associated rights to require the Company to redeem all or a portion of their Debentures, there can be no assurance that the Company would have sufficient funds to pay the redemption price for all the Debentures tendered by the holders thereof. The Company expects that the New Credit Facility will provide, and any future credit agreements (including an extension of the New Credit Facility) or other agreements relating to indebtedness (including Senior Indebtedness) to which the Company becomes a party also may provide, that a Fundamental Change would constitute an event of default thereunder permitting the lenders thereunder to accelerate the maturity thereof and thereby cause the subordination provisions in the Indenture to apply, preventing redemption of the Debentures until Senior Indebtedness thereunder is paid in full. Any such provisions could restrict or prohibit the redemption of the Debentures. If the Company is prohibited from redeeming the Debentures upon the occurrence of a Fundamental Change, the Company could seek the consent of its then existing lenders to redeem the Debentures or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company would remain prohibited from redeeming the Debentures. In such case, the Company's failure to redeem Debentures required to be redeemed under the terms of the Indenture would constitute an Event of Default under the Indenture and would likely constitute a default under the terms of any other indebtedness of the Company outstanding at such time, including Senior Indebtedness. In such circumstances, or if a Fundamental Change would in and of itself constitute an event of default under agreements governing Senior Indebtedness then outstanding, the subordination provisions in the Indenture would prohibit or restrict payments to the holders of Debentures.

Purchase of Debentures at the Option of the Holder

On March , 2003, March , 2008 and March , 2013 (each, a "Purchase Date"), the Company will become obligated to purchase, at the option of the holder thereof, any outstanding Debenture for which a written Purchase Notice has been delivered by the holder to the office of the paying agent (initially the Trustee) at any time from the opening of business on the date that is 20 Business Days (as defined) prior to such Purchase Date until the close of business on such Purchase Date and for which such Purchase Notice has not been withdrawn, subject to certain additional conditions.

The Purchase Notice shall state (i) the certificate numbers of the Debentures to be delivered by the holder thereof for purchase by the Company; (ii) the portion of the principal amount at maturity of Debentures to be purchased, which portion must be \$1,000 or a whole multiple thereof; (iii) that such Debentures are to be purchased by the Company pursuant to the applicable provisions of the Debentures; and (iv) in the event the Company elects, pursuant to the Company Notice (as defined), to pay the Purchase Price to be paid as of such Purchase Date in Common Stock, in whole or in part, but such Purchase Price is ultimately to be paid to such holder entirely in cash because any of the conditions to payment of the Purchase Price (or portion thereof) in Common Stock is not satisfied by the Purchase Date, as described below, whether such holder elects (x) to withdraw such Purchase Notice as to some or all of the Debentures to which it relates (stating the principal

amount at maturity and certificate numbers of the Debentures as to which such withdrawal shall relate), or (y) to receive cash in respect of the entire Purchase Price for all Debentures subject to such Purchase Notice. If the holder fails to indicate, in the Purchase Notice and in any written notice of withdrawal relating to such Purchase Notice, such holder's choice with respect to the election described in clause (iv) above, such holder shall be deemed to have elected to receive cash in respect of the entire Purchase Price for all Debentures subject to such Purchase Notice in such circumstances. For a discussion of the tax treatment of a holder receiving cash or Common Stock pursuant to its election to tender its Debentures to the Company on a Purchase Date, see "Certain United States Federal Income Tax Considerations."

Any Purchase Notice may be withdrawn by the holder by a written notice of withdrawal delivered to the paying agent prior to the close of business on the Purchase Date. The notice of withdrawal shall state the principal amount at maturity and the certificate numbers of the Debentures as to which the withdrawal notice relates and the principal amount at maturity, if any, which remains subject to the Purchase Notice.

The Purchase Price payable in respect of a Debenture shall be equal to the Issue Price plus accrued Original Issue Discount to the Purchase Date. The table below shows the Purchase Prices of a Debenture as of the specified Purchase Dates. The Company may elect to pay the Purchase Price payable as of any Purchase Date in cash or Common Stock or any combination thereof.

<u>Purchase Date</u>	<u>Purchase Price</u>
March , 2003	\$
March , 2008	
March , 2013	

If the Company elects to pay the Purchase Price, in whole or in part, in Common Stock, the number of shares to be delivered in respect of the portion of the Purchase Price to be paid in Common Stock shall be equal to such portion of the Purchase Price divided by the Market Price (as defined) of the Common Stock. However, no fractional shares of Common Stock will be delivered upon any purchase by the Company of Debentures through the delivery of Common Stock in payment, in whole or in part, of the Purchase Price. Instead, the Company will pay cash based on the Market Price for all fractional shares of Common Stock.

The Company will give notice (the "Company Notice") not less than 20 Business Days prior to the Purchase Date (the "Company Notice Date") to all holders at their addresses shown in the register of the registrar (and to beneficial owners as required by applicable law) stating, among other things, whether the Company will pay the Purchase Price of the Debentures in cash or Common Stock, or any combination thereof (specifying the percentage of each) and, if the Company elects to pay in Common Stock, in whole or in part, the method of calculating the Market Price of the Common Stock.

The "Market Price" means the average of the Sale Prices (as defined) of the Common Stock for the five trading day period ending on the third Business Day prior to the applicable Purchase Date (if the third Business Day prior to the applicable Purchase Date is a trading day or, if it is not a trading day, then on the last trading day prior to such third Business Day), appropriately adjusted to take into account the occurrence during the period commencing on the first of such trading days during such five trading day period and ending on such Purchase Date of certain events that would result in an adjustment of the Conversion Rate under the Indenture with respect to the Common Stock. The "Sale Price" of the Common Stock on any date means the closing per share sale price (or if no closing sale price is reported, the average bid and ask prices or, if more than one in either case, the average of the average bid and average ask prices) on such date as reported in the composite transactions for the principal United States securities exchange on which the Common Stock is traded or, if the Common Stock is not listed on a United States national or regional stock exchange, as reported by the National Association of Securities Dealers Automated Quotation System. Because the Market Price of the Common Stock is determined prior to the applicable Purchase Date, holders of Debentures bear the market risk with respect to the value of the Common Stock to be received from the date of determination of such Market Price to such Purchase Date. The Company may elect to pay the Purchase Price in Common Stock only if the information necessary to calculate the Market Price is reported in a daily newspaper of national circulation.

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Upon any distribution of assets of the Company upon any dissolution, winding up, voluntary or involuntary bankruptcy, insolvency, liquidation, reorganization, receivership or similar proceeding relating to the Company or its property, an assignment for the benefit of creditors or any marshaling of the Company's assets or liabilities, the holders of Senior Indebtedness will be entitled to receive payment in full, in cash or other payment satisfactory to the holders of Senior Indebtedness, of all obligations due in respect of such Senior Indebtedness before the holders of Debentures will be entitled to receive any payment of the principal amount at maturity, Issue Price, accrued Original Issue Discount, Redemption Price, Purchase Price, Fundamental Change Redemption Price, interest, if any, Liquidated Damages, if any, or any other payment in respect of the Debentures (a "Payment on the Debentures"), and until all obligations with respect to Senior Indebtedness are paid in full in cash or other payment satisfactory to the holders of Senior Indebtedness, any Payment on the Debentures to which the holders of Debentures would be entitled shall be made to the holders of Senior Indebtedness. By reason of the subordination, in the event of the Company's dissolution, winding up, bankruptcy, insolvency, liquidation, reorganization, receivership or similar proceeding relating to the Company or its property, an assignment for the benefit of creditors or any marshaling of the Company's assets or liabilities, holders of Senior Indebtedness may receive more, ratably, and the holders of Debentures may receive less, ratably, than the other creditors of the Company.

In the event that the Debentures are declared due and payable prior to their stated maturity by reason of the occurrence of an Event of Default, then the Company is obligated to notify promptly holders of Senior Indebtedness of such acceleration. The Company may not pay monies owed pursuant to the Debentures until 120 days have passed after such acceleration occurs and may thereafter pay the Debentures if the terms of the Indenture otherwise permit payment at that time.

The Company also may not make any Payment on the Debentures if (i) a default in any payment obligations in respect of Senior Indebtedness occurs and is continuing, without regard to any applicable period of grace (whether at maturity or at a date fixed for payment or by declaration or otherwise) (each a "payment default") or (ii) any other default occurs and is continuing with respect to Designated Senior Indebtedness that permits holders of the Designated Senior Indebtedness as to which such default relates to accelerate its maturity and the Trustee receives a notice of such default (a "Payment Blockage Notice") from the Company or from a representative for any issue of Designated Senior Indebtedness. Payments on the Debentures may and shall be resumed (a) in case of a payment default, the earlier of the date on which such default is cured or waived in accordance with the terms of the governing instrument or ceases to exist and (b) in case of a nonpayment default, the earlier of the date on which such nonpayment default is cured or waived in accordance with the terms of the governing instrument or ceases to exist or 179 days after the date on which the applicable Payment Blockage Notice is received by the Trustee if the terms of the Indenture otherwise permit payment at that time. No new period of payment blockage may be commenced pursuant to a Payment Blockage Notice unless and until 365 days have elapsed since the initial effectiveness of the immediately prior Payment Blockage Notice. No nonpayment default that existed or was continuing on the date of delivery of any Payment Blockage Notice to the Trustee shall be, or shall be made, the basis for a subsequent Payment Blockage Notice unless such default shall have been cured or waived for a period of not less than 90 days (it being acknowledged that (x) any action of the Company or any of its subsidiaries occurring subsequent to delivery of a Payment Blockage Notice that would give rise to any event of default pursuant to any provision of Senior Indebtedness under which an event of default previously existed (or was continuing at the time of delivery of such Payment Blockage Notice) shall constitute a new event of default for this purpose and (y) any breach of a financial covenant giving rise to a nonpayment default for a period ending subsequent to the date of delivery of the respective Payment Blockage Notice shall constitute a new event of default for this purpose).

The term "Senior Indebtedness" means the principal of, premium, if any, interest (including all interest accruing subsequent to, or which would accrue but for, the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding), original issue discount, rent and end of term payments payable on or in connection with, and, to the extent not included in the foregoing, all amounts payable as fees, costs, expenses, liquidated damages, indemnities, repurchase and other put obligations and other amounts to the extent accrued or due on or in connection with, Secured Indebtedness (as defined) of the Company, whether outstanding on the date of the Indenture or thereafter created, incurred, assumed, guaranteed or in effect guaranteed by the Company (including all deferrals, renewals,

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extensions or refundings of, or amendments, modifications or supplements to, the foregoing). Notwithstanding the foregoing, the term Senior Indebtedness shall not include (i) Indebtedness of the Company to any subsidiary of the Company, a majority of the voting stock of which is owned, directly or indirectly, by the Company, (ii) accounts payable or other indebtedness to trade creditors created or assumed by the Company in the ordinary course of business and (iii) any particular Indebtedness in which the instrument creating or evidencing the same or the assumption or guarantee thereof expressly provides that such Indebtedness shall not be senior in right of payment to, or is pari passu with, or is subordinated or junior to, the Debentures.

The term "Indebtedness" means, with respect to any Person (as defined) and without duplication: (a) all indebtedness, obligations and other liabilities (contingent or otherwise) of such Person for borrowed money (including obligations of the Company in respect of overdrafts, foreign exchange contracts, currency exchange agreements, interest rate protection agreements, and any loans or advances, whether or not evidenced by notes or similar instruments) or evidenced by bonds, debentures, notes or similar instruments (whether or not the recourse of the lender is to the whole of the assets of such Person or to only a portion thereof); (b) all reimbursement obligations and other liabilities (contingent or otherwise) of such Person with respect to letters of credit, bank guarantees, bankers' acceptances or similar facilities; (c) all obligations and liabilities (contingent or otherwise) in respect of leases of such Person (i) required, in conformity with generally accepted accounting principles, to be accounted for as capitalized lease obligations on the balance sheet of such Person, or (ii) required, in conformity with generally accepted accounting principles, to be accounted for as an operating lease, provided either (A) such operating lease requires, at the end of the term thereof, that such Person make any payment other than accrued periodic rent in the event that such Person does not acquire the leased real property and related fixtures subject to such lease or (B) such Person has an option to acquire the leased real property and related fixtures, whether such option is exercisable at any time or under specified circumstances; (d) all obligations of such Person (contingent or otherwise) with respect to an interest rate swap, cap or collar agreement or other similar instrument or agreement or foreign currency hedge or exchange agreement or other similar instrument or agreement; (e) all direct or indirect guaranties or similar agreements by such Person in respect of, and obligations or liabilities (contingent or otherwise) of such Person to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of, indebtedness, obligations or liabilities of another Person of the kind described in clauses (a) through (d); (f) any indebtedness or other obligations described in clauses (a) through (d) secured by any mortgage, pledge, lien or other encumbrance existing on property which is owned or held by such Person, regardless of whether the indebtedness or other obligation secured thereby shall have been assumed by such Person; and (g) any and all deferrals, renewals, extensions and refundings of, or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kind described in clauses (a) through (f).

The term "Designated Senior Indebtedness" means (i) Senior Indebtedness incurred under the New Credit Facility or (ii) any other particular Senior Indebtedness in which the instrument creating or evidencing the same or the assumption or guarantee thereof (or related agreements or documents to which the Company is a party) expressly provides that such Senior Indebtedness shall be "Designated Senior Indebtedness" for purposes of the Indenture; provided that such instrument, agreement or other document may place limitations and conditions on the right of such Senior Indebtedness to exercise the rights of Designated Senior Indebtedness.

The term "Secured Indebtedness" means, with respect to any Person, Indebtedness of such Person secured by any mortgage, pledge, lien or other encumbrance existing on the property or assets which is owned or held by such Person.

The Debentures are obligations exclusively of the Company. Since the operations of the Company are conducted through subsidiaries, the cash flow and the consequent ability to service debt, including the Debentures, are dependent upon the earnings of its subsidiaries and the distribution of those earnings to, or upon loans or other payments of funds by those subsidiaries to, the Company. The subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amount pursuant to the Debentures or to make any funds available therefor, whether by dividends, loans or other payments. In addition, the payment of dividends and making of loans and advances to the Company by its subsidiaries are subject to statutory or contractual restrictions, including those expected under the New Credit Facility, are contingent upon the earnings of those subsidiaries and are subject to various business considerations.

Any right of the Company to receive assets of any of its subsidiaries upon their liquidation or reorganization (and the consequent right of the holders of the Debentures to participate in those assets) will be effectively subordinated to the claims of that subsidiary's creditors (including trade creditors), except to the extent that the Company is itself recognized as a creditor of such subsidiary, in which case the claims of the Company would still be subordinate to any security interests in the assets of such subsidiary and any indebtedness of such subsidiary senior to that held by the Company.

At December 28, 1997, on a pro forma basis after giving effect to the Acquisitions, the Bank Financing, the Offering and the application of the net proceeds therefrom, approximately \$1.537 million of Senior Indebtedness and the Company's subsidiaries would have had approximately \$731 million of indebtedness and other liabilities outstanding (excluding intercompany liabilities and liabilities of a type not required to be reflected on a balance sheet in accordance with generally accepted accounting principles) to which the Debentures would have been effectively subordinated. The Debentures rank *pari passu* with all outstanding indebtedness and other liabilities of the Company, including trade payables. Upon the consummation of the Offering, the Company will have no outstanding indebtedness or other liabilities other than trade payables. The Indenture will not limit the amount of additional indebtedness, including Senior Indebtedness, which the Company can create, incur, assume or guarantee, nor will the Indenture limit the amount of indebtedness which any subsidiary can create, incur, assume or guarantee.

In the event that, notwithstanding the foregoing, the Trustee or any holder of the Debentures receives any payment or distribution of assets of the Company of any kind in contravention of any of the subordination provisions of the Indenture, whether in cash, property or securities, including, without limitation, by way of set-off or otherwise, in respect of the Debentures before all Senior Indebtedness is paid in full in cash or other payment satisfactory to the holders of Senior Indebtedness, then such payment or distribution will be held by the recipient in trust for the benefit of holders of Senior Indebtedness or their representatives to the extent necessary to make payment in full in cash or other payment satisfactory to the holders of Senior Indebtedness of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution, or provision therefor, to or for the holders of Senior Indebtedness.

The Company is obligated to pay reasonable compensation to the Trustee and to indemnify the Trustee against certain losses, liabilities or expenses incurred by it in connection with its duties relating to the Debentures. The Trustee's claims for such payments will generally be senior to those of holders of the Debentures in respect of all funds collected or held by the Trustee.

Events of Default; Notice and Waiver

The Indenture provides that, if an Event of Default specified therein shall have occurred and be continuing, either the Trustee or the holders of not less than 25% in aggregate principal amount at maturity of the Debentures then outstanding may declare the Issue Price of the Debentures plus the Original Issue Discount on the Debentures and any liquidated damages under the Registration Rights Agreement accrued to the date of such declaration to be immediately due and payable, but if the Company shall cure all defaults (except the nonpayment of Issue Price and accrued Original Issue Discount which shall have become due by acceleration) and certain other conditions are met, such declaration may be annulled and past defaults may be waived by the holders of a majority in principal amount at maturity of the Debentures then outstanding. In the case of certain events of bankruptcy or insolvency, the Issue Price of the Debentures plus the Original Issue Discount accrued thereon to the occurrence of such event shall automatically become and be immediately due and payable. Under certain circumstances, the holders of a majority in aggregate principal amount at maturity of the outstanding Debentures may rescind any such acceleration with respect to the Debentures and its consequences. Interest shall accrue at the rate of % per annum and be payable on demand upon a default in the payment of the Issue Price, accrued Original Issue Discount, accrued liquidated damages, if any, or any Redemption Price, Purchase Price or Fundamental Change Redemption Price to the extent that payment of such interest shall be legally enforceable.

Under the Indenture, Events of Default are defined as: (i) default in payment of the principal amount at maturity, Issue Price, accrued Original Issue Discount, accrued Liquidated Damages, if any, Redemption Price, Purchase Price or Fundamental Change Redemption Price with respect to any Debenture when such becomes due and payable (whether or not payment is prohibited by the subordination provisions of the Indenture), provided

that in the case of any failure to pay Liquidated Damages, such failure continues for a period of 30 days; (ii) failure by the Company to comply with any of its other agreements in the Debentures or the Indenture upon the receipt by the Company of notice of such default by the Trustee or by holders of not less than 25% in aggregate principal amount at maturity of the Debentures then outstanding and the Company's failure to cure such default within 60 days after receipt by the Company of such notice; or (iii) certain events of bankruptcy or insolvency.

The Trustee shall give notice to holders of the Debentures of any continuing default known to the Trustee within 90 days after the occurrence thereof, provided that the Trustee may withhold such notice if it determines in good faith that withholding the notice is in the interests of the holders.

The holders of a majority in aggregate principal amount at maturity of the outstanding Debentures may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; provided that such direction shall not be in conflict with any law or the Indenture and subject to certain other limitations. Before proceeding to exercise any right or power under the Indenture at the direction of such holders, the Trustee shall be entitled to receive from such holders reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in complying with any such direction. No holder of any Debenture will have any right to pursue any remedy with respect to the Indenture or the Debentures, unless (i) such holder shall have previously given the Trustee written notice of a continuing Event of Default; (ii) the holders of at least 25% in aggregate principal amount at maturity of the outstanding Debentures shall have made a written request to the Trustee to pursue such remedy; (iii) such holder or holders have offered to the Trustee reasonable indemnity satisfactory to the Trustee; (iv) the holders of a majority in aggregate principal amount at maturity of the outstanding Debentures have not given the Trustee a direction inconsistent with such request within 60 days after receipt of such request; and (v) the Trustee shall have failed to comply with the request within such 60-day period.

In the event that the Debentures are declared due and payable prior to their stated maturity by reason of the occurrence of an Event of Default, then the Company is obligated to notify promptly holders of Senior Indebtedness of such acceleration. The Company may not pay monies owed pursuant to the Debentures until 120 days have passed after such acceleration occurs and may thereafter pay the Debentures if the terms of the Indenture otherwise permit payment at that time.

However, the right of any holder (x) to receive payment of the principal amount at maturity, Issue Price, accrued Original Issue Discount, Redemption Price, Purchase Price, Fundamental Change Redemption Price and any interest in respect of a default in the payment of any such amounts on a Debenture, on or after the due date expressed in such Debenture, (y) to institute suit for the enforcement of any such payments or conversion or (z) to convert Debentures shall not be impaired or adversely affected without such holder's consent. The holders of at least a majority in aggregate principal amount at maturity of the outstanding Debentures may waive an existing default and its consequences, other than (i) any default in any payment on the Debentures, (ii) any default with respect to the conversion rights of the Debentures or (iii) any default in respect of certain covenants or provisions in the Indenture which may not be modified without the consent of the holder of each Debenture as described in "Modification" below. The Company will be required to furnish to the Trustee annually a statement as to any default by the Company in the performance and observance of its obligations under the Indenture.

Mergers and Sales of Assets by the Company

The Company may not consolidate with or merge into any other person or convey, transfer or lease its properties and assets substantially as an entirety to another person, unless, among other items, (i) the resulting, surviving or transferee person (if other than the Company) is organized and existing under the laws of the United States, any state thereof or the District of Columbia, (ii) such successor person assumes all obligations of the Company under the Debentures and the Indenture and (iii) the Company or such successor person shall not immediately thereafter be in default under the Indenture. Upon the assumption of the Company's obligations by such person in such circumstances, subject to certain exceptions, the Company shall be discharged from all obligations under the Debentures and the Indenture. Certain such transactions which would constitute a Fundamental Change would permit each holder to require the Company to redeem the Debentures of such holder as described under "Redemption at Option of the Holder Upon a Fundamental Change."

Modification

Modification and amendment of the Indenture or the Debentures may be effected by the Company and the Trustee with the consent of the holders of not less than a majority in aggregate principal amount at maturity of the Debentures then outstanding. Notwithstanding the foregoing, no such amendment may, without the consent of each holder affected thereby: (i) reduce the principal amount at maturity, Issue Price, Purchase Price, Fundamental Change Redemption Price or Redemption Price, or extend the stated maturity of any Debenture or alter the manner or rate of accrual of Original Issue Discount or interest, or make any Debenture payable in money or securities other than that stated in the Debenture; (ii) make any change to the principal amount at maturity of Debentures whose holders must consent to an amendment or any waiver under the Indenture or modify the Indenture provisions relating to such amendments or waivers; (iii) make any change that adversely affects the right to convert any Debenture or the right to require the Company to purchase a Debenture or the right to require the Company to redeem a Debenture upon a Fundamental Change; (iv) modify the provisions of the Indenture relating to the subordination of the Debentures in a manner adverse to the holders of the Debentures in any material respect; or (v) impair the right to institute suit for the enforcement of any payment with respect to, or conversion of, the Debentures. The Indenture also provides for certain modifications of its terms without the consent of the holders. No amendment may be made to the subordination provisions of the Indenture that adversely affects the rights of any holder of Senior Indebtedness then outstanding, unless the holders of such Senior Indebtedness (as required pursuant to the terms of such Senior Indebtedness) consent to such change.

Limitations of Claims in Bankruptcy

If a bankruptcy proceeding is commenced in respect of the Company, the claim of the holder of a Debenture is, under Title 11 of the United States Code, limited to the Issue Price of the Debenture plus that portion of the Original Issue Discount that has accrued from the date of issue to the commencement of the proceeding. In addition, the Debentures will be subordinated in right of payment to Senior Indebtedness to the extent set forth in the Indenture and effectively subordinated to the indebtedness and other obligations of the Company's subsidiaries. See "Subordination of Debentures" above.

Taxation of Debentures

See "Certain United States Federal Income Tax Considerations" for a discussion of certain tax considerations relevant to a holder of Debentures.

Rule 144A Information Requirement

The Company has agreed to furnish to the holders or beneficial holders of the Debentures or Common Stock issued upon conversion thereof and prospective purchasers of the Debentures or such Common Stock designated by such holders, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act until such time as such securities are no longer "restricted securities" within the meaning of Rule 144 under the Securities Act (assuming such securities have not been owned by an affiliate of the Company).

Information Concerning the Trustee

The Bank of New York, as Trustee under the Indenture, has been appointed by the Company as paying agent, conversion agent, registrar and custodian with regard to the Debentures. The Indenture provides that, except during the continuance of an Event of Default, the Trustee thereunder will exercise such rights and powers vested in it under the Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise under the circumstances in the conduct of such person's own affairs.

The Indenture and provisions of the Trust Indenture Act of 1939, as amended ("TIA"), incorporated by reference therein contain limitations on the rights of the Trustee thereunder, should it become a creditor of the Company, to obtain payment of certain claims in certain cases or to realize on certain property received by it in respect of any such claims, as security or otherwise. The Trustee is permitted to engage in other transactions; provided, however, that if it acquires any conflicting interest (within the meaning of the TIA) it must eliminate such conflicting interest or resign.

REGISTRATION RIGHTS

A copy of the Registration Rights Agreement will be available from the Trustee upon request by a registered holder of the Debentures. The following summary of certain provisions of the Registration Rights Agreement does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the Registration Rights Agreement, including the definitions of certain terms that are not otherwise defined in this Offering Memorandum. The Company will enter into a registration rights agreement with the Initial Purchaser (the "Registration Rights Agreement") pursuant to which the Company, at its expense, will, for the benefit of the holders, file with the Commission the Shelf Registration Statement covering resale of the Registrable Securities as soon as practicable, but in any event within 90 days after the first date of original issuance of the Debentures. The Company will use its best efforts to cause the Shelf Registration Statement to become effective as promptly as is practicable, but in any event within 180 days of such first date of original issuance and to keep the Shelf Registration Statement effective until the earlier of (i) the sale pursuant to the Shelf Registration Statement of all the securities registered thereunder and (ii) the expiration of the holding period applicable to such securities held by persons that are not affiliates of the Company under Rule 144(k) under the Securities Act, or any successor provision, subject to certain permitted exceptions. The Company will be permitted to suspend the use of the prospectus that is a part of the Shelf Registration Statement under certain circumstances relating to pending corporate developments, public filings with the Commission and similar events for a period not to exceed 30 days in any three-month period or not to exceed an aggregate of 90 days in any 12-month period; provided, however, that the Company will be permitted to suspend the use of the prospectus for a period not to exceed 60 days in any 3-month period or 90 days in any 12-month period under certain circumstances relating to probable acquisitions, acquisitions, financings or similar transactions. The Company will agree to pay predetermined liquidated damages as described herein ("Liquidated Damages") to holders of Debentures and holders of Common Stock issued upon conversion of the Debentures if the Shelf Registration Statement is not timely filed or made effective or if the prospectus is unavailable for periods in excess of those permitted above. Such Liquidated Damages shall accrue until such failure to file or become effective or unavailability is cured, (i) in respect of any Debenture, at a rate per annum equal to 0.25% for the first 90 day period after the occurrence of such event and 0.5% thereafter on the Issue Price of the Debenture plus accrued Original Issue Discount thereon and, (ii) in respect of each share of Common Stock, at a rate per annum equal to 0.25% for the first 90 day period and 0.5% thereafter on the then applicable conversion price for a share of Common Stock which equals the Issue Price of \$1,000 principal amount at maturity of Debentures plus accrued Original Issue Discount thereon divided by the Conversion Rate in effect. A holder who sells Debentures and Common Stock issued upon conversion of the Debentures pursuant to the Shelf Registration Statement generally will be required to be named as a selling stockholder in the related prospectus, deliver a prospectus to purchasers of such Debentures and/or Common Stock issued upon conversion thereof and be bound by certain provisions of the Registration Rights Agreement that are applicable to such holder (including certain indemnification provisions). The Company will pay all expenses of the Shelf Registration Statement, provide to each registered holder copies of such prospectus, notify each registered holder when the Shelf Registration Statement has become effective and take certain other actions as are required to permit, subject to the foregoing, unrestricted resales of the Debentures and the Common Stock issued upon conversion of the Debentures. The plan of distribution of the Shelf Registration Statement will permit resales of Registrable Securities by selling security holders through brokers and dealers.

Attached to this Offering Memorandum as Appendix B is a notice and questionnaire (the "Questionnaire") to be completed and delivered by a holder to the Company at least three business days prior to any intended distribution of Registrable Securities pursuant to the Shelf Registration Statement. Holders are required to complete and deliver the Questionnaire prior to the effectiveness of the Shelf Registration Statement so that such holders may be named as selling stockholders in the related prospectus at the time of effectiveness. Upon receipt of such a completed Questionnaire, together with such other information as may be reasonably requested by the Company, from a holder following the effectiveness of the Shelf Registration Statement, the Company will, as

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promptly as practicable but in any event within five business days of such receipt, file such amendments to the Shelf Registration Statement or supplements to the related prospectus as are necessary to permit such holder to deliver such prospectus to purchasers of Registrable Securities (subject to the Company's right to suspend the use of the prospectus as described above). The Company has agreed to pay Liquidated Damages in the amount set forth above to such holder if the Company fails to make such filing in the time required or, if such filing is a post-effective amendment to the Shelf Registration Statement required to be declared effective under the Securities Act, if such amendment is not declared effective within 45 days of the filing thereof. Any holder that does not complete and deliver a Questionnaire or provide such other information will not be named as a selling stockholder in the prospectus and therefore will not be permitted to sell any Registrable Securities pursuant to the Shelf Registration Statement.

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DESCRIPTION OF CAPITAL STOCK

The Company's authorized capital stock consists of 200,000,000 shares of Common Stock, par value \$.01 per share and 2,000,000 shares of preferred stock, par value \$.01 per share.

Common Stock

As of February 27, 1998, there were 86,457,201 shares of Common Stock outstanding. Each share of Common Stock has one vote on all matters upon which stockholders are entitled or permitted to vote, including the election of directors. There are no cumulative voting rights. Shares of Common Stock would participate ratably in any distribution of assets in a liquidation, dissolution or winding up of the Company, subject to prior distribution rights of any shares of preferred stock then outstanding. The Common Stock has no preemptive rights or conversion rights nor are there any redemption or sinking fund provisions applicable to the Common Stock. Holders of Common Stock are entitled to participate in dividends as and when declared by the Company's Board of Directors out of funds legally available therefor. The Company's ability to pay cash dividends is subject to certain restrictions. The Company expects that the New Credit Facility will contain limitations on the ability of the Company to pay dividends. The Company's Proxy Statement for its next annual meeting which is scheduled for May 13, 1998, includes an amendment to the Company's Restated Certificate of Incorporation increasing the total number of authorized shares of Common Stock to 500,000,000 shares from 200,000,000 shares.

The transfer agent and registrar for the Common Stock is The Bank of New York.

Preferred Stock

There are no shares of preferred stock currently outstanding. The Certificate of Incorporation provides that the Board of Directors of the Company may authorize the issuance of one or more series of preferred stock having such rights, including voting, conversion and redemption rights, and such preferences, including dividend and liquidation preferences, as the Board may determine without any further action by the stockholders of the Company.

Delaware General Corporation Law Section 203

Section 203 of the Delaware General Corporation Law (the "DGCL") prohibits certain transactions between a Delaware corporation and an "interested stockholder," which is defined as a person who, together with any affiliate and/or associates of such person, beneficially owns, directly or indirectly, 15% or more of the outstanding voting shares of a Delaware corporation. This provision prohibits certain business combinations (defined broadly to include mergers, consolidations, sales or other dispositions of assets having an aggregate value in excess of 10% of the consolidated assets of the corporation or the aggregate value of all of the outstanding capital stock of the corporation, and certain transactions that would increase the interested stockholder's proportionate share ownership in the corporation) between an interested stockholder and a corporation for a period of three years after the date the interested stockholder acquired its stock, unless (i) the business combination is approved by the corporation's board of directors prior to the date the interested stockholder acquired shares, (ii) the interested stockholder acquired at least 85% of the voting stock of the corporation in the transaction in which it became an interested stockholder or (iii) the business combination is approved by a majority of the board of directors and by the affirmative vote of two-thirds of the votes entitled to be cast by disinterested stockholders at an annual or special meeting. Any future election to opt out of Section 203 can be effected only by an amendment to the Certificate of Incorporation or the Bylaws. Any such election would not be effective until 12 months after the adoption of such amendment and would not apply to a business combination with any interested stockholder who became such on or prior to the date of adoption.

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CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of certain material U.S. federal income tax considerations relating to the purchase, ownership and disposition of the Debentures and Common Stock to a holder of a Debenture or Common Stock that is, for U.S. federal income tax purposes, (i) a citizen or resident of the United States, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States or any political subdivision thereof, (iii) an estate, the income of which is subject to United States federal income taxation regardless of its source, or (iv) a trust, the administration of which is subject to the primary supervision of a court within the United States and which has one or more United States persons with authority to control all substantial decisions. This summary is based on laws, regulations, rulings and decisions now in effect, all of which are subject to change, possibly with retroactive effect. There can be no assurance that the Internal Revenue Service (the "IRS") will not challenge one or more of the tax consequences described herein, and the Company has not obtained, nor does it intend to obtain, a ruling from the IRS or an opinion of counsel as to any U.S. federal income tax consequences relating to the Debentures.

This summary deals only with holders of Debentures who purchase the Debentures pursuant to the Offering and hold the Debentures and any Common Stock into which the Debentures are converted as capital assets. This summary does not address tax considerations applicable to investors that may be subject to special tax rules (including, without limitation, banks, insurance companies, tax-exempt entities, regulated investment companies, common trust funds, dealers in securities, or persons who hold Debentures or Common Stock as part of a hedge conversion or constructive sale transaction, straddle or other risk reduction transaction). This discussion also does not address the tax consequences arising under the laws of any foreign, state or local jurisdiction.

INVESTORS CONSIDERING THE PURCHASE OF A DEBENTURE SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF ACQUIRING, HOLDING, CONVERTING OR OTHERWISE DISPOSING OF THE DEBENTURES AND COMMON STOCK, INCLUDING THE EFFECT AND THE APPLICABILITY OF STATE, LOCAL OR FOREIGN TAX LAWS.

Original Issue Discount on the Debentures. The Debentures are being issued at a substantial discount from their stated redemption price at maturity. For U.S. federal income tax purposes, the excess of the stated redemption price at maturity of each Debenture over its issue price (which is expected to be the Issue Price) constitutes Original Issue Discount ("OID"). The issue price of the Debentures will equal the initial price at which a substantial amount of the Debentures is sold for cash (other than to bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers), and the stated redemption price at maturity of a Debenture will be the sum of all payments due under the Debenture (which is expected to be the principal amount at maturity).

For each taxable year of a U.S. Holder, the amount of OID that must be included in gross income in respect of a Debenture will be the sum of the daily portions of OID for each day during such taxable year (or any portion thereof) in which such U.S. Holder held the Debentures. Such daily portions are determined by allocating to each day in an accrual period a pro rata portion of the OID allocable to the accrual period. The amount of OID allocated to any accrual period generally will equal the product of the Debenture's "adjusted issue price" at the beginning of such accrual period multiplied by its yield to maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period). The "adjusted issue price" of a Debenture at the beginning of an accrual period will equal the issue price of the Debentures, as defined above, increased by previously accrued OID from prior accrual periods, and reduced by payments, if any, made on such Debenture on or before the first day of the accrual period.

There are several circumstances under which the Company could make a payment on a Debenture which might have to be taken into account under Treasury Regulations and could affect the amount or timing of OID included in income, including (as described under "Description of Debentures") the obligation of the Company

to purchase Debentures upon the occurrence of a Fundamental Change. According to Treasury Regulations, the possibility of any such event will not be treated as affecting the amount of OID required to be includable in income by a holder (or the timing of such inclusion) if the likelihood of such event occurring as of the date the debt obligations are issued, is remote. The Company intends to report on the basis that the likelihood of any change in the yield on the Debentures is remote.

Sale, Exchange or Retirement of the Debentures. A holder's tax basis for determining gain or loss on the sale or other disposition of a Debenture will generally equal the holder's cost of the Debenture increased by any accrued OID includable in such holder's gross income and reduced by payments, if any. Except as described in the next paragraph, upon the sale, exchange or retirement of a Debenture, a holder will recognize gain or loss equal to the difference between the amount realized on the sale or other disposition of the Debenture and the holder's tax basis in such Debenture. Gain or loss realized on the sale, exchange or retirement of a Debenture will generally be capital gain or loss and will be long-term capital gain or loss if the Debenture is held for more than one year.

If a holder elects to exercise its option to cause the Company to purchase its Debentures on a Purchase Date and the Company issues Common Stock in satisfaction of all of the Purchase Price, the exchange of the Debentures for Common Stock should generally not be a taxable event (except with respect to cash received in lieu of a fractional share). A holder's tax basis in the Common Stock received in such exchange of a Debenture should be the same as the holder's tax basis in the Debenture at the time of the conversion (except for any tax basis allocable to a fractional share) and the holding period for the Common Stock received in such exchange should include the holding period of the Debenture exchanged. If the Purchase Price is paid with a combination of Common Stock and cash, gain (but not loss) realized by the holder should be recognized, but only to the extent of the cash received (including cash received in lieu of a fractional share). A holder's tax basis in the Common Stock received should be the same as such holder's tax basis in the Debenture at the time of the conversion (except for any portion allocable to a fractional share of Common Stock), increased by the amount of gain recognized (other than with respect to a fractional share) and decreased by the amount of any cash received (except cash received in lieu of a fractional share). The holding period for Common Stock received in the exchange should include the holding period of the Debenture tendered to the Company in exchange therefor. The receipt of cash in lieu of a fractional share of Common Stock should generally result in capital gain or loss, measured by the difference between the amount of cash received for the fractional share and the holder's tax basis in the fractional share interest.

Conversion of Debentures. A holder's conversion of a Debenture into Common Stock will generally not be a taxable event (except with respect to cash received in lieu of a fractional share). A tax basis in the Common Stock received on conversion of a Debenture will be the same as the holder's tax basis in the Debenture at the time of conversion (except for any tax basis allocable to a fractional share) and the holding period for the Common Stock received on conversion will include the holding period of the Debenture converted, except that it is possible that the Internal Revenue Service may argue that the holding period of the Common Stock allocable to OID will commence on the date of the conversion and a holder would be required to hold such Common Stock for more than twelve months before long-term capital gain (or loss) treatment could be obtained upon a sale of such Common Stock. The receipt of cash in lieu of a fractional share of Common Stock should generally result in capital gain or loss (measured by the difference between the cash received for the fractional share interest and the holder's tax basis in the fractional share interest).

Dividends; Adjustment of Conversion Price. Dividends, if any, paid on the Common Stock generally will be includable in the income of a holder as ordinary income to the extent of the Company's current or accumulated earnings and profits.

If at any time the Company makes a distribution of property to shareholders that would be taxable to such shareholders as a dividend for federal income tax purposes (for example, distributions of evidences of

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indebtedness or assets of the Company, but generally not stock dividends or rights to subscribe for Common Stock) and, pursuant to the anti-dilution provisions of the Indenture, the Conversion Rate of the Debentures is increased, such increase may be deemed to be the payment of a taxable dividend to holders of Debentures. If the Conversion Rate is increased at the discretion of the Company or in certain other circumstances, such increase may also be deemed to be the payment of a taxable dividend to holders of Debentures. Moreover, in certain other circumstances, the absence of such an adjustment to the Conversion Rate of the Debentures may result in a taxable dividend to holders of the Common Stock.

Sale of Common Stock. Upon the sale or exchange of Common Stock, holders generally will recognize capital gain or capital loss equal to the difference between the amount realized on such sale or exchange and the holder's adjusted tax basis in such shares.

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PLAN OF DISTRIBUTION

Under the terms and subject to the conditions set forth in the Purchase Agreement between the Company and Morgan Stanley & Co. Incorporated (the "Initial Purchaser") dated March 1, 1998 (the "Purchase Agreement"), the Initial Purchaser has agreed to purchase, and the Company has agreed to sell to the Initial Purchaser, \$1,300,000,000, aggregate principal amount at maturity of Debentures at a purchase price of $\frac{1}{2}$ % of the principal amount at maturity thereof. After the initial offering of the Debentures, the offering price and other selling terms may from time to time be varied by the Initial Purchaser.

The Purchase Agreement provides that the obligation of the Initial Purchaser to pay for and accept delivery of the Debentures is subject to approval of certain legal matters by its counsel and to certain other conditions. The Initial Purchaser is obligated to take and pay for all of the Debentures offered hereby if any are taken (other than the Debentures covered by the overallotment option described below).

The Company has granted to the Initial Purchaser an option, exercisable within 30 days of the date of the Purchase Agreement, to purchase up to an additional \$195,000,000 aggregate principal amount at maturity of the Debentures solely for the purpose of covering over-allotments, if any.

The Purchase Agreement provides that the Company will indemnify the Initial Purchaser against certain liabilities, including liabilities under the Securities Act.

The Company has been advised by the Initial Purchaser that the Initial Purchaser proposes to resell the Debentures initially at the price set forth on the cover page hereof to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act) in reliance on Rule 144A under the Securities Act and to a limited number of other institutional "accredited investors" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act, that agree in writing to comply with the transfer restrictions and other conditions set forth in the Purchase Agreement. See "Transfer Restrictions."

The Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except as described in the immediately preceding paragraph.

The Debentures are expected to be eligible for trading in The Portal Market. The Initial Purchaser has advised the Company that it presently intends to make a market in the Debentures as permitted by applicable laws and regulations. The Initial Purchaser is not obligated, however, to make a market in the Debentures and any such market making may be discontinued at any time at the sole discretion of the Initial Purchaser. Accordingly, no assurance can be given as to the liquidity of, or trading markets for, the Debentures.

The Company and the directors and executive officers named under "Security Ownership of Management" will agree that they will not (a) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, or (b) enter into any swap or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (a) or (b) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, for a 90-day period after the date of this Offering Memorandum, without the prior written consent of Morgan Stanley & Co. Incorporated, other than (i) the Debentures offered hereby, (ii) the Common Stock issuable upon conversion of the Debentures, (iii) securities of the Company (and the agreement to provide such securities) as full or partial consideration in connection with any future acquisitions or strategic investments by the Company or securities of the Company issuable upon exercise or conversion of the foregoing securities; provided that the market value of such securities does not exceed \$500 million in the aggregate, (iv) options granted or stock issued upon the exercise of outstanding stock options or otherwise pursuant to the Company's stock option or employee stock purchase plans and (v) in connection with the acquisition of Coleman.

In order to facilitate the offering of the Debentures and the Common Stock, the Initial Purchaser may engage in transactions that stabilize, maintain or otherwise affect the price of the Debentures or the Common Stock. Specifically, the Initial Purchaser may over-allot in connection with the offering, creating a short position in the Debentures for its own account. In addition, to cover over-allotments or stabilize the price of the Debentures and

the Common Stock, the Initial Purchaser may bid for, and purchase, the Debentures or shares of the Common Stock in the open market. Finally, the Initial Purchaser may reclaim selling concessions allowed to dealers for distributing the Debentures in the offering, if the Initial Purchaser repurchases previously distributed Debentures in transactions to cover short positions established by the Initial Purchaser, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the Debentures or the Common Stock above independent market levels. The Initial Purchaser is not required to engage in these activities, and may discontinue any of these activities at any time.

The Initial Purchaser has performed various investment banking and other services for the Company in the past, and may do so from time to time in the future. In particular, the Initial Purchaser is acting as the Company's financial advisor in connection with the Acquisitions. In addition, an affiliate of the Initial Purchaser is arranging the New Credit Facility and expects to be a lender thereunder.

TRANSFER RESTRICTIONS

The Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act. The Debentures and Common Stock issuable upon conversion of the Debentures may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons, except (i) in compliance with the registration requirements of the Securities Act and all other applicable securities laws, or (ii) pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and any other applicable securities laws. Accordingly, the Debentures are being offered and sold only (1) to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act) ("QIBs") in compliance with Rule 144A and (2) to a limited number of other institutional "accredited investors" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) ("Institutional Accredited Investors") that, prior to their purchases of Debentures, deliver to the Initial Purchaser a letter attached hereto as Appendix A, which contains certain representations and agreements.

Each purchaser of Debentures will be deemed to (1) represent that it is purchasing the Debentures for its own account or an account with respect to which it exercises sole investment discretion and that it or such account is a QIB, or an institutional accredited investor, (2) acknowledge that the Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act, and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except as set forth below, (3) agree that if it should resell or otherwise transfer the Debentures or the Common Stock issuable upon conversion of the Debentures within the period prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), it will do so within the United States or to, or for the account or benefit of, U.S. persons only (a) to the Company or any subsidiary thereof, (b) to a QIB in compliance with Rule 144A, (c) to an institutional accredited investor that, prior to such transfer, furnishes to the Trustee, as registrar for the Debentures (or in the case of the Common Stock, the transfer agent for the Common Stock (the "Transfer Agent")), a signed letter containing certain representations and agreements relating to the restrictions on transfer of the Debentures (or the Common Stock, as the case may be) (the form of which letter can be obtained from the Trustee for the Debentures or the Transfer Agent for the Common Stock), (d) pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available) or (e) pursuant to a registration statement which has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer), and (4) agree that it will give each person to whom it transfers such Debentures or Common Stock issuable on conversion of the Debentures notice of any restrictions on transfer of such Debentures and such Common Stock. Each institutional accredited investor (other than a QIB) that is an original purchaser of the Debentures will be required to sign an agreement to the foregoing effect in the form attached hereto as Appendix A. In the case of any certificated Debentures, prior to any proposed transfer of Debentures within the period prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), the holders thereof must check the appropriate box set forth on the certificate representing the Debentures relating to the manner of such transfer and submit the certificate representing the Debentures to the Trustee. If (i) such transfer is to an institutional accredited investor or (ii) any holder proposes to transfer Common Stock issued upon conversion of Debentures in either case prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), the holder (or beneficial holder, as the case may be) will be required

to furnish to the Trustee (or, in the case of the Common Stock, the Transfer Agent) such certifications, legal opinions or other information as it may reasonably require to confirm that the proposed transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

Each certificate representing a Debenture will bear the following legend (unless such Debenture has been sold pursuant to a registration statement that has been declared effective under the Securities Act):

THE DEBENTURE EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT) ("INSTITUTIONAL ACCREDITED INVESTOR"); (2) AGREES THAT IT WILL NOT, PRIOR TO EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE DEBENTURE EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), RESELL OR OTHERWISE TRANSFER THE DEBENTURE EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH DEBENTURES WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OF, U.S. PERSONS EXCEPT (A) TO SUNBEAM CORPORATION OR ANY SUBSIDIARY THEREOF, (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) TO AN INSTITUTIONAL ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE DEBENTURE EVIDENCED HEREBY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM SUCH TRUSTEE OR A SUCCESSOR TRUSTEE, AS APPLICABLE), (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (E) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER); (3) PRIOR TO SUCH TRANSFER (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(E) ABOVE), IT WILL FURNISH TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE TRUSTEE MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (4) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE DEBENTURES EVIDENCED HEREBY ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THE DEBENTURE EVIDENCED HEREBY PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE DEBENTURE EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE). IF THE PROPOSED TRANSFEREE IS AN INSTITUTIONAL ACCREDITED INVESTOR OR IS A PURCHASER WHO IS NOT A U.S. PERSON, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS IT MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE DEBENTURE EVIDENCED HEREBY PURSUANT TO CLAUSE 2(E) ABOVE OR UPON ANY TRANSFER OF THE DEBENTURE EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY

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SUCCESSOR PROVISION). AS USED HEREIN, THE TERMS "UNITED STATES" AND "UNITED STATES PERSON" HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

Each stock certificate representing Common Stock issued upon conversion of the Debenture will bear the following legend (unless such Common Stock has been sold pursuant to a registration statement that has been declared effective under the Securities Act):

THE COMMON STOCK EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. THE HOLDER HEREOF AGREES THAT UNTIL THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE SECURITY EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), (1) IT WILL NOT RESELL OR OTHERWISE TRANSFER THE COMMON STOCK EVIDENCED HEREBY WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OF, U.S. PERSONS EXCEPT (A) TO SUNBEAM CORPORATION OR ANY SUBSIDIARY THEREOF, (B) TO A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN COMPLIANCE WITH RULE 144A, (C) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT) THAT PRIOR TO SUCH TRANSFER, FURNISHES TO THE BANK OF NEW YORK AS TRANSFER AGENT (OR A SUCCESSOR TRANSFER AGENT, AS APPLICABLE), A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM SUCH TRANSFER AGENT OR A SUCCESSOR TRANSFER AGENT, AS APPLICABLE), (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), OR (E) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER); (2) PRIOR TO SUCH TRANSFER (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(E) ABOVE), IT WILL FURNISH TO THE BANK OF NEW YORK AS TRANSFER AGENT (OR A SUCCESSOR TRANSFER AGENT, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) IT WILL DELIVER TO EACH PERSON TO WHOM THE COMMON STOCK EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(E) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY PURSUANT TO CLAUSE 1(E) ABOVE OR UPON ANY TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY AFTER THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE SECURITY EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION). AS USED HEREIN, THE TERMS "UNITED STATES" AND "UNITED STATES PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

LEGAL MATTERS

Certain legal matters will be passed upon for the Company by Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York and for the Initial Purchaser by Davis Polk & Wardwell, New York, New York.

INDEPENDENT AUDITORS

The consolidated financial statements of Sunbeam Corporation and its subsidiaries, included in this Offering Memorandum, have been audited by Arthur Andersen LLP to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of Arthur Andersen LLP.

The consolidated financial statements of CLN Holdings and its subsidiaries, included in this Offering Memorandum, have been audited by Ernst & Young LLP to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of Ernst & Young LLP.

The consolidated financial statements of Signature Brands USA, Inc. and its subsidiaries, included in this Offering Memorandum, have been audited by KPMG Peat Marwick LLP, independent certified public accountants to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of KPMG Peat Marwick LLP, independent certified public accountants.

The consolidated financial statements of First Alert, Inc. and its subsidiaries, included in this Offering Memorandum, have been audited by Price Waterhouse LLP to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of Price Waterhouse LLP.

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REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Board of Directors and Shareholders of
Sunbeam Corporation:

We have audited the accompanying consolidated balance sheets of Sunbeam Corporation (a Delaware corporation) and subsidiaries as of December 29, 1996 and December 28, 1997 and the related consolidated statements of operations, shareholders' equity and cash flows for each of the three fiscal years in the period ended December 28, 1997. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 29, 1996 and December 28, 1997, and the results of its operations and its cash flows for each of the three fiscal years in the period ended December 28, 1997 in conformity with generally accepted accounting principles.

ARTHUR ANDERSEN LLP

Fort Lauderdale, Florida,
January 28, 1998, except with respect
to the matters discussed in Note 14,
as to which the date is March 2, 1998

SUNBEAM CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(Dollars in thousands, except per share amounts)

	Fiscal Years Ended		
	December 28, 1997	December 29, 1996	December 31, 1995
Net sales	\$1,168,182	\$ 984,236	\$1,016,883
Cost of goods sold	837,683	900,573	809,130
Selling, general and administrative expense	131,056	214,029	137,508
Restructuring, impairment and other costs	—	154,869	—
Operating earnings (loss)	199,443	(285,235)	70,245
Interest expense	11,381	13,588	9,437
Other (income) expense, net	(1,218)	3,738	173
Earnings (loss) from continuing operations before income taxes	189,280	(302,561)	60,635
Income taxes (benefit):			
Current	8,369	(28,062)	(2,105)
Deferred	57,783	(77,828)	25,146
	66,152	(105,890)	23,041
Earnings (loss) from continuing operations	123,128	(196,671)	37,594
Earnings from discontinued operations, net of taxes	—	839	12,917
Loss on sale of discontinued operations, net of taxes	(13,713)	(32,430)	—
Net earnings (loss)	<u>\$ 109,415</u>	<u>\$ (228,262)</u>	<u>\$ 50,511</u>
Earnings (loss) per share of common stock from continuing operations:			
Basic	<u>\$ 1.45</u>	<u>\$ (2.37)</u>	<u>\$ 0.46</u>
Diluted	<u>1.41</u>	<u>(2.37)</u>	<u>0.45</u>
Net earnings (loss) per share of common stock:			
Basic	<u>\$ 1.29</u>	<u>\$ (2.75)</u>	<u>\$ 0.62</u>
Diluted	<u>1.25</u>	<u>(2.75)</u>	<u>0.61</u>
Weighted average common shares outstanding:			
Basic	<u>84,945</u>	<u>82,925</u>	<u>81,626</u>
Diluted	<u>87,542</u>	<u>82,925</u>	<u>82,819</u>

See Notes to Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(Dollars in thousands)

	<u>December 28,</u> <u>1997</u>	<u>December 29,</u> <u>1996</u>
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 52,378	\$ 11,526
Receivables, net	295,550	213,438
Inventories	256,180	162,252
Net assets of discontinued operations and other assets held for sale	—	102,847
Deferred income taxes	36,706	93,689
Prepaid expenses and other current assets	<u>17,191</u>	<u>40,411</u>
Total current assets	658,005	624,163
Property, plant and equipment, net	240,897	220,088
Trademarks and trade names, net	194,372	200,262
Other assets	<u>27,010</u>	<u>28,196</u>
	<u>\$1,120,284</u>	<u>\$1,072,709</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Short-term debt and current portion of long-term debt	\$ 668	\$ 921
Accounts payable	105,580	107,319
Restructuring accrual	10,938	63,834
Other current liabilities	<u>80,913</u>	<u>99,509</u>
Total current liabilities	198,099	271,583
Long-term debt	194,580	201,115
Other long-term liabilities	141,109	152,451
Deferred income taxes	54,559	52,308
Commitments and contingencies (Note 12)		
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized, none outstanding)	—	—
Common stock (issued 89,984,425 and 88,441,479 shares)	900	884
Paid-in capital	483,384	447,948
Retained earnings	141,134	35,118
Other	<u>(30,436)</u>	<u>(25,310)</u>
Treasury stock, at cost (4,454,394 and 4,478,814 shares)	594,982	458,640
	<u>(63,045)</u>	<u>(63,388)</u>
Total shareholders' equity	<u>531,937</u>	<u>395,252</u>
	<u>\$1,120,284</u>	<u>\$1,072,709</u>

See Notes to Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(Dollars in thousands, except per share amounts)

	<u>Common Stock</u>	<u>Paid-in Capital</u>	<u>Retained Earnings</u>	<u>Other (Note 2)</u>	<u>Treasury Stock</u>
Balance at January 1, 1995	\$932	\$461,876	\$285,990	\$(20,118)	\$(174,070)
Net earnings	—	—	50,511	—	—
Common dividends (\$.04 per share)	—	—	(3,268)	—	—
Exercise of stock options	20	17,013	—	—	—
Amortization of unearned compensation	—	—	—	582	—
Retirement of treasury shares	(74)	(37,103)	(66,535)	—	103,712
Purchase of common stock for treasury	—	—	—	—	(13,091)
Minimum pension liability	—	—	—	(199)	—
Translation adjustments	—	—	—	(5,145)	—
Balance at December 31, 1995	<u>878</u>	<u>441,786</u>	<u>266,698</u>	<u>(24,880)</u>	<u>(83,449)</u>
Net loss	—	—	(228,262)	—	—
Common dividends (\$.04 per share)	—	—	(3,318)	—	—
Exercise of stock options	6	7,313	—	—	—
Grant of restricted stock	—	(1,120)	—	(14,346)	15,466
Amortization of unearned compensation	—	—	—	7,707	—
Minimum pension liability	—	—	—	4,963	—
Retirement and sale of treasury shares	—	(31)	—	—	4,595
Translation adjustments	—	—	—	1,246	—
Balance at December 29, 1996	<u>884</u>	<u>447,948</u>	<u>35,118</u>	<u>(25,310)</u>	<u>(63,388)</u>
Net earnings	—	—	109,415	—	—
Common dividends (\$.04 per share)	—	—	(3,399)	—	—
Exercise of stock options	16	34,680	—	—	—
Amortization of unearned compensation	—	—	—	5,322	—
Minimum pension liability	—	—	—	(9,709)	—
Other stock issuances	—	756	—	—	343
Translation adjustments	—	—	—	(739)	—
Balance at December 28, 1997	<u>\$900</u>	<u>\$483,384</u>	<u>\$141,134</u>	<u>\$(30,436)</u>	<u>\$ (63,045)</u>

See Notes to Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Dollars in thousands)

	Fiscal Years Ended		
	December 28, 1997	December 29, 1996	December 31, 1995
Operating activities:			
Net earnings (loss)	\$ 109,415	\$ (228,262)	\$ 50,511
Adjustments to reconcile net earnings (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	38,577	47,429	44,174
Restructuring, impairment and other costs	—	154,869	—
Other non-cash special charges	—	128,800	—
Loss on sale of discontinued operations, net of taxes	13,713	32,430	—
Deferred income taxes	57,783	(77,828)	25,146
Increase (decrease) in cash from changes in working capital:			
Receivables, net	(84,576)	(13,829)	(4,499)
Inventories	(100,810)	(11,651)	(4,874)
Accounts payable	(1,585)	14,735	9,245
Restructuring accrual	(43,378)	—	—
Prepaid expenses and other current assets and liabilities	(9,004)	2,737	(8,821)
Income taxes payable	52,844	(21,942)	(18,452)
Payment of other long-term and non-operating liabilities	(14,682)	(27,089)	(21,719)
Other, net	(26,546)	13,764	10,305
Net cash provided by (used in) operating activities	<u>(8,249)</u>	<u>14,163</u>	<u>81,516</u>
Investing activities:			
Capital expenditures	(58,258)	(75,336)	(140,053)
Decrease in investments restricted for plant construction	—	—	45,755
Proceeds from sale of divested operations and other assets	90,982	—	—
Purchase of businesses	—	—	(13,053)
Other, net	—	(860)	—
Net cash provided by (used in) investing activities	<u>32,724</u>	<u>(76,196)</u>	<u>(107,351)</u>
Financing activities:			
Net borrowings under revolving credit facility	5,000	30,000	40,000
Issuance of long-term debt	—	11,500	—
Payments of debt obligations	(12,157)	(1,794)	(5,417)
Proceeds from exercise of stock options	26,613	4,684	9,818
Purchase of common stock for treasury	—	—	(13,091)
Sale of treasury stock	—	4,578	—
Payments of dividends on common stock	(3,399)	(3,318)	(3,268)
Other financing activities	320	(364)	(264)
Net cash provided by financing activities	<u>16,377</u>	<u>45,286</u>	<u>27,778</u>
Net increase (decrease) in cash and cash equivalents	40,852	(16,747)	1,943
Cash and cash equivalents at beginning of year	11,526	28,273	26,330
Cash and cash equivalents at end of year	<u>\$ 52,378</u>	<u>\$ 11,526</u>	<u>\$ 28,273</u>

See Notes to Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Operations and Significant Accounting Policies

Organization

Sunbeam Corporation ("Sunbeam" or the "Company") is a leading manufacturer and marketer of branded consumer products. The Sunbeam® and Oster® brands have been household names for generations, and the Company is a market share leader in many of its product categories.

The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogs, television shopping channels, Company-owned outlet stores, hardware stores, home centers, drug and grocery stores, pet supply retailers, as well as independent distributors and the military. The Company also sells its products to commercial end users such as hotels and other institutions.

Approximately 79% of total Company sales are generated in the United States. The remaining sales are generated primarily in Latin America, Mexico, Canada, Europe and Asia.

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and all majority-owned subsidiaries that it controls. All material intercompany balances and transactions have been eliminated.

Presentation of Fiscal Periods

The Company's fiscal year ends on the Sunday nearest December 31. Fiscal years 1997, 1996 and 1995 ended on December 28, 1997, December 29, 1996, and December 31, 1995 respectively, which encompassed 52-week periods.

Use of Estimates

The preparation of the consolidated financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates. Significant accounting estimates include the establishment of the allowance for doubtful accounts, reserves for product warranty, product liability, excess and obsolete inventory, litigation and environmental exposures.

Concentrations of Credit Risk

Substantially all of the Company's trade receivables are due from retailers and distributors located throughout the United States, Latin America and Canada. Approximately 36% of the Company's sales in 1997 were to its five largest customers. The Company establishes its credit policies based on an ongoing evaluation of its customers' creditworthiness and competitive market conditions and establishes its allowance for doubtful accounts based on an assessment of exposures to credit losses at each balance sheet date. The Company believes its allowance for doubtful accounts is sufficient based on the credit exposures outstanding at December 28, 1997. However, certain retailers filed for bankruptcy protection in the last several years and it is possible that additional credit losses could be incurred if the trends of retail consolidation continue.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

1. Operations and Significant Accounting Policies—(Continued)

Inventories

Inventories are stated at the lower of cost or market with cost being determined principally by the first-in, first-out method.

Property, Plant and Equipment

Property, plant and equipment is stated at cost. The Company provides for depreciation using primarily the straight-line method in amounts that allocate the cost of property, plant and equipment over the following useful lives:

Buildings and improvements	20 to 40 years
Machinery, equipment and tooling	3 to 15 years
Furniture and fixtures	3 to 10 years

Leasehold improvements are amortized on a straight-line basis over the shorter of its estimated useful life or the term of the lease.

Long-lived Assets

The Company accounts for long-lived assets pursuant to Statement of Financial Accounting Standards ("SFAS") No. 121, *Accounting for the Impairment of Long-lived Assets and for Long-lived Assets to Be Disposed Of*. See Notes 8 and 9 for a discussion of asset impairment charges in 1996.

Capitalized Interest

Interest costs for the construction of certain long-term assets are capitalized and amortized over the related assets' estimated useful lives. Total interest costs during 1997 and 1996 amounted to \$12.3 million and \$14.0 million respectively, of which \$.9 million and \$.4 million respectively, was capitalized into the construction cost of the long-term assets.

Amortization Periods

Trademarks and trade names are being amortized on a straight-line basis over 40 years.

Revenue Recognition

The Company recognizes revenues from product sales principally at the time of shipment to customers. In limited circumstances, at the customers request the Company may sell seasonal product on a bill and hold basis provided that the goods are completed, packaged and ready for shipment, such goods are segregated and the risks of ownership and legal title have passed to the customer. The amount of such bill and hold sales at December 29, 1997 was approximately 3% of consolidated revenues.

Net sales is comprised of gross sales less provisions for expected customer returns, discounts, promotional allowances and cooperative advertising.

Warranty Costs

The Company provides for warranty costs in amounts it estimates will be needed to cover future warranty obligations for products sold during the year. Estimates of warranty costs are periodically reviewed and adjusted, when necessary, to consider actual experience.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

1. Operations and Significant Accounting Policies—(Continued)

Advertising Costs

Media advertising costs included in "Selling, General and Administrative Expense," are expensed as incurred. Co-operative advertising costs are expensed ratably over the year in relation to revenues.

Foreign Currency Translation

The assets and liabilities of subsidiaries, other than those operating in highly inflationary environments, are translated into U.S. dollars at year-end exchange rates, with resulting translation gains and losses accumulated in a separate component of shareholders' equity. Income and expense items are converted into U.S. dollars at average rates of exchange prevailing during the year.

For subsidiaries operating in highly inflationary environments, (Venezuela and Mexico) inventories and property, plant and equipment are translated at the rate of exchange on the date the assets were acquired, while other assets and liabilities are translated at year-end exchange rates. Translation adjustments for those operations are included in "Other (income) expense, net" on the Accompanying Consolidated Statements of Operations.

Stock-Based Compensation Plans

SFAS No. 123, *Accounting for Stock-Based Compensation* allows either adoption of a fair value method for accounting for stock-based compensation plans or continuation of accounting under Accounting Principles Board ("APB") Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations with supplemental disclosures.

The Company has chosen to account for its stock options using the intrinsic value based method prescribed in APB Opinion No. 25 and, accordingly, does not recognize compensation expense for stock option grants made at an exercise price equal to or in excess of the fair market value of the stock at the date of grant. Pro forma net income and earnings per share amounts as if the fair value method had been adopted are presented in Note 5 herein. SFAS No. 123 does not impact the Company's results of operations, financial position or cash flows.

Earnings Per Share of Common Stock

In 1997, the Company adopted SFAS No. 128, *Earnings Per Share*. Basic earnings per common share calculations are determined by dividing earnings available to common shareholders by the weighted average number of shares of common stock. Diluted earnings per share are determined by dividing earnings available to common shareholders by the weighted average number of shares of common stock and dilutive common stock equivalents outstanding (all related to outstanding stock options and restricted stock discussed in Note 5). The Company's reported primary earnings per share for 1995 has been restated to comply with the requirements of SFAS No. 128. SFAS No. 128 had no impact on the Company's reported loss per share for 1996 and no impact on the diluted earnings per share reported in 1995. The effect of this accounting change on previously reported earnings per share (EPS) for 1995 was as follows:

Earnings per share from continuing operations		
Primary EPS as reported		\$0.45
Effect of SFAS No. 128		0.01
Basic EPS as restated		0.46
Earnings per share		
Primary EPS as reported		\$0.61
Effect of SFAS No. 128		0.01
Basic EPS as restated		0.62

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

I. Operations and Significant Accounting Policies—(Continued)

Reclassification

Certain prior year amounts have been reclassified to conform with the 1997 presentation.

New Accounting Standards

In June 1997, the Financial Accounting Standards Board ("FASB") issued SFAS No. 130, *Reporting Comprehensive Income*. SFAS No. 130 establishes standards for reporting and display of comprehensive income and its components in the financial statements. SFAS No. 130 is effective for fiscal years beginning after December 15, 1997. Reclassification of financial statements for earlier periods provided for comparative purposes is required. The Company is in the process of determining its preferred format. The adoption of SFAS No. 130 will have no impact on the Company's consolidated results of operations, financial position or cash flows.

In June 1997, the FASB issued SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*. SFAS No. 131 establishes standards for the way that public business enterprises report information about operating segments in annual financial statements and requires that those enterprises report selected information about operating segments in interim financial reports issued to shareholders. It also establishes standards for related disclosures about products and services, geographic areas, and major customers. SFAS No. 131 is effective for financial statements for fiscal years beginning after December 15, 1997. Financial statement disclosures for prior periods are required to be restated. The Company is in the process of evaluating the disclosure requirements. The adoption of SFAS No. 131 will have no impact on consolidated results of operations, financial position or cash flow.

2. Shareholders' Equity

The Company has 200,000,000 shares of \$.01 par value common stock authorized. At December 28, 1997 there were 9,404,068 shares of common stock reserved for issuance upon the exercise of outstanding stock options.

In June 1995, the Company retired 7,376,395 shares of common stock held in treasury, and such shares were returned to the status of authorized but unissued shares. As a result, \$103.7 million assigned to treasury stock has been eliminated with a corresponding decrease to common stock, paid-in capital and retained earnings. In 1995, the Company repurchased 905,600 shares of its common stock at a total cost of \$13.1 million.

In July 1996, the Company sold 321,786 shares of common stock for total proceeds of approximately \$4.4 million, and granted 1,100,000 shares of restricted stock in connection with the employment of a new Chairman and Chief Executive Officer and certain other officers of the Company. Compensation expense attributable to the restricted stock awards is being amortized to expense beginning in 1996 over the periods in which the restrictions lapse (which in the case of 333,333 shares, was immediately upon the date of grant, in the case of 666,667 shares, is equally over two years from the date of grant and in the case of the remaining restricted shares, is equally over three years from the dates of grant).

On February 20, 1998 the Company entered into new three-year employment agreements with its Chairman and Chief Executive Officer and two other senior officers of the Company. These agreements replaced previous employment agreements entered into in July 1996 that were scheduled to expire in July 1999. Refer to Note 11 for additional information regarding the new employment contracts, including the acceleration of vesting of restricted stock grants discussed above.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

2. Shareholders' Equity—(Continued)

Information regarding other changes in shareholders' equity is summarized below (in thousands):

	Currency Translation Adjustments	Minimum Pension Liability	Unearned Compensation	Total
Balance at January 1, 1995	\$ (8,212)	\$(10,927)	\$ (979)	\$(20,118)
Amortization of unearned compensation	—	—	582	582
Increase in minimum pension liability (net of tax of \$127)	—	(199)	—	(199)
Translation adjustments	(5,145)	—	—	(5,145)
Balance at December 31, 1995	(13,357)	(11,126)	(397)	(24,880)
Grant of restricted stock	—	—	(14,346)	(14,346)
Amortization of unearned compensation	—	—	7,707	7,707
Decrease in minimum pension liability (net of tax of \$2,672)	—	4,963	—	4,963
Translation adjustments	1,246	—	—	1,246
Balance at December 29, 1996	(12,111)	(6,163)	(7,036)	(25,310)
Amortization of unearned compensation	—	—	5,322	5,322
Increase in minimum pension liability (net of tax of \$5,228)	—	(9,709)	—	(9,709)
Translation adjustments	(739)	—	—	(739)
Balance at December 28, 1997	<u>\$ (12,850)</u>	<u>\$(15,872)</u>	<u>\$ (1,714)</u>	<u>\$(30,436)</u>

3. Credit Facilities and Long-Term Debt

In 1994, the Mississippi Business Finance Corporation ("MBFC") issued \$75 million of 7.85% Industrial Development Revenue Notes (the "Notes") maturing serially in eleven equal annual installments beginning June 1999 to certain institutional investors through a private placement. The MBFC loaned the proceeds of the Notes to a subsidiary of the Company under a non-recourse loan agreement (the "Hattiesburg Loan") restricting the use of such funds to the acquisition, design, construction and equipping of the Hattiesburg, Mississippi manufacturing and distribution center. The Notes are guaranteed by the Company and the Hattiesburg Loan is secured by the Hattiesburg facility.

In September 1996 (as subsequently amended), the Company entered into a \$500 million syndicated unsecured five year revolving credit facility (the "Credit Agreement") which replaced a previous credit facility of \$500 million. In July 1997, the Company reduced the amount of available borrowings under the facility to \$250 million. Under the Credit Agreement, the Company can borrow under a competitive bid option, or at a spread above LIBOR (currently .5%) or at a bank base rate. In addition, the Company pays an annual facility fee (currently .25%). The Credit Agreement contains certain financial covenants.

During 1997, the Company repaid \$12.2 million of long-term borrowings related to the divested furniture operations and other assets sold.

The aggregate annual principal payments on long-term debt, excluding amounts outstanding under the Credit Agreement, due in each of the years 1998-2002, are \$7.7 million, \$7.5 million, \$7.6 million, \$7.6 million and \$7.7 million, respectively.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

3. Credit Facilities and Long-Term Debt—(Continued)

Long-term debt at the end of each fiscal year consists of the following (in thousands):

	<u>1997</u>	<u>1996</u>
Revolving credit facility, weighted average interest rate of 5.99% and 5.60% for 1997, and for 1996, respectively	\$110,000	\$105,000
Hattiesburg industrial revenue bond due 2009, fixed interest rate of 7.85%	75,000	75,000
Other long-term borrowings, due through 2012, weighted average interest rate of 3.92% and 4.95%, at December 28, 1997 and December 29, 1996, respectively	10,248	22,036
	<u>\$195,248</u>	<u>\$202,036</u>

In December 1997, the Company entered into a revolving trade accounts receivable securitization program to sell without recourse, through a wholly-owned subsidiary, certain trade accounts receivable. The maximum amount of receivables that can be sold through this program is \$70 million. At December 28, 1997, the Company had received approximately \$59 million from the sale of trade accounts receivable. The proceeds from the sale were used to reduce borrowings under the Company's revolving credit facility. Costs of the program, which primarily consist of the purchaser's financing cost of issuing commercial paper backed by the receivables, totaled \$2 million during 1997, and have been classified as interest expense in the accompanying Consolidated Statements of Operations. The Company, as agent for the purchaser of the receivables, retains collection and administrative responsibilities for the purchased receivables.

4. Financial Instruments

Fair Value of Financial Instruments

The carrying amounts of the Company's financial instruments as of December 28, 1997 approximate market values based upon the following methods and assumptions:

Cash and Cash Equivalents—The carrying amount of cash and cash equivalents is assumed to approximate fair value as cash equivalents include all highly liquid, short-term investments with original maturities of three months or less.

Short and Long Term Debt—The carrying value of the Company's various debt outstanding as of December 28, 1997 approximates market. The fair value of the Company's fixed rate debt is estimated using discounted cash flow analysis, based upon the market yield of public debt securities of comparable credit quality and maturity. The carrying value of the Company's variable rate debt is assumed to approximate market based upon periodic adjustments of the interest rate to the current market rate in accordance with the terms of the debt agreements.

Letters of Credit—The Company utilizes stand-by letters of credit to back certain financing instruments and insurance policies and commercial letters of credit guaranteeing various international trade activities. The contract amounts of the letters of credit approximate their fair value.

Derivative Financial Instruments

The Company selectively uses derivatives to manage interest rate and foreign exchange exposures that arise in the normal course of business. The use of derivatives did not have a material impact on the Company's results of operations in 1997, 1996 and 1995. No derivatives are entered into for trading or speculative purposes. Foreign exchange option and forward contracts are used to hedge a portion of the Company's underlying exposures denominated in foreign currency. Although the market value of derivative contracts at any single point in time

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

4. Financial Instruments—(Continued)

will vary with changes in interest and/or foreign exchange rates, the difference between the carrying value and fair value of such contracts at December 29, 1996 and December 31, 1995 is not considered to be material, either individually or in the aggregate. The Company had no derivative financial instruments outstanding at December 28, 1997. The Company enters into derivative contracts with counterparties that it believes to be creditworthy. The Company does not enter into any leveraged derivative transactions.

As of December 28, 1996, \$10.0 million of the Company's outstanding floating rate debt was subject to interest rate swap agreements.

In order to mitigate the transaction exposures that may arise from changes in foreign exchange rates, the Company purchases foreign currency option contracts to hedge anticipated transactions. The option contracts typically expire within one year. Any realized gains on options are not deferred but are recognized in income in the period when the hedged exposure is recognized. The Company purchased options with a notional value of \$16.6 million in 1997, \$18.2 million in 1996 and \$11.7 million in 1995. Options with notional value of \$17.9 million, \$25.4 million and \$3.2 million expired in 1997, 1996 and 1995, respectively. The Company held purchased option contracts with a notional value of \$1.4 million at December 29, 1996.

5. Employee Stock Options and Awards

The Company has one stock-based compensation plan, the Amended and Restated Sunbeam Corporation Stock Option Plan (the "Plan"). Under the Plan, all employees are eligible for grants of options to purchase up to an aggregate of 11,300,000 shares of the Company's common stock at an exercise price equal to or in excess of the fair market value of the stock on the date of grant. The term of each option commences on the date of grant and expires on the tenth anniversary of the date of grant. Options generally become exercisable over a three to five year period.

The Plan also provides for the grant of restricted stock awards of up to 200,000 shares, in the aggregate, to employees and non-employee directors. See Note 2 for a discussion of restricted stock awards made outside the Plan.

In July 1996, options to purchase an aggregate of 3,000,000 shares (of which 2,750,000 options were outstanding at December 28, 1997) were granted outside of the Plan at exercise prices equal to the fair market value of the Company's common stock on the dates of grant in connection with the employment of a new Chairman and Chief Executive Officer and certain other executive officers of the Company. These outstanding options have terms of ten years and, with respect to options for 2,500,000 shares, are exercisable in three annual installments beginning July 17, 1996. Options for the remaining 250,000 shares still outstanding are exercisable in three annual installments beginning on the first anniversary of the July 22, 1996 grant date. On February 20, 1998 the vesting provisions of the options granted outside the plan were accelerated as further described in Note 14.

The Company applies APB Opinion No. 25 and related interpretations in accounting for its stock options. Accordingly, no compensation cost has been recognized for outstanding stock options. Had compensation cost for the Company's outstanding stock options been determined based on the fair value at the grant dates for those options consistent with SFAS No. 123, the Company's net earnings (loss) and diluted earnings (loss) per share would have been reduced to the pro forma amounts indicated below (in thousands except per share amounts):

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Net earnings/(loss)			
As reported	\$109,415	\$(228,262)	\$50,511
Pro forma	\$ 94,887	\$(238,186)	\$49,731
Diluted earnings/(loss) per share			
As reported	\$ 1.25	\$ (2.75)	\$ 0.61
Pro forma	\$ 1.08	\$ (2.87)	\$ 0.60

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

5. Employee Stock Options and Awards—(Continued)

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions:

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Expected volatility	34.19%	36.78%	36.78%
Risk-free interest rate	6.36%	6.34%	6.34%
Dividend yield.....	.1%	.1%	.1%
Expected life	6 years	5 years	5 years

A summary of the status of the Company's outstanding stock options as of December 28, 1997, December 29, 1996 and December 31, 1995, and changes during the years ending on those dates is presented below:

	<u>1997</u>		<u>1996</u>		<u>1995</u>	
	<u>Shares</u>	<u>Weighted Average Exercise Price</u>	<u>Shares</u>	<u>Weighted Average Exercise Price</u>	<u>Shares</u>	<u>Weighted Average Exercise Price</u>
Plan Options						
Outstanding at beginning of year	6,271,837	\$19.43	4,610,387	\$16.67	5,230,221	\$14.85
Granted	3,105,263	32.40	4,061,450	20.39	1,928,500	18.61
Exercised	(1,549,196)	17.20	(622,994)	7.51	(1,142,348)	6.32
Canceled	(1,173,836)	21.10	(1,777,006)	18.64	(1,405,986)	21.06
Outstanding at end of year	<u>6,654,068</u>	<u>25.61</u>	<u>6,271,837</u>	<u>19.43</u>	<u>4,610,387</u>	<u>16.67</u>
Options exercisable at year-end ...	1,547,198	\$19.13	1,655,450	\$16.13	1,539,836	\$11.47
Weighted-average fair value of options granted during the year	\$ 15.46		\$ 14.76		\$ 8.28	
Options Outside Plan						
Outstanding at beginning of year	2,750,000	\$12.43	692,500	\$16.70	750,000	\$16.70
Granted	—		3,000,000	12.65	—	—
Exercised	—		—		(57,500)	16.70
Canceled	—		(942,500)	16.27	—	—
Outstanding at end of year	<u>2,750,000</u>	<u>12.43</u>	<u>2,750,000</u>	<u>12.43</u>	<u>692,500</u>	<u>16.70</u>
Options exercisable at year-end ...	1,750,000	\$12.35	833,333	\$12.25	505,000	\$16.70
Weighted-average fair value of options granted during the year	\$ —		\$ 5.99		\$ —	

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

5. Employee Stock Options and Awards—(Continued)

The following table summarizes information about stock options outstanding at December 28, 1997:

Range of Exercise Prices	Options Outstanding		
	Number Outstanding at 12/28/97	Weighted-Average Remaining Contractual Life (Years)	Weighted-Average Exercise Price
\$ 5.00 to \$14.99	3,514,556	8.2	\$12.50
\$15.00 to \$19.99	485,240	7.4	16.30
\$20.00 to \$24.99	2,090,187	8.2	22.39
\$25.00 to \$29.99	1,786,007	9.0	25.99
\$30.00 to \$34.99	448,468	9.3	32.01
\$35.00 to \$39.99	336,820	9.5	38.77
\$40.00 to \$44.99	680,290	9.7	42.99
\$45.00 and over	62,500	9.7	46.22
\$ 5.00 to \$49.71	<u>9,404,068</u>	<u>8.5</u>	<u>\$21.76</u>

Range of Exercise Prices	Options Exercisable	
	Number Exercisable at 12/28/97	Weighted-Average Exercise Price
\$ 5.00 to \$14.99	2,108,255	\$12.08
\$15.00 to \$19.99	219,466	16.50
\$20.00 to \$24.99	842,601	22.27
\$25.00 and over	<u>126,876</u>	<u>26.41</u>
\$ 5.00 to \$27.36	<u>3,297,198</u>	<u>\$15.54</u>

6. Employee Benefit Plans

Retirement Plans

The Company sponsors several defined benefit pension plans covering eligible U.S. salaried and hourly employees. Benefit accruals under such plans covering all U.S. salaried employees were frozen, effective December 31, 1990. Therefore no credit in the pension formula is given for service or compensation after that date. However, employees continue to earn service toward vesting in their interest in the frozen plans as of December 31, 1990. Employees of non-U.S. subsidiaries generally receive retirement benefits from Company sponsored plans or from statutory plans administered by governmental agencies in their countries.

The funded status of the Company's U.S. defined benefit pension plans at the end of each fiscal year follows (in thousands):

	1997	1996
Actuarial present value of benefit obligations:		
Vested	\$126,941	\$122,379
Non-vested	288	375
Accumulated benefit obligations	127,229	122,754
Plan assets at fair value	116,485	116,522
Accumulated benefit obligations in excess of plan assets	10,744	6,232
Unrecognized net loss	(25,192)	(19,537)
Additional minimum liability	25,192	10,255
Pension liability (prepaid) recognized on the balance sheet	<u>\$ 10,744</u>	<u>\$ (3,050)</u>

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

6. Employee Benefit Plans—(Continued)

Net periodic pension cost for the Company's U.S. defined benefit pension plans for each fiscal year include the following components (in thousands):

	1997	1996	1995
Service cost-benefits earned during the period	\$ 157	\$ 411	\$ 331
Interest cost-accumulated benefit obligations	8,970	9,071	10,620
Actual return on plan assets	(12,511)	(816)	(20,985)
Net amortization and deferral	4,338	(7,518)	11,332
Net periodic pension cost	<u>\$ 954</u>	<u>\$ 1,148</u>	<u>\$ 1,298</u>
Assumptions:			
Discount rate	7.25%	7.75%	7.25%
Long-term rate of return on assets	7.25%	7.75%	9.50%

The Company funds its pension plans in amounts consistent with applicable laws and regulations. Pension plan assets include corporate and U.S. government bonds and cash equivalents.

The assets, liabilities and pension costs of the Company's non-U.S. defined benefit retirement plans are not material to the consolidated financial statements.

Other Postretirement Benefits

The Company provides health care and life insurance benefits to certain former employees who retired from the Company prior to March 31, 1991. The Company has consistently followed a policy of funding the cost of postretirement health care and life insurance benefits on a pay-as-you-go basis.

Effective July 1993, various amendments to the Company's postretirement benefits program were adopted. The amendments included increases in retiree contribution levels for certain retiree groups and the discontinuation of medical and/or life insurance coverage for certain retirees who qualify for Medicare. These amendments resulted in an unrecognized reduction in prior service cost which is being amortized over future years.

The following table presents the funded status reconciled with the amounts recognized in the Company's consolidated balance sheet at the end of each fiscal year (in thousands):

	1997	1996
Accumulated postretirement benefit obligation	\$14,220	\$14,555
Plan assets	—	—
Accumulated postretirement benefit obligation in excess of plan assets	14,220	14,555
Unrecognized reduction in prior service cost	15,934	18,877
Unrecognized net gain	240	95
Accrued postretirement benefit obligation recognized on the balance sheet ...	<u>\$30,394</u>	<u>\$33,527</u>

Net periodic postretirement benefit cost for each fiscal year includes the following components (in thousands):

	1997	1996
Interest cost	\$ 983	\$ 1,042
Amortization of reduction in prior service cost	(2,943)	(2,943)
Net periodic postretirement benefit credit	<u>\$ (1,960)</u>	<u>\$ (1,901)</u>

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

6. Employee Benefit Plans—(Continued)

The assumed health care cost trend rate used in measuring the accumulated postretirement benefit obligation is 8.8% for 1998 and is assumed to decrease gradually to 6% by 2003 and remain at that level thereafter. A one percentage point increase in the assumed health care cost trend rate for each year would increase the accumulated postretirement benefit obligation as of December 28, 1997 and the net periodic postretirement benefit cost for 1997 by approximately 8%. The weighted average discount rate used in determining the accumulated postretirement benefit obligation was 7.25% at December 28, 1997 and December 29, 1996.

Defined Contribution Plans

The Company sponsors defined contribution profit sharing plans covering eligible employees. Company contributions to these plans include employer matching contributions as well as discretionary profit sharing contributions depending on the performance of the Company, in an amount up to 10% of eligible compensation. The Company provided \$1.8 million in 1997, \$1.7 million in 1996 and \$4.1 million in 1995 for its defined contribution plans.

7. Supplementary Financial Statement Data

Supplementary Balance Sheet data at the end of each fiscal year is as follows (in thousands):

	1997	1996
Receivables:		
Trade	\$305,219	\$227,043
Sundry	7,794	2,412
	313,013	229,455
Valuations allowances	(17,463)	(16,017)
	<u>\$295,550</u>	<u>\$213,438</u>
Inventories:		
Finished goods	\$142,976	\$ 84,813
Work in process	26,237	25,167
Raw materials and supplies	86,967	52,272
	<u>\$256,180</u>	<u>\$162,252</u>
Property, plant and equipment:		
Land	\$ 1,793	\$ 2,524
Buildings and improvements	98,054	95,619
Machinery and equipment	245,824	258,199
	345,671	356,342
Accumulated depreciation and amortization	(104,774)	(136,254)
	<u>\$240,897</u>	<u>\$220,088</u>
Trademarks and trade names:		
Gross	\$237,095	\$245,307
Accumulated amortization	(42,723)	(45,045)
	<u>\$194,372</u>	<u>\$200,262</u>

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

7. Supplementary Financial Statement Data—(Continued)

Inventory and property, plant and equipment in 1996 exclude assets of discontinued operations and other assets held for sale.

	<u>1997</u>	<u>1996</u>
Other current liabilities:		
Payrolls, commissions and employee benefits	\$ 14,051	\$ 18,536
Advertising and sales promotion	27,524	23,816
Product warranty	24,154	23,883
Other	15,184	33,274
	<u>\$ 80,913</u>	<u>\$ 99,509</u>
Other long-term liabilities:		
Accrued postretirement benefit obligation	\$ 30,394	\$ 33,527
Accrued pension	10,744	—
Other	99,971	118,924
	<u>\$141,109</u>	<u>\$152,451</u>

Supplementary Statements of Operations and Cash Flows data for each fiscal year are summarized as follows (in thousands):

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Other (income) expense, net:			
Interest income	\$ (1,555)	\$ (1,255)	\$ (3,657)
Other	337	4,993	3,830
	<u>\$ (1,218)</u>	<u>\$ 3,738</u>	<u>\$ 173</u>
Advertising and sales promotion	<u>\$ 56,448</u>	<u>\$ 71,524</u>	<u>\$ 57,274</u>
Cash paid (received) during the period for:			
Interest (net of capitalization)	<u>\$ 13,058</u>	<u>\$ 13,397</u>	<u>\$ 12,555</u>
Income taxes (net of refunds)	<u>\$ (44,508)</u>	<u>\$ (540)</u>	<u>\$ 13,936</u>

Non-cash Transactions

In connection with a warehouse expansion related to the electric blanket business, the Company entered into a \$5 million capital lease obligation in 1996.

8. Restructuring, Impairment and Other Costs

In November 1996, the Company announced the details of its restructuring and growth plan. The cost reduction phase of the plan included the consolidation of administrative functions within the Company, the rationalization of manufacturing and warehouse facilities, the centralization of the Company's procurement function, and reduction of the Company's product offerings and stock keeping units ("SKU's"). The Company also announced plans to divest several lines of business which it determined are not core for Sunbeam (see Note 9).

In connection with the restructuring plan, the Company consolidated six divisional and regional headquarters functions into a single worldwide corporate headquarters in Delray Beach, Florida and outsourced certain back-office activities resulting in a 50% reduction in total back-office/administrative headcount. Overall, the restructuring plan calls for a reduction in the number of production facilities from 26 to 8 and the elimination of over 6,000 positions from the Company's workforce, including 3,300 from the disposition of non-core business operations and the elimination of approximately 2,800 other positions. The Company completed the major phases of the restructuring plan by January 1997.

In conjunction with the implementation of the restructuring and growth plan, the Company recorded a pre-tax special charge to earnings of approximately \$337.6 million in the fourth quarter of 1996. This amount is

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

8. Restructuring, Impairment and Other Costs—(Continued)

allocated as follows in the accompanying Consolidated Statement of Operations: \$154.9 million to Restructuring, Impairment and Other Costs as further described below; \$92.3 million to Cost of Goods Sold related principally to inventory write-downs from the reduction in SKU's and costs of inventory liquidation programs; \$42.5 million to Selling, General and Administrative expenses principally for increases in environmental and litigation reserves (see Note 12) and other reserve categories; and the estimated pre-tax loss on the divestiture of the Company's furniture business of approximately \$47.9 million. During the first quarter of 1997, upon completion of the sale, the Company provided for additional losses on the disposal of the furniture business of \$13.7 million, net of applicable income tax benefits as a result of lower than anticipated sales proceeds.

Amounts included in Restructuring, Impairment and Other Costs in 1996 in the accompanying Consolidated Statement of Operations include cash items such as severance and other employee costs of \$43.0 million, lease obligations and other exit costs associated with facility closures of \$12.6 million, \$7.5 million of start-up costs on back-office outsourcing initiatives and other costs related to the implementation of the restructuring and growth plan. Non-cash Restructuring, Impairment and Other Costs in 1996 include \$91.8 million related to asset write-downs to net realizable value for disposals of excess facilities and equipment and non-core product lines, write-offs of redundant computer systems from the administrative back-office consolidations and outsourcing initiatives and intangible, packaging and other asset write-downs related to exited product lines and SKU reductions. The following table sets forth the details and the cumulative activity in the restructuring accrual as of December 28, 1997 (in millions):

	Accrual Balance at December 29, 1996	Cash Reductions	Non-Cash Reductions	Accrual Balance at December 28, 1997
Severance and other employee costs . . .	\$36.9	\$18.6	\$9.5	\$ 8.8
Closure and consolidation of facilities and related exit costs	26.9	24.8	—	2.1
Total	<u>\$63.8</u>	<u>\$43.4</u>	<u>\$9.5</u>	<u>\$10.9</u>

9. Discontinued Operations and Other Assets Held For Sale

As part of the restructuring plan and redefinition of its core businesses, the Company also announced the divestiture of the furniture business, by a sale of assets. In February 1997, the Company entered into an agreement to sell the business to U.S. Industries, Inc. which was completed on March 17, 1997. In connection with the sale of these assets (primarily inventory, property, plant and equipment), the Company received \$69 million in cash. The Company retained accounts receivable related to the furniture business of approximately \$50.0 million as of the closing date.

In connection with the furniture divestiture, the Company recorded a provision for estimated losses to be incurred on the sale of \$32.4 million in 1996, net of applicable income tax benefits and an additional loss of \$13.7 million, net of applicable income tax benefits in the first quarter of 1997 as a result of lower than anticipated sales proceeds. Earnings from the discontinued furniture business were \$.8 million in 1996 and \$12.9 million in 1995, net of applicable income taxes of \$.5 million and \$7.9 million, respectively. Earnings from the discontinued furniture business in 1997 were not material. Revenues for the discontinued furniture business were \$51.6 million in 1997, \$227.5 million in 1996 and \$185.6 million in 1995. These revenues are not included in net sales as reported in the accompanying Consolidated Statements of Operations.

In addition to the furniture business divestiture, the Company also completed the sale of other non-core product lines and assets in 1997 as part of its restructuring plan, including time and temperature products, Counselor® and Borg® scales and a textile facility. Losses incurred on the disposal of these assets, which consist primarily of write-downs of assets to net realizable value, are included in Restructuring, Impairment and Other Costs in 1996 in the Consolidated Statements of Operations as described in Note 8.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

10. Income Taxes

Earnings (loss) from continuing operations before income taxes for each fiscal year is summarized as follows (in thousands):

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Domestic.....	\$167,822	\$(285,011)	\$54,646
Foreign	21,458	(17,550)	5,989
	<u>\$189,280</u>	<u>\$(302,561)</u>	<u>\$60,635</u>

Income tax provisions include current and deferred taxes (tax benefits) for each fiscal year as follows (in thousands):

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Current:			
Federal	\$ 3,420	\$ (28,567)	\$(1,329)
State	3,266	(202)	(1,402)
Foreign	1,683	707	626
	<u>8,369</u>	<u>(28,062)</u>	<u>(2,105)</u>
Deferred:			
Federal	49,513	(65,833)	23,127
State	3,962	(11,050)	1,962
Foreign	4,308	(945)	57
	<u>57,783</u>	<u>(77,828)</u>	<u>25,146</u>
	<u>\$66,152</u>	<u>\$(105,890)</u>	<u>\$23,041</u>

A reconciliation of income tax expense with the expected income tax computed by applying the federal statutory income tax rate to earnings (loss) from continuing operations before income taxes for each fiscal year is as follows (in thousands):

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Income tax computed at the federal statutory tax rate	\$66,248	\$(105,896)	\$21,222
State and local taxes (net of federal benefit)	4,698	(7,313)	364
Foreign earnings and dividends taxed at other rates	(3,611)	5,967	419
Other, net	(1,183)	1,352	1,036
	<u>\$66,152</u>	<u>\$(105,890)</u>	<u>\$23,041</u>

The major components of the Company's net current deferred tax asset and net long-term deferred tax liability at the end of each fiscal year are as follows (in thousands):

	<u>1997</u>		<u>1996</u>	
	<u>Current Deferred Tax Asset</u>	<u>Long-term Deferred Tax Liability</u>	<u>Current Deferred Tax Asset</u>	<u>Long-term Deferred Tax Liability</u>
Operating reserves and accruals	\$11,721	\$ 29,966	\$60,307	\$ 28,446
Book/tax basis difference in trademarks and trade names	—	(70,881)	—	(72,587)
Book/tax basis difference in other assets	11,937	(22,645)	19,276	(13,406)
Reserves for non-operating assets and non-operating liabilities	3,062	21,849	8,905	24,045
Other	9,986	(12,848)	5,201	(18,805)
	<u>\$36,706</u>	<u>\$(54,599)</u>	<u>\$93,689</u>	<u>\$(52,308)</u>

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

10. Income Taxes—(Continued)

Deferred U.S. income taxes are not provided on the undistributed earnings of foreign subsidiaries, since such earnings are considered to be permanently reinvested. At December 28, 1997, the cumulative amount of undistributed earnings of foreign subsidiaries on which U.S. federal income taxes have not been provided was approximately \$51.5 million. Determination of the amount of unrecognized deferred U.S. income tax liability is not practical because of the complexities associated with its hypothetical calculation; however, unrecognized foreign tax credit carryovers would be available to reduce some portion of the U.S. liability.

11. Customer and Geographic Data

Classes of products which contributed more than 10% to consolidated sales were outdoor home use durable products and indoor home use durable products. Sales of outdoor home use durable products amounted to \$325.8 million in 1997, \$256.9 million in 1996 and \$269.0 million in 1995. Sales of indoor home use durable products were \$769.6 million in 1997, \$680.7 million in 1996 and \$688.3 million in 1995.

The Company's largest customer accounted for approximately 21% of consolidated net sales in 1997 and 19% in 1996 and 1995.

The Company's operations are conducted in the United States and international markets, principally in Latin America, Canada and Mexico. Information about the Company's domestic and international operations for each fiscal year is as follows (in thousands):

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Net sales:			
Domestic	\$ 927,660	\$ 800,969	\$ 829,423
International (includes U.S. export sales).....	240,522	183,267	187,460
	<u>\$1,168,182</u>	<u>\$ 984,236</u>	<u>\$1,016,883</u>
Operating earnings (loss):			
Domestic	\$ 175,858	\$ (244,477)	\$ 70,423
International (includes U.S. export sales).....	53,641	(5,022)	24,301
	229,499	(249,499)	94,724
Unallocated expenses and eliminations.....	(30,056)	(35,736)	(24,479)
	<u>\$ 199,443</u>	<u>\$ (285,235)</u>	<u>\$ 70,245</u>
Identifiable assets:			
Domestic	\$ 923,527	\$ 781,788	\$1,040,591
International	131,359	73,430	67,563
	1,054,886	855,218	1,108,154
Corporate assets	65,398	217,491	50,530
	<u>\$1,120,284</u>	<u>\$1,072,709</u>	<u>\$1,158,684</u>

Unallocated expenses and eliminations include corporate administrative expenses, intangible amortization, certain pension and postretirement benefit costs or credits, and eliminations of intercompany income and expense. Identifiable assets are those used directly in the operations, and exclude non-operating corporate and deferred tax assets. Sales between geographic areas are not material and are made primarily at cost plus a markup.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

12. Commitments and Contingencies

Environmental Matters

The Company's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations. As of December 28, 1997, the Company had been identified as a potentially responsible party ("PRP") in connection with seven sites subject to the federal Superfund law and two sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a de minimis (less than 1%) participant. Substantially all of these sites relate to divested operations of the Company.

The Company currently is engaged in active remediation activities at nine sites, four of which are among the Environmental Sites referred to above, and five of which have not been designated as Superfund sites under federal or state law. In addition, the Company is engaged in environmental remediation activities at a site in Newburgh Heights, Ohio, where a subsidiary formerly conducted operations. The Company has been actively cooperating with the United States Nuclear Regulatory Commission and state regulatory authorities in developing a plan for remediation of this site; which remediation is expected to be substantially completed during 1998.

The Company has established reserves, in accordance with SFAS No. 5, *Accounting for Contingencies*, to cover the anticipated probable costs of remediation, based upon periodic reviews of all sites for which the Company has, or may have remediation responsibility. As of December 28, 1997, the amount of such reserves was less than 5% of the Company's total liabilities as set forth in the consolidated financial statements. Liability under the Superfund law is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, the Company recognizes its responsibility to determine whether other PRP's at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRP's established with respect to such sites. The Company continues to pursue the recovery of some environmental remediation costs from certain of its liability insurance carriers; however, such potential recoveries have not been offset against potential liabilities and have not been considered in determining the Company's environmental reserves.

Due to uncertainty over remedial measures to be adopted at some sites, the possibility of changes in environmental laws and regulations and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, the Company's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved as of December 28, 1997. In connection with the Company's restructuring plan, in the fourth quarter of 1996 a comprehensive review of all environmental exposures was performed, and the Company accelerated its strategy for the resolution and settlement of certain environmental claims. As a result, the Company recorded additional environmental reserves of approximately \$9.0 million in the fourth quarter of 1996. The Company believes, based on existing information, that the costs of completing environmental remediation of all sites for which the Company has a remediation responsibility have been adequately reserved, and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition.

Leases

The Company rents certain facilities, equipment and retail stores under operating leases. Rental expense for operating leases amounted to \$7.4 million in 1997, \$8.0 million for 1996 and \$8.6 million for 1995. The minimum future rentals due under noncancelable operating leases as of December 28, 1997 aggregated \$30.9 million. The amounts payable in each of the years 1998-2002 and thereafter are \$4.8 million, \$4.6 million, \$4.2 million, \$3.9 million, \$3.4 million and \$10.0 million, respectively.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

12. Commitments and Contingencies—(Continued)

Certain Debt Obligations

Responsibility for servicing certain debt obligations of the Company's predecessor were assumed by third parties in connection with the acquisition of former businesses, although the Company's predecessor remained the primary obligor in accordance with the respective loan documents. Such obligations, which amounted to approximately \$19.0 million at December 28, 1997, and the corresponding receivables from the third parties, are not included in the consolidated balance sheets since these transactions occurred prior to the issuance of SFAS No. 76, Extinguishment of Debt. Management believes that the third parties will continue to meet their obligations pursuant to the assumption agreements.

Letters of credit aggregating \$28.6 million were outstanding as of December 28, 1997.

Litigation

The Company is involved in various lawsuits arising from time to time in the ordinary course of business and/or related to divested operations of the Company. The Company has established reserves, in accordance with SFAS No. 5, Accounting for Contingencies, to cover the anticipated probable costs of litigation matters, based upon periodic reviews of all cases.

The Company believes, based on existing information, that anticipated probable costs of litigation matters have been adequately reserved, and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition.

Product Liability Matters

The Company is party to various personal injury and property damage lawsuits relating to its products and incidental to its business. Annually, the Company sets its product liability insurance program based on the Company's current and historical claims experience and the availability and cost of insurance. The Company's program for 1997 was comprised of a self-insurance retention of \$1 million per occurrence.

Cumulative amounts estimated to be payable by the Company with respect to pending and potential claims for all years in which the Company is liable under its self-insurance retention have been accrued as liabilities. Such accrued liabilities are necessarily based on estimates (which include actuarial determinations made by independent actuarial consultants as to liability exposure, taking into account prior experience, numbers of claims and other relevant factors); thus, the Company's ultimate liability may exceed or be less than the amounts accrued. The methods of making such estimates and establishing the resulting liability are reviewed continually and any adjustments resulting therefrom are reflected in current operating results.

Historically, product liability awards have rarely exceeded the Company's individual per occurrence self-insured retention. There can be no assurance, however, that the Company's future product liability experience will be consistent with its past experience. Based on existing information, the Company believes that the ultimate conclusion of the various pending product liability claims and lawsuits of the Company, individually or in the aggregate, will not have a materially adverse effect on the financial position or results of operations of the Company.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

13. Unaudited Quarterly Financial Data

FISCAL 1997(a)

	<u>First Quarter</u>	<u>Second Quarter</u>	<u>Third Quarter</u>	<u>Fourth Quarter</u>
	(Dollars in millions, except per share data)			
Net sales	\$253.5	\$287.6	\$289.0	\$338.1
Gross profit	67.7	74.5	88.8	99.5
Operating earnings	34.7	43.0	54.9	66.8
Earnings from continuing operations	20.6	26.2	34.6	41.7
Basic earnings per share from continuing operations	\$.24	\$.31	\$.41	\$.49
Diluted earnings per share from continuing operations	.24	.30	.39	.47
Earnings from discontinued operations, net of taxes	—	—	—	—
Loss on sale of discontinued operations, net of taxes	(13.7)	—	—	—
Net earnings	6.8	26.2	34.6	41.8
Basic earnings per share(c)	.08	.31	.41	.49
Diluted earnings per share(c)	.08	.30	.39	.47
Market price for common stock				
—high	\$ 34½	\$ 40¾	\$ 45¾	\$ 50⅞
—low	24⅞	29¾	35⅞	37
Dividends paid	\$.01	\$.01	\$.01	\$.01

FISCAL 1996(a)

	<u>First Quarter</u>	<u>Second Quarter</u>	<u>Third Quarter</u>	<u>Fourth Quarter</u>
	(Dollars in millions, except per share data)			
Net sales	\$229.7	\$253.9	\$231.8	\$268.8
Gross profit (loss)	48.1	47.2	28.8	(40.5)
Operating earnings (loss)	15.5	9.2	(20.7)	(289.2)(b)
Earnings (loss) from continuing operations	6.7	2.8	(15.8)	(190.4)
Basic earnings (loss) per share from continuing operations	\$.08	\$.03	\$ (.19)	\$ (2.29)
Diluted earnings (loss) from continuing operations	.08	.03	(.19)	(2.29)
Earnings (loss) from discontinued operations, net of taxes	10.7	4.4	(2.3)	(12.0)
Loss on sale of discontinued operations, net of taxes	—	—	—	(32.4)
Net earnings (loss)	17.4	7.2	(18.1)	(234.8)
Basic earnings (loss) per share(c)	.21	.09	(.22)	(2.83)
Diluted earnings (loss) per share(c)	.21	.09	(.22)	(2.83)
Market price for common stock				
—high	\$ 19¾	\$ 17⅞	\$ 24¾	\$ 29½
—low	15⅞	13½	12¼	22¼
Dividends paid	\$.01	\$.01	\$.01	\$.01

(a) Each quarter consists of a 13-week period.

(b) Refer to Notes 8 and 9 regarding the Company's 1996 restructuring and growth plan.

(c) Reflects the adoption of SFAS No. 128, *Earnings Per Share*.

14. Subsequent Events

New Employment Agreements

On February 20, 1998 the Company entered into new three-year employment agreements with its Chairman and Chief Executive Officer and two other senior officers of the Company. These agreements replaced previous employment agreements entered into in July 1996 that were scheduled to expire in July 1999.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

14. Subsequent Events—(Continued)

The new employment agreement for the Company's Chairman provides for, among other items, the acceleration of vesting of 200,000 shares of restricted stock and the forfeiture of the remaining 133,333 shares of unvested restricted stock granted under the July 1996 agreement as further described in Note 2, a new equity grant of 300,000 shares of unrestricted stock, a new grant of a ten-year option to purchase 3,750,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in three equal annual installments beginning on the date of grant and the acceleration of vesting of 833,333 outstanding stock options granted under the July 1996 agreement as further described in Note 5. In addition, the new employment agreement with the Chairman and Chief Executive Officer provides for tax gross-ups with respect to any tax assessed on the equity grant and acceleration of vesting of restricted stock.

The new employment agreements with the two other senior officers provide for, among other items, the grant of a total of 180,000 shares of restricted stock that vest in four equal annual installments beginning the date of grant, the acceleration of vesting of 44,000 shares of restricted stock and the forfeiture of the remaining 29,332 shares of unvested restricted stock granted under the July 1996 agreements, new grants of ten-year options to purchase a total of 1,875,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in four equal annual installments beginning on the date of grant and the acceleration of vesting of 383,334 outstanding stock options granted under the July 1996 agreements. In addition, the new employment agreements provide for tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock.

Compensation expense attributed to the equity grant, the acceleration of vesting of restricted stock and the related tax gross-ups will be recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups will be amortized to expense beginning in the first quarter of 1998 over the period in which the restrictions lapse. Total after-tax compensation expense to be recognized in the first quarter of 1998 related to these items is expected to be approximately \$30.0 million.

Pending Acquisitions

On March 2, 1998, the Company announced the signing of three definitive agreements to acquire The Coleman Company, Inc., Signature Brands USA, Inc. and First Alert, Inc. Completion of the acquisitions, which is expected in the second quarter of 1998, is contingent on customary conditions, including regulatory approvals, and acquisition financings. Each of the acquisitions will be accounted for under the purchase method, whereby the purchase price will be allocated to the underlying assets acquired and liabilities assumed based upon their estimated fair values.

The acquisition of The Coleman Company, Inc., the global leader in outdoor recreational and hardware products is valued at approximately \$2.0 billion, consisting of the Company's common stock valued at approximately \$811 million, cash of approximately \$260 million and assumed debt. Shareholders of The Coleman Company, Inc. will receive \$6.44 in cash and .5677 shares of the Company's stock for each share of Coleman stock.

The acquisition of Signature Brands USA, Inc., the North American leader in coffeemakers marketed under the Mr. Coffee® brand and a leader in consumer health products marketed under the Health o Meter® brand is valued at approximately \$250 million, consisting of cash of \$8.25 per share of Signature Brand common stock and the assumption of existing debt.

The acquisition of First Alert, Inc., the worldwide leader in residential safety equipment, including smoke detectors and carbon monoxide detectors is valued at approximately \$175 million, consisting of cash of \$5.25 per share of First Alert common stock and the assumption of existing debt.

The Company plans on refinancing all or substantially all of the assumed debt of the acquired companies concurrent with the transactions closings.

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REPORT OF INDEPENDENT AUDITORS

The Board of Directors and Stockholder
CLN Holdings Inc.

We have audited the accompanying consolidated balance sheets of CLN Holdings Inc. and subsidiaries as of December 31, 1997 and 1996, and the related consolidated statements of operations, stockholder's deficit, and cash flows for each of the three years in the period ended December 31, 1997. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of CLN Holdings Inc. and subsidiaries at December 31, 1997 and 1996, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 1997, in conformity with generally accepted accounting principles.

/s/ Ernst & Young LLP

Wichita, Kansas
February 18, 1998

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CLN HOLDINGS INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(In thousands, except share data)

	December 31.	
	1997	1996
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 13,031	\$ 17,299
Short term investments in escrow	6,331	—
Accounts receivable, less allowance of \$8,930 in 1997 and \$11,512 in 1996	154,279	182,418
Notes receivable	25,477	27,524
Inventories	236,327	287,502
Deferred tax assets	26,378	40,466
Prepaid assets and other	21,437	14,943
Total current assets	483,260	570,152
Property, plant and equipment, net	175,494	199,182
Intangible assets related to businesses acquired, net	338,989	349,761
Note receivable—affiliate	35,395	54,739
Deferred tax assets and other	64,731	34,441
	<u>\$1,097,869</u>	<u>\$1,208,275</u>
LIABILITIES AND STOCKHOLDER'S DEFICIT		
Current liabilities:		
Current portion of long-term debt	\$ 3,026	\$ 747
Short-term borrowings	64,207	33,935
Accounts payable	91,846	98,628
Accounts payable—affiliates	2,825	278
Accrued expenses	94,858	113,040
Total current liabilities	256,762	246,628
Long-term debt	980,447	999,794
Income taxes payable—affiliate	13,317	18,528
Other liabilities	60,606	76,173
Minority interest	43,386	45,088
Commitments and contingencies		
Stockholder's deficit:		
Common stock, par value \$1.00 per share;		
1,000 shares issued and outstanding	1	1
Capital deficiency	(131,860)	(117,963)
Accumulated deficit	(114,740)	(62,594)
Currency translation adjustment	(9,287)	2,856
Minimum pension liability adjustment	(763)	(236)
Total stockholder's deficit	(256,649)	(177,936)
	<u>\$1,097,869</u>	<u>\$1,208,275</u>

See Notes to Consolidated Financial Statements

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CLN HOLDINGS INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands)

	Year Ended December 31,		
	1997	1996	1995
Net revenues	\$1,154,294	\$1,220,216	\$933,574
Cost of sales	<u>840,331</u>	<u>928,497</u>	<u>649,427</u>
Gross profit	313,963	291,719	284,147
Selling, general and administrative expenses	266,635	292,012	175,036
Asset impairment charge	—	—	12,289
Interest expense, net	90,886	75,120	57,830
Amortization of goodwill and deferred charges	14,704	12,304	9,558
Other expense (income), net	<u>1,867</u>	<u>(1,604)</u>	<u>283</u>
(Loss) earnings before income taxes, minority interest and extraordinary item	(60,129)	(86,113)	29,151
Income tax (benefit) expense	(24,162)	(23,766)	11,701
Minority interest in earnings of Camping Gaz	1,386	1,872	—
Minority interest in (loss) earnings of Coleman	<u>(446)</u>	<u>(7,262)</u>	<u>6,696</u>
(Loss) earnings before extraordinary item	(36,907)	(56,957)	10,754
Extraordinary loss on early extinguishment of debt, net of income tax benefit of \$9,391 in 1997, \$846 in 1996, and \$503 in 1995	<u>(15,239)</u>	<u>(1,244)</u>	<u>(787)</u>
Net (loss) earnings	<u>\$ (52,146)</u>	<u>\$ (58,201)</u>	<u>\$ 9,967</u>

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See Notes to Consolidated Financial Statements

CLN HOLDINGS INC. AND SUBSIDIARIES
 CONSOLIDATED STATEMENTS OF STOCKHOLDER'S DEFICIT
 (In thousands, except share data)

	Common Stock		Capital Deficiency	Accumulated Deficit	Currency Translation Adjustment	Minimum Pension Liability
	Number of Shares	Amount				
Balance at December 31, 1994	1,000	1	(112,669)	(3,300)	970	—
Net earnings	—	—	—	9,967	—	—
Currency translation adjustment ...	—	—	—	—	(617)	—
Net distributions	—	—	(1,005)	(6,667)	—	—
Balance at December 31, 1995	1,000	1	(113,674)	—	353	—
Net loss	—	—	—	(58,201)	—	—
Currency translation adjustment ...	—	—	—	—	2,503	—
Minimum pension liability adjustment, net of tax	—	—	—	—	—	(236)
Net distributions	—	—	(4,289)	(4,393)	—	—
Balance at December 31, 1996	1,000	1	(117,963)	(62,594)	2,856	(236)
Net loss	—	—	—	(52,146)	—	—
Currency translation adjustment ...	—	—	—	—	(12,143)	—
Minimum pension liability adjustment, net of tax	—	—	—	—	—	(527)
Net distributions	—	—	(13,897)	—	—	—
Balance at December 31, 1997	<u>1,000</u>	<u>\$ 1</u>	<u>\$(131,860)</u>	<u>\$(114,740)</u>	<u>\$(9,287)</u>	<u>\$ (763)</u>

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See Notes to Consolidated Financial Statements

CLN HOLDINGS INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31.		
	1997	1996	1995
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net (loss) earnings	\$(52,146)	\$(58,201)	\$ 9,967
Adjustments to reconcile net (loss) earnings to net cash flows from operating activities:			
Depreciation and amortization	41,343	38,189	28,335
Non-cash tax sharing agreement (benefit) provision	(23,980)	(4,376)	7,562
Minority interest in (loss) earnings of Coleman	(446)	(7,262)	6,696
Minority interest in earnings of Camping Gaz	1,386	1,872	—
Interest accretion	53,581	36,404	33,288
Non-cash gain on LYONs conversion	—	(2,755)	—
Non-cash restructuring and other charges	17,325	48,269	12,289
Extraordinary loss on early extinguishment of debt	24,630	2,090	1,290
Change in assets and liabilities:			
Increase in short term investments in escrow	(6,331)	—	—
Decrease (increase) in receivables	3,952	976	(37,833)
Decrease (increase) in inventories	35,250	(42,402)	(49,396)
Increase (decrease) in accounts payable	1,226	(12,308)	13,825
Other, net	(25,962)	(5,972)	(16,682)
	<u>121,974</u>	<u>52,725</u>	<u>(626)</u>
Net cash provided (used) by operating activities	<u>69,828</u>	<u>(5,476)</u>	<u>9,341</u>
CASH FLOWS FROM INVESTING ACTIVITIES:			
Capital expenditures	(26,973)	(41,334)	(29,053)
Purchases of businesses, net of cash acquired	(14,300)	(161,875)	(33,385)
Decrease (increase) in note receivable—affiliate	19,344	(4,054)	(6,742)
Proceeds from sale of fixed assets	5,728	2,924	928
Net cash used by investing activities	<u>(16,201)</u>	<u>(204,339)</u>	<u>(68,252)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:			
Net change in short-term borrowings	37,071	(11,043)	3,106
Net payments of revolving credit agreement borrowings	(91,498)	(2,779)	(61,289)
Proceeds from issuance of long-term debt	470,007	235,000	200,000
Repayment of long-term debt	(455,339)	(6,778)	(74,782)
Debt issuance and refinancing costs	(16,516)	(3,902)	(3,569)
Purchases of Company common stock	—	(2,329)	(4,086)
Proceeds from stock options exercised including tax benefits	2,585	2,192	4,520
Contributions from parent	284	331	488
Net cash (used) provided by financing activities	<u>(53,406)</u>	<u>210,692</u>	<u>64,388</u>
Effect of exchange rate changes on cash	(4,489)	4,357	(1,731)
Net (decrease) increase in cash and cash equivalents	(4,268)	5,234	3,746
Cash and cash equivalents at beginning of the year	17,299	12,065	8,319
Cash and cash equivalents at end of the year	<u>\$ 13,031</u>	<u>\$ 17,299</u>	<u>\$ 12,065</u>

See Notes to Consolidated Financial Statements

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CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(In thousands, except share data)

1. Significant Accounting Policies

Background:

CLN Holdings Inc. (formerly known as Coleman Escrow Corp. ("CLN Holdings")), is a holding company formed in May 1997 in connection with the offering of Senior Secured First Priority Discount Notes due 2001 (the "Old First Priority Notes") and Senior Secured Second Priority Discount Notes due 2001 (the "Old Second Priority Notes" and together with the Old First Priority Notes, the "Old Escrow Notes") to hold all of the outstanding shares of capital stock of Coleman Holdings Inc. ("Coleman Holdings"). Coleman Holdings was a holding company formed in July 1993 in connection with the offering of Senior Secured Discount Notes due 1998 (the "Holdings Notes") to hold all of the outstanding shares of capital stock of Coleman Worldwide Corporation ("Coleman Worldwide"). On July 15, 1997, Coleman Holdings was merged into CLN Holdings. Coleman Worldwide is a holding company formed in March 1993 in connection with the offering of Liquid Yield Option™ Notes due 2013 (the "LYONs™"). Coleman Worldwide also holds 44,067,520 shares of the common stock of The Coleman Company, Inc. ("Coleman" or the "Company") which represents approximately 82% of the outstanding Coleman common stock as of December 31, 1997. CLN Holdings and Coleman Worldwide are holding companies with no business operations of their own. In connection with an initial public offering ("IPO"), Coleman was formed in December 1991 to succeed to the assets and liabilities of the outdoor products business of New Coleman Holdings Inc. ("Holdings") an indirect wholly-owned subsidiary of Mafco Holdings Inc. ("Mafco"). Holdings (then named The Coleman Company, Inc.) was acquired in 1989 by MacAndrews & Forbes Holdings Inc. ("MacAndrews Holdings", and together with Mafco, "MacAndrews & Forbes"), a corporation wholly owned through Mafco by Ronald O. Perelman. Coleman is a subsidiary of Coleman Worldwide Corporation which is an indirect wholly-owned subsidiary of Holdings. In March 1992, the Company completed an IPO of its common stock.

Principles of Consolidation:

The consolidated financial statements include the accounts of CLN Holdings and its subsidiaries after elimination of all material intercompany accounts and transactions.

Cash and Cash Equivalents:

All highly liquid investments with a maturity of three months or less at the date of purchase are considered to be cash equivalents. The Company's cash equivalents consist primarily of investments in money market funds and commercial paper. The Company's cash equivalents are generally held until maturity and are carried at cost, which approximates fair value.

Inventories:

Inventories are stated at the lower of cost or market. Cost is determined by the first-in, first-out method.

Property, Plant and Equipment:

Property, plant and equipment is recorded at cost and depreciated on a straight-line basis over the estimated useful lives of such assets as follows: land improvements, 5 to 25 years; buildings and building improvements, 7 to 45 years; and machinery and equipment, 3 to 15 years. Leasehold improvements are amortized over their estimated useful lives or the terms of the leases, whichever is shorter. Repairs and maintenance are charged to operations as incurred, and significant expenditures for additions and improvements are capitalized.

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

1. Significant Accounting Policies—(Continued)

Intangible Assets:

Intangible assets primarily represent goodwill which is being amortized on a straight-line basis over periods not in excess of 40 years. The carrying amount of goodwill is reviewed if facts and circumstances suggest it may be impaired. If this review indicates goodwill will not be recoverable over the remaining amortization period, as determined based on the estimated undiscounted cash flows of the entity acquired, the carrying amount of the goodwill is reduced to estimated fair value based on market value or discounted cash flows, as appropriate. Accumulated amortization aggregated \$48,148 and \$39,520 at December 31, 1997 and 1996, respectively.

Revenue Recognition:

The Company recognizes revenues at the time title passes to the customer. Net revenues comprise gross revenues less provisions for estimated customer returns and allowances.

Research and Development:

Research and development expenditures are expensed as incurred. The amounts charged against operations for the years ended December 31, 1997, 1996 and 1995 were \$11,871, \$11,082, and \$6,548, respectively.

Advertising and Promotion Expense:

Production costs of future media advertising are deferred until the advertising occurs. All other advertising and promotion costs are expensed when incurred. The amounts charged against operations for the years ended December 31, 1997, 1996 and 1995 were \$53,408, \$58,823, and \$37,544, respectively.

Insurance Programs:

The Company obtains insurance coverage for catastrophic exposures as well as those risks required to be insured by law or contract. It is the policy of the Company to retain a significant portion of certain losses related primarily to workers' compensation, employee health benefits, physical loss and property, and product and vehicle liability. Provisions for losses expected under these programs are recorded based upon the Company's estimates of the aggregate liability for claims incurred.

Foreign Currency Translation:

Assets and liabilities of foreign operations are generally translated into United States dollars at the rates of exchange in effect at the balance sheet date. Income and expense items are generally translated at the weighted average exchange rates prevailing during each period presented. Gains and losses resulting from foreign currency transactions are included in the results of operations. Gains and losses resulting from translation of financial statements of foreign subsidiaries and branches operating in non-highly inflationary economies are recorded as a component of stockholder's equity. Foreign subsidiaries and branches operating in highly inflationary economies translate nonmonetary assets and liabilities at historical rates and include translation adjustments in the results of operations.

Derivative Financial Instruments:

The Company uses derivative financial instruments to reduce interest rate and foreign exchange exposures. The Company maintains a control environment which includes policies and procedures for risk assessment and for the approval, reporting and monitoring of derivative financial instrument activities. The Company does not hold or issue derivative financial instruments for trading purposes.

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

1. Significant Accounting Policies—(Continued)

Amounts to be received or paid under interest rate swap and cap contracts designated as hedges are recognized over the life of the contracts as adjustments to interest expense. Gains and losses on terminations of interest rate swap and cap contracts designated as hedges are deferred and amortized as adjustments to interest expense over the remaining life of the terminated contracts. Unrealized gains and losses on outstanding interest rate contracts designated as hedges are not recognized.

Foreign currency forward contracts are marked to market and gains and losses on foreign currency forward contracts to hedge firm foreign currency commitments are deferred and accounted for as part of the related foreign currency transaction. Gains and losses on all other forward contracts to hedge third-party and intercompany transactions are recorded in operations as foreign exchange gains and losses. Gains and losses on purchased foreign currency option contracts are deferred and recognized as adjustments to cost of sales upon the sale of the related inventory to the third-party customers.

Credit Risk:

Financial instruments which potentially subject the Company to concentrations of credit risk consist primarily of trade receivables and derivative financial instruments. Credit risk on trade receivables is minimized as a result of the large and diversified nature of the Company's worldwide customer base. Although the Company has one significant customer (See Note 15), there have been no credit losses related to this customer. With respect to its derivative contracts, the Company is also subject to credit risk of non-performance by counterparties and its maximum potential loss may exceed the amount recognized in the financial statements. The Company controls its exposure to credit risk through credit approvals, credit limits and monitoring procedures. Collateral is generally not required for the Company's financial instruments.

Fair Value of Financial Instruments:

The following methods and assumptions were used by CLN Holdings in estimating its fair value disclosures for financial instruments:

Cash and cash equivalents: The carrying amount reported in the balance sheet for cash and cash equivalents approximates its fair value.

Long- and short-term debt: The carrying amounts of CLN Holdings' borrowings under its foreign bank lines of credit, revolving credit agreement and other variable rate debt approximate their fair value. The fair value of the Company's senior notes issues (see Note 9) are estimated using discounted cash flow analysis based on the Company's estimated current borrowing rate for similar types of borrowing arrangements. The fair value of the publicly traded LYONs debt and Escrow Notes is based on quoted market prices.

Foreign currency exchange contracts: The fair values of CLN Holdings' foreign currency contracts are estimated based on quoted market prices of comparable contracts, adjusted through interpolation where necessary for maturity differences.

The carrying amounts and fair values of CLN Holdings' financial instruments are as follows:

	December 31, 1997		December 31, 1996	
	Carrying Amount of Asset/ (Liability)	Fair Value of Asset/ (Liability)	Carrying Amount of Asset/ (Liability)	Fair Value of Asset/ (Liability)
Cash and cash equivalents	\$ 13,031	\$ 13,031	\$ 17,299	\$ 17,299
Short-term debt	(64,207)	(64,207)	(33,935)	(33,935)
Long-term debt excluding capital leases	(983,173)	(929,157)	(999,947)	(972,821)
Foreign currency exchange contracts	128	128	940	1,629

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CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

1. Significant Accounting Policies—(Continued)

Stock-Based Compensation:

Statement of Financial Accounting Standards ("SFAS") No. 123, "Accounting for Stock-Based Compensation," encourages, but does not require companies to record compensation cost for stock-based employee compensation plans at fair value. The Company has chosen to account for stock-based compensation plans using the intrinsic value method prescribed in Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees," and related Interpretations. Accordingly, compensation cost for stock options is measured as the excess, if any, of the quoted market price of Coleman's stock at the date of the grant over the amount an employee must pay to acquire the stock.

Reclassifications:

Certain prior year amounts in the financial statements have been reclassified to conform to the current year presentation.

Use of Estimates:

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ materially from those estimates.

Recently Issued Accounting Standards:

In June 1997, the Financial Accounting Standards Board (the "FASB") issued SFAS No. 130 "Reporting Comprehensive Income". SFAS No. 130 establishes standards for reporting and display of comprehensive income and its components in the financial statements. SFAS No. 130 is effective for fiscal years beginning after December 15, 1997. Reclassification of financial statements for earlier periods provided for comparative purposes is required.

In June 1997, the FASB issued SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information". SFAS No. 131 establishes standards for the way public business enterprises report information about operating segments in annual financial statements and requires those enterprises report selected information about operating segments in interim financial reports. It also establishes standards for related disclosures about products and services, geographic areas, and major customers. SFAS No. 131 is effective for financial statements for fiscal years beginning after December 15, 1997. Financial statement disclosures for prior periods are required to be restated.

In February 1998, the FASB issued SFAS No. 132, "Employers' Disclosures about Pensions and Other Postretirement Benefits". SFAS No. 132 revises employers' disclosures about pension and other postretirement benefits to the extent practicable. It also requires additional information on changes in the benefit obligations and fair value of plan assets and eliminates certain other disclosures. SFAS No. 132 is effective for financial statements for fiscal years beginning after December 15, 1997. Financial statement disclosures for prior periods are required to be restated.

CLN Holdings has not yet determined the impact of adoption of these standards; however, the adoption of these standards will have no impact on CLN Holdings' consolidated results of operations, financial position or cash flows.

2. Acquisitions and Divestitures

On November 2, 1994, the Company purchased substantially all the assets of Eastpak, Inc. and all the capital stock of M.G. Industries, Inc. (collectively, "Eastpak"), a leading designer, manufacturer and distributor of

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CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

2. Acquisitions and Divestitures—(Continued)

branded daypacks, sports bags and related products. The Company also entered into an agreement with the predecessor owner of Eastpak to make additional payments based upon the achievement of certain annual sales levels of Eastpak products and other products substantially similar to the Eastpak products during the years ended December 31, 1995, 1996, and 1997. A total of \$23,000 was earned by the predecessor owner of Eastpak under the terms of this agreement. This amount has been recorded as additional goodwill.

During 1995, the Company purchased all of the outstanding shares of capital stock of Sierra Corporation of Fort Smith, Inc., a manufacturer of portable outdoor and recreational folding furniture and accessories, and substantially all of the assets of Active Technologies, Inc. ("ATI"), a manufacturer of technologically advanced lightweight generators and battery charging equipment. The aggregate purchase price for these acquisitions was \$19,516 including fees and expenses. These acquisitions were accounted for using the purchase method of accounting. The purchase price and expenses associated with these acquisitions exceeded the fair value of net assets acquired by \$11,186 and the excess has been assigned to goodwill and is being amortized over 20 to 30 years on the straight-line method. In connection with the ATI purchase, the Company may also be required to make payments to the predecessor owner of ATI of up to \$18,750 based on the Company's sales of ATI related products and royalties received by the Company for licensing arrangements related to ATI patents. As of December 31, 1997, the amounts recorded, as additional goodwill, under the terms of this agreement have been immaterial. The results of operations of these companies on a pro forma basis as if their acquisitions had occurred at the beginning of 1995 individually and in the aggregate were not significant to CLN Holdings.

On January 2, 1996, the Company purchased substantially all the assets and assumed certain liabilities of Seatt Corporation ("Seatt"), a leading designer, manufacturer and distributor of safety and security related electronic products for residential and commercial applications. The Seatt acquisition, which was accounted for under the purchase method, was completed for approximately \$65,300 including fees and expenses. The results of operations of Seatt have been included in the consolidated financial statements from the date of acquisition. In connection with the purchase price allocation of the Seatt acquisition, the Company recorded goodwill of approximately \$38,800. The Company is amortizing this amount over 40 years on the straight-line method.

On February 18, 1998, the Company announced an agreement was signed for the sale of Coleman Safety & Security Products, Inc., the successor to Seatt, to Ranco Incorporated, a U.S. subsidiary of Siebe plc, a United Kingdom diversified engineering group. The sale price is approximately \$105,000 and is subject to adjustment upon closing which is expected to occur by the end of March 1998. Net assets of Coleman Safety & Security at December 31, 1997 were approximately \$73,000.

On February 28, 1996, the Company purchased approximately 70% of the outstanding shares of Application des Gaz, S.A. ("ADG" or "Camping Gaz"), a leading manufacturer and distributor of camping appliances in Europe. The Company completed the necessary steps to acquire the remaining 30% of the outstanding shares during the second quarter of 1996. The cost of acquiring all the shares of ADG was approximately \$100,000 including fees and expenses.

The acquisition of Camping Gaz was accounted for under the purchase method. In connection with the final allocation of purchase price to the fair values of assets acquired and liabilities assumed, the Company recorded goodwill of approximately \$78,900, which is being amortized over 40 years on the straight-line method. At acquisition, the Company recognized liabilities in the amount of \$21,898 representing severance and other termination benefits for certain production and administrative employees of Camping Gaz. As of December 31, 1997, the Company had paid termination costs of approximately \$13,350 and anticipates all remaining termination costs will be paid during 1998.

The Company has included the results of operations of Camping Gaz in the consolidated financial statements from March 1, 1996, the date on which the Company obtained control of Camping Gaz, and has recognized minority interest related to the remaining shares for the period March 1, 1996 through June 30, 1996.

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CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

2. Acquisitions and Divestitures—(Continued)

The following summarized, unaudited pro forma results of operations of CLN Holdings for the years ended December 31, 1996 and 1995 assume the acquisition of Seatt and the acquisition of all the outstanding shares of Camping Gaz occurred as of the beginning of the respective periods. The pro forma results include certain adjustments, primarily reflecting increased amortization and interest expense and a lower income tax provision, and are not necessarily indicative of what the results of operations would have been had the Seatt and Camping Gaz acquisitions occurred at the beginning of the respective periods. Moreover, the pro forma information is not intended to be indicative of future results of operations.

	Year Ended December 31,	
	1996	1997
Net revenues	\$1,246,370	\$1,193,295
(Loss) earnings before extraordinary item	(57,091)	9,996
Net (loss) earnings	(58,335)	9,209

3. Restructuring and Other Charges

During 1997, the Company recorded restructuring charges of \$32,791 and certain other charges of \$3,628, collectively, (the "1997 Restructuring Charges") and related tax benefits of \$13,918. The Company reflected \$19,493 of the 1997 Restructuring Charges in cost of sales and reflected \$16,926 in selling, general and administrative ("SG&A") expenses. The 1997 Restructuring charges of \$36,419 consisted of (i) \$15,735 to exit various low margin products, including pressure washers, (ii) \$14,943 to close and relocate certain administrative and sales offices, and (iii) \$5,741 to close several manufacturing facilities. Most of these activities were substantially complete as of December 31, 1997, and remaining actions are expected to be completed in 1998.

During 1996, the Company recorded restructuring charges of \$66,202 and certain other charges of \$7,998 (collectively, the "1996 Restructuring Charges") and related net tax benefits of \$21,684. The Company reflected \$44,005 of the 1996 Restructuring Charges in cost of sales and \$30,195 in SG&A. The pre-tax restructuring charges of \$66,202 consisted of (i) \$29,067 to integrate Camping Gaz and Coleman operations into a global recreation products business, (ii) \$19,000 to exit the low end electric pressure washer business, (iii) \$14,135 to exit a portion of the Company's battery powered light business and (iv) \$4,000 to settle certain litigation with respect to the battery-powered light business. The charges to integrate the Camping Gaz and Coleman operations reflect primarily the cost to dispose of duplicate manufacturing, distribution and administrative facilities and the related severance costs, which actions were substantially completed in 1997 and are expected to be fully completed in 1998. The low end pressure washer and battery powered light businesses were exited by discontinuing the manufacturing and distribution of these products in 1997. The other pre-tax charges of \$7,998 related primarily to certain asset write-offs. These charges were incurred in the Company's normal course of business, although the amounts involved were higher than similar charges the Company had recorded in prior years. The provision for income taxes included \$21,684 of tax benefits resulting from these restructuring and other charges, net of an increase in the valuation reserve related to certain foreign deferred tax assets and other foreign tax charges totaling \$5,595.

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CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

3. Restructuring and Other Charges—(Continued)

The components of the combined 1997 Restructuring Charges and 1996 Restructuring Charges and an analysis of the amounts charged against the reserve are outlined in the following table:

	1996 Original Reserve	Charges During Year Ended 12/31/96	Balance at 12/31/96	1997 Additional Reserves	Charges During Year Ended 12/31/97	Balance at 12/31/97
Impairment of fixed assets	\$10,012	\$ (1,789)	\$ 8,223	\$ 6,449	\$(6,530)	\$ 8,142
Inventory and other asset impairments	38,257	(25,875)	12,382	10,961	(14,966)	8,377
Termination costs ...	2,018	(1,633)	385	12,146	(9,729)	2,802
Idle facilities, relocation and other exit costs ...	<u>23,913</u>	<u>(12,429)</u>	<u>11,484</u>	<u>6,863</u>	<u>(9,656)</u>	<u>8,691</u>
	<u>\$74,200</u>	<u>\$(41,726)</u>	<u>\$32,474</u>	<u>\$36,419</u>	<u>\$40,881</u>	<u>\$28,012</u>

The termination costs recognized in 1996 related to approximately 200 employees and the 1997 termination costs related to approximately 525 employees. As of December 31, 1997, \$11,362 of termination costs were paid on behalf of the approximately 700 employees who were terminated as of that date.

During 1995, the Company recognized an asset impairment charge of \$12,289 related to its Brazilian operations. The Brazilian operations had not performed to the Company's expectations since acquisition of this business in April of 1994, and in the fourth quarter of 1995, the Company initiated actions to reduce the operating losses in Brazil. These actions included replacing management, increasing prices, downsizing the manufacturing operations and reducing SG&A and other expenses. Because of these actions, the Company performed an impairment review and concluded recognition of an asset impairment charge was appropriate. The basis of the fair values used in the computation of the charge were appraisals for property and equipment and estimated discounted cash flows for goodwill. The charge has been included in the statement of operations under the caption "Asset Impairment Charge".

4. Inventories

Inventories consisted of the following:

	December 31,	
	1997	1996
Raw material and supplies	\$ 59,406	\$ 82,399
Work-in-process	7,813	12,878
Finished goods	<u>169,108</u>	<u>192,225</u>
	<u>\$236,327</u>	<u>\$287,502</u>

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

5. Property, Plant and Equipment, Net

	December 31,	
	1997	1996
Property, plant and equipment, net consisted of the following:		
Land and land improvements	\$ 7,700	\$ 8,772
Buildings and building improvements	79,101	78,760
Machinery and equipment	192,650	194,714
Construction-in-progress	10,076	15,519
	289,527	297,765
Accumulated depreciation	(114,033)	(98,583)
	\$175,494	\$199,182

Depreciation expense was \$26,956, \$25,770, and \$19,142 for the years ended December 31, 1997, 1996 and 1995, respectively.

6. Accrued Expenses

Accrued expenses consisted of the following:

	December 31,	
	1997	1996
Compensation and related benefits	\$ 20,385	\$ 29,331
Other	74,473	83,709
	\$ 94,858	\$ 113,040

7. Other Liabilities

Other liabilities consisted of the following:

	December 31,	
	1997	1996
Pensions and other postretirement benefits	\$ 49,121	\$ 52,229
Other	11,485	23,944
	\$ 60,606	\$ 76,173

8. Short-Term Borrowings

The Company maintained short-term bank lines of credit at December 31, 1997 and 1996 aggregating approximately \$115,249, and \$119,101, respectively, of which approximately \$64,207 and \$33,935 were outstanding at December 31, 1997 and 1996, respectively. The weighted average interest rate on amounts borrowed under these short-term lines was approximately 2.7% and 2.4% at December 31, 1997 and 1996, respectively.

Outstanding letters of credit aggregated approximately \$37,208 and \$32,897 at December 31, 1997 and 1996, respectively.

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

9. Long-Term Debt

Long-term debt consisted of the following:

	December 31,	
	1997	1996
7.26% Senior Notes due 2007 (a)	\$200,000	\$ 200,000
7.10% Senior Notes due 2006 (b)	85,000	85,000
7.25% Senior Notes due 2008 (c)	75,000	75,000
Revolving credit facility (d)	52,127	146,350
Term loan (d)	64,894	73,478
Senior Secured Discount Exchange Notes due 2001 (e)	503,171	—
Liquid Yield Option(TM)Notes due 2013 (f)	2,503	174,594
Series B Senior Secured Discount Notes due 1998 (g)	—	242,334
Other	778	3,785
	<u>983,473</u>	<u>1,000,541</u>
Less current portion	3,026	747
	<u>\$980,447</u>	<u>\$ 999,794</u>

(a) On August 8, 1995, the Company completed a private placement issuance and sale of \$200,000 aggregate principal amount of 7.26% Senior Notes due 2007 (the "2007 Notes"). Interest on the 2007 Notes is payable semiannually, and the principal is payable in annual installments of \$40,000 each commencing August 8, 2003, with a final installment payment of \$40,000 due on August 8, 2007. If there is a default, the interest rate will be the greater of (i) 9.26% or (ii) 2.0% above the prime interest rate.

The 2007 Notes are unsecured and are subject to various restrictive covenants including, without limitation, requirements for the maintenance of specified financial ratios and levels of consolidated net worth and certain other provisions limiting the incurrence of additional debt and sale and leaseback transactions under the terms of the note purchase agreement.

(b) On June 13, 1996, the Company completed a private placement issuance and sale of \$85,000 aggregate principal amount of 7.10% Senior Notes due 2006 (the "2006 Notes"). Interest on the 2006 Notes is payable semiannually, and the principal is payable in annual installments of \$12,143 each commencing June 13, 2000, with a final installment payment of \$12,143 due on June 13, 2006. If there is a default, the interest rate will be the greater of (i) 9.10% or (ii) 2.0% above the prime interest rate.

The 2006 Notes are unsecured and are subject to various restrictive covenants including, without limitation, requirements for the maintenance of specified financial ratios and levels of consolidated net worth and certain other provisions limiting the incurrence of additional debt and sale and leaseback transactions under the terms of the note purchase agreement.

(c) On June 13, 1996, the Company completed a private placement issuance and sale of \$75,000 aggregate principal amount of 7.25% Senior Notes due 2008 (the "2008 Notes"). Interest on the 2008 Notes is payable semiannually, and the principal is payable in annual installments of \$15,000 each commencing June 13, 2004, with a final installment payment of \$15,000 due on June 13, 2008. If there is a default, the interest rate will be the greater of (i) 9.25% or (ii) 2.0% above the prime interest rate.

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

9. Long-Term Debt—(Continued)

The 2008 Notes are unsecured and are subject to various restrictive covenants including, without limitation, requirements for the maintenance of specified financial ratios and levels of consolidated net worth and certain other provisions limiting the incurrence of additional debt and sale and leaseback transactions under the terms of the note purchase agreement.

- (d) In April 1996, the Company amended its credit agreement to: a) provide a term loan of French Franc 385,125 (\$64,894 at December 31, 1997 exchange rates) (the "Term Loan"), b) provide a \$275,000 unsecured revolving credit facility line (the "Credit Facility"), c) allow for the Camping Gaz acquisition and d) extend the maturity of the credit agreement (as amended, the "Company Credit Agreement"). In connection with the Company recording the restructuring and other charges as discussed in Note 3 and lower than expected operating results, the Company further amended the Company Credit Agreement in October 1996 and again in March 1997.

The Company Credit Agreement is available to the Company until April 30, 2001. The outstanding loans under the Company Credit Agreement bear interest at either of the following rates, as selected by the Company from time to time: (i) the higher of the agent's base lending rate or the federal funds rate plus .50% or (ii) the London Inter-Bank Offered Rate ("LIBOR") plus a margin ranging from .25% to 2.125% based on the Company's financial performance. If there is a default, the interest rate otherwise in effect will be increased by 2% per annum. The Company Credit Agreement also bears an overall facility fee ranging from .15% to .375% based on the Company's financial performance.

In addition, the Company Credit Agreement provides, subject to certain exceptions, for the net cash proceeds from disposition of assets other than in the ordinary course of business, to be used to prepay any outstanding Term Loan balances with any remaining excess net cash proceeds to be applied to outstanding borrowings under the Credit Facility with a corresponding reduction in the overall amount of the Credit Facility line.

The Company Credit Agreement contains various restrictive covenants including, without limitation, requirements for the maintenance of specified financial ratios, levels of consolidated net worth and profits, and certain other provisions limiting the incurrence of additional debt, purchase or redemption of the Company's common stock, issuance of preferred stock of the Company, and also prohibits the Company from paying any dividends until on or after January 1, 1999 and limits the amount of dividends the Company may pay thereafter. The Company Credit Agreement also contains an event of default upon a change of control of the Company (as defined in the Company Credit Agreement) and other customary events of default. In addition, substantially all of the shares of the Company's common stock owned by Coleman Worldwide are pledged to secure indebtedness of Coleman Worldwide and of its parent, CLN Holdings Inc. The indentures governing this indebtedness contain various covenants including a covenant placing certain limitations on the Company's indebtedness.

- (e) On May 20, 1997, CLN Holdings issued approximately \$600,475 in principal amount at maturity of Old First Priority Notes and approximately \$131,560 in principal amount at maturity of Old Second Priority Notes resulting in aggregate net proceeds of approximately \$455,257 in a private placement offering. The Old First Priority Notes and Old Second Priority Notes were issued at a discount from their principal amount at maturity to yield 11 1/8% and 12 7/8%, respectively, per annum calculated from May 20, 1997. Subsequent to the private placement offering, a registration statement on Form S-1 was filed to exchange the Old First Priority Notes for Senior Secured First Priority Discount Exchange Notes due 2001 (the "First Priority Notes") and to exchange the Old Second Priority Notes for Senior Secured Second Priority Discount Exchange Notes due 2001 (the "Second Priority Notes" and together with the First Priority Notes, the "Escrow Notes"). The indenture governing the Escrow Notes (the "Indenture") requires, subject to certain

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(In thousands, except share data)

9. Long-Term Debt—(Continued)

exceptions, that the retirement of the remaining outstanding LYONs be consummated no later than June 10, 1998. The Indenture requires CLN Holdings to hold, directly or indirectly, a majority of the voting power of the Company at all times, unless and until CLN Holdings exercises its right to substitute U.S. Government obligations for all of the pledged collateral. The Indenture, to which Coleman is not a party, also contains certain covenants that, among other things, generally prohibit the incurrence of additional debt by CLN Holdings and the issuance of additional debt and the issuance of preferred stock by Coleman Worldwide, and limit (i) the incurrence of additional debt and the issuance of preferred stock by the Company, (ii) the payment of dividends on the capital stock of CLN Holdings and its subsidiaries and the redemption or repurchase of the capital stock of CLN Holdings, (iii) the sale of assets and subsidiary stock, (iv) transactions with affiliates, (v) the creation of liens on the assets of CLN Holdings and Coleman Worldwide, and (vi) consolidations, mergers and transfers of all or substantially all of CLN Holdings' assets. The foregoing limitations and prohibitions, however, are subject to a number of qualifications. The Escrow Notes also contain customary events of defaults and a put right by the holders at a price specified in the Indenture in the event of a change of control of CLN Holdings (as defined in the Indenture).

Approximately \$262,194 of the net proceeds of the Escrow Notes were contributed to Coleman Holdings, then a subsidiary of CLN Holdings, and used by it to redeem, on July 15, 1997, the Discount Notes (as defined below). Coleman Holdings recorded an extraordinary loss of \$4,300, net of tax benefits of \$2,315, relating to the excess of the redemption price over the accreted value of the Discount Notes and the write-off of deferred charges related to the Discount Notes. Approximately \$191,278 of the net proceeds of the Escrow Notes were contributed to Coleman Worldwide and used by it to accept for exchange, \$554,053 aggregate principal amount at maturity of LYONs, including redemption fees and expenses. Coleman Worldwide recorded an extraordinary loss of \$10,939, net of tax benefits of \$7,076, relating to the excess of the exchange offer price over the accreted value of the LYONs, the write-off of deferred charges related to the LYONs exchanged and redemption fees and expenses. The \$7,500 principal amount at maturity of LYONs which remain outstanding are secured by a pledge of 7,692,854 shares of Coleman common stock owned by Coleman Worldwide. The Escrow Notes are secured by a pledge of all the shares of common stock of Coleman Worldwide and guaranteed pursuant to a non-recourse guaranty of Coleman Worldwide (the "Guaranty"), which Guaranty is currently secured by a pledge of 36,374,666 shares of Company common stock and will be secured by the shares currently securing the LYONs upon their redemption.

- (f) On May 27, 1993, Coleman Worldwide issued and sold \$500,000 principal amount at maturity of LYONs in an underwritten public offering. On June 7, 1993, an additional \$75,000 principal amount at maturity of LYONs was sold upon exercise of the underwriter's overallotment option. During 1997, Coleman Worldwide redeemed \$554,053 principal amount at maturity of LYONs as described above. The \$7,500 principal amount at maturity of LYONs which remain outstanding are secured by a pledge of 7,692,854 shares of Coleman common stock owned by Coleman Worldwide. There are no periodic payments of interest on the LYONs. The aggregate principal amount of the LYONs represents a yield to maturity of 7.25% per annum (computed on a semi-annual bond equivalent basis) calculated from May 27, 1993. Coleman Worldwide plans to redeem the remaining \$7,500 aggregate principal amount at maturity of LYONs no later than May 27, 1998 with the remaining proceeds from the issuance of the Escrow Notes which are being held in escrow. The LYONs, to which the Company is not a party, provide that it is an Additional Purchase Right Event (as defined below) if, among other things, the amount of debt incurred by the Company exceeds certain limitations. The Indenture governing the LYONs, to which the Company is not a party, provides the holders of LYONs with the option to require Coleman Worldwide to purchase the LYONs at a price specified in the Indenture after the occurrence of certain events ("Additional Purchase Right Events"). Additional Purchase Right Events occur, among other things, upon the Company's Consolidated Debt Ratio (as defined) exceeding 0.75 to 1.0 or the

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CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(In thousands, except share data)

9. Long-Term Debt—(Continued)

Consolidated Net Worth (as defined) of Coleman Worldwide as of the end of any fiscal quarter being less than a specified amount which is \$70,000 at December 31, 1997.

- (g) On July 22, 1993, Coleman Holdings issued and sold \$281,281 principal amount at maturity of Old Notes in a private placement offering. Subsequent to the private placement offering, a registration statement on Form S-1 was filed to exchange the Old Notes for Series B Senior Secured Discount Notes (the "Discount Notes"). During 1997, Coleman Holdings redeemed the Discount Notes as described above.

The aggregate scheduled amounts of long-term debt maturities in the years 1998 through 2002 are \$3,026, \$78, \$12,207, \$632,376, and \$12,159, respectively.

10. Derivative Financial Instruments

The Company periodically enters into a variety of foreign currency exchange contracts to reduce its foreign currency exposure resulting primarily from firm commitments, intercompany foreign sales transactions expected to occur within the next twelve months, and intercompany accounts receivable and payable.

At December 31, 1997 and December 31, 1996, the Company did not have any outstanding foreign currency exchange contracts related to firm commitments.

During the fourth quarter of 1995, the Company elected to adopt the provisions of the Emerging Issues Task Force Issue No. 95-2, "Determination of What Constitutes a Firm Commitment for Foreign Currency Transactions Not Involving a Third Party" ("EITF 95-2") which narrowed the scope of intercompany foreign currency commitments eligible to be hedged for financial reporting purposes. As a result of this change, the Company increased net income by \$3,796 in the fourth quarter of 1995. Prior to the adoption of EITF 95-2, the gains and losses associated with these contracts were accounted for under the deferral method. At December 31, 1997, the Company did not have any outstanding foreign currency forward contracts related to intercompany foreign sales transactions. At December 31, 1996, the Company had forward exchange contracts to sell \$8,500 in Canadian dollars maturing on February 28, 1997, for which the Company has recognized a net gain of \$40 as a component of cost of sales.

At December 31, 1997, the Company did not have any outstanding option contracts. At December 31, 1996, the Company had outstanding option contracts for the sale of Japanese yen at fixed exchange rates totaling \$20,038 for specified periods of time which expired during 1997. Net unrealized gains deferred at December 31, 1996 were \$653.

With respect to intercompany accounts receivable and payable, at December 31, 1997, the Company had foreign currency forward contracts to sell \$1,580 in foreign currencies, which contracts matured in February 1998, and had deferred a net gain of \$128. At December 31, 1996, the Company had foreign currency forward contracts to sell \$26,623 and to buy \$3,898 in foreign currencies, which contracts matured at various dates in 1997, and had deferred a net gain of \$185.

At December 31, 1997, \$25,000 of the Company's outstanding long-term debt was subject to an interest rate swap agreement and \$25,000 of the Company's outstanding long-term debt was subject to an interest rate cap. Under the interest rate swap agreement, the Company pays the counterparty interest at a fixed rate of 6.115%, and the counterparty pays the Company interest at a variable rate equal to the three month LIBOR for a seven-year period commencing January 2, 1996. The agreement is with a major financial institution which is expected to fully perform under the terms of the agreement, thereby mitigating the credit risk from the transaction. The interest rate cap agreement entitles the Company to receive from a major financial institution the amount, if any, by which the Company's interest payments on \$25,000 of its variable rate debt exceed 7.35%. The \$509 premium

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(In thousands, except share data)

10. Derivative Financial Instruments—(Continued)

paid for this interest rate cap agreement is included in other assets and was amortized to interest expense over the three-year term of the cap, which commenced January 3, 1995.

11. Taxes

CLN Holdings is included in the consolidated federal and certain consolidated state income tax returns of Mafco and/or its affiliates. CLN Holdings and Mafco and subsidiaries provide taxes as if they were a separate taxpayer. CLN Holdings will pay to Mafco amounts equal to the taxes that CLN Holdings would otherwise have to pay if it were to file separate tax returns for itself. To the extent that CLN Holdings is entitled to a tax benefit from Mafco as a result of its tax losses, such amounts are recorded as a reduction in the provision for income taxes and a distribution to its parent. During 1997 and 1996, respectively, CLN Holdings recorded a benefit of \$18,769 and \$9,013 for income taxes, and similar amounts were recorded as distributions to its parent. Coleman Worldwide and Mafco are parties to a tax sharing agreement (the "Tax Sharing Agreement"), pursuant to which Coleman Worldwide is required to pay to Mafco amounts equal to the taxes Coleman Worldwide would otherwise have to pay if it were to file separate consolidated federal, state or local income tax returns including only itself and its domestic subsidiaries. Pursuant to the LYONs indenture agreement, at any time the LYONs are outstanding, the amounts Coleman Worldwide would be required to pay to Mafco under the Tax Sharing Agreement, together with any remaining funds paid to Coleman Worldwide by the Company under the tax sharing agreement between Coleman Worldwide and the Company, may not be paid as tax sharing payments, but Coleman Worldwide may advance such funds to Mafco as long as the aggregate amount of such advances at any time does not exceed the issue price plus accrued OID of the LYONs. Such advances are evidenced by noninterest bearing unsecured demand promissory notes (the "Mafco Demand Notes") from Mafco in the amount of \$35,395 at December 31, 1997. Following the redemption or retirement in full of the LYONs, expected to occur no later than May 27, 1998, the Mafco Demand Notes shall be canceled automatically without further action of any person, and shall be of no further force or effect whatsoever, and, until the time of such cancellation, no demand or request for payment of any kind shall be made with respect to the Mafco Demand Notes. As a result of the restriction on the payment of the tax sharing amounts, income taxes provided pursuant to the Tax Sharing Agreement are reflected as a non-cash charge. For all periods presented, federal and state income taxes are provided as if Coleman Worldwide filed its own income tax returns. The accompanying consolidated balance sheet includes approximately \$13,317 and \$18,528 of federal and state income taxes payable to Mafco pursuant to the Tax Sharing Agreement at December 31, 1997 and 1996, respectively.

For financial reporting purposes, (loss) earnings before income taxes, minority interest and extraordinary item include the following components:

	Year Ended December 31,		
	1997	1996	1995
(Loss) earnings before income taxes, minority interest and extraordinary item:			
Domestic	\$(67,881)	\$(65,344)	\$ 43,585
Foreign	7,752	(20,769)	(14,434)
	<u>\$ (60,129)</u>	<u>\$ (86,113)</u>	<u>\$ 29,151</u>

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(In thousands, except share data)

11. Taxes—(Continued)

Significant components of the provision for income tax (benefit) expense were as follow:

	Year Ended December 31.		
	1997	1996	1995
Current:			
Federal	\$(21,194)	\$(12,945)	\$ 6,360
State		(937)	3,102
Foreign	1,485	3,454	3,853
Total current	<u>(19,709)</u>	<u>(10,428)</u>	<u>13,315</u>
Deferred:			
Federal	(538)	(10,686)	(3,104)
State	(1,890)	(2,178)	(725)
Foreign	(2,025)	(474)	2,215
Total deferred	<u>(4,453)</u>	<u>(13,338)</u>	<u>(1,614)</u>
	<u><u>\$(24,162)</u></u>	<u><u>\$(23,766)</u></u>	<u><u>\$11,701</u></u>

The effective tax rate on (loss) earnings before income taxes, minority interest and extraordinary item varies from the current statutory federal income tax rate as follows:

	Year Ended December 31.		
	1997	1996	1995
(Benefit) provision at statutory rate	(35.0)%	(35.0)%	35.0%
State taxes, net	(2.0)	(3.2)	4.0
Nondeductible amortization	4.1	3.0	6.8
Foreign operations	(7.0)	2.6	(0.4)
Valuation allowance	3.9	4.1	—
Change in tax rates	(2.2)	—	—
Puerto Rico operations	(1.4)	0.2	(5.7)
Other, net	(0.6)	0.7	0.4
Effective tax rate (benefit) provision	<u>(40.2)%</u>	<u>(27.6)%</u>	<u>40.1%</u>

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of CLN Holdings' deferred tax liabilities and assets are as follows:

	Year Ended December 31.	
	1997	1996
Deferred tax assets:		
Postretirement benefits other than pensions	\$12,964	\$12,370
Reserves for self-insurance and warranty costs	4,898	6,678
Pension liabilities	7,377	8,828
Inventory	6,626	8,245
Net operating loss carryforwards	73,628	47,013
Other, net	12,728	24,026
Total deferred tax assets	<u>118,221</u>	<u>107,160</u>
Valuation allowance	(39,990)	(39,639)
Net deferred tax assets	<u>78,231</u>	<u>67,521</u>
Deferred tax liabilities:		
Depreciation	19,872	18,248
Other, net	8,405	7,675
Total deferred tax liabilities	<u>28,277</u>	<u>25,923</u>
Net deferred tax assets	<u><u>\$49,954</u></u>	<u><u>\$41,598</u></u>

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(In thousands, except share data)

11. Taxes—(Continued)

The deferred tax account balance at December 31, 1997 differs from the account balance at December 31, 1996 due primarily to the 1997 deferred tax provision, the tax effects of the foreign exchange gain recorded as a component of stockholder's equity, the tax effects of adjustments related to the finalization of the purchase accounting related to the acquisition of Camping Gaz and the deferred tax asset recorded related to the acquisitions in 1997 of inactive companies which were recorded as a capital contribution (see Note 12).

During 1997, CLN Holdings increased the valuation allowance related to certain foreign deferred tax assets due to uncertainties over realization. At December 31, 1997, CLN Holdings had net operating loss carryforwards ("NOL's") of approximately \$107,229 for certain foreign income tax purposes. These NOL's expire beginning in 1998.

CLN Holdings has not provided for taxes on undistributed foreign earnings of approximately \$20,860 at December 31, 1997, as CLN Holdings intends to permanently reinvest these earnings in the future growth of the business. Determination of the amount of unrecognized deferred U.S. income tax liability is not practicable because of the complexities associated with its hypothetical calculation.

12. Related Party Transactions

Capital Contributions

As of March 31, 1997, the Company purchased an inactive subsidiary from an affiliate for net cash consideration of \$1,031, including transaction costs. The Company expects to realize certain foreign tax benefits from this transaction in future years. Under certain circumstances, a portion of these tax benefits will be payable to the affiliate to the extent such tax benefits are realized by the Company. During the fourth quarter of 1997, the Company purchased an inactive subsidiary from an affiliate in a transaction in which the Company expects to realize certain foreign tax benefits in future years and for which the Company agreed to pay 50% of those realized benefits to the affiliate. The Company has recorded a liability to the affiliate in the amount of \$219 which represents 50% of the estimated amount of future tax benefits. The Company has accounted for these transactions in a manner similar to a pooling-of-interests due to the Mafco Holdings Inc. common control over each of the parties involved in the transactions. The \$2,799 excess value of estimated realizable tax benefits acquired over the total acquisition costs have been accounted for as a capital contribution.

Insurance Programs

The Company participates in certain of Holdings' insurance programs, including health and life insurance, workers compensation, and liability insurance. The Company's expense represents its expected costs for self-insured retentions and premiums for excess coverage insurance. The expense was \$13,339, \$13,923 and \$9,875 for the years ended December 31, 1997, 1996 and 1995, respectively.

Services Agreement

From time to time, Coleman purchases, at negotiated rates, specialized accounting and other services provided by an affiliate. Coleman also provides, at negotiated rates, services to an affiliate. The net expense for such services was \$394 during 1997 and was immaterial in prior years.

Management Agreement

The Company provided management services to certain affiliates pursuant to a management agreement through June 30, 1995. The consolidated financial statements reflect the management fees as a reduction in selling, general and administration expenses. For the year ended December 31, 1995, management fees earned by the Company were \$2,400.

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CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

12. Related Party Transactions—(Continued)

Licensing Agreement

During 1997, the Company engaged an affiliate of MacAndrews & Forbes to provide licensing services. The Company recorded expenses of \$650 related to these services in 1997.

Other

In 1996, the Company entered into an agreement with an affiliate in which the Company realized approximately \$1,800 of net tax benefits associated with certain foreign tax net operating loss carryforwards that had not previously been recognized.

The Company purchases and sells products from and to certain affiliates. These amounts are not, in the aggregate, material.

The Company subleases six thousand square feet of office space in New York City from an affiliate pursuant to a month-to-month occupancy memorandum (the "Lease") entered into during 1997. The rent paid by the Company during the year ended December 31, 1997 pursuant to the Lease was \$158.

During 1997, Coleman used an airplane owned by a corporation of which a director of Coleman is a stockholder, for which Coleman paid approximately \$158.

13. Employee Benefit Plans

Pension Plans

Holdings maintains pension and other retirement plans in various forms covering employees of the Company who meet eligibility requirements. The U.S. salaried retirement plan is a non-contributory defined benefit plan and provides benefits based on a formula of each participant's final average pay and years of service. The U.S. hourly pension plan is a non-contributory defined benefit plan and contains a flat benefit formula. The salaried and hourly plans provide reduced benefits for early retirement and the salaried plan takes into account offsets for Social Security benefits. The Company's policy is to contribute annually the minimum amount required pursuant to the Employee Retirement Income Security Act, as amended. Under certain circumstances, the Company may make additional contributions to the pension plans up to the maximum deductible amounts for income tax purposes.

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

13. Employee Benefit Plans—(Continued)

Holdings also has an unfunded excess benefit plan covering certain of the Company's U.S. employees whose benefits under the plans described above are limited by provisions of the Internal Revenue Code. The following table reconciles the funded status of the pension plans with the amount recognized in CLN Holdings' consolidated balance sheets as of the dates indicated:

	December 31.	
	1997	1996
Actuarial present value of benefit obligation:		
Accumulated benefit obligation, including vested benefits of \$24,296 and \$18,686	\$(27,843)	\$(21,933)
Projected benefit obligation for service rendered to date	\$(43,246)	\$(37,092)
Plan assets at fair value	23,102	16,197
Projected benefit obligation in excess of plan assets	(20,144)	(20,895)
Unrecognized prior service cost	130	50
Unrecognized net loss	6,259	7,999
Accrued pension cost	(13,755)	(12,846)
Amount reflected as an intangible asset	(143)	(288)
Amount reflected as minimum pension liability adjustment	(1,526)	(470)
Amount reflected as pension liability	\$(15,424)	\$(13,604)

The weighted-average discount rate used in determining the actuarial present value of the projected benefit obligation was 7.5% as of December 31, 1997 and 1996. The rate of increase in future compensation levels reflected in such determination was 5% as of December 31, 1997 and 1996. The expected long-term rate of return on assets was 9% as of December 31, 1997, 1996 and 1995. Plan assets consist primarily of common stock, mutual funds and fixed income securities stated at fair market value, and cash equivalents stated at cost, which approximates fair market value. Unrecognized items are being recognized over the estimated remaining service lives of active employees.

Net pension expense includes the following components:

	Year Ended December 31.		
	1997	1996	1995
Service cost-benefits attributed to service during the year	\$3,081	\$3,098	\$2,125
Interest cost on projected benefit obligation	2,813	2,442	2,004
Curtailement loss	972	—	—
Actual return on plan assets	(2,908)	(1,490)	(1,347)
Net amortization and deferrals	1,537	844	834
Net pension expense	\$5,495	\$4,894	\$3,616

Net pension expense for the year ended December 31, 1997 includes \$972 curtailment loss associated with certain executive officer changes during the year.

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CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

13. Employee Benefit Plans—(Continued)

Savings Plan:

Holdings maintains an employee savings plan under Section 401(k) of the Internal Revenue Code. This plan covers substantially all of the Company's full-time U.S. employees and allows employees to contribute up to 10% of their salary to the plan. The Company matches, at a 34% rate, employee contributions of up to 6% of their salary. Amounts charged to expense for matching contributions were \$1,401, \$1,314, and \$1,165 for the years ended December 31, 1997, 1996 and 1995, respectively.

Retiree Health Care and Life Insurance:

The Company, through Holdings, provides certain unfunded health and life insurance benefits for certain retired employees. Approximately 55% of the Company's U.S. employees may become eligible for these benefits if they reach retirement age while working for the Company.

The following table reconciles the funded status of the Company's allocable portion of Holdings' postretirement benefit plans with the amount recognized in CLN Holdings' consolidated balance sheets as of the dates indicated:

	December 31.	
	1997	1996
Accumulated postretirement benefit obligation:		
Retirees	\$ (6,852)	\$ (6,682)
Fully eligible active plan participants	(3,308)	(3,015)
Other active plan participants	(10,322)	(10,664)
Total accumulated postretirement benefit obligation	(20,482)	(20,361)
Unrecognized transition benefit	(3,707)	(3,973)
Unrecognized prior service cost	(404)	(492)
Unrecognized net gain	(2,415)	(976)
Net postretirement benefit liability	\$(27,008)	\$(25,802)

Net periodic postretirement benefit expense includes the following components:

	Year Ended December 31.		
	1997	1996	1995
Service cost-benefits attributed to service during the year	\$ 927	\$1,044	\$ 756
Interest cost on accumulated postretirement benefit obligation	1,453	1,454	1,352
Amortization of transition benefit and other net gains	(358)	(354)	(455)
Net periodic postretirement benefit expense	\$2,022	\$2,144	\$1,653

The discount rate used in determining the accumulated postretirement benefit obligation ("APBO") was 7.5% as of December 31, 1997 and 1996. At December 31, 1997, the assumed health care cost trend rate used in measuring the APBO was 7.5% starting in 1998 then gradually decreasing to 5% by the year 2003 and remaining at that level thereafter. The health care cost trend rate assumption has a significant effect on the amount of the obligation and periodic benefit expense reported. An increase in the assumed health care cost trend rates by 1% in each year would increase the APBO as of December 31, 1997 by approximately 19% and the service and interest cost components of net periodic postretirement benefit expense by approximately 22%.

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

13. Employee Benefit Plans—(Continued)

Stock Option Plans:

The Company adopted The Coleman Company, Inc. 1992 Stock Option Plan (the "1992 Stock Option Plan") in 1992. During 1993, the shareholders approved the 1993 Stock Option Plan (the "1993 Stock Option Plan") and during 1996, the shareholders approved The Coleman Company, Inc. 1996 Stock Option Plan (the "1996 Stock Option Plan"). Under the terms of the 1992 Stock Option Plan, the 1993 Stock Option Plan and the 1996 Stock Option Plan (collectively the "Stock Option Plans"), incentive stock options ("ISOs"), non-qualified stock options ("NQSOs") and stock appreciation rights may be granted to key employees of the Company and any of its affiliates from time to time. Stock options have been granted under the Stock Option Plans with vesting terms and maximum terms of approximately five years and ten years, respectively. The aggregate number of shares of common stock as to which options and rights may be granted under the Stock Option Plans may not exceed 4,700,000.

The following table summarizes the stock option transactions under the Stock Option Plans:

	1997		1996		1995	
	Options	Weighted-Average Exercise Price	Options	Weighted-Average Exercise Price	Options	Weighted-Average Exercise Price
Outstanding—January 1,	3,017,630	\$15.84	2,572,930	\$15.25	2,310,888	\$14.03
Granted:						
at market price	2,081,000	14.77	294,000	19.73	637,000	17.89
above market price	75,000	15.00	381,000	15.00	—	—
Exercised	(220,750)	11.42	(154,890)	12.17	(325,748)	12.09
Forfeited	(1,605,330)	16.49	(75,410)	14.19	(49,210)	13.14
Outstanding—December 31,	<u>3,347,550</u>	15.14	<u>3,017,630</u>	15.84	<u>2,572,930</u>	15.25
Exercisable—December 31,	<u>927,000</u>	14.02	<u>513,440</u>	13.25	<u>413,526</u>	12.84
Weighted-average fair value of options granted during the year:						
at market price	\$ 7.43		\$ 6.62		\$ 7.13	
above market price	\$ 5.28		\$ 3.21		\$ —	

The following table summarizes information concerning currently outstanding and exercisable options at December 31, 1997:

Options Outstanding			Options Exercisable		
Range of Exercise Prices	Number Outstanding	Weighted-Average Remaining Contractual Life	Weighted-Average Exercise Price	Number Exercisable	Weighted-Average Exercise Price
\$12.25-\$13.82	543,030	5.26 years	\$12.96	425,230	\$12.79
\$13.83-\$14.00	878,500	9.29	14.00	181,250	14.0
\$14.01-\$16.12	806,520	6.66	15.38	226,020	15.2
\$16.13-\$20.38	<u>1,119,500</u>	9.20	16.92	<u>94,500</u>	16.6
\$12.25-\$20.38	<u>3,347,550</u>	<u>7.97</u>	15.14	<u>927,000</u>	<u>14.0</u>

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CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

13. Employee Benefit Plans—(Continued)

As described in Note 1, the Company follows APB Opinion No. 25 in accounting for stock compensation arrangements. Pro forma financial information regarding net income and earnings per share has been determined as if the Company had accounted for its employee stock options under the fair value method of SFAS No. 123. The fair value of ISOs and NQSOs granted during 1997, 1996 and 1995 were estimated at the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions: risk-free interest rates of 6.53%, 6.11% and 5.91 % for 1997, 1996 and 1995, respectively, dividend yield of 0.0%, volatility of the expected market price of the Company's common stock of 31.3%, 20.2% and 30.8% for 1997, 1996 and 1995, respectively, and a weighted-average expected life of the option of 7.7, 5.5 and 5.5 years for 1997, 1996 and 1995, respectively.

SFAS No. 123 requires the use of option valuation models, one of which is the Black-Scholes model, that were not developed for use valuing ISOs or NQSOs. Further, these option valuation models require the input of highly subjective assumptions, including the expected stock price volatility. In management's opinion, based on the above, the existing models do not necessarily provide a reliable single measure of the fair value of its ISOs or NQSOs.

The following summarized, unaudited pro forma results of operations assume the estimated fair value of the ISOs and NQSOs granted during the years ended December 31, 1997, 1996 and 1995 is amortized to expense over the ISOs' and NQSOs' vesting period. SFAS No. 123 does not require disclosure of the effect of any grants of stock based compensation prior to 1995 and, therefore, the pro forma effect of SFAS No. 123 on net earnings is not representative of the pro forma effect on net earnings in future years.

	Year Ended December 31,		
	1997	1996	1995
Pro forma net (loss) earnings	\$(55,045)	\$(58,918)	\$9,742

14. Commitments and Contingencies

Leases:

The Company leases manufacturing, administrative and sales facilities and various types of equipment under operating lease agreements expiring through 2007. Rental expense was \$15,620, \$14,164, and \$11,526 for the years ended December 31, 1997, 1996 and 1995, respectively. Minimum rental commitments under all noncancellable operating leases with remaining lease terms in excess of one year from December 31, 1997, aggregated \$31,506; such commitments for each of the five years subsequent to December 31, 1997 are \$7,571, \$6,683, \$4,622, \$2,848, and \$3,560, respectively, and \$6,222 thereafter.

The Company leases its former corporate office building in Denver, Colorado under agreements which give the Company the right, subject to certain qualifications, to renew or terminate the lease, or purchase the property. Upon termination, the Company has guaranteed the lessor certain residual values.

Environmental Matters:

Gilbert and Mosley Site. As a result of investigations undertaken in 1986, the Kansas Department of Health and Environment ("KDHE") discovered that groundwater in the downtown Wichita area (the "Gilbert and Mosley Site") was contaminated with volatile organic chemicals ("VOCs"). Coleman occupied a facility within the boundaries of the Gilbert and Mosley Site. Subsequent investigations in the area, including investigations in November 1988 by Coleman, indicated the groundwater beneath the Coleman property is contaminated with VOCs. Coleman is in the process of remediating the contamination on its property.

The City of Wichita has entered into a voluntary agreement with KDHE in which the City agreed to investigate and then remediate contamination in the Gilbert and Mosley Site. Coleman has entered into an agreement with KDHE in which Coleman agreed to perform a similar study for the Coleman property and to implement remedial activities at its property. In addition, Coleman entered into an agreement with the City of

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CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

14. Commitments and Contingencies—(Continued)

Wichita in which Coleman agreed to fund its proportionate share of the City's study and remediation of the Gilbert and Mosley site.

Maize Site. Coleman has undertaken a soil and groundwater investigation at its facility in Maize, Kansas (the "Maize Site"). Results indicate that limited VOC contamination is present in the groundwater under and to the southeast of the facility. The data has been reported to the KDHE, and Coleman has entered into an agreement with KDHE to implement appropriate remedial actions. The remediation system has been installed, and Coleman is in the process of remediating the contaminated groundwater.

Northeast Site. In 1990, Coleman undertook a soil and groundwater investigation of its facility in northeast Wichita (the "Northeast Site"). Results indicated the presence of VOCs in the groundwater and soils. Although some of the contamination may be a result of Coleman's operations at the facility, the data also indicated that contamination was migrating onto the Coleman property from up gradient sources. Coleman reported the initial results of its study to KDHE. Coleman has also provided copies of all data to the United States Environmental Protection Agency (the "EPA"), at its request. The EPA has not initiated any actions against the Company with respect to the Northeast Site. An agreement has been entered into with KDHE to undertake additional investigatory activities, and an interim remediation system has been installed.

The Company has not been named as a potentially responsible party ("PRP") by the EPA nor does it have joint and several liability with any other PRP for remediation at any of the above sites.

The Company has adopted an environmental policy designed to ensure the Company operates in full compliance with applicable environmental regulations and, where appropriate, the Company's own internal standards. Coleman has also undertaken an environmental compliance audit program. The Company makes expenditures it believes are necessary to comply with environmental management practices. Environmental expenditures that relate to current operations are expensed or capitalized as appropriate and were not significant in 1997 and are not expected to be significant in the foreseeable future. The Company accrues for losses associated with environmental remediation obligations when such losses are probable and reasonably estimable. Accruals for estimated losses from environmental remediation obligations generally are recognized no later than completion of the remedial feasibility study. Such accruals are adjusted as further information develops or circumstances change. Costs of future expenditures for environmental remediation obligations are not discounted to their present value. Recoveries of environmental remediation costs from other parties are recognized as assets when their receipt is deemed probable.

While it is possible the Company reserves may change in the near term, the Company believes the reserves established for environmental matters are adequate. This belief is based on estimates provided by the state governmental authorities referred to above, results of environmental investigations of the groundwater and soils at the manufacturing facilities operated by Coleman conducted by independent consultants specializing in environmental investigations and remediation and estimates provided by such independent consultants, together with estimates provided by Coleman's environmental engineering staff.

Other:

The Company and Holdings are involved in various claims and legal actions arising in the ordinary course of business. The Company believes the ultimate disposition of these matters is not expected to have a material adverse effect on CLN Holdings' consolidated financial condition or results of operations. The Company has entered into a cross-indemnification agreement with Holdings pursuant to which it will indemnify Holdings against all liabilities related to businesses transferred to the Company, and Holdings will indemnify the Company against all liabilities of Holdings other than liabilities related to the businesses transferred to the Company.

The Company is party to a license agreement which requires payments of minimum guaranteed royalties aggregating to \$11,778 at December 31, 1997; such commitments for each of the five years remaining under the agreement subsequent to December 31, 1997 are \$1,040, \$1,745, \$2,434, \$3,010 and \$3,549, respectively.

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CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

15. Significant Customers

The Company's U.S. and Canadian operations have one significant customer which accounted for approximately 13%, 15%, and 19% of net revenues in the years ended December 31, 1997, 1996 and 1995, respectively.

16. Cash Flow Reporting

CLN Holdings uses the indirect method to report cash flows from operating activities. Interest paid was \$42,217, \$37,608, and \$23,976 and net income taxes paid were \$3,206, \$2,857, and \$4,606 for the years ended December 31, 1997, 1996 and 1995, respectively. Certain non-cash transactions relating to acquisitions, the issuance of long-term debt and income taxes have been reported in Notes 2, 9 and 11.

17. Geographic Segments

CLN Holdings, through the Company, designs, manufactures and markets a wide variety of multiuse products and accessories, which are primarily marketed through independent retail markets for outdoor recreation and hardware consumers. CLN Holdings, through the Company, is a leading manufacturer and marketer of brand name consumer products for the camping and related outdoor recreation markets in the United States, Canada, Europe, and Japan.

Operating profit, as indicated below, represents net revenues less operating expenses and amortization of goodwill. Generally, sales between geographic areas are made at cost plus a share of operating profit. Identifiable assets are those used by each geographic segment. Corporate assets are principally cash, certain property and equipment, income tax refunds receivable—affiliate, and deferred charges.

Information related to CLN Holdings' geographic segments is as follows:

	Year Ended December 31.		
	1997	1996	1995
Net revenues:			
Domestic—U.S.	\$ 855,365	\$ 916,260	\$716,018
—Export	78,120	91,125	90,434
Europe	217,863	168,780	52,233
Other foreign	167,119	219,350	169,836
Eliminations	(164,173)	(175,299)	(94,947)
	<u>\$1,154,294</u>	<u>\$1,220,216</u>	<u>\$933,574</u>
Operating profit:			
Domestic (a)	\$ 34,754	\$ 19,915	\$120,915
Europe (b)	1,299	(17,505)	(3,241)
Other foreign (c)	26,384	4,027	(10,540)
	<u>62,437</u>	<u>6,437</u>	<u>107,134</u>
Corporate expenses (d)	(31,680)	(17,430)	(20,153)
Interest expense	(90,886)	(75,120)	(57,830)
(Loss) earnings before income taxes, minority interest and extraordinary item	<u>\$ (60,129)</u>	<u>\$ (86,113)</u>	<u>\$ 29,151</u>
Identifiable assets:			
Domestic	\$ 681,325	\$ 782,373	\$696,681
Europe	216,816	247,412	70,478
Other foreign	91,192	83,033	59,107
Corporate	108,536	95,457	83,194
	<u>\$1,097,869</u>	<u>\$1,208,275</u>	<u>\$909,460</u>

(a) Includes restructuring and other charges of \$21,025 in 1997 and \$49,257 in 1996.

(b) Includes restructuring and other charges of \$114 in 1997 and \$20,002 in 1996.

(c) Includes restructuring and other charges of \$4,151 in 1997 and \$4,941 in 1996; and \$12,289 of asset impairment charges in 1995.

(d) Includes restructuring and other charges of \$11,129 in 1997.

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CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

18. Quarterly Financial Summaries (Unaudited)

Summarized quarterly financial data for 1997 and 1996 are as follows:

	Quarter Ended			
	March 31,	June 30,	September 30,	December 31,
1997				
Net revenues	\$295,464	\$383,514	\$252,434	\$222,882
Gross profit (a)	81,042	101,913	69,867	61,141
Loss before extraordinary item (a)	(5,959)	(350)	(16,530)	(14,068)
Net loss (a)	(5,959)	(11,279)	(20,830)	(14,078)
1996				
Net revenues	\$273,560	\$452,654	\$269,607	\$224,395
Gross profit (a)	80,966	137,538	39,894	33,321
Earnings (loss) before extraordinary item (a)	8,180	17,337	(46,325)	(36,149)
Net earnings (loss) (a)	7,598	16,680	(46,330)	(36,149)

(a) Includes restructuring and other charges (credits) as follows:

1997				
Gross profit	\$ (425)	\$ 11,402	\$ 9,010	\$ (314)
Earnings before extraordinary item	2,435	11,547	9,433	(914)
Net earnings	2,435	11,547	9,433	(914)
1996				
Gross profit	—	—	33,567	10,438
Earnings before extraordinary item	—	—	44,495	8,021
Net earnings	—	—	44,495	8,021

19. Impact of Year 2000 (Unaudited)

Some of the Company's older computer programs were written using two digits rather than four to represent the applicable year. As a result, those computer programs recognize a date represented by "00" as the year 1900 rather than the year 2000. This situation, known as the "Year 2000" issue, could cause a system failure or miscalculations causing disruptions of operations, including, among other things, a temporary inability to process transactions, send invoices, or engage in similar normal business activities.

Based on ongoing assessments of the Company's operations, the Company has determined it will be required to modify or replace portions of its computer software so the computer systems will function properly with respect to dates in the year 2000 and thereafter. The Company believes that, in most instances, with minor modifications to existing software, the Year 2000 issue will not pose significant operational problems for its computer systems. The Company has identified one location with significant Year 2000 software issues. Failure to complete a timely conversion of this location to a Year 2000 compliant system could have a material impact on the operations of the Company; however, the Company has begun to replace the software at this location, and such replacement software is expected to be installed prior to December 31, 1999.

The Company has initiated formal communications with some of its significant suppliers and large customers to determine the extent to which the Company's interface systems are vulnerable to those third parties' failure to remediate their own Year 2000 issues. There can be no guarantee that the systems of other companies on which the Company's systems rely will be timely converted and would not have an adverse effect on the Company's systems.

In 1996, the Company began a project to select and install a Company-wide enterprise resource computer software system designed to improve operational efficiency. The selected system is Year 2000 compliant and complete installation of this software system is expected to take three years. The cost of the purchase of the

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CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

19. Impact of Year 2000 (Unaudited)—(Continued)

software and installation costs is expected to range from \$20,000 to \$25,000. The Company will capitalize a significant portion of these costs and does not believe the costs of this project will have a significant impact on the Company's financial condition or results of operations.

The costs of the project and the date on which the Company believes it will be Year 2000 compliant are based on management's best estimates, which were derived utilizing numerous assumptions of future events, including the continued availability of certain resources, third party modification plans and other factors. However, there can be no guarantee that these estimates will be achieved and actual results could differ materially from those anticipated. Specific factors that might cause such material differences include, but are not limited to, the availability and cost of personnel trained in this area, the ability to locate and correct all relevant computer codes, and similar uncertainties.

20. Subsequent Event (Unaudited)

On February 27, 1998, the Company, Sunbeam Corporation ("Sunbeam"), and a wholly owned subsidiary of Sunbeam ("Merger Sub"), entered into an Agreement and Plan of Merger (the "Coleman Merger Agreement") providing that, among other things, Merger Sub will be merged (the "Coleman Merger") with the Company. Pursuant to the Coleman Merger Agreement, each share of the Company's Common Stock, issued and outstanding immediately prior to the effective time of the Coleman Merger (other than certain shares) will be converted into the right to receive (a) 0.5677 shares of Sunbeam common stock, with cash paid in lieu of fractional shares, and (b) \$6.44 in cash, without interest.

Coincident with the execution of the Coleman Merger Agreement, CLN Holdings and Coleman (Parent) Holdings Inc., the parent company of CLN Holdings, entered into an Agreement and Plan of Merger (the "Holdings merger Agreement" and with the "Coleman Merger Agreement", collectively the "Merger Agreements"), with Sunbeam and a wholly owned subsidiary of Sunbeam ("Laser Merger Sub"). The Holdings Merger Agreement provides that, among other things, Laser Merger Sub will be merged (the "Holdings Merger") with CLN Holdings. Pursuant to the Holdings Merger Agreement, the shares of CLN Holdings' common stock issued and outstanding immediately prior to the effective time of the Holdings Merger (other than certain shares) will be converted into the right to receive in the aggregate 14,099,749 shares of Sunbeam's common stock and \$159,957 in cash, without interest.

Following consummation of the Holdings Merger, CLN Holdings will be a direct wholly-owned subsidiary of Sunbeam. Following consummation of the Coleman Merger, the Company will be an indirect wholly-owned subsidiary of Sunbeam.

The Holdings Merger is subject to the expiration of antitrust waiting periods and certain other customary conditions. The Coleman Merger Agreement is subject to consummation of the Holdings Merger. These transactions will constitute a change in control as defined in the Company Credit Agreement, the Lyons and the Escrow Notes. Per the terms of the Merger Agreements, certain arrangements with related parties may be altered or terminated. In addition, outstanding, unvested stock Company options immediately vest upon consummation of the Holdings Merger.

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INDEPENDENT AUDITORS' REPORT

The Board of Directors
Signature Brands USA, Inc. and Subsidiary:

We have audited the accompanying consolidated balance sheets of Signature Brands USA, Inc. and subsidiary (formerly Health o meter Products, Inc.) as of September 28, 1997 and September 29, 1996, and the related consolidated statements of operations, stockholders' equity, and cash flows in the years ended September 28, 1997, September 29, 1996 and October 1, 1995. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Signature Brands USA, Inc. and subsidiary as of September 28, 1997 and September 29, 1996, and the results of their operations and their cash flows for the years ended September 28, 1997, September 29, 1996, and October 1, 1995, in conformity with generally accepted accounting principles.

KPMG PEAT MARWICK LLP

December 9, 1997,
except as to
paragraph 6 of
Note 8, which is
as of December 24, 1997
Cleveland, Ohio

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
CONSOLIDATED BALANCE SHEETS

September 28, 1997 and September 29, 1996
(Amounts in thousands, except per share data)

	<u>1997</u>	<u>1996</u>
ASSETS		
Current assets		
Cash	\$ 890	\$ 736
Trade accounts receivable, less allowance for doubtful accounts and discounts of \$1,978 in 1997 and \$2,592 in 1996	52,336	57,960
Inventories	39,607	43,037
Refundable income taxes	497	—
Deferred income taxes	6,329	5,432
Other current assets	<u>1,333</u>	<u>1,479</u>
Total current assets	100,992	108,644
Property, plant and equipment, net	17,598	18,522
Other assets		
Excess of cost over fair value of net assets acquired, net	135,893	139,830
Deferred financing costs, net	3,723	4,579
Other	<u>1,504</u>	<u>1,552</u>
Total other assets	141,120	145,961
Total assets	<u>\$259,710</u>	<u>\$273,127</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Current portion of long-term debt	\$ 8,750	\$ 6,000
Accounts payable	21,004	22,851
Accrued liabilities	<u>22,217</u>	<u>19,542</u>
Total current liabilities	51,971	48,393
Long-term debt	154,112	170,531
Product liability	3,212	3,516
Other	<u>3,818</u>	<u>2,043</u>
Total liabilities	<u>\$213,113</u>	<u>\$224,483</u>
Stockholders' equity		
Common stock, par value \$.01 per share; authorized 20,000 shares; issued and outstanding 9,082 shares at September 28, 1997 and 9,080 shares at September 29, 1996	91	91
Paid-in capital	51,937	51,772
Warrants	1,773	1,773
Accumulated deficit	<u>(7,204)</u>	<u>(4,992)</u>
Total stockholders' equity	46,597	48,644
Total liabilities and stockholders' equity	<u>\$259,710</u>	<u>\$273,127</u>

See accompanying notes to consolidated financial statements.

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF OPERATIONS

Years ended September 28, 1997, September 29, 1996, and October 1, 1995
(Amounts in thousands, except per share data)

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Net sales	\$275,708	\$282,977	\$267,887
Operating costs and expenses			
Cost of goods sold	190,083	193,117	184,454
Selling, general, and administrative expenses	62,578	59,635	56,642
Amortization of intangible assets	3,937	4,000	3,961
Unusual item	2,350	—	—
Total operating costs and expenses	<u>258,948</u>	<u>256,752</u>	<u>245,057</u>
Operating income	16,760	26,225	22,830
Interest expense	18,638	19,134	19,354
Other income	(454)	(357)	(195)
Income (loss) before income taxes	(1,424)	7,448	3,671
Income tax expense	788	4,727	2,687
Net income (loss)	<u>\$ (2,212)</u>	<u>\$ 2,721</u>	<u>\$ 984</u>
Net income (loss) per share	<u>\$ (.24)</u>	<u>\$.30</u>	<u>\$.11</u>
Weighted average shares outstanding	<u>9,081</u>	<u>9,073</u>	<u>9,071</u>

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See accompanying notes to consolidated financial statements.

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
 CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
 Years ended September 28, 1997, September 29, 1996, and October 1, 1995
 (Amounts in thousands)

	Common Stock			Warrants	Accumulated Deficit
	Shares Issued	Dollars	Paid-In Capital		
Balance at October 2, 1994, as previously reported	9,071	\$91	\$51,741	\$1,773	\$ (8,300)
Retroactive effect on prior years of change in accounting method.....	—	—	—	—	(397)
Balance at October 2, 1994, as restated	9,071	91	51,741	1,773	(8,697)
Net income	—	—	—	—	984
Balance at October 1, 1995	9,071	91	51,741	1,773	(7,713)
Net income	—	—	—	—	2,721
Issuance of common stock pursuant to exercise of stock options.....	9	—	31	—	—
Balance at September 29, 1996	9,080	91	51,772	1,773	(4,992)
Net loss	—	—	—	—	(2,212)
Issuance of common stock under option plans and awards	2	—	165	—	—
Balance at September 28, 1997	<u>9,082</u>	<u>\$91</u>	<u>\$51,937</u>	<u>\$1,773</u>	<u>\$ (7,204)</u>

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See accompanying notes to consolidated financial statements.

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**SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF CASH FLOWS**

Years ended September 28, 1997, September 29, 1996, and October 1, 1995
(Amounts in thousands)

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Cash flows from operating activities			
Net income (loss)	\$ (2,212)	\$ 2,721	\$ 984
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities			
Depreciation and amortization of plant and equipment	6,554	6,011	5,108
Loss on asset write-offs and disposals	64	63	119
Amortization of intangible assets	3,937	4,000	3,961
Amortization of deferred financing costs	856	858	823
Deferred tax expense (benefit)	(283)	349	2,547
Accretion of debt discount	223	223	223
Changes in			
Trade accounts receivable	5,624	(3,809)	(12,479)
Inventories	3,430	(1,674)	2,356
Refundable income taxes	(497)	—	—
Other assets	194	482	3,198
Accounts payable	(1,847)	(2,952)	(7,306)
Accrued liabilities	2,675	(286)	60
Noncurrent liabilities	857	(127)	(492)
Net cash provided by (used in) operating activities	<u>19,575</u>	<u>5,859</u>	<u>(898)</u>
Cash flows from investing activities			
Capital expenditures	<u>(5,694)</u>	<u>(4,439)</u>	<u>(4,636)</u>
Net cash used in investing activities	<u>(5,694)</u>	<u>(4,439)</u>	<u>(4,636)</u>
Cash flows from financing activities			
Proceeds from revolving credit facilities	66,100	76,700	80,600
Repayments of revolving credit facilities	(74,000)	(74,500)	(70,600)
Repayment of long-term debt	(5,992)	(3,750)	(5,000)
Proceeds from stock issuances under option plans and awards	165	31	—
Payment of financing fees	—	—	(315)
Net cash provided by (used in) financing activities	<u>(13,727)</u>	<u>(1,519)</u>	<u>4,685</u>
Increase (decrease) in cash	154	(99)	(849)
Cash at beginning of the period	<u>736</u>	<u>835</u>	<u>1,684</u>
Cash at end of the period	<u>\$ 890</u>	<u>\$ 736</u>	<u>\$ 835</u>
Supplemental disclosures of cash flow information			
Cash paid during the period for			
Interest	\$ 15,872	\$ 18,092	\$ 18,820
Income taxes	\$ 1,891	\$ 3,490	\$ 280

See accompanying notes to consolidated financial statements.

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

September 28, 1997 and September 29, 1996
(Amounts in thousands, except share and per share data)

1. Summary of Significant Accounting Policies

(a) Description of Business

Signature Brands USA, Inc. (the Company) is a holding company which, through its wholly owned subsidiary, Signature Brands, Inc. (Signature Brands), designs, manufactures, markets, and distributes a comprehensive line of consumer and professional products. The Company's consumer products, marketed under the Mr. Coffee® and Health o meter® brand names, include automatic drip coffeemakers, iced and hot teamakers, coffee filters, water filtration products, accessories, and other kitchen countertop appliances as well as bath, kitchen, and gourmet scales and therapeutic devices. Professional products include the Pelouze® and Health o meter® brands of office, foodservice, and medical scales.

(b) Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiary. All significant intercompany accounts and transactions are eliminated in consolidation.

(c) Revenue Recognition

The Company recognizes revenue from product sales upon shipment to the customer. Costs or losses estimated to be incurred in connection with product returns and warranties are charged against revenues at the time of sale, based upon consideration of historical experience and information available from customers.

(d) Inventories

Inventories are stated at the lower of cost or market. Cost is determined using the first-in, first-out (FIFO) method.

(e) Property, Plant and Equipment

Property, plant and equipment are stated at cost. The Company calculates depreciation using the straight-line method over the estimated useful lives of the respective assets.

(f) Excess of Cost over Fair Value of Net Assets Acquired

The Company's excess of cost over the fair value of net assets acquired primarily represents the value of its brand names, created by advertising and product performance over many years, and is being amortized on the straight-line basis over a 40-year period. The Company assesses the recoverability of this intangible asset by determining whether the brand name dominance in terms of market share and the national distribution secured can generate sufficient revenues, growth, and cash flow to recover the intangible asset balance over its remaining life. Accumulated amortization amounted to \$15,195 and \$11,258 at September 28, 1997 and September 29, 1996, respectively.

(g) Deferred Financing and Stock Issuance Costs

Financing costs related to the issuance of debt are capitalized and amortized over the term of the debt. Accumulated amortization of financing costs amounted to \$2,606 and \$1,750 at September 28, 1997 and September 29, 1996, respectively. Issuance costs related to the sale of common stock reduce paid-in capital.

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except share and per share data)

1. Summary of Significant Accounting Policies—(Continued)

(h) Income Taxes

The Company accounts for income taxes under the asset and liability method whereby deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amount of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using the tax rates in effect at the end of the period. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that the new tax rate is enacted.

(i) Product Liability Costs

Costs estimated to be incurred with respect to product liability claims are accrued based upon actuarially determined estimates derived from experience factors. The current portion represents product liability costs estimated to be paid within one year.

(j) Net Income (Loss) per Common Share

Net income per common share is calculated by dividing net income by the weighted average of outstanding common stock and common stock equivalents using the treasury stock method, except when the effect of common stock equivalents would be antidilutive or when dilution is less than 3 percent. Net loss per common share is based on the weighted average of outstanding common shares.

(k) Use of Estimates

Generally accepted accounting principles require management to make a number of estimates and assumptions relating to the reported amounts of assets and liabilities and the disclosure of contingent liabilities, at the date of the financial statements, and the reported amounts of revenues and expenses during the period in preparing these financial statements. Actual results could differ from those estimates.

(l) Stock-Based Compensation

During 1995, the FASB issued Statement of Financial Accounting Standards No. 123, Accounting for Stock-Based Compensation, which provides a basis for measurement and recognition of all stock-based employee compensation plans. The disclosure requirements of this Statement are effective for fiscal years beginning after December 15, 1995. The Company chose to maintain its current accounting method for stock-based compensation and disclose the pro forma effects on net income and net income per share of the fair market value method, if material, as permitted by the Statement.

(m) Advertising Costs

The Company expenses reimbursement of customers' advertising costs at the time the related revenues are recognized. Advertising expense was \$23,450, \$20,087 and \$18,458 for the years ended September 28, 1997, September 29, 1996 and October 1, 1995, respectively.

2. Name Change

On March 6, 1997, the stockholders of the Company approved an amendment to the Company's Certificate of Incorporation to change the name of the Company to "Signature Brands USA, Inc." In view of the Company's name change, on April 30, 1997, Health o meter, Inc., the Company's operating subsidiary, was merged with and into a wholly-owned subsidiary of the Company, Signature Brands, Inc., an Ohio corporation, formed by the Company solely for the purpose of changing the name of Health o meter, Inc. to "Signature Brands, Inc."

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except share and per share data)

3. Accounting Change

As of September 30, 1996, the Company changed its method of determining the cost of certain inventories from the last-in, first-out (LIFO) method to the first-in, first-out (FIFO) method. Management believes that the change in accounting for inventories is preferable because it will more appropriately measure operating results and inventory value, better match revenues and expenses, and conform all inventories of the Company to the same accounting method.

The change in the method of valuing inventories has been applied retroactively by restating financial statements for prior years. The effect of this restatement was to reduce retained earnings as of September 29, 1996 by \$363. The following summarizes the effect of changing the accounting method for certain inventories:

	<u>1996</u>	<u>1995</u>
Net income as previously reported	\$2,959	\$ 712
Effect of change in accounting method for inventories, net of income tax	(238)	272
Net income as restated	<u>\$2,721</u>	<u>\$ 984</u>
Net income per share as previously reported	\$.33	\$.08
Effect of change in accounting method for inventories, net of income tax	(.03)	.03
Net income per share as restated	<u>\$.30</u>	<u>\$.11</u>

4. Unusual Item

The Company charged \$2,350 to operations in the year ended September 28, 1997 primarily for costs associated with the severance of several senior executive officers.

5. Inventories

The components of inventories are as follows:

	<u>1997</u>	<u>1996</u>
Raw materials and purchased parts	\$11,233	\$13,446
Finished goods	<u>28,374</u>	<u>29,591</u>
	<u>\$39,607</u>	<u>\$43,037</u>

Work-in-process inventories are not significant and are included with raw materials.

6. Property, Plant and Equipment

Property, plant and equipment are as follows:

	<u>1997</u>	<u>1996</u>
Land, buildings and building improvements	\$ 6,241	\$ 6,108
Machinery and equipment	9,477	7,862
Tools, dies and patterns	22,783	21,657
Furniture and fixtures	5,635	4,192
Leasehold improvements	578	413
Construction in progress	<u>2,106</u>	<u>1,018</u>
	46,820	41,250
Accumulated depreciation	(29,222)	(22,728)
Property, plant and equipment, net	<u>\$ 17,598</u>	<u>\$ 18,522</u>

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except share and per share data)

7. Accrued Liabilities

The components of accrued liabilities are as follows:

	<u>1997</u>	<u>1996</u>
Product returns under warranties	\$ 6,007	\$ 6,200
Advertising and promotional costs	5,807	4,866
Accrued compensation	2,585	1,945
Interest	3,094	1,364
Product liability	965	965
Other	3,759	4,202
Accrued liabilities	<u>\$22,217</u>	<u>\$19,542</u>

8. Long-Term Debt

Debt is summarized as follows:

	<u>1997</u>	<u>1996</u>
Revolving Credit Facility dated August 17, 1994, bearing interest at prime plus 1% or the London Interbank Offered Rate (LIBOR) plus 2.5% (weighted average interest rate was 8.45% at September 28, 1997); due August 15, 2001; secured by substantially all of Signature Brands' assets and a pledge of all its issued and outstanding common stock; Signature Brands' obligations under the Bank Credit Agreement are also guaranteed by the Company.	\$ 33,700	\$ 41,600
Term Loan dated August 17, 1994, bearing interest at prime plus 1% or LIBOR plus 2.5% (weighted average interest rate was 8.38% at September 28, 1997); due August 15, 2001; principal payable on a quarterly basis in aggregate 12-month amounts of \$8,750, \$17,500, \$15,000, and \$19,000 during fiscal 1998 through fiscal 2001; secured by substantially all of Signature Brands' assets and a pledge of all its issued and outstanding common stock; Signature Brands' obligations under the Bank Credit Agreement are also guaranteed by the Company.	60,258	66,250
Senior Subordinated Notes, net of unamortized discount of \$1,096 and \$1,319 at September 28, 1997 and September 29, 1996, respectively, bearing interest at 13%, payable semiannually; due August 15, 2002.	<u>68,904</u>	<u>68,681</u>
	162,862	176,531
Current portion of long-term debt	<u>(8,750)</u>	<u>(6,000)</u>
Long-term debt	<u>\$154,112</u>	<u>\$170,531</u>

Bank Credit Agreement

Signature Brands' Bank Credit Agreement (the Agreement) includes a \$60.0 million revolving credit facility (including an \$18.0 million letter of credit subfacility) and a \$75.0 million term loan facility. The revolving credit facility includes a charge of 0.5 percent on the unused line and 2.5 percent for letter of credit guarantees.

Signature Brands is required to make prepayments on the term loan and revolving credit facility with a percentage of Excess Cash Flow, as defined, and 100 percent of the proceeds from certain asset sales, issuances

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except share and per share data)

8. Long-Term Debt—(Continued)

of debt and equity securities, and extraordinary items outside the ordinary course of business. There is no required prepayment for fiscal 1998. Signature Brands may also make optional prepayments, in full or in part, on the term loan.

Borrowing availability under the revolving credit facility at September 28, 1997 was \$13.6 million after giving effect to outstanding letters of credit of \$1.2 million, actual borrowings of \$33.7 million, and sufficiency of collateral.

Signature Brands is subject to certain customary affirmative and negative covenants contained in the Agreement. These include, without limitation, covenants that restrict, subject to certain exceptions, incurrence of additional indebtedness; mergers, consolidations, or asset sales; changes in the nature of the business; granting of liens to secure any other indebtedness; and transactions with affiliates. In addition, the Agreement requires that the Company maintain certain specified financial ratios, including minimum interest and fixed charge coverage ratios, maximum leverage ratios, minimum net worth levels, and ceilings on leverage and capital expenditures. At September 28, 1997, the Company was in compliance with such covenants.

In December 1997, the Agreement was amended to increase the term loan facility by \$1.0 million and to modify the amortization schedule such that the annual aggregate payments are \$5.0 million, \$8.75 million, \$14.5 million, and \$33.0 million during fiscal 1998 through fiscal 2001, respectively. A portion of the annual payment for fiscal 2001 may be accelerated into fiscal 2000 if certain EBITDA levels are not achieved in fiscal 1999. In addition, the revolving credit facility was reduced to \$55.0 million, however, because the advance rate on collateral was increased, the Company's availability thereunder should not be materially impacted.

Senior Subordinated Notes

The Senior Subordinated Notes (the Notes) are general obligations of Signature Brands. Signature Brands' payment obligations under the Notes are unconditionally guaranteed by the Company. The Notes and the Company's guaranty are subordinated to the prior payment of the Company's amounts outstanding under the Agreement. The Indenture governing the Notes contains customary provisions restricting mergers, consolidations, or sales of assets; issuances of preferred stock or the incurrence of additional indebtedness; payment of dividends; creation of liens; and transactions with affiliates. Provided that certain financial tests are met, the Indenture does not limit the amount of additional indebtedness that Signature Brands and its subsidiaries may incur.

The Notes are generally not redeemable at the option of the Company until August 15, 1999. Under certain limited circumstances, the Company may be required to use a portion of the proceeds from asset sales to make an offer to purchase a portion of the Notes, at a price of 101 percent of the principal amount thereof, together with accrued and unpaid interest. In addition, in the event of a change in control of the Company, each holder will have the right to require Signature Brands to repurchase its Notes at a price of 101 percent of the principal amount thereof, together with accrued and unpaid interest thereon. Except for the foregoing circumstances, Signature Brands is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

The Agreement currently prohibits the Company from purchasing any Notes prior to the expiration thereof and also provides that certain change in control events with respect to the Company would constitute a default thereunder.

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except share and per share data)

9. Warrants

The Company, in conjunction with the issuance of the Notes, issued 70,000 warrants. Each warrant entitles the holder thereof to purchase 10.96 shares of common stock at \$6.25 per share, subject to adjustment under certain circumstances. The warrants expire on August 15, 2002.

10. Income Taxes

Income tax expense (benefit) for the years ended September 28, 1997, September 29, 1996, and October 1, 1995, respectively, consisted of:

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Current			
Federal	\$856	\$4,052	\$ 100
State	215	326	40
Deferred	(283)	349	2,547
	<u>\$788</u>	<u>\$4,727</u>	<u>\$2,687</u>

The principal items accounting for the difference in taxes on income computed at the U.S. statutory rate and as recorded for the years ended September 28, 1997, September 29, 1996, and October 1, 1995, respectively, are as follows:

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Tax expense (benefit) at statutory rate of 35%	\$ (498)	\$2,607	\$1,285
State taxes, net of federal benefit	86	455	206
Goodwill amortization	1,241	1,302	1,255
Other	(41)	363	(59)
	<u>\$ 788</u>	<u>\$4,727</u>	<u>\$2,687</u>

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and liabilities at September 28, 1997 and September 29, 1996 are as follows:

	<u>1997</u>	<u>1996</u>
Deferred tax assets		
Compensation and vacation	\$1,096	\$ 340
Warranties and sales reserves	2,259	2,897
Advertising	676	683
Product liability	1,646	1,746
Above market rate lease	—	219
Bad debts	751	456
Other	455	741
Total gross deferred tax assets	<u>\$6,883</u>	<u>\$7,082</u>
Deferred tax liabilities		
Depreciation and amortization	(1,493)	(1,928)
Other	(232)	(279)
Total gross deferred tax liabilities	<u>(1,725)</u>	<u>(2,207)</u>
Net deferred tax asset	<u>\$5,158</u>	<u>\$4,875</u>

The realization of the Company's net deferred tax asset is dependent on the generation of future taxable income. Management believes that it is more likely than not that the Company will generate sufficient future

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(Amounts in thousands, except share and per share data)

10. Income Taxes—(Continued)

taxable income to fully utilize the established net asset. Accordingly, no valuation allowance for the net deferred tax asset has been provided.

11. Lease Commitments

The Company leases various buildings and equipment under leases expiring at various dates. At September 28, 1997, minimum rental commitments under noncancelable leases are as follows:

<u>Fiscal Year Ending</u>	
1998	\$ 2,031
1999	1,903
2000	1,800
2001	1,790
2002	1,750
Thereafter	<u>18,400</u>
	<u>\$27,674</u>

Rental expense amounted to approximately \$1,630, \$1,438, and \$1,447, for the years ended September 28, 1997, September 29, 1996, and October 1, 1995, respectively.

12. Contingencies

The Company is involved in various claims and items of litigation. Management believes that the ultimate outcome of such matters will not have a material adverse effect upon the operations or financial position of the Company.

13. Stock Incentive Plans

The Company has five stock-based compensation plans. Options granted under these plans have ten-year terms and generally have graded vesting schedules of either four or five years. Options scheduled over five years require achievement of company-wide performance goals in order for options to vest.

The Company applies APB Opinion 25 (APB 25) in accounting for its stock incentive plans and, accordingly, recognizes compensation costs only to the extent that the market price of shares granted exceeds the exercise price at the grant date. During 1995, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation* (SFAS 123), which permits the continued use of APB 25 and requires disclosure of the pro forma effects on net income and net income per share had the fair value method of accounting prescribed under SFAS 123 been used. Under SFAS 123, an option's fair value is estimated at the grant date using an option pricing model, the resulting fair value is then recognized as compensation cost over the vesting period of the related option. In the Company's case these pro forma disclosures are required to be applied only to options granted after October 1, 1995 (fiscal 1996). In estimating fair value, the Company has used the Black-Scholes option pricing model with the following weighted-average assumptions for 1997 and 1996, respectively; risk free interest rate of 6.21 percent and 6.10 percent, expected lives of 4.1 years and 4.7 years, and stock price volatility of 29.3 percent. The weighted

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(Amounts in thousands, except share and per share data)

13. Stock Incentive Plans—(Continued)

average fair value of options granted during 1997 and 1996 was \$1.18 and \$1.70, respectively. The following chart depicts the pro forma affects on net income of applying the provisions of SFAS 123.

	<u>1997</u>	<u>1996</u>
Net income (loss)		
As reported	\$(2,212)	\$2,721
Pro forma	\$(2,302)	\$2,673
Net income (loss) per share		
As reported	\$ (.24)	\$.30
Pro forma	\$ (.25)	\$.29

The following is a summary with respect to options outstanding at September 28, 1997, September 29, 1996, and October 1, 1995, and the activity during those years:

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Options unexercised at beginning of the year	919,853	813,853	502,353
Weighted average exercise price	\$4.15	\$3.86	\$3.96
Options granted during the year	669,000	211,000	377,000
Weighted average exercise price	\$3.99	\$5.55	\$4.44
Options exercised during the year	(1,250)	(9,125)	—
Weighted average exercise price	\$3.44	\$3.46	—
Options canceled during the year	(186,375)	(95,875)	(65,500)
Weighted average exercise price	\$5.24	\$4.82	\$4.44
Options unexercised at end of year	1,401,228	919,853	813,853
Weighted average exercise price	\$3.93	\$4.15	\$3.86
Options exercisable at end of year	567,728	443,478	398,353
Weighted average exercise price	\$3.52	\$3.15	\$3.08

At September 28, 1997, the range of exercise prices and weighted average remaining contractual life of outstanding options was \$2.61—\$14.50 and 8.5 years.

1992 Incentive Stock Option Plan

In February 1992, the Company adopted a new incentive stock plan (1992 Plan). The 1992 Plan provides that incentive stock options and nonqualified stock options may be granted to such officers and key employees as the administrators of the 1992 Plan may select. The 1992 Plan is administered by a committee of the board of directors which selects the participants and determines (i) the type of options; (ii) the vesting schedule of options; (iii) the exercise price (which may not be less than fair market value on the date of grant); and (iv) the duration of the options (which cannot exceed 10 years). A total of 220,000 shares of common stock have been reserved for issuance under the 1992 Plan. No options may be granted under the 1992 Plan after December 31, 2001.

1994 Nonqualified Stock Option Grant

In August 1994, the Company granted an executive officer of the Company 362,353 nonqualified stock options at an exercise price of \$2.61 per share in exchange for canceled options of Mr. Coffee. The difference between the aggregate exercise price of such new options and the fair value of the Company's stock was equal to the option spread for the canceled Mr. Coffee options. The options are exercisable immediately, but may not be exercised more than one year after termination or death while in the employ of the Company or more than 10 years from date of grant.

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (Amounts in thousands, except share and per share data)

13. Stock Incentive Plans—(Continued)

1995 Stock Option and Incentive Plan

In April 1995, the Company adopted a new stock option and incentive plan (1995 Plan). The 1995 Plan provides authority for the grant of stock options and stock appreciation rights to directors, employees, and consultants by the Compensation Committee (Committee) of the board of directors. The total number of shares of common stock that may be subject to awards granted under the 1995 Plan is equal to 750,000 shares of common stock, subject to certain adjustments. The Committee selects the participants and determines (i) the type of option; (ii) the vesting schedule of options; (iii) the exercise price; and (iv) the duration of the options. No options may be granted under the 1995 Plan after April 27, 2005.

1997 Stock Option and Incentive Plan

In March 1997, the Company adopted a new stock option and incentive plan (1997 Plan). The 1997 Plan provides the Compensation Committee (Committee) of the board of directors the authority to grant stock options and stock appreciation rights to directors, employees, and consultants. The Committee selects the participants and determines (i) the type of award; (ii) the vesting schedule of awards; (iii) the exercise price; and (iv) duration of the award. The total number of shares of common stock that may be subject to awards granted under the 1997 Plan is equal to 270,000 shares of common stock, subject to certain adjustments. No awards may be granted under the 1997 Plan after March 5, 2007.

1997 Nonqualified Stock Option Grant

In August 1997, the Company granted an executive officer of the Company 500,000 nonqualified stock options at an exercise price of \$3.50 per share. One-half of the options become exercisable on September 30 of each year following the date of grant, but may not be exercised more than ten years from the date of grant.

14. Unaudited Quarterly Financial Data

	Quarter			
	First	Second	Third	Fourth
Year ended September 28, 1997 (1)				
Net sales	\$87,136	\$61,925	\$64,194	\$62,453
Gross profit	26,059	19,613	20,018	19,935
Interest expense	4,982	4,575	4,484	4,597
Net income (loss)	491	(267)	75	(2,511)
Net income (loss) per share .....	.05	(.03)	.01	(.28)
Weighted average shares outstanding (in thousands)	9,080	9,080	9,080	9,081
Year ended September 29, 1996 (2)				
Net sales	\$97,407	\$6,275	\$9,339	\$69,956
Gross profit	30,544	17,737	19,011	22,568
Interest expense	5,097	4,717	4,637	4,683
Net income (loss)	1,977	10	(218)	952
Net income (loss) per share .....	.22	—	(.02)	.10
Weighted average shares outstanding (in thousands)	9,071	9,071	9,071	9,078

- (1) The results for the fourth quarter include an unusual item of \$2.4 million primarily for expenses associated with severance costs for several senior executive officers.
- (2) Amounts for the fourth quarter have been restated for the effect of the Company's change from the LIFO method of accounting for certain inventories to the FIFO method. Amounts for the first, second and third quarters were not restated as the impact was not material to those quarters.

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except share and per share data)

15. Business and Credit Concentrations

The Company distributes and sells its products through major retail outlets, including discounters/mass merchants, department stores, warehouse clubs, specialty stores, catalog showrooms, mail order catalog companies, and national hardware, drugstore, and retail grocery chains. Approximately 39 percent, 36 percent, and 33 percent of the Company's revenues were from two customers in the years ended September 28, 1997, September 29, 1996, and October 1, 1995, respectively. The largest of these two customers accounted for 27 percent, 23 percent, and 23 percent of the Company's revenues in those same years, respectively.

16. Related Party Transactions

Signature Brands pays a management fee to a related party for certain administrative and professional services performed by the related party. Amounts paid to this related party for management fees, including reimbursed expenses, were \$252, \$263, and \$305 for the years ended September 28, 1997, September 29, 1996, and October 1, 1995, respectively.

17. Financial Instruments

Management has determined that at September 28, 1997 and September 29, 1996, the fair value of financial instruments included in the balance sheets approximated their carrying values. With respect to cash, receivables, payables, and accrued liabilities, this determination was based on the short maturity of the instruments. With respect to debt, the assessment was based on management's judgment as to currently available rates on debt with similar maturities.

18. Condensed Consolidated Financial Information

Condensed consolidated financial information for Signature Brands, Inc. at September 28, 1997 and September 29, 1996, and for the years ended September 28, 1997, September 29, 1996, and October 1, 1995 is as follows:

	September 28 1997	September 29 1996	
Current assets	\$100,992	\$108,644	
Noncurrent assets	158,718	164,483	
Total assets	<u>\$259,710</u>	<u>\$273,127</u>	
Current liabilities	\$ 51,971	\$ 48,393	
Noncurrent liabilities	161,142	176,090	
Intercompany payables	47,823	47,658	
Total liabilities	<u>\$260,936</u>	<u>\$272,141</u>	
Stockholder's equity			
Common stock—\$1.00 stated value; authorized 850 shares; issued and outstanding 100 shares in 1997 and \$.01 par value; authorized and outstanding 1,000,000 shares in 1996	—	10	
Paid-in capital	2,821	2,811	
Accumulated deficit	(4,047)	(1,835)	
Total stockholder's equity	<u>(1,226)</u>	<u>986</u>	
Total liabilities and stockholder's equity	<u>\$259,710</u>	<u>\$273,127</u>	
	Year Ended		
	September 28 1997	September 29 1996	October 1 1995
Net sales	\$275,708	\$282,977	\$267,887
Gross profit	85,625	89,860	85,433
Net income (loss)	\$ (2,212)	\$ 2,721	\$ 984

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
CONSOLIDATED BALANCE SHEETS
(Amounts in thousands, except per share data)

	<u>December 28,</u> 1997	<u>September 28,</u> 1997
	(Unaudited)	
ASSETS		
Current assets		
Cash	\$ 4,118	890
Trade accounts receivable, net	67,501	52,336
Inventories	37,851	39,607
Refundable income taxes	497	497
Deferred income taxes	6,329	6,329
Other current assets	1,378	1,333
Total current assets	117,674	100,992
Property, plant and equipment, net	16,820	17,598
Other assets		
Excess of cost over fair value of net assets acquired, net	134,921	135,893
Deferred financing costs, net	4,084	3,723
Other	1,579	1,504
Total other assets	140,584	141,120
Total assets	<u>\$275,078</u>	<u>259,710</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Current portion of long-term debt	\$ 5,000	8,750
Accounts payable	21,849	21,004
Accrued liabilities	29,645	22,217
Total current liabilities	56,494	51,971
Long-term debt		
Revolving Credit Facility	40,100	33,700
Term Note	55,000	51,508
Senior Subordinated Notes	68,960	68,904
Total long-term debt	164,060	154,112
Product liability	2,813	3,212
Other	3,726	3,818
Total liabilities	<u>\$227,093</u>	<u>\$213,113</u>
Stockholders' equity		
Common stock, par value \$0.01 per share; authorized 20,000 shares; issued and outstanding 9,174 shares at December 28, 1997 and 9,082 shares at September 28, 1997	92	91
Paid-in capital	52,099	51,937
Warrants	1,773	1,773
Accumulated deficit	(5,979)	(7,204)
Total stockholders' equity	47,985	46,597
Total liabilities and stockholders' equity	<u>\$275,078</u>	<u>259,710</u>

See accompanying notes to unaudited consolidated financial statements.

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(Amounts in thousands, except per share data)

	Thirteen weeks ended	
	December 28 1997	December 29 1996
Net sales	\$90,365	\$87,136
Operating costs and expenses		
Cost of goods sold	63,388	61,077
Selling, general and administrative expenses	18,219	19,055
Amortization of intangible assets	972	984
Total operating costs and expenses	<u>82,579</u>	<u>81,116</u>
Operating income	7,786	6,020
Interest expense	4,800	4,982
Other income	(76)	(189)
Income before income taxes	3,062	1,227
Income tax expense	<u>1,837</u>	<u>736</u>
Net income	<u>\$ 1,225</u>	<u>\$ 491</u>
Basic and diluted net income per share	<u>\$ 0.13</u>	<u>\$ 0.05</u>

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See accompanying notes to unaudited consolidated financial statements.

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(Amounts in thousands)

	Thirteen Weeks Ended	
	December 28, 1997	December 29, 1996
Cash flows from operating activities		
Net income	\$ 1,225	\$ 491
Adjustments to reconcile net income to net cash used in operating activities		
Depreciation and amortization of plant and equipment	1,598	1,730
Amortization of intangible assets	972	984
Amortization of deferred financing costs	214	214
Accretion of debt discount	56	56
Changes in		
Accounts receivable	(15,165)	(8,163)
Inventories	1,756	(410)
Other assets	(120)	271
Accounts payable	845	(140)
Accrued liabilities	7,428	4,202
Noncurrent liabilities	(491)	22
Net cash used in operating activities	(1,682)	(743)
Cash flows from investing activities		
Capital expenditures	(820)	(728)
Net cash used in investing activities	(820)	(728)
Cash flows from financing activities		
Proceeds from revolving credit facility	32,100	19,900
Repayments of revolving credit facility	(25,700)	(15,600)
Repayment of long-term debt	(1,250)	(1,250)
Proceeds from Term Note	992	—
Proceeds from stock issuances under option plans and awards	163	—
Payment of financing fees	(575)	—
Net cash provided by financing activities	5,730	3,050
Increase in cash	3,228	1,579
Cash at the beginning of the period	890	736
Cash at the end of the period	\$ 4,118	\$ 2,315
Supplemental disclosures of cash flow information		
Cash paid during the period for		
Interest	\$ 2,251	\$ 2,375
Income taxes	—	\$ 415

See accompanying notes to unaudited consolidated financial statements.

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)
(Amounts in thousands, except per share data)

1. Basis of Presentation

The consolidated financial statements include the accounts of Signature Brands USA, Inc. (the "Company") and its wholly owned subsidiary. All significant intercompany accounts and transactions are eliminated in consolidation.

In the opinion of management, the information furnished herein includes all adjustments of a normal recurring nature that are necessary for a fair presentation of results for the interim periods shown in accordance with generally accepted accounting principles. The unaudited interim consolidated financial statements have been prepared using the same accounting principles that were used in preparation of the Company's annual report on Form 10-K for the year ended September 28, 1997, and should be read in conjunction with the consolidated financial statements and notes thereto. Because of the seasonal nature of the small appliance and consumer scale industries, the results of operations for the interim period are not necessarily indicative of results for the full fiscal year.

2. Inventories

The components of inventories are as follows:

	<u>December 28,</u> <u>1997</u>	<u>September 28,</u> <u>1997</u>
Raw materials and purchased parts	\$10,040	\$11,233
Finished goods	27,811	28,374
	<u>\$37,851</u>	<u>\$39,607</u>

Work-in-process inventories are not significant and are included with raw materials.

3. Earnings per share

The Company adopted Statement of Financial Accounting Standards No. 128, Earnings per Share ("SFAS No. 128"), in the quarter ended December 28, 1997. SFAS No. 128 requires the Company to disclose two earnings per share amounts, basic and diluted. Basic earnings per share is based on net income available to common stockholders and weighted average common stock outstanding during the period. Diluted earnings per share includes the effect of all dilutive securities which are convertible to common stock of the Company such as stock options and warrants.

Below is a table which reconciles basic earnings per share with diluted earnings per share for the thirteen weeks ended December 28, 1997 and December 29, 1996.

	<u>Net Income</u>		<u>Shares</u>		<u>Per Share</u> <u>Amounts</u>	
	<u>1997</u>	<u>1996</u>	<u>1997</u>	<u>1996</u>	<u>1997</u>	<u>1996</u>
Basic Earnings Per Share						
Net income available to common stockholders	\$1,225	\$491	9,109	9,081	\$0.13	\$0.05
Effect of Dilutive Securities ¹						
Stock Options	—	—	298	268		
Diluted Earnings Per Share	<u>\$1,225</u>	<u>\$491</u>	<u>9,407</u>	<u>9,349</u>	<u>\$0.13</u>	<u>\$0.05</u>

¹ The Company's outstanding warrants and certain outstanding stock options have not been included as they are currently antidilutive.

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SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (Unaudited)
 (Amounts in thousands, except per share data)

4. Condensed Consolidated Financial Information

Condensed consolidated financial information for Signature Brands, Inc. at December 28, 1997 and September 28, 1997, and for the thirteen week periods ended December 28, 1997 and December 29, 1996 is as follows:

	<u>December 28,</u> 1997	<u>September 28,</u> 1997
Current assets	\$117,674	\$100,992
Noncurrent assets	157,404	158,718
Total assets	<u>\$275,078</u>	<u>\$259,710</u>
Current liabilities	\$ 56,494	\$ 51,971
Noncurrent liabilities	170,599	161,142
Intercompany payables	47,986	47,823
Total liabilities	<u>\$275,079</u>	<u>\$260,936</u>
Stockholder's equity		
Common stock— \$1.00 stated value; authorized 850 shares; issued and outstanding 100 shares	—	—
Paid-in capital	2,821	2,821
Accumulated deficit	(2,822)	(4,047)
Total stockholder's equity	<u>(1)</u>	<u>(1,226)</u>
Total liabilities and stockholder's equity	<u>\$275,078</u>	<u>\$259,710</u>
	<u>Thirteen week period ended</u>	
	<u>December 28,</u> 1997	<u>December 29,</u> 1996
Net sales	\$ 90,365	\$ 87,136
Gross profit	26,977	26,059
Net income	1,225	491

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REPORT OF INDEPENDENT ACCOUNTANTS

Price Waterhouse LLP

To the Board of Directors and Stockholders of First Alert, Inc.

In our opinion, the accompanying consolidated balance sheet and related consolidated statements of operations, of cash flows and of stockholders' equity present fairly, in all material respects, the financial position of First Alert, Inc. and its subsidiaries at December 31, 1997 and 1996 and the results of their operations and their cash flows for each of the three years in the period ended December 31, 1997, in conformity with generally accepted accounting principles. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with generally accepted auditing standards which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for the opinion expressed above.

/s/ PRICE WATERHOUSE LLP

Chicago, Illinois
March 13, 1998

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FIRST ALERT, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEET
(In thousands, except share data)

	At December 31,	
	1997	1996
Assets		
Current assets:		
Cash and cash equivalents	\$ 2,996	\$ 6,846
Accounts receivable, less allowance for doubtful accounts of \$3,837 at December 31, 1997, \$3,820 at December 31, 1996	46,106	40,617
Income tax receivable	7,572	8,503
Inventories (Note 4)	40,285	58,222
Deferred taxes (Note 9)	6,646	10,510
Prepayments and other assets	4,034	3,249
Total current assets	107,639	127,947
Property, plant and equipment, net of accumulated depreciation of \$22,994 at December 31, 1997, \$22,763 at December 31, 1996 (Note 6)	28,181	29,803
Other Assets:		
Goodwill, net of accumulated amortization of \$3,453 at December 31, 1997, \$2,815 at December 31, 1996 (Note 5)	22,045	22,683
Other intangibles, net of accumulated amortization of \$3,440 at December 31, 1997, \$2,905 at December 31, 1996 (Note 5)	6,496	6,058
Total assets	\$164,361	\$186,491
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 15,897	\$ 7,304
Accrued expenses (Note 7)	17,105	26,395
Short-term revolving credit facility (Note 8)	45,026	20,500
Total current liabilities	78,028	54,199
Long-term revolving credit facility (Note 8)	—	40,000
Other long-term liabilities	71	71
Deferred taxes (Note 9)	4,862	3,369
Contingencies (Note 13)	—	—
Total liabilities	82,961	97,639
Stockholders' equity:		
Common stock (\$0.01 par value, 30,000,000 shares authorized, 24,335,112 issued and outstanding at December 31, 1997; 24,183,116 issued and outstanding at December 31, 1996)	243	242
Preferred stock (\$0.01 par value, 1,000,000 shares authorized at December 31, 1997 and 1996, none issued and outstanding)	—	—
Paid-in capital	72,012	71,637
Stockholder loans	—	(8)
Retained earnings	9,145	16,981
Total stockholders' equity	81,400	88,852
Total liabilities and stockholders' equity	\$164,361	\$186,491

See accompanying notes to Consolidated Financial Statements.

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FIRST ALERT, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF OPERATIONS
(In thousands, except per share data)

	Year Ended December 31,		
	1997	1996	1995
Net sales	\$186,941	\$205,607	\$246,266
Operating expenses:			
Cost of sales, excluding depreciation	134,349	150,611	140,980
Selling, general and administrative	54,213	72,663	77,548
Restructuring charge (Note 3)	—	2,499	—
Depreciation and amortization	6,846	6,353	7,305
Operating income (loss)	(8,467)	(26,519)	20,433
Other expenses (income):			
Interest expense	3,555	3,803	1,487
Miscellaneous, net	1,038	628	(113)
Income (loss) before taxes	(13,060)	(30,950)	19,059
Income tax provision (benefit)	(5,224)	(12,248)	7,622
Net income (loss)	<u>\$ (7,836)</u>	<u>\$ (18,702)</u>	<u>\$ 11,437</u>
Basic net income (loss) per share	\$ (0.32)	\$ (0.78)	\$ 0.48
Diluted net income (loss) per share	(0.32)	(0.78)	0.46
Basic weighted average shares outstanding	24,242	24,119	24,043
Diluted weighted average shares outstanding	24,242	24,119	24,831

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See accompanying notes to Consolidated Financial Statements.

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FIRST ALERT, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF CASH FLOWS
(In thousands)

	Year ended December 31,		
	1997	1996	1995
Operating Activities:			
Net income (loss)	\$ (7,836)	\$ (18,702)	\$ 11,437
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	6,846	6,353	7,305
Restructuring charge	—	4,497	—
Changes in assets and liabilities:			
(Increase)/Decrease in accounts receivable	(5,489)	22,350	(4,351)
Decrease/(Increase) in income tax receivable	1,039	(6,910)	(1,340)
Decrease/(Increase) in inventories	17,937	8,731	(28,933)
Increase in prepayments and other assets	(785)	(770)	(1,028)
Decrease/(Increase) in net deferred taxes	5,357	(4,252)	3,028
Decrease in accounts payable/acrued expenses	(697)	(11,266)	(14,034)
Other changes, net	(18)	(41)	87
Net cash and cash equivalents provided by (used in) operating activities	16,354	(10)	(27,829)
Investing Activities:			
Capital expenditures	(3,992)	(5,274)	(10,648)
Disposal of property, plant and equipment	255	848	4,159
Other	(1,246)	554	(997)
Net cash and cash equivalents used in investing activities	(4,983)	(3,872)	(7,486)
Financing Activities:			
Borrowings under revolving credit facilities	38,645	59,300	65,550
Payments under revolving credit facilities	(54,119)	(51,000)	(29,050)
Payment of Former Credit Facility	(36,896)	—	—
Proceeds from Credit Facility	36,896	—	—
Proceeds from sale of stock	245	226	28
Proceeds from stockholder loans	8	8	43
Other	—	(193)	—
Net cash and cash equivalents (used in) provided by financing activities	(15,221)	8,341	36,571
Net (decrease) increase in cash and cash equivalents	(3,850)	4,459	1,256
Cash and cash equivalents at beginning of period	6,846	2,387	1,131
Cash and cash equivalents at end of period	<u>\$ 2,996</u>	<u>\$ 6,846</u>	<u>\$ 2,387</u>
Interest paid	\$ 4,108	\$ 3,586	\$ 1,701
Income taxes paid (refunded), net	(8,668)	1,274	12,559

See accompanying notes to Consolidated Financial Statements.

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FIRST ALERT, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(In thousands, except share data)

	Common Stock		Paid in Capital	Stockholder Loans	Retained Earnings
	Shares	Par Value			
Balance December 31, 1994	24,025,616	\$240	\$70,986	\$(59)	\$ 24,246
Net income during the year ended					
December 31, 1995	—	—	—	—	\$ 11,437
Stock options exercised	17,500	—	\$ 28	—	—
Income tax benefit related to the exercise of					
stock options	—	—	112	—	—
Payment of stockholder loans, net	—	—	—	\$ 43	—
Value of stock options granted	—	—	11	—	—
Balance December 31, 1995	24,043,116	\$240	\$71,137	\$(16)	\$ 35,683
Net loss during the year ended					
December 31, 1996	—	—	—	—	\$(18,702)
Stock options exercised	140,000	\$ 2	\$ 224	—	—
Income tax benefit related to the exercise of					
stock options	—	—	253	—	—
Payment of stockholder loans, net	—	—	—	\$ 8	—
Value of stock options granted	—	—	23	—	—
Balance December 31, 1996	24,183,116	\$242	\$71,637	\$(8)	\$ 16,981
Net loss during the year ended					
December 31, 1997	—	—	—	—	\$(7,836)
Stock options exercised	151,996	\$ 1	\$ 244	—	—
Income tax benefit related to the exercise of					
stock options	—	—	108	—	—
Payment of stockholder loans, net	—	—	—	\$ 8	—
Value of stock options granted	—	—	23	—	—
Balance December 31, 1997	24,335,112	\$243	\$72,012	\$—	\$ 9,145

See accompanying notes to Consolidated Financial Statements.

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FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 1—The Company

Effective July 31, 1992, THL-FA Operating Corp. acquired substantially all the net assets of the BRK Electronics Division and all the issued and outstanding shares of certain non-U.S. subsidiaries of the Fire Safety Group of Pittway Corporation (hereinafter referred to as the "Predecessor" or the "Division") for approximately \$92,500 ("Acquisition"). THL-FA Operating Corp. is a wholly owned subsidiary of THL-FA Holding Corp. THL-FA Operating Corp. subsequently changed its name to BRK Brands, Inc. and THL-FA Holding Corp. subsequently changed its name to First Alert, Inc. ("Company" or "First Alert"). After this acquisition, the Company was owned by Thomas H. Lee Company and related entities, Pittway Intellectual Property Corporation, a subsidiary of Pittway Corporation ("Pittway") and management of the Company. On April 5, 1994, the Company completed an initial public offering ("IPO") of 5,180,000 shares of its common stock. An additional 3,100,000 shares of the Company's common stock were sold by Pittway as part of the same offering.

The Company, through its subsidiaries, manufactures and markets residential safety products including smoke and carbon monoxide detectors, fire extinguishers, motion sensing lighting control devices, timers, fire security safes and chests, fire escape ladders, child safety products and rechargeable flashlights. The Company's manufacturing operations are located in Juarez, Mexico and Aurora, Illinois.

While the Company has a number of customers in the retail and wholesale markets, a significant amount of its net sales are concentrated in three major U.S. national retail chains comprising 13%, 7% and 7% of consolidated net sales for the year ended December 31, 1997; 15%, 7% and 5% for the year ended December 31, 1996 and 13%, 8% and 6% for the year ended December 31, 1995.

Most of the components used in the Company's products are available from multiple sources; however, the Company has elected to purchase integrated circuit components used in the Company's smoke detectors and carbon monoxide detectors, and certain other components used in the Company's products, from single sources. The Company has developed an alternative source of supply for these integrated circuit components. However, there can be no assurance that the Company will be able to continue to obtain these components on a timely basis given the unpredictability of the demand for carbon monoxide detectors. In addition, the biomimetic sensor, which is the key component used in the Company's battery-powered carbon monoxide detector, is obtained by the Company pursuant to a license from Quantum Group, Inc. (Quantum), its sole supplier of this component. Commencing on January 1, 1997, Quantum was permitted to sell its sensors to other customers. There is no alternative supply for the biomimetic sensor. An extended interruption or termination in the supply of any of the components used in the Company's products, or a reduction in their quality or reliability, would have an adverse effect on the Company's business and results of operations.

Note 2—Summary of Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements of the Company include those assets, liabilities, revenue and expenses of the Company and its subsidiaries and its foreign operations after eliminating significant intercompany accounts and transactions. The financial statements include the operations in the United States, Canada, Europe, Mexico and Australia.

Revenue Recognition

Revenue is recorded at the time products are shipped to customers and title passes. Net sales include estimates for returns, warranties, discounts and volume rebates. The Company grants credit terms to its customers consistent with normal industry practices.

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FIRST ALERT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 2—Summary of Significant Accounting Policies—(Continued)

Cash and Cash Equivalents

Only highly liquid investments with initial maturities of less than three months are considered as cash and cash equivalents. Substantially all of the Company's cash is held by one bank at December 31, 1997. The Company does not believe that as a result of this concentration, it is subject to any unusual credit risk beyond the normal risk associated with commercial banking relationships.

Earnings per Share

In 1997, the Company adopted Financial Accounting Standards Board Statement No. 128 (SFAS 128), "Earnings per Share." This statement establishes standards for computing earnings per share (EPS) and simplifies the standards for computing EPS previously found in APB Opinion No. 15 (APB15), "Earnings per Share." It replaces the presentation of Primary EPS with a presentation of Basic EPS. It also requires dual presentation of Basic and Diluted EPS on the face of the income statement for all entities with complex capital structures. Basic EPS is based on the weighted average number of shares of common stock while Diluted EPS is based on the weighted average number of shares of common stock and dilutive potential shares of common stock outstanding during the periods. In accordance with the requirements of SFAS 128, the Company has restated all EPS data for prior periods.

A reconciliation of both the income and shares used in the calculation of Basic and Diluted EPS are as follows:

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Basic EPS calculation:			
Numerator:			
Net income (loss)	\$(7,836)	\$(18,702)	\$11,437
Denominator:			
Common shares outstanding	<u>24,242</u>	<u>24,119</u>	<u>24,043</u>
Basic EPS	<u>\$ (0.32)</u>	<u>\$ (0.78)</u>	<u>\$ 0.48</u>
Diluted EPS calculation:			
Numerator:			
Net income (loss)	\$(7,836)	\$(18,702)	\$11,437
Denominator:			
Common shares outstanding	24,242	24,119	24,043
Dilutive Options	<u>0</u>	<u>0</u>	<u>788</u>
Total shares	<u>24,242</u>	<u>24,119</u>	<u>24,831</u>
Diluted EPS	<u>\$ (0.32)</u>	<u>\$ (0.78)</u>	<u>\$ 0.46</u>

Stock options were outstanding at December 31, 1997, 1996 and 1995, as discussed in Note 11.

Translation of Foreign Currencies

The functional currency of the foreign operations included in these financial statements is the U.S. dollar. Translation adjustments and transaction gains and losses are reflected in net income and consisted of a loss of \$1,149 in the year ended December 31, 1997, a gain of \$733 in the year ended December 31, 1996, and a loss of \$39 in the year ended December 31, 1995.

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FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 2—Summary of Significant Accounting Policies—(Continued)

Inventories

Company inventories are valued at the lower of cost, determined on the first-in, first-out (FIFO) basis, or market.

Property, Plant and Equipment

Properties are stated at cost. Depreciation of all assets is computed over their estimated useful lives using the straight-line method for financial reporting and accelerated methods for income tax reporting.

Upon sale or retirement of property, plant and equipment, a gain or loss is recognized. Expenditures for maintenance and repairs are charged to expense.

Useful lives for property, plant and equipment are as follows:

	<u>Years</u>
Buildings	Up to 40
Building improvements	20
Furniture and fixtures	10
Machinery and equipment	10
Tools, jigs and dies	3

Goodwill

Goodwill, representing the difference between the total purchase price and the fair value of assets (tangible and intangible) and liabilities at the date of acquisition, is being amortized on a straight-line basis over 40 years. Amortization expense totalled \$638 for each of the three years in the period ended December 31, 1997.

Impairment of Assets

In 1996, the Company adopted Financial Accounting Standards Board Statement No. 121 "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of." This statement requires that long-lived assets and certain identifiable intangibles be reviewed for impairment whenever events or changes in circumstance indicate that the carrying amount of an asset may not be recoverable. Under provisions of the statement, impairment losses are recognized when expected future cash flows are less than the assets' carrying value.

Patents, Trademarks and Other Intangibles

Patents, trademarks and other intangibles are carried at cost less accumulated amortization, which is calculated on a straight-line basis over the estimated useful lives of the assets, not to exceed 40 years (see Note 5). Amortization expense was \$704, \$682 and \$1,054 for the years ended December 31, 1997, 1996 and 1995, respectively.

Fair Value of Financial Instruments

The carrying values of cash and cash equivalents, accounts receivable and payable and accrued liabilities approximate fair value due to the short-term maturities of these assets and liabilities. The aggregate fair value of the Credit Facility approximates its carrying amount because of the recent and frequent repricing based on market conditions.

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FIRST ALERT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (All dollar amounts in thousands unless otherwise indicated, except per share data)

Stock Based Compensation

Effective January 1, 1996, the Company adopted the "disclosure method" provisions of Financial Accounting Standards Board Statement No. 123 "Accounting for Stock-Based Compensation." As permitted under this statement, the Company continues to recognize stock-based compensation costs under the intrinsic value based method of accounting as prescribed by Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees."

Income Taxes

Income taxes of the Company are accounted for using Financial Accounting Standards Board Statement No. 109, "Accounting for Income Taxes."

Advertising and Research and Development Costs

Advertising costs, including advertising allowances granted to customers, are accrued at the date of sale of certain products to reflect advertising commitments made to customers. Research and development costs are charged to expense as incurred. Expense charged to operations for the periods presented were as follows:

	Year Ended December 31.		
	1997	1996	1995
Advertising and product promotion	\$12,796	\$22,899	\$33,258
Research and development	\$ 2,012	\$ 3,121	\$ 2,866

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

Impact of New Accounting Standards

Financial Accounting Standards Board Statement No. 130 (SFAS 130), "Reporting Comprehensive Income" and Financial Accounting Standards Board Statement No. 131 (SFAS 131), "Disclosures about Segments of an Enterprise and Related Information," were issued in June 1997 and are effective for the Company's fiscal year 1998. SFAS 130 establishes standards for the reporting and display of comprehensive income, which includes net income and changes in equity except those resulting from investments by, or distributions to, stockholders. SFAS 131 establishes standards for disclosures related to business operating segments. The Company is currently evaluating the impact that these statements will have on the consolidated financial statements.

Note 3 — Restructuring Charge

During the fourth quarter of 1996, the Company adopted a plan to revitalize the Company's core product lines of smoke and carbon monoxide detectors and discontinue, reposition or outsource non-performing product lines, right-size and consolidate manufacturing operations, reduce the Company's selling, general and administrative cost structures and aggressively address inventory levels. As a result of this plan, the Company recorded a pre-tax restructuring charge of \$4,497 including a provision of \$1,998 for inventory write-downs which was appropriately charged to cost of sales, excluding depreciation. The remaining restructuring charge of \$2,499 includes \$1,789 for the write-down of the net book value of manufacturing equipment for product lines that will be outsourced or eliminated, \$410 for severance costs for approximately 600 manufacturing and corporate office employees who were released from employment in the fourth quarter of 1996 and \$300 for

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FIRST ALERT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 3 — Restructuring Charge—(Continued)

contractual plant restoration costs. The provision for inventory write-downs relates primarily to inventory for product lines that either have been or will be outsourced or eliminated. The following table sets forth the details of activity for 1997:

	Balance at December 31, 1996	1997 Charges	Balance at December 31, 1997
Manufacturing equipment write-down	\$1,789	—	\$1,789
Inventory write-down	1,998	\$1,283	715
Severance	93	93	—
Plant restoration	300	135	165
Total	<u>\$4,180</u>	<u>\$1,511</u>	<u>\$2,669</u>

Of the 1997 charges, \$93 of severance was a cash charge with the remainder being non-cash charges.

During the fourth quarter of 1997, the Company released \$1,005 of inventory write-down and plant restoration cost accruals which were determined by the Company's management as no longer being required. The release, reflected as a non-cash charge in the above table, was recorded through cost of sales, excluding depreciation. These accruals were deemed no longer necessary as the Company, in light of market conditions faced in 1997, reassessed its original cost estimates associated with repositioning certain product lines and consolidating its manufacturing operations.

Note 4 — Inventories

The components of inventory are as follows:

	At December 31,	
	1997	1996
Raw materials	\$19,311	\$25,575
Work-in-process	4,892	3,656
Finished goods	19,657	33,497
Reserves	(3,575)	(4,506)
Total	<u>\$40,285</u>	<u>\$58,222</u>

Note 5 — Goodwill and Other Intangibles

	At December 31,		Useful Lives (Years)
	1997	1996	
Goodwill	\$25,498	\$25,498	40
Trademarks	5,000	5,000	40
Patents	2,995	2,995	Various
Other	1,941	968	3-5
Less: accumulated amortization	(6,893)	(5,720)	
Total	<u>\$28,541</u>	<u>\$28,741</u>	

FIRST ALERT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 6—Property, Plant and Equipment

	At December 31.	
	1997	1996
Land	\$ 816	\$ 816
Buildings	4,040	3,815
Machinery and equipment	30,392	29,686
Leasehold improvements	3,600	3,611
Tools, jigs and dies	12,327	14,638
Less: accumulated depreciation	(22,994)	(22,763)
Net property, plant and equipment	\$28,181	\$29,803

Note 7—Accrued Expenses

	At December 31.	
	1997	1996
Advertising/promotion	\$ 3,634	\$ 8,859
Warranty and product related	6,000	6,526
Other	7,471	11,010
Total	\$17,105	\$26,395

Note 8—Revolving Credit Facility

	At December 31.	
	1997	1996
Revolving credit facility (average rate of 7.85% at December 31, 1997, and 7.2% at December 31, 1996)	\$45,026	\$60,500
Less: Short-term portion	45,026	20,500
Long-term revolving credit facility	\$ —	\$40,000

On May 14, 1997, the Company entered into an \$80.0 million revolving three-year credit facility (the "Credit Facility") with an agent financial institution, replacing its Former Credit Facility (as defined below). Advances under the Credit Facility are limited to (a) 85% of eligible accounts receivable plus (b) the lesser of 60% of eligible inventory or \$35.0 million. During the period of May 1997 through October 1997, \$10.0 million in additional borrowing was available and from June 1998 through September 1998, \$5.0 million in additional borrowing will be available under the Credit Facility. All obligations under the Credit Facility are secured by first priority liens upon certain of the Company's assets. Amounts outstanding under the Credit Facility bear interest at prime rate plus 1/2% or the London Interbank Offered Rate (LIBOR) plus 2%. The Company is subject to a commitment fee of 0.375% per annum on the unused portion of the Credit Facility less \$2.0 million. The Credit Facility agreement contains covenants for, among other things, total liabilities to tangible net worth and fixed charge ratios; maintenance of tangible net worth; and restrictions on additional indebtedness, capital expenditures and payment of dividends.

At December 31, 1997, the Company was not in compliance with the total liabilities to tangible net worth, fixed charge coverage ratio and minimum tangible net worth covenants set forth in the Credit Facility. While a waiver was obtained from the lender for the noncompliance with these covenants at December 31, 1997, it is not expected that the Company will be able to meet the restrictive covenants throughout 1998. Accordingly, the Credit Facility has been classified as a current liability. The Company is currently negotiating the terms of an extension of the Credit Facility, as well as a modification of the restrictive covenants and fully expects that a new agreement with its current lender will be in place by the second quarter of 1998.

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FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 8—Revolving Credit Facility—(Continued)

At December 31, 1996, under the terms of the Company's former revolving credit facility (the "Former Credit Facility"), the Company was able to borrow up to \$77.5 million until January 31, 1997, when the amount available was reduced to \$70.0 million. In connection with a September 4, 1996 amendment, the Company granted a security interest in all of its assets which included the stock of wholly owned subsidiaries to secure the obligations to the lenders under the Former Credit Facility. Similarly, Electronica BRK de Mexico S.A. de C.V., a wholly owned subsidiary, agreed to pledge all of its assets to secure repayment of advances under the Former Credit Facility.

Under the Former Credit Facility, the Company was subject to a commitment fee of 0.35% per annum on the unused portion of the Former Credit Facility. The Former Credit Facility carried an interest rate of LIBOR plus 1.5% for amounts up to \$70.0 million (LIBOR plus 2.0% for amounts in excess of \$70.0 million) on the LIBOR based portion of the Former Credit Facility and the higher of the lender's corporate borrowing rate or the Federal Funds Rate plus 0.75% for amounts up to \$70.0 million (Federal Funds Rate plus 1.25% for amounts in excess of \$70.0 million) on the remaining balance. Additionally the Former Credit Facility contained covenants restricting, among other things, the payment of dividends, the sale of assets, mergers and acquisitions and required maintenance of interest coverage ratios, leverage ratios and a minimum tangible net worth. At December 31, 1996, the Company was not in compliance with the interest coverage ratio and the leverage ratio covenants. On May 14, 1997, proceeds from the Credit Facility were used to fully reduce the Company's indebtedness under the Former Credit Facility.

Note 9—Income Taxes

The domestic and foreign components of income (loss) before taxes are as follows:

	Year Ended December 31,		
	1997	1996	1995
Domestic	\$(14,517)	\$(31,578)	\$19,563
Foreign	1,457	628	(504)
Total	<u>\$(13,060)</u>	<u>\$(30,950)</u>	<u>\$19,059</u>

The elements of the income tax provision (benefit) of the Company are as follows:

	Year Ended December 31,		
	1997	1996	1995
Current income taxes:			
Federal	\$ (8,982)	\$ (6,467)	\$3,232
State	(2,246)	(1,911)	813
Foreign	647	382	549
	<u>\$(10,581)</u>	<u>\$ (7,996)</u>	<u>\$4,594</u>
Deferred income taxes:			
Federal	\$ 4,318	\$ (3,685)	\$3,183
State	1,206	(393)	618
Foreign	(167)	(174)	(773)
	<u>\$ 5,357</u>	<u>\$ (4,252)</u>	<u>\$3,028</u>
Income tax provision (benefit)	<u>\$(5,224)</u>	<u>\$(12,248)</u>	<u>\$7,622</u>

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FIRST ALERT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (All dollar amounts in thousands unless otherwise indicated, except per share data)

The tax effects of the significant temporary differences which comprise the deferred tax assets and liabilities are as follows:

	At December 31,	
	1997	1996
Assets:		
Foreign statutory operating losses	\$ 2,028	\$ 1,861
Advertising/promotion accruals	830	3,342
Warranty and product related accruals	1,788	1,997
Alternative minimum tax	1,125	—
Other	3,598	3,827
Gross deferred assets	<u>\$ 9,369</u>	<u>\$11,027</u>
Liabilities:		
Accelerated depreciation	\$(5,092)	\$(3,369)
Accounts receivable and other	(1,976)	—
Gross deferred liabilities	\$(7,068)	\$(3,369)
Valuation allowance	(517)	(517)
Net assets	<u>\$ 1,784</u>	<u>\$ 7,141</u>

Reconciliations of the differences between income taxes computed at the Federal statutory rate and consolidated income tax provision (benefit) are as follows:

	Year ended December 31,		
	1997	1996	1995
Income taxes computed at Federal statutory rate (35%) ...	\$(4,571)	\$(10,833)	\$6,671
State taxes, net of Federal benefit	(678)	(1,497)	930
Foreign losses and rate differentials	(30)	(12)	(48)
Other, net	55	94	69
Income tax provision (benefit)	<u>\$(5,224)</u>	<u>\$(12,248)</u>	<u>\$7,622</u>

Note 10—Retirement Plans

The Company has retirement plans covering substantially all U.S. employees of its subsidiaries. No other post-retirement benefits are offered to retirees.

Eligible U.S. employees may participate in the Company's defined contribution plans. Company contributions to the plans are based upon a percentage of the employee contribution and vest over a five-year period commencing with date of employment. Such contributions amounted to \$182, \$210, and \$154 for the years 1997, 1996 and 1995, respectively.

There are two non-contributory defined benefit plans covering substantially all U.S. employees. Benefits are based on years of service and annual compensation as defined by such plans. Employees vest in plan benefits after five years of service.

Pursuant to the terms of the purchase agreement with Pittway, all retirement obligations earned by Company employees through July 31, 1992, were retained by Pittway. Obligations arising subsequent to that date are the responsibility of the Company. Pension costs recorded for the fiscal years 1997, 1996 and 1995 aggregated \$307.

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FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 10—Retirement Plans—(Continued)

\$379 and \$346, respectively. The components of net pension cost for the fiscal years 1997, 1996 and 1995 consist of:

	Year ended December 31,		
	1997	1996	1995
Service cost of benefits earned during the year	\$ 346	\$ 378	\$ 328
Interest cost on projected benefit obligation	89	74	50
Return on plan assets	(289)	(188)	(172)
Net amortization and deferred gains and losses	161	115	140
Net pension cost	<u>\$ 307</u>	<u>\$ 379</u>	<u>\$ 346</u>
Discount rate	7.0%	7.0%	7.0%
Rate of compensation increase	5.0%	5.0%	5.0%
Long-term rate of return on assets	7.0%	7.0%	7.0%

A reconciliation of the funded status of the plans is as follows:

	At December 31,	
	1997	1996
Actuarial present value of benefit obligations:		
Vested benefit obligation	\$ 1,049	\$ 878
Non-vested benefit obligation	244	197
Accumulated benefit obligation	1,293	1,075
Projected benefit obligation	1,659	1,500
Plan assets at fair value	<u>1,905</u>	<u>1,498</u>
Plan assets (in excess of) less than projected benefit obligation	(246)	2
Unrecognized net gain	<u>531</u>	<u>145</u>
Accrued pension cost included in the consolidated balance sheet	<u>\$ 285</u>	<u>\$ 147</u>

The cost of benefit plans covering non-U.S. employees is not significant.

Note 11—Stock Options

Following the Acquisition, the Company established the 1992 Time Accelerated Restricted Stock Option Plan ("1992 Plan") under which it is authorized to grant non-qualified options to purchase shares of Company common stock at a price equal to the market value of a share of such stock on the date of grant. Such options vest over a five-year period if certain provisions are met and are generally exercisable once vested, or, in the case of a terminated employee, become exercisable pursuant to the terms of the plan.

During 1994, the Company established the 1994 Stock Option Plan ("1994 Plan") which provides for the grant of options to purchase up to 1,226,666 shares of common stock. During 1997, the Company established the 1997 Stock Option Plan ("1997 Plan") which provides for the grant of options to purchase up to 1,300,000 shares of common stock. The 1994 and 1997 Plans allow for the issuance of incentive stock options and non-qualified options. Options granted under the 1994 and 1997 Plans are generally issued at an exercise price of not less than the current market price and vest over periods determined by the Board of Directors. Under the 1994 and 1997 Plans, no option shall be exercisable after ten years from the date on which it was granted.

FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 11—Stock Options—(Continued)

During 1996, the Company established the Nonqualified Stock Option Plan for Non-Employee Directors ("Non-Employee Director Plan") which provides for the grant of options for the purchase of an aggregate of 100,000 shares of common stock by all independent directors of the Company. Options to purchase 12,912 shares of common stock at an exercise price of \$1.78 per share 6,456 of which have expired and 6,827 shares of common stock at an exercise price of \$1.17 per share were granted in 1997 under the Non-Employee Director Plan. Options granted under the Non-Employee Director Plan are generally granted at an exercise price of one half of the market price of a share of common stock at the date of grant and become fully exercisable on the first anniversary of the date of grant. Under the Non-Employee Director Plan, options expire ten years after the date granted.

In February 1997, options for 314,000 shares of common stock were repriced to \$3.19 per share, the market price of the Company's common stock on the date of repricing. Of these options, 114,000 shares have a time-based vesting schedule while 200,000 shares were only to become exercisable in the event of a change in control of the Company consummated on or before December 31, 1997. Options for those 314,000 shares were granted apart from any Company stock option plan. The option for 114,000 shares was outstanding at December 31, 1997, while the one for 200,000 shares expired by its terms on December 31, 1997.

In February 1997, 505,200 options under the 1994 Plan were repriced to \$3.19 per share, the market price of the Company's common stock on the date of the repricing.

Stock option activity for fixed plans is as follows:

	Year ended December 31,		
	1997	1996	1995
Outstanding at beginning of period	1,587,224	1,541,864	1,238,364
Granted	1,322,939	814,194	324,000
Exercised	(151,996)	(140,000)	(17,500)
Cancelled	(1,013,505)	(628,834)	(3,000)
Outstanding at end of period	<u>1,744,662</u>	<u>1,587,224</u>	<u>1,541,864</u>
Options exercisable at end of year	<u>483,346</u>	<u>643,457</u>	<u>725,963</u>

The weighted average exercise price per share related to this stock option activity is as follows:

	At December 31,		
	1997	1996	1995
Outstanding at beginning of period	\$5.55	\$ 6.34	\$ 4.25
Granted	3.11	6.83	14.12
Exercised	1.61	1.61	1.61
Cancelled	6.19	10.00	13.50
Outstanding at end of period	<u>\$3.67</u>	<u>\$ 5.55</u>	<u>\$ 6.34</u>
Options exercisable at end of year	<u>\$4.12</u>	<u>\$ 3.59</u>	<u>\$ 2.74</u>

The weighted average fair value of options granted under fixed plans was \$1.42 per share in 1997, \$3.13 per share in 1996 and \$6.59 per share in 1995 using the Black-Scholes option pricing model.

FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (All dollar amounts in thousands unless otherwise indicated, except per share data)

The following tables summarize information about employee stock options outstanding for fixed plans at December 31, 1997:

Range of Exercise Price	Shares Outstanding at December 31, 1997	Weighted-Average Remaining Life	Weighted-Average Exercise Price
\$1.17-8.50	1,699,662	7.7 years	\$ 3.33
13.50	45,000	7 years	13.50
Range of Exercise Price	Shares Exercisable at December 31, 1997	Weighted-Average Exercise Price	
\$1.17-8.50	460,846	\$ 3.66	
13.50	22,500	13.50	

Shares of common stock have been reserved for future issuance under all of the foregoing options.

The Company applies APB Opinion No. 25 and related interpretations in accounting for the aforementioned stock option plans. Accordingly, no compensation cost has been recognized for its fixed stock option plans while compensation expense has been recognized for its compensatory plans. Had compensation cost for the Company's fixed stock option plans been determined based on the fair value based method, as defined in Statement No. ■■■, the Company's net earnings (loss) and earnings (loss) per share would not be significantly different from those reported and consequently pro forma amounts have not been disclosed.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model with the following weighted average assumptions used for grants: expected volatility of 27.0% in 1997, 29.3% in 1996 and 28.0% in 1995; expected lives of seven years for 1997, 1996 and 1995 and risk free interest rate of 6.3% in 1997, 6.4% in 1996 and 7.8% in 1995. It has been assumed that no dividends will be paid for the expected term of the options.

Note 12—Lease Commitments

The Company leases certain warehouses, office space and equipment under noncancelable operating leases expiring at various dates through the year 2010. Minimum annual rental commitments under all noncancelable leases for the next five years beginning with 1998 are as follows:

1998	1999	2000	2001	2002	Thereafter
\$2,879	\$2,852	\$2,483	\$2,172	\$2,165	\$11,547

Total rent expense including taxes, insurance and maintenance when included in rent amounted to \$3,223, \$3,801 and \$2,681 for the years ended December 31, 1997, 1996 and 1995, respectively.

Note 13—Contingencies

In November 1994, the Company and certain of its officers and directors were named as defendants in four purported class action lawsuits filed in the United States District Court for the Northern District of Illinois, Eastern Division. The plaintiffs in these actions, pursuant to a Court order, filed a consolidated and amended complaint resulting in the consolidation of the four actions. The consolidated case is entitled *Gilbert et al. vs. First Alert, Inc. et al.* ("Gilbert"). The amended complaint sought compensatory damages, costs and attorneys' fees on behalf of the purchasers of the Company's Common Stock during the period from October 12, 1994 through November 10, 1994. By order dated August 21, 1995, the Court certified the class. Subsequently, the plaintiff's motion to amend the complaint to expand the class period to September 20, 1994 through December 7, 1994, was granted and a second consolidated and amended complaint was filed on January 16, 1996. The new class was certified by the Court. The complaint alleges generally that the Company and other defendants disseminated false and misleading information to the investing public regarding the *First Alert*® Carbon Monoxide Detector in connection with an anticipated secondary public offering of the Company's Common Stock in late 1994 in violation of various provisions of the Securities Exchange Act of 1934 and the rules

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FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 13—Contingencies—(Continued)

promulgated thereunder. The Registration Statement with respect to the proposed secondary public offering was declared effective by the Securities and Exchange Commission on November 9, 1994, but was subsequently withdrawn by the Company at the request of the selling stockholders. The public offering was solely to facilitate the sale of shares by certain selling stockholders and the Company would not have received any proceeds therefrom.

The Company vigorously contested all claims and denied liability. Nevertheless, to avoid further expense and the burdens of litigation, in November 1996, the Company agreed to a tentative settlement of the consolidated class actions. An executed settlement agreement was filed with the Court on February 11, 1997 and the Court entered an order on February 25, 1997, giving preliminary approval to the settlement.

Pursuant to the Court's February 25, 1997, order, members of the class had until May 12, 1997, to opt out of the class and until July 28, 1997, to file proofs of claim if they wished to receive a share of the settlement amount. The Court held a hearing on June 20, 1997, to consider the fairness of the settlement and, at that time, the Court approved the settlement.

Under the terms of the settlement agreement, defendants will pay a fixed amount per share to class members, depending on when they bought or sold their shares, with a maximum amount of \$3.0 million (including attorney's fees and costs for class counsel) to be paid out in settlement. The majority of the settlement amount is being paid by the Company's directors and officers liability insurance carrier. The pendency of the *Gilbert* complaint has not had a material effect on the Company's financial results for any period and adequate reserves exist at December 31, 1997, for the Company's share of the settlement amount.

A purported class action entitled *Betley et al. vs. First Alert, Inc. et al.* ("Betley") was filed in the Circuit Court of Cook County, Illinois on January 3, 1995, against the Company and its wholly owned subsidiary, BRK Brands, Inc., alleging common law fraud, breach of warranties, and a statutory violation of the Illinois Consumer Fraud Act, all related to alleged defects in the original *First Alert*® Carbon Monoxide Detector (Model FACO) design and the manner in which the detector was marketed. The Company does not believe that the plaintiffs claim any personal injuries or property damage; nor do the plaintiffs claim that their detectors failed to detect dangerous levels of carbon monoxide. Instead, they claim (i) that the Company failed to disclose that the product alarms in non-life threatening conditions (which they state in their complaint to be a "nuisance"), (ii) that the Company falsely proclaims the product resets "automatically" when, in fact, the product can take several hours or days to reset after it has gone into alarm and (iii) that the Company falsely claims that the product met Underwriters Laboratories' listing criteria for residential carbon monoxide detectors in effect at the time the Model FACO was manufactured. The plaintiffs seek a refund of their purchase price, other out-of-pocket expenses, punitive damages, and attorneys' fees. The Company has raised numerous defenses to this claim and will continue to oppose it forcefully.

In February 1997, the Company and its wholly owned subsidiary, BRK Brands, Inc., were named as defendants in a purported class action lawsuit entitled *Houlihan et al. vs. First Alert, Inc. et al.* ("Houlihan") in the Circuit Court of Cook County, Illinois, alleging breach of express warranty and statutory violations of various states' consumer protection statutes due to alleged misrepresentations and product defects involving *First Alert*® Carbon Monoxide Detectors. The Company does not believe the plaintiff claimed any personal injuries or property damage; nor did he claim specifically that his detector failed to detect dangerous levels of carbon monoxide. Rather, the plaintiff sought "rescissionary damages" and attorneys' fees. The plaintiff's original complaint was stricken by the Court on April 9, 1997, but the Court gave the plaintiff leave to re-plead the case which was done. The Company filed a Motion to Dismiss the amended complaint and that motion was granted on August 22, 1997. The case has now been settled by refunding the plaintiff's purchase price of the detector.

On February 11, 1998, a jury returned a verdict against the Company's BRK Brands, Inc., subsidiary, awarding damages totaling \$16.9 million in the case of *Mercer et al. vs. BRK Brands, Inc. et al.*, which was tried

FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 13—Contingencies—(Continued)

in the Iowa District Court for Scott County. The verdict includes \$12.5 million of punitive damages. The case alleged negligence, breach of warranty and fraudulent nondisclosure in connection with a BRK[®] Electronics smoke detector that alarmed during a residential fire. The punitive damage award was based upon the jury finding a preponderance of clear, convincing and satisfactory evidence the Company's conduct constituted willful and wanton disregard for the rights or safety of others. Substantially all of the cost of defense and the damages assessed in this case are covered by the Company's insurance. The Company intends to continue to vigorously contest this case by pursuing a number of post-trial motions to overturn the verdict and appealing the decision, if necessary.

In addition to the *Gilbert, Betley* and *Mercer* actions, the Company and its subsidiaries, including BRK Brands, Inc., are parties to various product liability and other types of lawsuits and are from time to time subject to investigations by various governmental agencies, including investigations regarding environmental matters. Although the ultimate liabilities, if any, arising out of the *Gilbert, Betley, Mercer* and other pending legal actions or investigations cannot presently be determined, based on its past experience and assessment of such matters, the Company believes that the outcome of these matters will not have a material adverse effect on the Company's financial position.

Note 14—Related Party Transactions

Certain administrative fees were paid to Thomas H. Lee Company aggregating \$214, \$195 and \$326, for the years ended December 31, 1997, 1996 and 1995, respectively.

The First Alert trademark is owned by the First Alert Trust in which the Company has a 75% beneficial interest. The Company entered into a license agreement with the First Alert Trust and Pittway which permits the Company in perpetuity and on an exclusive, royalty-free basis, to manufacture and market under the First Alert brand name any products other than products which are designed to be monitored by an alarm or building control system or to work in conjunction with a communications panel or other building control system ("Professional Products"). Pittway owns the remaining 25% beneficial interest in the First Alert Trust and is a party to such license agreement with the First Alert Trust under which Pittway has, in perpetuity, an exclusive, royalty-free license to manufacture and market Professional Products under the First Alert Professional[®] and First Alert Professional Security System[®] brand names. Either Pittway or the Company may terminate their further obligations and rights under the license by providing notice to the other party.

FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 15—Segment Information

The Company operates in one segment—residential safety products.

Presented below is information on the geographic areas in which the Company operates. Sales between geographic areas are made at approximate arms-length prices.

Geographic Areas

	Year Ended December 31, 1997		At December 31, 1997
	Net Sales	Operating Income (Loss)	Identifiable Assets
United States	\$169,017	\$ (7,891)	\$144,978
Europe	20,243	1,418	7,396
Other	17,823	(1,973)	11,987
Elimination	(20,142)	(21)	—
Total	<u>\$186,941</u>	<u>\$ (8,467)</u>	<u>\$164,361</u>
	Year Ended December 31, 1996		At December 31, 1996
	Net Sales	Operating Income (Loss)	Identifiable Assets
United States	\$188,363	\$ (25,382)	\$167,824
Europe	16,877	(278)	7,315
Other	18,120	(838)	11,352
Elimination	(17,753)	(21)	—
Total	<u>\$205,607</u>	<u>\$ (26,519)</u>	<u>\$186,491</u>
	Year Ended December 31, 1995		At December 31, 1995
	Net Sales	Operating Income (Loss)	Identifiable Assets
United States	\$225,430	\$ 20,511	\$187,045
Europe	16,964	(1,840)	5,961
Other	23,661	1,807	13,987
Elimination	(19,789)	(45)	—
Total	<u>\$246,266</u>	<u>\$ 20,433</u>	<u>\$206,993</u>

Operating income includes costs of goods sold, selling, general and administrative expenses, restructuring charge and depreciation and amortization expense.

FIRST ALERT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 16—Quarterly Results (unaudited)

Quarterly Results of Operations for the years ended December 31, 1997 and 1996 are shown below:

	1997			
	Three Month Period Ended			
	March 30	June 29	September 28	December 31
Net sales	\$37,413	\$27,481	\$50,774	\$71,273
Gross profit	10,536	7,097	14,163	20,796
Net income (loss)	(3,274)	(4,404)	(1,543)	1,385
Basic net income (loss) per share	(0.14)	(0.18)	(0.06)	0.06
Diluted net income (loss) per share	(0.14)	(0.18)	(0.06)	0.06
Common stock price range—				
High	4.125	3.50	4.00	3.50
Low	2.688	1.875	2.75	1.875
	1997			
	Three Month Period Ended			
	March 31	June 30	September 30	December 31
Net sales	\$55,489	\$28,981	\$60,860	\$60,277
Gross profit	15,351	6,579	24,276	8,790
Net income (loss)	(4,501)	(5,937)	2,203	(10,467)
Basic net income (loss) per share	(0.19)	(0.25)	0.09	(0.43)
Diluted net income (loss) per share	(0.19)	(0.25)	0.09	(0.43)
Common stock price range—				
High	11.375	7.75	6.375	6.125
Low	6.375	4.00	4.375	3.00

Income per share amounts for each quarter are required to be computed independently and, therefore, may not equal the amount computed for the entire year.

Results of operations in the three month period ended December 31, 1997 include costs associated with inefficiencies incurred in manufacturing operations, premium freight out charges and key customer allowances which were partially offset by the release of \$4.5 million of reserves established in prior years deemed no longer necessary. These reserves had been established over a period of years and their initial recording was not significant to any individual prior reporting period.

Results of operations during the three months ended December 31, 1996, include a pre-tax restructuring charge of \$4,497, including inventory write-down, and a pre-tax charge to operations of \$4,972. The pre-tax charge to operations includes additional inventory related costs, anticipated product allowances for sales made prior to December 31, 1996, severance and asset impairment costs.

Note 17—Subsequent Events

On March 2, 1998, the Company announced that it had entered into a definitive agreement with Sunbeam Corporation (the "Agreement") providing for the acquisition of the Company by Sunbeam in a transaction valued at approximately \$175 million including the assumption of existing debt. The consummation of the offer is subject to certain customary conditions, including expiration of the waiting period under the Hart-Scott-Rodino Antitrust Improvement Act. The Agreement provides that the Company pay a fee of \$3.75 million in the event that the acquisition is terminated.

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ACCREDITED INVESTOR LETTER

Sunbeam Corporation
 1615 S. Congress Avenue, Suite 200
 Delray Beach, Florida 33445

Morgan Stanley & Co. Incorporated
 1585 Broadway
 New York, New York 10036

Ladies and Gentleman:

We are delivering this letter in connection with an offering by Sunbeam Corporation (the "Company") of its Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures"), which are convertible into shares of the Company's common stock, \$0.01 par value per share (the "Common Stock"), all as described in the Offering Memorandum (the "Offering Memorandum") relating to the Offering. We hereby confirm that:

(i) we are an "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933 (the "Securities Act") or an entity in which all of the equity owners are accredited investors within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act (an "Institutional Accredited Investor") able to bear the economic risk of an investment in the Debentures;

(ii) (A) any purchase of Debentures by us will be for our own account or for the account of one or more other Institutional Accredited Investors for each of which we exercise sole investment discretion (and have authority to make, and do make, the statements contained in this letter) or as fiduciary for the account of one or more trusts, each of which is an "accredited investor" within the meaning of Rule 501(a)(7) under the Securities Act and for each of which we exercise sole investment discretion or (B) we are a "bank," within the meaning of Section 3(a)(2) of the Securities Act, or a "savings and loan association" or other institution described in Section 3(a)(5)(A) of the Securities Act that is acquiring Debentures as fiduciary for the account of one or more institutions for which we exercise sole investment discretion;

(iii) in the event that we purchase any Debentures, we will acquire Debentures having a minimum purchase price of not less than \$250,000 for our own account or for any separate account for which we are acting;

(iv) we have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of purchasing Debentures;

(v) we are not acquiring Debentures with a view to distribution thereof or with any present intention of offering or selling Debentures or the Common Stock issuable upon conversion thereof, except as permitted below; provided that the disposition of our property and property of any accounts for which we are acting as fiduciary shall remain at all times within our control; and

(vi) we have received a copy of the Offering Memorandum and acknowledge that we have had access to such financial and other information, and have been offered the opportunity to ask such questions of representatives of the Company and receive answers thereto, as we deem necessary in connection with our decision to purchase Debentures.

We understand that the Debentures are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the Debentures and the Common Stock issuable upon conversion thereof have not been registered under the Securities Act, and we agree, on our own behalf and on behalf of each account for which we acquire any Debentures, that if in the future we decide to resell or otherwise transfer such Debentures or the Common Stock issuable upon conversion thereof, such Debentures or Common Stock may be resold or otherwise transferred within the United States or to, or for the account or benefit of, U.S. persons only (i) to the Company or any subsidiary thereof, (ii) to a person who is a "qualified institutional

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buyer" (as defined in Rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A, (iii) to an Institutional Accredited Investor that, prior to such transfer, furnishes to the Trustee for the Debentures (or in the case of Common Stock, the transfer agent therefor) a signed letter containing certain representations and agreements relating to the restrictions on transfer of such securities (the form of which letter can be obtained from the Trustee or transfer agent, as the case may be), (iv) pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available) or (v) pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer, and in each case, in accordance with any applicable securities laws of any State of the United States or any other applicable jurisdiction and in accordance with the legends set forth on the Debentures and any Common Stock, as the case may be. We further agree to provide to any person purchasing any of the Debentures or the Common Stock issuable upon conversion thereof (other than pursuant to clause (v) above) from us a notice advising such purchaser that resales of such securities are restricted as stated herein. We understand that the registrar and transfer agents for the Debentures and the Common Stock will not be required to accept for registration of transfer any Debentures or any Common Stock issued upon conversion of the Debentures, except upon presentation of evidence satisfactory to the Company that the foregoing restrictions on transfer have been complied with. We further understand that any Debentures and any Common Stock issued upon conversion of the Debentures will be in the form of definitive physical certificates and that such certificates will bear a legend reflecting the substance of this paragraph other than pursuant to clause (v) above.

We acknowledge that the Company, others and you will rely upon our confirmations, acknowledgments and agreements set forth herein, and we agree to notify you promptly in writing if any of our representations or warranties herein ceases to be accurate and complete.

THIS LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

(Name of Purchaser)

By: _____

Name: _____

Title: _____

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SUNBEAM CORPORATION

SELLING SECURITYHOLDER NOTICE AND QUESTIONNAIRE

The undersigned beneficial holder of Zero Coupon Convertible Senior Subordinated Debenture due 2018 (the "Debenture") of Sunbeam Corporation (the "Company" or "Registrant") or Common Stock, \$0.01 par value (the "Common Stock" and, together with the Debentures, the "Registrable Securities") of the Company understands that the Registrant has filed or intends to file with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (the "Shelf Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement, dated as of March , 1998 (the "Registration Rights Agreement"), between the Company and the Initial Purchaser named therein. A copy of the Registration Rights Agreement is available from the Company upon requests at the address set forth below. All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Registration Rights Agreement.

Each beneficial owner of Registrable Securities is entitled to the benefits of the Registration Rights Agreement. In order to sell or otherwise dispose of any Registrable Securities pursuant to the Shelf Registration Statement, a beneficial owner of Registrable Securities generally will be required to be named as a selling securityholder in the related prospectus, deliver a prospectus to purchasers of Registrable Securities and be bound by those provisions of the Registration Rights Agreement applicable to such beneficial owner (including certain indemnification provisions, as described below). Beneficial owners that do not complete this Notice and Questionnaire and deliver it to the Company as provided below will not be named as selling securityholders in the prospectus and therefore will not be permitted to sell any Registrable Securities pursuant to the Shelf Registration Statement. Beneficial owners are encouraged to complete and deliver this Notice and Questionnaire prior to the effectiveness of the Shelf Registration Statement so that such beneficial owners may be named as selling securityholders in the related prospectus at the time of effectiveness. Upon receipt of a completed Notice and Questionnaire from a beneficial owner following the effectiveness of the Shelf Registration Statement, the Company will, as promptly as practicable but in any event within five business days of such receipt, file such amendments to the Shelf Registration Statement or supplements to the related prospectus as are necessary to permit such holder to deliver such prospectus to purchasers of Registrable Securities. The Company has agreed to pay liquidated damages pursuant to the Registration Rights Agreement under certain circumstances as set forth therein.

Certain legal consequences arise from being named as a selling securityholder in the Shelf Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling securityholder in the Shelf Registration Statement and the related prospectus.

NOTICE

The undersigned beneficial owner (the "Selling Securityholder") of Registrable Securities hereby gives notice to the Company of its intention to sell or otherwise dispose of Registrable Securities beneficially owned by it and listed below in Item 3 (unless otherwise specified under Item 3) pursuant to the Shelf Registration Statement. The undersigned, by signing and returning this Notice and Questionnaire, understands that it will be bound by the terms and conditions of this Notice and Questionnaire and the Registration Rights Agreement.

Pursuant to the Registration Rights Agreement, the undersigned has agreed to indemnify and hold harmless the Company's directors, the Company's officers who sign the Company Registration Statement, and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), from and against certain losses arising in connection with statements concerning the undersigned made in the Company's Registration Statement or the related prospectus in reliance upon the information provided in this Notice and Questionnaire.

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The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

QUESTIONNAIRE

1. (a) Full Legal Name of Selling Securityholder:

- (b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities listed in (3) below are held:

- (c) Full Legal Name of DTC Participant (if applicable and if not the same as (b) above) through which Registrable Securities listed in (3) below are held:

2. Address for Notices to Selling Securityholder:

Telephone: _____
Fax: _____
Contact Person: _____

3. Beneficial Ownership of Registrable Securities:
- (a) Type and Principal Amount Registrable Securities beneficially owned:

- (b) CUSIP No(s). of such Registrable Securities beneficially owned:

4. Beneficial Ownership of Other Securities of the Company owned by the Selling Securityholder:
Except as set forth below in this Item (4), the undersigned is not the beneficial or registered owner of any securities of the Company other than the Registrable Securities listed above in Item (3).

- (a) Type and Amount of Other Securities beneficially owned by the Selling Securityholder:

- (b) CUSIP No(s). of such Other Securities beneficially owned:

5. Relationships with the Company:
Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (5% or more) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.
- State any exceptions here: _____

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6. Plan of Distribution:

Except as set forth below, the undersigned (including its donees or pledgees) intends to distribute the Registrable Securities listed above in Item (3) pursuant to the Shelf Registration Statement only as follows (if at all): Such Registrable Securities may be sold from time to time directly by the undersigned or, alternatively, through underwriters, broker-dealers or agents. If the Registrable Securities are sold through underwriters or broker-dealers, the Selling Securityholder will be responsible for underwriting discounts or commissions or agent's commissions. Such Registrable Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale, or at negotiated prices. Such sales may be effected in transactions (which may involve crosses or block transactions) (i) on any national securities exchange or quotation service on which the Registrable Securities may be listed or quoted at the time of sale, (ii) in the over-the-counter market, (iii) in transactions otherwise than on such exchanges or services or in the over-the-counter market, or (iv) through the writing of options. In connection with sales of the Registrable Securities or otherwise, the undersigned may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the Registrable Securities in the course of hedging in positions they assume. The undersigned may also sell Registrable Securities short and deliver Registrable Securities to close out short positions, or loan or pledge Registrable Securities to broker-dealers that in turn may sell such securities.

State any exceptions here: _____

Note: In no event will such method(s) of distribution take the form of an underwritten offering of the Registrable Securities without the prior agreement of the Company.

The undersigned acknowledges that it understands its obligation to comply with the provisions of the Exchange Act and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Registrable Securities pursuant to the Shelf Registration Agreement. The undersigned agrees that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

The Selling Securityholder hereby acknowledges its obligations under the Registrable Rights Agreement to indemnify and hold harmless certain persons as set forth herein.

Pursuant to the Registration Rights Agreement, the Company has agreed under certain circumstances to indemnify the Selling Securityholder against certain liabilities.

In accordance with the undersigned's obligation under the Registration Rights Agreement to provide such information as may be required by law for inclusion in the Shelf Registration Statement, the undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Shelf Registration Statement remains effective. All notices hereunder and pursuant to the Registration Rights Agreement shall be made in writing at the address set forth below.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items (1) through (6) above and the inclusion of such information in the Shelf Registration Statement and the related prospectus. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Shelf Registration Statement and the related prospectus.

IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated:

(Beneficial Owner)

By: _____

Name: _____

Title: _____

PLEASE RETURN THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE TO
SUNBEAM CORPORATION AT:

Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445

Attention: Rich Goudis

NOT A CERTIFIED COPY

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CONFIDENTIAL

MF

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CPH 1326475

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

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021793

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

**COLEMAN (PARENT) HOLDINGS INC.'S RESPONSES
AND OBJECTIONS TO MORGAN STANLEY & CO., INC.'S
FIFTH SET OF INTERROGATORIES**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys and pursuant to Rules 1.280 and 1.340 of the Florida Rules of Civil Procedure and the Court's October 14, 2004 Order, responds and objects to Morgan Stanley & Co., Inc.'s ("Morgan Stanley's") Fifth Set of Interrogatories ("Interrogatories") as follows:

INITIAL OBJECTIONS

1. CPH objects to the Interrogatories, including all Definitions and Instructions, to the extent they purport to impose upon CPH any requirements that exceed or are inconsistent with the Florida Rules of Civil Procedure or any other applicable rule or court order.

2. CPH objects to the Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other privilege, doctrine, immunity, or rule. CPH reserves the right to assert any and all privileges to which CPH is entitled under the law.

3. CPH objects to the definitions of "CPH" and "MAFCO" to the extent they include CPH's counsel in this litigation. CPH interprets these definitions to exclude Jenner & Block, LLP and Searcy Denney Scarola Barnhart & Shipley P.A., and their respective attorneys.

4. CPH's response to any interrogatory is not intended and should not be construed as an acknowledgment that the requested information is relevant or that any persons identified actually possess knowledge or information relevant to the subject matter of this action.

5. CPH's objections and responses are based on a good-faith investigation. CPH expressly reserves the right to amend and/or modify its objections and responses.

6. CPH responds to Morgan Stanley's Interrogatories without waiving the Initial Objections. CPH incorporates, as though fully set forth therein, these Initial Objections into each of its responses.

FURTHER OBJECTIONS

INTERROGATORY 1: Identify every instance in which Mafco or CPH engaged or retained Morgan Stanley between January 1, 1993 and March 30, 1998. Your response should identify the nature, subject, and purpose of each such engagement, the transaction or proposed transaction contemplated by each such engagement, and the name(s) of any Morgan Stanley employee or agents retained or consulted by Mafco or CPH.

FURTHER OBJECTION AND RESPONSE: CPH objects to this interrogatory as unduly burdensome because it seeks information already in the possession of Morgan Stanley and details concerning "every instance" in which Morgan Stanley was engaged or retained. MacAndrews & Forbes Holdings Inc. ("Mafco"), CPH, and their affiliates worked with Morgan Stanley on numerous occasions and in numerous capacities during this multi-year period, which ended more than six years ago. None of these companies keeps records of the sort that would allow for an easy or comprehensive determination of all of the engagements in which Morgan Stanley may have played some role. Thus, the information set forth below is necessarily incomplete and tentative, but CPH has made a reasonable effort to compile this response. CPH's investigation continues. CPH also notes that Interrogatory No. 1 constitutes multiple separate interrogatories. Subject to and notwithstanding its Initial and Further Objections, CPH states that

Morgan Stanley was involved in the following transactions with Mafco, CPH, or affiliated companies:

- In 1985, Morgan Stanley served as advisor to Pantry Pride, Inc. ("Pantry Pride"), a Mafco affiliate, in its acquisition of Revlon, Inc. ("Old Revlon").
- In 1986, Morgan Stanley served as an advisor to Pantry Pride in the sale of Old Revlon's pharmaceutical business to Rorer Group Inc.
- In 1989, Morgan Stanley served as an advisor to The Coleman Company, Inc. ("Old Coleman") during the acquisition by a Mafco affiliate of Old Coleman.
- In 1989, Morgan Stanley served as Old Coleman's financial advisor when Old Coleman reviewed the \$460.5 million buyout proposal by former Old Coleman chairman Sheldon Coleman and other members of the Coleman family.
- In 1991, National Health Laboratories Incorporated ("NHL"), an affiliate of Mafco, completed a secondary public offering of its common stock, for which Morgan Stanley served as a co-manager.
- In 1992, National Health Care Group Inc. (an indirect Mafco subsidiary) sold 14 million shares of NHL in a registered offering through Morgan Stanley and other underwriters.
- In 1992, Morgan Stanley served as an underwriter for Old Coleman's February 1992 offering of \$100 million in Guaranteed Pass Through Certificates due 2022.
- In 1992, Morgan Stanley served as a joint underwriting manager for the \$83 million initial public offering by The Coleman Company, Inc. ("Coleman") of its common stock.
- In 1992, Revlon, Inc. ("Revlon") planned but did not complete a \$120 million initial public offering of its common stock, which was to be co-managed by Morgan Stanley.
- In 1992, MacAndrews & Forbes Company ("Flavors"), a Mafco affiliate, retained Morgan Stanley and other underwriters in connection with a contemplated, but later withdrawn, initial public offering of its common stock.
- In 1992, Morgan Stanley co-managed an \$85 million 12% senior debt offering for Flavors.
- In 1993, Morgan Stanley served as the financial advisor for NHL in connection with its proposed acquisition of Damon Corp.

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- In 1993-94, Morgan Stanley served as one of the underwriters for a \$125 million senior subordinated notes offering by Marvel III Holdings Inc., a Mafco affiliate.
- In 1994, Morgan Stanley served as the financial advisor and dealer manager for NHL's tender offer for the outstanding shares of Allied Clinical Laboratories Inc.
- In 1994, Morgan Stanley served as the financing agent for \$200 million of senior notes issued by NHL Intermediate Holdings Corp. II, a unit of National Health Laboratories Holdings Inc., a Mafco affiliate.
- In 1994, New World Communications Group Incorporated, a Mafco affiliate, arranged for \$200 million in financing using Morgan Stanley, as agent.
- In 1995, Toy Biz, Inc. ("Toy Biz"), a Mafco affiliate, and one of its shareholders sold Toy Biz common stock in a \$62 million initial public offering co-managed by Morgan Stanley.
- In 1995, a Mafco affiliate and Abex Inc. agreed to merge. Morgan Stanley served as a financial advisor to Mafco in this transaction.
- In 1996, Revlon completed a \$180 million initial public offering of its common stock, which was co-managed by Morgan Stanley.
- In 1996, Morgan Stanley led an underwriting group in conjunction with the \$48 million sale by Toy Biz and one of its shareholders of shares of Toy Biz common stock.
- In 1996, Consolidated Cigar Holdings Inc. ("Cigar"), a Mafco affiliate, completed a \$124 million initial public offering of its common stock, which was co-managed by Morgan Stanley.
- In 1997, Cigar completed a \$118 million additional offering of its common stock, which was co-managed by Morgan Stanley.
- In 1997, Mafco Holdings Inc., a Mafco affiliate, completed a "going private" transaction with its affiliate, Mafco Consolidated Group Inc. ("Mafco Consolidated"). Mafco Consolidated retained Morgan Stanley as a financial advisor to represent the minority interest in evaluating and negotiating the Mafco Holdings proposal.

In addition to the transactions listed above, in late 1997 and early 1998, Morgan Stanley (including at least William Reid, Robert Kitts, and Matt Grogan) sought to interest Mafco in a

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transaction involving Gucci. In early 1998, Morgan Stanley (including at least Mark Perret and Edwin Datson) also sought to interest Mafco in possible European acquisition opportunities.

INTERROGATORY 2: Identify all communications between Coleman, CPH, or Mafco (or any of their attorneys or financial advisors) and Sunbeam, Arthur Andersen, Morgan Stanley, or Skadden Arps between March 19, 1998 and March 30, 1998 concerning Sunbeam's sales during the first quarter of 1998, Sunbeam's March 19, 1998 Press Release, or any of the information contained in Sunbeam's March 19, 1998 Press Release.

FURTHER OBJECTION AND RESPONSE: Subject to and without waiving its Initial Objections, CPH states that a CPH representative attended Sunbeam's and Morgan Stanley's "roadshow" presentation for the Senior Subordinated Convertible Debenture offering on March 18, 1998, at which Sunbeam and Morgan Stanley misrepresented and concealed Sunbeam's true condition. Further, after the March 19, 1998 press release was issued, one or more CPH and/or Coleman representatives reached out to and spoke with one or more Sunbeam and/or Morgan Stanley employees concerning the subject matter of the interrogatory. Sunbeam and/or Morgan Stanley assured CPH and/or Coleman that Sunbeam would make the sales numbers it previously had projected for the first quarter of 1998 and the full year. Sunbeam and/or Morgan Stanley also represented that the March 19, 1998 press release had been issued out of an abundance of caution, solely at the behest of legal counsel, due to the debenture offering and not because there was any problem at Sunbeam that imperiled its previous projections. In addition, CPH had a request outstanding throughout this period pursuant to Section 6.8 of the Agreement and Plan of Merger among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and CPH dated as of February 27, 1998 (the "Holdings Merger Agreement") for, among other things, advice of any change or event that would be materially adverse. CPH further states that there were numerous communications between CPH

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and/or Coleman and Sunbeam and/or Morgan Stanley during this time period and Sunbeam and/or Morgan Stanley failed to inform CPH and/or Coleman of Sunbeam's true condition.

INTERROGATORY 3: Identify all inquiries or requests for information that Coleman, CPH, or Mafco (or any of their attorneys or financial advisors) made to Sunbeam, Arthur Andersen, Morgan Stanley, or Skadden Arps regarding Sunbeam's history, operations, financial performance, or projection that Sunbeam, Arthur Andersen, Morgan Stanley, or Skadden Arps failed or refused to answer.

FURTHER OBJECTION AND RESPONSE: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without securing the agreement of plaintiff or a court order. Subject to and without waiving its Initial or Further Objections, CPH states that prior to the March 30, 1998 closing, CPH made the following requests for information from Sunbeam and Morgan Stanley: (i) on or before February 23, 1998, CPH and Coleman representatives requested that Morgan Stanley and Sunbeam provide information about Sunbeam, including Sunbeam's history, operations, financial performance, and projections, but Morgan Stanley and Sunbeam did not provide truthful information to CPH and Coleman in response; (ii) on February 27, 1998, CPH and Coleman requested that Morgan Stanley and Sunbeam advise CPH and Coleman if Sunbeam's operations and/or financial performance changed in a material adverse manner (*see* § 6.8 of the Holdings Merger Agreement), but Morgan Stanley and Sunbeam did not provide truthful information to CPH and Coleman in response; (iii) a CPH representative attended Sunbeam's and Morgan Stanley's "roadshow" presentation for the Senior Subordinated Convertible Debenture offering on March 18, 1998, at which Sunbeam and Morgan Stanley misrepresented and concealed Sunbeam's true condition, and (iv) after the March 19, 1998 press release was issued, CPH and Coleman requested that Morgan Stanley and Sunbeam provide information concerning Sunbeam, including Sunbeam's operations, financial information, and

projections, but Morgan Stanley and Sunbeam failed to provide truthful information to CPH and Coleman in response.

INTERROGATORY 4: For each of Morgan Stanley's Second, Third, and Fourth Set of Requests for Admission that CPH has denied, in whole or in part, state each fact that supports the denial. If CPH's denial is related to its objection to Morgan Stanley's definition of the term "CPH" in the Requests for Admission, state how CPH's response to the Request for Admission would change if CPH applied Morgan Stanley's definition.

FURTHER OBJECTION AND RESPONSE: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without securing the agreement of plaintiff or a court order. CPH further objects to Interrogatory No. 4 as overbroad insofar as it seeks identification of "all facts" that support CPH's denial of the requests for admission. CPH also notes that Interrogatory No. 4 constitutes multiple separate interrogatories. Subject to and without waiving its Initial or Further Objections, CPH states the following:

Morgan Stanley's Second Set of Requests for Admission:

- No. 1: CPH did not retain CSFB. Rather, Coleman retained CSFB.
- No. 3: Mafco did not retain CSFB. Rather, Coleman retained CSFB.
- Nos. 4, 5, 11, 12, 17, 21: CSFB did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did with Sunbeam.
- Nos. 9, 10, 13, 14: Wachtell Lipton, Rosen & Katz did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did with Sunbeam.
- Nos. 16, 18, 20, 22: Wachtell, Lipton, Rosen & Katz performed customary legal services in connection with the Coleman Transaction.
- No. 23: One or more of the pre-March 19, 1998 drafts of the Arthur Andersen comfort letters were communicated to Morgan Stanley on or about March 18, 1998 and pre-March 19, 1998 drafts of the comfort letter have been produced in this litigation.

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Morgan Stanley's Third Set of Requests for Admission:

Nos. 9, 13, 17: Coleman did not close the March 30, 1998 Coleman Transaction. Coleman could not have obtained the "comfort letters" described by Section 7.3(b) of the Public Merger Agreement prior to the March 30, 1998 closing of the CPH transaction.

Nos. 10, 14, 18: CLN could not have obtained the "comfort letters" described by Section 7.3(b) of the Public Merger Agreement prior to the March 30, 1998 closing of the CPH transaction.

Nos. 11, 15, 19: CPH could not have obtained the "comfort letters" described by Section 7.3(b) of the Public Merger Agreement prior to the March 30, 1998 closing of the CPH transaction.

No. 12, 16, 20: Mafco did not close the March 30, 1998 Coleman Transaction. Mafco could not have obtained the "comfort letters" described by Section 7.3(b) of the Public Merger Agreement prior to the March 30, 1998 closing of the CPH transaction.

Morgan Stanley's Fourth Set of Requests for Admission:

No. 1: The February 23, 1998 Letter was not drafted by counsel for CPH and was not signed.

No. 2: There is no evidence that the February 23, 1998 Letter is the agreement referred to in those merger agreement provisions.

Nos. 3, 4, 10, 11, 12, 13, 14: In negotiating the merger agreement, CPH requested and Sunbeam agreed to provide information reflecting any material adverse development in Sunbeam's performance or operations. The information referred to in these Requests plainly would have been within the scope of that provision. Morgan Stanley knew that Sunbeam had an

affirmative obligation to notify CPH of any material adverse change and yet Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH this information.

No. 5: CPH did not learn that 50% of Sunbeam's sales typically occurred in the last month of the quarter. Rather, CPH reviewed analyst commentary that suggested that in the third quarter of 1997, 50% of Sunbeam's sales occurred in the last month of the quarter.

No. 6: An analyst mentioned possible international sales pipeline filling.

No. 7: Not all Sunbeam Research Analysts decreased their estimates of Sunbeam's 1998 Earnings Per Share.

No. 8: No one told CPH representatives that Sunbeam's February 1998 sales were slow.

No. 15: Sunbeam and Morgan Stanley misrepresented and concealed the true facts concerning Sunbeam during the negotiations with CPH and Coleman.

No. 17: Morgan Stanley participated in the oral presentation of the Long Range Strategic Plan, which also was presented by both Morgan Stanley and Sunbeam in written form.

Nos. 18, 20, 21, 22: The facts known to Sunbeam and Morgan Stanley rendered those statements false.

No. 19: CPH lacks information sufficient to answer this request. CPH further states that Morgan Stanley adopted and vouched for the statements by incorporating them into Morgan Stanley's presentation.

No. 23: CPH wanted and accepted Sunbeam's stock on the basis of Sunbeam's and Morgan Stanley's representations concerning the condition and performance of Sunbeam, but CPH did not affirmatively request it.

No. 25: CPH exercised its rights by obtaining the right in § 6.8 of the Holdings Merger Agreement to receive notice of material adverse changes. Further, among other things, (a) CPH

received and reviewed Sunbeam's Annual Report on Form 10-K for the year ended December 29, 1997; (b) a CPH representative attended one of the "roadshow" presentations made by Sunbeam and Morgan Stanley in connection with its offering of Senior Subordinated Convertible Debentures that were used to finance the acquisition; (c) a CPH representative obtained and reviewed the offering memorandum prepared and distributed by Sunbeam and Morgan Stanley in connection with the offering of the debentures; (d) CPH received and reviewed the March 19, 1998 press release drafted by Sunbeam and Morgan Stanley; (e) following its receipt of the March 19, 1998 press release, one or more CPH and/or Coleman representatives contacted and spoke with one or more Sunbeam and/or Morgan Stanley representatives concerning the release and Sunbeam's expectations for first quarter 1998.

No. 26: CPH does not have information sufficient to determine whether the handwriting on the identified documents is authentic.

No. 27: CPH does not believe that the documents on Exhibit 2 of the response meet the requirements of Florida Evidence Code ¶ 90.803(b). As to the remaining documents and all handwriting, CPH denies that or does not have information sufficient to determine whether those documents meet the requirements of Florida Evidence Code ¶ 90.803(a).

No. 28: CPH did not author the documents or handwriting in question.

INTERROGATORY 5: State the value that CPH and/or Mafco ascribed to the warrants that they received from Sunbeam pursuant to the August 12, 1998 settlement between CPH and Sunbeam, including but not limited to the value that CPH and Mafco placed upon the warrants for tax or accounting purposes and an identification of all persons from CPH, Mafco, or their outside advisors involved in the valuation.

FURTHER OBJECTION AND RESPONSE: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without securing the agreement of plaintiff or a court order. CPH further objects that the interrogatory is overbroad and not reasonably calculated to lead to the

discovery of admissible evidence to extent that the interrogatory is not limited as to time. CPH further objects that neither the tax treatment nor the accounting treatment of the warrants is a relevant issue in this case. CPH further objects that it has not placed the treatment of the warrants for taxation purposes at issue in this action, and Morgan Stanley has failed to show that it is unable to obtain discovery concerning the value of the warrants from other sources. CPH further objects to this interrogatory to the extent that it calls for information protected by the attorney-client privilege, work product doctrine or the accountant privilege. Moreover, CPH further objects to this interrogatory as vague and ambiguous in its use of the term "value," which is susceptible to different meanings.

Subject to and without waiving its Initial or Further Objections, CPH states that the warrants had no value to CPH when they were received, or at any time thereafter. CPH refers to the November 18, 2004 corporate representative deposition of CPH (Mr. Laurence Winoker), the November 17 and November 18, 2004 deposition of Ronald O. Perelman, and the November 19, 2004 deposition of Howard Gittis for information concerning the economic value ascribed to the warrants by CPH and its management, as well as CPH's treatment of the warrants in CPH's books and records.

INTERROGATORY 6: Identify every potential bidder and/or acquirer for Coleman that discussed a proposed acquisition of Coleman with Mafco, CPH or Coleman between January 1, 1997 and March 30, 1998, including without limitation "the most likely potential bidder" referenced at CPH 0634057 of the 2/25/98 Coleman Board Meeting Minutes. Your response should include the dates, terms and outcome of any such discussions.

FURTHER OBJECTION AND RESPONSE: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without securing the agreement of plaintiff or a court order. CPH further objects that the interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its Initial and Further Objections, CPH

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states that the "most likely potential bidder" referenced in the February 25, 1998 Coleman Board meeting minutes was Brunswick Corporation. In further response, CPH incorporates by reference the November 19, 2004 deposition testimony of Howard Gittis concerning the contact with Brunswick.

Dated: November 24, 2004

As to objections:

By: 

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to counsel listed below on this 24th day of November, 2004:

Thomas A. Clare
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen
Kellogg, Huber, Hansen, Todd
& EVANS, P .L.L.C.
Sumner Square, 1615 M Street N.W.
Suite 400
Washington, D.C. 20036-3209


Deirdre E. Connell

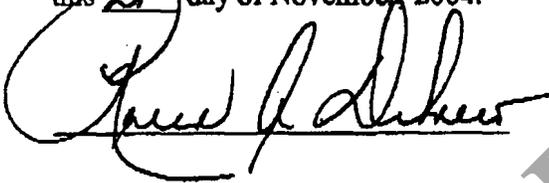
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I, Steven L. Fasman, being duly sworn, depose and say that I am authorized on behalf of Coleman (Parent) Holdings Inc. and, on its behalf, I have read the foregoing COLEMAN (PARENT) HOLDINGS INC.'S RESPONSES AND OBJECTIONS TO MORGAN STANLEY & CO., INC.'S FIFTH SET OF INTERROGATORIES, and to the best of my knowledge and belief the response contained therein is true and correct.


STEVEN L. FASMAN

Subscribed and sworn to before me
this 27th day of November, 2004.



KAREN A. DeMECO
Notary Public, State of New York
No. 01DE4688502
Qualified in Queens County
Commission Expires March 30, 2007

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021808

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

_____)	
COLEMAN (PARENT) HOLDINGS INC.,)	
)	
Plaintiff,	)	Case No. 2003 CA 005045 AI
)	
v.	)	Judge Elizabeth T. Maass
)	
MORGAN STANLEY & CO., INC.,	)	CONFIDENTIAL -
	)	FILE UNDER SEAL
Defendant.)	
_____)	

**COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE
TO MORGAN STANLEY & CO. INCORPORATED'S
FIRST SET OF INTERROGATORIES**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, and pursuant to Florida Rules of Civil Procedure 1.280 and 1.340, hereby responds and objects to Morgan Stanley & Co. Incorporated's ("Morgan Stanley") First Set of Interrogatories as follows:

INITIAL OBJECTIONS

1. CPH objects to Defendant's First Set of Interrogatories, including all Definitions and Instructions, to the extent they purport to impose upon CPH any requirements that exceed or are inconsistent with the Florida Rules of Civil Procedure or any other applicable rule or court order. For example, CPH will not comply with Instructions Nos. 3, 4, 5, 6, 7, and 8 to the extent that they purport to impose upon CPH obligations that are not required under Florida law. CPH will comply with the applicable rules and law.
2. CPH objects to defendant's interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other privilege, doctrine, immunity, or rule.

3. CPH objects to the definition of "CPH," "MAFCO," and "You" to the extent it includes CPH's counsel in this litigation. CPH interprets these definitions to exclude Jenner & Block, LLC and Searcy Denney Scarola Barnhart & Shipley P.A.

4. CPH's response to any interrogatory is not intended and should not be construed as an acknowledgment that the requested information is relevant or that any persons identified actually possess knowledge or information relevant to the subject matter of this action.

5. CPH's objections and responses are based on a good-faith investigation. CPH expressly reserves the right to amend and/or modify its objections and responses.

6. CPH responds to Morgan Stanley's interrogatories without waiving the Initial Objections. CPH incorporates, as though fully set forth therein, these Initial Objections into each of the Responses and Objections set forth below.

RESPONSES AND FURTHER OBJECTIONS

INTERROGATORY NO. 1: Identify all individuals who may have discoverable information relating to the allegations in your Complaint and state, with respect to each, the subjects of the information the [sic] possess.

RESPONSE: CPH objects to Interrogatory No. 1 as vague and overbroad to the extent that it requires CPH to identify "all individuals" with "discoverable information" relating to CPH's complaint, including all individuals who have some knowledge of matters that are not or should not be in dispute. CPH further objects to Interrogatory No. 1 as overbroad and unduly burdensome because it requests that CPH state all information in the possession of each person identified. CPH also notes that Defendant's Interrogatory No. 1 constitutes multiple separate interrogatories. Subject to and without waiving this objection or the foregoing Initial Objections, Plaintiff believes that, based upon its investigation to date, the following individuals may have knowledge of the facts alleged in Plaintiff's Complaint:

Arthur Andersen LLP

*Rosemary Alberto
Lawrence Bornstein
Mark Brockelman
Steven Davis
Donald Denkhaus
Richard Dieter
Miguel A. Fonseca
Phillip E. Harlow
Urban Kantola
Vance Kistler
Timothy LaMacchia
Dennis Pastrana
William Pruitt
John Riley
Amy Ripepi
Gregory B. Wilder
John Zamora*

Bank of America NT & SA

*Deirdre Doyle
Chuck Francavilla
Laurens F. Schaad, Jr.
Igor Suica*

Bear Stearns

Constance Maneaty

Buckinham Research

William Steele

CIBC Oppenheimer

Scott Graham

The Coleman Company, Inc.

*Karen Clark
Frank Gifford
Steven R. Isko
Lawrence M. Jones
Ann D. Jordan
Jerry W. Levin
John A. Moran
Scott Ochs
Joseph P. Page
James D. Robinson, III
Paul Shapiro*

*William H. Spoor
Gwen Wisler*

Coopers & Lybrand

*Jack Bonini
Donald Burnett
Jong Lee
Eric Mauch
Andrew Molenaar
Tom Nicholas
Dick Oishi
Keith Polak
Chris Ruggeri
Dave Winston*

Credit Suisse First Boston

*Robert Duffy
Steven Geller
Chuck Ward*

Davis Polk & Wardwell

*David Caplan
Alan Dean
Peter Douglas
Nicole Duncan
Edith Fassberg
Gail Flesher
Charles Hsieh
Alexander Kwit
Peter Levin
James Lurie
William Megevick
Po Sit
Monica Sliva
Bradley Smith
Heather Stack*

Deloitte & Touche

*Jane Ameen
Edward Breheny
Debra Cohen
Stephen Galluci
Marc Glogoff
John Gordon
Anthony Sasso
Noel Spiegel*

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*Steve Thibault
Kenneth Thompson
Christina Tsang
Thomas Williamson*

Ernst & Young LLP

*Keith Chalfaut
Gerald D. Cohen
Michael J. Fitzpatrick
James M. Havel
Ken Marshall
Michael F. Mullen
Kevin Reilly
Mitchell Rosendorf*

First Union

*Barbara Adams
M. Walker Duvall
Andrew J. Gamble
Tom Molitor
Kimberly A. Quinn*

Franklin Mutual Advisors

*Peter Langerman
Michael Price*

Global Financial Press

Ken McLure

Goldman Sachs

Elizabeth Fontinelli

Hill & Knowlton

Mauri Hope

Llama Company

*Kerry L. Hairston
B. Scott Hollingsworth
Alice L. Walton*

MacAndrews & Forbes Holdings Inc.

*Lenny Ajzenman
Glenn Dickes
Donald Drapkin
Irwin Engelman
Norman Ginstling*

*Howard Gittis
James Maher
William Nesbitt
Ronald Perelman
Joram C. Salig
Paul G. Savas
Barry F. Schwartz
Todd Slotkin
Bruce Slovin*

Merrill Lynch
Deepak Raj

Morgan Stanley & Co., Inc.

*Christopher Bodner
Shani Boone
Thomas Burchill
Marianne Carrel
Tyrone Chang
Nicole Cheslock
Andrew Conway
Henry D'Allessandro
Ben Derito
James Dormer
Morgan Edwards
Karen Eltrich
Richard Felix
Kurt Feuerman
Bruce Fiedorek
Robert Franz
Jake Foley
Alexandre Fuchs
Roger Gilbert
Johannes Groeller
David Hall
Brooks Harris
Michael Hart
John Irish
Robert Kitts
William Kourakos
Jason Kunreuther
Robert Lee
Kirstoffer Mack
Michael McGlaughlin
Patrick McNellis
Scott Mulcahy*

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*John Oren
Vikram Pandit
Ruth Porat
Soumya Prasad
Christopher Pucillo
Lily Rafii
Simon Rankin
William Reid
Hartley Rogers
Andrew Savarie
Ishaan Seth
Dwight Sippelle
Scott Sippelle
Bram Smith
William Strong
James Stynes
John Tyree
Josh Webber
Chris Whelen
James Wilmott
Jill Woodworth
William Wright
Gene Yoo*

Paine Webber
*Robert Quinn
Andrew Shore*

Skadden, Arps, Slate, Meagher & Flom LLP

*Alison Amorison
Stephen Banker
Steven Daniels
Bobby Davies
Adrian Deitz
Richard Easton
Greg Fernicola
Blaine Fogg
Todd Freed
Michele Gartland
Leander Gray
Mathew Greendberg
Christopher Malloy
Peter Neckles
Timothy Nelson
Mark Shehan
Mitchell Solomon*

Bill Weiss
Robert Zimet

Sunbeam

Lisa Dalberth
Steve Dalberth
Deidra DenDanto
Albert Dunlap
Charles Elson
David Fannin
Robert Gluck
Richard Goudis
Lee Griffith
Steve Groh
Thomas Hartshorne
Kyle Kaiser
Janet Kelley
Russell Kersh
Howard Kristol
Al LeFevre
Deborah MacDonald
Warren Myers
William T. Rutter
Charles Thayer
George Timchal
Shimon Topor
Donald R. Uzzi
Faith Whittlesey
Scott Yales

Wachtell Lipton Rosen & Katz

Peter C. Canellos
Steven A. Cohen
Adam O. Emmerich
David M. Finhorn
Michael S. Katze
Frank Miller
Deborah L. Paul
Paul K. Rowe
Rachelle Silverberg

CPH further responds to this interrogatory by referring Morgan Stanley to the following documents:

MORGAN STANLEY CONFIDENTIAL 0003921-0003930
MORGAN STANLEY CONFIDENTIAL 0001923-0001931
MORGAN STANLEY CONFIDENTIAL 0003348-0003363
MORGAN STANLEY CONFIDENTIAL 0003332-0003347
MORGAN STANLEY CONFIDENTIAL 0003364-0003381
MORGAN STANLEY CONFIDENTIAL 0019287-0019313
MORGAN STANLEY CONFIDENTIAL 0001792-0001818
MORGAN STANLEY CONFIDENTIAL 0003315-0003331
MORGAN STANLEY CONFIDENTIAL 0004673-0004702
MORGAN STANLEY CONFIDENTIAL 0001050-0001077
MORGAN STANLEY CONFIDENTIAL 0005453-0005469
MORGAN STANLEY CONFIDENTIAL 0021232-0021259
MORGAN STANLEY CONFIDENTIAL 0019524-0019529

and the depositions that CPH produced to Morgan Stanley on August 14, 2003.

Plaintiff's investigation continues.

INTERROGATORY NO. 2: Identify all Advisors and state, with respect to each, the nature of the services they performed in connection with the Coleman Transaction.

RESPONSE: CPH objects to the definition of "Coleman Transaction" because Morgan Stanley's definition mischaracterizes the transaction that closed on March 30, 1998. CPH will construe the term "Coleman Transaction" to mean the transaction by which CPH transferred its interest in The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation ("Sunbeam"). Subject to and without waiving the foregoing Initial Objections and consistent with its interpretation of the term "Coleman Transaction," CPH responds that the following third parties provided advice and/or assistance to CPH in connection with the transaction by which CPH transferred its interest in Coleman to Sunbeam:

<u>ADVISOR</u>	<u>NATURE OF SERVICES</u>
<i>Credit Suisse First Boston</i>	Financial Advisor
<i>Wachtell, Lipton, Rosen & Katz</i>	Legal Advisor

INTERROGATORY NO. 3: Identify with particularity all misrepresentations by MS & Co. that CPH intends to rely upon at trial and state, with respect to each such statement, the date and time the representation was made; the document, setting or circumstances in which the representation was

made; the person(s) who made the representation; the exact wording of the misrepresentation; and all reasons why CPH believes the misrepresentation was false when it was made.

RESPONSE: CPH notes that Interrogatory No. 3 constitutes at least six separate interrogatories. CPH objects to this interrogatory on the grounds that it is premature, particularly given that: (a) Morgan Stanley has made only limited productions of documents in response to CPH's May 9, 2003 First Request for the Production of Documents; (b) Morgan Stanley has indicated that its document production is not complete and has not advised CPH when Morgan Stanley will complete its document production; and (c) Morgan Stanley has yet to produce a single witness in response to CPH's May 9, 2003 Notice of Depositions. Nevertheless, subject to and without waiving these objections and the foregoing Initial Objections, CPH responds that Morgan Stanley's misrepresentations include the following:

On February 23, 1998, Morgan Stanley representatives Messrs. Fuchs, Stynes, and Kitts and Sunbeam representatives Messrs. Kersh, Fannin and Goudis met with Messrs. Levin, Page, Shapiro, Maher and Nesbitt, along with representatives of CSFB, at Morgan Stanley's offices. At that meeting, Sunbeam and Morgan Stanley representatives provided the CPH representatives with "Discussion Materials" (see CP 01908-01985) and Sunbeam's Strategic Plan (see MF 00001-00019). Those two documents contained numerous falsehoods, including misrepresentations about Sunbeam's performance, its supposed "turnaround," its restructuring program, its sales programs, its "channel management" programs, its new products, its "operational improvements," its purported opportunities for growth, and the value of Sunbeam's stock. In addition, Morgan Stanley and Sunbeam made the following oral false representations:

- Sunbeam would meet or exceed Wall Street's first quarter 1998 earnings estimates;
- Sunbeam's first quarter 1998 sales were tracking fine;
- Wall Street analysts' 1998 earnings estimates for Sunbeam were correct;

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- They were quite confident that Sunbeam would earn \$2.20 per share in 1998;
- Sunbeam was on track for 1998;
- The increase in earnings from 1997 to 1998 was based on cost decreases that already had been accomplished;
- Sunbeam's turnaround was real;
- Sunbeam would have \$341 million in grill revenue in 1998;
- Sunbeam's "early buy" sales program would not hurt Sunbeam's future revenues;
- The stock portion of the transaction represented consideration worth approximately \$600 million;
- Sunbeam's 1998 and 1999 business plan was easily achievable, probably low.
- Sunbeam's new air and water products worked.
- Sunbeam's air and water products would add approximately \$100 million in revenue in 1998.

Those representations were false when made. For example, Sunbeam's first quarter 1998 sales were well behind the pace of the previous year — they were down 60% in January (\$28 million in January 1998, compared to \$73 million in January 1997) — and well behind Sunbeam's projections. Morgan Stanley understood that those representations were false no later than March 19, 1998 when it received a letter from Sunbeam's outside accountants, which stated, "[a]lthough the company has not provided us with any financial statements as of any date or for any period subsequent to February 1, 1998, management has provided net sales from December 29, 1997 through March 1, 1998, which were \$72,018,000 as compared to \$143,499,000 for the corresponding period of the preceding year" and that the reason for the shortfall was that Sunbeam's "early buy" program had accelerated Sunbeam's first quarter 1998 sales into fourth quarter 1997. (MORGAN STANLEY CONFIDENTIAL 0000376-0000382.)

On March 19, 1998, Sunbeam, with Morgan Stanley's knowledge and assistance, prepared and issued a false press release that affirmatively misstated and concealed Sunbeam's true financial condition: "Sunbeam Corporation . . . said today that it is possible that its net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates for \$285 million to \$295 million, but net sales are expected to exceed 1997 first quarter net sales of \$253.4 million. . . . The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the Company's major retail customers. The Company further stated that based on the strength of its new product offerings and powerful brand names, it remains highly confident about the overall sales outlook for its products for the entire year." (MORGAN STANLEY CONFIDENTIAL 0016944-0016945.) The March 19, 1998 press release made no disclosure of Sunbeam's earnings for the quarter, which Wall Street analysts had expected to be in the range of \$0.30 to \$0.33 per share (excluding one-time charges), based upon Sunbeam's disclosures up to that point.

Morgan Stanley knew that this press release was false and misleading. The release failed to disclose the material variance between Sunbeam's actual January and February 1998 sales and the sales needed to render those projections and estimates accurate. Furthermore, the press release failed to disclose the reason for the collapse of Sunbeam's sales and earnings. Morgan Stanley knew when the statement issued that Sunbeam would not meet the \$285 million to \$295 million in net sales for the first quarter of 1998, which is the result Wall Street analysts had expected and which the March 19 press release said still was a reasonable possibility. Likewise, Morgan Stanley knew that Sunbeam would not meet the 1997 sales level for the first quarter as Sunbeam would have needed sales of \$123.3 million over the 12 remaining days of the quarter in order to reach that result.

After Sunbeam's false press release was issued, Morgan Stanley assisted Dunlap and Kersh in communications with analysts, investors, and CPH that the March 19, 1998 release was a purely cautionary statement because some first quarter 1998 sales might simply "spillover" into the second quarter but that Sunbeam still believed that it actually would meet analysts' estimates of \$285 million to \$295 million in first quarter 1998 sales. In fact, Morgan Stanley knew and had been told by Sunbeam's auditors that Sunbeam's first quarter 1998 problem was mainly due to sales being "accelerated" into the fourth quarter of 1997, not delayed until later in 1998.

In addition, Morgan Stanley knew no later than March 25, 1998 that Sunbeam's earnings for the first quarter of 1998 were going to miss Wall Street analysts' earnings expectations, which had been lowered slightly in the wake of the March 19, 1998 press release to \$0.28 to \$0.31 per share (excluding one-time charges). By letter dated March 25, Sunbeam's outside auditors advised Morgan Stanley that Sunbeam had suffered a loss during the first two months of 1998 of \$41.19 million, including a one-time charge of \$30.2 million. (MORGAN STANLEY CONFIDENTIAL 0020799.) Excluding that one-time charge, Sunbeam's loss for the first two months was \$0.13 per share. To achieve first quarter operating earnings of \$0.28 per share, which was at the low end of analyst expectations, Sunbeam would have needed to realize a profit of \$24 million during March 1998, when Sunbeam was frantically attempting to cut deals to close the massive gap between its actual net sales and its public statements. There was no possibility that Sunbeam could do so. Although that information was highly material, it was not disclosed to CPH or the public until after Sunbeam's acquisition of CPH's interest in Coleman closed on March 30, 1998.

CPH further responds to this interrogatory by referring Morgan Stanley to the following documents that contain misrepresentations concerning Sunbeam's performance, its "turnaround,"

its growth opportunities, the value of Sunbeam's stock, and the value of the consideration CPH was to receive in connection with the transfer of its interest in Coleman to Sunbeam:

SB 232346
MS 0007797-0007970
SB 0018203-0018288
MS 009999
CP 038199-038206
CP 016766
CP 039154-039157
CP 016747-016750
CP 004888
CP 009659-009660
CP 046317-046319

Plaintiff's investigation continues.

INTERROGATORY NO. 4: Identify all persons involved in developing, preparing, reviewing, or verifying the information reflected on the Schedule of Synergies and state, with respect to each, their [sic] nature of their involvement.

RESPONSE: CPH objects to the term "Schedule of Synergies" on the grounds that it mischaracterizes the document attached as Exhibit A to Morgan Stanley Senior Funding's ("MSSF") Complaint. On its face, Exhibit A to MSSF's Complaint states that it is a list of "IDEAS." By answering this interrogatory CPH does not concede that the document attached as Exhibit A to MSSF's Complaint is a "schedule of synergies." Subject to and without waiving this objection or the foregoing Initial Objections, CPH believes that Jerry Levin, Paul Shapiro, and Joseph Page of The Coleman Company, Inc. were involved in preparing Exhibit A attached to MSSF's Complaint.

Plaintiff's investigation continues.

INTERROGATORY NO. 5: Identify all transactions since 1993 in which CPH or MAFCO, or any company owned, controlled, or affiliated with CPH or MAFCO, has received stock as any portion of the consideration for the transaction.

RESPONSE: CPH objects to this interrogatory on the ground that the time period "since 1993" is over broad and requests information not relevant to this action. CPH further objects to this

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interrogatory on the ground that it is vague and ambiguous insofar as the terms "controlled," "affiliated" and "stock" are not defined and, therefore, the interrogatory is subject to multiple interpretations. CPH will interpret this interrogatory as follows: (i) "controlled" means ownership of at least 50% of the equity of a company; (ii) "affiliated" means under common control; and (iii) "stock" is understood in its usual sense as shares of a corporation that are a claim on the corporations's earnings and assets in a for-profit business entity. CPH's response to this interrogatory does not include any transactions involving purchases of stock on the open market (e.g., the following types of transactions are excluded from CPH's response: (a) any stock repurchase program by any affiliate of CPH or MAFCO; (b) any stock purchased by an affiliate of CPH or MAFCO for short-term investment purposes; and (c) any purchase of stock that resulted in CPH, MAFCO, or their affiliates owning less than 5% of the outstanding equity of the company). Subject to these objections and the foregoing Initial Objections, and consistent with CPH's interpretation of this interrogatory, CPH identifies the following material transactions:

Transactions by CPH:

- In 1998, CPH transferred its 82% interest in The Coleman Company, Inc. ("Coleman") to the Sunbeam Corporation ("Sunbeam") for 14.1 million shares of Sunbeam stock and other consideration.

Transactions by MAFCO:

- In 2003, as part of a series of related transactions, MAFCO purchased Series C Preferred Stock from Revlon, Inc. ("Revlon") and purchased, in a private sale, shares of Class A Common Stock from Revlon.

Transactions by Companies Controlled by MAFCO:

- In 1993, Revlon Holdings Inc. purchased Series A Preferred Stock from Revlon.
- In 1993, New Marvel Holdings Inc. purchased shares of Marvel Entertainment Group, Inc. ("Marvel Entertainment") pursuant to a tender offer.
- In 1993, Marvel Entertainment received shares in Toy Biz, Inc. pursuant to an agreement whereby Marvel contributed various assets to Toy Biz, Inc.

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- In 1993, Andrews Group Incorporated received shares in SCI Television, Inc. ("SCI") in connection with a \$100 million contribution to the SCI plan of reorganization.
- In 1993, Four Star International Inc. purchased 50% of the shares of Genesis Entertainment, Inc. from a group of private investors.
- In 1993, National Health Care Group, Inc. ("NHCG") purchased shares of Boston Whaler, Inc. from Reebok International Ltd.
- In 1994, Marvel Entertainment purchased shares in Maxwell Communications Italia S.p.A. owned by private investors.
- In 1994, Marvel Entertainment purchased shares in Welsh Publishing Group, Inc. owned by a private investor.
- In 1994, Marvel Entertainment purchased shares in Malibu Comics Entertainment, Inc. owned by a private investor.
- In 1995, Fleer Corp. purchased shares in Skybox International Inc. owned by a private investor.
- In 1995, Coleman purchased the shares in Sierra Corporation of Forth Smith, Inc. owned by a group of private investors. [Coleman was controlled by both CPH and MAFCO]
- In 1995, Roux Laboratories, Inc. ("Roux") purchased the shares of Creative Nail Design Systems, Inc. owned by a group of private investors.
- In 1995, National Health Laboratories Holdings Inc. ("NHL") merged with Roche Biomedical Laboratories, Inc. to form Laboratory Corporation of America Holdings Inc. ("Labcorp"), and NHCG received Labcorp shares in exchange for its NHL shares.
- In 1996, Roux purchased shares of American Crew, Inc. owned by a group of private investors.
- In 1996, First Nationwide Bank, A Federal Savings Bank ("First Nationwide") purchased shares in SFFed Corp. held by a group of private investors.
- In 1996, First Nationwide purchased shares in Home Federal Financial Corporation held by a group of private investors.
- In 1997, First Nationwide purchased shares in Cal Fed Bancorp Inc. pursuant to a tender offer.
- In 1997, Prestige Fragrance & Cosmetics, Inc. ("PFC") merged with and into Cosmetic Center, Inc. ("Cosmetic Center"), and Revlon Consumer Products Corporation received Cosmetic Center shares for its PFC shares.
- In 1997, Andrews Group Incorporated ("Andrews") received shares of News Corporation Ltd. ("Newscorp") as part of a transaction in which Newscorp acquired Andrew's shares of New World Communication Group Inc.
- In 1998, Roux purchased shares of A.P. Products Ltd. owned by a group of private investors.
- In 1998, First Gibraltar Holdings Inc. ("FGH") received shares of Golden State Bancorp Inc. ("Golden State") as part of a transaction in which Glendale Federal Bank, Federal Savings Bank, a subsidiary of Golden State, merged with and into California Federal Bank, a Federal Savings Bank, a partially owned subsidiary of FGH. As part of this transaction, FGH entered into an agreement pursuant to which it became entitled to receive Golden State shares in respect of certain tax benefits enjoyed by Golden State.
- In 2001, Revlon Holdings Inc. received common and preferred shares of Revlon in exchange for certain assets held by Revlon Holdings Inc.

- In 2002, a subsidiary of Citigroup, Inc. merged with Golden State, and GSB Investments Corp. received Citigroup, Inc. shares for its Golden State shares. As part of this transaction, the right of GSB Investments Corp. to receive Golden State shares in respect of certain tax benefits converted into a right to receive Citigroup, Inc. shares.

Transactions by Other Affiliates of CPH and MAFCO:

- In 1995, C&F (Parent) Holdings Inc. ("C&F Parent") received shares in Mafco Consolidated Group Inc. ("MCG"), which itself was the result of a merger between Abex Inc. and C&F Merger Inc., a wholly owned subsidiary of C&F Parent. As part of the same transaction, MCG received preferred shares in Power Control Technologies Inc. ("PCT"), a former subsidiary of Abex Inc.
- In 1995, MCG purchased shares in MCG and PCT held by a private investor.
- In 1997, Consolidated Cigar Corporation purchased shares in Fabrica de Tabacos La Flor de Copan, S.A. de C.V. from a group of private investors.
- In 1998, PX Holding Corporation ("PX Holding") purchased shares of Panavision Inc. ("Panavision") from Panavision as part of a recapitalization of Panavision.
- In 1999, PX Holding purchased shares in Panavision from a private investor.
- In 2001, PX Holding purchased newly issued preferred shares in MFW.
- In 2001, PX Holding received common and preferred shares of M & F Worldwide Corp. ("MFW") as part of a transaction in which PX Holding sold to MFW its shares in Panavision.
- In 2001, MFW purchased the shares in Las Palmas Productions, Inc. from a group of private investors.
- In 2001, as part of the settlement of litigation, MFW purchased certain of its shares held by a private investor.
- In 2001, Mafco Holdings Inc. received preferred shares in MFW in exchange for certain Senior Subordinated Discount Notes (the "Notes") that it owned.
- In 2001, MFW received preferred shares in Panavision in exchange for the Notes that MFW had received from PX Holding and other Notes.
- In 2002, Mafco Holdings Inc. purchased preferred shares in Panavision from Panavision.
- In 2002, PX Holding received the shares it formerly held in Panavision, as well as certain preferred shares in Panavision, as part of the settlement of litigation relating to the 2001 sale transaction. In 2003, Mafco Holdings Inc. purchased preferred shares in Panavision from Panavision.
- In 2003, PX Holding exchanged one series of preferred shares in Panavision for another.
- In 2003, PX Holding and Panavision International, L.P. each purchased shares in PANY Rental, Inc. from a group of private investors.
- In 2003, Mafco Holdings Inc. purchased units in SpectaGuard Acquisition LLC and all of the shares of SpectaGuard Holding Corporation, a unitholder in SpectaGuard Acquisition LLC.

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Dated: September 2, 2003

As to Objections:

By: *Deirdre E. Connell*

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ATTORNEYS FOR COLEMAN (PARENT) HOLDINGS INC.

NOT A CERTIFIED COPY

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I, Steven L. Fasman, being duly sworn, depose and say that I am authorized on behalf of Coleman (Parent) Holdings Inc. and, on behalf of Coleman (Parent) Holdings Inc., I have read the foregoing COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY & CO. INCORPORATED'S FIRST SET OF INTERROGATORIES, and to the best of my knowledge and belief the responses contained therein are true and correct.


STEVEN L. FASMAN

Subscribed and sworn to before me
this 2nd day of September, 2003.


Notary Public

DEBBIE HERNANDEZ
Notary Public, State of New York
No. 01HE5021255
Qualified in Queens County
Certificate Filed in New York County
Commission Expires December 13, 2005

NOT A CERTIFIED COPY

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CERTIFICATE OF SERVICE

I, Deirdre E. Connell, hereby certify that a true and correct copy of the foregoing **COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY & CO. INCORPORATED'S FIRST SET OF INTERROGATORIES** has been served upon the parties listed below via Facsimile and Federal Express on this 2nd day of September, 2003.

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DEIRDRE E. CONNELL

Document Number: 956144

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO. 2003 CA 005045 AI

MORGAN STANLEY & CO., INC.,

Judge Elizabeth T. Maass

Defendant.

**COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE
AND OBJECTIONS TO MORGAN STANLEY & CO. INC.'S
FOURTH SET OF INTERROGATORIES**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys and pursuant to the Florida Rules of Civil Procedure 1.280, 1.340, and 1.350, hereby responds and objects to Morgan Stanley & Co., Inc.'s ("Morgan Stanley") Fourth Set of Interrogatories as follows:

INITIAL OBJECTIONS

1. CPH incorporates by reference the Initial Objections set forth in its written response to Morgan Stanley's first set of interrogatories.

INTERROGATORY RESPONSE AND FURTHER OBJECTIONS

INTERROGATORY 1: For each and every alleged misrepresentation identified by you in your response to Interrogatory No. 3 of MS & Co.'s First Set of Interrogatories to CPH, identify with particularity the date and time that you contend MS & Co. knew the alleged representation to be false or misleading, and identify with particularity the event(s), document(s), or circumstance(s) under which you contend MS & Co. obtained that knowledge, including the identity of the person(s) you contend provided and obtained that knowledge.

RESPONSE: CPH objects to this interrogatory on the grounds that it is premature as discovery is ongoing in this case. CPH also objects to the extent the interrogatory calls for CPH to describe all of the documents and deposition testimony supporting its claims,

which information is equally available to Morgan Stanley. Subject to and without waiving this objection and the Initial Objections, CPH responds that Morgan Stanley learned throughout 1997 and 1998 that certain of Morgan Stanley's representations to CPH, or certain representations made by Sunbeam in Morgan Stanley's presence, concerning Sunbeam's business and financial performance and condition, the value of Sunbeam's stock, and Sunbeam's opportunities for growth were false and misleading. Morgan Stanley has purged its files and failed to produce e-mail records relating to the Sunbeam engagement, which has prejudiced CPH's ability to discover the facts. CPH continues to investigate the dates on which Morgan Stanley personnel knew that Morgan Stanley's representations to CPH were false and misleading, and the events, documents, and circumstances reflecting those misrepresentations. However, discovery in this case reveals the following:

Beginning in April 1997, Morgan Stanley investigated Sunbeam's business and financial condition as Sunbeam's investment advisor, an engagement which ultimately netted Morgan Stanley over \$40 million in professional fees. (Morgan Stanley 0080328; 12/4/2003 W. Strong Dep. at 50-51; Morgan Stanley 0047861.) Morgan Stanley personnel, including William Strong, Bruce Fiedorek, James Stynes, Robert Kitts, David McCreery, John Tyree, Andrew Savarie, Tyrone Chang, Ishaan Seth, Alexandre Fuchs, Lilly Rafii, Gene Yoo, Bram Smith, Michael Hart, and Thomas Burchill, traveled to Sunbeam's Delray Beach, Florida offices to study the company, meet with Sunbeam's senior management team, and aggressively search for a buyer for Sunbeam. (CPH Exhibit 84; CPH Exhibit 37.) At the same time, Morgan Stanley employees, including Tyrone Chang, prepared false and misleading presentation materials about Sunbeam's business and financial performance and condition, its supposed "turnaround," its restructuring program, its sales programs, its "channel management" programs, its new products,

its "operational improvements," its purported opportunities for growth, and the value of Sunbeam's stock. (CPH Exhibit 9; CPH Exhibit 86.)

Morgan Stanley knew that Sunbeam's "turnaround" was illusory and that Morgan Stanley's presentation materials were false and misleading. Morgan Stanley's investigation in the summer of 1997 revealed that Al Dunlap's supposed turnaround of Sunbeam was strikingly similar to Dunlap's "restructuring" of Scott Paper in 1995, which Morgan Stanley knew was a "volume-driven plan [to] prop up" the company for sale. (CPH Exhibit 148; CPH Exhibit 81.) Morgan Stanley's September 1997 game plan for finding a buyer specifically stated that there should be no communication with Kimberly-Clark relating to Sunbeam. (CPH Exhibit 69.) Morgan Stanley was unable to find a buyer for Sunbeam in part because of Sunbeam's high stock price. (1/4/2001 W. Strong Dep. at 167-68.) Morgan Stanley recommended that Sunbeam consider acquiring other companies using Sunbeam's stock, which was fraudulently inflated. (12/4/2003 W. Strong Dep. at 96.)

Two of Morgan Stanley's false and misleading presentations, "Discussion Materials" (CPH Ex. 9) and "Sunbeam Long Range Strategic Plan" (CPH 1324756-1324774), were provided to CPH representatives on February 23, 1998. Additionally, Morgan Stanley representatives, including James Stynes, Robert Kitts, Alexandre Fuchs, and Tyrone Chang, along with Sunbeam representatives, made oral misrepresentations to CPH's representatives regarding Sunbeam's business and financial condition. (CPH 1421922-1421931.) These written materials and oral statements misrepresented the true business and financial condition of Sunbeam and falsely described the purported "turnaround" of the company. As a result of actions taken to inflate Sunbeam's 1997 results, by February 23, 1998, Sunbeam's first quarter 1998 net sales had declined almost 50% over the same period in 1997, and were significantly

below Sunbeam's projections and Wall Street expectations that Sunbeam sales would be substantially higher in the first quarter of 1998 than they had been in 1997. (CPH Exhibit 46; CPH Exhibit 47; CPH Exhibit 17.) Nonetheless, Morgan Stanley never advised CPH's representatives of Sunbeam's dramatically declining sales on February 23, 1998. Instead, Morgan Stanley and Sunbeam together assured CPH's representatives, among other things, that Sunbeam's first quarter 1998 sales were on track and that Sunbeam would meet or exceed Wall Street's first quarter 1998 earnings estimates.

No later than February 28, 1998, Morgan Stanley and other of Sunbeam's advisors began crafting a list of false and misleading responses to "Hard Questions" in advance of the March 2, 1998 announcement of Sunbeam's acquisition of CPH's interest in The Coleman Company, Inc. (2/12/2004 R. Kitts Dep. at 109-118.) A February 28, 1998 draft list of questions and answers contains no statements concerning Sunbeam's performance in the first quarter of 1998. (CPH Exhibit 140.) A March 1, 1998 revised draft includes a question inquiring into Sunbeam's first quarter performance, and the following response: "We're happy with our first quarter so far. We're on target. At this point I'm comfortable with the street estimates." (CPH Exhibit 141.) On another copy of the March 1, 1998 draft, someone crossed out the words: "We're on target." (CPH Exhibit 142.) Later that evening, the answer is revised to read: "The core business is healthy. We're in great shape. We expect that our sales will be up double digits over 1997." (CPH Exhibit 143.) Those statements were false and misleading. Morgan Stanley knew that Sunbeam had serious concerns about its first quarter 1998 performance and was not on target to meet the company's projections. William Strong spoke with Al Dunlap and Russell Kersh two to three times per week in the first quarter of 1998, and had between 50 to 100 telephone conversations with Sunbeam's senior management throughout the engagement. (12/4/2003 W.

Strong Dep. at 225-226; 1/4/2001 W. Strong Dep. at 153-155.) Both Strong and the Morgan Stanley personnel conducting due diligence of Sunbeam were apprised of Sunbeam's sales and earnings in the first quarter of 1998. (12/4/2003 W. Strong Dep. at 245, 250, 252.)

On or about March 17, 1998, Sunbeam's outside auditors sent Morgan Stanley a letter warning that Sunbeam's net sales in the first quarter of 1998 were half of net sales for the same period in 1997, and that the primary reason for the shortfall was that Sunbeam had accelerated first quarter 1998 sales into the fourth quarter of 1997. However, Morgan Stanley again received confirmation of Sunbeam's sales acceleration practices no later than March 12, 1998, when Sunbeam's outside auditors discussed Sunbeam's aggressive revenue recognition practices with Morgan Stanley. (CPH Exhibit 123; CPH Exhibit 28.)

On March 18-19, 1998, Morgan Stanley assisted Sunbeam with preparing a false and misleading press release that affirmatively misstated and concealed Sunbeam's true business and financial condition. (CPH Exhibit 13; CPH Exhibit 14.) Morgan Stanley knew on these dates that the press release was false and misleading. On March 18, Morgan Stanley held internal conferences in its offices and teleconferences with Sunbeam management concerning Sunbeam's first quarter sales shortfall and the issuance of a press release. (11/14/2003 J. Tyree Dep. at 342-348; 360-377.) Morgan Stanley knew that the press release falsely indicated that Sunbeam might meet Wall Street expectations for first quarter 1998 sales and failed to disclose the material variance between Sunbeam's actual January and February 1998 sales and the Wall Street expectations. In fact, the press release made no reference whatsoever to Sunbeam's performance shortfall in January and February, creating the false impression that sales had been on track and that any shortfall would be due to matters arising later in the quarter. The press release failed to disclose that Sunbeam would fall far short of Wall Street expectations for first quarter 1998

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earnings. At this point, Morgan Stanley knew that Sunbeam's net sales for the period December 29, 1997 through March 1, 1998 were half of Sunbeam's net sales for the corresponding period the preceding year and nowhere near \$285 million to \$295 million in net sales, which is the result Wall Street analysts had expected and which the March 19, 1998 press release indicated still was a reasonable possibility. Likewise, Morgan Stanley knew that Sunbeam required sales of approximately \$15 million per day until the close of the first quarter on March 29, 1998 just to match first quarter 1997 sales of \$253 million, which the March 19, 1998 press release said Sunbeam expected to achieve. (CPH Exhibit 14; CPH Exhibit 16; CPH Exhibit 114; 1/15/2004 L. Bornstein Dep. at 81.)

On March 19, 1998, Larry Bornstein, an experienced audit manager with Sunbeam's outside auditors, questioned John Tyree about the misleading statements contained in the press release. Sunbeam's auditors had played no role in writing or issuing the press release and had not been given an opportunity to review it in advance. Bornstein, who had knowledge of Sunbeam's sales and shipping capabilities, told Tyree that he was very skeptical of Sunbeam's ability to achieve the projections described in the press release, and that he disagreed with the plan to include the misleading press release language into the debenture offering memorandum. (1/15/04 L. Bornstein Dep. at 73-75; CPH Exhibit 10.) After Bornstein learned that, in response to these statements, Tyree directed profanity toward him outside his presence, Bornstein confronted Tyree and warned him that Sunbeam better meet the sales projections as reflected in the press release or else "you're all going to get sued." (1/15/2004 L. Bornstein Dep. at 81.) Bornstein then advised Tyree that he would send auditors to the shipping docks at the close of the quarter to monitor Sunbeam's shipping cut-off procedures. (1/15/2004 L. Bornstein Dep. at 79-82.)

Morgan Stanley also knew no later than March 25, 1998 that Sunbeam's earnings for the first quarter of 1998 were significantly lower than Wall Street analysts' earnings expectations, which had been lowered slightly in the wake of the March 19, 1998 press release to \$0.28 to \$0.31 per share (excluding one-time charges). (CPH Exhibit 112; CPH 1393269; CPH 1059641.) By letter dated March 25, Sunbeam's outside auditors advised Morgan Stanley that Sunbeam had suffered a loss during the first two months of 1998 of \$41.19 million, including a one-time charge of \$30.2 million. (CPH Exhibit 112.) Excluding that one-time charge, Sunbeam's loss for the first two months was \$0.13 per share. To achieve first quarter operating earnings of \$0.28 per share, which was at the low end of analyst expectations, Sunbeam would have needed to realize a profit of approximately \$35 million during March 1998, when Sunbeam was frantically attempting to cut deals to close the massive gap between its actual net sales and its public statements. (CPH Exhibit 112; CPH Exhibit 15.) There was no realistic possibility that Sunbeam could do so. Although that information was highly material, it was not disclosed to CPH or the public until after Sunbeam's acquisition of CPH's interest in Coleman closed on March 30, 1998.

CPH's investigation continues.

Dated: February 20, 2004

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As to objections:

By: Michael T. Scarola

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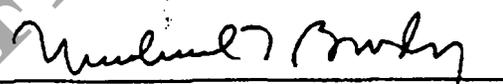
Attorneys for Coleman (Parent) Holdings Inc.

CERTIFICATE OF SERVICE

I, Michael T. Brody, hereby certify that a true and correct copy of the foregoing
COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE AND OBJECTIONS TO MORGAN STANLEY & CO.,
INC.'S FOURTH SET OF INTERROGATORIES has been served upon the parties listed below via
facsimile and U.S. mail on this 20th day of February 2004.

Thomas A. Clare, Esq.
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Joseph Ianno, Jr., Esq.
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West Palm Beach, FL 33401



Michael T. Brody

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021838

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING,
INC.,
Plaintiff,

CASE NO. CA 03-5165 AI

vs.

MACANDREWS & FORBES HOLDINGS,
INC., ET AL.
Defendants.

**COLEMAN (PARENT) HOLDINGS INC.'S AMENDED RESPONSE TO
MORGAN STANLEY & CO., INC.'S FOURTH SET OF INTERROGATORIES**

On February 20, 2004, Coleman (Parent) Holdings Inc. ("CPH") served a written response to Morgan Stanley & Co., Inc.'s ("Morgan Stanley") Fourth Set of Interrogatories. On March 22, 2004, the Court granted in part Morgan Stanley's March 12, 2004 motion to compel and ordered CPH to supplement its February 20, 2004 response. The Court directed CPH to state, if known, the date and time that CPH contends Morgan Stanley knew the alleged misrepresentations in the specific documents or oral statements listed in the Court's March 22, 2004 order were false and/or misleading.

In this Amended Response, CPH incorporates by reference the general and specific objections that it made to Morgan Stanley's Fourth Set of Interrogatories in its written response dated February 20, 2004. CPH also incorporates by reference the objections that it made to the

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interrogatory, both orally and in writing, in response to Morgan Stanley's motion to compel CPH's response to this interrogatory. Without waiving those objections, and in accordance with the Court's March 22, 2004 order, CPH supplements its response as follows. If no time of day appears in the response, CPH contends that Morgan Stanley knew the representations were false and/or misleading when made, but CPH is unable, at this point in its investigation, to specify the time of day Morgan Stanley knew the misrepresentations were false and/or misleading.

INTERROGATORY 1: For each and every alleged misrepresentation identified by you in your response to Interrogatory No. 3 of MS & Co.'s First Set of Interrogatories to CPH, identify with particularity the date and time that you contend MS & Co. knew the alleged representation to be false or misleading, and identify with particularity the event(s), document(s), or circumstance(s) under which you contend MS & Co. obtained that knowledge, including the identity of the person(s) you contend provided and obtained that knowledge.

SUPPLEMENTAL RESPONSE:

(i) **The "Discussion Materials" and Strategic Plan furnished February 23, 1998.**

Morgan Stanley knew no later than February 23, 1998 that the Discussion Materials and Strategic Plan were false and/or misleading.

(ii) **The misrepresentations listed as bullet points in Plaintiff's Response to Interrogatory No. 3 of Defendant's First Set of Interrogatories, namely:**

- **Sunbeam would meet or exceed Wall Street's first quarter 1998 earnings estimates.**
- **Sunbeam's first quarter 1998 sales were tracking fine.**
- **Wall Street analysts' 1998 earnings estimates for Sunbeam were correct.**
- **They were quite confident that Sunbeam would earn \$2.20 per share in 1998.**
- **Sunbeam was on track for 1998.**
- **The increase in earnings from 1997 to 1998 was based on cost decreases that already had been accomplished.**

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- Sunbeam's turnaround was real.
- Sunbeam would have \$341 million in grill revenue in 1998.
- Sunbeam's "early buy" sales program would not hurt Sunbeam's future revenues.
- The stock portion of the transaction represented consideration worth approximately \$600 million.
- Sunbeam's 1998 and 1999 business plan was easily achievable, probably low.
- Sunbeam's new air and water products worked.
- Sunbeam's air and water products would add approximately \$100 million in revenue in 1998.

Morgan Stanley knew no later than February 23, 1998 that the representations were false and/or misleading.

(iii) The March 19, 1998 press release.

Morgan Stanley knew no later than March 19, 1998 that the press release was false and/or misleading. Further, Morgan Stanley knew on the afternoon or evening of March 18, 1998 that the press release that was to be issued on March 19 was false and/or misleading.

(iv) Documents produced bearing the following Bates numbers:

SB 232346. Morgan Stanley knew no later than November 6, 1997 that SB 232346 was false and/or misleading.

MS 7797-7970. Morgan Stanley knew no later than the afternoon of March 18, 1998 that MS 7797-7970 was false and/or misleading.

SB 18203-18288. Morgan Stanley knew no later than March 19, 1998 that SB 18203-18288 was false and/or misleading.

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MS 9990 [sic.; MS 977-999]. Morgan Stanley knew no later than March 13, 1998 that MS 977-999 was false and/or misleading.

CP 38199-38206. CPH currently is unable to identify the precise date that Morgan Stanley knew that CP 38199-38206 was false and/or misleading. CPH contends that Morgan Stanley knew no later than late February 1998 that the document was false and/or misleading. CPH's investigation continues.

CP 16766. CPH currently is unable to identify the precise date that Morgan Stanley knew that CP 16766 was false and/or misleading. CPH contends that Morgan Stanley knew no later than late February 1998 that the document was false and/or misleading. CPH's investigation continues.

CP 39154-39157. Morgan Stanley knew no later than February 20, 1998 that CP 39154-39157 was false and/or misleading.

CP 016747-16750. CPH currently is unable to identify the precise date that Morgan Stanley knew that CP 016747-16750 was false and/or misleading. CPH contends that Morgan Stanley knew no later than late February 1998 that the document was false and/or misleading. CPH's investigation continues.

CP 4888. Morgan Stanley knew no later than March 19, 1998 that the press release was false and/or misleading. Further, Morgan Stanley knew on the afternoon or evening of March 18, 1998 that the press release that was to be issued on March 19 was false and/or misleading.

CP 9659-9660. Morgan Stanley knew no later than February 27, 1998 that CP 9659-9660 was false and/or misleading.

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CP 46317-46319. Morgan Stanley knew no later than February 26, 1998 that CP 46317-46319 was false and/or misleading.

CPH's investigation continues.

Dated: April 21, 2004

As to objections:

By: Michael T. Brady

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(312) 222-9350

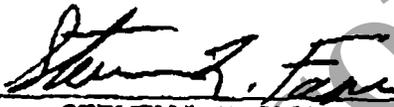
John Scarola
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Attorneys for Coleman (Parent) Holdings Inc.

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I, Steven L. Fasman, being duly sworn, depose and say that I am authorized on behalf of Coleman (Parent) Holdings Inc. and, on its behalf, I have read the foregoing COLBMAN (PARENT) HOLDINGS INC.'S AMENDED RESPONSE TO MORGAN STANLEY & CO., INC.'S FOURTH SET OF INTERROGATORIES, and to the best of my knowledge and belief the response contained therein is true and correct.


STEVEN L. FASMAN

Subscribed and sworn to before me
this 21st day of April, 2004.


DEBBIE HERNANDEZ
Notary Public, State of New York
No. 01HE5021256
Qualified in Queens County
Certificate Filed in New York County
Commission Expires December 13, 2005

NOTA CERTIFIED COPY

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CERTIFICATE OF SERVICE

I, Michael T. Brody, hereby certify that a true and correct copy of the foregoing
COLEMAN (PARENT) HOLDINGS INC.'S AMENDED RESPONSE TO MORGAN STANLEY & CO., INC.'S
FOURTH SET OF INTERROGATORIES has been served upon the parties listed below via facsimile
and U.S. mail on this 21st day of April 2004.

Thomas A. Clare, Esq.
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Joseph Ianno, Jr., Esq.
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West Palm Beach, FL 33401



Michael T. Brody

CHICAGO10635443

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021846

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

**COLEMAN (PARENT) HOLDINGS INC.'S RESPONSES AND
OBJECTIONS TO MORGAN STANLEY & CO. INCORPORATED'S
FOURTH SET OF REQUESTS FOR ADMISSION**

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, and pursuant to Rule 1.370 of the Florida Rules of Civil Procedure and the Court's October 14, 2004 Order, objects and responds to Morgan Stanley & Co. Incorporated's ("Morgan Stanley's") Fourth Set of Requests for Admission ("Requests for Admission") as follows:

INITIAL OBJECTIONS

1. CPH objects on the basis that Morgan Stanley's Requests for Admission violate Rule 1.370(a) of the Florida Rules of Civil Procedure, as amended by 2003 Florida Court Order 18 and effective January 1, 2004, which limits the number of requests for admission to 30 requests.

2. CPH objects on the basis that Morgan Stanley's Requests for Admission are untimely. The Requests for Admission were served by facsimile at 9:32 p.m. on October 25, 2004. Pursuant to Fla. R. Civ. P. 1.080(b)(5), service shall be deemed to have been made on October 26, 2004, which is less than 30 days prior to the deadline of November 24, 2004 for completing fact discovery.

3. CPH objects to the Requests for Admission on the basis that they are vague, ambiguous, overly broad, unduly burdensome, oppressive, abusive, vexatious, and excessively time consuming as written.

4. CPH objects to the Requests for Admission to the extent that they seek information not in CPH's possession, custody, or control.

5. CPH objects to the Requests for Admission to the extent that the definitions, instructions, or the requests themselves incorrectly characterize the facts and evidence to be presented in this case.

6. CPH objects to the Requests for Admission to the extent that they assume, imply, or require any legal conclusions.

7. CPH objects to the definition of "CPH" as ambiguous and overly broad. CPH will construe the term "CPH" to mean Coleman (Parent) Holdings Inc.

8. CPH objects to the definition of "Coleman Transaction" as vague, ambiguous, and overly broad to the extent that it includes "all related communications, agreements, and financing transactions." CPH will construe the term "Coleman Transaction" to mean the transaction by which CPH transferred its interest in The Coleman Company, Inc. to Sunbeam.

9. CPH objects to the definition of "February 23, 1998 Letter" as a mischaracterization of the evidence and an incorrect reflection of the record. CPH will construe the term "February 23, 1998 Letter" as the letter marked as Morgan Stanley Exhibit 307.

10. CPH objects to the definition of "February 27, 1998 Company Agreement" as vague, ambiguous, and overly broad to the extent that it includes "all . . . documents related to those Agreements." CPH will construe the term "February 27, 1998 Company Agreement" to

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mean the Agreement and Plan of Merger dated February 27, 1998 among Sunbeam Corp., Camper Acquisition Corp., and The Coleman Company, Inc.

11. CPH objects to the definition of "Mafco" as ambiguous and overly broad. CPH will construe the term "Mafco" to mean MacAndrews & Forbes Holdings Inc.

12. CPH responds to these Requests for Admission subject to and without waiving these Initial Objections. CPH incorporates, as though fully set forth herein, these Initial Objections into each of its responses.

FURTHER OBJECTIONS AND RESPONSES

Request No. 1. The February 23, 1998 Letter was drafted by counsel for CPH and signed by or on behalf of Coleman.

RESPONSE: Denied.

Request No. 2. The February 23, 1998 Letter is one of the Confidentiality Agreements identified in the February 27, 1998 Company Agreement at section 7.2, and one of the Confidentiality Agreements identified in the February 27, 1998 Agreement at section 6.7.

RESPONSE: Denied.

Request No. 3. CPH signed the February 27, 1998 Agreement without requesting from Sunbeam copies of its interim financial statements for the months (to date) of January or February 1998.

RESPONSE: Denied. Answering further, CPH states that Sunbeam had an affirmative obligation to notify CPH of any material adverse change but failed to do so. Morgan Stanley knew that Sunbeam was obligated to notify CPH of any material adverse change, Morgan Stanley knew that Sunbeam had failed to do so, Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH the true facts concerning Sunbeam, Morgan Stanley affirmatively assisted Sunbeam in perpetrating a fraud upon CPH, Morgan Stanley

agreed with Sunbeam to conceal from and misrepresent to CPH the true facts concerning Sunbeam, and Morgan Stanley agreed with Sunbeam to assist in perpetrating a fraud upon CPH.

Request No. 4. CPH signed the February 27, 1998 Agreement without requesting from Sunbeam its actual net sales or net income (loss) to date in the first quarter of 1998.

RESPONSE: Denied. Answering further, CPH states that Sunbeam had an affirmative obligation to notify CPH of any material adverse change but failed to do so. Morgan Stanley knew that Sunbeam was obligated to notify CPH of any material adverse change, Morgan Stanley knew that Sunbeam had failed to do so, Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH the true facts concerning Sunbeam, Morgan Stanley affirmatively assisted Sunbeam in perpetrating a fraud upon CPH, Morgan Stanley agreed with Sunbeam to conceal from and misrepresent to CPH the true facts concerning Sunbeam, and Morgan Stanley agreed with Sunbeam to assist in perpetrating a fraud upon CPH.

Request No. 5. Before signing the February 27, 1998 Agreement, CPH learned that 50 percent of Sunbeam's sales typically occurred in the last month of the quarter.

RESPONSE: Denied.

Request No. 6. In 1997 CPH had concerns about Sunbeam's "international sales pipeline fillings."

RESPONSE: Denied.

Request No. 7. In January 1998, CPH learned that the Sunbeam Research Analysts were decreasing their estimates of Sunbeam's earnings per share for 1998.

RESPONSE: Denied. Answering further, CPH states that Sunbeam Research Analysts took different positions.

Request No. 8: On or around February 23, 1998, CPH representatives were told by Sunbeam representatives that Sunbeam's sales for January and February [1998] were "slow."

RESPONSE: CPH admits that Sunbeam advised a Coleman representative that sales for January 1998 were slow. CPH denies that Sunbeam advised CPH representatives that sales for February 1998 were slow. Answering further, CPH states that Sunbeam and Morgan Stanley advised CPH and Coleman that Sunbeam would meet or exceed Wall Street's expectations for the first quarter of 1998 and meet or exceed Wall Street's expectations for full year 1998.

Request No. 9: CPH received Sunbeam's 1997 Annual Report on form 10-K before March 30, 1998.

RESPONSE: Admitted. Answering further, CPH states that Sunbeam's 1997 Annual Report on Form 10-K did not truthfully and adequately disclose Sunbeam's true condition and business practices.

Request No. 10: Between March 19, 1998 and March 30, 1998, CPH did not request from either Sunbeam or Morgan Stanley the net sales (to date) that Sunbeam had recorded on its books and records for the first quarter of 1998.

RESPONSE: Denied. Answering further, CPH states that Sunbeam had an affirmative obligation to notify CPH of any material adverse change but failed to do so. Morgan Stanley knew that Sunbeam was obligated to notify CPH of any material adverse change, Morgan Stanley knew that Sunbeam had failed to do so, Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH the true facts concerning Sunbeam, Morgan Stanley affirmatively assisted Sunbeam in perpetrating a fraud upon CPH, Morgan Stanley agreed with Sunbeam to conceal from and misrepresent to CPH the true facts concerning Sunbeam, and Morgan Stanley agreed with Sunbeam to assist in perpetrating a fraud upon CPH.

Request No. 11: Between March 19, 1998 and March 30, 1998, CPH did not request from either Sunbeam or Morgan Stanley a projection of Sunbeam's net sales for Sunbeam's first quarter of 1998.

RESPONSE: Denied. Answering further, CPH states that Sunbeam had an affirmative obligation to notify CPH of any material adverse change but failed to do so. Morgan Stanley knew that Sunbeam was obligated to notify CPH of any material adverse change, Morgan Stanley knew that Sunbeam had failed to do so, Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH the true facts concerning Sunbeam, Morgan Stanley affirmatively assisted Sunbeam in perpetrating a fraud upon CPH, Morgan Stanley agreed with Sunbeam to conceal from and misrepresent to CPH the true facts concerning Sunbeam, and Morgan Stanley agreed with Sunbeam to assist in perpetrating a fraud upon CPH.

Request No. 12: Between March 19, 1998 and March 30, 1998, CPH did not request from either Sunbeam or Morgan Stanley a projection of Sunbeam's net earnings (loss) for Sunbeam's first quarter of 1998.

RESPONSE: Denied. Answering further, CPH states that Sunbeam had an affirmative obligation to notify CPH of any material adverse change but failed to do so. Morgan Stanley knew that Sunbeam was obligated to notify CPH of any material adverse change, Morgan Stanley knew that Sunbeam had failed to do so, Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH the true facts concerning Sunbeam, Morgan Stanley affirmatively assisted Sunbeam in perpetrating a fraud upon CPH, Morgan Stanley agreed with Sunbeam to conceal from and misrepresent to CPH the true facts concerning Sunbeam, and Morgan Stanley agreed with Sunbeam to assist in perpetrating a fraud upon CPH.

Request No. 13: CPH made no inquiries of Sunbeam at the March 30, 1998 closing of the Coleman Transaction about Sunbeam's actual (to date) net sales or net earnings (loss) for the first quarter of 1998.

RESPONSE: Denied. Answering further, CPH states that Sunbeam had an affirmative obligation to notify CPH of any material adverse change but failed to do so. Morgan Stanley knew that Sunbeam was obligated to notify CPH of any material adverse change, Morgan

Stanley knew that Sunbeam had failed to do so, Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH the true facts concerning Sunbeam, Morgan Stanley affirmatively assisted Sunbeam in perpetrating a fraud upon CPH, Morgan Stanley agreed with Sunbeam to conceal from and misrepresent to CPH the true facts concerning Sunbeam, and Morgan Stanley agreed with Sunbeam to assist in perpetrating a fraud upon CPH.

Request No. 14: CPH did not request from Sunbeam, Arthur Andersen, or Morgan Stanley a copy of any comfort letter issued by Arthur Andersen to any person in connection with the Coleman Transaction before the closing of the Coleman Transaction.

RESPONSE: Denied. Answering further, CPH states that Sunbeam had an affirmative obligation to notify CPH of any material adverse change but failed to do so. Morgan Stanley knew that Sunbeam was obligated to notify CPH of any material adverse change, Morgan Stanley knew that Sunbeam had failed to do so, Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH the true facts concerning Sunbeam, Morgan Stanley affirmatively assisted Sunbeam in perpetrating a fraud upon CPH, Morgan Stanley agreed with Sunbeam to conceal from and misrepresent to CPH the true facts concerning Sunbeam, and Morgan Stanley agreed with Sunbeam to assist in perpetrating a fraud upon CPH.

Request No. 15: The Coleman Transaction involved a transaction negotiated at arm's length by two large, sophisticated, and publicly traded corporations that were represented by prominent, highly paid advisors: Morgan Stanley, Skadden Arps, and Arthur Andersen for Sunbeam, and Credit Suisse First Boston and Wachtell, Lipton, Rosen & Katz for The Coleman Company.

RESPONSE: CPH denies that the transaction was negotiated at arm's length and admits the remainder of this Request. Answering further, CPH states that Sunbeam and Morgan Stanley misrepresented and concealed the true facts concerning Sunbeam during the negotiations with CPH and Coleman.

Request No. 16: Between December 1, 1997 and March 31, 1998, Sunbeam made the only proposal to CPH or Coleman's shareholders to acquire Coleman in whole or in part, whether by purchase of stock or assets.

RESPONSE: Admitted. Answering further, CPH states that it had not solicited any proposal to acquire Coleman; it was content to retain, as of March 1998, its interest in Coleman; and it had no reason to expect that anyone would make a proposal to acquire Coleman, where the 82% owner had not expressed a desire to sell.

Request No. 17: A Sunbeam representative orally presented Sunbeam's Long Range Strategic Plan on February 23, 1998.

RESPONSE: CPH admits that the Long Range Strategic Plan was presented on February 23, 1998 by Sunbeam representatives, as well as Morgan Stanley representatives, in both oral and written form, and otherwise denies this Request.

Request No. 18: Each of the following statements in CPH Exhibit 9 is a statement of subjective opinion:

- (a) "Sunbeam represents an attractive growth story and investment opportunity."
- (b) "Sunbeam has undergone a profound transformation since the arrival of new management in July 1996."
- (c) Sunbeam has "renewed focus on profitability and growth."
- (d) There is "tremendous intrinsic value in Sunbeam."
- (e) Sunbeam had a "strong management team that is opportunistic but disciplined."
- (f) Sunbeam had a "valuable opportunity to penetrate and become a global market leader of branded consumer devices."

RESPONSE: Denied. Answering further, CPH states that the facts known to Sunbeam and Morgan Stanley rendered those statements false.

Request No. 19: The 1998 and 1999 estimates on pages CP026296 and CP026297 of CPH Exhibit 9 were from an Oppenheimer research report dated December 11, 1997.

RESPONSE: CPH has made a reasonable inquiry into the documents in its possession and conducted searches of an electronic database, but has not been able to locate a copy of the Oppenheimer research report dated December 11, 1997. Accordingly, CPH lacks knowledge or information sufficient to answer this request and therefore denies this request. Answering further, CPH states that Morgan Stanley adopted and vouched for the statements contained on pages of CP 026296 and CP 026297 of CPH Exhibit 9.

Request No. 20: Each of the following statements, which CPH alleges were made on February 23, 1998, is a projection of future performance:

- (a) that in 1998 Sunbeam expected significant growth in sales and earnings over and above 1997 levels;
- (b) that Sunbeam's 1998 revenues were expected to increase by 34 percent over 1997 levels;
- (c) that Sunbeam's 1999 revenues were expected to increase 25 percent over 1998 levels;
- (d) that Sunbeam's gross was expected to increase by 31 percent in both 1998 and 1999;
- (e) that Sunbeam would "meet or exceed Wall Street's expectations for Sunbeam's earnings estimates" for 1998;
- (f) that "analysts' favorable 1998 earnings estimates of \$1.90 to \$2.12 per share were low"; or
- (g) that "Sunbeam's plan to earn \$2.20 per share in 1998 were easily achievable and probably low."

RESPONSE: Denied. Answering further, CPH states that the facts known to Sunbeam and Morgan Stanley rendered those statements false.

Request No. 21: A statement made on March 19, 1998 that Sunbeam's net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates is a projection of future performance.

RESPONSE: Denied. Answering further, CPH states that the facts known to Sunbeam and Morgan Stanley rendered this statement false.

Request No. 22: A statement made on March 19, 1998 that Sunbeam's net sales for the first quarter of 1998 are expected to exceed 1997 first quarter net sales is a projection of future performance.

RESPONSE: Denied. Answering further, CPH states that the facts known to Sunbeam and Morgan Stanley rendered this statement false.

Request No. 23: CPH or Mafco requested Sunbeam stock as part of the consideration for CPH's interest in Coleman.

RESPONSE: Denied. Answering further, CPH states that it wanted and accepted Sunbeam stock based on Sunbeam's and Morgan Stanley's representations concerning the condition and performance of Sunbeam.

Request No. 24: CPH or Mafco requested expedited Hart-Scott-Rodino approval for the Transaction to allow the Transaction to close before or at the end of the first quarter of 1998.

RESPONSE: CPH admits that MacAndrews & Forbes Holdings Inc. requested expedited Hart-Scott-Rodino approval of Sunbeam's acquisition of CPH's interest in The Coleman Company, Inc., but states that it did so at Sunbeam's request.

Request No. 25: Between February 27, 1998 and March 30, 1998 CPH did not exercise its rights, pursuant to section 6.7 of the February 27, 1998 Agreement, to access Sunbeam's books, records, properties, plants, and personnel.

RESPONSE: Denied.

Request No. 26: The documents listed in the attached Exhibits A and B are what they purport to be or are otherwise true and authentic copies of original documents within the meaning of Florida Evidence Code § 90.901.

RESPONSE: CPH objects to this request on the basis that it is overly broad, unduly burdensome, oppressive, abusive, vexatious, and excessively time consuming as written.

Exhibits A and B contain thousands of pages of documents, including documents plainly authored by Morgan Stanley and third parties. However, CPH does not dispute the authenticity within the meaning of Florida Evidence Code ¶ 90.901 of the documents listed in Exhibits A and B. However, unless specifically stated, CPH denies the authenticity of all handwritten marginalia.

Request No. 27. The documents listed in the attached Exhibits A and B are business records within the meaning of Florida Evidence Code § 90.803(6).

RESPONSE: CPH objects to this request on the basis that it is overly broad, unduly burdensome, oppressive, abusive, vexatious, and excessively time consuming as written. Exhibits A and B contain thousands of pages of documents, including documents plainly authored by Morgan Stanley and third parties. CPH does not dispute that the documents listed in Exhibit 1 attached to this response meet the requirements of Florida Evidence Code ¶ 90.803(6)(a); however, unless specifically stated, CPH denies that all handwritten marginalia meets the requirements of Florida Evidence Code ¶ 90.803(6)(a). CPH denies that the documents listed in Exhibit 1 attached to this response meet the requirements of Florida Evidence Code ¶ 90.803(6)(b). As to the remaining documents listed in Exhibits A and B attached to Morgan Stanley's Requests for Admission, CPH denies that or lacks knowledge or information sufficient to determine whether those documents meet the requirements of Florida Evidence Code ¶ 90.803(6).

Request No. 28: CPH authored the documents listed in the attached Exhibit B.

RESPONSE: CPH objects to this request on the basis that it is overly broad, unduly burdensome, oppressive, abusive, vexatious, and excessively time consuming as written. Exhibit B includes thousands of pages of documents, including documents plainly authored by Morgan

Stanley and third parties. CPH admits that MacAndrews & Forbes Holdings Inc., CPH, CLN Holdings, or Coleman Worldwide authored the documents listed in Exhibit 2 attached to this response; however, unless specifically stated, CPH denies that that it authored all handwritten marginalia. CPH denies that it authored the remaining documents listed in Exhibit B to Morgan Stanley's Requests for Admission.

Dated: November 24, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: 
One of Its Attorneys

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(561) 686-6300

NOT A CERTIFIED COPY

021859

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to counsel listed below on this 24th day of November, 2004:

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& EVANS, P .L.L.C.
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Suite 400
Washington, D.C. 20036-3209

By: 
Deirdre E. Connell

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021860

Exhibit 1

MS	Ex. No.	Bates
MS	5	CPH 2000039-20000040
MS	6	CPH 2000044
MS	11	MSC 0016944-0016945
MS	31	CPH 0041641-0041648
MS	39	CPH 1075408
MS	40	MSC 0000001-0000175
MS	41	MSC 0028858
MS	42	CPH 0129975-0129977
MS	62	CPH 1433326-1433329
MS	69	CPH 1341551-1341574
MS	70	CPH 1399303-1399316
MS	79	CPH 0467007
MS	81	CPH 1421814-1421817
MS	82	CPH 1406962-1406964
MS	83	CPH 1427250-1427253
MS	84	CPH 1324756-1324774
MS	86	CPH 2000687-2000707
MS	88	CPH 0634056-0634064
MS	90-A	
MS	90-B	
MS	90-C	
MS	90-D	
MS	90-E	
MS	90-F	
MS	90-G	
MS	90-H	
MS	90-I	
MS	90-J	
MS	90-K	
MS	90-L	
MS	92	CPH 1429803-1429805
MS	93	MSC 0007947-0008010
MS	94	CPH 1428774-1428775
MS	95	CPH 1429806-1429807
MS	104	CPH 2000144-2000149
MS	105	CPH 1426299-1426303
MS	106	CPH 1425922-1425931
MS	107	CPH 2000086-2000095
MS	113	CPH 0634065-0634075
MS	114	CPH 1344526-1344542
MS	115	MSC 0063805-0063811
MS	117	CPH 0008011-0008066

021861

MS	118	CPH 0634065-0634085
MS	121	CPH 2005974-2005978
MS	122	CPH 1433326-1433329
MS	123	CPH 2000848
MS	124	CPH 2000037
MS	125	CPH 2000041
MS	126	CPH 2000044
MS	127	DPW 0014210-0014229
MS	128	DPW 0014376-0014398
MS	129	DPW 0014143-0014144
MS	130	CPH 1406746-1406765
MS	132	CPH 1414669-1414713
MS	133	CPH 0642925-0642932
MS	135	CPH 1325201-1325202
MS	137	CPH 1393114; 1327092
MS	138	CPH 1327714-1327721
MS	165	CPH 1426297-1426303
MS	167*	CPH 1011319-1011351
MS	168	CPH 1433889-1433890
MS	170	CPH 1429981-1429983
MS	171	CPH 2000708-2000715
MS	172	CPH 1429974-1429977
MS	173	MSC 0033256-0033263
MS	176	MSC 0043213-0043216
MS	186	CPH 1324775-1324850
MS	190	CPH 1406986
MS	191	CPH 1418025
MS	192	CPH 1408944
MS	195	CPH 2000635-2000686
MS	196	CPH 1393830-1393831
MS	205	CPH 1327077-1327081
MS	224	CPH 1427923-1427924
MS	232	CPH 2000771
MS	233	CPH 1328300-1328301
MS	236	CPH 0627084-0627210
MS	238	CPH 1418423-1418499
MS	239	
MS	246	DPW 0011015-0011020
MS	250	CPH 0508863-0508898
MS	257	CPH 0505156
MS	273	WLRK 0009189-0009195

* CPH admits that bates range CPH 1011319-1011320 was authored by CPH and constitutes a business record. With respect to the remainder of MS Ex. 167 (CPH 1011321-1011351), CPH denies that it authored those pages, but will not contest that the entirety of MS Ex. 167 constitutes a business record.

021862

MS	274	WLRK 0009197-0009199
MS	276	DPW 0014400-0014403
MS	278	CPH 1094218-1094235
MS	287	CPH 1408297
MS	295**	CPH 2010664-2010666
MS	299	CPH 2007230-2007296
MS	300	CPH 2006250-2006413
MS	301	CPH 2006677-2006826
MS	302	CPH 2006618-2006669
MS	303	CPH 2007528-2007534
MS	304	DPW 0000719-0000720
MS	305	DPW 0014400-0014403
MS	306	DPW 0011015-0011020
MS	308	CPH 2006236-2006249
MS	310	CPH 2011528-2011531
MS	311	CPH 2006641-2006669
MS	314	WLRK 0014181-0014295
MS	318	CPH 1408945-1408947
MS	319	CPH 1407858-1407866
MS	323	CPH 1408270
MS	325	CPH 1395054-1395058
MS	327	DPW 0013825-0013827
MS	328	CPH 1408269
MS	349***	CPH 1167561-1167563
MS	350	WLRK 0012067
MS	352	CPH 1411183-1411209
MS	353	CPH 2005703
MS	354	CPH 2005706
MS	355****	CPH 1278481-1278484
MS	360	CPH 1411943
MS	362	WLRK 0012066-0012067
MS	363	CPH 1426259
MS	365	CPH 1433895

** CPH admits that it authored the handwriting on MS Ex. 295, but denies that it authored any other portion of MS Ex. 295. CPH further admits that CPH 2010665 constitutes a business record, but denies that the remainder of MS Ex. 295 constitutes a business record.

*** CPH admits that bates range CPH 1167562-1167563 was authored by CPH and constitutes a business record. With respect to the remainder of MS Ex. 349 (CPH 1167561), CPH denies that it authored that page and denies that it constitutes a business record.

**** CPH admits that bates range CPH 1278481-1278482 was authored by CPH and constitutes a business record. With respect to the remainder of MS Ex. 355 (CPH 1278483-1278484), CPH denies that it authored those pages, but will not contest that the entirety of MS Ex. 355 constitutes a business record.

021863

MS	366	CPH 1428745-1428746
MS	367	DPW 0014300-0014301
MS	368	CPH 1272487-1272536
MS	369	DPW 0014073-0014074
MS	370	DPW 0014028-0014029
MS	371	WLRK 0013747-0013790
MS	372	DPW 0013720-0013723
MS	373	DPW 0013793-0013794
MS	375	DPW 0014137-0014110
MS	376	DPW 0014141-0014142
MS	377	DPW 0013935-0013936
MS	378	DPW 0013821-0013822
MS	379	
MS	380	DPW 0013662
MS	402	DPW 0013767-0013768
MS	403	CPH 0637558-0637570

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021864

Exhibit 2

MS	Ex. No.	Bates
MS	5	CPH 2000039-20000040
MS	6	CPH 2000044
MS	62	CPH 1433326-1433329
MS	67	
MS	68	
MS	86	CPH 2000687-2000707
MS	90-A	
MS	90-B	
MS	90-C	
MS	90-D	
MS	90-E	
MS	90-F	
MS	90-G	
MS	90-H	
MS	90-I	
MS	90-J	
MS	90-K	
MS	90-L	
MS	92	CPH 1429803-1429805
MS	94	CPH 1428774-1428775
MS	95	CPH 1429806-1429807
MS	105	CPH 1426299-1426303
MS	106	CPH 1425922-1425931
MS	107	CPH 2000086-2000095
MS	119	CPH 1315399-1315409
MS	121	CPH 2005974-2005978
MS	122	CPH 1433326-1433329
MS	123	CPH 2000848
MS	124	CPH 2000037
MS	125	CPH 2000041
MS	126	CPH 2000044
MS	132	CPH 1414669-1414713
MS	137	CPH 1393114; 1327092
MS	165	CPH 1426297-1426303
MS	167*	CPH 1011319-1011351
MS	170	CPH 1429981-1429983
MS	171	CPH 2000708-2000715

* CPH admits that bates range CPH 1011319-1011320 was authored by CPH and constitutes a business record. With respect to the remainder of MS Ex. 167 (CPH 1011321-1011351), CPH denies that it authored those pages, but will not contest that the entirety of MS Ex. 167 constitutes a business record.

021865

MS	Ex. No.	Bates
MS	172	CPH 1429974-1429977
MS	187	
MS	195	CPH 2000635-2000686
MS	224	CPH 1427923-1427924
MS	232	CPH 2000771
MS	233	CPH 1328300-1328301
MS	246	DPW 0011015-0011020
MS	250	CPH 0508863-0508898
MS	273	WLRK 0009189-0009195
MS	274	WLRK 0009197-0009199
MS	276	DPW 0014400-0014403
MS	295**	CPH 2010664-2010666
MS	305	DPW 0014400-0014403
MS	306	DPW 0011015-0011020
MS	310	CPH 2011528-2011531
MS	349***	CPH 1167561-1167563
MS	350	WLRK 0012067
MS	353	CPH 2005703
MS	354	CPH 2005706
MS	355****	CPH 1278481-1278484
MS	360	CPH 1411943
MS	362	WLRK 0012066-0012067
MS	363	CPH 1426259
MS	365	CPH 1433895
MS	366	CPH 1428745-1428746

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021866

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

**COLEMAN (PARENT) HOLDINGS INC.'S AMENDED
SUPPLEMENTAL RESPONSE TO MORGAN STANLEY
& CO. INC.'S FIFTH SET OF INTERROGATORIES**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys and pursuant to Rules 1.280 and 1.340 of the Florida Rules of Civil Procedure amends its supplemental response and objection to Morgan Stanley & Co., Inc.'s ("Morgan Stanley's") Fifth Set of Interrogatories ("Interrogatories") No. 2 as follows:

INTERROGATORY 2: Identify all communications between Coleman, CPH, or Mafco (or any of their attorneys or financial advisors) and Sunbeam, Arthur Andersen, Morgan Stanley, or Skadden Arps between March 19, 1998 and March 30, 1998 concerning Sunbeam's sales during the first quarter of 1998, Sunbeam's March 19, 1998 Press Release, or any of the information contained in Sunbeam's March 19, 1998 Press Release.

AMENDED SUPPLEMENTAL RESPONSE: CPH incorporates the Initial Objections set forth in its November 24, 2004 responses and objections to Morgan Stanley's Fifth Set of Interrogatories. Subject to and without waiving those Initial Objections, CPH supplements its prior interrogatory response concerning the communications between representatives of CPH and Coleman, on the one hand, and representatives of Sunbeam and Morgan Stanley, on the other hand, following the issuance of the March 19, 1998 press release:

Although no witness thus far recalls specifically who from CPH, Coleman, or CSFB spoke directly to Sunbeam or Morgan Stanley following the issuance of the March 19, 1998

press release, numerous witnesses, including Messrs. Perelman, Gittis, Drapkin, Schwartz, Maher, Nesbitt, and Shapiro, each have testified that those discussions concerning the March 19, 1998 release occurred. Those witnesses recall and believe that Sunbeam and Morgan Stanley provided assurances about Sunbeam's condition and prospects in the wake of the March 19, 1998 press release. Indeed, Mr. Perelman testified that he personally may have had those discussions. Further, Gordon Rich, the senior Credit Suisse First Boston investment banker working with Coleman on the transaction, died in November 2000 and therefore, CPH has not been able to ascertain whether Mr. Rich had any discussions with Morgan Stanley concerning the March 19, 1998 press release.

In addition to those direct discussions, Mr. Nesbitt and others examined analyst reaction to the March 19, 1998 press release and advised representatives of CPH and Coleman that analysts were reporting the same information that those individuals recall was provided directly to CPH and Coleman by Sunbeam and Morgan Stanley. The information provided to CPH and Coleman and repeated by analysts included statements by Sunbeam management that the March 19, 1998 press release had been issued out of an abundance of caution, solely at the behest of legal counsel, because of the debenture offering and not because there was any problem at Sunbeam that cast any doubt on Sunbeam's previous statements concerning sales or earnings.

Further answering, CPH notes that Morgan Stanley has extensively questioned many witnesses on this topic and therefore incorporates by reference all of that deposition testimony including but not limited to the testimony of Ronald Perelman, Howard Gittis, Donald Drapkin, Barry Schwartz, James Maher, William Nesbitt, and Paul Shapiro.

Investigation continues.

Dated: December 22, 2004

As to objections:

By: *John Scarola*

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Attorneys for Coleman (Parent) Holdings Inc.

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021870

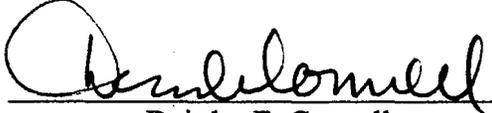
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to counsel listed below on this 22nd day of December, 2004:

Thomas A. Clare
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Deirdre E. Connell

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021871

I, Steven L. Fasman, being duly sworn, depose and say that I am authorized on behalf of Coleman (Parent) Holdings Inc. and, on its behalf, I have read the foregoing COLEMAN (PARENT) HOLDINGS INC.'S SUPPLEMENTAL RESPONSE TO INTERROGATORY NUMBER 2 OF MORGAN STANLEY & CO. INCORPORATED'S FIFTH SET OF INTERROGATORIES, and to the best of my knowledge and belief the response contained therein are true and correct.


STEVEN L. FASMAN

Subscribed and sworn to before me
this 22 day of December, 2004.


Notary Public

DEBBIE HERNANDEZ
Notary Public, State of New York
No. 01HE5021255
Qualified in Queens County
Certificate Filed in New York County
Commission Expires December 13, 10 2005

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021872

197

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

FILED

Jan 11 20 05
SHARON R. BOCK
CLERK & COMPTROLLER
BY *[Signature]*
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

**SUPPLEMENTAL APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S
SUMMARY JUDGMENT FILING**

**VOLUME 8
(EXHIBITS 234-241)**

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0225556

Attorneys for Coleman (Parent) Holdings Inc

1024

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022557

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

FCO Consolidated Group Inc.
Will Nesbitt

9:17 AM
12/11/97

SUNBEAM QUARTERLY EARNINGS COMPARISON

	Q1/96	Q2/96	Q3/96	Q4/96	Q1/97	Q2/97	Q3/97	Q4/97
							ESTIMATE	
Net Sales: US	NA	NA	NA	NA	201,500	230,100	229,000	266,700
International	NA	NA	NA	NA	52,000	57,500	60,000	72,000
Total	229,700	253,900	231,800	268,900	253,500	287,600	289,000	338,700
Cost of Goods Sold	181,600	206,700	203,000	217,000	185,700	213,100	200,200	233,700
Gross Profit	48,100	47,200	28,800	51,900	67,800	74,500	88,800	105,000
S,G&A	32,600	38,000	49,500	53,700	32,600	31,600	33,900	38,600
Operating Income	15,500	9,200	-20,700	-1,800	35,200	42,900	54,900	66,400
Qtr Revenues as % of Annual Sales	23.3%	25.8%	23.5%	27.3%	21.7%	24.6%	24.7%	29.0%
Rev Increase vs Prior Year Quarter					10.4%	13.3%	24.7%	26.0%
Rev Increase vs Prior Quarter		10.5%	-8.7%	16.0%	-5.7%	13.5%	0.5%	17.2%
Gross Profit Margin	20.9%	18.6%	12.4%	19.3%	26.7%	25.9%	30.7%	31.0%
S,G&A Expense	14.2%	15.0%	21.4%	20.0%	12.9%	11.0%	11.7%	11.4%
Operating Income %	6.7%	3.6%	-8.9%	-0.7%	13.9%	14.9%	19.0%	19.6%
Receivables	266,700	228,749	194,559	213,438	296,716	252,045	309,095	
Inventories	310,100	327,093	330,213	162,252	148,011	208,374	290,876	
Accounts Payable	125,300	104,225	70,072	107,319	100,648	136,489	132,686	
Net	451,500	451,617	454,700	268,371	344,079	323,930	467,285	

4th Quarter Issues:

- * Jump in Inventories supposedly relates to finished goods that SOC plans to ship in Oct/Nov.
- * Also supposedly a result of initiatives to improve "on-time and complete" delivery record.
- * Note that restructuring accrual balance at September was \$20.1M vs \$43.7M at year-end 96.
- * Uptick in 3rd quarter receivables supposedly relates to 1/2 of quarter sales being shipped in September.
 - 77% of 3rd quarter sales were on net 60 days or better, 75% of September's sales were on net-30.
- * Another concern has been international pipeline filling.

MIS 165
Date 8/31/04

NOT A

CPH 1426297

022559

MAFCO Consolidated Group Inc.
 Will Nesbitt

9:17 AM
 12/11/97

CASH VS. STOCK COMPARISON-NO COST SAVINGS

	ALL STOCK <u>\$26.00</u>	ALL CASH <u>\$26.00</u>
Pro Forma Income Statement:		
Sunbeam Pretax Income	275,700	275,700
Coleman Pretax Income	96,500	96,500
Less Incremental Goodwill	-28,505	-28,505
Less Incremental Interest Expense	0	-128,485
Pretax Income	343,695	215,210
Less Income Taxes	<u>133,992</u>	<u>87,738</u>
Net Income Before Cost Savings	209,703	127,473
EPS	\$1.73	\$1.49
(Dilution)/Accretion	-\$0.32	-\$0.56

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MAFCO Consolidated Group Inc.
Will Nesbitt

4:56 PM
12/10/97

	<u>Sunbeam</u>	<u>Coleman</u>
Stock Price	\$39.00	\$15.25
Shares Outstanding	85,471	53,424
Market Value	3,333,369	814,716
Plus Net Debt	<u>177,712</u>	<u>469,550</u>
Enterprise Value	3,511,081	1,284,266

	<u>Sunbeam</u>			<u>Coleman</u>			
	<u>1996</u>	<u>1997E</u>	<u>1998E</u>	Using Sunbeam Margins			
Year	<u>1996</u>	<u>1997E</u>	<u>1998E</u>	<u>1996</u>	<u>1997E</u>	<u>1998E</u>	<u>1998E Adj</u>
Revenues	984,300	1,185,100	1,473,900	1,220,200	1,152,500	1,267,800	1,267,800
Cost of Goods Sold	<u>808,300</u>	<u>840,400</u>	<u>1,016,000</u>	<u>884,500</u>	<u>805,600</u>	<u>862,100</u>	<u>873,930</u>
Gross Profit	176,000	344,700	457,900	335,700	346,900	405,700	393,870
Operating Expenses	<u>173,800</u>	<u>139,300</u>	<u>172,200</u>	<u>261,500</u>	<u>249,500</u>	<u>259,200</u>	<u>148,121</u>
Operating Income	2,200	205,400	285,700	74,200	97,400	146,500	245,750
Amortization	0	0	0	10,500	11,500	12,000	12,000
Interest Expense	13,600	8,500	5,800	38,700	41,500	38,000	38,000
Other Expense	<u>1,600</u>	<u>-1,200</u>	<u>4,200</u>	<u>1,200</u>	<u>0</u>	<u>0</u>	<u>0</u>
Pretax Income	-13,000	198,100	275,700	23,800	44,400	96,500	195,750
Taxes	<u>-4,800</u>	<u>70,500</u>	<u>102,300</u>	<u>10,800</u>	<u>14,300</u>	<u>35,900</u>	<u>72,823</u>
Net Income	-8,200	127,600	173,400	13,000	30,100	60,600	122,927
Depreciation and Amortization	<u>47,429</u>	<u>57,000</u>	<u>65,000</u>	<u>36,400</u>	<u>40,000</u>	<u>44,000</u>	<u>44,000</u>
EBITDA	49,629	262,400	350,700	100,100	125,900	178,500	277,750
Less Capital Expenditures	<u>75,336</u>	<u>58,000</u>	<u>71,000</u>	<u>34,300</u>	<u>26,000</u>	<u>40,000</u>	<u>40,000</u>
EBITDA - Capital Expenditures	-25,707	204,400	279,700	65,800	99,900	138,500	237,750

	<u>Sunbeam Multiples</u>			<u>Coleman Multiples</u>			
Year	<u>1996</u>	<u>1997E</u>	<u>1998E</u>	<u>1996</u>	<u>1997E</u>	<u>1998E</u>	<u>1998E Adj</u>
Enterprise Value/Revenues	3.6	3.0	2.4	1.1	1.1	1.0	1.0
Enterprise Value/EBITDA	70.7	13.4	10.0	12.8	10.2	7.2	4.6
Enterprise Value/EBITDA - Capex	NM	17.2	12.6	19.5	12.9	9.3	5.4
Enterprise Value/Operating Income	NM	17.1	12.3	17.3	13.2	8.8	5.2
Market Value/Net Income	NM	26.1	19.2	62.7	27.1	13.4	6.6

195270

MAFCO Consolidated Group Inc.
Will Nesbitt

4:56 PM
12/10/97

Sunbeam Margins

	<u>1996</u>	<u>1997E</u>	<u>1998E</u>
Gross Profit	17.9%	29.1%	31.1%
Operating Expenses	17.7%	11.8%	11.7%
Operating Income	0.2%	17.3%	19.4%
EBITDA	5.0%	22.1%	23.8%
EBITDA - Capex	-2.6%	17.2%	19.0%

Coleman Margins

	<u>1996</u>	<u>1997E</u>	<u>1998E</u>
Gross Profit	27.5%	30.1%	32.0%
Operating Expenses	21.4%	21.6%	20.4%
Operating Income	6.1%	8.5%	11.6%
EBITDA	8.2%	10.9%	14.1%
EBITDA - Capex	5.4%	8.7%	10.9%

Other Data:

Employees	12,000	6,000	7,000
Manufacturing Plants	26	9	16

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MERGER CONSEQUENCES

Sunbeam Data:

Current Price	\$39.00	
Shares Outstanding	85,471	
Market Value	3,333,369	
Net Debt	177,712	
Enterprise Value	3,511,081	
1998E EPS	\$2.05	Goldman Est.
P/E Multiple	19.0	
1998E Revenues	1,473,900	
1998E EBIT	285,700	Goldman Est.
1998E EBIT Margin	19.2%	
EV/EBIT Multiple	12.3	

Coleman Data:

Current Price	\$15.25	
Shares Outstanding	53,424	
Market Value	814,716	
Net Debt	469,550	
Enterprise Value	1,284,266	
1998E EPS	\$1.10	CSFB Est.
P/E Multiple	13.9	
1998E Revenues	1,267,800	
1998E EBIT	146,500	CSFB Est.
1998E EBIT Margin	11.6%	
EV/EBIT Multiple	8.8	

Merger Consequences Assuming Pooling Treatment Not Available:

	\$22.00	\$24.00	\$26.00	\$28.00	\$30.00
Price Per Share	\$22.00	\$24.00	\$26.00	\$28.00	\$30.00
Current SOC Shares	85,471	85,471	85,471	85,471	85,471
New SOC Shares Issued	30,137	32,876	35,616	38,356	41,095
Pro Forma SOC Shares	115,608	118,347	121,087	123,827	126,566
Pro Forma SOC Equity Value	4,508,697	4,615,545	4,722,393	4,829,241	4,936,089
M & F % Ownership	21.5%	22.9%	24.3%	25.6%	26.8%
Pro Forma SOC Enterprise Value	5,155,959	5,282,807	5,369,655	5,476,503	5,583,351

Pro Forma EPS:

	\$2.05	\$2.05	\$2.05	\$2.05	\$2.05
1998E EPS (Current)	\$2.05	\$2.05	\$2.05	\$2.05	\$2.05
Pro Forma (Dilution)/Accretion-No Cost Savings	-\$0.19	-\$0.26	-\$0.32	-\$0.38	-\$0.44
PF (Dilution) With Cost Savings of: 40,000	\$0.03	-\$0.04	-\$0.11	-\$0.17	-\$0.23
PF (Dilution) With Cost Savings of: 60,000	\$0.14	\$0.07	\$0.00	-\$0.07	-\$0.13

Pro Forma EPS Excluding Goodwill:

	\$2.05	\$2.05	\$2.05	\$2.05	\$2.05
1998E EPS (Current)	\$2.05	\$2.05	\$2.05	\$2.05	\$2.05
Pro Forma (Dilution)/Accretion-No Cost Savings	\$0.11	\$0.06	\$0.02	-\$0.03	-\$0.07
PF (Dilution) With Cost Savings of: 40,000	\$0.34	\$0.28	\$0.23	\$0.18	\$0.13
PF (Dilution) With Cost Savings of: 60,000	\$0.45	\$0.39	\$0.33	\$0.28	\$0.23

MAFCO Consolidated Group Inc.
 Will Nesbitt

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 12/10/97

MERGER CONSEQUENCES

Merger Consequences Assuming Pooling Treatment Not Available:

Price Per Share	<u>\$22.00</u>	<u>\$24.00</u>	<u>\$26.00</u>	<u>\$28.00</u>	<u>\$30.00</u>
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Pro Forma Enterprise Value/EBITDA - Capex Multiples:

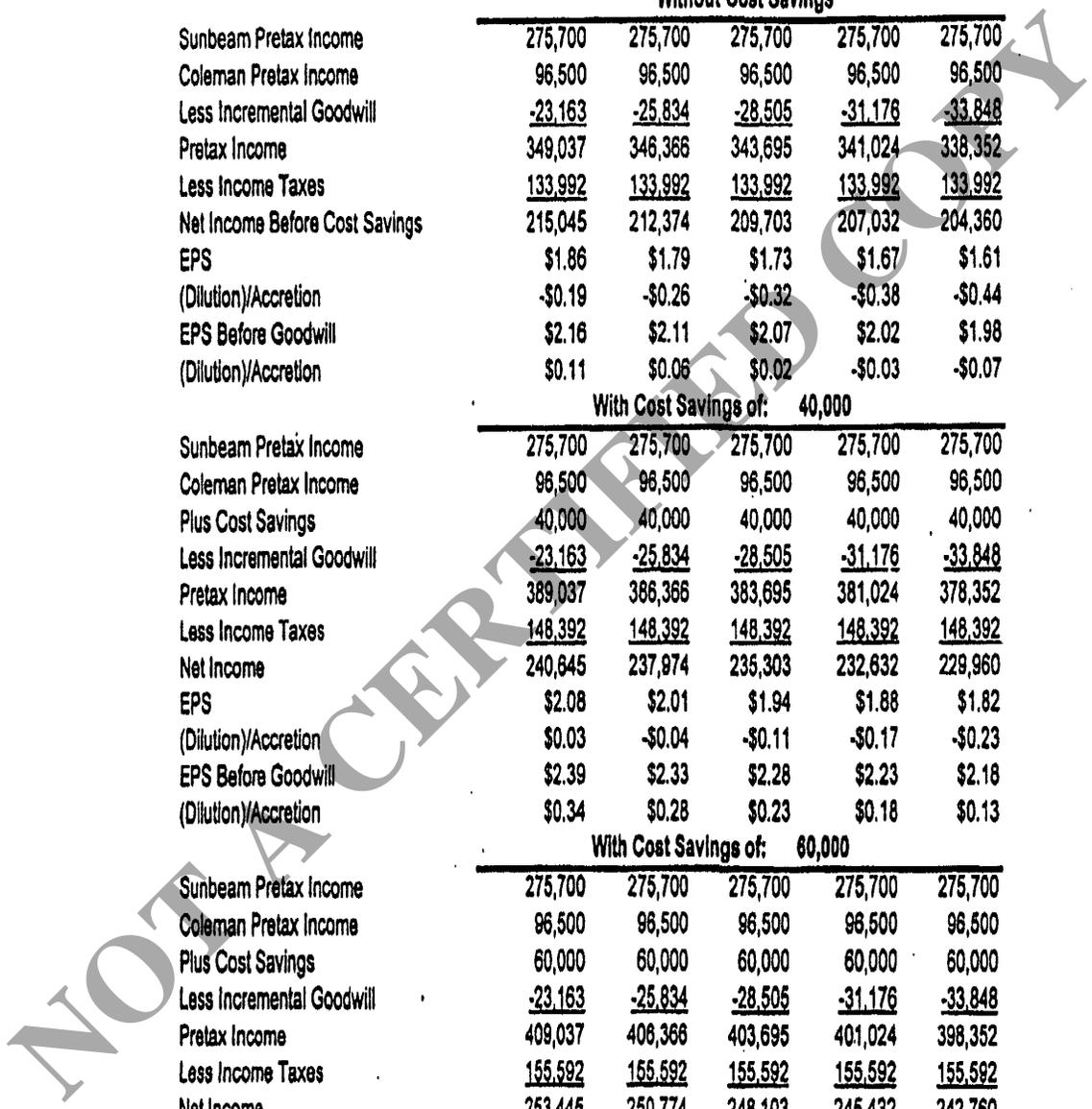
Current EV/1998 EBITDA - Capex	12.6	12.8	12.6	12.6	12.6
Pro Forma Multiple Without Cost Savings	12.3	12.6	12.8	13.1	13.4
Pro Forma Multiple With Savings 40,000	11.3	11.5	11.7	12.0	12.2
Pro Forma Multiple With Savings 60,000	10.8	11.0	11.2	11.5	11.7

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MAFCO Consolidated Group Inc.
Will Nesbitt

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12/10/97

Price Per Share	<u>\$22.00</u>	<u>\$24.00</u>	<u>\$26.00</u>	<u>\$28.00</u>	<u>\$30.00</u>
	<u>Without Cost Savings</u>				
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Less Incremental Goodwill	<u>-23,163</u>	<u>-25,834</u>	<u>-28,505</u>	<u>-31,176</u>	<u>-33,848</u>
Pretax Income	349,037	346,366	343,695	341,024	338,352
Less Income Taxes	<u>133,992</u>	<u>133,992</u>	<u>133,992</u>	<u>133,992</u>	<u>133,992</u>
Net Income Before Cost Savings	215,045	212,374	209,703	207,032	204,360
EPS	\$1.86	\$1.79	\$1.73	\$1.67	\$1.61
(Dilution)/Accretion	-\$0.19	-\$0.26	-\$0.32	-\$0.38	-\$0.44
EPS Before Goodwill	\$2.16	\$2.11	\$2.07	\$2.02	\$1.98
(Dilution)/Accretion	\$0.11	\$0.06	\$0.02	-\$0.03	-\$0.07
	<u>With Cost Savings of: 40,000</u>				
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Plus Cost Savings	40,000	40,000	40,000	40,000	40,000
Less Incremental Goodwill	<u>-23,163</u>	<u>-25,834</u>	<u>-28,505</u>	<u>-31,176</u>	<u>-33,848</u>
Pretax Income	389,037	386,366	383,695	381,024	378,352
Less Income Taxes	<u>148,392</u>	<u>148,392</u>	<u>148,392</u>	<u>148,392</u>	<u>148,392</u>
Net Income	240,645	237,974	235,303	232,632	229,960
EPS	\$2.08	\$2.01	\$1.94	\$1.88	\$1.82
(Dilution)/Accretion	\$0.03	-\$0.04	-\$0.11	-\$0.17	-\$0.23
EPS Before Goodwill	\$2.39	\$2.33	\$2.28	\$2.23	\$2.18
(Dilution)/Accretion	\$0.34	\$0.28	\$0.23	\$0.18	\$0.13
	<u>With Cost Savings of: 60,000</u>				
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Plus Cost Savings	60,000	60,000	60,000	60,000	60,000
Less Incremental Goodwill	<u>-23,163</u>	<u>-25,834</u>	<u>-28,505</u>	<u>-31,176</u>	<u>-33,848</u>
Pretax Income	409,037	406,366	403,695	401,024	398,352
Less Income Taxes	<u>155,592</u>	<u>155,592</u>	<u>155,592</u>	<u>155,592</u>	<u>155,592</u>
Net Income	253,445	250,774	248,103	245,432	242,760
EPS	\$2.19	\$2.12	\$2.05	\$1.98	\$1.92
(Dilution)/Accretion	\$0.14	\$0.07	-\$0.00	-\$0.07	-\$0.13
EPS Before Goodwill	\$2.50	\$2.44	\$2.38	\$2.33	\$2.28



IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

CONFIDENTIAL - FILE UNDER SEAL

**COLEMAN (PARENT) HOLDINGS INC.'S SUPPLEMENTAL RESPONSE
TO INTERROGATORY NO. 3 AND SECOND SUPPLEMENTAL RESPONSE
TO INTERROGATORY NUMBER 5 OF MORGAN STANLEY & CO.,
INC.'S FIRST SET OF INTERROGATORIES**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, and pursuant to Florida Rules of Civil Procedure 1.280 and 1.340, and the Court's October 14, 2004 Order, hereby supplements its responses to Interrogatory No. 3 and No. 5 of Morgan Stanley & Co., Inc.'s ("Morgan Stanley") First Set of Interrogatories as follows:

INTERROGATORY NO. 3: Identify with particularity all misrepresentations by MS & Co. that CPH intends to rely upon at trial and state, with respect to each such statement, the date and time the representation was made; the document, setting or circumstances in which the representation was made; the person(s) who made the representations; the exact wording of the misrepresentation; and all reasons why CPH believes the misrepresentation was false when it was made.

SUPPLEMENTAL RESPONSE: CPH incorporates by reference the Initial Objections set forth in its response to MS& Co.'s First Set of Interrogatories and the Further Objections set forth in response to Interrogatory No. 3. CPH supplements its prior response with the following information:

Morgan Stanley made and substantially assisted Sunbeam in making numerous misrepresentations concerning Sunbeam's "turn-around," condition, and prospects during the

roadshows Morgan Stanley that conducted to sell the Sunbeam subordinated debentures that were used to pay for Sunbeam's acquisition of Coleman. William Nesbitt, a representative of CPH, attended Morgan Stanley's roadshow presentation in New York on March 18, 1998. At that meeting, Mr. Nesbitt was given a set of Morgan Stanley's presentation materials, which he distributed to other CPH representatives, including Howard Gittis. The oral presentation scripted by Morgan Stanley and the written materials prepared and distributed by Morgan Stanley (MS Ex. 193) included the following misrepresentations: the "Dunlap Value Creation Model" chart (pg. 6); Sunbeam completed its restructuring in July 1997 (pg. 6); the "Sunbeam Today" table (pg. 8); Dunlap had been "very successful at turning [Sunbeam] around" (pg. 8); Sunbeam had "record levels of revenues and earnings" (pg. 8); the "Sunbeam Phase II - Refine and Grow" chart (pg. 10); Sunbeam "was successful at accelerating the growth and improvement throughout" 1997 (pg. 10); and Dunlap had "fixed" Sunbeam's underlying business such that Sunbeam had a "strong base from which [Sunbeam could] now grow" (pg. 10). Morgan Stanley knew that these representations were false by at least March 18, 1998 as a result of the information that Morgan Stanley learned in connection with the due diligence it was required to perform in underwriting the sale of Sunbeam's subordinated debentures. That due diligence included Morgan Stanley's discussions with Arthur Andersen and its review of Arthur Andersen's draft comfort letters.

Morgan Stanley made numerous misrepresentations in the red herring and the final offering memorandum for Sunbeam's subordinated debentures. Those materials falsely portrayed Sunbeam as a company that had been successfully turned-around and the final offering memorandum repeated verbatim the text of the false and misleading March 19, 1998 press release in its "recent developments" section. Morgan Stanley knew that those representations

were false when made as a result of the information that Morgan Stanley learned in connection with the due diligence it was required to perform in underwriting the sale of Sunbeam's subordinated debentures. That due diligence included Morgan Stanley's discussions with Arthur Andersen and its review of Arthur Andersen's draft comfort letters.

Following the issuance of the March 19, 1998 press release, Morgan Stanley provided false assurances to the public and CPH's representatives concerning Sunbeam's condition and prospects. Morgan Stanley, directly and through Sunbeam, falsely advised financial analysts, CPH and other investors that the March 19, 1998 press release had been issued out of an abundance of caution, solely at the behest of legal counsel, because of the debenture offering and not because there was a problem at Sunbeam that cast any doubt on Sunbeam's previous projections of sales or earnings. Morgan Stanley stood with and vouched for Sunbeam as Sunbeam reassured investors that the only reason that the press release was issued was because of the debt offering, that Sunbeam's retail sales were "strong," and Sunbeam was on track for revenues and earnings. (CPH Ex. 75 at SB 18225). Morgan Stanley knew that those representations were false at the time they were made as a result of information that Morgan Stanley obtained through its due diligence investigation of Sunbeam, including Morgan Stanley's review of Arthur Andersen's draft and final comfort letters and the list of "forecasted" and "potential" orders it received from Donald Uzzi on March 18, 1998.

The March 25, 1998 press release, which touted the closing of the subordinated debenture offering, misrepresented Sunbeam's condition and prospects by failing to alert financial analysts, CPH, and other investors to Sunbeam's worsening condition. Morgan Stanley knew that the March 25, 1998 press release falsely depicted Sunbeam's condition and prospects at the time the March 25, 1998 press release was issued as a result of information that Morgan Stanley obtained

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through its due diligence investigation of Sunbeam, including Morgan Stanley's review of Arthur Andersen's draft and final March 19, 1998 comfort letters, draft and final March 25, 1998 comfort letters, the list of "forecasted" and "potential" orders it received from Donald Uzzi on March 18, 1998, and the "bring-down" due diligence conference it conducted with Sunbeam.

Further answering, CPH incorporates by reference the following: (a) CPH's original, amended, and supplemental responses to Morgan Stanley's Fourth Set of Interrogatories, No. 1; (b) CPH's Amended Supplement Response to Morgan Stanley's Fifth Set of Interrogatories; (c) CPH's original and supplemental response to Morgan Stanley's Second Set of Interrogatories, No. 6; (d) CPH's Response in Opposition to Morgan Stanley's Motion for Summary Judgment; (e) CPH's Motion to Amend Complaint to Seek Punitive Damages; (f) CPH's Reply in Support of its Motion to Amend Pleadings and Seek Punitive Damages; (g) the depositions of Blaine Fogg, Ruth Porat, Michael Hart, Bram Smith, John Tyree, William Strong, Andrew Savarie, Eugene Yoo, Lawrence Bornstein, Philip Harlow, Dennis Pastrana, William Pruitt, James Lurie, Heather Stack, Alan Dean, Ronald Perelman, Howard Gittis, Paul Shapiro, Jerry Levin, James Maher, and William Nesbitt and the exhibits used during those depositions; and (h) the term sheets that Morgan Stanley provided to CPH, Coleman, CSFB, and Wachtell.

Investigation continues.

INTERROGATORY NO. 5: Identify all transactions since 1993 in which CPH or MAFCO, or any company owned, controlled, or affiliated with CPH or MAFCO, has received stock as any portion of the consideration for the transaction.

SUPPLEMENTAL RESPONSE: CPH incorporates by reference the Initial Objections set forth in its response to MS& Co.'s First Set of Interrogatories and the Further Objections set forth in response to Interrogatory No. 5. CPH supplements its prior response with the following additional material transactions:

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Transactions by MAFCO:

- In 2003 and 2004, MacAndrews & Forbes Holdings Inc. purchased shares of common stock of SIGA Technologies Inc.
- In 2004, as part of a series of related transactions, various affiliates of MacAndrews & Forbes Holdings Inc. received shares of Class A Common Stock from Revlon, Inc. ("Revlon") in exchange for various classes of preferred stock of Revlon and its subsidiary.

Transactions by Other Affiliates of CPH and MAFCO:

- In 2003, SGMS Acquisition Corporation acquired preferred shares of Scientific Games Corporation ("Scientific"), and Scientific later converted a portion of those shares into common shares.
- In 2003, SpectaGuard Holding Corporation ("SpectaGuard") and an entity later acquired by SpectaGuard currently known as SpectaGuard Holding Two Corporation ("SpectaGuard Two") purchased units of SpectaGuard Acquisition LLC ("Acquisition"), and in 2004, SpectaGuard and SpectaGuard Two exchanged all of their units in Acquisition for an equal number of units of similar denomination of Allied Security Holdings LLC.
- In 2004, MacAndrews AMG Holdings LLC received units of AM General Holdings LLC in exchange for an investment contribution to the company.

Dated: December 24, 2004

As to objections:

By: 

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One IBM Plaza, Suite 4400
Chicago, Illinois 60611
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(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc.

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I, Steven L. Fasman, being duly sworn, depose and say that I am authorized on behalf of Coleman (Parent) Holdings Inc. and, on its behalf, I have read the foregoing COLEMAN (PARENT) HOLDINGS INC.'S SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3 AND SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NUMBER 5 OF MORGAN STANLEY & CO. INCORPORATED'S FIRST SET OF INTERROGATORIES, and to the best of my knowledge and belief the response contained therein are true and correct.


STEVEN L. FASMAN

Subscribed and sworn to before me
this 24 day of December, 2004.


Notary Public

DEBBIE HERNANDEZ
Notary Public, State of New York
No. 01HE5021255
Qualified in Queens County
Certificate Filed in New York County
Commission Expires December 13, 19 2005

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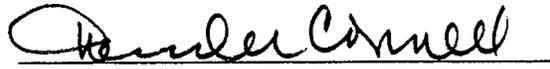
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to counsel listed below on this 24th day of December, 2004:

Thomas A. Clare
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen
Kellogg, Huber, Hansen, Todd
& EVANS, P .L.L.C.
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Washington, D.C. 20036-3209


Deirdre E. Connell

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH, COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

_____/ CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).

**CPH'S RESPONSE TO MORGAN STANLEY & CO., INC.'S
SECOND SET OF REQUESTS FOR ADMISSION**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys and pursuant to Rule 1.370 of the Florida Rules of Civil Procedure, hereby responds and objects to Morgan Stanley & Co. Incorporated's ("Morgan Stanley") Second Set of Requests for Admission ("Requests for Admission") dated February 16, 2004:

INITIAL OBJECTIONS

1. CPH objects to the definition of "CPH" as ambiguous and overly broad. CPH will construe the term "CPH" to mean Coleman (Parent) Holdings Inc.

2. CPH objects to the definition of "MAFCO" as ambiguous and overly broad. CPH will construe the term "MAFCO" to mean MacAndrews & Forbes Holdings Inc.

3. CPH objects to Morgan Stanley's use of the term "due-diligence investigation" as vague and ambiguous. CPH further objects to the term insofar as it purports to relate to the standard of care applicable to any investigation addressed in the requests for admission.

4. CPH objects to the term "Accounting Irregularities" as vague and misleading in the context of these requests for admission as it purports to divert attention from Morgan Stanley's direct involvement in the fraud alleged in this case.

5. CPH objects on the basis that Morgan Stanley's Requests for Admission violate Rule 1.370(a) of the Florida Rules of Civil Procedure, as amended by 2003 Florida Court Order 18 and effective January 1, 2004, which limits the number of requests for admission to 30 requests. Morgan Stanley previously served 273 requests (excluding subparts) in its First Set of Requests for Admission, and with this Second Set, now has served a total of 296 requests.

6. CPH responds to Morgan Stanley's Requests for Admission subject to and without waiving these Initial Objections. CPH incorporates, as though fully set forth therein, these Initial Objections into each of the Responses and Objections set forth below.

RESPONSES AND FURTHER OBJECTIONS

1. CPH retained Credit Suisse First Boston as its exclusive financial advisor for the Coleman Transaction.

RESPONSE: Denied. Answering further, CPH states that prior to the completion of the Coleman Transaction, CPH owned 82% of the shares of Coleman, which retained Credit Suisse First Boston to act as a financial advisor for the Coleman Transaction.

2. Coleman retained Credit Suisse First Boston as its exclusive financial advisor for the Coleman Transaction.

RESPONSE: Admitted.

3. MAFCO retained Credit Suisse First Boston as its exclusive financial advisor for the Coleman Transaction.

RESPONSE: Denied. Answering further, CPH states that MAFCO is the indirect owner of CPH, and prior to the completion of the Coleman Transaction, CPH owned 82% of the shares of Coleman, which retained Credit Suisse First Boston to act as a financial advisor for the Coleman Transaction.

4. Credit Suisse First Boston had the ability in 1997 and 1998 to conduct a due-diligence investigation sufficient to detect Accounting Irregularities at Sunbeam.

RESPONSE: CPH objects to this request as an incomplete hypothetical with unstated assumptions. Answering further, CPH did not retain Credit Suisse First Boston in connection with the Coleman Transaction. CPH further states that Credit Suisse First Boston did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did and therefore denies this request.

5. Credit Suisse First Boston had the ability in 1997 and 1998 to conduct a due-diligence investigation sufficient to detect the falsity of the misrepresentations alleged in the Complaint.

RESPONSE: CPH objects to this request as an incomplete hypothetical with unstated assumptions. Answering further, CPH did not retain Credit Suisse First Boston in connection with the Coleman Transaction. CPH further states that Credit Suisse First Boston did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did and therefore denies this request.

6. CPH retained Wachtell, Lipton, Rosen & Katz as its legal advisor for the Coleman Transaction.

RESPONSE: Admitted.

7. Coleman retained Wachtell, Lipton, Rosen & Katz as its legal advisor for the Coleman Transaction.

RESPONSE: Admitted.

8. MAFCO retained Wachtell, Lipton, Rosen & Katz as its legal advisor in the Coleman Transaction.

RESPONSE: Admitted.

9. Wachtell, Lipton, Rosen & Katz had the ability in 1997 and 1998 to conduct a due-diligence investigation sufficient to detect Accounting Irregularities at Sunbeam.

RESPONSE: CPH objects to this request as an incomplete hypothetical with unstated assumptions. Answering further, it is not customary for lawyers to conduct "due diligence" of the type conducted by investment bankers, such as Morgan Stanley. CPH further states that Wachtell, Lipton, Rosen & Katz did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did. In all other respects, this request is denied.

10. Wachtell, Lipton, Rosen & Katz had the ability in 1997 and 1998 to conduct a due-diligence investigation sufficient to detect the falsity of the misrepresentations alleged in the Complaint.

RESPONSE: CPH objects to this request as an incomplete hypothetical with unstated assumptions. Answering further, it is not customary for lawyers to conduct "due diligence" of the type conducted by investment bankers, such as Morgan Stanley. CPH further states that

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Wachtell, Lipton, Rosen & Katz did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did. In all other respects, this request is denied.

11. Any reasonable due-diligence investigation by Credit Suisse First Boston in the first quarter of 1998 would have been sufficient to detect Accounting Irregularities at Sunbeam.

RESPONSE: CPH objects to this request as an incomplete hypothetical with unstated assumptions. CPH further objects to the term “[a]ny reasonable due-diligence investigation” as vague and ambiguous. Answering further, CPH did not retain Credit Suisse First Boston in connection with the Coleman Transaction. CPH further states that Credit Suisse First Boston did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did and therefore denies this request.

12. Any reasonable due-diligence investigation by Credit Suisse First Boston in the first quarter of 1998 would have been sufficient to detect the falsity of the misrepresentations alleged in the Complaint.

RESPONSE: CPH objects to this request as an incomplete hypothetical with unstated assumptions. CPH further objects to the term “[a]ny reasonable due-diligence investigation” as vague and ambiguous. Answering further, CPH did not retain Credit Suisse First Boston in connection with the Coleman Transaction. CPH further states that Credit Suisse First Boston did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did and therefore denies this request.

13. Any reasonable due-diligence investigation by Wachtell, Lipton, Rosen & Katz in the first quarter of 1998 would have been sufficient to detect Accounting Irregularities at Sunbeam.

RESPONSE: CPH objects to this request as an incomplete hypothetical with unstated assumptions. CPH further objects to the term “[a]ny reasonable due-diligence investigation” as vague and ambiguous. Answering further, it is not customary for lawyers to conduct “due diligence” of the type conducted by investment bankers, such as Morgan Stanley. CPH further states that Wachtell, Lipton, Rosen & Katz did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did. In all other respects, this request is denied.

14. Any reasonable due-diligence investigation by Wachtell, Lipton, Rosen & Katz in the first quarter of 1998 would have been sufficient to detect the falsity of the misrepresentations alleged in the Complaint.

RESPONSE: CPH objects to this request as an incomplete hypothetical with unstated assumptions. CPH further objects to the term “[a]ny reasonable due-diligence investigation” as vague and ambiguous. Answering further, it is not customary for lawyers to conduct “due diligence” of the type conducted by investment bankers, such as Morgan Stanley. CPH further states that Wachtell, Lipton, Rosen & Katz did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did. In all other respects, this request is denied.

15. CPH did not ask Credit Suisse First Boston to perform a due-diligence investigation into Sunbeam in the first quarter of 1998.

RESPONSE: Admitted. Answering further, CPH states that prior to the completion of the Coleman Transaction, CPH owned 82% of the shares of Coleman, which retained Credit Suisse First Boston to act as a financial advisor for the Coleman Transaction.

16. CPH did not ask Wachtell, Lipton, Rosen & Katz to perform a due-diligence investigation into Sunbeam in the first quarter of 1998.

RESPONSE: CPH objects to this request because it is not customary for lawyers to conduct “due diligence” of the type conducted by investment bankers, such as Morgan Stanley. Answering further, CPH denies this request because Wachtell, Lipton, Rosen & Katz performed customary legal services in connection with the Coleman Transaction.

17. Coleman did not ask Credit Suisse First Boston to perform a due-diligence investigation into Sunbeam in the first quarter of 1998.

RESPONSE: Denied. Answering further, CPH states that Credit Suisse First Boston did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did.

18. Coleman did not ask Wachtell, Lipton, Rosen & Katz to perform a due-diligence investigation into Sunbeam in the first quarter of 1998.

RESPONSE: CPH objects to this request because it is not customary for lawyers to conduct “due diligence” of the type conducted by investment bankers, such as Morgan Stanley. Answering further, CPH denies this request because Wachtell, Lipton, Rosen & Katz performed customary legal services in connection with the Coleman Transaction.

19. MAFCO did not ask Credit Suisse First Boston to perform a due-diligence investigation into Sunbeam in the first quarter of 1998.

RESPONSE: Admitted. Answering further, CPH states that MAFCO is the indirect owner of CPH, and prior to the completion of the Coleman Transaction, CPH owned 82% of the shares of Coleman, which retained Credit Suisse First Boston to act as a financial advisor for the Coleman Transaction.

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20. MAFCO did not ask Wachtell, Lipton, Rosen & Katz to perform a due-diligence investigation into Sunbeam in the first quarter of 1998.

RESPONSE: CPH objects to this request because it is not customary for lawyers to conduct "due diligence" of the type conducted by investment bankers, such as Morgan Stanley. Answering further, CPH denies this request because Wachtell, Lipton, Rosen & Katz performed customary legal services in connection with the Coleman Transaction.

21. Credit Suisse First Boston did not conduct a due-diligence investigation into Sunbeam in the first quarter of 1998.

RESPONSE: Denied. Answering further, CPH states that Credit Suisse First Boston did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did.

22. Wachtell, Lipton, Rosen & Katz did not conduct a due-diligence investigation into Sunbeam in the first quarter of 1998.

RESPONSE: CPH objects to this request because it is not customary for lawyers to conduct "due diligence" of the type conducted by investment bankers such as Morgan Stanley. Answering further, CPH denies this request because Wachtell, Lipton, Rosen & Katz performed customary legal services in connection with the Coleman Transaction.

23. Neither CPH nor its attorneys are in possession of the letter alleged to have been faxed to Morgan Stanley from Arthur Andersen on March 17, 1998, as described in paragraph 56 in CPH's Complaint.

RESPONSE: CPH denies this request because it believes that one or more of the pre-March 19 drafts of the Arthur Andersen comfort letter were communicated to Morgan Stanley on or about March 17, 1998, and pre-March 19 drafts of the comfort letter have been produced in this litigation. Answering further, CPH states that (a) CPH's attorneys have in their possession pre-

March 19 drafts of the Arthur Andersen comfort letter; (b) there has been testimony in this case that drafts of the comfort letter were sent to Morgan Stanley prior to March 19, 1998; and (c) Morgan Stanley's counsel have prepared a chronology in which they reveal that Morgan Stanley's counsel had the draft comfort letter no later than March 18, 1998.

Dated: March 17, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: 
One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by
Fax, Email and US Mail to all counsel on the attached list on this 17th day of
March, 2004.



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Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
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Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

**COLEMAN (PARENT) HOLDINGS INC.'S SUPPLEMENTAL RESPONSE
TO INTERROGATORY NO. 4 AND NO. 6 OF
MORGAN STANLEY & CO., INC.'S SECOND SET OF INTERROGATORIES**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, and pursuant to Florida Rules of Civil Procedure 1.280 and 1.340, and the Court's October 14, 2004 Order, hereby supplements its response to Interrogatories No. 4 and No. 6 of Morgan Stanley & Co., Inc.'s ("Morgan Stanley") Second Set of Interrogatories as follows:

RESPONSES AND FURTHER OBJECTIONS

INTERROGATORY NO. 4: Identify each discussion, telephone conference, meeting, document, or other communication any MAFCO, Coleman, and/or CPH employee or other representative had with MS&Co. or received from MS&Co. concerning the Transaction and, for each such communication, identify the individuals participating in the communication, the date of the communication, and state with particularity the substance of the communication.

RESPONSE: CPH incorporates the Initial Objections set forth in its October 13, 2003, responses and objections to Morgan Stanley's Second Set of Interrogatories and the Further Objections set forth in response to Interrogatory No. 4. Subject to and without waiving those objections, CPH supplements its prior interrogatory response as follows:

Prior to November 6, 1997 - Representatives of Morgan Stanley, including Robert Kitts, met with representatives of CPH, including James Maher, to discuss a potential transaction involving Sunbeam.

November 6, 1997 - Representatives of Morgan Stanley, including Messrs. Reid, Kitts, and Fuchs, met with representative of CPH, including James Maher, to discuss a potential transaction

involving Sunbeam. At that time, Morgan Stanley provided Maher with written materials concerning Sunbeam.

December 11, 1997 - Representatives of Morgan Stanley discussed a potential transaction involving Sunbeam and Coleman with representatives of CPH.

December 15, 1997 - Representatives of Morgan Stanley discussed a potential transaction involving Sunbeam and Coleman with representatives of CPH.

December 16, 1997 - Representatives of Morgan Stanley discussed a potential transaction involving Sunbeam and Coleman with representatives of CPH.

January 27, 1998 - Representatives of Morgan Stanley, including William Reid, discussed a potential transaction involving Sunbeam and Coleman with representatives of CPH.

January 29, 1998 - Representatives of Morgan Stanley, including Messrs. Stynes, Fuchs, and Chang discussed a potential transaction involving Sunbeam and Coleman with representatives of CPH and Coleman.

February 3, 1998 - Representatives of Morgan Stanley, including Alexandre Fuchs, discussed a potential transaction involving Sunbeam and Coleman with Jerry Levin.

February 23, 1998 - At a meeting in Morgan Stanley's offices, Morgan Stanley provided CPH representatives with Morgan Stanley's "Discussion Materials" concerning Sunbeam and Sunbeam Long Range Strategic Plan.

On or around March 16, 1998 - Morgan Stanley provided CPH representatives with a copy of the "red herring" for the offering of Sunbeam's subordinated debentures.

March 18, 1998 - William Nesbitt attended Morgan Stanley's road show presentation for the offering of Sunbeam's subordinated debentures and was provided a hard copy of Morgan Stanley's presentation materials.

On or around March 20, 1998 - Morgan Stanley provided CPH representatives with a copy of the final offering memorandum for the offering of Sunbeam's subordinated debentures.

On or around March 25, 1998 - CPH received a copy of the March 25, 1998 Press Release concerning the closing of the Subordinated Debenture Offering.

Following the issuance of the March 19, 1998 press release - Representatives of CPH spoke with representatives of Morgan Stanley concerning the information contained in Sunbeam's March 19, 1998 press release and received assurances concerning Sunbeam's condition and prospects.

Further answering, CPH incorporates by reference CPH Ex. 169, CPH's Amended Supplemental response to Morgan Stanley's Fifth Set of Interrogatories, MS Ex. 75, MS Ex. 374, CPH Ex. 379, MS Ex. 80, MS Ex. 81, MS Ex. 82, MS Ex. 83, MS Ex. 175, MS Ex. 182, MS Ex.

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188, MS Ex. 189, MS Ex. 340, CPH Ex. 9, all term sheets provided by Morgan Stanley to CPH, CSFB, Coleman, and Wachtell, and the deposition of Robert Duffy. Further, Mr. Gordon Rich had discussions with Morgan Stanley, however, CPH is not able to provide details concerning those discussions due to Mr. Rich's death in November 2000.

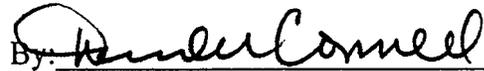
Investigation continues.

INTERROGATORY NO. 6: Identify each item of damages that CPH claims and include in this answer the category into which each item of damages falls (i.e. general damages, interest, and any other relevant categories); the specific factual basis and causal connection for each item of damages; the amount that CPH believes it is entitled to; and an explanation of how CPH computed each item of damages, including any estimate, calculation, forecast, mathematical formula or model used and all persons who had a substantial role in preparing or reviewing it.

RESPONSE: CPH incorporates the Initial Objections set forth in its October 13, 2003, responses and objections to Morgan Stanley's Second Set of Interrogatories and the Further Objections set forth in response to Interrogatory No. 6. Subject to and without waiving those objections, CPH supplements its prior interrogatory response by incorporating by reference the expert disclosures of Blaine F. Nye, Ph.D., Samuel J. Kursh, D.B.A., and Michael J. Wagner served on December 7, 2004, and the rebuttal disclosures that those witnesses will soon submit.

Dated: December 24, 2004

As to objections:

By:  _____

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Attorneys for Coleman (Parent) Holdings Inc.

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I, Steven L. Fasman, being duly sworn, depose and say that I am authorized on behalf of Coleman (Parent) Holdings Inc. and, on its behalf, I have read the foregoing COLEMAN (PARENT) HOLDINGS INC.'S SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NUMBER 6 OF MORGAN STANLEY & CO. INCORPORATED'S SECOND SET OF INTERROGATORIES, and to the best of my knowledge and belief the response contained therein are true and correct.


STEVEN L. FASMAN

Subscribed and sworn to before me
this 24 day of December, 2004.


Notary Public

DEBBIE HERNANDEZ
Notary Public, State of New York
No. 01HE5021255
Qualified in Queens County
Certificate Filed in New York County
Commission Expires December 13, ~~19~~ 2005

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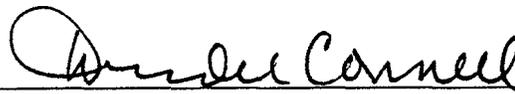
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and Federal Express to counsel listed below on this 24th day of December, 2004:

Thomas A. Clare
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Washington, D.C. 20036-3209


Deirdre E. Connell

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I. Background and Qualifications

1. I am a financial economist and the President of Stanford Consulting Group, Inc., which provides research and consulting services in financial economics and related areas to clients, including government agencies, corporations, and law firms. I have a B.A. degree in physics from Stanford University, an M.S. degree in physics from the University of Washington, an M.B.A. degree from Stanford, and a Ph.D. in finance from Stanford. I have served as a consultant or expert witness in the areas of market efficiency, materiality, causation, and damages in a number of securities actions. My curriculum vitae is attached as Exhibit 1. During the past five years I have provided expert testimony in trial or by deposition in the matters listed in Exhibit 2. My publications are listed in my curriculum vitae (Exhibit 1).

2. The fees charged Plaintiff for this project are the standard hourly rates of employees of Stanford Consulting Group, Inc. My current hourly rate is \$550. My compensation is in no way contingent upon the outcome of this litigation.

II. Bases for Opinion

3. I have been retained by counsel for Coleman (Parent) Holdings, Inc. ("Plaintiff") in this action to provide expert opinions on the losses incurred by Plaintiff when it received 14,099,749 shares of the common stock of Sunbeam Corporation ("Sunbeam") on March 30, 1998 in partial exchange for its 44,067,520 shares, or 82% interest, ("the Exchange") in The Coleman Company, Inc. ("Coleman"). Plaintiff entered into the Exchange in reliance upon representations made by Defendant Morgan Stanley & Co., Inc. ("Morgan Stanley"). I understand that Coleman also received consideration in the

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form of cash and debt relief in this transaction. If called to testify, I will offer my opinions on the losses incurred by Plaintiff.

4. My opinions are based upon my professional knowledge and experience, as well as on a review of documents and information relevant to this matter, and analysis of data. Documents considered are listed in Exhibit 3. Documents and other materials upon which I have relied as a basis for my opinions are cited in this report and its exhibits; all documents and materials are the type typically relied upon by experts in preparing this type of report. Analyses that are bases for my opinions are described in this report and its exhibits and results of those analyses are contained in this report and its exhibits.

5. The materials I have relied upon include, in general categories: Plaintiff's Complaint and other pleadings, news reports, SEC filings, analysts' reports, daily stock price and volume data, company-specific shareholding data, and daily market and industry index prices. These are the types of materials and data typically relied upon by economists to examine the effects of public information on changes in stock prices and the relationships between changes in stock prices, newly released information, and changes in market and industry effects, as well as testing for evidence of market efficiency.

6. It is my understanding that discovery is continuing in this matter. I may review additional information and documents, including information and documents that may become available through discovery and the reports and depositions of other witnesses or expert witnesses. The opinions offered in this report are subject to refinement or revision based on any additional analysis of the documents and information listed above, as well as new or additional information that may be provided to or obtained by me in the course

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of this matter. I may be called upon to offer opinions on any opinions rendered by expert witnesses that Morgan Stanley retains that relate to the opinions expressed in this report.

III. Assumptions

7. In calculating the losses incurred by Plaintiff in this matter, I have been asked to assume (and have assumed) the following:

- a) Sunbeam misrepresented, omitted, and/or failed to correct in its public filings and statements, information regarding Sunbeam's revenues and that Sunbeam's accounting practices were not in compliance with Generally Accepted Accounting Principles ("GAAP"); Morgan Stanley was aware that Sunbeam made material misrepresentations to the public and to Plaintiff, and Morgan Stanley also made materially false and misleading statements directly to Plaintiff. Information provided by Sunbeam or Morgan Stanley to Plaintiff that was known by Morgan Stanley to be incorrect—and upon which the Exchange was premised—was materially false and misleading.
- b) Morgan Stanley knew that Sunbeam's and Morgan Stanley's statements regarding the Sunbeam turnaround in 1997 were false and misleading. Morgan Stanley knew that the public description of Sunbeam's alleged growth and successful turnaround was false. Morgan Stanley knew that Sunbeam pulled 1998 sales into 1997 in order to falsely portray itself as having a successful turnaround in its financial condition. The result was that investors, including Plaintiff, based Sunbeam's expected revenues and

projected earnings on false and misleading statements made by Sunbeam and Morgan Stanley.

- c) By March 19, 1998, at the latest, Morgan Stanley was on notice from Sunbeam's outside auditor that sales for the first two months of 1998 were approximately \$72.0 million compared to \$143.5 million in the year-ago period, and compared to analysts' expectations that full-quarter sales would be \$285-\$295 million; that the auditor primarily attributed the difference in sales to the early buy program which accelerated grill sales into 1997; that Sunbeam's debt was increasing; and that Q1 1998 through March 1 was operating at a loss as compared to a reported profit in the year-ago period. Morgan Stanley understood that disclosure of these facts would jeopardize the upcoming purchase of Coleman.
- d) Morgan Stanley assisted in the preparation and dissemination of the March 19, 1998 press release, which did not disclose the material information known to it, nor cause Sunbeam to do so, either in the press release or in separate communications with Plaintiff, thus misleading Plaintiff and inducing Plaintiff into closing the transaction.

IV. Summary of Opinions and Expected Testimony

A. *Materiality and causation*

8. Material information is that information which a reasonable investor would want to know in making investment decisions. The price of a share in a public company reflects the information then available in the market about the company. Share price is the present value, on a per-share basis, of the expected future earnings stream of a

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company that would accrue to the company's shareholders and embodies market expectations about the company's future earnings growth. For the share price to accurately and properly reflect those expectations, the statements to the market by company representatives, directly or indirectly, must be accurate and not misrepresent, omit, or mislead the market on material facts. Additional non-public information may be available to the parties in confidential negotiations such as those between Plaintiff, on one hand, and Morgan Stanley and Sunbeam, on the other hand. Participants in such a financial transaction take all this information—including both public and confidential material—into account in determining whether or not to conclude a deal. Public disclosure at any earlier time of the material information that Plaintiff alleges was misrepresented or omitted would have caused Sunbeam's common stock to trade at lower prices, demonstrating an unbiased assessment of Sunbeam's true value, which should have been disclosed to Plaintiff. Furthermore, Plaintiff could have acted on that knowledge, in refusing to conclude the sale on the proposed terms, even if important information had not been properly disseminated to the public.

B. Losses attributable to the alleged misrepresentations and fraud

9. Plaintiff entered into a merger agreement with Sunbeam based on what it could evaluate in the negotiations and learn from the public domain. Once the agreement was signed, Plaintiff was entitled to exit the agreement upon occurrence of a pre-closing material adverse event. Given (as Plaintiff contends) that Sunbeam common stock was trading at artificially inflated prices at the time of the Exchange, and that Sunbeam and Morgan Stanley withheld material information from Plaintiff, Morgan Stanley caused Plaintiff to incur monetary losses.

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10. My estimate of losses incurred by Plaintiff is approximately \$680 million, excluding prejudgment interest, and approximately \$1,090 million, including prejudgment interest. In calculating interest (simple, not compounded), I have used the Statutory Interest Rates pursuant to Section 55.03, Florida Statutes. (See Exhibit 4 for a summary of the calculations. See Exhibit 5 for the statutory interest rates.) My estimate of losses incurred by Plaintiff assuming it could have registered and sold shares in Q1 2000 is approximately \$635 million, excluding prejudgment interest, and approximately \$1,024 million, including prejudgment interest. (See Exhibit 4.)

11. Plaintiff received certain offsets which should be taken into account. The value of a confidential cash settlement should be subtracted from the losses; the settlement amount including prejudgment interest from the date of that settlement, would be subtracted from the amount of losses including prejudgment interest. Receipt of warrants in August 1998 has been considered, but Plaintiff could not have realized any value through exercise of these warrants.

C. Market efficiency

12. Based on my review of the evidence in this matter and analysis of data specific to Sunbeam and its common stock, I conclude that the market for Sunbeam common stock was open, developed, and efficient during the years 1997 and 1998, which encompass the events at issue in this matter.

V. Summary of Evidence in Support of Opinions

A. Materiality and causation

13. Share price is a function of a company's expected future economic earnings, i.e., the expected future free cash flow to investors. Free cash flow is that cash flow on which

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there are no other claims—not from suppliers, creditors, employees, government in the form of taxes, or from others—and hence is a return to equity investors for their investment and the risk they have borne. This cash flow can be distributed to equity investors as dividends or special distributions and/or as appreciation in share price realized at sale of the stock. In other words, a company's share price is the present value of future cash flows expected by its equity investors, discounted for risk and the time value of money. If market expectations for a company's future economic earnings change, the company's share price will change. If the expected growth rate of future economic earnings increases, share price increases; if the expected growth rate decreases or becomes negative, share price decreases.

14. Material information is that information which a reasonable investor would want to know in making investment decisions. Such material information is likely to include: historical and current revenues, expenses, and earnings (as they convey information about future trends) and changes in revenue, expense, and earnings trends. Based on public information from Sunbeam management and Morgan Stanley, the turnaround at Sunbeam was thought by investors to have been successful. The public information regarding Sunbeam's purported successful turnaround would have been used by investors and Plaintiff to evaluate and project Sunbeam's expected future financial condition and financial performance. In addition, Morgan Stanley provided Plaintiff information of the same type in the private forum of confidential negotiations, as evidenced by statements from Morgan Stanley's Discussion Materials about Sunbeam prepared in February 1998. The segment on Investment Rationale states that: "Sunbeam represents an **attractive growth story** and investment opportunity"; "Sunbeam has undergone a **profound**

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

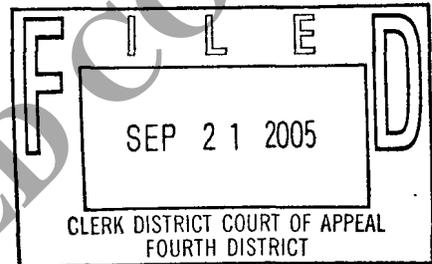
CASE NO. 502003CA005045XXOCAI

FOURTH DISTRICT CASE NO. 4D05-2606

MORGAN STANLEY & CO. INCORPORATED

VS.

COLEMAN(PARENT) HOLDINGS INC.



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INDEX TO RECORD ON APPEAL

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DISTRICT COURT OF APPEAL
FOURTH DISTRICT

transformation since the arrival of new management in July 1996"; and that there is "tremendous intrinsic value in the Company".¹

15. The misrepresentations and omissions made or assisted by Morgan Stanley were material. Misrepresentations and omissions by Sunbeam management and Morgan Stanley concerning revenues and earnings, as well as those concerning prospects for revenues and earnings growth, shaped Plaintiff's, as well as the market's, expectations regarding Sunbeam's future earnings stream and therefore were material in determining the observable public share price. Information about Sunbeam's revenues, earnings, and prospects also would have entered into Plaintiff's consideration of the fairness of the proposed deal. The alleged misrepresentations and omissions regarding Sunbeam's financial position and its reported revenues and earnings, had the effect of inflating the price of Sunbeam's common stock prior to the Exchange. Morgan Stanley was aware of this information, including that sales had been pulled in from later quarters such that reported earnings were not actually representative of Sunbeam's financial position, and that the supposed turnaround was not really a success.

16. Plaintiff could reasonably rely on the prevailing market price as an independent assessment of Sunbeam's value—for which it was exchanging its own valuable asset, a majority ownership of Coleman. However, if material information is hidden from the market, it will not be incorporated into the share price. Instead, the market was pricing what it believed to be the overall result of the business combinations Sunbeam announced when it disclosed the Coleman transaction along with two smaller acquisitions.

¹ Deposition Exhibit CPH 9, (CP 026288-026370) at CP 026690.

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B. Losses attributable to the alleged misrepresentations and fraud

17. Plaintiff received 14.1 million Sunbeam shares which it anticipated were worth approximately \$48.26 per share based on the average of the closing prices of Sunbeam stock from the date the agreement was announced until the closing date, i.e., March 2, 1998, to March 30, 1998. This value reflects the average market consensus during the period when the market could consider the effects of the proposed transactions. Thus, Plaintiff could reasonably expect that the total value of the shares it would receive in the Exchange was approximately \$680 million.

18. It is my understanding that Plaintiff had the right to terminate the proposed Exchange transaction for a material adverse change in Sunbeam's financial condition. It is my understanding that had Morgan Stanley timely informed Plaintiff of the information it had learned from Sunbeam's outside auditor, Plaintiff would have canceled the proposed Exchange transaction. It is my understanding that Plaintiff has not sold any Sunbeam shares to date and that such shares were cancelled or became worthless when Sunbeam declared bankruptcy on February 5, 2001.

19. Plaintiff suffered losses from the transaction it was fraudulently induced to complete. Sunbeam's average closing share price was approximately \$48.26 during the period when the public market was aware that the Exchange had been agreed upon. Plaintiff received 14,099,749 shares of Sunbeam common stock; thus Plaintiff's loss is approximately \$680 million. (See Exhibit 4.)

20. In this matter, I have used Florida statutory interest rates from the time of acquisition, i.e., March 30, 1998, to the present, i.e., December 7, 2004. I expect to

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update my interest calculations at the time of trial as needed. Aggregate losses with interest are approximately \$1,090 million. (See Exhibit 4.)

(i) Losses if Stock Could Have Been Sold as of Q1 2000

21. The common stock received in the Exchange had restrictions. According to the Agreement and Plan of Merger among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings Inc., dated February 27, 1998, ("Merger Agreement") Plaintiff could not register and sell its shares immediately after the closing of the Exchange. The schedule, compared to the Effective Time (presumably the March 30, 1998 closing date) was: three months following the Effective Time (June 30, 1998) Plaintiff could sell up to 25% of the shares received; after six months (September 30, 1998) up to 50% could be sold; and after nine months had elapsed (December 31, 1998), there were to be no further restrictions on registering and selling the shares acquired in the Exchange.

22. The shares issued in the Exchange were not registered at the time of the Exchange; according to Sunbeam's 1999 Form S-4/A the SEC registration process would delay the transaction, and it was deemed less disruptive to the integration of the businesses to close quickly. The agreement contemplated a subsequent transaction which would acquire the publicly-traded Coleman shares; this format

would enable Sunbeam to acquire control of Coleman as quickly as possible in order to reduce disruption to Coleman's business... The two-step structure would enable Sunbeam to acquire control of Coleman more quickly than in a one-step transaction, since Sunbeam could issue shares of its common stock to the MacAndrews & Forbes subsidiary that owned the shares of Coleman common stock without having to register the Sunbeam shares under the federal securities laws, thereby avoiding the delay inherent in the registration process. ... Sunbeam believed that it was in the best interests of its stockholders that Sunbeam acquire

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Coleman for consideration consisting, at least in part, of shares of its common stock. Accordingly, Sunbeam believed that a cash tender offer for all outstanding shares of Coleman common stock, which also would have avoided the registration process, was not an acceptable alternative.²

23. Before the first restriction elapsed on June 30, 1998, Dunlap and other key Sunbeam executives had been fired and certain former Coleman personnel took over Sunbeam executive management duties. On June 25, auditor Arthur Andersen revoked its prior certification of Sunbeam's financial statements. Plaintiff would not have been able to register shares for sale into the public market because Sunbeam's financial statements had been withdrawn. On August 6, 1998, Sunbeam's audit committee announced that restatements certainly would be required for 1997, and also possibly for 1996 and the unaudited first quarter of 1998, and that the restated results should be available by the end of September.

24. Analysts recognized that no suitor was likely to buy all or significant parts of Sunbeam. As one analyst stated:

We Highly Doubt Any Buyers Would Consider A Bid For SOC Prior To Resolution Of The Restatement Of Its Financials, Quantification Of Its Shareholder Lawsuit Liabilities and Determination Of Its Inventory Write-Down – Given the recent news that SOC will now have to restate its financial statements, *we don't believe that any potential suitors would step in to buy the entire company, nor do we believe management is likely to sell individual parts of the company pending resolution of all the pending lawsuits by shareholders.*³ (emphasis in original)

25. Sunbeam noted that as of December 6, 1999, in the last 18 months there had been no "offer or proposal from an unaffiliated person regarding a merger or consolidation

² Amendment No. 4 to Form S-4, filed December 6, 1999 ("12/6/99 S-4/A") at page 40.

³ Analyst report, Prudential Securities Inc., August 10, 1998.

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involving, or the acquisition of all or any substantial part of the assets of, or the acquisition of securities conferring control of, Sunbeam or Coleman.”⁴

26. On August 12, 1998, Plaintiff entered into a settlement agreement with Sunbeam whereby it ceased pursuing certain legal remedies and agreed to provide certain management services and three of Plaintiff’s executives signed three-year contracts with Sunbeam. The settlement agreement included elimination of restrictions on 75% of the shares Plaintiff received in the Exchange and extending the sales or transfer restrictions on the remaining 25% of shares to three years. However, Plaintiff was required to register its shares in order to sell them to the public.⁵ Plaintiff would not have been able to register the shares after Arthur Andersen’s withdrawal of its approval of Sunbeam’s financial statements.

27. On October 20, 1998, the results of Sunbeam’s restatement were announced for the six quarters from Q4 1996 through Q1 1998, including the existence of “accounting missteps” such as prebooking sales, bill-and-hold transactions, and excessive restructuring charges.

28. After the restatement, Sunbeam was not able to immediately complete its pending registration statements for either the public Coleman shares or for the debentures. Sunbeam received a series of letters from the SEC Division of Corporation Finance concerning its registration statements on Forms S-1 and S-4 from July 8, 1998 to October 27, 1999 to the effect that further statements and clarifications were needed before such

⁴ 12/6/99 S-4/A at page 48.

⁵ See Merger Agreement, Section 7.2 Restrictive Legend at page 20; also 12/6/99 S-4/A at page 12.

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filings could be declared effective. On November 8, 1999, the SEC declared the debenture registration statement effective.

29. On December 6, 1999, the registration statement for the Sunbeam shares received by the public shareholders of Coleman stock was declared effective. However, the final acquisition of the Coleman shares held by those shareholders was not completed until January 6, 2000.

30. For purposes of the alternative measure of damages I have assumed that Plaintiff could have registered its shares no earlier than December 6, 1999, and that the registration statement would have been approved by the SEC. If Plaintiff could have sold its Sunbeam shares when the former Coleman public shareholders could do so, i.e., during the first quarter of 2000, at an average price of \$4.35 Plaintiff would have received approximately \$46 million for 75% of the Sunbeam shares that were not restricted from sale or transfer. Sunbeam declared bankruptcy while the remaining 25% of Plaintiff's shares received in the Exchange remained restricted from sale or transfer.

31. Thus, if losses are to be reduced by amounts that Plaintiff might have received from the sale of its shares as early as was possible by Plaintiff, these reduced losses total approximately \$635 million without prejudgment interest and approximately \$1,024 million with prejudgment interest.

(ii) Potential Offsets

32. As part of the August 12, 1998 settlement agreement, Plaintiff received 5-year warrants to purchase 23 million shares of Sunbeam common stock at \$7.00 per share. The settlement agreement restricted Plaintiff from transferring or selling 50% of the

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warrants received for three years. It is my understanding that within days of Plaintiff's receipt of the warrants, other Sunbeam shareholders commenced litigation against Sunbeam claiming that the settlement was unfair to them. In addition, other actions against Sunbeam were also pending. It is my understanding that, notwithstanding the fact that there were no contractual restrictions upon Plaintiff's ability to sell or transfer 50% of the warrants received in the August 1998 settlement, the lack of certified financial statements from Sunbeam and the pending litigation precluded Plaintiff from registering its warrants for sale to the public.

33. On January 6, 2000, the holders of publicly-traded Coleman shares received warrants expiring August 24, 2003 to purchase 4.98 million Sunbeam shares, also at \$7.00—those warrants were freely tradable upon issuance, unlike the warrants Plaintiff received.⁶ Sunbeam's share price on January 6, 2000 was \$4.125; the warrant exercise price was \$7.00, thus the warrants were not in the money at that time nor at any later time.

34. According to the August 12, 1998 agreement, the warrants (and shares of common stock upon exercise of the warrants) Plaintiff received were not registered with the SEC and were subject to certain resale provisions and/or registration requirements. The need to close the warrant transaction rapidly and eliminate legal problems and management uncertainty led to a special situation requiring an NYSE exception:

The settlement normally would have required approval by Sunbeam's stockholders under the rules of the NYSE because of the issuance of the warrant as part of the settlement. However, Sunbeam's audit committee determined that the delay that would be necessary to secure stockholder approval prior to issuing the warrant would:

⁶ 12/6/99 S-4/A at page 6.

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- be lengthy due to the SEC's ongoing investigation of Sunbeam's accounting practices and policies and the need to complete the restatement of Sunbeam's historical financial statements,
- inhibit Sunbeam's ability to reach a settlement with the MacAndrews & Forbes subsidiary and to retain and hire essential senior management personnel, and
- seriously jeopardize Sunbeam's financial viability.

Based on these determinations, Sunbeam's audit committee, relying on an exception provided in the applicable NYSE stockholder approval policy, expressly approved Sunbeam's omission to seek stockholder approval. The NYSE accepted Sunbeam's application of the exception.⁷

35. It was not until December 6, 1999 that Sunbeam's registration statement for the public Coleman shareholders was declared effective by the SEC; the acquisition of all the public Coleman shares was completed on January 6, 2000. However, the shares and warrants held by Plaintiff apparently were still not registered at that time.

36. In sum, given the numerous difficulties in transforming its Sunbeam warrants into cash, it is unlikely Plaintiff could have offset any of its claimed losses by attempting to monetize the warrants it received.

37. It is my understanding that there has been a confidential monetary settlement with another party in this matter; the dollar amount of that settlement should be subtracted from the losses I have calculated. From the settlement date of October 10, 2002, the settlement amount should be multiplied by 14.61% to calculate prejudgment interest. Thus, the total offset including prejudgment interest for the cash settlement is the amount of the cash settlement multiplied by 1.1461.

⁷ 12/6/99 S-4/A at page 33.

C. *Market efficiency*

38. Securities prices in efficient markets reflect the market's consensus as to fair value given all publicly available information at the time of purchase or sale. Over the past thirty years, the efficient capital markets hypothesis ("ECMH") has risen to a prominent position in financial and economic theory. In its most commonly-held form – known as "semi-strong" – the ECMH states that the securities markets incorporate all available public information. This hypothesis has been empirically validated in numerous studies.⁸ The ECMH also has stood up against its critics; while anomalies have occurred in financial markets, they are random and do not allow for trading strategies that would create abnormal profits.⁹

39. In an efficient market, market participants can rely on the market price as reflecting all available public information. In other words, the price at which a market participant can buy or sell a security is the market's consensus as to that security's fair value given all of the publicly available information known at the time of purchase or sale. Because a stock's price is a function of a company's expected future cash flows, and those expectations are based on projected future revenues and earnings, any information used by the market to evaluate future revenues and earnings is an important determinant of the market price.

⁸ See, e.g., Eugene F. Fama, "Efficient Capital Markets: A Review of Theory and Empirical Work," *Journal of Finance*. Volume 25, Issue 2; May, 1970; pages 383-417. In this article, Fama provides an overview of a number of studies supporting the ECMH.

⁹ Eugene F. Fama, "Market Efficiency, Long-Term Returns, and Behavioral Finance," *Journal of Financial Economics*. Volume 49, 1998, pages 283-306. As Fama states: "Consistent with the market efficiency hypothesis that the anomalies are chance results, apparent overreaction to information is about as common as underreaction, and post-event continuation of pre-event abnormal returns is about as frequent as post-event reversal. Most important, consistent with the market efficiency prediction that apparent anomalies can be due to methodology, most long-term return anomalies tend to disappear with reasonable changes in technique."

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40. Thus a demonstration that Sunbeam shares trade in an efficient market leads to the presumption that the market price provides a reasonable consensus estimate of the fair value of the entire company less its liabilities (i.e., per-share price multiplied by total shares outstanding). That valuation is a proxy for what Plaintiff could expect to receive on a per-share basis were it to agree to a transaction with Sunbeam. Plaintiff could also look to the market's assessment in order to corroborate its own calculations as it considered under what circumstances it would enter into the Exchange.

41. In order to assess the presence of market efficiency, it is helpful to examine demonstrative factors. The Courts generally accept as evidence of an efficient market the results of a number of statistical findings or criteria for market efficiency. See, e.g., Cammer v. Bloom, 711 F. Supp. 1264 (D.N.J. 1989).

42. The Cammer Court found that for the market for a particular security to be efficient, the following two criteria should be met:

- a) It should trade in an open market in which anyone, or at least a large number of persons, can buy or sell.
- b) It should trade in a developed market which has a relatively high level of activity and frequency, and for which trading information (e.g., price and volume) is widely available. It usually, but not necessarily, has continuity and liquidity (the ability to absorb a reasonable amount of trading with relatively small, smooth price changes).¹⁰

43. A direct empirical test of market efficiency is to examine price responsiveness to the release of new and material information. If the security price responds quickly, the

¹⁰ Cammer, at 1276, n. 17.

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market for the security is efficient. An indirect test of informational efficiency is to examine whether the conditions that facilitate market efficiency exist. Four such conditions are:

- a) The market is open and trading is facilitated by professional market makers/specialists.
- b) Information about the company's activities and prospects is readily available.
- c) Some of the shareholders are large institutions that have significant positions.
- d) The market is liquid as measured by empirical proxies for liquidity such as trading frequency, trading volume, and dollar trading volume.

44. Case precedent also exists on the indicators of market efficiency. Specifically, the Cammer Court focused on five factors to be considered in determining whether the market for a particular security is efficient.¹¹ In forming my opinion, I have considered each of the five Cammer factors as applied to the market for Sunbeam common stock.

These five Cammer factors are:

- a) whether the security trades at a high weekly volume;
- b) whether analysts follow and report on the security;
- c) whether the security has market makers;
- d) whether the company is eligible to file SEC Form S-3;¹² and

¹¹ Cammer, at 1286-87.

¹² SEC Form S-3 is a simplified form for registration of securities by companies meeting specified SEC requirements, including reporting under the 1934 Act for at least 12 months. Companies that meet these requirements may incorporate prior SEC filings by reference into current filings, rather than repeating such information, as it is deemed already to be publicly available.

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- e) whether there are empirical facts showing a cause and effect relationship between unexpected corporate events or financial releases and an immediate response in the security's price.

45. The Cammer factors address informational efficiency, i.e., whether the market conditions exist such that, when relevant information about a company is released, the prices of the company's securities can and do change to reflect the new mix of public information. Each of these five factors was applied to the market for Sunbeam common stock. Considering all five factors and other evidence, as described below, it is evident that the market for Sunbeam common stock was efficient during 1997 and 1998.

Cammer Factor 1: Weekly trading volume

46. A market is liquid if investors can trade a large number of shares on demand. The high level of trading activity associated with trading in Sunbeam common stock during 1997 and 1998 indicates that Sunbeam common stock traded in a liquid market. High trading volume generally indicates that there is sufficient interest in the company and its stock that analysts will conduct research and report their analysis to market participants. Liquidity and high trading volume also allows investors to quickly buy and sell shares when their assessments about the value of a company's stock have changed. During 1997 and 1998, the total consolidated reported trading volume of Sunbeam common stock on the New York Stock Exchange ("NYSE") was 568,246,474. (See Exhibit 6 for reported prices and volume of Sunbeam common stock.)

47. According to a reference cited by the Cammer Court, "turnover measured by average weekly trading of 2% or more of the outstanding shares would justify a strong presumption that the market for the security is an efficient one; 1% would justify a

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substantial presumption.”¹³ For Sunbeam, the average weekly reported trading volume for weeks fully contained during the years 1997 and 1998 was 5,432,939 shares.

Sunbeam shares issued and outstanding totaled 84 million at the start of 1997 and 101 million at the end of 1998. (See Exhibit 7 for a summary of Sunbeam common stock weekly trading volume and shares outstanding.) On average, the weekly trading volume was 5.9% of shares outstanding. Thus, Sunbeam’s high weekly turnover volume justifies the presumption that the market for Sunbeam common stock is efficient.

48. The annualized turnover ratio is the annual reported trading volume divided by the number of shares outstanding. In 1997 and 1998, the average annualized turnover ratio was 69% and 76% for the NYSE.¹⁴ Total trading volume of Sunbeam common stock during 1997 and 1998 was 568 million shares, compared to 101 million shares outstanding at the end of 1998. This is an annualized turnover ratio¹⁵ of 281.6%. Thus, Sunbeam’s annualized turnover ratio was significantly larger than the average on the NYSE. (See Exhibit 7.)

49. Given the volume of trading relative to the number of shares outstanding, Sunbeam common stock experienced high weekly trading volumes. Sunbeam’s high trading volume indicates that the market for Sunbeam common stock was efficient.

Cammer Factor 2: The number of securities analysts following and reporting on Sunbeam

¹³ *Cammer*, at 1293, quoting Bromberg & Lowenfels, 4 Securities Fraud and Commodities Fraud (Aug. 1988).

¹⁴ 1999 NYSE Annual Fact Book, page 91.

¹⁵ Share volume divided by shares outstanding divided by time period in years.

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50. Securities analysts research and report to investors on the financial condition and prospects of a covered company. In conducting their research, analysts typically have greater access to company management than do individual investors. Analysts are conduits to the market for information collected from management from on-site visits, conference calls accompanying key company announcements, and other contacts with senior management. Analysts can channel new information to the market rapidly through their published reports, online reporting services such as First Call, and alerts given to clients and other employees of the same investment firm. Analysts thus facilitate the dissemination of new information to investors and share price reaction to new information.

51. During 1997 and 1998, securities analysts from numerous firms reported on Sunbeam, including: Bear Stearns & Co., Inc.; Buckingham Research Group; CIBC Oppenheimer; Friedman, Billings, Ramsey & Co., Inc.; Goldman Sachs & Co.; McDonald & Co.; Merrill Lynch; Northern Trust Company; PaineWebber; Prudential Securities; Sands Brothers & Co., Ltd.; Standard & Poor's; and UBS Equities.¹⁶

52. During 1997 and 1998, there were at least 86 analyst reports about Sunbeam published and available to investors via one source, Reuters Research. The number of analysts covering Sunbeam and the substantial number of reports supports my opinion that the market for Sunbeam stock was efficient during 1997 and 1998.

Cammer Factor 3: The number of market makers

53. The third Cammer factor applies directly to stocks traded on Nasdaq because that exchange uses market makers to facilitate market efficiency while the NYSE uses

¹⁶ Source: Reuters Research and analyst reports provided by counsel.

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specialists to facilitate an orderly and efficient market for each security traded on the NYSE, such as Sunbeam. Market makers and specialists enable investors to trade almost instantaneously upon the arrival of new relevant information; thereby, new information can be rapidly reflected in securities prices.

54. Sunbeam was listed and traded on the New York Stock Exchange. In general, a security's listing on a national exchange means that financial information about that company is readily available to investors, at a minimum, through the company's SEC filings. Also, listing on the NYSE, AMEX, or Nasdaq means that investors have access to trading prices and volumes throughout the trading day. Rules of the national exchange also mean that investors buy at the lowest ask price and sell at the highest bid price prevailing at the time of their trade. Because a national exchange brings together many thousands (or millions) of investors, trading prices reflect the consensus opinion as to securities' values.

55. A reference cited by the Cammer Court said that "at a minimum, there should be a presumption – probably conditional for class determination – that certain markets are developed and efficient for virtually all the securities traded there: the New York and American Stock Exchanges, the Chicago Board Options Exchange and the NASDAQ National Market System."¹⁷

56. In the Cammer decision, the Court stated:

"...some may concur with [Defendant's] suggestion ... that companies listed on national stock exchanges or companies entitled to issue new securities using SEC

¹⁷ Cammer, at 1292, citing Bromberg & Lowenfels, 4 Securities Fraud and Commodities Fraud, Section 8.6 (Aug. 1988).

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Form S-3 would almost by definition involve stock trading in an 'open and developed' market."¹⁸

57. The NYSE assigns one dealer, known as the specialist, to each security traded on the NYSE. These specialists are independent companies in corporate or partnership structures whose responsibilities require them to maintain a fair, competitive, orderly and efficient market for the securities assigned to them. NYSE is an agency auction market where most trading is conducted by brokers acting on behalf of customers, rather than by dealers trading for their own account. Competitive price discovery at the point of sale results from this dealer interaction. Aided by specialists, the NYSE marketplace provides all customer orders an equal opportunity to interact and receive the best price.¹⁹

58. Presently there are seven firms employing 443 specialists who specialize in more than 2,800 stocks; each specialist usually handles from five to ten listed stocks.²⁰ The last specialist of record for Sunbeam common stock before it was delisted was Walter N. Frank & Co., which was acquired by Goldman Sachs in 2002.

Cammer Factor 4: Whether Sunbeam was eligible to file SEC Form S-3

59. Form S-3 is a simplified registration form that may be used if a company has been subject to Securities Exchange Act of 1934 reporting requirements for more than one year, has filed all documents in a timely manner during the prior twelve months, and has not, since the last audited statements, failed to pay required dividends or sinking funds, nor defaulted on debts or material leases.²¹ Thus, companies that have previously provided what the SEC deems to be sufficient public information may incorporate prior

¹⁸ *Cammer*, at 1276-77

¹⁹ www.nyse.com

²⁰ The New York Stock Exchange Glossary, www.nyse.com.

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filings by reference into current filings, and need not repeat such information since it is already widely publicly available. Sunbeam filed two Registration Statements on Form S-3 and two Amended Registration Statements on Form S-3/A with the SEC in 1994. Although it has not filed any since then, Sunbeam may have been eligible to file Form S-3 during 1997 and before June 25, 1998 when Sunbeam's outside auditor revoked its prior certification of Sunbeam's financial statements. Documents in this case indicate that at least until June 1998, Sunbeam intended to file a Form S-3 to register the debentures.²²

Cammer Factor 5: Empirical facts showing a cause-and-effect relationship between unexpected corporate events or financial releases and an immediate response in the stock price

60. The ECMH states that the securities markets incorporate all available public information. One way to determine whether prices incorporate relevant publicly available information is to examine statistically significant price changes and examine what information was disclosed about a company's financial condition and prospects prior to these price changes occurring. In the case of Sunbeam, many of the statistically significant price changes were associated with information released by Sunbeam and echoed by analysts after discussions began between Plaintiff and Morgan Stanley in December 1997.

61. There was extensive news coverage of Sunbeam during 1997 and 1998, including reports on Sunbeam's financial condition, its prospects for growth, and its revenues and

²¹ www.sec.gov

²² See for example CPH 0004988-4991, CPH 0021370-3172.

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earnings trends. Articles concerning Sunbeam appeared in major financial news sources such as the *Associated Press Newswires*, *Bloomberg News*, *Business Week*, *Chicago Tribune*, *Dow Jones Business Services*, *Dow Jones News Service*, *Financial Post*, *Los Angeles Times*, *New York Times*, *PR Newswire*, *Reuters News*, *St. Petersburg Times*, and *The Wall Street Journal*, among others. On most days of 1997 and 1998, there were news articles about Sunbeam or that mentioned Sunbeam.

62. Institutional investors such as pension funds, mutual funds, and investment banks, typically have ready access to minute-to-minute financial news and to online bulletins from analysts such as those disseminated through First Call. Thus, the fact of significant institutional ownership is a signal that knowledgeable investors are closely and rapidly scrutinizing sources of company information and forming investment opinions that affect share price accordingly.

63. There was substantial institutional ownership and trading of Sunbeam common stock throughout 1997 and 1998. According to data provided by Thomson Financial (Exhibit 8A), institutional ownership of Sunbeam common stock ranged between 75% and 89% of Sunbeam's reported shares outstanding from December 31, 1996 through March 31, 1998. Sometime after the March 31, 1998, quarterly reporting date, there was a huge sell-off by institutions, which reduced their holdings to less than one-third of Sunbeam shares by December 31, 1998.²³ There were between 77 and 155 institutional investors that reported holding Sunbeam common stock at quarter-ends during 1997 and

²³ Institutions which file Form 13F with the SEC report shares held as of the end of each calendar quarter. These data are collected and published by Thomson Financial.

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1998. Institutional investors actively traded Sunbeam common stock, as indicated by data from reporting institutions' filings of Form 13F with the SEC. (See Exhibit 8B.)

64. On January 28, 1998, when Sunbeam announced that its fourth quarter 1997 financial results were less than analysts' expectations, due to blanket production issues, the stock dropped 9.5% to \$37.625, a statistically significant return.

65. On March 2, 1998, when definitive agreements were announced for Sunbeam to acquire Coleman, Signature Brands, and First Alert, Sunbeam stock price closed at \$45.625, up 9.3%, a statistically significant return.

66. After Sunbeam made the announcement on March 19, 1998 that the first quarter 1998 might see sales lower than analysts' estimates, the stock price closed at \$45.375, a decline of 9.4%, a statistically significant return.

67. On April 3, 1998, Sunbeam announced that not only would first quarter 1998 sales be less than expected but would be less than the year-ago quarter's sales and declared that 1998 would be a year of consolidation and restructuring. The stock price fell 24.6%, a statistically significant return, to \$34.375.

68. On May 11, 1998, actual first-quarter 1998 results were released, which were even worse than the reduced guidance provided on April 3—despite including bill-and-hold sales of \$29 million, adding \$5 million in sales (excluding Coleman) by lengthening the quarter by a few days (from March 29 to March 31), and including \$14.8 million for two days of Coleman sales, March 30 and 31.²⁴ In addition, management sharply lowered the full-year forecast and it became even clearer than before that the successful turnaround

²⁴ Sunbeam Form 10-Q for quarter ending March 31, 1998 at Notes 1 and 2 to the financial statements, and in Item 2, Management's Discussion and Analysis.

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story was false. Sunbeam stock price fell to \$25.75, a decline of 7.4%, a statistically significant return.

69. On June 25, 1998, Arthur Andersen withdrew its financial statement certification as it reviewed its prior statements in connection with the planned debenture Registration Statement. This action delayed the filing of the debenture Registration Statement until February 4, 1999; it was not declared effective until November 8, 1999.²⁵ Sunbeam stock price fell to \$10.44, a decline of 13.0%, a statistically significant return. Though the lack of certified financial statements may make valuation difficult, it does not effect market efficiency *per se*; if the negative and uncertain news is received, evaluated, and acted upon, that is the cornerstone of market efficiency.

70. All the net changes in Sunbeam share price noted above were statistically significant, as indicated in Exhibit 9. The event study analysis demonstrates that, during 1997 and 1998, unexpected material new information concerning Sunbeam resulted in significant changes in stock price after netting out market effects. (See Exhibit 10 for a summary of information releases on significant dates.) This statistical analysis and the extensive news coverage of Sunbeam indicate that the market for Sunbeam common stock was efficient during 1997 and 1998. If the information provided to the market is inaccurate or fraudulent, the market still takes that information into account; when such information is revealed as incorrect, a re-assessment will take place.

VI. Summary and conclusions

71. As detailed in Section V.C., many factors contribute to my opinion that the market for Sunbeam common stock was efficient throughout 1997 and 1998. The fact of market

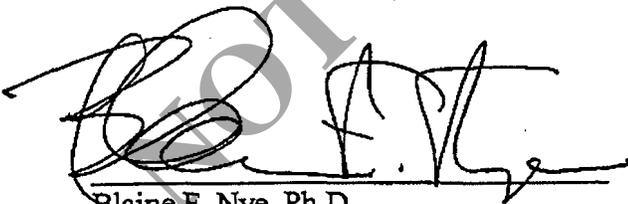
²⁵ 12/6/99 S-4/A at page 29.

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efficiency does not preclude the information about Sunbeam disseminated to the market by Sunbeam or Morgan Stanley from being false and misleading. Rather, it means that the information disseminated about Sunbeam and its prospects, whether true or false, was reflected in Sunbeam's share price.

72. Plaintiff may have received non-public information in good faith during its negotiations with Morgan Stanley and Sunbeam. It is my understanding that the non-public information was consistent with the public information and, therefore, the public market price provided a reasonable basis upon which to arrive at a deal valuation. Thus, if Plaintiff's allegations are found to be correct, losses suffered by Plaintiff in this transaction are approximately \$680 million without prejudgment interest and \$1,090 million with prejudgment interest (\$635 million without prejudgment interest and \$1,024 million with prejudgment interest assuming Plaintiff could have registered and sold shares in Q1 2000), to be offset by the amount of the confidential cash settlement, with prejudgment interest amounts calculated by a multiplier applied from the payment date of the cash settlement.

December 7, 2004



Blaine F. Nye, Ph.D.

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Appendix: Regression Analysis and Event Study

Regression Analysis

1. Regression analysis is commonly used by economists to determine whether a relationship exists between one variable (in this case, returns on Sunbeam common stock) and one or more independent variables (in this case, returns on a market index and residual returns on an industry index). The results of regression analysis are used to screen out effects of the market and industry on the price of a security, and quantify the remaining effects of company-specific information on a company's share price. This is the method used to determine the predicted returns of Sunbeam common stock on each day from December 1997 (when negotiations among Plaintiff, Morgan Stanley, and Sunbeam commenced) through the end of December 1998.
2. To assess the relationship between the price of Sunbeam common stock and developments in the broad market and in the industry in which Sunbeam competed, the daily returns on Sunbeam share price were regressed against the daily returns on a broad market index for the one-year period between January 2, 1997 and December 31, 1997. A daily return on a stock is the percentage change in the stock's share price from one trading day to the next.
3. The market index used is a market capitalization weighted composite of all stocks traded on the New York Stock Exchange ("NYSE"), American Stock Exchange ("Amex"), and Nasdaq (the NYSE/AMEX/Nasdaq composite index, or "NAN").

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This broad-based market index is commonly used by economists as a representation of the market. The data are provided by CRSP.²⁶

4. Sunbeam, in its proxy statements, compared itself to an index composed of companies it considered its peers; it also listed several companies in the competition section of its Form 10-K filings. In addition, analysts following Sunbeam listed companies they considered peers, as did both investment bankers in the confidential negotiations. All of these companies named in the sources above were considered in the regression analysis.²⁷ The industry competitor returns were regressed against the market index as the independent variable. Sunbeam daily returns then were regressed as the dependent variable against the market returns and the residual returns of the industry competitors (portions of the daily returns not explained by changes in the market index) as the independent variables, to determine whether they were significantly correlated (i.e., to determine whether after excluding market effects, the competitors' daily residual returns helped to explain the daily returns on Sunbeam). Sunbeam daily returns were not statistically significantly correlated with the daily residual returns of any of the industry competitors deemed reasonably representative of the industry.
5. The results of the regression of Sunbeam's daily returns against daily returns on the market index appear in Exhibit 11. Sunbeam daily returns were statistically significantly correlated with the daily returns of the market index, as indicated by the

²⁶ CRSP is Center for Research in Security Prices at the University of Chicago Graduate School of Business.

²⁷ The companies are: applica Inc., Black and Decker, Brunswick Corp., Global-Tech Appliances Inc., Home Products International Inc., Huffy Corp., Lancaster Colony Corp., Libbey Inc., Masco Corp., Maytag

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t-statistics in Exhibit 11. A t-statistic greater than 1.96 or less than -1.96 is statistically significant at the 95% level of confidence. The 95% level of confidence is a measure frequently employed by economists to determine statistical significance.

6. The regression equation from this time period explained the variation in Sunbeam stock returns as measured by the square of the correlation coefficient, or R^2 ,²⁸ and the regression equation was statistically significant, as measured by the F-statistic.²⁹ The final regression analysis and regression equation are provided in Exhibit 11.
7. The regression formula from the regression results was then used to predict daily returns on Sunbeam share prices from December 1997 through December 1998, based on the daily returns on the market in the period. Dates were identified during December 1997 through 1998 on which the actual return on Sunbeam's share price was statistically significantly different from the return predicted based on the market and industry return, at the 95% level of confidence. Dates when Sunbeam's residual returns (residual of market effects in the change in the share price) were statistically significant are inferred to be dates on which material new company-specific information reached investors and caused a significant change in Sunbeam's share price. Those dates are listed in Exhibit 9. The z-score that appears beside each date is an indicator of the magnitude of the difference between Sunbeam's predicted return

Corp., National Presto Industries, Inc., Newell, Oneida Ltd., Royal Appliance Mfg. Co., Rubbermaid Inc., Russell Corp., Salton Inc., Scotts Co., Stanley Works, Tupperware Corp., and Whirlpool Corp.

²⁸ The correlation coefficient, R, is a dimensionless index that ranges from -1.0 to 1.0 inclusive and reflects the extent of a linear relationship between two data sets. The R^2 value can be interpreted as the proportion of the variance in the dependent variable attributable to the variance in the independent variables and ranges from 0 to 1.0.

²⁹ The F-statistic is the result of a statistical test to determine whether a significant relationship exists between the dependent variable and the set of independent variables. Here the F-statistic is significant at

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(based on market and industry returns) and its actual share price return for that day. A z-score greater than 1.96 or less than -1.96 indicates the day's residual return (the difference between the predicted return based on market returns, and the actual return on that day) is statistically significant at the 95% confidence level.³⁰

8. Expected Sunbeam stock returns are those changes in Sunbeam stock prices due to market factors, i.e., stock prices can and do change when new information or valuation assessments can potentially change the values of all stocks in an economy (market effects). On each day of the period from December 1, 1997 to December 31, 1998, the expected returns for Sunbeam stock are calculated from the regression equation. The difference between the actual Sunbeam stock return and its expected return is a measure of the change in the stock price due to company-specific events. Company-specific events include any news, analyst coverage, oral commentary, or other information that changes market participants' perceptions about the value of a company.

Event Study

9. An event study was used to examine the publicly available company-specific information contemporaneous with significant stock price returns—in other words, to

greater than the 95% level of confidence, i.e., there is a greater than 95% probability that there is a statistically significant relationship between Sunbeam stock returns and market returns.

³⁰ The z-score is equal to the residual return (percentage change in share price after accounting for market effects; i.e. the difference between the actual return on the stock for that day and the predicted return based on the regression formula), divided by the standard error of the predicted return on the stock. The standard error of the prediction measures the relative volatility of Sunbeam stock returns compared to the predicted returns on Sunbeam stock. The larger the standard error, the greater the residual return must be in order to be considered statistically different from its predicted return. If the z-statistic is greater than or equal to 1.96 or less than or equal to -1.96, the difference between the two returns is significantly different from zero at the 95% level of confidence, i.e., there is a 95% probability that the difference between the actual return and expected return is not equal to zero, it is not a spurious result, and on that day the Sunbeam stock return incorporates a company-specific effect.

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determine whether news affecting Sunbeam promptly caused a measurable share price reaction after accounting for general market effects. Several of those events were described in the section relating to Cammer Factor 5; more are summarized in Exhibit 10. All of the net changes in Sunbeam stock prices that were statistically significantly different from expected changes in Sunbeam stock price based on market factors are listed in Exhibit 9.

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Preliminary Statement

This unauthorized and spurious lawsuit is nothing more than a hardball tactic by parties who are not entitled to receive, and under the pending plan will not receive, anything from Sunbeam's reorganization. Just recently, the Second Circuit reaffirmed that even if a creditors' committee brings a suit with the debtor's consent, such a suit must be "*in the best interest of the bankruptcy estate, and 'necessary and beneficial' to the fair and efficient resolution of the bankruptcy proceedings.*" In re Commodore Int'l Ltd., __ F.3d __, 2001 WL 897138, at *3 (2d Cir. Aug. 9, 2001) (emphasis added). Here, the Committee's meritless lawsuit against Morgan Stanley -- brought without this Court's permission, without Sunbeam's consent, without any regard to its adverse effect on the estate, and admittedly designed to delay approval of the reorganization plan indefinitely -- should not be permitted to proceed beyond this motion to dismiss.

As will be demonstrated below, the Committee has no authority even to commence this adversary proceeding against Morgan Stanley, purportedly on behalf of the estate, since under the Bankruptcy Code and controlling Second Circuit authority it was required to, but did not, seek and obtain leave of court by motion on notice. The Committee's failure to obtain such leave alone requires summary dismissal of the claims against Morgan Stanley.

If the Court determines that the Committee had or should have authority to bring these claims against Morgan Stanley, they must nevertheless be dismissed for lack of standing. As shown below, the Committee's Amended Complaint asserts what are essentially individual or class claims belonging to the purchasers of the Notes and other creditors in their individual capacities, even though, as the Committee conceded, it lacks standing to assert such claims. And to the extent that any of the claims purports to allege a distinct harm to Sunbeam, as opposed to a harm allegedly suffered by the Noteholders or other creditors, from the alleged wrongful or fraudulent conduct of Sunbeam's former management allegedly aided and abetted by Morgan Stanley, the Committee suing on behalf of the estate lacks standing, since Sunbeam itself would be barred by application of the *in pari delicto* doctrine from asserting claims against third parties.

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Quite apart from the Committee's lack of authority and standing to sue Morgan Stanley in this adversary proceeding, all purported claims against Morgan Stanley must be dismissed for failure to state a claim upon which relief can be granted, since the Amended Complaint fails to plead facts sufficient to establish any of those claims. In short, not only does the Committee have no right to sue Morgan Stanley on behalf of the estate, it has not even pleaded facts that would amount to an actionable claim against Morgan Stanley by the estate. The Amended Complaint should be dismissed.

Statement of Facts

The relevant facts are summarized in the Statement of Facts in the Memorandum of Law in Support of Motion to Dismiss the Amended Complaint by Defendants Morgan Stanley Senior Funding, Inc. ("MSF"), First Union National Bank ("FUB"), and Bank of America National Trust and Savings ("BOA," and together with MSF and FUB, the "Lenders"), submitted concurrently with this memorandum, which Statement of Facts is incorporated herein by reference. The Statement of Facts is based upon the allegations of the Amended Complaint, which are accepted as true only for purposes of this motion to dismiss, Granite Partners, L.P. v. Bear, Stearns & Co., 58 F. Supp. 2d 228, 234 (S.D.N.Y. 1999), as well as upon other documents to which reference properly may be made on this motion.*

* The Statement of Facts is principally based upon the allegations of the Amended Complaint. Reference is also made to the Morgan Stanley Retention Agreement, the Morgan Stanley Fairness Opinion, the Note Offering Memorandum, and the deposition testimony of Michael Hart, each of these documents being cited and relied upon in the Amended Complaint (¶¶ 8, 44, 52, 55, 66, 78, 94). Copies of the documents are submitted as exhibits A, B, C and D, respectively, to the Affidavit of Dmitry Joffe, sworn to October 1, 2001 ("Joffe Aff."). These documents may be considered on this motion to dismiss under various theories endorsed in this Circuit, including (i) incorporation by reference, see, e.g., Cowan v. Codelia, 2001 WL 856606, at *1 (S.D.N.Y. July 30, 2001); Pompano-Windy City Partners, Ltd. v. Bear Stearns & Co., 794 F. Supp. 1265, 1281 (S.D.N.Y. 1992); (ii) documents integral to plaintiff's claims, see, e.g., Cortec Indus. Inc. v. Sum Holding L.P., 949 F.2d 42, 48 (2d Cir. 1991); Sable v. Southmark/Envicon Capital Corp., 819 F. Supp. 324, 328 (S.D.N.Y. 1993); and (iii) documents "of which plaintiff had knowledge and relied on in bringing suit," Brass v. American Film Tech., Inc., 987 F.2d 142, 150 (2d Cir. 1993).

The following additional facts are pertinent to the instant claims against Morgan Stanley. Unlike the Lenders, Morgan Stanley is not a claimant in Sunbeam's chapter 11 case, and the Amended Complaint does not allege that Morgan Stanley filed a proof of claim before the Court in this matter. Amended Complaint ¶¶ 20-22.

On March 1, 2001, this Court entered the Final Order Authorizing Debtor in Possession to Enter Into Post-Petition Financing Agreement (the "DIP Order") (attached as Exhibit E to the Joffe Affidavit). The Order provides (Joffe Aff. Exh. E ¶ 17):

Notwithstanding anything herein to the contrary, no . . . "Lender Funds" may be used by the Debtor, any statutory committee or any other person or entity to object to or contest in any manner, or raise any defenses to, the validity, perfection, priority or enforceability of the Pre-Petition Indebtedness or the Lenders' Pre-Petition Liens, or to assert or prosecute any action for preferences, fraudulent conveyances, other avoidance power claims or any other claims or causes of action against any of the Pre-Petition Lenders or any of the Pre-Petition Agents; without limitation of the foregoing, (i) at no time shall any such committee or other person or entity have the right to use Lender Funds to prosecute any such claims, causes of action, objections, contests or defenses (collectively, "Claims and Defenses"), (ii) any such committee or other person or entity shall have the right to assert Claims and Defenses only in an action commenced in this Court on or before the 75th day following the date of entry of this Order (the Creditors' Committee shall have standing to bring such an action without further order of the Court)

The Order defines "Pre-Petition Lenders" and "Pre-Petition Agents" to include the Lenders, but not Morgan Stanley. Joffe Aff. Exh. E ¶¶ C-D.

On July 13, 2001, the Committee commenced this adversary proceeding by filing a complaint (the "Original Complaint") in this court against the Lenders and Morgan Stanley. On August 15, 2000 the Lenders moved, pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6), to dismiss the claims purported to be asserted against them in the Original Complaint, and by separate motion on that date Morgan Stanley moved, pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6), to dismiss the claims asserted against it (the "Original Motions"). Morgan Stanley also based its motion on the Committee's failure to have obtained leave of court to assert claims against it on behalf of the estate, in disregard of the requirement in the Second Circuit that such leave be obtained only upon satisfaction of the Commodore Int'l requirements set forth above.

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On September 6, 2001, the Committee served the Amended Complaint, which superceded the original Complaint and mooted the defendants' Original Motions to dismiss the Original Complaint. Although the Amended Complaint purports to assert claims against Morgan Stanley, the Committee again failed to seek or obtain leave of court to assert such claims. This motion, as well as a separate motion on behalf of the Lenders to dismiss the claims asserted against them in the Amended Complaint, followed.*

Argument

This memorandum of law is submitted in support of Morgan Stanley's motion to dismiss the Amended Complaint for failure to obtain the requisite leave of court and, if such leave is held to have been granted or unnecessary, under Rules 12(b)(6) and 9(b) of the Federal Rules of Civil Procedure.**

"[T]o survive a motion to dismiss, [plaintiff's] claims must be supported by specific and detailed factual allegations not stated in wholly conclusory terms." Rodriguez v. Basilone, 2001 WL 755389, at *1 (S.D.N.Y. July 5, 2001) (quoting Friedl v. New York, 210 F.3d 79, 85-86 (2d Cir. 2000)). "The court need not credit conclusory statements unsupported by assertions of facts," In re Livent, Inc., 2001 WL 740673, at *23 (S.D.N.Y. June 29, 2001) (citing Papasan v. Allain, 478 U.S.

* Along with the Amended Complaint, the Committee served an 85-page document entitled "Plaintiff's Memorandum of Law in Opposition to Defendants' Motions to Dismiss" ("Comm. Br."). However, since the Committee asserts (and defendants agree) that the Amended Complaint superceded the Original Complaint and rendered the defendants' Original Motions moot, such memorandum, which is devoted to defending the Amended Complaint against a motion addressed to the Original Complaint, is a nullity and should be disregarded, except for the admissions by the Committee contained therein.

** Although the First Claim (for equitable subordination) and the Second Claim (to avoid and recover fraudulent transfers) are by their titles asserted "Against all Defendants," Morgan Stanley is not a claimant in this chapter 11 case so it has no claims to equitably subordinate, and it is not alleged to have received any of the transfers or obligations sought to be avoided. Accordingly, this memorandum will focus exclusively on the Third, Fourth, Fifth and Sixth Claims, since relief ostensibly is sought therein against Morgan Stanley. The First and Second Claims, asserted against the other defendants, are addressed in the Lenders' memorandum, as is the Sixth Claim.

265, 286 (1986)), and is "free to disregard legal conclusions, deductions or opinions couched as factual allegations." In re Daley, 222 B.R. 44, 46 (Bankr. S.D.N.Y. 1998).

POINT I

THE COMMITTEE HAS NO AUTHORITY OR STANDING TO BRING CLAIMS AGAINST MORGAN STANLEY.

As a threshold matter, the Committee's claims against Morgan Stanley must be dismissed because the Committee clearly lacks authority to bring adversary proceedings against Morgan Stanley, and such authority has not been granted by the Court. The Second Circuit in In re STN Enterprises, 779 F.2d 901, 904 (2d Cir. 1985), stated that creditors' committees have an implied qualified right to initiate adversary proceedings in the name of the debtor only with the approval of the bankruptcy court and when the trustee or debtor in possession unjustifiably has failed to bring such a suit. See also In re Vitreous Steel Prod. Co., 911 F.2d 1223, 1231 (7th Cir. 1990) ("An unsecured creditor has no standing without first obtaining special authorization from the court.").

Substantively, "courts have summarized the principles in In re STN Enters. to require three conditions in order to permit a creditor to sue on behalf of the estate: (1) the claim must be colorable; (2) the intervention must be brought on behalf of the estate; and (3) the trustee or debtor-in-possession has unjustifiably refused to bring the suit or abused its discretion in not suing." In re Ashford Hotels, Ltd., 226 B.R. 797, 803 (Bankr. S.D.N.Y. 1998).

And just recently, the Second Circuit in In re Commodore Int'l Ltd., 2001 WL 897138, at *3, confirmed that even if a creditors' committee has the consent of the debtor in possession or trustee, it still must obtain the approval of the bankruptcy court. In order to grant that approval, the bankruptcy court must find "that suit by the committee is (a) in the best interest of the bankruptcy estate, and (b) is 'necessary and beneficial' to the fair and efficient resolution of the bankruptcy proceedings." In Commodore Int'l, the Second Circuit affirmed the dismissal of the committee's suit brought with the debtor's consent, holding that "the Creditors' Committee has not yet gained standing" because the Bankruptcy Court "has not considered whether suit by the Creditors'

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Committee . . . is ‘necessary and beneficial’ to the fair and efficient resolution of the bankruptcy proceedings.” Id. at *4.

Procedurally, obtaining the court’s permission requires a “motion on notice followed by an appropriate showing as to why the trustee erred in determining not to bring suit.” In re Daley, 224 B.R. 307, 311 (Bankr. S.D.N.Y. 1998). “[T]he court must also examine, on affidavit and other submission, by evidentiary hearing or otherwise, whether an action asserting such claim(s) is likely to benefit the reorganization estate.” In re STN Enters., 779 F.2d at 905. Here, of course, the Committee did not even ask Sunbeam to bring such a suit, nor did it bring a motion on notice seeking such authorization.

The Committee’s claims against Morgan Stanley are brought in clear violation of these substantive and procedural requirements. Instead of complying with the required conditions -- and in a repeated and blatantly transparent attempted end-run around the controlling law -- the Committee asserts that it “has standing to bring the within claims on behalf of the estate pursuant to an order of this Court dated March 3, 2001.” Amended Complaint ¶ 18. As the Committee itself is no doubt aware, the plain language of the DIP Order only deals with defenses to claims by the Lenders or claims against the Lenders (specifically referred to as “Pre-Petition Lenders” and “Pre-Petition Agents”) -- *not* claims against Morgan Stanley, which is not even mentioned in the DIP Order.* No authority is granted to the Committee to bring claims on behalf of the estate against entities other than the Lenders. See Joffe Aff. Exh. C ¶¶ C-D; ¶ 17. It was never the intention of the DIP Order to allow the Committee to sue entities other than the Lenders without leave of court and, as shown, the express language of the DIP Order so indicates. It cannot be construed to authorize the Committee to sue Morgan Stanley without leave of court.

The Committee asserts (Amended Complaint ¶ 18) that the DIP Order authorizes it to bring claims against Morgan Stanley because “Sunbeam’s claims against Morgan Stanley may be re-

* The DIP Order defines “Pre-Petition Lenders” and “Pre-Petition Agents” to include MSF, FUB and BOA, but not Morgan Stanley. See Joffe Aff. Exh. E ¶¶ C-D.

couped from MSF and thus . . . Morgan Stanley's misconduct raises defenses to Sunbeam's alleged obligations to MSF."* This patent non sequitur is also patent drivel. It completely and deliberately ignores the specific limitation and identification in the DIP Order of the entities against which the Committee is authorized to bring affirmative claims or assert defenses, whether by way of its now abandoned setoff claim contained in the Original Complaint or by way of its newly minted "recoupment" claim. *Those target entities do not include Morgan Stanley.*

In any event, even if the DIP Order is somehow construed to mean that the debtor has granted its consent to the Committee to pursue claims against Morgan Stanley -- even though such construction is squarely precluded by the express terms of the DIP Order -- the Committee would still have no standing because it has not, and cannot, demonstrate that its suit is both in the best interests of the estate and "necessary and beneficial" to the resolution of the bankruptcy proceedings, as required by Commodore Int'l. Indeed, the Committee's suit is designed to achieve the opposite goal of *delaying* the resolution of Sunbeam's chapter 11 proceedings by obstructing the expeditious approval of the pending reorganization plan. Moreover, since the Court did not make the findings required by the Second Circuit in that case and its predecessors, the DIP Order would remain ineffective as a purported grant of permission to the Committee to sue Morgan Stanley.

Finally, even if the Committee were to request the Court's permission, its request should be denied because, as shown below, in addition to failing to meet the requirements of Commodore Int'l, the Committee's claims against Morgan Stanley do not -- and cannot -- satisfy the substantive requirements for obtaining such permission. Thus, while professing to sue on behalf of Sunbeam, the Committee in fact asserts claims belonging to Sunbeam's shareholders and Noteholders, which the Committee, as it concedes, has no standing to pursue. Since such standing is constitutional and jurisdictional, a court order cannot grant such standing where none exists. See Points II.C, III.A

* To the extent the Committee is suggesting that asserting claims against Morgan Stanley is equivalent to asserting claims against MSF, that contention is untenable. See Lenders' Brief, Point I.A.3.

and IV.A below. In addition, the Committee does not and cannot state any colorable claims against Morgan Stanley upon which relief can be granted. See Points II, III.B and IV.B below.

In sum, the Committee simply has no authority or power to bring the Third, Fourth, Fifth or Sixth Claims against Morgan Stanley on behalf of the estate. These claims should summarily be dismissed without further inquiry.

POINT II

THE THIRD CLAIM FOR NEGLIGENCE AND GROSS NEGLIGENCE MUST BE DISMISSED.

A. Any liability for negligence is precluded by the terms of Morgan Stanley's Retention Agreement and Fairness Opinion.

The third claim in the Amended Complaint deals primarily with alleged conduct of Morgan Stanley as financial advisor to Sunbeam in connection with the Acquisitions, and asserts that "Morgan Stanley owed a duty to Sunbeam to (i) act with reasonable care in the course of its duties and responsibilities as financial advisor to Sunbeam and (ii) avoid conflicts of interests in the course of its duties advising Sunbeam and Sunbeam's Board of Directors." Amended Complaint ¶ 130.

With respect to Morgan Stanley's duties of care as Sunbeam's advisor, the law is clear that the scope of such professional duties "may be controlled by the terms of [its] contract of employment." 76 N.Y. Jur. 2d, Malpractice § 6 (1989); see also Lama Holding Co. v. Shearman & Sterling, 758 F. Supp. 159, 163-64 (S.D.N.Y. 1991) (granting financial advisor's motion to dismiss claims for breach of fiduciary duty and negligence where the retention agreement did not create the duty alleged and did not encompass any alleged fiduciary duty). Here, the plain terms of the Retention Agreement and the Fairness Opinion preclude the Committee's negligence claims against Morgan Stanley. The Retention Agreement expressly provides that "no Indemnified Person [defined as Morgan Stanley and any of its affiliates] shall have any liability to [Sunbeam] for or in connection with the Engagement except for any such liability for losses, claims, damages or liabilities incurred by [Sunbeam] that are finally judicially determined to have resulted from the bad faith or gross negligence of such Indemnified Person." Joffe Aff. Exh. A.

It is well-settled that such clauses absolving a party from its own negligence are enforceable. See, e.g., Colnaghi, U.S.A., Ltd. v. Jewelers Protection Servs., Ltd., 81 N.Y.2d 821, 823 (N.Y. 1993). Therefore, the Retention Agreement unequivocally bars claims by Sunbeam (and, consequently, by the Committee purporting to sue derivatively on behalf of Sunbeam) against Morgan Stanley for negligence.*

The Committee also alleges, by nothing more than a rhetorical flourish, that Morgan Stanley is liable for gross negligence. However, there are no factual allegations in the Amended Complaint, its pejorative adjectives notwithstanding, that would rise to the level required to state a claim for gross negligence. “Gross negligence’ differs in kind, not only degree, from claims of ordinary negligence. It is conduct that evinces a reckless disregard for the rights of others or ‘smacks’ of intentional wrongdoing.” Aphrodite Jewelry, Inc. v. D&W Central Station Alarm Co., 681 N.Y.S.2d 305, 306-07 (N.Y. App. Div. 1998) (dismissing the complaint where “plaintiff did not allege conduct by [defendant] which rises to the level of gross negligence, and the causes of action sounding in tort are barred by the provision of the contract which absolves [defendant] from its own negligence”). Based on the same definition, the court in Tevdorachvili v. Chase Manhattan Bank, 103 F. Supp. 2d 632, 644 (E.D.N.Y. 2000), dismissed a claim for gross negligence, holding that “[t]he difference between ‘negligence’ and ‘gross negligence’ is one of fact, not law, and plaintiff alleges no facts to sustain a cause of action for gross negligence.”

In fact, the Amended Complaint’s conclusory allegation of gross negligence is flatly contradicted by the terms of the Fairness Opinion itself. The Opinion specifically provides that in concluding that the Acquisitions were fair from a financial point of view, Morgan Stanley “assumed and relied upon without independent verification the accuracy and completeness of the information reviewed by us for the purposes of this opinion.” Joffe Aff. Exh. B. Such information included pub-

* A bankruptcy trustee (or a creditors’ committee standing in a position analogous to that of the trustee) “is subject to all defenses available against the debtor, and must prove all elements that the debtor would be required to prove.” In re Segerstrom, 247 F.3d 218, 224 (5th Cir. 2001); see also Miller v. New York Produce Exchange, 550 F. 2d 762, 768 (2d Cir. 1977) (citing Bank of Marin v. England, 385 U.S. 99, 101 (1966)).

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licly available financial statements and financial projections prepared by the managements of Sunbeam and the Acquired Companies, as well as Coopers & Lybrand's synergy analysis. In particular, the Fairness Opinion states (*id.*):

With respect to the financial projections including the estimates of synergies and cost savings expected to be achieved in the Mergers, we have assumed that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the future financial performance of the Company. With respect to the potential operational improvements associated with the Mergers we have relied upon the evaluation of both Coopers & Lybrand and the Company. We have not made any independent valuation or appraisal of the assets or liabilities of the Company; however, we have reviewed the valuation of Coopers & Lybrand with respect to operational benefits expected to be achieved in the Mergers, and have relied without independent verification upon such valuations for purposes of this opinion.

Accordingly, it was expressly understood that Morgan Stanley rendered its Fairness Opinion based on financial projections prepared by others without any independent verification. There are no allegations in the Amended Complaint that Morgan Stanley did not in fact rely on Coopers & Lybrand's valuations of potential synergies, or that such reliance evinced a "reckless disregard for the rights of others or 'smacked' of intentional wrongdoing," as required for gross negligence. Instead, the Committee alleges in wholly conclusory fashion that "Morgan Stanley's Fairness Opinion to Sunbeam . . . and its reliance on any synergy analyses in connection therewith were grossly negligent." Amended Complaint ¶ 59. This assertion should be disregarded as unsupported by any facts, contrary to the express terms of Morgan Stanley's scope of engagement, and based on nothing more than an opinion of Sunbeam's current management who, with the clarity of hindsight, found Coopers' synergy analysis to be flawed and unreliable. See Amended Complaint ¶¶ 56-59.

Thus, in In re Reliance Sec. Litig., 135 F. Supp. 2d 480, 516 (D. Del. 2001), the court dismissed claims against a financial advisor for breach of duties in issuing a fairness opinion because plaintiffs did not identify facts to suggest that the advisor did not actually rely on the financial statements and information provided by the company, or that such reliance was reckless: "As the Financial Advisors argued, they did not contract to re-audit [the company's] financial statements and projections. Rather, [the company] asked the financial advisors to make a judgment based on a limited

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set of data.” Here, too, Morgan Stanley did not contract to re-audit Sunbeam’s or any of the acquired companies’ financial statements or projections, and the Fairness Opinion expressly so advised.

Likewise, the Committee faults Morgan Stanley for “creat[ing] a conflict of interest” in assuming the roles of financial advisor and of underwriter (Amended Complaint ¶ 61) -- despite the fact that any potential conflict was fully disclosed to Sunbeam.* Where an agent disclosed to its principal a conflict of interest, the relevant question becomes “whether the principal was fully informed of every fact material to its interests and whether the principal freely consented in the presence of this knowledge.” 2A N.Y. Jur. 2d, Agency, § 216 (1998); see also Moore v. United States, 950 F.2d 656, 660 (10th Cir. 1991) (in attorney-client context, a conflict of interest claim is waived if client consciously chooses to proceed with counsel despite a known conflict to which client could have objected but chose to disregard); Artache v. Goldin, 570 N.Y.S.2d 238, 239 (N.Y. App. Ct. 1991) (in attorney-client context, counsel’s representation of client found entirely competent where counsel’s potential conflict of interest was fully disclosed to the client and the client chose to continue to be represented by counsel).

There is not a single allegation in the Amended Complaint -- nor could there be -- that Sunbeam was not fully aware of Morgan Stanley’s purportedly “conflicting assignments relating to Sunbeam.” Amended Complaint ¶ 2. Indeed, in its Retention Agreement with Morgan Stanley, Sun-

* The Amended Complaint’s allegations on this point are contradictory: the Amended Complaint initially alleges that “Morgan Stanley agreed to serve as underwriter for the bond offering and to serve as *an agent bank for the Bank Facility*” -- but then proceeds to describe Morgan Stanley’s purported conflict of interests arising from its role as financial advisor with respect to the Acquisitions and as underwriter of the Notes. Amended Complaint ¶ 61 (emphasis added). The allegation with respect to Morgan Stanley’s serving as an agent bank for the Bank Facility is patently wrong and is flatly contradicted by the Amended Complaint’s more specific allegations that the Bank Facility was in fact entered “among Sunbeam, MSF, as Syndication Agent, BOA, as Documentation Agent, and FUB, as Administrative Agent.” Amended Complaint ¶ 85. See Hirsch v. Arthur Andersen & Co., 72 F.3d 1085, 1095 (2d Cir. 1995) (sustaining dismissal of the complaint where “attenuated allegations” supporting a claim “are contradicted . . . by more specific allegations in the complaint”). And Morgan Stanley’s allegedly conflicting roles with respect to the Acquisitions and the Note Offering were fully disclosed to and expressly authorized by Sunbeam, as discussed in the text following this footnote.

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beam expressly authorized Morgan Stanley to assume the roles now contended by the Committee to be conflicting. See Joffe Aff. Exh. A (emphasis added):

During the term of our engagement we will provide you with financial advice and assistance in connection with these transactions [including “the possible acquisition of one or more entities (an ‘Acquisition Transaction’)”] If, in connection with this assignment, Sunbeam effects a repurchase of or a public sale or private placement of equity, preferred or debt securities . . . and Sunbeam requires investment banking services in connection therewith, Sunbeam agrees to offer to retain Morgan Stanley on mutually agreeable terms to assist it with such transaction.

To the extent the purported conflict of interest allegedly caused injuries to the Noteholders of Sunbeam, the Committee has no right, as it concedes, to pursue claims against Morgan Stanley based on such injuries. See Point II.C below. Moreover, Sunbeam fully disclosed its retention of Morgan Stanley prior to the Note Offering in its October 23, 1997 press release. Amended Complaint ¶ 45.

In short, the Committee has failed to allege any legally cognizable breach of duty by Morgan Stanley. The Amended Complaint’s Third Claim thus fails to state a claim for negligence against Morgan Stanley arising out of its role as Sunbeam’s financial advisor and should be dismissed.

B. There is no negligence liability for what is in fact an aiding-and-abetting-a-fraudulent-conveyance claim.

Quite apart from the inadequacy of the pleading, the gravamen of the Committee’s negligence claim is that Morgan Stanley’s advice resulted in Sunbeam’s conveying its property for inadequate consideration while it was insolvent, or as a result of which it was rendered insolvent or unable to pay its debts as they matured. In essence, the Committee alleges that Morgan Stanley, through its alleged negligence, caused Sunbeam to make a fraudulent conveyance and thus aided and abetted such transfers. See Amended Complaint ¶ 135. (“Morgan Stanley knew, should have known or recklessly disregarded the fact that Sunbeam was not receiving fair consideration and/or reasonably equivalent value for the Acquisitions.”) However, under New York law, *FDIC v. Porco*, 75 N.Y.2d 840, 842 (1990), a non-transferee, such as Morgan Stanley, may not be held liable for damages for a fraudulent transfer unless it has dominion and control over the transferred assets or unless

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it was a beneficiary of the conveyance. The Amended Complaint here is devoid of any such allegations.

Thus, in Lippe v. Bairnco Corp., 218 B.R. 294, 302-03 (S.D.N.Y. 1988), the court dismissed plaintiffs' claim for aiding and abetting a breach of fiduciary duty, holding that Porco was dispositive of the issue. Citing the complaint's language to the effect that the action was brought to remedy the purportedly fraudulent transactions, the court concluded that "plaintiffs' aiding and abetting a breach of fiduciary duty claim is in fact an aiding and abetting a fraudulent conveyance claim." Here, too, the Committee claims to have brought this adversary proceeding to redress defendants' conduct "in a series of integrated transactions . . . [which] caused Sunbeam's insolvency and ultimate bankruptcy." Amended Complaint ¶ 1. And since the Third Claim essentially alleges that Morgan Stanley's conduct aided Sunbeam to make a fraudulent conveyance (Amended Complaint ¶ 135), it should be likewise dismissed under Porco.

C. The Committee has no claim for negligence against Morgan Stanley based on the alleged harm to Sunbeam's noteholders and shareholders.

In its brief opposing the Original Motions, the Committee conceded that it "cannot sue for any harm caused by Morgan Stanley to creditors," that "the Committee does not rely on any harm to Noteholders and other constituents" and that it "is not suing in that capacity." Comm. Br. 75. The Committee nevertheless purports to bring its Amended Complaint's Third Claim based on alleged injuries to Sunbeam's Noteholders and shareholders allegedly caused by Morgan Stanley's Fairness Opinion. Amended Complaint ¶ 136. In addition to being contrary to the Committee's concession, this claim is squarely precluded by the reasoning of the recent Fifth Circuit decision in Collins v. Morgan Stanley Dean Witter, where the Fifth Circuit upheld the district court's dismissal, under New York law, of claims brought by option-holders against an investment bank based on the bank's allegedly misleading fairness opinion. See 224 F.3d 496 (5th Cir. 2000).

In Collins, Morgan Stanley Dean Witter was engaged by Allwaste to evaluate the possible sale of Allwaste and to render a fairness opinion. "The [Retention] Agreement provided that Morgan Stanley had 'duties solely to Allwaste' and that any advice or opinion provided by Morgan

Stanley could not be disclosed or referred to publicly without Morgan Stanley's consent." Collins, 224 F.3d at 497. Morgan Stanley's fairness opinion further provided that "it was written 'for the information of the Board of Directors of the Company only and may not be used for any other purpose without [Morgan Stanley's] prior consent'." Id. at 498. Based on these facts, the Fifth Circuit held (id. at 499):

[B]oth the Agreement and the fairness opinion specified that the efforts were undertaken at the behest of and for the benefit of the Board alone. The fairness opinion, meanwhile, expressly negated not only enforcement by but reception to third parties. Under New York law, then, the Board is the only entity that enjoyed the right to sue on the Agreement; the option-holder plaintiffs are precluded from doing so.

The virtually identical facts here likewise require dismissal of the Committee's claims against Morgan Stanley for the alleged injury to the Noteholders and shareholders of Sunbeam purportedly caused by the Fairness Opinion. As in Collins, Morgan Stanley's Retention Agreement provides that Morgan Stanley had "duties solely to Sunbeam" and that "[a]ny advice or opinions provided by Morgan Stanley may not be disclosed or referred to publicly or to any third party except in accordance with [Morgan Stanley's] prior written consent." Joffe Aff. Exh. A. Also as in Collins, Morgan Stanley's Fairness Opinion stated that "[i]t is understood that this letter is for the information of the Board of Directors of [Sunbeam] and may not be used for any other purpose without [Morgan Stanley's] prior written consent." Joffe Aff. Exh. B.

Accordingly, under Collins, Sunbeam's Noteholders and shareholders are precluded from suing Morgan Stanley for injuries allegedly caused by the Fairness Opinion, and so is the Committee to the extent its claim is based on those very injuries. Moreover, as will be demonstrated in Point III.A below, the Committee has no constitutional or jurisdictional standing to sue Morgan Stanley on behalf of Sunbeam's Noteholders and shareholders.

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POINT III
THE FOURTH CLAIM FOR AIDING AND ABETTING FRAUD MUST BE DISMISSED.

A. The Committee has no standing to sue Morgan Stanley on behalf of Sunbeam's creditors.

Even if the Committee were somehow to obtain authority to assert claim Four against Morgan Stanley, such claim would nevertheless have to be dismissed for lack of standing. When a creditors' committee attempts to sue derivatively on behalf of the debtor (which is the only type of suit it can bring under STN Enters.), it stands in the shoes of the trustee for the purpose of determining standing. In re Mediators, Inc., 105 F.3d 822, 826 (2d Cir. 1997).

Standing is a constitutional and jurisdictional requirement. If a plaintiff lacks standing to bring a particular claim, it will be dismissed pursuant to a motion made under Rule 12(b)(6). In re Mediators, Inc., 105 F.3d at 823; Hirsch, 72 F.3d at 1091; Shearson Lehman Hutton, Inc. v. Wagoner, 944 F.2d 114, 117 (2d Cir. 1991). To determine standing, the court must look "to the nature of the wrongs alleged in the complaint without regard to the plaintiff's designation . . . and the nature of the injury for which relief is sought." In re Granite Partners, L.P., 194 B.R. 318, 325 (Bankr. S.D.N.Y. 1996) and cases cited therein. The burden of establishing standing rests upon the plaintiff. Hirsch, 72 F.3d at 1099.

A committee has no standing to assert claims for alleged injuries to creditors or groups of creditors *qua* creditors. As the Supreme Court held in Caplin v. Marine Midland Grace Trust Co., 406 U.S. 416, 428 (1972), "nowhere in the statutory scheme is there any suggestion that the trustee in reorganization is to assume the responsibility of suing third parties on behalf of debenture holders." See also Mediators, 105 F.3d at 826 ("[A] trustee has no standing generally to sue third parties on behalf of the estate's creditors, but may only assert claims held by the bankrupt corporation itself.") (quoting Shearson Lehman, 944 F.2d at 118); Hirsch, 72 F.3d at 1093 ("The Trustee in bankruptcy has standing to represent only the interests of the debtor corporation. Therefore, he has no standing to assert claims of damage to the defrauded purchasers of securities."); Shearson Lehman, 944 F.2d at 118 ("It is well settled that a bankruptcy trustee has no standing generally to sue third parties on be-

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half of the estate's creditors, but may only assert claims held by the bankrupt corporation itself."); BRS Assoc. v. Dansker, 246 B.R. 755, 771-72 (Bankr. S.D.N.Y. 2000) ("If the cause of action belongs to the estate, the trustee has exclusive standing to assert it; conversely, if the cause of action belongs solely to shareholders, the trustee has no standing to assert it.").

The Amended Complaint purports to assert two distinct types of injury allegedly caused by Morgan Stanley's supposed aiding and abetting Dunlap's and Kersh's misconduct. The principal type of injury is based on the alleged injury to the purchasers of Notes and Sunbeam's shareholders allegedly caused by Morgan Stanley. See, e.g., Amended Complaint ¶ 145 ("Morgan Stanley's conduct harmed the public generally because (i) the [Note] Offering involved numerous Noteholders with the intent that the Notes would be publicly traded shortly after the initial offering; (ii) Sunbeam's public shareholders relied on Morgan Stanley to conduct itself prudently and without conflicts of interest; and (iii) Morgan Stanley knew that it was advising the Board of Directors, which owed fiduciary duties to the shareholders and the Noteholders. . . . Morgan Stanley's conduct was gross, wanton, and in reckless disregard of the rights of Noteholders . . .").* See also Amended Complaint ¶ 141 ("Sunbeam's Board of Directors relied on representations by Morgan Stanley that . . . the Note Offering would not defraud the purchasers of the Notes.").

Under the Caplin-Shearson Lehman doctrine, the Committee has no standing to pursue claims based on the alleged injury to the Noteholders. In Hirsch, the Second Circuit affirmed a dismissal of the trustee's claims against third-party professionals predicated upon (1) the distribution of misleading private placement memoranda to the purchasers of the debtor's securities, and (2) the provision of deficient professional services to the debtor in connection with a due diligence investigation of the proposed acquisitions.

With respect to the first type of claim, the Second Circuit held: "claims predicated upon the distribution of misleading PPMs to investors in [the debtor] are the property of those inves-

* As demonstrated in Point II.C, *supra*, the Committee has no claim against Morgan Stanley for the alleged injury to Sunbeam's Noteholders and shareholders purportedly caused by Morgan Stanley's Fairness Opinion.

tors, and may be asserted only by them and to the exclusion of [the trustee].” Hirsch, 72 F.3d at 1094. Under Hirsch, the vast bulk of the Committee’s claims against Morgan Stanley must also be dismissed for lack of standing, since they arise out of the alleged misrepresentations related to the Note Offering. See also Mediators, 105 F.3d at 826 (holding that “a bankruptcy trustee had no standing to sue [a third party] for aiding and abetting the unlawful investment activity of” a bankrupt corporation’s officer because such claims belong to creditors *qua* creditors); Cumberland Oil Corp. v. Thropp, 791 F.2d 1037, 1042 (2d Cir.), cert. denied, 479 U.S. 950 (1986); In re Granite Partners, L.P., 194 B.R. at 327; In re M&L Bus. Mach. Co., 136 B.R. 271, 276 (Bankr. D. Colo. 1992).

In its brief, the Committee states that it now “agrees” that “the Committee cannot sue for any harm caused by Morgan Stanley to creditors,” that “the Committee does not rely on any harm to Noteholders and other constituents,” and that it “is not suing in that capacity.” Comm. Br. 75. The Committee’s disclaimer is inconsistent with the allegations of the Amended Complaint quoted above and others, which are based almost exclusively upon the supposed fraud perpetrated upon the Noteholders through alleged misrepresentations and omissions in the Note Offering and the omitted and misleading information about Sunbeam’s financial condition that allegedly induced the purchase of the Notes. See Amended Complaint, ¶¶ 141, 145, quoted above. See also *id.* ¶ 136. But as the law cited above makes clear, and the Committee apparently now concedes, these allegations of its Amended Complaint against Morgan Stanley are a legal nullity.

This conclusion is reinforced by the Amended Complaint’s only allegations of the conduct of Morgan Stanley, which allegedly aided and abetted the alleged fraud, set forth in paragraph 142 of the Amended Complaint. This conduct consists of the following three alleged acts, two of which relate to the Note Offering: “(i) rendering the Fairness Opinion, (ii) proceeding with the Note Offering with knowledge or reckless disregard of the fraudulent accounting practices at Sunbeam, and (iii) reviewing, approving and disseminating the March 19, 1998 press release with knowledge or reckless disregard of the false and materially misleading statements made therein.” As can be seen, items (ii) and (iii) relate directly to the alleged misrepresentations and omissions that the Amended Complaint alleges tainted the Note Offering and injured the purchasers of the Notes. With

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regard to item (i), rendering of the Fairness Opinion, it is difficult to ascertain how such conduct can be a predicate for the claim of aiding and abetting fraud upon Sunbeam.* Certainly no statement made by Morgan Stanley in the Fairness Opinion is alleged to have aided Dunlap's and Kersh's alleged fraud. In any event, as shown in Point II, the allegations of the Amended Complaint fail to state any claim on behalf of Sunbeam arising from the issuance of the Fairness Opinion.

The other type of harm alleged to have been caused by Morgan Stanley's supposed aiding and abetting Dunlap's and Kersh's misconduct is the alleged secondary injury to Sunbeam itself -- that "Morgan Stanley's conduct caused Sunbeam to be mired in litigation, subject to substantial competitive disadvantages and subject to substantial and burdensome professional fees." Amended Complaint ¶ 144. To the extent that this conclusory and speculative bootstrap allegation could be construed to state an actionable claim on behalf of Sunbeam, but see Point III.B, infra, the Committee, nevertheless, lacks standing to assert it.

Since Dunlap's and Kersh's knowledge and conduct as principal management officers are attributable to Sunbeam, Sunbeam itself, if it had sued, would have been barred by the doctrine of *in pari delicto* from bringing such a claim against third parties. This type of claim is squarely precluded by the Second Circuit's holding in Mediators, 105 F.3d at 826-27, that a company "has no standing to assert aiding-and-abetting claims against third parties for cooperating in the very misconduct that it had initiated." See also Shearson, 944 F.2d at 120 (a corporation has no claim against a third party for defrauding the corporation with the cooperation of management); Hirsch, 72 F.3d at 1094 (the trustee "is precluded from asserting the professional malpractice claims alleged in the complaint because of the debtor's collaboration with the defendants-appellees in promulgating and promoting the [fraudulent] schemes"); In re Granite Partners, 194 B.R. at 327-30 (doctrine of *in pari delicto* deprived chapter 11 trustee of standing to bring claims against brokers for conspiring with and

* The allegations against Morgan Stanley relating to its issuance of the Fairness Opinion constitute the essence of the Third Claim in the Amended Complaint, which attempts to assert a claim against Morgan Stanley for "Gross Negligence and Negligence." As shown above, such allegations do not state a claim for negligence or gross negligence nor, as shown below, do they state a claim for fraud.

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aiding and abetting debtor's principals in breach of fiduciary duty that resulted in dissipation of debtor's assets, following Shearson); Seidman & Seidman v. Gee, 625 So. 2d 1, 3 (Fla. Dist. Ct. App. 1992) ("Where it is shown, without dispute, that a corporate officer's fraud intended to and did benefit the corporation, to the detriment of outsiders, the fraud is imputed to the corporation and is an absolute defense to the corporation's action against its accounting firm for negligent failure to discover the fraud.").

Here, Dunlap's and Kersh's conduct was taken to advance Sunbeam's interests (as well as their own). Indeed, according to the Amended Complaint, both officers were hired by Sunbeam to engineer a quick restructuring and sell Sunbeam at a premium. And, both men were given incentives to align their financial interests with those of Sunbeam. See, e.g., Amended Complaint ¶ 27 ("Sunbeam's Board of Directors hired Dunlap in July of 1996 to restructure the financially ailing company. Sunbeam hired Dunlap on the basis of his reputation *in the hope that he could engineer a quick turnaround and sell Sunbeam at a significant premium to the trading value of Sunbeam's stock.*"); ¶ 29 ("Dunlap and Kersh entered into lucrative three-year employment agreements that *gave them strong financial incentives to raise the stock price and sell Sunbeam.*") (emphasis added throughout); see also ¶ 31 ("While Dunlap and Kersh exercised overall control over Sunbeam and all its executives, many other members of senior management undertook primary responsibility for executing different parts of the fraudulent scheme devised by Dunlap and Kersh. Dunlap acted primarily as the spokesman and used his reputation as a specialist in turning around troubled companies to support aggressive promises about future performance and lend credibility to false and misleading announcements of record results."); ¶ 34 ("the price of Sunbeam stock increased precipitously after the announcement of Dunlap's hiring and the restructuring program"); ¶ 46 ("Dunlap reluctantly agreed that the focus of Morgan Stanley's engagement would need to change from selling Sunbeam to finding companies that Sunbeam could acquire in an effort to mask the failing turnaround effort.").

This alignment of interests between Sunbeam and its management bars Sunbeam -- and, consequently, the Committee -- from bringing the instant aiding-and-abetting claim against Morgan Stanley, notwithstanding the Amended Complaint's conclusory assertions that Dunlap's and

Kersh's personal interests were "adverse to Sunbeam's best interests." Amended Complaint ¶ 149. See In re Livent, 151 F.Supp.2d 371, 405 (S.D.N.Y. 2001) (stating that "a court need not feel constrained to accept as truth conflicting pleadings . . . that are contradicted . . . by statements in the complaint itself"); see also Hirsch, 72 F.3d at 1095 (sustaining dismissal of the complaint where "attenuated allegations" supporting a claim "are contradicted . . . by more specific allegations in the complaint"); American Centennial Ins. Co. v. Seguros La Republica, S.A., 1996 WL 304436, at *16 (S.D.N.Y. June 5, 1996) ("Allegations are not well pleaded if they are 'made indefinite or erroneous by other allegations in the same complaint'").

The Committee attempts to avoid the inevitable application of the *pari delicto* doctrine to the claims it purports to assert derivatively on behalf of Sunbeam against Morgan Stanley by adding the conclusory allegations of paragraph 143 to the Amended Complaint, seeking to invoke the "adverse interest" exception to *in pari delicto*:

143. In pursuing a fraudulent course of conduct, Dunlap and Kersh acted in a manner that was adverse to the interests of Sunbeam. Dunlap and Kersh were not the "sole actors" with respect to Sunbeam. Rather, there were independent directors at Sunbeam who would have brought Dunlap and Kersh's activities to an abrupt halt had they been properly and timely advised by Morgan Stanley.

The Committee's attempt must fail.

"[T]he adverse interest exception rebuts the usual presumption that the acts and knowledge of an agent acting within the scope of employment are imputed to the principal. . . . *The exception is a narrow one and applies only when the agent has 'totally abandoned' the principal's interests.*" Mediators, 105 F.3d at 827, citing Center v. Hampton Affiliates, 66 N.Y.2d 782, 784 (1985) (emphasis added). The exception does not apply simply because the agent has a conflict of interest or does not act primarily for his own or another's benefit. Granite Partners, 194 B.R. at 331 n.15 (citing cases).

As shown above, the factual non-conclusory allegations of the Amended Complaint fail to satisfy the requirement of the adverse interest exception that the insider wrongdoer[s] "totally abandoned" Sunbeam's interests by the alleged wrongful conduct. Indeed, as shown, if anything, the

factual allegations point to just the opposite conclusion -- that Dunlap's and Kersh's conduct was in furtherance of Sunbeam's strategy of enhancing its financial results so that it could be sold at a premium and, failing a sale, subsequently making major acquisitions in order to hide Sunbeam's true financial performance. See Amended Complaint ¶¶ 27, 29, 46. Thus, it cannot seriously be claimed that in doing so they abandoned, let alone "totally abandoned," Sunbeam's interests to serve their own or the interests of another -- the prerequisite for application of the adverse interest exception to *in pari delicto*.

The additional conclusory allegation of paragraph 143 that "Dunlap and Kersh were not the 'sole actors' with respect to Sunbeam" and that "there were independent directors at Sunbeam who would have brought Dunlap and Kersh's activities to an abrupt halt had they been properly and timely advised by Morgan Stanley" does not serve to salvage the Amended Complaint. Such allegations are insufficient to negate application of *in pari delicto*. In effect, the Committee is attempting to argue that the application of *in pari delicto*, as enunciated in Mediators, Shearson and other Second Circuit cases, is limited to the situation where the alleged wrongdoing corporate agent (here Dunlap and Kersh) was the sole shareholder of the corporation or the sole actor or decision maker. This argument is fallacious and contrary to applicable Second Circuit law.

The Committee's argument is fatally flawed because it skips a crucial step -- the determination of whether the adverse interest exception to *in pari delicto* applies in the first place -- which must be made before there can be a determination of whether the "sole stockholder" or "sole actor" doctrine can be used to overcome the adverse interest exception. In other words, while it is true that "the adverse interest exception does not apply to cases in which the principal is a corporation and the agent is its sole shareholder," Mediators, 105 F.3d at 827, the converse -- the Committee's argument that the adverse interest exception necessarily applies where the principal is not the sole shareholder, actor or decision maker -- does not logically follow and is legally erroneous. Indeed, it has specifically been held that "the application of *in pari delicto* does not depend on [the alleged wrongdoer's] status as . . . sole shareholder." Granite Partners, 194 B.R. at 331. Accordingly, if *in pari delicto* is otherwise appropriate (which, of course, includes the inapplicability of the "narrow"

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adverse interest exception), “the doctrine necessarily applies even if the culpable insider is not the only shareholder.” Id.

B. The Amended Complaint’s allegations fail to state a claim for aiding and abetting fraud.

The Fourth Claim also should be dismissed based on the Committee’s utter failure to state any viable cause of action against Morgan Stanley for aiding and abetting fraud. A claim for aiding and abetting fraud is subject to dismissal under Rules 12(b)(6) and 9(b) unless it states, with the required particularity, each of the following elements: (1) the existence of a primary fraud; (2) defendant’s actual knowledge of the fraud; and (3) defendant’s substantial assistance in the commission of the fraud. See, e.g., Cromer Fin. Ltd. v. Berger, 137 F. Supp. 2d 452, 470 (S.D.N.Y. 2001) (citing Wight v. Bankamerica Corp., 219 F.3d 79, 91 (2d Cir. 2000)). As shown below, the Amended Complaint alleges neither Morgan Stanley’s actual knowledge of Dunlap’s and Kersh’s alleged fraud, nor its substantial assistance in the commission of that fraud.

1. The Amended Complaint does not allege Morgan Stanley’s “actual knowledge” of Dunlap’s and Kersh’s alleged fraud.

The Amended Complaint does not contain a single non-conclusory, factual allegation that Morgan Stanley had *actual knowledge* of Dunlap’s and Kersh’s alleged fraud as required under New York law. See, e.g., Cromer Finance, 137 F. Supp. 2d at 494 (“To satisfy the knowledge requirement of these [aiding and abetting] claims, New York law requires that a defendant have ‘actual knowledge’ of the underlying fraud.”) (citing Wight, 219 F.3d at 91); Kolbeck v. LIT America, Inc., 939 F. Supp. 240, 246 (S.D.N.Y. 1996) aff’d, 152 F.3d 918 (2d Cir. 1998) (“New York courts and federal courts in this district, have required actual knowledge” for imposing aiding and abetting liability); Renner v. Chase Manhattan Bank, 2000 WL 781081, at *6 (S.D.N.Y. June 16, 2000) (dismissing an aiding and abetting claim for failure to allege actual knowledge); Ryan v. Hunton & Williams, 2000 WL 1375265, at *8 (E.D.N.Y. Sept. 20, 2000).

Nowhere does the Amended Complaint allege facts that would show, if proven, Morgan Stanley’s actual knowledge of the underlying allegedly fraudulent activities of Dunlap and Kersh. At most, the Amended Complaint conclusorily alleges that “Morgan Stanley conducted sub-

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stantial due diligence at Sunbeam, which afforded it *the opportunity to discover*” facts that might have indicated Sunbeam’s allegedly “fraudulent accounting practices and deteriorating financial condition.” Amended Complaint ¶ 140 (emphasis added). The Amended Complaint also concludes that Morgan Stanley “knew or recklessly disregarded these facts.” *Id.*

These conclusory allegations are clearly insufficient to satisfy the pleading requirements for aiding-and-abetting claims. As a threshold matter, the allegations that Morgan Stanley had “the opportunity to discover” facts indicating Sunbeam’s alleged fraud at most might be argued to allege Morgan Stanley’s *constructive* knowledge -- not the required *actual* knowledge -- and are thus insufficient as a matter of law. *See, e.g., Kolbeck*, 939 F. Supp. at 246 (“New York common law, which controls the analysis here, has not adopted a constructive knowledge standard for imposing aiding and abetting liability.”). For example, in dismissing aiding and abetting fraud claims against Chemical Bank in *Ryan*, the court held: “Allegations that Chemical suspected fraudulent activity . . . do not raise an inference of actual knowledge of Wolas’s fraud.” 2000 WL 1375265, at *9.

Moreover, the Committee has failed to support even these legally insufficient and conclusory allegations of constructive knowledge with any facts. As more fully discussed in Point II.A above, Morgan Stanley’s scope of duties was defined by its agreements with Sunbeam, which allowed Morgan Stanley to rely on financial statements and information provided by Sunbeam, its accountants and consultants, as well as other sources, including information from the acquired companies, without further verification. There are no allegations in the Amended Complaint that Morgan Stanley did not in fact rely on such information provided by Sunbeam, its accountants (Arthur Andersen & Co.), its consultant (Coopers & Lybrand), and other specified sources, or that such reliance was unjustified. Like the financial advisors in *In re Reliance Sec. Litig.*, whose motion to dismiss was granted by the court, Morgan Stanley “did not contract to re-audit [the company’s] financial statements and projections. Rather, [the company] asked [the financial advisor] to make a judgment based on a limited set of data.” 135 F. Supp. 2d at 516.

Likewise, Morgan Stanley’s rendering of the Fairness Opinion pursuant to its Retention Agreement with Sunbeam cannot establish a sufficient basis for inferring the required actual

knowledge. Thus, in dismissing fraud claims on a Rule 12(b)(6) motion, the court in Morin v. Trupin, 711 F. Supp. 97, 110 (S.D.N.Y. 1989), held that “merely alleging that a professional has performed services for other defendants is an insufficient basis for inferring scienter.” And that is precisely what the Committee alleges here: barring the Amended Complaint’s unsubstantiated legal conclusions and rhetorical flourishes, the (few) remaining factual allegations merely establish that (a) Morgan Stanley was engaged by Sunbeam as a financial adviser in connection with the Acquisitions and as an underwriter in connection with the Note Offering (Amended Complaint ¶ 44; Joffe Aff. Exh. A); and (b) pursuant to that engagement, Morgan Stanley rendered its Fairness Opinion relying on financial data and projections prepared by Sunbeam and its accountants and consultants, as it was entitled to do. Amended Complaint ¶¶ 54-55; Joffe Aff. Exh. B. Under Morin, such allegations cannot establish the required “actual knowledge” element as a matter of law. See also Dannenberg v. Dorison, 603 F. Supp. 1238, 1241 (S.D.N.Y. 1985) (even though plaintiffs had alleged that defendant law firm had prepared numerous tax opinions for fraudulent tax shelters promoted by the same individuals, the pleading was deficient under Rule 9(b)).

In short, the Committee in essence seeks to impose aiding and abetting liability on Morgan Stanley by alleging in conclusory fashion that Morgan Stanley should and would have unearthed the circumstances indicating fraud had it pursued the alleged “opportunities to discover” that were clearly outside of its agreed scope of engagement. As shown, such allegations are utterly deficient under the controlling law and should be dismissed.

2. The Amended Complaint does not allege Morgan Stanley’s “substantial assistance” in the commission of the alleged fraud.

The Amended Complaint’s allegations of “substantial assistance” purportedly rendered by Morgan Stanley to the commission of the alleged fraud fare no better than its inadequate allegations of “actual knowledge” discussed above, and its inadequate pleading of this requisite element is an additional reason compelling dismissal. Under New York law, “a defendant provides substantial assistance *only* if it affirmatively assists, helps conceal, or by virtue of failing to act when required to do so enables [the fraud] to proceed.” Ryan, 2000 WL 1375265, at *9 (emphasis added);

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accord Cromer Fin., 137 F. Supp. 2d at 470 (same); Nigerian Nat'l Petroleum Corp. v. Citibank, 1999 WL 558141, at *8 (S.D.N.Y. July 30, 1999) (same) (citing Diduck v. Kaszycki & Sons Contractors, Inc., 974 F.2d 270, 284 (2d Cir. 1992)).

The Amended Complaint's allegations of "substantive assistance" do not even begin to describe any of these well-defined and limited situations: Morgan Stanley is not alleged to have affirmatively assisted Dunlap and Kersh in their allegedly fraudulent activities, to have helped them conceal their alleged fraud, or to have failed to act (and thus enabled the fraud to proceed) when it was required to act.

Thus, the Amended Complaint alleges that Morgan Stanley aided and abetted the alleged fraud by "(i) rendering the Fairness Opinion, (ii) proceeding with the Note Offering with knowledge or reckless disregard of the fraudulent accounting practices at Sunbeam, and (iii) reviewing, approving and disseminating the March 19, 1998 press release with knowledge or reckless disregard of the false and materially misleading statements made therein." Amended Complaint ¶ 142. None of the alleged acts, however, demonstrates any legally cognizable "substantial assistance" for the purposes of aiding and abetting liability.

As discussed above (Point III.B.1), the Fairness Opinion was provided by Morgan Stanley in the ordinary course of its professional service pursuant to its Retention Agreement with Sunbeam. The Fairness Opinion itself expressly stated that Morgan Stanley relied on financial statements and projections prepared by Sunbeam and Sunbeam's accountants, consultants and other specified persons. And the Amended Complaint does not allege any facts that would establish that Morgan Stanley was reckless in its reliance. In its Fairness Opinion, Morgan Stanley only stated that, based on such projections, among other things, the proposed Acquisitions were fair from a financial point of view. And Morgan Stanley made no statements in its Fairness Opinion that are alleged to have rendered substantial assistance to Dunlap's and Kersh's alleged fraudulent scheme.

With respect to Morgan Stanley's conduct in connection with the Note Offering, as shown in Points II.B and II.C, whatever injury that conduct allegedly caused was visited upon the Noteholders, not Sunbeam itself. As shown in Points II.B and II.C, and as the Committee concedes,

the Committee has no standing or right to assert any claims against Morgan Stanley based on such injuries.

Further, the Committee's allegations of Morgan Stanley's conduct in connection with the Note Offering also lack the required causal relationship between Morgan Stanley's challenged conduct and Sunbeam's injury. As the Second Circuit held in Bloor v. Carro, Spanbock, Londin, Rodman & Fass, 754 F.2d 57, 62-63 (2d Cir. 1985):

In alleging the requisite "substantial assistance" by the aider and abettor, the complaint must allege that the acts of the aider and abettor proximately caused the harm to the corporation on which the primary liability is predicated [citing authorities]. Allegations of a "but for" causal relationship are insufficient.

Thus, even if the Committee had the right to raise such allegations, it would still fail on the required causation element because it does not and could not show how Morgan Stanley's underwriting of the Notes that raised \$750 million for Sunbeam (instead of the projected \$500 million, see Amended Complaint ¶ 61) caused any harm to Sunbeam. The Committee's allegations fail to state even a "but for" causal relationship, let alone the required proximate causation. Accordingly, the Committee's claim must be dismissed as a matter of law. See Bloor, 754 F.2d at 63 ("The district court was correct in concluding, as a matter of law, that any injury suffered by [the corporation] as a result of the alleged fraud was not proximately caused by the actions of [the alleged aider and abettor].").

The Amended Complaint's remaining allegation of "substantial assistance" consists of a wholly conclusory allegation regarding Morgan Stanley's actions in connection with the supposedly misleading March 19 release. First, as with the Note Offering, any alleged injury from the press release would have caused to Sunbeam's Noteholders and shareholders -- not to the company itself. Therefore, no matter how the Committee chooses to characterize Morgan Stanley's conduct in connection with the press release, its allegations would not suffice as a matter of law to establish the causation element for aiding and abetting liability. See Bloor, 754 F.2d at 62-63.

Second, the Committee's wholly conclusory allegations with respect to Morgan Stanley's actions in connection with the press release should be disregarded in any event, since they are

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flatly contradicted by more specific facts alleged elsewhere in the Amended Complaint. See Hirsch, 72 F.3d at 1095 (sustaining dismissal of the complaint where “attenuated allegations” supporting a claim “are contradicted . . . by more specific allegations in the complaint”); American Centennial, 1996 WL 304436, at *16 (“Allegations are not well pleaded if they are ‘made indefinite or erroneous by other allegations in the same complaint’”).

Thus, the Amended Complaint’s own allegations establish beyond doubt that it was only due to Morgan Stanley’s insistence that Sunbeam disclosed the possibility of a sales shortfall by issuing its March 19 press release. The Committee states that when Morgan Stanley learned that Sunbeam was performing below its sales forecasts, “Morgan Stanley insisted that Sunbeam issue a press release about the sales shortfall. The Sunbeam representatives strenuously resisted.” Amended Complaint ¶¶ 69-70. Moreover, even after the Sunbeam representatives provided Morgan Stanley with Sunbeam’s plan to meet forecasts, “Morgan Stanley continued to insist that Sunbeam issue a press release disclosing the possibility of a sales shortfall.” Amended Complaint ¶ 72.* These allegations make crystal clear that it was only due to Morgan Stanley’s insistence that Sunbeam agreed to issue its March 19 press release in the first place. If anything, these specific allegations demonstrate that Morgan Stanley affirmatively resisted -- not assisted -- the alleged fraudulent activities at Sunbeam.

Other allegations in the Amended Complaint similarly refute the notion that Morgan Stanley was in cahoots with Dunlap and Kersh. Thus, Dunlap’s and Kersh’s allegedly fraudulent scheme originally contemplated the *sale* of Sunbeam, not the acquisitions of other companies. Amended Complaint ¶ 29. Morgan Stanley, on the other hand, allegedly insisted from the very inception of its business relationship with Sunbeam that “a sale would not be viable under the circum-

* While the Amended Complaint’s factual allegations make clear that Morgan Stanley learned about (and consequently insisted upon the disclosure of) the potential *sales* shortfall, the Committee now alleges in a classic non sequitur that Morgan Stanley “knew, should have known or recklessly disregarded” that the press release was allegedly misleading “most significantly . . . because it addressed *only sales and not earnings*.” Amended Complaint ¶ 73 (emphasis added).

stances.” Amended Complaint ¶ 41. As the Committee alleges, “[u]ndeterred, Dunlap and Kersh insisted that Morgan Stanley canvass the market and deliver a quick sale.” *Id.*

When, after an unsuccessful search, Morgan Stanley confirmed its initial “no sale” view, Dunlap allegedly “became enraged and accused Morgan Stanley of incompetence.” Amended Complaint ¶ 42. Furthermore, Dunlap only “*reluctantly* agreed” that the focus of Morgan Stanley’s engagement would need to change from selling Sunbeam to finding acquisition candidates. Amended Complaint ¶ 46 (emphasis added). And while the Amended Complaint alleges, upon information and belief, that “Morgan Stanley knew, should have known or recklessly disregarded the fact that Dunlap had directed Morgan Stanley to find acquisition targets as a desperate attempt to hide Sunbeam’s true financial condition to investors [sic]” (¶ 46) — the Amended Complaint characteristically fails to support its empty conclusory rhetoric with any factual allegations that would establish that Dunlap ever confided his alleged desperation and improper motives to Morgan Stanley. Rules 12(b)(6) and 9(b) bar allegations pleaded in such a manner.

POINT IV

THE FIFTH CLAIM FOR AIDING AND ABETTING BREACH OF FIDUCIARY DUTY MUST BE DISMISSED.

A. The Committee has no standing to sue Morgan Stanley on behalf of Sunbeam’s creditors.

The Fifth Claim does not specify the nature of the purported injury allegedly caused by Morgan Stanley’s conduct. However, the Fifth Claim’s allegations of Morgan Stanley’s conduct with respect to aiding and abetting Dunlap’s and Kersh’s alleged breach of their fiduciary duties (Amended Complaint ¶ 151) are precisely the same as those asserted in the Fourth Claim with respect to aiding and abetting their fraudulent conduct (Amended Complaint ¶ 142), and so, presumably, the purported injury must also be the same. Moreover, the conduct alleged to be the breach of Dunlap’s and Kersh’s fiduciary duties is the fraudulent scheme itself. Amended Complaint ¶ 149 (“At all relevant times, Dunlap and Kersh breached their duty of loyalty by devising and implementing the fraudulent scheme.”). Accordingly, to the extent the Committee seeks to bring its Fifth Claim against

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Morgan Stanley on behalf of the allegedly injured creditors, including Noteholders, it has no standing for the reasons and authorities discussed in Point III.A. above.

B. The Amended Complaint's allegations fail to state a claim for aiding and abetting breach of fiduciary duties.

Under Delaware law,* in order to state a claim for aiding and abetting a breach of fiduciary duty, the plaintiff must allege: (1) the existence of a fiduciary relationship; (2) a breach of the fiduciary's duty; and (3) knowing participation in that breach by the defendant. See, e.g., In re Santa Fe Pac. Corp. Shareholder Litig., 669 A.2d 59, 72 (Del. 1995); Ivanhoe Partners v. Newmont Mining Corp., 535 A.2d 1334, 1344 (Del. 1987). A court may only infer knowing participation "if a fiduciary breaches its duty in an inherently wrongful manner, and the plaintiff alleges specific facts from which that court could reasonably infer knowledge of the breach." Nebenzahl v. Miller, 1996 WL 494913, at * 7 (Del. Ch. Aug. 26, 1996). Moreover, an "aiding and abetting claim must be supported by proof of an understanding between the parties 'with respect to their complicity in any . . . breach of fiduciary duties.'" Golaine v. Edwards, 1999 WL 1271882, at * 10 n. 39 (Del. Ch. Dec. 21, 1999) (citing Carlton Invs v. TLC Beatrice Int'l Holdings, 1995 WL 694397, at *15 (Del. Ch. Nov. 21, 1995)).

Here, the Amended Complaint falls far short of alleging "knowing participation" by Morgan Stanley. The Amended Complaint repeatedly alleges that Morgan Stanley was reckless. See, e.g., Amended Complaint ¶¶ 6, 52, 55, 66, 72, 73. But the Amended Complaint fails to allege specific facts from which it can be inferred that Morgan Stanley *knowingly participated* in Dunlap's and Kersh's breaches of fiduciary duties. Allegations of mere notice, unreasonable unawareness or

* Claims arising out of an alleged breach of fiduciary duties owed to a corporation are governed by the law of the state of incorporation (in this case, Delaware). See Alwick v. European Micro Holdings, Inc., 137 F. Supp. 2d 112, 126 (E.D.N.Y. 2001) (citing Walton v. Morgan Stanley & Co., 623 F.2d 796, 798 n.3 (2d Cir. 1980)). The same choice-of-law rule applies to claims of aiding and abetting breach of fiduciary duties. See BBS Norwalk One, Inc. v. Raccolta, Inc., 60 F. Supp. 2d 123, 129 (S.D.N.Y. 1999), aff'd, 205 F.3d 1321 (2d Cir. 2000). "New York law governing a claim of aiding and abetting [a breach of fiduciary duty] is not materially different" from Delaware law. Id.; see also Glidden v. Jandernoa, 5 F. Supp. 2d 541, 555 n. 9 (W.D. Mich. 1998) (New York and Delaware "appl[y] the same legal standards" to a claim of aiding and abetting a breach of fiduciary duty).

recklessness are not sufficient. See, e.g., Samuel M. Feinberg Testamentary Trust v. Carter, 652 F. Supp. 1066, 1082 (S.D.N.Y. 1987); Terrydale Liquidating Trust v. Barnes, 611 F. Supp. 1006 (S.D.N.Y. 1984) (“Actual knowledge of a breach of duty is required; mere suspicion or even recklessness as to the existence of a breach is insufficient.”). There is not a single allegation in the Amended Complaint that suggests that Morgan Stanley knew that Dunlap and Kersh were advancing their personal interests, as opposed to Sunbeam’s, and thus violating their duty of loyalty to Sunbeam. From Morgan Stanley’s point of view, the interests of Dunlap and Kersh were aligned with those of Sunbeam. See Amended Complaint ¶¶ 27, 29.

Likewise, there are no specific facts alleged that would demonstrate, if proven, an “understanding” between Dunlap, Kersh and Morgan Stanley with respect to their “complicity.” “Conclusion and conjecture” is insufficient to establish knowing participation in a breach of fiduciary duty. Nebenzahl, 1996 WL 494913, at *7 (dismissing aiding and abetting claims). Nor is the fact that Morgan Stanley profited from its professional services to Sunbeam sufficient to establish that it knew of Dunlap’s and Kersh’s wrongdoing. See, e.g., BBS Norwalk, 60 F. Supp. 2d at 131 (“the mere fact that [a lender] obtained a favorable deal does not reasonably support a conclusion that he knew of any wrongdoing”); Rand v. Western Airlines Inc., 1989 WL 104933, at *5 (Del. Ch. Sept. 11, 1989) (“the fact that [third party charged with aiding and abetting breach of fiduciary duty] requested and obtained . . . concessions [in its dealings with corporation] does not, without more, give rise to an inference that [third party] was aware of any wrongful conduct by [corporation] or its directors”).

As discussed in Point III.B, the Amended Complaint is devoid of any facts demonstrating such critical elements of aiding and abetting liability as Morgan Stanley’s actual knowledge of or participation in Dunlap’s and Kersh’s alleged wrongdoing, or the causal connection (both “but for” and proximate) between Morgan Stanley’s alleged participation and any harm to Sunbeam. Morgan Stanley’s conduct alleged in the Fifth Claim is precisely the same as alleged in the Fourth Claim. Therefore, the Amended Complaint’s allegations of aiding and abetting breach of fiduciary

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duties must be dismissed as legally insufficient as a matter of law for the same reasons as stated herein with respect to the allegations of aiding and abetting fraud.

POINT V

THE SIXTH CLAIM FOR RECOUPMENT MUST BE DISMISSED.

The Amended Complaint fails to state a recoupment claim. Indeed, such a claim could not possibly be valid, because recoupment is “in the nature of a defense” to a claim. See In re Malinowski, 156 F.3d 131, 133 (2d Cir. 1998); Comm. Br. at 66. But Morgan Stanley has not asserted any claims against Sunbeam, so there simply is no basis for the “defense” of recoupment. Thus, the Amended Complaint’s reference to the “claims of the MS Entities against Sunbeam” (Amended Complaint ¶ 157) is disingenuous and misleading.

The recoupment claim can pertain only to MSF, not Morgan Stanley. The Amended Complaint styles its “Sixth Claim for Relief” as “Recoupment against the *MS Entities*” (emphasis added). But the Amended Complaint pleads that “Sunbeam’s claims against the MS Entities should be recouped from *MSF’s* claims against Sunbeam.” Amended Complaint ¶ 157 (emphasis added). And the Committee’s brief concedes that “[t]he claims asserted in the Amended Complaint against Morgan Stanley have been included only to the extent necessary to seek recoupment from the claims of *MSF*. Recoupment should be permitted from *MSF’s* claims.” Comm. Br. at 68 (emphasis added).

As demonstrated in the separate memorandum submitted on behalf of the Lenders, the Amended Complaint fails to state a valid claim of recoupment even against MSF. See Lenders’ Brief at III. And the grounds for dismissal of the claim as against MSF apply with equal force to the claim as against Morgan Stanley. But there can be no question that the recoupment claim fails as against Morgan Stanley for the more fundamental reason that Morgan Stanley has not asserted any claims against Sunbeam that could be the subject of recoupment; the Amended Complaint and accompanying brief acknowledge that the Committee seeks recoupment only from *MSF’s* claims. Accordingly, the Court should dismiss the recoupment claim as against Morgan Stanley.

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Conclusion

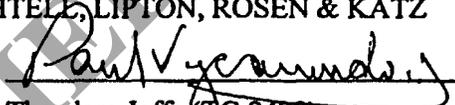
Based on the foregoing, it is respectfully submitted that the claims against Morgan Stanley should be dismissed. As stated more fully in Point IV of the Lenders' brief submitted concurrently herewith (which Point is incorporated herein by reference), the Committee should not be allowed leave to replead its allegations again, and to the extent the Amended Complaint as against Morgan Stanley is dismissed pursuant to Rules 12(b)(6) and 9(b) for failure to state a claim and for failure to plead with particularity, it should be dismissed with prejudice.

Dated: October 1, 2001
New York, New York

Respectfully submitted,

WACHTELL, LIPTON, ROSEN & KATZ

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Conclusion

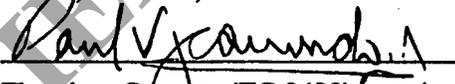
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Dated: October 1, 2001
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Respectfully submitted,

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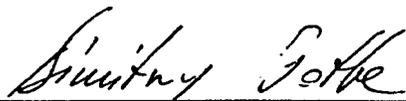
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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on October 1, 2001, he caused a copy of the (1) Notice of Motion to Dismiss the Amended Complaint by Defendant Morgan Stanley & Co. Incorporated; (2) Memorandum of Law in Support of Motion to Dismiss the Amended Complaint by Defendant Morgan Stanley & Co. Incorporated, and (3) Affidavit of Dimitry Joffe, sworn to October 1, 2001, and the exhibits thereto to be sent by hand delivery to:

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Dimitry Joffe (DJ 6498)

NOT A CERTIFIED COPY

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

For Publication

In re:

Chapter 11

SUNBEAM CORP.,

Case No. 01-40291 (AJG)

Debtor.

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF SUNBEAM CORPORATION,
on behalf of the estate of SUNBEAM
CORPORATION,

Plaintiff,

v.

Adv. Pro. No. 01-2886A

MORGAN STANLEY & CO., INC.,
MORGAN STANLEY SENIOR FUNDING, INC.,
FIRST UNION NATIONAL BANK, and
BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION,

Defendants.

MEMORANDUM DECISION GRANTING
MOTIONS TO DISMISS AMENDED COMPLAINT

Appearances:

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Of Counsel

ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY JUDGE

Before the Court are two motions, each dated October 1, 2001, to dismiss portions of an Amended Complaint,¹ dated September 6, 2001 (the "Amended Complaint"). The Amended Complaint was filed by the Official Committee of Unsecured Creditors (the "Committee") against (i) Morgan Stanley Senior Funding, Inc. ("MSSF"), (ii) First Union National Bank ("First Union"), (iii)

¹ The original complaint was filed on July 13, 2001. On August 15, 2002, the parties that filed the current motions to dismiss filed motions to dismiss the original complaint. The August 15, 2002 motions to dismiss were rendered moot by the filing of the Amended Complaint.

Bank of America National Trust & Savings Association (“BANTSA”) (collectively, the “Lenders”) who are holders of secured claims in excess of \$1.6 billion against Sunbeam Corp. (“Sunbeam” or the “Debtor”); and (iv) Morgan Stanley & Co., Inc. (“Morgan Stanley,” and collectively with the Lenders, the “Defendants”). The Amended Complaint seeks to equitably subordinate, or equitably disallow, the claims of all of the Defendants; to avoid and recover for the estate the Lenders’ claims and liens as fraudulent conveyances; to recover damages for Morgan Stanley’s alleged gross negligence and for Morgan Stanley allegedly having aided and abetted fraud and aided and abetted breach of fiduciary duty; and to recoup from MSSF’s claims against the Debtor, all of the Debtor’s claims against what the Committee refers to as the Morgan Stanley entities.

One motion to dismiss was filed by the Lenders and the other by Morgan Stanley. The two motions seek dismissal of the Amended Complaint for lack of standing to pursue the action, pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Bankr. P. 7012(b) for failure to state a claim upon which relief can be granted, and pursuant to Fed. R. Civ. P. 9(b) and Fed. R. Bankr. P. 7009 for failure to state fraud with the requisite particularity. The Debtor supports the relief sought in the two motions to dismiss.

DISCUSSION

Fed. R. Civ. P. 12(b)(6) is incorporated into bankruptcy procedure by Fed. R. Bankr. P. 7012(b). In considering a 12(b)(6) motion to dismiss for failure to state a claim for relief, the court accepts as true all material facts alleged in the complaint and draws all reasonable inferences in favor of the plaintiff. *Bolt Elec., Inc. v. City of New York*, 53 F.3d 465 (2d Cir. 1995). The motion to dismiss is granted only if no set of facts can be established to entitle the plaintiff to relief. *Walker v.*

City of New York, 974 F.2d 293, 298 (2d Cir. 1992).

In considering such a motion, although the Court accepts all the factual allegations in the complaint as true, the Court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Papasan v. Allain*, 478 U.S. 265, 286 106 S. Ct. 2932, 2944 92 L. Ed. 2d 209 (1986). Rather, to withstand a motion to dismiss, there must be specific and detailed factual allegations to support the claim. *Friedl v. City of New York*, 210 F.3d 79, 85-86 (2d Cir. 2000).

“Although bald assertions and conclusions of law are insufficient, the pleading standard is nonetheless a liberal one.” *Cooper v. Parsky*, 140 F.3d 433, 440 (2d Cir. 1998). Pursuant to Fed. R. Civ. P. 8(a), which is made applicable to adversary proceedings by Fed. R. Bankr. P. 7008, in asserting a claim, the pleader need only set forth a short and plain statement of the claim showing that the pleader is entitled to relief. The purpose of the statement is to provide “fair notice” of the claim and “the grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47, 78 S. Ct. 99,103, 2 L. Ed. 2d 80 (1957). The simplicity required by the rule recognizes the ample opportunity afforded for discovery and other pre-trial procedures which permit the parties to obtain more detail as to the basis of the claim and as to the disputed facts and issues. *Conley*, 355 U.S. at 47-48, 78 S. Ct. at 103. Based upon the liberal pleading standard established by Rule 8(a), even the failure to cite a statute, or to cite the correct statute, will not affect the merits of the claim. *Northrop v. Hoffman of Simsbury, Inc.*, 134 F.3d 41, 46 (2d Cir. 1997). In considering a motion to dismiss, it is not the legal theory but, rather, the factual allegations that matter. *Id.*, citing, *Flickinger v. Harold C. Brown & Co.*, 947 F.2d 595, 600 (2d Cir. 1991) (other citations omitted).

In reviewing a 12(b)(6) motion, the court may consider the allegations in the complaint, exhibits

attached to the complaint or incorporated therein by reference, matters of which judicial notice may be taken, *Brass v. American Film Techs., Inc.*, 987 F.2d 142, 150 (2d Cir. 1993), and documents of which plaintiff has notice and on which it relied in bringing its claim or that are integral to its claim. *Cortec Industrs. v. Sum Holding, L.P.*, 949 F.2d 42, 48 (2d Cir. 1991). However, mere notice or possession of the document is not sufficient. *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002). Rather, a necessary prerequisite for the court's consideration of the document is that a plaintiff relied "on the terms and effect of a document in drafting the complaint." *Id.* As such, the document relied upon in framing the complaint is considered to be merged into the pleading. *Id.* at 153 n.3. (citation omitted). In contrast, when assessing the sufficiency of the complaint, the court does not consider extraneous material because considering such material would run counter to the liberal pleading standard which requires only a short and plain statement of the claim showing entitlement to relief. *Id.* at 154.

Finally, to survive a motion to dismiss, a plaintiff only has to allege sufficient facts, not prove them. *Koppel v. 4987 Corp.*, 167 F.3d 125, 133 (2d Cir. 1999). A court's role in ruling on a motion to dismiss is to evaluate the legal feasibility of the complaint, not to undertake to weigh the evidence which may be offered to support it. *Cooper v. Parsky*, 140 F.3d 433, 440 (2d Cir. 1998).

Thus, for the purposes of this motion to dismiss, the Court accepts as true all of the material allegations in the Committee's complaint.

The Amended Complaint

The Amended Complaint alleges that Morgan Stanley acted as underwriter in connection with Sunbeam's offering of certain convertible notes (the "Note Offering") at the same time that it acted as

financial advisor to Sunbeam in connection with Sunbeam's acquisition of three entities (the "Acquisitions") - The Coleman Company, Inc; First Alert, Inc.; and Signature Brands USA, Inc. In this dual capacity, the Amended Complaint alleges that Morgan Stanley was conflicted. The Amended Complaint details alleged fraudulent activity by certain of Debtor's senior management (the "Insiders"). It is alleged that, in its dual role as underwriter in the Note Offering and advisor concerning the Acquisitions, Morgan Stanley aided and abetted the fraudulent activity of the Insiders. According to the Amended Complaint, Morgan Stanley committed gross negligence by (i) failing to uncover the Insiders fraudulent activity, and (ii) recklessly advising Sunbeam to proceed with the Acquisitions by rendering a "Fairness Opinion" to Sunbeam that the Acquisitions were fair to Sunbeam from a financial point of view based on a synergy analysis when, according to the Committee, the amounts paid for the Acquisitions were excessive. It is alleged that the Fairness Opinion issued by Morgan Stanley was based on evaluations prepared by Coopers & Lybrand upon which Morgan Stanley relied without independent verification. It is also alleged that the Lenders extended financing (the "Bank Facility") to Sunbeam in 1998 and Sunbeam used the proceeds from the Bank Facility to finance the Acquisitions while Sunbeam was insolvent or, alternatively, that the Acquisitions caused Sunbeam to become insolvent.

The Amended Complaint alleges that Morgan Stanley, as underwriter, lured investors into purchasing the Notes to finance the Acquisitions. It is alleged that the purpose of the Note Offering was to use the proceeds to bolster the creditworthiness of the Lenders' loan. This was allegedly accomplished because pursuant to the Indenture upon which the Notes were issued, the Notes were contractually subordinated to the indebtedness under the Bank Facility and the proceeds of the Note

Offering would provide a substantial "cushion" for repayment of the loan. It is further alleged that the Lenders would only provide financing conditioned on the issuance of the Notes. After the Note Offering closed, the Lenders issued a commitment letter on the loan. The borrowings under the loan were guaranteed by the Debtor's direct and indirect subsidiaries and, as such, the Bank Facility was structurally senior to the Notes.

The Committee alleges that Morgan Stanley committed fraud by omitting and misrepresenting material facts concerning Sunbeam's financial condition when acting as underwriter for the Note Offering and inducing the purchase of the Sunbeam Notes. In its capacity as underwriter, Morgan Stanley consented to a March 19, 1998 press release with allegedly material misrepresentations of Sunbeam's financial condition. It is alleged that Morgan Stanley received information that should have alerted it to the fact that Sunbeam would not meet the projections set forth in the press release and it therefore was misleading. It is further alleged that once the press release was issued, a representative of the accounting firm Arthur Anderson opposed its inclusion with the offering materials distributed for the Notes but that Morgan Stanley proceeded to include the press release in those materials. It is also alleged that the Noteholders relied on the misrepresentations, were not aware that they were false, and have suffered injury as a result. Further, this alleged fraud injured the Noteholders and other unsecured creditors.

In the Amended Complaint, it is further alleged that MSSF is the alter ego of Morgan Stanley and as such, Morgan Stanley's alleged misconduct can be imputed to MSSF. It is also alleged that BANTSA and First Union's participation in the Bank Facility is also actionable because the misconduct of Morgan Stanley can be imputed to BANTSA and First Union on an agency theory or because

BANTSA and First Union willingly accepted the benefits of the Note Offering, knowing that such was the product of fraud, or by recklessly disregarding that fact.

First Claim for Relief

With respect to the first claim for relief in the Amended Complaint, the Committee seeks to equitably subordinate the claims of all of the Defendants.

The Lenders argue that the equitable subordination claim must be dismissed as to them because, while alleging misconduct by Morgan Stanley, the Amended Complaint does not allege any inequitable conduct by the Lenders or any basis to attribute Morgan Stanley's alleged inequitable conduct to the Lenders.

Morgan Stanley argues that the claim for equitable subordination against it must be dismissed because in order to equitably subordinate a claim, the claimant itself must have engaged in the inequitable conduct and Morgan Stanley is not a claimant as it has not filed a proof of claim in this case.

Equitable Subordination

11 U.S.C. § 510(c) provides, in relevant part, that:

(c) . . . the court may

(1) under principles of equitable subordination, subordinate for purposes of distribution all or part or an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest; or

(2) order that any lien securing such a subordinated claim be transferred to the estate.

11 U.S.C. § 510(c).

The Bankruptcy Code does not set forth the "principles of equitable subordination." Rather, Congress intended for existing case law to establish the framework for its development. *80 Nassau Assocs. v. Crossland Fed. Sav. Bank (In re 80 Nassau Assocs.)*, 169 B.R. 832, 837 n.3 (Bankr.

S.D.N.Y. 1994), *citing*, S. Rep No. 95-989, 95th Cong., 2d Sess. 74 (1978); 124 Cong.Rec. H11,095 (daily ed. Sept. 28, 1978) (statement of Rep. Edwards); Andrew De Natale & Prudence B. Abram, *The Doctrine of Equitable Subordination as Applied to Nonmanagement Creditors*, 40 Bus. Law 417, 421 (1985). Thus, pre-Bankruptcy Code cases which interpret the doctrine of equitable subordination continue as authoritative precedent. *Nassau Assocs.*, 169 B.R. at 837 n.3. Indeed, in considering the doctrine under the Bankruptcy Code, courts have relied on the three-prong test set forth in *Benjamin v. Diamond (In re Mobile Steel Co.)*, 563 F.2d 692, 700 (5th Cir. 1977), a proceeding under Chapter XI of the Bankruptcy Act, 11 U.S.C. §§ 701 *et. seq.* (1970).

The elements of the *Mobile Steel* test are as follows:

- (i) the claimant must have engaged in some type of inequitable conduct;
- (ii) the misconduct must have resulted in injury to the creditors . . . or conferred an unfair advantage on the claimant;
- (iii) equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy [law].

Mobile Steel, 563 F.2d at 700.

A bankruptcy court's "general equitable power to adjust equities among creditors in relation to the liquidation results" is the source of the bankruptcy court's power to subordinate claims. *Nassau Assocs.*, 169 B.R. at 837. The equitable goal is to prevent injustice or unfairness in the bankruptcy context. *Id.* This is accomplished by permitting the court to subordinate an otherwise legally valid claim when the claimant has engaged in conduct that makes it unjust or unfair for the claimant to share *pro rata* with similarly situated creditors. *Id.*

Equitable subordination can only be used to reorder priorities, not to disallow claims. *Nassau Assocs.*, 169 B.R. at 837. Moreover, pursuant to the express terms of Bankruptcy Code § 510(c),

claims may only be subordinated to other claims and interests may only be subordinated to other interests.

Inequitable Conduct

The type of misconduct that warrants equitable subordination of a claim includes instances where there has been:

- (i) fraud, illegality or breach of fiduciary duty;
- (ii) undercapitalization; and
- (iii) control or use of the debtor as an alter ego for the benefit of the claimant.

Nassau Assocs., 169 B.R. at 838. See also *Capital Bank & Trust Realty Trust v. 604 Columbus Ave. Realty Trust (In re 604 Columbus Ave. Realty Trust)*, 968 F.2d 1332, 1359-60 (1st Cir. 1992) (noting that equitable subordination applies when the debtor's fiduciary misuses his position to disadvantage other creditors, when a third party dominates or controls a debtor to disadvantage others, or when a third party defrauds other creditors.)

However, even lawful conduct may be considered inequitable if it "shocks one's good conscience." *Nassau Assocs.*, 169 B.R. at 837. This is because, as an "integrated proceeding," the bankruptcy case "concerns not only the legal validity of the claim but also claimant's right to share in the estate." *Id.* If a claimant has engaged in inequitable conduct, its claim may be equitably subordinated irrespective of whether that conduct is related to the acquisition or assertion of the claim. *Mobile Steel*, 563 F.2d at 700.

A higher level of proof is required to equitably subordinate the claim of a party that is neither an insider of the debtor, nor a fiduciary to the debtor or other creditors. *ABF Capital Mgmt. v. Kidder Peabody & Co., Inc. (In re Granite Partners, L.P.)*, 210 B.R. 508, 515 (Bankr. S.D.N.Y. 1997).

This is because, absent receipt of a preference or fraudulent transfer, a creditor may ordinarily improve its position in relation to other creditors. *Id.* at 515. Courts are “reluctant to find the requisite level of misconduct in ‘arms-length’ transactions between borrowers and lenders.” *Columbus Ave.*, 968 F.2d at 1361.

When a non-insider or non-fiduciary is involved, courts have required that a claimant’s conduct be egregious and severely unfair to other creditors before its claim will be equitably subordinated. *Columbus Ave.*, 968 F.2d at 1360. The conduct required has been described as “substantial misconduct tantamount to fraud, misrepresentation, overreaching or spoliation.” *Nassau Assocs.*, 169 B.R. at 838-39. Few cases find that non-insider, non-fiduciary claimants meet this standard. *Granite Partners*, 210 B.R. at 515.

The conduct alleged must “violate[] a generally recognized duty that exists outside of bankruptcy law.” *Nassau Assocs.*, 169 B.R. at 839. Thus, to defeat a motion to dismiss, the facts must allege that the claimant committed fraud or some other illegal action, or that the claimant breached some legal duty that it owed to the debtor or its creditors. *Granite Partners*, 210 B.R. at 508.

Injury to Creditors or Unfair Advantage to the Claimant

The second element of the *Mobile Steel* test requires a finding that the claimant’s conduct injured the debtor or its creditors or resulted in an unfair advantage to the claimant. Moreover, when a court finds that the claimant’s conduct warrants equitable subordination of its claim, as equitable relief is remedial and not penal, that claim is “subordinated only to the extent necessary to offset the harm which the bankrupt and its creditors suffered on account of the inequitable conduct.” *Mobile Steel*, 563 F.2d at 701. The injury suffered sets the limits of the remedy regardless of the nature of the claimant’s

conduct. *Nassau Assocs.*, 169 B.R. at 840.

Not Inconsistent with the Bankruptcy Code

The third requirement of the *Mobile Steel* standard is that any equitable subordination of a claim not be inconsistent with bankruptcy law. This element recognizes that the doctrine is not a mechanism to be used by courts to alter the statutory scheme in an effort to reach a result the court considers more equitable than the distribution scheme provided for in the Bankruptcy Code. *Nassau Assocs.*, 169 B.R. at 841.

As the first requirement for equitable subordination is that the claimant itself engaged in the inequitable conduct, the Lenders and Morgan Stanley argue that their claims cannot be subordinated under this theory. The Lenders argue that they are claimants but the inequitable conduct alleged was not their conduct but, rather, the conduct of Morgan Stanley. Morgan Stanley argues that it is not a claimant as it has not filed any proof of claim in this case.

The Committee contends that the Lenders were lenders under the Bank Facility in name only and that there was an alter ego or agency relationship between Morgan Stanley and MSSF and, therefore, the inequitable conduct alleged against Morgan Stanley can be imputed to MSSF. The Committee further alleges that there was also an agency relationship between Morgan Stanley and BANTSA and First Union which would allow for Morgan Stanley's conduct to be imputed to BANTSA and First Union.

Alter Ego Liability

In determining whether the corporate form will be disregarded and the corporate veil pierced, the law of the state of incorporation is applied. *Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1456 (2d Cir.

1995). Morgan Stanley and MSSF are Delaware corporations, therefore, Delaware law applies.

Under Delaware law, the corporate veil of an entity can be pierced “where there is fraud or where a subsidiary is in fact a mere instrumentality or alter ego of its owner.” *Geyer v. Ingersoll Publ'ns Co.*, 621 A.2d 784, 793 (Del.Ch. 1992). As the applicable standard is in the alternative, there is no requirement of a showing of fraud when relying on the alter ego theory of liability. *Fletcher*, 68 F.3d at 1457.

To establish alter ego liability under Delaware law, what must be shown is:

- (1) that the parent and the subsidiary operated as a single economic entity; and
- (2) that an overall element of injustice or unfairness is present.

Fletcher, 68 F.3d at 1457. (citations and internal quotation marks omitted). Thus, although fraud need not be shown, it is required that an overall element of injustice or unfairness be shown. *Fletcher*, 68 F.3d at 1458.

A court considers various factors in determining whether the parent and subsidiary “operated as a single economic entity such that it would be inequitable . . . to uphold a legal distinction between them.” *Fletcher*, 68 F.3d at 1458. (citations omitted). The relevant factors to consider include:

- whether the corporation was adequately capitalized for the corporate undertaking;
- whether the corporation was solvent;
- whether dividends were paid, corporate records kept, officers and directors functioned properly, and other corporate formalities were observed;
- whether the dominant shareholder siphoned corporate funds; and
- whether, in general, the corporation simply functioned as a facade for the dominant shareholder.

Fletcher, 68 F.3d at 1458.

However, even in the absence of allegations of these specific factors, a court may not grant a

motion to dismiss where the plaintiff has made other relevant allegations. *Union Carbide Corp. v. Montell N.V.*, 944 F.Supp. 1119, 1145 (S.D.N.Y. 1996).

The purpose of allowing the corporate veil to be pierced on an alter ego theory is to hold the party actually responsible for the inequitable conduct accountable and to prevent that corporation from “using another corporation to shield itself from liability.” *Gabriel Capital, L.P. v. NatWest Fin., Inc.*, 122 F. Supp.2d 407, 432 (S.D.N.Y. 2000), *citing*, 1 WILLIAM MEADE FLETCHER ET AL, FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 41.10, at 577-78 & § 41.20, at 596.

Nevertheless, courts are reluctant to disregard the corporate structure unless provided with a sufficient rationale. *Fletcher*, 68 F.3d at 1458. Therefore, a high standard must be met before alter ego liability is warranted. *Gabriel Capital*, 122 F.Supp.2d at 432.

Ordinarily the determination of the nature and extent of domination is a question of fact. *Union Carbide*, 944 F. Supp. at 1145. However, there are instances “where courts have granted motions to dismiss as well as motions for summary judgment in favor of defendant parent companies where there has been a lack of sufficient evidence to place the alter ego issue in dispute.” *See Fletcher*, 68 F.3d at 1458 (citing cases).

To support a claim for alter ego liability and establish that the subsidiary was a mere facade for the dominant shareholder, it is not sufficient to show “mere domination and control” of the subsidiary by the parent corporation. *Outokumpu Eng’g. Enters., Inc. v. Kvaerner Enviropower, Inc.*, 685 A.2d 724, 729 (Sup.Ct. Del. 1996). Rather, the domination shown must be “complete domination of the corporation” concerning the transaction in issue. *Union Carbide Corp. v. Montell N.V.*, 944 F.Supp. 1119, 1144 (S.D.N.Y. 1996). The extent of the domination and control must preclude the controlled

entity from having "legal or independent significance of its own." *Wallace v. Wood*, 752 A.2d 1175, 1184 (1999). There must be an abuse of the corporate form to effect a fraud or an injustice - some sort of "elaborate shell game." *Outokumpu*, 685 A.2d at 729.

Finally, while it is not sufficient, at the pleading stage, to make conclusory allegations of control, *Union Carbide Corp.*, 944 F. Supp. at 1144-45, nevertheless, setting forth some examples of alleged domination may provide sufficiently specific factual allegations to support an alter ego claim and result in denial of the motion to dismiss. See *Union Carbide*, 944 F. Supp. at 1145; *Geyer*, 621 A.2d at 793.

Agency

There are two theories of agency for determining whether a parent may be liable for actions by a subsidiary, one is complete dominion and control and the analysis is similar to that used for alter ego, the other is "the standard principal/agent concept often involving but not necessarily requiring a parent and subsidiary." *Outokumpu Eng'g Enters, Inc. v. Kvaerner Enviropower Inc.*, 685 A.2d at 730 (Del Supr. 1996). While the former uses an alter ego type of analysis and requires that total dominance of the subsidiary by the parent be proven, the latter does not require a showing of complete dominance because customary agency principles may apply whether the parties are parent and subsidiary or completely unrelated apart from the specific transaction where they may have assumed roles of principal and agent. *Phoenix Canada Oil Co. Ltd. v. Texaco, Inc.*, 842 F.2d 1466, 1477 (3d. Cir. 1988). In considering traditional agency principles the focus of the inquiry is on the relationship between the two entities as it bears on the alleged wrong. *Id.*

Even under traditional agency relationship analysis where total domination need not be proven, in considering whether an agency relationship is present, the most essential element is a finding that the

principal *directs* and *controls* the agent's action. *Nat'l Petrochemical Co. of Iran v. M/T Stolt Sheaf*, 930 F.2d 230, 244 (2d Cir. 1991); *see also Abex, Inc. v. Koll Real Estate Group, Inc.*, 1994 WL 728827 *14 (Del.Ch. 1994) (noting that the right to control is the critical factor in establishing an agency relationship).

Moreover, acting in the name of another, by itself, does not make one an agent. Rather, "[t]o be an agent, one must have been appointed by the principal and be subject to the principal's orders." *Abex, Inc.*, 1994 WL 728827 at *15 *citing*, RESTATEMENT (SECOND) OF AGENCY §§ 1 and 14.

Application of the Facts, as Alleged, to the "Alter Ego" and "Agency" Theories

The Committee argues that the alter ego theory applies because Morgan Stanley and MSSF operated as a single economic unit and therefore there should be no distinction between them. The Committee alleges that MSSF was just named as the lender in the loan documents but that Morgan Stanley really controlled the entire process.

With respect to the alter ego theory, the Defendants maintain that mere control of one entity by another is not sufficient to pierce the corporate veil. The Defendants also contend that because the Committee has not alleged any of the *Fletcher* factors, their motion must be dismissed.

The Amended Complaint contains no allegation concerning the *Fletcher* factors. Most relevant, there are no allegations that MSSF was undercapitalized, or that it had no business operations, or that its finances were intermingled with those of Morgan Stanley. Nevertheless, even in the absence of allegations of *Fletcher* factors, in certain cases, it may be proper to deny a motion to dismiss where there are other specific relevant allegations.

In this case, the Committee argues that the corporate veil should be pierced because of Morgan

Stanley's purported control and dominance over its affiliate, MSSF, throughout the entire process leading to the extension of the Bank Facility. The Committee alleges that the allocation of responsibility concerning the Bank Facility was to be determined solely by Morgan Stanley. The Committee also alleges that Morgan Stanley did not distinguish between itself and MSSF in its engagement letter to Sunbeam or in the Note offering. The Committee further alleges that in addition to its oversight over MSSF's actions concerning the Bank Facility, MSSF did not perform any due diligence and had no independent discretion. The Committee asserts that MSSF's role was merely to be named a lender on the Bank Facility.

The Committee's assertion that MSSF had no discretion is conclusory. The Committee has had ample discovery and has not provided support for this assertion. Moreover, the Court does not credit the Committee's reference to Morgan Stanley's alleged failure to distinguish between itself and MSSF in Morgan Stanley's engagement letter to Sunbeam or in the Note Offering because in both instances, despite the Committee's allegation to the contrary, Morgan Stanley clearly referenced the fact that either it or "its affiliates" or "an affiliate" would provide the services mentioned in those documents.

In addition, mere domination or control by one entity over another is not sufficient to require piercing of the corporate veil. Rather there must be such complete domination and control that the controlled entity is a mere shell.

Moreover, the purpose in allowing the corporate veil to be pierced is to ensure that an entity who engaged in inequitable conduct is held accountable for its actions and to prevent that wrongdoer from using another entity to shield it from liability. The typical situation arises where an entity

completely controls an undercapitalized subsidiary or affiliate and, through that dominance, causes the underfunded-controlled entity to engage in inequitable conduct. When, as a result of that conduct, the injured party attempts to obtain redress, the controlling entity shields itself from liability behind the facade of the shell corporation, while the injured party has no recourse against the undercapitalized shell corporation. In that instance, the corporate form was used to effect a fraud or injustice and the corporate veil is pierced to allow the injured party to obtain redress from the actual wrongdoer who has the wherewithal to pay any damages awarded.

In this case, the allegations of wrongdoing are all based on the conduct of Morgan Stanley. Morgan Stanley's purported wrongful conduct is blamed for the injury to the Noteholders and other unsecured creditors. There is no evidence, however, that Morgan Stanley used MSSF to shield itself from potential liability. Rather, Morgan Stanley has liability exposure to the Noteholders by virtue of its role as underwriter of the Note Offering. Moreover, MSSF is not the typical undercapitalized shell used to shield a related entity from creditors. MSSF had sufficient capital to make the loan and there are no allegations that it did not have sufficient capital to fund its operations generally. Thus, the corporate form was not used to allow Morgan Stanley to escape any liability it might have based on its conduct. The Committee has not presented a sufficient rationale to overcome the reluctance to disregard the corporate structure.

In addition, the Court finds that the Committee has not alleged a sufficient basis upon which to hold MSSF liable for any conduct on Morgan Stanley's part based upon a theory of agency. The Court has rejected application of alter ego liability and as the characteristics of agency based upon complete dominance and control are identical, agency cannot be established on that basis. Under a

traditional agency theory, in order to hold the principal liable for the agent's conduct, there would have to be allegations that the principal directed and controlled the agent. There are no allegations in the Amended Complaint that Morgan Stanley acted subject to MSSF's direction and control. Thus, there are no allegations that MSSF controlled Morgan Stanley upon which to conclude that Morgan Stanley was MSSF's agent. Indeed, the Committee has alleged the opposite, that Morgan Stanley controlled MSSF.

The Court, further finds that even if one were to impute Morgan Stanley's conduct to MSSF, the allegations in the Amended Complaint would be insufficient to hold First Union or BANTSA liable on a theory of agency. There are no allegations that First Union or BANTSA controlled either Morgan Stanley or MSSF. The Committee referenced the titles given the Lenders under the documents - Syndication Agent, Documentation Agent, and Administrative Agent. However, merely having been given a title does not establish an agreement by one to be subject to another's control. The titles by themselves do not set forth legal relationships. In any case, the alleged inequitable conduct by Morgan Stanley sought to be imputed to MSSF would be outside of its scope as syndication agent and could not therefore be imputed to its principal even if it were established that First Union and BANTSA were the principals of MSSF in its role as syndication agent. Aside from the reference to the titles, there are no allegations in the Amended Complaint that specifically reference anything in the loan documents or in the agreement between the Lenders establishing an agreement by MSSF to be subject to the control of First Union or BANTSA. Nor are there any allegations that First Union or BANTSA directed any specific actions of either Morgan Stanley or MSSF. Thus, the allegation that Morgan Stanley and MSSF acted as agent for First Union and BANTSA in connection with the Bank Facility is conclusory.

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Moreover, there is no allegation that Morgan Stanley acted as agent for First Union and BANTSA in connection with the Note Offering or the Acquisitions. Yet, it is Morgan Stanley's conduct in relation to the Note Offering and Acquisitions that form the basis for its allegedly inequitable conduct.

The Committee argues that First Union and BANTSA are also liable based on their own actions. In the Amended Complaint, the Committee alleges that BANTSA and First Union failed to conduct due diligence concerning the March 19, 1998 press release issued by Sunbeam which was purportedly fraudulent.² However, in connection with their extension of the loan as part of the Bank Facility, failure to conduct such due diligence cannot be considered inequitable conduct as the Lenders did not have a duty to conduct due diligence concerning the press release. Nor is the Lenders' decision to attempt to syndicate all or a portion of the loan evidence of inequitable conduct as syndication of large loans is common, and acceptable, practice.

None of the allegations directed at the Lenders themselves, as opposed to those directed to Morgan Stanley and attempted to be imputed to the Lenders, are the type of gross and egregious conduct required to equitably subordinate a claim.

The allegations in the Amended Complaint do not provide a basis to impute Morgan Stanley's conduct to MSSF, under either an alter ego or agency theory. Nor is there any basis to find First Union or BANTSA liable on a theory of agency. In addition, there are no allegations in the Amended Complaint concerning actionable inequitable conduct by the Lenders themselves. Thus, the Court

² The Committee contradicts this assertion in ¶ 74 of the Amended Complaint where it is alleged that First Union and BANTSA performed due diligence on Sunbeam's revenues and short falls.

grants the Lenders motion to dismiss the first claim for relief.³

Second Claim for Relief

Concerning the second claim for relief which seeks to avoid the Lenders' claims and liens as fraudulent conveyances, the Committee argues that the loans were earmarked for the Acquisitions at a time when the Lenders knew or recklessly disregarded that Sunbeam would not receive reasonably equivalent value for the loans. Further, the Committee notes that as security for the loans, Sunbeam and its subsidiaries conveyed security interests in their respective property to the Defendants. The Committee contends that the Acquisitions, and the incurrence of the debt and transfer of the security interests related to the Bank Facility, reduced Sunbeam's assets available to other creditors. The Committee urges that the Court consider the Bank Facility and the Acquisitions a single integrated transaction. Further, the Committee contends that this series of transactions occurred at a time when Sunbeam was insolvent or, alternatively, the transactions caused Sunbeam to become insolvent.

The Lenders move to dismiss this claim for relief arguing first that the Amended Complaint fails to allege the absence of fair consideration or reasonably equivalent value with the requisite particularity. In addition, the Lenders argue that the facts do not warrant "collapsing" the loan transaction and the Acquisitions into a single integrated transaction. The Lenders maintain that the transaction pursuant to which Sunbeam borrowed from the Lenders and secured those loans is separate and independent from

³ With respect to the request for equitable disallowance of the Lenders' claims, the Court need not address the issue of the continued viability of such doctrine after the enactment of § 501(c). The Committee concedes that to the extent equitable disallowance would apply, such disallowance would be based on the same equitable principles as equitable subordination. Inasmuch as the Court has found that the allegations in the Amended Complaint do not support a finding of inequitable conduct sufficient to warrant subordination of the Lenders' claim, they even less support disallowance of such claim.

the transaction under which Sunbeam used certain of the loan proceeds, as well as proceeds of the Note Offering, to make the Acquisitions.

Collapsing Transactions

A series of transactions may, under certain circumstances, be “collapsed” and treated as a single transaction for the purpose of determining whether there has been a fraudulent conveyance. *HBE Leasing Corp. v. Frank*, 48 F.3d 623, 635 (2d Cir. 1995). This treatment is usually accorded in situations where a debtor who has exchanged property with another for fair consideration, then gratuitously transfers that consideration to a third-party. *Id.* When the series of transactions are completed, the debtor remains with nothing while the counter-party to the first transaction receives the property and the counter-party to the second transaction receives the consideration. *Id.*

Although the concept of “collapsing” a series of transactions and treating them as a single integrated transaction has been applied primarily when analyzing a transfer alleged to be fraudulent in the context of a failed leveraged buy-out (“LBO”), it has also been utilized in other contexts. *In re Best Prods. Co., Inc.*, 157 B.R. 222, 229-30 (Bankr. S.D.N.Y. 1993) (citing LBO cases, then collapsing sublease between subsidiary and parent corporation which was used as mere financing vehicle and treating loan as having been made directly to parent corporation); *see also, Orr v. Kinderhill Corp.*, 991 F.2d 31, 35-36 (2d Cir. 1993) (collapsing transactions concerning corporation’s (i) transfer of real property, and (ii) subsequent distribution of stock in transferee corporation, and treating integrated transaction as not supported by fair consideration); *See also, Voest-Alpine Trading Corp. v. Vantage Steel Corp.*, 919 F.2d 206, 212-13 (3d Cir. 1990) (collapsing series of transactions as “sham” where transactions were designed to deprive a company’s unsecured creditors of access to its assets by

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rendering company insolvent through foreclosure and transferring its assets to another company without fair consideration).

Courts have “collapsed” a series of transactions into one transaction when it appears that despite the formal structure erected and the labels attached, the segments, in reality, comprise a single integrated scheme when evaluated focusing on the knowledge and intent of the parties involved in the transaction. *Best Prods. Co.*, 157 B.R. at 229; *Voest-Alpine*, 919 F.2d at 213. Focusing on the knowledge and intent of the parties involves a fact intensive case-by-case analysis. *Best Prods. Co.*, 157 B.R. at 229.

Where a transfer is actually “only a step in a general plan,” an evaluation is made of the entire plan and its overall implications. *Orr v. Kinderhill Corp.*, 991 F.2d at 35. A loan may appear to provide fair consideration because the lender provided funds to an entity in exchange for a security interest. If, however, the proceeds of that loan are transferred to a third-party for less than fair consideration, the transactions may be collapsed and the initial lender’s transfer deemed fraudulent if that initial transferor was intimately involved in the formulation or implementation of the plan by which the proceeds of the loan were channeled to the third-party. *Voest-Alpine*, 919 F.2d at 212-13, citing, *U.S. v. Tabor Court Realty Corp.*, 803 F.2d 1288, 1303 n.8 (3d Cir. 1986). Where the evidence shows that the parties knew or should have known that the ultimate use of the funds would deplete the assets of a corporation, a court disregards the formal structure. *Lippi v. City Bank*, 955 F.2d 599, 612 (9th Cir. 1992). Nevertheless, a lender may extend a loan to an entity even if it is aware that the borrower ultimately intends to use the funds to repay antecedent debt, *Atlanta Shipping Corp. v. Chemical Bank*, 818 F.2d 240, 249 (2d Cir. 1987), or to invest in a speculative venture. *In re*

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Greenbrook Carpet Co., 722 F.2d 659, 661 (11th Cir. 1984). Where the funds are ultimately used for legitimate corporate purposes, then the transfer is not fraudulent even if the series of transactions are viewed as a single integrated transaction. *HBE Leasing*, 48 F.3d at 637.

To render the initial transferee's exchange with a debtor fraudulent, that transferee must have had either actual or constructive knowledge of the entire scheme. *HBE Leasing*, 48 F.3d at 635. Constructive knowledge is attributed to a party if it was aware of circumstances that would ordinarily lead one to inquire further but it failed to do so. *Id.* at 636. Although certain courts attribute the transferees who fail to make appropriate inquiries with the knowledge that would have been gained from ordinary diligence, other courts require a "more active avoidance of the truth," such as consciously turning away from knowledge. *Id.* (citations omitted).

Application of the Facts, as Alleged, to the Collapsing Theory

In order for the Committee to prevail on its collapsing theory, it is necessary to treat the transaction concerning the borrowing from the Lenders and the securing of the loan, the transaction concerning the Note Offering, and the transaction concerning the use of the loan proceeds to buy the Acquisitions as one integrated transaction.

The Committee argues that although the \$1.6 billion advanced to the Debtor provided fair consideration for the security interest received by the Lenders, the Lenders knew that proceeds from the loan would be used to purchase the Acquisitions at prices substantially higher than their fair market value and that those purchases were made while the Debtor was insolvent or, alternatively, that the purchases caused the Debtor to become insolvent. The Committee contends that the Lenders were prepared to finance this risky loan because the funds from the Note Offering would supply a cushion for

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repayment of their loan. Thus, the Committee argues that because the Lenders knew that the ultimate use of the funds would harm the Debtor, the transactions should be collapsed and the Lenders claims and liens should be avoided as fraudulent transfers.⁴

The Lenders argue that the factual allegations do not justify collapsing the transactions because the loan proceeds were used for legitimate corporate purposes. In addition to applying a portion of the proceeds of the Bank Facility for the purchase of the Acquisitions, the Lenders note that in the Amended Complaint, the Committee acknowledges that the documents upon which they rely indicate that the balance of the loan proceeds were to be used to refinance certain existing indebtedness, to pay related fees and expenses, and to finance ongoing working capital needs. The Lenders maintain that there is no dispute that these additional intended uses are all legitimate corporate expenditures. Moreover, the Lenders argue that it was proper to use a portion of the loan proceeds, together with the proceeds from the Note Offering, to purchase three unrelated companies - each with their own geographic presence, product lines and brand names. As those proceeds were used to acquire other existing companies, each with its own business and assets, the Lenders maintain that the purchases of the Acquisitions were legitimate corporate expenditures even if they were speculative ventures.

⁴ Citing to the Uniform Fraudulent Conveyance Act and the Uniform Fraudulent Transfer Act, the committee asserts that a party seeking to recover a conveyance as fraudulent must plead that:

- i. the debtor was insolvent, inadequately capitalized and/or intended to incur debts that it could not repay as they would become due.
- ii. the debtor received less than reasonably equivalent value (also known as "fair consideration") in exchange for the obligation incurred or the property transferred.

The Committee also cites to N.Y. Debtor & Creditor Law § 272, 273; Fla. Stat. §§ 726.103, 726.104, as containing analogous sections.

The Committee asserts that the Lenders were aware of the structure of the entire transaction in that proceeds from the Bank Facility would be used to purchase the Acquisitions and that closing on the Notes was a condition precedent to closing on the Bank Facility. Thus, the Committee maintains that the Lenders knowingly funded the purchase of the Acquisitions.

An entity, however, may use proceeds of a loan to purchase another business even if it is a speculative venture and the fact that the acquired company later proves unprofitable is not a basis upon which to retroactively impute knowledge that the consideration paid to acquire it far exceeded its value to the purchaser.

The Committee, nevertheless, contends that the Lenders had actual knowledge, after having conducted due diligence, that the Debtor was insolvent and that it was paying an excessive sum to purchase the Acquisitions. In support of this assertion, the Committee references information provided by the current CEO of the Debtor as to the unreliability of the financial analysis upon which the Lenders relied in extending the loan. A deposition upon which the Committee relied in bringing the Amended Complaint, however, makes clear that the meeting at which the CEO provided this information to the Lenders did not occur until several months after the closing of the Bank Facility.

The Committee's assertion concerning the Lenders purported knowledge of the Debtor's overpayment for the Acquisitions is conclusory as there are no factual allegations to support it. There are no allegations concerning what facts were discovered by the Lenders. Rather, the allegations concern what Morgan Stanley discovered. Moreover, in the Amended Complaint, it is acknowledged that Morgan Stanley found the purchase of the Acquisitions to be fair to the Debtor from a financial point of view based upon the synergy estimates prepared by Coopers & Lybrand and the other

financial information provided to it, upon all of which it was entitled to rely without independent verification, in accordance with its engagement. In addition, the Debtor's board of directors approved of the transactions involving the Acquisitions, fully aware of Morgan Stanley's reliance on Coopers & Lybrand's synergy analysis and the other financial information provided to it.

Moreover, the statement made by the Debtor's CEO does not support the Committee's contention that the Lenders knew prior to closing the Bank Facility that the Debtor was insolvent because the CEO's testimony dates the Debtor's insolvency to a period subsequent to the closing of the Bank Facility. Nor are there any allegations that would support the Committee's assertion that the Lender's knew that the purchase of Acquisitions would render the Debtor insolvent.

Thus, there are no allegations that, prior to closing the Bank Facility, the Lenders knew or consciously avoided discovering that the Acquisitions were worth substantially less than the Debtors paid for them or that the Debtor was insolvent or that it would be rendered insolvent as a result of the Acquisitions. Nor are there any allegations to support a finding that the Lenders had constructive knowledge that the Debtor was overpaying for the Acquisitions, or that it was insolvent or would be rendered insolvent by the Acquisitions. There are no allegations concerning any facts learned by the Lenders as a result of their due diligence that would have put them on notice of a fraudulent scheme or that would have required further investigation.

As there are no facts alleged in the Amended Complaint to support a finding that the Lenders had either actual or constructive knowledge that the Debtor was insolvent or would be rendered insolvent or that the Acquisitions were valued incorrectly, there is no basis to warrant collapsing the several transactions for the purpose of finding any of the conveyances to be fraudulent.

Therefore, the Court grants the Lenders' motion to dismiss the second claim for relief contained in the Amended Complaint.⁵

The Third, Fourth and Fifth Claims for Relief

The third, fourth and fifth claims for relief are all asserted against Morgan Stanley. The third claim seeks to recover damages for the estate based upon Morgan Stanley's purported negligence or gross negligence in issuing the Fairness Opinion and recommending that the Debtor proceed with the purchase of the Acquisitions. The fourth claim for relief seeks to recover damages for the estate based on Morgan Stanley's purported role in aiding and abetting the fraud allegedly committed by the Insiders. The fifth claim for relief seeks to recover damages for the estate based on Morgan Stanley's purported role in aiding and abetting the Insiders in committing breaches of their fiduciary duty as officers of the Debtor.

Morgan Stanley contends that all of the claims for relief asserted against it must be dismissed because the Committee had no authority to commence an adversary proceeding against it as the Committee failed to obtain leave of court to commence the action on behalf of the estate. Alternatively, Morgan Stanley argues that the factual allegations in the Amended Complaint do not support the relief sought.

The Committee argues that the claims against Morgan Stanley should not be dismissed as the Final Order Authorizing Debtor in Possession to Enter into Post-Petition Financing Agreement, dated

⁵ Having dismissed the fraud claim because the factual allegations do not support collapsing the transactions, the Court does not reach the issue of the measure of particularity with which the plaintiffs should have pled the alleged fraud.

March 1, 2001 (the "DIP Financing Order"), provides the Committee with the requisite authority to sue Morgan Stanley. Alternatively, the Committee requests that the Court grant it authority to sue, on behalf of the estate, as the Committee asserts that the estate has a colorable claim against Morgan Stanley which the Debtor refuses to pursue.

The DIP Financing Order conferred standing on the Committee to assert or prosecute certain actions against any of the "Pre-Petition Lenders" or "Pre-Petition Agents" and to raise defenses to their claims. The Pre-Petition Lenders and Pre-Petition Agents, as defined, included the Lenders, but not Morgan Stanley. Thus, the DIP Financing Order authorized the Committee to pursue, on behalf of the estate, the Debtor's claims against the Lenders, but not against Morgan Stanley. Nevertheless, the Committee argues that because the DIP Financing Order provided it with authority to assert defenses to MSSF's claims, its action against Morgan Stanley should be viewed as a recoupment defense to MSSF's claim which it is authorized to assert. The argument, however, even if tenable, would depend upon treating Morgan Stanley and MSSF as the same entity, a contention which this Court has already rejected. Thus, the DIP Financing Order did not provide the Committee with authority to commence an action against Morgan Stanley. Alternatively, the Committee now asks the Court to confer authority on it to assert the claims against Morgan Stanley.

In *Unsecured Creditors Committee v. Noyes (In re STN Enterprises)*, 779 F.2d 901, 904 (2d Cir. 1985), the Second Circuit found that pursuant to 11 U.S.C. §§ 1103(c)(5) and 1109(b), a creditors' committee has a qualified right to initiate an action against a third-party where (i) the trustee or debtor-in possession unjustifiably fails to bring such action or abuses its discretion in not bringing the action, and (ii) the creditors' committee first obtains the approval of the bankruptcy court to bring the

action.

In determining whether to allow a creditors' committee to commence an action, a court considers:

- 1) whether the creditors' committee has presented a colorable claim; and
- 2) whether the action is likely to benefit the reorganization estate.

In re STN Enterprises, 779 F.2d at 905. Moreover, a creditors' committee may also acquire standing to pursue a debtor's claims if (1) the debtor in possession or trustee consents to the committee pursuing the claims, and (2) the court finds that allowing the action by the committee is (a) in the bankruptcy estate's best interest, and (b) is "necessary and beneficial" to the fair and efficient resolution of the bankruptcy proceedings." *Commodore Int'l Ltd. v. Gould (In re Commodore Int'l Ltd.)*, 262 F.3d 96, 100 (2d Cir. 2001).

The Committee argues that it is not required to show that pursuing the debtor's claim is "necessary and beneficial" to the fair and efficient resolution of the bankruptcy proceeding because that standard only applies in the case where the debtor has given its consent. The Committee directs the Court's attention to language in the *Commodore* decision where the Second Circuit noted that in the situation where the trustee or debtor-in-possession consents to a committee maintaining suit on a debtor's claim, the committee's suit must be necessary and beneficial to the resolution of the bankruptcy proceeding. *Commodore*, 262 F.3d at 100. From this statement, the Committee concludes that it is not required to meet the "necessary and beneficial" standard when a committee seeks to commence a claim where the trustee or debtor-in-possession have unjustifiably failed to commence that suit. This argument, however, fails to recognize that in those cases where a committee

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does not obtain the consent of a trustee or debtor-in-possession to bring an action, in order for the Committee to gain the capacity to bring the action itself, it must establish that the debtor has unjustifiably failed to bring such action or abused its discretion in not bringing the action. Any analysis concerning whether a debtor's failure to bring an action was unjustifiable or an abuse of its discretion would require a determination of whether the action was necessary and beneficial to the bankruptcy estate. Thus, a finding that allowing a committee to pursue a debtor's claim would be necessary and beneficial to the resolution of the bankruptcy proceeding is required in all instances.

The Court finds that the Committee has not met the standards set forth in *STN* and *Commodore* and, therefore, denies its request for leave to commence the derivative action against Morgan Stanley on behalf of the Debtor's estate. The Committee has not shown that the Debtor unjustifiably refused to commence an action against Morgan Stanley as the Committee has not even shown that it consulted with the Debtor in bringing such action. Moreover, any lawsuit brought on behalf of the Debtor's estate against Morgan Stanley would have to overcome the *in pari delicto* defense.⁶ In addition, the Committee seeks to pursue claims that will delay resolution of this reorganization proceeding by impeding approval of the pending plan of reorganization which is not in the best interests of the estate.

Most significantly, the reorganization value of the Debtor has dropped continuously in the last year because of the general market decline in the industry and in the overall economy. At the

⁶Apart from any claims the estate may have, to the extent that the Noteholder's held actionable claims based on Morgan Stanley's conduct, they could have pursued those claims against Morgan Stanley directly in the appropriate forum.

commencement of this case, a major issue of contention between the Debtor and the Committee was the reorganization value of the Debtor - with the Committee according it a value in excess of \$2 billion, while the Debtor contended that the value was approximately half of that amount. More recently, however, at the hearing to consider approval of the Debtor's disclosure statement which was held on October 4, 2002, the Committee acknowledged that for the past year it has recognized that the reorganization value of the Debtor is less than the \$1.6 billion owed the Lenders and that the only way in which the unsecured creditors would recover any value is if they were successful in this litigation. The Debtors and the Lenders have argued that the Lenders faced a deficiency in the payment of their claim in excess of \$500 million at the commencement of this case and that the deficiency has steadily increased. While the Committee does not concede the extent of the Lender's deficiency claim, the fact that the Committee is no longer disputing the reorganization value is an indication to the Court that the Committee acknowledges that the deficiency is material. As the Court has dismissed the Committee's claim for relief based on equitable subordination and as the Noteholder claims are contractually subordinated, any recovery from an action against Morgan Stanley would first be used to pay the Lenders claims before any payment benefitted the Noteholders or other unsecured creditors. The proposed plan of reorganization provides that the Lenders are to receive 100% of the equity of the reorganized entity. Consequently, the unsecured claimants, including the Noteholders, have no economic stake in the reorganization. It is the Lenders who would benefit from pursuit of any claim against Morgan Stanley and they have chosen not to proceed at this time. As the entities that would benefit from any recovery are not seeking to pursue the claims at this time and as any recovery will not materially impact on the distribution to other creditors, the Committee has not shown that the

prosecution of the actions against Morgan Stanley would be necessary and beneficial to the resolution of the bankruptcy proceeding.

As the Court has determined not to grant the Committee leave to commence an action against Morgan Stanley, the Committee may not maintain the third, fourth and fifth claims for relief against Morgan Stanley and, therefore, those claims are dismissed.

The Sixth Claim for Relief

In the final claim for relief, the Committee seeks to recoup from any amounts owed to MSSF, anything that Morgan Stanley or MSSF owe the Debtor based on the other claims for relief asserted against the Defendants. As the Court has dismissed the other claims for relief against the Defendants, there is no basis upon which to assert the defense of recoupment. Therefore, the sixth claim for relief is dismissed.⁷

CONCLUSION

The Court finds that the allegations in the Amended Complaint do not provide a basis to impute Morgan Stanley's purported inequitable conduct to the Lender's such as would warrant subordinating the Lender's claim pursuant to § 510(c). Nor are there allegations in the Amended Complaint that would provide a basis to find actionable inequitable conduct by the Lenders themselves. The first claim for relief is dismissed.⁸

⁷ As this claim for relief is dismissed because there is nothing to recoup, the Court does not reach the issue as to whether recoupment, which is essentially a defense to a claim, may be asserted as an affirmative claim for relief in an adversary proceeding. Nor does the Court reach the substantive merits of a recoupment defense under the facts of this case.

⁸ In light of the Court's ruling, it is not necessary to address the Committee's request that the guaranties given by the Debtor's subsidiaries be disallowed.

The Court further finds that as there are no facts alleged in the Amended Complaint to support a finding that the Lenders had either actual or constructive knowledge that the Debtor was insolvent at the time of, or would be rendered insolvent by, the purchase of the Acquisitions, or that the Debtor was overpaying for the Acquisitions, there is no basis to warrant collapsing the several transactions for the purpose of finding any of the conveyances to be fraudulent. Thus, the second claim for relief is dismissed.

The Court further finds that because the Creditors' Committee has not met the standards for obtaining the Court's approval to pursue any claim the estate may have against Morgan Stanley, the third, fourth and fifth claims for relief against Morgan Stanley are dismissed.

The Court further finds that, as the other claims for relief have been dismissed, there is no basis upon which to assert the defense of recoupment and the final claim for relief is dismissed.

Thus, the entire Amended Complaint is dismissed.

Counsel for the Lenders is to settle an order, consistent with this Memorandum Decision, on three (3) days' notice.

Dated: New York, New York
October 18, 2002

/s/ Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE

022702

\$732,035,000



Coleman Escrow Corp.

\$600,475,000 Senior Secured First Priority Discount Notes due 2001
\$131,560,000 Senior Secured Second Priority Discount Notes due 2001

The Issue Price of each of the Senior Secured First Priority Discount Notes due 2001 (the "First Priority Notes") will be \$649.49 per \$1,000 principal amount at maturity (64.949% of principal amount at maturity), and the Issue Price of each of the Senior Secured Second Priority Discount Notes due 2001 (the "Second Priority Notes" and, together with the First Priority Notes, the "Notes") will be \$608.12 per \$1,000 principal amount at maturity (60.812% of principal amount at maturity). Except as set forth herein, there will be no periodic payments of interest on the Notes. The Notes will mature on May 15, 2001. The Issue Price of (i) each First Priority Note represents a yield to maturity of 11 1/4% per annum and (ii) each Second Priority Note represents a yield to maturity of 12 1/4% per annum, in each case, computed on a semiannual bond equivalent basis, calculated from May 20, 1997.

The Notes are being offered (the "Offering") by Coleman Escrow Corp. (the "Issuer") to fund (i) the redemption of \$281,281,000 aggregate principal amount at maturity of Senior Secured Discount Notes due 1998 (the "Coleman Holdings Notes") of Coleman Holdings Inc., a wholly owned subsidiary of the Issuer ("Coleman Holdings"), and (ii) the retirement, including through redemption or any earlier exchanges, of \$561,553,000 outstanding aggregate principal amount at maturity of Liquid Yield Option™ Notes due 2013 (the "LYONs™") of Coleman Worldwide Corporation, a wholly owned subsidiary of Coleman Holdings ("Coleman Worldwide"), which LYONs are exchangeable for shares of common stock, par value \$.01 per share (the "Coleman Common Stock"), of The Coleman Company, Inc. ("Coleman" or the "Company"). The redemption of the Coleman Holdings Notes (the "Coleman Holdings Notes Redemption") is expected to occur on or about July 15, 1997. Following the Coleman Holdings Notes Redemption, Coleman Holdings expects to be merged with and into the Issuer (the "Coleman Holdings Merger"), and the Issuer will directly own all of the shares of capital stock of Coleman Worldwide and indirectly own through Coleman Worldwide the 26,000,000 shares (representing approximately 48.7% of shares outstanding) of Coleman Common Stock that are currently pledged to secure the Coleman Holdings Notes. The retirement of the LYONs is expected to occur in a series of transactions, including an exchange offer by Coleman Worldwide and the subsequent redemption by Coleman Worldwide on May 27, 1998 of all LYONs then outstanding (such transactions collectively referred to herein as the "LYONs Retirement").

(Continued on following page)

See "Risk Factors" beginning on page 20 for a discussion of certain factors that should be considered by prospective purchasers in evaluating an investment in the Notes.

THE NOTES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND, UNLESS SO REGISTERED, THE NOTES MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. ACCORDINGLY, THE NOTES OFFERED HEREBY ARE BEING OFFERED AND SOLD ONLY TO "QUALIFIED INSTITUTIONAL BUYERS" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN RELIANCE ON THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED BY RULE 144A, AND TO A LIMITED NUMBER OF INSTITUTIONAL "ACCREDITED INVESTORS" (AS DEFINED IN RULE 501(A) (1), (2), (3) OR (7) UNDER THE SECURITIES ACT) THAT EXECUTE AND DELIVER A LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS. PROSPECTIVE PURCHASERS ARE HEREBY NOTIFIED THAT SELLERS OF THE NOTES MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A. FOR CERTAIN RESTRICTIONS ON REALES, SEE "NOTICE TO INVESTORS."

	Principal Amount at Maturity	Price to Investors(1)	Discounts to Initial Purchasers(2)	Proceeds to Issuer(1)(3)
Per First Priority Note.....	100%	64.949%	1.624%	63.325%
Total.....	\$600,475,000	\$390,002,508	\$9,750,063	\$380,252,445
Per Second Priority Note.....	100%	60.812%	1.520%	59.292%
Total.....	\$131,560,000	\$80,004,267	\$2,000,107	\$78,004,160

(1) Plus accrued Original Issue Discount (as defined herein), if any, from the date of issuance.
 (2) The Issuer has agreed to indemnify the Initial Purchasers against certain liabilities under the Securities Act. See "Plan of Distribution."
 (3) Before deducting expenses estimated at \$3,000,000 payable by the Issuer.

The Notes are being offered by Bear, Stearns & Co. Inc., Chase Securities Inc. and Credit Suisse First Boston Corporation (the "Initial Purchasers"), subject to prior sale, when, as and if delivered to and accepted by the Initial Purchasers, subject to certain other conditions. The Initial Purchasers reserve the right to withdraw, cancel or modify such offer and to reject orders in whole or in part. It is expected that delivery of the Notes will be made against payment therefor in New York, New York, on or about May 20, 1997, in book-entry form through the facilities of The Depository Trust Company.

Bear, Stearns & Co. Inc.

Chase Securities Inc.

Credit Suisse First Boston

The date of this Offering Memorandum is May 15, 1997.

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Following the LYONs Retirement, the Issuer expects to be merged with and into Coleman Worldwide (the "Coleman Worldwide Merger"), and Coleman Worldwide, as successor to the Issuer, will continue to own the 16,394,810 shares (representing approximately 30.7% of shares outstanding) of Coleman Common Stock currently pledged to secure the LYONs, the 26,000,000 shares of Coleman Common Stock currently pledged to secure the Coleman Holdings Notes and the 1,672,710 shares (representing approximately 3.2% of shares outstanding) of Coleman Common Stock not currently pledged, of which 522,710 shares are currently available to be pledged to secure the Notes, less any shares of Coleman Common Stock delivered upon exchange of the LYONs (the "Delivered Shares").

Concurrently with the closing of the Offering, the Issuer will deposit the net proceeds of the Offering (the "Escrowed Funds") with an escrow agent (the "Escrow Agent"), and the Escrowed Funds will be temporarily invested in Treasury Securities and other Permitted Investments (as such terms are defined herein). The Escrowed Funds will be used by the Issuer to make capital contributions from time to time to Coleman Holdings and Coleman Worldwide (the "Capital Contributions"), which Capital Contributions will be used to fund the Coleman Holdings Notes Redemption and the LYONs Retirement.

The Notes will be redeemable at the option of the Issuer, in whole or in part, at any time on and after May 15, 2000 at the redemption prices set forth herein on the date of redemption. Notwithstanding the foregoing, the Issuer will have the option to redeem the Notes at any time in whole at a redemption price equal to the Accreted Value (as defined herein) on the date of redemption plus the Applicable Premium (as defined herein). Upon a Change of Control (as defined herein), subject to certain conditions, each holder of the Notes will have the right to require the Issuer to repurchase all or a portion of such holder's Notes at a price equal to the Put Amount (as defined herein) on the date of repurchase.

The Notes will be senior secured obligations of the Issuer and will rank *pari passu* in right of payment with all future senior indebtedness of the Issuer, if any, and senior to all future subordinated indebtedness of the Issuer, if any. The Notes will be (i) upon consummation of the Offering and prior to the Coleman Holdings Merger, secured by a pledge of all of the shares of capital stock of Coleman Holdings, (ii) upon consummation of the Offering, guaranteed on a non-recourse basis by Coleman Worldwide (the "Coleman Worldwide Non-Recourse Guaranty"), which Coleman Worldwide Non-Recourse Guaranty will initially be secured by a pledge of 522,710 shares of Coleman Common Stock that are currently available to be pledged and, simultaneously with the Coleman Holdings Notes Redemption, also secured by a pledge of the 26,000,000 shares of Coleman Common Stock currently pledged to secure the Coleman Holdings Notes, and (iii) simultaneously with the Coleman Holdings Notes Redemption, secured by a pledge of all of the shares of capital stock of Coleman Worldwide. In addition, simultaneously with any release of Escrowed Funds from time to time in connection with the LYONs Retirement, the Coleman Worldwide Non-Recourse Guaranty will also be secured by the shares of Coleman Common Stock for which such exchanged LYONs are exchangeable that are released from the pledge to secure any exchanged LYONs. Upon consummation of the Coleman Holdings Notes Redemption and the LYONs Retirement, the Notes will be secured by a pledge of 44,067,520 shares of Coleman Common Stock, less any Delivered Shares. The First Priority Notes will rank senior in right of payment to the Second Priority Notes with respect to any collateral securing the Notes and the Coleman Worldwide Non-Recourse Guaranty. See "Risk Factors—Control by Holders of First Priority Notes." On May 15, 1997, the last reported sale price of the Coleman Common Stock on the New York Stock Exchange (the "NYSE") was \$16¼ per share.

Upon consummation of the Offering, the only outstanding indebtedness of the Issuer will be the Notes, and all of the Issuer's consolidated liabilities (other than the Notes and certain liabilities incurred in connection with the Offering) will be liabilities of its subsidiaries. The Issuer is a holding company and therefore the Notes will be effectively subordinated to all existing and future indebtedness and other liabilities of the Issuer's subsidiaries. The Indenture will generally prohibit the incurrence of additional debt by the Issuer and will limit the incurrence of additional debt and the issuance of preferred stock by the Issuer's subsidiaries. As of March 31, 1997, after giving pro forma effect to the Offering, the Capital Contributions, the Coleman Holdings Notes Redemption and the LYONs Retirement, the outstanding indebtedness and other liabilities of such subsidiaries would have been approximately \$970.9 million. Prior to the Coleman Holdings Notes Redemption and the LYONs Retirement, the Notes will also be effectively subordinated to the Coleman Holdings Notes and the LYONs, respectively. See "Description of the Notes."

For a discussion of certain federal income tax consequences to holders of Notes, see "Certain U.S. Federal Income Tax Considerations." It is expected that the Notes will be eligible for trading in the Private Offerings, Resales and Trading through Automated Linkages (PORTAL) market.

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IN CONNECTION WITH THIS OFFERING, THE INITIAL PURCHASERS MAY ENGAGE IN TRANSACTIONS THAT STABILIZE, MAINTAIN, OR OTHERWISE AFFECT THE PRICE OF THE NOTES, INCLUDING OVER-ALLOTMENT, STABILIZING AND SHORT-COVERING TRANSACTIONS AND THE IMPOSITION OF PENALTY BIDS. SEE "PLAN OF DISTRIBUTION."

THIS OFFERING MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL, OR A SOLICITATION OF AN OFFER TO BUY, ANY NOTES BY ANY PERSON IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL FOR SUCH PERSON TO MAKE SUCH AN OFFERING OR SOLICITATION. NEITHER THE DELIVERY OF THIS OFFERING MEMORANDUM NOR ANY SALE MADE HEREUNDER SHALL UNDER ANY CIRCUMSTANCES IMPLY THAT THE INFORMATION HEREIN IS CORRECT AS OF ANY DATE SUBSEQUENT TO THE DATE HEREOF.

THIS OFFERING MEMORANDUM IS BEING PROVIDED ON A CONFIDENTIAL BASIS TO QUALIFIED INSTITUTIONAL BUYERS AND TO A LIMITED NUMBER OF INSTITUTIONAL ACCREDITED INVESTORS FOR INFORMATIONAL USE SOLELY IN CONNECTION WITH THE CONSIDERATION OF THE PURCHASE OF THE NOTES. ITS USE FOR ANY OTHER PURPOSE IS NOT AUTHORIZED. IT MAY NOT BE COPIED OR REPRODUCED IN WHOLE OR IN PART, NOR MAY IT BE DISTRIBUTED OR ANY OF ITS CONTENTS BE DISCLOSED TO ANY PERSON OTHER THAN THE PROSPECTIVE INVESTORS TO WHOM IT IS BEING PROVIDED.

THE INFORMATION CONTAINED IN THIS OFFERING MEMORANDUM HAS BEEN PROVIDED BY THE ISSUER ON A CONFIDENTIAL BASIS SOLELY TO THE PROSPECTIVE INVESTORS IN THE NOTES. NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IS MADE BY THE INITIAL PURCHASERS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION AND NOTHING CONTAINED IN THIS OFFERING MEMORANDUM IS, OR SHALL BE RELIED UPON AS, A PROMISE OR REPRESENTATION BY THE INITIAL PURCHASERS AS TO THE PAST OR THE FUTURE. THE INITIAL PURCHASERS ASSUME NO RESPONSIBILITY FOR THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. IN MAKING AN INVESTMENT DECISION, PROSPECTIVE INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE CONTENTS OF THIS OFFERING MEMORANDUM ARE NOT TO BE CONSTRUED AS LEGAL, BUSINESS OR TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN ATTORNEY, BUSINESS ADVISOR AND TAX ADVISOR AS TO LEGAL, BUSINESS OR TAX ADVICE. PROSPECTIVE INVESTORS MAY OBTAIN ADDITIONAL INFORMATION UPON REQUEST FROM THE INITIAL PURCHASERS OR THE ISSUER WHICH THEY MAY REASONABLY REQUIRE IN CONNECTION WITH THE DECISION TO PURCHASE ANY OF THE NOTES.

THE OFFERING IS BEING MADE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT FOR AN OFFER AND SALE OF SECURITIES WHICH DOES NOT INVOLVE A PUBLIC OFFERING. THE NOTES DESCRIBED HEREIN HAVE NOT BEEN REGISTERED WITH, RECOMMENDED BY OR APPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY OTHER FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY, NOR HAS ANY SUCH COMMISSION OR REGULATORY AUTHORITY REVIEWED OR PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

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THE NOTES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. PROSPECTIVE INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. EACH PURCHASER OF NOTES OFFERED HEREBY WILL BE DEEMED TO HAVE MADE CERTAIN ACKNOWLEDGMENTS, REPRESENTATIONS AND AGREEMENTS AS SET FORTH UNDER "NOTICE TO INVESTORS."

EACH PROSPECTIVE PURCHASER OF THE NOTES MUST COMPLY WITH ALL LAWS AND REGULATIONS APPLICABLE TO IT IN FORCE IN ANY JURISDICTION IN WHICH IT PURCHASES, OFFERS OR SELLS THE NOTES OR POSSESSES OR DISTRIBUTES THIS OFFERING MEMORANDUM AND MUST OBTAIN ANY CONSENT, APPROVAL OR PERMISSION REQUIRED TO BE OBTAINED BY IT FOR THE PURCHASE, OFFER OR SALE BY IT OF THE NOTES UNDER THE LAWS AND REGULATIONS APPLICABLE TO IT IN FORCE IN ANY JURISDICTION TO WHICH IT IS SUBJECT OR IN WHICH IT MAKES SUCH PURCHASES, OFFERS OR SALES, AND NEITHER THE ISSUER NOR THE INITIAL PURCHASERS SHALL HAVE ANY RESPONSIBILITY THEREFOR.

NOTICE TO NEW HAMPSHIRE RESIDENTS

NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED UNDER CHAPTER 421-B OF THE NEW HAMPSHIRE REVISED STATUTES WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY IS EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE CONSTITUTES A FINDING BY THE SECRETARY OF STATE THAT ANY DOCUMENT FILED UNDER CHAPTER 421-B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT AN EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THAT THE SECRETARY OF STATE HAS PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL TO, ANY PERSON, SECURITY OR TRANSACTION. IT IS UNLAWFUL TO MAKE, OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER OR CLIENT ANY REPRESENTATION INCONSISTENT WITH THE PROVISIONS OF THIS PARAGRAPH.

NOTICE TO FLORIDA RESIDENTS

PURSUANT TO SECTION 517.061(11)(a)(5) OF THE FLORIDA SECURITIES ACT, YOU HAVE THE RIGHT TO RESCIND YOUR SUBSCRIPTION (UNLESS YOU ARE AN INSTITUTIONAL INVESTOR DESCRIBED IN SECTION 517.061(7) OF THE FLORIDA SECURITIES ACT) BY GIVING NOTICE OF SUCH RESCISSION BY TELEPHONE, TELEGRAPH OR LETTER, WITHIN THREE DAYS AFTER YOU FIRST TENDER CONSIDERATION, TO THE INITIAL PURCHASER. IF NOTICE IS NOT RECEIVED BY SUCH TIME, THE FOREGOING RIGHT OF RESCISSION SHALL BE NULL AND VOID.

OFFERING MEMORANDUM SUMMARY

The following is qualified in its entirety by, and should be read in conjunction with, the more detailed information and the Consolidated Financial Statements and notes thereto contained elsewhere in this Offering Memorandum. Unless the context otherwise requires, all references in this Offering Memorandum to (i) the "Issuer" mean Coleman Escrow Corp., (ii) the "Company" or "Coleman" mean The Coleman Company, Inc. and its subsidiaries, (iii) "Coleman Holdings" mean Coleman Holdings Inc. and (iv) "Coleman Worldwide" mean Coleman Worldwide Corporation. All share information and percentages with respect to Coleman Common Stock are based on the number of shares outstanding as of May 5, 1997.

The Issuer

The Issuer is a holding company whose only significant asset is all of the common stock, par value \$1.00 per share, of Coleman Holdings. Coleman Holdings is a holding company formed in July 1993 in connection with the offering of the Coleman Holdings Notes and holds all of the outstanding shares of capital stock of Coleman Worldwide. Coleman Worldwide was formed in March 1993 in connection with the offering of \$575 million aggregate principal amount at maturity of LYONs. Coleman Worldwide also holds 44,067,520 shares of the Coleman Common Stock, which represent approximately 82.6% of the outstanding Coleman Common Stock. As such, the Issuer's principal business operations are conducted by Coleman and its subsidiaries, and the Issuer has no operations of its own. The Issuer is an indirect wholly owned subsidiary of MacAndrews & Forbes Holdings Inc. ("MacAndrews Holdings"), a corporation wholly owned through Masco Holdings Inc. ("Masco" and together with MacAndrews Holdings, "MacAndrews & Forbes") by Ronald O. Perelman. See "Relationship with MacAndrews & Forbes" and "Ownership of Common Stock." Following the Coleman Holdings Notes Redemption, Coleman Holdings expects to be merged with and into the Issuer in the Coleman Holdings Merger. Following the LYONs Retirement, the Issuer expects to be merged with and into Coleman Worldwide in the Coleman Worldwide Merger, with Coleman Worldwide as the surviving corporation.

The Company

Coleman is a leading manufacturer and marketer of consumer products for the outdoor recreation and hardware markets on a global basis. The Company's products have been sold domestically and internationally under the Coleman brand name since the 1920s. The Company believes its strong market position is attributable primarily to its well-recognized trademarks, particularly the Coleman brand name, broad product line, product quality and innovation, and marketing, distribution and manufacturing expertise.

The Company participates in two primary markets, outdoor recreation and hardware. The Company's principal outdoor recreation products include a comprehensive line of lanterns and stoves for outdoor recreational use, fuel-related products such as disposable fuel cartridges, a broad range of coolers and jugs, sleeping bags, backpacks, tents, outdoor folding furniture, portable electric lights, spas, camping accessories and other products for recreational use. These outdoor recreation products are distributed predominantly through mass merchandisers, sporting goods chains and outdoor specialty stores. The Company's principal hardware products include portable generators, portable and stationary air compressors, and safety and security products such as smoke alarms, carbon monoxide detectors and thermostats.

The Company has made several acquisitions in recent years designed to expand its product lines in the outdoor recreation market. In 1996, the Company acquired the French company Application des Gaz ("Camping Gaz"), which is a leader in the European camping equipment market. In 1995, the Company acquired Sierra Corporation of Fort Smith, Inc. ("Sierra"), a manufacturer of portable outdoor and recreational folding furniture and accessories. In 1994, the Company acquired substantially all of the assets of Eastpak, Inc. and all of the capital stock of M.G. Industries, Inc. (together, "Eastpak"), a leading designer, manufacturer and distributor of branded daypacks, sports bags and related products.

The Company also restructured certain operations in the outdoor recreation market. In 1994, the Company restructured its German manufacturing operations (the "German Restructuring"), including selling its plastic cooler business located in Inheiden, Germany and Loucka, Czech Republic. In 1996, the Company closed the Brazilian manufacturing operations it had acquired from Metal Yanes, Ltda. in 1994.

The Company has also expanded its presence in the hardware market through its acquisition in 1996 of the assets of Seatt Corporation ("Seatt"), a leading designer, manufacturer and distributor of smoke alarms, thermostats and carbon monoxide detectors, its acquisition in 1995 of substantially all of the assets of Active Technologies, Inc. ("ATI"), a manufacturer of technologically advanced lightweight generators and battery charging equipment, and its acquisition in 1994 of substantially all of the assets of Sanborn Manufacturing Company ("Sanborn"), a manufacturer of a broad line of portable and stationary air compressors.

Business Strategy and Restructuring

The Company's business strategy is to build upon its reputation as a leading manufacturer and marketer of high quality brand name consumer products for the outdoor recreation and hardware markets by (i) focusing on quality and service, (ii) continuing to introduce new products, (iii) developing the Company's existing brands, (iv) expanding the Company's international presence, (v) continuing to develop its human resources, including developing and building its team of experienced managers and increasing management's focus on profitability and cash flows and (vi) further improving the quality and efficiency of its business processes to reduce administrative costs and improve profitability and competitiveness.

As part of its strategy to improve its business processes, the Company has announced several restructuring initiatives designed to reduce costs and improve profitability and competitiveness. In March 1997, the Company announced that it would close its executive offices in Golden, Colorado, with most of its administrative functions expected to return to its Wichita, Kansas facility. In April 1997, the Company announced its intention to (i) eliminate 700 employees, which represent approximately 10% of its current work force, (ii) close or relocate three domestic factories and close one international factory, (iii) close its Geneva, Switzerland international headquarters, (iv) rationalize its product lines, including a significant reduction in SKUs, and (v) sell its pressure washer business. In addition, the Company may sell other non-strategic businesses if suitable opportunities arise. Coleman has already begun to implement its new restructuring plan. Coleman has announced plans to close its Hastings, Nebraska factory which was used in the manufacturing of portable power generators and pressure washers. The Company expects to incur certain restructuring and other charges in connection with these initiatives during 1997. The Company recorded other charges of approximately \$2.4 million, net of taxes, for the first quarter of 1997 and expects to record a significantly greater amount of restructuring and other charges for the second quarter of 1997. There can be no assurance as to the amount of the restructuring and other charges to be recorded in the second quarter of 1997 or that restructuring and other charges will not be recorded in subsequent periods. See "Management's Discussion of Financial Condition and Results of Operations—Liquidity and Capital Resources."

Background

Coleman was formed in December 1991 to succeed to the assets and liabilities of the outdoor products business of New Coleman Holdings Inc. ("Holdings"), an indirect parent of the Issuer. Holdings (then named The Coleman Company, Inc.) was acquired in 1989 by MacAndrews & Forbes (the "Acquisition"). In March 1992, the Company completed an initial public offering of the Coleman Common Stock (the "IPO"). Coleman Worldwide's ownership interest in the Company was approximately 82.6% at May 5, 1997.

In 1993, Coleman Worldwide issued \$575.0 million principal amount at maturity of LYONs in an underwritten public offering. The net proceeds from the issuance of the LYONs of approximately \$133.1 million were distributed by Coleman Worldwide to its then direct and indirect parent companies, of which \$110.0 million was used to repay indebtedness incurred in connection with the Acquisition. See "Description of Other Indebtedness—Coleman Worldwide—The LYONs." In connection with the offering of the LYONs, the ownership interest of MacAndrews & Forbes in the Company was transferred to Coleman Worldwide. Each LYON (\$1,000 principal amount at maturity) is exchangeable at the option of the holder at any time for 15.706 shares of Coleman Common Stock, subject to Coleman Worldwide's right to elect to pay cash equal to the then market value of such shares in lieu, in whole or in part, of delivering such shares of Coleman Common Stock. The LYONs are secured by a pledge of 16,394,810 shares (representing approximately 30.7% of shares outstanding) of Coleman Common Stock.

Also in 1993, Coleman Holdings issued approximately \$281.3 million principal amount at maturity of Coleman Holdings Notes pursuant to exemptions from, or in transactions not subject to, the registration requirements of the Securities Act and applicable state securities laws. The net proceeds from the issuance of the Coleman Holdings Notes of approximately \$162.3 million were distributed to MacAndrews & Forbes and were not available to Coleman Holdings or its subsidiaries. In connection with the offering of the Coleman Holdings Notes, all of the outstanding capital stock of Coleman Worldwide was transferred by Holdings to Coleman Holdings. The Coleman Holdings Notes are secured by a pledge of all of the common stock of Coleman Worldwide and guaranteed on a non-recourse basis by Coleman Worldwide (the "Old Coleman Worldwide Non-Recourse Guaranty"). The Old Coleman Worldwide Non-Recourse Guaranty is secured by a pledge of 26,000,000 shares (representing approximately 48.7% of shares outstanding) of Coleman Common Stock. In addition, Coleman Worldwide currently owns 1,672,710 shares (representing approximately 3.2% of shares outstanding) of Coleman Common Stock, of which 522,710 shares are currently available to be pledged to secure the Notes.

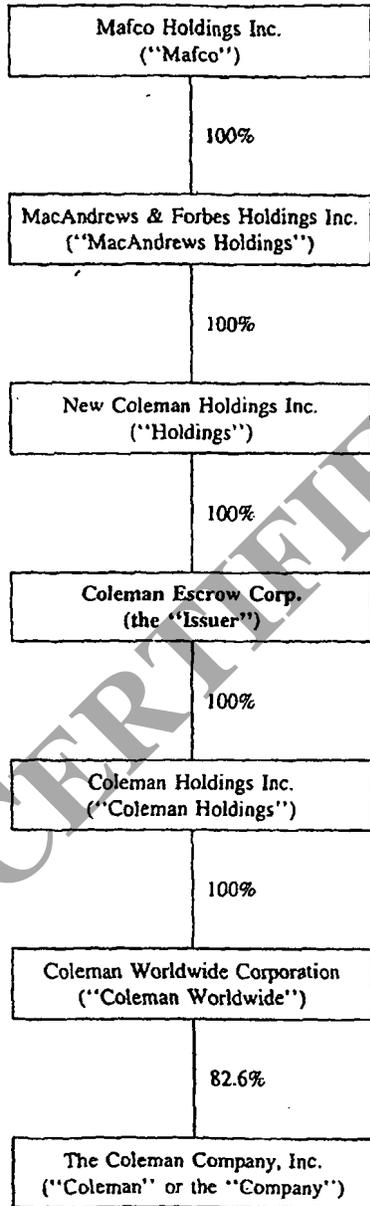
The Issuer was incorporated in Delaware in May 1997. The Issuer's principal executive offices are located at 5900 North Andrews Avenue, Suite 700, Fort Lauderdale, Florida 33309 and its telephone number is (954) 772-9000.

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Ownership of the Issuer and the Company

The following chart illustrates a simplified ownership structure of the Issuer and the Company immediately following consummation of the Offering:



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The Transactions

Upon consummation of the Offering, the Notes will be secured by a pledge of all of the shares of common stock of Coleman Holdings and guaranteed pursuant to the Coleman Worldwide Non-Recourse Guaranty, which Coleman Worldwide Non-Recourse Guaranty will initially be secured by a pledge of 522,710 shares of Coleman Common Stock that are currently available to be pledged. Concurrently with the closing of the Offering, the Issuer will deposit the Escrowed Funds, which will consist of the net proceeds of the Offering, with the Escrow Agent. The Escrow Agent will release the Escrowed Funds to the Issuer from time to time upon the satisfaction of certain conditions, including presentation of an Officer's Certificate certifying that, among other things (a) (i) the conditions to the optional redemption by Coleman Holdings contained in the indenture governing the Coleman Holdings Notes (the "Coleman Holdings Notes Indenture") to be complied with on the date of the Coleman Holdings Notes Redemption (other than payment) have been satisfied or waived, (ii) the conditions to any delivery of cash upon exchange from time to time of LYONs through an exchange offer to be complied with by Coleman Worldwide (other than payment) have been satisfied or waived, (iii) the conditions to the optional redemption by Coleman Worldwide contained in the indenture governing the LYONs (the "LYONs Indenture") to be complied with on May 27, 1998 (other than payment) have been satisfied or waived, (iv) the conditions to any exchange of LYONs from time to time by the holders thereof and the election by Coleman Worldwide to deliver cash in lieu of shares of Coleman Common Stock that are contained in the LYONs Indenture (other than payment) have been satisfied or waived or (v) the conditions to certain other payments that may be required to be made by Coleman Worldwide pursuant to the terms of the LYONs Indenture have been satisfied or waived and (b) following the release, such Escrowed Funds, subject to certain limited exceptions, will be contributed to Coleman Holdings or Coleman Worldwide and used to fund the Coleman Holdings Notes Redemption, the LYONs Retirement or such other payments, as the case may be. See "Description of the Notes—Escrow of Proceeds." Notwithstanding the foregoing, there will be no release of Escrowed Funds to the Issuer after the occurrence of certain events of bankruptcy, insolvency or reorganization of Coleman Holdings, Coleman Worldwide or Coleman (the "Triggering Events"). If a Triggering Event occurs, the Issuer will be required to use any remaining Escrowed Funds to redeem the Notes, on a pro rata basis, at a redemption price equal to the Accreted Value plus accrued interest (if any) on the Mandatory Redemption Date (as defined herein). See "Description of the Notes—Mandatory Redemption."

The Issuer will contribute from time to time the Escrowed Funds to Coleman Holdings and Coleman Worldwide (the "Capital Contributions") to finance the Coleman Holdings Notes Redemption and the LYONs Retirement. The Issuer intends to cause Coleman Holdings to give a notice of redemption of the Coleman Holdings Notes upon consummation of the Offering. The Coleman Holdings Notes Redemption is expected to be consummated on or about July 15, 1997. The LYONs Retirement is expected to be completed on or prior to May 27, 1998. Coleman Worldwide is expected to commence an offer to pay cash upon exchange of LYONs in excess of the then market value of the shares of Coleman Common Stock for which the LYONs may be exchanged as soon as reasonably practicable. The Issuer intends to cause Coleman Worldwide to redeem any outstanding LYONs on May 27, 1998, which is the first time that Coleman Worldwide has the right to do so under the LYONs Indenture. There can be no assurance that an exchange offer for the LYONs will be consummated or, if consummated, as to the final terms thereof or that the LYONs Retirement will be consummated on or before May 27, 1998. In addition, there can be no assurance that the Escrowed Funds will be sufficient to consummate the LYONs Retirement. See "Risk Factors—Subordination to Subsidiary Liabilities."

Following the Coleman Holdings Notes Redemption, Coleman Holdings expects to be merged with and into the Issuer in the Coleman Holdings Merger, and the Issuer will directly own all of the shares of capital stock of Coleman Worldwide. The pledge of the Coleman Holdings capital stock will terminate upon the Coleman Holdings Merger. Following the LYONs Retirement, the Issuer expects to be merged with and into Coleman Worldwide in the Coleman Worldwide Merger, with Coleman Worldwide, as the surviving corporation, assuming all of the Issuer's obligations under the Indenture and the Notes. The Coleman Worldwide Non-Recourse Guaranty and the pledge of the Coleman Worldwide capital stock will terminate upon the Coleman Worldwide Merger. Following each of the Coleman Holdings Notes Redemption and the LYONs Retirement, all obligations of Coleman Holdings under the Coleman Holdings Notes Indenture and all obligations of Coleman Worldwide under the LYONs Indenture, respectively, will be satisfied and discharged.

Simultaneously with the Coleman Holdings Notes Redemption, the Notes will be secured by a pledge of all of the shares of capital stock of Coleman Worldwide and the Coleman Worldwide Non-Recourse Guaranty will be secured by an additional pledge of the 26,000,000 shares of Coleman Common Stock that are currently pledged to secure the Old Coleman Worldwide Non-Recourse Guaranty of the Coleman Holdings Notes. In addition to such shares, simultaneously with the release of Escrowed Funds from time to time in connection with the LYONs Retirement, the Coleman Worldwide Non-Recourse Guaranty will be secured by the shares of Coleman Common Stock for which such exchanged LYONs are exchangeable that are released from the pledge to secure any exchanged LYONs. Upon consummation of the Coleman Holdings Notes Redemption, and the LYONs Retirement, the Notes will be secured by a pledge of 44,067,520 shares of Coleman Common Stock (consisting of the 26,000,000 shares currently pledged to secure the Old Coleman Worldwide Non-Recourse Guaranty of the Coleman Holdings Notes, the 16,394,810 shares of Coleman Common Stock currently pledged to secure the LYONs and the 1,672,710 shares of Coleman Common Stock not currently pledged, of which 522,710 shares are currently available to be pledged to secure the Notes), less any Delivered Shares.

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The Offering

Securities Offered	\$600,475,000 principal amount at maturity of Senior Secured First Priority Discount Notes due 2001 (the "First Priority Notes;") and \$131,560,000 principal amount at maturity of Senior Secured Second Priority Discount Notes due 2001 (the "Second Priority Notes").
Issue Price	\$649.49 per \$1,000 principal amount at maturity of First Priority Notes and \$608.12 per \$1,000 principal amount at maturity of Second Priority Notes.
Maturity Date	May 15, 2001.
Yield to Maturity	11½% and 12½% per annum with respect to the First Priority Notes and Second Priority Notes, respectively (computed on a semiannual bond equivalent basis), calculated from May 20, 1997, without giving effect to any periodic payments of interest described below under "—Exchange Offer; Registration Rights." Except for the interest described thereunder, there will be no periodic payments of interest on the Notes.
Original Issue Discount	Each Note is being offered at an Original Issue Discount for United States federal income tax purposes equal to the excess of the principal amount at maturity of the Note over the amount of the Issue Price. Prospective purchasers of Notes should be aware that, although, except as described under "—Exchange Offer; Registration Rights," there will be no periodic payments of interest on the Notes, accrued Original Issue Discount will be includable, periodically, in a holder's gross income for United States federal income tax purposes in advance of the receipt of cash payments to which such income is attributable, regardless of the holder's regular method of accounting. See "Certain U.S. Federal Income Tax Considerations."
Optional Redemption	The Notes may be redeemed at the option of the Issuer in whole or from time to time in part at any time on and after May 15, 2000 at the redemption prices set forth herein on the date of redemption. Notwithstanding the foregoing, the Issuer will have the option to redeem the Notes at any time in whole at a redemption price equal to the Accreted Value on the date of redemption plus the Applicable Premium. See "Description of the Notes—Optional Redemption."
Change of Control	Upon a Change of Control, each holder of the Notes will have the right to require the Issuer to repurchase all or a portion of such holder's Notes at a price equal to the Put Amount on the date of repurchase.
Escrow of Proceeds	The net proceeds of the Offering will be deposited with the Escrow Agent and held in escrow. Such Escrowed Funds will be temporarily invested in Treasury Securities and other Permitted Investments. The Escrow Agent will release the Escrowed Funds to the Issuer from time to time as necessary to finance the Coleman Holdings Notes Redemption and the LYONs Retirement, subject to satisfaction of certain conditions and subject to certain limited exceptions. Notwithstanding the foregoing, there will be no release of Escrowed Funds to the Issuer upon the occurrence of a Triggering Event. See "Description of the Notes—Escrow of Proceeds."

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Mandatory Redemption The Notes are subject to mandatory redemption upon the occurrence of a Triggering Event at a time when any Escrowed Funds are remaining. If a Triggering Event occurs, the Issuer will be required to use any such remaining Escrowed Funds to redeem the Notes, on a pro rata basis, at a redemption price equal to the Accreted Value plus accrued interest (if any) on the Mandatory Redemption Date. See "Description of the Notes—Mandatory Redemption."

Collateral Upon consummation of the Offering and prior to the Coleman Holdings Merger, the Notes will be secured by a pledge of all of the shares of capital stock of Coleman Holdings. In addition, upon consummation of the Offering, the Notes will be guaranteed pursuant to the Coleman Worldwide Non-Recourse Guaranty, which Coleman Worldwide Non-Recourse Guaranty will initially be secured by a pledge of the 522,710 shares of Coleman Common Stock owned by Coleman Worldwide which are currently available to be pledged. Simultaneously with the Coleman Holdings Notes Redemption, the Notes will be secured by a pledge of all of the shares of capital stock of Coleman Worldwide and the Coleman Worldwide Non-Recourse Guaranty will be secured by an additional pledge of the 26,000,000 shares of Coleman Common Stock that are currently pledged to secure the Old Coleman Worldwide Non-Recourse Guaranty of the Coleman Holdings Notes. In addition to such shares, simultaneously with the release of Escrowed Funds from time to time in connection with the LYONs Retirement, the Coleman Worldwide Non-Recourse Guaranty will be secured by the shares of Coleman Common Stock for which such exchanged LYONs are exchangeable that are released from the pledge to secure any exchanged LYONs. Upon consummation of the Coleman Holdings Notes Redemption and the LYONs Retirement, the Notes will be secured by a pledge of 44,067,520 shares of Coleman Common Stock (consisting of the 26,000,000 shares currently pledged to secure the Old Coleman Worldwide Non-Recourse Guaranty of the Coleman Holdings Notes, the 16,394,810 shares of Coleman Common Stock currently pledged to secure the LYONs and the 1,672,710 shares of Coleman Common Stock not currently pledged, of which 522,710 shares are currently available to be pledged to secure the Notes), less any Delivered Shares. The First Priority Notes will rank senior in right of payment to the Second Priority Notes with respect to any collateral securing the Notes and the Coleman Worldwide Non-Recourse Guaranty. See "Risk Factors—Control by Holders of First Priority Notes." No additional shares of Coleman Common Stock will be pledged by the Issuer as security for the Notes irrespective of the value of Coleman Common Stock at any time. See "Risk Factors—Security for the Notes; Potential for Diminution" and "Description of the Notes—Security."

After the consummation of the Coleman Holdings Notes Redemption and the LYONs Retirement, the Issuer or Coleman Worldwide, as applicable, may withdraw the collateral consisting of shares of Coleman Common Stock, in whole or in part, by substituting therefor with the Trustee cash or U.S. Government Obligations (as defined herein) that will be sufficient for the payment at maturity of principal and interest (if any) on the Notes.

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or the pro rata portion thereof, respectively. In addition, the pro rata portion of collateral consisting of Coleman Common Stock may be released following a redemption, in part, of the Notes or a repurchase, in part, of the Notes after a Change of Control or the delivery of less than all the Notes for cancellation. See "Description of the Notes—Security."

The Coleman Worldwide Non-Recourse Guaranty will be secured by "margin stock" within the meaning of the margin regulations (Regulations G, T, U, and X) issued by the Board of Governors of the Federal Reserve System (the "Federal Reserve Board"). Accordingly, if a purchaser of Notes (other than, based on a published opinion of the staff of the Federal Reserve Board, a Qualified Institutional Buyer acting in reliance on the exemption from the registration requirements provided by Rule 144A under the Securities Act) is a bank within the meaning of Regulation U, such purchaser will have to comply with such Regulation. If a purchaser of Notes is a person (other than (i) based on a published opinion of the staff of the Federal Reserve Board, a Qualified Institutional Buyer acting in reliance on the exemption from the registration requirements provided by Rule 144A under the Securities Act, (ii) a bank subject to Regulation U or (iii) a broker or dealer subject to Regulation T) which is purchasing the Notes in the ordinary course of its business, such purchaser will be required to be a registered lender under Regulation G or will be required to so register within 30 days of the end of the calendar quarter in which the Notes are purchased unless such purchaser does not during such calendar quarter extend credit (including its purchase of the Notes) secured by "margin stock" in excess of \$200,000 and does not have outstanding extensions of credit (including the Notes) so secured in excess of \$500,000 in the aggregate at any time during such calendar quarter. The purchase of the Notes will not constitute "purpose credit" within the meaning of Regulation G or Regulation U, and, accordingly, will not be subject to the collateral requirements of such Regulations.

Ranking and Holding Company
Structure

The Notes will be senior secured obligations of the Issuer and will rank *pari passu* in right of payment with all future senior indebtedness of the Issuer, if any, and senior to all future subordinated indebtedness of the Issuer, if any. Upon consummation of the Offering, the only outstanding indebtedness of the Issuer will be the Notes, and all the Issuer's consolidated liabilities (other than the Notes and certain liabilities incurred in connection with the Offering) will be liabilities of its subsidiaries. The Issuer is a holding company and therefore the Notes will be effectively subordinated to all existing and future indebtedness and other liabilities of the Issuer's subsidiaries, including trade payables. As of March 31, 1997, after giving pro forma effect to the Offering, the Capital Contributions, the Coleman Holdings Notes Redemption and the LYONs Retirement, the outstanding indebtedness and other liabilities of such subsidiaries would have been approximately \$970.9 million. Prior to the Coleman Holdings Notes Redemption and the LYONs Retirement, the Notes will also be effectively subordinated to the Coleman Holdings Notes and the LYONs.

respectively. See "Risk Factors—Holding Company Structure,"
"—Indebtedness and Ability to Repay the Notes,"
"—Subordination to Subsidiary Liabilities" and "Description of
the Notes."

Exchange Offer; Registration Rights ...

The Issuer has agreed to use its best efforts to cause to be declared effective a registration statement with the Securities and Exchange Commission (the "SEC") with respect to a registered offer to exchange the Notes (the "Exchange Offer") for senior secured notes of the Issuer which will have substantially identical terms to the Notes (the "Exchange Notes") by October 17, 1997. In the event that applicable interpretations of the staff of the SEC do not permit the Issuer to effect the Exchange Offer, or if for any other reason the Exchange Offer is not consummated by November 17, 1997, the Issuer will use its best efforts to cause to be declared effective a shelf registration statement with respect to the resale of the Notes (the "Shelf Registration Statement") and to keep the Shelf Registration Statement effective until two years after the effective date thereof. If (a) by July 7, 1997 a registration statement has not been filed with the SEC with respect to the Exchange Offer or the resale of the Notes, interest will accrue (in addition to the accretion of Original Issue Discount) on the Notes from and including such date, until but excluding the earlier of (i) the date such registration statement is filed and (ii) November 17, 1997; and (b) if by November 17, 1997 neither (i) the Exchange Offer is consummated nor (ii) the Shelf Registration Statement is declared effective, interest will accrue (in addition to the accretion of Original Issue Discount) on the Notes from and including such date, until but excluding the earlier of (i) the consummation of the Exchange Offer and (ii) the effective date of the Shelf Registration Statement. In each case, such interest will be payable in cash semiannually in arrears on May 15 and November 15, commencing November 15, 1997, at a rate per annum equal to .50% of the Accreted Value of the Notes as of the November 15 and May 15 immediately preceding such interest payment date. See "Exchange Offer; Registration Rights."

Certain Covenants

The indenture governing the Notes (the "Indenture") will require the Coleman Holdings Notes Redemption to be consummated no later than July 31, 1997 and the LYONs Retirement to be consummated no later than June 10, 1998, provided that, in each case, no Triggering Event shall have occurred. The Indenture will also require the Issuer, prior to the Coleman Holdings Merger, to hold directly all of the capital stock of Coleman Holdings and, prior to the Coleman Worldwide Merger, to hold, directly or indirectly, all of the capital stock of Coleman Worldwide. The Issuer will also be required to hold, directly or indirectly, a majority of the voting power of the voting stock of Coleman at all times, unless and until the Issuer exercises its right to substitute U.S. Government Obligations for all of the pledged collateral. The Indenture will also contain certain covenants that, among other things, will generally prohibit the incurrence of additional debt by the Issuer and the issuance of additional debt or preferred stock by Coleman Holdings and Coleman Worldwide, and will limit (i) the incurrence of additional debt and the issuance of preferred stock by Coleman,

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(ii) the payment of dividends on the capital stock of the Issuer and its subsidiaries and the redemption or repurchase of the capital stock of the Issuer, (iii) the sale of assets and subsidiary stock, (iv) transactions with affiliates, (v) the creation of liens on the assets of the Issuer, Coleman Holdings and Coleman Worldwide and (vi) consolidations, mergers and transfers of all or substantially all of the Issuer's assets. The foregoing limitations and prohibitions, however, are subject to a number of qualifications. See "Description of the Notes—Certain Covenants."

Transfer Restrictions;

Absence of a Public

Market for the Notes

The Notes have not been registered under the Securities Act and are subject to restrictions on transferability and resale. The Notes are new securities and there is currently no established market for the Notes. If issued, the Exchange Notes generally will be freely transferable (subject to the restrictions discussed elsewhere herein), but will be new securities for which initially there will not be a market. Accordingly, there can be no assurance as to the development or liquidity of any market for the Notes or, if issued, the Exchange Notes. The Notes are eligible for trading in the PORTAL market. The Initial Purchasers have advised the Issuer that they currently intend to make a market in the Notes. However, the Initial Purchasers are not obligated to do so, and any market making with respect to the Notes may be discontinued without notice. The Issuer does not intend to apply for listing of the Notes or, if issued, the Exchange Notes on any national securities exchange or for their quotation through The Nasdaq Stock Market. See "Risk Factors—Lack of Public Market; Restrictions on Transferability" and "Notice to Investors."

Use of Proceeds

The Issuer will use the net proceeds of the Offering, which are estimated to be approximately \$455.3 million, to make the Capital Contributions to finance the Coleman Holdings Notes Redemption and the LYONs Retirement. Pending such uses, the net proceeds of the Offering will be held in escrow and invested in Treasury Securities and other Permitted Investments. See "Use of Proceeds."

Risk Factors

Prospective purchasers of the Notes should consider carefully all of the information set forth in this Offering Memorandum and, in particular, should evaluate the specific factors set forth under "Risk Factors" on page 20 for risks involved with an investment in the Notes.

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Summary Historical Financial Data

The Issuer is a holding company formed in May 1997 to hold all of the common stock of Coleman Holdings. Coleman Holdings is a holding company formed in July 1993 in connection with the offering of the Coleman Holdings Notes and holds all of the outstanding shares of capital stock of Coleman Worldwide. Coleman Worldwide was formed in March 1993 in connection with the offering of \$575 million aggregate principal amount at maturity of LYONs and holds 44,067,520 shares of Coleman Common Stock, which represent approximately 82.6% of the outstanding Coleman Common Stock. Coleman was formed in December 1991 to succeed to the assets and liabilities of the outdoor products business of Holdings. Due to the Issuer's 100% direct ownership of Coleman Holdings, 100% indirect ownership of Coleman Worldwide and approximately 82.6% indirect ownership of Coleman, the Consolidated Financial Statements of the Issuer include the accounts of Coleman Holdings and its subsidiaries after elimination of all material intercompany accounts and transactions. Minority interest primarily represents the minority stockholders' proportionate share of the results of operations and equity of Coleman.

The summary historical financial data for, and as of the end of, each of the years in the five year period ended December 31, 1996 have been derived from the audited Consolidated Financial Statements of the Issuer and its subsidiaries. The summary historical financial data for the three months ended March 31, 1997 and 1996 and as of March 31, 1997 have been derived from the unaudited Consolidated Financial Statements of the Issuer which reflect, in the opinion of management, all adjustments (which include only normal recurring adjustments) necessary to present fairly the financial data for such periods and at such date. Results for the interim periods are not necessarily indicative of results for the full year.

The following summary historical financial data should be read in conjunction with "Capitalization," "Selected Historical Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the Consolidated Financial Statements of the Issuer and the notes thereto included elsewhere in this Offering Memorandum.

	(Dollars in Thousands)						
	Three Months Ended March 31,		Year Ended December 31,				
	1997	1996	1996	1995	1994	1993	1992
Operations Data:							
Net revenues	\$295,464	\$273,560	\$1,220,216	\$933,574	\$751,580	\$575,415	\$505,815
Cost of sales (a)	214,422	192,594	928,497	649,427	535,710	400,052	350,141
Gross profit	81,042	80,966	291,719	284,147	215,870	175,363	155,674
Selling, general and administrative expenses (a)	65,952	46,800	292,012	175,036	128,664	102,214	92,711
Asset impairment charge (b)	—	—	—	12,289	—	—	—
Restructuring expense (c)	—	—	—	—	18,456	—	—
Interest expense, net	20,414	16,960	75,120	57,830	43,736	23,760	14,465
Amortization of goodwill and deferred charges	3,322	2,704	12,304	9,558	7,864	6,322	6,002
Gain on IPO (d)	—	—	—	—	—	—	(54,515)
Other (income) expense, net	271	(2,721)	(1,604)	283	1,138	766	1,343
(Loss) earnings before income taxes, minority interest and extraordinary item	(8,917)	17,223	(86,113)	29,151	16,012	42,301	95,668
Income tax (benefit) expense (a)	(3,190)	6,508	(23,766)	11,701	3,091	18,210	40,713
Minority interest	232	2,535	(5,390)	6,696	5,734	6,401	4,428
(Loss) earnings before extraordinary item	(5,959)	8,180	(56,957)	10,754	7,187	17,690	50,527
Extraordinary loss on early extinguishment of debt, net of income taxes	—	(582)	(1,244)	(787)	(677)	—	—
Net (loss) earnings	\$ (5,959)	\$ 7,598	\$ (58,201)	\$ 9,967	\$ 6,510	\$ 17,690	\$ 50,527
Other Data:							
Ratio of earnings to fixed charges (e)	—	1.93x	—	1.45x	1.33x	2.51x	6.35x
EBITDA (f)	\$ 25,472	\$ 39,477	\$ 98,641	\$ 127,605	\$ 102,614	\$ 83,181	\$ 70,249
Cash interest expense	11,783	11,233	37,608	23,976	11,933	9,675	14,732
Ratio of EBITDA to interest expense, net	1.25x	2.33x	1.31x	2.21x	2.35x	3.50x	4.86x
Ratio of EBITDA to cash interest expense	2.16	3.51	2.62	5.32	8.60	8.60	4.77

(continued on following page)

(Dollars in Thousands)

	As of March 31, 1997
Balance Sheet Data:	
Total assets	\$1,254,931
Long-term debt (including current portions)	995,394
Minority interest	44,598
Total stockholder's deficit	(187,156)

- (a) During 1996, the Company recorded restructuring and certain other charges totaling \$52,516, net of tax. Cost of sales includes a pre-tax charge of \$44,005, selling, general and administrative expenses include a pre-tax charge of \$30,195, and the provision for income tax benefit includes \$21,684 of net tax benefits resulting from these charges.
- (b) Asset impairment charge reflects primarily the non-recurring charge taken in connection with the adoption of Statement of Financial Accounting Standards No. 121.
- (c) Restructuring expense reflects primarily the non-recurring charge taken in connection with the German Restructuring which includes severance costs, commitments to third parties and write-downs of leasehold improvements and other assets to estimated realizable values.
- (d) Gain on IPO represents the gain to Coleman Worldwide on the sale of approximately 18% of the Coleman Common Stock in the IPO.
- (e) Earnings used in computing the ratio of earnings to fixed charges consist of (loss) earnings before income taxes plus fixed charges. Fixed charges consist of interest expense (including amortization of debt issuance costs, but not the loss relating to the early extinguishment of debt) and 33% of rental expense (considered to be representative of the interest factors). The deficiency of earnings to fixed charges was \$8,917 and \$86,113 for the three months ended March 31, 1997 and the year ended December 31, 1996, respectively.
- (f) EBITDA is defined as (loss) earnings before income taxes, minority interest and extraordinary item, plus interest expense, net, depreciation and amortization, asset impairment charge of \$12,289 for the year ended December 31, 1995, restructuring and certain other charges of \$3,928 for the three months ended March 31, 1997, \$74,200 for the year ended December 31, 1996 and \$18,456 for the year ended December 31, 1994, less gain on IPO of \$54,515 for the year ended December 31, 1992 and less non-cash gain on LYONS conversion of \$2,751 for the three months ended March 31, 1996 and \$2,755 for the year ended December 31, 1996. EBITDA is presented here not as a measure of operating results but rather as a measure of debt service ability. EBITDA should not be considered in isolation or as a substitute for net income or cash flow from operations prepared in accordance with generally accepted accounting principles, or as a measure of the profitability or liquidity of the Company. EBITDA does not take into account the Issuer's consolidated debt service requirements and other commitments and, accordingly, is not necessarily indicative of amounts that may be available for discretionary uses. Net cash (used) provided by operating activities was (\$48,121), (\$92,844), (\$5,476), \$9,341, \$46,648, \$36,749 and \$15,530 for the three months ended March 31, 1997 and 1996 and the years ended December 31, 1996, 1995, 1994, 1993 and 1992, respectively. Net cash provided (used) by investing activities was \$2,813, (\$66,812), (\$204,339), (\$68,252), (\$157,083), (\$68,506) and (\$20,400) for the three months ended March 31, 1997 and 1996 and the years ended December 31, 1996, 1995, 1994, 1993 and 1992, respectively. Net cash provided by financing activities was \$39,534, \$153,778, \$210,692, \$64,388, \$114,748, \$30,176 and \$8,704 for the three months ended March 31, 1997 and 1996 and the years ended December 31, 1996, 1995, 1994, 1993 and 1992, respectively.

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Summary Pro Forma Financial Data

The following unaudited summary pro forma consolidated condensed statements of operations and other data for the three months ended March 31, 1997 and the year ended December 31, 1996 give pro forma effect to the Offering, the Capital Contributions, the Coleman Holdings Notes Redemption and the LYONs Retirement. In each case, as if such transactions had been consummated on January 1, 1996, and the pro forma consolidated condensed balance sheet as of March 31, 1997 gives pro forma effect to the Offering, the Capital Contributions, the Coleman Holdings Notes Redemption and the LYONs Retirement as if such transactions had been consummated on March 31, 1997. The pro forma information does not give effect to any exchange offer for the LYONs, but rather assumes that all outstanding LYONs are redeemed on May 27, 1998. The pro forma adjustments are based upon available information and certain assumptions that management of the Issuer believes are reasonable under the circumstances. The summary pro forma financial data do not purport to represent the results of operations or the financial position of the Issuer and its subsidiaries that actually would have occurred had the foregoing transactions been consummated on the aforesaid dates.

The summary pro forma financial data should be read in conjunction with the Pro Forma Financial Data, Consolidated Financial Statements of the Issuer and the notes thereto included elsewhere in this Offering Memorandum.

**Pro Forma Consolidated Condensed Balance Sheet
(Dollars in Thousands)
(unaudited)**

	As of March 31, 1997		
	Actual	Adjustments	Pro Forma
Current Assets:			
Cash and cash equivalents	\$ 12,866	\$455,257 (1) (192,955)(2) (262,197)(3)	\$ 12,971
Accounts and notes receivable	271,617		271,617
Inventories	288,166		288,166
Deferred tax assets	39,895		39,895
Prepaid assets and other	16,654		16,654
Total current assets	629,198	105	629,303
Property, plant and equipment, net	194,739		194,739
Intangible assets related to businesses acquired, net	341,907		341,907
Note receivable—affiliate	47,739		47,739
Deferred tax assets and other	41,348	14,750 (1) (5,117)(2) (1,456)(3)	49,525
	<u>1,254,931</u>	<u>8,282</u>	<u>1,263,213</u>
Current Liabilities:			
Accounts and notes payable	194,462		194,462
Other current liabilities	115,971		115,971
Total current liabilities	310,433		310,433
Long-term debt	994,664	470,007 (1) (177,736)(2) (248,894)(3)	1,038,041
Income taxes payable—affiliate	16,681		16,681
Other liabilities	75,711		75,711
Minority interest	44,598		44,598
Stockholder's deficit	(187,156)	(20,336)(2) (14,759)(3)	(222,251)
	<u>\$1,254,931</u>	<u>\$ 8,282</u>	<u>\$1,263,213</u>

(continued on following page)

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Pro Forma Consolidated Condensed Statements of Operations
(Dollars in Thousands)
(unaudited)

	Three Months Ended March 31, 1997			Year Ended December 31, 1996		
	Actual	Adjustments	Pro Forma	Actual	Adjustments	Pro Forma
Net revenues	\$ 295,464		\$ 295,464	\$1,220,216		\$1,220,216
Cost of sales	214,422		214,422	928,497		928,497
Gross profit	81,042		81,042	291,719		291,719
Selling, general and administrative expenses	65,952		65,952	292,012		292,012
Interest expense, net	20,414	\$ 15,005 (4) (9,702)(5)	25,717	75,120	\$ 55,227 (4) (36,404)(5)	93,943
Amortization of goodwill and deferred charges	3,322	922 (4) (390)(5)	3,854	12,304	3,688 (4) (1,561)(5)	14,431
Other expense (income), net	271	—	271	(1,604)	—	(1,604)
Loss before income taxes, minority interest and extraordinary item	(8,917)	(5,835)	(14,752)	(86,113)	(20,950)	(107,063)
Income tax benefit	(3,190)	(1,945)(6)	(5,135)	(23,766)	(6,961)(6)	130,727
Minority interest in earnings of Camping Gaz	112		112	1,872		1,872
Minority interest in earnings (loss) of Coleman	120		120	(7,262)		(7,262)
Loss before extraordinary item	<u>\$ (5,959)</u>	<u>\$ (3,890)</u>	<u>\$ (9,849)</u>	<u>\$ (56,957)</u>	<u>\$ (13,989)</u>	<u>\$ (70,946)</u>
Other Data: Ratio of earnings to fixed charges (7)	—		—	—		—

- (1) Reflects the issuance of the Notes, net of underwriting discounts and related fees and expenses.
- (2) Reflects the LYONs Retirement at May 27, 1998 for aggregate consideration of \$192,955, the accreted value on such date. Stockholder's deficit reflects a charge representing interest accretion on the LYONs from April 1, 1997 through May 27, 1998 of \$9,436 net of taxes, an extraordinary loss of \$3,173, net of taxes, representing the write-off of deferred charges related to the LYONs and a distribution of the tax benefit of \$7,727 associated with such charges since the Issuer is not a party to a tax sharing agreement.
- (3) Reflects the redemption of the Coleman Holdings Notes for aggregate consideration of \$262,197 based on the redemption price of 102.175% of the accreted value at July 15, 1997. Stockholder's deficit reflects a charge representing interest accretion on the Coleman Holdings Notes from April 1, 1997 through July 15, 1997 of \$5,018 net of taxes, an extraordinary loss of \$4,575, net of taxes, representing the redemption premium paid to redeem the Coleman Holdings Notes and the write-off of deferred charges related to the Coleman Holdings Notes, and a distribution of the tax benefit of \$5,166 associated with such charges since the Issuer is not a party to a tax sharing agreement.
- (4) Reflects interest expense on the Notes based on a yield to maturity of 11 1/8% on the First Priority Notes and 12 7/8% on the Second Priority Notes compounded semiannually on a bond equivalent basis, and the related amortization of deferred financing costs over four years.
- (5) Reflects the elimination of interest expense and amortization of deferred financing costs related to the LYONs and Coleman Holdings Notes. Since the LYONs Retirement may not be completed until May 27, 1998, the Issuer and its subsidiaries will continue to incur interest expense on the outstanding principal amount of the LYONs not retired at a rate of 7.25% and will earn interest income on the Escrowed Funds for such period. Since the Coleman Holdings Notes Redemption will not be completed until approximately two months after the Offering, the Issuer and its subsidiaries will continue to incur interest expense on the Coleman Holdings Notes at a rate of 10.875% and will earn interest income on the Escrowed Funds for such period. Escrowed Funds will earn interest income at an annual rate of approximately 5.5% based on interest rates as of May 14, 1997.
- (6) Reflects the tax effect of the pro forma adjustments.
- (7) The actual and pro forma deficiency of earnings to fixed charges was \$86,113 and \$107,063, respectively, for the year ended December 31, 1996 and \$8,917 and \$14,752, respectively, for the three months ended March 31, 1997.

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RISK FACTORS

Prospective purchasers of the Notes offered hereby should consider carefully the following factors, as well as the other information set forth in this Offering Memorandum, before making an investment in the Notes.

Holding Company Structure

The Issuer is a holding company with no business operations or source of income of its own. The Issuer's only significant asset is all of the common stock of Coleman Holdings, a holding company that through Coleman Worldwide owns approximately 82.6% of the outstanding shares of Coleman Common Stock. The Issuer's principal business operations are conducted by Coleman and its subsidiaries, and the Issuer has no operations of its own. Accordingly, the Issuer's only source of cash to pay its obligations with respect to the Notes and any other obligations is expected to be distributions with respect to its ownership interest in Coleman from the net earnings and cash flow generated by Coleman, after payment by Coleman Worldwide and Coleman Holdings of amounts due on the LYONs and the Coleman Holdings Notes, as the case may be, for so long as they remain outstanding and certain other expenses. As the indirect holder through Coleman Worldwide of approximately 82.6% of the Coleman Common Stock, the Issuer has the ability to cause the Company, Coleman Worldwide and Coleman Holdings, to make distributions up to the maximum amount permitted by law, subject to limitations in the debt instruments of the Company, Coleman Worldwide and Coleman Holdings. However, the Issuer currently expects that, for the foreseeable future, the net earnings and cash flow of the Company will be retained and used in the business of the Company and that the Issuer will not receive any distributions from the Company, Coleman Worldwide or Coleman Holdings. The terms of the Company's credit agreement as amended and restated as of August 3, 1995 and as further amended (the "Company Credit Agreement"), prohibits the Company from paying dividends prior to January 1, 1999 and thereafter restricts the Company's ability to pay dividends or make other payments to Coleman Worldwide, Coleman Holdings and the Issuer. In addition, the LYONs Indenture restricts Coleman Worldwide's ability to pay dividends and make other payments to Coleman Holdings or the Issuer and the Coleman Holdings Notes Indenture restricts Coleman Holdings' ability to pay dividends and make other payments to the Issuer. Although Coleman Worldwide may receive payments from the Company pursuant to a tax sharing agreement (the "Company Tax Sharing Agreement"), Coleman Worldwide will not distribute such payments to Coleman Holdings or the Issuer. In addition, the LYONs Indenture requires that any such payments received from the Company be paid to Mafco or retained by Coleman Worldwide (except under certain limited circumstances which are unlikely to occur prior to the LYONs Retirement). See "Description of Other Indebtedness—Coleman Worldwide—The LYONs" and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources."

Indebtedness and Ability to Repay the Notes

Upon consummation of the Offering, the only outstanding indebtedness of the Issuer on an unconsolidated basis will be the Notes. The Indenture generally will prohibit the incurrence of additional debt by the Issuer and will limit the incurrence of additional debt and the issuance of preferred stock by the Issuer's subsidiaries. See "Description of the Notes—Certain Covenants."

The Issuer currently anticipates that in order to pay the principal amount at maturity of the Notes or upon the occurrence of an Event of Default, to redeem the Notes or to repurchase the Notes upon the occurrence of a Change of Control, the Issuer will be required to adopt one or more alternatives, such as seeking capital contributions or loans from its affiliates, refinancing its indebtedness or selling its equity securities or the equity securities or assets of Coleman. None of the affiliates of the Issuer will be required to make any capital contributions or other payments to the Issuer with respect to the Issuer's obligations on the Notes, and, except for the Coleman Worldwide Non-Recourse Guaranty, which will terminate upon the Coleman Worldwide Merger, the obligations of the Issuer with respect to the Notes will not be guaranteed by any affiliate of the Issuer or any other person. There can be no assurance that any of the foregoing actions could be effected on satisfactory terms, that they would be sufficient to enable the Issuer to make any payments in respect of the Notes when required or that any of such actions would be permitted by the terms of the Indenture, the Coleman Holdings Notes Indenture (prior to the Coleman Holdings Notes Redemption), the LYONs Indenture (prior to the LYONs Retirement) or the debt instruments of the Company or Coleman Worldwide then in effect. Moreover, the events that constitute a Change of Control under the Indenture may also constitute events of default or repurchase right events under

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certain debt instruments of the Issuer's subsidiaries. Such events may permit the lenders under such debt instruments to accelerate the debt (or, in the case of the Coleman Holdings Notes and the LYONs, to require the issuers thereof to repurchase such securities) and, if the debt is not paid or repurchased, to enforce their security interests, if any, in substantially all of the assets of the Issuer's subsidiaries and the shares of Coleman Common Stock securing the Coleman Holdings Notes and the LYONs. Any such enforcement may limit the Issuer's ability to raise cash to purchase the Notes and may have a material adverse effect on the market price of Coleman Common Stock and on the price that could be obtained for the Coleman Worldwide capital stock and thus on the ability of the Trustee to realize value through sales of the collateral. See "—Security for the Notes; Potential for Diminution," "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources," "Description of Other Indebtedness" and "Description of the Notes."

Recent Operating Losses and Stockholder's Deficit

The Issuer recorded a loss before extraordinary item of \$57.0 million for the year ended December 31, 1996 and a net loss of \$6.0 million for the three months ended March 31, 1997. On a historical basis, the Issuer's earnings before fixed charges were insufficient to cover fixed charges by approximately \$86.1 million and \$8.9 million for the year ended December 31, 1996 and the three months ended March 31, 1997, respectively. On a pro forma basis, assuming that the Offering, the Capital Contributions, the Coleman Holdings Notes Redemption and the LYONs Retirement had each occurred on January 1, 1996, the Issuer would have experienced a loss before extraordinary item of \$70.9 million and \$9.8 million for the year ended December 31, 1996 and the three months ended March 31, 1997, respectively. On a pro forma basis, assuming that the Offering, the Capital Contributions, the Coleman Holdings Notes Redemption and the LYONs Retirement had each occurred on January 1, 1996, the Issuer's net earnings for the year ended December 31, 1996 and the three months ended March 31, 1997 would have been insufficient to cover fixed charges by approximately \$107.1 million and \$14.8 million, respectively. As a result, on a historical and a pro forma basis, the Issuer would have had to achieve growth in its earnings before fixed charges at least equal to the amounts of such insufficiencies in order to cover its fixed charges. Fixed charges consist of interest expense (including amortization of debt issuance costs, but not the loss relating to the early extinguishment of debt) and 33% of rental expense (considered by the Issuer to be representative of the interest factor). The Issuer had a stockholder's deficit of approximately \$187.2 million as of March 31, 1997 and, on a pro forma basis, assuming that the Offering, the Capital Contributions, the Coleman Holdings Notes Redemption and the LYONs Retirement had each occurred on March 31, 1997, the Issuer's stockholder's deficit would have been approximately \$222.3 million.

Subordination to Subsidiary Liabilities

Any right of the Issuer and its creditors, including holders of the Notes, to participate in the assets of any of the Issuer's subsidiaries upon any liquidation or reorganization of any such subsidiary will be subject to the prior claims of the subsidiary's creditors, including trade creditors (except to the extent the Issuer may itself be a creditor of such subsidiary). Accordingly, the Notes will be effectively subordinated to liabilities, including trade payables, of the subsidiaries of the Issuer. The ability of the Issuer's creditors, including the holders of the Notes, to participate in such assets will also be limited to the extent that the outstanding shares of Coleman Common Stock are not beneficially owned by the Issuer. The Issuer is a holding company and, immediately following the issuance of the Notes, the Issuer will not have any indebtedness that ranks *pari passu* with, or senior to, the Notes. As of March 31, 1997, after giving effect to the Offering, the Capital Contributions, the Coleman Holdings Notes Redemption and the LYONs Retirement, subsidiaries of the Issuer would have had approximately \$970.9 million of total liabilities, including approximately \$648.3 million of indebtedness. The Indenture will generally prohibit the incurrence of additional debt by the Issuer and will limit the incurrence of additional debt and the issuance of preferred stock by the Issuer's subsidiaries, including Coleman. Prior to the Coleman Holdings Notes Redemption and the LYONs Retirement, the Notes will also be effectively subordinated to the Coleman Holdings Notes and the LYONs, respectively.

There can be no assurance that an exchange offer for the LYONs will be consummated or that the LYONs Retirement will be consummated on or before May 27, 1998. See "Description of the Notes." To the extent that the LYONs Retirement may not be completed until May 27, 1998, the Issuer and its subsidiaries will continue to incur interest expense on the outstanding principal amount of the LYONs not retired at the rate of 7.25%. In

addition, there can be no assurance that the Escrowed Funds will be sufficient to consummate the LYONs Retirement at any time, particularly if the market value of the Coleman Common Stock increases such that the market value of the shares for which the outstanding LYONs may be exchanged exceeds the remaining Escrowed Funds. If the Escrowed Funds are insufficient, the Issuer will be required to adopt one or more alternatives, such as seeking capital contributions or loans from its affiliates, or if LYONs are exchanged, delivering Coleman Common Stock upon exchange, thereby reducing the Issuer's indirect ownership of Coleman. None of the affiliates of the Issuer will be required to make any capital contributions or other payments to the Issuer with respect to the Issuer's obligation to consummate the LYONs Retirement. There can be no assurance that any of the foregoing actions could be effected on satisfactory terms, that they would be sufficient to enable the Issuer to consummate the LYONs Retirement on May 27, 1998 without delivering Coleman Common Stock upon exchange or that any of such actions would be permitted by the terms of the Indenture, the LYONs Indenture or the debt instruments of the Company then in effect.

Security for the Notes; Potential for Diminution

Upon the consummation of the Offering and prior to the Coleman Holdings Merger, all of the Issuer's obligations under the Indenture and the Notes will be secured by a pledge of all of the shares of capital stock of Coleman Holdings. In addition, upon consummation of the Offering, the Notes will be guaranteed pursuant to the Coleman Worldwide Non-Recourse Guaranty, which Coleman Worldwide Non-Recourse Guaranty will initially be secured by 522,710 shares of Coleman Common Stock. Simultaneously with the Coleman Holdings Notes Redemption, the Notes will be secured by all of the capital stock of Coleman Worldwide and the Coleman Worldwide Non-Recourse Guaranty will be secured by an additional pledge of the 26,000,000 shares of Coleman Common Stock that are currently pledged to secure the Old Coleman Worldwide Non-Recourse Guaranty of the Coleman Holdings Notes. The Coleman Worldwide Non-Recourse Guaranty and the pledge of the Coleman Worldwide capital stock will terminate upon the Coleman Worldwide Merger. The Trustee's claim under the Coleman Worldwide Non-Recourse Guaranty will be limited to the shares pledged as security therefor and will not entitle the Trustee or the holders of the Notes to the status of a general creditor of Coleman Worldwide. In addition to such shares, simultaneously with the release of Escrowed Funds from time to time to redeem the LYONs or upon exchange of LYONs in connection with the LYONs Retirement, the Coleman Worldwide Non-Recourse Guaranty will become secured by the shares of Coleman Common Stock into which such exchanged or redeemed LYONs are exchangeable that are released from the pledge to secure any exchanged or redeemed LYONs, until consummation of the LYONs Retirement, at which time the Notes will also be secured by the 16,394,810 shares of Coleman Common Stock currently pledged to secure the LYONs and the 1,672,710 shares of Coleman Common Stock not currently pledged, of which 522,710 shares are currently available to be pledged to secure the Notes, less any Delivered Shares. Upon consummation of the Coleman Holdings Notes Redemption and the LYONs Retirement, the Notes will be secured by the shares of Coleman Common Stock that are currently pledged to secure the LYONs and the Old Coleman Worldwide Non-Recourse Guaranty of the Coleman Holdings Notes plus the 1,672,710 shares of Coleman Common Stock not currently pledged, less any Delivered Shares.

No additional shares of Coleman Common Stock will be pledged irrespective of the market value of the stock at any time. The Coleman Common Stock is currently listed on the NYSE. Since January 1, 1996, the high and low sales prices of the Coleman Common Stock were \$26 and \$11½ per share, respectively. There currently is no public market for the Coleman Worldwide or Coleman Holdings capital stock. The value of the collateral will be subject to fluctuation and there can be no assurance that the proceeds from the sale or sales of all of such collateral would be sufficient to satisfy the amounts due on the Notes in the event of a default. In addition, the ability of the holders of the Notes to realize upon the collateral may be subject to certain limitations and there can be no assurance that the Trustee or the holders of the Notes would be able to sell the shares pledged as collateral to secure the Notes and the Coleman Worldwide Non-Recourse Guaranty at the then current market value. Sales of substantial amounts of the Coleman Common Stock (whether by the Trustee or other secured lenders, if any, or otherwise) could adversely affect market prices.

The Notes are not guaranteed by the Company, and except for the Coleman Worldwide Non-Recourse Guaranty of Coleman Worldwide, which will terminate upon the Coleman Worldwide Merger, the Notes are not guaranteed by any other affiliate of the Issuer. If there were an Event of Default under the Indenture and the

Trustee under the Indenture or the holders of the Notes were to foreclose upon the collateral, such foreclosure could constitute a change of control of the Company which would result in an event of default permitting acceleration under the Company Credit Agreement. There can be no assurance that the assets of the Company and its subsidiaries would be sufficient to repay in full borrowings under the Company Credit Agreement if they became due. In such event no assets of the subsidiaries of the Company would be available to the holders of the Notes and the value of the shares of Coleman Common Stock (and Coleman Holdings and Coleman Worldwide capital stock) securing the Notes would be substantially diminished or eliminated. Although currently unsecured, the Company Credit Agreement provides that it will become secured by the Company's assets at December 31, 1997 if a specified financial leverage requirement is not met. If the Company Credit Agreement became secured, any enforcement of the security interests securing the Company Credit Agreement, or enforcement of the security interests securing any other indebtedness of the Issuer or its subsidiaries, could have a material adverse effect on the market price of Coleman Common Stock and on the ability of the Trustee to realize value through sales of the collateral pledged to secure the Notes and the Coleman Worldwide Non-Recourse Guaranty. The Indenture permits the Issuer, under certain circumstances, to grant liens on its assets, if any, other than the shares of Coleman Holdings, Coleman Worldwide or Coleman, as the case may be, pledged to secure the Notes.

Because the additional 26,000,000 shares of Coleman Common Stock to be pledged to secure the Coleman Worldwide Non-Recourse Guaranty following the Coleman Holdings Merger and the shares, if any, to be pledged upon the completion of the LYONs Retirement, will not be pledged simultaneously with Coleman Worldwide incurring its obligation to issue the Coleman Worldwide Non-Recourse Guaranty, but rather will be pledged later, in certain circumstances such pledge could constitute a preference if Coleman Worldwide were to become a debtor in a bankruptcy case. Under applicable provisions of the United States Bankruptcy Code (the "Bankruptcy Code") if Coleman Worldwide were to become the subject of a bankruptcy case within the 90-day period following the issuance of the Coleman Worldwide Non-Recourse Guaranty or following any pledges of additional shares of Coleman Common Stock (or within one year of such events if the entity for whom the transfer is made is an "insider" within the meaning of the Bankruptcy Code), a bankruptcy court could avoid the pledge of Coleman Common Stock as a preference if Coleman Worldwide was insolvent at the time thereof and the pledge enabled holders of the Notes to receive more than they would if Coleman Worldwide were liquidated under the Bankruptcy Code. Such pledges by Coleman Worldwide may also be voidable as preferences under similar state laws, which in many cases have a 120-day preference period. The Notes are not secured by a pledge of the Escrowed Funds. The Escrowed Funds could be subject to the claims of creditors of the Issuer, if any, other than the holders of the Notes.

Control by Holders of First Priority Notes

The First Priority Notes are expected to constitute approximately 82.0% of the aggregate principal amount at maturity of the Notes to be sold in the Offering and the Second Priority Notes will constitute the balance. Under the terms of the Indenture, although the First Priority Notes and the Second Priority Notes will be treated as separate series of securities for purposes of their respective rights to payment upon a realization of the collateral securing the Notes and the Coleman Worldwide Non-Recourse Guaranty. Accordingly, any proceeds received by the Trustee from a realization on the collateral will be applied first to pay the expenses of the Trustee under the Indenture, second to pay the Default Amount (as defined herein) on the First Priority Notes and, thereafter, to pay the Default Amount on the Second Priority Notes. For all other purposes the First Priority Notes and the Second Priority Notes will be treated as a single class of securities issued under the Indenture. Any actions that may be taken by the holders of less than all of Notes outstanding under the Indenture, including the approval of any supplements or amendments thereto, waivers of any past defaults, giving notice to the Issuer and the Trustee of an Event of Default, rescinding an acceleration of the Notes, exercising remedies with respect to the collateral securing the Notes and controlling proceedings following an Event of Default, may be taken by the holders of specified percentages of the aggregate principal amount at maturity of Notes outstanding. There will be no separate class voting for holders of the Second Priority Notes under any circumstances, even if the proposed action would more adversely affect the holders of the Second Priority Notes. Accordingly, it is expected that the holders of the First Priority Notes will be able to control the vote on all actions requiring approval of the holders of a majority of the aggregate principal amount at maturity of Notes outstanding without obtaining the approval of any holders of the Second Priority Notes. With respect to actions that may be taken by holders of at least 25% of the aggregate principal amount at maturity of Notes outstanding, the approval of at least some of the holders of

the First Priority Notes will be required in order to take such actions. In addition, if a default occurs under the Indenture, the Trustee may be deemed to have a "conflicting interest" within the meaning of the Trust Indenture Act of 1939, as amended (the "TIA"). In such case, the Trustee would be required to eliminate the conflicting interest, by appointing another trustee or otherwise.

Restrictions Imposed by Terms of Indebtedness; Consequences of Failure to Comply

The terms and conditions of the Indenture, the Coleman Holdings Notes Indenture, the LYONs Indenture, the Company Credit Agreement and the Company Senior Notes (as defined herein) impose restrictions that affect, among other things, the ability of the Issuer and its subsidiaries to incur debt, pay dividends, make acquisitions, create liens, sell assets and make certain investments.

The terms of the Company Credit Agreement also require the Company to maintain specified financial ratios and tests, including a specified ratio of consolidated current assets to consolidated current liabilities, a specified ratio of consolidated debt to consolidated net worth, a minimum interest coverage ratio, a minimum fixed charge coverage ratio, and a minimum consolidated net worth. The terms of the Company Senior Notes also require the Company to maintain specified financial ratios and tests, including a specified level of consolidated net worth. The Company's ability to comply with the foregoing provisions can be affected by events beyond the Company's control, and there can be no assurance that the Company will achieve operating results that maintain compliance with such provisions. The breach of any of such covenants would result in a default under the Company Credit Agreement or the Company Senior Notes permitting the holders thereof to declare all amounts outstanding thereunder to be due and payable. In addition, the terms of the LYONs Indenture provide that if the Company fails to maintain a specified ratio of consolidated debt to the sum of consolidated debt and consolidated net worth or Coleman Worldwide fails to maintain a minimum consolidated net worth, an Additional Purchase Right Event under the LYONs Indenture would occur, which would require Coleman Worldwide to repurchase the LYONs. If an Additional Purchase Right Event under the LYONs Indenture did so occur, however, the Issuer would be permitted under the Indenture and the Escrow Agreement to use the Escrowed Funds to finance such LYONs repurchase. If indebtedness of the Issuer or its subsidiaries were to be accelerated or required to be repurchased, there could be no assurance that the assets of the Issuer and its subsidiaries would be sufficient to repay in full borrowings under the outstanding debt instruments of the Issuer and its subsidiaries, including the Notes. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources," "Description of the Notes" and "Description of Other Indebtedness."

The events that constitute a Change of Control under the Indenture may also constitute events of default or repurchase right events under certain indebtedness of the Issuer's subsidiaries which indebtedness is effectively senior to the Notes. See "—Subordination to Subsidiary Liabilities." Such events may permit the lenders under such debt instruments to accelerate the debt (or, in the case of the Coleman Holdings Notes and the LYONs, to require the issuers thereof to repurchase such securities) and, if the debt is not paid or repurchased, to enforce their security interests, if any, thereby limiting the Issuer's ability to raise cash to repurchase the Notes and reducing the practical benefit of this provision to the holders of the Notes. As of March 31, 1997 after giving pro forma effect to the Offering, the Capital Contributions, the Coleman Holdings Notes Redemption and the LYONs Retirement, the amount of outstanding indebtedness that could be accelerated or result in a mandatory repurchase under these circumstances would have been \$205.1 million (excluding the Coleman Holdings Notes and the LYONs). See "—Indebtedness and Ability to Repay the Notes," "—Subordination to Subsidiary Liabilities" and "Description of the Notes—Change of Control."

Competition

The markets in which the Company operates are highly competitive. The Company competes in selected product categories against a number of multinational manufacturers, some of which are larger and have substantially greater resources than the Company. See "Business—Competition."

Social, Political and Economic Risks Affecting Foreign Operations and Effects of Foreign Currency Fluctuations

The Company sells its products in more than 100 countries. As a result, the Company is exposed to the risk of changes in social, political and economic conditions inherent in foreign operations, including changes in the laws and policies that govern foreign investment in countries where it has operations as well as, to a lesser extent, changes in United States laws and regulations relating to foreign trade and investment. In addition, the Company's results of operations and the value of its foreign assets are affected by fluctuations in foreign currency exchange rates, which may favorably or adversely affect reported earnings and, accordingly, the comparability of period-to-period results of operations. Changes in currency exchange rates may affect the relative prices at which the Company and foreign competitors sell their products in the same market. For 1996 and 1995, 32% and 24%, respectively, of the Company's net sales were outside North America. The Company enters into forward and option contracts to hedge certain cash flows denominated in foreign currency. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources."

Fraudulent Conveyance Considerations

None of the proceeds from the Offering will be available to Coleman Worldwide, which following the Coleman Holdings Notes Redemption will issue the Coleman Worldwide Non-Recourse Guaranty to secure the Notes issued by its parent, the Issuer, and pledge Coleman Common Stock as security therefor. Under applicable provisions of federal bankruptcy law or comparable provisions of state fraudulent transfer law, if a court were to find that at the time it issued the Coleman Worldwide Non-Recourse Guaranty or pledged the Coleman Common Stock in connection with the Offering (a) Coleman Worldwide issued the Coleman Worldwide Non-Recourse Guaranty or pledged the Coleman Common Stock with the intent of hindering, delaying or defrauding creditors, or (b) Coleman Worldwide received less than reasonably equivalent value or fair consideration in exchange for the obligations that it incurred under the Coleman Worldwide Non-Recourse Guaranty, or for the pledge of Coleman Common Stock, and Coleman Worldwide (i) was insolvent or was rendered insolvent by reason of such incurrence or pledge, (ii) was engaged in business or a transaction, or was about to engage in business or a transaction, for which its remaining assets constituted unreasonably small capital or (iii) intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they matured, the Coleman Worldwide Non-Recourse Guaranty and the pledge of the Coleman Common Stock securing the Coleman Worldwide Non-Recourse Guaranty could be voided, or claims in respect of the Coleman Worldwide Non-Recourse Guaranty and the pledge could be subordinated to all other debts of Coleman Worldwide. In addition, any payments by Coleman Worldwide pursuant to the Coleman Worldwide Non-Recourse Guaranty could be avoided and be required to be returned to Coleman Worldwide, particular creditors of Coleman Worldwide or to a fund for the benefit of its creditors.

The measures of insolvency for purposes of the foregoing considerations will vary depending upon the law applied in any proceeding with respect to the foregoing. Generally, however, Coleman Worldwide would be considered insolvent if the sum of its debts, including contingent liabilities, were greater than the value of all of its assets at a fair valuation or if the present fair saleable value of its assets were less than the amount that would be required to pay its probable liability on its existing debts, including contingent liabilities, as they become absolute and mature. There can be no assurance, however, as to what standard a court would apply in making such determination.

Original Issue Discount; Limitations on Holders' Claims

The Notes will be issued at a substantial original issue discount from their principal amount at maturity. Consequently, purchasers of Notes will be required to include amounts in gross income for federal income tax purposes in advance of receipt of the cash payments to which the income is attributable. See "Certain U.S. Federal Income Tax Considerations" for a more detailed discussion of the federal income tax consequences to the purchasers of the Notes resulting from the purchase, ownership or disposition thereof.

Under the Indenture, in the event of an acceleration of the maturity of the Notes upon the occurrence of an Event of Default, the holders of the Notes may be entitled to recover only the amount which may be declared due

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and payable pursuant to the Indenture, which will be less than the principal amount at maturity of such Notes. See "Description of the Notes—Defaults."

If a bankruptcy case is commenced by or against the Issuer under the Bankruptcy Code, the claim of a holder of Notes with respect to the principal amount thereof may be limited to an amount equal to the sum of (i) the Issue Price of the Notes and (ii) that portion of the Original Issue Discount which is not deemed to constitute "unmatured interest" for purposes of the Bankruptcy Code. Accordingly, holders of the Notes under such circumstances may, even if sufficient funds are available, receive a lesser amount than they would be entitled to under the express terms of the Indenture. In addition, there can be no assurance that a bankruptcy court would compute the accrual of interest by the same method as that used for the calculation of Original Issue Discount under federal income tax law and, accordingly, a holder might be required to recognize gain or loss in the event of a distribution related to such a bankruptcy case.

Lack of Public Market; Restrictions on Transferability

The Notes are new securities for which there currently is no market. Although the Initial Purchasers have informed the Issuer that they currently intend to make a market in the Notes, and if issued, the Exchange Notes, they are not obligated to do so and any such market making may be discontinued at any time without notice. In addition, such market making activity may be limited during the pendency of the Exchange Offer or the effectiveness of a shelf registration statement in lieu thereof. Accordingly, there can be no assurance as to the development or liquidity of any market for the Notes and, if issued, the Exchange Notes. It is expected that the Notes will be eligible for trading by qualified buyers in the PORTAL market. The Issuer does not intend to apply for listing of the Notes or, if issued, the Exchange Notes, on any securities exchange or for quotation through The Nasdaq Stock Market.

The Notes are being offered in reliance upon an exemption from registration under the Securities Act and applicable state securities laws. Therefore, the Notes may be transferred or resold only in a transaction registered under or exempt from the Securities Act and applicable state securities laws. Pursuant to the Registration Agreement (as defined herein), the Issuer has agreed to file the Exchange Offer Registration Statement (as defined herein) with the SEC and to use its best efforts to cause such registration statement to become effective with respect to the Exchange Notes. If issued, the Exchange Notes generally will be permitted to be resold or otherwise transferred (subject to the restrictions described under "Exchange Offer: Registration Rights" and "Notice to Investors") by each holder without the requirement of further registration. The Exchange Notes, however, also will constitute a new issue of securities with no established trading market. The Exchange Offer will not be conditioned upon any minimum or maximum aggregate principal amount of Notes being tendered for exchange. No assurance can be given as to the liquidity of the trading market for the Exchange Notes, or, in the case of non-tendering holders of Notes, the trading market for the Notes following the Exchange Offer.

The liquidity of, and trading market for, the Notes or the Exchange Notes also may be adversely affected by general declines in the market for similar securities. Such a decline may adversely affect such liquidity and trading markets independent of the financial performance of, and prospects for, the Issuer.

Control by MacAndrews & Forbes

MacAndrews & Forbes' indirect ownership of all of the capital stock of each of the Issuer, Coleman Holdings and Coleman Worldwide and approximately 82.6% of the Coleman Common Stock permits MacAndrews & Forbes to elect the entire Board of Directors of each of the Issuer, Coleman Holdings, Coleman Worldwide and the Company and to control the Issuer, Coleman Holdings, Coleman Worldwide and the Company, including the vote on matters submitted to a vote of the Company's stockholders. Although the Company has five directors who are neither officers nor employees of MacAndrews & Forbes or any of its affiliates, the Board of Directors of each of the Issuer, Coleman Holdings, Coleman Worldwide and the Company has been, and is expected to continue to be, comprised entirely of designees of MacAndrews & Forbes, which is wholly owned by Ronald O. Perelman.

The shares of common stock of the Issuer and shares of common stock of intermediate holding companies are or may from time to time be pledged to secure obligations of MacAndrews & Forbes or its affiliates. A foreclosure upon any such shares of common stock could constitute a change of control under the Indenture and

certain debt instruments of the Issuer's subsidiaries, including the Company Credit Agreement, the Coleman Holdings Notes and the LYONs. See "—Security for the Notes; Potential for Diminution."

Forward-Looking Statements

This Offering Memorandum contains certain forward-looking statements and information relating to the Company that are based on the beliefs of management as well as assumptions made by and information currently available to management. Such forward-looking statements are principally contained in the sections "Offering Memorandum Summary," "Business—Business Strategy" and "Management's Discussion and Analysis of Financial Condition and Results of Operations." In addition, in those and other portions of this Offering Memorandum, the words "anticipate," "believe," "estimate," "expect," "plans," "intends" and similar expressions, as they relate to the Issuer, Coleman Holdings, Coleman Worldwide, the Company or management, are intended to identify forward-looking statements. Such statements reflect the current views of the Issuer and its subsidiaries with respect to future events and are subject to certain risks, uncertainties and assumptions, including the risk factors described in this Offering Memorandum. In addition to factors that may be described in this Offering Memorandum, the following factors, among others, could cause the actual results of the Issuer and its subsidiaries, including the Company, to differ materially from those expressed in any forward-looking statements made: (i) the success of the Company's restructuring programs, (ii) negative external factors like adverse weather in North America or other regions, (iii) possible continued consumer spending decline in Japan, (iv) the possibility the Company may be required to renegotiate its credit agreements and (v) any difficulties or delays in effecting the Coleman Holdings Notes Redemption and the LYONs Retirement. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those described herein as anticipated, believed, estimated or expected. The Issuer does not intend to update these forward-looking statements.

USE OF PROCEEDS

The Issuer will use the net proceeds of the Offering, approximately \$455.3 million, to make the Capital Contributions to finance the Coleman Holdings Notes Redemption and the LYONs Retirement. The Coleman Holdings Notes mature on May 27, 1998 and original issue discount thereon accretes at the rate of 10 $\frac{1}{8}$ % per annum, compounded on a semiannual bond equivalent basis. The LYONs mature on May 27, 2013 and original issue discount accretes at the rate of 7.25% per annum, compounded on a semiannual bond equivalent basis. As of March 31, 1997, the accreted value of the Coleman Holdings Notes and the LYONs was approximately \$248.9 million and \$177.7 million, respectively. If there are any proceeds of the Offering remaining after consummation of the Coleman Holdings Notes Redemption and the LYONs Retirement, the Issuer intends to dividend or distribute such funds to MacAndrews & Forbes. See "Description of Other Indebtedness." Pending such uses, the net proceeds of the Offering will be held in escrow and invested in Treasury Securities and other Permitted Investments.

CAPITALIZATION

The following table sets forth the actual consolidated capitalization of the Issuer and its subsidiaries as of March 31, 1997 and the consolidated capitalization of the Issuer and its subsidiaries at such date as adjusted to give effect to the Offering, the Capital Contributions, the Coleman Holdings Notes Redemption and the LYONs Retirement, as if such transactions had been consummated on March 31, 1997. The as adjusted information does not give effect to any exchange offer for the LYONs, but rather assumes that all outstanding LYONs are redeemed on May 27, 1998. Due to its direct 100% ownership of Coleman Holdings, indirect 100% ownership of Coleman Worldwide and indirect 82.6% ownership of Coleman, the Consolidated Financial Statements of the Issuer and its subsidiaries include the accounts of Coleman Holdings and its subsidiaries after elimination of all material intercompany accounts and transactions. Minority interest primarily represents the minority stockholders' proportionate share of the equity of Coleman. This table should be read in conjunction with the Consolidated Financial Statements of the Issuer and the notes thereto and the Pro Forma Financial Data included elsewhere in this Offering Memorandum.

	As of March 31, 1997	
	Actual	As Adjusted
	(Dollars in Thousands, except Share Data)	
Short-term borrowings	\$ 79,562	\$ 79,562
Current portion of long-term debt	730	730
Long-term debt:		
The Issuer:		
First Priority Notes	\$ —	\$ 390,003(a)
Second Priority Notes	—	80,004(a)
Coleman Holdings:		
Coleman Holdings Notes	248,894	—(b)
Coleman Worldwide:		
LYONs	177,736	—(c)
Coleman:		
7.26% Senior Notes due 2007	200,000	200,000
7.10% Senior Notes due 2006	85,000	85,000
7.25% Senior Notes due 2008	75,000	75,000
Company Credit Agreement (d):		
Revolving credit facility	136,901	136,901
Term loan	68,167	68,167
Other	3,696	3,696
Total long-term debt, including current portion	995,394	1,038,771
Less: current portion	(730)	(730)
Total long-term debt	994,664	1,038,041
Minority interest	44,598	44,598
Stockholder's deficit		
Common stock, \$1.00 par value: 1,000 shares authorized, issued and outstanding	1	1
Capital deficiency	(130,576)	(143,469)(e)
Accumulated deficit	(53,842)	(76,044)(f)
Currency translation adjustment	(2,364)	(2,364)
Minimum pension liability adjustment	(375)	(375)
Total stockholder's deficit	(187,156)	(222,251)
Total capitalization	\$ 932,398	\$ 940,680

(a) Reflects the issuance of the Notes, net of the Original Issue Discount of \$210.5 million and \$51.6 million for the First Priority Notes and Second Priority Notes, respectively.

(b) Reflects the Coleman Holdings Notes Redemption.

(c) Reflects the LYONs Retirement.

(d) The Company Credit Agreement consists of a \$275.0 million revolving credit facility and a 385.1 million French Franc (approximately \$68.2 million at March 31, 1997 exchange rates) term loan that matures on April 30, 2001. At March 31, 1997, \$135.1 million was available for borrowings under the Company Credit Agreement.

(e) Reflects the distribution of the tax benefit relating to the interest accretion and extraordinary loss associated with the Coleman Holdings Notes Redemption and the LYONs Retirement since the Issuer is not a party to a tax sharing agreement.

(f) Reflects the interest accretion on the LYONs from April 1, 1997 through May 27, 1998 and an extraordinary loss, net of taxes, related to the LYONs Retirement and reflects the interest accretion on the Coleman Holdings Notes from April 1, 1997 through July 15, 1997 and an extraordinary loss, net of taxes, related to the Coleman Holdings Note Redemption.

PRICE RANGE OF COLEMAN COMMON STOCK

The Coleman Common Stock is listed and traded on the NYSE under the symbol "CLN" and has unlisted trading privileges on the Midwest Stock Exchange and the Pacific Stock Exchange. The following table sets forth the high and low sales prices as reported on the NYSE Composite Tape for the Coleman Common Stock for the first quarter in 1997, the second quarter in 1997 (through May 15, 1997) and for each quarter in 1996 and 1995.

	<u>High</u>	<u>Low</u>
<u>1997</u>		
First Quarter	\$ 16 ¹ / ₈	\$11 ¹ / ₂
Second Quarter (through May 15, 1997)	19 ¹ / ₈	12 ⁷ / ₈
<u>1996</u>		
First Quarter	\$ 26	\$16 ⁵ / ₁₆
Second Quarter	23 ¹ / ₄	19 ¹³ / ₁₆
Third Quarter	21 ⁵ / ₈	13 ³ / ₄
Fourth Quarter	15 ¹ / ₄	11 ³ / ₄
<u>1995</u>		
First Quarter	\$ 19 ¹ / ₁₆	\$16 ¹ / ₄
Second Quarter	19 ¹ / ₈	15 ¹ / ₂
Third Quarter	19 ⁹ / ₁₆	17 ¹¹ / ₁₆
Fourth Quarter	18 ³ / ₄	16 ³ / ₈

On May 15, 1997, the last reported sales price of the Coleman Common Stock on the NYSE was \$16³/₄ per share.

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PRO FORMA FINANCIAL DATA

The following unaudited pro forma consolidated condensed statements of operations and other data for the year ended December 31, 1996 and the three months ended March 31, 1997 give pro forma effect to the Offering, the Capital Contributions, the Coleman Holdings Notes Redemption and the LYONs Retirement, in each case, as if such transactions had been consummated on January 1, 1996, and the pro forma consolidated condensed balance sheet as of March 31, 1997 gives pro forma effect to the Offering, the Capital Contributions, the Coleman Holdings Notes Redemption and the LYONs Retirement as if such transactions had been consummated on March 31, 1997. The pro forma information does not give effect to any exchange offer for the LYONs, but rather assumes that all outstanding LYONs are redeemed on May 27, 1998. The pro forma adjustments are based upon available information and certain assumptions that management of the Issuer believes are reasonable under the circumstances. The pro forma financial data do not purport to represent the results of operations or the financial position of the Issuer and its subsidiaries that actually would have occurred had the foregoing transactions been consummated on the aforesaid dates.

The pro forma financial data should be read in conjunction with the Consolidated Financial Statements of the Issuer and the notes thereto included elsewhere in this Offering Memorandum.

Pro Forma Consolidated Condensed Balance Sheet
(Dollars in Thousands)
(unaudited)

	As of March 31, 1997		
	Actual	Adjustments	Pro Forma
Current Assets:			
Cash and cash equivalents	\$ 12,866	\$455,257 (1) (192,955)(2) (262,197)(3)	\$ 12,971
Accounts and notes receivable	271,617		271,617
Inventories	288,166		288,166
Deferred tax assets	39,895		39,895
Prepaid assets and other	16,654		16,654
Total current assets	629,198	105	629,303
Property, plant and equipment, net	194,739		194,739
Intangible assets related to businesses acquired, net	341,907		341,907
Note receivable-affiliate	47,739		47,739
Deferred tax assets and other	41,348	14,750 (1) (5,117)(2) (1,456)(3)	49,525
	<u>1,254,931</u>	<u>8,282</u>	<u>1,263,213</u>
Current Liabilities:			
Accounts and notes payable	194,462		194,462
Other current liabilities	115,971		115,971
Total current liabilities	310,433		310,433
Long-term debt	994,664	470,007 (1) (177,736)(2) (248,894)(3)	1,038,041
Income taxes payable—affiliate	16,681		16,681
Other liabilities	75,711		75,711
Minority interest	44,598		44,598
Stockholder's deficit	(187,156)	(20,336)(2) (14,759)(3)	(222,251)
	<u>\$1,254,931</u>	<u>\$ 8,282</u>	<u>\$1,263,213</u>

(continued on following page)

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Pro Forma Consolidated Condensed Statements of Operations
(Dollars in Thousands)
(unaudited)

	Three Months Ended March 31, 1997			Year Ended December 31, 1996		
	Actual	Adjustments	Pro Forma	Actual	Adjustments	Pro Forma
Net revenues	\$ 295,464		\$ 295,464	\$1,220,216		\$1,220,216
Cost of sales	214,422		214,422	928,497		928,497
Gross profit	81,042		81,042	291,719		291,719
Selling, general and administrative expenses	65,952		65,952	292,012		292,012
Interest expense, net	20,414	\$ 15,005 (4) (9,702)(5)	25,717	75,120	\$ 55,227 (4) (36,404)(5)	93,943
Amortization of goodwill and deferred charges	3,322	922 (4) (390)(5)	3,854	12,304	3,688 (4) (1,561)(5)	14,431
Other expense (income), net	271	—	271	(1,604)	—	(1,604)
Loss before income taxes, minority interest and extraordinary item	(8,917)	(5,835)	(14,752)	(86,113)	(20,950)	(107,063)
Income tax benefit	(3,190)	(1,945)(6)	(5,135)	(23,766)	(6,961)(6)	(30,727)
Minority interest in earnings of Camping Gaz	112		112	1,872		1,872
Minority interest in earnings (loss) of Coleman	120		120	(7,262)		(7,262)
Loss before extraordinary item	<u>\$ (5,959)</u>	<u>\$ (3,890)</u>	<u>\$ (9,849)</u>	<u>\$ (56,957)</u>	<u>\$ (13,989)</u>	<u>\$ (70,946)</u>
Other Data:						
Ratio of earnings to fixed charges (7)	—		—	—		—

- (1) Reflects the issuance of the Notes, net of underwriting discounts and related fees and expenses.
- (2) Reflects the LYONs Retirement at May 27, 1998 for aggregate consideration of \$192,955, the accreted value on such date. Stockholder's deficit reflects a charge representing interest accretion on the LYONs from April 1, 1997 through May 27, 1998 of \$9,436 net of taxes, an extraordinary loss of \$3,173, net of taxes, representing the write-off of deferred charges related to the LYONs and a distribution of the tax benefit of \$7,727 associated with such charges since the Issuer is not a party to a tax sharing agreement.
- (3) Reflects the redemption of the Coleman Holdings Notes for aggregate consideration of \$262,197 based on the redemption price of 102.175% of the accreted value at July 15, 1997. Stockholder's deficit reflects a charge representing interest accretion on the Coleman Holdings Notes from April 1, 1997 through July 15, 1997 of \$5,018 net of taxes, an extraordinary loss of \$4,575 net of taxes, representing the redemption premium paid to redeem the Coleman Holdings Notes and the write-off of deferred charges related to the Coleman Holdings Notes, and a distribution of the tax benefit of \$5,166 associated with such charges since the Issuer is not a party to a tax sharing agreement.
- (4) Reflects interest expense on the Notes based on a yield to maturity of 11 1/4% on the First Priority Notes and 12 3/4% on the Second Priority Notes compounded semiannually on a bond equivalent basis, and the related amortization of deferred financing costs over four years.
- (5) Reflects the elimination of interest expense and amortization of deferred financing costs related to the LYONs and Coleman Holdings Notes. Since the LYONs Retirement may not be completed until May 27, 1998, the Issuer and its subsidiaries will continue to incur interest expense on the outstanding principal amount of the LYONs not retired at a rate of 7.25% and will earn interest income on the Escrowed Funds for such period. Since the Coleman Holdings Notes Redemption will not be completed until approximately two months after the Offering, the Issuer and its subsidiaries will continue to incur interest expense on the Coleman Holdings Notes at a rate of 10.875% and will earn interest income on the Escrowed Funds for such period. Escrowed Funds will earn interest income at an annual rate of approximately 5.5% based on interest rates as of May 14, 1997.
- (6) Reflects the tax effect of the pro forma adjustments.
- (7) The actual and pro forma deficiency of earnings to fixed charges was \$86,113 and \$107,063, respectively, for the year ended December 31, 1996 and \$8,917 and \$14,752, respectively, for the three months ended March 31, 1997.

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SELECTED HISTORICAL FINANCIAL DATA

The Issuer is a holding company formed in May 1997 to hold all of the common stock of Coleman Holdings. Coleman Holdings is a holding company formed in July 1993 in connection with the offering of the Coleman Holdings Notes and holds all of the outstanding shares of capital stock of Coleman Worldwide. Coleman Worldwide was formed in March 1993 in connection with the offering of \$575 million aggregate principal amount at maturity of LYONs and holds 44,067,520 shares of Coleman Common Stock, which represent approximately 82.6% of the outstanding Coleman Common Stock. Coleman was formed in December 1991 to succeed to the assets and liabilities of the outdoor products business of Holdings. Due to the Issuer's 100% direct ownership of Coleman Holdings, 100% indirect ownership of Coleman Worldwide and approximately 82.6% indirect ownership of Coleman, the Consolidated Financial Statements of the Issuer include the accounts of Coleman Holdings and its subsidiaries after elimination of all material intercompany accounts and transactions. Minority interest primarily represents the minority stockholders' proportionate share of the results of operations and equity of Coleman.

The selected historical financial data for, and as of the end of, each of the years in the five year period ended December 31, 1996 have been derived from the audited Consolidated Financial Statements of the Issuer and its subsidiaries. The selected historical financial data for the three months ended March 31, 1997 and 1996 and as of March 31, 1997 have been derived from the unaudited Consolidated Financial Statements of the Issuer which reflect, in the opinion of management, all adjustments (which include only normal recurring adjustments) necessary to present fairly the financial data for such periods and at such date. Results for the interim periods are not necessarily indicative of results for the full year.

The following selected historical financial data should be read in conjunction with "Capitalization," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the Consolidated Financial Statements of the Issuer and the notes thereto included elsewhere in this Offering Memorandum.

	(Dollars in Thousands)						
	Three Months Ended March 31,		Year Ended December 31,				
	1997	1996	1996	1995	1994	1993	1992
Operations Data:							
Net revenues	\$295,464	\$273,560	\$1,220,216	\$933,374	\$751,580	\$575,415	\$505,815
Cost of sales (a)	214,422	192,594	928,497	649,427	535,710	400,052	350,141
Gross profit	81,042	80,966	291,719	284,147	215,870	175,363	155,674
Selling, general and administrative expenses (a)	65,952	46,800	292,012	175,036	128,664	102,214	92,711
Asset impairment charge (b)	—	—	—	12,289	—	—	—
Restructuring expense (c)	—	—	—	—	18,456	—	—
Interest expense, net	20,414	16,960	75,120	57,830	43,736	23,760	14,465
Amortization of goodwill and deferred charges	3,322	2,704	12,304	9,558	7,864	6,322	6,002
Gain on IPO (d)	—	—	—	—	—	—	(54,515)
Other (income) expense, net	271	(2,721)	(1,604)	283	1,138	766	1,343
(Loss) earnings before income taxes, minority interest and extraordinary item	(8,917)	17,223	(86,113)	29,151	16,012	42,301	95,668
Income tax (benefit) expense (a)	(3,190)	6,508	(23,766)	11,701	3,091	18,210	40,713
Minority interest	232	2,535	(5,390)	6,696	5,734	6,401	4,428
(Loss) earnings before extraordinary item	(5,959)	8,180	(56,957)	10,754	7,187	17,690	50,527
Extraordinary loss on early extinguishment of debt, net of income taxes	—	(582)	(1,244)	(787)	(677)	—	—
Net (loss) earnings	<u>\$ (5,959)</u>	<u>\$ 7,598</u>	<u>\$ (58,201)</u>	<u>\$ 9,967</u>	<u>\$ 6,510</u>	<u>\$ 17,690</u>	<u>\$ 50,527</u>

(Dollars in Thousands)

	Three Months Ended		Year Ended December 31,				
	March 31,						
	1997	1996	1996	1995	1994	1993	1992
Other Data:							
Ratio of earnings to fixed charges (e)	—	1.93x	—	1.45x	1.33x	2.51x	6.35x
EBITDA (f)	\$ 25,472	\$ 39,477	\$ 98,641	\$127,605	\$102,614	\$ 83,181	\$ 70,249
Cash interest expense	11,783	11,233	37,608	23,976	11,933	9,675	14,732
Ratio of EBITDA to interest expense, net	1.25x	2.33x	1.31x	2.21x	2.35x	3.50x	4.56x
Ratio of EBITDA to cash interest expense	2.16	3.51	2.62	5.32	8.60	8.60	4.77
	As of	As of					
	March 31,	December 31,					
	1997	1996	1995	1994	1993	1992	
Balance Sheet Data:							
Total assets	\$ 1,254,931	\$ 1,208,275	\$ 909,460	\$ 759,417	\$ 558,243	\$ 443,781	
Long-term debt (including current portions)	995,394	1,000,541	738,672	642,297	489,618	237,098	
Minority interest	44,598	45,088	49,266	42,233	39,952	36,372	
Total stockholder's (deficit) equity	(187,156)	(177,936)	(113,320)	(114,998)	(115,692)	54,778	

- (a) During 1996, the Company recorded restructuring and certain other charges totaling \$52,516, net of tax. Cost of sales includes a pre-tax charge of \$44,005, selling, general and administrative expenses include a pre-tax charge of \$30,195, and the provision for income tax benefit includes \$21,684 of net tax benefits resulting from these charges.
- (b) Asset impairment charge reflects primarily the non-recurring charge taken in connection with the adoption of Statement of Financial Accounting Standards No. 121.
- (c) Restructuring expense reflects primarily the non-recurring charge taken in connection with the German Restructuring which includes severance costs, commitments to third parties and write-downs of leasehold improvements and other assets to estimated realizable values.
- (d) Gain on IPO represents the gain to Coleman Worldwide on the sale of approximately 18% of the Coleman Common Stock in the IPO.
- (e) Earnings used in computing the ratio of earnings to fixed charges consist of loss (earnings) before income taxes plus fixed charges. Fixed charges consist of interest expense (including amortization of debt issuance costs, but not the loss relating to the early extinguishment of debt) and 33% of rental expense (considered to be representative of the interest factors). The deficiency of earnings to fixed charges was \$8,917 and \$86,113 for the three months ended March 31, 1997 and the year ended December 31, 1996, respectively.
- (f) EBITDA is defined as (loss) earnings before income taxes, minority interest and extraordinary item, plus interest expense, net, depreciation and amortization, asset impairment charge of \$12,289 for the year ended December 31, 1995, restructuring and certain other charges of \$3,928 for the three months ended March 31, 1997, \$74,200 for the year ended December 31, 1996 and \$18,456 for the year ended December 31, 1994, less gain on IPO of \$54,515 for the year ended December 31, 1992 and less non-cash gain on LYONs conversion of \$2,751 for the three months ended March 31, 1996 and \$2,755 for the year ended December 31, 1996. EBITDA is presented here not as a measure of operating results but rather as a measure of debt service ability. EBITDA should not be considered in isolation or as a substitute for net income or cash flow from operations prepared in accordance with generally accepted accounting principles, or as a measure of the profitability or liquidity of the Company. EBITDA does not take into account the Issuer's consolidated debt service requirements and other commitments and, accordingly, is not necessarily indicative of amounts that may be available for discretionary uses. Net cash (used) provided by operating activities was (\$48,121), (\$92,844), (\$5,476), \$9,341, \$46,648, \$36,749 and \$15,530 for the three months ended March 31, 1997 and 1996 and the years ended December 31, 1996, 1995, 1994, 1993 and 1992, respectively. Net cash provided (used) by investing activities was \$2,813, (\$66,812), (\$204,339), (\$68,252), (\$157,083), (\$68,506) and (\$20,400) for the three months ended March 31, 1997 and 1996 and the years ended December 31, 1996, 1995, 1994, 1993 and 1992, respectively. Net cash provided by financing activities was \$39,534, \$153,778, \$210,692, \$64,388, \$114,748, \$30,176 and \$8,704 for the three months ended March 31, 1997 and 1996 and the years ended December 31, 1996, 1995, 1994, 1993 and 1992, respectively.

**MANAGEMENT'S DISCUSSION AND ANALYSIS OF
FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The Issuer is a holding company with no business operations or source of income of its own. Accordingly, except as otherwise indicated, the following discussion relates to the results of operations of the Company. The following discussion should be read in conjunction with the Consolidated Financial Statements of the Issuer and the notes thereto included elsewhere in this Offering Memorandum. See "Index to Consolidated Financial Statements."

Results of Operations

Three months ended March 31, 1997 compared with the three months ended March 31, 1996

Net revenues of \$295.5 million in 1997 were \$21.9 million or 8.0% greater than in 1996 with outdoor recreation products increasing \$29.2 million or 15.5% and hardware products decreasing \$7.3 million or 8.6%. Geographically, United States and Canadian revenues decreased 7.9% while international revenues increased 60.6%.

Outdoor recreation products revenues increased \$29.2 million or 15.5%. The sales increase includes the effects of Camping Gaz, a business acquired in March 1996. Excluding the estimated effects of the Camping Gaz acquisition and the strengthening of the US dollar, sales decreased approximately 3.9% reflecting the Company's initiatives to reduce its dependence on promotional programs. Hardware products revenues decreased \$7.3 million or 8.6% due to the decline in pressure washer sales, a result of the Company's decision to exit the electric pressure washer business.

Gross margins decreased as a percent of sales by 2.2 percentage points from 29.6% in 1996. The decrease is driven by the effect of lower production levels and to a lesser extent increased resin costs associated with the Company's plastics business. The closing or relocating of three domestic factories and the closing of one international factory as part of the Company's restructuring initiatives is intended to reduce manufacturing costs in the latter part of 1997.

Selling, general and administrative ("SG&A") expenses were \$65.9 million in 1997 compared to \$46.7 million in 1996, an increase of 40.9%. The increase in SG&A expenses reflects SG&A expenses associated with the Camping Gaz acquisition and severance costs associated with recent executive changes.

Interest expense was \$10.7 million in 1997 compared with \$8.1 million in 1996, an increase of \$2.6 million. This increase was primarily the result of higher borrowings to fund the Camping Gaz acquisition and to a lesser extent higher interest rates. Coleman Worldwide, on a stand-alone basis, had \$3.2 million of interest expense in 1997 compared with \$3.0 million in 1996, an increase of \$0.2 million. This increase is a result of the effects of compounding interest related to the LYONs. In addition, Coleman Holdings, on a stand-alone basis, had \$6.5 million of interest expense in 1997 compared with \$5.9 million in 1996, an increase of \$0.6 million. This increase is a result of the effects of compounding interest related to the Coleman Holdings Notes.

During the three months ended March 31, 1996, holders of LYONs with a principal amount at maturity of \$9.4 million elected to exchange such LYONs pursuant to the terms of the LYONs Indenture. In connection with these exchanges, Coleman Worldwide delivered 74,107 shares of Coleman Common Stock that Coleman Worldwide owned to the holders of such LYONs. Coleman Worldwide recognized a gain of \$2.7 million in connection with these exchanges which is reflected in other income. Coleman Worldwide also recognized an extraordinary loss on early extinguishment of debt as a result of the LYONs exchange in an amount of \$1.0 million (\$0.6 million after tax). This extraordinary loss represents (i) the excess fair value of the property delivered by Coleman Worldwide to the holders of the LYONs which were exchanged over the accreted value of the LYONs obligations at the time of the exchange, along with (ii) a pro rata portion of the related unamortized financing costs associated with the LYONs issuance.

Minority interest in earnings of Camping Gaz represents the interest of minority shareholders in certain subsidiary operations of Camping Gaz. Minority interest in the earnings of Coleman represents the minority stockholders' proportionate share of the results of operations of Coleman, which is reflected on the Issuer's

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consolidated financial statements because of the Issuer's approximate 82.6% ownership of Coleman Common Stock.

The Company recorded a provision for income tax expense of \$0.5 million or 38.6% of pre-tax earnings in 1997 compared to a provision for income tax expense of \$8.8 million or 37.0% of pre-tax earnings in 1996. On an unconsolidated basis, Coleman Worldwide recorded an income tax benefit of \$1.3 million in 1997 and \$0.1 million in 1996, or approximately 38% of Coleman Worldwide's unconsolidated pre-tax loss in each period. In addition, Coleman Holdings on an unconsolidated basis, recorded a provision for income tax benefit of \$2.4 million in 1997 and \$2.2 million in 1996, or approximately 35.0% of Coleman Holdings' unconsolidated pre-tax loss in each period.

The Company recorded other charges of approximately \$2.4 million, net of taxes, for the first quarter of 1997 and expects to record a significantly greater amount of restructuring and other charges for the second quarter of 1997. See "Business—Business Strategy and Restructuring—Restructuring." There can be no assurance as to the amount of the restructuring and other charges to be recorded in the second quarter of 1997 or that restructuring and other charges will not be recorded in subsequent periods. See "—Liquidity and Capital Resources."

Year ended December 31, 1996 compared with the year ended December 31, 1995

Net revenues in 1996 and 1995 were \$1,220.2 million and \$933.6 million, respectively, an increase of \$286.6 million or 30.7% with outdoor recreation products increasing by \$170.7 million or 24.8% and hardware products increasing \$115.9 million or 47.4%. Geographically, United States and Canada revenues increased 15.6%, while international revenues increased 79.5%.

Outdoor recreation products revenues increased \$170.7 million or 24.8%. Excluding the impact of the Camping Gaz and Sierra acquisitions, the effect of a weaker yen in 1996 as compared to 1995 and the one-time 1995 thermo-electric cooler premium promotion, comparable outdoor recreation product revenues increased approximately 6.4%. Significant revenue gains were experienced in the backpack, tent and sleeping bag businesses, primarily in international markets. In addition, the Company successfully introduced a new line of camping accessories and expanded its heater and light businesses. These gains were substantially offset by poor weather conditions during the camping season in North America and the economic downturn experienced in Japan, both of which adversely affected the demand for the Company's camping products. Hardware products revenues increased 47.4% or \$115.9 million. Excluding the impact of the Seatt acquisition, comparable hardware products revenues increased approximately 13.8%, driven by strong generator and pressure washer sales.

Gross margins, excluding the impact of restructuring and other charges totaling \$44.0 million which are more fully discussed below, decreased as a percent of sales by 2.9 percentage points from 30.4% in 1995 to 27.5% in 1996. This decrease is primarily the result of lower margins associated with the Company's backpack business and the unfavorable effects of product mix including significantly higher sales of pressure washers at lower gross margin percentages and lower sales of camping products which tend to have higher gross margin percentages than the Company's average.

SG&A expenses, excluding \$30.2 million of restructuring and other charges as discussed more fully below, were \$261.5 million in 1996 compared to \$174.7 million in 1995, an increase of 49.7%. The increase in SG&A expenses primarily reflects SG&A expenses associated with the Camping Gaz and Seatt business acquisitions and to a lesser extent increased advertising and marketing expenses.

During 1996, the Company recorded restructuring and certain other charges totaling \$52.5 million net of tax. The restructuring charges total \$45.1 million, net of tax, and consist of charges to (a) integrate the Camping Gaz and Coleman operations into a single global recreation products business, (b) exit the low-end electric pressure washer business, (c) exit a portion of the Company's battery powered light business and settle certain litigation with respect to this business, and (d) increase the valuation reserve for certain foreign deferred income tax assets. Other charges of \$7.4 million, net of tax, relate to certain asset write-offs and other tax matters. These other charges were incurred in the Company's normal course of business, although the amounts involved are higher than similar charges that the Company has recorded in prior periods. Cost of sales includes a pre-tax charge of \$44.0 million, SG&A expenses includes a pre-tax charge of \$30.2 million, and the provision for income tax

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expense includes \$21.7 million of tax benefits resulting from these charges, net of the effect of an increase in the valuation reserve related to certain foreign deferred tax assets and other foreign tax charges.

The Company's interest expense was \$38.7 million in 1996 compared with \$24.5 million in 1995, an increase of \$14.2 million. This increase was primarily the result of higher borrowings to fund business acquisitions and support the increased working capital. On an unconsolidated basis, Coleman Worldwide had an additional \$12.1 million of interest expense in 1996 compared with \$11.4 million in 1995, an increase of \$0.7 million. This increase is a result of the effects of compounding interest related to the LYONS. In addition, Coleman Holdings, on an unconsolidated basis, had \$24.3 million of interest expense in 1996 compared with \$21.9 million in 1995, an increase of \$2.4 million. This increase is a result of the effects of compounding interest related to the Coleman Holdings Notes.

The Company recorded an income tax benefit in 1996 of \$10.9 million, which includes the net tax benefit of \$21.7 million associated with restructuring and other charges discussed above. Excluding the net tax benefit from restructuring and other charges, the provision for income taxes would have been \$10.8 million or 45.0% of pre-tax earnings, excluding restructuring and other charges, as compared to a provision for income tax expense of \$24.5 million or 37.9% of pre-tax earnings in 1995. The increase is primarily due to losses of certain foreign subsidiaries for which the Company has not recognized a tax benefit and the impact of non-deductible goodwill amortization. On an unconsolidated basis, Coleman Worldwide recorded an income tax benefit of \$3.9 million in 1996 and \$4.6 million in 1995 or approximately 38% of Coleman Worldwide's unconsolidated pre-tax loss in each period. In addition, Coleman Holdings on an unconsolidated basis, recorded a provision for income tax benefit of \$9.0 million in 1996 and \$8.2 million in 1995 or approximately 35.0% of Coleman Holdings' unconsolidated pre-tax loss in each period.

The Company obtained control of approximately 70% of Camping Gaz in March 1996 and obtained control of the remaining 30% in July 1996. Accordingly, the minority interest in Camping Gaz for 1996 primarily represents the minority shareholders' approximate 30% proportionate share of the results of operations of Camping Gaz for the period March through June of 1996. Minority interest in Camping Gaz also includes the interests of minority shareholders in certain subsidiary operations of Camping Gaz.

Minority interest in the loss of the Company represents the minority stockholders' proportionate share of the results of operations of the Company, which is reflected on the Issuer's Consolidated Financial Statements because of the Issuer's ownership through Coleman Holdings and Coleman Worldwide of approximately 83% of the Coleman Common Stock.

During the second quarter of 1996, in connection with the renegotiation of its then existing credit agreement, the Company recorded an extraordinary loss of \$1.1 million (\$0.6 million after taxes) which represents a write-off of the related unamortized financing costs associated with its then existing credit agreement. During the third quarter of 1995, the Company completed a \$200.0 million private placement debt issue. In connection with the private placement, the Company renegotiated its previous credit agreement and recorded an extraordinary loss of \$1.3 million (\$0.8 million after taxes) which represents a write-off of the related unamortized financing costs associated with its previous credit agreement.

Year ended December 31, 1995 compared with the year ended December 31, 1994

Net revenues in 1995 and 1994 were \$933.6 million and \$751.6 million, respectively, an increase of \$182.0 million, or 24.2% with outdoor recreation products increasing by \$125.2 million or 22.2% and hardware products increasing \$56.8 million or 30.2%. Geographically, United States and Canada revenues increased 24.0%, while international revenues increased 25.1%.

Outdoor recreation products revenues increased \$125.2 million or 22.2%. The sales increase includes the effects of a full twelve months of the Eastpak business, a business acquired in November 1994. The sales increase also reflects strong performance in the sleeping bag, tent, and the core camping businesses, particularly in Japan. Sales of coolers and jugs increased overall in part due to a thermo-electric cooler premium promotion that began in early 1995. In addition, price increases in selected areas also helped to compensate for the loss of revenues attributable to the German operations which were sold in the third quarter of 1994. Hardware products revenues increased 30.2% or \$56.8 million. The sales increase includes the effects of a full twelve months of the

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compressor business, a business acquired in April of 1994. Pressure washer unit sales continued to increase although per unit sales prices declined somewhat in the latter half of 1995 in response to a more competitive market. In addition, generator sales were up primarily as a result of storm activity in the latter half of 1995

Gross margins increased as a percent of sales by 1.7 percentage points from 28.7% in 1994 to 30.4% in 1995. The margin improvement is due to the favorable effects of the mix of products sold including higher margin new products. Gross margins were negatively impacted in 1995 due to manufacturing inefficiencies, integration costs and pricing issues at the Company's Brazilian operations. Cost of sales in 1995 also includes a \$6.3 million benefit resulting from the effects of marking to market the Company's forward exchange contracts pursuant to the guidance of the Emerging Issues Task Force (the "EITF") in its consensus opinion of EITF 95-2 "Determination of What Constitutes a Firm Commitment for Foreign Currency Transactions Not Involving a Third Party", which was adopted in the fourth quarter of 1995. Prior to the adoption of EITF 95-2, the Company routinely used forward exchange contracts to hedge certain intercompany commitments and deferred recognition of forward exchange contract gains and losses until the component of the related hedge transaction was completed and recognized in income. Cost of sales in 1994 also includes a \$2.2 million charge resulting from an increase in the Company's reserves for estimated costs of environmental remediation efforts.

SG&A expenses were \$174.7 million in 1995, compared to \$128.5 million in 1994, an increase of 36.0%. The increase in SG&A expenses is primarily related to the Company's selling and marketing organization. SG&A expenses associated with the businesses acquired in 1994, and expenses associated with the relocation of corporate, certain international and hardware offices. Reduced annual expenses associated with certain insurance programs helped reduce the overall increase in SG&A.

During the fourth quarter of 1995, the Company adopted Financial Accounting Standards No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of" ("FAS 121"). In connection with the adoption of FAS 121 the Company recognized an asset impairment charge of \$12.3 million (\$9.9 million after tax) related to its Brazilian operations. The Brazilian operations had not performed to the Company's expectations since the acquisition of this business in April of 1994, and, in the fourth quarter of 1995, the Company initiated actions to reduce the operating losses in Brazil. These actions included replacing management, increasing prices, dramatically downsizing the manufacturing operations and reducing SG&A and other overhead. Because of these actions, the Company performed an impairment review pursuant to the guidelines set forth in FAS 121 and concluded that a recognition of an asset impairment charge was appropriate.

During September 1994, the Company restructured its German manufacturing operations in a move to strengthen its European business and eliminate unprofitable operations. The German Restructuring resulted in a one-time charge of approximately \$18.0 million before tax and included severance costs of \$1.5 million, commitments to third parties of approximately \$5.5 million, and write-downs of leasehold improvements and other assets to estimated realizable values aggregating \$11.0 million. In connection with the restructuring, the Company recognized tax benefits of approximately \$10.9 million relating to the write-off of the Company's investment in its German operations. The Company also announced a plan to change from manufacturing to sourcing for certain textile product lines and to exit the market for personal flotation devices. This plan resulted in a \$0.5 million pretax charge.

The Company's interest expense was \$24.5 million in 1995 and \$13.4 million in 1994, an increase of \$11.1 million. This increase was primarily the result of higher borrowings in 1995 necessary to support the Company's acquisitions and increased working capital needs related to the growth of the Company and, to a lesser extent, higher interest rates in 1995. On an unconsolidated basis, Coleman Worldwide had an additional \$11.4 million of interest expense in 1995 compared with \$10.6 million in 1994, an increase of \$0.8 million, or 6.9%. This increase is a result of the effects of compounding interest related to the LYONs. In addition, Coleman Holdings, on an unconsolidated basis, had \$21.9 million of interest expense in 1995 compared with \$19.7 million in 1994, an increase of \$2.2 million, or 11.1%. This increase is a result of the effects of compounding interest related to the Coleman Holdings Notes.

Minority interest represents the minority stockholders' proportionate share of the results of operations of the Company, which is reflected on the Issuer's Consolidated Financial Statements because of the sale of

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approximately 18% of the Coleman Common Stock in the IPO in 1992. Minority interest increased in 1995 due to an increase in the Company's income in 1995.

The Company's effective income tax rate was 37.9% in 1995 compared with 30.6% in 1994. The increase in the effective tax rate in 1995 as compared to 1994 is primarily due to higher taxes on foreign earnings in the 1995 period as compared to the 1994 period which was favorably impacted by the tax benefits arising from permanent basis differences associated with the restructuring of the German operations. The effective income tax rate in 1995 also reflects the favorable impact of tax benefits associated with the Company's manufacturing operations in Puerto Rico, which were acquired in late 1994. The Issuer's consolidated effective income tax rate was 40.1% in 1995 compared with 19.3% in 1994. The increase in the Issuer's consolidated effective income tax rate reflects the proportionately greater impact of the items discussed above when compared to the Issuer's consolidated earnings before income taxes, minority interest and extraordinary item, partially offset by the proportionately higher impact of nondeductible goodwill amortization when compared with 1994.

During the third quarter of 1995, the Company completed a \$200.0 million private placement debt issue. In connection with the private placement, the Company renegotiated its previous credit agreement and recorded an extraordinary loss of \$1.3 million (\$0.8 million after taxes), which represents a write-off of the related unamortized financing costs associated with its previous credit agreement. During the second quarter of 1994, in connection with the renegotiation of its then existing credit agreement, the Company recorded an extraordinary loss of \$1.1 million (\$0.7 million after taxes) which represents a write-off of the related unamortized financing costs associated with its then existing credit agreement.

Liquidity and Capital Resources

Operating activities of the Issuer and its subsidiaries used \$5.5 million of cash during the year ended December 31, 1996 and provided \$9.3 million and \$46.6 million for the years ended December 31, 1995 and 1994, respectively, and used \$48.1 million and \$92.8 million during the three months ended March 31, 1997 and 1996, respectively. At December 31, 1996, receivables were approximately equal to 1995 year-end levels, excluding the amount acquired in connection with the Camping Gaz and Seatt acquisitions and the effect of the restructuring and other charges described above. Inventories, excluding the amount acquired in connection with the Camping Gaz and Seatt acquisitions and the effect of the restructuring and other charges described above, increased by \$42.4 million during the year ended December 31, 1996 period primarily because of lower than expected sales as described above. During the three months ended March 31, 1997, receivables increased \$67.5 million as a result of the seasonality of the Company's sales and an increase in the overall level of such sales. Despite the seasonality of the Company's business, inventories at March 31, 1997 were approximately equal to the levels at December 31, 1996 as a result of the Company's initiative to reduce inventory.

Net cash used for (provided by) investing activities by the Issuer and its subsidiaries was \$204.3 million, \$68.3 million, and \$157.1 million for the years ended December 31, 1996, 1995 and 1994, respectively, and (\$2.8) million and \$66.8 million for the three months ended March 31, 1997 and 1996, respectively. Net cash used for investing activities was composed primarily of the Company's capital expenditures, purchases of businesses, and also advances to Mafco under the Coleman Worldwide Tax Sharing Agreement (as defined herein) and the terms of the LYONs Indenture of \$4.1 million, \$6.7 million and \$27.1 million for the years ended December 31, 1996, 1995 and 1994, respectively. The Company's capital expenditures were \$41.3 million in the year ended December 31, 1996, and the Company used \$161.9 million of cash for business acquisitions during the year ended December 31, 1996. During the three months ended March 31, 1997, the Company's capital expenditures were \$6.3 million, and Coleman Worldwide had a reduction in the net advances to Mafco under the Coleman Worldwide Tax Sharing Agreement and the terms of the LYONs Indenture in the amount of \$7.0 million. For 1997, the Company expects capital expenditures to be within the range of \$30.0 million to \$40.0 million.

Net cash provided by financing activities by the Issuer and its subsidiaries was \$210.7 million, \$64.4 million, and \$114.7 million for the years ended December 31, 1996, 1995, and 1994, respectively, and consisted primarily of increases in long-term borrowings and in 1994 from revolving credit agreement borrowings. The Company paid \$2.3 million to acquire 100,000 shares of Coleman Common Stock in the open market during 1996. Coleman Holdings' net cash provided by financing activities for the three months ended

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March 31, 1997 consisted primarily of an increase in short-term borrowings to finance the seasonal increase in working capital.

The Company's working capital requirements are currently funded by cash flow from operations and domestic and foreign bank lines of credit. In April 1996, the Company amended its then existing credit agreement to: (a) provide a term loan of French Franc 385.1 million (\$75.0 million at the then current exchange rates and approximately \$68.2 million at March 31, 1997), (b) provide an unsecured revolving credit facility in an amount of \$275.0 million, (c) allow for the Camping Gaz acquisition and (d) extend the maturity of the Company Credit Agreement. Due to the restructuring and other charges as discussed previously and lower than expected operating results, the Company further amended the Company Credit Agreement in October 1996 and again in March 1997.

Availability under the Company Credit Agreement is reduced by any commercial paper borrowings outstanding. The Company Credit Agreement is available to the Company until April 30, 2001. At December 31, 1996, \$128.1 million was available for borrowings under the Company Credit Agreement. At March 31, 1997, \$135.1 million was available for borrowings under the Company Credit Agreement. However, the Indenture, the Coleman Holdings Indenture and the LYONs Indenture contain certain provisions that by their terms restrict the Company's ability to, among other things, incur debt. Accordingly, to the extent that borrowings by the Company of amounts otherwise available under the Company Credit Agreement exceed the level of borrowings permitted by such holding company debt instruments, a default will result under such debt instruments.

The outstanding loans under the Company Credit Agreement bear interest at either of the following rates, as selected by the Company from time to time: (i) the higher of the agent's base lending rate or the federal funds rate plus .50% or (ii) the London Inter-Bank Offered Rate ("LIBOR") plus a margin ranging from .25% to 2.125% based on the Company's financial performance. If there is a default, the interest rate otherwise in effect will be increased by 2% per annum. The Company Credit Agreement also bears an overall facility fee ranging from .15% to .375% based on the Company's financial performance.

The Company Credit Agreement contains various restrictive covenants including, without limitation, requirements for the maintenance of specified financial ratios, levels of consolidated net worth and profits, and certain other provisions limiting the incurrence of additional debt, purchase or redemption of the Company's common stock, issuance of preferred stock of the Company, and also prohibits the Company from paying any dividends until on or after January 1, 1999 and limits the amount of dividends the Company may pay thereafter. The Company Credit Agreement also provides for a specific requirement relating to the Company's financial leverage at December 31, 1997 which, if not achieved, will result in the Company Credit Agreement becoming secured by the Company's assets. For purposes of determining the Company's compliance with certain of such financial covenants, the Company Credit Agreement excludes up to \$30 million of charges in connection with the Company's restructuring initiatives. See "Description of Other Indebtedness—Company Credit Agreement." In addition, substantially all of the Coleman Common Stock owned by Coleman Worldwide are pledged to secure indebtedness of Coleman Worldwide and of its parent, Coleman Holdings.

The Company's ability to meet its current cash operating requirements, including projected capital expenditures, tax sharing payments and other obligations is dependent upon a combination of cash flows from operations and borrowings under the Company Credit Agreement. The Company's ability to borrow under the terms of the Company Credit Agreement is subject to the Company's continuing requirement to meet the various restrictive covenants, including without limitation, those described above. If the Company fails to meet the various restrictive covenants of the Company Credit Agreement, the Company will need to renegotiate its current Company Credit Agreement, and/or enter into alternative financing arrangements. There is no assurance that the terms and conditions of such agreements would be as favorable as those now contained in the Company Credit Agreement.

The Company financed the acquisition of the shares of Camping Gaz with the net proceeds from (i) a private placement issuance and sale of \$85.0 million aggregate principal amount of 7.10% Senior Notes, Series A, due 2006 (the "Notes due 2006") and (ii) a private placement issuance and sale of \$75.0 million aggregate principal amount of 7.25% Senior Notes, Series B, due 2008 (the "Notes due 2008"). The Notes due 2006 bear interest at the rate of 7.10% per annum payable semiannually, and the principal amount is payable in annual installments of \$12.1 million commencing June 13, 2000 with a final payment due on June 13, 2006. If there is a default, the

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interest rate will be the greater of (i) 9.10 % or (ii) 2% above the prime interest rate. The Notes due 2008 bear interest at the rate of 7.25% per annum payable semiannually, and the principal amount is payable in annual installments of \$15.0 million commencing June 13, 2004 with a final payment due on June 13, 2008. If there is a default, the interest rate will be the greater of (i) 9.25 % or (ii) 2% above the prime interest rate. The Notes due 2006 and the Notes due 2008 are unsecured and are subject to various restrictive covenants, including without limitation, requirements for the maintenance of specified financial ratios and levels of consolidated net worth and certain other provisions limiting the incurrence of additional debt and sale and leaseback transactions under the terms of the Note Purchase Agreement. The Notes due 2006 and the Notes due 2008 and the Company's Notes due 2007 (as defined herein) shall become secured if the Company Credit Agreement becomes secured as discussed above. See "Description of Other Indebtedness."

The Company's international operations are located primarily in Japan, Europe, and Canada, which are not considered to be highly inflationary environments. The Company uses a variety of derivative financial instruments to manage its foreign currency and interest rate exposures. The Company does not speculate on interest rates or foreign currency rates. Instead, it uses derivatives when implementing its risk management strategies to reduce the possible effects of these exposures.

With respect to foreign currency exposures, the Company principally uses forward and option contracts to reduce risks arising from firm commitments, anticipated intercompany sales transactions and intercompany receivable and payable balances. The Company generally uses interest rate swaps and interest rate caps to fix certain of its variable rate debt. The Company manages credit risk related to these derivative contracts through credit approvals, exposure limits and other monitoring procedures.

Coleman Worldwide is a holding company with no business operations or source of income of its own, and its ability to meet its obligations with respect to the LYONs and any other obligations is contingent upon distributions from the Company, including payments under the Company Tax Sharing Agreement, capital contributions or loans from its direct and indirect parent companies, other borrowings and proceeds from the disposition of the Coleman Common Stock owned by Coleman Worldwide. As the holder of approximately 83% of the Coleman Common Stock, Coleman Worldwide has the ability to cause the Company to make distributions up to the maximum amount permitted by law, subject to limitations in the debt instruments of the Company. However, Coleman Worldwide currently expects that, for the foreseeable future, the net earnings and cash flow of the Company will be retained and used in the business of the Company and that Coleman Worldwide will not receive any distributions from the Company other than payments under the Company's tax sharing agreement. Furthermore, the terms of the Company Credit Agreement prohibits the Company from paying any dividends until on or after January 1, 1999 and limits the amount of dividends the Company may pay thereafter. The receipt by Coleman Worldwide of tax sharing payments from the Company will cease upon Coleman Worldwide's ownership interest in Coleman falling below 80%, and the LYONs Indenture does not require Coleman Worldwide to own more than a majority of the Coleman Common Stock. Pursuant to the LYONs Indenture, at any time that the LYONs are outstanding, the amounts that Coleman Worldwide would be required to pay to Mafco Holdings under the Worldwide Tax Sharing Agreement, together with any remaining funds paid to Coleman Worldwide by the Company under the Company Tax Sharing Agreement may not be paid as tax sharing payments, but Coleman Worldwide may advance such funds to Mafco Holdings as long as the aggregate amount of such advances at any time does not exceed the issue price plus accrued OID of the LYONs. Such advances are evidenced by noninterest bearing unsecured demand promissory notes from Mafco Holdings in the amount of \$47.7 million at March 31, 1997. See "Relationship with MacAndrews & Forbes—Tax Sharing Agreements."

The Issuer expects to use the Escrowed Funds to redeem the LYONs or to repurchase the LYONs for cash, including upon the optional redemption on May 27, 1998 or upon the occurrence of any Additional Purchase Right Event (as defined), or to repay the LYONs upon an acceleration after an Event of Default (as defined in the LYONs Indenture) has occurred. There can be no assurance, however, that the Escrowed Funds will be sufficient to consummate the LYONs Retirement. If the Escrowed Funds are insufficient, the Issuer will be required to adopt one or more alternatives, such as seeking capital contributions or loans from its affiliates. None of the affiliates of the Issuer will be required to make any capital contributions or other payments to the Issuer with respect to the Issuer's obligations to consummate the LYONs Retirement. There can be no assurance that any of the foregoing actions could be effected on satisfactory terms, that they would be sufficient to enable the Issuer to

consummate the LYONs Retirement when required or that any of such actions would be permitted by the terms of the Indenture, the LYONs Indenture or the debt instruments of the Company then in effect.

The LYONs Indenture provides the holders of LYONs with the option to require Coleman Worldwide to purchase the LYONs after the occurrence of certain events ("Additional Purchase Right Events"). Additional Purchase Right Events occur, among other things, upon the Company's Consolidated Debt Ratio (as defined) exceeding 0.75 to 1.0 or the Consolidated Net Worth (as defined) of Coleman Worldwide as of the end of any fiscal quarter being less than a specified amount which is \$60.0 million at March 31, 1997, which specified amount increases to \$70.0 million at June 30, 1997. The Indenture and the Escrow Agreement will permit the use of Escrowed Funds to finance any required purchase of LYONs by Coleman Worldwide following an Additional Purchase Right Event.

On March 31, 1997, MacAndrews Holdings assumed a liability of Coleman Worldwide in the amount of approximately \$2.3 million. The assumption was accounted for as a capital contribution.

Coleman Holdings is a holding company with no business operations or source of income of its own. Coleman Holdings' only significant asset is all of the common stock of Coleman Worldwide, which owns approximately 82.6% of the outstanding shares of Coleman Common Stock. Coleman Holdings' principal business operations are conducted by Coleman and its subsidiaries, and Coleman Holdings has no operations of its own. Accordingly, Coleman Holdings' only source of cash to pay its obligations with respect to the Coleman Holdings Notes and any other obligations is distributions with respect to ownership interest in Coleman from the net earnings and cash flow generated by Coleman, after payment by Coleman Worldwide of amounts due on the LYONs for so long as they remain outstanding and certain other expenses. However, Coleman Holdings currently expects that the proceeds of the Offering will be contributed by the Issuer to Coleman Holdings and used to fund the Coleman Holdings Notes Redemption.

The Coleman Holdings Notes Indenture contains certain covenants that, among other things, state that Coleman Holdings shall not permit the Company to issue debt if after giving effect to such issuance the Company's Consolidated Debt Ratio (as defined) exceeds 0.75 to 1.0. See "Risk Factors—Indebtedness and Ability to Repay the Notes," "Description of Other Indebtedness" and "Description of the Notes."

The Issuer is a holding company with no business operations or source of income of its own. The Issuer's only significant asset is all of the common stock of Coleman Holdings, a holding company that through Coleman Worldwide owns approximately 82.6% of the outstanding shares of Coleman Common Stock. The Issuer's principal business operations are conducted by Coleman and its subsidiaries, and the Issuer has no operations of its own. Accordingly, the Issuer's only source of cash to pay its obligations with respect to the Notes and any other obligations is expected to be distributions with respect to ownership interest in Coleman from the net earnings and cash flow generated by Coleman, after payment by Coleman Worldwide and Coleman Holdings of amounts due on the LYONs and the Coleman Holdings Notes, as the case may be, for so long as they remain outstanding and certain other expenses. As the indirect holder through Coleman Worldwide of approximately 82.6% of the Coleman Common Stock, the Issuer has the ability to cause the Company, Coleman Worldwide and Coleman Holdings, to make distributions up to the maximum amount permitted by law, subject to limitations in the debt instruments of the Company, Coleman Worldwide and Coleman Holdings. However, the Issuer currently expects that, for the foreseeable future, the net earnings and cash flow of the Company will be retained and used in the business of the Company and that the Issuer will not receive any distributions from the Company, Coleman Worldwide or Coleman Holdings. The terms of the Company Credit Agreement prohibit the Company from paying dividends until on or after January 1, 1999 and thereafter restrict the Company's ability to pay dividends or make other payments to Coleman Worldwide, Coleman Holdings and the Issuer. In addition, the LYONs Indenture restricts Coleman Worldwide's ability to pay dividends and make other payments to Coleman Holdings or the Issuer and the Coleman Holdings Notes Indenture restricts Coleman Holdings' ability to pay dividends and make other payments to the Issuer. Although Coleman Worldwide may receive payments from the Company pursuant to the Company Tax Sharing Agreement, Coleman Worldwide will not distribute such payments to Coleman Holdings or the Issuer. In addition, the LYONs Indenture requires that any such payments received from the Company be paid to Mafco or retained by Coleman Worldwide (except under certain limited circumstances which are unlikely to occur prior to the LYONs Retirement). See "Description of Other Indebtedness—Coleman Worldwide—The LYONs" and "Risk Factors—Holding Company Structure."

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The Issuer currently anticipates that in order to pay the principal amount at maturity of the Notes or upon the occurrence of an Event of Default, to redeem the Notes or to repurchase the Notes upon the occurrence of a Change of Control, the Issuer will be required to adopt one or more alternatives, such as seeking capital contributions or loans from its affiliates, refinancing its indebtedness or selling its equity securities or the equity securities or assets of Coleman. None of the affiliates of the Issuer will be required to make any capital contributions or other payments to the Issuer with respect to the Issuer's obligations on the Notes, and, except for the Coleman Worldwide Non-Recourse Guaranty to be issued following the Coleman Holdings Notes Redemption, the obligations of the Issuer with respect to the Notes will not be guaranteed by any affiliate of the Issuer or any other person. There can be no assurance that any of the foregoing actions could be effected on satisfactory terms, that they would be sufficient to enable the Issuer to make any payments in respect of the Notes when required or that any of such actions would be permitted by the terms of the Indenture, the Coleman Holdings Notes Indenture, the LYONs Indenture or the debt instruments of the Company or Coleman Worldwide then in effect. Moreover, the events that constitute a Change of Control under the Indenture may also constitute events of default or repurchase right events under certain debt instruments of the Issuer's subsidiaries. Such events may permit the lenders under such debt instruments to accelerate the debt (or, in the case of LYONs, to require Coleman Worldwide to repurchase the LYONs) and, if the debt is not paid or repurchased, to enforce their security interests in substantially all of the assets of the Issuer's subsidiaries. Any such enforcement may limit the Issuer's ability to raise cash to purchase the Notes and may have a material adverse effect on the market price of Coleman Common Stock and on the price that could be obtained for the Coleman Worldwide capital stock and thus on the ability of the Trustee to realize value through sales of the collateral. See "Risk Factors—Indebtedness and Ability to Repay the Notes." "—Security for the Notes: Potential for Diminution." "Description of Other Indebtedness" and "Description of the Notes."

Seasonality

The Company's sales generally are highest in the second quarter of the year and lowest in the fourth quarter. As a result of this seasonality, the Company has generally incurred a loss in the fourth quarter. The Company's sales may be affected by weather conditions, especially during the second and third quarters of the year. For the years ended December 31, 1994, 1995 and 1996, second quarter sales comprised approximately 34%, 33% and 37% of annual sales, respectively. Consequently, the Company's annual results are generally dependent on its results during the second quarter. Furthermore, the Company has announced and is in the process of implementing certain restructuring initiatives, which the Company expects to have an impact on its results during the remainder of 1997. There can be no assurance as to the Company's success in implementing such initiatives or the results therefrom or as to any adverse impact of the Company's restructuring initiatives. See "—Liquidity and Capital Resources."

Inflation

In general, manufacturing costs are affected by inflation and the effects of inflation may be experienced by the Company in future periods. Management believes, however, that such effect has not been material to the Company during the past three years.

BUSINESS

The Issuer

The Issuer is a holding company whose only significant asset is all of the common stock, par value \$1.00 per share, of Coleman Holdings. Coleman Holdings is a holding company formed in July 1993 in connection with the offering of the Coleman Holdings Notes and holds all of the outstanding shares of capital stock of Coleman Worldwide. Coleman Worldwide was formed in March 1993 in connection with the offering of \$575 million aggregate principal amount at maturity of LYONs. Coleman Worldwide also holds 44,067,520 shares of the Coleman Common Stock, which represent approximately 82.6% of the outstanding Coleman Common Stock. As such, the Issuer's principal business operations are conducted by Coleman and its subsidiaries, and the Issuer has no operations of its own. The Issuer is an indirect wholly owned subsidiary of MacAndrews Holdings, a corporation wholly owned by Ronald O. Perelman. See "Relationship with MacAndrews & Forbes" and "Ownership of Common Stock." Following the Coleman Holdings Notes Redemption, Coleman Holdings expects to be merged with and into the Issuer in the Coleman Holdings Merger. Following the LYONs Retirement, the Issuer expects to be merged with and into Coleman Worldwide in the Coleman Worldwide Merger, with Coleman Worldwide as the surviving corporation.

The Company

Coleman is a leading manufacturer and marketer of consumer products for the outdoor recreation and hardware markets on a global basis. The Company's products have been sold domestically and internationally under the Coleman brand name since the 1920s. The Company believes its strong market position is attributable primarily to its well-recognized trademarks, particularly the Coleman brand name, broad product line, product quality and innovation, and marketing, distribution and manufacturing expertise.

The Company participates in two primary markets, outdoor recreation and hardware. The Company's principal outdoor recreation products include a comprehensive line of lanterns and stoves for outdoor recreational use, fuel-related products such as disposable fuel cartridges, a broad range of coolers and jugs, sleeping bags, backpacks, tents, outdoor folding furniture, portable electric lights, spas, camping accessories and other products for recreational use. These outdoor recreation products are distributed predominantly through mass merchandisers, sporting goods chains and outdoor specialty stores. The Company's principal hardware products include portable generators, portable and stationary air compressors, and safety and security products such as smoke alarms, carbon monoxide detectors and thermostats.

The Company has made several acquisitions in recent years designed to expand its product lines in the outdoor recreation market. In 1996, the Company acquired the French company, Camping Gaz, which is a leader in the European camping equipment market. In 1995, the Company acquired Sierra, a manufacturer of portable outdoor and recreational folding furniture and accessories. In 1994, the Company acquired substantially all of the assets of Eastpak. In 1993, the Company acquired substantially all of the assets associated with the butane business of Taymar in the United Kingdom and substantially all of the assets of S.V.B. in Italy. Taymar manufactures and distributes lightweight butane camping lanterns and stoves, as well as butane gas torches and other accessories. S.V.B. manufactures and distributes a wide range of products for the camping and hardware markets under the S.V.B. brand name.

The Company also restructured certain operations in the outdoor recreation market. In 1994, the Company completed the German Restructuring of its German manufacturing operations, including selling its plastic cooler business located in Inheiden, Germany and Loucka, Czech Republic. In 1996, the Company closed the Brazilian manufacturing operations it had acquired from Metal Yanes, Ltda. in 1994.

The Company has also expanded its presence in the hardware market through its acquisition in 1996 of the assets of Seatt, a leading designer, manufacturer and distributor of smoke alarms, thermostats and carbon monoxide detectors, its acquisition in 1995 of substantially all of the assets of ATI, a manufacturer of technologically advanced lightweight generators and battery charging equipment, and its acquisition in 1994 of substantially all of the assets of Sanborn, a manufacturer of a broad line of portable and stationary air compressors.

Products

The Company participates in two primary markets, outdoor recreation and hardware.

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Outdoor Recreation

The Company's principal products include a comprehensive line of lanterns and stoves for outdoor recreational use, fuel-related products such as disposable fuel cartridges, a broad range of coolers and jugs, sleeping bags, backpacks, tents, outdoor folding furniture, portable electric lights, spas, camping accessories and other products for recreational use. These products are distributed predominantly through mass merchandisers, sporting goods chains and outdoor specialty stores.

Lanterns and Stoves. Coleman believes it is the leading manufacturer of lanterns and stoves for outdoor recreational use in the world. Coleman's liquid fuel appliances include single and dual fuel-powered lanterns and stoves. Coleman also manufactures a broad range of propane- and butane-fueled lanterns and stoves, which allow the user to regulate the intensity of light or heat. These products are manufactured at the Company's facilities located in the United States and Europe and are marketed under the Coleman, Camping Gaz and Peak 1 brand names.

Fuel. The Company is a leading supplier to the worldwide camping and outdoor recreation market of propane and butane cartridges and camping fuel. In addition to manufacturing and filling disposable propane cartridges and refillable LPG cylinders, Coleman sells camping fuel that is refined and canned to its specifications by various suppliers, fills butane gas cartridges and purchases butane-filled gas cartridges from third-party vendors for sale to customers throughout the world. These products are marketed under the Coleman, Camping Gaz and Peak 1 brand names.

Coolers and Jugs. The Company manufactures and sells a wide variety of insulated coolers and jugs and reusable ice substitutes. The Company's cooler line includes personal coolers for camping, picnics or lunch box use; large coolers; beverage coolers for use at work sites and recreational and social events; and soft-sided coolers. Coleman's cooler products are manufactured predominantly at the Company's facilities located in the United States and are marketed under the Coleman brand name worldwide and under the Camping Gaz brand name in Europe. In addition, the Company also manufactures coolers and jugs for third parties to be given away as promotions or sold with the customer's own products as a premium.

Recreational Soft Goods. The Company designs, manufactures or sources, and markets textile products, including tents, sleeping bags, backpacks, daysacks, sports bags, duffle bags and rucksacks. These products are manufactured at the Company's facilities located in the United States and Puerto Rico or sourced from third-party vendors who manufacture them to the Company's specifications. The Company's tents and sleeping bags are marketed under the Coleman and Peak 1 brand names, while its daysacks, sport bags and related products are marketed under the Coleman, Eastpak and newly licensed Timberland brand names. In addition to mass merchandisers, sporting goods chains and outdoor specialty stores, the Company distributes daysacks, sports bags and duffle bags through college bookstores and luggage shops.

Outdoor Furniture. The Company manufactures and markets aluminum- and steel-framed, portable, outdoor, folding furniture under the Coleman and Sierra Trails brand names. These products are manufactured predominantly at the Company's facilities located in the United States.

Electric Lights. The Company designs and markets electric lighting products that are manufactured by others and sold under the Coleman, Powermate, Job-Pro and Camping Gaz brand names. These products include portable electric lights such as hand held spotlights, flashlights and fluorescent lanterns and a line of rechargeable lanterns and flashlights.

Spas. The Company manufactures and markets a wide range of spas, which are made primarily from acrylic, for residential applications. These products are manufactured at the Company's facility located in the United States and are distributed through a nationwide dealer network.

Camping Accessories. The Company designs, sources and markets a variety of small accessories for camping and outdoor use, such as cookware and utensils. These products are manufactured by third-party vendors to Coleman's specifications and are marketed under the Coleman brand name.

Hardware

The Company's principal products include portable generators, portable and stationary air compressors and safety and security products such as smoke alarms, carbon monoxide detectors and thermostats.

Generators. The Company is a leading manufacturer and distributor of portable generators in the United States and worldwide. These products are manufactured by the Company, using engines manufactured by

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Tecumseh, Briggs & Stratton, Vanguard, Honda and Kawasaki, at its facilities located in the United States, are marketed under the Coleman Powermate brand name and are distributed predominantly through mass merchandisers and home center chains. With its acquisition of ATI, the Company now produces advanced, light-weight generators.

Air Compressors. The Company's air compressors are manufactured at its facilities located in the United States, are marketed under the Coleman Powermate brand name and are distributed predominantly through mass merchandisers and home center chains.

Safety and Security Products. The Company manufactures a range of safety and security products for residential use, primarily smoke alarms, carbon monoxide detectors and thermostats. The Company manufactures these products at its facilities located in Mexico and markets them under the Firex, Code 1 and Coleman Sheltra brand names. These products are distributed predominantly through electrical wholesalers, mass merchandisers, and home center chains in North America and selected foreign countries, primarily Australia and the United Kingdom.

In addition, the Company offers a line of pressure washers manufactured at its facilities located in the United States and distributed predominantly through mass merchandisers and home center chains under the Coleman Powermate brand name. As part of its restructuring initiatives, the Company expects to sell its pressure washer business. See "—Business Strategy and Restructuring."

Business Strategy and Restructuring

Business Strategy

The Company's business strategy is to build upon its reputation as a leading manufacturer and marketer of high quality brand name consumer products for the outdoor recreation and hardware markets. The specific operating strategies include:

Focus on Quality and Service. Since the business of the Company was founded in the early 1900s, Coleman has built a reputation for its quality products and superior customer service. The Company is committed to continuing, and building upon, this reputation.

Introducing New Products. The Company plans to continue introducing new products. Management intends to focus on leveraging the Company's existing technologies, processes and expertise to maximize the speed and efficiency of new product development and introductions.

Developing Existing Brands. The Company believes it has some of the more prominent brand names in the outdoor recreation and hardware markets and plans to strengthen these brands through superior product design, advertising and promotion.

Expanding International Markets. Coleman is currently a market leader in several product categories in Europe and Japan. The Company plans to utilize its well-established infrastructures in Europe and Japan to expand in other core product categories and to invest appropriately to develop and build businesses in new geographic markets.

Developing Human Resources. The Company plans to continue developing, training, and motivating its personnel at all levels to achieve excellence, including developing and building its team of experienced managers and revising its management incentive programs to increase management's focus on profitability and cash flows.

Operating Efficiency. The Company plans to continue seeking ways to further improve the quality and efficiency of its business processes in order to ensure quality and realize cost savings, including, among other things, exiting low margin product lines and businesses and consolidating manufacturing, distribution and administrative facilities.

Restructuring

As part of its strategy to improve its business processes, the Company has announced several restructuring initiatives designed to reduce costs and improve profitability and competitiveness. In March 1997, the Company announced that it would close its executive offices in Golden, Colorado, with most of its administrative functions expected to return to its Wichita, Kansas, facility. In April 1997, the Company announced its intention to (i) eliminate 700 employees, which represent approximately 10% of its current work force, (ii) close or relocate three domestic factories and close one international factory, (iii) close its Geneva, Switzerland international

headquarters, (iv) rationalize its product lines, including a significant reduction in SKUs, and (v) sell its pressure washer business. In addition, the Company may sell other non-strategic businesses if suitable opportunities arise. Coleman has already begun to implement its new restructuring plan. Coleman has announced plans to close its Hastings, Nebraska factory which was used in the manufacturing of portable power generators and pressure washers, and to eliminate the jobs of its 135 factory employees. The Company expects to incur certain restructuring and other charges in connection with these initiatives during 1997. The Company recorded other charges of approximately \$2.4 million, net of taxes, for the first quarter of 1997 and expects to record a significantly greater amount of restructuring and other charges for the second quarter of 1997. There can be no assurance as to the amount of the restructuring and other charges to be recorded in the second quarter of 1997 or that restructuring and other charges will not be recorded in subsequent periods. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources."

Sales and Marketing

The following table sets forth the net revenues by class of products for the three months ended March 31, 1997 and 1996 and the years ended December 31, 1996, 1995 and 1994.

	Three months ended March 31,		Year ended December 31,		
	1997	1996	1996	1995	1994
	(In Millions)				
Outdoor Recreation	\$217.8	\$188.6	\$ 859.6	\$688.9	\$563.7
Hardware	77.7	85.0	360.6	244.7	187.9
Total	<u>\$295.5</u>	<u>\$273.6</u>	<u>\$1,220.2</u>	<u>\$933.6</u>	<u>\$751.6</u>

In the United States and Canada, the Company's outdoor recreation products are sold by the Company's own sales force and, to a lesser extent, by sales representatives that serve specialty markets and related distribution channels. Spa products, however, are sold by independent sales representatives to a nationwide dealer network and, to a lesser extent, by regional sales managers employed by the Company. The Company's hardware products are sold by Company and independent sales representatives.

The Company promotes its products through national and local advertising campaigns, frequently coordinating with retailers' promotions to maximize the benefits of its advertising efforts.

Coleman's major customers include Canadian Tire, Home Depot, Kmart, Price/Costco, Target, and Wal-Mart. Wal-Mart and its affiliates accounted for approximately 15% of the Company's 1996 consolidated net revenues. Although the loss of Wal-Mart as a customer could have an adverse effect on the Company, the Company believes its relationship with Wal-Mart is satisfactory and the Company has no reason to believe Wal-Mart will not continue as a customer.

International sales represented 32%, 24% and 23% of net revenues for the years ended December 31, 1996, 1995 and 1994, respectively. For 1996, approximately 79% of the Company's international sales were in Japan and Europe, with the balance in Latin America, Asia-Pacific, Africa and the Middle East. The Company has sales administration offices and warehouse and distribution facilities in Australia, Austria, Belgium, Brazil, the Czech Republic, France, Germany, Hungary, Italy, Japan, The Netherlands, Portugal, Spain, Switzerland, the United Arab Emirates and the United Kingdom. Each office is responsible for sales and distribution of the Company's products in the territories assigned to that office. The Company's direct export operations market its products directly to international customers in certain other markets through Company sales managers, independent distributors, and commissioned sales representatives. In total, the Company sells its products in more than 100 countries.

Seasonality

The Company's sales generally are highest in the second quarter of the year and lowest in the fourth quarter. As a result of this seasonality, the Company has generally incurred a loss in the fourth quarter. The Company's sales may be affected by weather conditions, especially during the second and third quarters of the year. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Seasonality."

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Competition

The markets in which the Company operates are highly competitive, based primarily on product quality, product innovation, price and customer service and support. The Company's competitors vary according to product line. The Company believes that no other company produces and markets the breadth of camping and outdoor recreation products marketed by the Company. Lanterns and stoves compete with, among others, products offered by Century Primus (a unit of Century Tool & Manufacturing Inc.), American Camper (a unit of Brunswick Corporation) and Dayton Hudson Corporation. The Company's insulated cooler and jug products compete with products offered by Rubbermaid Incorporated, Igloo Products Corp. (a unit of Brunswick Corporation) and The Thermos Company (a unit of Nippon Sanso KK). The Company's sleeping bags compete with, among others, American Recreation and Slumberjack (units of Kellwood Company), Academy Broadway Corp. and MZH Inc. (a unit of Brunswick Corporation), as well as certain private label manufacturers. In the tent market, the Company competes with, among others, Sears, Wenzel (a unit of Kellwood Company), Eureka (a unit of Johnson Worldwide Associates, Inc.) and Mountain Safety Research (a unit of Thaw Corporation), as well as certain private label manufacturers. The Company's backpack products compete with, among others, American Camper (a unit of Brunswick Corporation), JanSport (a unit of VF Corporation), Nike, Outdoor Products and Kelty (a unit of Kellwood Company), as well as certain private label manufacturers. The Company's competition in the electric light business includes, among others, Eveready (a unit of Ralston Purina Company) and Rayovac Corporation. The Company's spas compete with, among others, Watkins Manufacturing Corporation (d.b.a. Hot Springs, a unit of Masco Corporation) and Clark Manufacturing Company, Inc. (d.b.a. Sundance Spas). The Company's camping accessories compete primarily with Coughlan's. The Company's primary competitors in the generator business are Generac Corporation, Honda Motor Co., Ltd., Kawasaki and Yamaha. Primary competitors in the air compressor business include DeVilbiss and Campbell Hausfeld. Alfred Karcher, Inc. and Sears are the Company's primary competitors in pressure washers. The Company's safety and security products compete primarily with First Alert, American Sensor and Nighthawk (a unit of Williams Holding PLC). In addition, the Company competes with various other entities in international markets.

Patents, Trademarks, and Licenses

The Company's operations are not significantly dependent upon any single or related group of patents. While the Company does not believe any single trademark is material to its business other than the "Coleman" word mark and the "Coleman in parallelogram with lantern symbol" logo mark, it believes its trademarks taken as a whole are material to its business. Accordingly, the Company has taken, and will continue to take, actions to protect its interests in all such trademarks.

The Company licenses the Coleman name and logo under two types of licensing arrangements: general merchandise licenses and licenses to purchasers of businesses divested by Holdings. The Company's general merchandise licensing activities involve licensing the Coleman name and logo, for a royalty fee, to certain companies that manufacture and sell products that complement the Company's product lines. In connection with the divestitures of certain businesses after the Acquisition, Holdings entered into trademark license agreements with the purchasers of these businesses. The Company and Holdings receive no direct financial remuneration from the use of the Coleman name by the purchasers of the divested businesses. The Company's licensing activities are not material to the results of operations of the Company.

Research and Development

The Company's research and development efforts are linked to the process of marketing its products. New products and improvements to existing products are developed based upon the perceived needs and demands of consumers. The Company's research and development is performed primarily by an in-house team of marketing managers, engineers, draftsmen and product testers using tools such as computer-assisted design and a variety of consumer research techniques.

Industry Segments, Foreign and Domestic Operations

The Company operates in a single business segment. Certain information concerning geographic segments of the Company is set forth in Note 16 to the Notes to Consolidated Financial Statements of the Issuer contained elsewhere in this Offering Memorandum.

Employees

As of December 31, 1996, the Company employed approximately 4,200 persons full time in the United States and 2,800 persons internationally. None of the Company's United States employees are represented by unions. The Company's Canadian warehouse employees are represented by a union. All of the approximately 350 production employees at the Company's operations in France and Italy and the approximately 1,100 production employees at the Company's operations in Mexico are represented by unions. The Company believes that its relations with its employees are satisfactory and that its employees, many of whom have long-term experience with the Company, represent a valuable resource.

Properties

The Company's principal properties as of December 31, 1996 are as follows:

<u>Location</u>	<u>Principal Use</u>	<u>Building Square Footage</u>
St Genis Laval, France	Manufacture of lanterns and stoves, filling of gas cylinders, and assembly of barbecues; office and warehouse	2,070,000
Wichita, KS	Manufacture of lanterns and stoves and insulated coolers and jugs; research and development and design operations; office and warehouse	1,162,000
New Braunfels, TX	Manufacture of insulated coolers and other plastic products	338,000
Lake City, SC	Manufacture of sleeping bags	168,000
Springfield, MN	Manufacture of air compressors	166,000
Cedar City, UT	Manufacture of sleeping bags	160,000
Kearney, NE	Manufacture/assembly of portable generators and pressure washers; office and warehouse	155,000
Pacola, OK	Manufacture of outdoor folding furniture	123,000
Maize, KS	Manufacture of propane cylinders and machined parts	116,000
Chihuahua, Mexico	Manufacture of smoke alarms and carbon monoxide detectors	110,000
Hastings, NE	Manufacture of pressure washers and generators	103,000
New Ulm, MN	Manufacture of air compressors	90,000
Morovis and Orocovis, Puerto Rico	Manufacture of daypacks, sports bags, and related products	80,000

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<u>Location</u>	<u>Principal Use</u>	<u>Building Square Footage</u>
Chandler, AZ	Manufacture of acrylic spas; office and warehouse	78,000
Centenaro di Lonato, Italy	Manufacture of butane lanterns, stoves and heaters; office and warehouse	77,000
Stockport, England	Manufacture of butane cylinders, torches, lanterns and stoves; office and warehouse	60,000

The Wichita, Kansas; New Braunfels, Texas; Lake City, South Carolina; Cedar City, Utah; Pacola, Oklahoma; Chandler, Arizona; New Ulm and Springfield, Minnesota; Centenaro di Lonato, Italy; and Stockport, England facilities are owned by the Company. The owned facilities at Kearney, Nebraska reside on land leased under three leases that expire in 2007 with options to extend for three additional ten-year periods. The Maize, Kansas facility is leased by the Company under leases that terminate in 2005. The Company has an option to purchase this facility at the end of the lease period. The Hastings, Nebraska facility is leased by the Company for a term that expires in 1999 with options to extend the lease for three additional one-year periods and an option to purchase the facility during the lease term including renewal periods. The Puerto Rico facilities in Morovis and Orocovis are leased for terms that expire in 1999 and 2007, respectively. The warehouse portion of St. Genis Laval, France is leased for terms that expire in 1998, the remaining facility is owned. Approximately 48,000 square feet of the Chihuahua, Mexico property are leased for terms that expire in 1998, and the remaining facility is owned.

Legal Proceedings

Environmental Matters

Gilbert and Mosley Site. As a result of investigations undertaken in 1986, the Kansas Department of Health and Environment ("KDHE") discovered that groundwater in the downtown Wichita area (the "Gilbert and Mosley Site") was contaminated with volatile organic chemicals ("VOCs"). Coleman occupied a facility within the boundaries of the Gilbert and Mosley Site. Subsequent investigations in the area, including investigations in November 1988 by Coleman, indicated that the groundwater beneath the Coleman property is contaminated with VOCs. Coleman is in the process of remediating the contamination on its property.

The City of Wichita has entered into a voluntary agreement with KDHE in which the City agreed to investigate and then remediate contamination in the Gilbert and Mosley Site. Coleman has entered into an agreement with KDHE in which Coleman agreed to perform a similar study for the Coleman property and to implement remedial activities at its property. In addition, Coleman entered into an agreement with the City of Wichita in which Coleman agreed to fund its proportionate share of the City's study and remediation of the Gilbert and Mosley site.

All previously filed lawsuits alleging that properties in the downtown Wichita area were diminished in value as a result of discharges of volatile organic chemicals from Coleman's downtown Wichita facility have been settled and dismissed.

Maize Site. Coleman has undertaken a soil and groundwater investigation at its facility in Maize, Kansas (the "Maize Site"). Results indicate that limited VOC contamination is present in the groundwater under and to the southeast of the facility. The data has been reported to the KDHE, and Coleman has entered into an agreement with KDHE to implement appropriate remedial actions. The remediation system has been installed, and Coleman is in the process of remediating the contaminated groundwater.

Northeast Site. In 1990 Coleman undertook a soil and groundwater investigation of its facility in northeast Wichita (the "Northeast Site"). Results indicated the presence of VOCs in the groundwater and soils. Although some of the contamination may be a result of Coleman's operations at the facility, the data also indicated that

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

FILED

Jan 11 20 05
SHARON R. BOCK
CLERK & CONTROLLER
BY *[Signature]*
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

**SUPPLEMENTAL APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S
SUMMARY JUDGMENT FILING**

**VOLUME 6
(EXHIBITS 230-231)**

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File



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**Sunbeam Corporation Registration Statement for Coleman Transaction
Declared Effective by SEC**

- Coleman Merger to Occur January 6, 2000 -

Boca Raton, FL, December 6, 1999 – Sunbeam Corporation (NYSE: SOC) today announced that the Securities and Exchange Commission has declared effective Sunbeam's Registration Statement relating to the shares of Sunbeam common stock to be issued in connection with the completion of Sunbeam's acquisition of The Coleman Company, Inc. Sunbeam expects to complete the transaction on January 6, 2000.

Sunbeam Corporation is a leading consumer products Company that designs, manufactures and markets, nationally and internationally, a diverse portfolio of consumer products under such world-class brands as Sunbeam^(R), Oster^(R), Grillmaster^(R), Coleman^(R), Mr. Coffee^(R), First Alert^(R), Powermate^(R), Health o meter^(R), Eastpak^(R) and Campingaz^(R).

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The COLEMAN COMPANY, INC.
Corporate Office

December 6, 1999

Dear Stockholder:

On or about January 6, 2000, Coleman plans to merge with a subsidiary of Sunbeam Corporation. Under the February 1998 agreement relating to the merger, you will receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed. In addition, under a court-approved litigation settlement, you will receive warrants each entitling you to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003. You will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed (assuming no further increase in the number of outstanding Coleman shares).

The merger was approved by Coleman's board of directors and majority stockholder, a subsidiary of MacAndrews & Forbes Holdings Inc., on February 27, 1998. As a result, no further action by you or any other Coleman stockholder is required to complete the merger.

At the same time that Coleman's board and majority stockholder approved the merger, Sunbeam agreed to acquire indirectly about 81% of the then outstanding Coleman common stock from a MacAndrews & Forbes subsidiary. That transaction was completed on March 30, 1998. Sunbeam now owns indirectly about 79% of the outstanding Coleman common stock, as well as shares of a newly created series of Coleman voting preferred stock purchased from Coleman in July 1999, which together enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock.

As a result of several negative developments affecting Sunbeam, the market price of Sunbeam common stock has declined sharply since the transaction was first announced. Sunbeam's stock closed at \$41.75 on February 27, 1998; it closed at \$4.75 on December 3, 1999. The financial advisor which advised the then Coleman board on February 27, 1998 that the merger was fair to you has since indicated that its opinion, although correct when given, should no longer be relied upon because of the subsequent negative developments affecting Sunbeam. In addition, Sunbeam's financial advisor has advised Sunbeam that its opinion regarding the fairness to Sunbeam of the consideration payable to you under the merger agreement, although correct when given, should no longer be relied upon.

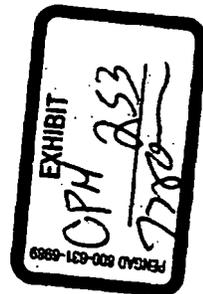
The February 1998 merger agreement provides that it cannot be amended or terminated and the amount of merger consideration has not been adjusted to reflect the decline in the market price of Sunbeam's stock. However, litigation brought on behalf of you and the other Coleman minority stockholders relating to the merger has been settled and, under the terms of the court-approved litigation settlement, you and the other Coleman minority stockholders will receive the warrants, in addition to the cash and stock provided under the merger agreement, when the merger is completed.

Instead of receiving cash, Sunbeam stock and warrants upon completion of the merger, you have the right to dissent from the merger and have the fair value of your Coleman shares appraised by a court and paid to you in cash. These appraisal rights are granted to you by Delaware law and were not affected by the litigation settlement. In order to pursue your appraisal rights, you must submit a written demand to Coleman on or before December 27, 1999 and satisfy the other requirements outlined in the attached document.

The attached document contains important information about the merger, Coleman, Sunbeam, your Delaware law appraisal rights and the litigation settlement. You should read it carefully.

Very truly yours,

Jerry W. Levin
Chairman and Chief Executive Officer



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**THE COLEMAN COMPANY, INC.
NOTICE OF MERGER
AND APPRAISAL RIGHTS
AND INFORMATION STATEMENT**

**SUNBEAM CORPORATION
PROSPECTUS**

On or about January 6, 2000, Coleman plans to merge with a subsidiary of Sunbeam Corporation. Under the February 1998 agreement relating to the merger, you will receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed. In addition, under a court-approved litigation settlement, you will receive warrants each entitling you to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003. You will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed (assuming no further increase in the number of outstanding Coleman shares).

As a result of the merger, Coleman will become a wholly owned subsidiary of Sunbeam. A copy of the merger agreement is attached as Annex I at the back of this document. You are urged to read the merger agreement carefully as it is the legal document that governs the merger.

The merger was approved by Coleman's board of directors and majority stockholder, a subsidiary of MacAndrews & Forbes Holdings Inc., on February 27, 1998. As a result, no further action by you or any other stockholder of Coleman is required to complete the merger.

At the same time that Coleman's board and majority stockholder approved the merger, Sunbeam agreed to acquire indirectly about 81% of the then outstanding Coleman common stock from the MacAndrews & Forbes subsidiary. That transaction was completed on March 30, 1998, and Sunbeam now owns indirectly about 79% of the outstanding Coleman common stock. As a result of a purchase by Sunbeam of shares of a newly created series of Coleman voting preferred stock in July 1999, Sunbeam now has the right to exercise just over 80% of the total voting power of Coleman's outstanding capital stock.

Instead of receiving cash, Sunbeam stock and warrants upon completion of the merger, you have the right to dissent from the merger and have the fair value of your Coleman shares appraised by a court and paid to you in cash. These appraisal rights are granted to you by Delaware law and were not affected by the litigation settlement. In order to pursue your appraisal rights, you must submit a written demand to Coleman on or before December 27, 1999 and satisfy the other requirements outlined in the attached document.

Sunbeam common stock trades on the New York Stock Exchange under the symbol "SOC." Coleman common stock trades on the New York Stock Exchange, the Pacific Stock Exchange and the Chicago Stock Exchange under the symbol "CLN."

This document contains important information about the merger, Coleman, Sunbeam, your Delaware law appraisal rights and the litigation settlement, including the terms of the warrants you will receive. This document is the prospectus of Sunbeam for the common stock to be issued in the merger and the common stock to be issued when the warrants are exercised. As required by Delaware law, this document also is Coleman's notice to you of your appraisal rights.

You should read this entire document carefully, including the Annexes which are found at the back of the document and the documents referred to under the caption "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155 which tells you where you can find additional information about Coleman and Sunbeam.

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Stockholders of Sunbeam and Coleman should carefully consider the risks and uncertainties affecting Sunbeam's business described in this document under the caption "RISK FACTORS" beginning on page 18.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the Sunbeam common stock to be issued under this document or determined if this document is accurate or adequate. Any representation to the contrary is a criminal offense.

This document is dated December 6, 1999 and was first mailed to you and the other stockholders of Coleman on or about December 7, 1999.

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SUMMARY

This summary highlights information that may be found in greater detail elsewhere in this document. In this summary, we have attempted to describe those matters which we believe will be of the greatest importance to you in considering the merger. This summary may not, however, contain all information that is important to you. For that reason, we urge you to read this document carefully in its entirety, including the Annexes at the back of this document and the additional documents we refer you to under "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155. In particular, you are urged to read carefully the information contained in this document under the caption "RISK FACTORS," beginning on page 18.

Q: What will I receive in the merger?

A: Under the February 1998 agreement relating to the merger, you will receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed. In addition, under a court-approved litigation settlement, you will receive warrants each entitling you to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003. You will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed (assuming no further increase in the number of outstanding Coleman shares). For further information regarding the terms of the settlement, including the terms of the warrants, see "LITIGATION SETTLEMENT AND WARRANTS" beginning on page 60.

You will not receive fractional shares of Sunbeam common stock in the merger. Instead, you will receive a check in payment for any fractional share based on the closing share price of Sunbeam common stock on the day the merger is completed. Nor will you receive any fractional warrants under the litigation settlement. Any fractional warrant will be rounded up or down to the nearest whole number.

Q: What choice do I have?

A: Your basic choice is whether to receive the cash, stock and warrants Sunbeam proposes to give you when the merger is completed, or to take action to pursue your Delaware law appraisal rights to have a court determine the value of your Coleman shares and to receive that value as determined by the court entirely in cash.

Q: What risks should I consider?

A: First, you should understand that you are receiving a fixed number of Sunbeam shares in the merger (0.5677 of a share for each Coleman share you own) and no more than a fixed number of Sunbeam warrants in the settlement (0.381 of a warrant for each Coleman share you own). Since the merger was approved, negative developments affecting Sunbeam have caused the market price of the Sunbeam shares to decline sharply (from \$41.75 per share on February 27, 1998 to \$4.75 per share on December 3, 1999). The market price per Sunbeam share may further decrease before or after the merger.

Second, please understand that the financial advisor which advised the then Coleman board on February 27, 1998 that the merger was fair to you has since indicated that its opinion, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam. Moreover, no other financial advisor has been asked to provide a fairness opinion with respect to the consideration you will receive in the merger. As a result, you do not have the benefit of an independent evaluation of the fairness of the merger consideration in deciding whether to accept the merger consideration or pursue your Delaware law appraisal rights. In addition, Sunbeam's financial advisor has advised Sunbeam that its opinion regarding the fairness to Sunbeam of the consideration payable to you under the merger agreement, although correct when given, should no longer be relied upon.

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You also should realize that Sunbeam faces the following risks that could negatively affect the value of the shares and warrants you receive:

- Sunbeam is highly leveraged which impairs its ability to obtain financing and limits cash flow available for Sunbeam's operations and may limit its competitiveness in the market place.
- Sunbeam's bank credit facility contains covenants which Sunbeam may not be able to satisfy and default provisions it may not be able to avoid, and if Sunbeam cannot, the banks could demand immediate repayment of Sunbeam's bank debt.
- Sunbeam's bank debt could become due on April 10, 2000, if Sunbeam does not get another waiver from the banks or refinance its bank debt by then, and there can be no assurance that Sunbeam would be able to repay the bank debt on that date.
- Sunbeam may not be able to service its large debt burden, which may force it to restructure or refinance its debt.
- Sunbeam's outside auditors determined that Sunbeam's 1997 internal controls were inadequate and Sunbeam cannot assure you that the corrective measures it has adopted or will adopt to address these inadequacies will be effective.
- Sunbeam had significant losses and its operations consumed significant amounts of cash in the first nine months of 1999 and in fiscal year 1998 and Sunbeam cannot assure you that it will be able to generate profits or positive cash flow from operations in the future.
- Major lawsuits have been brought against Sunbeam, including lawsuits under federal and state securities laws, and the SEC is conducting a formal investigation of Sunbeam; Sunbeam cannot predict the outcome of these lawsuits or the SEC investigation, but if Sunbeam were to lose the lawsuits, the resulting judgments would likely have a negative effect on its financial position, results of operations and cash flow.
- Sunbeam's 1998 acquisitions have increased the size of the operations Sunbeam has to manage and Sunbeam's failure to manage its operations effectively would likely cause Sunbeam to have poor operating results.
- Sunbeam's international operations expose Sunbeam to uncertainties and risks from abroad, which could negatively affect its operations and sales.
- The nature of Sunbeam's businesses requires Sunbeam to successfully develop new and innovative products on a consistent basis in order to regain profitability and increase revenues and Sunbeam may not be able to do so.
- Sunbeam's businesses are very sensitive to the strength of the U.S. retail market and any weakness in this market could adversely affect Sunbeam's financial results.
- Sunbeam operates in a highly competitive market and Sunbeam's inability to compete effectively could cause it to lose market share and could adversely affect its financial results.
- Sunbeam's sales are highly dependent on purchases from several large customers and any significant decline in these purchases or pressure from these customers to reduce prices could have a negative effect on Sunbeam's future financial performance; Sunbeam has no long-term supply contracts with any of its customers.
- Raw materials and components are critical inputs for Sunbeam's products and price hikes or problems with their supply could adversely affect Sunbeam.
- Sunbeam's operations are dependent upon third-party suppliers and service providers whose failure to perform adequately could disrupt Sunbeam's business operations.
- Sunbeam is subject to several production-related risks which could jeopardize its ability to realize anticipated sales and profits.

- The effects of Sunbeam's prior management's outsourcing of critical operating tasks and sales policies may continue to cause Sunbeam substantial difficulty.
- Weather conditions can hurt sales of some of Sunbeam's products.
- Sunbeam remains vulnerable to Year 2000 compliance problems in its systems and those of its suppliers and customers which could potentially disrupt Sunbeam's operations and may require greater than anticipated remedial expenses.
- Sunbeam's debt covenants currently do not allow Sunbeam to pay cash dividends on Sunbeam common stock.
- Negative developments since March 1998 have caused Sunbeam's common stock price to drop significantly, and the risks described in the "RISK FACTORS" section of this document may cause further declines in the price of Sunbeam common stock.
- Because many members of Sunbeam's current management and board of directors recently joined Sunbeam and do not have a long history of managing Sunbeam, there can be no assurance that Sunbeam's current management and board of directors will be able to successfully manage Sunbeam, and
- Sunbeam relies on its key personnel and the loss of one or more of those personnel could have a material adverse effect on Sunbeam's business, financial condition and results of operations.

For more detail about these and other risks, please carefully read "RISK FACTORS" beginning on page 18 and "RECENT DEVELOPMENTS AFFECTING SUNBEAM" beginning on page 26.

Q: When do you expect the merger to be completed?

A: We plan to complete the merger on or about January 6, 2000, which is the twenty-first business day following the date on which this document was first mailed to you.

Q: What are the tax consequences of the merger to Coleman stockholders?

A: Your receipt of cash, Sunbeam common stock and warrants to purchase Sunbeam common stock in exchange for the shares of Coleman common stock you own when the merger is completed is expected to be a taxable transaction for United States Federal income tax purposes and may also be a taxable transaction under applicable state, local, foreign and other tax laws. However, the tax consequences of the merger are subject to a number of qualifications, as discussed below under the caption "UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS" beginning on page 60.

The tax consequences to you of the merger will depend on your own situation. You should consult your own tax advisor for a full understanding of these tax consequences.

Q: Am I being asked to vote on the merger?

A: No. The merger agreement was approved on February 27, 1998 by Coleman's former board of directors and majority stockholder, a MacAndrews & Forbes subsidiary. As a result, no further action by you or any other Coleman stockholder is required to complete the merger.

Q: What if I want to accept the cash, stock and warrants Sunbeam proposes to give me? Should I send in my Coleman common stock certificates now?

A: If you wish to accept the cash, stock and warrants described above in exchange for the shares of Coleman common stock you own when the merger is completed, you need not take any action now. After the merger is completed, you will receive written instructions on how to surrender your Coleman common stock certificates in exchange for the merger consideration.

Q: What if I do not wish to accept the cash, stock and warrants Sunbeam proposes to give me?

A: If you object to the merger and do not wish to accept the cash, stock and warrants described above in exchange for the shares of Coleman common stock you own when the merger is completed, you have the right to dissent from the merger and have the fair value of your Coleman shares appraised by a

court and the amount determined by the court will be paid to you in cash by Coleman. If you wish to exercise this right, you must submit a written demand to coleman on or before December 27, 1999. you must also satisfy the other requirements outlined under "APPRAISAL RIGHTS" beginning on page 62. Failure to take any of the required steps on a timely basis may result in the loss of your appraisal rights.

Q: Where should I send my written demand for appraisal?

A: You should send your written demand for appraisal to the following address:

The Coleman Company, Inc.
2111 East 37th Street North
P.O. Box 2931
Wichita, Kansas 67201
Attention: Corporate Secretary
Phone number: (316) 832-2700

Q: Does Sunbeam currently pay dividends?

A: No. Sunbeam stopped paying dividends after the first quarter of 1998 and has no present intention to pay any dividends for the foreseeable future. In addition, Sunbeam's bank credit agreement prohibits Sunbeam from paying cash dividends.

Q: Who can help answer further questions?

A: If you would like additional copies of this document, or if you have questions about the merger, you should contact either Sunbeam or Coleman at the following addresses:

Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, Florida 33431
Attention: Corporate Secretary
Phone number: (561) 912-4100

The Coleman Company, Inc.
2111 East 37th Street North
P.O. Box 2931
Wichita, Kansas 67201
Attention: Corporate Secretary
Phone number: (316) 832-2700

If you would like more general information about Sunbeam or Coleman, please visit our websites at the following web addresses:

Sunbeam:
<http://www.sunbeam.com>

Coleman:
<http://www.colemanco.com>

For more details on where to find more information about the merger, please see "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155.

The Companies

Sunbeam. Sunbeam's primary business is the manufacturing, marketing and distribution of durable household and outdoor leisure consumer products through mass market and other distribution channels in the United States and internationally. Sunbeam also sells its products to professional and commercial end users, such as small businesses, health care providers, hotels and other institutions. Sunbeam's principal products include household kitchen appliances; health monitoring and care products for home use; scales for consumer and professional use for weight management and business uses; electric blankets and throws; clippers and trimmers for consumer, professional and animal uses; smoke and carbon monoxide detectors; outdoor barbecue grills; camping equipment such as tents, lanterns, sleeping bags and stoves; coolers; backpacks and book bags; and portable generators and compressors. In 1998, Sunbeam's net sales, including sales by Coleman from March 30, 1998, were about \$1,800 million, and Sunbeam's net sales for the nine months ended September 30, 1999, including sales by Coleman, were about \$1,786 million.

Sunbeam's principal executive offices are located at 2381 Executive Center Drive, Boca Raton, Florida 33431, and its telephone number is (561) 912-4100. For further information concerning Sunbeam, see "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155.

Coleman. Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Coleman's products have been sold under the Coleman® brand name since the 1920s. Coleman had net revenues in 1998 of about \$1,015 million and net revenues for the nine months ended September 30, 1999 of about \$1,018 million.

Coleman's principal executive offices are located at 2111 East 37th Street North, Wichita, Kansas 67219, and its telephone number is (316) 832-2700. For further information concerning Coleman, see "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155.

Recent Developments Affecting Sunbeam

Sunbeam has experienced significant changes and events since January 1, 1998, including:

- acquisition of control of Coleman and acquisitions of Signature Brands USA, Inc. and First Alert, Inc.,
- substantial borrowings resulting in a large debt burden and high leverage,
- major changes in Sunbeam's management and board of directors,
- restatement of Sunbeam's 1996, 1997 and first quarter 1998 financial results,
- large losses and negative cash flow in 1998 and the first nine months of 1999,
- a change in Sunbeam's auditors,
- amendments and waivers relating to Sunbeam's bank credit facility,
- filing of several lawsuits against Sunbeam, including lawsuits brought under federal and state securities laws, and commencement of a formal SEC investigation of Sunbeam,
- a review of Sunbeam's continued eligibility for listing on the New York Stock Exchange,
- acquisition of shares of a newly created series of Coleman voting preferred stock to enable Sunbeam and Coleman to file consolidated income tax returns prior to the completion of the merger, and
- announcement of plans to sell Coleman's Eastpak business and certain non-essential assets for expected net proceeds of approximately \$200 million.

We urge you to carefully read "RECENT DEVELOPMENTS AFFECTING SUNBEAM" beginning on page 26 and "RISK FACTORS" beginning on page 18.

Recent Developments Affecting Coleman

In addition to Sunbeam's acquisition of control of Coleman, Coleman has experienced significant changes and events since January 1, 1998, including:

- a review of Coleman's continued eligibility for listing on the New York Stock Exchange,
- revisions to Coleman's note payable to Sunbeam and the pledge of Coleman's assets to secure the note, and
- issuance to Sunbeam of shares of a newly created series of Coleman voting preferred stock to enable Sunbeam and Coleman to file consolidated income tax returns prior to the completion of the merger.

We urge you to carefully read "RECENT DEVELOPMENTS AFFECTING COLEMAN" beginning on page 35 and "RISK FACTORS" beginning on page 18.

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The Merger

The merger agreement is attached as Annex 1 at the back of this document. We encourage you to read the merger agreement carefully as it is the legal document that governs the merger.

Merger Consideration. Under the February 1998 agreement relating to the merger, you will receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed. In addition, under a court-approved litigation settlement, you will receive warrants each entitling you to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003. You will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed (assuming no further increase in the number of outstanding Coleman shares). On March 30, 1998, in connection with the acquisition by Sunbeam of about 81% of the then outstanding shares of Coleman common stock from a subsidiary of MacAndrew & Forbes, all outstanding Coleman employee stock options vested and became exercisable. Accordingly, holders of Coleman employee stock options now have the choice of exercising their options prior to the merger or having their options cashed out in the merger at a price equal to \$27.50 minus the per share exercise price of the option. Under the terms of the settlement, the pool of warrants available to Coleman minority stockholders will be distributed pro rata based on the number of Coleman shares held by Coleman minority stockholders at the time of the merger. The number of warrants available for distribution will not be increased in the event that additional Coleman shares are issued to Coleman minority stockholders prior to the completion of the merger. Therefore, if Coleman employee stock option holders were to exercise their options prior to the merger, the outstanding number of Coleman shares would increase and the fraction of a warrant you would receive in the merger for each of your Coleman shares would be reduced. Sunbeam and Coleman do not anticipate that Coleman employee stock option holders will exercise their options prior to the merger, however, because the exercise prices of these options are substantially above the current market price of Coleman common stock. For further information regarding the terms of the settlement, including the terms of the warrants, see "LITIGATION SETTLEMENT AND WARRANTS" beginning on page 60.

You will not receive fractional shares of Sunbeam common stock in the merger. Instead, you will receive a check in payment for any fractional share based on the closing share price of Sunbeam common stock on the day the merger is completed. Nor will you receive any fractional warrants under the terms of the litigation settlement. Any fractional warrant will be rounded up or down to the nearest whole number.

Instead of receiving the cash, stock and warrants Sunbeam proposes to give you, you may exercise your Delaware law appraisal rights if you follow the procedures and satisfy the other requirements outlined below under the caption "APPRAISAL RIGHTS" beginning on page 62.

Ownership of Sunbeam After the Merger. In the merger, Sunbeam will issue about 6,676,135 shares of Sunbeam common stock, assuming all currently outstanding options to acquire Coleman common stock are cashed out in the merger and no Coleman stockholders exercise their Delaware law appraisal rights. See "THE MERGER—Ownership Interest of Coleman Stockholders in Sunbeam After the Merger" beginning on page 58. These 6,676,135 shares of Sunbeam common stock will constitute about 6.2% of the outstanding Sunbeam shares after the merger.

On March 30, 1998, Sunbeam issued 14,099,749 shares of Sunbeam common stock to a MacAndrews & Forbes subsidiary in the transaction in which Sunbeam acquired indirectly about 81% of the then outstanding Coleman common stock (the "M&F Transaction"). These 14,099,749 shares will constitute about 13.1% of the outstanding Sunbeam shares after the merger.

In addition, under a court-approved litigation settlement, Sunbeam will issue warrants expiring August 24, 2003 to purchase about 4.98 million Sunbeam shares at a cash price of \$7 per share when the merger is completed, assuming no Coleman stockholders exercise their Delaware law appraisal rights. Sunbeam has already issued a warrant expiring August 24, 2003 to purchase 23 million Sunbeam shares at a cash price of \$7 per share to a MacAndrews & Forbes subsidiary in settlement of claims relating to the M&F Transaction. The warrants to be issued to you will have the same terms as the warrant issued to the MacAndrews & Forbes subsidiary except that the warrants issued to you, unlike the warrants issued to the MacAndrews & Forbes subsidiary, will be freely tradeable upon issuance. See "RECENT DEVELOPMENTS

AFFECTING SUNBEAM—Settlement of Claims Relating to the M&F Transaction beginning on page 32 and **"LITIGATION SETTLEMENT AND WARRANTS"** beginning on page 60. If all these warrants were exercised promptly after the merger, the shares owned by the former Coleman minority stockholders would represent about 8.6% of the then outstanding Sunbeam shares, and the shares owned by the MacAndrews & Forbes subsidiary would represent about 27.4% of the then outstanding Sunbeam shares.

The current stockholders of Sunbeam, other than the MacAndrews & Forbes subsidiary, will own about 81% of the outstanding Sunbeam shares after the merger, or about 64% if all the warrants are exercised promptly after the merger.

Conditions. The completion of the merger was originally subject to the following conditions contained in the merger agreement:

- this document had to be declared effective by the SEC;
- the shares of Sunbeam common stock to be issued in the merger had to be listed for trading on the NYSE; and
- the M&F Transaction had to be completed.

All of these conditions have already been satisfied. Therefore, assuming no court order is entered which prevents the merger from being completed, we expect that the merger will be completed on or about January 6, 2000, which is the twenty-first business day following the date on which this document was first mailed to you.

Accounting Treatment. The merger will be accounted for under the "purchase" method in accordance with generally accepted accounting principles. Therefore, the aggregate consideration paid by Sunbeam to Coleman stockholders in the merger and in the M&F Transaction will be allocated to Coleman's assets and liabilities based upon their fair market value with any excess being treated as goodwill.

Coleman's Financial Advisor. Credit Suisse First Boston Corporation acted as Coleman's financial advisor in connection with the merger. On February 27, 1998, when the merger agreement was approved by Coleman's former board of directors, Credit Suisse First Boston delivered to Coleman's former board an oral opinion, which was subsequently confirmed in writing, to the effect that, as of that date and based upon and subject to the matters described in the opinion, the cash and stock consideration you will receive under the merger agreement was fair to you from a financial point of view. Because Sunbeam did not plan to issue the warrants at the time the merger agreement was signed, Credit Suisse First Boston did not take the warrants into account when evaluating the fairness of the merger agreement consideration.

Since the date of the Credit Suisse First Boston opinion, numerous events have occurred that significantly adversely affected the price of Sunbeam common stock. When Credit Suisse First Boston was engaged by Coleman, they were not asked to render an updated opinion as of the date of this document and neither Sunbeam nor Coleman has requested that they do so. Moreover, Credit Suisse First Boston has advised Sunbeam that its opinion, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam. See **"RECENT DEVELOPMENTS AFFECTING SUNBEAM"** beginning on page 26.

For its services to Coleman, Credit Suisse First Boston has received fees of about \$4 million. See **"SPECIAL FACTORS—Financial Advisors' Opinions"** beginning on page 42.

Sunbeam's Financial Advisor. Morgan Stanley & Co., Incorporated acted as Sunbeam's financial advisor in connection with its acquisition of Coleman. On February 27, 1998, when the merger agreement was approved by Sunbeam's board of directors, Morgan Stanley rendered to Sunbeam's board of directors an oral opinion, which was subsequently confirmed in writing, to the effect that, as of that date and based upon and subject to certain matters described in the opinion, the cash and stock consideration payable in the M&F Transaction and under the merger agreement was fair to Sunbeam from a financial point of view. Because Sunbeam did not plan to issue the warrants at the time the merger agreement was signed, Morgan Stanley did not take the warrants into account when evaluating the fairness to Sunbeam of the consideration payable in the M&F Transaction and under the merger agreement.

Since the date of the Morgan Stanley opinion, a number of negative developments have occurred affecting Sunbeam and the price of Sunbeam common stock. When Morgan Stanley was engaged by Sunbeam, they were not asked to render an updated opinion as of the date of this document and neither Sunbeam nor Coleman has requested that they do so. Moreover, Morgan Stanley has advised Sunbeam that its opinion, although correct when given, should no longer be relied upon because of the subsequent negative developments affecting Sunbeam. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM" beginning on page 26.

For its services to Sunbeam in connection with the Coleman acquisition, Morgan Stanley has received fees from Sunbeam totaling about \$9.6 million. The amended engagement letter between Sunbeam and Morgan Stanley provides for the payment to Morgan Stanley of an additional transaction fee of \$680,000 when the merger is completed, based on the average market price of Sunbeam common stock on the last trading day prior to the date of this document. Sunbeam's obligation to pay this additional transaction fee to Morgan Stanley will not be affected by the fact that Sunbeam is no longer entitled to rely on Morgan Stanley's fairness opinion. See "SPECIAL FACTORS—Financial Advisors' Opinions" beginning on page 42.

Interests of Certain Persons in the Merger. You should be aware that a number of persons, including current directors and executive officers of Sunbeam and former directors and executive officers of Coleman, some of whom have subsequently rejoined Coleman, have interests in the merger that are different from or in addition to yours. See "THE MERGER—Interests of Certain Persons in the Merger" beginning on page 50. These interests include:

- the accelerated vesting, as a result of the M&F Transaction, of options to purchase Coleman common stock held by Coleman employees, officers and directors, including options exercised as a result of such accelerated vesting by two current executive officers of Sunbeam and Coleman, one of whom is a current director of Sunbeam and Coleman and a former director and executive officer of Coleman, as described below,
- the right under the merger agreement of holders of Coleman employee stock options—including one former director of Coleman and three current executive officers of Sunbeam and Coleman, as described below—to have their options to purchase shares of Coleman common stock cashed out in the merger at a price equal to \$27.50 per share minus the per share exercise price of the options,
- the right of Coleman's current and former officers, directors, employees and consultants to continued indemnification,
- the right of Coleman's officers, directors, employees and consultants—including two current executive officers of Sunbeam and Coleman and one former executive officer of Coleman, as described below—to receive severance payments as a result of the M&F Transaction, and
- the right of the MacAndrews & Forbes subsidiary from which Sunbeam acquired a controlling interest in Coleman in the M&F Transaction and former directors and executive officers of Coleman to require the registration under the federal and state securities laws of the shares of Sunbeam common stock held by them and the warrants held by the MacAndrews & Forbes subsidiary and the shares issuable upon exercise of that warrant.

Immediately after the completion of the M&F Transaction, two current executive officers of Sunbeam and Coleman exercised options which vested as a result of the M&F Transaction. Jerry W. Levin, the then Chairman and Chief Executive Officer of Coleman and the current Chairman and Chief Executive Officer of Sunbeam and Coleman, exercised 500,000 Coleman stock options at per share exercise prices ranging from \$12.25 to \$14.00 and Mr. Levin received net proceeds upon the sale of such shares of about \$9.94 million. Bobby G. Jenkins, the current Executive Vice President and Chief Financial Officer of Sunbeam and Executive Vice President of Coleman, exercised 20,000 Coleman stock options at per share exercise prices ranging from \$16.125 to \$16.434 and Mr. Jenkins received net proceeds upon the sale of such shares of about \$288,360.

Ronald O. Perelman, the sole stockholder of MacAndrews & Forbes and a member of the Coleman board at the time the agreement relating to the M&F Transaction and the merger agreement were executed, holds 500,000 Coleman stock options with an exercise price of \$14.00 per share. Paul E. Shapiro, the current Executive Vice President and Chief Administrative Officer of Sunbeam and Coleman, holds 62,500 Coleman stock options with an exercise price of \$17.062 per share and 15,000 Coleman stock options with an exercise price of \$16.125 per share. Karen K. Clark, the current Senior Vice President, Finance of Sunbeam and Senior Vice President, Finance of Coleman, holds 10,000 Coleman stock options with an exercise price of \$17.062 per share and 15,000 Coleman stock options with an exercise price of \$16.125 per share. Steven R. Isko, the current Senior Vice President and General Counsel of Sunbeam and Senior Vice President and General Counsel of Coleman, holds 10,000 Coleman stock options with an exercise price of \$17.062 per share, 7,500 Coleman stock options with an exercise price of \$16.125 per share and 2,500 Coleman stock options with an exercise price of \$12.937 per share. Upon completion of the merger, in settlement of their Coleman stock options, Messrs. Perelman, Shapiro and Isko, and Ms. Clark will receive cash payments of \$6,750,000, \$823,000, \$226,009 and \$275,005, respectively.

In connection with the change in control resulting from the completion of the M&F Transaction, Sunbeam has paid, or has caused Coleman to pay or recognize as payable, a total of \$7,903,765 in severance compensation and related benefits for approximately 117 former Coleman employees. Of that amount, \$7,597,936 was in respect of base salary and related benefits, and \$305,829 was in respect of extra pension credits. In addition, Coleman paid \$454,277 for management incentive bonuses to 37 former Coleman employees. The only principal executive officer of Coleman to receive severance compensation from Coleman as a result of the change in control was Joseph Page, the former Chief Financial Officer of Coleman, who received severance payments totaling \$280,000. Bobby G. Jenkins, the current Executive Vice President and Chief Financial Officer of Sunbeam and Executive Vice President of Coleman, received severance payments totaling \$18,583 as a result of his resignation from Coleman following the M&F Transaction, and prior to his being rehired by both Sunbeam and Coleman in the capacities mentioned above. Steven R. Isko, the current Senior Vice President and General Counsel of Sunbeam and Senior Vice President and General Counsel of Coleman, received severance payments totaling \$185,634 as a result of his resignation from Coleman following the M&F Transaction, and prior to his being rehired by both Sunbeam and Coleman in the capacities mentioned above.

Governmental and Regulatory Approvals. Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, Sunbeam and Coleman were required to make filings with the Federal Trade Commission and the Antitrust Division of the Department of Justice about the merger and observe a waiting period before completing the merger. These filings were made and the waiting period was terminated in March 1998.

United States Federal Income Tax Considerations

Your receipt of cash, Sunbeam common stock and warrants to purchase Sunbeam common stock in exchange for the shares of Coleman common stock you own when the merger is completed is expected to be a taxable transaction for United States Federal income tax purposes and may also be a taxable transaction under applicable state, local, foreign and other tax laws. In general, for United States Federal income tax purposes, you will recognize gain or loss equal to the difference between:

- the sum of the cash and the fair market value of the Sunbeam common stock and warrants you receive, and
- your adjusted tax basis in the shares of Coleman common stock you exchange in the merger.

This gain or loss will be capital gain or loss if you hold the shares of Coleman common stock as a capital asset and will be long-term capital gain or loss if you have held the shares for more than twelve months.

However, the tax consequences of the merger are subject to a number of qualifications, discussed below under the caption "UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS" beginning on page 60.

The tax consequences to you of the merger will depend on your own situation. You should consult your own tax advisor for a full understanding of all of these tax consequences.

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Litigation Settlement and Warrants

On October 21, 1998, Sunbeam announced that it had entered into a memorandum of understanding to settle class action and derivative lawsuits brought by minority stockholders of Coleman challenging the merger. A stipulation of settlement was executed on August 6, 1999. The Court of Chancery of the State of Delaware held a hearing on September 29, 1999 to consider approving the settlement. The court approved the settlement on November 12, 1999.

Under the terms of the settlement, unless you have demanded your Delaware law appraisal rights, you will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed (assuming no further increase in the number of outstanding Coleman shares). Each warrant will entitle you to purchase one share of Sunbeam common stock at a cash price of \$7 per share until August 24, 2003. The total number of warrants you receive will be based on the number of shares of Coleman common stock outstanding and the number of shares you own at the time of the merger and will be equal to the product of (A) 4,979,663, less the 497,966 warrants awarded by the court to counsel for the Coleman minority stockholders in the litigation as their fee multiplied by (B) a fraction, the numerator of which is the number of shares of Coleman common stock you hold when the merger is completed (other than any shares with respect to which Delaware law appraisal rights have been demanded) and the denominator of which is the total number of shares of Coleman common stock outstanding and owned by Coleman stockholders other than Sunbeam and its subsidiaries at the time of the merger (approximately 11,759,970 shares, assuming no further exercises of Coleman employee stock options). Sunbeam does not anticipate any further exercises of Coleman employee-stock options. The warrants will be subject to anti-dilution adjustments. No fractional warrants will be issued. Instead, the number of warrants to which you are entitled will be rounded up or down to the closest whole number. Thus, for example, if there are no further exercises of Coleman options and no anti-dilution adjustments, a Coleman stockholder who holds 100 shares of Coleman common stock at the time of the merger and does not demand Delaware law appraisal rights would be entitled to receive 38 warrants, calculated as follows:

$$(4,979,663 - 497,966) \times (100 / 11,759,970) = 38.109$$

total # of warrants available	-	total # of warrants paid to plaintiffs' counsel	X	/	# of shares owned	=	# of warrants to be received
				total # of shares owned by the Coleman minority stockholders at the time the merger is completed			

The result of this equation would then be rounded down from 38.109 to 38, the closest whole number. However, because of the possibility (although unlikely) that Coleman options will be exercised prior to the completion of the merger, you will not be able to determine the precise number of warrants you will be entitled to receive in the merger before December 27, 1999, the date by which you must submit to Coleman a written demand for your appraisal rights under Delaware law if you wish to exercise those rights. See "APPRAISAL RIGHTS" beginning on page 62. However, for a description of the warrants, see "LITIGATION SETTLEMENT AND WARRANTS" beginning on page 60.

Material Contacts Between Coleman and Sunbeam and Its Affiliates

Financial Transactions Between Coleman and Sunbeam. In connection with the M&F Transaction, Coleman repaid substantially all of its outstanding indebtedness with the proceeds of borrowings from Sunbeam. Since then, Coleman has borrowed from, and repaid funds to, Sunbeam. Through April 15, 1999, Coleman's obligations to Sunbeam were evidenced by an unsecured subordinated demand note payable by

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Coleman to Sunbeam. This note was pledged by Sunbeam to its lenders as security for Sunbeam's obligations under its bank credit facility.

In connection with the April 15, 1999 amendment to Sunbeam's bank credit facility, the Coleman note was revised to, among other things:

- lower the interest rate,
- make the note payable on April 15, 2000 rather than on demand,
- add customary representations, warranties, covenants and events of default, and
- provide that an event of default under Sunbeam's bank credit facility would constitute an event of default under the Coleman note.

As security for the revised Coleman note, Coleman pledged:

- substantially all of its domestic assets, other than real property,
- 66% of its ownership interests in its direct foreign subsidiaries and in its domestic holding companies for its foreign subsidiaries (but not the assets of these subsidiaries), and
- all of its ownership interests in its other direct domestic subsidiaries (but not the assets of these subsidiaries).

The revised Coleman note had an unpaid principal balance of \$303.2 million on September 30, 1999. Sunbeam pledged the revised Coleman note as security for Sunbeam's obligations to its lending banks under its bank credit facility and assigned to these lending banks the security pledged by Coleman for the revised Coleman note. Coleman also gave the lending banks a direct pledge of the assets securing the revised Coleman note to secure the obligations under Sunbeam's bank credit facility, subject to a cap equal to the balance due from time to time on the revised Coleman note. The revision of the Coleman note and the pledge of Coleman's assets were approved on behalf of Coleman by A. Whitman Marchand, Coleman's only disinterested director, acting as a duly authorized independent committee of the Coleman board of directors.

Under Sunbeam's bank credit facility, an event of default will occur if this document is not declared effective by the SEC on or before January 10, 2000, if the merger is not completed within 25 business days after the effectiveness of this document or if Sunbeam has to pay more than \$87.5 million in cash (excluding expenses) to complete the merger (including any amounts paid with respect to appraisal rights). An event of default of this kind would also constitute an event of default under the Coleman note, and Sunbeam's lenders would be entitled to foreclose on the Coleman note and the Coleman assets pledged as security for the Coleman note. The Coleman note, by its terms, will not be affected by the merger and will remain outstanding. For more information concerning Sunbeam's bank credit facility, including the aggregate amount of borrowings outstanding thereunder, the amount available for future borrowings and the maturity date, see "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION" beginning on page 64. See also "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Financial Transactions Between Coleman and Sunbeam" beginning on page 68.

M&F Transaction. In the M&F Transaction, which was completed on March 30, 1998, Sunbeam acquired indirectly about 81% of the then outstanding Coleman common stock (reduced to about 79% as a result of the exercise of Coleman employee stock options immediately following the M&F Transaction). As a result of a purchase by Sunbeam of shares of a newly created series of Coleman voting preferred stock in July 1999, Sunbeam now has the right to exercise just over 80% of the total voting power of Coleman's outstanding capital stock.

In the M&F Transaction, a subsidiary of MacAndrews & Forbes received 14,099,749 shares of Sunbeam common stock, which represent about 14% of the currently outstanding Sunbeam common stock, and about \$160 million in cash. In addition, in connection with the M&F Transaction, Sunbeam assumed about \$1,016 million in debt of Coleman and its parent corporations, including \$497 million of indebtedness of Coleman.

Immediately following the M&F Transaction, all the directors of Coleman resigned, the number of directors constituting the Coleman board of directors was fixed at five, and five designees of Sunbeam were

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elected as directors of Coleman. In addition, Sunbeam designees were appointed to senior management positions at Coleman. Subsequently, as a result of changes in Sunbeam's management and board of directors, in June 1998, Jerry W. Levin, the current Chairman and Chief Executive Officer of Sunbeam and Coleman, was reelected to the Coleman board. In addition, Paul E. Shapiro, the current Executive Vice President and Chief Administrative Officer of Sunbeam and Coleman, was elected to the Coleman board. The other members of the Coleman board resigned or were removed by Sunbeam. In April 1999, the size of the Coleman board was fixed at three members and A. Whitman Marchand, who is not otherwise affiliated with either Sunbeam or Coleman, was elected to the Coleman board. In July 1999, the size of the Coleman board was fixed at four and John H. Klein, an outside director of Sunbeam, was elected to the Coleman board. See "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Appointments of Former Coleman and MacAndrews & Forbes Officers to Sunbeam's Management and Board," "—Settlement of Claims Relating to the M&F Transaction" and "—Services Provided by MacAndrews & Forbes" beginning on pages 71, 71 and 72, respectively.

Registration Rights Agreement. The shares of Sunbeam common stock issued to a subsidiary of MacAndrews & Forbes in the M&F Transaction were not registered under federal or state securities laws. Accordingly, in connection with the issuance, Sunbeam entered into a registration rights agreement with the MacAndrews & Forbes subsidiary. Under the registration rights agreement, the MacAndrews & Forbes subsidiary can require Sunbeam to register under federal and applicable state securities laws the shares of Sunbeam common stock it received in the M&F Transaction. The registration rights agreement was amended in August 1998 to provide that the MacAndrews & Forbes subsidiary can also require Sunbeam to register under federal and applicable state securities laws the warrant; and the shares of Sunbeam common stock issuable upon exercise of the warrant, issued to the MacAndrews & Forbes subsidiary in settlement of legal claims related to the M&F Transaction.

Directors, officers and other affiliates of Coleman who receive shares of Sunbeam common stock in the merger can also require Sunbeam to register those shares under federal and applicable state securities laws. To exercise this right, these individuals must agree to be bound by the terms of the registration rights agreement.

Appointments of Former Coleman and MacAndrews & Forbes Officers to Sunbeam's Management and Board. In June 1998, following the removal of Sunbeam's former Chief Executive Officer and Chief Financial Officer, Sunbeam announced that Jerry W. Levin of MacAndrews & Forbes had been elected as Sunbeam's Chief Executive Officer. Mr. Levin and other Sunbeam executives that were affiliated with MacAndrews & Forbes later signed three-year employment agreements with Sunbeam. The other executives include Paul E. Shapiro, Executive Vice President and Chief Administrative Officer of Sunbeam, and Bobby G. Jenkins, Executive Vice President and Chief Financial Officer of Sunbeam. Mr. Levin and Howard Gittis of MacAndrews & Forbes also were elected to the Sunbeam board. For a description of the terms of the employment agreements entered into by Messrs. Levin, Shapiro and Jenkins, see "MANAGEMENT—Executive Compensation—Employment Agreement with Mr. Levin"; "Employment Agreements with Executives Shapiro, Jenkins and Clark" beginning on pages 142 and 143, respectively. For a further discussion of the events leading up to the appointment of Mr. Levin as Sunbeam's Chief Executive Officer and the appointment of Messrs. Levin and Gittis to the Sunbeam board, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Changes in Sunbeam's Management and Board" beginning on page 30.

Settlement of Claims Relating to the M&F Transaction. On August 12, 1998, Sunbeam announced that, following investigation and negotiation by a special committee of the Sunbeam board consisting of four directors not affiliated with MacAndrews & Forbes, Sunbeam had entered into a settlement agreement with a MacAndrews & Forbes subsidiary. The settlement:

- released Sunbeam from threatened claims of MacAndrews & Forbes and its affiliates arising from the M&F Transaction,
- enabled Sunbeam to retain the services of executive personnel affiliated with MacAndrews & Forbes who had been managing Sunbeam since mid-June of 1998, including Jerry W. Levin, Sunbeam's Chairman and Chief Executive Officer, Paul E. Shapiro, Sunbeam's Executive Vice President and

Chief Administrative Officer, and Bobby G. Jenkins, Sunbeam's Executive Vice President and Chief Financial Officer, and

- provided for the continuing management assistance and other support by MacAndrews & Forbes and its affiliates to Sunbeam described in "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Services Provided by MacAndrews & Forbes" beginning on page 72.

As part of the settlement, the MacAndrews & Forbes subsidiary received from Sunbeam a warrant expiring August 24, 2003 to purchase 23 million shares of Sunbeam common stock at a cash exercise price of \$7 per share, subject to anti-dilution adjustments. For a description of the settlement agreement and the terms of the warrant issued to the MacAndrews & Forbes subsidiary, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Settlement of Claims Relating to the M&F Transaction" beginning on page 32.

Services Provided by MacAndrews & Forbes. Under Sunbeam's August 1998 settlement agreement with a MacAndrews & Forbes subsidiary, in addition to the services of MacAndrews & Forbes' former executive personnel who have been managing Sunbeam since mid-June 1998, MacAndrews & Forbes agreed to provide management assistance and other support to Sunbeam at its request in a wide variety of areas. Sunbeam does not pay MacAndrews & Forbes and its affiliates for the services of their employees, but does reimburse them for out-of-pocket expenses. See "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Services Provided by MacAndrews & Forbes" beginning on page 72.

Acquisition of Coleman Preferred Stock. On July 12, 1999, one of Sunbeam's wholly owned subsidiaries acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock for an aggregate purchase price of approximately \$31 million. These shares, together with the shares of Coleman common stock already indirectly owned by Sunbeam, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock as of July 12, 1999. This class of preferred stock was created by Coleman and acquired by Sunbeam in order to enable Sunbeam and Coleman to file consolidated federal income tax returns and, in certain jurisdictions, consolidated state income tax returns, prior to the completion of the merger. In connection with the acquisition of these shares, Sunbeam entered into a tax sharing agreement with Coleman pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had Coleman not been included in the consolidated income tax return of Sunbeam. The terms of the voting preferred stock, the per share issue price and the terms of the tax sharing agreement were approved on Coleman's behalf by Coleman's then sole independent director. The net proceeds from the sale of the preferred stock to Sunbeam were used by Coleman to make a partial repayment on Coleman's note payable to Sunbeam. For further information regarding the terms of the preferred stock issued to Sunbeam's subsidiary, see "DESCRIPTION OF COLEMAN CAPITAL STOCK—Coleman Preferred Stock beginning on page 154."

SUMMARY HISTORICAL AND PRO FORMA FINANCIAL INFORMATION

The following summary historical financial information is derived from Sunbeam's audited consolidated financial statements and unaudited condensed consolidated financial statements. The following summary pro forma financial information is derived from Sunbeam's unaudited pro forma condensed consolidated financial statements beginning on page 72. The summary unaudited pro forma financial information gives effect to the following "Pro Forma Transactions":

- the corporate acquisitions Sunbeam made in 1998, excluding the acquisition of First Alert, Inc., the effect of which is not significant;
- the proposed acquisition by Sunbeam of the Coleman common stock held by the Coleman minority stockholders upon completion of the merger for cash, shares of Sunbeam common stock and warrants;
- the initial borrowing of approximately \$1.325 million under Sunbeam's bank credit facility;
- the original offering of an aggregate principal amount at maturity of \$2,014 million of Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures due 2018 on March 25, 1998, for net proceeds of about \$730 million; and

- the use of most of the net proceeds of the original bank borrowing and the original offering of the debentures to acquire Coleman and Signature Brands and to refinance indebtedness.

The summary unaudited pro forma financial information is not necessarily indicative of what Sunbeam's results would have been if the Pro Forma Transactions actually had occurred as of the dates indicated or of what Sunbeam's future operating results will be.

This summary historical and pro forma financial information should be read in conjunction with Sunbeam's audited consolidated financial statements beginning on page F-1, "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS" beginning on page 86 and "UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS" beginning on page 72.

While reviewing the summary historical and pro forma financial information, please note the following:

- Sunbeam accounted for the March 30, 1998 acquisition of a controlling interest in Coleman and the April 6, 1998 acquisitions of First Alert and Signature Brands under the purchase method of accounting. Accordingly, Sunbeam's consolidated financial statements include the financial position and results of operations of each of the acquired companies from the respective dates of acquisition.
- For the fiscal year ended December 31, 1998, Sunbeam took an extraordinary charge of \$122.4 million related to the early extinguishments of debt and took other charges of:
 - \$70.0 million related to the issuance of warrants to a MacAndrews & Forbes subsidiary;
 - \$62.5 million related to the write-off of goodwill;
 - \$39.4 million related to fixed asset impairments;
 - \$31 million related to compensation expense for the new employment agreements with Sunbeam's former Chairman and Chief Executive Officer and two other former senior officers; and
 - \$95.8 million related to write-downs of inventory.

See Notes 2, 3 and 11 to Sunbeam's audited consolidated financial statements.

- For the fiscal year ended December 28, 1997, Sunbeam reversed \$28.0 million of pre-tax liabilities no longer required and \$13.3 million of tax liabilities no longer required.
- For the fiscal year ended December 29, 1996, Sunbeam took restructuring, asset impairment and other charges of \$239.2 million before taxes. See Notes 12 and 13 to Sunbeam's audited consolidated financial statements.
- The unaudited pro forma condensed consolidated balance sheet as of September 30, 1999 gives pro forma effect to the proposed acquisition of the shares of Coleman common stock held by the Coleman minority stockholders as if it had occurred on September 30, 1999. The unaudited pro forma condensed consolidated statement of operations for the fiscal year ended December 31, 1998 and the nine months ended September 30, 1999 give effect to the Pro Forma Transactions, as if they had occurred on December 29, 1997, the beginning of Sunbeam's 1998 fiscal year. Also, pro forma net losses are from continuing operations and do not include extraordinary items.
- In computing the ratio of earnings to fixed charges:
 - earnings represent income (loss) from continuing operations before income taxes and fixed charges (exclusive of interest capitalized); and
 - fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense.

For the fiscal years ended December 29, 1996 and December 31, 1998, historical earnings were insufficient to cover fixed charges by \$262.2 million and \$797.1 million, respectively. For the nine months ended September 30, 1998 and 1999, historical earnings were insufficient to cover fixed charges by \$476.7 million and \$130.1 million, respectively. For the fiscal year ended December 31,

1998 and for the nine months ended September 30, 1999, on a pro forma basis, earnings were insufficient to cover fixed charges by \$834.9 million and \$139.1 million, respectively.

- At September 30, 1999, Sunbeam had goodwill and other intangible assets of \$1,809.9 million.

	Fiscal Years Ended					Nine Months Ended			
	January 1, 1995	Dec. 31, 1995	Dec. 29, 1996	Dec. 28, 1997	Dec. 31, 1998	Dec. 31, 1998 Pro Forma	September 30, 1998	September 30, 1999	September 30, 1999 Pro Forma
(In millions, except ratio and per share data)									
Statement of Operations Data:									
Net sales	\$1,044.3	\$1,016.9	\$ 984.2	\$1,073.1	\$1,836.9	\$2,098.7	\$1,322.1	\$1,786.4	\$1,786.4
Operating earnings (loss)	151.0	70.3	(244.5)	104.1	(670.0)	(697.4)	(391.7)	3.0	(0.5)
Net earnings (loss)	107.0	50.5	(208.5)	38.3	(897.9)	(824.1)	(587.1)	(155.0)	(150.7)
Earnings (loss) per share:									
Basic	1.30	0.62	(2.51)	0.45	(9.25)	(7.68)	(6.12)	(1.54)	(1.40)
Diluted	1.30	0.61	(2.51)	0.44	(9.25)	(7.68)	(6.12)	(1.54)	(1.40)
Weighted average shares outstanding:									
Basic	82.6	81.6	82.9	84.9	97.1	107.3	95.9	100.7	107.4
Diluted	82.6	82.8	82.9	87.5	97.1	107.3	95.9	100.7	107.4
Other Data:									
Ratio of earnings to fixed charges	14.4x	4.7x	—	7.2x	—	—	—	—	—
Balance Sheet Data (at period end):									
Working capital	\$ 294.8	\$ 411.7	\$ 359.9	\$ 369.1	\$ 488.5	N/A	\$ (666.5)	\$ (946.8)	\$ (1,029.5)
Total assets	1,008.9	1,158.7	1,059.4	1,058.9	3,405.5	N/A	3,503.7	3,318.0	3,436.7
Long-term debt	124.0	161.6	201.1	194.6	2,142.4	N/A	778.8	817.1	817.1
Shareholders' equity	454.7	601.0	415.0	472.1	260.4	N/A	449.6	94.7	155.1

Comparative Per Share Data

The tables below show comparative per share data for Sunbeam (on a historical and consolidated pro forma basis) and for Coleman (on a historical and pro forma equivalent basis). Historical information for Sunbeam and Coleman has been derived from the respective selected financial data for the two companies which can be found elsewhere in this document. Pro forma information for Sunbeam was derived from the Unaudited Pro Forma Condensed Consolidated Financial Statements of Sunbeam as of and for the year ended December 31, 1998 and the nine months ended September 30, 1999 which are included in "UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS" beginning on page 72. Pro forma equivalent information for Coleman was calculated by multiplying the pro forma per share amounts for Sunbeam by 0.5677, the exchange ratio of Coleman common stock for Sunbeam common stock in the merger.

	As of and for the Year Ended December 31, 1998			
	Sunbeam Historical	Coleman Historical	Pro Forma Consolidated	Coleman Pro Forma Equivalent
Cash dividends per common share	\$ 0.01	\$ 0.00	\$ 0.01	\$ 0.01
Loss per common share from continuing operations before extraordinary charge	(7.99)	(0.73)	(7.68)	(4.36)
Book value per common share	2.59	4.27	2.99	1.70

As of and for the Nine Months Ended September 30, 1999

	Sunbeam Historical	Coleman Historical	Pro Forma Consolidated	Coleman Pro Forma Equivalent
Cash dividends per common share	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
(Loss) income per common share from continuing operations before extraordinary charge	(1.54)	1.09	(1.40)	(0.79)
Book value per common share	0.94	5.17	1.44	0.82

Market Prices and Dividends

Market Prices. Sunbeam common stock is traded on the NYSE under the symbol "SOC." Coleman common stock is traded on the NYSE, the Pacific Stock Exchange and the Chicago Stock Exchange under the symbol "CLN." The table below shows:

- the closing sale prices of Sunbeam common stock and Coleman common stock, as reported on the NYSE Composite Transactions Tape, on February 27, 1998, the last trading day prior to the signing of the merger agreement,
- the closing sale prices of Sunbeam common stock and Coleman common stock, as reported on the NYSE Composite Transactions Tape, on December 3, 1999, the last trading day prior to the date of this document, and
- the equivalent pro forma prices of Coleman common stock on those dates, as determined by multiplying the last reported sale prices of Sunbeam common stock by 0.5677 and adding \$6.44.

The table below does not reflect any value attributable to the warrants to be issued to Coleman minority stockholders in settlement of the litigation relating to the merger.

	Sunbeam Common Stock	Coleman Common Stock	Coleman Equivalent
February 27, 1998	\$41.750	\$20.875	\$ 30.14
December 3, 1999	<u>4.750</u>	<u>9.313</u>	<u>9.14</u>

The number of shares of Sunbeam common stock to be received by Coleman stockholders in the merger is fixed at 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock. This number will not be adjusted in the event of any increase or decrease in the price of either Sunbeam common stock or Coleman common stock between February 27, 1998 and the day on which the merger is completed. Since February 27, 1998, the market price of Sunbeam common stock reached a high of \$53 on March 4, 1998 and a low of \$4.125 on November 5 and 8, 1999. It was \$4.750 on December 3, 1999, the last trading day prior to the date of this document, and may increase or decrease between the date of this document and the date on which the merger is completed. Stockholders of Coleman are urged to obtain current market quotations for Sunbeam common stock and Coleman common stock. See "RISK FACTORS" beginning on page 18.

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The following table shows, for the periods indicated, the range of the high and low sale prices of Coleman common stock and Sunbeam common stock, respectively, as reported on the NYSE Composite Transactions Tape.

	Coleman Common Stock		Sunbeam Common Stock	
	High	Low	High	Low
1997				
First Quarter	\$16.125	\$11.500	\$34.500	\$24.625
Second Quarter	19.125	12.875	40.750	30.000
Third Quarter	18.000	15.188	45.750	35.375
Fourth Quarter	16.813	12.375	50.438	37.000
1998				
First Quarter	\$35.563	\$12.063	\$53.000	\$35.438
Second Quarter	31.750	10.812	45.563	8.188
Third Quarter	12.000	8.938	10.375	5.125
Fourth Quarter	10.188	7.438	7.313	4.625
1999				
First Quarter	\$10.625	\$ 8.188	\$ 7.500	\$ 5.500
Second Quarter	9.563	6.625	9.125	5.125
Third Quarter	9.750	8.875	8.000	5.625
Fourth Quarter (through December 3, 1999)	9.812	8.687	6.250	4.125

As of December 3, 1999, the last trading day prior to the date of this document, there were 55,827,490 shares of Coleman common stock outstanding, which were held of record by 548 holders, and 100,902,392 shares of Sunbeam common stock outstanding, which were held of record by 4,529 holders.

The shares of Sunbeam common stock to be issued in the merger have been listed for trading on the NYSE. Sunbeam intends to file an application with the NYSE to list the shares of Sunbeam common stock issuable upon exercise of the warrants. For a discussion of matters relating to Sunbeam's continued listing on the NYSE, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—New York Stock Exchange Listing" beginning on page 34.

For a discussion of matters relating to Coleman's continued listing on the NYSE, see "RECENT DEVELOPMENTS AFFECTING COLEMAN" beginning on page 35. Following the completion of the merger, the Coleman common stock will be delisted from all of the stock exchanges on which it is listed and deregistered under the Exchange Act.

Sunbeam Dividend Policy. Through the first quarter of 1998, Sunbeam's practice had been to pay a dividend at a quarterly rate of \$.01 per share. Sunbeam discontinued paying dividends after the first quarter of 1998 and has no present intention to pay any dividends for the foreseeable future. Moreover, Sunbeam's bank credit facility, as amended, prohibits Sunbeam from paying cash dividends.

Coleman Dividend Policy. Coleman has not declared a cash dividend on its common stock since its initial public offering in February 1992. Under the merger agreement, Coleman is prohibited from paying any cash dividends prior to the completion of the merger.

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RISK FACTORS

In reviewing the information contained in this document and in deciding whether to accept the cash, stock and warrants Sunbeam proposes to give you, or to dissent from the merger and have the fair value of your shares appraised by a court and paid to you in cash, you should consider the following:

The number of Sunbeam shares and warrants you receive for each Coleman share has not been and will not be adjusted

Unless you pursue your appraisal rights, you will receive \$6.44 in cash, 0.5677 of a share of Sunbeam common stock and 0.381 of a Sunbeam warrant (assuming no further increase in the number of outstanding Coleman shares), for each share of Coleman common stock you own when the merger is completed. The number of Sunbeam shares and warrants you will receive has not been adjusted to reflect the decrease in the market price of Sunbeam common stock and will not be adjusted to reflect any future changes in the market price of either Sunbeam common stock or Coleman common stock. Since February 27, 1998, the market price of Sunbeam common stock reached a high of \$53 on March 4, 1998 and a low of \$4.125 on November 5 and 8, 1999. It was \$4.75 on December 3, 1999, the last trading day prior to the date of this document, and may increase or decrease between the date of this document and the date on which the merger is completed. Variations in the price of Sunbeam common stock may be the result of changes in the business, operations or prospects of Sunbeam or Coleman, general market and economic conditions and other factors. See "—Negative developments since March 1998 have caused Sunbeam's common stock price to drop significantly, and the risks described in the "RISK FACTORS" section of this document may cause further declines in the price of Sunbeam common stock." Stockholders of Coleman are urged to obtain current market quotations for Sunbeam common stock and Coleman common stock. See "SUMMARY—Market Prices and Dividends."

Coleman's financial advisor has advised Coleman that its opinion as to the fairness of the consideration to be paid to you under the February 1998 merger agreement upon completion of the merger should no longer be relied upon and no other financial advisor has been asked to provide a fairness opinion. Therefore, you do not have the benefit of an independent evaluation of the fairness of the merger to you from a financial point of view in deciding whether to accept the cash, stock and warrants Sunbeam proposes to give you or pursue your Delaware law appraisal rights

As a result of the adverse developments affecting Sunbeam described in the section of this document captioned "RECENT DEVELOPMENTS AFFECTING SUNBEAM" beginning on page 26, Coleman's financial advisor, Credit Suisse First Boston, has advised Coleman that its February 1998 opinion as to the fairness of the consideration payable to you under the merger agreement should no longer be relied upon. Therefore, you should no longer rely on the Credit Suisse First Boston opinion or on the February 1998 determination of the then Coleman board that the consideration payable under the merger agreement was fair to you from a financial point of view, since that determination was based, at least in part, on the Credit Suisse First Boston opinion. As a result, you do not have the benefit of an independent evaluation of the fairness of the merger to you from a financial point of view in deciding whether to accept the cash, stock and warrants Sunbeam proposes to give you or pursue your Delaware law appraisal rights.

Sunbeam is highly leveraged which impairs its ability to obtain financing and limits cash flow available for Sunbeam's operations and may limit its competitiveness in the market place

Sunbeam is highly leveraged, with indebtedness that is very large when compared to its stockholders' equity. Much of its indebtedness was incurred to finance three corporate acquisitions in 1998. At September 30, 1999, Sunbeam's consolidated indebtedness was approximately \$2,322.7 million and its stockholders' equity was approximately \$94.7 million, including approximately \$1,809.9 million of goodwill and other intangible assets. If required, Sunbeam may incur additional indebtedness under the bank credit facility or, subject to restrictions in the bank credit facility, through other borrowings. The indenture governing Sunbeam's zero coupon convertible senior subordinated debentures does not limit Sunbeam's ability to incur additional indebtedness. You should carefully read Sunbeam's audited consolidated financial statements beginning on page F-1.

Sunbeam's high leverage has important consequences. For example:

- Sunbeam's ability to obtain additional financing for working capital, capital expenditures, acquisitions or general corporate purposes is and may continue to be impaired,
- all or a substantial portion of Sunbeam's cash flow from operations must be dedicated to the payment of principal and interest on Sunbeam's indebtedness; therefore cash available for its operations and other purposes will be limited,
- Sunbeam may be substantially more leveraged than some of its competitors, which may place it at a competitive disadvantage,
- Sunbeam may be less able to adjust rapidly to changing market conditions, and
- Sunbeam's results of operations could be adversely affected, particularly in the event of a downturn in general economic conditions or Sunbeam's business.

Sunbeam's bank credit facility contains covenants which Sunbeam may not be able to satisfy and default provisions it may not be able to avoid, and, if Sunbeam cannot, the banks could demand immediate repayment of Sunbeam's bank debt

As of September 30, 1999, Sunbeam had incurred about \$1,500 million in borrowings and had availability to borrow about \$200 million under the bank credit facility. The bank credit facility contains covenants which require Sunbeam to meet financial tests and ratios relating to Sunbeam's future performance which it may not be able to satisfy. If Sunbeam cannot satisfy these tests and ratios it would be in default. The bank credit facility also provides that the occurrence of any of the following events, which Sunbeam may not be able to avoid, would be an event of default:

- if Sunbeam fails to have the SEC declare this document effective by January 10, 2000,
- if Sunbeam fails to complete the merger within 25 business days after this document is declared effective by the SEC, or
- if Sunbeam has to pay more than \$87.5 million in cash to complete the merger, including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses.

An event of default would give the banks the right to demand immediate repayment—a demand Sunbeam might not be able to meet.

Sunbeam's bank debt could become due on April 10, 2000, if Sunbeam does not get another waiver from the banks or refinance its bank debt by then, and there can be no assurance that Sunbeam would be able to repay the bank debt on that date

In 1998, Sunbeam was in violation of some of the covenants of the bank credit facility, but the banks waived these violations first until December 31, 1998, then until April 10, 1999, then until April 15, 1999 and now until April 10, 2000. However, if Sunbeam does not get another waiver or refinance the bank debt by April 10, 2000, the banks would have the right to demand immediate repayment—a demand which Sunbeam might not be able to meet.

Sunbeam may not be able to service its large debt burden, which may force it to restructure or refinance its debt

To meet its debt service requirements, Sunbeam must be able to successfully implement its business strategy and integrate into its operations the three companies Sunbeam acquired in 1998. In addition, Sunbeam's future financial and operating performance will affect its ability to repay or to refinance its indebtedness. Sunbeam's future financial and operating performance is subject to prevailing economic and competitive conditions and to financial, business and other factors which may be beyond Sunbeam's control.

Sunbeam cannot assure you that its operating cash flow and capital resources will be sufficient to meet its debt service requirements. For the nine months ended September 30, 1999 and the year ended December 31, 1998 Sunbeam's earnings were insufficient to cover its fixed charges by approximately \$130.1 million

and \$797.1 million, respectively. If Sunbeam does not have enough cash flow and capital resources to meet its debt service obligations, Sunbeam may be forced to reduce or delay capital expenditures, sell assets, or seek to obtain additional equity capital. Sunbeam also might be forced to refinance or restructure its debt, including its zero coupon convertible subordinated debentures. Although Sunbeam does not have any firm plans or arrangements to restructure its debt, a restructuring, if Sunbeam decided to pursue one, could involve one or more exchange offers, tender offers or consent solicitations involving the debentures.

Sunbeam's outside auditors determined that Sunbeam's 1997 internal controls were inadequate and Sunbeam cannot assure you that the corrective measures it has adopted or will adopt to address these inadequacies will be effective

In October 1998, Sunbeam's auditors at the time, Arthur Andersen LLP, told Sunbeam that the design and effectiveness of its internal controls were inadequate to detect material misstatements in the preparation of Sunbeam's 1997 annual and quarterly financial statements. As described further in "CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE" beginning on page 118, Sunbeam has restated its financial results for a six-quarter period from the fourth quarter of 1996 through the first quarter of 1998. Sunbeam cannot assure you that any interim or final corrective measures Sunbeam has adopted or will adopt to address the inadequacies in its internal controls will be effective.

Sunbeam had significant losses and its operations consumed significant amounts of cash in the first nine months of 1999 and in fiscal year 1998 and Sunbeam cannot assure you that it will be able to generate profits or positive cash flow from operations in the future

For the nine months ended September 30, 1999 and the year ended December 31, 1998, Sunbeam had consolidated net losses of approximately \$155.0 million and \$897.9 million, respectively, and net cash used in operations of \$73.2 million and \$190.4 million, respectively. Sunbeam cannot assure you that it will be able to generate profits or positive cash flow from operations in the future. See "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS" beginning on page 86 for a further discussion.

Major lawsuits have been brought against Sunbeam, including lawsuits under federal and state securities laws, and the SEC is conducting a formal investigation of Sunbeam; Sunbeam cannot predict the outcome of these lawsuits or the SEC investigation, but if Sunbeam were to lose the lawsuits, the resulting judgments would likely have a negative effect on its financial position, results of operations and cash flow

Litigation. Beginning in April 1998 many lawsuits alleging claims arising under Delaware law, Texas law and federal and state securities laws have been filed against Sunbeam and some of its former directors and officers, some of its current directors and its former auditor in various federal and state courts. Many of these lawsuits relate to Sunbeam's financial performance from the second quarter of 1997 through the second quarter of 1998. Many plaintiffs are claiming that Sunbeam's prior management misrepresented and omitted material information in its public filings and in their statements concerning its historical and expected future results of operations for the purpose of artificially inflating the market price of Sunbeam common stock. Currently Sunbeam cannot predict the outcome of these lawsuits, evaluate the likelihood of Sunbeam's success in any particular case, or evaluate the range of potential loss. If Sunbeam were to lose these lawsuits, judgments would likely have a material adverse effect on Sunbeam's financial position, results of operations and cash flows.

Sunbeam's insurers are attempting to have the directors' and officers' liability policies it has with them voided or canceled or have advised Sunbeam that they do not intend to provide coverage with respect to these lawsuits. Failure by Sunbeam to obtain insurance recoveries from its liability insurers following an adverse judgment against Sunbeam or any persons it is obligated to indemnify in any of the lawsuits discussed above could have a material adverse effect on Sunbeam's financial position, results of operations and cash flow.

SEC Investigation. In July 1998, the SEC commenced a formal investigation of Sunbeam after informing Sunbeam in the previous month of an informal investigation. Although Sunbeam believes that it

has cooperated with the SEC and furnished the SEC with documents they requested, Sunbeam has, however, declined to provide the SEC with material that Sunbeam believes is subject to the attorney-client privilege and the work product immunity. Sunbeam cannot predict how long this investigation will last or its outcome. In addition, Sunbeam cannot at this time determine what actions, if any, the SEC might take against it or what effect any action might have on Sunbeam. For further information regarding the SEC investigation of Sunbeam, please see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—SEC Investigation" beginning on page 32.

Product-Related Liabilities. As a consumer goods manufacturer and distributor, Sunbeam faces the constant risks of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. These claims could result in liabilities that could have a material adverse effect on Sunbeam's financial position and results of operations. Some of the product lines Sunbeam acquired in the 1998 acquisitions have increased its exposure to product liability and related claims.

See "BUSINESS OF SUNBEAM—Litigation and Other Contingent Liabilities" beginning on page 126 for more information about lawsuits Sunbeam is involved in, the SEC investigation and other contingent liabilities.

Sunbeam's 1998 acquisitions have increased the size of the operations Sunbeam has to manage and Sunbeam's failure to manage its operations effectively would likely cause Sunbeam to have poor operating results

The 1998 acquisitions of Coleman, First Alert, and Signature Brands have resulted in a substantial increase in the size of Sunbeam's operations. As a result, Sunbeam must effectively use its employees and management, operational, and financial resources to manage its expanded operations. A failure on Sunbeam's part to successfully integrate and effectively manage its expanded operations would likely cause Sunbeam to have poor operating results.

Sunbeam's international operations expose Sunbeam to uncertainties and risks from abroad which could negatively affect its operations and sales

Sunbeam currently has sales in countries where economic growth has slowed, primarily Japan and Korea; or where economies have been unstable or hyperinflationary in recent years, primarily Mexico and Venezuela. The economies of other foreign countries important to Sunbeam's operations, including other countries in Latin America and Asia, could also suffer slower economic growth or instability in the future.

The following are among the risks that could negatively affect Sunbeam's operations and sales in foreign markets:

- new restrictions on access to markets,
- currency devaluation,
- new tariffs,
- adverse changes in monetary and/or tax policies,
- inflation, and
- governmental instability.

Should any of these risks occur, it could impair Sunbeam's ability to export its products and result in a loss of sales from its international operations.

The nature of Sunbeam's businesses requires Sunbeam to successfully develop new and innovative products on a consistent basis in order to regain profitability and increase revenues and Sunbeam may not be able to do so

Sunbeam must develop new and innovative products to regain profitability and increase revenues. In the past Sunbeam has experienced difficulties in developing and introducing quality new products on a timely basis. Sunbeam may not be able to meet its schedules for future product development. Failure to develop and

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manufacture successful new products could have a material adverse effect on Sunbeam's future financial performance.

Sunbeam's businesses are very sensitive to the strength of the U.S. retail market and any weakness in this market could adversely affect Sunbeam's financial results

The strength of the retail economy in the United States has a significant impact on Sunbeam's performance. Weakness in consumer confidence and poor financial performance by retail outlets, including the financial weakness or bankruptcy of retail outlets, especially mass merchants, may adversely impact Sunbeam's future financial results.

Sunbeam operates in a highly competitive market and Sunbeam's inability to compete effectively could cause it to lose market share and could adversely affect its financial results

Sunbeam operates in a highly competitive environment. Sunbeam has numerous domestic and foreign competitors, and many of them are financially strong and capable of competing effectively with Sunbeam. Competitors may take actions to match Sunbeam's new product introductions and other initiatives. Some competitors may be willing to reduce prices and accept lower profit margins to compete with Sunbeam. As a result of this competition, Sunbeam could lose market share and sales and suffer losses, which could have a material adverse effect on Sunbeam's future financial performance.

Sunbeam's future success will significantly depend upon its ability to remain competitive in the areas of price, quality, marketing, product development, manufacturing, distribution, order processing and customer service. Sunbeam cannot assure you that it will be able to compete effectively in all these areas in the future.

Sunbeam's sales are highly dependent on purchases from several large customers and any significant decline in these purchases or pressure from these customers to reduce prices could have a negative effect on Sunbeam's future financial performance; Sunbeam has no long-term supply contracts with any of its customers

Due to the consolidation of the U.S. retail industry, Sunbeam's customer base has become relatively concentrated. Wal-Mart Stores, Inc., Sunbeam's largest single customer, accounted for 18% of Sunbeam's net sales in 1998, and its five largest customers combined accounted for 38% of its 1998 net sales.

Sunbeam has no long-term supply contracts with any of its customers. As a result, Sunbeam must receive a continuous flow of new orders from its large, high-volume retailing customers. Sunbeam has responded to the challenges of its markets by pursuing strategic relationships with large, high-volume merchandisers. However, Sunbeam cannot assure you that it can continue to successfully meet the needs of Sunbeam's customers. In addition, failure to obtain anticipated orders or delays or cancellations of orders or significant pressure to reduce prices from key customers could have a material adverse effect on Sunbeam's future financial performance.

Raw materials and components are critical inputs for Sunbeam's products and price hikes or problems with their supply could adversely affect Sunbeam

Raw materials and components constitute a significant portion of the cost of Sunbeam's goods. Factors which are largely beyond Sunbeam's control, such as movements in commodity prices for the specific materials Sunbeam requires, may affect the future cost of such raw materials and components. In addition, any inability of Sunbeam's suppliers to timely deliver raw materials and components or any unanticipated change in Sunbeam's suppliers could be disruptive and costly to Sunbeam.

A significant failure by Sunbeam to contain raw material or component costs could have a material adverse effect on its future financial performance. In addition, delays or cancellations by suppliers could adversely affect results.

Sunbeam's operations are dependent upon third-party suppliers and service providers whose failure to perform adequately could disrupt Sunbeam's business operations

Sunbeam currently manufactures many of its products, but it sources many of its parts and products from third parties. Sunbeam's ability to select reliable vendors who provide timely deliveries of quality parts

and products will impact its success in meeting customer demand for timely delivery of quality products. Any inability of Sunbeam's suppliers to timely deliver quality parts and products or any unanticipated change in suppliers or pricing of products could be disruptive and costly to Sunbeam.

Sunbeam has entered into various arrangements with third parties for the provision of back-office administrative services that it used to perform internally. Sunbeam now outsources accounts payable, collection of accounts receivable, customer service and some necessary computer systems servicing, among other things. If any of these third-party service providers failed to perform adequately, Sunbeam's normal business operations could be disrupted. Among other things, this could hurt Sunbeam's sales, collections, customer service, cash flow and profitability.

Sunbeam is subject to several production-related risks which could jeopardize its ability to realize anticipated sales and profits

To realize sales and operating profits at anticipated levels, Sunbeam must manufacture, source and deliver in a timely manner products of high quality. Among others, the following factors can have a negative effect on Sunbeam's ability to do these things:

- labor difficulties,
- scheduling and transportation difficulties,
- management dislocation,
- substandard product quality, which can result in higher warranty, product liability and product recall costs,
- delays in development of quality new products,
- changes in laws and regulations, including changes in tax rates, accounting standards, environmental laws and occupational health and safety laws, and
- changes in the availability and costs of labor.

The effects of Sunbeam's prior management's outsourcing of critical operating tasks and sales policies may continue to cause Sunbeam substantial difficulty

Sunbeam's prior management substantially reduced the number of its employees and hired third parties to perform many of its critical operating tasks, including handling of accounts payable, computer support, customer service and collection of accounts receivable. Sunbeam is currently evaluating the effectiveness of outsourcing these activities and are hiring personnel to perform some of these tasks in-house once again. Sunbeam may experience disruption in critical services and other difficulties while it implements necessary staff increases and changes in prior management's outsourcing policy.

Sunbeam's prior management increased sales of products in some prior periods by providing retailers with substantial price discounts or attractive payment terms to induce them to purchase more products than they needed at the time. Sunbeam believes this caused many of its customers to build up inventory in its products which reduced Sunbeam's sales and profitability through 1998. Although Sunbeam believes that the excess inventory maintained by retailers has been eliminated, Sunbeam may not have correctly evaluated the amount of or the impact of such inventory practices, which may continue to negatively impact its sales and profitability.

Weather conditions can hurt sales of some of Sunbeam's products

Weather conditions may negatively impact sales of some of Sunbeam's products. For instance, Sunbeam may not sell as many portable generators as anticipated if there are fewer natural disasters such as hurricanes and ice storms; mild winter weather may negatively impact sales of electric blankets, some health products and smoke detectors; and the late arrival of summer weather may negatively impact sales of outdoor camping equipment and grills.

Sunbeam remains vulnerable to year 2000 compliance problems in its systems and those of its suppliers and customers which could potentially disrupt Sunbeam's operations and may require greater than anticipated remedial expenses

Sunbeam is preparing for the impact of the Year 2000 on its operations. Year 2000 issues could include potential problems in Sunbeam's information technology and other systems that it use in its operations. Year 2000 system failures could affect routine but critical operations such as:

- forecasting,
- purchasing,
- production,
- order processing,
- inventory control,
- shipping, and
- billing and collections.

In addition, system failures could affect security, payroll operations and employee safety. Third parties who fail to adequately address their own Year 2000 issues could also expose Sunbeam to potential risks.

Systems and applications that Sunbeam had identified as not Year 2000 ready and which are critical to its operations include:

- financial software systems, which process:
 - order entry,
 - purchasing,
 - production management,
 - general ledger,
 - accounts receivable,
 - accounts payable functions, and
 - payroll applications, and
- critical applications in Sunbeam's manufacturing and distribution facilities, such as warehouse management applications.

Sunbeam has largely implemented the corrective work described above and expects to complete final testing and implementation of such systems in the fourth quarter of 1999.

Sunbeam's failure to timely complete its Year 2000 compliance work could have a material adverse impact on Sunbeam. In addition, the failure of its third-party suppliers and customers to become Year 2000 compliant could have a material adverse impact on Sunbeam.

At this time, Sunbeam believes that the most likely "worst-case" scenario relating to Year 2000 involves potential disruptions in areas in which its operations must rely on third parties, such as suppliers, whose systems may not work properly after January 1, 2000. While these system failures could significantly affect some of Sunbeam's important operations, currently it cannot estimate either the likelihood or the potential cost of such failures. If Sunbeam does not develop appropriate contingency plans before January 1, 2000, the impact on its operations could be material.

Sunbeam currently estimates that the total cost of addressing and remedying Year 2000 issues and enhancing its operating systems is about \$64 million. Through the first nine months of 1999, including costs incurred in 1998, Sunbeam spent about \$60 million to address Year 2000 issues, with approximately \$41 million of these expenditures occurring in the first nine months of 1999. As Sunbeam completes its

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assessment of the Year 2000 issues, it may determine that the actual expenditures it must incur may be materially higher than its current estimates. The bank credit facility does not permit Sunbeam to spend more than \$50 million on Year 2000 testing and remediation during 1999.

See "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—Year 2000 Readiness Disclosure" beginning on page 113 for more details of its Year 2000 assessment and compliance efforts.

Sunbeam's debt covenants currently do not allow Sunbeam to pay cash dividends on Sunbeam common stock

The bank credit facility prohibits Sunbeam from paying cash dividends on Sunbeam common stock. Accordingly, Sunbeam cannot assure you that Sunbeam will be able to pay dividends on Sunbeam common stock. In any event, Sunbeam currently does not intend to pay dividends on Sunbeam common stock. Sunbeam discontinued paying dividends beginning in the second quarter of 1998. See the "SUMMARY—Comparative Per Share Data" section beginning on page 15 for information concerning the history of Sunbeam's dividend payments.

Negative developments since March 1998 have caused Sunbeam's common stock price to drop significantly, and the risks described in the "RISK FACTORS" section of this document may cause further declines in the price of Sunbeam common stock

The price of Sunbeam common stock has dropped significantly since March 1998. Sunbeam believes this was the result of many of the negative developments described in the "RECENT DEVELOPMENTS AFFECTING SUNBEAM" section beginning on page 26. On March 18, 1998, the last trading day prior to former management's announcement of lower than expected net sales for the first quarter of 1998, the last reported sale price of Sunbeam common stock was \$50.625 per share. On December 3, 1999, the last reported sale price of Sunbeam common stock was \$4.750 per share. Sunbeam cannot assure you that the market price of Sunbeam common stock will not experience further declines as a result of the risks described in this "RISK FACTORS" section or otherwise. See the "SUMMARY—Market Prices and Dividends" section beginning on page 16 for details of Sunbeam common stock's recent trading prices.

Because many members of Sunbeam's current management and board of directors recently joined Sunbeam and do not have a long history of managing Sunbeam, there can be no assurance that Sunbeam's current management and board of directors will be able to successfully manage Sunbeam

Sunbeam's board of directors replaced several members of Sunbeam's management in June of 1998, including Albert J. Dunlap, Sunbeam's Chairman and Chief Executive Officer. Since that time, six new directors have been appointed or elected to the Sunbeam board. Although Sunbeam's current management has significant experience in the consumer products industry, including working at Coleman, most of Sunbeam's current management and many members of its board of directors had no direct exposure to Sunbeam's operations prior to June 1998. Accordingly, there can be no assurance that Sunbeam's current management and board of directors will be able to successfully manage Sunbeam.

Sunbeam relies on its key personnel and the loss of one or more of those personnel could have a material adverse effect on Sunbeam's business, financial condition and results of operations.

Sunbeam's operations and prospects depend in large part on the performance of its senior management team. There can be no assurance that Sunbeam would be able to find qualified replacements for any of these individuals if their services were no longer available. The loss of the services of one or more members of Sunbeam's senior management team could have a material adverse effect on Sunbeam's business, financial condition and results of operations. For further information regarding Sunbeam's senior management team, see the discussion below under the caption "MANAGEMENT" beginning on page 133.

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RECENT DEVELOPMENTS AFFECTING SUNBEAM

The 1998 Acquisitions

On March 2, 1998, in addition to announcing its agreement to acquire Coleman, Sunbeam announced that it had entered into separate agreements to acquire Signature Brands and First Alert, companies not affiliated with Coleman or MacAndrews & Forbes.

In the M&F Transaction, which was completed on March 30, 1998, Sunbeam acquired about 81% of the then outstanding shares of Coleman common stock from Coleman (Parent) Holdings, Inc., a subsidiary of MacAndrews & Forbes. This represented MacAndrews & Forbes' entire interest in Coleman. In exchange, the MacAndrews & Forbes subsidiary received about 14% of the currently outstanding shares of Sunbeam common stock and about \$160 million in cash. Sunbeam also assumed about \$1,016 million of debt, including \$497 million of indebtedness of Coleman. Immediately after the M&F Transaction, as a result of the exercise of Coleman employee stock options, Sunbeam's ownership of Coleman decreased to about 79% of the outstanding shares of Coleman common stock.

At the same time Sunbeam agreed to acquire the Coleman shares from the MacAndrews & Forbes subsidiary, Sunbeam also agreed to acquire the remaining shares of Coleman common stock in the merger and the MacAndrews & Forbes subsidiary voted its shares to approve the merger. Under the February 1998 merger agreement, you will receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed. In addition, unless you exercise and perfect your Delaware law appraisal rights, you will receive warrants each entitling you to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003, under a court-approved settlement of litigation relating to the merger. Under the terms of the settlement, you will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed, assuming the number of outstanding shares of Coleman common stock does not increase prior to the completion of the merger as a result of further exercises of Coleman employee stock options. In the aggregate, the Coleman minority stockholders will receive about 6.7 million shares of Sunbeam common stock, about \$87 million in cash, including cash outs of Coleman's remaining employee stock options, and warrants to purchase about 4.98 million shares of Sunbeam common stock (less the warrants awarded by the court to plaintiffs' counsel as their fee), assuming no Coleman stockholders exercise their Delaware law appraisal rights. See "—Settlement of Claims Relating to the M&F Transaction" for information regarding the settlement of legal claims of a subsidiary of MacAndrews & Forbes relating to the M&F Transaction. See "LITIGATION SETTLEMENT AND WARRANTS" for information regarding the settlement of legal claims of Coleman stockholders relating to the merger.

On April 3, 1998, Sunbeam acquired more than 90% of the stock of each of Signature Brands and First Alert in cash tender offers. On April 6, 1998, Sunbeam acquired the remaining shares of each of Signature Brands and First Alert in merger transactions. Signature Brands is a leading manufacturer of a comprehensive line of consumer and professional products, including coffee makers marketed under the Mr. Coffee® brand name and consumer health products marketed under the Health-o-Meter®, Counselor® and Borg® brand names. Signature Brands had revenues of about \$279 million in 1997. First Alert is the worldwide leader in residential fire safety equipment, including smoke and carbon monoxide detectors marketed under the First Alert® brand name. First Alert had revenues of about \$187 million in 1997. Sunbeam paid about \$255 million in cash, including the paying down of debt, to acquire Signature Brands. Sunbeam paid about \$133 million in cash and assumed about \$49 million in debt—a total consideration of about \$182 million—to acquire First Alert.

On July 12, 1999, one of Sunbeam's wholly owned subsidiaries acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock for an aggregate purchase price of approximately \$31 million. These shares, together with the shares of Coleman common stock already indirectly owned by Sunbeam, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock. Coleman created these shares and Sunbeam acquired them in order to enable Sunbeam and Coleman to file consolidated federal income tax returns and, in certain jurisdictions, consolidated state income tax returns, prior to the completion of the merger. In connection with the acquisition of these shares,

Sunbeam entered into a tax sharing agreement with Coleman pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had Coleman not been included in the consolidated income tax return of Sunbeam. The terms of the voting preferred stock, the per share issue price and the terms of the tax sharing agreement were approved on Coleman's behalf by Coleman's then sole independent director. The net proceeds from the sale of the preferred stock to Sunbeam were used by Coleman to make a partial repayment on Coleman's note payable to Sunbeam.

On November 9, 1999, Sunbeam announced its intention to divest Coleman's Eastpak business, as well as certain non-essential assets. Sunbeam anticipates that these asset sales will produce net proceeds of approximately \$200 million, which will be used primarily to pay down its bank debt.

Issuance of Debentures and Bank Credit Facility

In order to finance the 1998 acquisitions and to refinance substantially all of the indebtedness of Sunbeam, Coleman and its parent corporations, CLN Holdings and Coleman Worldwide, First Alert and Signature Brands, Sunbeam completed an offering of an aggregate principal amount at maturity of \$2,014 million of its Zero Coupon Convertible Senior Subordinated Debentures Due 2018 on March 25, 1998, for net proceeds of about \$730 million, and borrowed about \$1,325 million under a new bank credit facility.

The debentures are due March 25, 2018, are subject to earlier repurchase at the option of the holders on specified dates beginning in 2003 and are convertible into up to 13,242,050 shares of Sunbeam common stock, subject to adjustment in certain events.

The bank credit facility, as amended, allows Sunbeam to borrow up to \$1,700 million under:

- a \$400 million revolving credit facility maturing on March 30, 2005, of which \$52.5 million may be used only to complete the merger,
- up to \$800 million in term loans maturing on March 30, 2005, of which \$35 million may be used only to complete the merger, and
- a \$500 million term loan maturing on September 30, 2006, of which \$5.0 million has already been repaid through September 30, 1999.

Unless Sunbeam further amends its bank credit facility or refinances its bank debt by April 10, 2000, Sunbeam's lenders will be able to accelerate the maturities listed above at any time after April 10, 2000.

Until March 31, 2000, Sunbeam has agreed to limit the total amount of revolving loans (other than those used to fund the merger) at the end of each month as follows:

<u>Month</u>	<u>Amount</u>
April, 1999	\$290,400,000
May, 1999	\$303,700,000
June, 1999	\$279,100,000
July, 1999	\$281,400,000
August, 1999	\$264,200,000
September, 1999	\$257,300,000
October, 1999	\$277,000,000
November, 1999	\$224,200,000
December, 1999	\$185,200,000
January, 2000	\$201,500,000
February, 2000	\$217,800,000
March, 2000	\$234,100,000

Borrowings under the bank credit facility are secured by, among other things, substantially all of Sunbeam's assets, including a pledge of Sunbeam's stock in Coleman, First Alert, Signature Brands and its other material subsidiaries. See "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION—Security and Guarantees."

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This credit facility accrues interest, at Sunbeam's option:

- at LIBOR, or
- at the base rate of the administrative agent which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%,

in each case, plus an interest rate margin which varies depending on the occurrence of specified events. The interest rate margin is currently 4.00% for LIBOR loans and 2.50% for base rate loans, and is subject to potential decreases in the future, including a decrease to 3.00% for LIBOR loans and 1.75% for base rate loans upon consummation of the merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the bank credit facility. See "Covenants Under Bank Credit Facility."

Under an April 15, 1999 amendment to the bank credit facility, Sunbeam agreed to pay the bank lenders a loan commitment fee of between 0.25% to 1.00% of the commitments under the bank credit facility as of April 15, 1999. The percentage used to calculate the fee will be determined by reference to the bank lenders' aggregate commitments and loan exposure under the bank credit facility as they may be reduced on or before September 30, 2000. The fee is payable on the earlier of September 30, 2000 and the date the commitments are terminated and the loans and other amounts payable under the bank credit facility are repaid.

At September 30, 1999, Sunbeam owed about \$1,500 million under the bank credit facility (including \$200 million of outstanding revolving credit facility borrowings) and had about \$200 million available for borrowing. See "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION."

Covenants Under Bank Credit Facility

Sunbeam's bank credit facility contains a number of covenants, including covenants requiring Sunbeam to meet various financial tests and ratios. As a result of Sunbeam's operating losses, among other things, at June 30, 1998 Sunbeam was not in compliance with these financial covenants of the bank credit facility. As of June 30, 1998, Sunbeam entered into an agreement with its bank lenders which waived Sunbeam's compliance with these covenants and terms through December 31, 1998. On October 19, 1998, Sunbeam's bank lenders agreed to extend this waiver through April 10, 1999, then until April 15, 1999. In April 1999, the waiver was extended to April 10, 2000, and the bank credit facility was amended to, among other things:

- require Sunbeam to meet new financial tests and ratios,
- decrease the interest rate margins to 3.75% for LIBOR loans and 2.50% for base rate loans,
- further reduce the interest rate margins to 3.25% for LIBOR loans and 2.00% for base rate loans as a result of Sunbeam's satisfaction on May 14, 1999 of the agreed upon conditions to this reduction. However, such margins increased to 3.50% for LIBOR loans and 2.25% for base rate loans on September 1, 1999 as a result of the merger not occurring by such date and increased to 4.00% for LIBOR loans and 2.50% for base rate loans on October 1, 1999 as a result of the merger not occurring by such date,
- defer until April 10, 2000 principal payments of \$69.3 million otherwise due September 30, 1999 and principal payments of \$69.3 million otherwise due March 31, 2000, as a result of Sunbeam's satisfaction on May 14, 1999 of the agreed upon conditions to this deferral,
- provide that the following events relating to the merger will be events of default under the bank credit facility:
 - if Sunbeam fails to have the SEC declare this document effective by October 30, 1999 (which was subsequently amended to January 10, 2000),
 - if Sunbeam fails to complete the merger within 25 business days after this document is declared effective by the SEC, or

- if Sunbeam has to pay more than \$87.5 million in cash to complete the merger, including any payments on account of the exercise of appraisal rights, but excluding related legal, accounting and other customary fees and expenses,
- require Sunbeam and Coleman to amend Coleman's note payable to Sunbeam and to have Coleman secure the note, which is pledged by Sunbeam to secure the obligations under the bank credit facility, with substantially all of Coleman's assets other than real property,
- impose restrictions on the total amount of revolving loans (other than those used to fund the merger) permitted to be outstanding at the end of each month under the bank credit facility,
- require Sunbeam to maintain a concentration cash management system and to repay to the banks (subject to reborrowing) revolving loans to the extent that cash on hand in Sunbeam's concentration accounts on any business day exceeds \$15 million,
- require Sunbeam to prepay term loans under the bank credit facility on December 31, 1999 to the extent that cash on hand in Sunbeam's concentration accounts plus the total amount of unused revolving loan commitments on this date exceeds \$125 million, but Sunbeam is not required to prepay more than \$69.3 million in total as a result of this provision,
- require Sunbeam to reserve \$52.5 million of availability under the revolving credit facility for use solely to pay the required cash portion of the merger consideration,
- limit the amount that Sunbeam may spend on Year 2000 testing and remediation to \$50 million in total during the fiscal year ending December 31, 1999,
- require Sunbeam to obtain the bank lenders' consent to any litigation settlement concerning the restatement of Sunbeam's 1996 and 1997 fiscal year and first quarter 1998 financial statements if such settlements require the payment of money, not paid by insurance carriers or other third parties, of more than \$1 million in total,
- impose new informational reporting requirements, and
- provide Sunbeam with a \$40 million foreign currency revolving loan subfacility.

See "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION."

Delayed Filing of Registration Statement

On March 25, 1998, Sunbeam entered into a registration rights agreement with Morgan Stanley relating to the original issuance of the debentures. The registration rights agreement required Sunbeam to file a registration statement with the SEC by June 23, 1998 to register the debentures and the shares of Sunbeam common stock issuable upon conversion of the debentures for resale by the holders. However, Sunbeam did not file that registration statement until February 4, 1999 and the SEC did not declare the registration statement effective until November 8, 1999. The delay resulted from Sunbeam's need to review and restate its historical financial statements following the refusal of its former independent auditors, Arthur Andersen, to consent to the inclusion in that registration statement of their opinion on Sunbeam's 1997 financial statements.

Sunbeam's failure to file that registration statement by June 23, 1998 did not constitute a default under the debentures. However, from June 23, 1998 until the day on which that registration statement was declared effective, cash liquidated damages payable to the holders of the debentures accrued:

- on a daily basis at a rate per annum equal to 0.25% during the first 90 days, and
- on a daily basis at a rate per annum equal to 0.50% thereafter,

multiplied, in each case, by the sum of the issue price of the debentures plus the accrued original issue discount on the debentures on each day for which damages are calculated. Sunbeam has made total payments for liquidated damages since June 23, 1998 of \$4.5 million, of which \$1.5 million related to damages for the period through December 31, 1998. A final payment of approximately \$0.5 million, representing liquidated

damages from September 26, 1999 until the registration statement was declared effective, will be payable on March 25, 2000.

Press Releases Relating to Sunbeam's First Quarter 1998 Results

On March 19, 1998, Sunbeam's prior management issued a press release stating that Sunbeam's net sales for the first quarter of 1998 might be lower than the range of Wall Street analysts' estimates of \$285 million to \$295 million, but that net sales for the quarter were expected to exceed 1997 first quarter net sales of \$253.4 million. On April 3, 1998, Sunbeam's prior management issued a press release announcing that net sales for the first quarter of 1998 were expected to be about 5% lower than those achieved in the first quarter of 1997 and, due to the lower sales and significant one-time charges, a loss was expected for the quarter.

On May 11, 1998, Sunbeam's prior management announced 1998 first quarter results and made forecasts for the remainder of 1998 and beyond. They reported net sales of \$244.3 million for the quarter, as compared to \$253.4 million in the first quarter of 1997. Before one-time charges of \$36.8 million for early retirement of debt and compensation expense relating to new employment agreements with three former Sunbeam executives, they reported a net loss from continuing operations of \$7.8 million in the first quarter of 1998 versus net income from continuing operations of \$20.6 million in the first quarter of 1997. After one-time charges of \$0.43 per share, Sunbeam lost \$0.52 per share in the 1998 quarter, compared with earnings per share of \$0.08 in the comparable 1997 period. Sunbeam's prior management also stated that it expected earnings per share in the range of \$1.00 for 1998 and \$2.00 for 1999. On June 15, 1998, Sunbeam's new management announced that these previously announced forecasts should not be relied upon.

Following each of these press releases, the market price of Sunbeam common stock fell substantially. On October 20, 1998, Sunbeam issued a press release restating operating results for fiscal years 1996 and 1997, as well as the first quarter of fiscal 1998. See "—Restatement of Financial Results," "—Changes in Sunbeam's Management and Board" and "RISK FACTORS."

Changes in Sunbeam's Management and Board

On June 15, 1998, Sunbeam's board of directors removed Albert J. Dunlap as Sunbeam's Chairman and Chief Executive Officer. Three days later, Sunbeam's board of directors removed Russell A. Kersh as Sunbeam's Vice Chairman and Chief Financial Officer. The Sunbeam board took these steps because Sunbeam's outside directors had lost confidence in Mr. Dunlap's leadership. On June 15, 1998, the Sunbeam board elected Peter A. Langerman as non-executive Chairman of the board and Jerry W. Levin as Sunbeam's new Chief Executive Officer. Mr. Langerman, an outside director of Sunbeam since 1990, is President and Chief Executive Officer of Franklin Mutual Advisers, Inc., the investment adviser to Franklin Mutual Series Fund, which owns about 17% of Sunbeam's common stock. Mr. Levin is an Executive Vice President of MacAndrews & Forbes. A subsidiary of MacAndrews & Forbes owns about 14% of Sunbeam's common stock and a warrant which, if exercised in full, would increase its ownership to about 29% of Sunbeam's outstanding common stock. Mr. Levin was Chairman and Chief Executive Officer of Coleman at the time of the M&F Transaction and previously was the Chairman and Chief Executive Officer of Revlon, Inc., an affiliate of MacAndrews & Forbes.

On June 16, 1998, Paul E. Shapiro was appointed as Sunbeam's Executive Vice President and Chief Administrative Officer. Mr. Shapiro also serves as a director and Executive Vice President of Coleman. Mr. Shapiro was the Executive Vice President and General Counsel of Coleman at the time of the M&F Transaction. Bobby G. Jenkins was appointed as Sunbeam's Executive Vice President and Chief Financial Officer on June 15, 1998. Mr. Jenkins also serves as Executive Vice President of Coleman. On April 24, 1998, Karen K. Clark was appointed as Sunbeam's Vice President, Operations Finance. Since April 1999, Ms. Clark has served as Sunbeam's Senior Vice President, Finance. Ms. Clark also serves as Senior Vice President, Finance of Coleman. Jack D. Hall joined Sunbeam on October 1, 1998 as President, International. Steven R. Isko was appointed as Sunbeam's Senior Vice President and General Counsel on June 1, 1999. Mr. Isko also serves as Senior Vice President and General Counsel of Coleman.

In June 1998, Mr. Levin, Howard Gittis of MacAndrews & Forbes, and Lawrence Sondike of Franklin Mutual Advisers, Inc. were elected to the Sunbeam board. William T. Rutter resigned from the Sunbeam

board effective July 8, 1998, and Faith Whittlesey was elected to fill the vacancy on the Sunbeam board of directors' audit committee resulting from Mr. Rutter's resignation. Messrs. Dunlap and Kersh resigned from the Sunbeam board of directors effective August 5, 1998. In January 1999, Mr. Sondike resigned from the Sunbeam board of directors; in February 1999, John H. Klein, Chairman and Chief Executive Officer of Bi-Logix, Inc., was elected to the Sunbeam board of directors; and on June 29, 1999, Philip E. Beekman, President of Owl Hollow Enterprises, Inc., was elected to the Sunbeam board of directors at its annual stockholders meeting.

In March 1999, Mr. Levin became Chairman of the Sunbeam board of directors, succeeding Mr. Langerman, who remains a director of Sunbeam.

Restatement of Financial Results; Change of Auditors

On June 25, 1998, Sunbeam announced that its former independent auditors, Arthur Andersen, would not consent to the inclusion of their opinion on Sunbeam's 1997 financial statements in a registration statement Sunbeam was then planning to file with the SEC. On June 30, 1998, Sunbeam announced that the audit committee of its board of directors would review the accuracy of Sunbeam's prior financial statements and, therefore, those financial statements should not be relied upon. Sunbeam also announced that Deloitte & Touche LLP had been retained to assist the audit committee and Arthur Andersen in this review. On August 6, 1998, Sunbeam announced that the audit committee had determined that Sunbeam would be required to restate its financial statements for 1997, the first quarter of 1998, and possibly 1996, and that the adjustments, while not then quantified, would be material.

On October 20, 1998, Sunbeam announced the restatement of its financial results for a six-quarter period from the fourth quarter of 1996 through the first quarter of 1998. Sunbeam had to restate these financial results because its previously issued financial statements generally overstated losses for 1996, overstated profits for 1997 and understated losses for the first quarter of 1998. The audit committee concluded that Sunbeam had incorrectly recognized revenue during these periods from "bill and hold" and guaranteed sales transactions. The audit committee also concluded that some costs and allowances for sales returns, co-op advertising, customer deductions and reserves for product liability and warranty expense were not accrued or were incorrectly recorded. Finally, the audit committee concluded that various costs were incorrectly included in and charged to restructuring, asset impairment and other costs.

On November 20, 1998, Sunbeam announced that its audit committee had recommended, and its board of directors had approved, the appointment of Deloitte & Touche to replace Arthur Andersen as Sunbeam's independent auditors for fiscal year 1998. Arthur Andersen will continue to provide Sunbeam with limited professional services. For further information regarding Sunbeam's independent auditors, see "CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE."

Reporting of Results for First Nine Months of 1999 and Fiscal Year 1998

On November 9, 1999, Sunbeam reported that for the first nine months of 1999 Sunbeam had net sales of \$1,786.4 million and a net loss of \$155.0 million, or a loss per diluted share of \$1.54. Results for the nine months ended September 30, 1998 include Coleman, Signature Brands and First Alert from their respective acquisition dates. After adjusting 1998 sales to include sales of the acquired companies for the periods from the beginning of 1998 through the respective dates of acquisition, 1999 net sales increased approximately \$162 million or approximately 10% over 1998 combined historical net sales of \$1,624.0 million. Sunbeam also announced that net cash used in operations was \$73.2 million for the first nine months of 1999 as compared to \$224.7 million during the same period in the prior year.

On April 21, 1999, Sunbeam reported that, for the full year 1998, Sunbeam had net sales of \$1,800 million and a net loss of \$898 million, or a loss of \$9.25 per diluted share. Excluding sales of Coleman, First Alert and Signature Brands, comparable sales declined 23% to \$828 million in 1998 from about \$1,100 million in 1997. Sunbeam also announced net cash provided by operations of about \$30 million for the fourth quarter of 1998, compared with net cash used in operations of about \$220 million during the first three quarters of 1998.

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Litigation Involving Sunbeam

Since prior management's issuance of the April 3, 1998 press release concerning Sunbeam's 1998 first quarter results, many lawsuits alleging legal claims arising under federal and state securities and other laws have been filed against Sunbeam, some of Sunbeam's former directors and officers, some of Sunbeam's current directors and Arthur Andersen. Sunbeam is currently defending these lawsuits in a number of courts. Many of these suits relate to Sunbeam's financial performance from the second quarter of 1997 through the second quarter of 1998. Many plaintiffs are claiming that Sunbeam's prior management misrepresented and omitted material information in its public filings and in its statements concerning Sunbeam's historical and expected future results of operations. In many of these cases, the plaintiffs claim that the alleged actions were intended to artificially inflate the market price of Sunbeam's common stock. Sunbeam's insurers have also attempted to have Sunbeam's directors' and officers' liability policies voided or canceled or have advised Sunbeam that they do not intend to provide coverage with respect to these lawsuits. Sunbeam is unable to predict the outcome of these lawsuits or its potential exposure to damages. However, if Sunbeam were to lose these lawsuits, the judgments would likely have a material adverse effect on Sunbeam's financial condition, results of operations and cash flow. For a more detailed description of these and other lawsuits, see "BUSINESS OF SUNBEAM—Litigation and Other Contingent Liabilities."

SEC Investigation

The staff of the Division of Enforcement of the SEC advised Sunbeam in a letter dated June 17, 1998 that it was conducting an informal inquiry into Sunbeam's accounting policies and procedures. On July 2, 1998, the SEC advised Sunbeam that it had issued a formal order of investigation. The order indicates that the SEC is investigating whether Sunbeam, certain of its current or former officers, directors, employees and certain other persons and entities violated the federal securities laws and regulations by:

- filing or causing to be filed inaccurate reports with the SEC.
- failing to maintain accurate books, records and accounts,
- failing to create or maintain adequate internal accounting controls, or circumventing such controls,
- knowingly or recklessly making false or misleading statements in reports filed with the SEC or in other public statements, or
- making false or misleading statements to an accountant in connection with audits or examinations of Sunbeam's financial statements or reports filed with the SEC.

At the time the formal order of investigation was issued, the SEC also subpoenaed various documents from Sunbeam. On November 4, 1998, Sunbeam received another SEC subpoena requiring the production of additional documents. Sunbeam has cooperated with the SEC and has furnished the SEC with documents they requested. Sunbeam has, however, declined to provide the SEC with material Sunbeam believes is subject to the attorney-client privilege and the work product immunity. Sunbeam cannot predict how long the SEC investigation will continue or its outcome.

Settlement of Claims Relating to the M&F Transaction

On August 12, 1998, Sunbeam announced that it had entered into an agreement to settle threatened claims of the MacAndrews & Forbes subsidiary that sold Sunbeam a controlling interest in Coleman in the M&F Transaction in March 1998, in exchange for consideration which included about 14 million shares of Sunbeam common stock. These shares had a market value of about \$580 million when the MacAndrews & Forbes subsidiary agreed to the M&F Transaction, but their market value was less than \$100 million at the time of the settlement.

The claims of the MacAndrews & Forbes subsidiary were substantially the same as the claims made in a number of the stockholder lawsuits filed in the second and third quarters of 1998 alleging that Sunbeam, in 1997 and the first quarter of 1998 under its prior management, made material misstatements and omissions of fact that artificially inflated the market price of Sunbeam common stock. The MacAndrews & Forbes

subsidiary also alleged that Sunbeam had breached representations made in the agreement relating to the M&F Transaction. The settlement:

- released Sunbeam from threatened claims arising out of Sunbeam's acquisition of the MacAndrews & Forbes subsidiary's controlling interest in Coleman,
- enabled Sunbeam to retain the services of executive personnel affiliated with MacAndrews & Forbes who had been managing Sunbeam since mid-June of 1998, including Jerry W. Levin, Sunbeam's Chairman and Chief Executive Officer, Paul E. Shapiro, Sunbeam's Executive Vice President and Chief Administrative Officer, and Bobby G. Jenkins, Sunbeam's Executive Vice President and Chief Financial Officer, and
- provided for continuing management assistance and other support by MacAndrews & Forbes to Sunbeam at its request.

In exchange, Sunbeam issued to the MacAndrews & Forbes subsidiary a warrant expiring August 24, 2003 to purchase 23 million shares of Sunbeam common stock at a cash exercise price of \$7 per share, subject to anti-dilution adjustments. Sunbeam has agreed that the MacAndrews & Forbes subsidiary can require Sunbeam to register under federal and applicable state securities laws the warrant and the shares of Sunbeam common stock issuable upon exercise of the warrant. See "BUSINESS—Litigation and Other Contingent Liabilities."

The terms of the settlement and warrant were negotiated and approved on Sunbeam's behalf by a special committee of four of Sunbeam's outside directors, none of whom has any affiliation with MacAndrews & Forbes. The members of the special committee were Howard Kristol (Chairman), Charles Elson, Peter Langerman and Faith Whittlesey. They were assisted by independent financial advisors and legal counsel.

For their services as members of the special committee in connection with the settlement, Mr. Kristol received additional compensation of \$50,000 and Messrs. Elson and Langerman and Mrs. Whittlesey each received additional compensation of \$35,000. Sunbeam also agreed to indemnify each of the members of the special committee to the fullest extent allowed by applicable law and Sunbeam's certificate of incorporation and by-laws for any liabilities arising out of their services on the special committee.

The settlement normally would have required approval by Sunbeam's stockholders under the rules of the NYSE because of the issuance of the warrant as part of the settlement. However, Sunbeam's audit committee determined that the delay that would be necessary to secure stockholder approval prior to issuing the warrant would:

- be lengthy due to the SEC's ongoing investigation of Sunbeam's accounting practices and policies and the need to complete the restatement of Sunbeam's historical financial statements,
- inhibit Sunbeam's ability to reach a settlement with the MacAndrews & Forbes subsidiary and to retain and hire essential senior management personnel, and
- seriously jeopardize Sunbeam's financial viability.

Based on these determinations, Sunbeam's audit committee, relying on an exception provided in the applicable NYSE stockholder approval policy, expressly approved Sunbeam's omission to seek stockholder approval. The NYSE accepted Sunbeam's application of the exception.

In connection with the settlement agreement, Messrs. Levin, Shapiro and Jenkins each signed three-year employment agreements with Sunbeam. See "MANAGEMENT."

Options Exchange

In August 1998, Sunbeam approved an exchange plan for outstanding options held by its employees to purchase shares of Sunbeam common stock. The exchange plan, which has been completed, provided for the outstanding options with exercise prices in excess of \$10.00 per share to be valued by reference to the generally accepted Black-Scholes option pricing model, and permitted Sunbeam employees to exchange old

options for new options with an exercise price of \$7.00 per share having a value equivalent to the value of the old options. See Note 9 to Sunbeam's Consolidated Financial Statements.

New York Stock Exchange Listing

In May 1998, the NYSE advised Sunbeam that it did not meet the NYSE's continuing listing standards because Sunbeam did not have tangible net assets of at least \$12 million at December 31, 1997 and average annual net income of at least \$600,000 for 1995, 1996 and 1997. Sunbeam representatives met with NYSE officials, and in March 1999, the NYSE informed Sunbeam that Sunbeam common stock would not be delisted at that time, although the NYSE would continue to monitor Sunbeam's financial condition and operating performance. On August 5, 1999, the NYSE advised Sunbeam that the NYSE had revised its continuing listing standards, and that Sunbeam is in compliance with the revised standards.

Matters Involving Former Management

In early August 1998, Sunbeam entered into a six-month agreement with Messrs. Dunlap and Kersh in which the parties agreed not to assert claims against each other and to exchange information relating to the pending stockholder lawsuits. Sunbeam also agreed to pay a portion of the accrued vacation and employment benefits of Messrs. Dunlap and Kersh.

After the agreement expired, by letters dated February 9, 1999, Messrs. Dunlap and Kersh submitted demands for arbitration to the American Arbitration Association alleging that Sunbeam terminated their employment without cause. Messrs. Dunlap and Kersh are seeking lump sum payments of about \$5,250,000 and \$2,296,875, respectively. Messrs. Dunlap and Kersh also are seeking:

- amounts for accrued but unused vacation,
- amounts in respect of certain benefit plans,
- a ruling that their options to acquire shares of Sunbeam common stock are fully vested and that they will receive the economic equivalent of their participation in Sunbeam's program for repricing of options, and
- in the case of Mr. Kersh, more than \$3 million, including tax gross-ups, with respect to his restricted stock.

Sunbeam is vigorously contesting the claims of Messrs. Dunlap and Kersh. To date, Sunbeam has not made any severance payments to either of Messrs. Dunlap or Kersh.

On March 23, 1999, Messrs. Dunlap and Kersh filed a complaint in the Court of Chancery of the State of Delaware seeking an order directing Sunbeam to advance attorneys' fees and other expenses incurred in connection with the defense of the stockholder lawsuits and the SEC investigation. A trial of this summary proceeding was held on June 15 and 16, 1999, and the court ordered Sunbeam to advance Messrs. Dunlap and Kersh about \$1.4 million for their expenses incurred through the date of their complaint and to advance expenses reasonably incurred by them in the future. Messrs. Dunlap and Kersh have agreed to repay to Sunbeam all amounts reimbursed or advanced if it is ultimately determined that they are not entitled to indemnification under Delaware law.

Acquisition of Coleman Preferred Stock

On July 12, 1999, one of Sunbeam's wholly owned subsidiaries acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock, for an aggregate purchase price of approximately \$31 million. These shares, together with the shares of Coleman common stock already indirectly owned by Sunbeam, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock. Coleman created these shares and Sunbeam acquired them in order to enable Sunbeam and Coleman to file consolidated federal income tax returns and, in certain jurisdictions, consolidated state income tax returns, prior to the completion of the merger. In connection with the acquisition of these shares, Sunbeam entered into a tax sharing agreement with Coleman pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had

Coleman not been included in the consolidated income tax return of Sunbeam. The terms of the voting preferred stock, the per share issue price and the terms of the tax sharing agreement were approved on Coleman's behalf by Coleman's then sole independent director. The net proceeds from the sale of the preferred stock to Sunbeam were used by Coleman to make a partial repayment on Coleman's note payable to Sunbeam.

For information concerning the terms of the new preferred stock issued to Sunbeam, see "DESCRIPTION OF COLEMAN CAPITAL STOCK—Coleman Preferred Stock."

Proposed Sale of Coleman Eastpak Business

On November 9, 1999, Sunbeam announced its intention to divest Coleman's Eastpak business, as well as certain non-essential assets. Sunbeam anticipates that these asset sales will produce net proceeds of approximately \$200 million, which will be used primarily to pay down its bank debt.

RECENT DEVELOPMENTS AFFECTING COLEMAN

In April 1999, the NYSE advised Coleman that it did not meet the NYSE's continuing listing standards because Coleman did not have tangible net assets of at least \$12 million at September 30, 1998 and average annual net income of at least \$600,000 for fiscal years 1997, 1996 and 1995. At that time, Coleman requested the NYSE to continue to list the Coleman common stock until completion of the merger. The NYSE subsequently advised Coleman that Coleman also failed to satisfy certain non-financial continuing listing standards. On August 5, 1999, the NYSE advised Coleman that the NYSE had revised its continuing listing standards, and that Coleman is in compliance with the revised financial standards. Coleman and the NYSE have agreed upon a program whereby Coleman will correct the deficiencies in its non-financial continuing listing standards by the end of 1999. Coleman is currently complying with such program. If Coleman were to be delisted from the NYSE, it could adversely affect the market price of Coleman's common stock and Coleman's ability to sell its capital stock to third parties. However, Sunbeam's bank credit facility currently restricts Coleman from taking such action.

Following the M&F Transaction, Sunbeam caused Coleman to repay substantially all of its outstanding indebtedness (which had been assumed by Sunbeam in the M&F Transaction) with the proceeds of borrowings from Sunbeam. Since the completion of the M&F Transaction, Coleman has borrowed additional funds from Sunbeam. During 1998 and through April 15, 1999, these borrowings were evidenced by an unsecured subordinated demand note payable by Coleman to Sunbeam. This note was pledged by Sunbeam to its lenders as security for Sunbeam's obligations under its bank credit facility. In April 1999, Coleman's note payable to Sunbeam was revised and secured by a pledge of Coleman assets in favor of Sunbeam's lending banks. The revised Coleman note had an unpaid principal amount of \$303.2 million on September 30, 1999. See "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Financial Transactions Between Coleman and Sunbeam."

As described above, on July 12, 1999, Coleman issued 3,000,000 shares of a newly created series of Coleman voting preferred stock to one of Sunbeam's wholly owned subsidiaries. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Acquisition of Coleman Preferred Stock."

SPECIAL FACTORS

Background of the Merger

In the spring of 1997, as part of a long-term strategic planning process, Sunbeam's prior management began exploring a possible sale of Sunbeam or the making of one or more major acquisitions. On April 22, 1997, representatives of Morgan Stanley & Co., Incorporated, Sunbeam's financial advisor, met with Albert J. Dunlap, Sunbeam's then Chairman and Chief Executive Officer, and Russell A. Kersh, Sunbeam's then Vice Chairman and Chief Financial Officer, to discuss, among other things, the retention of Morgan Stanley as Sunbeam's financial advisor in connection with a possible sale of Sunbeam or one or more major acquisitions by Sunbeam.

On September 11, 1997, Morgan Stanley was formally retained by Sunbeam to assist in connection with a possible sale of Sunbeam, one or more possible acquisitions by Sunbeam and the consideration of other strategic alternatives. Thereafter, representatives of Morgan Stanley contacted five companies in the branded consumer products business to determine whether any of these companies would be interested in exploring a possible acquisition of Sunbeam. Morgan Stanley contacted only those companies which it believed were large enough to finance an acquisition of Sunbeam and to successfully integrate Sunbeam's operations. In addition, Morgan Stanley selected only companies with product lines and operations which it believed were compatible with or complementary to those of Sunbeam. One of the companies contacted was MacAndrews & Forbes, which Morgan Stanley from time to time advises on a variety of business and financial matters. None of the companies contacted by Morgan Stanley expressed interest in acquiring Sunbeam at a price which would have constituted a premium over the then current market price of the Sunbeam common stock. Based on Morgan Stanley's initial contacts with potential acquirors of Sunbeam, Sunbeam's then senior management concluded that it was unlikely that any major consumer products company would be likely to pursue an acquisition of Sunbeam at a price or on terms that would be acceptable to Sunbeam. Morgan Stanley then explored the impact on Sunbeam of various other strategic alternatives, including a sale of one or more of Sunbeam's businesses, a spin-off of one or more of Sunbeam's subsidiaries or a recapitalization of Sunbeam. These strategic alternatives were rejected by Sunbeam's former management because of former management's stated belief that one or more acquisitions by Sunbeam would have a more positive impact on stockholder value. Former management then directed Morgan Stanley to shift its focus to one or more possible major acquisitions.

On December 12, 1997, Mr. Kersh, David C. Fannin, Sunbeam's then Executive Vice President, General Counsel and Secretary, and Peter A. Langerman, a director of Sunbeam, met with Jerry W. Levin, then Chairman and Chief Executive Officer of Coleman, Paul E. Shapiro, then Coleman's Executive Vice President and General Counsel, and Joseph P. Page, then Executive Vice President and Chief Financial Officer of Coleman, and discussed Coleman's businesses and the potential cost savings, efficiencies and other benefits that could result from a combination of Sunbeam and Coleman. The December 12 meeting was initiated by Morgan Stanley on Sunbeam's behalf. Notwithstanding MacAndrews & Forbes' previous rejection of Sunbeam's overtures regarding an acquisition of Sunbeam by MacAndrews & Forbes, both Morgan Stanley and Sunbeam believed that the complementary nature of the product offerings of Sunbeam and Coleman, the asset base of Coleman, including its ownership of various brand names which enjoy substantial consumer recognition, the potential revenue and operational benefits associated with a Sunbeam/Coleman combination and the then current trading prices of Coleman's common stock all favored an acquisition of Coleman by Sunbeam.

At that time, MacAndrews & Forbes indirectly owned about 81% of the Coleman common stock through various subsidiaries, including Coleman (Parent) Holdings. Other stockholders then owned about 19% of the outstanding Coleman common stock. For further information regarding the organizational structure of MacAndrews & Forbes and the structure of the M&F Transaction, see "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—M&F Transaction."

On December 18, 1997, Mr. Dunlap and Michael Price, the then President and Chief Executive Officer of Franklin Mutual Advisers, Inc., Sunbeam's largest stockholder, met with Ronald O. Perelman, MacAndrews & Forbes' Chairman, Chief Executive Officer and sole stockholder, and another senior executive of MacAndrews & Forbes. Mr. Dunlap suggested a possible transaction in which Sunbeam would

acquire Coleman for consideration valued in the range of \$18 to \$22 per share of Coleman common stock. Mr. Perelman advised Mr. Dunlap that the price range was too low and indicated that he would not support a transaction in that price range.

On or about January 22, 1998, in an effort to revive a possible transaction, a representative of Morgan Stanley contacted a representative of MacAndrews & Forbes and indicated that Sunbeam might consider a possible transaction involving both cash and shares of Sunbeam common stock at a price higher than the price range suggested by Mr. Dunlap at the December 18 meeting. MacAndrews & Forbes' representative indicated his willingness to discuss a possible transaction on those terms. On January 23, 1998, representatives of Morgan Stanley met with representatives of MacAndrews & Forbes to begin discussions regarding a possible transaction between Sunbeam and Coleman. On January 29, 1998, representatives of Sunbeam and Morgan Stanley met with representatives of Coleman and MacAndrews & Forbes, as well as representatives of Credit Suisse First Boston Corporation, Coleman's financial advisor. During the meeting, the parties discussed the potential cost savings, revenue and operational efficiencies and other benefits that might be associated with a business combination of Sunbeam and Coleman and a preliminary schedule for mutual due diligence. During the week of February 2, 1998, Morgan Stanley submitted to MacAndrews & Forbes an outline of a possible transaction structure which focused on Sunbeam's acquisition of Coleman in a one-step merger of a wholly owned Sunbeam subsidiary with and into Coleman in which all outstanding shares of Coleman common stock, including the shares owned indirectly by MacAndrews & Forbes, would be exchanged for consideration consisting solely of Sunbeam common stock. The proposal was rejected because it did not contemplate the assumption by Sunbeam of the indebtedness of two subsidiaries of MacAndrews & Forbes which were corporate parents of Coleman holding MacAndrews & Forbes' interest in Coleman—CLN Holdings (the subsidiary of Coleman (Parent) Holdings) and Coleman Worldwide (the subsidiary of CLN Holdings)—or the payment of any cash consideration. At that time, Coleman Worldwide and CLN Holdings had aggregate outstanding indebtedness of about \$518.7 million.

On February 6, 1998, representatives of Morgan Stanley met with representatives of MacAndrews & Forbes and Credit Suisse First Boston to again discuss a possible acquisition of Coleman by Sunbeam. At this meeting, the possibility of Sunbeam's acquisition of MacAndrews & Forbes' interest in Coleman, including Sunbeam's assumption of the indebtedness of Coleman Worldwide and CLN Holdings, as the first step in an acquisition of Coleman was discussed. Although the parties had not yet reached agreement on price or the value of Coleman, the parties began to discuss this structure.

On February 13, 1998 and February 19, 1998, representatives of Sunbeam and Morgan Stanley participated in conference calls with a representative of MacAndrews & Forbes and discussed the terms of a possible transaction, including structure and price. The parties tentatively agreed that the transaction would be structured as a stock purchase in which Sunbeam would acquire all of the outstanding capital stock of CLN Holdings from Coleman (Parent) Holdings, an indirect subsidiary of MacAndrews & Forbes. Under this structure, Sunbeam in effect would assume the indebtedness of CLN Holdings and Coleman Worldwide. The consideration payable by Sunbeam was not, however, agreed upon. Due diligence meetings were held at various times on and after February 21, 1998 during which representatives of Sunbeam and Morgan Stanley, as well as Sunbeam's accountants and consultants, met with representatives of Coleman, MacAndrews & Forbes and Credit Suisse First Boston, as well as Coleman's accountants, to discuss Coleman's financial results for fiscal year 1997, strategic plans and financial projections for fiscal year 1998.

Due diligence meetings were also held on February 23 and 24, 1998 during which representatives of Sunbeam met with representatives of Coleman, along with representatives of MacAndrews & Forbes and Credit Suisse First Boston, to discuss Sunbeam's long-term strategic plan and financial projections for fiscal years 1998 through 2000.

On February 24, 1998, Messrs. Kersh and Fannin and representatives of Morgan Stanley participated in conference calls with representatives of MacAndrews & Forbes to finalize the transaction structure and negotiate the remaining terms of the transaction. During these conference calls, the parties reached agreement on the type of consideration payable by Sunbeam in the acquisition, although neither the amount of cash consideration nor the precise exchange ratio of Sunbeam common stock for Coleman common stock was agreed upon. On February 25 and 26, 1998, meetings and conference calls were held between representatives

of Sunbeam and its legal advisors, representatives of Coleman and its legal advisors, and representatives of MacAndrews & Forbes and its legal advisors. During the February 26, 1998 meetings and conference calls, the parties agreed that the final transaction structure would consist of a merger of CLN Holdings and a wholly owned Sunbeam subsidiary, followed by a second-step merger of a wholly owned Sunbeam subsidiary with Coleman. At that time, the parties also reached final agreement on the consideration payable by Sunbeam in the acquisition, including the amount of cash consideration and the precise exchange ratio of Sunbeam common stock for Coleman common stock. The parties and their advisors then finalized definitive agreements reflecting the agreed upon transaction structure and consideration.

On February 25, 1998, Coleman's then board of directors met and received and considered the presentations of the management of Coleman, Credit Suisse First Boston and Coleman's legal counsel regarding the transactions. The presentation of Credit Suisse First Boston was addressed, primarily, to the fairness to the Coleman minority stockholders of the consideration payable under the merger agreement. As part of this presentation, representatives of Credit Suisse First Boston evaluated the following factors:

- the proposed structure of the transaction;
- the type and amount of consideration payable to the Coleman minority stockholders in the merger and to the MacAndrews & Forbes subsidiary, Coleman (Parent) Holdings, in the M&F Transaction, including the assumption by Sunbeam of the indebtedness of Coleman Worldwide, CLN Holdings and Coleman;
- the premium represented by the then value of the merger consideration when compared to:
 - historical trading prices of the Coleman common stock;
 - Coleman's EBITDA for fiscal years 1997 and 1998; and
 - Coleman's earnings per share for fiscal years 1997 and 1998; and
- the value of Coleman, as measured by:
 - an analysis of the then present value of Coleman's future unlevered cash flows generated by its then current assets;
 - the public market trading values of comparable companies; and
 - the prices paid in recent acquisitions of comparable companies.

On Friday, February 27, 1998, meetings of the boards of directors of Coleman and Sunbeam were held to consider and act upon the proposed transactions. At the meeting of the Coleman board Credit Suisse First Boston delivered its opinion to the Coleman board to the effect that, as of that date, the consideration of 0.5677 of a share of Sunbeam common stock and \$6.44 in cash, without interest thereon, in exchange for each share of Coleman common stock, was fair, from a financial point of view, to the stockholders of Coleman, other than MacAndrews & Forbes and its subsidiaries.

At the meeting of the Sunbeam board, the directors of Sunbeam received and considered presentations of Morgan Stanley regarding the transactions. The presentation of Morgan Stanley was addressed to the fairness to Sunbeam of the consideration payable under the merger agreement. As part of this presentation, representatives of Morgan Stanley, among other things, discussed with the Sunbeam board the following factors:

- the strategic rationale for the transaction, including:
 - the strength of Coleman's brand names and the potential revenue benefits they presented to Sunbeam;
 - the benefits associated with an acquisition by Sunbeam in terms of market expectations, Sunbeam's ability to remain a market leader and the increased leverage over distribution channels associated with increased size; and
 - the potential for synergies and cost savings as a result of the merger;
- the proposed structure of the transaction;

- the financial condition of Coleman and Sunbeam;
- the nature of Coleman's and Sunbeam's business operations and their future prospects;
- estimates of the revenue and operational benefits expected to be realized as a result of the transaction as prepared by the management of Sunbeam;
- an analysis of the present value of Coleman's projected cash flows with a terminal value applied;
- the public market trading values of comparable companies with a projected control premium included; and
- prices paid in recent acquisitions of comparable companies.

In addition, at the February 27, 1998 Sunbeam board meeting, Morgan Stanley delivered its opinion to the Sunbeam board to the effect that, as of that date, the consideration payable in the merger and the M&F Transaction was fair, from a financial point of view, to Sunbeam.

Following the receipt of the respective fairness opinions, the boards of directors of Sunbeam and Coleman each approved the merger and the M&F Transaction. Definitive agreements were executed by the parties late that night and a press release announcing the transactions was issued before the opening of trading on the NYSE on Monday, March 2, 1998.

On February 27, 1998, Coleman Worldwide, as the owner of about 81% of the then outstanding shares of Coleman common stock, executed a written consent and voted its shares to approve the merger agreement and the merger. As a result, no further action on the part of any stockholder of Coleman is required to complete the merger.

As described above under the caption "RECENT DEVELOPMENTS AFFECTING SUNBEAM," since the merger agreement was approved and signed in February 1998 and the M&F Transaction was completed in March 1998, adverse developments affecting Sunbeam have caused a substantial decrease in the market value of the Sunbeam common stock. As a result, the value of the consideration paid to the MacAndrews & Forbes subsidiary in the M&F Transaction and the value of the consideration to be paid to Coleman's other stockholders under the merger agreement have also declined substantially. Coleman and Sunbeam have not considered amending or terminating the merger agreement because the merger agreement, by its terms, cannot be amended or terminated. Instead, Coleman and Sunbeam determined to provide additional consideration to the Coleman minority stockholders in connection with the settlement of the Coleman minority stockholders' litigation claims.

Coleman's Reasons for the Merger and Approval of the Coleman Board

At its meetings on February 25 and 27, 1998, the then Coleman board received and considered the presentations of Coleman management, Credit Suisse First Boston and Coleman's legal counsel regarding the merger agreement and the merger. At its February 27 meeting, the then Coleman board unanimously approved and adopted the merger and approved the merger agreement and the transactions contemplated by the merger agreement. See "—Background of the Merger."

In reaching its determination to approve the merger, the then Coleman board considered a number of factors. Listed below are the material factors, both positive and negative, considered. In view of the number and variety of factors considered in connection with its evaluation of the merger, the then Coleman board did not consider it practicable to, nor did it attempt to, quantify or otherwise assign relative weights to the specific factors considered in reaching its determination. In addition, individual members of the then Coleman board may have given different weight to the different factors.

The then Coleman board identified and considered a variety of positive factors in its deliberations concerning the merger, including those set forth below.

Coleman's Business, Condition and Prospects. The Coleman board reviewed Coleman's business, its then current financial condition and results of operations and its future prospects, including Coleman's ability to maintain its position in the consumer products business at its present size, and the current and anticipated developments in Coleman's business. The Coleman board received and reviewed presentations from, and

discussed the terms and conditions of the merger agreement with, executive officers of Coleman and Coleman's financial and legal advisors. The Coleman board considered the views of its management and financial advisor regarding recent trends in the industry in which Coleman operates, including recent acquisitions and business combinations. Based on its familiarity with the business, current financial condition and results of operations and future prospects of Coleman, and in light of the various presentations it received, the Coleman board concluded that a business combination of Coleman with Sunbeam would be in the best interests of Coleman and its stockholders.

Terms and Structure of the Transaction. The Coleman board of directors considered the fact that the merger agreement does not contain any provisions that either (1) limit the effect of changes in the market price of the Sunbeam common stock prior to the completion of the merger on the value of the consideration to be received by Coleman stockholders in the merger or (2) permit Coleman or Sunbeam to terminate the merger agreement based upon changes in stock price and that, accordingly, the value of the consideration could change based on the performance of the Sunbeam common stock between the execution of the merger agreement and the completion of the merger. While recognizing that the absence of these provisions exposed Coleman's stockholders to market risk, the Coleman board considered this risk to be mitigated to some extent by the trading history of Sunbeam common stock during the period from January 1, 1997 through February 24, 1998 and the fact that the Sunbeam common stock had outperformed both the Coleman common stock and the Standard and Poor's 500 Stock Index during that period.

The Coleman board reviewed the economic terms of the transaction based upon the closing prices of the Coleman common stock and the Sunbeam common stock on February 24, 1998 and February 26, 1998, the days prior to each of the meetings of the Coleman board. As reported on the NYSE Composite Transactions Tape, the closing prices of Sunbeam common stock and Coleman common stock were \$40.625 and \$20.688, respectively, on February 24, 1998, and \$41.875 and \$20.188, respectively, on February 26, 1998. The Coleman board considered that, in each case, the merger consideration implied a per share premium of about 44.2% when the market value of the merger consideration was compared to the then market price per share of Coleman common stock. The Coleman board also considered that the merger consideration was higher than the value implied by the historical stock market prices of the Coleman common stock and Sunbeam common stock.

The Coleman board also considered the fact that the transaction was structured as a two-step acquisition which, among other things, would enable Sunbeam to acquire control of Coleman as quickly as possible in order to reduce disruption to Coleman's business. The two-step structure would enable Sunbeam to acquire control of Coleman more quickly than in a one-step transaction, since Sunbeam could issue shares of its common stock to the MacAndrews & Forbes subsidiary that owned the shares of Coleman common stock without having to register the Sunbeam shares under the federal securities laws, thereby avoiding the delay inherent in the registration process. The agreement relating to the M&F Transaction was signed on February 27, 1998 and the transaction was completed thirty days later on March 30, 1998. As described below under "—Purposes and Effects of the Merger," Sunbeam believed that it was in the best interests of its stockholders that Sunbeam acquire Coleman for consideration consisting, at least in part, of shares of its common stock. Accordingly, Sunbeam believed that a cash tender offer for all outstanding shares of Coleman common stock, which also would have avoided the registration process, was not an acceptable alternative.

Opinion of Credit Suisse First Boston. The Coleman board considered the oral opinion delivered by Credit Suisse First Boston at the meeting of the Coleman board on February 27, 1998, which was subsequently confirmed in writing, to the effect that, as of that date and based upon and subject to the matters described in the opinion, the cash and stock consideration payable in the merger was fair from a financial point of view to Coleman's minority stockholders. When Credit Suisse First Boston was engaged by Coleman, they were not asked to render an updated opinion as of the date of this document and neither Sunbeam nor Coleman has requested that they do so. Moreover, Credit Suisse First Boston has advised Sunbeam that its opinion, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam.

Ability of Coleman's Stockholders to Obtain a Continuing Interest in Sunbeam. The Coleman board considered that, under the terms of the merger agreement, Coleman's stockholders will receive equity

securities of Sunbeam, thus enabling Coleman's stockholders to participate in increases in the value of Sunbeam, including any value that may be generated through Sunbeam's acquisition of Coleman's businesses. The Coleman board also noted that the price of the Sunbeam common stock had more than doubled since the time Mr. Dunlap had become Chief Executive Officer of Sunbeam.

Ownership of Coleman Voting Stock. The Coleman board considered the fact that prior to the merger the Coleman minority stockholders were stockholders in a company controlled by MacAndrews & Forbes, but that following the merger they would be stockholders in a public company without any controlling stockholder and therefore the Coleman minority stockholders, as stockholders of Sunbeam, may be able to obtain a control premium with respect to their Sunbeam common stock in the future. The ability of Coleman's stockholders to receive dividends or other distributions declared and paid by Coleman was not considered material by the Coleman board because Coleman had not declared a dividend since its initial public offering in February 1992 and at the time of the approval of the merger, the then Coleman board had no plans to declare any dividends.

Availability of Appraisal Rights. The Coleman board considered the fact that the Coleman minority stockholders would have the right to pursue appraisal rights under Delaware law. Accordingly, any Coleman public stockholder who did not wish to accept the cash and stock consideration payable under the merger agreement would have the right to dissent from the merger and have the fair value of his Coleman shares determined by a court and paid to him in cash.

In addition, the then Coleman board identified and considered a variety of potentially negative factors, including those set forth below.

Failure to Realize Expected Benefits. The then Coleman board considered the possibility that the operational and revenue benefits expected to be realized as result of the transaction might not be fully realized. For example, some of the benefits of the transaction projected by the then Coleman board depended upon the ability of Sunbeam to cut costs, streamline operations and capitalize on the revenue and operational benefits derived from a combination of the two companies and the unrealized potential of Coleman's assets. Any such projected benefits are inherently subject to risks and uncertainties beyond the control of either Sunbeam or Coleman. The then Coleman board considered that any failure by Sunbeam to successfully implement its business strategies and cost-saving initiatives could have a material adverse effect on the market price of the Sunbeam common stock and thereby adversely affect former Coleman stockholders who receive Sunbeam shares in the merger.

Possible Failure to Complete the Transaction. The then Coleman board considered that the M&F Transaction was subject to customary closing conditions and, therefore, was subject to the risk that the M&F Transaction and the merger would not be completed. The then Coleman board considered that non-consummation of the two transactions could negatively affect the market price of the Coleman common stock and the financial community's perception of the stability and future prospects of Coleman. Moreover, a failure to complete the two transactions following their public announcement could negatively affect Coleman's sales and operating results, its ability to attract and retain key management and marketing personnel and its ability to successfully complete long-term strategic projects.

Substantial Charges Incurred in Connection with the Transaction. The then Coleman board considered that Coleman would be required to incur significant expenses in order to complete the M&F Transaction and the merger. These expenses include costs of integrating the businesses of Coleman and Sunbeam, fees of Coleman's legal and financial advisors and the expenditure of corporate resources in support of the transaction generally. The then Coleman board recognized that these expenses would be borne solely by Coleman in the event that the transaction was not completed.

Possible Loss of Key Personnel. The then Coleman board considered that, despite the efforts of the combined company, key management and marketing personnel might not remain employed by Coleman or Sunbeam. The loss of any such key personnel could have a material adverse effect on Coleman's financial position, results of operations and cash flow.

Tax Treatment. The Coleman board considered the fact that the merger is expected to be a taxable transaction for United States Federal income tax purposes and may be taxable under state, local or foreign

laws as well. For a discussion of the tax consequences of the merger to Coleman minority stockholders, see "UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS."

The then Coleman board believed, however, that the foregoing negative factors were outweighed by the projected benefits of the transactions.

The terms of the merger were arrived at through arms'-length negotiations between two unaffiliated parties, MacAndrews & Forbes and Sunbeam. The then Coleman board believed that the interests of MacAndrews & Forbes, as the then indirect owner of about 81% of the outstanding Coleman common stock, were substantially aligned with the interests of Coleman's minority stockholders. The merger agreement also contains provisions designed to protect Coleman's minority stockholders. The merger agreement prevents Sunbeam from altering the consideration payable to Coleman's minority stockholders in the merger or otherwise amending or terminating the merger agreement after completion of the M&F Transaction. Furthermore, the merger is subject to very few conditions, consisting only of (1) this document had to be declared effective by the SEC, (2) the Sunbeam common stock to be issued in the merger had to be listed on the NYSE, (3) the M&F Transaction had to be completed and (4) there can be no preliminary or permanent injunction preventing the merger. In addition, the merger agreement was approved by a unanimous vote of the Coleman board, including by those members of the Coleman board who were not employees or affiliates of Coleman or MacAndrews & Forbes. In light of the foregoing, the then Coleman board did not deem it necessary to institute additional procedural safeguards such as a requirement that the merger be approved by a majority of Coleman's minority stockholders or the formation of a special committee of Coleman's outside directors to negotiate the terms of the merger.

Financial Advisors' Opinions

Coleman's Financial Advisor. Credit Suisse First Boston acted as Coleman's financial advisor in connection with the merger at the time the merger agreement was signed. Credit Suisse First Boston was selected by Coleman based on Credit Suisse First Boston's experience, expertise and familiarity with Coleman and its business. Credit Suisse First Boston is an internationally recognized investment banking firm and is regularly engaged in the valuation of businesses and securities in connection with mergers and acquisitions, leveraged buyouts, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and valuations for corporate and other purposes.

On February 27, 1998, Credit Suisse First Boston delivered to the Coleman board an oral opinion, which was subsequently confirmed in writing, to the effect that, as of that date and based upon and subject to the matters described in the opinion, the cash and stock consideration payable under the merger agreement was fair from a financial point of view to Coleman's minority stockholders. However, since the date of Credit Suisse First Boston's opinion, numerous events have occurred that significantly affected the price of Sunbeam common stock. When Credit Suisse First Boston was engaged by Coleman, they were not asked to render an updated opinion as of the date of this document and neither Sunbeam nor Coleman has requested that they do so. Moreover, Credit Suisse First Boston has advised Sunbeam that its opinion, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam. Because Sunbeam did not plan to issue the warrants at the time the merger agreement was signed, Credit Suisse First Boston did not take the warrants into account when evaluating the fairness of the merger consideration.

Terms of Credit Suisse First Boston's Engagement. Under the letter agreement dated December 10, 1997 between Coleman and Credit Suisse First Boston, Coleman agreed to pay Credit Suisse First Boston for services rendered in connection with the merger a fee of about \$4 million. Coleman also agreed to reimburse Credit Suisse First Boston for all reasonable out-of-pocket expenses, including the reasonable fees and expenses of its legal counsel and any other advisor retained by Credit Suisse First Boston, resulting from or arising out of the engagement. Coleman further agreed to indemnify Credit Suisse First Boston and related persons and entities for losses, claims, damages or liabilities (including related actions or proceedings) related to or arising out of, among other things, its engagement as Coleman's financial advisor.

In the past, Credit Suisse First Boston has performed investment banking services for Coleman and MacAndrews & Forbes and their affiliates and has received customary fees for these services. In the ordinary

course of its business, Credit Suisse First Boston and its affiliates may actively trade the debt and equity securities of Coleman, MacAndrews & Forbes and its affiliates and Sunbeam for their own accounts and for the accounts of customers and, accordingly, may at any time hold a long or short position in those securities.

Sunbeam's Financial Advisor. Morgan Stanley was retained by Sunbeam to assist in connection with a possible sale of Sunbeam, one or more possible acquisitions by Sunbeam and/or other strategic alternatives. As part of that engagement, Morgan Stanley acted as Sunbeam's financial advisor in connection with its acquisition of Coleman. Sunbeam retained Morgan Stanley based on its qualifications, expertise and reputation, as well as upon its prior investment banking relationships with Sunbeam and its familiarity with Sunbeam and its business.

On February 27, 1998, Morgan Stanley rendered to the Sunbeam board an oral opinion, which was later confirmed in writing, to the effect that, as of that date and based upon and subject to the matters described in the opinion, the cash and stock consideration payable in the M&F Transaction and under the merger agreement was fair from a financial point of view to Sunbeam. When Morgan Stanley was engaged by Sunbeam, they were not asked to render an updated opinion as of the date of this document and neither Sunbeam nor Coleman has requested that they do so. Moreover, Morgan Stanley has advised Sunbeam that its opinion, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam. Because Sunbeam did not plan to issue the warrants at the time the merger agreement was signed, Morgan Stanley did not take the warrants into account when evaluating the fairness to Sunbeam of the consideration payable in the merger. On the basis of Morgan Stanley's advice, the Sunbeam board has determined not to rely on the opinion of Morgan Stanley as a basis for its plans to complete the merger.

Terms of Morgan Stanley's Engagement. Under an amended engagement letter between Sunbeam and Morgan Stanley, Sunbeam agreed to pay Morgan Stanley (1) an exposure fee equal to 25% of the estimated transaction fee referred to below, payable upon execution of the agreement relating to the M&F Transaction and the merger agreement, and (2) a transaction fee equal to a percentage of the aggregate value of the consideration payable by Sunbeam in the M&F Transaction and the merger (including the amount of any debt assumed or repaid by Sunbeam), payable, as to the M&F Transaction, upon its completion and, as to the merger, upon its completion. For purposes of calculating the transaction fee, the value of the Sunbeam common stock issued in the M&F Transaction and the merger will be the average of the closing sale prices for the Sunbeam common stock for the ten trading days prior to the completion of the M&F Transaction and the merger, respectively. For its services to Sunbeam in connection with the Coleman acquisition, Morgan Stanley has received fees from Sunbeam totaling about \$9.6 million. The amended engagement letter between Sunbeam and Morgan Stanley provides for the payment to Morgan Stanley of an additional transaction fee of \$680,000 when the merger is completed, based on the average market price of Sunbeam common stock on the last trading day prior to the date of this document. Sunbeam's obligation to pay this additional transaction fee to Morgan Stanley will not be affected by the fact that Sunbeam is no longer entitled to rely on Morgan Stanley's fairness opinion. Sunbeam has also agreed to reimburse Morgan Stanley for its expenses, including fees and expenses of its counsel, and to indemnify Morgan Stanley and related parties against various liabilities and expenses, which may include liabilities under the federal securities laws, arising out of its engagement. Morgan Stanley also acted as an initial purchaser for the private placement of the Sunbeam debentures and an affiliate of Morgan Stanley is a lender under Sunbeam's bank credit facility. Morgan Stanley also advised Sunbeam in connection with its acquisitions of Signature Brands and First Alert.

Sunbeam's Reasons for Acquiring Coleman and Approval of the Sunbeam Board

Sunbeam's Reasons for Acquiring Coleman. While Sunbeam's current management does not know all the reasons why prior management agreed to acquire Coleman, Sunbeam's current management believes that the following reasons were provided by prior management to the then Sunbeam board.

As part of its 1997 review of strategic alternatives, Sunbeam's then management team concluded that it was unlikely that Sunbeam could be sold at a price or on terms that would be acceptable to Sunbeam. Sunbeam shifted its strategic focus to identify underperforming companies with strong brand names that Sunbeam could acquire. Sunbeam's former management intended to capitalize on its perceived capability in cost containment and operational improvement by acquiring one or more of these companies and their

premier brand names, thereby broadening the Sunbeam product offering spectrum and presenting opportunities to eliminate redundant or inefficient operations.

Sunbeam acquired its current interest in Coleman and agreed to acquire the remaining equity interest in Coleman primarily due to Coleman's strong and established brand names, the potential opportunity to streamline operations, the diversification these brand names provide to Sunbeam's product base and the potential for revenue and operational benefits associated with a combination of Sunbeam and Coleman. In addition, Sunbeam believed that its existing international geographic marketing and distribution strengths and those of Coleman would significantly complement each other. Sunbeam's former management believed that the acquisition of Coleman would give Sunbeam a platform from which to capitalize on the fragmentation and potential consolidation of the durable household consumer products sector.

Approval of the Sunbeam Board. In February 1998, the then Sunbeam board approved the agreement relating to the M&F Transaction and the merger agreement and determined that the terms of the agreements were fair to Sunbeam's stockholders. The then Sunbeam board identified and considered a variety of positive factors in its deliberations concerning the merger, including, but not limited to, the following:

- the opinion of Sunbeam's financial advisor, Morgan Stanley, to the effect that the consideration to be paid by Sunbeam for Coleman was fair to Sunbeam from a financial point of view; Morgan Stanley has since advised Sunbeam that its opinion, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam;
- the terms of the agreements, including the fact that the exchange ratio of Sunbeam common stock for Coleman common stock would not change even in the event of a decrease in the market price of the Sunbeam common stock;
- the then Sunbeam board's belief that the then per share premium of about 44.2% implied by the then current value of the consideration compared to the then market price per share of Coleman common stock was reasonable in light of other comparable transactions involving companies in the consumer products and sporting goods industries;
- the belief of Sunbeam's prior management that Coleman presented unrealized potential which could be exploited once Coleman's operations were added to those of Sunbeam;
- the anticipated operational efficiencies and revenue benefits associated with the acquisition of Coleman's product lines; and
- the belief of Sunbeam's prior management that Coleman's operations could be streamlined to enhance efficiency.

In addition, the Sunbeam board identified and considered a variety of potentially negative factors, including the following:

- the possibility that the operational and revenue benefits expected to be realized as result of the transaction might not be fully realized;
- the difficulties associated with integrating Coleman's operations with those of Sunbeam and managing the combined enterprise;
- the fact that the M&F Transaction was subject to customary closing conditions and, therefore, was subject to the risk that the M&F Transaction and the merger would not be completed; the Sunbeam board considered that non-consummation could negatively affect the market price of the Sunbeam common stock and the financial community's perception of the stability and future prospects of Sunbeam;
- the significant expenses Sunbeam would be required to incur in order to complete the M&F Transaction and the merger, including costs of integrating the businesses of Coleman and Sunbeam, fees of Sunbeam's legal and financial advisors and the expenditure of corporate resources in support of the transaction generally;
- the risks associated with managing a highly leveraged business; and

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- the risks associated with managing operations at different locations.

The Sunbeam board believed, however, that the foregoing negative factors were outweighed by the projected benefits of the transactions.

Purposes and Effects of the Merger

The purpose of the merger is to enable Sunbeam to acquire the entire equity interest in Coleman. In the M&F Transaction, which was completed on March 30, 1998, Sunbeam acquired indirectly about 81% of the then outstanding shares of Coleman common stock. Sunbeam's ownership interest in Coleman was immediately thereafter reduced to about 79% as a result of the exercise of Coleman employee stock options immediately following the M&F Transaction. As a result of the merger, Sunbeam will acquire the remaining equity interest in Coleman, and Coleman will become an indirect, wholly owned subsidiary of Sunbeam.

In addition, under the April 15, 1999 amendment to Sunbeam's bank credit facility, it is an event of default under the bank credit facility:

- if Sunbeam fails to have the SEC declare this document effective by October 30, 1999 (which was subsequently amended to January 10, 2000)
- if Sunbeam fails to complete the merger within 25 business days after this document is declared effective by the SEC, or
- if Sunbeam has to pay more than \$87.5 million in cash to complete the merger including any amounts paid with respect to appraisal rights, but excluding related legal, accounting and other customary fees and expenses.

If an event of default were to occur, a default would also occur under the Coleman note payable to Sunbeam and, among other things, the lenders under Sunbeam's credit agreement would be entitled to foreclose on the Coleman note and the Coleman assets pledged under the Coleman note. The Coleman note, by its terms, will not be affected by the merger and will remain outstanding. See "MATERIAL CONTACTS BETWEEN SUNBEAM AND COLEMAN AND ITS AFFILIATES—Financial Transactions Between Coleman and Sunbeam."

The interest rate margins on Sunbeam's bank credit facility increased to 3.50% for LIBOR loans and 2.25% for base rate loans on September 1, 1999 as a result of the merger not occurring by such date and increased to 4.00% for LIBOR loans and 2.50% for base rate loans on October 1, 1999 as a result of the merger not occurring by such date. The interest rate margins will be decreased to 3.00% for LIBOR loans and 1.75% for base rate loans upon consummation of the merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the bank credit facility.

Coleman and Sunbeam adopted a two-step acquisition structure for several reasons, including to enable Sunbeam to acquire control of Coleman as quickly as possible. Alternative transaction structures were considered by Sunbeam and Coleman, including a one-step merger without first completing the M&F Transaction and a direct purchase by Sunbeam of Coleman Worldwide's equity interest in Coleman prior to completion of the merger. MacAndrews & Forbes rejected these transaction structures. The parties agreed that the final transaction would be structured as a merger of CLN Holdings and a wholly owned Sunbeam subsidiary, followed by a second-step merger of another wholly owned Sunbeam subsidiary with Coleman. See "Background of the Merger."

Sunbeam also considered paying alternative types of consideration to Coleman stockholders. Sunbeam initially proposed consideration consisting exclusively of Sunbeam common stock. Sunbeam's prior management believed that the use of Sunbeam common stock as consideration would enhance stockholder value by allowing Sunbeam to capitalize on the then recent rise in Sunbeam's stock price. This consideration, however, was rejected by MacAndrews & Forbes. Other types of consideration were also briefly discussed, including the use of Sunbeam preferred stock instead of the cash portion of the merger consideration. This type of consideration was not seriously considered by the parties.

As a result of the merger, the minority stockholders of Coleman:

- will cease to hold any direct equity interest in Coleman,
- will no longer directly share in the profits and losses of Coleman, but will indirectly share in such profits and losses as stockholders of Sunbeam.
- will not be entitled to receive dividends or other distributions, if any, declared and paid by Coleman, and
- will not be entitled to vote or otherwise participate in the corporate governance of Coleman, except through their ability to vote and participate in the corporate governance of Sunbeam through their ownership of Sunbeam common stock.

As a result of the M&F Transaction and the merger, Sunbeam will have the entire indirect interest in the net book value and net earnings of Coleman. Sunbeam will also be entitled to all benefits resulting from that interest, including all income generated by Coleman's operations, any future increase in Coleman's value and the right to elect all members of the Coleman board of directors. Similarly, Sunbeam will bear the entire risk of losses generated by Coleman's operations and any decrease in the value of Coleman after the merger. The minority stockholders of Coleman will have only an indirect interest in the net book value and net earnings of Coleman and future increases, if any, in the value of Coleman through their holdings of Sunbeam common stock to be received in the merger and upon any exercise of the warrants.

Upon completion of the merger, there will no longer be any publicly held shares of Coleman common stock and the Coleman common stock will be delisted from the NYSE, the Pacific Stock Exchange and the Chicago Stock Exchange and deregistered under the Exchange Act.

The tax consequences of the merger are subject to a number of qualifications, as discussed below under the caption "UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS."

Sunbeam's Plans and Proposals for Coleman

On May 11, 1998, Sunbeam's former management announced its plans to commence a restructuring intended to integrate Sunbeam's operations with those of Coleman, First Alert and Signature Brands. The planned restructuring was also intended to centralize the operations of the four companies, close or divest some of Sunbeam's plants and reduce Sunbeam's workforce. Following the changes in Sunbeam's management that were announced in June 1998, plans for the proposed restructuring were postponed pending further review of Sunbeam's organizational structure. On August 24, 1998, Sunbeam's new management announced a revised organizational structure which provided for some plant closings and reductions in workforce, but eliminated the previously announced centralization of Sunbeam's operations.

Upon completion of the M&F Transaction, which occurred on March 30, 1998, all of the members of the Coleman board resigned, the number of directors constituting the Coleman board of directors was fixed at five, and five designees of Sunbeam were elected as directors of Coleman. In addition, Sunbeam designees were appointed to senior management positions at Coleman. Subsequently, as a result of changes in Sunbeam's management and board of directors, Jerry W. Levin, the current Chairman and Chief Executive Officer of Sunbeam and Coleman, was reelected to the Coleman board. In addition, Paul E. Shapiro, the current Executive Vice President and Chief Administrative Officer of Sunbeam and Coleman, was elected to the Coleman board of directors. The other members of the Coleman board of directors resigned or were removed by Sunbeam. In April 1999, the size of the Coleman board of directors was fixed at three members and A. Whitman Marchand, who is not affiliated with either Sunbeam or Coleman, was elected to the Coleman board of directors. In July 1999, the size of the Coleman board was fixed at four and John H. Klein, an outside director of Sunbeam, was elected to the Coleman board. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Changes in Sunbeam's Management and Board" and "—Settlement of Claims Relating to the M&F Transaction" and "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Appointments of Former Coleman and MacAndrews & Forbes Officers to Sunbeam's Management and Board" and "—Services Provided by MacAndrews & Forbes."

Following the completion of the M&F Transaction, Sunbeam prepaid substantially all of the \$1,016 million aggregate outstanding indebtedness of Coleman, Coleman Worldwide, CLN Holdings and certain of Coleman's subsidiaries with a portion of the net proceeds from the offering of the debentures and borrowings under Sunbeam's bank credit facility. See "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION."

Position of Sunbeam and Coleman on the Fairness of the Merger and the Settlement

Sunbeam's interest is to complete the merger as soon as possible on terms beneficial to Sunbeam, and Coleman is controlled by Sunbeam. Therefore, the Coleman minority stockholders should not necessarily rely on any views of Sunbeam or Coleman regarding the fairness of the merger.

The original February 1998 merger agreement, which provided for consideration of \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock, was negotiated at arms'-length between parties that were unaffiliated at the time; was unanimously approved by the then Coleman board; and was approved by written consent of Coleman's then majority stockholder. These approvals constituted all the approvals required by Delaware law in connection with the merger. Following these approvals and the completion of the M&F Transaction, the merger agreement by its terms could not be amended or terminated, and the only unfulfilled condition to the merger was the effectiveness with the SEC of this document.

Thereafter, major adverse developments affecting Sunbeam caused a substantial decrease in the market value of Sunbeam's stock and, therefore, the value of the consideration to be paid to the Coleman minority stockholders under the merger agreement. The Coleman minority stockholders instituted litigation in the Delaware Court of Chancery claiming that the consideration payable to them under the merger agreement was inadequate. In October 1998, the litigation claims of the Coleman minority stockholders were settled in arms'-length negotiations between counsel to plaintiffs and counsel to Sunbeam. The settlement, which was approved by the Court on November 12, 1999, effectively increased the consideration payable to the Coleman minority stockholders in connection with the merger by providing them with warrants, each entitling them to purchase one Sunbeam share at \$7 per share, at the rate of 0.381 of a warrant for each Coleman share (after deducting the warrants to be issued to counsel for the Coleman minority stockholders as their legal fees), in addition to their receiving \$6.44 in cash and 0.5677 of a Sunbeam share for each Coleman share, upon completion of the merger.

Sunbeam and Coleman believe that the transaction consisting of the merger and the settlement is substantively fair to the Coleman minority stockholders, and that the process which arrived at the transaction was procedurally fair to them. This belief is based solely on the following considerations:

- (1) The merger agreement was negotiated at arms'-length between parties that were unaffiliated at the time—Sunbeam, on the one hand, and, on the other hand, Coleman and its then 81% stockholder, MacAndrews & Forbes.
- (2) The merger agreement provides that it cannot be amended (whether to change the merger consideration, to add conditions to the merger or otherwise) or terminated.
- (3) The settlement of the litigation claims of the Coleman minority stockholders was negotiated at arms'-length between parties that were and are unaffiliated—counsel to Sunbeam and counsel to the Coleman minority stockholders.
- (4) The settlement was approved by the Delaware Court of Chancery on November 12, 1999 as being fair, reasonable and in the best interests of the Coleman minority stockholders after a hearing on September 29, 1999 at which all Coleman minority stockholders had an opportunity to be heard and only one stockholder objected to the settlement.
- (5) Notwithstanding the settlement, any Coleman minority stockholder who objects to the terms of the merger agreement and settlement can pursue his Delaware law appraisal rights and seek payment in cash of the judicially determined fair value of his Coleman shares.

In transactions such as the merger, the SEC has stated that certain factors normally are considered to be important when reaching a determination regarding the fairness of the proposed transaction to unaffiliated security holders. However, for the reasons set forth below, Sunbeam and Coleman believe that none of these factors is relevant to an evaluation of the fairness of the consideration payable to Coleman minority stockholders under the merger agreement and in the settlement:

- *Current Market Prices.* The trading price of Coleman common stock has been linked to the trading price of Sunbeam common stock since the execution of the merger agreement and the announcement of the merger in February 1998. Therefore, the Coleman common stock has no market value independent of its relationship to the Sunbeam common stock and the value of the consideration payable under the merger agreement and in the settlement;
- *Historical Market Prices.* The trading price of Coleman common stock has been linked to the trading price of Sunbeam common stock since the execution of the merger agreement and the announcement of the merger in February 1998. Sunbeam and Coleman do not believe that market prices prior to February 1998—more than 20 months ago—provide any indication of the current value of Sunbeam or Coleman;
- *Net Book Value.* Sunbeam and Coleman believe that net book value is not a true indication of the value of Sunbeam or the value of Coleman on a stand-alone basis;
- *Prior Coleman Common Stock Repurchases.* Coleman has not repurchased any of its common stock since March 1996 and Sunbeam and Coleman do not believe that the prices paid in connection with any such transactions more than three and one half years ago provide any indication of the current value of Coleman;
- *Going Concern Value; Liquidation Value.* Any current estimate of the going concern value or liquidation value of Sunbeam or Coleman would require a detailed financial analysis by an appraiser, financial advisor or other outside party. No such analysis was requested or obtained and it was considered impractical to request or obtain such an analysis;
- *Reports, Opinions or Appraisals.* Coleman's financial advisor, Credit Suisse First Boston, has advised Sunbeam that its February 1998 opinion regarding the fairness to the Coleman minority stockholders from a financial point of view of the consideration payable under the merger agreement, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam. Moreover, Sunbeam's financial advisor, Morgan Stanley, has advised Sunbeam that its February 1998 opinion regarding the fairness to Sunbeam from a financial point of view of the consideration payable under the merger agreement, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam. No other report, opinion or appraisal was requested or obtained by Sunbeam or Coleman in connection with the merger or the settlement and it was considered impractical to request or obtain any such report, opinion or appraisal; and
- *Offers or Proposals by Unaffiliated Persons.* During the past 18 months, neither Sunbeam nor Coleman has received any offer or proposal from an unaffiliated person regarding a merger or consolidation involving, or the acquisition of all or any substantial part of the assets of, or the acquisition of securities conferring control of, Sunbeam or Coleman.

Sunbeam and Coleman have not performed, and (as stated above) have not requested or obtained from any financial advisor or other outside expert, any current valuation of Coleman or the minority stockholders' interest in Coleman based on any of the analyses typically employed in such a valuation (such as a comparable company or comparable transaction analysis or an analysis of the discounted present value of projected future cash flows and terminal values). Nor have they performed, or requested or obtained, any current valuation of the warrants which are part of the consideration to be paid to the Coleman minority stockholders upon completion of the merger.

The Delaware Court of Chancery, in its November 12, 1999 opinion approving the settlement, accepted a September 1999 valuation of the warrants by plaintiffs' expert based on the Black-Scholes option-pricing model of \$2.475 per warrant. Based on such valuation (which may no longer be applicable because it

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assumed a \$6.00 per share Sunbeam stock price), and assuming a market price of \$4.75 per Sunbeam share (the NYSE closing price on December 3, 1999), the consideration to be received by the Coleman minority stockholders upon completion of the merger would have a value of approximately \$10.08 per Coleman share (\$6.44 in cash, \$2.70 in Sunbeam stock and \$0.94 in Sunbeam warrants). However, Sunbeam and Coleman cannot and will not try to predict the prices at which the Sunbeam shares and warrants will trade upon completion of the merger, or whether an active trading market for the warrants will develop.

Because the merger agreement was approved by all action of the Coleman board and stockholders required under Delaware law and by its terms cannot be amended, Sunbeam and Coleman have not considered amending the merger agreement to add procedural safeguards as conditions to the merger, such as a condition that the merger be approved by a majority of Coleman's minority stockholders or by independent Coleman directors or a condition requiring a favorable opinion of a financial advisor on the fairness of the consideration to be received by stockholders upon completion of the merger. Instead, Sunbeam and Coleman decided to settle the claims of the Coleman minority stockholders challenging the fairness of the consideration provided under the merger agreement through arms'-length negotiations with their litigation counsel on terms that the Delaware Court of Chancery would approve as being fair to the Coleman minority stockholders. Notwithstanding the absence of the procedural safeguards discussed in the first sentence of this paragraph, based solely on the factors listed under items (1) through (5) above, Sunbeam and Coleman believe that the transaction consisting of the merger and the settlement is procedurally fair to the Coleman minority stockholders.

Camper Acquisition Corp. is a wholly owned subsidiary of Sunbeam which was formed solely for the purpose of acting as an acquisition vehicle in connection with the merger. Camper Acquisition Corp expressly adopts the foregoing statements of Sunbeam.

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THE MERGER

The description of the merger and the merger agreement contained in this document does not purport to be complete and is qualified in its entirety by reference to the merger agreement, a copy of which is attached as Annex I at the back of this document and is incorporated in this document by reference.

General

The merger will become effective when a certificate of merger is filed with the Secretary of State of the State of Delaware. It is currently anticipated that the certificate of merger will be filed, and the merger will become effective, on or about January 6, 2000, which is the twenty-first business day following the date on which this document was first mailed to you.

Prior to the completion of the merger, the outstanding capital stock of Camper Acquisition Corp., all of which is currently owned directly by Sunbeam, will be contributed to Coleman Worldwide Corporation. In the merger, Camper Acquisition Corp., which will then be directly owned by Coleman Worldwide Corporation, will be merged into Coleman, which is currently 80.01% directly owned by Coleman Worldwide Corporation.

Interests of Certain Persons in the Merger

In considering the approval of the merger by the former Coleman board of directors, you should be aware that a number of persons, including current and former directors and executive officers of Coleman, have interests in the merger that are different from or in addition to yours, as described below.

Coleman Options. Under the merger agreement, after the completion of the M&F Transaction, which occurred on March 30, 1998, all of the then outstanding options to purchase shares of Coleman common stock under Coleman's stock option plans became fully vested and exercisable. During the period between the completion of the M&F Transaction and the completion of the merger, Sunbeam is obligated, under the merger agreement, to cause Coleman to maintain a broker-dealer cashless exercise procedure for the exercise of the Coleman stock options. Upon the completion of the merger, each outstanding Coleman stock option that has not been exercised will be cancelled and each holder of an unexercised Coleman stock option will be paid an amount in cash equal to the product of (1) the total number of shares of Coleman common stock subject to the Coleman stock option, multiplied by (2) the excess of \$27.50 over the exercise price per share of Coleman common stock subject to the Coleman stock option, less any applicable withholding taxes.

Immediately after the completion of the M&F Transaction, two current executive officers of Sunbeam and Coleman exercised options that vested as a result of the M&F Transaction. Jerry W. Levin, the then Chairman and Chief Executive Officer of Coleman and the current Chairman and Chief Executive Officer of Sunbeam and Coleman, exercised 500,000 Coleman stock options at per share exercise prices ranging from \$12.25 to \$14.00 and Mr. Levin received net proceeds upon the sale of such shares of about \$9.94 million. Bobby G. Jenkins, the current Executive Vice President and Chief Financial Officer of Sunbeam and Executive Vice President of Coleman, exercised 20,000 Coleman stock options at per share exercise prices ranging from \$16.125 to \$16.434 and Mr. Jenkins received net proceeds upon the sale of such shares of about \$288,360.

Ronald O. Perelman, the sole stockholder of MacAndrews & Forbes and a member of the Coleman board at the time the agreement relating to the M&F Transaction and the merger agreement were executed, holds 500,000 Coleman stock options with an exercise price of \$14.00 per share. Paul E. Shapiro, the current Executive Vice President and Chief Administrative Officer of Sunbeam and Coleman and a director of Coleman, holds 62,500 Coleman stock options with an exercise price of \$17.062 per share and 15,000 Coleman stock options with an exercise price of \$16.125 per share. Karen K. Clark, the current Senior Vice President, Finance of Sunbeam and Senior Vice President, Finance of Coleman, holds 10,000 Coleman stock options with an exercise price of \$17.062 per share and 15,000 Coleman stock options with an exercise price of \$16.125 per share. Steven R. Isko, the current Senior Vice President and General Counsel of Sunbeam and Senior Vice President and General Counsel of Coleman, holds 10,000 Coleman stock options with an

exercise price of \$17.062 per share, 7,500 Coleman stock options with an exercise price of \$16.125 and 2,500 Coleman stock options with an exercise price of \$12.937 per share. Upon completion of the merger, in settlement of their Coleman stock options, Messrs. Perelman, Shapiro and Isko and Ms. Clark will receive cash payments of \$6,750,000, \$823,000, \$226,009 and \$275,005 respectively.

Severance Arrangements. The M&F Transaction constituted a "change in control" of Coleman under the terms of some Coleman employee benefit plans and various employment, severance, termination, consulting and retirement agreements to which Coleman was a party. As a result, at the effective time of the M&F Transaction, Coleman became obligated to pay all amounts provided under those plans and agreements as a result of the change in control. Under the merger agreement, Sunbeam agreed that after completion of the M&F Transaction it would honor, and cause Coleman to honor, all employment, severance, termination, consulting and retirement agreements to which Coleman was a party on that date. Accordingly, all rights and obligations of Coleman under these agreements have become rights and obligations of Sunbeam and except as noted below with respect to the former employment agreements between Coleman and Messrs. Levin and Shapiro, Sunbeam has agreed to cause Coleman to pay all amounts provided under these employee benefit plans and agreements as a result of the change in control of Coleman in accordance with their respective terms and to honor, and to cause Coleman to honor, all rights, privileges and modifications to or with respect to any such employee benefit plans of Coleman or agreements which become effective as a result of the change in control. However, neither Sunbeam nor Coleman has any responsibility for Coleman's obligations under the former employment agreements between Coleman and Jerry W. Levin, Coleman's then Chairman and Chief Executive Officer, and Paul E. Shapiro, Coleman's then Executive Vice President and General Counsel, except, in the case of Mr. Levin, for an incentive payment in the amount of \$1.5 million due from Coleman (and subsequently paid) related to the sale of Coleman Safety & Security Products, Inc. to an unrelated third party, which transaction was pending at the time the merger agreement was signed. The former employment agreements with Messrs. Levin and Shapiro were terminated upon completion of the M&F Transaction.

In connection with the change in control resulting from the completion of the M&F Transaction, Sunbeam has paid, or has caused Coleman to pay or recognize as payable, a total of \$7,903,765 in severance compensation and related benefits for approximately 117 former Coleman employees. Of that amount, \$7,597,936 was in respect of base salary and related benefits, and \$305,829 was in respect of extra pension credits. In addition, Coleman paid \$454,277 for management incentive bonuses to 37 former Coleman employees. The only principal executive officer of Coleman to receive severance compensation from Coleman as a result of the change in control was Joseph Page, the former Chief Financial Officer of Coleman, who received severance payments totaling \$280,000. Bobby G. Jenkins, the current Executive Vice President and Chief Financial Officer of Sunbeam and Executive Vice President of Coleman, received severance payments totaling \$18,583 as a result of his resignation from Coleman following the M&F Transaction, and prior to his being rehired by both Sunbeam and Coleman in the capacities mentioned above. Steven R. Isko, the current Senior Vice President and General Counsel of Sunbeam and Senior Vice President and General Counsel of Coleman, received severance payments totaling \$185,634 as a result of his resignation from Coleman following the M&F Transaction, and prior to his being rehired by both Sunbeam and Coleman in the capacities mentioned above.

Indemnification. The merger agreement provides that all rights to indemnification existing in favor of any director or officer of Coleman in office at or prior to the completion of the merger, as provided in Coleman's Certificate of Incorporation, Coleman's By-laws, as amended, or indemnification agreements in effect as of February 27, 1998, will survive the merger and continue in full force and effect for a period of six years after the effective time of the merger (and during the period from the completion of the M&F Transaction to the completion of the merger), to the extent these rights are consistent with Delaware law. In addition, Sunbeam agreed that, from and after the completion of the M&F Transaction and for a period of six years following the completion of the merger, Sunbeam or Coleman, as the surviving corporation in the merger, will cause to be maintained a liability insurance policy for the benefit of Coleman's former directors and officers providing coverage substantially similar to the policies in effect as of February 27, 1998. Neither Sunbeam nor Coleman will be required to pay an annual premium for such insurance in excess of 200% of the last annual premium paid by Coleman prior to the date of the merger agreement, but in such case will

purchase as much coverage as possible for such amount. See "THE MERGER—Continuation of Existing Indemnification Rights."

Registration Rights Agreement. The shares of Sunbeam common stock issued to the MacAndrews & Forbes subsidiary from which Sunbeam acquired indirectly about 81% of the then outstanding Coleman common stock in the M&F Transaction were not registered under federal or state securities laws. Accordingly, in connection with the completion of the M&F Transaction, Sunbeam entered into a registration rights agreement with the MacAndrews & Forbes subsidiary, permitting the MacAndrews & Forbes subsidiary and other affiliates of Coleman to require Sunbeam to register their shares of Sunbeam common stock under federal and applicable state securities laws. The registration rights agreement was subsequently amended in August 1998 to provide that the MacAndrews & Forbes subsidiary can also require Sunbeam to register the warrant and the shares of Sunbeam common stock issuable upon exercise of the warrant issued to the MacAndrews & Forbes subsidiary in connection with the settlement of legal claims related to the M&F Transaction. See "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Registration Rights Agreement."

Conversion of Coleman Common Stock

Upon completion of the merger, each outstanding share of Coleman common stock—other than shares held indirectly by Sunbeam and shares, if any, with respect to which Delaware appraisal rights are sought and perfected—will no longer be outstanding and will automatically be cancelled. After completion of the merger, you will no longer have any rights under the certificate representing your shares of Coleman common stock, except the right to receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed, a cash payment equal to the value of any fractional shares of Sunbeam common stock you would otherwise be entitled to receive upon surrender of the certificate, and warrants entitling you to purchase one share of Sunbeam common stock at a cash price of \$7 per share until August 24, 2003 to be issued under the recent settlement of litigation relating to the merger. Under the terms of the settlement, you will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed, assuming no further increase in the number of outstanding shares of Coleman common stock prior to the completion of the merger as a result of further exercises of Coleman employee stock options. The number of warrants you will receive will be rounded up or down to the nearest whole number to avoid the issuance of fractional warrants. See "LITIGATION SETTLEMENT AND WARRANTS."

Upon completion of the merger, all shares of Coleman common stock held indirectly by Sunbeam through Coleman Worldwide will remain outstanding and unchanged as a result of the merger. Each share of Coleman common stock, if any, held in the treasury of Coleman, by any subsidiary of Coleman, by Sunbeam or by any subsidiary of Sunbeam (other than Coleman Worldwide) immediately prior to the completion of the merger will be automatically cancelled. In addition, upon completion of the merger, each outstanding share of common stock of Camper Acquisition Corp., the wholly owned subsidiary of Sunbeam that will be merged with Coleman in the merger, will be automatically cancelled.

Exchange of Coleman Common Stock

The exchange of the shares of Coleman common stock you own when the merger is completed will occur as follows:

- upon completion of the merger, Sunbeam will deposit, with an exchange agent selected by Sunbeam, (1) certificates for the shares of Sunbeam common stock to be issued to you in the merger; (2) cash sufficient to pay the cash portion of the merger consideration and any fractional share payments you are entitled to receive; and (3) warrants to purchase Sunbeam common stock at a cash price of \$7 per share to which you are entitled under the court-approved settlement of litigation relating to the merger;
- as soon as reasonably practicable after the completion of the merger, Sunbeam will cause the exchange agent to mail a letter of transmittal and exchange instructions to you;

- upon surrender of your Coleman common stock certificate(s) for cancellation to the exchange agent, together with a properly completed and duly executed letter of transmittal, you will receive, in exchange for your Coleman certificate(s), (1) a certificate for the shares of Sunbeam common stock you are entitled to receive in the merger, (2) a cash payment in respect of the cash portion of the merger consideration, after giving effect to any required withholding tax, and any fractional share payment you are entitled to receive, and (3) warrants to purchase Sunbeam common stock at a cash price of \$7 per share to which you are entitled under the court-approved litigation settlement relating to the merger based on the number of shares of Coleman common stock you own when the merger is completed; your certificate(s) will then be cancelled;
- until you surrender your Coleman stock certificates, you will not be entitled to vote the shares of Sunbeam common stock you are entitled to receive in the merger or receive any dividends or distributions with a record date after the completion of the merger with respect to such Sunbeam common stock, although any such dividends or distributions will accrue and be payable to you, without interest, upon surrender of your certificate(s); it should be noted, however, that Sunbeam does not pay, and is prohibited from paying under the bank credit facility, cash dividends;
- any merger consideration and warrants that remain undistributed for six months after the completion of the merger will be delivered to Sunbeam, upon demand, and any holders of unsurrendered Coleman common stock certificates may thereafter look only to Sunbeam, as general creditors, for payment of the merger consideration and warrants. In no event will Sunbeam, Coleman or the exchange agent be liable to any holder of unsurrendered certificates for any merger consideration or warrants that are delivered to a public official under applicable escheat laws; and
- upon completion of the merger, the stock transfer books of Coleman will be closed and no further transfer of shares of Coleman common stock will be made; if, after the completion of the merger, Coleman common stock certificates are presented to Coleman, they will be cancelled and exchanged for the merger consideration and warrants.

You should not forward your certificates to the exchange agent until you receive a letter of transmittal and exchange instructions.

No Fractional Shares or Warrants

No fractional shares of Sunbeam common stock or warrants will be issued to you, and no dividend, stock split or other change in the capital structure of Sunbeam will relate to any fractional shares. Any Coleman stockholder who would otherwise be entitled to fractional shares will not be entitled to vote or to exercise any rights of a security holder with respect to such fractional shares.

Instead of any fractional shares of Sunbeam common stock, each Coleman stockholder who would otherwise be entitled to a fraction of a share of Sunbeam common stock will be paid cash, without interest, in an amount equal to the fraction of a share of Sunbeam common stock to which such stockholder would otherwise be entitled, multiplied by the closing sale price of one share of Sunbeam common stock on the NYSE Composite Transactions Tape on the day of the completion of the merger, or, if shares of Sunbeam common stock are not so traded on that day, the closing sale price on the next preceding day on which the shares were traded on the NYSE. Shares of Coleman common stock of any holder represented by two or more certificates will be aggregated, and in no event will any holder of Coleman common stock be paid an amount of cash for fractional shares in respect of one or more than one share of Sunbeam common stock.

Instead of any fractional warrants, each Coleman stockholder who would otherwise be entitled to a fraction of a warrant will receive a number of whole warrants determined by rounding up or down to the nearest whole number.

Conditions

Under the terms of the merger agreement, the completion of the merger was subject to the following conditions: (1) this document had to be declared effective by the SEC, (2) the shares of Sunbeam common stock to be issued by Sunbeam in the merger had to be listed for trading on the NYSE, and (3) the M&F

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Transaction had to be completed. All of these conditions have already been satisfied. Therefore, assuming that no court order is entered which prevents the merger from being completed, the merger will be completed on or about January 6, 2000, which is the twenty-first business day following the date on which this document was first mailed to you.

Governmental And Regulatory Approvals

Completion of the M&F Transaction was conditioned on the expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. On March 4, 1998, Sunbeam and Ronald O. Perelman, as the then ultimate parent of Coleman, filed notifications and report forms under the HSR Act with the Federal Trade Commission and the Antitrust Division of the Department of Justice relating to the M&F Transaction and the merger. The applicable waiting period under the HSR Act was terminated on March 27, 1998. However, notwithstanding the termination of the waiting period under the HSR Act, the FTC, the Antitrust Division, a state or a private person or entity could seek under federal or state antitrust laws, among other things, to enjoin or rescind the M&F Transaction or the merger. Although Sunbeam and Coleman believe that the M&F Transaction and the merger do not violate United States antitrust laws, there can be no assurance that if such a challenge is made, it would not be successful.

In addition to the filings under the HSR Act, Sunbeam and Coleman filed a pre-merger notification form with the German Federal Cartel Office relating to the M&F Transaction and the merger, which was approved by the Federal Cartel Office on March 20, 1998. Neither Sunbeam nor Coleman is aware of any other material approval or other action by any governmental, administrative or regulatory agency or authority, domestic or foreign, that would be required in order to complete the merger.

Employee Matters

Sunbeam agreed that, from and after the completion of the M&F Transaction, it would honor, and cause Coleman to honor, all employment, severance, termination, consulting and retirement agreements to which Coleman was a party on that date. Accordingly, all rights and obligations of Coleman under these agreements became rights and obligations of Sunbeam. However, neither Sunbeam nor Coleman has any responsibility for Coleman's obligations under the former employment agreements between Coleman and Jerry W. Levin, Coleman's then Chairman and Chief Executive Officer, and Paul E. Shapiro, Coleman's then Executive Vice President and General Counsel, except in the case of Mr. Levin for an incentive payment in the amount of \$1.5 million due from Coleman (and subsequently paid) related to the sale of Coleman Safety & Security Products, Inc. to an unrelated third party, which transaction was pending at the time the merger agreement was signed. The former employment agreements with Messrs. Levin and Shapiro were terminated upon completion of the M&F Transaction. Sunbeam agreed to cause Coleman to allow Coleman employees to participate in Sunbeam employee benefit plans, from and after the completion of the M&F Transaction, on substantially the same basis as similarly situated Sunbeam employees. With respect to welfare benefit plans, Sunbeam also agreed to waive any pre-existing condition limitations and give effect, in determining any deductible and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and reimbursed to, those employees with respect to similar plans maintained by Coleman. Sunbeam has, or has caused Coleman to, give Coleman employees full credit for purposes of eligibility and vesting of benefits and benefit accrual for service with Coleman and its affiliates prior to the completion of the M&F Transaction under each employee benefit plan, so long as such crediting of service did not result in duplication of benefits. See "—Interests of Certain Persons in the Merger."

The M&F Transaction constituted a "change in control" of Coleman under some Coleman employee benefit plans and employment, severance, termination, consulting and retirement agreements. Except as noted above with respect to the employment agreements of Messrs. Levin and Shapiro, Sunbeam agreed to cause Coleman to pay all amounts provided under these employee benefit plans and agreements as a result of the change in control of Coleman in accordance with their respective terms and to honor, and to cause Coleman to honor, all rights, privileges and modifications to or with respect to any such employee benefit plans of Coleman or agreements which became effective as a result of the change in control. See "—Interests of Certain Persons in the Merger."

Sunbeam caused Coleman to continue Coleman's Annual Incentive Plan for Management Employees for the remainder of 1998, and participants in the Management Incentive Plan were not eligible to participate in Sunbeam's incentive plan in respect of 1998. Under the terms of the Management Incentive Plan, participants were eligible for cash bonuses payable upon the attainment of certain performance goals, which performance goals were determined by reference to (1) earnings before interest, taxes and amortization, (2) operating working capital per sales dollar and (3) other quantitative goals as approved from time to time. Cash bonuses paid were equal to a percentage of a participant's base salary, depending on the percentage of the target attained by Coleman. Coleman paid a total of about \$2.9 million to participants in the Management Incentive Plan with respect to 1998. Eligible participants include select employees of Coleman and its subsidiaries who are (1) designated to participate by the Chief Executive Officer of Coleman, (2) are employed prior to the start of the last fiscal quarter in the plan year and (3) are not participants in another short-term incentive program of Coleman.

Sunbeam will honor, and will cause Coleman to honor, Coleman's Executive Severance Policy without any amendments adverse to participants. The Coleman Executive Severance Policy applies to certain terminations of employment of employees of Coleman and its subsidiaries who are participants in Coleman's Management Incentive Plan or who are in the position of country general manager/president and above. Participation in the Executive Severance Policy is limited to those participants in the Management Incentive Plan described above. Benefits are payable to a participant in the event of a termination of the participant's employment by Coleman within three years following the M&F Transaction other than for Cause (as defined in the Executive Severance Policy) or by the participant with Good Reason (as defined in the Executive Severance Policy). The benefits payable under the Executive Severance Policy generally include the following:

- salary continuation for twelve, nine or six months, depending on the participant's level of participation in the Management Incentive Plan;
- medical and/or dental coverage under COBRA until the end of the severance period at the same contribution level in effect for active participants, with Coleman paying the portion of the premiums it was paying for such participant prior to the M&F Transaction;
- in the event of a termination prior to December 31, 1998, a pro rata payment under the Management Incentive Plan through the date of such termination;
- a lump sum cash payment in an amount equal to the aggregate benefit that the participant would have accrued had he or she remained employed during the severance period under Coleman's qualified defined benefit retirement plans and its excess or supplemental defined benefit retirement plans, less any actual vested benefit of the participant under such plans;
- a lump sum payment in an amount equal to the value of the participant's accrued vacation, determined in accordance with Coleman's vacation policy; and
- an additional payment to hold the participant harmless from the excise taxes imposed by sections 280G and 4999 of the tax code, if the severance payments and benefits payable under the Executive Severance Policy exceed certain minimum thresholds.

In addition, any participant who was a party to an employment contract or other written agreement with Coleman was entitled to choose between the severance benefits, if any, payable under such contract and the severance benefits payable under the Executive Severance Policy.

Since the ninety-first day following completion of the M&F Transaction, some of the participants in the Executive Severance Policy have been entitled to voluntarily terminate their employment with Coleman and to have such termination deemed to be for Good Reason under the Executive Severance Policy, as a result of the completion of the M&F Transaction.

Since the date of the M&F Transaction, Coleman has paid or become obligated to pay about \$4.2 million to participants under the Executive Severance Policy.

For the benefit of those employees of Coleman who were not participants in the Executive Severance Policy and who did not have employment agreements with Coleman, Sunbeam provided severance benefits under Sunbeam's Severance Pay Plan on substantially the same basis as similarly situated Sunbeam employees. To date, Sunbeam has made aggregate payments of about \$470,000 to former Coleman employees under the Sunbeam Severance Pay Plan. Under the terms of the Severance Pay Plan, a participant who is a Coleman employee and whose employment is terminated as the direct result of the closure of a facility or the elimination of the participant's position will be entitled to receive the following severance benefits:

- a lump sum cash payment in an amount equal to (1) six months', three months' or six weeks' base pay, depending on the number of years of service, in the case of an exempt employee or (2) one week of base pay for each completed year of service, in the case of a non-exempt employee; and
- health coverage under COBRA until the end of the severance pay period at the same contribution level in effect for active participants, with Sunbeam paying the same portion of the premiums that it would pay for active participants.

Continuation of Existing Indemnification Rights

For a period of six years after the completion of the merger, and during the period between the completion of the M&F Transaction and the completion of the merger, Sunbeam agreed to indemnify directors and officers of Coleman in office at or prior to the completion of the merger in connection with any threatened or actual legal proceeding to the fullest extent allowed by Delaware law, the Coleman Certificate of Incorporation, the Coleman By-laws and any indemnification agreement in effect at the date of the merger agreement, including any provisions relating to advancement of expenses. This indemnification does not, however, extend to any legal proceeding initiated against Coleman by an indemnified person unless the proceeding was (1) authorized by the Coleman board of directors or (2) brought by an indemnified person to enforce his or her right to indemnification under the merger agreement. In addition, the right to indemnification under the merger agreement extends only to legal proceedings arising from:

- the fact that the indemnified person was a director or officer of Coleman or was serving at the request of Coleman as a director, officer, employee or agent of another entity, or
- the agreement relating to the M&F Transaction, the merger agreement or any of the transactions contemplated by those agreements.

Moreover, the right to indemnification provided by the merger agreement extends only to claims which pertain to matters arising, existing or occurring prior to or at the completion of the merger. To give rise to an indemnification right, however, the claim need not have been asserted prior to the completion of the merger. If any claim is asserted against an indemnified person within the period during which indemnification is provided, all rights to indemnification under the merger agreement continue until disposition of the claim. In the event any indemnified person becomes involved in a legal proceeding after the completion of the merger, Sunbeam will, or will cause Coleman to, periodically advance legal and other expenses to the indemnified person, including the cost of any investigation and preparation incurred in connection with the legal proceeding. However, as a condition to advancement of expenses, the indemnified person must provide Sunbeam with an undertaking to reimburse all amounts so advanced in the event that the indemnified person is determined not to be entitled to indemnification.

Sunbeam and Coleman also agreed that all rights to indemnification, and all limitations with respect to indemnification, existing in favor of any indemnified person, as provided in the Coleman Certificate of Incorporation, the Coleman By-Laws or any indemnification agreement in effect at the date of the merger agreement, will survive the merger and will, to the extent permitted by Delaware law, continue in full force and effect, without any amendment, for a period of six years after the completion of the merger and during the period from the completion of the M&F Transaction to the completion of the merger. If any claim is asserted against any indemnified person within that period, all rights to indemnification will continue until final disposition of the legal proceeding. Any determination required to be made with respect to whether an indemnified person's conduct complies with the standards set forth under Delaware law, the Coleman

certificate of incorporation, the Coleman by-laws or any agreement, as the case may be, will be made by independent legal counsel selected by the indemnified person and reasonably acceptable to Sunbeam.

Sunbeam also agreed that, from and after the completion of the M&F Transaction, Sunbeam or Coleman will maintain, for a period of not less than six years after the completion of the merger, a liability insurance policy for the benefit of Coleman's former directors and officers providing coverage substantially similar to the policies in place prior to the completion of the M&F Transaction. However, neither Sunbeam nor Coleman will be required to pay an annual premium for this insurance which exceeds 200% of the last annual premium paid by Coleman prior to the date of the merger agreement. In the event that the premium does exceed that amount, Sunbeam or Coleman will purchase as much coverage as possible for such amount.

Accounting Treatment

The merger will be accounted for under the "purchase" method of accounting in accordance with generally accepted accounting principles. Therefore, the aggregate consideration paid by Sunbeam in the merger and in the M&F Transaction will be allocated to Coleman's assets and liabilities based upon their fair market value with any excess being treated as excess of investment over net assets acquired or "goodwill". The assets and liabilities and results of operations of Coleman have been consolidated for financial accounting (but not tax) purposes with the assets and liabilities and results of operations of Sunbeam since the completion of the M&F Transaction.

Stock Exchange Listing

The NYSE has approved for listing on the NYSE the shares of Sunbeam common stock to be issued to Coleman stockholders in the merger, subject to official notice of issuance. Sunbeam intends to file an application with the NYSE to list the shares of Sunbeam common stock that will be issued when the warrants are exercised. For a description of matters relating to the continued listing of Sunbeam common stock on the NYSE, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—New York Stock Exchange Listing."

Delisting and Deregistration of Coleman Common Stock

Upon completion of the merger, there will no longer be any publicly held shares of Coleman common stock and the Coleman common stock will be delisted from the NYSE, the Pacific Stock Exchange and the Chicago Stock Exchange and deregistered under the Exchange Act. For a description of matters relating to the continued listing of Coleman common stock on the NYSE, see "RECENT DEVELOPMENTS AFFECTING COLEMAN."

Ownership of Coleman Common Stock

At the close of business on December 3, 1999, there were outstanding 55,827,490 shares of Coleman common stock held by about 548 holders of record. In the M&F Transaction, which was completed on March 30, 1998, Sunbeam became the indirect beneficial owner of 44,067,520 shares of Coleman common stock, representing about 81% of the then outstanding shares of Coleman common stock. As a result of option exercises by employees and former employees of Coleman immediately following the completion of the M&F Transaction, these shares represent about 79% of the currently outstanding shares of Coleman common stock. On July 12, 1999, Sunbeam acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock. These shares, together with the shares of Coleman common stock acquired by Sunbeam in the M&F Transaction, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock.

The table below shows the number of shares of Coleman common stock owned by each of the current directors and officers of Coleman and the percentage of the outstanding Coleman common stock which these shares represent.

<u>Name of Beneficial Owner</u>	<u>Amount and Nature of Beneficial Ownership</u>	<u>Percentage of Common Stock</u>
Directors:		
Jerry W. Levin	—	—
A. Whitman Marchand	—	—
Paul E. Shapiro.....	77,500(1)	*
John H. Klein	—	—
Executive Officers:		
Bobby G. Jenkins.....	—	—
Steven R. Isko	20,000(1)	*
Karen K. Clark	25,000(1)	*
William L. Phillips	—	—
Gwen C. Wisler	—	—
Barbara L. Allen	20	*
All Directors and Executive Officers as a Group (10 persons).....	122,520(1)	*

* Less than 1%

(1) Represents shares of common stock which these individuals have the right to acquire upon exercise of employee stock options that are currently exercisable and may be exercised within the next 60 days.

At its February 27, 1998 meeting, the then Coleman board of directors unanimously approved the merger agreement. See "—Coleman's Reasons for the Merger and Approval of the Coleman Board." Since the completion of the M&F Transaction, however, the composition of Coleman's management and board of directors has changed significantly. See "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—M&F Transaction." Mr. Levin voted on February 27, 1998 as a member of the Coleman board of directors to approve the merger agreement. However, neither Mr. Levin nor any other director or officer of Coleman is currently making any recommendation to Coleman stockholders regarding the merger.

Since January 1, 1996, Coleman has completed one purchase of Coleman common stock. On March 1, 1996, Coleman purchased 50,000 shares of Coleman common stock (or 100,000 shares, adjusted for the two-for-one stock split of Coleman common stock on June 28, 1996) in the open market at a purchase price of \$46.54 per share (\$23.26 per share, as adjusted), or an aggregate of \$2.33 million. On May 23, 1997, Coleman Worldwide commenced an offer to accept for exchange its Liquid Yield Option™ Notes due 2013 ("LYONs") for cash at a price equal to their redemption price of \$343.61 per \$1,000 principal amount at maturity. The LYONs were exchangeable for shares of Coleman common stock at the rate of 15.706 shares for each \$1,000 principal amount at maturity of LYONs. The holders of \$545,053,000 aggregate principal amount at maturity of LYONs out of the \$561,553,000 aggregate principal amount at maturity then outstanding accepted Coleman Worldwide's offer, which expired on June 20, 1997. On April 20, 1998, Coleman Worldwide gave notice of its intention to redeem all LYONs remaining outstanding on May 27, 1998 for cash at their redemption price of \$343.61 per \$1,000 principal amount at maturity, unless, prior to that date, the holders of the LYONs elected to exchange their LYONs for shares of Coleman common stock. All of the LYONs that remained outstanding on May 27, 1998 were redeemed by Coleman Worldwide.

Ownership Interest of Coleman Stockholders in Sunbeam After the Merger

Based on the number of shares of Sunbeam common stock and Coleman common stock outstanding on December 3, 1999 and assuming no Coleman stockholders exercise their Delaware law appraisal rights, upon completion of the merger there will be about 107,578,527 shares of Sunbeam common stock outstanding, of which the former stockholders of Coleman, including a subsidiary of MacAndrews & Forbes, will own about

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19.3%. The former holders of Coleman common stock will own about 36% of the outstanding Sunbeam common stock after the merger, assuming the exercise of (1) the warrant issued to a MacAndrews & Forbes subsidiary in settlement of threatened legal claims related to the M&F Transaction and (2) the warrants to be issued to the Coleman minority stockholders upon completion of the merger under the recent settlement of litigation related to the merger.

Expenses

All costs and expenses incurred in connection with the M&F Transaction and the merger will be paid by the party incurring such expenses.

Sunbeam and Coleman have incurred, and will incur, fees and expenses in connection with the M&F Transaction and the merger, including filing fees in connection with the registration of the shares to be issued in connection with the merger and upon exercise of the warrants and other required filings, fees of counsel, accountants' fees and printing costs. These expenses are estimated to be as follows:

Financial advisory fees	\$13,600,000
Legal fees and expenses	2,000,000
Accounting fees and expenses	700,000
Filing fees	67,669
Printing and mailing	350,000
Miscellaneous	<u>20,000</u>
TOTAL	<u>\$16,737,669</u>

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UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following discussion is a summary of the anticipated material United States Federal income tax consequences of the merger to a holder of Coleman common stock (a "holder"). The discussion is based on laws, regulations, rulings and decisions in effect on the date of mailing of this document, all of which are subject to change, possibly with retroactive effect. This discussion deals only with holders who hold their shares of Coleman common stock as capital assets and does not address all aspects of United States Federal taxation that may be relevant to particular holders in light of their personal circumstances or to holders (1) who are not citizens or residents of the United States, (2) who may be subject to special tax rules, such as rules relating to financial institutions and banks, tax-exempt organizations, insurance companies, dealers in securities, and persons who hold Coleman common stock as part of a hedge, conversion or constructive sale transaction, straddle or other risk reduction transaction (3) who perfect their appraisal rights under Delaware law, or (4) who acquired their shares of Coleman common stock pursuant to the exercise of employee stock options or other compensation arrangements with Coleman. In addition, the discussion does not address the tax consequences of the merger arising under the laws of any state, local or foreign jurisdiction.

Each holder of Coleman common stock is urged to consult its own tax advisor with respect to the particular tax consequences of the merger to such holder.

The receipt of the cash, Sunbeam common stock and warrants to purchase Sunbeam common stock upon completion of the merger is expected to be a taxable transaction for United States Federal income tax purposes and may also be a taxable transaction under applicable state, local, foreign and other tax laws. In general, for United States Federal income tax purposes, a holder will recognize gain or loss equal to the difference between (1) the sum of cash, the fair market value of the Sunbeam common stock received in exchange for such holder's shares of Coleman common stock, and the fair market value of the warrants to purchase additional shares of Sunbeam common stock and (2) the adjusted tax basis of such shares of Coleman common stock. This gain or loss will be capital gain or loss and will be long-term capital gain or loss if the shares have been held for more than twelve months.

LITIGATION SETTLEMENT AND WARRANTS

Beginning on June 25, 1998, several class action lawsuits were filed in the Court of Chancery of the State of Delaware by minority stockholders of Coleman against Coleman, Sunbeam and several of Coleman's former officers and directors. These actions were later consolidated into a single class action lawsuit. The class action alleged, among other things, that the consideration to be paid to the minority stockholders of Coleman under the February 1998 merger agreement was no longer fair as a result of the decline in the market price of Sunbeam's common stock. See "BUSINESS OF SUNBEAM—Litigation and Other Contingent Liabilities."

On October 21, 1998, Sunbeam announced that it had entered into a memorandum of understanding to settle the class action, subject to court approval. On August 6, 1999, a stipulation of settlement was executed and on August 25, 1999, notice of the settlement and of a September 29, 1999 hearing in the Court of Chancery of the State of Delaware to consider approval of the settlement was mailed to the members of the class (consisting of all Coleman stockholders owning shares at any time from February 27, 1998 until the date of the merger other than Coleman Worldwide). The Court held a hearing on September 29, 1999 and approved the settlement on November 12, 1999.

Under the terms of the settlement, Sunbeam will issue to the Coleman minority stockholders and their litigation counsel warrants expiring August 24, 2003 to purchase about 4.98 million shares of Sunbeam common stock at a cash exercise price of \$7 per share, subject to anti-dilution adjustments. Each Coleman minority stockholder will receive 0.381 of a warrant for each share of Coleman common stock owned by such stockholder when the merger is completed, assuming the number of outstanding shares of Coleman common stock does not increase prior to the completion of the merger as a result of further exercises of Coleman employee stock options. Warrants will be issued when the merger is completed to all Coleman stockholders of record as of the completion of the merger, other than Coleman Worldwide and those

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stockholders who choose to dissent from the merger and have the fair value of their shares appraised by a court, and to counsel for the Coleman minority stockholders in the litigation as their court-awarded fee.

The warrants will be freely transferrable and are exempt from registration under the Securities Act. The shares of Sunbeam common stock to be issued upon exercise of the warrants will be freely transferrable and will be registered under the Securities Act. Sunbeam intends to file an application with the NYSE to list the shares of Sunbeam common stock issuable upon exercise of the warrants. In the settlement, all members of the class released Coleman, Sunbeam, MacAndrews & Forbes and its affiliates and the former and present directors of Coleman from all claims arising out of or relating to the merger, other than their Delaware law appraisal rights.

The number of warrants that each Coleman minority stockholder will receive will be based on the number of shares of Coleman common stock owned by the stockholder at the time of the merger and will be equal to the product of (A) 4,979,663, less the 497,966 warrants awarded by the court to counsel for the Coleman minority stockholders in the litigation as their fee and (B) a fraction, the numerator of which is equal to the number of shares of Coleman common stock held by such stockholder immediately prior to the merger (other than any shares with respect to which Delaware law appraisal rights have been exercised) and the denominator of which is equal to the total number of shares of Coleman common stock outstanding and owned by Coleman minority stockholders at the time of the merger (approximately 11,759,970 shares assuming no further exercises of Coleman options).

The warrants to be issued under the settlement will have the same terms as the warrant issued to Coleman (Parent) Holdings, a subsidiary of MacAndrews & Forbes, in August 1998 in the settlement of its claims against Sunbeam. The number of warrants to be issued in the settlement (4,979,663) was determined by multiplying the number of shares issuable upon exercise of the warrant received by Coleman (Parent) Holdings (23,000,000) by a fraction of which the numerator is the number of Coleman shares owned by its minority stockholders on February 27, 1998 (9,540,930) and the denominator is the number of Coleman shares then owned by Coleman (Parent) Holdings (44,067,520). Since February 27, 1998, the number of Coleman shares held by the Coleman stockholders entitled to receive warrants in the settlement has increased to 11,759,970 through exercises of previously granted Coleman employee stock options, but the settlement did not provide for any increase in the number of warrants to be issued thereunder as a result of the issuance of Coleman shares after February 27, 1998.

No fractional warrants will be issued in the merger. A Coleman public stockholder who would otherwise be entitled to receive fractional warrants will receive a number of warrants determined by rounding up or down to the nearest whole number of warrants.

General. The warrants to be issued in the merger will be issued under a Warrant Agreement to be entered into prior to the completion of the merger by Sunbeam and The Bank of New York, as Warrant Agent. The description of the Warrant Agreement contained in this document does not purport to be complete and is qualified in its entirety by reference to the form of Warrant Agreement, a copy of which, including the form of warrant certificate, is included as an exhibit to the registration statement of which this document forms a part.

Each warrant issued in the merger will be evidenced by a warrant certificate which will entitle the warrant holder, at any time prior to August 24, 2003, to purchase one share of Sunbeam common stock at a cash exercise price of \$7 per share. Warrants that are not exercised prior to that date will expire and become void.

Exercise of Warrants. In order to exercise any or all of your warrants, you will be required to surrender to The Bank of New York, as Warrant Agent: (1) the warrant certificate, (2) a duly executed copy of the exercise subscription form set forth in the warrant certificate and (3) payment in full of the exercise price for each share of Sunbeam common stock as to which the warrants are exercised. Payment may be made in cash (including wire transfer of immediately available funds) or by certified or official bank check or bank cashier's check payable to the order of Sunbeam Corporation.

Upon the exercise of any warrants in accordance with the Warrant Agreement, Sunbeam will transfer the appropriate number of shares of Sunbeam common stock to the warrant holder or to a designee specified by

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the warrant holder. All shares of Sunbeam common stock issued upon the exercise of warrants will be validly issued, fully paid and nonassessable.

Antidilution Provisions. The number of shares of Sunbeam common stock issuable upon exercise of each warrant is subject to adjustments in the event that Sunbeam, among other things: (1) pays a dividend or makes any other distribution in shares of Sunbeam common stock, (2) subdivides the Sunbeam common stock, (3) combines the Sunbeam common stock into a smaller number of shares, (4) issues any shares of Sunbeam common stock in a reclassification (including any reclassification in connection with a merger, consolidation or other business combination in which Sunbeam is the continuing corporation), (5) distributes, by dividend or otherwise, options, rights or warrants to purchase any such securities, cash or other assets, (6) issues non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of Sunbeam or options, rights or warrants to purchase any of such securities) at a price per share that is lower (at the record date for the issuance) than the fair market value of the shares or other securities issued, (7) repurchases, by self-tender offer or otherwise, any shares of Sunbeam common stock (or options, rights or warrants to purchase shares of Sunbeam common stock or any securities convertible into or exchangeable for Sunbeam common stock) at a price per share that is higher (at the record date for the issuance) than the then current market value per share of Sunbeam common stock or (8) repurchases, by self-tender offer or otherwise, any non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of Sunbeam or options, rights or warrants to purchase any of such securities) at a price per share that is higher (at the record date for the issuance) than the fair market value of the shares or other securities repurchased.

No fractional shares will be issued upon exercise of warrants. In the event of any transaction in which Sunbeam stockholders receive stock, securities, cash or other assets in exchange for their Sunbeam common stock, each warrant holder will, upon exercise of the warrant at any time after the transaction, have the right to the stock, securities, cash or other assets the warrant holder would have been entitled to receive if the warrant had been exercised immediately prior to the transaction.

No Stock Rights. Prior to the exercise of his or her warrants, no warrant holder will be entitled to vote or be deemed the holder of the shares of Sunbeam common stock issuable upon exercise of the warrants and will have no rights of a stockholder of Sunbeam.

APPRAISAL RIGHTS

Under Delaware law, Coleman stockholders have appraisal rights in connection with the merger. Any stockholder who is eligible to exercise appraisal rights and properly does so will be paid in cash the "fair value" (exclusive of any element of value arising from the accomplishment or expectation of the merger) for his or her shares of Coleman common stock as determined by the Court of Chancery of the State of Delaware. Any shares of Coleman common stock for which a written demand for appraisal is properly filed and not withdrawn in accordance with the procedures set forth under Delaware law, except any shares as to which the holder effectively withdraws or loses the right to appraisal and payment for such shares prior to the effective time of the merger, are referred to in this document as "Dissenting Shares."

Any holder of Dissenting Shares will be paid the "fair value" of the shares, as described below, and will not receive, upon completion of the merger, cash, shares of Sunbeam common stock and warrants payable in the merger, as described in "THE MERGER—Conversion of Coleman Common Stock."

Only holders of record of Coleman common stock who are eligible for appraisal rights and comply with the applicable statutory procedures summarized in this document will be entitled to appraisal rights under Delaware law. A person having a beneficial interest in shares of Coleman common stock held of record in the name of another person, such as a broker or nominee, must act promptly to cause the record holder to follow the steps summarized below properly and in a timely manner to perfect appraisal rights.

The following discussion is not a complete statement of the law pertaining to appraisal rights under Delaware law and is qualified in its entirety by the full text of Section 262 of the general Corporation Law of the State of Delaware which is reprinted in its entirety as Annex II at the back of

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this document. All references in Section 262 and in this summary to a "stockholder" or "holder" are to the record holders of Dissenting Shares.

Under Delaware law, when a merger is approved by written consent in lieu of a stockholders meeting under Section 228 of Delaware law, as the merger was, each constituent corporation, either before the effective date of the merger or within ten days after that date, must notify each holder of any class or series of stock of the constituent corporation that is entitled to appraisal rights of the approval of the merger and the availability of appraisal rights for any or all shares of that class or series of stock, and must include in the notice a copy of Section 262 of Delaware law.

This document constitutes the required notice to the stockholders of Coleman and the applicable statutory provisions of Delaware law are attached as Annex II at the back of this document. Any stockholder who wishes to exercise his or her appraisal rights or who wishes to preserve his or her right to do so should review the following discussion and Annex II carefully, because failure to timely and properly comply with the procedures specified will result in the loss of appraisal rights under Delaware law.

A Coleman stockholder wishing to exercise appraisal rights must deliver to Coleman, within twenty days after the date of mailing of this document, or by December 27, 1999, a written demand for appraisal of such holder's shares of Coleman common stock. Written demands received after that date will be disregarded. This demand must reasonably inform Coleman of the identity of the stockholder and of the stockholder's intent to demand appraisal of his or her shares of Coleman common stock. *A holder of Coleman common stock wishing to exercise his or her appraisal rights must be the holder of record of the Coleman common stock on the date the written demand for appraisal is made and must continue to hold the Coleman common stock until the completion of the merger. Accordingly, a Coleman stockholder who is the holder of record of Coleman common stock on the date the written demand for appraisal is made, but who subsequently transfers the Coleman common stock prior to completion of the merger, will lose any right to appraisal of such holder's shares of Coleman common stock. Similarly, any person who acquires Coleman common stock after December 27, 1999 will not be entitled to appraisal rights.*

Only a stockholder of record is entitled to assert appraisal rights for the Coleman common stock registered in that holder's name. A demand for appraisal should be executed by or on behalf of the holder of record, fully and correctly, as the holder's name appears on the holder's stock certificates. If the Coleman common stock is held of record in a fiduciary capacity, such as by a trustee, guardian or custodian, execution of the demand should be made in that capacity. If the Coleman common stock is held of record by more than one owner, as in a joint tenancy or tenancy in common, the demand should be executed by or on behalf of all joint owners. An authorized agent, including one or more joint owners, may execute a demand for appraisal on behalf of a holder of record. However, the agent must identify the holder of record and expressly disclose the fact that, in executing the demand, the agent is agent for the holder. A holder of record, such as a broker who holds Coleman common stock as nominee for several beneficial owners, may exercise appraisal rights with respect to the Coleman common stock held for one or more beneficial owners while not exercising appraisal rights with respect to the Coleman common stock held for other beneficial owners. In that case, the written demand should set forth the number of shares of Coleman common stock as to which appraisal is sought. When no number of shares of Coleman common stock is expressly mentioned, the demand will be presumed to cover all shares of Coleman common stock in brokerage accounts or other nominee forms. Those stockholders whose shares of Coleman common stock are held in brokerage accounts or other nominee forms who wish to exercise appraisal rights under Delaware law are urged to consult with their brokers or nominees to determine the appropriate procedures for the making of a demand for appraisal.

All written demands for appraisal should be sent or delivered to The Coleman Company, Inc., 2111 E. 37th Street North P.O. Box 2931, Wichita, Kansas 67201, Attention: Corporate Secretary.

Within 120 days after the completion of the merger, but not after that date, the surviving corporation in the merger, or any stockholder who has complied with the statutory requirements summarized above, may file a petition in the Court of Chancery of the State of Delaware demanding a determination of the fair value of the Dissenting Shares. *Coleman, as the surviving corporation in the merger, is under no obligation, and Coleman has no present intention, to file a petition for the appraisal of the fair value of the Dissenting*

Shares. Accordingly, it is the obligation of stockholders wishing to assert appraisal rights to initiate all necessary action to perfect their appraisal rights within the time prescribed in Section 262 of Delaware law.

Within 120 days after the completion of the merger, any stockholder who has complied with the requirements for exercise of appraisal rights will be entitled, upon written request, to receive from Coleman a statement setting forth the aggregate number of Dissenting Shares as to which demands for appraisal have been received and the aggregate number of holders of those Dissenting Shares. Such statements must be mailed within ten days after a written request therefor has been received by Coleman.

If a petition for an appraisal is timely filed, after a hearing on the petition, the Court of Chancery of the State of Delaware will determine the stockholders entitled to appraisal rights and will appraise the "fair value" of their Dissenting Shares, exclusive of any element of value arising from the accomplishment or expectation of the merger, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. Stockholders considering seeking appraisal should be aware that the fair value of their Dissenting Shares as determined under Section 262 of Delaware law could be more than, the same as or less than the value of the merger consideration they are entitled to receive under the merger agreement if they do not seek appraisal of their shares of Coleman common stock and that investment banking opinions as to fairness from a financial point of view are not necessarily opinions as to fair value under Section 262 of Delaware law. The Supreme Court of the State of Delaware has stated that "proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court" should be considered in the appraisal proceedings.

The Court of Chancery of the State of Delaware will determine the amount of interest, if any, to be paid upon the amounts to be received by stockholders whose Dissenting Shares have been appraised. The costs of the action may be determined by the Court of Chancery of the State of Delaware and imposed upon the parties as the Court of Chancery of the State of Delaware deems equitable. The Court of Chancery of the State of Delaware may also order that all or a portion of the expenses incurred by any stockholder in connection with an appraisal, including reasonable attorneys' fees and the fees and expenses of experts utilized in the appraisal proceeding, be charged pro rata against the value of all of the Dissenting Shares entitled to appraisal.

Any holder of Coleman common stock who has duly demanded an appraisal in compliance with Section 262 of Delaware law will not, after the completion of the merger, be entitled to vote the Dissenting Shares for any purpose or be entitled to the payment of dividends or other distributions on those Dissenting Shares.

If any stockholder who properly demands appraisal of Coleman common stock under Section 262 of Delaware law fails to perfect, or effectively withdraws or loses, the right to appraisal, as provided in Section 262 of Delaware law, the shares of Coleman common stock owned by such stockholder upon completion of the merger will be converted into the right to receive the cash, stock and warrants referred to above. A stockholder will fail to perfect, or effectively lose or withdraw, the right to appraisal if, among other things, no petition for appraisal is filed within 120 days after the completion of the merger, or if the stockholder delivers to Coleman a written withdrawal of the demand for appraisal. Any attempt to withdraw an appraisal demand more than sixty days after the completion of the merger will require the written approval of Coleman.

SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION

General. The total amount of funds and other consideration required by Sunbeam to complete the merger and to pay related expenses is about \$103,737,669 in cash, 6,676,135 shares of Sunbeam common stock and warrants to purchase about 4.98 million shares of Sunbeam common stock, assuming all outstanding Coleman stock options are cashed out in the merger and no Coleman stockholders exercise their Delaware law appraisal rights.

Bank Credit Facility. Sunbeam expects to obtain the cash portion of the merger consideration and amounts necessary to pay related expenses from cash on hand and additional borrowings under its bank credit facility. Sunbeam's bank credit facility, as amended, provides for aggregate borrowings of up to \$1,700 million under: (1) a revolving credit facility in an aggregate principal amount of up to \$400 million, maturing

on March 30, 2005, of which \$52.5 million may be used only to complete the merger; (2) up to \$800 million in Tranche A term loans maturing on March 30, 2005, of which \$35 million may be used only to complete the merger; and (3) a Tranche B \$500 million term loan maturing on September 30, 2006, of which \$5.0 million has already been repaid through September 30, 1999. Absent a further extension by Sunbeam's bank lenders of the April 15, 1999 waiver or a refinancing of the bank credit facility, the foregoing maturities could be accelerated by Sunbeam's bank lenders at any time after April 10, 2000.

Under the bank credit facility, interest accrues, at Sunbeam's option: (1) at LIBOR; or (2) at the base rate of the administrative agent, which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%, in each case, plus, an interest rate margin which varies depending upon the occurrence of specified events. These events relate to:

- the execution and delivery by Coleman and its domestic subsidiaries of guarantees and related security documents which will become effective upon the completion of the merger;
- the filing with the SEC of this document;
- the completion of the merger; and
- the reduction of the bank lenders' commitment and loan exposure under the bank credit facility.

The interest rate margin is currently 4.00% for LIBOR loans and 2.50% for base rate loans and is subject to potential decreases in the future, including a decrease to 3.00% for LIBOR loans and 1.75% for base rate loans upon consummation of the merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the bank credit facility.

Security and Guarantees. Borrowings under the bank credit facility are secured by a pledge of the stock of Sunbeam's material subsidiaries, including Coleman and by a security interest in substantially all of the assets of Sunbeam and its material domestic subsidiaries, other than Coleman and its subsidiaries except as described below. Currently, Coleman's inventory and related assets are pledged to secure its obligations for letters of credit issued for its account under the bank credit facility. Additionally, as security for Coleman's note payable to Sunbeam, Coleman pledged substantially all of its domestic assets, other than real property, including 66% of its ownership interests in Coleman's direct foreign subsidiaries and domestic holding companies for its foreign subsidiaries and all of its ownership interests in other direct domestic subsidiaries (but not the assets of any of these subsidiaries). The pledge runs in favor of Sunbeam's lending banks, to which the Coleman note has been pledged as security for Sunbeam's obligations to them. The Coleman note, by its terms, will not be affected by the completion of the merger. Upon completion of the merger, substantially all of Coleman's assets and the assets of Coleman's domestic subsidiaries will be pledged to secure the obligations under the bank credit facility.

Borrowings under the bank credit facility are guaranteed by a number of Sunbeam's wholly owned material domestic subsidiaries and these subsidiary guarantees are secured as described above. Upon completion of the merger, Coleman and each of its domestic subsidiaries will become guarantors of the obligations under the bank credit facility. To the extent extensions of credit are made by any subsidiaries of Sunbeam, the obligations of these subsidiaries are guaranteed by Sunbeam.

Repayment and Refinancing. Sunbeam has made no decision with respect to the repayment or refinancing of indebtedness incurred or to be incurred under the bank credit facility and may repay this indebtedness out of its internally generated funds or from proceeds of a subsequent financing. Any decisions with respect to such repayment or refinancing will be made based on a review from time to time of the advisability of particular transactions, as well as on prevailing interest rates and financial and economic conditions.

Covenants. The bank credit facility contains covenants customary for credit facilities of a similar nature, including limitations on the ability of Sunbeam and its subsidiaries, including Coleman, to, among other things:

- declare dividends or repurchase stock;
- prepay, redeem or repurchase debt, incur liens and engage in sale-leaseback transactions;

- make loans and investments;
- incur additional debt, including revolving loans under the bank credit facility;
- amend or otherwise alter material agreements or enter into restrictive agreements;
- make capital and Year 2000 compliance expenditures;
- engage in mergers, acquisitions and asset sales;
- engage in certain transactions with affiliates;
- alter its fiscal year or accounting policies;
- enter into hedging agreements;
- settle certain litigation;
- alter its cash management system; and
- alter the businesses they conduct.

Sunbeam is also required to comply with specified financial covenants and ratios. As a result of Sunbeam's operating losses, among other things, at June 30, 1998 Sunbeam was not in compliance with these financial covenants and other terms of its bank credit facility. As of June 30, 1998, Sunbeam entered into an agreement with its bank lenders which waived Sunbeam's compliance through December 31, 1998. On October 19, 1998, Sunbeam's bank lenders agreed to extend this waiver through April 10, 1999. In April 1999, the waiver was extended to April 10, 2000, and the bank credit facility was amended to, among other things:

- require Sunbeam to meet new financial tests and ratios;
- decrease the interest rate margins to 3.75% for LIBOR loans and 2.5% for base rate loans;
- further reduce the interest rate margins to 3.25% for LIBOR loans and 2.00% for base rate loans as a result of Sunbeam's satisfaction on May 14, 1999 of the agreed upon conditions to this reduction. However, such margins increased to 3.50% for LIBOR loans and 2.25% for base rate loans on September 1, 1999 as a result of the merger not occurring by such date and increased to 4.00% for LIBOR loans and 2.50% for base rate loans on October 1, 1999 as a result of the merger not occurring by such date;
- defer until April 10, 2000 principal payments of \$69.3 million otherwise due September 30, 1999 and principal payments of \$69.3 million otherwise due March 31, 2000, as a result of the satisfaction by Sunbeam on May 14, 1999 of the agreed upon conditions to this deferral;
- provide that the following events relating to the merger will be events of default under the bank credit facility:
 - if Sunbeam fails to have the SEC declare this document effective by October 30, 1999 (which was subsequently amended to January 10, 2000);
 - if Sunbeam fails to complete the merger within 25 business days after this document is declared effective by the SEC; or
 - if Sunbeam has to pay more than \$87.5 million in cash to complete the merger, including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses;
- require Sunbeam and Coleman to amend Coleman's note payable to Sunbeam and to have Coleman secure the note, which is pledged by Sunbeam to secure the obligations under Sunbeam's bank credit facility, with substantially all of Coleman's domestic assets other than real property including 66% of its ownership interests in Coleman's direct foreign subsidiaries and domestic holding companies for its foreign subsidiaries, and all of its ownership interests in other direct domestic subsidiaries;

- impose restrictions on the aggregate revolving loan (other than loans used to fund the merger) principal balance permitted to be outstanding at the end of each month under the bank credit facility;
- require Sunbeam to maintain a concentration cash management system and to repay revolving loans, which may be reborrowed subject to satisfaction of the bank credit facility's borrowing conditions, to the extent that cash on hand in the concentration accounts on any business day exceeds \$15 million;
- require Sunbeam to prepay term loans under the bank credit facility on December 31, 1999 to the extent that cash on hand in Sunbeam's concentration accounts plus the aggregate amount of unused revolving loan commitments on this date exceeds \$125 million, but Sunbeam is not required to prepay more than \$69.3 million in the aggregate as a result of this provision;
- require Sunbeam to reserve \$52.5 million of availability under the revolving credit facility for use solely to pay required cash portion of the merger consideration;
- limit the amount that Sunbeam and its subsidiaries may spend on Year 2000 compatibility testing and remediation to \$50 million in the aggregate during the fiscal year ending December 31, 1999;
- require Sunbeam to obtain the bank lenders' consent to any litigation settlement concerning the restatement of Sunbeam's 1996 and 1997 fiscal year and first quarter 1998 financial statements if such settlements require the payment of money, not paid by insurance carriers or other third parties, of more than \$1 million in total;
- impose new informational reporting requirements; and
- provide Sunbeam with a \$40 million foreign currency revolving loan subfacility.

At September 30, 1999, approximately \$1,500 million was outstanding and approximately \$200 million was available for borrowing under the credit facility. Of the approximately \$1,500 million outstanding under the new credit facility, \$1,300 million was outstanding under the Tranche A and Tranche B term loans and \$200 million was outstanding under the revolving credit facility.

Defaults. The bank credit facility provides for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, material adverse change arising from compliance with ERISA, material adverse judgments, entering into guarantees and change of ownership and control. It is also an event of default under the bank credit facility if this document is not declared effective by the SEC on or before January 10, 2000 or if the merger does not occur within 25 business days of the effectiveness of this document or if the cash consideration—including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses—to consummate the merger exceeds \$87.5 million. Although there can be no assurance, Sunbeam anticipates that it will satisfy these conditions.

Issuance of Sunbeam Common Stock in the Merger and upon Exercise of the Warrants. The stock portion of the merger consideration and the shares of stock to be issued upon exercise of the warrants will consist of newly issued shares of Sunbeam common stock. The issuance of the shares of Sunbeam common stock in the merger and upon exercise of the warrants is being registered under the registration statement of which this document forms a part.

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**MATERIAL CONTACTS BETWEEN
COLEMAN AND SUNBEAM AND ITS AFFILIATES**

Financial Transactions Between Coleman and Sunbeam

In connection with the M&F Transaction, Coleman repaid substantially all of its outstanding indebtedness with the proceeds of borrowings from Sunbeam. These borrowings, together with loans made by Sunbeam to Coleman after March 30, 1998, were evidenced by an unsecured subordinated demand note payable by Coleman to Sunbeam. The note bore interest at a floating rate equivalent to the weighted average interest rate incurred by Sunbeam on borrowings under its bank credit facility and on its debentures (about 5.9% per annum during the first half of 1999). The note was pledged by Sunbeam as security for its obligations under its bank credit facility.

In connection with the April 15, 1999 amendment to Sunbeam's bank credit facility, the Coleman note payable to Sunbeam was revised to, among other things:

- lower the interest rate to 4% if the three-month LIBOR quoted on the teletype system is less than 6%, or 5% if the three-month LIBOR quoted on the teletype system is 6% or higher,
- make the note payable on April 15, 2000 rather than on demand,
- add customary representations, warranties, covenants and events of default, and
- provide that an event of default under Sunbeam's bank credit facility would constitute an event of default under the Coleman note.

The revised Coleman note had an unpaid principal amount of \$303.2 million on September 30, 1999. As security for the revised Coleman note, Coleman pledged substantially all of its domestic assets, other than real property, including 66% of its ownership interests in its direct foreign subsidiaries and in its domestic holding companies for its foreign subsidiaries, and all of its ownership interests in its other direct domestic subsidiaries, but Coleman's subsidiaries have not pledged their assets or the stock of their subsidiaries. Sunbeam pledged the revised Coleman note as security for Sunbeam's obligations to its lending banks and Sunbeam assigned to these lending banks the security pledged by Coleman for the revised Coleman note. Coleman also gave the lending banks a direct pledge of the assets securing the revised Coleman note to secure the obligations under Sunbeam's bank credit facility, subject to a cap equal to the balance due from time to time on the revised Coleman note. The Coleman note, by its terms, will not be affected by the completion of the merger. The revision of the Coleman note and the pledge of Coleman assets were approved on behalf of Coleman by A. Whitman Marchand, Coleman's then only disinterested director, acting as a duly authorized independent committee of the Coleman board of directors. Coleman paid Mr. Marchand \$25,000 for his services as an independent director and agreed to indemnify him to the fullest extent permitted by Delaware law.

Since the Sunbeam bank credit facility provides that Sunbeam will not contribute capital to Coleman or, with some exceptions, permit Coleman to borrow money from any source other than Sunbeam, Coleman's ability to meet its cash operating requirements, including working capital requirements, capital expenditures and other obligations, is dependent upon its cash flow from operations and loans from Sunbeam. Sunbeam intends, and believes it will have the ability, to fund any Coleman requirements for borrowed funds through April 10, 2000. All loans from Sunbeam to Coleman will be added to the Coleman note payable to Sunbeam.

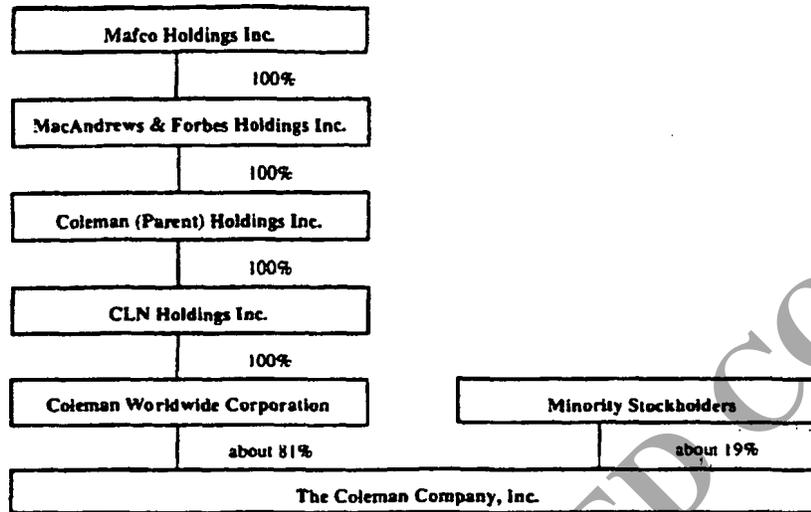
M&F Transaction

Prior to the M&F Transaction, MacAndrews & Forbes indirectly owned about 81% of the issued and outstanding Coleman common stock through various subsidiaries, including Coleman (Parent) Holdings, CLN Holdings and Coleman Worldwide.

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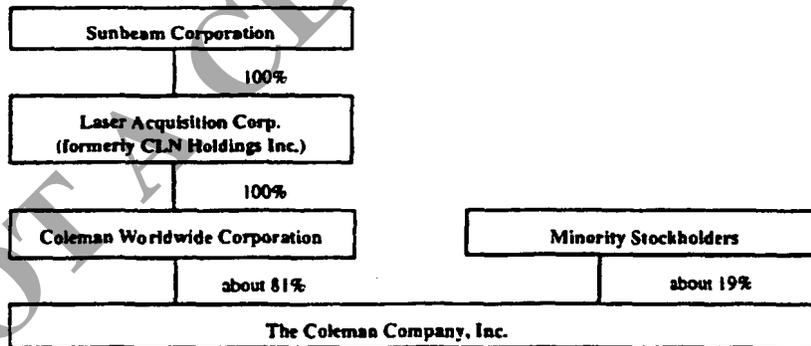
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Ownership Structure Before the M&F Transaction



In the M&F Transaction, which was completed on March 30, 1998, CLN Holdings merged with Laser Acquisition Corp., a subsidiary of Sunbeam, and Sunbeam, through its then indirect ownership of Coleman Worldwide, became the owner of MacAndrews & Forbes' shares of Coleman common stock. In exchange for the Coleman shares, Coleman (Parent) Holdings received 14,099,749 shares of Sunbeam common stock and \$159,956,756 in cash. In addition, in the M&F Transaction, Sunbeam assumed about \$1.016 million in debt of Coleman and its parent corporations, including \$497 million of indebtedness of Coleman.

Ownership Structure After the M&F Transaction



Sunbeam's ownership interest in Coleman was reduced to about 79% as a result of the exercise of Coleman employee stock options immediately following the M&F Transaction. On July 12, 1999, Sunbeam acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock. These shares, together with the shares of Coleman common stock acquired by Sunbeam in the M&F Transaction, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock. Following the completion of the M&F Transaction, Coleman (Parent) Holdings remained a wholly owned subsidiary of MacAndrews & Forbes.

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As a result of the M&F Transaction, MacAndrews & Forbes, as the indirect parent corporation of Coleman (Parent) Holdings, became Sunbeam's second largest stockholder with shares representing about 14% of the currently outstanding Sunbeam common stock. As part of the August 1998 settlement with MacAndrews & Forbes of threatened claims related to the M&F Transaction, Coleman (Parent) Holdings received from Sunbeam a warrant expiring August 24, 2003 to purchase an additional 23 million shares of Sunbeam common stock at a cash exercise price of \$7 per share, subject to anti-dilution adjustments. Accordingly, MacAndrews & Forbes may now be deemed to be the beneficial owner of 29.9% of the total number of shares of Sunbeam common stock that would be outstanding following the exercise of the warrant. See "—Settlement of Claims Relating to the M&F Transaction."

Under the agreement relating to the M&F Transaction, upon completion of the M&F Transaction, all the directors of Coleman resigned, the number of directors constituting the board of directors of Coleman was fixed at five, and five designees of Sunbeam were elected as directors of Coleman. In addition, Sunbeam designees were appointed to senior management positions at Coleman. Subsequently, as a result of changes in Sunbeam's management and board of directors, Jerry W. Levin, the current Chairman and Chief Executive Officer of Sunbeam and Coleman, was reelected to the Coleman board. In addition, Paul E. Shapiro, the current Executive Vice President and Chief Administrative Officer of Sunbeam and Coleman, was elected to the Coleman board. The other members of the Coleman board resigned or were removed by Sunbeam. In April 1999, the size of the Coleman board was fixed at three members and A. Whitman Marchand, who is not affiliated with either Sunbeam or Coleman, was elected to the Coleman board. In July 1999, the size of the Coleman board was fixed at four and John H. Klein, an outside director of Sunbeam, was elected to the Coleman board. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Changes in Sunbeam's Management and Board," "—Settlement of Claims Relating to the M&F Transaction" and "—Services Provided by MacAndrews & Forbes."

Under the agreement relating to the M&F Transaction, Coleman (Parent) Holdings agreed not to transfer the shares of Sunbeam common stock it received in the M&F Transaction (other than to specified affiliates) for a period of nine months from and after the completion of the M&F Transaction, subject to certain exceptions. This nine-month period expired on November 30, 1998. Notwithstanding the lapse of these restrictions, to date Coleman (Parent) Holdings has not transferred any such shares.

The agreement relating to the M&F Transaction has been filed as an exhibit to the Registration Statement of which this document forms a part and is incorporated in this document by reference.

Registration Rights Agreement

The shares of Sunbeam common stock issued to Coleman (Parent) Holdings in the M&F Transaction were not registered under federal or state securities laws. Accordingly, in connection with the issuance, Sunbeam entered into a Registration Rights Agreement with Coleman (Parent) Holdings. Under the Registration Rights Agreement, Coleman (Parent) Holdings can require Sunbeam to register under federal and applicable state securities laws the shares of Sunbeam common stock it received in the M&F Transaction. The Registration Rights Agreement was amended in August 1998 to provide that Coleman (Parent) Holdings can also require Sunbeam to register under federal and applicable state securities laws the warrant, and the shares of Sunbeam common stock issuable upon exercise of the warrant, issued to Coleman (Parent) Holdings in connection with a settlement of legal claims related to the M&F Transaction.

Sunbeam has also agreed to use its reasonable best efforts to permit any registration statement filed by Sunbeam in connection with the Registration Rights Agreement to be used by former affiliates of Coleman for resales of Sunbeam common stock received by those affiliates in the merger. Any affiliate seeking to register shares of Sunbeam common stock for resale must agree in writing to be bound by the terms of the Registration Rights Agreement.

The Registration Rights Agreement, and the August 1998 amendment thereto, have been filed as exhibits to the Registration Statement of which this document forms a part and are incorporated in this document by reference.

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Appointments of Former Coleman and MacAndrews & Forbes Officers to Sunbeam's Management and Board

In June 1998, concurrently with the removal of Sunbeam's former Chief Executive Officer and Chief Financial Officer, Sunbeam announced that Jerry W. Levin of MacAndrews & Forbes had been elected as Sunbeam's Chief Executive Officer. Mr. Levin and other Sunbeam executives who were affiliated with MacAndrews & Forbes later signed three-year employment agreements with Sunbeam. The other executives include Paul E. Shapiro, Executive Vice President and Chief Administrative Officer of Sunbeam, and Bobby G. Jenkins, Executive Vice President and Chief Financial Officer of Sunbeam. Mr. Levin and Howard Gittis of MacAndrews & Forbes also were elected to the Sunbeam board of directors. For a description of the terms of the employment agreements entered into by Messrs. Levin, Shapiro and Jenkins, see "MANAGEMENT—Executive Compensation." For a further discussion of the events leading up to the appointment of Mr. Levin as Sunbeam's Chief Executive Officer and the election of Messrs. Levin and Gittis to the Sunbeam board of directors, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Changes in Sunbeam's Management and Board."

Settlement of Claims Relating to the M&F Transaction

On August 12, 1998, Sunbeam announced that, following investigation and negotiation by a special committee of the Sunbeam board, Sunbeam had entered into a settlement agreement with Coleman (Parent) Holdings, the MacAndrews & Forbes subsidiary from which Sunbeam acquired a controlling interest in Coleman in the M&F Transaction. The settlement:

- released Sunbeam from threatened claims of MacAndrews & Forbes and its affiliates arising from the M&F Transaction,
- enabled Sunbeam to retain the services of executive personnel affiliated with MacAndrews & Forbes who had been managing Sunbeam since mid-June 1998, including Jerry W. Levin, Sunbeam's Chairman and Chief Executive Officer, Paul E. Shapiro, Sunbeam's Executive Vice President and Chief Administrative Officer, and Bobby G. Jenkins, Sunbeam's Executive Vice President and Chief Financial Officer, each of which signed a three-year employment agreement with Sunbeam in connection with the settlement, and
- provided for continuing management assistance and other support by MacAndrews & Forbes and its affiliates to Sunbeam, at its request, as described below.

As part of the settlement, Coleman (Parent) Holdings received from Sunbeam a warrant expiring August 24, 2003 to purchase 23 million shares of Sunbeam common stock at a cash exercise price of \$7 per share, subject to anti-dilution adjustments. Accordingly, MacAndrews & Forbes may now be deemed to be the beneficial owner of 29.9% of the total number of shares of Sunbeam common stock that would be outstanding following the exercise of the warrant. In connection with the settlement agreement, Sunbeam and Coleman (Parent) Holdings entered into an amendment to the Registration Rights Agreement executed in connection with the M&F Transaction. Under this amendment, Coleman (Parent) Holdings can require Sunbeam to register under federal and applicable state securities laws the warrant received by Coleman (Parent) Holdings in the settlement and the shares of Sunbeam common stock issuable upon exercise of the warrant. For a description of the settlement agreement and the terms of the warrant issued to Coleman (Parent) Holdings, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Settlement of Claims Relating to the M&F Transaction."

The special committee that negotiated and approved the terms of the settlement agreement with Coleman (Parent) Holdings, including the terms of the warrant issued to Coleman (Parent) Holdings, consisted of four outside directors, none of whom has any affiliation with MacAndrews & Forbes. The members of the special committee were Howard Kristol (Chairman), Charles Elson, Peter Langerman and Faith Whittlesey. They were assisted by independent financial advisors and independent legal counsel. The special committee considered the services of Messrs. Levin, Shapiro and Jenkins and MacAndrews & Forbes' commitment to provide assistance and support to Sunbeam to be essential and of substantial (although incalculable) value to Sunbeam.

In connection with the settlement agreement with Coleman (Parent) Holdings, Messrs. Levin, Shapiro and Jenkins each signed three-year employment agreements with Sunbeam. See "MANAGEMENT."

Services Provided by MacAndrews & Forbes

Under Sunbeam's August 1998 settlement agreement with Coleman (Parent) Holdings, in addition to the services of MacAndrews & Forbes' former executive personnel who have been managing Sunbeam since mid-June 1998, MacAndrews & Forbes agreed to provide management assistance and other support to Sunbeam at its request in a wide variety of areas. Although the nature and extent of this assistance and support had not been determined at the time of the settlement, Sunbeam has significantly benefited from this assistance and support in connection with the following areas:

- negotiations with Sunbeam's lending banks;
- the defense of the many lawsuits brought against Sunbeam and certain of its present and former directors and officers;
- the prosecution of claims against Sunbeam's liability insurance providers;
- the defense of claims against Sunbeam by its former Chief Executive Officer and Chief Financial Officer;
- the restatement of certain of Sunbeam's historical financial statements;
- the preparation of various SEC filings by Sunbeam and Coleman; and
- various other insurance, regulatory, litigation and executive compensation matters.

MacAndrews & Forbes employees provide this assistance and support to Sunbeam. Sunbeam does not pay MacAndrews & Forbes and its affiliates for the services of its employees, but does reimburse them for out-of-pocket expenses. Execution of the settlement agreement was a condition to Sunbeam's continued employment of Messrs. Levin, Shapiro and Jenkins as officers of Sunbeam.

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

The following unaudited pro forma condensed consolidated financial statements were prepared to give effect to the following "Pro Forma Transactions":

- Sunbeam's acquisition on March 30, 1998 of about 81% of the then outstanding shares of Coleman common stock in exchange for 14,099,749 shares of Sunbeam's common stock and approximately \$160 million in cash. Immediately thereafter, as a result of the exercise of Coleman employee stock options, Sunbeam's beneficial ownership of Coleman decreased to approximately 79% of the total number of outstanding shares of Coleman common stock;
- Sunbeam's acquisition on April 6, 1998 of all of the outstanding stock of Signature Brands in exchange for approximately \$255 million in cash;
- Sunbeam's proposed acquisition of the shares of Coleman common stock held by the Coleman minority stockholders, in exchange for about 6.7 million shares of Sunbeam common stock, about \$87 million in cash, including cash-outs of Coleman options and warrants to purchase up to approximately 4.98 million shares of Sunbeam common stock at \$7 per share;
- the initial borrowing of approximately \$1,325 million under Sunbeam's bank credit facility;
- the original offering of the debentures producing net proceeds of approximately \$730 million; and
- the use of most of the net proceeds from the original bank borrowing and offering of the debentures.

The bank credit facility, as amended, consists of:

- a revolving credit facility in an aggregate principal amount of up to \$400 million maturing March 30, 2005, of which \$52.5 million may only be used to complete the merger;
- up to \$800 million in term loans maturing on March 30, 2005, of which \$35.0 million may only be used to complete the merger; and
- a \$500 million term loan maturing September 30, 2006, of which \$5.0 million has already been repaid through September 30, 1999.

Interest accrues, at the Company's option:

- at LIBOR, or
- at the base rate of the administrative agent which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%,

in each case, plus an interest margin which is currently 4.00% for LIBOR borrowings and 2.50% for base rate borrowings and is subject to potential decreases in the future, including a decrease to 3.00% for LIBOR borrowings and 1.75% for base rate borrowings upon consummation of the merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the bank credit facility. Past defaults have been waived through April 10, 2000.

The original offering in March 1998 of \$2,014 million aggregate principal amount of the debentures at a yield to maturity of 5.0% resulted in net proceeds of approximately \$730 million. The debentures are exchangeable for shares of Sunbeam common stock at an initial conversion rate of 6.575 shares for each \$1,000 principal amount at maturity of the debentures, subject to adjustment upon occurrence of certain events. The debentures are subordinated in right of payment to all of our existing and future senior indebtedness. The debentures are not redeemable by Sunbeam prior to March 25, 2003.

Proceeds from the initial bank borrowing and the original offering of debentures of \$1,176 million, \$255 million and \$182 million were used to acquire and repay the debt of Coleman and its parent corporations, CLH Holdings and Coleman Worldwide, Signature Brands and First Alert, respectively. Also, approximately \$300 million of Sunbeam's outstanding indebtedness was repaid from such proceeds. In addition, the financing provided funds to pay the \$106.9 million of redemption premiums associated with debt extinguishments and also provided working capital and funds for general corporate purposes.

The unaudited pro forma condensed consolidated balance sheet as of September 30, 1999 gives pro forma effect to Sunbeam's proposed acquisition of the shares of Coleman common stock held by the Coleman minority stockholders as if it had occurred on September 30, 1999. The unaudited pro forma condensed consolidated statements of operations for the year ended December 31, 1998 and the nine months ended September 30, 1999 give effect to the Pro Forma Transactions as if they had occurred on December 29, 1997, the beginning of Sunbeam's 1998 fiscal year.

The unaudited pro forma condensed consolidated financial statements do not include pro forma adjustments relating to the acquisition of First Alert because the effects of that acquisition are not significant.

Sunbeam's consolidated historical results of operations for the year ended December 31, 1998 includes Coleman and Signature Brands from the respective acquisition dates and has been derived from the audited financial statements of Sunbeam as of and for the year ended December 31, 1998. The results of operations of the acquired entities from the beginning of the period through the respective acquisition dates have been derived from the unaudited statements of operations of the acquired entities for the three months ended March 31, 1998. The acquisitions have been accounted for under the purchase method of accounting.

Reclassifications were made to the net sales, cost of goods sold and selling, general and administrative expense as reported in the historical financial statements of Coleman and Signature Brands. These reclassifications were made to conform to the classifications of Sunbeam and consist of promotional allowances and cooperative advertising expenses. Sunbeam classifies these amounts as a deduction to arrive at net sales.

Included in the historical statement of operations of Coleman for the three months ended March 31, 1998, are certain pretax charges for costs relating to the acquisition of Coleman by Sunbeam in the amount of \$7.1 million, a \$3.6 million write-off of capitalized costs associated with the installation of a company-wide computer software system which was abandoned following its acquisition by Sunbeam and \$2.2 million to cancel a licensing agreement with an affiliate. Additionally, the expense of the early extinguishment of debt of \$1.2 million shown as an extraordinary charge on Coleman's historical statement of operations for the three months ended March 31, 1998, has been excluded from the unaudited pro forma condensed consolidated statement of operations for the year ended December 31, 1998.

The pro forma adjustments are based upon available information and certain assumptions that Sunbeam believes are reasonable under the circumstances.

The unaudited pro forma condensed consolidated financial statements should be read in conjunction with "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS" and the financial statements of Sunbeam and the notes thereto, and the other financial information included elsewhere in this document. These unaudited pro forma condensed consolidated financial statements are provided for informational purposes only and do not purport to be indicative of the financial position or results of operations which would have been obtained had the Pro Forma Transactions been completed as of the dates indicated above or the results of operations for any future period.

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UNAUDITED PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET

As of September 30, 1999
(in thousands)

	<u>Historical Sunbeam</u>	<u>Coleman Merger(i)</u>	<u>Pro Forma After Coleman Merger</u>
ASSETS			
Current assets			
Cash and cash equivalents	\$ 29,088		\$ 29,088
Receivables, net	443,223		443,223
Inventories	507,821	\$ 4,280	512,101
Prepaid expenses and other current assets	70,681		70,681
Total current assets	1,050,813	4,280	1,055,093
Property, plant and equipment, net	457,293	12,640	469,933
Trademarks, tradenames, goodwill and other, net	1,809,868	101,849	1,911,717
	<u>\$3,317,974</u>	<u>\$118,769</u>	<u>\$3,436,743</u>
LIABILITIES AND SHAREHOLDERS' EQUITY			
Current liabilities:			
Short-term debt and current portion of long-term debt	\$1,505,576	\$ 87,000	\$1,592,576
Accounts payable	188,899		188,899
Other current liabilities	303,075		303,075
Total current liabilities	1,997,550	87,000	2,084,550
Long-term debt, less current portion	817,128		817,128
Other long-term liabilities	231,898		231,898
Deferred income taxes	111,516	36,600	148,116
Minority interest	65,195	(65,195)	
Shareholders' equity:			
Common stock	1,007	67	1,074
Additional paid-in capital	1,122,896	60,297	1,183,193
Accumulated deficit	(965,036)		(965,036)
Accumulated other comprehensive loss	(64,180)		(64,180)
Total shareholders' equity	94,687	60,364	155,051
	<u>\$3,317,974</u>	<u>\$118,769</u>	<u>\$3,436,743</u>

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See Notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS

For the Year Ended December 31, 1998

(in thousands, except per share data)

	<u>Historical Sunbeam</u>	<u>Signature Brands(a)</u>	<u>Coleman(a)</u>	<u>Pro Forma Adjustments</u>	<u>Pro Forma Before Coleman Merger</u>	<u>Coleman Merger</u>	<u>Pro Forma After Coleman Merger</u>
Net sales	\$1,836,871	\$55,482	\$244,499	\$(23,346)(b) (14,800)(c)	\$2,098,706		\$2,098,706
Cost of goods sold	1,788,819	39,098	175,777	(10,954)(b) (10,700)(c) 1,554 (d)	1,983,594	\$ 1,440 (i)	1,985,034
Amortization of goodwill and identifiable intangibles	43,830	1,032	2,934	6,537 (d)	54,333	3,009 (i)	57,342
Selling, general and administrative expense	674,247	20,392	74,855	(12,392)(b) (3,700)(c) 173 (d)	753,575	160 (i)	753,735
Operating loss	<u>(670,025)</u>	<u>(5,040)</u>	<u>(9,067)</u>	<u>(8,664)</u>	<u>(692,796)</u>	<u>(4,609)</u>	<u>(697,405)</u>
Interest expense, net	131,091	4,654	9,044	13,019 (e) 701 (f)	158,509	7,439 (i)	165,948
Other income (expense)	4,768	173	(1,861)		3,080		3,080
Gain on sale of business			26,137		26,137		26,137
(Loss) earnings from continuing operations before income taxes, minority interest and extraordinary charge	<u>(796,348)</u>	<u>(9,521)</u>	6,165	<u>(22,384)</u>	<u>(822,088)</u>	<u>(12,048)</u>	<u>(834,136)</u>
Income taxes (benefit)	<u>(10,130)</u>	<u>(3,062)</u>	7,518	<u>(4,400)(g)</u>	<u>(10,074)</u>		<u>(10,074)</u>
Minority interest	<u>(10,681)</u>		61	<u>(297)(h)</u>	<u>(10,917)</u>	<u>10,917 (i)</u>	
Loss from continuing operations before extraordinary charge	<u>\$ (775,537)</u>	<u>\$ (6,459)</u>	<u>\$ (1,414)</u>	<u>\$ (17,687)</u>	<u>\$ (801,097)</u>	<u>\$ (22,965)</u>	<u>\$ (824,062)</u>
Basic loss per share of common stock from continuing operations	<u>\$ (7.99)</u>				<u>\$ (7.96)</u>		<u>\$ (7.68)</u>
Weighted average common shares outstanding	<u>97,121</u>			<u>3,525 (j)</u>	<u>100,646</u>	<u>6,700 (j)</u>	<u>107,346</u>
Ratio of earnings to fixed charges	<u>— (l)</u>				<u>— (l)</u>		<u>— (l)</u>

See Notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS

For the Nine Months Ended September 30, 1999
(in thousands, except per share data)

	Historical Sunbeam	Coleman Merger	Pro Forma After Coleman Merger
Net sales	\$1,786,428		\$1,786,428
Cost of goods sold	1,334,177	\$ 1,080 (i)	1,335,257
Amortization of goodwill and identifiable intangibles	38,401	2,257 (i)	40,658
Selling, general and administrative expense	410,862	120 (i)	410,982
Operating loss	2,988	(3,457)	(469)
Interest expense, net	136,631	5,579 (i)	142,210
Other income, net	(4,619)		(4,619)
Loss from continuing operations before income taxes and minority interest	(129,024)	(9,036)	(138,060)
Income taxes	12,661		12,661
Minority interest	13,354	(13,354) (i)	
Net (loss) earnings	\$ (155,039)	\$ 4,318	\$ (150,721)
Basic loss per share	\$ (1.54)		\$ (1.40)
Weighted average common shares outstanding	100,743	6,700 (k)	107,443
Ratio of earnings to fixed charges	— (l)		— (l)

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See Notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

NOTES TO UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

**As of September 30, 1999 and for the Year Ended December 31, 1998
and the Nine Months Ended September 30, 1999
(in thousands, except percentages, share data and as noted)**

- (a) Represents the historical statements of operations of Coleman and Signature Brands for the three months ended March 31, 1998.
- (b) Represents the reclassifications made to net sales, cost of goods sold and selling, general and administrative expense as reported in the historical financial statements of Coleman and Signature Brands for the three months ended March 31, 1998. These reclassifications were made to conform to the classifications of Sunbeam and consist of promotional allowances and cooperative advertising. Sunbeam classifies these amounts as a deduction to arrive at net sales, as follows:

	Decrease in		
	Net Sales	Cost of Goods Sold	Selling, General and Administrative Expense
Coleman	\$(17,115)	\$(10,954)	\$ (6,161)
Signature Brands	(6,231)		(6,231)
	<u>\$(23,346)</u>	<u>\$(10,954)</u>	<u>\$(12,392)</u>

- (c) Represents the elimination of Coleman's net sales, cost of goods sold and selling, general and administrative expense for the two days ended March 31, 1998. These amounts are included in the Coleman historical statement of operations for the three months ended March 31, 1998 and are also reflected in the Sunbeam historical statement of operations since March 30, 1998.
- (d) Represents the increase in depreciation and amortization to reflect the pro forma effect of the acquisitions occurring at the beginning of the period. In each acquisition, the purchase price paid has been allocated to the fair value, as determined by independent appraisals, of tangible and identified intangible assets acquired and liabilities assumed as follows (in millions):

	Coleman	Signature Brands
Value of common stock issued	\$ 607	
Cash paid including expenses and mandatory redemption of debt, net of cash acquired	160	\$255
Cash received from sale of Coleman Spas, Inc.	(17)	
Cash received from stock option proceeds	(9)	
Net cash paid and equity issued	741	255
Fair value of total liabilities assumed, including debt	1,455	83
	<u>2,196</u>	<u>338</u>
Fair value of assets acquired	1,113	191
Excess of purchase price over fair value of net assets acquired	<u>\$1,083</u>	<u>\$147</u>

The value of approximately \$44 per share for the Sunbeam common stock issued at the date of the M&F Transaction was derived by using the average closing stock price for the day before and day of the public announcement of the M&F Transaction. Subsequent to the M&F Transaction, Coleman Spas, Inc. was sold for \$17 million and the related proceeds are therefore presented above as a deduction to arrive at the net cash paid and equity issued for the businesses retained. The \$17 million is similarly excluded from the amount of \$1,113 million described as "fair value of assets acquired." Immediately after the M&F Transaction, employee stock options were exercised generating proceeds of \$9 million.

This amount is presented above as a reduction to arrive at the net cash paid for the M&F Transaction and a proportionate corresponding increase is included in the minority interest liability assumed.

The pro forma amounts are derived as follows:

	<u>Coleman</u>	<u>Signature Brands</u>	<u>Average Life</u>	<u>Quarterly Depreciation/Amortization</u>
Increase in property, plant and equipment to reflect fair value	\$50,560	\$3,871	7.9 years	<u>\$1,727</u>
Amount attributable to:				
Cost of goods sold				<u>\$1,554</u>
Selling, general and administrative expense				<u>\$ 173</u>

The pro forma purchase price allocation to the acquired property, plant and equipment of Coleman and Signature Brands represents the aggregate amount recorded for financial statement purposes as detailed by an independent appraisal. The remaining economic useful lives for the acquired property, plant and equipment range from 17 to 34 years for buildings, 6 to 12 years for machinery and equipment and 1 to 5 years for tooling and other depreciable assets. The average life of 7.9 years represents the weighted average of the depreciable lives used for financial reporting purposes.

Amortization of goodwill and identifiable intangibles:

	<u>Coleman</u>	<u>Signature Brands</u>	<u>Life</u>	<u>Quarterly Depreciation/Amortization</u>
Goodwill	\$1,083,259	\$147,151	40 years	\$7,690
Trademarks	279,920	53,900	40 years	2,086
Assembled workforce	12,880	3,000	8 years	496
Patents	5,600	1,800	8 years	231
				<u>10,503</u>
Less: historical amortization				<u>(3,966)</u>
				<u>\$6,537</u>

- (e) Represents the net increase in interest expense to reflect the pro forma effect of acquisition and refinancing borrowings as if such transactions occurred at the beginning of the period. Amounts are derived as follows:

<u>Acquisition</u>	<u>Acquisition and Refinancing Borrowings</u>	<u>Effective Rate</u>	<u>Quarterly Interest on Acquisition and Refinancing Borrowings</u>	<u>Less: Quarterly Interest on Pre-Acquisition Borrowings</u>	<u>Increase in Interest Expense</u>
Coleman	\$1,176,000	7.47%	\$21,962	\$9,044	\$12,918
Signature Brands	254,600	7.47%	4,755	4,654	101
					<u>\$13,019</u>

The assumed effective interest rate was derived using the 1998 effective rates, including amortization of deferred financing costs, of 9.05% for the term loan borrowings, which represent approximately 59% of Sunbeam's acquisition and refinancing borrowings, and 5.20% for the debentures, which represent approximately 41% of Sunbeam's acquisition and refinancing borrowings. The effect on operations of a 1/8% variance in interest rates on the acquisition and refinancing borrowings would be approximately \$1.1 million per year and \$0.3 million per quarter.

- (f) Represents the net increase in interest expense to reflect the pro forma effect of higher interest rates on the new financing compared with historical financing. The amount is derived as follows:

	Average Pre-Refinancing Borrowings	Effective Rate	Quarterly Interest at Refinancing Borrowings Rate	Quarterly Interest at Pre-Refinancing Borrowings Rate	Increase in Interest Expense
Historical Sunbeam	\$242,500	7.47%	\$4,529	\$3,828	\$701

- (g) Represents the domestic income tax provision accrued by Coleman of \$4.4 million for the three months ended March 31, 1998. On a pro forma basis this accrual would not have been required as a consequence of the net operating losses generated by Sunbeam for the year ended December 31, 1998. No adjustment is required to the Signature Brands tax benefit since the Signature Brands loss in the first quarter of 1998 was available for carryback. No tax benefit is provided on the pro forma adjustments since the adjustments for depreciation and amortization are not deductible for income tax purposes and the deferred tax asset resulting from the remaining pro forma adjustments results in an additional valuation allowance since it is more likely than not that such deferred tax assets will not be realized from future taxable income.
- (h) Represents approximately 21% of the loss from continuing operations before extraordinary charge of Coleman for the three months ended March 31, 1998.
- (i) Represents the pro forma effects associated with completing the merger and acquiring the remaining Coleman shares outstanding. The total consideration is derived as follows:

Cash	\$ 87,000
Sunbeam common stock	45,225
Sunbeam warrants	15,139
	<u>\$147,364</u>

The portion of the consideration consisting of approximately 6.7 million shares of Sunbeam common stock is valued at \$6.75 per share, the closing price of Sunbeam's common stock on October 21, 1998, the date the Company announced the terms of the Memorandum of Understanding. The warrants to purchase approximately 4.98 million shares of Sunbeam common stock at \$7 per share are valued at \$3.04 per warrant, the same value ascribed to the warrant issued to a subsidiary of MacAndrews & Forbes in August 1998 based on a valuation performed by an independent consultant. The pro forma allocation of the consideration is based on independent appraisals prepared in connection with the M & F transaction. Allocation of the total consideration and its effect on the pro forma condensed consolidated financial statements is as follows:

	Life	Allocation	Year Ended December 31, 1998		
			Pro Forma Effect on:		
			Cost of Goods Sold	Amortization of Goodwill and Identifiable Intangibles	Selling, General and Administrative Expense
Inventories	—	\$ 4,280			
Property, plant and equipment	7.9 years	12,640	\$1,440		\$160
Trademarks	40 years	69,980		\$1,750	
Assembled workforce	8 years	3,220		403	
Patents	8 years	1,400		175	
Minority interest	—	65,195			
Deferred income taxes	—	(36,600)			
Goodwill	40 years	27,249		681	
		<u>\$147,364</u>	<u>\$1,440</u>	<u>\$3,009</u>	<u>\$160</u>
Pro forma effect on Nine Months Ended September 30, 1999			<u>\$1,080</u>	<u>\$2,257</u>	<u>\$120</u>

The pro forma adjustment for the nine months ended September 30, 1999, assumes that the depreciation and amortization are charged to operations ratably over the year.

In deriving the above pro forma adjustments, Sunbeam assumed that the fair values used in connection with the acquisition of the initial 79% interest in Coleman were reasonable approximations of the appropriate fair values to be used in connection with the second half of this step acquisition.

Accordingly, the purchase price amounts allocated above to inventories, property, plant and equipment, trademarks, assembled workforce and patents reflect 21% of the fair values used in the acquisition of the initial 79% interest of Coleman.

The pro forma adjustment to deferred income taxes represents the recording in purchase accounting of the deferred income tax effects of the temporary differences which result from the allocation of \$91.5 million of the consideration to tangible and identifiable intangible assets. The deferred income taxes have been established based on an estimated federal, state and foreign income tax rate of approximately 40%.

The pro forma adjustments also reflect:

- additional interest expense of \$7.439 million and \$5.579 million for the year ended December 31, 1998 and nine months ended September 30, 1999, respectively, on the \$87 million portion of the consideration which is expected to be funded from Sunbeam's revolving credit facility at an interest rate of 8.55% (the rate in effect at December 31, 1998). The effect on operations of a 1/8% variance in interest rates on these borrowings would be approximately \$109,000 per year and \$27,000 per quarter.
 - the elimination of the minority interest in the loss on Coleman in the pro forma statement of operations.
- (j) Represents the increase in the weighted average shares of Sunbeam common stock outstanding as of December 31, 1998, adjusted for the 14,099,749 shares issued in connection with the acquisition of Coleman as if it had occurred at the beginning of the period and the approximately 6.7 million shares of Sunbeam common stock to be issued in connection with the acquisition of the remaining Coleman shares outstanding. Since the Coleman acquisition occurred at the end of the first quarter of 1998, the weighted average shares outstanding would have increased on a pro forma basis by one quarter of the 14,099,749 shares issued, or 3,524,937 shares. The shares of common stock issuable upon conversion of the debentures, the MacAndrews & Forbes warrants, and the warrants to be issued in connection with the merger have not been included, as they would be anti-dilutive.
- (k) Represents the increase in the weighted average shares of Sunbeam common stock outstanding as of September 30, 1999, adjusted for the approximately 6.7 million shares of Sunbeam common stock to be issued in connection with the acquisition of the remaining Coleman shares outstanding. The shares of common stock issuable upon conversion of the debentures, the MacAndrews & Forbes warrants, and the warrants to be issued in connection with the merger have not been included, as they would be anti-dilutive.
- (l) In computing the ratio of earnings to fixed charges: (a) earnings represents income (loss) from continuing operations before income taxes and fixed charges, exclusive of capitalized interest; and (b) fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense. For the fiscal year ended December 31, 1998 and the nine months ended September 30, 1999, historical earnings were insufficient to cover fixed charges by \$797.1 million and \$130.1 million, respectively. For the fiscal year ended December 31, 1998 and the nine months ended September 30, 1999, on a pro forma basis, earnings were insufficient to cover fixed charges by \$834.9 million and \$139.1 million, respectively.

SELECTED CONSOLIDATED FINANCIAL INFORMATION OF SUNBEAM

The following selected historical financial information has been derived from the consolidated financial statements and the condensed consolidated financial statements of Sunbeam. This information should be read in conjunction with Sunbeam's consolidated financial statements and related notes, which are included elsewhere in this prospectus.

While reviewing the following selected historical financial information, please note the following:

- All amounts in the table are expressed in millions, except per share and ratio data.
- On March 30, 1998, Sunbeam acquired approximately 81% of the then outstanding shares of common stock of Coleman, which immediately thereafter was reduced to about 79% through exercises of Coleman employee stock options. On April 6, 1998, Sunbeam completed the cash acquisitions of First Alert and Signature Brands. The acquisitions were accounted for under the purchase method of accounting and, accordingly, the financial position and results of operations of each acquired entity are included in the Consolidated Financial Statements from the respective dates of acquisition.
 - For the fiscal year ended December 31, 1998, Sunbeam took an extraordinary charge of \$122.4 million related to the early extinguishments of debt and took other charges of:
 - \$70.0 million related to the issuance of warrants;
 - \$62.5 million related to the write-off of goodwill;
 - \$39.4 million related to fixed asset impairments;
 - \$31 million related to compensation expense for the new employment agreements with Sunbeam's former Chairman and Chief Executive Officer and two other former senior officers; and
 - \$95.8 million related to write-downs of inventory.

See Notes 2, 3 and 11 to Sunbeam's Consolidated Financial Statements.

- For the fiscal year ended December 28, 1997, Sunbeam reversed \$28.0 million of pre-tax liabilities no longer required and \$13.3 million of tax liabilities no longer required.
- For the fiscal year ended December 29, 1996, Sunbeam took restructuring, asset impairment and other charges of \$239.2 million before taxes. See Notes 12 and 13 to Sunbeam's consolidated financial statements included in this prospectus.
- The "earnings (loss) from discontinued operations, net of taxes" and "loss on sale of discontinued operations, net of taxes" represent results from Sunbeam's furniture business, net of taxes and the estimated loss on disposal. See Note 13 to Sunbeam's consolidated financial statements included in this prospectus.
- In computing the ratio of earnings to fixed charges:
 - earnings represent income (loss) from continuing operations before income taxes and fixed charges (exclusive of capitalized interest); and
 - fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense.

For the fiscal year ended December 29, 1996 and the fiscal year ended December 31, 1998, historical earnings were insufficient to cover fixed charges by \$262.2 million and \$797.1 million, respectively. For the nine months ended September 30, 1998 and 1999, historical earnings were insufficient to cover fixed charges by \$476.7 million and \$130.1 million, respectively. For the fiscal year ended December 31, 1998 and for the nine months ended September 30, 1999, on a pro forma basis, earnings were insufficient to cover fixed charges by \$834.9 million and \$139.1 million, respectively.

- At September 30, 1999, total assets include goodwill and other intangible assets of \$1,809.9 million.

	Fiscal Years Ended					Nine Months Ended			
	January 1, 1995	December 31, 1995	December 29, 1996	December 28, 1997	December 31, 1998	December 31, 1998 Pro Forma	September 30, 1998	September 30, 1999	September 30, 1999 Pro Forma
Statement of Operations									
Data:									
Net sales	\$1,044.3	\$1,016.9	\$ 984.2	\$1,073.1	\$1,836.9	\$2,098.7	\$1,322.1	\$1,786.4	\$ 1,786.4
Cost of goods sold	764.4	809.1	896.9	831.0	1,788.8	1,985.0	1,273.4	1,334.2	1,335.3
Selling, general and administrative expenses	128.9	137.5	221.7	152.6	718.1	811.1	440.4	449.2	451.6
Restructuring, and asset impairment charge (benefit)	—	—	110.1	(14.6)	—	—	—	—	—
Operating earnings (loss)	\$ 151.0	\$ 70.3	\$ (244.5)	\$ 104.1	\$ (670.0)	\$ (697.4)	\$ (391.7)	\$ 3.0	\$ (0.5)
Earnings (loss) from continuing operations before extraordinary charge	\$ 85.3	\$ 37.6	\$ (170.2)	\$ 52.3	\$ (775.5)	\$ (824.1)	\$ (475.4)	\$ (155.0)	\$ (150.7)
Earnings (loss) from discontinued operations, net of taxes	21.7	12.9	0.8	—	—	—	—	—	—
Loss on sale of discontinued operations, net of taxes	—	—	(39.1)	(14.0)	—	—	—	—	—
Extraordinary charge	—	—	—	—	(122.4)	—	(111.7)	—	—
Net earnings (loss)	\$ 107.0	\$ 50.5	\$ (208.5)	\$ 38.3	\$ (897.9)	\$ (824.1)	\$ (587.1)	\$ (155.0)	\$ (150.7)
Ratio of earnings to fixed charges	14.4x	4.7x	—	7.2x	—	—	—	—	—
Earnings (Loss) Per Share Data:									
Weighted average shares outstanding:									
Basic	82.6	81.6	82.9	84.9	97.1	107.3	95.9	100.7	107.4
Diluted	82.6	82.8	82.9	87.5	97.1	107.3	95.9	100.7	107.4
Earnings (loss) per share from continuing operations before extraordinary charge:									
Basic	\$ 1.03	\$ 0.46	\$ (2.05)	\$ 0.62	\$ (7.99)	\$ (7.68)	\$ (4.96)	\$ (1.54)	\$ (1.40)
Diluted	1.03	0.45	(2.05)	0.60	(7.99)	(7.68)	(4.96)	(1.54)	(1.40)
Earnings (loss) per share:									
Basic	1.30	0.62	(2.51)	0.45	(9.25)	(7.68)	(6.12)	(1.54)	(1.40)
Diluted	1.30	0.61	(2.51)	0.44	(9.25)	(7.68)	(6.12)	(1.54)	(1.40)
Cash dividends declared per share	0.04	0.04	0.04	0.04	0.02	0.02	—	—	—
Balance Sheet Data (at period end):									
Working capital	\$ 294.8	\$ 411.7	\$ 359.9	\$ 369.1	\$ 488.5	N/A	\$ (666.5)	\$ (946.8)	\$ (1,029.5)
Total assets	1,008.9	1,158.7	1,059.4	1,058.9	3,405.5	N/A	3,503.7	3,318.0	3,436.7
Long-term debt	124.0	161.6	201.1	194.6	2,142.4	N/A	778.8	817.1	817.1
Shareholders' equity	454.7	601.0	415.0	472.1	260.4	N/A	449.6	94.7	155.1

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SELECTED CONSOLIDATED FINANCIAL INFORMATION OF COLEMAN

The following selected consolidated historical financial information of Coleman with respect to each year in the five-year period ended December 31, 1998 and for the nine-month periods ended September 30, 1998 and September 30, 1999 is derived from the consolidated financial statements of Coleman. The balance sheet data as of September 30, 1999 and December 31, 1998, 1997, 1996 and 1995 and the statement of operations data for the nine-month periods ended September 30, 1999 and September 30, 1998 and each of the three years in the periods ended December 31, 1998, 1997 and 1996 are included in documents incorporated by reference in this document. The balance sheet data as of September 30, 1998 and December 31, 1994, have been derived from Coleman's consolidated financial statements previously filed with the SEC but not incorporated by reference in this document. The selected consolidated historical financial information should be read in conjunction with the consolidated financial statements and the related notes of Coleman which are incorporated by reference in this document. See "WHERE TO FIND MORE INFORMATION" and "INCORPORATION OF DOCUMENTS BY REFERENCE."

While reviewing the following selected historical financial information, please note the following:

- All amounts are expressed in thousands, except per share data.
- For the fiscal year ended December 31, 1998, Coleman took restructuring and other charges of \$31.6 million before taxes, which have been recorded as follows:
 - \$13.7 million in selling, general and administrative expense
 - \$17.9 million in restructuring charges (credits)
- For the fiscal year ended December 31, 1997, Coleman took restructuring and other charges of \$34.4 million before taxes, which have been recorded as follows:
 - \$8.1 million in cost of sales
 - \$3.6 million in selling, general and administrative expense
 - \$22.7 million in restructuring charges (credits)
- For the fiscal year ended December 31, 1996, Coleman took restructuring and other charges of \$66.2 million before taxes, which have been recorded as follows:
 - \$31.4 million in cost of sales
 - \$4.1 million in selling, general and administrative expense
 - \$30.7 million in restructuring charges (credits)
- The asset impairment charge in 1995 is related to Coleman's Brazilian operations which had not performed to Coleman's expectations since acquisition of this operation in 1994 and reflects charges taken in connection with the adoption of SFAS No. 121.
- Restructuring charges in 1994 reflect primarily the non-recurring charges taken in connection with the restructuring of Coleman's German operations and which include severance costs, commitments to third parties and write-downs of leasehold improvements and other assets to estimated realizable values.

	Year Ended December 31,					Nine Months Ended September 30,	
	1994	1995	1996	1997	1998	1998	1999
Statement of Operations							
Data:							
Net revenues	\$751,580	\$933,574	\$1,220,216	\$1,154,294	\$1,015,373	\$816,230	\$1,017,516
Cost of sales	535,710	649,427	917,947	828,107	748,295	587,232	691,699
Gross profit	215,870	284,147	302,269	326,187	267,078	228,998	325,817
Selling, general and administrative expense	128,466	174,688	271,541	255,785	255,071	192,158	201,705
Asset impairment charge Restructuring charges (credits)	—	12,289	—	—	—	—	—
Interest expense, net	18,456	—	30,678	22,722	17,892	16,867	(165)
Amortization of goodwill and deferred charges	13,374	24,545	38,727	40,852	33,213	26,403	16,406
Gain on sale of business	6,209	7,745	10,473	11,338	19,584	8,313	7,189
Other expense (income), net	—	—	—	—	(32,411)	(25,098)	—
	1,138	334	1,151	1,867	170	33	(2,721)
Earnings (loss) before income taxes, minority interest and extraordinary item	48,227	64,546	(50,301)	(6,377)	(26,441)	10,322	103,403
Income tax expense (benefit)	14,747	24,479	(10,927)	(5,227)	13,846	13,315	39,810
Minority interest	—	—	1,872	1,386	276	332	1,404
Earnings (loss) before extraordinary item	33,480	40,067	(41,246)	(2,536)	(40,563)	(3,325)	62,189
Extraordinary loss on early extinguishment of debt, net of income taxes	(677)	(787)	(647)	—	(17,538)	(17,538)	—
Net earnings (loss)	\$ 32,803	\$ 39,280	\$ (41,893)	\$ (2,536)	\$ (58,101)	\$ (20,863)	\$ 62,189
Basic earnings (loss) per common share	\$ 0.61	\$ 0.74	\$ (0.79)	\$ (0.05)	\$ (1.05)	\$ (0.38)	\$ 1.09
Balance Sheet Data (at end of period):							
Total assets	\$712,265	\$844,487	\$1,160,086	\$1,041,764	\$ 933,257	\$945,476	\$ 997,534
Long-term debt (including current portions)	291,175	355,257	583,613	477,799	365,535	381,318	303,743
Stockholders' equity	253,363	292,342	252,945	240,469	238,615	270,998	320,112

**MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION
AND RESULTS OF OPERATIONS**

The following discussion should be read in conjunction with the accompanying Consolidated and Condensed Consolidated Financial Statements (and related notes), Selected Consolidated Financial Information of Sunbeam and Unaudited Pro Forma Condensed Consolidated Financial Statements appearing elsewhere in this document.

On March 30, 1998, Sunbeam, through a wholly owned subsidiary, acquired approximately 81% of the outstanding shares of common stock of Coleman from a subsidiary of MacAndrews & Forbes in exchange for 14,099,749 shares of Sunbeam's common stock and approximately \$160 million in cash. In addition, Sunbeam assumed approximately \$1,016 million in debt. Immediately afterwards, as a result of the exercise of Coleman employee stock options, Sunbeam's indirect beneficial ownership of Coleman decreased to approximately 79%. Sunbeam's agreement for the acquisition of the remaining publicly held Coleman shares in a merger transaction provides that the remaining Coleman shareholders will receive:

- approximately 6.7 million shares of Sunbeam common stock—0.5677 of a share for each outstanding Coleman share; and
- approximately \$87 million in cash—\$6.44 for each outstanding Coleman share and cash outs of unexercised Coleman employee stock options equal to the difference between \$27.50 per share and the exercise price of the options.

Sunbeam expects to complete the merger in the fourth quarter of 1999 or early in the first quarter of 2000, although there can be no assurance that the merger will occur during that time. See Notes 2 and 15 to Sunbeam's Consolidated Financial Statements and "LITIGATION SETTLEMENT AND WARRANTS" for information regarding the settlement of claims relating to the Coleman acquisition, the terms of which provide for the issuance at the time of the merger of warrants to purchase up to approximately 4.98 million shares of Sunbeam's common stock at \$7 per share.

On April 6, 1998, Sunbeam completed the cash acquisitions of First Alert, a leading manufacturer of smoke and carbon monoxide detectors, and Signature Brands, a leading manufacturer of consumer and professional products. The First Alert and the Signature Brands acquisitions were valued at approximately \$182 million, including \$133 million of cash and \$49 million of assumed debt, and \$255 million, reflecting cash paid, including the required retirement or defeasance of debt, respectively.

The acquisitions were recorded under the purchase method of accounting and accordingly, the financial position and results of operations of each acquired entity are included in the Consolidated Financial Statements from the respective dates of acquisition. The purchase prices of the acquired entities have been allocated to individual assets acquired and liabilities assumed based on estimates of fair values determined by independent appraisals at the dates of acquisition.

Fiscal Year

To standardize the fiscal period ends of Sunbeam and the acquired entities, effective with its 1998 fiscal year, Sunbeam has changed its fiscal year end from the Sunday nearest December 31 to a calendar year. See Note 1 to Sunbeam's Consolidated Financial Statements.

Asset Impairment and Other Charges

Goodwill

When changes in circumstances indicate that the carrying value of goodwill may not be recoverable, Sunbeam estimates future cash flows using the recoverability method -undiscounted future cash flows and including related interest charges—as a basis for recording any impairment loss. An impairment loss is then recorded to adjust the carrying value of goodwill to the recoverable amount. The impairment loss taken is no greater than the amount by which the carrying value of the net assets of the business exceeds its fair value. Due to First Alert's financial performance in 1998 and its prospects for 1999 and beyond, Sunbeam

determined that the goodwill relating to this acquisition was impaired. Accordingly, based on its determination of fair value, Sunbeam has written off the net carrying value of goodwill of \$62.5 million in the fourth quarter of 1998.

Fixed Asset Impairment and Excess and Obsolete Inventory Reserves

In the second quarter of 1998, Sunbeam decided to outsource or discontinue a substantial number of products—principally breadmakers, toasters and certain other appliances, air and water filtration products, and the elimination of certain stock keeping units ("SKUs") within existing product lines, primarily relating to appliances, grills and grill accessories—previously made by Sunbeam, resulting in some facilities and equipment that will either no longer be used or will be utilized in a significantly different manner. Accordingly, a charge of \$29.6 million was recorded in Cost of Goods Sold to write some of these assets down to their estimated fair market value. Approximately 80% of this charge related to machinery, equipment and tooling at Sunbeam's Mexico City and Hattiesburg, Mississippi manufacturing plants, the estimated fair value for which was derived through an auction process. The remainder of this charge related to tooling and equipment at various other facilities, which either had a nominal value or the fair market value of which was derived through an auction process. These assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. The net carrying value of these assets after the write-down approximated \$2.2 million and these assets are expected to be disposed of by September 30, 1999. Depreciation expense associated with these assets approximated \$2.6 million in 1998, \$4.2 million in 1997 and \$3.5 million in 1996.

Personnel at the Mexico City facility were notified in the second quarter of 1998 that the plant was scheduled for closure at year-end 1998; accordingly, at that time a liability of \$1.8 million was recorded in Cost of Goods Sold primarily for employee severance. The employee severance was related to approximately 1,200 positions of which approximately 1,100 were terminated, and \$1.4 million paid in severance, as of December 31, 1998. Substantially all of the remaining positions were eliminated and severance payments were paid by July 31, 1999. In the third quarter of 1998, Sunbeam recorded in Cost of Goods Sold an additional provision for impairment of fixed assets of \$3.1 million in an acquired entity relating to assets taken out of service for which there was no remaining value. The asset impairment resulted from management's decision, during the third quarter, to discontinue certain SKU's within product lines, principally generators, compressors and propane cylinders. These fixed assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. Depreciation expense associated with these assets approximated \$0.8 million in 1998. In the fourth quarter of 1998, Sunbeam recorded a \$7.1 million charge as a result of management's decision, during the fourth quarter, to outsource the production of some appliances (principally irons). This charge to Cost of Goods Sold primarily consists of a provision for certain tooling and equipment (\$6.7 million) and severance and related benefits (\$0.4 million). This tooling and equipment, which had no remaining value, was written off and depreciation of this equipment was discontinued at the time of the write-down. Depreciation expense associated with these assets approximated \$2.4 million in 1998, \$2.3 million in 1997 and \$0.9 million in 1996. The severance costs related to approximately 45 production employees, none of whom was terminated as of December 31, 1998. It is anticipated that these employees' positions will be eliminated and the severance obligation paid by December 31, 1999.

During 1997 and the first half of 1998, Sunbeam built inventories in anticipation of 1998 sales volumes which did not materialize. As a result, it has been and will continue to be necessary to dispose of some portions of excess inventories at amounts less than cost. Accordingly, during 1998, when it became evident that the anticipated sales volumes would not materialize, Sunbeam recorded \$58.2 million in charges (of which \$46.4 million, \$2.2 million and \$9.6 million, were recorded during the second, third and fourth quarters, respectively) to properly state this inventory at the lower-of-cost-or-market. This inventory primarily related to some appliances, grills and grill accessories. Sunbeam also recorded a charge of \$11.0 million during the second quarter for excess inventories for raw materials and work in process which will not be used due to outsourcing the production of breadmakers, toasters and some other appliances. In addition, during 1998, Sunbeam made the decision to exit some product lines, primarily air and water filtration products, and to eliminate some SKUs within existing product lines, primarily relating to appliances, grills

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and grill accessories. As a result of this decision, a \$26.6 million charge was recorded during the second quarter to properly state this inventory at the lower-of-cost-or-market. Total charges for excess inventories recorded at the lower-of-cost-or-market based upon management's best estimate of net realizable value, amounted to approximately \$95.8 million at December 31, 1998. See Note 12 to Sunbeam's Consolidated Financial Statements for asset impairment and other charges recorded in conjunction with a 1996 restructuring plan.

Restatements

On June 30, 1998, Sunbeam announced that the audit committee of its board of directors was initiating a review into the accuracy of Sunbeam's prior financial statements. The audit committee's review has since been completed and, as a result of its findings, Sunbeam has restated its previously issued consolidated financial statements for 1996 and 1997 and the first quarter of 1998. Based upon the review, it was determined that some revenue had been inappropriately recognized, some costs and allowances had not been accrued or were improperly recorded, and some costs were inappropriately included in, and subsequently charged to, restructuring, asset impairment and other costs within the Consolidated Statement of Operations for the years ended December 29, 1996 and December 28, 1997 and the three months ended March 31, 1998. The financial statements for the years ended December 28, 1997 and December 29, 1996 were restated, audited and filed on Form 10-K/A with the SEC on November 9, 1998. The accompanying 1996 and 1997 Consolidated Financial Statements and 1998 Condensed Consolidated Financial Statements of Sunbeam present the restated results.

In connection with the restatements referred to above, Arthur Andersen advised Sunbeam that it believed there were material weaknesses in Sunbeam's internal controls. In order to address these material weaknesses, Sunbeam has increased the number of senior financial personnel and has implemented comprehensive review procedures of operating and financial information. Additionally, as explained in more detail under "—Year 2000 Readiness Disclosure" below, Sunbeam is in the process of significantly enhancing its operating systems. Sunbeam anticipates that its systems enhancements will be completed in 1999. See "CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE."

Nine Months Ended September 30, 1999 Compared to Nine Months Ended September 30, 1998

Net sales for the nine months ended September 30, 1999 and 1998 were \$1,786.4 million and \$1,322.1 million respectively, an increase of \$464.3 million. Results for the nine months ended September 30, 1998 include Coleman, Signature Brands and First Alert from their respective acquisition dates. After adjusting 1998 sales to include sales of the acquired companies for the periods from the beginning of 1998 through the respective dates of acquisition, combined historical net sales would be \$1,624.0 million. 1999 net sales increased approximately \$162 million or approximately 10% over 1998 combined historical net sales. Information that adjusts for the results of the acquisitions prior to the actual acquisition dates (the "combined historical" information) is provided for informational purposes only and is to enhance comparability of the period presented. This information is not necessarily indicative of what the combined results would have been had these acquisitions occurred at the beginning of the periods presented or the results for any future period. The increase in net sales is driven by the Outdoor Leisure group which had an increase of approximately \$123 million in 1999 as compared to the combined historical net sales in the same period in the prior year. This increase over combined historical net sales was largely due to sales of outdoor recreation products and Powermate® generators. The higher level of sales of these products is believed to be partially attributable to heightened consumer sensitivity to the need for emergency preparedness. Sunbeam believes that this heightened sensitivity is reflective of a combination of factors, including weather conditions and Year 2000 considerations. Household net sales in 1999 increased approximately \$11 million compared to 1998 combined historical net sales. Sunbeam believes that the decrease in shipments in the prior year in order to allow trade inventories to return to a normal level is primarily responsible for this increase. This factor affects the year to year comparisons for each of the operating groups. Excluding the effect on 1998 of loading, Sunbeam believes that Household net sales in 1999 were approximately the same as in the prior year. Within the Household segment, net sales of personal care products increased as a result of a strengthening retail

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environment largely offset by decreases in sales of appliances. International net sales in 1999 increased \$30.3 million over 1998 combined historical net sales. Higher sales in Canada, Europe and Japan resulted predominantly from strong retail demand of Powermate® and outdoor recreation products. This increase was partially offset by the impact of weak economic conditions in Latin America.

Gross margin for the first nine months of 1999 was \$452.3 million or \$403.6 million higher than the comparable period in 1998. During 1998, Sunbeam recorded a number of largely non-recurring charges which affect the comparability of gross margin in the first nine months of 1999 over the same period in the prior year. These charges are summarized below:

- In the second and third quarters of 1998, Sunbeam recorded charges totaling \$86.2 million relating to fixed asset impairments and provisions for excess and obsolete inventory totaling \$32.7 million. These charges, which were recorded in Cost of Goods Sold, are discussed above in the section "Fixed Asset and Excess Obsolete Inventory Reserves."

In addition to the charge taken in 1998, the excess and obsolete inventory referenced above has impacted Sunbeam's operating results in several ways, with two primary effects. First, gross margins have been impacted by sales, at below normal prices, of obsolete inventory into non-traditional channels and excess inventory into traditional channels. In addition, due to the high levels of excess inventory at the end of 1998, Sunbeam's usage of its manufacturing facilities has been lower than normal, resulting in lower fixed cost absorption, which in turn, reduced gross margins in 1999.

- Cost of Goods Sold for the first nine months of 1998 also reflects the non-recurring impact (\$28.1 million) of Sunbeam recording the 1998 acquisitions using the purchase method of accounting. In accordance with this accounting method, inventory pertaining to acquisitions was recorded at fair value. The fair value of the inventory exceeded the book value reflected on the balance sheets of the acquired companies as of the respective acquisition dates. The excess of the fair value of inventory over its pre-acquisition book value was recorded in cost of sales as the inventory was sold.

Adjusting for the combined results of the acquired companies and excluding the effects of 1998 non-recurring items, which are summarized above, gross margin for the first nine months of 1999 increased approximately \$182 million over the 1998 combined historical gross margin. As a percentage of net sales, gross margin improved to approximately 25% in the first nine months of 1999 as compared to approximately 4% in the 1998 period. The gross margin percentage for the 1998 period adjusted for the non-recurring charges and for the effect of the acquired companies was approximately 17% of combined historical net sales. The Household group contributed approximately 30% of the 1999 gross margin improvement over the 1998 combined historical gross margin. The improvement in the Household group's gross margin resulted primarily from lower sales deduction rates, improved manufacturing processes and controls, additional sales volume, and improved product mix. The Outdoor Leisure group contributed approximately 50% of the 1999 gross margin improvement over the 1998 combined historical gross margin. Approximately 80% of the improvement in the Outdoor Leisure group's gross margin resulted from additional volume and related improved manufacturing overhead absorption, as well as improvements in manufacturing. The balance of the increase resulted from improved product mix. The International group contributed approximately 20% of the 1999 gross margin improvement over 1998 combined historical gross margin. Approximately 40% of the improvement in the International group's gross margin resulted from the shut down of the Mexico City manufacturing facility which had experienced high material usage costs and employee benefit costs in the prior year. The remaining improvement resulted from increased sales volume, a lower level of product returns and improved product mix.

SG&A expense for the first nine months of 1999 was \$449.3 million, an increase of \$8.9 million or 2.0% over the same period in the prior year. After adjusting 1998 SG&A expense to include the acquired companies' SG&A expense for the period from the beginning of 1998 through the respective dates of acquisition (\$100.9 million), combined historical SG&A expense was \$541.3 million. Since the combined historical 1998 SG&A expenses were derived by adding the acquired companies' pre-acquisition period costs to the reported nine months' results of Sunbeam, the combined historical SG&A expenses include \$30.4 million of amortization of intangibles expense representing both pre- and post-acquisition periods, as well as approximately \$12 million of transaction costs incurred by the acquired companies relating to them being

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purchased by Sunbeam. Excluding these costs and the effects of the following, adjusted 1998 SG&A expenses were approximately \$378 million.

- \$70.0 million recorded in the third quarter of 1998 related to the issuance of a warrant to a subsidiary of MacAndrews & Forbes, as discussed below,
- approximately \$31 million of 1998 compensation expense recorded in connection with the new February 1998 employment agreement with Sunbeam's former Chairman and Chief Executive Officer and two other senior officers of Sunbeam and approximately \$3.8 million of severance for former employees. The new employment agreements provided for, among other items, the acceleration of vesting of restricted stock and the forfeiture of unvested restricted stock that had been granted under the executives' prior employment agreements, new restricted stock grants and options to purchase common shares. In addition, the new employment agreements provided for income tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock. (See Note 8 to the Condensed Consolidated Financial Statements);
- \$10.8 million, \$4.0 million, and \$2.1 million of costs recorded in 1998 related to expenses associated with the restatement efforts (principally representing legal, accounting and auditing costs of \$6.1 million and \$4.7 million, respectively), a corporate office relocation and Year 2000 compliance efforts, respectively.

Excluding amortization of intangibles expense of \$38.4 million for the first nine months of 1999 and \$18.7 million of costs related to Year 2000 compliance efforts, adjusted 1999 SG&A costs were \$392.2 million, an increase of approximately \$14 million over adjusted 1998 SG&A expense. As previously discussed, this increase is primarily attributable to higher levels of selling and administrative costs driven by increased net sales, headcount increases to support future growth and costs associated with certain redundant operations resulting from Sunbeam's 1998 acquisitions which operations Sunbeam is integrating and the decision to bring in-house certain functions that had previously been outsourced. Sunbeam is in the process of fully integrating certain of these functions and expects that when this process has been completed consolidated SG&A expense for these functions will be reduced. Partially offsetting these increases in SG&A expense are certain 1998 expenses which did not reoccur in 1999. These 1998 expenses include increases associated with restructuring reserve at Coleman (approximately \$7 million) and higher bad debt expense (approximately \$5 million).

On August 12, 1998, Sunbeam announced that, following investigation and negotiation conducted by a Special Committee of the Board of Directors consisting of four outside directors not affiliated with M&F, Sunbeam had entered into a settlement agreement with a subsidiary of M&F pursuant to which Sunbeam was released from certain threatened claims of M&F and its subsidiaries arising from the Coleman acquisition and M&F agreed to provide certain management personnel and assistance to Sunbeam in exchange for the issuance to the M&F subsidiary of a warrant expiring August 24, 2003 to purchase up to 23 million shares of the Company's common stock at a cash exercise price of \$7.00 per share, subject to anti-dilution adjustments. Sunbeam concluded that the agreement to issue this warrant did not result in a new measurement date for the purposes of determining the purchase price for Coleman and accounted for the issuance of this warrant in the third quarter of 1998 as a cost of settling a potential claim. Accordingly, a \$70.0 million non-cash SG&A expense was recorded in the third quarter of 1998, based upon a valuation performed as of August 1998 using facts existing at that time. The valuation was conducted by an independent consultant engaged by the special committee of the board of directors.

Operating results for the first nine months of 1999 and 1998, were a profit of \$3.0 million in 1999 and a loss of \$391.7 million in 1998. Adjusted for the historical results of the acquired companies and excluding non-recurring charges, as previously described, operating results for the 1999 and 1998 periods were a profit of \$21.7 million and a loss of \$149.2 million, respectively. This change resulted from the factors discussed above.

Interest expense increased from \$88.5 million in 1998 to \$136.6 million in 1999. Approximately 75% of the change related to higher borrowing levels in 1999 resulting primarily from borrowings for the acquisitions that were outstanding for the entire 1999 nine-month period as compared to only a portion of the 1998

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period. The balance of this increase was primarily driven by the amortization of the loan commitment fee (approximately \$2 million) Sunbeam is obligated to pay under the terms of Sunbeam's bank credit facility and the expense related to liquidated damages payable to debenture holders (approximately \$3 million).

Other income, net of \$4.6 million in 1999 included a gain of approximately \$4 million relating to the sale of the Mexico City facility. This gain was partially offset by losses from other miscellaneous asset sales of approximately \$0.3 million. The remaining other income, net in 1999 resulted from favorable foreign exchange rates, primarily from Sunbeam's operations in Japan. Other income, net of \$4.1 million in 1998 included \$8.0 million from the settlement of a lawsuit partially offset by net foreign exchange losses, primarily from Mexico.

The minority interest reported in 1999 and 1998 relates to the minority interest held in Coleman by public shareholders.

Approximately \$6 million of the \$12.7 million income tax expense recorded in 1999 related to U.S. tax liability generated by Coleman as a separate U.S. tax filing entity. As previously discussed, in July 1999, Sunbeam acquired a sufficient ownership interest in Coleman to permit it to file consolidated U.S. tax returns with Coleman for all future periods. The remaining tax expense recorded in 1999 related to taxes on foreign income and was partially offset by the favorable resolution of an income tax audit. Tax expense recorded in 1998 was nearly all related to foreign taxes. No net tax benefit was recorded on Sunbeam's losses in either year as it is management's assessment that Sunbeam cannot demonstrate that it is more likely than not that deferred tax assets resulting from these losses would be realized through future taxable income.

On July 12, 1999, Sunbeam acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock for an aggregate purchase price of approximately \$31 million. These shares, together with the shares of Coleman common stock Sunbeam owns, enable Sunbeam to exercise 80.01% of the total voting power of Coleman's outstanding capital stock as of July 12, 1999. This class of preferred stock was created by Coleman and acquired by Sunbeam in order to enable Coleman and Sunbeam to file consolidated federal income tax returns, and in certain jurisdictions, consolidated state income tax returns, prior to the consummation of the Coleman merger. In connection with the issuance of the shares of preferred stock, Sunbeam entered into a tax sharing agreement with Coleman, pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had Coleman not been included in the consolidated income tax return of Sunbeam. The net proceeds from the issuance of the shares by Coleman of its voting preferred stock to Sunbeam were used by Coleman to make a partial repayment of loans outstanding from Sunbeam under Coleman's intercompany note. (See Note 8 to the Condensed Consolidated Financial Statements.)

In March 1998, Sunbeam prepaid a \$75.0 million 7.85% industrial revenue bond related to its Hattiesburg facility originally due in 2009. In connection with the early extinguishment of this debt, Sunbeam recognized an extraordinary charge in the first quarter of 1998. As a result of repayment of certain indebtedness assumed in the Coleman acquisition, Sunbeam also recognized an extraordinary charge in the second quarter of 1998. The debt assumed in connection with the Coleman acquisition was repaid as a result of the requirements under the terms of Sunbeam's bank credit facility. These extraordinary charges consisted of redemption premiums (\$106.9 million), unamortized debt discount (\$13.8 million) and unamortized deferred financing costs (\$1.7 million) and were net of income taxes (\$10.7 million).

On November 9, 1999, Sunbeam announced a plan to divest Eastpak and also plans to divest certain non-essential assets. Proceeds from these assets sales are estimated to be \$200 million and will be primarily used to pay down debt.

Year Ended December 31, 1998 Compared to Year Ended December 28, 1997

Results of operations for the year ended December 31, 1998 include the results of Coleman from March 30, 1998 and of Signature Brands and First Alert from April 6, 1998, the respective dates of the acquisitions. The acquired companies generated net sales of \$1,009.0 million from the acquisition dates noted above through December 31, 1998, with corresponding gross margin of \$205.1 million, or 20% of sales.

SG&A costs recorded by the acquired companies were \$329.9 million in the period, yielding an operating loss of \$124.8 million.

For the acquired companies, net sales from the dates of the acquisitions through fiscal year-end were approximately \$152 million lower than the same period in the prior year. This decline was caused by lower net sales at Coleman (\$81.5 million), Signature Brands (\$31.2 million) and First Alert (\$39.2 million). Excluding the effects of Coleman's sale of its safety and security business in March 1998 and the discontinuation of its pressure washer business during 1997, Coleman's 1998 sales would have been approximately \$4 million lower than in 1997. Sunbeam believes that Signature Brands' decline, primarily in its coffee and tea products, resulted largely from lost distribution and insufficient attention to the business during part of 1998. Sunbeam believes that all of the acquired businesses were, to some extent, impacted by the disruption that arose from the integration with Sunbeam and the related management changes, both at the acquired companies and at Sunbeam. First Alert's sales decline related predominantly to increased inventory positions in the domestic channel in 1997 as compared to 1998 with the remaining decrease primarily related to more favorable weather conditions in the fourth quarter of 1997 as compared to the same period in 1998 which affected consumer shopping patterns. Excluding the effects from purchase accounting and the write-off of First Alert's goodwill, as discussed in Note 2 to the Consolidated Financial Statements, operating profit for these three companies declined by approximately \$45 million since the acquisitions in 1998 as compared to the same period in the prior year, resulting primarily from lower net sales. Although there can be no assurance, management anticipates that results from the acquired companies will significantly improve during 1999 due to, among other things, the absence of the factors causing disruption and insufficient focus at these three companies during 1998.

Consolidated net sales for the year ended December 31, 1998 were \$1,836.9 million, an increase of \$763.8 million versus the year ended December 28, 1997. After excluding:

- \$1,009.0 million of sales generated by the acquired companies;
- \$5.5 million of sales in 1998 resulting from the change in fiscal year end, as described in Note 1 to the Consolidated Financial Statements;
- \$12.7 million in 1998 and \$31.3 million in 1997 from sales of excess or discontinued inventory for which the inventory carrying value was substantially equivalent to the sales value;
- \$4.2 million from 1997 sales relating to divested product lines which are not classified as discontinued operations - time and temperature products and Counselor and Borg branded scales; and
- a \$5.4 million benefit in 1997 from the reduction of cooperative advertising accruals no longer required (cooperative advertising costs are recorded as deductions in determining net sales);

net sales on an adjusted basis ("Adjusted Sales") of \$809.7 million in 1998 decreased approximately 22% from Adjusted Sales of \$1,032.2 million in 1997. Product sales were adversely impacted by a number of factors, with the largest being changes in retail inventory levels from channel loading which took place in 1997. Sunbeam believes the year-to-year effect of these inventory reductions amounted to over \$100 million. Additionally, losses in distribution of outdoor cooking products estimated at approximately \$60 million, the estimated effect of price discounting on appliance and grill products of approximately \$14 million, and estimated higher provisions for customer returns and allowances of approximately \$30 million contributed to the lower sales in 1998. The increase in customer returns and allowances resulted from:

- increased returns of approximately \$16 million principally resulting from channel loading and other aggressive sales practices (estimated at approximately \$9 million) which began in the fourth quarter of 1997 and continued in the first quarter of 1998, a blanket recall (\$3.0 million) and the discontinuance of certain product lines (approximately \$4 million) principally air and water products; and
- additional customer allowances of approximately \$14 million primarily to induce sales during the first quarter of 1998.

The remaining sales decline was due in part to exiting some product SKUs.

Domestic Adjusted Sales declined approximately 21% or \$170 million from 1997. Sunbeam believes more than half of the sales decline was due to increased retail inventory levels in 1997 versus decreased inventory positions at customers in 1998. Excluding this effect, sales were still lower than the prior year throughout the business, with the most significant decline occurring in outdoor cooking products sales. During 1997, Sunbeam lost a significant portion of its outdoor cooking products distribution, including the majority of its grill parts and accessories products distribution. The outdoor cooking products sales decline was attributable predominantly to this lost distribution and to price discounting. The majority of the remaining sales decline was due to higher provisions for customer returns and allowances.

International Adjusted Sales, which represented 22% of Adjusted Sales for 1998, decreased approximately 24% compared with the International Adjusted Sales for the same period a year ago. Sunbeam believes this sales decline was primarily attributable to decreasing customer inventory levels as compared with the prior year. Sales were also adversely impacted by a decision to stop selling to some export distributors in Latin America and by poor economic conditions in that region. In addition, lost distribution in Canada contributed to the sales decline from the prior year.

Excluding the effects of:

- the gross margin generated from the inclusion of the acquired companies' operations in the period of \$205.1 million;
- \$0.8 million from the impact of the change in fiscal year-end;
- \$128.4 million in 1998 in charges recorded in the second and fourth quarters related to excess inventory and fixed assets impairments;
- \$15.8 million from the benefit in 1997 from the reversal of reserves no longer required, including \$5.4 million of cooperative advertising accruals; and
- a \$2.8 million benefit recorded in the second quarter of 1997 resulting from capitalizing some manufacturing supplies inventories which were previously expensed;

there was a negative gross margin of \$29.4 million for 1998 versus a gross margin of \$223.5 million for 1997. This reduction in gross margin was principally attributable to the following:

- approximately \$145 million related to lower sales volume and unfavorable manufacturing efficiencies resulting from lower production levels associated with the lower sales volumes and high inventory levels in 1998;
- approximately \$65 million related to lower price realization, higher costs of customer returns and allowances, and adverse sales mix in 1998;
- approximately \$12 million related to higher costs in 1998 associated with warranty, of which \$3.0 million related to a blanket recall, with the remaining increase attributable to increased provisions in response to higher overall warranty expense experiences; and
- approximately \$20 million related to unfavorable inventory adjustments, of which the most significant single factor was physical inventory adjustments in the domestic business.

Adverse product sales mix was due to the loss of a majority of the grill accessory products distribution as accessories generate significantly better margins than the average margins on sales of most of Sunbeam's other products.

Excluding the effects of the following, SG&A expenses were approximately \$254 million in 1998, approximately \$105 million, or 70% higher than in 1997:

- \$329.9 million of SG&A charges in the acquired companies, including the \$62.5 million goodwill write-off related to First Alert;
- \$70.0 million recorded in the third quarter of 1998 related to the issuance of a warrant to a subsidiary of MacAndrews & Forbes, as discussed below;

- \$2.3 million of SG&A expense in 1998 from the change in the fiscal period;
- a \$3.0 million benefit in 1998 and a \$12.1 million benefit in 1997 from the reversal of reserves no longer required. The 1998 benefit consists of a \$3.0 million reversal in the first quarter of 1998 of environmental reserves which are no longer required as a result of a favorable development at a remediation site. The 1997 benefit consists primarily of a \$8.1 million reversal of litigation reserves, established in 1996, which were no longer required in the fourth quarter of 1997 due to a favorable settlement during 1997. The remaining \$4.0 million 1997 benefit consists of reversals of other accruals primarily relating to consulting fees, health insurance and advertising. For further information see Note 17 to the Consolidated Financial Statements;
- approximately \$31 million of 1998 compensation expense recorded in connection with new February 1998 employment agreements with Sunbeam's former Chairman and Chief Executive Officer and two other former senior officers and approximately \$3 million of severance in 1998 for some former employees. The new employment agreements provided for Sunbeam to pay these former employees amounts which reimbursed them for their personal tax liabilities resulting from shares issued in connection with the accelerated vesting of restricted stock granted under their July 1996 agreements (\$6.9 million), as well as on the new unrestricted stock grants under the February 1998 agreements (\$9.8 million). The charge also includes the value, at approximately \$39 per share, of 300,000 restricted shares and 45,000 restricted shares which vested in February 1998 for Sunbeam's then Chairman and Chief Executive Officer and two other then senior officers, respectively (\$13.6 million). In addition, \$0.4 million was expensed during 1998 relating to the amortization of the 1996 restricted stock awards. See Note 8 to Sunbeam's Consolidated Financial Statements for information regarding the terms of these employment agreements;
- \$20.4 million, \$6.1 million and \$4.0 million of costs recorded in 1998 related to costs associated with the restatement efforts, principally representing legal, accounting and auditing, and consulting costs of \$14.1 million, \$5.7 million and \$0.6 million, respectively, Year 2000 compliance efforts and a corporate office relocation, respectively; and
- \$15.8 million of restructuring related charges recorded in 1997, charged to operations as incurred, represent employee relocation and recruiting (\$6.2 million), equipment relocation and installation (\$5.6 million) and package redesign costs (\$4.0 million).

The increase of approximately \$105 million in SG&A expense in 1998 over 1997 is principally due to several factors:

- Corporate administrative costs increased by approximately \$47 million, reflecting additional personnel and related relocation, travel and other costs, as well as increased outside provider fees, telecommunications expense and insurance.
- Higher allowances for accounts receivable in 1998, accounting for approximately \$20 million of the increase, related primarily to collection issues with customers in the United States and in Latin America, including several major customers who have filed and/or threatened bankruptcy.
- Advertising, marketing and selling expenses increased by approximately \$13 million, reflecting a national television campaign for grills and increased activity in market research, package design and sales efforts. Higher inventory levels in 1998 and costs associated with outsourcing small parts fulfillment led to higher distribution and warehousing costs of approximately \$12 million.
- Increased environmental reserves for divested and closed facilities added approximately \$5 million. Approximately half of the environmental reserve increase reflected revisions to estimates of costs to remediate existing sites. These revisions were based on obtaining additional information in the fourth quarter of 1998 about costs of planned remediation actions and costs associated with additional remediation actions. The remaining amount was to provide for revisions to reserves for estimated losses for damages related to environmental sites. These revisions were based on obtaining additional information in the fourth quarter of 1998 regarding the level of damages sought and the costs and probability of defending Sunbeam's position in these actions.

• Settlement of a patent infringement action resulted in additional expense of approximately \$4 million. Remaining legal expenses recorded in the year of approximately \$1 million for investigation, defense and settlement of both new and previously existing issues were nearly equal to amounts incurred for similar items in 1997. Additionally, as described above, SG&A includes \$14.1 million of legal costs recorded in 1998 associated with the restatement efforts. Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and claims and related anticipated legal fees. The costs are accrued when it is both probable that an asset has been impaired or a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon Sunbeam's assessment, after consultation with counsel, of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the plaintiff, and other significant factors which vary by case. When it is not possible to estimate a specific expected amount of loss to be incurred, Sunbeam evaluates the range of possible losses and records the minimum end of the range. As of December 31, 1998 and December 28, 1997, Sunbeam had established accruals for litigation matters of \$31.2 million (representing \$17.5 million and \$13.7 million for estimated damages or settlement amounts and legal fees, respectively) and \$9.9 million (representing \$3.0 million and \$6.9 million for estimated damages or settlement amounts and legal fees, respectively). It is anticipated that the \$31.2 million accrual will be paid as follows: \$22.4 million in 1999, \$7.5 million in 2000 and \$1.3 million in 2001. Sunbeam believes, based on information known to it on December 31, 1998, that anticipated probable costs of litigation matters existing as of December 31, 1998 have been adequately reserved to the extent determinable.

During 1997, Sunbeam determined that the amounts accrued at December 29, 1996 for Restructuring and Asset Impairment Charges recorded in fiscal 1996 exceeded amounts ultimately required. Accordingly, the 1997 Consolidated Statement of Operations reflects the reversal of accruals no longer required, resulting in a Restructuring and Asset Impairment Benefit of \$14.6 million. This reversal was reflected in the third (\$5.8 million) and fourth (\$8.8 million) quarters of 1997 when it became evident that such accruals were no longer required.

On August 12, 1998, Sunbeam announced that, following investigation and negotiation conducted by a special committee of the board of directors consisting of four outside directors not affiliated with MacAndrews & Forbes, Sunbeam had entered into a settlement agreement with a subsidiary of MacAndrews & Forbes, pursuant to which Sunbeam was released from certain threatened claims of MacAndrews & Forbes and its affiliates arising from the Coleman acquisition and MacAndrews & Forbes agreed to provide certain management personnel and assistance to Sunbeam in exchange for the issuance to the MacAndrews & Forbes subsidiary a warrant expiring August 24, 2003 to purchase up to 23 million shares of Sunbeam's common stock at a cash exercise price of \$7.00 per share, subject to antidilution adjustments. Sunbeam concluded that the agreement to issue this warrant did not result in a new measurement date for the purposes of determining the purchase price for Coleman and has accounted for the issuance of this warrant as a cost of settling a potential claim. Accordingly, a \$70.0 million non-cash SG&A expense was recorded in the third quarter of 1998, based on a valuation performed as of August 1998 using facts existing at that time. The valuation was conducted by an independent consultant engaged by the special committee of the board of directors.

Operating results for 1998 and 1997, on an adjusted basis as described above, were a loss of approximately \$283 million in 1998 and a profit of approximately \$74 million in 1997. This change resulted from the factors discussed above.

Interest expense increased from \$11.4 million for the twelve months of 1997 to \$131.1 million for the same period in 1998. Approximately 70% of the change related to higher borrowing levels in 1998 for the acquisitions, with the remainder due to increased borrowings to fund working capital, capital expenditures and the operating losses.

Other income, net increased in 1998 by \$4.8 million due to approximately \$8 million from the settlement of a lawsuit, and approximately \$4 million of increased net gains from foreign exchange in the period. The foreign exchange net gains were primarily from Mexico. Increased losses on sales of fixed assets

of approximately \$5 million and increased expenses related to the bank credit facility partially offset the above mentioned income. The increased credit facility expenses largely related to unused facility fees.

The minority interest reported in 1998 relates to the minority interest held in Coleman by minority stockholders.

During 1998, the current tax provision arose largely from taxes on the earnings of foreign subsidiaries as well as franchise taxes. Deferred tax benefits were recognized in 1998 principally due to net operating losses incurred subsequent to the acquisitions. These benefits were realized through the use of deferred tax credits that were established in connection with the acquisitions to the extent that such credits are expected to be realized in the loss carryforward period. Throughout 1998, Sunbeam increased the income tax valuation allowance on deferred tax assets to \$290.5 million. This increase reflects management's assessment that it is more likely than not that these deferred tax assets will not be realized through future taxable income. This assessment, which was initially made in the fourth quarter of 1997, resulted from the significant leverage undertaken by Sunbeam in connection with its acquisitions and the continuing decline in Sunbeam's net sales and earnings, as well as the operating losses incurred throughout the 1998 year. The 1997 effective tax rate was higher than the federal statutory income tax rate primarily due to state taxes, the effects of foreign earnings and dividends taxed at other rates and the impact of providing a valuation allowance on deferred tax assets.

In 1998, Sunbeam prepaid debt assumed in the acquisitions and prepaid an industrial revenue bond related to its Hattiesburg facility. The debt assumed in connection with the Coleman acquisition was repaid as a result of the requirements under the terms of Sunbeam's new credit facility. In connection with these early extinguishments of debt, Sunbeam recognized an extraordinary charge of \$122.4 million, consisting of redemption premiums (\$106.9 million), unamortized debt discount (\$13.8 million) and unamortized deferred financing costs (\$1.7 million).

Sunbeam's discontinued furniture business, which was sold in March 1997, had revenues of \$51.6 million in the first quarter of 1997 prior to the sale and nominal earnings for that period. As a result of the sale of Sunbeam's furniture business assets (primarily inventory, property, plant and equipment), Sunbeam received \$69.0 million in cash, retained approximately \$50 million in accounts receivable and retained some liabilities. The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the sale agreement and in the first quarter of 1997, after completion of the sale, Sunbeam recorded an additional loss on disposal of \$14.0 million net of applicable income tax benefits of \$8.5 million.

Year Ended December 28, 1997 Compared to Year Ended December 29, 1996

1996 Restructuring Plan and Other Charges and Benefits

In November 1996, Sunbeam announced the details of a restructuring plan. The plan included:

- the consolidation of administrative functions;
- the reduction of manufacturing and warehouse facilities;
- the centralization of Sunbeam's procurement function;
- the reduction of Sunbeam's product offerings and SKUs; and
- the elimination of some businesses and product lines.

As part of the restructuring plan, Sunbeam consolidated six divisional and regional headquarters functions into a single worldwide corporate headquarters and outsourced some back office activities resulting in a reduction in total back-office/administrative headcount. Overall, the restructuring plan called for a reduction in the number of production facilities from 26 to 8 and the elimination of over 6,000 positions from Sunbeam's workforce, including 3,300 from the disposition of some business operations and the elimination of approximately 2,800 other positions, some of which were outsourced. Sunbeam completed the major phases of the restructuring plan by July 1997.

The 1996 restructuring plan was unable to improve earnings over the long term for a number of reasons, including, but not limited to, its failure to realize some of the anticipated costs savings and the negative impact that implementation of the restructuring plan had on sales, product quality, customer service, research and development and the introduction of new products. Sunbeam's current strategy is to create innovative new products that anticipate consumer needs, develop effective marketing and advertising programs, build relationships, create the right culture and choose the right people.

In conjunction with the implementation of the restructuring plan, Sunbeam recorded a pre-tax charge of \$239.2 million in the fourth quarter of 1996. This amount is recorded as follows in the Consolidated Statements of Operations:

- \$110.1 million recorded in Restructuring and Asset Impairment Charges, as further described below;
- \$60.8 million in Cost of Goods Sold related principally to inventory write-downs to net realizable value as a result of a reduction in SKUs and costs of inventory liquidation programs;
- \$10.1 million in SG&A expense, for period costs, which were charged to operations as incurred, principally relating to employee relocation and recruiting, equipment relocation and installation (\$3.2 million), transitional fees relating to outsourcing arrangements (\$4.9 million) and package redesign costs (\$2.0 million); and
- \$58.2 million (\$39.1 million net of taxes) in Loss on Sale of Discontinued Operations related to the divestiture of its furniture business.

In 1997, upon completion of the sale of the furniture business, Sunbeam recorded an additional pre-tax loss of \$22.5 million from discontinued operations (\$14.0 million net of taxes) due primarily to lower than anticipated sales proceeds relating to the post closing adjustment that was part of the sale agreement.

Amounts included in Restructuring and Asset Impairment Charges in 1996 in the accompanying Consolidated Statements of Operations included anticipated cash charges such as severance and other employee costs of \$24.7 million, lease obligations of \$12.6 million and other exit costs associated with facility closures and related to the implementation of the restructuring plan of \$4.1 million, principally representing costs related to clean-up and restoration of owned and leased facilities for either sale or return to the landlord.

Included in Restructuring and Asset Impairment Charges of \$110.1 million in 1996 was \$68.7 million of non-cash charges principally consisting of:

- asset write-downs to net realizable value of \$22.5 million for disposals of excess facilities and equipment and product lines;
- write-offs of redundant computer systems of \$12.3 million from the administrative back-office consolidations and outsourcing initiatives;
- write-off of intangibles of \$10.1 million relating to discontinued product lines;
- write-off of capitalized product and package design costs and other expenses of \$9.0 million related to exited product lines and SKU reductions. Prior to 1996, Sunbeam had capitalized certain costs related to international product development and package design, which were amortized over the period of related benefit. The product development costs (\$1.9 million) related to international operations and represented the costs necessary to modify products for introduction to the international markets. As the restructuring plan included the closure of the International Group office and elimination of a number of products to which these costs pertained, the related capitalized costs were written off. Additionally, in connection with the restructuring plan, as a result of the elimination of many products and SKUs, Sunbeam updated its package designs. Accordingly, the unamortized balance of the capitalized package design costs which had been capitalized prior to 1996 (\$5.0 million) was written off. Sunbeam discontinued incurring costs of a significant nature relating to these items and consequently has discontinued capitalizing such costs subsequent to 1995; and
- asset write-downs of \$14.8 million related to the divestiture of some non-core products and businesses.

The asset write-downs of \$22.5 million and write-offs of \$12.3 million discussed above included equipment taken out of service in 1996 (either abandoned in 1996 or sold in 1997) and, accordingly, depreciation was not recorded subsequent to the date of the impairment charge. The asset write-downs of \$14.8 million related to the divestiture of non-core products and businesses resulted from divesting the time and temperature business in March 1997 and Counselor and Borg scale product lines in May 1997 and the sale of the textile mill in Biddeford, Maine in May 1997. These charges primarily represented the estimated non-cash losses resulting from the sale or abandonment of facilities and equipment, based on the estimated net proceeds from the sale of these assets compared to their recorded net book value, related to exiting these product lines.

The \$24.7 million for severance and other employee costs, including COBRA and other fringe benefits, related to approximately 3,700 positions that were planned to be eliminated as a result of the restructuring plan, excluding approximately 2,400 employees terminated from the furniture business for which severance was included in Loss on Sale of Discontinued Operations. See Note 13 to Sunbeam's Consolidated Financial Statements. The furniture business was sold in 1997. In 1996 and 1997, approximately 1,200 employees and 1,800 employees, respectively, were terminated from continuing operations. Due largely to attrition, the remaining planned terminations were not required. In 1997, Sunbeam determined that its severance and employee benefit costs were less than originally accrued principally due to lower than expected COBRA and workers compensation costs and, accordingly, reversed accruals of \$7.9 million in the third (\$2.1 million) and fourth (\$5.8 million) quarters. At December 31, 1997, the balance accrued of \$1.2 million represented the remaining severance and employee benefit costs for some employees terminated during 1997. During 1998, all amounts were expended.

The amounts accrued at December 29, 1996 for Restructuring and Asset Impairment Charges recorded in fiscal 1996, exceeded amounts ultimately required principally due to reductions in anticipated severance and employee benefit costs of \$7.9 million, as discussed above, and reductions in estimated lease payments of \$6.7 million (\$3.7 million and \$3.0 million recognized in the third and fourth quarters, respectively) resulting from better than anticipated rentals received under sub-leases and favorable negotiation of lease terminations. Accordingly, the fiscal 1997 Consolidated Statement of Operations included \$14.6 million of benefit (\$5.8 million in the third quarter and \$8.8 million in the fourth quarter of 1997) related to the reversal of accruals no longer required, which were recorded as these reduced obligations became known.

In 1996, in conjunction with the initiation of the restructuring plan, Sunbeam recorded additional charges totaling \$129.1 million, reflected in Cost of Goods Sold, SG&A expense, and Loss on Sale of Discontinued Operations. The charge included in Cost of Goods Sold of \$60.8 million principally represented inventory write-downs to net realizable value and anticipated losses on the disposition of the inventory as a result of the significant reduction in SKUs provided for in the restructuring plan. The write-down to net realizable value, based upon management's best estimates, included \$26.9 million related to raw materials, work-in process and finished goods for discontinued outdoor cooking products, principally grills and grill accessories and the balance related to raw materials, work-in process and finished goods for other discontinued products including appliances (\$27.8 million), clippers (\$1.0 million) and blankets (\$5.1 million). For inventory which management determined was saleable, the estimated write-down was based upon the difference between the expected net sales proceeds of the inventory, depending upon distribution channel, and the recorded value of the inventory. In the case of abandoned inventory, the write-down was equal to the recorded value of the inventory. The resulting difference between carrying value and estimated net realizable value represented the \$60.8 million write-down necessary to record the inventory at its net realizable value. SG&A expense included period costs, charged to operations as incurred, in 1997 and 1996 of \$15.8 million and \$10.1 million, respectively, relating to employee relocation and recruiting and equipment installation and relocation (\$11.8 million in 1997 and \$3.2 million in 1996) transitional fees relating to outsourcing arrangements (\$4.9 million in 1996), and package redesign costs (\$4.0 million in 1997 and \$2.0 million in 1996) expended as a result of the implementation of the restructuring plan. The 1996 Loss on Sale of Discontinued Operations related to the divestiture of Sunbeam's furniture business. In 1996, Sunbeam decided to divest its furniture operations and recorded an estimated pre-tax loss of \$58.2 million related to the sale of assets, primarily fixed assets and inventory. In 1997, Sunbeam recorded an additional pre-tax loss of \$22.5 million due primarily to lower than anticipated sales proceeds resulting from the post closing

adjustment as provided for in the sale agreement. See Notes 12 and 13 to Sunbeam's Consolidated Financial Statements.

At December 28, 1997, Sunbeam had \$5.2 million in liabilities accrued related to the 1996 restructuring plan, including \$1.2 million of severance related costs and \$4.0 million related to facility closures, which principally represented future lease payments, net of sub-leases, on exited facilities. During 1998, this liability was reduced by \$4.0 million as a result of cash expenditures. At December 28, 1997, Sunbeam had \$3.0 million of warranty liabilities related to the discontinued furniture operations. During 1998, \$2.5 million of this liability was liquidated.

The charges and benefit described above are included in the following categories in the 1997 and 1996 Consolidated Statements of Operations (in millions):

	<u>1997</u>	<u>1996</u>
Restructuring and impairment (benefit) charge	\$(14.6)	\$110.1
Cost of goods sold	—	60.8
Selling, general and administrative expense	15.8	10.1
Loss on sale of discontinued operations	22.5	58.2
	<u>\$ 23.7</u>	<u>\$239.2</u>

These charges and benefit consisted of the following (in millions):

	<u>1997</u>	<u>1996</u>
Write-downs:		
Fixed assets held for disposal, not in use	\$ —	\$ 34.8
Fixed assets held for disposal, used until disposed	—	14.8
Inventory on hand	—	60.8
Other assets, principally trademarks and intangible assets	—	19.1
	<u>—</u>	<u>129.5</u>
Restructuring accruals (including amounts expended in 1996):		
Employee severance pay and fringes	(7.9)	24.7
Lease payments and termination fees	(6.7)	12.6
Other exit activity costs, principally facility closure expenses	—	4.1
	<u>(14.6)</u>	<u>41.4</u>
Other related period costs, charged to operations as incurred:		
Employee relocation; equipment relocation and installation and other	11.8	3.2
Transitional fees related to outsourcing arrangements	—	4.9
Package redesign	4.0	2.0
	<u>15.8</u>	<u>10.1</u>
Charges included in continuing operations	1.2	181.0
Loss on sale of discontinued operations	22.5	58.2
	<u>\$ 23.7</u>	<u>\$239.2</u>

At December 29, 1996, the net realizable value of the remaining inventory written-down as part of the restructuring and asset impairment charges was approximately \$37.3 million. During 1997, this inventory, a portion of which was product of discontinued operations, was sold for amounts substantially equivalent to its net carrying value.

As further discussed in Note 15 to the Consolidated Financial Statements, during the fourth quarter of 1996, Sunbeam charged SG&A for increases of \$9.0 million in environmental reserves and \$12.0 million in litigation reserves. In the fourth quarter of 1996, Sunbeam performed a comprehensive review of all environmental exposures in an attempt by the then new senior management team to accelerate the resolution and settlement of environmental claims. As a result, upon the conclusion of the review, Sunbeam recorded additional environmental reserves of \$9.0 million in the fourth quarter of 1996. The litigation charge of \$12.0 million was recorded due to an unfavorable court ruling in January 1997, which held that Sunbeam

was liable for environmental remediation costs related to the operations of a successor company. As a result of this ruling, Sunbeam provided for this liability in the fourth quarter of 1996. In the fourth quarter of 1997, this case was settled and, as a result, \$8.1 million of the charge was reversed into income, primarily in the fourth quarter of 1997.

As described in Note 8 to the Consolidated Financial Statements, Sunbeam also charged \$7.7 million to SG&A expenses in 1996 for compensation costs associated with restricted stock awards and other costs related to the employment of the then new senior management team.

During the first, second, third and fourth quarters of 1997, approximately \$0.5 million, \$4.5 million, \$1.5 million and \$21.5 million, respectively, of pre-tax liabilities provided in prior years and determined to be no longer required were reversed and taken into income. These amounts were primarily related to:

- the litigation reserve of \$8.1 million discussed above, resulting in a reduction in SG&A expenses;
- inventory valuation allowances of \$7.0 million, resulting in a reduction in Costs of Goods Sold;
- cooperative advertising allowances of \$5.4 million, resulting in an increase in net sales;
- liabilities for exiting of facilities and plant consolidations provided for prior to 1996 of \$3.5 million, resulting in a decrease in Cost of Goods Sold; and
- consulting fee accruals of \$1.3 million, which resulted in a decrease in SG&A expenses.

These liabilities were provided for by Sunbeam, principally in 1996, based upon its best available estimate at the time of the probable liabilities. When information became available that the amounts provided were in excess of what was required, Sunbeam reduced the applicable reserves and recorded increases in Net Sales of \$5.4 million, reductions in Cost of Goods Sold of \$10.5 million and reductions in SG&A expenses of \$12.1 million.

Additionally, effective in the second quarter of fiscal 1997, Sunbeam changed its method of accounting to capitalize manufacturing supplies inventories, whereas, previously these inventories were charged to operations when purchased. This change reduced Cost of Goods Sold in fiscal 1997 by \$2.8 million.

Results of Operations for 1997 Compared to 1996

Net sales for 1997 were \$1,073.1 million, an increase of \$88.9 million or 9% over 1996. After excluding the following, Adjusted Sales increased 8% over the prior year to \$1,032.2 million from \$953.4 million in 1996:

- \$4.2 million and \$30.8 million in 1997 and 1996, respectively, related to divested product lines which were not classified as discontinued operations (time and temperature products, decorative bedding and Counselor and Borg branded scales);
- \$31.3 million of sales in 1997 of discontinued inventory which resulted primarily from the reduction of SKUs as part of the 1996 restructuring plan and for which the inventory carrying value was substantially equivalent to the sales value; and
- a \$5.4 million benefit from the reduction of cooperative advertising accruals no longer required in 1997.

Adjusted Sales, on a worldwide basis, increased during 1997 primarily from new product introductions, expanded distribution, particularly with Sunbeam's top ten customers, international geographic expansion and increased inventory positions at some customers. Adjusted Sales growth was approximately 19% for appliances and approximately 12% in outdoor cooking. Adjusted Sales for health products increased approximately 5% while Adjusted Sales of personal care products and blankets decreased approximately 13% during 1997.

Sales increases in appliances of approximately \$69 million were driven by new products, such as redesigned blenders and mixers, coffeemakers, irons, deep fryers and toasters, and by increased distribution with large national mass retailers, combined with higher inventory levels at some customers. Sales of outdoor

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cooking products increased approximately \$30 million in 1997 attributed to increased merchandising and advertising programs, new distribution and higher inventory levels at some customers. During 1997, Sunbeam lost a significant portion of its outdoor cooking products distribution, including the majority of its grill accessory products distribution. Accessories, which accounted for just over 10% of the outdoor cooking sales volume in 1997, generate significantly better margins than the average margins on sales of grills. These distribution changes are expected to adversely impact outdoor cooking sales and margins in the future, until such time as the distribution is regained.

Sales of personal care products and blankets suffered during the fourth quarter of 1997 as a result of lower than expected retail sell through of electric blankets in key northern markets in late 1997 coupled with the inability to service demand for king and queen sized blankets due to shortages of blanket shells. Sunbeam shifted to a more level production for blankets in 1998 in order to more adequately service the seasonal demand for bedding products. Sales of health products as well as personal care and bedding products were impacted by increased inventory positions at customers in 1997.

International sales, which represented 21% of total revenues in 1997, grew 25% during the year. This sales growth was driven primarily by 54 new 220 volt product introductions and a general improvement in demand in export operations and in Mexico. Net sales growth of approximately 35% was achieved in the Latin American export sales organization. Most of this growth came from increased business with three exporters. In Mexico and Venezuela, sales grew 30% and 24%, respectively. Canada accounted for the majority of the remaining international sales growth.

Excluding the effects of:

- charges of \$60.8 million to Cost of Goods Sold related to the restructuring plan in 1996;
- the \$15.9 million benefit of reducing reserves no longer required in 1997; and
- the \$2.8 million benefit in 1997 of capitalizing manufacturing supplies inventories;

gross margin as a percent of Adjusted Sales would have been approximately 22% in 1997, an improvement of approximately 6 percentage points from 16% in 1996. This increase reflects the results of lower overhead spending, improved factory utilization and labor cost benefits resulting from Sunbeam's restructuring plan, coupled with reductions in materials costs. The lower overhead spending resulted from a reduction in the number of facilities operated by Sunbeam. With fewer facilities used for production purposes, the capacity of the remaining plants was more fully utilized. The labor cost benefits were realized principally from shifting production to Mexico. In addition, a broad based program to obtain lower costs for materials contributed to the 1997 margin improvement.

Excluding the impact of:

- the restructuring and asset impairment period costs to SG&A expense of \$15.8 million in 1997 and \$10.1 million in 1996;
- the 1996 charges for the environmental accrual of \$9.0 million, litigation accrual of \$12.0 million and restricted stock grant compensation of \$7.7 million; and
- the 1997 benefit from the reversal of reserves no longer required of \$12.1 million;

SG&A improved to 14% of Adjusted Sales in 1997, down 5 percentage points from 19% in 1996. This improvement was partially the result of benefits from the consolidation of six divisional and regional headquarters into one corporate headquarters and one administrative operations center, reduced staffing levels, a reduction in the number of warehouses, and Company-wide cost control initiatives. Higher expenditures in 1996 for market research, new packaging and other discretionary charges and higher bad debt expenses associated with some of Sunbeam's customers also contributed to the decrease in SG&A expense from 1996 to 1997. The expense for doubtful accounts and cash discounts was \$17.3 million in 1997 as compared to \$27.1 million in 1996. The principal factor in the decrease in bad debt expenses during this period was the acceleration of the consolidation of the U.S. retail industry and the related competitive environment, which resulted in a number of troubled retailers and related bankruptcies during 1996. This resulted in the significant amount of bad debt write-offs—\$19.9 million—in 1996.

The restructuring accrual, which existed at January 1, 1996 (\$13.8 million), was initially established as part of a "rightsizing program" during fiscal 1992. During 1996, approximately \$3 million of this accrual was utilized and the remaining \$10.8 million became part of the reserve requirements of the 1996 restructuring plan. In effect, in 1996, Sunbeam reversed the \$10.8 million prior year accrual determined to be no longer required and provided a corresponding amount in connection with the 1996 restructuring charge.

Operating results for 1997 and 1996, on a comparable basis as described above, were earnings of \$74.5 million in 1997 and a loss of \$34.8 million in 1996. On the same basis, operating margin increased 11 percentage points to 7% of Adjusted Sales in 1997 versus a loss of 4% in 1996. This improvement resulted from the factors discussed above.

Interest expense decreased from \$13.6 million in 1996 to \$11.4 million in 1997 primarily as a result of lower average borrowing levels in 1997.

The 1997 effective income tax rate for continuing operations was higher than the federal statutory income tax rate primarily due to state taxes plus the effect of foreign earnings and dividends taxed at other rates and the increase to the valuation reserve for deferred tax assets, offset in part by the reversal of tax liabilities no longer required. During the fourth quarter of 1997, approximately \$13.3 million of tax liabilities related to the 1993 and 1994 tax years were determined to be no longer required and were reversed and taken into income. These accruals were no longer required because during the fourth quarter of 1997 Sunbeam reached a resolution with the Internal Revenue Service on its audits of the 1993 and 1994 tax years. Additionally, in the fourth quarter of 1997, Sunbeam increased the valuation allowance by \$23.2 million reflecting management's assessment that it was more likely than not that the deferred tax asset will not be realized through future taxable income. Of this amount, \$18.9 million related to deferred tax assets, the majority of which was recognized as a benefit in the first three quarters of 1997. The remainder related to minimum pension liabilities and was therefore recorded as an adjustment to shareholders' equity. This assessment was made as a result of the significant leverage incurred by Sunbeam to finance the acquisitions and the significant decline in net sales and earnings from anticipated levels during the fourth quarter of 1997 and the first quarter of 1998. For 1996, the effective income tax rate for continuing operations equaled the federal statutory income tax rate.

Sunbeam's diluted earnings per share from continuing operations was \$0.60 per share in 1997 versus a loss per share from continuing operations in 1996 of \$2.05. Sunbeam's share base utilized in the diluted earnings per share calculation increased approximately 6% during 1997 as a result of an increase in the number of shares of common stock outstanding due to the exercise of stock options in 1997 and the inclusion of common stock equivalents in the 1997 calculation.

Sunbeam's discontinued furniture business, which was sold in March 1997, had revenues of \$51.6 million in the first quarter of 1997 prior to the sale and nominal earnings. In 1996, the discontinued furniture business had net income of \$0.8 million on revenues of \$227.5 million and an estimated loss on disposal of the business of \$39.1 million, net of applicable income tax benefits. The sale of Sunbeam's furniture business assets—primarily inventory, property, plant and equipment—was completed in March 1997. Sunbeam received \$69.0 million in cash, retained approximately \$50.0 million in accounts receivable and retained some liabilities related to the furniture business. The final purchase price for the furniture business was subject to a post-closing adjustment under the terms of the sale agreement, and in the first quarter of 1997, after completion of the sale, Sunbeam recorded an additional pre-tax loss on disposal of \$22.5 million. Although the discontinued furniture business was profitable, net income had declined from \$21.7 million in 1994 to \$0.8 million in 1996. This decline, along with Sunbeam's announcement that it intended to divest this line of business contributed to the loss on the sale. See discussion of restructuring and asset impairment (benefit) charges in Note 12 and discontinued operations in Note 13 to the Consolidated Financial Statements for further information regarding sale of the furniture business.

Summary of (Loss) Earnings from Continuing Operations

A reconciliation of operating (loss) earnings to adjusted (loss) earnings from continuing operations for 1998, 1997 and 1996, on a comparable basis follows (in millions):

	<u>1998</u>	<u>1997</u>	<u>1996</u>
Operating (loss) earnings, as reported	\$(670.0)	\$104.1	\$(244.5)
Add (deduct):			
Loss from acquisitions	124.8	—	—
Issuance of warrants to MacAndrews & Forbes subsidiary	70.0	—	—
Restructuring, asset impairment and other related charges	—	1.2	181.0
Fixed asset and inventory charges	128.4	—	—
Environmental reserve increase principally related to divested operations	—	—	9.0
Litigation reserve increase relating to divested operation	—	—	12.0
Restricted stock and other management compensation/severance	34.4	—	7.7
Reversals of accruals no longer required	(3.0)	(28.0)	—
Capitalization of manufacturing supplies inventories	—	(2.8)	—
Restatement related expenses	20.4	—	—
Year 2000 and systems initiatives expenses	6.1	—	—
Change in fiscal year-end effect and office relocation expense	5.5	—	—
Adjusted operating (loss) earnings from continuing operations before income taxes, minority interest and extraordinary charge	(283.4)	74.5	(34.8)
Interest expense	131.1	11.4	13.6
Other (income) expense, net	(4.8)	—	3.7
Adjusted (loss) earnings from continuing operations before income taxes and minority interest	(409.7)	63.1	(52.1)
Adjusted income tax (benefit) expense	(10.1)	56.3	(18.2)
Minority interest	(10.7)	—	—
Adjusted (loss) earnings from continuing operations	<u>\$(388.9)</u>	<u>\$ 6.8</u>	<u>\$(33.9)</u>

After consideration of the adjustments above, 1998 and 1996 results from continuing operations reflect losses and 1997 continuing operations are marginally profitable. Due to a variety of factors, including increased inventory positions at some customers and manufacturing and sourcing activities during 1997 and the first half of 1998 which increased Sunbeam's inventory position, the results for each of 1998 and 1997 are not indicative of future results. Results for 1999 are expected to be impacted by the continuing effects of Sunbeam's excess inventory position, as well as costs related to Year 2000 compliance efforts.

Foreign Operations

Approximately 75% of Sunbeam's business is conducted in U.S. dollars, including domestic sales, U.S. dollar denominated export sales, primarily to Latin American markets, Asian sales and the majority of European sales. Sunbeam's non-U.S. dollar denominated sales are made principally by subsidiaries in Europe, Canada, Japan, Latin America and Mexico. Mexico reverted to a hyperinflationary status for accounting purposes in 1997; therefore, translation adjustments related to Mexican net monetary assets are included as a component of net (loss) earnings. Mexico is no longer considered hyperinflationary as of January 1, 1999. This change in Mexico's hyperinflationary status is not expected to have a material effect on Sunbeam's financial results. Translation adjustments resulting from Sunbeam's non-U.S. denominated subsidiaries have not had a material impact on Sunbeam's financial condition, results of operations or cash flows.

While revenues generated in Asia have traditionally not been significant, economic instability in this region is expected to have a negative effect on earnings. Economic instability and the political environment in Latin America have also affected sales in that region. It is anticipated that sales in and exports to these regions will continue to decline so long as the economic environments in those regions remain unsettled.

On a limited basis, Sunbeam selectively uses derivatives—foreign exchange option and forward contracts—to manage foreign exchange exposures that arise in the normal course of business. No derivative contracts are entered into for trading or speculative purposes. The use of derivatives has not had a material impact on Sunbeam's financial results. See Note 4 to the Consolidated Financial Statements.

Exposure to Market Risk

Qualitative Information

Sunbeam uses a variety of derivative financial instruments to manage its foreign currency and interest rate exposures. Sunbeam does not speculate on interest rates or foreign currency rates. Instead, it uses derivatives when implementing its risk management strategies to reduce the possible effects of these exposures.

With respect to foreign currency exposures, Sunbeam is most vulnerable to changes in rates between the United States dollar/Japanese yen, Canadian dollar, German deutschemark, Mexican peso and Venezuelan bolivar exchange rates. Sunbeam principally uses forward and option contracts to reduce risks arising from firm commitments, intercompany sales transactions and intercompany receivable and payable balances. Sunbeam generally uses interest rate swaps to fix some of its variable rate debt. Sunbeam manages credit risk related to these derivative contracts through credit approvals, exposure limits and threshold amounts and other monitoring procedures.

Quantitative Information

Below are tables of information related to Sunbeam's investments in market risk sensitive instruments. All of the instruments in the following tables have been entered into by Sunbeam for purposes other than trading purposes.

Interest Rate Sensitivity: The table below provides information about Sunbeam's derivative financial instruments and other financial instruments that are sensitive to changes in interest rates, including interest rate swaps and debt obligations.

For debt obligations, the table presents principal cash flows by expected maturity date and related (weighted) December 31, 1998 average interest rates. Included in the debt position are the debentures, which carry no intervening cash flows but mature in 2018. For interest rate swaps, the table presents notional amounts and weighted average interest rates for the contracts at the current time. Notional amounts are used to calculate the contractual payments to be exchanged under the contracts.

	December 31, 1998	Expected Maturity Date						Total	Fair Value(1)
		1999	2000	2001	2002	2003	Thereafter		
(US\$ Equivalent in Millions)									
Domestic Liabilities									
Debentures(2)	\$ 779	\$ —	\$ —	\$ —	\$ —	\$ —	\$2,014	\$2,014	\$ 240
Other	80	71	1	1	1	1	5	80	79
Total fixed rate debt (US\$)	859	71	1	1	1	1	2,019	2,094	319
Average interest rate	5.64%								
Variable rate debt: US\$	\$1,357	\$ 3	\$1,354(3)	\$ —	\$ —	\$ —	\$ —	\$1,357	\$1,357
Average interest rate	8.47%								
Interest Rate Derivatives									
Interest rate swaps:									
Variable to fixed (US\$)	\$ 325	\$ —	\$ —	\$150	\$ —	\$ 175	\$ —	\$ 325	\$ (7)
Average pay rate	5.70%								
Average receive rate	5.21%								

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- (1) The fair value of fixed rate debt is estimated using either reported transaction values or discounted cash flow analysis. The carrying value of variable rate debt is assumed to approximate market value based on the periodic adjustments of the interest rates to the current market rates in accordance with the terms of the agreements. The fair value of the interest rate swaps is based on estimates of the cost of terminating the swaps.
- (2) The total amount of debentures maturing in future periods exceeds the balance as of December 31, 1998 due to the accretion of the debentures. See Note 3 to Sunbeam's Consolidated Financial Statements.
- (3) Represents bank credit facility debt. See "—Liquidity and Capital Resources" and Note 3 to the Consolidated Financial Statements.

Exchange Rate Sensitivity. The table below provides information about Sunbeam's derivative financial instruments, other financial instruments and forward exchange agreements by functional currency and presents such information in U.S. dollar equivalents. The table summarizes information on instruments and transactions that are sensitive to foreign currency exchange rates, including foreign currency variable rate credit lines, foreign currency forward exchange agreements and foreign currency purchased put option contracts. For debt obligations, the table presents principal cash flows and related weighted average interest rates by expected maturity dates. For foreign currency forward exchange agreements and foreign currency put option contracts, the table presents the notional amounts and weighted average exchange rates by expected (contractual) maturity dates. These notional amounts generally are used to calculate the contractual payments to be exchanged under the contract. None of the instruments listed in the table have maturity dates beyond 1999.

	December 31, 1998	Fair Value
	(US\$ Equivalent in Millions)	
On Balance Sheet Financial Instruments		
US\$ Functional Currency		
Short-term debt:		
Variable rate credit lines (Europe, Japan and Asia)	\$ 45.8	\$45.8
Weighted average interest rate	2.8%	
US\$ Functional Currency		
Forward Exchange Agreements		
(Receive US\$/pay DM)		
Contract amount	\$ 12.0	\$12.2
Average contractual exchange rate	1.62	
(Receive US\$/pay JPY)		
Contract amount	\$ 14.9	\$14.2
Average contractual exchange rate	116.11	
(Receive US\$/pay GBP)		
Contract amount	\$ 4.0	\$ 4.1
Average contractual exchange rate	1.68	
Purchased Put Option Agreements		
(Receive US\$/pay DM)		
Contract amount	\$ 18.4	\$ 0.1
Average strike price	1.80	
(Receive US\$/pay JPY)		
Contract amount	\$ 12.4	\$ 0.2
Average strike price	125.0	
(Receive US\$/pay GBP)		
Contract amount	\$ 1.5	\$ —
Average strike price	1.62	

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Euro Conversion

On January 1, 1999, certain member countries of the European Union established fixed conversion rates between their existing currencies and the European Union's common currency (the "Euro"). The transition period for the introduction of the Euro is between January 1, 1999 and January 1, 2002. Sunbeam has been preparing for the introduction of the Euro and continues to evaluate and address the many issues involved, including the conversion of information technology systems, recalculating currency risk, strategies concerning continuity of contracts, and impacts on the processes for preparing taxation and accounting records. Based on the work to date, Sunbeam believes the Euro conversion will not have a material impact on its results of operations.

Seasonality

Sunbeam's consolidated sales are not expected to exhibit substantial seasonality; however, sales are expected to be strongest during the second quarter of the calendar year. Furthermore, sales of a number of products, including warming blankets, vaporizers, humidifiers, grills, First Alert products, camping and generator products may be impacted by unseasonable weather conditions.

Liquidity and Capital Resources

Debt Instruments

In order to finance the acquisition of Coleman, First Alert and Signature Brands and to refinance substantially all of the indebtedness of Sunbeam and the three acquired companies, Sunbeam consummated an offering of debentures at a yield to maturity of 5%—approximately \$2,014 million principal amount at maturity—in March 1998, which resulted in approximately \$730 million of net proceeds and borrowed about \$1,325 million under its new bank credit facility.

The debentures are exchangeable for shares of Sunbeam's common stock at an initial conversion rate of 6.575 shares for each \$1,000 principal amount at maturity of the debentures, subject to adjustments upon occurrence of specified events. The debentures are subordinated in right of payment to all existing and future senior indebtedness of Sunbeam. The debentures are not redeemable by Sunbeam prior to March 25, 2003. On or after such date, the debentures are redeemable for cash with at least 30 days notice, at the option of Sunbeam. Sunbeam is required to purchase debentures at the option of the holder as of March 25, 2003, March 25, 2008 and March 25, 2013, at purchase prices equal to the issue price plus accrued original discount to such dates. Sunbeam may, at its option, elect to pay any such purchase price in cash or common stock or any combination thereof. However, the bank credit facility prohibits Sunbeam from redeeming or repurchasing debentures for cash. Sunbeam was required to file a registration statement with the SEC to register the debentures by June 23, 1998. This registration statement was filed on February 4, 1999 and, as amended, was declared effective on November 8, 1999. Sunbeam's failure to file the registration statement by June 23, 1998 did not constitute default under the terms of the debentures. From June 23, 1998 until the registration statement was declared effective, Sunbeam was required to pay to the debenture holders cash liquidated damages accruing, for each day during such period, at a rate per annum equal to 0.25% during the first 90 days and 0.50% thereafter multiplied by the total of the issue price of the debentures plus the original issue discount thereon on such day. Sunbeam has made total payments for liquidated damages since June 23, 1998 of \$4.5 million, of which \$1.5 million related to damages for the period through December 31, 1998. A final payment of approximately \$0.5 million, representing liquidated damages from September 26, 1999 until the registration statement was declared effective, will be payable on March 25, 2000.

Concurrent with the acquisitions, Sunbeam replaced its \$250 million syndicated unsecured five-year revolving credit facility with the bank credit facility. The bank credit facility provided for aggregate borrowings of up to \$1.7 billion and in addition to other customary covenants, required Sunbeam to maintain specified consolidated leverage, interest coverage and fixed charge coverage ratios as of the end of each fiscal quarter occurring after March 31, 1998 and on or prior to the latest stated maturity date for any of the borrowings under the bank credit facility.

As a result of, among other things, its operating losses incurred during the first half of 1998, Sunbeam did not achieve the specified financial ratios for June 30, 1998 and it appeared unlikely that Sunbeam would achieve the specified financial ratios for September 30, 1998. Consequently, Sunbeam and its lenders entered into an agreement dated as of June 30, 1998 that waived through December 31, 1998 all defaults arising from the failure of Sunbeam to satisfy the specified financial ratios for June 30, 1998 and September 30, 1998. Pursuant to an agreement with Sunbeam dated as of October 19, 1998, Sunbeam's lenders extended all of the waivers under the June 30 agreement through April 10, 1999 and also waived through such date all defaults arising from any failure by Sunbeam to satisfy the specified financial ratios for December 31, 1998. As part of the October 19, 1998 agreement, Sunbeam agreed to a minimum monthly earnings before interest, taxes, depreciation and amortization ("EBITDA") covenant for each of February, March and April of 1999, which covenant Sunbeam was able to satisfy.

On April 10, 1999, among other things, the lenders extended all of the waivers set forth in the October 19, 1998 agreement through April 15, 1999. On April 15, 1999, Sunbeam and its lenders entered into a comprehensive amendment to the bank credit facility that, among other things, extended all of the waivers under the April 10, 1999 agreement until April 10, 2000 and waived until such date all defaults arising from any failure by Sunbeam to satisfy the specified financial ratios for any fiscal quarter end occurring during 1999 and for March 31, 2000. As part of the April 15, 1999 amendment, Sunbeam agreed to a minimum cumulative EBITDA covenant that is based on post-December 31, 1998 consolidated EBITDA and is tested at the end of each month occurring on or prior to March 31, 2000, as well as a covenant limiting the amount of revolving loans (other than those used to fund the merger) that may be outstanding under the bank credit facility as of the end of each such month. The minimum cumulative EBITDA was initially \$6.3 million for the period January 1, 1999 through April 30, 1999 and generally grows on a monthly basis until it reaches \$121 million for the period from January 1, 1999 through March 31, 2000. The following description of the bank credit facility reflects the terms of the bank credit facility as amended to date.

The bank credit facility provides for aggregate borrowings of up to \$1.7 billion through:

- a revolving credit facility in an aggregate principal amount of up to \$400.0 million maturing March 30, 2005, \$52.5 million of which may be used only to complete the merger;
- up to \$800.0 million in term loans maturing on March 30, 2005, of which \$35.0 million may be used only to complete the merger; and
- a \$500.0 million term loan maturing September 30, 2006 (of which \$5.0 million has already been repaid through June 30, 1999).

As of September 30, 1999, approximately \$1.5 billion was outstanding and approximately \$0.2 billion was available for borrowing under the bank credit facility.

Under the bank credit facility, interest accrues, at Sunbeam's option:

- at LIBOR; or
- at the base rate of the administrative agent which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%;

in each case plus an interest margin which is currently 4.00% for LIBOR borrowings and 2.50% for base rate borrowings. The current interest rates reflect an increase of 0.25% for LIBOR loans and base rate loans which occurred on September 1, 1999 as a result of the merger not occurring by such date and an increase of 0.50% for LIBOR and 0.25% for base rate loans which occurred on October 1, 1999 as a result of the merger not occurring by such date. The applicable interest margin is subject to downward adjustment upon the occurrence of specified events, including a decrease to 3.00% for LIBOR borrowings and 1.75% for base rate borrowings upon completion of the merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the bank credit facility.

Under an April 15, 1999 amendment to the bank credit facility, Sunbeam agreed to pay the bank lenders a loan commitment fee of between 0.25% to 1.00% of the commitments under the bank credit facility as of April 15, 1999. The percentage used to calculate the fee will be determined by reference to the bank lenders'

aggregate commitments and loan exposure under the bank credit facility as they may be reduced on or before September 30, 2000. The fee is payable on the earlier of September 30, 2000 and the date the commitments are terminated and the loans and other amounts payable under the bank credit facility are repaid. See Note 15 to the Consolidated Financial Statements.

Borrowings under the bank credit facility are secured by a pledge of the stock of Sunbeam's material subsidiaries, including Coleman, and by a security interest in substantially all of the assets of Sunbeam and its material domestic subsidiaries, other than Coleman and its material subsidiaries except as described below. Currently, Coleman's inventory and related assets are pledged to secure its obligations for letters of credit issued for its account under the bank credit facility. Additionally, as security for Coleman's note payable to Sunbeam, Coleman pledged substantially all of its domestic assets, other than real property, including 66% of the stock of its direct foreign subsidiaries and domestic holding companies for its foreign subsidiaries and all of the stock of its other direct domestic subsidiaries but not the assets of Coleman's subsidiaries. The pledge runs in favor of Sunbeam's lending banks, to which the Coleman note has been pledged as security for Sunbeam's obligations to them. Upon completion of the merger, substantially all of Coleman's assets and the assets of Coleman's domestic subsidiaries will be pledged to secure the obligations under the bank credit facility.

In addition, borrowings under the bank credit facility are guaranteed by a number of Sunbeam's wholly owned material domestic subsidiaries and these subsidiary guarantees are secured as described above. Upon completion of the merger, Coleman and each of its United States subsidiaries will become guarantors of the obligations under the bank credit facility. To the extent extensions of credit are made to any subsidiaries of Sunbeam, the obligations of such subsidiaries are guaranteed by Sunbeam.

In addition to the above described financial ratios and tests, the bank credit facility contains covenants customary for credit facilities of a similar nature, including limitations on the ability of Sunbeam and its subsidiaries, including Coleman, to, among other things:

- declare dividends or repurchase stock;
- prepay, redeem or repurchase debt, incur liens and engage in sale-leaseback transactions;
- make loans and investments;
- incur additional debt, including revolving loans under the bank credit facility;
- amend or otherwise alter material agreements or enter into restrictive agreements;
- make capital and Year 2000 compliance expenditures;
- engage in mergers, acquisitions and asset sales;
- engage in certain transactions with affiliates;
- settle certain litigation;
- alter its cash management system; and
- alter the businesses they conduct.

Sunbeam is also required to comply with specified financial covenants and ratios.

The bank credit facility provides for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, material adverse change arising from compliance with ERISA, material adverse judgments, entering into guarantees and change of ownership and control. It is also an event of default under the bank credit facility, as amended November 16, 1999, if Sunbeam's registration statement in connection with the merger is not declared effective by the SEC on or before January 10, 2000 or if the merger does not occur within 25 business days of the effectiveness of the registration statement or if the cash consideration—including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses—to consummate the merger exceeds \$87.5 million. Although there can be no assurance, Sunbeam anticipates that it will satisfy these conditions. Furthermore, the bank credit facility requires Sunbeam to prepay term loans

under the bank credit facility on December 31, 1999 to the extent that cash on hand in Sunbeam's concentration accounts plus the aggregate amount of unused revolving loan commitments on this date exceeds \$125 million, but Sunbeam is not required to prepay more than \$69.3 million in the aggregate as a result of the provision.

Unless waived by the bank lenders, the failure of Sunbeam to satisfy any of the financial ratios and tests contained in the bank credit facility or the occurrence of any other event of default under the bank credit facility would entitle the bank lenders to (a) receive a 2.00% increase in the interest rate applicable to outstanding loans and increase the trade letter of credit fees to 1.00% and (b) accelerate the maturity of the outstanding borrowings under the bank credit facility and exercise all or any of their other rights and remedies. Any such acceleration or other exercise of rights and remedies would likely have a material adverse effect on Sunbeam.

The bank credit facility also includes provisions for the deferral of the September 30, 1999 and March 31, 2000 scheduled term loan payments of \$69.3 million due on each such date until April 10, 2000 as a result of the satisfaction by Sunbeam on May 14, 1999 of the agreed upon conditions to the deferral. See Note 3 to the Consolidated and Condensed Consolidated Financial Statements.

Cash Flows

As of September 30, 1999, Sunbeam had cash and cash equivalents of \$29.1 million and total debt of \$2.3 billion. Because the waivers granted by Sunbeam's lenders expire on April 10, 2000, the borrowings under the bank credit facility, as well as other debt containing cross-default provisions, are classified as current in the September 30, 1999 Condensed Consolidated Balance Sheet. Cash used in operating activities during the first nine months of 1999 was \$73.2 million compared to \$224.7 million in the first nine months of 1998. This change is primarily attributable to improved operating results after giving effect to non-cash items, partially offset by increased working capital needs during the 1999 period. The increase in cash used for working capital during the 1999 period was primarily driven by accounts receivable, which increased \$159.4 million as compared to the 1998 period, primarily attributable to Sunbeam's Outdoor Leisure division which experienced stronger second and third quarters sales in 1999 than in 1998. Additionally, working capital for the 1998 period was positively affected by the timing of Sunbeam's acquisition of Coleman, which was at the peak of its inventory build for the 1998 selling season. Cash used for this acquired inventory is not reflected in working capital for the 1998 period. As a result of the effect of Company's management of inventory levels in 1999, cash flow improved approximately \$81 million as compared to 1998 despite the favorable impact of the inventory acquired in connection with the 1998 acquisitions. Increases in accounts payable of approximately \$30 million in the first nine months of 1999 positively impacted cash flow whereas payables used approximately \$76 million of cash in the same period of 1998, resulting in an improvement in cash flow period-to-period of approximately \$106 million. The increase in payables in the current period resulted from payable balances having been reduced to a low level by year-end 1998. This reduction in payables, which included an effort to reduce delinquent payables, began in the second quarter of 1998. Decreases in other liabilities, primarily accrued interest, account for the majority of the balance of the cash used for working capital in 1999. Sunbeam participates in an accounts receivable securitization program to finance a portion of its accounts receivable. See Note 4 to the Condensed Consolidated Financial Statements.

In the first nine months of 1999, cash used in investing activities was driven by capital expenditures of \$63.2 million, primarily for information systems, including expenditures for Year 2000 readiness and equipment and tooling for new products. Capital spending in the comparable 1998 period was \$32.8 million and was primarily for several manufacturing efficiency initiatives, equipment and tooling for new products and management information systems and software licenses. The new product capital spending in the 1998 period principally related to the appliance category and included costs related to water and air filtration products which were discontinued in the second quarter, blenders, standmixers and irons. Cash used in investing activities in the first nine months of 1998 also reflects \$379.2 million for the acquisitions of the shares of Coleman from a subsidiary of MacAndrews & Forbes, as well as the acquisitions of Signature Brands and First Alert. Sunbeam anticipates 1999 capital spending to be less than 5% of net sales. Capital expenditures in the current year are expected to primarily relate to information systems and related support, including expenditures for Year 2000 readiness, new product introductions and capacity additions.

Cash provided by financing activities totaled \$99.2 million in the first nine months of 1999 and reflected net borrowings under Sunbeam's bank credit facility. Cash provided by financing activities in the first nine months of 1998 was \$636.1 million and reflected net proceeds from the debentures of \$729.6 million, the cancellation and repayment of all outstanding balances under Sunbeam's \$250 million September 1996 revolving credit facility, the repayment of certain debt assumed in connection with the Coleman, Signature Brands and First Alert acquisitions, and the early extinguishment of the \$75.0 million Hattiesburg industrial revenue bond. In addition, cash provided by financing activities in 1998 is net of \$26.2 million of financing fees related to Sunbeam's \$1.7 billion bank credit facility and \$19.6 million of proceeds from the exercise of stock options. See Note 3 to the Condensed Consolidated Financial Statements.

As of December 31, 1998, Sunbeam had cash and cash equivalents of \$61.4 million, working capital excluding cash and cash equivalents of \$427.1 million and total debt of \$2,261 million. Cash used in operating activities during 1998 was \$190.4 million compared to \$6.0 million used in operating activities in 1997. This change is primarily attributable to lower earnings after giving effect to non-cash charges partially offset by improvements in working capital. During 1998, \$184.2 million in cash was generated by reducing receivables, including through the revolving trade accounts receivable securitization program described below, and reducing inventories, which was partially offset by a \$68.2 million reduction in accounts payable levels. In the fourth quarter of 1998, cash provided by operating activities totaled \$34.3 million, principally due to cash generated by reducing receivables and inventories of \$181.9 million. The decrease in cash provided by operations from 1996 to 1997 is primarily attributable to increased inventory levels in 1997 and spending in 1997 related to the restructuring initiatives accrued for in 1996, largely offset by an increase in cash generated by earnings in 1997 and an income tax refund (net of payments) in 1997. Cash used in operating activities reflects proceeds of \$200.0 million in 1998 and \$58.9 million in 1997 from Sunbeam's revolving trade accounts receivable securitization program, described below.

Cash used in investing activities in 1998 reflects \$522.4 million for the acquisitions. In 1997, cash provided by investing activities reflected \$91.0 million in proceeds from the sales of divested operations and other assets. Capital spending totaled \$53.7 million in 1998 and was primarily for manufacturing efficiency initiatives, equipment and tooling for new products, and management information systems hardware and software licenses. The new product capital spending principally related to the air and water filtration products which were discontinued in the second quarter of 1998, electric blankets, grills, clippers and appliances. Capital spending in 1997 was \$60.5 million and was primarily attributable to manufacturing capacity expansion, cost reduction initiatives and equipment to manufacture new products. The new product capital spending in 1997 principally related to appliances and included costs related to blenders, toasters, stand mixers, slow cookers and a soft serve ice cream product. Capital spending in 1996 was \$75.3 million, including \$14.5 million related to the discontinued furniture business, and was primarily attributable to equipment for new product development and cost reduction initiatives. As discussed above, Sunbeam's capital and Year 2000 compliance expenditures are limited under the terms of the bank credit facility.

Cash provided by financing activities totaled \$766.2 million in 1998 and reflects:

- the net proceeds from the sale of debentures of \$729.6 million;
- the cancellation and repayment of all outstanding balances under Sunbeam's \$250 million September 1996 revolving credit facility;
- the repayment of debt in connection with the acquisitions;
- the early extinguishment of the \$75.0 million Hattiesburg industrial revenue bond; and
- net borrowings under the bank credit facility.

In addition, cash provided by financing activities during 1998 includes \$19.6 million of proceeds from the exercise of stock options.

During 1997, cash provided by financing activities of \$16.4 million reflected:

- net borrowings of \$5.0 million under Sunbeam's September 1996 revolving credit facility;
- \$12.2 million of debt repayments related to the divested furniture business and other assets sold; and

- \$26.6 million in cash proceeds from the exercise of stock options.

During 1996, cash provided by financing activities of \$45.3 million primarily reflected:

- revolving credit facility borrowings of \$30.0 million to support working capital and capital spending requirements;
- \$11.5 million in new issuances of long-term debt; and
- \$4.6 million in proceeds from the sale of treasury shares to certain executives of Sunbeam.

In December 1997, Sunbeam entered into a revolving trade accounts receivable securitization program, which as amended expires in March 2000, to sell without recourse, through a wholly owned subsidiary, up to a maximum of \$70 million in trade accounts receivable. Sunbeam, as agent for the purchaser of the receivables, retains collection and administrative responsibilities for the purchased receivables. For the nine months ended September 30, 1999 and for the year ended December 31, 1998, Sunbeam sold approximately \$228.4 million and \$200 million of accounts receivable, respectively, under this program. At September 30, 1999 and December 31, 1998, Sunbeam had reduced accounts receivable by \$36.9 million and \$20.0 million, respectively, for receivables sold under this program. Sunbeam expects to continue to utilize the securitization program to finance a portion of its accounts receivable. See Note 4 to the Condensed Consolidated Financial Statements and Note 5 to the Consolidated Financial Statements.

At September 30, 1999, standby and commercial letters of credit aggregated \$68.9 million and were predominantly for insurance, pension, environmental, workers' compensation, and international trade activities. In addition, as of September 30, 1999, surety bonds with a contract value of \$67.5 million were outstanding largely for Sunbeam's pension plans and as a result of litigation judgments that are currently under appeal.

For additional information relating to the debentures, the bank credit facility and the repayment of debt, see Note 3 to the Consolidated and Condensed Consolidated Financial Statements.

Sunbeam expects to acquire the remaining equity interest in Coleman in a merger transaction in which the existing Coleman minority stockholders will receive 0.3677 share of Sunbeam's common stock and \$6.44 in cash for each share of Coleman common stock outstanding. In addition, under a court-approved litigation settlement, Coleman minority stockholders (other than those who exercise and perfect their Delaware law appraisal rights) will receive for each share of Coleman common stock 0.381 of a warrant, entitling them to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003 (assuming no further increases in the number of outstanding shares of Coleman common stock). Furthermore, unexercised options under Coleman's stock option plans will be cashed out at a price per share equal to \$27.50 minus the per share exercise price of such options. Sunbeam expects to issue approximately 6.7 million shares of common stock and expend approximately \$87 million in cash, including cash paid to option holders, to complete the Coleman transaction. See Note 2 to the Unaudited Condensed Consolidated and Consolidated Financial Statements. Also, see Note 15 to the Consolidated Financial Statements. Although there can be no assurance, it is anticipated that the merger will occur late in the fourth quarter of 1999 or early in the first quarter of 2000.

Sunbeam believes its borrowing capacity under the bank credit facility, cash flow from the combined operations of Sunbeam and its acquired companies, existing cash and cash equivalent balances, and its receivable securitization program will be sufficient to support working capital needs, capital expenditure and Year 2000 compliance spending, and debt service through April 10, 2000. Sunbeam intends to negotiate with its lenders on an amendment to the bank credit facility, negotiate with its lenders on further waiver of such covenants and other terms or refinance the bank credit facility. Any decisions with respect to such amendment, waiver, or refinancing will be made based on a review from time to time of the advisability of particular transactions. There can be no assurance that an amendment, further waiver of existing covenants and other terms, or refinancing will be entered into by April 10, 2000. The failure to obtain such an amendment, further waiver or debt refinancing would likely result in violation of existing covenants and non-compliance with other terms, which would permit the bank lenders to accelerate the maturity of all outstanding borrowings under the bank credit facility, and could otherwise have a material adverse effect on

Sunbeam. Accordingly, debt related to the bank credit facility and all debt containing cross-default provisions is classified as current in the Unaudited Condensed Consolidated Balance Sheet at September 30, 1999.

In May 1998, the NYSE advised Sunbeam that it did not meet the NYSE's continuing listing standards because Sunbeam did not have tangible net assets of \$12.0 million at December 31, 1997 and average annual net income of at least \$0.6 million for fiscal years 1997, 1996 and 1995. Sunbeam representatives met with NYSE officials, and in March 1999, the NYSE informed Sunbeam that Sunbeam common stock would not be delisted at that time, although the NYSE would, however, continue to monitor Sunbeam's financial condition and operations. On August 5, 1999, the NYSE advised Sunbeam that the NYSE had revised its continuing listing standards, and that Sunbeam is in compliance with the revised standards.

In April 1999, the NYSE advised Coleman that it did not meet the NYSE's continuing listing standards because Coleman did not have tangible net assets of at least \$12.0 million at September 30, 1998 and average annual net income of at least \$0.6 million for fiscal years 1997, 1996 and 1995. At that time, Coleman requested the NYSE to continue to list the Coleman common stock until completion of the merger. The NYSE subsequently advised Coleman that Coleman also failed to satisfy certain non-financial continuing listing standards. On August 5, 1999, the NYSE advised Coleman that the NYSE had revised its continuing listing standards, and that Coleman is in compliance with the revised financial standards. Coleman and the NYSE have agreed upon a program whereby Coleman will correct the deficiencies in its non-financial continuing listing standards by the end of 1999. Coleman is currently complying with such program. If Coleman were to be delisted from the NYSE, it could adversely affect the market price of Coleman's common stock and Coleman's ability to sell its capital stock to third parties. However, Sunbeam's bank credit facility currently restricts Coleman from taking such actions.

By letter dated June 17, 1998, the staff of the Division of Enforcement of the SEC advised Sunbeam that it was conducting an informal inquiry into Sunbeam's accounting policies and procedures and requested that Sunbeam produce documents. On July 2, 1998, the SEC issued a Formal Order of Private Investigation, designating officers to take testimony and pursuant to which a subpoena was served on Sunbeam requiring the production of documents. On November 4, 1998, Sunbeam received another SEC subpoena requiring the production of additional documents. Sunbeam has provided numerous documents to the SEC staff and continues to cooperate with the SEC staff. Sunbeam has, however, declined to provide the SEC with material that Sunbeam believes is subject to the attorney-client privilege and the work product immunity. Sunbeam cannot predict the term of such investigation or its potential outcome.

Sunbeam is involved in significant litigation, including class and derivative actions, relating to events which led to the restatement of its consolidated financial statements, the issuance of the MacAndrews & Forbes warrant, the sale of the debentures and the employment agreements, of Messrs. Dunlap and Kersh. Sunbeam intends to vigorously defend each of the actions, but cannot predict the outcome and is not currently able to evaluate the likelihood of Sunbeam's success in each case or the range of potential loss. However, if Sunbeam were to lose these suits, judgments would likely have a material adverse effect on Sunbeam's financial position, results of operations and cash flows. Additionally, Sunbeam's insurance carriers have filed various suits requesting a declaratory judgment that the directors' and officers' liability insurance policies for excess coverage was invalid and/or had been properly canceled by the carriers or have advised Sunbeam of their intent to deny coverage under such policies. Sunbeam intends to pursue recovery from all of its insurers if damages are awarded against Sunbeam or its indemnified officers and/or directors under any of the foregoing actions and to recover attorneys' fees covered under those policies. Sunbeam's failure to obtain such insurance recoveries following an adverse judgment against Sunbeam on any of the foregoing actions could have a material adverse effect on Sunbeam's financial position, results of operations and cash flows.

Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and claims and related anticipated legal fees. The costs are accrued when it is both probable that an asset has been impaired or a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon Sunbeam's assessment, after consultation with counsel, of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the

plaintiffs, and other significant factors which vary by case. When it is not possible to estimate a specific expected cost to be incurred, Sunbeam evaluates the range of probable loss and records the minimum end of the range. As of September 30, 1999, Sunbeam had established accruals for litigation matters of \$22.6 million (representing \$11.3 million and \$11.3 million for estimated damages or settlement amounts and legal fees, respectively). As of December 31, 1998, Sunbeam had established accruals for litigation matters of \$31.2 million (representing \$17.5 million and \$13.7 million for estimated damages or settlement amounts and legal fees, respectively) and \$9.9 million as of December 28, 1997, (representing \$3.0 million and \$6.9 million for estimated damages or settlement amounts and legal fees, respectively). It is anticipated that the \$22.6 million accrual will be paid as follows: \$5.2 million in 1999, \$14.9 million in 2000, and \$2.5 million in 2001. Sunbeam believes, based on information known to Sunbeam on September 30, 1999, that anticipated probable costs of litigation matters existing as of September 30, 1999 have been adequately reserved to the extent determinable.

As a consumer goods manufacturer and distributor, Sunbeam faces the constant risks of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. These claims could result in liabilities that could have a material adverse effect on Sunbeam's financial position, results of operations and cash flows. Some of the product lines Sunbeam acquired in the 1998 acquisitions have increased its exposure to product liability and related claims.

Sunbeam and its subsidiaries are also involved in various lawsuits from time to time that Sunbeam considers to be ordinary routine litigation incidental to its business. In the opinion of Sunbeam, the resolution of these routine matters, and of matters relating to prior operations, individually or in the aggregate, will not have a material adverse effect on the financial position, results of operations or cash flows of Sunbeam.

For additional information relating to litigation, see "BUSINESS OF SUNBEAM—Litigation and Other Contingent Liabilities."

New Accounting Standards

In March 1998, the American Institute of Certified Public Accountants ("AICPA") issued Statement of Position 98-1, Accounting for the Costs of Computer Software Developed or Obtained for Internal Use ("SOP 98-1"). SOP 98-1 requires computer software costs associated with internal use software to be expensed as incurred until certain capitalization criteria are met. Sunbeam adopted SOP 98-1 effective January 1, 1999. Adoption of this statement did not have a material impact on Sunbeam's consolidated financial position, results of operations, or cash flows. Actual charges incurred due to systems projects may be material.

In April 1998, the AICPA issued Statement of Position 98-5, Reporting on the Cost of Start-up Activities ("SOP 98-5"). SOP 98-5 requires all costs associated with pre-opening, pre-operating and organization activities to be expensed as incurred. Sunbeam adopted SOP 98-5 beginning January 1, 1999. Adoption of this statement did not have a material impact on Sunbeam's consolidated financial position, results of operations, or cash flows.

In June 1998, the FASB issued SFAS No. 133, Accounting for Derivative Instruments and Hedging Activities, which is effective for fiscal years beginning after June 15, 2000. SFAS No. 133 requires the recognition of all derivatives in the Consolidated Balance Sheets as either assets or liabilities measured at fair value. Sunbeam has not yet determined the impact SFAS No. 133 will have on its consolidated financial position, results of operations or cash flows.

Year 2000 Readiness Disclosure

Sunbeam is preparing for the impact of the Year 2000 on its operations. Year 2000 issues could include potential problems in the information technology ("IT") and non-IT systems that Sunbeam uses in its operations and problems in Sunbeam's products. Year 2000 system failures could affect routine but critical operations such as forecasting, purchasing, production, order processing, inventory control, shipping, billing and collection. In addition, system failures could affect Sunbeam's security, payroll operations, or employee

safety. Sunbeam may also be exposed to potential risks from third parties with whom Sunbeam interacts who fail to adequately address their own Year 2000 issues.

Sunbeam's Approach to Year 2000 Issues

While Sunbeam's Year 2000 readiness planning has been underway for over one year, during the third quarter of 1998 Sunbeam established a cross-functional project team consisting of senior managers, assisted by three external consulting firms which were retained to provide consulting services and to assist Sunbeam in implementing its Year 2000 strategy. This team is headed by Sunbeam's Chief Financial Officer who reports directly to Sunbeam's Chief Executive Officer on this issue. The audit committee of the board of directors is advised periodically on the status of Sunbeam's Year 2000 readiness program.

The Year 2000 project team has developed a phased approach to identify and resolve Year 2000 issues with many of these activities conducted in parallel. Sunbeam's approach and the anticipated timing of each phase are described below.

Phase 1—Inventory and Assessment. During the first phase of Sunbeam's Year 2000 readiness program, Sunbeam established a Year 2000 program management office to centralize the management of all of Sunbeam's Year 2000 projects. Through this office, Sunbeam developed a corporate-wide, uniform strategy for assessing and addressing the Year 2000 issues.

Sunbeam has completed an inventory of its hardware and software systems, manufacturing equipment, electronic data interchange, telecommunications and other technical assets potentially subject to Year 2000 problems, such as security systems and controls for lighting, air conditioning, ventilation and facility access. This inventory was then entered into Sunbeam's Year 2000 database along with a determination of the item's level of criticality to operations. For those inventory items anticipated to have a significant effect on the business if not corrected, Sunbeam's Year 2000 program envisions repair or replacement and testing of such items. All information relative to each item is being tracked in Sunbeam's Year 2000 database. Sunbeam completed most of this phase during the third and fourth quarters of 1998. Sunbeam has completed a review of the readiness of embedded microprocessors in its products and determined that none of Sunbeam's products have Year 2000 date sensitive systems.

Phase 2—Correction and Testing. The second phase of Sunbeam's Year 2000 readiness program is structured to replace, upgrade or remediate, as necessary, those items identified during Phase 1 as requiring corrective action.

Sunbeam relies on its IT functions to perform many tasks that are critical to its operations. Significant transactions that could be impacted by not being ready for any Year 2000 issues include, among others:

- purchases of materials;
- production management;
- order entry and fulfillment;
- payroll processing; and
- billing and collections.

Systems and applications that have been identified by Sunbeam to date as not currently Year 2000 ready and which are critical to Sunbeam's operations include:

- financial software systems, which process:
 - order entry;
 - purchasing;
 - production management;
 - general ledger;
 - accounts receivable; and

- accounts payable functions;
- payroll applications; and
- critical applications in Sunbeam's manufacturing and distribution facilities, such as warehouse management applications.

Recognizing how dependent the entire company is on IT, Sunbeam decided in 1997 to replace its primary business applications with a uniform international business and accounting information system to address the systems or applications listed above as well as to improve internal reporting processes. Based upon representations from the manufacturer that the current version of this uniform information system is Year 2000 ready, Sunbeam upgraded its business sites that currently utilize this uniform system to the Year 2000 ready version. In addition to the pre-acquisition Sunbeam locations which had already utilized an earlier non-Year 2000 ready version of this uniform business and accounting information system, Eastpak, Mr. Coffee, Health-o-Meter, and Sunbeam Latin America replaced their current non-Year 2000 ready systems with this new uniform system. In addition, Coleman Europe also has replaced key business components with this new system.

Sunbeam is also actively replacing and/or upgrading a number of business systems that are not Year 2000 ready, including those that use localized business system packages which were not candidates to be replaced by the uniform business and accounting information system. For example, at Coleman approximately 2,000 mainframe software programs that are used in lieu of Sunbeam's uniform business and accounting information system have been remediated and tested to be Year 2000 ready. With respect to Sunbeam's non-IT systems, including time and attendance, security, and in-line manufacturing hardware, Sunbeam has analyzed these items to assess any Year 2000 issues, and is testing and correcting such items, if necessary.

Phase 3—Customers, Suppliers and Business Partners. The third phase of Sunbeam's Year 2000 readiness program which was initiated during the third and fourth quarters of 1998 is designed to assess and interact with Sunbeam's customers, suppliers, and business partners. As part of this effort, Sunbeam surveyed 1,100 vendors and suppliers, a portion of which did not provide an initial response. During the first half of 1999, "high risk" vendors were contacted directly and the number of non-respondents has since decreased substantially. In fact, currently only 7% of Sunbeam's vendors who were surveyed are categorized as "high risk," which includes non-respondents. Based on the most recent responses to the survey and continued evaluation, Sunbeam believes that there is only a low to a medium risk of Year 2000 issues for the remaining vendors. Sunbeam will continue to monitor the Year 2000 progress of the "high risk" vendors and has resurveyed these companies to determine the appropriate course of action. Furthermore, Sunbeam has contacted alternate vendors who are Year 2000 ready to replace critical vendors deemed "high risk" in the event that these vendors are not found to be Year 2000 ready. Sunbeam is in the process of completing a verification of the Year 2000 survey responses for the most critical vendors to Sunbeam.

Sunbeam has responded to numerous customer inquiries about Sunbeam's Year 2000 readiness. Sunbeam has verified that all of Sunbeam's major customers have planned programs to deal with Year 2000 issues and is currently completing the process of contacting its major customers to confirm they are implementing their planned programs to address Year 2000 issues. In order to improve Sunbeam's communication with its customers, suppliers and business partners, Sunbeam has set up a Sunbeam Year 2000 telephone number and is providing Year 2000 information on a Company web site.

Phase 4—Contingency Planning. This phase involves contingency planning for unresolved Year 2000 issues, particularly any issues arising with third party suppliers. Sunbeam has designed and documented its Year 2000 contingency plan and is in the process of implementing it. The development of the contingency plan included a process whereby Sunbeam's critical IT and non-IT systems were evaluated for Year 2000 readiness. As a result of this evaluation, Sunbeam does not expect to require additional operational equipment or significant process contingency measures. Although Sunbeam does not currently believe there is significant risk associated with its third party suppliers, the contingency plan includes the continuing evaluation of the readiness of Sunbeam's suppliers and minor increases in Sunbeam's inventory requirements to protect against supply disruption.

The Risks of Sunbeam's Year 2000 Approach

The independent consultants assisting Sunbeam in its Year 2000 readiness program have reviewed and concurred with Sunbeam's approach, have assisted in developing cost estimates and have monitored costs for the largest single component (upgrade or installation of Sunbeam's uniform system) of Sunbeam's Year 2000 program. Since Sunbeam's Year 2000 program was developed and is monitored with the help of independent consultants, Sunbeam did not engage another independent third party to verify the program's overall approach or total cost; based on this, Sunbeam believes that Sunbeam's exposure in this regard is mitigated. In addition, through the use of external third-party diagnostic software packages that are designed to analyze the Year 2000 readiness of business software programs, Sunbeam was able to identify potential Year 2000 issues at Coleman. Given this, Sunbeam believes that it has also mitigated its risk by validating and verifying key program components.

Management believes that, although there are significant systems that are being modified or replaced, including the uniform business and accounting information system, Sunbeam's information systems environment will be made Year 2000 ready prior to January 1, 2000. Sunbeam's failure to timely complete such corrective work could have a material adverse impact on Sunbeam.

With respect to customers, suppliers and business partners, the failure of some of these third parties to become Year 2000 ready could also have a material adverse impact on Sunbeam. For example, the failure of some of Sunbeam's principal suppliers to have Year 2000 ready internal systems could impact Sunbeam's ability to manufacture and/or ship its products or to maintain adequate inventory levels for production.

At this time, Sunbeam believes that the most likely "worst-case" scenario relating to Year 2000 involves potential disruptions in areas in which Sunbeam's operations must rely on third parties, such as suppliers, whose systems may not work properly after January 1, 2000. While such system failures could either directly or indirectly affect important operations of Sunbeam and its subsidiaries in a significant manner, Sunbeam cannot at present estimate either the likelihood or the potential cost of such failures. Subject to the nature of the goods or services provided to Sunbeam by third parties whose operations are not made ready for Year 2000 issues, the impact on Sunbeam's operations could be material. However, Sunbeam believes that it has mitigated such risks through the development and implementation of the contingency plans discussed above.

The nature and focus of Sunbeam's efforts to address the Year 2000 problem may be revised periodically as interim goals are achieved or new issues are identified. In addition, it is important to note that the description of Sunbeam's efforts and assessments necessarily involves estimates and projections with respect to activities required in the future. These estimates and projections are subject to change as work continues, and such changes may be substantial.

The Costs to Address Sunbeam's Year 2000 Issues

Through the first nine months of 1999, including costs incurred in 1998, Sunbeam had expended approximately \$60 million to address Year 2000 issues of which approximately 50% was recorded as capital expenditures and the remainder as SG&A expense. Sunbeam's current assessment of the total costs to address and remedy Year 2000 issues and enhance its operating systems, including costs for the acquired companies, is approximately \$64 million.

This estimate includes the following categories:

- | | |
|---|--------------|
| • uniform international business and accounting system | \$44 million |
| • localized business system software upgrades and remediation | \$9 million |
| • Year 2000 readiness assessment and tracking | \$6 million |
| • upgrade of personal computers and related software | \$5 million |

The amount to be incurred for Year 2000 issues during 1999 of approximately \$44 million represents over 50% of Sunbeam's total 1999 budget for information systems and related support, including Year 2000 costs. A large majority of these costs are expected to be incremental expenditures that will not recur in the

Year 2000 or thereafter. Fees and expenses related to third party consultants, who are involved in the program management office as well as the modification and replacement of software, represent approximately 75% of the total estimated cost. The balance of the total estimated cost relates primarily to software license fees and new hardware, but excludes the costs associated with company employees. Sunbeam expects these expenditures to be financed through operating cash flows or borrowings, as applicable. A significant portion of these expenditures will enhance Sunbeam's operating systems in addition to resolving the Year 2000 issues. As Sunbeam completes its assessment of the Year 2000 issues, the actual expenditures incurred or to be incurred may differ materially from the amounts shown above. The bank credit facility does not permit Sunbeam to spend more than \$50 million on Year 2000 testing and remediation during 1999.

Because Year 2000 readiness is critical to the business, Sunbeam has redeployed some resources from non-critical system enhancements to address Year 2000 issues. In addition, due to the importance of IT systems to Sunbeam's business, management has deferred non-critical systems enhancements as much as possible. Sunbeam does not expect these redeployments and deferrals to have a material impact on Sunbeam's financial condition, results of operations or cash flows.

Effects of Inflation

For each of the three years in the period ended December 31, 1998, and in the nine-month period ended September 30, 1999, Sunbeam's cost of raw materials and other product remained relatively stable. To the extent possible, Sunbeam's objective is to offset the impact of inflation through productivity enhancements, cost reductions and price increases.

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**CHANGES IN AND DISAGREEMENTS WITH
ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

On November 20, 1998, the audit committee recommended and Sunbeam's board approved the appointment of Deloitte & Touche as its independent auditors for 1998, to replace Arthur Andersen, Sunbeam's former auditor. Arthur Andersen is continuing to provide certain professional services to Sunbeam.

On June 25, 1998, Sunbeam announced that Arthur Andersen would not consent to the inclusion of its opinion on Sunbeam's 1997 financial statements in a registration statement Sunbeam was planning to file with the SEC. On June 30, 1998, Sunbeam announced that the audit committee of its board of directors would conduct a review of Sunbeam's prior financial statements and that, therefore, those financial statements should not be relied upon. Sunbeam also announced that Deloitte & Touche had been retained to assist the audit committee and Arthur Andersen in their review of Sunbeam's prior financial statements. On August 6, 1998, Sunbeam announced that the audit committee had determined that Sunbeam would be required to restate its financial statements for 1997, the first quarter of 1998 and possibly 1996, and that the adjustments, while not then quantified, would be material. On October 20, 1998 Sunbeam announced the restatement of its financial results for a six-quarter period from the fourth quarter of 1996 through the first quarter of 1998. On November 12, 1998, Sunbeam filed a Form 10-K/A for the year ended December 28, 1997, which contains an unqualified opinion by Arthur Andersen on Sunbeam's restated consolidated financial statements as of December 29, 1996 and December 28, 1997 and for each of the three years in the period ended December 28, 1997.

Arthur Andersen's report on Sunbeam's financial statements for the two fiscal years of Sunbeam ended December 28, 1997 contained no adverse opinion or disclaimer of opinion and was not qualified or modified as to uncertainty, audit scope or accounting principles. In connection with its audits for those periods and through November 20, 1998, there were no disagreements with Arthur Andersen on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of Arthur Andersen would have caused Arthur Andersen to make reference thereto in their report on the financial statements for such years. Sunbeam has not consulted with Deloitte & Touche on any matter that was either the subject of a disagreement or a reportable event between Sunbeam and Arthur Andersen.

In connection with the restatements referred to above, in a letter dated October 16, 1998, Arthur Andersen advised Sunbeam that there existed the following conditions that Arthur Andersen believed to be material weaknesses in Sunbeam's internal controls:

"In our opinion, [Sunbeam's] design and effectiveness of its internal control were inadequate to detect material misstatements in the preparation of [Sunbeam's] 1997 annual (before audit) and quarterly financial statements."

As part of its audit of Sunbeam's 1997 consolidated financial statements that led to the restatement of these financial statements, Arthur Andersen was required to consider Sunbeam's internal controls in determining the scope of its audit procedures. Arthur Andersen has advised management of its concerns regarding Sunbeam's internal controls. Management is addressing these concerns and although Sunbeam has not yet fully implemented all additional planned controls, management believes that the interim measures Sunbeam has adopted to prevent material misstatements in its financial statements will be effective until the remainder of the additional controls can be implemented.

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BUSINESS OF SUNBEAM

General

Sunbeam is a leading designer, manufacturer and marketer of branded consumer products. Sunbeam's primary business is the manufacturing, marketing and distribution of durable household and outdoor leisure consumer products through mass market and other distribution channels in the United States and internationally. Sunbeam also sells its products to professional and commercial end users such as small businesses, health care providers, hotels and other institutions. Sunbeam's principal products include household kitchen appliances; health monitoring and care products for home use; scales for consumer and professional use for weight management and business uses; electric blankets and throws; clippers and trimmers for consumer, professional and animal uses; smoke and carbon monoxide detectors; outdoor barbecue grills; camping equipment such as tents, lanterns, sleeping bags and stoves; coolers; backpacks and book bags; and portable generators and compressors.

Sunbeam was organized in 1989 as Sunbeam-Oster Company, Inc., and in September 1990, Sunbeam acquired the assets and assumed certain liabilities, through a reorganization, of Allegheny International, Inc., an entity operating as a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code since 1988. In August 1992, Sunbeam completed a public offering of 20,000,000 shares of its common stock. In May 1995, Sunbeam changed its name from Sunbeam-Oster Company, Inc. to Sunbeam Corporation.

In 1998, Sunbeam acquired an indirect controlling interest in Coleman and all the outstanding common stock of Signature Brands and First Alert.

Products And Operations

Sunbeam's operations are managed through four groups: Household, Outdoor Leisure, International and Corporate. The Household and Outdoor Leisure operating groups encompass the following products:

• In the Household group:

- (1) Appliances—including mixers, blenders, food steamers, breadmakers, rice cookers, coffee makers, toasters, irons and garment steamers;
- (2) Health products—including vaporizers, humidifiers, air cleaners, massagers, hot and cold packs and blood pressure monitors;
- (3) Scales;
- (4) Personal care—including hair clippers and trimmers and related products for the professional beauty, barber and veterinarian trade and sales of products to commercial and institutional channels;
- (5) Blankets—including electric blankets, heated throws and mattress pads; and
- (6) First Alert—including smoke and carbon monoxide detectors, fire extinguishers and home safety equipment.

• In the Outdoor Leisure group:

- (1) Outdoor recreation products—including tents, sleeping bags, coolers, camping stoves, lanterns and outdoor heaters;
- (2) Outdoor cooking products—including gas and charcoal outdoor grills and grill parts and accessories;
- (3) Powermate products—including portable power generators and air compressors; and
- (4) Eastpak products—including backpacks and bags.

Sunbeam's International group is managed through the following regional subdivisions:

- (1) Europe—manufacture, sales and distribution of Campingaz® products and sales and distribution in Europe, Africa and the Middle East of other Sunbeam products;
- (2) Latin America—manufacture, sales and distribution throughout Latin America of small appliances, and sales and distribution of personal care products, professional clippers and related products, camping products and Powermate products;
- (3) Japan—sales and distribution of primarily outdoor recreation products;
- (4) Canada—sales and distribution of substantially all Sunbeam's products; and

(5) East Asia—sales and distribution in all areas of East Asia other than Japan of substantially all Sunbeam's products.

Sunbeam's Corporate group provides certain management, accounting, legal, risk management, treasury, human resources, tax and management information services to all operating groups and also includes the operation of Sunbeam's retail stores and the conduct of Sunbeam's licensing activities.

See Note 14 to the Consolidated Financial Statements and Note 9 to the Condensed Consolidated Financial Statements for financial data concerning Sunbeam's operating segments.

Household

Sunbeam's Household group includes appliances, health products, scales, personal care products, blankets and First Alert products. Net sales of Household group products accounted for approximately 50%, 73% and 74% of Sunbeam's consolidated net sales in 1998, 1997 and 1996, respectively. Except as discussed below, there were no Household group products or group of similar products with sales that accounted for 10% or more of consolidated net sales in any of the last three fiscal years.

Appliances. Small kitchen appliances include Mixmaster® stand mixers, hand mixers, Osterizer® blenders, food processors, rice cookers, food steamers, toasters, can openers, breadmakers, waffle makers, ice cream makers, frying pans, deep fryers and culinary accessories, which are sold primarily under the Sunbeam® and Oster® brand names. In addition, Sunbeam sells coffee makers under the Mr. Coffee®, Sunbeam and Oster brand names and, with respect to coffee and tea products, the Mr. Coffee brand name. Other brand names or trademarks used in marketing include: Toast Logic®, Details® by Mr. Coffee for high end coffeemakers sold in department and specialty stores, Mrs. Tea™, and Iced Tea Pot™, Oster Designer® and Pause N Serve®. Sunbeam holds the number one or two market positions in coffee makers, mixers, and breadmakers. Appliances also encompass garment care appliances consisting of irons and steamers. Sunbeam manufactures a portion of its appliances in its United States and Mexico plants and sources the balance of its appliance products from domestic and foreign manufacturers.

Health. Sunbeam markets many of its health products under the Sunbeam® name and the trademark Health at Home®. These products include heating pads, bath scales, blood pressure and other health-monitoring instruments, massagers, vaporizers, humidifiers and dental care products. Sunbeam assembles and/or manufactures its vaporizers, humidifiers and heating pads at its United States and Mexico facilities. Sunbeam's other personal health products are sourced from manufacturers primarily located in China.

Scales. Sunbeam also designs, manufactures and markets scales for consumer, office and professional use. Sunbeam manufactures a complete line of analog and digital floor scales, waist-high and eye-level scales for use in weight monitoring by consumers. These consumer scales are sold under the brand names Health o Meter®, Sunbeam, Counselor® and Borg®. Other trademarks used in marketing the scales are BigFoot® and Precious Metals®. Sunbeam also markets professional scales such as traditional balance beam scales, pediatric scales, wheelchair ramp scales, chair and sling scales and home healthcare scales using the Pro Series® and Pro Plus Series® trademarks in addition to the Health o Meter brand. Sunbeam's line of scales also includes letter and parcel scales for office use, marketed under the Pelouze® brand name. Sunbeam has a commanding share of the office scale market with its Pelouze scales. Sunbeam's Pelouze food scales include analog and digital portion control scales, thermometers and timers for commercial and non-commercial applications. Sunbeam manufactures approximately one-half of its scales at a United States plant and sources the remaining scales from both domestic and foreign suppliers.

Personal Care. Sunbeam's personal care products include a broad line of hair clippers and trimmers for animals and humans which are sold through retail channels. Sunbeam holds the number one or two position in its clipper and trimmer product lines. Sunbeam also markets a line of professional barber, beauty and animal grooming products, including electric and battery clippers, replacement blades and other grooming accessories sold to both conventional retailers and through professional distributors. These products are manufactured at Sunbeam's United States and Mexico facilities.

Blankets. Sunbeam's blanket products include electric blankets, Cuddle-Up® heated throws and heated mattress pads. Sunbeam holds the number one market position in each of electric blankets, heated throws and heated mattress pads. These products are manufactured at Sunbeam's United States and Mexico facilities. In 1996, sales of electric blankets accounted for approximately 12% of consolidated net sales.

First Alert. Sunbeam is a leading manufacturer and marketer of a broad range of residential safety products, including residential use ionization and photoelectric smoke detectors in which Sunbeam has the leading market share. Other products include carbon monoxide detectors, fire extinguishers, rechargeable flashlights and lanterns, electric and electromechanical timers, night lights, radon gas detectors, fire escape ladders and motion sensing lighting controls. Sunbeam's smoke detectors are battery-operated and carbon monoxide detectors are available in both plug in and battery operated units and in a combination unit. These products are marketed primarily under the First Alert® brand name. Sunbeam also uses the brand names Family Gard® and Sure Grip® for certain of its products. Sunbeam markets certain of these products under the BRK® brand for the electrical wholesale markets. Sunbeam manufactures its smoke and carbon monoxide detectors in its Mexico plant, manufactures fire extinguishers in its United States plant and sources other products from domestic and foreign suppliers.

In 1996, Sunbeam's furniture business accounted for approximately 23% of consolidated net sales. See Note 13 to the Consolidated Financial Statements for information relating to the divestiture of Sunbeam's furniture business.

Outdoor Leisure

Sunbeam's Outdoor Leisure group includes products for outdoor recreation and outdoor cooking, as well as the Powermate and Eastpak product lines. Net sales of the Outdoor Leisure group accounted for approximately 50%, 25% and 26% of Sunbeam's consolidated net sales in 1998, 1997 and 1996, respectively. Except as discussed below, there were no other Outdoor Leisure products or groups of similar products with sales that accounted for 10% or more of consolidated net sales in any of the last three fiscal years.

Outdoor Recreation. Principal outdoor recreation products include a comprehensive line of lanterns and stoves for outdoor recreational use, fuel-related products such as disposable fuel cartridges, a broad range of coolers and jugs, sleeping bags, backpacks, tents, outdoor folding furniture, portable electric lights, camping accessories and other products. These products are used predominantly in outdoor recreation, but many products have applications in emergency preparedness and some are also used in home improvement projects. The products are distributed predominantly through mass merchandisers, home centers and other retail outlets. Sunbeam believes it is the leading manufacturer of lanterns and stoves for outdoor recreational use in the world. Sunbeam's liquid fuel appliances include single and dual fuel-powered lanterns and stoves and a broad range of propane- and butane-fueled lanterns and stoves. These products are manufactured at Sunbeam's facilities located in the United States and are marketed under the Coleman® and Peak One® brand names.

Sunbeam manufactures and sells a wide variety of insulated coolers and jugs and reusable ice substitutes, including personal coolers for camping, picnics or lunch box use; large coolers; beverage coolers for use at work sites and recreational and social events; and soft-sided coolers. Sunbeam's cooler products are manufactured predominantly at Sunbeam's facilities located in the United States and are marketed under the Coleman brand name worldwide. Sunbeam designs, manufactures or sources, and markets textile products, including tents, sleeping bags, backpacks and rucksacks. Sunbeam's tents and sleeping bags are marketed under the Coleman and Peak One brand names. Sunbeam manufactures and markets aluminum- and steel-framed, portable, outdoor, folding furniture under the Coleman and Sierra Trails® brand names. These products are manufactured predominantly at Sunbeam's facilities located in the United States. Sunbeam designs and markets electric lighting products that are manufactured by others and sold under the Coleman, Powermate and Job-Pro® brand names. These products include portable electric lights such as hand held spotlights, flashlights and fluorescent lanterns and a line of rechargeable lanterns and flashlights. Sunbeam designs, sources and markets a variety of small accessories for camping and outdoor use, such as cookware and utensils. These products are manufactured by third-party vendors to Coleman's specifications and are marketed under the Coleman brand name.

Outdoor Cooking. Sunbeam is a leading supplier of outdoor barbecue grills. Sunbeam has one of the leading market share positions in the gas grill industry. Outdoor barbecue grills consist of gas, electric and charcoal models which are sold by Sunbeam primarily under the Sunbeam and Grillmaster® brand names. Sunbeam's outdoor cooking products also include smokers and replacement parts for grills and various accessories such as cooking utensils, grill cleaning products and barbecue tools. Almost all of Sunbeam's grills are manufactured at Sunbeam's United States facility. Sunbeam sources practically all of its accessories and a portion of its replacement parts from various manufacturers, many of which are in East Asia. A

licensee of Sunbeam produces gas barbecue grills under the Coleman name. In 1997 and 1996, sales of gas grills accounted for approximately 13% and 19%, respectively, of consolidated net sales.

Powermate. Sunbeam's principal Powermate products include portable generators and portable and stationary air compressors. Sunbeam is a leading manufacturer and distributor of portable generators in the United States. Generators are used for home improvement projects, small businesses, emergency preparedness and outdoor recreation. These products are manufactured by Sunbeam at its United States facilities using engines manufactured by third parties, are marketed under the Coleman Powermate® brand name and are distributed predominantly through mass merchandisers and home center chains. Sunbeam also produces advanced, light-weight generators incorporating proprietary technology. Sunbeam's air compressors are manufactured at its facilities located in the United States, are marketed under the Coleman Powermate brand name and are distributed predominantly through mass merchandisers and home center chains.

Eastpak. Sunbeam designs, manufactures and distributes book bags, backpacks and related goods throughout the United States under the Eastpak and Timberland® brand names. Sunbeam manufactures the majority of its products in its plants located in Puerto Rico. On November 9, 1999, Sunbeam announced a plan to divest Eastpak.

International

Sunbeam markets a variety of products outside the United States. While Sunbeam sells many of the same products domestically and internationally, it also sells products designed specifically to appeal to foreign markets. Sunbeam, through its foreign subsidiaries, has manufacturing facilities in France, Indonesia, Italy, Mexico, and Venezuela, and sales administration offices, warehouse and distribution facilities in Canada, Europe, the Mideast, Asia and Latin America. Sunbeam also sells its products directly to international customers in certain other markets through Sunbeam sales managers, independent distributors and commissioned sales representatives. The products sold by the international group are sourced from Sunbeam's manufacturing operations or from vendors primarily located in Asia. International sales accounted for approximately 23%, 21% and 19% of Sunbeam's consolidated net sales in 1998, 1997 and 1996, respectively. Sunbeam's international operations are managed through the following geographic areas:

Europe. Sunbeam's European operations are managed from Lyon, France and the sales are dominated by the product lines acquired by Sunbeam as part of the Coleman acquisition, including the Campingaz product lines and Eastpak products. Sunbeam's European office also manages the sale and distribution of Sunbeam products throughout Africa and the Middle East.

Japan. Sunbeam's sales in Japan are almost exclusively sales of camping equipment such as tents, stoves, lanterns, sleeping bags and accessories.

Latin America. The activities of Sunbeam outside the United States were primarily focused in Mexico and Latin America prior to the 1998 acquisition of Coleman. Sunbeam enjoys a strong market position in a number of product lines in Latin America. The Oster brand has the leading market share in small appliances in a number of Latin American countries. Sunbeam's sales in Latin America are derived primarily from household appliances, particularly the Oster blender and the recently introduced Oster arepa maker.

Canada. Sunbeam sells substantially all of its products in Canada through a distribution sales office located in Toronto.

East Asia. During 1998, Sunbeam's sales in East Asia were hampered by the economic downturn particularly in South Korea where Sunbeam had developed a strong market for Eastpak bags, and in Indonesia where Sunbeam sells Campingaz products. Sunbeam has established a sales office in Australia, from which it sells primarily clippers and appliances, and distributes First Alert products in Australia and New Zealand. Sales offices have also been established in Manila and Hong Kong.

Sunbeam has sales and facilities in countries where economic growth has slowed, primarily Japan, Korea and Latin America. The economies of other foreign countries important to Sunbeam's operations could also suffer instability in the future. The following are among the factors that could negatively affect Sunbeam's operations in foreign markets: (1) access to markets; (2) currency devaluation; (3) new tariffs; (4) changes in monetary and/or tax policies; (5) inflation; and (6) governmental instability. See "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—Foreign Operations."

Corporate

Retail. Sunbeam sells many of its products through its retail outlet stores which are operated under the Sunbeam, Oster and Camp Coleman® names. In addition, Sunbeam currently has 37 retail outlet stores in the United States and Canada which primarily carry discontinued, overstock and refurbished products for retail sale to consumers. Net sales from retail stores were not significant in any of the last three fiscal years.

Licensing. Sunbeam licenses the Sunbeam name and the Coleman name and logo under two types of licensing arrangements: general merchandise licenses and licenses to purchasers of businesses divested by Sunbeam. Sunbeam's general merchandise licensing activities involve licensing the Sunbeam and/or Coleman name and logo, for a royalty fee, to certain companies that manufacture and sell products that complement Sunbeam's product lines. Revenue from licensing activities in 1998 in the amount of \$4 million was generated primarily from the license of the Coleman name. In addition, Sunbeam licenses trade names from third parties for use in connection with Sunbeam's products. Revenue from licensing activities was not significant in 1997 and 1996.

Competition

The markets in which Sunbeam operates are generally highly competitive, based primarily on product quality, product innovation, price and customer service and support, although the degree and nature of such competition vary by location and product line. Sunbeam believes that no other company produces and markets the breadth of household appliance, camping and outdoor recreation products marketed by Sunbeam.

Sunbeam competes with various manufacturers and distributors with respect to its household appliances. Primary competitors in the kitchen appliance area have been Black & Decker (which recently sold its appliance division to Windmere), Hamilton Beach/Procter Silex, West Bend, Melita, Salton-Maxim, Cuisinart, Regal, Krups, Kitchen Aid, Braun and Rival. Sunbeam's primary competitor in the consumer scale market is Metro Corporation. Sunbeam's health care products compete with those of numerous small manufacturers and distributors, none of which dominates the home health care market. Sunbeam has limited domestic competition for its electric blankets and heated throws and enjoys a market share in excess of 90% for these products. Sunbeam's primary competitors for retail clippers and trimmers are Wahl and Conair; the primary competitors in the professional products lines are Wahl and Andis. Sunbeam enjoys a leading market share with respect to its smoke and carbon monoxide detectors where Ranco, American Sensor, Nighthawk and Siebe are the primary competitors. Sunbeam competes with Micro General with respect to its Pelouze scales.

Sunbeam's Outdoor Leisure products compete with numerous products sold by other manufacturers. Lanterns and stoves compete with, among others, products offered by Century Primus, American Camper and Dayton Hudson Corporation, while Desa & Schau and Mr. Heater are the primary competitors for heaters. The primary competitors for Sunbeam's portable furniture are a variety of import companies. Sunbeam's insulated cooler and jug products compete with products offered by Rubbermaid Incorporated, Igloo Products Corp. and The Thermos Company. Sunbeam's sleeping bags compete with, among others, American Recreation, Slumberjack, Academy Broadway Corp. and MZH Inc., as well as certain private label manufacturers. In the tent market, Sunbeam competes with, among others, Wenzel, Eureka and Mountain Safety Research, as well as certain private label manufacturers. Sunbeam competes with W.C. Bradley, Meco, Fiesta, Ducane, Weber and Keanall for sales of outdoor grills and accessories. Sunbeam's backpack products compete with, among others, American Camper, JanSport, Nike, Outdoor Products, The North Face, and Kelty, as well as certain private label manufacturers. Sunbeam's competition in the electric light business includes, among others, Eveready and Rayovac Corporation. Sunbeam's camping accessories compete primarily with Coughlan's. Sunbeam's primary competitors in the generator business are Generac Corporation, Honda Motor Co., Ltd., Kawasaki and Yamaha. Primary competitors in the air compressor business include DeVilbiss and Campbell Hausfield. In addition, Sunbeam competes with various other entities in international markets.

Customers

Sunbeam markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogues, Sunbeam-owned outlet stores, television shopping channels, hardware stores, home improvement centers, office products centers, drug and grocery stores, and pet supply retailers, as well as independent distributors and military post exchange outlets. In

1998, Sunbeam sold products to virtually all of the top 100 U.S. retailers, including Wal-Mart/Sam's Club, Kmart, Price Costco, Target Stores and Home Depot. Sunbeam's largest customer, Wal-Mart, accounted for approximately 18%, 20% and 19% of consolidated net sales in 1998, 1997 and 1996, respectively. Sunbeam has the majority of its U.S. customer sales on electronic data interchange (EDI) systems.

Backlog

The amount of backlog orders at any point in time is not a significant factor in Sunbeam's business.

Patents and Trademarks

Sunbeam believes that an integral part of its strength is its ability to capitalize on the Sunbeam®, Coleman®, Oster®, Eastpak®, Mr. Coffee®, Health-o-Meter®, First Alert® and Campingaz®, trademarks which are registered in the United States and in numerous foreign countries. Widely recognized throughout North America, Latin America and Europe, these registered trademarks, along with Powermate®, Pelouze®, Peak One®, Osterizer®, Mixmaster®, Toast Logic®, Steammaster®, Oskar®, Grillmaster® and "Blanket with a Brain®" brands are important to the success of Sunbeam's products. Other important trademarks within Sunbeam include Oster Designer®, Cuddle-Up® and A5®. The loss of any single trademark would not have a material adverse effect on Sunbeam's business; however, the Sunbeam, Coleman and Mr. Coffee trademarks are integral to certain of Sunbeam's continuing operations and Sunbeam aggressively monitors and protects these and other brands.

Sunbeam holds numerous design and utility patents covering a wide variety of products, the loss of any one of which would not have a material adverse effect on Sunbeam's business taken as a whole.

Research and Development

New products and improvements to existing products are developed based upon the perceived needs and demands of consumers. Research and development expenditures are expensed as incurred. The amounts charged to operations for the nine months ended September 30, 1999 and 1998 and for the fiscal years ended 1998, 1997 and 1996 were \$18.8 million, \$13.2 million, \$18.7 million, \$5.7 million and \$6.5 million, respectively.

Employees

As of September 30, 1999, Sunbeam had approximately 13,700 full-time and part-time employees of which approximately 8,700 are employed domestically. Sunbeam is a party to collective bargaining agreements with its hourly employees located at the Aurora, Illinois, Glenwillow, Ohio and Bridgeview, Illinois plants. Sunbeam's Canadian warehouse employees are represented by a union, as are all of the production employees at Sunbeam's operations in France and Italy. Sunbeam has had no material labor-related work stoppages and, in the opinion of management, relations with its employees are generally good.

Seasonality

Sunbeam's consolidated sales are not expected to exhibit substantial seasonality; however, sales are expected to be strongest during the second quarter of the calendar year. Furthermore, sales of a number of products, including warming blankets, vaporizers, humidifiers, grills, First Alert products, camping and generator products, may be impacted by unseasonable weather conditions.

Raw Materials/Suppliers

The raw materials used in the manufacture of Sunbeam's products are available from numerous suppliers in quantities sufficient to meet normal requirements. Sunbeam's primary raw materials include aluminum, steel, plastic resin, copper, electrical components, various textiles or fabrics and corrugated cardboard for cartons. Sunbeam also purchases a substantial number of finished products. Sunbeam is not dependent upon any single supplier for a material amount of such sourced products.

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Properties

Sunbeam's principal properties as of September 30, 1999 are as follows:

<u>Building Location</u>	<u>Principal Use</u>	<u>Square Footage</u>	<u>Owned/Leased</u>
<u>United States</u>			
Aurora, IL	First Alert offices, manufacture of fire extinguisher	236,000	Leased
Boca Raton, FL	Corporate headquarters	100,626	Leased
Bridgeview, IL	Offices and manufacture of scales	157,000	Owned
Glenwillow, OH	Manufacture of Mr. Coffee products, distribution warehouse and offices	458,000	Leased
Hattiesburg, MS	Manufacture of molded plastic parts, humidifiers, vaporizers, warehouse/distribution, and offices	725,000	Owned
Haverhill, MA	Office and warehouse/distribution	111,750	Leased
Kearney, NE	Manufacture/assembly of portable generators; office and warehouse	155,000	Leased(1)
Lake City, SC	Manufacture of sleeping bags	168,000	Owned
Maize, KS	Manufacture of propane cylinders and machined parts	232,760	Leased
McMinnville, TN	Manufacture of clippers, trimmers and blades	169,400	Leased
Neosho, MO	Manufacture of outdoor barbecue grills	669,700	Owned
New Braunfels, TX	Manufacture of insulated coolers and other plastic products	338,000	Owned
Pocola, OK	Manufacture of outdoor folding furniture and warehouse	186,000	Owned
Springfield, MN	Manufacture of air compressors	166,000	Owned
Waynesboro, MS	Manufacture of electric blankets	853,714	Leased
Wichita, KS	Manufacture of lanterns and stoves and insulated coolers and jugs; research and development and design operations; office and warehouse	1,197,000	Owned
Morovis and Orocovis, Puerto Rico	Manufacture of daypacks, sports bags, and related products; office and warehouse	110,000	Leased
<u>International</u>			
Acuna, Mexico	Manufacture of appliances	110,000	Owned
Barquisimeto, Venezuela	Manufacture of appliances	75,686	Owned
Centenaro di Lonsato, Italy	Manufacture of butane lanterns, stoves, heaters and grills; office and warehouse	77,000	Owned
Juarez, Mexico	Manufacture of smoke and carbon monoxide detectors	109,000	Leased
Matamoros, Mexico	Manufacture of controls	91,542	Owned
Mississauga, Canada	Sales and distribution office	19,891	Leased
St. Genis Laval, France	Manufacture of lanterns and stoves, filling of gas cylinders, and assembly of grills; office and warehouse.	2,070,000	Owned(2)
Tlalnepantla, Mexico	Manufacture of appliances	297,927	Owned

- (1) The owned facilities at Kearney, Nebraska reside on land leased under three leases that expire in 2007 with options to extend each for three additional ten-year periods.
- (2) The warehouse portion of St. Genis Laval, France is leased for terms that expire in 2004; the remaining facility is owned.

Sunbeam also maintains leased sales and administrative offices in the United States, Europe, Asia and Latin America, among other sites. Sunbeam leases various warehouse facilities and/or accesses public warehouse facilities as needed on a short term lease basis. Sunbeam also maintains gas filling plants in Indonesia, the Philippines and the United Kingdom. Sunbeam also leases a total of 172,469 square feet for the operation of its retail outlet stores. Sunbeam management considers Sunbeam's facilities to be suitable for

Sunbeam's operations, and believes that Sunbeam's facilities provide sufficient capacity for its production requirements.

Litigation and Other Contingent Liabilities

On April 23, 1998, two class action lawsuits were filed on behalf of purchasers of Sunbeam common stock in the U.S. District Court for the Southern District of Florida against Sunbeam and some of its present and former directors and former officers alleging violations of the federal securities laws as discussed below. After that date, approximately fifteen similar class actions were filed in the same Court. One of the lawsuits also named as defendant Arthur Andersen, Sunbeam's independent accountants for the period covered by the lawsuit.

On June 16, 1998, the court entered an order consolidating all these suits and all similar class actions subsequently filed (collectively, the "Consolidated Federal Actions") and providing time periods for the filing of a consolidated amended complaint and defendants' response thereto. On June 22, 1998, two groups of plaintiffs made motions to be appointed lead plaintiffs and to have their selection of counsel approved as lead counsel. On July 20, 1998, the court entered an order appointing lead plaintiffs and lead counsel. This order also stated that it shall apply to all subsequently filed actions that are consolidated with the other actions. On August 28, 1998, plaintiffs in one of the subsequently filed actions filed an objection to having their action consolidated pursuant to the June 16, 1998 order, arguing that the class period in their action differs from the class periods in the originally filed consolidated actions. On December 9, 1998, the court entered an order overruling plaintiffs' objections and affirming its prior order appointing lead plaintiffs and lead counsel.

On January 6, 1999, plaintiffs filed a consolidated amended class action complaint against Sunbeam, some of its present and former directors and former officers, and Arthur Andersen. The consolidated amended class action complaint alleges that, in violation of section 10(b) of the Exchange Act and SEC Rule 10b-5, defendants made material misrepresentations and omissions regarding Sunbeam's business operations, future prospects and anticipated earnings per share, in an effort to artificially inflate the price of Sunbeam common stock and call options, and that, in violation of section 20(a) of the Exchange Act, the individual defendants exercised influence and control over Sunbeam, causing Sunbeam to make material misrepresentations and omissions. The consolidated amended complaint seeks an unspecified award of money damages. On February 5, 1999, plaintiffs moved for an order certifying a class consisting of all persons and entities who purchased Sunbeam common stock or who purchased call options or sold put options with respect to Sunbeam common stock during the period April 23, 1997 through June 30, 1998, excluding the defendants, their affiliates, and employees of Sunbeam. Defendants' response to the motion for class certification was filed on May 6, 1999. On March 8, 1999, all defendants who had been served with the consolidated amended class action complaint moved to dismiss it. Under the Private Securities Litigation Reform Act of 1995, all discovery in the consolidated action is stayed pending resolution of the motions to dismiss.

On April 7, 1998, a purported derivative action was filed in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida against Sunbeam and some of its present and former directors and former officers. The action alleged that the individual defendants breached their fiduciary duties and wasted corporate assets when Sunbeam granted stock options on or about February 2, 1998 at an exercise price of \$36.85 to three of its officers and directors who were subsequently terminated by Sunbeam. On June 25, 1998, all defendants filed a motion to dismiss the complaint for failure to make a pre-suit demand on Sunbeam's board of directors. On October 22, 1998, the plaintiff amended the complaint against all but one of the defendants named in the original complaint. On February 19, 1999, plaintiffs filed a second amended derivative complaint nominally on behalf of Sunbeam against some of its present and former directors and former officers and Arthur Andersen. The second amended complaint alleges, among other things, that Messrs. Dunlap and Kersh, Sunbeam's former Chairman and Chief Executive Officer and former Chief Financial Officer, respectively, caused Sunbeam to employ fraudulent accounting procedures in order to enable them to secure new employment contracts, and seeks a declaration that the individual defendants have violated fiduciary duties, an injunction against the payment of compensation to Messrs. Dunlap and Kersh or the imposition of a constructive trust on such payments, and unspecified money damages. The defendants have each moved to dismiss the second amended complaint in whole or in part.

On June 25, 1998, four purported class actions were filed in the Court of Chancery of the State of Delaware in New Castle County by minority stockholders of Coleman against Coleman, Sunbeam and certain of Sunbeam's and Coleman's present and former officers and directors. An additional class action was filed on August 10, 1998, against the same parties. The complaints in these class actions alleged, in essence, that the existing exchange ratio for the proposed merger is no longer fair to Coleman minority stockholders as a result of the decline in the market value of Sunbeam common stock. On October 21, 1998, Sunbeam announced that it had entered into a memorandum of understanding to settle, subject to court approval, the class actions. The court approved the settlement on November 12, 1999. Under the terms of the settlement, Sunbeam will issue to Coleman minority stockholders and plaintiffs' counsel in this action warrants to purchase up to approximately 4.98 million shares of Sunbeam common stock at \$7 per share, subject to anti-dilution adjustments. Coleman minority stockholders who elect an appraisal under Delaware law will not receive warrants. These warrants will generally have the same terms as the warrant issued to the MacAndrews & Forbes subsidiary and will be issued when the merger is consummated, which is now expected to occur during the fourth quarter of 1999 or early in the first quarter of 2000.

During the months of August and October 1998, purported class action and derivative lawsuits were filed in the Court of Chancery of the State of Delaware in New Castle County and in the U.S. District Court for the Southern District of Florida by stockholders of Sunbeam against Sunbeam, MacAndrews & Forbes and some of Sunbeam's present and former directors. These complaints allege that the defendants breached their fiduciary duties when Sunbeam entered into a settlement agreement with the MacAndrews & Forbes subsidiary that sold Sunbeam a controlling interest in Coleman. In the settlement agreement the MacAndrews & Forbes subsidiary released Sunbeam from threatened claims arising out of Sunbeam's acquisition of its interest in Coleman, and MacAndrews & Forbes agreed to provide management support to Sunbeam. Under the settlement agreement, the MacAndrews & Forbes subsidiary was granted a warrant expiring August 24, 2003 to purchase up to an additional 23 million shares of Sunbeam's common stock at an exercise price of \$7 per share, subject to anti-dilution provisions. The plaintiffs have requested an injunction against the issuance of stock to MacAndrews & Forbes upon the exercise of its warrant and unspecified money damages. These complaints also allege that the rights of the minority stockholders have been compromised, as the settlement would normally require stockholder approval under the rules and regulations of the NYSE. The audit committee of Sunbeam's board of directors determined that obtaining such stockholder approval would have seriously jeopardized the financial viability of Sunbeam which is an allowable exception to the NYSE stockholder approval requirements. By order of the Delaware Court of Chancery dated January 7, 1999, the derivative actions filed in that court were consolidated, and Sunbeam and other defendants have moved to dismiss these actions. The action filed in the U.S. District Court for the Southern District of Florida has been dismissed.

On September 16, 1998, an action was filed in the 56th Judicial District Court of Galveston County, Texas alleging various claims in violation of the Texas Securities Act and Texas Business and Commercial Code as well as common law fraud as a result of Sunbeam's alleged misstatements and omissions regarding Sunbeam's financial condition and prospects during a period beginning May 1, 1998 and ending June 16, 1998, in which the U.S. National Bank of Galveston, Kempner Capital Management, Inc. and Legacy Trust Company engaged in transactions in Sunbeam common stock on their own behalf and on behalf of their respective clients. Sunbeam is the only named defendant in this action. The complaint requests recovery of compensatory damages, punitive damages and expenses in an unspecified amount. This action was removed to the U.S. District Court for the Southern District of Texas and subsequently transferred to the Southern District of Florida and consolidated with the Consolidated Federal Actions. Plaintiffs in this action have objected to the consolidation and have sought reconsideration by the Southern District of Florida of the order of the Southern District of Texas denying plaintiffs' motion to remand the case to state court and transferring it to Florida. A similar suit was brought by the same group of plaintiffs in the above action against Arthur Andersen. In that action, the plaintiffs allege that Arthur Andersen violated the Texas Securities Act, committed statutory and common law fraud and was negligent in its audits of Sunbeam's 1996 and 1997 financial statements. On September 29, 1999, Arthur Andersen had filed a motion for leave to join Sunbeam and certain of its former officers as responsible third parties and contribution defendants. Their motion was denied.

On October 30, 1998, a class action lawsuit was filed on behalf of certain purchasers of the debentures in the U.S. District Court for the Southern District of Florida against Sunbeam and some of Sunbeam's former officers and directors, alleging violations of the federal securities laws and common law fraud. The complaint alleges that Sunbeam's offering memorandum used for the marketing of the debentures contained false and misleading information regarding Sunbeam's financial position and that the defendants engaged in a plan to inflate Sunbeam's earnings for the purpose of defrauding the plaintiffs and others. The plaintiffs seek a declaration that defendants violated federal securities laws and either unspecified monetary damages or rescission of their purchase of the debentures. The parties have negotiated a proposed coordination plan in order to coordinate proceedings in this action with those in the Consolidated Federal Actions.

Sunbeam has been named as a defendant in an action filed in the District Court of Tarrant County, Texas, 48th Judicial District, on November 20, 1998. Sunbeam was served in this action through the Secretary of State of Texas on January 15, 1999. The plaintiffs in this action are purchasers of the debentures. The plaintiffs allege that Sunbeam violated the Texas Securities Act and the Texas Business & Commercial Code and committed state common law fraud by materially misstating the financial position of Sunbeam in connection with the offering and sale of the debentures. The complaint seeks rescission, as well as compensatory and exemplary damages in an unspecified amount. Sunbeam specially appeared to assert an objection to the Texas court's exercise of personal jurisdiction over Sunbeam, and a hearing on this objection took place on April 15, 1999. On April 23, 1999, the court entered an order granting Sunbeam's special appearance and dismissing the case without prejudice. The plaintiffs moved for reconsideration of the court order, which motion the court denied on May 24, 1999. The plaintiffs have appealed the order dismissing the case to the Texas Court of Appeals, and the appeal is pending.

On April 12, 1999, a class action lawsuit was filed in the U.S. District Court for the Southern District of Florida. The lawsuit was filed on behalf of persons who purchased debentures during the period of March 20, 1998 through June 30, 1998, inclusive, but after the initial offering of such debentures. The complaint asserts that Sunbeam made material omissions and misrepresentations that had the effect of inflating the market price of the debentures. The complaint names as defendants Sunbeam, its former auditor, Arthur Andersen, and two former Sunbeam officers, Messrs. Dunlap and Kersh. The plaintiff is an institution which allegedly acquired in excess of \$150,000,000 face amount of the debentures and now seeks unspecified money damages. Sunbeam was served on April 16, 1999 in connection with this pending lawsuit. Sunbeam has requested that this action be coordinated with the Consolidated Federal Actions.

On February 9, 1999, Messrs. Dunlap and Kersh filed with the American Arbitration Association demands for arbitration of claims under their respective employment agreements with Sunbeam. Messrs. Dunlap and Kersh are requesting a finding by the arbitrator that Sunbeam terminated their employment without cause and that they should be awarded certain benefits based upon their respective employment agreements. On March 12, 1999, Sunbeam asked the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida to issue an injunction prohibiting Messrs. Dunlap and Kersh from pursuing their arbitration proceedings against Sunbeam on the grounds, among others, that the simultaneous litigation of the action filed in that court on April 7, 1998, described above, and the arbitration proceedings would subject Sunbeam to the threat of inconsistent adjudications with respect to certain rights to compensation asserted by Messrs. Dunlap and Kersh and would cause irreparable harm to Sunbeam and its stockholders. On March 19, 1999, the plaintiff in the April 7, 1998 action discussed above moved for an injunction on similar grounds. On May 11, 1999, the court denied the motions for a preliminary injunction filed by Sunbeam and the plaintiff. Sunbeam has answered the arbitration demands of Messrs. Dunlap and Kersh and has filed counterclaims seeking, among other things, the return of all consideration paid, or to be paid, under the February 1998 Employment Agreements between Sunbeam and Messrs. Dunlap and Kersh. An answer was filed by Messrs. Dunlap and Kersh generally denying Sunbeam's counterclaim. Discovery is pending.

On May 24, 1999, an action naming Sunbeam as defendant was filed in the Circuit Court for Ozaukee County, Wisconsin. Prior to service of the complaint, the plaintiff dismissed its claims, voluntarily, without prejudice. The plaintiff in this action was a purchaser of the debentures. The plaintiff alleged that Sunbeam violated the Wisconsin Uniform Securities Act and committed acts of false advertising and misrepresentation in connection with the offering and sale of the debentures. The plaintiff sought rescission, as well as compensatory and exemplary damages in an unspecified amount.

On September 13, 1999, an action naming Sunbeam and Arthur Andersen as defendants was filed in the Circuit Court for Montgomery County, Alabama. The plaintiffs in this action are purchasers of Sunbeam common stock during the period March 19, 1998 through May 6, 1998. The plaintiffs allege, among other things, that the defendants violated the Alabama Security Laws and SEC Rule 10b-5. The plaintiffs seek compensatory and punitive damages in an unspecified amount. Sunbeam has removed this case to the U.S. District Court for the District of Alabama. In addition, Arthur Andersen has filed a cross claim against Sunbeam for contribution and indemnity. Sunbeam has filed a motion with the Judicial Panel on Multidistrict Litigation to consolidate this action with the Consolidated Federal Actions.

Sunbeam intends to vigorously defend each of the foregoing lawsuits other than those as to which a memorandum of understanding to settle has been reached, but cannot predict the outcome and is not currently able to evaluate the likelihood of Sunbeam's success in each case or the range of potential loss. However, if Sunbeam were to lose these lawsuits, judgments would likely have a material adverse effect on Sunbeam's consolidated financial position, results of operations and cash flows.

On March 23, 1999, Messrs. Dunlap and Kersh filed a complaint in the Court of Chancery of the State of Delaware seeking an order directing Sunbeam to advance attorneys' fees and other expenses incurred in connection with various state and federal class and derivative actions and an investigation instituted by the SEC. The complaint alleges that such advancements are required by Sunbeam's by-laws and by a forbearance agreement entered into between Sunbeam and Messrs. Dunlap and Kersh in August, 1998. A trial of this summary proceeding was held on June 15 and 16, 1999. On June 23, 1999, the court issued a memorandum opinion directing Sunbeam to pay about \$1.4 million on account of expenses incurred to date and to advance the reasonable future expenses in those actions and investigations. Messrs. Dunlap and Kersh have agreed to repay all amounts advanced to them if it is ultimately determined that they are not entitled to indemnification under Delaware law.

On July 2, 1998, the American Alliance Insurance Company filed suit against Sunbeam in the U.S. District Court for the Southern District of New York requesting a declaratory judgment of the court that the directors' and officers' liability insurance policy for excess coverage issued by American Alliance was invalid and/or had been properly canceled by American Alliance. American Alliance has filed a motion for summary judgment on the ground that coverage was never bound. Sunbeam has opposed that motion. As a result of a motion made by Sunbeam, this case has been transferred to the U.S. District Court for the Southern District of Florida for coordination and consolidation of pre-trial proceedings with the various actions pending in that court. On October 20, 1998, an action was filed by Federal Insurance Company in the U.S. District Court for the Middle District of Florida requesting the same relief as that requested by American in the previously filed action as to additional coverage levels under Sunbeam's directors' and officers' liability insurance policy. This action has been transferred to the U.S. District Court for the Southern District of Florida and is currently in discovery. Sunbeam is seeking a stay of discovery to coordinate discovery in this action with any discovery that may occur in the Consolidated Federal Actions. Plaintiff has moved to compel production of various documents. On December 22, 1998, an action was filed by Executive Risk Indemnity, Inc. in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida requesting the same relief as that requested by American and Federal in their previously filed actions as to additional coverage levels under Sunbeam's directors' and officers' liability insurance policy. On April 15, 1999, Sunbeam filed an action in the U.S. District Court for the Southern District of Florida against National Union Fire Insurance Company of Pittsburgh, PA, Gulf Insurance Company and St. Paul Mercury Insurance Company requesting, among other things, a declaratory judgment that National Union is not entitled to rescind its directors' and officers' liability insurance policies to Sunbeam and a declaratory judgment that Sunbeam is entitled to coverage from these insurance companies for the various lawsuits described herein under directors' and officers' liability insurance policies issued by each of the defendants. In response to Sunbeam's complaint, defendants St. Paul and Gulf have answered and asserted counterclaims seeking rescission and declaratory relief that no coverage is available to Sunbeam. Sunbeam has denied the allegations of Gulf's and St. Paul's counterclaims. Defendant National Union has filed a motion to dismiss or stay the claims filed by Sunbeam against National Union on the basis, among others, that Sunbeam must submit the dispute to arbitration or mediation. Sunbeam has filed a response opposing that motion. Sunbeam intends to pursue recovery from all of its insurers if damages are awarded against Sunbeam or its indemnified officers and/or directors under any of the foregoing actions and to recover attorneys' fees covered under those policies. Sunbeam's failure to

obtain such insurance recoveries following an adverse judgment in any of the actions described above could have a material adverse effect on Sunbeam's financial position, results of operations and cash flows.

By letter dated June 17, 1998, the staff of the Division of Enforcement of the SEC advised Sunbeam that it was conducting an informal inquiry into Sunbeam's accounting policies and procedures and requested that Sunbeam produce certain documents. On July 2, 1998, the SEC issued a Formal Order of Private Investigation, designating SEC officers to take testimony and pursuant to which a subpoena was served on Sunbeam requiring the production of certain documents. On November 4, 1998, another SEC subpoena requiring the production of additional documents was received by Sunbeam. Sunbeam has provided numerous documents to the SEC staff and continues to cooperate with the SEC staff. Sunbeam has, however, declined to provide the SEC with material that Sunbeam believes is subject to the attorney-client privilege and the work product immunity.

The SEC has not commenced any civil or administrative proceedings as a result of its investigation, and Sunbeam cannot predict at this time whether the SEC will seek to impose any monetary or other penalties against Sunbeam. Under these circumstances, Sunbeam cannot estimate the duration of the investigation or its outcome.

Sunbeam and its subsidiaries are also involved in various other lawsuits arising from time to time which Sunbeam considers to be ordinary routine litigation incidental to its business. In the opinion of Sunbeam, the resolution of these routine matters, and of certain matters relating to prior operations, individually or in the aggregate, will not have a material adverse effect upon the financial position, results of operations or cash flows of Sunbeam.

Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and claims and related anticipated legal fees for defending such actions. The costs are accrued when it is both probable that an asset has been impaired or a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon Sunbeam's assessment, after consultation with counsel, of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the plaintiffs and other significant factors which vary by case. When it is not possible to estimate a specific expected cost to be incurred, Sunbeam evaluates the range of probable loss and records the minimum end of the range. As of September 30, 1999, Sunbeam had established accruals for litigation matters of \$22.6 million (representing \$11.3 million and \$11.3 million for estimated damages or settlement amounts and legal fees, respectively.) As of December 31, 1998 Sunbeam had established accruals for litigation matters of \$31.2 million (representing \$17.5 million and \$13.7 million for estimated damages or settlement amounts and legal fees, respectively) and \$9.9 million as of December 28, 1997 (representing \$3.0 million and \$6.9 million for estimated damages or settlement amounts and legal fees, respectively). It is anticipated that the \$22.6 million accrual will be paid as follows: \$5.2 million in 1999, \$14.9 million in 2000, and \$2.5 million in 2001. Sunbeam believes, based on information known to Sunbeam on September 30, 1999, that anticipated probable costs of litigation matters existing as of September 30, 1999 have been adequately reserved to the extent determinable.

Products Liability

As a consumer goods manufacturer and distributor, Sunbeam faces the constant risks of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. These claims could result in liabilities that could have a material adverse effect on Sunbeam's consolidated financial position, results of operations or cash flows. Some of the product lines Sunbeam acquired in the 1998 acquisitions have increased its exposure to product liability and related claims.

BRK Brands, Inc., a wholly owned subsidiary of Sunbeam, is a defendant in an ongoing products liability case in which the plaintiff alleged, among other things, that the plaintiff's smoke detector (which had been manufactured by a predecessor company to BRK Brands, Inc.) did not alarm quickly enough. In July 1999, the jury in the case awarded \$20 million in compensatory damages and \$30 million in punitive damages. This case has been settled and BRK Brands, Inc.'s obligation under the settlement is limited to payment of the balance of its self-insured retention.

Sunbeam is party to various personal injury and property damage lawsuits relating to its products and incidental to its business. Annually, Sunbeam sets its product liability insurance program based on Sunbeam's current and historical claims experience and the availability and cost of insurance. Sunbeam's program for 1999 was comprised of a self-insurance retention of \$3.5 million per occurrence, and was limited to \$28.0 million in the aggregate.

Cumulative amounts estimated to be payable by Sunbeam with respect to pending and potential claims for all years in which Sunbeam is liable under its self-insurance retention have been accrued as liabilities. Such accrued liabilities are necessarily based on estimates (which include actuarial determinations made by independent actuarial consultants as to liability exposure, taking into account prior experience, numbers of claims and other relevant factors); thus, Sunbeam's ultimate liability may exceed or be less than the amounts accrued. The methods of making such estimates and establishing the resulting liability are reviewed continually and any adjustments resulting therefrom are reflected in current operating results.

Historically, product liability awards have rarely exceeded Sunbeam's individual per occurrence self-insured retention. There can be no assurance, however, that Sunbeam's future product liability experience will be consistent with its past experience. Based on existing information, Sunbeam believes that the ultimate conclusion of the various pending product liability claims and lawsuits of Sunbeam, individually or in the aggregate, will not have a material adverse effect on the financial position, results of operations or cash flows of Sunbeam.

Environmental Matters

Sunbeam's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations in addition to laws and regulations regarding labeling and packaging of products and the sales of products containing certain environmentally sensitive materials. Sunbeam believes it is in substantial compliance with all environmental laws and regulations which are applicable to its operations. Compliance with environmental laws and regulations involves certain continuing costs; however, such costs of ongoing compliance have not resulted, and are not anticipated to result, in a material increase in Sunbeam's capital expenditures or to have a material adverse effect on Sunbeam's results of operations, financial condition or competitive position.

In addition to ongoing environmental compliance at its operations, Sunbeam also is actively engaged in environmental remediation activities many of which related to divested operations. As of December 31, 1998, Sunbeam has been identified by the United States Environmental Protection Agency ("EPA") or a state environmental agency as a potentially responsible party ("PRP") in connection with seven sites subject to the federal Superfund Act and five sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which Sunbeam has been designated (or expects to be designated) as a de minimis (less than 1%) participant.

The Superfund Act, and related state environmental remediation laws, generally authorize governmental authorities to remediate a Superfund site and to assess the costs against the PRPs or to order the PRPs to remediate the site at their expense. Liability under the Superfund Act is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, Sunbeam recognizes its responsibility to determine whether other PRPs at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever Sunbeam has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize Sunbeam's potential liability with respect to the Environmental Sites, Sunbeam has actively participated in steering committees and other groups of PRPs established with respect to such sites. Sunbeam currently is engaged in active remediation activities at 11 sites, six of which are among the Environmental Sites referred to above, and five of which have not been designated as Superfund sites under federal or state law. The remediation efforts in which Sunbeam is involved include facility investigations, including soil and groundwater investigations, corrective measure studies, including feasibility studies, groundwater monitoring, extraction and treatment, soil sampling, excavation and treatment relating to environmental clean-ups. In certain instances, Sunbeam has entered into agreements with governmental authorities to undertake additional investigatory activities and in other instances has agreed to implement appropriate remedial actions. Sunbeam has also established reserve amounts for certain non-compliance matters including those involving air emissions.

Sunbeam has established reserves to cover the anticipated probable costs of investigation and remediation, based upon periodic reviews of all sites for which Sunbeam has, or may have remediation responsibility. Sunbeam accrues environmental investigation and remediation costs when it is both probable that a liability has been incurred and the amount can be reasonably estimated and Sunbeam's responsibility is established. Generally, the timing of these accruals coincides with the earlier of formal commitment to an investigation plan, completion of a feasibility study or Sunbeam's commitment to a formal plan of action. As of September 30, 1999, December 31, 1998 and 1997, Sunbeam's environmental reserves were \$23.3 million (representing \$21.6 million for the estimated costs of facility investigations, corrective measure studies, or known remedial measures, and \$1.7 million for estimated legal costs), \$25.0 million (representing \$22.9 million for the estimated costs of facility investigations, corrective measure studies, or known remedial measures, and \$2.1 million for estimated legal costs) and \$24.0 million (representing \$21.8 million for the estimated costs of facility investigations, corrective measure studies, or known remedial measures, and \$2.2 million for estimated legal costs), respectively. It is anticipated that the \$23.3 million accrual at September 30, 1999 will be paid as follows: \$5.2 million in 1999, \$3.9 million in 2000, \$1.8 million in 2001, \$2.0 million in 2002, \$0.6 million in 2003 and \$9.8 million thereafter. Sunbeam has accrued its best estimate of investigation and remediation costs based upon facts known to Sunbeam at such dates and because of the inherent difficulties in estimating the ultimate amount of environmental costs, which are further described below, these estimates may materially change in the future as a result of the uncertainties described below. Estimated costs, which are based upon experience with similar sites and technical evaluations, are judgmental in nature and are recorded at undiscounted amounts without considering the impact of inflation and are adjusted periodically to reflect changes in applicable laws or regulations, changes in available technologies and receipt by Sunbeam of new information. It is difficult to estimate the ultimate level of future environmental expenditures due to a number of uncertainties surrounding environmental liabilities. These uncertainties include the applicability of laws and regulations, changes in environmental remediation requirements, the enactment of additional regulations, uncertainties surrounding remediation procedures including the development of new technology, the identification of new sites for which Sunbeam could be a PRP, information relating to the exact nature and extent of the contamination at each site and the extent of required cleanup efforts, the uncertainties with respect to the ultimate outcome of issues which may be actively contested and the varying costs of alternative remediation strategies. Sunbeam continues to pursue the recovery of some environmental remediation costs from certain of its liability insurance carriers; however, such potential recoveries have not been offset against potential liabilities and have not been considered in determining Sunbeam's environmental reserves.

Due to uncertainty over remedial measures to be adopted at some sites, the possibility of changes in environmental laws and regulations and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, Sunbeam's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved as of September 30, 1999.

Sunbeam believes, based on existing information for sites where costs are estimable, that the costs of completing environmental remediation of all sites for which Sunbeam has a remediation responsibility have been adequately reserved and that the ultimate resolution of these matters will not have a material adverse effect upon Sunbeam's financial condition, results of operations or cash flows.

Regulatory Matters

Sunbeam is subject to various laws and regulations in connection with its business operations, including but not limited to laws related to relations with employees, maintenance of safe manufacturing facilities, truth in packaging and advertising, regulation of medical products and safety of consumer products. Sunbeam does not anticipate that its business or operations will be materially adversely affected by compliance with any of these provisions.

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MANAGEMENT

Directors and Executive Officers of Sunbeam, Camper Acquisition Corp. and Coleman

The following tables set forth information regarding the directors and executive officers of Sunbeam, Camper Acquisition Corp. (the wholly owned Sunbeam subsidiary that will be merged with Coleman in the merger) and Coleman, respectively. The name, age, present principal occupation or employment and five-year employment history of each individual is set forth in each individual's biography below. The term of office of each of the directors of Sunbeam, Camper Acquisition Corp. and Coleman will expire after a period of one year from their previous date of election or at the time each such director's successor is duly elected and shall have qualified. Unless otherwise indicated in each individual's biography, the business address of each of the directors and executive officers is: 2381 Executive Center Drive, Boca Raton, Florida 33431. Each of the directors and executive officers is a citizen of the United States.

Current Sunbeam Directors and Executive Officers

<u>Name</u>	<u>Age</u>	<u>Position</u>
Jerry W. Levin	55	Chairman of the Board, President, Chief Executive Officer and Director
Paul E. Shapiro	58	Executive Vice President and Chief Administrative Officer
Bobby G. Jenkins	37	Executive Vice President and Chief Financial Officer
Karen K. Clark	39	Senior Vice President, Finance
Steven R. Isko	35	Senior Vice President and General Counsel
Ronald H. Dunbar	62	Senior Vice President, Human Resources
Barbara L. Allen	44	Secretary
Jack D. Hall	55	President, International
Philip E. Beekman	68	Director
Charles M. Elson	40	Director
Howard Gittis	65	Director
John H. Klein	53	Director
Howard G. Kristol	62	Director
Peter A. Langerman	44	Director
Faith Whittlesey	60	Director

Current Camper Acquisition Corp. Directors and Executive Officers

<u>Name</u>	<u>Age</u>	<u>Position</u>
Jerry W. Levin	55	President, Chief Executive Officer and Director
Paul E. Shapiro	58	Executive Vice President, Chief Administrative Officer and Director
Bobby G. Jenkins	37	Executive Vice President
Karen K. Clark	39	Senior Vice President, Finance
Ronald R. Richter	55	Vice President and Treasurer
Steven R. Isko	35	Senior Vice President and General Counsel
Barbara L. Allen	44	Secretary

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Current Coleman Directors and Executive Officers

<u>Name</u>	<u>Age</u>	<u>Position</u>
Jerry W. Levin	55	Chairman, Chief Executive Officer and Director
Paul E. Shapiro	58	Executive Vice President, Chief Administrative Officer and Director
Bobby G. Jenkins	37	Executive Vice President
Karen K. Clark	39	Senior Vice President, Finance
Steven R. Isko	35	Senior Vice President and General Counsel
Barbara L. Allen	44	Secretary
William L. Phillips	47	President, Outdoor Recreation Division
Gwen C. Wisler	40	Executive Vice President and Chief Financial Officer
A. Whitman Marchand	63	Director
John H. Klein	53	Director

Jerry W. Levin was appointed Chief Executive Officer, President and a director of Sunbeam in June 1998 and was elected Chairman of the Sunbeam board in March 1999. Mr. Levin was also appointed to serve as Chairman of the Board and Chief Executive Officer of Coleman since August 1998 and as Chief Executive Officer of Coleman from June 1998 to August 1998. Mr. Levin has served as a director of Camper Acquisition Corp., a wholly owned subsidiary of Sunbeam, since June 1998 and as President, Chief Executive Officer and director since January 1999. Mr. Levin previously held the position of Chairman and Chief Executive Officer of Coleman from February 1997 until its acquisition by Sunbeam in March 1998. Mr. Levin was also the Chairman of Coleman from 1989 to 1991. Mr. Levin was Chairman of the board of Revlon, Inc. from November 1995 until June 1998, Chief Executive Officer of Revlon, Inc. from 1992 until January 1997, and President of Revlon, Inc. from 1991 to 1995. Mr. Levin has been Executive Vice President of MacAndrews & Forbes since March 1989. For 15 years prior to joining MacAndrews & Forbes, Mr. Levin held various senior executive positions with the Pillsbury Company. Mr. Levin is also a member of the boards of directors of Revlon, Inc., Ecolab, Inc. and U.S. Bancorp. For a description of certain arrangements entered into by Sunbeam and MacAndrews & Forbes relating to the appointment of Mr. Levin as an officer of Sunbeam, see "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Appointments of Coleman Executive Officers to Sunbeam's Management and Board" and "—Services Provided by MacAndrews & Forbes."

Paul E. Shapiro joined Sunbeam as Executive Vice President and Chief Administrative Officer in June 1998. Mr. Shapiro was appointed Executive Vice President and Chief Administrative Officer and a director of Coleman in June 1998. Mr. Shapiro served as President of Camper Acquisition Corp. from June 1998 to January 1999, and has served as Executive Vice President and Chief Administrative Officer of Camper Acquisition Corp. since January 1999. Mr. Shapiro previously held the position of Executive Vice President and General Counsel of Coleman from July 1997 until its sale in March 1998. Before joining Coleman, he was Executive Vice President, General Counsel and Chief Administrative Officer of Marvel Entertainment Group, Inc. Marvel and several of its subsidiaries filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code in 1996. Mr. Shapiro served as an executive officer of Marvel at the time of such filing. He had previously spent over 25 years in private law practice and as a business executive, most recently as a shareholder in the law firm of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel. Mr. Shapiro is also a member of the board of directors of Toll Brothers, Inc. For a description of arrangements entered into by Sunbeam and MacAndrews & Forbes relating to the appointment of Mr. Shapiro as an officer of Sunbeam, see "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Appointments of Coleman Executive Officers to Sunbeam's Management and Board" and "—Services Provided by MacAndrews & Forbes."

Bobby G. Jenkins joined Sunbeam as Executive Vice President and Chief Financial Officer in June 1998 and has served as Executive Vice President of Camper Acquisition Corp. since January 1999. Mr. Jenkins was appointed Executive Vice President of Coleman in August 1998. Mr. Jenkins previously held the position of Chief Financial Officer of Coleman's Outdoor Recreation division from September 1997 to May 1998.

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Mr. Jenkins was Executive Vice President and Chief Financial Officer of Marvel from December 1993 through June 1997. Mr. Jenkins served as an executive officer of Marvel at the time of the 1996 Chapter 11 filings of Marvel and several of its subsidiaries. Mr. Jenkins was Assistant Vice President of Finance at Turner Broadcasting System from August 1992 to November 1993. Prior to that, Mr. Jenkins was with Price Waterhouse, last serving as Senior Audit Manager. For a description of arrangements entered into by Sunbeam and MacAndrews & Forbes relating to the appointment of Mr. Jenkins as an officer of Sunbeam, see "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Appointments of Coleman Executive Officers to Sunbeam's Management and Board" and "—Services Provided by MacAndrews & Forbes."

Karen K. Clark joined Sunbeam in April 1998 as Vice President, Operations Finance and served as Vice President, Finance from June 1998 until her appointment as Senior Vice President, Finance in April 1999. Ms. Clark served as Vice President, Finance of Coleman from 1997, and as Vice President, Finance of Camper Acquisition Corp. from January 1999 until her appointment as Senior Vice President, Finance of Coleman and Camper Acquisition Corp. in November 1999. She was Corporate Controller for Precision Castparts Corp. from 1994 to 1997 and prior to that held various positions in public accounting and industry.

Steven R. Isko joined Sunbeam in June 1999 as Senior Vice President and General Counsel. Mr. Isko served as Vice President, General Counsel and Secretary of Camper Acquisition Corp. and Coleman from June 1999 until his appointment as Senior Vice President and General Counsel of Coleman and Camper Acquisition Corp. in November 1999. From May 1998 to December 1998, Mr. Isko was Senior Vice President, General Counsel and Secretary of The Cosmetic Center, Inc. From June 1997 to April 1998, Mr. Isko was Vice President, Legal for Coleman and from June 1996 to July 1997 was Vice President—Law and Corporate Secretary of Marvel Entertainment Group. Prior to June 1996, Mr. Isko was an associate at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP in New York, New York.

Ronald H. Dunbar was appointed Senior Vice President, Human Resources in August 1998. Mr. Dunbar also serves as Senior Vice President, Human Resources of Coleman. Mr. Dunbar was Senior Vice President, Human Resources of Revlon, Inc. from 1992 until 1998. Mr. Dunbar was Vice President and General Manager of Arnold Menn and Associates, a career management consulting and executive outplacement firm, from 1989 to 1991 and Executive Vice President and Chief Human Resources Officer of Ryder System, Inc., a highway transportation firm, from 1978 to 1989. Prior to that, Mr. Dunbar served in senior executive human resources positions at Xerox Corporation and Ford Motor Company.

Barbara L. Allen joined Sunbeam in June 1999 as Secretary. Ms. Allen has also served as Secretary of Camper Acquisition Corp. and Coleman since June 1999. From April 1998 to June 1999, Ms. Allen was a consultant to Coleman. From April 1997 to March 1998, Ms. Allen was Secretary of Coleman. Prior to April 1997, Ms. Allen served in various capacities at Coleman, including as Assistant Secretary from December 1991 to April 1997. Ms. Allen's business address is The Coleman Company, Inc., 3600 North Hydraulic Street, P.O. Box 2931, Wichita, Kansas 67201.

Jack D. Hall joined Sunbeam in October 1998 as President, International. Prior to joining Sunbeam, Mr. Hall held various positions with Revlon, Inc., most recently serving as Executive Vice President, Worldwide Sales and Marketing Development. Prior to joining Revlon, he spent six years with International Playtex Inc. in a variety of sales positions.

William L. Phillips serves as the President of Coleman's Outdoor Recreation division, and was Vice President and General Manager for the hard goods business of Coleman's Outdoor Recreation division until August 1998. From 1985 to 1998, Mr. Phillips held various positions in the sales and marketing area of Coleman, and has been with Coleman since 1978. Mr. Phillips' business address is The Coleman Company, Inc., 3600 North Hydraulic Street, P.O. Box 2931, Wichita, Kansas 67201.

Ronald R. Richter joined Sunbeam in March 1998 as Vice President and Treasurer. From July 1996 to March 1998, Mr. Richter was a Group Vice President at ABN AMRO NV, a Dutch multinational bank. Prior to that, he held various positions at Continental Bank and Bank of America since 1972 and was a Managing Director of Bank of America from 1992 until 1996.

Gwen C. Wisler was appointed Executive Vice President and Chief Financial Officer of Coleman in March 1999, President of Coleman's Eastpak division in July 1999, and was Senior Vice President and Chief Financial Officer from July 1998 to March 1999. Ms. Wisler was appointed Senior Vice President and Chief Financial Officer—Outdoor Leisure Group and International for Sunbeam in March 1999, and was Senior Vice President and Chief Financial Officer—Outdoor Leisure Group for Sunbeam from July 1998 to March 1999. Ms. Wisler joined Coleman in January 1997 as Vice President and Chief Financial Officer—International. Prior to that, Ms. Wisler was Vice President and Chief Accounting Officer for New World Communications Group Incorporated from February 1994 to January 1997, and Chief Financial Officer for Cobb Partners from May 1993 to February 1994.

Philip E. Beekman was elected to the Sunbeam board of directors in June 1999. Mr. Beekman is President of Owl Hollow Enterprises Inc., a position he has held since July 1994. From December 1986 to July 1994, he was Chairman and Chief Executive Officer of Hook SUPERX, a retail drug store chain. Mr. Beekman also is a member of the Boards of Directors of General Chemical Group, Inc., Linens 'N Things, Inc. and The Kendle Company.

Charles M. Elson has been a director of Sunbeam since his election to the Sunbeam board in September 1996. Mr. Elson was a director of Coleman from March 30, 1998 until June 24, 1998. Mr. Elson has been a Professor of Law at Stetson University College of Law since 1990 and serves as Of Counsel to the law firm of Holland & Knight (since May 1995). He was a Visiting Professor at the University of Maryland School of Law from August 1998 to December 1998. Mr. Elson is also a member of the American Law Institute and the Advisory Council and Commissions on Director Compensation, Director Professionalism, CEO Succession and Audit Committees of the National Association of Corporate Directors. He is trustee of Talledega College and a Salvatori-Fellow of the Heritage Foundation. Mr. Elson also is a director of Nuevo Energy Company. Mr. Elson's business address is Stetson University College of Law, 1401 61st Street South, St. Petersburg, Florida 33707.

Howard Gittis was elected to the Sunbeam board in June 1998. Mr. Gittis has been a director, Vice Chairman and Chief Administrative Officer of MacAndrews & Forbes and several of its affiliates since 1985. Mr. Gittis also is a member of the board of directors of Golden State Bancorp Inc., Golden State Holdings Inc., Jones Apparel Group, Inc., Loral Space & Communications Ltd., M & F Worldwide Corp., Panavision Inc., Revlon Consumer Products Corporation, Revlon, Inc., REV Holdings Inc. and Rutherford-Moran Oil Corporation.

John H. Klein was elected to the Sunbeam board in February 1999 and to the Coleman board in July 1999. Mr. Klein is Chairman and Chief Executive Officer of Bi-Logix, Inc. and Strategic Business and Technology Solutions LLC and Chairman of CyBear, positions he has held since mid-1998. From April 1996 to May 1998, he was Chairman and Chief Executive Officer of MIM Corporation, a provider of pharmacy benefit services to medical groups. Prior to that, he served as President of IVAX North American Multi-Source Pharmaceutical Group (from January 1995) and as President and Chief Executive Officer of Zenith Laboratories, a generic pharmaceutical manufacturer (from May 1989 to 1995).

Howard G. Kristol has been a director of Sunbeam since his election to the Sunbeam board in August 1996. Mr. Kristol has been a partner in the law firm of Reboul, MacMurray, Hewitt, Maynard & Kristol since 1976. Mr. Kristol's business address is Reboul, MacMurray, Hewitt, Maynard & Kristol, 45 Rockefeller Plaza, New York, New York 10111.

Peter A. Langerman has been a director of Sunbeam since 1990 and served as the Chairman of the Sunbeam board from May 1996 until July 1996 and from June 1998 until March 1999. Since November 1998, Mr. Langerman has been President and Chief Executive Officer of Franklin Mutual Advisers, Inc., a registered investment advisor and a wholly owned subsidiary of Franklin Resources, Inc., a diversified financial services organization. Previously, Mr. Langerman had (since November 1996) served as Senior Vice President and Chief Operating Officer of Franklin Mutual Advisers, Inc. Mr. Langerman was a Senior Vice President of Heine Securities Corporation, an investment advisory service company, from 1986 to November 1996, and a Vice President of Mutual Series Fund from 1988 until its acquisition by Franklin Resources, Inc. in 1996. He has been a director of Franklin Mutual Series Fund, Inc. (previously Mutual Series Fund Inc.) since 1988. Franklin Mutual Series Fund, Inc. is currently the Company's largest shareholder.

Mr. Langerman's business address is Franklin Mutual Advisers, Inc., 51 John F. Kennedy Parkway, Short Hills, New Jersey 07078.

A. *Whitman Marchand* was elected to the Coleman board in April 1999. Mr. Marchand was Managing Director and Group Head for the Special Loan Group of Bankers Trust Company from 1982 to 1998. Prior to 1982, Mr. Marchand held various positions within the national banking department at Bankers Trust, including head of the Real Estate Investment Trust Group. Mr. Marchand is also a member of the board of directors of RainTree Healthcare Corporation.

Faith Whittlesey has been a director of Sunbeam since her election to the Sunbeam board in December 1996. Mrs. Whittlesey has served as the Chief Executive Officer of the American Swiss Foundation, a charitable and educational foundation, since 1991. She is also a member of the board of directors of Valassis Communications, Inc., a publishing and printing company. Mrs. Whittlesey's business address is American Swiss Foundation, Charitable and Educational Foundation, 232 East 66th Street, New York, New York 10021.

Compensation of Sunbeam Directors

The Amended and Restated Sunbeam Corporation Stock Option Plan (the "Option Plan") provides that each director of Sunbeam who is not an employee of Sunbeam or an affiliate of Sunbeam ("Outside Directors"), is automatically granted 1,500 shares of restricted Sunbeam common stock upon his or her initial election or appointment to the Sunbeam board and upon each subsequent re-election to the Sunbeam board of directors (prorated in case of an election or appointment at any time other than at an annual meeting of stockholders). Such restricted Sunbeam common stock vests immediately upon the Outside Director's acceptance of his or her election or appointment.

In addition to the grant of restricted stock, effective as of June 29, 1999, Outside Directors are paid a \$10,000 annual retainer and \$1,000 for each meeting of the board of directors or its committees that they attend, whether in person or by telephone.

Sunbeam directors do not receive any other fees, but are reimbursed for all ordinary and necessary out-of-pocket expenses incurred by them in attending meetings of the Sunbeam board or its committees. Pursuant to Sunbeam's by-laws and Delaware law, Sunbeam is either providing a defense, or reimbursing certain current and former directors of Sunbeam for defense costs incurred by them, in connection with pending litigation against Sunbeam in which certain of such directors have been named as defendants. See "BUSINESS OF SUNBEAM—Litigation and Other Contingent Liabilities."

In addition to the foregoing, during 1998, the Chairman of the special committee of the Sunbeam board of directors, Mr. Kristol, was paid \$50,000 for his services on the committee and the other members of the committee (Messrs. Langerman and Elson and Mrs. Whittlesey) each were paid \$35,000 for their services on the committee.

Compensation of Sunbeam Executives

Summary Compensation Table

The following table sets forth for the years ended December 31, 1998, December 28, 1997 and December 29, 1996, the compensation for services rendered to Sunbeam in all capacities of those persons who, during 1998:

- (1) served as chief executive officer of Sunbeam;
- (2) were among the four most highly compensated executive officers of Sunbeam, other than the CEO, as of Sunbeam's fiscal year end; and
- (3) were among the four most highly compensated executive officers during 1998, but who were not executive officers of Sunbeam as of year end.

(Footnotes continued from previous page)

agreement provided that of the 100,000 shares of restricted Sunbeam common stock granted to him in 1996, 26,667 shares were canceled and the remaining 73,333 shares were fully vested. In addition, Mr. Kersh's 1998 employment agreement provided for the grant of 150,000 shares of restricted Sunbeam common stock of which 37,500 shares were to vest on grant and the remaining shares were to vest in equal increments on the first, second and third anniversary of the grant date if he remained employed by Sunbeam through such dates or upon the occurrence of certain events. Sunbeam is currently involved in disputes with Messrs. Dunlap and Kersh over some of the stock grants made to them. See "—Employment Agreement with Mr. Dunlap—Dispute with Mr. Dunlap" and "—Employment Agreements with Messrs. Kersh and Fannin—Dispute with Mr. Kersh" for information concerning disputes between Sunbeam and Messrs. Dunlap and Kersh over equity grants and other matters. Under Mr. Fannin's agreement with Sunbeam in connection with his termination, all unvested shares of restricted Sunbeam common stock granted to him in 1998 and held by him were canceled, leaving him with 14,883 shares of vested Sunbeam common stock, which were previously restricted. Dividends were paid on all restricted shares prior to Sunbeam's discontinuance of dividend payments in the second quarter of 1998. At December 31, 1998, none of the other Named Executives held restricted Sunbeam common stock.

- (3) The option grants to Messrs. Levin, Shapiro and Jenkins were provided for in their respective employment agreements.
- (4) For 1998, represents premiums paid by Sunbeam for term life insurance coverage for Messrs. Levin, Shapiro, Dunlap and Kersh and Ms. Kelley.
- (5) Includes \$82,616 for reimbursement of country club fees, the value of a Sunbeam-provided automobile, relocation expenses of \$37,560 and taxes paid by Sunbeam on the value of such relocation expenses.
- (6) Includes each of Mr. Jenkins's and Ms. Clark's salary from Coleman from the date of the acquisition of the MacAndrews & Forbes subsidiary's interest in Coleman by Sunbeam to their respective terminations of employment with Coleman and their respective salaries from Sunbeam, from the date of employment by Sunbeam. In the case of Mr. Jenkins, includes \$12,327 paid for accrued vacation in 1998 upon Mr. Jenkins' termination from employment with Coleman.
- (7) Includes the entire amount of bonuses paid to Mr. Jenkins and Ms. Clark in 1999 for services rendered to Coleman and Sunbeam during 1998.
- (8) Includes a car allowance, reimbursement of relocation expenses of \$37,692 and taxes paid by Sunbeam on such relocation payments.
- (9) Severance payments made to Mr. Jenkins in connection with the termination of his employment with Coleman.
- (10) Includes reimbursement of relocation expenses of \$64,506, taxes paid by Sunbeam on such relocation payments, a car allowance and bonuses of \$40,467 paid upon acceptance of employment with Sunbeam and relocation.
- (11) Includes 75,000 options granted to Ms. Clark during 1998 which were subsequently canceled in exchange for 50,000 options granted under Sunbeam's stock option repricing program.
- (12) For 1998, includes \$11,887,500 which represents the value of the 300,000 shares of Sunbeam common stock granted to Mr. Dunlap in connection with his 1998 employment agreement, based upon the closing market price on the grant date of \$39.625. Also includes \$51,923, \$115,385 and \$51,923 paid in 1998, 1997 and 1996, respectively, in lieu of vacation. See "—Employment Agreement with Mr. Dunlap—Dispute with Mr. Dunlap" for information concerning disputes between Sunbeam and Mr. Dunlap over equity grants and other matters.
- (13) For 1998, includes \$13,698,561 for taxes paid by Sunbeam on the value of the vesting of restricted Sunbeam common stock granted to Mr. Dunlap and other Sunbeam benefits, including health and dental

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care premiums, spouse travel costs and security costs, amounts reimbursed for financial and legal consulting services and the value of a Sunbeam-provided automobile. The 1997 and 1996 amounts include \$14,355 and \$17,250, respectively, for the value of a Sunbeam—provided automobile, \$115,665 and \$27,345, respectively, for taxes paid by Sunbeam on the value of such automobile and other Sunbeam—provided benefits, including financial consulting services, health and dental care premiums and membership in a country club and \$41,348 as reimbursement for financial planning services in 1997.

- (14) Sunbeam adopted an Executive Benefit Replacement Plan (the "Replacement Plan") in 1994 to restore the amount of benefits payable to certain highly compensated employees of Sunbeam who would otherwise be subject to certain limitations on the amount of benefits payable under Sunbeam's 401(k) Savings and Profit Sharing Plan. The Replacement Plan was terminated as of December 31, 1998. Amounts of "All Other Compensation" include amounts accrued for Messrs. Dunlap, Kersh and Fannin, respectively, in 1997 and 1996 under the Replacement Plan, including Sunbeam's profit sharing allocation. Each of Messrs. Dunlap, Kersh and Fannin was paid the amount of their respective accounts in the Replacement Plan in connection with the termination of their employment with Sunbeam. Does not include amounts which the 1998 employment agreements with Messrs. Dunlap and Kersh provided would be payable to them upon termination other than for "Cause," as defined in the respective employment agreements. Sunbeam has taken the position that such amounts are not payable by Sunbeam. See "*—Employment Agreement with Mr. Dunlap—Dispute with Mr. Dunlap*" and "*—Employment Agreements with Messrs. Kersh and Fannin—Dispute with Mr. Kersh*" for information concerning disputes between Sunbeam and Messrs. Dunlap and Kersh.
- (15) Includes \$61,298 paid in lieu of vacation. See "*—Employment Agreements with Messrs. Kersh and Fannin—Dispute with Mr. Kersh*" for information concerning disputes between Sunbeam and Mr. Kersh.
- (16) One-time bonus paid when Mr. Kersh's employment began.
- (17) For 1998, represents taxes paid by Sunbeam on the value of the vesting of restricted Sunbeam common stock granted to Mr. Kersh. For 1996, represents a discount on the purchase price of shares of Sunbeam common stock from Sunbeam in the amount of \$239,800 and premiums paid by Sunbeam for health and dental insurance coverage.
- (18) Includes \$77,808 paid in lieu of vacation for the years 1996, 1997 and 1998 in accordance with Mr. Fannin's termination agreement.
- (19) Represents taxes paid by Sunbeam on the value of the vesting of restricted Sunbeam common stock granted to Mr. Fannin.
- (20) All of these options have been canceled pursuant to Mr. Fannin's termination agreement.
- (21) Includes options awarded in exchange for the cancellation of certain outstanding options, a portion of which were granted in 1995. Shares underlying option grants previously made which were canceled in exchange for new option awards are also included.
- (22) Includes the following amounts payable under Mr. Fannin's termination agreement: (a) \$825,000 severance payment of which \$575,001 was paid in 1998 and the balance of which is payable in monthly installments of \$16,667; (b) consulting payments of \$250,000, of which \$41,667 was paid in 1998 and the balance of which is payable in monthly installments of \$13,889; (c) \$50,000 payable for the three year extension of Mr. Fannin's non-compete agreement, of which \$8,334 was paid in 1998 and the balance of which is payable in equal monthly installments of \$2,778; (d) \$7,785 for health and dental care premiums paid or payable, of which \$1,795 was paid in 1998; and (e) \$127,801, which represents the total amount of Mr. Fannin's account in the Replacement Plan. See "*—Subsequent Arrangements with Messrs. Dunlap, Kersh and Fannin.*"

Option Grants in Last Fiscal Year

The following table sets forth information with respect to the options to purchase shares of Sunbeam common stock granted to the Named Executives during 1998. The option grants made to Messrs. Levin, Shapiro and Jenkins were approved by Sunbeam's stockholders at Sunbeam's 1999 annual meeting of stockholders held on June 29, 1999. The option grants made to Messrs. Dunlap, Kersh and Fannin were approved by Sunbeam's stockholders at Sunbeam's 1998 annual meeting of stockholders held on May 12, 1998. All other option grants were made under the Option Plan. See "—Employment Agreement with Mr. Dunlap—Dispute with Mr. Dunlap" and "—Employment Agreements with Messrs. Kersh and Fannin—Dispute with Mr. Kersh" for information concerning disputes between Sunbeam and Messrs. Dunlap and Kersh over equity grants and other matters.

Name	Number of Securities Underlying Options Granted(1)	% of Total Options Granted to Employees in Fiscal Year	Exercise or Base Price (\$/Share)	Grant Date Market Price (\$/Share)	Expiration Date	Date Grant Value(8)
Officers						
Jerry W. Levin.....	1,750,000(2)	10.6%	\$ 7.00	\$ 6.88	8/11/2008	\$6,457,500
	500,000(2)	3.0%	10.50	6.88	8/11/2008	1,470,000
	500,000(2)	3.0%	14.00	6.88	8/11/2008	1,205,000
Paul E. Shapiro	600,000(2)	3.6%	7.00	6.88	8/11/2008	2,214,000
Bobby G. Jenkins	450,000(2)	2.7%	7.00	6.88	8/11/2008	1,660,500
Karen K. Clark	75,000(3)(4)	.5%	25.08	25.08	5/11/2008	906,750
	50,000(2)	.3%	7.00	7.50	8/30/2008	208,000
	50,000(2)	.3%	7.00	7.50	8/30/2008	208,000
Former Officers						
Albert J. Dunlap	3,750,000(5)	22.7%	36.85	36.85	2/01/2008	78,600,000
Russell J. Kersh	1,125,000(6)	6.8%	36.85	36.85	2/01/2008	23,580,000
David C. Fannin	750,000(6)	4.5%	36.85	36.85	2/01/2008	15,720,000
Janet G. Kelley	75,000	.5%	38.34	38.34	2/18/2008	1,296,000
	11,250	.1%	24.03	24.03	5/18/2008	129,375
	60,000(7)	.4%	7.00	5.94	12/15/2008	161,800

- (1) All options have a term of ten years from their respective grant dates.
- (2) These options become exercisable at a predetermined date as specified in the employees' respective employment agreements. See "—Employment Agreement with Mr. Levin—Equity Grants" and "—Employment Agreements with Executives Shapiro, Jenkins and Clark—Equity Grants."
- (3) These options become exercisable over three years in equal annual increments commencing on the first anniversary of the grant date.
- (4) These options have been canceled in exchange for one of the grants of 50,000 options set forth in the table above.
- (5) Mr. Dunlap's employment agreement provided that one-third of these options vested as of the grant date and that an additional one-third of such options were to vest on each of the first and second anniversaries of the grant dates.
- (6) The options granted to Messrs. Kersh and Fannin provided for vesting in equal installments on the grant date and the first, second and third anniversaries of the grant date. The entire option grant to Mr. Fannin was canceled upon the termination of his employment by mutual agreement.
- (7) These options became fully exercisable on June 13, 1999 in connection with Ms. Kelley's resignation from Sunbeam. At the same time, Ms. Kelley forfeited 68,583 exercisable options having exercise prices ranging from \$20.30 per share to \$38.34 per share.

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(B) Grant date values were calculated using the Black-Scholes options pricing model which has been adjusted to take dividends into account for the period prior to announced discontinuance of dividends. Use of this model should not be viewed in any way as a forecast of the future performance of the common stock. The estimated present value of each stock option as set forth above is based on the following inputs:

Valuation Dates	2/01/98	2/19/98	5/12/98	5/19/98	8/12/98	8/31/98	12/16/98
Risk Free Interest Rate	5.51%	5.57%	5.79%	5.72%	5.37%	4.95%	4.60%
Stock Price Volatility	36.10%	36.00%	40.30%	40.30%	49.60%	49.80%	52.80%
Dividend Yield	0.10%	0.10%	0.20%	0.20%	0.00%	0.00%	0.00%

The model assumes: (a) an expected option term of six years; (b) a risk-free interest rate based on closing six-year U.S. Treasury strip yield on the date of valuation; and (c) no forfeitures. Stock price volatility is calculated using weekly stock prices for a period of five years ended as of the valuation date and believed to reflect volatility in the absence of unusual corporate transactions. Notwithstanding the fact that these options are, with limited exceptions, non-transferable, no discount for lack of marketability was taken.

Aggregated Option Exercises in Last Fiscal Year and Fiscal Year-End Option Values

The following table sets forth information with respect to option exercises occurring during 1998 and the number of options held by the Named Executives at Sunbeam's fiscal year end. The option grants to Messrs. Levin, Shapiro and Jenkins were approved by Sunbeam's stockholders at Sunbeam's 1999 annual meeting of stockholders held on June 29, 1999. Sunbeam and Messrs. Dunlap and Kersh are disputing the amounts and benefits paid and payable to each of them under their respective employment agreements, and Sunbeam is contesting the validity of options granted to them. The following table includes the entire amount of the options granted by Sunbeam which Messrs. Dunlap and Kersh assert are vested. See "—Employment Agreement with Mr. Dunlap—Dispute with Mr. Dunlap" and "—Employment Agreement with Messrs. Kersh and Fannin—Dispute with Mr. Kersh" for information concerning disputes between Sunbeam and Messrs. Dunlap and Kersh over equity grants and other matters.

Name	Shares Acquired on Exercise	Value Realized	Number of Securities Underlying Unexercised Options Held at December 31, 1998		Value of Unexercised In-the-Money Options at December 31, 1998(1)	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Officers						
Jerry W. Levin	0	0	0	2,750,000	0	0
Paul E. Shapiro	0	0	0	600,000	0	0
Bobby G. Jenkins	0	0	0	450,000	0	0
Karen K. Clark	0	0	0	100,000	0	0
Former Officers						
Albert J. Dunlap	0	0	6,250,000	0	0	0
Russell A. Kersh	0	0	1,625,000	0	0	0
David C. Fannin	0	0	200,000	0	0	0
Janet G. Kelley	0	0	52,766	173,484	0	0

Employment Agreement with Mr. Levin

On August 12, 1998, Sunbeam entered into an employment agreement with Mr. Levin (the "Levin Agreement") in which Sunbeam has agreed to employ Mr. Levin as Chief Executive Officer, and Mr. Levin has agreed to serve in such capacity, for an initial period ending June 14, 2001.

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Compensation

Under the Levin Agreement, Mr. Levin will be paid a base salary at an annual rate of not less than \$1,000,000. Effective April 1, 1999, Mr. Levin's base compensation was increased to \$1,150,000. Additionally, Mr. Levin was paid a guaranteed bonus for 1998 of \$541,667 and, thereafter, is eligible to receive a performance-based target annual bonus of 100% of his base salary and, if specified performance objectives are met, up to a bonus of 200% of his base salary under Sunbeam's incentive plan subject to a maximum award of \$2,000,000. Mr. Levin participates in the other benefit plans available generally to employees or other senior executives of Sunbeam. Sunbeam also reimburses Mr. Levin for the cost of membership in a country club.

Equity Grants

Mr. Levin received grants effective as of August 12, 1998 of options to purchase 1,750,000 shares of Sunbeam common stock at a price of \$7.00 per share; 500,000 shares of Sunbeam common stock at a price of \$14.00 per share; and 500,000 shares of Sunbeam common stock at a price of \$10.50 per share (the "Levin Options"). The term of each of the Levin Options is ten years, and they will vest and become exercisable in full on June 14, 2001 if Mr. Levin remains employed by Sunbeam as of such date. In addition, effective March 29, 1999, Mr. Levin received grants of options under the Option Plan to purchase 250,000 shares of Sunbeam common stock at \$5.57 per share. These options will vest equally on the first, second and third anniversaries of the grant date. Upon the occurrence of a "Change in Control" of Sunbeam as defined in the Option Plan, all of the options granted to Mr. Levin will vest in full.

Termination and Change in Control Provisions

Sunbeam may terminate Mr. Levin's employment under the Levin Agreement due to his disability, or for Cause. As defined in the Levin Agreement, "Cause" means (1) gross neglect of his duties, (2) his conviction for a felony or any lesser crime or offense involving the property of Sunbeam, (3) willful misconduct in connection with the performance of any material portion of his duties, (4) willful breach of any material provision of the Levin Agreement, or (5) any conduct on Mr. Levin's part which would make his continued employment materially prejudicial to the best interests of Sunbeam. In addition, he may terminate his employment following a Company Breach upon 60 days' written notice to Sunbeam. As defined in the Levin Agreement, "Company Breach" means (1) any material breach of the Levin Agreement by Sunbeam, including the failure to obtain stockholder approval of the grant of the Levin Options, or (2) a "Change in Control" of Sunbeam, as defined in the Levin Agreement.

The Levin Agreement provides that, if Sunbeam terminates Mr. Levin's employment for Cause or if he voluntarily terminates his employment, all obligations, other than accrued obligations, of Sunbeam will cease and all unvested Levin Options will be immediately forfeited. If a Company Breach occurs, and Mr. Levin terminates the Levin Agreement, Sunbeam is obligated to continue to pay Mr. Levin's base salary and target bonus for the balance of the term and continue his benefits until his reemployment. In addition, all of the Levin Options vest and remain exercisable for three years.

The Levin Agreement provides that, if Mr. Levin's employment is terminated due to his death or his continued disability for six months, his legal representatives or designated beneficiary, or Mr. Levin, will receive continued payments in an amount equal to 60% of base salary until the longer of 12 months or the end of the term in effect at the time of his death or termination due to disability. The Levin Options will become vested and remain exercisable for three years thereafter.

Employment Agreements with Executives Shapiro, Jenkins and Clark

Sunbeam entered into employment agreements with Messrs. Shapiro and Jenkins and Ms. Clark in August 1998. Messrs. Shapiro and Jenkins and Ms. Clark are referred to as the "Executives." The agreements with Messrs. Shapiro and Jenkins are for an initial period of approximately three years ending on June 14, 2001; and the agreement with Ms. Clark has a term ending on June 14, 2000. The Executives' agreements are referred to individually as an "Executive Agreement" and collectively as the "Executive Agreements."

Compensation

Under the Executive Agreements, Messrs. Shapiro and Jenkins and Ms. Clark will be paid a base salary at annual rates not less than \$600,000, \$365,000 and \$270,000, respectively. Effective April 1, 1999, the annual base salary for each of Messrs. Shapiro and Jenkins was increased to \$750,000 and \$425,000, respectively. Effective June 1, 1999, the annual base salary of Ms. Clark was increased to \$297,000. Additionally, under the Executive Agreements, Messrs. Shapiro and Jenkins and Ms. Clark were paid a guaranteed bonus for 1998 equal to \$243,750, \$118,625 and \$73,125, respectively, and, thereafter, are eligible to receive a performance-based annual target bonus equal to 75%, 60% and 50% of their respective annual salaries. The Executives also participate in the other benefit plans available generally to employees or other senior executives of Sunbeam.

Equity Grants

Under the Executive Agreements, Messrs. Shapiro and Jenkins and Ms. Clark also received grants effective as of June 15, 1998, June 15, 1998 and August 31, 1998, respectively, of options to purchase 600,000 shares, 450,000 shares and 50,000 shares, respectively, of Sunbeam common stock at a price of \$7.00 per share (the "Executive Options"). The term of each of the Executive Options is ten years, and they will vest and become exercisable in full on June 14, 2001, June 14, 2001 and June 14, 2000, respectively, if the Executive remains employed as of such date. Mr. Jenkins was also granted an option, effective March 29, 1999, to acquire 100,000 shares of Sunbeam common stock at a purchase price of \$5.57 per share. This option will vest in equal increments on the first, second and third anniversaries of the grant date. Upon the occurrence of a "Change in Control" of Sunbeam, as defined in the Option Plan, the Executive Options will vest in full. In addition, under her employment agreement, Ms. Clark exchanged 75,000 options she had previously received upon joining Sunbeam for 50,000 options with an exercise price of \$7.00 per share, as part of Sunbeam's option exchange program.

Termination and Change in Control Provisions

Sunbeam may terminate an Executive's employment under his or her Executive Agreement due to disability, or for Cause. As defined in the Executive Agreements, "Cause" means (1) gross neglect of duties, (2) conviction for a felony or any lesser crime or offense involving the property of Sunbeam, (3) willful misconduct in connection with the performance of any material portion of the Executive's duties, (4) willful breach of any material provision of the agreement by Executive, or (5) any conduct on the Executive's part which would make continued employment materially prejudicial to the best interests of Sunbeam. The Executive may terminate his or her employment under the Executive Agreement at any time. In addition, he or she may terminate his or her employment for Company Breach upon 60 days' written notice to Sunbeam. As defined in the Executive Agreements, "Company Breach" means any material breach of the Executive Agreement by Sunbeam. In the case of the agreements with Messrs. Shapiro and Jenkins, a material breach includes the failure to obtain stockholder approval of the grants of the Executive Options to Messrs. Shapiro and Jenkins and a "Change of Control" of Sunbeam, as defined in their respective Executive Agreements.

The Executive Agreements provide that, if Sunbeam terminates an Executive's employment for Cause or if the Executive voluntarily terminates his or her employment, all obligations, other than accrued obligations of Sunbeam will cease and all unvested Executive Options shall be immediately forfeited. If a Company Breach occurs, and an Executive terminates his or her Executive Agreement, Sunbeam is obligated to continue to pay the Executive's base salary and target bonus for the balance of the term and continue the Executive's benefits until his reemployment. In addition, all of the Executive Options will vest and remain exercisable for three years.

The Executive Agreements provide that, if an Executive's employment is terminated due to death, his or her legal representatives or designated beneficiary will receive continued payments in an amount equal to 60% of base salary until the longer of 12 months or the end of the term in effect at the time of death. Upon an Executive's death, the Executive Options will be vested upon such death and will remain exercisable for three years thereafter.

Employment Agreement with Mr. Dunlap

As of February 1, 1998, Sunbeam entered into an employment agreement with Mr. Dunlap (the "Dunlap Agreement") in which Sunbeam agreed to continue to employ Mr. Dunlap as Chairman of the board of directors and Chief Executive Officer, and Mr. Dunlap agreed to serve in such capacities, for a period of three years ending January 31, 2001, and for successive one-year renewal periods unless advance notice of termination was given by either party by no later than August 1 of the immediately preceding year. The Dunlap Agreement was not renewable beyond January 31, 2003. The Dunlap Agreement replaced and superseded Mr. Dunlap's prior employment agreement.

Dispute with Mr. Dunlap. On June 13, 1998, the Sunbeam board of directors removed Mr. Dunlap as Chairman and Chief Executive Officer. The Sunbeam board took this step because Sunbeam's outside directors had lost confidence in Mr. Dunlap's leadership. Mr. Dunlap has asserted that Sunbeam terminated his employment without cause in breach of the Dunlap Agreement, and Sunbeam is vigorously contesting these claims, including claims regarding the validity of grants of Sunbeam common stock and stock options to him. Nothing in this prospectus should be construed to support his claims or to limit or otherwise affect Sunbeam's claims against Mr. Dunlap, including claims with respect to his entitlement to equity grants.

Compensation. Under the Dunlap Agreement, Mr. Dunlap was to be paid a base salary at an annual rate of \$2,000,000. Sunbeam could increase Mr. Dunlap's base salary, but could not reduce it after any such increase. Mr. Dunlap was eligible to participate in the other benefit plans available generally to employees or other senior executives of Sunbeam. However, he was not eligible to participate in any incentive plan of Sunbeam. Sunbeam also provided Mr. Dunlap with various perquisites on a grossed-up basis. Upon Mr. Dunlap's termination, he did not receive any compensation from Sunbeam. Sunbeam subsequently agreed to pay \$52,000 of the accrued vacation and employment benefits of Mr. Dunlap as part of a six-month agreement with Mr. Dunlap in which the parties agreed not to assert claims against each other and to exchange information relating to the pending stockholder lawsuits.

Equity Grants. The Dunlap Agreement provided that all of Mr. Dunlap's then outstanding options to purchase shares of Sunbeam common stock, which were granted under Mr. Dunlap's prior employment agreement, vested as of February 20, 1998; 40% of Mr. Dunlap's shares of restricted Sunbeam common stock were canceled as of such date; and all of Mr. Dunlap's remaining shares of restricted Sunbeam common stock vested as of such date. The Dunlap Agreement also provided that Sunbeam reimburse Mr. Dunlap on a grossed-up basis with respect to any income tax assessed in connection with the vesting of such shares of restricted Sunbeam common stock.

Mr. Dunlap received a grant as of February 1, 1998 of 300,000 shares of Sunbeam common stock. Mr. Dunlap also received a grant effective as of February 1, 1998 of options to purchase 3,750,000 shares of Sunbeam common stock at a price of \$36.85 per share (the "Dunlap Options"), which grant was approved by Sunbeam's stockholders at the 1998 annual meeting. The Dunlap Options provided for a term of ten years, and for vesting with respect to one-third of the shares subject thereto on the grant date and for an additional one-third to vest on each of the first and second anniversaries of the grant date if Mr. Dunlap had remained employed by Sunbeam. The Dunlap Agreement provided that upon the occurrence of a "Change in Control" of Sunbeam, as defined in the Option Plan, the Dunlap Options would have vested in full.

Termination and Change in Control Provisions. The Dunlap Agreement provided that Sunbeam could terminate Mr. Dunlap's employment at any time, or due to his disability, or for Cause. The Dunlap Agreement defined "Cause" to mean (1) willful failure substantially to perform Mr. Dunlap's duties under the Dunlap Agreement, except if such failure results from disability, or (2) his conviction for a felony or a plea of guilty or no contest thereto.

The Dunlap Agreement provided that, if Sunbeam terminated Mr. Dunlap's employment other than for Cause and not due to his disability, or if he terminated his employment for a "Good Reason," as defined in the Dunlap Agreement:

(1) he would receive as liquidated damages a lump sum payment in an amount equal to the base salary that would have been payable through the period ending January 31, 2001, or any then applicable renewal period;

(2) the Dunlap Options would become fully vested, and he would be entitled to exercise the Dunlap Options as well as previously granted options for the balance of their original ten-year term; and

(3) he would be entitled to continue participating in the employee benefit plans in which he had been entitled to participate before termination, for three years after termination, or to receive substantially equivalent benefits.

The Dunlap Agreement provided that, if Sunbeam terminated Mr. Dunlap's employment for Cause or if he terminated his employment other than for Good Reason, all obligations, other than accrued obligations, of Sunbeam would cease, except that Mr. Dunlap would be able to exercise the Dunlap Options as well as previously granted options which were exercisable on the date of termination within 90 days, if the termination were for Cause, and within one year, if it were by Mr. Dunlap without Good Reason.

In addition, the Dunlap Agreement provided that Mr. Dunlap would be entitled to receive a gross-up with respect to any excise tax applicable under the Internal Revenue Code of 1986, as amended, to "excess parachute payments."

Employment Agreements with Messrs. Kersh And Fannin

Sunbeam entered into employment agreements with each of Messrs. Kersh and Fannin as of February 1, 1998. Messrs. Kersh and Fannin are referred to herein as the "Prior Executives." The employment agreements with Messrs. Kersh and Fannin had terms ending on January 31, 2001. The employment agreements with Messrs. Kersh and Fannin (referred to individually as a "Prior Executive Agreement" and collectively as the "Prior Executive Agreements") replaced and superseded their respective previous employment agreements with Sunbeam.

Dispute with Mr. Kersh. On June 16, 1998, the Sunbeam board of directors terminated Mr. Kersh as Vice Chairman and Chief Financial Officer. Mr. Kersh has asserted that Sunbeam terminated his employment without cause in breach of his Prior Executive Agreement, and Sunbeam is vigorously contesting these claims, including claims regarding the validity of grants of restricted Sunbeam common stock and options to him. Nothing in this prospectus should be construed to support his claims or to limit or otherwise affect Sunbeam's claims against Mr. Kersh, including claims with respect to his entitlement to equity grants.

Compensation. Under their respective Prior Executive Agreements, Messrs. Kersh and Fannin were each to be paid a base salary at annual rates of \$875,000 and \$595,000, respectively. The Prior Executives were also eligible to participate in those benefit plans available generally to employees or other senior executives of Sunbeam. However, the Prior Executives were not eligible to participate in any cash incentive plan of Sunbeam. Upon Mr. Kersh's termination, he did not receive any compensation from Sunbeam. Sunbeam subsequently agreed to pay \$68,000 of the accrued vacation and employment benefits of Mr. Kersh as part of a six-month agreement with Mr. Kersh in which the parties agreed not to assert claims against each other and to exchange information relating to the pending stockholder lawsuits.

Equity Grants. The Prior Executive Agreements provided that all of Mr. Kersh's then outstanding options to acquire shares of Sunbeam common stock, which were granted under Mr. Kersh's previous employment agreement, and all of Mr. Fannin's then outstanding options to acquire shares of Sunbeam common stock vested as of February 20, 1998; 40% of each of Mr. Kersh's and Mr. Fannin's shares of restricted Sunbeam common stock were canceled as of such date; and all of Mr. Kersh's and Mr. Fannin's remaining shares of restricted Sunbeam common stock vested as of such date. The Prior Executive Agreements provided that Sunbeam was to reimburse Messrs. Kersh and Fannin on a grossed-up basis with respect to any income tax assessed in connection with the vesting of such shares of restricted Sunbeam common stock.

As of February 1, 1998, Messrs. Kersh and Fannin each received a grant of 150,000 and 30,000 shares of restricted Sunbeam common stock (the "Prior Executive Restricted Shares"), respectively. These Prior Executive Restricted Shares provided for vesting in four equal installments on each of February 1, 1998 and the first, second and third anniversaries of February 1, 1998. Messrs. Kersh and Fannin also received grants, effective as of February 1, 1998, of options to purchase 1,125,000 and 750,000 shares of Sunbeam common stock, respectively, at a price of \$36.85 per share which were approved by Sunbeam's stockholders at the 1998 annual meeting (the "Prior Executive Options"). These Prior Executive Options provided for vesting in

four equal installments on the grant date of February 1, 1998 and the first, second and third anniversaries of February 1, 1998.

Termination and Change in Control Provisions. The Prior Executive Agreements with Messrs. Kersh and Fannin provided that Sunbeam may terminate either Prior Executive's employment at any time, or due to the Prior Executive's disability, or for "Cause," as defined in the Prior Executive Agreement.

Each Prior Executive Agreement provided that, if Sunbeam terminated the Prior Executive's employment other than for Cause and not due to his disability, or if the Prior Executive terminated his employment for "Good Reason," as defined in the Prior Executive Agreements, or following a "Change in Control," as defined in the Prior Executive Agreements:

(1) such Prior Executive would receive as liquidated damages a lump sum payment in an amount equal to the base salary that would have been payable to him through the end of the employment term;

(2) the Options and Executive Restricted Shares granted to such Prior Executive would become fully vested, and the Prior Executive will be entitled to exercise his Prior Executive Options and previously granted options for the balance of their original ten-year term; and

(3) the Prior Executive would be entitled to continue participating in the employee benefit plans in which he had been entitled to participate before termination, through the end of the employment term, or to receive substantially equivalent benefits.

Each Prior Executive Agreement provided that if Sunbeam terminated the Prior Executive's employment for Cause or if the Prior Executive terminated his employment other than for Good Reason or following a Change in Control, all obligations, other than accrued obligations, of Sunbeam would cease, except that such Prior Executive would be able to exercise Prior Executive Options and previously granted options granted to him which were exercisable on the date of termination or within 90 days thereof, if the termination were for Cause, and within one year thereof, if the termination were by the Executive other than for Good Reason or following a Change in Control.

In addition, each Prior Executive Agreement provided that the Prior Executive would be entitled to receive a gross-up with respect to any excise tax applicable under the Internal Revenue Code to "excess parachute payments."

Employment Agreement with Ms. Kelley

Sunbeam entered into an employment agreement with Ms. Kelley in December 1998. The agreement had an initial term extending until December 31, 2000, but expired upon her resignation from employment effective May 31, 1999. In 1999, while this agreement was in effect, Ms. Kelley's annual base salary rate was \$275,000. In addition, Ms. Kelley was paid a guaranteed bonus of \$112,500 for 1998. Under the agreement, Ms. Kelley received a grant effective as of December 16, 1998 of options to purchase 60,000 shares of common stock at a price of \$7.00 per share.

Ms. Kelley's agreement provided that if Sunbeam terminated her employment for Cause (as defined in Ms. Kelley's agreement) or if she voluntarily terminated her employment, all obligations of Sunbeam, other than accrued obligations, would cease and all unvested stock options would be immediately forfeited. If a Company Breach (as defined in Ms. Kelley's agreement) occurred, and Ms. Kelley terminated her employment, under the agreement, Sunbeam was obligated to pay Ms. Kelley's base salary and target bonus for the balance of the term and continue her benefits until her reemployment. In addition, all of Ms. Kelley's options would have vested and remained exercisable for three years.

In connection with her resignation, the options to purchase 60,000 shares of common stock at \$7.00 per share were made fully exercisable on June 13, 1999 in exchange for the forfeiture by Ms. Kelley of 68,583 exercisable options having exercise prices ranging from \$20.30 per share to \$38.34 per share.

Subsequent Arrangements with Messrs. Dunlap, Kersh and Fannin

In early August 1998, Sunbeam entered into a six-month agreement with Messrs. Dunlap and Kersh in which all parties agreed not to assert claims against each other and to exchange information relating to the various lawsuits in which Sunbeam and Messrs. Dunlap Kersh are named as defendants. Sunbeam also agreed

to pay, and has paid, to Messrs. Dunlap and Kersh amounts related to accrued vacation and employment benefits and to advance litigation defense costs subject to the receipt of an undertaking from each of them, which Sunbeam has received, to repay all amounts so advanced if it is determined that they did not meet the applicable standard of conduct for indemnification under Delaware law. This agreement has expired and Messrs. Dunlap and Kersh have commenced an arbitration action against Sunbeam claiming recovery of amounts they allege are payable to them under their agreements. Sunbeam is vigorously contesting these claims and is seeking the return of all amounts they received under their February 1998 employment agreements. Messrs. Dunlap and Kersh have obtained an order from the Court of Chancery of the State of Delaware requiring Sunbeam to advance reasonable litigation defense costs to each of them.

In connection with the termination of Mr. Fannin's employment by mutual agreement, Sunbeam entered into an agreement with him providing that, under the terms of his employment agreement and in consideration of the execution of the agreement, including a release and covenant not to sue contained therein, he would receive the following payments, all subject to applicable withholding taxes:

(a) \$825,000 in severance payments, of which \$575,001 was paid in 1998 and the balance of which is payable in monthly installments of \$16,667;

(b) consulting payments of \$250,000 of which \$41,667 was paid in 1998 and the balance of which is payable in monthly installments of \$13,889; and

(c) \$50,000 payable for the three year extension of Mr. Fannin's non-compete agreement, of which \$8,334 was paid in 1998 and the balance of which is payable in equal monthly installments of \$2,778.

In addition, Mr. Fannin received the value of his accrued vacation for 1996, 1997 and 1998, continuation of health, dental and life insurance coverage, on the same basis as prior to termination of employment for an additional 18 months or until his earlier employment providing such benefits. The termination agreement with Mr. Fannin also provided for a three-year term for his outstanding vested stock options, confirmed the amount of his unrestricted Sunbeam common stock grants and provided for the mutually agreed cancellation of all other equity awards.

Other Transactions

Settlement of Claims; Issuance of Warrant

On August 12, 1998, Sunbeam announced that, following investigation and negotiation conducted by a special committee of the Sunbeam board of directors, consisting of four outside directors not affiliated with MacAndrews & Forbes, Sunbeam had entered into the settlement agreement with the MacAndrews & Forbes subsidiary from which Sunbeam had acquired a controlling interest in Coleman in March 1998. Under the settlement agreement, Sunbeam was released from threatened claims arising from that acquisition, and MacAndrews & Forbes agreed to provide management personnel and assistance to Sunbeam, in exchange for the issuance to the MacAndrews & Forbes subsidiary of a warrant expiring August 24, 2003 to purchase 23 million shares of Sunbeam common stock at an exercise price of \$7 per share, subject to anti-dilution provisions.

Services Provided by MacAndrews & Forbes

Under the settlement agreement referred to in the previous paragraph, in addition to making the services of Messrs. Levin, Shapiro and Jenkins available to Sunbeam, MacAndrews & Forbes agreed to provide management assistance to Sunbeam with respect to specified matters. Sunbeam does not reimburse MacAndrews & Forbes for these services or for expenses incurred in providing these services to Sunbeam, other than reimbursement of out-of-pocket expenses paid to third parties. Execution of the settlement agreement was a condition to Sunbeam's continued employment of Messrs. Levin, Shapiro and Jenkins as officers of Sunbeam.

Registration Rights

Sunbeam and the MacAndrews & Forbes subsidiary which sold Sunbeam its controlling interest in Coleman have entered into a registration rights agreement. Under the registration rights agreement, the MacAndrews & Forbes subsidiary can require Sunbeam to register under the federal and applicable state

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securities laws the shares of Sunbeam common stock the subsidiary received when it sold its controlling interest in Coleman to Sunbeam. Sunbeam has also agreed to permit former affiliates of Coleman that received Sunbeam common stock in the March 1988 acquisition to join the MacAndrews & Forbes subsidiary in any registration of the subsidiary's shares of Sunbeam common stock.

The registration rights agreement was amended in August 1998 to permit the MacAndrews & Forbes subsidiary to require Sunbeam to also register (1) the warrant issued to it by Sunbeam under its settlement agreement with Sunbeam and (2) the shares of Sunbeam common stock issuable upon exercise of the warrant.

Settlement of Coleman Options

Under Sunbeam's agreement providing for the merger, the unexercised options under Coleman's stock option plans will be cashed out at a price per share equal to the difference between \$27.50 and the exercise price of the options. Ronald O. Perelman, the sole stockholder of MacAndrews & Forbes, holds 500,000 options for which he will receive a net payment of \$6,750,000 upon completion of the merger. Messrs. Shapiro and Isko and Ms. Clark, executive officers of Sunbeam, hold 77,500, 20,000 and 25,000 options, respectively, for which they will receive net payments of \$823,000, \$226,099 and \$275,005, respectively.

Arrangements with Coleman

Coleman and a subsidiary of MacAndrews & Forbes are parties to a cross-indemnification agreement in which Coleman has agreed to indemnify the subsidiary, its officers, directors, employees, control persons, agents and representatives against all past, present and future liabilities, including product liability and environmental matters, related to the initial assets of Coleman, which Coleman acquired from such affiliate in December 1991. In addition, under this cross-indemnification agreement, the MacAndrews & Forbes subsidiary has agreed to indemnify Coleman and its officers, directors, employees, agents and representatives against all other liabilities of this MacAndrews & Forbes subsidiary or any of its subsidiaries, including liabilities relating to the assets it did not transfer to Coleman in December 1991. This cross-indemnification agreement will survive the merger.

Coleman previously was included in the consolidated tax group for the MacAndrews & Forbes companies and was a party to a tax sharing agreement with a MacAndrews & Forbes subsidiary, under which Coleman paid to this subsidiary the amount of taxes which would have been paid by Coleman if it were required to file separate Federal, state or local income tax returns. The obligations of MacAndrews & Forbes under the tax sharing agreement were terminated when Sunbeam bought a controlling interest in Coleman in March 1998. As described under the section titled "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Acquisition of Coleman Preferred Stock," one of Sunbeam's wholly owned subsidiaries recently acquired shares of a newly created series of Coleman voting preferred stock. These shares were created and purchased in order to enable Sunbeam and Coleman to file consolidated federal income tax returns prior to the completion of the merger. In connection with the acquisition of these shares, Sunbeam entered into a tax sharing agreement with Coleman pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had Coleman not been included in the consolidated income tax return of Sunbeam.

Office Space

During 1998, Sunbeam sublet office space in New York City from an affiliate of MacAndrews & Forbes. The expense for such rent during 1998 was approximately \$130,000. The lease was terminated in 1999.

Employment of Law Firms

Sunbeam employed the law firms of Reboul, MacMurray, Hewitt, Maynard and Kristol, of which Mr. Kristol is a partner, and Holland & Knight, of which Mr. Elson is Of Counsel, to perform some legal services for Sunbeam during 1998. The total fees paid to these firms during 1998 were less than \$20,000. Neither Mr. Kristol nor Mr. Elson was involved in the provision of legal services to Sunbeam.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS

The following table shows, with respect to beneficial ownership of the Sunbeam common stock by all persons known by Sunbeam to be the record or beneficial owner of more than 5% of the outstanding common stock, the number of shares of Sunbeam common stock owned by each such person or group as of December 3, 1999, the percentage of the outstanding Sunbeam common stock those holdings represented on that date, and the percentage of the outstanding Sunbeam common stock that those holdings will represent after the merger.

Name	Amount and Nature of Beneficial Ownership	Percentage of Sunbeam Common Stock Prior to Merger	Percentage of Sunbeam Common Stock After Merger(5)
Ronald O. Perelman	37,099,749(1)	29.9%(1)	28.4%
Franklin Mutual Advisers, Inc	17,541,398(2)	17.4%	16.3%
Albert J. Dunlap	7,741,564(3)	7.2%(3)	6.8%
Invista Capital Management, LLC/Principal Mutual Holding Company	7,440,200(4)	7.4%	6.9%

- (1) Represents shares of Sunbeam common stock received by a subsidiary of MacAndrews & Forbes in the M&F Transaction and 23 million shares of Sunbeam common stock which may be acquired by MacAndrews & Forbes pursuant to the warrant issued to it by Sunbeam. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Settlement of Claims Relating to the M&F Transaction." The address of Coleman (Parent) Holdings is 35 E. 62nd Street, New York, New York 10021. Ronald O. Perelman is the indirect beneficial owner of all of the outstanding capital stock of Coleman (Parent) Holdings. Accordingly, Mr. Perelman may be deemed to be the beneficial owner of all of the shares of Sunbeam common stock owned by Parent Holdings. Mr. Perelman's address is 35 E. 62nd Street, New York, New York 10021.
- (2) Information reflected in this table and the notes thereto with respect to Franklin Mutual Advisers is derived from the Schedule 13D, dated November 1, 1996, filed by Franklin Mutual Advisers or its predecessors with the SEC, as thereafter amended, most recently on March 1, 1999. The address of Franklin Mutual Advisers is 51 John F. Kennedy Parkway, Short Hills, New Jersey 07078. The shares listed above are beneficially owned by one or more open-end investment companies or other managed accounts which, pursuant to advisory contracts, are advised by Franklin Mutual Advisers. Franklin Mutual Advisers disclaims beneficial ownership of these shares.
- (3) Information reflected in this table and the notes thereto with respect to Mr. Dunlap is based upon filings made by him with the SEC. Mr. Dunlap's holdings include certain stock grants for 1,166,667 shares and options to acquire an additional 6,250,000 shares of Sunbeam common stock granted by Sunbeam which are a matter of dispute between Sunbeam and Mr. Dunlap. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Matters Involving Former Management."
- (4) Information reflected in this table and the notes thereto with respect to Invista Capital Management and Principal Mutual Holding Company is derived from the Form 13G jointly filed with the SEC by Invista and Principal on February 16, 1999. The address of Invista Capital Management is 1900 Hub Tower, 699 Walnut Street, Des Moines, Iowa 50392. Invista Capital Management and Principal Mutual Holding Company exercise shared voting power and investment discretion with respect to all of the shares of Sunbeam common stock beneficially owned by them.
- (5) Assumes (1) the issuance by Sunbeam in the merger of 6,676,135 shares of Sunbeam common stock, (2) the issuance of 23 million shares of Sunbeam common stock to a MacAndrews & Forbes subsidiary upon exercise of the warrant issued in connection with the settlement of threatened legal claims relating to the M&F Transaction, (3) the issuance of about 4.98 million shares of Sunbeam common stock to Coleman minority stockholders upon the exercise of warrants issued in connection with the settlement of litigation relating to the merger and (4) no further issuances of Sunbeam common stock (whether by exercise of Sunbeam employee stock options or otherwise) prior to the completion of the merger.

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SECURITY OWNERSHIP OF MANAGEMENT

The following table sets forth the beneficial ownership, reported to Sunbeam as of December 3, 1999, of Sunbeam common stock, including shares as to which a right to acquire ownership exists, of: (1) each director of Sunbeam; (2) each of the Named Executives; and (3) the directors and current executive officers of Sunbeam as a group. In addition, the following table sets forth, as of December 3, 1999, the beneficial ownership of three former directors and two former Named Executives, based on information filed by them with the SEC and available to the public. With respect to (1) each current director of Sunbeam and (2) all directors and officers of Sunbeam as a group, the following table also shows the percentage of the outstanding Sunbeam common stock which such person's or group's holdings will represent after the merger.

Name	Amount and Nature of Beneficial Ownership(1)	Percentage of Sunbeam Common Stock Prior to Merger(2)	Percentage of Sunbeam Common Stock After Merger(3)
Directors			
Philip E. Beekman	1,500(3)	*	*
Charles M. Elson	12,000(3)	*	*
Howard Gittis	—(5)	0	0
John H. Klein	1,915(3)	*	*
Howard G. Kristol	-12,000(3)	*	*
Peter A. Langerman	—(4)	0	0
Jerry W. Levin	—(5)	0	0
Faith Whittlesey	8,390(3)	*	*
Former Directors			
Albert J. Dunlap	7,741,564(2)	7.2%	N/A
Russell A. Kersh	1,889,150(2)	1.8%	N/A
Lawrence A. Sondike	—	0	N/A
Other Named Executives			
Karen K. Clark	—	0	0
Bobby G. Jenkins	—	0	0
Paul E. Shapiro	—(5)	0	0
Former Named Executives			
Janet G. Kelley	78,000(6)	*	N/A
David C. Fannin	220,433(2)	*	N/A
All directors and current executive officers as a group (15 persons)	85,805(7)	*	*

* Less than one percent.

- (1) All present and former directors and Named Executives have the sole power to vote and to dispose of the shares of Sunbeam common stock listed above except as follows: (1) Mr. Dunlap is believed to hold 1,491,564 of the listed shares jointly with his wife; (2) 151,600 shares listed as owned by Mr. Kersh are believed to be held by the Russell A. Kersh Irrevocable Trust of which Mr. Kersh is the sole beneficiary, and Mr. Kersh is believed to hold 5,000 of the listed shares jointly with his spouse; (3) Mr. Fannin holds 20,433 shares of stock jointly with his wife; and (4) Ms. Kelley holds 100 shares jointly with her spouse.
- (2) Includes shares of Sunbeam common stock which present and former directors of Sunbeam and Named Executives have the right to acquire under options which are currently exercisable, including options which will become exercisable within the next sixty days. This includes 200,000 and 77,900 shares in the case of Mr. Fannin and Ms. Kelley, respectively, upon the exercise of options which are currently exercisable. Options which are not currently exercisable and will not become exercisable within sixty days are not included in the table. The figures also include stock awards and options to acquire 6,250,000 and 1,625,000 shares in the case of Messrs. Dunlap and Kersh, respectively. Sunbeam is disputing the

(Footnotes continued on next page)

(Footnotes continued from previous page)

status of these stock awards and options. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Matters Involving Former Management" for information concerning these disputes.

- (3) Includes shares of restricted Sunbeam common stock granted to each of directors Beekman, Elson, Klein, Kristol and Whittlesey upon their respective elections, appointments and subsequent reelections to the Sunbeam board, all of which shares were immediately vested.
- (4) Does not include shares of Sunbeam common stock owned by Franklin Mutual Advisers as to which Mr. Langerman disclaims beneficial ownership. See "SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS."
- (5) Does not include shares of Sunbeam common stock owned by MacAndrews & Forbes and its affiliates, as to which Messrs. Gittis, Levin and Shapiro disclaim beneficial ownership. See "SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS."
- (6) In connection with Ms. Kelley's resignation from Sunbeam effective May 31, 1999, 60,000 options previously granted to Ms. Kelley became immediately exercisable on June 13, 1999 and Ms. Kelley forfeited exercisable options to purchase another 68,583 shares.
- (7) Includes 50,000 shares of Sunbeam common stock which all current executive officers of Sunbeam have a right to acquire under options which are currently exercisable, including options which will become exercisable within the next sixty days.
- (8) Assumes (1) the issuance by Sunbeam in the merger of 6,676,135 shares of Sunbeam common stock, (2) the issuance of 23 million shares of Sunbeam common stock to a MacAndrews & Forbes subsidiary upon exercise of the warrant issued in connection with the settlement of threatened legal claims relating to the M&F Transaction and (3) the issuance of about 4.98 million shares of Sunbeam common stock to Coleman minority stockholders upon the exercise of warrants issued in connection with the settlement of litigation relating to the merger.

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DESCRIPTION OF SUNBEAM CAPITAL STOCK

The following statements are summaries of provisions of Sunbeam's capital stock.

Sunbeam Common Stock

Sunbeam's authorized capital stock currently consists of 500,000,000 shares of Sunbeam common stock, par value \$.01 per share, and 2,000,000 shares of preferred stock, par value \$.01 per share. As of December 3, 1999, there were 100,902,392 shares of Sunbeam common stock outstanding. Each share of Sunbeam common stock entitles its holder to one vote on all matters upon which Sunbeam stockholders are entitled or permitted to vote, including the election of directors. There are no cumulative voting rights. Shares of Sunbeam common stock would participate ratably in any distribution of assets in a liquidation, dissolution or winding up of Sunbeam, subject to prior distribution rights of any shares of preferred stock then outstanding. The Sunbeam common stock has no preemptive rights or conversion rights nor are there any redemption or sinking fund provisions applicable to the Sunbeam common stock. Holders of Sunbeam common stock are entitled to participate in dividends as and when declared by the Sunbeam board out of funds legally available therefor. Sunbeam's ability to pay cash dividends is subject to restrictions under Delaware law. In addition, Sunbeam's bank credit facility prohibits Sunbeam from paying cash dividends.

The transfer agent and registrar for the Sunbeam common stock is The Bank of New York.

Sunbeam Preferred Stock

There are no shares of Sunbeam preferred stock currently outstanding. Sunbeam's Certificate of Incorporation provides that the Sunbeam board of directors may authorize the issuance of one or more series of preferred stock having such rights, including voting, conversion and redemption rights, and such preferences, including dividend and liquidation preferences, as the Sunbeam board may determine without any further action by the stockholders of Sunbeam.

Warrants

Sunbeam currently has outstanding one warrant which entitles the holder to purchase up to 23 million shares of Sunbeam common stock. This warrant was issued on August 24, 1998 under the terms of the Settlement Agreement, dated August 12, 1998, by and between Sunbeam and Coleman (Parent) Holdings, Inc., the MacAndrews & Forbes subsidiary from which Sunbeam acquired about 81% of the then outstanding Coleman common stock in the M&F Transaction. In the merger, Sunbeam will issue warrants which will entitle their holders to purchase up to 4.98 million shares of Sunbeam common stock. These warrants will be issued under a Warrant Agreement to be entered into by Sunbeam and The Bank of New York, as Warrant Agent, prior to the completion of the merger.

The warrant to be issued in the merger will be substantially similar to the warrant issued to Coleman (Parent) Holdings.

The warrant issued to Coleman (Parent) Holdings and each of the warrants to be issued in the merger will be exercisable at a cash exercise price of \$7 per share and will expire on August 24, 2003. In addition, the warrant issued to Coleman (Parent) Holdings and each of the warrants to be issued in the merger is subject to anti-dilution adjustments in the event that Sunbeam completes one or more transactions having a dilutive effect on its existing stockholders. Under the settlement with Coleman (Parent) Holdings, Sunbeam has agreed that Coleman (Parent) Holdings can require Sunbeam to register under the federal and applicable state securities laws the shares of Sunbeam common stock issuable upon exercise of the warrant. The shares of Sunbeam common stock issuable upon exercise of the warrants to be issued in the merger are being registered under the registration statement of which this document forms a part.

For further information regarding the warrant issued to Coleman (Parent) Holdings, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM—Settlement of Claims Relating to the M&F Transaction." For further information regarding the terms of the warrants to be issued in the merger, see "SETTLEMENT OF LITIGATION AND WARRANTS."

DESCRIPTION OF COLEMAN CAPITAL STOCK

The following statements are summaries of provisions of Coleman's capital stock.

Coleman Common Stock

The authorized capital stock of Coleman consists of 100,000,000 shares of capital stock, 80,000,000 of which are common stock, par value \$.01 per share, and 20,000,000 of which are preferred stock, par value \$.01 per share. Of these authorized shares, as of December 3, 1999, 55,827,490 shares of Coleman common stock were issued and outstanding and 923,670 shares of Coleman common stock were issuable upon exercise of Coleman stock options outstanding under Coleman's employee stock option plans (all of which options are currently exercisable).

Subject to the rights of holders of any Coleman preferred stock then outstanding, holders of Coleman common stock are entitled to receive dividends as may from time to time be declared by the Coleman board subject to certain limitations under Delaware law. The merger agreement prohibits Coleman from paying dividends and Sunbeam's credit facility only permits Coleman to pay dividends in additional shares of its capital stock until the merger is completed. Holders of Coleman common stock are entitled to one vote per share on all matters on which the holders of Coleman common stock are entitled to vote. Because holders of Coleman common stock do not have cumulative voting rights, the holders of a majority of the shares of Coleman common stock represented at a meeting can elect all of the directors. In the event of liquidation, dissolution or winding up of Coleman, holders of Coleman common stock would be entitled to share ratably in assets of Coleman available for distribution to the holders of Coleman common stock.

Holders of Coleman common stock are not liable for any liabilities of Coleman. There are no preemptive rights for the Coleman common stock. The outstanding shares of Coleman common stock are fully paid and nonassessable.

American Stock Transfer & Trust Co. acts as transfer agent and registrar for the Coleman common stock.

Coleman Preferred Stock

As of December 3, 1999, there were 3,000,000 shares of Coleman preferred stock issued and outstanding. Coleman's Certificate of Incorporation authorizes the Coleman board of directors to provide for the issuance, from time to time, of shares of preferred stock in series, to establish from time to time the number of shares to be included in any such series and to fix the designation, powers, preferences and rights of the shares of each such series and any qualifications, limitations or restrictions thereof.

On July 12, 1999, Coleman issued to Coleman Worldwide Corporation 3,000,000 shares of a newly created series of voting preferred stock, par value \$.01 per share, denominated as "Series A Participating Preferred Stock." Each share of Series A Participating Preferred Stock entitles the holder thereof to one vote on all matters submitted to a vote of the stockholders of Coleman. Except as required by law, the holders of the Series A Participating Preferred Stock vote together as a single class with the holders of Coleman common stock on all matters submitted to a vote of the Coleman stockholders. The Series A Participating Preferred Stock is entitled to an annual dividend. Dividends on the Series A Participating Preferred Stock will accrue and be payable at the earlier of (1) the time any liquidating distribution is made to the holders of the Series A Participating Preferred Stock and (2) the time the shares of Series A Participating Preferred Stock are exchanged or changed into other stock or securities, cash and/or any other property, in connection with a consolidation, merger, combination or other transaction involving Coleman (other than the merger of a wholly owned Sunbeam subsidiary with Coleman). However, Sunbeam's credit facility only permits Coleman to pay dividends in additional shares of its capital stock until the merger is completed. The holders of shares of Series A Participating Preferred Stock share ratably in all other dividends and distributions received by the holders of Coleman common stock. In addition, the holders of shares of Series A Participating Preferred Stock are entitled to a per share liquidation preference equal to the price the Series A Participating Preferred Stock was initially issued to Sunbeam and, once the holders of shares of Coleman common stock have received a like per share amount, the holders of shares of Series A Participating Preferred Stock will share ratably with the holders of shares of Coleman common stock in all remaining amounts available for distribution upon liquidation of Coleman.

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EXPERTS

The Consolidated Financial Statements of Sunbeam Corporation and its consolidated subsidiaries (except The Coleman Company, Inc. and its subsidiaries) as of December 31, 1998 and for the year then ended, and the related financial statement schedule included in this document have been audited by Deloitte & Touche LLP as stated in their report appearing herein. The consolidated financial statements of The Coleman Company, Inc. (consolidated with those of Sunbeam) have been audited by Ernst & Young LLP as stated in their report included herein. The Consolidated Financial Statements of Sunbeam Corporation and its subsidiaries are included herein in reliance upon the respective reports of such firms, in each case given upon their authority as experts in accounting and auditing. Deloitte & Touche LLP, and Ernst & Young LLP, are independent auditors.

The Consolidated Financial Statements and schedule of Sunbeam Corporation included in this document and in the corresponding registration statement as of December 28, 1997 and for the years ended December 28, 1997 and December 29, 1996 have been audited by Arthur Andersen LLP, independent certified public accountants, as indicated in their report with respect thereto, and are included herein in reliance upon the authority of said firm as experts in giving said report.

Ernst & Young LLP, independent auditors, have audited Coleman's consolidated financial statements included in its Annual Report on Form 10-K, as amended, for the year ended December 31, 1998, as set forth in their report, which is included in this document and is incorporated by reference elsewhere in the registration statement. Coleman's financial statements are incorporated by reference in this document in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

LEGAL OPINIONS

The validity of the shares of Sunbeam common stock being offered hereby is being passed upon for Sunbeam by Steven R. Isko, Senior Vice President and General Counsel of Sunbeam.

WHERE YOU CAN FIND MORE INFORMATION

Sunbeam is distributing this document to you to provide you with information about the merger, your Delaware appraisal rights and the litigation settlement. This document also serves as Sunbeam's prospectus in connection with the issuance of the shares of Sunbeam common stock you will receive in the merger and upon exercise of the settlement warrants after the merger. This document is also part of a registration statement filed by Sunbeam with the SEC to register those shares under the Securities Act of 1933. The registration statement, including the attached exhibits and schedules, contains additional relevant information about Sunbeam. Under the rules and regulations of the SEC, however, some information included in the registration statement is not required to be included in this document. You are urged to read carefully the registration statement and the attached exhibits and schedules.

This document also serves as Coleman's information statement in connection with the merger. This document has been filed by Coleman with the SEC to comply with Coleman's disclosure obligations under the Securities Exchange Act of 1934. Under the rules and regulations of the SEC, however, some information concerning Coleman is not required to be included in this document. Instead, the SEC allows Coleman to "incorporate by reference" the omitted information. This means that Coleman can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be a part of this document, except for any information that has been directly superseded by information contained in this document. You are urged to read carefully the documents to which we have referred you.

You can inspect and copy reports, proxy statements and other information about Sunbeam and Coleman at the NYSE office located at 20 Broad Street, New York, New York 10005.

You may read publicly available information about Sunbeam and Coleman, including the registration statement and the documents concerning Coleman to which we have referred you, at the following locations of the SEC:

Public Reference Room
450 Fifth Street, N.W.
Room 1024
Washington, D.C. 20549

Midwest Regional Office
Citicorp Center
500 West Madison Street
Suite 1400
Chicago, Illinois 60661

New York Regional Office
7 World Trade Center
Suite 1300
New York, New York 10048

You may also obtain copies of this information by mail from the Public Reference Section of the SEC, 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549, at prescribed rates. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

The SEC also maintains an Internet world wide web site that contains reports, proxy statements and other information about issuers, like Sunbeam and Coleman, who file electronically with the SEC. The address of that site is <http://www.sec.gov>.

This document incorporates by reference the documents listed below that Coleman has previously filed with the SEC. They contain important information about Coleman and its financial condition.

1. Coleman's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 1999;
2. Coleman's Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 1999, as amended;
3. Coleman's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 1999, as amended;
4. Coleman's Annual Report on Form 10-K for the fiscal year ended December 31, 1998, as amended;
5. Coleman's Annual Reports on Form 10-K for the fiscal years ended December 31, 1997 and 1996; and
6. Coleman's Information Statement under Section 14(f) of the Exchange Act mailed to Coleman stockholders on or about March 18, 1998.

Coleman also incorporates by reference any additional documents it may file with the SEC between the date of this document and the completion of the merger. These documents include periodic reports, such as Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, as well as proxy statements.

You can obtain any of the documents incorporated by reference in this document through Coleman or from the SEC through the SEC's web site at the address described above. Documents incorporated by reference are available from Coleman without charge, excluding any exhibits to those documents unless the exhibit is specifically incorporated by reference as an exhibit in this document. You can obtain documents incorporated by reference in this document by requesting them in writing or by telephone from Coleman at the following address:

The Coleman Company, Inc.
2111 East 37th Street North
P.O. Box 2391
Wichita, Kansas 67201
Attention: Corporate Secretary
Telephone: (316) 832-2700

If you would like to request documents, please do so by December 30, 1999 to receive them before the completion of the merger. If you request any documents from Coleman, we will mail them to you by first-class mail, or another equally timely means, promptly after we receive your request.

We have not authorized anyone to give any information or make any representation about the merger or our companies that is different from, or in addition to, that contained in this document or in any of the materials that we have incorporated by reference into this document. Therefore, if anyone does give you information of this sort, you should not rely on it. If you are in a jurisdiction where offers to exchange or sell, or solicitations of offers to exchange or purchase, the securities offered by this document are unlawful, or if you are a person to whom it is unlawful to direct these types of activities, then the offer presented in this document does not extend to you. The information contained in this document speaks only as of the date of this document unless the information specifically indicates that another date applies.

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* All other schedules for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission are not required under the related instructions or are inapplicable, and therefore not included herein.

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INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Shareholders of
Sunbeam Corporation and subsidiaries:

We have audited the accompanying consolidated balance sheet of Sunbeam Corporation and subsidiaries (the "Company") as of December 31, 1998, and the related consolidated statements of operations, shareholders' equity, and cash flows for the year then ended. Our audit also included the financial statement schedule as of and for the year ended December 31, 1998, listed in the Index to Financial Statements. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audit. We did not audit the consolidated financial statements of The Coleman Company, Inc. and subsidiaries (consolidated subsidiaries), which statements reflect total assets constituting 27% of consolidated total assets as of December 31, 1998, and total revenues constituting 40% of consolidated total revenues for the year then ended. Those consolidated financial statements were audited by other auditors whose report has been furnished to us, and our opinion, insofar as it relates to the amounts included for The Coleman Company, Inc. and subsidiaries, is based solely on the report of such other auditors.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit and the report of the other auditors provide a reasonable basis for our opinion.

In our opinion, based on our audit and the report of the other auditors, such consolidated financial statements present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 31, 1998, and the results of their operations and their cash flows for the year then ended in conformity with generally accepted accounting principles. Also, in our opinion, based on our audit and (as to the amounts included for The Coleman Company, Inc. and subsidiaries) the report of other auditors, such financial statement schedule as of and for the year ended December 31, 1998, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

DELOITTE & TOUCHE LLP
Certified Public Accountants
Fort Lauderdale, Florida
April 16, 1999

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REPORT OF INDEPENDENT AUDITORS

Stockholders and Board of Directors
The Coleman Company, Inc.

We have audited the consolidated balance sheets of The Coleman Company, Inc. and subsidiaries as of December 31, 1998 and 1997, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 1998 (not presented separately herein). These financial statements are the responsibility of Sunbeam's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of The Coleman Company, Inc. and subsidiaries at December 31, 1998 and 1997, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 1998, in conformity with generally accepted accounting principles.

/s/ ERNST & YOUNG LLP

Wichita, Kansas
April 15, 1999

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REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Board of Directors and Shareholders of
Sunbeam Corporation:

We have audited the accompanying consolidated balance sheet of Sunbeam Corporation (a Delaware corporation) and subsidiaries as of December 28, 1997 and the related consolidated statements of operations, shareholders' equity and cash flows for each of the two fiscal years in the period ended December 28, 1997. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 28, 1997, and the results of their operations and their cash flows for each of the two fiscal years in the period ended December 28, 1997 in conformity with generally accepted accounting principles.

Our audits were made for the purpose of forming an opinion on the basic financial statements taken as a whole. Schedule II for each of the two years in the period ended December 28, 1997 is presented for the purpose of complying with the Securities and Exchange Commission's rules and is not part of the basic financial statements. This Schedule has been subjected to the auditing procedures applied in the audits of the basic financial statements and, in our opinion, fairly states in all material respects the financial data required to be set forth therein in relation to the basic financial statements taken as a whole.

ARTHUR ANDERSEN LLP

Fort Lauderdale, Florida,
October 16, 1998

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in thousands, except per share amounts)

	Fiscal Year Ended		
	December 31, 1998	December 28, 1997	December 29, 1996
Net sales	\$1,836,871	\$1,073,090	\$ 984,236
Cost of goods sold	1,788,819	830,956	896,938
Selling, general and administrative expense	718,077	152,653	221,655
Restructuring and asset impairment (benefit) charges	—	(14,582)	110,122
Operating (loss) earnings	(670,025)	104,063	(244,479)
Interest expense	131,091	11,381	13,588
Other (income) expense, net	(4,768)	12	3,738
(Loss) earnings from continuing operations before income taxes, minority interest and extraordinary charge	(796,348)	92,670	(261,805)
Income taxes (benefit):			
Current	8,667	1,528	(22,419)
Deferred	(18,797)	38,824	(69,206)
	(10,130)	40,352	(91,625)
Minority interest	(10,681)	—	—
(Loss) earnings from continuing operations before extraordinary charge	(775,537)	52,318	(170,180)
Earnings from discontinued operations, net of taxes	—	—	839
Loss on sale of discontinued operations, net of taxes	—	(14,017)	(39,140)
Extraordinary charge from early extinguishments of debt	(122,386)	—	—
Net (loss) earnings	<u>\$ (897,923)</u>	<u>\$ 38,301</u>	<u>\$ (208,481)</u>
(Loss) earnings per share:			
(Loss) earnings from continuing operations before extraordinary charge:			
Basic	<u>\$ (7.99)</u>	<u>\$ 0.62</u>	<u>\$ (2.05)</u>
Diluted	<u>(7.99)</u>	<u>0.60</u>	<u>(2.05)</u>
(Loss) from sale of discontinued operations:			
Basic	<u>\$ —</u>	<u>\$ (0.17)</u>	<u>\$ (0.46)</u>
Diluted	<u>—</u>	<u>(0.16)</u>	<u>(0.46)</u>
Extraordinary charge:			
Basic	<u>\$ (1.26)</u>	<u>\$ —</u>	<u>\$ —</u>
Diluted	<u>(1.26)</u>	<u>—</u>	<u>—</u>
Net (loss) earnings:			
Basic	<u>\$ (9.25)</u>	<u>\$ 0.45</u>	<u>\$ (2.51)</u>
Diluted	<u>(9.25)</u>	<u>0.44</u>	<u>(2.51)</u>
Weighted average common shares outstanding:			
Basic	97,121	84,945	82,925
Diluted	97,121	87,542	82,925

See Notes to Consolidated Financial Statements.

SUNBEAM CORPORATION AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(Amounts in thousands)

	<u>December 31,</u> 1998	<u>December 28,</u> 1997
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 61,432	\$ 52,298
Restricted investments	74,386	—
Receivables, net	361,774	228,460
Inventories	519,189	304,900
Prepaid expenses and other current assets	74,187	16,584
Total current assets	<u>1,090,968</u>	<u>602,242</u>
Property, plant and equipment, net	455,172	249,524
Trademarks, tradenames, goodwill and other, net	1,859,377	207,162
	<u>\$3,405,517</u>	<u>\$1,058,928</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Short-term debt and current portion of long-term debt	\$ 119,103	\$ 668
Accounts payable	162,173	108,374
Other current liabilities	321,185	124,085
Total current liabilities	602,461	233,127
Long-term debt, less current portion	2,142,362	194,580
Other long-term liabilities	248,459	154,300
Deferred income taxes	100,473	4,842
Minority interest	51,325	—
Commitments and contingencies (Notes 3 and 15)		
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized, none outstanding)	—	—
Common stock (100,739,053 and 89,984,425 shares issued)	1,007	900
Additional paid-in capital	1,123,457	479,200
(Accumulated deficit) retained earnings	(809,997)	89,801
Accumulated other comprehensive loss	(54,030)	(33,063)
Other shareholders' equity	—	(1,714)
	260,437	535,124
Treasury stock, at cost (4,454,394 shares in 1997)	—	(63,045)
Total shareholders' equity	<u>260,437</u>	<u>472,079</u>
	<u>\$3,405,517</u>	<u>\$1,058,928</u>

See Notes to Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(Amounts in thousands, except per share amounts)

	Common Stock	Additional Paid-In Capital	(Accumulated Deficit) Retained Earnings	Accumulated Other Comprehensive (Loss) Income	Unearned Compensation	Treasury Stock	Total Shareholders' Equity
Balance at January 1, 1996.....	\$ 878	\$ 441,786	\$ 266,698	\$(24,483)	\$ (397)	\$(83,449)	\$ 601,033
Comprehensive loss:							
Net loss	—	—	(208,481)	—	—	—	(208,481)
Minimum pension liability (net of tax of \$2,672)	—	1	—	4,963	—	—	4,963
Translation adjustments	—	—	—	1,246	—	—	1,246
Comprehensive loss							(202,272)
Common dividends (\$0.04 per share)	—	—	(3,318)	—	—	—	(3,318)
Exercise of stock options	6	7,313	—	—	—	—	7,319
Grant of restricted stock	—	(1,120)	—	—	(14,346)	15,466	—
Amortization of unearned compensation	—	—	—	—	7,707	—	7,707
Retirement and sale of treasury shares	—	(31)	—	—	—	4,595	4,564
Balance at December 29, 1996 ..	884	447,948	54,899	(18,274)	(7,036)	(63,388)	415,033
Comprehensive income:							
Net earnings	—	—	38,301	—	—	—	38,301
Minimum pension liability	—	—	—	(14,050)	—	—	(14,050)
Translation adjustments	—	—	—	(739)	—	—	(739)
Comprehensive income							23,512
Common dividends (\$0.04 per share)	—	—	(3,399)	—	—	—	(3,399)
Exercise of stock options	16	30,496	—	—	—	—	30,512
Amortization of unearned compensation	—	—	—	—	5,322	—	5,322
Other stock issuances	—	756	—	—	—	343	1,099
Balance at December 28, 1997 ..	900	479,200	89,801	(33,063)	(1,714)	(63,045)	472,079
Comprehensive loss:							
Net loss	—	—	(897,923)	—	—	—	(897,923)
Minimum pension liability	—	—	—	(21,795)	—	—	(21,795)
Translation adjustments	—	—	—	828	—	—	828
Comprehensive loss							(918,890)
Common dividends (\$0.02 per share)	—	—	(1,875)	—	—	—	(1,875)
Exercise of stock options	9	18,383	—	—	—	—	18,392
Grant of restricted stock	4	18,880	—	—	(32,500)	—	(13,616)
Cancellation of restricted stock ..	(1)	(5,228)	—	—	10,182	(2,250)	2,703
Amortization of unearned compensation	—	—	—	—	24,032	—	24,032
Acquisition of Coleman	95	541,428	—	—	—	65,200	606,723
Warrants issued	—	70,000	—	—	—	—	70,000
Other stock issuances	—	794	—	—	—	95	889
Balance at December 31, 1998 ..	<u>\$1,007</u>	<u>\$1,123,457</u>	<u>\$(809,997)</u>	<u>\$(54,030)</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 260,437</u>

See Notes to Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in thousands)

	Fiscal Year Ended		
	December 31, 1998	December 28, 1997	December 29, 1996
Operating Activities:			
Net (loss) earnings	\$ (897,923)	\$ 38,301	\$(208,481)
Adjustments to reconcile net (loss) earnings to net cash (used in) provided by operating activities:			
Depreciation and amortization	107,865	39,757	47,429
Non-cash interest charges	32,531	—	—
Restructuring and asset impairment (benefit) charges	—	(14,582)	110,122
Other non-cash special charges	—	—	10,047
Loss on sale of discontinued operations, net of taxes	—	14,017	39,140
Deferred income taxes	(18,797)	38,824	(69,206)
Minority interest	(10,681)	—	—
Loss on sale of property, plant and equipment	3,260	—	—
Provision for fixed assets	39,404	—	—
Provision for excess and obsolete inventory	95,830	—	60,800
Goodwill impairment	62,490	—	—
Issuance of warrants	70,000	—	—
Non-cash compensation charge	13,118	—	—
Extraordinary charge from early extinguishments of debt	122,386	—	—
Changes in operating assets and liabilities, exclusive of impact of divestitures and acquisitions:			
Receivables, net	147,045	1,044	(845)
Inventories	37,112	(140,555)	11,289
Accounts payable	(68,187)	4,261	11,029
Restructuring accrual	(3,894)	(31,957)	—
Prepaid expenses and other current assets and liabilities	50,622	(16,092)	39,657
Income taxes payable	15,758	52,052	(21,942)
Change in other long-term and non-operating liabilities	13,994	(1,401)	(27,089)
Other, net	(2,347)	10,288	12,213
Net cash (used in) provided by operating activities	<u>(190,414)</u>	<u>(6,043)</u>	<u>14,163</u>
Investing Activities:			
Capital expenditures	(53,686)	(60,544)	(75,336)
Proceeds from sale of divested operations and other assets	9,575	90,982	—
Purchases of businesses, net of cash acquired	(522,412)	—	—
Other, net	(139)	—	(860)
Net cash (used in) provided by investing activities	<u>(566,662)</u>	<u>30,438</u>	<u>(76,196)</u>
Financing Activities:			
Issuance of convertible senior subordinated debentures, net of financing fees	729,622	—	—
Net borrowings under revolving credit facility	1,205,675	5,000	30,000
Issuance of long-term debt	—	—	11,500
Payments of debt obligations, including prepayment penalties	(1,186,796)	(12,157)	(1,794)
Proceeds from exercise of stock options	19,553	26,613	4,684
Sale of treasury stock	—	—	4,578
Payments of dividends on common stock	(1,875)	(3,399)	(3,318)
Other, net	31	320	(364)
Net cash provided by financing activities	<u>766,210</u>	<u>16,377</u>	<u>45,286</u>
Net increase (decrease) in cash and cash equivalents	9,134	40,772	(16,747)
Cash and cash equivalents at beginning of year	52,298	11,526	28,273
Cash and cash equivalents at end of year	<u>\$ 61,432</u>	<u>\$ 52,298</u>	<u>\$ 11,526</u>

See Notes to Consolidated Financial Statements.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Operations and Significant Accounting Policies

Organization

Sunbeam Corporation ("Sunbeam" or the "Company") is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacturing, marketing and distribution of durable household and outdoor leisure consumer products through mass market and other distribution channels in the United States and internationally. The Company also sells its products to professional and commercial end users such as small businesses, health care providers, hotels and other institutions. The Company's principal products include household kitchen appliances; health monitoring and care products for home use; scales for consumer and professional use for weight management and business uses; electric blankets and throws; clippers and trimmers for consumer, professional and animal uses; smoke and carbon monoxide detectors; outdoor barbecue grills; camping equipment such as tents, lanterns, sleeping bags and stoves; coolers; backpacks and book bags; and portable generators and compressors.

In 1998 the Company acquired an indirect controlling interest in The Coleman Company, Inc. ("Coleman") and all the outstanding common stock of Signature Brands USA, Inc. ("Signature Brands") and First Alert, Inc. ("First Alert").

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and all majority-owned subsidiaries that it controls. All material intercompany balances and transactions have been eliminated.

Presentation of Fiscal Periods

To standardize the fiscal period ends of the Company and its acquired entities, effective with its 1998 fiscal year, the Company has changed its fiscal year end from the Sunday nearest December 31 to a calendar year. The impact of this change in fiscal period on net sales for 1998 was to increase sales by approximately \$5.5 million, and the impact on operating results for the period was to increase the net loss by approximately \$1.5 million.

Fiscal years 1997 and 1996 ended on December 28, 1997 and December 29, 1996, respectively, which encompassed 52-week periods.

Use of Estimates

The preparation of the consolidated financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates. Significant accounting estimates include the establishment of the allowance for doubtful accounts, tax valuation allowances, reserves for sales returns and allowances, product warranty, product liability, excess and obsolete inventory, litigation and environmental exposures.

Cash and Cash Equivalents

The Company considers highly liquid investments purchased with an original maturity of three months or less to be cash equivalents.

Concentrations of Credit Risk

Substantially all of the Company's trade receivables are due from retailers and distributors located throughout the United States, Europe, Latin America, Canada, and Japan. Approximately 38% of the Company's sales in 1998 were to its five largest customers. The Company establishes its credit policies based on an ongoing evaluation of its customers' creditworthiness and competitive market conditions and establishes its allowance for

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

1. Operations and Significant Accounting Policies—(Continued)

doubtful accounts based on an assessment of exposures to credit losses at each balance sheet date. The Company believes its allowance for doubtful accounts is sufficient based on the credit exposures outstanding at December 31, 1998. However, certain retailers filed for bankruptcy protection in the last several years and it is possible that additional credit losses could be incurred if other retailers seek bankruptcy protection or if the trends of retail consolidation continue.

Inventories

Inventories are stated at the lower-of-cost-or-market with cost being determined principally by the first-in, first-out method.

In certain instances, the Company receives rebates from vendors based on the volume of merchandise purchased. Vendor rebates are recorded as reductions in the price of the purchased merchandise and are recognized in operations as the related inventories are sold.

Effective in fiscal 1997, as a consequence of the initial outsourcing of the supplies inventories management function, the Company began capitalizing the cost of manufacturing supplies, whereas previously the cost of these supplies was charged to operations when purchased. This change, which management believes is preferable in that it provides for a more appropriate matching of revenues and expenses, increased pre-tax operating earnings in fiscal 1997 by \$2.8 million. Additional disclosures pursuant to Accounting Principles Board ("APB") Opinion No. 20, *Accounting Changes*, are not provided since supplies inventories were not monitored for financial reporting purposes prior to the initial outsourcing of the inventory management function and, consequently, the information is not available.

Property, Plant and Equipment

Property, plant and equipment are stated at cost. The Company provides for depreciation using primarily the straight-line method in amounts that allocate the cost of property, plant and equipment over the following useful lives:

Buildings and improvements	5 to 45 years
Machinery, equipment and tooling	3 to 15 years
Furniture and fixtures	3 to 10 years

Leasehold improvements are amortized on a straight-line basis over the shorter of its estimated useful life or the term of the lease.

Long-lived Assets

The Company accounts for long-lived assets pursuant to Statement of Financial Accounting Standards ("SFAS") No. 121, *Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of*. The Company periodically evaluates factors, events and circumstances which include, but are not limited to, the historical and projected operating performance of the business operations, specific industry trends and general economic conditions to assess whether the remaining estimated useful lives of long-lived assets may warrant revision or whether the remaining asset values are recoverable through future operations. When such factors, events or circumstances indicate that long-lived assets should be evaluated for possible impairment, the Company uses an estimate of cash flows (undiscounted and without interest charges) over the remaining lives of the assets to measure recoverability. If the estimated cash flows are less than the carrying value of the asset, the loss is measured as the amount by which the carrying value of the asset exceeds fair value.

With respect to enterprise level goodwill, the Company reviews impairment when changes in circumstances, similar to those described above for long-lived assets, indicate that the carrying value may not be recoverable. Under these circumstances, the Company estimates future cash flows using the recoverability method

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

1. Operations and Significant Accounting Policies—(Continued)

(undiscounted and including related interest charges), as a basis for recording any impairment loss. An impairment loss is then recorded to adjust the carrying value of goodwill to the recoverable amount. The impairment loss taken is no greater than the amount by which the carrying value of the net assets of the business exceeds its fair value.

Derivative Financial Instruments

The Company enters into interest rate swap agreements and foreign exchange rate contracts as part of the management of its interest rate and foreign currency exchange rate exposures. The Company has no derivative financial instruments held for trading purposes and none of the instruments is leveraged. All financial instruments are put into place to hedge specific exposures. To qualify as a hedge, the item to be hedged must expose the Company to price, interest rate or foreign currency exchange rate risk and the hedging instrument must reduce that exposure. Any contracts held or issued that do not meet the requirements of a hedge are recorded at fair value in the Consolidated Balance Sheets and any changes in that fair value recognized in operations.

Interest rate swap agreements—Interest rate differentials to be paid or received as a result of interest rate swap agreements are accrued and recognized as an adjustment of interest expense related to the designated debt. Amounts receivable or payable under the agreements are included in receivables or other current liabilities in the Consolidated Balance Sheets. The fair value of the swap agreements and changes in the fair value as a result of changes in market interest rates are not recognized in the financial statements. Related premiums are amortized to interest expense ratably during the life of the swap agreement.

Gains and losses on termination of interest rate swap agreements are deferred and amortized as an adjustment to interest expense over the original period of interest exposure, provided the designated liability continues to exist. Realized and unrealized changes in the fair value of interest rate swaps designated with liabilities that no longer exist are recorded as a component of the gain or loss arising from the disposition of the designated liability.

Foreign currency options and forward contracts—Foreign currency contracts designated and effective as hedges are marked to market with realized and unrealized gains and losses deferred and recognized in operations when the designated transaction occurs. Foreign currency contracts not designated as hedges, failing to be hedges or failing to continue as effective hedges are included in operations as foreign exchange gains or losses.

Discounts or premiums on forward contracts designated and effective as hedges are accreted or amortized to expense using the straight-line method over the term of the related contract. Discounts or premiums on forward contracts not designated or effective as hedges are included in the mark to market adjustment and recognized in income as foreign exchange gains or losses. Initial premiums paid for purchased option contracts are amortized over the related option period.

Capitalized Interest

Interest costs for the construction of certain long-term assets are capitalized and amortized over the related assets' estimated useful lives. Total interest costs during 1998, 1997 and 1996 amounted to \$131.9 million, \$12.3 million and \$14.0 million, respectively, of which \$0.8 million, \$0.9 million and \$0.4 million, respectively, was capitalized as a cost of the related long-term assets.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

1. Operations and Significant Accounting Policies—(Continued)

Deferred Financing Costs

Costs incurred in connection with obtaining financing are deferred and amortized as a charge to interest expense over the terms of the related borrowings using the interest method.

Amortization Periods

Trademarks, tradenames and goodwill are being amortized on a straight-line basis over 20 to 40 years.

Revenue Recognition

The Company recognizes sales and related cost of goods sold from product sales at the latter of the time of shipment or when title passes to the customers. In some situations, the Company has shipped product with the right of return where the Company is unable to reasonably estimate the level of returns and/or the sale is contingent upon the resale of the product. In these situations, the Company does not recognize revenue upon product shipment, but rather when the buyer of the product informs the Company that the product has been sold. Net sales is comprised of gross sales less provisions for estimated customer returns, discounts, promotional allowances, cooperative advertising allowances and costs incurred by the Company to ship product to customers. Reserves for estimated returns are established by the Company concurrently with the recognition of revenue. Reserves are established based on a variety of factors, including historical return rates, estimates of customer inventory levels, the market for the product and projected economic conditions. The Company monitors these reserves and makes adjustments to them when management believes that actual returns or costs to be incurred differ from amounts recorded.

Warranty Costs

The Company provides for warranty costs in amounts it estimates will be needed to cover future warranty obligations for products sold during the year. Estimates of warranty costs are periodically reviewed and adjusted, when necessary, to consider actual experience.

Product Liability

The Company provides for product liability costs it estimates will be needed to cover future product liability costs for product sold during the year. Estimates of product liability costs are periodically reviewed and adjusted, when necessary, to consider actual experience, and other relevant factors.

Legal Costs

The Company records charges for the costs it anticipates incurring in connection with litigation and claims against the Company when management can reasonably estimate these costs.

Income Taxes

The Company accounts for income taxes under the liability method in accordance with SFAS No. 109, *Accounting for Income Taxes*. The provision for income taxes includes deferred income taxes resulting from items reported in different periods for income tax and financial statement purposes. Deferred tax assets and liabilities represent the expected future tax consequences of the differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. The effects of changes in tax rates on deferred tax assets and liabilities are recognized in the period that includes the enactment date.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

1. Operations and Significant Accounting Policies—(Continued)

Advertising Costs

Media advertising costs included in Selling, General and Administrative Expense ("SG&A") are expensed as incurred. Allowances provided to customers for cooperative advertising are charged to operations, as earned, based on revenues and are included as a deduction from gross sales in determining net sales. The amounts charged to operations for media and cooperative advertising during 1998, 1997 and 1996 were \$124.5 million, \$55.7 million and \$78.7 million, respectively.

Research and Development

Research and development expenditures are expensed in the period incurred. The amounts charged against operations during 1998, 1997 and 1996 were \$18.7 million, \$5.7 million and \$6.5 million, respectively.

Foreign Currency Translation

The assets and liabilities of subsidiaries, other than those operating in highly inflationary economies, are translated into U.S. dollars with resulting translation gains and losses accumulated in a separate component of shareholders' equity. Income and expense items are converted into U.S. dollars at average rates of exchange prevailing during the year.

For subsidiaries operating in highly inflationary economies (Venezuela and Mexico), inventories and property, plant and equipment are translated at the rate of exchange on the date the assets were acquired, while other assets and liabilities are translated at year-end exchange rates. Translation adjustments for those operations are included in Other (Income) Expense, Net in the accompanying Consolidated Statements of Operations. Effective January 1, 1999, Mexico will no longer be considered highly inflationary.

Stock-Based Compensation Plans

SFAS No. 123, *Accounting for Stock-Based Compensation* allows either adoption of a fair value method for accounting for stock-based compensation plans or continuation of accounting under APB Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations with supplemental disclosures.

The Company has chosen to account for its stock options using the intrinsic value based method prescribed in APB Opinion No. 25 and, accordingly, does not recognize compensation expense for stock option grants made at an exercise price equal to or in excess of the fair market value of the stock at the date of grant. Pro forma net income and earnings per share amounts as if the fair value method had been adopted are presented in Note 9. SFAS No. 123 does not impact the Company's results of operations, financial position or cash flows.

Basic and Diluted (Loss) Earnings Per Share of Common Stock

Basic (loss) earnings per common share calculations are determined by dividing (loss) earnings available to common shareholders by the weighted average number of shares of common stock outstanding. Diluted (loss) earnings per share are determined by dividing (loss) earnings available to common shareholders by the weighted average number of shares of common stock and dilutive common stock equivalents outstanding (all related to outstanding stock options, restricted stock, warrants and the Zero Coupon Convertible Senior Subordinated Debentures).

For the years ended December 31, 1998 and December 29, 1996, respectively, 1,902,177 and 1,552,684 shares related to stock options, were not included in diluted average common shares outstanding because their effect would be antidilutive. Diluted average common shares outstanding as of December 29, 1996 also excluded (78,654) shares related to restricted stock. Diluted average common shares outstanding as of December 31, 1998 also excluded 13,242,050 shares related to the conversion feature of the Zero Coupon Convertible Senior Subordinated Debentures (see Note 3) and 23,000,000 shares issuable on the exercise of warrants, due to

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

1. Operations and Significant Accounting Policies—(Continued)

antidilution. For the year ended December 28, 1997, the dilutive effect of 2,718,649 equivalent shares related to stock options and (120,923) equivalent shares of restricted stock were used in determining the dilutive average shares outstanding.

New Accounting Standards

In March 1998, the American Institute of Certified Public Accountants ("AICPA") issued Statement of Position 98-1, *Accounting for the Costs of Computer Software Developed or Obtained for Internal Use* ("SOP 98-1"). SOP 98-1 requires computer software costs associated with internal use software to be expensed as incurred until certain capitalization criteria are met. The Company will adopt SOP 98-1 on January 1, 1999. Adoption of this statement is not expected to have a material impact on the Company's consolidated financial position, results of operations, or cash flows. Actual charges incurred due to systems projects may be material.

In April 1998, the AICPA issued Statement of Position 98-5, *Reporting on the Cost of Start-Up Activities* ("SOP 98-5"). SOP 98-5 requires all costs associated with pre-opening, pre-operating and organization activities to be expensed as incurred. The Company will adopt SOP 98-5 beginning January 1, 1999. Adoption of this statement is not expected to have a material impact on the Company's consolidated financial position, results of operations, or cash flows.

In June 1998, the FASB issued SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, which is effective for fiscal years beginning after June 15, 1999. SFAS No. 133 requires the recognition of all derivatives in the Consolidated Balance Sheets as either assets or liabilities measured at fair value. The Company will adopt SFAS No. 133 for the 2000 fiscal year. The Company has not yet determined the impact SFAS No. 133 will have on its consolidated financial position, results of operations or cash flows.

Reclassification

Certain prior year amounts have been reclassified to conform with the 1998 presentation.

2. Acquisitions

On March 30, 1998, the Company, through a wholly-owned subsidiary, acquired approximately 81% of the total number of then outstanding shares of common stock of Coleman from an affiliate of MacAndrews & Forbes Holdings, Inc. ("M&F"), in exchange for 14,099,749 shares of the Company's common stock and approximately \$160 million in cash. In addition, the Company assumed approximately \$1,016 million in debt. The value of the common stock issued at the date of acquisition was derived by using the average closing stock price as reported on the New York Stock Exchange Composite Tape for the day before and day of the public announcement of the acquisition. Immediately thereafter, as a result of the exercise of employee stock options, Sunbeam's indirect beneficial ownership of Coleman decreased to approximately 79% of the total number of the outstanding shares of Coleman common stock.

On August 12, 1998, the Company announced that, following investigation and negotiation conducted by a Special Committee of the Board consisting of four outside directors not affiliated with M&F, the Company had entered into a settlement agreement with an affiliate of M&F pursuant to which the Company was released from certain threatened claims of M&F and its affiliates arising from the Coleman acquisition and M&F agreed to provide certain management personnel and assistance to the Company in exchange for the issuance to the M&F affiliate of a five year warrant to purchase up to 23 million shares of the Company's common stock at a cash exercise price of \$7.00 per share, subject to antidilution adjustments. The Company concluded that the agreement to issue this warrant did not result in a new measurement date for the purposes of determining the purchase price for Coleman and has accounted for the issuance of this warrant as a cost of settling a potential claim. Accordingly, a \$70.0 million non-cash SG&A expense was recorded in the third quarter of 1998, based on

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

2. Acquisitions—(Continued)

valuation performed as of August 1998 using facts existing at that time. The valuation was conducted by an independent consultant engaged by the Special Committee of the board of directors.

The Company expects to acquire the remaining equity interest in Coleman pursuant to a merger transaction in which the existing Coleman minority shareholders will receive 0.5677 shares of the Company's common stock and \$6.44 in cash for each share of Coleman common stock outstanding. In addition, unexercised options under Coleman's stock option plans will be cashed out at a price per share equal to the difference between \$27.50 and the exercise price of such options. The Company expects to issue approximately 6.7 million shares of common stock and expend approximately \$87 million in cash to complete the Coleman acquisition. Although there can be no assurance, it is anticipated the Coleman merger will occur in the second half of 1999. The acquisition of the remaining outstanding shares of Coleman common stock will be accounted for under the purchase method of accounting on the date of consummation of the Coleman merger. (Also see Note 15 for information regarding the proposed issuance of warrants related to this transaction.)

On April 6, 1998, the Company completed the acquisitions of First Alert, valued at approximately \$182 million (including \$133 million of cash and \$49 million of assumed debt) and Signature Brands valued at \$255 million, (reflecting cash paid, including the required retirement or defeasance of debt).

All of these acquisitions were accounted for by the purchase method of accounting. Accordingly, the results of operations of the acquired entities are included in the accompanying Consolidated Statements of Operations from their respective dates of acquisition.

In each acquisition, the purchase price paid has been allocated to the fair value (determined by independent appraisals) of tangible and identified intangible assets acquired and liabilities assumed as follows (in millions):

	Coleman	Signature Brands	First Alert	Total
Value of common stock issued	\$ 607	\$ —	\$ —	\$ 607
Cash paid including expenses and mandatory redemption of debt, net of cash acquired	160	255	133	548
Cash received from sale of Coleman Spas, Inc	(17)	—	—	(17)
Cash received from stock option proceeds	(9)	—	—	(9)
Net cash paid and equity issued	741	255	133	1,129
Fair value of total liabilities assumed, including debt	<u>1,455</u>	<u>83</u>	<u>103</u>	<u>1,641</u>
	2,196	338	236	2,770
Fair value of assets acquired	<u>1,113</u>	<u>191</u>	<u>172</u>	<u>1,476</u>
Excess of purchase price over fair value of net assets acquired	<u>\$1,083</u>	<u>\$147</u>	<u>\$64</u>	<u>\$1,294</u>

The excess of purchase price over the fair value of net assets acquired has been classified as goodwill. Goodwill related to the Coleman and Signature Brands acquisitions is being amortized on a straight-line basis over 40 years. During the fourth quarter of 1998, as a result of the significant loss incurred by First Alert, as well as its future prospects, the Company determined that the goodwill relating to this acquisition was impaired and, based on the determination of fair value, has written-off the net carrying value of goodwill approximating \$62.5 million. This one-time charge is reflected in SG&A expense in the Consolidated Statements of Operations.

As of the date of the acquisition of Coleman, management of the Company determined approximately 117 employees of Coleman would need to be involuntarily terminated in order to eliminate duplicate activities and functions and fully integrate Coleman into Sunbeam's operations. The Company recognized a liability of approximately \$8 million representing severance and benefit costs related to 117 employees pursuant to the termination plan. This liability was included in the allocation of purchase price. As of December 31, 1998, the

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

2. Acquisitions—(Continued)

Company had paid severance benefits of approximately \$5 million and 8 employees remained to be terminated. Remaining termination costs are expected to be paid by December 31, 2000 and no additional charges are anticipated in future periods related to this issue.

The following unaudited pro forma financial information for the Company gives effect to the Coleman and Signature Brands acquisitions as if they had occurred at the beginning of the periods presented. No pro forma adjustments have been made for the First Alert acquisition as its effects are not significant. These pro forma results have been prepared for informational purposes only and do not purport to be indicative of the results of operations which actually would have occurred had the acquisitions been consummated on the dates indicated, or which may result in the future. The unaudited pro forma results follow (in millions, except per share data):

	Fiscal Years Ended	
	December 31, 1998	December 28, 1997
Net sales	\$2,098.7	\$2,408.9
Net loss from continuing operations before extraordinary charge	(801.1)	(23.6)
Basic and diluted loss per share from continuing operations before extraordinary charge	(7.96)	(0.24)

3. Debt

Debt at the end of each fiscal year consists of the following (in thousands):

	1998	1997
Term loans, due in installments through 2006, average interest rate of 8.47% for 1998	\$1,262,500	\$ —
Revolving credit facility, average interest rate of 8.55% for 1998 and 5.99% for 1997	94,000	110,000
Zero coupon convertible senior subordinated debentures, net of unamortized discount of \$1,234,845, due 2018	779,155	—
Senior subordinated notes, bearing interest at 13.0%, payable semiannually, due August 1999	70,000	—
Hattiesburg industrial revenue bond due 2009, fixed interest rate of 7.85%	—	75,000
Other lines of credit, including foreign facilities	45,803	—
Other long-term borrowings, due through 2012, weighted average interest rate of 3.89% and 3.92%, at December 31, 1998 and December 28, 1997, respectively	10,007	10,248
	<u>2,261,465</u>	<u>195,248</u>
Less short-term debt and current portion of long-term debt	119,103	668
Long-term debt	<u>\$2,142,362</u>	<u>\$194,580</u>

Concurrent with the acquisitions, the Company replaced its \$250 million syndicated unsecured five-year revolving credit facility with a revolving and term credit facility (the "New Credit Facility"). The New Credit Facility provided for aggregate borrowings of up to \$1.7 billion and in addition to other customary covenants, required Sunbeam to maintain specified consolidated leverage, interest coverage and fixed charge coverage ratios as of the end of each fiscal quarter occurring after March 31, 1998 and on or prior to the latest stated maturity date for any of the borrowings under the New Credit Facility.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

3. Debt—(Continued)

As a result of, among other things, its operating losses incurred during the first half of 1998, Sunbeam did not achieve the specified financial ratios for June 30, 1998 and it appeared unlikely that Sunbeam would achieve the specified financial ratios for September 30, 1998. Consequently, Sunbeam and its lenders entered into an agreement dated as of June 30, 1998 that waived through December 31, 1998 all defaults arising from the failure of Sunbeam to satisfy the specified financial ratios for June 30, 1998 and September 30, 1998. Pursuant to an agreement with Sunbeam dated as of October 19, 1998, Sunbeam's lenders extended all of the waivers under the June 30, 1998 agreement through April 10, 1999 and also waived through such date all defaults arising from any failure by Sunbeam to satisfy the specified financial ratios for December 31, 1998. As part of the October 19, 1998 agreement, Sunbeam agreed to a minimum monthly earnings before interest, taxes, depreciation and amortization ("EBITDA") covenant for each of February, March and April of 1999, which covenant Sunbeam was able to satisfy.

On April 10, 1999, among other things, the lenders extended all of the waivers set forth in the October 19, 1998 agreement through April 15, 1999. On April 15, 1999, Sunbeam and its lenders entered into a comprehensive amendment to the New Credit Facility that, among other things, extended all of the waivers under the April 10, 1999 agreement until April 10, 2000 and waived until such date all defaults arising from any failure by Sunbeam to satisfy the specified financial ratios for any fiscal quarter end occurring during 1999 and for March 31, 2000. As part of the April 15, 1999 amendment, Sunbeam agreed to a minimum cumulative EBITDA covenant that is based on post-December 31, 1998 consolidated EBITDA and is tested at the end of each month occurring on or prior to March 31, 2000, as well as a covenant limiting the amount of revolving loans (other than those used to fund the Coleman merger) that may be outstanding under the New Credit Facility as of the end of each such month. The minimum cumulative EBITDA was initially \$6.3 million for the period January 1, 1999 through April 30, 1999 and generally grows on a monthly basis until it reaches \$121 million for the period from January 1, 1999 through March 31, 2000. The following description of the New Credit Facility reflects the terms of the New Credit Facility as amended.

The New Credit Facility provides for aggregate borrowings of up to \$1.7 billion pursuant to: (i) a revolving credit facility in an aggregate principal amount of up to \$400 million maturing March 30, 2005 (\$52.5 million of which may only be used to complete the Coleman merger); (ii) up to \$800 million in term loans maturing on March 30, 2005 (of which \$35.0 million may only be used to complete the Coleman merger) and (iii) a \$500 million term loan maturing September 30, 2006 (of which \$5.0 million has already been repaid through March 31, 1999). As of December 31, 1998, \$1.4 billion was outstanding and \$0.3 billion was available for borrowing under the New Credit Facility.

Pursuant to the New Credit Facility, interest accrues, at the Company's option: (i) at the London Interbank Offered Rate ("LIBOR"), or (ii) at the base rate of the administrative agent which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%, in each case plus an interest margin which is currently 3.75% for LIBOR borrowings and 2.50% for base rate borrowings. The applicable interest margin is subject to upward or downward adjustment upon the occurrence of certain events. Borrowings under the New Credit Facility are secured by a pledge of the stock of the Company's material subsidiaries, including Coleman, and by a security interest in substantially all of the assets of Sunbeam and its material domestic subsidiaries, other than Coleman and its material subsidiaries except as described below. Currently, Coleman's inventory and related assets are pledged to secure its obligations for letters of credit issued for its account under the New Credit Facility. Additionally, as security for Coleman's note payable to the Company, Coleman pledged substantially all of its domestic assets, other than real property, including 66% of the stock of its direct foreign subsidiaries and domestic holding companies for its foreign subsidiaries, and all of the stock of its other direct domestic subsidiaries (but not the assets of Coleman's subsidiaries). The pledge runs in favor of Sunbeam's lending banks, to which the Coleman note has been pledged as security for Sunbeam's obligations to them. Upon completion of the Coleman merger, substantially all of Coleman's assets and the assets of Coleman's domestic subsidiaries will be pledged to secure the obligations under the New Credit Facility. In

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

3. Debt—(Continued)

addition, borrowings under the New Credit Facility are guaranteed by a number of the Company's wholly owned material domestic subsidiaries and these subsidiary guarantees are secured as described above. Upon completion of the Coleman merger, Coleman and each of its United States subsidiaries will become guarantors of the obligations under the New Credit Facility. To the extent extensions of credit are made to any subsidiaries of the Company, the obligations of such subsidiaries are guaranteed by the Company.

In addition to the above described ratios and tests, the New Credit Facility contains covenants customary for credit facilities of a similar nature, including limitations on the ability of Sunbeam and its subsidiaries, including Coleman, to, among other things, (i) declare dividends or repurchase stock, (ii) prepay, redeem or repurchase debt, incur liens and engage in sale-leaseback transactions, (iii) make loans and investments, (iv) incur additional debt, including revolving loans under the New Credit Facility, (v) amend or otherwise alter material agreements or enter into restrictive agreements, (vi) make capital and year 2000 compliance expenditures, (vii) engage in mergers, acquisitions and asset sales, (viii) engage in certain transactions with affiliates, (ix) settle certain litigation, (x) alter its cash management system and (xi) alter the businesses they conduct. Sunbeam is also required to comply with specified financial covenants and ratios. The New Credit Facility provides for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, material adverse change arising from compliance with ERISA, material adverse judgments, entering into guarantees and change of ownership and control. It is also an event of default under the New Credit Facility if Sunbeam's registration statement in connection with the Coleman merger is not declared effective by the Securities and Exchange Commission ("SEC") on or before October 30, 1999 or if the merger does not occur within 25 business days of the effectiveness of the registration statement or if the cash consideration (including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses) to consummate the Coleman merger exceeds \$87.5 million. Although there can be no assurance, the Company anticipates that it will satisfy these conditions. Unless waived by the bank lenders, the failure of Sunbeam to satisfy any of the financial ratios and tests contained in the New Credit Facility or the occurrence of any other event of default under the New Credit Facility would entitle the bank lenders to (a) receive a 2.00% increase in the interest rate applicable to outstanding loans and increase the trade letter of credit fees to 1.00% and (b) accelerate the maturity of the outstanding borrowings under the New Credit Facility and exercise all or any of their other rights and remedies. Any such acceleration or other exercise of rights and remedies would likely have a material adverse effect on Sunbeam. The New Credit Facility also includes provisions for the deferral of the 1999 scheduled term loan payments of \$69.3 million, subject to delivery of certain collateral documents and the filing of an amendment to the Company's registration statement on Form S-4 relating to the Coleman merger. If these conditions are met, and there are no events of default, the scheduled loan payments will be extended until April 10, 2000. The Company anticipates that it will satisfy these conditions and, accordingly, has classified these amounts as long-term in the Consolidated Balance Sheet.

In March 1998, the Company completed an offering of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures") at a yield to maturity of 5.0% (approximately \$2,014 million principal amount at maturity) which resulted in approximately \$730 million of net proceeds. The Debentures are exchangeable for shares of the Company's common stock at an initial conversion rate of 6.575 shares for each \$1,000 principal amount at maturity of the Debentures, subject to adjustment upon occurrence of certain events. The Debentures are subordinated in right of payment to all existing and future senior indebtedness of the Company. The Debentures are not redeemable by the Company prior to March 25, 2003. On or after such date, the Debentures are redeemable for cash with at least 30 days notice, at the option of the Company. The Company is required to purchase Debentures at the option of the holder as of March 25, 2003, March 25, 2008 and March 25, 2013, at purchase prices equal to the issue price plus accrued original discount to such dates. The Company may, at its option, elect to pay any such purchase price in cash or common stock, or any combination thereof. The Company was required to file a registration statement with the SEC to register the Debentures by June 23, 1998. This registration statement was filed February 4, 1999 and the SEC has not declared the registration statement effective. Sunbeam's failure to file the registration statement by June 23, 1998 did not constitute a default under

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

3. Debt—(Continued)

the terms of the Debentures. As part of the normal review process by the SEC, a number of comments have been made by the staff of the division of Corporation Finance relating to the registration statement and the restated 1996 and 1997 financial statements included therein. The Company expects to resolve these comments when it files an amendment to the registration statement. From June 23, 1998 until the registration statement is declared effective, the Company is required to pay to the Debenture holders cash liquidated damages accruing, for each day during such period, at a rate per annum equal to 0.25% during the first 90 days and 0.50% thereafter multiplied by the total of the issue price of the Debentures plus the original issue discount thereon on such day. The Company made its first payment of approximately \$0.5 million to the Debenture holders on September 25, 1998. As of December 31, 1998 the Company had accrued additional payments totaling \$1.0 million. The Company made a payment to Debenture holders in March 1999 of approximately \$2.0 million. This amount included liquidated damages that accrued during the first quarter of 1999.

In connection with the acquisition of Signature Brands, the Company was required to defease \$70.0 million of acquired debt. Cash was placed with a trustee to provide for the defeasance, including the related prepayment penalty. This cash was used to purchase Treasury Notes. Accordingly, \$74.4 million of restricted investments held by the trustee for the August 1999 liquidation of this acquired debt are reflected as an asset and \$70.0 million is reflected as short-term debt in the Consolidated Balance Sheet at December 31, 1998. The prepayment penalty is reflected as part of the acquisition price of Signature Brands.

In March 1998, the Company prepaid the \$75.0 million 7.85% industrial revenue bond related to its Hattiesburg facility originally due in 2009. In connection with the early extinguishment of this debt, the Company recognized an extraordinary charge of \$7.5 million. As a result of repayment of certain indebtedness assumed in the Coleman acquisition, the Company also recognized an extraordinary charge of \$114.9 million. The debt assumed in connection with the Coleman acquisition was repaid as a result of the requirements under the terms of the New Credit Facility Credit Agreement. These extraordinary charges consisted of redemption premiums (\$106.9 million), unamortized debt discount (\$13.8 million) and unamortized deferred financing costs (\$1.7 million).

During 1997, the Company repaid \$12.2 million of long-term borrowings related to the divested furniture operations and other assets sold.

At December 31, 1998, the aggregate annual maturities on short-term and long-term debt in each of the years 1999-2003, and thereafter, were \$119 million, \$1,355 million, \$1 million, \$1 million, \$1 million, and \$5 million, respectively. In addition, the fully accreted Debenture amount of \$2,014 million matures in 2018. The total of annual debt maturities for all years presented does not agree to the balance of debt outstanding at December 31, 1998 as a result of the accretion of discount on the Debentures. The outstanding balances relating to the New Credit Facility are included in the maturity schedule in 2000, consistent with the expiration of the covenant waiver. Sunbeam has made no decision with respect to the repayment or refinancing of indebtedness incurred or to be incurred under the New Credit Facility and may repay such indebtedness out of its internally generated funds or from proceeds of a subsequent financing. Any decisions with respect to such repayment or refinancing will be made based on a review from time to time of the advisability of particular transactions, as well as on prevailing interest rates and financial and economic conditions.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

4. Financial Instruments

Fair Value of Financial Instruments

The fair value of the Company's financial instruments as of December 31, 1998 and December 28, 1997 was estimated based upon the following methods and assumptions:

Cash and Cash Equivalents—The carrying amount of cash and cash equivalents is assumed to approximate fair value as cash equivalents include all highly liquid, short-term investments with original maturities of three months or less.

Short and Long Term Debt—The fair value of the Company's fixed rate debt is estimated using either reported transaction values or discounted cash flow analysis. The fair value of the Company's fixed rate debt was \$319 million as of December 31, 1998 as compared to the carrying value of \$859 million. The carrying value of the Company's variable rate debt is assumed to approximate market based upon periodic adjustments of the interest rate to the current market rate in accordance with the terms of the debt agreements. The carrying value of the Company's various debt outstanding as of December 28, 1997 approximated market.

Letters of Credit and Surety Bonds—The Company utilizes stand-by letters of credit to back certain financing instruments and insurance policies and commercial letters of credit guaranteeing various international trade activities. In addition, the Company also entered into surety bonds largely as a result of litigation judgements that are currently under appeal. The contract amounts of the letters of credit and surety bonds approximate their fair values. The contract value of letters of credit were \$82.3 million and \$29.0 million as of December 31, 1998 and December 28, 1997, respectively. Contract values for surety bonds as of December 31, 1998 were approximately \$26.5 million and were not significant at December 28, 1997.

Derivative Financial Instruments—The Company utilizes interest rate swap agreements to reduce the impact on interest expense of fluctuating interest rates on its floating rate debt. The use of derivatives did not have a material impact on the Company's operations in 1998, 1997 and 1996. At December 31, 1998, the Company held three floating to fixed interest rate swap agreements, one with a notional value of \$25 million and two with notional amounts of \$150 million each. The swap agreements are contracts to exchange floating rate for fixed interest payments periodically over the lives of the agreements without the exchange of the underlying notional principal amounts. The swaps expire in January 2003, June 2001 and June 2003, respectively. Under these agreements, the Company received an average floating rate of 5.64%, 5.59% and 5.59%, respectively, and paid an average fixed rate of 6.12%, 5.75% and 5.58%, respectively, during 1998. The fair value of the interest rate swaps at December 31, 1998 is estimated to be \$7.3 million. This estimate is based upon quotes received from the Company's lending institutions and represents the cash requirement if the existing agreements had been terminated at the end of the year. Interest rate swaps are off-balance-sheet instruments and therefore have no carrying value. The Company had no swap agreements outstanding at December 28, 1997.

In order to mitigate the transaction exposures that may arise from changes in foreign exchange rates, the Company purchases foreign currency option and forward contracts to hedge specific transactions, principally the purchases of inventories. The option contracts typically expire within one year. The options are accounted for as hedges pursuant to SFAS No. 52, *Foreign Currency Translation*, accordingly gains and losses thereon are deferred and recorded in operations in the period in which the underlying transaction is recorded. At December 31, 1998, the Company held purchased option contracts with a notional value of \$32.3 million and a fair value of \$0.3 million and forward contracts with a notional value of \$30.9 million and a fair value of \$30.5 million. The Company did not hold any such contracts at December 28, 1997.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

4. Financial Instruments—(Continued)

The table below summarizes by currency, the contractual amounts, carrying amounts and related unrealized gain (loss) of the Company's forward exchange and option contracts at December 31, 1998 (in millions):

December 31, 1998	Forward Contracts	Purchased Option Contracts	Total Contracts	Carrying Amount Asset (Liability)	Recognized Unrealized Gain (Loss)	Deferred Unrealized Gain (Loss)
Currency:						
Deutschemark	\$12.0	\$18.4	\$30.4	\$ 0.3	\$ 0.2	\$—
Yen	\$14.9	\$12.4	\$27.3	\$(0.3)	\$(0.7)	\$—
Pound sterling	\$ 4.0	\$ 1.5	\$ 5.5	\$ 0.1	\$ 0.1	\$—
Total	<u>\$30.9</u>	<u>\$32.3</u>	<u>\$63.2</u>	<u>\$ 0.1</u>	<u>\$(0.4)</u>	<u>\$—</u>

The fair values of the Company's foreign currency contracts were based on quoted market prices of comparable contracts, adjusted through interpolation where necessary for maturity differences.

Exposure to market risk on interest rate and foreign currency financial instruments results from fluctuations in interest and currency rates, respectively, during the periods in which the contracts are outstanding. The counterparties to the Company's interest rate swap agreements and currency exchange contracts consist of a diversified group of major financial institutions, each of which is rated investment grade A or better. The Company is exposed to credit risk to the extent of potential nonperformance by counterparties on financial instruments. The Company believes the risk of incurred losses due to credit risk is remote.

5. Accounts Receivable Securitization

In December 1997, the Company entered into a receivable securitization program, that expires March 2000, to sell without recourse, through a wholly owned subsidiary, certain trade accounts receivable, up to a maximum of \$70.0 million. During 1998, the Company has received approximately \$200.0 million under this arrangement. At December 31, 1998, the Company had reduced accounts receivable by \$20.0 million for receivables sold under this program. At December 28, 1997, the Company had received \$58.9 million under this arrangement, of which \$39.1 million related to sales recorded in fiscal 1997 and the balance related to sales to be recognized in the first quarter of 1998. During 1997, the Company sold \$19.8 million of receivables related to bill and hold and consignment sales that had been initially recognized in its Consolidated Financial Statements and were subsequently reversed in the restatement process. The conditions for recognizing these sales were met in the first quarter of 1998. Accordingly, at December 28, 1997, the accompanying Consolidated Balance Sheet reflects a reduction in accounts receivable of \$39.1 million and an increase in other current liabilities of \$19.8 million. Proceeds from the sales of receivables were used to reduce borrowings under the Company's revolving credit facility or to provide cash flow for working capital purposes, thereby reducing the need to borrow under the credit facility. Costs of the program, which primarily consist of the purchaser's financing cost of issuing commercial paper backed by the receivables, totaled \$2.3 million and \$0.2 million during 1998 and 1997, respectively, and have been classified as interest expense in the accompanying Consolidated Statements of Operations. The Company, through a wholly-owned subsidiary, retains collection and administrative responsibilities for the purchased receivables. This agreement contains cross-default provisions that provide the purchaser of the receivables an option to cease purchasing receivables from the Company if the Company is in default under the New Credit Facility.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

6. Income Taxes

(Loss) earnings from continuing operations before income taxes, minority interest and extraordinary charge for each fiscal year is summarized as follows (in thousands):

	<u>1998</u>	<u>1997</u>	<u>1996</u>
Domestic.....	\$(723,179)	\$80,946	\$(244,255)
Foreign	(73,169)	11,724	(17,550)
	<u>\$(796,348)</u>	<u>\$92,670</u>	<u>\$(261,805)</u>

Income tax provisions include current and deferred taxes (tax benefits) for each fiscal year as follows (in thousands):

	<u>1998</u>	<u>1997</u>	<u>1996</u>
Current:			
Federal	\$ 1,203	\$(3,421)	\$(22,924)
State	275	3,266	(202)
Foreign	7,189	1,683	707
	<u>8,667</u>	<u>1,528</u>	<u>(22,419)</u>
Deferred:			
Federal	(6,343)	30,554	(57,211)
State	(1,316)	3,962	(11,050)
Foreign	(11,138)	4,308	(945)
	<u>(18,797)</u>	<u>38,824</u>	<u>(69,206)</u>
	<u>\$(10,130)</u>	<u>\$40,352</u>	<u>\$(91,625)</u>

The effective tax rate on earnings (loss) before income taxes, minority interest and extraordinary charges varies from the current statutory federal income tax rate as follows:

	<u>1998</u>	<u>1997</u>	<u>1996</u>
(Benefit) provision at statutory rate	(35.0)%	35.0 %	(35.0)%
State taxes, net	—	5.1	(2.8)
Amortization of intangible assets and goodwill	4.3	—	—
Warrants issued in settlement of claim	3.1	—	—
Foreign earnings and dividends taxed at other rates	2.7	2.0	2.3
Valuation allowance.....	23.6	20.4	—
Reversal of tax liabilities no longer required	—	(14.4)	—
Other, net	—	(4.6)	0.5
Effective tax rate (benefit) provision.....	<u>(1.3)%</u>	<u>43.5 %</u>	<u>(35.0)%</u>

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

6. Income Taxes—(Continued)

Significant components of the Company's deferred tax liabilities and assets are as follows:

	December 31, 1998	December 28, 1997
Deferred tax assets:		
Receivables	\$ 19,180	\$ 10,516
Postretirement benefits other than pensions	22,714	11,430
Reserves for self-insurance and warranty costs	40,765	33,426
Pension liabilities	16,334	2,811
Inventories	27,822	14,437
Net operating loss carryforwards	322,273	—
Tax credits	13,510	12,955
Other, net	<u>89,577</u>	<u>33,388</u>
Total deferred tax assets	552,175	118,963
Valuation allowance	<u>290,520</u>	<u>23,215</u>
Net deferred tax assets	<u>261,655</u>	<u>95,748</u>
Deferred tax liabilities:		
Depreciation	43,377	22,532
Acquired intangible assets	244,378	68,311
Other, net	<u>19,850</u>	<u>9,747</u>
Total deferred tax liabilities	<u>307,605</u>	<u>100,590</u>
Net deferred tax liabilities	<u>\$ (45,950)</u>	<u>\$ (4,842)</u>

The Company establishes valuation allowances in accordance with the provisions of SFAS No. 109. The Company continually reviews the adequacy of the valuation allowances and recognizes tax benefits when it is more likely than not that the benefits will be realized. In the fourth quarter of 1997, the Company increased the valuation allowance by \$23.2 million, reflecting management's assessment that it was more likely than not that the deferred tax assets would not be realized through future taxable income. Of this amount, approximately \$18.9 million related to deferred tax assets, the majority of which was recognized as a benefit in the first three quarters of 1997. The remainder related to minimum pension liabilities and was therefore recorded as an adjustment in shareholders' equity. This assessment was made as a result of the significant leverage undertaken by the Company as part of the acquisitions (see Note 2) and the significant decline in net sales and earnings from anticipated levels during the fourth quarter of 1997 and the first quarter of 1998.

Throughout 1998, the Company increased the valuation allowance to \$290.5 million, which increase reflects management's assessment that it is more likely than not that the deferred tax asset will not be realized through future taxable income. As described above, this assessment was made as a result of the significant leverage undertaken by the Company and the continuing decline in Sunbeam's net sales and earnings, as well as the operating losses incurred throughout the 1998 year. At December 31, 1998, the Company had net operating loss carryforwards ("NOL's") of approximately \$725 million for domestic income tax purposes and \$169 million for foreign income tax purposes. The domestic NOL's begin expiring in 2018. Of the foreign tax NOL's, \$3 million, \$4 million, \$19 million, \$18 million and \$16 million expire in the years ending December 31, 1999 through 2003, respectively, and \$91 million of such NOL's have an unlimited life.

The Company has not provided U.S. income taxes on undistributed foreign earnings of approximately \$32 million at December 31, 1998, as the Company intends to permanently reinvest these earnings in the future growth of the business. Determination of the amount of unrecognized deferred U.S. income tax liability is not practicable because of the complexities associated with its hypothetical calculation.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

7. Employee Benefit Plans

Pension and Other Postretirement Benefit Plans

The Company sponsors several defined benefit pension plans covering eligible U.S. salaried and hourly employees. Benefit accruals under such plans covering all U.S. salaried employees were frozen, effective December 31, 1990. Accordingly, no credit in the pension formula is given for service or compensation after that date. However, these employees continue to earn service toward vesting in their interest in the frozen plans as of December 31, 1990. The Company also provides health care and life insurance benefits to certain former employees who retired from the Company prior to March 31, 1991. The Company has consistently followed a policy of funding the cost of postretirement health care and life insurance benefits on a pay-as-you-go basis.

As a result of the Company's acquisitions of Coleman and First Alert (see Note 2), the liabilities for their respective defined benefit pension plans (the "Plans") were assumed and have been accounted for in accordance with Accounting Principles Board Opinion No. 16 ("APB 16"), *Accounting for Business Combinations*. Effective January 1, 1999, the Coleman and First Alert salaried pension plans were amended to change the pension benefit formula to a cash balance formula from the existing benefit calculation. The benefits accrued under these plans as of December 31, 1998 were frozen and converted to the new cash balance plan using a 7.0% interest rate assumption. The effect of the amendment of the Plans is reflected in the projected benefit obligation as of the date of acquisition as required by APB 16. Under the cash balance plan, the Company will credit certain participants' accounts annually. At the date of acquisition the pension benefit obligation and the fair value of the plan assets attributable to these Plans were \$43.4 million and \$27.7 million, respectively, and are reflected in the table below.

In addition, Coleman provided certain unfunded postretirement health and life insurance benefits for certain retired employees. At the date of acquisition the postretirement benefit obligation associated with this plan was \$19.5 million as reflected in the table below, and has been accounted for in accordance with APB 16.

The Company funds all pension plans in amounts consistent with applicable laws and regulations. Pension plan assets include corporate and U.S. government bonds, corporate stocks, mutual funds, fixed income securities, and cash equivalents.

Employees of non-U.S. subsidiaries generally receive retirement benefits from Company sponsored plans or from statutory plans administered by governmental agencies in their countries. The assets, liabilities and pension costs of the Company's non-U.S. defined benefit retirement plans are not material to the consolidated financial statements.

On January 1, 1998, the Company adopted SFAS No. 132, *Employers' Disclosures About Pensions and Other Postretirement Benefits* ("SFAS No. 132"). This statement revises employers' disclosures about pension and other postretirement benefit plans. SFAS No. 132 does not change the method of accounting for such plans.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

7. Employee Benefit Plans—(Continued)

The following table includes disclosures of the funded status and amounts recognized in the Company's Consolidated Balance Sheets at the end of each fiscal year as required by SFAS No. 132 (in thousands):

	<u>Pension Benefits</u>		<u>Postretirement Benefits</u>	
	<u>1998</u>	<u>1997</u>	<u>1998</u>	<u>1997</u>
Change in Benefit Obligation:				
Benefit obligation at beginning of year	\$127,229	\$122,754	\$ 14,220	\$ 14,555
Acquisitions	43,404	—	19,477	—
Service cost	1,551	157	689	—
Interest cost	10,875	8,970	2,088	996
Amendments	—	84	—	—
Actuarial loss	20,456	10,630	4,069	—
Settlement	—	(1,732)	—	—
Benefits paid	(15,018)	(13,634)	(1,677)	(1,331)
Benefit obligation at end of year	<u>\$188,497</u>	<u>\$127,229</u>	<u>\$ 38,866</u>	<u>\$ 14,220</u>
Change in Plan Assets:				
Fair value of plan assets at beginning of year	\$116,485	\$116,522	\$ —	\$ —
Acquisitions	27,657	—	—	—
Actual return on plan assets	6,424	12,511	—	—
Employer contributions	8,889	2,818	1,677	1,331
Settlement	—	(1,732)	—	—
Benefits paid	(15,018)	(13,634)	(1,677)	(1,331)
Fair value of plan assets at end of year	<u>\$144,437</u>	<u>\$116,485</u>	<u>\$ —</u>	<u>\$ —</u>
Reconciliation of Funded Status:				
Funded status	\$(44,060)	\$(10,744)	\$(38,866)	\$(14,220)
Unrecognized net actuarial loss/(gain)	48,616	25,192	3,829	(240)
Unrecognized prior service cost	—	—	(12,991)	(15,934)
Net amount recognized	<u>\$ 4,556</u>	<u>\$ 14,448</u>	<u>\$(48,028)</u>	<u>\$(30,394)</u>
Amount Recognized in the Consolidated Balance Sheets				
Consist of:				
Accrued benefit liability	\$(42,431)	\$(10,744)	\$(48,028)	\$(30,394)
Accumulated other comprehensive income	46,987	25,192	—	—
Net amount recognized	<u>\$ 4,556</u>	<u>\$ 14,448</u>	<u>\$(48,028)</u>	<u>\$(30,394)</u>

In determining the actuarial present value of the benefit obligation, the weighted average discount rate was 6.75% and 7.25% as of December 31, 1998 and December 28, 1997, respectively; the expected return on plan assets ranged from 6.75% to 9.00% for 1998 and was 7.25% for 1997. The expected increase in future compensation levels was 4.00% for Coleman for 1998.

The assumed health care cost trend rates used in measuring the accumulated postretirement benefit obligation were 7.0% to 8.0% for the plans for 1999 and were assumed to decrease gradually to 5.0% by 2003 and remain at that level thereafter.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

7. Employee Benefit Plans—(Continued)

Assumed health care cost trend rates have a significant effect on the amounts reported for the health care plan. A one-percentage-point change in assumed health care cost trend rates would have the following effects:

	<u>1-Percentage- Point Increase</u>	<u>1-Percentage- Point Decrease</u>
Effect on total of service and interest cost components	\$ 508	\$ (424)
Effect on the postretirement benefit obligation	\$6,035	\$(5,144)

Net pension expense and periodic postretirement benefit include the following components (in thousands):

	<u>Pension Benefits</u>			<u>Postretirement Benefits</u>		
	<u>1998</u>	<u>1997</u>	<u>1996</u>	<u>1998</u>	<u>1997</u>	<u>1996</u>
Components of net periodic pension benefit cost:						
Service cost	\$ 1,551	\$ 157	\$ 411	\$ 689	\$ —	\$ —
Interest cost	10,875	8,970	9,071	2,088	996	1,041
Expected return of market value of assets	(10,127)	(8,586)	(816)	—	—	—
Amortization of unrecognized prior service cost	—	—	—	(2,943)	(2,942)	(2,942)
Recognized net actuarial loss (gain)	735	414	(7,518)	—	—	—
Net periodic benefit cost (benefit)	3,034	955	1,148	(166)	(1,946)	(1,901)
Settlement charge	—	615	—	—	—	—
Curtailment charge	—	106	—	—	—	—
Total expense (benefit)	<u>\$ 3,034</u>	<u>\$ 1,676</u>	<u>\$ 1,148</u>	<u>\$ (166)</u>	<u>\$ (1,946)</u>	<u>\$ (1,901)</u>

The projected benefit obligation, accumulated benefit obligation and fair value of plan assets for the plans with accumulated benefit obligations in excess of plan assets were \$186.4 million, \$161.6 million and \$125.5 million at December 31, 1998 and \$127.2 million, \$127.2 million and \$116.5 million at December 28, 1997, respectively.

Defined Contribution Plans

As a result of the Company's acquisitions of Coleman, First Alert and Signature Brands, the Company amended its Savings & Investment and Profit Sharing Plan ("Savings Plan") to assume the assets of the respective savings plans at each of the acquired companies and establish parity with the benefits provided by Sunbeam. Effective January 1, 1999, all eligible employees could participate in the Savings Plan. Company contributions to these plans include employer matching contributions as well as discretionary contributions depending on the performance of the Company, in an amount up to 10% of eligible compensation. The Company provided \$1.9 million in 1998, \$1.8 million in 1997 and \$1.7 million in 1996 for its defined contribution plans.

8. Shareholders' Equity

Common Stock

At December 31, 1998, the Company had 500,000,000 shares of \$0.01 par value common stock authorized and there were 14,094,158 shares of common stock reserved for issuance upon the exercise of outstanding stock options.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

8. Shareholders' Equity—(Continued)

Compensatory Stock Grants

In July 1996, the Company granted 1,100,000 shares of restricted stock in connection with the employment of a then new Chairman and Chief Executive Officer and two other senior officers of the Company. Compensation expense attributable to the restricted stock awards was amortized to expense beginning in 1996 over the periods in which the restrictions lapse (which in the case of 333,333 shares, was immediately upon the date of grant, in the case of 666,667 shares, was to be amortized equally over two years from the date of grant and in the case of the remaining 100,000 shares, was equally over three years from the date of grant). These restricted stock awards resulted in a \$7.7 million charge to SG&A expense in 1996.

On February 20, 1998, the Company entered into new three-year employment agreements with its then Chairman and Chief Executive Officer and two other then senior officers of the Company. These agreements replaced previous employment agreements entered into in July 1996 that were scheduled to expire in July 1999.

The new employment agreement for the Company's then Chairman and Chief Executive Officer provided for, among other items, the acceleration of vesting of 200,000 shares of restricted stock and the forfeiture of the remaining 133,334 shares of unvested restricted stock granted under the July 1996 agreement, a new equity grant of 300,000 shares of unrestricted stock, a new grant of a ten-year option to purchase 3,750,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in three equal annual installments beginning on the date of grant and the acceleration of vesting of 833,333 outstanding stock options granted under the July 1996 agreement, as further described in Note 9. In addition, the new employment agreement with the then Chairman and Chief Executive Officer provided for income tax gross-ups with respect to any tax assessed on the equity grant and acceleration of vesting of restricted stock.

The new employment agreements with the two other then senior officers provided for, among other items, the grant of a total of 180,000 shares of restricted stock that were to vest in four equal annual installments beginning on the date of grant, the acceleration of vesting of 44,000 shares of restricted stock and the forfeiture of the remaining 29,332 shares of unvested restricted stock granted under the July 1996 agreements, new grants of ten-year options to purchase a total of 1,875,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in four equal annual installments beginning on the date of grant and the acceleration of vesting of 383,334 outstanding stock options granted under the July 1996 agreements. In addition, the new employment agreements provided for income tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock.

Compensation expense attributed to the equity grant, the acceleration of vesting of restricted stock and the related income tax gross-ups was recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups was amortized to expense beginning in the first quarter of 1998 with amortization to continue over the period in which the restrictions lapse. Total compensation expense recognized in 1998 related to these items was approximately \$31 million.

On June 15, 1998, the Company's board of directors announced the removal of the then Chairman and Chief Executive Officer and subsequently announced the removal or resignation of other senior officers, including the Company's then Chief Financial Officer. In connection with the removal or resignation of the senior officers and the termination of their restricted stock grants, the unamortized portion of the deferred compensation expense attributable to the restricted stock grants was reversed. The Company and certain of its former officers are in disagreement as to the Company's obligations to these individuals under prior employment agreements and arising from their terminations. (See Note 15.)

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

8. Shareholders' Equity—(Continued)

Accumulated Other Comprehensive Loss

The components of accumulated other comprehensive loss consist of the following (in thousands):

	<u>Currency Translation Adjustments</u>	<u>Minimum Pension Liability</u>	<u>Total</u>
Balance at December 29, 1996	\$(12,111)	\$ (6,163)	\$(18,274)
Balance at December 28, 1997	(12,850)	(20,213)	(33,063)
Balance at December 31, 1998	(12,022)	(42,008)	(54,030)

The accumulated other comprehensive loss associated with the minimum pension liability is net of deferred income taxes of approximately \$5.0 million in 1998, 1997 and 1996.

9. Employee Stock Options and Awards

The Company has one stock-based compensation plan, the Amended and Restated Sunbeam Corporation Stock Option Plan (the "Plan"). Under the Plan, all employees are eligible for grants of options to purchase up to an aggregate of 16,300,000 shares of the Company's common stock at an exercise price equal to or in excess of the fair market value of the stock on the date of grant. The term of each option commences on the date of grant and expires on the tenth anniversary of the date of grant subject to earlier cancellation. Options generally become exercisable over a three to five year period.

The Plan also provides for the grant of restricted stock awards of up to 200,000 shares, in the aggregate, to employees and non-employee directors. The Plan provides that each non-employee director of the Company is automatically granted 1,500 shares of restricted common stock upon his or her initial election or appointment and upon each subsequent re-election to the Company's board of directors. In the event of an election or appointment to the Company's board of directors at any time other than at the annual meeting of stockholders, the director receives a prorated amount of restricted common shares. These restricted common shares vest immediately upon the non-employee director's acceptance of his or her election or appointment to the Company's board of directors. The Company granted 6,000, 6,000, and 7,818 shares of restricted stock to non-employee directors in 1998, 1997 and 1996, respectively, and recognized compensation expense related to these grants of \$0.2 million in each of 1998, 1997 and 1996. See Note 8 for a discussion of restricted stock awards made outside the Plan.

In July 1996, options to purchase an aggregate of 3,000,000 shares (of which 2,750,000 options were outstanding at December 28, 1997) were granted outside of the Plan at exercise prices equal to the fair market value of the Company's common stock on the dates of grant in connection with the employment of a then new Chairman and Chief Executive Officer and two other senior officers of the Company. These outstanding options have terms of ten years and, with respect to options for 2,500,000 shares, were exercisable in three annual installments beginning July 17, 1996. Options for the remaining 250,000 shares still outstanding were exercisable in three annual installments beginning on the first anniversary of the July 22, 1996 grant date. On February 20, 1998 the vesting provisions of the options granted outside the Plan were accelerated. Additional stock option grants outside the Plan were made in February 1998, with a portion thereof subsequently terminated in connection with the removal of the then Chairman and Chief Executive Officer. The then Chairman and Chief Executive Officer and another senior officer are disputing termination of their stock option grants. (See Notes 8 and 15.)

In the third and fourth quarters of 1998, options to purchase an aggregate of 4,200,000 shares were granted outside of the Plan in connection with the employment of the new Chief Executive Officer and certain members of the new senior management team. The options were granted to certain senior executives at exercise prices equal to or greater than the fair market value of the Company's common stock on the dates of the grant. The senior officers were granted options to purchase 3,200,000 shares of common stock at a price of \$7.00 per share; 500,000 shares of common stock at a price of \$10.50 per share and 500,000 shares at a price of \$14.00 per share.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

9. Employee Stock Options and Awards—(Continued)

All of these outstanding options have terms of ten years and become fully exercisable at the end of two to three year periods if the executive remains employed by the Company as of such date. These grants are subject the shareholder approval at the 1999 Annual Meeting. A measurement date pursuant to APB Opinion No. 25 will be established for these grants upon shareholder approval. These options have been included in the following tables summarizing the Company's stock option activity for the year ended December 31, 1998.

In August 1998, the Company approved a plan to exchange outstanding common stock options held by the Company's employees. The exchange program, which has been completed, provided for outstanding options with exercise prices in excess of \$10.00 per share to be exchanged for new options on a voluntary basis in an exchange ratio ranging from approximately two to three old options for one new option, (as determined by reference to a Black-Scholes option pricing model) with the exercise price of the new options set at \$7.00 per share. These options were repriced at an exercise price approximating the market value of the Company's common stock at the date of the repricing and, consequently, there was no related compensation expense.

The Company applies APB Opinion No. 25 and related interpretations in accounting for its stock options. Accordingly, no compensation cost has been recognized for outstanding stock options. Had compensation cost for the Company's outstanding stock options been determined based on the fair value at the grant dates for those options consistent with SFAS No. 123, the Company's net (loss) earnings and basic and diluted (loss) earnings per share would have differed as reflected by the pro forma amounts indicated below (in thousands except per share amounts):

	<u>1998</u>	<u>1997</u>	<u>1996</u>
Net (loss) earnings:			
As reported	\$ (897,923)	\$38,301	\$(208,481)
Pro forma	(1,023,932)	14,524	(218,405)
Basic (loss) earnings per share:			
As reported	(9.25)	0.45	(2.51)
Pro forma	(10.54)	0.17	(2.63)
Diluted (loss) earnings per share:			
As reported	(9.25)	0.44	(2.51)
Pro forma	(10.54)	0.17	(2.63)

The Company's pro forma net loss for 1998 includes approximately \$68 million of compensation cost relating to options issued to the former Chairman and Chief Executive Officer (3,750,000) and a former senior officer (1,125,000) in connection with their February 1998 employment agreements. These options are included in the outstanding and exercisable options issued outside the plan in the following table. The Company and these individuals are in dispute regarding the status of these options.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions:

	<u>1998</u>	<u>1997</u>	<u>1996</u>
Expected volatility	52.80%	34.19%	36.78%
Risk-free interest rate	4.68%	6.36%	6.34%
Dividend yield	0.0%	0.1%	0.1%
Expected life	6 years	6 years	5 years

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

9. Employee Stock Options and Awards—(Continued)

A summary of the status of the Company's outstanding stock options as of December 31, 1998, December 28, 1997 and December 29, 1996, and changes during the years ended on those dates is presented below:

	1998		1997		1996	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Plan options						
Outstanding at beginning of year ..	6,654,068	\$25.61	6,271,837	\$19.43	4,610,387	\$16.67
Granted	6,663,998	17.13	3,105,263	32.40	4,061,450	20.39
Exercised	(879,088)	22.25	(1,549,196)	17.20	(622,994)	7.51
Canceled	(6,826,070)	27.75	(1,173,836)	21.10	(1,777,006)	18.64
Outstanding at end of year	<u>5,612,908</u>	\$13.32	<u>6,654,068</u>	\$25.61	<u>6,271,837</u>	\$19.43
Options exercisable at year-end	1,717,545	\$20.91	1,547,198	\$19.13	1,655,450	\$16.13
Weighted-average fair value of options granted during the year		\$10.47		\$15.46		\$14.76
Options outside plan						
Outstanding at beginning of year ..	2,750,000	\$12.43	2,750,000	\$12.43	692,500	\$16.70
Granted	9,825,000	24.62	—	—	3,000,000	12.65
Canceled	(750,000)	36.85	—	—	(942,500)	16.27
Outstanding at end of year	<u>11,825,000</u>	\$21.01	<u>2,750,000</u>	\$12.43	<u>2,750,000</u>	\$12.43
Options exercisable at year-end	7,625,000	\$28.04	1,750,000	\$12.35	833,333	\$12.25
Weighted-average fair value of options granted during the year		\$13.71		N/A		\$ 5.99

Included in the outstanding and exercisable options issued outside the plan, as presented above, are options issued to the former Chairman and Chief Executive Officer (3,750,000) and a former senior officer (1,125,000) in connection with their February 1998 employment agreements. The Company and these individuals are in a dispute regarding the status of these options.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

9. Employee Stock Options and Awards—(Continued)

The following table summarizes information about stock options outstanding at December 31, 1998:

<u>Range of Exercise Prices</u>	<u>Options Outstanding</u>		
	<u>Number Outstanding at 12/31/98</u>	<u>Weighted-Average Remaining Contractual Life (Years)</u>	<u>Weighted-Average Exercise Price</u>
\$5.00 to 7.00	6,076,805	9.2	\$ 6.91
\$7.01 to \$14.00	4,048,200	8.3	11.80
\$14.01 to \$15.00	642,124	7.6	14.43
\$15.01 to \$23.15	697,697	7.2	19.47
\$23.16 to \$26.71	733,714	8.3	25.07
\$26.72 to \$36.85	4,951,590	9.1	36.55
\$36.86 and over	287,778	8.9	40.32
<u>\$5.00 to \$50.77</u>	<u>17,437,908</u>	<u>8.7</u>	<u>18.49</u>

<u>Range of Exercise Prices</u>	<u>Options Exercisable</u>	
	<u>Number Exercisable at 12/31/98</u>	<u>Weighted-Average Exercise Price</u>
\$5.00 to \$7.00	95,895	\$ 5.01
\$7.01 to \$14.00	2,500,000	12.25
\$14.01 to \$15.00	571,290	14.41
\$15.01 to \$23.15	627,488	19.30
\$23.16 to \$26.71	540,055	25.10
\$26.72 to \$36.85	4,906,961	36.62
\$36.86 and over	100,856	40.60
<u>\$5.00 to \$50.77</u>	<u>9,342,545</u>	<u>26.62</u>

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

10. Supplementary Financial Statement Data

Supplementary Balance Sheet data at the end of each fiscal year is as follows (in thousands):

	<u>1998</u>	<u>1997</u>
Receivables:		
Trade	\$ 407,452	\$250,699
Sundry	7,347	7,794
	<u>414,799</u>	<u>258,493</u>
Valuation allowance	<u>(53,025)</u>	<u>(30,033)</u>
	<u>\$ 361,774</u>	<u>\$228,460</u>
Inventories:		
Finished goods	\$ 370,622	\$193,864
Work in process	39,143	25,679
Raw materials and supplies	<u>109,424</u>	<u>85,357</u>
	<u>\$ 519,189</u>	<u>\$304,900</u>
Prepaid expenses and other current assets:		
Deferred income taxes	\$ 40,756	\$ —
Prepaid expenses and other	<u>33,431</u>	<u>16,584</u>
	<u>\$ 74,187</u>	<u>\$ 16,584</u>
Property, plant and equipment:		
Land	\$ 10,664	\$ 1,793
Buildings and improvements	168,685	98,054
Machinery and equipment	395,763	248,138
Furniture and fixtures	<u>18,208</u>	<u>7,327</u>
	593,320	355,312
Accumulated depreciation and amortization	<u>(138,148)</u>	<u>(105,788)</u>
	<u>\$ 455,172</u>	<u>\$249,524</u>
Trademarks, tradenames, goodwill and other:		
Trademarks and tradenames	\$ 597,515	\$237,095
Goodwill	1,254,880	24,687
Deferred financing costs	47,325	983
Other intangible assets	<u>28,012</u>	<u>424</u>
	1,927,732	263,189
Accumulated amortization	<u>(101,783)</u>	<u>(56,880)</u>
	1,825,949	206,309
Other assets	<u>33,428</u>	<u>853</u>
	<u>\$1,859,377</u>	<u>\$207,162</u>

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

10. Supplementary Financial Statement Data—(Continued)

	<u>1998</u>	<u>1997</u>
Other current liabilities:		
Payrolls, commissions and employee benefits	\$ 61,294	\$ 12,227
Advertising and sales promotion	56,288	34,749
Product warranty	50,287	21,498
Accounts receivable securitization liability	—	19,750
Sales returns	16,972	7,846
Interest	26,202	941
Other	<u>110,142</u>	<u>27,074</u>
	<u>\$321,185</u>	<u>\$124,085</u>
Other long-term liabilities:		
Accrued postretirement benefit obligation	\$ 48,028	\$ 30,394
Accrued pension	42,431	10,744
Product liability and workers compensation	71,868	41,901
Other	<u>86,132</u>	<u>71,261</u>
	<u>\$248,459</u>	<u>\$154,300</u>

Supplementary Statements of Operations and Cash Flows data for each fiscal year are summarized as follows (in thousands):

	<u>1998</u>	<u>1997</u>	<u>1996</u>
Other (income) expense, net:			
Interest income	\$ (2,897)	\$ (2,561)	\$ (1,255)
Other, net	<u>(1,871)</u>	<u>2,573</u>	<u>4,993</u>
	<u>\$ (4,768)</u>	<u>\$ 12</u>	<u>\$ 3,738</u>
Cash paid (received) during the period for:			
Interest	<u>\$ 81,291</u>	<u>\$ 13,058</u>	<u>\$ 13,397</u>
Income taxes (net of refunds)	<u>\$ (17,358)</u>	<u>\$ (44,508)</u>	<u>\$ (540)</u>

11. Asset Impairment and Other Charges

In the fourth quarter of 1998, the Company recorded a \$62.5 million charge for the write-off of the carrying value of First Alert's goodwill (see Note 2).

In the second quarter of 1998, as a result of decisions to outsource or discontinue a substantial number of products previously made by the Company (principally breadmakers, toasters and certain other appliances, air and water filtration products and the elimination of certain stock keeping units ("SKU's")) within existing product lines, primarily relating to appliances, grills and grill accessories), certain facilities and equipment will either no longer be used or will be utilized in a significantly different manner. Accordingly, a charge of \$29.6 million was recorded in Cost of Goods Sold to write certain of these assets down to their estimated fair market value. Approximately 80% of this charge related to machinery, equipment and tooling at the Company's Mexico City and Hattiesburg, Mississippi manufacturing plants, the estimated fair value for which was derived through an auction process. The remainder of this charge related to tooling and equipment at various other facilities, which either had a nominal value or the fair market value of which was derived through an auction process. These assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. The net carrying value of these assets after the write-down approximated \$2.2 million and these assets are expected to be disposed of by September 30, 1999. Depreciation

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

11. Asset Impairment and Other Charges—(Continued)

expense associated with these assets approximated \$2.6 million in 1998, \$4.2 million in 1997 and \$3.5 million in 1996.

Personnel at the Mexico City facility were notified in the second quarter of 1998 that the plant was scheduled for closure at year-end 1998; accordingly, at that time, a liability of \$1.8 million was recorded in Cost of Goods Sold primarily for employee severance. The employee severance related to approximately 1,200 positions of which approximately 1,100 were terminated and \$1.4 million paid in severance as of December 31, 1998. It is anticipated that the remaining 100 employees will be terminated and the balance of the severance obligation (\$0.4 million) paid by July 31, 1999. In the third quarter of 1998, the Company recorded as Cost of Goods Sold, an additional provision for impairment of fixed assets of \$3.1 million in an acquired entity, relating to assets taken out of service for which there was no remaining value. The asset impairment resulted from management's decision, during the third quarter, to discontinue certain SKU's within product lines (principally generators, compressors and propane cylinders) subsequent to the acquisition. These fixed assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. Depreciation expense associated with these assets approximated \$0.8 million in 1998. In the fourth quarter of 1998, the Company recorded a \$7.1 million charge as a result of management's decision, during the fourth quarter, to outsource the production of certain appliances (principally irons). This charge to Cost of Goods Sold primarily consists of a provision for certain tooling and equipment (\$6.7 million) and severance and related benefits (\$0.4 million). This tooling and equipment, which had no remaining value, was written off. These fixed assets were taken out of service at the time of the write-down, and consequently depreciation was discontinued at the time of the write-down. Depreciation expense associated with these assets approximated \$2.4 million in 1998. \$2.4 million of the charge recorded in 1998, the severance was related to approximately 100 employees. The remaining \$4.7 million of the charge was related to the tooling and equipment. The charge recorded in 1998, the severance was related to approximately 100 employees. The remaining \$4.7 million of the charge was related to the tooling and equipment.

During 1997 and the first half of 1998, the Company built inventory for anticipated 1998 sales volume which did not materialize. As a result, it has been and will continue to be necessary to dispose of some portion of excess inventories at amounts less than cost. Accordingly, during 1998, when the facts and circumstances were known that such sales volume would not materialize, the Company recorded \$58.2 million in charges (of which \$46.4 million, \$2.2 million and \$9.6 million, were recorded during the second, third and fourth quarters, respectively) to properly state this inventory at the lower-of-cost-or-market. This inventory primarily related to certain appliances, grills and grill accessories. The Company also recorded a charge of \$11.0 million during the second quarter for excess inventories for raw materials and work in process that will not be used due to outsourcing the production of breadmakers, toasters and certain other appliances. In addition, during 1998, the Company made the decision to exit certain product lines, primarily air and water filtration products and eliminate certain SKU's within existing product lines, primarily relating to appliances, grills and grill accessories. As a result of this decision, a \$26.6 million charge was recorded during the second quarter to properly state this inventory at the lower-of-cost-or-market. Total charges for excess inventories recorded at the lower-of-cost-or-market, based on management's best estimate of net realizable value, amounted to approximately \$95.8 million at December 31, 1998. (See Note 12 for asset impairment and other charges recorded in conjunction with a 1996

12. Restructuring

In November 1996, the Company announced the details of a restructuring plan. The plan included the consolidation of administrative functions within the Company, the reduction of manufacturing and warehouse facilities, the centralization of the Company's procurement function, and reduction of the Company's product offerings and SKU's. The Company also announced plans to divest several lines of business (see Note 13)

As part of the restructuring plan, the Company consolidated six divisional and regional headquarters into a single worldwide corporate headquarters and outsourced certain back office activities

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

12. Restructuring—(Continued)

a reduction in total back-office/administrative headcount. Overall, the restructuring provided for a reduction in the number of production facilities from 26 to 8 and the elimination of over 6,000 positions from the Company's workforce, including 3,300 from the disposition of certain business operations and the elimination of approximately 2,700 other positions whose work was reassigned. The Company completed the major phases of the restructuring plan by July 1997.

In conjunction with the implementation of the restructuring plan, the Company recorded a pre-tax charge of \$239.2 million in the fourth quarter of 1996. This amount is recorded as follows in the accompanying Consolidated Statements of Operations: \$110.1 million in Restructuring and Asset Impairment Charges, as further described below; \$60.8 million in Cost of Goods Sold related principally to inventory write-downs to net realizable values as a result of a reduction in SKUs and costs of inventory liquidation programs; \$50.3 million in SG&A expense, a period cost which were charged to operations as incurred, principally relating to employee relocation and remaining and equipment relocation and lease losses (\$3.2 million); transitional fees relating to outsourcing arrangements (\$4.9 million) and package redesign costs (\$2.0 million), and \$58.2 million (\$39.1 million net of taxes) in Loss on Sale of Discontinued Operations related to the divestiture of its furniture business. In 1997, upon completion of the sale of the furniture business, the Company recorded an additional pre-tax loss of \$22.5 million from discontinued operations (\$14.0 million net of taxes) due primarily to lower than anticipated sales proceeds relating to the post closing adjustment process that was part of the sale agreement.

Amounts included in Restructuring and Asset Impairment Charges in 1996 in the accompanying Consolidated Statements of Operations included cash items such as severance and other employee costs of \$24.7 million, lease write-offs of \$11.0 million and other fixed asset write-offs of \$10.0 million, and other charges to the income statement of \$64.4 million, principally consisting of the restructuring and asset impairment charges.

Included in restructuring and asset impairment charges in 1996 was \$68.7 million in non-cash charges (classified within the \$110.1 million restructuring charge) principally consisting of: (a) asset write-downs to net realizable value for disposals of excess facilities and equipment and certain product lines (\$22.5 million); (b) write-offs of redundant computer systems from the administrative back-office consolidations and outsourcing initiatives (\$12.3 million); (c) write-off of intangibles relating to discontinued product lines (\$10.1 million); (d) write-off of capitalized product and package design costs and other expenses related to exited product lines and SKU reductions (\$9.0 million) (Prior to 1996, Sunbeam had capitalized certain costs related to international product development and package design, which were amortized over the period of related benefit. The product development costs of \$9 million related to international operations and represented the costs necessary to modify products for introduction to the international markets. As the restructuring plan included the closure of International Group office and elimination of a number of products to which these costs pertained, the related capitalized costs were written off. Additionally, in connection with the restructuring plan as a result of the elimination of many products and SKUs, Sunbeam updated its package designs. Accordingly, the unamortized balance of the capitalized package design costs which had been capitalized prior to 1996, \$5.0 million, was written off. Sunbeam discontinued incurring costs of product and package design in 1996.

has discontinued incurring such costs subsequent to 1996 and the remaining \$9.0 million related to the certain non-cash charges discussed above was for the remaining 1996 and 1997. (a) and (b) discussed above) included equipment taken out of service in 1996 further abandoned in 1996 or sold in 1997) and accordingly, depreciation was not recorded subsequent to the date of impairment charge. The asset write-downs of \$14.8 million related to the divestiture of non-core products and businesses resulted from divesting of the time and temperature business (sold in March 1997) and Counselor® and Borg® scale product lines (sold in May 1997) and the sale of the textile mill in Biddeford, Maine in May 1997. These charges primarily represented the estimated non-cash losses resulting from the sale or abandonment of facilities and equipment related to exiting these product lines. The Company continued to record depreciation expense on these fixed assets, based on historical rates, until such time that the assets were disposed of. For these fixed assets, the

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

12. Restructuring—(Continued)

impairment charges represented write-downs to net realizable values (based on the estimated net proceeds from the sale of these assets compared to their recorded net book value), less estimated depreciation expense at historical rates through the period of estimated use. The net carrying value of these assets at December 29, 1996 approximated \$42.5 million.

The \$24.7 million for severance and other employee costs, including COBRA and other fringe benefits, related to approximately 3,700 positions that were planned to be eliminated as a result of the restructuring plan, excluding approximately 2,400 employees terminated from the furniture business for which severance was included in Loss on Sale of Discontinued Operations (see Note 13). The furniture business was sold in 1997. In 1996 and 1997, approximately 1,200 employees and 1,800 employees, respectively, were terminated from continuing operations. Due largely to attrition, the remaining planned terminations were not required. In 1997, the Company determined that its severance and employee benefit costs were less than originally accrued principally due to lower than expected COBRA and workers compensation costs, and accordingly reversed accruals of \$7.9 million in the third quarter (\$2.1 million) and fourth quarter (\$5.8 million). At December 31, 1997, the balance accrued of \$1.2 million represented the remaining severance and employee benefit costs for certain employees terminated during 1997. During 1998, all amounts were expended.

The amounts accrued at December 29, 1996, for Restructuring and Asset Impairment Charges recorded in fiscal 1996, exceeded amounts ultimately required principally due to reductions in anticipated severance and employee benefit costs of \$7.9 million, as discussed above, and reductions in estimated lease payments of \$6.7 million (\$3.7 million and \$3.0 million recognized in the third and fourth quarters, respectively) resulting from better than anticipated rentals received under sub-leases and favorable negotiation of lease terminations. Accordingly, the fiscal 1997 Consolidated Statement of Operations included \$14.6 million of benefit (\$5.8 million in the third quarter and \$8.8 million in the fourth quarter of 1997) related to the reversal of accruals no longer required, which were recorded as these reduced obligations became known.

In 1996, in conjunction with the initiation of the restructuring plan, the Company recorded additional charges totaling \$129.1 million, reflected in Cost of Goods Sold; SG&A expense and Loss on Sale of Discontinued Operations. The charge included in Cost of Goods Sold (\$60.8 million) principally represented inventory write-downs to net realizable value, based upon management's best estimates, and anticipated losses on the disposition of the inventory as a result of the significant reduction in SKU's provided for in the restructuring plan. The write-down included \$26.9 million related to raw materials, work-in process and finished goods for discontinued outdoor cooking products, principally grills and grills accessories and the balance related to raw materials, work-in-process and finished goods for other discontinued products including appliances (\$27.8 million), clippers (\$1.0 million) and blankets (\$5.1 million). For inventory which management determined was salable, the estimated write-down was based upon the difference between the expected net sales proceeds of the inventory, depending on distribution channel, and the recorded value of the inventory. In the case of abandoned inventory, the write-down was equal to the recorded value of the inventory. The resulting difference between carrying value and estimated net realizable value represented the \$60.8 million write-down necessary to record the inventory at its net realizable value. SG&A expense included period costs, charged to operations as incurred, in 1997 and 1996 of \$15.8 million and \$10.1 million, respectively, relating to employee relocation and recruiting and equipment relocation and installation (\$11.8 million in 1997 and \$3.2 million in 1996), transitional fees related to outsourcing arrangements (\$4.9 million in 1996) and package redesign costs (\$4.0 million in 1997 and \$2.0 million in 1996) expended as a result of the implementation of the restructuring plan. The Loss on Sale of Discontinued Operations of \$58.2 million is discussed further in Note 13.

At December 28, 1997, the Company had \$5.2 million in liabilities accrued related to the 1996 restructuring plan, including \$1.2 million of severance related costs and \$4.0 million related to facility closures, which principally represented future lease payments (net of sub-leases) on exited facilities. During 1998, this liability was reduced by \$4.0 million as a result of cash expenditures. At December 28, 1997, the Company had

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

12. Restructuring—(Continued)

\$3.0 million of warranty liabilities related to the discontinued furniture operations. During 1998, \$2.5 million of this liability was liquidated.

The following table sets forth the details and the activity from the charges (in millions):

	<u>Accrual Balance January 1, 1996</u>	<u>Additions Charged to Income</u>	<u>Cash Reductions</u>	<u>Non-cash Reductions</u>	<u>Accrual Balance December 29, 1996</u>
Write-downs:					
Fixed assets, held for disposal, not in use	\$ —	\$ 34.8	\$ —	\$ 34.8	\$ —
Fixed assets, held for disposal, used until disposed	11.3	14.8	—	11.3	14.8
Inventory on hand	—	60.8	—	60.8	—
Other assets, principally trademarks and intangible assets	—	19.1	—	18.0	1.1
	<u>11.3</u>	<u>129.5</u>	<u>—</u>	<u>124.9</u>	<u>15.9</u>
Restructuring accruals:					
Employee severance pay and fringes	—	24.7	5.6	—	19.1
Lease payments and termination fees	2.5	12.6	2.5	—	12.6
Other exit activity costs, principally facility closure expense	—	4.1	—	—	4.1
	<u>2.5</u>	<u>41.4</u>	<u>8.1</u>	<u>—</u>	<u>35.8</u>
Total restructuring and asset impairment accrual	<u>13.8</u>	<u>170.9</u>	<u>8.1</u>	<u>124.9</u>	<u>51.7</u>
Other related period costs charged to operations as incurred:					
Employee relocation; equipment relocation and installation and other	—	3.2	3.2	—	—
Transitional fees related to outsourcing arrangements	—	4.9	4.9	—	—
Package redesign	—	2.0	2.0	—	—
	<u>—</u>	<u>10.1</u>	<u>10.1</u>	<u>—</u>	<u>—</u>
Total included in continuing operations	13.8	181.0	18.2	124.9	51.7
Total included in discontinued operations	—	58.2	—	—	58.2
	<u>\$13.8</u>	<u>\$239.2</u>	<u>\$18.2</u>	<u>\$124.9</u>	<u>\$109.9</u>

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

12. Restructuring—(Continued)

	Accrual Balance December 30, 1996	Additions Charged to Income	Cash Reductions	Non-cash Reductions	Reversals	Accrual Balance December 28, 1997
Write-downs:						
Fixed assets, held for disposal, used until disposed	\$ 14.8	\$ —	\$ —	\$14.8	\$ —	\$ —
Other assets, principally trademarks and intangible assets	<u>1.1</u>	<u>—</u>	<u>—</u>	<u>1.1</u>	<u>—</u>	<u>—</u>
	<u>15.9</u>	<u>—</u>	<u>—</u>	<u>15.9</u>	<u>—</u>	<u>—</u>
Restructuring accruals:						
Employee severance pay and fringes	19.1	—	10.0	—	7.9	1.2
Lease payments and termination fees	12.6	—	2.6	—	6.7	3.3
Other exit activity costs, principally facility closure expenses	<u>4.1</u>	<u>—</u>	<u>3.4</u>	<u>—</u>	<u>—</u>	<u>0.7</u>
	<u>35.8</u>	<u>—</u>	<u>16.0</u>	<u>—</u>	<u>14.6</u>	<u>5.2</u>
Total restructuring and asset impairment accrual	51.7	—	16.0	15.9	14.6	5.2
Discontinued operations	<u>58.2</u>	<u>22.5</u>	<u>6.1</u>	<u>71.6</u>	<u>—</u>	<u>3.0</u>
	<u>\$109.9</u>	<u>\$22.5</u>	<u>\$22.1</u>	<u>\$87.5</u>	<u>\$14.6</u>	<u>\$8.2</u>

	Accrual Balance December 29, 1997	Cash Reductions	Accrual Balance December 31, 1998
Restructuring accruals:			
Employee severance pay and fringes	\$1.2	\$1.2	\$ —
Lease payments and termination fees	3.3	2.1	1.2
Other exit activity costs, principally facility closure expenses	<u>0.7</u>	<u>0.7</u>	<u>—</u>
Total restructuring accrual	<u>5.2</u>	<u>4.0</u>	<u>1.2</u>
Discontinued operations	<u>3.0</u>	<u>2.5</u>	<u>0.5</u>
	<u>\$8.2</u>	<u>\$6.5</u>	<u>\$1.7</u>

The restructuring accrual, which existed at January 1, 1996 (\$13.8 million), was initially established as part of a "rightsizing program" during fiscal 1992. During 1996 approximately \$3 million of this accrual was utilized and the remaining \$10.8 million became part of the reserve requirements of the 1996 restructuring plan. In effect, in 1996, the Company reversed the \$10.8 million prior year accrual determined to be no longer required and provided a corresponding amount in connection with the 1996 restructuring charge.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

13. Discontinued Operations

As part of the 1996 restructuring plan, the Company also announced the divestiture of the furniture business, by a sale of assets. In February 1997, the Company entered into an agreement to sell the business to U.S. Industries, Inc. in a transaction that was completed on March 17, 1997. In connection with the furniture divestiture, the Company recorded a provision for estimated losses to be incurred on the sale of \$39.1 million in 1996, net of applicable income tax benefits of \$19.9 million. Although the discontinued furniture operations were profitable, net income had declined from \$21.7 million in 1994 to \$0.8 million in 1996. This decline, along with the Company's announcement that it intended to divest this line of business contributed to the loss on sale. Revenues for the discontinued furniture business were \$51.6 million in the first quarter of 1997, \$227.5 million in 1996 and \$185.6 million in 1995. Results of operations were nominal in 1997 and 1996, down from \$12.9 million (net of \$7.9 million in taxes) in 1995. In connection with the sale of these assets (primarily inventory, property, plant and equipment), the Company received \$69.0 million in cash. The Company retained accounts receivable related to the furniture business of approximately \$50 million as of the closing date and retained certain liabilities. The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the asset purchase agreement and in the first quarter of 1997, after completion of the sale, the Company recorded an additional loss of \$14.0 million, net of applicable income tax benefits of \$8.5 million.

In addition to the furniture business divestiture, the Company also completed the sale of other product lines and assets in 1997 as part of its restructuring plan, including time and temperature products, Counselor® and Borg® scales and a textile facility. Losses incurred on the disposal of these assets, which consist primarily of write-downs of assets to net realizable value, are included in Restructuring and Asset Impairment Charges in 1996 in the Consolidated Statements of Operations.

14. Segment, Customer and Geographic Data

Throughout 1998 Sunbeam's operations were managed through four reportable segments: Household, Outdoor Leisure, International and Corporate. Reportable segments are identified by the Company based upon the distinct products manufactured (Household and Outdoor Leisure) or based upon the geographic region in which its products are distributed (International). The Company's reportable segments are all separately managed.

The Household group consists of appliances (including mixers, blenders, food steamers, bread makers, rice cookers, coffee makers, toasters, irons and garment steamers), health products (including vaporizers, humidifiers, air cleaners, massagers, hot and cold packs and blood pressure monitors), scales, personal care products (including hair clippers and trimmers and related products for the professional beauty, barber and veterinarian trade and sales of products to commercial and institutional channels), blankets (including electric blankets, heated throws and mattress pads) and First Alert® products (smoke and carbon monoxide detectors, fire extinguishers and home safety equipment).

The Outdoor Leisure group includes outdoor recreation products (which encompass tents, sleeping bags, coolers, camping stoves, lanterns and outdoor heaters), outdoor cooking products (including gas and charcoal outdoor grills and grill parts and accessories), Powermate® products (including portable power generators and air compressors), and Eastpak® products (including backpacks and bags).

The International group is managed through five regional subdivisions: Europe, Latin America, Japan, Canada and East Asia. Europe includes the manufacture, sales and distribution of Campingaz® products and sales and distribution in Europe, Africa and the Middle East of other Company products. The Latin American region includes the manufacture, sales and distribution throughout Latin America of small appliances, and sales and distribution of personal care products, professional clippers and related products, camping products and Powermate products. Japan includes the sales and distribution of primarily outdoor recreation products. Canada includes sales of substantially all the Company's products and East Asia encompasses sales and distribution in all areas of East Asia other than Japan of substantially all the Company's products.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

14. Segment, Customer and Geographic Data—(Continued)

The Company's Corporate group provides certain management, accounting, legal, risk management, treasury, human resources, tax and management information services to all operating groups and also includes the operation of the Company's retail stores and the conduct of the Company's licensing activities.

The accounting policies of the operating segments are the same as those described in the summary of significant accounting policies (see Note 1) except that certain bad debt expense is recorded at a consolidated level and included in the Corporate group. Sunbeam evaluates performance and allocates resources based upon profit or loss from operations before amortization, income taxes, minority interest, interest expense, non-recurring gains and losses and foreign exchange gains and losses. Intersegment sales and transfers are primarily recorded at cost.

The following tables include selected financial information with respect to Sunbeam's four operating segments. Business segment information for prior years has been reclassified to conform to the current year presentation.

	<u>Household</u>	<u>Outdoor Leisure</u>	<u>International</u>	<u>Corporate</u>	<u>Total</u>
Year Ended December 31, 1998					
Net sales to unaffiliated customers.....	\$714,568	\$ 677,526	\$413,864	\$ 30,913	\$1,836,871
Intersegment net sales	62,971	111,583	98,120	—	272,674
Segment operating loss	(66,376)	(71,612)	(29,941)	(150,975)	(318,904)
Segment assets.....	864,745	1,782,994	413,755	344,023	3,405,517
Segment depreciation expense.....	24,086	32,759	2,448	4,742	64,035
Year Ended December 28, 1997					
Net sales to unaffiliated customers.....	\$568,921	\$ 258,484	\$229,572	\$ 16,113	\$1,073,090
Intersegment net sales	100,355	3,520	64,549	—	168,424
Segment operating earnings (loss)	73,210	8,205	43,793	(42,915)	82,293
Segment assets.....	510,183	141,332	167,591	239,822	1,058,928
Segment depreciation expense.....	15,358	9,494	3,204	3,872	31,928
Year Ended December 29, 1996					
Net sales to unaffiliated customers.....	\$555,215	\$ 245,600	\$183,267	\$ 154	\$ 984,236
Intersegment net sales	48,961	8,940	30,012	—	87,913
Segment operating (loss) earnings	(37,598)	39,970	5,567	(62,355)	(54,416)
Segment assets.....	352,253	215,757	89,360	402,078	1,059,448
Segment depreciation expense.....	25,950	9,180	2,464	741	38,335

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

14. Segment, Customer and Geographic Data—(Continued)

Reconciliation of selected segment information to Sunbeam's consolidated totals for the years ended:

	<u>December 31, 1998</u>	<u>December 28, 1997</u>	<u>December 29, 1996</u>
Net sales:			
Net sales for reportable segments	\$2,109,545	\$1,241,514	\$1,072,149
Elimination of intersegment net sales	<u>(272,674)</u>	<u>(168,424)</u>	<u>(87,913)</u>
Consolidated net sales	<u>\$1,836,871</u>	<u>\$1,073,090</u>	<u>\$ 984,236</u>
Segment (loss) earnings:			
Total (loss) earnings for reportable segments	\$ (318,904)	\$ 82,293	\$ (54,416)
Unallocated amounts:			
Interest expense	(131,091)	(11,381)	(13,588)
Other (income) expense, net	4,768	(12)	(3,738)
Amortization of intangible assets	(43,830)	(7,829)	(9,094)
Provision for inventory (Notes 11 and 12)	(95,830)	—	(60,800)
Asset impairment (Notes 2 and 11)	(101,894)	—	—
Issuance of warrants (Note 2)	(70,000)	—	—
Former employees deferred compensation and severance (Note 8)	(30,688)	—	—
Restructuring benefit (charges) (Note 12)	—	14,582	(110,122)
Restructuring related charges (Note 12)	—	(15,800)	(10,047)
Reversals of reserves no longer required (Note 17)	—	27,963	—
Other (charges) benefit	(8,879)	2,854	—
	<u>(477,444)</u>	<u>10,377</u>	<u>(207,389)</u>
Consolidated (loss) earnings from continuing operations before income taxes, minority interest and extraordinary charge	<u>\$ (796,348)</u>	<u>\$ 92,670</u>	<u>\$ (261,805)</u>

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

14. Segment, Customer and Geographic Data—(Continued)

Enterprise-Wide Disclosures

Net sales from the Company's Household products represented 50%, 73% and 74% of consolidated net sales in 1998, 1997 and 1996, respectively. Net sales from the Company's Outdoor Leisure products category represented 50%, 25% and 26% of consolidated net sales in 1998, 1997 and 1996, respectively.

	Fiscal Years Ended		
	1998	1997	1996
Geographic Area Data			
Net sales to unaffiliated customers:			
United States	\$1,423,007	\$ 843,518	\$ 800,969
Europe	170,910	17,415	18,872
Latin America	158,670	164,044	125,072
Other	84,284	48,113	39,323
Total net sales	<u>\$1,836,871</u>	<u>\$1,073,090</u>	<u>\$ 984,236</u>
Identifiable assets:			
United States	\$2,991,762	\$ 891,337	\$ 970,088
Europe	244,670	9,703	15,476
Latin America	80,943	127,036	54,921
Other	88,142	30,852	18,963
Total identifiable assets	<u>\$3,405,517</u>	<u>\$1,058,928</u>	<u>\$1,059,448</u>

Revenue from one retail customer in the United States in Sunbeam's Household and Outdoor Leisure segments accounted for approximately 18%, 20% and 19% of consolidated net sales in 1998, 1997 and 1996, respectively. Receivables from this customer approximated \$62.6 million and \$51.9 million at December 31, 1998 and December 27, 1997, respectively. The Company establishes its credit policies based on an ongoing evaluation of its customers' creditworthiness and competitive market conditions and establishes its allowance for doubtful accounts based on an assessment of exposures to credit losses at each balance sheet date. The Company believes its allowance for doubtful accounts is sufficient based on the credit exposures outstanding.

15. Commitments and Contingencies

SEC Investigation

By letter dated June 17, 1998, the staff of the Division of Enforcement of the SEC advised the Company that it was conducting an informal inquiry into the Company's accounting policies and procedures and requested that the Company produce certain documents. On July 2, 1998, the SEC issued a Formal Order of Private Investigation, designating officers to take testimony and pursuant to which a subpoena duces tecum was served on the Company requiring the production of certain documents. On November 4, 1998, the Company received another SEC subpoena duces tecum requiring the production of further documents. The Company has provided numerous documents to the SEC staff and continues to cooperate with the SEC staff. The Company has, however, declined to provide the SEC with material that the Company believes is subject to the attorney-client privilege and the work product immunity. The Company cannot predict the term of such investigation or its potential outcome.

Litigation

On April 23, 1998, two class action lawsuits were filed on behalf of purchasers of the Company's common stock in the U.S. District Court for the Southern District of Florida against the Company and some of its present and former directors and former officers alleging violations of the federal securities laws as discussed below.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

After that date, approximately fifteen similar class actions were filed in the same Court. One of the lawsuits also named as defendant Arthur Andersen LLP, the Company's independent accountants for the period covered by the lawsuit.

On June 16, 1998, the Court entered an Order consolidating all these suits and all similar class actions subsequently filed (collectively, the "Consolidated Federal Actions") and providing time periods for the filing of a consolidated amended complaint and defendants' response thereto. On June 22, 1998, two groups of plaintiffs made motions to be appointed lead plaintiffs and to have their selection of counsel approved as lead counsel. On July 20, 1998, the Court entered an Order appointing lead plaintiffs and lead counsel. This Order also stated that it "shall apply to all subsequently filed actions which are consolidated herewith." On August 28, 1998, plaintiffs in one of the subsequently filed actions filed an objection to having their action consolidated pursuant to the June 16, 1998 Order, arguing that the class period in their action differs from the class periods in the originally filed consolidated actions. On December 9, 1998, the Court entered an Order overruling plaintiffs' objections and affirming its prior Order appointing lead plaintiffs and lead counsel.

On January 6, 1999, plaintiffs filed a consolidated amended class action complaint against the Company, some of its present and former directors and former officers, and Arthur Andersen LLP. The consolidated amended class action complaint alleges that, in violation of section 10(b) of the Exchange Act and SEC Rule 10b-5, defendants made material misrepresentations and omissions regarding the Company's business operations, future prospects and anticipated earnings per share, in an effort to artificially inflate the price of the common stock and call options, and that, in violation of section 20(a) of the Exchange Act, the individual defendants exercised influence and control over the Company, causing the Company to make material misrepresentations and omissions. The consolidated amended complaint seeks an unspecified award of money damages. On February 5, 1999, plaintiffs moved for an order certifying a class consisting of all persons and entities who purchased Sunbeam common stock or who purchased call options or sold put options with respect to Sunbeam common stock during the period April 23, 1997 through June 30, 1998, excluding the defendants, their affiliates, and employees of Sunbeam. Defendants have filed a response to the motion for class certification. On March 8, 1999, all defendants who had been served with the consolidated amended class action complaint moved to dismiss it. Under the Private Securities Litigation Reform Act of 1995, all discovery in the consolidated action is stayed pending resolution of the motions to dismiss.

On April 7, 1998, a purported derivative action was filed in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida against the Company and some of its present and former directors and former officers. The action alleged that the individual defendants breached their fiduciary duties and wasted corporate assets when the Company granted stock options at an exercise price of \$36.85 to three of its officers and directors (who were subsequently terminated) on or about February 2, 1998. On June 25, 1998, all defendants filed a motion to dismiss the complaint for failure to make a presuit demand on Sunbeam's board of directors. On October 22, 1998, the plaintiff amended the complaint against all but one of the defendants named in the original complaint. On February 19, 1999, plaintiffs filed a second amended derivative complaint nominally on behalf of Sunbeam against some of its present and former directors and former officers and Arthur Andersen LLP. The second amended complaint alleges, among other things, that Messrs. Dunlap and Kersh (the Company's former Chairman and Chief Executive Officer and Chief Financial Officer, respectively) caused Sunbeam to employ fraudulent accounting procedures in order to enable them to secure new employment contracts, and seeks an award of damages and other declaratory and equitable relief. The plaintiff has agreed that defendants need not respond to the second amended complaint until May 14, 1999. As described below, the Company and the plaintiffs have moved the Court for injunctive relief against Messrs. Dunlap and Kersh with respect to the arbitration action brought by them.

On June 25, 1998, four purported class actions were filed in the Court of Chancery of the State of Delaware in New Castle County by minority shareholders of Coleman against Coleman, the Company and some of the Company's and Coleman's present and former officers and directors. An additional class action was filed on

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

August 10, 1998, against the same parties. The complaints in these class actions allege, in essence, that the existing exchange ratio for the proposed Coleman merger is no longer fair to Coleman's public shareholders as a result of the decline in the market value of the common stock. On October 21, 1998, the Company announced that it had entered into a Memorandum of Understanding to settle, subject to court approval, the class actions. Under the terms of the proposed settlement, if approved by the court the Company will issue to the Coleman public shareholders, and plaintiff's counsel in this action, warrants to purchase up to approximately 4.98 million shares of the Company's common stock at a cash exercise price of \$7 per share, subject to certain anti-dilution provisions. These warrants will generally have the same terms as the warrants issued to an affiliate of M&F (see Note 2) and will be issued when the Coleman merger is consummated, which is now expected to be during the second half of 1999. As a consequence of entering the Memorandum of Understanding and agreeing to issue additional consideration in the form of warrants to purchase Sunbeam common stock, a new five year measurement date was established. The total consideration to be paid (cash, Sunbeam common stock, and Sunbeam warrants) to the Coleman shareholders will therefore be measured as of October 21, 1998. There can be no assurance that the Court will approve the settlement as proposed.

During the months of August and October 1998, purported class action and derivative lawsuits were filed in the Court of Chancery of the State of Delaware in New Castle County and in the U.S. District Court for the Southern District of Florida by shareholders of the Company against the Company, M&F and certain of the Company's present and former directors. These complaints allege that the defendants breached their fiduciary duties when the Company entered into a settlement agreement whereby M&F and its affiliates released the Company from certain claims they may have had arising out of the Company's acquisition of M&F's interest in Coleman, and M&F agreed to provide management support to the Company. Under the settlement agreement, M&F was granted a five year warrant to purchase up to an additional 23 million shares of Sunbeam's common stock at an exercise price of \$7 per share, subject to certain anti-dilution provisions. The plaintiffs have requested an injunction against issuance of stock to M&F pursuant to exercise of the warrants and unspecified money damages. These complaints also allege that the rights of the public shareholders have been compromised, as the settlement would normally require shareholders' approval under the rules and regulations of the New York Stock Exchange ("NYSE"). The Audit Committee of the Company's board of directors determined that obtaining such shareholders' approval would have seriously jeopardized the financial viability of the Company, which is an allowable exception to the NYSE shareholders' approval requirements. By Order of the Court of Chancery dated January 7, 1999, the derivative actions filed in that Court were consolidated and the Company has moved to dismiss such action. The action filed in the U.S. District Court for the Southern District of Florida has been dismissed.

On September 16, 1998, an action was filed in the 56th Judicial District Court of Galveston County, Texas alleging various claims in violation of the Texas Securities Act and Texas Business & Commercial Code as well as common law fraud as a result of the Company's alleged misstatements and omissions regarding the Company's financial condition and prospects during a period beginning May 1, 1998 and ending June 16, 1998, in which the plaintiffs engaged in transactions in the Company's common stock. The Company is the only named defendant in this action. The complaint requests recovery of compensatory damages, punitive damages and expenses in an unspecified amount. This action was removed to the U.S. District Court for the Southern District of Texas and subsequently has been transferred to the Southern District of Florida, the forum for the Consolidated Federal Actions.

On October 30, 1998, a class action lawsuit was filed on behalf of certain purchasers of the Debentures in the U.S. District Court of the Southern District of Florida against the Company and some of the Company's former officers and directors, alleging violations of the federal securities laws and common law fraud. The complaint alleges that the Company's offering memorandum used for the marketing of the Debentures contained false and misleading information regarding the Company's financial position and that the defendants engaged in a plan to inflate the Company's earnings for the purpose of defrauding the plaintiffs and others. This action has

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

been transferred to the Southern District of Florida, the forum for the Consolidated Federal Actions, and the parties have negotiated a proposed coordination plan in order to coordinate proceedings in this action with those in the Consolidated Federal Actions.

The Company has been named as a defendant in an action filed in the District Court of Tarrant County, Texas, 48th Judicial District, on November 20, 1998, which was served on the Company through the Secretary of State of Texas on January 15, 1999. The plaintiffs in this action are purchasers of the Debentures. The plaintiffs allege that the Company violated the Texas Securities Act and the Texas Business & Commercial Code and committed state common law fraud by materially misstating the financial position of the Company in connection with the offering and sale of the Debentures. The complaint seeks rescission, as well as compensatory and exemplary damages in an unspecified amount. The Company specially appeared to assert an objection to the Texas Court's exercise of personal jurisdiction over the Company, and a hearing on this objection was held on April 15, 1999. The Court has issued a letter ruling advising the parties that it would grant the Company's special appearance and sustain the challenge to personal jurisdiction. The plaintiffs have moved for reconsideration of this decision. Plaintiffs had also moved for partial summary judgment on their Texas Securities Act claims, but, in light of the Court's decision on the special appearance, the hearing on the summary judgment motion has been cancelled.

On April 12, 1999, a class action lawsuit was filed in the U.S. District Court for the Southern District of Florida. The lawsuit was filed on behalf of persons who purchased the Debentures during the period of March 20, 1998 through June 30, 1998, inclusive, but after the initial offering of such Debentures. The complaint asserts that Sunbeam made material omissions and misrepresentations that had the effect of inflating the market price of the Debentures. The complaint names as defendants the Company, its former auditor, Arthur Andersen LLP and two former Sunbeam officers, Messrs. Dunlap and Kersh. The plaintiff is an institution which allegedly acquired in excess of \$150,000,000 face amount of the Debentures and now seeks unspecified money damages. The Company was served on April 16, 1999 in connection with this pending lawsuit. The Company will advise the Court of the pending Consolidated Federal Actions and request transfer of the action.

On February 9, 1999, Messrs. Dunlap and Kersh filed with the American Arbitration Association demands for arbitration of claims under their respective employment agreements with Sunbeam. Messrs. Dunlap and Kersh are requesting a finding by the arbitrator that they were terminated by the Company without cause and should be awarded the corresponding benefits set forth in their respective employment agreements. On March 12, 1999, Sunbeam asked the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida to issue an injunction prohibiting Messrs. Dunlap and Kersh from pursuing their arbitration proceedings against Sunbeam on the ground that the simultaneous litigation of the April 7, 1998 action and these arbitration proceedings would subject Sunbeam to the threat of inconsistent adjudications with respect to certain rights to compensation asserted by Messrs. Dunlap and Kersh. On March 19, 1999, the plaintiff in the April 7, 1998 action discussed above moved for a similar injunction on the ground that the arbitration proceedings threatened irreparable harm to Sunbeam and its shareholders. On March 26, 1999, Messrs. Dunlap and Kersh filed a response in opposition to the motions for injunctive relief. A hearing on the motions for injunctive relief has been held and, as a result of Sunbeam's motion for preliminary injunction, administration of the arbitrations has been suspended until May 10, 1999.

On March 23, 1999, Messrs. Dunlap and Kersh filed a complaint in the Court of Chancery of the State of Delaware seeking an order directing Sunbeam to advance attorneys' fees and other expenses incurred in connection with various state and federal class and derivative actions and an investigation instituted by the SEC. The complaint alleges that such advancements are required by Sunbeam's by-laws and by a forbearance agreement entered into between Sunbeam and Messrs. Dunlap and Kersh in August 1998. The Company has filed its answer to the complaint and the Court of Chancery has scheduled a trial of this summary proceeding to be held on June 15, 1999.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

The Company intends to vigorously defend each of the foregoing lawsuits other than those as to which a Memorandum of Understanding to settle has been reached, but cannot predict the outcome and is not currently able to evaluate the likelihood of the Company's success in each case or the range of potential loss. However, if the foregoing actions were determined adversely to the Company, such judgements would likely have a material adverse effect on the Company's financial position, results of operations and cash flows.

On July 2, 1998, the American Insurance Company ("American") filed suit against the Company in the U.S. District Court for the Southern District of New York requesting a declaratory judgment of the Court that the directors' and officers' liability insurance policy for excess coverage issued by American was invalid and/or had been properly canceled by American. The Company's motion to transfer such action to the federal district court in which the Consolidated Federal Actions are currently pending was recently denied. The case is now in discovery. On October 20, 1998, an action was filed by Federal Insurance Company in the U.S. District Court for the Middle District of Florida requesting the same relief as that requested by American in the previously filed action as to additional coverage levels under the Company's directors' and officers' liability insurance policy. This action has been transferred to the U.S. District Court for the Southern District of Florida and is currently in discovery. On December 22, 1998, an action was filed by Executive Risk Indemnity, Inc. in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida requesting the same relief as that requested by American and Federal in their previously filed actions as to additional coverage levels under the Company's directors' and officers' liability insurance policy. On April 15, 1999, the Company filed an action in the U.S. District Court for the Southern District of Florida against the National Union Fire Insurance Company of Pittsburgh, PA, Gulf Insurance Company and St. Paul Mercury Insurance Company requesting, among other things, a declaratory judgment that National Union is not entitled to rescind its liability insurance policy to the Company and a declaratory judgment that the Company is entitled to coverage from these insurance companies for various lawsuits described herein under liability insurance policies issued by each of the defendants. The Company intends to pursue recovery from all of its insurers if damages are awarded against the Company or its indemnified officers and/or directors under any of the foregoing actions. The Company's failure to obtain such insurance recoveries following an adverse judgement in any of the foregoing actions could have a material adverse effect on the Company's financial position, results of operations and cash flows.

The Company and its subsidiaries are also involved in various lawsuits arising from time to time that the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these routine matters, and of certain matters relating to prior operations, individually or in the aggregate, will not have a material adverse effect upon the financial position, results of operations, or cash flows of the Company.

In the fourth quarter of 1996, the Company recorded a \$12.0 million charge related to a case for which an adverse development arose near year-end. In 1997, this case was favorably resolved and, as a result, \$8.1 million of the charge established in 1996 was reversed into income primarily in the fourth quarter of 1997.

Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and claims and related anticipated legal fees. The costs are accrued when it is both probable that an asset has been impaired or a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon the Company's assessment, after consultation with counsel, of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the plaintiffs, and other significant factors which vary by case. When it is not possible to estimate a specific expected cost to be incurred, the Company evaluates the range of probable loss and records the minimum end of the range. As of December 31, 1998 Sunbeam had established accruals for litigation matters of \$31.2 million (representing \$17.5 million and \$13.7 million for estimated damages or settlement amounts and legal fees, respectively) and \$9.9 million as of December 28, 1997 (representing \$3.0 million and \$6.9 million for estimated damages or settlement amounts and legal fees, respectively). It is anticipated that the \$31.2 million accrual will be paid as follows: \$22.4 million in

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

1999, \$7.5 million in 2000, and \$1.3 million in 2001. The Company believes, based on information known at December 31, 1998, that anticipated probable costs of litigation matters existing as of December 31, 1998 have been adequately reserved to the extent determinable.

Environmental Matters

The Company's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations in addition to laws and regulations regarding labeling and packaging of products and the sales of products containing certain environmentally sensitive materials ("Environmental Laws"). The Company believes it is in substantial compliance with all Environmental Laws which are applicable to its operations. Compliance with Environmental Laws involves certain continuing costs; however, such costs of ongoing compliance have not resulted, and are not anticipated to result, in a material increase in the Company's capital expenditures or to have a material adverse effect on the Company's results of operations, financial condition or competitive position.

In addition to ongoing environmental compliance at its operations, the Company also is actively engaged in certain environmental remediation activities many of which relate to divested operations. As of December 31, 1998, the Company has been identified by the United States Environmental Protection Agency ("EPA") or a state environmental agency as a potentially responsible party ("PRP") in connection with seven sites subject to the federal Superfund Act and five sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a *de minimis* (less than 1%) participant.

The Superfund Act, and related state environmental remediation laws, generally authorize governmental authorities to remediate a Superfund site and to assess the costs against the PRPs or to order the PRPs to remediate the site at their expense. Liability under the Superfund Act is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, the Company recognizes its responsibility to determine whether other PRPs at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRPs established with respect to such sites. The Company currently is engaged in active remediation activities at 12 sites, seven of which are among the Environmental Sites referred to above, and five of which have not been designated as Superfund sites under federal or state law. The remediation efforts in which the Company is involved include facility investigations, including soil and groundwater investigations, corrective measure studies, including feasibility studies, groundwater monitoring, extraction and treatment, soil sampling, excavation and treatment relating to environmental clean-ups. In certain instances, the Company has entered into agreements with governmental authorities to undertake additional investigatory activities and in other instances has agreed to implement appropriate remedial actions. The Company has also established reserve amounts for certain non-compliance matters including those involving air emissions.

The Company has established reserves, in accordance with SFAS No. 5, *Accounting for Contingencies*, to cover the anticipated probable costs of investigation and remediation, based upon periodic reviews of all sites for which the Company has, or may have remediation responsibility. The Company accrues environmental investigation and remediation costs when it is both probable that a liability has been incurred and the amount can be reasonably estimated and the Company's responsibility is established. Generally, the timing of these accruals coincides with the earlier of formal commitment to an investigation plan, completion of feasibility study or the Company's commitment to a formal plan of action. As of December 31, 1998 and 1997, the Company's environmental reserves were \$25.0 million (representing \$22.9 million for the estimated costs of facility investigations, corrective measure studies and known remedial measures and \$2.1 million for estimated legal

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

costs) and \$24.0 million, (representing \$21.8 million for the estimated cost of facility investigations, corrective measure studies and known remedial measures and \$2.2 million for estimated legal costs), respectively. It is anticipated that the \$25.0 million accrual at December 31, 1998 will be paid as follows: \$5.3 million in 1999, \$4.9 million in 2000, \$3.2 million in 2001, \$1.0 million in 2002, \$1.0 million in 2003 and \$9.6 million thereafter. The Company has accrued its best estimate of investigation and remediation costs (based upon a range of exposure of \$13.0 million to \$46.3 million) based upon facts known to the Company and because of the inherent difficulties in estimating the ultimate amount of environmental costs, which are further described below, these estimates may materially change in the future as a result of the uncertainties described below. Estimated costs, which are based upon experience with similar sites and technical evaluations, are judgmental in nature and are recorded at undiscounted amounts without considering the impact of inflation and are adjusted periodically to reflect changes in applicable laws or regulations, changes in available technologies and receipt by the Company of new information. It is difficult to estimate the ultimate level of future environmental expenditures due to a number of uncertainties surrounding environmental liabilities. These uncertainties include the applicability of laws and regulations, changes in environmental remediation requirements, the enactment of additional regulations, uncertainties surrounding remediation procedures including the development of new technology, the identification of new sites for which the Company could be a PRP, information relating to the exact nature and extent of the contamination at each site and the extent of required cleanup efforts, the uncertainties with respect to the ultimate outcome of issues which may be actively contested and the varying costs of alternative remediation strategies. The Company continues to pursue the recovery of some environmental remediation costs from certain of its liability insurance carriers; however, such potential recoveries have not been offset against potential liabilities and have not been considered in determining the Company's environmental reserves. Due to uncertainty over remedial measures to be adopted at some sites, the possibility of changes in Environmental Laws and regulations and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, the Company's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved as of December 31, 1998.

In the fourth quarter of 1996, the Company performed a comprehensive review of all environmental exposures in an attempt by the then new senior management team to accelerate the resolution and settlement of environmental claims. As a result, upon conclusion of the review, the Company recorded additional environmental reserves of approximately \$9.0 million in the fourth quarter of 1996.

The Company believes, based on existing information, that the costs of completing environmental remediation of all sites for which the Company has a remediation responsibility have been adequately reserved, and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition, results of operations or cash flows.

Product Liability Matters

As a consumer goods manufacturer and distributor, the Company faces the constant risks of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. These claims could result in liabilities that could have a material adverse effect on Sunbeam's financial position, results of operations and cash flows. Some of the product lines Sunbeam acquired in the 1998 acquisitions have increased its exposure to product liabilities and related claims.

The Company is party to various personal injury and property damage lawsuits relating to its products and incidental to its business. Annually, the Company sets its product liability insurance program based on the Company's current and historical claims experience and the availability and cost of insurance. The Company's program for 1998 was comprised of a self-insurance retention of \$2.5 million per occurrence.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

Cumulative amounts estimated to be payable by the Company with respect to pending and potential claims for all years in which the Company is liable under its self-insurance retention have been accrued as liabilities. Such accrued liabilities are necessarily based on estimates taking into account prior experience, numbers of claims and other relevant factors; thus, the Company's ultimate liability may exceed or be less than the amounts accrued. The methods of making such estimates and establishing the resulting liability are reviewed periodically and any adjustments resulting therefrom are reflected in current operating results.

Historically, product liability awards have rarely exceeded the Company's individual per occurrence self-insured retention. There can be no assurance, however, that the Company's future product liability experience will be consistent with its past experience. Based on existing information, the Company believes that the ultimate conclusion of the various pending product liability claims and lawsuits of the Company, individually or in the aggregate, will not have a material adverse effect on the financial position, results of operations or cash flows of the Company.

Commitment Fee

Under the terms of the April 15, 1999 amendment to the New Credit Facility, the Company is obligated to pay a loan commitment fee of between \$4.2 million and \$17.0 million. The ultimate amount of the fee is determined based on multiplying the sum of the outstanding borrowings and amounts available for borrowings as of April 15, 1999 by a factor that is determined at the earlier of September 30, 2000 or upon repayment of the New Credit Facility. This fee is payable at the earlier of September 30, 2000 or upon repayment of the New Credit Facility. At a minimum, the Company is obligated under these terms to pay \$4.2 million. The ultimate amount due could be as high as \$17.0 million if the sum of the outstanding borrowings and amounts available for borrowings at September 30, 2000 (the "aggregate availability") exceeds \$1.2 billion. If the aggregate availability is between \$1.0 billion and \$1.2 billion, a fee of \$8.4 million will be due. If the aggregate availability is \$1.0 billion or less, the \$4.2 million minimum will be due. Under any circumstances, the \$4.2 million will be due; therefore, the Company will accrue the minimum liability and record an offsetting asset in the second quarter of 1999, which will be amortized and included in interest expense through April 10, 2000, the term of the current amendment extension period.

The Company will not accrue for amounts in excess of the \$4.2 million as there are numerous uncertainties which may individually or in the aggregate impact the level of aggregate availability at September 30, 2000. These uncertainties include, but are not limited to: the ability to obtain an amendment or further waiver of existing covenants from the lenders under the New Credit Facility for the period beyond April 10, 2000; proceeds from the sales of assets or businesses, if any; changes in debt structure, including the effects of refinancing, if any; and cash flows generated or used by future operations. Given these uncertainties, the Company is currently not able to predict the probable level of aggregate availability at September 30, 2000. As events develop, the Company will periodically review the expected aggregate availability at September 30, 2000. If it becomes likely that an amount in excess of \$4.2 million will be paid, the Company will recognize that change in estimate over the remaining period of the New Credit Facility Amendment.

Leases

The Company rents certain facilities, equipment and retail stores under operating leases. Rental expense for operating leases amounted to \$28.1 million in 1998, \$7.4 million for 1997 and \$8.0 million for 1996. The minimum future rentals due under noncancelable operating leases as of December 31, 1998 aggregated to \$167.6 million. The amounts payable in each of the years 1999-2003 and thereafter are \$34.6 million, \$33.7 million, \$17.1 million, \$13.5 million, \$9.7 million and \$59.0 million, respectively.

In connection with a warehouse expansion related to the electric blanket business, the Company entered into a \$5 million capital lease obligation in 1996.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Commitments and Contingencies—(Continued)

Certain Debt Obligations

Responsibility for servicing certain debt obligations of the Company's predecessor were assumed by third parties in connection with the acquisition of former businesses, although the Company's predecessor remained the primary obligor in accordance with the respective loan documents. Such obligations, which amounted to approximately \$17.3 million at December 31, 1998, and the corresponding receivables from the third parties, are not included in the Consolidated Balance Sheets since these transactions occurred prior to the issuance of SFAS No. 76, Extinguishment of Debt. Management believes that the third parties will continue to meet their obligations pursuant to the assumption agreements.

Purchase and other Commitments

In conjunction with the sale of the Biddeford, Maine textile mill in 1997, the Company entered into a five-year agreement to purchase blanket shells from the mill. The agreement provides for a minimum purchase commitment each year of the contract. As of December 31, 1998, the Company had remaining minimum commitments under the contract of approximately \$104 million.

In connection with Coleman's 1995 purchase of substantially all of the assets of Active Technologies, Inc. ("ATI"), the Company may be required to make payments to the predecessor owner of ATI of up to \$18.8 million based on the Company's sales of ATI related products and royalties received by the Company for licensing arrangements related to ATI patents. As of December 31, 1998, the amounts paid under the terms of this agreement have been immaterial.

16. Related Party Transactions

Services Provided by M&F

Pursuant to the settlement agreement with M&F, M&F agreed to make certain executive management personnel available to the Company and to provide certain management assistance to Sunbeam. The Company does not reimburse M&F for such services, other than reimbursement of out-of-pocket expenses paid to third parties. (See Note 2.)

Liquidation of Options

The Company expects to acquire the remaining approximately 20% equity interest in Coleman in the second half of 1999. Upon the consummation of the merger transaction, the unexercised options under Coleman's stock option plans will be cashed out at a price per share equal to the difference between \$27.50 per share and the exercise price of such options. Ronald O. Perelman, the sole stockholder of M&F, holds 500,000 options for which he will receive a net payment of \$6,750,000. Mr. Shapiro and Ms. Clark, executive officers of the Company, hold 77,500 and 25,000 options, respectively, for which they will receive net payments of \$823,000 and \$275,005, respectively.

Arrangements Between Coleman and M&F

Coleman and an affiliate of M&F are parties to a cross-indemnification agreement pursuant to which Coleman has agreed to indemnify such affiliate, its officers, directors, employees, control persons, agents and representatives against all past, present and future liabilities, including product liability and environmental matters, related to the initial assets of Coleman, which Coleman acquired from such affiliate in December 1991. In addition, pursuant to this cross-indemnification agreement, the M&F affiliate has agreed to indemnify Coleman and its officers, directors, employees, agents and representatives against all other liabilities of such M&F affiliate or any of its subsidiaries, including liabilities relating to the assets it did not transfer to Coleman in December 1991. This cross-indemnification agreement will survive the Coleman merger.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

16. Related Party Transactions—(Continued)

Coleman previously was included in the consolidated tax group for the M&F companies and was a party to a tax sharing agreement with a M&F affiliate, pursuant to which Coleman paid to such affiliate the amount of taxes which would have been paid by Coleman if it were required to file separate federal, state or local income tax returns. The tax sharing agreement was terminated upon the acquisition of Coleman; however, the acquisition agreement provides for certain tax indemnities and tax sharing payments among the Company and the M&F affiliates relating to periods prior to the acquisition.

Lease of Office Space

During 1998, the Company sublet office space in New York City from an affiliate of M&F. The expense for such rent during 1998 was approximately \$130,000. The lease was terminated in 1999.

17. Unaudited Quarterly Financial Data

	Fiscal 1998(a)			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	(Dollars in millions, except per share data)			
Net sales	\$ 247.6	\$ 578.5	\$ 496.0	\$ 514.8
Gross profit (loss)	33.8	(52.5)	67.4	(0.6)
Operating loss	(37.4)	(193.3)	(161.0)	(278.3)
Loss from continuing operations before extraordinary charge	(45.6)	(241.0)	(188.9)	(300.0)
Basic and diluted loss per share from continuing operations before extraordinary charge	(0.53)	(2.39)	(1.88)	(2.98)
Extraordinary charge	(8.6)	(103.1)	—	(10.7)
Net loss	(54.1)	(344.1)	(188.9)	(310.8)
Basic and diluted loss per share	(0.63)	(3.41)	(1.88)	(3.09)
	Fiscal 1997(a)(b)			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	(Dollars in millions, except per share data)			
Net sales	\$ 252.5	\$ 271.4	\$ 286.8	\$ 262.4
Gross profit	58.3	55.3	76.5	52.1
Operating earnings	17.1	16.8	45.1	25.1
Earnings from continuing operations	9.0	8.7	27.5	7.1
Basic earnings per share from continuing operations	0.11	0.10	0.32	0.08
Diluted earnings per share from continuing operations	0.11	0.10	0.31	0.08
(Loss) on sale of discontinued operations, net of taxes	(13.7)	—	(2.7)	2.4
Net (loss) earnings	(4.7)	8.7	24.8	9.5
Basic (loss) earnings per share	(0.06)	0.10	0.29	0.11
Diluted (loss) earnings per share	(0.06)	0.10	0.28	0.11

(a) Due to the net loss incurred, earnings per share calculations exclude common stock equivalents for all four quarters and for the year in 1998 and for the first and third quarters in 1997. Earnings (loss) per share are computed independently for each of the quarters presented. Therefore, the sum of the quarterly earnings (loss) per share in 1998 and 1997 does not equal the total computed for the year.

(b) Each quarter consists of a 13-week period.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

17. Unaudited Quarterly Financial Data—(Continued)

During 1998, significant unusual charges affected the respective quarters as follows:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Compensation agreements with former senior officers (Note 8)	\$31.2	\$ —	\$ —	\$ —
Excess and obsolete inventory reserves (Note 11)	—	84.0	2.2	9.6
Facilities impairment charges (Note 11)	—	29.6	3.1	6.7
Warrants issued to M&F (Note 2)	—	—	70.0	—
Costs associated with financial statement restatement	—	—	10.8	9.6
Goodwill impairment (Note 2)	—	—	—	62.5
Total	<u>\$31.2</u>	<u>\$113.6</u>	<u>\$86.1</u>	<u>\$88.4</u>

During the first, second, third and fourth quarters of fiscal 1997, approximately \$0.5 million, \$4.5 million, \$1.5 million and \$21.5 million, respectively, of pre-tax liabilities no longer required were reversed and taken into income. Included in these reserves is the \$8.1 million litigation reserve reversal discussed in Note 15. Also, during the third and fourth quarters of fiscal 1997, approximately \$5.8 million and \$8.8 million, respectively, of restructuring reserves no longer required were reversed and taken into income, as discussed in Note 12. Additionally, during the fourth quarter of fiscal 1997, approximately \$13.3 million of tax liabilities related to the 1993 and 1994 tax years were determined to be no longer required and were reversed and taken into income. These accruals were no longer required because during the fourth quarter of 1997 the Company reached a resolution with the Internal Revenue Service on its audits of the 1993 and 1994 tax years.

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**SUNBEAM CORPORATION AND SUBSIDIARIES
SCHEDULE II**

VALUATION AND QUALIFYING ACCOUNTS

**Fiscal Years 1998, 1997 and 1996
(Dollars in thousands)**

<u>Description</u>	<u>Balance at Beginning of Period</u>	<u>Additions Charged to Costs and Expenses</u>	<u>Reserves from Acquisitions</u>	<u>Deductions</u>	<u>Balance at End of Period</u>
Allowance for doubtful accounts and cash discounts:					
Fiscal year ended December 31, 1998.....	<u>\$30,033</u>	<u>\$32,919</u>	<u>\$15,216</u>	\$25,050 (b) 93 (c)	<u>\$53,025</u>
Fiscal year ended December 28, 1997.....	<u>\$19,701</u>	<u>\$17,297</u>	\$ —	\$(2,000)(a) 8,948 (b) 17 (c)	<u>\$30,033</u>
Fiscal year ended December 29, 1996.....	<u>\$12,326</u>	<u>\$27,053</u>	\$ —	\$ (233)(a) 19,911 (b) — (c)	<u>\$19,701</u>

- Notes: (a) Reclassified to/from accrued liabilities for customer deductions.
 (b) Accounts written off as uncollectible.
 (c) Foreign currency translation adjustment.
 (d) Reserve balances of acquired companies at acquisition date.

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)
(Amounts in thousands, except per share amounts)

	Nine Months Ended	
	September 30, 1999	September 30, 1998
Net sales	\$1,786,428	\$1,322,129
Cost of goods sold	1,334,177	1,273,424
Selling, general and administrative expense	449,263	440,381
Operating income (loss)	2,988	(391,676)
Interest expense, net	136,631	88,476
Other income, net	(4,619)	(4,065)
Loss before income taxes, minority interest and extraordinary charge	(129,024)	(476,087)
Income tax provision (benefit):		
Current	1,370	3,995
Deferred	11,291	(1,280)
	12,661	2,715
Minority interest	13,354	(3,447)
Loss before extraordinary charge	(155,039)	(475,355)
Extraordinary charge from early extinguishments of debt	—	(111,715)
Net loss	<u>\$ (155,039)</u>	<u>\$ (587,070)</u>
Basic and diluted loss per share:		
Loss from continuing operations before extraordinary charge	\$ (1.54)	\$ (4.96)
Extraordinary charge	—	(1.16)
Net loss	<u>\$ (1.54)</u>	<u>\$ (6.12)</u>
Basic and diluted weighted average common shares outstanding	100,743	95,919

See Notes to Condensed Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)
(Amounts in thousands)

	<u>September 30,</u> 1999	<u>December 31,</u> 1998
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 29,088	\$ 61,432
Restricted investments	—	74,386
Receivables, net	443,223	361,774
Inventories	507,821	519,189
Prepaid expenses, deferred income taxes and other current assets	70,681	74,187
Total current assets	1,050,813	1,090,968
Property, plant and equipment, net	457,293	455,172
Trademarks, tradenames, goodwill and other, net	1,809,868	1,859,377
	<u>\$3,317,974</u>	<u>\$3,405,517</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Short-term debt and current portion of long-term debt	\$1,505,576	\$ 119,103
Accounts payable	188,899	162,173
Other current liabilities	303,075	321,185
Total current liabilities	1,997,550	602,461
Long-term debt, less current portion	817,128	2,142,362
Other long-term liabilities	231,898	248,459
Deferred income taxes	111,516	100,473
Minority interest	65,195	51,325
Commitments and contingencies		
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized, none outstanding)	—	—
Common stock (100,746,400 and 100,739,053 shares issued)	1,007	1,007
Additional paid-in capital	1,122,896	1,123,457
Accumulated deficit	(965,036)	(809,997)
Accumulated other comprehensive loss	(64,180)	(54,030)
Total shareholders' equity	94,687	260,437
	<u>\$3,317,974</u>	<u>\$3,405,517</u>

See Notes to Condensed Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)
(Amounts in thousands)

	Nine Months Ended	
	September 30, 1999	September 30, 1998
Operating Activities:		
Net loss	\$(155,039)	\$ (587,070)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	93,917	70,123
Non-cash interest charges	34,120	19,387
Deferred income taxes	11,291	(1,280)
Minority interest	13,354	(3,447)
(Gain) loss on sale of property, plant and equipment	(3,405)	2,406
Provision for fixed assets	—	32,642
Provision for excess and obsolete inventory	—	86,167
Warrants charged to expense	—	70,000
Non-cash compensation charge	—	23,359
Extraordinary charge from early extinguishments of debt	—	111,715
Changes in working capital and other, net of acquisitions	(67,409)	(48,697)
Net cash used in operating activities	<u>(73,171)</u>	<u>(224,695)</u>
Investing Activities:		
Capital expenditures	(63,205)	(32,766)
Purchases of businesses, net of cash acquired	—	(379,159)
Other	4,838	307
Net cash used in investing activities	<u>(58,367)</u>	<u>(411,618)</u>
Financing Activities:		
Issuance of convertible subordinated debentures, net of financing fees	—	729,622
Net borrowings under revolving credit facilities	105,025	1,353,041
Payments of debt obligations, including prepayment penalties	(2,940)	(1,464,245)
Proceeds from exercise of stock options	35	19,553
Other	(2,926)	(1,875)
Net cash provided by financing activities	<u>99,194</u>	<u>636,096</u>
Net decrease in cash and cash equivalents	(52,344)	(217)
Cash and cash equivalents at beginning of period	61,432	52,298
Cash and cash equivalents at end of period	<u>\$ 29,088</u>	<u>\$ 52,081</u>

See Notes to Condensed Consolidated Financial Statements.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Operations and Basis of Presentation

Organization

Sunbeam Corporation ("Sunbeam" or the "Company") is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacturing, marketing and distribution of durable household and outdoor leisure consumer products through mass market and other distribution channels in the United States and internationally. The Company also sells its products to professional and commercial end users such as small businesses, health care providers, hotels and other institutions. The Company's principal products include household kitchen appliances; health monitoring and care products for home use; scales for consumer and professional use for weight management and business uses; electric blankets and throws; clippers and trimmers for consumer, professional and animal uses; smoke and carbon monoxide detectors; outdoor barbecue grills; camping equipment such as tents, lanterns, sleeping bags and stoves; coolers; backpacks and book bags; and portable generators and compressors.

In 1998 the Company acquired an indirect controlling interest in The Coleman Company, Inc. ("Coleman") and all the outstanding common stock of Signature Brands USA, Inc. ("Signature Brands") and First Alert, Inc. ("First Alert").

Basis of Presentation

The Condensed Consolidated Balance Sheet of the Company as of September 30, 1999 and the Condensed Consolidated Statements of Operations and Cash Flows for the nine months ended September 30, 1999 and 1998 are unaudited. The unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions of Form 10-Q and Rule 10-01 of Regulation S-X. The December 31, 1998 Condensed Consolidated Balance Sheet was derived from the consolidated financial statements contained in the Company's Annual Report on Form 10-K/A for the year ended December 31, 1998. The condensed consolidated financial statements contained herein should be read in conjunction with the consolidated financial statements and related notes contained in the Company's 1998 Annual Report on Form 10-K/A. In the opinion of management, the unaudited condensed consolidated financial statements contained herein include all adjustments (consisting of only recurring adjustments) necessary for a fair presentation of the results of operations for the interim periods presented. These interim results of operations are not necessarily indicative of results for the entire year or future periods.

Basic and Diluted Loss per Share of Common Stock

Loss per common share calculations are determined by dividing loss attributable to common shareholders by the weighted average number of shares of common stock outstanding. Loss per share for the nine months ended September 30, 1999 and 1998, is based only on the weighted average number of common shares outstanding, as potential common shares have been excluded as a result of the loss during the periods presented. Loss per share for the nine months ended September 30, 1999 excluded 78,562 shares related to stock options, as their effect would have been anti-dilutive. Stock options to purchase 19,420,292 common shares for the nine months ended September 30, 1999, were excluded from potential common shares as the option exercise prices were greater than the average market price of the Company's common stock during the period. The nine months ended September 30, 1998 loss per share excluded 3,017,516 shares related to stock options, as their effect would have been anti-dilutive. The nine month 1998 period also excluded 63,016 shares related to restricted stock. Stock options to purchase 9,609,033 common shares for the nine months ended September 30, 1998 were excluded from potential common shares as the option exercise prices were greater than the average market price of the Company's common stock during the period. Diluted average common shares outstanding for all periods presented excluded 13,242,050 shares issuable upon the conversion of the Zero Coupon Convertible Senior

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

1. Operations and Basis of Presentation—(Continued)

Subordinated Debentures due 2018 (the "Debentures"). In addition, diluted average common shares outstanding for the period ended September 30, 1999 excluded 23,000,000 shares issuable on the exercise of warrants.

New Accounting Standards

Effective January 1, 1999, the Company adopted Statement of Position 98-1, *Accounting for the Costs of Computer Software Developed or Obtained for Internal Use* ("SOP 98-1"). SOP 98-1 requires computer software costs associated with internal use software to be expensed as incurred until certain capitalization criteria are met. Adoption of this statement did not have a material impact on the Company's consolidated financial position, results of operations, or cash flows.

In June 1998, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 133 ("SFAS No. 133"), *Accounting for Derivative Instruments and Hedging Activities*, which, as amended, is effective for fiscal years beginning after June 15, 2000. SFAS No. 133 requires the recognition of all derivatives in the Consolidated Balance Sheets as either assets or liabilities measured at fair value. The Company has not yet determined the impact SFAS No. 133 will have on its consolidated financial position, results of operations, or cash flows.

Reclassifications

Certain prior year amounts have been reclassified to conform with the 1999 presentation.

2. Acquisitions

On March 30, 1998, the Company, through a wholly-owned subsidiary, acquired approximately 81% of the total number of then outstanding shares of common stock of Coleman from a subsidiary of MacAndrews & Forbes Holdings, Inc. ("M&F"), in exchange for 14,099,749 shares of the Company's common stock and approximately \$160 million in cash. In addition, the Company assumed approximately \$1,016 million in debt. The value of the common stock issued at the date of acquisition was derived by using the average closing stock price as reported on the New York Stock Exchange ("NYSE") Composite Tape for the day before and day of the public announcement of the acquisition. Immediately thereafter, as a result of the exercise of employee stock options, Sunbeam's indirect beneficial ownership of Coleman decreased to approximately 79% of the total number of the outstanding shares of Coleman common stock. (See Note 10.)

On August 12, 1998, the Company announced that, following investigation and negotiation conducted by a Special Committee of the Board consisting of four outside directors not affiliated with M&F, the Company had entered into a settlement agreement with a subsidiary of M&F pursuant to which the Company was released from certain threatened claims of M&F and its subsidiaries arising from the Coleman acquisition and M&F agreed to provide certain management personnel and assistance to the Company in exchange for the issuance to the M&F subsidiary of a warrant expiring August 24, 2003 to purchase up to 23 million shares of the Company's common stock at a cash exercise price of \$7.00 per share, subject to anti-dilution adjustments. The Company concluded that the agreement to issue this warrant did not result in a new measurement date for the purposes of determining the purchase price for Coleman and has accounted for the issuance of this warrant in the third quarter of 1998 as a cost of settling a potential claim. Accordingly, a \$70.0 million non-cash SG&A expense was recorded in the third quarter of 1998, based upon a valuation performed as of August 1998 using facts existing at that time. The valuation was conducted by an independent consultant engaged by the special committee of the board of directors.

The Company expects to acquire the remaining equity interest in Coleman pursuant to a merger transaction in which the existing Coleman minority shareholders will receive 0.5677 of a share of the Company's common stock and \$6.44 in cash for each share of Coleman common stock outstanding. In addition, unexercised options

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

2. Acquisitions—(Continued)

under Coleman's stock option plans will be cashed out at a price per share equal to the difference between \$27.50 and the exercise price of such options. The Company expects to issue approximately 6.7 million shares of common stock and expend approximately \$87 million in cash to complete the Coleman acquisition. Although there can be no assurance, it is anticipated the Coleman merger will occur in the fourth quarter of 1999 or early in the first quarter of 2000. The acquisition of the remaining outstanding shares of Coleman common stock will be accounted for under the purchase method of accounting from the date of consummation of the Coleman merger.

On October 21, 1998, the Company announced that it had entered into a Memorandum of Understanding to settle class action claims made by minority shareholders of Coleman relating to the Coleman merger. Under the terms of the settlement, the Company will issue to the Coleman public shareholders, and plaintiff's counsel in this action, warrants to purchase up to 4.98 million shares of the Company's common stock at a cash exercise price of \$7.00 per share, subject to certain anti-dilution provisions. These warrants would generally have the same terms as the warrants issued to a subsidiary of M&F and will be issued when the Coleman merger is consummated. Issuance of these warrants will be accounted for as additional purchase consideration. As a consequence of entering into the Memorandum of Understanding and agreeing to issue additional consideration in the form of warrants to purchase Sunbeam common stock, a new measurement date was established for the remaining equity interest in Coleman. The total consideration to be paid (cash, Sunbeam common stock and Sunbeam warrants) to the Coleman shareholders will therefore be measured as of October 21, 1998.

On April 6, 1998, the Company completed the acquisitions of First Alert, valued at approximately \$182 million (including \$133 million of cash and \$49 million of assumed debt) and Signature Brands, valued at approximately \$255 million (reflecting cash paid, including the required retirement of defeasance of debt).

As of the date of the acquisition of Coleman, management of the Company determined approximately 117 employees of Coleman would need to be involuntarily terminated in order to eliminate duplicate activities and functions and fully integrate Coleman into Sunbeam's operations. The Company recognized a liability of approximately \$8 million representing severance and benefit costs related to 117 employees pursuant to the termination plan. This liability was included in the allocation of purchase price. As of September 30, 1999, 113 employees were terminated and paid benefits of approximately \$7 million. The four remaining employees are expected to be terminated by March 31, 2000. Remaining termination costs are expected to be paid by December 31, 2000 and no additional charges are anticipated in future periods related to this issue.

All of these acquisitions were accounted for by the purchase method of accounting. Accordingly, the results of operations of the acquired entities are included in the accompanying Condensed Consolidated Statements of Operations from their respective dates of acquisition.

The following pro forma financial information for the Company gives effect to the Coleman and Signature Brands acquisitions as if they had occurred at the beginning of the period presented. No pro forma adjustments have been made for the First Alert acquisition as its effects are not significant. These pro forma results have been prepared for informational purposes only and do not purport to be indicative of the results of operations which actually would have occurred had the acquisitions been consummated on the date indicated, or which may result in the future. The pro forma results follow (in millions, except per share data):

	Nine Months Ended September 30, 1998
Net sales	\$1,584.0
Loss before extraordinary charge	(498.1)
Basic and diluted loss per share from continuing operations before extraordinary charge	(4.78)

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

3. Debt

In order to finance the acquisitions described in Note 2 and to refinance substantially all of the indebtedness of the Company and the acquired companies, the Company consummated an offering of the Debentures at a yield to maturity of 5.0% (approximately \$2,014 million principal amount at maturity) in March 1998, which resulted in approximately \$730 million of net proceeds and entered into a revolving and term credit facility ("New Credit Facility").

The Debentures are exchangeable for shares of the Company's common stock at an initial conversion rate of 6.575 shares for each \$1,000 principal amount at maturity of the Debentures, subject to adjustment upon occurrence of specified events. The Debentures are subordinated in right of payment to all existing and future senior indebtedness of the Company. The Debentures are not redeemable by the Company prior to March 25, 2003. On or after such date, the Debentures are redeemable for cash with at least 30 days' notice, at the option of the Company. The Company is required to purchase Debentures at the option of the holder as of March 25, 2003, March 25, 2008 and March 25, 2013, at purchase prices equal to the issue price plus accrued original discount to such dates. The Company may, at its option, elect to pay any such purchase price in cash or common stock, or any combination thereof. However, the New Credit Facility prohibits the Company from redeeming or repurchasing Debentures for cash. The Company was required to file a registration statement with the SEC to register the Debentures by June 23, 1998. This registration statement was filed on February 4, 1999 and, as amended, was declared effective on November 8, 1999. The Company's failure to file the registration statement by June 23, 1998 did not constitute default under the terms of the Debentures. From June 23, 1998 until the registration statement was declared effective, the Company was required to pay to the Debenture holders cash liquidated damages accruing, for each day during such period, at a rate per annum equal to 0.25% during the first 90 days and 0.50% thereafter multiplied by the total of the issue price of the Debentures plus the original issue discount thereon on such day. The Company has made total payments for liquidated damages since June 23, 1998 of \$4.5 million, of which \$1.5 million related to damages for the period through December 31, 1998. A final payment of approximately \$0.5 million, representing liquidated damages from September 26, 1999 until the registration statement was declared effective, will be payable on March 25, 2000.

Concurrent with the acquisitions, the Company replaced its \$250 million syndicated unsecured five-year revolving credit facility with the New Credit Facility. The New Credit Facility provided for aggregate borrowings of up to \$1.7 billion and in addition to other customary covenants, required the Company to maintain specified consolidated leverage, interest coverage and fixed charge coverage ratios as of the end of each fiscal quarter occurring after March 31, 1998 and on or prior to the latest stated maturity date for any of the borrowings under the New Credit Facility.

As a result of, among other things, its operating losses incurred during the first half of 1998, the Company did not achieve the specified financial ratios for June 30, 1998 and it appeared unlikely that the Company would achieve the specified financial ratios for September 30, 1998. Consequently, the Company and its lenders entered into an agreement dated as of June 30, 1998 that waived through December 31, 1998 all defaults arising from the failure of the Company to satisfy the specified financial ratios for June 30, 1998 and September 30, 1998. Pursuant to an agreement with the Company dated as of October 19, 1998, the Company's lenders extended all of the waivers under the June 30, 1998 agreement through April 10, 1999 and also waived through such date all defaults arising from any failure by the Company to satisfy the specified financial ratios for December 31, 1998. As part of the October 19, 1998 agreement, the Company agreed to a minimum monthly earnings before interest, taxes, depreciation and amortization ("EBITDA") covenant (as defined in the New Credit Facility) which covenant the Company has been able to satisfy.

On April 10, 1999, among other things, the lenders extended all of the waivers set forth in the October 19, 1998 agreement through April 15, 1999. On April 15, 1999, the Company and its lenders entered into a comprehensive amendment to the New Credit Facility that, among other things, extended all of the waivers under the April 10, 1999 agreement until April 10, 2000 and waived until such date all defaults arising from any failure

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

3. Debt—(Continued)

by the Company to satisfy the specified financial ratios for any fiscal quarter end occurring during 1999 and for March 31, 2000. The Company intends to negotiate with its lenders an amendment to the New Credit Facility, or to negotiate further waiver of such covenants and other terms beyond April 10, 2000, or to refinance the New Credit Facility. There can be no assurance that an amendment, further waiver of existing covenants and other terms, or refinancing will be entered into by April 10, 2000. The failure to obtain such an amendment, further waiver or debt refinancing would likely result in violation of the existing covenants and compliance with other terms, which would permit the bank lenders to accelerate the maturity of all outstanding borrowings under the New Credit Facility and could otherwise have a material adverse effect on the Company. Accordingly, debt related to the New Credit Facility and all debt containing cross-default provisions is classified as current in the September 30, 1999 Condensed Consolidated Balance Sheet.

As part of the April 15, 1999 New Credit Facility amendment, the Company agreed to a minimum cumulative EBITDA covenant that is based on post-December 31, 1998 consolidated EBITDA and is tested at the end of each month occurring on or prior to March 31, 2000, as well as a covenant limiting the amount of revolving loans (other than those used to fund the Coleman merger) that may be outstanding under the New Credit Facility as of the end of each such month. The minimum cumulative EBITDA was initially \$6.3 million for the period January 1, 1999 through April 30, 1999 and generally grows on a monthly basis until it reaches \$121.0 million for the period from January 1, 1999 through March 31, 2000.

The following description of the New Credit Facility reflects its significant terms as amended April 15, 1999.

The New Credit Facility provides for aggregate borrowings of up to \$1.7 billion through: (i) a revolving credit facility in an aggregate principal amount of up to \$400.0 million maturing March 30, 2005 (\$52.5 million of which may only be used to complete the Coleman merger); (ii) up to \$800.0 million in term loans maturing on March 30, 2005 (of which \$35.0 million may only be used to complete the Coleman merger); and (iii) a \$500.0 million term loan maturing September 30, 2006 (of which \$5.0 million has already been repaid through September 30, 1999). As of September 30, 1999, approximately \$1.5 billion was outstanding and approximately \$0.2 billion was available for borrowing under the New Credit Facility.

Under the New Credit Facility, interest accrues, at the Company's option: (i) at the London Interbank Offered Rate ("LIBOR"); or (ii) at the base rate of the administrative agent which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%; in each case plus an interest margin which is currently 4.00% for LIBOR loans and 2.50% for base rate loans. The current interest rates reflect an increase of 0.25% for LIBOR loans and base rate loans which occurred on September 1, 1999 as a result of the merger not occurring by such date and an increase of 0.50% for LIBOR loans and 0.25% for base rate loans which occurred on October 1, 1999 as a result of the merger not occurring by such date. The interest margin is subject to potential decreases in the future, including a decrease to 3.00% for LIBOR loans and 1.75% for base rate loans upon consummation of the Coleman merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the New Credit Facility. Borrowings under the New Credit Facility are secured by a pledge of the stock of the Company's material subsidiaries, including Coleman, and by a security interest in substantially all of the assets of the Company and its material domestic subsidiaries, other than Coleman and its material subsidiaries except as described below. Currently, Coleman's inventory and related assets are pledged to secure its obligations for letters of credit issued for its account under the New Credit Facility. Additionally, as security for Coleman's note payable to the Company, Coleman pledged substantially all of its domestic assets, other than real property, including 66% of the stock of its direct foreign subsidiaries and domestic holding companies for its foreign subsidiaries, and all of the stock of its other direct domestic subsidiaries (but not the assets of Coleman's subsidiaries). The pledge runs in favor of the Company's lending banks, to which the Coleman note has been

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

3. Debt—(Continued)

pledged as security for the Company's obligations to them. Upon completion of the Coleman merger, substantially all of Coleman's assets and the assets of Coleman's domestic subsidiaries will be pledged to secure the obligations under the New Credit Facility. In addition, borrowings under the New Credit Facility are guaranteed by a number of the Company's wholly-owned material domestic subsidiaries and these subsidiary guarantees are secured as described above. Upon completion of the Coleman merger, Coleman and each of its United States subsidiaries will become guarantors of the obligations under the New Credit Facility. To the extent extensions of credit are made to any subsidiaries of the Company, the obligations of such subsidiaries are guaranteed by the Company.

In addition to the above described ratios and tests, the New Credit Facility contains covenants customary for credit facilities of a similar nature, including limitations on the ability of the Company and its subsidiaries, including Coleman, to, among other things, (i) declare dividends or repurchase stock, (ii) prepay, redeem or repurchase debt, incur liens and engage in sale-leaseback transactions, (iii) make loans and investments, (iv) incur additional debt, including revolving loans under the New Credit Facility, (v) amend or otherwise alter material agreements or enter into restrictive agreements, (vi) make capital and year 2000 compliance expenditures, (vii) engage in mergers, acquisitions and asset sales, (viii) engage in certain transactions with affiliates, (ix) settle certain litigation, (x) alter its cash management system and (xi) alter the businesses they conduct. The Company is also required to comply with specified financial covenants and ratios. The New Credit Facility provides for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, material adverse change arising from compliance with ERISA, material adverse judgments, entering into guarantees and change of ownership and control. It is also an event of default under the New Credit Facility, as amended November 16, 1999, if the Company's registration statement in connection with the Coleman merger is not declared effective by the SEC on or before January 10, 2000, or if the merger does not occur within 25 business days of the effectiveness of the registration statement or if the cash consideration (including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses) to consummate the Coleman merger exceeds \$87.5 million. Although there can be no assurance, the Company anticipates that it will satisfy these conditions. Furthermore, the New Credit Facility requires the Company to prepay term loans on December 31, 1999 to the extent that cash on hand in the Company's concentration accounts plus the aggregate amount of unused revolving loan commitments on this date exceeds \$125 million, but the Company is not required to prepay more than \$69.3 million as a result of the provision. Unless waived by the bank lenders, the failure to satisfy any of the financial ratios and tests contained in the New Credit Facility or the occurrence of any other event of default under the New Credit Facility would entitle the bank lenders to (a) receive a 2.00% increase in the interest rate applicable to outstanding loans and increase the trade letter of credit fees to 1.00% and (b) accelerate the maturity of the outstanding borrowings under the New Credit Facility and exercise all or any of their other rights and remedies. Any such acceleration or other exercise rights and remedies would likely have a material adverse effect on the Company. The New Credit Facility also includes provisions for the deferral of the September 30, 1999 and the March 31, 2000 scheduled term loan payments of \$69.3 million each until April 10, 2000 as a result of the satisfaction by the Company of the agreed upon conditions to the deferral.

In March 1998, the Company prepaid a \$75.0 million 7.85% industrial revenue bond related to its Hattiesburg facility originally due in 2009. In connection with the early extinguishment of this debt, the Company recognized an extraordinary charge in the first quarter of 1998. As a result of repayment of certain indebtedness assumed in the Coleman acquisition, the Company also recognized an extraordinary charge in the second quarter of 1998. The debt assumed in connection with the Coleman acquisition was repaid as a result of the requirements under the terms of the New Credit Facility. These extraordinary charges consisted of redemption premiums (\$106.9 million), unamortized debt discount (\$13.8 million) and unamortized deferred financing costs (\$1.7 million) and were net of an income tax benefit (\$10.7 million).

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

3. Debt—(Continued)

In connection with the acquisition of Signature Brands, the Company was required to defease \$70.0 million of acquired debt. Cash was placed with a trustee to provide for the defeasance, including the related prepayment penalty. This cash was used to purchase Treasury Notes. Accordingly, \$74.4 million of restricted investments held by the trustee for the August 1999 liquidation of this acquired debt are reflected as an asset at December 31, 1998. The prepayment penalty is reflected as part of the acquisition price of Signature Brands. This debt was redeemed in August 1999 utilizing the proceeds from investments restricted for this purpose.

4. Accounts Receivable Securitization

The Company has entered into a receivables securitization program that expires in March 2000. The Company has received \$228.4 million and \$130.6 million in the first nine months of each 1999 and 1998, respectively, for the sale of trade accounts receivable. Trade accounts receivable at September 30, 1999 and 1998 reflect a reduction of \$36.9 million and \$10.5 million, respectively, for receivables sold under this program. Costs of the program, which primarily consist of the purchaser's financing cost of issuing commercial paper backed by the receivables, totaled \$1.7 million and \$1.9 million in the first nine months of 1999 and 1998, respectively, and have been classified as interest expense in the accompanying Condensed Consolidated Statements of Operations. The Company, through a wholly-owned subsidiary, retains collection and administrative responsibilities for the purchased receivables. This agreement contains cross-default provisions that provide the purchaser of the receivables an option to cease purchasing receivables from the Company if the Company is in default under the New Credit Facility.

5. Comprehensive Loss

The components of the Company's comprehensive loss are as follows (in thousands):

	Nine Months Ended	
	September 30, 1999	September 30, 1998
Net loss	\$(155,039)	\$(587,070)
Foreign currency translation adjustment, net of taxes	(10,150)	154
Change in minimum pension liability	—	(266)
Comprehensive loss	<u>\$(165,189)</u>	<u>\$(587,182)</u>

As of September 30, 1999 and December 31, 1998, "Accumulated other comprehensive loss," as reflected in the Condensed Consolidated Balance Sheets, is comprised of the following:

	Currency Translation Adjustments	Minimum Pension Liability	Total
Balance at September 30, 1999	\$(22,172)	\$(42,008)	\$(64,180)
Balance at December 31, 1998	(12,022)	(42,008)	(54,030)

The accumulated other comprehensive loss associated with the minimum pension liability is net of deferred taxes of approximately \$5 million as of September 30, 1999 and December 31, 1998.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

6. Supplementary Financial Statement Data

Supplementary Balance Sheet data at the end of each period is as follows (in thousands):

	<u>September 30, 1999</u>	<u>December 31, 1998</u>
Receivables:		
Trade	\$475,595	\$407,452
Sundry	10,090	7,347
	485,685	414,799
Valuation allowance	(42,462)	(53,025)
	<u>\$443,223</u>	<u>\$361,774</u>
Inventories:		
Finished goods	\$353,561	\$370,622
Work in process	46,191	39,143
Raw materials and supplies	108,069	109,424
	<u>\$507,821</u>	<u>\$519,189</u>

Supplementary Statements of Cash Flows data is as follows (in thousands):

	<u>Nine Months Ended</u>	
	<u>September 30, 1999</u>	<u>September 30, 1998</u>
Cash paid (received) during the period for:		
Interest	<u>\$ 125,642</u>	<u>\$ 37,796</u>
Income taxes, net of refunds	<u>\$ 2,145</u>	<u>\$(13,077)</u>

7. Asset Impairment and Other Charges

In the second quarter of 1998, decisions were made to outsource or discontinue a substantial number of products previously made by the Company (principally breadmakers, toasters and certain other appliances, air and water filtration products and the elimination of certain stock keeping units ("SKU's")) within existing product lines, primarily relating to appliances, grills and grill accessories). As a result, certain facilities and equipment would either no longer be used or would be utilized in a significantly different manner. Accordingly, a charge of \$29.6 million was recorded in Cost of Goods Sold to write certain of these assets down to their estimated fair market value. Approximately 80% of this charge related to machinery, equipment and tooling at the Company's Mexico City, Mexico and Hattiesburg, Mississippi manufacturing plants, the estimated fair value for which was derived through an auction process. The remainder of this charge related to tooling and equipment at various other facilities, which either had a nominal value or the fair market value of which was derived through an auction process. These assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. The net carrying value of these assets after the write-down approximated \$2.2 million and these assets are expected to be substantially disposed of by December 31, 1999. Depreciation expense associated with these assets approximated \$2.6 million in the first half of 1998.

Personnel at the Mexico City facility were notified in the second quarter of 1998 that the plant was scheduled for closure at year-end 1998, accordingly, at that time, a liability of \$1.8 million was recorded in Cost of Goods Sold primarily for employee severance. The employee severance related to approximately 1,200 positions of which 100 employees, representing a \$0.4 million severance obligation, remained to be terminated at December 31, 1998. Substantially all of these remaining positions had been eliminated and the severance payments had been made as of June 30, 1999. Subsequent to the decisions made in conjunction with the

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(Unaudited)

7. Asset Impairment and Other Charges—(Continued)

acquisitions, management decided to discontinue certain SKU's within product lines (principally generators, compressors and propane cylinders). As a result, in the third quarter of 1998, the Company recorded as Cost of Goods Sold, an additional provision for impairment of fixed assets of \$3.1 million in an acquired entity, relating to assets taken out of service for which there was no remaining value. These fixed assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. Depreciation expense associated with these assets approximated \$0.8 million in 1998.

During 1997 and the first half of 1998, the Company built inventories in anticipation of 1998 sales volumes which did not materialize. As a result, it has been and will continue to be necessary to dispose of some portions of excess inventories at amounts less than cost. Accordingly, during 1998, when the facts and circumstances were known that such sales volume would not materialize, the Company recorded \$48.6 million in charges (of which \$46.4 million and \$2.2 million were recorded in the second and third quarters, respectively) to properly state this inventory at the lower-of-cost-or-market. This inventory primarily related to certain appliances, grills and grill accessories.

The Company also recorded a charge during the second quarter of 1998 of \$11.0 million for excess inventories for raw material and work in process that will not be used due to outsourcing the production of breadmakers, toasters, and certain other appliances. In addition, during the second quarter of 1998, the Company made the decision to exit certain product lines, primarily air and water filtration products and eliminate certain SKU's within existing product lines, primarily relating to appliances, grills and grill accessories. As a result of this decision, a \$26.6 million charge was recorded during the second quarter to properly state this inventory at the lower-of-cost-or-market. Total charges for excess inventory recorded at the lower-of-cost-or-market, based upon management's best estimate of net realizable value, amounted to \$86.2 million through September 30, 1998.

In the fourth quarter of 1998, in connection with management's decision to outsource the production of certain appliances (principally irons) the Company recorded \$0.4 million of severance costs related to the elimination of approximately 45 production positions. During the nine months ended September 30, 1999, 8 positions were eliminated and \$0.1 million of the severance was paid. The remaining positions are expected to be eliminated by December 31, 1999.

At December 31, 1998, the Company had \$1.7 million of restructuring accruals relating to its 1996 restructuring plan. This \$1.7 million was comprised of \$1.2 million relating to lease payments and termination fees and \$0.5 million relating to discontinued operations. During the nine months ended September 30, 1999, the Company expended \$0.2 million for lease payments and termination fees and \$0.4 million relating to discontinued operations, respectively. It is anticipated that the remaining restructuring accrual of \$1.1 million (\$1.0 million relating to lease payments and termination fees and \$0.1 million relating to discontinued operations) will be paid through 2006.

8. Shareholders' Equity

Compensatory Stock Grants

On February 20, 1998, the Company entered into new three-year employment agreements with its then Chairman and Chief Executive Officer and two other senior officers of the Company (the "February 1998 Employment Agreements"). These agreements replaced previous employment agreements entered into in July 1996 that were scheduled to expire in July 1999. The new employment agreements provided for, among other items, the acceleration of vesting of restricted stock and the forfeiture of unvested restricted stock that had been granted under the July 1996 agreement, new restricted stock grants and options to purchase the Company's common stock. In addition, the new employment agreements provided for income tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

8. Shareholders' Equity—(Continued)

Compensation expense attributed to the equity grant, the acceleration of vesting of restricted stock and the related income tax gross-ups was recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups was amortized to expense beginning in the first quarter of 1998 with amortization to continue over the period in which the restrictions lapse. Total compensation expense recognized in the first quarter of 1998 related to these items was approximately \$31 million.

On June 15, 1998, the Company's Board of Directors announced the removal of the then Chairman and Chief Executive Officer and subsequently announced the removal or resignation of other senior officers, including the Company's then Chief Financial Officer. The Company and certain of its former officers are in litigation as to the Company's obligations to these individuals under prior agreements and arising from their termination. (See Note 10).

Purchase of Coleman Preferred Stock

On July 12, 1999, the Company acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock for an aggregate purchase price of approximately \$31 million. These shares, together with the shares of Coleman common stock the Company owns, enable Sunbeam to exercise 80.01% of the total voting power of Coleman's outstanding capital stock as of July 12, 1999. This class of preferred stock was created by Coleman and acquired by the Company in order to enable Coleman and the Company to file consolidated federal income tax returns, and in certain jurisdictions, consolidated state income tax returns, prior to the consummation of the Coleman merger. The issue price per share of the voting preferred stock was equal to 110% of the average closing price per share of common stock of Coleman over the five trading days prior to the date of issuance of the voting preferred stock. Except as required by law, the holders of the voting preferred stock vote as a single class with the holders of the Coleman common stock on all matters submitted to a vote of the holders of Coleman common stock, with each share of voting preferred stock and each share of Coleman common stock having one vote. The voting preferred stock has an annual dividend equal to 7% of \$10.35 per share, the issue price per share of the voting preferred stock, which accrues but will not be paid in cash unless a liquidation of Coleman occurs or certain transactions are consummated as described below. In addition, the voting preferred stock will participate ratably with the Coleman common stock in all other dividends and distributions (other than liquidating distributions) made by Coleman to the holders of its common stock. The voting preferred stock will participate with the Coleman common stock in any merger, consolidation, or any other transaction (other than a merger of a wholly owned subsidiary of the Company with Coleman, including the Coleman merger) and will receive on a per share basis the same type and amount of consideration as the Coleman common stock. On liquidations of Coleman: (1) the holders of the voting preferred stock would receive a preferential distribution equal to \$10.35 per share, plus accrued and unpaid dividends, (2) next, the holders of the Coleman common stock would receive an amount equal to \$10.35 per share of Coleman common stock and (3) any assets remaining after such distributions would be shared by the holders of voting preferred stock and the Coleman common stock on a share for share basis. In connection with the issuance of the shares of preferred stock, Coleman entered into a tax sharing agreement with the Company pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had Coleman not been included in the consolidated income tax return of the Company. The terms of the voting preferred stock, their issue price and the terms of the tax sharing agreement were approved on Coleman's behalf by Coleman's then sole independent director. The net proceeds from the issuance of the shares by Coleman of its voting preferred stock to the Company were used by Coleman to make a partial repayment of loans outstanding from Sunbeam under the Intercompany Note.

9. Segment, Customer and Geographic Data

The following tables include selected financial information with respect to Sunbeam's four operating segments. Corporate expenses include, among other items, expenses for services which are provided in varying

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

9. Segment, Customer and Geographic Data—(Continued)

levels to the three operating groups and for Year 2000 efforts. The increase from 1998 to 1999 is largely due to an expansion of centralized services related to the acquisitions, Year 2000 expenses and increased costs associated with outside services and insurance.

	<u>Household</u>	<u>Outdoor Leisure</u>	<u>International</u>	<u>Corporate</u>	<u>Total</u>
Nine Months Ended September 30, 1999					
Net sales to unaffiliated customers	\$555,207	\$ 774,698	\$444,305	\$ 12,218	\$1,786,428
Intersegment net sales	57,070	126,681	6,896	—	190,647
Segment earnings (loss)	22,363	71,877	-41,021	(93,872)	41,389
Segment depreciation expense	19,436	27,654	4,034	4,392	55,516
Nine Months Ended September 30, 1998					
Net sales to unaffiliated customers	\$454,974	\$ 524,409	\$328,628	\$ 14,118	\$1,322,129
Intersegment net sales	50,103	76,538	53,143	—	179,784
Segment (loss) earnings	(29,608)	(41,520)	11,541	(78,425)	(138,012)
Segment depreciation expense	19,778	18,260	3,812	3,087	44,937
Segment Assets					
September 30, 1999	\$787,956	\$1,771,883	\$403,609	\$354,526	\$3,317,974
December 31, 1998	864,745	1,782,994	413,755	344,023	3,405,517

Reconciliation of selected segment information to Sunbeam's consolidated totals:

	<u>Nine Months Ended</u>	
	<u>September 30, 1999</u>	<u>September 30, 1998</u>
Net sales:		
Net sales for reportable segments	\$1,977,075	\$1,501,916
Elimination of intersegment net sales	(190,647)	(179,787)
Consolidated net sales	<u>\$1,786,428</u>	<u>\$1,322,129</u>
Segment earnings (loss):		
Total earnings (loss) for reportable segments	\$ 41,389	\$ (138,012)
Unallocated amounts:		
Interest expense	(136,631)	(88,476)
Other income, net	4,619	4,065
Amortization of intangible assets	(38,401)	(25,186)
Former employees deferred compensation (Note 8) and severance	—	(34,410)
Provision for inventory (Note 7)	—	(86,167)
Asset impairment (Note 7)	—	(32,642)
Issuance of warrants (Note 2)	—	(70,000)
Office relocation expense	—	(4,011)
Other charges	—	(1,248)
	<u>(170,413)</u>	<u>(338,075)</u>
Consolidated loss before income taxes, minority interest and extraordinary charge	<u>\$ (129,024)</u>	<u>\$ (476,087)</u>

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
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10. Commitments and Contingencies

Litigation

On April 23, 1998, two class action lawsuits were filed on behalf of purchasers of the Company's common stock in the U.S. District Court for the Southern District of Florida against the Company and some of its present and former directors and former officers alleging violations of the federal securities laws as discussed below. After that date, approximately fifteen similar class actions were filed in the same Court. One of the lawsuits also named as defendant Arthur Andersen, the Company's independent accountants for the period covered by the lawsuit.

On June 16, 1998, the court entered an order consolidating all these suits and all similar class actions subsequently filed (collectively, the "Consolidated Federal Actions") and providing time periods for the filing of a consolidated amended complaint and defendants' response thereto. On June 22, 1998, two groups of plaintiffs made motions to be appointed lead plaintiffs and to have their selection of counsel approved as lead counsel. On July 20, 1998, the court entered an order appointing lead plaintiffs and lead counsel. This order also stated that it shall apply to all subsequently filed actions that are consolidated with the other actions. On August 28, 1998, plaintiffs in one of the subsequently filed actions filed an objection to having their action consolidated pursuant to the June 16, 1998 order, arguing that the class period in their action differs from the class periods in the originally filed consolidated actions. On December 9, 1998, the court entered an order overruling plaintiffs' objections and affirming its prior order appointing lead plaintiffs and lead counsel.

On January 6, 1999, plaintiffs filed a consolidated amended class action complaint against the Company, some of its present and former directors and former officers, and Arthur Andersen. The consolidated amended class action complaint alleges that, in violation of section 10(b) of the Exchange Act and SEC Rule 10b-5, defendants made material misrepresentations and omissions regarding the Company's business operations, future prospects and anticipated earnings per share, in an effort to artificially inflate the price of the Company's common stock and call options, and that, in violation of section 20(a) of the Exchange Act, the individual defendants exercised influence and control over the Company, causing the Company to make material misrepresentations and omissions. The consolidated amended complaint seeks an unspecified award of money damages. On February 5, 1999, plaintiffs moved for an order certifying a class consisting of all persons and entities who purchased the Company's common stock or who purchased call options or sold put options with respect to the Company's common stock during the period April 23, 1997 through June 30, 1998, excluding the defendants, their affiliates, and employees of the Company. Defendants' response to the motion for class certification was filed on May 6, 1999. On March 8, 1999, all defendants who had been served with the consolidated amended class action complaint moved to dismiss it. Under the Private Securities Litigation Reform Act of 1995, all discovery in the consolidated action is stayed pending resolution of the motions to dismiss.

On April 7, 1998, a purported derivative action was filed in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida against the Company and some of its present and former directors and former officers. The action alleged that the individual defendants breached their fiduciary duties and wasted corporate assets when the Company granted stock options on or about February 2, 1998 at an exercise price of \$36.85 to three of its officers and directors who were subsequently terminated by the Company. On June 25, 1998, all defendants filed a motion to dismiss the complaint for failure to make a pre-suit demand on the Company's board of directors. On October 22, 1998, the plaintiff amended the complaint against all but one of the defendants named in the original complaint. On February 19, 1999, plaintiffs filed a second amended derivative complaint nominally on behalf of the Company against some of its present and former directors and former officers and Arthur Andersen. The second amended complaint alleges, among other things, that Messrs. Dunlap and Kersh, the Company's former Chairman and Chief Executive Officer and former Chief Financial Officer, respectively, caused the Company to employ fraudulent accounting procedures in order to enable them to secure new employment contracts, and seeks a declaration that the individual defendants have violated fiduciary

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

10. Commitments and Contingencies—(Continued)

Litigation—(Continued)

duties, an injunction against the payment of compensation to Messrs. Dunlap and Kersh or the imposition of a constructive trust on such payments, and unspecified money damages. The defendants have each moved to dismiss the second amended complaint in whole or in part.

On June 25, 1998, four purported class actions were filed in the Court of Chancery of the State of Delaware in New Castle County by minority shareholders of Coleman against Coleman, the Company and certain of the Company's and Coleman's present and former officers and directors. An additional class action was filed on August 10, 1998 against the same parties. The complaints in these class actions allege, in essence, that the existing exchange ratio for the proposed Coleman merger is no longer fair to Coleman minority shareholders as a result of the decline in the market value of the Company's common stock. On October 21, 1998, the Company announced that it had entered into a memorandum of understanding to settle, subject to court approval, the class actions. The court approved the settlement on November 12, 1999. Under the terms of the settlement, the Company will issue to Coleman minority shareholders and plaintiffs' counsel in this action warrants to purchase up to approximately 4.98 million shares of the Company's common stock at \$7 per share, subject to anti-dilution adjustments. Coleman minority shareholders who elect an appraisal under Delaware law will not receive warrants. These warrants will generally have the same terms as the warrant issued to the MacAndrews & Forbes subsidiary and will be issued when the Coleman merger is consummated, which is now expected to occur in the fourth quarter of 1999 or early in the first quarter of 2000. Issuance of the warrants will be accounted for as additional purchase consideration.

During the months of August and October 1998, purported class action and derivative lawsuits were filed in the Court of Chancery of the State of Delaware in New Castle County and in the U.S. District Court for the Southern District of Florida by shareholders of the Company against the Company, MacAndrews & Forbes and some of the Company's present and former directors. These complaints allege that the defendants breached their fiduciary duties when the Company entered into a settlement agreement with the MacAndrews & Forbes subsidiary that sold the Company a controlling interest in Coleman. In the settlement agreement the MacAndrews & Forbes subsidiary released the Company from threatened claims arising out of the Company's acquisition of its interest in Coleman, and MacAndrews & Forbes agreed to provide management support to the Company. Under the settlement agreement, the MacAndrews & Forbes subsidiary was granted a warrant expiring August 24, 2003 to purchase up to an additional 23 million shares of the Company's common stock at an exercise price of \$7 per share, subject to anti-dilution provisions. The plaintiffs have requested an injunction against the issuance of stock to MacAndrews & Forbes upon the exercise of its warrant and unspecified money damages. These complaints also allege that the rights of the minority shareholders have been compromised, as the settlement would normally require shareholder approval under the rules and regulations of the NYSE. The audit committee of the Company's board of directors determined that obtaining such shareholder approval would have seriously jeopardized the financial viability of the Company which is an allowable exception to the NYSE shareholder approval requirements. By order of the Delaware Court of Chancery dated January 7, 1999, the derivative actions filed in that court were consolidated, and the Company and the other defendants have moved to dismiss these actions. The action filed in the U.S. District Court for the Southern District of Florida has been dismissed.

On September 16, 1998, an action was filed in the 56th Judicial District Court of Galveston County, Texas alleging various claims in violation of the Texas Securities Act and Texas Business and Commercial Code as well as common law fraud as a result of the Company's alleged misstatements and omissions regarding the Company's financial condition and prospects during a period beginning May 1, 1998 and ending June 16, 1998, in which the U.S. National Bank of Galveston, Kempner Capital Management, Inc. and Legacy Trust Company engaged in transactions in the Company's common stock on their own behalf and on behalf of their respective clients. The Company is the only named defendant in this action. The complaint requests recovery of compensatory damages, punitive damages and expenses in an unspecified amount. This action was removed to

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SUNBEAM CORPORATION AND SUBSIDIARIES
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(Unaudited)

10. Commitments and Contingencies—(Continued)

Litigation—(Continued)

the U.S. District Court for the Southern District of Texas and subsequently transferred to the Southern District of Florida and consolidated with the Consolidated Federal Actions. Plaintiffs in this action have objected to the consolidation and have sought reconsideration by the Southern District of Florida of the order of the Southern District of Texas denying plaintiffs' motion to remand the case to state court and transferring it to Florida. A similar suit was brought by the same group of plaintiffs in the above action against Arthur Andersen. In that action, the plaintiffs allege that Arthur Andersen violated the Texas Securities Act, committed statutory and common law fraud and was negligent in its audits of the Company's 1996 and 1997 financial statements. On September 29, 1999, Arthur Andersen filed a motion for leave to join the Company and certain of its former officers as responsible third parties and contribution defendants. Their motion was denied.

On October 30, 1998, a class action lawsuit was filed on behalf of certain purchasers of the Debentures in the U.S. District Court for the Southern District of Florida against the Company and some of the Company's former officers and directors, alleging violations of the federal securities laws and common law fraud. The complaint alleges that the Company's offering memorandum used for the marketing of the Debentures contained false and misleading information regarding the Company's financial position and that the defendants engaged in a plan to inflate the Company's earnings for the purpose of defrauding the plaintiffs and others. The plaintiffs seek a declaration that defendants violated federal securities laws and either unspecified monetary damages or rescission of their purchase of the Debentures. The parties have negotiated a proposed coordination plan in order to coordinate proceedings in this action with those in the Consolidated Federal Actions.

The Company has been named as a defendant in an action filed in the District Court of Tarrant County, Texas, 48th Judicial District, on November 20, 1998. The Company was served in this action through the Secretary of State of Texas on January 15, 1999. The plaintiffs in this action are purchasers of the Debentures. The plaintiffs allege that the Company violated the Texas Securities Act and the Texas Business & Commercial Code and committed state common law fraud by materially misstating the financial position of the Company in connection with the offering and sale of the Debentures. The complaint seeks rescission, as well as compensatory and exemplary damages in an unspecified amount. The Company specially appeared to assert an objection to the Texas court's exercise of personal jurisdiction over the Company, and a hearing on this objection took place on April 15, 1999. On April 23, 1999, the court entered an order granting the Company's special appearance and dismissing the case without prejudice. The plaintiffs moved for reconsideration of the court order, which motion the court denied on May 24, 1999. The plaintiffs have appealed to the Texas Court of Appeals the order dismissing the case and that appeal is pending.

On April 12, 1999, a class action lawsuit was filed in the U.S. District Court for the Southern District of Florida. The lawsuit was filed on behalf of persons who purchased Debentures during the period of March 20, 1998 through June 30, 1998, inclusive, but after the initial offering of such Debentures. The complaint asserts that the Company made material omissions and misrepresentations that had the effect of inflating the market price of the Debentures. The complaint names as defendants the Company, its former auditor, Arthur Andersen, and two former Company officers, Messrs. Dunlap and Kersh. The plaintiff is an institution which allegedly acquired in excess of \$150,000,000 face amount of the Debentures and now seeks unspecified money damages. The Company was served on April 16, 1999 in connection with this pending lawsuit. The Company has requested that this action be coordinated with the Consolidated Federal Actions.

On February 9, 1999, Messrs. Dunlap and Kersh filed with the American Arbitration Association demands for arbitration of claims under their respective employment agreements with the Company. Messrs. Dunlap and Kersh are requesting a finding by the arbitrators that the Company terminated their employment without cause and that they should be awarded certain benefits based upon their respective employment agreements. On March 12, 1999, the Company asked the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County,

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

10. Commitments and Contingencies—(Continued)

Litigation—(Continued)

Florida to issue an injunction prohibiting Messrs. Dunlap and Kersh from pursuing their arbitration proceedings against the Company on the grounds, among others, that the simultaneous litigation of the action filed in that court on April 7, 1998, described above, and the arbitration proceedings would subject the Company to the threat of inconsistent adjudications with respect to certain rights to compensation asserted by Messrs. Dunlap and Kersh and would cause irreparable harm to the Company and its shareholders. On March 19, 1999, the plaintiff in the April 7, 1998 action discussed above moved for an injunction on similar grounds. On May 11, 1999, the court denied the motions for a preliminary injunction filed by the Company and the plaintiff. The Company has answered the arbitration demands of Messrs. Dunlap and Kersh and has filed counterclaims seeking, among other things, the return of all consideration paid, or to be paid, under the February 1998 Employment Agreements between the Company and Messrs. Dunlap and Kersh. An answer was filed by Messrs. Dunlap and Kersh generally denying the Company's counterclaims. Discovery is pending.

On May 24, 1999, an action naming the Company as defendant was filed in the Circuit Court for Ozaukee County, Wisconsin. Prior to service of the complaint, the plaintiff dismissed its claims, voluntarily, without prejudice. The plaintiff in this action was a purchaser of the Debentures. The plaintiff alleged that the Company violated the Wisconsin Uniform Securities Act and committed acts of false advertising and misrepresentation in connection with the offering and sale of the Debentures. The plaintiff sought rescission, as well as compensatory and exemplary damages in an unspecified amount.

On September 13, 1999, an action naming the Company and Arthur Andersen as defendants was filed in the Circuit Court for Montgomery County, Alabama. The plaintiffs in this action are purchasers of the Company's common stock during the period March 19, 1998 through May 6, 1998. The plaintiffs allege, among other things, that the defendants violated the Alabama Security Laws and SEC Rule 10b-5. The plaintiffs seek compensatory and punitive damages in an unspecified amount. The Company has removed this case to the U.S. District Court for the District of Alabama. In addition, Arthur Andersen has filed a cross claim against the Company for contribution and indemnity. The Company has filed a motion with the Judicial Panel on Multidistrict Litigation to consolidate this action with the Consolidated Federal Actions.

The Company intends to vigorously defend each of the foregoing lawsuits other than those as to which a memorandum of understanding to settle has been reached, but cannot predict the outcome and is not currently able to evaluate the likelihood of the Company's success in each case or the range of potential loss. However, if the Company were to lose these lawsuits, judgments would likely have a material adverse effect on the Company's consolidated financial position, results of operations and cash flows.

On March 23, 1999, Messrs. Dunlap and Kersh filed a complaint in the Court of Chancery of the State of Delaware seeking an order directing the Company to advance attorneys' fees and other expenses incurred in connection with various state and federal class and derivative actions and an investigation instituted by the SEC. The complaint alleges that such advancements are required by the Company's by-laws and by a forbearance agreement entered into between the Company and Messrs. Dunlap and Kersh in August, 1998. A trial of this summary proceeding was held on June 15 and 16, 1999. On June 23, 1999, the court issued a memorandum opinion directing the Company to pay about \$1.4 million on account of expenses incurred to date and to advance the reasonable future expenses in those actions and investigations. Messrs. Dunlap and Kersh have agreed to repay all amounts advanced to them if it is ultimately determined that they are not entitled to indemnification under Delaware law.

On July 2, 1998, the American Alliance Insurance Company filed suit against the Company in the U.S. District Court for the Southern District of New York requesting a declaratory judgment of the court that the directors' and officers' liability insurance policy for excess coverage issued by American Alliance was invalid and/or had been properly canceled by American Alliance. American Alliance has filed a motion for summary

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

10. Commitments and Contingencies—(Continued)

Litigation—(Continued)

judgment on the ground that coverage was never bound. The Company has opposed that motion. As a result of a motion made by the Company, this case has been transferred to the U.S. District Court for the Southern District of Florida for coordination and consolidation of pre-trial proceedings with the various actions pending in that court. On October 20, 1998, an action was filed by Federal Insurance Company in the U.S. District Court for the Middle District of Florida requesting the same relief as that requested by American Alliance in the previously filed action as to additional coverage levels under the Company's directors' and officers' liability insurance policy. This action has been transferred to the U.S. District Court for the Southern District of Florida and is currently in discovery. The Company is seeking a stay of discovery to coordinate discovery in this action with any discovery that may occur in the Consolidated Federal Actions. Plaintiff has moved to compel production of various documents. On December 22, 1998, an action was filed by Executive Risk Indemnity, Inc. in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida requesting the same relief as that requested by American and Federal in their previously filed actions as to additional coverage levels under the Company's directors' and officers' liability insurance policy. On April 15, 1999, the Company filed an action in the U.S. District Court for the Southern District of Florida against National Union Fire Insurance Company of Pittsburgh, PA, Gulf Insurance Company and St. Paul Mercury Insurance Company requesting, among other things, a declaratory judgment that National Union is not entitled to rescind its directors' and officers' liability insurance policies to the Company and a declaratory judgment that the Company is entitled to coverage from these insurance companies for the various lawsuits described herein under directors' and officers' liability insurance policies issued by each of the defendants. In response to the Company's complaint, defendants St. Paul and Gulf have answered and asserted counterclaims seeking rescission and declaratory relief that no coverage is available to the Company. The Company has denied the allegations of Gulf's and St. Paul's counterclaims. Defendant National Union has filed a motion to dismiss or stay the claims filed by the Company against National Union on the basis, among others, that the Company must submit the dispute to arbitration or mediation. The Company has filed a response opposing that motion. The Company intends to pursue recovery from all of its insurers if damages are awarded against the Company or its indemnified officers and/or directors under any of the foregoing actions and to recover attorneys' fees covered under those policies. The Company's failure to obtain such insurance recoveries following an adverse judgment in any of the actions described above could have a material adverse effect on the Company's financial position, results of operations and cash flows.

By letter dated June 17, 1998, the staff of the Division of Enforcement of the SEC advised the Company that it was conducting an informal inquiry into the Company's accounting policies and procedures and requested that the Company produce certain documents. On July 2, 1998, the SEC issued a Formal Order of Private Investigation, designating SEC officers to take testimony and pursuant to which a subpoena was served on the Company requiring the production of certain documents. On November 4, 1998, another SEC subpoena requiring the production of additional documents was received by the Company. The Company has provided numerous documents to the SEC staff and continues to cooperate with the SEC staff. The Company has, however, declined to provide the SEC with material that the Company believes is subject to the attorney-client privilege and the work product immunity.

The SEC has not commenced any civil or administrative proceedings as a result of its investigation, and the Company cannot predict at this time whether the SEC will seek to impose any monetary or other penalties against the Company. Under these circumstances, the Company cannot estimate the duration of the investigation or its outcome.

The Company and its subsidiaries are also involved in various other lawsuits arising from time to time which the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these routine matters, and of certain matters relating to prior operations, individually

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SUNBEAM CORPORATION AND SUBSIDIARIES
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(Unaudited)

10. Commitments and Contingencies—(Continued)

Litigation—(Continued)

or in the aggregate, will not have a material adverse effect upon the financial position, results of operations or cash flows of the Company.

Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and claims and related anticipated legal fees for defending such actions. The costs are accrued when it is both probable that an asset has been impaired or a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon the Company's assessment, after consultation with counsel, of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the plaintiffs and other significant factors which vary by case. When it is not possible to estimate a specific expected cost to be incurred, the Company evaluates the range of probable loss and records the minimum end of the range. As of September 30, 1999, the Company had established accruals for litigation matters of \$22.6 million (representing \$11.3 million and \$11.3 million for estimated damages or settlement amounts and legal fees, respectively.) As of December 31, 1998 the Company had established accruals for litigation matters of \$31.2 million (representing \$17.5 million and \$13.7 million for estimated damages or settlement amounts and legal fees, respectively). It is anticipated that the \$22.6 million accrual will be paid as follows: \$5.2 million in 1999, \$14.9 million in 2000, and \$2.5 million in 2001. The Company believes, based on information known to the Company on September 30, 1999, that anticipated probable costs of litigation matters existing as of September 30, 1999 have been adequately reserved, to the extent determinable.

Products Liability

As a consumer goods manufacturer and distributor, the Company faces the constant risks of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. These claims could result in liabilities that could have a material adverse effect on the Company's consolidated financial position, results of operations, or cash flows. Some of the product lines the Company acquired in the 1998 acquisitions have increased its exposure to product liability and related claims.

BRK Brands, Inc., a wholly owned subsidiary of the Company, was a defendant in the case *Gordon v. BRK Brands, Inc., et al.* in the Circuit Court for the City of St Louis. In *Gordon*, the plaintiff alleged, among other things, that the plaintiff's smoke detector (which had been manufactured by a predecessor of BRK Brands) did not alarm quickly enough. In July 1999, the jury in the *Gordon* case awarded \$20 million in compensatory damages and \$30 million in punitive damages. This case has been settled and BRK's obligation under the settlement is to pay the balance of its self-insured retention.

The Company is party to various personal injury and property damage lawsuits relating to its products and incidental to its business. Annually, the Company sets its product liability insurance program based on the Company's current and historical claims experience and the availability and cost of insurance. The Company's program for 1999 was comprised of a self-insurance retention of \$3.5 million per occurrence, and was limited to \$28.0 million in the aggregate.

Cumulative amounts estimated to be payable by the Company with respect to pending and potential claims for all years in which the Company is liable under its self-insurance retention have been accrued as liabilities. Such accrued liabilities are necessarily based on estimates (which include actuarial determinations made by independent actuarial consultants as to liability exposure, taking into account prior experience, numbers of claims and other relevant factors); thus, the Company's ultimate liability may exceed or be less than the amounts accrued. The methods of making such estimates and establishing the resulting liability are reviewed continually and any adjustments resulting therefrom are reflected in current operating results.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

10. Commitments and Contingencies—(Continued)

Products Liability—(Continued)

Historically, product liability awards have rarely exceeded the Company's individual per occurrence self-insured retention. There can be no assurance, however, that the Company's future product liability experience will be consistent with its past experience. Based on existing information, the Company believes that the ultimate conclusion of the various pending product liability claims and lawsuits of the Company, individually or in the aggregate, will not have a material adverse effect on the financial position, results of operations or cash flows of the Company.

Environmental Matters

The Company's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations in addition to laws and regulations regarding labeling and packaging of products and the sales of products containing certain environmentally sensitive materials. The Company believes it is in substantial compliance with all environmental laws and regulations which are applicable to its operations. Compliance with environmental laws and regulations involves certain continuing costs; however, such costs of ongoing compliance have not resulted, and are not anticipated to result, in a material increase in the Company's capital expenditures or to have a material adverse effect on the Company's results of operations, financial condition or competitive position.

In addition to ongoing environmental compliance at its operations, the Company also is actively engaged in environmental remediation activities many of which are related to divested operations. As of December 31, 1998, the Company has been identified by the United States Environmental Protection Agency ("EPA") or a state environmental agency as a potentially responsible party ("PRP") in connection with seven sites subject to the federal Superfund Act and five sites subject to state Superfund laws comparable to the federal law (collectively, the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a de minimis (less than 1%) participant.

The Superfund Act, and related state environmental remediation laws, generally authorize governmental authorities to remediate a Superfund site and to assess the costs against the PRPs or to order the PRPs to remediate the site at their expense. Liability under the Superfund Act is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, the Company recognizes its responsibility to determine whether other PRPs at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRPs established with respect to such sites. The Company currently is engaged in active remediation activities at 11 sites, six of which are among the Environmental Sites referred to above, and five of which have not been designated as Superfund sites under federal or state law. The remediation efforts in which the Company is involved include facility investigations, including soil and groundwater investigations, corrective measure studies, including feasibility studies, groundwater monitoring, extraction and treatment, soil sampling, excavation and treatment relating to environmental clean-ups. In certain instances, the Company has entered into agreements with governmental authorities to undertake additional investigatory activities and in other instances has agreed to implement appropriate remedial actions. The Company has also established reserve amounts for certain non-compliance matters including those involving air emissions.

The Company has established reserves to cover the anticipated probable costs of investigation and remediation, based upon periodic reviews of all sites for which the Company has, or may have, remediation responsibility. The Company accrues environmental investigation and remediation costs when it is both probable

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

10. Commitments and Contingencies—(Continued)

Environmental Matters—(Continued)

that a liability has been incurred and the amount can be reasonably estimated and the Company's responsibility is established. Generally, the timing of these accruals coincides with the earlier of formal commitment to an investigation plan, completion of a feasibility study or the Company's commitment to a formal plan of action. As of September 30, 1999 and December 31, 1998, the Company's environmental reserves were \$23.3 million (representing \$21.6 million for the estimated costs of facility investigations, corrective measure studies or known remedial measures, and \$1.7 million for estimated legal costs) and \$25.0 million (representing \$22.9 million for the estimated costs of facility investigations, corrective measure studies or known remedial measures, and \$2.1 million for estimated legal costs), respectively. It is anticipated that the \$23.3 million accrual at September 30, 1999 will be paid as follows: \$5.2 million in 1999, \$3.9 million in 2000, \$1.8 million in 2001, \$2.0 million in 2002, \$0.6 million in 2003 and \$9.8 million, thereafter. The Company has accrued its best estimate of investigation and remediation costs based upon facts known to the Company at such dates and because of the inherent difficulties in estimating the ultimate amount of environmental costs, which are further described below, these estimates may materially change in the future as a result of the uncertainties described below. Estimated costs, which are based upon experience with similar sites and technical evaluations, are judgmental in nature and are recorded at undiscounted amounts without considering the impact of inflation and are adjusted periodically to reflect changes in applicable laws or regulations, changes in available technologies and receipt by the Company of new information. It is difficult to estimate the ultimate level of future environmental expenditures due to a number of uncertainties surrounding environmental liabilities. These uncertainties include the applicability of laws and regulations, changes in environmental remediation requirements, the enactment of additional regulations, uncertainties surrounding remediation procedures including the development of new technology, the identification of new sites for which the Company could be a PRP, information relating to the exact nature and extent of the contamination at each site and the extent of required cleanup efforts, the uncertainties with respect to the ultimate outcome of issues which may be actively contested and the varying costs of alternative remediation strategies. The Company continues to pursue the recovery of some environmental remediation costs from certain of its liability insurance carriers; however, such potential recoveries have not been offset against potential liabilities and have not been considered in determining the Company's environmental reserves.

Due to uncertainty over remedial measures to be adopted at some sites, the possibility of changes in environmental laws and regulations and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, the Company's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved as of September 30, 1999.

The Company believes, based on existing information for sites where costs are estimable, that the costs of completing environmental remediation of all sites for which the Company has a remediation responsibility have been adequately reserved and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition, results of operations or cash flows.

Commitment Fee

Under the terms of the April 15, 1999 amendment to the New Credit Facility, the Company is obligated to pay a loan commitment fee of between \$4.2 million and \$17.0 million. The ultimate amount of the fee is determined based on multiplying the sum of the outstanding borrowings and amounts available for borrowings as of April 15, 1999 by a factor that is determined at the earlier of September 30, 2000 or upon repayment of the New Credit Facility. This fee is payable at the earlier of September 30, 2000 or upon repayment of the New Credit Facility. At a minimum, the Company is obligated under these terms to pay \$4.2 million. The ultimate amount due could be as high as \$17.0 million if the sum of the outstanding borrowings and amounts available for borrowings at September 30, 2000 (the "aggregate availability") exceeds \$1.2 billion. If the aggregate

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

10. Commitments and Contingencies—(Continued)

Commitment Fee—(Continued)

availability is between \$1.0 billion and \$1.2 billion, a fee of \$8.4 million will be due. If the aggregate availability is \$1.0 billion or less, the \$4.2 million minimum will be due. Under any circumstances, the \$4.2 million will be due; therefore, the Company has accrued the minimum liability and an offsetting asset which is being amortized and included in interest expense through April 10, 2000, the term of the current amendment extension period.

The Company has not accrued for amounts in excess of the \$4.2 million, as there are numerous uncertainties which may individually or in the aggregate impact the level of aggregate availability at September 30, 2000. These uncertainties include, but are not limited to: the ability to obtain an amendment or further waiver of existing covenants from the lenders under the New Credit Facility for the period beyond April 10, 2000; proceeds from the sales of assets or businesses, if any; changes in debt structure, including the effects of refinancing, if any; and cash flows generated or used by future operations. Given these uncertainties, the Company is currently not able to predict the probable level of aggregate availability at September 30, 2000. As events develop, the Company will periodically review the expected aggregate availability at September 30, 2000. If it becomes likely that an amount in excess of \$4.2 million will be paid, the Company will recognize that change in estimate over the remaining period of the New Credit Facility Amendment.

11. Subsequent Event

On November 9, 1999, the Company announced a plan to divest Eastpak and certain non-essential assets. Net proceeds from these assets sales are estimated to be \$200 million and will be primarily used to pay down debt.

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AGREEMENT AND PLAN OF MERGER

among

SUNBEAM CORPORATION
CAMPER ACQUISITION CORP.

and

THE COLEMAN COMPANY, INC.

Dated as of
February 27, 1998

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of February 27, 1998, among SUNBEAM CORPORATION, a Delaware corporation ("Laser"), CAMPER ACQUISITION CORP. ("Merger Sub"), a Delaware corporation and a wholly owned subsidiary of Laser, and THE COLEMAN COMPANY, INC., a Delaware corporation (the "Company").

WHEREAS, the Boards of Directors of Laser, Merger Sub and the Company deem it advisable and in the best interests of their respective stockholders that Merger Sub merge with and into the Company (the "Company Merger"), and such Boards of Directors have approved the Company Merger, upon the terms and subject to the conditions set forth herein; and

WHEREAS, as a condition to the Company Merger, a newly formed, wholly owned subsidiary of Laser will merge with and into CLN Holdings Inc. ("Holdings") with Holdings continuing as the surviving corporation and a wholly owned subsidiary of Laser (the "Holdings Merger") pursuant to an Agreement and Plan of Merger (the "Holdings Merger Agreement"), dated as of the date hereof, among Laser, Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Laser, Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings"), and Holdings; and

WHEREAS, the Board of Directors of the Company has approved the Holdings Merger solely for purposes of rendering Section 203 of the DGCL inapplicable to the transactions contemplated hereby; and

WHEREAS, Laser, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Company Merger and also to prescribe certain conditions to the Company Merger.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings, the definitions to be applicable to both the singular and plural forms of each term defined to the extent that such forms of such terms are used in this Agreement.

"Affiliate" shall mean, as to any Person (as hereinafter defined), any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interest, by contract or otherwise.

"Affiliate Agreements" shall mean any Contract, agreement or understanding between the Company and any of its subsidiaries, on the one hand, and Worldwide and any of its Affiliates (other than the Company and its subsidiaries), on the other hand.

"Certificate of Incorporation" shall have the meaning ascribed to it in Section 2.4.

"Certificate of Merger" shall have the meaning ascribed to it in Section 2.3.

"Claim" shall have the meaning ascribed to it in Section 7.8(a).

"Closing" shall have the meaning ascribed to it in Section 2.2.

"Closing Date" shall have the meaning ascribed to it in Section 2.2.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commonly Controlled Entity" shall have the meaning ascribed to it in Section 4.13(a).

"Company Balance Sheet Date" shall have the meaning ascribed to it in Section 4.6(c).

"Company Business Personnel" shall have the meaning ascribed to it in Section 4.12.

"Company Common Stock" shall mean the common stock, par value \$.01 per share, of the Company.

"Company Disclosure Schedule" shall have the meaning ascribed to it in the Introduction to Article IV.

"Company Effective Time" shall have the meaning ascribed to it in Section 2.3.

"Company Licenses" shall have the meaning ascribed to it in Section 4.11.

"Company Material Adverse Effect" shall have the meaning ascribed to it in Section 4.1.

"Company Merger" shall have the meaning ascribed to it in the Recitals.

"Company Plans" shall have the meaning ascribed to it in Section 4.13(a).

"Company Preferred Stock" shall mean the preferred stock, par value \$.01 per share, of the Company.

"Company Rule 145 Affiliates" shall have the meaning ascribed to it in Section 7.5.

"Company SEC Reports" shall have the meaning ascribed to it in Section 4.6(a).

"Company Stock Option Plans" shall mean The Coleman Company, Inc. 1996 Stock Option Plan, The Coleman Company, Inc. 1993 Stock Option Plan and The Coleman Company, Inc. 1992 Stock Option Plan.

"Competition Laws" shall mean foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other foreign Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, lessening of competition or restraint of trade.

"Contract" shall mean any note, bond, mortgage, indenture, license, contract, agreement or other instrument or obligation.

"Conversion Number" shall have the meaning ascribed to it in Section 3.1(a)(i).

"Credit Suisse First Boston" shall mean Credit Suisse First Boston Corporation, the Company's financial advisor.

"DGCL" shall mean the General Corporation Law of the State of Delaware.

"D&O Insurance" shall have the meaning ascribed to it in Section 7.8(c).

"Dissenting Shares" shall have the meaning ascribed to it in Section 3.8.

"Employee Stock Options" shall mean all employee and non-employee director stock options issued pursuant to the Company Stock Option Plans.

"Environmental Claim" shall mean any claim, action, investigation or written notice to the Company or any of its subsidiaries by any person or entity alleging potential liability (including, without limitation, potential liability for investigatory costs, cleanup costs, governmental response costs, natural resource damages, personal injuries, or penalties) arising out of, based on, or resulting from, (a) the presence, or release into the environment, of any Hazardous Substance at any location, whether or not owned or operated by the Company or any of its subsidiaries or (b) circumstances forming the basis of any violation, or alleged violation of any applicable Environmental Law.

"Environmental Laws" shall mean all federal, state, local and foreign Laws and regulations, as in effect and as interpreted as of the date of this Agreement, relating to pollution or protection of the environment, including, without limitation, Laws and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

"Environmental Permits" shall have the meaning ascribed to it in Section 4.14(a).

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

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"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Exchange Agent" shall have the meaning ascribed to it in Section 3.2(a).

"Exchange Fund" shall have the meaning ascribed to it in Section 3.2(a).

"Filed Company SEC Reports" shall have the meaning ascribed to it in Section 4.6(a).

"Filed Laser SEC Reports" shall have the meaning ascribed to it in Section 5.6(a).

"GAAP" shall mean United States generally accepted accounting principles and practices in effect from time to time, consistently applied.

"Governmental Entity" shall mean any court, arbitral tribunal, administrative agency or commission or other governmental or regulatory authority or agency.

"Hazardous Substance" shall mean all substances defined as Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. section 300.5, or defined as such by, or regulated as such under, any Environmental Law, including any radon, asbestos and oil and petroleum products, by-products and fractions.

"Holdings" shall have the meaning ascribed to it in the Recitals.

"Holdings Disclosure Schedule" shall mean the Disclosure Schedule being delivered by Holdings concurrently with the execution of the Agreement and Plan of Merger relating to the Holdings Merger.

"Holdings Effective Time" shall mean the date and time on which the Holdings Merger is effected.

"Holdings Merger" shall have the meaning ascribed to it in the Recitals.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"Information Statement" shall have the meaning ascribed to it in Section 4.9.

"Indemnified Person" shall have the meaning ascribed to it in Section 7.8(a).

"Intellectual Property" shall mean all domestic and foreign patents, patent applications, written invention disclosures to be filed or awaiting filing determinations, trademark and service mark applications, registered trademarks, registered service marks, registered copyrights, trademarks, service marks and trade names.

"Laser Balance Sheet Date" shall have the meaning ascribed to it in Section 5.6(c).

"Laser Common Stock" shall mean the common stock, par value \$.01 per share, of Laser.

"Laser Licenses" shall have the meaning ascribed to it in Section 5.11.

"Laser Material Adverse Effect" shall have the meaning ascribed to it in Section 5.1.

"Laser Preferred Stock" shall mean the preferred stock, par value \$.01 per share, of Laser.

"Laser SEC Reports" shall have the meaning ascribed to it in Section 5.6(a).

"Laser Shares" shall mean the shares of Laser Common Stock to be issued in the Company Merger.

"Laser Stock Option Plans" shall have the meaning ascribed to it in Section 5.2.

"Laser Stock Options" shall have the meaning ascribed to it in Section 5.2.

"Laws" shall mean any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree, administrative order or decree, administrative or judicial decision, and any other executive or legislative proclamation.

"Liens" shall mean all pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever.

"LYONs" shall mean the Liquid Yield Option™ Notes due 2013 of Worldwide.

"Merger Sub Common Stock" shall mean the common stock, par value \$.01 per share, of Merger Sub.

"Morgan Stanley" shall mean Morgan Stanley & Co. Incorporated, Laser's financial advisor.

"NYSE" shall mean the New York Stock Exchange, Inc.

"PBGC" shall mean the Pension Benefit Guaranty Corporation.

"Pension Plan" shall have the meaning ascribed to it in Section 4.13(a).

"Per Share Merger Consideration" shall have the meaning ascribed to it in Section 3.1(a)(i).

"Person" shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization.

"Plans" shall have the meaning ascribed to it in Section 7.7(e).

"Properties" shall have the meaning ascribed to it in Section 4.14(c).

"Registration Statement" shall have the meaning ascribed to it in Section 4.9.

"Release" shall mean any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including, without limitation, ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

"Schedule 13E-3" shall have the meaning ascribed to it in Section 4.9.

"Section 14(f) Notice" shall have the meaning ascribed to it in Section 4.9.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Subsidiary" shall mean, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other subsidiary of such party is a general partner or (ii) at least 50% of the securities or other interests having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization or at least 50% of the value of the outstanding equity is directly or indirectly owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"Surviving Corporation" shall have the meaning ascribed to it in Section 2.1.

"Tax" (and, with correlative meaning, "Taxes" and "Taxable") shall mean (i) any federal, state, local or foreign net income, gross income, receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any governmental authority; and (ii) any liability of Laser or any Laser subsidiary or the Company or any of its subsidiaries, as applicable, for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation of Laser or any Laser subsidiary or the Company or any of its subsidiaries, as the case may be, under any arrangement to share liability for taxes or indemnify any other entity or person for taxes.

"Tax Return" shall mean any return, report or statement required to be filed with respect to any Tax (including any attachments thereto), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

"Welfare Plan" shall have the meaning ascribed to it in Section 4.13(a).

"Worldwide" shall mean Coleman Worldwide Corporation, a Delaware corporation and a wholly owned subsidiary of Holdings.

ARTICLE II

THE COMPANY MERGER

Section 2.1 The Company. Upon the terms and subject to the conditions set forth herein, and in accordance with the DGCL, at the Company Effective Time, Merger Sub shall be merged with and into the Company. Following the Company Effective Time, the Company shall continue as the surviving corporation (the "Surviving Corporation"), and the separate corporate existence of Merger Sub shall cease. The Company Merger shall have the effects set forth in Section 259 of the DGCL.

Section 2.2 Closing. The closing of the Company Merger (the "Closing") will take place at 10:00 a.m. on a date to be specified by the parties (the "Closing Date"), which shall be no later than the third NYSE trading day after satisfaction or waiver of the conditions set forth in Section 8.1, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, unless another time, date or place is agreed to in writing by the parties hereto.

Section 2.3 Company Effective Time of the Company Merger. The Company Merger shall become effective on the date and at the time at which a properly executed certificate of merger (the "Certificate of Merger") is duly filed with the Secretary of State of the State of Delaware. The Certificate of Merger shall be filed as soon as practicable on or after the Closing Date. When used in this Agreement, the term "Company Effective Time" shall mean the date and time on which the Certificate of Merger is so filed.

Section 2.4 Certificate of Incorporation. From and after the Company Effective Time, the certificate of incorporation of the Company as in-effect at the Company Effective Time (the "Certificate of Incorporation") shall be the certificate of incorporation of the Surviving Corporation until amended as provided by Law and the Certificate of Incorporation.

Section 2.5 By-Laws. From and after the Company Effective Time, the by-laws of Merger Sub as in effect at the Company Effective Time shall be the by-laws of the Surviving Corporation until amended as provided by the DGCL, the Certificate of Incorporation and the terms thereof.

Section 2.6 Directors. The directors of Merger Sub at the Company Effective Time shall be the initial directors of the Surviving Corporation and shall hold office from the Company Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation or as otherwise provided by the DGCL (it being understood that the directors of the Company shall resign upon the later of (i) the Holdings Effective Time and (ii) the eleventh (11th) day following the date on which the Section 14(f) Notice shall have been filed with the SEC and mailed to all stockholders of record of the Company in accordance herewith).

Section 2.7 Officers. The officers of the Company at the Company Effective Time shall be the initial officers of the Surviving Corporation and shall hold office from the Company Effective Time until their respective successors are duly elected or appointed and qualifies in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation, or as otherwise provided by Law.

ARTICLE III

CONVERSION OF SHARES

Section 3.1 Effect on Capital Stock. At the Company Effective Time, by virtue of the Company Merger and without any action on the part of any holder thereof:

(a) Conversion of Company Common Stock.

(i) Subject to Section 3.1(b) hereof, each share of Company Common Stock issued and outstanding immediately prior to the Company Effective Time (other than Dissenting Shares and Company Common Stock to be cancelled in accordance with Section 3.1(c) hereof) shall be converted into the right to receive (A) 0.5677 (the "Conversion Number") of a fully paid and nonassessable share of Laser Common Stock and (B) \$6.44 in cash, without interest thereon (the consideration

referred to in this Section 3.1(a) being sometimes referred to herein as the "Per Share Merger Consideration").

(ii) If, prior to the Company Effective Time, Laser shall (A) pay a dividend in, subdivide, combine into a smaller number of shares or issue by reclassification of its shares, any shares of Laser Common Stock, the Conversion Number shall be adjusted appropriately or (B) pay a dividend (other than regular quarterly dividend payments, consistent with past practice), whether in cash or property, the amount of the cash portion of the Per Share Merger Consideration shall be appropriately adjusted such that the amount of cash to be received with respect to each share of Company Common Stock, or if a dividend shall have been paid in other property, cash and other property to be received with respect to each share of Company Common Stock, shall be equal to that which would have been received in the aggregate with respect to each share of Company Common Stock (on a per share equivalent basis) had the dividend been paid following the Company Effective Time at a time when the Laser Shares to be issued pursuant hereto had been issued to the holders of the shares of Company Common Stock.

(iii) Each of the shares of Company Common Stock converted in accordance with paragraph (i) of this Section 3.1(a) shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate representing any such shares of Company Common Stock shall cease to have any rights with respect thereto, except the right to receive the Per Share Merger Consideration and cash in lieu of any fractional share of Laser Common Stock (determined in accordance with Section 3.4 hereof), to be issued or paid in consideration therefor upon the surrender of such certificate in accordance with Section 3.2 hereof, without interest.

(b) Company Common Stock Held by Worldwide or Holdings to Remain Outstanding. Notwithstanding Section 3.1(a) hereof, at the Company Effective Time all shares of Company Common Stock held by Worldwide or Holdings shall remain outstanding and unchanged as a result of the Company Merger.

(c) Cancellation of Treasury Stock and Company Common Stock Held by Laser and Company Subsidiaries. Each share of Company Common Stock, if any, held in the treasury of the Company, by any subsidiary of the Company, by Laser or by any subsidiary of Laser (other than Worldwide or Holdings) immediately prior to the Company Effective Time shall be cancelled and retired and cease to exist.

(d) Cancellation of Merger Sub Common Stock. Each share of Merger Sub Common Stock issued and outstanding immediately prior to the Company Effective Time shall be cancelled and retired and cease to exist.

Section 3.2 Exchange of Certificates Representing Shares.

(a) As of the Company Effective Time, Laser shall deposit, or shall cause to be deposited, with an exchange agent selected by Laser and reasonably satisfactory to the Company (the "Exchange Agent"), for the benefit of the holders of shares of Company Common Stock, for exchange in accordance with this Article III: (i) certificates representing the number of Laser Shares issuable in the Company Merger to be issued in respect of all shares of Company Common Stock outstanding immediately prior to the Company Effective Time and which are to be exchanged pursuant to the Company Merger (exclusive of shares to remain outstanding pursuant to Section 3.1(b) hereof or to be canceled pursuant to Section 3.1(c) hereof); and (ii) cash in an amount sufficient to make any cash payment due under Sections 3.1(a)(i)(B) and 3.4 hereof (such cash and certificates for Laser Shares being hereinafter referred to collectively as the "Exchange Fund").

(b) As soon as reasonably practicable after the Company Effective Time, Laser shall cause the Exchange Agent to mail (or deliver to its principal office) to each holder of record of a certificate or certificates representing shares of Company Common Stock (i) a letter of transmittal which shall specify that delivery shall be effected, and risk of loss and title to the certificates for shares of Company Common Stock shall pass, only upon delivery of the certificates for such shares of Company Common Stock to the Exchange Agent and which shall be in such form and have such other provisions, including appropriate provisions with respect to back-up withholding, as Laser may reasonably specify, and (ii) instructions for use in effecting the surrender of the certificates for shares of Company Common Stock. Upon surrender of a

certificate for shares of Company Common Stock for cancellation to the Exchange Agent, together with such letter of transmittal, duly executed and completed in accordance with the instructions thereto, the holder thereof shall be entitled to receive in exchange therefor that portion of the Exchange Fund which such holder has the right to receive pursuant to the provisions of this Article III, after giving effect to any required withholding Tax, and the certificate for shares of Company Common Stock so surrendered shall forthwith be cancelled. No interest will be paid or accrued on the cash portion of the Exchange Fund. In the event of any transfer of ownership of shares of Company Common Stock which has not been registered in the transfer records of the Company, certificates representing the proper number of shares of Laser Common Stock, if any, and a check in an amount equal to the proper amount of the cash component, if any, of the Exchange Fund, will be issued to the transferee of the certificate representing the transferred shares of Company Common Stock, only upon presentation to the Exchange Agent of a certificate or certificates representing such shares of Company Common Stock, accompanied by all documents required to evidence and effect the prior transfer thereof and to evidence that any applicable stock transfer Taxes associated with such transfer were paid.

Section 3.3 Dividends; Transfer Taxes. No dividends that are declared on Laser Common Stock will be paid to persons entitled to receive certificates representing shares of Laser Common Stock until such persons surrender their certificates representing shares of Company Common Stock. Upon such surrender, there shall be paid to the person in whose name the certificates representing such shares of Laser Common Stock shall be issued, any dividends which shall have become payable with respect to such shares of Laser Common Stock between the Company Effective Time and the time of such surrender. In no event shall the person entitled to receive such dividends be entitled to receive interest on such dividends. If any certificates for any shares of Laser Common Stock are to be issued in a name other than that in which the certificate representing shares of Company Common Stock surrendered in exchange therefor is registered, it shall be a condition of such exchange that the person requesting such exchange shall pay to the Exchange Agent any transfer or other Taxes required by reason of the issuance of certificates for such shares of Laser Common Stock in a name other than that of the registered holder of the certificate surrendered or shall establish to the satisfaction of the Exchange Agent that such Tax has been paid or is not applicable. Notwithstanding the foregoing, (i) neither the Exchange Agent nor any party hereto shall be liable to a holder of shares of Company Common Stock for any shares of Laser Common Stock or dividends thereon, any cash payments to be made pursuant to Section 3.1(a)(i)(B) hereof or, in accordance with Section 3.4 hereof, any cash in lieu of fractional share interests, in each case, delivered to a public official pursuant to applicable escheat Laws and (ii) any shares of Laser Common Stock held by the Exchange Agent prior to surrender of certificates representing shares of Company Common Stock shall not be deemed issued.

Section 3.4 No Fractional Shares. No certificates or scrip representing fractional shares of Laser Common Stock shall be issued upon the surrender for exchange of certificates representing shares of Company Common Stock pursuant to this Article III, and no dividend, stock split or other change in the capital structure of Laser shall relate to any fractional security, and such fractional interests shall not entitle the owner thereof to vote or to any rights of a security holder. In lieu of any such fractional shares of Laser Common Stock, each holder of shares of Company Common Stock who would otherwise have been entitled to a fraction of a share of Laser Common Stock upon surrender of stock certificates for exchange pursuant to this Article III will be paid cash upon such surrender in an amount equal to the product of such fraction multiplied by the closing sale price of one share of Laser Common Stock on the NYSE on the day of the Company Effective Time, or, if shares of Laser Common Stock are not so traded on such day, the closing sale price of one such share on the next preceding day on which such share was traded on the NYSE. For purposes of this Section 3.4, shares of Company Common Stock of any holder represented by two or more certificates shall be aggregated, and in no event shall any holder be paid an amount of cash pursuant to this Section 3.4 in respect of more than one share of Laser Common Stock.

Section 3.5 Termination of Exchange Fund. Any portion of the Exchange Fund which remains undistributed to the holders of the Company Common Stock for six (6) months after the Company Effective Time shall be delivered to Laser, upon demand, and any holders of the Company Common Stock who have not theretofore complied with this Article III shall thereafter look only to Laser for payment of their claim for the shares of Laser Common Stock and cash and dividends or other distributions, if any, pursuant to this Article III.

Section 3.6 Investment of Exchange Fund. Without prejudice to the rights of any holder of Company Common Stock to receive the Per Share Merger Consideration, the Exchange Agent shall invest any cash

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included in the Exchange Fund, as directed by Laser, on a daily basis. Any interest and other income resulting from such investments shall be paid to Laser.

Section 3.7 Closing of Company Transfer Books. At the Company Effective Time, the stock transfer books of the Company shall be closed and no transfer of shares of Company Common Stock shall thereafter be made. If, after the Company Effective Time, certificates representing shares of Company Common Stock are presented to the Surviving Corporation, they shall be cancelled and exchanged for the Per Share Merger Consideration applicable thereto.

Section 3.8 Dissenting Shares. Each outstanding share of Company Common Stock as to which a written demand for appraisal is filed in accordance with Section 262 of the DGCL and not withdrawn, and with respect to which a consent is not given in favor of the Company Merger shall not be converted into or represent a right to receive the Per Share Merger Consideration unless and until the holder thereof shall have failed to perfect, or shall have effectively withdrawn or lost, the right to appraisal of and payment for each such share of Company Common Stock under Section 262, at which time each such share shall be converted into the right to receive the Per Share Merger Consideration. All such shares of Company Common Stock as to which such a written demand for appraisal is so filed and not withdrawn and with respect to which a consent is not given in favor of the Company Merger, except any such shares of Company Common Stock the holder of which, prior to the Company Effective Time, shall have effectively withdrawn or lost such right to appraisal and payment for such shares of Company Common Stock under Section 262, are herein referred to as "Dissenting Shares." The Company shall give Laser prompt notice upon receipt by the Company of any written demands for appraisal rights, withdrawal of such demands, and any other written communications delivered to the Company pursuant to Section 262, and the Company shall give Laser the opportunity, to the extent permitted by Law, to participate in all negotiations and proceedings with respect to such demands. Except with the prior written consent of Laser, the Company shall not voluntarily make any payment with respect to any demands for appraisal rights and shall not settle or offer to settle any such demands. Each holder of Dissenting Shares who becomes entitled, pursuant to the provisions of Section 262, to payment for such shares of Dissenting Shares under the provisions of Section 262 shall receive payment therefor from the Surviving Corporation and such shares of Company Common Stock shall be cancelled thereafter.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as otherwise disclosed to Laser in a schedule delivered to Laser prior to the execution hereof (which schedule shall contain appropriate references to identify the representations and warranties herein to which the information in such schedule relates) (the "Company Disclosure Schedule"), the Company represents and warrants to Laser and Merger Sub as follows:

Section 4.1 Organization. The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted. The Company is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a material adverse effect on the business, results of operations or financial condition of the Company and its subsidiaries, taken as a whole (a "Company Material Adverse Effect").

Section 4.2 Capitalization. The authorized capital stock of the Company consists of 80,000,000 shares of Company Common Stock and 20,000,000 shares of Company Preferred Stock. As of February 23, 1998, (i) 53,488,170 shares of Company Common Stock were issued and outstanding; (ii) 3,282,930 shares of Company Common Stock were issuable upon exercise of Employee Stock Options to acquire 3,282,930 shares of Company Common Stock outstanding under the Company Stock Option Plans (of which options to acquire 2,399,380 were vested); and (iii) no shares of Company Preferred Stock were issued or outstanding. As of such date, no shares of Company Common Stock were held as treasury shares. All of the issued and outstanding shares of Company Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. As of the date hereof, except as set forth above, there are no shares of capital stock of the Company issued or outstanding or any

options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating the Company to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities. There are no notes, bonds, debentures or other indebtedness of the Company having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of the Company may vote.

Section 4.3 Subsidiaries. All the outstanding shares of capital stock of, or other ownership interests in, each of the Company's subsidiaries have been validly issued and are fully paid and nonassessable and such shares (other than directors' qualifying shares and similar interests) are owned directly or indirectly by the Company, free and clear of all Liens. Except for the capital stock of the Company's subsidiaries and except as set forth in Section 4.3 of the Company Disclosure Schedule, the Company does not own, directly or indirectly, any capital stock or other ownership interest in any corporation, partnership, limited liability company, joint venture or other entity. Each of the Company's subsidiaries that is a corporation is a corporation duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation. Each of the Company's subsidiaries that is a partnership or a limited liability company is duly formed and validly existing under the Laws of its jurisdiction of formation. Each of the Company's subsidiaries has the corporate power or the partnership power, as the case may be, to carry on its business as it is now being conducted or presently proposed to be conducted. Each the Company's subsidiaries that is a corporation is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a Company Material Adverse Effect. Each of the Company's subsidiaries that is a partnership is duly qualified as a foreign partnership authorized to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a Company Material Adverse Effect. Except as set forth in Section 4.2 hereof, there are no outstanding options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating the Company or any of its subsidiaries to issue, transfer or sell any securities of any Company subsidiary. There are no voting, stockholder or other agreements or understandings to which the Company or any of the Company's subsidiaries is a party or is bound with respect to the voting of the capital stock of the Company or any of the Company's subsidiaries.

Section 4.4 Authority Relative to this Agreement. The Company has the corporate power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly authorized by the Board of Directors of the Company, and no other corporate actions or proceedings on the part of the Company (including any action on the part of its stockholders) are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization and valid execution and delivery by Laser and Merger Sub, constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and to general principles of equity.

Section 4.5 Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws and state securities or blue sky Laws, and the filing and recordation of the Certificate of Merger as required by the DGCL, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by the Company of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not individually or in the aggregate have a Company Material Adverse Effect. Except as set forth in Section 4.5 of the Company Disclosure Schedule, neither the execution and delivery of this Agreement by the Company, nor the consummation by the Company of the transactions contemplated hereby, nor compliance by the Company with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of the Company or the certificate of incorporation or by-laws of any of the Company's subsidiaries; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or

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both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material (as defined for purposes of Form 10-K) Contract to which the Company or any of the Company's subsidiaries is a party or by which any of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company, any of the Company's subsidiaries or any of their properties or assets, except in the case of clauses (b) and (c) for violations, breaches or defaults which would not individually or in the aggregate have a Company Material Adverse Effect.

Section 4.6 Reports and Financial Statements.

(a) The Company has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Company SEC Reports"). As of their respective dates, the Company SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Company SEC Report has been amended, revised or superseded by a later Company SEC Report filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by a later Company SEC Report filed and publicly available prior to the date of this Agreement, the "Filed Company SEC Reports"), none of the Filed Company SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements of the Company included in the Filed Company SEC Reports complied as to form in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto have been prepared in accordance with GAAP (except, in the case of the unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present the consolidated financial position of the Company and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(c) Except as set forth in the Filed Company SEC Reports and except for liabilities and obligations incurred in the ordinary course of business consistent with past practice since the date of the most recent consolidated balance sheet included in the Filed Company SEC Reports (the "Company Balance Sheet Date"), neither the Company nor any of its subsidiaries has any material liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be recognized or disclosed on a consolidated balance sheet of the Company and its consolidated subsidiaries or in the notes thereto.

Section 4.7 Absence of Certain Changes or Events. Except as set forth in the Filed Company SEC Reports, since the Company Balance Sheet Date, the business of the Company and its subsidiaries has been conducted only in the ordinary course of business consistent with past practice, and there has not been any event, change or development which individually or in the aggregate has had or would reasonably be expected to have a Company Material Adverse Effect or would impair or delay the ability of the Company to consummate the transactions contemplated by, or to satisfy its obligations under, this Agreement. Except as set forth in Section 4.7 of the Company Disclosure Schedule, during the period from the Company Balance Sheet Date through the date of this Agreement, neither the Company nor any of its subsidiaries has:

(i) declared, set aside or paid any distributions (whether in cash, stock or property) with respect to its capital stock or (y) split, combined, or reclassified any of its capital stock or issued or authorized the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock (other than dividends or stock issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(ii) issued, delivered, sold, pledged or otherwise encumbered any shares of its capital stock, any other voting securities or any securities convertible into, or any options, warrants or rights to acquire, any such shares, voting securities or convertible securities (other than the issuance of Company

Common Stock upon the exercise of Employee Stock Options in accordance with their terms and issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(iii) in the case of the Company, amended its certificate of incorporation or by-laws;

(iv) acquired or agreed to acquire by merging or consolidating with, or in purchasing a substantial portion of the assets of, or in any other manner, any business or any corporation, limited liability company, partnership, association or other business organization or division thereof material to the Company;

(v) other than in the ordinary course of business, (x) incurred any indebtedness or (y) made any loans, advances or capital contributions to, or investments in, any other person (other than the Company or a subsidiary of the Company), in any case in an amount material to the Company;

(vi) other than in the ordinary course of business or consistent with the Company's capital budgets heretofore disclosed to Laser, made or agreed to make any capital expenditure or capital expenditures;

(vii) other than in the ordinary course of business, made any Tax election or settled or compromised any material income Tax liability;

(viii) except in the ordinary course of business or except as would not reasonably be expected to have a Company Material Adverse Effect, entered into any Contracts or amended or terminated any material Contract or agreement to which the Company or any of its subsidiaries is a party or waived, released or assigned any material rights or claims thereunder;

(ix) except as required by Law or contractual obligation or in the ordinary course of business consistent with past practice, (a) increased the compensation of any of its employees, (b) entered into any Contract with any of its employees regarding his or her employment, compensation or benefits, or (c) adopted any plan, arrangement or policy which would become a Company Plan or amended any Company Plan to the extent such adoption or amendment would create or increase any material liability or obligation on the part of the Company or its subsidiaries;

(x) entered into any transaction or Contract with, or (except pursuant to the Affiliate Agreements) made any payment to, any Affiliate of the Company (other than to the Company's subsidiaries or its or their officers or directors in the ordinary course of business consistent with past practice); or

(xi) agreed to do any of the foregoing.

Section 4.8 Litigation. Except as disclosed in the Filed Company SEC Reports and as set forth in Section 4.8 of the Company Disclosure Schedule, as of the date hereof, to the Company's knowledge there is no suit, action, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its subsidiaries that individually or in the aggregate would reasonably be expected to (i) have a Company Material Adverse Effect (taking into account any reserve therefor as of the Company Balance Sheet Date), or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement, nor is there any judgment, order, decree, statute, Law, ordinance, rule or regulation of any Governmental Entity or arbitrator outstanding against the Company or any of its subsidiaries having, or which would reasonably be expected to have, any effect referred to in clause (i) or (ii) above.

Section 4.9 Information in Disclosure Documents and Registration Statement. None of the information to be supplied by the Company for inclusion or incorporation by reference in the information statement to be distributed in connection with the Company Merger (as amended or supplemented, the "Information Statement") or the related filing on Schedule 13E-3 (as amended or supplemented, the "Schedule 13E-3") or the notice to be provided to the Company's stockholders pursuant to Section 14(f) of the Exchange Act (as amended or supplemented, the "Section 14(f) Notice") or the registration statement on Form S-4 under the Securities Act for the purpose of registering the shares of Laser Common Stock to be issued in the Company Merger (as amended or supplemented, the "Registration Statement") will, in the case of the Registration

Statement, at the time it becomes effective and at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or, in the case of the Information Statement, the Schedule 13E-3, the Section 14(f) Notice, at the time of the mailing thereof and, in the case of the Information Statement, the Schedule 13E-3 at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Information Statement, the Schedule 13E-3 and the Section 14(f) Notice will comply as to form in all material respects with the provisions of the Exchange Act, and the rules and regulations promulgated thereunder.

Section 4.10 Taxes. Except as would not have a Company Material Adverse Effect or as set forth in Section 4.10 of the Company Disclosure Schedule:

(a) Each of the Company and each of its subsidiaries has (i) filed (or there has been filed on its behalf) with the appropriate Governmental Entities all Tax Returns required to be filed by it, and all such Tax Returns are true, correct and complete and (ii) has paid all Taxes due by it;

(b) there is no action, suit, investigation, audit, claim or assessment pending or proposed in writing or threatened in writing with respect to Taxes of the Company or any of its subsidiaries and, to the best of the Company's knowledge, no basis exists therefor;

(c) there are no Liens for Taxes upon the assets of the Company or any of its subsidiaries except Liens relating to current Taxes not yet due;

(d) the United States federal income Tax Returns which include the Company and the Company's subsidiaries have been examined, and such examinations have been completed, by the Internal Revenue Service (or the applicable statutes of limitation for the assessment of federal income Taxes for such periods have expired) for all periods through and including 1985.

Section 4.11 Compliance with Applicable Law. Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries have received such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances from appropriate Governmental Entities (the "Company Licenses") as are necessary to own or lease and operate their respective properties and to conduct their respective businesses substantially in the manner described in the Company SEC Reports and as currently owned or leased and conducted, and all such Company Licenses are valid and in full force and effect, except for any such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances which the failure to have or to be in full force and effect would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as disclosed in Filed Company SEC Reports, the Company and the Company's subsidiaries are in compliance with their respective obligations under the Company Licenses, with only such exceptions as, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect. Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries are in compliance with all judgments, orders, decrees, statutes, Laws, ordinances, rules and regulations of any Governmental Entity applicable to them, except for such noncompliance which individually or in the aggregate would not have a Company Material Adverse Effect.

Section 4.12 Labor Matters. Except as disclosed in the Filed Company SEC Reports, neither the Company nor any of the Company's subsidiaries has any labor contracts, collective bargaining agreements or material employment or consulting agreements with any persons employed by or otherwise performing services primarily for the Company or any of the Company's subsidiaries (the "Company Business Personnel") or any representative of any Company Business Personnel. Except as set forth in the Filed Company SEC Reports, neither the Company nor any of its subsidiaries has engaged in any unfair labor practice with respect to Company Business Personnel, and there is no unfair labor practice complaint pending against the Company or any of its subsidiaries with respect to Company Business Personnel which, in either such case, would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as set forth in the Filed Company SEC Reports, there is no material labor strike, dispute, slowdown or stoppage pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries, and neither the Company

nor any of its subsidiaries has experienced any material primary work stoppage or other material labor difficulty involving its employees during the last three (3) years.

Section 4.13 ERISA Compliance.

(a) The Company has delivered to Laser or will deliver to Laser prior to the Company Effective Time each "employee pension benefit plan" (as defined in Section 3(2) of ERISA) (a "Pension Plan"), each "employee welfare benefit plan" (as defined in Section 3(1) of ERISA) (a "Welfare Plan"), each material bonus, stock option, stock purchase, stock ownership, stock bonus, restricted stock, deferred compensation plan or arrangement and each other material employee fringe benefit plan or arrangement maintained, contributed to or required to be maintained or contributed to by the Company or any of its subsidiaries or any other person or entity that, together with the Company, is or was treated as a single employer under Section 414(b), (c), (m) or (o) of the Code (each, a "Commonly Controlled Entity") which is currently in effect for the benefit of any current or former directors, officers, employees or independent contractors of the Company or any of its subsidiaries (collectively, the "Company Plans"). The Company has delivered to Laser or will deliver to Laser prior to the Company Effective Time true, complete and correct copies of (x) the two most recent annual reports on Form 5500 filed with the Internal Revenue Service with respect to each Company Plan (if any such report was required), (y) the most recent summary plan description for each Company Plan for which such summary plan description is required and (z) each currently effective trust agreement, insurance or group annuity contract and each other material funding or financing arrangement relating to any Company Plan.

(b) No Commonly Controlled Entity has incurred any liability under Title IV of ERISA, other than for contributions not yet due to a defined benefit pension plan subject to Title IV of ERISA and other than for the payment of premiums to the PBGC not yet due, and no condition exists that presents a material risk of incurring any such liability, which liability, to the extent currently due, has not been fully paid as of the date hereof and would individually or in the aggregate be reasonably likely to result in a Company Material Adverse Effect.

(c) Except as set forth in Company SEC reports or in Section 4.13 of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries has any obligation to provide any welfare benefits to employees or former employees following termination of employment except (i) for benefits the cost of which is borne entirely by the employee or former employee, (ii) as required under Section 4980 of the Code or other applicable law or (iii) obligations to provide such benefits to Company employees employed in non-U.S. jurisdictions.

(d) No Commonly Controlled Entity has engaged in a transaction described in Section 4069 of ERISA that could subject the Company or any of its subsidiaries or Laser to liability at any time after the date hereof, which liability would be reasonably likely to result in a Company Material Adverse Effect.

(e) No Commonly Controlled Entity has withdrawn from any multiemployer plan where such withdrawal has resulted in any actual or potential "withdrawal liability" (as defined in Section 4201 of ERISA) that has not been fully paid, which liability would be reasonably likely to result in a Company Material Adverse Effect.

(f) Except as set forth in Section 4.13 of the Company Disclosure Schedule or as specifically provided in this Agreement, the transactions contemplated by this Agreement will not, either alone or in connection with another event, cause there to be paid or become payable any additional benefits or any acceleration of the time of payment or vesting of any benefits under any Company Plan or under any employment, severance, termination or compensation agreement to which the Company is a party as of the Company Effective Time.

Section 4.14 Environmental Matters.

(a) Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries are in compliance with all applicable Environmental Laws, which compliance includes the possession of permits and governmental authorizations required under applicable Environmental Laws ("Environmental

Permits") and compliance with the terms and conditions thereof, except where such non-compliance would not result in a Company Material Adverse Effect.

(b) Except as disclosed in the Filed Company SEC Reports, there are no Environmental Claims pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries that would reasonably be expected to result in a Company Material Adverse Effect.

(c) Except as disclosed in the Filed Company SEC Reports, the properties presently or to the knowledge of the Company formerly owned, leased or operated by the Company or its subsidiaries (including groundwater under the properties) (the "Properties") do not contain any Hazardous Substance other than as permitted under applicable Environmental Law; provided, however, that with respect to Properties formerly owned, leased or operated by the Company or its subsidiaries, such representation is limited to the period prior to the disposition of such Properties by the Company or its subsidiaries.

(d) Except as disclosed in the Filed Company SEC Reports, to the knowledge of the Company, no Hazardous Substance has been disposed of or transported from any of the Properties during the time any such Property was owned, leased or operated by the Company or any of its subsidiaries, other than as permitted under applicable Environmental Law and in effect at the time of such disposal or transportation.

(e) Except as disclosed in the Filed Company SEC Reports, to the knowledge of the Company, the Company and its subsidiaries have not become obligated, whether by operation of Law or through contractual agreement, to indemnify any other person or otherwise to assume liability for any claim brought pursuant to any Environmental Law which could reasonably be expected to have a Company Material Adverse Effect.

Section 4.15 Intellectual Property. The Company has previously delivered to Laser a list, which, to the knowledge of the Company, is true and correct as of the date hereof in all material respects, of all material issued patents and registered trademarks of the Company. Except as set forth in Section 4.15 of the Company Disclosure Schedule, the Company and its subsidiaries own or have sufficient rights to use all material Intellectual Property used in connection with the business of the Company and its subsidiaries as currently conducted. As used in this Section 4.15, the term "material," when applied to Intellectual Property, means that such Intellectual Property is used in a significant manner to conduct the business of the Company and its subsidiaries as it is currently conducted.

Section 4.16 Contracts. Except as set forth in Section 4.16 of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries is a party to or bound by any material Contract, other than (i) the Affiliate Agreements listed in Section 4.10 of the Holdings Disclosure Schedule, (ii) any Contract filed or incorporated by reference as an exhibit to any Filed Company SEC Report or (iii) any Contract (other than the Affiliate Agreements listed in Section 4.10 of the Holdings Disclosure Schedule) entered into in the ordinary course of business consistent with past practice.

Section 4.17 Opinion of Financial Advisor. The Board of Directors of the Company has received the opinion of Credit Suisse First Boston, dated the date hereof to the effect that the Per Share Merger Consideration is fair to the holders of shares of Company Common Stock (other than Worldwide) from a financial point of view.

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Section 4.18 Takeover Statute. The Board of Directors of the Company has approved the Holdings Merger solely for the purpose of rendering inapplicable, and such approval is sufficient to render inapplicable, to the Company Merger and the other transactions contemplated by this Agreement the provisions of Section 203 of the DGCL. To the best of the Company's knowledge, no other state takeover statute or similar statute or regulation applies or purports to apply to the Company Merger, this Agreement or any of the transactions contemplated hereby, and no provision of the certificate of incorporation or by-laws of the Company or certificates of incorporation or by-laws (or comparable organizational documents) of any subsidiary of the Company would, directly or indirectly, restrict or impair the ability of Laser to vote, or otherwise to exercise the rights of a stockholder with respect to, shares of capital stock of the Company or any of its subsidiaries that may be acquired or controlled by Laser.

Section 4.19 Brokers. No broker, investment banker or other person, other than Credit Suisse First Boston, the fees and expenses of which will be paid by the Company (as reflected in an agreement between Credit Suisse First Boston and the Company, a copy of which has been furnished to Laser), is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF LASER AND MERGER SUB

Laser and Merger Sub represent and warrant to the Company as follows:

Section 5.1 Organization. Laser is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted. Laser is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a material adverse effect on the business, results of operations or financial condition of Laser and its subsidiaries, taken as a whole (a "Laser Material Adverse Effect").

Section 5.2 Capitalization. The authorized capital stock of Laser consists of 200,000,000 shares of Laser Common Stock, and 2,000,000 shares of Laser Preferred Stock. As of February 23, 1998, (i) 85,988,627 shares of Laser Common Stock were issued and outstanding; (ii) 16,129,197 shares of Laser Common Stock were issuable upon exercise of employee and non-employee stock options (the "Laser Stock Options") outstanding under all stock option plans of Laser (the "Laser Stock Option Plans") or granted pursuant to employment agreements; and (iii) no shares of Laser Preferred Stock were issued and outstanding. As of such date, 4,568,959 shares of Laser Common Stock were held as treasury shares. All of the issued and outstanding shares of Laser Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. All of the shares of Laser Common Stock issuable as consideration in the Company Merger at the Company Effective Time in accordance with this Agreement will be, when so issued, duly authorized, validly issued, fully paid and nonassessable and free of preemptive rights. As of such date, except as set forth above, there are no shares of capital stock of Laser issued or outstanding or, as of such date or as of the date hereof, except as set forth above, any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Laser to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities, or the capital stock or securities of Laser. There are no notes, bonds, debentures or other indebtedness of Laser having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of Laser may vote.

Section 5.3 Merger Sub. Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Merger Sub is a newly incorporated company formed solely for purposes of consummating the transactions contemplated by this Agreement and has engaged in no activity other than as provided in, or contemplated by, this Agreement. The authorized capital stock of Merger Sub consists of 1,000 shares of Merger Sub Common Stock, all of which are validly issued, fully paid and nonassessable and are owned by Laser. Except as set forth above there are no shares of capital stock of Merger Sub issued or outstanding or any options, warrants, subscription, calls, rights, convertible securities or other

agreements or commitments obligating Merger Sub to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

Section 5.4 Authority Relative to this Agreement. Each of Laser and Merger Sub has the corporate power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Laser and Merger Sub and the consummation by Laser and Merger Sub of the transactions contemplated hereby have been duly authorized by the Boards of Directors of Laser and Merger Sub, and no other corporate action or proceedings on the part of Laser or Merger Sub (including any action on the part of its stockholders) is necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by Laser and Merger Sub and, assuming it is a valid and binding obligation of the Company, constitutes a valid and binding agreement of Laser and Merger Sub, enforceable against Laser and Merger Sub in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and other forms of equitable relief may be subject to equitable defenses and the discretion of the court before which any proceedings therefor may be brought.

Section 5.5 Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws, and state securities or blue sky Laws, and the filing of the Certificate of Merger in such form as required by, and executed in accordance with the relevant provisions of, the DGCL, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Laser or Merger Sub of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not (i) individually or in the aggregate have a Laser Material Adverse Effect or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement. Neither the execution and delivery of this Agreement by Laser or Merger Sub nor the consummation by Laser or Merger Sub of the transactions contemplated hereby, nor compliance by Laser with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Laser or Merger Sub; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material (as defined for purposes of Form 10-K) Contract to which Laser, Merger Sub or any of their subsidiaries is a party or by which any of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Laser, Merger Sub, any of their subsidiaries or any of their properties or assets, except, in the case of clauses (b) and (c), for violations, breaches or defaults which would not individually or in the aggregate have a Laser Material Adverse Effect.

Section 5.6 Reports and Financial Statements

(a) Laser has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Laser SEC Reports"). As of their respective dates, the Laser SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Laser SEC Report has been amended, revised or superseded by a later Laser SEC Report filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by a later filed Laser SEC Report to the date of this Agreement, the "Filed Laser SEC Reports"), none of the Filed Laser SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements of Laser included in the Filed Laser SEC Reports complied as to form in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except, in the case of the unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present the consolidated financial position of Laser and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(c) Except as set forth in the Filed Laser SEC Reports and except for liabilities and obligations incurred in the ordinary course of business consistent with past practice since the date of the most recent consolidated balance sheet included in the Filed Laser SEC Reports (the "Laser Balance Sheet Date"), neither Laser nor any of the Laser subsidiaries has any material liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be recognized or disclosed on a consolidated balance sheet of Laser and its consolidated subsidiaries or in the notes thereto.

Section 5.7 Absence of Certain Changes or Events. Except as set forth in the Filed Laser SEC Reports, since the Laser Balance Sheet Date, the business of Laser and its subsidiaries has been conducted only in the ordinary course of business consistent with past practice, and there has not been any event, change or development which individually or in the aggregate has had or would reasonably be expected to have a Laser Material Adverse Effect or would impair or delay the ability of Laser to consummate the transactions contemplated by, or to satisfy its obligations under, this Agreement.

Section 5.8 Litigation. Except as disclosed in the Filed Laser SEC Reports, there is no suit, action, proceeding or investigation pending or, to the knowledge of Laser, threatened against or affecting Laser or any of its subsidiaries that individually or in the aggregate would reasonably be expected to (i) have a Laser Material Adverse Effect (taking into account any reserve therefor as of the most recent balance sheet included in the Filed Laser SEC Reports) or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement, nor is there any judgment, order, decree, statute, Law, ordinance, rule or regulation of any Governmental Entity or arbitrator outstanding against Laser or any of its subsidiaries having, or which would reasonably be expected to have, any effect referred to in clause (i) or (ii) above.

Section 5.9 Information in Disclosure Documents and Registration Statement. None of the information to be supplied by Laser for inclusion or incorporation by reference in (a) the Registration Statement or (b) the Information Statement, the Schedule 13E-3 or the Section 14(f) Notice will, in the case of the Registration Statement, at the time it becomes effective and at the Company Effective Time contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or, in the case of the Information Statement, the Schedule 13E-3 and the Section 14(f) Notice, at the time of the mailing thereof and, in the case of the Information Statement and the Schedule 13E-3, at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Registration Statement will comply as to form in all material respects with the provisions of the Securities Act and the rules and regulations promulgated thereunder. The Schedule 13E-3 will comply as to form in all material respects with the provisions of the Exchange Act and the rules and regulations promulgated thereunder.

Section 5.10 Taxes.

(a) Laser and its subsidiaries have filed (or there have been filed on their behalf) with the appropriate governmental authorities all material Tax Returns required to be filed by them and such Tax Returns are true, correct and complete in all material respects and disclose all Taxes required to be paid by them for the periods covered thereby; and

(b) all material Taxes (whether or not shown on any Tax Return) owed by Laser and its subsidiaries and required to be paid on or before the Closing Date have been (or will be) timely paid or, in the case of Taxes which Laser or any of its subsidiaries is presently contesting in good faith, an adequate reserve has been established for such Taxes in accordance with GAAP.

Section 5.11 Compliance with Applicable Law. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries have received such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances from appropriate Governmental Entities (the "Laser Licenses") as are necessary to own or lease and operate their respective properties and to conduct their respective businesses substantially in the manner described in the Laser SEC Reports and as currently owned or leased and conducted, and all such Laser Licenses are valid and in full force and effect, except for any such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances which the failure to have or to be in full force and effect would not reasonably be expected to have, individually or in the aggregate, a Laser Material Adverse Effect. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries are in compliance in all material respects with their respective obligations under the Laser Licenses, with only such

exceptions as, individually or in the aggregate, would not reasonably be expected to have a Laser Material Adverse Effect. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries are in compliance with all judgments, orders, decrees, statutes, Laws, ordinances, rules and regulations of any Governmental Entity applicable to them, except for such noncompliance which individually or in the aggregate would not have a Laser Material Adverse Effect.

Section 5.12 Brokers. No broker, investment banker or other person, other than Morgan Stanley, the fees and expenses of which will be paid by Laser (as reflected in an agreement between Morgan Stanley and Laser) is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Laser.

ARTICLE VI

COVENANTS RELATING TO CONDUCT OF BUSINESS

Section 6.1 Conduct of Business by the Company. During the period from the date of this Agreement to the Holdings Effective Time, except as expressly permitted by this Agreement or with the prior written consent of Laser or as set forth in Section 6.1 of the Company Disclosure Schedule, the Company shall, and shall cause its subsidiaries to, carry on the business of the Company and its subsidiaries in the usual, regular and ordinary course in substantially the same manner as heretofore conducted and in compliance in all material respects with all applicable Laws and regulations and, to the extent consistent therewith, use all reasonable efforts to preserve intact the current business organizations of the Company and its subsidiaries, and to preserve its relationships with those persons having business dealings with the Company and its subsidiaries to the end that the goodwill and ongoing businesses of the Company and its subsidiaries shall be unimpaired at the Holdings Effective Time. Without limiting the generality of the foregoing, during the period from the date of this Agreement to the Holdings Effective Time, the Company agrees as to itself and its subsidiaries that, except as expressly permitted by this Agreement or with the prior written consent of Laser or as set forth in Section 6.1 of the Company Disclosure Schedule:

(i) Neither the Company nor any of its subsidiaries shall (x) declare, set aside or pay any distributions (whether in cash, stock or property) with respect to its capital stock or (y) split, combine, or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock (other than dividends or stock issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(ii) Neither the Company nor any of its subsidiaries shall issue, deliver, sell, pledge or otherwise encumber any shares of its capital stock, any other voting securities or any securities convertible into, or any options, warrants or rights to acquire, any such shares, voting securities or convertible securities (other than the issuance of Company Common Stock upon the exercise of Employee Stock Options in accordance with their terms and issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(iii) The Company shall not amend its certificate of incorporation or by-laws;

(iv) Other than as would not be material to the Company, the Company and its subsidiaries shall not acquire or agree to acquire (x) by merging or consolidating with, or by purchasing a substantial portion of the assets of, or in any other manner, any business or any corporation, limited liability company, partnership, joint venture, association or other business organization or division thereof or (y) any assets that individually or in the aggregate are material to the Company and its subsidiaries;

(v) Other than as would not be material to the Company, the Company and its subsidiaries shall not sell, lease, license or otherwise encumber or subject to any Lien or otherwise dispose of any of the properties or assets of the Company and its subsidiaries, other than in the ordinary course of business consistent with past practice or pursuant to existing contractual obligations, if any, set forth in Section 6.1 of the Company Disclosure Schedule;

(vi) Other than in the ordinary course of business or as would not be material to the Company, the Company and its subsidiaries shall not (x) incur any indebtedness or (y) make any loans, advances or capital contributions to, or investments in, any other person (other than the Company or a subsidiary of the Company), other than to officers and employees of the Company and its subsidiaries for travel, business or relocation expenses in the ordinary course of business;

(vii) Other than in the ordinary course of business or consistent with the Company's 1998 capital budget;

(viii) Other than in the ordinary course of business, the Company and its subsidiaries shall not make any material Tax election or settle or compromise any material income Tax liability;

(ix) Except in the ordinary course of business or except as would not reasonably be expected to have a Company Material Adverse Effect, the Company and its subsidiaries (i) shall not enter into any Contracts and (ii) shall not modify, amend or terminate any material Contract or agreement to which the Company or any of its subsidiaries is, or as of the Company Effective Time will be, a party or waive, release or assign any material rights or claims thereunder;

(x) Except as required by Law or previously existing contractual arrangements, in the ordinary course of business consistent with past practice or as disclosed or otherwise provided in this Agreement, the Company will not, nor will it permit any of its subsidiaries to, (a) increase the compensation of any of its employees, (b) enter into any Contract with any of its employees regarding his or her employment, compensation or benefits, or (c) adopt any plan, arrangement or policy which would become a Company Plan or amend any Company Plan to the extent such adoption or amendment would create or materially increase any material liability or obligation on the part of the Company or its subsidiaries;

(xi) The Company and its subsidiaries shall not make any change to their accounting methods, principles or practices, except as may be required by GAAP or Regulation S-X promulgated by the SEC or by Law;

(xii) The Company shall not, and shall not permit any of its subsidiaries to, create, incur, suffer to exist or assume any material Lien on any of their assets, except as would not have a Company Material Adverse Effect or materially impair the Company's conduct of the business and operations of the Company and its subsidiaries, as presently conducted;

(xiii) The Company shall not, and shall not permit any of its subsidiaries to enter into any transaction or contract with, or (except pursuant to the Affiliate Agreements) make any payment to, any Affiliate of the Company (other than the Company's subsidiaries or its or their officers or directors in the ordinary course of business consistent with past practice); and

(xiv) The Company and its subsidiaries shall not authorize, or commit or agree to take, any of the foregoing actions.

Section 6.2 Other Actions. During the period from the date hereof to the Holdings Effective Time, the Company and Laser shall not, and shall not permit any of their respective subsidiaries to, take any action that would, or that could reasonably be expected to, result in (i) any of the representations and warranties of such party set forth in this Agreement that are qualified as to materiality becoming untrue, (ii) any of such representations and warranties that are not so qualified becoming untrue in any material respect or (iii) any of the conditions to the Company Merger set forth in Article VIII hereof not being satisfied.

Section 6.3 Advice of Changes. Upon obtaining knowledge of any such occurrence, the Company and Laser shall promptly advise the other party orally and in writing of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect, (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement or (iii) any change or event (x) having, or which, insofar as can reasonably be foreseen, would have, in the case of Laser, a Laser Material Adverse Effect and, in the case of the Company, a Company Material Adverse Effect, (y) having, or which, insofar as can reasonably be foreseen, would have, the effect set forth in clause (i) above or (z) which has resulted, or which, insofar as can reasonably be foreseen, would result, in any of the conditions set forth in Article VIII hereof not being satisfied; provided, however, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

Section 6.4 Conduct of Business of Merger Sub. From the date hereof to the Company Effective Time, Merger Sub shall not (i) engage in any activities of any nature, (ii) acquire any assets, or (iii) incur any indebtedness or assume any liabilities or obligations, in each case, except as provided in or contemplated by this Agreement.

Section 6.5 Section 14(f) Notice. Promptly after the date hereof, Laser shall provide to the Company in writing the information with respect to the Laser Designees (as defined in the Holdings Merger Agreement) required by Section 14(f) of the Exchange Act and Rule 14f-1 of the SEC. Promptly after its receipt of such information, the Company shall file with the SEC and mail to all stockholders of record of the Company the Section 14(f) Notice.

ARTICLE VII

ADDITIONAL AGREEMENTS

Section 7.1 Preparation of the Registration Statement, the Information Statement, the Schedule 13E-3 and the Section 14(f) Notice. As soon as reasonably practicable following the date of this Agreement, Laser and the Company shall prepare and file with the SEC the Information Statement and Laser shall prepare and file with the SEC the Registration Statement, in which the Information Statement will be included as a prospectus (including the financial statements and pro forma financial information required to be set forth therein), and the Schedule 13E-3 and the Section 14(f) Notice. Laser shall use all reasonable best efforts to have the Registration Statement declared effective under the Securities Act and the Schedule 13E-3 and the Section 14(f) Notice cleared by the SEC and mailed as promptly as practicable after such filing. The Company will use all reasonable best efforts to cause the Information Statement and the Schedule 13E-3 and the Section 14(f) Notice to be mailed to the Company's stockholders as promptly as practicable after it has been cleared by the SEC. Each of Laser and the Company shall also take any action (other than qualifying to do business in any jurisdiction in which it is not now so qualified or to file a general consent to service of process) required to be taken under any applicable state securities Laws in connection with the issuance of Laser Common Stock in connection with the Company Merger and the Holdings Merger. The Company shall furnish all information concerning the Company, its subsidiaries and the holders of the Company Common Stock and Laser shall furnish all information concerning Laser and its subsidiaries, in each case, as may be reasonably requested in connection with any such action.

Section 7.2 Access and Information; Confidentiality. The Company and Laser shall each afford to the other and to the other's financial advisors, legal counsel, accountants, consultants and other representatives full access at all reasonable times throughout the period prior to the Company Effective Time to all of its books, records, properties, plants and personnel (provided that all such access shall be on reasonable advance notice and shall not disrupt normal business operations) and, during such period, each shall furnish promptly to the other (a) a copy of each report, schedule and other document filed or received by it pursuant to the requirements of federal or state securities Laws, and (b) all other information as such other party may reasonably request, provided that no investigation pursuant to this Section 7.2 shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the Company Merger. Each party and their respective affiliates, representatives and agents shall hold in confidence all nonpublic information in accordance with the terms of the Confidentiality Agreements between Laser and the Company dated February 4, 1998 and February 23, 1998.

Section 7.3 Comfort Letters.

(a) The Company shall use its reasonable best efforts to cause to be delivered to Laser "comfort" letters of Ernst & Young, LLP, the Company's independent public accountants, dated the date on which the Registration Statement shall become effective and as of the date on which the Information Statement is mailed to the Company's stockholders, and addressed to Laser and the Company, in form and substance reasonably satisfactory to Laser and as is reasonably customary in scope and substance for letters delivered by independent public accountants in connection with transactions such as those contemplated by this Agreement.

(b) Laser shall use its reasonable best efforts to cause to be delivered to the Company "comfort" letters of Arthur Andersen, LLP, Laser's independent public accountants, dated the date on which the Registration Statement shall become effective and as of the date on which the Information Statement is mailed to the Company's stockholders, and addressed to the Company and Laser, in form and substance reasonably satisfactory to the Company and as is reasonably customary in scope and substance for letters delivered by independent public accountants in connection with transactions such as those contemplated by this Agreement.

Section 7.4 Listing Application. Laser shall prepare and submit to the NYSE a listing application covering the Laser Shares to be issued in connection with the Company Merger, and shall use its reasonable best

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efforts to obtain, prior to the Company Effective Time, approval for the listing of such Laser Shares, subject to official notice of issuance.

Section 7.5 Affiliates. Prior to the Company Effective Time, the Company shall cause to be prepared and delivered to Laser a list (reasonably satisfactory to counsel for Laser) identifying each person who, at the time the Information Statement is mailed to the Company's stockholders, may be deemed to be an "affiliate" of the Company, as such term is used in paragraphs (c) and (d) of Rule 145 under the Securities Act (the "Company Rule 145 Affiliates"). The Company shall use its reasonable best efforts to cause such person who is identified as a Company Rule 145 Affiliate in such list to deliver to Laser on or prior to the Company Effective Time a written agreement, in customary form, that such Company Rule 145 Affiliate will not (i) sell, pledge, transfer or otherwise dispose of, or in any other way reduce such Company Rule 145 Affiliate's risk relative to, any Laser Shares issued to such Company Rule 145 Affiliate in connection with the Company Merger, except pursuant to an effective registration statement or in compliance with such Rule 145 or another exemption from the registration requirements of the Securities Act or (ii) sell or in any other way reduce such Rule 145 Affiliate's risk relative to any Laser Shares received in the Company Merger (within the meaning of Section 201.01 of the SEC's Financial Reporting Release No. 1) during the period commencing thirty (30) days prior to the Company Effective Time and ending at such time as the financial results (including combined sales and net income) covering at least thirty (30) days of post-Merger operations have been published, except as permitted by Staff Accounting Bulletin No. 76 issued by the SEC.

Section 7.6 HSR Act; Competition Laws. As soon as reasonably practicable, the Company, Laser and Merger Sub shall make or cause to be made all filings and submissions under the HSR Act (if applicable) and any other applicable Competition Laws as may be reasonably required to be made in connection with this Agreement and the transactions contemplated hereby. Subject to Section 7.2 hereof, the Company will furnish to Laser and Laser will furnish to the Company, such information and assistance as the other may reasonably request in connection with the preparation of any such filings or submissions. Subject to Section 7.2 hereof, the Company will provide Laser, and Laser will provide the Company, with copies of all correspondence, filings or communications (or memoranda setting forth the substance thereof) between such party or any of its representatives, on the one hand, and any governmental agency or authority or members of their respective staffs, on the other hand, with respect to this Agreement and the transactions contemplated hereby. The Company and Laser shall consult with one another with respect to any such correspondence, filings or communications and shall engage in discussions with any Governmental Entity on a joint basis.

Section 7.7 Employee Matters.

(a) From and after the Holdings Effective Time, Laser shall honor, and shall cause the Company to honor, all employment, severance, termination, consulting and retirement agreements to which the Company is a party as of the Holdings Effective Time; provided, however, that (i) neither Laser nor the Company shall have any responsibility for the Company's obligations under that certain employment agreement entered into as of October 1, 1997, between the Company and Jerry W. Levin (except for the incentive payment provided for in section 3.2(b) thereof (relating to the divestiture of Coleman Safety & Security Products, Inc.), which shall be the responsibility of the Company and paid in accordance with the terms of section 3.2(b) thereof), and (ii) neither Laser nor the Company shall have any responsibility for the Company's obligations under that certain employment agreement entered into as of July 1, 1997, between the Company and Paul E. Shapiro. Except as provided in the first sentence of Section 7.7(b) or the proviso to this sentence, from and after the Holdings Effective Time, Laser will cause the Company to allow Company employees to participate in Laser employee benefit plans on substantially the same basis as similarly situated Laser employees; provided, however, that Laser will cause the Company to continue the Company Plans for at least six (6) months following the Holdings Effective Time. Laser will or will cause the Company to give Company employees full credit for purposes of eligibility and vesting of benefits and benefit accrual for service with the Company and its affiliates prior to the Holdings Effective Time under each Laser employee benefit plan; provided, however, that no such crediting of service results in duplication of benefits. With respect to any welfare benefit plans maintained for the benefit of Company employees from and after the Holdings Effective Time, Laser shall (i) cause there to be waived any pre-existing condition limitations and (ii) give effect, in determining any deductible and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and amounts reimbursed to, such employees with respect to similar plans maintained by the Company for such employee's benefit immediately prior to the Holdings Effective Time. Laser acknowledges that, for the purposes of certain of such Company Plans and certain of such

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other employment, severance, termination, consulting and retirement agreements to which the Company is currently a party, the consummation of the Holdings Merger will constitute a "change in control" of the Company (as such term is defined in such plans and agreements). Laser agrees to cause the Company, after the Holdings Effective Time, to pay all amounts provided under such Company Plans and agreements as a result of a change in control of the Company in accordance with their respective terms and to honor, and to cause the Company to honor, all rights, privileges and modifications to or with respect to any such Company Plans or agreements which become effective as a result of such change in control.

(b) Laser shall cause the Company to continue the Company's Executive Annual Incentive Policy for the remainder of 1998, and participants therein shall not be eligible for participation in an analogous Laser incentive plan in respect of 1998. Laser shall honor, and shall cause the Company to honor, the Company's Executive Severance Policy without any amendment adverse to participants. Laser shall provide severance benefits for employees of the Company, who are not participants in Company's Executive Severance Policy and who do not have employment agreements with the Company, under the Laser severance policy on the same basis as similarly situated Laser employees provided that severance benefits shall be no less than those set forth on Schedule 7.7(b).

(c) Effective as of the ninety-first (91st) day following the Holdings Effective Time, the participants in the Executive Severance Policy set forth on Schedule 7.7(c) may voluntarily terminate their employment, which termination will be deemed to be for "Good Reason" under the Executive Severance Policy as a result of the consummation of the Holdings Merger.

(d) Laser and the Company agree to take all necessary action to provide that, effective as of the Holdings Effective Time, all outstanding Employee Stock Options shall be vested and exercisable as of the Holdings Effective Time, and between the Holdings Effective Time and the Company Effective Time, Laser shall cause the Company to maintain a broker-dealer cashless exercise procedure for the exercise of Employee Stock Options. Laser and the Company agree to take all other actions necessary to provide for the cancellation, effective at the Company Effective Time, of each outstanding Employee Stock Option and, in settlement therefor, a payment to the holder of the Employee Stock Option in cash by Laser or the Company at the Company Effective Time equal to the product of (i) the total number of shares of Company Common Stock subject to such Employee Stock Option, and (ii) the excess of \$27.50 over the exercise price per share of Company Common Stock subject to such Employee Stock Option, less any applicable withholding taxes.

(e) Laser agrees that, at or prior to the Holdings Effective Time, Holdings may cause the Company to (i) assume sponsorship of the pension, retirement, savings, retiree health care and life insurance and other plans maintained by New Coleman Holdings, Inc. that are reflected in footnotes 7 and 12 to the 1996 financial statements included in the Company's 1996 Annual Report on SEC Form 10-K (as such plans may have been changed in the ordinary course of business since December 31, 1996) (the "Plans"), and (ii) assume the liabilities and obligations of New Coleman Holdings, Inc. under the Plans to the extent reflected in such footnotes (as such liabilities and obligations may have changed in the ordinary course of business since December 31, 1996). The documents used to effect such assumption shall be in form and substance reasonably satisfactory to Parent Holdings and Laser.

Section 7.8 Continuance of Existing Indemnification Rights.

(a) For six (6) years after the Company Effective Time (and during the period following the Holdings Effective Time but prior to the Company Effective Time), Laser shall, or shall cause the Surviving Corporation to, indemnify, defend and hold harmless any person who is now, or has been at any time prior to the date hereof, or who becomes prior to the Company Effective Time, a director or officer of the Company (an "Indemnified Person") against all losses, claims, damages, liabilities, costs and expenses (including attorneys' fees and expenses), judgments, fines, losses and amounts paid in settlement in connection with any actual or threatened action, suit, claim, proceeding or investigation (each, a "Claim") to the extent that any such Claim is based on, or arises out of: (i) the fact that such Indemnified Person is or was a director or officer of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise; or (ii) this Agreement or the Holdings Merger Agreement or any of the transactions contemplated hereby or thereby, in each case to the extent that any such Claim pertains to any matter or fact arising, existing or occurring prior to or at the Company Effective Time, regardless of whether such Claim is asserted or claimed prior to, at or after the Company Effective Time, to the full extent permitted under the DGCL, the Company's certificate of incorporation or by-laws or any indemnification agreement in effect at the date hereof, including provisions relating to advancement of expenses incurred in the defense of any

such Claim; provided, however, that neither Laser nor the Surviving Corporation shall be required to indemnify any Indemnified Person in connection with any proceeding (or portion thereof) involving any Claim initiated by such Indemnified Person against the Company unless the initiation of such proceeding (or portion thereof) was authorized by the Board of Directors of the Company or unless such proceeding is brought by an Indemnified Person to enforce rights under this Section 7.8; and provided further that in the event any Claim is asserted or made within such period, all such rights, liabilities and limitations in respect of any such Claim shall continue until disposition thereof. Without limiting the generality of the preceding sentence, in the event any Indemnified Person becomes involved in any Claim after the Company Effective Time, Laser shall, or shall cause the Surviving Corporation to, periodically advance to such Indemnified Person its legal and other expenses (including the cost of any investigation and preparation incurred in connection therewith), subject to the providing by such Indemnified Person of an undertaking to reimburse all amounts so advanced in the event of a final non-appealable determination by a court of competent jurisdiction that such Indemnified Person is not entitled thereto.

(b) Laser and the Company agree that all rights to indemnification, and all limitations with respect thereto, existing in favor of any Indemnified Person, as provided in the Company's certificate of incorporation or by-laws and any indemnification agreement in effect at the date hereof, shall survive the Holdings Merger and the Company Merger and shall continue in full force and effect, without any amendment thereto, for a period of six (6) years from the Company Effective Time (and during the period following the Holdings Effective Time but prior to the Company Effective Time) to the extent such rights and limitations are consistent with the DGCL; provided, however, that in the event any Claim is asserted or made within such period, all such rights, liabilities and limitations in respect of any such Claim shall continue until disposition thereof; provided further that any determination required to be made with respect to whether an Indemnified Person's conduct complies with the standards set forth under the DGCL, the Company's certificate of incorporation or by-laws or any such agreement, as the case may be, shall be made by independent legal counsel selected by such Indemnified Person and reasonably acceptable to Laser; and provided further that nothing in this Section 7.8 shall impair any rights or obligations of any current or former director or officer of the Company.

(c) Laser or the Surviving Corporation shall use reasonable best efforts to obtain a liability insurance policy ("D&O Insurance") for the benefit of the Company's existing and former directors and officers commencing at the Holdings Effective Time and for a period of not less than six (6) years after the Company Effective Time providing substantially similar coverage in amounts and on terms no less advantageous than that currently provided to such existing and former directors and officers; provided further that neither Laser nor the Surviving Corporation shall be required to pay an annual premium for D&O Insurance in excess of 200% of the last annual premium paid prior to the date hereof, but in such case shall purchase as much coverage as possible for such amount.

(d) The provisions of this Section 7.8 are intended to be for the benefit of, and shall be enforceable by, each Indemnified Person, his or her heirs and his or her personal representatives.

Section 7.9 Expenses. Whether or not the Company Merger is consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses.

Section 7.10 Public Announcements. Laser and the Company shall consult with each other before issuing their respective initial press releases to be issued with respect to the transactions contemplated by this Agreement and the Holdings Merger.

Section 7.11 Reasonable Best Efforts. Upon the terms and subject to the conditions set forth in this Agreement, each of the parties hereto agrees to use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable, to consummate and make effective, in the most expeditious manner practicable, the Company Merger and the other transactions contemplated by this Agreement, including, but not limited to: (i) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from all Governmental Entities and the making of all necessary registrations and filings with, and the taking of all other reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Entity (including those in connection with the HSR Act, if applicable); (ii) the obtaining of all necessary consents, approvals or waivers from persons other than Governmental Entities; (iii) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the

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consummation of the transactions contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Entity vacated or reversed; and (iv) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to require any party hereto to enter into any agreement with any Governmental Entity or to consent to any order, decree or judgment requiring such party to hold, separate or divest, or to restrict the dominion or control of such party or any of its Affiliates over, any of the assets, properties or businesses of such party or its Affiliates in existence on the date hereof.

ARTICLE VIII

CONDITIONS TO CONSUMMATION OF THE MERGER

Section 8.1 Conditions to Each Party's Obligation to Effect the Company Merger. The respective obligations of each party to effect the Company Merger shall be subject to the satisfaction or waiver, to the extent permitted by Law, at or prior to the Company Effective Time of the following conditions:

(a) The Registration Statement shall have become effective in accordance with the provisions of the Securities Act and no stop order suspending the effectiveness of the Registration Statement shall be in effect and no proceeding for such purpose shall be pending before or threatened by the SEC; and all applicable time periods required under the Securities Act and the Exchange Act following the mailing of the Information Statement to the Company's stockholders shall have lapsed.

(b) The Laser Shares shall have been approved for listing on the NYSE, subject to official notice of issuance.

(c) No preliminary or permanent injunction or other order by any federal or state court in the United States of competent jurisdiction which prohibits the consummation of the Company Merger shall have been issued and remain in effect.

(d) The Holdings Merger shall have been consummated in accordance with its terms and the applicable provisions of the DGCL.

ARTICLE IX

TERMINATION, AMENDMENT AND WAIVER

Section 9.1 Termination. This Agreement shall terminate automatically upon the termination of the Holdings Merger Agreement in accordance with its terms.

Section 9.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 9.1 hereof, this Agreement shall forthwith become void and there shall be no liability on the part of any of the parties; provided that the provisions of Sections 7.2 and 7.9 and of this Article IX shall continue and that nothing herein shall relieve any party from liability for any willful breach hereof.

Section 9.3 Amendment. This Agreement may be amended by the parties pursuant to a writing adopted by action taken by all of the parties at any time prior to (but not following) the consummation of the Holdings Merger. This Agreement may not be amended except by an instrument in writing signed by all the parties hereto.

Section 9.4 Extension; Waiver. At any time prior to (but not following) the consummation of the Holdings Merger any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only as against such party and only if set forth in an instrument in writing signed by such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

ARTICLE X

GENERAL PROVISIONS

Section 10.1 No Survival of Representations and Warranties. No representations or warranties contained herein shall survive beyond the Company Effective Time. This Section 10.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Company Effective Time.

Section 10.2 Notices. All notices or other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended, if delivered by registered or certified mail, return receipt requested, or by a national courier service, or if sent by telecopier; provided that the telecopy is promptly confirmed by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

(a) If to Laser, to:

Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, Florida 33445
Facsimile: (561) 243-2191
Attention: David C. Fannin, Esq.

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Facsimile: (302) 651-3001
Attention: Richard L. Easton, Esq.

(b) If to the Company, to:

CLN Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Facsimile: (954) 772-3352
Attention: General Counsel

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Facsimile: (212) 403-2000
Attention: Adam O. Emmerich, Esq.

Any such notification shall be deemed delivered (i) upon receipt, if delivered personally, (ii) on the next business day, if sent by national courier service for next business day delivery or (iii) the business day received, if sent by telecopier.

Section 10.3 Descriptive Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 10.4 Entire Agreement; No Third-Party Beneficiary. This Agreement (including the Exhibits, Disclosure Schedules and other documents and instruments referred to herein) (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties or any of them, with respect to the subject matter hereof; (b) except for the provisions of Sections 7.7(c) and 7.8 hereof, is not intended to confer upon any other person any rights or remedies hereunder.

Section 10.5 Interpretation. When a reference is made in this Agreement to an Article, Section or Annex, such reference shall be to an Article or Section of, or an Annex to, this Agreement unless otherwise indicated.

Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The phrase "made available" in this Agreement shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available. All terms defined in this Agreement shall have the defined meanings used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

Section 10.6 Severability. If any provision of this Agreement or the application thereof to any person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon any such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect original intent of the parties.

Section 10.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of Law or otherwise by any of the parties without the prior written consent of the other parties. Any assignment in violation of the preceding sentence shall be void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 10.8 Disclosure Schedules. Matters reflected on the Company Disclosure Schedule are not necessarily limited to matters required by this Agreement to be reflected therein and the inclusion of such matters shall not be deemed an admission that such matters were required to be reflected on the Company Disclosure Schedule. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. Capitalized terms used in the Company Disclosure Schedule but not otherwise defined therein shall have the respective meanings assigned to such terms in this Agreement.

Section 10.9 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware without giving effect to the provisions thereof relating to conflicts of Law.

Section 10.10 Specific Performance. The parties hereto agree that irreparable damage would occur in the event any of the provisions of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at Law or equity.

Section 10.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

Section 10.12 Certain Terms. As used herein, (i) the term "material adverse effect" (including as used in any definition), with respect to any Person, shall exclude any change, event, effect or circumstance (a) arising in connection with the announcement or performance of the transactions contemplated by this Agreement or the Holdings Merger Agreement and (b) affecting the United States economy generally or such Person's industries generally; and (ii) "to the knowledge of the Company" shall mean to the actual knowledge of Paul E. Shapiro, Jerry W. Levin and Steven R. Isko.

[SIGNATURE PAGE FOLLOWS]

022146

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf by its officers thereunto duly authorized, all as of the date first above written.

SUNBEAM CORPORATION

By: /s/ RUSSELL A. KERSH

Name: Russell A. Kersh

Title: *Executive Vice President*

CAMPER ACQUISITION CORP.

By: /s/ RUSSELL A. KERSH

Name: Russell A. Kersh

Title: *Executive Vice President*

THE COLEMAN COMPANY, INC.

By: /s/ PAUL E. SHAPIRO

Name: Paul E. Shapiro

Title: *Executive Vice President*

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ANNEX II

262 APPRAISAL RIGHTS. (a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to Section 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word "stockholder" means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and the words "depository receipt" mean a receipt or other instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to section 251 (other than a merger effected pursuant to section 251(g) of this title), section 252, section 254, section 257, section 258, section 263, or section 264 of this title:

(1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders to act upon the agreement of merger or consolidation, were either (i) listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in subsection (f) of section 251 of this title.

(2) Notwithstanding paragraph (1) of this subsection, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to sections 251, 252, 254, 257, 258, 263 and 264 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a. and b. of this paragraph; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a., b. and c. of this paragraph.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under section 253 of this title is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as is practicable.

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CONFIDENTIAL

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for such meeting with respect to shares for which appraisal rights are available pursuant to subsections (b) or (c) hereof that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section. Each stockholder electing to demand the appraisal of his shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of his shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of his shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to Section 228 or Section 253 of this title, each constituent corporation, either before the effective date of the merger or consolidation or within ten days thereafter, shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section; provided that, if the notice is given on or after the effective date of the merger or consolidation, such notice shall be given by the surviving or resulting corporation to all such holders of any class or series of stock of a constituent corporation that are entitled to appraisal rights. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) hereof and who is otherwise entitled to appraisal rights, may file a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder shall have the right to withdraw his demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) hereof, upon written request, shall be entitled to receive from the corporation

surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after his written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) hereof, whichever is later.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

(h) After determining the stockholders entitled to an appraisal, the Court shall appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. In determining the fair rate of interest, the Court may consider all relevant factors, including the rate of interest which the surviving or resulting corporation would have had to pay to borrow money during the pendency of the proceeding. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, permit discovery or other pretrial proceedings and may proceed to trial upon the appraisal prior to the final determination of the stockholder entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted his certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that he is not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Interest may be simple or compound, as the Court may direct. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court's decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded his appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of his demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

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CP 019748
CONFIDENTIAL

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

FILED

Jan 11 2005
SHARON R. BOCK
CLERK & COMPTROLLER
BY *Dolly Maus*
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

**SUPPLEMENTAL APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S
SUMMARY JUDGMENT FILING**

**VOLUME 7
(EXHIBITS 232-233)**

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
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One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

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Attorneys for Coleman (Parent) Holdings Inc

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MS Ex. 282	233

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TAB

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MS Ex. 282 233

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ACCESSION NUMBER: 0000889812-99-003592
CONFORMED SUBMISSION TYPE: S-4/A
PUBLIC DOCUMENT COUNT: 6
FILED AS OF DATE: 19991206

FILER:

COMPANY DATA:

COMPANY CONFORMED NAME: SUNBEAM CORP/FL/
CENTRAL INDEX KEY: 0000003662
STANDARD INDUSTRIAL CLASSIFICATION: ELECTRIC HOUSEWARES & FANS [3634]
IRS NUMBER: 251638266
STATE OF INCORPORATION: DE
FISCAL YEAR END: 1229

FILING VALUES:

FORM TYPE: S-4/A
SEC ACT:
SEC FILE NUMBER: 333-52333
FILM NUMBER: 99768980

BUSINESS ADDRESS:

STREET 1: 2381 EXECUTIVE CENTER DR
CITY: BOCA RATON
STATE: FL
ZIP: 33431
BUSINESS PHONE: 5612432100

MAIL ADDRESS:

STREET 1: 2381 EXECURIVE CENTER DR
CITY: BOCA RATON
STATE: FL
ZIP: 33431

FORMER COMPANY:

FORMER CONFORMED NAME: SUNBEAM OSTER COMPANY INC /DE/
DATE OF NAME CHANGE: 19931210

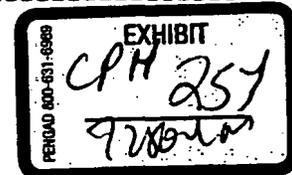
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AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON DECEMBER 6, 1999

REGISTRATION NO. 333-52333

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549



022157

AMENDMENT NO. 4
TO
FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

SUNBEAM CORPORATION
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

<TABLE>
<S>

<C>

DELAWARE
(STATE OR OTHER JURISDICTION OF
INCORPORATION OR ORGANIZATION)

3634
(PRIMARY STANDARD INDUSTRIAL
CLASSIFICATION CODE NUMBER)

</TABLE>

2381 EXECUTIVE CENTER DRIVE
BOCA RATON, FLORIDA 33431
(561) 912-4100
(ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER,
INCLUDING AREA CODE, OF REGISTRANT'S PRINCIPAL EXECUTIVE OFFICES)

STEVEN R. ISKO, ESQ.
SENIOR VICE PRESIDENT AND GENERAL COUNSEL
SUNBEAM CORPORATION
2381 EXECUTIVE CENTER DRIVE
BOCA RATON, FLORIDA 33431
(561) 912-4100
(NAME, ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER,
INCLUDING AREA CODE, OF AGENT FOR SERVICE)

Copy to:

RICHARD L. EASTON, ESQ.
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 651-3000

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE OF THE SECURITIES TO THE PUBLIC: As soon as practicable after the effective date of this registration statement, which relates to (i) the issuance of common stock, par value \$.01 per share ("Sunbeam Common Stock"), of Sunbeam Corporation ("Sunbeam") in the merger (the "Merger") of Camper Acquisition Corp., a wholly owned subsidiary of Sunbeam ("CAC"), with and into The Coleman Company, Inc. ("Coleman"), pursuant to the Agreement and Plan of Merger, dated as of February 27, 1998, among Sunbeam, CAC and Coleman and (ii) the issuance of warrants to purchase shares of Sunbeam Common Stock in connection with the settlement of certain litigation relating to the Merger.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with

General Instruction G, check the following box. / /

CALCULATION OF REGISTRATION FEE

<TABLE>
<CAPTION>

TITLE OF EACH CLASS OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED	PROPC OFFER PER S <C>
<S>	<C>	<C>
Common Stock, par value \$.01 per share, to be issued in the Merger.....	7,199,452 (1)	
Common Stock, par value \$.01 per share, issuable following the Merger upon the exercise of warrants.....	4,980,000 (3)	
Total.....	12,179,452 (1)	

<CAPTION>

TITLE OF EACH CLASS OF SECURITIES TO BE REGISTERED	AMOUNT OF REGISTRATION FEE
<S>	<C>
Common Stock, par value \$.01 per share, to be issued in the Merger.....	\$ 57,978
Common Stock, par value \$.01 per share, issuable following the Merger upon the exercise of warrants.....	\$ 9,691
Total.....	\$ 67,669 (5)

</TABLE>

- (1) Based on the number of shares of common stock, par value \$.01 per share ("Coleman Common Stock"), of Coleman to be exchanged in the Merger, assuming the exercise of all outstanding options to purchase shares of Coleman Common Stock, multiplied by 0.5677 of a share of Sunbeam Common Stock, the stock portion of the merger consideration.
- (2) Estimated solely for the purpose of calculating the Registration Fee required by Section 6(b) of the Securities Act of 1933, as amended (the "Securities Act"), and computed pursuant to Rule 457(f) under the Securities Act by multiplying \$21.9375, the average of the high and low sale prices of Coleman Common Stock on May 8, 1998, as reported on the New York Stock Exchange, Inc. Composite Transactions Tape, by 12,681,790, the number of shares of Coleman Common Stock to be exchanged in the Merger, assuming the exercise of all outstanding options to purchase shares of Coleman Common Stock, and deducting \$6.44 per share, or an aggregate of \$81,670,728, in respect of the cash portion of the merger consideration.
- (3) Based on the number of shares of Sunbeam Common Stock to be issued upon exercise of the warrants to be issued in connection with the settlement of certain litigation relating to the Merger.
- (4) Estimated solely for the purpose of calculating the Registration Fee required by Section 6(b) of the Securities Act and computed pursuant to Rule 457(g) (1) under the Securities Act by multiplying \$7.00, the per share exercise price of the warrants, by 4,980,000, the aggregate number of shares of Sunbeam Common Stock issuable upon exercise of the warrants.
- (5) Pursuant to Rule 457(a) under the Securities Act, \$57,978 of the Registration Fee was previously paid in connection with the initial filing of this Registration Statement on Form S-4 (the "Registration Statement") with the Securities and Exchange Commission (the "Commission") on May 11, 1998. An additional \$9,691 of the Registration Fee was previously paid in connection with the filing of Amendment No. 1 to the Registration Statement with the Commission on May 14, 1999.

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THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OR UNTIL THIS REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

<PAGE>

SCHEDULE 14C
(RULE 14C-101)
INFORMATION REQUIRED IN
INFORMATION STATEMENT
AMENDMENT NO. 4 TO
INFORMATION STATEMENT PURSUANT TO SECTION 14(C)
OF THE SECURITIES EXCHANGE ACT OF 1934

<TABLE>

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// Preliminary Information Statement	// Confidential, for Use of the Comm Only (as permitted by Rule 14c-5(c))
/x/ Definitive Information Statement	

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The Coleman Company, Inc.
(Name of Registrant as Specified in Its Charter)

Payment of Filing Fee (check the appropriate box):

<TABLE>

<S>	<C>
//	No fee required.
/x/	Fee computed on table below per Exchange Act Rules 14c-5(g) and 0-11.

- (1) Title of each class of securities to which transaction applies: Common Stock, par value The Coleman Company, Inc. ("Coleman Common Stock")
- (2) Aggregate number of securities to which transaction applies: 12,681,790 (assumes the ex outstanding options to purchase shares of Coleman Common Stock)
- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11(a)(2) forth the amount on which the filing fee is calculated and state how it was determined) average of the high and low sale prices of Coleman Common Stock on May 8, 1998, as reported on the New York Stock Exchange, Inc. Composite Transactions Tape
- (4) Proposed maximum aggregate value of transaction: \$278,206,768
- (5) Total fee paid: \$55,641

// Fee paid previously with preliminary materials.

/x/ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) filing for which the offsetting fee was paid previously. Identify the previous filing statement number, or the Form or Schedule and the date of its filing.

- (1) Amount previously paid: \$57,978
 - (2) Form, Schedule or Registration Statement No.: Registration Statement on Form S-4 (No. 3
 - (3) Filing Parties: Sunbeam Corporation
 - (4) Date Filed: May 11, 1998
- </TABLE>
- <PAGE>

[THE COLEMAN COMPANY, INC. LETTERHEAD]

December 6, 1999

Dear Stockholder:

On or about January 6, 2000, Coleman plans to merge with a subsidiary of Sunbeam Corporation. Under the February 1998 agreement relating to the merger, you will receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed. In addition, under a court-approved litigation settlement, you will receive warrants each entitling you to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003. You will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed (assuming no further increase in the number of outstanding Coleman shares).

The merger was approved by Coleman's board of directors and majority stockholder, a subsidiary of MacAndrews & Forbes Holdings Inc., on February 27, 1998. AS A RESULT, NO FURTHER ACTION BY YOU OR ANY OTHER COLEMAN STOCKHOLDER IS REQUIRED TO COMPLETE THE MERGER.

At the same time that Coleman's board and majority stockholder approved the merger, Sunbeam agreed to acquire indirectly about 81% of the then outstanding Coleman common stock from a MacAndrews & Forbes subsidiary. That transaction was completed on March 30, 1998. Sunbeam now owns indirectly about 79% of the outstanding Coleman common stock, as well as shares of a newly created series of Coleman voting preferred stock purchased from Coleman in July 1999, which together enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock.

As a result of several negative developments affecting Sunbeam, the market price of Sunbeam common stock has declined sharply since the transaction was first announced. Sunbeam's stock closed at \$41.75 on February 27, 1998; it closed at \$4.75 on December 3, 1999. The financial advisor which advised the then Coleman board on February 27, 1998 that the merger was fair to you has since indicated that its opinion, although correct when given, should no longer be relied upon because of the subsequent negative developments affecting Sunbeam. In addition, Sunbeam's financial advisor has advised Sunbeam that its opinion regarding the fairness to Sunbeam of the consideration payable to you under the merger agreement, although correct when given, should no longer be relied upon.

The February 1998 merger agreement provides that it cannot be amended or terminated and the amount of merger consideration has not been adjusted to reflect the decline in the market price of Sunbeam's stock. However, litigation brought on behalf of you and the other Coleman minority stockholders relating to

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the merger has been settled and, under the terms of the court-approved litigation settlement, you and the other Coleman minority stockholders will receive the warrants, in addition to the cash and stock provided under the merger agreement, when the merger is completed.

Instead of receiving cash, Sunbeam stock and warrants upon completion of the merger, you have the right to dissent from the merger and have the fair value of your Coleman shares appraised by a court and paid to you in cash. These appraisal rights are granted to you by Delaware law and were not affected by the litigation settlement. IN ORDER TO PURSUE YOUR APPRAISAL RIGHTS, YOU MUST SUBMIT A WRITTEN DEMAND TO COLEMAN ON OR BEFORE DECEMBER 27, 1999 AND SATISFY THE OTHER REQUIREMENTS OUTLINED IN THE ATTACHED DOCUMENT.

The attached document contains important information about the merger, Coleman, Sunbeam, your Delaware law appraisal rights and the litigation settlement. You should read it carefully.

Very truly yours,

/s/ Jerry W. Levin

Jerry W. Levin
Chairman and Chief Executive Officer

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THE COLEMAN COMPANY, INC.
NOTICE OF MERGER
AND APPRAISAL RIGHTS
AND INFORMATION STATEMENT

SUNBEAM CORPORATION
PROSPECTUS

On or about January 6, 2000, Coleman plans to merge with a subsidiary of Sunbeam Corporation. Under the February 1998 agreement relating to the merger, you will receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed. In addition, under a court-approved litigation settlement, you will receive warrants each entitling you to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003. You will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed (assuming no further increase in the number of outstanding Coleman shares).

As a result of the merger, Coleman will become a wholly owned subsidiary of Sunbeam. A copy of the merger agreement is attached as Annex I at the back of this document. YOU ARE URGED TO READ THE MERGER AGREEMENT CAREFULLY AS IT IS THE LEGAL DOCUMENT THAT GOVERNS THE MERGER.

The merger was approved by Coleman's board of directors and majority stockholder, a subsidiary of MacAndrews & Forbes Holdings Inc., on February 27, 1998. AS A RESULT, NO FURTHER ACTION BY YOU OR ANY OTHER STOCKHOLDER OF COLEMAN IS REQUIRED TO COMPLETE THE MERGER.

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At the same time that Coleman's board and majority stockholder approved the merger, Sunbeam agreed to acquire indirectly about 81% of the then outstanding Coleman common stock from the MacAndrews & Forbes subsidiary. That transaction was completed on March 30, 1998, and Sunbeam now owns indirectly about 79% of the outstanding Coleman common stock. As a result of a purchase by Sunbeam of shares of a newly created series of Coleman voting preferred stock in July 1999, Sunbeam now has the right to exercise just over 80% of the total voting power of Coleman's outstanding capital stock.

Instead of receiving cash, Sunbeam stock and warrants upon completion of the merger, you have the right to dissent from the merger and have the fair value of your Coleman shares appraised by a court and paid to you in cash. These appraisal rights are granted to you by Delaware law and were not affected by the litigation settlement. IN ORDER TO PURSUE YOUR APPRAISAL RIGHTS, YOU MUST SUBMIT A WRITTEN DEMAND TO COLEMAN ON OR BEFORE DECEMBER 27, 1999 AND SATISFY THE OTHER REQUIREMENTS OUTLINED IN THE ATTACHED DOCUMENT.

Sunbeam common stock trades on the New York Stock Exchange under the symbol "SOC." Coleman common stock trades on the New York Stock Exchange, the Pacific Stock Exchange and the Chicago Stock Exchange under the symbol "CLN."

This document contains important information about the merger, Coleman, Sunbeam, your Delaware law appraisal rights and the litigation settlement, including the terms of the warrants you will receive. This document is the prospectus of Sunbeam for the common stock to be issued in the merger and the common stock to be issued when the warrants are exercised. As required by Delaware law, this document also is Coleman's notice to you of your appraisal rights.

You should read this entire document carefully, including the Annexes which are found at the back of the document and the documents referred to under the caption "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155 which tells you where you can find additional information about Coleman and Sunbeam.

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STOCKHOLDERS OF SUNBEAM AND COLEMAN SHOULD CAREFULLY CONSIDER THE RISKS AND UNCERTAINTIES AFFECTING SUNBEAM'S BUSINESS DESCRIBED IN THIS DOCUMENT UNDER THE CAPTION "RISK FACTORS" BEGINNING ON PAGE 18.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THE SUNBEAM COMMON STOCK TO BE ISSUED UNDER THIS DOCUMENT OR DETERMINED IF THIS DOCUMENT IS ACCURATE OR ADEQUATE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

This document is dated December 6, 1999 and was first mailed to you and the other stockholders of Coleman on or about December 7, 1999.

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SUMMARY

This summary highlights information that may be found in greater detail elsewhere in this document. In this summary, we have attempted to describe those matters which we believe will be of the greatest importance to you in considering the merger. This summary may not, however, contain all information that is important to you. For that reason, we urge you to read this document carefully in its entirety, including the Annexes at the back of this document and the additional documents we refer you to under "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155. In particular, you are urged to read carefully the information contained in this document under the caption "RISK FACTORS," beginning on page 18.

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Q: WHAT WILL I RECEIVE IN THE MERGER?

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A: Under the February 1998 agreement relating to the merger, you will receive \$6.44 in cash share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed. In addition, under a court-approved litigation settlement, you will receive warrants each purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003. You will receive one warrant for each share of Coleman common stock you own when the merger is completed (as an increase in the number of outstanding Coleman shares). For further information regarding the litigation settlement, including the terms of the warrants, see "LITIGATION SETTLEMENT AND WARRANTS" page 60.

You will not receive fractional shares of Sunbeam common stock in the merger. Instead, you will receive a check in payment for any fractional share based on the closing share price of Sunbeam common stock on the day the merger is completed. Nor will you receive any fractional warrants under the litigation settlement. Any fractional warrant will be rounded up or down to the nearest whole number.

Q: WHAT CHOICE DO I HAVE?

A: Your basic choice is whether to receive the cash, stock and warrants Sunbeam proposes to pay when the merger is completed, or to take action to pursue your Delaware law appraisal rights to have the value of your Coleman shares determined and to receive that value as determined by the cash.

Q: WHAT RISKS SHOULD I CONSIDER?

A: First, you should understand that you are receiving a fixed number of Sunbeam shares in the merger (one share of Sunbeam for each Coleman share you own) and no more than a fixed number of Sunbeam warrants (0.381 of a warrant for each Coleman share you own). Since the merger was approved in 1998, subsequent developments affecting Sunbeam have caused the market price of the Sunbeam shares to decline (from \$41.75 per share on February 27, 1998 to \$4.75 per share on December 3, 1999). The market price of Sunbeam shares may further decrease before or after the merger.

Second, please understand that the financial advisor which advised the then Coleman board in 1998 that the merger was fair to you has since indicated that its opinion, although correct at the time, should no longer be relied upon because of subsequent negative developments affecting Sunbeam. Another financial advisor has been asked to provide a fairness opinion with respect to the merger. You will receive the merger consideration as a result, you do not have the benefit of an independent evaluation of the fairness of the merger consideration in deciding whether to accept the merger consideration or to exercise your Delaware law appraisal rights. In addition, Sunbeam's financial advisor has advised Sunbeam regarding the fairness to Sunbeam of the consideration payable to you under the merger agreement. This opinion, if correct when given, should no longer be relied upon.

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You also should realize that Sunbeam faces the following risks that could negatively affect the value of the shares and warrants you receive:

- o Sunbeam is highly leveraged which impairs its ability to obtain financing and limits cash available for Sunbeam's operations and may limit its competitiveness in the market place,
- o Sunbeam's bank credit facility contains covenants which Sunbeam may not be able to satisfy and provisions it may not be able to avoid, and if Sunbeam cannot, the banks could demand repayment of Sunbeam's bank debt,
- o Sunbeam's bank debt could become due on April 10, 2000, if Sunbeam does not get another loan from the banks or refinance its bank debt by then, and there can be no assurance that Sunbeam will be able to repay the bank debt on that date,
- o Sunbeam may not be able to service its large debt burden, which may force it to restructure its debt,

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- o Because many members of Sunbeam's current management and board of directors recently jo not have a long history of managing Sunbeam, there can be no assurance that Sunbeam's c and board of directors will be able to successfully manage Sunbeam, and
- o Sunbeam relies on its key personnel and the loss of one or more of those personnel coul adverse effect on Sunbeam's business, financial condition and results of operations.

For more detail about these and other risks, please carefully read "RISK FACTORS" beginni "RECENT DEVELOPMENTS AFFECTING SUNBEAM" beginning on page 26.

Q: WHEN DO YOU EXPECT THE MERGER TO BE COMPLETED?

A: We plan to complete the merger on or about January 6, 2000, which is the twenty-first bus the date on which this document was first mailed to you.

Q: WHAT ARE THE TAX CONSEQUENCES OF THE MERGER TO COLEMAN STOCKHOLDERS?

A: Your receipt of cash, Sunbeam common stock and warrants to purchase Sunbeam common stock shares of Coleman common stock you own when the merger is completed is expected to be a t for United States Federal income tax purposes and may also be a taxable transaction under local, foreign and other tax laws. However, the tax consequences of the merger are subjec qualifications, as discussed below under the caption "UNITED STATES FEDERAL INCOME TAX CC beginning on page 60.

THE TAX CONSEQUENCES TO YOU OF THE MERGER WILL DEPEND ON YOUR OWN SITUATION. YOU SHOULD C ADVISOR FOR A FULL UNDERSTANDING OF THESE TAX CONSEQUENCES.

Q: AM I BEING ASKED TO VOTE ON THE MERGER?

A: No. The merger agreement was approved on February 27, 1998 by Coleman's former board of c majority stockholder, a MacAndrews & Forbes subsidiary. AS A RESULT, NO FURTHER ACTION BY COLEMAN STOCKHOLDER IS REQUIRED TO COMPLETE THE MERGER.

Q: WHAT IF I WANT TO ACCEPT THE CASH, STOCK AND WARRANTS SUNBEAM PROPOSES TO GIVE ME? SHOULD COLEMAN COMMON STOCK CERTIFICATES NOW?

A: If you wish to accept the cash, stock and warrants described above in exchange for the sh common stock you own when the merger is completed, you need not take any action now. Afte completed, you will receive written instructions on how to surrender your Coleman common in exchange for the merger consideration.

Q: WHAT IF I DO NOT WISH TO ACCEPT THE CASH, STOCK AND WARRANTS SUNBEAM PROPOSES TO GIVE ME?

A: If you object to the merger and do not wish to accept the cash, stock and warrants descri exchange for the shares of Coleman common stock you own when the merger is completed, you dissent from the merger and have the fair value of your Coleman shares appraised by a

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court and the amount determined by the court will be paid to you in cash by Coleman. IF Y THIS RIGHT, YOU MUST SUBMIT A WRITTEN DEMAND TO COLEMAN ON OR BEFORE DECEMBER 27, 1999. Y SATISFY THE OTHER REQUIREMENTS OUTLINED UNDER "APPRAISAL RIGHTS" BEGINNING ON PAGE 62. FA OF THE REQUIRED STEPS ON A TIMELY BASIS MAY RESULT IN THE LOSS OF YOUR APPRAISAL RIGHTS.

Q: WHERE SHOULD I SEND MY WRITTEN DEMAND FOR APPRAISAL?

A: You should send your written demand for appraisal to the following address:

</TABLE>

The Coleman Company, Inc.
2111 East 37th Street North
P.O. Box 2931
Wichita, Kansas 67201
Attention: Corporate Secretary
Phone number: (316) 832-2700

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Q: DOES SUNBEAM CURRENTLY PAY DIVIDENDS?

A: No. Sunbeam stopped paying dividends after the first quarter of 1998 and has no present dividends for the foreseeable future. In addition, Sunbeam's bank credit agreement prohibit paying cash dividends.

Q: WHO CAN HELP ANSWER FURTHER QUESTIONS?

A: If you would like additional copies of this document, or if you have questions about the contact either Sunbeam or Coleman at the following addresses:

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Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, Florida 33431
Attention: Corporate Secretary
Phone number: (561) 912-4100

The Coleman Company, I
2111 East 37th Street N
P.O. Box 2931
Wichita, Kansas 6720
Attention: Corporate Sec
Phone number: (316) 832

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If you would like more general information about Sunbeam or Coleman, please visit our websites at the following web addresses:

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Sunbeam:
<http://www.sunbeam.com>

Coleman:
<http://www.colemanco.>

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For more details on where to find more information about the merger, please see "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155.

THE COMPANIES

Sunbeam. Sunbeam's primary business is the manufacturing, marketing and distribution of durable household and outdoor leisure consumer products through mass market and other distribution channels in the United States and internationally. Sunbeam also sells its products to professional and commercial end users, such as small businesses, health care providers, hotels and other institutions. Sunbeam's principal products include household kitchen appliances; health monitoring and care products for home use; scales for consumer and professional use for weight management and business uses; electric blankets and throws; clippers and trimmers for consumer, professional and animal uses; smoke and carbon monoxide detectors; outdoor barbecue grills; camping equipment such as tents, lanterns, sleeping bags and stoves; coolers; backpacks and book bags; and portable generators and compressors. In 1998, Sunbeam's net sales, including sales by Coleman from March 30, 1998, were about \$1,800 million, and Sunbeam's net sales for the nine months ended September 30, 1999, including sales by

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Coleman, were about \$1,786 million.

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Sunbeam's principal executive offices are located at 2381 Executive Center Drive, Boca Raton, Florida 33431, and its telephone number is (561) 912-4100. For further information concerning Sunbeam, see "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155.

Coleman. Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Coleman's products have been sold under the Coleman(Registered) brand name since the 1920s. Coleman had net revenues in 1998 of about \$1,015 million and net revenues for the nine months ended September 30, 1999 of about \$1,018 million.

Coleman's principal executive offices are located at 2111 East 37th Street North, Wichita, Kansas 67219, and its telephone number is (316) 832-2700. For further information concerning Coleman, see "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155.

RECENT DEVELOPMENTS AFFECTING SUNBEAM

Sunbeam has experienced significant changes and events since January 1, 1998, including:

- o acquisition of control of Coleman and acquisitions of Signature Brands USA, Inc. and First Alert, Inc.,
- o substantial borrowings resulting in a large debt burden and high leverage,
- o major changes in Sunbeam's management and board of directors,
- o restatement of Sunbeam's 1996, 1997 and first quarter 1998 financial results,
- o large losses and negative cash flow in 1998 and the first nine months of 1999,
- o a change in Sunbeam's auditors,
- o amendments and waivers relating to Sunbeam's bank credit facility,
- o filing of several lawsuits against Sunbeam, including lawsuits brought under federal and state securities laws, and commencement of a formal SEC investigation of Sunbeam,
- o a review of Sunbeam's continued eligibility for listing on the New York Stock Exchange,
- o acquisition of shares of a newly created series of Coleman voting preferred stock to enable Sunbeam and Coleman to file consolidated income tax returns prior to the completion of the merger, and
- o announcement of plans to sell Coleman's Eastpak business and certain non-essential assets for expected net proceeds of approximately \$200 million.

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We urge you to carefully read "RECENT DEVELOPMENTS AFFECTING SUNBEAM" beginning on page 26 and "RISK FACTORS" beginning on page 18.

RECENT DEVELOPMENTS AFFECTING COLEMAN

In addition to Sunbeam's acquisition of control of Coleman, Coleman has experienced significant changes and events since January 1, 1998, including:

- o a review of Coleman's continued eligibility for listing on the New York Stock Exchange,
- o revisions to Coleman's note payable to Sunbeam and the pledge of Coleman's assets to secure the note, and
- o issuance to Sunbeam of shares of a newly created series of Coleman voting preferred stock to enable Sunbeam and Coleman to file consolidated income tax returns prior to the completion of the merger.

We urge you to carefully read "RECENT DEVELOPMENTS AFFECTING COLEMAN" beginning on page 35 and "RISK FACTORS" beginning on page 18.

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THE MERGER

The merger agreement is attached as Annex I at the back of this document. We encourage you to read the merger agreement carefully as it is the legal document that governs the merger.

Merger Consideration. Under the February 1998 agreement relating to the merger, you will receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed. In addition, under a court-approved litigation settlement, you will receive warrants each entitling you to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003. You will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed (assuming no further increase in the number of outstanding Coleman shares). On March 30, 1998, in connection with the acquisition by Sunbeam of about 81% of the then outstanding shares of Coleman common stock from a subsidiary of MacAndrew & Forbes, all outstanding Coleman employee stock options vested and became exercisable. Accordingly, holders of Coleman employee stock options now have the choice of exercising their options prior to the merger or having their options cashed out in the merger at a price equal to \$27.50 minus the per share exercise price of the option. Under the terms of the settlement, the pool of warrants available to Coleman minority stockholders will be distributed pro rata based on the number of Coleman shares held by Coleman minority stockholders at the time of the merger. The number of warrants available for distribution will not be increased in the event that additional Coleman shares are issued to Coleman minority stockholders prior to the completion of the merger. Therefore, if Coleman employee stock option holders were to exercise their options prior to the merger, the outstanding number of Coleman shares would increase and the fraction of a warrant you would receive in the merger for each of your Coleman shares would be reduced. Sunbeam and Coleman do not anticipate that Coleman employee stock option holders will exercise their options prior to the merger, however, because the exercise prices of these options are substantially above the current market price of Coleman common stock. For further information regarding the terms of the settlement, including the terms of the warrants, see

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"LITIGATION SETTLEMENT AND WARRANTS" beginning on page 60.

You will not receive fractional shares of Sunbeam common stock in the merger. Instead, you will receive a check in payment for any fractional share based on the closing share price of Sunbeam common stock on the day the merger is completed. Nor will you receive any fractional warrants under the terms of the litigation settlement. Any fractional warrant will be rounded up or down to the nearest whole number.

Instead of receiving the cash, stock and warrants Sunbeam proposes to give you, you may exercise your Delaware law appraisal rights if you follow the procedures and satisfy the other requirements outlined below under the caption "APPRAISAL RIGHTS" beginning on page 62.

Ownership of Sunbeam After the Merger. In the merger, Sunbeam will issue about 6,676,135 shares of Sunbeam common stock, assuming all currently outstanding options to acquire Coleman common stock are cashed out in the merger and no Coleman stockholders exercise their Delaware law appraisal rights. See "THE MERGER--Ownership Interest of Coleman Stockholders in Sunbeam After the Merger" beginning on page 58. These 6,676,135 shares of Sunbeam common stock will constitute about 6.2% of the outstanding Sunbeam shares after the merger.

On March 30, 1998, Sunbeam issued 14,099,749 shares of Sunbeam common stock to a MacAndrews & Forbes subsidiary in the transaction in which Sunbeam acquired indirectly about 81% of the then outstanding Coleman common stock (the "M&F Transaction"). These 14,099,749 shares will constitute about 13.1% of the outstanding Sunbeam shares after the merger.

In addition, under a court-approved litigation settlement, Sunbeam will issue warrants expiring August 24, 2003 to purchase about 4.98 million Sunbeam shares at a cash price of \$7 per share when the merger is completed, assuming no Coleman stockholders exercise their Delaware law appraisal rights. Sunbeam has already issued a warrant expiring August 24, 2003 to purchase 23 million Sunbeam shares at a cash price of \$7 per share to a MacAndrews & Forbes subsidiary in settlement of claims relating to the M&F Transaction. The warrants to be issued to you will have the same terms as the warrant issued to the MacAndrews & Forbes subsidiary except that the warrants issued to you, unlike the warrants issued to the MacAndrews & Forbes subsidiary, will be freely tradeable upon issuance. See "RECENT DEVELOPMENTS

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AFFECTING SUNBEAM--Settlement of Claims Relating to the M&F Transaction" beginning on page 32 and "LITIGATION SETTLEMENT AND WARRANTS" beginning on page 60. If all these warrants were exercised promptly after the merger, the shares owned by the former Coleman minority stockholders would represent about 8.6% of the then outstanding Sunbeam shares, and the shares owned by the MacAndrews & Forbes subsidiary would represent about 27.4% of the then outstanding Sunbeam shares.

The current stockholders of Sunbeam, other than the MacAndrews & Forbes subsidiary, will own about 81% of the outstanding Sunbeam shares after the merger, or about 64% if all the warrants are exercised promptly after the

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merger.

Conditions. The completion of the merger was originally subject to the following conditions contained in the merger agreement:

- o this document had to be declared effective by the SEC;
- o the shares of Sunbeam common stock to be issued in the merger had to be listed for trading on the NYSE; and
- o the M&F Transaction had to be completed.

All of these conditions have already been satisfied. Therefore, assuming no court order is entered which prevents the merger from being completed, we expect that the merger will be completed on or about January 6, 2000, which is the twenty-first business day following the date on which this document was first mailed to you.

Accounting Treatment. The merger will be accounted for under the "purchase" method in accordance with generally accepted accounting principles. Therefore, the aggregate consideration paid by Sunbeam to Coleman stockholders in the merger and in the M&F Transaction will be allocated to Coleman's assets and liabilities based upon their fair market value with any excess being treated as goodwill.

Coleman's Financial Advisor. Credit Suisse First Boston Corporation acted as Coleman's financial advisor in connection with the merger. On February 27, 1998, when the merger agreement was approved by Coleman's former board of directors, Credit Suisse First Boston delivered to Coleman's former board an oral opinion, which was subsequently confirmed in writing, to the effect that, as of that date and based upon and subject to the matters described in the opinion, the cash and stock consideration you will receive under the merger agreement was fair to you from a financial point of view. Because Sunbeam did not plan to issue the warrants at the time the merger agreement was signed, Credit Suisse First Boston did not take the warrants into account when evaluating the fairness of the merger agreement consideration.

Since the date of the Credit Suisse First Boston opinion, numerous events have occurred that significantly adversely affected the price of Sunbeam common stock. WHEN CREDIT SUISSE FIRST BOSTON WAS ENGAGED BY COLEMAN, THEY WERE NOT ASKED TO RENDER AN UPDATED OPINION AS OF THE DATE OF THIS DOCUMENT AND NEITHER SUNBEAM NOR COLEMAN HAS REQUESTED THAT THEY DO SO. MOREOVER, CREDIT SUISSE FIRST BOSTON HAS ADVISED SUNBEAM THAT ITS OPINION, ALTHOUGH CORRECT WHEN GIVEN, SHOULD NO LONGER BE RELIED UPON BECAUSE OF SUBSEQUENT NEGATIVE DEVELOPMENTS AFFECTING SUNBEAM. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM" beginning on page 26.

For its services to Coleman, Credit Suisse First Boston has received fees of about \$4 million. See "SPECIAL FACTORS--Financial Advisors' Opinions" beginning on page 42.

Sunbeam's Financial Advisor. Morgan Stanley & Co., Incorporated acted as Sunbeam's financial advisor in connection with its acquisition of Coleman. On February 27, 1998, when the merger agreement was approved by Sunbeam's board of directors, Morgan Stanley rendered to Sunbeam's board of directors an oral opinion, which was subsequently confirmed in writing, to the effect that, as of that date and based upon and subject to certain matters described in the opinion, the cash and stock consideration payable in the M&F Transaction and under the merger agreement was fair to Sunbeam from a financial point of view.

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Because Sunbeam did not plan to issue the warrants at the time the merger agreement was signed, Morgan Stanley did not take the warrants into account when evaluating the fairness to Sunbeam of the consideration payable in the M&F Transaction and under the merger agreement.

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Since the date of the Morgan Stanley opinion, a number of negative developments have occurred affecting Sunbeam and the price of Sunbeam common stock. WHEN MORGAN STANLEY WAS ENGAGED BY SUNBEAM, THEY WERE NOT ASKED TO RENDER AN UPDATED OPINION AS OF THE DATE OF THIS DOCUMENT AND NEITHER SUNBEAM NOR COLEMAN HAS REQUESTED THAT THEY DO SO. MOREOVER, MORGAN STANLEY HAS ADVISED SUNBEAM THAT ITS OPINION, ALTHOUGH CORRECT WHEN GIVEN, SHOULD NO LONGER BE RELIED UPON BECAUSE OF THE SUBSEQUENT NEGATIVE DEVELOPMENTS AFFECTING SUNBEAM. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM" beginning on page 26.

For its services to Sunbeam in connection with the Coleman acquisition, Morgan Stanley has received fees from Sunbeam totaling about \$9.6 million. The amended engagement letter between Sunbeam and Morgan Stanley provides for the payment to Morgan Stanley of an additional transaction fee of \$680,000 when the merger is completed, based on the average market price of Sunbeam common stock on the last trading day prior to the date of this document. Sunbeam's obligation to pay this additional transaction fee to Morgan Stanley will not be affected by the fact that Sunbeam is no longer entitled to rely on Morgan Stanley's fairness opinion. See "SPECIAL FACTORS--Financial Advisors' Opinions" beginning on page 42.

Interests of Certain Persons in the Merger. You should be aware that a number of persons, including current directors and executive officers of Sunbeam and former directors and executive officers of Coleman, some of whom have subsequently rejoined Coleman, have interests in the merger that are different from or in addition to yours. See "THE MERGER--Interests of Certain Persons in the Merger" beginning on page 50. These interests include:

- o the accelerated vesting, as a result of the M&F Transaction, of options to purchase Coleman common stock held by Coleman employees, officers and directors, including options exercised as a result of such accelerated vesting by two current executive officers of Sunbeam and Coleman, one of whom is a current director of Sunbeam and Coleman and a former director and executive officer of Coleman, as described below,
- o the right under the merger agreement of holders of Coleman employee stock options--including one former director of Coleman and three current executive officers of Sunbeam and Coleman, as described below--to have their options to purchase shares of Coleman common stock cashed out in the merger at a price equal to \$27.50 per share minus the per share exercise price of the options,
- o the right of Coleman's current and former officers, directors, employees and consultants to continued indemnification,
- o the right of Coleman's officers, directors, employees and consultants--including two current executive officers of Sunbeam and Coleman and one former executive officer of Coleman, as described below--to receive severance payments as a result of the M&F Transaction, and

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- o the right of the MacAndrews & Forbes subsidiary from which Sunbeam acquired a controlling interest in Coleman in the M&F Transaction and former directors and executive officers of Coleman to require the registration under the federal and state securities laws of the shares of Sunbeam common stock held by them and the warrants held by the MacAndrews & Forbes subsidiary and the shares issuable upon exercise of that warrant.

Immediately after the completion of the M&F Transaction, two current executive officers of Sunbeam and Coleman exercised options which vested as a result of the M&F Transaction. Jerry W. Levin, the then Chairman and Chief Executive Officer of Coleman and the current Chairman and Chief Executive Officer of Sunbeam and Coleman, exercised 500,000 Coleman stock options at per share exercise prices ranging from \$12.25 to \$14.00 and Mr. Levin received net proceeds upon the sale of such shares of about \$9.94 million. Bobby G. Jenkins, the current Executive Vice President and Chief Financial Officer of Sunbeam and Executive Vice President of Coleman, exercised 20,000 Coleman stock options at per share exercise prices ranging from \$16.125 to \$16.434 and Mr. Jenkins received net proceeds upon the sale of such shares of about \$288,360.

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Ronald O. Perelman, the sole stockholder of MacAndrews & Forbes and a member of the Coleman board at the time the agreement relating to the M&F Transaction and the merger agreement were executed, holds 500,000 Coleman stock options with an exercise price of \$14.00 per share. Paul E. Shapiro, the current Executive Vice President and Chief Administrative Officer of Sunbeam and Coleman, holds 62,500 Coleman stock options with an exercise price of \$17.062 per share and 15,000 Coleman stock options with an exercise price of \$16.125 per share. Karen K. Clark, the current Senior Vice President, Finance of Sunbeam and Senior Vice President, Finance of Coleman, holds 10,000 Coleman stock options with an exercise price of \$17.062 per share and 15,000 Coleman stock options with an exercise price of \$16.125 per share. Steven R. Isko, the current Senior Vice President and General Counsel of Sunbeam and Senior Vice President and General Counsel of Coleman, holds 10,000 Coleman stock options with an exercise price of \$17.062 per share, 7,500 Coleman stock options with an exercise price of \$16.125 per share and 2,500 Coleman stock options with an exercise price of \$12.937 per share. Upon completion of the merger, in settlement of their Coleman stock options, Messrs. Perelman, Shapiro and Isko and Ms. Clark will receive cash payments of \$6,750,000, \$823,000, \$226,009 and \$275,005, respectively.

In connection with the change in control resulting from the completion of the M&F Transaction, Sunbeam has paid, or has caused Coleman to pay or recognize as payable, a total of \$7,903,765 in severance compensation and related benefits for approximately 117 former Coleman employees. Of that amount, \$7,597,936 was in respect of base salary and related benefits, and \$305,829 was in respect of extra pension credits. In addition, Coleman paid \$454,277 for management incentive bonuses to 37 former Coleman employees. The only principal executive officer of Coleman to receive severance compensation from Coleman as a result of the change in control was Joseph Page, the former Chief Financial Officer of Coleman, who received severance payments totaling \$280,000. Bobby G. Jenkins, the current Executive Vice President and Chief Financial Officer of Sunbeam and Executive Vice President of Coleman, received severance payments totaling \$18,583 as a result of his resignation from Coleman following the M&F Transaction, and prior to his being rehired by both Sunbeam and Coleman in the capacities mentioned above. Steven R. Isko, the current Senior Vice President and General Counsel of Sunbeam and Senior Vice President and General Counsel of Coleman, received severance payments totaling \$185,634 as a result of his resignation from Coleman following the M&F Transaction, and prior to his being rehired by both Sunbeam and Coleman in the capacities mentioned above.

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Governmental and Regulatory Approvals. Under the Hart-Scott-Rodino

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Antitrust Improvements Act of 1976, as amended, Sunbeam and Coleman were required to make filings with the Federal Trade Commission and the Antitrust Division of the Department of Justice about the merger and observe a waiting period before completing the merger. These filings were made and the waiting period was terminated in March 1998.

UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

Your receipt of cash, Sunbeam common stock and warrants to purchase Sunbeam common stock in exchange for the shares of Coleman common stock you own when the merger is completed is expected to be a taxable transaction for United States Federal income tax purposes and may also be a taxable transaction under applicable state, local, foreign and other tax laws. In general, for United States Federal income tax purposes, you will recognize gain or loss equal to the difference between:

- o the sum of the cash and the fair market value of the Sunbeam common stock and warrants you receive, and
- o your adjusted tax basis in the shares of Coleman common stock you exchange in the merger.

This gain or loss will be capital gain or loss if you hold the shares of Coleman common stock as a capital asset and will be long-term capital gain or loss if you have held the shares for more than twelve months.

However, the tax consequences of the merger are subject to a number of qualifications, discussed below under the caption "UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS" beginning on page 60.

THE TAX CONSEQUENCES TO YOU OF THE MERGER WILL DEPEND ON YOUR OWN SITUATION. YOU SHOULD CONSULT YOUR OWN TAX ADVISOR FOR A FULL UNDERSTANDING OF ALL OF THESE TAX CONSEQUENCES.

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LITIGATION SETTLEMENT AND WARRANTS

On October 21, 1998, Sunbeam announced that it had entered into a memorandum of understanding to settle class action and derivative lawsuits brought by minority stockholders of Coleman challenging the merger. A stipulation of settlement was executed on August 6, 1999. The Court of Chancery of the State of Delaware held a hearing on September 29, 1999 to consider approving the settlement. The court approved the settlement on November 12, 1999.

Under the terms of the settlement, unless you have demanded your Delaware law appraisal rights, you will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed (assuming no further increase in the number of outstanding Coleman shares). Each warrant will entitle you to purchase one share of Sunbeam common stock at a cash price of \$7 per share until August 24, 2003. The total number of warrants you receive will be based on the number of shares of Coleman common stock outstanding and the number of shares you own at the time of the merger and will be equal to the product of (A) 4,979,663, less the 497,966 warrants awarded by the court to counsel for the Coleman minority stockholders in the litigation as their fee multiplied by (B) a fraction, the numerator of which is the number of shares of Coleman common stock you hold when the merger is completed (other than any shares with respect to which Delaware law appraisal rights have been demanded) and the denominator of which is the total number of shares of Coleman common stock outstanding and

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owned by Coleman stockholders other than Sunbeam and its subsidiaries at the time of the merger (approximately 11,759,970 shares, assuming no further exercises of Coleman employee stock options). Sunbeam does not anticipate any further exercises of Coleman employee stock options. The warrants will be subject to anti-dilution adjustments. No fractional warrants will be issued. Instead, the number of warrants to which you are entitled will be rounded up or down to the closest whole number. Thus, for example, if there are no further exercises of Coleman options and no anti-dilution adjustments, a Coleman stockholder who holds 100 shares of Coleman common stock at the time of the merger and does not demand Delaware law appraisal rights would be entitled to receive 38 warrants, calculated as follows:

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$$(4,979,663 - 497,966) \times (100 / 11,759,970) = 38.109$$

<S>	<C>	<C>	<C>
total # of warrants available	-	total # of warrants paid to plaintiffs' counsel	X
			# of shares owned
			/
			total # of shares owned by the Coleman minority stockholders at th time the merger is completed

</TABLE>

The result of this equation would then be rounded down from 38.109 to 38, the closest whole number. However, because of the possibility (although unlikely) that Coleman options will be exercised prior to the completion of the merger, you will not be able to determine the precise number of warrants you will be entitled to receive in the merger before December 27, 1999, the date by which you must submit to Coleman a written demand for your appraisal rights under Delaware law if you wish to exercise those rights. See "APPRAISAL RIGHTS" beginning on page 62. However, for a description of the warrants, see "LITIGATION SETTLEMENT AND WARRANTS" beginning on page 60.

MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES

Financial Transactions Between Coleman and Sunbeam. In connection with the M&F Transaction, Coleman repaid substantially all of its outstanding indebtedness with the proceeds of borrowings from Sunbeam. Since then, Coleman has borrowed from, and repaid funds to, Sunbeam. Through April 15, 1999, Coleman's obligations to Sunbeam were evidenced by an unsecured subordinated demand note payable by

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Coleman to Sunbeam. This note was pledged by Sunbeam to its lenders as security for Sunbeam's obligations under its bank credit facility.

In connection with the April 15, 1999 amendment to Sunbeam's bank credit facility, the Coleman note was revised to, among other things:

- o lower the interest rate,
- o make the note payable on April 15, 2000 rather than on demand,
- o add customary representations, warranties, covenants and events of default, and
- o provide that an event of default under Sunbeam's bank credit facility

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would constitute an event of default under the Coleman note.

As security for the revised Coleman note, Coleman pledged:

- o substantially all of its domestic assets, other than real property,
- o 66% of its ownership interests in its direct foreign subsidiaries and in its domestic holding companies for its foreign subsidiaries (but not the assets of these subsidiaries), and
- o all of its ownership interests in its other direct domestic subsidiaries (but not the assets of these subsidiaries).

The revised Coleman note had an unpaid principal balance of \$303.2 million on September 30, 1999. Sunbeam pledged the revised Coleman note as security for Sunbeam's obligations to its lending banks under its bank credit facility and assigned to these lending banks the security pledged by Coleman for the revised Coleman note. Coleman also gave the lending banks a direct pledge of the assets securing the revised Coleman note to secure the obligations under Sunbeam's bank credit facility, subject to a cap equal to the balance due from time to time on the revised Coleman note. The revision of the Coleman note and the pledge of Coleman's assets were approved on behalf of Coleman by A. Whitman Marchand, Coleman's only disinterested director, acting as a duly authorized independent committee of the Coleman board of directors.

Under Sunbeam's bank credit facility, an event of default will occur if this document is not declared effective by the SEC on or before January 10, 2000, if the merger is not completed within 25 business days after the effectiveness of this document or if Sunbeam has to pay more than \$87.5 million in cash (excluding expenses) to complete the merger (including any amounts paid with respect to appraisal rights). An event of default of this kind would also constitute an event of default under the Coleman note, and Sunbeam's lenders would be entitled to foreclose on the Coleman note and the Coleman assets pledged as security for the Coleman note. The Coleman note, by its terms, will not be affected by the merger and will remain outstanding. For more information concerning Sunbeam's bank credit facility, including the aggregate amount of borrowings outstanding thereunder, the amount available for future borrowings and the maturity date, see "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION" beginning on page 64. See also "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES--Financial Transactions Between Coleman and Sunbeam" beginning on page 68.

M&F Transaction. In the M&F Transaction, which was completed on March 30, 1998, Sunbeam acquired indirectly about 81% of the then outstanding Coleman common stock (reduced to about 79% as a result of the exercise of Coleman employee stock options immediately following the M&F Transaction). As a result of a purchase by Sunbeam of shares of a newly created series of Coleman voting preferred stock in July 1999, Sunbeam now has the right to exercise just over 80% of the total voting power of Coleman's outstanding capital stock.

In the M&F Transaction, a subsidiary of MacAndrews & Forbes received 14,099,749 shares of Sunbeam common stock, which represent about 14% of the currently outstanding Sunbeam common stock, and about \$160 million in cash. In addition, in connection with the M&F Transaction, Sunbeam assumed about \$1,016 million in debt of Coleman and its parent corporations, including \$497 million of indebtedness of Coleman.

Immediately following the M&F Transaction, all the directors of Coleman resigned, the number of directors constituting the Coleman board of directors was fixed at five, and five designees of Sunbeam were

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elected as directors of Coleman. In addition, Sunbeam designees were appointed to senior management positions at Coleman. Subsequently, as a result of changes in Sunbeam's management and board of directors, in June 1998, Jerry W. Levin, the current Chairman and Chief Executive Officer of Sunbeam and Coleman, was reelected to the Coleman board. In addition, Paul E. Shapiro, the current Executive Vice President and Chief Administrative Officer of Sunbeam and Coleman, was elected to the Coleman board. The other members of the Coleman board resigned or were removed by Sunbeam. In April 1999, the size of the Coleman board was fixed at three members and A. Whitman Marchand, who is not otherwise affiliated with either Sunbeam or Coleman, was elected to the Coleman board. In July 1999, the size of the Coleman board was fixed at four and John H. Klein, an outside director of Sunbeam, was elected to the Coleman board. See "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES--Appointments of Former Coleman and MacAndrews & Forbes Officers to Sunbeam's Management and Board," "--Settlement of Claims Relating to the M&F Transaction" and "--Services Provided by MacAndrews & Forbes" beginning on pages 71, 71 and 72, respectively.

Registration Rights Agreement. The shares of Sunbeam common stock issued to a subsidiary of MacAndrews & Forbes in the M&F Transaction were not registered under federal or state securities laws. Accordingly, in connection with the issuance, Sunbeam entered into a registration rights agreement with the MacAndrews & Forbes subsidiary. Under the registration rights agreement, the MacAndrews & Forbes subsidiary can require Sunbeam to register under federal and applicable state securities laws the shares of Sunbeam common stock it received in the M&F Transaction. The registration rights agreement was amended in August 1998 to provide that the MacAndrews & Forbes subsidiary can also require Sunbeam to register under federal and applicable state securities laws the warrant, and the shares of Sunbeam common stock issuable upon exercise of the warrant, issued to the MacAndrews & Forbes subsidiary in settlement of legal claims related to the M&F Transaction.

Directors, officers and other affiliates of Coleman who receive shares of Sunbeam common stock in the merger can also require Sunbeam to register those shares under federal and applicable state securities laws. To exercise this right, these individuals must agree to be bound by the terms of the registration rights agreement.

Appointments of Former Coleman and MacAndrews & Forbes Officers to Sunbeam's Management and Board. In June 1998, following the removal of Sunbeam's former Chief Executive Officer and Chief Financial Officer, Sunbeam announced that Jerry W. Levin of MacAndrews & Forbes had been elected as Sunbeam's Chief Executive Officer. Mr. Levin and other Sunbeam executives that were affiliated with MacAndrews & Forbes later signed three-year employment agreements with Sunbeam. The other executives include Paul E. Shapiro, Executive Vice President and Chief Administrative Officer of Sunbeam, and Bobby G. Jenkins, Executive Vice President and Chief Financial Officer of Sunbeam. Mr. Levin and Howard Gittis of MacAndrews & Forbes also were elected to the Sunbeam board. For a description of the terms of the employment agreements entered into by Messrs. Levin, Shapiro and Jenkins, see "MANAGEMENT--Executive Compensation--Employment Agreement with Mr. Levin"; "Employment Agreements with Executives Shapiro, Jenkins and Clark" beginning on pages 142 and 143, respectively. For a further discussion of the events leading up to the appointment of Mr. Levin as Sunbeam's Chief Executive Officer and the appointment of Messrs. Levin and Gittis to the Sunbeam board, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM--Changes in Sunbeam's Management and Board" beginning on page 30.

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Settlement of Claims Relating to the M&F Transaction. On August 12, 1998, Sunbeam announced that, following investigation and negotiation by a special committee of the Sunbeam board consisting of four directors not affiliated with MacAndrews & Forbes, Sunbeam had entered into a settlement agreement with a MacAndrews & Forbes subsidiary. The settlement:

- o released Sunbeam from threatened claims of MacAndrews & Forbes and its affiliates arising from the M&F Transaction,
- o enabled Sunbeam to retain the services of executive personnel affiliated with MacAndrews & Forbes who had been managing Sunbeam since mid-June of 1998, including Jerry W. Levin, Sunbeam's Chairman and Chief Executive Officer, Paul E. Shapiro, Sunbeam's Executive Vice President and

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Chief Administrative Officer, and Bobby G. Jenkins, Sunbeam's Executive Vice President and Chief Financial Officer, and

- o provided for the continuing management assistance and other support by MacAndrews & Forbes and its affiliates to Sunbeam described in "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES--Services Provided by MacAndrews & Forbes" beginning on page 72.

As part of the settlement, the MacAndrews & Forbes subsidiary received from Sunbeam a warrant expiring August 24, 2003 to purchase 23 million shares of Sunbeam common stock at a cash exercise price of \$7 per share, subject to anti-dilution adjustments. For a description of the settlement agreement and the terms of the warrant issued to the MacAndrews & Forbes subsidiary, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM--Settlement of Claims Relating to the M&F Transaction" beginning on page 32.

Services Provided by MacAndrews & Forbes. Under Sunbeam's August 1998 settlement agreement with a MacAndrews & Forbes subsidiary, in addition to the services of MacAndrews & Forbes' former executive personnel who have been managing Sunbeam since mid-June 1998, MacAndrews & Forbes agreed to provide management assistance and other support to Sunbeam at its request in a wide variety of areas. Sunbeam does not pay MacAndrews & Forbes and its affiliates for the services of their employees, but does reimburse them for out-of-pocket expenses. See "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES--Services Provided by MacAndrews & Forbes" beginning on page 72.

Acquisition of Coleman Preferred Stock. On July 12, 1999, one of Sunbeam's wholly owned subsidiaries acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock for an aggregate purchase price of approximately \$31 million. These shares, together with the shares of Coleman common stock already indirectly owned by Sunbeam, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock as of July 12, 1999. This class of preferred stock was created by Coleman and acquired by Sunbeam in order to enable Sunbeam and Coleman to file consolidated federal income tax returns and, in certain jurisdictions, consolidated state income tax returns, prior to the completion of the merger. In connection with the acquisition of these shares, Sunbeam entered into a tax sharing agreement with

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Coleman pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had Coleman not been included in the consolidated income tax return of Sunbeam. The terms of the voting preferred stock, the per share issue price and the terms of the tax sharing agreement were approved on Coleman's behalf by Coleman's then sole independent director. The net proceeds from the sale of the preferred stock to Sunbeam were used by Coleman to make a partial repayment on Coleman's note payable to Sunbeam. For further information regarding the terms of the preferred stock issued to Sunbeam's subsidiary, see "DESCRIPTION OF COLEMAN CAPITAL STOCK--Coleman Preferred Stock beginning on page 154."

SUMMARY HISTORICAL AND PRO FORMA FINANCIAL INFORMATION

The following summary historical financial information is derived from Sunbeam's audited consolidated financial statements and unaudited condensed consolidated financial statements. The following summary pro forma financial information is derived from Sunbeam's unaudited pro forma condensed consolidated financial statements beginning on page 72. The summary unaudited pro forma financial information gives effect to the following "Pro Forma Transactions":

- o the corporate acquisitions Sunbeam made in 1998, excluding the acquisition of First Alert, Inc., the effect of which is not significant;
- o the proposed acquisition by Sunbeam of the Coleman common stock held by the Coleman minority stockholders upon completion of the merger for cash, shares of Sunbeam common stock and warrants;
- o the initial borrowing of approximately \$1,325 million under Sunbeam's bank credit facility;
- o the original offering of an aggregate principal amount at maturity of \$2,014 million of Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures due 2018 on March 25, 1998, for net proceeds of about \$730 million; and

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- o the use of most of the net proceeds of the original bank borrowing and the original offering of the debentures to acquire Coleman and Signature Brands and to refinance indebtedness.

The summary unaudited pro forma financial information is not necessarily indicative of what Sunbeam's results would have been if the Pro Forma Transactions actually had occurred as of the dates indicated or of what Sunbeam's future operating results will be.

This summary historical and pro forma financial information should be read in conjunction with Sunbeam's audited consolidated financial statements beginning on page F-1, "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS" beginning on page 86 and "UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS" beginning on page 72.

While reviewing the summary historical and pro forma financial information, please note the following:

- o Sunbeam accounted for the March 30, 1998 acquisition of a controlling interest in Coleman and the April 6, 1998 acquisitions of First Alert and

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Signature Brands under the purchase method of accounting. Accordingly, Sunbeam's consolidated financial statements include the financial position and results of operations of each of the acquired companies from the respective dates of acquisition.

- o For the fiscal year ended December 31, 1998, Sunbeam took an extraordinary charge of \$122.4 million related to the early extinguishments of debt and took other charges of:
 - o \$70.0 million related to the issuance of warrants to a MacAndrews & Forbes subsidiary;
 - o \$62.5 million related to the write-off of goodwill;
 - o \$39.4 million related to fixed asset impairments;
 - o \$31 million related to compensation expense for the new employment agreements with Sunbeam's former Chairman and Chief Executive Officer and two other former senior officers; and
 - o \$95.8 million related to write-downs of inventory.

See Notes 2, 3 and 11 to Sunbeam's audited consolidated financial statements.

- o For the fiscal year ended December 28, 1997, Sunbeam reversed \$28.0 million of pre-tax liabilities no longer required and \$13.3 million of tax liabilities no longer required.
- o For the fiscal year ended December 29, 1996, Sunbeam took restructuring, asset impairment and other charges of \$239.2 million before taxes. See Notes 12 and 13 to Sunbeam's audited consolidated financial statements.
- o The unaudited pro forma condensed consolidated balance sheet as of September 30, 1999 gives pro forma effect to the proposed acquisition of the shares of Coleman common stock held by the Coleman minority stockholders as if it had occurred on September 30, 1999. The unaudited pro forma condensed consolidated statement of operations for the fiscal year ended December 31, 1998 and the nine months ended September 30, 1999 give effect to the Pro Forma Transactions, as if they had occurred on December 29, 1997, the beginning of Sunbeam's 1998 fiscal year. Also, pro forma net losses are from continuing operations and do not include extraordinary items.
- o In computing the ratio of earnings to fixed charges:
 - o earnings represent income (loss) from continuing operations before income taxes and fixed charges (exclusive of interest capitalized); and
 - o fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense.

For the fiscal years ended December 29, 1996 and December 31, 1998, historical earnings were insufficient to cover fixed charges by \$262.2 million and \$797.1 million, respectively. For the nine months ended September 30, 1998 and 1999, historical earnings were insufficient to cover fixed charges by \$476.7 million and \$130.1 million, respectively. For the fiscal year ended December 31,

1998 and for the nine months ended September 30, 1999, on a pro forma basis, earnings were insufficient to cover fixed charges by \$834.9 million and \$139.1 million, respectively.

- o At September 30, 1999, Sunbeam had goodwill and other intangible assets of \$1,809.9 million.

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	FISCAL YEARS ENDED						
	JANUARY 1, 1995	DEC. 31, 1995	DEC. 29, 1996	DEC. 28, 1997	DEC. 31, 1998	DEC. 31, 1998 PRO FORMA	SEPTEMBER 1998
	(IN MILLIONS, EXCEPT RATIO AND PER SHARE DATA)						
<S>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
STATEMENT OF OPERATIONS DATA:							
Net sales.....	\$1,044.3	\$1,016.9	\$ 984.2	\$1,073.1	\$1,836.9	\$2,098.7	\$ 1,322.
Operating earnings (loss).....	151.0	70.3	(244.5)	104.1	(670.0)	(697.4)	(391.)
Net earnings (loss).....	107.0	50.5	(208.5)	38.3	(897.9)	(824.1)	(587.)
Earnings (loss) per share:							
Basic.....	1.30	0.62	(2.51)	0.45	(9.25)	(7.68)	(6.1)
Diluted.....	1.30	0.61	(2.51)	0.44	(9.25)	(7.68)	(6.1)
Weighted average shares outstanding:							
Basic.....	82.6	81.6	82.9	84.9	97.1	107.3	95.
Diluted.....	82.6	82.8	82.9	87.5	97.1	107.3	95.
OTHER DATA:							
Ratio of earnings to fixed charges.....	14.4x	4.7x	--	7.2x	--	--	-
BALANCE SHEET DATA (AT PERIOD END):							
Working capital	\$ 294.8	\$ 411.7	\$ 359.9	\$ 369.1	\$ 488.5	N/A	\$ (666.)
Total assets.....	1,008.9	1,158.7	1,059.4	1,058.9	3,405.5	N/A	3,503.
Long-term debt.....	124.0	161.6	201.1	194.6	2,142.4	N/A	778.
Shareholders' equity.....	454.7	601.0	415.0	472.1	260.4	N/A	449.

</TABLE>

COMPARATIVE PER SHARE DATA

The tables below show comparative per share data for Sunbeam (on a historical and consolidated pro forma basis) and for Coleman (on a historical and pro forma equivalent basis). Historical information for Sunbeam and Coleman has been derived from the respective selected financial data for the two companies which can be found elsewhere in this document. Pro forma information for Sunbeam was derived from the Unaudited Pro Forma Condensed Consolidated Financial Statements of Sunbeam as of and for the year ended December 31, 1998 and the nine months ended September 30, 1999 which are included in "UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS" beginning on page 72. Pro forma equivalent information for Coleman was calculated by multiplying the pro forma per share amounts for Sunbeam by 0.5677, the exchange ratio of Coleman

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common stock for Sunbeam common stock in the merger.

<TABLE>
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AS OF AND FOR THE YEAR E

	SUNBEAM HISTORICAL	COLEMAN HISTORICAL
<S>	<C>	<C>
Cash dividends per common share.....	\$ 0.01	\$ 0.00
Loss per common share from continuing operations before extraordinary charge.....	(7.99)	(0.73)
Book value per common share.....	2.59	4.27

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<TABLE>
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AS OF AND FOR THE NINE MON
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	SUNBEAM HISTORICAL	COLEMAN HISTORICAL
<S>	<C>	<C>
Cash dividends per common share.....	\$ 0.00	\$ 0.00
(Loss) income per common share from continuing operations before extraordinary charge.....	(1.54)	1.09
Book value per common share.....	0.94	5.17

MARKET PRICES AND DIVIDENDS

Market Prices. Sunbeam common stock is traded on the NYSE under the symbol "SOC." Coleman common stock is traded on the NYSE, the Pacific Stock Exchange and the Chicago Stock Exchange under the symbol "CLN." The table below shows:

- o the closing sale prices of Sunbeam common stock and Coleman common stock, as reported on the NYSE Composite Transactions Tape, on February 27, 1998, the last trading day prior to the signing of the merger agreement,
- o the closing sale prices of Sunbeam common stock and Coleman common stock, as reported on the NYSE Composite Transactions Tape, on December 3, 1999, the last trading day prior to the date of this document, and
- o the equivalent pro forma prices of Coleman common stock on those dates, as determined by multiplying the last reported sale prices of Sunbeam common stock by 0.5677 and adding \$6.44.

The table below does not reflect any value attributable to the warrants to be issued to Coleman minority stockholders in settlement of the litigation relating to the merger.

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<TABLE>
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	SUNBEAM COMMON STOCK	COLEM COMMON
<S>	<C>	<C>
February 27, 1998.....	\$ 41.750	\$ 20.
December 3, 1999.....	4.750	9.

</TABLE>

The number of shares of Sunbeam common stock to be received by Coleman stockholders in the merger is fixed at 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock. This number will not be adjusted in the event of any increase or decrease in the price of either Sunbeam common stock or Coleman common stock between February 27, 1998 and the day on which the merger is completed. Since February 27, 1998, the market price of Sunbeam common stock reached a high of \$53 on March 4, 1998 and a low of \$4.125 on November 5 and 8, 1999. It was \$4.750 on December 3, 1999, the last trading day prior to the date of this document, and may increase or decrease between the date of this document and the date on which the merger is completed. Stockholders of Coleman are urged to obtain current market quotations for Sunbeam common stock and Coleman common stock. See "RISK FACTORS" beginning on page 18.

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The following table shows, for the periods indicated, the range of the high and low sale prices of Coleman common stock and Sunbeam common stock, respectively, as reported on the NYSE Composite Transactions Tape.

<TABLE>
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	COLEMAN COMMON STOCK		
	HIGH	LOW	
<S>	<C>	<C>	<
1997			
First Quarter.....	\$16.125	\$11.500	\$
Second Quarter.....	19.125	12.875	
Third Quarter.....	18.000	15.188	
Fourth Quarter.....	16.813	12.375	
1998			
First Quarter.....	\$35.563	\$12.063	\$
Second Quarter.....	31.750	10.812	
Third Quarter.....	12.000	8.938	
Fourth Quarter.....	10.188	7.438	
1999			
First Quarter.....	\$10.625	\$ 8.188	\$
Second Quarter.....	9.563	6.625	
Third Quarter.....	9.750	8.875	
Fourth Quarter (through December 3, 1999).....	9.812	8.687	

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</TABLE>

As of December 3, 1999, the last trading day prior to the date of this document, there were 55,827,490 shares of Coleman common stock outstanding, which were held of record by 548 holders, and 100,902,392 shares of Sunbeam common stock outstanding, which were held of record by 4,529 holders.

The shares of Sunbeam common stock to be issued in the merger have been listed for trading on the NYSE. Sunbeam intends to file an application with the NYSE to list the shares of Sunbeam common stock issuable upon exercise of the warrants. For a discussion of matters relating to Sunbeam's continued listing on the NYSE, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM--New York Stock Exchange Listing" beginning on page 34.

For a discussion of matters relating to Coleman's continued listing on the NYSE, see "RECENT DEVELOPMENTS AFFECTING COLEMAN" beginning on page 35. Following the completion of the merger, the Coleman common stock will be delisted from all of the stock exchanges on which it is listed and deregistered under the Exchange Act.

Sunbeam Dividend Policy. Through the first quarter of 1998, Sunbeam's practice had been to pay a dividend at a quarterly rate of \$.01 per share. Sunbeam discontinued paying dividends after the first quarter of 1998 and has no present intention to pay any dividends for the foreseeable future. Moreover, Sunbeam's bank credit facility, as amended, prohibits Sunbeam from paying cash dividends.

Coleman Dividend Policy. Coleman has not declared a cash dividend on its common stock since its initial public offering in February 1992. Under the merger agreement, Coleman is prohibited from paying any cash dividends prior to the completion of the merger.

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RISK FACTORS

In reviewing the information contained in this document and in deciding whether to accept the cash, stock and warrants Sunbeam proposes to give you, or to dissent from the merger and have the fair value of your shares appraised by a court and paid to you in cash, you should consider the following:

THE NUMBER OF SUNBEAM SHARES AND WARRANTS YOU RECEIVE FOR EACH COLEMAN SHARE HAS NOT BEEN AND WILL NOT BE ADJUSTED

Unless you pursue your appraisal rights, you will receive \$6.44 in cash, .05677 of a share of Sunbeam common stock and 0.381 of a Sunbeam warrant (assuming no further increase in the number of outstanding Coleman shares), for each share of Coleman common stock you own when the merger is completed. The number of Sunbeam shares and warrants you will receive has not been adjusted to reflect the decrease in the market price of Sunbeam common stock and will not be adjusted to reflect any future changes in the market price of either Sunbeam common stock or Coleman common stock. Since February 27, 1998, the market price of Sunbeam common stock reached a high of \$53 on March 4, 1998 and a low of \$4.125 on November 5 and 8, 1999. It was \$4.75 on December 3, 1999, the last trading day prior to the date of this document, and may increase or decrease

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between the date of this document and the date on which the merger is completed. Variations in the price of Sunbeam common stock may be the result of changes in the business, operations or prospects of Sunbeam or Coleman, general market and economic conditions and other factors. See "--Negative developments since March 1998 have caused Sunbeam's common stock price to drop significantly, and the risks described in the "RISK FACTORS" section of this document may cause further declines in the price of Sunbeam common stock." Stockholders of Coleman are urged to obtain current market quotations for Sunbeam common stock and Coleman common stock. See "SUMMARY--Market Prices and Dividends."

COLEMAN'S FINANCIAL ADVISOR HAS ADVISED COLEMAN THAT ITS OPINION AS TO THE FAIRNESS OF THE CONSIDERATION TO BE PAID TO YOU UNDER THE FEBRUARY 1998 MERGER AGREEMENT UPON COMPLETION OF THE MERGER SHOULD NO LONGER BE RELIED UPON AND NO OTHER FINANCIAL ADVISOR HAS BEEN ASKED TO PROVIDE A FAIRNESS OPINION. THEREFORE, YOU DO NOT HAVE THE BENEFIT OF AN INDEPENDENT EVALUATION OF THE FAIRNESS OF THE MERGER TO YOU FROM A FINANCIAL POINT OF VIEW IN DECIDING WHETHER TO ACCEPT THE CASH, STOCK AND WARRANTS SUNBEAM PROPOSES TO GIVE YOU OR PURSUE YOUR DELAWARE LAW APPRAISAL RIGHTS

As a result of the adverse developments affecting Sunbeam described in the section of this document captioned "RECENT DEVELOPMENTS AFFECTING SUNBEAM" beginning on page 26, Coleman's financial advisor, Credit Suisse First Boston, has advised Coleman that its February 1998 opinion as to the fairness of the consideration payable to you under the merger agreement should no longer be relied upon. Therefore, you should no longer rely on the Credit Suisse First Boston opinion or on the February 1998 determination of the then Coleman board that the consideration payable under the merger agreement was fair to you from a financial point of view, since that determination was based, at least in part, on the Credit Suisse First Boston opinion. As a result, you do not have the benefit of an independent evaluation of the fairness of the merger to you from a financial point of view in deciding whether to accept the cash, stock and warrants Sunbeam proposes to give you or pursue your Delaware law appraisal rights.

SUNBEAM IS HIGHLY LEVERAGED WHICH IMPAIRS ITS ABILITY TO OBTAIN FINANCING AND LIMITS CASH FLOW AVAILABLE FOR SUNBEAM'S OPERATIONS AND MAY LIMIT ITS COMPETITIVENESS IN THE MARKET PLACE

Sunbeam is highly leveraged, with indebtedness that is very large when compared to its stockholders' equity. Much of its indebtedness was incurred to finance three corporate acquisitions in 1998. At September 30, 1999, Sunbeam's consolidated indebtedness was approximately \$2,322.7 million and its stockholders' equity was approximately \$94.7 million, including approximately \$1,809.9 million of goodwill and other intangible assets. If required, Sunbeam may incur additional indebtedness under the bank credit facility or, subject to restrictions in the bank credit facility, through other borrowings. The indenture governing Sunbeam's zero coupon convertible senior subordinated debentures does not limit Sunbeam's ability to incur additional indebtedness. You should carefully read Sunbeam's audited consolidated financial statements beginning on page F-1.

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Sunbeam's high leverage has important consequences. For example:

- o Sunbeam's ability to obtain additional financing for working capital, capital expenditures, acquisitions or general corporate purposes is and may continue to be impaired,

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- o all or a substantial portion of Sunbeam's cash flow from operations must be dedicated to the payment of principal and interest on Sunbeam's indebtedness; therefore cash available for its operations and other purposes will be limited,
- o Sunbeam may be substantially more leveraged than some of its competitors, which may place it at a competitive disadvantage,
- o Sunbeam may be less able to adjust rapidly to changing market conditions, and
- o Sunbeam's results of operations could be adversely affected, particularly in the event of a downturn in general economic conditions or Sunbeam's business.

SUNBEAM'S BANK CREDIT FACILITY CONTAINS COVENANTS WHICH SUNBEAM MAY NOT BE ABLE TO SATISFY AND DEFAULT PROVISIONS IT MAY NOT BE ABLE TO AVOID, AND, IF SUNBEAM CANNOT, THE BANKS COULD DEMAND IMMEDIATE REPAYMENT OF SUNBEAM'S BANK DEBT

As of September 30, 1999, Sunbeam had incurred about \$1,500 million in borrowings and had availability to borrow about \$200 million under the bank credit facility. The bank credit facility contains covenants which require Sunbeam to meet financial tests and ratios relating to Sunbeam's future performance which it may not be able to satisfy. If Sunbeam cannot satisfy these tests and ratios it would be in default. The bank credit facility also provides that the occurrence of any of the following events, which Sunbeam may not be able to avoid, would be an event of default:

- o if Sunbeam fails to have the SEC declare this document effective by January 10, 2000,
- o if Sunbeam fails to complete the merger within 25 business days after this document is declared effective by the SEC, or
- o if Sunbeam has to pay more than \$87.5 million in cash to complete the merger, including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses.

An event of default would give the banks the right to demand immediate repayment--a demand Sunbeam might not be able to meet.

SUNBEAM'S BANK DEBT COULD BECOME DUE ON APRIL 10, 2000, IF SUNBEAM DOES NOT GET ANOTHER WAIVER FROM THE BANKS OR REFINANCE ITS BANK DEBT BY THEN, AND THERE CAN BE NO ASSURANCE THAT SUNBEAM WOULD BE ABLE TO REPAY THE BANK DEBT ON THAT DATE

In 1998, Sunbeam was in violation of some of the covenants of the bank credit facility, but the banks waived these violations first until December 31, 1998, then until April 10, 1999, then until April 15, 1999 and now until April 10, 2000. However, if Sunbeam does not get another waiver or refinance the bank debt by April 10, 2000, the banks would have the right to demand immediate repayment--a demand which Sunbeam might not be able to meet.

SUNBEAM MAY NOT BE ABLE TO SERVICE ITS LARGE DEBT BURDEN, WHICH MAY FORCE IT TO RESTRUCTURE OR REFINANCE ITS DEBT

To meet its debt service requirements, Sunbeam must be able to successfully implement its business strategy and integrate into its operations the three companies Sunbeam acquired in 1998. In addition, Sunbeam's future financial and operating performance will affect its ability to repay or to refinance its indebtedness. Sunbeam's future financial and operating performance is subject to prevailing economic and competitive conditions and to financial, business and other factors which may be beyond Sunbeam's control.

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Sunbeam cannot assure you that its operating cash flow and capital resources will be sufficient to meet its debt service requirements. For the nine months ended September 30, 1999 and the year ended December 31, 1998 Sunbeam's earnings were insufficient to cover its fixed charges by approximately \$130.1 million

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and \$797.1 million, respectively. If Sunbeam does not have enough cash flow and capital resources to meet its debt service obligations, Sunbeam may be forced to reduce or delay capital expenditures, sell assets, or seek to obtain additional equity capital. Sunbeam also might be forced to refinance or restructure its debt, including its zero coupon convertible subordinated debentures. Although Sunbeam does not have any firm plans or arrangements to restructure its debt, a restructuring, if Sunbeam decided to pursue one, could involve one or more exchange offers, tender offers or consent solicitations involving the debentures.

SUNBEAM'S OUTSIDE AUDITORS DETERMINED THAT SUNBEAM'S 1997 INTERNAL CONTROLS WERE INADEQUATE AND SUNBEAM CANNOT ASSURE YOU THAT THE CORRECTIVE MEASURES IT HAS ADOPTED OR WILL ADOPT TO ADDRESS THESE INADEQUACIES WILL BE EFFECTIVE

In October 1998, Sunbeam's auditors at the time, Arthur Andersen LLP, told Sunbeam that the design and effectiveness of its internal controls were inadequate to detect material misstatements in the preparation of Sunbeam's 1997 annual and quarterly financial statements. As described further in "CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE" beginning on page 118, Sunbeam has restated its financial results for a six-quarter period from the fourth quarter of 1996 through the first quarter of 1998. Sunbeam cannot assure you that any interim or final corrective measures Sunbeam has adopted or will adopt to address the inadequacies in its internal controls will be effective.

SUNBEAM HAD SIGNIFICANT LOSSES AND ITS OPERATIONS CONSUMED SIGNIFICANT AMOUNTS OF CASH IN THE FIRST NINEMONTHS OF 1999 AND IN FISCAL YEAR 1998 AND SUNBEAM CANNOT ASSURE YOU THAT IT WILL BE ABLE TO GENERATE PROFITS OR POSITIVE CASH FLOW FROM OPERATIONS IN THE FUTURE

For the nine months ended September 30, 1999 and the year ended December 31, 1998, Sunbeam had consolidated net losses of approximately \$155.0 million and \$897.9 million, respectively, and net cash used in operations of \$73.2 million and \$190.4 million, respectively. Sunbeam cannot assure you that it will be able to generate profits or positive cash flow from operations in the future. See "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS" beginning on page 86 for a further discussion.

MAJOR LAWSUITS HAVE BEEN BROUGHT AGAINST SUNBEAM, INCLUDING LAWSUITS UNDER FEDERAL AND STATE SECURITIES LAWS, AND THE SEC IS CONDUCTING A FORMAL INVESTIGATION OF SUNBEAM; SUNBEAM CANNOT PREDICT THE OUTCOME OF THESE LAWSUITS OR THE SEC INVESTIGATION, BUT IF SUNBEAM WERE TO LOSE THE LAWSUITS, THE RESULTING JUDGMENTS WOULD LIKELY HAVE A NEGATIVE EFFECT ON ITS FINANCIAL POSITION, RESULTS OF OPERATIONS AND CASH FLOW

Litigation. Beginning in April 1998 many lawsuits alleging claims arising under Delaware law, Texas law and federal and state securities laws have been filed against Sunbeam and some of its former directors and officers, some of its current directors and its former auditor in various federal and state courts. Many of these lawsuits relate to Sunbeam's financial performance from the second

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quarter of 1997 through the second quarter of 1998. Many plaintiffs are claiming that Sunbeam's prior management misrepresented and omitted material information in its public filings and in their statements concerning its historical and expected future results of operations for the purpose of artificially inflating the market price of Sunbeam common stock. Currently Sunbeam cannot predict the outcome of these lawsuits, evaluate the likelihood of Sunbeam's success in any particular case, or evaluate the range of potential loss. If Sunbeam were to lose these lawsuits, judgments would likely have a material adverse effect on Sunbeam's financial position, results of operations and cash flows.

Sunbeam's insurers are attempting to have the directors' and officers' liability policies it has with them voided or canceled or have advised Sunbeam that they do not intend to provide coverage with respect to these lawsuits. Failure by Sunbeam to obtain insurance recoveries from its liability insurers following an adverse judgment against Sunbeam or any persons it is obligated to indemnify in any of the lawsuits discussed above could have a material adverse effect on Sunbeam's financial position, results of operations and cash flow.

SEC Investigation. In July 1998, the SEC commenced a formal investigation of Sunbeam after informing Sunbeam in the previous month of an informal investigation. Although Sunbeam believes that it

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has cooperated with the SEC and furnished the SEC with documents they requested, Sunbeam has, however, declined to provide the SEC with material that Sunbeam believes is subject to the attorney-client privilege and the work product immunity. Sunbeam cannot predict how long this investigation will last or its outcome. In addition, Sunbeam cannot at this time determine what actions, if any, the SEC might take against it or what effect any action might have on Sunbeam. For further information regarding the SEC investigation of Sunbeam, please see "RECENT DEVELOPMENTS AFFECTING SUNBEAM--SEC Investigation" beginning on page 32.

Product-Related Liabilities. As a consumer goods manufacturer and distributor, Sunbeam faces the constant risks of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. These claims could result in liabilities that could have a material adverse effect on Sunbeam's financial position and results of operations. Some of the product lines Sunbeam acquired in the 1998 acquisitions have increased its exposure to product liability and related claims.

See "BUSINESS OF SUNBEAM--Litigation and Other Contingent Liabilities" beginning on page 126 for more information about lawsuits Sunbeam is involved in, the SEC investigation and other contingent liabilities.

SUNBEAM'S 1998 ACQUISITIONS HAVE INCREASED THE SIZE OF THE OPERATIONS SUNBEAM HAS TO MANAGE AND SUNBEAM'S FAILURE TO MANAGE ITS OPERATIONS EFFECTIVELY WOULD LIKELY CAUSE SUNBEAM TO HAVE POOR OPERATING RESULTS

The 1998 acquisitions of Coleman, First Alert, and Signature Brands have resulted in a substantial increase in the size of Sunbeam's operations. As a result, Sunbeam must effectively use its employees and management, operational, and financial resources to manage its expanded operations. A failure on Sunbeam's part to successfully integrate and effectively manage its expanded

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operations would likely cause Sunbeam to have poor operating results.

SUNBEAM'S INTERNATIONAL OPERATIONS EXPOSE SUNBEAM TO UNCERTAINTIES AND RISKS FROM ABROAD WHICH COULD NEGATIVELY AFFECT ITS OPERATIONS AND SALES

Sunbeam currently has sales in countries where economic growth has slowed, primarily Japan and Korea; or where economies have been unstable or hyperinflationary in recent years, primarily Mexico and Venezuela. The economies of other foreign countries important to Sunbeam's operations, including other countries in Latin America and Asia, could also suffer slower economic growth or instability in the future.

The following are among the risks that could negatively affect Sunbeam's operations and sales in foreign markets:

- o new restrictions on access to markets,
- o currency devaluation,
- o new tariffs,
- o adverse changes in monetary and/or tax policies,
- o inflation, and
- o governmental instability.

Should any of these risks occur, it could impair Sunbeam's ability to export its products and result in a loss of sales from its international operations.

THE NATURE OF SUNBEAM'S BUSINESSES REQUIRES SUNBEAM TO SUCCESSFULLY DEVELOP NEW AND INNOVATIVE PRODUCTS ON A CONSISTENT BASIS IN ORDER TO REGAIN PROFITABILITY AND INCREASE REVENUES AND SUNBEAM MAY NOT BE ABLE TO DO SO

Sunbeam must develop new and innovative products to regain profitability and increase revenues. In the past Sunbeam has experienced difficulties in developing and introducing quality new products on a timely basis. Sunbeam may not be able to meet its schedules for future product development. Failure to develop and

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manufacture successful new products could have a material adverse effect on Sunbeam's future financial performance.

SUNBEAM'S BUSINESSES ARE VERY SENSITIVE TO THE STRENGTH OF THE U.S. RETAIL MARKET AND ANY WEAKNESS IN THIS MARKET COULD ADVERSELY AFFECT SUNBEAM'S FINANCIAL RESULTS

The strength of the retail economy in the United States has a significant impact on Sunbeam's performance. Weakness in consumer confidence and poor financial performance by retail outlets, including the financial weakness or bankruptcy of retail outlets, especially mass merchants, may adversely impact Sunbeam's future financial results.

SUNBEAM OPERATES IN A HIGHLY COMPETITIVE MARKET AND SUNBEAM'S INABILITY TO COMPETE EFFECTIVELY COULD CAUSE IT TO LOSE MARKET SHARE AND COULD ADVERSELY AFFECT ITS FINANCIAL RESULTS

Sunbeam operates in a highly competitive environment. Sunbeam has numerous domestic and foreign competitors, and many of them are financially strong and

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capable of competing effectively with Sunbeam. Competitors may take actions to match Sunbeam's new product introductions and other initiatives. Some competitors may be willing to reduce prices and accept lower profit margins to compete with Sunbeam. As a result of this competition, Sunbeam could lose market share and sales and suffer losses, which could have a material adverse effect on Sunbeam's future financial performance.

Sunbeam's future success will significantly depend upon its ability to remain competitive in the areas of price, quality, marketing, product development, manufacturing, distribution, order processing and customer service. Sunbeam cannot assure you that it will be able to compete effectively in all these areas in the future.

SUNBEAM'S SALES ARE HIGHLY DEPENDENT ON PURCHASES FROM SEVERAL LARGE CUSTOMERS AND ANY SIGNIFICANT DECLINE IN THESE PURCHASES OR PRESSURE FROM THESE CUSTOMERS TO REDUCE PRICES COULD HAVE A NEGATIVE EFFECT ON SUNBEAM'S FUTURE FINANCIAL PERFORMANCE; SUNBEAM HAS NO LONG-TERM SUPPLY CONTRACTS WITH ANY OF ITS CUSTOMERS

Due to the consolidation of the U.S. retail industry, Sunbeam's customer base has become relatively concentrated. Wal-Mart Stores, Inc., Sunbeam's largest single customer, accounted for 18% of Sunbeam's net sales in 1998, and its five largest customers combined accounted for 38% of its 1998 net sales.

Sunbeam has no long-term supply contracts with any of its customers. As a result, Sunbeam must receive a continuous flow of new orders from its large, high-volume retailing customers. Sunbeam has responded to the challenges of its markets by pursuing strategic relationships with large, high-volume merchandisers. However, Sunbeam cannot assure you that it can continue to successfully meet the needs of Sunbeam's customers. In addition, failure to obtain anticipated orders or delays or cancellations of orders or significant pressure to reduce prices from key customers could have a material adverse effect on Sunbeam's future financial performance.

RAW MATERIALS AND COMPONENTS ARE CRITICAL INPUTS FOR SUNBEAM'S PRODUCTS AND PRICE HIKES OR PROBLEMS WITH THEIR SUPPLY COULD ADVERSELY AFFECT SUNBEAM

Raw materials and components constitute a significant portion of the cost of Sunbeam's goods. Factors which are largely beyond Sunbeam's control, such as movements in commodity prices for the specific materials Sunbeam requires, may affect the future cost of such raw materials and components. In addition, any inability of Sunbeam's suppliers to timely deliver raw materials and components or any unanticipated change in Sunbeam's suppliers could be disruptive and costly to Sunbeam.

A significant failure by Sunbeam to contain raw material or component costs could have a material adverse effect on its future financial performance. In addition, delays or cancellations by suppliers could adversely affect results.

SUNBEAM'S OPERATIONS ARE DEPENDENT UPON THIRD-PARTY SUPPLIERS AND SERVICE PROVIDERS WHOSE FAILURE TO PERFORM ADEQUATELY COULD DISRUPT SUNBEAM'S BUSINESS OPERATIONS

Sunbeam currently manufactures many of its products, but it sources many of its parts and products from third parties. Sunbeam's ability to select reliable vendors who provide timely deliveries of quality parts

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and products will impact its success in meeting customer demand for timely delivery of quality products. Any inability of Sunbeam's suppliers to timely deliver quality parts and products or any unanticipated change in suppliers or pricing of products could be disruptive and costly to Sunbeam.

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Sunbeam has entered into various arrangements with third parties for the provision of back-office administrative services that it used to perform internally. Sunbeam now outsources accounts payable, collection of accounts receivable, customer service and some necessary computer systems servicing, among other things. If any of these third-party service providers failed to perform adequately, Sunbeam's normal business operations could be disrupted. Among other things, this could hurt Sunbeam's sales, collections, customer service, cash flow and profitability.

SUNBEAM IS SUBJECT TO SEVERAL PRODUCTION-RELATED RISKS WHICH COULD JEOPARDIZE ITS ABILITY TO REALIZE ANTICIPATED SALES AND PROFITS

To realize sales and operating profits at anticipated levels, Sunbeam must manufacture, source and deliver in a timely manner products of high quality. Among others, the following factors can have a negative effect on Sunbeam's ability to do these things:

- o labor difficulties,
- o scheduling and transportation difficulties,
- o management dislocation,
- o substandard product quality, which can result in higher warranty, product liability and product recall costs,
- o delays in development of quality new products,
- o changes in laws and regulations, including changes in tax rates, accounting standards, environmental laws and occupational health and safety laws, and
- o changes in the availability and costs of labor.

THE EFFECTS OF SUNBEAM'S PRIOR MANAGEMENT'S OUTSOURCING OF CRITICAL OPERATING TASKS AND SALES POLICIES MAY CONTINUE TO CAUSE SUNBEAM SUBSTANTIAL DIFFICULTY

Sunbeam's prior management substantially reduced the number of its employees and hired third parties to perform many of its critical operating tasks, including handling of accounts payable, computer support, customer service and collection of accounts receivable. Sunbeam is currently evaluating the effectiveness of outsourcing these activities and are hiring personnel to perform some of these tasks in-house once again. Sunbeam may experience disruption in critical services and other difficulties while it implements necessary staff increases and changes in prior management's outsourcing policy.

Sunbeam's prior management increased sales of products in some prior periods by providing retailers with substantial price discounts or attractive payment terms to induce them to purchase more products than they needed at the time. Sunbeam believes this caused many of its customers to build up inventory in its products which reduced Sunbeam's sales and profitability through 1998. Although Sunbeam believes that the excess inventory maintained by retailers has been eliminated, Sunbeam may not have correctly evaluated the amount of or the impact of such inventory practices, which may continue to negatively impact its sales and profitability.

WEATHER CONDITIONS CAN HURT SALES OF SOME OF SUNBEAM'S PRODUCTS

Weather conditions may negatively impact sales of some of Sunbeam's products. For instance, Sunbeam may not sell as many portable generators as anticipated if there are fewer natural disasters such as hurricanes and ice storms; mild winter weather may negatively impact sales of electric blankets, some health products and smoke detectors; and the late arrival of summer weather

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may negatively impact sales of outdoor camping equipment and grills.

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SUNBEAM REMAINS VULNERABLE TO YEAR 2000 COMPLIANCE PROBLEMS IN ITS SYSTEMS AND THOSE OF ITS SUPPLIERS AND CUSTOMERS WHICH COULD POTENTIALLY DISRUPT SUNBEAM'S OPERATIONS AND MAY REQUIRE GREATER THAN ANTICIPATED REMEDIAL EXPENSES

Sunbeam is preparing for the impact of the Year 2000 on its operations. Year 2000 issues could include potential problems in Sunbeam's information technology and other systems that it use in its operations. Year 2000 system failures could affect routine but critical operations such as:

- o forecasting,
- o purchasing,
- o production,
- o order processing,
- o inventory control,
- o shipping, and
- o billing and collections.

In addition, system failures could affect security, payroll operations and employee safety. Third parties who fail to adequately address their own Year 2000 issues could also expose Sunbeam to potential risks.

Systems and applications that Sunbeam had identified as not Year 2000 ready and which are critical to its operations include:

- o financial software systems, which process:
 - o order entry,
 - o purchasing,
 - o production management,
 - o general ledger,
 - o accounts receivable,
 - o accounts payable functions, and
 - o payroll applications, and
- o critical applications in Sunbeam's manufacturing and distribution facilities, such as warehouse management applications.

Sunbeam has largely implemented the corrective work described above and expects to complete final testing and implementation of such systems in the fourth quarter of 1999.

Sunbeam's failure to timely complete its Year 2000 compliance work could have a material adverse impact on Sunbeam. In addition, the failure of its third-party suppliers and customers to become Year 2000 compliant could have a material adverse impact on Sunbeam.

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At this time, Sunbeam believes that the most likely "worst-case" scenario relating to Year 2000 involves potential disruptions in areas in which its operations must rely on third parties, such as suppliers, whose systems may not work properly after January 1, 2000. While these system failures could significantly affect some of Sunbeam's important operations, currently it cannot estimate either the likelihood or the potential cost of such failures. If Sunbeam does not develop appropriate contingency plans before January 1, 2000, the impact on its operations could be material.

Sunbeam currently estimates that the total cost of addressing and remedying Year 2000 issues and enhancing its operating systems is about \$64 million. Through the first nine months of 1999, including costs incurred in 1998, Sunbeam spent about \$60 million to address Year 2000 issues, with approximately \$41 million of these expenditures occurring in the first nine months of 1999. As Sunbeam completes its

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assessment of the Year 2000 issues, it may determine that the actual expenditures it must incur may be materially higher than its current estimates. The bank credit facility does not permit Sunbeam to spend more than \$50 million on Year 2000 testing and remediation during 1999.

See "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS--Year 2000 Readiness Disclosure" beginning on page 113 for more details of its Year 2000 assessment and compliance efforts.

SUNBEAM'S DEBT COVENANTS CURRENTLY DO NOT ALLOW SUNBEAM TO PAY CASH DIVIDENDS ON SUNBEAM COMMON STOCK

The bank credit facility prohibits Sunbeam from paying cash dividends on Sunbeam common stock. Accordingly, Sunbeam cannot assure you that Sunbeam will be able to pay dividends on Sunbeam common stock. In any event, Sunbeam currently does not intend to pay dividends on Sunbeam common stock. Sunbeam discontinued paying dividends beginning in the second quarter of 1998. See the "SUMMARY--Comparative Per Share Data" section beginning on page 15 for information concerning the history of Sunbeam's dividend payments.

NEGATIVE DEVELOPMENTS SINCE MARCH 1998 HAVE CAUSED SUNBEAM'S COMMON STOCK PRICE TO DROP SIGNIFICANTLY, AND THE RISKS DESCRIBED IN THE "RISK FACTORS" SECTION OF THIS DOCUMENT MAY CAUSE FURTHER DECLINES IN THE PRICE OF SUNBEAM COMMON STOCK

The price of Sunbeam common stock has dropped significantly since March 1998. Sunbeam believes this was the result of many of the negative developments described in the "RECENT DEVELOPMENTS AFFECTING SUNBEAM" section beginning on page 26. On March 18, 1998, the last trading day prior to former management's announcement of lower than expected net sales for the first quarter of 1998, the last reported sale price of Sunbeam common stock was \$50.625 per share. On December 3, 1999, the last reported sale price of Sunbeam common stock was \$4.750 per share. Sunbeam cannot assure you that the market price of Sunbeam common stock will not experience further declines as a result of the risks described in this "RISK FACTORS" section or otherwise. See the "SUMMARY--Market Prices and Dividends" section beginning on page 16 for details of Sunbeam common stock's recent trading prices.

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BECAUSE MANY MEMBERS OF SUNBEAM'S CURRENT MANAGEMENT AND BOARD OF DIRECTORS RECENTLY JOINED SUNBEAM AND DO NOT HAVE A LONG HISTORY OF MANAGING SUNBEAM, THERE CAN BE NO ASSURANCE THAT SUNBEAM'S CURRENT MANAGEMENT AND BOARD OF DIRECTORS WILL BE ABLE TO SUCCESSFULLY MANAGE SUNBEAM

Sunbeam's board of directors replaced several members of Sunbeam's management in June of 1998, including Albert J. Dunlap, Sunbeam's Chairman and Chief Executive Officer. Since that time, six new directors have been appointed or elected to the Sunbeam board. Although Sunbeam's current management has significant experience in the consumer products industry, including working at Coleman, most of Sunbeam's current management and many members of its board of directors had no direct exposure to Sunbeam's operations prior to June 1998. Accordingly, there can be no assurance that Sunbeam's current management and board of directors will be able to successfully manage Sunbeam.

SUNBEAM RELIES ON ITS KEY PERSONNEL AND THE LOSS OF ONE OR MORE OF THOSE PERSONNEL COULD HAVE A MATERIAL ADVERSE EFFECT ON SUNBEAM'S BUSINESS, FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

Sunbeam's operations and prospects depend in large part on the performance of its senior management team. There can be no assurance that Sunbeam would be able to find qualified replacements for any of these individuals if their services were no longer available. The loss of the services of one or more members of Sunbeam's senior management team could have a material adverse effect on Sunbeam's business, financial condition and results of operations. For further information regarding Sunbeam's senior management team, see the discussion below under the caption "MANAGEMENT" beginning on page 133.

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RECENT DEVELOPMENTS AFFECTING SUNBEAM

THE 1998 ACQUISITIONS

On March 2, 1998, in addition to announcing its agreement to acquire Coleman, Sunbeam announced that it had entered into separate agreements to acquire Signature Brands and First Alert, companies not affiliated with Coleman or MacAndrews & Forbes.

In the M&F Transaction, which was completed on March 30, 1998, Sunbeam acquired about 81% of the then outstanding shares of Coleman common stock from Coleman (Parent) Holdings, Inc., a subsidiary of MacAndrews & Forbes. This represented MacAndrews & Forbes' entire interest in Coleman. In exchange, the MacAndrews & Forbes subsidiary received about 14% of the currently outstanding shares of Sunbeam common stock and about \$160 million in cash. Sunbeam also assumed about \$1,016 million of debt, including \$497 million of indebtedness of Coleman. Immediately after the M&F Transaction, as a result of the exercise of Coleman employee stock options, Sunbeam's ownership of Coleman decreased to about 79% of the outstanding shares of Coleman common stock.

At the same time Sunbeam agreed to acquire the Coleman shares from the MacAndrews & Forbes subsidiary, Sunbeam also agreed to acquire the remaining shares of Coleman common stock in the merger and the MacAndrews & Forbes subsidiary voted its shares to approve the merger. Under the February 1998 merger agreement, you will receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed. In addition, unless you exercise and perfect your Delaware law appraisal rights, you will receive warrants each entitling you to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003, under a

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court-approved settlement of litigation relating to the merger. Under the terms of the settlement, you will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed, assuming the number of outstanding shares of Coleman common stock does not increase prior to the completion of the merger as a result of further exercises of Coleman employee stock options. In the aggregate, the Coleman minority stockholders will receive about 6.7 million shares of Sunbeam common stock, about \$87 million in cash, including cash outs of Coleman's remaining employee stock options, and warrants to purchase about 4.98 million shares of Sunbeam common stock (less the warrants awarded by the court to plaintiffs' counsel as their fee), assuming no Coleman stockholders exercise their Delaware law appraisal rights. See "--Settlement of Claims Relating to the M&F Transaction" for information regarding the settlement of legal claims of a subsidiary of MacAndrews & Forbes relating to the M&F Transaction. See "LITIGATION SETTLEMENT AND WARRANTS" for information regarding the settlement of legal claims of Coleman stockholders relating to the merger.

On April 3, 1998, Sunbeam acquired more than 90% of the stock of each of Signature Brands and First Alert in cash tender offers. On April 6, 1998, Sunbeam acquired the remaining shares of each of Signature Brands and First Alert in merger transactions. Signature Brands is a leading manufacturer of a comprehensive line of consumer and professional products, including coffee makers marketed under the Mr. Coffee(Registered) brand name and consumer health products marketed under the Health-o-Meter(Registered), Counselor(Registered) and Borg(Registered) brand names. Signature Brands had revenues of about \$279 million in 1997. First Alert is the worldwide leader in residential fire safety equipment, including smoke and carbon monoxide detectors marketed under the First Alert(Registered) brand name. First Alert had revenues of about \$187 million in 1997. Sunbeam paid about \$255 million in cash, including the paying down of debt, to acquire Signature Brands. Sunbeam paid about \$133 million in cash and assumed about \$49 million in debt--a total consideration of about \$182 million--to acquire First Alert.

On July 12, 1999, one of Sunbeam's wholly owned subsidiaries acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock for an aggregate purchase price of approximately \$31 million. These shares, together with the shares of Coleman common stock already indirectly owned by Sunbeam, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock. Coleman created these shares and Sunbeam acquired them in order to enable Sunbeam and Coleman to file consolidated federal income tax returns and, in certain jurisdictions, consolidated state income tax returns, prior to the completion of the merger. In connection with the acquisition of these shares,

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Sunbeam entered into a tax sharing agreement with Coleman pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had Coleman not been included in the consolidated income tax return of Sunbeam. The terms of the voting preferred stock, the per share issue price and the terms of the tax sharing agreement were approved on Coleman's behalf by Coleman's then sole independent director. The net proceeds from the sale of the preferred stock to Sunbeam were used by Coleman to make a partial repayment on Coleman's note payable to Sunbeam.

On November 9, 1999, Sunbeam announced its intention to divest Coleman's Eastpak business, as well as certain non-essential assets. Sunbeam anticipates that these asset sales will produce net proceeds of approximately \$200 million, which will be used primarily to pay down its bank debt.

ISSUANCE OF DEBENTURES AND BANK CREDIT FACILITY

In order to finance the 1998 acquisitions and to refinance substantially

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all of the indebtedness of Sunbeam, Coleman and its parent corporations, CLN Holdings and Coleman Worldwide, First Alert and Signature Brands, Sunbeam completed an offering of an aggregate principal amount at maturity of \$2,014 million of its Zero Coupon Convertible Senior Subordinated Debentures Due 2018 on March 25, 1998, for net proceeds of about \$730 million, and borrowed about \$1,325 million under a new bank credit facility.

The debentures are due March 25, 2018, are subject to earlier repurchase at the option of the holders on specified dates beginning in 2003 and are convertible into up to 13,242,050 shares of Sunbeam common stock, subject to adjustment in certain events.

The bank credit facility, as amended, allows Sunbeam to borrow up to \$1,700 million under:

- o a \$400 million revolving credit facility maturing on March 30, 2005, of which \$52.5 million may be used only to complete the merger,
- o up to \$800 million in term loans maturing on March 30, 2005, of which \$35 million may be used only to complete the merger, and
- o a \$500 million term loan maturing on September 30, 2006, of which \$5.0 million has already been repaid through September 30, 1999.

Unless Sunbeam further amends its bank credit facility or refinances its bank debt by April 10, 2000, Sunbeam's lenders will be able to accelerate the maturities listed above at any time after April 10, 2000.

Until March 31, 2000, Sunbeam has agreed to limit the total amount of revolving loans (other than those used to fund the merger) at the end of each month as follows:

<TABLE>
<CAPTION>
MONTH

MONTH	AMOUNT
<S>	<C>
April, 1999.....	\$290,400,000
May, 1999.....	\$303,700,000
June, 1999.....	\$279,100,000
July, 1999.....	\$281,400,000
August, 1999.....	\$264,200,000
September, 1999.....	\$257,300,000
October, 1999.....	\$277,000,000
November, 1999.....	\$224,200,000
December, 1999.....	\$185,200,000
January, 2000.....	\$201,500,000
February, 2000.....	\$217,800,000
March, 2000.....	\$234,100,000

</TABLE>

Borrowings under the bank credit facility are secured by, among other things, substantially all of Sunbeam's assets, including a pledge of Sunbeam's stock in Coleman, First Alert, Signature Brands and its other material subsidiaries. See "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION--Security and Guarantees."

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This credit facility accrues interest, at Sunbeam's option:

- o at LIBOR, or

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- o at the base rate of the administrative agent which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%,

in each case, plus an interest rate margin which varies depending on the occurrence of specified events. The interest rate margin is currently 4.00% for LIBOR loans and 2.50% for base rate loans, and is subject to potential decreases in the future, including a decrease to 3.00% for LIBOR loans and 1.75% for base rate loans upon consummation of the merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the bank credit facility. See "--Covenants Under Bank Credit Facility."

Under an April 15, 1999 amendment to the bank credit facility, Sunbeam agreed to pay the bank lenders a loan commitment fee of between 0.25% to 1.00% of the commitments under the bank credit facility as of April 15, 1999. The percentage used to calculate the fee will be determined by reference to the bank lenders' aggregate commitments and loan exposure under the bank credit facility as they may be reduced on or before September 30, 2000. The fee is payable on the earlier of September 30, 2000 and the date the commitments are terminated and the loans and other amounts payable under the bank credit facility are repaid.

At September 30, 1999, Sunbeam owed about \$1,500 million under the bank credit facility (including \$200 million of outstanding revolving credit facility borrowings) and had about \$200 million available for borrowing. See "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION."

COVENANTS UNDER BANK CREDIT FACILITY

Sunbeam's bank credit facility contains a number of covenants, including covenants requiring Sunbeam to meet various financial tests and ratios. As a result of Sunbeam's operating losses, among other things, at June 30, 1998 Sunbeam was not in compliance with these financial covenants of the bank credit facility. As of June 30, 1998, Sunbeam entered into an agreement with its bank lenders which waived Sunbeam's compliance with these covenants and terms through December 31, 1998. On October 19, 1998, Sunbeam's bank lenders agreed to extend this waiver through April 10, 1999, then until April 15, 1999. In April 1999, the waiver was extended to April 10, 2000, and the bank credit facility was amended to, among other things:

- o require Sunbeam to meet new financial tests and ratios,
- o decrease the interest rate margins to 3.75% for LIBOR loans and 2.50% for base rate loans,
- o further reduce the interest rate margins to 3.25% for LIBOR loans and 2.00% for base rate loans as a result of Sunbeam's satisfaction on May 14, 1999 of the agreed upon conditions to this reduction. However, such margins increased to 3.50% for LIBOR loans and 2.25% for base rate loans on September 1, 1999 as a result of the merger not occurring by such date and increased to 4.00% for LIBOR loans and 2.50% for base rate loans on October 1, 1999 as a result of the merger not occurring by such date,
- o defer until April 10, 2000 principal payments of \$69.3 million otherwise due September 30, 1999 and principal payments of \$69.3 million otherwise due March 31, 2000, as a result of Sunbeam's satisfaction on May 14, 1999 of the agreed upon conditions to this deferral,
- o provide that the following events relating to the merger will be events of default under the bank credit facility:
 - o if Sunbeam fails to have the SEC declare this document effective by

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October 30, 1999 (which was subsequently amended to January 10, 2000),

- o if Sunbeam fails to complete the merger within 25 business days after this document is declared effective by the SEC, or

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- o if Sunbeam has to pay more than \$87.5 million in cash to complete the merger, including any payments on account of the exercise of appraisal rights, but excluding related legal, accounting and other customary fees and expenses,
- o require Sunbeam and Coleman to amend Coleman's note payable to Sunbeam and to have Coleman secure the note, which is pledged by Sunbeam to secure the obligations under the bank credit facility, with substantially all of Coleman's assets other than real property,
- o impose restrictions on the total amount of revolving loans (other than those used to fund the merger) permitted to be outstanding at the end of each month under the bank credit facility,
- o require Sunbeam to maintain a concentration cash management system and to repay to the banks (subject to reborrowing) revolving loans to the extent that cash on hand in Sunbeam's concentration accounts on any business day exceeds \$15 million,
- o require Sunbeam to prepay term loans under the bank credit facility on December 31, 1999 to the extent that cash on hand in Sunbeam's concentration accounts plus the total amount of unused revolving loan commitments on this date exceeds \$125 million, but Sunbeam is not required to prepay more than \$69.3 million in total as a result of this provision,
- o require Sunbeam to reserve \$52.5 million of availability under the revolving credit facility for use solely to pay the required cash portion of the merger consideration,
- o limit the amount that Sunbeam may spend on Year 2000 testing and remediation to \$50 million in total during the fiscal year ending December 31, 1999,
- o require Sunbeam to obtain the bank lenders' consent to any litigation settlement concerning the restatement of Sunbeam's 1996 and 1997 fiscal year and first quarter 1998 financial statements if such settlements require the payment of money, not paid by insurance carriers or other third parties, of more than \$1 million in total,
- o impose new informational reporting requirements, and
- o provide Sunbeam with a \$40 million foreign currency revolving loan subfacility.

See "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION."

DELAYED FILING OF REGISTRATION STATEMENT

On March 25, 1998, Sunbeam entered into a registration rights agreement with Morgan Stanley relating to the original issuance of the debentures. The registration rights agreement required Sunbeam to file a registration statement with the SEC by June 23, 1998 to register the debentures and the shares of Sunbeam common stock issuable upon conversion of the debentures for resale by

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the holders. However, Sunbeam did not file that registration statement until February 4, 1999 and the SEC did not declare the registration statement effective until November 8, 1999. The delay resulted from Sunbeam's need to review and restate its historical financial statements following the refusal of its former independent auditors, Arthur Andersen, to consent to the inclusion in that registration statement of their opinion on Sunbeam's 1997 financial statements.

Sunbeam's failure to file that registration statement by June 23, 1998 did not constitute a default under the debentures. However, from June 23, 1998 until the day on which that registration statement was declared effective, cash liquidated damages payable to the holders of the debentures accrued:

- o on a daily basis at a rate per annum equal to 0.25% during the first 90 days, and
- o on a daily basis at a rate per annum equal to 0.50% thereafter,

multiplied, in each case, by the sum of the issue price of the debentures plus the accrued original issue discount on the debentures on each day for which damages are calculated. Sunbeam has made total payments for liquidated damages since June 23, 1998 of \$4.5 million, of which \$1.5 million related to damages for the period through December 31, 1998. A final payment of approximately \$0.5 million, representing liquidated

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damages from September 26, 1999 until the registration statement was declared effective, will be payable on March 25, 2000.

PRESS RELEASES RELATING TO SUNBEAM'S FIRST QUARTER 1998 RESULTS

On March 19, 1998, Sunbeam's prior management issued a press release stating that Sunbeam's net sales for the first quarter of 1998 might be lower than the range of Wall Street analysts' estimates of \$285 million to \$295 million, but that net sales for the quarter were expected to exceed 1997 first quarter net sales of \$253.4 million. On April 3, 1998, Sunbeam's prior management issued a press release announcing that net sales for the first quarter of 1998 were expected to be about 5% lower than those achieved in the first quarter of 1997 and, due to the lower sales and significant one-time charges, a loss was expected for the quarter.

On May 11, 1998, Sunbeam's prior management announced 1998 first quarter results and made forecasts for the remainder of 1998 and beyond. They reported net sales of \$244.3 million for the quarter, as compared to \$253.4 million in the first quarter of 1997. Before one-time charges of \$36.8 million for early retirement of debt and compensation expense relating to new employment agreements with three former Sunbeam executives, they reported a net loss from continuing operations of \$7.8 million in the first quarter of 1998 versus net income from continuing operations of \$20.6 million in the first quarter of 1997. After one-time charges of \$0.43 per share, Sunbeam lost \$0.52 per share in the 1998 quarter, compared with earnings per share of \$0.08 in the comparable 1997 period. Sunbeam's prior management also stated that it expected earnings per share in the range of \$1.00 for 1998 and \$2.00 for 1999. On June 15, 1998, Sunbeam's new management announced that these previously announced forecasts should not be relied upon.

Following each of these press releases, the market price of Sunbeam common stock fell substantially. On October 20, 1998, Sunbeam issued a press release restating operating results for fiscal years 1996 and 1997, as well as the first quarter of fiscal 1998. See "--Restatement of Financial Results," "--Changes in Sunbeam's Management and Board" and "RISK FACTORS."

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CHANGES IN SUNBEAM'S MANAGEMENT AND BOARD

On June 15, 1998, Sunbeam's board of directors removed Albert J. Dunlap as Sunbeam's Chairman and Chief Executive Officer. Three days later, Sunbeam's board of directors removed Russell A. Kersh as Sunbeam's Vice Chairman and Chief Financial Officer. The Sunbeam board took these steps because Sunbeam's outside directors had lost confidence in Mr. Dunlap's leadership. On June 15, 1998, the Sunbeam board elected Peter A. Langerman as non-executive Chairman of the board and Jerry W. Levin as Sunbeam's new Chief Executive Officer. Mr. Langerman, an outside director of Sunbeam since 1990, is President and Chief Executive Officer of Franklin Mutual Advisers, Inc., the investment adviser to Franklin Mutual Series Fund, which owns about 17% of Sunbeam's common stock. Mr. Levin is an Executive Vice President of MacAndrews & Forbes. A subsidiary of MacAndrews & Forbes owns about 14% of Sunbeam's common stock and a warrant which, if exercised in full, would increase its ownership to about 29% of Sunbeam's outstanding common stock. Mr. Levin was Chairman and Chief Executive Officer of Coleman at the time of the M&F Transaction and previously was the Chairman and Chief Executive Officer of Revlon, Inc., an affiliate of MacAndrews & Forbes.

On June 16, 1998, Paul E. Shapiro was appointed as Sunbeam's Executive Vice President and Chief Administrative Officer. Mr. Shapiro also serves as a director and Executive Vice President of Coleman. Mr. Shapiro was the Executive Vice President and General Counsel of Coleman at the time of the M&F Transaction. Bobby G. Jenkins was appointed as Sunbeam's Executive Vice President and Chief Financial Officer on June 15, 1998. Mr. Jenkins also serves as Executive Vice President of Coleman. On April 24, 1998, Karen K. Clark was appointed as Sunbeam's Vice President, Operations Finance. Since April 1999, Ms. Clark has served as Sunbeam's Senior Vice President, Finance. Ms. Clark also serves as Senior Vice President, Finance of Coleman. Jack D. Hall joined Sunbeam on October 1, 1998 as President, International. Steven R. Isko was appointed as Sunbeam's Senior Vice President and General Counsel on June 1, 1999. Mr. Isko also serves as Senior Vice President and General Counsel of Coleman.

In June 1998, Mr. Levin, Howard Gittis of MacAndrews & Forbes, and Lawrence Sondike of Franklin Mutual Advisers, Inc. were elected to the Sunbeam board. William T. Rutter resigned from the Sunbeam

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board effective July 8, 1998, and Faith Whittlesey was elected to fill the vacancy on the Sunbeam board of directors' audit committee resulting from Mr. Rutter's resignation. Messrs. Dunlap and Kersh resigned from the Sunbeam board of directors effective August 5, 1998. In January 1999, Mr. Sondike resigned from the Sunbeam board of directors; in February 1999, John H. Klein, Chairman and Chief Executive Officer of Bi-Logix, Inc., was elected to the Sunbeam board of directors; and on June 29, 1999, Philip E. Beekman, President of Owl Hollow Enterprises, Inc., was elected to the Sunbeam board of directors at its annual stockholders meeting.

In March 1999, Mr. Levin became Chairman of the Sunbeam board of directors, succeeding Mr. Langerman, who remains a director of Sunbeam.

RESTATEMENT OF FINANCIAL RESULTS; CHANGE OF AUDITORS

On June 25, 1998, Sunbeam announced that its former independent auditors, Arthur Andersen, would not consent to the inclusion of their opinion on Sunbeam's 1997 financial statements in a registration statement Sunbeam was then planning to file with the SEC. On June 30, 1998, Sunbeam announced that the audit committee of its board of directors would review the accuracy of Sunbeam's prior financial statements and, therefore, those financial statements should not be relied upon. Sunbeam also announced that Deloitte & Touche LLP had been

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retained to assist the audit committee and Arthur Andersen in this review. On August 6, 1998, Sunbeam announced that the audit committee had determined that Sunbeam would be required to restate its financial statements for 1997, the first quarter of 1998, and possibly 1996, and that the adjustments, while not then quantified, would be material.

On October 20, 1998, Sunbeam announced the restatement of its financial results for a six-quarter period from the fourth quarter of 1996 through the first quarter of 1998. Sunbeam had to restate these financial results because its previously issued financial statements generally overstated losses for 1996, overstated profits for 1997 and understated losses for the first quarter of 1998. The audit committee concluded that Sunbeam had incorrectly recognized revenue during these periods from "bill and hold" and guaranteed sales transactions. The audit committee also concluded that some costs and allowances for sales returns, co-op advertising, customer deductions and reserves for product liability and warranty expense were not accrued or were incorrectly recorded. Finally, the audit committee concluded that various costs were incorrectly included in and charged to restructuring, asset impairment and other costs.

On November 20, 1998, Sunbeam announced that its audit committee had recommended, and its board of directors had approved, the appointment of Deloitte & Touche to replace Arthur Andersen as Sunbeam's independent auditors for fiscal year 1998. Arthur Andersen will continue to provide Sunbeam with limited professional services. For further information regarding Sunbeam's independent auditors, see "CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE."

REPORTING OF RESULTS FOR FIRST NINE MONTHS OF 1999 AND FISCAL YEAR 1998

On November 9, 1999, Sunbeam reported that for the first nine months of 1999 Sunbeam had net sales of \$1,786.4 million and a net loss of \$155.0 million, or a loss per diluted share of \$1.54. Results for the nine months ended September 30, 1998 include Coleman, Signature Brands and First Alert from their respective acquisition dates. After adjusting 1998 sales to include sales of the acquired companies for the periods from the beginning of 1998 through the respective dates of acquisition, 1999 net sales increased approximately \$162 million or approximately 10% over 1998 combined historical net sales of \$1,624.0 million. Sunbeam also announced that net cash used in operations was \$73.2 million for the first nine months of 1999 as compared to \$224.7 million during the same period in the prior year.

On April 21, 1999, Sunbeam reported that, for the full year 1998, Sunbeam had net sales of \$1,800 million and a net loss of \$898 million, or a loss of \$9.25 per diluted share. Excluding sales of Coleman, First Alert and Signature Brands, comparable sales declined 23% to \$828 million in 1998 from about \$1,100 million in 1997. Sunbeam also announced net cash provided by operations of about \$30 million for the fourth quarter of 1998, compared with net cash used in operations of about \$220 million during the first three quarters of 1998.

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LITIGATION INVOLVING SUNBEAM

Since prior management's issuance of the April 3, 1998 press release concerning Sunbeam's 1998 first quarter results, many lawsuits alleging legal claims arising under federal and state securities and other laws have been filed against Sunbeam, some of Sunbeam's former directors and officers, some of Sunbeam's current directors and Arthur Andersen. Sunbeam is currently defending these lawsuits in a number of courts. Many of these suits relate to Sunbeam's financial performance from the second quarter of 1997 through the second quarter of 1998. Many plaintiffs are claiming that Sunbeam's prior management

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misrepresented and omitted material information in its public filings and in its statements concerning Sunbeam's historical and expected future results of operations. In many of these cases, the plaintiffs claim that the alleged actions were intended to artificially inflate the market price of Sunbeam's common stock. Sunbeam's insurers have also attempted to have Sunbeam's directors' and officers' liability policies voided or canceled or have advised Sunbeam that they do not intend to provide coverage with respect to these lawsuits. Sunbeam is unable to predict the outcome of these lawsuits or its potential exposure to damages. However, if Sunbeam were to lose these lawsuits, the judgments would likely have a material adverse effect on Sunbeam's financial condition, results of operations and cash flow. For a more detailed description of these and other lawsuits, see "BUSINESS OF SUNBEAM--Litigation and Other Contingent Liabilities."

SEC INVESTIGATION

The staff of the Division of Enforcement of the SEC advised Sunbeam in a letter dated June 17, 1998 that it was conducting an informal inquiry into Sunbeam's accounting policies and procedures. On July 2, 1998, the SEC advised Sunbeam that it had issued a formal order of investigation. The order indicates that the SEC is investigating whether Sunbeam, certain of its current or former officers, directors, employees and certain other persons and entities violated the federal securities laws and regulations by:

- o filing or causing to be filed inaccurate reports with the SEC,
- o failing to maintain accurate books, records and accounts,
- o failing to create or maintain adequate internal accounting controls, or circumventing such controls,
- o knowingly or recklessly making false or misleading statements in reports filed with the SEC or in other public statements, or
- o making false or misleading statements to an accountant in connection with audits or examinations of Sunbeam's financial statements or reports filed with the SEC.

At the time the formal order of investigation was issued, the SEC also subpoenaed various documents from Sunbeam. On November 4, 1998, Sunbeam received another SEC subpoena requiring the production of additional documents. Sunbeam has cooperated with the SEC and has furnished the SEC with documents they requested. Sunbeam has, however, declined to provide the SEC with material Sunbeam believes is subject to the attorney-client privilege and the work product immunity. Sunbeam cannot predict how long the SEC investigation will continue or its outcome.

SETTLEMENT OF CLAIMS RELATING TO THE M&F TRANSACTION

On August 12, 1998, Sunbeam announced that it had entered into an agreement to settle threatened claims of the MacAndrews & Forbes subsidiary that sold Sunbeam a controlling interest in Coleman in the M&F Transaction in March 1998, in exchange for consideration which included about 14 million shares of Sunbeam common stock. These shares had a market value of about \$580 million when the MacAndrews & Forbes subsidiary agreed to the M&F Transaction, but their market value was less than \$100 million at the time of the settlement.

The claims of the MacAndrews & Forbes subsidiary were substantially the same as the claims made in a number of the stockholder lawsuits filed in the second and third quarters of 1998 alleging that Sunbeam, in 1997 and the first quarter of 1998 under its prior management, made material misstatements and omissions of fact that artificially inflated the market price of Sunbeam common stock. The MacAndrews & Forbes

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subsidiary also alleged that Sunbeam had breached representations made in the agreement relating to the M&F Transaction. The settlement:

- o released Sunbeam from threatened claims arising out of Sunbeam's acquisition of the MacAndrews & Forbes subsidiary's controlling interest in Coleman,
- o enabled Sunbeam to retain the services of executive personnel affiliated with MacAndrews & Forbes who had been managing Sunbeam since mid-June of 1998, including Jerry W. Levin, Sunbeam's Chairman and Chief Executive Officer, Paul E. Shapiro, Sunbeam's Executive Vice President and Chief Administrative Officer, and Bobby G. Jenkins, Sunbeam's Executive Vice President and Chief Financial Officer, and
- o provided for continuing management assistance and other support by MacAndrews & Forbes to Sunbeam at its request.

In exchange, Sunbeam issued to the MacAndrews & Forbes subsidiary a warrant expiring August 24, 2003 to purchase 23 million shares of Sunbeam common stock at a cash exercise price of \$7 per share, subject to anti-dilution adjustments. Sunbeam has agreed that the MacAndrews & Forbes subsidiary can require Sunbeam to register under federal and applicable state securities laws the warrant and the shares of Sunbeam common stock issuable upon exercise of the warrant. See "BUSINESS--Litigation and Other Contingent Liabilities."

The terms of the settlement and warrant were negotiated and approved on Sunbeam's behalf by a special committee of four of Sunbeam's outside directors, none of whom has any affiliation with MacAndrews & Forbes. The members of the special committee were Howard Kristol (Chairman), Charles Elson, Peter Langerman and Faith Whittlesey. They were assisted by independent financial advisors and legal counsel.

For their services as members of the special committee in connection with the settlement, Mr. Kristol received additional compensation of \$50,000 and Messrs. Elson and Langerman and Mrs. Whittlesey each received additional compensation of \$35,000. Sunbeam also agreed to indemnify each of the members of the special committee to the fullest extent allowed by applicable law and Sunbeam's certificate of incorporation and by-laws for any liabilities arising out of their services on the special committee.

The settlement normally would have required approval by Sunbeam's stockholders under the rules of the NYSE because of the issuance of the warrant as part of the settlement. However, Sunbeam's audit committee determined that the delay that would be necessary to secure stockholder approval prior to issuing the warrant would:

- o be lengthy due to the SEC's ongoing investigation of Sunbeam's accounting practices and policies and the need to complete the restatement of Sunbeam's historical financial statements,
- o inhibit Sunbeam's ability to reach a settlement with the MacAndrews & Forbes subsidiary and to retain and hire essential senior management personnel, and
- o seriously jeopardize Sunbeam's financial viability.

Based on these determinations, Sunbeam's audit committee, relying on an exception provided in the applicable NYSE stockholder approval policy, expressly approved Sunbeam's omission to seek stockholder approval. The NYSE accepted Sunbeam's application of the exception.

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In connection with the settlement agreement, Messrs. Levin, Shapiro and Jenkins each signed three-year employment agreements with Sunbeam. See "MANAGEMENT."

OPTIONS EXCHANGE

In August 1998, Sunbeam approved an exchange plan for outstanding options held by its employees to purchase shares of Sunbeam common stock. The exchange plan, which has been completed, provided for the outstanding options with exercise prices in excess of \$10.00 per share to be valued by reference to the generally accepted Black-Scholes option pricing model, and permitted Sunbeam employees to exchange old

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options for new options with an exercise price of \$7.00 per share having a value equivalent to the value of the old options. See Note 9 to Sunbeam's Consolidated Financial Statements.

NEW YORK STOCK EXCHANGE LISTING

In May 1998, the NYSE advised Sunbeam that it did not meet the NYSE's continuing listing standards because Sunbeam did not have tangible net assets of at least \$12 million at December 31, 1997 and average annual net income of at least \$600,000 for 1995, 1996 and 1997. Sunbeam representatives met with NYSE officials, and in March 1999, the NYSE informed Sunbeam that Sunbeam common stock would not be delisted at that time, although the NYSE would continue to monitor Sunbeam's financial condition and operating performance. On August 5, 1999, the NYSE advised Sunbeam that the NYSE had revised its continuing listing standards, and that Sunbeam is in compliance with the revised standards.

MATTERS INVOLVING FORMER MANAGEMENT

In early August 1998, Sunbeam entered into a six-month agreement with Messrs. Dunlap and Kersh in which the parties agreed not to assert claims against each other and to exchange information relating to the pending stockholder lawsuits. Sunbeam also agreed to pay a portion of the accrued vacation and employment benefits of Messrs. Dunlap and Kersh.

After the agreement expired, by letters dated February 9, 1999, Messrs. Dunlap and Kersh submitted demands for arbitration to the American Arbitration Association alleging that Sunbeam terminated their employment without cause. Messrs. Dunlap and Kersh are seeking lump sum payments of about \$5,250,000 and \$2,296,875, respectively. Messrs. Dunlap and Kersh also are seeking:

- o amounts for accrued but unused vacation,
- o amounts in respect of certain benefit plans,
- o a ruling that their options to acquire shares of Sunbeam common stock are fully vested and that they will receive the economic equivalent of their participation in Sunbeam's program for repricing of options, and
- o in the case of Mr. Kersh, more than \$3 million, including tax gross-ups, with respect to his restricted stock.

Sunbeam is vigorously contesting the claims of Messrs. Dunlap and Kersh. To date, Sunbeam has not made any severance payments to either of Messrs. Dunlap or Kersh.

On March 23, 1999, Messrs. Dunlap and Kersh filed a complaint in the Court

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of Chancery of the State of Delaware seeking an order directing Sunbeam to advance attorneys' fees and other expenses incurred in connection with the defense of the stockholder lawsuits and the SEC investigation. A trial of this summary proceeding was held on June 15 and 16, 1999, and the court ordered Sunbeam to advance Messrs. Dunlap and Kersh about \$1.4 million for their expenses incurred through the date of their complaint and to advance expenses reasonably incurred by them in the future. Messrs. Dunlap and Kersh have agreed to repay to Sunbeam all amounts reimbursed or advanced if it is ultimately determined that they are not entitled to indemnification under Delaware law.

ACQUISITION OF COLEMAN PREFERRED STOCK

On July 12, 1999, one of Sunbeam's wholly owned subsidiaries acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock, for an aggregate purchase price of approximately \$31 million. These shares, together with the shares of Coleman common stock already indirectly owned by Sunbeam, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock. Coleman created these shares and Sunbeam acquired them in order to enable Sunbeam and Coleman to file consolidated federal income tax returns and, in certain jurisdictions, consolidated state income tax returns, prior to the completion of the merger. In connection with the acquisition of these shares, Sunbeam entered into a tax sharing agreement with Coleman pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had

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Coleman not been included in the consolidated income tax return of Sunbeam. The terms of the voting preferred stock, the per share issue price and the terms of the tax sharing agreement were approved on Coleman's behalf by Coleman's then sole independent director. The net proceeds from the sale of the preferred stock to Sunbeam were used by Coleman to make a partial repayment on Coleman's note payable to Sunbeam.

For information concerning the terms of the new preferred stock issued to Sunbeam, see "DESCRIPTION OF COLEMAN CAPITAL STOCK--Coleman Preferred Stock."

PROPOSED SALE OF COLEMAN EASTPAK BUSINESS

On November 9, 1999, Sunbeam announced its intention to divest Coleman's Eastpak business, as well as certain non-essential assets. Sunbeam anticipates that these asset sales will produce net proceeds of approximately \$200 million, which will be used primarily to pay down its bank debt.

RECENT DEVELOPMENTS AFFECTING COLEMAN

In April 1999, the NYSE advised Coleman that it did not meet the NYSE's continuing listing standards because Coleman did not have tangible net assets of at least \$12 million at September 30, 1998 and average annual net income of at least \$600,000 for fiscal years 1997, 1996 and 1995. At that time, Coleman requested the NYSE to continue to list the Coleman common stock until completion of the merger. The NYSE subsequently advised Coleman that Coleman also failed to satisfy certain non-financial continuing listing standards. On August 5, 1999, the NYSE advised Coleman that the NYSE had revised its continuing listing standards, and that Coleman is in compliance with the revised financial standards. Coleman and the NYSE have agreed upon a program whereby Coleman will correct the deficiencies in its non-financial continuing listing standards by the end of 1999. Coleman is currently complying with such program. If Coleman were to be delisted from the NYSE, it could adversely affect the market price of Coleman's common stock and Coleman's ability to sell its capital stock to third

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parties. However, Sunbeam's bank credit facility currently restricts Coleman from taking such action.

Following the M&F Transaction, Sunbeam caused Coleman to repay substantially all of its outstanding indebtedness (which had been assumed by Sunbeam in the M&F Transaction) with the proceeds of borrowings from Sunbeam. Since the completion of the M&F Transaction, Coleman has borrowed additional funds from Sunbeam. During 1998 and through April 15, 1999, these borrowings were evidenced by an unsecured subordinated demand note payable by Coleman to Sunbeam. This note was pledged by Sunbeam to its lenders as security for Sunbeam's obligations under its bank credit facility. In April 1999, Coleman's note payable to Sunbeam was revised and secured by a pledge of Coleman assets in favor of Sunbeam's lending banks. The revised Coleman note had an unpaid principal amount of \$303.2 million on September 30, 1999. See "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES--Financial Transactions Between Coleman and Sunbeam."

As described above, on July 12, 1999, Coleman issued 3,000,000 shares of a newly created series of Coleman voting preferred stock to one of Sunbeam's wholly owned subsidiaries. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM--Acquisition of Coleman Preferred Stock."

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SPECIAL FACTORS

BACKGROUND OF THE MERGER

In the spring of 1997, as part of a long-term strategic planning process, Sunbeam's prior management began exploring a possible sale of Sunbeam or the making of one or more major acquisitions. On April 22, 1997, representatives of Morgan Stanley & Co., Incorporated, Sunbeam's financial advisor, met with Albert J. Dunlap, Sunbeam's then Chairman and Chief Executive Officer, and Russell A. Kersh, Sunbeam's then Vice Chairman and Chief Financial Officer, to discuss, among other things, the retention of Morgan Stanley as Sunbeam's financial advisor in connection with a possible sale of Sunbeam or one or more major acquisitions by Sunbeam.

On September 11, 1997, Morgan Stanley was formally retained by Sunbeam to assist in connection with a possible sale of Sunbeam, one or more possible acquisitions by Sunbeam and the consideration of other strategic alternatives. Thereafter, representatives of Morgan Stanley contacted five companies in the branded consumer products business to determine whether any of these companies would be interested in exploring a possible acquisition of Sunbeam. Morgan Stanley contacted only those companies which it believed were large enough to finance an acquisition of Sunbeam and to successfully integrate Sunbeam's operations. In addition, Morgan Stanley selected only companies with product lines and operations which it believed were compatible with or complementary to those of Sunbeam. One of the companies contacted was MacAndrews & Forbes, which Morgan Stanley from time to time advises on a variety of business and financial matters. None of the companies contacted by Morgan Stanley expressed interest in acquiring Sunbeam at a price which would have constituted a premium over the then current market price of the Sunbeam common stock. Based on Morgan Stanley's initial contacts with potential acquirors of Sunbeam, Sunbeam's then senior management concluded that it was unlikely that any major consumer products company would be likely to pursue an acquisition of Sunbeam at a price or on terms that would be acceptable to Sunbeam. Morgan Stanley then explored the impact on Sunbeam of various other strategic alternatives, including a sale of one or more of Sunbeam's businesses, a spin-off of one or more of Sunbeam's subsidiaries or a recapitalization of Sunbeam. These strategic alternatives were rejected by Sunbeam's former management because of former management's stated belief that one or more acquisitions by Sunbeam would have a more positive

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impact on stockholder value. Former management then directed Morgan Stanley to shift its focus to one or more possible major acquisitions.

On December 12, 1997, Mr. Kersh, David C. Fannin, Sunbeam's then Executive Vice President, General Counsel and Secretary, and Peter A. Langerman, a director of Sunbeam, met with Jerry W. Levin, then Chairman and Chief Executive Officer of Coleman, Paul E. Shapiro, then Coleman's Executive Vice President and General Counsel, and Joseph P. Page, then Executive Vice President and Chief Financial Officer of Coleman, and discussed Coleman's businesses and the potential cost savings, efficiencies and other benefits that could result from a combination of Sunbeam and Coleman. The December 12 meeting was initiated by Morgan Stanley on Sunbeam's behalf. Notwithstanding MacAndrews & Forbes' previous rejection of Sunbeam's overtures regarding an acquisition of Sunbeam by MacAndrews & Forbes, both Morgan Stanley and Sunbeam believed that the complementary nature of the product offerings of Sunbeam and Coleman, the asset base of Coleman, including its ownership of various brand names which enjoy substantial consumer recognition, the potential revenue and operational benefits associated with a Sunbeam/Coleman combination and the then current trading prices of Coleman's common stock all favored an acquisition of Coleman by Sunbeam.

At that time, MacAndrews & Forbes indirectly owned about 81% of the Coleman common stock through various subsidiaries, including Coleman (Parent) Holdings. Other stockholders then owned about 19% of the outstanding Coleman common stock. For further information regarding the organizational structure of MacAndrews & Forbes and the structure of the M&F Transaction, see "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES--M&F Transaction."

On December 18, 1997, Mr. Dunlap and Michael Price, the then President and Chief Executive Officer of Franklin Mutual Advisers, Inc., Sunbeam's largest stockholder, met with Ronald O. Perelman, MacAndrews & Forbes' Chairman, Chief Executive Officer and sole stockholder, and another senior executive of MacAndrews & Forbes. Mr. Dunlap suggested a possible transaction in which Sunbeam would

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acquire Coleman for consideration valued in the range of \$18 to \$22 per share of Coleman common stock. Mr. Perelman advised Mr. Dunlap that the price range was too low and indicated that he would not support a transaction in that price range.

On or about January 22, 1998, in an effort to revive a possible transaction, a representative of Morgan Stanley contacted a representative of MacAndrews & Forbes and indicated that Sunbeam might consider a possible transaction involving both cash and shares of Sunbeam common stock at a price higher than the price range suggested by Mr. Dunlap at the December 18 meeting. MacAndrews & Forbes' representative indicated his willingness to discuss a possible transaction on those terms. On January 23, 1998, representatives of Morgan Stanley met with representatives of MacAndrews & Forbes to begin discussions regarding a possible transaction between Sunbeam and Coleman. On January 29, 1998, representatives of Sunbeam and Morgan Stanley met with representatives of Coleman and MacAndrews & Forbes, as well as representatives of Credit Suisse First Boston Corporation, Coleman's financial advisor. During the meeting, the parties discussed the potential cost savings, revenue and operational efficiencies and other benefits that might be associated with a business combination of Sunbeam and Coleman and a preliminary schedule for mutual due diligence. During the week of February 2, 1998, Morgan Stanley submitted to MacAndrews & Forbes an outline of a possible transaction structure which focused on Sunbeam's acquisition of Coleman in a one-step merger of a wholly owned Sunbeam subsidiary with and into Coleman in which all outstanding shares of Coleman common stock, including the shares owned indirectly by

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MacAndrews & Forbes, would be exchanged for consideration consisting solely of Sunbeam common stock. The proposal was rejected because it did not contemplate the assumption by Sunbeam of the indebtedness of two subsidiaries of MacAndrews & Forbes which were corporate parents of Coleman holding MacAndrews & Forbes' interest in Coleman--CLN Holdings (the subsidiary of Coleman (Parent) Holdings) and Coleman Worldwide (the subsidiary of CLN Holdings)--or the payment of any cash consideration. At that time, Coleman Worldwide and CLN Holdings had aggregate outstanding indebtedness of about \$518.7 million.

On February 6, 1998, representatives of Morgan Stanley met with representatives of MacAndrews & Forbes and Credit Suisse First Boston to again discuss a possible acquisition of Coleman by Sunbeam. At this meeting, the possibility of Sunbeam's acquisition of MacAndrews & Forbes' interest in Coleman, including Sunbeam's assumption of the indebtedness of Coleman Worldwide and CLN Holdings, as the first step in an acquisition of Coleman was discussed. Although the parties had not yet reached agreement on price or the value of Coleman, the parties began to discuss this structure.

On February 13, 1998 and February 19, 1998, representatives of Sunbeam and Morgan Stanley participated in conference calls with a representative of MacAndrews & Forbes and discussed the terms of a possible transaction, including structure and price. The parties tentatively agreed that the transaction would be structured as a stock purchase in which Sunbeam would acquire all of the outstanding capital stock of CLN Holdings from Coleman (Parent) Holdings, an indirect subsidiary of MacAndrews & Forbes. Under this structure, Sunbeam in effect would assume the indebtedness of CLN Holdings and Coleman Worldwide. The consideration payable by Sunbeam was not, however, agreed upon. Due diligence meetings were held at various times on and after February 21, 1998 during which representatives of Sunbeam and Morgan Stanley, as well as Sunbeam's accountants and consultants, met with representatives of Coleman, MacAndrews & Forbes and Credit Suisse First Boston, as well as Coleman's accountants, to discuss Coleman's financial results for fiscal year 1997, strategic plans and financial projections for fiscal year 1998.

Due diligence meetings were also held on February 23 and 24, 1998 during which representatives of Sunbeam met with representatives of Coleman, along with representatives of MacAndrews & Forbes and Credit Suisse First Boston, to discuss Sunbeam's long-term strategic plan and financial projections for fiscal years 1998 through 2000.

On February 24, 1998, Messrs. Kersh and Fannin and representatives of Morgan Stanley participated in conference calls with representatives of MacAndrews & Forbes to finalize the transaction structure and negotiate the remaining terms of the transaction. During these conference calls, the parties reached agreement on the type of consideration payable by Sunbeam in the acquisition, although neither the amount of cash consideration nor the precise exchange ratio of Sunbeam common stock for Coleman common stock was agreed upon. On February 25 and 26, 1998, meetings and conference calls were held between representatives

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of Sunbeam and its legal advisors, representatives of Coleman and its legal advisors, and representatives of MacAndrews & Forbes and its legal advisors. During the February 26, 1998 meetings and conference calls, the parties agreed that the final transaction structure would consist of a merger of CLN Holdings and a wholly owned Sunbeam subsidiary, followed by a second-step merger of a wholly owned Sunbeam subsidiary with Coleman. At that time, the parties also reached final agreement on the consideration payable by Sunbeam in the acquisition, including the amount of cash consideration and the precise exchange ratio of Sunbeam common stock for Coleman common stock. The parties and their advisors then finalized definitive agreements reflecting the agreed upon

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transaction structure and consideration.

On February 25, 1998, Coleman's then board of directors met and received and considered the presentations of the management of Coleman, Credit Suisse First Boston and Coleman's legal counsel regarding the transactions. The presentation of Credit Suisse First Boston was addressed, primarily, to the fairness to the Coleman minority stockholders of the consideration payable under the merger agreement. As part of this presentation, representatives of Credit Suisse First Boston evaluated the following factors:

- o the proposed structure of the transaction;
- o the type and amount of consideration payable to the Coleman minority stockholders in the merger and to the MacAndrews & Forbes subsidiary, Coleman (Parent) Holdings, in the M&F Transaction, including the assumption by Sunbeam of the indebtedness of Coleman Worldwide, CLN Holdings and Coleman;
- o the premium represented by the then value of the merger consideration when compared to:
 - o historical trading prices of the Coleman common stock;
 - o Coleman's EBITDA for fiscal years 1997 and 1998; and
 - o Coleman's earnings per share for fiscal years 1997 and 1998; and
- o the value of Coleman, as measured by:
 - o an analysis of the then present value of Coleman's future unlevered cash flows generated by its then current assets;
 - o the public market trading values of comparable companies; and
 - o the prices paid in recent acquisitions of comparable companies.

On Friday, February 27, 1998, meetings of the boards of directors of Coleman and Sunbeam were held to consider and act upon the proposed transactions. At the meeting of the Coleman board Credit Suisse First Boston delivered its opinion to the Coleman board to the effect that, as of that date, the consideration of 0.5677 of a share of Sunbeam common stock and \$6.44 in cash, without interest thereon, in exchange for each share of Coleman common stock, was fair, from a financial point of view, to the stockholders of Coleman, other than MacAndrews & Forbes and its subsidiaries.

At the meeting of the Sunbeam board, the directors of Sunbeam received and considered presentations of Morgan Stanley regarding the transactions. The presentation of Morgan Stanley was addressed to the fairness to Sunbeam of the consideration payable under the merger agreement. As part of this presentation, representatives of Morgan Stanley, among other things, discussed with the Sunbeam board the following factors:

- o the strategic rationale for the transaction, including:
 - o the strength of Coleman's brand names and the potential revenue benefits they presented to Sunbeam;
 - o the benefits associated with an acquisition by Sunbeam in terms of market expectations, Sunbeam's ability to remain a market leader and the increased leverage over distribution channels associated with increased size; and
- o the potential for synergies and cost savings as a result of the merger;

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- o the proposed structure of the transaction;

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- o the financial condition of Coleman and Sunbeam;
- o the nature of Coleman's and Sunbeam's business operations and their future prospects;
- o estimates of the revenue and operational benefits expected to be realized as a result of the transaction as prepared by the management of Sunbeam;
- o an analysis of the present value of Coleman's projected cash flows with a terminal value applied;
- o the public market trading values of comparable companies with a projected control premium included; and
- o prices paid in recent acquisitions of comparable companies.

In addition, at the February 27, 1998 Sunbeam board meeting, Morgan Stanley delivered its opinion to the Sunbeam board to the effect that, as of that date, the consideration payable in the merger and the M&F Transaction was fair, from a financial point of view, to Sunbeam.

Following the receipt of the respective fairness opinions, the boards of directors of Sunbeam and Coleman each approved the merger and the M&F Transaction. Definitive agreements were executed by the parties late that night and a press release announcing the transactions was issued before the opening of trading on the NYSE on Monday, March 2, 1998.

On February 27, 1998, Coleman Worldwide, as the owner of about 81% of the then outstanding shares of Coleman common stock, executed a written consent and voted its shares to approve the merger agreement and the merger. As a result, no further action on the part of any stockholder of Coleman is required to complete the merger.

As described above under the caption "RECENT DEVELOPMENTS AFFECTING SUNBEAM," since the merger agreement was approved and signed in February 1998 and the M&F Transaction was completed in March 1998, adverse developments affecting Sunbeam have caused a substantial decrease in the market value of the Sunbeam common stock. As a result, the value of the consideration paid to the MacAndrews & Forbes subsidiary in the M&F Transaction and the value of the consideration to be paid to Coleman's other stockholders under the merger agreement have also declined substantially. Coleman and Sunbeam have not considered amending or terminating the merger agreement because the merger agreement, by its terms, cannot be amended or terminated. Instead, Coleman and Sunbeam determined to provide additional consideration to the Coleman minority stockholders in connection with the settlement of the Coleman minority stockholders' litigation claims.

COLEMAN'S REASONS FOR THE MERGER AND APPROVAL OF THE COLEMAN BOARD

At its meetings on February 25 and 27, 1998, the then Coleman board received and considered the presentations of Coleman management, Credit Suisse First Boston and Coleman's legal counsel regarding the merger agreement and the merger. At its February 27 meeting, the then Coleman board unanimously approved and adopted the merger and approved the merger agreement and the transactions contemplated by the merger agreement. See "--Background of the Merger."

In reaching its determination to approve the merger, the then Coleman board considered a number of factors. Listed below are the material factors, both

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positive and negative, considered. In view of the number and variety of factors considered in connection with its evaluation of the merger, the then Coleman board did not consider it practicable to, nor did it attempt to, quantify or otherwise assign relative weights to the specific factors considered in reaching its determination. In addition, individual members of the then Coleman board may have given different weight to the different factors.

The then Coleman board identified and considered a variety of positive factors in its deliberations concerning the merger, including those set forth below.

Coleman's Business, Condition and Prospects. The Coleman board reviewed Coleman's business, its then current financial condition and results of operations and its future prospects, including Coleman's ability to maintain its position in the consumer products business at its present size, and the current and anticipated developments in Coleman's business. The Coleman board received and reviewed presentations from, and

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discussed the terms and conditions of the merger agreement with, executive officers of Coleman and Coleman's financial and legal advisors. The Coleman board considered the views of its management and financial advisor regarding recent trends in the industry in which Coleman operates, including recent acquisitions and business combinations. Based on its familiarity with the business, current financial condition and results of operations and future prospects of Coleman, and in light of the various presentations it received, the Coleman board concluded that a business combination of Coleman with Sunbeam would be in the best interests of Coleman and its stockholders.

Terms and Structure of the Transaction. The Coleman board of directors considered the fact that the merger agreement does not contain any provisions that either (1) limit the effect of changes in the market price of the Sunbeam common stock prior to the completion of the merger on the value of the consideration to be received by Coleman stockholders in the merger or (2) permit Coleman or Sunbeam to terminate the merger agreement based upon changes in stock price and that, accordingly, the value of the consideration could change based on the performance of the Sunbeam common stock between the execution of the merger agreement and the completion of the merger. While recognizing that the absence of these provisions exposed Coleman's stockholders to market risk, the Coleman board considered this risk to be mitigated to some extent by the trading history of Sunbeam common stock during the period from January 1, 1997 through February 24, 1998 and the fact that the Sunbeam common stock had outperformed both the Coleman common stock and the Standard and Poor's 500 Stock Index during that period.

The Coleman board reviewed the economic terms of the transaction based upon the closing prices of the Coleman common stock and the Sunbeam common stock on February 24, 1998 and February 26, 1998, the days prior to each of the meetings of the Coleman board. As reported on the NYSE Composite Transactions Tape, the closing prices of Sunbeam common stock and Coleman common stock were \$40.625 and \$20.688, respectively, on February 24, 1998, and \$41.875 and \$20.188, respectively, on February 26, 1998. The Coleman board considered that, in each case, the merger consideration implied a per share premium of about 44.2% when the market value of the merger consideration was compared to the then market price per share of Coleman common stock. The Coleman board also considered that the merger consideration was higher than the value implied by the historical stock market prices of the Coleman common stock and Sunbeam common stock.

The Coleman board also considered the fact that the transaction was structured as a two-step acquisition which, among other things, would enable Sunbeam to acquire control of Coleman as quickly as possible in order to reduce

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disruption to Coleman's business. The two-step structure would enable Sunbeam to acquire control of Coleman more quickly than in a one-step transaction, since Sunbeam could issue shares of its common stock to the MacAndrews & Forbes subsidiary that owned the shares of Coleman common stock without having to register the Sunbeam shares under the federal securities laws, thereby avoiding the delay inherent in the registration process. The agreement relating to the M&F Transaction was signed on February 27, 1998 and the transaction was completed thirty days later on March 30, 1998. As described below under "--Purposes and Effects of the Merger," Sunbeam believed that it was in the best interests of its stockholders that Sunbeam acquire Coleman for consideration consisting, at least in part, of shares of its common stock. Accordingly, Sunbeam believed that a cash tender offer for all outstanding shares of Coleman common stock, which also would have avoided the registration process, was not an acceptable alternative.

Opinion of Credit Suisse First Boston. The Coleman board considered the oral opinion delivered by Credit Suisse First Boston at the meeting of the Coleman board on February 27, 1998, which was subsequently confirmed in writing, to the effect that, as of that date and based upon and subject to the matters described in the opinion, the cash and stock consideration payable in the merger was fair from a financial point of view to Coleman's minority stockholders. WHEN CREDIT SUISSE FIRST BOSTON WAS ENGAGED BY COLEMAN, THEY WERE NOT ASKED TO RENDER AN UPDATED OPINION AS OF THE DATE OF THIS DOCUMENT AND NEITHER SUNBEAM NOR COLEMAN HAS REQUESTED THAT THEY DO SO. MOREOVER, CREDIT SUISSE FIRST BOSTON HAS ADVISED SUNBEAM THAT ITS OPINION, ALTHOUGH CORRECT WHEN GIVEN, SHOULD NO LONGER BE RELIED UPON BECAUSE OF SUBSEQUENT NEGATIVE DEVELOPMENTS AFFECTING SUNBEAM.

Ability of Coleman's Stockholders to Obtain a Continuing Interest in Sunbeam. The Coleman board considered that, under the terms of the merger agreement, Coleman's stockholders will receive equity

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securities of Sunbeam, thus enabling Coleman's stockholders to participate in increases in the value of Sunbeam, including any value that may be generated through Sunbeam's acquisition of Coleman's businesses. The Coleman board also noted that the price of the Sunbeam common stock had more than doubled since the time Mr. Dunlap had become Chief Executive Officer of Sunbeam.

Ownership of Coleman Voting Stock. The Coleman board considered the fact that prior to the merger the Coleman minority stockholders were stockholders in a company controlled by MacAndrews & Forbes, but that following the merger they would be stockholders in a public company without any controlling stockholder and therefore the Coleman minority stockholders, as stockholders of Sunbeam, may be able to obtain a control premium with respect to their Sunbeam common stock in the future. The ability of Coleman's stockholders to receive dividends or other distributions declared and paid by Coleman was not considered material by the Coleman board because Coleman had not declared a dividend since its initial public offering in February 1992 and at the time of the approval of the merger, the then Coleman board had no plans to declare any dividends.

Availability of Appraisal Rights. The Coleman board considered the fact that the Coleman minority stockholders would have the right to pursue appraisal rights under Delaware law. Accordingly, any Coleman public stockholder who did not wish to accept the cash and stock consideration payable under the merger agreement would have the right to dissent from the merger and have the fair value of his Coleman shares determined by a court and paid to him in cash.

In addition, the then Coleman board identified and considered a variety of potentially negative factors, including those set forth below.

Failure to Realize Expected Benefits. The then Coleman board considered

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the possibility that the operational and revenue benefits expected to be realized as result of the transaction might not be fully realized. For example, some of the benefits of the transaction projected by the then Coleman board depended upon the ability of Sunbeam to cut costs, streamline operations and capitalize on the revenue and operational benefits derived from a combination of the two companies and the unrealized potential of Coleman's assets. Any such projected benefits are inherently subject to risks and uncertainties beyond the control of either Sunbeam or Coleman. The then Coleman board considered that any failure by Sunbeam to successfully implement its business strategies and cost-saving initiatives could have a material adverse effect on the market price of the Sunbeam common stock and thereby adversely affect former Coleman stockholders who receive Sunbeam shares in the merger.

Possible Failure to Complete the Transaction. The then Coleman board considered that the M&F Transaction was subject to customary closing conditions and, therefore, was subject to the risk that the M&F Transaction and the merger would not be completed. The then Coleman board considered that non-consummation of the two transactions could negatively affect the market price of the Coleman common stock and the financial community's perception of the stability and future prospects of Coleman. Moreover, a failure to complete the two transactions following their public announcement could negatively affect Coleman's sales and operating results, its ability to attract and retain key management and marketing personnel and its ability to successfully complete long-term strategic projects.

Substantial Charges Incurred in Connection with the Transaction. The then Coleman board considered that Coleman would be required to incur significant expenses in order to complete the M&F Transaction and the merger. These expenses include costs of integrating the businesses of Coleman and Sunbeam, fees of Coleman's legal and financial advisors and the expenditure of corporate resources in support of the transaction generally. The then Coleman board recognized that these expenses would be borne solely by Coleman in the event that the transaction was not completed.

Possible Loss of Key Personnel. The then Coleman board considered that, despite the efforts of the combined company, key management and marketing personnel might not remain employed by Coleman or Sunbeam. The loss of any such key personnel could have a material adverse effect on Coleman's financial position, results of operations and cash flow.

Tax Treatment. The Coleman board considered the fact that the merger is expected to be a taxable transaction for United States Federal income tax purposes and may be taxable under state, local or foreign

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laws as well. For a discussion of the tax consequences of the merger to Coleman minority stockholders, see "UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS."

The then Coleman board believed, however, that the foregoing negative factors were outweighed by the projected benefits of the transactions.

The terms of the merger were arrived at through arms'-length negotiations between two unaffiliated parties, MacAndrews & Forbes and Sunbeam. The then Coleman board believed that the interests of MacAndrews & Forbes, as the then indirect owner of about 81% of the outstanding Coleman common stock, were substantially aligned with the interests of Coleman's minority stockholders. The merger agreement also contains provisions designed to protect Coleman's minority stockholders. The merger agreement prevents Sunbeam from altering the consideration payable to Coleman's minority stockholders in the merger or otherwise amending or terminating the merger agreement after completion of the M&F Transaction. Furthermore, the merger is subject to very few conditions,

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consisting only of (1) this document had to be declared effective by the SEC, (2) the Sunbeam common stock to be issued in the merger had to be listed on the NYSE, (3) the M&F Transaction had to be completed and (4) there can be no preliminary or permanent injunction preventing the merger. In addition, the merger agreement was approved by a unanimous vote of the Coleman board, including by those members of the Coleman board who were not employees or affiliates of Coleman or MacAndrews & Forbes. In light of the foregoing, the then Coleman board did not deem it necessary to institute additional procedural safeguards such as a requirement that the merger be approved by a majority of Coleman's minority stockholders or the formation of a special committee of Coleman's outside directors to negotiate the terms of the merger.

FINANCIAL ADVISORS' OPINIONS

Coleman's Financial Advisor. Credit Suisse First Boston acted as Coleman's financial advisor in connection with the merger at the time the merger agreement was signed. Credit Suisse First Boston was selected by Coleman based on Credit Suisse First Boston's experience, expertise and familiarity with Coleman and its business. Credit Suisse First Boston is an internationally recognized investment banking firm and is regularly engaged in the valuation of businesses and securities in connection with mergers and acquisitions, leveraged buyouts, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and valuations for corporate and other purposes.

On February 27, 1998, Credit Suisse First Boston delivered to the Coleman board an oral opinion, which was subsequently confirmed in writing, to the effect that, as of that date and based upon and subject to the matters described in the opinion, the cash and stock consideration payable under the merger agreement was fair from a financial point of view to Coleman's minority stockholders. However, since the date of Credit Suisse First Boston's opinion, numerous events have occurred that significantly affected the price of Sunbeam common stock. WHEN CREDIT SUISSE FIRST BOSTON WAS ENGAGED BY COLEMAN, THEY WERE NOT ASKED TO RENDER AN UPDATED OPINION AS OF THE DATE OF THIS DOCUMENT AND NEITHER SUNBEAM NOR COLEMAN HAS REQUESTED THAT THEY DO SO. MOREOVER, CREDIT SUISSE FIRST BOSTON HAS ADVISED SUNBEAM THAT ITS OPINION, ALTHOUGH CORRECT WHEN GIVEN, SHOULD NO LONGER BE RELIED UPON BECAUSE OF SUBSEQUENT NEGATIVE DEVELOPMENTS AFFECTING SUNBEAM. Because Sunbeam did not plan to issue the warrants at the time the merger agreement was signed, Credit Suisse First Boston did not take the warrants into account when evaluating the fairness of the merger consideration.

Terms of Credit Suisse First Boston's Engagement. Under the letter agreement dated December 10, 1997 between Coleman and Credit Suisse First Boston, Coleman agreed to pay Credit Suisse First Boston for services rendered in connection with the merger a fee of about \$4 million. Coleman also agreed to reimburse Credit Suisse First Boston for all reasonable out-of-pocket expenses, including the reasonable fees and expenses of its legal counsel and any other advisor retained by Credit Suisse First Boston, resulting from or arising out of the engagement. Coleman further agreed to indemnify Credit Suisse First Boston and related persons and entities for losses, claims, damages or liabilities (including related actions or proceedings) related to or arising out of, among other things, its engagement as Coleman's financial advisor.

In the past, Credit Suisse First Boston has performed investment banking services for Coleman and MacAndrews & Forbes and their affiliates and has received customary fees for these services. In the ordinary

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course of its business, Credit Suisse First Boston and its affiliates may actively trade the debt and equity securities of Coleman, MacAndrews & Forbes

and its affiliates and Sunbeam for their own accounts and for the accounts of customers and, accordingly, may at any time hold a long or short position in those securities.

Sunbeam's Financial Advisor. Morgan Stanley was retained by Sunbeam to assist in connection with a possible sale of Sunbeam, one or more possible acquisitions by Sunbeam and/or other strategic alternatives. As part of that engagement, Morgan Stanley acted as Sunbeam's financial advisor in connection with its acquisition of Coleman. Sunbeam retained Morgan Stanley based on its qualifications, expertise and reputation, as well as upon its prior investment banking relationships with Sunbeam and its familiarity with Sunbeam and its business.

On February 27, 1998, Morgan Stanley rendered to the Sunbeam board an oral opinion, which was later confirmed in writing, to the effect that, as of that date and based upon and subject to the matters described in the opinion, the cash and stock consideration payable in the M&F Transaction and under the merger agreement was fair from a financial point of view to Sunbeam. WHEN MORGAN STANLEY WAS ENGAGED BY SUNBEAM, THEY WERE NOT ASKED TO RENDER AN UPDATED OPINION AS OF THE DATE OF THIS DOCUMENT AND NEITHER SUNBEAM NOR COLEMAN HAS REQUESTED THAT THEY DO SO. MOREOVER, MORGAN STANLEY HAS ADVISED SUNBEAM THAT ITS OPINION, ALTHOUGH CORRECT WHEN GIVEN, SHOULD NO LONGER BE RELIED UPON BECAUSE OF SUBSEQUENT NEGATIVE DEVELOPMENTS AFFECTING SUNBEAM. Because Sunbeam did not plan to issue the warrants at the time the merger agreement was signed, Morgan Stanley did not take the warrants into account when evaluating the fairness to Sunbeam of the consideration payable in the merger. On the basis of Morgan Stanley's advice, the Sunbeam board has determined not to rely on the opinion of Morgan Stanley as a basis for its plans to complete the merger.

Terms of Morgan Stanley's Engagement. Under an amended engagement letter between Sunbeam and Morgan Stanley, Sunbeam agreed to pay Morgan Stanley (1) an exposure fee equal to 25% of the estimated transaction fee referred to below, payable upon execution of the agreement relating to the M&F Transaction and the merger agreement, and (2) a transaction fee equal to a percentage of the aggregate value of the consideration payable by Sunbeam in the M&F Transaction and the merger (including the amount of any debt assumed or repaid by Sunbeam), payable, as to the M&F Transaction, upon its completion and, as to the merger, upon its completion. For purposes of calculating the transaction fee, the value of the Sunbeam common stock issued in the M&F Transaction and the merger will be the average of the closing sale prices for the Sunbeam common stock for the ten trading days prior to the completion of the M&F Transaction and the merger, respectively. For its services to Sunbeam in connection with the Coleman acquisition, Morgan Stanley has received fees from Sunbeam totaling about \$9.6 million. The amended engagement letter between Sunbeam and Morgan Stanley provides for the payment to Morgan Stanley of an additional transaction fee of \$680,000 when the merger is completed, based on the average market price of Sunbeam common stock on the last trading day prior to the date of this document. Sunbeam's obligation to pay this additional transaction fee to Morgan Stanley will not be affected by the fact that Sunbeam is no longer entitled to rely on Morgan Stanley's fairness opinion. Sunbeam has also agreed to reimburse Morgan Stanley for its expenses, including fees and expenses of its counsel, and to indemnify Morgan Stanley and related parties against various liabilities and expenses, which may include liabilities under the federal securities laws, arising out of its engagement. Morgan Stanley also acted as an initial purchaser for the private placement of the Sunbeam debentures and an affiliate of Morgan Stanley is a lender under Sunbeam's bank credit facility. Morgan Stanley also advised Sunbeam in connection with its acquisitions of Signature Brands and First Alert.

SUNBEAM'S REASONS FOR ACQUIRING COLEMAN AND APPROVAL OF THE SUNBEAM BOARD

Sunbeam's Reasons for Acquiring Coleman. While Sunbeam's current

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management does not know all the reasons why prior management agreed to acquire Coleman, Sunbeam's current management believes that the following reasons were provided by prior management to the then Sunbeam board.

As part of its 1997 review of strategic alternatives, Sunbeam's then management team concluded that it was unlikely that Sunbeam could be sold at a price or on terms that would be acceptable to Sunbeam. Sunbeam shifted its strategic focus to identify underperforming companies with strong brand names that Sunbeam could acquire. Sunbeam's former management intended to capitalize on its perceived capability in cost containment and operational improvement by acquiring one or more of these companies and their

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premier brand names, thereby broadening the Sunbeam product offering spectrum and presenting opportunities to eliminate redundant or inefficient operations.

Sunbeam acquired its current interest in Coleman and agreed to acquire the remaining equity interest in Coleman primarily due to Coleman's strong and established brand names, the potential opportunity to streamline operations, the diversification these brand names provide to Sunbeam's product base and the potential for revenue and operational benefits associated with a combination of Sunbeam and Coleman. In addition, Sunbeam believed that its existing international geographic marketing and distribution strengths and those of Coleman would significantly complement each other. Sunbeam's former management believed that the acquisition of Coleman would give Sunbeam a platform from which to capitalize on the fragmentation and potential consolidation of the durable household consumer products sector.

Approval of the Sunbeam Board. In February 1998, the then Sunbeam board approved the agreement relating to the M&F Transaction and the merger agreement and determined that the terms of the agreements were fair to Sunbeam's stockholders. The then Sunbeam board identified and considered a variety of positive factors in its deliberations concerning the merger, including, but not limited to, the following:

- o the opinion of Sunbeam's financial advisor, Morgan Stanley, to the effect that the consideration to be paid by Sunbeam for Coleman was fair to Sunbeam from a financial point of view; MORGAN STANLEY HAS SINCE ADVISED SUNBEAM THAT ITS OPINION, ALTHOUGH CORRECT WHEN GIVEN, SHOULD NO LONGER BE RELIED UPON BECAUSE OF SUBSEQUENT NEGATIVE DEVELOPMENTS AFFECTING SUNBEAM;
- o the terms of the agreements, including the fact that the exchange ratio of Sunbeam common stock for Coleman common stock would not change even in the event of a decrease in the market price of the Sunbeam common stock;
- o the then Sunbeam board's belief that the then per share premium of about 44.2% implied by the then current value of the consideration compared to the then market price per share of Coleman common stock was reasonable in light of other comparable transactions involving companies in the consumer products and sporting goods industries;
- o the belief of Sunbeam's prior management that Coleman presented unrealized potential which could be exploited once Coleman's operations were added to those of Sunbeam;
- o the anticipated operational efficiencies and revenue benefits associated with the acquisition of Coleman's product lines; and
- o the belief of Sunbeam's prior management that Coleman's operations could be streamlined to enhance efficiency.

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In addition, the Sunbeam board identified and considered a variety of potentially negative factors, including the following:

- o the possibility that the operational and revenue benefits expected to be realized as result of the transaction might not be fully realized;
- o the difficulties associated with integrating Coleman's operations with those of Sunbeam and managing the combined enterprise;
- o the fact that the M&F Transaction was subject to customary closing conditions and, therefore, was subject to the risk that the M&F Transaction and the merger would not be completed; the Sunbeam board considered that non-consummation could negatively affect the market price of the Sunbeam common stock and the financial community's perception of the stability and future prospects of Sunbeam;
- o the significant expenses Sunbeam would be required to incur in order to complete the M&F Transaction and the merger, including costs of integrating the businesses of Coleman and Sunbeam, fees of Sunbeam's legal and financial advisors and the expenditure of corporate resources in support of the transaction generally;
- o the risks associated with managing a highly leveraged business; and

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- o the risks associated with managing operations at different locations.

The Sunbeam board believed, however, that the foregoing negative factors were outweighed by the projected benefits of the transactions.

PURPOSES AND EFFECTS OF THE MERGER

The purpose of the merger is to enable Sunbeam to acquire the entire equity interest in Coleman. In the M&F Transaction, which was completed on March 30, 1998, Sunbeam acquired indirectly about 81% of the then outstanding shares of Coleman common stock. Sunbeam's ownership interest in Coleman was immediately thereafter reduced to about 79% as a result of the exercise of Coleman employee stock options immediately following the M&F Transaction. As a result of the merger, Sunbeam will acquire the remaining equity interest in Coleman, and Coleman will become an indirect, wholly owned subsidiary of Sunbeam.

In addition, under the April 15, 1999 amendment to Sunbeam's bank credit facility, it is an event of default under the bank credit facility:

- o if Sunbeam fails to have the SEC declare this document effective by October 30, 1999 (which was subsequently amended to January 10, 2000)
- o if Sunbeam fails to complete the merger within 25 business days after this document is declared effective by the SEC, or
- o if Sunbeam has to pay more than \$87.5 million in cash to complete the merger including any amounts paid with respect to appraisal rights, but excluding related legal, accounting and other customary fees and expenses.

If an event of default were to occur, a default would also occur under the Coleman note payable to Sunbeam and, among other things, the lenders under Sunbeam's credit agreement would be entitled to foreclose on the Coleman note and the Coleman assets pledged under the Coleman note. The Coleman note, by its terms, will not be affected by the merger and will remain outstanding. See

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"MATERIAL CONTACTS BETWEEN SUNBEAM AND COLEMAN AND ITS AFFILIATES--Financial Transactions Between Coleman and Sunbeam."

The interest rate margins on Sunbeam's bank credit facility increased to 3.50% for LIBOR loans and 2.25% for base rate loans on September 1, 1999 as a result of the merger not occurring by such date and increased to 4.00% for LIBOR loans and 2.50% for base rate loans on October 1, 1999 as a result of the merger not occurring by such date. The interest rate margins will be decreased to 3.00% for LIBOR loans and 1.75% for base rate loans upon consummation of the merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the bank credit facility.

Coleman and Sunbeam adopted a two-step acquisition structure for several reasons, including to enable Sunbeam to acquire control of Coleman as quickly as possible. Alternative transaction structures were considered by Sunbeam and Coleman, including a one-step merger without first completing the M&F Transaction and a direct purchase by Sunbeam of Coleman Worldwide's equity interest in Coleman prior to completion of the merger. MacAndrews & Forbes rejected these transaction structures. The parties agreed that the final transaction would be structured as a merger of CLN Holdings and a wholly owned Sunbeam subsidiary, followed by a second-step merger of another wholly owned Sunbeam subsidiary with Coleman. See "--Background of the Merger."

Sunbeam also considered paying alternative types of consideration to Coleman stockholders. Sunbeam initially proposed consideration consisting exclusively of Sunbeam common stock. Sunbeam's prior management believed that the use of Sunbeam common stock as consideration would enhance stockholder value by allowing Sunbeam to capitalize on the then recent rise in Sunbeam's stock price. This consideration, however, was rejected by MacAndrews & Forbes. Other types of consideration were also briefly discussed, including the use of Sunbeam preferred stock instead of the cash portion of the merger consideration. This type of consideration was not seriously considered by the parties.

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As a result of the merger, the minority stockholders of Coleman:

- o will cease to hold any direct equity interest in Coleman,
- o will no longer directly share in the profits and losses of Coleman, but will indirectly share in such profits and losses as stockholders of Sunbeam,
- o will not be entitled to receive dividends or other distributions, if any, declared and paid by Coleman, and
- o will not be entitled to vote or otherwise participate in the corporate governance of Coleman, except through their ability to vote and participate in the corporate governance of Sunbeam through their ownership of Sunbeam common stock.

As a result of the M&F Transaction and the merger, Sunbeam will have the entire indirect interest in the net book value and net earnings of Coleman. Sunbeam will also be entitled to all benefits resulting from that interest, including all income generated by Coleman's operations, any future increase in Coleman's value and the right to elect all members of the Coleman board of directors. Similarly, Sunbeam will bear the entire risk of losses generated by Coleman's operations and any decrease in the value of Coleman after the merger. The minority stockholders of Coleman will have only an indirect interest in the net book value and net earnings of Coleman and future increases, if any, in the value of Coleman through their holdings of Sunbeam common stock to be received

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in the merger and upon any exercise of the warrants.

Upon completion of the merger, there will no longer be any publicly held shares of Coleman common stock and the Coleman common stock will be delisted from the NYSE, the Pacific Stock Exchange and the Chicago Stock Exchange and deregistered under the Exchange Act.

The tax consequences of the merger are subject to a number of qualifications, as discussed below under the caption "UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS."

SUNBEAM'S PLANS AND PROPOSALS FOR COLEMAN

On May 11, 1998, Sunbeam's former management announced its plans to commence a restructuring intended to integrate Sunbeam's operations with those of Coleman, First Alert and Signature Brands. The planned restructuring was also intended to centralize the operations of the four companies, close or divest some of Sunbeam's plants and reduce Sunbeam's workforce. Following the changes in Sunbeam's management that were announced in June 1998, plans for the proposed restructuring were postponed pending further review of Sunbeam's organizational structure. On August 24, 1998, Sunbeam's new management announced a revised organizational structure which provided for some plant closings and reductions in workforce, but eliminated the previously announced centralization of Sunbeam's operations.

Upon completion of the M&F Transaction, which occurred on March 30, 1998, all of the members of the Coleman board resigned, the number of directors constituting the Coleman board of directors was fixed at five, and five designees of Sunbeam were elected as directors of Coleman. In addition, Sunbeam designees were appointed to senior management positions at Coleman. Subsequently, as a result of changes in Sunbeam's management and board of directors, Jerry W. Levin, the current Chairman and Chief Executive Officer of Sunbeam and Coleman, was reelected to the Coleman board. In addition, Paul E. Shapiro, the current Executive Vice President and Chief Administrative Officer of Sunbeam and Coleman, was elected to the Coleman board of directors. The other members of the Coleman board of directors resigned or were removed by Sunbeam. In April 1999, the size of the Coleman board of directors was fixed at three members and A. Whitman Marchand, who is not affiliated with either Sunbeam or Coleman, was elected to the Coleman board of directors. In July 1999, the size of the Coleman board was fixed at four and John H. Klein, an outside director of Sunbeam, was elected to the Coleman board. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM--Changes in Sunbeam's Management and Board" and "--Settlement of Claims Relating to the M&F Transaction" and "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES--Appointments of Former Coleman and MacAndrews & Forbes Officers to Sunbeam's Management and Board" and "---Services Provided by MacAndrews & Forbes."

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Following the completion of the M&F Transaction, Sunbeam prepaid substantially all of the \$1,016 million aggregate outstanding indebtedness of Coleman, Coleman Worldwide, CLN Holdings and certain of Coleman's subsidiaries with a portion of the net proceeds from the offering of the debentures and borrowings under Sunbeam's bank credit facility. See "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION."

POSITION OF SUNBEAM AND COLEMAN ON THE FAIRNESS OF THE MERGER AND THE SETTLEMENT

SUNBEAM'S INTEREST IS TO COMPLETE THE MERGER AS SOON AS POSSIBLE ON TERMS BENEFICIAL TO SUNBEAM, AND COLEMAN IS CONTROLLED BY SUNBEAM. THEREFORE, THE

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COLEMAN MINORITY STOCKHOLDERS SHOULD NOT NECESSARILY RELY ON ANY VIEWS OF SUNBEAM OR COLEMAN REGARDING THE FAIRNESS OF THE MERGER.

The original February 1998 merger agreement, which provided for consideration of \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock, was negotiated at arms'-length between parties that were unaffiliated at the time; was unanimously approved by the then Coleman board; and was approved by written consent of Coleman's then majority stockholder. These approvals constituted all the approvals required by Delaware law in connection with the merger. Following these approvals and the completion of the M&F Transaction, the merger agreement by its terms could not be amended or terminated, and the only unfulfilled condition to the merger was the effectiveness with the SEC of this document.

Thereafter, major adverse developments affecting Sunbeam caused a substantial decrease in the market value of Sunbeam's stock and, therefore, the value of the consideration to be paid to the Coleman minority stockholders under the merger agreement. The Coleman minority stockholders instituted litigation in the Delaware Court of Chancery claiming that the consideration payable to them under the merger agreement was inadequate. In October 1998, the litigation claims of the Coleman minority stockholders were settled in arms'-length negotiations between counsel to plaintiffs and counsel to Sunbeam. The settlement, which was approved by the Court on November 12, 1999, effectively increased the consideration payable to the Coleman minority stockholders in connection with the merger by providing them with warrants, each entitling them to purchase one Sunbeam share at \$7 per share, at the rate of 0.381 of a warrant for each Coleman share (after deducting the warrants to be issued to counsel for the Coleman minority stockholders as their legal fees), in addition to their receiving \$6.44 in cash and 0.5677 of a Sunbeam share for each Coleman share, upon completion of the merger.

Sunbeam and Coleman believe that the transaction consisting of the merger and the settlement is substantively fair to the Coleman minority stockholders, and that the process which arrived at the transaction was procedurally fair to them. This belief is based solely on the following considerations:

- (1) The merger agreement was negotiated at arms'-length between parties that were unaffiliated at the time--Sunbeam, on the one hand, and, on the other hand, Coleman and its then 81% stockholder, MacAndrews & Forbes.
- (2) The merger agreement provides that it cannot be amended (whether to change the merger consideration, to add conditions to the merger or otherwise) or terminated.
- (3) The settlement of the litigation claims of the Coleman minority stockholders was negotiated at arms'-length between parties that were and are unaffiliated--counsel to Sunbeam and counsel to the Coleman minority stockholders.
- (4) The settlement was approved by the Delaware Court of Chancery on November 12, 1999 as being fair, reasonable and in the best interests of the Coleman minority stockholders after a hearing on September 29, 1999 at which all Coleman minority stockholders had an opportunity to be heard and only one stockholder objected to the settlement.

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- (5) Notwithstanding the settlement, any Coleman minority stockholder who objects to the terms of the merger agreement and settlement can pursue his Delaware law appraisal rights and seek payment in cash of the judicially determined fair value of his Coleman shares.

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In transactions such as the merger, the SEC has stated that certain factors normally are considered to be important when reaching a determination regarding the fairness of the proposed transaction to unaffiliated security holders. However, for the reasons set forth below, Sunbeam and Coleman believe that none of these factors is relevant to an evaluation of the fairness of the consideration payable to Coleman minority stockholders under the merger agreement and in the settlement:

- o Current Market Prices. The trading price of Coleman common stock has been linked to the trading price of Sunbeam common stock since the execution of the merger agreement and the announcement of the merger in February 1998. Therefore, the Coleman common stock has no market value independent of its relationship to the Sunbeam common stock and the value of the consideration payable under the merger agreement and in the settlement;
- o Historical Market Prices. The trading price of Coleman common stock has been linked to the trading price of Sunbeam common stock since the execution of the merger agreement and the announcement of the merger in February 1998. Sunbeam and Coleman do not believe that market prices prior to February 1998--more than 20 months ago--provide any indication of the current value of Sunbeam or Coleman;
- o Net Book Value. Sunbeam and Coleman believe that net book value is not a true indication of the value of Sunbeam or the value of Coleman on a stand-alone basis;
- o Prior Coleman Common Stock Repurchases. Coleman has not repurchased any of its common stock since March 1996 and Sunbeam and Coleman do not believe that the prices paid in connection with any such transactions more than three and one half years ago provide any indication of the current value of Coleman;
- o Going Concern Value; Liquidation Value. Any current estimate of the going concern value or liquidation value of Sunbeam or Coleman would require a detailed financial analysis by an appraiser, financial advisor or other outside party. No such analysis was requested or obtained and it was considered impractical to request or obtain such an analysis;
- o Reports, Opinions or Appraisals. Coleman's financial advisor, Credit Suisse First Boston, has advised Sunbeam that its February 1998 opinion

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regarding the fairness to the Coleman minority stockholders from a financial point of view of the consideration payable under the merger agreement, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam. Moreover, Sunbeam's financial advisor, Morgan Stanley, has advised Sunbeam that its February 1998 opinion regarding the fairness to Sunbeam from a financial point of view of the consideration payable under the merger agreement, although correct when given, should no longer be relied upon because of subsequent negative developments affecting Sunbeam. No other report, opinion or appraisal was requested or obtained by Sunbeam or Coleman in connection with the merger or the settlement and it was considered impractical to request or obtain any such report, opinion or appraisal, and

- o Offers or Proposals by Unaffiliated Persons. During the past 18 months, neither Sunbeam nor Coleman has received any offer or proposal from an unaffiliated person regarding a merger or consolidation involving, or the acquisition of all or any substantial part of the assets of, or the acquisition of securities conferring control of, Sunbeam or Coleman.

Sunbeam and Coleman have not performed, and (as stated above) have not requested or obtained from any financial advisor or other outside expert, any current valuation of Coleman or the minority stockholders' interest in Coleman based on any of the analyses typically employed in such a valuation (such as a comparable company or comparable transaction analysis or an analysis of the discounted present value of projected future cash flows and terminal values). Nor have they performed, or requested or obtained, any current valuation of the warrants which are part of the consideration to be paid to the Coleman minority stockholders upon completion of the merger.

The Delaware Court of Chancery, in its November 12, 1999 opinion approving the settlement, accepted a September 1999 valuation of the warrants by plaintiffs' expert based on the Black-Scholes option-pricing model of \$2.475 per warrant. Based on such valuation (which may no longer be applicable because it

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assumed a \$6.00 per share Sunbeam stock price), and assuming a market price of \$4.75 per Sunbeam share (the NYSE closing price on December 3, 1999), the consideration to be received by the Coleman minority stockholders upon completion of the merger would have a value of approximately \$10.08 per Coleman share (\$6.44 in cash, \$2.70 in Sunbeam stock and [\$0.94] in Sunbeam warrants). However, Sunbeam and Coleman cannot and will not try to predict the prices at which the Sunbeam shares and warrants will trade upon completion of the merger, or whether an active trading market for the warrants will develop.

Because the merger agreement was approved by all action of the Coleman board and stockholders required under Delaware law and by its terms cannot be amended, Sunbeam and Coleman have not considered amending the merger agreement to add procedural safeguards as conditions to the merger, such as a condition that the merger be approved by a majority of Coleman's minority stockholders or by independent Coleman directors or a condition requiring a favorable opinion of

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a financial advisor on the fairness of the consideration to be received by stockholders upon completion of the merger. Instead, Sunbeam and Coleman decided to settle the claims of the Coleman minority stockholders challenging the fairness of the consideration provided under the merger agreement through arms'-length negotiations with their litigation counsel on terms that the Delaware Court of Chancery would approve as being fair to the Coleman minority stockholders. Notwithstanding the absence of the procedural safeguards discussed in the first sentence of this paragraph, based solely on the factors listed under items (1) through (5) above, Sunbeam and Coleman believe that the transaction consisting of the merger and the settlement is procedurally fair to the Coleman minority stockholders.

Camper Acquisition Corp. is a wholly owned subsidiary of Sunbeam which was formed solely for the purpose of acting as an acquisition vehicle in connection with the merger. Camper Acquisition Corp expressly adopts the foregoing statements of Sunbeam.

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THE MERGER

The description of the merger and the merger agreement contained in this document does not purport to be complete and is qualified in its entirety by reference to the merger agreement, a copy of which is attached as Annex I at the back of this document and is incorporated in this document by reference.

GENERAL

The merger will become effective when a certificate of merger is filed with the Secretary of State of the State of Delaware. It is currently anticipated that the certificate of merger will be filed, and the merger will become effective, on or about January 6, 2000, which is the twenty-first business day following the date on which this document was first mailed to you.

Prior to the completion of the merger, the outstanding capital stock of Camper Acquisition Corp., all of which is currently owned directly by Sunbeam, will be contributed to Coleman Worldwide Corporation. In the merger, Camper Acquisition Corp., which will then be directly owned by Coleman Worldwide Corporation, will be merged into Coleman, which is currently 80.01% directly owned by Coleman Worldwide Corporation.

INTERESTS OF CERTAIN PERSONS IN THE MERGER

In considering the approval of the merger by the former Coleman board of directors, you should be aware that a number of persons, including current and former directors and executive officers of Coleman, have interests in the merger that are different from or in addition to yours, as described below.

Coleman Options. Under the merger agreement, after the completion of the M&F Transaction, which occurred on March 30, 1998, all of the then outstanding options to purchase shares of Coleman common stock under Coleman's stock option plans became fully vested and exercisable. During the period between the completion of the M&F Transaction and the completion of the merger, Sunbeam is obligated, under the merger agreement, to cause Coleman to maintain a broker-dealer cashless exercise procedure for the exercise of the Coleman stock options. Upon the completion of the merger, each outstanding Coleman stock option that has not been exercised will be cancelled and each holder of an unexercised Coleman stock option will be paid an amount in cash equal to the product of (1) the total number of shares of Coleman common stock subject to the

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Coleman stock option, multiplied by (2) the excess of \$27.50 over the exercise price per share of Coleman common stock subject to the Coleman stock option, less any applicable withholding taxes.

Immediately after the completion of the M&F Transaction, two current executive officers of Sunbeam and Coleman exercised options that vested as a result of the M&F Transaction. Jerry W. Levin, the then Chairman and Chief Executive Officer of Coleman and the current Chairman and Chief Executive Officer of Sunbeam and Coleman, exercised 500,000 Coleman stock options at per share exercise prices ranging from \$12.25 to \$14.00 and Mr. Levin received net proceeds upon the sale of such shares of about \$9.94 million. Bobby G. Jenkins, the current Executive Vice President and Chief Financial Officer of Sunbeam and Executive Vice President of Coleman, exercised 20,000 Coleman stock options at per share exercise prices ranging from \$16.125 to \$16.434 and Mr. Jenkins received net proceeds upon the sale of such shares of about \$288,360.

Ronald O. Perelman, the sole stockholder of MacAndrews & Forbes and a member of the Coleman board at the time the agreement relating to the M&F Transaction and the merger agreement were executed, holds 500,000 Coleman stock options with an exercise price of \$14.00 per share. Paul E. Shapiro, the current Executive Vice President and Chief Administrative Officer of Sunbeam and Coleman and a director of Coleman, holds 62,500 Coleman stock options with an exercise price of \$17.062 per share and 15,000 Coleman stock options with an exercise price of \$16.125 per share. Karen K. Clark, the current Senior Vice President, Finance of Sunbeam and Senior Vice President, Finance of Coleman, holds 10,000 Coleman stock options with an exercise price of \$17.062 per share and 15,000 Coleman stock options with an exercise price of \$16.125 per share. Steven R. Isko, the current Senior Vice President and General Counsel of Sunbeam and Senior Vice President and General Counsel of Coleman, holds 10,000 Coleman stock options with an

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exercise price of \$17.062 per share, 7,500 Coleman stock options with an exercise price of \$16.125 and 2,500 Coleman stock options with an exercise price of \$12.937 per share. Upon completion of the merger, in settlement of their Coleman stock options, Messrs. Perelman, Shapiro and Isko and Ms. Clark will receive cash payments of \$6,750,000, \$823,000, \$226,009 and \$275,005 respectively.

Severance Arrangements. The M&F Transaction constituted a "change in control" of Coleman under the terms of some Coleman employee benefit plans and various employment, severance, termination, consulting and retirement agreements to which Coleman was a party. As a result, at the effective time of the M&F Transaction, Coleman became obligated to pay all amounts provided under those plans and agreements as a result of the change in control. Under the merger agreement, Sunbeam agreed that after completion of the M&F Transaction it would honor, and cause Coleman to honor, all employment, severance, termination, consulting and retirement agreements to which Coleman was a party on that date. Accordingly, all rights and obligations of Coleman under these agreements have become rights and obligations of Sunbeam and except as noted below with respect to the former employment agreements between Coleman and Messrs. Levin and Shapiro, Sunbeam has agreed to cause Coleman to pay all amounts provided under these employee benefit plans and agreements as a result of the change in control of Coleman in accordance with their respective terms and to honor, and to cause Coleman to honor, all rights, privileges and modifications to or with respect to any such employee benefit plans of Coleman or agreements which become effective as a result of the change in control. However, neither Sunbeam nor Coleman has any responsibility for Coleman's obligations under the former employment agreements between Coleman and Jerry W. Levin, Coleman's then Chairman and Chief Executive Officer, and Paul E. Shapiro, Coleman's then Executive Vice President and General Counsel, except, in the case of Mr. Levin, for an incentive payment

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in the amount of \$1.5 million due from Coleman (and subsequently paid) related to the sale of Coleman Safety & Security Products, Inc. to an unrelated third party, which transaction was pending at the time the merger agreement was signed. The former employment agreements with Messrs. Levin and Shapiro were terminated upon completion of the M&F Transaction.

In connection with the change in control resulting from the completion of the M&F Transaction, Sunbeam has paid, or has caused Coleman to pay or recognize as payable, a total of \$7,903,765 in severance compensation and related benefits for approximately 117 former Coleman employees. Of that amount, \$7,597,936 was in respect of base salary and related benefits, and \$305,829 was in respect of extra pension credits. In addition, Coleman paid \$454,277 for management incentive bonuses to 37 former Coleman employees. The only principal executive officer of Coleman to receive severance compensation from Coleman as a result of the change in control was Joseph Page, the former Chief Financial Officer of Coleman, who received severance payments totaling \$280,000. Bobby G. Jenkins, the current Executive Vice President and Chief Financial Officer of Sunbeam and Executive Vice President of Coleman, received severance payments totaling \$18,583 as a result of his resignation from Coleman following the M&F Transaction, and prior to his being rehired by both Sunbeam and Coleman in the capacities mentioned above. Steven R. Isko, the current Senior Vice President and General Counsel of Sunbeam and Senior Vice President and General Counsel of Coleman, received severance payments totaling \$185,634 as a result of his resignation from Coleman following the M&F Transaction, and prior to his being rehired by both Sunbeam and Coleman in the capacities mentioned above.

Indemnification. The merger agreement provides that all rights to indemnification existing in favor of any director or officer of Coleman in office at or prior to the completion of the merger, as provided in Coleman's Certificate of Incorporation, Coleman's By-laws, as amended, or indemnification agreements in effect as of February 27, 1998, will survive the merger and continue in full force and effect for a period of six years after the effective time of the merger (and during the period from the completion of the M&F Transaction to the completion of the merger), to the extent these rights are consistent with Delaware law. In addition, Sunbeam agreed that, from and after the completion of the M&F Transaction and for a period of six years following the completion of the merger, Sunbeam or Coleman, as the surviving corporation in the merger, will cause to be maintained a liability insurance policy for the benefit of Coleman's former directors and officers providing coverage substantially similar to the policies in effect as of February 27, 1998. Neither Sunbeam nor Coleman will be required to pay an annual premium for such insurance in excess of 200% of the last annual premium paid by Coleman prior to the date of the merger agreement, but in such case will

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purchase as much coverage as possible for such amount. See "THE MERGER--Continuation of Existing Indemnification Rights."

Registration Rights Agreement. The shares of Sunbeam common stock issued to the MacAndrews & Forbes subsidiary from which Sunbeam acquired indirectly about 81% of the then outstanding Coleman common stock in the M&F Transaction were not registered under federal or state securities laws. Accordingly, in connection with the completion of the M&F Transaction, Sunbeam entered into a registration rights agreement with the MacAndrews & Forbes subsidiary, permitting the MacAndrews & Forbes subsidiary and other affiliates of Coleman to require Sunbeam to register their shares of Sunbeam common stock under federal and applicable state securities laws. The registration rights agreement was subsequently amended in August 1998 to provide that the MacAndrews & Forbes subsidiary can also require Sunbeam to register the warrant and the shares of Sunbeam common stock issuable upon exercise of the warrant issued to the MacAndrews & Forbes subsidiary in connection with the settlement of legal claims

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related to the M&F Transaction. See "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES--Registration Rights Agreement."

CONVERSION OF COLEMAN COMMON STOCK

Upon completion of the merger, each outstanding share of Coleman common stock--other than shares held indirectly by Sunbeam and shares, if any, with respect to which Delaware appraisal rights are sought and perfected--will no longer be outstanding and will automatically be cancelled. After completion of the merger, you will no longer have any rights under the certificate representing your shares of Coleman common stock, except the right to receive \$6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed, a cash payment equal to the value of any fractional shares of Sunbeam common stock you would otherwise be entitled to receive upon surrender of the certificate, and warrants entitling you to purchase one share of Sunbeam common stock at a cash price of \$7 per share until August 24, 2003 to be issued under the recent settlement of litigation relating to the merger. Under the terms of the settlement, you will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed, assuming no further increase in the number of outstanding shares of Coleman common stock prior to the completion of the merger as a result of further exercises of Coleman employee stock options. The number of warrants you will receive will be rounded up or down to the nearest whole number to avoid the issuance of fractional warrants. See "LITIGATION SETTLEMENT AND WARRANTS."

Upon completion of the merger, all shares of Coleman common stock held indirectly by Sunbeam through Coleman Worldwide will remain outstanding and unchanged as a result of the merger. Each share of Coleman common stock, if any, held in the treasury of Coleman, by any subsidiary of Coleman, by Sunbeam or by any subsidiary of Sunbeam (other than Coleman Worldwide) immediately prior to the completion of the merger will be automatically cancelled. In addition, upon completion of the merger, each outstanding share of common stock of Camper Acquisition Corp., the wholly owned subsidiary of Sunbeam that will be merged with Coleman in the merger, will be automatically cancelled.

EXCHANGE OF COLEMAN COMMON STOCK

The exchange of the shares of Coleman common stock you own when the merger is completed will occur as follows:

- o upon completion of the merger, Sunbeam will deposit, with an exchange agent selected by Sunbeam, (1) certificates for the shares of Sunbeam common stock to be issued to you in the merger; (2) cash sufficient to pay the cash portion of the merger consideration and any fractional share payments you are entitled to receive; and (3) warrants to purchase Sunbeam common stock at a cash price of \$7 per share to which you are entitled under the court-approved settlement of litigation relating to the merger;
- o as soon as reasonably practicable after the completion of the merger, Sunbeam will cause the exchange agent to mail a letter of transmittal and exchange instructions to you;

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- o upon surrender of your Coleman common stock certificate(s) for cancellation to the exchange agent, together with a properly completed and duly executed letter of transmittal, you will receive, in exchange

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for your Coleman certificate(s), (1) a certificate for the shares of Sunbeam common stock you are entitled to receive in the merger, (2) a cash payment in respect of the cash portion of the merger consideration, after giving effect to any required withholding tax, and any fractional share payment you are entitled to receive, and (3) warrants to purchase Sunbeam common stock at a cash price of \$7 per share to which you are entitled under the court-approved litigation settlement relating to the merger based on the number of shares of Coleman common stock you own when the merger is completed; your certificate(s) will then be cancelled;

- o until you surrender your Coleman stock certificates, you will not be entitled to vote the shares of Sunbeam common stock you are entitled to receive in the merger or receive any dividends or distributions with a record date after the completion of the merger with respect to such Sunbeam common stock, although any such dividends or distributions will accrue and be payable to you, without interest, upon surrender of your certificate(s); it should be noted, however, that Sunbeam does not pay, and is prohibited from paying under the bank credit facility, cash dividends;
- o any merger consideration and warrants that remain undistributed for six months after the completion of the merger will be delivered to Sunbeam, upon demand, and any holders of unsurrendered Coleman common stock certificates may thereafter look only to Sunbeam, as general creditors, for payment of the merger consideration and warrants. In no event will Sunbeam, Coleman or the exchange agent be liable to any holder of unsurrendered certificates for any merger consideration or warrants that are delivered to a public official under applicable escheat laws; and
- o upon completion of the merger, the stock transfer books of Coleman will be closed and no further transfer of shares of Coleman common stock will be made; if, after the completion of the merger, Coleman common stock certificates are presented to Coleman, they will be cancelled and exchanged for the merger consideration and warrants.

YOU SHOULD NOT FORWARD YOUR CERTIFICATES TO THE EXCHANGE AGENT UNTIL YOU RECEIVE A LETTER OF TRANSMITTAL AND EXCHANGE INSTRUCTIONS.

NO FRACTIONAL SHARES OR WARRANTS

No fractional shares of Sunbeam common stock or warrants will be issued to you, and no dividend, stock split or other change in the capital structure of Sunbeam will relate to any fractional shares. Any Coleman stockholder who would otherwise be entitled to fractional shares will not be entitled to vote or to exercise any rights of a security holder with respect to such fractional shares.

Instead of any fractional shares of Sunbeam common stock, each Coleman stockholder who would otherwise be entitled to a fraction of a share of Sunbeam common stock will be paid cash, without interest, in an amount equal to the fraction of a share of Sunbeam common stock to which such stockholder would otherwise be entitled, multiplied by the closing sale price of one share of Sunbeam common stock on the NYSE Composite Transactions Tape on the day of the completion of the merger, or, if shares of Sunbeam common stock are not so traded on that day, the closing sale price on the next preceding day on which the shares were traded on the NYSE. Shares of Coleman common stock of any holder represented by two or more certificates will be aggregated, and in no event will any holder of Coleman common stock be paid an amount of cash for fractional shares in respect of one or more than one share of Sunbeam common stock.

Instead of any fractional warrants, each Coleman stockholder who would otherwise be entitled to a fraction of a warrant will receive a number of whole warrants determined by rounding up or down to the nearest whole number.

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CONDITIONS

Under the terms of the merger agreement, the completion of the merger was subject to the following conditions: (1) this document had to be declared effective by the SEC, (2) the shares of Sunbeam common stock to be issued by Sunbeam in the merger had to be listed for trading on the NYSE, and (3) the M&F

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Transaction had to be completed. All of these conditions have already been satisfied. Therefore, assuming that no court order is entered which prevents the merger from being completed, the merger will be completed on or about January 6, 2000, which is the twenty-first business day following the date on which this document was first mailed to you.

GOVERNMENTAL AND REGULATORY APPROVALS

Completion of the M&F Transaction was conditioned on the expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. On March 4, 1998, Sunbeam and Ronald O. Perelman, as the then ultimate parent of Coleman, filed notifications and report forms under the HSR Act with the Federal Trade Commission and the Antitrust Division of the Department of Justice relating to the M&F Transaction and the merger. The applicable waiting period under the HSR Act was terminated on March 27, 1998. However, notwithstanding the termination of the waiting period under the HSR Act, the FTC, the Antitrust Division, a state or a private person or entity could seek under federal or state antitrust laws, among other things, to enjoin or rescind the M&F Transaction or the merger. Although Sunbeam and Coleman believe that the M&F Transaction and the merger do not violate United States antitrust laws, there can be no assurance that if such a challenge is made, it would not be successful.

In addition to the filings under the HSR Act, Sunbeam and Coleman filed a pre-merger notification form with the German Federal Cartel Office relating to the M&F Transaction and the merger, which was approved by the Federal Cartel Office on March 20, 1998. Neither Sunbeam nor Coleman is aware of any other material approval or other action by any governmental, administrative or regulatory agency or authority, domestic or foreign, that would be required in order to complete the merger.

EMPLOYEE MATTERS

Sunbeam agreed that, from and after the completion of the M&F Transaction, it would honor, and cause Coleman to honor, all employment, severance, termination, consulting and retirement agreements to which Coleman was a party on that date. Accordingly, all rights and obligations of Coleman under these agreements became rights and obligations of Sunbeam. However, neither Sunbeam nor Coleman has any responsibility for Coleman's obligations under the former employment agreements between Coleman and Jerry W. Levin, Coleman's then Chairman and Chief Executive Officer, and Paul E. Shapiro, Coleman's then Executive Vice President and General Counsel, except in the case of Mr. Levin for an incentive payment in the amount of \$1.5 million due from Coleman (and subsequently paid) related to the sale of Coleman Safety & Security Products, Inc. to an unrelated third party, which transaction was pending at the time the merger agreement was signed. The former employment agreements with Messrs. Levin and Shapiro were terminated upon completion of the M&F Transaction. Sunbeam agreed to cause Coleman to allow Coleman employees to participate in Sunbeam employee benefit plans, from and after the completion of the M&F Transaction, on

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substantially the same basis as similarly situated Sunbeam employees. With respect to welfare benefit plans, Sunbeam also agreed to waive any pre-existing condition limitations and give effect, in determining any deductible and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and reimbursed to, those employees with respect to similar plans maintained by Coleman. Sunbeam has, or has caused Coleman to, give Coleman employees full credit for purposes of eligibility and vesting of benefits and benefit accrual for service with Coleman and its affiliates prior to the completion of the M&F Transaction under each employee benefit plan, so long as such crediting of service did not result in duplication of benefits. See "--Interests of Certain Persons in the Merger."

The M&F Transaction constituted a "change in control" of Coleman under some Coleman employee benefit plans and employment, severance, termination, consulting and retirement agreements. Except as noted above with respect to the employment agreements of Messrs. Levin and Shapiro, Sunbeam agreed to cause Coleman to pay all amounts provided under these employee benefit plans and agreements as a result of the change in control of Coleman in accordance with their respective terms and to honor, and to cause Coleman to honor, all rights, privileges and modifications to or with respect to any such employee benefit plans of Coleman or agreements which became effective as a result of the change in control. See "--Interests of Certain Persons in the Merger."

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Sunbeam caused Coleman to continue Coleman's Annual Incentive Plan for Management Employees for the remainder of 1998, and participants in the Management Incentive Plan were not eligible to participate in Sunbeam's incentive plan in respect of 1998. Under the terms of the Management Incentive Plan, participants were eligible for cash bonuses payable upon the attainment of certain performance goals, which performance goals were determined by reference to (1) earnings before interest, taxes and amortization, (2) operating working capital per sales dollar and (3) other quantitative goals as approved from time to time. Cash bonuses paid were equal to a percentage of a participant's base salary, depending on the percentage of the target attained by Coleman. Coleman paid a total of about \$2.9 million to participants in the Management Incentive Plan with respect to 1998. Eligible participants include select employees of Coleman and its subsidiaries who are (1) designated to participate by the Chief Executive Officer of Coleman, (2) are employed prior to the start of the last fiscal quarter in the plan year and (3) are not participants in another short-term incentive program of Coleman.

Sunbeam will honor, and will cause Coleman to honor, Coleman's Executive Severance Policy without any amendments adverse to participants. The Coleman Executive Severance Policy applies to certain terminations of employment of employees of Coleman and its subsidiaries who are participants in Coleman's Management Incentive Plan or who are in the position of country general manager/president and above. Participation in the Executive Severance Policy is limited to those participants in the Management Incentive Plan described above. Benefits are payable to a participant in the event of a termination of the participant's employment by Coleman within three years following the M&F Transaction other than for Cause (as defined in the Executive Severance Policy) or by the participant with Good Reason (as defined in the Executive Severance Policy). The benefits payable under the Executive Severance Policy generally include the following:

- o salary continuation for twelve, nine or six months, depending on the participant's level of participation in the Management Incentive Plan;
- o medical and/or dental coverage under COBRA until the end of the severance period at the same contribution level in effect for active participants, with Coleman paying the portion of the premiums it was paying for such

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participant prior to the M&F Transaction;

- o in the event of a termination prior to December 31, 1998, a pro rata payment under the Management Incentive Plan through the date of such termination;
- o a lump sum cash payment in an amount equal to the aggregate benefit that the participant would have accrued had he or she remained employed during the severance period under Coleman's qualified defined benefit retirement plans and its excess or supplemental defined benefit retirement plans, less any actual vested benefit of the participant under such plans;
- o a lump sum payment in an amount equal to the value of the participant's accrued vacation, determined in accordance with Coleman's vacation policy; and
- o an additional payment to hold the participant harmless from the excise taxes imposed by sections 280G and 4999 of the tax code, if the severance payments and benefits payable under the Executive Severance Policy exceed certain minimum thresholds.

In addition, any participant who was a party to an employment contract or other written agreement with Coleman was entitled to choose between the severance benefits, if any, payable under such contract and the severance benefits payable under the Executive Severance Policy.

Since the ninety-first day following completion of the M&F Transaction, some of the participants in the Executive Severance Policy have been entitled to voluntarily terminate their employment with Coleman and to have such termination deemed to be for Good Reason under the Executive Severance Policy, as a result of the completion of the M&F Transaction.

Since the date of the M&F Transaction, Coleman has paid or become obligated to pay about \$4.2 million to participants under the Executive Severance Policy.

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For the benefit of those employees of Coleman who were not participants in the Executive Severance Policy and who did not have employment agreements with Coleman, Sunbeam provided severance benefits under Sunbeam's Severance Pay Plan on substantially the same basis as similarly situated Sunbeam employees. To date, Sunbeam has made aggregate payments of about \$470,000 to former Coleman employees under the Sunbeam Severance Pay Plan. Under the terms of the Severance Pay Plan, a participant who is a Coleman employee and whose employment is terminated as the direct result of the closure of a facility or the elimination of the participant's position will be entitled to receive the following severance benefits:

- o a lump sum cash payment in an amount equal to (1) six months', three months' or six weeks' base pay, depending on the number of years of service, in the case of an exempt employee or (2) one week of base pay for each completed year of service, in the case of a non-exempt employee; and
- o health coverage under COBRA until the end of the severance pay period at the same contribution level in effect for active participants, with Sunbeam paying the same portion of the premiums that it would pay for active participants.

CONTINUATION OF EXISTING INDEMNIFICATION RIGHTS

For a period of six years after the completion of the merger, and during

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the period between the completion of the M&F Transaction and the completion of the merger, Sunbeam agreed to indemnify directors and officers of Coleman in office at or prior to the completion of the merger in connection with any threatened or actual legal proceeding to the fullest extent allowed by Delaware law, the Coleman Certificate of Incorporation, the Coleman By-laws and any indemnification agreement in effect at the date of the merger agreement, including any provisions relating to advancement of expenses. This indemnification does not, however, extend to any legal proceeding initiated against Coleman by an indemnified person unless the proceeding was (1) authorized by the Coleman board of directors or (2) brought by an indemnified person to enforce his or her right to indemnification under the merger agreement. In addition, the right to indemnification under the merger agreement extends only to legal proceedings arising from:

- o the fact that the indemnified person was a director or officer of Coleman or was serving at the request of Coleman as a director, officer, employee or agent of another entity, or
- o the agreement relating to the M&F Transaction, the merger agreement or any of the transactions contemplated by those agreements.

Moreover, the right to indemnification provided by the merger agreement extends only to claims which pertain to matters arising, existing or occurring prior to or at the completion of the merger. To give rise to an indemnification right, however, the claim need not have been asserted prior to the completion of the merger. If any claim is asserted against an indemnified person within the period during which indemnification is provided, all rights to indemnification under the merger agreement continue until disposition of the claim. In the event any indemnified person becomes involved in a legal proceeding after the completion of the merger, Sunbeam will, or will cause Coleman to, periodically advance legal and other expenses to the indemnified person, including the cost of any investigation and preparation incurred in connection with the legal proceeding. However, as a condition to advancement of expenses, the indemnified person must provide Sunbeam with an undertaking to reimburse all amounts so advanced in the event that the indemnified person is determined not to be entitled to indemnification.

Sunbeam and Coleman also agreed that all rights to indemnification, and all limitations with respect to indemnification, existing in favor of any indemnified person, as provided in the Coleman Certificate of Incorporation, the Coleman By-Laws or any indemnification agreement in effect at the date of the merger agreement, will survive the merger and will, to the extent permitted by Delaware law, continue in full force and effect, without any amendment, for a period of six years after the completion of the merger and during the period from the completion of the M&F Transaction to the completion of the merger. If any claim is asserted against any indemnified person within that period, all rights to indemnification will continue until final disposition of the legal proceeding. Any determination required to be made with respect to whether an indemnified person's conduct complies with the standards set forth under Delaware law, the Coleman

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certificate of incorporation, the Coleman by-laws or any agreement, as the case may be, will be made by independent legal counsel selected by the indemnified person and reasonably acceptable to Sunbeam.

Sunbeam also agreed that, from and after the completion of the M&F Transaction, Sunbeam or Coleman will maintain, for a period of not less than six years after the completion of the merger, a liability insurance policy for the benefit of Coleman's former directors and officers providing coverage substantially similar to the policies in place prior to the completion of the

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M&F Transaction. However, neither Sunbeam nor Coleman will be required to pay an annual premium for this insurance which exceeds 200% of the last annual premium paid by Coleman prior to the date of the merger agreement. In the event that the premium does exceed that amount, Sunbeam or Coleman will purchase as much coverage as possible for such amount.

ACCOUNTING TREATMENT

The merger will be accounted for under the "purchase" method of accounting in accordance with generally accepted accounting principles. Therefore, the aggregate consideration paid by Sunbeam in the merger and in the M&F Transaction will be allocated to Coleman's assets and liabilities based upon their fair market value with any excess being treated as excess of investment over net assets acquired or "goodwill". The assets and liabilities and results of operations of Coleman have been consolidated for financial accounting (but not tax) purposes with the assets and liabilities and results of operations of Sunbeam since the completion of the M&F Transaction.

STOCK EXCHANGE LISTING

The NYSE has approved for listing on the NYSE the shares of Sunbeam common stock to be issued to Coleman stockholders in the merger, subject to official notice of issuance. Sunbeam intends to file an application with the NYSE to list the shares of Sunbeam common stock that will be issued when the warrants are exercised. For a description of matters relating to the continued listing of Sunbeam common stock on the NYSE, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM--New York Stock Exchange Listing."

DELISTING AND DEREGISTRATION OF COLEMAN COMMON STOCK

Upon completion of the merger, there will no longer be any publicly held shares of Coleman common stock and the Coleman common stock will be delisted from the NYSE, the Pacific Stock Exchange and the Chicago Stock Exchange and deregistered under the Exchange Act. For a description of matters relating to the continued listing of Coleman common stock on the NYSE, see "RECENT DEVELOPMENTS AFFECTING COLEMAN."

OWNERSHIP OF COLEMAN COMMON STOCK

At the close of business on December 3, 1999, there were outstanding 55,827,490 shares of Coleman common stock held by about 548 holders of record. In the M&F Transaction, which was completed on March 30, 1998, Sunbeam became the indirect beneficial owner of 44,067,520 shares of Coleman common stock, representing about 81% of the then outstanding shares of Coleman common stock. As a result of option exercises by employees and former employees of Coleman immediately following the completion of the M&F Transaction, these shares represent about 79% of the currently outstanding shares of Coleman common stock. On July 12, 1999, Sunbeam acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock. These shares, together with the shares of Coleman common stock acquired by Sunbeam in the M&F Transaction, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock.

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The table below shows the number of shares of Coleman common stock owned by each of the current directors and officers of Coleman and the percentage of the outstanding Coleman common stock which these shares represent.

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NAME OF BENEFICIAL OWNER	AMOUNT AND NATURE OF BENEFICIAL OWNERSHIP	PER C COM
<S>	<C>	<C>
Directors:		
Jerry W. Levin.....	--	
A. Whitman Marchand.....	--	
Paul E. Shapiro.....	77,500 (1)	
John H. Klein.....	--	
Executive Officers:		
Bobby G. Jenkins.....	--	
Steven R. Isko.....	20,000 (1)	
Karen K. Clark.....	25,000 (1)	
William L. Phillips.....	--	
Gwen C. Wisler.....	--	
Barbara L. Allen.....	20	
All Directors and Executive Officers as a Group (10 persons).....	122,520 (1)	

* Less than 1%

(1) Represents shares of common stock which these individuals have the right to acquire upon exercise of employee stock options that are currently exercisable and may be exercised within the next 60 days.

At its February 27, 1998 meeting, the then Coleman board of directors unanimously approved the merger agreement. See "--Coleman's Reasons for the Merger and Approval of the Coleman Board." Since the completion of the M&F Transaction, however, the composition of Coleman's management and board of directors has changed significantly. See "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES--M&F Transaction." Mr. Levin voted on February 27, 1998 as a member of the Coleman board of directors to approve the merger agreement. However, neither Mr. Levin nor any other director or officer of Coleman is currently making any recommendation to Coleman stockholders regarding the merger.

Since January 1, 1996, Coleman has completed one purchase of Coleman common stock. On March 1, 1996, Coleman purchased 50,000 shares of Coleman common stock (or 100,000 shares, adjusted for the two-for-one stock split of Coleman common stock on June 28, 1996) in the open market at a purchase price of \$46.54 per share (\$23.26 per share, as adjusted), or an aggregate of \$2.33 million. On May 23, 1997, Coleman Worldwide commenced an offer to accept for exchange its Liquid Yield Option(Trademark) Notes due 2013 ("LYONs") for cash at a price equal to their redemption price of \$343.61 per \$1,000 principal amount at maturity. The LYONs were exchangeable for shares of Coleman common stock at the rate of 15.706 shares for each \$1,000 principal amount at maturity of LYONs. The holders of \$545,053,000 aggregate principal amount at maturity of LYONs out of the \$561,553,000 aggregate principal amount at maturity then outstanding accepted Coleman Worldwide's offer, which expired on June 20, 1997. On April 20, 1998, Coleman Worldwide gave notice of its intention to redeem all LYONs remaining outstanding on May 27, 1998 for cash at their redemption price of \$343.61 per \$1,000 principal amount at maturity, unless, prior to that date, the holders of the LYONs elected to exchange their LYONs for shares of Coleman common stock. All of the LYONs that remained outstanding on May 27, 1998 were redeemed by Coleman Worldwide.

OWNERSHIP INTEREST OF COLEMAN STOCKHOLDERS IN SUNBEAM AFTER THE MERGER

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Based on the number of shares of Sunbeam common stock and Coleman common stock outstanding on December 3, 1999 and assuming no Coleman stockholders exercise their Delaware law appraisal rights, upon completion of the merger there will be about 107,578,527 shares of Sunbeam common stock outstanding, of which the former stockholders of Coleman, including a subsidiary of MacAndrews & Forbes, will own about

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19.3%. The former holders of Coleman common stock will own about 36% of the outstanding Sunbeam common stock after the merger, assuming the exercise of (1) the warrant issued to a MacAndrews & Forbes subsidiary in settlement of threatened legal claims related to the M&F Transaction and (2) the warrants to be issued to the Coleman minority stockholders upon completion of the merger under the recent settlement of litigation related to the merger.

EXPENSES

All costs and expenses incurred in connection with the M&F Transaction and the merger will be paid by the party incurring such expenses.

Sunbeam and Coleman have incurred, and will incur, fees and expenses in connection with the M&F Transaction and the merger, including filing fees in connection with the registration of the shares to be issued in connection with the merger and upon exercise of the warrants and other required filings, fees of counsel, accountants' fees and printing costs. These expenses are estimated to be as follows:

<TABLE>

<S>		<C>
Financial advisory fees.....		\$13
Legal fees and expenses.....		2
Accounting fees and expenses.....		
Filing fees.....		
Printing and mailing.....		
Miscellaneous.....		
TOTAL.....		\$16

</TABLE>

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UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following discussion is a summary of the anticipated material United States Federal income tax consequences of the merger to a holder of Coleman common stock (a "holder"). The discussion is based on laws, regulations, rulings and decisions in effect on the date of mailing of this document, all of which are subject to change, possibly with retroactive effect. This discussion deals only with holders who hold their shares of Coleman common stock as capital assets and does not address all aspects of United States Federal taxation that may be relevant to particular holders in light of their personal circumstances

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or to holders (1) who are not citizens or residents of the United States, (2) who may be subject to special tax rules, such as rules relating to financial institutions and banks, tax-exempt organizations, insurance companies, dealers in securities, and persons who hold Coleman common stock as part of a hedge, conversion or constructive sale transaction, straddle or other risk reduction transaction (3) who perfect their appraisal rights under Delaware law, or (4) who acquired their shares of Coleman common stock pursuant to the exercise of employee stock options or other compensation arrangements with Coleman. In addition, the discussion does not address the tax consequences of the merger arising under the laws of any state, local or foreign jurisdiction.

EACH HOLDER OF COLEMAN COMMON STOCK IS URGED TO CONSULT ITS OWN TAX ADVISOR WITH RESPECT TO THE PARTICULAR TAX CONSEQUENCES OF THE MERGER TO SUCH HOLDER.

The receipt of the cash, Sunbeam common stock and warrants to purchase Sunbeam common stock upon completion of the merger is expected to be a taxable transaction for United States Federal income tax purposes and may also be a taxable transaction under applicable state, local, foreign and other tax laws. In general, for United States Federal income tax purposes, a holder will recognize gain or loss equal to the difference between (1) the sum of cash, the fair market value of the Sunbeam common stock received in exchange for such holder's shares of Coleman common stock, and the fair market value of the warrants to purchase additional shares of Sunbeam common stock and (2) the adjusted tax basis of such shares of Coleman common stock. This gain or loss will be capital gain or loss and will be long-term capital gain or loss if the shares have been held for more than twelve months.

LITIGATION SETTLEMENT AND WARRANTS

Beginning on June 25, 1998, several class action lawsuits were filed in the Court of Chancery of the State of Delaware by minority stockholders of Coleman against Coleman, Sunbeam and several of Coleman's former officers and directors. These actions were later consolidated into a single class action lawsuit. The class action alleged, among other things, that the consideration to be paid to the minority stockholders of Coleman under the February 1998 merger agreement was no longer fair as a result of the decline in the market price of Sunbeam's common stock. See "BUSINESS OF SUNBEAM--Litigation and Other Contingent Liabilities."

On October 21, 1998, Sunbeam announced that it had entered into a memorandum of understanding to settle the class action, subject to court approval. On August 6, 1999, a stipulation of settlement was executed and on August 25, 1999, notice of the settlement and of a September 29, 1999 hearing in the Court of Chancery of the State of Delaware to consider approval of the settlement was mailed to the members of the class (consisting of all Coleman stockholders owning shares at any time from February 27, 1998 until the date of the merger other than Coleman Worldwide). The Court held a hearing on September 29, 1999 and approved the settlement on November 12, 1999.

Under the terms of the settlement, Sunbeam will issue to the Coleman minority stockholders and their litigation counsel warrants expiring August 24, 2003 to purchase about 4.98 million shares of Sunbeam common stock at a cash exercise price of \$7 per share, subject to anti-dilution adjustments. Each Coleman minority stockholder will receive 0.381 of a warrant for each share of Coleman common stock owned by such stockholder when the merger is completed, assuming the number of outstanding shares of Coleman common stock does not increase prior to the completion of the merger as a result of further exercises of Coleman employee stock options. Warrants will be issued when the merger is completed to all Coleman stockholders of record as of the completion of the merger, other than Coleman Worldwide and those

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stockholders who choose to dissent from the merger and have the fair value of their shares appraised by a court, and to counsel for the Coleman minority stockholders in the litigation as their court-awarded fee.

The warrants will be freely transferrable and are exempt from registration under the Securities Act. The shares of Sunbeam common stock to be issued upon exercise of the warrants will be freely transferrable and will be registered under the Securities Act. Sunbeam intends to file an application with the NYSE to list the shares of Sunbeam common stock issuable upon exercise of the warrants. In the settlement, all members of the class released Coleman, Sunbeam, MacAndrews & Forbes and its affiliates and the former and present directors of Coleman from all claims arising out of or relating to the merger, other than their Delaware law appraisal rights.

The number of warrants that each Coleman minority stockholder will receive will be based on the number of shares of Coleman common stock owned by the stockholder at the time of the merger and will be equal to the product of (A) 4,979,663, less the 497,966 warrants awarded by the court to counsel for the Coleman minority stockholders in the litigation as their fee and (B) a fraction, the numerator of which is equal to the number of shares of Coleman common stock held by such stockholder immediately prior to the merger (other than any shares with respect to which Delaware law appraisal rights have been exercised) and the denominator of which is equal to the total number of shares of Coleman common stock outstanding and owned by Coleman minority stockholders at the time of the merger (approximately 11,759,970 shares assuming no further exercises of Coleman options).

The warrants to be issued under the settlement will have the same terms as the warrant issued to Coleman (Parent) Holdings, a subsidiary of MacAndrews & Forbes, in August 1998 in the settlement of its claims against Sunbeam. The number of warrants to be issued in the settlement (4,979,663) was determined by multiplying the number of shares issuable upon exercise of the warrant received by Coleman (Parent) Holdings (23,000,000) by a fraction of which the numerator is the number of Coleman shares owned by its minority stockholders on February 27, 1998 (9,540,930) and the denominator is the number of Coleman shares then owned by Coleman (Parent) Holdings (44,067,520). Since February 27, 1998, the number of Coleman shares held by the Coleman stockholders entitled to receive warrants in the settlement has increased to 11,759,970 through exercises of previously granted Coleman employee stock options, but the settlement did not provide for any increase in the number of warrants to be issued thereunder as a result of the issuance of Coleman shares after February 27, 1998.

No fractional warrants will be issued in the merger. A Coleman public stockholder who would otherwise be entitled to receive fractional warrants will receive a number of warrants determined by rounding up or down to the nearest whole number of warrants.

General. The warrants to be issued in the merger will be issued under a Warrant Agreement to be entered into prior to the completion of the merger by Sunbeam and The Bank of New York, as Warrant Agent. The description of the Warrant Agreement contained in this document does not purport to be complete and is qualified in its entirety by reference to the form of Warrant Agreement, a copy of which, including the form of warrant certificate, is included as an exhibit to the registration statement of which this document forms a part.

Each warrant issued in the merger will be evidenced by a warrant certificate which will entitle the warrant holder, at any time prior to

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August 24, 2003, to purchase one share of Sunbeam common stock at a cash exercise price of \$7 per share. Warrants that are not exercised prior to that date will expire and become void.

Exercise of Warrants. In order to exercise any or all of your warrants, you will be required to surrender to The Bank of New York, as Warrant Agent: (1) the warrant certificate, (2) a duly executed copy of the exercise subscription form set forth in the warrant certificate and (3) payment in full of the exercise price for each share of Sunbeam common stock as to which the warrants are exercised. Payment may be made in cash (including wire transfer of immediately available funds) or by certified or official bank check or bank cashier's check payable to the order of Sunbeam Corporation.

Upon the exercise of any warrants in accordance with the Warrant Agreement, Sunbeam will transfer the appropriate number of shares of Sunbeam common stock to the warrant holder or to a designee specified by

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the warrant holder. All shares of Sunbeam common stock issued upon the exercise of warrants will be validly issued, fully paid and nonassessable.

Antidilution Provisions. The number of shares of Sunbeam common stock issuable upon exercise of each warrant is subject to adjustments in the event that Sunbeam, among other things: (1) pays a dividend or makes any other distribution in shares of Sunbeam common stock, (2) subdivides the Sunbeam common stock, (3) combines the Sunbeam common stock into a smaller number of shares, (4) issues any shares of Sunbeam common stock in a reclassification (including any reclassification in connection with a merger, consolidation or other business combination in which Sunbeam is the continuing corporation), (5) distributes, by dividend or otherwise, options, rights or warrants to purchase any such securities, cash or other assets, (6) issues non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of Sunbeam or options, rights or warrants to purchase any of such securities) at a price per share that is lower (at the record date for the issuance) than the fair market value of the shares or other securities issued, (7) repurchases, by self-tender offer or otherwise, any shares of Sunbeam common stock (or options, rights or warrants to purchase shares of Sunbeam common stock or any securities convertible into or exchangeable for Sunbeam common stock) at a price per share that is higher (at the record date for the issuance) than the then current market value per share of Sunbeam common stock or (8) repurchases, by self-tender offer or otherwise, any non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of Sunbeam or options, rights or warrants to purchase any of such securities) at a price per share that is higher (at the record date for the issuance) than the fair market value of the shares or other securities repurchased.

No fractional shares will be issued upon exercise of warrants. In the event of any transaction in which Sunbeam stockholders receive stock, securities, cash or other assets in exchange for their Sunbeam common stock, each warrant holder will, upon exercise of the warrant at any time after the transaction, have the right to the stock, securities, cash or other assets the warrant holder would have been entitled to receive if the warrant had been exercised immediately prior to the transaction.

No Stock Rights. Prior to the exercise of his or her warrants, no warrant holder will be entitled to vote or be deemed the holder of the shares of Sunbeam

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common stock issuable upon exercise of the warrants and will have no rights of a stockholder of Sunbeam.

APPRAISAL RIGHTS

Under Delaware law, Coleman stockholders have appraisal rights in connection with the merger. Any stockholder who is eligible to exercise appraisal rights and properly does so will be paid in cash the "fair value" (exclusive of any element of value arising from the accomplishment or expectation of the merger) for his or her shares of Coleman common stock as determined by the Court of Chancery of the State of Delaware. Any shares of Coleman common stock for which a written demand for appraisal is properly filed and not withdrawn in accordance with the procedures set forth under Delaware law, except any shares as to which the holder effectively withdraws or loses the right to appraisal and payment for such shares prior to the effective time of the merger, are referred to in this document as "Dissenting Shares."

Any holder of Dissenting Shares will be paid the "fair value" of the shares, as described below, and will not receive, upon completion of the merger, cash, shares of Sunbeam common stock and warrants payable in the merger, as described in "THE MERGER--Conversion of Coleman Common Stock."

Only holders of record of Coleman common stock who are eligible for appraisal rights and comply with the applicable statutory procedures summarized in this document will be entitled to appraisal rights under Delaware law. A person having a beneficial interest in shares of Coleman common stock held of record in the name of another person, such as a broker or nominee, must act promptly to cause the record holder to follow the steps summarized below properly and in a timely manner to perfect appraisal rights.

THE FOLLOWING DISCUSSION IS NOT A COMPLETE STATEMENT OF THE LAW PERTAINING TO APPRAISAL RIGHTS UNDER DELAWARE LAW AND IS QUALIFIED IN ITS ENTIRETY BY THE FULL TEXT OF SECTION 262 OF THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE WHICH IS REPRINTED IN ITS ENTIRETY AS ANNEX II AT THE BACK OF

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THIS DOCUMENT. ALL REFERENCES IN SECTION 262 AND IN THIS SUMMARY TO A "STOCKHOLDER" OR "HOLDER" ARE TO THE RECORD HOLDERS OF DISSENTING SHARES.

Under Delaware law, when a merger is approved by written consent in lieu of a stockholders meeting under Section 228 of Delaware law, as the merger was, each constituent corporation, either before the effective date of the merger or within ten days after that date, must notify each holder of any class or series of stock of the constituent corporation that is entitled to appraisal rights of the approval of the merger and the availability of appraisal rights for any or all shares of that class or series of stock, and must include in the notice a copy of Section 262 of Delaware law.

This document constitutes the required notice to the stockholders of Coleman and the applicable statutory provisions of Delaware law are attached as Annex II at the back of this document. Any stockholder who wishes to exercise his or her appraisal rights or who wishes to preserve his or her right to do so should review the following discussion and Annex II carefully, because failure to timely and properly comply with the procedures specified will result in the loss of appraisal rights under Delaware law.

A COLEMAN STOCKHOLDER WISHING TO EXERCISE APPRAISAL RIGHTS MUST DELIVER TO COLEMAN, WITHIN TWENTY DAYS AFTER THE DATE OF MAILING OF THIS DOCUMENT, OR BY DECEMBER 27, 1999, A WRITTEN DEMAND FOR APPRAISAL OF SUCH HOLDER'S SHARES OF COLEMAN COMMON STOCK. WRITTEN DEMANDS RECEIVED AFTER THAT DATE WILL BE

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DISREGARDED. This demand must reasonably inform Coleman of the identity of the stockholder and of the stockholder's intent to demand appraisal of his or her shares of Coleman common stock. A holder of Coleman common stock wishing to exercise his or her appraisal rights must be the holder of record of the Coleman common stock on the date the written demand for appraisal is made and must continue to hold the Coleman common stock until the completion of the merger. Accordingly, a Coleman stockholder who is the holder of record of Coleman common stock on the date the written demand for appraisal is made, but who subsequently transfers the Coleman common stock prior to completion of the merger, will lose any right to appraisal of such holder's shares of Coleman common stock. Similarly, any person who acquires Coleman common stock after December 27, 1999 will not be entitled to appraisal rights.

Only a stockholder of record is entitled to assert appraisal rights for the Coleman common stock registered in that holder's name. A demand for appraisal should be executed by or on behalf of the holder of record, fully and correctly, as the holder's name appears on the holder's stock certificates. If the Coleman common stock is held of record in a fiduciary capacity, such as by a trustee, guardian or custodian, execution of the demand should be made in that capacity. If the Coleman common stock is held of record by more than one owner, as in a joint tenancy or tenancy in common, the demand should be executed by or on behalf of all joint owners. An authorized agent, including one or more joint owners, may execute a demand for appraisal on behalf of a holder of record. However, the agent must identify the holder of record and expressly disclose the fact that, in executing the demand, the agent is agent for the holder. A holder of record, such as a broker who holds Coleman common stock as nominee for several beneficial owners, may exercise appraisal rights with respect to the Coleman common stock held for one or more beneficial owners while not exercising appraisal rights with respect to the Coleman common stock held for other beneficial owners. In that case, the written demand should set forth the number of shares of Coleman common stock as to which appraisal is sought. When no number of shares of Coleman common stock is expressly mentioned, the demand will be presumed to cover all shares of Coleman common stock in brokerage accounts or other nominee forms. Those stockholders whose shares of Coleman common stock are held in brokerage accounts or other nominee forms who wish to exercise appraisal rights under Delaware law are urged to consult with their brokers or nominees to determine the appropriate procedures for the making of a demand for appraisal.

ALL WRITTEN DEMANDS FOR APPRAISAL SHOULD BE SENT OR DELIVERED TO THE COLEMAN COMPANY, INC., 2111 E. 37TH STREET NORTH P.O. BOX 2931, WICHITA, KANSAS 67201, ATTENTION: CORPORATE SECRETARY.

Within 120 days after the completion of the merger, but not after that date, the surviving corporation in the merger, or any stockholder who has complied with the statutory requirements summarized above, may file a petition in the Court of Chancery of the State of Delaware demanding a determination of the fair value of the Dissenting Shares. Coleman, as the surviving corporation in the merger, is under no obligation, and Coleman has no present intention, to file a petition for the appraisal of the fair value of the Dissenting

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Shares. Accordingly, it is the obligation of stockholders wishing to assert appraisal rights to initiate all necessary action to perfect their appraisal rights within the time prescribed in Section 262 of Delaware law.

Within 120 days after the completion of the merger, any stockholder who has complied with the requirements for exercise of appraisal rights will be entitled, upon written request, to receive from Coleman a statement setting forth the aggregate number of Dissenting Shares as to which demands for appraisal have been received and the aggregate number of holders of those

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Dissenting Shares. Such statements must be mailed within ten days after a written request therefor has been received by Coleman.

If a petition for an appraisal is timely filed, after a hearing on the petition, the Court of Chancery of the State of Delaware will determine the stockholders entitled to appraisal rights and will appraise the "fair value" of their Dissenting Shares, exclusive of any element of value arising from the accomplishment or expectation of the merger, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. Stockholders considering seeking appraisal should be aware that the fair value of their Dissenting Shares as determined under Section 262 of Delaware law could be more than, the same as or less than the value of the merger consideration they are entitled to receive under the merger agreement if they do not seek appraisal of their shares of Coleman common stock and that investment banking opinions as to fairness from a financial point of view are not necessarily opinions as to fair value under Section 262 of Delaware law. The Supreme Court of the State of Delaware has stated that "proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court" should be considered in the appraisal proceedings.

The Court of Chancery of the State of Delaware will determine the amount of interest, if any, to be paid upon the amounts to be received by stockholders whose Dissenting Shares have been appraised. The costs of the action may be determined by the Court of Chancery of the State of Delaware and imposed upon the parties as the Court of Chancery of the State of Delaware deems equitable. The Court of Chancery of the State of Delaware may also order that all or a portion of the expenses incurred by any stockholder in connection with an appraisal, including reasonable attorneys' fees and the fees and expenses of experts utilized in the appraisal proceeding, be charged pro rata against the value of all of the Dissenting Shares entitled to appraisal.

Any holder of Coleman common stock who has duly demanded an appraisal in compliance with Section 262 of Delaware law will not, after the completion of the merger, be entitled to vote the Dissenting Shares for any purpose or be entitled to the payment of dividends or other distributions on those Dissenting Shares.

If any stockholder who properly demands appraisal of Coleman common stock under Section 262 of Delaware law fails to perfect, or effectively withdraws or loses, the right to appraisal, as provided in Section 262 of Delaware law, the shares of Coleman common stock owned by such stockholder upon completion of the merger will be converted into the right to receive the cash, stock and warrants referred to above. A stockholder will fail to perfect, or effectively lose or withdraw, the right to appraisal if, among other things, no petition for appraisal is filed within 120 days after the completion of the merger, or if the stockholder delivers to Coleman a written withdrawal of the demand for appraisal. Any attempt to withdraw an appraisal demand more than sixty days after the completion of the merger will require the written approval of Coleman.

SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION

General. The total amount of funds and other consideration required by Sunbeam to complete the merger and to pay related expenses is about \$16,737,669 in cash, 6,676,135 shares of Sunbeam common stock and warrants to purchase about 4.98 million shares of Sunbeam common stock, assuming all outstanding Coleman stock options are cashed out in the merger and no Coleman stockholders exercise their Delaware law appraisal rights.

Bank Credit Facility. Sunbeam expects to obtain the cash portion of the merger consideration and amounts necessary to pay related expenses from cash on hand and additional borrowings under its bank credit facility. Sunbeam's bank

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credit facility, as amended, provides for aggregate borrowings of up to \$1,700 million under: (1) a revolving credit facility in an aggregate principal amount of up to \$400 million, maturing

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on March 30, 2005, of which \$52.5 million may be used only to complete the merger; (2) up to \$800 million in Tranche A term loans maturing on March 30, 2005, of which \$35 million may be used only to complete the merger; and (3) a Tranche B \$500 million term loan maturing on September 30, 2006, of which \$5.0 million has already been repaid through September 30, 1999. Absent a further extension by Sunbeam's bank lenders of the April 15, 1999 waiver or a refinancing of the bank credit facility, the foregoing maturities could be accelerated by Sunbeam's bank lenders at any time after April 10, 2000.

Under the bank credit facility, interest accrues, at Sunbeam's option: (1) at LIBOR; or (2) at the base rate of the administrative agent, which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%, in each case, plus, an interest rate margin which varies depending upon the occurrence of specified events. These events relate to:

- o the execution and delivery by Coleman and its domestic subsidiaries of guarantees and related security documents which will become effective upon the completion of the merger;
- o the filing with the SEC of this document;
- o the completion of the merger; and
- o the reduction of the bank lenders' commitment and loan exposure under the bank credit facility.

The interest rate margin is currently 4.00% for LIBOR loans and 2.50% for base rate loans and is subject to potential decreases in the future, including a decrease to 3.00% for LIBOR loans and 1.75% for base rate loans upon consummation of the merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the bank credit facility.

Security and Guarantees. Borrowings under the bank credit facility are secured by a pledge of the stock of Sunbeam's material subsidiaries, including Coleman and by a security interest in substantially all of the assets of Sunbeam and its material domestic subsidiaries, other than Coleman and its subsidiaries except as described below. Currently, Coleman's inventory and related assets are pledged to secure its obligations for letters of credit issued for its account under the bank credit facility. Additionally, as security for Coleman's note payable to Sunbeam, Coleman pledged substantially all of its domestic assets, other than real property, including 66% of its ownership interests in Coleman's direct foreign subsidiaries and domestic holding companies for its foreign subsidiaries and all of its ownership interests in other direct domestic subsidiaries (but not the assets of any of these subsidiaries). The pledge runs in favor of Sunbeam's lending banks, to which the Coleman note has been pledged as security for Sunbeam's obligations to them. The Coleman note, by its terms, will not be affected by the completion of the merger. Upon completion of the merger, substantially all of Coleman's assets and the assets of Coleman's domestic subsidiaries will be pledged to secure the obligations under the bank credit facility.

Borrowings under the bank credit facility are guaranteed by a number of Sunbeam's wholly owned material domestic subsidiaries and these subsidiary guarantees are secured as described above. Upon completion of the merger,

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Coleman and each of its domestic subsidiaries will become guarantors of the obligations under the bank credit facility. To the extent extensions of credit are made by any subsidiaries of Sunbeam, the obligations of these subsidiaries are guaranteed by Sunbeam.

Repayment and Refinancing. Sunbeam has made no decision with respect to the repayment or refinancing of indebtedness incurred or to be incurred under the bank credit facility and may repay this indebtedness out of its internally generated funds or from proceeds of a subsequent financing. Any decisions with respect to such repayment or refinancing will be made based on a review from time to time of the advisability of particular transactions, as well as on prevailing interest rates and financial and economic conditions.

Covenants. The bank credit facility contains covenants customary for credit facilities of a similar nature, including limitations on the ability of Sunbeam and its subsidiaries, including Coleman, to, among other things:

- o declare dividends or repurchase stock;
- o prepay, redeem or repurchase debt, incur liens and engage in sale-leaseback transactions;

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- o make loans and investments;
- o incur additional debt, including revolving loans under the bank credit facility;
- o amend or otherwise alter material agreements or enter into restrictive agreements;
- o make capital and Year 2000 compliance expenditures;
- o engage in mergers, acquisitions and asset sales;
- o engage in certain transactions with affiliates;
- o alter its fiscal year or accounting policies;
- o enter into hedging agreements;
- o settle certain litigation;
- o alter its cash management system; and
- o alter the businesses they conduct.

Sunbeam is also required to comply with specified financial covenants and ratios. As a result of Sunbeam's operating losses, among other things, at June 30, 1998 Sunbeam was not in compliance with these financial covenants and other terms of its bank credit facility. As of June 30, 1998, Sunbeam entered into an agreement with its bank lenders which waived Sunbeam's compliance through December 31, 1998. On October 19, 1998, Sunbeam's bank lenders agreed to extend this waiver through April 10, 1999. In April 1999, the waiver was extended to April 10, 2000, and the bank credit facility was amended to, among other things:

- o require Sunbeam to meet new financial tests and ratios;
- o decrease the interest rate margins to 3.75% for LIBOR loans and 2.5% for base rate loans;

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- o further reduce the interest rate margins to 3.25% for LIBOR loans and 2.00% for base rate loans as a result of Sunbeam's satisfaction on May 14, 1999 of the agreed upon conditions to this reduction. However, such margins increased to 3.50% for LIBOR loans and 2.25% for base rate loans on September 1, 1999 as a result of the merger not occurring by such date and increased to 4.00% for LIBOR loans and 2.50% for base rate loans on October 1, 1999 as a result of the merger not occurring by such date;
- o defer until April 10, 2000 principal payments of \$69.3 million otherwise due September 30, 1999 and principal payments of \$69.3 million otherwise due March 31, 2000, as a result of the satisfaction by Sunbeam on May 14, 1999 of the agreed upon conditions to this deferral;
- o provide that the following events relating to the merger will be events of default under the bank credit facility:
 - o if Sunbeam fails to have the SEC declare this document effective by October 30, 1999 (which was subsequently amended to January 10, 2000);
 - o if Sunbeam fails to complete the merger within 25 business days after this document is declared effective by the SEC; or
 - o if Sunbeam has to pay more than \$87.5 million in cash to complete the merger, including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses;
- o require Sunbeam and Coleman to amend Coleman's note payable to Sunbeam and to have Coleman secure the note, which is pledged by Sunbeam to secure the obligations under Sunbeam's bank credit facility, with substantially all of Coleman's domestic assets other than real property including 66% of its ownership interests in Coleman's direct foreign subsidiaries and domestic holding companies for its foreign subsidiaries, and all of its ownership interests in other direct domestic subsidiaries;

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- o impose restrictions on the aggregate revolving loan (other than loans used to fund the merger) principal balance permitted to be outstanding at the end of each month under the bank credit facility;
- o require Sunbeam to maintain a concentration cash management system and to repay revolving loans, which may be reborrowed subject to satisfaction of the bank credit facility's borrowing conditions, to the extent that cash on hand in the concentration accounts on any business day exceeds \$15 million;
- o require Sunbeam to prepay term loans under the bank credit facility on December 31, 1999 to the extent that cash on hand in Sunbeam's concentration accounts plus the aggregate amount of unused revolving loan commitments on this date exceeds \$125 million, but Sunbeam is not required to prepay more than \$69.3 million in the aggregate as a result of this provision;
- o require Sunbeam to reserve \$52.5 million of availability under the revolving credit facility for use solely to pay required cash portion of the merger consideration;
- o limit the amount that Sunbeam and its subsidiaries may spend on Year 2000 compatibility testing and remediation to \$50 million in the aggregate

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during the fiscal year ending December 31, 1999;

- o require Sunbeam to obtain the bank lenders' consent to any litigation settlement concerning the restatement of Sunbeam's 1996 and 1997 fiscal year and first quarter 1998 financial statements if such settlements require the payment of money, not paid by insurance carriers or other third parties, of more than \$1 million in total;
- o impose new informational reporting requirements; and
- o provide Sunbeam with a \$40 million foreign currency revolving loan subfacility.

At September 30, 1999, approximately \$1,500 million was outstanding and approximately \$200 million was available for borrowing under the credit facility. Of the approximately \$1,500 million outstanding under the new credit facility, \$1,300 million was outstanding under the Tranche A and Tranche B term loans and \$200 million was outstanding under the revolving credit facility.

Defaults. The bank credit facility provides for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, material adverse change arising from compliance with ERISA, material adverse judgments, entering into guarantees and change of ownership and control. It is also an event of default under the bank credit facility if this document is not declared effective by the SEC on or before January 10, 2000 or if the merger does not occur within 25 business days of the effectiveness of this document or if the cash consideration--including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses--to consummate the merger exceeds \$87.5 million. Although there can be no assurance, Sunbeam anticipates that it will satisfy these conditions.

Issuance of Sunbeam Common Stock in the Merger and upon Exercise of the Warrants. The stock portion of the merger consideration and the shares of stock to be issued upon exercise of the warrants will consist of newly issued shares of Sunbeam common stock. The issuance of the shares of Sunbeam common stock in the merger and upon exercise of the warrants is being registered under the registration statement of which this document forms a part.

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MATERIAL CONTACTS BETWEEN
COLEMAN AND SUNBEAM AND ITS AFFILIATES

FINANCIAL TRANSACTIONS BETWEEN COLEMAN AND SUNBEAM

In connection with the M&F Transaction, Coleman repaid substantially all of its outstanding indebtedness with the proceeds of borrowings from Sunbeam. These borrowings, together with loans made by Sunbeam to Coleman after March 30, 1998, were evidenced by an unsecured subordinated demand note payable by Coleman to Sunbeam. The note bore interest at a floating rate equivalent to the weighted average interest rate incurred by Sunbeam on borrowings under its bank credit facility and on its debentures (about 5.9% per annum during the first half of 1999). The note was pledged by Sunbeam as security for its obligations under its bank credit facility.

In connection with the April 15, 1999 amendment to Sunbeam's bank credit facility, the Coleman note payable to Sunbeam was revised to, among other things:

- o lower the interest rate to 4% if the three-month LIBOR quoted on the

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tolerate system is less than 6%, or 5% if the three-month LIBOR quoted on the tolerate system is 6% or higher,

- o make the note payable on April 15, 2000 rather than on demand,
- o add customary representations, warranties, covenants and events of default, and
- o provide that an event of default under Sunbeam's bank credit facility would constitute an event of default under the Coleman note.

The revised Coleman note had an unpaid principal amount of \$303.2 million on September 30, 1999. As security for the revised Coleman note, Coleman pledged substantially all of its domestic assets, other than real property, including 66% of its ownership interests in its direct foreign subsidiaries and in its domestic holding companies for its foreign subsidiaries, and all of its ownership interests in its other direct domestic subsidiaries, but Coleman's subsidiaries have not pledged their assets or the stock of their subsidiaries. Sunbeam pledged the revised Coleman note as security for Sunbeam's obligations to its lending banks and Sunbeam assigned to these lending banks the security pledged by Coleman for the revised Coleman note. Coleman also gave the lending banks a direct pledge of the assets securing the revised Coleman note to secure the obligations under Sunbeam's bank credit facility, subject to a cap equal to the balance due from time to time on the revised Coleman note. The Coleman note, by its terms, will not be affected by the completion of the merger. The revision of the Coleman note and the pledge of Coleman assets were approved on behalf of Coleman by A. Whitman Marchand, Coleman's then only disinterested director, acting as a duly authorized independent committee of the Coleman board of directors. Coleman paid Mr. Marchand \$25,000 for his services as an independent director and agreed to indemnify him to the fullest extent permitted by Delaware law.

Since the Sunbeam bank credit facility provides that Sunbeam will not contribute capital to Coleman or, with some exceptions, permit Coleman to borrow money from any source other than Sunbeam, Coleman's ability to meet its cash operating requirements, including working capital requirements, capital expenditures and other obligations, is dependent upon its cash flow from operations and loans from Sunbeam. Sunbeam intends, and believes it will have the ability, to fund any Coleman requirements for borrowed funds through April 10, 2000. All loans from Sunbeam to Coleman will be added to the Coleman note payable to Sunbeam.

M&F TRANSACTION

Prior to the M&F Transaction, MacAndrews & Forbes indirectly owned about 81% of the issued and outstanding Coleman common stock through various subsidiaries, including Coleman (Parent) Holdings, CLN Holdings and Coleman Worldwide.

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OWNERSHIP STRUCTURE BEFORE THE M&F TRANSACTION

[FLOWCHART APPEARS HERE]

In the M&F Transaction, which was completed on March 30, 1998, CLN Holdings merged with Laser Acquisition Corp., a subsidiary of Sunbeam, and Sunbeam, through its then indirect ownership of Coleman Worldwide, became the owner of

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MacAndrews & Forbes' shares of Coleman common stock. In exchange for the Coleman shares, Coleman (Parent) Holdings received 14,099,749 shares of Sunbeam common stock and \$159,956,756 in cash. In addition, in the M&F Transaction, Sunbeam assumed about \$1,016 million in debt of Coleman and its parent corporations, including \$497 million of indebtedness of Coleman.

OWNERSHIP STRUCTURE AFTER THE M&F TRANSACTION

[FLOWCHART APPEARS HERE]

Sunbeam's ownership interest in Coleman was reduced to about 79% as a result of the exercise of Coleman employee stock options immediately following the M&F Transaction. On July 12, 1999, Sunbeam acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock. These shares, together with the shares of Coleman common stock acquired by Sunbeam in the M&F Transaction, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock. Following the completion of the M&F Transaction, Coleman (Parent) Holdings remained a wholly owned subsidiary of MacAndrews & Forbes.

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As a result of the M&F Transaction, MacAndrews & Forbes, as the indirect parent corporation of Coleman (Parent) Holdings, became Sunbeam's second largest stockholder with shares representing about 14% of the currently outstanding Sunbeam common stock. As part of the August 1998 settlement with MacAndrews & Forbes of threatened claims related to the M&F Transaction, Coleman (Parent) Holdings received from Sunbeam a warrant expiring August 24, 2003 to purchase an additional 23 million shares of Sunbeam common stock at a cash exercise price of \$7 per share, subject to anti-dilution adjustments. Accordingly, MacAndrews & Forbes may now be deemed to be the beneficial owner of 29.9% of the total number of shares of Sunbeam common stock that would be outstanding following the exercise of the warrant. See "--Settlement of Claims Relating to the M&F Transaction."

Under the agreement relating to the M&F Transaction, upon completion of the M&F Transaction, all the directors of Coleman resigned, the number of directors constituting the board of directors of Coleman was fixed at five, and five designees of Sunbeam were elected as directors of Coleman. In addition, Sunbeam designees were appointed to senior management positions at Coleman. Subsequently, as a result of changes in Sunbeam's management and board of directors, Jerry W. Levin, the current Chairman and Chief Executive Officer of Sunbeam and Coleman, was reelected to the Coleman board. In addition, Paul E. Shapiro, the current Executive Vice President and Chief Administrative Officer of Sunbeam and Coleman, was elected to the Coleman board. The other members of the Coleman board resigned or were removed by Sunbeam. In April 1999, the size of the Coleman board was fixed at three members and A. Whitman Marchand, who is not affiliated with either Sunbeam or Coleman, was elected to the Coleman board. In July 1999, the size of the Coleman board was fixed at four and John H. Klein, an outside director of Sunbeam, was elected to the Coleman board. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM--Changes in Sunbeam's Management and Board," "--Settlement of Claims Relating to the M&F Transaction" and "--Services Provided by MacAndrews & Forbes."

Under the agreement relating to the M&F Transaction, Coleman (Parent) Holdings agreed not to transfer the shares of Sunbeam common stock it received in the M&F Transaction (other than to specified affiliates) for a period of nine months from and after the completion of the M&F Transaction, subject to certain exceptions. This nine-month period expired on November 30, 1998. Notwithstanding the lapse of these restrictions, to date Coleman (Parent) Holdings has not

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transferred any such shares.

The agreement relating to the M&F Transaction has been filed as an exhibit to the Registration Statement of which this document forms a part and is incorporated in this document by reference.

REGISTRATION RIGHTS AGREEMENT

The shares of Sunbeam common stock issued to Coleman (Parent) Holdings in the M&F Transaction were not registered under federal or state securities laws. Accordingly, in connection with the issuance, Sunbeam entered into a Registration Rights Agreement with Coleman (Parent) Holdings. Under the Registration Rights Agreement, Coleman (Parent) Holdings can require Sunbeam to register under federal and applicable state securities laws the shares of Sunbeam common stock it received in the M&F Transaction. The Registration Rights Agreement was amended in August 1998 to provide that Coleman (Parent) Holdings can also require Sunbeam to register under federal and applicable state securities laws the warrant, and the shares of Sunbeam common stock issuable upon exercise of the warrant, issued to Coleman (Parent) Holdings in connection with a settlement of legal claims related to the M&F Transaction.

Sunbeam has also agreed to use its reasonable best efforts to permit any registration statement filed by Sunbeam in connection with the Registration Rights Agreement to be used by former affiliates of Coleman for resales of Sunbeam common stock received by those affiliates in the merger. Any affiliate seeking to register shares of Sunbeam common stock for resale must agree in writing to be bound by the terms of the Registration Rights Agreement.

The Registration Rights Agreement, and the August 1998 amendment thereto, have been filed as exhibits to the Registration Statement of which this document forms a part and are incorporated in this document by reference.

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APPOINTMENTS OF FORMER COLEMAN AND MACANDREWS & FORBES OFFICERS TO SUNBEAM'S MANAGEMENT AND BOARD

In June 1998, concurrently with the removal of Sunbeam's former Chief Executive Officer and Chief Financial Officer, Sunbeam announced that Jerry W. Levin of MacAndrews & Forbes had been elected as Sunbeam's Chief Executive Officer. Mr. Levin and other Sunbeam executives who were affiliated with MacAndrews & Forbes later signed three-year employment agreements with Sunbeam. The other executives include Paul E. Shapiro, Executive Vice President and Chief Administrative Officer of Sunbeam, and Bobby G. Jenkins, Executive Vice President and Chief Financial Officer of Sunbeam. Mr. Levin and Howard Gittis of MacAndrews & Forbes also were elected to the Sunbeam board of directors. For a description of the terms of the employment agreements entered into by Messrs. Levin, Shapiro and Jenkins, see "MANAGEMENT--Executive Compensation." For a further discussion of the events leading up to the appointment of Mr. Levin as Sunbeam's Chief Executive Officer and the election of Messrs. Levin and Gittis to the Sunbeam board of directors, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM--Changes in Sunbeam's Management and Board."

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SETTLEMENT OF CLAIMS RELATING TO THE M&F TRANSACTION

On August 12, 1998, Sunbeam announced that, following investigation and negotiation by a special committee of the Sunbeam board, Sunbeam had entered into a settlement agreement with Coleman (Parent) Holdings, the MacAndrews & Forbes subsidiary from which Sunbeam acquired a controlling interest in Coleman in the M&F Transaction. The settlement:

- o released Sunbeam from threatened claims of MacAndrews & Forbes and its

affiliates arising from the M&F Transaction,

- o enabled Sunbeam to retain the services of executive personnel affiliated with MacAndrews & Forbes who had been managing Sunbeam since mid-June 1998, including Jerry W. Levin, Sunbeam's Chairman and Chief Executive Officer, Paul E. Shapiro, Sunbeam's Executive Vice President and Chief Administrative Officer, and Bobby G. Jenkins, Sunbeam's Executive Vice President and Chief Financial Officer, each of which signed a three-year employment agreement with Sunbeam in connection with the settlement, and
- o provided for continuing management assistance and other support by MacAndrews & Forbes and its affiliates to Sunbeam, at its request, as described below.

As part of the settlement, Coleman (Parent) Holdings received from Sunbeam a warrant expiring August 24, 2003 to purchase 23 million shares of Sunbeam common stock at a cash exercise price of \$7 per share, subject to anti-dilution adjustments. Accordingly, MacAndrews & Forbes may now be deemed to be the beneficial owner of 29.9% of the total number of shares of Sunbeam common stock that would be outstanding following the exercise of the warrant. In connection with the settlement agreement, Sunbeam and Coleman (Parent) Holdings entered into an amendment to the Registration Rights Agreement executed in connection with the M&F Transaction. Under this amendment, Coleman (Parent) Holdings can require Sunbeam to register under federal and applicable state securities laws the warrant received by Coleman (Parent) Holdings in the settlement and the shares of Sunbeam common stock issuable upon exercise of the warrant. For a description of the settlement agreement and the terms of the warrant issued to Coleman (Parent) Holdings, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM--Settlement of Claims Relating to the M&F Transaction."

The special committee that negotiated and approved the terms of the settlement agreement with Coleman (Parent) Holdings, including the terms of the warrant issued to Coleman (Parent) Holdings, consisted of four outside directors, none of whom has any affiliation with MacAndrews & Forbes. The members of the special committee were Howard Kristol (Chairman), Charles Elson, Peter Langerman and Faith Whittlesey. They were assisted by independent financial advisors and independent legal counsel. The special committee considered the services of Messrs. Levin, Shapiro and Jenkins and MacAndrews & Forbes' commitment to provide assistance and support to Sunbeam to be essential and of substantial (although incalculable) value to Sunbeam.

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In connection with the settlement agreement with Coleman (Parent) Holdings, Messrs. Levin, Shapiro and Jenkins each signed three-year employment agreements with Sunbeam. See "MANAGEMENT."

SERVICES PROVIDED BY MACANDREWS & FORBES

Under Sunbeam's August 1998 settlement agreement with Coleman (Parent) Holdings, in addition to the services of MacAndrews & Forbes' former executive personnel who have been managing Sunbeam since mid-June 1998, MacAndrews & Forbes agreed to provide management assistance and other support to Sunbeam at its request in a wide variety of areas. Although the nature and extent of this assistance and support had not been determined at the time of the settlement, Sunbeam has significantly benefited from this assistance and support in connection with the following areas:

- o negotiations with Sunbeam's lending banks;
- o the defense of the many lawsuits brought against Sunbeam and certain of its present and former directors and officers;

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- o the prosecution of claims against Sunbeam's liability insurance providers;
- o the defense of claims against Sunbeam by its former Chief Executive Officer and Chief Financial Officer;
- o the restatement of certain of Sunbeam's historical financial statements;
- o the preparation of various SEC filings by Sunbeam and Coleman; and
- o various other insurance, regulatory, litigation and executive compensation matters.

MacAndrews & Forbes employees provide this assistance and support to Sunbeam. Sunbeam does not pay MacAndrews & Forbes and its affiliates for the services or its employees, but does reimburse them for out-of-pocket expenses. Execution of the settlement agreement was a condition to Sunbeam's continued employment of Messrs. Levin, Shapiro and Jenkins as officers of Sunbeam.

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED
FINANCIAL STATEMENTS

The following unaudited pro forma condensed consolidated financial statements were prepared to give effect to the following "Pro Forma Transactions":

- o Sunbeam's acquisition on March 30, 1998 of about 81% of the then outstanding shares of Coleman common stock in exchange for 14,099,749 shares of Sunbeam's common stock and approximately \$160 million in cash. Immediately thereafter, as a result of the exercise of Coleman employee stock options, Sunbeam's beneficial ownership of Coleman decreased to approximately 79% of the total number of outstanding shares of Coleman common stock;
- o Sunbeam's acquisition on April 6, 1998 of all of the outstanding stock of Signature Brands in exchange for approximately \$255 million in cash;
- o Sunbeam's proposed acquisition of the shares of Coleman common stock held by the Coleman minority stockholders, in exchange for about 6.7 million shares of Sunbeam common stock, about \$87 million in cash, including cash-outs of Coleman options and warrants to purchase up to approximately 4.98 million shares of Sunbeam common stock at \$7 per share;
- o the initial borrowing of approximately \$1,325 million under Sunbeam's bank credit facility;
- o the original offering of the debentures producing net proceeds of approximately \$730 million; and
- o the use of most of the net proceeds from the original bank borrowing and offering of the debentures.

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The bank credit facility, as amended, consists of:

- o a revolving credit facility in an aggregate principal amount of up to \$400 million maturing March 30, 2005, of which \$52.5 million may only be used to complete the merger;
- o up to \$800 million in term loans maturing on March 30, 2005, of which

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\$35.0 million may only be used to complete the merger; and

- o a \$500 million term loan maturing September 30, 2006, of which \$5.0 million has already been repaid through September 30, 1999.

Interest accrues, at the Company's option:

- o at LIBOR, or
- o at the base rate of the administrative agent which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%,

in each case, plus an interest margin which is currently 4.00% for LIBOR borrowings and 2.50% for base rate borrowings and is subject to potential decreases in the future, including a decrease to 3.00% for LIBOR borrowings and 1.75% for base rate borrowings upon consummation of the merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the bank credit facility. Past defaults have been waived through April 10, 2000.

The original offering in March 1998 of \$2,014 million aggregate principal amount of the debentures at a yield to maturity of 5.0% resulted in net proceeds of approximately \$730 million. The debentures are exchangeable for shares of Sunbeam common stock at an initial conversion rate of 6.575 shares for each \$1,000 principal amount at maturity of the debentures, subject to adjustment upon occurrence of certain events. The debentures are subordinated in right of payment to all of our existing and future senior indebtedness. The debentures are not redeemable by Sunbeam prior to March 25, 2003.

Proceeds from the initial bank borrowing and the original offering of debentures of \$1,176 million, \$255 million and \$182 million were used to acquire and repay the debt of Coleman and its parent corporations, CLH Holdings and Coleman Worldwide, Signature Brands and First Alert, respectively. Also, approximately \$300 million of Sunbeam's outstanding indebtedness was repaid from such proceeds. In addition, the financing provided funds to pay the \$106.9 million of redemption premiums associated with debt extinguishments and also provided working capital and funds for general corporate purposes.

The unaudited pro forma condensed consolidated balance sheet as of September 30, 1999 gives pro forma effect to Sunbeam's proposed acquisition of the shares of Coleman common stock held by the Coleman minority stockholders as if it had occurred on September 30, 1999. The unaudited pro forma condensed consolidated statements of operations for the year ended December 31, 1998 and the nine months ended September 30, 1999 give effect to the Pro Forma Transactions as if they had occurred on December 29, 1997, the beginning of Sunbeam's 1998 fiscal year.

The unaudited pro forma condensed consolidated financial statements do not include pro forma adjustments relating to the acquisition of First Alert because the effects of that acquisition are not significant.

Sunbeam's consolidated historical results of operations for the year ended December 31, 1998 includes Coleman and Signature Brands from the respective acquisition dates and has been derived from the audited financial statements of Sunbeam as of and for the year ended December 31, 1998. The results of operations of the acquired entities from the beginning of the period through the respective acquisition dates have been derived from the unaudited statements of operations of the acquired entities for the three months ended March 31, 1998. The acquisitions have been accounted for under the purchase method of accounting.

Reclassifications were made to the net sales, cost of goods sold and selling, general and administrative expense as reported in the historical

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financial statements of Coleman and Signature Brands. These reclassifications were made to conform to the classifications of Sunbeam and consist of promotional allowances and cooperative advertising expenses. Sunbeam classifies these amounts as a deduction to arrive at net sales.

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Included in the historical statement of operations of Coleman for the three months ended March 31, 1998, are certain pretax charges for costs relating to the acquisition of Coleman by Sunbeam in the amount of \$7.1 million, a \$3.6 million write-off of capitalized costs associated with the installation of a company-wide computer software system which was abandoned following its acquisition by Sunbeam and \$2.2 million to cancel a licensing agreement with an affiliate. Additionally, the expense of the early extinguishment of debt of \$1.2 million shown as an extraordinary charge on Coleman's historical statement of operations for the three months ended March 31, 1998, has been excluded from the unaudited pro forma condensed consolidated statement of operations for the year ended December 31, 1998.

The pro forma adjustments are based upon available information and certain assumptions that Sunbeam believes are reasonable under the circumstances.

The unaudited pro forma condensed consolidated financial statements should be read in conjunction with "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS" and the financial statements of Sunbeam and the notes thereto, and the other financial information included elsewhere in this document. These unaudited pro forma condensed consolidated financial statements are provided for informational purposes only and do not purport to be indicative of the financial position or results of operations which would have been obtained had the Pro Forma Transactions been completed as of the dates indicated above or the results of operations for any future period.

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UNAUDITED PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET

AS OF SEPTEMBER 30, 1999
(IN THOUSANDS)

<TABLE>
<CAPTION>

<S>

ASSETS

	HISTORICAL SUNBEAM	COLEMAN MERGER (i)
	<C>	<C>
Current assets		
Cash and cash equivalents.....	\$ 29,088	
Receivables, net.....	443,223	
Inventories.....	507,821	\$ 4,26
Prepaid expenses and other current assets.....	70,681	
Total current assets.....	1,050,813	4,26
Property, plant and equipment, net.....	457,293	12,64
Trademarks, tradenames, goodwill and other, net.....	1,809,868	101,84
	\$3,317,974	\$ 118,76

LIABILITIES AND SHAREHOLDERS' EQUITY

Current liabilities:		
Short-term debt and current portion of long-term debt.....	\$1,505,576	\$ 87,00
Accounts payable.....	188,899	
Other current liabilities.....	303,075	
Total current liabilities.....	1,997,550	87,00
Long-term debt, less current portion.....	817,128	
Other long-term liabilities.....	231,898	
Deferred income taxes.....	111,516	36,60
Minority interest.....	65,195	(65,19)
Shareholders' equity:		
Common stock.....	1,007	6
Additional paid-in capital.....	1,122,896	60,29
Accumulated deficit.....	(965,036)	
Accumulated other comprehensive loss.....	(64,180)	
Total shareholders' equity.....	94,687	60,36
	\$3,317,974	\$ 118,76

</TABLE>

See Notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

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<PAGE>

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS

FOR THE YEAR ENDED DECEMBER 31, 1998
(IN THOUSANDS, EXCEPT PER SHARE DATA)

<TABLE>
<CAPTION>

	HISTORICAL SUNBEAM	SIGNATURE BRANDS (A)	COLEMAN (A)	PRO FORMA ADJUSTMENTS	PRO FOR BEFOR COLEMAN MERGE
<S>	<C>	<C>	<C>	<C>	<C>
Net sales.....	\$1,836,871	\$55,482	\$244,499	\$ (23,346) (b) (14,800) (c)	\$2,098,
Cost of goods sold.....	1,788,819	39,098	175,777	(10,954) (b) (10,700) (c) 1,554 (d)	,983,
Amortization of goodwill and identifiable intangibles..	43,830	1,032	2,934	6,537 (d)	54,
Selling, general and administrative expense....	674,247	20,392	74,855	(12,392) (b) (3,700) (c) 173 (d)	753,
Operating loss.....	(670,025)	(5,040)	(9,067)	(8,664)	(692,

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Interest expense, net.....	131,091	4,654	9,044	13,019 (e) 701 (f)	158,
Other income (expense).....	4,768	173	(1,861)		3,
Gain on sale of business....			26,137		26,
(Loss) earnings from continuing operations before income taxes, minority interest and extraordinary charge.....	(796,348)	(9,521)	6,165	(22,384)	(822,
Income taxes (benefit).....	(10,130)	(3,062)	7,518	(4,400) (g)	(10,
Minority interest.....	(10,681)		61	(297) (h)	(10,
Loss from continuing operations before extraordinary charge.....	\$ (775,537)	\$ (6,459)	\$ (1,414)	\$ (17,687)	\$ (801,
Basic loss per share of common stock from continuing operations.....	\$ (7.99)				\$ (7
Weighted average common shares outstanding.....	97,121			3,525 (j)	100,
Ratio of earnings to fixed charges.....	-- (1)				

</TABLE>

See Notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

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<PAGE>

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS

FOR THE NINE MONTHS ENDED SEPTEMBER 30, 1999
(IN THOUSANDS, EXCEPT PER SHARE DATA)

<TABLE>
<CAPTION>

<S>		HISTORICAL SUNBEAM
Net sales.....		----- <C> \$1,786,428
Cost of goods sold.....		1,334,177

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Amortization of goodwill and identifiable intangibles.....	38,401	
Selling, general and administrative expense.....	410,862	
Operating loss.....	2,988	
Interest expense, net.....	136,631	
Other income, net.....	(4,619)	
Loss from continuing operations before income taxes and minority interest...	(129,024)	
Income taxes.....	12,661	
Minority interest.....	13,354	
Net (loss) earnings.....	\$ (155,039)	
Basic loss per share.....	\$ (1.54)	
Weighted average common shares outstanding.....	100,743	
Ratio of earnings to fixed charges.....	--	(1)

</TABLE>

See Notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

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NOTES TO UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

AS OF SEPTEMBER 30, 1999 AND FOR THE YEAR ENDED DECEMBER 31, 1998
 AND THE NINE MONTHS ENDED SEPTEMBER 30, 1999
 (IN THOUSANDS, EXCEPT PERCENTAGES, SHARE DATA AND AS NOTED)

- (a) Represents the historical statements of operations of Coleman and Signature Brands for the three months ended March 31, 1998.
- (b) Represents the reclassifications made to net sales, cost of goods sold and selling, general and administrative expense as reported in the historical financial statements of Coleman and Signature Brands for the three months ended March 31, 1998. These reclassifications were made to conform to the classifications of Sunbeam and consist of promotional allowances and cooperative advertising. Sunbeam classifies these amounts as a deduction to arrive at net sales, as follows:

<TABLE>
 <CAPTION>

		DECREASE IN	

	NET SALES	COST OF	A
		GOODS SOLD	
	-----	-----	-----
<S>	<C>	<C>	<
Coleman.....	\$ (17,115)	\$ (10,954)	
Signature Brands.....	(6,231)		
	\$ (23,346)	\$ (10,954)	
	-----	-----	

028255

</TABLE>

- (c) Represents the elimination of Coleman's net sales, cost of goods sold and selling, general and administrative expense for the two days ended March 31, 1998. These amounts are included in the Coleman historical statement of operations for the three months ended March 31, 1998 and are also reflected in the Sunbeam historical statement of operations since March 30, 1998.
- (d) Represents the increase in depreciation and amortization to reflect the pro forma effect of the acquisitions occurring at the beginning of the period. In each acquisition, the purchase price paid has been allocated to the fair value, as determined by independent appraisals, of tangible and identified intangible assets acquired and liabilities assumed as follows (in millions):

<TABLE>
<CAPTION>

	COLEMAN

<S>	<C>
Value of common stock issued.....	\$ 607
Cash paid including expenses and mandatory redemption of debt, net of cash acquired.....	160
Cash received from sale of Coleman Spas, Inc.....	(17)
Cash received from stock option proceeds.....	(9)

Net cash paid and equity issued.....	741
Fair value of total liabilities assumed, including debt.....	1,455

Fair value of assets acquired.....	2,196
	1,113

Excess of purchase price over fair value of net assets acquired.....	\$1,083

</TABLE>

The value of approximately \$44 per share for the Sunbeam common stock issued at the date of the M&F Transaction was derived by using the average closing stock price for the day before and day of the public announcement of the M&F Transaction. Subsequent to the M&F Transaction, Coleman Spas, Inc. was sold for \$17 million and the related proceeds are therefore presented above as a deduction to arrive at the net cash paid and equity issued for the businesses retained. The \$17 million is similarly excluded from the amount of \$1,113 million described as "fair value of assets acquired." Immediately after the M&F Transaction, employee stock options were exercised generating proceeds of \$9 million.

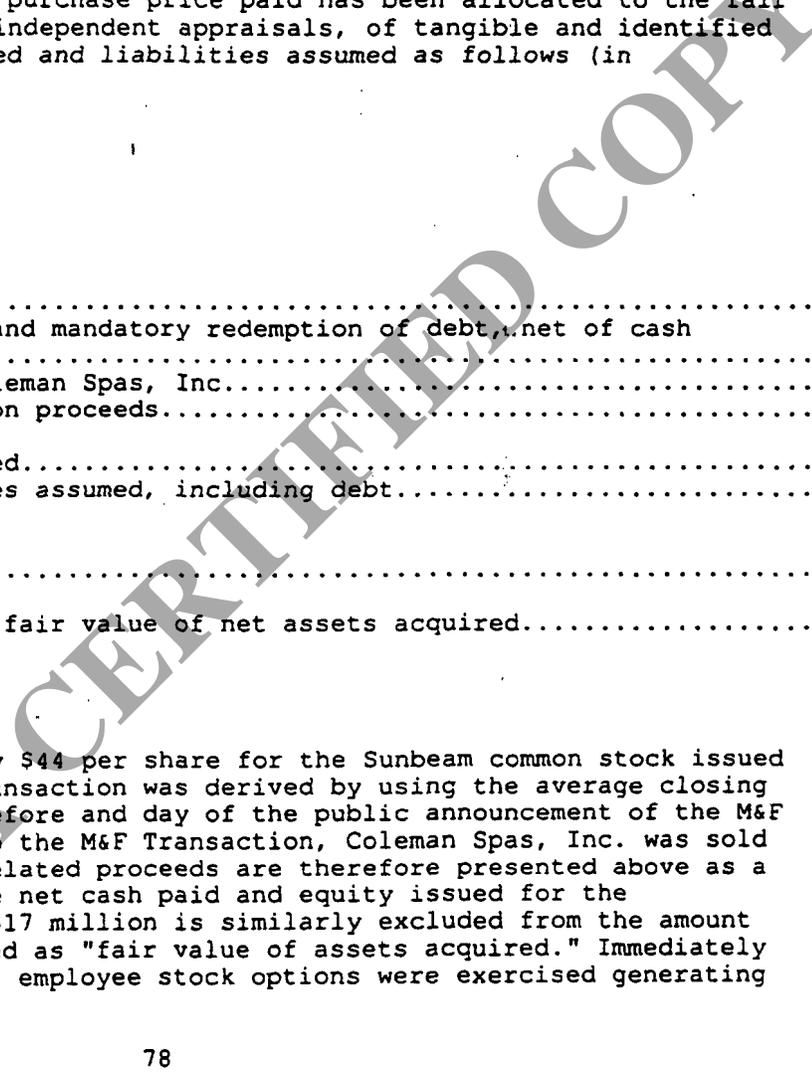
<PAGE>

This amount is presented above as a reduction to arrive at the net cash paid for the M&F Transaction and a proportionate corresponding increase is included in the minority interest liability assumed.

The pro forma amounts are derived as follows:

<TABLE>
<CAPTION>

COLEMAN	SIGNATURE BRANDS	AVERAGE LIFE
---------	---------------------	-----------------



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	----- <C>	----- <C>	----- <C>
<S> Increase in property, plant and equipment to reflect fair value.....	\$50,560	\$ 3,871	7.9 years

Amount attributable to:
 Cost of goods sold.....
 Selling, general and administrative expense.....

</TABLE>

The pro forma purchase price allocation to the acquired property, plant and equipment of Coleman and Signature Brands represents the aggregate amount recorded for financial statement purposes as detailed by an independent appraisal. The remaining economic useful lives for the acquired property, plant and equipment range from 17 to 34 years for buildings, 6 to 12 years for machinery and equipment and 1 to 5 years for tooling and other depreciable assets. The average life of 7.9 years represents the weighted average of the depreciable lives used for financial reporting purposes.

Amortization of goodwill and identifiable intangibles:

<TABLE>
<CAPTION>

	----- COLEMAN ----- <C>	----- SIGNATURE BRANDS ----- <C>	----- LIFE ----- <C>	----- E A ----- <
<S> Goodwill.....	\$1,083,259	\$ 147,151	40 years	
Trademarks.....	279,920	53,900	40 years	
Assembled workforce.....	12,880	3,000	8 years	
Patents.....	5,600	1,800	8 years	
Less: historical amortization.....				

</TABLE>

(e) Represents the net increase in interest expense to reflect the pro forma effect of acquisition and refinancing borrowings as if such transactions occurred at the beginning of the period. Amounts are derived as follows:

<TABLE>
<CAPTION>

ACQUISITION	----- ACQUISITION AND REFINANCING BORROWINGS ----- <C>	----- EFFECTIVE RATE ----- <C>	----- QUARTERLY INTEREST ON ACQUISITION AND REFINANCING BORROWINGS ----- <C>	----- QUARTERLY INTEREST PRE-ACQUISSI BORROWING ----- <C>
<S> Coleman.....	\$ 1,176,000	7.47%	\$21,962	\$ 9,044
Signature Brands.....	254,600	7.47%	4,755	4,654

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CLASS: QUARTERLY INTEREST PRE-ACQUISITION BORROWING

</TABLE>

The assumed effective interest rate was derived using the 1998 effective rates, including amortization of deferred financing costs, of 9.05% for the term loan borrowings, which represent approximately 59% of Sunbeam's acquisition and refinancing borrowings, and 5.20% for the debentures, which represent approximately 41% of Sunbeam's acquisition and refinancing borrowings. The effect on operations of a 1/8% variance in interest rates on the acquisition and refinancing borrowings would be approximately \$1.1 million per year and \$0.3 million per quarter.

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(f) Represents the net increase in interest expense to reflect the pro forma effect of higher interest rates on the new financing compared with historical financing. The amount is derived as follows:

<TABLE>
<CAPTION>

	AVERAGE PRE-REFINANCING BORROWINGS	EFFECTIVE RATE	QUARTERLY INTEREST AT REFINANCING BORROWINGS RATE	QUARTERLY INTEREST A PRE-REFINAN BORROWINGS
	-----	-----	-----	-----
<S> Historical Sunbeam.....	<C> \$ 242,500	<C> 7.47%	<C> \$ 4,529	<C> \$ 3,828

(g) Represents the domestic income tax provision accrued by Coleman of \$4.4 million for the three months ended March 31, 1998. On a pro forma basis this accrual would not have been required as a consequence of the net operating losses generated by Sunbeam for the year ended December 31, 1998. No adjustment is required to the Signature Brands tax benefit since the Signature Brands loss in the first quarter of 1998 was available for carryback. No tax benefit is provided on the pro forma adjustments since the adjustments for depreciation and amortization are not deductible for income tax purposes and the deferred tax asset resulting from the remaining pro forma adjustments results in an additional valuation allowance since it is more likely than not that such deferred tax assets will not be realized from future taxable income.

(h) Represents approximately 21% of the loss from continuing operations before extraordinary charge of Coleman for the three months ended March 31, 1998.

(i) Represents the pro forma effects associated with completing the merger and acquiring the remaining Coleman shares outstanding. The total consideration is derived as follows:

<TABLE>	
<S>	<C>
Cash.....	\$ 87,000
Sunbeam common stock.....	45,225
Sunbeam warrants.....	15,139

	\$147,364

</TABLE>	

The portion of the consideration consisting of approximately 6.7 million

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shares of Sunbeam common stock is valued at \$6.75 per share, the closing price of Sunbeam's common stock on October 21, 1998, the date the Company announced the terms of the Memorandum of Understanding. The warrants to purchase approximately 4.98 million shares of Sunbeam common stock at \$7 per share are valued at \$3.04 per warrant, the same value ascribed to the warrant issued to a subsidiary of MacAndrews & Forbes in August 1998 based on a valuation performed by an independent consultant. The pro forma allocation of the consideration is based on independent appraisals prepared in connection with the M & F transaction. Allocation of the total consideration and its effect on the pro forma condensed consolidated financial statements is as follows:

<TABLE>
<CAPTION>

			YEAR ENDED DECEMBER 31 PRO FORMA EFFECT C	
	LIFE	ALLOCATION	COST OF GOODS SOLD	AMORTIZATION OF GOODWILL AND IDENTIFIABLE INTANGIBLES
<S>	<C>	<C>	<C>	<C>
Inventories.....	--	\$ 4,280		
Property, plant and equipment.....	7.9 years	12,640	\$1,440	
Trademarks.....	40 years	69,980		\$ 1,750
Assembled workforce.....	8 years	3,220		403
Patents.....	8 years	1,400		175
Minority interest.....	--	65,195		
Deferred income taxes.....	--	(36,600)		
Goodwill.....	40 years	27,249		681
		\$147,364	\$1,440	\$ 3,009
Pro forma effect on Nine Months Ended September 30, 1999.....			\$1,080	\$ 2,257

</TABLE>

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The pro forma adjustment for the nine months ended September 30, 1999, assumes that the depreciation and amortization are charged to operations ratably over the year.

In deriving the above pro forma adjustments, Sunbeam assumed that the fair values used in connection with the acquisition of the initial 79% interest in Coleman were reasonable approximations of the appropriate fair values to be used in connection with the second half of this step acquisition. Accordingly, the purchase price amounts allocated above to inventories, property, plant and equipment, trademarks, assembled workforce and patents reflect 21% of the fair values used in the acquisition of the initial 79% interest of Coleman.

The pro forma adjustment to deferred income taxes represents the recording in purchase accounting of the deferred income tax effects of the temporary differences which result from the allocation of \$91.5 million of the consideration to tangible and identifiable intangible assets. The deferred income taxes have been established based on an estimated federal, state and

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foreign income tax rate of approximately 40%.

The pro forma adjustments also reflect:

- o additional interest expense of \$7.439 million and \$5.579 million for the year ended December 31, 1998 and nine months ended September 30, 1999, respectively, on the \$87 million portion of the consideration which is expected to be funded from Sunbeam's revolving credit facility at an interest rate of 8.55% (the rate in effect at December 31, 1998). The effect on operations of a 1/8% variance in interest rates on these borrowings would be approximately \$109,000 per year and \$27,000 per quarter.
 - o the elimination of the minority interest in the loss on Coleman in the pro forma statement of operations.
- (j) Represents the increase in the weighted average shares of Sunbeam common stock outstanding as of December 31, 1998, adjusted for the 14,099,749 shares issued in connection with the acquisition of Coleman as if it had occurred at the beginning of the period and the approximately 6.7 million shares of Sunbeam common stock to be issued in connection with the acquisition of the remaining Coleman shares outstanding. Since the Coleman acquisition occurred at the end of the first quarter of 1998, the weighted average shares outstanding would have increased on a pro forma basis by one quarter of the 14,099,749 shares issued, or 3,524,937 shares. The shares of common stock issuable upon conversion of the debentures, the MacAndrews & Forbes warrants, and the warrants to be issued in connection with the merger have not been included, as they would be anti-dilutive.
- (k) Represents the increase in the weighted average shares of Sunbeam common stock outstanding as of September 30, 1999, adjusted for the approximately 6.7 million shares of Sunbeam common stock to be issued in connection with the acquisition of the remaining Coleman shares outstanding. The shares of common stock issuable upon conversion of the debentures, the MacAndrews & Forbes warrants, and the warrants to be issued in connection with the merger have not been included, as they would be anti-dilutive.
- (l) In computing the ratio of earnings to fixed charges: (a) earnings represents income (loss) from continuing operations before income taxes and fixed charges, exclusive of capitalized interest; and (b) fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense. For the fiscal year ended December 31, 1998 and the nine months ended September 30, 1999, historical earnings were insufficient to cover fixed charges by \$797.1 million and \$130.1 million, respectively. For the fiscal year ended December 31, 1998 and the nine months ended September 30, 1999, on a pro forma basis, earnings were insufficient to cover fixed charges by \$834.9 million and \$139.1 million, respectively.

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SELECTED CONSOLIDATED FINANCIAL INFORMATION OF SUNBEAM

The following selected historical financial information has been derived from the consolidated financial statements and the condensed consolidated financial statements of Sunbeam. This information should be read in conjunction with Sunbeam's consolidated financial statements and related notes, which are included elsewhere in this prospectus.

While reviewing the following selected historical financial information, please note the following:

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- o All amounts in the table are expressed in millions, except per share and ratio data.
- o On March 30, 1998, Sunbeam acquired approximately 81% of the then outstanding shares of common stock of Coleman, which immediately thereafter was reduced to about 79% through exercises of Coleman employee stock options. On April 6, 1998, Sunbeam completed the cash acquisitions of First Alert and Signature Brands. The acquisitions were accounted for under the purchase method of accounting and, accordingly, the financial position and results of operations of each acquired entity are included in the Consolidated Financial Statements from the respective dates of acquisition.
 - o For the fiscal year ended December 31, 1998, Sunbeam took an extraordinary charge of \$122.4 million related to the early extinguishments of debt and took other charges of:
 - o \$70.0 million related to the issuance of warrants;
 - o \$62.5 million related to the write-off of goodwill;
 - o \$39.4 million related to fixed asset impairments;
 - o \$31 million related to compensation expense for the new employment agreements with Sunbeam's former Chairman and Chief Executive Officer and two other former senior officers; and
 - o \$95.8 million related to write-downs of inventory.

See Notes 2, 3 and 11 to Sunbeam's Consolidated Financial Statements.

- o For the fiscal year ended December 28, 1997, Sunbeam reversed \$28.0 million of pre-tax liabilities no longer required and \$13.3 million of tax liabilities no longer required.
- o For the fiscal year ended December 29, 1996, Sunbeam took restructuring, asset impairment and other charges of \$239.2 million before taxes. See Notes 12 and 13 to Sunbeam's consolidated financial statements included in this prospectus.
- o The "earnings (loss) from discontinued operations, net of taxes" and "loss on sale of discontinued operations, net of taxes" represent results from Sunbeam's furniture business, net of taxes and the estimated loss on disposal. See Note 13 to Sunbeam's consolidated financial statements included in this prospectus.
- o In computing the ratio of earnings to fixed charges:
 - o earnings represent income (loss) from continuing operations before income taxes and fixed charges (exclusive of capitalized interest); and
 - o fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense.

For the fiscal year ended December 29, 1996 and the fiscal year ended December 31, 1998, historical earnings were insufficient to cover fixed charges by \$262.2 million and \$797.1 million, respectively. For the nine months ended September 30, 1998 and 1999, historical earnings were insufficient to cover fixed charges by \$476.7 million and \$130.1 million, respectively. For the fiscal year ended December 31, 1998 and for the nine months ended September 30, 1999, on a pro forma basis, earnings were insufficient to cover fixed charges by \$834.9 million and \$139.1 million, respectively.

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- o At September 30, 1999, total assets include goodwill and other intangible assets of \$1,809.9 million.

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<PAGE>

<TABLE>

<CAPTION>

	FISCAL YEARS ENDED					DEC
	JANUARY 1, 1995	DECEMBER 31, 1995	DECEMBER 29, 1996	DECEMBER 28, 1997	DECEMBER 31, 1998	PRC
<S>	<C>	<C>	<C>	<C>	<C>	<C>
STATEMENT OF OPERATIONS DATA:						
Net sales.....	\$1,044.3	\$1,016.9	\$ 984.2	\$1,073.1	\$1,836.9	\$
Cost of goods sold...	764.4	809.1	896.9	831.0	1,788.8	
Selling, general and administrative expenses.....	128.9	137.5	221.7	152.6	718.1	
Restructuring, and asset impairment charge (benefit)...	--	--	110.1	(14.6)	--	
Operating earnings (loss).....	\$ 151.0	\$ 70.3	\$ (244.5)	\$ 104.1	\$ (670.0)	\$
Earnings (loss) from continuing operations before extraordinary charge.....	\$ 85.3	\$ 37.6	\$ (170.2)	\$ 52.3	\$ (775.5)	\$
Earnings (loss) from discontinued operations, net of taxes.....	21.7	12.9	0.8	--	--	
Loss on sale of discontinued operations, net of taxes.....	--	--	(39.1)	(14.0)	--	
Extraordinary charge.....	--	--	--	--	(122.4)	
Net earnings (loss).....	\$ 107.0	\$ 50.5	\$ (208.5)	\$ 38.3	\$ (897.9)	\$
Ratio of earnings to fixed charges.....	14.4x	4.7x	--	7.2x	--	
EARNINGS (LOSS) PER SHARE DATA:						
Weighted average shares outstanding:						
Basic.....	82.6	81.6	82.9	84.9	97.1	
Diluted.....	82.6	82.8	82.9	87.5	97.1	
Earnings (loss) per share from continuing operations before extraordinary						

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charge:						
Basic.....	\$ 1.03	\$ 0.46	\$ (2.05)	\$ 0.62	\$ (7.99)	\$
Diluted.....	1.03	0.45	(2.05)	0.60	(7.99)	
Earnings (loss) per share:						
Basic.....	1.30	0.62	(2.51)	0.45	(9.25)	
Diluted.....	1.30	0.61	(2.51)	0.44	(9.25)	
Cash dividends declared per share.....	0.04	0.04	0.04	0.04	0.02	
BALANCE SHEET DATA (AT PERIOD END):						
Working capital.....	\$ 294.8	\$ 411.7	\$ 359.9	\$ 369.1	\$ 488.5	
Total assets.....	1,008.9	1,158.7	1,059.4	1,058.9	3,405.5	
Long-term debt.....	124.0	161.6	201.1	194.6	2,142.4	
Shareholders' equity.....	454.7	601.0	415.0	472.1	260.4	

<CAPTION>

NINE MONTHS ENDED

	-----	-----
	SEPTEMBER 30,	SEPTEMBER 30,
	1999	1999
	-----	-----
	PRO FORMA	
	-----	-----

<S>
STATEMENT OF OPERATIONS DATA:

	<C>	<C>
Net sales.....	\$ 1,786.4	\$ 1,786.4
Cost of goods sold...	1,334.2	1,335.3
Selling, general and administrative expenses.....	449.2	451.6
Restructuring, and asset impairment charge (benefit)...	---	---
Operating earnings (loss).....	\$ 3.0	\$ (0.5)
Earnings (loss) from continuing operations before extraordinary charge.....	\$ (155.0)	\$ (150.7)
Earnings (loss) from discontinued operations, net of taxes.....	--	--
Loss on sale of discontinued operations, net of taxes.....	--	--
Extraordinary charge.....	--	--
Net earnings (loss).....	\$ (155.0)	\$ (150.7)
Ratio of earnings to fixed charges.....	--	--
EARNINGS (LOSS) PER SHARE DATA:		
Weighted average shares		

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outstanding:		
Basic.....	100.7	107.4
Diluted.....	100.7	107.4
Earnings (loss) per share from continuing operations before extraordinary charge:		
Basic.....	\$ (1.54)	\$ (1.40)
Diluted.....	(1.54)	(1.40)
Earnings (loss) per share:		
Basic.....	(1.54)	(1.40)
Diluted.....	(1.54)	(1.40)
Cash dividends declared per share.....		
	--	--
BALANCE SHEET DATA (AT PERIOD END):		
Working capital.....	\$ (946.8)	\$ (1,029.5)
Total assets.....	3,318.0	3,436.7
Long-term debt.....	817.1	817.1
Shareholders' equity.....	94.7	155.1
</TABLE>		

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SELECTED CONSOLIDATED FINANCIAL INFORMATION OF COLEMAN

The following selected consolidated historical financial information of Coleman with respect to each year in the five-year period ended December 31, 1998 and for the nine-month periods ended September 30, 1998 and September 30, 1999 is derived from the consolidated financial statements of Coleman. The balance sheet data as of September 30, 1999 and December 31, 1998, 1997, 1996 and 1995 and the statement of operations data for the nine-month periods ended September 30, 1999 and September 30, 1998 and each of the three years in the periods ended December 31, 1998, 1997 and 1996 are included in documents incorporated by reference in this document. The balance sheet data as of September 30, 1998 and December 31, 1994, have been derived from Coleman's consolidated financial statements previously filed with the SEC but not incorporated by reference in this document. The selected consolidated historical financial information should be read in conjunction with the consolidated financial statements and the related notes of Coleman which are incorporated by reference in this document. See "WHERE TO FIND MORE INFORMATION" and "INCORPORATION OF DOCUMENTS BY REFERENCE."

While reviewing the following selected historical financial information, please note the following:

- o All amounts are expressed in thousands, except per share data.
- o For the fiscal year ended December 31, 1998, Coleman took restructuring and other charges of \$31.6 million before taxes, which have been recorded as follows:
 - o \$13.7 million in selling, general and administrative expense
 - o \$17.9 million in restructuring charges (credits)

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- o For the fiscal year ended December 31, 1997, Coleman took restructuring and other charges of \$34.4 million before taxes, which have been recorded as follows:
 - o \$8.1 million in cost of sales
 - o \$3.6 million in selling, general and administrative expense
 - o \$22.7 million in restructuring charges (credits)
- o For the fiscal year ended December 31, 1996, Coleman took restructuring and other charges of \$66.2 million before taxes, which have been recorded as follows:
 - o \$31.4 million in cost of sales
 - o \$4.1 million in selling, general and administrative expense
 - o \$30.7 million in restructuring charges (credits)
- o The asset impairment charge in 1995 is related to Coleman's Brazilian operations which had not performed to Coleman's expectations since acquisition of this operation in 1994 and reflects charges taken in connection with the adoption of SFAS No. 121.
- o Restructuring charges in 1994 reflect primarily the non-recurring charges taken in connection with the restructuring of Coleman's German operations and which include severance costs, commitments to third parties and write-downs of leasehold improvements and other assets to estimated realizable values.

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	YEAR ENDED DECEMBER 31,					
	1994	1995	1996	1997	1998	
<S>	<C>	<C>	<C>	<C>	<C>	<C>
STATEMENT OF OPERATIONS DATA:						
Net revenues.....	\$751,580	\$933,574	\$1,220,216	\$1,154,294	\$1,015,373	
Cost of sales.....	535,710	649,427	917,947	828,107	748,295	
Gross profit.....	215,870	284,147	302,269	326,187	267,078	
Selling, general and administrative expense.....	128,466	174,688	271,541	255,785	255,077	
Asset impairment charge....	--	12,289	--	--	--	
Restructuring charges (credits).....	18,456	--	30,678	22,722	17,892	
Interest expense, net.....	13,374	24,545	38,727	40,852	33,213	
Amortization of goodwill and deferred charges....	6,209	7,745	10,473	11,338	19,584	
Gain on sale of business....	--	--	--	--	(32,411)	
Other expense (income), net.....	1,138	334	1,151	1,867	170	
Earnings (loss) before income taxes, minority						

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interest and extraordinary item	48,227	64,546	(50,301)	(6,377)	(26,441)
Income tax expense (benefit).....	14,747	24,479	(10,927)	(5,227)	13,846
Minority interest.....	--	--	1,872	1,386	276
Earnings (loss) before extraordinary item	33,480	40,067	(41,246)	(2,536)	(40,563)
Extraordinary loss on early extinguishment of debt, net of income taxes.....	(677)	(787)	(647)	--	(17,538)
Net earnings (loss).....	\$ 32,803	\$ 39,280	\$ (41,893)	\$ (2,536)	\$ (58,101)
Basic earnings (loss) per common share	\$ 0.61	\$ 0.74	\$ (0.79)	\$ (0.05)	\$ (1.05)
BALANCE SHEET DATA (AT END OF PERIOD):					
Total assets.....	\$712,265	\$844,487	\$1,160,086	\$1,041,764	\$ 933,257
Long-term debt (including current portions).....	291,175	355,257	583,613	477,799	365,535
Stockholders' equity.....	253,363	292,342	252,945	240,469	238,615

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MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION
AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with the accompanying Consolidated and Condensed Consolidated Financial Statements (and related notes), Selected Consolidated Financial Information of Sunbeam and Unaudited Pro Forma Condensed Consolidated Financial Statements appearing elsewhere in this document.

On March 30, 1998, Sunbeam, through a wholly owned subsidiary, acquired approximately 81% of the outstanding shares of common stock of Coleman from a subsidiary of MacAndrews & Forbes in exchange for 14,099,749 shares of Sunbeam's common stock and approximately \$160 million in cash. In addition, Sunbeam assumed approximately \$1,016 million in debt. Immediately afterwards, as a result of the exercise of Coleman employee stock options, Sunbeam's indirect beneficial ownership of Coleman decreased to approximately 79%. Sunbeam's agreement for the acquisition of the remaining publicly held Coleman shares in a merger transaction provides that the remaining Coleman shareholders will receive:

- o approximately 6.7 million shares of Sunbeam common stock--0.5677 of a share for each outstanding Coleman share; and
- o approximately \$87 million in cash--\$6.44 for each outstanding Coleman share and cash outs of unexercised Coleman employee stock options equal to the difference between \$27.50 per share and the exercise price of the options.

Sunbeam expects to complete the merger in the fourth quarter of 1999 or early in the first quarter of 2000, although there can be no assurance that the

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merger will occur during that time. See Notes 2 and 15 to Sunbeam's Consolidated Financial Statements and "LITIGATION SETTLEMENT AND WARRANTS" for information regarding the settlement of claims relating to the Coleman acquisition, the terms of which provide for the issuance at the time of the merger of warrants to purchase up to approximately 4.98 million shares of Sunbeam's common stock at \$7 per share.

On April 6, 1998, Sunbeam completed the cash acquisitions of First Alert, a leading manufacturer of smoke and carbon monoxide detectors, and Signature Brands, a leading manufacturer of consumer and professional products. The First Alert and the Signature Brands acquisitions were valued at approximately \$182 million, including \$133 million of cash and \$49 million of assumed debt, and \$255 million, reflecting cash paid, including the required retirement or defeasance of debt, respectively.

The acquisitions were recorded under the purchase method of accounting and accordingly, the financial position and results of operations of each acquired entity are included in the Consolidated Financial Statements from the respective dates of acquisition. The purchase prices of the acquired entities have been allocated to individual assets acquired and liabilities assumed based on estimates of fair values determined by independent appraisals at the dates of acquisition.

FISCAL YEAR

To standardize the fiscal period ends of Sunbeam and the acquired entities, effective with its 1998 fiscal year, Sunbeam has changed its fiscal year end from the Sunday nearest December 31 to a calendar year. See Note 1 to Sunbeam's Consolidated Financial Statements.

ASSET IMPAIRMENT AND OTHER CHARGES

Goodwill

When changes in circumstances indicate that the carrying value of goodwill may not be recoverable, Sunbeam estimates future cash flows using the recoverability method -undiscounted future cash flows and including related interest charges--as a basis for recording any impairment loss. An impairment loss is then recorded to adjust the carrying value of goodwill to the recoverable amount. The impairment loss taken is no greater than the amount by which the carrying value of the net assets of the business exceeds its fair value. Due to First Alert's financial performance in 1998 and its prospects for 1999 and beyond, Sunbeam

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determined that the goodwill relating to this acquisition was impaired. Accordingly, based on its determination of fair value, Sunbeam has written off the net carrying value of goodwill of \$62.5 million in the fourth quarter of 1998.

Fixed Asset Impairment and Excess and Obsolete Inventory Reserves

In the second quarter of 1998, Sunbeam decided to outsource or discontinue a substantial number of products--principally breadmakers, toasters and certain other appliances, air and water filtration products, and the elimination of certain stock keeping units ("SKUs") within existing product lines, primarily relating to appliances, grills and grill accessories--previously made by Sunbeam, resulting in some facilities and equipment that will either no longer be used or will be utilized in a significantly different manner. Accordingly, a charge of \$29.6 million was recorded in Cost of Goods Sold to write some of these assets down to their estimated fair market value. Approximately 80% of

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this charge related to machinery, equipment and tooling at Sunbeam's Mexico City and Hattiesburg, Mississippi manufacturing plants, the estimated fair value for which was derived through an auction process. The remainder of this charge related to tooling and equipment at various other facilities, which either had a nominal value or the fair market value of which was derived through an auction process. These assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. The net carrying value of these assets after the write-down approximated \$2.2 million and these assets are expected to be disposed of by September 30, 1999. Depreciation expense associated with these assets approximated \$2.6 million in 1998, \$4.2 million in 1997 and \$3.5 million in 1996.

Personnel at the Mexico City facility were notified in the second quarter of 1998 that the plant was scheduled for closure at year-end 1998; accordingly, at that time a liability of \$1.8 million was recorded in Cost of Goods Sold primarily for employee severance. The employee severance was related to approximately 1,200 positions of which approximately 1,100 were terminated, and \$1.4 million paid in severance, as of December 31, 1998. Substantially all of the remaining positions were eliminated and severance payments were paid by July 31, 1999. In the third quarter of 1998, Sunbeam recorded in Cost of Goods Sold an additional provision for impairment of fixed assets of \$3.1 million in an acquired entity relating to assets taken out of service for which there was no remaining value. The asset impairment resulted from management's decision, during the third quarter, to discontinue certain SKU's within product lines, principally generators, compressors and propane cylinders. These fixed assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. Depreciation expense associated with these assets approximated \$0.8 million in 1998. In the fourth quarter of 1998, Sunbeam recorded a \$7.1 million charge as a result of management's decision, during the fourth quarter, to outsource the production of some appliances (principally irons). This charge to Cost of Goods Sold primarily consists of a provision for certain tooling and equipment (\$6.7 million) and severance and related benefits (\$0.4 million). This tooling and equipment, which had no remaining value, was written off and depreciation of this equipment was discontinued at the time of the write-down. Depreciation expense associated with these assets approximated \$2.4 million in 1998, \$2.3 million in 1997 and \$0.9 million in 1996. The severance costs related to approximately 45 production employees, none of whom was terminated as of December 31, 1998. It is anticipated that these employees' positions will be eliminated and the severance obligation paid by December 31, 1999.

During 1997 and the first half of 1998, Sunbeam built inventories in anticipation of 1998 sales volumes which did not materialize. As a result, it has been and will continue to be necessary to dispose of some portions of excess inventories at amounts less than cost. Accordingly, during 1998, when it became evident that the anticipated sales volumes would not materialize, Sunbeam recorded \$58.2 million in charges (of which \$46.4 million, \$2.2 million and \$9.6 million, were recorded during the second, third and fourth quarters, respectively) to properly state this inventory at the lower-of-cost-or-market. This inventory primarily related to some appliances, grills and grill accessories. Sunbeam also recorded a charge of \$11.0 million during the second quarter for excess inventories for raw materials and work in process which will not be used due to outsourcing the production of breadmakers, toasters and some other appliances. In addition, during 1998, Sunbeam made the decision to exit some product lines, primarily air and water filtration products, and to eliminate some SKUs within existing product lines, primarily relating to appliances, grills

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and grill accessories. As a result of this decision, a \$26.6 million charge was recorded during the second quarter to properly state this inventory at the

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lower-of-cost-or-market. Total charges for excess inventories recorded at the lower-of-cost-or-market based upon management's best estimate of net realizable value, amounted to approximately \$95.8 million at December 31, 1998. See Note 12 to Sunbeam's Consolidated Financial Statements for asset impairment and other charges recorded in conjunction with a 1996 restructuring plan.

RESTATEMENTS

On June 30, 1998, Sunbeam announced that the audit committee of its board of directors was initiating a review into the accuracy of Sunbeam's prior financial statements. The audit committee's review has since been completed and, as a result of its findings, Sunbeam has restated its previously issued consolidated financial statements for 1996 and 1997 and the first quarter of 1998. Based upon the review, it was determined that some revenue had been inappropriately recognized, some costs and allowances had not been accrued or were improperly recorded, and some costs were inappropriately included in, and subsequently charged to, restructuring, asset impairment and other costs within the Consolidated Statement of Operations for the years ended December 29, 1996 and December 28, 1997 and the three months ended March 31, 1998. The financial statements for the years ended December 28, 1997 and December 29, 1996 were restated, audited and filed on Form 10-K/A with the SEC on November 9, 1998. The accompanying 1996 and 1997 Consolidated Financial Statements and 1998 Condensed Consolidated Financial Statements of Sunbeam present the restated results.

In connection with the restatements referred to above, Arthur Andersen advised Sunbeam that it believed there were material weaknesses in Sunbeam's internal controls. In order to address these material weaknesses, Sunbeam has increased the number of senior financial personnel and has implemented comprehensive review procedures of operating and financial information. Additionally, as explained in more detail under "Year 2000 Readiness Disclosure" below, Sunbeam is in the process of significantly enhancing its operating systems. Sunbeam anticipates that its systems enhancements will be completed in 1999. See "CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE."

NINE MONTHS ENDED SEPTEMBER 30, 1999 COMPARED TO NINE MONTHS ENDED SEPTEMBER 30, 1998

Net sales for the nine months ended September 30, 1999 and 1998 were \$1,786.4 million and \$1,322.1 million respectively, an increase of \$464.3 million. Results for the nine months ended September 30, 1998 include Coleman, Signature Brands and First Alert from their respective acquisition dates. After adjusting 1998 sales to include sales of the acquired companies for the periods from the beginning of 1998 through the respective dates of acquisition, combined historical net sales would be \$1,624.0 million. 1999 net sales increased approximately \$162 million or approximately 10% over 1998 combined historical net sales. Information that adjusts for the results of the acquisitions prior to the actual acquisition dates (the "combined historical" information) is provided for informational purposes only and is to enhance comparability of the period presented. This information is not necessarily indicative of what the combined results would have been had these acquisitions occurred at the beginning of the periods presented or the results for any future period. The increase in net sales is driven by the Outdoor Leisure group which had an increase of approximately \$123 million in 1999 as compared to the combined historical net sales in the same period in the prior year. This increase over combined historical net sales was largely due to sales of outdoor recreation products and Powermate(Registered) generators. The higher level of sales of these products is believed to be partially attributable to heightened consumer sensitivity to the need for emergency preparedness. Sunbeam believes that this heightened sensitivity is reflective of a combination of factors, including weather conditions and Year 2000 considerations. Household net sales in 1999 increased approximately \$11 million compared to 1998 combined historical net sales. Sunbeam believes that the decrease in shipments in the prior year in order to allow trade inventories to return to a normal level is primarily responsible for

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this increase. This factor affects the year to year comparisons for each of the operating groups. Excluding the effect on 1998 of loading, Sunbeam believes that Household net sales in 1999 were approximately the same as in the prior year. Within the Household segment, net sales of personal care products increased as a result of a strengthening retail

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environment largely offset by decreases in sales of appliances. International net sales in 1999 increased \$30.3 million over 1998 combined historical net sales. Higher sales in Canada, Europe and Japan resulted predominantly from strong retail demand of Powermate(Registered) and outdoor recreation products. This increase was partially offset by the impact of weak economic conditions in Latin America.

Gross margin for the first nine months of 1999 was \$452.3 million or \$403.6 million higher than the comparable period in 1998. During 1998, Sunbeam recorded a number of largely non-recurring charges which affect the comparability of gross margin in the first nine months of 1999 over the same period in the prior year. These charges are summarized below:

- o In the second and third quarters of 1998, Sunbeam recorded charges totaling \$86.2 million relating to fixed asset impairments and provisions for excess and obsolete inventory totaling \$32.7 million. These charges, which were recorded in Cost of Goods Sold, are discussed above in the section "Fixed Asset and Excess Obsolete Inventory Reserves."

In addition to the charge taken in 1998, the excess and obsolete inventory referenced above has impacted Sunbeam's operating results in several ways, with two primary effects. First, gross margins have been impacted by sales, at below normal prices, of obsolete inventory into non-traditional channels and excess inventory into traditional channels. In addition, due to the high levels of excess inventory at the end of 1998, Sunbeam's usage of its manufacturing facilities has been lower than normal, resulting in lower fixed cost absorption, which in turn, reduced gross margins in 1999.

- o Cost of Goods Sold for the first nine months of 1998 also reflects the non-recurring impact (\$28.1 million) of Sunbeam recording the 1998 acquisitions using the purchase method of accounting. In accordance with this accounting method, inventory pertaining to acquisitions was recorded at fair value. The fair value of the inventory exceeded the book value reflected on the balance sheets of the acquired companies as of the respective acquisition dates. The excess of the fair value of inventory over its pre-acquisition book value was recorded in cost of sales as the inventory was sold.

Adjusting for the combined results of the acquired companies and excluding the effects of 1998 non-recurring items, which are summarized above, gross margin for the first nine months of 1999 increased approximately \$182 million over the 1998 combined historical gross margin. As a percentage of net sales, gross margin improved to approximately 25% in the first nine months of 1999 as compared to approximately 4% in the 1998 period. The gross margin percentage for the 1998 period adjusted for the non-recurring charges and for the effect of the acquired companies was approximately 17% of combined historical net sales. The Household group contributed approximately 30% of the 1999 gross margin improvement over the 1998 combined historical gross margin. The improvement in the Household group's gross margin resulted primarily from lower sales deduction rates, improved manufacturing processes and controls, additional sales volume, and improved product mix. The Outdoor Leisure group contributed approximately 50% of the 1999 gross margin improvement over the 1998 combined historical gross margin. Approximately 80% of the improvement in the Outdoor Leisure group's

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gross margin resulted from additional volume and related improved manufacturing overhead absorption, as well as improvements in manufacturing. The balance of the increase resulted from improved product mix. The International group contributed approximately 20% of the 1999 gross margin improvement over 1998 combined historical gross margin. Approximately 40% of the improvement in the International group's gross margin resulted from the shut down of the Mexico City manufacturing facility which had experienced high material usage costs and employee benefit costs in the prior year. The remaining improvement resulted from increased sales volume, a lower level of product returns and improved product mix.

SG&A expense for the first nine months of 1999 was \$449.3 million, an increase of \$8.9 million or 2.0% over the same period in the prior year. After adjusting 1998 SG&A expense to include the acquired companies' SG&A expense for the period from the beginning of 1998 through the respective dates of acquisition (\$100.9 million), combined historical SG&A expense was \$541.3 million. Since the combined historical 1998 SG&A expenses were derived by adding the acquired companies' pre-acquisition period costs to the reported nine months' results of Sunbeam, the combined historical SG&A expenses include \$30.4 million of amortization of intangibles expense representing both pre- and post-acquisition periods, as well as approximately \$12 million of transaction costs incurred by the acquired companies relating to them being

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purchased by Sunbeam. Excluding these costs and the effects of the following, adjusted 1998 SG&A expenses were approximately \$378 million.

- o \$70.0 million recorded in the third quarter of 1998 related to the issuance of a warrant to a subsidiary of MacAndrews & Forbes, as discussed below,
- o approximately \$31 million of 1998 compensation expense recorded in connection with the new February 1998 employment agreement with Sunbeam's former Chairman and Chief Executive Officer and two other senior officers of Sunbeam and approximately \$3.8 million of severance for former employees. The new employment agreements provided for, among other items, the acceleration of vesting of restricted stock and the forfeiture of unvested restricted stock that had been granted under the executives' prior employment agreements, new restricted stock grants and options to purchase common shares. In addition, the new employment agreements provided for income tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock. (See Note 8 to the Condensed Consolidated Financial Statements);
- o \$10.8 million, \$4.0 million, and \$2.1 million of costs recorded in 1998 related to expenses associated with the restatement efforts (principally representing legal, accounting and auditing costs of \$6.1 million and \$4.7 million, respectively), a corporate office relocation and Year 2000 compliance efforts, respectively.

Excluding amortization of intangibles expense of \$38.4 million for the first nine months of 1999 and \$18.7 million of costs related to Year 2000 compliance efforts, adjusted 1999 SG&A costs were \$392.2 million, an increase of approximately \$14 million over adjusted 1998 SG&A expense. As previously discussed, this increase is primarily attributable to higher levels of selling and administrative costs driven by increased net sales, headcount increases to support future growth and costs associated with certain redundant operations resulting from Sunbeam's 1998 acquisitions which operations Sunbeam is integrating and the decision to bring in-house certain functions that had previously been outsourced. Sunbeam is in the process of fully integrating certain of these functions and expects that when this process has been completed

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consolidated SG&A expense for these functions will be reduced. Partially offsetting these increases in SG&A expense are certain 1998 expenses which did not reoccur in 1999. These 1998 expenses include increases associated with restructuring reserve at Coleman (approximately \$7 million) and higher bad debt expense (approximately \$5 million).

On August 12, 1998, Sunbeam announced that, following investigation and negotiation conducted by a Special Committee of the Board of Directors consisting of four outside directors not affiliated with M&F, Sunbeam had entered into a settlement agreement with a subsidiary of M&F pursuant to which Sunbeam was released from certain threatened claims of M&F and its subsidiaries arising from the Coleman acquisition and M&F agreed to provide certain management personnel and assistance to Sunbeam in exchange for the issuance to the M&F subsidiary of a warrant expiring August 24, 2003 to purchase up to 23 million shares of the Company's common stock at a cash exercise price of \$7.00 per share, subject to anti-dilution adjustments. Sunbeam concluded that the agreement to issue this warrant did not result in a new measurement date for the purposes of determining the purchase price for Coleman and accounted for the issuance of this warrant in the third quarter of 1998 as a cost of settling a potential claim. Accordingly, a \$70.0 million non-cash SG&A expense was recorded in the third quarter of 1998, based upon a valuation performed as of August 1998 using facts existing at that time. The valuation was conducted by an independent consultant engaged by the special committee of the board of directors.

Operating results for the first nine months of 1999 and 1998, were a profit of \$3.0 million in 1999 and a loss of \$391.7 million in 1998. Adjusted for the historical results of the acquired companies and excluding non-recurring charges, as previously described, operating results for the 1999 and 1998 periods were a profit of \$21.7 million and a loss of \$149.2 million, respectively. This change resulted from the factors discussed above.

Interest expense increased from \$88.5 million in 1998 to \$136.6 million in 1999. Approximately 75% of the change related to higher borrowing levels in 1999 resulting primarily from borrowings for the acquisitions that were outstanding for the entire 1999 nine-month period as compared to only a portion of the 1998

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period. The balance of this increase was primarily driven by the amortization of the loan commitment fee (approximately \$2 million) Sunbeam is obligated to pay under the terms of Sunbeam's bank credit facility and the expense related to liquidated damages payable to debenture holders (approximately \$3 million).

Other income, net of \$4.6 million in 1999 included a gain of approximately \$4 million relating to the sale of the Mexico City facility. This gain was partially offset by losses from other miscellaneous asset sales of approximately \$0.3 million. The remaining other income, net in 1999 resulted from favorable foreign exchange rates, primarily from Sunbeam's operations in Japan. Other income, net of \$4.1 million in 1998 included \$8.0 million from the settlement of a lawsuit partially offset by net foreign exchange losses, primarily from Mexico.

The minority interest reported in 1999 and 1998 relates to the minority interest held in Coleman by public shareholders.

Approximately \$6 million of the \$12.7 million income tax expense recorded in 1999 related to U.S. tax liability generated by Coleman as a separate U.S. tax filing entity. As previously discussed, in July 1999, Sunbeam acquired a sufficient ownership interest in Coleman to permit it to file consolidated U.S. tax returns with Coleman for all future periods. The remaining tax expense recorded in 1999 related to taxes on foreign income and was partially offset by the favorable resolution of an income tax audit. Tax expense recorded in 1998

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was nearly all related to foreign taxes. No net tax benefit was recorded on Sunbeam's losses in either year as it is management's assessment that Sunbeam cannot demonstrate that it is more likely than not that deferred tax assets resulting from these losses would be realized through future taxable income.

On July 12, 1999, Sunbeam acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock for an aggregate purchase price of approximately \$31 million. These shares, together with the shares of Coleman common stock Sunbeam owns, enable Sunbeam to exercise 80.01% of the total voting power of Coleman's outstanding capital stock as of July 12, 1999. This class of preferred stock was created by Coleman and acquired by Sunbeam in order to enable Coleman and Sunbeam to file consolidated federal income tax returns, and in certain jurisdictions, consolidated state income tax returns, prior to the consummation of the Coleman merger. In connection with the issuance of the shares of preferred stock, Sunbeam entered into a tax sharing agreement with Coleman, pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had Coleman not been included in the consolidated income tax return of Sunbeam. The net proceeds from the issuance of the shares by Coleman of its voting preferred stock to Sunbeam were used by Coleman to make a partial repayment of loans outstanding from Sunbeam under Coleman's intercompany note. (See Note 8 to the Condensed Consolidated Financial Statements.)

In March 1998, Sunbeam prepaid a \$75.0 million 7.85% industrial revenue bond related to its Hattiesburg facility originally due in 2009. In connection with the early extinguishment of this debt, Sunbeam recognized an extraordinary charge in the first quarter of 1998. As a result of repayment of certain indebtedness assumed in the Coleman acquisition, Sunbeam also recognized an extraordinary charge in the second quarter of 1998. The debt assumed in connection with the Coleman acquisition was repaid as a result of the requirements under the terms of Sunbeam's bank credit facility. These extraordinary charges consisted of redemption premiums (\$106.9 million), unamortized debt discount (\$13.8 million) and unamortized deferred financing costs (\$1.7 million) and were net of income taxes (\$10.7 million).

On November 9, 1999, Sunbeam announced a plan to divest Eastpak and also plans to divest certain non-essential assets. Proceeds from these assets sales are estimated to be \$200 million and will be primarily used to pay down debt.

YEAR ENDED DECEMBER 31, 1998 COMPARED TO YEAR ENDED DECEMBER 28, 1997

Results of operations for the year ended December 31, 1998 include the results of Coleman from March 30, 1998 and of Signature Brands and First Alert from April 6, 1998, the respective dates of the acquisitions. The acquired companies generated net sales of \$1,009.0 million from the acquisition dates noted above through December 31, 1998, with corresponding gross margin of \$205.1 million, or 20% of sales.

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SG&A costs recorded by the acquired companies were \$329.9 million in the period, yielding an operating loss of \$124.8 million.

For the acquired companies, net sales from the dates of the acquisitions through fiscal year-end were approximately \$152 million lower than the same period in the prior year. This decline was caused by lower net sales at Coleman (\$81.5 million), Signature Brands (\$31.2 million) and First Alert (\$39.2 million). Excluding the effects of Coleman's sale of its safety and security business in March 1998 and the discontinuation of its pressure washer business during 1997, Coleman's 1998 sales would have been approximately \$4 million lower than in 1997. Sunbeam believes that Signature Brands' decline, primarily in its coffee and tea products, resulted largely from lost

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distribution and insufficient attention to the business during part of 1998. Sunbeam believes that all of the acquired businesses were, to some extent, impacted by the disruption that arose from the integration with Sunbeam and the related management changes, both at the acquired companies and at Sunbeam. First Alert's sales decline related predominantly to increased inventory positions in the domestic channel in 1997 as compared to 1998 with the remaining decrease primarily related to more favorable weather conditions in the fourth quarter of 1997 as compared to the same period in 1998 which affected consumer shopping patterns. Excluding the effects from purchase accounting and the write-off of First Alert's goodwill, as discussed in Note 2 to the Consolidated Financial Statements, operating profit for these three companies declined by approximately \$45 million since the acquisitions in 1998 as compared to the same period in the prior year, resulting primarily from lower net sales. Although there can be no assurance, management anticipates that results from the acquired companies will significantly improve during 1999 due to, among other things, the absence of the factors causing disruption and insufficient focus at these three companies during 1998.

Consolidated net sales for the year ended December 31, 1998 were \$1,836.9 million, an increase of \$763.8 million versus the year ended December 28, 1997. After excluding:

- o \$1,009.0 million of sales generated by the acquired companies;
- o \$5.5 million of sales in 1998 resulting from the change in fiscal year end, as described in Note 1 to the Consolidated Financial Statements;
- o \$12.7 million in 1998 and \$31.3 million in 1997 from sales of excess or discontinued inventory for which the inventory carrying value was substantially equivalent to the sales value;
- o \$4.2 million from 1997 sales relating to divested product lines which are not classified as discontinued operations - time and temperature products and Counselor and Borg branded scales; and
- o a \$5.4 million benefit in 1997 from the reduction of cooperative advertising accruals no longer required (cooperative advertising costs are recorded as deductions in determining net sales);

net sales on an adjusted basis ("Adjusted Sales") of \$809.7 million in 1998 decreased approximately 22% from Adjusted Sales of \$1,032.2 million in 1997. Product sales were adversely impacted by a number of factors, with the largest being changes in retail inventory levels from channel loading which took place in 1997. Sunbeam believes the year-to-year effect of these inventory reductions amounted to over \$100 million. Additionally, losses in distribution of outdoor cooking products estimated at approximately \$60 million, the estimated effect of price discounting on appliance and grill products of approximately \$14 million, and estimated higher provisions for customer returns and allowances of approximately \$30 million contributed to the lower sales in 1998. The increase in customer returns and allowances resulted from:

- o increased returns of approximately \$16 million principally resulting from channel loading and other aggressive sales practices (estimated at approximately \$9 million) which began in the fourth quarter of 1997 and continued in the first quarter of 1998, a blanket recall (\$3.0 million) and the discontinuance of certain product lines (approximately \$4 million) principally air and water products; and
- o additional customer allowances of approximately \$14 million primarily to induce sales during the first quarter of 1998.

The remaining sales decline was due in part to exiting some product SKUs.

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Domestic Adjusted Sales declined approximately 21% or \$170 million from 1997. Sunbeam believes more than half of the sales decline was due to increased retail inventory levels in 1997 versus decreased inventory positions at customers in 1998. Excluding this effect, sales were still lower than the prior year throughout the business, with the most significant decline occurring in outdoor cooking products sales. During 1997, Sunbeam lost a significant portion of its outdoor cooking products distribution, including the majority of its grill parts and accessories products distribution. The outdoor cooking products sales decline was attributable predominantly to this lost distribution and to price discounting. The majority of the remaining sales decline was due to higher provisions for customer returns and allowances.

International Adjusted Sales, which represented 22% of Adjusted Sales for 1998, decreased approximately 24% compared with the International Adjusted Sales for the same period a year ago. Sunbeam believes this sales decline was primarily attributable to decreasing customer inventory levels as compared with the prior year. Sales were also adversely impacted by a decision to stop selling to some export distributors in Latin America and by poor economic conditions in that region. In addition, lost distribution in Canada contributed to the sales decline from the prior year.

Excluding the effects of:

- o the gross margin generated from the inclusion of the acquired companies' operations in the period of \$205.1 million;
- o \$0.8 million from the impact of the change in fiscal year-end;
- o \$128.4 million in 1998 in charges recorded in the second and fourth quarters related to excess inventory and fixed assets impairments;
- o \$15.8 million from the benefit in 1997 from the reversal of reserves no longer required, including \$5.4 million of cooperative advertising accruals; and
- o a \$2.8 million benefit recorded in the second quarter of 1997 resulting from capitalizing some manufacturing supplies inventories which were previously expensed;

there was a negative gross margin of \$29.4 million for 1998 versus a gross margin of \$223.5 million for 1997. This reduction in gross margin was principally attributable to the following:

- o approximately \$145 million related to lower sales volume and unfavorable manufacturing efficiencies resulting from lower production levels associated with the lower sales volumes and high inventory levels in 1998;
- o approximately \$65 million related to lower price realization, higher costs of customer returns and allowances, and adverse sales mix in 1998;
- o approximately \$12 million related to higher costs in 1998 associated with warranty, of which \$3.0 million related to a blanket recall, with the remaining increase attributable to increased provisions in response to higher overall warranty expense experiences; and
- o approximately \$20 million related to unfavorable inventory adjustments, of which the most significant single factor was physical inventory adjustments in the domestic business.

Adverse product sales mix was due to the loss of a majority of the grill

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accessory products distribution as accessories generate significantly better margins than the average margins on sales of most of Sunbeam's other products.

Excluding the effects of the following, SG&A expenses were approximately \$254 million in 1998, approximately \$105 million, or 70% higher than in 1997:

- o \$329.9 million of SG&A charges in the acquired companies, including the \$62.5 million goodwill write-off related to First Alert;
- o \$70.0 million recorded in the third quarter of 1998 related to the issuance of a warrant to a subsidiary of MacAndrews & Forbes, as discussed below;

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- o \$2.3 million of SG&A expense in 1998 from the change in the fiscal period;
- o a \$3.0 million benefit in 1998 and a \$12.1 million benefit in 1997 from the reversal of reserves no longer required. The 1998 benefit consists of a \$3.0 million reversal in the first quarter of 1998 of environmental reserves which are no longer required as a result of a favorable development at a remediation site. The 1997 benefit consists primarily of a \$8.1 million reversal of litigation reserves, established in 1996, which were no longer required in the fourth quarter of 1997 due to a favorable settlement during 1997. The remaining \$4.0 million 1997 benefit consists of reversals of other accruals primarily relating to consulting fees, health insurance and advertising. For further information see Note 17 to the Consolidated Financial Statements;
- o approximately \$31 million of 1998 compensation expense recorded in connection with new February 1998 employment agreements with Sunbeam's former Chairman and Chief Executive Officer and two other former senior officers and approximately \$3 million of severance in 1998 for some former employees. The new employment agreements provided for Sunbeam to pay these former employees amounts which reimbursed them for their personal tax liabilities resulting from shares issued in connection with the accelerated vesting of restricted stock granted under their July 1996 agreements (\$6.9 million), as well as on the new unrestricted stock grants under the February 1998 agreements (\$9.8 million). The charge also includes the value, at approximately \$39 per share, of 300,000 restricted shares and 45,000 restricted shares which vested in February 1998 for Sunbeam's then Chairman and Chief Executive Officer and two other then senior officers, respectively (\$13.6 million). In addition, \$0.4 million was expensed during 1998 relating to the amortization of the 1996 restricted stock awards. See Note 8 to Sunbeam's Consolidated Financial Statements for information regarding the terms of these employment agreements;
- o \$20.4 million, \$6.1 million and \$4.0 million of costs recorded in 1998 related to costs associated with the restatement efforts, principally representing legal, accounting and auditing, and consulting costs of \$14.1 million, \$5.7 million and \$0.6 million, respectively, Year 2000 compliance efforts and a corporate office relocation, respectively; and
- o \$15.8 million of restructuring related charges recorded in 1997, charged to operations as incurred, represent employee relocation and recruiting (\$6.2 million), equipment relocation and installation (\$5.6 million) and package redesign costs (\$4.0 million).

The increase of approximately \$105 million in SG&A expense in 1998 over 1997 is principally due to several factors:

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- o Corporate administrative costs increased by approximately \$47 million, reflecting additional personnel and related relocation, travel and other costs, as well as increased outside provider fees, telecommunications expense and insurance.
- o Higher allowances for accounts receivable in 1998, accounting for approximately \$20 million of the increase, related primarily to collection issues with customers in the United States and in Latin America, including several major customers who have filed and/or threatened bankruptcy.
- o Advertising, marketing and selling expenses increased by approximately \$13 million, reflecting a national television campaign for grills and increased activity in market research, package design and sales efforts. Higher inventory levels in 1998 and costs associated with outsourcing small parts fulfillment led to higher distribution and warehousing costs of approximately \$12 million.
- o Increased environmental reserves for divested and closed facilities added approximately \$5 million. Approximately half of the environmental reserve increase reflected revisions to estimates of costs to remediate existing sites. These revisions were based on obtaining additional information in the fourth quarter of 1998 about costs of planned remediation actions and costs associated with additional remediation actions. The remaining amount was to provide for revisions to reserves for estimated losses for damages related to environmental sites. These revisions were based on obtaining additional information in the fourth quarter of 1998 regarding the level of damages sought and the costs and probability of defending Sunbeam's position in these actions.

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- o Settlement of a patent infringement action resulted in additional expense of approximately \$4 million. Remaining legal expenses recorded in the year of approximately \$1 million for investigation, defense and settlement of both new and previously existing issues were nearly equal to amounts incurred for similar items in 1997. Additionally, as described above, SG&A includes \$14.1 million of legal costs recorded in 1998 associated with the restatement efforts. Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and claims and related anticipated legal fees. The costs are accrued when it is both probable that an asset has been impaired or a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon Sunbeam's assessment, after consultation with counsel, of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the plaintiff, and other significant factors which vary by case. When it is not possible to estimate a specific expected amount of loss to be incurred, Sunbeam evaluates the range of possible losses and records the minimum end of the range. As of December 31, 1998 and December 28, 1997, Sunbeam had established accruals for litigation matters of \$31.2 million (representing \$17.5 million and \$13.7 million for estimated damages or settlement amounts and legal fees, respectively) and \$9.9 million (representing \$3.0 million and \$6.9 million for estimated damages or settlement amounts and legal fees, respectively), respectively. It is anticipated that the \$31.2 million accrual will be paid as follows: \$22.4 million in 1999, \$7.5 million in 2000 and \$1.3 million in 2001. Sunbeam believes, based on information known to it on December 31, 1998, that anticipated probable costs of litigation matters existing as of December 31, 1998 have been adequately

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reserved to the extent determinable.

During 1997, Sunbeam determined that the amounts accrued at December 29, 1996 for Restructuring and Asset Impairment Charges recorded in fiscal 1996 exceeded amounts ultimately required. Accordingly, the 1997 Consolidated Statement of Operations reflects the reversal of accruals no longer required, resulting in a Restructuring and Asset Impairment Benefit of \$14.6 million. This reversal was reflected in the third (\$5.8 million) and fourth (\$8.8 million) quarters of 1997 when it became evident that such accruals were no longer required.

On August 12, 1998, Sunbeam announced that, following investigation and negotiation conducted by a special committee of the board of directors consisting of four outside directors not affiliated with MacAndrews & Forbes, Sunbeam had entered into a settlement agreement with a subsidiary of MacAndrews & Forbes, pursuant to which Sunbeam was released from certain threatened claims of MacAndrews & Forbes and its affiliates arising from the Coleman acquisition and MacAndrews & Forbes agreed to provide certain management personnel and assistance to Sunbeam in exchange for the issuance to the MacAndrews & Forbes subsidiary a warrant expiring August 24, 2003 to purchase up to 23 million shares of Sunbeam's common stock at a cash exercise price of \$7.00 per share, subject to antidilution adjustments. Sunbeam concluded that the agreement to issue this warrant did not result in a new measurement date for the purposes of determining the purchase price for Coleman and has accounted for the issuance of this warrant as a cost of settling a potential claim. Accordingly, a \$70.0 million non-cash SG&A expense was recorded in the third quarter of 1998, based on a valuation performed as of August 1998 using facts existing at that time. The valuation was conducted by an independent consultant engaged by the special committee of the board of directors.

Operating results for 1998 and 1997, on an adjusted basis as described above, were a loss of approximately \$283 million in 1998 and a profit of approximately \$74 million in 1997. This change resulted from the factors discussed above.

Interest expense increased from \$11.4 million for the twelve months of 1997 to \$131.1 million for the same period in 1998. Approximately 70% of the change related to higher borrowing levels in 1998 for the acquisitions, with the remainder due to increased borrowings to fund working capital, capital expenditures and the operating losses.

Other income, net increased in 1998 by \$4.8 million due to approximately \$8 million from the settlement of a lawsuit, and approximately \$4 million of increased net gains from foreign exchange in the period. The foreign exchange net gains were primarily from Mexico. Increased losses on sales of fixed assets

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of approximately \$5 million and increased expenses related to the bank credit facility partially offset the above mentioned income. The increased credit facility expenses largely related to unused facility fees.

The minority interest reported in 1998 relates to the minority interest held in Coleman by minority stockholders.

During 1998, the current tax provision arose largely from taxes on the earnings of foreign subsidiaries as well as franchise taxes. Deferred tax benefits were recognized in 1998 principally due to net operating losses incurred subsequent to the acquisitions. These benefits were realized through the use of deferred tax credits that were established in connection with the acquisitions to the extent that such credits are expected to be realized in the loss carryforward period. Throughout 1998, Sunbeam increased the income tax

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valuation allowance on deferred tax assets to \$290.5 million. This increase reflects management's assessment that it is more likely than not that these deferred tax assets will not be realized through future taxable income. This assessment, which was initially made in the fourth quarter of 1997, resulted from the significant leverage undertaken by Sunbeam in connection with its acquisitions and the continuing decline in Sunbeam's net sales and earnings, as well as the operating losses incurred throughout the 1998 year. The 1997 effective tax rate was higher than the federal statutory income tax rate primarily due to state taxes, the effects of foreign earnings and dividends taxed at other rates and the impact of providing a valuation allowance on deferred tax assets.

In 1998, Sunbeam prepaid debt assumed in the acquisitions and prepaid an industrial revenue bond related to its Hattiesburg facility. The debt assumed in connection with the Coleman acquisition was repaid as a result of the requirements under the terms of Sunbeam's new credit facility. In connection with these early extinguishments of debt, Sunbeam recognized an extraordinary charge of \$122.4 million, consisting of redemption premiums (\$106.9 million), unamortized debt discount (\$13.8 million) and unamortized deferred financing costs (\$1.7 million).

Sunbeam's discontinued furniture business, which was sold in March 1997, had revenues of \$51.6 million in the first quarter of 1997 prior to the sale and nominal earnings for that period. As a result of the sale of Sunbeam's furniture business assets (primarily inventory, property, plant and equipment), Sunbeam received \$69.0 million in cash, retained approximately \$50 million in accounts receivable and retained some liabilities. The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the sale agreement and in the first quarter of 1997, after completion of the sale, Sunbeam recorded an additional loss on disposal of \$14.0 million net of applicable income tax benefits of \$8.5 million.

YEAR ENDED DECEMBER 28, 1997 COMPARED TO YEAR ENDED DECEMBER 29, 1996

1996 Restructuring Plan and Other Charges and Benefits

In November 1996, Sunbeam announced the details of a restructuring plan. The plan included:

- o the consolidation of administrative functions;
- o the reduction of manufacturing and warehouse facilities;
- o the centralization of Sunbeam's procurement function;
- o the reduction of Sunbeam's product offerings and SKUs; and
- o the elimination of some businesses and product lines.

As part of the restructuring plan, Sunbeam consolidated six divisional and regional headquarters functions into a single worldwide corporate headquarters and outsourced some back office activities resulting in a reduction in total back-office/administrative headcount. Overall, the restructuring plan called for a reduction in the number of production facilities from 26 to 8 and the elimination of over 6,000 positions from Sunbeam's workforce, including 3,300 from the disposition of some business operations and the elimination of approximately 2,800 other positions, some of which were outsourced. Sunbeam completed the major phases of the restructuring plan by July 1997.

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The 1996 restructuring plan was unable to improve earnings over the long

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term for a number of reasons, including, but not limited to, its failure to realize some of the anticipated costs savings and the negative impact that implementation of the restructuring plan had on sales, product quality, customer service, research and development and the introduction of new products. Sunbeam's current strategy is to create innovative new products that anticipate consumer needs, develop effective marketing and advertising programs, build relationships, create the right culture and choose the right people.

In conjunction with the implementation of the restructuring plan, Sunbeam recorded a pre-tax charge of \$239.2 million in the fourth quarter of 1996. This amount is recorded as follows in the Consolidated Statements of Operations:

- o \$110.1 million recorded in Restructuring and Asset Impairment Charges, as further described below;
- o \$60.8 million in Cost of Goods Sold related principally to inventory write-downs to net realizable value as a result of a reduction in SKUs and costs of inventory liquidation programs;
- o \$10.1 million in SG&A expense, for period costs, which were charged to operations as incurred, principally relating to employee relocation and recruiting, equipment relocation and installation (\$3.2 million), transitional fees relating to outsourcing arrangements (\$4.9 million) and package redesign costs (\$2.0 million); and
- o \$58.2 million (\$39.1 million net of taxes) in Loss on Sale of Discontinued Operations related to the divestiture of its furniture business.

In 1997, upon completion of the sale of the furniture business, Sunbeam recorded an additional pre-tax loss of \$22.5 million from discontinued operations (\$14.0 million net of taxes) due primarily to lower than anticipated sales proceeds relating to the post closing adjustment that was part of the sale agreement.

Amounts included in Restructuring and Asset Impairment Charges in 1996 in the accompanying Consolidated Statements of Operations included anticipated cash charges such as severance and other employee costs of \$24.7 million, lease obligations of \$12.6 million and other exit costs associated with facility closures and related to the implementation of the restructuring plan of \$4.1 million, principally representing costs related to clean-up and restoration of owned and leased facilities for either sale or return to the landlord.

Included in Restructuring and Asset Impairment Charges of \$110.1 million in 1996 was \$68.7 million of non-cash charges principally consisting of:

- o asset write-downs to net realizable value of \$22.5 million for disposals of excess facilities and equipment and product lines;
- o write-offs of redundant computer systems of \$12.3 million from the administrative back-office consolidations and outsourcing initiatives;
- o write-off of intangibles of \$10.1 million relating to discontinued product lines;
- o write-off of capitalized product and package design costs and other expenses of \$9.0 million related to exited product lines and SKU reductions. Prior to 1996, Sunbeam had capitalized certain costs related to international product development and package design, which were amortized over the period of related benefit. The product development costs (\$1.9 million) related to international operations and represented the costs necessary to modify products for introduction to the international markets. As the restructuring plan included the closure of the International Group office and elimination of a number of products to

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which these costs pertained, the related capitalized costs were written off. Additionally, in connection with the restructuring plan, as a result of the elimination of many products and SKUs, Sunbeam updated its package designs. Accordingly, the unamortized balance of the capitalized package design costs which had been capitalized prior to 1996 (\$5.0 million) was written off. Sunbeam discontinued incurring costs of a significant nature relating to these items and consequently has discontinued capitalizing such costs subsequent to 1995; and

- o asset write-downs of \$14.8 million related to the divestiture of some non-core products and businesses.

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The asset write-downs of \$22.5 million and write-offs of \$12.3 million discussed above included equipment taken out of service in 1996 (either abandoned in 1996 or sold in 1997) and, accordingly, depreciation was not recorded subsequent to the date of the impairment charge. The asset write-downs of \$14.8 million related to the divestiture of non-core products and businesses resulted from divesting the time and temperature business in March 1997 and Counselor and Borg scale product lines in May 1997 and the sale of the textile mill in Biddeford, Maine in May 1997. These charges primarily represented the estimated non-cash losses resulting from the sale or abandonment of facilities and equipment, based on the estimated net proceeds from the sale of these assets compared to their recorded net book value, related to exiting these product lines.

The \$24.7 million for severance and other employee costs, including COBRA and other fringe benefits, related to approximately 3,700 positions that were planned to be eliminated as a result of the restructuring plan, excluding approximately 2,400 employees terminated from the furniture business for which severance was included in Loss on Sale of Discontinued Operations. See Note 13 to Sunbeam's Consolidated Financial Statements. The furniture business was sold in 1997. In 1996 and 1997, approximately 1,200 employees and 1,800 employees, respectively, were terminated from continuing operations. Due largely to attrition, the remaining planned terminations were not required. In 1997, Sunbeam determined that its severance and employee benefit costs were less than originally accrued principally due to lower than expected COBRA and workers compensation costs and, accordingly, reversed accruals of \$7.9 million in the third (\$2.1 million) and fourth (\$5.8 million) quarters. At December 31, 1997, the balance accrued of \$1.2 million represented the remaining severance and employee benefit costs for some employees terminated during 1997. During 1998, all amounts were expended.

The amounts accrued at December 29, 1996 for Restructuring and Asset Impairment Charges recorded in fiscal 1996, exceeded amounts ultimately required principally due to reductions in anticipated severance and employee benefit costs of \$7.9 million, as discussed above, and reductions in estimated lease payments of \$6.7 million (\$3.7 million and \$3.0 million recognized in the third and fourth quarters, respectively) resulting from better than anticipated rentals received under sub-leases and favorable negotiation of lease terminations. Accordingly, the fiscal 1997 Consolidated Statement of Operations included \$14.6 million of benefit (\$5.8 million in the third quarter and \$8.8 million in the fourth quarter of 1997) related to the reversal of accruals no longer required, which were recorded as these reduced obligations became known.

In 1996, in conjunction with the initiation of the restructuring plan, Sunbeam recorded additional charges totaling \$129.1 million, reflected in Cost of Goods Sold, SG&A expense, and Loss on Sale of Discontinued Operations. The charge included in Cost of Goods Sold of \$60.8 million principally represented inventory write-downs to net realizable value and anticipated losses on the

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disposition of the inventory as a result of the significant reduction in SKUs provided for in the restructuring plan. The write-down to net realizable value, based upon management's best estimates, included \$26.9 million related to raw materials, work-in process and finished goods for discontinued outdoor cooking products, principally grills and grill accessories and the balance related to raw materials, work-in process and finished goods for other discontinued products including appliances (\$27.8 million), clippers (\$1.0 million) and blankets (\$5.1 million). For inventory which management determined was saleable, the estimated write-down was based upon the difference between the expected net sales proceeds of the inventory, depending upon distribution channel, and the recorded value of the inventory. In the case of abandoned inventory, the write-down was equal to the recorded value of the inventory. The resulting difference between carrying value and estimated net realizable value represented the \$60.8 million write-down necessary to record the inventory at its net realizable value. SG&A expense included period costs, charged to operations as incurred, in 1997 and 1996 of \$15.8 million and \$10.1 million, respectively, relating to employee relocation and recruiting and equipment installation and relocation (\$11.8 million in 1997 and \$3.2 million in 1996) transitional fees relating to outsourcing arrangements (\$4.9 million in 1996), and package redesign costs (\$4.0 million in 1997 and \$2.0 million in 1996) expended as a result of the implementation of the restructuring plan. The 1996 Loss on Sale of Discontinued Operations related to the divestiture of Sunbeam's furniture business. In 1996, Sunbeam decided to divest its furniture operations and recorded an estimated pre-tax loss of \$58.2 million related to the sale of assets, primarily fixed assets and inventory. In 1997, Sunbeam recorded an additional pre-tax loss of \$22.5 million due primarily to lower than anticipated sales proceeds resulting from the post closing

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adjustment as provided for in the sale agreement. See Notes 12 and 13 to Sunbeam's Consolidated Financial Statements.

At December 28, 1997, Sunbeam had \$5.2 million in liabilities accrued related to the 1996 restructuring plan, including \$1.2 million of severance related costs and \$4.0 million related to facility closures, which principally represented future lease payments, net of sub-leases, on exited facilities. During 1998, this liability was reduced by \$4.0 million as a result of cash expenditures. At December 28, 1997, Sunbeam had \$3.0 million of warranty liabilities related to the discontinued furniture operations. During 1998, \$2.5 million of this liability was liquidated.

The charges and benefit described above are included in the following categories in the 1997 and 1996 Consolidated Statements of Operations (in millions):

<TABLE>
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Restructuring and impairment (benefit) charge.....	022282
Cost of goods sold.....	
Selling, general and administrative expense.....	
Loss on sale of discontinued operations.....	

These charges and benefit consisted of the following (in millions):

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Write-downs:

Fixed assets held for disposal, not in use.....
 Fixed assets held for disposal, used until disposed.....
 Inventory on hand.....
 Other assets, principally trademarks and intangible assets.....

Restructuring accruals (including amounts expended in 1996):

Employee severance pay and fringes.....
 Lease payments and termination fees.....
 Other exit activity costs, principally facility closure expenses.....

Other related period costs, charged to operations as incurred:

Employee relocation; equipment relocation and installation and other.....
 Transitional fees related to outsourcing arrangements.....
 Package redesign.....

Charges included in continuing operations.....
 Loss on sale of discontinued operations.....

</TABLE>

At December 29, 1996, the net realizable value of the remaining inventory written-down as part of the restructuring and asset impairment charges was approximately \$37.3 million. During 1997, this inventory, a portion of which was product of discontinued operations, was sold for amounts substantially equivalent to its net carrying value.

As further discussed in Note 15 to the Consolidated Financial Statements, during the fourth quarter of 1996, Sunbeam charged SG&A for increases of \$9.0 million in environmental reserves and \$12.0 million in litigation reserves. In the fourth quarter of 1996, Sunbeam performed a comprehensive review of all environmental exposures in an attempt by the then new senior management team to accelerate the resolution and settlement of environmental claims. As a result, upon the conclusion of the review, Sunbeam recorded additional environmental reserves of \$9.0 million in the fourth quarter of 1996. The litigation charge of \$12.0 million was recorded due to an unfavorable court ruling in January 1997, which held that Sunbeam

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was liable for environmental remediation costs related to the operations of a successor company. As a result of this ruling, Sunbeam provided for this liability in the fourth quarter of 1996. In the fourth quarter of 1997, this case was settled and, as a result, \$8.1 million of the charge was reversed into income, primarily in the fourth quarter of 1997.

As described in Note 8 to the Consolidated Financial Statements, Sunbeam also charged \$7.7 million to SG&A expenses in 1996 for compensation costs associated with restricted stock awards and other costs related to the

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employment of the then new senior management team.

During the first, second, third and fourth quarters of 1997, approximately \$0.5 million, \$4.5 million, \$1.5 million and \$21.5 million, respectively, of pre-tax liabilities provided in prior years and determined to be no longer required were reversed and taken into income. These amounts were primarily related to:

- o the litigation reserve of \$8.1 million discussed above, resulting in a reduction in SG&A expenses;
- o inventory valuation allowances of \$7.0 million, resulting in a reduction in Costs of Goods Sold;
- o cooperative advertising allowances of \$5.4 million, resulting in an increase in net sales;
- o liabilities for exiting of facilities and plant consolidations provided for prior to 1996 of \$3.5 million, resulting in a decrease in Cost of Goods Sold; and
- o consulting fee accruals of \$1.3 million, which resulted in a decrease in SG&A expenses.

These liabilities were provided for by Sunbeam, principally in 1996, based upon its best available estimate at the time of the probable liabilities. When information became available that the amounts provided were in excess of what was required, Sunbeam reduced the applicable reserves and recorded increases in Net Sales of \$5.4 million, reductions in Cost of Goods Sold of \$10.5 million and reductions in SG&A expenses of \$12.1 million.

Additionally, effective in the second quarter of fiscal 1997, Sunbeam changed its method of accounting to capitalize manufacturing supplies inventories, whereas, previously these inventories were charged to operations when purchased. This change reduced Cost of Goods Sold in fiscal 1997 by \$2.8 million.

Results of Operations for 1997 Compared to 1996

Net sales for 1997 were \$1,073.1 million, an increase of \$88.9 million or 9% over 1996. After excluding the following, Adjusted Sales increased 8% over the prior year to \$1,032.2 million from \$953.4 million in 1996:

- o \$4.2 million and \$30.8 million in 1997 and 1996, respectively, related to divested product lines which were not classified as discontinued operations (time and temperature products, decorative bedding and Counselor and Borg branded scales);
- o \$31.3 million of sales in 1997 of discontinued inventory which resulted primarily from the reduction of SKUs as part of the 1996 restructuring plan and for which the inventory carrying value was substantially equivalent to the sales value; and
- o a \$5.4 million benefit from the reduction of cooperative advertising accruals no longer required in 1997.

Adjusted Sales, on a worldwide basis, increased during 1997 primarily from new product introductions, expanded distribution, particularly with Sunbeam's top ten customers, international geographic expansion and increased inventory positions at some customers. Adjusted Sales growth was approximately 19% for appliances and approximately 12% in outdoor cooking. Adjusted Sales for health products increased approximately 5% while Adjusted Sales of personal care products and blankets decreased approximately 13% during 1997.

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Sales increases in appliances of approximately \$69 million were driven by new products, such as redesigned blenders and mixers, coffeemakers, irons, deep fryers and toasters, and by increased distribution with large national mass retailers, combined with higher inventory levels at some customers. Sales of outdoor

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cooking products increased approximately \$30 million in 1997 attributed to increased merchandising and advertising programs, new distribution and higher inventory levels at some customers. During 1997, Sunbeam lost a significant portion of its outdoor cooking products distribution, including the majority of its grill accessory products distribution. Accessories, which accounted for just over 10% of the outdoor cooking sales volume in 1997; generate significantly better margins than the average margins on sales of grills. These distribution changes are expected to adversely impact outdoor cooking sales and margins in the future, until such time as the distribution is regained.

Sales of personal care products and blankets suffered during the fourth quarter of 1997 as a result of lower than expected retail sell through of electric blankets in key northern markets in late 1997 coupled with the inability to service demand for king and queen sized blankets due to shortages of blanket shells. Sunbeam shifted to a more level production for blankets in 1998 in order to more adequately service the seasonal demand for bedding products. Sales of health products as well as personal care and bedding products were impacted by increased inventory positions at customers in 1997.

International sales, which represented 21% of total revenues in 1997, grew 25% during the year. This sales growth was driven primarily by 54 new 220 volt product introductions and a general improvement in demand in export operations and in Mexico. Net sales growth of approximately 35% was achieved in the Latin American export sales organization. Most of this growth came from increased business with three exporters. In Mexico and Venezuela, sales grew 30% and 24%, respectively. Canada accounted for the majority of the remaining international sales growth.

Excluding the effects of:

- o charges of \$60.8 million to Cost of Goods Sold related to the restructuring plan in 1996;
- o the \$15.9 million benefit of reducing reserves no longer required in 1997; and
- o the \$2.8 million benefit in 1997 of capitalizing manufacturing supplies inventories;

gross margin as a percent of Adjusted Sales would have been approximately 22% in 1997, an improvement of approximately 6 percentage points from 16% in 1996. This increase reflects the results of lower overhead spending, improved factory utilization and labor cost benefits resulting from Sunbeam's restructuring plan, coupled with reductions in materials costs. The lower overhead spending resulted from a reduction in the number of facilities operated by Sunbeam. With fewer facilities used for production purposes, the capacity of the remaining plants was more fully utilized. The labor cost benefits were realized principally from shifting production to Mexico. In addition, a broad based program to obtain lower costs for materials contributed to the 1997 margin improvement.

Excluding the impact of:

- o the restructuring and asset impairment period costs to SG&A expense of \$15.8 million in 1997 and \$10.1 million in 1996;

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- o the 1996 charges for the environmental accrual of \$9.0 million, litigation accrual of \$12.0 million and restricted stock grant compensation of \$7.7 million; and
- o the 1997 benefit from the reversal of reserves no longer required of \$12.1 million;

SG&A improved to 14% of Adjusted Sales in 1997, down 5 percentage points from 19% in 1996. This improvement was partially the result of benefits from the consolidation of six divisional and regional headquarters into one corporate headquarters and one administrative operations center, reduced staffing levels, a reduction in the number of warehouses, and Company-wide cost control initiatives. Higher expenditures in 1996 for market research, new packaging and other discretionary charges and higher bad debt expenses associated with some of Sunbeam's customers also contributed to the decrease in SG&A expense from 1996 to 1997. The expense for doubtful accounts and cash discounts was \$17.3 million in 1997 as compared to \$27.1 million in 1996. The principal factor in the decrease in bad debt expenses during this period was the acceleration of the consolidation of the U.S. retail industry and the related competitive environment, which resulted in a number of troubled retailers and related bankruptcies during 1996. This resulted in the significant amount of bad debt write-offs--\$19.9 million--in 1996.

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The restructuring accrual, which existed at January 1, 1996 (\$13.8 million), was initially established as part of a "rightsizing program" during fiscal 1992. During 1996, approximately \$3 million of this accrual was utilized and the remaining \$10.8 million became part of the reserve requirements of the 1996 restructuring plan. In effect, in 1996, Sunbeam reversed the \$10.8 million prior year accrual determined to be no longer required and provided a corresponding amount in connection with the 1996 restructuring charge.

Operating results for 1997 and 1996, on a comparable basis as described above, were earnings of \$74.5 million in 1997 and a loss of \$34.8 million in 1996. On the same basis, operating margin increased 11 percentage points to 7% of Adjusted Sales in 1997 versus a loss of 4% in 1996. This improvement resulted from the factors discussed above.

Interest expense decreased from \$13.6 million in 1996 to \$11.4 million in 1997 primarily as a result of lower average borrowing levels in 1997.

The 1997 effective income tax rate for continuing operations was higher than the federal statutory income tax rate primarily due to state taxes plus the effect of foreign earnings and dividends taxed at other rates and the increase to the valuation reserve for deferred tax assets, offset in part by the reversal of tax liabilities no longer required. During the fourth quarter of 1997, approximately \$13.3 million of tax liabilities related to the 1993 and 1994 tax years were determined to be no longer required and were reversed and taken into income. These accruals were no longer required because during the fourth quarter of 1997 Sunbeam reached a resolution with the Internal Revenue Service on its audits of the 1993 and 1994 tax years. Additionally, in the fourth quarter of 1997, Sunbeam increased the valuation allowance by \$23.2 million reflecting management's assessment that it was more likely than not that the deferred tax asset will not be realized through future taxable income. Of this amount, \$18.9 million related to deferred tax assets, the majority of which was recognized as a benefit in the first three quarters of 1997. The remainder related to minimum pension liabilities and was therefore recorded as an adjustment to shareholders' equity. This assessment was made as a result of the significant leverage incurred by Sunbeam to finance the acquisitions and the

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significant decline in net sales and earnings from anticipated levels during the fourth quarter of 1997 and the first quarter of 1998. For 1996, the effective income tax rate for continuing operations equaled the federal statutory income tax rate.

Sunbeam's diluted earnings per share from continuing operations was \$0.60 per share in 1997 versus a loss per share from continuing operations in 1996 of \$2.05. Sunbeam's share base utilized in the diluted earnings per share calculation increased approximately 6% during 1997 as a result of an increase in the number of shares of common stock outstanding due to the exercise of stock options in 1997 and the inclusion of common stock equivalents in the 1997 calculation.

Sunbeam's discontinued furniture business, which was sold in March 1997, had revenues of \$51.6 million in the first quarter of 1997 prior to the sale and nominal earnings. In 1996, the discontinued furniture business had net income of \$0.8 million on revenues of \$227.5 million and an estimated loss on disposal of the business of \$39.1 million, net of applicable income tax benefits. The sale of Sunbeam's furniture business assets--primarily inventory, property, plant and equipment--was completed in March 1997. Sunbeam received \$69.0 million in cash, retained approximately \$50.0 million in accounts receivable and retained some liabilities related to the furniture business. The final purchase price for the furniture business was subject to a post-closing adjustment under the terms of the sale agreement, and in the first quarter of 1997, after completion of the sale, Sunbeam recorded an additional pre-tax loss on disposal of \$22.5 million. Although the discontinued furniture business was profitable, net income had declined from \$21.7 million in 1994 to \$0.8 million in 1996. This decline, along with Sunbeam's announcement that it intended to divest this line of business contributed to the loss on the sale. See discussion of restructuring and asset impairment (benefit) charges in Note 12 and discontinued operations in Note 13 to the Consolidated Financial Statements for further information regarding sale of the furniture business.

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SUMMARY OF (LOSS) EARNINGS FROM CONTINUING OPERATIONS

A reconciliation of operating (loss) earnings to adjusted (loss) earnings from continuing operations for 1998, 1997 and 1996, on a comparable basis follows (in millions):

<TABLE>
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	1998

<S>	<C>
Operating (loss) earnings, as reported.....	\$(670.0)
Add (deduct):	0
Loss from acquisitions.....	24.8
Issuance of warrants to MacAndrews & Forbes subsidiary.....	20.0
Restructuring, asset impairment and other related charges.....	--
Fixed asset and inventory charges.....	28.4
Environmental reserve increase principally related to divested operations.....	7
Litigation reserve increase relating to divested operation.....	--
Restricted stock and other management compensation/severance.....	34.4
Reversals of accruals no longer required.....	(3.0)
Capitalization of manufacturing supplies inventories.....	--
Restatement related expenses.....	20.4
Year 2000 and systems initiatives expenses.....	6.1
Change in fiscal year-end effect and office relocation expense.....	5.5

Adjusted operating (loss) earnings from continuing operations before income taxes,

minority interest and extraordinary charge.....	(283.4)
Interest expense.....	131.1
Other (income) expense, net.....	(4.8)

Adjusted (loss) earnings from continuing operations before income taxes and minority interest.....	(409.7)
Adjusted income tax (benefit) expense.....	(10.1)
Minority interest.....	(10.7)

Adjusted (loss) earnings from continuing operations.....	\$(388.9)

</TABLE>

After consideration of the adjustments above, 1998 and 1996 results from continuing operations reflect losses and 1997 continuing operations are marginally profitable. Due to a variety of factors, including increased inventory positions at some customers and manufacturing and sourcing activities during 1997 and the first half of 1998 which increased Sunbeam's inventory position, the results for each of 1998 and 1997 are not indicative of future results. Results for 1999 are expected to be impacted by the continuing effects of Sunbeam's excess inventory position, as well as costs related to Year 2000 compliance efforts.

FOREIGN OPERATIONS

Approximately 75% of Sunbeam's business is conducted in U.S. dollars, including domestic sales, U.S. dollar denominated export sales, primarily to Latin American markets, Asian sales and the majority of European sales. Sunbeam's non-U.S. dollar denominated sales are made principally by subsidiaries in Europe, Canada, Japan, Latin America and Mexico. Mexico reverted to a hyperinflationary status for accounting purposes in 1997; therefore, translation adjustments related to Mexican net monetary assets are included as a component of net (loss) earnings. Mexico is no longer considered hyperinflationary as of January 1, 1999. This change in Mexico's hyperinflationary status is not expected to have a material effect on Sunbeam's financial results. Translation adjustments resulting from Sunbeam's non-U.S. denominated subsidiaries have not had a material impact on Sunbeam's financial condition, results of operations or cash flows.

While revenues generated in Asia have traditionally not been significant, economic instability in this region is expected to have a negative effect on earnings. Economic instability and the political environment in Latin America have also affected sales in that region. It is anticipated that sales in and exports to these regions will continue to decline so long as the economic environments in those regions remain unsettled.

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On a limited basis, Sunbeam selectively uses derivatives--foreign exchange option and forward contracts--to manage foreign exchange exposures that arise in the normal course of business. No derivative contracts are entered into for trading or speculative purposes. The use of derivatives has not had a material impact on Sunbeam's financial results. See Note 4 to the Consolidated Financial Statements.

EXPOSURE TO MARKET RISK

Qualitative Information

Sunbeam uses a variety of derivative financial instruments to manage its foreign currency and interest rate exposures. Sunbeam does not speculate on

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- (1) The fair value of fixed rate debt is estimated using either reported transaction values or discounted cash flow analysis. The carrying value of variable rate debt is assumed to approximate market value based on the periodic adjustments of the interest rates to the current market rates in accordance with the terms of the agreements. The fair value of the interest rate swaps is based on estimates of the cost of terminating the swaps.
- (2) The total amount of debentures maturing in future periods exceeds the balance as of December 31, 1998 due to the accretion of the debentures. See Note 3 to Sunbeam's Consolidated Financial Statements.
- (3) Represents bank credit facility debt. See "---Liquidity and Capital Resources" and Note 3 to the Consolidated Financial Statements.

Exchange Rate Sensitivity. The table below provides information about Sunbeam's derivative financial instruments, other financial instruments and forward exchange agreements by functional currency and presents such information in U.S. dollar equivalents. The table summarizes information on instruments and transactions that are sensitive to foreign currency exchange rates, including foreign currency variable rate credit lines, foreign currency forward exchange agreements and foreign currency purchased put option contracts. For debt obligations, the table presents principal cash flows and related weighted average interest rates by expected maturity dates. For foreign currency forward exchange agreements and foreign currency put option contracts, the table presents the notional amounts and weighted average exchange rates by expected (contractual) maturity dates. These notional amounts generally are used to calculate the contractual payments to be exchanged under the contract. None of the instruments listed in the table have maturity dates beyond 1999.

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ON BALANCE SHEET FINANCIAL INSTRUMENTS

US\$ Functional Currency

Short-term debt:

Variable rate credit lines (Europe, Japan and Asia).....	\$ 45.
Weighted average interest rate.....	2.

US\$ FUNCTIONAL CURRENCY

Forward Exchange Agreements

(Receive US\$/pay DM)

Contract amount.....	\$ 12.
Average contractual exchange rate.....	1.6

(Receive US\$/pay JPY)

Contract amount.....	\$ 14.
Average contractual exchange rate.....	116.1

(Receive US\$/pay GBP)

Contract amount.....	4.
Average contractual exchange rate.....	1.6

Purchased Put Option Agreements

(Receive US\$/pay DM)

Contract amount.....	\$ 18.
Average strike price.....	1.6

(Receive US\$/pay JPY)

Contract amount.....	\$ 12.
Average strike price.....	125.

(Receive US\$/pay GBP)

Contract amount.....	\$ 1.
Average strike price.....	1.6

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EURO CONVERSION

On January 1, 1999, certain member countries of the European Union established fixed conversion rates between their existing currencies and the European Union's common currency (the "Euro"). The transition period for the introduction of the Euro is between January 1, 1999 and January 1, 2002. Sunbeam has been preparing for the introduction of the Euro and continues to evaluate and address the many issues involved, including the conversion of information technology systems, recalculating currency risk, strategies concerning continuity of contracts, and impacts on the processes for preparing taxation and accounting records. Based on the work to date, Sunbeam believes the Euro conversion will not have a material impact on its results of operations.

SEASONALITY

Sunbeam's consolidated sales are not expected to exhibit substantial seasonality; however, sales are expected to be strongest during the second quarter of the calendar year. Furthermore, sales of a number of products, including warming blankets, vaporizers, humidifiers, grills, First Alert products, camping and generator products may be impacted by unseasonable weather conditions.

LIQUIDITY AND CAPITAL RESOURCES

Debt Instruments

In order to finance the acquisition of Coleman, First Alert and Signature Brands and to refinance substantially all of the indebtedness of Sunbeam and the three acquired companies, Sunbeam consummated an offering of debentures at a yield to maturity of 5%--approximately \$2,014 million principal amount at maturity--in March 1998, which resulted in approximately \$730 million of net proceeds and borrowed about \$1,325 million under its new bank credit facility.

The debentures are exchangeable for shares of Sunbeam's common stock at an initial conversion rate of 6.575 shares for each \$1,000 principal amount at maturity of the debentures, subject to adjustments upon occurrence of specified events. The debentures are subordinated in right of payment to all existing and future senior indebtedness of Sunbeam. The debentures are not redeemable by Sunbeam prior to March 25, 2003. On or after such date, the debentures are redeemable for cash with at least 30 days notice, at the option of Sunbeam. Sunbeam is required to purchase debentures at the option of the holder as of March 25, 2003, March 25, 2008 and March 25, 2013, at purchase prices equal to the issue price plus accrued original discount to such dates. Sunbeam may, at its option, elect to pay any such purchase price in cash or common stock or any combination thereof. However, the bank credit facility prohibits Sunbeam from redeeming or repurchasing debentures for cash. Sunbeam was required to file a registration statement with the SEC to register the debentures by June 23, 1998. This registration statement was filed on February 4, 1999 and, as amended, was declared effective on November 8, 1999. Sunbeam's failure to file the registration statement by June 23, 1998 did not constitute default under the terms of the debentures. From June 23, 1998 until the registration statement was declared effective, Sunbeam was required to pay to the debenture holders cash liquidated damages accruing, for each day during such period, at a rate per annum equal to 0.25% during the first 90 days and 0.50% thereafter multiplied by the total of the issue price of the debentures plus the original issue discount thereon on such day. Sunbeam has made total payments for liquidated damages since June 23, 1998 of \$4.5 million, of which \$1.5 million related to damages for the period through December 31, 1998. A final payment of approximately \$0.5 million, representing liquidated damages from September 26, 1999 until the

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registration statement was declared effective, will be payable on March 25, 2000.

Concurrent with the acquisitions, Sunbeam replaced its \$250 million syndicated unsecured five-year revolving credit facility with the bank credit facility. The bank credit facility provided for aggregate borrowings of up to \$1.7 billion and in addition to other customary covenants, required Sunbeam to maintain specified consolidated leverage, interest coverage and fixed charge coverage ratios as of the end of each fiscal quarter occurring after March 31, 1998 and on or prior to the latest stated maturity date for any of the borrowings under the bank credit facility.

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As a result of, among other things, its operating losses incurred during the first half of 1998, Sunbeam did not achieve the specified financial ratios for June 30, 1998 and it appeared unlikely that Sunbeam would achieve the specified financial ratios for September 30, 1998. Consequently, Sunbeam and its lenders entered into an agreement dated as of June 30, 1998 that waived through December 31, 1998 all defaults arising from the failure of Sunbeam to satisfy the specified financial ratios for June 30, 1998 and September 30, 1998. Pursuant to an agreement with Sunbeam dated as of October 19, 1998, Sunbeam's lenders extended all of the waivers under the June 30 agreement through April 10, 1999 and also waived through such date all defaults arising from any failure by Sunbeam to satisfy the specified financial ratios for December 31, 1998. As part of the October 19, 1998 agreement, Sunbeam agreed to a minimum monthly earnings before interest, taxes, depreciation and amortization ("EBITDA") covenant for each of February, March and April of 1999, which covenant Sunbeam was able to satisfy.

On April 10, 1999, among other things, the lenders extended all of the waivers set forth in the October 19, 1998 agreement through April 15, 1999. On April 15, 1999, Sunbeam and its lenders entered into a comprehensive amendment to the bank credit facility that, among other things, extended all of the waivers under the April 10, 1999 agreement until April 10, 2000 and waived until such date all defaults arising from any failure by Sunbeam to satisfy the specified financial ratios for any fiscal quarter end occurring during 1999 and for March 31, 2000. As part of the April 15, 1999 amendment, Sunbeam agreed to a minimum cumulative EBITDA covenant that is based on post-December 31, 1998 consolidated EBITDA and is tested at the end of each month occurring on or prior to March 31, 2000, as well as a covenant limiting the amount of revolving loans (other than those used to fund the merger) that may be outstanding under the bank credit facility as of the end of each such month. The minimum cumulative EBITDA was initially \$6.3 million for the period January 1, 1999 through April 30, 1999 and generally grows on a monthly basis until it reaches \$121 million for the period from January 1, 1999 through March 31, 2000. The following description of the bank credit facility reflects the terms of the bank credit facility as amended to date.

The bank credit facility provides for aggregate borrowings of up to \$1.7 billion through:

- o a revolving credit facility in an aggregate principal amount of up to \$400.0 million maturing March 30, 2005, \$52.5 million of which may be used only to complete the merger;
- o up to \$800.0 million in term loans maturing on March 30, 2005, of which \$35.0 million may be used only to complete the merger; and
- o a \$500.0 million term loan maturing September 30, 2006 (of which \$5.0 million has already been repaid through June 30, 1999).

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As of September 30, 1999, approximately \$1.5 billion was outstanding and approximately \$0.2 billion was available for borrowing under the bank credit facility.

Under the bank credit facility, interest accrues, at Sunbeam's option:

o at LIBOR; or

o at the base rate of the administrative agent which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%;

in each case plus an interest margin which is currently 4.00% for LIBOR borrowings and 2.50% for base rate borrowings. The current interest rates reflect an increase of 0.25% for LIBOR loans and base rate loans which occurred on September 1, 1999 as a result of the merger not occurring by such date and an increase of 0.50% for LIBOR and 0.25% for base rate loans which occurred on October 1, 1999 as a result of the merger not occurring by such date. The applicable interest margin is subject to downward adjustment upon the occurrence of specified events, including a decrease to 3.00% for LIBOR borrowings and 1.75% for base rate borrowings upon completion of the merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the bank credit facility.

Under an April 15, 1999 amendment to the bank credit facility, Sunbeam agreed to pay the bank lenders a loan commitment fee of between 0.25% to 1.00% of the commitments under the bank credit facility as of April 15, 1999. The percentage used to calculate the fee will be determined by reference to the bank lenders'

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aggregate commitments and loan exposure under the bank credit facility as they may be reduced on or before September 30, 2000. The fee is payable on the earlier of September 30, 2000 and the date the commitments are terminated and the loans and other amounts payable under the bank credit facility are repaid. See Note 15 to the Consolidated Financial Statements.

Borrowings under the bank credit facility are secured by a pledge of the stock of Sunbeam's material subsidiaries, including Coleman, and by a security interest in substantially all of the assets of Sunbeam and its material domestic subsidiaries, other than Coleman and its material subsidiaries except as described below. Currently, Coleman's inventory and related assets are pledged to secure its obligations for letters of credit issued for its account under the bank credit facility. Additionally, as security for Coleman's note payable to Sunbeam, Coleman pledged substantially all of its domestic assets, other than real property, including 66% of the stock of its direct foreign subsidiaries and domestic holding companies for its foreign subsidiaries and all of the stock of its other direct domestic subsidiaries but not the assets of Coleman's subsidiaries. The pledge runs in favor of Sunbeam's lending banks, to which the Coleman note has been pledged as security for Sunbeam's obligations to them. Upon completion of the merger, substantially all of Coleman's assets and the assets of Coleman's domestic subsidiaries will be pledged to secure the obligations under the bank credit facility.

In addition, borrowings under the bank credit facility are guaranteed by a number of Sunbeam's wholly owned material domestic subsidiaries and these subsidiary guarantees are secured as described above. Upon completion of the merger, Coleman and each of its United States subsidiaries will become guarantors of the obligations under the bank credit facility. To the extent

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extensions of credit are made to any subsidiaries of Sunbeam, the obligations of such subsidiaries are guaranteed by Sunbeam.

In addition to the above described financial ratios and tests, the bank credit facility contains covenants customary for credit facilities of a similar nature, including limitations on the ability of Sunbeam and its subsidiaries, including Coleman, to, among other things:

- o declare dividends or repurchase stock;
- o prepay, redeem or repurchase debt, incur liens and engage in sale-leaseback transactions;
- o make loans and investments;
- o incur additional debt, including revolving loans under the bank credit facility;
- o amend or otherwise alter material agreements or enter into restrictive agreements;
- o make capital and Year 2000 compliance expenditures;
- o engage in mergers, acquisitions and asset sales;
- o engage in certain transactions with affiliates;
- o settle certain litigation;
- o alter its cash management system; and
- o alter the businesses they conduct.

Sunbeam is also required to comply with specified financial covenants and ratios.

The bank credit facility provides for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, material adverse change arising from compliance with ERISA, material adverse judgments, entering into guarantees and change of ownership and control. It is also an event of default under the bank credit facility, as amended November 16, 1999, if Sunbeam's registration statement in connection with the merger is not declared effective by the SEC on or before January 10, 2000 or if the merger does not occur within 25 business days of the effectiveness of the registration statement or if the cash consideration--including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses--to consummate the merger exceeds \$87.5 million. Although there can be no assurance, Sunbeam anticipates that it will satisfy these conditions. Furthermore, the bank credit facility requires Sunbeam to prepay term loans

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under the bank credit facility on December 31, 1999 to the extent that cash on hand in Sunbeam's concentration accounts plus the aggregate amount of unused revolving loan commitments on this date exceeds \$125 million, but Sunbeam is not required to prepay more than \$69.3 million in the aggregate as a result of the provision.

Unless waived by the bank lenders, the failure of Sunbeam to satisfy any of the financial ratios and tests contained in the bank credit facility or the

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occurrence of any other event of default under the bank credit facility would entitle the bank lenders to (a) receive a 2.00% increase in the interest rate applicable to outstanding loans and increase the trade letter of credit fees to 1.00% and (b) accelerate the maturity of the outstanding borrowings under the bank credit facility and exercise all or any of their other rights and remedies. Any such acceleration or other exercise of rights and remedies would likely have a material adverse effect on Sunbeam.

The bank credit facility also includes provisions for the deferral of the September 30, 1999 and March 31, 2000 scheduled term loan payments of \$69.3 million due on each such date until April 10, 2000 as a result of the satisfaction by Sunbeam on May 14, 1999 of the agreed upon conditions to the deferral. See Note 3 to the Consolidated and Condensed Consolidated Financial Statements.

Cash Flows

As of September 30, 1999, Sunbeam had cash and cash equivalents of \$29.1 million and total debt of \$2.3 billion. Because the waivers granted by Sunbeam's lenders expire on April 10, 2000, the borrowings under the bank credit facility, as well as other debt containing cross-default provisions, are classified as current in the September 30, 1999 Condensed Consolidated Balance Sheet. Cash used in operating activities during the first nine months of 1999 was \$73.2 million compared to \$224.7 million in the first nine months of 1998. This change is primarily attributable to improved operating results after giving effect to non-cash items, partially offset by increased working capital needs during the 1999 period. The increase in cash used for working capital during the 1999 period was primarily driven by accounts receivable, which increased \$159.4 million as compared to the 1998 period, primarily attributable to Sunbeam's Outdoor Leisure division which experienced stronger second and third quarters sales in 1999 than in 1998. Additionally, working capital for the 1998 period was positively affected by the timing of Sunbeam's acquisition of Coleman, which was at the peak of its inventory build for the 1998 selling season. Cash used for this acquired inventory is not reflected in working capital for the 1998 period. As a result of the effect of Company's management of inventory levels in 1999, cash flow improved approximately \$81 million as compared to 1998 despite the favorable impact of the inventory acquired in connection with the 1998 acquisitions. Increases in accounts payable of approximately \$30 million in the first nine months of 1999 positively impacted cash flow whereas payables used approximately \$76 million of cash in the same period of 1998, resulting in an improvement in cash flow period-to-period of approximately \$106 million. The increase in payables in the current period resulted from payable balances having been reduced to a low level by year-end 1998. This reduction in payables, which included an effort to reduce delinquent payables, began in the second quarter of 1998. Decreases in other liabilities, primarily accrued interest, account for the majority of the balance of the cash used for working capital in 1999. Sunbeam participates in an accounts receivable securitization program to finance a portion of its accounts receivable. See Note 4 to the Condensed Consolidated Financial Statements.

In the first nine months of 1999, cash used in investing activities was driven by capital expenditures of \$63.2 million, primarily for information systems, including expenditures for Year 2000 readiness and equipment and tooling for new products. Capital spending in the comparable 1998 period was \$32.8 million and was primarily for several manufacturing efficiency initiatives, equipment and tooling for new products and management information systems and software licenses. The new product capital spending in the 1998 period principally related to the appliance category and included costs related to water and air filtration products which were discontinued in the second quarter, blenders, standmixers and irons. Cash used in investing activities in the first nine months of 1998 also reflects \$379.2 million for the acquisitions of the shares of Coleman from a subsidiary of MacAndrews & Forbes, as well as the acquisitions of Signature Brands and First Alert. Sunbeam anticipates 1999 capital spending to be less than 5% of net sales. Capital expenditures in the

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current year are expected to primarily relate to information systems and related support, including expenditures for Year 2000 readiness, new product introductions and capacity additions.

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Cash provided by financing activities totaled \$99.2 million in the first nine months of 1999 and reflected net borrowings under Sunbeam's bank credit facility. Cash provided by financing activities in the first nine months of 1998 was \$636.1 million and reflected net proceeds from the debentures of \$729.6 million, the cancellation and repayment of all outstanding balances under Sunbeam's \$250 million September 1996 revolving credit facility, the repayment of certain debt assumed in connection with the Coleman, Signature Brands and First Alert acquisitions, and the early extinguishment of the \$75.0 million Hattiesburg industrial revenue bond. In addition, cash provided by financing activities in 1998 is net of \$26.2 million of financing fees related to Sunbeam's \$1.7 billion bank credit facility and \$19.6 million of proceeds from the exercise of stock options. See Note 3 to the Condensed Consolidated Financial Statements.

As of December 31, 1998, Sunbeam had cash and cash equivalents of \$61.4 million, working capital excluding cash and cash equivalents of \$427.1 million and total debt of \$2,261 million. Cash used in operating activities during 1998 was \$190.4 million compared to \$6.0 million used in operating activities in 1997. This change is primarily attributable to lower earnings after giving effect to non-cash charges partially offset by improvements in working capital. During 1998, \$184.2 million in cash was generated by reducing receivables, including through the revolving trade accounts receivable securitization program described below, and reducing inventories, which was partially offset by a \$68.2 million reduction in accounts payable levels. In the fourth quarter of 1998, cash provided by operating activities totaled \$34.3 million, principally due to cash generated by reducing receivables and inventories of \$181.9 million. The decrease in cash provided by operations from 1996 to 1997 is primarily attributable to increased inventory levels in 1997 and spending in 1997 related to the restructuring initiatives accrued for in 1996, largely offset by an increase in cash generated by earnings in 1997 and an income tax refund (net of payments) in 1997. Cash used in operating activities reflects proceeds of \$200.0 million in 1998 and \$58.9 million in 1997 from Sunbeam's revolving trade accounts receivable securitization program, described below.

Cash used in investing activities in 1998 reflects \$522.4 million for the acquisitions. In 1997, cash provided by investing activities reflected \$91.0 million in proceeds from the sales of divested operations and other assets. Capital spending totaled \$53.7 million in 1998 and was primarily for manufacturing efficiency initiatives, equipment and tooling for new products, and management information systems hardware and software licenses. The new product capital spending principally related to the air and water filtration products which were discontinued in the second quarter of 1998, electric blankets, grills, clippers and appliances. Capital spending in 1997 was \$60.5 million and was primarily attributable to manufacturing capacity expansion, cost reduction initiatives and equipment to manufacture new products. The new product capital spending in 1997 principally related to appliances and included costs related to blenders, toasters, stand mixers, slow cookers and a soft serve ice cream product. Capital spending in 1996 was \$75.3 million, including \$14.5 million related to the discontinued furniture business, and was primarily attributable to equipment for new product development and cost reduction initiatives. As discussed above, Sunbeam's capital and Year 2000 compliance expenditures are limited under the terms of the bank credit facility.

Cash provided by financing activities totaled \$766.2 million in 1998 and reflects:

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- o the net proceeds from the sale of debentures of \$729.6 million;
- o the cancellation and repayment of all outstanding balances under Sunbeam's \$250 million September 1996 revolving credit facility;
- o the repayment of debt in connection with the acquisitions;
- o the early extinguishment of the \$75.0 million Hattiesburg industrial revenue bond; and
- o net borrowings under the bank credit facility.

In addition, cash provided by financing activities during 1998 includes \$19.6 million of proceeds from the exercise of stock options.

During 1997, cash provided by financing activities of \$16.4 million reflected:

- o net borrowings of \$5.0 million under Sunbeam's September 1996 revolving credit facility;
- o \$12.2 million of debt repayments related to the divested furniture business and other assets sold; and

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- o \$26.6 million in cash proceeds from the exercise of stock options.

During 1996, cash provided by financing activities of \$45.3 million primarily reflected:

- o revolving credit facility borrowings of \$30.0 million to support working capital and capital spending requirements;
- o \$11.5 million in new issuances of long-term debt; and
- o \$4.6 million in proceeds from the sale of treasury shares to certain executives of Sunbeam.

In December 1997, Sunbeam entered into a revolving trade accounts receivable securitization program, which as amended expires in March 2000, to sell without recourse, through a wholly owned subsidiary, up to a maximum of \$70 million in trade accounts receivable. Sunbeam, as agent for the purchaser of the receivables, retains collection and administrative responsibilities for the purchased receivables. For the nine months ended September 30, 1999 and for the year ended December 31, 1998, Sunbeam sold approximately \$228.4 million and \$200 million of accounts receivable, respectively, under this program. At September 30, 1999 and December 31, 1998, Sunbeam had reduced accounts receivable by \$36.9 million and \$20.0 million, respectively, for receivables sold under this program. Sunbeam expects to continue to utilize the securitization program to finance a portion of its accounts receivable. See Note 4 to the Condensed Consolidated Financial Statements and Note 5 to the Consolidated Financial Statements.

At September 30, 1999, standby and commercial letters of credit aggregated \$68.9 million and were predominantly for insurance, pension, environmental, workers' compensation, and international trade activities. In addition, as of September 30, 1999, surety bonds with a contract value of \$67.5 million were outstanding largely for Sunbeam's pension plans and as a result of litigation judgments that are currently under appeal.

For additional information relating to the debentures, the bank credit

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facility and the repayment of debt, see Note 3 to the Consolidated and Condensed Consolidated Financial Statements.

Sunbeam expects to acquire the remaining equity interest in Coleman in a merger transaction in which the existing Coleman minority stockholders will receive 0.5677 share of Sunbeam's common stock and \$6.44 in cash for each share of Coleman common stock outstanding. In addition, under a court-approved litigation settlement, Coleman minority stockholders (other than those who exercise and perfect their Delaware law appraisal rights) will receive for each share of Coleman common stock 0.381 of a warrant, entitling them to purchase one Sunbeam share at a cash price of \$7 per share until August 24, 2003 (assuming no further increases in the number of outstanding shares of Coleman common stock). Furthermore, unexercised options under Coleman's stock option plans will be cashed out at a price per share equal to \$27.50 minus the per share exercise price of such options. Sunbeam expects to issue approximately 6.7 million shares of common stock and expend approximately \$87 million in cash, including cash paid to option holders, to complete the Coleman transaction. See Note 2 to the Unaudited Condensed Consolidated and Consolidated Financial Statements. Also, see Note 15 to the Consolidated Financial Statements. Although there can be no assurance, it is anticipated that the merger will occur late in the fourth quarter of 1999 or early in the first quarter of 2000.

Sunbeam believes its borrowing capacity under the bank credit facility, cash flow from the combined operations of Sunbeam and its acquired companies, existing cash and cash equivalent balances, and its receivable securitization program will be sufficient to support working capital needs, capital expenditure and Year 2000 compliance spending, and debt service through April 10, 2000. Sunbeam intends to negotiate with its lenders on an amendment to the bank credit facility, negotiate with its lenders on further waiver of such covenants and other terms or refinance the bank credit facility. Any decisions with respect to such amendment, waiver, or refinancing will be made based on a review from time to time of the advisability of particular transactions. There can be no assurance that an amendment, further waiver of existing covenants and other terms, or refinancing will be entered into by April 10, 2000. The failure to obtain such an amendment, further waiver or debt refinancing would likely result in violation of existing covenants and non-compliance with other terms, which would permit the bank lenders to accelerate the maturity of all outstanding borrowings under the bank credit facility, and could otherwise have a material adverse effect on

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Sunbeam. Accordingly, debt related to the bank credit facility and all debt containing cross-default provisions is classified as current in the Unaudited Condensed Consolidated Balance Sheet at September 30, 1999.

In May 1998, the NYSE advised Sunbeam that it did not meet the NYSE's continuing listing standards because Sunbeam did not have tangible net assets of \$12.0 million at December 31, 1997 and average annual net income of at least \$0.6 million for fiscal years 1997, 1996 and 1995. Sunbeam representatives met with NYSE officials, and in March 1999, the NYSE informed Sunbeam that Sunbeam common stock would not be delisted at that time, although the NYSE would, however, continue to monitor Sunbeam's financial condition and operations. On August 5, 1999, the NYSE advised Sunbeam that the NYSE had revised its continuing listing standards, and that Sunbeam is in compliance with the revised standards.

In April 1999, the NYSE advised Coleman that it did not meet the NYSE's continuing listing standards because Coleman did not have tangible net assets of at least \$12.0 million at September 30, 1998 and average annual net income of at least \$0.6 million for fiscal years 1997, 1996 and 1995. At that time, Coleman requested the NYSE to continue to list the Coleman common stock until completion

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of the merger. The NYSE subsequently advised Coleman that Coleman also failed to satisfy certain non-financial continuing listing standards. On August 5, 1999, the NYSE advised Coleman that the NYSE had revised its continuing listing standards, and that Coleman is in compliance with the revised financial standards. Coleman and the NYSE have agreed upon a program whereby Coleman will correct the deficiencies in its non-financial continuing listing standards by the end of 1999. Coleman is currently complying with such program. If Coleman were to be delisted from the NYSE, it could adversely affect the market price of Coleman's common stock and Coleman's ability to sell its capital stock to third parties. However, Sunbeam's bank credit facility currently restricts Coleman from taking such actions.

By letter dated June 17, 1998, the staff of the Division of Enforcement of the SEC advised Sunbeam that it was conducting an informal inquiry into Sunbeam's accounting policies and procedures and requested that Sunbeam produce documents. On July 2, 1998, the SEC issued a Formal Order of Private Investigation, designating officers to take testimony and pursuant to which a subpoena was served on Sunbeam requiring the production of documents. On November 4, 1998, Sunbeam received another SEC subpoena requiring the production of additional documents. Sunbeam has provided numerous documents to the SEC staff and continues to cooperate with the SEC staff. Sunbeam has, however, declined to provide the SEC with material that Sunbeam believes is subject to the attorney-client privilege and the work product immunity. Sunbeam cannot predict the term of such investigation or its potential outcome.

Sunbeam is involved in significant litigation, including class and derivative actions, relating to events which led to the restatement of its consolidated financial statements, the issuance of the MacAndrews & Forbes warrant, the sale of the debentures and the employment agreements, of Messrs. Dunlap and Kersh. Sunbeam intends to vigorously defend each of the actions, but cannot predict the outcome and is not currently able to evaluate the likelihood of Sunbeam's success in each case or the range of potential loss. However, if Sunbeam were to lose these suits, judgments would likely have a material adverse effect on Sunbeam's financial position, results of operations and cash flows. Additionally, Sunbeam's insurance carriers have filed various suits requesting a declaratory judgment that the directors' and officers' liability insurance policies for excess coverage was invalid and/or had been properly canceled by the carriers or have advised Sunbeam of their intent to deny coverage under such policies. Sunbeam intends to pursue recovery from all of its insurers if damages are awarded against Sunbeam or its indemnified officers and/or directors under any of the foregoing actions and to recover attorneys' fees covered under those policies. Sunbeam's failure to obtain such insurance recoveries following an adverse judgment against Sunbeam on any of the foregoing actions could have a material adverse effect on Sunbeam's financial position, results of operations and cash flows.

Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and claims and related anticipated legal fees. The costs are accrued when it is both probable that an asset has been impaired or a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon Sunbeam's assessment, after consultation with counsel, of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the

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plaintiffs, and other significant factors which vary by case. When it is not possible to estimate a specific expected cost to be incurred, Sunbeam evaluates the range of probable loss and records the minimum end of the range. As of September 30, 1999, Sunbeam had established accruals for litigation matters of

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\$22.6 million (representing \$11.3 million and \$11.3 million for estimated damages or settlement amounts and legal fees, respectively). As of December 31, 1998, Sunbeam had established accruals for litigation matters of \$31.2 million (representing \$17.5 million and \$13.7 million for estimated damages or settlement amounts and legal fees, respectively) and \$9.9 million as of December 28, 1997, (representing \$3.0 million and \$6.9 million for estimated damages or settlement amounts and legal fees, respectively). It is anticipated that the \$22.6 million accrual will be paid as follows: \$5.2 million in 1999, \$14.9 million in 2000, and \$2.5 million in 2001. Sunbeam believes, based on information known to Sunbeam on September 30, 1999, that anticipated probable costs of litigation matters existing as of September 30, 1999 have been adequately reserved to the extent determinable.

As a consumer goods manufacturer and distributor, Sunbeam faces the constant risks of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. These claims could result in liabilities that could have a material adverse effect on Sunbeam's financial position, results of operations and cash flows. Some of the product lines Sunbeam acquired in the 1998 acquisitions have increased its exposure to product liability and related claims.

Sunbeam and its subsidiaries are also involved in various lawsuits from time to time that Sunbeam considers to be ordinary routine litigation incidental to its business. In the opinion of Sunbeam, the resolution of these routine matters, and of matters relating to prior operations, individually or in the aggregate, will not have a material adverse effect on the financial position, results of operations or cash flows of Sunbeam.

For additional information relating to litigation, see "BUSINESS OF SUNBEAM--Litigation and Other Contingent Liabilities."

NEW ACCOUNTING STANDARDS

In March 1998, the American Institute of Certified Public Accountants ("AICPA") issued Statement of Position 98-1, Accounting for the Costs of Computer Software Developed or Obtained for Internal Use ("SOP 98-1"). SOP 98-1 requires computer software costs associated with internal use software to be expensed as incurred until certain capitalization criteria are met. Sunbeam adopted SOP 98-1 effective January 1, 1999. Adoption of this statement did not have a material impact on Sunbeam's consolidated financial position, results of operations, or cash flows. Actual charges incurred due to systems projects may be material.

In April 1998, the AICPA issued Statement of Position 98-5, Reporting on the Cost of Start-up Activities ("SOP 98-5"). SOP 98-5 requires all costs associated with pre-opening, pre-operating and organization activities to be expensed as incurred. Sunbeam adopted SOP 98-5 beginning January 1, 1999. Adoption of this statement did not have a material impact on Sunbeam's consolidated financial position, results of operations, or cash flows.

In June 1998, the FASB issued SFAS No. 133, Accounting for Derivative Instruments and Hedging Activities, which is effective for fiscal years beginning after June 15, 2000. SFAS No. 133 requires the recognition of all derivatives in the Consolidated Balance Sheets as either assets or liabilities measured at fair value. Sunbeam has not yet determined the impact SFAS No. 133 will have on its consolidated financial position, results of operations or cash flows.

YEAR 2000 READINESS DISCLOSURE

Sunbeam is preparing for the impact of the Year 2000 on its operations. Year 2000 issues could include potential problems in the information technology ("IT") and non-IT systems that Sunbeam uses in its operations and problems in

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Sunbeam's products. Year 2000 system failures could affect routine but critical operations such as forecasting, purchasing, production, order processing, inventory control, shipping, billing and collection. In addition, system failures could affect Sunbeam's security, payroll operations, or employee

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safety. Sunbeam may also be exposed to potential risks from third parties with whom Sunbeam interacts who fail to adequately address their own Year 2000 issues.

Sunbeam's Approach to Year 2000 Issues

While Sunbeam's Year 2000 readiness planning has been underway for over one year, during the third quarter of 1998 Sunbeam established a cross-functional project team consisting of senior managers, assisted by three external consulting firms which were retained to provide consulting services and to assist Sunbeam in implementing its Year 2000 strategy. This team is headed by Sunbeam's Chief Financial Officer who reports directly to Sunbeam's Chief Executive Officer on this issue. The audit committee of the board of directors is advised periodically on the status of Sunbeam's Year 2000 readiness program.

The Year 2000 project team has developed a phased approach to identify and resolve Year 2000 issues with many of these activities conducted in parallel. Sunbeam's approach and the anticipated timing of each phase are described below.

Phase 1--Inventory and Assessment. During the first phase of Sunbeam's Year 2000 readiness program, Sunbeam established a Year 2000 program management office to centralize the management of all of Sunbeam's Year 2000 projects. Through this office, Sunbeam developed a corporate-wide, uniform strategy for assessing and addressing the Year 2000 issues.

Sunbeam has completed an inventory of its hardware and software systems, manufacturing equipment, electronic data interchange, telecommunications and other technical assets potentially subject to Year 2000 problems, such as security systems and controls for lighting, air conditioning, ventilation and facility access. This inventory was then entered into Sunbeam's Year 2000 database along with a determination of the item's level of criticality to operations. For those inventory items anticipated to have a significant effect on the business if not corrected, Sunbeam's Year 2000 program envisions repair or replacement and testing of such items. All information relative to each item is being tracked in Sunbeam's Year 2000 database. Sunbeam completed most of this phase during the third and fourth quarters of 1998. Sunbeam has completed a review of the readiness of embedded microprocessors in its products and determined that none of Sunbeam's products have Year 2000 date sensitive systems.

Phase 2--Correction and Testing. The second phase of Sunbeam's Year 2000 readiness program is structured to replace, upgrade or remediate, as necessary, those items identified during Phase 1 as requiring corrective action.

Sunbeam relies on its IT functions to perform many tasks that are critical to its operations. Significant transactions that could be impacted by not being ready for any Year 2000 issues include, among others:

- o purchases of materials;
- o production management;
- o order entry and fulfillment;
- o payroll processing; and

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- o billing and collections.

Systems and applications that have been identified by Sunbeam to date as not currently Year 2000 ready and which are critical to Sunbeam's operations include:

- o financial software systems, which process:
 - o order entry;
 - o purchasing;
 - o production management;
 - o general ledger;
 - o accounts receivable; and

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- o accounts payable functions;
- o payroll applications; and
- o critical applications in Sunbeam's manufacturing and distribution facilities, such as warehouse management applications.

Recognizing how dependent the entire company is on IT, Sunbeam decided in 1997 to replace its primary business applications with a uniform international business and accounting information system to address the systems or applications listed above as well as to improve internal reporting processes. Based upon representations from the manufacturer that the current version of this uniform information system is Year 2000 ready, Sunbeam upgraded its business sites that currently utilize this uniform system to the Year 2000 ready version. In addition to the pre-acquisition Sunbeam locations which had already utilized an earlier non-Year 2000 ready version of this uniform business and accounting information system, Eastpak, Mr. Coffee, Health-o-Meter, and Sunbeam Latin America replaced their current non-Year 2000 ready systems with this new uniform system. In addition, Coleman Europe also has replaced key business components with this new system.

Sunbeam is also actively replacing and/or upgrading a number of business systems that are not Year 2000 ready, including those that use localized business system packages which were not candidates to be replaced by the uniform business and accounting information system. For example, at Coleman approximately 2,000 mainframe software programs that are used in lieu of Sunbeam's uniform business and accounting information system have been remediated and tested to be Year 2000 ready. With respect to Sunbeam's non-IT systems, including time and attendance, security, and in-line manufacturing hardware, Sunbeam has analyzed these items to assess any Year 2000 issues, and is testing and correcting such items, if necessary.

Phase 3--Customers, Suppliers and Business Partners. The third phase of Sunbeam's Year 2000 readiness program which was initiated during the third and fourth quarters of 1998 is designed to assess and interact with Sunbeam's customers, suppliers, and business partners. As part of this effort, Sunbeam surveyed 1,100 vendors and suppliers, a portion of which did not provide an initial response. During the first half of 1999, "high risk" vendors were contacted directly and the number of non-respondents has since decreased substantially. In fact, currently only 7% of Sunbeam's vendors who were surveyed are categorized as "high risk," which includes non-respondents. Based on the

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most recent responses to the survey and continued evaluation, Sunbeam believes that there is only a low to a medium risk of Year 2000 issues for the remaining vendors. Sunbeam will continue to monitor the Year 2000 progress of the "high risk" vendors and has resurveyed these companies to determine the appropriate course of action. Furthermore, Sunbeam has contacted alternate vendors who are Year 2000 ready to replace critical vendors deemed "high risk" in the event that these vendors are not found to be Year 2000 ready. Sunbeam is in the process of completing a verification of the Year 2000 survey responses for the most critical vendors to Sunbeam.

Sunbeam has responded to numerous customer inquiries about Sunbeam's Year 2000 readiness. Sunbeam has verified that all of Sunbeam's major customers have planned programs to deal with Year 2000 issues and is currently completing the process of contacting its major customers to confirm they are implementing their planned programs to address Year 2000 issues. In order to improve Sunbeam's communication with its customers, suppliers and business partners, Sunbeam has set up a Sunbeam Year 2000 telephone number and is providing Year 2000 information on a Company web site.

Phase 4--Contingency Planning. This phase involves contingency planning for unresolved Year 2000 issues, particularly any issues arising with third party suppliers. Sunbeam has designed and documented its Year 2000 contingency plan and is in the process of implementing it. The development of the contingency plan included a process whereby Sunbeam's critical IT and non-IT systems were evaluated for Year 2000 readiness. As a result of this evaluation, Sunbeam does not expect to require additional operational equipment or significant process contingency measures. Although Sunbeam does not currently believe there is significant risk associated with its third party suppliers, the contingency plan includes the continuing evaluation of the readiness of Sunbeam's suppliers and minor increases in Sunbeam's inventory requirements to protect against supply disruption.

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The Risks of Sunbeam's Year 2000 Approach

The independent consultants assisting Sunbeam in its Year 2000 readiness program have reviewed and concurred with Sunbeam's approach, have assisted in developing cost estimates and have monitored costs for the largest single component (upgrade or installation of Sunbeam's uniform system) of Sunbeam's Year 2000 program. Since Sunbeam's Year 2000 program was developed and is monitored with the help of independent consultants, Sunbeam did not engage another independent third party to verify the program's overall approach or total cost; based on this, Sunbeam believes that Sunbeam's exposure in this regard is mitigated. In addition, through the use of external third-party diagnostic software packages that are designed to analyze the Year 2000 readiness of business software programs, Sunbeam was able to identify potential Year 2000 issues at Coleman. Given this, Sunbeam believes that it has also mitigated its risk by validating and verifying key program components.

Management believes that, although there are significant systems that are being modified or replaced, including the uniform business and accounting information system, Sunbeam's information systems environment will be made Year 2000 ready prior to January 1, 2000. Sunbeam's failure to timely complete such corrective work could have a material adverse impact on Sunbeam.

With respect to customers, suppliers and business partners, the failure of some of these third parties to become Year 2000 ready could also have a material adverse impact on Sunbeam. For example, the failure of some of Sunbeam's principal suppliers to have Year 2000 ready internal systems could impact Sunbeam's ability to manufacture and/or ship its products or to maintain adequate inventory levels for production.

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At this time, Sunbeam believes that the most likely "worst-case" scenario relating to Year 2000 involves potential disruptions in areas in which Sunbeam's operations must rely on third parties, such as suppliers, whose systems may not work properly after January 1, 2000. While such system failures could either directly or indirectly affect important operations of Sunbeam and its subsidiaries in a significant manner, Sunbeam cannot at present estimate either the likelihood or the potential cost of such failures. Subject to the nature of the goods or services provided to Sunbeam by third parties whose operations are not made ready for Year 2000 issues, the impact on Sunbeam's operations could be material. However, Sunbeam believes that it has mitigated such risks through the development and implementation of the contingency plans discussed above.

The nature and focus of Sunbeam's efforts to address the Year 2000 problem may be revised periodically as interim goals are achieved or new issues are identified. In addition, it is important to note that the description of Sunbeam's efforts and assessments necessarily involves estimates and projections with respect to activities required in the future. These estimates and projections are subject to change as work continues, and such changes may be substantial.

The Costs to Address Sunbeam's Year 2000 Issues

Through the first nine months of 1999, including costs incurred in 1998, Sunbeam had expended approximately \$60 million to address Year 2000 issues of which approximately 50% was recorded as capital expenditures and the remainder as SG&A expense. Sunbeam's current assessment of the total costs to address and remedy Year 2000 issues and enhance its operating systems, including costs for the acquired companies, is approximately \$64 million.

This estimate includes the following categories:

o uniform international business and accounting system	\$44 million
o localized business system software upgrades and remediation	\$9 million
o Year 2000 readiness assessment and tracking	\$6 million
o upgrade of personal computers and related software	\$5 million

The amount to be incurred for Year 2000 issues during 1999 of approximately \$44 million represents over 50% of Sunbeam's total 1999 budget for information systems and related support, including Year 2000 costs. A large majority of these costs are expected to be incremental expenditures that will not recur in the

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Year 2000 or thereafter. Fees and expenses related to third party consultants, who are involved in the program management office as well as the modification and replacement of software, represent approximately 75% of the total estimated cost. The balance of the total estimated cost relates primarily to software license fees and new hardware, but excludes the costs associated with company employees. Sunbeam expects these expenditures to be financed through operating cash flows or borrowings, as applicable. A significant portion of these expenditures will enhance Sunbeam's operating systems in addition to resolving the Year 2000 issues. As Sunbeam completes its assessment of the Year 2000 issues, the actual expenditures incurred or to be incurred may differ materially from the amounts shown above. The bank credit facility does not permit Sunbeam to spend more than \$50 million on Year 2000 testing and remediation during 1999.

Because Year 2000 readiness is critical to the business, Sunbeam has

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redeployed some resources from non-critical system enhancements to address Year 2000 issues. In addition, due to the importance of IT systems to Sunbeam's business, management has deferred non-critical systems enhancements as much as possible. Sunbeam does not expect these redeployments and deferrals to have a material impact on Sunbeam's financial condition, results of operations or cash flows.

EFFECTS OF INFLATION

For each of the three years in the period ended December 31, 1998, and in the nine-month period ended September 30, 1999, Sunbeam's cost of raw materials and other product remained relatively stable. To the extent possible, Sunbeam's objective is to offset the impact of inflation through productivity enhancements, cost reductions and price increases.

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CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

On November 20, 1998, the audit committee recommended and Sunbeam's board approved the appointment of Deloitte & Touche as its independent auditors for 1998, to replace Arthur Andersen, Sunbeam's former auditor. Arthur Andersen is continuing to provide certain professional services to Sunbeam.

On June 25, 1998, Sunbeam announced that Arthur Andersen would not consent to the inclusion of its opinion on Sunbeam's 1997 financial statements in a registration statement Sunbeam was planning to file with the SEC. On June 30, 1998, Sunbeam announced that the audit committee of its board of directors would conduct a review of Sunbeam's prior financial statements and that, therefore, those financial statements should not be relied upon. Sunbeam also announced that Deloitte & Touche had been retained to assist the audit committee and Arthur Andersen in their review of Sunbeam's prior financial statements. On August 6, 1998, Sunbeam announced that the audit committee had determined that Sunbeam would be required to restate its financial statements for 1997, the first quarter of 1998 and possibly 1996, and that the adjustments, while not then quantified, would be material. On October 20, 1998 Sunbeam announced the restatement of its financial results for a six-quarter period from the fourth quarter of 1996 through the first quarter of 1998. On November 12, 1998, Sunbeam filed a Form 10-K/A for the year ended December 28, 1997, which contains an unqualified opinion by Arthur Andersen on Sunbeam's restated consolidated financial statements as of December 29, 1996 and December 28, 1997 and for each of the three years in the period ended December 28, 1997.

Arthur Andersen's report on Sunbeam's financial statements for the two fiscal years of Sunbeam ended December 28, 1997 contained no adverse opinion or disclaimer of opinion and was not qualified or modified as to uncertainty, audit scope or accounting principles. In connection with its audits for those periods and through November 20, 1998, there were no disagreements with Arthur Andersen on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of Arthur Andersen would have caused Arthur Andersen to make reference thereto in their report on the financial statements for such years. Sunbeam has not consulted with Deloitte & Touche on any matter that was either the subject of a disagreement or a reportable event between Sunbeam and Arthur Andersen.

In connection with the restatements referred to above, in a letter dated October 16, 1998, Arthur Andersen advised Sunbeam that there existed the following conditions that Arthur Andersen believed to be material weaknesses in Sunbeam's internal controls:

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"In our opinion, [Sunbeam's] design and effectiveness of its internal control were inadequate to detect material misstatements in the preparation of [Sunbeam's] 1997 annual (before audit) and quarterly financial statements."

As part of its audit of Sunbeam's 1997 consolidated financial statements that led to the restatement of these financial statements, Arthur Andersen was required to consider Sunbeam's internal controls in determining the scope of its audit procedures. Arthur Andersen has advised management of its concerns regarding Sunbeam's internal controls. Management is addressing these concerns and although Sunbeam has not yet fully implemented all additional planned controls, management believes that the interim measures Sunbeam has adopted to prevent material misstatements in its financial statements will be effective until the remainder of the additional controls can be implemented.

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BUSINESS OF SUNBEAM

GENERAL

Sunbeam is a leading designer, manufacturer and marketer of branded consumer products. Sunbeam's primary business is the manufacturing, marketing and distribution of durable household and outdoor leisure consumer products through mass market and other distribution channels in the United States and internationally. Sunbeam also sells its products to professional and commercial end users such as small businesses, health care providers, hotels and other institutions. Sunbeam's principal products include household kitchen appliances; health monitoring and care products for home use; scales for consumer and professional use for weight management and business uses; electric blankets and throws; clippers and trimmers for consumer, professional and animal uses; smoke and carbon monoxide detectors; outdoor barbecue grills; camping equipment such as tents, lanterns, sleeping bags and stoves; coolers; backpacks and book bags; and portable generators and compressors.

Sunbeam was organized in 1989 as Sunbeam-Oster Company, Inc., and in September 1990, Sunbeam acquired the assets and assumed certain liabilities, through a reorganization, of Allegheny International, Inc., an entity operating as a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code since 1988. In August 1992, Sunbeam completed a public offering of 20,000,000 shares of its common stock. In May 1995, Sunbeam changed its name from Sunbeam-Oster Company, Inc. to Sunbeam Corporation.

In 1998, Sunbeam acquired an indirect controlling interest in Coleman and all the outstanding common stock of Signature Brands and First Alert.

PRODUCTS AND OPERATIONS

Sunbeam's operations are managed through four groups: Household, Outdoor Leisure, International and Corporate. The Household and Outdoor Leisure operating groups encompass the following products:

o In the Household group:

(1) Appliances--including mixers, blenders, food steamers, breadmakers, rice cookers, coffee makers, toasters, irons and garment steamers;

(2) Health products--including vaporizers, humidifiers, air cleaners, massagers, hot and cold packs and blood pressure monitors;

(3) Scales;

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(4) Personal care--including hair clippers and trimmers and related products for the professional beauty, barber and veterinarian trade and sales of products to commercial and institutional channels;

(5) Blankets--including electric blankets, heated throws and mattress pads; and

(6) First Alert--including smoke and carbon monoxide detectors, fire extinguishers and home safety equipment.

o In the Outdoor Leisure group:

(1) Outdoor recreation products--including tents, sleeping bags, coolers, camping stoves, lanterns and outdoor heaters;

(2) Outdoor cooking products--including gas and charcoal outdoor grills and grill parts and accessories;

(3) Powermate products--including portable power generators and air compressors; and

(4) Eastpak products--including backpacks and bags.

Sunbeam's International group is managed through the following regional subdivisions:

(1) Europe--manufacture, sales and distribution of Campingaz (Registered) products and sales and distribution in Europe, Africa and the Middle East of other Sunbeam products;

(2) Latin America--manufacture, sales and distribution throughout Latin America of small appliances, and sales and distribution of personal care products, professional clippers and related products, camping products and Powermate products;

(3) Japan--sales and distribution of primarily outdoor recreation products;

(4) Canada--sales and distribution of substantially all Sunbeam's products; and

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(5) East Asia--sales and distribution in all areas of East Asia other than Japan of substantially all Sunbeam's products.

Sunbeam's Corporate group provides certain management, accounting, legal, risk management, treasury, human resources, tax and management information services to all operating groups and also includes the operation of Sunbeam's retail stores and the conduct of Sunbeam's licensing activities.

See Note 14 to the Consolidated Financial Statements and Note 9 to the Condensed Consolidated Financial Statements for financial data concerning Sunbeam's operating segments.

Household

Sunbeam's Household group includes appliances, health products, scales, personal care products, blankets and First Alert products. Net sales of Household group products accounted for approximately 50%, 73% and 74% of Sunbeam's consolidated net sales in 1998, 1997 and 1996, respectively. Except as discussed below, there were no Household group products or group of similar products with sales that accounted for 10% or more of consolidated net sales in

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any of the last three fiscal years.

Appliances. Small kitchen appliances include Mixmaster(Registered) stand mixers, hand mixers, Osterizer(Registered) blenders, food processors, rice cookers, food steamers, toasters, can openers, breadmakers, waffle makers, ice cream makers, frying pans, deep fryers and culinary accessories, which are sold primarily under the Sunbeam(Registered) and Oster(Registered) brand names. In addition, Sunbeam sells coffee makers under the Mr. Coffee(Registered), Sunbeam and Oster brand names and, with respect to coffee and tea products, the Mr. Coffee brand name. Other brand names or trademarks used in marketing include: Toast Logic(Registered), Details(Registered) by Mr. Coffee for high end coffeemakers sold in department and specialty stores, Mrs. Tea(Trademark), and Iced Tea Pot(Trademark), Oster Designer(Registered) and Pause N Serve(Registered). Sunbeam holds the number one or two market positions in coffee makers, mixers, and breadmakers. Appliances also encompass garment care appliances consisting of irons and steamers. Sunbeam manufactures a portion of its appliances in its United States and Mexico plants and sources the balance of its appliance products from domestic and foreign manufacturers.

Health. Sunbeam markets many of its health products under the Sunbeam(Registered) name and the trademark Health at Home(Registered). These products include heating pads, bath scales, blood pressure and other health-monitoring instruments, massagers, vaporizers, humidifiers and dental care products. Sunbeam assembles and/or manufactures its vaporizers, humidifiers and heating pads at its United States and Mexico facilities. Sunbeam's other personal health products are sourced from manufacturers primarily located in China.

Scales. Sunbeam also designs, manufactures and markets scales for consumer, office and professional use. Sunbeam manufactures a complete line of analog and digital floor scales, waist-high and eye-level scales for use in weight monitoring by consumers. These consumer scales are sold under the brand names Health o Meter(Registered), Sunbeam, Counselor(Registered) and Borg(Registered). Other trademarks used in marketing the scales are BigFoot(Registered) and Precious Metals(Registered). Sunbeam also markets professional scales such as traditional balance beam scales, pediatric scales, wheelchair ramp scales, chair and sling scales and home healthcare scales using the Pro Series(Registered) and Pro Plus Series(Registered) trademarks in addition to the Health o Meter brand. Sunbeam's line of scales also includes letter and parcel scales for office use, marketed under the Pelouze(Registered) brand name. Sunbeam has a commanding share of the office scale market with its Pelouze scales. Sunbeam's Pelouze food scales include analog and digital portion control scales, thermometers and timers for commercial and non-commercial applications. Sunbeam manufactures approximately one-half of its scales at a United States plant and sources the remaining scales from both domestic and foreign suppliers.

Personal Care. Sunbeam's personal care products include a broad line of hair clippers and trimmers for animals and humans which are sold through retail channels. Sunbeam holds the number one or two position in its clipper and trimmer product lines. Sunbeam also markets a line of professional barber, beauty and animal grooming products, including electric and battery clippers, replacement blades and other grooming accessories sold to both conventional retailers and through professional distributors. These products are manufactured at Sunbeam's United States and Mexico facilities.

Blankets. Sunbeam's blanket products include electric blankets, Cuddle-Up(Registered) heated throws and heated mattress pads. Sunbeam holds the number one market position in each of electric blankets, heated throws and heated mattress pads. These products are manufactured at Sunbeam's United States and Mexico facilities. In 1996, sales of electric blankets accounted for approximately 12% of consolidated net sales.

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First Alert. Sunbeam is a leading manufacturer and marketer of a broad range of residential safety products, including residential use ionization and photoelectric smoke detectors in which Sunbeam has the leading market share. Other products include carbon monoxide detectors, fire extinguishers, rechargeable flashlights and lanterns, electric and electromechanical timers, night lights, radon gas detectors, fire escape ladders and motion sensing lighting controls. Sunbeam's smoke detectors are battery-operated and carbon monoxide detectors are available in both plug in and battery operated units and in a combination unit. These products are marketed primarily under the First Alert(Registered) brand name. Sunbeam also uses the brand names Family Gard(Registered) and Sure Grip(Registered) for certain of its products. Sunbeam markets certain of these products under the BRK(Registered) brand for the electrical wholesale markets. Sunbeam manufactures its smoke and carbon monoxide detectors in its Mexico plant, manufactures fire extinguishers in its United States plant and sources other products from domestic and foreign suppliers.

In 1996, Sunbeam's furniture business accounted for approximately 23% of consolidated net sales. See Note 13 to the Consolidated Financial Statements for information relating to the divestiture of Sunbeam's furniture business.

Outdoor Leisure

Sunbeam's Outdoor Leisure group includes products for outdoor recreation and outdoor cooking, as well as the Powermate and Eastpak product lines. Net sales of the Outdoor Leisure group accounted for approximately 50%, 25% and 26% of Sunbeam's consolidated net sales in 1998, 1997 and 1996, respectively. Except as discussed below, there were no other Outdoor Leisure products or groups of similar products with sales that accounted for 10% or more of consolidated net sales in any of the last three fiscal years.

Outdoor Recreation. Principal outdoor recreation products include a comprehensive line of lanterns and stoves for outdoor recreational use, fuel-related products such as disposable fuel cartridges, a broad range of coolers and jugs, sleeping bags, backpacks, tents, outdoor folding furniture, portable electric lights, camping accessories and other products. These products are used predominantly in outdoor recreation, but many products have applications in emergency preparedness and some are also used in home improvement projects. The products are distributed predominantly through mass merchandisers, home centers and other retail outlets. Sunbeam believes it is the leading manufacturer of lanterns and stoves for outdoor recreational use in the world. Sunbeam's liquid fuel appliances include single and dual fuel-powered lanterns and stoves and a broad range of propane- and butane-fueled lanterns and stoves. These products are manufactured at Sunbeam's facilities located in the United States and are marketed under the Coleman(Registered) and Peak One(Registered) brand names.

Sunbeam manufactures and sells a wide variety of insulated coolers and jugs and reusable ice substitutes, including personal coolers for camping, picnics or lunch box use; large coolers; beverage coolers for use at work sites and recreational and social events; and soft-sided coolers. Sunbeam's cooler products are manufactured predominantly at Sunbeam's facilities located in the United States and are marketed under the Coleman brand name worldwide. Sunbeam designs, manufactures or sources, and markets textile products, including tents, sleeping bags, backpacks and rucksacks. Sunbeam's tents and sleeping bags are marketed under the Coleman and Peak One brand names. Sunbeam manufactures and markets aluminum- and steel-framed, portable, outdoor, folding furniture under the Coleman and Sierra Trails(Registered) brand names. These products are manufactured predominantly at Sunbeam's facilities located in the United States. Sunbeam designs and markets electric lighting products that are manufactured by others and sold under the Coleman, Powermate and Job-Pro(Registered) brand names. These products include portable electric lights such as hand held

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spotlights, flashlights and fluorescent lanterns and a line of rechargeable lanterns and flashlights. Sunbeam designs, sources and markets a variety of small accessories for camping and outdoor use, such as cookware and utensils. These products are manufactured by third-party vendors to Coleman's specifications and are marketed under the Coleman brand name.

Outdoor Cooking. Sunbeam is a leading supplier of outdoor barbecue grills. Sunbeam has one of the leading market share positions in the gas grill industry. Outdoor barbecue grills consist of gas, electric and charcoal models which are sold by Sunbeam primarily under the Sunbeam and Grillmaster(Registered) brand names. Sunbeam's outdoor cooking products also include smokers and replacement parts for grills and various accessories such as cooking utensils, grill cleaning products and barbecue tools. Almost all of Sunbeam's grills are manufactured at Sunbeam's United States facility. Sunbeam sources practically all of its accessories and a portion of its replacement parts from various manufacturers, many of which are in East Asia. A

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licensee of Sunbeam produces gas barbecue grills under the Coleman name. In 1997 and 1996, sales of gas grills accounted for approximately 13% and 19%, respectively, of consolidated net sales.

Powermate. Sunbeam's principal Powermate products include portable generators and portable and stationary air compressors. Sunbeam is a leading manufacturer and distributor of portable generators in the United States. Generators are used for home improvement projects, small businesses, emergency preparedness and outdoor recreation. These products are manufactured by Sunbeam at its United States facilities using engines manufactured by third parties, are marketed under the Coleman Powermate(Registered) brand name and are distributed predominantly through mass merchandisers and home center chains. Sunbeam also produces advanced, light-weight generators incorporating proprietary technology. Sunbeam's air compressors are manufactured at its facilities located in the United States, are marketed under the Coleman Powermate brand name and are distributed predominantly through mass merchandisers and home center chains.

Eastpak. Sunbeam designs, manufactures and distributes book bags, backpacks and related goods throughout the United States under the Eastpak and Timberland(Registered) brand names. Sunbeam manufactures the majority of its products in its plants located in Puerto Rico. On November 9, 1999, Sunbeam announced a plan to divest Eastpak.

International

Sunbeam markets a variety of products outside the United States. While Sunbeam sells many of the same products domestically and internationally, it also sells products designed specifically to appeal to foreign markets. Sunbeam, through its foreign subsidiaries, has manufacturing facilities in France, Indonesia, Italy, Mexico, and Venezuela, and sales administration offices, warehouse and distribution facilities in Canada, Europe, the Mideast, Asia and Latin America. Sunbeam also sells its products directly to international customers in certain other markets through Sunbeam sales managers, independent distributors and commissioned sales representatives. The products sold by the international group are sourced from Sunbeam's manufacturing operations or from vendors primarily located in Asia. International sales accounted for approximately 23%, 21% and 19% of Sunbeam's consolidated net sales in 1998, 1997 and 1996, respectively. Sunbeam's international operations are managed through the following geographic areas:

Europe. Sunbeam's European operations are managed from Lyon, France and the sales are dominated by the product lines acquired by Sunbeam as part of the Coleman acquisition, including the Campingaz product lines and Eastpak products.

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Sunbeam's European office also manages the sale and distribution of Sunbeam products throughout Africa and the Middle East.

Japan. Sunbeam's sales in Japan are almost exclusively sales of camping equipment such as tents, stoves, lanterns, sleeping bags and accessories.

Latin America. The activities of Sunbeam outside the United States were primarily focused in Mexico and Latin America prior to the 1998 acquisition of Coleman. Sunbeam enjoys a strong market position in a number of product lines in Latin America. The Oster brand has the leading market share in small appliances in a number of Latin American countries. Sunbeam's sales in Latin America are derived primarily from household appliances, particularly the Oster blender and the recently introduced Oster arepa maker.

Canada. Sunbeam sells substantially all of its products in Canada through a distribution sales office located in Toronto.

East Asia. During 1998, Sunbeam's sales in East Asia were hampered by the economic downturn particularly in South Korea where Sunbeam had developed a strong market for Eastpak bags, and in Indonesia where Sunbeam sells Campingaz products. Sunbeam has established a sales office in Australia, from which it sells primarily clippers and appliances, and distributes First Alert products in Australia and New Zealand. Sales offices have also been established in Manila and Hong Kong.

Sunbeam has sales and facilities in countries where economic growth has slowed, primarily Japan, Korea and Latin America. The economies of other foreign countries important to Sunbeam's operations could also suffer instability in the future. The following are among the factors that could negatively affect Sunbeam's operations in foreign markets: (1) access to markets; (2) currency devaluation; (3) new tariffs; (4) changes in monetary and/or tax policies; (5) inflation; and (6) governmental instability. See "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS--Foreign Operations."

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CORPORATE

Retail. Sunbeam sells many of its products through its retail outlet stores which are operated under the Sunbeam, Oster and Camp Coleman(Registered) names. In addition, Sunbeam currently has 37 retail outlet stores in the United States and Canada which primarily carry discontinued, overstock and refurbished products for retail sale to consumers. Net sales from retail stores were not significant in any of the last three fiscal years.

Licensing. Sunbeam licenses the Sunbeam name and the Coleman name and logo under two types of licensing arrangements: general merchandise licenses and licenses to purchasers of businesses divested by Sunbeam. Sunbeam's general merchandise licensing activities involve licensing the Sunbeam and/or Coleman name and logo, for a royalty fee, to certain companies that manufacture and sell products that complement Sunbeam's product lines. Revenue from licensing activities in 1998 in the amount of \$4 million was generated primarily from the license of the Coleman name. In addition, Sunbeam licenses trade names from third parties for use in connection with Sunbeam's products. Revenue from licensing activities was not significant in 1997 and 1996.

COMPETITION

The markets in which Sunbeam operates are generally highly competitive, based primarily on product quality, product innovation, price and customer service and support, although the degree and nature of such competition vary by location and product line. Sunbeam believes that no other company produces and

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markets the breadth of household appliance, camping and outdoor recreation products marketed by Sunbeam.

Sunbeam competes with various manufacturers and distributors with respect to its household appliances. Primary competitors in the kitchen appliance area have been Black & Decker (which recently sold its appliance division to Windmere), Hamilton Beach/Procter Silex, West Bend, Melita, Salton-Maxim, Cuisinart, Regal, Krups, Kitchen Aid, Braun and Rival. Sunbeam's primary competitor in the consumer scale market is Metro Corporation. Sunbeam's health care products compete with those of numerous small manufacturers and distributors, none of which dominates the home health care market. Sunbeam has limited domestic competition for its electric blankets and heated throws and enjoys a market share in excess of 90% for these products. Sunbeam's primary competitors for retail clippers and trimmers are Wahl and Conair; the primary competitors in the professional products lines are Wahl and Andis. Sunbeam enjoys a leading market share with respect to its smoke and carbon monoxide detectors where Ranco, American Sensor, Nighthawk and Siebe are the primary competitors. Sunbeam competes with Micro General with respect to its Pelouze scales.

Sunbeam's Outdoor Leisure products compete with numerous products sold by other manufacturers. Lanterns and stoves compete with, among others, products offered by Century Primus, American Camper and Dayton Hudson Corporation, while Desa & Schau and Mr. Heater are the primary competitors for heaters. The primary competitors for Sunbeam's portable furniture are a variety of import companies. Sunbeam's insulated cooler and jug products compete with products offered by Rubbermaid Incorporated, Igloo Products Corp. and The Thermos Company. Sunbeam's sleeping bags compete with, among others, American Recreation, Slumberjack, Academy Broadway Corp. and MZH Inc., as well as certain private label manufacturers. In the tent market, Sunbeam competes with, among others, Wenzel, Eureka and Mountain Safety Research, as well as certain private label manufacturers. Sunbeam competes with W.C. Bradley, Meco, Fiesta, Ducane, Weber and Keanall for sales of outdoor grills and accessories. Sunbeam's backpack products compete with, among others, American Camper, JanSport, Nike, Outdoor Products, The North Face, and Kelty, as well as certain private label manufacturers. Sunbeam's competition in the electric light business includes, among others, Eveready and Rayovac Corporation. Sunbeam's camping accessories compete primarily with Coughlan's. Sunbeam's primary competitors in the generator business are Generac Corporation, Honda Motor Co., Ltd., Kawasaki and Yamaha. Primary competitors in the air compressor business include DeVilbiss and Campbell Hausfield. In addition, Sunbeam competes with various other entities in international markets.

CUSTOMERS

Sunbeam markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogues, Sunbeam-owned outlet stores, television shopping channels, hardware stores, home improvement centers, office products centers, drug and grocery stores, and pet supply retailers, as well as independent distributors and military post exchange outlets. In

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1998, Sunbeam sold products to virtually all of the top 100 U.S. retailers, including Wal-Mart/Sam's Club, Kmart, Price Costco, Target Stores and Home Depot. Sunbeam's largest customer, Wal-Mart, accounted for approximately 18%, 20% and 19% of consolidated net sales in 1998, 1997 and 1996, respectively. Sunbeam has the majority of its U.S. customer sales on electronic data interchange (EDI) systems.

BACKLOG

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The amount of backlog orders at any point in time is not a significant factor in Sunbeam's business.

PATENTS AND TRADEMARKS

Sunbeam believes that an integral part of its strength is its ability to capitalize on the Sunbeam(Registered), Coleman(Registered), Oster(Registered), Eastpak(Registered), Mr. Coffee(Registered), Health-o-Meter(Registered), First Alert(Registered) and Campingaz(Registered), trademarks which are registered in the United States and in numerous foreign countries. Widely recognized throughout North America, Latin America and Europe, these registered trademarks, along with Powermate(Registered), Pelouze(Registered), Peak One(Registered), Osterizer(Registered), Mixmaster(Registered), Toast Logic(Registered), Steammaster(Registered), Oskar(Registered), Grillmaster(Registered) and "Blanket with a Brain(Registered)" brands are important to the success of Sunbeam's products. Other important trademarks within Sunbeam include Oster Designer(Registered), Cuddle-Up(Registered) and A5(Registered). The loss of any single trademark would not have a material adverse effect on Sunbeam's business; however, the Sunbeam, Coleman and Mr. Coffee trademarks are integral to certain of Sunbeam's continuing operations and Sunbeam aggressively monitors and protects these and other brands.

Sunbeam holds numerous design and utility patents covering a wide variety of products, the loss of any one of which would not have a material adverse effect on Sunbeam's business taken as a whole.

RESEARCH AND DEVELOPMENT

New products and improvements to existing products are developed based upon the perceived needs and demands of consumers. Research and development expenditures are expensed as incurred. The amounts charged to operations for the nine months ended September 30, 1999 and 1998 and for the fiscal years ended 1998, 1997 and 1996 were \$18.8 million, \$13.2 million, \$18.7 million, \$5.7 million and \$6.5 million, respectively.

EMPLOYEES

As of September 30, 1999, Sunbeam had approximately 13,700 full-time and part-time employees of which approximately 8,700 are employed domestically. Sunbeam is a party to collective bargaining agreements with its hourly employees located at the Aurora, Illinois, Glenwillow, Ohio and Bridgeview, Illinois plants. Sunbeam's Canadian warehouse employees are represented by a union, as are all of the production employees at Sunbeam's operations in France and Italy. Sunbeam has had no material labor-related work stoppages and, in the opinion of management, relations with its employees are generally good.

SEASONALITY

Sunbeam's consolidated sales are not expected to exhibit substantial seasonality; however, sales are expected to be strongest during the second quarter of the calendar year. Furthermore, sales of a number of products, including warming blankets, vaporizers, humidifiers, grills, First Alert products, camping and generator products, may be impacted by unseasonable weather conditions.

RAW MATERIALS/SUPPLIERS

The raw materials used in the manufacture of Sunbeam's products are available from numerous suppliers in quantities sufficient to meet normal requirements. Sunbeam's primary raw materials include aluminum, steel, plastic resin, copper, electrical components, various textiles or fabrics and corrugated cardboard for cartons. Sunbeam also purchases a substantial number of finished products. Sunbeam is not dependent upon any single supplier for a material

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amount of such sourced products.

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PROPERTIES

Sunbeam's principal properties as of September 30, 1999 are as follows:

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<CAPTION>

BUILDING
LOCATION

PRINCIPAL USE

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United States		
Aurora, IL	First Alert offices, manufacture of fire extinguisher	236,0
Boca Raton, FL	Corporate headquarters	100,6
Bridgeview, IL	Offices and manufacture of scales	157,0
Glenwillow, OH	Manufacture of Mr. Coffee products, distribution warehouse and offices	458,0
Hattiesburg, MS	Manufacture of molded plastic parts, humidifiers, vaporizers, warehouse/distribution, and offices	725,0
Haverhill, MA	Office and warehouse/distribution	111,7
Kearney, NE	Manufacture/assembly of portable generators; office and warehouse	155,0
Lake City, SC	Manufacture of sleeping bags	168,0
Maize, KS	Manufacture of propane cylinders and machined parts	232,7
McMinnville, TN	Manufacture of clippers, trimmers and blades	169,4
Neosho, MO	Manufacture of outdoor barbecue grills	669,7
New Braunfels, TX	Manufacture of insulated coolers and other plastic products	338,0
Pocola, OK	Manufacture of outdoor folding furniture and warehouse	186,0
Springfield, MN	Manufacture of air compressors	166,0
Waynesboro, MS	Manufacture of electric blankets	853,7
Wichita, KS	Manufacture of lanterns and stoves and insulated coolers and jugs; research and development and design operations; office and warehouse	1,197,
Morovis and Orocovis, Puerto Rico	Manufacture of daypacks, sports bags, and related products; office and warehouse	110,0
International		
Acuna, Mexico	Manufacture of appliances	110,0
Barquisimeto, Venezuela	Manufacture of appliances	75,6

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Centenaro di Lonato, Italy	Manufacture of butane lanterns, stoves, heaters and grills; office and warehouse	77,0
Juarez, Mexico	Manufacture of smoke and carbon monoxide detectors	109,0
Matamoros, Mexico	Manufacture of controls	91,5
Mississauga, Canada	Sales and distribution office	19,8
St. Genis Laval, France	Manufacture of lanterns and stoves, filling of gas cylinders, and assembly of grills; office and warehouse.	2,070,
Tlalnepantla, Mexico	Manufacture of appliances	297,9
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- (1) The owned facilities at Kearney, Nebraska reside on land leased under three leases that expire in 2007 with options to extend each for three additional ten-year periods.
 - (2) The warehouse portion of St. Genis Laval, France is leased for terms that expire in 2004; the remaining facility is owned.

Sunbeam also maintains leased sales and administrative offices in the United States, Europe, Asia and Latin America, among other sites. Sunbeam leases various warehouse facilities and/or accesses public warehouse facilities as needed on a short term lease basis. Sunbeam also maintains gas filling plants in Indonesia, the Philippines and the United Kingdom. Sunbeam also leases a total of 172,469 square feet for the operation of its retail outlet stores. Sunbeam management considers Sunbeam's facilities to be suitable for

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Sunbeam's operations, and believes that Sunbeam's facilities provide sufficient capacity for its production requirements.

LITIGATION AND OTHER CONTINGENT LIABILITIES

On April 23, 1998, two class action lawsuits were filed on behalf of purchasers of Sunbeam common stock in the U.S. District Court for the Southern District of Florida against Sunbeam and some of its present and former directors and former officers alleging violations of the federal securities laws as discussed below. After that date, approximately fifteen similar class actions were filed in the same Court. One of the lawsuits also named as defendant Arthur Andersen, Sunbeam's independent accountants for the period covered by the lawsuit.

On June 16, 1998, the court entered an order consolidating all these suits and all similar class actions subsequently filed (collectively, the "Consolidated Federal Actions") and providing time periods for the filing of a consolidated amended complaint and defendants' response thereto. On June 22, 1998, two groups of plaintiffs made motions to be appointed lead plaintiffs and to have their selection of counsel approved as lead counsel. On July 20, 1998, the court entered an order appointing lead plaintiffs and lead counsel. This order also stated that it shall apply to all subsequently filed actions that are consolidated with the other actions. On August 28, 1998, plaintiffs in one of the subsequently filed actions filed an objection to having their action consolidated pursuant to the June 16, 1998 order, arguing that the class period in their action differs from the class periods in the originally filed consolidated actions. On December 9, 1998, the court entered an order overruling

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plaintiffs' objections and affirming its prior order appointing lead plaintiffs and lead counsel.

On January 6, 1999, plaintiffs filed a consolidated amended class action complaint against Sunbeam, some of its present and former directors and former officers, and Arthur Andersen. The consolidated amended class action complaint alleges that, in violation of section 10(b) of the Exchange Act and SEC Rule 10b-5, defendants made material misrepresentations and omissions regarding Sunbeam's business operations, future prospects and anticipated earnings per share, in an effort to artificially inflate the price of Sunbeam common stock and call options, and that, in violation of section 20(a) of the Exchange Act, the individual defendants exercised influence and control over Sunbeam, causing Sunbeam to make material misrepresentations and omissions. The consolidated amended complaint seeks an unspecified award of money damages. On February 5, 1999, plaintiffs moved for an order certifying a class consisting of all persons and entities who purchased Sunbeam common stock or who purchased call options or sold put options with respect to Sunbeam common stock during the period April 23, 1997 through June 30, 1998, excluding the defendants, their affiliates, and employees of Sunbeam. Defendants' response to the motion for class certification was filed on May 6, 1999. On March 8, 1999, all defendants who had been served with the consolidated amended class action complaint moved to dismiss it. Under the Private Securities Litigation Reform Act of 1995, all discovery in the consolidated action is stayed pending resolution of the motions to dismiss.

On April 7, 1998, a purported derivative action was filed in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida against Sunbeam and some of its present and former directors and former officers. The action alleged that the individual defendants breached their fiduciary duties and wasted corporate assets when Sunbeam granted stock options on or about February 2, 1998 at an exercise price of \$36.85 to three of its officers and directors who were subsequently terminated by Sunbeam. On June 25, 1998, all defendants filed a motion to dismiss the complaint for failure to make a pre-suit demand on Sunbeam's board of directors. On October 22, 1998, the plaintiff amended the complaint against all but one of the defendants named in the original complaint. On February 19, 1999, plaintiffs filed a second amended derivative complaint nominally on behalf of Sunbeam against some of its present and former directors and former officers and Arthur Andersen. The second amended complaint alleges, among other things, that Messrs. Dunlap and Kersh, Sunbeam's former Chairman and Chief Executive Officer and former Chief Financial Officer, respectively, caused Sunbeam to employ fraudulent accounting procedures in order to enable them to secure new employment contracts, and seeks a declaration that the individual defendants have violated fiduciary duties, an injunction against the payment of compensation to Messrs. Dunlap and Kersh or the imposition of a constructive trust on such payments, and unspecified money damages. The defendants have each moved to dismiss the second amended complaint in whole or in part.

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On June 25, 1998, four purported class actions were filed in the Court of Chancery of the State of Delaware in New Castle County by minority stockholders of Coleman against Coleman, Sunbeam and certain of Sunbeam's and Coleman's present and former officers and directors. An additional class action was filed on August 10, 1998, against the same parties. The complaints in these class actions alleged, in essence, that the existing exchange ratio for the proposed merger is no longer fair to Coleman minority stockholders as a result of the decline in the market value of Sunbeam common stock. On October 21, 1998, Sunbeam announced that it had entered into a memorandum of understanding to settle, subject to court approval, the class actions. The court approved the settlement on November 12, 1999. Under the terms of the settlement, Sunbeam will issue to Coleman minority stockholders and plaintiffs' counsel in this action

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warrants to purchase up to approximately 4.98 million shares of Sunbeam common stock at \$7 per share, subject to anti-dilution adjustments. Coleman minority stockholders who elect an appraisal under Delaware law will not receive warrants. These warrants will generally have the same terms as the warrant issued to the MacAndrews & Forbes subsidiary and will be issued when the merger is consummated, which is now expected to occur during the fourth quarter of 1999 or early in the first quarter of 2000.

During the months of August and October 1998, purported class action and derivative lawsuits were filed in the Court of Chancery of the State of Delaware in New Castle County and in the U.S. District Court for the Southern District of Florida by stockholders of Sunbeam against Sunbeam, MacAndrews & Forbes and some of Sunbeam's present and former directors. These complaints allege that the defendants breached their fiduciary duties when Sunbeam entered into a settlement agreement with the MacAndrews & Forbes subsidiary that sold Sunbeam a controlling interest in Coleman. In the settlement agreement the MacAndrews & Forbes subsidiary released Sunbeam from threatened claims arising out of Sunbeam's acquisition of its interest in Coleman, and MacAndrews & Forbes agreed to provide management support to Sunbeam. Under the settlement agreement, the MacAndrews & Forbes subsidiary was granted a warrant expiring August 24, 2003 to purchase up to an additional 23 million shares of Sunbeam's common stock at an exercise price of \$7 per share, subject to anti-dilution provisions. The plaintiffs have requested an injunction against the issuance of stock to MacAndrews & Forbes upon the exercise of its warrant and unspecified money damages. These complaints also allege that the rights of the minority stockholders have been compromised, as the settlement would normally require stockholder approval under the rules and regulations of the NYSE. The audit committee of Sunbeam's board of directors determined that obtaining such stockholder approval would have seriously jeopardized the financial viability of Sunbeam which is an allowable exception to the NYSE stockholder approval requirements. By order of the Delaware Court of Chancery dated January 7, 1999, the derivative actions filed in that court were consolidated, and Sunbeam and other defendants have moved to dismiss these actions. The action filed in the U.S. District Court for the Southern District of Florida has been dismissed.

On September 16, 1998, an action was filed in the 56th Judicial District Court of Galveston County, Texas alleging various claims in violation of the Texas Securities Act and Texas Business and Commercial Code as well as common law fraud as a result of Sunbeam's alleged misstatements and omissions regarding Sunbeam's financial condition and prospects during a period beginning May 1, 1998 and ending June 16, 1998, in which the U.S. National Bank of Galveston, Kempner Capital Management, Inc. and Legacy Trust Company engaged in transactions in Sunbeam common stock on their own behalf and on behalf of their respective clients. Sunbeam is the only named defendant in this action. The complaint requests recovery of compensatory damages, punitive damages and expenses in an unspecified amount. This action was removed to the U.S. District Court for the Southern District of Texas and subsequently transferred to the Southern District of Florida and consolidated with the Consolidated Federal Actions. Plaintiffs in this action have objected to the consolidation and have sought reconsideration by the Southern District of Florida of the order of the Southern District of Texas denying plaintiffs' motion to remand the case to state court and transferring it to Florida. A similar suit was brought by the same group of plaintiffs in the above action against Arthur Andersen. In that action, the plaintiffs allege that Arthur Andersen violated the Texas Securities Act, committed statutory and common law fraud and was negligent in its audits of Sunbeam's 1996 and 1997 financial statements. On September 29, 1999, Arthur Andersen had filed a motion for leave to join Sunbeam and certain of its former officers as responsible third parties and contribution defendants. Their motion was denied.

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On October 30, 1998, a class action lawsuit was filed on behalf of certain purchasers of the debentures in the U.S. District Court for the Southern District of Florida against Sunbeam and some of Sunbeam's former officers and directors, alleging violations of the federal securities laws and common law fraud. The complaint alleges that Sunbeam's offering memorandum used for the marketing of the debentures contained false and misleading information regarding Sunbeam's financial position and that the defendants engaged in a plan to inflate Sunbeam's earnings for the purpose of defrauding the plaintiffs and others. The plaintiffs seek a declaration that defendants violated federal securities laws and either unspecified monetary damages or rescission of their purchase of the debentures. The parties have negotiated a proposed coordination plan in order to coordinate proceedings in this action with those in the Consolidated Federal Actions.

Sunbeam has been named as a defendant in an action filed in the District Court of Tarrant County, Texas, 48th Judicial District, on November 20, 1998. Sunbeam was served in this action through the Secretary of State of Texas on January 15, 1999. The plaintiffs in this action are purchasers of the debentures. The plaintiffs allege that Sunbeam violated the Texas Securities Act and the Texas Business & Commercial Code and committed state common law fraud by materially misstating the financial position of Sunbeam in connection with the offering and sale of the debentures. The complaint seeks rescission, as well as compensatory and exemplary damages in an unspecified amount. Sunbeam specially appeared to assert an objection to the Texas court's exercise of personal jurisdiction over Sunbeam, and a hearing on this objection took place on April 15, 1999. On April 23, 1999, the court entered an order granting Sunbeam's special appearance and dismissing the case without prejudice. The plaintiffs moved for reconsideration of the court order, which motion the court denied on May 24, 1999. The plaintiffs have appealed the order dismissing the case to the Texas Court of Appeals, and the appeal is pending.

On April 12, 1999, a class action lawsuit was filed in the U.S. District Court for the Southern District of Florida. The lawsuit was filed on behalf of persons who purchased debentures during the period of March 20, 1998 through June 30, 1998, inclusive, but after the initial offering of such debentures. The complaint asserts that Sunbeam made material omissions and misrepresentations that had the effect of inflating the market price of the debentures. The complaint names as defendants Sunbeam, its former auditor, Arthur Andersen, and two former Sunbeam officers, Messrs. Dunlap and Kersh. The plaintiff is an institution which allegedly acquired in excess of \$150,000,000 face amount of the debentures and now seeks unspecified money damages. Sunbeam was served on April 16, 1999 in connection with this pending lawsuit. Sunbeam has requested that this action be coordinated with the Consolidated Federal Actions.

On February 9, 1999, Messrs. Dunlap and Kersh filed with the American Arbitration Association demands for arbitration of claims under their respective employment agreements with Sunbeam. Messrs. Dunlap and Kersh are requesting a finding by the arbitrator that Sunbeam terminated their employment without cause and that they should be awarded certain benefits based upon their respective employment agreements. On March 12, 1999, Sunbeam asked the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida to issue an injunction prohibiting Messrs. Dunlap and Kersh from pursuing their arbitration proceedings against Sunbeam on the grounds, among others, that the simultaneous litigation of the action filed in that court on April 7, 1998, described above, and the arbitration proceedings would subject Sunbeam to the threat of inconsistent adjudications with respect to certain rights to compensation asserted by Messrs. Dunlap and Kersh and would cause irreparable harm to Sunbeam and its stockholders. On March 19, 1999, the plaintiff in the April 7, 1998 action discussed above moved for an injunction on similar grounds. On May 11, 1999, the court denied the motions for a preliminary injunction filed by Sunbeam and the plaintiff. Sunbeam has answered the arbitration demands of Messrs. Dunlap and Kersh and has filed counterclaims seeking, among other things, the return of all consideration paid, or to be paid, under the February 1998 Employment Agreements between Sunbeam and Messrs. Dunlap and Kersh. An

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answer was filed by Messrs. Dunlap and Kersh generally denying Sunbeam's counterclaim. Discovery is pending.

On May 24, 1999, an action naming Sunbeam as defendant was filed in the Circuit Court for Ozaukee County, Wisconsin. Prior to service of the complaint, the plaintiff dismissed its claims, voluntarily, without prejudice. The plaintiff in this action was a purchaser of the debentures. The plaintiff alleged that Sunbeam violated the Wisconsin Uniform Securities Act and committed acts of false advertising and misrepresentation in connection with the offering and sale of the debentures. The plaintiff sought rescission, as well as compensatory and exemplary damages in an unspecified amount.

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On September 13, 1999, an action naming Sunbeam and Arthur Andersen as defendants was filed in the Circuit Court for Montgomery County, Alabama. The plaintiffs in this action are purchasers of Sunbeam common stock during the period March 19, 1998 through May 6, 1998. The plaintiffs allege, among other things, that the defendants violated the Alabama Security Laws and SEC Rule 10b-5. The plaintiffs seek compensatory and punitive damages in an unspecified amount. Sunbeam has removed this case to the U.S. District Court for the District of Alabama. In addition, Arthur Andersen has filed a cross claim against Sunbeam for contribution and indemnity. Sunbeam has filed a motion with the Judicial Panel on Multidistrict Litigation to consolidate this action with the Consolidated Federal Actions.

Sunbeam intends to vigorously defend each of the foregoing lawsuits other than those as to which a memorandum of understanding to settle has been reached, but cannot predict the outcome and is not currently able to evaluate the likelihood of Sunbeam's success in each case or the range of potential loss. However, if Sunbeam were to lose these lawsuits, judgments would likely have a material adverse effect on Sunbeam's consolidated financial position, results of operations and cash flows.

On March 23, 1999, Messrs. Dunlap and Kersh filed a complaint in the Court of Chancery of the State of Delaware seeking an order directing Sunbeam to advance attorneys' fees and other expenses incurred in connection with various state and federal class and derivative actions and an investigation instituted by the SEC. The complaint alleges that such advancements are required by Sunbeam's by-laws and by a forbearance agreement entered into between Sunbeam and Messrs. Dunlap and Kersh in August, 1998. A trial of this summary proceeding was held on June 15 and 16, 1999. On June 23, 1999, the court issued a memorandum opinion directing Sunbeam to pay about \$1.4 million on account of expenses incurred to date and to advance the reasonable future expenses in those actions and investigations. Messrs. Dunlap and Kersh have agreed to repay all amounts advanced to them if it is ultimately determined that they are not entitled to indemnification under Delaware law.

On July 2, 1998, the American Alliance Insurance Company filed suit against Sunbeam in the U.S. District Court for the Southern District of New York requesting a declaratory judgment of the court that the directors' and officers' liability insurance policy for excess coverage issued by American Alliance was invalid and/or had been properly canceled by American Alliance. American Alliance has filed a motion for summary judgment on the ground that coverage was never bound. Sunbeam has opposed that motion. As a result of a motion made by Sunbeam, this case has been transferred to the U.S. District Court for the Southern District of Florida for coordination and consolidation of pre-trial proceedings with the various actions pending in that court. On October 20, 1998, an action was filed by Federal Insurance Company in the U.S. District Court for the Middle District of Florida requesting the same relief as that requested by American in the previously filed action as to additional coverage levels under Sunbeam's directors' and officers' liability insurance policy. This action has

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been transferred to the U.S. District Court for the Southern District of Florida and is currently in discovery. Sunbeam is seeking a stay of discovery to coordinate discovery in this action with any discovery that may occur in the Consolidated Federal Actions. Plaintiff has moved to compel production of various documents. On December 22, 1998, an action was filed by Executive Risk Indemnity, Inc. in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida requesting the same relief as that requested by American and Federal in their previously filed actions as to additional coverage levels under Sunbeam's directors' and officers' liability insurance policy. On April 15, 1999, Sunbeam filed an action in the U.S. District Court for the Southern District of Florida against National Union Fire Insurance Company of Pittsburgh, PA, Gulf Insurance Company and St. Paul Mercury Insurance Company requesting, among other things, a declaratory judgment that National Union is not entitled to rescind its directors' and officers' liability insurance policies to Sunbeam and a declaratory judgment that Sunbeam is entitled to coverage from these insurance companies for the various lawsuits described herein under directors' and officers' liability insurance policies issued by each of the defendants. In response to Sunbeam's complaint, defendants St. Paul and Gulf have answered and asserted counterclaims seeking rescission and declaratory relief that no coverage is available to Sunbeam. Sunbeam has denied the allegations of Gulf's and St. Paul's counterclaims. Defendant National Union has filed a motion to dismiss or stay the claims filed by Sunbeam against National Union on the basis, among others, that Sunbeam must submit the dispute to arbitration or mediation. Sunbeam has filed a response opposing that motion. Sunbeam intends to pursue recovery from all of its insurers if damages are awarded against Sunbeam or its indemnified officers and/or directors under any of the foregoing actions and to recover attorneys' fees covered under those policies. Sunbeam's failure to

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obtain such insurance recoveries following an adverse judgment in any of the actions described above could have a material adverse effect on Sunbeam's financial position, results of operations and cash flows.

By letter dated June 17, 1998, the staff of the Division of Enforcement of the SEC advised Sunbeam that it was conducting an informal inquiry into Sunbeam's accounting policies and procedures and requested that Sunbeam produce certain documents. On July 2, 1998, the SEC issued a Formal Order of Private Investigation, designating SEC officers to take testimony and pursuant to which a subpoena was served on Sunbeam requiring the production of certain documents. On November 4, 1998, another SEC subpoena requiring the production of additional documents was received by Sunbeam. Sunbeam has provided numerous documents to the SEC staff and continues to cooperate with the SEC staff. Sunbeam has, however, declined to provide the SEC with material that Sunbeam believes is subject to the attorney-client privilege and the work product immunity.

The SEC has not commenced any civil or administrative proceedings as a result of its investigation, and Sunbeam cannot predict at this time whether the SEC will seek to impose any monetary or other penalties against Sunbeam. Under these circumstances, Sunbeam cannot estimate the duration of the investigation or its outcome.

Sunbeam and its subsidiaries are also involved in various other lawsuits arising from time to time which Sunbeam considers to be ordinary routine litigation incidental to its business. In the opinion of Sunbeam, the resolution of these routine matters, and of certain matters relating to prior operations, individually or in the aggregate, will not have a material adverse effect upon the financial position, results of operations or cash flows of Sunbeam.

Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and

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claims and related anticipated legal fees for defending such actions. The costs are accrued when it is both probable that an asset has been impaired or a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon Sunbeam's assessment, after consultation with counsel, of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the plaintiffs and other significant factors which vary by case. When it is not possible to estimate a specific expected cost to be incurred, Sunbeam evaluates the range of probable loss and records the minimum end of the range. As of September 30, 1999, Sunbeam had established accruals for litigation matters of \$22.6 million (representing \$11.3 million and \$11.3 million for estimated damages or settlement amounts and legal fees, respectively.) As of December 31, 1998 Sunbeam had established accruals for litigation matters of \$31.2 million (representing \$17.5 million and \$13.7 million for estimated damages or settlement amounts and legal fees, respectively) and \$9.9 million as of December 28, 1997 (representing \$3.0 million and \$6.9 million for estimated damages or settlement amounts and legal fees, respectively). It is anticipated that the \$22.6 million accrual will be paid as follows: \$5.2 million in 1999, \$14.9 million in 2000, and \$2.5 million in 2001. Sunbeam believes, based on information known to Sunbeam on September 30, 1999, that anticipated probable costs of litigation matters existing as of September 30, 1999 have been adequately reserved to the extent determinable.

PRODUCTS LIABILITY

As a consumer goods manufacturer and distributor, Sunbeam faces the constant risks of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. These claims could result in liabilities that could have a material adverse effect on Sunbeam's consolidated financial position, results of operations or cash flows. Some of the product lines Sunbeam acquired in the 1998 acquisitions have increased its exposure to product liability and related claims.

BRK Brands, Inc., a wholly owned subsidiary of Sunbeam, is a defendant in an ongoing products liability case in which the plaintiff alleged, among other things, that the plaintiff's smoke detector (which had been manufactured by a predecessor company to BRK Brands, Inc.) did not alarm quickly enough. In July 1999, the jury in the case awarded \$20 million in compensatory damages and \$30 million in punitive damages. This case has been settled and BRK Brands, Inc.'s obligation under the settlement is limited to payment of the balance of its self-insured retention.

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Sunbeam is party to various personal injury and property damage lawsuits relating to its products and incidental to its business. Annually, Sunbeam sets its product liability insurance program based on Sunbeam's current and historical claims experience and the availability and cost of insurance. Sunbeam's program for 1999 was comprised of a self-insurance retention of \$3.5 million per occurrence, and was limited to \$28.0 million in the aggregate.

Cumulative amounts estimated to be payable by Sunbeam with respect to pending and potential claims for all years in which Sunbeam is liable under its self-insurance retention have been accrued as liabilities. Such accrued liabilities are necessarily based on estimates (which include actuarial determinations made by independent actuarial consultants as to liability exposure, taking into account prior experience, numbers of claims and other relevant factors); thus, Sunbeam's ultimate liability may exceed or be less than the amounts accrued. The methods of making such estimates and establishing the resulting liability are reviewed continually and any adjustments resulting

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therefrom are reflected in current operating results.

Historically, product liability awards have rarely exceeded Sunbeam's individual per occurrence self-insured retention. There can be no assurance, however, that Sunbeam's future product liability experience will be consistent with its past experience. Based on existing information, Sunbeam believes that the ultimate conclusion of the various pending product liability claims and lawsuits of Sunbeam, individually or in the aggregate, will not have a material adverse effect on the financial position, results of operations or cash flows of Sunbeam.

ENVIRONMENTAL MATTERS

Sunbeam's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations in addition to laws and regulations regarding labeling and packaging of products and the sales of products containing certain environmentally sensitive materials. Sunbeam believes it is in substantial compliance with all environmental laws and regulations which are applicable to its operations. Compliance with environmental laws and regulations involves certain continuing costs; however, such costs of ongoing compliance have not resulted, and are not anticipated to result, in a material increase in Sunbeam's capital expenditures or to have a material adverse effect on Sunbeam's results of operations, financial condition or competitive position.

In addition to ongoing environmental compliance at its operations, Sunbeam also is actively engaged in environmental remediation activities many of which related to divested operations. As of December 31, 1998, Sunbeam has been identified by the United States Environmental Protection Agency ("EPA") or a state environmental agency as a potentially responsible party ("PRP") in connection with seven sites subject to the federal Superfund Act and five sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which Sunbeam has been designated (or expects to be designated) as a de minimis (less than 1%) participant.

The Superfund Act, and related state environmental remediation laws, generally authorize governmental authorities to remediate a Superfund site and to assess the costs against the PRPs or to order the PRPs to remediate the site at their expense. Liability under the Superfund Act is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, Sunbeam recognizes its responsibility to determine whether other PRPs at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever Sunbeam has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize Sunbeam's potential liability with respect to the Environmental Sites, Sunbeam has actively participated in steering committees and other groups of PRPs established with respect to such sites. Sunbeam currently is engaged in active remediation activities at 11 sites, six of which are among the Environmental Sites referred to above, and five of which have not been designated as Superfund sites under federal or state law. The remediation efforts in which Sunbeam is involved include facility investigations, including soil and groundwater investigations, corrective measure studies, including feasibility studies, groundwater monitoring, extraction and treatment, soil sampling, excavation and treatment relating to environmental clean-ups. In certain instances, Sunbeam has entered into agreements with governmental authorities to undertake additional investigatory activities and in other instances has agreed to implement appropriate remedial actions. Sunbeam has also established reserve amounts for certain non-compliance matters including those involving air emissions.

Sunbeam has established reserves to cover the anticipated probable costs of investigation and remediation, based upon periodic reviews of all sites for which Sunbeam has, or may have remediation responsibility. Sunbeam accrues environmental investigation and remediation costs when it is both probable that a liability has been incurred and the amount can be reasonably estimated and Sunbeam's responsibility is established. Generally, the timing of these accruals coincides with the earlier of formal commitment to an investigation plan, completion of a feasibility study or Sunbeam's commitment to a formal plan of action. As of September 30, 1999, December 31, 1998 and 1997, Sunbeam's environmental reserves were \$23.3 million (representing \$21.6 million for the estimated costs of facility investigations, corrective measure studies, or known remedial measures, and \$1.7 million for estimated legal costs), \$25.0 million (representing \$22.9 million for the estimated costs of facility investigations, corrective measure studies, or known remedial measures, and \$2.1 million for estimated legal costs) and \$24.0 million (representing \$21.8 million for the estimated costs of facility investigations, corrective measure studies, or known remedial measures, and \$2.2 million for estimated legal costs), respectively. It is anticipated that the \$23.3 million accrual at September 30, 1999 will be paid as follows: \$5.2 million in 1999, \$3.9 million in 2000, \$1.8 million in 2001, \$2.0 million in 2002, \$0.6 million in 2003 and \$9.8 million thereafter. Sunbeam has accrued its best estimate of investigation and remediation costs based upon facts known to Sunbeam at such dates and because of the inherent difficulties in estimating the ultimate amount of environmental costs, which are further described below, these estimates may materially change in the future as a result of the uncertainties described below. Estimated costs, which are based upon experience with similar sites and technical evaluations, are judgmental in nature and are recorded at undiscounted amounts without considering the impact of inflation and are adjusted periodically to reflect changes in applicable laws or regulations, changes in available technologies and receipt by Sunbeam of new information. It is difficult to estimate the ultimate level of future environmental expenditures due to a number of uncertainties surrounding environmental liabilities. These uncertainties include the applicability of laws and regulations, changes in environmental remediation requirements, the enactment of additional regulations, uncertainties surrounding remediation procedures including the development of new technology, the identification of new sites for which Sunbeam could be a PRP, information relating to the exact nature and extent of the contamination at each site and the extent of required cleanup efforts, the uncertainties with respect to the ultimate outcome of issues which may be actively contested and the varying costs of alternative remediation strategies. Sunbeam continues to pursue the recovery of some environmental remediation costs from certain of its liability insurance carriers; however, such potential recoveries have not been offset against potential liabilities and have not been considered in determining Sunbeam's environmental reserves.

Due to uncertainty over remedial measures to be adopted at some sites, the possibility of changes in environmental laws and regulations and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, Sunbeam's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved as of September 30, 1999.

Sunbeam believes, based on existing information for sites where costs are estimable, that the costs of completing environmental remediation of all sites for which Sunbeam has a remediation responsibility have been adequately reserved and that the ultimate resolution of these matters will not have a material adverse effect upon Sunbeam's financial condition, results of operations or cash flows.

REGULATORY MATTERS

Sunbeam is subject to various laws and regulations in connection with its business operations, including but not limited to laws related to relations with

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employees, maintenance of safe manufacturing facilities, truth in packaging and advertising, regulation of medical products and safety of consumer products. Sunbeam does not anticipate that its business or operations will be materially adversely affected by compliance with any of these provisions.

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MANAGEMENT

DIRECTORS AND EXECUTIVE OFFICERS OF SUNBEAM, CAMPER ACQUISITION CORP. AND COLEMAN

The following tables set forth information regarding the directors and executive officers of Sunbeam, Camper Acquisition Corp. (the wholly owned Sunbeam subsidiary that will be merged with Coleman in the merger) and Coleman, respectively. The name, age, present principal occupation or employment and five-year employment history of each individual is set forth in each individual's biography below. The term of office of each of the directors of Sunbeam, Camper Acquisition Corp. and Coleman will expire after a period of one year from their previous date of election or at the time each such director's successor is duly elected and shall have qualified. Unless otherwise indicated in each individual's biography, the business address of each of the directors and executive officers is: 2381 Executive Center Drive, Boca Raton, Florida 33431. Each of the directors and executive officers is a citizen of the United States.

Current Sunbeam Directors and Executive Officers

<TABLE>
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NAME	AGE	POSITION
<S>	<C>	<C>
Jerry W. Levin.....	55	Chairman of the Board, President, Chief Executive Officer and Director
Paul E. Shapiro.....	58	Executive Vice President and Chief Administrative Officer
Bobby G. Jenkins.....	37	Executive Vice President and Chief Financial Officer
Karen K. Clark.....	39	Senior Vice President, Finance
Steven R. Isko.....	35	Senior Vice President and General Counsel
Ronald H. Dunbar.....	62	Senior Vice President, Human Resources
Barbara L. Allen.....	44	Secretary
Jack D. Hall.....	55	President, International
Philip E. Beekman.....	68	Director
Charles M. Elson.....	40	Director
Howard Gittis.....	65	Director
John H. Klein.....	53	Director
Howard G. Kristol.....	62	Director

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Peter A. Langerman.....	44	Director
Faith Whittlesey.....	60	Director

Current Camper Acquisition Corp. Directors and Executive Officers

<TABLE>
<CAPTION>
NAME

-----	AGE	-----	POSITION
<S>	<C>	<C>	
Jerry W. Levin.....	55	President, Chief Executive Officer and	
Paul E. Shapiro.....	58	Executive Vice President, Chief Adminis	Officer and Director
Bobby G. Jenkins.....	37	Executive Vice President	
Karen K. Clark.....	39	Senior Vice President, Finance	
Ronald R. Richter.....	55	Vice President and Treasurer	
Steven R. Isko.....	35	Senior Vice President and General Couns	
Barbara L. Allen.....	44	Secretary	

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Current Coleman Directors and Executive Officers

<TABLE>
<CAPTION>
NAME

-----	AGE	-----	POSITION
<S>	<C>	<C>	
Jerry W. Levin.....	55	Chairman, Chief Executive Officer and I	
Paul E. Shapiro.....	58	Executive Vice President, Chief Adminis	Officer and Director
Bobby G. Jenkins.....	37	Executive Vice President	
Karen K. Clark.....	39	Senior Vice President, Finance	
Steven R. Isko.....	35	Senior Vice President and General Couns	
Barbara L. Allen.....	44	Secretary	
William L. Phillips.....	47	President, Outdoor Recreation Division	
Gwen C. Wisler.....	40	Executive Vice President and Chief Fina	Officer
A. Whitman Marchand.....	63	Director	
John H. Klein.....	53	Director	

Jerry W. Levin was appointed Chief Executive Officer, President and a director of Sunbeam in June 1998 and was elected Chairman of the Sunbeam board

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in March 1999. Mr. Levin was also appointed to serve as Chairman of the Board and Chief Executive Officer of Coleman since August 1998 and as Chief Executive Officer of Coleman from June 1998 to August 1998. Mr. Levin has served as a director of Camper Acquisition Corp., a wholly owned subsidiary of Sunbeam, since June 1998 and as President, Chief Executive Officer and director since January 1999. Mr. Levin previously held the position of Chairman and Chief Executive Officer of Coleman from February 1997 until its acquisition by Sunbeam in March 1998. Mr. Levin was also the Chairman of Coleman from 1989 to 1991. Mr. Levin was Chairman of the board of Revlon, Inc. from November 1995 until June 1998, Chief Executive Officer of Revlon, Inc. from 1992 until January 1997, and President of Revlon, Inc. from 1991 to 1995. Mr. Levin has been Executive Vice President of MacAndrews & Forbes since March 1989. For 15 years prior to joining MacAndrews & Forbes, Mr. Levin held various senior executive positions with the Pillsbury Company. Mr. Levin is also a member of the boards of directors of Revlon, Inc., Ecolab, Inc. and U.S. Bancorp. For a description of certain arrangements entered into by Sunbeam and MacAndrews & Forbes relating to the appointment of Mr. Levin as an officer of Sunbeam, see "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES--Appointments of Coleman Executive Officers to Sunbeam's Management and Board" and "--Services Provided by MacAndrews & Forbes."

Paul E. Shapiro joined Sunbeam as Executive Vice President and Chief Administrative Officer in June 1998. Mr. Shapiro was appointed Executive Vice President and Chief Administrative Officer and a director of Coleman in June 1998. Mr. Shapiro served as President of Camper Acquisition Corp. from June 1998 to January 1999, and has served as Executive Vice President and Chief Administrative Officer of Camper Acquisition Corp. since January 1999. Mr. Shapiro previously held the position of Executive Vice President and General Counsel of Coleman from July 1997 until its sale in March 1998. Before joining Coleman, he was Executive Vice President, General Counsel and Chief Administrative Officer of Marvel Entertainment Group, Inc. Marvel and several of its subsidiaries filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code in 1996. Mr. Shapiro served as an executive officer of Marvel at the time of such filing. He had previously spent over 25 years in private law practice and as a business executive, most recently as a shareholder in the law firm of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel. Mr. Shapiro is also a member of the board of directors of Toll Brothers, Inc. For a description of arrangements entered into by Sunbeam and MacAndrews & Forbes relating to the appointment of Mr. Shapiro as an officer of Sunbeam, see "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES--Appointments of Coleman Executive Officers to Sunbeam's Management and Board" and "--Services Provided by MacAndrews & Forbes."

Bobby G. Jenkins joined Sunbeam as Executive Vice President and Chief Financial Officer in June 1998 and has served as Executive Vice President of Camper Acquisition Corp. since January 1999. Mr. Jenkins was appointed Executive Vice President of Coleman in August 1998. Mr. Jenkins previously held the position of Chief Financial Officer of Coleman's Outdoor Recreation division from September 1997 to May 1998.

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Mr. Jenkins was Executive Vice President and Chief Financial Officer of Marvel from December 1993 through June 1997. Mr. Jenkins served as an executive officer of Marvel at the time of the 1996 Chapter 11 filings of Marvel and several of its subsidiaries. Mr. Jenkins was Assistant Vice President of Finance at Turner Broadcasting System from August 1992 to November 1993. Prior to that, Mr. Jenkins was with Price Waterhouse, last serving as Senior Audit Manager. For a description of arrangements entered into by Sunbeam and MacAndrews & Forbes relating to the appointment of Mr. Jenkins as an officer of Sunbeam, see "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES--Appointments of Coleman Executive Officers to Sunbeam's Management and Board" and "--Services

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Provided by MacAndrews & Forbes."

Karen K. Clark joined Sunbeam in April 1998 as Vice President, Operations Finance and served as Vice President, Finance from June 1998 until her appointment as Senior Vice President, Finance in April 1999. Ms. Clark served as Vice President, Finance of Coleman from 1997, and as Vice President, Finance of Camper Acquisition Corp. from January 1999 until her appointment as Senior Vice President, Finance of Coleman and Camper Acquisition Corp. in November 1999. She was Corporate Controller for Precision Castparts Corp. from 1994 to 1997 and prior to that held various positions in public accounting and industry.

Steven R. Isko joined Sunbeam in June 1999 as Senior Vice President and General Counsel. Mr. Isko served as Vice President, General Counsel and Secretary of Camper Acquisition Corp. and Coleman from June 1999 until his appointment as Senior Vice President and General Counsel of Coleman and Camper Acquisition Corp. in November 1999. From May 1998 to December 1998, Mr. Isko was Senior Vice President, General Counsel and Secretary of The Cosmetic Center, Inc. From June 1997 to April 1998, Mr. Isko was Vice President, Legal for Coleman and from June 1996 to July 1997 was Vice President--Law and Corporate Secretary of Marvel Entertainment Group. Prior to June 1996, Mr. Isko was an associate at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP in New York, New York.

Ronald H. Dunbar was appointed Senior Vice President, Human Resources in August 1998. Mr. Dunbar also serves as Senior Vice President, Human Resources of Coleman. Mr. Dunbar was Senior Vice President, Human Resources of Revlon, Inc. from 1992 until 1998. Mr. Dunbar was Vice President and General Manager of Arnold Menn and Associates, a career management consulting and executive outplacement firm, from 1989 to 1991 and Executive Vice President and Chief Human Resources Officer of Ryder System, Inc., a highway transportation firm, from 1978 to 1989. Prior to that, Mr. Dunbar served in senior executive human resources positions at Xerox Corporation and Ford Motor Company.

Barbara L. Allen joined Sunbeam in June 1999 as Secretary. Ms. Allen has also served as Secretary of Camper Acquisition Corp. and Coleman since June 1999. From April 1998 to June 1999, Ms. Allen was a consultant to Coleman. From April 1997 to March 1998, Ms. Allen was Secretary of Coleman. Prior to April 1997, Ms. Allen served in various capacities at Coleman, including as Assistant Secretary from December 1991 to April 1997. Ms. Allen's business address is The Coleman Company, Inc., 3600 North Hydraulic Street, P.O. Box 2931, Wichita, Kansas 67201.

Jack D. Hall joined Sunbeam in October 1998 as President, International. Prior to joining Sunbeam, Mr. Hall held various positions with Revlon, Inc., most recently serving as Executive Vice President, Worldwide Sales and Marketing Development. Prior to joining Revlon, he spent six years with International Playtex Inc. in a variety of sales positions.

William L. Phillips serves as the President of Coleman's Outdoor Recreation division, and was Vice President and General Manager for the hard goods business of Coleman's Outdoor Recreation division until August 1998. From 1985 to 1998, Mr. Phillips held various positions in the sales and marketing area of Coleman, and has been with Coleman since 1978. Mr. Phillips' business address is The Coleman Company, Inc., 3600 North Hydraulic Street, P.O. Box 2931, Wichita, Kansas 67201.

Ronald R. Richter joined Sunbeam in March 1998 as Vice President and Treasurer. From July 1996 to March 1998, Mr. Richter was a Group Vice President at ABN AMRO NV, a Dutch multinational bank. Prior to that, he held various positions at Continental Bank and Bank of America since 1972 and was a Managing Director of Bank of America from 1992 until 1996.

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Gwen C. Wisler was appointed Executive Vice President and Chief Financial Officer of Coleman in March 1999, President of Coleman's Eastpak division in July 1999, and was Senior Vice President and Chief Financial Officer from July 1998 to March 1999. Ms. Wisler was appointed Senior Vice President and Chief Financial Officer--Outdoor Leisure Group and International for Sunbeam in March 1999, and was Senior Vice President and Chief Financial Officer--Outdoor Leisure Group for Sunbeam from July 1998 to March 1999. Ms. Wisler joined Coleman in January 1997 as Vice President and Chief Financial Officer--International. Prior to that, Ms. Wisler was Vice President and Chief Accounting Officer for New World Communications Group Incorporated from February 1994 to January 1997, and Chief Financial Officer for Cobb Partners from May 1993 to February 1994.

Philip E. Beekman was elected to the Sunbeam board of directors in June 1999. Mr. Beekman is President of Owl Hollow Enterprises Inc., a position he has held since July 1994. From December 1986 to July 1994, he was Chairman and Chief Executive Officer of Hook SUPERX, a retail drug store chain. Mr. Beekman also is a member of the Boards of Directors of General Chemical Group, Inc., Linens 'N Things, Inc. and The Kendle Company.

Charles M. Elson has been a director of Sunbeam since his election to the Sunbeam board in September 1996. Mr. Elson was a director of Coleman from March 30, 1998 until June 24, 1998. Mr. Elson has been a Professor of Law at Stetson University College of Law since 1990 and serves as Of Counsel to the law firm of Holland & Knight (since May 1995). He was a Visiting Professor at the University of Maryland School of Law from August 1998 to December 1998. Mr. Elson is also a member of the American Law Institute and the Advisory Council and Commissions on Director Compensation, Director Professionalism, CEO Succession and Audit Committees of the National Association of Corporate Directors. He is trustee of Talledega College and a Salvatori Fellow of the Heritage Foundation. Mr. Elson also is a director of Nuevo Energy Company. Mr. Elson's business address is Stetson University College of Law, 1401 61st Street South, St. Petersburg, Florida 33707.

Howard Gittis was elected to the Sunbeam board in June 1998. Mr. Gittis has been a director, Vice Chairman and Chief Administrative Officer of MacAndrews & Forbes and several of its affiliates since 1985. Mr. Gittis also is a member of the board of directors of Golden State Bancorp Inc., Golden State Holdings Inc., Jones Apparel Group, Inc., Loral Space & Communications Ltd., M & F Worldwide Corp., Panavision Inc., Revlon Consumer Products Corporation, Revlon, Inc., REV Holdings Inc. and Rutherford-Moran Oil Corporation.

John H. Klein was elected to the Sunbeam board in February 1999 and to the Coleman board in July 1999. Mr. Klein is Chairman and Chief Executive Officer of Bi-Logix, Inc. and Strategic Business and Technology Solutions LLC and Chairman of CyBear, positions he has held since mid-1998. From April 1996 to May 1998, he was Chairman and Chief Executive Officer of MIM Corporation, a provider of pharmacy benefit services to medical groups. Prior to that, he served as President of IVAX North American Multi-Source Pharmaceutical Group (from January 1995) and as President and Chief Executive Officer of Zenith Laboratories, a generic pharmaceutical manufacturer (from May 1989 to 1995).

Howard G. Kristol has been a director of Sunbeam since his election to the Sunbeam board in August 1996. Mr. Kristol has been a partner in the law firm of Reboul, MacMurray, Hewitt, Maynard & Kristol since 1976. Mr. Kristol's business address is Reboul, MacMurray, Hewitt, Maynard & Kristol, 45 Rockefeller Plaza, New York, New York 10111.

Peter A. Langerman has been a director of Sunbeam since 1990 and served as the Chairman of the Sunbeam board from May 1996 until July 1996 and from June 1998 until March 1999. Since November 1998, Mr. Langerman has been President and Chief Executive Officer of Franklin Mutual Advisers, Inc., a registered investment advisor and a wholly owned subsidiary of Franklin Resources, Inc., a

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diversified financial services organization. Previously, Mr. Langerman had (since November 1996) served as Senior Vice President and Chief Operating Officer of Franklin Mutual Advisers, Inc. Mr. Langerman was a Senior Vice President of Heine Securities Corporation, an investment advisory service company, from 1986 to November 1996, and a Vice President of Mutual Series Fund from 1988 until its acquisition by Franklin Resources, Inc. in 1996. He has been a director of Franklin Mutual Series Fund, Inc. (previously Mutual Series Fund Inc.) since 1988. Franklin Mutual Series Fund, Inc. is currently the Company's largest shareholder.

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Mr. Langerman's business address is Franklin Mutual Advisers, Inc., 51 John F. Kennedy Parkway, Short Hills, New Jersey 07078.

A. Whitman Marchand was elected to the Coleman board in April 1999. Mr. Marchand was Managing Director and Group Head for the Special Loan Group of Bankers Trust Company from 1982 to 1998. Prior to 1982, Mr. Marchand held various positions within the national banking department at Bankers Trust, including head of the Real Estate Investment Trust Group. Mr. Marchand is also a member of the board of directors of RainTree Healthcare Corporation.

Faith Whittlesey has been a director of Sunbeam since her election to the Sunbeam board in December 1996. Mrs. Whittlesey has served as the Chief Executive Officer of the American Swiss Foundation, a charitable and educational foundation, since 1991. She is also a member of the board of directors of Valassis Communications, Inc., a publishing and printing company. Mrs. Whittlesey's business address is American Swiss Foundation, Charitable and Educational Foundation, 232 East 66th Street, New York, New York 10021.

COMPENSATION OF SUNBEAM DIRECTORS

The Amended and Restated Sunbeam Corporation Stock Option Plan (the "Option Plan") provides that each director of Sunbeam who is not an employee of Sunbeam or an affiliate of Sunbeam ("Outside Directors"), is automatically granted 1,500 shares of restricted Sunbeam common stock upon his or her initial election or appointment to the Sunbeam board and upon each subsequent re-election to the Sunbeam board of directors (prorated in case of an election or appointment at any time other than at an annual meeting of stockholders). Such restricted Sunbeam common stock vests immediately upon the Outside Director's acceptance of his or her election or appointment.

In addition to the grant of restricted stock, effective as of June 29, 1999, Outside Directors are paid a \$10,000 annual retainer and \$1,000 for each meeting of the board of directors or its committees that they attend, whether in person or by telephone.

Sunbeam directors do not receive any other fees, but are reimbursed for all ordinary and necessary out-of-pocket expenses incurred by them in attending meetings of the Sunbeam board or its committees. Pursuant to Sunbeam's by-laws and Delaware law, Sunbeam is either providing a defense, or reimbursing certain current and former directors of Sunbeam for defense costs incurred by them, in connection with pending litigation against Sunbeam in which certain of such directors have been named as defendants. See "BUSINESS OF SUNBEAM--Litigation and Other Contingent Liabilities."

In addition to the foregoing, during 1998, the Chairman of the special committee of the Sunbeam board of directors, Mr. Kristol, was paid \$50,000 for his services on the committee and the other members of the committee (Messrs. Langerman and Elson and Mrs. Whittlesey) each were paid \$35,000 for their services on the committee.

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COMPENSATION OF SUNBEAM EXECUTIVES

Summary Compensation Table

The following table sets forth for the years ended December 31, 1998, December 28, 1997 and December 29, 1996, the compensation for services rendered to Sunbeam in all capacities of those persons who, during 1998:

- (1) served as chief executive officer of Sunbeam;
- (2) were among the four most highly compensated executive officers of Sunbeam, other than the CEO, as of Sunbeam's fiscal year end; and
- (3) were among the four most highly compensated executive officers during 1998, but who were not executive officers of Sunbeam as of year end.

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The individuals referred to in clauses (1), (2) and (3) are collectively referred to as the "Named Executives." Each of Messrs. Levin, Shapiro and Jenkins and Ms. Clark joined Sunbeam during 1998. The employment of each of Messrs. Dunlap and Kersh was terminated by Sunbeam in June 1998; Mr. Fannin's employment terminated by mutual agreement in August 1998; and Ms. Kelley resigned from Sunbeam effective May 31, 1999.

<TABLE>
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NAME AND PRINCIPAL POSITION	YEAR	ANNUAL COMPENSATION AWARD			LONG TERM
		SALARY	BONUS	OTHER ANNUAL COMPENSATION (1)	RESTRICTED STOCK (2)
<S> OFFICERS	<C>	<C>	<C>	<C>	<C>
Jerry W. Levin, Chairman and Chief Executive Officer.....	1998	\$ 541,667	\$541,667	\$ 122,549(5)	\$
Paul E. Shapiro, Executive Vice President & Chief Administrative Officer	1998	339,298	243,750	--	
Bobby G. Jenkins, Executive Vice President & Chief Financial Officer.....	1998	238,986(6)	239,102(7)	55,540(8)	
Karen K. Clark, Senior Vice President, Finance.....	1998	190,157(6)	180,124(7)	133,457(10)	
FORMER OFFICERS					
Albert J. Dunlap, Former Chairman & Chief Executive Officer.....	1998	12,772,756(12)	0	13,917,409(13)	
	1997	1,115,385(12)	0	282,888(13)	
	1996	507,054(12)	0	63,850(13)	12,500,00
Russell A. Kersh,					

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Former Vice Chairman & Chief Administrative Officer.....					
	1998	428,154 (15)	0	2,123,267 (17)	5,527,50
	1997	425,000	0	--	
	1996	190,384	125,000 (16)	240,598 (17)	1,812,50
David C. Fannin, Former Executive Vice President & Chief Legal Officer.....					
	1998	449,891 (18)	0	315,067 (19)	1,105,50
	1997	313,233	0	--	
	1996	272,112	0	--	191,25
Janet G. Kelley, Former Senior Vice President & General Counsel.....					
	1998	218,000	112,500	--	
	1997	144,500	30,000	--	
	1996	140,000	19,463	--	

</TABLE>

- (1) Does not include perquisites or other personal benefits, securities or property, the aggregate value of which is less than \$50,000 or 10% of the Named Executive's salary and bonus.
- (2) Represents the value of the restricted Sunbeam common stock holdings of Messrs. Dunlap, Kersh and Fannin, as follows: The restricted Sunbeam common stock holdings granted in 1996 were valued based on the 1996 grants and the closing market price of \$12.500, \$18.125 and \$19.125 per share as of the respective grant dates of July 18, 22 and 29, 1996 for each of Messrs. Dunlap, Kersh and Fannin. The restricted 1998 common stockholdings were valued based on the market price of \$36.875 as of February 1, 1998, the date of such grants to Messrs. Kersh and Fannin. Mr. Dunlap's 1998 employment agreement provided for the grant of 300,000 shares of non-restricted Sunbeam common stock and also provided that, of the 1,000,000 shares of restricted Sunbeam common stock granted to him in 1996, 133,334 were canceled and the remaining 866,666 were fully vested. Mr. Kersh's 1998 employment

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agreement provided that of the 100,000 shares of restricted Sunbeam common stock granted to him in 1996, 26,667 shares were canceled and the remaining 73,333 shares were fully vested. In addition, Mr. Kersh's 1998 employment agreement provided for the grant of 150,000 shares of restricted Sunbeam common stock of which 37,500 shares were to vest on grant and the remaining shares were to vest in equal increments on the first, second and third anniversary of the grant date if he remained employed by Sunbeam through such dates or upon the occurrence of certain events. Sunbeam is currently involved in disputes with Messrs. Dunlap and Kersh over some of the stock grants made to them. See "--Employment Agreement with Mr. Dunlap--Dispute with Mr. Dunlap" and "--Employment Agreements with Messrs. Kersh and Fannin--Dispute with Mr. Kersh" for information concerning disputes between Sunbeam and Messrs. Dunlap and Kersh over equity grants and other matters. Under Mr. Fannin's agreement with Sunbeam in connection with his termination, all unvested shares of restricted Sunbeam common stock granted to him in 1998 and held by him

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were canceled, leaving him with 14,883 shares of vested Sunbeam common stock, which were previously restricted. Dividends were paid on all restricted shares prior to Sunbeam's discontinuance of dividend payments in the second quarter of 1998. At December 31, 1998, none of the other Named Executives held restricted Sunbeam common stock.

- (3) The option grants to Messrs. Levin, Shapiro and Jenkins were provided for in their respective employment agreements.
- (4) For 1998, represents premiums paid by Sunbeam for term life insurance coverage for Messrs. Levin, Shapiro, Dunlap and Kersh and Ms. Kelley.
- (5) Includes \$82,616 for reimbursement of country club fees, the value of a Sunbeam-provided automobile, relocation expenses of \$37,560 and taxes paid by Sunbeam on the value of such relocation expenses.
- (6) Includes each of Mr. Jenkins's and Ms. Clark's salary from Coleman from the date of the acquisition of the MacAndrews & Forbes subsidiary's interest in Coleman by Sunbeam to their respective terminations of employment with Coleman and their respective salaries from Sunbeam, from the date of employment by Sunbeam. In the case of Mr. Jenkins, includes \$12,327 paid for accrued vacation in 1998 upon Mr. Jenkins' termination from employment with Coleman.
- (7) Includes the entire amount of bonuses paid to Mr. Jenkins and Ms. Clark in 1999 for services rendered to Coleman and Sunbeam during 1998.
- (8) Includes a car allowance, reimbursement of relocation expenses of \$37,692 and taxes paid by Sunbeam on such relocation payments.
- (9) Severance payments made to Mr. Jenkins in connection with the termination of his employment with Coleman.
- (10) Includes reimbursement of relocation expenses of \$64,506, taxes paid by Sunbeam on such relocation payments, a car allowance and bonuses of \$40,467 paid upon acceptance of employment with Sunbeam and relocation.
- (11) Includes 75,000 options granted to Ms. Clark during 1998 which were subsequently canceled in exchange for 50,000 options granted under Sunbeam's stock option repricing program.
- (12) For 1998, includes \$11,887,500 which represents the value of the 300,000 shares of Sunbeam Common stock granted to Mr. Dunlap in connection with his 1998 employment agreement, based upon the closing market price on the grant date of \$39.625. Also includes \$51,923, \$115,385 and \$51,923 paid in 1998, 1997 and 1996, respectively, in lieu of vacation. See "--Employment Agreement with Mr. Dunlap--Dispute with Mr. Dunlap" for information concerning disputes between Sunbeam and Mr. Dunlap over equity grants and other matters.
- (13) For 1998, includes \$13,698,561 for taxes paid by Sunbeam on the value of the vesting of restricted Sunbeam common stock granted to Mr. Dunlap and other Sunbeam benefits, including health and dental

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care premiums, spouse travel costs and security costs, amounts reimbursed for financial and legal consulting services and the value of a

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Sunbeam-provided automobile. The 1997 and 1996 amounts include \$14,355 and \$17,250, respectively, for the value of a Sunbeam--provided automobile, \$115,665 and \$27,345, respectively, for taxes paid by Sunbeam on the value of such automobile and other Sunbeam--provided benefits, including financial consulting services, health and dental care premiums and membership in a country club and \$41,348 as reimbursement for financial planning services in 1997.

- (14) Sunbeam adopted an Executive Benefit Replacement Plan (the "Replacement Plan") in 1994 to restore the amount of benefits payable to certain highly compensated employees of Sunbeam who would otherwise be subject to certain limitations on the amount of benefits payable under Sunbeam's 401(k) Savings and Profit Sharing Plan. The Replacement Plan was terminated as of December 31, 1998. Amounts of "All Other Compensation" include amounts accrued for Messrs. Dunlap, Kersh and Fannin, respectively, in 1997 and 1996 under the Replacement Plan, including Sunbeam's profit sharing allocation. Each of Messrs. Dunlap, Kersh and Fannin was paid the amount of their respective accounts in the Replacement Plan in connection with the termination of their employment with Sunbeam. Does not include amounts which the 1998 employment agreements with Messrs. Dunlap and Kersh provided would be payable to them upon termination other than for "Cause," as defined in the respective employment agreements. Sunbeam has taken the position that such amounts are not payable by Sunbeam. See "--Employment Agreement with Mr. Dunlap--Dispute with Mr. Dunlap" and "--Employment Agreements with Messrs. Kersh and Fannin--Dispute with Mr. Kersh" for information concerning disputes between Sunbeam and Messrs. Dunlap and Kersh.
- (15) Includes \$61,298 paid in lieu of vacation. See "--Employment Agreements with Messrs. Kersh and Fannin--Dispute with Mr. Kersh" for information concerning disputes between Sunbeam and Mr. Kersh.
- (16) One-time bonus paid when Mr. Kersh's employment began.
- (17) For 1998, represents taxes paid by Sunbeam on the value of the vesting of restricted Sunbeam common stock granted to Mr. Kersh. For 1996, represents a discount on the purchase price of shares of Sunbeam common stock from Sunbeam in the amount of \$239,800 and premiums paid by Sunbeam for health and dental insurance coverage.
- (18) Includes \$77,808 paid in lieu of vacation for the years 1996, 1997 and 1998 in accordance with Mr. Fannin's termination agreement.
- (19) Represents taxes paid by Sunbeam on the value of the vesting of restricted Sunbeam common stock granted to Mr. Fannin.
- (20) All of these options have been canceled pursuant to Mr. Fannin's termination agreement.
- (21) Includes options awarded in exchange for the cancellation of certain outstanding options, a portion of which were granted in 1995. Shares underlying option grants previously made which were canceled in exchange for new option awards are also included.
- (22) Includes the following amounts payable under Mr. Fannin's termination agreement: (a) \$825,000 severance payment of which \$575,001 was paid in 1998 and the balance of which is payable in monthly installments of \$16,667; (b) consulting payments of \$250,000, of which \$41,667 was paid in 1998 and the balance of which is payable in monthly installments of \$13,889; (c) \$50,000 payable for the three year extension of Mr. Fannin's non-compete agreement, of which \$8,334 was paid in 1998 and the balance of which is payable in equal monthly installments of \$2,778; (d) \$7,785 for health and dental care premiums paid or payable, of which \$1,795 was paid in 1998; and (e) \$127,801, which represents the total amount of

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Mr. Fannin's account in the Replacement Plan. See "--Subsequent Arrangements with Messrs. Dunlap, Kersh and Fannin."

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Option Grants in Last Fiscal Year

The following table sets forth information with respect to the options to purchase shares of Sunbeam common stock granted to the Named Executives during 1998. The option grants made to Messrs. Levin, Shapiro and Jenkins were approved by Sunbeam's stockholders at Sunbeam's 1999 annual meeting of stockholders held on June 29, 1999. The option grants made to Messrs. Dunlap, Kersh and Fannin were approved by Sunbeam's stockholders at Sunbeam's 1998 annual meeting of stockholders held on May 12, 1998. All other option grants were made under the Option Plan. See "--Employment Agreement with Mr. Dunlap--Dispute with Mr. Dunlap" and "--Employment Agreements with Messrs. Kersh and Fannin--Dispute with Mr. Kersh" for information concerning disputes between Sunbeam and Messrs. Dunlap and Kersh over equity grants and other matters.

<TABLE>
<CAPTION>

NAME	NUMBER OF SECURITIES UNDERLYING OPTIONS GRANTED (1)	% OF TOTAL OPTIONS GRANTED TO EMPLOYEES IN FISCAL YEAR	EXERCISE OR BASE PRICE (\$/SHARE)	GRANT DATE MARKET PRICE (\$/SHARE)
<S>	<C>	<C>	<C>	<C>
OFFICERS				
Jerry W. Levin.....	1,750,000 (2)	10.6%	\$ 7.00	\$ 6.88
	500,000 (2)	3.0%	10.50	6.88
	500,000 (2)	3.0%	14.00	6.88
Paul E. Shapiro.....	600,000 (2)	3.6%	7.00	6.88
Bobby G. Jenkins.....	450,000 (2)	2.7%	7.00	6.88
Karen K. Clark.....	75,000 (3) (4)	.5%	25.08	25.08
	50,000 (2)	.3%	7.00	7.50
	50,000 (2)	.3%	7.00	7.50
FORMER OFFICERS				
Albert J. Dunlap.....	3,750,000 (5)	22.7%	36.85	36.85
Russell J. Kersh.....	1,125,000 (6)	6.8%	36.85	36.85
David C. Fannin.....	750,000 (6)	4.5%	36.85	36.85
Janet G. Kelley.....	75,000	.5%	38.34	38.34
	11,250	.1%	24.03	24.03
	60,000 (7)	.4%	7.00	5.94

</TABLE>

- (1) All options have a term of ten years from their respective grant dates.
- (2) These options become exercisable at a predetermined date as specified in the employees' respective employment agreements. See "--Employment Agreement with Mr. Levin--Equity Grants" and "--Employment Agreements with Executives Shapiro, Jenkins and Clark--Equity Grants."
- (3) These options become exercisable over three years in equal annual increments

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commencing on the first anniversary of the grant date.

- (4) These options have been canceled in exchange for one of the grants of 50,000 options set forth in the table above.
- (5) Mr. Dunlap's employment agreement provided that one-third of these options vested as of the grant date and that an additional one-third of such options were to vest on each of the first and second anniversaries of the grant dates.
- (6) The options granted to Messrs. Kersh and Fannin provided for vesting in equal installments on the grant date and the first, second and third anniversaries of the grant date. The entire option grant to Mr. Fannin was canceled upon the termination of his employment by mutual agreement.
- (7) These options became fully exercisable on June 13, 1999 in connection with Ms. Kelley's resignation from Sunbeam. At the same time, Ms. Kelley forfeited 68,583 exercisable options having exercise prices ranging from \$20.30 per share to \$38.34 per share.

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- (8) Grant date values were calculated using the Black-Scholes options pricing model which has been adjusted to take dividends into account for the period prior to announced discontinuance of dividends. Use of this model should not be viewed in any way as a forecast of the future performance of the common stock. The estimated present value of each stock option as set forth above is based on the following inputs:

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VALUATION DATES	2/01/98	2/19/98	5/12/98	5/19/98	8/12/98
<S>	<C>	<C>	<C>	<C>	<C>
Risk Free Interest Rate.....	5.51%	5.57%	5.79%	5.72%	5.37%
Stock Price Volatility.....	36.10%	36.00%	40.30%	40.30%	49.60%
Dividend Yield.....	0.10%	0.10%	0.20%	0.20%	0.00%

</TABLE>

The model assumes: (a) an expected option term of six years; (b) a risk-free interest rate based on closing six-year U.S. Treasury strip yield on the date of valuation; and (c) no forfeitures. Stock price volatility is calculated using weekly stock prices for a period of five years ended as of the valuation date and believed to reflect volatility in the absence of unusual corporate transactions. Notwithstanding the fact that these options are, with limited exceptions, non-transferable, no discount for lack of marketability was taken.

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Aggregated Option Exercises in Last Fiscal Year and Fiscal Year-End Option Values

The following table sets forth information with respect to option exercises occurring during 1998 and the number of options held by the Named Executives at Sunbeam's fiscal year end. The option grants to Messrs. Levin, Shapiro and Jenkins were approved by Sunbeam's stockholders at Sunbeam's 1999 annual meeting of stockholders held on June 29, 1999. Sunbeam and Messrs. Dunlap and Kersh are disputing the amounts and benefits paid and payable to each of them under their respective employment agreements, and Sunbeam is contesting the validity of

options granted to them. The following table includes the entire amount of the options granted by Sunbeam which Messrs. Dunlap and Kersh assert are vested. See "--Employment Agreement with Mr. Dunlap--Dispute with Mr. Dunlap" and "--Employment Agreement with Messrs. Kersh and Fannin--Dispute with Mr. Kersh" for information concerning disputes between Sunbeam and Messrs. Dunlap and Kersh over equity grants and other matters.

<TABLE>
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NAME	SHARES ACQUIRED ON EXERCISE	VALUE REALIZED	NUMBER OF SECURITIES UNDERLYING UNEXERCISED OPTIONS HELD AT DECEMBER 31, 1998	
			EXERCISABLE	UNEXERCISABLE
<S>	<C>	<C>	<C>	<C>
OFFICERS				
Jerry W. Levin.....	0	0	0	2,750,000
Paul E. Shapiro.....	0	0	0	600,000
Bobby G. Jenkins.....	0	0	0	450,000
Karen K. Clark.....	0	0	0	100,000
FORMER OFFICERS				
Albert J. Dunlap.....	0	0	6,250,000	0
Russell A. Kersh.....	0	0	1,625,000	0
David C. Fannin.....	0	0	200,000	0
Janet G. Kelley.....	0	0	52,766	173,484

EMPLOYMENT AGREEMENT WITH MR. LEVIN

On August 12, 1998, Sunbeam entered into an employment agreement with Mr. Levin (the "Levin Agreement") in which Sunbeam has agreed to employ Mr. Levin as Chief Executive Officer, and Mr. Levin has agreed to serve in such capacity, for an initial period ending June 14, 2001.

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Compensation

Under the Levin Agreement, Mr. Levin will be paid a base salary at an annual rate of not less than \$1,000,000. Effective April 1, 1999, Mr. Levin's base compensation was increased to \$1,150,000. Additionally, Mr. Levin was paid a guaranteed bonus for 1998 of \$541,667 and, thereafter, is eligible to receive a performance-based target annual bonus of 100% of his base salary and, if specified performance objectives are met, up to a bonus of 200% of his base salary under Sunbeam's incentive plan subject to a maximum award of \$2,000,000. Mr. Levin participates in the other benefit plans available generally to employees or other senior executives of Sunbeam. Sunbeam also reimburses Mr. Levin for the cost of membership in a country club.

Equity Grants

Mr. Levin received grants effective as of August 12, 1998 of options to purchase 1,750,000 shares of Sunbeam common stock at a price of \$7.00 per share:

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500,000 shares of Sunbeam common stock at a price of \$14.00 per share; and 500,000 shares of Sunbeam common stock at a price of \$10.50 per share (the "Levin Options"). The term of each of the Levin Options is ten years, and they will vest and become exercisable in full on June 14, 2001 if Mr. Levin remains employed by Sunbeam as of such date. In addition, effective March 29, 1999, Mr. Levin received grants of options under the Option Plan to purchase 250,000 shares of Sunbeam common stock at \$5.57 per share. These options will vest equally on the first, second and third anniversaries of the grant date. Upon the occurrence of a "Change in Control" of Sunbeam as defined in the Option Plan, all of the options granted to Mr. Levin will vest in full.

Termination and Change in Control Provisions

Sunbeam may terminate Mr. Levin's employment under the Levin Agreement due to his disability, or for Cause. As defined in the Levin Agreement, "Cause" means (1) gross neglect of his duties, (2) his conviction for a felony or any lesser crime or offense involving the property of Sunbeam, (3) willful misconduct in connection with the performance of any material portion of his duties, (4) willful breach of any material provision of the Levin Agreement, or (5) any conduct on Mr. Levin's part which would make his continued employment materially prejudicial to the best interests of Sunbeam. In addition, he may terminate his employment following a Company Breach upon 60 days' written notice to Sunbeam. As defined in the Levin Agreement, "Company Breach" means (1) any material breach of the Levin Agreement by Sunbeam, including the failure to obtain stockholder approval of the grant of the Levin Options, or (2) a "Change in Control" of Sunbeam, as defined in the Levin Agreement.

The Levin Agreement provides that, if Sunbeam terminates Mr. Levin's employment for Cause or if he voluntarily terminates his employment, all obligations, other than accrued obligations, of Sunbeam will cease and all unvested Levin Options will be immediately forfeited. If a Company Breach occurs, and Mr. Levin terminates the Levin Agreement, Sunbeam is obligated to continue to pay Mr. Levin's base salary and target bonus for the balance of the term and continue his benefits until his reemployment. In addition, all of the Levin Options vest and remain exercisable for three years.

The Levin Agreement provides that, if Mr. Levin's employment is terminated due to his death or his continued disability for six months, his legal representatives or designated beneficiary, or Mr. Levin, will receive continued payments in an amount equal to 60% of base salary until the longer of 12 months or the end of the term in effect at the time of his death or termination due to disability. The Levin Options will become vested and remain exercisable for three years thereafter.

EMPLOYMENT AGREEMENTS WITH EXECUTIVES SHAPIRO, JENKINS AND CLARK

Sunbeam entered into employment agreements with Messrs. Shapiro and Jenkins and Ms. Clark in August 1998. Messrs. Shapiro and Jenkins and Ms. Clark are referred to as the "Executives." The agreements with Messrs. Shapiro and Jenkins are for an initial period of approximately three years ending on June 14, 2001; and the agreement with Ms. Clark has a term ending on June 14, 2000. The Executives' agreements are referred to individually as an "Executive Agreement" and collectively as the "Executive Agreements."

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Compensation

Under the Executive Agreements, Messrs. Shapiro and Jenkins and Ms. Clark will be paid a base salary at annual rates not less than \$600,000, \$365,000 and \$270,000, respectively. Effective April 1, 1999, the annual base salary for each of Messrs. Shapiro and Jenkins was increased to \$750,000 and \$425,000,

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respectively. Effective June 1, 1999, the annual base salary of Ms. Clark was increased to \$297,000. Additionally, under the Executive Agreements, Messrs. Shapiro and Jenkins and Ms. Clark were paid a guaranteed bonus for 1998 equal to \$243,750, \$118,625 and \$73,125, respectively, and, thereafter, are eligible to receive a performance-based annual target bonus equal to 75%, 60% and 50% of their respective annual salaries. The Executives also participate in the other benefit plans available generally to employees or other senior executives of Sunbeam.

Equity Grants

Under the Executive Agreements, Messrs. Shapiro and Jenkins and Ms. Clark also received grants effective as of June 15, 1998, June 15, 1998 and August 31, 1998, respectively, of options to purchase 600,000 shares, 450,000 shares and 50,000 shares, respectively, of Sunbeam common stock at a price of \$7.00 per share (the "Executive Options"). The term of each of the Executive Options is ten years, and they will vest and become exercisable in full on June 14, 2001, June 14, 2001 and June 14, 2000, respectively, if the Executive remains employed as of such date. Mr. Jenkins was also granted an option, effective March 29, 1999, to acquire 100,000 shares of Sunbeam common stock at a purchase price of \$5.57 per share. This option will vest in equal increments on the first, second and third anniversaries of the grant date. Upon the occurrence of a "Change in Control" of Sunbeam, as defined in the Option Plan, the Executive Options will vest in full. In addition, under her employment agreement, Ms. Clark exchanged 75,000 options she had previously received upon joining Sunbeam for 50,000 options with an exercise price of \$7.00 per share, as part of Sunbeam's option exchange program.

Termination and Change in Control Provisions

Sunbeam may terminate an Executive's employment under his or her Executive Agreement due to disability, or for Cause. As defined in the Executive Agreements, "Cause" means (1) gross neglect of duties, (2) conviction for a felony or any lesser crime or offense involving the property of Sunbeam, (3) willful misconduct in connection with the performance of any material portion of the Executive's duties, (4) willful breach of any material provision of the agreement by Executive, or (5) any conduct on the Executive's part which would make continued employment materially prejudicial to the best interests of Sunbeam. The Executive may terminate his or her employment under the Executive Agreement at any time. In addition, he or she may terminate his or her employment for Company Breach upon 60 days' written notice to Sunbeam. As defined in the Executive Agreements, "Company Breach" means any material breach of the Executive Agreement by Sunbeam. In the case of the agreements with Messrs. Shapiro and Jenkins, a material breach includes the failure to obtain stockholder approval of the grants of the Executive Options to Messrs. Shapiro and Jenkins and a "Change of Control" of Sunbeam, as defined in their respective Executive Agreements.

The Executive Agreements provide that, if Sunbeam terminates an Executive's employment for Cause or if the Executive voluntarily terminates his or her employment, all obligations, other than accrued obligations of Sunbeam will cease and all unvested Executive Options shall be immediately forfeited. If a Company Breach occurs, and an Executive terminates his or her Executive Agreement, Sunbeam is obligated to continue to pay the Executive's base salary and target bonus for the balance of the term and continue the Executive's benefits until his reemployment. In addition, all of the Executive Options will vest and remain exercisable for three years.

The Executive Agreements provide that, if an Executive's employment is terminated due to death, his or her legal representatives or designated beneficiary will receive continued payments in an amount equal to 60% of base salary until the longer of 12 months or the end of the term in effect at the time of death. Upon an Executive's death, the Executive Options will be vested upon such death and will remain exercisable for three years thereafter.

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EMPLOYMENT AGREEMENT WITH MR. DUNLAP

As of February 1, 1998, Sunbeam entered into an employment agreement with Mr. Dunlap (the "Dunlap Agreement") in which Sunbeam agreed to continue to employ Mr. Dunlap as Chairman of the board of directors and Chief Executive Officer, and Mr. Dunlap agreed to serve in such capacities, for a period of three years ending January 31, 2001, and for successive one-year renewal periods unless advance notice of termination was given by either party by no later than August 1 of the immediately preceding year. The Dunlap Agreement was not renewable beyond January 31, 2003. The Dunlap Agreement replaced and superseded Mr. Dunlap's prior employment agreement.

Dispute with Mr. Dunlap. On June 13, 1998, the Sunbeam board of directors removed Mr. Dunlap as Chairman and Chief Executive Officer. The Sunbeam board took this step because Sunbeam's outside directors had lost confidence in Mr. Dunlap's leadership. Mr. Dunlap has asserted that Sunbeam terminated his employment without cause in breach of the Dunlap Agreement, and Sunbeam is vigorously contesting these claims, including claims regarding the validity of grants of Sunbeam common stock and stock options to him. Nothing in this prospectus should be construed to support his claims or to limit or otherwise affect Sunbeam's claims against Mr. Dunlap, including claims with respect to his entitlement to equity grants.

Compensation. Under the Dunlap Agreement, Mr. Dunlap was to be paid a base salary at an annual rate of \$2,000,000. Sunbeam could increase Mr. Dunlap's base salary, but could not reduce it after any such increase. Mr. Dunlap was eligible to participate in the other benefit plans available generally to employees or other senior executives of Sunbeam. However, he was not eligible to participate in any incentive plan of Sunbeam. Sunbeam also provided Mr. Dunlap with various perquisites on a grossed-up basis. Upon Mr. Dunlap's termination, he did not receive any compensation from Sunbeam. Sunbeam subsequently agreed to pay \$52,000 of the accrued vacation and employment benefits of Mr. Dunlap as part of a six-month agreement with Mr. Dunlap in which the parties agreed not to assert claims against each other and to exchange information relating to the pending stockholder lawsuits.

Equity Grants. The Dunlap Agreement provided that all of Mr. Dunlap's then outstanding options to purchase shares of Sunbeam common stock, which were granted under Mr. Dunlap's prior employment agreement, vested as of February 20, 1998; 40% of Mr. Dunlap's shares of restricted Sunbeam common stock were canceled as of such date; and all of Mr. Dunlap's remaining shares of restricted Sunbeam common stock vested as of such date. The Dunlap Agreement also provided that Sunbeam reimburse Mr. Dunlap on a grossed-up basis with respect to any income tax assessed in connection with the vesting of such shares of restricted Sunbeam common stock.

Mr. Dunlap received a grant as of February 1, 1998 of 300,000 shares of Sunbeam common stock. Mr. Dunlap also received a grant effective as of February 1, 1998 of options to purchase 3,750,000 shares of Sunbeam common stock at a price of \$36.85 per share (the "Dunlap Options"), which grant was approved by Sunbeam's stockholders at the 1998 annual meeting. The Dunlap Options provided for a term of ten years, and for vesting with respect to one-third of the shares subject thereto on the grant date and for an additional one-third to vest on each of the first and second anniversaries of the grant date if Mr. Dunlap had remained employed by Sunbeam. The Dunlap Agreement provided that upon the occurrence of a "Change in Control" of Sunbeam, as defined in the Option Plan, the Dunlap Options would have vested in full.

Termination and Change in Control Provisions. The Dunlap Agreement

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provided that Sunbeam could terminate Mr. Dunlap's employment at any time, or due to his disability, or for Cause. The Dunlap Agreement defined "Cause" to mean (1) willful failure substantially to perform Mr. Dunlap's duties under the Dunlap Agreement, except if such failure results from disability, or (2) his conviction for a felony or a plea of guilty or no contest thereto.

The Dunlap Agreement provided that, if Sunbeam terminated Mr. Dunlap's employment other than for Cause and not due to his disability, or if he terminated his employment for a "Good Reason," as defined in the Dunlap Agreement:

(1) he would receive as liquidated damages a lump sum payment in an amount equal to the base salary that would have been payable through the period ending January 31, 2001, or any then applicable renewal period;

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(2) the Dunlap Options would become fully vested, and he would be entitled to exercise the Dunlap Options as well as previously granted options for the balance of their original ten-year term; and

(3) he would be entitled to continue participating in the employee benefit plans in which he had been entitled to participate before termination, for three years after termination, or to receive substantially equivalent benefits.

The Dunlap Agreement provided that, if Sunbeam terminated Mr. Dunlap's employment for Cause or if he terminated his employment other than for Good Reason, all obligations, other than accrued obligations, of Sunbeam would cease, except that Mr. Dunlap would be able to exercise the Dunlap Options as well as previously granted options which were exercisable on the date of termination within 90 days, if the termination were for Cause, and within one year, if it were by Mr. Dunlap without Good Reason.

In addition, the Dunlap Agreement provided that Mr. Dunlap would be entitled to receive a gross-up with respect to any excise tax applicable under the Internal Revenue Code of 1986, as amended, to "excess parachute payments."

EMPLOYMENT AGREEMENTS WITH MESSRS. KERSH AND FANNIN

Sunbeam entered into employment agreements with each of Messrs. Kersh and Fannin as of February 1, 1998. Messrs. Kersh and Fannin are referred to herein as the "Prior Executives." The employment agreements with Messrs. Kersh and Fannin had terms ending on January 31, 2001. The employment agreements with Messrs. Kersh and Fannin (referred to individually as a "Prior Executive Agreement" and collectively as the "Prior Executive Agreements") replaced and superseded their respective previous employment agreements with Sunbeam.

Dispute with Mr. Kersh. On June 16, 1998, the Sunbeam board of directors terminated Mr. Kersh as Vice Chairman and Chief Financial Officer. Mr. Kersh has asserted that Sunbeam terminated his employment without cause in breach of his Prior Executive Agreement, and Sunbeam is vigorously contesting these claims, including claims regarding the validity of grants of restricted Sunbeam common stock and options to him. Nothing in this prospectus should be construed to support his claims or to limit or otherwise affect Sunbeam's claims against Mr. Kersh, including claims with respect to his entitlement to equity grants.

Compensation. Under their respective Prior Executive Agreements, Messrs. Kersh and Fannin were each to be paid a base salary at annual rates of \$875,000 and \$595,000, respectively. The Prior Executives were also eligible to participate in those benefit plans available generally to employees or other senior executives of Sunbeam. However, the Prior Executives were not eligible to

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participate in any cash incentive plan of Sunbeam. Upon Mr. Kersh's termination, he did not receive any compensation from Sunbeam. Sunbeam subsequently agreed to pay \$68,000 of the accrued vacation and employment benefits of Mr. Kersh as part of a six-month agreement with Mr. Kersh in which the parties agreed not to assert claims against each other and to exchange information relating to the pending stockholder lawsuits.

Equity Grants. The Prior Executive Agreements provided that all of Mr. Kersh's then outstanding options to acquire shares of Sunbeam common stock, which were granted under Mr. Kersh's previous employment agreement, and all of Mr. Fannin's then outstanding options to acquire shares of Sunbeam common stock vested as of February 20, 1998; 40% of each of Mr. Kersh's and Mr. Fannin's shares of restricted Sunbeam common stock were canceled as of such date; and all of Mr. Kersh's and Mr. Fannin's remaining shares of restricted Sunbeam common stock vested as of such date. The Prior Executive Agreements provided that Sunbeam was to reimburse Messrs. Kersh and Fannin on a grossed-up basis with respect to any income tax assessed in connection with the vesting of such shares of restricted Sunbeam common stock.

As of February 1, 1998, Messrs. Kersh and Fannin each received a grant of 150,000 and 30,000 shares of restricted Sunbeam common stock (the "Prior Executive Restricted Shares"), respectively. These Prior Executive Restricted Shares provided for vesting in four equal installments on each of February 1, 1998 and the first, second and third anniversaries of February 1, 1998. Messrs. Kersh and Fannin also received grants, effective as of February 1, 1998, of options to purchase 1,125,000 and 750,000 shares of Sunbeam common stock, respectively, at a price of \$36.85 per share which were approved by Sunbeam's stockholders at the 1998 annual meeting (the "Prior Executive Options"). These Prior Executive Options provided for vesting in

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four equal installments on the grant date of February 1, 1998 and the first, second and third anniversaries of February 1, 1998.

Termination and Change in Control Provisions. The Prior Executive Agreements with Messrs. Kersh and Fannin provided that Sunbeam may terminate either Prior Executive's employment at any time, or due to the Prior Executive's disability, or for "Cause," as defined in the Prior Executive Agreement.

Each Prior Executive Agreement provided that, if Sunbeam terminated the Prior Executive's employment other than for Cause and not due to his disability, or if the Prior Executive terminated his employment for "Good Reason," as defined in the Prior Executive Agreements, or following a "Change in Control," as defined in the Prior Executive Agreements:

- (1) such Prior Executive would receive as liquidated damages a lump sum payment in an amount equal to the base salary that would have been payable to him through the end of the employment term;
- (2) the Options and Executive Restricted Shares granted to such Prior Executive would become fully vested, and the Prior Executive will be entitled to exercise his Prior Executive Options and previously granted options for the balance of their original ten-year term; and
- (3) the Prior Executive would be entitled to continue participating in the employee benefit plans in which he had been entitled to participate before termination, through the end of the employment term, or to receive substantially equivalent benefits.

Each Prior Executive Agreement provided that if Sunbeam terminated the Prior Executive's employment for Cause or if the Prior Executive terminated his

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employment other than for Good Reason or following a Change in Control, all obligations, other than accrued obligations, of Sunbeam would cease, except that such Prior Executive would be able to exercise Prior Executive Options and previously granted options granted to him which were exercisable on the date of termination or within 90 days thereof, if the termination were for Cause, and within one year thereof, if the termination were by the Executive other than for Good Reason or following a Change in Control.

In addition, each Prior Executive Agreement provided that the Prior Executive would be entitled to receive a gross-up with respect to any excise tax applicable under the Internal Revenue Code to "excess parachute payments."

EMPLOYMENT AGREEMENT WITH MS. KELLEY

Sunbeam entered into an employment agreement with Ms. Kelley in December 1998. The agreement had an initial term extending until December 31, 2000, but expired upon her resignation from employment effective May 31, 1999. In 1999, while this agreement was in effect, Ms. Kelley's annual base salary rate was \$275,000. In addition, Ms. Kelley was paid a guaranteed bonus of \$112,500 for 1998. Under the agreement, Ms. Kelley received a grant effective as of December 16, 1998 of options to purchase 60,000 shares of common stock at a price of \$7.00 per share.

Ms. Kelley's agreement provided that if Sunbeam terminated her employment for Cause (as defined in Ms. Kelley's agreement) or if she voluntarily terminated her employment, all obligations of Sunbeam, other than accrued obligations, would cease and all unvested stock options would be immediately forfeited. If a Company Breach (as defined in Ms. Kelley's agreement) occurred, and Ms. Kelley terminated her employment, under the agreement, Sunbeam was obligated to pay Ms. Kelley's base salary and target bonus for the balance of the term and continue her benefits until her reemployment. In addition, all of Ms. Kelley's options would have vested and remained exercisable for three years.

In connection with her resignation, the options to purchase 60,000 shares of common stock at \$7.00 per share were made fully exercisable on June 13, 1999 in exchange for the forfeiture by Ms. Kelley of 68,583 exercisable options having exercise prices ranging from \$20.30 per share to \$38.34 per share.

SUBSEQUENT ARRANGEMENTS WITH MESSRS. DUNLAP, KERSH AND FANNIN

In early August 1998, Sunbeam entered into a six-month agreement with Messrs. Dunlap and Kersh in which all parties agreed not to assert claims against each other and to exchange information relating to the various lawsuits in which Sunbeam and Messrs. Dunlap Kersh are named as defendants. Sunbeam also agreed

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to pay, and has paid, to Messrs. Dunlap and Kersh amounts related to accrued vacation and employment benefits and to advance litigation defense costs subject to the receipt of an undertaking from each of them, which Sunbeam has received, to repay all amounts so advanced if it is determined that they did not meet the applicable standard of conduct for indemnification under Delaware law. This agreement has expired and Messrs. Dunlap and Kersh have commenced an arbitration action against Sunbeam claiming recovery of amounts they allege are payable to them under their agreements. Sunbeam is vigorously contesting these claims and is seeking the return of all amounts they received under their February 1998 employment agreements. Messrs. Dunlap and Kersh have obtained an order from the Court of Chancery of the State of Delaware requiring Sunbeam to advance reasonable litigation defense costs to each of them.

In connection with the termination of Mr. Fannin's employment by mutual

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agreement, Sunbeam entered into an agreement with him providing that, under the terms of his employment agreement and in consideration of the execution of the agreement, including a release and covenant not to sue contained therein, he would receive the following payments, all subject to applicable withholding taxes:

(a) \$825,000 in severance payments, of which \$575,001 was paid in 1998 and the balance of which is payable in monthly installments of \$16,667;

(b) consulting payments of \$250,000 of which \$41,667 was paid in 1998 and the balance of which is payable in monthly installments of \$13,889; and

(c) \$50,000 payable for the three year extension of Mr. Fannin's non-compete agreement, of which \$8,334 was paid in 1998 and the balance of which is payable in equal monthly installments of \$2,778.

In addition, Mr. Fannin received the value of his accrued vacation for 1996, 1997 and 1998, continuation of health, dental and life insurance coverage, on the same basis as prior to termination of employment for an additional 18 months or until his earlier employment providing such benefits. The termination agreement with Mr. Fannin also provided for a three-year term for his outstanding vested stock options, confirmed the amount of his unrestricted Sunbeam common stock grants and provided for the mutually agreed cancellation of all other equity awards.

OTHER TRANSACTIONS

Settlement of Claims; Issuance of Warrant

On August 12, 1998, Sunbeam announced that, following investigation and negotiation conducted by a special committee of the Sunbeam board of directors, consisting of four outside directors not affiliated with MacAndrews & Forbes, Sunbeam had entered into the settlement agreement with the MacAndrews & Forbes subsidiary from which Sunbeam had acquired a controlling interest in Coleman in March 1998. Under the settlement agreement, Sunbeam was released from threatened claims arising from that acquisition, and MacAndrews & Forbes agreed to provide management personnel and assistance to Sunbeam, in exchange for the issuance to the MacAndrews & Forbes subsidiary of a warrant expiring August 24, 2003 to purchase 23 million shares of Sunbeam common stock at an exercise price of \$7 per share, subject to anti-dilution provisions.

Services Provided by MacAndrews & Forbes

Under the settlement agreement referred to in the previous paragraph, in addition to making the services of Messrs. Levin, Shapiro and Jenkins available to Sunbeam, MacAndrews & Forbes agreed to provide management assistance to Sunbeam with respect to specified matters. Sunbeam does not reimburse MacAndrews & Forbes for these services or for expenses incurred in providing these services to Sunbeam, other than reimbursement of out-of-pocket expenses paid to third parties. Execution of the settlement agreement was a condition to Sunbeam's continued employment of Messrs. Levin, Shapiro and Jenkins as officers of Sunbeam.

Registration Rights

Sunbeam and the MacAndrews & Forbes subsidiary which sold Sunbeam its controlling interest in Coleman have entered into a registration rights agreement. Under the registration rights agreement, the MacAndrews & Forbes subsidiary can require Sunbeam to register under the federal and applicable state

securities laws the shares of Sunbeam common stock the subsidiary received when it sold its controlling interest in Coleman to Sunbeam. Sunbeam has also agreed to permit former affiliates of Coleman that received Sunbeam common stock in the March 1988 acquisition to join the MacAndrews & Forbes subsidiary in any registration of the subsidiary's shares of Sunbeam common stock.

The registration rights agreement was amended in August 1998 to permit the MacAndrews & Forbes subsidiary to require Sunbeam to also register (1) the warrant issued to it by Sunbeam under its settlement agreement with Sunbeam and (2) the shares of Sunbeam common stock issuable upon exercise of the warrant.

Settlement of Coleman Options

Under Sunbeam's agreement providing for the merger, the unexercised options under Coleman's stock option plans will be cashed out at a price per share equal to the difference between \$27.50 and the exercise price of the options. Ronald O. Perelman, the sole stockholder of MacAndrews & Forbes, holds 500,000 options for which he will receive a net payment of \$6,750,000 upon completion of the merger. Messrs. Shapiro and Isko and Ms. Clark, executive officers of Sunbeam, hold 77,500, 20,000 and 25,000 options, respectively, for which they will receive net payments of \$823,000, \$226,099 and \$275,005, respectively.

Arrangements with Coleman

Coleman and a subsidiary of MacAndrews & Forbes are parties to a cross-indemnification agreement in which Coleman has agreed to indemnify the subsidiary, its officers, directors, employees, control persons, agents and representatives against all past, present and future liabilities, including product liability and environmental matters, related to the initial assets of Coleman, which Coleman acquired from such affiliate in December 1991. In addition, under this cross-indemnification agreement, the MacAndrews & Forbes subsidiary has agreed to indemnify Coleman and its officers, directors, employees, agents and representatives against all other liabilities of this MacAndrews & Forbes subsidiary or any of its subsidiaries, including liabilities relating to the assets it did not transfer to Coleman in December 1991. This cross-indemnification agreement will survive the merger.

Coleman previously was included in the consolidated tax group for the MacAndrews & Forbes companies and was a party to a tax sharing agreement with a MacAndrews & Forbes subsidiary, under which Coleman paid to this subsidiary the amount of taxes which would have been paid by Coleman if it were required to file separate Federal, state or local income tax returns. The obligations of MacAndrews & Forbes under the tax sharing agreement were terminated when Sunbeam bought a controlling interest in Coleman in March 1998. As described under the section titled "RECENT DEVELOPMENTS AFFECTING SUNBEAM--Acquisition of Coleman Preferred Stock," one of Sunbeam's wholly owned subsidiaries recently acquired shares of a newly created series of Coleman voting preferred stock. These shares were created and purchased in order to enable Sunbeam and Coleman to file consolidated federal income tax returns prior to the completion of the merger. In connection with the acquisition of these shares, Sunbeam entered into a tax sharing agreement with Coleman pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had Coleman not been included in the consolidated income tax return of Sunbeam.

Office Space

During 1998, Sunbeam sublet office space in New York City from an affiliate of MacAndrews & Forbes. The expense for such rent during 1998 was approximately \$130,000. The lease was terminated in 1999.

Employment of Law Firms

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Sunbeam employed the law firms of Reboul, MacMurray, Hewitt, Maynard and Kristol, of which Mr. Kristol is a partner, and Holland & Knight, of which Mr. Elson is Of Counsel, to perform some legal services for Sunbeam during 1998. The total fees paid to these firms during 1998 were less than \$20,000. Neither Mr. Kristol nor Mr. Elson was involved in the provision of legal services to Sunbeam.

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SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS

The following table shows, with respect to beneficial ownership of the Sunbeam common stock by all persons known by Sunbeam to be the record or beneficial owner of more than 5% of the outstanding common stock, the number of shares of Sunbeam common stock owned by each such person or group as of December 3, 1999, the percentage of the outstanding Sunbeam common stock those holdings represented on that date, and the percentage of the outstanding Sunbeam common stock that those holdings will represent after the merger.

<TABLE>
<CAPTION>

NAME	AMOUNT AND NATURE OF BENEFICIAL OWNERSHIP	PERCENTAGE SUNBEAM C STOCK PRI MERGER
<S>	<C>	<C>
Ronald O. Perelman.....	37,099,749(1)	29.
Franklin Mutual Advisers, Inc.....	17,541,398(2)	17.
Albert J. Dunlap.....	7,741,564(3)	7.
Invista Capital Management, LLC/Principal Mutual Holding Company.....	7,440,200(4)	7.

- (1) Represents shares of Sunbeam common stock received by a subsidiary of MacAndrews & Forbes in the M&F Transaction and 23 million shares of Sunbeam common stock which may be acquired by MacAndrews & Forbes pursuant to the warrant issued to it by Sunbeam. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM--Settlement of Claims Relating to the M&F Transaction." The address of Coleman (Parent) Holdings is 35 E. 62nd Street, New York, New York 10021. Ronald O. Perelman is the indirect beneficial owner of all of the outstanding capital stock of Coleman (Parent) Holdings. Accordingly, Mr. Perelman may be deemed to be the beneficial owner of all of the shares of Sunbeam common stock owned by Parent Holdings. Mr. Perelman's address is 35 E. 62nd Street, New York, New York 10021.
- (2) Information reflected in this table and the notes thereto with respect to Franklin Mutual Advisers is derived from the Schedule 13D, dated November 1, 1996, filed by Franklin Mutual Advisers or its predecessors with the SEC, as thereafter amended, most recently on March 1, 1999. The address of Franklin Mutual Advisers is 51 John F. Kennedy Parkway, Short Hills, New Jersey 07078. The shares listed above are beneficially owned by one or more open-end investment companies or other managed accounts which, pursuant to advisory contracts, are advised by Franklin Mutual Advisors. Franklin Mutual Advisors disclaims beneficial ownership of these shares.
- (3) Information reflected in this table and the notes thereto with respect to Mr. Dunlap is based upon filings made by him with the SEC. Mr. Dunlap's holdings include certain stock grants for 1,166,667 shares and options to

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acquire an additional 6,250,000 shares of Sunbeam common stock granted by Sunbeam which are a matter of dispute between Sunbeam and Mr. Dunlap. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM--Matters Involving Former Management."

- (4) Information reflected in this table and the notes thereto with respect to Invista Capital Management and Principal Mutual Holding Company is derived from the Form 13G jointly filed with the SEC by Invista and Principal on February 16, 1999. The address of Invista Capital Management is 1900 Hub Tower, 699 Walnut Street, Des Moines, Iowa 50392. Invista Capital Management and Principal Mutual Holding Company exercise shared voting power and investment discretion with respect to all of the shares of Sunbeam common stock beneficially owned by them.
- (5) Assumes (1) the issuance by Sunbeam in the merger of 6,676,135 shares of Sunbeam common stock, (2) the issuance of 23 million shares of Sunbeam common stock to a MacAndrews & Forbes subsidiary upon exercise of the warrant issued in connection with the settlement of threatened legal claims relating to the M&F Transaction, (3) the issuance of about 4.98 million shares of Sunbeam common stock to Coleman minority stockholders upon the exercise of warrants issued in connection with the settlement of litigation relating to the merger and (4) no further issuances of Sunbeam common stock (whether by exercise of Sunbeam employee stock options or otherwise) prior to the completion of the merger.

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SECURITY OWNERSHIP OF MANAGEMENT

The following table sets forth the beneficial ownership, reported to Sunbeam as of December 3, 1999, of Sunbeam common stock, including shares as to which a right to acquire ownership exists, of: (1) each director of Sunbeam; (2) each of the Named Executives; and (3) the directors and current executive officers of Sunbeam as a group. In addition, the following table sets forth, as of December 3, 1999, the beneficial ownership of three former directors and two former Named Executives, based on information filed by them with the SEC and available to the public. With respect to (1) each current director of Sunbeam and (2) all directors and officers of Sunbeam as a group, the following table also shows the percentage of the outstanding Sunbeam common stock which such person's or group's holdings will represent after the merger.

<TABLE>
<CAPTION>

NAME	AMOUNT AND NATURE OF BENEFICIAL OWNERSHIP (1)	PERCENTAGE OF SUNBEAM COMMON STOCK BEFORE MERGER (2)
<S>	<C>	<C>
DIRECTORS		
Philip E. Beekman.....	1,500 (3)	*
Charles M. Elson.....	12,000 (3)	*
Howard Gittis.....	-- (5)	0
John H. Klein.....	1,915 (3)	*
Howard G. Kristol.....	12,000 (3)	*
Peter A. Langerman.....	-- (4)	0
Jerry W. Levin.....	-- (5)	0
Faith Whittlesey.....	8,390 (3)	*

FORMER DIRECTORS

Albert J. Dunlap.....	7,741,564 (2)	7.2%
Russell A. Kersh.....	1,889,150 (2)	1.8%
Lawrence A. Sondike.....	--	0

OTHER NAMED EXECUTIVES

Karen K. Clark.....	--	0
Bobby G. Jenkins.....	--	0
Paul E. Shapiro.....	-- (5)	0

FORMER NAMED EXECUTIVES

Janet G. Kelley.....	78,000 (6)	*
David C. Fannin.....	220,433 (2)	*
All directors and current executive officers as a group (15 persons).....	85,805 (7)	*

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* Less than one percent.

(1) All present and former directors and Named Executives have the sole power to vote and to dispose of the shares of Sunbeam common stock listed above except as follows: (1) Mr. Dunlap is believed to hold 1,491,564 of the listed shares jointly with his wife; (2) 151,600 shares listed as owned by Mr. Kersh are believed to be held by the Russell A. Kersh Irrevocable Trust of which Mr. Kersh is the sole beneficiary, and Mr. Kersh is believed to hold 5,000 of the listed shares jointly with his spouse; (3) Mr. Fannin holds 20,433 shares of stock jointly with his wife; and (4) Ms. Kelley holds 100 shares jointly with her spouse.

(2) Includes shares of Sunbeam common stock which present and former directors of Sunbeam and Named Executives have the right to acquire under options which are currently exercisable, including options which will become exercisable within the next sixty days. This includes 200,000 and 77,900 shares in the case of Mr. Fannin and Ms. Kelley, respectively, upon the exercise of options which are currently exercisable. Options which are not currently exercisable and will not become exercisable within sixty days are not included in the table. The figures also include stock awards and options to acquire 6,250,000 and 1,625,000 shares in the case of Messrs. Dunlap and Kersh, respectively. Sunbeam is disputing the

(Footnotes continued on next page)

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(Footnotes continued from previous page)

status of these stock awards and options. See "RECENT DEVELOPMENTS AFFECTING SUNBEAM--Matters Involving Former Management" for information concerning these disputes.

(3) Includes shares of restricted Sunbeam common stock granted to each of directors Beekman, Elson, Klein, Kristol and Whittlesey upon their respective elections, appointments and subsequent reelections to the Sunbeam board, all of which shares were immediately vested.

(4) Does not include shares of Sunbeam common stock owned by Franklin Mutual Advisers as to which Mr. Langerman disclaims beneficial ownership. See "SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS."

(5) Does not include shares of Sunbeam common stock owned by MacAndrews & Forbes and its affiliates, as to which Messrs. Gittis, Levin and Shapiro disclaim

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beneficial ownership. See "SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS."

- (6) In connection with Ms. Kelley's resignation from Sunbeam effective May 31, 1999, 60,000 options previously granted to Ms. Kelley became immediately exercisable on June 13, 1999 and Ms. Kelley forfeited exercisable options to purchase another 68,583 shares.
- (7) Includes 50,000 shares of Sunbeam common stock which all current executive officers of Sunbeam have a right to acquire under options which are currently exercisable, including options which will become exercisable within the next sixty days.
- (8) Assumes (1) the issuance by Sunbeam in the merger of 6,676,135 shares of Sunbeam common stock, (2) the issuance of 23 million shares of Sunbeam common stock to a MacAndrews & Forbes subsidiary upon exercise of the warrant issued in connection with the settlement of threatened legal claims relating to the M&F Transaction and (3) the issuance of about 4.98 million shares of Sunbeam common stock to Coleman minority stockholders upon the exercise of warrants issued in connection with the settlement of litigation relating to the merger.

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DESCRIPTION OF SUNBEAM CAPITAL STOCK

The following statements are summaries of provisions of Sunbeam's capital stock.

SUNBEAM COMMON STOCK

Sunbeam's authorized capital stock currently consists of 500,000,000 shares of Sunbeam common stock, par value \$.01 per share, and 2,000,000 shares of preferred stock, par value \$.01 per share. As of December 3, 1999, there were 100,902,392 shares of Sunbeam common stock outstanding. Each share of Sunbeam common stock entitles its holder to one vote on all matters upon which Sunbeam stockholders are entitled or permitted to vote, including the election of directors. There are no cumulative voting rights. Shares of Sunbeam common stock would participate ratably in any distribution of assets in a liquidation, dissolution or winding up of Sunbeam, subject to prior distribution rights of any shares of preferred stock then outstanding. The Sunbeam common stock has no preemptive rights or conversion rights nor are there any redemption or sinking fund provisions applicable to the Sunbeam common stock. Holders of Sunbeam common stock are entitled to participate in dividends as and when declared by the Sunbeam board out of funds legally available therefor. Sunbeam's ability to pay cash dividends is subject to restrictions under Delaware law. In addition, Sunbeam's bank credit facility prohibits Sunbeam from paying cash dividends.

The transfer agent and registrar for the Sunbeam common stock is The Bank of New York.

SUNBEAM PREFERRED STOCK

There are no shares of Sunbeam preferred stock currently outstanding. Sunbeam's Certificate of Incorporation provides that the Sunbeam board of directors may authorize the issuance of one or more series of preferred stock having such rights, including voting, conversion and redemption rights, and such preferences, including dividend and liquidation preferences, as the Sunbeam board may determine without any further action by the stockholders of Sunbeam.

WARRANTS

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Sunbeam currently has outstanding one warrant which entitles the holder to purchase up to 23 million shares of Sunbeam common stock. This warrant was issued on August 24, 1998 under the terms of the Settlement Agreement, dated August 12, 1998, by and between Sunbeam and Coleman (Parent) Holdings, Inc., the MacAndrews & Forbes subsidiary from which Sunbeam acquired about 81% of the then outstanding Coleman common stock in the M&F Transaction. In the merger, Sunbeam will issue warrants which will entitle their holders to purchase up to 4.98 million shares of Sunbeam common stock. These warrants will be issued under a Warrant Agreement to be entered into by Sunbeam and The Bank of New York, as Warrant Agent, prior to the completion of the merger.

The warrant to be issued in the merger will be substantially similar to the warrant issued to Coleman (Parent) Holdings.

The warrant issued to Coleman (Parent) Holdings and each of the warrants to be issued in the merger will be exercisable at a cash exercise price of \$7 per share and will expire on August 24, 2003. In addition, the warrant issued to Coleman (Parent) Holdings and each of the warrants to be issued in the merger is subject to anti-dilution adjustments in the event that Sunbeam completes one or more transactions having a dilutive effect on its existing stockholders. Under the settlement with Coleman (Parent) Holdings, Sunbeam has agreed that Coleman (Parent) Holdings can require Sunbeam to register under the federal and applicable state securities laws the shares of Sunbeam common stock issuable upon exercise of the warrant. The shares of Sunbeam common stock issuable upon exercise of the warrants to be issued in the merger are being registered under the registration statement of which this document forms a part.

For further information regarding the warrant issued to Coleman (Parent) Holdings, see "RECENT DEVELOPMENTS AFFECTING SUNBEAM--Settlement of Claims Relating to the M&F Transaction." For further information regarding the terms of the warrants to be issued in the merger, see "SETTLEMENT OF LITIGATION AND WARRANTS."

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DESCRIPTION OF COLEMAN CAPITAL STOCK

The following statements are summaries of provisions of Coleman's capital stock.

COLEMAN COMMON STOCK

The authorized capital stock of Coleman consists of 100,000,000 shares of capital stock, 80,000,000 of which are common stock, par value \$.01 per share, and 20,000,000 of which are preferred stock, par value \$.01 per share. Of these authorized shares, as of December 3, 1999, 55,827,490 shares of Coleman common stock were issued and outstanding and 923,670 shares of Coleman common stock were issuable upon exercise of Coleman stock options outstanding under Coleman's employee stock option plans (all of which options are currently exercisable).

Subject to the rights of holders of any Coleman preferred stock then outstanding, holders of Coleman common stock are entitled to receive dividends as may from time to time be declared by the Coleman board subject to certain limitations under Delaware law. The merger agreement prohibits Coleman from paying dividends and Sunbeam's credit facility only permits Coleman to pay dividends in additional shares of its capital stock until the merger is completed. Holders of Coleman common stock are entitled to one vote per share on

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all matters on which the holders of Coleman common stock are entitled to vote. Because holders of Coleman common stock do not have cumulative voting rights, the holders of a majority of the shares of Coleman common stock represented at a meeting can elect all of the directors. In the event of liquidation, dissolution or winding up of Coleman, holders of Coleman common stock would be entitled to share ratably in assets of Coleman available for distribution to the holders of Coleman common stock.

Holders of Coleman common stock are not liable for any liabilities of Coleman. There are no preemptive rights for the Coleman common stock. The outstanding shares of Coleman common stock are fully paid and nonassessable.

American Stock Transfer & Trust Co. acts as transfer agent and registrar for the Coleman common stock.

COLEMAN PREFERRED STOCK

As of December 3, 1999, there were 3,000,000 shares of Coleman preferred stock issued and outstanding. Coleman's Certificate of Incorporation authorizes the Coleman board of directors to provide for the issuance, from time to time, of shares of preferred stock in series, to establish from time to time the number of shares to be included in any such series and to fix the designation, powers, preferences and rights of the shares of each such series and any qualifications, limitations or restrictions thereof.

On July 12, 1999, Coleman issued to Coleman Worldwide Corporation 3,000,000 shares of a newly created series of voting preferred stock, par value \$.01 per share, denominated as "Series A Participating Preferred Stock." Each share of Series A Participating Preferred Stock entitles the holder thereof to one vote on all matters submitted to a vote of the stockholders of Coleman. Except as required by law, the holders of the Series A Participating Preferred Stock vote together as a single class with the holders of Coleman common stock on all matters submitted to a vote of the Coleman stockholders. The Series A Participating Preferred Stock is entitled to an annual dividend. Dividends on the Series A Participating Preferred Stock will accrue and be payable at the earlier of (1) the time any liquidating distribution is made to the holders of the Series A Participating Preferred Stock and (2) the time the shares of Series A Participating Preferred Stock are exchanged or changed into other stock or securities, cash and/or any other property, in connection with a consolidation, merger, combination or other transaction involving Coleman (other than the merger of a wholly owned Sunbeam subsidiary with Coleman). However, Sunbeam's credit facility only permits Coleman to pay dividends in additional shares of its capital stock until the merger is completed. The holders of shares of Series A Participating Preferred Stock share ratably in all other dividends and distributions received by the holders of Coleman common stock. In addition, the holders of shares of Series A Participating Preferred Stock are entitled to a per share liquidation preference equal to the price the Series A Participating Preferred Stock was initially issued to Sunbeam and, once the holders of shares of Coleman common stock have received a like per share amount, the holders of shares of Series A Participating Preferred Stock will share ratably with the holders of shares of Coleman common stock in all remaining amounts available for distribution upon liquidation of Coleman.

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EXPERTS

The Consolidated Financial Statements of Sunbeam Corporation and its consolidated subsidiaries (except The Coleman Company, Inc. and its subsidiaries) as of December 31, 1998 and for the year then ended, and the

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related financial statement schedule included in this document have been audited by Deloitte & Touche LLP as stated in their report appearing herein. The consolidated financial statements of The Coleman Company, Inc. (consolidated with those of Sunbeam) have been audited by Ernst & Young LLP as stated in their report included herein. The Consolidated Financial Statements of Sunbeam Corporation and its subsidiaries are included herein in reliance upon the respective reports of such firms, in each case given upon their authority as experts in accounting and auditing. Deloitte & Touche LLP, and Ernst & Young LLP, are independent auditors.

The Consolidated Financial Statements and schedule of Sunbeam Corporation included in this document and in the corresponding registration statement as of December 28, 1997 and for the years ended December 28, 1997 and December 29, 1996 have been audited by Arthur Andersen LLP, independent certified public accountants, as indicated in their report with respect thereto, and are included herein in reliance upon the authority of said firm as experts in giving said report.

Ernst & Young LLP, independent auditors, have audited Coleman's consolidated financial statements included in its Annual Report on Form 10-K, as amended, for the year ended December 31, 1998, as set forth in their report, which is included in this document and is incorporated by reference elsewhere in the registration statement. Coleman's financial statements are incorporated by reference in this document in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

LEGAL OPINIONS

The validity of the shares of Sunbeam common stock being offered hereby is being passed upon for Sunbeam by Steven R. Isko, Senior Vice President and General Counsel of Sunbeam.

WHERE YOU CAN FIND MORE INFORMATION

Sunbeam is distributing this document to you to provide you with information about the merger, your Delaware appraisal rights and the litigation settlement. This document also serves as Sunbeam's prospectus in connection with the issuance of the shares of Sunbeam common stock you will receive in the merger and upon exercise of the settlement warrants after the merger. This document is also part of a registration statement filed by Sunbeam with the SEC to register those shares under the Securities Act of 1933. The registration statement, including the attached exhibits and schedules, contains additional relevant information about Sunbeam. Under the rules and regulations of the SEC, however, some information included in the registration statement is not required to be included in this document. You are urged to read carefully the registration statement and the attached exhibits and schedules.

This document also serves as Coleman's information statement in connection with the merger. This document has been filed by Coleman with the SEC to comply with Coleman's disclosure obligations under the Securities Exchange Act of 1934. Under the rules and regulations of the SEC, however, some information concerning Coleman is not required to be included in this document. Instead, the SEC allows Coleman to "incorporate by reference" the omitted information. This means that Coleman can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be a part of this document, except for any information that has been directly superseded by information contained in this document. You are urged to read carefully the documents to which we have referred you.

You can inspect and copy reports, proxy statements and other information about Sunbeam and Coleman at the NYSE office located at 20 Broad Street, New York, New York 10005.

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You may read publicly available information about Sunbeam and Coleman, including the registration statement and the documents concerning Coleman to which we have referred you, at the following locations of the SEC:

<TABLE>

<S>

Public Reference Room
450 Fifth Street, N.W.
Room 1024
Washington, D.C. 20549

<C>

Midwest Regional Office
Citicorp Center
500 West Madison Street
Suite 1400
Chicago, Illinois 60661

<C>

New York Regional Off
7 World Trade Cente
Suite 1300
New York, New York 10

</TABLE>

You may also obtain copies of this information by mail from the Public Reference Section of the SEC, 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549, at prescribed rates. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

The SEC also maintains an Internet world wide web site that contains reports, proxy statements and other information about issuers, like Sunbeam and Coleman, who file electronically with the SEC. The address of that site is <http://www.sec.gov>.

This document incorporates by reference the documents listed below that Coleman has previously filed with the SEC. They contain important information about Coleman and its financial condition.

1. Coleman's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 1999;
2. Coleman's Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 1999, as amended;
3. Coleman's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 1999, as amended;
4. Coleman's Annual Report on Form 10-K for the fiscal year ended December 31, 1998, as amended;
5. Coleman's Annual Reports on Form 10-K for the fiscal years ended December 31, 1997 and 1996; and
6. Coleman's Information Statement under Section 14(f) of the Exchange Act mailed to Coleman stockholders on or about March 18, 1998.

Coleman also incorporates by reference any additional documents it may file with the SEC between the date of this document and the completion of the merger. These documents include periodic reports, such as Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, as well as proxy statements.

You can obtain any of the documents incorporated by reference in this document through Coleman or from the SEC through the SEC's web site at the address described above. Documents incorporated by reference are available from Coleman without charge, excluding any exhibits to those documents unless the exhibit is specifically incorporated by reference as an exhibit in this document. You can obtain documents incorporated by reference in this document by requesting them in writing or by telephone from Coleman at the following address:

The Coleman Company, Inc.

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16div-028256

2111 East 37th Street North
P.O. Box 2391
Wichita, Kansas 67201
Attention: Corporate Secretary
Telephone: (316) 832-2700

IF YOU WOULD LIKE TO REQUEST DOCUMENTS, PLEASE DO SO BY DECEMBER 30, 1999 TO RECEIVE THEM BEFORE THE COMPLETION OF THE MERGER. IF YOU REQUEST ANY DOCUMENTS FROM COLEMAN, WE WILL MAIL THEM TO YOU BY FIRST-CLASS MAIL, OR ANOTHER EQUALLY TIMELY MEANS, PROMPTLY AFTER WE RECEIVE YOUR REQUEST.

WE HAVE NOT AUTHORIZED ANYONE TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATION ABOUT THE MERGER OR OUR COMPANIES THAT IS DIFFERENT FROM, OR IN ADDITION TO, THAT CONTAINED IN THIS DOCUMENT OR IN ANY OF THE MATERIALS THAT WE HAVE INCORPORATED BY REFERENCE INTO THIS DOCUMENT. THEREFORE, IF ANYONE DOES GIVE YOU INFORMATION OF THIS SORT, YOU SHOULD NOT RELY ON IT. IF YOU ARE IN A JURISDICTION WHERE OFFERS TO EXCHANGE OR SELL, OR SOLICITATIONS OF OFFERS TO EXCHANGE OR PURCHASE, THE SECURITIES OFFERED BY THIS DOCUMENT ARE UNLAWFUL, OR IF YOU ARE A PERSON TO WHOM IT IS UNLAWFUL TO DIRECT THESE TYPES OF ACTIVITIES, THEN THE OFFER PRESENTED IN THIS DOCUMENT DOES NOT EXTEND TO YOU. THE INFORMATION CONTAINED IN THIS DOCUMENT SPEAKS ONLY AS OF THE DATE OF THIS DOCUMENT UNLESS THE INFORMATION SPECIFICALLY INDICATES THAT ANOTHER DATE APPLIES.

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Report of Ernst & Young LLP.....	
Report of Arthur Andersen LLP.....	
Consolidated Statements of Operations	
for the Fiscal Years Ended December 31, 1998, December 28, 1997 and December 29, 1996.....	
Consolidated Balance Sheets as of December 31, 1998 and December 28, 1997.....	
Consolidated Statements of Shareholders' Equity for the Fiscal Years Ended December 31, 1998,	
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Consolidated Statements of Cash Flows for the Fiscal Years Ended December 31, 1998, December 28	
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Condensed Consolidated Statements of Cash Flows (Unaudited) for the nine months ended September	
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* All other schedules for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission are not required under the related instructions or are inapplicable, and therefore not included herein.

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INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Shareholders of
Sunbeam Corporation and subsidiaries:

We have audited the accompanying consolidated balance sheet of Sunbeam Corporation and subsidiaries (the "Company") as of December 31, 1998, and the related consolidated statements of operations, shareholders' equity, and cash flows for the year then ended. Our audit also included the financial statement schedule as of and for the year ended December 31, 1998, listed in the Index to Financial Statements. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audit. We did not audit the consolidated financial statements of The Coleman Company, Inc. and subsidiaries (consolidated subsidiaries), which statements reflect total assets constituting 27% of consolidated total assets as of December 31, 1998, and total revenues constituting 40% of consolidated total revenues for the year then ended. Those consolidated financial statements were audited by other auditors whose report has been furnished to us, and our opinion, insofar as it relates to the amounts included for The Coleman Company, Inc. and subsidiaries, is based solely on the report of such other auditors.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit and the report of the other auditors provide a reasonable basis for our opinion.

In our opinion, based on our audit and the report of the other auditors, such consolidated financial statements present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 31, 1998, and the results of their operations and their cash flows for the year then ended in conformity with generally accepted accounting principles. Also, in our opinion, based on our audit and (as to the amounts included for The Coleman Company, Inc. and subsidiaries) the report of other auditors, such financial statement schedule as of and for the year ended December 31, 1998, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

DELOITTE & TOUCHE LLP
Certified Public Accountants
Fort Lauderdale, Florida
April 16, 1999

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REPORT OF INDEPENDENT AUDITORS

Stockholders and Board of Directors
The Coleman Company, Inc.

We have audited the consolidated balance sheets of The Coleman Company, Inc. and subsidiaries as of December 31, 1998 and 1997, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 1998 (not presented separately herein). These financial statements are the responsibility of Sunbeam's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of The Coleman Company, Inc. and subsidiaries at December 31, 1998 and 1997, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 1998, in conformity with generally accepted accounting principles.

/s/ ERNST & YOUNG LLP

Wichita, Kansas
April 15, 1999

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REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Board of Directors and Shareholders of
Sunbeam Corporation:

We have audited the accompanying consolidated balance sheet of Sunbeam Corporation (a Delaware corporation) and subsidiaries as of December 28, 1997 and the related consolidated statements of operations, shareholders' equity and cash flows for each of the two fiscal years in the period ended December 28, 1997. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 28, 1997, and the results of their operations and

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their cash flows for each of the two fiscal years in the period ended December 28, 1997 in conformity with generally accepted accounting principles.

Our audits were made for the purpose of forming an opinion on the basic financial statements taken as a whole. Schedule II for each of the two years in the period ended December 28, 1997 is presented for the purpose of complying with the Securities and Exchange Commission's rules and is not part of the basic financial statements. This Schedule has been subjected to the auditing procedures applied in the audits of the basic financial statements and, in our opinion, fairly states in all material respects the financial data required to be set forth therein in relation to the basic financial statements taken as a whole.

ARTHUR ANDERSEN LLP

Fort Lauderdale, Florida,
October 16, 1998

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(AMOUNTS IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

<TABLE>
<CAPTION>

	FISCAL YE	
	DECEMBER 31, 1998	DECEME 199
	<C>	<C>
Net sales.....	\$1,836,871	\$1,07
Cost of goods sold.....	1,788,819	83
Selling, general and administrative expense.....	718,077	15
Restructuring and asset impairment (benefit) charges.....	--	(1
Operating (loss) earnings.....	(670,025)	10
Interest expense.....	131,091	1
Other (income) expense, net.....	(4,768)	
(Loss) earnings from continuing operations before income taxes, minority interest and extraordinary charge	(796,348)	9
Income taxes (benefit):		
Current.....	8,667	
Deferred.....	(18,797)	3
Minority interest.....	(10,130)	4
(Loss) earnings from continuing operations before extraordinary charge.....	(775,537)	5
Earnings from discontinued operations, net of taxes.....	--	
Loss on sale of discontinued operations, net of taxes.....	--	(1
Extraordinary charge from early extinguishments of debt.....	(122,386)	
Net (loss) earnings.....	\$ (897,923)	\$ 3
(Loss) earnings per share:		
(Loss) earnings from continuing operations before extraordinary		

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charge:			
Basic.....	\$	(7.99)	\$
Diluted.....		(7.99)	
(Loss) from sale of discontinued operations:			
Basic.....	\$	--	\$
Diluted.....		--	
Extraordinary charge:			
Basic.....	\$	(1.26)	\$
Diluted.....		(1.26)	
Net (loss) earnings:			
Basic.....	\$	(9.25)	\$
Diluted.....		(9.25)	
Weighted average common shares outstanding:			
Basic.....		97,121	8
Diluted.....		97,121	8

</TABLE>

See Notes to Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
 CONSOLIDATED BALANCE SHEETS
 (AMOUNTS IN THOUSANDS)

<TABLE>
 <CAPTION>

DECEMBER
 1998

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ASSETS

Current assets:			
Cash and cash equivalents.....	\$	61	
Restricted investments.....		74	
Receivables, net.....		361	
Inventories.....		519	
Prepaid expenses and other current assets.....		74	
Total current assets.....		1,090	
Property, plant and equipment, net.....		455	
Trademarks, tradenames, goodwill and other, net.....		1,859	
		\$3,405	

LIABILITIES AND SHAREHOLDERS' EQUITY

Current liabilities:	
Short-term debt and current portion of long-term debt.....	\$ 119
Accounts payable.....	162
Other current liabilities.....	321
<hr/>	
Total current liabilities.....	602
Long-term debt, less current portion.....	2,142
Other long-term liabilities.....	248
Deferred income taxes.....	100
Minority interest.....	51
Commitments and contingencies (Notes 3 and 15)	
Shareholders' equity:	
Preferred stock (2,000,000 shares authorized, none outstanding).....	
Common stock (100,739,053 and 89,984,425 shares issued).....	1
Additional paid-in capital.....	1,123
(Accumulated deficit) retained earnings.....	(809)
Accumulated other comprehensive loss.....	(54)
<hr/>	
Other shareholders' equity.....	
<hr/>	
	260
Treasury stock, at cost (4,454,394 shares in 1997).....	
<hr/>	
Total shareholders' equity.....	260
	\$3,405
<hr/>	

</TABLE>

See Notes to Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
 CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
 (AMOUNTS IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

<TABLE>
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	COMMON STOCK	ADDITIONAL PAID-IN CAPITAL	(ACCUMULATED DEFICIT) RETAINED EARNINGS	ACCUMULATED OTHER COMPREHENSIVE (LOSS) INCOME	UNEARNED COMPENSATION
<S>	<C>	<C>	<C>	<C>	<C>
Balance at January 1, 1996.....	\$ 878	\$ 441,786	\$ 266,698	\$ (24,483)	\$ (397)
Comprehensive loss:					
Net loss.....	--	--	(208,481)	--	--
Minimum pension liability (net of tax of \$2,672).....	--	--	--	4,963	--
Translation adjustments.....	--	--	--	1,246	--
<hr/>					
Comprehensive loss.....					
Common dividends (\$0.04 per share).....	--	--	(3,318)	--	--
Exercise of stock options.....	6	7,313	--	--	--
Grant of restricted stock.....	--	(1,120)	--	--	(14,346)
Amortization of unearned compensation.....	--	--	--	--	7,707
<hr/>					

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Retirement and sale of treasury shares.....	--	(31)	--	--	--
Balance at December 29, 1996....	884	447,948	54,899	(18,274)	(7,036)
Comprehensive income:					
Net earnings.....	--	--	38,301	--	--
Minimum pension liability.....	--	--	--	(14,050)	--
Translation adjustments.....	--	--	--	(739)	--
Comprehensive income.....					
Common dividends (\$0.04 per share).....	--	--	(3,399)	--	--
Exercise of stock options.....	16	30,496	--	--	--
Amortization of unearned compensation.....	--	--	--	--	5,322
Other stock issuances.....	--	756	--	--	--
Balance at December 28, 1997....	900	479,200	89,801	(33,063)	(1,714)
Comprehensive loss:					
Net loss.....	--	--	(897,923)	--	--
Minimum pension liability.....	--	--	--	(21,795)	--
Translation adjustments.....	--	--	--	828	--
Comprehensive loss.....					
Common dividends (\$0.02 per share).....	--	--	(1,875)	--	--
Exercise of stock options.....	9	18,383	--	--	--
Grant of restricted stock.....	4	18,880	--	--	(32,500)
Cancellation of restricted stock.....	(1)	(5,228)	--	--	10,182
Amortization of unearned compensation.....	--	--	--	--	24,032
Acquisition of Coleman.....	95	541,428	--	--	--
Warrants issued.....	--	70,000	--	--	--
Other stock issuances.....	--	794	--	--	--
Balance at December 31, 1998....	\$1,007	\$1,123,457	\$ (809,997)	\$ (54,030)	\$ --

</TABLE>

See Notes to Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
 CONSOLIDATED STATEMENTS OF CASH FLOWS
 (AMOUNTS IN THOUSANDS)

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<TABLE>
 <CAPTION>

	FISCAL YEAR	
	DECEMBER 31, 1998	DECEMBER 31, 1997
<S>	<C>	<C>
OPERATING ACTIVITIES:		
Net (loss) earnings.....	\$ (897,923)	\$ 3
Adjustments to reconcile net (loss) earnings to net cash (used in) provided by operating activities:		
Depreciation and amortization.....	107,865	3

Non-cash interest charges.....	32,531	
Restructuring and asset impairment (benefit) charges.....	--	(1)
Other non-cash special charges.....	--	
Loss on sale of discontinued operations, net of taxes.....	--	1
Deferred income taxes.....	(18,797)	3
Minority interest.....	(10,681)	
Loss on sale of property, plant and equipment.....	3,260	
Provision for fixed assets.....	39,404	
Provision for excess and obsolete inventory.....	95,830	
Goodwill impairment.....	62,490	
Issuance of warrants.....	70,000	
Non-cash compensation charge.....	13,118	
Extraordinary charge from early extinguishments of debt.....	122,386	
Changes in operating assets and liabilities, exclusive of impact of divestitures and acquisitions:		
Receivables, net.....	147,045	
Inventories.....	37,112	(14)
Accounts payable.....	(68,187)	
Restructuring accrual.....	(3,894)	(3)
Prepaid expenses and other current assets and liabilities.....	50,622	(1)
Income taxes payable.....	15,758	5
Change in other long-term and non-operating liabilities.....	13,994	(
Other, net.....	(2,347)	1
Net cash (used in) provided by operating activities.....	(190,414)	(
INVESTING ACTIVITIES:		
Capital expenditures.....	(53,686)	(6
Proceeds from sale of divested operations and other assets.....	9,575	5
Purchases of businesses, net of cash acquired.....	(522,412)	
Other, net.....	(139)	
Net cash (used in) provided by investing activities.....	(566,662)	3
FINANCING ACTIVITIES:		
Issuance of convertible senior subordinated debentures, net of financing fees.....	729,622	
Net borrowings under revolving credit facility.....	1,205,675	
Issuance of long-term debt.....	--	
Payments of debt obligations, including prepayment penalties.....	(1,186,796)	(1
Proceeds from exercise of stock options.....	19,553	2
Sale of treasury stock.....	--	
Payments of dividends on common stock.....	(1,875)	(
Other, net.....	31	
Net cash provided by financing activities.....	766,210	1
Net increase (decrease) in cash and cash equivalents.....	9,134	4
Cash and cash equivalents at beginning of year.....	52,298	1
Cash and cash equivalents at end of year.....	\$ 61,432	\$ 5

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See Notes to Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES

Organization

Sunbeam Corporation ("Sunbeam" or the "Company") is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacturing, marketing and distribution of durable household and outdoor leisure consumer products through mass market and other distribution channels in the United States and internationally. The Company also sells its products to professional and commercial end users such as small businesses, health care providers, hotels and other institutions. The Company's principal products include household kitchen appliances; health monitoring and care products for home use; scales for consumer and professional use for weight management and business uses; electric blankets and throws; clippers and trimmers for consumer, professional and animal uses; smoke and carbon monoxide detectors; outdoor barbecue grills; camping equipment such as tents, lanterns, sleeping bags and stoves; coolers; backpacks and book bags; and portable generators and compressors.

In 1998 the Company acquired an indirect controlling interest in The Coleman Company, Inc. ("Coleman") and all the outstanding common stock of Signature Brands USA, Inc. ("Signature Brands") and First Alert, Inc. ("First Alert").

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and all majority-owned subsidiaries that it controls. All material intercompany balances and transactions have been eliminated.

Presentation of Fiscal Periods

To standardize the fiscal period ends of the Company and its acquired entities, effective with its 1998 fiscal year, the Company has changed its fiscal year end from the Sunday nearest December 31 to a calendar year. The impact of this change in fiscal period on net sales for 1998 was to increase sales by approximately \$5.5 million, and the impact on operating results for the period was to increase the net loss by approximately \$1.5 million.

Fiscal years 1997 and 1996 ended on December 28, 1997 and December 29, 1996, respectively, which encompassed 52-week periods.

Use of Estimates

The preparation of the consolidated financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates. Significant accounting estimates include the establishment of the allowance for doubtful accounts, tax valuation allowances, reserves for sales returns and allowances, product warranty, product liability, excess and obsolete inventory, litigation and environmental exposures.

Cash and Cash Equivalents

The Company considers highly liquid investments purchased with an original maturity of three months or less to be cash equivalents.

Concentrations of Credit Risk

Substantially all of the Company's trade receivables are due from retailers

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and distributors located throughout the United States, Europe, Latin America, Canada, and Japan. Approximately 38% of the Company's sales in 1998 were to its five largest customers. The Company establishes its credit policies based on an ongoing evaluation of its customers' creditworthiness and competitive market conditions and establishes its allowance for

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

1. OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES--(CONTINUED)

doubtful accounts based on an assessment of exposures to credit losses at each balance sheet date. The Company believes its allowance for doubtful accounts is sufficient based on the credit exposures outstanding at December 31, 1998. However, certain retailers filed for bankruptcy protection in the last several years and it is possible that additional credit losses could be incurred if other retailers seek bankruptcy protection or if the trends of retail consolidation continue.

Inventories

Inventories are stated at the lower-of-cost-or-market with cost being determined principally by the first-in, first-out method.

In certain instances, the Company receives rebates from vendors based on the volume of merchandise purchased. Vendor rebates are recorded as reductions in the price of the purchased merchandise and are recognized in operations as the related inventories are sold.

Effective in fiscal 1997, as a consequence of the initial outsourcing of the supplies inventories management function, the Company began capitalizing the cost of manufacturing supplies, whereas previously the cost of these supplies was charged to operations when purchased. This change, which management believes is preferable in that it provides for a more appropriate matching of revenues and expenses, increased pre-tax operating earnings in fiscal 1997 by \$2.8 million. Additional disclosures pursuant to Accounting Principles Board ("APB") Opinion No. 20, Accounting Changes, are not provided since supplies inventories were not monitored for financial reporting purposes prior to the initial outsourcing of the inventory management function and, consequently, the information is not available.

Property, Plant and Equipment

Property, plant and equipment are stated at cost. The Company provides for depreciation using primarily the straight-line method in amounts that allocate the cost of property, plant and equipment over the following useful lives:

<TABLE>

<S>

Buildings and improvements.....	5 to 45 years
Machinery, equipment and tooling.....	3 to 15 years
Furniture and fixtures.....	3 to 10 years

</TABLE>

Leasehold improvements are amortized on a straight-line basis over the shorter of its estimated useful life or the term of the lease.

Long-lived Assets

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The Company accounts for long-lived assets pursuant to Statement of Financial Accounting Standards ("SFAS") No. 121, Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of. The Company periodically evaluates factors, events and circumstances which include, but are not limited to, the historical and projected operating performance of the business operations, specific industry trends and general economic conditions to assess whether the remaining estimated useful lives of long-lived assets may warrant revision or whether the remaining asset values are recoverable through future operations. When such factors, events or circumstances indicate that long-lived assets should be evaluated for possible impairment, the Company uses an estimate of cash flows (undiscounted and without interest charges) over the remaining lives of the assets to measure recoverability. If the estimated cash flows are less than the carrying value of the asset, the loss is measured as the amount by which the carrying value of the asset exceeds fair value.

With respect to enterprise level goodwill, the Company reviews impairment when changes in circumstances, similar to those described above for long-lived assets, indicate that the carrying value may not be recoverable. Under these circumstances, the Company estimates future cash flows using the recoverability method

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

1. OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES--(CONTINUED)

(undiscounted and including related interest charges), as a basis for recording any impairment loss. An impairment loss is then recorded to adjust the carrying value of goodwill to the recoverable amount. The impairment loss taken is no greater than the amount by which the carrying value of the net assets of the business exceeds its fair value.

Derivative Financial Instruments

The Company enters into interest rate swap agreements and foreign exchange rate contracts as part of the management of its interest rate and foreign currency exchange rate exposures. The Company has no derivative financial instruments held for trading purposes and none of the instruments is leveraged. All financial instruments are put into place to hedge specific exposures. To qualify as a hedge, the item to be hedged must expose the Company to price, interest rate or foreign currency exchange rate risk and the hedging instrument must reduce that exposure. Any contracts held or issued that do not meet the requirements of a hedge are recorded at fair value in the Consolidated Balance Sheets and any changes in that fair value recognized in operations.

Interest rate swap agreements--Interest rate differentials to be paid or received as a result of interest rate swap agreements are accrued and recognized as an adjustment of interest expense related to the designated debt. Amounts receivable or payable under the agreements are included in receivables or other current liabilities in the Consolidated Balance Sheets. The fair value of the swap agreements and changes in the fair value as a result of changes in market interest rates are not recognized in the financial statements. Related premiums are amortized to interest expense ratably during the life of the swap agreement.

Gains and losses on termination of interest rate swap agreements are deferred and amortized as an adjustment to interest expense over the original period of interest exposure, provided the designated liability continues to exist. Realized and unrealized changes in the fair value of interest rate swaps designated with liabilities that no longer exist are recorded as a component of

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the gain or loss arising from the disposition of the designated liability.

Foreign currency options and forward contracts--Foreign currency contracts designated and effective as hedges are marked to market with realized and unrealized gains and losses deferred and recognized in operations when the designated transaction occurs. Foreign currency contracts not designated as hedges, failing to be hedges or failing to continue as effective hedges are included in operations as foreign exchange gains or losses.

Discounts or premiums on forward contracts designated and effective as hedges are accreted or amortized to expense using the straight-line method over the term of the related contract. Discounts or premiums on forward contracts not designated or effective as hedges are included in the mark to market adjustment and recognized in income as foreign exchange gains or losses. Initial premiums paid for purchased option contracts are amortized over the related option period.

Capitalized Interest

Interest costs for the construction of certain long-term assets are capitalized and amortized over the related assets' estimated useful lives. Total interest costs during 1998, 1997 and 1996 amounted to \$131.9 million, \$12.3 million and \$14.0 million, respectively, of which \$0.8 million, \$0.9 million and \$0.4 million, respectively, was capitalized as a cost of the related long-term assets.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

1. OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES--(CONTINUED)

Deferred Financing Costs

Costs incurred in connection with obtaining financing are deferred and amortized as a charge to interest expense over the terms of the related borrowings using the interest method.

Amortization Periods

Trademarks, tradenames and goodwill are being amortized on a straight-line basis over 20 to 40 years.

Revenue Recognition

The Company recognizes sales and related cost of goods sold from product sales at the latter of the time of shipment or when title passes to the customers. In some situations, the Company has shipped product with the right of return where the Company is unable to reasonably estimate the level of returns and/or the sale is contingent upon the resale of the product. In these situations, the Company does not recognize revenue upon product shipment, but rather when the buyer of the product informs the Company that the product has been sold. Net sales is comprised of gross sales less provisions for estimated customer returns, discounts, promotional allowances, cooperative advertising allowances and costs incurred by the Company to ship product to customers. Reserves for estimated returns are established by the Company concurrently with the recognition of revenue. Reserves are established based on a variety of factors, including historical return rates, estimates of customer inventory levels, the market for the product and projected economic conditions. The Company monitors these reserves and makes adjustments to them when management

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believes that actual returns or costs to be incurred differ from amounts recorded.

Warranty Costs

The Company provides for warranty costs in amounts it estimates will be needed to cover future warranty obligations for products sold during the year. Estimates of warranty costs are periodically reviewed and adjusted, when necessary, to consider actual experience.

Product Liability

The Company provides for product liability costs it estimates will be needed to cover future product liability costs for product sold during the year. Estimates of product liability costs are periodically reviewed and adjusted, when necessary, to consider actual experience, and other relevant factors.

Legal Costs

The Company records charges for the costs it anticipates incurring in connection with litigation and claims against the Company when management can reasonably estimate these costs.

Income Taxes

The Company accounts for income taxes under the liability method in accordance with SFAS No. 109, Accounting for Income Taxes. The provision for income taxes includes deferred income taxes resulting from items reported in different periods for income tax and financial statement purposes. Deferred tax assets and liabilities represent the expected future tax consequences of the differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. The effects of changes in tax rates on deferred tax assets and liabilities are recognized in the period that includes the enactment date.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

1. OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES--(CONTINUED)

Advertising Costs

Media advertising costs included in Selling, General and Administrative Expense ("SG&A") are expensed as incurred. Allowances provided to customers for cooperative advertising are charged to operations, as earned, based on revenues and are included as a deduction from gross sales in determining net sales. The amounts charged to operations for media and cooperative advertising during 1998, 1997 and 1996 were \$124.5 million, \$55.7 million and \$78.7 million, respectively.

Research and Development

Research and development expenditures are expensed in the period incurred. The amounts charged against operations during 1998, 1997 and 1996 were \$18.7 million, \$5.7 million and \$6.5 million, respectively.

Foreign Currency Translation

The assets and liabilities of subsidiaries, other than those operating in

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highly inflationary economies, are translated into U.S. dollars with resulting translation gains and losses accumulated in a separate component of shareholders' equity. Income and expense items are converted into U.S. dollars at average rates of exchange prevailing during the year.

For subsidiaries operating in highly inflationary economies (Venezuela and Mexico), inventories and property, plant and equipment are translated at the rate of exchange on the date the assets were acquired, while other assets and liabilities are translated at year-end exchange rates. Translation adjustments for those operations are included in Other (Income) Expense, Net in the accompanying Consolidated Statements of Operations. Effective January 1, 1999, Mexico will no longer be considered highly inflationary.

Stock-Based Compensation Plans

SFAS No. 123, Accounting for Stock-Based Compensation allows either adoption of a fair value method for accounting for stock-based compensation plans or continuation of accounting under APB Opinion No. 25, Accounting for Stock Issued to Employees, and related interpretations with supplemental disclosures.

The Company has chosen to account for its stock options using the intrinsic value based method prescribed in APB Opinion No. 25 and, accordingly, does not recognize compensation expense for stock option grants made at an exercise price equal to or in excess of the fair market value of the stock at the date of grant. Pro forma net income and earnings per share amounts as if the fair value method had been adopted are presented in Note 9. SFAS No. 123 does not impact the Company's results of operations, financial position or cash flows.

Basic and Diluted (Loss) Earnings Per Share of Common Stock

Basic (loss) earnings per common share calculations are determined by dividing (loss) earnings available to common shareholders by the weighted average number of shares of common stock outstanding. Diluted (loss) earnings per share are determined by dividing (loss) earnings available to common shareholders by the weighted average number of shares of common stock and dilutive common stock equivalents outstanding (all related to outstanding stock options, restricted stock, warrants and the Zero Coupon Convertible Senior Subordinated Debentures).

For the years ended December 31, 1998 and December 29, 1996, respectively, 1,902,177 and 1,552,684 shares related to stock options, were not included in diluted average common shares outstanding because their effect would be antidilutive. Diluted average common shares outstanding as of December 29, 1996 also excluded (78,654) shares related to restricted stock. Diluted average common shares outstanding as of December 31, 1998 also excluded 13,242,050 shares related to the conversion feature of the Zero Coupon Convertible Senior Subordinated Debentures (see Note 3) and 23,000,000 shares issuable on the exercise of warrants, due to

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

1. OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES--(CONTINUED)

antidilution. For the year ended December 28, 1997, the dilutive effect of 2,718,649 equivalent shares related to stock options and (120,923) equivalent shares of restricted stock were used in determining the dilutive average shares outstanding.

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New Accounting Standards

In March 1998, the American Institute of Certified Public Accountants ("AICPA") issued Statement of Position 98-1, Accounting for the Costs of Computer Software Developed or Obtained for Internal Use ("SOP 98-1"). SOP 98-1 requires computer software costs associated with internal use software to be expensed as incurred until certain capitalization criteria are met. The Company will adopt SOP 98-1 on January 1, 1999. Adoption of this statement is not expected to have a material impact on the Company's consolidated financial position, results of operations, or cash flows. Actual charges incurred due to systems projects may be material.

In April 1998, the AICPA issued Statement of Position 98-5, Reporting on the Cost of Start-Up Activities ("SOP 98-5"). SOP 98-5 requires all costs associated with pre-opening, pre-operating and organization activities to be expensed as incurred. The Company will adopt SOP 98-5 beginning January 1, 1999. Adoption of this statement is not expected to have a material impact on the Company's consolidated financial position, results of operations, or cash flows.

In June 1998, the FASB issued SFAS No. 133, Accounting for Derivative Instruments and Hedging Activities, which is effective for fiscal years beginning after June 15, 1999. SFAS No. 133 requires the recognition of all derivatives in the Consolidated Balance Sheets as either assets or liabilities measured at fair value. The Company will adopt SFAS No. 133 for the 2000 fiscal year. The Company has not yet determined the impact SFAS No. 133 will have on its consolidated financial position, results of operations or cash flows.

Reclassification

Certain prior year amounts have been reclassified to conform with the 1998 presentation.

2. ACQUISITIONS

On March 30, 1998, the Company, through a wholly-owned subsidiary, acquired approximately 81% of the total number of then outstanding shares of common stock of Coleman from an affiliate of MacAndrews & Forbes Holdings, Inc. ("M&F"), in exchange for 14,099,749 shares of the Company's common stock and approximately \$160 million in cash. In addition, the Company assumed approximately \$1,016 million in debt. The value of the common stock issued at the date of acquisition was derived by using the average closing stock price as reported on the New York Stock Exchange Composite Tape for the day before and day of the public announcement of the acquisition. Immediately thereafter, as a result of the exercise of employee stock options, Sunbeam's indirect beneficial ownership of Coleman decreased to approximately 79% of the total number of the outstanding shares of Coleman common stock.

On August 12, 1998, the Company announced that, following investigation and negotiation conducted by a Special Committee of the Board consisting of four outside directors not affiliated with M&F, the Company had entered into a settlement agreement with an affiliate of M&F pursuant to which the Company was released from certain threatened claims of M&F and its affiliates arising from the Coleman acquisition and M&F agreed to provide certain management personnel and assistance to the Company in exchange for the issuance to the M&F affiliate of a five year warrant to purchase up to 23 million shares of the Company's common stock at a cash exercise price of \$7.00 per share, subject to antidilution adjustments. The Company concluded that the agreement to issue this warrant did not result in a new measurement date for the purposes of determining the purchase price for Coleman and has accounted for the issuance of this warrant as a cost of settling a potential claim. Accordingly, a \$70.0 million non-cash SG&A expense was recorded in the third quarter of 1998, based on a

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS-- (CONTINUED)

2. ACQUISITIONS-- (CONTINUED)

valuation performed as of August 1998 using facts existing at that time. The valuation was conducted by an independent consultant engaged by the Special Committee of the board of directors.

The Company expects to acquire the remaining equity interest in Coleman pursuant to a merger transaction in which the existing Coleman minority shareholders will receive 0.5677 shares of the Company's common stock and \$6.44 in cash for each share of Coleman common stock outstanding. In addition, unexercised options under Coleman's stock option plans will be cashed out at a price per share equal to the difference between \$27.50 and the exercise price of such options. The Company expects to issue approximately 6.7 million shares of common stock and expend approximately \$87 million in cash to complete the Coleman acquisition. Although there can be no assurance, it is anticipated the Coleman merger will occur in the second half of 1999. The acquisition of the remaining outstanding shares of Coleman common stock will be accounted for under the purchase method of accounting on the date of consummation of the Coleman merger. (Also see Note 15 for information regarding the proposed issuance of warrants related to this transaction.)

On April 6, 1998, the Company completed the acquisitions of First Alert, valued at approximately \$182 million (including \$133 million of cash and \$49 million of assumed debt) and Signature Brands valued at \$255 million, (reflecting cash paid, including the required retirement or defeasance of debt).

All of these acquisitions were accounted for by the purchase method of accounting. Accordingly, the results of operations of the acquired entities are included in the accompanying Consolidated Statements of Operations from their respective dates of acquisition.

In each acquisition, the purchase price paid has been allocated to the fair value (determined by independent appraisals) of tangible and identified intangible assets acquired and liabilities assumed as follows (in millions):

<TABLE>
<CAPTION>

	COLEMAN	SIGNATURE BRANDS	FIF ALE
<S>	<C>	<C>	<C>
Value of common stock issued.....	\$ 607	\$ --	\$-
Cash paid including expenses and mandatory redemption of debt, net of cash acquired.....	160	255	13
Cash received from sale of Coleman Spas, Inc.....	(17)	--	-
Cash received from stock option proceeds.....	(9)	--	-
Net cash paid and equity issued.....	741	255	13
Fair value of total liabilities assumed, including debt.....	1,455	83	10
Fair value of assets acquired.....	2,196	338	23
Excess of purchase price over fair value of net assets acquired.....	\$1,083	\$ 147	\$6

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</TABLE>

The excess of purchase price over the fair value of net assets acquired has been classified as goodwill. Goodwill related to the Coleman and Signature Brands acquisitions is being amortized on a straight-line basis over 40 years. During the fourth quarter of 1998, as a result of the significant loss incurred by First Alert, as well as its future prospects, the Company determined that the goodwill relating to this acquisition was impaired and, based on the determination of fair value, has written-off the net carrying value of goodwill approximating \$62.5 million. This one-time charge is reflected in SG&A expense in the Consolidated Statements of Operations.

As of the date of the acquisition of Coleman, management of the Company determined approximately 117 employees of Coleman would need to be involuntarily terminated in order to eliminate duplicate activities and functions and fully integrate Coleman into Sunbeam's operations. The Company recognized a liability of approximately \$8 million representing severance and benefit costs related to 117 employees pursuant to the termination plan. This liability was included in the allocation of purchase price. As of December 31, 1998, the

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

2. ACQUISITIONS--(CONTINUED)

Company had paid severance benefits of approximately \$5 million and 8 employees remained to be terminated. Remaining termination costs are expected to be paid by December 31, 2000 and no additional charges are anticipated in future periods related to this issue.

The following unaudited pro forma financial information for the Company gives effect to the Coleman and Signature Brands acquisitions as if they had occurred at the beginning of the periods presented. No pro forma adjustments have been made for the First Alert acquisition as its effects are not significant. These pro forma results have been prepared for informational purposes only and do not purport to be indicative of the results of operations which actually would have occurred had the acquisitions been consummated on the dates indicated, or which may result in the future. The unaudited pro forma results follow (in millions, except per share data):

<TABLE>
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	FISCAL YEARS ENDED	
	DECEMBER 31, 1998	DECEMBER 28 1997
<S>	<C>	<C>
Net sales.....	\$2,098.7	\$2,408.9
Net loss from continuing operations before extraordinary charge.....	(801.1)	(23.6)
Basic and diluted loss per share from continuing operations before extraordinary charge.....	(7.96)	(0.24)

</TABLE>

3. DEBT

Debt at the end of each fiscal year consists of the following (in thousands):

<TABLE>
<CAPTION>

	1998	1997
	-----	-----
<S>	<C>	<C>
Term loans, due in installments through 2006, average interest rate of 8.47% for 1998.....	\$1,262,500	\$ --
Revolving credit facility, average interest rate of 8.55% for 1998 and 5.99% for 1997.....	94,000	110,000
Zero coupon convertible senior subordinated debentures, net of unamortized discount of \$1,234,845, due 2018.....	779,155	--
Senior subordinated notes, bearing interest at 13.0%, payable semiannually, due August 1999.....	70,000	--
Hattiesburg industrial revenue bond due 2009, fixed interest rate of 7.85%.....	--	75,000
Other lines of credit, including foreign facilities.....	45,803	--
Other long-term borrowings, due through 2012, weighted average interest rate of 3.89% and 3.92%, at December 31, 1998 and December 28, 1997, respectively.....	10,007	10,248
	-----	-----
	2,261,465	195,248
Less short-term debt and current portion of long-term debt.....	119,103	668
	-----	-----
Long-term debt.....	\$2,142,362	\$194,580
	-----	-----

</TABLE>

Concurrent with the acquisitions, the Company replaced its \$250 million syndicated unsecured five-year revolving credit facility with a revolving and term credit facility (the "New Credit Facility"). The New Credit Facility provided for aggregate borrowings of up to \$1.7 billion and in addition to other customary covenants, required Sunbeam to maintain specified consolidated leverage, interest coverage and fixed charge coverage ratios as of the end of each fiscal quarter occurring after March 31, 1998 and on or prior to the latest stated maturity date for any of the borrowings under the New Credit Facility.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

3. DEBT--(CONTINUED)

As a result of, among other things, its operating losses incurred during the first half of 1998, Sunbeam did not achieve the specified financial ratios for June 30, 1998 and it appeared unlikely that Sunbeam would achieve the specified financial ratios for September 30, 1998. Consequently, Sunbeam and its lenders entered into an agreement dated as of June 30, 1998 that waived through December 31, 1998 all defaults arising from the failure of Sunbeam to satisfy the specified financial ratios for June 30, 1998 and September 30, 1998. Pursuant to an agreement with Sunbeam dated as of October 19, 1998, Sunbeam's lenders extended all of the waivers under the June 30, 1998 agreement through April 10, 1999 and also waived through such date all defaults arising from any failure by Sunbeam to satisfy the specified financial ratios for December 31, 1998. As part of the October 19, 1998 agreement, Sunbeam agreed to a minimum monthly earnings before interest, taxes, depreciation and amortization ("EBITDA") covenant for each of February, March and April of 1999, which covenant Sunbeam was able to satisfy.

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On April 10, 1999, among other things, the lenders extended all of the waivers set forth in the October 19, 1998 agreement through April 15, 1999. On April 15, 1999, Sunbeam and its lenders entered into a comprehensive amendment to the New Credit Facility that, among other things, extended all of the waivers under the April 10, 1999 agreement until April 10, 2000 and waived until such date all defaults arising from any failure by Sunbeam to satisfy the specified financial ratios for any fiscal quarter end occurring during 1999 and for March 31, 2000. As part of the April 15, 1999 amendment, Sunbeam agreed to a minimum cumulative EBITDA covenant that is based on post-December 31, 1998 consolidated EBITDA and is tested at the end of each month occurring on or prior to March 31, 2000, as well as a covenant limiting the amount of revolving loans (other than those used to fund the Coleman merger) that may be outstanding under the New Credit Facility as of the end of each such month. The minimum cumulative EBITDA was initially \$6.3 million for the period January 1, 1999 through April 30, 1999 and generally grows on a monthly basis until it reaches \$121 million for the period from January 1, 1999 through March 31, 2000. The following description of the New Credit Facility reflects the terms of the New Credit Facility as amended.

The New Credit Facility provides for aggregate borrowings of up to \$1.7 billion pursuant to: (i) a revolving credit facility in an aggregate principal amount of up to \$400 million maturing March 30, 2005 (\$52.5 million of which may only be used to complete the Coleman merger); (ii) up to \$800 million in term loans maturing on March 30, 2005 (of which \$35.0 million may only be used to complete the Coleman merger) and (iii) a \$500 million term loan maturing September 30, 2006 (of which \$5.0 million has already been repaid through March 31, 1999). As of December 31, 1998, \$1.4 billion was outstanding and \$0.3 billion was available for borrowing under the New Credit Facility.

Pursuant to the New Credit Facility, interest accrues, at the Company's option: (i) at the London Interbank Offered Rate ("LIBOR"), or (ii) at the base rate of the administrative agent which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%, in each case plus an interest margin which is currently 3.75% for LIBOR borrowings and 2.50% for base rate borrowings. The applicable interest margin is subject to upward or downward adjustment upon the occurrence of certain events. Borrowings under the New Credit Facility are secured by a pledge of the stock of the Company's material subsidiaries, including Coleman, and by a security interest in substantially all of the assets of Sunbeam and its material domestic subsidiaries, other than Coleman and its material subsidiaries except as described below. Currently, Coleman's inventory and related assets are pledged to secure its obligations for letters of credit issued for its account under the New Credit Facility. Additionally, as security for Coleman's note payable to the Company, Coleman pledged substantially all of its domestic assets, other than real property, including 66% of the stock of its direct foreign subsidiaries and domestic holding companies for its foreign subsidiaries, and all of the stock of its other direct domestic subsidiaries (but not the assets of Coleman's subsidiaries). The pledge runs in favor of Sunbeam's lending banks, to which the Coleman note has been pledged as security for Sunbeam's obligations to them. Upon completion of the Coleman merger, substantially all of Coleman's assets and the assets of Coleman's domestic subsidiaries will be pledged to secure the obligations under the New Credit Facility. In

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

3. DEBT--(CONTINUED)

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addition, borrowings under the New Credit Facility are guaranteed by a number of the Company's wholly owned material domestic subsidiaries and these subsidiary guarantees are secured as described above. Upon completion of the Coleman merger, Coleman and each of its United States subsidiaries will become guarantors of the obligations under the New Credit Facility. To the extent extensions of credit are made to any subsidiaries of the Company, the obligations of such subsidiaries are guaranteed by the Company.

In addition to the above described ratios and tests, the New Credit Facility contains covenants customary for credit facilities of a similar nature, including limitations on the ability of Sunbeam and its subsidiaries, including Coleman, to, among other things, (i) declare dividends or repurchase stock, (ii) prepay, redeem or repurchase debt, incur liens and engage in sale-leaseback transactions, (iii) make loans and investments, (iv) incur additional debt, including revolving loans under the New Credit Facility, (v) amend or otherwise alter material agreements or enter into restrictive agreements, (vi) make capital and year 2000 compliance expenditures, (vii) engage in mergers, acquisitions and asset sales, (viii) engage in certain transactions with affiliates, (ix) settle certain litigation, (x) alter its cash management system and (xi) alter the businesses they conduct. Sunbeam is also required to comply with specified financial covenants and ratios. The New Credit Facility provides for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, material adverse change arising from compliance with ERISA, material adverse judgments, entering into guarantees and change of ownership and control. It is also an event of default under the New Credit Facility if Sunbeam's registration statement in connection with the Coleman merger is not declared effective by the Securities and Exchange Commission ("SEC") on or before October 30, 1999 or if the merger does not occur within 25 business days of the effectiveness of the registration statement or if the cash consideration (including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses) to consummate the Coleman merger exceeds \$87.5 million. Although there can be no assurance, the Company anticipates that it will satisfy these conditions. Unless waived by the bank lenders, the failure of Sunbeam to satisfy any of the financial ratios and tests contained in the New Credit Facility or the occurrence of any other event of default under the New Credit Facility would entitle the bank lenders to (a) receive a 2.00% increase in the interest rate applicable to outstanding loans and increase the trade letter of credit fees to 1.00% and (b) accelerate the maturity of the outstanding borrowings under the New Credit Facility and exercise all or any of their other rights and remedies. Any such acceleration or other exercise of rights and remedies would likely have a material adverse effect on Sunbeam. The New Credit Facility also includes provisions for the deferral of the 1999 scheduled term loan payments of \$69.3 million, subject to delivery of certain collateral documents and the filing of an amendment to the Company's registration statement on Form S-4 relating to the Coleman merger. If these conditions are met, and there are no events of default, the scheduled loan payments will be extended until April 10, 2000. The Company anticipates that it will satisfy these conditions and, accordingly, has classified these amounts as long-term in the Consolidated Balance Sheet.

In March 1998, the Company completed an offering of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures") at a yield to maturity of 5.0% (approximately \$2,014 million principal amount at maturity) which resulted in approximately \$730 million of net proceeds. The Debentures are exchangeable for shares of the Company's common stock at an initial conversion rate of 6.575 shares for each \$1,000 principal amount at maturity of the Debentures, subject to adjustment upon occurrence of certain events. The Debentures are subordinated in right of payment to all existing and future senior indebtedness of the Company. The Debentures are not redeemable by the Company prior to March 25, 2003. On or after such date, the Debentures are redeemable for cash with at least 30 days notice, at the option of the Company. The Company is required to purchase Debentures at the option of the holder as of March 25, 2003, March 25, 2008 and March 25, 2013, at purchase prices equal to

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the issue price plus accrued original discount to such dates. The Company may, at its option, elect to pay any such purchase price in cash or common stock, or any combination thereof. The Company was required to file a registration statement with the SEC to register the Debentures by June 23, 1998. This registration statement was filed February 4, 1999 and the SEC has not declared the registration statement effective. Sunbeam's failure to file the registration statement by June 23, 1998 did not constitute a default under

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

3. DEBT--(CONTINUED)

the terms of the Debentures. As part of the normal review process by the SEC, a number of comments have been made by the staff of the division of Corporation Finance relating to the registration statement and the restated 1996 and 1997 financial statements included therein. The Company expects to resolve these comments when it files an amendment to the registration statement. From June 23, 1998 until the registration statement is declared effective, the Company is required to pay to the Debenture holders cash liquidated damages accruing, for each day during such period, at a rate per annum equal to 0.25% during the first 90 days and 0.50% thereafter multiplied by the total of the issue price of the Debentures plus the original issue discount thereon on such day. The Company made its first payment of approximately \$0.5 million to the Debenture holders on September 25, 1998. As of December 31, 1998 the Company had accrued additional payments totaling \$1.0 million. The Company made a payment to Debenture holders in March 1999 of approximately \$2.0 million. This amount included liquidated damages that accrued during the first quarter of 1999.

In connection with the acquisition of Signature Brands, the Company was required to defease \$70.0 million of acquired debt. Cash was placed with a trustee to provide for the defeasance, including the related prepayment penalty. This cash was used to purchase Treasury Notes. Accordingly, \$74.4 million of restricted investments held by the trustee for the August 1999 liquidation of this acquired debt are reflected as an asset and \$70.0 million is reflected as short-term debt in the Consolidated Balance Sheet at December 31, 1998. The prepayment penalty is reflected as part of the acquisition price of Signature Brands.

In March 1998, the Company prepaid the \$75.0 million 7.85% industrial revenue bond related to its Hattiesburg facility originally due in 2009. In connection with the early extinguishment of this debt, the Company recognized an extraordinary charge of \$7.5 million. As a result of repayment of certain indebtedness assumed in the Coleman acquisition, the Company also recognized an extraordinary charge of \$114.9 million. The debt assumed in connection with the Coleman acquisition was repaid as a result of the requirements under the terms of the New Credit Facility Credit Agreement. These extraordinary charges consisted of redemption premiums (\$106.9 million), unamortized debt discount (\$13.8 million) and unamortized deferred financing costs (\$1.7 million).

During 1997, the Company repaid \$12.2 million of long-term borrowings related to the divested furniture operations and other assets sold.

At December 31, 1998, the aggregate annual maturities on short-term and long-term debt in each of the years 1999-2003, and thereafter, were \$119 million, \$1,355 million, \$1 million, \$1 million, \$1 million, and \$5 million, respectively. In addition, the fully accreted Debenture amount of \$2,014 million matures in 2018. The total of annual debt maturities for all years presented does not agree to the balance of debt outstanding at December 31, 1998 as a

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result of the accretion of discount on the Debentures. The outstanding balances relating to the New Credit Facility are included in the maturity schedule in 2000, consistent with the expiration of the covenant waiver. Sunbeam has made no decision with respect to the repayment or refinancing of indebtedness incurred or to be incurred under the New Credit Facility and may repay such indebtedness out of its internally generated funds or from proceeds of a subsequent financing. Any decisions with respect to such repayment or refinancing will be made based on a review from time to time of the advisability of particular transactions, as well as on prevailing interest rates and financial and economic conditions.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

4. FINANCIAL INSTRUMENTS

Fair Value of Financial Instruments

The fair value of the Company's financial instruments as of December 31, 1998 and December 28, 1997 was estimated based upon the following methods and assumptions:

Cash and Cash Equivalents--The carrying amount of cash and cash equivalents is assumed to approximate fair value as cash equivalents include all highly liquid, short-term investments with original maturities of three months or less.

Short and Long Term Debt--The fair value of the Company's fixed rate debt is estimated using either reported transaction values or discounted cash flow analysis. The fair value of the Company's fixed rate debt was \$319 million as of December 31, 1998 as compared to the carrying value of \$859 million. The carrying value of the Company's variable rate debt is assumed to approximate market based upon periodic adjustments of the interest rate to the current market rate in accordance with the terms of the debt agreements. The carrying value of the Company's various debt outstanding as of December 28, 1997 approximated market.

Letters of Credit and Surety Bonds--The Company utilizes stand-by letters of credit to back certain financing instruments and insurance policies and commercial letters of credit guaranteeing various international trade activities. In addition, the Company also entered into surety bonds largely as a result of litigation judgements that are currently under appeal. The contract amounts of the letters of credit and surety bonds approximate their fair values. The contract value of letters of credit were \$82.3 million and \$29.0 million as of December 31, 1998 and December 28, 1997, respectively. Contract values for surety bonds as of December 31, 1998 were approximately \$26.5 million and were not significant at December 28, 1997.

Derivative Financial Instruments--The Company utilizes interest rate swap agreements to reduce the impact on interest expense of fluctuating interest rates on its floating rate debt. The use of derivatives did not have a material impact on the Company's operations in 1998, 1997 and 1996. At December 31, 1998, the Company held three floating to fixed interest rate swap agreements, one with a notional value of \$25 million and two with notional amounts of \$150 million each. The swap agreements are contracts to exchange floating rate for fixed interest payments periodically over the lives of the agreements without the exchange of the underlying notional principal amounts. The swaps expire in January 2003, June 2001 and June 2003, respectively. Under these agreements, the Company received an average floating rate of 5.64%, 5.59% and 5.59%, respectively, and paid an average fixed rate of 6.12%, 5.75% and 5.58%,

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respectively, during 1998. The fair value of the interest rate swaps at December 31, 1998 is estimated to be \$7.3 million. This estimate is based upon quotes received from the Company's lending institutions and represents the cash requirement if the existing agreements had been terminated at the end of the year. Interest rate swaps are off-balance-sheet instruments and therefore have no carrying value. The Company had no swap agreements outstanding at December 28, 1997.

In order to mitigate the transaction exposures that may arise from changes in foreign exchange rates, the Company purchases foreign currency option and forward contracts to hedge specific transactions, principally the purchases of inventories. The option contracts typically expire within one year. The options are accounted for as hedges pursuant to SFAS No. 52, Foreign Currency Translation, accordingly gains and losses thereon are deferred and recorded in operations in the period in which the underlying transaction is recorded. At December 31, 1998, the Company held purchased option contracts with a notional value of \$32.3 million and a fair value of \$0.3 million and forward contracts with a notional value of \$30.9 million and a fair value of \$30.5 million. The Company did not hold any such contracts at December 28, 1997.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS-- (CONTINUED)

4. FINANCIAL INSTRUMENTS-- (CONTINUED)

The table below summarizes by currency, the contractual amounts, carrying amounts and related unrealized gain (loss) of the Company's forward exchange and option contracts at December 31, 1998 (in millions):

<TABLE>
<CAPTION>

	FORWARD CONTRACTS	PURCHASED OPTION CONTRACTS	TOTAL CONTRACTS	CARRYING AMOUNT ASSET (LIABILITY)	RECOGN UNREAL GAI (LOS)
<S>	<C>	<C>	<C>	<C>	<C>
December 31, 1998					
Currency:					
Deutschemark.....	\$12.0	\$18.4	\$30.4	\$ 0.3	\$ C
Yen.....	\$14.9	\$12.4	\$27.3	\$(0.3)	\$ (C
Pound sterling.....	\$ 4.0	\$ 1.5	\$ 5.5	\$ 0.1	\$ C
Total.....	\$30.9	\$32.3	\$63.2	\$ 0.1	\$ (C

</TABLE>

The fair values of the Company's foreign currency contracts were based on quoted market prices of comparable contracts, adjusted through interpolation where necessary for maturity differences.

Exposure to market risk on interest rate and foreign currency financial instruments results from fluctuations in interest and currency rates, respectively, during the periods in which the contracts are outstanding. The counterparties to the Company's interest rate swap agreements and currency exchange contracts consist of a diversified group of major financial institutions, each of which is rated investment grade A or better. The Company is exposed to credit risk to the extent of potential nonperformance by

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counterparties on financial instruments. The Company believes the risk of incurred losses due to credit risk is remote.

5. ACCOUNTS RECEIVABLE SECURITIZATION

In December 1997, the Company entered into a receivable securitization program, that expires March 2000, to sell without recourse, through a wholly owned subsidiary, certain trade accounts receivable, up to a maximum of \$70.0 million. During 1998, the Company has received approximately \$200.0 million under this arrangement. At December 31, 1998, the Company had reduced accounts receivable by \$20.0 million for receivables sold under this program. At December 28, 1997, the Company had received \$58.9 million under this arrangement, of which \$39.1 million related to sales recorded in fiscal 1997 and the balance related to sales to be recognized in the first quarter of 1998. During 1997, the Company sold \$19.8 million of receivables related to bill and hold and consignment sales that had been initially recognized in its Consolidated Financial Statements and were subsequently reversed in the restatement process. The conditions for recognizing these sales were met in the first quarter of 1998. Accordingly, at December 28, 1997, the accompanying Consolidated Balance Sheet reflects a reduction in accounts receivable of \$39.1 million and an increase in other current liabilities of \$19.8 million. Proceeds from the sales of receivables were used to reduce borrowings under the Company's revolving credit facility or to provide cash flow for working capital purposes, thereby reducing the need to borrow under the credit facility. Costs of the program, which primarily consist of the purchaser's financing cost of issuing commercial paper backed by the receivables, totaled \$2.3 million and \$0.2 million during 1998 and 1997, respectively, and have been classified as interest expense in the accompanying Consolidated Statements of Operations. The Company, through a wholly-owned subsidiary, retains collection and administrative responsibilities for the purchased receivables. This agreement contains cross-default provisions that provide the purchaser of the receivables an option to cease purchasing receivables from the Company if the Company is in default under the New Credit Facility.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

6. INCOME TAXES

(Loss) earnings from continuing operations before income taxes, minority interest and extraordinary charge for each fiscal year is summarized as follows (in thousands):

<TABLE>
<CAPTION>

	1998	1997	
	-----	-----	
<S>			<
Domestic.....	\$(723,179)	\$80,946	\$
Foreign.....	(73,169)	11,724	
	-----	-----	
	\$(796,348)	\$92,670	\$
	-----	-----	

</TABLE>

Income tax provisions include current and deferred taxes (tax benefits) for each fiscal year as follows (in thousands):

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<TABLE>
<CAPTION>

	1998	1997
	-----	-----
<S>	<C>	<C>
Current:		
Federal.....	\$ 1,203	\$(3,421)
State.....	275	3,266
Foreign.....	7,189	1,683
	-----	-----
	8,667	1,528
	-----	-----
Deferred:		
Federal.....	(6,343)	30,554
State.....	(1,316)	3,962
Foreign.....	(11,138)	4,308
	-----	-----
	(18,797)	38,824
	-----	-----
	\$(10,130)	\$40,352
	-----	-----

</TABLE>

The effective tax rate on earnings (loss) before income taxes, minority interest and extraordinary charges varies from the current statutory federal income tax rate as follows:

<TABLE>
<CAPTION>

	1998	1997
	-----	-----
<S>	<C>	<C>
(Benefit) provision at statutory rate.....	(35.0)%	35.0
State taxes, net.....	--	5.1
Amortization of intangible assets and goodwill.....	4.3	--
Warrants issued in settlement of claim.....	3.1	--
Foreign earnings and dividends taxed at other rates.....	2.7	2.0
Valuation allowance.....	23.6	20.4
Reversal of tax liabilities no longer required.....	--	(14.4)
Other, net.....	--	(4.6)
	-----	-----
Effective tax rate (benefit) provision.....	(1.3)%	43.5
	-----	-----

</TABLE>

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

6. INCOME TAXES--(CONTINUED)

Significant components of the Company's deferred tax liabilities and assets are as follows:

<TABLE>
<CAPTION>

DECEMBER 31, DECEMBER 28,

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	1998	1997
<S>	<C>	<C>
Deferred tax assets:		
Receivables.....	\$ 19,180	\$ 10,516
Postretirement benefits other than pensions.....	22,714	11,430
Reserves for self-insurance and warranty costs.....	40,765	33,426
Pension liabilities.....	16,334	2,811
Inventories.....	27,822	14,437
Net operating loss carryforwards.....	322,273	--
Tax credits.....	13,510	12,955
Other, net.....	89,577	33,388
	-----	-----
Total deferred tax assets.....	552,175	118,963
Valuation allowance.....	290,520	23,215
	-----	-----
Net deferred tax assets.....	261,655	95,748
	-----	-----
Deferred tax liabilities:		
Depreciation.....	43,377	22,532
Acquired intangible assets.....	244,378	68,311
Other, net.....	19,850	9,747
	-----	-----
Total deferred tax liabilities.....	307,605	100,590
	-----	-----
Net deferred tax liabilities.....	\$ (45,950)	\$ (4,842)
	-----	-----

</TABLE>

The Company establishes valuation allowances in accordance with the provisions of SFAS No. 109. The Company continually reviews the adequacy of the valuation allowances and recognizes tax benefits when it is more likely than not that the benefits will be realized. In the fourth quarter of 1997, the Company increased the valuation allowance by \$23.2 million, reflecting management's assessment that it was more likely than not that the deferred tax assets would not be realized through future taxable income. Of this amount, approximately \$18.9 million related to deferred tax assets, the majority of which was recognized as a benefit in the first three quarters of 1997. The remainder related to minimum pension liabilities and was therefore recorded as an adjustment in shareholders' equity. This assessment was made as a result of the significant leverage undertaken by the Company as part of the acquisitions (see Note 2) and the significant decline in net sales and earnings from anticipated levels during the fourth quarter of 1997 and the first quarter of 1998.

Throughout 1998, the Company increased the valuation allowance to \$290.5 million, which increase reflects management's assessment that it is more likely than not that the deferred tax asset will not be realized through future taxable income. As described above, this assessment was made as a result of the significant leverage undertaken by the Company and the continuing decline in Sunbeam's net sales and earnings, as well as the operating losses incurred throughout the 1998 year. At December 31, 1998, the Company had net operating loss carryforwards ("NOL's") of approximately \$725 million for domestic income tax purposes and \$169 million for foreign income tax purposes. The domestic NOL's begin expiring in 2018. Of the foreign tax NOL's, \$3 million, \$4 million, \$19 million, \$18 million and \$16 million expire in the years ending December 31, 1999 through 2003, respectively, and \$91 million of such NOL's have an unlimited life.

The Company has not provided U.S. income taxes on undistributed foreign earnings of approximately \$32 million at December 31, 1998, as the Company intends to permanently reinvest these earnings in the future growth of the business. Determination of the amount of unrecognized deferred U.S. income tax liability is not practicable because of the complexities associated with its

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hypothetical calculation.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS-- (CONTINUED)

7. EMPLOYEE BENEFIT PLANS

Pension and Other Postretirement Benefit Plans

The Company sponsors several defined benefit pension plans covering eligible U.S. salaried and hourly employees. Benefit accruals under such plans covering all U.S. salaried employees were frozen, effective December 31, 1990. Accordingly, no credit in the pension formula is given for service or compensation after that date. However, these employees continue to earn service toward vesting in their interest in the frozen plans as of December 31, 1990. The Company also provides health care and life insurance benefits to certain former employees who retired from the Company prior to March 31, 1991. The Company has consistently followed a policy of funding the cost of postretirement health care and life insurance benefits on a pay-as-you-go basis.

As a result of the Company's acquisitions of Coleman and First Alert (see Note 2), the liabilities for their respective defined benefit pension plans (the "Plans") were assumed and have been accounted for in accordance with Accounting Principles Board Opinion No.16 ("APB 16"), Accounting for Business Combinations. Effective January 1, 1999, the Coleman and First Alert salaried pension plans were amended to change the pension benefit formula to a cash balance formula from the existing benefit calculation. The benefits accrued under these plans as of December 31, 1998 were frozen and converted to the new cash balance plan using a 7.0% interest rate assumption. The effect of the amendment of the Plans is reflected in the projected benefit obligation as of the date of acquisition as required by APB 16. Under the cash balance plan, the Company will credit certain participants' accounts annually. At the date of acquisition the pension benefit obligation and the fair value of the plan assets attributable to these Plans were \$43.4 million and \$27.7 million, respectively, and are reflected in the table below.

In addition, Coleman provided certain unfunded postretirement health and life insurance benefits for certain retired employees. At the date of acquisition the postretirement benefit obligation associated with this plan was \$19.5 million as reflected in the table below, and has been accounted for in accordance with APB 16.

The Company funds all pension plans in amounts consistent with applicable laws and regulations. Pension plan assets include corporate and U.S. government bonds, corporate stocks, mutual funds, fixed income securities, and cash equivalents.

Employees of non-U.S. subsidiaries generally receive retirement benefits from Company sponsored plans or from statutory plans administered by governmental agencies in their countries. The assets, liabilities and pension costs of the Company's non-U.S. defined benefit retirement plans are not material to the consolidated financial statements.

On January 1, 1998, the Company adopted SFAS No. 132, Employers' Disclosures About Pensions and Other Postretirement Benefits ("SFAS No. 132"). This statement revises employers' disclosures about pension and other postretirement benefit plans. SFAS No. 132 does not change the method of accounting for such plans.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

7. EMPLOYEE BENEFIT PLANS--(CONTINUED)

The following table includes disclosures of the funded status and amounts recognized in the Company's Consolidated Balance Sheets at the end of each fiscal year as required by SFAS No. 132 (in thousands):

<TABLE>
<CAPTION>

	PENSION BENEFITS		
	1998	1997	
<S>	<C>	<C>	<C>
Change in Benefit Obligation:			
Benefit obligation at beginning of year.....	\$127,229	\$122,754	\$
Acquisitions.....	43,404	--	
Service cost.....	1,551	157	
Interest cost.....	10,875	8,970	
Amendments.....	--	84	
Actuarial loss.....	20,456	10,630	
Settlement.....	--	(1,732)	
Benefits paid.....	(15,018)	(13,634)	
Benefit obligation at end of year.....	\$188,497	\$127,229	\$
Change in Plan Assets:			
Fair value of plan assets at beginning of year.....	\$116,485	\$116,522	\$
Acquisitions.....	27,657	--	
Actual return on plan assets.....	6,424	12,511	
Employer contributions.....	8,889	2,818	
Settlement.....	--	(1,732)	
Benefits paid.....	(15,018)	(13,634)	
Fair value of plan assets at end of year.....	\$144,437	\$116,485	\$
Reconciliation of Funded Status:			
Funded status.....	\$ (44,060)	\$ (10,744)	\$ (
Unrecognized net actuarial loss/(gain).....	48,616	25,192	
Unrecognized prior service cost.....	--	--	(
Net amount recognized.....	\$ 4,556	\$ 14,448	\$ (
Amount Recognized in the Consolidated Balance Sheets Consist of:			
Accrued benefit liability.....	\$ (42,431)	\$ (10,744)	\$ (
Accumulated other comprehensive income.....	46,987	25,192	
Net amount recognized.....	\$ 4,556	\$ 14,448	\$ (

</TABLE>

In determining the actuarial present value of the benefit obligation, the

weighted average discount rate was 6.75% and 7.25% as of December 31, 1998 and December 28, 1997, respectively; the expected return on plan assets ranged from 6.75% to 9.00% for 1998 and was 7.25% for 1997. The expected increase in future compensation levels was 4.00% for Coleman for 1998.

The assumed health care cost trend rates used in measuring the accumulated postretirement benefit obligation were 7.0% to 8.0% for the plans for 1999 and were assumed to decrease gradually to 5.0% by 2003 and remain at that level thereafter.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

7. EMPLOYEE BENEFIT PLANS--(CONTINUED)

Assumed health care cost trend rates have a significant effect on the amounts reported for the health care plan. A one-percentage-point change in assumed health care cost trend rates would have the following effects:

<TABLE>
<CAPTION>

	1-PERCENTAGE- POINT INCREASE	
<S>	<C>	<
Effect on total of service and interest cost components.....	\$ 508	
Effect on the postretirement benefit obligation.....	\$6,035	
</TABLE>		

Net pension expense and periodic postretirement benefit include the following components (in thousands):

<TABLE>
<CAPTION>

	PENSION BENEFITS			POSTRE
	1998	1997	1996	1998
<S>	<C>	<C>	<C>	<C>
Components of net periodic pension benefit cost:				
Service cost.....	\$ 1,551	\$ 157	\$ 411	\$ 2,689
Interest cost.....	10,875	8,970	9,071	2,088
Expected return of market value of assets	(10,127)	(8,586)	(816)	--
Amortization of unrecognized prior service cost.....	--	--	--	(2,943)
Recognized net actuarial loss (gain).....	735	414	(7,518)	--
Net periodic benefit cost (benefit).....	3,034	955	1,148	(166)
Settlement charge.....	--	615	--	--
Curtailement charge.....	--	106	--	--
Total expense (benefit).....	\$ 3,034	\$ 1,676	\$ 1,148	\$ (166)
</TABLE>				

The projected benefit obligation, accumulated benefit obligation and fair value of plan assets for the plans with accumulated benefit obligations in excess of plan assets were \$186.4 million, \$161.6 million and \$125.5 million at

December 31, 1998 and \$127.2 million, \$127.2 million and \$116.5 million at December 28, 1997, respectively.

Defined Contribution Plans

As a result of the Company's acquisitions of Coleman, First Alert and Signature Brands, the Company amended its Savings & Investment and Profit Sharing Plan ("Savings Plan") to assume the assets of the respective savings plans at each of the acquired companies and establish parity with the benefits provided by Sunbeam. Effective January 1, 1999, all eligible employees could participate in the Savings Plan. Company contributions to these plans include employer matching contributions as well as discretionary contributions depending on the performance of the Company, in an amount up to 10% of eligible compensation. The Company provided \$1.9 million in 1998, \$1.8 million in 1997 and \$1.7 million in 1996 for its defined contribution plans.

8. SHAREHOLDERS' EQUITY

Common Stock

At December 31, 1998, the Company had 500,000,000 shares of \$0.01 par value common stock authorized and there were 14,094,158 shares of common stock reserved for issuance upon the exercise of outstanding stock options.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS-- (CONTINUED)

8. SHAREHOLDERS' EQUITY-- (CONTINUED)

Compensatory Stock Grants

In July 1996, the Company granted 1,100,000 shares of restricted stock in connection with the employment of a then new Chairman and Chief Executive Officer and two other senior officers of the Company. Compensation expense attributable to the restricted stock awards was amortized to expense beginning in 1996 over the periods in which the restrictions lapse (which in the case of 333,333 shares, was immediately upon the date of grant, in the case of 666,667 shares, was to be amortized equally over two years from the date of grant and in the case of the remaining 100,000 shares, was equally over three years from the date of grant). These restricted stock awards resulted in a \$7.7 million charge to SG&A expense in 1996.

On February 20, 1998, the Company entered into new three-year employment agreements with its then Chairman and Chief Executive Officer and two other then senior officers of the Company. These agreements replaced previous employment agreements entered into in July 1996 that were scheduled to expire in July 1999.

The new employment agreement for the Company's then Chairman and Chief Executive Officer provided for, among other items, the acceleration of vesting of 200,000 shares of restricted stock and the forfeiture of the remaining 133,334 shares of unvested restricted stock granted under the July 1996 agreement, a new equity grant of 300,000 shares of unrestricted stock, a new grant of a ten-year option to purchase 3,750,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in three equal annual installments beginning on the date of grant and the acceleration of vesting of 833,333 outstanding stock options granted under the July 1996 agreement, as further described in Note 9. In addition, the new employment agreement with the then Chairman and Chief Executive Officer provided for income tax gross-ups with respect to any tax

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assessed on the equity grant and acceleration of vesting of restricted stock.

The new employment agreements with the two other then senior officers provided for, among other items, the grant of a total of 180,000 shares of restricted stock that were to vest in four equal annual installments beginning on the date of grant, the acceleration of vesting of 44,000 shares of restricted stock and the forfeiture of the remaining 29,332 shares of unvested restricted stock granted under the July 1996 agreements, new grants of ten-year options to purchase a total of 1,875,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in four equal annual installments beginning on the date of grant and the acceleration of vesting of 383,334 outstanding stock options granted under the July 1996 agreements. In addition, the new employment agreements provided for income tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock.

Compensation expense attributed to the equity grant, the acceleration of vesting of restricted stock and the related income tax gross-ups was recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups was amortized to expense beginning in the first quarter of 1998 with amortization to continue over the period in which the restrictions lapse. Total compensation expense recognized in 1998 related to these items was approximately \$31 million.

On June 15, 1998, the Company's board of directors announced the removal of the then Chairman and Chief Executive Officer and subsequently announced the removal or resignation of other senior officers, including the Company's then Chief Financial Officer. In connection with the removal or resignation of the senior officers and the termination of their restricted stock grants, the unamortized portion of the deferred compensation expense attributable to the restricted stock grants was reversed. The Company and certain of its former officers are in disagreement as to the Company's obligations to these individuals under prior employment agreements and arising from their terminations. (See Note 15.)

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

8. SHAREHOLDERS' EQUITY--(CONTINUED)

Accumulated Other Comprehensive Loss

The components of accumulated other comprehensive loss consist of the following (in thousands):

<TABLE>
<CAPTION>

	CURRENCY TRANSLATION ADJUSTMENTS	MINIMUM PENSION LIABILITY
	-----	-----
<S>	<C>	<C>
Balance at December 29, 1996.....	\$ (12,111)	\$ (6,163)
Balance at December 28, 1997.....	(12,850)	(20,213)
Balance at December 31, 1998.....	(12,022)	(42,008)

</TABLE>

The accumulated other comprehensive loss associated with the minimum pension liability is net of deferred income taxes of approximately \$5.0 million

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in 1998, 1997 and 1996.

9. EMPLOYEE STOCK OPTIONS AND AWARDS

The Company has one stock-based compensation plan, the Amended and Restated Sunbeam Corporation Stock Option Plan (the "Plan"). Under the Plan, all employees are eligible for grants of options to purchase up to an aggregate of 16,300,000 shares of the Company's common stock at an exercise price equal to or in excess of the fair market value of the stock on the date of grant. The term of each option commences on the date of grant and expires on the tenth anniversary of the date of grant subject to earlier cancellation. Options generally become exercisable over a three to five year period.

The Plan also provides for the grant of restricted stock awards of up to 200,000 shares, in the aggregate, to employees and non-employee directors. The Plan provides that each non-employee director of the Company is automatically granted 1,500 shares of restricted common stock upon his or her initial election or appointment and upon each subsequent re-election to the Company's board of directors. In the event of an election or appointment to the Company's board of directors at any time other than at the annual meeting of stockholders, the director receives a prorated amount of restricted common shares. These restricted common shares vest immediately upon the non-employee director's acceptance of his or her election or appointment to the Company's board of directors. The Company granted 6,000, 6,000, and 7,818 shares of restricted stock to non-employee directors in 1998, 1997 and 1996, respectively, and recognized compensation expense related to these grants of \$0.2 million in each of 1998, 1997 and 1996. See Note 8 for a discussion of restricted stock awards made outside the Plan.

In July 1996, options to purchase an aggregate of 3,000,000 shares (of which 2,750,000 options were outstanding at December 28, 1997) were granted outside of the Plan at exercise prices equal to the fair market value of the Company's common stock on the dates of grant in connection with the employment of a then new Chairman and Chief Executive Officer and two other senior officers of the Company. These outstanding options have terms of ten years and, with respect to options for 2,500,000 shares, were exercisable in three annual installments beginning July 17, 1996. Options for the remaining 250,000 shares still outstanding were exercisable in three annual installments beginning on the first anniversary of the July 22, 1996 grant date. On February 20, 1998 the vesting provisions of the options granted outside the Plan were accelerated. Additional stock option grants outside the Plan were made in February 1998, with a portion thereof subsequently terminated in connection with the removal of the then Chairman and Chief Executive Officer. The then Chairman and Chief Executive Officer and another senior officer are disputing termination of their stock option grants. (See Notes 8 and 15.)

In the third and fourth quarters of 1998, options to purchase an aggregate of 4,200,000 shares were granted outside of the Plan in connection with the employment of the new Chief Executive Officer and certain members of the new senior management team. The options were granted to certain senior executives at exercise prices equal to or greater than the fair market value of the Company's common stock on the dates of the grant. The senior officers were granted options to purchase 3,200,000 shares of common stock at a price of \$7.00 per share; 500,000 shares of common stock at a price of \$10.50 per share and 500,000 shares at a price of \$14.00 per share.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

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9. EMPLOYEE STOCK OPTIONS AND AWARDS-- (CONTINUED)

All of these outstanding options have terms of ten years and become fully exercisable at the end of two to three year periods if the executive remains employed by the Company as of such date. These grants are subject the shareholder approval at the 1999 Annual Meeting. A measurement date pursuant to APB Opinion No. 25 will be established for these grants upon shareholder approval. These options have been included in the following tables summarizing the Company's stock option activity for the year ended December 31, 1998.

In August 1998, the Company approved a plan to exchange outstanding common stock options held by the Company's employees. The exchange program, which has been completed, provided for outstanding options with exercise prices in excess of \$10.00 per share to be exchanged for new options on a voluntary basis in an exchange ratio ranging from approximately two to three old options for one new option, (as determined by reference to a Black-Scholes option pricing model) with the exercise price of the new options set at \$7.00 per share. These options were repriced at an exercise price approximating the market value of the Company's common stock at the date of the repricing and, consequently, there was no related compensation expense.

The Company applies APB Opinion No. 25 and related interpretations in accounting for its stock options. Accordingly, no compensation cost has been recognized for outstanding stock options. Had compensation cost for the Company's outstanding stock options been determined based on the fair value at the grant dates for those options consistent with SFAS No. 123, the Company's net (loss) earnings and basic and diluted (loss) earnings per share would have differed as reflected by the pro forma amounts indicated below (in thousands except per share amounts):

<TABLE>
<CAPTION>

	1998	1997	
	-----	-----	
<S>	<C>	<C>	<
Net (loss) earnings:			
As reported.....	\$ (897,923)	\$38,301	\$
Pro forma.....	(1,023,932)	14,524	
Basic (loss) earnings per share:			
As reported.....	(9.25)	0.45	
Pro forma.....	(10.54)	0.17	
Diluted (loss) earnings per share:			
As reported.....	(9.25)	0.17	
Pro forma.....	(10.54)	0.17	

</TABLE>

The Company's pro forma net loss for 1998 includes approximately \$68 million of compensation cost relating to options issued to the former Chairman and Chief Executive Officer (3,750,000) and a former senior officer (1,125,000) in connection with their February 1998 employment agreements. These options are included in the outstanding and exercisable options issued outside the plan in the following table. The Company and these individuals are in dispute regarding the status of these options.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions:

<TABLE>
<CAPTION>

1998	1997
-----	-----

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<S>		<C>	<C>
Expected volatility.....		52.80%	34.19%
Risk-free interest rate.....		4.68%	6.36%
Dividend yield.....		0.0%	0.1%
Expected life.....		6 years	6 years
</TABLE>			

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

9. EMPLOYEE STOCK OPTIONS AND AWARDS--(CONTINUED)

A summary of the status of the Company's outstanding stock options as of December 31, 1998, December 28, 1997 and December 29, 1996, and changes during the years ended on those dates is presented below:

<TABLE>
<CAPTION>

	1998		1997		
	SHARES	WEIGHTED AVERAGE EXERCISE PRICE	SHARES	WEIGHTED AVERAGE EXERCISE PRICE	
<S>	<C>	<C>	<C>	<C>	<C>
Plan options					
Outstanding at beginning of year	6,654,068	\$25.61	6,271,837	\$19.43	4
Granted.....	6,663,998	17.13	3,105,263	32.40	4
Exercised.....	(879,088)	22.25	(1,549,196)	17.20	
Canceled.....	(6,826,070)	27.75	(1,173,836)	21.10	(1
Outstanding at end of year.....	5,612,908	\$13.32	6,654,068	\$25.61	6
Options exercisable at year-end.....	1,717,545	\$20.91	1,547,198	\$19.13	1
Weighted-average fair value of options granted during the year.....		\$10.47		\$15.46	
Options outside plan					
Outstanding at beginning of year	2,750,000	\$12.43	2,750,000	\$12.43	
Granted.....	9,825,000	24.62	--	--	3
Canceled.....	(750,000)	36.85	--	--	
Outstanding at end of year.....	11,825,000	\$21.01	2,750,000	\$12.43	2
Options exercisable at year-end.....	7,625,000	\$28.04	1,750,000	\$12.35	
Weighted-average fair value of options granted during the year.....		\$13.71		N/A	

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</TABLE>

Included in the outstanding and exercisable options issued outside the plan, as presented above, are options issued to the former Chairman and Chief Executive Officer (3,750,000) and a former senior officer (1,125,000) in connection with their February 1998 employment agreements. The Company and these individuals are in a dispute regarding the status of these options.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

9. EMPLOYEE STOCK OPTIONS AND AWARDS--(CONTINUED)

The following table summarizes information about stock options outstanding at December 31, 1998:

<TABLE>
<CAPTION>

RANGE OF EXERCISE PRICES	OPTIONS OUTSTAN	
	NUMBER OUTSTANDING AT 12/31/98	WEIGHTED-AVERAGE REMAINING CONTRACTUA LIFE (YEARS)
<S>	<C>	<C>
\$5.00 to 7.00.....	6,076,805	9.2
\$7.01 to \$14.00.....	4,048,200	8.3
\$14.01 to \$15.00.....	642,124	7.6
\$15.01 to \$23.15.....	697,697	7.2
\$23.16 to \$26.71.....	733,714	8.3
\$26.72 to \$36.85.....	4,951,590	9.1
\$36.86 and over.....	287,778	8.0
\$5.00 to \$50.77.....	17,437,908	8.2

</TABLE>

<TABLE>
<CAPTION>

RANGE OF EXERCISE PRICES	OPTI	
	NUMBER EXERCISAE AT 12/31/	
<S>	<C>	
\$5.00 to \$7.00.....	95,89	
\$7.01 to \$14.00.....	2,500,00	
\$14.01 to \$15.00.....	571,29	
\$15.01 to \$23.15.....	627,48	
\$23.16 to \$26.71.....	540,05	
\$26.72 to \$36.85.....	4,906,96	
\$36.86 and over.....	100,85	
\$5.00 to \$50.77.....	9,342,54	

</TABLE>

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS-- (CONTINUED)

10. SUPPLEMENTARY FINANCIAL STATEMENT DATA

Supplementary Balance Sheet data at the end of each fiscal year is as follows (in thousands):

<TABLE>
<CAPTION>

	1998
<S>	<C>
Receivables:	
Trade.....	\$ 407,452
Sundry.....	7,347

	414,799
Valuation allowance.....	(53,025)

	\$ 361,774

Inventories:	
Finished goods.....	\$ 370,622
Work in process.....	39,143
Raw materials and supplies.....	109,424

	\$ 519,189

Prepaid expenses and other current assets:	
Deferred income taxes.....	\$ 40,756
Prepaid expenses and other.....	33,431

	\$ 74,187

Property, plant and equipment:	
Land.....	\$ 10,000
Buildings and improvements.....	168,000
Machinery and equipment.....	395,000
Furniture and fixtures.....	18,000

	593,320
Accumulated depreciation and amortization.....	(138,148)

	\$ 455,172

Trademarks, tradenames, goodwill and other:	
Trademarks and tradenames.....	\$ 597,515
Goodwill.....	1,254,880
Deferred financing costs.....	47,325
Other intangible assets.....	28,012

	1,927,732
Accumulated amortization.....	(101,783)

16div-028292

Other assets.....	1,825,949
	33,428

	\$1,859,377

</TABLE>

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

10. SUPPLEMENTARY FINANCIAL STATEMENT DATA--(CONTINUED)

<TABLE>
<CAPTION>

	1998

<S>	<C>
Other current liabilities:	
Payrolls, commissions and employee benefits.....	\$ 61,294
Advertising and sales promotion.....	56,288
Product warranty.....	50,287
Accounts receivable securitization liability.....	--
Sales returns.....	16,972
Interest.....	26,202
Other.....	110,142

	\$321,185

Other long-term liabilities:	
Accrued postretirement benefit obligation.....	\$ 48,028
Accrued pension.....	42,431
Product liability and workers compensation.....	71,868
Other.....	86,132

	\$248,459

</TABLE>

Supplementary Statements of Operations and Cash Flows data for each fiscal year are summarized as follows (in thousands):

<TABLE>
<CAPTION>

	1998	1997	
	-----	-----	
<S>	<C>	<C>	<
Other (income) expense, net:			
Interest income.....	\$ (2,897)	\$ (2,561)	\$
Other, net.....	(1,871)	2,573	-
	-----	-----	-
	\$ (4,768)	\$ 12	\$
	-----	-----	-
Cash paid (received) during the period for:			
Interest.....	\$ 81,291	\$ 13,058	\$
	-----	-----	-

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Income taxes (net of refunds).....	\$ (17,358)	\$ (44,508)	\$
	-----	-----	-----

</TABLE>

11. ASSET IMPAIRMENT AND OTHER CHARGES

In the fourth quarter of 1998, the Company recorded a \$62.5 million charge for the write-off of the carrying value of First Alert's goodwill (see Note 2).

In the second quarter of 1998, as a result of decisions to outsource or discontinue a substantial number of products previously made by the Company (principally breadmakers, toasters and certain other appliances, air and water filtration products and the elimination of certain stock keeping units ("SKU's") within existing product lines, primarily relating to appliances, grills and grill accessories), certain facilities and equipment will either no longer be used or will be utilized in a significantly different manner. Accordingly, a charge of \$29.6 million was recorded in Cost of Goods Sold to write certain of these assets down to their estimated fair market value. Approximately 80% of this charge related to machinery, equipment and tooling at the Company's Mexico City and Hattiesburg, Mississippi manufacturing plants, the estimated fair value for which was derived through an auction process. The remainder of this charge related to tooling and equipment at various other facilities, which either had a nominal value or the fair market value of which was derived through an auction process. These assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. The net carrying value of these assets after the write-down approximated \$2.2 million and these assets are expected to be disposed of by September 30, 1999.

Depreciation

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

11. ASSET IMPAIRMENT AND OTHER CHARGES--(CONTINUED)

expense associated with these assets approximated \$2.6 million in 1998, \$4.2 million in 1997 and \$3.5 million in 1996.

Personnel at the Mexico City facility were notified in the second quarter of 1998 that the plant was scheduled for closure at year-end 1998, accordingly, at that time, a liability of \$1.8 million was recorded in Cost of Goods Sold primarily for employee severance. The employee severance related to approximately 1,200 positions of which approximately 1,100 were terminated, and \$1.4 million paid in severance, as of December 31, 1998. It is anticipated that the remaining 100 employees will be terminated and the balance of the severance obligation (\$0.4 million) paid by July 31, 1999. In the third quarter of 1998, the Company recorded as Cost of Goods Sold, an additional provision for impairment of fixed assets of \$3.1 million in an acquired entity, relating to assets taken out of service for which there was no remaining value. The asset impairment resulted from management's decision, during the third quarter, to discontinue certain SKU's within product lines (principally generators, compressors and propane cylinders) subsequent to the acquisition. These fixed assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. Depreciation expense associated with these assets approximated \$0.8 million in 1998. In the fourth quarter of 1998, the Company recorded a \$7.1 million charge as a result of management's decision, during the fourth quarter, to outsource the production of certain appliances (principally irons). This charge to Cost of Goods Sold

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primarily consists of a provision for certain tooling and equipment (\$6.7 million) and severance and related benefits (\$0.4 million). This tooling and equipment, which had no remaining value, was written off. These fixed assets were taken out of service at the time of the write-down, and consequently depreciation was discontinued at the time of the write-down. Depreciation expense associated with these assets approximated \$2.4 million in 1998, \$2.3 million in 1997 and \$0.9 million in 1996. The severance costs related to approximately 45 production employees, none of whom were terminated, as of December 31, 1998. It is anticipated that these employees will be terminated and the severance obligation paid by September 30, 1999.

During 1997 and the first half of 1998, the Company built inventories in anticipation of 1998 sales volumes which did not materialize. As a result, it has been and will continue to be necessary to dispose of some portions of excess inventories at amounts less than cost. Accordingly, during 1998, when the facts and circumstances were known that such sales volume would not materialize, the Company recorded \$58.2 million in charges (of which \$46.4 million, \$2.2 million and \$9.6 million, were recorded during the second, third and fourth quarters, respectively) to properly state this inventory at the lower-of-cost-or-market. This inventory primarily related to certain appliances, grills and grill accessories. The Company also recorded a charge of \$11.0 million during the second quarter for excess inventories for raw materials and work in process that will not be used due to outsourcing the production of breadmakers, toasters and certain other appliances. In addition, during 1998, the Company made the decision to exit certain product lines, primarily air and water filtration products and eliminate certain SKU's within existing product lines, primarily relating to appliances, grills and grill accessories. As a result of this decision, a \$26.6 million charge was recorded during the second quarter to properly state this inventory at the lower-of-cost-or-market. Total charges for excess inventories recorded at the lower-of-cost-or-market, based on management's best estimate of net realizable value, amounted to approximately \$95.8 million at December 31, 1998. (See Note 12 for asset impairment and other charges recorded in conjunction with a 1996 restructuring plan.)

12. RESTRUCTURING

In November 1996, the Company announced the details of a restructuring plan. The plan included the consolidation of administrative functions within the Company, the reduction of manufacturing and warehouse facilities, the centralization of the Company's procurement function, and reduction of the Company's product offerings and SKU's. The Company also announced plans to divest several lines of business (see Note 13).

As part of the restructuring plan, the Company consolidated six divisional and regional headquarter's functions into a single worldwide corporate headquarters and outsourced certain back office activities resulting in

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS-- (CONTINUED)

12. RESTRUCTURING-- (CONTINUED)

a reduction in total back-office/administrative headcount. Overall, the restructuring plan called for a reduction in the number of production facilities from 26 to 8 and the elimination of over 6,000 positions from the Company's workforce, including 3,300 from the disposition of certain business operations and the elimination of approximately 2,800 other positions, some of which were outsourced. The Company completed the major phases of the restructuring plan by July 1997.

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In conjunction with the implementation of the restructuring plan, the Company recorded a pre-tax charge of \$239.2 million in the fourth quarter of 1996. This amount is recorded as follows in the accompanying Consolidated Statements of Operations: \$110.1 million in Restructuring and Asset Impairment Charges, as further described below; \$60.8 million in Cost of Goods Sold related principally to inventory write-downs to net realizable value as a result of a reduction in SKU's and costs of inventory liquidation programs; \$10.1 million in SG&A expense, for period costs which were charged to operations as incurred, principally relating to employee relocation and recruiting and equipment relocation and installation (\$3.2 million), transitional fees relating to outsourcing arrangements (\$4.9 million) and package redesign costs (\$2.0 million), and \$58.2 million (\$39.1 million net of taxes) in Loss on Sale of Discontinued Operations related to the divestiture of its furniture business. In 1997, upon completion of the sale of the furniture business, the Company recorded an additional pre-tax loss of \$22.5 million from discontinued operations (\$14.0 million net of taxes) due primarily to lower than anticipated sales proceeds relating to the post closing adjustment process that was part of the sale agreement.

Amounts included in Restructuring and Asset Impairment Charges in 1996 in the accompanying Consolidated Statements of Operations included cash items such as severance and other employee costs of \$24.7 million, lease obligations of \$12.6 million and other exit costs associated with facility closures and related to the implementation of the restructuring plan of \$4.1 million, principally representing costs related to clean-up and restoration of facilities owned and leased for either sale or return to the landlord.

Included in Restructuring and Asset Impairment Charges in 1996 was \$68.7 million of non-cash charges (classified within the \$110.1 million restructuring charge) principally consisting of: (a) asset write-downs to net realizable value for disposals of excess facilities and equipment and certain product lines (\$22.5 million); (b) write-offs of redundant computer systems from the administrative back-office consolidations and outsourcing initiatives (\$12.3 million); (c) write-off of intangibles relating to discontinued product lines (\$10.1 million); (d) write-off of capitalized product and package design costs and other expenses related to exited product lines and SKU reductions (\$9.0 million) (Prior to 1996, Sunbeam had capitalized certain costs related to international product development and package design, which were amortized over the period of related benefit. The product development costs (\$1.9 million) related to international operations and represented the costs necessary to modify products for introduction to the international markets. As the restructuring plan included the closure of International Group office and elimination of a number of products to which these costs pertained, the related capitalized costs were written off. Additionally, in connection with the restructuring plan, as a result of the elimination of many products and SKU's, Sunbeam updated its package designs. Accordingly, the unamortized balance of the capitalized package design costs which had been capitalized prior to 1996, (\$5.0 million) was written off. Sunbeam discontinued incurring costs of a significant nature relating to these items and consequently has discontinued capitalizing such costs subsequent to 1995 and (e) asset write-downs related to the divestiture of certain non-core products and businesses (\$14.8 million). The asset write-downs of \$34.8 million (representing (a) and (b) discussed above) included equipment taken out of service in 1996 (either abandoned in 1996 or sold in 1997) and accordingly, depreciation was not recorded subsequent to the date of the impairment charge. The asset write-downs of \$14.8 million related to the divestiture of non-core products and businesses resulted from divesting of the time and temperature business (sold in March 1997) and Counselor(Registered) and Borg(Registered) scale product lines (sold in May 1997) and the sale of the textile mill in Biddeford, Maine in May 1997. These charges primarily represented the estimated non-cash losses resulting from the sale or abandonment of facilities and equipment related to exiting these product lines. The Company continued to record depreciation expense on these fixed assets, based on historical rates, until such time that the assets were disposed of. For these

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fixed assets, the

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

12. RESTRUCTURING--(CONTINUED)

impairment charges represented write-downs to net realizable values (based on the estimated net proceeds from the sale of these assets compared to their recorded net book value), less estimated depreciation expense at historical rates through the period of estimated use. The net carrying value of these assets at December 29, 1996 approximated \$42.5 million.

The \$24.7 million for severance and other employee costs, including COBRA and other fringe benefits, related to approximately 3,700 positions that were planned to be eliminated as a result of the restructuring plan, excluding approximately 2,400 employees terminated from the furniture business for which severance was included in Loss on Sale of Discontinued Operations (see Note 13). The furniture business was sold in 1997. In 1996 and 1997, approximately 1,200 employees and 1,800 employees, respectively, were terminated from continuing operations. Due largely to attrition, the remaining planned terminations were not required. In 1997, the Company determined that its severance and employee benefit costs were less than originally accrued principally due to lower than expected COBRA and workers compensation costs, and accordingly reversed accruals of \$7.9 million in the third quarter (\$2.1 million) and fourth quarter (\$5.8 million). At December 31, 1997, the balance accrued of \$1.2 million represented the remaining severance and employee benefit costs for certain employees terminated during 1997. During 1998, all amounts were expended.

The amounts accrued at December 29, 1996, for Restructuring and Asset Impairment Charges recorded in fiscal 1996, exceeded amounts ultimately required principally due to reductions in anticipated severance and employee benefit costs of \$7.9 million, as discussed above, and reductions in estimated lease payments of \$6.7 million (\$3.7 million and \$3.0 million recognized in the third and fourth quarters, respectively) resulting from better than anticipated rentals received under sub-leases and favorable negotiation of lease terminations. Accordingly, the fiscal 1997 Consolidated Statement of Operations included \$14.6 million of benefit (\$5.8 million in the third quarter and \$8.8 million in the fourth quarter of 1997) related to the reversal of accruals no longer required, which were recorded as these reduced obligations became known.

In 1996, in conjunction with the initiation of the restructuring plan, the Company recorded additional charges totaling \$129.1 million, reflected in Cost of Goods Sold, SG&A expense and Loss on Sale of Discontinued Operations. The charge included in Cost of Goods Sold (\$60.8 million) principally represented inventory write-downs to net realizable value, based upon management's best estimates, and anticipated losses on the disposition of the inventory as a result of the significant reduction in SKU's provided for in the restructuring plan. The write-down included \$26.9 million related to raw materials, work-in-process and finished goods for discontinued outdoor cooking products, principally grills and grills accessories and the balance related to raw materials, work-in-process and finished goods for other discontinued products including appliances (\$27.8 million), clippers (\$1.0 million) and blankets (\$5.1 million). For inventory which management determined was salable, the estimated write-down was based upon the difference between the expected net sales proceeds of the inventory, depending on distribution channel, and the recorded value of the inventory. In the case of abandoned inventory, the

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write-down was equal to the recorded value of the inventory. The resulting difference between carrying value and estimated net realizable value represented the \$60.8 million write-down necessary to record the inventory at its net realizable value. SG&A expense included period costs, charged to operations as incurred, in 1997 and 1996 of \$15.8 million and \$10.1 million, respectively, relating to employee relocation and recruiting and equipment relocation and installation (\$11.8 million in 1997 and \$3.2 million in 1996), transitional fees related to outsourcing arrangements (\$4.9 million in 1996) and package redesign costs (\$4.0 million in 1997 and \$2.0 million in 1996) expended as a result of the implementation of the restructuring plan. The Loss on Sale of Discontinued Operations of \$58.2 million is discussed further in Note 13.

At December 28, 1997, the Company had \$5.2 million in liabilities accrued related to the 1996 restructuring plan, including \$1.2 million of severance related costs and \$4.0 million related to facility closures, which principally represented future lease payments (net of sub-leases) on exited facilities. During 1998, this liability was reduced by \$4.0 million as a result of cash expenditures. At December 28, 1997, the Company had

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

12. RESTRUCTURING--(CONTINUED)

\$3.0 million of warranty liabilities related to the discontinued furniture operations. During 1998, \$2.5 million of this liability was liquidated.

The following table sets forth the details and the activity from the charges (in millions):

<TABLE>
<CAPTION>

	ACCRUAL BALANCE JANUARY 1, 1996	ADDITIONS CHARGED TO INCOME	CASH REDUCTIONS	NON-C REDUC
<S>	<C>	<C>	<C>	<C>
Write-downs:				
Fixed assets, held for disposal, not in use.....	\$ --	\$ 34.8	\$ --	\$ 3
Fixed assets, held for disposal, used until disposed.....	11.3	14.8	--	1
Inventory on hand.....	--	60.8	--	6
Other assets, principally trademarks and intangible assets.....	--	19.1	--	1
	11.3	129.5	--	12
Restructuring accruals:				
Employee severance pay and fringes....	--	24.7	5.6	
Lease payments and termination fees...	2.5	12.6	2.5	
Other exit activity costs, principally facility closure expense.....	--	4.1	--	
	2.5	41.4	8.1	
Total restructuring and asset impairment accrual.....	13.8	170.9	8.1	12

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Other related period costs charged to operations as incurred:				
Employee relocation; equipment relocation and installation and other.....	--	3.2	3.2	
Transitional fees related to outsourcing arrangements.....	--	4.9	4.9	
Package redesign.....	--	2.0	2.0	
		10.1	10.1	
Total included in continuing operations.....	13.8	181.0	18.2	12
Total included in discontinued operations.....	--	58.2	--	
	\$13.8	\$239.2	\$ 18.2	\$12

</TABLE>

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<PAGE>

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

12. RESTRUCTURING--(CONTINUED)

<TABLE>
<CAPTION>

	ACCRUAL BALANCE DECEMBER 30, 1996	ADDITIONS CHARGED TO INCOME	CASH REDUCTIONS	NON-CASH REDUCTIONS
<S>	<C>	<C>	<C>	<C>
Write-downs:				
Fixed assets, held for disposal, used until disposed.....	\$ 14.8	\$ --	\$ --	\$ 14.8
Other assets, principally trademarks and intangible assets.....	1.1	--	--	1.1
	15.9	--	--	15.9
Restructuring accruals:				
Employee severance pay and fringes.....	19.1	--	10.0	--
Lease payments and termination fees.....	12.6	--	2.6	--
Other exit activity costs, principally facility closure expenses.....	4.1	--	3.4	--
	35.8	--	16.0	--
Total restructuring and asset impairment accrual.....	51.7	--	16.0	15.9
Discontinued operations.....	58.2	22.5	6.1	71.6
	\$ 109.9	\$ 22.5	\$ 22.1	\$ 87.5

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</TABLE>

<TABLE>
<CAPTION>

	ACCRUAL BALANCE DECEMBER 29, 1997	CASH REDUCTIC
	-----	-----
<S>	<C>	<C>
Restructuring accruals:		
Employee severance pay and fringes.....	\$ 1.2	\$1.2
Lease payments and termination fees.....	3.3	2.1
Other exit activity costs, principally facility closure expenses.....	0.7	0.7
Total restructuring accrual.....	5.2	4.0
Discontinued operations.....	3.0	2.5
	\$ 8.2	\$6.5
	-----	-----

</TABLE>

The restructuring accrual, which existed at January 1, 1996 (\$13.8 million), was initially established as part of a "rightsizing program" during fiscal 1992. During 1996 approximately \$3 million of this accrual was utilized and the remaining \$10.8 million became part of the reserve requirements of the 1996 restructuring plan. In effect, in 1996, the Company reversed the \$10.8 million prior year accrual determined to be no longer required and provided a corresponding amount in connection with the 1996 restructuring charge.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

13. DISCONTINUED OPERATIONS

As part of the 1996 restructuring plan, the Company also announced the divestiture of the furniture business, by a sale of assets. In February 1997, the Company entered into an agreement to sell the business to U.S. Industries, Inc. in a transaction that was completed on March 17, 1997. In connection with the furniture divestiture, the Company recorded a provision for estimated losses to be incurred on the sale of \$39.1 million in 1996, net of applicable income tax benefits of \$19.9 million. Although the discontinued furniture operations were profitable, net income had declined from \$21.7 million in 1994 to \$0.8 million in 1996. This decline, along with the Company's announcement that it intended to divest this line of business contributed to the loss on sale. Revenues for the discontinued furniture business were \$51.6 million in the first quarter of 1997, \$227.5 million in 1996 and \$185.6 million in 1995. Results of operations were nominal in 1997 and 1996, down from \$12.9 million (net of \$7.9 million in taxes) in 1995. In connection with the sale of these assets (primarily inventory, property, plant and equipment), the Company received \$69.0 million in cash. The Company retained accounts receivable related to the furniture business of approximately \$50 million as of the closing date and retained certain liabilities. The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the

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asset purchase agreement and in the first quarter of 1997, after completion of the sale, the Company recorded an additional loss of \$14.0 million, net of applicable income tax benefits of \$8.5 million.

In addition to the furniture business divestiture, the Company also completed the sale of other product lines and assets in 1997 as part of its restructuring plan, including time and temperature products, Counselor(Registered) and Borg(Registered) scales and a textile facility. Losses incurred on the disposal of these assets, which consist primarily of write-downs of assets to net realizable value, are included in Restructuring and Asset Impairment Charges in 1996 in the Consolidated Statements of Operations.

14. SEGMENT, CUSTOMER AND GEOGRAPHIC DATA

Throughout 1998 Sunbeam's operations were managed through four reportable segments: Household, Outdoor Leisure, International and Corporate. Reportable segments are identified by the Company based upon the distinct products manufactured (Household and Outdoor Leisure) or based upon the geographic region in which its products are distributed (International). The Company's reportable segments are all separately managed.

The Household group consists of appliances (including mixers, blenders, food steamers, bread makers, rice cookers, coffee makers, toasters, irons and garment steamers), health products (including vaporizers, humidifiers, air cleaners, massagers, hot and cold packs and blood pressure monitors), scales, personal care products (including hair clippers and trimmers and related products for the professional beauty, barber and veterinarian trade and sales of products to commercial and institutional channels), blankets (including electric blankets, heated throws and mattress pads) and First Alert(Registered) products (smoke and carbon monoxide detectors, fire extinguishers and home safety equipment).

The Outdoor Leisure group includes outdoor recreation products (which encompass tents, sleeping bags, coolers, camping stoves, lanterns and outdoor heaters), outdoor cooking products (including gas and charcoal outdoor grills and grill parts and accessories), Powermate(Registered) products (including portable power generators and air compressors), and Eastpak(Registered) products (including backpacks and bags).

The International group is managed through five regional subdivisions: Europe, Latin America, Japan, Canada and East Asia. Europe includes the manufacture, sales and distribution of Campingaz(Registered) products and sales and distribution in Europe, Africa and the Middle East of other Company products. The Latin American region includes the manufacture, sales and distribution throughout Latin America of small appliances, and sales and distribution of personal care products, professional clippers and related products, camping products and Powermate products. Japan includes the sales and distribution of primarily outdoor recreation products. Canada includes sales of substantially all the Company's products and East Asia encompasses sales and distribution in all areas of East Asia other than Japan of substantially all the Company's products.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

14. SEGMENT, CUSTOMER AND GEOGRAPHIC DATA--(CONTINUED)

The Company's Corporate group provides certain management, accounting, legal, risk management, treasury, human resources, tax and management

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information services to all operating groups and also includes the operation of the Company's retail stores and the conduct of the Company's licensing activities.

The accounting policies of the operating segments are the same as those described in the summary of significant accounting policies (see Note 1) except that certain bad debt expense is recorded at a consolidated level and included in the Corporate group. Sunbeam evaluates performance and allocates resources based upon profit or loss from operations before amortization, income taxes, minority interest, interest expense, non-recurring gains and losses and foreign exchange gains and losses. Intersegment sales and transfers are primarily recorded at cost.

The following tables include selected financial information with respect to Sunbeam's four operating segments. Business segment information for prior years has been reclassified to conform to the current year presentation.

<TABLE>
<CAPTION>

	HOUSEHOLD	OUTDOOR LEISURE	INTERNATIONAL	CC
<S>	<C>	<C>	<C>	<C>
YEAR ENDED DECEMBER 31, 1998				
Net sales to unaffiliated customers.....	\$ 714,568	\$ 677,526	\$ 413,864	\$
Intersegment net sales.....	62,971	111,583	98,120	
Segment operating loss.....	(66,376)	(71,612)	(29,941)	(
Segment assets.....	864,745	1,782,994	413,755	
Segment depreciation expense.....	24,086	32,759	2,448	
YEAR ENDED DECEMBER 28, 1997				
Net sales to unaffiliated customers.....	\$ 568,921	\$ 258,484	\$ 229,572	\$
Intersegment net sales.....	100,355	3,520	64,549	
Segment operating earnings (loss).....	73,210	8,205	43,793	
Segment assets.....	510,183	141,332	167,591	
Segment depreciation expense.....	15,358	9,494	3,204	
YEAR ENDED DECEMBER 29, 1996				
Net sales to unaffiliated customers.....	\$ 555,215	\$ 245,600	\$ 183,267	\$
Intersegment net sales.....	48,961	8,940	30,012	
Segment operating (loss) earnings.....	(37,598)	39,970	5,567	
Segment assets.....	352,253	215,757	89,360	
Segment depreciation expense.....	25,950	9,180	2,464	

</TABLE>

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

14. SEGMENT, CUSTOMER AND GEOGRAPHIC DATA--(CONTINUED)

Reconciliation of selected segment information to Sunbeam's consolidated totals for the years ended:

<TABLE>
<CAPTION>

	DECEMBER 31, 1998	DECEMBER 28, 1997
<S>	<C>	<C>
Net sales:		

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Net sales for reportable segments.....	\$ 2,109,545	\$ 1,241,514
Elimination of intersegment net sales.....	(272,674)	(168,424)
Consolidated net sales.....	<u>\$ 1,836,871</u>	<u>\$ 1,073,090</u>
Segment (loss) earnings:		
Total (loss) earnings for reportable segments.....	\$ (318,904)	\$ 82,293
Unallocated amounts:		
Interest expense.....	(131,091)	(11,381)
Other (income) expense, net.....	4,768	(12)
Amortization of intangible assets.....	(43,830)	(7,829)
Provision for inventory (Notes 11 and 12).....	(95,830)	--
Asset impairment (Notes 2 and 11).....	(101,894)	--
Issuance of warrants (Note 2).....	(70,000)	--
Former employees deferred compensation and severance (Note 8).....	(30,688)	--
Restructuring benefit (charges) (Note 12).....	--	14,582
Restructuring related charges (Note 12).....	--	(15,800)
Reversals of reserves no longer required (Note 17)....	--	27,963
Other (charges) benefit.....	(8,879)	2,854
	<u>(477,444)</u>	<u>10,377</u>
Consolidated (loss) earnings from continuing operations before income taxes, minority interest and extraordinary charge.....	<u>\$ (796,348)</u>	<u>\$ 92,670</u>

</TABLE>

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

14. SEGMENT, CUSTOMER AND GEOGRAPHIC DATA--(CONTINUED)

Enterprise-Wide Disclosures

Net sales from the Company's Household products represented 50%, 73% and 74% of consolidated net sales in 1998, 1997 and 1996, respectively. Net sales from the Company's Outdoor Leisure products category represented 50%, 25% and 26% of consolidated net sales in 1998, 1997 and 1996, respectively.

<TABLE>
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	FISCAL YEARS ENDED		
	1998	1997	1996
<S>	<C>	<C>	<C>
Geographic Area Data			
Net sales to unaffiliated customers:			
United States.....	\$1,423,007	\$ 843,518	\$
Europe.....	170,910	17,415	
Latin America.....	158,670	164,044	
Other.....	84,284	48,113	
Total net sales.....	<u>\$1,836,871</u>	<u>\$1,073,090</u>	<u>\$</u>

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Identifiable assets:	-----	-----	---
United States.....	\$2,991,762	\$ 891,337	\$
Europe.....	244,670	9,703	
Latin America.....	80,943	127,036	
Other.....	88,142	30,852	
Total identifiable assets.....	\$3,405,517	\$1,058,928	\$1

</TABLE>

Revenue from one retail customer in the United States in Sunbeam's Household and Outdoor Leisure segments accounted for approximately 18%, 20% and 19% of consolidated net sales in 1998, 1997 and 1996, respectively. Receivables from this customer approximated \$62.6 million and \$51.9 million at December 31, 1998 and December 27, 1997, respectively. The Company establishes its credit policies based on an ongoing evaluation of its customers' creditworthiness and competitive market conditions and establishes its allowance for doubtful accounts based on an assessment of exposures to credit losses at each balance sheet date. The Company believes its allowance for doubtful accounts is sufficient based on the credit exposures outstanding.

15. COMMITMENTS AND CONTINGENCIES

SEC Investigation

By letter dated June 17, 1998, the staff of the Division of Enforcement of the SEC advised the Company that it was conducting an informal inquiry into the Company's accounting policies and procedures and requested that the Company produce certain documents. On July 2, 1998, the SEC issued a Formal Order of Private Investigation, designating officers to take testimony and pursuant to which a subpoena duces tecum was served on the Company requiring the production of certain documents. On November 4, 1998, the Company received another SEC subpoena duces tecum requiring the production of further documents. The Company has provided numerous documents to the SEC staff and continues to cooperate with the SEC staff. The Company has, however, declined to provide the SEC with material that the Company believes is subject to the attorney-client privilege and the work product immunity. The Company cannot predict the term of such investigation or its potential outcome.

Litigation

On April 23, 1998, two class action lawsuits were filed on behalf of purchasers of the Company's common stock in the U.S. District Court for the Southern District of Florida against the Company and some of its present and former directors and former officers alleging violations of the federal securities laws as discussed below.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

15. COMMITMENTS AND CONTINGENCIES--(CONTINUED)

After that date, approximately fifteen similar class actions were filed in the same Court. One of the lawsuits also named as defendant Arthur Andersen LLP, the Company's independent accountants for the period covered by the lawsuit.

On June 16, 1998, the Court entered an Order consolidating all these suits

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and all similar class actions subsequently filed (collectively, the "Consolidated Federal Actions") and providing time periods for the filing of a consolidated amended complaint and defendants' response thereto. On June 22, 1998, two groups of plaintiffs made motions to be appointed lead plaintiffs and to have their selection of counsel approved as lead counsel. On July 20, 1998, the Court entered an Order appointing lead plaintiffs and lead counsel. This Order also stated that it "shall apply to all subsequently filed actions which are consolidated herewith." On August 28, 1998, plaintiffs in one of the subsequently filed actions filed an objection to having their action consolidated pursuant to the June 16, 1998 Order, arguing that the class period in their action differs from the class periods in the originally filed consolidated actions. On December 9, 1998, the Court entered an Order overruling plaintiffs' objections and affirming its prior Order appointing lead plaintiffs and lead counsel.

On January 6, 1999, plaintiffs filed a consolidated amended class action complaint against the Company, some of its present and former directors and former officers, and Arthur Andersen LLP. The consolidated amended class action complaint alleges that, in violation of section 10(b) of the Exchange Act and SEC Rule 10b-5, defendants made material misrepresentations and omissions regarding the Company's business operations, future prospects and anticipated earnings per share, in an effort to artificially inflate the price of the common stock and call options, and that, in violation of section 20(a) of the Exchange Act, the individual defendants exercised influence and control over the Company, causing the Company to make material misrepresentations and omissions. The consolidated amended complaint seeks an unspecified award of money damages. On February 5, 1999, plaintiffs moved for an order certifying a class consisting of all persons and entities who purchased Sunbeam common stock or who purchased call options or sold put options with respect to Sunbeam common stock during the period April 23, 1997 through June 30, 1998, excluding the defendants, their affiliates, and employees of Sunbeam. Defendants have filed a response to the motion for class certification. On March 8, 1999, all defendants who had been served with the consolidated amended class action complaint moved to dismiss it. Under the Private Securities Litigation Reform Act of 1995, all discovery in the consolidated action is stayed pending resolution of the motions to dismiss.

On April 7, 1998, a purported derivative action was filed in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida against the Company and some of its present and former directors and former officers. The action alleged that the individual defendants breached their fiduciary duties and wasted corporate assets when the Company granted stock options at an exercise price of \$36.85 to three of its officers and directors (who were subsequently terminated) on or about February 2, 1998. On June 25, 1998, all defendants filed a motion to dismiss the complaint for failure to make a presuit demand on Sunbeam's board of directors. On October 22, 1998, the plaintiff amended the complaint against all but one of the defendants named in the original complaint. On February 19, 1999, plaintiffs filed a second amended derivative complaint nominally on behalf of Sunbeam against some of its present and former directors and former officers and Arthur Andersen LLP. The second amended complaint alleges, among other things, that Messrs. Dunlap and Kersh (the Company's former Chairman and Chief Executive Officer and Chief Financial Officer, respectively) caused Sunbeam to employ fraudulent accounting procedures in order to enable them to secure new employment contracts, and seeks an award of damages and other declaratory and equitable relief. The plaintiff has agreed that defendants need not respond to the second amended complaint until May 14, 1999. As described below, the Company and the plaintiffs have moved the Court for injunctive relief against Messrs. Dunlap and Kersh with respect to the arbitration action brought by them.

On June 25, 1998, four purported class actions were filed in the Court of Chancery of the State of Delaware in New Castle County by minority shareholders of Coleman against Coleman, the Company and some of the Company's and Coleman's present and former officers and directors. An additional class action was filed on

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

15. COMMITMENTS AND CONTINGENCIES--(CONTINUED)

August 10, 1998, against the same parties. The complaints in these class actions allege, in essence, that the existing exchange ratio for the proposed Coleman merger is no longer fair to Coleman's public shareholders as a result of the decline in the market value of the common stock. On October 21, 1998, the Company announced that it had entered into a Memorandum of Understanding to settle, subject to court approval, the class actions. Under the terms of the proposed settlement, if approved by the court the Company will issue to the Coleman public shareholders, and plaintiff's counsel in this action, warrants to purchase up to approximately 4.98 million shares of the Company's common stock at a cash exercise price of \$7 per share, subject to certain anti-dilution provisions. These warrants will generally have the same terms as the warrants issued to an affiliate of M&F (see Note 2) and will be issued when the Coleman merger is consummated, which is now expected to be during the second half of 1999. As a consequence of entering the Memorandum of Understanding and agreeing to issue additional consideration in the form of warrants to purchase Sunbeam common stock, a new five year measurement date was established. The total consideration to be paid (cash, Sunbeam common stock, and Sunbeam warrants) to the Coleman shareholders will therefore be measured as of October 21, 1998. There can be no assurance that the Court will approve the settlement as proposed.

During the months of August and October 1998, purported class action and derivative lawsuits were filed in the Court of Chancery of the State of Delaware in New Castle County and in the U.S. District Court for the Southern District of Florida by shareholders of the Company against the Company, M&F and certain of the Company's present and former directors. These complaints allege that the defendants breached their fiduciary duties when the Company entered into a settlement agreement whereby M&F and its affiliates released the Company from certain claims they may have had arising out of the Company's acquisition of M&F's interest in Coleman, and M&F agreed to provide management support to the Company. Under the settlement agreement, M&F was granted a five year warrant to purchase up to an additional 23 million shares of Sunbeam's common stock at an exercise price of \$7 per share, subject to certain anti-dilution provisions. The plaintiffs have requested an injunction against issuance of stock to M&F pursuant to exercise of the warrants and unspecified money damages. These complaints also allege that the rights of the public shareholders have been compromised, as the settlement would normally require shareholders' approval under the rules and regulations of the New York Stock Exchange ("NYSE"). The Audit Committee of the Company's board of directors determined that obtaining such shareholders' approval would have seriously jeopardized the financial viability of the Company, which is an allowable exception to the NYSE shareholders' approval requirements. By Order of the Court of Chancery dated January 7, 1999, the derivative actions filed in that Court were consolidated and the Company has moved to dismiss such action. The action filed in the U.S. District Court for the Southern District of Florida has been dismissed.

On September 16, 1998, an action was filed in the 56th Judicial District Court of Galveston County, Texas alleging various claims in violation of the Texas Securities Act and Texas Business & Commercial Code as well as common law fraud as a result of the Company's alleged misstatements and omissions regarding the Company's financial condition and prospects during a period beginning May 1, 1998 and ending June 16, 1998, in which the plaintiffs engaged in transactions in the Company's common stock. The Company is the only named defendant in this

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action. The complaint requests recovery of compensatory damages, punitive damages and expenses in an unspecified amount. This action was removed to the U.S. District Court for the Southern District of Texas and subsequently has been transferred to the Southern District of Florida, the forum for the Consolidated Federal Actions.

On October 30, 1998, a class action lawsuit was filed on behalf of certain purchasers of the Debentures in the U.S. District Court of the Southern District of Florida against the Company and some of the Company's former officers and directors, alleging violations of the federal securities laws and common law fraud. The complaint alleges that the Company's offering memorandum used for the marketing of the Debentures contained false and misleading information regarding the Company's financial position and that the defendants engaged in a plan to inflate the Company's earnings for the purpose of defrauding the plaintiffs and others. This action has

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS-- (CONTINUED)

15. COMMITMENTS AND CONTINGENCIES-- (CONTINUED)

been transferred to the Southern District of Florida, the forum for the Consolidated Federal Actions, and the parties have negotiated a proposed coordination plan in order to coordinate proceedings in this action with those in the Consolidated Federal Actions.

The Company has been named as a defendant in an action filed in the District Court of Tarrant County, Texas, 48th Judicial District, on November 20, 1998, which was served on the Company through the Secretary of State of Texas on January 15, 1999. The plaintiffs in this action are purchasers of the Debentures. The plaintiffs allege that the Company violated the Texas Securities Act and the Texas Business & Commercial Code and committed state common law fraud by materially misstating the financial position of the Company in connection with the offering and sale of the Debentures. The complaint seeks rescission, as well as compensatory and exemplary damages in an unspecified amount. The Company specially appeared to assert an objection to the Texas Court's exercise of personal jurisdiction over the Company, and a hearing on this objection was held on April 15, 1999. The Court has issued a letter ruling advising the parties that it would grant the Company's special appearance and sustain the challenge to personal jurisdiction. The plaintiffs have moved for reconsideration of this decision. Plaintiffs had also moved for partial summary judgment on their Texas Securities Act claims, but, in light of the Court's decision on the special appearance, the hearing on the summary judgment motion has been cancelled.

On April 12, 1999, a class action lawsuit was filed in the U.S. District Court for the Southern District of Florida. The lawsuit was filed on behalf of persons who purchased the Debentures during the period of March 20, 1998 through June 30, 1998, inclusive, but after the initial offering of such Debentures. The complaint asserts that Sunbeam made material omissions and misrepresentations that had the effect of inflating the market price of the Debentures. The complaint names as defendants the Company, its former auditor, Arthur Andersen LLP and two former Sunbeam officers, Messrs. Dunlap and Kersh. The plaintiff is an institution which allegedly acquired in excess of \$150,000,000 face amount of the Debentures and now seeks unspecified money damages. The Company was served on April 16, 1999 in connection with this pending lawsuit. The Company will advise the Court of the pending Consolidated Federal Actions and request transfer of the action.

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On February 9, 1999, Messrs. Dunlap and Kersh filed with the American Arbitration Association demands for arbitration of claims under their respective employment agreements with Sunbeam. Messrs. Dunlap and Kersh are requesting a finding by the arbitrator that they were terminated by the Company without cause and should be awarded the corresponding benefits set forth in their respective employment agreements. On March 12, 1999, Sunbeam asked the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida to issue an injunction prohibiting Messrs. Dunlap and Kersh from pursuing their arbitration proceedings against Sunbeam on the ground that the simultaneous litigation of the April 7, 1998 action and these arbitration proceedings would subject Sunbeam to the threat of inconsistent adjudications with respect to certain rights to compensation asserted by Messrs. Dunlap and Kersh. On March 19, 1999, the plaintiff in the April 7, 1998 action discussed above moved for a similar injunction on the ground that the arbitration proceedings threatened irreparable harm to Sunbeam and its shareholders. On March 26, 1999, Messrs., Dunlap and Kersh filed a response in opposition to the motions for injunctive relief. A hearing on the motions for injunctive relief has been held and, as a result of Sunbeam's motion for preliminary injunction, administration of the arbitrations has been suspended until May 10, 1999.

On March 23, 1999, Messrs. Dunlap and Kersh filed a complaint in the Court of Chancery of the State of Delaware seeking an order directing Sunbeam to advance attorneys' fees and other expenses incurred in connection with various state and federal class and derivative actions and an investigation instituted by the SEC. The complaint alleges that such advancements are required by Sunbeam's by-laws and by a forbearance agreement entered into between Sunbeam and Messrs. Dunlap and Kersh in August 1998. The Company has filed its answer to the complaint and the Court of Chancery has scheduled a trial of this summary proceeding to be held on June 15, 1999.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

15. COMMITMENTS AND CONTINGENCIES--(CONTINUED)

The Company intends to vigorously defend each of the foregoing lawsuits other than those as to which a Memorandum of Understanding to settle has been reached, but cannot predict the outcome and is not currently able to evaluate the likelihood of the Company's success in each case or the range of potential loss. However, if the foregoing actions were determined adversely to the Company, such judgements would likely have a material adverse effect on the Company's financial position, results of operations and cash flows.

On July 2, 1998, the American Insurance Company ("American") filed suit against the Company in the U.S. District Court for the Southern District of New York requesting a declaratory judgment of the Court that the directors' and officers' liability insurance policy for excess coverage issued by American was invalid and/or had been properly canceled by American. The Company's motion to transfer such action to the federal district court in which the Consolidated Federal Actions are currently pending was recently denied. The case is now in discovery. On October 20, 1998, an action was filed by Federal Insurance Company in the U.S. District Court for the Middle District of Florida requesting the same relief as that requested by American in the previously filed action as to additional coverage levels under the Company's directors' and officers' liability insurance policy. This action has been transferred to the U.S. District Court for the Southern District of Florida and is currently in discovery. On December 22, 1998, an action was filed by Executive Risk Indemnity, Inc. in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida requesting the same relief as that requested by

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American and Federal in their previously filed actions as to additional coverage levels under the Company's directors' and officers' liability insurance policy. On April 15, 1999, the Company filed an action in the U.S. District Court for the Southern District of Florida against the National Union Fire Insurance Company of Pittsburgh, PA, Gulf Insurance Company and St. Paul Mercury Insurance Company requesting, among other things, a declaratory judgment that National Union is not entitled to rescind its liability insurance policy to the Company and a declaratory judgment that the Company is entitled to coverage from these insurance companies for various lawsuits described herein under liability insurance policies issued by each of the defendants. The Company intends to pursue recovery from all of its insurers if damages are awarded against the Company or its indemnified officers and/or directors under any of the foregoing actions. The Company's failure to obtain such insurance recoveries following an adverse judgement in any of the foregoing actions could have a material adverse effect on the Company's financial position, results of operations and cash flows.

The Company and its subsidiaries are also involved in various lawsuits arising from time to time that the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these routine matters, and of certain matters relating to prior operations, individually or in the aggregate, will not have a material adverse effect upon the financial position, results of operations, or cash flows of the Company.

In the fourth quarter of 1996, the Company recorded a \$12.0 million charge related to a case for which an adverse development arose near year-end. In 1997, this case was favorably resolved and, as a result, \$8.1 million of the charge established in 1996 was reversed into income primarily in the fourth quarter of 1997.

Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and claims and related anticipated legal fees. The costs are accrued when it is both probable that an asset has been impaired or a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon the Company's assessment, after consultation with counsel, of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the plaintiffs, and other significant factors which vary by case. When it is not possible to estimate a specific expected cost to be incurred, the Company evaluates the range of probable loss and records the minimum end of the range. As of December 31, 1998 Sunbeam had established accruals for litigation matters of \$31.2 million (representing \$17.5 million and \$13.7 million for estimated damages or settlement amounts and legal fees, respectively) and \$9.9 million as of December 28, 1997 (representing \$3.0 million and \$6.9 million for estimated damages or settlement amounts and legal fees, respectively). It is anticipated that the \$31.2 million accrual will be paid as follows: \$22.4 million in

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

15. COMMITMENTS AND CONTINGENCIES--(CONTINUED)

1999, \$7.5 million in 2000, and \$1.3 million in 2001. The Company believes, based on information known at December 31, 1998, that anticipated probable costs of litigation matters existing as of December 31, 1998 have been adequately reserved to the extent determinable.

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Environmental Matters

The Company's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations in addition to laws and regulations regarding labeling and packaging of products and the sales of products containing certain environmentally sensitive materials ("Environmental Laws"). The Company believes it is in substantial compliance with all Environmental Laws which are applicable to its operations. Compliance with Environmental Laws involves certain continuing costs; however, such costs of ongoing compliance have not resulted, and are not anticipated to result, in a material increase in the Company's capital expenditures or to have a material adverse effect on the Company's results of operations, financial condition or competitive position.

In addition to ongoing environmental compliance at its operations, the Company also is actively engaged in certain environmental remediation activities many of which relate to divested operations. As of December 31, 1998, the Company has been identified by the United States Environmental Protection Agency ("EPA") or a state environmental agency as a potentially responsible party ("PRP") in connection with seven sites subject to the federal Superfund Act and five sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a de minimis (less than 1%) participant.

The Superfund Act, and related state environmental remediation laws, generally authorize governmental authorities to remediate a Superfund site and to assess the costs against the PRPs or to order the PRPs to remediate the site at their expense. Liability under the Superfund Act is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, the Company recognizes its responsibility to determine whether other PRPs at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRPs established with respect to such sites. The Company currently is engaged in active remediation activities at 12 sites, seven of which are among the Environmental Sites referred to above, and five of which have not been designated as Superfund sites under federal or state law. The remediation efforts in which the Company is involved include facility investigations, including soil and groundwater investigations, corrective measure studies, including feasibility studies, groundwater monitoring, extraction and treatment, soil sampling, excavation and treatment relating to environmental clean-ups. In certain instances, the Company has entered into agreements with governmental authorities to undertake additional investigatory activities and in other instances has agreed to implement appropriate remedial actions. The Company has also established reserve amounts for certain non-compliance matters including those involving air emissions.

The Company has established reserves, in accordance with SFAS No. 5, Accounting for Contingencies, to cover the anticipated probable costs of investigation and remediation, based upon periodic reviews of all sites for which the Company has, or may have remediation responsibility. The Company accrues environmental investigation and remediation costs when it is both probable that a liability has been incurred and the amount can be reasonably estimated and the Company's responsibility is established. Generally, the timing of these accruals coincides with the earlier of formal commitment to an investigation plan, completion of feasibility study or the Company's commitment to a formal plan of action. As of December 31, 1998 and 1997, the Company's environmental reserves were \$25.0 million (representing \$22.9 million for the estimated costs of facility investigations, corrective measure studies and known

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remedial measures and \$2.1 million for estimated legal

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

15. COMMITMENTS AND CONTINGENCIES--(CONTINUED)

costs) and \$24.0 million, (representing \$21.8 million for the estimated cost of facility investigations, corrective measure studies and known remedial measures and \$2.2 million for estimated legal costs), respectively. It is anticipated that the \$25.0 million accrual at December 31, 1998 will be paid as follows: \$5.3 million in 1999, \$4.9 million in 2000, \$3.2 million in 2001, \$1.0 million in 2002, \$1.0 million in 2003 and \$9.6 million thereafter. The Company has accrued its best estimate of investigation and remediation costs (based upon a range of exposure of \$13.0 million to \$46.3 million) based upon facts known to the Company and because of the inherent difficulties in estimating the ultimate amount of environmental costs, which are further described below, these estimates may materially change in the future as a result of the uncertainties described below. Estimated costs, which are based upon experience with similar sites and technical evaluations, are judgmental in nature and are recorded at undiscounted amounts without considering the impact of inflation and are adjusted periodically to reflect changes in applicable laws or regulations, changes in available technologies and receipt by the Company of new information. It is difficult to estimate the ultimate level of future environmental expenditures due to a number of uncertainties surrounding environmental liabilities. These uncertainties include the applicability of laws and regulations, changes in environmental remediation requirements, the enactment of additional regulations, uncertainties surrounding remediation procedures including the development of new technology, the identification of new sites for which the Company could be a PRP, information relating to the exact nature and extent of the contamination at each site and the extent of required cleanup efforts, the uncertainties with respect to the ultimate outcome of issues which may be actively contested and the varying costs of alternative remediation strategies. The Company continues to pursue the recovery of some environmental remediation costs from certain of its liability insurance carriers; however, such potential recoveries have not been offset against potential liabilities and have not been considered in determining the Company's environmental reserves. Due to uncertainty over remedial measures to be adopted at some sites, the possibility of changes in Environmental Laws and regulations and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, the Company's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved as of December 31, 1998.

In the fourth quarter of 1996, the Company performed a comprehensive review of all environmental exposures in an attempt by the then new senior management team to accelerate the resolution and settlement of environmental claims. As a result, upon conclusion of the review, the Company recorded additional environmental reserves of approximately \$9.0 million in the fourth quarter of 1996.

The Company believes, based on existing information, that the costs of completing environmental remediation of all sites for which the Company has a remediation responsibility have been adequately reserved, and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition, results of operations or cash flows.

Product Liability Matters

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As a consumer goods manufacturer and distributor, the Company faces the constant risks of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. These claims could result in liabilities that could have a material adverse effect on Sunbeam's financial position, results of operations and cash flows. Some of the product lines Sunbeam acquired in the 1998 acquisitions have increased its exposure to product liabilities and related claims.

The Company is party to various personal injury and property damage lawsuits relating to its products and incidental to its business. Annually, the Company sets its product liability insurance program based on the Company's current and historical claims experience and the availability and cost of insurance. The Company's program for 1998 was comprised of a self-insurance retention of \$2.5 million per occurrence.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

15. COMMITMENTS AND CONTINGENCIES--(CONTINUED)

Cumulative amounts estimated to be payable by the Company with respect to pending and potential claims for all years in which the Company is liable under its self-insurance retention have been accrued as liabilities. Such accrued liabilities are necessarily based on estimates taking into account prior experience, numbers of claims and other relevant factors; thus, the Company's ultimate liability may exceed or be less than the amounts accrued. The methods of making such estimates and establishing the resulting liability are reviewed periodically and any adjustments resulting therefrom are reflected in current operating results.

Historically, product liability awards have rarely exceeded the Company's individual per occurrence self-insured retention. There can be no assurance, however, that the Company's future product liability experience will be consistent with its past experience. Based on existing information, the Company believes that the ultimate conclusion of the various pending product liability claims and lawsuits of the Company, individually or in the aggregate, will not have a material adverse effect on the financial position, results of operations or cash flows of the Company.

Commitment Fee

Under the terms of the April 15, 1999 amendment to the New Credit Facility, the Company is obligated to pay a loan commitment fee of between \$4.2 million and \$17.0 million. The ultimate amount of the fee is determined based on multiplying the sum of the outstanding borrowings and amounts available for borrowings as of April 15, 1999 by a factor that is determined at the earlier of September 30, 2000 or upon repayment of the New Credit Facility. This fee is payable at the earlier of September 30, 2000 or upon repayment of the New Credit Facility. At a minimum, the Company is obligated under these terms to pay \$4.2 million. The ultimate amount due could be as high as \$17.0 million if the sum of the outstanding borrowings and amounts available for borrowings at September 30, 2000 (the "aggregate availability") exceeds \$1.2 billion. If the aggregate availability is between \$1.0 billion and \$1.2 billion, a fee of \$8.4 million will be due. If the aggregate availability is \$1.0 billion or less, the \$4.2 million minimum will be due. Under any circumstances, the \$4.2 million will be due; therefore, the Company will accrue the minimum liability and record an offsetting asset in the second quarter of 1999, which will be amortized and included in interest expense through April 10, 2000, the term of the current

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amendment extension period.

The Company will not accrue for amounts in excess of the \$4.2 million as there are numerous uncertainties which may individually or in the aggregate impact the level of aggregate availability at September 30, 2000. These uncertainties include, but are not limited to: the ability to obtain an amendment or further waiver of existing covenants from the lenders under the New Credit Facility for the period beyond April 10, 2000; proceeds from the sales of assets or businesses, if any; changes in debt structure, including the effects of refinancing, if any; and cash flows generated or used by future operations. Given these uncertainties, the Company is currently not able to predict the probable level of aggregate availability at September 30, 2000. As events develop, the Company will periodically review the expected aggregate availability at September 30, 2000. If it becomes likely that an amount in excess of \$4.2 million will be paid, the Company will recognize that change in estimate over the remaining period of the New Credit Facility Amendment.

Leases

The Company rents certain facilities, equipment and retail stores under operating leases. Rental expense for operating leases amounted to \$28.1 million in 1998, \$7.4 million for 1997 and \$8.0 million for 1996. The minimum future rentals due under noncancelable operating leases as of December 31, 1998 aggregated to \$167.6 million. The amounts payable in each of the years 1999-2003 and thereafter are \$34.6 million, \$33.7 million, \$17.1 million, \$13.5 million, \$9.7 million and \$59.0 million, respectively.

In connection with a warehouse expansion related to the electric blanket business, the Company entered into a \$5 million capital lease obligation in 1996.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

15. COMMITMENTS AND CONTINGENCIES--(CONTINUED)

Certain Debt Obligations

Responsibility for servicing certain debt obligations of the Company's predecessor were assumed by third parties in connection with the acquisition of former businesses, although the Company's predecessor remained the primary obligor in accordance with the respective loan documents. Such obligations, which amounted to approximately \$17.3 million at December 31, 1998, and the corresponding receivables from the third parties, are not included in the Consolidated Balance Sheets since these transactions occurred prior to the issuance of SFAS No. 76, Extinguishment of Debt. Management believes that the third parties will continue to meet their obligations pursuant to the assumption agreements.

Purchase and other Commitments

In conjunction with the sale of the Biddeford, Maine textile mill in 1997, the Company entered into a five-year agreement to purchase blanket shells from the mill. The agreement provides for a minimum purchase commitment each year of the contract. As of December 31, 1998, the Company had remaining minimum commitments under the contract of approximately \$104 million.

In connection with Coleman's 1995 purchase of substantially all of the assets of Active Technologies, Inc. ("ATI"), the Company may be required to make

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payments to the predecessor owner of ATI of up to \$18.8 million based on the Company's sales of ATI related products and royalties received by the Company for licensing arrangements related to ATI patents. As of December 31, 1998, the amounts paid under the terms of this agreement have been immaterial.

16. RELATED PARTY TRANSACTIONS

Services Provided by M&F

Pursuant to the settlement agreement with M&F, M&F agreed to make certain executive management personnel available to the Company and to provide certain management assistance to Sunbeam. The Company does not reimburse M&F for such services, other than reimbursement of out-of-pocket expenses paid to third parties. (See Note 2.)

Liquidation of Options

The Company expects to acquire the remaining approximately 20% equity interest in Coleman in the second half of 1999. Upon the consummation of the merger transaction, the unexercised options under Coleman's stock option plans will be cashed out at a price per share equal to the difference between \$27.50 per share and the exercise price of such options. Ronald O. Perelman, the sole stockholder of M&F, holds 500,000 options for which he will receive a net payment of \$6,750,000. Mr. Shapiro and Ms. Clark, executive officers of the Company, hold 77,500 and 25,000 options, respectively, for which they will receive net payments of \$823,000 and \$275,005, respectively.

Arrangements Between Coleman and M&F

Coleman and an affiliate of M&F are parties to a cross-indemnification agreement pursuant to which Coleman has agreed to indemnify such affiliate, its officers, directors, employees, control persons, agents and representatives against all past, present and future liabilities, including product liability and environmental matters, related to the initial assets of Coleman, which Coleman acquired from such affiliate in December 1991. In addition, pursuant to this cross-indemnification agreement, the M&F affiliate has agreed to indemnify Coleman and its officers, directors, employees, agents and representatives against all other liabilities of such M&F affiliate or any of its subsidiaries, including liabilities relating to the assets it did not transfer to Coleman in December 1991. This cross-indemnification agreement will survive the Coleman merger.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)

16. RELATED PARTY TRANSACTIONS--(CONTINUED)

Coleman previously was included in the consolidated tax group for the M&F companies and was a party to a tax sharing agreement with a M&F affiliate, pursuant to which Coleman paid to such affiliate the amount of taxes which would have been paid by Coleman if it were required to file separate federal, state or local income tax returns. The tax sharing agreement was terminated upon the acquisition of Coleman; however, the acquisition agreement provides for certain tax indemnities and tax sharing payments among the Company and the M&F affiliates relating to periods prior to the acquisition.

Lease of Office Space

During 1998, the Company sublet office space in New York City from an

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affiliate of M&F. The expense for such rent during 1998 was approximately \$130,000. The lease was terminated in 1999.

17. UNAUDITED QUARTERLY FINANCIAL DATA

<TABLE>
<CAPTION>

	FISCAL 19	
	FIRST QUARTER	SECOND QUARTER
	(DOLLARS IN MILLIONS, DATA)	
<S>	<C>	<C>
Net sales.....	\$ 247.6	\$ 578.5
Gross profit (loss).....	33.8	(52.5)
Operating loss.....	(37.4)	(193.3)
Loss from continuing operations before extraordinary charge.....	(45.6)	(241.0)
Basic and diluted loss per share from continuing operations before extraordinary charge.....	(0.53)	(2.39)
Extraordinary charge.....	(8.6)	(103.1)
Net loss.....	(54.1)	(344.1)
Basic and diluted loss per share.....	(0.63)	(3.41)

</TABLE>

<TABLE>
<CAPTION>

	FISCAL 1997	
	FIRST QUARTER	SECOND QUARTER
	(DOLLARS IN MILLIONS, DATA)	
<S>	<C>	<C>
Net sales.....	\$ 252.5	\$ 271.4
Gross profit.....	58.3	55.3
Operating earnings.....	17.1	16.8
Earnings from continuing operations.....	9.0	8.7
Basic earnings per share from continuing operations.....	0.11	0.10
Diluted earnings per share from continuing operations.....	0.11	0.10
(Loss) on sale of discontinued operations, net of taxes.....	(13.7)	--
Net (loss) earnings.....	(4.7)	8.7
Basic (loss) earnings per share.....	(0.06)	0.10
Diluted (loss) earnings per share.....	(0.06)	0.10

</TABLE>

(a) Due to the net loss incurred, earnings per share calculations exclude common stock equivalents for all four quarters and for the year in 1998 and for the first and third quarters in 1997. Earnings (loss) per share are computed independently for each of the quarters presented. Therefore, the sum of the quarterly earnings (loss) per share in 1998 and 1997 does not equal the total computed for the year.

(b) Each quarter consists of a 13-week period.

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SUNBEAM CORPORATION AND SUBSIDIARIES

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS-- (CONTINUED)

17. UNAUDITED QUARTERLY FINANCIAL DATA-- (CONTINUED)

During 1998, significant unusual charges affected the respective quarters as follows:

<TABLE>
<CAPTION>

	FIRST QUARTER	SECOND QUARTER
<S>	<C>	<C>
Compensation agreements with former senior officers (Note 8).....	\$31.2	\$ --
Excess and obsolete inventory reserves (Note 11).....	--	84.0
Facilities impairment charges (Note 11).....	--	29.6
Warrants issued to M&F (Note 2).....	--	--
Costs associated with financial statement restatement.....	--	--
Goodwill impairment (Note 2).....	--	--
Total.....	\$31.2	\$113.6

</TABLE>

During the first, second, third and fourth quarters of fiscal 1997, approximately \$0.5 million, \$4.5 million, \$1.5 million and \$21.5 million, respectively, of pre-tax liabilities no longer required were reversed and taken into income. Included in these reserves is the \$8.1 million litigation reserve reversal discussed in Note 15. Also, during the third and fourth quarters of fiscal 1997, approximately \$5.8 million and \$8.8 million, respectively, of restructuring reserves no longer required were reversed and taken into income, as discussed in Note 12. Additionally, during the fourth quarter of fiscal 1997, approximately \$13.3 million of tax liabilities related to the 1993 and 1994 tax years were determined to be no longer required and were reversed and taken into income. These accruals were no longer required because during the fourth quarter of 1997 the Company reached a resolution with the Internal Revenue Service on its audits of the 1993 and 1994 tax years.

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SUNBEAM CORPORATION AND SUBSIDIARIES

SCHEDULE II
VALUATION AND QUALIFYING ACCOUNTS
FISCAL YEARS 1998, 1997 AND 1996
(DOLLARS IN THOUSANDS)

<TABLE>
<CAPTION>

DESCRIPTION	BALANCE AT BEGINNING OF PERIOD	ADDITIONS CHARGED TO COSTS AND EXPENSES	RESERVES FROM ACQUISITIONS
<S>	<C>	<C>	<C>
Allowance for doubtful accounts and cash discounts:			
Fiscal year ended December 31, 1998.....	\$ 30,033	\$ 32,919	\$ 15,216

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Fiscal year ended December 28, 1997.....	\$ 19,701	\$ 17,297	\$ --
	-----	-----	-----
	-----	-----	-----
Fiscal year ended December 29, 1996.....	\$ 12,326	\$ 27,053	\$ --
	-----	-----	-----
	-----	-----	-----

</TABLE>

- Notes: (a) Reclassified to/from accrued liabilities for customer deductions.
 (b) Accounts written off as uncollectible.
 (c) Foreign currency translation adjustment.
 (d) Reserve balances of acquired companies at acquisition date.

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<PAGE>

SUNBEAM CORPORATION AND SUBSIDIARIES
 CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)
 (AMOUNTS IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

<TABLE>
 <CAPTION>

	NI
	SEPTEMBER 1999

<S>	<C>
Net sales.....	\$ 1,786
Cost of goods sold.....	1,334
Selling, general and administrative expense.....	449

Operating income (loss).....	2
Interest expense, net.....	136
Other income, net.....	(4)

Loss before income taxes, minority interest and extraordinary charge.....	(129)
Income tax provision (benefit):	
Current.....	1
Deferred.....	11

Minority interest.....	12
	13

Loss before extraordinary charge.....	(155)
Extraordinary charge from early extinguishments of debt.....	

Net loss.....	\$ (155)

Basic and diluted loss per share:	
Loss from continuing operations before extraordinary charge.....	\$ (
Extraordinary charge.....	-----
Net loss.....	\$ (

Basic and diluted weighted average
 common shares outstanding..... 100
 </TABLE>

See Notes to Condensed Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
 CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)
 (AMOUNTS IN THOUSANDS)

<TABLE>
 <CAPTION>

<S>

SEPTEMBER
 1999

<C>

ASSETS

Current assets:	
Cash and cash equivalents.....	\$ 29,
Restricted investments.....	
Receivables, net.....	443,
Inventories.....	507,
Prepaid expenses, deferred income taxes and other current assets.....	70,
Total current assets.....	1,050,
Property, plant and equipment, net.....	457,
Trademarks, tradenames, goodwill and other, net.....	1,809,
	\$ 3,317,

LIABILITIES AND SHAREHOLDERS' EQUITY

Current liabilities:	
Short-term debt and current portion of long-term debt.....	\$ 1,505,
Accounts payable.....	188,
Other current liabilities.....	303,
Total current liabilities.....	1,997,
Long-term debt, less current portion.....	817,
Other long-term liabilities.....	231,
Deferred income taxes.....	111,
Minority interest.....	65,
Commitments and contingencies	
Shareholders' equity:	
Preferred stock (2,000,000 shares authorized, none outstanding).....	1,
Common stock (100,746,400 and 100,739,053 shares issued).....	1,122,
Additional paid-in capital.....	(965,
Accumulated deficit.....	(64,
Accumulated other comprehensive loss.....	
Total shareholders' equity.....	94,
	\$ 3,317,

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</TABLE>

See Notes to Condensed Consolidated Financial Statements.

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<PAGE>

SUNBEAM CORPORATION AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)
(AMOUNTS IN THOUSANDS)

<TABLE>
<CAPTION>

<S>

NI

SEPTEMBER
1999

<C>

OPERATING ACTIVITIES:

Net loss.....	\$(155,
Adjustments to reconcile net loss to net cash used in operating activities:	
Depreciation and amortization.....	93,
Non-cash interest charges.....	34,
Deferred income taxes.....	11,
Minority interest.....	13,
(Gain) loss on sale of property, plant and equipment.....	(3,
Provision for fixed assets.....	
Provision for excess and obsolete inventory.....	
Warrants charged to expense.....	
Non-cash compensation charge.....	
Extraordinary charge from early extinguishments of debt.....	
Changes in working capital and other, net of acquisitions.....	(67,
Net cash used in operating activities.....	(73,

INVESTING ACTIVITIES:

Capital expenditures.....	(63,
Purchases of businesses, net of cash acquired.....	
Other.....	4,
Net cash used in investing activities.....	(58,

FINANCING ACTIVITIES:

Issuance of convertible subordinated debentures, net of financing fees.....	
Net borrowings under revolving credit facilities.....	105,
Payments of debt obligations, including prepayment penalties.....	(2,
Proceeds from exercise of stock options.....	
Other.....	(2,
Net cash provided by financing activities.....	99,

Net decrease in cash and cash equivalents.....	(32,
Cash and cash equivalents at beginning of period.....	61,
Cash and cash equivalents at end of period.....	\$ 29,

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</TABLE>

See Notes to Condensed Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

1. OPERATIONS AND BASIS OF PRESENTATION

Organization

Sunbeam Corporation ("Sunbeam" or the "Company") is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacturing, marketing and distribution of durable household and outdoor leisure consumer products through mass market and other distribution channels in the United States and internationally. The Company also sells its products to professional and commercial end users such as small businesses, health care providers, hotels and other institutions. The Company's principal products include household kitchen appliances; health monitoring and care products for home use; scales for consumer and professional use for weight management and business uses; electric blankets and throws; clippers and trimmers for consumer, professional and animal uses; smoke and carbon monoxide detectors; outdoor barbecue grills; camping equipment such as tents, lanterns, sleeping bags and stoves; coolers; backpacks and book bags; and portable generators and compressors.

In 1998 the Company acquired an indirect controlling interest in The Coleman Company, Inc. ("Coleman") and all the outstanding common stock of Signature Brands USA, Inc. ("Signature Brands") and First Alert, Inc. ("First Alert").

Basis of Presentation

The Condensed Consolidated Balance Sheet of the Company as of September 30, 1999 and the Condensed Consolidated Statements of Operations and Cash Flows for the nine months ended September 30, 1999 and 1998 are unaudited. The unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions of Form 10-Q and Rule 10-01 of Regulation S-X. The December 31, 1998 Condensed Consolidated Balance Sheet was derived from the consolidated financial statements contained in the Company's Annual Report on Form 10-K/A for the year ended December 31, 1998. The condensed consolidated financial statements contained herein should be read in conjunction with the consolidated financial statements and related notes contained in the Company's 1998 Annual Report on Form 10-K/A. In the opinion of management, the unaudited condensed consolidated financial statements contained herein include all adjustments (consisting of only recurring adjustments) necessary for a fair presentation of the results of operations for the interim periods presented. These interim results of operations are not necessarily indicative of results for the entire year or future periods.

Basic and Diluted Loss per Share of Common Stock

Loss per common share calculations are determined by dividing loss attributable to common shareholders by the weighted average number of shares of common stock outstanding. Loss per share for the nine months ended September 30, 1999 and 1998, is based only on the weighted average number of common shares outstanding, as potential common shares have been excluded as a result of the loss during the periods presented. Loss per share for the nine months ended September 30, 1999 excluded 78,562 shares related to stock options, as their effect would have been anti-dilutive. Stock options to purchase 19,420,292 common shares for the nine months ended September 30, 1999, were excluded from potential common shares as the option exercise prices were greater than the average market price of the Company's common stock during the period.

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The nine months ended September 30, 1998 loss per share excluded 3,017,516 shares related to stock options, as their effect would have been anti-dilutive. The nine month 1998 period also excluded 63,016 shares related to restricted stock. Stock options to purchase 9,609,033 common shares for the nine months ended September 30, 1998 were excluded from potential common shares as the option exercise prices were greater than the average market price of the Company's common stock during the period. Diluted average common shares outstanding for all periods presented excluded 13,242,050 shares issuable upon the conversion of the Zero Coupon Convertible Senior

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-- (CONTINUED)
(UNAUDITED)

1. OPERATIONS AND BASIS OF PRESENTATION-- (CONTINUED)

Subordinated Debentures due 2018 (the "Debentures"). In addition, diluted average common shares outstanding for the period ended September 30, 1999 excluded 23,000,000 shares issuable on the exercise of warrants.

New Accounting Standards

Effective January 1, 1999, the Company adopted Statement of Position 98-1, Accounting for the Costs of Computer Software Developed or Obtained for Internal Use ("SOP 98-1"). SOP 98-1 requires computer software costs associated with internal use software to be expensed as incurred until certain capitalization criteria are met. Adoption of this statement did not have a material impact on the Company's consolidated financial position, results of operations, or cash flows.

In June 1998, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 133 ("SFAS No. 133"), Accounting for Derivative Instruments and Hedging Activities, which, as amended, is effective for fiscal years beginning after June 15, 2000. SFAS No. 133 requires the recognition of all derivatives in the Consolidated Balance Sheets as either assets or liabilities measured at fair value. The Company has not yet determined the impact SFAS No. 133 will have on its consolidated financial position, results of operations, or cash flows.

Reclassifications

Certain prior year amounts have been reclassified to conform with the 1999 presentation.

2. ACQUISITIONS

On March 30, 1998, the Company, through a wholly-owned subsidiary, acquired approximately 81% of the total number of then outstanding shares of common stock of Coleman from a subsidiary of MacAndrews & Forbes Holdings, Inc. ("M&F"), in exchange for 14,099,749 shares of the Company's common stock and approximately \$160 million in cash. In addition, the Company assumed approximately \$1,016 million in debt. The value of the common stock issued at the date of acquisition was derived by using the average closing stock price as reported on the New York Stock Exchange ("NYSE") Composite Tape for the day before and day of the public announcement of the acquisition. Immediately thereafter, as a result of the exercise of employee stock options, Sunbeam's indirect beneficial ownership of Coleman decreased to approximately 79% of the total number of the outstanding shares of Coleman common stock. (See Note 10.)

On August 12, 1998, the Company announced that, following investigation and

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negotiation conducted by a Special Committee of the Board consisting of four outside directors not affiliated with M&F, the Company had entered into a settlement agreement with a subsidiary of M&F pursuant to which the Company was released from certain threatened claims of M&F and its subsidiaries arising from the Coleman acquisition and M&F agreed to provide certain management personnel and assistance to the Company in exchange for the issuance to the M&F subsidiary of a warrant expiring August 24, 2003 to purchase up to 23 million shares of the Company's common stock at a cash exercise price of \$7.00 per share, subject to anti-dilution adjustments. The Company concluded that the agreement to issue this warrant did not result in a new measurement date for the purposes of determining the purchase price for Coleman and has accounted for the issuance of this warrant in the third quarter of 1998 as a cost of settling a potential claim. Accordingly, a \$70.0 million non-cash SG&A expense was recorded in the third quarter of 1998, based upon a valuation performed as of August 1998 using facts existing at that time. The valuation was conducted by an independent consultant engaged by the special committee of the board of directors.

The Company expects to acquire the remaining equity interest in Coleman pursuant to a merger transaction in which the existing Coleman minority shareholders will receive 0.5677 of a share of the Company's common stock and \$6.44 in cash for each share of Coleman common stock outstanding. In addition, unexercised options

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-- (CONTINUED)
(UNAUDITED)

2. ACQUISITIONS-- (CONTINUED)

under Coleman's stock option plans will be cashed out at a price per share equal to the difference between \$27.50 and the exercise price of such options. The Company expects to issue approximately 6.7 million shares of common stock and expend approximately \$87 million in cash to complete the Coleman acquisition. Although there can be no assurance, it is anticipated the Coleman merger will occur in the fourth quarter of 1999 or early in the first quarter of 2000. The acquisition of the remaining outstanding shares of Coleman common stock will be accounted for under the purchase method of accounting from the date of consummation of the Coleman merger.

On October 21, 1998, the Company announced that it had entered into a Memorandum of Understanding to settle class action claims made by minority shareholders of Coleman relating to the Coleman merger. Under the terms of the settlement, the Company will issue to the Coleman public shareholders, and plaintiff's counsel in this action, warrants to purchase up to 4.98 million shares of the Company's common stock at a cash exercise price of \$7.00 per share, subject to certain anti-dilution provisions. These warrants would generally have the same terms as the warrants issued to a subsidiary of M&F and will be issued when the Coleman merger is consummated. Issuance of these warrants will be accounted for as additional purchase consideration. As a consequence of entering into the Memorandum of Understanding and agreeing to issue additional consideration in the form of warrants to purchase Sunbeam common stock, a new measurement date was established for the remaining equity interest in Coleman. The total consideration to be paid (cash, Sunbeam common stock and Sunbeam warrants) to the Coleman shareholders will therefore be measured as of October 21, 1998.

On April 6, 1998, the Company completed the acquisitions of First Alert, valued at approximately \$182 million (including \$133 million of cash and \$49 million of assumed debt) and Signature Brands, valued at approximately \$255 million (reflecting cash paid, including the required retirement of defeasance

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of debt).

As of the date of the acquisition of Coleman, management of the Company determined approximately 117 employees of Coleman would need to be involuntarily terminated in order to eliminate duplicate activities and functions and fully integrate Coleman into Sunbeam's operations. The Company recognized a liability of approximately \$8 million representing severance and benefit costs related to 117 employees pursuant to the termination plan. This liability was included in the allocation of purchase price. As of September 30, 1999, 113 employees were terminated and paid benefits of approximately \$7 million. The four remaining employees are expected to be terminated by March 31, 2000. Remaining termination costs are expected to be paid by December 31, 2000 and no additional charges are anticipated in future periods related to this issue.

All of these acquisitions were accounted for by the purchase method of accounting. Accordingly, the results of operations of the acquired entities are included in the accompanying Condensed Consolidated Statements of Operations from their respective dates of acquisition.

The following pro forma financial information for the Company gives effect to the Coleman and Signature Brands acquisitions as if they had occurred at the beginning of the period presented. No pro forma adjustments have been made for the First Alert acquisition as its effects are not significant. These pro forma results have been prepared for informational purposes only and do not purport to be indicative of the results of operations which actually would have occurred had the acquisitions been consummated on the date indicated, or which may result in the future. The pro forma results follow (in millions, except per share data):

<TABLE>
<CAPTION>

NINE MONTHS ENDED
SEPTEMBER 30,
1998

<S>	
Net sales.....	\$ 1,584.0
Loss before extraordinary charge.....	(498.1)
Basic and diluted loss per share from continuing operations before extraordinary charge.....	(4.78)
</TABLE>	

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-- (CONTINUED)
(UNAUDITED)

3. DEBT

In order to finance the acquisitions described in Note 2 and to refinance substantially all of the indebtedness of the Company and the acquired companies, the Company consummated an offering of the Debentures at a yield to maturity of 5.0% (approximately \$2,014 million principal amount at maturity) in March 1998, which resulted in approximately \$730 million of net proceeds and entered into a revolving and term credit facility ("New Credit Facility").

The Debentures are exchangeable for shares of the Company's common stock at an initial conversion rate of 6.575 shares for each \$1,000 principal amount at maturity of the Debentures, subject to adjustment upon occurrence of specified events. The Debentures are subordinated in right of payment to all existing and

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future senior indebtedness of the Company. The Debentures are not redeemable by the Company prior to March 25, 2003. On or after such date, the Debentures are redeemable for cash with at least 30 days' notice, at the option of the Company. The Company is required to purchase Debentures at the option of the holder as of March 25, 2003, March 25, 2008 and March 25, 2013, at purchase prices equal to the issue price plus accrued original discount to such dates. The Company may, at its option, elect to pay any such purchase price in cash or common stock, or any combination thereof. However, the New Credit Facility prohibits the Company from redeeming or repurchasing Debentures for cash. The Company was required to file a registration statement with the SEC to register the Debentures by June 23, 1998. This registration statement was filed on February 4, 1999 and, as amended, was declared effective on November 8, 1999. The Company's failure to file the registration statement by June 23, 1998 did not constitute default under the terms of the Debentures. From June 23, 1998 until the registration statement was declared effective, the Company was required to pay to the Debenture holders cash liquidated damages accruing, for each day during such period, at a rate per annum equal to 0.25% during the first 90 days and 0.50% thereafter multiplied by the total of the issue price of the Debentures plus the original issue discount thereon on such day. The Company has made total payments for liquidated damages since June 23, 1998 of \$4.5 million, of which \$1.5 million related to damages for the period through December 31, 1998. A final payment of approximately \$0.5 million, representing liquidated damages from September 26, 1999 until the registration statement was declared effective, will be payable on March 25, 2000.

Concurrent with the acquisitions, the Company replaced its \$250 million syndicated unsecured five-year revolving credit facility with the New Credit Facility. The New Credit Facility provided for aggregate borrowings of up to \$1.7 billion and in addition to other customary covenants, required the Company to maintain specified consolidated leverage, interest coverage and fixed charge coverage ratios as of the end of each fiscal quarter occurring after March 31, 1998 and on or prior to the latest stated maturity date for any of the borrowings under the New Credit Facility.

As a result of, among other things, its operating losses incurred during the first half of 1998, the Company did not achieve the specified financial ratios for June 30, 1998 and it appeared unlikely that the Company would achieve the specified financial ratios for September 30, 1998. Consequently, the Company and its lenders entered into an agreement dated as of June 30, 1998 that waived through December 31, 1998 all defaults arising from the failure of the Company to satisfy the specified financial ratios for June 30, 1998 and September 30, 1998. Pursuant to an agreement with the Company dated as of October 19, 1998, the Company's lenders extended all of the waivers under the June 30, 1998 agreement through April 10, 1999 and also waived through such date all defaults arising from any failure by the Company to satisfy the specified financial ratios for December 31, 1998. As part of the October 19, 1998 agreement, the Company agreed to a minimum monthly earnings before interest, taxes, depreciation and amortization ("EBITDA") covenant (as defined in the New Credit Facility) which covenant the Company has been able to satisfy.

On April 10, 1999, among other things, the lenders extended all of the waivers set forth in the October 19, 1998 agreement through April 15, 1999. On April 15, 1999, the Company and its lenders entered into a comprehensive amendment to the New Credit Facility that, among other things, extended all of the waivers under the April 10, 1999 agreement until April 10, 2000 and waived until such date all defaults arising from any failure

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)
(UNAUDITED)

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3. DEBT-- (CONTINUED)

by the Company to satisfy the specified financial ratios for any fiscal quarter end occurring during 1999 and for March 31, 2000. The Company intends to negotiate with its lenders an amendment to the New Credit Facility, or to negotiate further waiver of such covenants and other terms beyond April 10, 2000, or to refinance the New Credit Facility. There can be no assurance that an amendment, further waiver of existing covenants and other terms, or refinancing will be entered into by April 10, 2000. The failure to obtain such an amendment, further waiver or debt refinancing would likely result in violation of the existing covenants and compliance with other terms, which would permit the bank lenders to accelerate the maturity of all outstanding borrowings under the New Credit Facility and could otherwise have a material adverse effect on the Company. Accordingly, debt related to the New Credit Facility and all debt containing cross-default provisions is classified as current in the September 30, 1999 Condensed Consolidated Balance Sheet.

As part of the April 15, 1999 New Credit Facility amendment, the Company agreed to a minimum cumulative EBITDA covenant that is based on post-December 31, 1998 consolidated EBITDA and is tested at the end of each month occurring on or prior to March 31, 2000, as well as a covenant limiting the amount of revolving loans (other than those used to fund the Coleman merger) that may be outstanding under the New Credit Facility as of the end of each such month. The minimum cumulative EBITDA was initially \$6.3 million for the period January 1, 1999 through April 30, 1999 and generally grows on a monthly basis until it reaches \$121.0 million for the period from January 1, 1999 through March 31, 2000.

The following description of the New Credit Facility reflects its significant terms as amended April 15, 1999.

The New Credit Facility provides for aggregate borrowings of up to \$1.7 billion through: (i) a revolving credit facility in an aggregate principal amount of up to \$400.0 million maturing March 30, 2005 (\$52.5 million of which may only be used to complete the Coleman merger); (ii) up to \$800.0 million in term loans maturing on March 30, 2005 (of which \$35.0 million may only be used to complete the Coleman merger); and (iii) a \$500.0 million term loan maturing September 30, 2006 (of which \$5.0 million has already been repaid through September 30, 1999). As of September 30, 1999, approximately \$1.5 billion was outstanding and approximately \$0.2 billion was available for borrowing under the New Credit Facility.

Under the New Credit Facility, interest accrues, at the Company's option: (i) at the London Interbank Offered Rate ("LIBOR"); or (ii) at the base rate of the administrative agent which is generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 0.50%; in each case plus an interest margin which is currently 4.00% for LIBOR loans and 2.50% for base rate loans. The current interest rates reflect an increase of 0.25% for LIBOR loans and base rate loans which occurred on September 1, 1999 as a result of the merger not occurring by such date and an increase of 0.50% for LIBOR loans and 0.25% for base rate loans which occurred on October 1, 1999 as a result of the merger not occurring by such date. The interest margin is subject to potential decreases in the future, including a decrease to 3.00% for LIBOR loans and 1.75% for base rate loans upon consummation of the Coleman merger and the effectiveness of the pledge of substantially all of Coleman's and its domestic subsidiaries' assets to secure the obligations under the New Credit Facility. Borrowings under the New Credit Facility are secured by a pledge of the stock of the Company's material subsidiaries, including Coleman, and by a security interest in substantially all of the assets of the Company and its material domestic subsidiaries, other than Coleman and its material subsidiaries except as described below. Currently, Coleman's inventory and related assets are pledged to secure its obligations for letters of credit issued for its account

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under the New Credit Facility. Additionally, as security for Coleman's note payable to the Company, Coleman pledged substantially all of its domestic assets, other than real property, including 66% of the stock of its direct foreign subsidiaries and domestic holding companies for its foreign subsidiaries, and all of the stock of its other direct domestic subsidiaries (but not the assets of Coleman's subsidiaries). The pledge runs in favor of the Company's lending banks, to which the Coleman note has been

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-- (CONTINUED)
(UNAUDITED)

3. DEBT-- (CONTINUED)

pledged as security for the Company's obligations to them. Upon completion of the Coleman merger, substantially all of Coleman's assets and the assets of Coleman's domestic subsidiaries will be pledged to secure the obligations under the New Credit Facility. In addition, borrowings under the New Credit Facility are guaranteed by a number of the Company's wholly-owned material domestic subsidiaries and these subsidiary guarantees are secured as described above. Upon completion of the Coleman merger, Coleman and each of its United States subsidiaries will become guarantors of the obligations under the New Credit Facility. To the extent extensions of credit are made to any subsidiaries of the Company, the obligations of such subsidiaries are guaranteed by the Company.

In addition to the above described ratios and tests, the New Credit Facility contains covenants customary for credit facilities of a similar nature, including limitations on the ability of the Company and its subsidiaries, including Coleman, to, among other things, (i) declare dividends or repurchase stock, (ii) prepay, redeem or repurchase debt, incur liens and engage in sale-leaseback transactions, (iii) make loans and investments, (iv) incur additional debt, including revolving loans under the New Credit Facility, (v) amend or otherwise alter material agreements or enter into restrictive agreements, (vi) make capital and year 2000 compliance expenditures, (vii) engage in mergers, acquisitions and asset sales, (viii) engage in certain transactions with affiliates, (ix) settle certain litigation, (x) alter its cash management system and (xi) alter the businesses they conduct. The Company is also required to comply with specified financial covenants and ratios. The New Credit Facility provides for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, material adverse change arising from compliance with ERISA, material adverse judgments, entering into guarantees and change of ownership and control. It is also an event of default under the New Credit Facility, as amended November 16, 1999, if the Company's registration statement in connection with the Coleman merger is not declared effective by the SEC on or before January 10, 2000, or if the merger does not occur within 25 business days of the effectiveness of the registration statement or if the cash consideration (including any payments on account of the exercise of any appraisal rights, but excluding related legal, accounting and other customary fees and expenses) to consummate the Coleman merger exceeds \$87.5 million. Although there can be no assurance, the Company anticipates that it will satisfy these conditions. Furthermore, the New Credit Facility requires the Company to prepay term loans on December 31, 1999 to the extent that cash on hand in the Company's concentration accounts plus the aggregate amount of unused revolving loan commitments on this date exceeds \$125 million, but the Company is not required to prepay more than \$69.3 million as a result of the provision. Unless waived by the bank lenders, the failure to satisfy any of the financial ratios and tests contained in the New Credit Facility or the occurrence of any other event of default under the New Credit Facility would entitle the bank lenders to (a)

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receive a 2.00% increase in the interest rate applicable to outstanding loans and increase the trade letter of credit fees to 1.00% and (b) accelerate the maturity of the outstanding borrowings under the New Credit Facility and exercise all or any of their other rights and remedies. Any such acceleration or other exercise rights and remedies would likely have a material adverse effect on the Company. The New Credit Facility also includes provisions for the deferral of the September 30, 1999 and the March 31, 2000 scheduled term loan payments of \$69.3 million each until April 10, 2000 as a result of the satisfaction by the Company of the agreed upon conditions to the deferral.

In March 1998, the Company prepaid a \$75.0 million 7.85% industrial revenue bond related to its Hattiesburg facility originally due in 2009. In connection with the early extinguishment of this debt, the Company recognized an extraordinary charge in the first quarter of 1998. As a result of repayment of certain indebtedness assumed in the Coleman acquisition, the Company also recognized an extraordinary charge in the second quarter of 1998. The debt assumed in connection with the Coleman acquisition was repaid as a result of the requirements under the terms of the New Credit Facility. These extraordinary charges consisted of redemption premiums (\$106.9 million), unamortized debt discount (\$13.8 million) and unamortized deferred financing costs (\$1.7 million) and were net of an income tax benefit (\$10.7 million).

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)
(UNAUDITED)

3. DEBT--(CONTINUED)

In connection with the acquisition of Signature Brands, the Company was required to defease \$70.0 million of acquired debt. Cash was placed with a trustee to provide for the defeasance, including the related prepayment penalty. This cash was used to purchase Treasury Notes. Accordingly, \$74.4 million of restricted investments held by the trustee for the August 1999 liquidation of this acquired debt are reflected as an asset at December 31, 1998. The prepayment penalty is reflected as part of the acquisition price of Signature Brands. This debt was redeemed in August 1999 utilizing the proceeds from investments restricted for this purpose.

4. ACCOUNTS RECEIVABLE SECURITIZATION

The Company has entered into a receivables securitization program that expires in March 2000. The Company has received \$228.4 million and \$130.6 million in the first nine months of each 1999 and 1998, respectively, for the sale of trade accounts receivable. Trade accounts receivable at September 30, 1999 and 1998 reflect a reduction of \$36.9 million and \$10.5 million, respectively, for receivables sold under this program. Costs of the program, which primarily consist of the purchaser's financing cost of issuing commercial paper backed by the receivables, totaled \$1.7 million and \$1.9 million in the first nine months of 1999 and 1998, respectively, and have been classified as interest expense in the accompanying Condensed Consolidated Statements of Operations. The Company, through a wholly-owned subsidiary, retains collection and administrative responsibilities for the purchased receivables. This agreement contains cross-default provisions that provide the purchaser of the receivables an option to cease purchasing receivables from the Company if the Company is in default under the New Credit Facility.

5. COMPREHENSIVE LOSS

The components of the Company's comprehensive loss are as follows (in thousands):

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<TABLE>
<CAPTION>

	NINE MONTHS ENDED	
	SEPTEMBER 30, 1999	SEPTEMBER 3 1998
<S>	<C>	<C>
Net loss.....	\$ (155,039)	\$ (587,070)
Foreign currency translation adjustment, net of taxes.....	(10,150)	154
Change in minimum pension liability.....	--	(266)
Comprehensive loss.....	\$ (165,189)	\$ (587,182)

</TABLE>

As of September 30, 1999 and December 31, 1998, "Accumulated other comprehensive loss," as reflected in the Condensed Consolidated Balance Sheets, is comprised of the following:

<TABLE>
<CAPTION>

	CURRENCY TRANSLATION ADJUSTMENTS	MINIMUM PENSION LIABILITY
<S>	<C>	<C>
Balance at September 30, 1999.....	\$ (22,172)	\$ (42,008)
Balance at December 31, 1998.....	(12,022)	(42,008)

The accumulated other comprehensive loss associated with the minimum pension liability is net of deferred taxes of approximately \$5 million as of September 30, 1999 and December 31, 1998.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)
(UNAUDITED)

6. SUPPLEMENTARY FINANCIAL STATEMENT DATA

Supplementary Balance Sheet data at the end of each period is as follows (in thousands):

<TABLE>
<CAPTION>

	SEPTEMBER 30, 1999	DECEMBER 31 1998
<S>	<C>	<C>
Receivables:		
Trade.....	\$ 475,595	\$407,452
Sundry.....	10,090	7,347
	485,685	414,799
Valuation allowance.....	(42,462)	(53,025)
	\$ 443,223	\$361,774

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Inventories:

Finished goods.....	\$ 353,561	\$370,622
Work in process.....	46,191	39,143
Raw materials and supplies.....	108,069	109,424
	-----	-----
	\$ 507,821	\$519,189
	-----	-----

</TABLE>

Supplementary Statements of Cash Flows data is as follows (in thousands):

<TABLE>
<CAPTION>

	NINE MONTHS ENDED	
	SEPTEMBER 30, 1999	SEPTEMBER 3 1998
	-----	-----
<S>	<C>	<C>
Cash paid (received) during the period for:		
Interest.....	\$ 125,642	\$ 37,796
	-----	-----
Income taxes, net of refunds.....	\$ 2,145	\$ (13,077)
	-----	-----

</TABLE>

7. ASSET IMPAIRMENT AND OTHER CHARGES

In the second quarter of 1998, decisions were made to outsource or discontinue a substantial number of products previously made by the Company (principally breadmakers, toasters and certain other appliances, air and water filtration products and the elimination of certain stock keeping units ("SKU's") within existing product lines, primarily relating to appliances, grills and grill accessories). As a result, certain facilities and equipment would either no longer be used or would be utilized in a significantly different manner. Accordingly, a charge of \$29.6 million was recorded in Cost of Goods Sold to write certain of these assets down to their estimated fair market value. Approximately 80% of this charge related to machinery, equipment and tooling at the Company's Mexico City, Mexico and Hattiesburg, Mississippi manufacturing plants, the estimated fair value for which was derived through an auction process. The remainder of this charge related to tooling and equipment at various other facilities, which either had a nominal value or the fair market value of which was derived through an auction process. These assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. The net carrying value of these assets after the write-down approximated \$2.2 million and these assets are expected to be substantially disposed of by December 31, 1999. Depreciation expense associated with these assets approximated \$2.6 million in the first half of 1998.

Personnel at the Mexico City facility were notified in the second quarter of 1998 that the plant was scheduled for closure at year-end 1998, accordingly, at that time, a liability of \$1.8 million was recorded in Cost of Goods Sold primarily for employee severance. The employee severance related to approximately 1,200 positions of which 100 employees, representing a \$0.4 million severance obligation, remained to be terminated at December 31, 1998. Substantially all of these remaining positions had been eliminated and the severance payments had been made as of June 30, 1999. Subsequent to the decisions made in conjunction with the

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)
(UNAUDITED)

7. ASSET IMPAIRMENT AND OTHER CHARGES--(CONTINUED)

acquisitions, management decided to discontinue certain SKU's within product lines (principally generators, compressors and propane cylinders). As a result, in the third quarter of 1998, the Company recorded as Cost of Goods Sold, an additional provision for impairment of fixed assets of \$3.1 million in an acquired entity, relating to assets taken out of service for which there was no remaining value. These fixed assets were taken out of service at the time of the write-down and consequently were not depreciated further after the write-down. Depreciation expense associated with these assets approximated \$0.8 million in 1998.

During 1997 and the first half of 1998, the Company built inventories in anticipation of 1998 sales volumes which did not materialize. As a result, it has been and will continue to be necessary to dispose of some portions of excess inventories at amounts less than cost. Accordingly, during 1998, when the facts and circumstances were known that such sales volume would not materialize, the Company recorded \$48.6 million in charges (of which \$46.4 million and \$2.2 million were recorded in the second and third quarters, respectively) to properly state this inventory at the lower-of-cost-or-market. This inventory primarily related to certain appliances, grills and grill accessories.

The Company also recorded a charge during the second quarter of 1998 of \$11.0 million for excess inventories for raw material and work in process that will not be used due to outsourcing the production of breadmakers, toasters, and certain other appliances. In addition, during the second quarter of 1998, the Company made the decision to exit certain product lines, primarily air and water filtration products and eliminate certain SKU's within existing product lines, primarily relating to appliances, grills and grill accessories. As a result of this decision, a \$26.6 million charge was recorded during the second quarter to properly state this inventory at the lower-of-cost-or-market. Total charges for excess inventory recorded at the lower-of-cost-or-market, based upon management's best estimate of net realizable value, amounted to \$86.2 million through September 30, 1998.

In the fourth quarter of 1998, in connection with management's decision to outsource the production of certain appliances (principally irons) the Company recorded \$0.4 million of severance costs related to the elimination of approximately 45 production positions. During the nine months ended September 30, 1999, 8 positions were eliminated and \$0.1 million of the severance was paid. The remaining positions are expected to be eliminated by December 31, 1999.

At December 31, 1998, the Company had \$1.7 million of restructuring accruals relating to its 1996 restructuring plan. This \$1.7 million was comprised of \$1.2 million relating to lease payments and termination fees and \$0.5 million relating to discontinued operations. During the nine months ended September 30, 1999, the Company expended \$0.2 million for lease payments and termination fees and \$0.4 million relating to discontinued operations, respectively. It is anticipated that the remaining restructuring accrual of \$1.1 million (\$1.0 million relating to lease payments and termination fees and \$0.1 million relating to discontinued operations) will be paid through 2006.

8. SHAREHOLDERS' EQUITY

Compensatory Stock Grants

On February 20, 1998, the Company entered into new three-year employment

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agreements with its then Chairman and Chief Executive Officer and two other senior officers of the Company (the "February 1998 Employment Agreements"). These agreements replaced previous employment agreements entered into in July 1996 that were scheduled to expire in July 1999. The new employment agreements provided for, among other items, the acceleration of vesting of restricted stock and the forfeiture of unvested restricted stock that had been granted under the July 1996 agreement, new restricted stock grants and options to purchase the Company's common stock. In addition, the new employment agreements provided for income tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock.

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)
(UNAUDITED)

8. SHAREHOLDERS' EQUITY--(CONTINUED)

Compensation expense attributed to the equity grant, the acceleration of vesting of restricted stock and the related income tax gross-ups was recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups was amortized to expense beginning in the first quarter of 1998 with amortization to continue over the period in which the restrictions lapse. Total compensation expense recognized in the first quarter of 1998 related to these items was approximately \$31 million.

On June 15, 1998, the Company's Board of Directors announced the removal of the then Chairman and Chief Executive Officer and subsequently announced the removal or resignation of other senior officers, including the Company's then Chief Financial Officer. The Company and certain of its former officers are in litigation as to the Company's obligations to these individuals under prior agreements and arising from their termination. (See Note 10).

Purchase of Coleman Preferred Stock

On July 12, 1999, the Company acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock for an aggregate purchase price of approximately \$31 million. These shares, together with the shares of Coleman common stock the Company owns, enable Sunbeam to exercise 80.01% of the total voting power of Coleman's outstanding capital stock as of July 12, 1999. This class of preferred stock was created by Coleman and acquired by the Company in order to enable Coleman and the Company to file consolidated federal income tax returns, and in certain jurisdictions, consolidated state income tax returns, prior to the consummation of the Coleman merger. The issue price per share of the voting preferred stock was equal to 110% of the average closing price per share of common stock of Coleman over the five trading days prior to the date of issuance of the voting preferred stock. Except as required by law, the holders of the voting preferred stock vote as a single class with the holders of the Coleman common stock on all matters submitted to a vote of the holders of Coleman common stock, with each share of voting preferred stock and each share of Coleman common stock having one vote. The voting preferred stock has an annual dividend equal to 7% of \$10.35 per share, the issue price per share of the voting preferred stock, which accrues but will not be paid in cash unless a liquidation of Coleman occurs or certain transactions are consummated as described below. In addition, the voting preferred stock will participate ratably with the Coleman common stock in all other dividends and distributions (other than liquidating distributions) made by Coleman to the holders of its common stock. The voting preferred stock will participate with the Coleman common stock in any merger, consolidation, or any other transaction (other than a merger of a wholly owned subsidiary of the Company with Coleman, including the Coleman merger) and will receive on a per share basis the same type and amount

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of consideration as the Coleman common stock. On liquidations of Coleman: (1) the holders of the voting preferred stock would receive a preferential distribution equal to \$10.35 per share, plus accrued and unpaid dividends, (2) next, the holders of the Coleman common stock would receive an amount equal to \$10.35 per share of Coleman common stock and (3) any assets remaining after such distributions would be shared by the holders of voting preferred stock and the Coleman common stock on a share for share basis. In connection with the issuance of the shares of preferred stock, Coleman entered into a tax sharing agreement with the Company pursuant to which Coleman will pay to Sunbeam amounts equal to the federal and state income taxes that would have been payable by Coleman had Coleman not been included in the consolidated income tax return of the Company. The terms of the voting preferred stock, their issue price and the terms of the tax sharing agreement were approved on Coleman's behalf by Coleman's then sole independent director. The net proceeds from the issuance of the shares by Coleman of its voting preferred stock to the Company were used by Coleman to make a partial repayment of loans outstanding from Sunbeam under the Intercompany Note.

9. SEGMENT, CUSTOMER AND GEOGRAPHIC DATA

The following tables include selected financial information with respect to Sunbeam's four operating segments. Corporate expenses include, among other items, expenses for services which are provided in varying

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)
(UNAUDITED)

9. SEGMENT, CUSTOMER AND GEOGRAPHIC DATA--(CONTINUED)

levels to the three operating groups and for Year 2000 efforts. The increase from 1998 to 1999 is largely due to an expansion of centralized services related to the acquisitions, Year 2000 expenses and increased costs associated with outside services and insurance.

<TABLE>
<CAPTION>

	HOUSEHOLD	OUTDOOR LEISURE	INTERNATIONAL	C
<S>	<C>	<C>	<C>	<
NINE MONTHS ENDED SEPTEMBER 30, 1999				
Net sales to unaffiliated customers.....	\$ 555,207	\$ 774,698	\$ 444,305	\$
Intersegment net sales.....	57,070	126,681	6,896	
Segment earnings (loss).....	22,363	71,877	41,021	
Segment depreciation expense.....	19,436	27,654	4,034	
NINE MONTHS ENDED SEPTEMBER 30, 1998				
Net sales to unaffiliated customers.....	\$ 454,974	\$ 524,409	\$ 328,628	\$
Intersegment net sales.....	50,103	76,538	53,143	
Segment (loss) earnings.....	(29,608)	(41,520)	11,541	
Segment depreciation expense.....	19,778	18,260	3,812	
SEGMENT ASSETS				
September 30, 1999.....	\$ 787,956	\$1,771,883	\$ 403,609	\$
December 31, 1998.....	864,745	1,782,994	413,755	

</TABLE>

Reconciliation of selected segment information to Sunbeam's consolidated totals:

<TABLE>
<CAPTION>

	NINE MONTHS ENDED	
	SEPTEMBER 30, 1999	SEPTEMBER 30, 1998
<S>	<C>	<C>
Net sales:		
Net sales for reportable segments.....	\$1,977,075	\$1,501,916
Elimination of intersegment net sales.....	(190,647)	(179,787)
Consolidated net sales.....	\$1,786,428	\$1,322,129
Segment earnings (loss):		
Total earnings (loss) for reportable segments.....	\$ 41,389	\$ (138,012)
Unallocated amounts:		
Interest expense.....	(136,631)	(88,476)
Other income, net.....	4,619	4,065
Amortization of intangible assets.....	(38,401)	(25,186)
Former employees deferred compensation (Note 8) and severance.....	--	(34,410)
Provision for inventory (Note 7).....	--	(86,167)
Asset impairment (Note 7).....	--	(32,642)
Issuance of warrants (Note 2).....	--	(70,000)
Office relocation expense.....	--	(4,011)
Other charges.....	--	(1,248)
	(170,413)	(338,075)
Consolidated loss before income taxes, minority interest and extraordinary charge.....	\$ (129,024)	\$ (476,087)

</TABLE>

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)
(UNAUDITED)

10. COMMITMENTS AND CONTINGENCIES

Litigation

On April 23, 1998, two class action lawsuits were filed on behalf of purchasers of the Company's common stock in the U.S. District Court for the Southern District of Florida against the Company and some of its present and former directors and former officers alleging violations of the federal securities laws as discussed below. After that date, approximately fifteen similar class actions were filed in the same Court. One of the lawsuits also named as defendant Arthur Andersen, the Company's independent accountants for the period covered by the lawsuit.

On June 16, 1998, the court entered an order consolidating all these suits and all similar class actions subsequently filed (collectively, the "Consolidated Federal Actions") and providing time periods for the filing of a consolidated amended complaint and defendants' response thereto. On June 22, 1998, two groups of plaintiffs made motions to be appointed lead plaintiffs and

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to have their selection of counsel approved as lead counsel. On July 20, 1998, the court entered an order appointing lead plaintiffs and lead counsel. This order also stated that it shall apply to all subsequently filed actions that are consolidated with the other actions. On August 28, 1998, plaintiffs in one of the subsequently filed actions filed an objection to having their action consolidated pursuant to the June 16, 1998 order, arguing that the class period in their action differs from the class periods in the originally filed consolidated actions. On December 9, 1998, the court entered an order overruling plaintiffs' objections and affirming its prior order appointing lead plaintiffs and lead counsel.

On January 6, 1999, plaintiffs filed a consolidated amended class action complaint against the Company, some of its present and former directors and former officers, and Arthur Andersen. The consolidated amended class action complaint alleges that, in violation of section 10(b) of the Exchange Act and SEC Rule 10b-5, defendants made material misrepresentations and omissions regarding the Company's business operations, future prospects and anticipated earnings per share, in an effort to artificially inflate the price of the Company's common stock and call options, and that, in violation of section 20(a) of the Exchange Act, the individual defendants exercised influence and control over the Company, causing the Company to make material misrepresentations and omissions. The consolidated amended complaint seeks an unspecified award of money damages. On February 5, 1999, plaintiffs moved for an order certifying a class consisting of all persons and entities who purchased the Company's common stock or who purchased call options or sold put options with respect to the Company's common stock during the period April 23, 1997 through June 30, 1998, excluding the defendants, their affiliates, and employees of the Company. Defendants' response to the motion for class certification was filed on May 6, 1999. On March 8, 1999, all defendants who had been served with the consolidated amended class action complaint moved to dismiss it. Under the Private Securities Litigation Reform Act of 1995, all discovery in the consolidated action is stayed pending resolution of the motions to dismiss.

On April 7, 1998, a purported derivative action was filed in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida against the Company and some of its present and former directors and former officers. The action alleged that the individual defendants breached their fiduciary duties and wasted corporate assets when the Company granted stock options on or about February 2, 1998 at an exercise price of \$36.85 to three of its officers and directors who were subsequently terminated by the Company. On June 25, 1998, all defendants filed a motion to dismiss the complaint for failure to make a pre-suit demand on the Company's board of directors. On October 22, 1998, the plaintiff amended the complaint against all but one of the defendants named in the original complaint. On February 19, 1999, plaintiffs filed a second amended derivative complaint nominally on behalf of the Company against some of its present and former directors and former officers and Arthur Andersen. The second amended complaint alleges, among other things, that Messrs. Dunlap and Kersh, the Company's former Chairman and Chief Executive Officer and former Chief Financial Officer, respectively, caused the Company to employ fraudulent accounting procedures in order to enable them to secure new employment contracts, and seeks a declaration that the individual defendants have violated fiduciary

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SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS--(CONTINUED)
(UNAUDITED)

10. COMMITMENTS AND CONTINGENCIES--(CONTINUED)

Litigation--(Continued)

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duties, an injunction against the payment of compensation to Messrs. Dunlap and Kersh or the imposition of a constructive trust on such payments, and unspecified money damages. The defendants have each moved to dismiss the second amended complaint in whole or in part.

On June 25, 1998, four purported class actions were filed in the Court of Chancery of the State of Delaware in New Castle County by minority shareholders of Coleman against Coleman, the Company and certain of the Company's and Coleman's present and former officers and directors. An additional class action was filed on August 10, 1998 against the same parties. The complaints in these class actions allege, in essence, that the existing exchange ratio for the proposed Coleman merger is no longer fair to Coleman minority shareholders as a result of the decline in the market value of the Company's common stock. On October 21, 1998, the Company announced that it had entered into a memorandum of understanding to settle, subject to court approval, the class actions. The court approved the settlement on November 12, 1999. Under the terms of the settlement, the Company will issue to Coleman minority shareholders and plaintiffs' counsel in this action warrants to purchase up to approximately 4.98 million shares of the Company's common stock at \$7 per share, subject to anti-dilution adjustments. Coleman minority shareholders who elect an appraisal under Delaware law will not receive warrants. These warrants will generally have the same terms as the warrant issued to the MacAndrews & Forbes subsidiary and will be issued when the Coleman merger is consummated, which is now expected to occur in the fourth quarter of 1999 or early in the first quarter of 2000. Issuance of the warrants will be accounted for as additional purchase consideration.

During the months of August and October 1998, purported class action and derivative lawsuits were filed in the Court of Chancery of the State of Delaware in New Castle County and in the U.S. District Court for the Southern District of Florida by shareholders of the Company against the Company, MacAndrews & Forbes and some of the Company's present and former directors. These complaints allege that the defendants breached their fiduciary duties when the Company entered into a settlement agreement with the MacAndrews & Forbes subsidiary that sold the Company a controlling interest in Coleman. In the settlement agreement the MacAndrews & Forbes subsidiary released the Company from threatened claims arising out of the Company's acquisition of its interest in Coleman, and MacAndrews & Forbes agreed to provide management support to the Company. Under the settlement agreement, the MacAndrews & Forbes subsidiary was granted a warrant expiring August 24, 2003 to purchase up to an additional 23 million shares of the Company's common stock at an exercise price of \$7 per share, subject to anti-dilution provisions. The plaintiffs have requested an injunction against the issuance of stock to MacAndrews & Forbes upon the exercise of its warrant and unspecified money damages. These complaints also allege that the rights of the minority shareholders have been compromised, as the settlement would normally require shareholder approval under the rules and regulations of the NYSE. The audit committee of the Company's board of directors determined that obtaining such shareholder approval would have seriously jeopardized the financial viability of the Company which is an allowable exception to the NYSE shareholder approval requirements. By order of the Delaware Court of Chancery dated January 7, 1999, the derivative actions filed in that court were consolidated, and the Company and the other defendants have moved to dismiss these actions. The action filed in the U.S. District Court for the Southern District of Florida has been dismissed.

On September 16, 1998, an action was filed in the 56th Judicial District Court of Galveston County, Texas alleging various claims in violation of the Texas Securities Act and Texas Business and Commercial Code as well as common law fraud as a result of the Company's alleged misstatements and omissions regarding the Company's financial condition and prospects during a period beginning May 1, 1998 and ending June 16, 1998, in which the U.S. National Bank of Galveston, Kempner Capital Management, Inc. and Legacy Trust Company engaged in transactions in the Company's common stock on their own behalf and on behalf of their respective clients. The Company is the only named defendant in this

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action. The complaint requests recovery of compensatory damages, punitive damages and expenses in an unspecified amount. This action was removed to

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SUNBEAM CORPORATION AND SUBSIDIARIES

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10. COMMITMENTS AND CONTINGENCIES--(CONTINUED)

Litigation--(Continued)

the U.S. District Court for the Southern District of Texas and subsequently transferred to the Southern District of Florida and consolidated with the Consolidated Federal Actions. Plaintiffs in this action have objected to the consolidation and have sought reconsideration by the Southern District of Florida of the order of the Southern District of Texas denying plaintiffs' motion to remand the case to state court and transferring it to Florida. A similar suit was brought by the same group of plaintiffs in the above action against Arthur Andersen. In that action, the plaintiffs allege that Arthur Andersen violated the Texas Securities Act, committed statutory and common law fraud and was negligent in its audits of the Company's 1996 and 1997 financial statements. On September 29, 1999, Arthur Andersen filed a motion for leave to join the Company and certain of its former officers as responsible third parties and contribution defendants. Their motion was denied.

On October 30, 1998, a class action lawsuit was filed on behalf of certain purchasers of the Debentures in the U.S. District Court for the Southern District of Florida against the Company and some of the Company's former officers and directors, alleging violations of the federal securities laws and common law fraud. The complaint alleges that the Company's offering memorandum used for the marketing of the Debentures contained false and misleading information regarding the Company's financial position and that the defendants engaged in a plan to inflate the Company's earnings for the purpose of defrauding the plaintiffs and others. The plaintiffs seek a declaration that defendants violated federal securities laws and either unspecified monetary damages or rescission of their purchase of the Debentures. The parties have negotiated a proposed coordination plan in order to coordinate proceedings in this action with those in the Consolidated Federal Actions.

The Company has been named as a defendant in an action filed in the District Court of Tarrant County, Texas, 48th Judicial District, on November 20, 1998. The Company was served in this action through the Secretary of State of Texas on January 15, 1999. The plaintiffs in this action are purchasers of the Debentures. The plaintiffs allege that the Company violated the Texas Securities Act and the Texas Business & Commercial Code and committed state common law fraud by materially misstating the financial position of the Company in connection with the offering and sale of the Debentures. The complaint seeks rescission, as well as compensatory and exemplary damages in an unspecified amount. The Company specially appeared to assert an objection to the Texas court's exercise of personal jurisdiction over the Company, and a hearing on this objection took place on April 15, 1999. On April 23, 1999, the court entered an order granting the Company's special appearance and dismissing the case without prejudice. The plaintiffs moved for reconsideration of the court order, which motion the court denied on May 24, 1999. The plaintiffs have appealed to the Texas Court of Appeals the order dismissing the case and that appeal is pending.

On April 12, 1999, a class action lawsuit was filed in the U.S. District Court for the Southern District of Florida. The lawsuit was filed on behalf of persons who purchased Debentures during the period of March 20, 1998 through

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June 30, 1998, inclusive, but after the initial offering of such Debentures. The complaint asserts that the Company made material omissions and misrepresentations that had the effect of inflating the market price of the Debentures. The complaint names as defendants the Company, its former auditor, Arthur Andersen, and two former Company officers, Messrs. Dunlap and Kersh. The plaintiff is an institution which allegedly acquired in excess of \$150,000,000 face amount of the Debentures and now seeks unspecified money damages. The Company was served on April 16, 1999 in connection with this pending lawsuit. The Company has requested that this action be coordinated with the Consolidated Federal Actions.

On February 9, 1999, Messrs. Dunlap and Kersh filed with the American Arbitration Association demands for arbitration of claims under their respective employment agreements with the Company. Messrs. Dunlap and Kersh are requesting a finding by the arbitrators that the Company terminated their employment without cause and that they should be awarded certain benefits based upon their respective employment agreements. On March 12, 1999, the Company asked the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County,

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10. COMMITMENTS AND CONTINGENCIES-- (CONTINUED)

Litigation-- (Continued)

Florida to issue an injunction prohibiting Messrs. Dunlap and Kersh from pursuing their arbitration proceedings against the Company on the grounds, among others, that the simultaneous litigation of the action filed in that court on April 7, 1998, described above, and the arbitration proceedings would subject the Company to the threat of inconsistent adjudications with respect to certain rights to compensation asserted by Messrs. Dunlap and Kersh and would cause irreparable harm to the Company and its shareholders. On March 19, 1999, the plaintiff in the April 7, 1998 action discussed above moved for an injunction on similar grounds. On May 11, 1999, the court denied the motions for a preliminary injunction filed by the Company and the plaintiff. The Company has answered the arbitration demands of Messrs. Dunlap and Kersh and has filed counterclaims seeking, among other things, the return of all consideration paid, or to be paid, under the February 1998 Employment Agreements between the Company and Messrs. Dunlap and Kersh. An answer was filed by Messrs. Dunlap and Kersh generally denying the Company's counterclaims. Discovery is pending.

On May 24, 1999, an action naming the Company as defendant was filed in the Circuit Court for Ozaukee County, Wisconsin. Prior to service of the complaint, the plaintiff dismissed its claims, voluntarily, without prejudice. The plaintiff in this action was a purchaser of the Debentures. The plaintiff alleged that the Company violated the Wisconsin Uniform Securities Act and committed acts of false advertising and misrepresentation in connection with the offering and sale of the Debentures. The plaintiff sought rescission, as well as compensatory and exemplary damages in an unspecified amount.

On September 13, 1999, an action naming the Company and Arthur Andersen as defendants was filed in the Circuit Court for Montgomery County, Alabama. The plaintiffs in this action are purchasers of the Company's common stock during the period March 19, 1998 through May 6, 1998. The plaintiffs allege, among other things, that the defendants violated the Alabama Security Laws and SEC Rule 10b-5. The plaintiffs seek compensatory and punitive damages in an unspecified amount. The Company has removed this case to the U.S. District Court for the District of Alabama. In addition, Arthur Andersen has filed a cross

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claim against the Company for contribution and indemnity. The Company has filed a motion with the Judicial Panel on Multidistrict Litigation to consolidate this action with the Consolidated Federal Actions.

The Company intends to vigorously defend each of the foregoing lawsuits other than those as to which a memorandum of understanding to settle has been reached, but cannot predict the outcome and is not currently able to evaluate the likelihood of the Company's success in each case or the range of potential loss. However, if the Company were to lose these lawsuits, judgments would likely have a material adverse effect on the Company's consolidated financial position, results of operations and cash flows.

On March 23, 1999, Messrs. Dunlap and Kersh filed a complaint in the Court of Chancery of the State of Delaware seeking an order directing the Company to advance attorneys' fees and other expenses incurred in connection with various state and federal class and derivative actions and an investigation instituted by the SEC. The complaint alleges that such advancements are required by the Company's by-laws and by a forbearance agreement entered into between the Company and Messrs. Dunlap and Kersh in August, 1998. A trial of this summary proceeding was held on June 15 and 16, 1999. On June 23, 1999, the court issued a memorandum opinion directing the Company to pay about \$1.4 million on account of expenses incurred to date and to advance the reasonable future expenses in those actions and investigations. Messrs. Dunlap and Kersh have agreed to repay all amounts advanced to them if it is ultimately determined that they are not entitled to indemnification under Delaware law.

On July 2, 1998, the American Alliance Insurance Company filed suit against the Company in the U.S. District Court for the Southern District of New York requesting a declaratory judgment of the court that the directors' and officers' liability insurance policy for excess coverage issued by American Alliance was invalid and/or had been properly canceled by American Alliance. American Alliance has filed a motion for summary

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10. COMMITMENTS AND CONTINGENCIES--(CONTINUED)

Litigation--(Continued)

judgment on the ground that coverage was never bound. The Company has opposed that motion. As a result of a motion made by the Company, this case has been transferred to the U.S. District Court for the Southern District of Florida for coordination and consolidation of pre-trial proceedings with the various actions pending in that court. On October 20, 1998, an action was filed by Federal Insurance Company in the U.S. District Court for the Middle District of Florida requesting the same relief as that requested by American Alliance in the previously filed action as to additional coverage levels under the Company's directors' and officers' liability insurance policy. This action has been transferred to the U.S. District Court for the Southern District of Florida and is currently in discovery. The Company is seeking a stay of discovery to coordinate discovery in this action with any discovery that may occur in the Consolidated Federal Actions. Plaintiff has moved to compel production of various documents. On December 22, 1998, an action was filed by Executive Risk Indemnity, Inc. in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida requesting the same relief as that requested by American and Federal in their previously filed actions as to additional coverage levels under the Company's directors' and officers' liability insurance policy. On April 15, 1999, the Company filed an action in the U.S. District Court for

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the Southern District of Florida against National Union Fire Insurance Company of Pittsburgh, PA, Gulf Insurance Company and St. Paul Mercury Insurance Company requesting, among other things, a declaratory judgment that National Union is not entitled to rescind its directors' and officers' liability insurance policies to the Company and a declaratory judgment that the Company is entitled to coverage from these insurance companies for the various lawsuits described herein under directors' and officers' liability insurance policies issued by each of the defendants. In response to the Company's complaint, defendants St. Paul and Gulf have answered and asserted counterclaims seeking rescission and declaratory relief that no coverage is available to the Company. The Company has denied the allegations of Gulf's and St. Paul's counterclaims. Defendant National Union has filed a motion to dismiss or stay the claims filed by the Company against National Union on the basis, among others, that the Company must submit the dispute to arbitration or mediation. The Company has filed a response opposing that motion. The Company intends to pursue recovery from all of its insurers if damages are awarded against the Company or its indemnified officers and/or directors under any of the foregoing actions and to recover attorneys' fees covered under those policies. The Company's failure to obtain such insurance recoveries following an adverse judgment in any of the actions described above could have a material adverse effect on the Company's financial position, results of operations and cash flows.

By letter dated June 17, 1998, the staff of the Division of Enforcement of the SEC advised the Company that it was conducting an informal inquiry into the Company's accounting policies and procedures and requested that the Company produce certain documents. On July 2, 1998, the SEC issued a Formal Order of Private Investigation, designating SEC officers to take testimony and pursuant to which a subpoena was served on the Company requiring the production of certain documents. On November 4, 1998, another SEC subpoena requiring the production of additional documents was received by the Company. The Company has provided numerous documents to the SEC staff and continues to cooperate with the SEC staff. The Company has, however, declined to provide the SEC with material that the Company believes is subject to the attorney-client privilege and the work product immunity.

The SEC has not commenced any civil or administrative proceedings as a result of its investigation, and the Company cannot predict at this time whether the SEC will seek to impose any monetary or other penalties against the Company. Under these circumstances, the Company cannot estimate the duration of the investigation or its outcome.

The Company and its subsidiaries are also involved in various other lawsuits arising from time to time which the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these routine matters, and of certain matters relating to prior operations, individually

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SUNBEAM CORPORATION AND SUBSIDIARIES

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10. COMMITMENTS AND CONTINGENCIES--(CONTINUED)

Litigation--(Continued)

or in the aggregate, will not have a material adverse effect upon the financial position, results of operations or cash flows of the Company.

Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and

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claims and related anticipated legal fees for defending such actions. The costs are accrued when it is both probable that an asset has been impaired or a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon the Company's assessment, after consultation with counsel, of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the plaintiffs and other significant factors which vary by case. When it is not possible to estimate a specific expected cost to be incurred, the Company evaluates the range of probable loss and records the minimum end of the range. As of September 30, 1999, the Company had established accruals for litigation matters of \$22.6 million (representing \$11.3 million and \$11.3 million for estimated damages or settlement amounts and legal fees, respectively.) As of December 31, 1998 the Company had established accruals for litigation matters of \$31.2 million (representing \$17.5 million and \$13.7 million for estimated damages or settlement amounts and legal fees, respectively). It is anticipated that the \$22.6 million accrual will be paid as follows: \$5.2 million in 1999, \$14.9 million in 2000, and \$2.5 million in 2001. The Company believes, based on information known to the Company on September 30, 1999, that anticipated probable costs of litigation matters existing as of September 30, 1999 have been adequately reserved, to the extent determinable.

Products Liability

As a consumer goods manufacturer and distributor, the Company faces the constant risks of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. These claims could result in liabilities that could have a material adverse effect on the Company's consolidated financial position, results of operations, or cash flows. Some of the product lines the Company acquired in the 1998 acquisitions have increased its exposure to product liability and related claims.

BRK Brands, Inc., a wholly owned subsidiary of the Company, was a defendant in the case Gordon v. BRK Brands, Inc., et al. in the Circuit Court for the City of St Louis. In Gordon, the plaintiff alleged, among other things, that the plaintiff's smoke detector (which had been manufactured by a predecessor of BRK Brands) did not alarm quickly enough. In July 1999, the jury in the Gordon case awarded \$20 million in compensatory damages and \$30 million in punitive damages. This case has been settled and BRK's obligation under the settlement is to pay the balance of its self-insured retention.

The Company is party to various personal injury and property damage lawsuits relating to its products and incidental to its business. Annually, the Company sets its product liability insurance program based on the Company's current and historical claims experience and the availability and cost of insurance. The Company's program for 1999 was comprised of a self-insurance retention of \$3.5 million per occurrence, and was limited to \$28.0 million in the aggregate.

Cumulative amounts estimated to be payable by the Company with respect to pending and potential claims for all years in which the Company is liable under its self-insurance retention have been accrued as liabilities. Such accrued liabilities are necessarily based on estimates (which include actuarial determinations made by independent actuarial consultants as to liability exposure, taking into account prior experience, numbers of claims and other relevant factors); thus, the Company's ultimate liability may exceed or be less than the amounts accrued. The methods of making such estimates and establishing the resulting liability are reviewed continually and any adjustments resulting therefrom are reflected in current operating results.

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10.. COMMITMENTS AND CONTINGENCIES--(CONTINUED)

Products Liability--(Continued)

Historically, product liability awards have rarely exceeded the Company's individual per occurrence self-insured retention. There can be no assurance, however, that the Company's future product liability experience will be consistent with its past experience. Based on existing information, the Company believes that the ultimate conclusion of the various pending product liability claims and lawsuits of the Company, individually or in the aggregate, will not have a material adverse effect on the financial position, results of operations or cash flows of the Company.

Environmental Matters

The Company's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations in addition to laws and regulations regarding labeling and packaging of products and the sales of products containing certain environmentally sensitive materials. The Company believes it is in substantial compliance with all environmental laws and regulations which are applicable to its operations. Compliance with environmental laws and regulations involves certain continuing costs; however, such costs of ongoing compliance have not resulted, and are not anticipated to result, in a material increase in the Company's capital expenditures or to have a material adverse effect on the Company's results of operations, financial condition or competitive position.

In addition to ongoing environmental compliance at its operations, the Company also is actively engaged in environmental remediation activities many of which are related to divested operations. As of December 31, 1998, the Company has been identified by the United States Environmental Protection Agency ("EPA") or a state environmental agency as a potentially responsible party ("PRP") in connection with seven sites subject to the federal Superfund Act and five sites subject to state Superfund laws comparable to the federal law (collectively, the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a de minimis (less than 1%) participant.

The Superfund Act, and related state environmental remediation laws, generally authorize governmental authorities to remediate a Superfund site and to assess the costs against the PRPs or to order the PRPs to remediate the site at their expense. Liability under the Superfund Act is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, the Company recognizes its responsibility to determine whether other PRPs at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRPs established with respect to such sites. The Company currently is engaged in active remediation activities at 11 sites, six of which are among the Environmental Sites referred to above, and five of which have not been designated as Superfund sites under federal or state law. The remediation efforts in which the Company is involved include facility investigations, including soil and groundwater investigations, corrective measure studies, including feasibility studies, groundwater monitoring, extraction and treatment, soil sampling, excavation and treatment relating to environmental clean-ups. In certain instances, the Company has entered into agreements with governmental

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authorities to undertake additional investigatory activities and in other instances has agreed to implement appropriate remedial actions. The Company has also established reserve amounts for certain non-compliance matters including those involving air emissions.

The Company has established reserves to cover the anticipated probable costs of investigation and remediation, based upon periodic reviews of all sites for which the Company has, or may have, remediation responsibility. The Company accrues environmental investigation and remediation costs when it is both probable

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SUNBEAM CORPORATION AND SUBSIDIARIES

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10. COMMITMENTS AND CONTINGENCIES--(CONTINUED)

Environmental Matters--(Continued)

that a liability has been incurred and the amount can be reasonably estimated and the Company's responsibility is established. Generally, the timing of these accruals coincides with the earlier of formal commitment to an investigation plan, completion of a feasibility study or the Company's commitment to a formal plan of action. As of September 30, 1999 and December 31, 1998, the Company's environmental reserves were \$23.3 million (representing \$21.6 million for the estimated costs of facility investigations, corrective measure studies or known remedial measures, and \$1.7 million for estimated legal costs) and \$25.0 million (representing \$22.9 million for the estimated costs of facility investigations, corrective measure studies or known remedial measures, and \$2.1 million for estimated legal costs), respectively. It is anticipated that the \$23.3 million accrual at September 30, 1999 will be paid as follows: \$5.2 million in 1999, \$3.9 million in 2000, \$1.8 million in 2001, \$2.0 million in 2002, \$0.6 million in 2003 and \$9.8 million, thereafter. The Company has accrued its best estimate of investigation and remediation costs based upon facts known to the Company at such dates and because of the inherent difficulties in estimating the ultimate amount of environmental costs, which are further described below, these estimates may materially change in the future as a result of the uncertainties described below. Estimated costs, which are based upon experience with similar sites and technical evaluations, are judgmental in nature and are recorded at undiscounted amounts without considering the impact of inflation and are adjusted periodically to reflect changes in applicable laws or regulations, changes in available technologies and receipt by the Company of new information. It is difficult to estimate the ultimate level of future environmental expenditures due to a number of uncertainties surrounding environmental liabilities. These uncertainties include the applicability of laws and regulations, changes in environmental remediation requirements, the enactment of additional regulations, uncertainties surrounding remediation procedures including the development of new technology, the identification of new sites for which the Company could be a PRP, information relating to the exact nature and extent of the contamination at each site and the extent of required cleanup efforts, the uncertainties with respect to the ultimate outcome of issues which may be actively contested and the varying costs of alternative remediation strategies. The Company continues to pursue the recovery of some environmental remediation costs from certain of its liability insurance carriers; however, such potential recoveries have not been offset against potential liabilities and have not been considered in determining the Company's environmental reserves.

Due to uncertainty over remedial measures to be adopted at some sites, the possibility of changes in environmental laws and regulations and the fact that

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joint and several liability with the right of contribution is possible at federal and state Superfund sites, the Company's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved as of September 30, 1999.

The Company believes, based on existing information for sites where costs are estimable, that the costs of completing environmental remediation of all sites for which the Company has a remediation responsibility have been adequately reserved and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition, results of operations or cash flows.

Commitment Fee

Under the terms of the April 15, 1999 amendment to the New Credit Facility, the Company is obligated to pay a loan commitment fee of between \$4.2 million and \$17.0 million. The ultimate amount of the fee is determined based on multiplying the sum of the outstanding borrowings and amounts available for borrowings as of April 15, 1999 by a factor that is determined at the earlier of September 30, 2000 or upon repayment of the New Credit Facility. This fee is payable at the earlier of September 30, 2000 or upon repayment of the New Credit Facility. At a minimum, the Company is obligated under these terms to pay \$4.2 million. The ultimate amount due could be as high as \$17.0 million if the sum of the outstanding borrowings and amounts available for borrowings at September 30, 2000 (the "aggregate availability") exceeds \$1.2 billion. If the aggregate

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10. COMMITMENTS AND CONTINGENCIES--(CONTINUED)

Commitment Fee--(Continued)

availability is between \$1.0 billion and \$1.2 billion, a fee of \$8.4 million will be due. If the aggregate availability is \$1.0 billion or less, the \$4.2 million minimum will be due. Under any circumstances, the \$4.2 million will be due; therefore, the Company has accrued the minimum liability and an offsetting asset which is being amortized and included in interest expense through April 10, 2000, the term of the current amendment extension period.

The Company has not accrued for amounts in excess of the \$4.2 million, as there are numerous uncertainties which may individually or in the aggregate impact the level of aggregate availability at September 30, 2000. These uncertainties include, but are not limited to: the ability to obtain an amendment or further waiver of existing covenants from the lenders under the New Credit Facility for the period beyond April 10, 2000; proceeds from the sales of assets or businesses, if any; changes in debt structure, including the effects of refinancing, if any; and cash flows generated or used by future operations. Given these uncertainties, the Company is currently not able to predict the probable level of aggregate availability at September 30, 2000. As events develop, the Company will periodically review the expected aggregate availability at September 30, 2000. If it becomes likely that an amount in excess of \$4.2 million will be paid, the Company will recognize that change in estimate over the remaining period of the New Credit Facility Amendment.

11. SUBSEQUENT EVENT

On November 9, 1999, the Company announced a plan to divest Eastpak and certain non-essential assets. Net proceeds from these assets sales are estimated

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to be \$200 million and will be primarily used to pay down debt.

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ANNEX I

AGREEMENT AND PLAN OF MERGER

AMONG

SUNBEAM CORPORATION

CAMPER ACQUISITION CORP.

AND

THE COLEMAN COMPANY, INC.

DATED AS OF
FEBRUARY 27, 1998

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of February 27, 1998, among SUNBEAM CORPORATION, a Delaware corporation ("Laser"), CAMPER ACQUISITION CORP. ("Merger Sub"), a Delaware corporation and a wholly owned subsidiary of Laser, and THE COLEMAN COMPANY, INC., a Delaware corporation (the "Company").

WHEREAS, the Boards of Directors of Laser, Merger Sub and the Company deem it advisable and in the best interests of their respective stockholders that Merger Sub merge with and into the Company (the "Company Merger"), and such Boards of Directors have approved the Company Merger, upon the terms and subject to the conditions set forth herein; and

WHEREAS, as a condition to the Company Merger, a newly formed, wholly owned subsidiary of Laser will merge with and into CLN Holdings Inc. ("Holdings") with Holdings continuing as the surviving corporation and a wholly owned subsidiary of Laser (the "Holdings Merger") pursuant to an Agreement and Plan of Merger (the "Holdings Merger Agreement"), dated as of the date hereof, among Laser, Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Laser, Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings"), and Holdings; and

WHEREAS, the Board of Directors of the Company has approved the Holdings Merger solely for purposes of rendering Section 203 of the DGCL inapplicable to the transactions contemplated hereby; and

WHEREAS, Laser, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Company Merger and also to prescribe certain conditions to the Company Merger.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

SECTION 1.1 DEFINITIONS. As used in this Agreement, the following terms shall have the following meanings, the definitions to be applicable to both the

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singular and plural forms of each term defined to the extent that such forms of such terms are used in this Agreement.

"Affiliate" shall mean, as to any Person (as hereinafter defined), any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interest, by contract or otherwise.

"Affiliate Agreements" shall mean any Contract, agreement or understanding between the Company and any of its subsidiaries, on the one hand, and Worldwide and any of its Affiliates (other than the Company and its subsidiaries), on the other hand.

"Certificate of Incorporation" shall have the meaning ascribed to it in Section 2.4.

"Certificate of Merger" shall have the meaning ascribed to it in Section 2.3.

"Claim" shall have the meaning ascribed to it in Section 7.8(a).

"Closing" shall have the meaning ascribed to it in Section 2.2.

"Closing Date" shall have the meaning ascribed to it in Section 2.2.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commonly Controlled Entity" shall have the meaning ascribed to it in Section 4.13(a).

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"Company Balance Sheet Date" shall have the meaning ascribed to it in Section 4.6(c).

"Company Business Personnel" shall have the meaning ascribed to it in Section 4.12.

"Company Common Stock" shall mean the common stock, par value \$.01 per share, of the Company.

"Company Disclosure Schedule" shall have the meaning ascribed to it in the Introduction to Article IV.

"Company Effective Time" shall have the meaning ascribed to it in Section 2.3.

"Company Licenses" shall have the meaning ascribed to it in Section 4.11.

"Company Material Adverse Effect" shall have the meaning ascribed to it in Section 4.1.

"Company Merger" shall have the meaning ascribed to it in the Recitals.

"Company Plans" shall have the meaning ascribed to it in Section 4.13(a).

"Company Preferred Stock" shall mean the preferred stock, par value \$.01 per share, of the Company.

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"Company Rule 145 Affiliates" shall have the meaning ascribed to it in Section 7.5.

"Company SEC Reports" shall have the meaning ascribed to it in Section 4.6(a).

"Company Stock Option Plans" shall mean The Coleman Company, Inc. 1996 Stock Option Plan, The Coleman Company, Inc. 1993 Stock Option Plan and The Coleman Company, Inc. 1992 Stock Option Plan.

"Competition Laws" shall mean foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other foreign Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, lessening of competition or restraint of trade.

"Contract" shall mean any note, bond, mortgage, indenture, license, contract, agreement or other instrument or obligation.

"Conversion Number" shall have the meaning ascribed to it in Section 3.1(a)(i).

"Credit Suisse First Boston" shall mean Credit Suisse First Boston Corporation, the Company's financial advisor.

"DGCL" shall mean the General Corporation Law of the State of Delaware.

"D&O Insurance" shall have the meaning ascribed to it in Section 7.8(c).

"Dissenting Shares" shall have the meaning ascribed to it in Section 3.8.

"Employee Stock Options" shall mean all employee and non-employee director stock options issued pursuant to the Company Stock Option Plans.

"Environmental Claim" shall mean any claim, action, investigation or written notice to the Company or any of its subsidiaries by any person or entity alleging potential liability (including, without limitation, potential liability for investigatory costs, cleanup costs, governmental response costs, natural resource damages, personal injuries, or penalties) arising out of, based on, or resulting from, (a) the presence, or release into the environment, of any Hazardous Substance at any location, whether or not owned or operated by the Company or any of its subsidiaries or (b) circumstances forming the basis of any violation, or alleged violation of any applicable Environmental Law.

"Environmental Laws" shall mean all federal, state, local and foreign Laws and regulations, as in effect and as interpreted as of the date of this Agreement, relating to pollution or protection of the environment, including, without limitation, Laws and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

"Environmental Permits" shall have the meaning ascribed to it in Section 4.14(a).

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

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"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

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"Exchange Agent" shall have the meaning ascribed to it in Section 3.2(a).

"Exchange Fund" shall have the meaning ascribed to it in Section 3.2(a).

"Filed Company SEC Reports" shall have the meaning ascribed to it in Section 4.6(a).

"Filed Laser SEC Reports" shall have the meaning ascribed to it in Section 5.6(a).

"GAAP" shall mean United States generally accepted accounting principles and practices in effect from time to time, consistently applied.

"Governmental Entity" shall mean any court, arbitral tribunal, administrative agency or commission or other governmental or regulatory authority or agency.

"Hazardous Substance" shall mean all substances defined as Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. section 300.5, or defined as such by, or regulated as such under, any Environmental Law, including any radon, asbestos and oil and petroleum products, by-products and fractions.

"Holdings" shall have the meaning ascribed to it in the Recitals.

"Holdings Disclosure Schedule" shall mean the Disclosure Schedule being delivered by Holdings concurrently with the execution of the Agreement and Plan of Merger relating to the Holdings Merger.

"Holdings Effective Time" shall mean the date and time on which the Holdings Merger is effected.

"Holdings Merger" shall have the meaning ascribed to it in the Recitals.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"Information Statement" shall have the meaning ascribed to it in Section 4.9.

"Indemnified Person" shall have the meaning ascribed to it in Section 7.8(a).

"Intellectual Property" shall mean all domestic and foreign patents, patent applications, written invention disclosures to be filed or awaiting filing determinations, trademark and service mark applications, registered trademarks, registered service marks, registered copyrights, trademarks, service marks and trade names.

"Laser Balance Sheet Date" shall have the meaning ascribed to it in Section 5.6(c).

"Laser Common Stock" shall mean the common stock, par value \$.01 per share, of Laser.

"Laser Licenses" shall have the meaning ascribed to it in Section 5.11.

"Laser Material Adverse Effect" shall have the meaning ascribed to it in Section 5.1.

"Laser Preferred Stock" shall mean the preferred stock, par value \$.01 per share, of Laser.

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"Laser SEC Reports" shall have the meaning ascribed to it in Section 5.6(a).

"Laser Shares" shall mean the shares of Laser Common Stock to be issued in the Company Merger.

"Laser Stock Option Plans" shall have the meaning ascribed to it in Section 5.2.

"Laser Stock Options" shall have the meaning ascribed to it in Section 5.2.

"Laws" shall mean any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree, administrative order or decree, administrative or judicial decision, and any other executive or legislative proclamation.

"Liens" shall mean all pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever.

"LYONS" shall mean the Liquid Yield Option(Trademark) Notes due 2013 of Worldwide.

"Merger Sub Common Stock" shall mean the common stock, par value \$.01 per share, of Merger Sub.

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"Morgan Stanley" shall mean Morgan Stanley & Co. Incorporated, Laser's financial advisor.

"NYSE" shall mean the New York Stock Exchange, Inc.

"PBGC" shall mean the Pension Benefit Guaranty Corporation.

"Pension Plan" shall have the meaning ascribed to it in Section 4.13(a).

"Per Share Merger Consideration" shall have the meaning ascribed to it in Section 3.1(a)(i).

"Person" shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization.

"Plans" shall have the meaning ascribed to it in Section 7.7(e).

"Properties" shall have the meaning ascribed to it in Section 4.14(c).

"Registration Statement" shall have the meaning ascribed to it in Section 4.9.

"Release" shall mean any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including, without limitation, ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

"Schedule 13E-3" shall have the meaning ascribed to it in Section 4.9.

"Section 14(f) Notice" shall have the meaning ascribed to it in Section 4.9.

"Securities Act" shall mean the Securities Act of 1933, as amended.

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"Subsidiary" shall mean, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other subsidiary of such party is a general partner or (ii) at least 50% of the securities or other interests having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization or at least 50% of the value of the outstanding equity is directly or indirectly owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"Surviving Corporation" shall have the meaning ascribed to it in Section 2.1.

"Tax" (and, with correlative meaning, "Taxes" and "Taxable") shall mean (i) any federal, state, local or foreign net income, gross income, receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any governmental authority; and (ii) any liability of Laser or any Laser subsidiary or the Company or any of its subsidiaries, as applicable, for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation of Laser or any Laser subsidiary or the Company or any of its subsidiaries, as the case may be, under any arrangement to share liability for taxes or indemnify any other entity or person for taxes.

"Tax Return" shall mean any return, report or statement required to be filed with respect to any Tax (including any attachments thereto), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

"Welfare Plan" shall have the meaning ascribed to it in Section 4.13(a).

"Worldwide" shall mean Coleman Worldwide Corporation, a Delaware corporation and a wholly owned subsidiary of Holdings.

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ARTICLE II
THE COMPANY MERGER

SECTION 2.1 THE COMPANY. Upon the terms and subject to the conditions set forth herein, and in accordance with the DGCL, at the Company Effective Time, Merger Sub shall be merged with and into the Company. Following the Company Effective Time, the Company shall continue as the surviving corporation (the "Surviving Corporation"), and the separate corporate existence of Merger Sub shall cease. The Company Merger shall have the effects set forth in Section 259 of the DGCL.

SECTION 2.2 CLOSING. The closing of the Company Merger (the "Closing") will take place at 10:00 a.m. on a date to be specified by the parties (the "Closing Date"), which shall be no later than the third NYSE trading day after satisfaction or waiver of the conditions set forth in Section 8.1, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, unless another time, date or place is agreed to in writing by the parties hereto.

SECTION 2.3 COMPANY EFFECTIVE TIME OF THE COMPANY MERGER. The Company

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Merger shall become effective on the date and at the time at which a properly executed certificate of merger (the "Certificate of Merger") is duly filed with the Secretary of State of the State of Delaware. The Certificate of Merger shall be filed as soon as practicable on or after the Closing Date. When used in this Agreement, the term "Company Effective Time" shall mean the date and time on which the Certificate of Merger is so filed.

SECTION 2.4 CERTIFICATE OF INCORPORATION. From and after the Company Effective Time, the certificate of incorporation of the Company as in effect at the Company Effective Time (the "Certificate of Incorporation") shall be the certificate of incorporation of the Surviving Corporation until amended as provided by Law and the Certificate of Incorporation.

SECTION 2.5 BY-LAWS. From and after the Company Effective Time, the by-laws of Merger Sub as in effect at the Company Effective Time shall be the by-laws of the Surviving Corporation until amended as provided by the DGCL, the Certificate of Incorporation and the terms thereof.

SECTION 2.6 DIRECTORS. The directors of Merger Sub at the Company Effective Time shall be the initial directors of the Surviving Corporation and shall hold office from the Company Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation or as otherwise provided by the DGCL (it being understood that the directors of the Company shall resign upon the later of (i) the Holdings Effective Time and (ii) the eleventh (11th) day following the date on which the Section 14(f) Notice shall have been filed with the SEC and mailed to all stockholders of record of the Company in accordance herewith).

SECTION 2.7 OFFICERS. The officers of the Company at the Company Effective Time shall be the initial officers of the Surviving Corporation and shall hold office from the Company Effective Time until their respective successors are duly elected or appointed and qualifies in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation, or as otherwise provided by Law.

ARTICLE III CONVERSION OF SHARES

SECTION 3.1 EFFECT ON CAPITAL STOCK. At the Company Effective Time, by virtue of the Company Merger and without any action on the part of any holder thereof:

(a) Conversion of Company Common Stock.

(i) Subject to Section 3.1(b) hereof, each share of Company Common Stock issued and outstanding immediately prior to the Company Effective Time (other than Dissenting Shares and Company Common Stock to be cancelled in accordance with Section 3.1(c) hereof) shall be converted into the right to receive (A) 0.5677 (the "Conversion Number") of a fully paid and nonassessable share of Laser Common Stock and (B) \$6.44 in cash, without interest thereon (the consideration

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referred to in this Section 3.1(a) being sometimes referred to herein as the "Per Share Merger Consideration").

(ii) If, prior to the Company Effective Time, Laser shall (A) pay a dividend in, subdivide, combine into a smaller number of shares or issue by reclassification of its shares, any shares of Laser Common Stock, the Conversion Number shall be adjusted appropriately or (B) pay a dividend

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(other than regular quarterly dividend payments, consistent with past practice), whether in cash or property, the amount of the cash portion of the Per Share Merger Consideration shall be appropriately adjusted such that the amount of cash to be received with respect to each share of Company Common Stock, or if a dividend shall have been paid in other property, cash and other property to be received with respect to each share of Company Common Stock, shall be equal to that which would have been received in the aggregate with respect to each share of Company Common Stock (on a per share equivalent basis) had the dividend been paid following the Company Effective Time at a time when the Laser Shares to be issued pursuant hereto had been issued to the holders of the shares of Company Common Stock.

(iii) Each of the shares of Company Common Stock converted in accordance with paragraph (i) of this Section 3.1(a) shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate representing any such shares of Company Common Stock shall cease to have any rights with respect thereto, except the right to receive the Per Share Merger Consideration and cash in lieu of any fractional share of Laser Common Stock (determined in accordance with Section 3.4 hereof), to be issued or paid in consideration therefor upon the surrender of such certificate in accordance with Section 3.2 hereof, without interest.

(b) Company Common Stock Held by Worldwide or Holdings to Remain Outstanding. Notwithstanding Section 3.1(a) hereof, at the Company Effective Time all shares of Company Common Stock held by Worldwide or Holdings shall remain outstanding and unchanged as a result of the Company Merger.

(c) Cancellation of Treasury Stock and Company Common Stock Held by Laser and Company Subsidiaries. Each share of Company Common Stock, if any, held in the treasury of the Company, by any subsidiary of the Company, by Laser or by any subsidiary of Laser (other than Worldwide or Holdings) immediately prior to the Company Effective Time shall be cancelled and retired and cease to exist.

(d) Cancellation of Merger Sub Common Stock. Each share of Merger Sub Common Stock issued and outstanding immediately prior to the Company Effective Time shall be cancelled and retired and cease to exist.

SECTION 3.2 EXCHANGE OF CERTIFICATES REPRESENTING SHARES.

(a) As of the Company Effective Time, Laser shall deposit, or shall cause to be deposited, with an exchange agent selected by Laser and reasonably satisfactory to the Company (the "Exchange Agent"), for the benefit of the holders of shares of Company Common Stock, for exchange in accordance with this Article III: (i) certificates representing the number of Laser Shares issuable in the Company Merger to be issued in respect of all shares of Company Common Stock outstanding immediately prior to the Company Effective Time and which are to be exchanged pursuant to the Company Merger (exclusive of shares to remain outstanding pursuant to Section 3.1(b) hereof or to be canceled pursuant to Section 3.1(c) hereof); and (ii) cash in an amount sufficient to make any cash payment due under Sections 3.1(a)(i)(B) and 3.4 hereof (such cash and certificates for Laser Shares being hereinafter referred to collectively as the "Exchange Fund").

(b) As soon as reasonably practicable after the Company Effective Time, Laser shall cause the Exchange Agent to mail (or deliver to its principal office) to each holder of record of a certificate or certificates representing shares of Company Common Stock (i) a letter of transmittal which shall specify that delivery shall be effected, and risk of loss and title to the certificates for shares of Company Common Stock shall pass, only upon delivery of the certificates for such shares of Company Common

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Stock to the Exchange Agent and which shall be in such form and have such other provisions, including appropriate provisions with respect to back-up withholding, as Laser may reasonably specify, and (ii) instructions for use in effecting the surrender of the certificates for shares of Company Common Stock. Upon surrender of a

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certificate for shares of Company Common Stock for cancellation to the Exchange Agent, together with such letter of transmittal, duly executed and completed in accordance with the instructions thereto, the holder thereof shall be entitled to receive in exchange therefor that portion of the Exchange Fund which such holder has the right to receive pursuant to the provisions of this Article III, after giving effect to any required withholding Tax, and the certificate for shares of Company Common Stock so surrendered shall forthwith be cancelled. No interest will be paid or accrued on the cash portion of the Exchange Fund. In the event of any transfer of ownership of shares of Company Common Stock which has not been registered in the transfer records of the Company, certificates representing the proper number of shares of Laser Common Stock, if any, and a check in an amount equal to the proper amount of the cash component, if any, of the Exchange Fund, will be issued to the transferee of the certificate representing the transferred shares of Company Common Stock, only upon presentation to the Exchange Agent of a certificate or certificates representing such shares of Company Common Stock, accompanied by all documents required to evidence and effect the prior transfer thereof and to evidence that any applicable stock transfer Taxes associated with such transfer were paid.

SECTION 3.3 DIVIDENDS; TRANSFER TAXES. No dividends that are declared on Laser Common Stock will be paid to persons entitled to receive certificates representing shares of Laser Common Stock until such persons surrender their certificates representing shares of Company Common Stock. Upon such surrender, there shall be paid to the person in whose name the certificates representing such shares of Laser Common Stock shall be issued, any dividends which shall have become payable with respect to such shares of Laser Common Stock between the Company Effective Time and the time of such surrender. In no event shall the person entitled to receive such dividends be entitled to receive interest on such dividends. If any certificates for any shares of Laser Common Stock are to be issued in a name other than that in which the certificate representing shares of Company Common Stock surrendered in exchange therefor is registered, it shall be a condition of such exchange that the person requesting such exchange shall pay to the Exchange Agent any transfer or other Taxes required by reason of the issuance of certificates for such shares of Laser Common Stock in a name other than that of the registered holder of the certificate surrendered or shall establish to the satisfaction of the Exchange Agent that such Tax has been paid or is not applicable. Notwithstanding the foregoing, (i) neither the Exchange Agent nor any party hereto shall be liable to a holder of shares of Company Common Stock for any shares of Laser Common Stock or dividends thereon, any cash payments to be made pursuant to Section 3.1(a)(i)(B) hereof or, in accordance with Section 3.4 hereof, any cash in lieu of fractional share interests, in each case, delivered to a public official pursuant to applicable escheat Laws and (ii) any shares of Laser Common Stock held by the Exchange Agent prior to surrender of certificates representing shares of Company Common Stock shall not be deemed issued.

SECTION 3.4 NO FRACTIONAL SHARES. No certificates or scrip representing fractional shares of Laser Common Stock shall be issued upon the surrender for exchange of certificates representing shares of Company Common Stock pursuant to this Article III, and no dividend, stock split or other change in the capital structure of Laser shall relate to any fractional security, and such fractional interests shall not entitle the owner thereof to vote or to any rights of a

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security holder. In lieu of any such fractional shares of Laser Common Stock, each holder of shares of Company Common Stock who would otherwise have been entitled to a fraction of a share of Laser Common Stock upon surrender of stock certificates for exchange pursuant to this Article III will be paid cash upon such surrender in an amount equal to the product of such fraction multiplied by the closing sale price of one share of Laser Common Stock on the NYSE on the day of the Company Effective Time, or, if shares of Laser Common Stock are not so traded on such day, the closing sale price of one such share on the next preceding day on which such share was traded on the NYSE. For purposes of this Section 3.4, shares of Company Common Stock of any holder represented by two or more certificates shall be aggregated, and in no event shall any holder be paid an amount of cash pursuant to this Section 3.4 in respect of more than one share of Laser Common Stock.

SECTION 3.5 TERMINATION OF EXCHANGE FUND. Any portion of the Exchange Fund which remains undistributed to the holders of the Company Common Stock for six (6) months after the Company Effective Time shall be delivered to Laser, upon demand, and any holders of the Company Common Stock who have not theretofore complied with this Article III shall thereafter look only to Laser for payment of their claim for the shares of Laser Common Stock and cash and dividends or other distributions, if any, pursuant to this Article III.

SECTION 3.6 INVESTMENT OF EXCHANGE FUND. Without prejudice to the rights of any holder of Company Common Stock to receive the Per Share Merger Consideration, the Exchange Agent shall invest any cash

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included in the Exchange Fund, as directed by Laser, on a daily basis. Any interest and other income resulting from such investments shall be paid to Laser.

SECTION 3.7 CLOSING OF COMPANY TRANSFER BOOKS. At the Company Effective Time, the stock transfer books of the Company shall be closed and no transfer of shares of Company Common Stock shall thereafter be made. If, after the Company Effective Time, certificates representing shares of Company Common Stock are presented to the Surviving Corporation, they shall be cancelled and exchanged for the Per Share Merger Consideration applicable thereto.

SECTION 3.8 DISSENTING SHARES. Each outstanding share of Company Common Stock as to which a written demand for appraisal is filed in accordance with Section 262 of the DGCL and not withdrawn, and with respect to which a consent is not given in favor of the Company Merger shall not be converted into or represent a right to receive the Per Share Merger Consideration unless and until the holder thereof shall have failed to perfect, or shall have effectively withdrawn or lost, the right to appraisal of and payment for each such share of Company Common Stock under Section 262, at which time each such share shall be converted into the right to receive the Per Share Merger Consideration. All such shares of Company Common Stock as to which such a written demand for appraisal is so filed and not withdrawn and with respect to which a consent is not given in favor of the Company Merger, except any such shares of Company Common Stock the holder of which, prior to the Company Effective Time, shall have effectively withdrawn or lost such right to appraisal and payment for such shares of Company Common Stock under Section 262, are herein referred to as "Dissenting Shares." The Company shall give Laser prompt notice upon receipt by the Company of any written demands for appraisal rights, withdrawal of such demands, and any other written communications delivered to the Company pursuant to Section 262, and the Company shall give Laser the opportunity, to the extent permitted by Law, to participate in all negotiations and proceedings with respect to such demands. Except with the prior written consent of Laser, the Company shall not voluntarily make any payment with respect to any demands for appraisal rights and shall not settle or offer to settle any such demands. Each holder of

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Dissenting Shares who becomes entitled, pursuant to the provisions of Section 262, to payment for such shares of Dissenting Shares under the provisions of Section 262 shall receive payment therefor from the Surviving Corporation and such shares of Company Common Stock shall be cancelled thereafter.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as otherwise disclosed to Laser in a schedule delivered to Laser prior to the execution hereof (which schedule shall contain appropriate references to identify the representations and warranties herein to which the information in such schedule relates) (the "Company Disclosure Schedule"), the Company represents and warrants to Laser and Merger Sub as follows:

SECTION 4.1 ORGANIZATION. The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted. The Company is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a material adverse effect on the business, results of operations or financial condition of the Company and its subsidiaries, taken as a whole (a "Company Material Adverse Effect").

SECTION 4.2 CAPITALIZATION. The authorized capital stock of the Company consists of 80,000,000 shares of Company Common Stock and 20,000,000 shares of Company Preferred Stock. As of February 23, 1998, (i) 53,488,170 shares of Company Common Stock were issued and outstanding; (ii) 3,282,930 shares of Company Common Stock were issuable upon exercise of Employee Stock Options to acquire 3,282,930 shares of Company Common Stock outstanding under the Company Stock Option Plans (of which options to acquire 2,399,380 were vested); and (iii) no shares of Company Preferred Stock were issued or outstanding. As of such date, no shares of Company Common Stock were held as treasury shares. All of the issued and outstanding shares of Company Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. As of the date hereof, except as set forth above, there are no shares of capital stock of the Company issued or outstanding or any

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options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating the Company to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities. There are no notes, bonds, debentures or other indebtedness of the Company having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of the Company may vote.

SECTION 4.3 SUBSIDIARIES. All the outstanding shares of capital stock of, or other ownership interests in, each of the Company's subsidiaries have been validly issued and are fully paid and nonassessable and such shares (other than directors' qualifying shares and similar interests) are owned directly or indirectly by the Company, free and clear of all Liens. Except for the capital stock of the Company's subsidiaries and except as set forth in Section 4.3 of the Company Disclosure Schedule, the Company does not own, directly or indirectly, any capital stock or other ownership interest in any corporation, partnership, limited liability company, joint venture or other entity. Each of the Company's subsidiaries that is a corporation is a corporation duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation. Each of the Company's subsidiaries that is a partnership or a limited liability company is duly formed and validly existing

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under the Laws of its jurisdiction of formation. Each of the Company's subsidiaries has the corporate power or the partnership power, as the case may be, to carry on its business as it is now being conducted or presently proposed to be conducted. Each the Company's subsidiaries that is a corporation is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a Company Material Adverse Effect. Each of the Company's subsidiaries that is a partnership is duly qualified as a foreign partnership authorized to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a Company Material Adverse Effect. Except as set forth in Section 4.2 hereof, there are no outstanding options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating the Company or any of its subsidiaries to issue, transfer or sell any securities of any Company subsidiary. There are no voting, stockholder or other agreements or understandings to which the Company or any of the Company's subsidiaries is a party or is bound with respect to the voting of the capital stock of the Company or any of the Company's subsidiaries.

SECTION 4.4 AUTHORITY RELATIVE TO THIS AGREEMENT. The Company has the corporate power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly authorized by the Board of Directors of the Company, and no other corporate actions or proceedings on the part of the Company (including any action on the part of its stockholders) are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization and valid execution and delivery by Laser and Merger Sub, constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and to general principles of equity.

SECTION 4.5 CONSENTS AND APPROVALS; NO VIOLATIONS. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws and state securities or blue sky Laws, and the filing and recordation of the Certificate of Merger as required by the DGCL, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by the Company of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not individually or in the aggregate have a Company Material Adverse Effect. Except as set forth in Section 4.5 of the Company Disclosure Schedule, neither the execution and delivery of this Agreement by the Company, nor the consummation by the Company of the transactions contemplated hereby, nor compliance by the Company with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of the Company or the certificate of incorporation or by-laws of any of the Company's subsidiaries; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or

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both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material (as defined for purposes of Form 10-K) Contract to which the Company or any of the Company's subsidiaries is a party or by which any of them or any of their

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properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company, any of the Company's subsidiaries or any of their properties or assets, except in the case of clauses (b) and (c) for violations, breaches or defaults which would not individually or in the aggregate have a Company Material Adverse Effect.

SECTION 4.6 REPORTS AND FINANCIAL STATEMENTS.

(a) The Company has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Company SEC Reports"). As of their respective dates, the Company SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Company SEC Report has been amended, revised or superseded by a later Company SEC Report filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by a later Company SEC Report filed and publicly available prior to the date of this Agreement, the "Filed Company SEC Reports"), none of the Filed Company SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements of the Company included in the Filed Company SEC Reports complied as to form in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto have been prepared in accordance with GAAP (except, in the case of the unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present the consolidated financial position of the Company and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(c) Except as set forth in the Filed Company SEC Reports and except for liabilities and obligations incurred in the ordinary course of business consistent with past practice since the date of the most recent consolidated balance sheet included in the Filed Company SEC Reports (the "Company Balance Sheet Date"), neither the Company nor any of its subsidiaries has any material liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be recognized or disclosed on a consolidated balance sheet of the Company and its consolidated subsidiaries or in the notes thereto.

SECTION 4.7 ABSENCE OF CERTAIN CHANGES OR EVENTS. Except as set forth in the Filed Company SEC Reports, since the Company Balance Sheet Date, the business of the Company and its subsidiaries has been conducted only in the ordinary course of business consistent with past practice, and there has not been any event, change or development which individually or in the aggregate has had or would reasonably be expected to have a Company Material Adverse Effect or would impair or delay the ability of the Company to consummate the transactions contemplated by, or to satisfy its obligations under, this Agreement. Except as set forth in Section 4.7 of the Company Disclosure Schedule, during the period from the Company Balance Sheet Date through the date of this Agreement, neither the Company nor any of its subsidiaries has:

(i) declared, set aside or paid any distributions (whether in cash, stock or property) with respect to its capital stock or (y) split, combined, or reclassified any of its capital stock or issued or

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authorized the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock (other than dividends or stock issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(ii) issued, delivered, sold, pledged or otherwise encumbered any shares of its capital stock, any other voting securities or any securities convertible into, or any options, warrants or rights to acquire, any such shares, voting securities or convertible securities (other than the issuance of Company

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Common Stock upon the exercise of Employee Stock Options in accordance with their terms and issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(iii) in the case of the Company, amended its certificate of incorporation or by-laws;

(iv) acquired or agreed to acquire by merging or consolidating with, or in purchasing a substantial portion of the assets of, or in any other manner, any business or any corporation, limited liability company, partnership, association or other business organization or division thereof material to the Company;

(v) other than in the ordinary course of business, (x) incurred any indebtedness or (y) made any loans, advances or capital contributions to, or investments in, any other person (other than the Company or a subsidiary of the Company), in any case in an amount material to the Company;

(vi) other than in the ordinary course of business or consistent with the Company's capital budgets heretofore disclosed to Laser, made or agreed to make any capital expenditure or capital expenditures;

(vii) other than in the ordinary course of business, made any Tax election or settled or compromised any material income Tax liability;

(viii) except in the ordinary course of business or except as would not reasonably be expected to have a Company Material Adverse Effect, entered into any Contracts or amended or terminated any material Contract or agreement to which the Company or any of its subsidiaries is a party or waived, released or assigned any material rights or claims thereunder;

(ix) except as required by Law or contractual obligation or in the ordinary course of business consistent with past practice, (a) increased the compensation of any of its employees, (b) entered into any Contract with any of its employees regarding his or her employment, compensation or benefits, or (c) adopted any plan, arrangement or policy which would become a Company Plan or amended any Company Plan to the extent such adoption or amendment would create or increase any material liability or obligation on the part of the Company or its subsidiaries;

(x) entered into any transaction or Contract with, or (except pursuant to the Affiliate Agreements) made any payment to, any Affiliate of the Company (other than to the Company's subsidiaries or its or their officers or directors in the ordinary course of business consistent with past practice); or

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(xi) agreed to do any of the foregoing.

SECTION 4.8 LITIGATION. Except as disclosed in the Filed Company SEC Reports and as set forth in Section 4.8 of the Company Disclosure Schedule, as of the date hereof, to the Company's knowledge there is no suit, action, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its subsidiaries that individually or in the aggregate would reasonably be expected to (i) have a Company Material Adverse Effect (taking into account any reserve therefor as of the Company Balance Sheet Date), or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement, nor is there any judgment, order, decree, statute, Law, ordinance, rule or regulation of any Governmental Entity or arbitrator outstanding against the Company or any of its subsidiaries having, or which would reasonably be expected to have, any effect referred to in clause (i) or (ii) above.

SECTION 4.9 INFORMATION IN DISCLOSURE DOCUMENTS AND REGISTRATION STATEMENT. None of the information to be supplied by the Company for inclusion or incorporation by reference in the information statement to be distributed in connection with the Company Merger (as amended or supplemented, the "Information Statement") or the related filing on Schedule 13E-3 (as amended or supplemented, the "Schedule 13E-3") or the notice to be provided to the Company's stockholders pursuant to Section 14(f) of the Exchange Act (as amended or supplemented, the "Section 14(f) Notice") or the registration statement on Form S-4 under the Securities Act for the purpose of registering the shares of Laser Common Stock to be issued in the Company Merger (as amended or supplemented, the "Registration Statement") will, in the case of the Registration

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Statement, at the time it becomes effective and at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or, in the case of the Information Statement, the Schedule 13E-3, the Section 14(f) Notice, at the time of the mailing thereof and, in the case of the Information Statement, the Schedule 13E-3 at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Information Statement, the Schedule 13E-3 and the Section 14(f) Notice will comply as to form in all material respects with the provisions of the Exchange Act, and the rules and regulations promulgated thereunder.

SECTION 4.10 TAXES. Except as would not have a Company Material Adverse Effect or as set forth in Section 4.10 of the Company Disclosure Schedule:

(a) Each of the Company and each of its subsidiaries has (i) filed (or there has been filed on its behalf) with the appropriate Governmental Entities all Tax Returns required to be filed by it, and all such Tax Returns are true, correct and complete and (ii) has paid all Taxes due by it;

(b) there is no action, suit, investigation, audit, claim or assessment pending or proposed in writing or threatened in writing with respect to Taxes of the Company or any of its subsidiaries and, to the best of the Company's knowledge, no basis exists therefor;

(c) there are no Liens for Taxes upon the assets of the Company or any of its subsidiaries except Liens relating to current Taxes not yet due;

(d) the United States federal income Tax Returns which include the Company and the Company's subsidiaries have been examined, and such

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examinations have been completed, by the Internal Revenue Service (or the applicable statutes of limitation for the assessment of federal income Taxes for such periods have expired) for all periods through and including 1985.

SECTION 4.11 COMPLIANCE WITH APPLICABLE LAW. Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries have received such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances from appropriate Governmental Entities (the "Company Licenses") as are necessary to own or lease and operate their respective properties and to conduct their respective businesses substantially in the manner described in the Company SEC Reports and as currently owned or leased and conducted, and all such Company Licenses are valid and in full force and effect, except for any such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances which the failure to have or to be in full force and effect would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as disclosed in Filed Company SEC Reports, the Company and the Company's subsidiaries are in compliance with their respective obligations under the Company Licenses, with only such exceptions as, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect. Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries are in compliance with all judgments, orders, decrees, statutes, Laws, ordinances, rules and regulations of any Governmental Entity applicable to them, except for such noncompliance which individually or in the aggregate would not have a Company Material Adverse Effect.

SECTION 4.12 LABOR MATTERS. Except as disclosed in the Filed Company SEC Reports, neither the Company nor any of the Company's subsidiaries has any labor contracts, collective bargaining agreements or material employment or consulting agreements with any persons employed by or otherwise performing services primarily for the Company or any of the Company's subsidiaries (the "Company Business Personnel") or any representative of any Company Business Personnel. Except as set forth in the Filed Company SEC Reports, neither the Company nor any of its subsidiaries has engaged in any unfair labor practice with respect to Company Business Personnel, and there is no unfair labor practice complaint pending against the Company or any of its subsidiaries with respect to Company Business Personnel which, in either such case, would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as set forth in the Filed Company SEC Reports, there is no material labor strike, dispute, slowdown or stoppage pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries, and neither the Company

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nor any of its subsidiaries has experienced any material primary work stoppage or other material labor difficulty involving its employees during the last three (3) years.

SECTION 4.13 ERISA COMPLIANCE.

(a) The Company has delivered to Laser or will deliver to Laser prior to the Company Effective Time each "employee pension benefit plan" (as defined in Section 3(2) of ERISA) (a "Pension Plan"), each "employee welfare benefit plan" (as defined in Section 3(1) of ERISA) (a "Welfare Plan"), each material bonus, stock option, stock purchase, stock ownership, stock bonus, restricted stock, deferred compensation plan or arrangement and each other material employee fringe benefit plan or arrangement maintained, contributed to or required to be maintained or contributed to by the Company or any of its subsidiaries or any other person or entity that, together with the Company, is or was treated as a single employer

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under Section 414(b), (c), (m) or (o) of the Code (each, a "Commonly Controlled Entity") which is currently in effect for the benefit of any current or former directors, officers, employees or independent contractors of the Company or any of its subsidiaries (collectively, the "Company Plans"). The Company has delivered to Laser or will deliver to Laser prior to the Company Effective Time true, complete and correct copies of (x) the two most recent annual reports on Form 5500 filed with the Internal Revenue Service with respect to each Company Plan (if any such report was required), (y) the most recent summary plan description for each Company Plan for which such summary plan description is required and (z) each currently effective trust agreement, insurance or group annuity contract and each other material funding or financing arrangement relating to any Company Plan.

(b) No Commonly Controlled Entity has incurred any liability under Title IV of ERISA, other than for contributions not yet due to a defined benefit pension plan subject to Title IV of ERISA and other than for the payment of premiums to the PBGC not yet due, and no condition exists that presents a material risk of incurring any such liability, which liability, to the extent currently due, has not been fully paid as of the date hereof and would individually or in the aggregate be reasonably likely to result in a Company Material Adverse Effect.

(c) Except as set forth in Company SEC reports or in Section 4.13 of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries has any obligation to provide any welfare benefits to employees or former employees following termination of employment except (i) for benefits the cost of which is borne entirely by the employee or former employee, (ii) as required under Section 4980 of the Code or other applicable law or (iii) obligations to provide such benefits to Company employees employed in non-U.S. jurisdictions.

(d) No Commonly Controlled Entity has engaged in a transaction described in Section 4069 of ERISA that could subject the Company or any of its subsidiaries or Laser to liability at any time after the date hereof, which liability would be reasonably likely to result in a Company Material Adverse Effect.

(e) No Commonly Controlled Entity has withdrawn from any multiemployer plan where such withdrawal has resulted in any actual or potential "withdrawal liability" (as defined in Section 4201 of ERISA) that has not been fully paid, which liability would be reasonably likely to result in a Company Material Adverse Effect.

(f) Except as set forth in Section 4.13 of the Company Disclosure Schedule or as specifically provided in this Agreement, the transactions contemplated by this Agreement will not, either alone or in connection with another event, cause there to be paid or become payable any additional benefits or any acceleration of the time of payment or vesting of any benefits under any Company Plan or under any employment, severance, termination or compensation agreement to which the Company is a party as of the Company Effective Time.

SECTION 4.14 ENVIRONMENTAL MATTERS.

(a) Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries are in compliance with all applicable Environmental Laws, which compliance includes the possession of permits and governmental authorizations required under applicable Environmental Laws ("Environmental

Permits") and compliance with the terms and conditions thereof, except where such non-compliance would not result in a Company Material Adverse Effect.

(b) Except as disclosed in the Filed Company SEC Reports, there are no Environmental Claims pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries that would reasonably be expected to result in a Company Material Adverse Effect.

(c) Except as disclosed in the Filed Company SEC Reports, the properties presently or to the knowledge of the Company formerly owned, leased or operated by the Company or its subsidiaries (including groundwater under the properties) (the "Properties") do not contain any Hazardous Substance other than as permitted under applicable Environmental Law; provided, however, that with respect to Properties formerly owned, leased or operated by the Company or its subsidiaries, such representation is limited to the period prior to the disposition of such Properties by the Company or its subsidiaries.

(d) Except as disclosed in the Filed Company SEC Reports, to the knowledge of the Company, no Hazardous Substance has been disposed of or transported from any of the Properties during the time any such Property was owned, leased or operated by the Company or any of its subsidiaries, other than as permitted under applicable Environmental Law and in effect at the time of such disposal or transportation.

(e) Except as disclosed in the Filed Company SEC Reports, to the knowledge of the Company, the Company and its subsidiaries have not become obligated, whether by operation of Law or through contractual agreement, to indemnify any other person or otherwise to assume liability for any claim brought pursuant to any Environmental Law which could reasonably be expected to have a Company Material Adverse Effect.

SECTION 4.15 INTELLECTUAL PROPERTY. The Company has previously delivered to Laser a list, which, to the knowledge of the Company, is true and correct as of the date hereof in all material respects, of all material issued patents and registered trademarks of the Company. Except as set forth in Section 4.15 of the Company Disclosure Schedule, the Company and its subsidiaries own or have sufficient rights to use all material Intellectual Property used in connection with the business of the Company and its subsidiaries as currently conducted. As used in this Section 4.15, the term "material," when applied to Intellectual Property, means that such Intellectual Property is used in a significant manner to conduct the business of the Company and its subsidiaries as it is currently conducted.

SECTION 4.16 CONTRACTS. Except as set forth in Section 4.16 of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries is a party to or bound by any material Contract, other than (i) the Affiliate Agreements listed in Section 4.10 of the Holdings Disclosure Schedule, (ii) any Contract filed or incorporated by reference as an exhibit to any Filed Company SEC Report or (iii) any Contract (other than the Affiliate Agreements listed in Section 4.10 of the Holdings Disclosure Schedule) entered into in the ordinary course of business consistent with past practice.

SECTION 4.17 OPINION OF FINANCIAL ADVISOR. The Board of Directors of the Company has received the opinion of Credit Suisse First Boston, dated the date hereof to the effect that the Per Share Merger Consideration is fair to the holders of shares of Company Common Stock (other than Worldwide) from a financial point of view.

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SECTION 4.18 TAKEOVER STATUTE. The Board of Directors of the Company has approved the Holdings Merger solely for the purpose of rendering inapplicable, and such approval is sufficient to render inapplicable, to the Company Merger and the other transactions contemplated by this Agreement the provisions of Section 203 of the DGCL. To the best of the Company's knowledge, no other state takeover statute or similar statute or regulation applies or purports to apply to the Company Merger, this Agreement or any of the transactions contemplated hereby, and no provision of the certificate of incorporation or by-laws of the Company or certificates of incorporation or by-laws (or comparable organizational documents) of any subsidiary of the Company would, directly or indirectly, restrict or impair the ability of Laser to vote, or otherwise to exercise the rights of a stockholder with respect to, shares of capital stock of the Company or any of its subsidiaries that may be acquired or controlled by Laser.

SECTION 4.19 BROKERS. No broker, investment banker or other person, other than Credit Suisse First Boston, the fees and expenses of which will be paid by the Company (as reflected in an agreement between Credit Suisse First Boston and the Company, a copy of which has been furnished to Laser), is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF LASER
AND MERGER SUB

Laser and Merger Sub represent and warrant to the Company as follows:

SECTION 5.1 ORGANIZATION. Laser is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted. Laser is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a material adverse effect on the business, results of operations or financial condition of Laser and its subsidiaries, taken as a whole (a "Laser Material Adverse Effect").

SECTION 5.2 CAPITALIZATION. The authorized capital stock of Laser consists of 200,000,000 shares of Laser Common Stock, and 2,000,000 shares of Laser Preferred Stock. As of February 23, 1998, (i) 85,988,627 shares of Laser Common Stock were issued and outstanding; (ii) 16,129,197 shares of Laser Common Stock were issuable upon exercise of employee and non-employee stock options (the "Laser Stock Options") outstanding under all stock option plans of Laser (the "Laser Stock Option Plans") or granted pursuant to employment agreements; and (iii) no shares of Laser Preferred Stock were issued and outstanding. As of such date, 4,568,959 shares of Laser Common Stock were held as treasury shares. All of the issued and outstanding shares of Laser Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. All of the shares of Laser Common Stock issuable as consideration in the Company Merger at the Company Effective Time in accordance with this Agreement will be, when so issued, duly authorized, validly issued, fully paid and nonassessable and free of preemptive rights. As of such date, except as set forth above, there are no shares of capital stock of Laser issued or outstanding or, as of such date or as of the date hereof, except as set forth above, any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Laser to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities, or the capital stock or securities of Laser. There are no notes, bonds, debentures or other indebtedness of Laser having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of Laser may vote.

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SECTION 5.3 MERGER SUB. Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Merger Sub is a newly incorporated company formed solely for purposes of consummating the transactions contemplated by this Agreement and has engaged in no activity other than as provided in, or contemplated by, this Agreement. The authorized capital stock of Merger Sub consists of 1,000 shares of Merger Sub Common Stock, all of which are validly issued, fully paid and nonassessable and are owned by Laser. Except as set forth above there are no shares of capital stock of Merger Sub issued or outstanding or any options, warrants, subscription, calls, rights, convertible securities or other

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agreements or commitments obligating Merger Sub to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

SECTION 5.4 AUTHORITY RELATIVE TO THIS AGREEMENT. Each of Laser and Merger Sub has the corporate power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Laser and Merger Sub and the consummation by Laser and Merger Sub of the transactions contemplated hereby have been duly authorized by the Boards of Directors of Laser and Merger Sub, and no other corporate action or proceedings on the part of Laser or Merger Sub (including any action on the part of its stockholders) is necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by Laser and Merger Sub and, assuming it is a valid and binding obligation of the Company, constitutes a valid and binding agreement of Laser and Merger Sub, enforceable against Laser and Merger Sub in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and other forms of equitable relief may be subject to equitable defenses and the discretion of the court before which any proceedings therefor may be brought.

SECTION 5.5 CONSENTS AND APPROVALS; NO VIOLATIONS. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws, and state securities or blue sky Laws, and the filing of the Certificate of Merger in such form as required by, and executed in accordance with the relevant provisions of, the DGCL, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Laser or Merger Sub of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not (i) individually or in the aggregate have a Laser Material Adverse Effect or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement. Neither the execution and delivery of this Agreement by Laser or Merger Sub nor the consummation by Laser or Merger Sub of the transactions contemplated hereby, nor compliance by Laser with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Laser or Merger Sub; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material (as defined for purposes of Form 10-K) Contract to which Laser, Merger Sub or any of their subsidiaries is a party or by which any of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Laser, Merger Sub, any of their subsidiaries or any of their properties or assets, except, in the case of clauses (b) and (c), for violations, breaches or defaults which would not individually or in the aggregate have a Laser Material

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Adverse Effect.

SECTION 5.6 REPORTS AND FINANCIAL STATEMENTS

(a) Laser has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Laser SEC Reports"). As of their respective dates, the Laser SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Laser SEC Report has been amended, revised or superseded by a later Laser SEC Report filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by a later filed Laser SEC Report to the date of this Agreement, the "Filed Laser SEC Reports"), none of the Filed Laser SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements of Laser included in the Filed Laser SEC Reports complied as to form in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except, in the case of the unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present the consolidated financial position of Laser and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

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(c) Except as set forth in the Filed Laser SEC Reports and except for liabilities and obligations incurred in the ordinary course of business consistent with past practice since the date of the most recent consolidated balance sheet included in the Filed Laser SEC Reports (the "Laser Balance Sheet Date"), neither Laser nor any of the Laser subsidiaries has any material liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be recognized or disclosed on a consolidated balance sheet of Laser and its consolidated subsidiaries or in the notes thereto.

SECTION 5.7 ABSENCE OF CERTAIN CHANGES OR EVENTS. Except as set forth in the Filed Laser SEC Reports, since the Laser Balance Sheet Date, the business of Laser and its subsidiaries has been conducted only in the ordinary course of business consistent with past practice, and there has not been any event, change or development which individually or in the aggregate has had or would reasonably be expected to have a Laser Material Adverse Effect or would impair or delay the ability of Laser to consummate the transactions contemplated by, or to satisfy its obligations under, this Agreement.

SECTION 5.8 LITIGATION. Except as disclosed in the Filed Laser SEC Reports, there is no suit, action, proceeding or investigation pending or, to the knowledge of Laser, threatened against or affecting Laser or any of its subsidiaries that individually or in the aggregate would reasonably be expected to (i) have a Laser Material Adverse Effect (taking into account any reserve therefor as of the most recent balance sheet included in the Filed Laser SEC Reports) or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement, nor is there any judgment, order, decree, statute, Law, ordinance, rule or regulation of any

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Governmental Entity or arbitrator outstanding against Laser or any of its subsidiaries having, or which would reasonably be expected to have, any effect referred to in clause (i) or (ii) above.

SECTION 5.9 INFORMATION IN DISCLOSURE DOCUMENTS AND REGISTRATION STATEMENT. None of the information to be supplied by Laser for inclusion or incorporation by reference in (a) the Registration Statement or (b) the Information Statement, the Schedule 13E-3 or the Section 14(f) Notice will, in the case of the Registration Statement, at the time it becomes effective and at the Company Effective Time contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or, in the case of the Information Statement, the Schedule 13E-3 and the Section 14(f) Notice, at the time of the mailing thereof and, in the case of the Information Statement and the Schedule 13E-3, at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Registration Statement will comply as to form in all material respects with the provisions of the Securities Act and the rules and regulations promulgated thereunder. The Schedule 13E-3 will comply as to form in all material respects with the provisions of the Exchange Act and the rules and regulations promulgated thereunder.

SECTION 5.10 TAXES.

(a) Laser and its subsidiaries have filed (or there have been filed on their behalf) with the appropriate governmental authorities all material Tax Returns required to be filed by them and such Tax Returns are true, correct and complete in all material respects and disclose all Taxes required to be paid by them for the periods covered thereby; and

(b) all material Taxes (whether or not shown on any Tax Return) owed by Laser and its subsidiaries and required to be paid on or before the Closing Date have been (or will be) timely paid or, in the case of Taxes which Laser or any of its subsidiaries is presently contesting in good faith, an adequate reserve has been established for such Taxes in accordance with GAAP.

SECTION 5.11 COMPLIANCE WITH APPLICABLE LAW. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries have received such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances from appropriate Governmental Entities (the "Laser Licenses") as are necessary to own or lease and operate their respective properties and to conduct their respective businesses substantially in the manner described in the Laser SEC Reports and as currently owned or leased and conducted, and all such Laser Licenses are valid and in full force and effect, except for any such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances which the failure to have or to be in full force and effect would not reasonably be expected to have, individually or in the aggregate, a Laser Material Adverse Effect. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries are in compliance in all material respects with their respective obligations under the Laser Licenses, with only such

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exceptions as, individually or in the aggregate, would not reasonably be expected to have a Laser Material Adverse Effect. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries are in compliance with all judgments, orders, decrees, statutes, Laws, ordinances, rules and regulations of any Governmental Entity applicable to them, except for such noncompliance which individually or in the aggregate would not have a Laser Material Adverse Effect.

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SECTION 5.12 BROKERS. No broker, investment banker or other person, other than Morgan Stanley, the fees and expenses of which will be paid by Laser (as reflected in an agreement between Morgan Stanley and Laser) is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Laser.

ARTICLE VI
COVENANTS RELATING TO CONDUCT OF BUSINESS

SECTION 6.1 CONDUCT OF BUSINESS BY THE COMPANY. During the period from the date of this Agreement to the Holdings Effective Time, except as expressly permitted by this Agreement or with the prior written consent of Laser or as set forth in Section 6.1 of the Company Disclosure Schedule, the Company shall, and shall cause its subsidiaries to, carry on the business of the Company and its subsidiaries in the usual, regular and ordinary course in substantially the same manner as heretofore conducted and in compliance in all material respects with all applicable Laws and regulations and, to the extent consistent therewith, use all reasonable efforts to preserve intact the current business organizations of the Company and its subsidiaries, and to preserve its relationships with those persons having business dealings with the Company and its subsidiaries to the end that the goodwill and ongoing businesses of the Company and its subsidiaries shall be unimpaired at the Holdings Effective Time. Without limiting the generality of the foregoing, during the period from the date of this Agreement to the Holdings Effective Time, the Company agrees as to itself and its subsidiaries that, except as expressly permitted by this Agreement or with the prior written consent of Laser or as set forth in Section 6.1 of the Company Disclosure Schedule:

(i) Neither the Company nor any of its subsidiaries shall (x) declare, set aside or pay any distributions (whether in cash, stock or property) with respect to its capital stock or (y) split, combine, or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock (other than dividends or stock issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(ii) Neither the Company nor any of its subsidiaries shall issue, deliver, sell, pledge or otherwise encumber any shares of its capital stock, any other voting securities or any securities convertible into, or any options, warrants or rights to acquire, any such shares, voting securities or convertible securities (other than the issuance of Company Common Stock upon the exercise of Employee Stock Options in accordance with their terms and issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(iii) The Company shall not amend its certificate of incorporation or by-laws;

(iv) Other than as would not be material to the Company, the Company and its subsidiaries shall not acquire or agree to acquire (x) by merging or consolidating with, or by purchasing a substantial portion of the assets of, or in any other manner, any business or any corporation, limited liability company, partnership, joint venture, association or other business organization or division thereof or (y) any assets that individually or in the aggregate are material to the Company and its subsidiaries;

(v) Other than as would not be material to the Company, the Company and its subsidiaries shall not sell, lease, license or otherwise encumber or subject to any Lien or otherwise dispose of any of the properties or assets of the Company and its subsidiaries, other than in the ordinary course of business consistent with past practice or pursuant to existing

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contractual obligations, if any, set forth in Section 6.1 of the Company Disclosure Schedule;

(vi) Other than in the ordinary course of business or as would not be material to the Company, the Company and its subsidiaries shall not (x) incur any indebtedness or (y) make any loans, advances or capital contributions to, or investments in, any other person (other than the Company or a subsidiary of the Company), other than to officers and employees of the Company and its subsidiaries for travel, business or relocation expenses in the ordinary course of business;

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(vii) Other than in the ordinary course of business or consistent with the Company's 1998 capital budget;

(viii) Other than in the ordinary course of business, the Company and its subsidiaries shall not make any material Tax election or settle or compromise any material income Tax liability;

(ix) Except in the ordinary course of business or except as would not reasonably be expected to have a Company Material Adverse Effect, the Company and its subsidiaries (i) shall not enter into any Contracts and (ii) shall not modify, amend or terminate any material Contract or agreement to which the Company or any of its subsidiaries is, or as of the Company Effective Time will be, a party or waive, release or assign any material rights or claims thereunder;

(x) Except as required by Law or previously existing contractual arrangements, in the ordinary course of business consistent with past practice or as disclosed or otherwise provided in this Agreement, the Company will not, nor will it permit any of its subsidiaries to, (a) increase the compensation of any of its employees, (b) enter into any Contract with any of its employees regarding his or her employment, compensation or benefits, or (c) adopt any plan, arrangement or policy which would become a Company Plan or amend any Company Plan to the extent such adoption or amendment would create or materially increase any material liability or obligation on the part of the Company or its subsidiaries;

(xi) The Company and its subsidiaries shall not make any change to their accounting methods, principles or practices, except as may be required by GAAP or Regulation S-X promulgated by the SEC or by Law;

(xii) The Company shall not, and shall not permit any of its subsidiaries to, create, incur, suffer to exist or assume any material Lien on any of their assets, except as would not have a Company Material Adverse Effect or materially impair the Company's conduct of the business and operations of the Company and its subsidiaries, as presently conducted;

(xiii) The Company shall not, and shall not permit any of its subsidiaries to enter into any transaction or contract with, or (except pursuant to the Affiliate Agreements) make any payment to, any Affiliate of the Company (other than the Company's subsidiaries or its or their officers or directors in the ordinary course of business consistent with past practice); and

(xiv) The Company and its subsidiaries shall not authorize, or commit or agree to take, any of the foregoing actions.

SECTION 6.2 OTHER ACTIONS. During the period from the date hereof to the Holdings Effective Time, the Company and Laser shall not, and shall not permit any of their respective subsidiaries to, take any action that would, or that

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could reasonably be expected to, result in (i) any of the representations and warranties of such party set forth in this Agreement that are qualified as to materiality becoming untrue, (ii) any of such representations and warranties that are not so qualified becoming untrue in any material respect or (iii) any of the conditions to the Company Merger set forth in Article VIII hereof not being satisfied.

SECTION 6.3 ADVICE OF CHANGES. Upon obtaining knowledge of any such occurrence, the Company and Laser shall promptly advise the other party orally and in writing of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect, (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement or (iii) any change or event (x) having, or which, insofar as can reasonably be foreseen, would have, in the case of Laser, a Laser Material Adverse Effect and, in the case of the Company, a Company Material Adverse Effect, (y) having, or which, insofar as can reasonably be foreseen, would have, the effect set forth in clause (i) above or (z) which has resulted, or which, insofar as can reasonably be foreseen, would result, in any of the conditions set forth in Article VIII hereof not being satisfied; provided, however, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

SECTION 6.4 CONDUCT OF BUSINESS OF MERGER SUB. From the date hereof to the Company Effective Time, Merger Sub shall not (i) engage in any activities of any nature, (ii) acquire any assets, or (iii) incur any indebtedness or assume any liabilities or obligations, in each case, except as provided in or contemplated by this Agreement.

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SECTION 6.5 SECTION 14(F) NOTICE. Promptly after the date hereof, Laser shall provide to the Company in writing the information with respect to the Laser Designees (as defined in the Holdings Merger Agreement) required by Section 14(f) of the Exchange Act and Rule 14f-1 of the SEC. Promptly after its receipt of such information, the Company shall file with the SEC and mail to all stockholders of record of the Company the Section 14(f) Notice.

ARTICLE VII ADDITIONAL AGREEMENTS

SECTION 7.1 PREPARATION OF THE REGISTRATION STATEMENT, THE INFORMATION STATEMENT, THE SCHEDULE 13E-3 AND THE SECTION 14(F) NOTICE. As soon as reasonably practicable following the date of this Agreement, Laser and the Company shall prepare and file with the SEC the Information Statement and Laser shall prepare and file with the SEC the Registration Statement, in which the Information Statement will be included as a prospectus (including the financial statements and pro forma financial information required to be set forth therein), and the Schedule 13E-3 and the Section 14(f) Notice. Laser shall use all reasonable best efforts to have the Registration Statement declared effective under the Securities Act and the Schedule 13E-3 and the Section 14(f) Notice cleared by the SEC and mailed as promptly as practicable after such filing. The Company will use all reasonable best efforts to cause the Information Statement and the Schedule 13E-3 and the Section 14(f) Notice to be mailed to the Company's stockholders as promptly as practicable after it has been cleared by the SEC. Each of Laser and the Company shall also take any action (other than qualifying to do business in any jurisdiction in which it is not now so qualified or to file a general consent to service of process) required to be taken under any applicable state securities Laws in connection with the issuance of Laser Common Stock in connection with the Company Merger

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and the Holdings Merger. The Company shall furnish all information concerning the Company, its subsidiaries and the holders of the Company Common Stock and Laser shall furnish all information concerning Laser and its subsidiaries, in each case, as may be reasonably requested in connection with any such action.

SECTION 7.2 ACCESS AND INFORMATION; CONFIDENTIALITY. The Company and Laser shall each afford to the other and to the other's financial advisors, legal counsel, accountants, consultants and other representatives full access at all reasonable times throughout the period prior to the Company Effective Time to all of its books, records, properties, plants and personnel (provided that all such access shall be on reasonable advance notice and shall not disrupt normal business operations) and, during such period, each shall furnish promptly to the other (a) a copy of each report, schedule and other document filed or received by it pursuant to the requirements of federal or state securities Laws, and (b) all other information as such other party may reasonably request, provided that no investigation pursuant to this Section 7.2 shall affect any representations, or warranties made herein or the conditions to the obligations of the respective parties to consummate the Company Merger. Each party and their respective affiliates, representatives and agents shall hold in confidence all nonpublic information in accordance with the terms of the Confidentiality Agreements between Laser and the Company dated February 4, 1998 and February 23, 1998.

SECTION 7.3 COMFORT LETTERS.

(a) The Company shall use its reasonable best efforts to cause to be delivered to Laser "comfort" letters of Ernst & Young, LLP, the Company's independent public accountants, dated the date on which the Registration Statement shall become effective and as of the date on which the Information Statement is mailed to the Company's stockholders, and addressed to Laser and the Company, in form and substance reasonably satisfactory to Laser and as is reasonably customary in scope and substance for letters delivered by independent public accountants in connection with transactions such as those contemplated by this Agreement.

(b) Laser shall use its reasonable best efforts to cause to be delivered to the Company "comfort" letters of Arthur Andersen, LLP, Laser's independent public accountants, dated the date on which the Registration Statement shall become effective and as of the date on which the Information Statement is mailed to the Company's stockholders, and addressed to the Company and Laser, in form and substance reasonably satisfactory to the Company and as is reasonably customary in scope and substance for letters delivered by independent public accountants in connection with transactions such as those contemplated by this Agreement.

SECTION 7.4 LISTING APPLICATION. Laser shall prepare and submit to the NYSE a listing application covering the Laser Shares to be issued in connection with the Company Merger, and shall use its reasonable best

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efforts to obtain, prior to the Company Effective Time, approval for the listing of such Laser Shares, subject to official notice of issuance.

SECTION 7.5 AFFILIATES. Prior to the Company Effective Time, the Company shall cause to be prepared and delivered to Laser a list (reasonably satisfactory to counsel for Laser) identifying each person who, at the time the Information Statement is mailed to the Company's stockholders, may be deemed to be an "affiliate" of the Company, as such term is used in paragraphs (c) and (d) of Rule 145 under the Securities Act (the "Company Rule 145 Affiliates"). The Company shall use its reasonable best efforts to cause such person who is identified as a Company Rule 145 Affiliate in such list to deliver to Laser on or prior to the Company Effective Time a written agreement, in customary form,

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that such Company Rule 145 Affiliate will not (i) sell, pledge, transfer or otherwise dispose of, or in any other way reduce such Company Rule 145 Affiliate's risk relative to, any Laser Shares issued to such Company Rule 145 Affiliate in connection with the Company Merger, except pursuant to an effective registration statement or in compliance with such Rule 145 or another exemption from the registration requirements of the Securities Act or (ii) sell or in any other way reduce such Rule 145 Affiliate's risk relative to any Laser Shares received in the Company Merger (within the meaning of Section 201.01 of the SEC's Financial Reporting Release No. 1) during the period commencing thirty (30) days prior to the Company Effective Time and ending at such time as the financial results (including combined sales and net income) covering at least thirty (30) days of post-Merger operations have been published, except as permitted by Staff Accounting Bulletin No. 76 issued by the SEC.

SECTION 7.6 HSR ACT; COMPETITION LAWS. As soon as reasonably practicable, the Company, Laser and Merger Sub shall make or cause to be made all filings and submissions under the HSR Act (if applicable) and any other applicable Competition Laws as may be reasonably required to be made in connection with this Agreement and the transactions contemplated hereby. Subject to Section 7.2 hereof, the Company will furnish to Laser and Laser will furnish to the Company, such information and assistance as the other may reasonably request in connection with the preparation of any such filings or submissions. Subject to Section 7.2 hereof, the Company will provide Laser, and Laser will provide the Company, with copies of all correspondence, filings or communications (or memoranda setting forth the substance thereof) between such party or any of its representatives, on the one hand, and any governmental agency or authority or members of their respective staffs, on the other hand, with respect to this Agreement and the transactions contemplated hereby. The Company and Laser shall consult with one another with respect to any such correspondence, filings or communications and shall engage in discussions with any Governmental Entity on a joint basis.

SECTION 7.7 EMPLOYEE MATTERS.

(a) From and after the Holdings Effective Time, Laser shall honor, and shall cause the Company to honor, all employment, severance, termination, consulting and retirement agreements to which the Company is a party as of the Holdings Effective Time; provided, however, that (i) neither Laser nor the Company shall have any responsibility for the Company's obligations under that certain employment agreement entered into as of October 1, 1997, between the Company and Jerry W. Levin (except for the incentive payment provided for in section 3.2(b) thereof (relating to the divestiture of Coleman Safety & Security Products, Inc.), which shall be the responsibility of the Company and paid in accordance with the terms of section 3.2(b) thereof), and (ii) neither Laser nor the Company shall have any responsibility for the Company's obligations under that certain employment agreement entered into as of July 1, 1997, between the Company and Paul E. Shapiro. Except as provided in the first sentence of Section 7.7(b) or the proviso to this sentence, from and after the Holdings Effective Time, Laser will cause the Company to allow Company employees to participate in Laser employee benefit plans on substantially the same basis as similarly situated Laser employees; provided, however, that Laser will cause the Company to continue the Company Plans for at least six (6) months following the Holdings Effective Time. Laser will or will cause the Company to give Company employees full credit for purposes of eligibility and vesting of benefits and benefit accrual for service with the Company and its affiliates prior to the Holdings Effective Time under each Laser employee benefit plan; provided, however, that no such crediting of service results in duplication of benefits. With respect to any welfare benefit plans maintained for the benefit of Company employees from and after the Holdings Effective Time, Laser shall (i) cause there to be waived any pre-existing condition limitations and (ii) give effect, in determining any deductible and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and amounts reimbursed to, such employees with respect to similar plans maintained by the Company for such employee's benefit immediately prior to the Holdings Effective Time. Laser acknowledges that, for

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the purposes of certain of such Company Plans and certain of such

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other employment, severance, termination, consulting and retirement agreements to which the Company is currently a party, the consummation of the Holdings Merger will constitute a "change in control" of the Company (as such term is defined in such plans and agreements). Laser agrees to cause the Company, after the Holdings Effective Time, to pay all amounts provided under such Company Plans and agreements as a result of a change in control of the Company in accordance with their respective terms and to honor, and to cause the Company to honor, all rights, privileges and modifications to or with respect to any such Company Plans or agreements which become effective as a result of such change in control.

(b) Laser shall cause the Company to continue the Company's Executive Annual Incentive Policy for the remainder of 1998, and participants therein shall not be eligible for participation in an analogous Laser incentive plan in respect of 1998. Laser shall honor, and shall cause the Company to honor, the Company's Executive Severance Policy without any amendment adverse to participants. Laser shall provide severance benefits for employees of the Company, who are not participants in Company's Executive Severance Policy and who do not have employment agreements with the Company, under the Laser severance policy on the same basis as similarly situated Laser employees provided that severance benefits shall be no less than those set forth on Schedule 7.7(b).

(c) Effective as of the ninety-first (91st) day following the Holdings Effective Time, the participants in the Executive Severance Policy set forth on Schedule 7.7(c) may voluntarily terminate their employment, which termination will be deemed to be for "Good Reason" under the Executive Severance Policy as a result of the consummation of the Holdings Merger.

(d) Laser and the Company agree to take all necessary action to provide that, effective as of the Holdings Effective Time, all outstanding Employee Stock Options shall be vested and exercisable as of the Holdings Effective Time, and between the Holdings Effective Time and the Company Effective Time, Laser shall cause the Company to maintain a broker-dealer cashless exercise procedure for the exercise of Employee Stock Options. Laser and the Company agree to take all other actions necessary to provide for the cancellation, effective at the Company Effective Time, of each outstanding Employee Stock Option and, in settlement therefor, a payment to the holder of the Employee Stock Option in cash by Laser or the Company at the Company Effective Time equal to the product of (i) the total number of shares of Company Common Stock subject to such Employee Stock Option, and (ii) the excess of \$27.50 over the exercise price per share of Company Common Stock subject to such Employee Stock Option, less any applicable withholding taxes.

(e) Laser agrees that, at or prior to the Holdings Effective Time, Holdings may cause the Company to (i) assume sponsorship of the pension, retirement, savings, retiree health care and life insurance and other plans maintained by New Coleman Holdings, Inc. that are reflected in footnotes 7 and 12 to the 1996 financial statements included in the Company's 1996 Annual Report on SEC Form 10-K (as such plans may have been changed in the ordinary course of business since December 31, 1996) (the "Plans"), and (ii) assume the liabilities and obligations of New Coleman Holdings, Inc. under the Plans to the extent reflected in such footnotes (as such liabilities and obligations may have changed in the ordinary course of business since December 31, 1996). The documents used to effect such assumption shall be in form and substance reasonably satisfactory to Parent Holdings and Laser.

SECTION 7.8 CONTINUANCE OF EXISTING INDEMNIFICATION RIGHTS.

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(a) For six (6) years after the Company Effective Time (and during the period following the Holdings Effective Time but prior to the Company Effective Time), Laser shall, or shall cause the Surviving Corporation to, indemnify, defend and hold harmless any person who is now, or has been at any time prior to the date hereof, or who becomes prior to the Company Effective Time, a director or officer of the Company (an "Indemnified Person") against all losses, claims, damages, liabilities, costs and expenses (including attorneys' fees and expenses), judgments, fines, losses and amounts paid in settlement in connection with any actual or threatened action, suit, claim, proceeding or investigation (each, a "Claim") to the extent that any such Claim is based on, or arises out of: (i) the fact that such Indemnified Person is or was a director or officer of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise; or (ii) this Agreement or the Holdings Merger Agreement or any of the transactions contemplated hereby or thereby, in each case to the extent that any such Claim pertains to any matter or fact arising, existing or occurring prior to or at the Company Effective Time, regardless of whether such Claim is asserted or claimed prior to, at or after the Company Effective Time, to the full extent permitted under the DGCL, the Company's certificate of incorporation or by-laws or any indemnification agreement in effect at the date hereof, including provisions relating to advancement of expenses incurred in the defense of any

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such Claim; provided, however, that neither Laser nor the Surviving Corporation shall be required to indemnify any Indemnified Person in connection with any proceeding (or portion thereof) involving any Claim initiated by such Indemnified Person against the Company unless the initiation of such proceeding (or portion thereof) was authorized by the Board of Directors of the Company or unless such proceeding is brought by an Indemnified Person to enforce rights under this Section 7.8; and provided further that in the event any Claim is asserted or made within such period, all such rights, liabilities and limitations in respect of any such Claim shall continue until disposition thereof. Without limiting the generality of the preceding sentence, in the event any Indemnified Person becomes involved in any Claim after the Company Effective Time, Laser shall, or shall cause the Surviving Corporation to, periodically advance to such Indemnified Person its legal and other expenses (including the cost of any investigation and preparation incurred in connection therewith), subject to the providing by such Indemnified Person of an undertaking to reimburse all amounts so advanced in the event of a final non-appealable determination by a court of competent jurisdiction that such Indemnified Person is not entitled thereto.

(b) Laser and the Company agree that all rights to indemnification, and all limitations with respect thereto, existing in favor of any Indemnified Person, as provided in the Company's certificate of incorporation or by-laws and any indemnification agreement in effect at the date hereof, shall survive the Holdings Merger and the Company Merger and shall continue in full force and effect, without any amendment thereto, for a period of six (6) years from the Company Effective Time (and during the period following the Holdings Effective Time but prior to the Company Effective Time) to the extent such rights and limitations are consistent with the DGCL; provided, however, that in the event any Claim is asserted or made within such period, all such rights, liabilities and limitations in respect of any such Claim shall continue until disposition thereof; provided further that any determination required to be made with respect to whether an Indemnified Person's conduct complies with the standards set forth under the DGCL, the Company's certificate of incorporation or by-laws or any such agreement, as the case may be, shall be made by independent legal counsel selected by such Indemnified Person and reasonably acceptable to Laser; and provided further that nothing in this Section 7.8 shall impair any rights or

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obligations of any current or former director or officer of the Company.

(c) Laser or the Surviving Corporation shall use reasonable best efforts to obtain a liability insurance policy ("D&O Insurance") for the benefit of the Company's existing and former directors and officers commencing at the Holdings Effective Time and for a period of not less than six (6) years after the Company Effective Time providing substantially similar coverage in amounts and on terms no less advantageous than that currently provided to such existing and former directors and officers; provided further that neither Laser nor the Surviving Corporation shall be required to pay an annual premium for D&O Insurance in excess of 200% of the last annual premium paid prior to the date hereof, but in such case shall purchase as much coverage as possible for such amount.

(d) The provisions of this Section 7.8 are intended to be for the benefit of, and shall be enforceable by, each Indemnified Person, his or her heirs and his or her personal representatives.

SECTION 7.9 EXPENSES. Whether or not the Company Merger is consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses.

SECTION 7.10 PUBLIC ANNOUNCEMENTS. Laser and the Company shall consult with each other before issuing their respective initial press releases to be issued with respect to the transactions contemplated by this Agreement and the Holdings Merger.

SECTION 7.11 REASONABLE BEST EFFORTS. Upon the terms and subject to the conditions set forth in this Agreement, each of the parties hereto agrees to use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable, to consummate and make effective, in the most expeditious manner practicable, the Company Merger and the other transactions contemplated by this Agreement, including, but not limited to: (i) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from all Governmental Entities and the making of all necessary registrations and filings with, and the taking of all other reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Entity (including those in connection with the HSR Act, if applicable); (ii) the obtaining of all necessary consents, approvals or waivers from persons other than Governmental Entities; (iii) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the

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consummation of the transactions contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Entity vacated or reversed; and (iv) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to require any party hereto to enter into any agreement with any Governmental Entity or to consent to any order, decree or judgment requiring such party to hold, separate or divest, or to restrict the dominion or control of such party or any of its Affiliates over, any of the assets, properties or businesses of such party or its Affiliates in existence on the date hereof.

ARTICLE VIII CONDITIONS TO CONSUMMATION OF THE MERGER

SECTION 8.1 CONDITIONS TO EACH PARTY'S OBLIGATION TO EFFECT THE COMPANY MERGER. The respective obligations of each party to effect the Company Merger

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shall be subject to the satisfaction or waiver, to the extent permitted by Law, at or prior to the Company Effective Time of the following conditions:

(a) The Registration Statement shall have become effective in accordance with the provisions of the Securities Act and no stop order suspending the effectiveness of the Registration Statement shall be in effect and no proceeding for such purpose shall be pending before or threatened by the SEC; and all applicable time periods required under the Securities Act and the Exchange Act following the mailing of the Information Statement to the Company's stockholders shall have lapsed.

(b) The Laser Shares shall have been approved for listing on the NYSE, subject to official notice of issuance.

(c) No preliminary or permanent injunction or other order by any federal or state court in the United States of competent jurisdiction which prohibits the consummation of the Company Merger shall have been issued and remain in effect.

(d) The Holdings Merger shall have been consummated in accordance with its terms and the applicable provisions of the DGCL.

ARTICLE IX TERMINATION, AMENDMENT AND WAIVER

SECTION 9.1 TERMINATION. This Agreement shall terminate automatically upon the termination of the Holdings Merger Agreement in accordance with its terms.

SECTION 9.2 EFFECT OF TERMINATION. In the event of termination of this Agreement as provided in Section 9.1 hereof, this Agreement shall forthwith become void and there shall be no liability on the part of any of the parties; provided that the provisions of Sections 7.2 and 7.9 and of this Article IX shall continue and that nothing herein shall relieve any party from liability for any willful breach hereof.

SECTION 9.3 AMENDMENT. This Agreement may be amended by the parties pursuant to a writing adopted by action taken by all of the parties at any time prior to (but not following) the consummation of the Holdings Merger. This Agreement may not be amended except by an instrument in writing signed by all the parties hereto.

SECTION 9.4 EXTENSION; WAIVER. At any time prior to (but not following) the consummation of the Holdings Merger any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only as against such party and only if set forth in an instrument in writing signed by such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

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ARTICLE X GENERAL PROVISIONS

SECTION 10.1 NO SURVIVAL OF REPRESENTATIONS AND WARRANTIES. No representations or warranties contained herein shall survive beyond the Company Effective Time. This Section 10.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Company

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Effective Time.

SECTION 10.2 NOTICES: All notices or other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended, if delivered by registered or certified mail, return receipt requested, or by a national courier service, or if sent by telecopier; provided that the telecopy is promptly confirmed by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

(a) If to Laser, to:
Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, Florida 33445
Facsimile: (561) 243-2191
Attention: David C. Fannin, Esq.

with a copy to:
Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Facsimile: (302) 651-3001
Attention: Richard L. Easton, Esq.

(b) If to the Company, to:
CLN Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Facsimile: (954) 772-3352
Attention: General Counsel

with a copy to:
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Facsimile: (212) 403-2000
Attention: Adam O. Emmerich, Esq.

Any such notification shall be deemed delivered (i) upon receipt, if delivered personally, (ii) on the next business day, if sent by national courier service for next business day delivery or (iii) the business day received, if sent by telecopier.

SECTION 10.3 DESCRIPTIVE HEADINGS. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 10.4 ENTIRE AGREEMENT; NO THIRD-PARTY BENEFICIARY. This Agreement (including the Exhibits, Disclosure Schedules and other documents and instruments referred to herein) (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties or any of them, with respect to the subject matter hereof; (b) except for the provisions of Sections 7.7(c) and 7.8 hereof, is not intended to confer upon any other person any rights or remedies hereunder.

SECTION 10.5 INTERPRETATION. When a reference is made in this Agreement to an Article, Section or Annex, such reference shall be to an Article or Section of, or an Annex to, this Agreement unless otherwise indicated.

CERTIFIED COPY

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Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The phrase "made available" in this Agreement shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available. All terms defined in this Agreement shall have the defined meanings used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

SECTION 10.6 SEVERABILITY. If any provision of this Agreement or the application thereof to any person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon any such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect original intent of the parties.

SECTION 10.7 ASSIGNMENT. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of Law or otherwise by any of the parties without the prior written consent of the other parties. Any assignment in violation of the preceding sentence shall be void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

SECTION 10.8 DISCLOSURE SCHEDULES. Matters reflected on the Company Disclosure Schedule are not necessarily limited to matters required by this Agreement to be reflected therein and the inclusion of such matters shall not be deemed an admission that such matters were required to be reflected on the Company Disclosure Schedule. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. Capitalized terms used in the Company Disclosure Schedule but not otherwise defined therein shall have the respective meanings assigned to such terms in this Agreement.

SECTION 10.9 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware without giving effect to the provisions thereof relating to conflicts of Law.

SECTION 10.10 SPECIFIC PERFORMANCE. The parties hereto agree that irreparable damage would occur in the event any of the provisions of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at Law or equity.

SECTION 10.11 COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

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SECTION 10.12 CERTAIN TERMS. As used herein, (i) the term "material adverse effect" (including as used in any definition), with respect to any Person, shall exclude any change, event, effect or circumstance (a) arising in connection with the announcement or performance of the transactions contemplated by this Agreement or the Holdings Merger Agreement and (b) affecting the United States economy generally or such Person's industries generally; and (ii) "to the knowledge of the Company" shall mean to the actual knowledge of Paul E. Shapiro, Jerry W. Levin and Steven R. Isko.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf by its officers thereunto duly authorized, all as of the date first above written.

SUNBEAM CORPORATION

By: /s/ RUSSELL A. KERSH _____
 Name: Russell A. Kersh
 Title: Executive Vice President

CAMPER ACQUISITION CORP.

By: /s/ RUSSELL A. KERSH _____
 Name: Russell A. Kersh
 Title: Executive Vice President

THE COLEMAN COMPANY, INC.

By: /s/ PAUL E. SHAPIRO _____
 Name: Paul E. Shapiro
 Title: Executive Vice President

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ANNEX II

262 APPRAISAL RIGHTS. (a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to Section 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word "stockholder" means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and the words "depository receipt" mean a receipt or other instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to section 251 (other than a merger effected pursuant to

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section 251(g) of this title), section 252, section 254, section 257, section 258, section 263, or section 264 of this title:

(1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders to act upon the agreement of merger or consolidation, were either (i) listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in subsection (f) of section 251 of this title.

(2) Notwithstanding paragraph (1) of this subsection, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to sections 251, 252, 254, 257, 258, 263 and 264 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a. and b. of this paragraph; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a., b. and c. of this paragraph.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under section 253 of this title is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as is practicable.

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(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for such meeting with respect to shares for which appraisal rights are available pursuant to subsections (b) or (c) hereof that appraisal rights are available for any or all

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of the shares of the constituent corporations, and shall include in such notice a copy of this section. Each stockholder electing to demand the appraisal of his shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of his shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of his shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to Section 228 or Section 253 of this title, each constituent corporation, either before the effective date of the merger or consolidation or within ten days thereafter, shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section; provided that, if the notice is given on or after the effective date of the merger or consolidation, such notice shall be given by the surviving or resulting corporation to all such holders of any class or series of stock of a constituent corporation that are entitled to appraisal rights. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) hereof and who is otherwise entitled to appraisal rights, may file a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder shall have the right to

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withdraw his demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) hereof, upon written request, shall be entitled to receive from the corporation

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surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after his written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) hereof, whichever is later.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

(h) After determining the stockholders entitled to an appraisal, the Court shall appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. In determining the fair rate of interest, the Court may consider all relevant factors, including the rate of interest which the surviving or resulting corporation would have had to pay to borrow money during the pendency of the proceeding. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, permit discovery or other pretrial proceedings and may proceed to trial upon the appraisal prior to the final determination of the stockholder entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted his certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that he is

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not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Interest may be simple or compound, as the Court may direct. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court's decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

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(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded his appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of his demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

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PART II. INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 20. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 145 of the Delaware General Corporation Law (the "DGCL") permits a Delaware corporation to indemnify officers, directors, employees and agents for actions taken in good faith and in a manner they reasonably believed to be in, or not opposed to, the best interests of the corporation, and with respect to any criminal action, which they had no reasonable cause to believe was unlawful. The DGCL provides that a corporation may pay expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action (upon receipt of a written undertaking to reimburse the corporation if indemnification is not appropriate), and must reimburse a successful defendant for expenses, including attorneys' fees,

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actually and reasonably incurred, and permits a corporation to purchase and maintain liability insurance for its directors and officers. The DGCL provides that indemnification may be made for any claim, issue or matter as to which a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the corporation, unless and only to the extent a court determines that the person is entitled to indemnity for such expenses as the court deems proper.

The Sunbeam by-laws provide that every person will be indemnified against any and all judgments, fines, amounts paid in settling or otherwise disposing of threatened, pending or completed actions, suits or proceedings, whether by fact that he is or was a director or officer of Sunbeam or is or was serving at the request of Sunbeam as a director or officer of another corporation. Expenses so incurred by any such person defending or investigating a threatened or pending civil or criminal action or proceeding shall at his request be paid by Sunbeam, in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by Sunbeam.

The DGCL permits a Delaware corporation to include a provision in its certificate of incorporation eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for a breach of the director's fiduciary duty as a director, except for liability (1) for any breach of the Director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the DGCL, which concerns unlawful payments of dividends, stock purchases or redemptions or (iv) for any transaction from which the director derived an improper personal benefit. The Sunbeam certificate of incorporation contains provisions limiting the liability of Sunbeam's directors to the fullest extent currently permitted by the DGCL for monetary damages for breach of their fiduciary duty as directors. While these provisions provide directors with protection from awards for monetary damages for breaches of their duty of care, they do not eliminate such duty. Accordingly, these provisions will have no effect on the availability of equitable remedies such as an injunction or rescission based on a director's breach of his or her duty of care.

ITEM 21. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The following is a list of Exhibits included as part of this Registration Statement. Sunbeam agrees to furnish supplementally a copy of any omitted schedule to the SEC upon request. Items marked with an asterisk are filed herewith.

<TABLE> <CAPTION> EXHIBIT			DESCRIPTION OF EXHIBIT
<S>	<C>	<C>	
2.1	--		Agreement and Plan of Merger among Sunbeam Corporation, Camper Acquisition Corp. Company, Inc., dated as of February 27, 1998(7)
2.2	--		Agreement and Plan of Merger among Sunbeam Corporation, Laser Acquisition Corp., and Coleman (Parent) Holdings, Inc., dated as of February 27, 1998(7)
3.1	--		Amended and Restated Certificate of Incorporation of Sunbeam(3)
3.2	--		By-laws of Sunbeam, as amended(11)
4.1	--		Indenture, dated as of March 25, 1998, by and among Sunbeam and Morgan Stanley & respect to the Zero Coupon Senior Subordinated Debentures due 2018(8)
4.2	--		Registration Rights Agreement, dated March 25, 1998, by and among Sunbeam and Mc Inc., with respect to the Zero Coupon Convertible Senior Subordinated Debentures

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EXHIBIT

DESCRIPTION OF EXHIBIT

<S>	<C>	<C>
4.3	--	Registration Rights Agreement, dated as of March 29, 1998, between Sunbeam and C Holdings, Inc.(9)
4.4	--	Settlement Agreement, dated as of August 12, 1998, by and between Sunbeam and C Holdings, Inc.(10)
4.5	--	Amendment to Registration Rights Agreement, dated as of August 12, 1998, between (Parent) Holdings, Inc.(11)
4.6	--	Form of Warrant Agreement to be entered into between Sunbeam Corporation and The Warrant Agent*
5.1	--	Opinion of Steven R. Isko, Esq. of Sunbeam Corporation, regarding the legality c registered*
10.1	--	Employment Agreement, dated as of February 20, 1998, by and between Sunbeam and
10.2	--	Employment Agreement, dated as of February 20, 1998, by and between Sunbeam and
10.3	--	Employment Agreement, dated as of February 20, 1998, by and between Sunbeam and
10.4	--	Employment Agreement, dated as of January 1, 1997, by and between Sunbeam and Dc
10.5	--	Sunbeam Executive Benefit Replacement Plan(7)
10.6	--	Amended and Restated Sunbeam Corporation Stock Option Plan(13)
10.7	--	Performance Based Compensation Plan(7)
10.8	--	Tax Sharing Agreement, dated as of October 31, 1990, by and among Sunbeam, SAIL, subsidiaries of Sunbeam listed therein(1)
10.18	--	Receivables Sale and Contribution Agreement, dated as of December 4, 1997, betwe Inc. and Sunbeam Asset Diversification, Inc.(7)
10.19	--	Receivables Purchase and Servicing Agreement, dated as of December 4, 1997, betw Inc., Llama Retail, L.P., Capital USA, LLC and Sunbeam Asset Diversification, In
10.22	--	Agreement and Plan of Merger between Sunbeam Corporation, Java Acquisition Corp. USA, Inc., dated as of February 28, 1998(7)
10.23	--	Stock Purchase Agreement among Java Acquisition Corp. and the Sellers named ther February 28, 1998(7)
10.24	--	Agreement and Plan of Merger by and among Sunbeam Corporation, Sentinel Acquisit Alert, Inc., dated as of February 28, 1998(7)
10.25	--	Stock Sale Agreement among Sunbeam Corporation and the Stockholders named theri February 28, 1998(8)
10.26	--	Credit Agreement, dated as of March 30, 1998, among Sunbeam Corporation, the Bor therein, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., Bank of Trust and Savings Association and First Union National Bank(8)
10.27	--	First Amendment to Credit Agreement, dated as of May 8, 1998, among Sunbeam Corp Subsidiary Borrowers referred to therein, the Lenders party thereto, Morgan Star Inc., Bank America National Trust and Savings Association and First Union Nation
10.28	--	Second Amendment to Credit Agreement, dated as of June 30, 1998, among Sunbeam, Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior America National Trust and Savings Association and First Union National Bank(11)
10.29	--	Third Amendment to Credit Agreement, dated as of October 19, 1998, among Sunbeam Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior America National Trust and Savings Association and First Union National Bank(11)
10.30	--	Fourth Amendment to Credit Agreement, dated as of April 10, 1999, among Sunbeam, Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior America National Trust and Savings Association and First Union National Bank(14)
10.31	--	Fifth Amendment to Credit Agreement, Third Waiver and Agreement, dated as of Apr Sunbeam, the Subsidiary Borrowers referred to therein, the Lenders party theretc Funding, Bank America National Trust and Savings Association and First Union Nat

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EXHIBIT

DESCRIPTION OF EXHIBIT

<S>	<C>	<C>
10.32	--	Sixth Amendment to Credit Agreement, dated as of May 25, 1999, among Sunbeam, the referred to therein, the Lenders party thereto, Morgan Stanley Funding, Bank Ame and Savings Association and First Union National Bank(16)
10.33	--	Seventh Amendment to Credit Agreement, dated as of October 25, 1999, among Sunbe Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior America National Trust and Savings Association and First Union National Bank(16)
10.34	--	Eighth Amendment to Credit Agreement, dated as of October 25, 1999, among Sunbea Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior New York National Trust and Savings Association and First Union National Bank (1
10.35	--	Employment Agreement between Sunbeam and Jerry W. Levin, dated as of June 15, 19
10.36	--	Employment Agreement between Sunbeam and Paul Shapiro, dated as of June 15, 1998
10.37	--	Employment Agreement between Sunbeam and Bobby Jenkins, dated as of June 15, 199
10.38	--	Agreement between Sunbeam and David Fannin, dated August 20, 1998(11)
10.39	--	First Amendment to Receivables Sale and Contribution Agreement, dated April 2, 1 Products, Inc. and Sunbeam Assets Diversification, Inc.(11)
10.40	--	First Amendment to Receivables Purchase and Servicing Agreement, dated April 2, Retail Funding, L.P., Capital USA, LLC, Sunbeam Products, Inc. and Sunbeam Asset Inc.(11)
10.41	--	Second Amendment to Receivables Purchase and Servicing Agreement, dated July 29, Retail Funding, L.P., Capital USA, LLC, Sunbeam Products, Inc. and Sunbeam Asset Inc.(11)
10.42	--	Sunbeam Corporation Management Incentive Compensation Plan(15)
10.43	--	Stock Option Replacement Program(15)
10.44	--	Amendment No. 1 to Agreement and Plan of Merger, dated as of March 29, 1998, amc Acquisition Corp., Coleman (Parent) Holdings Inc., and CLN Holdings Inc.(14)
10.45	--	Employment Agreement between Sunbeam and Janet G. Kelley, dated as of December 1
10.46	--	Employment Agreement between Sunbeam and Karen K. Clark, dated as of August 31,
10.47	--	Employment Agreement, dated as of October 1, 1998, between Sunbeam and Jack Hall
10.48	--	Agreement, dated as of August 20, 1998, between Sunbeam and David C. Fannin
10.49	--	Compensation and Indemnification Agreement entered into as of June 29, 1998, bet of Howard G. Kristol, Charles M. Elson, Peter A. Langerman and Faith Whittlesey(
10.50	--	Agreement between Sunbeam Asset Diversification, Inc. and Capital USA, LLC amenc Purchase Agreement among Llama Retail Funding, L.P., Sunbeam Asset Diversificati LLC and Sunbeam Products, Inc.(15)
10.51	--	Tax Sharing Agreement, dated as of July 12, 1999, between Sunbeam Corporation ar Inc.(17)
12.1	--	Computation of Ratio of Earnings to Fixed Charges**
16.1	--	Letter re Change in Certifying Accountant(12)
21.1	--	Subsidiaries of the Registrant(15)
23.1	--	Consent of Arthur Andersen LLP*
23.2	--	Consent of Deloitte & Touche LLP*
23.3	--	Consent of Ernst & Young LLP*
23.4	--	Consent of Steven R. Isko, Esq. of Sunbeam Corporation (included in Exhibit 2.1)
24.1	--	Power of Attorney (included on the signature page of this Registration Statement
99.1	--	Press Release, dated January 28, 1997, regarding Sunbeam's 1997 earnings(7)
99.2	--	Press Release, dated March 2, 1998, regarding Sunbeam's acquisitions of the Cole Signature Brands USA, Inc. and First Alert, Inc.(7)
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- (13) Incorporated by reference to Sunbeam's Quarterly Report on Form 10-Q for the quarter ended June 30, 1998.
- (14) Incorporated by reference to the Annual Report on Form 10-K filed by the Coleman Company, Inc. for the fiscal year ended December 31, 1998.
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- (16) Incorporated by reference to Sunbeam's Registration Statement on Form S-1 (No. 333-71819), filed with the Securities and Exchange Commission on February 4, 1999.
- (17) Incorporated by reference to Coleman's Quarterly Report on Form 10-Q for the quarter ended June 30, 1999.
- (18) Incorporated by reference to Sunbeam's Quarterly Report on Form 10-Q for the quarter ended September 30, 1999.

* Filed herewith.

** Previously filed.

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ITEM 22. UNDERTAKINGS

(a) The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933.
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement.
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

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- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
 - (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at the time shall be deemed to be the initial bona fide offering thereof.
- (c)
 - (1) The undersigned Registrant hereby undertakes as follows: that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this Registration Statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.
 - (2) The Registrant undertakes that every prospectus: (i) that is filed pursuant to the paragraph immediately preceding, or (ii) that purports to meet the requirements of section 10(a)(3) of the Securities Act and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an

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amendment to the Registration Statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

- (d) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that, in the opinion of the Securities and Exchange Commission, such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.
- (e) The undersigned Registrant hereby undertakes to respond to requests for information that is incorporated by reference into the Information Statement/Prospectus pursuant to Items 4, 10(b), 11, or 13 of this Form S-4, within one business day of receipt of such request, and to send the incorporated documents by first-class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.
- (f) The undersigned Registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the Registration Statement when it became effective.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement Amendment to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Boca Raton, State of Florida, on this 6th day of December, 1999.

SUNBEAM CORPORATION

By: /s/ BOBBY G. JENKINS

Bobby G. Jenkins
Executive Vice President
and Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears

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16div-028389

below constitutes and appoints Paul E. Shapiro and Bobby G. Jenkins, and each of them, each with full power to act without the other, his true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for such person and in his name, place and stead, in any and all capacities, to sign any or all further amendments or supplements (including post-effective amendments) to this Registration Statement on Form S-4 and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto each of said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully as to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or his substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

<TABLE>
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SIGNATURE	TITLE	
* Jerry W. Levin	Chairman of the Board, President, Chief Executive Officer and Director	De
* Peter A. Langerman	Director	De
* Charles M. Elson	Director	De
* Howard Gittis	Director	De
* Howard G. Kristol	Director	De
* Faith Whittlesey	Director	De
* Philip E. Beekman	Director	De
/s/ BOBBY G. JENKINS Bobby G. Jenkins	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	De

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/s/ KAREN K. CLARK

Senior Vice President, Finance
(Principal Accounting Officer)

De

Karen K. Clark

* By: /s/ PAUL E. SHAPIRO

Attorney-in-Fact

Dec

Paul E. Shapiro

</TABLE>

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EXHIBIT INDEX

The following exhibits are filed with this report or are incorporated by reference to previously filed material.

<TABLE>
<CAPTION>
EXHIBIT

DESCRIPTION

<S>	<C>	<C>
2.1	--	Agreement and Plan of Merger among Sunbeam Corporation, Camper Acquisition Corp. Company, Inc., dated as of February 27, 1998(7)
2.2	--	Agreement and Plan of Merger among Sunbeam Corporation, Laser Acquisition Corp., Inc., and Coleman (Parent) Holdings, Inc., dated as of February 27, 1998(7)
3.1	--	Amended and Restated Certificate of Incorporation of Sunbeam(3)
3.2	--	By-laws of Sunbeam, as amended(11)
4.1	--	Indenture, dated as of March 25, 1998, by and among Sunbeam and Morgan Stanley & respect to the Zero Coupon Senior Subordinated Debentures due 2018(8)
4.2	--	Registration Rights Agreement, dated March 25, 1998, by and among Sunbeam and Mc Co., Inc., with respect to the Zero Coupon Convertible Senior Subordinated Deber
4.3	--	Registration Rights Agreement, dated as of March 29, 1998, between Sunbeam and C Holdings, Inc.(9)
4.4	--	Settlement Agreement, dated as of August 12, 1998, by and between Sunbeam and Cc Holdings, Inc.(10)
4.5	--	Amendment to Registration Rights Agreement, dated as of August 12, 1998, between Coleman (Parent) Holdings, Inc.(11)
4.6	--	Form of Warrant Agreement to be entered into between Sunbeam Corporation and The as Warrant Agent*
5.1	--	Opinion of Steven R. Isko, Esq. of Sunbeam Corporation, regarding the legality c being registered*
10.1	--	Employment Agreement, dated as of February 20, 1998, by and between Sunbeam and Dunlap(7)
10.2	--	Employment Agreement, dated as of February 20, 1998, by and between Sunbeam and Kersh(7)
10.3	--	Employment Agreement, dated as of February 20, 1998, by and between Sunbeam and
10.4	--	Employment Agreement, dated as of January 1, 1997, by and between Sunbeam and Dc
10.5	--	Sunbeam Executive Benefit Replacement Plan(7)
10.6	--	Amended and Restated Sunbeam Corporation Stock Option Plan(13)
10.7	--	Performance Based Compensation Plan(7)
10.8	--	Tax Sharing Agreement, dated as of October 31, 1990, by and among Sunbeam, SAIL, the subsidiaries of Sunbeam listed therein(1)
10.18	--	Receivables Sale and Contribution Agreement, dated as of December 4, 1997, betwe Products, Inc. and Sunbeam Asset Diversification, Inc.(7)
10.19	--	Receivables Purchase and Servicing Agreement, dated as of December 4, 1997, betw Products, Inc., Llama Retail, L.P., Capital USA, LLC and Sunbeam Asset Diversifi
10.22	--	Agreement and Plan of Merger between Sunbeam Corporation, Java Acquisition Corp.

22 1987

10.23 -- Brands USA, Inc., dated as of February 28, 1998(7)
 Stock Purchase Agreement among Java Acquisition Corp. and the Sellers named ther
 February 28, 1998(7)

10.24 -- Agreement and Plan of Merger by and among Sunbeam Corporation, Sentinel Acquisit
 First Alert, Inc., dated as of February 28, 1998(7)

10.25 -- Stock Sale Agreement among Sunbeam Corporation and the Stockholders named therei
 February 28, 1998(8)

10.26 -- Credit Agreement, dated as of March 30, 1998, among Sunbeam Corporation, the Bor
 therein, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., Bank of
 Trust and Savings Association and First Union National Bank(8)

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<TABLE>
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 EXHIBIT

DESCRIPTION

<S>	<C>	<C>	DESCRIPTION
10.27	--		First Amendment to Credit Agreement, dated as of May 8, 1998, among Sunbeam Corp Subsidiary Borrowers referred to therein, the Lenders party thereto, Morgan Star Funding, Inc., Bank America National Trust and Savings Association and First Uni Bank(8)
10.28	--		Second Amendment to Credit Agreement, dated as of June 30, 1998, among Sunbeam, Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior Bank America National Trust and Savings Association and First Union National Bar
10.29	--		Third Amendment to Credit Agreement, dated as of October 19, 1998, among Sunbear Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior Bank America National Trust and Savings Association and First Union National Bar
10.30	--		Fourth Amendment to Credit Agreement, dated as of April 10, 1999, among Sunbeam, Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior Bank America National Trust and Savings Association and First Union National Bar
10.31	--		Fifth Amendment to Credit Agreement, Third Waiver and Agreement, dated as of Apr Sunbeam, the Subsidiary Borrowers referred to therein, the Lenders party theretc Funding, Bank America National Trust and Savings Association and First Union Nat
10.32	--		Sixth Amendment to Credit Agreement, dated as of May 25, 1999, among Sunbeam, th Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Funding National Trust and Savings Association and First Union National Bank(16)
10.33	--		Seventh Amendment to Credit Agreement, dated as of October 25, 1999, among Sunbe Borrowers referred to therein, the Lenders Party thereto, Morgan Stanley Senior Bank of America National Trust and Savings Association and First Union National
10.34	--		Eighth Amendment to Credit Agreement, dated as of October 25, 1999, among Sunbea Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior Bank of New York National Trust and Savings Association and First Union National
10.35	--		Employment Agreement between Sunbeam and Jerry W. Levin, dated as of June 15, 19
10.36	--		Employment Agreement between Sunbeam and Paul Shapiro, dated as of June 15, 1998
10.37	--		Employment Agreement between Sunbeam and Bobby Jenkins, dated as of June 15, 199
10.38	--		Agreement between Sunbeam and David Fannin, dated August 20, 1998(11)
10.39	--		First Amendment to Receivables Sale and Contribution Agreement, dated April 2, 1 Sunbeam Products, Inc. and Sunbeam Assets Diversification, Inc.(11)
10.40	--		First Amendment to Receivables Purchase and Servicing Agreement, dated April 2, Llama Retail Funding, L.P., Capital USA, LLC, Sunbeam Products, Inc. and Sunbea Diversification, Inc.(11)
10.41	--		Second Amendment to Receivables Purchase and Servicing Agreement, dated July 29, Llama Retail Funding, L.P., Capital USA, LLC, Sunbeam Products, Inc. and Sunbea Diversification, Inc.(11)
10.42	--		Sunbeam Corporation Management Incentive Compensation Plan(15)
10.43	--		Stock Option Replacement Program(15)
10.44	--		Amendment No. 1 to Agreement and Plan of Merger, dated as of March 29, 1998, amc Acquisition Corp., Coleman (Parent) Holdings Inc., and CLN Holdings Inc.(14)
10.45	--		Employment Agreement between Sunbeam and Janet G. Kelley, dated as of December 1
10.46	--		Employment Agreement between Sunbeam and Karen K. Clark, dated as of August 31,

16div-028392

10.47 -- Employment Agreement, dated as of October 1, 1998, between Sunbeam and Jack Hall
 10.48 -- Agreement, dated as of August 20, 1998, between Sunbeam and David C. Fannin
 10.49 -- Compensation and Indemnification Agreement entered into as of June 29, 1998, bet
 each of Howard G. Kristol, Charles M. Elson, Peter A. Langerman and Faith Whittl

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10.50	--	Agreement between Sunbeam Asset Diversification, Inc. and Capital USA, LLC amend Receivables Purchase Agreement among Llama Retail Funding, L.P., Sunbeam Asset I Inc., Capital USA, LLC and Sunbeam Products, Inc. (15)
10.51	--	Tax Sharing Agreement, dated as of July 12, 1999, between Sunbeam Corporation an Company, Inc. (17)
12.1	--	Computation of Ratio of Earnings to Fixed Charges**
16.1	--	Letter re Change in Certifying Accountant (12)
21.1	--	Subsidiaries of the Registrant (16)
23.1	--	Consent of Arthur Andersen LLP*
23.2	--	Consent of Deloitte & Touche LLP*
23.3	--	Consent of Ernst & Young LLP*
23.4	--	Consent of Steven R. Isko, Esq. of Sunbeam Corporation (included in Exhibit 5.1)
24.1	--	Power of Attorney (included on the signature page of this Registration Statement
99.1	--	Press Release, dated January 28, 1997, regarding Sunbeam's 1997 earnings (7)
99.2	--	Press Release, dated March 2, 1998, regarding Sunbeam's acquisitions of the Cole Signature Brands USA, Inc. and First Alert, Inc. (7)
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022489

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** Previously filed.

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 <TYPE>EX-4.6
 <SEQUENCE>2
 <DESCRIPTION>FORM OF WARRANT AGREEMENT
 <TEXT>

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EXHIBIT 4.6

FORM OF WARRANT AGREEMENT

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Warrant Agreement, dated as of _____, 1999 (this "Agreement"),
 between Sunbeam Corporation, a Delaware corporation (the "Company"), and The
 Bank of New York, a [Delaware] corporation, as warrant agent (the "Warrant
 Agent").

RECITALS

WHEREAS, the Company proposes to issue and deliver warrant certificates
 (the "Warrant Certificates") evidencing warrants (the "Warrants") to purchase up
 to an aggregate of 4,979,663 shares of its Common Stock (as hereinafter defined)
 to holders (the "Warrant Recipients") of the Common Stock, par value \$.01 per
 share ("Coleman Common Stock"), of The Coleman Company, Inc., a Delaware corpora
 tion ("Coleman"), in connection with the consummation of the merger contemplated
 by the Agreement and Plan of Merger, dated as of February 27, 1998 (the "Merger
 Agreement"), by and among the Company, Coleman and Camper Acquisition Corp., a
 Delaware corporation and a wholly owned subsidiary of the Company ("CAC"); and

WHEREAS, each Warrant will entitle the registered holder thereof to
 purchase one fully paid and non-assessable shares of Common Stock of the Com
 pany, par value \$.01 per share (the "Common Stock"), at a purchase price per
 share equal to the Exercise Price (as hereinafter defined);

In consideration of the foregoing and for the purpose of defining the
 terms and provisions of the Warrants and the respective rights and obligations
 thereunder of the Company and the Holders (as hereinafter defined), the Company
 and the Warrant Agent each agrees as follows:

Section 1. Certain Definitions. As used in this Agreement, the
 following terms shall have the following respective meanings:

"Affiliate" shall have the meaning given to such term in Rule 12b-2
 promulgated under the Securities and Exchange Act of 1934, as amended.

"Agreement" shall have the meaning set forth in the Recitals to this
 Agreement.

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"Business Day" means any day except a Saturday, Sunday or other day on
 which commercial banks in The City of New York are authorized by law to close.

"CAC" shall have the meaning set forth in the Recitals to this

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Agreement.

"Certificate of Incorporation" means the Restated Certificate of

Incorporation of the Company.

"Closing Price" on any day means (i) if the shares of Common Stock then

are listed and traded on the New York Stock Exchange, Inc. ("NYSE"), the Closing
Price on such day as reported on the NYSE Composite Transactions Tape; (ii) if
shares of Common Stock then are not listed and traded on the NYSE, the Closing
Price on such day as reported by the principal national securities exchange on
which the shares of Common Stock are listed and traded; (iii) if the shares of
Common Stock then are not listed and traded on any such securities exchange, the
last reported sale price on such day on the National Market of The National
Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ");

or (iv) if the shares of Common Stock then are not traded on the NASDAQ National
Market, the average of the highest reported bid and the lowest reported asked
price on such day as reported by NASDAQ.

"Coleman" shall have the meaning set forth in the Recitals to this

Agreement.

"Coleman Common Stock" shall have the meaning set forth in the Recitals

to this Agreement.

"Common Share Equivalent" means, with respect to any security of the

Company and as of a given date, a number which is, (i) in the case of a share of
Common Stock, one, (ii) in the case of all or a portion of any right, warrant or
other security which may be exercised for a share or shares of Common Stock, the
number of shares of Common Stock receivable upon exercise of such security (or
such portion of such security), and (iii) in the case of any security
convertible or exchangeable into a share or shares of Common Stock, the number
of shares of Common Stock that would be received if such security were converted
or exchanged on such date.

"Common Stock" shall have the meaning set forth in the Recitals to this

Agreement.

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"Company" shall have the meaning set forth in the Preamble to this

Agreement.

"Convertible Securities" shall have the meaning set forth in Section

8(d).

"Effective Time" means the date of the filing of a certificate of

merger with the Secretary of State of the State of Delaware in connection with

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the merger of CAC with and into Coleman pursuant to the Merger Agreement.

"Determination Date" shall have the meaning set forth in Section 8(f).

"Exercise Date" shall mean, as to any Warrants, the date on which the

Warrant Agent shall have received both (a) the Warrant Certificate representing such Warrants, with the Exercise Forms therein duly executed by the Holder thereof or his attorney duly authorized in writing, and (b) payment in cash (including wire transfer of immediately available funds) or by certified or official bank check or bank cashier's check payable to the Company, of an amount in lawful money of the United States of America equal to the applicable Exercise Price (as hereinafter defined).

"Exercise Price" means a price per Warrant Share equal to \$7.00.

"Expiration Date" means 5:00 p.m. New York City time on August 23,

2003.

"Fair Market Value" as at any date of determination means, as to shares

of the Common Stock, if the Common Stock is publicly traded at such time, the average of the daily Closing Prices of a share of Common Stock for the ten (10) consecutive trading days ending on the most recent trading day prior to the date of determination. If the shares of Common Stock are not publicly traded at such time, and as to all things other than the Common Stock, Fair Market Value shall be determined in good faith by an independent nationally recognized investment banking firm selected by the Company and acceptable to a majority of the Holders and which shall have no other substantial relationship with the Company.

"Holder" means, with respect to any Warrant Certificate, the Person in

whose name such Warrant Certificate is registered upon the books to be maintained by the Warrant Agent pursuant to Section 3.

"Merger Agreement" shall have the meaning set forth in the first

Recitals to this Agreement.

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"NASDAQ" shall have the meaning set forth in the definition of "Closing Price."

"NYSE" shall have the meaning set forth in the definition of "Closing Price."

"Options" shall have the meaning set forth in Section 8(d).

"Person" means an individual, partnership, corporation, limited liability company, trust, joint stock company, association, joint venture, or

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any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Register" shall have the meaning set forth in Section 3(a) of this Agreement.

"Securities Act" means the Securities Act of 1933, as amended.

"Subsidiary" means, with respect to any Person, any corporation or other entity of which a majority of the capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

"Warrant Agent" shall have the meaning set forth in the Preamble to this Agreement or the successor or successors of such Warrant Agent duly appointed in accordance with the terms hereof.

"Warrant Certificates" shall have the meaning set forth in the Recitals to this Agreement.

"Warrant Recipients" shall have the meaning set forth in the Recitals to this Agreement.

"Warrant Shares" means the shares of Common Stock deliverable upon exercise of the Warrants, as adjusted from time to time.

"Warrants" shall have the meaning set forth in the Recitals to this Agreement.

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Section 2. The Warrant Certificates. (a) Upon issuance, each Warrant

Certificate shall evidence one or more Warrants. The Warrant Certificates shall be in registered form only and substantially in the form attached hereto as Exhibit A. The Warrant Certificates shall be dated the date on which they are

countersigned by the Warrant Agent and may have such legends and endorsements typed, stamped, printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with applicable laws, rules or regulations including any rule or regulation of any securities exchange on which the Warrants may be listed.

(b) Warrant Certificates substantially in the form of Exhibit A

hereto and evidencing Warrants to purchase an aggregate of up to 4,979,663 (Four Million Nine Hundred Seventy Nine Thousand Six Hundred and Sixty Three) shares of Common Stock (subject to adjustment pursuant to Sections 8 and 9) shall be executed, on or after the date of this Agreement, by the Company and delivered

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to the Warrant Agent for countersignature, and the Warrant Agent shall thereupon countersign and deliver such Warrant Certificates upon the order and at the direction of the Company. The names and addresses of the Warrant Recipients shall be specified by the Company pursuant to a list of Warrant Recipients provided to the Warrant Agent by the Company, which shall consist of the names of those Persons who were stockholders of record of Coleman as of the Effective Time, subject only to the elimination of the names of (i) any such Persons as are entitled to receive only a payment in lieu of a fractional Warrant in accordance with the terms of this Agreement and (ii) any such Persons who have perfected their right to have the fair value of their shares of Coleman Common Stock judicially appraised and paid to them in cash. The Warrant Agent is hereby authorized to countersign and deliver Warrant Certificates as required by this Section 2(b) or by Section 3(b), 4(f) or 6 hereof. The Warrant Certificates shall be executed on behalf of the Company by any of its duly authorized officers, either manually or by facsimile signature printed thereon, and shall be dated the date of issuance. The Warrant Agent shall countersign the Warrant Certificates either manually or by facsimile signature printed thereon, and the Warrant Certificates shall not be valid for any purpose until so countersigned. In case any duly authorized officer of the Company whose signature shall have been placed upon any of the Warrant Certificates shall cease to be such officer of the Company before countersignature by the Warrant Agent and issue and delivery thereof, such Warrant Certificates may, nevertheless, be countersigned by the Warrant Agent and issued and delivered with the same force and effect as though such person had not ceased to be such officer of the Company.

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Section 3. Registration, Exchange and Transfer of Warrants. (a) The

Warrant Agent shall keep at the principal corporate trust office of the Warrant Agent, specified in or pursuant to Section 4(d), a register (the "Register") in which, subject to such regulations as the Company may reasonably prescribe, the Warrant Agent shall provide for the registration of Warrant Certificates and of transfers or exchanges of Warrant Certificates as herein provided.

(b) At the option of the Holder, Warrant Certificates may be exchanged at such office and upon payment of the charges hereinafter provided. Whenever any Warrant Certificates are so surrendered for exchange, the Company shall execute, and the Warrant Agent shall countersign and deliver, the Warrant Certificates that the Holder making the exchange is entitled to receive; provided, however, that the Company

shall not be required to issue and deliver Warrant Certificates representing fractional warrants.

(c) Each Warrant Certificate issued upon any registration of transfer or exchange of Warrant Certificates shall be the valid obligation of the Company, evidencing the same obligations, and entitled to the same benefits under this Agreement as the Warrant Certificates surrendered for such registration of transfer or exchange.

(d) Each Warrant Certificate surrendered for registration of transfer or exchange shall (if so required by the Company or the Warrant Agent) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Warrant Agent, duly executed by the Holder thereof or his attorney duly authorized in writing.

(e) No service charge shall be made for any registration of

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transfer or exchange of Warrant Certificates. The Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Warrant Certificates.

(f) Each Warrant Certificate when duly endorsed in blank shall be negotiable and when a Warrant Certificate shall have been so endorsed, the Holder thereof may be treated by the Company, the Warrant Agent and all other persons dealing therewith as the sole and absolute owner thereof for any purpose and as the person solely entitled to exercise the rights represented thereby or to request the Warrant Agent to record the transfer thereof on the Register any notice to the contrary notwithstanding; but until such transfer on such Register, the Company and the Warrant Agent may treat the Holder thereof as the owner for all purposes.

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Section 4. Exercise Price, Payment of The Exercise Price, Duration And

Exercise of Warrants Generally. (a) Each Warrant Certificate shall, when counter

signed by the Warrant Agent, entitle the Holder thereof, upon payment of the Exercise Price and subject to the provisions of this Agreement, to receive one share of Common Stock for each whole Warrant represented thereby, subject to adjustment as herein provided, upon payment of the Exercise Price for each of such shares.

(b) Subject to the terms and conditions set forth herein, the Warrants shall be exercisable at any time, or from time to time, until the Expiration Date or, if such day is not a Business Day, then on the next succeeding day that shall be a Business Day.

(c) The Warrants shall terminate and become void as of 5:00 P.M. (New York City time) on the Expiration Date or, if such day is not a Business Day, then as of 5:00 P.M. on the next succeeding day that shall be a Business Day, and all rights of any Holder of a Warrant Certificate evidencing such Warrants under this Agreement or otherwise shall cease.

(d) Subject to Sections 5 and 10 hereof, in order to exercise a Warrant, the Holder thereof must surrender the Warrant Certificate evidencing such Warrant, with one of the forms on the reverse of or attached to the Warrant Certificates duly executed (with signature guaranteed), to the Warrant Agent at its office at 101 Barclay Street, New York, New York 10286, or at such other address as the Warrant Agent may specify in writing to the Holders at their respective addresses specified in the Register, together with payment-in-full of the Exercise Price thereof. Upon such delivery and payment, the Holder shall be deemed to be the holder of record of the number of shares of Common Stock issuable upon exercise of the Warrant (or, in the case of a partial exercise of this Warrant, the number of such shares as to which the Warrant has been exercised), notwithstanding that the stock transfer books of the Company shall then be closed or that certificates representing such shares shall not then be actually delivered to the Holder.

(e) At the option of the Holder, the Exercise Price may be paid in cash (including by wire transfer of immediately available funds) or by certified or official bank check or bank cashier's check payable to the order of the Company or by any combination of such cash or check. At the option of the Holder, the Exercise Price may in the alternative be paid in whole or in part by reducing the number of shares of Common Stock issuable to the Holder by a number

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of shares of Common Stock that have a Fair Market Value equal to the Exercise Price which otherwise would have been paid (so that the net number of shares of Common Stock issued in respect of

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such exercise shall equal the number of shares of Common Stock that would have been issuable had the Exercise Price been paid entirely in cash, less a number of shares of Common Stock with a Fair Market Value equal to the portion of the Exercise Price paid in kind); provided, however, that this option shall be

available only with respect to the exercise of not more than one-half of the total number of Warrants represented by such Holder's Warrant Certificate.

(f) The Warrants evidenced by a Warrant Certificate shall be exercisable either as an entirety or, from time to time, for part only of the number of whole Warrants evidenced thereby. If fewer than all of the Warrants evidenced by a Warrant Certificate are exercised at any time, the Warrant Certificate representing such Warrants shall be surrendered and a new Warrant Certificate of the same tenor and for the number of Warrants that were not exercised shall be issued by the Company. The Warrant Agent shall countersign the new Warrant Certificate, register it in such name or names as may be directed in writing by the Holder and deliver the new Warrant Certificate to the person or persons entitled to receive the same.

(g) As soon as practicable on or after the Exercise Date, the Warrant Agent shall notify the Company, and the Warrant Agent shall, within five Business Days of the Exercise Date, deliver or cause to be delivered to or upon any written order of any Holder appropriate evidence of ownership of any shares of Common Stock issuable upon exercise of the Warrants or other securities or property (including any cash, subject to any required withholding) to which the Holder is entitled hereunder, subject to Section 5. All funds received upon the exercise of Warrants shall be deposited by the Warrant Agent for the account of the Company, unless otherwise instructed in writing by the Company.

Section 5. Payment of Taxes. The Company shall pay any and all documen

tary, or similar issue or transfer taxes payable in respect of the issuance or delivery of the Warrant Shares. The Company shall not, however, be required to pay any transfer tax which may be payable in respect of any transfer involved in the issue or delivery of Warrants or Warrant Shares (or other securities or assets) in a name other than that in which the Warrants so exercised were registered, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of such transfer tax or has established, to the satisfaction of the Company, that such transfer tax has been paid.

Section 6. Mutilated or Missing Warrant Certificates. If (a) any

mutilated Warrant Certificate is surrendered to the Warrant Agent or (b) the Company and the Warrant Agent receive evidence to their satisfaction of the destruction, loss or theft

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of any Warrant Certificate, and there is delivered to the Company and the Warrant Agent (in the case of destruction, loss or theft) such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company or the Warrant Agent that such Warrant Certificate has been acquired by a bona fide purchaser, the Company shall execute and the Warrant Agent shall countersign and deliver, in exchange for any such mutilated Warrant Certificate or in lieu of any such destroyed, lost or stolen Warrant Certificate, a new Warrant Certificate of like tenor and for a like aggregate number of Warrants. Upon the issuance of any new Warrant Certificate under this Section 6, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and other expenses in connection therewith. Every new Warrant Certificate executed and delivered pursuant to this Section 6 in lieu of any destroyed, lost or stolen Warrant Certificate shall constitute an original contractual obligation of the Company, whether or not the destroyed, lost or stolen Warrant Certificate shall be at any time enforceable by anyone, and shall be entitled to the benefits of this Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder. The provisions of this Section 6 are exclusive and shall preclude (to the extent lawful) all other rights or remedies with respect to the replacement of mutilated, destroyed, lost or stolen Warrant Certificates.

Section 7. Reservation of Shares; Listing. The Company shall at all

times reserve and keep available, free from preemptive rights, and out of its authorized but unissued Common Stock, solely for the purpose of issuance upon exercise of Warrants as herein provided, such number of shares of Common Stock as shall then be issuable upon exercise of all outstanding Warrants. The Company covenants that all shares of Common Stock which shall be issuable upon exercise of the Warrants shall, upon issue in accordance with the terms of this Agreement, be duly and validly issued and fully paid and non-assessable and free from all taxes, liens, and charges with respect to the issue thereof and that upon issuance, such shares shall be listed on each national securities exchange on which any other shares of outstanding Common Stock are then listed.

Section 8. Anti-dilution Provisions. So long as any Warrants are

outstanding, the Exercise Price and the number of shares of Common Stock issuable upon exercise of each whole Warrant shall be subject to adjustment from time to time as follows:

(a) Common Stock Dividends, Subdivisions, Combinations. In case the Company shall (i) pay or make a dividend or other distribution to all holders of its

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Common Stock in shares of Common Stock, (ii) subdivide or split the outstanding shares of its Common Stock into a larger number of shares, or (iii) combine the outstanding shares of its Common Stock into a smaller number of shares (which shall not in any event be done without the express written approval of Holders of a majority of the outstanding Warrants), then in each such case the number of Warrant Shares issuable upon exercise of each whole Warrant shall be adjusted to

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equal the number of such shares to which the Holder of the Warrant would have been entitled upon the occurrence of such event had the Warrant been exercised immediately prior to the happening of such event or, in the case of a stock dividend or other distribution, prior to the record date for determination of stockholders entitled thereto. An adjustment made pursuant to this Section 8(a) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(b) Reorganization or Reclassification. In case of any capital

reorganization or any reclassification of the capital stock of the Company (whether pursuant to a merger or consolidation or otherwise), or in the event of any similar transaction, each whole Warrant shall thereafter be exercisable for the number of shares of stock or other securities or property receivable upon such capital reorganization or reclassification of capital stock or other transaction, as the case may be, by a holder of the number of shares of Common Stock into which such Warrant was exercisable immediately prior to such capital reorganization or reclassification of capital stock; and, in any case, appropriate adjustment (as determined in good faith by the Board of Directors of the Company) shall be made for the application of the provisions herein set forth with respect to the rights and interests thereafter of the Holders of the Warrants to the end that the provisions set forth herein shall thereafter be applicable, as nearly as reasonably practicable, in relation to any shares of stock or other securities or property thereafter deliverable upon the exercise of the Warrants. An adjustment made pursuant to this Section 8(b) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(c) Distributions of Assets or Securities Other than Common Stock. In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of its capital stock (other than Common Stock), or other debt or equity securities or evidences of indebtedness of the Company, or options, rights or warrants to purchase any of such securities, cash or other assets, then in each such case the number of Warrant Shares issuable upon exercise of each whole Warrant shall be adjusted by multiplying the number of Warrant Shares issuable upon exercise of each whole Warrant immediately prior to the date of such

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dividend or distribution by a fraction, of which the numerator shall be the Fair Market Value per share of Common Stock at the record date for determining share holders entitled to such dividend or distribution, and of which the denominator shall be such Fair Market Value per share less the Fair Market Value of the portion of the securities, cash, other assets or evidences of indebtedness so distributed applicable to one share of Common Stock. An adjustment made pursuant to this Section 8(c) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(d) Below Market Issuances of Common Stock and Convertible Securities. In case the Company shall issue Common Stock (or options, rights or warrants to purchase shares of Common Stock (collectively, "Options") or other securities convertible into or exchangeable or exercisable for shares of Common Stock (such other securities, collectively, "Convertible Securities")) at a

price per share (or having an effective exercise, exchange or conversion price per share together with the purchase price thereof) less than the Fair Market

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Value per share of Common Stock on the date such Common Stock (or Options or Convertible Securities), is sold or issued (provided that no sale of securities pursuant to an underwritten public offering shall be deemed to be for less than Fair Market Value), then in each such case the number of Warrant Shares issuable upon exercise of each whole Warrant shall thereafter be adjusted by multiplying the number of Warrant Shares issuable upon exercise of each whole Warrant immediately prior to the date of issuance of such Common Stock (or Options or Convertible Securities) by a fraction, the numerator of which shall be (x) the sum of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (ii) the number of additional Common Share Equivalents represented by all securities so issued multiplied by (y) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance, and the denominator of which shall be (x) the product of (A) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance and (B) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance plus (y) the aggregate consideration received by the Company for the total number of securities so issued plus, (z) in the case of Options or Convertible Securities, the additional consideration required to be received by the Company upon the exercise, exchange or conversion of such securities; provided, however, that

no adjustment shall be required in respect of issuances of Common Stock (or options to purchase Common Stock) pursuant to stock option or other employee benefit plans in effect on the date hereof, or approved by the Board of Directors of the Company after the date hereof. Notwithstanding anything herein to the contrary, (1) no further adjustment to the number of Warrant Shares issuable upon exercise of each whole

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Warrant shall be made upon the issuance or sale of Common Stock pursuant to (x) the exercise of any Options or (y) the conversion or exchange of any Convertible Securities, if in each case the adjustment in the number of Warrant Shares issuable upon exercise of each whole Warrant was made as required hereby upon the issuance or sale of such Options or Convertible Securities or no adjustment was required hereby at the time such Option or Convertible Security was issued, and (2) no adjustment to the number of Warrant Shares issuable upon exercise of each whole Warrant shall be made upon the issuance or sale of Common Stock upon the exercise of any Options existing on the original issue date hereof, without regard to the exercise price thereof. Notwithstanding the foregoing, no adjustment to the number of Warrant Shares issuable upon exercise of each whole Warrant shall be made pursuant to this paragraph upon the issuance or sale of Common Stock, Options, or Convertible Securities in a bona fide arm's-length transaction to any Person or group that, at the time of such issuance or sale, is not an Affiliate of the Company. An adjustment made pursuant to this Section 8(d) shall become effective immediately after such Common Stock, Options or Convertible Securities are sold.

(e) Below Market Distributions or Issuances of Preferred Stock or Other Securities. In case the Company shall issue non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of the Company (other than Common Stock or Options or Convertible Securities) or options, rights or warrants to purchase any of such securities) at a price per share (or other similar unit) less than the Fair Market Value per share (or other similar unit) of such preferred stock (or other security) on the date such preferred stock (or other security) is sold (provided that no sale of preferred stock or other security pursuant to an underwritten public offering shall be deemed to be for less than its fair market value), then in each such case the number of Warrant Shares issuable upon exercise of each

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whole Warrant shall thereafter be adjusted by multiplying the number of Warrant Shares issuable upon exercise of each whole Warrant immediately prior to the date of issuance of such preferred stock (or other security) by a fraction, the numerator of which shall be the product of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (ii) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (B) the Fair Market Value of a share of the Common Stock immediately prior to the date of such issuance minus (y) the difference between (1) the aggregate Fair Market Value of such preferred stock (or other security) and (2) the aggregate consideration received by the Company for such preferred stock (or other security). Notwithstanding the foregoing,

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no adjustment to the number of Warrant Shares issuable upon exercise of each whole Warrant shall be made pursuant to this paragraph upon the issuance or sale of preferred stock (or other securities of the Company other than Common Stock or Options or Convertible Securities) in a bona fide arm's-length transaction to any Person or group that, at the time of such issuance or sale, is not an Affiliate of the Company. An adjustment made pursuant to this Section 8(e) shall become effective immediately after such preferred stock (or other security) is sold.

(f) Above Market Repurchases of Common Stock. If at any time or from time to time the Company or any Subsidiary thereof shall repurchase, by self-tender offer or otherwise, any shares of Common Stock of the Company (or any Options or Convertible Securities) at a purchase price in excess of the Fair Market Value thereof, on the Business Day immediately prior to the earliest of (i) the date of such repurchase, (ii) the commencement of an offer to repurchase, or (iii) the public announcement of either (such date being referred to as the "Determination Date"), the number of Warrant Shares issuable upon

exercise of each whole Warrant shall be adjusted by multiplying the number of Warrant Shares issuable upon exercise of each whole Warrant immediately prior to such Determination Date by a fraction, the numerator of which shall be the product of (1) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date minus the number of Common Share Equivalents represented by the securities repurchased or to be purchased by the Company or any Subsidiary thereof in such repurchase and (2) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to the Determination Date and (B) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date minus (y) the sum of (1) the aggregate consideration paid by the Company in connection with such repurchase and (2) in the case of Options or Convertible Securities, the additional consideration required to be received by the Company upon the exercise, exchange or conversion of such securities. Notwithstanding the foregoing, no adjustment to the number of Warrant Shares issuable upon exercise of each whole Warrant shall be made pursuant to this paragraph upon the repurchase, by self-tender offer or otherwise, of Common Stock (or any Options or Convertible Security) in a bona fide arm's-length transaction from any Person or group that, at the time of such repurchase, is not an Affiliate of the Company.

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(g) Above Market Repurchases of Preferred Stock or Other Securities. If at any time or from time to time the Company or any Subsidiary thereof shall

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repurchase, by self-tender offer or otherwise, any shares of non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of the Company (other than Common Stock or Options or Convertible Securities) or options, rights or warrants to purchase any of such securities), at a purchase price in excess of the Fair Market Value thereof, on the Business Day immediately prior to the Determination Date, the number of Warrant Shares issuable upon exercise of each whole Warrant shall be adjusted by multiplying the number of Warrant Shares issuable upon exercise of each whole Warrant immediately prior to the Determination Date by a fraction, the numerator of which shall be the product of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date and (ii) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date and (B) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date minus (y) the difference between (1) the aggregate consideration paid by the Company in connection with such repurchase and (2) the aggregate Fair Market Value of such preferred stock (or other security). Notwithstanding the foregoing, no adjustment to the number of Warrant Shares issuable upon exercise of each whole Warrant shall be made pursuant to this paragraph upon the repurchase, by self-tender offer or otherwise, of non-convertible and non-exchangeable preferred stock (or other securities of the Company other than Common Stock or Options or Convertible Securities) in a bona fide arm's-length transaction from any Person or group that, at the time of such repurchase, is not an Affiliate of the Company.

(h) Readjustment of the Number of Warrant Shares Issuable Upon Exercise of Each Whole Warrant. If (i) the purchase price provided for in any Option or the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities or the rate at which any Convertible Securities, in each case as referred to in paragraphs (b) and (f) above, are convertible into or exchangeable for Common Stock shall change at any time (other than under or by reason of provisions designed to protect against dilution upon an event which results in a related adjustment pursuant to this Section 8), or (ii) any of such Options or Convertible Securities shall have irrevocably terminated, lapsed or expired, the number of Warrant Shares then issuable upon exercise of each whole Warrant shall forthwith be readjusted (effective only with respect to any exercise of Warrants after such readjustment) to the number of Warrant Shares issuable upon exercise of each whole Warrant which would then be in effect had the adjustment made upon the issuance, sale, distribution or grant of such Options or Convertible Securities been

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made based upon such changed purchase price, additional consideration or conversion rate, as the case may be (in the case of any event referred to in clause (i) of this paragraph (h)) or had such adjustment not been made (in the case of any event referred to in clause (ii) of this paragraph (h)).

(i) Exercise Price Adjustment. Upon each adjustment of the number of Warrant Shares issuable upon exercise of each whole Warrant pursuant to this Section 8, the Exercise Price of each Warrant outstanding immediately prior to such adjustment shall thereafter be equal to an adjusted Exercise Price per Warrant Share determined (to the nearest cent) by multiplying the Exercise Price for each whole Warrant immediately prior to such adjustment by a fraction, the numerator of which shall be the number of Warrant Shares issuable upon exercise of each whole Warrant immediately prior to such adjustment and the denominator of which shall be the number of Warrant Shares issuable upon exercise of each whole Warrant immediately after such adjustment.

(j) Consideration. If any shares of Common Stock, Options or Convertible Securities shall be issued, sold or distributed for cash, the consideration received in respect thereof shall be deemed to be the amount received by the Company therefor, before deduction therefrom of any reasonable, customary and adequately documented expenses incurred in connection therewith. If any shares of Common Stock, Options or Convertible Securities shall be issued, sold or distributed for a consideration other than cash, the amount of the consideration other than cash received by the Company shall be deemed to be the Fair Market Value of such consideration, before deduction of any reasonable, customary and adequately documented expenses incurred in connection therewith. If any shares of Common Stock, Options or Convertible Securities shall be issued in connection with any merger in which the Company is the surviving corporation, the amount of consideration therefor shall be deemed to be the Fair Market Value of such portion of the assets and business of the non-surviving corporation as shall be attributable to such Common Stock, Options or Convertible Securities, as the case may be. If any Options shall be issued in connection with the issuance and sale of other securities of the Company, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued without consideration.

(k) No Impairment. The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to

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be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Section 8 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the Holders of the Warrants against impairment. Without limiting the generality of the foregoing, the Company will not increase the par value of any shares of Common Stock issuable on the exercise of the Warrants above the amount payable therefor on such exercise.

(l) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the number of Warrant Shares issuable upon exercise of each whole Warrant pursuant to this Section 8, the Company, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to the Warrant Agent a certificate setting

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forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request at any time of any Holder of the Warrants, furnish or cause to be furnished to such Holder a like certificate setting forth (1) such adjustments and readjustments and (2) the number of Warrant Shares and the amount, if any, of other property which at the time would be received upon the exercise of this Warrant.

(m) Proceedings Prior to Any Action Requiring Adjustment. As a condition precedent to the taking of any action which would require an adjustment pursuant to this Section 8, the Company shall take any action which may be necessary, including obtaining regulatory approvals or exemptions, in order that the Company may thereafter validly and legally issue as fully paid and nonassessable all Warrant Shares which the Holders are entitled to receive upon exercise thereof.

(n) Notice of Adjustment. Upon the record date or effective date, as the case may be, of any action which requires or might require an adjustment or readjustment pursuant to this Section 8, the Company shall forthwith file in the custody of its Secretary or an Assistant Secretary at its principal executive office and with its transfer agent and the Warrant Agent, an officers' certificate showing the adjusted number of Warrant Shares determined as herein provided, setting forth in reasonable detail the facts requiring such adjustment and the manner of computing such adjustment. Each such officers' certificate shall be signed by the chairman, president or chief financial officer of the Company and by the secretary or any assistant secretary of the Company. Each such officers' certificate shall be made available at all reasonable times for inspection by the Holder or any Holder of a Warrant executed and delivered pursuant to Section 3(b) and the Company shall,

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forthwith after each such adjustment, mail a copy, by first-class mail, of such certificate to the Holder or any such Holder.

(o) Payments in Lieu of Adjustment. The Holder shall, at its option, be entitled to receive, in lieu of the adjustment pursuant to Section 8(c) otherwise required thereof, on (but not prior to) the date of exercise of the Warrants, the evidences of indebtedness, other securities, cash, property or other assets which such Holder would have been entitled to receive if it had exercised its Warrants for Warrant Shares immediately prior to the record date with respect to such distribution. Any Holder may exercise its option under this Section 8(o) by delivering to the Company a written notice of such exercise simultaneously with its notice of exercise of this Warrant.

Section 9. Consolidation, Merger or Sale of Assets. In case of any

consolidation of the Company with, or merger of the Company into, any other Person, any merger of another Person into the Company (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock) or any sale or transfer of all or substantially all of the assets of the Company to the Person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, each Holder of Warrants shall have the right thereafter to exercise its Warrants for the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer by a holder of the number of shares of Common Stock for which such Holder's Warrants may have been exercised immediately prior to such consolidation, merger, sale or

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transfer. Adjustments for events subsequent to the effective date of such a consolidation, merger, sale or transfer of assets shall be as nearly equivalent as may be practicable to the adjustments provided for herein. In any such event, effective provisions shall be made in the certificate or articles of incorporation of the resulting or surviving corporation, in any contract of sale, merger, conveyance, lease, transfer or otherwise so that the provisions set forth herein for the protection of the rights of the Holders of the Warrants shall thereafter continue to be applicable; and any such resulting or surviving corporation shall expressly assume the obligation to deliver, upon exercise, such shares of stock, other securities, cash and property. The provisions of this Section 9 shall similarly apply to successive consolidations, mergers, sales, leases or transfers.

Section 10. Fractional Shares. No fractional shares or scrip

representing fractional shares shall be issued upon the exercise of the Warrants and in lieu of delivery of any such fractional share upon any exercise thereof, the Company shall pay to the Holder an amount in cash equal to such fraction multiplied by the Fair

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Market Value thereof; provided, however, that, in the event that the Company

combines or reclassifies the outstanding shares of its Common Stock into a smaller number of shares, it shall be required to issue fractional shares to a Holder if the Holder exercises all or any part of its Warrants, unless the Holder has consented in writing to such reduction and provided the Company with a written waiver of its right to receive fractional shares in accordance with this Section 10. If more than one Warrant shall be presented for exercise in full at the same time by the same Holder, the number of full shares of Common Stock that shall be issuable upon such exercise thereof shall be computed on the basis of the aggregate number of shares of Common Stock acquirable on exercise of the Warrants so presented. The Holders, by their acceptance of the Warrant Certificates, expressly waive any and all rights to receive any fraction of a share of Common Stock or a stock certificate representing a fraction of a share of Common Stock.

Section 11. No Stock Rights. Prior to the exercise of the Warrants, no

Holder of a Warrant Certificate, as such, shall be entitled to vote or be deemed the holder of shares of Common Stock or any other securities of the Company that may at any time be issuable on the exercise thereof, nor shall anything contained herein be construed to confer upon any Holder of a Warrant Certificate, as such, the rights of a stockholder of the Company or the right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, to exercise any preemptive right, to receive notice of meetings or other actions affecting stockholders (except as provided herein), or to receive dividends or subscription rights or otherwise.

Section 12. The Warrant Agent. (a) The Company hereby appoints the

Warrant Agent to act as agent of the Company as set forth in this Agreement. The Warrant Agent hereby accepts the appointment as agent of the Company and agrees to perform that agency upon the terms and conditions herein set forth, by all of which the Company and the Holders of Warrants, by their acceptance thereof, shall be bound. No implied duties or obligations shall be read into this

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Agreement against the Warrant Agent. The Warrant Agent shall not by countersigning Warrant Certificates or by any other act hereunder be deemed to make any representation as to validity or authorization of the Warrants or the Warrant Certificates (except as to its countersig nature thereon) or of any securities or other property delivered upon exercise of any Warrant, or as to the number or kind or amount of stock or other securities or other property deliverable upon exercise of any Warrant. The Warrant Agent shall not have any duty to calculate or determine any adjustments with respect either to the kind and amount of shares or other securities or any property receivable by Holders upon the exercise or tender of Warrants required from time to time, and

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the Warrant Agent shall have no duty or responsibility in determining the accuracy or correctness of any such calculation, other than to apply any adjustment, notice of which is given by the Company to the Warrant Agent to be mailed to the Holders in accordance with Section 8(i). The Warrant Agent shall not (i) be liable for any recital or statement of fact contained herein or in the Warrant Certificates or for any action taken, suffered or omitted by it in good faith on the belief that any Warrant Certificate or any other documents or any signatures are genuine or properly authorized, (ii) be responsible for any failure on the part of the Company to comply with any of its covenants and obligations contained in this Agreement or in the Warrant Certificates, or (iii) be liable for any act or omission in connection with this Agreement except for its own negligence or willful misconduct. The Warrant Agent is hereby authorized to accept instructions with respect to the performance of its duties hereunder from any officer of the Company and to apply to any such officer for instructions (which instructions will be promptly given in writing when requested) and the Warrant Agent shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with the instructions of any such officer, except for its own negligence or willful misconduct, but in its discretion the Warrant Agent may in lieu thereof accept other evidence of such or may require such further or additional evidence as it may deem reasonable.

(b) The Warrant Agent shall not be under any obligation or duty to institute, appear in or defend any action, suit or legal proceeding in respect hereof, unless first indemnified to its satisfaction, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without such indemnity. The Warrant Agent shall promptly notify the Company in writing of any claim made or action, suit or proceeding instituted against it arising out of or in connection with this Agreement.

(c) The Company will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further acts, instruments and assurances as may reasonably be required by the Warrant Agent in order to enable it to carry out or perform its duties under this Agreement.

(d) The Company agrees to pay to the Warrant Agent compensation for all services rendered by it hereunder as the Company and the Warrant Agent may agree from time to time, and to reimburse the Warrant Agent for reasonable expenses and disbursements incurred in connection with the execution and administration of this Agreement (including the reasonable compensation and the expenses of its counsel), and further agrees to indemnify the Warrant Agent for, and to hold it harmless against any loss, liability or expense incurred without gross negligence or

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bad faith on its part, arising out of or in connection with the acceptance and administration of this Agreement, including the reasonable costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

(e) The Warrant Agent and any stockholder, director, officer or employee of the Warrant Agent may buy, sell and deal in any of the Warrants or other securities of the Company or its Affiliates or become pecuniarily interested in transactions in which the Company or its Affiliates may be interested, or contract with or lend money to the Company or its Affiliates or otherwise act as fully and freely as though it were not the Warrant Agent under this Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

(f) Anything in this Agreement to the contrary notwithstanding, in no event shall the Warrant Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to loss of profits), even if the Warrant Agent has been advised of the form of action.

Section 13. Resignation And Removal of Warrant Agent; Appointment of

Successor. (a) No resignation or removal of the Warrant Agent and no appointment of a successor warrant agent shall become effective until the acceptance of appointment by the successor warrant agent provided herein. The Warrant Agent may resign its duties and be discharged from all further duties and liability hereunder (except liability arising as a result of the Warrant Agent's own negligence, bad faith or willful misconduct) after giving written notice to the Company. The Company may remove the Warrant Agent upon written notice, and the Warrant Agent thereupon in like manner be discharged from all further duties and liabilities hereunder, except as aforesaid. Upon such resignation or removal, the Company shall appoint in writing a new warrant agent. If the Company shall fail to make such appointment within a period of 60 days after it has been notified in writing of such resignation by the resigning Warrant Agent or after such removal, then a Holder may apply to any court of competent jurisdiction for the appointment of a new warrant agent. Any new warrant agent, whether appointed by the Company or by such a court, shall be a corporation doing business under the laws of the United States or any State thereof, in good standing and having a combined capital and surplus of not less than \$50,000,000. The combined capital and surplus of any such new warrant agent shall be deemed to be the combined capital and surplus as set forth in the most recent annual report of its condition published by such warrant agent prior to its appointment, provided that such reports are published at least annually pursuant to

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law or to the requirements of a Federal or state supervising or examining authority. After acceptance in writing of such appointment by the new warrant

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agent, it shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as the Warrant Agent, without any further assurance, conveyance, act or deed; but if for any reason it shall be necessary or expedient to execute and deliver any further assurance, conveyance, act or deed, the same shall be done at the expense of the Company and shall be legally and validly executed and delivered by the resigning or removed Warrant Agent. Not later than the effective date of any such appointment, the Company shall give notice thereof to the resigning or removed Warrant Agent. Failure to give any notice provided for in this Section, however, or any defect therein, shall not affect the legality or validity of the resignation of the Warrant Agent or the appointment of a new warrant agent, as the case may be.

(b) Any corporation into which the Warrant Agent or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Warrant Agent or any new warrant agent shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Warrant Agent, shall be a successor Warrant Agent under this Agreement without any further act, provided that such corporation (i) would be eligible for appointment as successor to the Warrant Agent under the provisions of Section 12(a) or (ii) is a wholly owned subsidiary of the Warrant Agent. Any such successor Warrant Agent shall promptly cause notice of its succession as Warrant Agent to be mailed first-class mail, postage prepaid) to each Holder at such Holder's last address as shown on the Register.

Section 14. Money And Other Property Deposited With The Warrant Agent.

Any moneys, securities or other property that at any time shall be deposited on behalf of the Company with the Warrant Agent pursuant to this Agreement shall be and are hereby assigned, transferred and set over to the Warrant Agent in trust for the purpose for which such moneys, securities or other property shall have been deposited; provided, however, such moneys, securities or other property

need not be segregated from other funds, securities or other property except to the extent required by law.

Section 15. NOTICES. (a) Except as otherwise provided in Section 15(b), any notice, demand or delivery authorized by this agreement shall be sufficiently given or made when mailed if sent by first-class mail, postage prepaid, addressed to any Holder at such Holder's address shown on the Register and to the Company or the Warrant Agent as follows:

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If to the Company:

Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, Florida 33431
Attention: General Counsel
Facsimile: (561) 912-4612

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Attention: Richard L. Easton, Esq.
Facsimile: (302) 651-3001

If to the Warrant Agent:

The Bank of New York
101 Barclay Street

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16div-028412

New York, New York 10286

Attention:

Facsimile: (212) 815-_____

or such other address as shall have been furnished to the party giving or making such notice, demand or delivery.

(b) Any notice required to be given by the Company to the Holders shall be made by mailing by registered mail, return receipt requested, to the Holders at their respective addresses shown on the Register. The Company hereby irrevocably authorizes the Warrant Agent, in the name and at the expense of the Company, to mail any such notice upon receipt thereof from the Company. Any notice that is mailed in the manner herein provided shall be conclusively presumed to have been duly given when mailed, whether or not the Holder receives the notice.

SECTION 16. Amendments; Waivers. (a) The Company may from time to time

 supplement or amend this Agreement without the consent of any Holder, in order to (i) cure any ambiguity or correct or supplement any provision herein that may be defective or inconsistent with any other provision herein or (ii) add to the covenants and agreements of the Company for the benefit of the Holders, or surrender any rights or powers reserved to or conferred upon the Company in this Agreement. Upon the delivery of a certificate from an appropriate officer of the Company which states that the proposed supplement or amendment is in compliance with the terms of this Section 16, the Warrant Agent shall join with the Company in the execution and delivery of any such supplemental agreements unless it affects the

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Warrant Agent's own rights, duties or immunities hereunder in which case such party may, but shall not be required to, join in such execution and delivery.

(b) With the consent of the registered Holders of at least a majority in number of the Warrants at the time outstanding, the Company and the Warrant Agent may at any time and from time to time by supplemental agreement or amendment add any provisions to or change in any manner or eliminate any of the provisions of this Agreement or of any supplemental agreement or modify in any manner the rights and obligations of the Warrant holders and of the Company; provided, however, that no such supplemental agreement or amendment shall,

 without the consent of the registered Holder of each outstanding Warrant affected thereby:

(i) alter the provisions of this Agreement so as to affect adversely the terms upon which the Warrants are exercisable; or

(ii) reduce the number of Warrants outstanding the consent of whose Holders is required for any such supplemental agreement or amendment.

Upon the delivery of a certificate from an appropriate officer of the Company which states that the proposed supplement or amendment is in compliance with the terms of this section, the Warrant Agent shall join with the Company in the execution and delivery of any such supplemental agreements unless it affects the Warrant Agent's own rights, duties or immunities hereunder in which case such party may, but shall not be required to, join in such execution and delivery.

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(c) No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 17. Persons Benefitting. This Agreement shall be binding upon

and inure to the benefit of the Company and the Warrant Agent, and their respective successors, assigns, beneficiaries, executors and administrators, and each registered Holder of the Warrants. Nothing in this Agreement is intended or shall be construed to confer upon any person, other than the Company, the Warrant Agent and the Holders of the Warrants, any right, remedy or claim under or by reason of this Agreement or any part hereof.

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Section 18. Counterparts. This Agreement may be executed in any number

of counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

Section 19. Surrender of Certificates. Any Warrant Certificate

surrendered for exercise or purchase or otherwise acquired by the Company shall, if surrendered to the Company, be delivered to the Warrant Agent, and all Warrant Certificates surrendered or so delivered to the Warrant Agent shall be promptly cancelled by such Warrant Agent and shall not be reissued by the Company. The Warrant Agent shall deliver such cancelled Warrant Certificates to the Company.

Section 20. Termination of Agreement. This Agreement shall terminate

and be of no further force and effect on the earliest of (a) the Expiration Date or (b) the date on which all of the Warrants have been exercised, except that the provisions of Sections 11 and 13 shall continue in full force and effect after such termination date.

Section 21. Governing Law. This Agreement and the Warrants issued

hereunder and all rights arising hereunder and thereunder shall be construed and determined in accordance with the internal laws of the state of Delaware, and the performance hereof and thereof shall be governed and enforced in accordance with such laws.

Section 22. Interpretation. When a reference is made in this Agreement

to a Section, such reference shall be to a Section of this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. References to a Person are also to its permitted

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successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by its officer thereunto duly authorized as of the date first above written.

SUNBEAM CORPORATION

By:

Name: Steven R. Isko
Title: Senior Vice President and General Counsel

THE BANK OF NEW YORK, as Warrant Agent

By:

Name:
Title:

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EXHIBIT A

FORM OF FACE OF WARRANT CERTIFICATE
WARRANTS TO PURCHASE COMMON STOCK
OF SUNBEAM CORPORATION

No. _____ Certificate for _____ Warrants

This certifies that _____, or registered assigns, is the registered holder of the number of Warrants set forth above (the "Warrants").

Each Warrant entitles the holder thereof (a "Holder"), subject to the

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provisions contained herein and in the Warrant Agreement referred to below, to purchase from Sunbeam Corporation, a Delaware corporation (the "Company"), one share of Common Stock, par value \$.01 per share, of the

Company ("Common Stock"), at the exercise price (the "Exercise Price")

of \$7.00 per share, subject to adjustment upon the occurrence of certain events. This Warrant Certificate shall terminate and become void as of the close of business on August 24, 2003 (the "Expiration Date");

provided, however, that if the last day for the exercise of the Warrants

shall not be a Business Day, then the Warrants may be exercised on the next succeeding Business Day (as defined in the Warrant Agreement) following the Expiration Date.

This Warrant Certificate is issued under and in accordance with the Warrant Agreement, dated as of _____, 1999 (the "Warrant Agreement"),

between the Company and The Bank of New York, as warrant agent (the "Warrant

Agent", which term includes any successor Warrant Agent under the Warrant

Agreement), and is subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions the Holder of this Warrant Certificate consents by acceptance hereof. The Warrant Agreement is hereby incorporated herein by reference and made a part hereof. Reference is hereby made to the Warrant Agreement for a full statement of the respective rights, limitations of rights, duties, obligations and immunities thereunder of the Company, the Warrant Agent and the Holders of the Warrants.

As provided in the Warrant Agreement and subject to the terms and conditions therein set forth, the Warrants are immediately exercisable. At 5:00 P.M. (New York City time) on the Expiration Date, each Warrant not exercised prior thereto shall terminate and become void and of no value; provided, however, that

if the last day for the exercise of the Warrants shall not be a Business Day, then the Warrants may be exercised until 5:00 P.M. (New York City time) on the next succeeding Business Day following the Expiration Date.

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The Exercise Price and the number of shares of Common Stock issuable upon the exercise of each whole Warrant are subject to adjustment as provided in the Warrant Agreement.

In order to exercise a Warrant, the registered holder hereof must surrender this Warrant Certificate at the office of the Warrant Agent, with the Exercise Subscription Form on the reverse hereof duly executed by the Holder hereof, with signature guaranteed as therein specified, together with any required payment in full of the Exercise Price then in effect or the share(s) of Common Stock as to which the Warrant(s) represented by this Warrant Certificate are submitted for exercise, all subject to the terms and conditions hereof and of the Warrant Agreement. Any such payment of the Exercise Price shall be paid in cash (including by wire transfer of immediately available funds) or by certified or official bank check or bank cashier's check payable to the order of the Company or by any combination of such cash or check.

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The Company will pay all documentary stamp taxes, if any, attributable to the initial issuance of Common Stock upon the exercise of Warrants; provided, however, that the Company shall not be required to pay any tax or other

governmental charge which may be payable in respect of any transfer involved in the issue or delivery of any Warrant Certificates or certificates for Common Stock issued upon the exercise of Warrants in a name other than that of the registered Holder of such Warrants, and the Company shall not register any such transfer or issue any such certificate until such tax or governmental charge, if required, shall have been paid.

This Warrant Certificate and all rights hereunder are transferable by the registered holder hereof, in whole or in part, on the register of the Company, upon surrender of this Warrant Certificate for registration of transfer at the principal corporate trust office of the Warrant Agent maintained for such purpose in the City of New York, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Warrant Agent duly executed by the Holder hereof, or his attorney duly authorized in writing, with signature guaranteed as specified in the attached Form of Assignment. Upon any partial transfer, the Company will issue and deliver to such holder a new Warrant Certificate or Certificates with respect to any portion not so transferred; provided, however, that the Company shall not be required to issue and deliver Warrant Certificates representing fractional warrants.

No service charge shall be made for any registration of transfer or exchange of the Warrant Certificates, but the Company may require payment of a sum

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sufficient to cover any tax or other governmental charge payable in connection therewith.

This Warrant Certificate and the Warrant Agreement are subject to amendment as provided in the Warrant Agreement.

All terms used in this Warrant Certificate that are defined in the Warrant Agreement shall have the meanings assigned to them in the Warrant Agreement.

Copies of the Warrant Agreement are on file at the office of the Warrant Agent and may be obtained by writing to the Warrant Agent at the following address: 101 Barclay Street, New York, New York 10286, Attention:

This Warrant Certificate shall not be valid for any purpose until it shall have been countersigned by the Warrant Agent.

Dated: _____

SUNBEAM CORPORATION

By: _____

Name: Steven R. Isko
Title: Senior Vice President and General Counsel

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Countersigned:
THE BANK OF NEW YORK, as Warrant Agent

By: _____
Name:
Title:

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FORM OF REVERSE OF WARRANT CERTIFICATE
EXERCISE SUBSCRIPTION FORM

(To be executed only upon exercise of Warrants)

To: Sunbeam Corporation

The undersigned irrevocably exercises _____ of the Warrants for the purchase of one share per Warrant (subject to adjustment) of Common Stock, par value \$.01 per share, of Sunbeam Corporation represented by this Warrant Certificate hereof and herewith makes payment of \$_____ (such amount shall be paid in cash (including by wire transfer of immediately available funds) or by certified or official bank check or bank cashier's check payable to the order of Sunbeam Corporation or by any combination of such cash or check), representing the Exercise Price for such Warrants so exercised. On the terms and conditions specified in this Warrant Certificate and the Warrant Agreement therein referred to, the undersigned hereby surrenders this Warrant Certificate and all right, title and interest therein to and directs that the shares of Common Stock deliverable upon the exercise of such Warrants be registered or placed in the name and at the address specified below and delivered thereto.

Date: _____

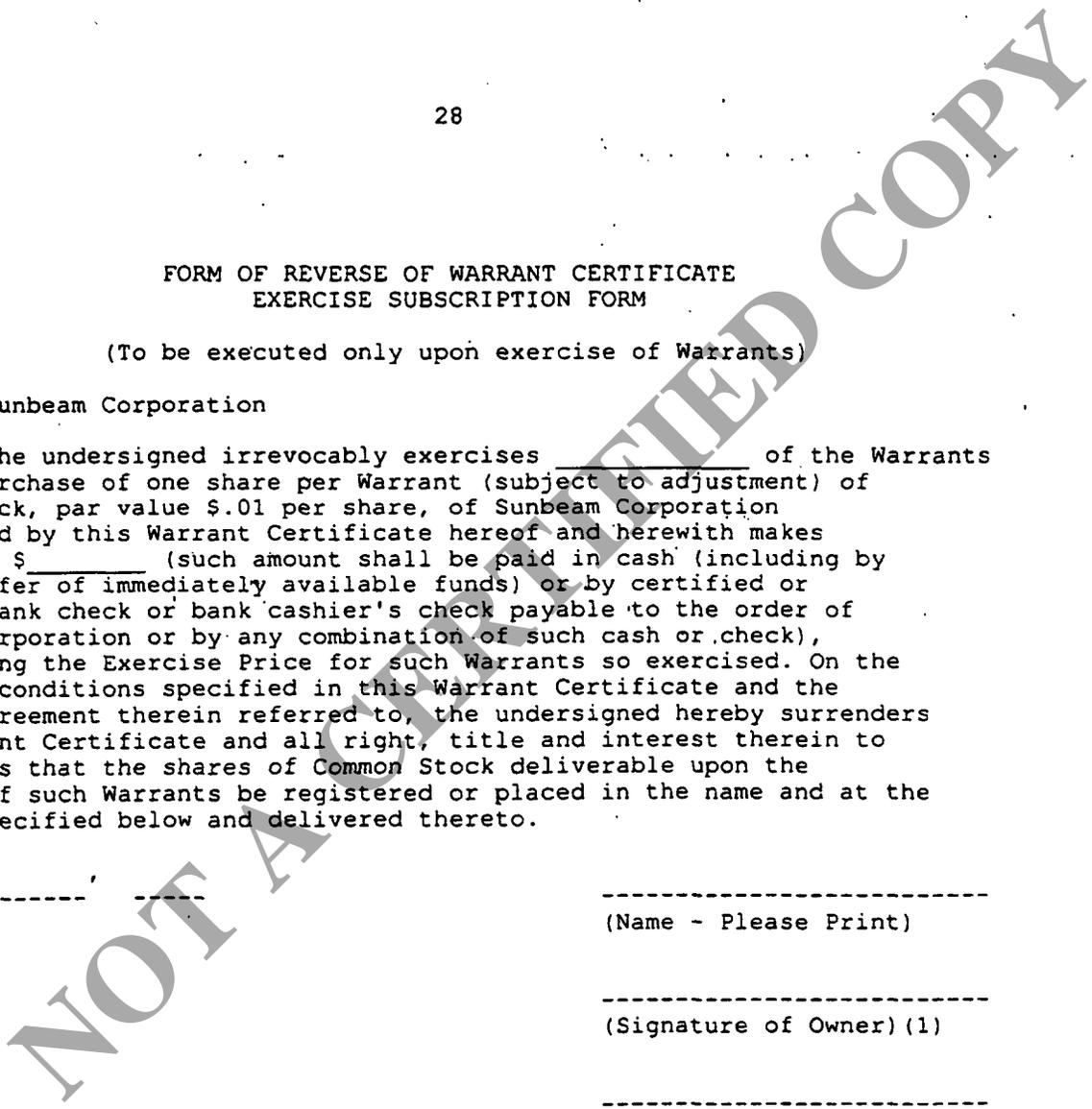
(Name - Please Print)

(Signature of Owner) (1)

(Street Address)

(City) (State) (Zip Code)

(Signature Guaranteed by)



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- (1) The signature must correspond with the name as written upon the face of the within Warrant Certificate in every particular, without alteration or enlargement or any change whatever, and must be guaranteed.

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Securities and/or check to be issued to:

Please insert social security or identifying number:

Name:

Street Address:

City, State and Zip Code:

Any unexercised Warrants evidenced by the within Warrant Certificate to be issued to:

Please insert social security or identifying number:

Name:

Street Address:

City, State and Zip Code:

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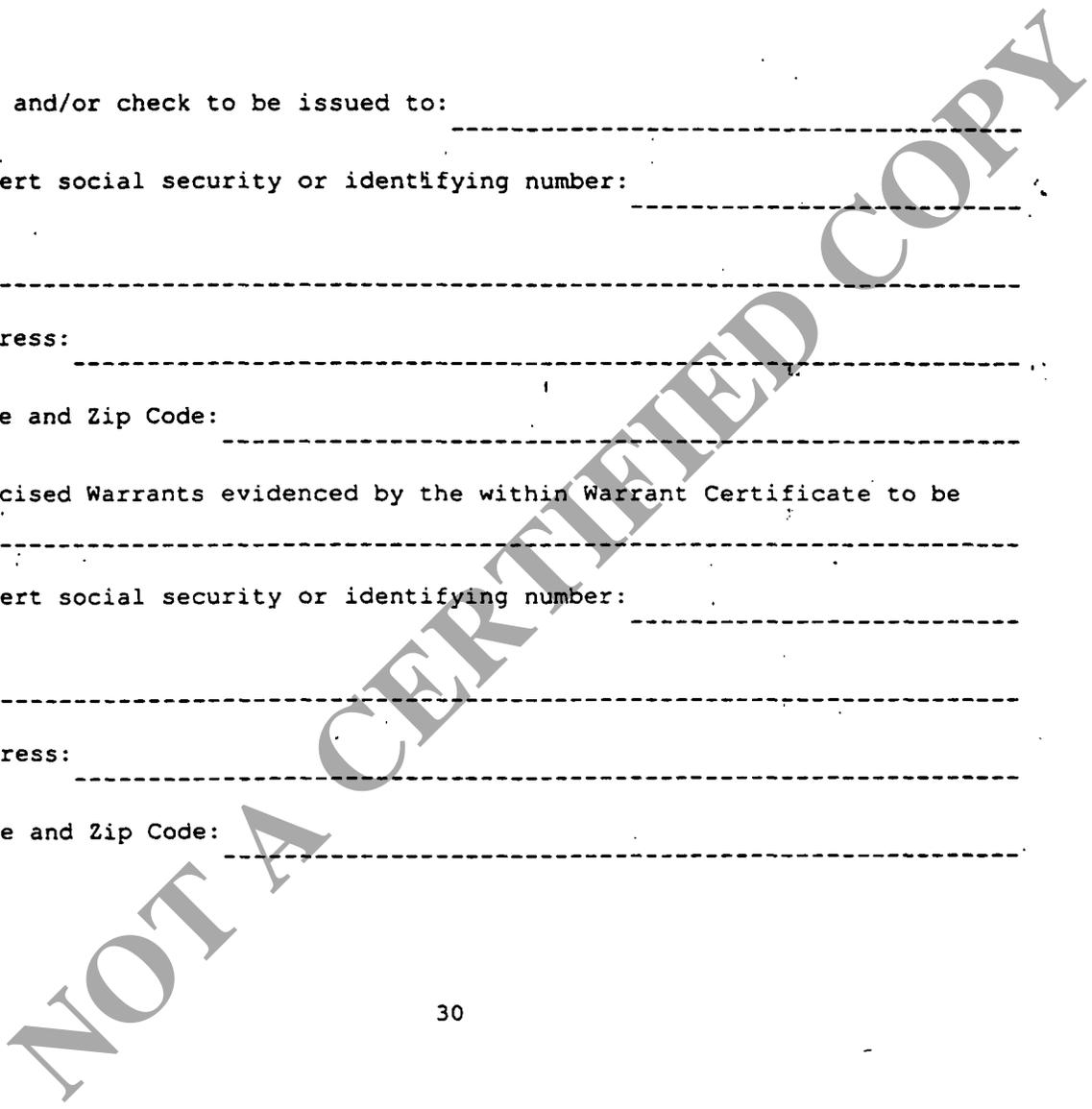
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FORM OF ASSIGNMENT

FOR VALUE RECEIVED the undersigned registered holder of the within Warrant Certificate hereby sells, assigns, and transfers unto the Assignee(s) named below (including the undersigned with respect to any Warrants constituting a part of the Warrants evidenced by the within Warrant Certificate not being assigned hereby) all of the right of the undersigned under the within Warrant Certificate, with respect to the number of whole Warrants set forth below:

Social Security
Number or Other

16div-028419



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Name of Assignees	Address	Identifying Number of Assignees	Number of Warrants
-------------------	---------	------------------------------------	--------------------

and does hereby irrevocably constitute and appoint _____ the undersigned's attorney to make such transfer on the books of the Warrant Agent maintained for that purpose, with full power of substitution in the premises.

Date: _____, 19 _____

(Signature of Owner) (2)

(Street Address)

(City) (State) (Zip Code)

(Signature Guaranteed by)

- (2) The signature must correspond with the name as written upon the face of the within Warrant Certificate in every particular, without alteration or enlargement or any change whatever, and must be guaranteed.

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EXHIBIT 5.1

[LETTERHEAD OF STEVEN R. ISKO-SUNBEAM CORPORATION]

December 6, 1999

Re: Sunbeam Corporation -
Registration Statement on Form S-4

16div-028420

Ladies and Gentlemen:

I am the Senior Vice President and General Counsel of Sunbeam Corporation, a Delaware corporation ("Sunbeam"), and am rendering this opinion in connection with the preparation of a Registration Statement on Form S-4 (the "Registration Statement") filed by Sunbeam with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"). The Registration Statement relates to (i) the issuance of shares of Common Stock, par value \$.01 per share, of Sunbeam ("Sunbeam Common Stock") in exchange for shares of Common Stock, par value \$.01 per share ("Coleman Common Stock"), of The Coleman Company, Inc., a Delaware corporation ("Coleman"), in the merger (the "Coleman Merger") of Camper Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Sunbeam ("CAC"), with and into Coleman pursuant to the Agreement and Plan of Merger, dated as of February 27, 1998, among Sunbeam, CAC and Coleman (the "Coleman Merger Agreement") and (ii) the issuance of shares of Sunbeam Common Stock upon exercise of warrants (the "Warrants") to purchase shares of Sunbeam Common Stock that were granted to the Coleman minority stockholders in settlement of litigation brought by such stockholders against Coleman, Sunbeam and several of Coleman's former officers and directors alleging, among other things, that the consideration to be paid to the minority stockholders of Coleman under the Coleman Merger Agreement was no longer fair as a result of the decline in the market price of the Sunbeam Common Stock. The shares of Sunbeam Common Stock to be issued in the Coleman Merger and upon exercise of the Warrants and registered pursuant to the Registration Statement are hereinafter collectively referred to as the "Shares."

This opinion is being rendered in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act. Capitalized terms used and not otherwise defined herein have the respective meanings ascribed to such terms in the Coleman Merger Agreement.

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In connection with this opinion, I have examined originals or copies, certified or otherwise identified to my satisfaction, of (a) the Registration Statement, as amended to date; (b) the Coleman Merger Agreement; (c) a specimen certificate representing the Shares; (d) the Restated Certificate of Incorporation and By-laws of Sunbeam, each as presently in effect; and (e) certain resolutions of the Board of Directors of Sunbeam. I have also examined originals or copies, certified or otherwise identified to my satisfaction, of such other documents, certificates and records as I have deemed necessary or appropriate as a basis for the opinions set forth herein.

In my examination, I have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to me as originals, the conformity to original documents of all documents submitted to me as certified, facsimile, conformed or photostatic copies and the authenticity of the originals of such copies. In making my examination of documents executed by parties other than Sunbeam or CAC, I have assumed that all such parties had the power, corporate or other, to enter into and perform their obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and execution and delivery by such parties of such documents and the validity and binding effect of such documents on such parties. As to any facts material to the opinions expressed herein which I did not independently establish or verify, I have relied upon the oral or written statements and representations of officers and other representatives of Sunbeam and others.

I am admitted to the bar of the State of New York, and express no opinion as to the laws of any other jurisdiction except the corporate law of the State of Delaware.

Based upon and subject to the foregoing, I am of the opinion that the

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issuance of the Shares has been duly authorized and, in the case of Shares issuable upon (A) consummation of the Coleman Merger, when (i) the Coleman Merger becomes effective and (ii) certificates representing the Shares in the form of the specimen certificates examined by me have been duly executed and delivered in exchange for shares of Coleman Common Stock as provided in the Coleman Merger Agreement, and (B) upon exercise of the Warrants, when (i) the Warrants are exercised in accordance with their terms and (ii) Sunbeam has received the exercise price payable by the Warrant holder upon exercise of the Warrants, the Shares will be validly issued, fully paid and nonassessable.

I hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement. I also hereby consent to the references to me

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contained in the Registration Statement under the caption "LEGAL MATTERS." In giving this consent, I do not thereby admit that I am included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission.

Very truly yours,

Steven R. Isko
Senior Vice President
and General Counsel

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EXHIBIT 23.1

CONSENT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

As independent certified public accountants, we hereby consent to the use of our report dated October 16, 1998, (and to all references to our Firm) included in or made part of this registration statement.

ARTHUR ANDERSEN LLP

Fort Lauderdale, Florida,
December 2, 1999

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EXHIBIT 23.2

INDEPENDENT AUDITORS' CONSENT

We consent to the use in this Amendment No. 4 to Registration Statement No. 333-52333 of Sunbeam Corporation on Form S-4 of our report dated April 16, 1999, appearing in the Prospectus, which is part of such Registration Statement, and to the reference to us under the heading "Experts" in such Prospectus.

Deloitte & Touche LLP
 Fort Lauderdale, Florida
 December 2, 1999

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EXHIBIT 23.3

Consent of Independent Auditors

We consent to the reference to our firm under the caption "Experts" in Amendment No. 4 to the Registration Statement (Form S-4 No. 333-52333) and related Prospectus of Sunbeam Corporation for the registration of 12,179,452 shares of its common stock and to the incorporation by reference therein of our report dated April 15, 1999, with respect to the consolidated financial statements of The Coleman Company, Inc. included in its Annual Report (Form 10-K/A) for the year ended December 31, 1998, filed with the Securities and Exchange Commission.

Ernst & Young LLP

Kansas City, Missouri
 December 3, 1999

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16div-028423

Downloaded By: Mirta Adams

Company: SUNBEAM CORP/FL/
Form Type: 10-Q/A SEC File #: 001-00052
Description:
File Date: 11/25/98
State of Incorporation: DE
Fiscal Year End: 12/29
CIK: 0000003662
SIC: 2390
IRS Identifying Number: 251638266

Business Address
2381 EXECUTIVE CENTER DR
SUITE 200
BOCA RATON, FL 33431
(561) 912-4100

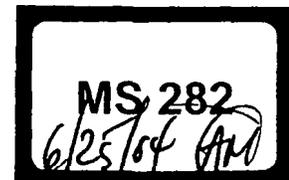
Mailing Address
2381 EXECUTIVE CENTER DR
SUITE 200
BOCA RATON, FL 33431

LIVEDGAR Information Provided By:
GSI ONLINE
A division of Global Securities Information, Inc.

Washington, DC	New York, NY	Chicago, IL
Los Angeles, CA	Miami, FL	Dallas, TX

For Additional Information About LIVEDGAR, Call
1-800-669-1154
or Visit Us on the World Wide Web at
<http://www.gsionline.com>

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q/A

Quarterly Report Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

For the period ended March 31, 1998

OR

Transition Report Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

For the transition period from _____ to _____

Commission File No. 1-52

SUNBEAM CORPORATION
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE (STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION) 25-1638266 (I.R.S. EMPLOYER IDENTIFICATION NUMBER)

1615 SOUTH CONGRESS AVENUE SUITE 200 DELRAY BEACH, FLORIDA (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES) 33445 (ZIP CODE)

(561) 243-2100 (REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

NOT APPLICABLE (FORMER NAME, FORMER ADDRESS AND FORMER FISCAL YEAR, IF CHANGED SINCE LAST REPORT)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

On November 4, 1998 there were 100,857,462 shares of the registrant's Common Stock (\$.01 par value) outstanding.

=====

022522

SUNBEAM CORPORATION AND SUBSIDIARIES

QUARTERLY REPORT
ON FORM 10-Q/A

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PART I. FINANCIAL INFORMATION

SUNBEAM CORPORATION AND SUBSIDIARIES
 CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
 (IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

	THREE MONTHS ENDED	
	MARCH 31, 1998	MARCH 30, 1997
	As restated, see Note 8	As restated, see Note 8
	(Unaudited)	(Unaudited)
Net sales	\$ 247,601	\$ 252,488
Cost of goods sold	213,828	194,237
Selling, general and administrative expense	71,139	41,195
Operating (loss) earnings	(37,366)	17,056
Interest expense	5,073	1,993
Other expense, net	3,165	77
(Loss) earnings from continuing operations before income taxes and extraordinary charge	(45,604)	14,986
Income tax (benefit) provision:		
Current	327	(1,052)
Deferred	(449)	7,011
	(122)	5,959
(Loss) earnings from continuing operations	(45,482)	9,027
Loss from discontinued operations, net of taxes	--	(13,713)
Extraordinary charge from early extinguishment of debt, net of taxes (Note 3)	(8,624)	--
Net loss	\$ (54,106)	\$ (4,686)
Earnings per share:		
(Loss) earnings from continuing operations:		
Basic	\$ (0.53)	\$ 0.11
Diluted	(0.53)	0.10
Loss from discontinued operations:		
Basic	--	(0.17)
Diluted	--	(0.15)
Extraordinary charge:		
Basic	(0.10)	--
Diluted	(0.10)	--
Net loss:		
Basic	\$ (0.63)	\$ (0.06)
Diluted	\$ (0.63)	\$ (0.05)
Weighted average common shares outstanding:		
Basic	86,390	84,187
Dilutive	86,390	86,135
Dividends declared per share of common stock	\$.01	\$.01

See Notes to Condensed Consolidated Financial Statements.

SUNBEAM CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(DOLLARS IN THOUSANDS)

	MARCH 31, 1998	DECEMBER 28, 1997
	As restated, see Note 8	As restated, see Note 8
	(Unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 193,543	\$ 52,298
Receivables, net	500,671	228,460
Inventories	617,091	304,900
Prepaid expenses, deferred income taxes and other current assets	74,855	16,584
Total current assets	1,386,160	602,242
Property, plant and equipment, net	412,096	249,524
Trademarks, trade names, goodwill and other, net	1,556,909	207,162
	\$ 3,355,165	\$ 1,058,928
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Short-term debt and current portion of long-term debt	\$ 62,139	\$ 668
Accounts payable	204,456	108,374
Other current liabilities	218,554	124,085
Total current liabilities	485,149	233,127
Long-term debt	1,637,820	194,580
Other long-term liabilities	216,240	159,142
Minority interest	55,191	--
Commitments and Contingencies (Note 10)		
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized, none outstanding)	--	--
Common stock (issued 100,824,578 and 89,984,425 shares)	1,008	900
Additional paid-in capital	966,631	479,200
Retained earnings	34,829	89,801
Accumulated other comprehensive loss	(32,878)	(33,063)
Other shareholders' equity	(8,825)	(1,714)
Total shareholders' equity	960,765	535,124
Treasury stock, at cost (4,454,394 shares in 1997)	--	(63,045)
Total shareholders' equity	960,765	472,079
	\$ 3,355,165	\$ 1,058,928

See Notes to Condensed Consolidated Financial Statements.

SUNBEAM CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)

	THREE MONTHS ENDED	
	MARCH 31, 1998	MARCH 30, 1997
	As restated, see Note 8 (Unaudited)	As restated, see Note 8
OPERATING ACTIVITIES:		
Net loss	\$ (54,106)	\$ (4,686)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	11,940	10,813
Deferred income taxes	(449)	7,011
Extraordinary charge from early extinguishment of debt	8,624	--
Non-cash compensation charges	24,290	--
Loss on sale of discontinued operations, net of taxes	--	13,713
Changes in working capital and other, net of acquisition	(125,025)	(49,449)
Net cash used in operating activities	(134,726)	(22,598)
INVESTING ACTIVITIES:		
Capital expenditures	(19,480)	(10,916)
Acquisition of Coleman, including acquisition costs, net of cash acquired	(160,612)	--
Proceeds from sale of divested operations and other assets	--	70,404
Net cash (used in) provided by investing activities ..	(180,092)	59,488
FINANCING ACTIVITIES:		
Issuance of convertible subordinated debentures, net of financing fees	729,622	--
Payments of debt obligations, including prepayment penalties	(266,672)	(26,322)
Other debt financing fees	(25,075)	--
Proceeds from exercise of stock options	19,045	8,866
Other, net	(857)	(545)
Net cash provided by (used in) financing activities ..	456,063	(18,001)
Net increase in cash and cash equivalents	141,245	18,889
Cash and cash equivalents at beginning of period	52,298	11,526
Cash and cash equivalents at end of period	\$ 193,543	\$ 30,415
	=====	=====

See Notes to Condensed Consolidated Financial Statements.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

1. OPERATIONS AND BASIS OF PRESENTATION

ORGANIZATION

Sunbeam Corporation ("Sunbeam" or the "Company") is a leading manufacturer and marketer of branded consumer products. The Sunbeam(R) and Oster(R) brands have been household names for generations, and the Company is a market share leader in many of its product categories.

The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogs, television shopping channels, Company-owned outlet stores, hardware stores, home centers, drug and grocery stores, pet supply retailers, as well as independent distributors and the military. The Company also sells its products to commercial end users such as hotels and other institutions.

As further described in Note 2, on March 30, 1998, the Company, through a wholly-owned subsidiary, acquired approximately 81% of the total number of then outstanding shares of common stock of The Coleman Company, Inc. ("Coleman"). Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically under the Coleman(R) brand name since the 1920's.

PRESENTATION OF FISCAL PERIODS

To standardize the fiscal period ends of the Company and its acquired entities, as further described in Notes 2 and 10, effective with its 1998 fiscal year, the Company has changed its fiscal year end from the Sunday nearest December 31 to a calendar year. Accordingly, quarterly reporting will follow the calendar quarters. Excluding the impact of the Coleman acquisition which occurred on March 30, 1998, the impact of this change in fiscal periods on net sales for the first quarter of 1998 was to increase sales by approximately \$4 million and the impact on operating results for the quarter was to increase earnings by approximately \$0.2 million.

BASIS OF PRESENTATION

The Condensed Consolidated Balance Sheet of the Company as of March 31, 1998 and the Condensed Consolidated Statements of Operations and Cash Flows for the three months ended March 31, 1998 and March 30, 1997 are unaudited. The unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions of Form 10-Q and Rule 10-01 of Regulation S-X. The December 28, 1997 Condensed Consolidated Balance Sheet was derived from the Company's Annual Report on Form 10-K/A for the year ended December 28, 1997. The condensed consolidated financial statements contained herein should be read in conjunction with the consolidated financial statements and related notes contained in the Company's 1997 Annual Report on Form 10-K/A. In the opinion of management, the unaudited condensed consolidated financial statements furnished herein include all adjustments (consisting of only recurring adjustments) necessary for a fair presentation of the results of operations for the interim periods presented. These interim results of operations are not necessarily indicative of results for the entire year.

RESTATEMENT

On June 30, 1998, the Company announced that the Audit Committee of the Board of Directors was initiating a review into the accuracy of prior financial statements. The Audit Committee's review has since been completed and, as a result of its findings, the Company has restated its previously issued financial statements for 1996, 1997 and the first quarter of 1998. (See Note 8).

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
(UNAUDITED)

1. OPERATIONS AND BASIS OF PRESENTATION - (CONTINUED)

BASIC AND DILUTED LOSS PER COMMON SHARE

In 1997, the Company adopted SFAS No. 128, EARNINGS PER SHARE. Basic earnings per common share calculations are determined by dividing earnings available to common shareholders by the weighted average number of shares of common stock outstanding. Diluted earnings per share are determined by dividing earnings available to common shareholders by the weighted average number of shares of common stock and dilutive common stock equivalents outstanding (all related to outstanding stock options, restricted stock and the Zero Coupon Convertible Senior Subordinated Debentures).

For the first quarter of 1998, 4,758,565 shares related to stock options, (58,065) shares related to restricted stock and 13,150,000 shares related to the conversion feature of the Zero Coupon Convertible Senior Subordinated Debentures were not included in the diluted average common shares outstanding, as the effect would have been antidilutive. For the first quarter of 1997, the dilutive effect of 2,174,154 equivalent shares and (225,915) equivalent shares related to restricted stock were used in determining the diluted average shares outstanding. SFAS No. 128 requires the use of dilutive potential common shares in the determination of diluted earnings per share if an entity reports earnings from continuing operations. Given Sunbeam's Loss from Discontinued Operations in the first quarter of 1997, the use of dilutive potential common shares in the determination of the diluted per share loss from discontinued operations and net loss per share is antidilutive. (See Note 10.)

NEW ACCOUNTING STANDARDS

In June 1997, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 131, DISCLOSURES ABOUT SEGMENTS OF AN ENTERPRISE AND RELATED INFORMATION. SFAS No. 131 establishes standards for the way that public business enterprises report information about operating segments in annual financial statements and requires that those enterprises report selected information about operating segments in interim financial reports issued to shareholders. It also establishes standards for related disclosures about products and services, geographic areas, and major customers. SFAS No. 131 is effective for financial statements for fiscal years beginning after December 15, 1997 and will be presented in the Company's Annual Report on Form 10-K for the year ending December 31, 1998. Financial statement disclosures for prior periods are required to be restated. The Company is in the process of evaluating the disclosure requirements. The adoption of SFAS No. 131 will have no impact on consolidated results of operations, financial position or cash flow.

In March 1998, the American Institute of Certified Public Accountants ("AICPA") issued Statement of Position 98-1, ACCOUNTING FOR THE COSTS OF COMPUTER SOFTWARE DEVELOPED OR OBTAINED FOR INTERNAL USE ("SOP 98-1"). SOP 98-1 requires computer software costs associated with internal use software to be expensed as incurred until certain capitalization criteria are met. The Company will adopt SOP 98-1 on January 1, 1999. Adoption of this Statement is not expected to have a material impact on the Company's consolidated financial position or results of operations, although actual charges incurred may be material due to Year 2000 issues.

See Note 10 for new accounting standards issued subsequent to March 31, 1998.

2. ACQUISITION

On March 30, 1998, the Company, through a wholly-owned subsidiary, acquired approximately 81% of the total number of then outstanding shares of common stock of Coleman from a subsidiary of MacAndrews & Forbes Holdings, Inc. ("M&F"), in exchange for 14,099,749 shares of the Company's common stock and approximately \$160 million in cash as well as the assumption of \$1,016 million in debt. The value of the common stock issued at the date of acquisition (\$524 million) was derived by using the average ending stock price as reported by the New York Stock Exchange Composite Tape for the day before and day of the public announcement of the acquisition discounted by 15% due to the restrictive nature of the securities. (See Note 10.)

SUNBEAM CORPORATION AND SUBSIDIARIES
 NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
 (UNAUDITED)

2. ACQUISITION - (CONTINUED)

The Coleman acquisition was accounted for under the purchase method of accounting; and accordingly, the results of operations of Coleman for March 30 and March 31, 1998 are included in the accompanying Condensed Consolidated Statement of Operations. The purchase price of Coleman has been allocated to individual assets acquired and liabilities assumed based on preliminary estimates of fair market value at the date of acquisition. The preliminary fair value of tangible assets acquired was approximately \$747 million (of which \$27 million was cash) and approximately \$1,331 million of liabilities were assumed. The excess of purchase price over net tangible assets acquired of \$1,270 million has been classified as goodwill and is being amortized on a straight-line basis over 40 years. The allocation of purchase price for the acquisition of Coleman will be revised when additional information concerning asset and liability valuations is obtained. Adjustments, which could be significant, will be made during the allocation period based on detailed reviews of the fair values of assets acquired and liabilities assumed and could result in a substantial change in goodwill and other intangible assets.

The Company expects to acquire the remaining equity interest in Coleman pursuant to a merger transaction in which the existing Coleman minority shareholders will receive .5677 shares of the Company's common stock and \$6.44 in cash for each share of Coleman common stock outstanding. In addition, unexercised options under Coleman's stock option plans will be cashed out at a price per share equal to the difference between \$27.50 and the exercise price of such options. The Company expects to issue approximately 6.7 million shares of common stock and expend approximately \$87 million in cash to complete the Coleman acquisition. Although there can be no assurance, it is anticipated the Coleman merger will occur in the first quarter of fiscal 1999. The acquisition of the remaining outstanding shares of Coleman will be accounted for under the purchase method of accounting on the date of consummation. Minority interest in the results from Coleman's operations for March 30 and 31, 1998, is reflected in Other Expense, net in the Condensed Consolidated Statement of Operations for the three months ended March 31, 1998. (See Note 10.)

The following unaudited pro forma financial information for the Company gives effect to the Coleman acquisition as if it had occurred at the beginning of 1998. These pro forma results have been prepared for informational purposes only and do not purport to be indicative of the results of operations which actually would have occurred had the acquisition been consummated on the date indicated, or which may result in the future. The unaudited pro forma results follow (in millions, except per share data):

	THREE MONTHS ENDED	
	MARCH 31, 1998	MARCH 30, 1997
Net sales (a)	\$ 477.3	\$ 548.0
Loss before extraordinary charge (a), (b), (c)	(64.7)	(4.8)
Basic and diluted loss per share before extraordinary items (d)	(0.65)	(0.05)

- (a) Adjusted to remove sales of \$14.8 million and loss before extraordinary charge of \$0.8 million from Coleman operations for March 30 and 31, 1998 included in Sunbeam's results.
- (b) Coleman's loss before extraordinary items has been adjusted to exclude the following one time after tax benefits and charges: (i) a \$15.8 million gain from the sale of Coleman Safety and Security Products, Inc., (ii) \$7.1 million of costs incurred by Coleman associated with the Company's acquisition of Coleman, (iii) the write off of \$2.1 million of capitalized costs associated with the installation of new software which will be abandoned as a result of the acquisition by the Company, (iv) \$1.3 million of costs to terminate a license agreement with a former affiliate of Coleman, and (v) the write off of \$1.7 million of unrealized deferred tax assets as a result of the change of control of Coleman.
- (c) In 1998 and 1997, respectively, after tax interest expense was increased \$11.5 million and \$9.8 million, and goodwill amortization, after tax, was increased \$5.5 million in each year to reflect the pro forma effect of the acquisition occurring at the beginning of the period. In addition, the minority shareholder percentage was adjusted to reflect the change in the portion of Coleman held by minority shareholders following the transaction. The minority interest in Coleman's losses from continuing operations was adjusted by \$0.6 million in 1998 and \$0.4 million in 1997 to reflect both the change in the proportion of the ownership of Coleman held by minority shareholders and the effects of the pro forma adjustments.
- (d) The shares outstanding were adjusted in each period to reflect the pro forma effect of the shares issued in the Coleman acquisition being outstanding from the beginning of the period.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
(UNAUDITED)

3. CREDIT FACILITIES, LONG-TERM DEBT AND FINANCIAL INSTRUMENTS

In order to finance the acquisitions described in Notes 2 and 10, and refinance substantially all of the indebtedness of the Company and its acquired entities, the Company consummated: (i) an offering (the "Offering") of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures") at a yield to maturity of 5% (approximately \$2,014 million principal amount at maturity) in March 1998, which resulted in approximately \$730 million of net proceeds and, (ii) entered into a revolving and term credit facility ("New Credit Facility"). (See Note 10.)

The Debentures are exchangeable for shares of the Company's common stock at an initial conversion rate of 6.575 shares for each \$1,000 principal amount at maturity of the Debentures, subject to adjustment upon occurrence of certain events. (See Note 10.)

The New Credit Facility provided for an aggregate borrowings of up to \$1.7 billion pursuant to: (i) a revolving credit facility in an aggregate principal amount of up to \$400 million, maturing March 31, 2005; (ii) an \$800 million term loan maturing on March 31, 2005, and (iii) a \$500 million term loan maturing September 30, 2006. Interest accrues at a rate selected at the Company's option of: (i) the London Interbank Offered Rate ("LIBOR") plus an agreed upon interest margin which varies depending upon the Company's leverage ratio, as defined, and other items or, (ii) the base rate of the administrative agent (generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 1/2 of 1%), plus an agreed upon interest margin which varies depending upon the Company's leverage ratio, as defined, and other items. The New Credit Facility contains certain covenants, including limitations on the ability of the Company and its subsidiaries to engage in certain transactions and the requirement to maintain certain financial covenants and ratios. (See Note 10.)

The Company selectively uses derivatives to manage interest rate and foreign exchange exposures that arise in the normal course of business. No derivatives are entered into for trading or speculative purposes. Foreign exchange option and forward contracts are used to hedge a portion of the Company's underlying exposures denominated in foreign currency. Although the market value of derivative contracts at any single point in time will vary with changes in interest and/or foreign exchange rates, the differences between the carrying value and fair value of such contracts at March 31, 1998 and March 30, 1997 were not considered to be material, either individually or in the aggregate. The Company enters into derivative contracts with counterparties that it believes to be creditworthy. The Company does not enter into any leveraged derivative transactions. At March 31, 1998, the Company held an interest rate swap agreement with a notional value of \$25.0 million to exchange floating rate interest for a fixed rate of 6.115%. (See Note 10.)

In March 1998, the Company prepaid a \$75.0 million 7.85% industrial revenue bond related to its Hattiesburg facility originally due in 2009. In connection with the early extinguishment of this debt, the Company recognized an extraordinary charge of \$8.6 million (\$0.10 per share) in the first quarter of 1998.

In December 1997, the Company entered into a receivables securitization program under which the Company has received approximately \$34.8 million from the sale of trade accounts receivable in the first quarter of 1998. Costs of the program, which primarily consist of the purchaser's financing cost of issuing commercial paper backed by the receivables, totaled \$0.6 million during the first quarter of 1998. The Company, as agent for the purchaser of the receivables, retains collection and administrative responsibilities for the purchased receivables.

SUNBEAM CORPORATION AND SUBSIDIARIES
 NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
 (UNAUDITED)

4. COMPREHENSIVE INCOME

The Company adopted SFAS No. 130, REPORTING COMPREHENSIVE INCOME, effective January 1, 1998. SFAS No. 130 establishes standards for reporting and display of comprehensive income and its components in financial statements. The components of the Company's comprehensive loss are as follows (in thousands):

	THREE MONTHS ENDED	
	MARCH 31, 1998	MARCH 30, 1997
Net loss	\$(54,106)	\$ (4,686)
Foreign currency translation adjustment, net of taxes	183	(186)
Comprehensive loss	\$(53,923)	\$ (4,872)
	=====	=====

5. SUPPLEMENTAL FINANCIAL STATEMENT DATA

Supplementary Balance Sheet data at the end of each period is as follows (in thousands):

	MARCH 31, 1998	DECEMBER 28, 1997
Receivables:		
Trade	\$ 521,755	\$ 250,699
Sundry	17,134	7,794
	538,889	258,493
Valuation allowance	(38,218)	(30,033)
	\$ 500,671	\$ 228,460
	=====	=====
Inventories:		
Finished goods	\$ 426,590	\$ 193,864
Work in process	52,728	25,679
Raw materials and supplies	137,773	85,357
	\$ 617,091	\$ 304,900
	=====	=====

(See Note 10 regarding asset valuation/impairment in the remainder of 1998.)

The Supplementary Statement of Cash Flows data is as follows (in thousands):

	THREE MONTHS ENDED	
	MARCH 31, 1998	MARCH 30, 1997
Cash paid during the period for:		
Interest	\$ 5,442	\$ 1,103
	=====	=====
Income taxes (refunds)	\$ 381	\$(11,920)
	=====	=====

SUNBEAM CORPORATION AND SUBSIDIARIES
 NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
 (UNAUDITED)

6. RESTRUCTURING AND ASSET IMPAIRMENT

At December 28, 1997, the Company, before consideration of the Coleman acquisition, had \$5.2 million in liabilities accrued related to a 1996 restructuring plan. The majority of these liabilities related to facility closures and related exit costs. In the first quarter of 1998, this liability was reduced by \$0.5 million as a result of cash expenditures.

The restated restructuring reserve details and activity as of and for the quarter ended March 30, 1997 are as follows (in millions):

	RESERVE BALANCE AT DECEMBER 29, 1996	CASH REDUCTIONS	NON-CASH REDUCTIONS	ACCRUAL BALANCE AT MARCH 30, 1997
	-----	-----	-----	-----
Severance and other employee costs	\$ 19.1	\$ 3.2	\$ --	\$ 15.9
Closure and consolidation of facilities and related exit costs	32.6	1.4	1.3	29.9
Total	51.7	\$ 4.6	\$ 1.3	\$ 45.8
	=====	=====	=====	=====

7. DISCONTINUED OPERATIONS

The Company's discontinued furniture business, which was sold in March 1997, had revenues of \$51.6 million in the first quarter of 1997 prior to the sale and nominal earnings. As a result of the sale of the Company's furniture business assets (primarily inventory, property, plant and equipment), the Company received \$69.0 million in cash, retained approximately \$50.0 million in accounts receivable and retained certain liabilities. The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the Asset Purchase Agreement and in the first quarter of 1997, after completion of the sale, the Company recorded an additional loss on disposal of \$22.5 million pre-tax.

SUNBEAM CORPORATION AND SUBSIDIARIES
 NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
 (UNAUDITED)

8. RESTATEMENT

Subsequent to the issuance of the Company's condensed consolidated financial statements for the three months ended March 31, 1998, it was determined that for the years ended December 29, 1996 and December 28, 1997 and the three months ended March 31, 1998, certain revenue was improperly recognized (principally "bill and hold" and guaranteed sales transactions), certain costs and allowances were not accrued or were improperly recorded (principally allowances for returns, cooperative advertising, and customer charge-backs as well as deductions and reserves for product liability and warranty expense) and certain costs were inappropriately included in, and subsequently charged to, restructuring, asset impairment and other costs within the Consolidated Statements of Operations. As a result, the consolidated financial statements as of December 28, 1997 and December 29, 1996 and for the years then ended were restated and a Form 10-K/A was filed with the Securities and Exchange Commission on November 12, 1998. The accompanying condensed consolidated financial statements as of March 31, 1998 and March 30, 1997 and for the three months then ended, present restated results.

A summary of the effects of the restatement for the three months ended March 31, 1998 and March 30, 1997 follows (in thousands, except per share data):

Condensed Consolidated Statements of Operations				
(Unaudited)				
THREE MONTHS ENDED				
	MARCH 31, 1998		MARCH 30, 1997	
	As Previously Reported	As Restated	As Previously Reported	As Restated
Net sales	\$ 244,296	\$ 247,601	\$ 253,450	\$ 252,488
Cost of goods sold	211,459	213,828	185,698	194,237
Selling, general and administrative expense	68,841	71,139	33,009	41,195
Operating (loss) earnings	(36,004)	(37,366)	34,743	17,056
Interest expense	5,072	5,073	1,993	1,993
Other expense, net	2,367	3,165	113	77
(Loss) earnings from continuing operations before income taxes and extraordinary charge	(43,443)	(45,604)	32,637	14,986
Income tax (benefit) provision	(4,458)	(122)	12,076	5,959
(Loss) earnings from continuing operations	(38,985)	(45,482)	20,561	9,027
Loss from discontinued operations, net of taxes	--	--	(13,713)	(13,713)
Extraordinary charge from early extinguishment of debt	(5,608)	(8,624)	--	--
Net (loss) earnings	\$ (44,593)	\$ (54,106)	\$ 6,848	\$ (4,686)
Earnings per share:				
(Loss) earnings from continuing operations:				
Basic	\$ (0.45)	\$ (0.53)	\$ 0.24	\$ 0.11
Diluted	(0.45)	(0.53)	0.24	0.10
Loss from discontinued operations:				
Basic	--	--	(0.16)	(0.17)
Diluted	--	--	(0.16)	(0.15)
Extraordinary item:				
Basic	(0.07)	(0.10)	--	--
Diluted	(0.07)	(0.10)	--	--
Net (loss) earning:				
Basic	\$ (0.52)	\$ (0.63)	\$ 0.08	\$ (0.06)
Diluted	\$ (0.52)	\$ (0.63)	\$ 0.08	\$ (0.05)

SUNBEAM CORPORATION AND SUBSIDIARIES
 NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
 (UNAUDITED)

8. RESTATEMENT - (CONTINUED)

Condensed Consolidated Balance Sheets
 (Unaudited)

	AS OF MARCH 31, 1998		AS OF MARCH 30, 1997	
	As Previously Reported	As Restated	As Previously Reported	As Restated
ASSETS				
Cash and cash equivalents	\$ 193,543	\$ 193,543	\$ 30,415	\$ 30,415
Receivables, net	562,294	500,671	296,716	289,509
Inventories	575,109	617,091	148,011	148,011
Prepaid expenses, deferred income taxes and other current assets	107,692	74,855	134,512	128,359
Total current assets	1,438,638	1,386,160	609,654	596,294
Property, plant and equipment, net	403,179	412,096	217,453	226,627
Trademarks, trade names, goodwill and other, net	1,601,605	1,556,909	226,048	226,048
Total assets	\$ 3,443,422	\$ 3,355,165	\$ 1,053,155	\$ 1,048,969
LIABILITIES AND SHAREHOLDERS' EQUITY				
Short-term debt and current portion of long-term debt	\$ 62,139	\$ 62,139	\$ 848	\$ 848
Accounts payable	205,217	204,456	100,648	98,262
Other current liabilities	179,373	218,554	158,658	145,614
Total current liabilities	446,729	485,149	260,154	244,724
Long-term debt	1,637,820	1,637,820	175,235	175,235
Other long-term liabilities	269,334	216,240	204,606	207,603
Minority interest	55,191	55,191	--	--
Shareholders' equity:				
Common stock	1,008	1,008	892	892
Additional paid-in capital	975,778	966,631	458,690	458,690
Retained earnings	95,675	34,839	41,125	49,372
Accumulated other comprehensive loss	(29,288)	(32,878)	(18,460)	(18,460)
Other shareholders' equity	(8,825)	(8,825)	(5,699)	(5,699)
Treasury stock	--	--	(63,388)	(63,388)
Total shareholders' equity	1,034,348	960,765	413,160	421,407
Total liabilities and shareholders' equity	\$ 3,443,422	\$ 3,355,165	\$ 1,053,155	\$ 1,048,969

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
(UNAUDITED)

9. NEW EMPLOYMENT AGREEMENTS

On February 20, 1998 the Company entered into new three-year employment agreements with its then Chairman and Chief Executive Officer and two other senior officers of the Company. These agreements replaced previous employment agreements entered into in July 1996 that were scheduled to expire in July 1999.

The new employment agreement for the Company's then Chairman provided for, among other items, the acceleration of vesting of 200,000 shares of restricted stock and the forfeiture of the remaining 133,333 shares of unvested restricted stock granted under the July 1996 agreement, a new equity grant of 300,000 shares of unrestricted stock, a new grant of a ten-year option to purchase 3,750,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in three equal annual installments beginning on the date of grant and the acceleration of vesting of 833,333 outstanding stock options granted under the July 1996 agreement. In addition, the new employment agreement with the then Chairman and Chief Executive Officer provided for income tax gross-ups with respect to any tax assessed on the equity grant and acceleration of vesting of restricted stock.

The new employment agreements with the two other then senior officers provided for, among other items, the grant of a total of 180,000 shares of restricted stock that vest in four equal annual installments beginning the date of grant, the acceleration of vesting of 44,000 shares of restricted stock and the forfeiture of the remaining 29,332 shares of unvested restricted stock granted under the July 1996 agreements, new grants of ten-year options to purchase a total of 1,875,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in four equal annual installments beginning on the date of grant and the acceleration of vesting of 383,334 outstanding stock options granted under the July 1996 agreements. In addition, the new employment agreements provided for income tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock.

Compensation expense attributed to the equity grant, the acceleration of vesting of restricted stock and the related income tax gross-ups was recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups was amortized to expense beginning in the first quarter of 1998 with amortization to continue over the period in which the restrictions lapse. Total compensation expense recognized in the first quarter of 1998 related to these items was approximately \$31 million. (See Note 10.)

10. SUBSEQUENT EVENTS

SENIOR MANAGEMENT CHANGES

On June 15, 1998, the Company's Board of Directors announced the removal of the then Chairman and Chief Executive Officer and subsequently announced the removal or resignation of other senior officers, including the Company's then Chief Financial Officer. In connection with the removal or resignation of the senior officers and the termination of their restricted stock grants, the unamortized portion of the deferred compensation expense attributable to the restricted stock grants will be reversed and compensation expense of approximately \$0.9 million recognized in the first quarter of 1998 for unvested restricted stock grants will be reversed into income in the second and third quarters of 1998. Other costs related to the resignations and terminations will be recognized, as appropriate, in 1998. The Company and certain of its former officers are in disagreement as to the Company's obligations to these individuals under prior employment agreements and arising from their terminations. The Board of Directors has installed a new Chief Executive Officer and senior management team.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
(UNAUDITED)

10. SUBSEQUENT EVENTS - (CONTINUED)

COLEMAN ACQUISITION

On August 12, 1998, the Company announced that, following investigation and negotiation conducted by a Special Committee of the Board consisting of four outside directors not affiliated with M&F, the Company had entered into a settlement agreement with a subsidiary of M&F pursuant to which the Company was released from certain threatened claims of M&F and its affiliates arising from the Coleman acquisition and M&F agreed to provide certain management personnel and assistance to the Company in exchange for the issuance to the M&F subsidiary of five-year warrants to purchase up to 23 million shares of the Company's common stock at an exercise price of \$7.00 per share, subject to anti-dilution provisions. The financial statement impact of the settlement, which will be material in amount, will be recorded in the third quarter of 1998. (See Litigation, below.)

OTHER ACQUISITIONS

On April 6, 1998, the Company completed the cash acquisitions of First Alert, Inc. ("First Alert"), a leading manufacturer of smoke and carbon monoxide detectors, and Signature Brands USA, Inc. ("Signature Brands"), a leading manufacturer of a comprehensive line of consumer and professional products. The First Alert and the Signature Brands acquisitions were valued at approximately \$178 million and \$253 million, respectively, including the assumption of debt. These acquisitions will be accounted for by the purchase method of accounting and the results of operations of the acquired entities will be included in the Company's Consolidated Statement of Operations from the respective acquisition dates.

DEBENTURES, NEW CREDIT FACILITY AND FINANCIAL INSTRUMENTS

The Company was required to file a registration statement with the Securities and Exchange Commission to register the Debentures by June 23, 1998, which registration statement has not been filed. From June 23, 1998 until the day on which the registration statement is filed and declared effective, the Company is required to pay to the Debenture holders cash liquidated damages accruing, for each day during such period, at a rate per annum equal to 0.25% during the first 90 days and 0.50% thereafter multiplied by the total of the issue price of the Debentures plus the original issue discount thereon on such day. The Company made its first payment of approximately \$525,000 to the Debenture holders on September 25, 1998.

At June 30, 1998, the Company was not in compliance with the financial covenants and ratios required under the New Credit Facility. The Company and its lenders entered into an agreement dated June 30, 1998, which provided that compliance with the covenants would be waived through December 31, 1998. Borrowings under the New Credit Facility are secured by certain of the Company's assets, including its stock interest in Coleman and certain other subsidiaries and certain of the Company's tangible and intangible personal property. Pursuant to an amendment dated October 19, 1998, the Company is not required to comply with the original financial covenants and ratios under the New Credit Facility until April 10, 1999, but will be required to comply with an earnings before interest, taxes, depreciation and amortization covenant, the amounts of which are to be determined, beginning February 1999. Concurrent with each of these amendments, interest margin was increased. The margin continues to increase monthly through March 1999 to a maximum of 400 basis points over LIBOR. At September 30, 1998, following the scheduled repayment of a portion of the term loan, the New Credit Facility was reduced to \$1,698 million in total, of which approximately \$1,453 million was outstanding and approximately \$245 million was available. In addition, the Company's cash balance available for debt repayment at September 30, 1998 was approximately \$43 million.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
(UNAUDITED)

10. SUBSEQUENT EVENTS - (CONTINUED)

The Company is working closely with its bank lenders and hopes to reach agreement with the bank lenders on a further amendment to the New Credit Facility containing revised financial covenants which the bank lenders and the Company find mutually acceptable. There can be no assurance that such an amendment, or a further waiver of the existing financial covenants, will be entered into with the bank lenders by April 10, 1999. The failure to obtain such an amendment or further waiver would result in violation of the existing covenants, which would permit the bank lenders to accelerate the maturity of all outstanding borrowing under the New Credit Facility.

The Company selectively uses derivatives to manage interest rate and foreign exchange exposures that arise in the normal course of business. In the second quarter of 1998, the Company entered into two swap transactions in a notional amount of \$150 million each, in connection with the New Credit Facility. The swap agreements are contracts to exchange floating rate for fixed interest payments periodically over the life of the agreements without the exchange of the underlying notional principal amounts. The swaps expire in June 2001 and 2003 and have strike rates of 5.75% and 5.58%, respectively. The notional amounts of the agreements do not represent the amount of exposure to credit loss.

As a result of repayment of certain indebtedness assumed in the Coleman acquisition, the Company will recognize an extraordinary charge of approximately \$104 million in the second quarter of 1998.

SEC INVESTIGATION

By letter dated June 17, 1998, the staff of the Division of Enforcement of the SEC advised the Company that it was conducting an informal inquiry into the Company's accounting policies and procedures and requested that the Company produce certain documents. On July 2, 1998, the SEC issued a Formal Order of Private Investigation, designating officers to take testimony and pursuant to which a subpoena duces tecum was served on the Company requiring the production of certain documents. On November 4, 1998, another SEC subpoena duces tecum requiring the production of further documents was received by the Company. The Company has provided numerous documents to the SEC staff and continues to cooperate fully with the SEC staff. The Company cannot predict the term of such investigation or its potential outcome.

LITIGATION

On April 23, 1998, two class action lawsuits were filed on behalf of purchasers of the Company's common stock in the U. S. District Court for the Southern District of Florida against the Company and certain of its present and former officers and directors alleging violations of the federal securities laws as discussed below (the "Consolidated Federal Actions"). Since that date, approximately fifteen similar class actions have been filed in the same Court. One of the lawsuits also names as defendant Arthur Andersen LLP, the Company's independent accountants for the period covered by the lawsuit.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
(UNAUDITED)

10. SUBSEQUENT EVENTS - (CONTINUED)

The complaints in the Consolidated Federal Actions allege to varying degrees that the defendants (i) failed to disclose that the Company pre-sold approximately \$50 million of products pursuant to its "early buy" marketing program in an effort to boost its 1997 sales and net income figures and (ii) made material misrepresentations regarding the Company's business operations, future prospects and anticipated earnings per share, in an effort to artificially inflate the price of the Company stock long enough for the Company to complete a \$2 billion debt financing (supported with stock incentives) necessary to complete the acquisitions of Coleman, Signature Brands and First Alert, and for the individual defendants to enter into lucrative long-term employment agreements with the Company. Each complaint alleges two counts of securities fraud; one count against all defendants and one count against the individual defendants.

On June 16, 1998, the Court entered an Order consolidating all such filed and all such subsequently filed class actions and providing time periods for the filing of a Consolidated Amended Complaint and defendants' response thereto. On June 22, 1998, two groups of plaintiffs made motions to be appointed lead plaintiffs and to have their selection of counsel approved as lead counsel. On July 20, 1998, the Court entered an Order appointing lead plaintiffs and lead counsel (the "Smith Plaintiffs' Group"). This Order also stated that it "shall apply to all subsequently filed actions which are consolidated herewith". On August 28, 1998, plaintiffs in one of the subsequently filed actions filed an objection to having their action consolidated pursuant to the June 16, 1998 Order, arguing that the class period in their action differs from the class periods in the originally filed consolidated actions. On September 29, 1998, the Smith Plaintiffs' Group filed its memorandum in opposition to this objection.

On April 7, 1998, a purported derivative action was filed in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida against the Company and certain of its present and former officers and directors. The action alleged that the individual defendants breached their fiduciary duties and wasted corporate assets when the Company granted stock options to three of its officers and directors on or about February 2, 1998 at an exercise price of \$36.85. On June 25, 1998, all defendants filed a motion to dismiss the complaint for failure to make a presuit demand on the board of directors of the Company. On October 22, 1998, the plaintiff amended the complaint against all but one of the defendants named in the original complaint. The amended complaint no longer challenges the stock options, but instead alleges that the individual defendants breached their fiduciary duties by failing to have in place adequate accounting and sales controls, which failure caused the inaccurate reporting of financial information to the public, thereby causing an artificial inflation of the Company's financial statements and stock price.

On June 25, 1998, four purported class actions were filed in the Court of Chancery of the State of Delaware in New Castle County by minority shareholders of Coleman against the Company and certain of the Company's present and former officers and directors. An additional class action was filed on August 10, 1998, against the same parties. All of the plaintiffs are represented by the same Delaware counsel and have agreed to consolidate the class actions. These actions allege, in essence, that the existing exchange ratio for the proposed merger between the Company and Coleman is no longer fair to Coleman shareholders as a result of the recent decline in the market value of the Company stock. On October 21, 1998, the Company announced that it had entered into a Memorandum of Understanding to settle, subject to court approval, certain class actions brought by shareholders of Coleman challenging the proposed Coleman Merger. Under the terms of the proposed settlement, the Company will issue to the Coleman public shareholders five-year warrants to purchase 4.98 million shares of the Company's common stock at \$7.00 per share. These warrants will generally have the same terms as the warrants previously issued to a subsidiary of M&F and will be issued when the Coleman Merger is consummated, which is now expected to be in the first quarter of 1999. There can be no assurance that the Court will approve the settlement as proposed.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
(UNAUDITED)

10. SUBSEQUENT EVENTS - (CONTINUED)

During the months of August and October 1998, purported class and derivative actions were filed in the Court of Chancery of the State of Delaware in New Castle County and in the U. S. District Court for the Southern District of Florida by shareholders of the Company against the Company, M&F and certain of the Company's present and former directors. These complaints allege that the defendants breached their fiduciary duties when the Company entered into a settlement agreement with M&F whereby M&F released the Company from any claims it may have had arising out of the Company's acquisition of its interest in Coleman and agreed to provide management support to the Company (the "Settlement Agreement"). Pursuant to the Settlement Agreement, M&F was granted five-year warrants to purchase an additional 23 million shares of the Company's common stock at an exercise price of \$7.00 per share. These complaints also allege that the rights of the public shareholders have been compromised, as the settlement would normally require shareholder approval under the rules and regulations of the New York Stock Exchange ("NYSE"). The Audit Committee of the Company's board determined that obtaining such shareholder approval would have seriously jeopardized the financial viability of the Company which is an allowable exception to the NYSE shareholder approval requirements.

On September 16, 1998, an action was filed in the 56th Judicial District Court of Galveston County, Texas alleging various claims in violation of the Texas Securities Act and Texas Business and Commercial Code as well as common law fraud as a result of the Company's alleged misstatements and omissions regarding the Company's financial condition and prospects during a period beginning May 1, 1998 and ending June 16, 1998, in which the plaintiffs engaged in transactions in the Company's stock. The Company is the only named defendant in this action. The complaint requests recovery of compensatory damages, punitive damages and expenses in an unspecified amount. This action has been removed to the U.S. District Court for the Southern District of Texas and the Company has filed a motion to transfer this case to the Southern District of Florida, the forum for the Consolidated Federal Actions. Plaintiffs have moved to remand the case to Texas state court.

On October 30, 1998, a class action lawsuit was filed on behalf of certain purchasers of the Company's Debentures in the U.S. District Court of the Southern District of Florida against the Company and its prior Chief Executive Officer and Chief Financial Officer, alleging violations of the federal securities laws and common law fraud. The complaint alleges that the Company's offering memorandum used for the marketing of the Debentures contained false and misleading information regarding the Company's financial position and that the defendants engaged in a plan to inflate the Company's earnings for the purpose of defrauding the plaintiffs and others. The Company is seeking to consolidate this lawsuit with the other Consolidated Federal Actions.

The Company intends to vigorously defend each of the foregoing lawsuits, but cannot predict the outcome and is not currently able to evaluate the likelihood of the Company's success in each case or the range of potential loss. However, if the foregoing actions were determined adversely to the Company, such judgments would likely have a material adverse effect on the Company's financial position, results of operations and cash flows.

On July 2, 1998, the American Insurance Company ("American") filed suit against the Company in the U.S. District Court for the Southern District of New York requesting a declaratory judgment of the court that the directors' and officers' liability insurance policy for excess coverage issued by American was invalid and/or had been properly cancelled by American. The Company has moved to transfer such action to the federal district court in which the Consolidated Federal Actions are currently pending; American is opposing such motion. On October 20, 1998, an action was filed by Federal Insurance Company in the U.S. District Court for the Middle District of Florida requesting the same relief as that requested by American in the previously filed action as to additional coverage levels under the Company's directors' and officers' liability insurance policy. The Company intends to pursue recovery from all of its insurers if damages are awarded against the Company or its indemnified officers and/or directors under any of the foregoing actions. The Company's failure to obtain such insurance recoveries following an adverse judgement against the Company in any of the foregoing actions could have a material adverse impact on the Company's financial position, results of operations and cash flow.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
(UNAUDITED)

10. SUBSEQUENT EVENTS - (CONTINUED)

The Company and its subsidiaries are also involved in various lawsuits arising from time to time which the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these routine matters, and of certain matters relating to prior operations of the Predecessor, individually or in the aggregate, will not have a material adverse effect upon the financial position or results of operations of the Company.

ASSET IMPAIRMENT, INVENTORY RESERVES AND RELATED LIABILITIES

In 1998, as a result of decisions to outsource a substantial number of products previously made by the Company, certain facilities and equipment will either no longer be used or will be used in a significantly different manner. Accordingly, certain assets recorded at March 31, 1998 will be written down in future periods to reflect the fair market value of items held for disposition or to reflect impairment for items where the future utility is altered by the sourcing change. Personnel at the Mexico City manufacturing plant were notified in the second quarter of 1998 that the plant is scheduled for closure at year-end 1998. Accordingly, a liability related to plant closure will be recorded in the second quarter. As certain inventories built in 1997 and the first quarter of 1998 in anticipation of 1998 sales volumes exceed the actual requirements, it will be necessary to dispose of some portions of excess inventories at amounts less than cost. The Company is also in the process of assessing the expected future performance of its business operations and the impact of this assessment on the valuation of assets in the business. This assessment is expected to be completed in the fourth quarter.

NEW ACCOUNTING STANDARDS

In April 1998, the AICPA issued Statement of Position 98-5, REPORTING ON THE COSTS OF START-UP ACTIVITIES ("SOP 98-5"). SOP 98-5 requires all costs associated with pre-opening, pre-operating and organization activities to be expensed as incurred. The Company will adopt SOP 98-5 beginning January 1, 1999. Adoption of the Statement is not expected to have a material impact on the Company's consolidated financial position or results of operations.

In June 1998, the FASB issued SFAS No. 133, ACCOUNTING FOR DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES for fiscal years beginning after June 15, 1999. SFAS No. 133 requires the recognition of all derivatives in the Consolidated Balance Sheet as either assets or liabilities measured at fair value. The Company will adopt SFAS No. 133 effective for the 2000 calendar year end. The Company has not yet determined the impact SFAS No. 133 will have on its financial position or results of operations when such statement is adopted.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

On June 30, 1998, the Company announced that the Audit Committee of the Board of Directors was initiating a review into the accuracy of prior financial statements. The Audit Committee's review has since been completed and, as a result of its findings, the Company has restated its previously issued consolidated financial statements for 1996 and 1997 and the first quarters of 1998 and 1997 (see Note 8 to the accompanying condensed consolidated financial statements and the Company's Annual Report on Form 10-K/A for the year ended December 28, 1997). The following discussion should be read in conjunction with the accompanying condensed consolidated financial statements as of and for the three months ended March 31, 1998 and March 30, 1997.

OVERVIEW

On March 30, 1998, the Company, through a wholly-owned subsidiary, acquired approximately 81% of the total number of then outstanding shares of common stock of The Coleman Company, Inc. ("Coleman"), in exchange for 14,099,749 shares of the Company's common stock and approximately \$160 million in cash as well as the assumption of \$1,016 million in debt. The Company expects to acquire the remaining equity interest in Coleman pursuant to a merger transaction in which the existing Coleman minority shareholders will receive approximately 6.7 million shares of common stock and approximately \$87 million in cash. Although there can be no assurance, it is anticipated the Coleman merger will occur in the first quarter of fiscal 1999. (See Note 10 to the condensed consolidated financial statements and Part II, Item 1. "Legal Proceedings"). Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically under the Coleman /registered trademark/ brand name since the 1920's.

The Coleman acquisition was recorded under the purchase method of accounting; and accordingly, the results of operations of Coleman for March 30 and 31, 1998 are included in the accompanying Condensed Consolidated Statement of Operations. The purchase price of Coleman has been allocated to individual assets acquired and liabilities assumed based on preliminary estimates of fair market value at the date of acquisition. The allocation of purchase price for the acquisition of Coleman will be revised when additional information concerning asset and liability valuations is obtained. Adjustments, which could be significant, will be made during the allocation period based on detailed reviews of the fair values of assets acquired and liabilities assumed and could result in a substantial change in goodwill and other intangible assets.

To standardize the fiscal period ends of the Company, Coleman and two companies acquired after March 31, 1998, effective with its 1998 fiscal year, the Company has changed its fiscal year end from the Sunday nearest December 31 to a calendar year. (See Notes 1 and 10 to the condensed consolidated financial statements.)

THREE MONTHS ENDED MARCH 31, 1998 COMPARED TO THREE MONTHS ENDED MARCH 30, 1997

Net sales is comprised of gross sales less provisions for estimated customer returns, discounts, promotional allowances, cooperative advertising allowances and costs incurred by the Company to ship product to customers. Net sales for the three months ended March 31, 1998 were \$247.6 million, a decrease of \$4.9 million or 2% versus the three months ended March 30, 1997. After excluding: (i) \$14.8 million of Coleman's sales for March 30 and 31, 1998, (ii) approximately \$4 million in 1998 sales resulting from the change in year end described above, (iii) \$4.2 million from 1997 sales relating to divested product lines which are not classified as discontinued operations (time and temperature products and Counselor /registered trademark/ and Borg /registered trademark/ branded scales), and (iv) \$13.7 million from 1997 sales of discontinued inventory which resulted primarily from the reduction of SKU's as part of the 1996 restructuring plan and for which the inventory carrying value was substantially equivalent to the sales value, net sales on an adjusted basis ("Adjusted Sales") reflected a 2% decrease from the first quarter of 1997.

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Overall, product sales were adversely impacted by price discounting and approximately \$13 million of higher provisions for estimated returns, costs to ship products to customers, rebates and other customer allowances.

Domestic Adjusted Sales declined approximately \$10 million from the first quarter of 1997. Outdoor Cooking category sales accounted for the majority of this decline. During 1997, the Company lost a significant portion of its Outdoor Cooking products distribution, including the majority of its grill accessory products distribution. As compared with the first quarter of 1997, the Outdoor Cooking products sales decline was also attributed to a lower than anticipated retail sell-through during the early stages of the 1998 retail selling season. Based on the sales levels achieved in the first quarter of 1998, distribution losses and retail inventory levels for Outdoor Cooking products, and a significant sales decline experienced subsequent to the first quarter as compared with the same period in the prior year, sales for the remainder of 1998 will be significantly lower as compared to the prior year. Adjusted Sales for Appliance category products increased approximately \$7 million but were offset by declines in other product categories, primarily Away From Home products.

International sales, which represented 26% of Adjusted Sales in the first quarter of 1998, grew approximately 16% over the first quarter of 1997's Adjusted Sales. This sales growth was attributed to improved distribution, new product sales and increased retail inventory levels in Latin America, including Mexico and Venezuela, offset by declines in sales of Outdoor Cooking products in Europe and Canada.

Excluding \$4.1 million of gross margin generated from the inclusion of the Coleman operations for two days in the first quarter of 1998 and approximately \$0.6 million in gross margin from the change in the fiscal period, gross margin declined to \$29.1 million, or 12.7% of Adjusted Sales in 1998 versus \$58.3 million, or 24.8% of Adjusted Sales for the same period a year ago. The margin erosion was due to lower price realization and higher costs of customer allowances, rebates and similar incentives in 1998, coupled with a higher product return reserve and an adverse product sales mix in 1998. The adverse product sales mix was due in part to the loss of a majority of the grill accessory products distribution. Accessories generate significantly better margins than the average margins on sales of grills. During the first quarter of each year, grill and grill accessory sales are traditionally a higher portion of overall sales in the period than during other quarters of the year.

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Due to the level of Outdoor Cooking products sales in the first quarter and the levels of retail inventories for these products, the Company began the season-end ramp down of production at the Neosho Outdoor Cooking products facility earlier than previously planned. As a result, operating results for the 1998 grill season will be adversely impacted due to unabsorbed fixed factory overhead during the second and third quarters and higher inventory carrying costs.

Excluding the effect of: (i) \$3.7 million of selling, general and administrative ("SG&A") charges from Coleman, (ii) approximately \$0.8 million of SG&A expenses in 1998 from the change in the fiscal period, (iii) a \$3.0 million benefit in the first quarter of 1998 and a \$0.5 million benefit in the first quarter of 1997 from the reversal of reserves no longer required, (iv) \$31.2 million of charges recorded in 1998 related to compensation for former executives, and (v) \$4.1 million of restructuring related charges recorded in 1997, SG&A expenses were 2% higher in 1998 than 1997. Higher distribution and warehousing costs due to increased levels of inventory were primarily responsible for the increase in costs between years.

Operating results for the first quarters of 1998 and 1997, on a comparable basis as described above, were a loss of \$9.4 million in 1998 and a profit of \$20.7 million in 1997. On the same basis, operating margins as a percent of Adjusted Sales decreased to a loss of 4.1% from a profit of 8.8% in the prior year. This change resulted from the factors discussed above.

Interest expense increased from \$2.0 million in the first quarter of 1997 to \$5.1 million in the first quarter of 1998 primarily related to higher borrowing levels in 1998 for the acquisitions and increased working capital. (See Note 3 to the condensed consolidated financial statements.)

Other expense, net of \$3.2 million in 1998 and \$0.1 million in 1997 primarily represents foreign exchange losses. Losses in both years arose from Sunbeam's operations in Mexico. In addition, the 1998 losses were impacted by Sunbeam's operations in Venezuela and Coleman's operations in Japan.

The effective income tax rate was 0.3% in the first quarter of 1998, as compared to 39.8% in the first quarter of 1997. The 1998 rate is lower than the statutory federal rate principally as a result of a valuation allowance for deferred tax assets provided in 1998. The 1997 rate was higher than the federal statutory income tax rate primarily due to state and local taxes plus the effect of foreign earnings taxed at other rates.

The Company's loss per share from continuing operations in the first quarter of 1998, excluding: (i) Coleman's results for March 30 and 31, 1998, (ii) the effect of the change in fiscal periods, (iii) the reversals of reserves no longer required in each year's first quarter, (iv) the restructuring related charges in 1997, and (v) the 1998 charge related to management compensation was a loss of \$0.20 per share versus earnings per share from continuing operations in the first quarter of 1997 of \$0.13 per share. Due to increased inventory positions at certain customers from sales in 1997 and the first quarter of 1998, as well as increased inventory positions at the Company, sales and operating income will be materially affected during the remainder of 1998. In addition, 1998 results will be impacted materially by charges related to, among other items, a change in management, changes in business operations resulting in part from acquisitions in 1998, interest costs associated with higher debt levels, costs associated with litigation and asset impairment costs, as well as costs related to Year 2000 issues. (See "Liquidity and Capital Resources", below, and Note 10 to the condensed consolidated financial statements.)

In March 1998, the Company prepaid a \$75.0 million 7.85% industrial revenue bond related to its Hattiesburg facility originally due in 2009. In connection with the early extinguishment of this debt, the Company recognized an extraordinary charge of \$8.6 million (\$0.10 per share) in the first quarter of 1998.

The Company's discontinued furniture business, which was sold in March

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1997, had revenues of \$51.6 million in the first quarter of 1997 prior to the sale and nominal earnings. As a result of the sale of the Company's furniture business assets (primarily inventory, property, plant and equipment), the Company received \$69.0 million in cash, retained approximately \$50.0 million in accounts receivable and retained certain liabilities. The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the Asset Purchase Agreement and in the first quarter of 1997, after completion of the sale, the Company recorded an additional loss on disposal of \$22.5 million pre-tax.

FOREIGN OPERATIONS

Approximately 90% of the Company's business is conducted in U.S. dollars (including both domestic sales, U.S. dollar denominated export sales, primarily to certain Latin American markets, Asian sales and the majority of European sales). The Company's exposure to market risk from changes in foreign currency and interest rates is generally insignificant. The Company's non-U.S. dollar denominated sales are made principally by subsidiaries in Mexico, Venezuela and Canada. Venezuela is considered a hyperinflationary economy for accounting purposes for 1998 and 1997 and Mexico reverted to a hyperinflationary status for accounting purposes in 1997; therefore, translation adjustments related to Venezuelan and Mexican net monetary assets are included as a component of net earnings. Mexico is not expected to be hyperinflationary at some point in 1998.

While Sunbeam's revenues generated in Asia have traditionally not been significant, economic instability in this region is expected to have a negative effect on Coleman's earnings. It is anticipated that sales in and exports to this region will continue to decline so long as the economic environment remains unsettled. It is not anticipated that this impact will be materially adverse to the Company's results of operations taken as a whole.

On a limited basis, the Company selectively uses derivatives (foreign exchange option and forward contracts) to manage foreign exchange exposures that arise in the normal course of business. No derivative contracts are entered into for trading or speculative purposes. The use of derivatives did not have a material impact on the Company's financial results in 1998 and 1997. (See Note 3 to the condensed consolidated financial statements.)

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SEASONALITY

On a consolidated basis, the Company's sales have not traditionally exhibited substantial seasonality; however, sales have been strongest during the fourth quarter of the calendar year. Additionally, sales of Outdoor Cooking products are strongest in the first half of the year, while sales of Appliances and Personal Care and Comfort products are strongest in the second half of the year. Furthermore, sales of a number of the Company's traditional products, including warming blankets, vaporizers, humidifiers and grills may be impacted by unseasonable weather conditions. After considering the seasonality of the acquired entities, the Company's consolidated sales are not expected to exhibit substantial seasonality; however, sales are expected to be strongest during the second quarter of the calendar year. Additionally, sales of many products sold by Coleman may be impacted by unseasonable weather conditions.

LIQUIDITY AND CAPITAL RESOURCES

In order to finance the acquisition of Coleman in the first quarter of 1998 and the anticipated acquisitions of First Alert, Inc. ("First Alert") and Signature Brands USA, Inc. ("Signature Brands") and to refinance substantially all of the indebtedness of the Company and the acquired entities, the Company consummated: (i) an offering (the "Offering") of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures") at a yield to maturity of 5% (approximately \$2,014 million principal amount at maturity) in March 1998, which resulted in approximately \$730 million of net proceeds and, (ii) entered into a revolving and term credit facility ("New Credit Facility"). (See Note 10.)

The New Credit Facility provided for an aggregate borrowings of up to \$1.7 billion pursuant to: (i) a revolving credit facility in an aggregate principal amount of up to \$400 million, maturing March 31, 2005; (ii) an \$800 million term loan maturing on March 31, 2005, and (iii) a \$500 million term loan maturing September 30, 2006. Interest accrues at a rate selected at the Company's option of: (i) the London Interbank Offered Rate ("LIBOR") plus an agreed upon interest margin which varies depending upon the Company's leverage ratio, as defined, and other items or, (ii) the base rate of the administrative agent (generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 1/2 of 1%), plus an agreed upon interest margin which varies depending upon the Company's leverage ratio, as defined, and other items. (See Notes 3 and 10 to the condensed consolidated financial statements.)

As of March 31, 1998, the Company had cash and cash equivalents of \$193.5 million, working capital excluding cash and cash equivalents of \$707.5 million and total debt of \$1.7 billion. Cash used in operating activities during the first quarter of 1998 was \$134.7 million compared to \$22.6 million in the first quarter of 1997. This increase is primarily attributable to lower earnings before non-cash charges and an increased investment in working capital. The majority of the increase in working capital is a result of higher inventory and receivables levels in 1998. Inventories increased \$312.2 million from December 28, 1997, of which \$246.3 million related to Coleman and \$65.9 million related to Sunbeam's household and grill products. Receivables increased \$272.2 million from December 28, 1997, with \$215.1 million due to the Coleman acquisition and \$57.1 million from Sunbeam's historical operating units. Extended dating terms contributed to the increase in Sunbeam's receivables. Cash used in operating activities for the 1998 first quarter reflects proceeds of \$34.8 million from the Company's revolving trade accounts receivable securitization program entered into in December 1997. The Company expects to continue to use the securitization program to finance a portion of its accounts receivable. The Company anticipates that cash used in operating activities will increase in the second and third quarters of 1998, principally from losses incurred in operations and increases in inventory. As certain inventories built in 1997 and the first quarter of 1998 in anticipation of 1998 sales volumes exceed the actual requirements, it will be necessary to dispose of some portions of excess inventories at amounts less than cost.

Cash used in investing activities in the first quarter of 1998 reflects \$160.6 million for the acquisition of approximately 81% of Coleman. In the first quarter of 1997, cash provided by investing activities reflected \$70.4 million

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in proceeds from the sales of divested operations. Capital spending totaled \$19.5 million in 1998 and was primarily for capacity expansion initiatives primarily at the Neosho grill manufacturing facility, and equipment and tooling for new products. Capital spending in 1997 was \$10.9 million and was primarily attributable to manufacturing capacity expansion and equipment to manufacture new products. The new product capital spending in 1998 principally related to the Appliance category and included costs related to water and air filtration products, blenders, standmixers and irons. The Company anticipates 1998 capital spending to be approximately 5% of sales, primarily related to new product introductions, capacity additions and certain facility rationalization initiatives.

Cash provided by financing activities totaled \$456.1 million in the first quarter of 1998 and reflects net proceeds from the Debentures of \$729.6 million, the cancellation and repayment of all outstanding balances under the Company's \$250 million September 1996 revolving credit facility, the repayment of certain Coleman debt and the early extinguishment of the \$75.0 million Hattiesburg bond. In addition, cash provided by financing activities is net of \$25.1 million of financing fees related to the Company's \$1.7 billion New Credit Facility and \$19.0 million of proceeds from the exercise of stock options. (See Note 3 to the condensed consolidated financial statements.)

In April 1998, the Company drew from the term loans under the New Credit Facility to fund the acquisitions of Signature Brands and First Alert as further described in Note 10 to the condensed consolidated financial statements and to refinance certain debt of the acquired companies. The Company drew an additional \$550 million of term loans and \$50 million of revolving loans in May 1998 to finance the prepayment of certain debt assumed in connection with the Coleman acquisition. In connection with these debt refinancings, the Company expects to record an extraordinary charge of approximately \$104 million in the second quarter of 1998.

At June 30, 1998, the Company was not in compliance with the covenants and ratios under the New Credit Facility. The Company and its lenders entered into an agreement dated June 30, 1998, which provided that compliance with the covenants would be waived through December 31, 1998. Subsequently, pursuant to an amendment dated October 19, 1998, the Company is not required to comply with the original financial covenants and ratios under the New Credit Facility until April 10, 1999, but will be required to comply with an earnings before interest, taxes, depreciation and amortization covenant, the amounts of which are to be determined, beginning February 1999. At September 30, 1998, following the scheduled repayment of a portion of the term loan, the New Credit Facility was reduced to \$1,698 million in total, of which approximately \$1,453 million was outstanding and approximately \$245 million was available. In addition, the Company's cash balance available for debt repayment at September 30, 1998 was approximately \$43 million.

The Company is working closely with its bank lenders and hopes to reach agreement with the bank lenders on a further amendment to the New Credit Facility containing revised financial covenants which the bank lenders and the Company find mutually acceptable. There can be no assurance that such an amendment, or a further waiver of the existing financial covenants, will be entered into with the bank lenders by April 10, 1999. The failure to obtain such an amendment or further waiver would result in violation of the existing covenants, which would permit the bank lenders to accelerate the maturity of all outstanding borrowing under the New Credit Facility.

The Company expects to acquire the remaining equity interest in Coleman pursuant to a merger transaction in which the existing Coleman minority shareholders will receive approximately 6.7 million shares of common stock and approximately \$87 million in cash. In addition, as a result of litigation related to the merger consideration, the Company has entered into a memorandum of understanding (subject to court approval) pursuant to which the holders of the remaining equity interest in Coleman will also receive five-year warrants to purchase 4.98 million shares of Sunbeam common stock at \$7.00 per share. There can be no assurance that the court will approve the settlement as proposed. Although there can be no assurance, it is anticipated the Coleman merger will occur in the first quarter of fiscal 1999. (See Note 10 to the condensed consolidated financial statements.)

The Company believes its borrowing capacity under the New Credit Agreement, cash flow from the combined operations of the Company and its acquired companies, existing cash and cash equivalent balances, and its receivable securitization program will be sufficient to support working capital needs, capital spending, and debt service for the foreseeable future. However, if the Company is unable to satisfactorily amend the financial covenants and ratio requirements of the New Credit Facility or obtain a further waiver of the existing covenants and ratio requirements prior to April 10, 1999, the Company expects it would, at that time, be in default of the requirements under the New Credit Facility and, as noted above, the lenders could then require the repayment of all amounts then outstanding under the New Credit Facility.

NEW ACCOUNTING STANDARDS

See Notes 1 and 10 to the Company's condensed consolidated financial statements for a discussion of Statement of Financial Accounting Standards ("SFAS") No. 131, DISCLOSURES ABOUT SEGMENTS OF AN ENTERPRISE AND RELATED INFORMATION, SFAS No. 133, ACCOUNTING FOR DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES, Statement of Position ("SOP") 98-1, ACCOUNTING FOR THE COSTS OF COMPUTER SOFTWARE DEVELOPED OR OBTAINED FOR INTERNAL USE and SOP 98-5, REPORTING ON THE COSTS OF START-UP ACTIVITIES, which are required to be adopted for periods beginning after December 15, 1997. The adoption of these standards is not expected to have a material effect on the Company's consolidated results of operations, financial position, or cash flows, although actual charges incurred may be material due to Year 2000 issues, as discussed below.

YEAR 2000

The Company is in the process of assessing the impact of the Year 2000 on its operations, including the Coleman, First Alert and Signature Brands companies which were acquired by the Company in the spring of 1998. The Company established a Year 2000 Program Management Office in the third quarter of 1998 to conduct such assessment with assistance from three consulting firms. The Company's assessment encompasses the Company's information technology functions along with the impact of the effects of noncompliance by its vendors, service providers, customers, and financial institutions. Additionally, the Company is assessing the impact of noncompliance of embedded microprocessors in its products as well as equipment, such as security and telephone systems and controls for lighting, heating/ventilation, and facility access.

The Company relies on its information technology functions to perform many tasks that are critical to its operations. Significant transactions that could be impacted by Year 2000 noncompliance include, among others, purchases of materials, production management, order entry and fulfillment, and payroll processing. Systems and applications that have been identified by the Company to date as not currently Year 2000 compliant and which are critical to the Company's operations include its financial software systems, which process the order entry, purchasing, production management, general ledger, accounts receivable, and accounts payable functions, and critical applications in the Company's manufacturing and distribution facilities, such as the warehouse management application. The Company plans to complete corrective work with respect to the Company's systems by the second quarter of 1999 with final testing and implementation of such systems occurring in the third quarter of 1999. Management believes that, although there are significant systems that will need to be modified or replaced, the Company's information systems environment will be made Year 2000 compliant prior to January 1, 2000. The Company's failure to timely complete such corrective work could have a material adverse impact on the Company. The Company is not able to estimate possible lost profits arising from such failure.

The Company is in the process of contacting its vendors and suppliers of products and services to determine their Year 2000 readiness and plans. This review includes third party providers to whom the Company has outsourced the processing of its cash receipt and cash disbursement transactions. The Company plans to complete this review during the fourth quarter of 1998. The failure of certain of these third party suppliers to become Year 2000 compliant could have a material adverse impact on the Company.

The Company's preliminary assessment of the total costs to address and remedy Year 2000 issues, including costs for the acquired companies, is at least \$50 million. This estimate includes the costs of software and hardware modifications and replacements and fees to third party consultants, but excludes internal resources. The Company expects these expenditures to be financed through operating cash flows or borrowings, as applicable. Through March 31, 1998, the Company had expended less than \$1 million related to new systems and remediation to address Year 2000 issues, of which the majority was for software licenses and was therefore recorded as capital expenditures. Of the remaining estimated expenditures, it is anticipated that approximately 25% will be incurred by year-end 1998, with the remainder in 1999. A significant portion of these expenditures will enhance the Company's operating systems in addition to resolving the Year 2000 issues. As the Company completes its assessment of the Year 2000 issues, the actual expenditures incurred or to be incurred may differ materially from the amounts shown above.

After completing the assessment of the Year 2000 on its operations, the Company plans to establish a contingency plan for addressing any effects of the Year 2000 on its operations, whether due to noncompliance of the Company's systems or those of third parties. The Company expects to complete such contingency plan by September 30, 1999; such contingency plan will address alternative processes, such as manual procedures to replace those processed by noncompliant systems, potential alternative service providers, and plans to address compliance issues as they arise. Subject to the nature of the systems and applications which are not made Year 2000 compliant, the impact of such non-compliance on the Company's operations could be material if appropriate contingency plans cannot be developed prior to January 1, 2000.

SUBSEQUENT EVENTS

See Note 10 of Notes to the condensed consolidated financial statements for information relating to, among other matters, a change in management, litigation and anticipated asset impairment, inventory reserves and related liabilities.

RESTATEMENT OF RESULTS OF OPERATIONS FOR THE THREE MONTHS ENDED MARCH 30, 1997 COMPARED TO THE THREE MONTHS ENDED MARCH 31, 1996

The results of operations previously reported for the three months ended March 30, 1997 as compared with the three months ended March 31, 1996 generally understated the level of expenses incurred in 1997. Gross margin was previously reported to have improved 5.8 percentage points from the level achieved in 1996. After restatement, the gross margin improvement was 2.2 percentage points. Operating income was previously reported to have improved \$19.2 million or 123.9% from 1996's first quarter to the first quarter of 1997. After reflecting the results of the restatement, operating earnings were \$17.1 million for the first quarter of 1997, an improvement of \$1.5 million or 9.9% from the prior year. On November 12, 1998, the Company filed a Form 10-K/A setting forth its restated financial statements for December 28, 1997 and December 29, 1996, and the fiscal years then ended. Management's Discussion and Analysis of Financial Condition and Results of Operations for the fiscal years 1997 and 1998 as well as 1996 and 1995 are contained therein. (See Note 8 to the condensed consolidated financial statements.)

CAUTIONARY STATEMENTS

Certain statements in this Quarterly Report on Form 10-Q/A may constitute "forward-looking" statements within the meaning of the Private Securities Litigation Reform Act of 1995, as the same may be amended from time to time (herein the "Act") and in releases made by the Securities and Exchange Commission ("SEC") from time to time. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance, or achievements of the Company to be materially different from any future results, performance, or achievements expressed or implied by such forward-looking statements. When used in this Quarterly Report on Form 10-Q/A, the word "estimate," "project," "intend," "expect" and similar expressions, when used in connection with the Company, including its management, are intended to identify forward-looking statements. These forward-looking statements were based on various factors and were derived utilizing numerous important assumptions and other important factors that could cause actual results to differ materially from those in the forward-looking statements. These Cautionary Statements are being made pursuant to the Act, with the intention of obtaining the benefits of the "Safe Harbor" provisions of the Act. The Company cautions investors that any forward-looking statements made by the Company are not guarantees of future performance. Important assumptions and other important factors that could cause actual results to differ materially from those in the forward-looking statements with respect to the Company include, but are not limited to risks associated with (i) high leverage, (ii) Sunbeam's ability to enter into an amendment to its credit agreement containing financial covenants which it and its bank lenders find mutually acceptable, or to continue to obtain waivers from its bank lenders with respect to its compliance with the existing covenants contained in such agreement, and to continue to have access to its revolving credit facility, (iii) Sunbeam's ability to integrate the recently acquired Coleman, Signature Brands and First Alert companies and expenses associated with such integration, (iv) Sunbeam's sourcing of products from international vendors, including the ability to select reliable vendors and to avoid delays in shipments, (v) Sunbeam's ability to maintain and increase market share for its products at anticipated margins, (vi) Sunbeam's ability to successfully introduce new products and to provide on-time delivery and a satisfactory level of customer service, (vii) changes in laws and regulations, including changes in tax rates, accounting standards, environmental laws, occupational, health and safety laws, (viii) access to foreign markets together with foreign economic conditions, including currency fluctuations, (ix) uncertainty as to the effect of competition in existing and potential future lines of business, (x) fluctuations in the cost and availability of raw materials and/or products, (xi) changes in the availability and relative costs of labor, (xii) effectiveness of advertising and marketing programs, (xiii) economic uncertainty in Japan, Korea and other Asian countries, as well as in Mexico, Venezuela, and other Latin American countries, (xiv) product quality, including excess warranty costs, product liability expenses and costs of product recalls, (xv) weather conditions which can have an unfavorable impact upon sales of Sunbeam's products, (xvi) the numerous lawsuits against the Company and the SEC investigation into the Company's accounting practices and policies, and uncertainty regarding the Company's available coverage on its directors' and officers' liability insurance, (xvii) the possibility of a recession in the United States or other countries resulting in a decrease in consumer demands for the Company's products, and (xviii) failure of the Company and/or its suppliers of goods or services to timely complete the remediation of computer systems to effectively process Year 2000 information. Other factors and assumptions not included in the foregoing may cause the Company's actual results to materially differ from those projected. The Company assumes no obligation to update any forward-looking statements or these Cautionary Statements to reflect actual results or changes in other factors affecting such forward-looking statements.

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

On April 23, 1998, two class action lawsuits were filed on behalf of purchasers of the Company's common stock in the U. S. District Court for the Southern District of Florida against the Company and certain of its present and former officers and directors alleging violations of the federal securities laws as discussed below (the "Consolidated Federal Actions"). Since that date, approximately fifteen similar class actions have been filed in the same Court. One of the lawsuits also names as defendant Arthur Andersen LLP, the Company's independent accountants.

The complaints in the Consolidated Federal Actions allege to varying degrees that the defendants (i) failed to disclose that the Company pre-sold approximately \$50 million of products pursuant to its "early buy" marketing program in an effort to boost its 1997 sales and net income figures and (ii) made material misrepresentations regarding the Company's business operations, future prospects and anticipated earnings per share, in an effort to artificially inflate the price of the Company stock long enough for the Company to complete a \$2 billion debt financing (supported with stock incentives) necessary to complete the acquisitions of Coleman, Signature Brands and First Alert, and for the individual defendants to enter into lucrative long-term employment agreements with the Company. Each complaint alleges two counts of securities fraud; one count against all defendants and one count against the individual defendants.

On June 16, 1998, the Court entered an Order consolidating all such filed and all such subsequently filed class actions and providing time periods for the filing of a Consolidated Amended Complaint and defendants' response thereto. On June 22, 1998, two groups of plaintiffs made motions to be appointed lead plaintiffs and to have their selection of counsel approved as lead counsel. On July 20, 1998, the Court entered an Order appointing lead plaintiffs and lead counsel (the "Smith Plaintiffs' Group"). This Order also stated that it "shall apply to all subsequently filed actions which are consolidated herewith". On August 28, 1998, plaintiffs in one of the subsequently filed actions filed an objection to having their action consolidated pursuant to the June 16, 1998 Order, arguing that the class period in their action differs from the class periods in the originally filed consolidated actions. On September 29, 1998, the Smith Plaintiffs' Group filed its memorandum in opposition to this objection.

On April 7, 1998, a purported derivative action was filed in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida against the Company and certain of its present and former officers and directors. The action alleged that the individual defendants breached their fiduciary duties and wasted corporate assets when the Company granted stock options to three of its officers and directors on or about February 2, 1998 at an exercise price of \$36.85. On June 25, 1998, all defendants filed a motion to dismiss the complaint for failure to make a presuit demand on the board of directors of the Company. On October 22, 1998, plaintiff filed an amended complaint against all but one of the defendants named in the original complaint. The amended complaint no longer challenges the stock options, but instead alleges that the individual defendants breached their fiduciary duties by failing to have in place adequate accounting and sales controls, which failure caused the inaccurate reporting of financial information to the public, thereby causing an artificial inflation of the Company's financial statements and stock price.

On June 25, 1998, four purported class actions were filed in the Court of Chancery of the State of Delaware in New Castle County by minority shareholders of Coleman against the Company and certain of the Company's present and former officers and directors. An additional class action was filed on August 10, 1998, against the same parties. All of the plaintiffs are represented by the same Delaware counsel and have agreed to consolidate the class actions. These actions allege, in essence, that the existing exchange ratio for the proposed merger between the Company and Coleman is no longer fair to Coleman shareholders as a

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result of the recent decline in the market value of the Company stock. On or about October 21, 1998, the parties signed a memorandum of understanding to settle these class actions, subject to court approval.

During the months of August and October 1998, purported class and derivative actions were filed in the Court of Chancery of the State of Delaware in New Castle County and in the U. S. District Court for the Southern District of Florida by shareholders of the Company against the Company, M&F and certain of the Company's present and former directors. These complaints allege that the defendants breached their fiduciary duties when the Company entered into a settlement agreement whereby M&F released the Company from any claims it may have had arising out of the Company's acquisition of its interest in Coleman and agreed to provide management support to the Company (the "Settlement Agreement"). Pursuant to the Settlement Agreement, a M&F subsidiary was granted five-year warrants to purchase up to an additional 23 million shares of the Company's common stock at an exercise price of \$7.00 per share. These complaints also allege that the rights of the public shareholders have been compromised, as the settlement would normally require shareholder approval under the rules and regulations of the New York Stock Exchange ("NYSE"). The Audit Committee of the Company's board determined that obtaining such shareholder approval would have seriously jeopardized the financial viability of the Company which is an allowable exception to the NYSE shareholder approval requirement. An amended complaint has been filed on this action.

On September 16, 1998, an action was filed in the 56th Judicial District Court of Galveston County, Texas alleging various claims in violation of the Texas Securities Act and Texas Business and Commercial Code as well as common law fraud as a result of the Company's alleged misstatements and omissions regarding the Company's financial condition and prospects during a period beginning May 1, 1998 and ending June 16, 1998, in which the plaintiffs engaged in transactions in the Company's stock. The Company is the only named defendant in this action. The complaint requests recovery of compensatory damages, punitive damages and expenses in an unspecified amount. This action has been removed to the U.S. District Court for the Southern District of Texas and the Company has filed a motion to transfer this case to the Southern District of Florida, the forum for the Consolidated Federal Actions. Plaintiffs have moved to remand the case to Texas state court.

On October 30, 1998, a class action lawsuit was filed on behalf of certain purchasers of the Company's Debentures in the U.S. District Court of the Southern District of Florida against the Company and its prior Chief Executive Officer and Chief Financial Officer, alleging violations of the federal securities laws and common law fraud. The complaint alleges that the Company's offering memorandum used for the marketing of the Debentures

contained false and misleading information regarding the Company's financial position and that the defendants engaged in a plan to inflate the Company's earnings for the purpose of defrauding the plaintiffs and others. The Company is seeking to consolidate this lawsuit with the other Consolidated Federal Actions.

The Company intends to vigorously defend each of the foregoing lawsuits, but cannot predict the outcome and is not currently able to evaluate the likelihood of the Company's success in each case or the range of potential loss. However, if the foregoing actions were determined adversely to the Company, such judgments would likely have a material adverse effect on the Company's financial position, results of operations and cash flow.

On July 2, 1998, the American Insurance Company ("American") filed suit against the Company in the U.S. District Court for the Southern District of New York requesting a declaratory judgment of the court that the directors' and officers' liability insurance policy for excess coverage issued by American was invalid and/or had been properly cancelled by American. The Company has moved to transfer such action to the federal district court in which the Consolidated Federal Actions are currently pending; American is opposing such motion. On October 20, 1998, an action was filed by Federal Insurance Company in the U.S. District Court for the Middle District of Florida requesting the same relief as that requested by American in the previously filed action as to additional coverage levels under the Company's directors' and officers' liability insurance policy. The Company intends to pursue recovery from all of its insurers if damages are awarded against the Company or its indemnified officers and/or directors under any of the foregoing actions. The Company's failure to obtain such insurance recoveries following an adverse judgement against the Company in any of the lawsuits referred to above could have a material adverse effect on the Company's financial position, results of operations and cash flow.

The Company and its subsidiaries are also involved in various lawsuits arising from time to time which the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these routine matters, and of certain matters relating to prior operations of the Company's predecessor, individually or in the aggregate, will not have a material adverse effect upon the financial position or results of operations of the Company.

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ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K.

(a) Exhibits*

- 3. Bylaws of Sunbeam Corporation, as amended.
- 10.a Credit Agreement dated as of March 30, 1998, among Sunbeam Corporation, the Subsidiary Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., Bank America National Trust and Savings Association and First Union National Bank.
- 10.b First Amendment to Credit Agreement dated as of May 8, 1998, among Sunbeam Corporation, the Subsidiary Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., Bank America National Trust and Savings Association and First Union National Bank.
- 10.c Indenture, dated as of March 25, 1998, by and among the Company and Bank of New York, as Trustee, with respect to the Zero Coupon Convertible Senior Subordinated Debentures due 2018.
- 10.d Registration Rights Agreement dated March 25, 1998, by and among the Company and Morgan Stanley & Co., Inc., with respect to the Zero Coupon Convertible Senior Subordinated Debentures due 2018.
- 27 Financial Data Schedule, submitted electronically to the Securities and Exchange Commission for information only and not filed.
- 99.a Press Release dated May 11, 1998, regarding first quarter 1998 earning and restructure of the Sunbeam acquired companies.

* All of the foregoing Exhibits were filed with the Company's report on Form 10-Q for the first quarter of 1998.

(b) Reports on Form 8-K

The Company filed Reports on Form 8-K on April 13, 1998 as amended by Form 8-K/A filed on May 11, 1998.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SUNBEAM CORPORATION

BY: /S/ BOBBY G. JENKINS

Bobby G. Jenkins
Executive Vice President, and
Chief Financial Officer
(Principal Financial Officer)

Dated: November 25, 1998

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EXHIBIT INDEX

EXHIBIT	DESCRIPTION
27	Financial Data Schedule

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

**COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR ADVERSE
INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S
DESTRUCTION OF E-MAILS AND MORGAN STANLEY'S
NONCOMPLIANCE WITH THE COURT'S APRIL 16, 2004 AGREED ORDER**

Coleman (Parent) Holdings Inc. ("CPH") respectfully requests that the Court instruct the jury that it can draw an adverse inference from the destruction of e-mails and other electronic documents by Morgan Stanley & Co., Inc. ("Morgan Stanley") and from Morgan Stanley's noncompliance with this Court's April 16, 2004 Agreed Order entered in response to CPH's Motion to Compel Concerning E-mails and Other Electronic Documents. Ex. A. Morgan Stanley was required by that Order to produce, by May 14, 2004, all of the responsive e-mails that survived Morgan Stanley's general destruction of e-mails in 1999. But Morgan Stanley recently has disclosed that it has failed to produce all of those e-mails, and further, has revealed that it still has backup tapes that have not even been searched — despite the fact that trial is only three weeks away. Accordingly, because of Morgan Stanley's non-compliance with this Court's Order, CPH requests that the Court instruct the jury that it can infer that the contents of the missing e-mails would be harmful to Morgan Stanley's defense in this case.

1. As this Court is aware, since the beginning of this litigation, CPH has been seeking e-mails and other materials that are relevant to the issues in this litigation. Morgan



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Stanley's document custodian testified that by no later than February 1999, he had gathered files and documents in anticipation of the Sunbeam litigation. Ex. B, Plotnick Dep. at 46. At that time, Morgan Stanley also kept backup tapes of all e-mails from the previous 12 months (*see id.* at 64-66), so e-mails dating back to at least February 1998 should have been gathered. But instead, Morgan Stanley destroyed most or all of the 1998 e-mails concerning Sunbeam, producing only a small handful of e-mails in response to CPH's document requests.

2. Morgan Stanley's destruction of 1998 e-mails was improper for two reasons. First, throughout the relevant period, Morgan Stanley anticipated Sunbeam-related litigation — indeed, Morgan Stanley has invoked work-product immunity for documents dated as early as March 25, 1998. *See* Ex. C, Privilege Log at 58. Second, SEC regulations required Morgan Stanley to retain e-mails in a readily accessible fashion for at least two years. *See* 17 C.F.R. § 240.17a-4 (1997). Morgan Stanley's violation of those regulations led the SEC to impose a \$1.65 million fine against Morgan Stanley. *See* Ex. D, SEC Orders, Findings, and Penalties at 2, 5.

3. A long process by which CPH sought to have Morgan Stanley find and restore its lost e-mails began in October 2003, when CPH filed a motion to compel, which led to the entry of the Agreed Order at issue in this motion. Ex. A. The April 16, 2004 Agreed Order required Morgan Stanley to (1) search the oldest full e-mail backups for the Morgan Stanley employees involved in the Sunbeam transaction, (2) review e-mails dated from February 15, 1998 through April 15, 1998 and e-mails containing specified search terms such as "Sunbeam" and "Coleman" regardless of their date, (3) produce by May 14, 2004 all non-privileged e-mails responsive to CPH's document requests, (4) give CPH a privilege log, and (5) also provide CPH a certificate confirming compliance with the foregoing requirements.

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4. On May 14, 2004, Morgan Stanley produced about 1,300 pages of e-mails pursuant to the Agreed Order, but provided no privilege log or certificate of compliance. *See Ex. F.* After repeated inquiries by CPH (*see Ex. G & Ex. H*), on June 23, 2004, Morgan Stanley finally produced a privilege log and a certificate. *See Ex. I.*¹

5. On November 17, 2004, more than six months after the May 14, 2004 deadline for producing e-mails in response to the Agreed Order, Morgan Stanley sent CPH a letter revealing that its June 23 certificate of compliance was incorrect. *See Ex. O.* The letter stated (*id.*):

Morgan Stanley has discovered additional e-mail backup tapes since our e-mail production in May 2004. The data on some of [the] newly discovered tapes has been restored and, to ensure continued compliance with the agreed order, we have re-run the searches described in the order. Some responsive e-mails have been located as a result of that process. We will produce the responsive documents to you as soon as the production is finalized.

The letter also foreshadowed further delays: "Some of the backup tapes are still being restored. To ensure continued compliance with the agreed order, we intend to re-run the searches again when the restoration process is complete and will produce any responsive documents that result."

Id.

6. On November 19, 2004, Morgan Stanley produced some of the new e-mails, but no privilege log. After a follow-up inquiry by CPH (*see Ex. P*), on December 17, 2004, Morgan

¹ The Court entered a second Agreed Order on April 16 covering e-mails in the possession of Bloomberg, Inc., a third party vendor, because several Morgan Stanley employees had used Bloomberg e-mail accounts while working on the Sunbeam transaction. *See Ex. E.* That Order required Morgan Stanley to produce Bloomberg e-mails within 25 days of Morgan Stanley's receipt of them from Bloomberg. *Id.* at 2. On July 9, 2004, Morgan Stanley produced about 20 pages of Bloomberg e-mails. *See Ex. J.* After an inquiry by CPH (*see Ex. K*), on July 19, 2004, Morgan Stanley produced a certificate of compliance, which covered some but not all of the paragraphs in the Agreed Order relating to Bloomberg. *See Ex. L.* On July 29, 2004, Morgan Stanley produced a certificate covering the remaining aspects of the Bloomberg Agreed Order (*Ex. M*), and on August 2, 2004, Morgan Stanley informed CPH that no documents had been withheld from the Bloomberg production on the basis of privilege. *See Ex. N.*

Stanley produced a privilege log and advised CPH that “[n]o additional responsive e-mails have been located since our November production.” Ex. Q. But Morgan Stanley refused to answer CPH’s questions about whether Morgan Stanley had restored all the backup tapes as promised in its November 17 letter and about why the tapes had only recently been located. Ex. Q.

7. On December 30, 2004, CPH sent Morgan Stanley a letter seeking confirmation that all e-mail backup tapes had been reviewed and that all responsive e-mails had been produced, and if not, asking when the review would be completed. Ex. R. On January 11, 2005, Morgan Stanley informed CPH that the “restoration of e-mail backup tapes is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time.” Ex. S.

8. On January 19, 2005, CPH wrote asking Morgan Stanley to explain the circumstances under which Morgan Stanley located the recently discovered backup tapes and to disclose when the tapes were located. Ex. T. CPH also asked Morgan Stanley to explain why the next set of backup tapes could not be restored sooner. *Id.*

9. On January 21, Morgan Stanley sent CPH a letter that failed to answer CPH’s questions. Ex. U. Instead, Morgan Stanley described its efforts to restore the backup tapes as “ongoing;” informed CPH that “there is no way for Morgan Stanley to know or accurately predict the type or time period of data that might be recovered;” and stated that “Morgan Stanley cannot accurately estimate when all of the tapes will be restored or whether any recoverable data will be found on the remaining tapes.” *Id.* Ominously, the letter closed by noting that, “when the agreed-upon searches are run again,” they “will include approximately one terabyte of additional data.” *Id.* One terabyte equals 1 million megabytes, or about 405,000,000,000,000 pages of data.

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10. More than eight months after the deadline for producing e-mails, and only three weeks before trial, Morgan Stanley has yet to comply with this Court's April 16, 2004 Agreed Order. Nor has it disclosed when it plans to comply. Morgan Stanley's disregard of the letter and the spirit of the April 16 Order should not be tolerated.

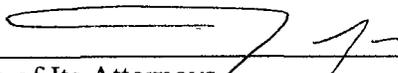
Wherefore, CPH requests that the Court instruct the jury that Morgan Stanley's destruction of e-mails and other electronic documents and Morgan Stanley's noncompliance with the April 16, 2004 Agreed Order can give rise to an adverse inference that the contents of the missing e-mails would be harmful to Morgan Stanley's defense in this case. *See Amlan, Inc. v. Detroit Diesel Corp.*, 651 So. 2d 701, 703 (Fla. 4th DCA 1995) ("in cases in which the misconduct alleged is the destruction or unexplained disappearance of crucial evidence . . . an instruction may be given concerning the inference that the withheld or missing evidence would be unfavorable to the party failing to produce the evidence"); *see also Martino v. Wal-Mart Stores, Inc.*, 835 So. 2d 1251, 1257 (Fla. 4th DCA 2003) (concluding that adverse inference argument should be permitted "where potentially self-damaging evidence is in the possession of a party and that party either loses or destroys the evidence"); *see also Palmas y Bambu, S.A. v. E.I. Dupont de Nemours & Co.*, 881 So. 2d 565, 581-83 (Fla. 3d DCA 2004) (allowing counsel to argue that the jury should draw an adverse inference from the defendant's destruction of evidence); *Jordan ex rel. Shealey v. Masters*, 821 So. 2d 342, 346-48 (Fla. 4th DCA 2002) ("Lawyers are entitled to argue adverse inferences from the evidence as part of their closing arguments.").

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Dated: January 26, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: 
One of Its Attorneys

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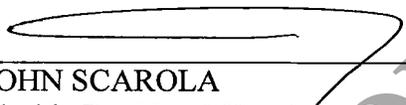
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by
Fax and Federal Express to all counsel on the attached list on this 26th day of
Jan., 2005.



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Attorneys for Coleman(Parent)Holdings Inc.

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0293335

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029336

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH, COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).

**AGREED ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO
COMPEL CONCERNING E-MAILS AND OTHER ELECTRONIC DOCUMENTS**

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings, Inc.'s ("CPH") motion to compel concerning e-mails and other electronic documents, the parties having reached agreement, it is hereby

ORDERED and ADJUDGED:

1. Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc. (collectively, "Morgan Stanley") will search the oldest full backup that exists for e-mail of each of the Morgan Stanley employees or former employees identified in Response Nos. 1, 2, 3, and 5 of MS & Co.'s Responses to CPH's First Set of Interrogatories and Response Nos. 1, 4, 5, and 6 of MSSF's Responses to Defendants' First Set of Interrogatories.

2. Morgan Stanley shall provide to its attorneys for responsiveness and privilege review all e-mail that (a) is dated from February 15, 1998 through April 15, 1998, and/or (b), without regard to date, contains any of the following terms:

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AA
Andersen
Anderson
Bornstein
Camper
Coleman
Colman
Comfort Letter
Dunlap
Early Buy
Fannin
Goudis
Grill
Harlow
Kersh
Laser
MacAndrews
MAFCO
Maher
Nesbitt
Pearlman
Perelman
Perlman
Press Release
Scott
SOC
Sunbeam
Synergies
Uzzi

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The term search shall be neither case-sensitive nor whole word sensitive.

3. Non-privileged e-mails responsive to any CPH or MAFCO document request will be produced by May 14, 2004.

4. Any materials withheld on privilege grounds shall be listed on a privilege log in accordance with this Court's previous orders.

5. An authorized Morgan Stanley representative will certify compliance with Paragraphs 1 through 4 of this Order, and will identify the date of the backup utilized for each employee or former employee for whom email is being produced.

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6. This Order is without prejudice to CPH's right to seek restoration and production of certain electronic documents and also is without prejudice to Morgan Stanley's right to seek restoration and production of e-mail.

7. Each side shall bear its own costs.

DONE AND ORDERED at West Palm Beach County, Florida, this ____ day of April, 2004.

SIGNED AND DATED
APR 16 2004
JUDGE ELIZABETH T. MAASS
ELIZABETH T. MAASS
Circuit Court 5000

copies furnished to:

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Chicago, IL 60611

1070345 v2

0293339

1
2 IN THE CIRCUIT COURT OF THE
3 FIFTEENTH JUDICIAL CIRCUIT
4 IN AND FOR PALM BEACH COUNTY, FLORIDA

5
6 -----x
7 COLEMAN (PARENT) HOLDINGS, INC.)
8 Plaintiff,)
9 vs.)
10 MORGAN STANLEY & CO, INC.,)
11 Defendant.)

12 -----x
13
14 September 9, 2003
15 9:30 a.m.

16
17 VIDEOTAPED DEPOSITION OF
18 JOHN H. PLOTNICK

19
20
21
22
23
24 Reported by: David Henry
25 Job Number: 152427

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EXHIBIT
B

1 Plotnick

2 material?

3 MR. CLARE: Object, calls for
4 speculation, since the three-year period has
5 not yet elapsed from when the policy went in
6 effect per the witness' testimony. So if
7 you know going forward, you can address it.

8 A. I don't think we've gotten there
9 yet.

10 Q. When the policy went into effect, I
11 think you said it was January, 2001?

12 A. I believe so.

13 Q. Did the company have back up of
14 e-mail from January, 1998?

15 A. I don't believe so.

16 Q. What was the most recent backup of
17 e-mail that the company had when the new
18 policy went into effect in January, 2001?

19 A. I'm not positive.

20 Q. Do you have any idea?

21 A. I believe prior to January 1, 2001,
22 e-mail was saved for a year afterwards and
23 then the tapes may have been rewritten.

24 Q. When, as a general matter, when
25 litigation is instituted, how does Morgan

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029341

1 Plotnick

2 A. Correct.

3 Q. When were Morgan Stanley first
4 notified of Sunbeam-related litigation?

5 A. I don't know precisely.

6 Q. Do you have any general idea?

7 A. 1998 or 1999.

8 Q. When did you personally become
9 involved in Sunbeam-related litigation?

10 A. 1998 or 1999.

11 Q. Did any legal assistant at Morgan
12 Stanley precede you in working on
13 Sunbeam-related litigation?

14 A. No.

15 Q. At any point were Morgan Stanley
16 employees directed to preserve any materials
17 they may have relating to Sunbeam?

18 A. I recall identifying the people who
19 were involved in the Sunbeam transaction, and
20 I directed them to send me -- I collected
21 everything, so they didn't retain it, they
22 sent it to me, all their files.

23 Q. And when did you do that?

24 A. 1998 or 1999.

25 Q. Do you have any idea within that

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1 Plotnick

2 two-year frame more specifically when that
3 might have occurred?

4 A. I'm sure, I'm pretty sure that at
5 least in February of 1999, I called all the
6 bankers.

7 Q. Was a firm-wide preservation notice
8 ever circulated directing Morgan Stanley
9 employees to preserve materials relating to
10 Sunbeam?

11 A. I'm not aware of it. We called the
12 individual bankers and other professionals who
13 were involved in Sunbeam transactions
14 directly.

15 Q. Okay. And I believe you just
16 testified that as of February of 99, that had
17 been completed?

18 A. I called the investment bankers I'm
19 pretty sure in February of 99, at least by
20 February of 99. I may have called them
21 earlier.

22 Q. Okay. How shortly after hearing of
23 Sunbeam litigation did you make those phone
24 calls?

25 A. I don't know if there was

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1 Plotnick
2 litigation back then. I was directed by my
3 colleagues to start collecting the files. But
4 I'm not aware of when I was aware of
5 litigation. I was aware of a Sunbeam matter,
6 but I don't think we were a party.

7 Q. And then in response to your phone
8 calls to the bankers, did you receive any
9 materials relating to Sunbeam?

10 A. Yes, I did.

11 Q. How much?

12 MR. CLARE: Which time period?

13 Q. Your initial calls, which were
14 completed at the latest I think February, 99.

15 A. How voluminous were the documents
16 directly from the bankers?

17 Q. Yes.

18 A. I don't recall, because in addition
19 I collected documents from the central files
20 area, so I don't recall.

21 Q. The origin of -

22 A. The origin, whether they came
23 directly from the bankers or the central file
24 area.

25 Q. Now, there have been several

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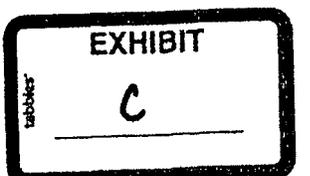
029345

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Incorporated
Morgan Stanley Senior Funding v. MacAndrews & Forbes Holdings Inc., et al.

May 10, 2004 Revised Privilege Log

J&B	Date	Author(s)	Recipient(s)	Priv	Privilege Description	Redact Bates
1	1/4/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	25349
2	1/4/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	25829
3	1/4/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26100
4	1/4/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26102
5	7/24/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26207
6	7/24/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26209
7	7/24/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26210
8	7/24/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26211
9	7/24/2001	Doyle, James (MS)		WP	Redacted document, reflecting attorney notes from in-house counsel regarding deposition exhibit.	26212

5/10/2004



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J&B	Date	Author(s)	Recipient(s)	Priv	Privilege Description	Redact Bates
240	11/10/2000	Lee, Soogy (Simpson, Thacher & Bartlett)	Mollitor, Tom (First Union); Bouthuys, Julie (First Union); Ulrich, Chris (First Union); Thomas, Joel (First Union); Rankin, Simon (MS); Patrick, Mich (MS); McDermott, Melanie (MS); Doster, Ted (MS); Felix, Rick (MS); Ryan, Dan (MS); Steke, Eric (Bank America); Wheelock, Peter (Bank America); Biaggi, Tom (Bank America); Policano, Mike (Policano & Manzo); Ordway, Ed (Policano & Manzo); Kleinschmidt, Ned (Policano & Manzo); Sunbeam Lender Group	WP, common interest principle AC, WP, common interest principle	Redacted document, reflecting transmittal memo from outside counsel to client providing legal advice regarding amendment to credit agreement.	76794-76795
241	3/5/2001	Lee, Soogy (Simpson, Thacher & Bartlett)	Sunbeam Lender Group, Fuhrman, Steven (Simpson Thacher & Bartlett)	common interest principle	Memo from outside counsel to client providing legal advice regarding credit agreement, waivers and amendments.	
242	3/25/1998	Davis Polk & Wardwell	Morgan Stanley & Co. Incorporated	AC, WP	Letter from outside counsel to client providing legal advice regarding securities issues and rights under the Purchase Agreement.	
243.01	1/4/1993	Legal and Regulatory Affairs Department	All MS Professionals	AC	Redacted memo from in-house counsel to client providing legal advice regarding analyst reports and equity offerings.	80635-80638
243.02	2/6/1992	Pellecchio, Ralph (MS); Rosenthal, Richard (MS)	N.Y. MS Professionals	AC	Redacted memo from in-house counsel to client providing legal advice regarding equity offerings.	80646
243.03	1/25/1993	Pellecchio, Ralph (MS); Rosenthal, Richard (MS); Wallach, Michelle (MS)	U.S. MS Professionals	AC	Redacted memo from in-house counsel to client providing legal advice regarding equity offerings.	80648-80649

5/10/2004

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U.S. Securities and Exchange Commission

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
RELEASE NO. 46937 / DECEMBER 3, 2002

ADMINISTRATIVE PROCEEDING
FILE NO. 3-10957

In The Matter Of

DEUTSCHE BANK SECURITIES, INC.,
GOLDMAN, SACHS & CO.,
MORGAN STANLEY & CO. INCORPORATED,
SALOMON SMITH BARNEY INC., and
U.S. BANCORP PIPER JAFFRAY INC.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS PURSUANT
TO SECTION 15(b)(4) AND
SECTION 21C OF THE
SECURITIES EXCHANGE ACT
OF 1934, MAKING
FINDINGS AND IMPOSING
CEASE-AND-DESIST
ORDERS, PENALTIES, AND
OTHER RELIEF

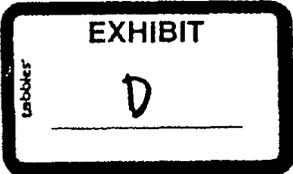
I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings pursuant to Section 15(b)(4) and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), be and hereby are instituted against Deutsche Bank Securities, Inc., Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated, Salomon Smith Barney Inc., and U.S. Bancorp Piper Jaffray Inc. (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, the Respondents have each submitted Offers of Settlement ("Offers") to the Commission, which the Commission has determined to accept. Solely for the purpose of these proceedings, and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, the Respondents, without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and over the subject matter of these proceedings, consent to the entry of this Order Instituting Proceedings Pursuant to Section 15(b)(4) and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Cease-and-Desist Orders, Penalties, And Other Relief ("Order").

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Accordingly, it is ordered that proceedings pursuant to Exchange Act Section 15(b)(4) and Section 21C be, and hereby are, instituted.

III.

On the basis of this Order and the Respondents' Offers, the Commission finds that:

A. RESPONDENTS

Deutsche Bank Securities, Inc., is a Delaware corporation with its principal place of business in New York, New York. Deutsche Bank is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act and is a member of NASD and the New York Stock Exchange. Deutsche Bank engages in a nationwide securities business.

Goldman, Sachs & Co. is a New York limited partnership with its principal place of business in New York, New York. Goldman Sachs is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a member of NASD and the New York Stock Exchange. Goldman Sachs engages in a nationwide securities business.

Morgan Stanley & Co. Incorporated is a Delaware corporation with its principal place of business in New York, New York. Morgan Stanley is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a member of NASD and the New York Stock Exchange. Morgan Stanley engages in a nationwide securities business.

Salomon Smith Barney Inc. is a New York corporation with its principal place of business in New York, New York. Salomon Smith Barney is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a member of NASD and the New York Stock Exchange. Salomon Smith Barney engages in a nationwide securities business.

U.S. Bancorp Piper Jaffray Inc. is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. U.S. Bancorp Piper Jaffray is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a member of NASD and the New York Stock Exchange. U.S. Bancorp Piper Jaffray engages in a nationwide securities business.

B. SUMMARY

This action concerns Respondents' violations of the record-keeping requirements of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder during the period from 1999 to at least 2001 (the "relevant period"). During all or part of the relevant period, each Respondent failed to preserve for three years, and/or to preserve in an accessible place for two years, electronic mail communications (including inter-office memoranda and communications) received and sent by its agents and employees that related to its business as a member of an exchange, broker or dealer. Each Respondent lacked adequate systems or procedures for the preservation of electronic mail communications.

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C. FACTS

The facts specific to these proceedings are set forth below:

1. The employees of each Respondent used electronic mail communications in part to conduct the Respondent's business as a broker, dealer and member of an exchange.
2. Respondents failed to preserve copies of electronic mail communications for three years, and/or maintain electronic mail communications for the first two years in an accessible place. Respondents did not have adequate systems or procedures in place during all or part of the relevant period to retain and/or make accessible electronic mail communications. Each Respondent's failure to preserve electronic mail communications and/or to maintain them in an accessible place was discovered during investigations being conducted jointly and separately by the Commission, the New York Stock Exchange, and NASD. The deficiencies in Respondents' systems and procedures for the preservation of electronic mail communications preexisted these investigations.
3. Some Respondents backed up electronic mail communications on tape or other media that Respondents represent was part of a process designed as a disaster recovery or business continuity measure, or for another business purpose. While some Respondents relied on these backups to preserve electronic mail communications during the relevant period, Respondents had inadequate systems or procedures to ensure the retention of such back-ups for three years and/or to maintain such data in a readily accessible manner for two years. These Respondents discarded, or recycled and overwrote their back-up tapes and other media, often a year or less after back-up occurred. In those instances in which Respondents did retain electronic mail communications, those electronic mail communications were often stored in an unorganized fashion on backup tapes, other media, or on the hard drives of computers used by individual employees of Respondents. Before the filing of these proceedings, one or more Respondents took steps to develop new database systems for the retention of electronic mail communications.
4. While some Respondents relied upon employees to preserve copies of their electronic mail communications on the hard drives of their individual personal computers or elsewhere, and many e-mails were preserved, there were inadequate systems or procedures to ensure that employees did so for the requisite record-keeping period. In some instances, hard drives of computers were erased when individuals left the employment of the Respondent.

D. LEGAL DISCUSSION

Section 17(a)(1) of the Exchange Act provides that each member of a national securities exchange, broker, or dealer "shall make and keep for prescribed periods such records, furnish copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of

investors, or otherwise in furtherance of the purposes of this title."

The Commission has emphasized the importance of the records required by the rules as "the basic source documents" of a broker-dealer. *Statement Regarding the Maintenance of Current Books and Records by Brokers and Dealers*, 4 SEC Docket 195 (April 6, 1974). The record keeping rules are "a keystone of the surveillance of broker and dealers by [Commission] staff and by the securities industry's self-regulatory bodies." *Edward J. Mawod & Co.*, 46 S.E.C. 865, 873 n.39 (1977) (citation omitted), *aff'd sub nom. Mawod & Co. v. SEC*, 591 F.2d 588 (10th Cir. 1979).

Pursuant to its authority under Section 17(a)(1) of the Exchange Act, the Commission promulgated Rule 17a-4. Rule 17a-4(b)(4) in turn requires each Respondent to "preserve for a period of not less than 3 years, the first two years in an accessible place.... [o]riginals of all communications received and copies of all communications sent by such member, broker or dealer (including inter-office memoranda and communications) relating to his business as such." Rule 17a-4 is not by its terms limited to physical documents. The Commission has stated that internal electronic mail communications relating to a broker-dealer's "business as such" fall within the purview of Rule 17a-4 and that, for the purposes of Rule 17a-4, "the content of the electronic communication is determinative" as to whether that communication is required to be retained and accessible. *Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934*, Rel. No. 34-38245 (Feb. 5, 1997).

Based on the foregoing and Respondents' Offers of Settlement, the Commission finds that with respect to electronic mail communications during the relevant period, each Respondent willfully violated Section 17(a) of the Exchange Act and Rule 17a-4 promulgated thereunder by failing to preserve electronic mail communications for three years, and/or by failing to preserve electronic mail communications for the first two years in an accessible place.¹

IV.

Each Respondent has undertaken to review its procedures regarding the preservation of electronic mail communications for compliance with the federal securities laws and regulations, and the rules of NASD and New York Stock Exchange. Within 90 days of the issuance of this Order, unless otherwise extended by the staff of the Commission for good cause shown, each Respondent undertakes and agrees to inform the Commission in writing that it has completed its review and that it has established systems and procedures reasonably designed to achieve compliance with those laws, regulations, and rules concerning the preservation of electronic mail communications.

V.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in Respondents' Offers.

ACCORDINGLY, IT IS HEREBY ORDERED:

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- A. Respondents, and each of them, pursuant to Section 21C of the Exchange Act, cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4 promulgated thereunder.
- B. Respondents, and each of them, are censured pursuant to Section 15(b)(4) of the Exchange Act.
- C. Each Respondent shall, within ten days of the entry of this Order, pay the amount of \$1,650,000, for a total of \$8,250,000 by all named Respondents. Each Respondent shall make payment as follows: (i) pursuant to Section 15(b)(4) and Section 21B of the Exchange Act, Respondent shall pay a civil monetary penalty of \$550,000 to the United States Treasury; (ii) pursuant to Respondent's agreement with NASD in related proceedings, Respondent shall pay a fine in the amount of \$550,000 to NASD; and (iii) pursuant to Respondent's agreement with the New York Stock Exchange in related proceedings, Respondent shall pay a fine in the amount of \$550,000 to the New York Stock Exchange. Such payment to the U.S. Treasury shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies the payor as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 450 5th Street N.W., Washington, D.C. 20549-0801.
- D. Each Respondent shall comply with the undertaking contained in Section IV., above.

By the Commission.

Jonathan G. Katz
Secretary

¹ "Willfully" as used in this Order means intentionally committing the act which constitutes the violation. See *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

<http://www.sec.gov/litigation/admin/34-46937.htm>

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Modified: 12/03/2002

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH, COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).

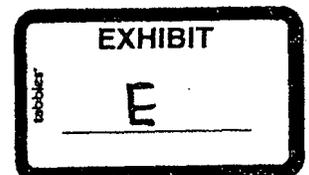
**AGREED ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO
COMPEL CONSENT TO THIRD-PARTY PRODUCTION OF RESPONSIVE E-MAILS**

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings, Inc.'s ("CPH") motion to compel consent to third-party production of responsive e-mails, the parties having reached agreement, it is hereby

ORDERED and ADJUDGED:

1. Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc. (collectively, "Morgan Stanley") will obtain from Bloomberg, Inc., all e-mail, including any e-mail that can be restored from backup, of each of the Morgan Stanley employees or former employees identified in Response Nos. 1, 2, 3, and 5 of MS & Co.'s Responses to CPH's First Set of Interrogatories and Response Nos. 1, 4, 5, and 6 of MSSF's Responses to Defendants' First Set of Interrogatories. Herein, that set of e-mails shall be called "Bloomberg e-mail." Morgan Stanley will advise counsel for CPH of the volume of Bloomberg e-mail provided by Bloomberg.

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2. Morgan Stanley attorneys shall review for responsiveness and privilege all Bloomberg e-mail that (a) is dated from February 15, 1998 through April 15, 1998, and/or (b) without regard to date, contains any of the following terms:

AA
Andersen
Anderson
Bornstein
Camper
Coleman
Colman
Comfort Letter
Dunlap
Early Buy
Fannin
Goudis
Grill
Harlow
Kersh
Laser
MacAndrews
MAFCO
Maher
Nesbitt
Pearlman
Perelman
Perlman
Press Release
Scott
SOC
Sunbeam
Synergies
Uzzi

The term search shall be neither case-sensitive nor whole word sensitive.

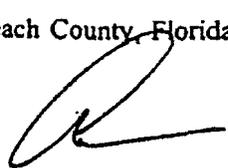
3. ~~Non-privileged~~ Bloomberg e-mails responsive to any CPH or MAFCO document REQUESTED IMMEDIATELY AND NON-PRIVILEGED E-MAILS WILL BE request will be produced by May 14, 2004. WITHIN 25 DAYS OF MORGAN STANLEY'S RECEIPT OF THOSE E-MAILS.

4. Any materials withheld on privilege grounds shall be listed on a privilege log in accordance with this Court's previous orders.

5. An authorized Morgan Stanley representative will certify compliance with Paragraphs 1 through 4 of this Order.

6. Each side shall bear its own costs.

DONE AND ORDERED at West Palm Beach County, Florida, this 16 day of April, 2004.



ELIZABETH T. MAASS
Circuit Court Judge

copies furnished to:

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John Scarola, Esq.
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Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, IL 60611

1071024 v1

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029354

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May 14, 2004

By Federal Express

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

Enclosed is Morgan Stanley's production of e-mails pursuant to the parties' April 16, 2004 agreed-upon order, bearing the bates range 0094349-0095651. In addition to the production, the CD contains two text files: a cross-reference file and a comma-delimited data file (which contains attachment information).

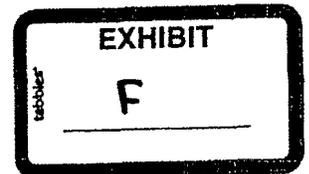
Sincerely,



Kathryn R. DeBord

cc: Joseph Ianno, Jr., Esq. (by facsimile) (without enclosure)
John Scarola, Esq. (by facsimile) (without enclosure)
Mark Hansen, Esq. (by facsimile) (without enclosure)

029355



JENNER & BLOCK

June 21, 2004

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Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

I write with regard to your failure to produce responsive Bloomberg emails in accordance with the Agreed Order that was entered by the Court on April 16, 2004.

We agreed that either Morgan Stanley or Bloomberg could produce the Bloomberg emails to us, but we have still not received any responsive documents. Please advise us by the close of business on June 23, 2004 when we will receive the production of Bloomberg email, any privilege log derived from that production, and Morgan Stanley's certification of compliance in accordance with Paragraph 5 of the aforementioned Agreed Order.

Very truly yours,

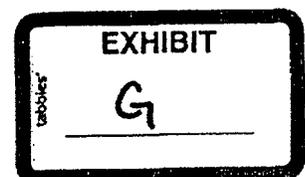


Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.
Thomas H. Golden, Esq. (by telecopy)

1118045

029356



16div-028486

JENNER & BLOCK

June 21, 2004

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Michael T. Brody
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Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

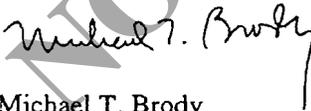
I write with regard to MSSF/Morgan Stanley's May 14, 2004 production of emails pursuant to Court order.

Any privilege log identifying documents withheld from that production on privilege or work product grounds was due on June 14, 2004. Are we to assume that MSSF/Morgan Stanley did not withhold any documents from that production based on the assertion of privilege? Please provide a privilege log or advise us that no documents were withheld from the May 14, 2004 production.

In addition, Morgan Stanley failed to comply with Paragraph 5 of the Court's April 16, 2004 Order, which requires a Morgan Stanley representative to "certify compliance with [the Order]" and to "identify the date of the backup utilized for each employee or former employee for whom email is being produced."

Please provide a privilege log (or advise us that no documents were withheld) and comply with Paragraph 5 of the Order by close of business on June 23, 2004, or we will be at an impasse.

Very truly yours,



Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

1117960

029357



16div-028487

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June 23, 2004

By Facsimile

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

I write in response to your June 21, 2004 letters regarding Morgan Stanley's May 14, 2004 e-mail production and the forthcoming production of Bloomberg e-mails. With regard to the May 14, 2004 production, a privilege log is enclosed, along with the certification of compliance described by the April 16, 2004 Agreed Order.

Regarding the third-party e-mails, Morgan Stanley received the e-mails from Bloomberg on June 14, 2004. Pursuant to the Court's Order, all non-privileged responsive e-mails will be produced on Friday, July 9, 2004.

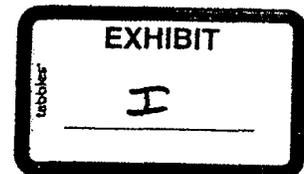
Sincerely,



Thomas A. Clare

cc: Joseph Ianno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hansen, Esq. (by facsimile)

029358



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July 9, 2004

Via Facsimile
By Federal Express

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

Enclosed is Morgan Stanley's production of Bloomberg e-mails pursuant to the parties' April 16, 2004 agreed-upon order, bearing the bates range 95729-95740. A certification of compliance is forthcoming.

Sincerely,

Kathryn R. DeBord
Kathryn R. DeBord

(RJS)

Enclosure (1)

cc: Joseph Ianno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hansen, Esq. (by facsimile)

029359



JENNER & BLOCK

July 15, 2004

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By Telecopy

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Washington, D.C. 20005

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Kathryn:

I write with regard to your letter dated July 9, 2004, which accompanied your production of Bloomberg emails on that date.

As we discussed on the telephone, your July 9, 2004 letter identifies production numbers 95729-95740, but your July 9 production was numbered 95709-28. When I inquired about the apparent discrepancy, you informed me that the production numbers identified in your letter mistakenly relate to a different production that Morgan Stanley has not yet made. Please produce whatever documents bear production numbers 95729-95740 by July 19, 2004.

In addition, as required by the Court's order, please provide us with a certification of the Bloomberg production by July 19, 2004.

Very truly yours,



Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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16div-028490

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July 19, 2004

By Facsimile

Michael Brady, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

I write in response to your July 15, 2004 letter, which does not accurately reflect our telephone conversation. As I informed you during our telephone conversation, the Bates range reflected in my July 9, 2004 cover letter enclosing the Bloomberg e-mail production was an error. That range should have read 95709-95728. MS & Co. and MSSF have no additional documents to produce.

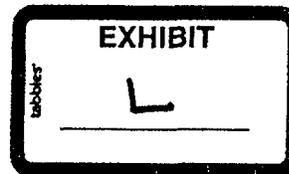
Also enclosed is a certification of compliance for paragraphs two through four of the Court's April 16, 2004 order. We will provide to you a certification of compliance for paragraph one (which will be prepared by Bloomberg or its counsel) as soon as we receive it.

Sincerely,

Kathryn R. DeBord
Kathryn R. DeBord

cc: Joseph Ianno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hansen, Esq. (by facsimile)

029361



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July 29, 2004

By Facsimile

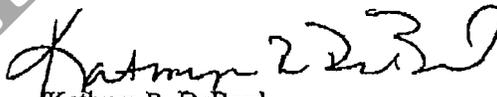
Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

Enclosed please find Bloomberg's certification of compliance with Paragraph 1 of the April 16 Agreed Order on Coleman (Parent) Holding Inc.'s Motion to Compel Consent to Third-Party Production of Responsive E-mails.

Sincerely,


Kathryn R. DeBord

cc: Joseph Ianno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hansen, Esq. (by facsimile)

029362



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August 2, 2004

By Facsimile

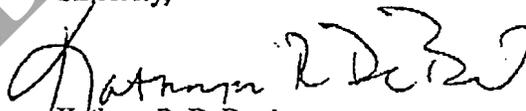
Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

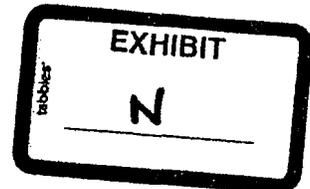
I write to inform you that no documents were withheld from Morgan Stanley's July 9, 2004 production of Bloomberg e-mails on the basis of privilege.

Sincerely,


Kathryn R. DeBord

cc: Joseph Ianno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hansen, Esq. (by facsimile)

029363



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November 17, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

I write regarding supplementation of Morgan Stanley's document production.

Morgan Stanley has discovered additional e-mail backup tapes since our e-mail production in May 2004. The data on some of newly discovered tapes has been restored and, to ensure continued compliance with the agreed order, we have re-run the searches described in the order. Some responsive e-mails have been located as a result of this process. We will produce the responsive documents to you as soon as the production is finalized.

Some of the backup tapes are still being restored. To ensure continued compliance with the agreed order, we intend to re-run the searches again when the restoration process is complete and will produce any responsive documents that result.

Sincerely,

Thomas A. Clare 1/4

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)



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029364

16div-028494

JENNER & BLOCK

December 14, 2004

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By Telecopy

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655 Fifteenth Street, N.W.
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Washington, D.C. 20005

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write concerning your letter of November 17, 2004 relating to Morgan Stanley's discovery of additional emails.

In that letter, you state that Morgan Stanley located additional email backup tapes, and that you would be producing documents soon. Within two days of that letter, you produced some emails to us. In your November 17, 2004 letter, however, you also indicate that "some of the backup tapes are still being restored." Have those backup tapes been restored? Have you found additional, responsive emails? If so, when will Morgan Stanley produce those emails? How is it that the tapes were only recently located?

Finally, as required by the Court, we assume that you will produce a privilege log for any responsive emails that you withheld from your recent email production.

Very truly yours,

Michael T. Brody
Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

029365



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December 17, 2004

BY FACSIMILE

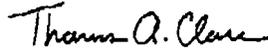
Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

I write in response to your December 14 letter regarding the production of e-mail messages from backup tapes. No additional responsive e-mails have been located since our November production. A privilege log from our November production is enclosed.

Sincerely,



Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

NOT A CERTIFIED COPY

029366

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JENNER & BLOCK

December 30, 2004

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Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write in response to your letter dated December 17, 2004 concerning Morgan Stanley's recent production of emails.

In that letter, you state that Morgan Stanley has not located any additional, responsive emails. You do not inform us whether the review of the recently-located backup tapes still is ongoing. Please confirm that all email backup tapes from the relevant time period have been reviewed and all responsive emails have been produced. If the review still is proceeding, please let us know when the review will be completed.

Very truly yours,

Michael T. Brody
Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

029367

CHICAGO_1195782_1



16div-028497

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January 11, 2005

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

I write in response to your letter regarding e-mail backup tapes.

Morgan Stanley's restoration of e-mail backup tapes is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time.

Sincerely,



Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Searola, Esq. (by facsimile)
Mark C. Hanson, Esq. (by facsimile)

029368

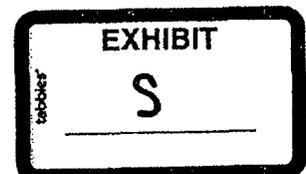
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JENNER & BLOCK

January 19, 2005

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Michael T. Brody
Tel 312 923-2711
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mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write in response to your January 11, 2005 letter concerning e-mails back-up tapes. Unfortunately, your letter raises more questions than it answers. As I requested in my December 14, 2004 letter, please explain the circumstances under which Morgan Stanley located these backup tapes and advise us of the date on which the tapes were located.

Further, please explain your statement that that "the next set of backup tapes" is scheduled to be restored "at the end of January." How many tapes will be restored by the end of January? When exactly in January will Morgan Stanley complete the process of restoring and searching these tapes for responsive documents? Are there other backup tapes that are not yet in the process of being restored? If so, please advise us of (a) the number of tapes that are not yet in the process of being restored; (b) the time period of the data contained on those tapes; and (c) Morgan Stanley's timetable for restoring and searching those tapes. In addition, please explain why those tapes are not yet in the process of being restored. Please also explain why Morgan Stanley cannot complete the restoration and searching of all remaining backup tapes before "the end of January." As you know, our trial is scheduled to begin on February 22, 2005.

We look forward your complete response to these questions no later than January 21, 2005 so that we can bring this matter to the Court's attention, if necessary.

Very truly yours,


Michael T. Brody

MTB:cjg

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

CHICAGO_1202511_1

COPY

029369



16div-028499

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January 21, 2005

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
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Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

I write in response to your January 19, 2005 letter regarding Morgan Stanley's production of e-mails restored from backup tapes.

Morgan Stanley completed its initial production of restored e-mail messages on May 14, 2004. The May 2004 production was conducted in accordance with the agreed-upon order governing, and the searches that resulted in that production encompassed data from all of the backup tapes known to exist at the time. Subsequent to the May 2004 production, additional tapes were found in various locations at Morgan Stanley. The discovered tapes were not clearly labeled as to their contents, were not found in locations where e-mail backup tapes customarily were stored, and many of the tapes were in a different format than other e-mail backup tapes. In November 2004, once it was determined at least some of the discovered tapes contained recoverable e-mail data, Morgan Stanley re-ran the searches described in the agreed-upon order. Those searches resulted in Morgan Stanley's November 2004 production.

Morgan Stanley's efforts to restore the backup tapes discovered after the May 2004 production are ongoing. It is a time-consuming and painstaking process and, given the absence of clear labels or other index information for the backup tapes, there is no way for Morgan Stanley to know or accurately predict the type or time period of data that might be recovered from tapes that have yet to be restored. While Morgan Stanley cannot accurately estimate when all of the tapes will be restored or whether any recoverable data will be found on the remaining tapes, we understand from Morgan Stanley that, when the agreed-upon searches are run again at the end of January, those searches will include approximately one terabyte of additional data restored since the prior production.

Chicago

London

Los Angeles

New York

San Francisco

029370



KIRKLAND & ELLIS LLP

Michael Brody, Esq.
January 21, 2005
Page 2

Sincerely,

Thomas Clare
Thomas A. Clare

cc: Joseph Lanno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

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029371

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

**MORGAN STANLEY'S OPPOSITION TO CPH'S MOTION
FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S
DESTRUCTION OF E-MAILS AND MORGAN STANLEY'S
NONCOMPLIANCE WITH THE COURT'S APRIL 16, 2004 AGREED ORDER**

Coleman (Parent) Holdings Inc.'s ("CPH") motion is factually baseless and squarely contrary to settled law. CPH's conclusory allegations that Morgan Stanley destroyed e-mails relating to Sunbeam are not supported by any evidence, and its allegations that Morgan Stanley failed to comply with the April 16, 2004 Agreed Order are contradicted by the written record. Morgan Stanley has spent enormous sums to locate, restore, and produce Sunbeam-related e-mails to CPH in this litigation, as evidenced by its production of more than 9,000 pages of e-mail messages responsive to CPH's requests. Moreover, Morgan Stanley did exactly what it was supposed to do when it learned that some backup tapes had not been searched: it promptly notified CPH, began restoring the additional tapes and searching the discovered data, and produced additional responsive e-mails to CPH.

CPH's motion also runs afoul of Florida law. Florida courts have repeatedly held that the instruction sought by CPH improperly "invades the province of the jury" and *constitutes reversible error* where, as here, the party seeking the instruction (1) has not established the existence of any "missing" evidence; (2) has not established that the missing evidence is

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“essential” to its prima facie case; and (3) has not established that the evidence is missing due to an intentional or deliberate act of the opposing party. CPH has not (and cannot) establish any one of these requirements, and its motion must therefore be denied.

FACTS

1. This lawsuit arises from Sunbeam’s acquisition of The Coleman Company. The acquisition was negotiated in late 1997 and early 1998 and closed on March 30, 1998. CPH filed this lawsuit against Morgan Stanley in May 2003, more than five years after the relevant events.

2. On April 16, 2004, this Court entered an Agreed Order governing the search and production of Morgan Stanley e-mail messages restored from e-mail backup tapes. (Apr. 16, 2004 Agreed Order on CPH’s Motion to Compel Concerning E-mails & Other Elec. Docs. (“Agreed Order”).) The Agreed Order was necessary because due to the passage of time and technical limitations, Morgan Stanley only was able to reliably restore electronic documents on backup tapes created after January 2000. Nevertheless, pursuant to the Agreed Order, Morgan Stanley agreed that it would undertake an electronic search of data from the oldest available backup tapes for certain employees’ e-mail accounts, using certain agreed-upon keywords. (*Id.* ¶ 2.)

3. Morgan Stanley produced e-mails pursuant to the Agreed Order on May 14, 2004. Morgan Stanley’s May 14, 2004 production consisted of more than 1300 pages of responsive e-mails. (May 14, 2004 Letter from K. DeBord to M. Brody (Ex. 1).)

4. At the end of October 2004, James F. Doyle, the attorney at Morgan Stanley who directed Morgan Stanley’s prior search for e-mail messages, learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data on those tapes had not been restored or searched prior to the May 14, 2004 e-mail production. (J. Doyle Decl. ¶ 3 (Ex. 2)). Mr. Doyle directed that the electronic searches described in the Agreed Order be conducted

for any backup tapes that had been restored and made searchable at that point. (*Id.*) Mr. Doyle further directed that the process of restoring the remaining backup tapes continue as expeditiously as possible. (*Id.*)

5. In early November 2004, Morgan Stanley's Information Technology Department conducted electronic searches on all e-mail data that had been restored and made searchable since May 14, 2004. (G. Jonas Decl. ¶ 2 (Ex. 3).) The results of those searches were provided to Morgan Stanley's outside counsel in mid-November. (*Id.*)

6. On November 15, 2004, Morgan Stanley's outside counsel first determined that the data generated by the new searches included e-mail messages responsive to CPH's discovery requests. (T. Clare Decl. ¶ 2 (Ex. 4).) Two days later, on November 17, 2004, counsel for Morgan Stanley wrote to CPH and informed it that: (1) additional e-mail backup tapes had been discovered; (2) additional responsive e-mails had been identified; and (3) e-mail backup tapes were still being restored. (Nov. 17, 2004 Letter from T. Clare to M. Brody (Ex. 5).)

7. On November 18, 2004, Morgan Stanley produced all responsive e-mails located on the backup tapes that had been restored and made searchable at that point. (Nov. 18, 2004 Letter from M. Occhuzzo to M. Brody (Ex. 6).) Morgan Stanley's November 18, 2004 production consisted of over 8,000 pages of e-mail messages.

8. Since November 2004, Morgan Stanley has worked continuously and diligently to migrate the data from the remaining backup tapes onto a searchable database. (A. Nachtigal Decl. ¶ 2 (Ex. 7).) The restoration of these tapes is still underway, but Morgan Stanley is proceeding with the restoration of the remaining tapes as quickly and accurately as possible. (*Id.*)

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9. The restoration of the remaining backup tapes has been one of Morgan Stanley's priorities since November 2004. (*Id.*) However, given the technical limitations and other difficulties associated with restoring e-mail backup tapes, Morgan Stanley's Information Technology staff is unable to estimate with certainty when the data from all of the remaining backup tapes will be restored. (*Id.* ¶ 3.)

10. To ensure continued compliance with the Agreed Order, Morgan Stanley intends, in parallel with finalizing the restoration of the remaining tapes, to run the electronic searches described in the Agreed Order periodically as the restored data becomes available in searchable form. This process will allow Morgan Stanley to provide the results of those searches to outside counsel on a rolling basis and determine, as expeditiously as possible, whether any additional responsive e-mails exist. (*Id.* ¶ 4.) Morgan Stanley's technical staff estimates that the results of these searches will begin to be available on or about February 7, 2005. (*Id.*) Until these searches have been conducted and the resulting data reviewed by counsel, there is no way to determine whether there are any additional materials responsive to the Agreed Order. (*Id.* ¶ 5.)

ARGUMENT

I. THE LEGAL STANDARD

It is well-established in Florida that, except in "limited" situations not applicable here, an adverse inference instruction "invades the province of the jury" and constitutes reversible error. *See Jordan ex rel. Shealey v. Masters*, 821 So. 2d 342, 346-47 (Fla. 4th DCA 2002) (discussing the "limited function of the presumption"). Indeed, virtually *every case* cited in CPH's motion *rejects* the propriety of adverse inference instructions and *reverses* judgments entered in trials where such instructions were given. *See Palmas Y. Bambu v. E.I. Dupont de Nemours & Co.*, 881 So. 2d 565, 580 (Fla. 3d DCA 2004) (adverse inference instruction "invaded the province of the jury and constitute[d] reversible error"); *Jordan*, 821 So. 2d at 348 (reversing in part on an

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adverse inference jury instruction which “constituted a comment on the evidence by the trial court and approval for the jury to conclude that all of that evidence would be unfavorable”); *Martino v. Wal-Mart Stores, Inc.*, 835 So. 2d 1251, 1257 n.2 (Fla. 4th DCA 2003) (conclusion that jury instruction concerning the adverse inference created by Wal-Mart’s failure to produce a shopping cart and security videotape “is not appropriate”).¹ Other Florida cases reach the same conclusion. *See, e.g., Southern Pine Co. v. Powell*, 37 So. 570 (Fla. 1904) (concluding that a jury instruction on the facts constituted error sufficient to warrant reversal); *Bessett v. Hackett*, 66 So. 2d 694, 701 (Fla. 1953) (“The rule is that the court’s instructions to the jury must not assume the truth of facts which are controverted, or impose upon either party a duty not shown by the evidence to exist.”).

The only exception to the general rule prohibiting adverse inference instructions was established (and carefully circumscribed) in *Public Health Trust of Dade County v. Valcin*, 507 So. 2d 596 (Fla. 1987). In *Valcin*, the Florida Supreme Court approved the adoption of a rebuttable presumption of negligence in a medical malpractice case where the operative notes were either missing or inadequate due to the negligence of the hospital or doctors. *Id.* at 599-600. The Florida Supreme Court stressed the “limited” function of an adverse inference instruction, and expressly limited such instructions to situations in which the plaintiff establishes

¹ The only other case cited by CPH, *Amlan, Inc. v. Detroit Diesel Corp.*, 651 So. 2d 701 (Fla 4th DCA 1995), had nothing to do with an adverse inference or a jury instruction. Moreover, more recent Florida cases (including those cited by CPH) *rejected* the argument that *Amlan* stands for the proposition that an adverse inference instruction to the jury is proper. *See Palmas Y. Bambu*, 881 So. 2d 565 (Fla 3d DCA 2004) (holding that trial court’s adverse inference instruction was reversible error and stating that trial court’s reliance on *Amlan* was improper because the facts of *Amlan* did not involve an adverse inference or a jury instruction).

“to the satisfaction of the court that the absence of the records hinders his ability to establish a prima facie case.” *Id.* at 599.

Jordan ex rel. Shelly v. Masters establishes the rigorous showing that must be made by a party seeking an adverse inference instruction in the Fourth District. First, the party seeking an adverse inference instruction must establish that “the allegedly missing evidence should have or did exist.” *Jordan*, 821 So. 2d at 347. Then, the Court must determine whether the missing evidence “hindered the plaintiff’s ability to proceed.” *Id.* To satisfy this requirement, the Fourth District held, “*Valcin* requires that the missing evidence be *essential* to the opposing party’s prima facie case.” *Id.* (emphasis added).² The trial court must make *both* of these findings before giving an adverse inference instruction. *Jordan*, 821 So. 2d at 347 (reversing judgment where “the trial court . . . should have determined *both* issues before giving Jordan’s adverse inference instruction, but it determined neither”) (emphasis in original).

Similarly, the law is clear that an adverse inference jury instruction is not permitted where the only allegation is a failure to produce evidence. *See id.* at 346 (“We have found no case approving an instruction for an adverse inference to be drawn from the failure to produce evidence.”); *Palmas Y. Bambu*, 881 So. 2d at 581 (“Like the Fourth District, we have been unable to locate any Florida decision approving an instruction for an adverse inference to be drawn from the failure to produce nonessential evidence.”).

Finally, it is improper — and risks reversible error — to allow one party to argue to the jury an inference of misconduct, where that party has not (and cannot) show that the opposing

² *See also Palmas Y. Bambu*, 881 So. 2d at 582 (“In this case, the trial court correctly found that the nurseries’ ability to establish a prima facie case was not hindered by the loss of the Monte Vista evidence. Under these circumstances, *Valcin* is inapplicable.”).

party engaged in a pattern of discovery misconduct, committed fraud on the Court, or willfully defied a court order. Indeed, one of the primary cases cited by CPH recognizes that “[e]vidence related to the history of pretrial discovery conduct should normally not be a matter submitted for the jury’s consideration on the issues of liability.” *Amlan, Inc.*, 651 So. 2d at 703 (citing *Emerson Elec. Co. v. Garcia*, 623 So. 2d 523, 525 (Fla. 3d DCA 1993)).

II. CPH HAS NOT OFFERED ANY EVIDENCE TO SUPPORT ITS CLAIMS.

CPH has had ample opportunity to develop evidence, if any existed, in support of its motion. On September 9, 2003, CPH deposed a Morgan Stanley corporate representative, John Plotnick, to address topics related to Morgan Stanley’s document collection efforts in this case, and its document retention policies for hard copy and electronic documents.³ In addition, on February 10, 2004, CPH deposed a Morgan Stanley corporate representative, Robert Saunders, regarding Morgan Stanley’s e-mail retention policies and its ability to restore e-mail. CPH also deposed numerous fact witness regarding e-mail messages. Despite these extensive discovery efforts, CPH has not offered a any evidence to support its required showing that (1) additional Sunbeam-related e-mails existed; (2) Sunbeam-related e-mails were destroyed; and (3) the “missing” Sunbeam-related e-mails are “essential” to its prima facie case.

³ CPH has cited Mr. Plotnick’s testimony for the proposition that Morgan Stanley did not retain e-mail messages from 1997 and 1998, when Morgan Stanley was not a party to any Sunbeam-related litigation. It is absurd for CPH to attempt to make an issue of Morgan Stanley’s retention of e-mail when, by its own admission, CPH has never enacted or enforced a written document retention policy to prevent destruction of relevant documents, including emails, by its employees. *See* Part III.

A. There Are No “Missing” E-Mails

CPH argues — *without any evidentiary support whatsoever* — that “Morgan Stanley destroyed most or all of its 1998 e-mails concerning Sunbeam.” (Jan. 26, 2005 CPH’s Mot. for Adverse Inference Instruction Due to MS Destruction of E-Mails and MS’s Noncompliance with the Court’s Apr. 16, 2004 Agreed Order at 2 (“Mot.”).) As “proof” of this allegation, CPH states that Morgan Stanley produced “only a small handful of e-mails in response to CPH’s document requests.” (*Id.*) But this is a gross mischaracterization of Morgan Stanley’s prior production. Morgan Stanley has produced more than 9,000 pages of e-mail. (*See* Facts ¶¶ 3, 7.) Virtually all of these e-mails “concern Sunbeam,” and many are from the relevant 1997 and 1998 time period.

CPH’s motion misleadingly describes, again without any evidentiary support, a “general destruction of e-mails in 1999” (Motion at 1) and refers, without any explanation, to a industry-wide 2002 settlement with the Securities and Exchange Commission (SEC) (*Id.* at 2). CPH juxtaposes these arguments in an attempt to create the false impression that the SEC fined Morgan Stanley for destroying e-mail messages. That is not the case. The SEC settlement, which was industry-wide, addressed only the failure of certain registered broker-dealers, including Morgan Stanley, to comply with regulatory requirements that require broker-dealers to preserve certain electronic communications for a three-year period, and to preserve those electronic communications for the first two years in a readily accessible place.⁴ Nothing in the SEC settlement supports a “general destruction of e-mails in 1999,” or any inference that any Sunbeam-related e-mails were ever destroyed.

⁴ The recycling of e-mail tapes at Morgan Stanley ended in January 2001, years before CPH ever threatened or filed suit against Morgan Stanley.

Simply put, conclusory allegations are not enough. If CPH believes it has evidence that additional Sunbeam-related e-mails existed and were destroyed, it should have provided that evidence in its motion. Otherwise, its motion is deficient and must be denied. *See Jordan*, 821 So. 2d at 347 (finding reversible error where a negative inference instruction was given and the requesting party “failed to offer any evidence to support the existence of the videotape”). CPH has not offered any such evidence here, and its motion should be denied on this ground alone.

B. CPH Is Not Entitled To An Adverse Inference Instruction Based On Materials That *Might* Exist On The Tapes Still Being Restored

CPH argues that a negative inference is warranted because Morgan Stanley produced additional responsive e-mails in November 2004 and is still in the process of restoring and searching e-mail backup tapes that were not identified or searched as part of Morgan Stanley’s May 14, 2004 e-mail production. But Morgan Stanley did *exactly* what a responsible litigant is *supposed* to do when it discovers the existence of additional materials that are (or may be) responsive to an opposing party’s discovery requests or a court order. As set forth in detail above, Morgan Stanley’s in-house and outside counsel: (1) notified CPH that Morgan Stanley had discovered additional potentially responsive materials; (2) searched restored data for responsive emails; (3) produced responsive documents; and (4) took affirmative steps to continue the process of restoring the remaining tapes. (*See* Facts ¶¶ 6-8.) Clearly, no adverse inference instruction is warranted under these circumstances.

CPH next argues that an adverse inference instruction is warranted because responsive materials *might* exist on backup tapes that are still in the process of being restored. *First*, such an assertion is purely speculative. Until the data from those tapes is restored, searched, and received by counsel, there is no way to determine whether the additional tapes contain any responsive materials. (*See* Facts ¶ 10.) *Second*, even if the contents of the additional tapes were

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known, such allegations are insufficient, as a matter of Florida law, to entitle CPH to the instruction it seeks. *See Jordan*, 821 So. 2d at 346 (holding it was reversible error to give adverse inference instruction and noting that “[w]e have found no case approving an instruction for an adverse inference to be drawn from the failure to produce evidence”).

Morgan Stanley has worked hard and with great diligence to complete the restoration of the additional backup tapes located since its May 14, 2004 production, and it expects that data from those tapes will begin to be available for review. If and when additional responsive e-mails are located, Morgan Stanley will promptly produce them. But there is no basis — in fact or in law — for CPH to bootstrap the mere *possibility* that additional responsive e-mails exist into an entitlement to an adverse inference instruction.

C. CPH Has Not Offered Any Proof That “Missing” E-Mails Are “Essential” To Its Prima Facie Case.

“*Valcin* requires that the missing evidence be essential to the opposing party’s prima facie case.” *Jordan*, 821 So. 2d at 347. Here, CPH has offered no evidence whatsoever regarding the subject matter of the allegedly “missing” e-mails, no explanation how the allegedly “missing” e-mails might relate to the subject matter of this lawsuit, and no argument as to how such e-mails are “essential” to its ability to establish its prima facie case. These defects are fatal to CPH’s motion. *See Palmas Y. Bambu*, 881 So. 2d at 580-81 (finding reversible error where a negative inference instruction was given and the requesting party “has not demonstrated an inability to proceed without the [missing] evidence”); *Bulkmatic Transport Co. v. Taylor*, 860 So. 2d 436, 449 (Fla. 1st DCA 2003) (instruction improper where plaintiff’s ability to establish prima facie case is not hindered by the absence of evidence).

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III. CPH'S OWN FAILURE TO RETAIN E-MAILS PRECLUDES THE ADVERSE INSTRUCTION IT NOW SEEKS.

It is absurd for CPH to attempt to make an issue of Morgan Stanley's retention of e-mail when, by its own admission, CPH has never enacted or enforced a written document retention policy to prevent destruction of relevant documents, including emails, by its employees and has maintained a policy of recycling its own e-mail backup tapes every month — even after it threatened Sunbeam with a lawsuit, even after its executives became named parties to litigation related to the Sunbeam/Coleman transaction, even after it sued Arthur Andersen, and even after the onset of litigation in the present case. (*See* Sept. 15, 2003 Fasman Dep. at 31, 49 (Ex. 8); MS 1 (Ex. 9).)

CONCLUSION

CPH's motion invites the Court to commit reversible error at a critical stage of the case. Morgan Stanley has produced thousands of e-mails, and it acted reasonably and expeditiously when additional potentially responsive materials were discovered. CPH failed to offer any evidence to support the existence of additional Sunbeam-related e-mails, the destruction of a single Sunbeam-related e-mail, or its inability to present a prima facie case without them. Accordingly, its motion should be denied.

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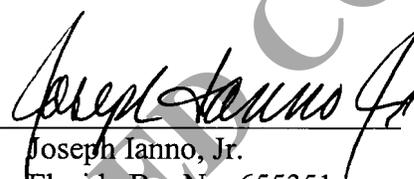
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 31st day of January, 2005.

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Lawrence P. Bemis (FL Bar No. 618349)
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*Counsel for Morgan Stanley
& Co. Incorporated*

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BY: 
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Michael Brody
JENNER & BLOCK, LLC
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Chicago, IL 60611

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Exhibit 1

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KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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Kathryn R. DeBord
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Dir. Fax: (202) 879-5200

May 14, 2004

By Federal Express

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

**Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
MSSF v. MacAndrews & Forbes Holdings Inc. et al.***

Dear Mike:

Enclosed is Morgan Stanley's production of e-mails pursuant to the parties' April 16, 2004 agreed-upon order, bearing the bates range 0094349-0095651. In addition to the production, the CD contains two text files: a cross-reference file and a comma-delimited data file (which contains attachment information).

Sincerely,



Kathryn R. DeBord

cc: Joseph Ianno, Jr., Esq. (by facsimile) (without enclosure)
John Scarola, Esq. (by facsimile) (without enclosure)
Mark Hansen, Esq. (by facsimile) (without enclosure)

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Chicago

London

Los Angeles

New York

San Francisco

16div-028516

Exhibit 2

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

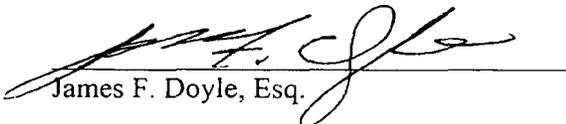
DECLARATION OF JAMES F. DOYLE

1. I am James F. Doyle. I am employed as an Executive Director in the Law Division of Morgan Stanley & Co. Incorporated ("Morgan Stanley"). In that capacity, I have personal knowledge of the matters set forth herein.

2. On information and belief, Morgan Stanley produced restored e-mail documents in the above-captioned matter on May 14, 2004.

3. At the end of October 2004, I learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data on those tapes had not been restored or searched prior to Morgan Stanley's May 14, 2004 e-mail production. Upon learning that information, I directed that the electronic searches described in the April 16, 2004 Agreed Order be conducted for any backup tapes that had been restored and made searchable at that point, and that the process of restoring the remaining backup tapes continue as expeditiously as possible.

UNDER PENALTY OF PERJURY, I HEREBY DECLARE THAT THE FOREGOING
IS TRUE AND CORRECT.


James F. Doyle, Esq.

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Exhibit 3

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO: CA 03-5045 AI

vs.

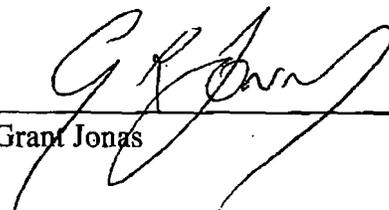
MORGAN STANLEY & CO. INCORPORATED,
Defendant.

DECLARATION OF GRANT JONAS

1. I am Grant Jonas. I am a Vice President in Morgan Stanley's IT Security Department in New York, New York. In that capacity, I have personal knowledge of the matters set forth herein.

2. In early November 2004, I was directed to conduct electronic searches of e-mail data that had been restored and made searchable since May 14, 2004. Pursuant to that request, I ran again the electronic searches described in the April 16, 2004 Agreed Order ("Order") and provided the results of those searches to outside counsel in mid-November.

UNDER PENALTY OF PERJURY, I HEREBY DECLARE THAT THE FOREGOING
IS TRUE AND CORRECT.



Grant Jonas

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Exhibit 4

NOT A CERTIFIED COPY

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

DECLARATION OF THOMAS A. CLARE, ESQ.

1. I am a partner in the law firm of Kirkland & Ellis LLP. Kirkland & Ellis is counsel to Morgan Stanley in the above-captioned action. I have been an attorney at Kirkland & Ellis since 1996. I have worked on this action since its inception.

2. On November 15, 2004, Morgan Stanley's outside counsel first determined that the data generated by Morgan Stanley's November 2004 searches of restored backup tapes included e-mail messages responsive to CPH's discovery requests.

UNDER PENALTY OF PERJURY, I HEREBY DECLARE THAT THE FOREGOING IS TRUE AND CORRECT.

Thomas A. Clare

Thomas A. Clare

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Exhibit 5

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KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

Thomas A. Clare
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Facsimile:
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November 17, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

I write regarding supplementation of Morgan Stanley's document production.

Morgan Stanley has discovered additional e-mail backup tapes since our e-mail production in May 2004. The data on some of newly discovered tapes has been restored and, to ensure continued compliance with the agreed order, we have re-run the searches described in the order. Some responsive e-mails have been located as a result of this process. We will produce the responsive documents to you as soon as the production is finalized.

Some of the backup tapes are still being restored. To ensure continued compliance with the agreed order, we intend to re-run the searches again when the restoration process is complete and will produce any responsive documents that result.

Sincerely,

Thomas A. Clare /kpc

Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark C. Hansen, Esq. (by facsimile)

Chicago

London

Los Angeles

New York

San Francisco

029712

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Exhibit 6

NOT A CERTIFIED COPY

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KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
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Michael C. Occhuzzo
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Facsimile:
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November 18, 2004

By Federal Express

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

I write regarding the supplementation of Morgan Stanley's document production.

Following up on Tom Clare's November 17, 2004 letter regarding the supplemental production of Morgan Stanley e-mails, I have enclosed two compact disks containing the responsive documents identified during our review.

The Bates range for this production is Morgan Stanley Confidential 0103434 through Morgan Stanley Confidential 0111575.

Sincerely,



Michael C. Occhuzzo

Enclosure

Chicago

London

Los Angeles

New York

San Francisco

029714

16div-028526

Exhibit 7

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IN THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

DECLARATION OF ALLISON GORMAN NACHTIGAL

1. I am Allison Gorman Nachtigal. I am an Executive Director in Morgan Stanley's Enterprise and Client Technology Division in New York, New York. In that capacity, I have personal knowledge of the matters set forth herein.

2. Since November 2004, Morgan Stanley has worked continuously and diligently to migrate the data from the additional e-mail backup tapes onto a searchable database. Morgan Stanley is proceeding with the restoration process as quickly and accurately as possible. The restoration of those tapes has been one of my priorities.

3. Given the technical limitations and difficulties associated with restoring e-mail backup tapes, Morgan Stanley's Information Technology staff is unable to estimate with certainty when the data from all of the remaining e-mail backup tapes will be restored. To ensure continued compliance with the April 16, 2004 Agreed Order ("Agreed Order"), Morgan Stanley intends, in parallel with finalizing the restoration of the remaining tapes, to run the electronic searches described in the Agreed Order periodically as the restored data becomes

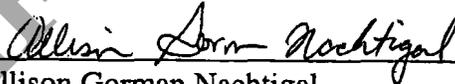
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available in searchable form. This process will allow Morgan Stanley to provide the results of those searches to outside counsel on a rolling basis.

4. I estimate that the results of the parallel searches described in Paragraph 3 will begin to be available on or about February 7, 2005. In my judgment and experience, this approach is the fastest way to determine whether any of the restored additional tapes include materials responsive to the Agreed Order.

5. Until the searches described in Paragraph 3 have been conducted and the resulting data reviewed by counsel, there is no way to determine whether the restored tapes include materials responsive to the Agreed Order.

UNDER PENALTY OF PERJURY, I HEREBY DECLARE THAT THE FOREGOING IS TRUE AND CORRECT.


Allison Gorman Nachtigal

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Exhibit 8

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EXHIBIT IS CONFIDENTIAL

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Exhibit 9

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JENNER & BLOCK

September 9, 2003

Jenner & Block, LLC Chicago
One IBM Plaza Dallas
Chicago, IL 60611-7603 Washington, DC
Tel 312 222-9350
www.jenner.com

By Telecopy

Zhonette M. Brown, Esq.
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655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

**Re: Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co.
Morgan Stanley Senior Funding v. MacAndrews & Forbes Holdings Inc., et al.**

Dear Zhonette:

I write in response to your letter of September 8, 2003.

In your letter, you request CPH and Mafco to produce their written document retention policies and related documents. CPH and Mafco do not have any responsive documents.

You also request CPH and Mafco to provide copies of the "March 17 letter referred to in paragraph 56 of the complaint filed by CPH." All such copies have been produced.

Very truly yours,

Michael T. Brody

MTB:cjg

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Jerold S. Solovy, Esq.

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9-5-03 EXHIBIT #1 Morgan Stanley Rm 5

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

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PALM BEACH COUNTY, FL
CIRCUIT CIVIL 9

ORDER AND NOTICE OF HEARING

This cause came before the Court February 1, 2005 on the parties' Joint ore tenus Motion to Continue, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the parties' Joint ore tenus Motion to Continue is Granted. Hearing on CPH's Motion to Deem Certain Documents Admissible and for Sanctions Due to Morgan Stanley's Disregard of Court Order and on CPH's Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order set February 1, 2005 is canceled and is hereby reset for

February 2, 2005, at 9:30 a.m.

at the West Palm Beach Courthouse, Room 11A, 205 N Dixie Hwy, WPB, FL. It is further

ORDERED AND ADJUDGED that hearing on Motions in Limine and deposition designations is hereby set for

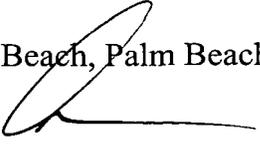
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February 2, 2005, at 9:30 a.m. and February 3, 2005, at 1:30 p.m.

at the West Palm Beach Courthouse, Room 11A, 205 N Dixie Hwy, WPB, FL.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 1st day of February, 2005.


ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:

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John Scarola, Esq.
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Rebecca Beynon, Esq.
Sumner Square
1615 M Street, NW, Suite 400
Washington, DC 20036

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-4380 within two (2) working days of your receipt of this [describe notice]; if you are hearing or voice impaired, call 1-800-955-8771.

SPANISH

Si Ud. es una persona incapacitada que necesita de un servicio especial para participar en este proceso, Ud. tiene derecho a que le provean cierta ayuda sin costo alguno. Por favor pongase en contacto con el Coordinador de la Oficina Administrativa de la Corte ADA, situada en el 205 North Dixie Highway, Oficina 5.2500, West Palm Beach, Florida, 33401, teléfono (561) 355-4380, dentro de los dos (2) próximos días hábiles después de recibir esta [describa la notificación]; si tiene incapacidad de oír ó hablar llame al 1-800-955-8771.

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CREOLE

Si ou sé yon moun ki Infirm, ki bézwen ninpôt akomodasyon pou ka patisipé nan pwosè sa-a, ou gen dwa, san'l pa kouté'w anyin, pou yo ba'w kèk sèvis. Tanpri kontakté koòdinatè ADA ya nan Biro Administratif Tribinal nan cité Palm Beach la, ki nan 205 North Dixie Highway, Cham 5.2500, West Palm Beach, Florida 33401, niméro telefonn-nan sé (561) 355-4380, rélé dé (2) jou dé lè ou résévwa [notis sa-a]; si ou bèbè ou byen soud rélé 1-800-955-8771.

FRENCH

Si vous êtes infirme, et en besoin de n'importe accommodation pour pouvoir participer á ces procédures, vous pouvez gratuitement recevoir, certains services. S'il-vous-plait contactez le coordinateur du Bureau Administratif du Tribunal de Palm Beach, située à 205 North Dixie Highway, Chambre 5.2500, West Palm Beach, Florida 33401, numero de téléphone (561) 355-4380 durant deux (2) jours suivant la réception de [cette note]; si vous êtes muets ou sourds, appelez 1-800-955-8771.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

Material Redacted Without Prior Determination of Protectability by Court

**MORGAN STANLEY'S MOTION IN LIMINE (NO. 22)
TO EXCLUDE TESTIMONY AND EVIDENCE
REGARDING PREJUDGMENT INTEREST**

Coleman (Parent) Holdings Inc. ("CPH") has disclosed that it intends to offer expert testimony endeavoring to

Under Florida law, the Court — not experts and not the jury — ultimately computes prejudgment interest. In fact, such computation occurs only *after* the jury renders its verdict. The Court therefore should preclude CPH from introducing any testimony, evidence, or argument to the jury regarding prejudgment interest.

In support of its position, Morgan Stanley states as follows:

CPH damages expert Blaine F. Nye, Ph.D., in his report dated December 7, 2004,

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SHARON BOCK, CLERK
PALM BEACH COUNTY, FL
CRIMINAL DIVISION

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2. “[T]he assessment of prejudgment interest is a ministerial act, a mathematical calculation, to be performed by the trial judge after the jury renders its verdict.” *Bennett v. Morales*, 845 So. 2d 1002, 1004 (Fla. 5th DCA 2003) (citing *Argonaut Ins. Co. v. May Plumbing Co.*, 474 So. 2d 212 (Fla. 1985); *Maingate Dev., Inc. v. Lakeview Mktg. Group, Inc.*, 758 So. 2d 1290, 1291 (Fla. 4th DCA 2000)). *See generally* 17 Fla. Jur. 2d *Damages* § 90 (2004) (same).

3. The award of prejudgment interest, which is based on statutory interest rates, is strictly a “matter of law.” *Argonaut*, 474 So. 2d at 215. “There is no ‘finding of fact’ needed.” *Id.* Thus, CPH’s presentation of expert testimony to a jury regarding prejudgment interest calculations would be a wholly improper usurpation of the Court’s post-verdict ministerial function and would run contrary to controlling Florida law. *Id.*

4. In addition, introducing such evidence would confuse the jury and cause unfair prejudice. Morgan Stanley would be forced to cross-examine a non-lawyer expert witness on a matter of law. And the jury likely would be influenced by improperly inflated figures and perplexed by what to do with the prejudgment interest figures. Given the Florida Supreme Court’s acknowledgement of the “conflict and confusion in the treatment of prejudgment interest” by courts as a matter of law, *id.* at 213-14, CPH’s groundbreaking attempt to have *the jury* usurp the Court’s ministerial function would only exacerbate that confusion.

5. Moreover, Dr. Nye’s computation is self-contradictory and completely at odds with Florida law, which states that prejudgment interest is not triggered until damages are liquidated, i.e., the date certain that CPH suffered an actual, fixed loss. *Id.* at 215.

Dr. Nye's inconsistent analysis in this case only reinforces why the Florida Supreme Court observed that "tort claims are generally excepted from the rule allowing prejudgment interest, primarily because tort damages are generally too speculative to liquidate before final judgment." *Lumbermens Mut. Cas. Co. v. Percefull*, 653 So. 2d 389, 390 (Fla. 1995) (citing *Parker v. Brinson Constr. Co.*, 78 So. 2d 873, 875 (Fla. 1955)).

6. Here, the Court must protect and retain its ministerial role and only address prejudgment interest in the event the jury were to render a verdict awarding compensatory damages. Until then, the Court should bar CPH from introducing testimony and evidence that will only lead to juror confusion.

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WHEREFORE, Morgan Stanley respectfully requests that this Court preclude CPH's witnesses and attorneys from introducing any evidence, testimony, and argument to the jury regarding the applicability or amount of prejudgment interest in CPH's damages claim.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 13th day of February, 2005.

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BY: 

*Counsel for Morgan Stanley
& Co. Incorporated*

031568

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Suite 1200 – West Tower
West Palm Beach, FL 22401-6136

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EXHIBIT 1

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EXHIBIT IS CONFIDENTIAL

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COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: 2003 CA 005045 AI

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15th JUDICIAL CIRCUIT
PALM BEACH COUNTY, FL

**COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY'S
MOTION IN LIMINE NO. 21 TO PERMIT CROSS-EXAMINATION OF ARTHUR
ANDERSEN LLP WITNESSES REGARDING SUNBEAM'S FINANCIAL CONDITION**

Before any Andersen witness has been called to testify, and without knowing the precise scope of any such witness' direct examination, Morgan Stanley is asking for this Court for a broad license to cross-examine any Andersen witness called during CPH's case-in-chief about a wide array of matters relating to: (1) Sunbeam's financial condition while Morgan Stanley was advising Sunbeam; (2) Andersen's 1996 and 1997 audits of Sunbeam; and (3) Andersen's restatement of Sunbeam's 1996 and 1997 financial results. Morgan Stanley's request, which amounts to an attempt by Morgan Stanley to try its case in CPH's case, is both premature and without merit.

First, contrary to Morgan Stanley's contention (at ¶ 7), it is impossible at this point to rule that the broad areas of cross-examination that Morgan Stanley wishes to explore would be within the scope of CPH direct examination because no one has testified yet. If Mr. Bornstein were to testify and confine his testimony to the incident at the printer, for example, clearly, the broad areas of inquiry identified by Morgan Stanley would be beyond the scope of the direct examination. This is a matter on which this Court cannot rule in a vacuum without having heard

the direct testimony involved.

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Second, contrary to Morgan Stanley's assertion that the subjects it has identified for cross-examination "bear directly on the credibility of [Andersen] witnesses" (at ¶ 9), Morgan Stanley has not begun to tie any of the potential Andersen witnesses to any purported wrongdoing. And even if the potential witnesses were involved in the wrongdoing in some way, Morgan Stanley has not shown that such evidence would be proper cross-examination.

Third, Morgan Stanley's motion should be rejected for one more reason: Morgan Stanley has subpoenaed the Andersen witnesses and can present them in its own case. So if Morgan Stanley truly wishes to explore in detail Sunbeam's finances and Andersen's role in various audits, and to attempt to challenge the creditability of the Andersen witnesses by delving into issues that are unrelated to the scope of CPH's direct examinations, Morgan Stanley is free to do so in its case. Morgan Stanley, however, should not be allowed to obstruct and confuse the presentation of CPH's proofs by questioning witnesses about matters that fall well outside CPH direct examination.

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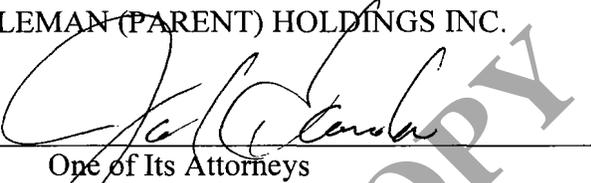
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WHEREFORE, for the foregoing reasons, CPH requests that this Court deny Morgan Stanley's motion in limine No. 21 concerning the cross-examination of Arthur Andersen LLP witnesses.

Dated: February 14, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: 
One of Its Attorneys

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Ronald L. Marmer
Jeffrey T. Shaw
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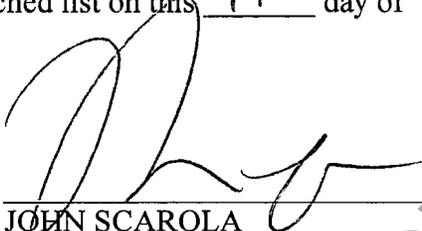
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

Fax and hand delivery to all counsel on the attached list on this 14th day of

Feb., 2005.



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Fax: (561) 684-5816
Attorneys for Coleman(Parent)Holdings Inc.

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Kellogg, Huber, Hansen,
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031576

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO.: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

STIPULATION

Morgan Stanley & Co. ("Morgan Stanley") stipulates that the documents listed in Exhibit A are true and correct copies of authentic documents, that those documents were prepared by Morgan Stanley or by Morgan Stanley's accountants pursuant to authorization by Morgan Stanley, and that those documents constitute records of regularly conducted business activity pursuant to Section 90.803(6) of the Florida Evidence Code.

MORGAN STANLEY & CO.

BY: *Thomas A. Clare*

COLEMAN (PARENT) HOLDINGS INC.

BY: *Jerold S. Solovy*

Thomas A. Clare
Thomas A. Clare
KIRKLAND & ELLIS LLP
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Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Jerold S. Solovy
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One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Dated: February 6, 2005

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R. BOCK, CLERK
PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION 2

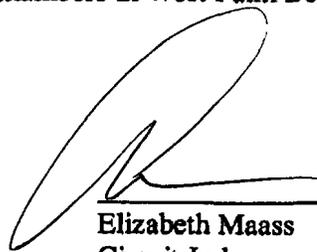
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ORDER APPROVING STIPULATION

THIS CAUSE, having come before the Court upon the foregoing stipulation, and after having reviewed the agreement of the parties, the Court approves the stipulation.

DONE AND ORDERED in chambers in West Palm Beach, Florida this 13th day of February, 2005.



Elizabeth Maass
Circuit Judge

Copies furnished to:

^{1/3} John Scarola, Esq.
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EXHIBIT A

BATES RANGE
MSC 0112001-0112050
MSC 0112220-0112285
MSC 1112218- 1112219

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

CASE NO: CA 03-5045

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DEFENDANT'S NOTICE TO PRODUCE AT TRIAL

Morgan Stanley, by and through the undersigned counsel, requests, pursuant to Rule 1.350 of the Florida Rules of Civil Procedure, that Plaintiff, Coleman (Parent) Holdings Inc. ("CPH") produce and permit Defendant to inspect and copy each of the documents described below. It is requested that the aforesaid production be made at the commencement of trial in this matter. Inspection will be made by visual observation, examination, and/or copying.

DEFINITIONS

Morgan Stanley incorporates by reference the Definitions and Instructions set forth in Defendant's First Request for Production of Documents served in this action. In addition, Morgan Stanley defines the following terms as follows:

1. "Coleman" means The Coleman Company, Inc. and any of its officers, directors, former or present employees, representatives, or agents.
2. "CPH" means Coleman (Parent) Holdings Inc. and any of its officers, directors, former or present employees, representatives, or agents.
3. "MAFCO" means MacAndrews & Forbes Holdings, Inc. and any of its officers, directors, former or present employees, representatives, agents, or affiliated holding and operating companies, including without limitation Mafco Holdings, Inc., Mafco Consolidated

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Group, CPH, CLN Holdings Inc., New Coleman Holdings, Coleman Worldwide Corporation, and Coleman.

DOCUMENTS REQUESTED

1. All documents involving, relating to, or referring to the value of the Sunbeam shares received by CPH as part of the Coleman Transaction, including without limitation all non-public financial statements, general ledger entries or other “accounting value” or “book value” documents relating to the value of the Sunbeam shares.

2. All documents produced by MAFCO, Credit Suisse First Boston or Ernst & Young in *Prescott Group Small Cap, L.P. et al. v. The Coleman Company, Inc.*, C.A. No. 17802 NC (Del. Chan. Ct.).

3. All discovery requests and responses in *Prescott Group Small Cap, L.P. et al. v. The Coleman Company, Inc.*, C.A. No. 17802 NC (Del. Chan. Ct.).

4. All deposition transcripts and exhibits produced in *Prescott Group Small Cap, L.P. et al. v. The Coleman Company, Inc.*, C.A. No. 17802 NC (Del. Chan. Ct.), including without limitation the trial transcripts and exhibits of Mr. Levin, Mr. Jenkins, Dr. Kursh, and Mr. Garvey.

5. All expert reports and supporting materials filed by Dr. Kursh and Mr. Garvey in *Prescott Group Small Cap, L.P. et al. v. The Coleman Company, Inc.*, C.A. No. 17802 NC (Del. Chan. Ct.).

6. All trial transcripts and exhibits from *Prescott Group Small Cap, L.P. et al. v. The Coleman Company, Inc.*, C.A. No. 17802 NC (Del. Chan. Ct.), including without limitation the trial transcripts and exhibits of Mr. Levin, Mr. Jenkins, Dr. Kursh, and Mr. Garvey.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to
all counsel of record on the attached service list by facsimile and hand delivery on this 12th day ^{4xPB}
of February 2005.

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BY: Lawrence P. Bemis

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*Counsel for
Morgan Stanley & Co. Incorporated*

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031583

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AT

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

FILED
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SHARON R. BOSK
CLERK OF COURT
PALM BEACH COUNTY
FLORIDA

MORGAN STANLEY'S COMBINED OPPOSITION TO CPH'S MOTIONS AND REQUESTS FOR DOCUMENTS RELATING TO WILLIAM STRONG

Coleman (Parent) Holdings Inc.'s ("CPH") has filed four related motions and discovery requests to obtain documents relating to the exoneration of William Strong from accusations made against him in 1998 in Italy involving a 1992 transaction when he was an employee of Salomon Brothers. The accusations have been a matter of public record since at least late 1998, and have been of record before the NASD since Mr. Strong filed his Form U-4 in November 2001. Notwithstanding the public nature of the allegations, CPH waited nearly two years to discover this information — after the close of discovery and only days before trial.

The Court should deny discovery and related matters for three reasons. *First*, contrary to CPH's assertion, the new documents CPH seeks *were not* covered by CPH's prior document requests. *Second*, CPH's request is egregiously untimely, as it falls two and one-half months outside of the close of fact discovery, and CPH has provided *no grounds whatsoever* for re-opening discovery two weeks before trial. *Third*, the documents at issue have no possible relevance to any issue in this case because they relate to an accusation made after the Sunbeam-Coleman transaction about events that occurred in Italy before William Strong's employment at Morgan Stanley, and *Strong was acquitted of the charge on the merits and absolved of any and all wrongdoing.*

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STATEMENT OF FACTS

1. On October 8, 1998, William Strong committed for trial in an Italian court of law on a charge of contributing toward causing the carrying out of the crime of corruption. (See Feb. 9, 2005 CPH's Motion to Compel Prod. of Doc. Relating to William Strong ("Mot. to Compel") at Ex. B.)

2. On November 10, 1998, Bloomberg published an article reporting that William Strong had been ordered to stand trial in Italy on corruption-related charges relating to his position as head of the European investment banking branch of Salomon Brothers.

3. On June 18, 2001, Mr. Strong filed a Uniform Application for Securities Industry Registration or Transfer on Form U-4 with the National Association of Securities Dealers ("NASD"). In this form, Mr. Strong disclosed that on October 8, 1998, an Italian Magistrate Judge in Milan charged him with "contributing toward causing the carrying out of the crime of corruption." (See Mot. to Compel at Ex. B.)

4. On January 8, 2003, the Court of Appeal of Milan absolved Mr. Strong of the crime for which he was charged "on the grounds that he did not commit the crime." (See Mot. to Compel at Ex. D.)

5. On May 8, 2003, CPH filed suit in the Fifteenth Judicial Circuit for Palm Beach County, Florida against Morgan Stanley Inc. alleging, *inter alia*, fraudulent and negligent misrepresentation in connection with Morgan Stanley's role in Sunbeam's March 1998 acquisition of the Coleman Company. CPH has repeatedly alleged that Mr. Strong has a propensity for "bad acts."

6. On May 9, 2003, CPH filed its First Request for Production of Documents. Request No. 44 called for "[a]ll documents concerning employment contracts, performance evaluations, and/or personnel files (including without limitation any documents that describe or

discuss the training, experience, competence, and accomplishments) of all Morgan Stanley personnel who performed services for or on behalf of Sunbeam in 1997 or 1998.” (May 9, 2003 Plaintiff’s First Req. for Prod. of Docs., Req. 44 (Ex. 1).) In accordance with the Court’s March 3, 2004 Order, Morgan Stanley searched for and produced documents responsive to CPH’s Request No. 44.

7. On December 4, 2003, CPH deposed Mr. Strong in Chicago, Illinois. At no time during the deposition was Mr. Strong asked if he had ever been charged with or convicted of a crime.

8. In its October 14, 2004 Order Concerning Pretrial Schedule And Following Case Management Conference, this Court provided for the close of fact discovery on November 24, 2004.

9. After the close of discovery, between December 6 and December 14, 2004, CPH was given the opportunity to depose four of Morgan Stanley senior executives, Joseph Perella, Robert Scott, Tarek Abdel-Meguid, and Bruce Fiedorek, who either reviewed Mr. Strong as part of Morgan Stanley’s personnel evaluation process or who served as Mr. Strong’s evaluation director. Despite ample opportunity, at no time did counsel for CPH ever ask the deponents whether they knew if Mr. Strong had ever been charged with or convicted of a crime.

10. Commencing on February 4, 2005, CPH filed numerous motions and discovery related requests to obtain documents relating to the charges brought against Mr. Strong in Italy in 1998. (See Feb. 4, 2005 CPH’s Tenth Request For Production of Documents; Feb. 5, 2005, Plaintiff’s Notice to Produce At Trial; Feb. 9, 2005 Mot. to Compel; Feb. 9, 2005 CPH’s Motion To Advance Morgan Stanley’s Time For Answering CPH’s Tenth Request For Production (“Mot. to Advance Time”).)

11. On February 18, 2005, jury selection for this action begins.

ARGUMENT

12. CPH has had nearly two years to investigate its case and take discovery of Morgan Stanley. On February 4 — *less than three weeks* before the trial is set to begin *and less than two weeks* before the Pretrial Conference — CPH served a Tenth Request for Production of Documents (“Tenth Request”) on Morgan Stanley that has no colorable relevance to any issue in this case, and a simultaneous motion to accelerate Morgan Stanley’s response to its requests. This discovery request was then followed by a Notice to Produce At Trial and a Motion to Compel Production of Documents. Morgan Stanley opposes CPH’s untimely gamesmanship and cross-moves the Court to strike many of the various motions and requests. This Court should not permit CPH to interfere with Morgan Stanley’s trial preparation at the eleventh hour when CPH could have requested the document during discovery, but did not, and when the documents are not reasonably calculated to lead to the discovery of admissible evidence in the case. Fla. R. Civ. P. 1.280(b)(1).

I. CPH Did Not Request The Documents At Issue Or Inquire About The Italian Proceeding During Discovery.

13. In support of its Motion to Compel and Motion to Advance Time, CPH erroneously states that, “Morgan Stanley has improperly withheld documents responsive to document requests made on May 9, 2003.” (Mot. to Compel at 1; *see id.* at 5 (indicating that the requested documents were responsive to CPH’s First Request for Production No. 44).) This statement is plainly false.

14. CPH’s First Request for Production No. 44 requests, “[a]ll documents concerning employment contracts, performance evaluations, and/or personnel files (including without limitation any documents that describe or discuss the training, experience, competence, and

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accomplishments) of all Morgan Stanley personnel who performed services for or on behalf of Sunbeam in 1997 or 1998.” (May 9, 2004 Plaintiff’s First Req. for Prod. of Docs. at Req. 44 (Ex. 1).) Morgan Stanley objected to this request, CPH filed a motion to compel, which the Court granted in part and denied in part. (June 25, 2003 Morgan Stanley Objs. to Pls. First Req. for Prod. of Docs. at Resp. 44 (Ex. 2); March 3, 2004 Order Granting in Part & Denying In Part Pl.’s Mot. to Compel Prod. of Docs. Relating To Employee Performance.)

15. The Court’s March 3, 2004 Order required Morgan Stanley to produce “documents *responsive to Plaintiff’s May 9, 2003 Request to Produce number 44* for the Morgan Stanley employees who worked on the 1997-1998 Sunbeam-related engagements. Specifically, Morgan Stanley shall produce, for those employees and for the time period from 1992 through and including 1998:

- (a) All references (positive or negative) to work performed by the employee on Sunbeam - related engagements and/or to the general quality of work performed in 1997 and/or 1998.
- (b) All references (positive or negative) to the employee’s performance in fee generation.
- (c) All references (positive or negative) to the employee’s performance of due diligence activities, regardless of whether designated specifically as such.
- (d) All references (positive or negative) to the employee’s truthfulness, veracity, or moral turpitude.”

(March 3, 2004 Order at 2.)

16. In accordance with the Court’s Order, Morgan Stanley searched for and produced documents responsive to CPH’s Request No. 44. Morgan Stanley limited the scope of its search, as the Order directed, to “documents responsive to CPH’s Request No. 44.” Morgan Stanley searched for documents “concerning employment contracts, performance evaluations, and/or personnel files” and produced those documents to CPH.

17. CPH now argues that documents *not concerning* Mr. Strong's "employment contracts, performance evaluations, and/or personnel files" should have been produced in response to this request and the Court's Order. In support of this argument CPH cites a November 10, 1998 Bloomberg article in which a Morgan Stanley employee states that, "Based on the firm's (own) investigation, we have no reason to believe that William Strong engaged in any wrongdoing in connection with this matter." Contrary to CPH's unsupported assertion, whatever documents in Morgan Stanley may have *outside* of the requested "employment contracts, performance evaluations, and/or personnel files" relating to an investigation in which Morgan Stanley concluded Mr. Strong had committed no wrong would be *outside* the scope of CPH's Request No. 44 and *outside* of the Court's March 3, 2004 Order.

18. CPH concedes as much by the fact that it served *new, totally different* requests in its Tenth Request.

II. CPH Cites No Good Cause For The Court To Re-Open Discovery On The Eve Of Trial.

19. CPH's virtually concedes the untimeliness of its discovery requests. The Court's October 14, 2004 Order Concerning Pretrial Schedule And Following Case Management Conference provides for the close of fact discovery on November 24, 2004.¹ CPH attempts to gloss over the fact that its requests would have had to be served over *three months ago* in order

¹ Despite the fact that CPH seeks to ignore the discovery cut-off now that it is convenient, CPH sought to use the cut-off to complain that Morgan Stanley was untimely in seeking leave of Court to take the deposition of Mr. Donald Uzzi. In CPH's Response To Morgan Stanley's Motion For Leave To Take Deposition of Donald R. Uzzi, CPH stated explicitly: "Given that this litigation has been pending since May 2003, and given Morgan Stanley has known about Uzzi's role in the underlying events since the beginning, CPH questions whether Morgan Stanley could have sought Uzzi's deposition sooner." (Dec. 21, 2004 CPH's Resp. To Morgan Stanley's Mot. For Leave To Take Dep. of Donald R. Uzzi at 1.) In this instance, therefore, CPH is hoisted with its own petard.

to fall inside the discovery cut-off. CPH does not directly address the untimeliness issue other than to say that CPH “recently obtained information” and more specifically, “on January 25, 2005, counsel for CPH obtained a copy of a November 10, 1998 Bloomberg article” that led it to desire additional documents related to Mr. Strong. (Mot. to Compel at 1.)

20. The fact that CPH chose not to do its investigation of Mr. Strong during the discovery period, or before his deposition (Dec. 4, 2003) and the depositions of Strong’s evaluators, Joseph Perella, Robert Scott, Tarek Abdel-Meguid,, and Bruce Fiedorek (Dec. 6-14, 2004) is no reason to re-open fact discovery now. Morgan Stanley should not be required to submit to new discovery in the midst of its trial preparation merely because CPH failed to obtain the November 10, 1998 Bloomberg article in the *six and one-half* years since its publication or ask the right questions in its depositions.

21. CPH’s transparent admission that it desires additional discovery merely because it “recently obtained” *public* information *available to CPH during the entire discovery period* is mandates that the motion be denied.²

III. Strong’s Italian Charge And Acquittal Are Irrelevant, Highly Prejudicial And Misleading.

22. In its Motion to Compel, CPH admits, as it must, that Mr. Strong was absolved of the charges against him “*on the ground that he did not commit the crime for which he was charged.*”³ (Mot. to Compel at 3.) This admission is fatal to CPH’s motion.

² Discovery is a two way street. If the Court is inclined to re-open fact discovery two weeks before trial — rewarding CPH for its procrastination and delay in conducting its investigation of this case and requiring Morgan Stanley to divert resources from trial preparation — then Morgan Stanley has its own additional sets of document requests, interrogatories and requests for admissions that it will serve on CPH.

23. To get the discovery CPH seeks — even if the discovery were timely, which it is not — CPH must demonstrate that the evidence is relevant to the subject matter of this action. *See Fla. R. Civ. P. 1.280(b)(1)*. The Florida Evidence Code defines relevant “evidence as evidence tending to prove or disprove a material fact.” Fla. Evid. Code § 90.401. The fact that William Strong “did not commit the crime for which he was charged” is the end of the story. Mr. Strong’s acquittal on the merits means that the charge and the proceedings in Italy *cannot* prove or disprove any material fact in this case. *See Fla. Evid. Code § 90.401*. Florida law is clear: “[E]vidence of crimes for which a defendant has been acquitted is not admissible in a subsequent trial.” *State v. Perkins*, 349 So. 2d 161, 164 (Fla. 1977); *see also Metropolitan Dade County v. Wilkey*, 414 So. 2d 269, 271 (Fla. 3d DCA 1982) (“An indictment is an accusatory pleading; pleadings are not admissible in evidence to prove or disprove a fact in issue.”) (internal citations omitted).

24. CPH tries to make an end-run around this unequivocal Florida law by muddying the waters and reframing the relevant issue in terms of Morgan Stanley’s state of mind. CPH asserts that “Morgan Stanley’s knowledge of and response to those 1998 circumstances, regardless of the exoneration by the appellate court in 2003, are pertinent to Morgan Stanley’s state of mind concerning Strong’s conduct in the time period relevant to this litigation.” (Mot. to Compel at 3.). At its root, CPH’s theory sounds in negligent entrustment; but CPH has not pled negligent entrustment or vicarious liability. In fact, it would have been impossible for CPH to

³This evidence does not even rise to the level of inadmissible propensity evidence, because the circumstances of Mr. Strong’s acquittal only serve to demonstrate his propensity to act innocently. In addition, the evidence could not follow under § 90.404(2)(a) of the Florida Evidence Code, because an acquittal — by definition — is not evidence of “other crimes, wrongs, or acts.”

have negligently entrusted the Sunbeam engagement to Mr. Strong based on Morgan Stanley's knowledge of the Italian indictment because Mr. Strong was not indicted until October 8, 1998, *over six months after* the closing of the Sunbeam — Coleman transaction. (See Mot. to Compel at Ex. B.)

25. But even if CPH's pleadings were not deficient as a matter of law, evidence of Mr. Strong's acquittal would nonetheless remain irrelevant to any material fact at issue in this case. CPH claims that "[i]f Morgan Stanley knew of the allegations and chose to ignore them, or investigated the allegations, concluded they were well-founded, and nevertheless continued to entrust Strong with important corporate responsibilities, such circumstances are clearly indicative of a reckless disregard for the interests of third parties relying on Morgan Stanley's corporate integrity." (Mot. to Compel at 3.)⁴

26. CPH's theory requires evidence of two things: *first*, that Strong committed certain bad acts in Italy over a decade ago while employed by another investment banking firm; and *second*, that Morgan Stanley knew or should have known of these bad acts at the time it assigned Strong to the Sunbeam engagement. But because Strong "did not commit the crime for which he was charged," CPH's theory falls apart. And because Mr. Strong was not even charged with any crime until *after the Sunbeam transaction closed*, Morgan Stanley *could not have known* about the Italian indictment until *after* Mr. Strong's involvement with the transaction had already come to an end.

⁴ Evidence that is barred by Florida law from being used *directly* against Mr. Strong cannot be used against others *even further removed* who might merely have knowledge of the wrongful indictment or acquittal.

27. In addition, CPH argues that the Italian charge and acquittal might be relevant “[i]f Morgan Stanley knew of the allegations and chose to ignore them, or investigated the allegations, concluded that they were well-founded, and nevertheless continued to entrust Strong with important corporate responsibilities.” (Mot. to Compel at 3.) This argument for *hypothetical relevance* is nothing more than smoke and mirrors given CPH’s acknowledgement of Morgan Stanley’s 1998 statement that, “[b]ased on the firm’s (own) investigation, we have no reason to believe that William Strong engaged in any wrongdoing in connection with this matter.” (Mot. to Compel at Ex. A).

28. As a matter of law, Morgan Stanley cannot be found negligent in assigning the *wrongfully accused* Mr. Strong to the Sunbeam engagement. CPH clearly seeks this evidence for the sole improper purpose of misleading or prejudicing the jury against Mr. Strong on the grounds of the false charge alone. This is precisely what the Florida legislature intended to prevent when it barred such evidence through Fla. Evid. Code § 90.403. *See Brown v. State*, 719 So. 2d 882 (Fla. 1998) (“‘Unfair prejudice,’ contemplated in evidentiary rule excluding relevant evidence outweighed by danger of unfair prejudice, means undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.”). This evidence lacks any potential probative value, and is highly likely to mislead the jury and unfairly prejudice Morgan Stanley and Mr. Strong. *See Fla. Evid. Code § 90.403; Morowitz v. Vistaview Apartments, Ltd.*, 613 So. 2d 493 (Fla. 3d DCA 1993), *review denied*, 626 So. 2d 210 (Fla. 1993).

29. Thus, any evidence of the accusations against Mr. Strong and his later acquittal are inadmissible under Florida evidentiary rules and highly irrelevant to any issue the jury will

be asked to decide in the case. The only reason CPH is pursuing this “evidence” is to prejudice the jury against Mr. Strong and Morgan Stanley.

CONCLUSION

Morgan Stanley cannot be blamed for the fact that CPH failed to avail itself of public information and failed to serve its new discovery requests within the discovery period. CPH’s requests are untimely and not reasonably calculated to lead to the discovery of admissible evidence in the case. Accordingly, the Court should enter an Order: (i) Striking CPH's Feb. 4, 2005 Tenth Requests for Production of Documents as untimely and not reasonably calculated to lead to the discovery of admissible evidence; (ii) Denying CPH's Feb. 9, 2005 Motion to Advance Morgan Stanley's Time for Answering CPH's Tenth Request for Production; (iii) Denying CPH's Feb. 9, 2005 Motion to Compel Production of Documents Related to William Strong; and (iii) Striking Plaintiff's Feb. 5, 2005 Notice to Produce at Trial these same documents.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and hand delivery on this 11th day of February 2005.

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Exhibit 1

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

Case No. CA 005045 AI

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION

MAY 09 2003

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Plaintiff Coleman (Parent) Holdings, Inc. ("CPH" or "Plaintiff"), by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block, LLC, hereby serves its First Request for Production of Documents upon Defendant Morgan Stanley & Co., Inc. ("Morgan Stanley" or "Defendant"), and requests responses and the production of documents at the office of Searcy Denney Scarola Barnhart & Shipley P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida, within the time provided by Florida Rule of Civil Procedure 1.350(b).

DEFINITIONS

1. "Arbitrations" means Albert J. Dunlap and Sunbeam Corporation, No. 32 160 00088 99 (AAA); and Russell A. Kersh and Sunbeam Corporation, No. 32 160 00091 99 (AAA).
2. "Coleman" means the Coleman Company, Inc. or any of its present and former officers, directors, employees, representatives, agents, and all other persons acting or purporting to act on its behalf.

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43. All documents concerning Morgan Stanley's policies, procedures, manuals, guidelines, reference materials, or checklists that were in effect from and including January 1, 1997 through and including December 31, 1998 for the performance of due diligence, including without limitation due diligence performed in connection with underwriting the sale of equity or debt securities.

44. All documents concerning employment contracts, performance evaluations, and/or personnel files (including without limitation any documents that describe or discuss the training, experience, competence, and accomplishments) of all Morgan Stanley personnel who performed services for or on behalf of Sunbeam in 1997 or 1998.

45. All documents concerning Morgan Stanley's performance evaluation criteria or guidelines in effect from and including January 1, 1997 through and including December 31, 1998.

46. All documents concerning Morgan Stanley's compensation criteria or guidelines in effect from and including January 1, 1997 through and including December 31, 1998.

47. All marketing or other promotional material prepared or used by, or on behalf of, Morgan Stanley concerning investment banking or securities underwriting services that were created or used at any time from and including January 1, 1997 through and including December 31, 1998.

48. All of your document retention or document destruction policies or procedures or similar procedures for the back-up or deletion of electronic or hard copy documents of any kind for any time during 1997 through the present, including without limitation any amendments to any such policies or procedures, schedules or related documents, and any memoranda or other instructions communicated to your employees concerning the obligation and procedures to be

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56. All privilege logs you prepared in any of the Litigations, the Arbitrations, or the SEC Administrative Proceedings with respect to documents that you withheld from production in response to any document requests, subpoenas duces tecum, or other process.

57. All transcripts of and exhibits to any depositions, recorded statements, or affidavits in connection with any of the Litigations, the Arbitrations, or the SEC Administrative Proceedings.

58. All documents obtained by you or produced to you by other parties, third parties, or non-parties (whether voluntarily or in response to any document requests, subpoenas duces tecum, or other process served by you or any other party) concerning Sunbeam.

59. All document requests, subpoenas duces tecum, interrogatories, requests for admission, responses, or objections that you served on, or received from, any party, third party or non-party in In re Sunbeam Corp., Inc., No. 01-40291 (AJG) (Bankr. S.D.N.Y.) and any adversary proceedings therein.

60. All transcripts of any hearings held in connection with the Litigations, the Arbitrations, or the SEC Administrative Proceedings.

61. All affidavits, declarations, or other testimonial statements filed or submitted in connection with any of the Litigations, the Arbitrations, or the SEC Administrative Proceedings.

COLEMAN (PARENT) HOLDINGS INC.

By: [Signature]
One of Its Attorneys

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Exhibit 2

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

**MORGAN STANLEY & CO. INCORPORATED'S OBJECTIONS TO
COLEMAN (PARENT) HOLDINGS, INC. FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS**

Pursuant to Rules 1.280 and 1.350 of the Florida Rules of Civil Procedure, defendant, Morgan Stanley & Co. Incorporated ("MS & Co.") hereby interposes the following objections to Coleman (Parent) Holdings, Inc.'s ("CPH") First Request for Production of Documents ("Request for Production").

GENERAL OBJECTIONS

The following general objections apply to all specifications of CPH's Request for Production. Each General Objection is hereby incorporated in the response to each request herein as if fully set forth:

1. MS & Co. objects to the entire Request for Production on the ground that discovery at this stage of the litigation would result in unnecessary burden and expense to MS & Co. On June 25, 2003, MS & Co. filed a Motion to Dismiss Or In the Alternative For Judgment on the Pleadings that is potentially dispositive of all of CPH's claims and will allow the Court to

objects to this request because it is duplicative of other document requests, including, but not limited to Request Nos. 49 and 59.

MS & Co. further objects to this request on the ground that it is an overbroad request for documents for entities other than MS & Co. and Morgan Stanley Senior Funding.

DOCUMENT REQUEST NO. 43

All documents concerning MS & Co.'s policies, procedures, manuals, guidelines, reference materials, or checklists that were in effect from and including January 1, 1997 through and including December 31, 1998 for the performance of due diligence, including without limitation due diligence performed in connection with underwriting the sale of equity or debt securities.

MS & Co.'s Objections:

MS & Co. objects to this request to the extent that it is vague, ambiguous, over broad and unduly burdensome. To the extent that it seeks documents concerning MS & Co.'s policies, procedures, manuals, etc... for the performance of due diligence other than that due diligence performed in the course of MS & Co.'s engagement for Sunbeam, the request is requesting documents which are irrelevant to this litigation and not reasonably calculated to lead to the discovery of admissible evidence. MS & Co. further objects to this request to the extent that it seeks the production of documents which do not exist.

Subject to and without waiving its specific or general objections, MS & Co. will, if necessary following the Court's determination of the pending case-dispositive motions, endeavor to produce any non-privileged documents in its possession, responsive to this request.

DOCUMENT REQUEST NO. 44

All documents concerning employment contracts, performance evaluations, and/or personnel files (including without limitation any documents that describe or discuss the training, experience, competence, and accomplishments) of all MS & Co. personnel who performed services for or on behalf of Sunbeam in 1997 or 1998.

MS & Co.'s Objections:

MS & Co. objects to this request to the extent that it seeks documents which are protected by the attorney-client, attorney work product, other common law or statutory privileges, or which are otherwise immune from discovery. MS & Co. expressly reserves the right to assert any and all common law or statutory privileges to which MS & Co. and its attorneys are entitled under applicable law.

This request seeks to compel production of personnel files and performance evaluations of individual MS & Co. employees that are neither relevant to CPH's claims nor reasonably calculated to lead to the discovery of admissible evidence and, in addition, would unnecessarily infringe on the privacy interests of those employees.

MS & Co. will not produce documents responsive to this request.

DOCUMENT REQUEST NO. 45

All documents concerning MS & Co.'s performance evaluation criteria or guidelines in effect from and including January 1, 1997 through and including December 31, 1998.

MS & Co.'s Objections:

MS & Co. objects to this request in that it seeks the production of documents which are irrelevant to this litigation and not reasonably calculated to lead to the discovery of admissible evidence.

MS & Co. will not produce documents responsive to this request.

DOCUMENT REQUEST NO. 46

All documents concerning MS & Co.'s compensation criteria or guidelines in effect from and including January 1, 1997 through and including December 31, 1998.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail and Federal Express to all counsel of record on the attached service list on this 25th day of June, 2003.

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BY: Thomas A. Clare
Thomas A. Clare

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

CASE NO: CA 03-5045 AI

FILED
05 FEB 14 PM 4:13
SHARON R. BOGGS, CLERK
PALM BEACH COUNTY
CIRCUIT COURT

**MORGAN STANLEY'S SUPPLEMENTAL OPPOSITION
TO CPH'S MOTION FOR ADVERSE INFERENCE INSTRUCTION**

INTRODUCTION

As ordered by the Court, Morgan Stanley now has processed and produced responsive emails from the additional tapes. Moreover, the testimony of witnesses deposed pursuant to the Court's Order shows that Morgan Stanley acted with good faith and diligence in searching for and processing data from these tapes.

I. CPH'S MOTION IS MOOT BECAUSE THE TAPES HAVE NOW BEEN PROCESSED AND THE RESPONSIVE E-MAILS HAVE NOW BEEN PRODUCED.

During the February 2, 2005 hearing on CPH's motion for an adverse inference instruction, this Court recognized that "it would be a mistake to impose evidentiary sanctions when if we wait two weeks we'll know whether there's any prejudice or not. I mean we've come this far. I'm not interested in doing that." (Ex. 1, 2/2/05 Tr. at 150). That is precisely the case.

Since the hearing on February 5th, Morgan Stanley has reviewed thousands of e-mails for privilege and responsiveness and has produced a total of 21 documents. (Ex. 2, T. Clare Aff. at ¶ 6) Out of these 21 documents, 10 are exact duplicates of documents previously produced to CPH. (*Id.* at ¶ 6(a)) One of the 21 documents contains the same text as an e-mail

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document Morgan Stanley previously produced to CPH but bears a different date. (*Id.* at ¶ 6(b)) Two of the 21 e-mails are duplicates of each other with the only difference that they contain a message that the e-mail was not delivered to one of the intended recipients. (*Id.* ¶ 6(c)) One of the 21 e-mails is a computer-generated e-mail message informing the recipient that Sunbeam made a public form 10-K/A filing. (*Id.* at ¶ 6(d)) And two more of the 21 documents are substantial duplicates of e-mails Morgan Stanley already produced to CPH with the only slight difference being the inclusion of a reply message. (*Id.* at ¶ 6(e))

As a result, Morgan Stanley produced only 8 documents that contain e-mail threads that were not produced, in whole or in substantial part, to CPH. (*Id.* at ¶ 7) And none of the e-mail threads in this production are dated between February 1998 and April 30, 1998. (*Id.* at ¶¶ 7-8)

II. THE EVIDENCE IS CLEAR THAT THE LAWYERS IN THIS LITIGATION WERE RESPONSIBLE FOR SPEEDING UP THE PROCESSING OF THE TAPES AT ISSUE

Affidavit of Counsel

Morgan Stanley has previously submitted an affidavit of James F. Doyle, the lawyer with responsibility for the Coleman case, attesting that it was only at the end of October, 2004, that he first “learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data insert on those tapes had not been restored or searched prior to Morgan Stanley’s May 14, 2004 e-mail production.” (Ex. 3, Doyle Aff. at ¶ 3) He further states that “[u]pon learning that information, I directed that the electronic searches described in the April 16, 2004 Agreed Order be conducted for any backup tapes that had not been restored and made searchable at that point, and that the process of restoring the remaining backup tapes continue as expeditiously as possible.” (Doyle Aff. at ¶ 3) From this October discovery by Mr. Doyle, Morgan Stanley outside counsel reviewed the output of this work and produced the first batch of

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additional documents in November. The reason that the outside counsel and the in-house lawyer responsible for this case did not learn until October/November of a limited number of additional backup tapes is because of a series of missteps by a Morgan Stanley employee, issues that did not come to light until after he was placed on administrative leave in August 2004. The employee is Arthur Riel, who was the architect of Morgan Stanley's newly implemented optical disk e-mail archivel system. Unknown to Morgan Stanley, this employee took advantage of access to the emails of other employees. (Ex. 4, 02/09/05 A. Gorman Dep. at 13). His replacement, Ms. Allison Gorman, discovered a number of issues with Mr. Riel's work in connection with the email archiving project—problems which hampered her ability to more quickly process the emails into the archive system.

The Testimony of Allison Gorman – Replacement for the Employee Placed on Administrative Leave

As described by Ms. Gorman, Mr. Riel and his team were placed on administrative leave for taking advantage of access to people's emails without authorization. (Gorman Dep. at 12-13) She took over certain of his responsibilities in August of 2004 and brought in her own team. The result was a nearly complete turnover in the entire group responsible for setting up and using Morgan Stanley's archive system to review e-mails. (Gorman Dep. at 13-14) Mr. Riel's team designed the tools that allowed the archive system to be searched. (Gorman Dep. at 28) When Ms. Gorman's team took over the system in 2004, they were faced with lots of time sensitive and critical issues left from Mr. Riel's performance. (Gorman Dep. at 51) She discovered that the system was out of disk space, that the code which was written to allow searches to be run had technical issues, and the system was dangerously close to not capturing live content. (Gorman Dep. at 52) Throughout September and October,

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Ms. Gorman and her team worked diligently to try to correct these issues. Ms. Gorman and her team were able to create “space” for additional archives in October 2004 with the purchase of new hardware which allowed them to store more data. (Gorman Dep. at 53) Allowing the system to run out of space was one of the problems that occurred under Mr. Riel. (Gorman Dep. at 58) In addition, Mr. Riel did not keep a proper development environment, such that when the new group took over they did not know where the source codes used to run the system were located. (Gorman Dep. at 58).

One of the issues facing Ms. Gorman was a large amount of data in the “staging area.” The “staging area” is a part of the e-mail archive system that is used after backup tapes are processed by a third-party vendor, National Data Conversion, Inc. (“NDCI”) The data returned from NDCI is stored in this “staging area” until the system is properly programmed to allow the new data to be migrated into the e-mail archive. Because of the numerous challenges she faced in just keeping the current system operating when she first came on the job, Ms. Gorman did not make the processing of data in the “staging area” a priority until after an October meeting with Morgan Stanley’s counsel. (Gorman Dep. at 64-65, 69-70) After her conversations with counsel, Ms. Gorman made it a priority to ensure that all data currently in the “staging area” would be migrated to the e-mail archive system as soon as possible. (Gorman Dep. at 66-67)

Among the data in the “staging area” at this time, were e-mails harvested from backup tapes in a security room in Brooklyn. (Gorman Dep. at 65-66) The total data in the staging area was approximately 600 gigabytes of data. (Gorman Dep. at 66-67) There would have been no way for Ms. Gorman to migrate this data from the “staging area” in August 2004 because of the instability and lack of space in the system at that time. (Gorman Dep. at 55) As

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noted above, Ms. Gorman and her team worked diligently in August, September and October to correct these issues.

Processing the data required the use of scripts, which are computer programming “that index the context on [Morgan Stanley’s] database” that assist in inserting the data into Morgan Stanley’s file system.¹ (Gorman Dep. at 39-40) The data in the “staging area” could not be completely migrated into the e-mail archive system because of problems with the “scripts” needed to complete the task. (Gorman Dep. at 67) Ms. Gorman’s predecessor had not properly documented where the “scripts” were located and they could not be found until November 2004 - - where they were found in a completely different directory than would be expected. (Gorman Dep. at 70-71) When Ms. Gorman’s team tested these “scripts,” they realized they did not process the data in the “staging area” correctly. (Gorman Dep. at 71) Ms. Gorman and her team did more testing on the scripts in December and by January had completely debugged the system by recoding the piece that was not working properly. On January 14, 2005, Ms. Gorman’s team started processing the data. (Gorman Dep. at 71)

Simply put, Ms. Gorman and her team worked diligently to correct the issues that they inherited from a previous team. Ms. Gorman was provided with all the resources she needed to complete the task. Processing e-mail into the e-mail archive system is a time-

¹ As Mrs. Gorman explained in her deposition: “All the e-mail content is sitting on a file system, just in a regular file directory structure. And so we run a set of code, what I would call a script, that reads through the content, creates entries on a key database which acts as our index. Those entries would contain header date, ‘to,’ ‘from,’ ‘cc,’ ‘subject line,’ ‘date.’ Then the address or the file system location path, really being the proper word, of the content were it’s been inserted into the file system. And the file system represents where the actual content, which is e-mails and attachments, sits.” (Gorman Dep. at 40)

consuming and technical task. Indeed, it would take anyone doing the work two to three months to even get up to speed on the various technicalities inherent in the project. (Gorman Dep. at 71)

Mr. Riel's responsibilities included apprising legal staff of the existence of emails on back-up recovery tapes. But this was another of his failings. He learned of the existence of additional tapes in approximately May of 2004 and learned that they contained email in July 2004, but it was only after his departure, and replacement by Ms. Gorman that legal staff learned of the existence of additional backup tapes that needed to be migrated onto the e-mail archive system. (Doyle Aff. at ¶ 3; Gorman Dep. at 69-70) After learning that there was additional data that needed to be migrated into the e-mail archive system, Morgan Stanley's in-house legal staff made sure that the IT staff understood that this task needed to be completed accurately and as soon as practicable. (Doyle Aff. at ¶ 3.)

III. ALTHOUGH MORGAN STANLEY'S INFORMATION TECHNOLOGY DEPARTMENT EXPERIENCED SOME SET-BACKS IN ITS ATTEMPT TO COMPREHENSIVELY IDENTIFY, AND RETRIEVE BACKUP E-MAILS FROM BEFORE 2003, THE EVIDENCE SHOWS IT SUCCESSFULLY IMPLEMENTATED A NEW AND IMPROVED MIGRATION SYSTEM

Development of the Email Archive System

On April 16, 2004, this Court entered an Agreed Order governing the search and production of Morgan Stanley e-mail messages restored from e-mail backup tapes. The Agreed Order was necessary because due to the passage of time and technical limitations, Morgan Stanley only was able to reliably restore electronic documents on backup tapes created after January 2000. Nevertheless, pursuant to the Agreed Order, Morgan Stanley agreed that it would undertake an electronic search of data from the oldest available backup tapes for certain employees' e-mail accounts, using certain agreed-upon keywords.

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Before this Agreed Order, Morgan Stanley, for reasons unrelated to this particular litigation, had set in motion a process by which it could more efficiently and quickly restore and review these older backup tapes -- those from before January 1, 2003. Discussed more fully below, these efforts coincided with the requirements outlined in the Agreed Order.

As background, beginning in the 2001 and 2002 timeframe, Morgan Stanley frequently received "ad hoc requests" to search its backup tapes for e-mail responsive to various and sundry litigation and regulatory matters. (Ex. 5, 02/10/05 Saunders Dep. at 11, 48) In response to these requests, Morgan Stanley used its in-house resources to retrieve e-mails from backup tapes that it believed captured data relevant to the particular litigation or regulatory matter at issue. The result, however, was that the Company was often unsuccessful in retrieving significant data, often reinvented the wheel -- searching time and again the same backup tapes on an individual basis -- and often did so at a pace perceived by the Company to be too slow to satisfy its legal and regulatory obligations. (Saunders Dep. at 48)

As a result of these inefficiencies, the company implemented what it believed at the time were two improvements to the retrieval and review process. First, Morgan Stanley contracted with an outside vendor, NDCI, to extract from raw backup tapes (known as "DLT Legato tapes") relevant information and place that information on a SDLT tape. NDCI would then return those tapes to Morgan Stanley's back-up and restore group ("BURP"), which would arrange to load the SDLTs onto a disk and into a staging area where Arthur Riel's group would take over and further process the tapes. Morgan Stanley implemented this process because it believed it would allow it to "more expeditiously provid[e] search capability of e-mail prior to

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2003 for litigations or for regulatory requests.” (Saunders Dep. at 11, 17)² This e-mail restoration project is what is referred to as the “migration process.” (Saunders Dep. at 6-8)

The second improvement related to the uploading and review of those tapes. As noted earlier, Arthur Riel, on behalf of the company, had designed a program that Morgan Stanley at the time believed would allow the Company to upload information into a searchable archive system where, with search terms, Morgan Stanley could locate potentially relevant e-mails housed anywhere in the *ENTIRE* e-mail backup collection. (Saunders Dep. at 11 (noting the benefits of a “comprehensive” process)) No longer would individual tapes have to be searched; instead, *ALL* e-mails collected in Morgan Stanley backup tapes would be housed in an archived and searchable database.

The Migration Process From December 2003 to May 2004

The migration process for these DLT Legato tapes began in approximately December, 2003. (Saunders Dep. at 10) Morgan Stanley monitored this process through a group dubbed the E-mail Archive group, comprised of representatives from BURP, Arthur Riel’s group and NDCI. For a period of time, the group met almost every week to review and record its own progress. (Saunders Dep. at 16; Ex. 6, 02/10/05 Seickel Dep. at 88-89.)

The process began with the BURP group. It brought back backup tapes being housed at Recall, its outside storage vendor, and forwarded those tapes to its e-mail retrieval vendor, NDCI. At the beginning of the process, Morgan Stanley had approximately 35,000 backup tapes at Recall, which it endeavored to bring back and forward to NDCI. The backup

² Morgan Stanley has identified both Glenn Seickel, the operational manager of BURP, and his boss, Robert Saunders, as individuals with knowledge about this process. Both have been deposed.

tapes were at Recall because Morgan Stanley had sent them there over the course of the past several years as part of its standard backup business practices. (Saunders Dep. at 34.) At the time, Morgan Stanley believed that the 35,000 tapes represented the complete universe of Morgan Stanley backup tapes. (Saunders Dep. at 35.)

With the approximately 35,000 tapes in hand, NDCI worked on retrieving and deduping e-mail data from the tapes during the early months of 2004. Although this process was fraught with problems (broken tapes, read errors, etc.), NDCI was able to report by May 6, 2004, that it had finished processing 32,832 of 35,000 tapes, resulting in the restoration of 114 SDLTs. (MS 0112286, attached as Ex. 7) As Robert Saunders noted, by the summer of 2004, the “project had been moving along . . . at a run rate capacity.” (Saunders Dep. at 16.) And NDCI’s performance had been “timely” and “very satisfactory.” (Saunders Dep. at 89) Pursuant to the Morgan Stanley protocol, these tapes were then placed in a staging area where Arthur Riel’s group was tasked with the responsibility of uploading the data into the new optical disc e-mail archive system for review.

The Brooklyn Tapes

Although Morgan Stanley believed during this early phase of the restoration process that it had identified all the backup tapes that needed to be converted (i.e., those that had, over time, been sent to Morgan Stanley’s Recall off-site facility), on or around May 6, 2004, over a thousand additional unlabeled DLT tapes were found in a security room in Brooklyn. (Saunders Dep. at 33-34.) According to Glenn Seickel, a facilities worker at the security room alerted John Pamula, a member of the E-Mail Archive group, that tapes had been found and needed to be moved. Pamula then notified Mr. Seickel. (Seickel Dep. at 37) Being unlabeled, it was unclear how old these tapes were, whether the tapes contained e-mails, and whether those e-

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mails were recoverable. The tapes were found in a bin in a cage in a locked room. (Seickel Dep. at 43.) After this discovery, the BURP group did a sweep and physically looked for any additional tapes that may have been missed or misplaced. (Saunders Dep. at 32, 37-38; Seickel Dep. at 44.) They found none.

Having found these "Brooklyn" tapes, Morgan Stanley tasked John Pamula, a contract employee from Siemens, to ship them to NDCI for processing. (Ex. 8, May 20, 2004 Minutes; 0112291) By June 18, 2004, the minutes to the E-mail archive group meeting reflect that these additional tapes (determined to number 1423 DLTs) had, in fact, been shipped to NDCI for processing. (Ex. 9, June 18, 2004 Minutes, 0112296) It is not clear when NDCI finished restoring and converting these tapes to SDLTs, but a mid-summer e-mail from NDCI's Bruce Buchanan to Arthur Riel suggests that by July 2, 2004, NDCI had restored at least some of the tapes and determined that 90 of those found in Brooklyn contained e-mails. Of the 90, Buchanan was able to determine dates for four of those tapes, three of the four falling in the May or August, 1999 timeframe, and one in 2001. (Ex. 10; MS 0112327) By July 2, 2004, NDCI had not yet identified any tapes with e-mails dated from February 15th to April 15th, 1998 -- the relevant timeframe identified in this Court's April Order.

By July 16, 2004, NDCI reported that it had identified an additional 22 tapes that contained e-mails data, bringing the total tally to 112 DLTs that contained e-mail data (Ex. 11, MS 0112889). The processed data from these tapes were in the staging area when Arthur Riel ~~was dismissed for integrity issues~~ *placed on administrative leave* in August 2004. (Gorman Dep. at 66-67)

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The 8 mm Tapes

In addition to the Brooklyn tapes, there were also 738 8 mm tapes that were not uploaded into the e-mail archive system until ~~the Fall~~^{February} of 2004. Like the Brooklyn tapes, these tapes were placed at the end of the NDCI processing queue, and their processing progress was tracked during each of the E-mail archive meetings. (See, e.g., Ex. 12, MS 0112286, 0112291, 0112296, 0112301, 0112306, 0112311, 0112312, 0112313, 0112314) As Allison Gorman noted, once the script problems with the archival system were resolved, these tapes were promptly reviewed and any responsive documents produced.

¹⁶⁹The 168 Tapes Found at Recall

In November or December, 2004, Glenn Seickel and John Pamula came to believe that there might be some backup tape containers at Recall that had not yet been processed by NDCI. (Seickel Dep. at 64-66) They learned this after identifying some discrepancies between boxes retrieved from Recall and those on the Recall Inventory List. (*Id.*) Legal counsel was alerted within no more than two days. (Seickel Dep. at 65) By ~~and January~~^{February}, NDCI had processed the tapes found within these misplaced boxes and returned them to Morgan Stanley for uploading and archival review. (Seickel Dep. at 74).

CONCLUSION

The Morgan Stanley E-mail Restoration And Review Process was a major undertaking, and has been a success. It has resulted in the production of thousands of pages of email messages in this litigation. The fact that the tapes found in the Brooklyn security room, the 8 millimeter tapes, and the tapes at Recall yielded virtually nothing is testament that Morgan Stanley was right in its prioritization, organization and processing of tapes as a part of the comprehensive E-mail Restoration and Review Process. Moreover, rather than delaying the

processing of tapes potentially relevant to this case, the Morgan Stanley lawyers actually sped up the processing of those tapes. Accordingly, Plaintiff's motion should be dismissed as moot and without merit.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and hand delivery on this 11th day of February 2005.

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Exhibit 1

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1
2 IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND
3 FOR PALM BEACH COUNTY, FLORIDA
4 CIVIL DIVISION
5 CASE NO.: 03 CA 005045 AI

6 COLEMAN (PARENT) HOLDINGS, INC.,

7 Plaintiff,

8 vs.

9 MORGAN STANLEY & CO., INC.,

10 Defendant.

11 ---
12 TRANSCRIPT OF THE PROCEEDINGS BEFORE
13 THE HONORABLE ELIZABETH T. MAASS

14 ---
15 West Palm Beach, Florida
16 Wednesday, February 2, 2005
17 9:21 a.m. - 3:23 p.m.
18
19
20
21
22
23
24
25

1 APPEARANCES:

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1 BE IT REMEMBERED that the
2 foregoing proceedings were had before the HONORABLE
3 ELIZABETH T. MAASS, in Chambers, in the Palm Beach
4 County Courthouse, West Palm Beach, Florida, on
5 Wednesday, February 2, 2005, starting at 9:21 a.m.,
6 with appearances as hereinabove noted, to wit:

7 * * *

8 MR. IANNO: I hope the schedule we
9 proposed to the court --

10 THE COURT: Some of them I didn't think
11 would take as long to argue as I guess you
12 guys think it would take. But I guess
13 we'll find that out as we get in. And we
14 can't start tomorrow until 2:30; is that
15 right?

16 MR. IANNO: There's two motions in
17 limine we can start earlier, but the three
18 Coleman motions we have to wait because of
19 availability after 2:30. But what we
20 proposed to do, Judge, if it's okay with
21 you, is to argue the two motions from
22 yesterday this morning.

23 THE COURT: Right.

24 MR. IANNO: We've agreed, as I think we
25 conveyed to your office, on the motion to

1 remove the confidentiality designations so
2 there's no argument necessary on that.

3 THE COURT: Okay.

4 MR. IANNO: And then if we can come
5 back at 1:30, 2:00 o'clock this afternoon,
6 we can argue the two Morgan Stanley
7 motions in limine, and Mr. Bemis can be
8 here to argue the remaining motions after
9 2:30.

10 THE COURT: Wait. Today or tomorrow?
11 I'm confused.

12 MR. IANNO: Today.

13 THE COURT: Then what are we doing
14 tomorrow?

15 MR. IANNO: Then we have four motions in
16 limine tomorrow.

17 THE COURT: I had three motions in
18 limine tomorrow and that we couldn't do
19 until 2:30; is that right?

20 MR. IANNO: It's three. But we can
21 start those at 1:30 tomorrow, I think. I
22 believe that's what my letter says.

23 THE COURT: You'll have to look at your
24 letter. I'll be right back. And then
25 we'll be straight.

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1 (A recess was taken from 9:22 a.m. to
 2 9:33 a.m.)
 3 THE COURT: Okay. Where -- first of all,
 4 did we figure out what we're doing?
 5 MR. IANNO: Yes. This is what happens
 6 when a lawyer types a document, judge.
 7 The 2:30 reference was supposed to refer
 8 to the motions that immediately preceded
 9 it, not the Thursday afternoon. For some
 10 reason on the fax copy it printed twice.
 11 What we had intended was we had listed
 12 five motions for this afternoon.
 13 THE COURT: At 2:30.
 14 MR. IANNO: No, three of them -- three
 15 of them are Coleman motions. Since
 16 Mr. Bemis is arguing those motions, he
 17 wasn't going to be prepared to argue those
 18 until 2:30. Mr. Clare and I are prepared
 19 to argue the Morgan Stanley motion first.
 20 That's why we suggested probably
 21 2:00 o'clock argue those motions.
 22 MR. SCAROLA: We don't have any problem
 23 with that.
 24 MR. IANNO: And tomorrow we can start
 25 at 1:30 or whatever time the court

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1 prefers.
 2 THE COURT: Sure.
 3 MR. SCAROLA: Let me introduce
 4 Joanne Sweeney.
 5 THE COURT: Good morning.
 6 MR. SCAROLA: Joanne's name may be
 7 familiar to you from having reviewed the
 8 Downey transcript. She's the attorney from
 9 Jenner & Block who represented the
 10 plaintiffs in that deposition.
 11 MR. CLARE: Mr. Doyle.
 12 MR. SCAROLA: Doyle, yes. Doyle,
 13 Downey. This is --
 14 THE COURT: What is this?
 15 MR. SCAROLA: This is the agreed order
 16 on the confidentiality issue.
 17 THE COURT: Don't we have to give the
 18 clerk directions, then? I mean, this
 19 doesn't tell the clerk what to do.
 20 MR. SCAROLA: Actually, I think all
 21 that we would need to do is to file the
 22 unredacted copies.
 23 THE COURT: Okay. You want me just to
 24 add that?
 25 MR. SCAROLA: That will be fine.

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1 THE COURT: Plaintiff shall file the
 2 unredacted copies referred to in the
 3 motion.
 4 MR. IANNO: That's fine.
 5 MR. SCAROLA: That works. Thank you.
 6 MR. IANNO: It's not that it's
 7 insubstantial, I guess.
 8 MR. SCAROLA: It is not insubstantial.
 9 THE COURT: They don't even send me
 10 files anymore. I hate to think what
 11 volume we're up to. Okay. Would you put
 12 this... While I'm thinking about it, when
 13 do we want to go down to the jury assembly
 14 room just so I can let them know?
 15 MR. SCAROLA: Whenever it's convenient.
 16 THE COURT: Do you want to do it with
 17 Mr. Bemis?
 18 MR. SCAROLA: Pardon me?
 19 THE COURT: Do we want to do it with
 20 Mr. Bemis? Does he care?
 21 MR. IANNO: He will be here this
 22 afternoon, judge. We can do it later this
 23 afternoon. We can do it sometime
 24 tomorrow.
 25 THE COURT: Okay. I'll check with them

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1 within the law department since October of
2 2000. He tells us at page 12, actually
3 the bottom of page 11 and the top of page
4 12 that his preparation for the deposition
5 as corporate representative consisted of a
6 two-hour meeting with litigation counsel
7 that occurred the day before the
8 deposition was taken.

9 At pages 15, 41, 42, 67 and 147, and
10 I'll refer to those briefly as we go
11 through the deposition, he makes it very
12 clear that apart from that two-hour
13 meeting he has done nothing else to inform
14 himself in order to be in a position to
15 speak on behalf of the corporation with
16 regard to each of the documents that had
17 been previously designated and about which
18 testimony was to be taken.

19 He describes at page 15 his
20 understanding of the responsibility that
21 he has undertaken as corporate
22 representative and says, "My understanding
23 is that I am to testify on behalf of the
24 corporation as to authenticity and
25 authorship."

1 Again, at page 13 he's directly asked,
2 line 13, "Other than your meeting with
3 counsel where you reviewed documents did
4 you do anything else to prepare for
5 today's deposition?"

6 And he answers, "No."

7 He subsequently refuses to answer
8 questions as a corporate representative as
9 to anything except authenticity and
10 authorship. And an example of where that
11 occurs is at page 29 of the deposition
12 where at line 3 he says, "As I testified
13 earlier, it's my understanding that I was
14 here to discuss authorship and
15 authenticity."

16 Question, "Are you refusing to answer
17 the question about whether this was the
18 regular practice of Morgan Stanley to
19 create this document?"

20 Answer, "I can answer the question in
21 my personal capacity." And then his
22 answer is, "I don't know."

23 And you will see as we go through the
24 deposition that Mr. Doyle draws a
25 distinction between responses that he is

1 providing as corporate representative and
2 responses that he is providing personally.
3 But with regard to both responses that he
4 provides in his capacity as a corporate
5 representative and with regard to
6 responses that he provides personally, he
7 refuses to disclose attorney-client
8 privileged communications when the only
9 preparation he did was to consult with
10 litigation counsel. And he refuses to
11 disclose any work product basically
12 asserting that the personal knowledge that
13 he has is as a consequence of work that he
14 performed in contemplation of litigation.
15 So inquiry is shut off both with regard to
16 his role as a corporate representative on
17 the basis of attorney-client privilege and
18 with regard to personal knowledge on the
19 basis of attorney-client privilege and
20 work product.

21 THE COURT: Okay.

22 MR. SCAROLA: Moving on, he makes it
23 clear that what he knows is limited solely
24 and exclusively to what he has read in the
25 depositions in this case. If you take a

1 look at the exchange that occurs beginning
2 at -- well, let's take it from page 17,
3 line 12, he's asked, "Other than the fact
4 that it says Morgan Stanley, do you know
5 what that is?"

6 Answer, "I don't."

7 "Do you know how that appears on
8 documents?"

9 Nope.

10 And we're talking about the footer, the
11 computer footer on the document. "This
12 document was drafted by Morgan Stanley; is
13 that correct?"

14 Answer, "Can I see our response to the
15 request for admissions?" RFA is request
16 for admissions.

17 "Let me ask you why you need to see the
18 response to the RFAs. I'm asking you
19 independently as you sit here today."

20 Answer, "Independently as I sit here
21 today?"

22 Question, "Did Morgan Stanley draft
23 that document?"

24 Answer, "If you're asking me in my
25 personal capacity, I have no idea."

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1 Question, "I'm not asking you into your
2 personal capacity, sir. I'm asking you in
3 your representative capacity as a
4 representative of Morgan Stanley as you've
5 been identified as the person
6 knowledgeable about these documents."

7 Going down to line 22, "Without looking
8 at the response to the RFAs but before
9 looking at that sir, without looking at
10 the response to the RFAs, do you know
11 whether Morgan Stanley drafted that
12 document?"

13 Answer, "I don't know."

14 He then refers to deposition testimony
15 at least at the following pages and
16 basically says, his answer is I refer to
17 whatever deposition testimony exists with
18 regard to this point, but I can't tell you
19 what the depositions are or what they say.
20 I'm just telling you if there's deposition
21 testimony, that's what I refer to.

22 Now if you go to page 52, there's a
23 very interesting exchange that occurs with
24 regard to what Mr. Downey means when
25 Mr. Downey says I refer to deposition

1 testimony, beginning at line four,
2 question, "Just so we can clear this up,
3 we obviously today can't go through every
4 deposition that has been taken in this
5 case or we would be here for a long time.
6 What I think I understand you saying is
7 you are not going -- you're not going to
8 contradict something that was said about
9 these documents in deposition testimony
10 if something was said about a document.
11 Is that true or am I understanding that
12 incorrectly?"

13 Response, "Let me answer it this way.
14 I have no personal knowledge as to any
15 document in this litigation. So,
16 accordingly, if there has been deposition
17 testimony taken by counsel for CPH as to
18 these documents during the pendency of
19 this litigation, then I would refer to
20 that deposition testimony. If counsel for
21 CPH has not taken testimony as to this
22 document, then I am without knowledge as
23 to any particular document."

24 Go to page 45, then, if you would,
25 Actually at the bottom of page 44. "I'm

1 going to represent to you that Mr. Webber
2 testified that this document was prepared
3 by or created by Morgan Stanley. Mr. Yoo
4 testified that this was Morgan Stanley's
5 description of Sunbeam and its situation,
6 and Mr. Burchill testified that it was
7 definitely a Morgan Stanley document.
8 Accepting that for purposes of my
9 question, does that change at all your
10 testimony with regard to whether, you
11 know, whether someone from Morgan Stanley
12 typed the document?"

13 Answer, "It doesn't because I would
14 have to see the deposition testimony in
15 its entirety as well as the deposition
16 testimony of other witnesses from Morgan
17 Stanley who testified as to this
18 document".

19 Now the entire purpose of obtaining the
20 order from the court to have a corporate
21 representative designated to be deposed
22 with regard to these issues was because of
23 the inadequacy of the responses that we
24 had received both in depositions and in
25 response to the request for admissions.

1 That was the -- that was the issue that
2 was specifically argued before Your Honor
3 in support of our motion to compel the
4 testimony of a corporate representative
5 with regard to these issues in order to
6 establish a predicate.

7 And when they produce someone, we have
8 someone who tells us the only thing I did
9 to prepare for this deposition was to talk
10 to counsel; I reviewed depositions; I know
11 there was some things in the depositions
12 about these documents, and those
13 depositions say whatever they say, but I'm
14 not even prepared to accept what those
15 depositions say even when it's our own
16 witnesses.

17 We wasted our time, and the defendant
18 failed to comply in good faith with an
19 express order of the court that obviously
20 was intended to get to the substance of
21 issues with regard to admissibility.

22 Now Your Honor already focused at the
23 time we briefly began the hearing on this
24 motion on the misinterpretation of this
25 court's order upon which the defendant

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1 proceeded. It was clearly the intent of
2 the court, regardless of what ambiguity
3 may have existed in the actual language of
4 the order entered, it was the intent of
5 the court that we were to have an
6 opportunity to examine a corporate
7 representative with regard to those issues
8 necessary to establish the predicate for
9 the admissibility of specified documents
10 as business records. And we were clearly
11 frustrated in our effort to be able to do
12 that.

13 Moving on, it is absolutely clear
14 beginning at page 41 that there was no
15 investigation --

16 THE COURT: Can I just ask them first
17 whether they disagree with what you said?

18 MR. SCAROLA: Yes.

19 THE COURT: Was there any sort of
20 misinterpretation of my order?

21 MR. IANNO: I don't believe so, judge.
22 I think the fundamental problem and the
23 overriding issue that has to be determined
24 by this court is what is the scope of a
25 1.310 (b)(6) deposition.

1 THE COURT: That's fine. I mean, I'm
2 looking at the order myself. It's the
3 December 3rd order, and it said you had to
4 produce a deposition witness in accordance
5 with CPH's notice of taking depositions.

6 Then it said the date. To be deposed on
7 the listed topics. By listed topics I
8 obviously meant the topics listed in the
9 request for admission. I mean, that's --

10 MR. IANNO: And those topics are
11 authenticity, business record and
12 authorship.

13 THE COURT: No.

14 MR. IANNO: It says authenticity,
15 source, creation, use, maintenance and
16 business purpose. That's the deposition
17 notice, judge.

18 THE COURT: Do you have a copy of the
19 deposition notice?

20 MR. IANNO: It's Tab 4 of our binder,
21 judge.

22 THE COURT: Thank you.

23 MR. IANNO: And it's paragraph one of
24 Exhibit A.

25 THE COURT: But we agree it was much

1 subjects?

2 MR. IANNO: To the extent the
3 corporation has knowledge.

4 THE COURT: We're arguing about that.

5 MR. IANNO: That's really the issue.
6 That's what we're arguing about.

7 THE COURT: But we agree that's what
8 was ordered.

9 MR. SCAROLA: So let's get to that
10 issue about whether the corporation has
11 knowledge and this corporate
12 representative reasonably determined
13 whether the corporation had knowledge.
14 Page 41.

15 THE COURT: Let me go back to the depo.
16 Okay.

17 MR. SCAROLA: Do you know, and I'm just
18 picking up --

19 THE COURT: What line are you at?

20 MR. SCAROLA: I'm at line three. "Do
21 you know whether a document like this
22 without those two things on it is in
23 Morgan Stanley's files or on its computer
24 system?"

25 The answer is on line 19, "I don't

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1 know. I can endeavor to find out, but I
 2 don't know sitting here today."
 3 Question, "If on CPH Exhibit 9 in the
 4 lower left-hand corner that is a Morgan
 5 Stanley word processing stamp, do you
 6 believe that you would be able to search
 7 on the computer and find that document?"
 8 The answer is at line 13, "I don't
 9 know, but, again, we can endeavor to find
 10 out."

11 The same kind of exchange occurs at
 12 page 80, page 93, page 109, page 144, page
 13 149 where the witness specifically says, I
 14 can not answer that foundation question.
 15 I haven't made any effort to determine
 16 whether the information exists or not, but
 17 I can endeavor to do it. He specifically
 18 says at each of those pages this is
 19 information that may be available. I've
 20 made no effort whatsoever to determine
 21 whether it is available.

22 Go then, if you will, please, to page
 23 53. This is actually the testimony I was
 24 trying to find earlier with regard to what
 25 Mr. Doyle means when he says I refer to

1 depositions.
 2 THE COURT: Okay.
 3 MR. SCAROLA: Line 13, "When you say
 4 you would refer to deposition testimony,
 5 would you say you'd defer to deposition
 6 testimony?"

7 Answer, "I would say I would refer to
 8 deposition testimony."

9 Question, "Can you explain what you
 10 mean by I would refer to deposition
 11 testimony?"

12 Answer, "To the extent that there has
 13 been deposition testimony by a Morgan
 14 Stanley witness with personal knowledge as
 15 to the events underlying this litigation,
 16 I would refer to their deposition
 17 testimony for the substance as to Morgan
 18 Stanley's statements as to these
 19 particular documents."

20 Question, "When you say -- I'm not
 21 understanding what you mean by, 'I would
 22 refer to that.' Do you mean that you
 23 would read the deposition testimony and
 24 agree with it? I just don't understand
 25 what you mean by I would refer to the

1 deposition testimony."
 2 Answer at line 14, "I don't think I can
 3 explain any more curtly than I just did."
 4 Going to page 55, line 22, "I would
 5 have no basis to agree or disagree with
 6 that testimony. The testimony is what it
 7 is."

8 The entire purpose of taking a
 9 corporate representative deposition is to
 10 obtain the corporation's position with
 11 regard to issues of significance in the
 12 litigation. In this case those issues are
 13 issues with regard to establishing a
 14 foundation for documents. This witness
 15 appears and says, I can read my own
 16 employees' testimony with regard to this
 17 document. I can tell you what it says,
 18 but I will not tell you what the
 19 corporation's position is with regard to
 20 whether that testimony is or is not to be
 21 relied upon.

22 Now I suggest that simply is not a good
 23 faith response to fulfilling the
 24 responsibilities that a corporate
 25 representative has. If there is contrary

1 information somewhere, they're responsible
 2 for uncovering that contrary information
 3 and coming in and saying, yes, Mr. Jones
 4 said A. However, it is the corporation's
 5 position that it is indeed B because we
 6 disagree with Mr. Jones.

7 THE COURT: How large was the universe
 8 of documents he was expected to testify
 9 about under my order?

10 MR. IANNO: Everything attached to Tab
 11 14. That is the January 12th deposition
 12 notice.

13 THE COURT: Well, no, because my order
 14 limited that.

15 MR. IANNO: I believe, and maybe --
 16 this is the limited universe.

17 THE COURT: Are you sure? My order was
 18 December 3rd. When was this -- December
 19 29th. Is that right? No. Hold on. Oh,
 20 14 is the amended notice of taking depo.

21 MR. IANNO: For the deposition at issue
 22 today.

23 THE COURT: Okay. But it listed the
 24 same --

25 MR. IANNO: No, I think the original

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1 list was more than --
 2 THE COURT: Was the list of topics the
 3 same?
 4 MR. IANNO: Yes. I think they did that
 5 throughout for all of these corporate
 6 notices, Judge, on these documents. They
 7 use the same introductory language.
 8 MR. SCAROLA: Your Honor, Miss Sweeney
 9 informs me that prior to the deposition
 10 the scope of inquiry was narrowed. There
 11 were 20 documents. Some of them may well
 12 have been composites, but there was a very
 13 limited number of documents about which
 14 the witness was expected to give
 15 testimony.
 16 THE COURT: Okay.
 17 MR. SCAROLA: I might also comment that
 18 there's some reference made during the
 19 deposition to the fact that you can't
 20 expect one person to know all these
 21 things. Well, there is no obligation that
 22 one person know all these things. They
 23 could have produced 20 people to speak on
 24 behalf of the corporation.
 25 THE COURT: Did we get the documents

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1 marked for identification in the depo?
 2 MR. SCAROLA: Yes.
 3 THE COURT: Do we have -- some place do
 4 I have the universe of documents?
 5 MR. IANNO: Judge, the first tabs to
 6 our binder, all of the documents at issue
 7 in the motion except one the plaintiff has
 8 apparently given up on are attached to the
 9 beginning of Tab 1.
 10 THE COURT: Is that the narrowed list?
 11 MR. IANNO: It's the list that's
 12 included in their motion. Their motion is
 13 limited to certain documents.
 14 MR. SCAROLA: Your Honor, at the time
 15 of the last hearing I think I provided
 16 both the court and Mr. Ianno with a
 17 summary that identified.
 18 THE COURT: Is that this?
 19 MR. SCAROLA: That's it, yes.
 20 MR. IANNO: And then, Judge, for
 21 instance, the first page is CPH-9 that's
 22 Tab 1 of our binder.
 23 THE COURT: So how many -- I didn't go
 24 through and count. How many documents are
 25 we talking about? Ten?

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1 you can certainly look at the responses to
 2 the request to admit, that Morgan Stanley
 3 originally admitted that it authored this
 4 document.
 5 Okay. Question, "Yesterday, however,
 6 we received a letter stating that Morgan
 7 Stanley did not author the document. Are
 8 you aware of that?"
 9 Answer, "Yes."
 10 Question, "Do you know why Morgan
 11 Stanley changed its position as to the
 12 authorship of this document?"
 13 Miss Brown then instructs the witness
 14 not to answer.
 15 Question, "Were you involved in the
 16 decision to change Morgan Stanley's
 17 position as to the authorship of this
 18 document?"
 19 The witness again is instructed not to
 20 answer. He says, "I don't think I can
 21 answer that question without revealing
 22 confidential attorney-client
 23 communications." Now I don't know how the
 24 response to the request involved invades a
 25 privileged communication between a lawyer

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1 and a client. It is simply a question
 2 with regard to what act the witness
 3 himself engaged in.
 4 Nonetheless, question, "I'm not asking
 5 about a communication or conversation you
 6 had with counsel. I'm just asking if you
 7 were involved in the decision to change
 8 Morgan Stanley's position as to whether
 9 they authored this document."

10 Answer, "I don't think I can answer
 11 that question without revealing
 12 attorney-client work product."

13 So we have both an invocation of a
 14 communication privilege and an invocation
 15 of the work-product privilege. And that
 16 occurs also at page 145 of the deposition.
 17 And I don't think we need to go through
 18 that. But it's a second time where that
 19 happens as well. Even where Morgan
 20 Stanley admits that documents were made in
 21 the ordinary course of Morgan Stanley's
 22 business, Mr. Doyle will not admit that
 23 Morgan Stanley made, created, or typed the
 24 document. That exchange occurs at page
 25 117, line 20. "Despite the fact that you

1 know that Morgan Stanley has admitted that
 2 this document, CPH-155, was made in the
 3 ordinary course of its business, it's your
 4 testimony that you don't know whether it
 5 was made, created or typed by Morgan
 6 Stanley?"

7 Answer, "That is correct. I have no
 8 personal knowledge whether it was made,
 9 created or typed by Morgan Stanley,
 10 although I would refer," not defer, but
 11 "refer to the testimony, if any, by Morgan
 12 Stanley employees on the substance of this
 13 document."

14 There's another very interesting
 15 position that Mr. Doyle takes, and that
 16 position is that Morgan Stanley has a
 17 document retention policy. That document
 18 retention policy apparently is to retain
 19 for some limited period of time documents
 20 that -- I don't remember the exact
 21 description that Mr. Doyle gives, but
 22 basically what he says is we only retain
 23 the material last final version of the
 24 document pursuant to our retention
 25 policies and only that for a limited

1 period of time.

2 So even if a document comes out of a
 3 Morgan Stanley employee's file which that
 4 employee was maintaining in connection
 5 with his employment, the position of
 6 Morgan Stanley is if this is not a final
 7 version of the document or if it was
 8 acquired after pursuant to the document
 9 retention policy it would have been
 10 destroyed, it is automatically not kept in
 11 the ordinary course of Morgan Stanley's
 12 business, because in the ordinary course
 13 of our business we throw these documents
 14 away.

15 Now I think there's a legal issue there
 16 for the court to determine, and I can not
 17 believe, and, quite frankly, I haven't
 18 found any case on point because I've never
 19 heard this position taken before, but I
 20 can not believe that the intent of the
 21 evidence code is to enable a party to
 22 establish a document destruction policy.

23 THE COURT: I mean, I think what you're
 24 suggesting is whether it's a business
 25 record attaches at the time it's made, and

1 if they subsequently have a policy of
 2 destroying it, it's not like all of a
 3 sudden it is no longer a business record.

4 MR. SCAROLA: Exactly.

5 THE COURT: I understand.

6 MR. SCAROLA: The fact that there may
 7 be some internal policy that says get rid
 8 of these documents, if they're still
 9 there, they were created as business
 10 records. They remain business records.

11 THE COURT: It doesn't deprive them of
 12 their characteristic as a business
 13 record --

14 MR. SCAROLA: That's right.

15 THE COURT: -- because they choose to
 16 change it or destroy it later. Do we
 17 agree with that, that a business record,
 18 whether it attaches, attaches at the time
 19 the document is made?

20 MR. IANNO: I agree that that's a
 21 question that the court is going to
 22 determine. I don't agree that that was a
 23 question that's appropriate to be decided
 24 on this motion. That wasn't part of
 25 Mr. Scarola's argument.

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1 THE COURT: Do you agree with the
2 proposition that the character of an item
3 as a business record is -- attaches at the
4 time the document is made?

5 MR. IANNO: I haven't looked at it,
6 Judge, and I would be hesitant to agree
7 with the court without looking at it. I
8 just don't know the answer to it. I don't
9 know one way or another.

10 THE COURT: Absent some really
11 overwhelming argument, that to me seems
12 intuitive.

13 MR. SCAROLA: The reason I bring that up
14 is because it is illustrative of the
15 extent to which the defendant has gone to
16 frustrate the fundamental purpose of this
17 discovery. To deny that documents even
18 admitted by them to have been created by
19 them are not business records, that
20 documents admittedly coming out of their
21 files are not kept in the ordinary course
22 of business because -- or were not created
23 in the ordinary course of business because
24 we've got a policy to trash these
25 documents, those are the kinds of

1 circumstances that I suggest provide a
2 strong foundation for the court to
3 determine that these documents, by virtue
4 of the defendant's effort to frustrate the
5 ability to lay a predicate, shall be
6 deemed admissible before we ever get to an
7 individual examination of the documents.
8 The bad faith failure to comply with the
9 express order of the court given the
10 history of the discovery efforts on the
11 part of the plaintiff to lay an
12 appropriate foundation should excuse the
13 plaintiff from having to lay a foundation
14 with regard to these documents. They
15 should be deemed admissible as a matter of
16 law on that basis.

17 THE COURT: Okay. Now you made an
18 assertion to me that they have a policy
19 where they retain only the final version
20 of a document and that they've taken the
21 position in this litigation that means the
22 prior versions are not business records.
23 Was that asserted in the deposition, or
24 what are you basing that --

25 MR. SCAROLA: That was asserted in the

1 deposition.

2 THE COURT: Can you tell me where?

3 MR. SCAROLA: Yes, if I can have just a
4 moment. If we take a look at page 131,
5 line 9, "Is it your testimony that if a
6 document does not fall under the
7 guidelines of Morgan Stanley's document
8 retention policy and someone kept the
9 document that they necessarily kept it
10 outside of the ordinary course of Morgan
11 Stanley's business?"

12 The question is repeated for the
13 witness and he answers, "What my testimony
14 is is that documents that are not retained
15 pursuant to Morgan Stanley -- well, let me
16 rephrase it. Documents that are retained
17 pursuant to Morgan Stanley's document
18 retention policy would be documents that
19 Morgan Stanley would retain in its
20 ordinary course of business. Documents
21 that are retained outside of that scope
22 are retained for the personal reasons of
23 the employee who kept it, not because it's
24 Morgan Stanley's policy to retain those
25 documents."

1 There is another section where that
2 document retention policy is specifically
3 described, and, Joanne, could you find
4 that?

5 MS. SWEENEY: Yes.

6 MR. SCAROLA: We'll get that and bring
7 that to the court's attention, Your Honor,
8 but the policy is expressly described by
9 the witness. He basically says we only
10 keep the last version, and we only keep it
11 for a limited period of time, and it's
12 destroyed after that. Even if it remains
13 on the computer, you know, even if
14 somebody has kept it as part of their job
15 and for their reasons within the
16 performance of their responsibilities, we
17 don't consider it a business record, and
18 we deny it is a business record on that
19 basis.

20 THE COURT: Okay. Is that the
21 preliminary statement?

22 MR. SCAROLA: Yes.

23 THE COURT: Did you want to respond?

24 MR. IANNO: Judge, just briefly, the
25 statement that Mr. Scarola made -- and if

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1 it's okay, I'll just stand here for a
 2 moment. I don't want to address every one
 3 of Mr. Scarola's statements because
 4 they're not relevant to what the issues
 5 were to the particular questions. If you
 6 ask a corporate representative is this
 7 document kept in the ordinary course of
 8 your business, and that corporate
 9 representative honestly answers as
 10 Mr. Doyle did, not Mr. Downey, that, no,
 11 this is not kept pursuant to our ordinary
 12 business, but then later a court
 13 determines it is a business record, those
 14 are two separate and very very distinct
 15 issues. A document may be admissible
 16 pursuant to the evidence code --

17 THE COURT: Sure, but let me ask you
 18 this. When you were asked to admit that
 19 certain documents were admissible as
 20 business records exceptions, were you
 21 relying on the retention policy or were
 22 you relying on the law?

23 MR. IANNO: We didn't answer whether
 24 they were admissible. We answered the
 25 specific question, is this a true and

1 correct copy, is it authentic, do you know
 2 if Morgan Stanley drafted it. Those are
 3 the foundational things. The question was
 4 specifically asked by Mr. Scarola and read
 5 to the court is this kept in the ordinary
 6 course of Morgan Stanley's business, and
 7 the answer is, no, it is not kept in the
 8 ordinary course of Morgan Stanley's
 9 business because we have a policy that
 10 says we don't. But if it is, judge -- but
 11 the point is if it is kept, will it be
 12 admissible in court? That's a decision
 13 Your Honor will make.

14 THE COURT: Let me ask you this. What's
 15 the purpose of such a policy other than to
 16 try to thwart exactly this kind of
 17 discovery?

18 MR. IANNO: My law firm has a document
 19 retention policy, judge. The way it is
 20 nowadays with the volume of documents is
 21 you can not deep every single piece of
 22 paper.

23 THE COURT: Sure, but if you have it,
 24 would you ever maintain it's not a
 25 business record?

1 this case. Every witness that could
 2 possibly have knowledge together with the
 3 interrogatory answers testified and gave
 4 the best knowledge that they can in these
 5 documents.

6 For instance, when we go through it,
 7 you're going to see Tab 1 is a Sunbeam
 8 document. They keep asking Morgan Stanley
 9 drafted it, Morgan Stanley drafted it.
 10 They didn't. I think when we go through
 11 them document by document the court's
 12 concerns are going to be alleviated.

13 THE COURT: Even things when like it
 14 had the little Morgan Stanley computer
 15 whatever logo thingamajig on it, was
 16 anybody ever deposed about when in the
 17 course of Morgan Stanley's business that's
 18 added?

19 MR. IANNO: Mr. Doyle testified --

20 THE COURT: That wasn't my question.
 21 Doyle apparently didn't really know the
 22 significance of that. Was there ever
 23 somebody who wasn't sort of a fact witness
 24 in this case but who was ever deposed
 25 about what's the significance of that?

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1 MR. IANNO: I don't think they ever
 2 asked for that.
 3 THE COURT: Well, then why didn't Doyle
 4 go ask?
 5 MR. IANNO: What Mr. Doyle said is that
 6 stamp is put on any time a document is
 7 printed, not when it's created. For
 8 instance, Miss Raffi did testify on the
 9 Metadata (phonetic). She was shown a
 10 document that showed she was the author.
 11 And whenever a document is put on Morgan
 12 Stanley's system, it inputs certain data
 13 into it. And she said I don't believe I
 14 was the author of this document even
 15 though it says on the Metadata it was.
 16 For instance, if Mr. Scarola's law firm
 17 sends me a document, I put it on my
 18 document management system. It may input
 19 information into it that I was the author
 20 because I am the only one in the
 21 corporation that does that. That doesn't
 22 mean I authored the document.
 23 THE COURT: Did you actually -- did
 24 Doyle make these inquiries?
 25 MR. IANNO: He said the document

1 stamping process comes on every time a
 2 document is printed. It does not
 3 necessarily -- the question was doesn't
 4 that mean Morgan Stanley authored, and he
 5 said, no, not necessarily.
 6 The other thing about Mr. Doyle is he
 7 has been the primary attorney involved in
 8 this. He has read every deposition.
 9 He's, in fact, attended some depositions,
 10 so he has more knowledge than he was
 11 inquired about as well. He prepared for
 12 this deposition by meeting with counsel as
 13 he testified to. He is familiar with the
 14 depositions. He reviewed the deposition
 15 testimony on these topics, and at certain
 16 points he couldn't recall who said exactly
 17 what, but he did recall that there was
 18 deposition testimony regarding these very
 19 documents. And he said, I would refer to
 20 that. Those people know about these
 21 documents. And sometimes the answer is
 22 simply I don't know; we've done everything
 23 we could, and they've failed to establish
 24 we haven't. I think we should just go
 25 through document by document.

1 their own system, whether there was
 2 Metadata embedded in the document that
 3 indicated who the author was. They did
 4 none of those things.
 5 THE COURT: Okay. I do think we need
 6 to do a document-by-document inquiry
 7 although -- well, let's start document by
 8 document. First is document nine which is
 9 found at tab --
 10 MR. IANNO: One.
 11 THE COURT: Okay.
 12 MR. SCAROLA: Your Honor, we have
 13 located the testimony with regard to the
 14 document retention policy if you'd like me
 15 to --
 16 THE COURT: Where else was that?
 17 MR. SCAROLA: It is at page 99,
 18 beginning at line 6.
 19 THE COURT: Okay.
 20 MR. SCAROLA: "Do you know whether this
 21 document was kept in the ordinary course
 22 of Morgan Stanley's business?"
 23 Answer, "It does not appear to be."
 24 Question, "Why is that, sir?"
 25 Answer, "As I mentioned earlier, my

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1 understanding of Morgan Stanley's document
2 retention policy at the time was that
3 Morgan Stanley would retain documents that
4 were -- memorialized the essential terms
5 of the transaction and would otherwise be
6 required to retain by law or regulation.
7 This does not appear to be such a
8 document, although I do note that this
9 document did come from Morgan Stanley's
10 files."

11 Question, "So you'll agree with me that
12 this document was kept in Morgan Stanley's
13 files; is that correct?"

14 Answer, that's correct."

15 Question, "But you don't agree it was
16 kept in the ordinary course of Morgan
17 Stanley's business?"

18 Answer, "That's correct."

19 That's not the only place where he says
20 similar things.

21 THE COURT: Okay. Let's start with
22 document one.

23 MR. SCAROLA: Document number one is
24 CPH-9, Your Honor.

25 THE COURT: I have it in front of me.

1 MR. SCAROLA: For purposes of
2 efficiency I've provided both Your Honor
3 and Mr. Ianno I guess last week or the
4 week before that now with this same
5 summary, and it might be most efficient to
6 just have Mr. Ianno to respond to our
7 assertions with regard to this document
8 and then I'll reply.

9 THE COURT: Hold on a second. Okay.
10 What did you want to respond?

11 MR. IANNO: Judge, if we look at CPH-9,
12 it is a document that is written by
13 Sunbeam. It is an executive summary and a
14 PowerPoint presentation of Sunbeam
15 Corporation. It was not drafted by Morgan
16 Stanley. The content came from Sunbeam,
17 and that is the testimony.

18 In Mr. Scarola hand-up he quotes the
19 testimony of Mr. Webber that he believed
20 the document was prepared by Morgan
21 Stanley. Well, what Mr. Webber actually
22 testified is it was a type of document,
23 but he did not recognize it. More
24 importantly, Mr. Burchill testified that
25 it's definitely Morgan Stanley's format.

1 Mr. Doyle should have received, but he
2 didn't?

3 MR. IANNO: But he did, judge. That's
4 the point.

5 THE COURT: No, he told us he only
6 looked at the depositions.

7 MR. IANNO: That's who you would ask.
8 That's the fatal assumption of plaintiff's
9 case.

10 THE COURT: Let me ask you this --

11 MR. IANNO: Remember, Judge, these are
12 six, maybe seven-years-old at this point,
13 some of them eight-years-old. Everybody
14 that had knowledge was inquired of. Did
15 you draft this document? No, the content
16 came from Sunbeam. Everyone said that.

17 THE COURT: Do we agree that that's the
18 word processing stamp?

19 MR. IANNO: Of -- we agree it's a word
20 processing stamp, yes. Do we agree it
21 came from --

22 THE COURT: So what's answer to that?

23 MR. IANNO: But we don't know where it
24 came from. The answer is I simply don't
25 know. There's nothing wrong with that

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1 answer.
 2 THE COURT: Did Mr. Doyle go back and
 3 say at the time this document was created
 4 in 1998 what was the significance of
 5 having that word processing stamp in the
 6 bottom right-hand corner and is there any
 7 information we can figure out from that?
 8 MR. IANNO: And the answer is, no, we
 9 can't.
 10 THE COURT: But he didn't do it.
 11 MR. IANNO: But, judge, everyone he
 12 would have gone to was deposed.
 13 THE COURT: Why wouldn't he go to the
 14 word processor people and say what's the
 15 significance of that down there, what does
 16 that tell us, if anything?
 17 MR. IANNO: But, Judge, there is no one
 18 else to ask.
 19 THE COURT: How do we know that? The
 20 only people he asked were sort of the fact
 21 witnesses, not the people who would have
 22 been sort of the nitty-gritty people in
 23 how the word processing equipment worked
 24 at the time.
 25 MR. IANNO: That assumes there was a

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1 word processing department who would have
 2 done it.
 3 THE COURT: Right.
 4 MR. IANNO: The people responsible for
 5 this presentation are the people who were
 6 inquired about.
 7 THE COURT: Sure. But if -- you may
 8 show me something that I authored 20 years
 9 ago and I may have zero recollection, but
 10 there may be five word processing stamps
 11 that indicate it was generated by my firm
 12 and I was the author of it. And the fact
 13 that I don't remember, even though I was
 14 the one involved in the transaction,
 15 doesn't mean that there's not information
 16 that would suggest I authored it.
 17 MR. IANNO: And you go back and ask
 18 people and they say I don't know.
 19 THE COURT: I would go back to Dorothy
 20 at the word processor and say what does
 21 this stamp mean.
 22 MR. IANNO: There's no information like
 23 that.
 24 THE WITNESS: How do they know? Doyle
 25 didn't ask.

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1 would know. I mean, those are the people
 2 that would know.
 3 THE COURT: Did any of them testify to
 4 the significance of the Morgan Stanley
 5 word processing stamp on the document?
 6 MR. IANNO: Mr. Doyle said it looks
 7 like -- he's seen some documents.
 8 Mr. Scarola read the testimony.
 9 THE COURT: That was like I really
 10 don't know anything about this.
 11 MR. IANNO: Because it's not -- I don't
 12 know how else to answer it, judge. But
 13 the people that have the knowledge, the
 14 corporation exhausted its knowledge. If
 15 you're saying Mr. Doyle should go back and
 16 try to find a word processor that may have
 17 been there seven or eight years ago when
 18 the people that were actually responsible
 19 for this transaction don't know, we can
 20 try to do that. I submit that that's not
 21 what we are required to do and that's not
 22 what plaintiff asked us to do. We asked
 23 the authenticity source creation, not
 24 whether or not Morgan Stanley typed it.
 25 The source of this document is Sunbeam.

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1 The authenticity is not at issue. The
 2 business purpose was asked. I defy
 3 Mr. Scarola to say where in the amended
 4 deposition notice whether the fact that it
 5 resides on Morgan Stanley's computer
 6 system at one time fits into the
 7 authenticity source, creation --
 8 THE COURT: Wouldn't there be some
 9 information potentially by source? Why
 10 would it ever be on your computer system?
 11 MR. IANNO: The source is Sunbeam. The
 12 testimony is the content came from
 13 Sunbeam. There's no dispute about that,
 14 judge. The testimony of all the
 15 individuals is the source of this document
 16 was Sunbeam.
 17 THE COURT: What do you mean when you
 18 say "source"? Do you mean they were the
 19 publisher?
 20 MR. IANNO: That's where the -- well, I
 21 don't know what they meant by source. I
 22 can tell you what we meant by source.
 23 Where did the information in this document
 24 come from, the source of this document.
 25 The source of this document was Sunbeam.

1 believe Morgan Stanley drafted the
 2 document. That's not going to change. I
 3 don't know how anyone else can say
 4 differently, judge. Everyone that was
 5 involved in this transaction has testified
 6 to that.
 7 MR. SCAROLA: Mr. Strong testified that
 8 Morgan Stanley likely typed the document,
 9 but the content came from Sunbeam, page
 10 166 of his deposition. Mr. Burchill, page
 11 38, testified that it's definitely Morgan
 12 Stanley's format. Mr. Yoo testified that
 13 the document was Morgan Stanley's
 14 description of Sunbeam and its current
 15 situation. Mr. Webber testified that he
 16 believed the document was prepared by
 17 Morgan Stanley. We've provided page and
 18 line citations. We've described what the
 19 testimony is, and for their corporate
 20 representative to come in without having
 21 conducted a reasonable investigation under
 22 these circumstances should result in the
 23 admission of this document.
 24 MR. IANNO: Judge, Mr. Burchill,
 25 testified, "Do you know if anyone within

1 Which question --
 2 THE COURT: When you say the
 3 information came from Sunbeam, who put
 4 together the document? Is that different
 5 than who put it together? I mean, if all
 6 you're saying is it includes figures
 7 Sunbeam gave us, that's real different
 8 than saying Sunbeam is the source of it.
 9 MR. IANNO: Well, the testimony was the
 10 content came from Sunbeam.
 11 THE COURT: The content meaning it
 12 extracts figures and items that Sunbeam
 13 provided to Morgan Stanley? Who put the
 14 document together? Who drafted it.
 15 MR. IANNO: No one knows.
 16 THE COURT: Are you prepared to say
 17 Morgan Stanley did not draft it?
 18 MR. IANNO: The testimony was the
 19 content came from Sunbeam.
 20 THE COURT: You know, that's like
 21 saying I write a biography of
 22 George Washington and the content came
 23 from his life. Well, yeah, but did I
 24 write it.
 25 MR. IANNO: The testimony is they don't

1 Morgan Stanley put this together?" "I
 2 don't know." He didn't testify that
 3 Morgan Stanley put it together. The
 4 testimony is there, judge. And the
 5 sanctions do not deem it admissible.
 6 THE COURT: I agree, but -- maybe not
 7 for this document, but I would also agree
 8 I don't think Morgan Stanley has done near
 9 enough to determine whether this was a
 10 document produced by Morgan Stanley or
 11 not.
 12 MR. IANNO: The only possible thing we
 13 could have done, judge, is go to the word
 14 processing department, if one even existed
 15 back in --
 16 THE COURT: You can't tell me whether
 17 you did because you didn't do it.
 18 MR. IANNO: Well, because we conducted a
 19 good faith investigation with the people.
 20 Now the court obviously has a different
 21 interpretation of that. But in response
 22 to their deposition notice we had somebody
 23 who was capable of testifying to the
 24 corporate knowledge of authenticity, the
 25 corporate knowledge of source.

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1 THE COURT: I don't think so.
 2 MR. IANNO: Okay. Then we can go back
 3 and see if the testimony would be any
 4 different. I think on that one, though,
 5 most we can do is say is that our word
 6 processing stamp. I don't know how that
 7 changes.

8 THE COURT: I don't know. I don't know
 9 what other information -- it strikes me
 10 that you guys are probably a pretty
 11 sophisticated entity, and there probably
 12 is other information included in that. I
 13 mean, I frankly would almost be surprised
 14 if you couldn't tell who made changes to
 15 the document when --

16 MR. IANNO: Eight years ago, though,
 17 judge... The other thing is, Judge, you
 18 saw this in earlier motions. The --
 19 Coleman has given you examples of
 20 Metadata. They've asked for the Metadata.
 21 If Metadata existed for this document, we
 22 would have produced it to Coleman. They
 23 didn't give it to you for this motion, so
 24 I think we can assume that there is no
 25 Metadata for this document that is

1 relevant to this. So where are we
 2 supposed to go is my concern.
 3 THE COURT: I don't know because you
 4 guys didn't make any inquiry at all. You
 5 know, all I'm saying is you guys
 6 apparently made no inquiry to anybody
 7 other than sort of the principal players
 8 that would have helped you identify how
 9 this document migrated to Morgan Stanley's
 10 word processing system and what it was
 11 doing there and how, if at all, it was
 12 changed.

13 MR. IANNO: I would submit to the court
 14 that they did as much as an inquiry as is
 15 possible under the circumstances. Maybe
 16 Mr. Doyle didn't testify to it because he
 17 wasn't asked specifically, but counsel
 18 spent hours going through each one of
 19 these documents and trying to figure out
 20 whether Morgan Stanley authored it.

21 THE COURT: When you say counsel, to
 22 whom are you referring, Mr. Doyle or
 23 somebody else?

24 MR. IANNO: Outside counsel, judge.

25 THE COURT: Then all you're saying is,

1 THE COURT: No, but isn't it sufficient
 2 to say sort of the same way about the
 3 first document, we probably didn't make a
 4 sufficient inquiry?

5 MR. IANNO: I understand that to be
 6 their position, Judge, and, once again,
 7 everyone that had knowledge of this
 8 document was asked about this document.
 9 If the court's position is we have to go
 10 to try to find a word processor or word
 11 processing department that existed in '97
 12 and '98, obviously we're going to comply
 13 with the court order and do that. But the
 14 people that are at knowledge here, if you
 15 look at the document, it's a Sunbeam
 16 document.

17 THE COURT: You say that because
 18 Sunbeam -- I mean, face it, attorneys and
 19 entities all the time ghostwrite things
 20 for others. That happens all the time.
 21 And, frankly, it's disingenuous to testify
 22 that just because Sunbeam's name is on it
 23 that must mean Sunbeam wrote it.

24 MR. IANNO: Well, Mr. Savarie testified
 25 that it was a Sunbeam document.

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1 THE COURT: What does that mean? That
 2 they published it. Well, you know, big
 3 whoop.
 4 MR. IANNO: He also testified about the
 5 word processing stamp, judge. On page
 6 148, line 14 -- page 149 in his deposition
 7 he says, "Whose word processing system was
 8 the presentation kept on?"
 9 "I don't know. It may have changed
 10 hands a couple of times at various points
 11 in the process. It's not uncommon for
 12 that to happen. I don't know whether or
 13 not -- I don't recall specifically, you
 14 know, where it started. It may have been
 15 an outline that lead to a first draft."
 16 That's the problem with electronics,
 17 Judge, if it resided on Morgan Stanley's
 18 computer system because Sunbeam sent us an
 19 electronic copy of it, for instance, does
 20 that mean Morgan Stanley drafted it?
 21 THE COURT: I understand what you're
 22 telling me, but I think the problem I'm
 23 having is because we don't know what
 24 information is there, it's real hard to
 25 argue this. All we know is there may be

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1 information there, but nobody has asked
 2 yet.
 3 MR. IANNO: Well, we've asked -- we
 4 haven't asked the word processing people.
 5 Mr. Doyle didn't testify that he requested
 6 it. It may have happened, Judge, and the
 7 answer is still I don't know.
 8 THE COURT: It may have, but there
 9 would be no way for me to know that.
 10 What's plaintiff's position? And right
 11 now we're talking about CPH-75.
 12 MR. SCAROLA: That is a word processing
 13 stamp which by -- or a computer footer, I
 14 think, is a more accurate description.
 15 This is a computer footer that appears to
 16 be formatted exactly the same as other
 17 documents which Morgan Stanley has
 18 admitted it authored. And when you get
 19 another document that's got exactly the
 20 same formatted footer on it with Morgan
 21 Stanley's name stamped on it, there's at
 22 least an obligation to make some inquiry
 23 as to is this on our computer system, what
 24 does the footer itself tell us, is there a
 25 date that's incorporated into the footer,

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1 THE COURT: Source, creation, use,
 2 maintenance.
 3 MR. IANNO: The creation we testified
 4 to. Mr. Scarola still hasn't said which
 5 one of those specific topics was not
 6 addressed, authenticity, source, I
 7 understand.
 8 THE COURT: You're saying on some of
 9 these you have insufficient information
 10 because there wasn't -- I understand you
 11 guys disagree. I think this is clearly
 12 something you guys could go look at. We
 13 need to finish going through the documents
 14 and then talk about whether there's time
 15 to get this done and if there's not, what
 16 do we do.
 17 Let's go on to the next one, which is
 18 CPH-130. That's number three.
 19 MR. IANNO: No, it's actually number
 20 three, Your Honor, was their most
 21 egregious error.
 22 THE COURT: That they've abandoned.
 23 MR. IANNO: Yes, because the testimony
 24 was absolutely clear on this just like we
 25 believe all the others are.

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1 THE COURT: We're going to number four,
 2 then.
 3 MR. IANNO: Number four. And it's the
 4 same argument, Judge, with CPH-130.
 5 They're different versions of the same
 6 document. For instance, CPH-130 is a
 7 different version of CPH-75. They're
 8 slide show presentations of Sunbeam.
 9 THE COURT: It would be the same thing.
 10 We have to go figure out...
 11 Okay. Next one we have is 155, which
 12 is -- is that Tab 5?
 13 MR. IANNO: Tab 5.
 14 THE COURT: Okay.
 15 MR. IANNO: And here's another
 16 illustrative point, judge. When you're
 17 asking about Morgan Stanley's name is on
 18 that, take a look at Tab 5, page five.
 19 Morgan Stanley Dean Witter's name is on
 20 it; Bank of America's name is on it; First
 21 Union's name is on it; Coleman's name is
 22 on it.
 23 THE COURT: Isn't that done in sort of
 24 a different capacity? Those weren't
 25 identifying information that -- places a

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1 document can be located. That's just
 2 saying who was involved in this
 3 transaction.
 4 MR. IANNO: My point is the mere
 5 fact --
 6 THE COURT: I would agree the mere fact
 7 Morgan Stanley's name is on a document
 8 doesn't mean that you guys -- it would
 9 suggest you probably had some input into
 10 it. I think there is obviously a
 11 different significance between having your
 12 name included in a title of a document and
 13 having your name included in a word
 14 processing stamp.
 15 MR. IANNO: And it also -- just to have
 16 it included in the footer anywhere. This
 17 is another one, Judge, that -- this is an
 18 information memorandum under the
 19 securities laws prepared by Sunbeam.
 20 THE COURT: That doesn't -- I'm not
 21 sure that answers the question.
 22 MR. IANNO: When we go back to exactly
 23 what was Morgan Stanley supposed to do, we
 24 said we didn't author it. The source of
 25 the document is Sunbeam. The creation of

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1 but you're not prepared to say anything
 2 other than that.
 3 MR. IANNO: What I'm prepared to tell
 4 you, Judge, is there's testimony on it, on
 5 all these things -- these issues that is
 6 sufficient corporate knowledge and
 7 corporate testimony for what Mr. Scarola's
 8 purpose is.
 9 MR. SCAROLA: Which they will refer to
 10 but not defer to.
 11 MR. IANNO: I think Mr. Doyle's
 12 testimony, as the court heard, was they
 13 know.
 14 THE COURT: So he was deferring to it.
 15 He just said refer because he didn't like
 16 it.
 17 MR. IANNO: That's the testimony. They
 18 have the testimony. How do you establish
 19 the admissibility of any document, judge?
 20 Through testimony.
 21 THE COURT: Let me ask you,
 22 Mr. Scarola, on CPH-155, what are the list
 23 of topics do you think Mr. Doyle was not
 24 prepared to address?
 25 MR. SCAROLA: I don't think he was

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1 prepared to address any of this list of
2 topics. This is another document -- and
3 in this case Morgan Stanley has admitted
4 that this was a document prepared in the
5 ordinary course of Morgan Stanley's
6 business. We have a response to a request
7 for admission which acknowledges that it
8 was prepared in the ordinary course of
9 Morgan Stanley's business.

10 THE COURT: Does it acknowledge that
11 they prepared it?

12 MR. SCAROLA: No. All they acknowledge
13 is it was prepared in the ordinary course
14 of Morgan Stanley's business. We have
15 acknowledgments in testimony from Mr. Seth
16 that he contributed to its preparation,
17 and Mr. Rankin testified that he and
18 Mr. Seth were involved in writing the
19 document, so we have -- we have that much
20 independent of Mr. Doyle. But Mr. Doyle
21 had no knowledge of who drafted or who
22 typed the document. As the corporate
23 representative, he wasn't prepared to come
24 in and say anything about this document.

25 THE COURT: Is your concern that, for

1 going to say Mr. Seth is a liar and he had
2 no role?

3 MR. SCAROLA: I'd like to know that,
4 sure. I would like to know -- I'd like to
5 know is Morgan Stanley going to
6 acknowledge that they prepared -- are they
7 going to acknowledge that they, in fact,
8 prepared this document. No matter where
9 they gathered information from, was this a
10 document that they themselves prepared for
11 whatever the sources were that they had?
12 Did they, in fact, themselves contribute
13 to the content of the document? And what
14 contributions did they make as opposed to
15 simply gathering information from others?
16 What efforts did they make to determine
17 the reliability of the information? Are
18 they contesting the content of the
19 document in some respect? When was it
20 prepared and how was it maintained within
21 Morgan Stanley?

22 THE COURT: Let me go back and --

23 MR. SCAROLA: Remember that this is the
24 document about which they changed their
25 position. This is the document that they

1 instance, he wasn't prepared to say
2 whether or not Morgan Stanley typed it?

3 MR. SCAROLA: Whether --

4 THE COURT: Whether Morgan Stanley
5 typed it or somebody at Sunbeam typed it
6 or somebody else typed it.

7 MR. SCAROLA: He was not prepared to
8 say whether it was typed by Morgan
9 Stanley. He was not prepared to say that,
10 yes, indeed, the corporation acknowledges
11 that our employees contributed to the
12 content of the document. He was prepared
13 to refer to that testimony but not to
14 defer to it. He would not state what the
15 corporation's position was with regard to
16 any issue relating to this document. And
17 that's what we're trying to find out at
18 this point in time, what is the defendant
19 going to say about this document.

20 THE COURT: Let me ask you this. Is
21 what you want to know -- or is it
22 sufficient for your purposes today if
23 Morgan Stanley acknowledges that it had
24 some role in drafting the document? Or
25 are you really asking him, look, are you

1 said yes about first and then sent a
2 letter saying, no, we're no longer
3 acknowledging the authenticity and
4 authorship of this document.

5 MR. IANNO: We changed authorship,
6 Judge, not authenticity.

7 THE COURT: Do you have any information
8 that would indicate Morgan Stanley was not
9 the author?

10 MR. IANNO: Yes, because Mr. Seth who
11 testified on it says the content came from
12 Sunbeam. He may have had a role in it.
13 It's fair to say he did have some role in
14 drafting it. The questions Mr. Scarola
15 wants answered were answered to the best
16 of the fact witness's ability. What
17 Morgan Stanley's role was in this
18 document, the only people that are going
19 to know that, judge, are the people who
20 were actually involved in the transaction
21 and they've testified. There's no place
22 to go for that information regardless of
23 whether the court thinks we should go to
24 our computer department to find out
25 computer related information about the

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1 document.
 2 THE COURT: Let me ask you this. When
 3 you say -- as I understand it, what Morgan
 4 Stanley has done is back off its admission
 5 that it authored the document.
 6 MR. IANNO: Correct.
 7 THE COURT: And the only information I
 8 understand that you have today that would
 9 indicate you did not author the document
 10 is that content came from somebody else?
 11 MR. IANNO: No. That's true for those
 12 PowerPoint presentations, judge. This
 13 document would have been authored by
 14 Sunbeam and Coopers & Lybrand according to
 15 the testimony with Morgan Stanley --
 16 THE COURT: Where would I look for that
 17 testimony?
 18 MR. IANNO: It's in Mr. Seth and
 19 Mr. Rankin's testimony as I believe quoted
 20 by Mr. Scarola that he gave to the court.
 21 For instance --
 22 THE COURT: The testimony he gave me is
 23 the testimony that says they were involved
 24 in writing it, not what you just referred
 25 to, that Sunbeam and Coopers & Lybrand

1 were the authors.
 2 MR. IANNO: That's the complete from --
 3 THE COURT: Do you have the complete
 4 quote?
 5 MR. IANNO: I have it on the computer,
 6 judge. I can bring it over. I just did
 7 it in preparing for this. I don't think
 8 we have Mr. Rankin's.
 9 THE COURT: I probably have it.
 10 MR. IANNO: For instance, Mr. Rankin
 11 testified 48, line 15, "So this is the
 12 bank book you referred to earlier in your
 13 testimony?"
 14 "Yes."
 15 "Were there some portions of this
 16 document that you yourself wrote?"
 17 His answer was, "Not that I recall."
 18 THE COURT: What I asked you about,
 19 your statement that they testified Sunbeam
 20 and -- was it Coopers & Lybrand?
 21 MR. IANNO: Coopers, yes. I'll find
 22 that for the court.
 23 THE COURT: Let me go do this warrant
 24 and you can find it while we're gone.
 25 (A recess was taken from 10:44 a.m. to

1 10:59 a.m.)
 2 Okay. Did we find that testimony?
 3 MR. IANNO: Yes, judge. It's tab 19 of
 4 our binder. It was quoted in our
 5 opposition. I was looking in
 6 Mr. Scarola's papers, and that's why I
 7 couldn't find it.
 8 THE COURT: Let me get back to that.
 9 Okay. What page?
 10 MR. IANNO: Your Honor, these are the
 11 excerpts about this Exhibit. It's called
 12 the bank book.
 13 THE COURT: Wait, wait. Tab 19?
 14 MR. IANNO: Yes.
 15 THE COURT: Of what?
 16 MR. IANNO: The binder I sent. It's
 17 the excerpts of the deposition of
 18 Mr. Ishaan Seth. What we're talking about
 19 is where I got the quote that the
 20 information came from Sunbeam and Coopers.
 21 It's contained within these deposition
 22 excerpts.
 23 THE COURT: What pages?
 24 MR. IANNO: These are the excerpts that
 25 specifically talk about it. There's only

1 two or three pages.
 2 THE COURT: I don't honestly remember.
 3 MR. IANNO: Specifically, judge, if you
 4 go to page 27 of the deposition, line 6,
 5 you have to put it together. What
 6 Mr. Seth testifies to is the information
 7 came from Sunbeam from part of the M&A
 8 team from Morgan Stanley and from a
 9 consulting firm, and then he was asked was
 10 that other consulting firm Coopers &
 11 Lybrand. He says I believe it was.
 12 THE COURT: Let me look at this real
 13 quick. Who was Mr. Seth?
 14 MR. IANNO: He was involved on the
 15 financing side of the transaction on
 16 behalf of Morgan Stanley.
 17 THE COURT: Okay. This is about
 18 sources of information, correct?
 19 MR. IANNO: Right. And that's what we
 20 were talking about is who authored the
 21 document. It's clear, you know, what
 22 happened was it was -- what Mr. Seth
 23 testified to and the corporate knowledge
 24 was it was a collaborative effort that
 25 came from Sunbeam personnel, which is a

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1 key source that Mr. Seth testified to.
 2 Some information came from Morgan Stanley,
 3 and other information came --
 4 THE COURT: Who put it together?
 5 MR. IANNO: Well, that's what he
 6 testified to. It went back and forth on
 7 the system. It was -- not one company put
 8 it together.
 9 THE COURT: Who produced the first
 10 draft?
 11 MR. IANNO: I would have to say
 12 Sunbeam, judge. Or -- I think Sunbeam
 13 would have produced the first draft since
 14 it's their information memorandum. But I
 15 don't know if anyone was specifically
 16 asked who produced the first draft.
 17 THE COURT: When you say source of
 18 information, do you mean -- do you use
 19 that to mean drafted or is that -- I
 20 wouldn't use those to be the same thing,
 21 but it sounds like you are.
 22 MR. IANNO: I interpret that to mean
 23 where did the information come from that's
 24 in this document, the source of the
 25 information.

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1 THE COURT: That's different than the
 2 drafting.
 3 MR. IANNO: Correct. The source of the
 4 information is what I thought they were
 5 getting after. If they're asking who
 6 drafted the document, that's a different
 7 issue to me.
 8 THE COURT: Okay.
 9 MR. IANNO: The testimony was that
 10 sources for this information, CPH-155, was
 11 various individual -- various companies,
 12 including Sunbeam, including some Morgan
 13 Stanley and including Coopers & Lybrand.
 14 That's the source of this document.
 15 THE COURT: Okay. What's the response?
 16 MR. SCAROLA: Your Honor, I have the
 17 problem that I think the court is having.
 18 The source of the information is distinct
 19 from the source of the document. And what
 20 we are trying to determine is who prepared
 21 the document. And they keep saying the
 22 source of the document was Sunbeam when
 23 what they are really saying is we now know
 24 based upon Mr. Ianno's, quote,
 25 clarification, unquote, is Morgan Stanley

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1 put the document together from information
 2 that was provided by a whole lot of
 3 different people. And if that's what
 4 they're saying, that's what they ought to
 5 say. But they have done everything they
 6 can to avoid stating clearly and
 7 unequivocally Morgan Stanley put this
 8 document together from sources of
 9 information provided by others.
 10 They ought to be obliged. They were
 11 obliged. They had an obligation to
 12 produce a corporate representative who
 13 would say those things clearly and
 14 unequivocally, and instead through months
 15 of effort on our part they have done
 16 everything they could to evade accepting
 17 the responsibility that they had and
 18 clearly acknowledging the role that they
 19 played. That's the problem that we're
 20 having just two weeks prior or three weeks
 21 prior to the commencement of trial.
 22 MR. IANNO: Judge, I don't know how you
 23 can state anything clearly and
 24 unequivocally when the people that know
 25 about it say I don't know if it was on

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1 portion of it does not make this document
2 admissible or have anything to do with it.
3 And when Mr. Scarola says clearly and
4 unequivocally, the answer can be I don't
5 know. It doesn't have to be a clear and
6 unequivocal yes or no.

7 THE COURT: That one I want to think
8 about.

9 What's next?

10 MR. IANNO: CPH-170, Judge, which should
11 be in Tab 6.

12 THE COURT: Yep.

13 MR. IANNO: This is the one where
14 Miss Raffi testifies to, and this is the
15 one where they actually show someone the
16 Metadata from this document. And they ask
17 Miss Raffi clearly on the Metadata, page
18 92 beginning on line 23, "This document --
19 the Metadata would indicate that Morgan
20 Stanley was involved in preparing this
21 biographical information?"

22 Miss Raffi says, "Not necessarily."
23 This is the one where the Metadata shows
24 her as the author, and she says, no, that
25 doesn't mean we compiled this information.

1 What it means is that it shows up on
2 Morgan Stanley's system. This is a
3 basically a CV --

4 THE COURT: Is this sort of what I was
5 talking about before, this is someone who
6 says I don't know if I did it or not, but
7 we didn't go back? Or are you saying
8 there is no information within Morgan
9 Stanley's word processing equipment that
10 would have shown?

11 MR. IANNO: The word processing is the
12 Metadata, judge. It's the document, the
13 electronic document properties that was
14 produced that shows where this document
15 resides on Morgan Stanley's system.

16 THE COURT: So it shows she was the
17 author, but she doesn't remember.

18 MR. IANNO: She says, no, I was not the
19 author of this document.

20 THE COURT: She says she doesn't know
21 or she doesn't remember?

22 MR. IANNO: The question was doesn't
23 this mean that you're the author of the
24 document.

25 THE COURT: What does she say?

1 could have been edited or this could have
2 been typed out based on something the
3 company gave us. It doesn't mean that
4 Morgan Stanley compiled this information.
5 I don't remember this document."

6 THE COURT: Sure, but that doesn't --
7 it doesn't mean that -- Morgan Stanley
8 gathered the information is different than
9 whether Morgan Stanley produced the
10 document. You're unwilling to admit that
11 Morgan Stanley produced this document?

12 MR. IANNO: Produced it as far as in
13 this litigation, judge?

14 THE COURT: No.

15 MR. IANNO: It resided on Morgan
16 Stanley's system.

17 THE COURT: That it was the source of
18 the document. Not the source of the
19 information contained in the document, but
20 the source of the document.

21 MR. IANNO: I think the only thing that
22 we can admit based on the corporate
23 knowledge is it resided on Morgan
24 Stanley's computer system and that it was
25 printed from Morgan Stanley's system and

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1 given to the plaintiffs in this case.
2 Because when you say the source of the
3 information, Morgan Stanley did not
4 compile Mr. Dunlop's credentials.

5 THE COURT: I understand that, you
6 know --

7 MR. IANNO: Was the document given to
8 Morgan Stanley? Was it placed on Morgan
9 Stanley's server? Was it then printed
10 from Morgan Stanley's server? Those are
11 all accurate statements. Did Morgan
12 Stanley create this information? The
13 corporate knowledge is we don't think so.
14 It would have been given to us by the
15 company.

16 THE COURT: Did Raffi have any
17 information about how a document could be
18 edited and the authorship -- edited by
19 somebody other than the original
20 authorship -- edited by the person --
21 other than the person who originally
22 authored it and not have the authorship of
23 the document change?

24 MR. IANNO: I don't know if she was
25 asked that, but that would happen, Judge,

1 as a matter of computers when a document
2 came from outside the native servers. For
3 instance, like the example I gave you if
4 Mr. Scarola sends me the joint pretrial
5 stip in Word Perfect Microsoft Word, his
6 information won't show up as the author on
7 my system because it can only store the
8 employees of my company on the system.
9 And that's one -- I don't know if she was
10 specifically asked in this situation, but
11 that's my understanding of how computers
12 work today and how they worked back in '97
13 and '98.

14 THE COURT: What's plaintiff's
15 position?

16 MR. SCAROLA: Our first response is
17 that Mr. Ianno is not a witness in this
18 case. He didn't work in the word
19 processing department of Morgan Stanley,
20 and his responses are really speculation.
21 They are nothing but speculation on his
22 part.

23 Mr. Doyle testified I don't even know
24 whether that's Morgan Stanley's word
25 processing stamp. He wouldn't -- he

1 more -- to prepare for the deposition that
2 would have given you more information than
3 you already had?

4 MR. IANNO: At the very least he could
5 have made a determination with regard to
6 whether that is Morgan Stanley's word
7 processing stamp, whether the computer
8 footer is theirs, could have been prepared
9 on behalf of the corporation to either
10 confirm or deny that or tell us, I tried
11 and could not. And he never even made
12 that effort. And he could have made an
13 effort if it was, in fact, Morgan
14 Stanley's footer to make a determination
15 as to what information can be derived from
16 that footer.

17 Clearly the testimony from Miss Raffi
18 does not deny the authorship of the
19 document. All she says is I don't
20 remember. The footer indicates that she
21 is the author. There's apparently an
22 acknowledgment of that. Is the corporate
23 position in this case going to be that
24 information is wrong? I want to know not
25 what Miss Raffi, an employee of the

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1 corporation, says. I want to know what
2 Morgan Stanley's position is. Are they
3 going to come in and say she did author
4 it, she didn't author it or I don't know.
5 I did everything I could to find out and I
6 don't know? Instead, we get a witness who
7 says I don't know, and I did nothing to
8 find out.

9 THE COURT: Okay.

10 MR. IANNO: This is a prime example,
11 judge. The only information that could
12 possibly be contained in the footer is the
13 electronic information, the Metadata that
14 plaintiff already has in its possession
15 for every one of these documents. There
16 is no better knowledge than Miss Raffi.
17 She says I don't remember authoring this
18 document. It would have come from
19 Sunbeam. The fact that it's on our system
20 does not mean Morgan Stanley compiled it.
21 Where else are we supposed to go other
22 than the person who's listed in the
23 electronic document properties as the
24 author to get different information? And
25 we do have to defer to Miss Raffi.

1 THE COURT: Okay. Let's move on. 182.

2 MR. IANNO: 182, Judge, I believe is
3 going to be subsumed within 75 and 130
4 because it's just another version of the
5 Sunbeam presentation.

6 THE COURT: I appreciate your candor.

7 MR. IANNO: Then we get to number --

8 THE COURT: 209.

9 MR. IANNO: Tab 8, Judge, which this is
10 the offering memorandum that's given in
11 connection with the sale of the
12 subordinated debentures, which the court
13 has heard so much about. It's our
14 position this is a Sunbeam document.

15 THE COURT: When you say it's a Sunbeam
16 document, what do you mean, that they were
17 the publisher of it?

18 MR. IANNO: Morgan Stanley is just the
19 underwriter of these debentures.

20 THE COURT: We're still trying to find
21 out Morgan Stanley's role in the creation
22 of these documents.

23 MR. IANNO: The testimony is that,
24 Mr. Doyle testified at page 48, line 10
25 through 20 and 59, line 14 through 20 that

1 He can't come in and say I spent two
2 hours yesterday talking to my lawyer. I
3 won't tell you what was said because
4 that's privileged. I may have had some
5 involvement while I was working as
6 in-house counsel, but I won't tell you
7 what I did because that's privileged, but
8 what I'm going to tell you is that I don't
9 believe that this document was created by
10 Morgan Stanley.

11 I just don't see how that works. They
12 can't designate a corporate representative
13 who is going to hide behind privilege and
14 then make an assertion that we can not
15 test with regard to the adequacy of the
16 corporate knowledge regarding this
17 document and the adequacy of the
18 investigation conducted with regard to the
19 document.

20 THE COURT: Did any of the deponents
21 ever testify that Morgan Stanley had a
22 hand in it?

23 MR. SCAROLA: I don't know that there
24 was any specific testimony on that point.

25 THE COURT: Okay. 217.

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1 MR. IANNO: Judge, I think we've lumped
 2 217 together with 155, which --
 3 THE WITNESS: It's the same thing.
 4 MR. IANNO: Yes. Those two should be
 5 treated together.
 6 MR. SCAROLA: I would agree.
 7 THE COURT: Appreciate your candor.
 8 And then we're on to --
 9 MR. IANNO: 264. And this begins some
 10 handwritten note Exhibits, Judge. 264 and
 11 265 we lumped together as well. These are
 12 handwritten notes, judge. Everyone has
 13 been asked are these your notes. I
 14 don't -- there's no footer here. There's
 15 no electronic document properties. We've
 16 answered interrogatories on this. We've
 17 made an inquiry on these documents, and
 18 nobody recognizes the handwriting of these
 19 documents.
 20 THE COURT: What was the source of the
 21 document? How did we get them?
 22 MR. IANNO: Morgan Stanley.
 23 THE COURT: In response to request for
 24 production or something else?
 25 MR. IANNO: Yes, response to request to

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1 produce, this is a document Morgan Stanley
 2 produced to us.
 3 THE COURT: In its original form?
 4 MR. IANNO: Probably a copy.
 5 MR. SCAROLA: It was a photocopy, but
 6 it was a photocopy that includes all the
 7 handwriting.
 8 THE COURT: Right. But do we know
 9 where the original notes are?
 10 MR. IANNO: No, judge.
 11 THE COURT: Do we know where Morgan --
 12 do we know if Morgan Stanley had the
 13 original when it produced a copy?
 14 MR. IANNO: Not actually, Judge. This
 15 comes from a -- production in other
 16 lawsuits. This is not Bates stamped -- if
 17 you look at Exhibits 10 and 11, I don't
 18 believe those are Bates stamps from this
 19 lawsuit. So these are reproduced from
 20 previous productions.
 21 THE COURT: Did you go back and trace
 22 where you got them?
 23 MR. IANNO: I don't know if we did
 24 that, judge. We asked everyone are these
 25 your notes.

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1 originals, but it's still not going to
 2 find out whose handwriting it is.
 3 THE COURT: No, but it might let us
 4 know what file it originally came from or
 5 how they originally came into your
 6 possession.
 7 MR. IANNO: I don't even know if that's
 8 possible, but we'll be glad to try that.
 9 THE COURT: What's the response?
 10 MR. SCAROLA: That's exactly what
 11 should have been done, that what the
 12 corporate representative was obliged to do
 13 pursuant to court order was to make a
 14 determination about where this document
 15 came from. It was produced to us by
 16 Morgan Stanley. The content of the
 17 document strongly suggests that someone
 18 within Morgan Stanley made these
 19 handwritten notes. They won't even tell
 20 us whether this was a document that they
 21 themselves maintained or whether somebody
 22 walked by Sunbeam headquarters and picked
 23 it out of the trash can there. You know,
 24 that's what we're trying to find out, is
 25 this part of your files, and we can't even

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1 find out whether it's part of their files
2 because they made no effort to determine
3 whether it was part of their files.

4 MR. IANNO: Judge, we've tried to find
5 out whose documents these are, whose
6 handwriting it is. We don't know.

7 MR. SCAROLA: That's an entirely
8 different issue.

9 THE COURT: I would agree. Okay. 264
10 and 265 were lumped together so we're on
11 to 278. And that is Tab 12; is that
12 right?

13 MR. IANNO: That's correct, judge.

14 THE COURT: Okay.

15 MR. IANNO: And in support of Coleman's
16 position on this, they cite Mr. Fannin's
17 testimony or they use, quote Mr. Fannin
18 who was not deposed in this case, I don't
19 believe. He said the document was a
20 collaborative effort between Morgan
21 Stanley and Sunbeam. That's typical,
22 Judge. There's a citation, but there's no
23 support for that citation whatever.

24 MR. SCAROLA: Actually, there's not a
25 citation there. And I am just informed,

1 Your Honor, that that information came not
2 from deposition testimony but through a
3 separate conversation, and I was probably
4 in error having produced that page and
5 that reference, so I would ask the court
6 to disregard it.

7 THE COURT: You're talking about the
8 bullet point --

9 MR. SCAROLA: The second bullet point
10 under number two that refers Mr. Fannin's
11 statement is not a matter of record before
12 the court at this time. That is, in fact,
13 as a consequence of attorney work product,
14 and we'd ask that it be withdrawn, ignored
15 and returned to us.

16 THE COURT: You mean --

17 MR. SCAROLA: Just that page including
18 that line. That was an inadvertent
19 disclosure.

20 THE COURT: From mine or Mr. Ianno's?

21 MR. SCAROLA: From Mr. Ianno's.

22 THE COURT: Was a copy of this filed,
23 the document?

24 MR. SCAROLA: Yes. That page that has
25 been filed includes an inadvertent

1 that this document is a Sunbeam
2 presentation to Morgan Stanley. It's not
3 a document that's prepared by Morgan
4 Stanley. He testified to it. Mr. Doyle
5 referred to that testimony. And we will
6 defer to that testimony that we didn't
7 author it, we're not the source of it. It
8 is a document that was a presentation by
9 Sunbeam to Morgan Stanley.

10 THE COURT: Wait. I'm sorry. Where
11 would I look to see that testimony?

12 MR. IANNO: Seth's deposition page 47,
13 line 13 to 25.

14 THE COURT: Where is the deposition?
15 Where am I going to?

16 MR. IANNO: It is the last page of Tab
17 19 in our binder.

18 THE COURT: Okay. Let me go to that.
19 This is just saying they gave us a copy of
20 it.

21 MR. IANNO: It says, it's basically a
22 PowerPoint presentation Sunbeam Management
23 went through during the course of the
24 meeting. To be honest, I don't remember
25 specifically. I imagine so. That's the

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1 best testimony on this document.
 2 MR. SCAROLA: May I make a comment that
 3 perhaps will focus the court's attention
 4 on what our concern is?
 5 THE COURT: Yes.
 6 MR. SCAROLA: Your Honor, Mr. Doyle's
 7 testimony with regard to this document
 8 appears at page 155, beginning at line 3.
 9 And what we are attempting to establish is
 10 a predicate for the introduction of this
 11 document, and one way in which to do that,
 12 obviously, is to establish that it is a
 13 document that was made or kept in the
 14 ordinary course of Morgan Stanley's
 15 business. We acknowledge the testimony
 16 indicates that this was not made by Morgan
 17 Stanley, so we're focusing on whether it
 18 was kept by Morgan Stanley in the ordinary
 19 course of its business. And we get the
 20 same position asserted by Mr. Doyle that
 21 if it is kept outside the record retention
 22 policies of Morgan Stanley, then it's not
 23 kept in the ordinary course of our
 24 business. That's what he says, page 155,
 25 lines 3 through 22.

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1 And we go back to the legal issue that
 2 we discussed earlier, whether by virtue of
 3 the fact that they have a document
 4 destruction policy they can rely upon that
 5 policy to say, no, this was not kept in
 6 the ordinary course of our business.
 7 THE COURT: Okay. So for your purposes
 8 is it sufficient if I find that sort of
 9 the business purpose -- business records
 10 characterization attaches at the time the
 11 document is created or kept, originally
 12 kept and they can't be destroyed by
 13 subsequent destruction of the document?
 14 Is that all you need from this is to show
 15 they had it and they transmitted it?
 16 MR. SCAROLA: Well, because Mr. Doyle
 17 took the position that he did, we don't
 18 get that answer from him. In other words,
 19 Your Honor can say if you kept it at some
 20 time in the ordinary course of your
 21 business or received it in the ordinary
 22 course of your business, it does not lose
 23 its character by virtue of the fact that
 24 it's continued retention violates an
 25 internal policy, but we don't get

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1 THE COURT: I just want to make sure
 2 I'm not missing some basic proposition.
 3 It was always sort of my understanding of
 4 the business records exception that the
 5 business had to be the one that created
 6 the document and kept the document, that
 7 you couldn't sort of create a hearsay
 8 objection by having something given by a
 9 third party to the business and having the
 10 business find it in its file. That
 11 doesn't mean that item provided by the
 12 third party has an exception to the
 13 hearsay rule.
 14 MR. IANNO: Right.
 15 THE COURT: And it looks to me like
 16 that's what we're trying to somehow morph
 17 this into. And I just want to be clear
 18 where we're going. If all we're trying to
 19 say is Morgan Stanley had this, and
 20 clearly they had a copy because they faxed
 21 it, that's fine. But what else are we
 22 looking for? I don't know that that's
 23 sufficient to say this is -- meets the
 24 business records exception in the hearsay
 25 rule. So I just want to be clear what

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1 information we're trying to get out of
 2 this.
 3 MR. SCAROLA: Well, I'm not sure that I
 4 understood what Your Honor just said. I
 5 don't know that it is necessary in order
 6 to meet the business records exception to
 7 the hearsay rule that the business from
 8 whom the document is obtained created the
 9 document. If they received and maintained
 10 the document in the ordinary course of
 11 business, I suggest it can qualify as a
 12 business record. There may be other
 13 hearsay objections to the content of the
 14 document, but the document can qualify as
 15 a business record if it is received and
 16 maintained in the ordinary course of
 17 business even if it is not created and
 18 maintained in the ordinary course of that
 19 business's business.
 20 THE COURT: I'll be honest, I certainly
 21 have never thought the business records
 22 exception allowed you to receive a
 23 document from a third party, have it be in
 24 your general course to keep it and all of
 25 a sudden have that be a sufficient course

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1 to get around the business records
 2 exception. If you can show the document
 3 was created by this third-party entity in
 4 the ordinary course of its business by
 5 somebody with contemporaneous knowledge,
 6 all those predicates, and they don't keep
 7 it, but they mail it to you and you keep
 8 it in your file, can you cut and paste the
 9 business records exception that way? I've
 10 never honestly thought about it. I don't
 11 know if that's what you're implying. I
 12 certainly don't think you can have a third
 13 party mail a document to a business, have
 14 the business keep the document as part of
 15 its ordinary business practice and without
 16 more say that that then meets the
 17 evidentiary predicate.
 18 MR. SCAROLA: Well, what I am suggesting
 19 to you is that it will depend upon the
 20 purpose for which the document is being
 21 introduced. If what we are attempting to
 22 establish is, as is the case here, what
 23 Morgan Stanley knew and when it knew it,
 24 its receipt of the document and
 25 maintenance of the document as a business

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1 record establishes what it knew and when
 2 it knew.
 3 THE COURT: Sure. But that's not
 4 trying to meet the hearsay exception. In
 5 the evidence code that's just saying we
 6 want proof you have this. We are not sure
 7 it's true. We just want to know.
 8 MR. IANNO: That's not something within
 9 Mr. Doyle's.
 10 THE COURT: I don't know that we need
 11 anything else if we are all on the same
 12 page that the fact that Morgan Stanley
 13 faxed it to somebody certainly shows they
 14 had it.
 15 MR. IANNO: There's been no dispute
 16 about that, judge.
 17 THE COURT: Good. Where are we going
 18 next?
 19 MR. IANNO: Morgan Stanley number 40 is
 20 the same. We treated that the same as I
 21 think 209, judge. And Morgan Stanley 40
 22 is Tab 13. Once again, this is the
 23 debenture offering memorandum.
 24 THE COURT: And I'm sorry. We're
 25 treating that how?

1 MR. IANNO: The same as 209, which is
 2 tab 8. So Tab 8 and 13 of our binder.
 3 There's both offering memorandum. One is
 4 CPH and one is Morgan Stanley. The
 5 position is the same for both of those
 6 documents.
 7 MR. SCAROLA: I would point out there
 8 are some differences between 209 and 40.
 9 It appears that MS-40 is the final version
 10 of CPH-209. And this is the version that
 11 was produced by Morgan Stanley who tells
 12 us that they only keep final versions in
 13 accordance with their document policy.
 14 But this is another circumstance where
 15 Mr. Doyle states that he did not believe
 16 anyone from Morgan Stanley wrote the
 17 document. Someone may have reviewed and
 18 commented on it. He's not sure. Then he
 19 tells us the document was issued by
 20 Sunbeam.
 21 THE COURT: Okay.
 22 MR. IANNO: The testimony on that,
 23 judge, is the same as 209, that it was
 24 prepared by Sunbeam, kept by its counsel,
 25 sent out to other lawyers in Morgan

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1 Stanley. And Mr. Doyle on this one did
 2 admit because it was the final version, it
 3 was, quote, kept in the ordinary course of
 4 Morgan Stanley's business.
 5 THE COURT: Let's talk about where we
 6 need to go. I find that Doyle's testimony
 7 was sufficient on CPH-155, 278, 209 and
 8 MS-40. I think it was insufficient as to
 9 CPH-9, 75, 130, 155, 170, 182 and 217, as
 10 well as 264 and 265. For all the
 11 documents but MS-170, 264 and 265, I think
 12 what's missing is any inquiry into what
 13 information, if any, can be explained from
 14 the word processing stamp or the footer.
 15 I think Mr. Doyle's testimony was woefully
 16 insufficient, though the inquiry was
 17 woefully insufficient on 75, 264 and 265
 18 on virtually every area.
 19 Now what can we do to see what we fix?
 20 MR. IANNO: Judge, before we go there
 21 you said 155 twice.
 22 THE COURT: You're right. That's
 23 because -- let me go back and look at it.
 24 I think I wrote it up and then -- it's Tab
 25 5, right? Let me go back and look at it

1 and I'll remember real quick.
 2 MR. SCAROLA: This is the document
 3 about which they changed their position,
 4 so it certainly makes sense that Your
 5 Honor might have it on both lists.
 6 THE COURT: We're not rearguing,
 7 although that's a really nice try. Let me
 8 go back and see what I was thinking.
 9 No. I'm sorry. 155 is okay. What are
 10 we going to do on the other ones?
 11 MR. IANNO: Let us go back after lunch
 12 and -- come back.
 13 THE COURT: You want to come back with
 14 a proposal?
 15 MR. IANNO: Hopefully we'll be able to
 16 find something out over the lunch hour.
 17 THE COURT: Any objection to their
 18 trying to come back with a proposal how to
 19 address these deficiencies?
 20 MR. SCAROLA: No, Your Honor. We've
 21 made our argument with regard to what we
 22 believe is appropriate, and certainly
 23 giving them until after lunch is fine.
 24 THE COURT: Okay. We have 22 minutes
 25 left. Do we want to try to argue the

1 motion for adverse inference instruction?
 2 MR. SCAROLA: Yes.
 3 THE COURT: Okay.
 4 MR. SCAROLA: If I can just have one
 5 moment to shift gears, Your Honor.
 6 Your Honor, our motion details the
 7 history with regard to our efforts to
 8 obtain e-mails in this case.
 9 THE COURT: Can I ask just one stupid
 10 question? I mean, I know there was some
 11 reference I made that you guys found this
 12 stuff in November or something. Do I have
 13 any explanation of where? Like was it in
 14 a corner? Was this with the dust bunnies
 15 or where was it?
 16 MR. SCAROLA: That was primarily one of
 17 our concerns is that we repeatedly
 18 inquired why are we finding them now; how
 19 did you find them --
 20 THE COURT: Do we have anything under
 21 oath that would suggest why we found in
 22 November there was this other information?
 23 MR. CLARE: This information -- And
 24 we're talking about now specifically about
 25 the backup tapes that were located at
 1 various points in time at various
 2 locations after the May 2004 production of
 3 e-mails. I can speak from my own
 4 knowledge of it. There's nothing under
 5 oath is the short answer to Your Honor's
 6 question. We have represented to
 7 Mr. Coleman's counsel when we initially
 8 located this --
 9 THE COURT: I'm confused. I thought
 10 you said they were found at different
 11 points in time.
 12 MR. CLARE: Sure.
 13 THE COURT: When was the first one
 14 found?
 15 MR. CLARE: I don't know the answer to
 16 that. What we do have under oath is
 17 what -- Mr. Doyle's sworn declaration that
 18 when he became aware that there were
 19 additional tapes that had been located by
 20 the IT department, for example -- I
 21 know -- I'm not going to testify or I'm
 22 not going to comment, lest it be declared
 23 a waiver later on.
 24 THE COURT: Then we'll be asking you
 25 everything your client told you. Where's

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1 Mr. Bemis when we need him?
 2 MR. CLARE: I'm not going to fall under
 3 the same -- let me say this. Mr. Doyle
 4 submitted a declaration to Your Honor that
 5 says in late October the law division
 6 became aware that additional tapes had
 7 been located that were not covered by our
 8 prior search. Within days those tapes
 9 began to be searched and within days
 10 documents were produced.

11 THE COURT: Aren't we sort of missing
 12 an important link, which is when and how
 13 these were found and did the person who
 14 found them understand their significance?

15 MR. CLARE: Well, I don't think so.

16 THE COURT: Why not? What you're
 17 suggesting is as long as the attorney did
 18 something as soon as he found out, that's
 19 sufficient. But what we're talking about
 20 is the client.

21 MR. CLARE: Let me give you a
 22 hypothetical. An intern in the
 23 intellectual -- the information technology
 24 department goes into a back room where
 25 e-mail backup tapes are not ordinarily

1 kept and finds in the corner or on a shelf
 2 or behind some boxes three e-mail tapes,
 3 and he brings them to the attention of his
 4 supervisor. Is that --

5 THE COURT: No, but don't you think
 6 there are a lot of hypotheticals that
 7 would show guilt and knowledge on behalf
 8 of Morgan Stanley or some -- you know,
 9 plan, then, to not allow these to be
 10 searched?

11 MR. CLARE: Well, I think the evidence
 12 is to the contrary.

13 THE COURT: We don't have any evidence.
 14 You just told me that.

15 MR. CLARE: There's no evidentiary
 16 information provided whatsoever by the
 17 plaintiff that any document was destroyed
 18 or not retained or not produced in good
 19 faith.

20 THE COURT: This information is solely
 21 within your client's control. Why would
 22 you expect plaintiff to come forward with
 23 it?

24 MR. CLARE: Because they're seeking an
 25 adverse inference.

1 THE COURT: Sure, pursuant to an agreed
 2 order where you agreed you were going to
 3 produce this stuff, and it turns out you
 4 have this stuff, and you haven't produced
 5 it, but you're unwilling to come forward
 6 and say, hey, this is why, this is the
 7 explanation of why we didn't.

8 MR. CLARE: Well, the explanation that
 9 has been put forward -- and if Your Honor
 10 thinks it's insufficient and would like us
 11 to come back with further explanation, we
 12 can do that. The explanation we put
 13 forward, we believe, is more than
 14 sufficient to overcome their request,
 15 which is as soon as parties who are
 16 responsible for this litigation and with
 17 the knowledge of the agreed upon order
 18 came to learn that information,
 19 affirmative steps were taken to search the
 20 tapes to produce documents within days.

21 That is undisputed. And if Your Honor
 22 thinks that there's an earlier point in
 23 time that is relevant to the question of
 24 whether they're entitled to an adverse
 25 inference or our good faith compliance

with an agreed upon order, I'm happy to go
 back and try to get that information.
 THE COURT: I think the answer is, no,
 we don't really have an explanation of why
 we didn't find out about this stuff until
 October. So why don't you go ahead.
 MR. SCAROLA: Thank you very much. The
 history of efforts to obtain e-mail
 production is outlined in our motion. We
 are dealing with a corporation that that
 was fined \$1.65 million.

MR. CLARE: If Mr. Scarola is making an
 evidentiary proffer based on the SEC
 findings cited in his paper, I object to
 that evidentiary proffer on the grounds of
 hearsay.
 THE COURT: Okay. I think it would be
 fair to say that for today's purposes I
 don't have any evidence from either side
 other than in October we first found out
 there were other backup tapes.

MR. SCAROLA: What you do have, because
 it is attached to the motion, is a record
 of our efforts to try to get an
 explanation. So as the record stands

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1 before Your Honor right now, we have a
2 record of repeated efforts to obtain the
3 information, the entry of an order
4 imposing a deadline on production, and
5 acknowledgment that substantial
6 information existed but was not produced
7 in accordance with the deadline and
8 silence in the face of requests for an
9 explanation.

10 Now I suggest that that shifts the
11 burden because of the entry of the order,
12 it shifts the burden to Morgan Stanley to
13 come forward and to explain its
14 noncompliance.

15 They have failed to do that in any way
16 whatsoever. Now Your Honor may choose to
17 give them another chance to do it,
18 although I suggest that it should have
19 been done in response to the motion that
20 was already filed. If you give them
21 another chance, you give them another
22 chance. But in the absence of a
23 reasonable explanation for their failure
24 to comply with the court order with regard
25 to what obviously is extremely important

1 circumstances the information that has not
2 been produced is information that would
3 have been hurtful to the defendant and
4 helpful to the plaintiff.

5 I recognize that there is a significant
6 burden that must be met in order to obtain
7 that kind of instruction. The case law is
8 very clear about that. But in the absence
9 of any explanation at all I suggest that
10 burden has been met.

11 THE COURT: Okay. What's your
12 response?

13 MR. CLARE: Your Honor, I disagree with
14 Mr. Scarola's characterization of the
15 record initially. He characterizes the
16 record as insufficient with regard to
17 Morgan Stanley's efforts to comply. We
18 have submitted declarations from the legal
19 department and also from individuals who
20 have been responsible since those tapes
21 were directed to be restored that they
22 have been restored expeditiously and have
23 been worked on continuously. We also have
24 sworn declaration indicating that given
25 the technical parameters there's no way to

1 information -- we've narrowed our focus to
2 the period of time in February of 1998 and
3 March of 1998 and April of 1998 when the
4 communications going on within Morgan
5 Stanley are of critical importance to
6 demonstrate what they knew and when they
7 knew it.

8 And to be told that there are trillions
9 of bits of information that have just been
10 discovered, to be told that we are making
11 an effort to examine them, and we don't
12 know when that effort is going to be
13 completed, we can't give you any idea, we
14 refuse to tell you when we might complete
15 this job with trial two to three weeks
16 away, I suggest, is just unacceptable.
17 And there needs to be a judicial response
18 to that circumstance.

19 And there are alternatives, but the one
20 that I suggest is most appropriate on the
21 basis of the record that currently exists,
22 unless they are given an opportunity to
23 supplement that record is to tell the jury
24 what they did and to tell them that it's
25 reasonable to assume that under these

1 know.

2 I also think Mr. Scarola made a point
3 about the time period to which these
4 e-mails relate. There is no way for
5 anyone to know, and this is in
6 Ms. Gorman's declaration, whether any of
7 the information on the tape, these tapes
8 that we're talking about comes from 1997,
9 1998, 1999, 2000, 2003. Nobody knows.
10 And so to create some presumption that
11 these tapes come from a relevant time
12 period is incorrect.

13 THE COURT: What do you think is
14 appropriate?

15 MR. CLARE: What exactly Morgan Stanley
16 has done. When the tapes were
17 identified --

18 THE COURT: Let's assume you don't --
19 you're unable to extract everything by the
20 time we start the trial. What do you
21 think is appropriate? Should there be no
22 sanctions?

23 MR. CLARE: Absolutely. Morgan Stanley
24 has done everything it can within
25 technical reason to comply with this

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1 order, the court's order. And we came
2 forward with this information. We
3 disclosed it to plaintiffs in November.
4 We produced 8,000 additional pages of
5 documents that came out of the search.
6 There's a much smaller subset of data that
7 hasn't been searched because it's in the
8 process of being restored. The
9 information that we provided to the
10 plaintiff was at the end of January we
11 would rerun all of the searches again. We
12 stand by that commitment. We're prepared
13 to do that.

14 THE COURT: Well, it's the end of
15 January. Did we do it?

16 MR. CLARE: We're in the process of
17 doing it. Searches are being run as I
18 stand here and talk to you.

19 THE COURT: They're still backup tapes
20 that have not been searched or restored to
21 be searched?

22 MR. CLARE: There are additional tapes
23 in parallel -- and this is what Miss
24 Gorman says. In parallel with the
25 restoration efforts, Morgan Stanley is

1 MR. CLARE: If I could change your
2 hypothetical to make it more accurate, it
3 would be as if the attorney came in and
4 said, Your Honor, we have discovered a
5 series of file cabinets that are
6 unlabeled, and we don't know whether they
7 have anything to do with the litigation or
8 not.

9 THE COURT: Please understand I have
10 nothing from the client itself telling me
11 that.

12 MR. CLARE: Actually, you do, Your
13 Honor. Your Honor, you have the
14 declaration of Miss Gorman, who is an
15 executive director in Morgan Stanley's
16 information technology department.

17 THE COURT: Where do I find that?

18 MR. CLARE: That is attached as Exhibit
19 7 to our opposition.

20 THE COURT: Hang on a minute. Let me
21 find that. Exhibit 7. Well, yeah.

22 MR. CLARE: Paragraph number five of
23 the declaration says until the searches
24 are completed.

25 THE COURT: That's just going to say

1 running the searches. It is estimated,
2 although we can not say for sure, and we
3 can not commit to a schedule because these
4 are tapes whose condition and contents are
5 unknown, but it is estimated all the tapes
6 will be restored within the next few
7 weeks, and we can continue to run the
8 searches.

9 THE COURT: I'll be honest with you,
10 this sort of strikes me as your typical --
11 let's assume this was a typical breach of
12 contract case between two small companies
13 here in West Palm Beach, and there's a
14 request for production of documents, and
15 they -- you know, I do an order
16 compelling. They produce it, and on the
17 eve of trial the attorney walks in and
18 says, I'm so sorry. My client just
19 produced six boxes of little pieces of
20 paper that we think may be relevant. But
21 please don't sanction us because I just
22 got this stuff from my client."

23 MR. CLARE: Actually, I would disagree
24 with that hypothetical.

25 THE COURT: What's the difference?

1 it's going to take us a lot of time to
2 unwind the pieces of paper that are in the
3 box. That doesn't tell us anything about
4 why the client didn't give us the box for
5 more than a year, which is what disturbs
6 me.

7 MR. CLARE: Well, we provided this --
8 we made these disclosures to plaintiff in
9 November.

10 THE COURT: Right. But you also made
11 an oral representation to me at the
12 beginning of your presentation that you
13 guys found these, you know, Morgan Stanley
14 found these backup tapes over a period of
15 time, but you're not prepared to tell me
16 when. For all I know you guys found these
17 in March and either recognized the
18 significance and nobody brought them to
19 the legal department's attention or simply
20 didn't recognize the significance. But I
21 have no way of making that factual
22 determination.

23 MR. CLARE: There's a two-step inquiry,
24 then, for Your Honor. If you want to
25 understand the chronology that lead to

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1 this point, we'll need to have an
2 evidentiary hearing.
3 THE COURT: All I'm suggesting is, in
4 all honesty, I think the ball is in your
5 court to come up and give me some kind of
6 coherent explanation as to why this stuff
7 wasn't found until October. You've not
8 offered anything. You're not even
9 prepared to tell me when it was found.

10 MR. CLARE: What I'm prepared to tell
11 you is what Mr. Doyle has sworn to in his
12 declaration.

13 THE COURT: I think it's wholly
14 insufficient to be honest with you. It
15 strikes me -- you guys need to go do some
16 work real quick on this is.

17 MR. CLARE: Then we would request the
18 opportunity to present evidence to you.

19 THE COURT: At a minimum I want a sworn
20 affidavit that tells me what we're looking
21 at. In all honesty, you want to walk in
22 and say, hey, we're the lawyers; we just
23 got this stuff; as soon as we got it, we
24 told you; we're done. And that's not the
25 way it works.

1 MR. CLARE: Well, no, that's not the
2 position that we're taking, Your Honor.

3 THE COURT: What part have I missed?

4 MR. CLARE: We've made a good faith
5 effort -- as soon as individuals who were
6 in any way responsible or knowledgeable
7 about --

8 THE COURT: Tell me where I look in the
9 declarations for those factual assertions.

10 MR. CLARE: Mr. Doyle's declaration.

11 THE COURT: What Exhibit is it so I can
12 look at it?

13 MR. CLARE: Exhibit Number 2. And
14 Mr. Doyle, as we've heard this morning, is
15 the individual at Morgan Stanley who has
16 been responsible and who conducted the
17 initial e-mail search back in May.

18 THE COURT: You tell me where in this
19 it says that the first time anybody
20 understood the legal significance of these
21 was November.

22 MR. CLARE: As opposed -- I guess what
23 I'm -- what you're missing or what we're
24 missing in our evidentiary statement is a
25 statement that Mr. Doyle was the person

1 didn't because the attorney just got it
2 and that's enough.

3 MR. CLARE: It is entirely possible as
4 I stand here right now based on
5 Miss Gorman's declaration, it is entirely
6 possible that there are no additional
7 documents to produce.

8 THE COURT: When are we going to know
9 that?

10 MR. CLARE: As soon as the searches are
11 run.

12 THE COURT: And when is that going to
13 be?

14 MR. CLARE: The data will be given to
15 counsel to review on February 7th.

16 THE COURT: This is something I think
17 we need to raise after lunch. I think you
18 need to go find out whatever you can real
19 quick.

20 MR. CLARE: Beyond when we can advise
21 the court whether there is additional
22 responsive documents?

23 THE COURT: I think there are two sort
24 of glaring omissions, one more glaring
25 than the other. The first glaring

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1 omission, in my opinion, is a complete
2 failure to offer an explanation of why
3 this stuff only came to the attention of
4 counsel in October. I mean, that's the
5 black box. I have no idea why that
6 happened.

7 The second, frankly, I need a whole lot
8 of information about when these tapes can
9 be restored and the information made
10 available.

11 MR. CLARE: Okay. We'll endeavor to
12 find that information out. The latest
13 information that I have as of this morning
14 is that the searches are being run. At
15 the end of January as we --

16 THE COURT: It's now early February so
17 I'm thinking they're done.

18 MR. CLARE: The tapes have been
19 restored. The searches are being run.
20 That data becomes available to counsel for
21 review for responsiveness. It could be
22 that it kicks out nothing. It could be
23 that these --

24 THE COURT: Do we know how many tapes
25 there are?

1 we find out? Which one do we want to go
2 back to first?

3 MR. CLARE: We'd like to close the loop
4 on the e-mail issue where we left off.

5 THE COURT: Sure.

6 MR. CLARE: Happy to report on what
7 we've been able to find out over the lunch
8 break.

9 THE COURT: Okay.

10 MR. CLARE: And I'll give you the
11 headlines first, and then I'll walk you
12 through as much detail as I've been able
13 to uncover in the last two hours.

14 THE COURT: Just like to see an end.

15 MR. CLARE: Just like to see an end.
16 I'd like to hand up to the court, if I
17 might, the beginning of what I think the
18 headline is, which is the Certificate of
19 Compliance that was provided by Morgan
20 Stanley in connection with the court's
21 order. This will be the beginning point
22 of the chronology that I'm going to walk
23 the court through. It's dated June 23rd,
24 2004. It relates to our May production.

25 THE COURT: Right.

1 MR. CLARE: I do not know.

2 THE COURT: Do we know how many tapes
3 have been restored?

4 MR. CLARE: I do not know that.

5 THE COURT: I think probably after
6 lunch we should know that.

7 MR. CLARE: Okay.

8 THE COURT: In my capacity as mentor
9 coordinator I have to have lunch with one
10 of my mentees, so if we could not meet
11 until 1:30, that would be helpful.

12 Normally I would have taken a shorter
13 lunch.

14 MR. IANNO: That's fine.

15 MR. SCAROLA: That's fine.

16 THE COURT: Would you rather do it at
17 2:00?

18 MR. IANNO: 2:00 gives us more time.

19 THE COURT: And you're going to be
20 trying to reach who you're going to be
21 trying to reach. Okay. We'll do it at
22 2:00, then.

23 (A lunch recess was taken from 11:56 a.m.
24 to 1:58 p.m.)

25 THE COURT: Okay. Have a seat. What did

1 MR. CLARE: The headline is that the
2 first time that anyone -- that anyone at
3 Morgan Stanley knew that there was
4 recoverable e-mail data that might fall
5 within the court's order was not until
6 late October 2004 consistent with
7 Mr. Doyle's declaration. And I'm prepared
8 to walk the court through and explain
9 where the tapes were found, how they were
10 found.

11 THE COURT: Why don't you make a
12 proffer, and we'll figure out where we're
13 going.

14 MR. CLARE: Very good. In the summer of
15 2004 -- I do not have a precise date on
16 that, but sometime during the summer,
17 1,400 DLT tapes were found in a closet, in
18 a closet in an off-site storage facility
19 in Brooklyn. Those tapes --

20 THE COURT: What's DLT mean?

21 MR. CLARE: DLT is a type of tape that
22 describes the capacity of the tape. It's
23 a digital tape. And DLT is an indication
24 that indicates how much data it can
25 containment and I'll get to how -- who wit

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1 would down that number in a minute. Those
2 tapes were sent to an outside vendor to
3 determine what, if anything was on them.
4 There was no indication that there was
5 anything on them at all.

6 In late October of 2004, which is the
7 date that Mr. Doyle alluded to in his
8 declaration and the date that I'm
9 representing to the court is the first
10 time anybody knew that there was
11 recoverable e-mail data --

12 THE COURT: Do we know when the tapes
13 were sent to the outside vendor?

14 MR. CLARE: They were sent shortly after
15 they were discovered.

16 THE COURT: We don't know that date
17 yet?

18 MR. CLARE: We do not know the date.
19 That is one of the irons that we still
20 have in the fire. But we have reason to
21 believe throughout the summer of 2004
22 there were constant updates that were
23 being provided on this, all of which
24 indicated that the tapes were still at the
25 vendor, so we believe they were at the

1 vendor for a while during the summer of
2 2004.

3 In late October 2004, the report came
4 back the from the vendor that 112 of those
5 tapes had e-mail, recoverable e-mail data
6 on them. And they immediately or promptly
7 within days of learning that began to be
8 uploaded onto a system to make them
9 searchable so that we could run the
10 searches. It was at that point that
11 counsel learned that these tapes existed
12 and that they might have recoverable
13 e-mail data and so the searches were run
14 in early November as described in
15 Mr. Jonas's declaration, which is before
16 the court, on all of the tapes that had
17 been restored up to that point. Some
18 portion of those 112 tapes had been
19 restored and made searchable by the middle
20 of November.

21 THE COURT: We do not know how many?

22 MR. CLARE: We do not know how many.

23 The other portion was being uploaded
24 continuously since then, and those tapes
25 are what came online today or early

1 this moment.

2 On November 4th, 2004, additional tapes
3 were located at not a central Morgan
4 Stanley facility. I don't know exactly
5 where they were found. I can't give you
6 the analog to the closet in Brooklyn, but
7 it was found, again, at a place where
8 e-mail tapes are not normally kept. These
9 were 728 eight-millimeter tapes. And it's
10 important for the court and to make the
11 record that these eight-millimeter tapes
12 are of a format different than the type
13 that Morgan Stanley had customarily and
14 historically used to back up e-mail tapes.
15 They're a different type of tape.

16 Those 728 tapes were then also sent to
17 a vendor. The result was that two SDLT
18 tapes resulted in recoverable e-mail data.

19 THE COURT: Okay. And when did they
20 become recoverable?

21 MR. CLARE: Those -- the data that came
22 from the eight-millimeter tapes, as well
23 as the remaining portion of the 112, came
24 online and recoverable within Morgan
25 Stanley a day or two ago. They will be

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1 searchable, using best efforts to make
2 them searchable, as fast as possible the
3 week of the 7th, which is what we
4 represented to the court. That was the
5 estimate given by Miss Gorman in her
6 declaration.

7 THE COURT: Why once they're
8 recoverable, what's the delay in having
9 them searched?

10 MR. CLARE: This is an area I'm not
11 competent to provide Your Honor with
12 information other than what Miss Gorman
13 and her colleagues inform me is this a
14 multi-step process. These tapes are
15 received back from the vendor. You can't
16 just search them on the tape. They have to
17 be uploaded to a system. They have to be
18 formatted to go into Morgan Stanley's
19 database archive system. And it takes a
20 period of time to work their way through
21 the staging period.

22 I'll tell Your Honor also that the
23 process of uploading them and making that
24 complete is slowed down if you have to
25 access the system to run searches in the

1 searches.

2 THE COURT: Okay.

3 MR. CLARE: The client has committed to
4 move with deliberate speed and use best
5 efforts.

6 THE COURT: Is that different than old
7 deliberate speed?

8 MR. CLARE: Whatever standard you want
9 they're willing to and they have committed
10 and did commit back in November to do
11 that. And so we, the outside counsel,
12 have committed to turn the data around as
13 soon as it's provided to us by the client
14 to provide them with responsive data with
15 the goal being that by the date of the
16 first pretrial conference we will know
17 whether there are any additional e-mails
18 to be produced.

19 That's the other point of this that I
20 alluded to before the lunch break, and I
21 don't want it to get lost, is that we just
22 don't know as we sit here.

23 THE COURT: Sure. But then the
24 question is -- that's precisely the point,
25 we don't know. The question is if we

1 system. So that's the tension that you
2 can't process as many tapes if you're
3 interrupting the processing of tapes to
4 run searches.

5 THE COURT: If they're going to search
6 them the week of February 7th, how long is
7 that process going to take?

8 MR. CLARE: The searchable data will be
9 available -- we can, you know, know on a
10 daily basis.

11 THE COURT: But when's it going to be
12 completed?

13 MR. CLARE: We will have it completed by
14 no later than the 14th.

15 THE COURT: It takes a week is what
16 you're telling me.

17 MR. CLARE: It might take a week. I
18 don't want to commit to the court a date.
19 That is using best efforts as represented
20 to me by Morgan Stanley. That is the best
21 that they can do given the dates that they
22 found the tape, the dates that they were
23 returned from the vendor, the amount of
24 time it takes to process them and the
25 amount of time it takes to run the

1 don't find out, whose fault is that? And
2 I have to assume it's sort of Morgan
3 Stanley's fault, and then we talk about
4 what's appropriate.

5 MR. CLARE: Let me respond to that in a
6 couple ways. First, I don't think that
7 there's any evidence from what we've
8 submitted to the court or from what I've
9 been told, and the proffer we'd be happy
10 to make under oath, supplemental proffer
11 if that's the way the court wants to
12 handle it, of any intentional delay of
13 this. At worst, at the absolute worst it
14 can be said that an outside vendor took a
15 long time to get these tapes to us and
16 that the technical limitations limit our
17 ability to upload and search them quickly.
18 There's no indication any of this was
19 intentional or anything of the like.

20 Morgan Stanley's executive director of
21 the information technology department has
22 given you a sworn affidavit that this has
23 been a priority of her department since
24 December of 2004.

25 THE COURT: Mr. Scarola, let me ask you

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1 this. Wouldn't the more conservative
2 approach be to set an evidentiary hearing
3 on this to start first thing on the 14th?
4 And if we have the information by then and
5 there's no prejudice to your client, it
6 may be a pain, and we can talk about what
7 other sanctions may be appropriate, but
8 there wouldn't be evidentiary sanctions.

9 MR. SCAROLA: Your Honor, I can't argue
10 that that is not the more conservative
11 approach. It clearly is the more
12 conservative approach. I can suggest that
13 it is an unnecessarily conservative
14 approach under these circumstances. And I
15 do suggest that.

16 THE COURT: I'll be real honest with
17 you, what my real concern is is if that's
18 the approach we take is we come to
19 February 14th, it turns out that there is
20 relevant information in some of these
21 newly discovered e-mails, we have now
22 either forced your client to go to trial
23 on less than complete discovery or Morgan
24 Stanley has gotten the continuance it's
25 tried so hard all along to get. I'm going

1 monitored the vendor, but it took a real
2 long time to get it done. And we didn't
3 even bother to tell Coleman at the time
4 that we found these tapes. I appreciate
5 the effort you made in a very short period
6 of time to fill in some of the gaps. The
7 gaps are still not all filled in.

8 MR. CLARE: The key, and I think this is
9 the key, there would be nothing to tell
10 Coleman or anyone until the existence of
11 recoverable e-mail data is confirmed or
12 understood by anybody.

13 THE COURT: Well, I understand that
14 would be your client's position. I'm not
15 sure I would accept it.

16 MR. CLARE: The court's order
17 specifically says that the oldest
18 available backup tape has to be searched
19 for certain individuals as it existed at
20 the time. What's the oldest available
21 backup tapes for these individuals? Until
22 you know that there's even e-mail data on
23 these tapes --

24 THE COURT: That's sort of like going
25 back to the outstanding discovery request.

1 to need you to respond to that.
2 In all honesty, my initial inclination
3 is to say, look, if you're telling me
4 February 14th, we're going to know what's
5 in these additional tapes, you know, we
6 maybe should wait and see what's in them.
7 My real concern is then all of a sudden
8 we're in a rock and a hard place because
9 then plaintiffs have to make a decision of
10 what do they do.

11 MR. CLARE: I recognize that. Can I
12 just respond briefly to what I think might
13 be implicit in Your Honor's comments is I
14 can represent on behalf of Morgan Stanley
15 this is not any tactical effort to obtain
16 a delay in the trial.

17 THE COURT: I understand you guys are
18 telling me that. I still have sort of
19 nothing from the client itself. You know,
20 I'm getting these sort of vague things.
21 Sometime in September we found these
22 tapes. We sent them to an outside vendor.
23 It's still not clear to me whether the
24 people who found them understood the
25 importance of them or not. We sort of

1 You discover a warehouse full of
2 documents, and you know there's been a
3 discovery request for certain things
4 outstanding. You haven't had time to go
5 through the warehouse. And rather than
6 tell your opposing counsel we found this
7 warehouse of stuff and we haven't had time
8 to go through it it's like saying, well,
9 we'll wait until we have time to go
10 through it all and then we'll tell them.
11 And that deprives them the ability to try
12 to expedite the recovery.

13 But what's your client's position?

14 MR. SCAROLA: Your Honor, I think that
15 last question focuses on my client's
16 position. This is a certification of
17 compliance that we've both been handed.
18 And it says it is my understanding that
19 counsel from Kirkland & Ellis, LLP
20 produced all nonprivileged responsive
21 documents on May 14, 2004. Now from what
22 we've heard from Mr. Clare, as of sometime
23 in the summer of 2004, and I don't know
24 when that is -- we don't know when that
25 is.

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1 THE COURT: We can guess it's within
 2 three months of signing this document
 3 which was the almost first day of summer.
 4 MR. SCAROLA: Well, clearly it's
 5 sometime after this document and sometime
 6 before the next production is made in the
 7 middle of November because summer is over
 8 by then. So sometime long before we were
 9 ever alerted to any of these possibilities
 10 these folks knew that the certification
 11 that they had made may be inaccurate. I
 12 won't tell you that they knew it was
 13 inaccurate, but at the very least if we
 14 accept Mr. Clare's representations, they
 15 knew that it might be inaccurate, that
 16 they've got this huge box that they
 17 haven't been able to unwrap yet, and it
 18 may contain information that renders this
 19 certification inaccurate.
 20 I suggest that the moment they knew
 21 that, as soon as they found out that their
 22 certification was questionable, they had
 23 an obligation to come to you and to come
 24 to us and say we just found this
 25 additional source of information. We

1 don't know what's in there, and it's going
 2 to take us time to find out so that we
 3 could explore the details at that point of
 4 what was necessary and participate
 5 together in a determination as to with
 6 what priority and expediency these tasks
 7 needed to be addressed, not be in a
 8 position less than three weeks before
 9 trial of having to deal with the issues
 10 that have now been presented to us.
 11 That's simply unfair.
 12 MR. CLARE: And if I could respond to
 13 that, that is exactly what we did. You
 14 can argue -- we can argue.
 15 THE COURT: What's exactly what you
 16 did?
 17 MR. CLARE: In November we wrote to
 18 plaintiff's counsel and we said exactly
 19 what Mr. Scarola described.
 20 THE COURT: I'm sure you understand his
 21 point.
 22 MR. CLARE: I understand his point
 23 completely. The certification of
 24 compliance, for Mr. Scarola to question
 25 that it was untrue when given or became

1 untrue.
 2 THE COURT: No, he's just saying at
 3 some point when you found these tapes, you
 4 no longer knew whether it was true or not.
 5 MR. CLARE: And that point was when we
 6 alerted them that discoverable e-mail data
 7 was available.
 8 THE COURT: No, no, it was when you
 9 discovered tapes that you didn't know what
 10 was on them and you didn't know what they
 11 were, then you no longer knew whether this
 12 certification was correct or not. You're
 13 telling me as you stand here you don't
 14 know whether this certification is
 15 correct. As soon as you found the tapes,
 16 you knew that this was no longer true.
 17 MR. CLARE: And that was October 2004.
 18 THE COURT: No, it wasn't. You just
 19 told me it was in the summer.
 20 MR. CLARE: That individuals in Morgan
 21 Stanley's IT department in Brooklyn found
 22 some tapes. In October, the legal
 23 department is advised saying there's
 24 recoverable e-mail on these tapes; what
 25 are the implications to this. And we

1 promptly wrote to them. Three months go
 2 by and plaintiff does nothing. I
 3 understand Mr. Scarola's position, and I'm
 4 not standing here saying that it's -- that
 5 we're happy to be where we are three weeks
 6 before trial and not knowing --
 7 THE COURT: I frankly don't know if you
 8 are or not.
 9 MR. CLARE: I will represent to the
 10 court that we're not happy to be in this
 11 position, nor is the client. But we
 12 promptly advised him when we had
 13 information we believed called into
 14 question the certificate. We advised them
 15 in November. We produced 8,000 additional
 16 pages of documents in November. Radio
 17 silence up through the end of January.
 18 I'm not saying it's plaintiff's
 19 responsibility and that they put
 20 themselves in this position. But months
 21 went by when we were working to restore
 22 these tapes, and now we're in a position
 23 where we are attempting to restore them as
 24 quickly as we can.
 25 THE COURT: Did you want to respond to

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1 that? Is there correspondence?
 2 MR. SCAROLA: Here's the letter of
 3 December 14 asking what's going on; here's
 4 the letter of December 17 asking what's
 5 going on; here's the letter of
 6 December 30th asking what's going on;
 7 here's the letter of January 11th asking
 8 what's going on; here's the letter of
 9 January 19 asking what's going on. I
 10 guess Mr. Clare is right, there was radio
 11 silence, but there sure wasn't e-mail
 12 silence.
 13 MR. CLARE: And to each of those
 14 requests there were responses made that no
 15 additional information was available to
 16 provide to them as we represented to him.
 17 THE COURT: You just gave me a bunch --
 18 you know, you got these from lunchtime.
 19 No. All right. This is what we're going
 20 to do for now. I'm going to set an
 21 evidentiary hearing on this. Are we here
 22 on the 14th? Is that right?
 23 Can you get the book, please? I want
 24 to make sure I'm not screwing up the
 25 dates.

1 MR. SCAROLA: Your Honor, obviously --
 2 THE COURT: I understand you disagree,
 3 and please understand that I'm very
 4 sensitive to your client's position that
 5 this could just be a back door way to try
 6 to get a continuance and that I just think
 7 it would be a mistake to impose
 8 evidentiary sanctions when if we wait two
 9 weeks we'll know whether there's any
 10 prejudice or not. I mean, we've come this
 11 far. I'm not interested in doing that.
 12 MR. SCAROLA: I understand that concern.
 13 I'm just worried about a new task to be
 14 completed between now and the start of
 15 trial.
 16 THE COURT: I understand your client's
 17 consternation, and that actually brings me
 18 to something else. But first let's do
 19 this. Yes, we start here on
 20 February 14th. So this is going to be
 21 number one up, okay?
 22 MR. SCAROLA: Yes, Your Honor. Is it
 23 Your Honor's intention that we engage in
 24 any discovery?
 25 THE COURT: That's what I was going to

1 bring up. And then I also -- and I hate
 2 to be a suspicious sort, but the other
 3 question I have is obviously it's in
 4 Morgan Stanley's best interest to find
 5 nothing relevant in these tapes. And I
 6 guess the real question I have is is there
 7 any way your client wants to try to check
 8 that assertion?
 9 MR. SCAROLA: Well, that, Your Honor, is
 10 precisely my concern. There is obviously
 11 now an enormous incentive for Morgan
 12 Stanley to find nothing of value. I think
 13 at the very least we ought to have direct
 14 access to that data at this point. At the
 15 very least we ought not to be in a
 16 position of having to trust this
 17 defendant.
 18 THE COURT: Do you know how you would
 19 propose you guys have direct access as
 20 opposed to taking custody of the tapes
 21 versus having your own representative
 22 present while the process is done?
 23 MR. SCAROLA: What I am lead to believe
 24 is these tapes have now been placed in
 25 searchable form. I want the searchable
 1 form of the data to conduct our own
 2 search. That's what I suggest is
 3 reasonable under these circumstances as an
 4 alternative to the harsher sanctions that
 5 we have been requesting.
 6 THE COURT: What would be the response
 7 to that? Why would that not be
 8 reasonable?
 9 MR. CLARE: Because there are concerns
 10 that Morgan Stanley would have, legitimate
 11 concerns about giving raw e-mail data
 12 about other deals, other commercial
 13 situations.
 14 THE COURT: Can you guys agree on a
 15 third party to do it?
 16 MR. SCAROLA: I can't answer that
 17 question, Your Honor. I just am not in a
 18 position to do that.
 19 MR. CLARE: We're open, of course, to
 20 anything that is reasonable that protects
 21 Morgan Stanley's business interest and
 22 maintaining the confidentiality of
 23 nonrelevant nonresponsive materials. But
 24 if that means a third party, then we're
 25 open to exploring that.

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1 MR. SCAROLA: The one concern I have
2 about having a third party conduct the
3 search is the ability to educate the third
4 party as to what the third party is
5 looking for and what is of significance.

6 THE COURT: We're looking -- aren't
7 there specific terms we're searching for?

8 MR. CLARE: Yes.

9 MR. SCAROLA: Well, there are specific
10 terms that we are searching for outside a
11 temporal period. I think, if I recall
12 correctly, Your Honor defined a time
13 period during which we were to get -- they
14 were to search completely, and then
15 outside that time period they were only to
16 be searching for things like the word
17 "Coleman" or the word "Sunbeam."

18 THE COURT: Let me double-check, see if
19 we've got that. That might be for like a
20 three-month period we're searching
21 everything, and beyond that we're
22 searching words.

23 MR. SCAROLA: I think within that period
24 they were to be searching everything, and
25 beyond that period the search was to be

1 limited to specific key words.

2 THE COURT: Wait a minute. I have the
3 agreed order. Hold on. We have some that
4 are signed for employee and some that are
5 searched --

6 MR. SCAROLA: I think some of them
7 specifically identified employees --

8 THE COURT: Here's the order. Why
9 don't you guys look at that.

10 MR. CLARE: It contemplates that there
11 is a certain list of employees that are
12 agreed upon, and then for those employees
13 electronic searches are run based on a
14 list of key words. That -- the data that
15 is generated from those searches are then
16 provided to counsel for responsiveness.

17 THE COURT: Tell you what, is this
18 something we should revisit again tomorrow
19 once you guys have had a chance to talk to
20 whomever you need to talk to just to come
21 up with a proposal?

22 MR. SCAROLA: Probably not a bad idea.

23 THE COURT: In the meantime I'm going
24 to generate a notice of hearing setting
25 this for hearing on February the 14th at

1 9:30 which is the second part you brought
2 up. Do you need to do discovery --
3 presumably you do -- of the people that
4 they would present to testify, or do you
5 not want to?

6 MR. IANNO: No, I -- I don't want to
7 from the standpoint of the additional
8 burden it imposes upon us, but if an
9 evidentiary hearing is going to be held,
10 I'd like the opportunity to be able to
11 conduct discovery.

12 THE COURT: Can we pick a date now
13 pretty quick where you're going to list
14 everybody that's going to testify at this
15 hearing? Let's see. Today is the 2nd.
16 We're coming on the 14th. By Tuesday the
17 8th, and you need to make them available
18 for deposition, Wednesday, Thursday,
19 Friday.

20 MR. SCAROLA: Here.

21 THE COURT: Here. So it would be the
22 person and sort of a summary of the
23 expected subject matter.

24 MR. SCAROLA: With any relevant
25 documents produced by the same deadline as

1 the witnesses will be identified.

2 THE COURT: Any documents that the
3 witness will rely on.

4 MR. SCAROLA: Any documents that the
5 witnesses intend to rely upon or any
6 documents intended to be introduced.

7 THE COURT: I'm trying to think how
8 we're going to write this where it would
9 make sense.

10 MR. SCAROLA: I would imagine, for
11 example, that there are written documents
12 that relate to the discovery of these
13 materials. Somebody wrote a memo to
14 someone. Someone e-mailed somebody. I
15 would certainly like to have produced to
16 us all documents relating to the discovery
17 of any materials that are involved in this
18 consideration.

19 And apparently there have been outside
20 vendors involved in the reconstituting,
21 reformatting and searching these
22 documents. I'd like to see all
23 correspondence with those outside vendors
24 and any and all agreements reflecting the
25 terms of their retention, as well as

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1 proposals received in connection with any
2 task to be performed in reformatting or
3 searching the documents. It would be very
4 interesting to know, for example, if
5 someone said we can get the job done in 48
6 hours, but it's going to cost you more.

7 THE COURT: Anybody have a hand at
8 this, a good global definition of
9 document?

10 MR. SCAROLA: I don't know that I have
11 it handy. Plaintiff's definition of
12 document contained within prior requests
13 to produce, I think that's been pretty
14 standardized in our earlier discovery
15 requests.

16 THE COURT: It includes like telephone
17 messages, e-mails, all that?

18 MR. SCAROLA: Yes.

19 THE COURT: I'll have this order typed
20 for you by tomorrow unless you want to try
21 to get it -- I want to play with the
22 language a little bit. But the basic
23 concept is going to be by Tuesday at noon
24 Morgan Stanley needs to designate
25 everybody who's going to testify at the

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1 hearing; needs to provide copies of all
2 the documents that are sort of relevant to
3 the issues before the court and all the
4 documents, correspondence between Morgan
5 Stanley and any outside or prospective
6 outside vendors. I want to play with the
7 language a little bit.

8 And, again, I know it's harsh for the
9 parties now to have to go through these
10 hoops, but it's a combination of two
11 things. It's a combination of my concern
12 about doing an evidentiary sanction where
13 we wait a couple weeks, we know if there's
14 any true prejudice. Coupled with that, I
15 sort of see as a very half-hearted effort
16 before today of Morgan Stanley to try to
17 provide this information. And, again,
18 that doesn't give me any level of
19 confidence in going forward with the
20 motion today.

21 Want to take this to Nancy?

22 Now we are going to go back and come up
23 with -- Good afternoon, Mr. Bemis.

24 MR. BEMIS: Good afternoon, Your Honor.
25 I hope I wasn't late. I was told 2:30.

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1 1.310 (b)(6), this is our corporate
2 knowledge, and this is what the witness
3 would testify to. Then the parties follow
4 up with this, can you tell me more about
5 this. We did this with the debentures and
6 other things in this case.

7 What I suggest to do, the documents the
8 court identified and the areas of concern
9 the court identified, together with some
10 questions Mr. Scarola raised, I suggest
11 that Morgan Stanley file a written
12 response under oath verified as to those
13 documents; Coleman can review it, say,
14 well, I need more information on this or I
15 don't think that's sufficient; I want to
16 take -- I want the deposition on this, and
17 then we provide the deposition. And that
18 way we're not wasting our time where they
19 ask a question that, you know, we don't
20 honestly expect to be coming on some
21 things. We'll respond to the footer
22 issue. We'll do more searches and
23 discovery into those handwritten
24 documents.

25 THE COURT: I think what you're

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1 suggesting to me is that within -- and
2 presumably a very short period of time you
3 guys would do a sworn statement addressing
4 what you believe to be my concerns about
5 sort of failures of Mr. Doyle's testimony.

6 MR. IANNO: Correct.

7 THE COURT: And then plaintiff within a
8 short period of time would either say,
9 yeah, this is sufficient for our purposes;
10 we might not be happy, but we realize this
11 is the best we're going to get or is going
12 to be able to say, no, we still want the
13 corporate rep to testify.

14 MR. IANNO: Two things in the
15 alternative. They could say if you just
16 tell us this under oath, that may be okay
17 because that's what they've done in the
18 past. They say, well, what did you mean
19 by. That may be a simple question. You
20 know, they didn't understand a term or
21 they didn't -- they just need a little
22 more information.

23 THE COURT: I don't think that that was
24 the kind of thing we were talking about
25 this morning.

1 short period of time.

2 MR. SCAROLA: Perfectly reasonable --

3 THE COURT: But...

4 MR. SCAROLA: -- if we were three months
5 away from trial and not three weeks away
6 from trial. And that's really what my
7 concern is, Your Honor. It is not as if
8 this is an area that we have not
9 diligently pursued for many, many, many
10 months. This has been the subject of
11 repeated hearings before Your Honor.

12 THE COURT: I understand that, and sort
13 of an aside to all of this is whether at a
14 minimum plaintiffs should be entitled to
15 attorney's fees for the depo. The depo
16 was really wholly a waste. All Mr. Doyle
17 did is come and say he read the other
18 depositions. Well, they had the other depositions.

19 MR. IANNO: I understand the court's
20 position on that.

21 MR. SCAROLA: I can't add any more to
22 what I've said, Your Honor. I've told you
23 that I think that the time has come where
24 they face the consequences of their
25 conscious choices. There is clearly

1 MR. IANNO: I'm just saying this is what
2 we've done in the past. It was an
3 either/or. They can either do that or
4 say, no, we want the corporate rep depo on
5 this.

6 THE COURT: Let's assume the proposal
7 on the table for discussion purposes is
8 that within some very short period of time
9 we're going to give a sworn statement, you
10 know, at least on the ones about the word
11 processing standpoint, computer footer,
12 you know, disclosing every possible piece
13 of information that could be gleaned from
14 that and then that they pursued it, and
15 this is what they believed, and then we
16 still have the three documents where sort
17 of the testimony was just insufficient
18 and then I guess on those three documents,
19 giving a sworn answer that they think
20 addresses the deficiencies, and then you
21 either say this is fine for us or, you
22 know what, we need to go back and take
23 another corporate rep depo.

24 MR. SCAROLA: Perfectly --

25 THE COURT: Provided we do it in a

1 evidence of a deliberate stonewalling, and
2 they ought to -- they ought to be held
3 accountable for that. And the only
4 reasonable way that avoids prejudicing the
5 plaintiff at this stage of the proceedings
6 is simply by deeming those documents that
7 they have failed to respond to
8 appropriately, as Your Honor has
9 identified, to be admissible.

10 MR. IANNO: I think the Court has
11 already stated that sanctions of
12 admissibility are not the sanctions that
13 are appropriate.

14 THE COURT: Yeah. Hold on.

15 What's the subsection of what we're
16 dealing with?

17 MR. IANNO: 803.6.

18 THE COURT: No, 1.310 of the rule.

19 MR. IANNO: (b)(6). We always refer to
20 it as a 30(b)(6) depo pursuant to federal
21 rules.

22 THE COURT: Again, I have to play with
23 the language, but the basic concept is
24 going to be -- I have to go back and see
25 the time frame I was contemplating. I

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1 think it was two business days. Yeah, by
2 12 noon on Monday that you all need to
3 file a sworn statement, and I'm going to
4 play with -- according to all information
5 conveyed or referable by what's been
6 referred to as the word process stamp,
7 together with a statement of methodology
8 by which the information can be conveyed
9 or inferred. Some explanation of how
10 you're getting this from this and what
11 that information shows for each of those
12 listed document.

13 And you also need to -- And all I'm
14 doing is copying what were the designated
15 topics from their Notice of Deposition for
16 those three additional documents we talked
17 about. You just need to give all that
18 information. And then within two business
19 days after that is served on you, you have
20 your option to either say, okay, that's
21 enough or we want to depose the
22 1.310(b)(6) witness as to any of these
23 items in which case they have to produce
24 the deponent within two business days for
25 depo.

1 Do we care where this person is
2 produced for depo?
3 MR. SCAROLA: Yes, Your Honor.
4 THE COURT: And where would we want
5 this person to be produced?
6 MR. SCAROLA: Here. Our litigation team
7 is now in residence.
8 THE COURT: I'm sorry. Who's in
9 residence?
10 MR. SCAROLA: Our litigation team is now
11 in residence.
12 MR. IANNO: We're all trying to help
13 the Palm Beach economy.
14 THE COURT: I'm sure you guys are
15 helping it.
16 MR. SCAROLA: May I suggest that the
17 court expressly reserve the right to
18 impose additional economic sanctions?
19 THE COURT: I am. I'm just writing now
20 we're determining fees for bringing the
21 motions and related efforts; we're
22 reserving jurisdiction to determine the
23 amount and figure out whatever other
24 sanctions we need to do with a process.
25 MR. SCAROLA: With similar language as

1 in the motion for sanctions?
2 THE COURT: I'm trying to remember.
3 Okay. I'll have to play with the
4 language.
5 Are we ready to start the motions in
6 limine, then?
7 MR. SCAROLA: Yes, ma'am. Are we going
8 to take it in the order in which you
9 described?
10 MR. IANNO: Pick one. Whichever one you
11 guys want to start with.
12 THE COURT: The first one we're going
13 to do is which one?
14 MR. IANNO: Morgan Stanley's motion in
15 limine number three.
16 THE COURT: Okay. Okay. Go ahead.
17 MR. CLARE: Good afternoon, Your Honor,
18 again, Thomas Clare for Morgan Stanley.
19 This is Morgan Stanley's motion in limine
20 number three. The scope of this motion is
21 to exclude evidence, argument or reference
22 at the trial to corporate corruption in
23 accounting scandals. Examples of these
24 types of scandals are well-known and have
25 been littered throughout the pleadings,

1 Enron, WorldCom, Arthur Andersen, Tyco and
2 others. People in the community have a
3 very strong feeling about these scandals,
4 and even mere references to them bring out
5 very emotionally charged feelings.
6 THE COURT: Can I ask you, do you
7 intend to offer any evidence or testimony
8 that it would have been against your
9 client's economic interest to do what
10 Coleman suggested you did? Or do you
11 intend just to argue that?
12 MR. CLARE: Well, our executives will
13 testify that they would not have loaned
14 Sunbeam its -- Morgan Stanley's own money
15 if they had any inkling of fraud or any
16 other misconduct at Sunbeam.
17 THE COURT: Okay.
18 MR. CLARE: That is absolutely going to
19 be --
20 THE COURT: Because they did some sort
21 of economic analysis of what their
22 expected profit was and what were the
23 chances they would be found out?
24 MR. CLARE: No, there's nothing like
25 that. Morgan Stanley acted as a lender to

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1 Sunbeam, lent its own money to Sunbeam.
2 And the Morgan Stanley executives who were
3 involved in the decision to loan the money
4 have testified and will testify that had
5 they known there was any financial
6 misdeeds at Sunbeam or things were other
7 than as they had been represented to
8 Morgan Stanley, they would not have
9 proceeded to commit Morgan Stanley's own
10 capital as a lender and as an underwriter
11 of the debentures.

12 THE COURT: Yes.

13 MR. CLARE: Because Morgan Stanley would
14 not have lent money to a corporation whose
15 audited financials, as represented by the
16 auditors, Sunbeam's auditors were not in
17 compliance with GAAP as ultimately turned
18 out to be the case.

19 THE COURT: Okay. And why? I mean,
20 because your client is just -- and I'm not
21 being facetious, but because your client
22 is ethical or because your client is in
23 the business to make a profit and you know
24 that there's a chance that if the audited
25 financials are incorrect, there's a chance

1 the whole thing is going to unravel and
2 you're going to lose money or why?

3 MR. CLARE: It is both. I mean, it is
4 Morgan Stanley would not knowingly
5 affiliate itself with a transaction as a
6 lender, as an underwriter or as an advisor
7 with a company that it knew was involved
8 in any sort of fraud or financial
9 misdealings.

10 THE COURT: So it's both because you're
11 ethical so you wouldn't do that and
12 because you're afraid you'd lose money?

13 MR. CLARE: Certainly the idea of
14 loaning money to an institution that is
15 committing fraud is a bad business
16 decision in addition to being unethical
17 and against Morgan Stanley' business
18 principles.

19 THE COURT: It's not always a bad
20 business decision, which is presumably
21 what plaintiff is going to respond, that
22 lots of companies have done it because
23 it's not always a bad economic decision
24 because the chances are that fraud won't
25 be uncovered in time to make your client

1 liable.

2 MR. CLARE: In order for that argument
3 by the plaintiff to make any sense, there
4 would have to be a showing or some sort of
5 an evidentiary proffer that the other
6 dealings to which they want to refer are
7 substantially similar to in circumstances
8 to the ones at issue here, and that is not
9 the case with any of the ones that
10 plaintiff has raised so far or any of the
11 other corporate scandals that are out
12 there so far.

13 The sweeping assertion of Enron, Tyco,
14 WordCom, JP Morgan or Citigroup doesn't
15 get them all the way home. There are
16 substantial differences between the
17 transactions that are involved, the
18 financial incentives, the type of payback,
19 consideration that a company would have to
20 go through if they were going to do that
21 type of analysis, and it would be unfairly
22 prejudicial to Morgan Stanley to have that
23 emotionally charged comparison made
24 without a showing that the other
25 transactions were substantially similar.

1 The case law is in accord.

2 THE COURT: Okay. And so sort of we're
3 acknowledging other companies have made
4 business decisions that had them go
5 through with deals even in the face of
6 fraud presumably because they thought at
7 the time it was in their economic
8 self-interest, and we're just saying that
9 that's not Morgan Stanley, there's nothing
10 to suggest Morgan Stanley has done that.

11 MR. CLARE: I'm not acknowledging
12 anything about what other companies did or
13 how -- what other companies' incentives
14 were at some point in time. That's not an
15 issue in this case.

16 THE COURT: You're just saying you guys
17 didn't do it and wouldn't do it. Okay.
18 What's the response? How is this relevant
19 and how would you intend to use it if at
20 all?

21 MR. CLARE: And not unfairly
22 prejudicial.

23 THE COURT: Sure. I understand that.
24 And, you know, you got to understand what
25 it is they're saying. These are

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1 emotionally charged issues.
 2 MR. SCAROLA: I understand exactly what
 3 they're saying, Your Honor. And I find it
 4 strange that they are saying it in light
 5 of what they are simultaneously doing with
 6 respect to complying with Your Honor's
 7 direction that we formulate a
 8 questionnaire for jurors, because on the
 9 questionnaire that we received from them
 10 for our consideration, prominent among the
 11 questions are have any of you been
 12 investors in WorldCom; have any of you
 13 been investors in Enron; have any of you
 14 been investors in Tyco; did you experience
 15 any losses as a consequence of Enron,
 16 WorldCom or Tyco; how have those events
 17 affected your attitudes.
 18 Now they're asking those questions for
 19 very obvious reasons because those real
 20 world recent events have a very
 21 significant impact on the reality of the
 22 financial world in which we are presently
 23 living.
 24 THE COURT: Sure, but what we're
 25 talking about is the legitimate

1 evidentiary value of those items in the
 2 case.
 3 MR. SCAROLA: I understand what the
 4 motion asks for is that no one be
 5 permitted to reference those matters. And
 6 what I am telling Your Honor is that they
 7 propose to reference them in voir dire.
 8 And I say that because that is an
 9 acknowledgment of the significance of
 10 those events in shaping current attitudes.
 11 If they are asking presumably because
 12 they are concerned that the attitudes of
 13 jurors have been influenced by those
 14 recent world events, this is a case in
 15 which they are arguing that we failed to
 16 conduct reasonable due diligence in 1998
 17 before WorldCom, before Tyco, before
 18 Enron. The financial world that existed
 19 before Enron, before WorldCom and before
 20 Tyco was a very different world. It was
 21 indeed an extremely different world. And
 22 the level of suspicion that an investor --
 23 you were about to say something.
 24 THE COURT: If what you're getting to
 25 is your experts might refer to some of

1 think is the legal relevancy of sort of
 2 any reference to this. And all I can
 3 hear -- maybe I'm misunderstanding -- that
 4 you're telling me now is you want to make
 5 sure the experts can explain that what was
 6 reasonable due diligence in '97 and '98
 7 before there was all this evidence of
 8 corporate fraud is different and probably
 9 less global than what may be due diligence
 10 now.
 11 MR. SCAROLA: You got it. That's
 12 exactly what I'm saying.
 13 THE COURT: We're talking about
 14 retained experts, and we're talking about
 15 only in reference to their explaining the
 16 level of due diligence that was required
 17 in '97 and '98.
 18 MR. SCAROLA: That's point one.
 19 THE COURT: Is there any other legal
 20 relevance to this piece of information?
 21 MR. SCAROLA: I want our experts to be
 22 able to say although we're sitting here
 23 today, I would say that it was
 24 unreasonable to do X; in 1998, it was
 25 reasonable to do X because we didn't know

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1 about things like WorldCom and Enron and
2 Tyco. We have had our level of suspicions
3 raised today, and that didn't exist then,
4 and you need to understand, ladies and
5 gentlemen of the jury, when you're
6 deciding what is reasonable that you're
7 deciding what is reasonable in the context
8 of the world as it existed pre-Enron,
9 pre-WorldCom, pre-Tyco. I would like them
10 to be able to say that.

11 THE COURT: To convey that concept, do
12 you need to use specific examples of
13 illegitimate corporate deeds, or why
14 wouldn't it be appropriate for them to
15 testify benignly that there have been
16 recent examples of fraud and that the
17 level of due diligence has changed?

18 MR. SCAROLA: I don't need them to get
19 into a detailed description of those
20 frauds, but why should I not be able to
21 reference them specifically when we all
22 know what we're talking about?

23 THE COURT: I just don't want to open
24 up a whole mini trial about what Enron was
25 about or what Tyco was about.

1 MR. SCAROLA: I just want them to be
2 able to say what I just said. I want my
3 expert to be able to get on the witness
4 stand and say I am telling you that what
5 Ron Perlman and CPH did in 1997 was
6 unreasonable, also, the knowledge that it
7 may not be reasonable from what we've
8 learned from Enron, Tyco and WorldCom, but
9 back then we didn't have that level of
10 suspicion. That level of suspicion did
11 not exist.

12 To draw an analogy, if we were asking
13 people what's due diligence in terms of
14 airplane security before and after
15 September 11, 2001, if you were trying to
16 convince a jury in 1998 that people had to
17 take off their shoes in order to get on an
18 airplane, people are going to look at you
19 and say that's ridiculous; that's not
20 reasonable. But it has become reasonable
21 as a consequence of what we have
22 subsequently learned. So what I want to
23 be able to prove to this jury is that
24 subsequent events have altered what is
25 reasonable. What was reasonable then is

1 are companies that have knowingly
2 subjected themselves to engage in business
3 transactions with companies known to have
4 been engaging in fraud, don't you? You
5 know this isn't the first time -- this
6 isn't the only time. Arthur Andersen did.
7 You know that Arthur Andersen was involved
8 in a very similar transaction, don't you,
9 sir? So how can you credibly assert that
10 it couldn't happen, it wouldn't happen.
11 It does happen. It has happened. It's
12 been proven to happen. And you're aware
13 of that, Mr. Fritz, aren't you? You read
14 about it on the front pages of the Wall
15 Street Journal.

16 THE COURT: Any other evidence
17 relevance to this?

18 MR. SCAROLA: Those are the two contexts
19 I envision it coming up, cross-examination
20 of defense witnesses and direct
21 examination of plaintiff's witnesses to
22 explain the reasonable standard of care as
23 it existed in 1998.

24 THE COURT: Okay. Let's talk about
25 that latter thing first. Wouldn't it make

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1 sense that jurors come in with sort of
2 some expectation of what you would do for
3 due diligence and it's probably based on
4 more recent events?

5 MR. CLARE: I think that it is
6 reasonable for the jurors to come to the
7 jury box with a world view that is
8 current. I think that is reasonable.

9 THE COURT: Sure.

10 MR. CLARE: And that is the purpose of
11 voir dire is to be able to understand what
12 jurors' current --

13 THE COURT: How do you draw their
14 attention to their sort of view of world
15 events now is not what the parties were
16 faced with in 1997?

17 MR. CLARE: To the extent that is a
18 legitimate and relevant argument as set
19 forth by Mr. Scarola, I do not concede it
20 is because that is not the subject of this
21 motion. But assuming it can be done in a
22 way without reference to specific
23 corporate scandals that refers to
24 subsequent events or in the generic to
25 avoid the risk of prejudice and avoid the

1 confusion of the issues, both with respect
2 to that explanation of what intervening
3 events have changed attitudes about due
4 diligence --

5 THE COURT: Give me an example of what
6 you think is the kind of question and
7 answer that would be permissible.

8 MR. CLARE: Would be permissible?

9 THE COURT: Yes.

10 MR. CLARE: I would pick the formulation
11 that Mr. Scarola had used a moment ago
12 when he talked about subsequent corporate
13 events or subsequent world events.

14 THE COURT: No. That wouldn't even
15 tell them what we're talking about.

16 MR. CLARE: I would have to give more
17 thought specifically to what the
18 formulation would be that would be
19 acceptable, but I would submit that the
20 parameters should be that it should not
21 include any specific reference to a named
22 corporation, company, or investment bank
23 because it opens the door to confusion of
24 the issues and will lead, as Your Honor
25 pointed out, to the inevitable mini trial

1 on how each of those scandals are
2 different or the same.
3 Mr. Scarola's cross-examination example
4 is -- the correct point is that what will
5 happen if that line of questioning is
6 permitted, not just with regard to in
7 general, but with regard to specific
8 inquiry is that it will evolve into a
9 discussion of how the Enron scandal was
10 different than the Sunbeam scandal, how
11 the WorldCom scandal was different than
12 the Sunbeam scandal, how the commodity
13 transactions at issue in those types of
14 scandals were different than the merger
15 and acquisition transaction. We'll be
16 going down a path where we will have
17 experts on both sides opining as to
18 scandals that are not in front of the
19 court and will confuse the issues in front
20 of the jury.
21 The financial transactions in this case
22 are complex enough without injecting
23 additional complex financial transactions
24 into the mix for them to consider and sort
25 out. And the risk of prejudice to Morgan

1 Stanley from having been lumped together
2 with these dissimilar scandals overwhelms
3 whatever minimal probative value, those
4 lines of relevance that Mr. Scarola has
5 identified.
6 MR. SCAROLA: Defendants avoid that
7 aspect of this evidence by not having
8 their witnesses take the position that
9 they have taken. If they don't get up in
10 front of this jury and say this can not
11 happen because companies like Morgan
12 Stanley don't knowingly participate in
13 frauds, if they don't make those kinds of
14 statements, they don't open the door to
15 that line of inquiry. If they do make
16 those kinds of statements, they have
17 invited the cross-examination that I've
18 described. Just say Morgan Stanley didn't
19 do it. Don't come in here and try to say
20 Morgan Stanley wouldn't do it because
21 other companies don't; it hasn't happened
22 before, because then they're inviting
23 cross-examination about the fact that
24 indeed it has happened before. And they
25 know it.

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1 MR. CLARE: The court can certainly
2 fashion an order that would contemplate --
3 if Mr. Scarola's argument is credited that
4 would contemplate that plaintiffs should
5 not be permitted to make reference to
6 these corporate scandals in
7 cross-examination or otherwise without
8 first approaching the court and obtaining
9 permission based on the door opening
10 principle that Mr. Scarola has just
11 articulated.

12 THE COURT: Let me write this, and then
13 we'll talk where we're going. First of
14 all, the general order, sort of the form
15 of order I use on motions in limine has
16 language that says granted for purposes of
17 the motion, you know, means no, you know,
18 witness or counsel shall refer to the item
19 or attempt to place it before the jury
20 without first proffering the good faith
21 basis to believe the matter is now
22 admissible and relevant before. It
23 doesn't mean it doesn't come in. It means
24 it's not referred to unless we all talk
25 about it first.

1 the jury questionnaire, if it's still
2 there we'll talk about it then unless we
3 first talk about it in private.

4 Okay. Where are we going next?

5 MR. IANNO: Morgan Stanley's nine, Your
6 Honor.

7 MR. SCAROLA: Before Mr. Ianno makes his
8 presentation, may I perhaps narrow the
9 focus of the issues here?

10 THE COURT: Sure.

11 MR. BEMIS: Your Honor, can I just step
12 outside while Mr. Ianno makes his
13 presentation?

14 THE COURT: Sure. Do you want us to
15 wait?

16 MR. BEMIS: No. I just wanted to have
17 permission to step outside.

18 THE COURT: What did you want to try to
19 limit?

20 MR. SCAROLA: I simply wanted to make it
21 clear that it is the plaintiff's position
22 that evidence with regard to litigation
23 misconduct will be offered only in support
24 of our punitive damage claim and in a
25 bifurcated proceeding only in the second

1 Again, this is another one I'm going to
2 have to play with the language. I would
3 agree it's fair for plaintiff -- really
4 for either side to examine a retained
5 expert on the issue of due diligence of
6 whether the standard for due diligence has
7 changed since April of 1998. However, the
8 question and the answer should not refer
9 to any specific entity. Either identify
10 an entity or have an entity be
11 identifiable from the answer.

12 I would also agree that it's fair if a
13 witness testifies that sort of nobody, no
14 entity would complete this transaction or
15 make a loan where there's either fraud or
16 suspicion of fraud it's fair for that
17 person to be cross-examined about their
18 knowledge of whether that has ever
19 happened in the past. If they don't
20 testify in that fashion, they won't be
21 cross-examined on it.

22 But other than those two specific
23 instances, the motion would be granted,
24 which means we're not talking about this
25 stuff, although presumably when we get to

1 phase of that proceeding.

2 THE COURT: Okay. If that's the case,
3 do we want to do this now, or do we want
4 to wait and argue later?

5 MR. IANNO: I think we can do it now,
6 judge, and the reason is twofold. One,
7 there is no pending motion to bifurcate
8 I'm aware of unless it's come in since
9 lunchtime. It hasn't come in by fax as
10 long as I've been sitting here. And the
11 second thing is the litigation misconduct
12 that Mr. Scarola is referring to is a
13 separate case.

14 THE COURT: I mean, that would be, in
15 all honesty in reading this, my fear. And
16 I hate to short-circuit. Your argument
17 would be if we make reference to this,
18 suddenly we're trying that whole case
19 within the ambit of this. It's sort of
20 like the contempt. We're going to just
21 meet that train that goes off the tracks.

22 MR. IANNO: We're trying to streamline
23 this, not add that case back into the mix.

24 THE COURT: I agree. I mean, I'll be
25 real honest, I mean, how much do you guys

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1 really care about this? I mean, because
2 otherwise aren't we -- if you want to get
3 up and say, hey, they sued our affiliate
4 and dismissed it, they're really bad guys,
5 there were no merits, there's -- the only
6 way we address that is if we try that.

7 MR. SCAROLA: I understand the court's
8 concerns. My response is I believe those
9 issues can be dealt with in very summary
10 fashion and that they are indeed
11 appropriate in a second phase proceeding
12 where we're talking about the nature of
13 the defendant's response to having been
14 caught with its hand in the cookie jar.

15 THE COURT: We're talking about the
16 whole synergy stuff?

17 MR. SCAROLA: Pardon me?

18 MR. IANNO: No. What they're referring
19 to, judge, is they blamed us so we
20 automatically blame them. It's what they
21 say in their response.

22 THE COURT: Sure, but implicit in that
23 is that your other case was not
24 well-founded. Because if it was
25 well-founded, you guys could bring a

1 have to --

2 THE COURT: This is your motion. Why
3 don't you go back and argue.

4 MR. IANNO: We're going to have to go in
5 and prove the fraud we were trying to
6 avoid that CPH committed, the money Morgan
7 Stanley Senior Funding lost. We have to
8 go in and talk about that whole case.
9 This four-week trial now becomes eight.
10 And -- it's just not relevant to show
11 liability. And there is no bifurcated
12 proceedings here.

13 THE COURT: What's the response to that
14 it would be irrelevant and not punitive
15 damages?

16 MR. IANNO: If damages are being sought,
17 they wouldn't be against Morgan Stanley
18 Senior Funding. They're being sought
19 against Morgan Stanley Co., Incorporated.
20 It's Morgan Stanley Senior Funding that
21 brought that case.

22 THE COURT: What's the response?

23 MR. SCAROLA: We are talking about
24 Morgan Stanley's participation in
25 initiating that litigation.

1 well-founded claim and abandon it for
2 whatever reason you want.

3 MR. IANNO: That's our point. You know,
4 we're not here to try whether or not we
5 were defrauded. And the reasons for that
6 are irrelevant why we dropped it.

7 THE COURT: I guess I don't see any of
8 this is relevant unless you're prepared to
9 show that whole case was just woefully
10 baseless and they knew that from the
11 get-go.

12 MR. SCAROLA: We are prepared to show
13 that, and we believe that we can show it
14 very summarily.

15 THE COURT: Like how?

16 MR. SCAROLA: By showing that they not
17 only didn't suffer any damages, that
18 Morgan Stanley didn't suffer any damages
19 but that Morgan Stanley made a \$42 million
20 profit on the transaction and participated
21 as a party in that lawsuit solely for
22 purposes of attempting to evade the
23 responsibility that it has in this case.

24 And that can be done very very briefly.

25 MR. IANNO: Except then we're going to

1 THE COURT: How would we ever show
2 that.

3 MR. SCAROLA: I think there's record
4 evidence of Morgan Stanley's participation
5 in that litigation in statements that were
6 made in open court going back into the
7 whole contempt issues.

8 THE COURT: I would grant the motion.
9 I think if we get into this, it is
10 pandora's box.

11 MR. IANNO: I have a proposed order and
12 envelopes.

13 THE COURT: Let me see what it is.

14 MR. IANNO: It doesn't have your
15 language so it isn't going to work.

16 THE COURT: We'll do it, but we'll take
17 your envelopes.

18 THE COURT: Now we're on to Coleman.
19 Let me get this notebook closed and get to
20 the other one.

21 MR. SCAROLA: Coleman's motion in limine
22 five.

23 THE COURT: Just so you know, I have a
24 warrant coming at about 3:30, so we'll
25 keep going and break when they show up.

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1 MR. BEMIS: I think these are going to
 2 go fast.
 3 MR. IANNO: Judge, do you mind if we
 4 come and go?
 5 THE COURT: Not at all. You guys feel
 6 free.
 7 THE COURT: I do have to thank you
 8 guys. I got to use one to update my one
 9 updating my administrative orders.
 10 MR. SCAROLA: You could probably start a
 11 very lucrative office supply business on
 12 the side.
 13 THE COURT: You know, we collect all
 14 the notebooks and we give them to school
 15 kids.
 16 MR. SCAROLA: I didn't realize that.
 17 THE COURT: We do that, yes.
 18 MR. SCAROLA: Very good.
 19 THE COURT: We're starting with number
 20 five, correct? Yes, sir. Go ahead.
 21 MR. SCAROLA: Your Honor, this is what I
 22 hope is a simple motion. Ruth Korit
 23 (phonetic), a key Morgan Stanley figure in
 24 the Sunbeam transaction, had the
 25 misfortune of some serious health problems

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1 for a considerable period of time and,
 2 fortunately, has returned to work full
 3 time at Morgan Stanley. Indeed, she's
 4 working 12 hours a day every day according
 5 to her testimony. We're pleased that she
 6 has recovered. We believe that her
 7 illness is not relevant or material to any
 8 issue in this case, and any reference to
 9 it would simply be an effort to invoke
 10 sympathy on the part of the jury. We are
 11 asking that there be no reference.
 12 THE COURT: What's the response?
 13 MR. BEMIS: We don't intend to do that,
 14 and we have no objection to --
 15 THE COURT: So we'll grant it, and if
 16 something happens, we'll go back and
 17 revisit it.
 18 MR. BEMIS: Correct. Out of the
 19 presence of the jury and before the
 20 evidence is offered.
 21 THE COURT: I'm still going to do my
 22 own order just because that -- we have the
 23 form so I can make sure all the language
 24 is the same. But we can do it. That can
 25 go to Nancy, too. Thank you. I'm sure

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1 she's thinned.
 2 Okay. Seven.
 3 MR. SCAROLA: Seven.
 4 THE COURT: Oh, yeah.
 5 MR. SCAROLA: Your Honor, the way in
 6 which this motion is presented we have
 7 asked the court to exclude any reference
 8 to settlement of our claims against Arthur
 9 Andersen. In fact, I anticipate that
 10 avoiding reference to the fact that there
 11 were claims against Arthur Andersen and
 12 indeed a resolution of that claim is
 13 probably --
 14 THE COURT: Not realistic.
 15 MR. SCAROLA: -- probably not realistic.
 16 What is entirely realistic is to exclude
 17 any reference to the amount of settlement.
 18 There is no question at all about the fact
 19 that it is the court's province to deal
 20 with collateral source recoveries post
 21 verdict to make whatever setoffs are
 22 appropriate post verdict, and,
 23 accordingly, there would be no reason for
 24 the court -- for the jury to become
 25 involved in making a determination or

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1 considering at all what the amount of the
 2 Andersen settlement was.
 3 THE COURT: Is there any -- Let me ask
 4 you this. First of all, do you think
 5 there needs to be evidence --
 6 MR. BEMIS: No. Unless a circumstance
 7 arises that I don't perceive, I don't see
 8 that happening, bottom line, and I agree
 9 with Mr. Scarola, the amount of settlement
 10 is not something a jury considers.
 11 MR. SCAROLA: And, in fact, I agree it
 12 would be appropriate to instruct the jury
 13 -- to exclude any reference to a
 14 settlement with Arthur Andersen and that
 15 the court will set off the amount of any
 16 recoveries that may have been attained in
 17 a post-trial determination. I mean,
 18 obviously that same thing would apply to
 19 Sunbeam as well.
 20 MR. BEMIS: By my silence I'm not
 21 agreeing with what the instruction should
 22 be, but I'm aware of the concept, and I
 23 know we'll have an instruction of some
 24 nature on that.
 25 THE COURT: Is the next one we have the

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1 same one but it's Sunbeam?
 2 MR. BEMIS: Yes, Your Honor.
 3 THE COURT: And it's the same as to
 4 each.
 5 MR. BEMIS: We would not attempt to
 6 introduce any evidence of the value of a
 7 settlement.
 8 THE COURT: Tomorrow afternoon is when
 9 we're going to do the other three at, you
 10 said, 1:30.
 11 MR. SCAROLA: 1:30 is fine for me.
 12 MR. BEMIS: I thought we had 2:30.
 13 THE COURT: Well, we had a little
 14 confusion about that earlier. I thought
 15 we had 2:30.
 16 MR. SCAROLA: 2:30 is fine.
 17 MR. BEMIS: I would prefer 2:30 because
 18 there are many things due this Friday, and
 19 we've been a little bit schedule disrupted
 20 if you can accommodate us at 2:30 --
 21 THE COURT: How long do you think we'll
 22 be?
 23 MR. BEMIS: The longest one, I think,
 24 will be the one related to Mr. William
 25 Strong, the evaluation records. You have

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1 heard my argument on that.
 2 MR. SCAROLA: I think we can finish all
 3 of them in under two hours. I don't see
 4 us going over two hours.
 5 THE COURT: Then my question is do we
 6 want to -- can we do it at 2:00 and go to
 7 the jury assembly room first?
 8 MR. BEMIS: I could be here at
 9 2:00 o'clock if that's what Your Honor --
 10 THE COURT: I got your answers.
 11 MR. SCAROLA: Or if you would like, we
 12 can wait around and go down to the jury
 13 assembly room after 3:30.
 14 THE COURT: I haven't called them to
 15 arrange it, but I can't imagine it would
 16 be a problem. I have your little list.
 17 Do you want to try to do it now or --
 18 MR. SCAROLA: We can try to do it now.
 19 That's fine, too.
 20 THE COURT: Let me go call and see if
 21 we're able to do that. Okay. I'll be
 22 right back. Thanks.
 23 (A recess was taken from 3:19 p.m.
 24 to 3:21 p.m.)
 25 THE COURT: Okay. She's waiting for us.

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1 CERTIFICATE
 2
 3 THE STATE OF FLORIDA)
 4)
 5 COUNTY OF PALM BEACH)
 6 I, Barbara Gallo, RMR-CRR, Registered Merit
 7 Reporter-Certified Realtime Reporter, do hereby
 8 certify that I was authorized to and did report the
 9 foregoing proceedings at the time and place herein
 10 stated, and that the foregoing is a true and correct
 11 transcription of my stenotype notes taken during said
 12 proceedings.
 13 IN WITNESS WHEREOF, I have hereunto set my
 14 hand this ____ day of _____, 2005
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BARBARA GALLO, RMR-CRR
 Registered Merit Reporter
 Certified Realtime Reporter

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Exhibit 2

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031455

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

DECLARATION OF THOMAS A. CLARE

1. I am Thomas A. Clare. I am a partner in the law firm of Kirkland & Ellis LLP. Kirkland & Ellis is counsel to Morgan Stanley in the above-captioned action. In that capacity, I have personal knowledge of the matters set forth herein.

2. I am familiar with the Court's Order on Coleman (Parent) Holdings Inc.'s Ore Tenus Motion To Participate In Search Of Additional E-mail Back Up Tapes Or Appoint Third Party To Conduct Search (the "Additional Tapes Order"). The Additional Tapes Order requires Morgan Stanley to search additional e-mail backup tapes that were not previously searched, and to produce to CPH each e-mail required by the April 16, 2004 Agreed Order on CPH's Motion To Compel Concerning E-mail And Other Electronic Documents.

3. I supervised the review of data from the additional e-mail backup tapes for responsiveness and privilege. I supervised the production of responsive e-mail messages to CPH, as well as the preparation and production of privilege logs associated with those productions.

4. Morgan Stanley completed the final installment of its production of e-mails to CPH at approximately 2:35 a.m. on February 11, 2005.

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5. I personally have reviewed every responsive e-mail document produced to CPH pursuant to the Additional Tapes Order, and every responsive e-mail document withheld by Morgan Stanley from those productions on grounds of privilege. I personally have compared every one of these e-mail documents to Morgan Stanley's prior productions to CPH.

6. Morgan Stanley produced twenty-one (21) documents to CPH pursuant to the Additional Tapes Order. That production can be summarized as follows:

- (a) Ten (10) of these documents are *exact* duplicates of documents Morgan Stanley previously produced to CPH;
- (b) One (1) of these documents *contains exactly the same text* as an e-mail document Morgan Stanley previously produced to CPH, but it bears a different date;
- (c) Two (2) of these documents are *duplicates of each other*, with the only difference being a series of computer-generated error messages informing the sender that the e-mail message was not delivered to one of the intended recipients;
- (d) One (1) of these documents is a *computer-generated* e-mail message informing the recipient that Sunbeam publicly filed a Form 10-K/A with the Securities and Exchange Commission in November 1998, seven months *after* the financial transactions that are the subject of this lawsuit;
- (e) Two (2) of these documents are *substantial duplicates* of documents Morgan Stanley previously produced to CPH, with the only difference being the inclusion of an additional e-mail reply message.

7. Only eight (8) newly-produced documents contain e-mail threads that were not previously produced, in whole or in substantial part, to CPH. None of the e-mail messages contained in those eight (8) documents are dated between February, 1998 and April 30, 1998.

8. At the February 2, 2005 hearing on CPH's Motion For Adverse Inference, counsel for CPH informed the Court that that "we [CPH] narrowed our focus to the period of time in February of 1998 and March of 1998 and April of 1998 when the communications going on

within Morgan Stanley are of critical importance to demonstrate what they knew and when they knew it.” (Feb. 2, 2005 Hrg. at 118.) A true and correct copy of the relevant transcript pages is appended to this Declaration.

UNDER PENALTY OF PERJURY, I HEREBY DECLARE THAT THE FOREGOING IS TRUE AND CORRECT.

Thomas A. Clare

Thomas A. Clare

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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND
FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 03 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

TRANSCRIPT OF THE PROCEEDINGS BEFORE
THE HONORABLE ELIZABETH T. MAASS

West Palm Beach, Florida
Wednesday, February 2, 2005
9:21 a.m. - 3:23 p.m.

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Co-Counsel for the Plaintiffs

15 BY: JOANNE SWEENEY, ESQUIRE
and ROBERT MARKOWSKY, ESQUIRE

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1 with an agreed upon order, I'm happy to go
2 back and try to get that information.

3 THE COURT: I think the answer is, no,
4 we don't really have an explanation of why
5 we didn't find out about this stuff until
6 October. So why don't you go ahead.

7 MR. SCAROLA: Thank you very much. The
8 history of efforts to obtain e-mail
9 production is outlined in our motion. We
10 are dealing with a corporation that that
11 was fined \$1.65 million.

12 MR. CLARE: If Mr. Scarola is making an
13 evidentiary proffer based on the SEC
14 findings cited in his paper, I object to
15 that evidentiary proffer on the grounds of
16 hearsay.

17 THE COURT: Okay. I think it would be
18 fair to say that for today's purposes I
19 don't have any evidence from either side
20 other than in October we first found out
21 there were other backup tapes.

22 MR. SCAROLA: What you do have, because
23 it is attached to the motion, is a record
24 of our efforts to try to get an
25 explanation. So as the record stands

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1 before Your Honor right now, we have a
2 record of repeated efforts to obtain the
3 information, the entry of an order
4 imposing a deadline on production, and
5 acknowledgment that substantial
6 information existed but was not produced
7 in accordance with the deadline and
8 silence in the face of requests for an
9 explanation.

10 Now I suggest that that shifts the
11 burden because of the entry of the order,
12 it shifts the burden to Morgan Stanley to
13 come forward and to explain its
14 noncompliance.

15 They have failed to do that in any way
16 whatsoever. Now Your Honor may choose to
17 give them another chance to do it,
18 although I suggest that it should have
19 been done in response to the motion that
20 was already filed. If you give them
21 another chance, you give them another
22 chance. But in the absence of a
23 reasonable explanation for their failure
24 to comply with the court order with regard
25 to what obviously is extremely important

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1 information -- we've narrowed our focus to
2 the period of time in February of 1998 and
3 March of 1998 and April of 1998 when the
4 communications going on within Morgan
5 Stanley are of critical importance to
6 demonstrate what they knew and when they
7 knew it.

8 And to be told that there are trillions
9 of bits of information that have just been
10 discovered, to be told that we are making
11 an effort to examine them, and we don't
12 know when that effort is going to be
13 completed, we can't give you any idea, we
14 refuse to tell you when we might complete
15 this job with trial two to three weeks
16 away, I suggest, is just unacceptable.

17 And there needs to be a judicial response
18 to that circumstance.

19 And there are alternatives, but the one
20 that I suggest is most appropriate on the
21 basis of the record that currently exists,
22 unless they are given an opportunity to
23 supplement that record is to tell the jury
24 what they did and to tell them that it's
25 reasonable to assume that under these

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Exhibit 3

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

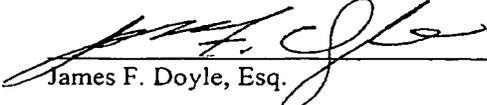
DECLARATION OF JAMES F. DOYLE

1. I am James F. Doyle. I am employed as an Executive Director in the Law Division of Morgan Stanley & Co. Incorporated ("Morgan Stanley"). In that capacity, I have personal knowledge of the matters set forth herein.

2. On information and belief, Morgan Stanley produced restored e-mail documents in the above-captioned matter on May 14, 2004.

3. At the end of October 2004, I learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data on those tapes had not been restored or searched prior to Morgan Stanley's May 14, 2004 e-mail production. Upon learning that information, I directed that the electronic searches described in the April 16, 2004 Agreed Order be conducted for any backup tapes that had been restored and made searchable at that point, and that the process of restoring the remaining backup tapes continue as expeditiously as possible.

UNDER PENALTY OF PERJURY, I HEREBY DECLARE THAT THE FOREGOING IS TRUE AND CORRECT.


James F. Doyle, Esq.

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Exhibit 4

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031466

IN THE CIRCUIT COURT FOR THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA
CASE NO. 03 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

DEPOSITION OF ALLISON GORMAN NACHTIGAL

Taken before Tracey L. Spatara, Registered
Professional Reporter, Notary Public in and for the
State of Florida at Large, pursuant to Notice of Taking
Deposition filed by the Plaintiff in the above cause.

Wednesday, February 9, 2004
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida
3:10 p.m. to 5:30 p.m.

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1 PROCEEDINGS
 2 - - -
 3 THEREUPON,
 4 ALLISON GORMAN NACHTIGAL
 5 being by the undersigned Notary Public first duly
 6 sworn, testified as follows:
 7 THE WITNESS: I do.
 8 DIRECT EXAMINATION
 9 BY MR. BYMAN:
 10 Q. The record should reflect that this is the
 11 deposition of Allison Gorman Nachtigal taken pursuant
 12 to the order of court dated February 3rd, 2005 and the
 13 designation pursuant to that order of Ms. Gorman
 14 Nachtigal as one of three witnesses.
 15 Before we started the deposition, you gave
 16 me permission to call you Ms. Gorman, is that all
 17 right?
 18 A. Yes.
 19 Q. And I appreciate that, because I'm not very
 20 good at five syllable names?
 21 A. Me neither.
 22 Q. Would you state your full name for the
 23 record, please?
 24 A. Allison Gorman Nachtigal.
 25 Q. Where do you reside?

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1 A. Mamaroneck, New York.
 2 Q. I apologize for asking, but how old are you?
 3 A. 36.
 4 Q. What's your educational background?
 5 A. I went through and got a BA in computer
 6 science at Hamilton College.
 7 Q. In what year?
 8 A. I graduated in 1990.
 9 Q. Since 1990 how have you been employed?
 10 A. I worked for Morgan Stanley from August of
 11 1990 through August of -- no, I'm sorry. Back up.
 12 July of 1996 I left for a year. I worked at Smith
 13 Barney. And I returned to Morgan Stanley in August of
 14 1997. I've been there since.
 15 Q. When you were at Morgan Stanley for your
 16 first tour of duty, what jobs did you hold?
 17 A. I joined as a trainee. I was a floor
 18 support person. I went into a rotation in our data
 19 center where I did development and a combination of
 20 that and shift work. We operated the main frame
 21 systems.
 22 When I came off that rotation, I continued
 23 to do development, management for the back-end systems
 24 on the main frame.
 25 From there I started to manage a help desk

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1 part-time and that subsequently became my full-time
 2 job. And I did a help desk consolidation. That was my
 3 last role before going to Smith Barney.
 4 Q. What did you do at Smith Barney?
 5 A. I was brought over to do a help desk
 6 consolidation. Shifted gears about three times there
 7 managing a number of different help desk service-based
 8 areas. And left.
 9 Q. And when you came back to Morgan Stanley in
 10 1997 did you have a title?
 11 A. No, I came in as an associate and my job
 12 description was integration engineering.
 13 Q. Did there come a time when you did get a
 14 title?
 15 A. Yes, I was promoted to VP in 1999. No, I'm
 16 sorry, 1998. And I made ED in 2000.
 17 Q. ED being executive director?
 18 A. Executive director.
 19 Q. As VP what were your duties?
 20 A. When, I came back and I was doing
 21 integration engineering, that job essentially developed
 22 over the next few years. And so I moved into being
 23 responsible for the infrastructure that interconnected
 24 Morgan Stanley, the merger that we had done with Dean
 25 Witter and Discover. So there was infrastructure we

1 put in place to connect those. And I was responsible
 2 for that.
 3 I took on a service-based role and sort of
 4 tacked that on to my responsibilities. That included
 5 providing frontline based services for our -- what we
 6 consider our company functions like HR and legal.
 7 I shed that piece of the role, but kept the
 8 cost company integration role and moved over into the
 9 group that I'm a part of now, Enterprise and Client
 10 Technologies, at the end of 2000, which was when I got
 11 the second promotion.
 12 Q. And that was the promotion to executive
 13 director?
 14 A. Yes.
 15 Q. Have you had any promotions or changes in
 16 job responsibilities since the year 2000?
 17 A. Yes.
 18 Q. Would you tell me what those are?
 19 A. I took on product management for a number of
 20 intercompany based products that ECT, which is
 21 Enterprise and Client Technologies, I was responsible
 22 for including the Internet, the firm-wide directory
 23 services. I took on a development team for our e-based
 24 learning training team. I took on responsibility for
 25 the on-demand product that we have for IBM, which is

1 used for records retention.
 2 I took on some risk management based sort of
 3 responsibilities across ECT as well, which I still
 4 carry. I got out of a few of those, not all, and took
 5 on the e-mail archive responsibilities in August of
 6 this year. That pretty much brings you to current.
 7 Q. Who had been in charge of e-mail archive
 8 responsibilities prior to your doing it in August of
 9 2004?
 10 A. Arthur Reil.
 11 Q. Is Mr. Reil still with Morgan Stanley?
 12 A. He is on leave from Morgan Stanley.
 13 Q. Do you know where he's located?
 14 A. No.
 15 Q. Do you know if he's still on Morgan
 16 Stanley's payroll?
 17 A. I know he was for some time. I don't know
 18 currently if he is.
 19 Q. To your knowledge or understanding did he go
 20 on leave in August of 2004 or at some other time?
 21 A. He went on leave the same day I took over.
 22 Q. And I really don't mean to pry into his
 23 personal affairs, but do you know if there was a
 24 medical reason for that or a --
 25 A. He was placed on administrative leave by the

1 firm.
 2 Q. Do you know what the reason for that was?
 3 A. I don't know the specifics.
 4 Q. Was it a disciplinary action?
 5 A. I think there were general concerns about
 6 his work.
 7 Q. Were there general concerns about his work
 8 on the e-mail archive project?
 9 A. Yes.
 10 Q. And what was the nature of those concerns?
 11 A. I don't know the details.
 12 Q. What did you do to get up to speed in order
 13 to perform your duties with respect to the e-mail
 14 archive project?
 15 A. We gathered together all of the people who
 16 were familiar with the system and had, essentially, a
 17 turn over meeting with myself and a couple people that
 18 I had collected within the day or so it took us to put
 19 the meeting together.
 20 They started to train us as best they could
 21 on how the system operated. And shortly following
 22 that, over the next two weeks, we conducted interviews
 23 with Arthur and two people -- actually, two people on
 24 his team and then later in September we conducted an
 25 interview with somebody in the offshore development

1 team that had previously supported the product.
 2 Q. Let me back up a bit. Is there something
 3 called the e-mail archive project? Is there some
 4 official name we should call it?
 5 A. The e-mail archive system, yeah.
 6 Q. Had you had any exposure or knowledge of
 7 that system prior to August of 2004?
 8 A. Peripherally.
 9 Q. You just knew that it existed?
 10 A. I knew it existed. Arthur -- and I knew
 11 Arthur and I supported him in other capacities, not
 12 directly in that one, but we talked.
 13 Q. Prior to him being placed on administrative
 14 leave was he in a co-equal position to you or superior
 15 position or inferior position?
 16 A. We were in different organizations, but
 17 roughly equal in terms of level.
 18 Q. And when you were -- and I don't know if you
 19 were offered this job or were assigned to it. I guess
 20 I should figure that out first.
 21 Was this something you were told to do or
 22 was it something that was an opportunity?
 23 A. It was something I was asked to do.
 24 Q. Did you view it as an opportunity?
 25 A. Yes, on some level.

1 Q. Who was it that gave you this opportunity or
 2 asked you to do it?
 3 A. My manager.
 4 Q. And who is that?
 5 A. Jonathan Saxe, S-A-X-E.
 6 Q. And had he also been Mr. Reil's manager?
 7 A. No.
 8 Q. Do you know who Mr. Reil's manager was?
 9 A. Yes, Moyra Kilcoyne, K-I-L-C-O-Y-N-E.
 10 Q. I take it from the fact that you were
 11 offered this job by a different manager that the
 12 project moved from one manager to another?
 13 A. Yes, there was a decision --
 14 Q. How did that happen?
 15 A. Arthur was a part of an organization called
 16 company IT. It's an application development team that
 17 is responsible for all of the systems that legal, HR
 18 and all these company-based functions run.
 19 When they -- there had actually been prior
 20 discussions about this, but when he was asked to leave,
 21 they decided to move ahead with the change that had
 22 already been under discussion, which was to move it
 23 over to ECT. We have responsibility for e-mail, web,
 24 which is one of the other content types we're
 25 interested in. All the messaging type, instant

1 messenger, faxing. So, essentially, Arthur archived
 2 what ECT was generating. So since we generated it, we
 3 would be better at archiving it. Therefore, the
 4 decision between Moyra and John to move it over between
 5 the organizations.
 6 Q. And when Mr. Saxe asked you to take on this
 7 responsibility what did he tell you your job was going
 8 to be?
 9 A. He told me I was going to be responsible for
 10 the applications, development of the e-mail archive and
 11 actually the supervisory system, which is closely
 12 linked to that.
 13 Q. Did he tell you that there was some problem
 14 with the project up until that date that precipitated
 15 your taking it over?
 16 A. He told me that the team that supported the
 17 system was put on leave. I knew the people were going.
 18 I didn't know anything about the system.
 19 Q. Well, in order to fix whatever it was that
 20 put those people on leave, you had to know what the
 21 problem was, didn't you?
 22 A. I didn't assume there was any problem with
 23 the system. It was a problem with the people.
 24 Q. All right. But there was some problem
 25 somewhere that required a change in personnel. Did you

1 ever identify what the problem was?
 2 MR. JONES: Object to the form of the
 3 question, asked and answered.
 4 You can answer.
 5 THE WITNESS: It came out over the course of
 6 discussions that they were concerned with Arthur
 7 and his team. They thought he was reading
 8 people's e-mail. They didn't trust the offshore
 9 that he had commissioned to do the work. And so
 10 they let them go.
 11 BY MR. BYMAN:
 12 Q. So this was an integrity issue as opposed to
 13 a performance issue?
 14 A. It was an integrity issue.
 15 Q. When you took over in August of 2004, what
 16 did you do to get up to speed other than what you've
 17 just told me?
 18 A. One of the people -- we took two people from
 19 the e-mail engineering team, which is essentially part
 20 of ECT, and we put them on the team. Because they had
 21 the most knowledge of the system since they had worked
 22 closely with Arthur's team in order to feed him the
 23 content. And from there we essentially dug into the
 24 code.
 25 Q. Did you retain anybody who had been on

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1 Arthur's team?
 2 A. I did not.
 3 Q. I mean, did you keep on your team people
 4 that had been on his team?
 5 A. No.
 6 Q. So there was a complete turnover in
 7 personnel?
 8 A. There was one person who stayed, but that
 9 person did not come to me.
 10 Q. Who was that person?
 11 A. Boy, I can't spell her name. It's
 12 D-A-N-I-L-Y-A-N, I believe. She went to work for the
 13 IT security team. They took over operating the inquiry
 14 tool.
 15 Q. What was the purpose of the e-mail archive
 16 project, what was it supposed to do?
 17 A. We built a system to meet the regulations
 18 from the various regulatory bodies to retain all of our
 19 e-mail on worm compliance storage, meet all the
 20 third-party supervisor requirements and make it
 21 possible to make inquiries into e-mail as required by
 22 the SEC, HR.
 23 Q. Did you have any knowledge about any SEC
 24 requirements that you were supposed to meet? What did
 25 you do to find out what requirements you were meeting?

1 A. I read the 17A4 regulation, which the system
 2 was built to meet, so that I would be educated from
 3 that perspective.
 4 I met with my key user in compliance.
 5 Q. Who is that?
 6 A. Scott Rockoff, to get an understanding of
 7 the system.
 8 Q. Were you aware that there had been an SEC
 9 fine imposed against Morgan Stanley with respect to its
 10 past e-mail practices?
 11 A. At that time, no.
 12 Q. You later learned that?
 13 A. I learned that later.
 14 Q. Were you aware that the e-mail archive
 15 project grew out of reacting to that fine?
 16 A. No.
 17 Q. Did you have any understanding as to what it
 18 grew out of other than to comply with the law?
 19 A. Yeah, just to comply with the law.
 20 Everybody on the street was building an e-mail archive.
 21 I didn't scratch my head too much.
 22 Q. The idea then was to archive e-mails on an
 23 ongoing basis?
 24 A. Yes. The focus of the live system is to
 25 pick messages out of the infrastructure as they flow

1 through and archive them.
 2 Q. And keep them in a searchable format for
 3 three years?
 4 A. Yes.
 5 Q. Was part of the project, what, to
 6 reconstruct and archive past e-mails?
 7 A. Yes.
 8 Q. How far back?
 9 A. Not reconstruct, but...
 10 Q. Was there any reconstruction involved?
 11 Recovery? I'm not going to speak the same language
 12 that you do, Ms. Gorman. I apologize.
 13 A. Reconstruction is a little different.
 14 Yes, recover. Migrate, as we say.
 15 Yes, there was a tape restoration process
 16 underway.
 17 Q. And what was the goal of that process? How
 18 far back were you trying to go?
 19 A. I don't know if there was a date. I believe
 20 we were basically migrating all the tapes that were
 21 available. I never heard it associated with a date.
 22 Q. So anything you could find?
 23 A. So anything we could find we were putting
 24 in.
 25 Q. What did you do to cast your net to make

1 sure you found as much as possible?
 2 MR. JONES: Object to the form.
 3 THE WITNESS: That's not my area to cover.
 4 BY MR. BYMAN:
 5 Q. Whose area is that?
 6 A. Bob Saunders, the enterprise competing
 7 group.
 8 Q. Does he report to you on the e-mail archive
 9 system?
 10 A. No.
 11 Q. Do you know who he does report to?
 12 A. Jerry DeMarco.
 13 Q. Who is Mr. DeMarco?
 14 A. Jerry DeMarco runs a group that we call
 15 enterprise computer, which is -- actually he probably
 16 runs a subset of that, responsible for the UNIX and
 17 Windows-based server infrastructure, and desktop
 18 infrastructure.
 19 Q. Do you still report to Mr. Saxe?
 20 A. Yes.
 21 Q. Do you know who he reports to?
 22 A. He has a dual report to Richard Anfang and
 23 Guy Chiarello.
 24 Q. And who were they?
 25 A. Richard Anfang runs an organization called

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1 EI and guy is the CIO.
 2 Q. Chief institutional officer?
 3 A. Yes.
 4 Q. Do you know who Mr. DeMarco reports to?
 5 A. Jerry reports to Jeff Birnbaum.
 6 Q. And who is he?
 7 A. He oversees both enterprise computing and a
 8 group we call enterprise application infrastructure.
 9 Q. This may be above your pay grade, but is
 10 there a point at which --
 11 A. All this comes together?
 12 Q. Yes.
 13 A. Richard. So John and Jeff both report
 14 directly to Richard.
 15 Q. Richard Anfang?
 16 A. Yes.
 17 Q. Let me back up a little bit about your
 18 preparation today and your reason for being here today.
 19 Did you do anything to prepare for your
 20 deposition today?
 21 A. I met with the lawyers.
 22 Q. When did you meet with them?
 23 A. Last night and today on the plane.
 24 Q. And I don't want to know what you said, but
 25 I would like to know how long you talked, how much time

1 did you spend in preparation?
 2 A. Last night we spoke just a little over an
 3 hour.
 4 Q. And your plane ride couldn't have been more
 5 than --
 6 A. The plane ride I think we talked for about
 7 two hours maybe.
 8 Q. Other than last night and today on the
 9 plane, have you had any other contact with the lawyers
 10 with respect to e-mail issues? And, again, I don't
 11 want the substance, I just want to know if you've had
 12 contact?
 13 A. I need you to be a little more specific. I
 14 talk to lawyers about e-mail every day.
 15 Q. Let me be more specific. In front of us is
 16 a stack of documents that were provided to us
 17 yesterday. Again, the court order, which you may or
 18 may not be aware of, but let me represent to you that
 19 there was a court order that directed Morgan Stanley to
 20 advise us of the identity of witnesses who would
 21 testify at a hearing on Monday. You are one of three
 22 persons who has been identified to us. And it also
 23 directed Morgan Stanley to produce any document that
 24 might be used in connection with the testimony of those
 25 three witnesses.

1 I have the entire stack in front of you. My
 2 first question is: Did you help prepare any of those
 3 documents to your knowledge?
 4 A. I produced --
 5 MR. JONES: Hold on. You ought to look to
 6 see what the documents are.
 7 THE WITNESS: That's a good point.
 8 MR. BYMAN: Please feel free.
 9 BY MR. BYMAN:
 10 Q. And what I'd like you to do, Ms. Gorman, if
 11 you could, is let's keep them in numerical order and go
 12 through them and tell me if any of the documents as you
 13 go through them are documents that you provided to
 14 counsel so that they could be provided to us.
 15 A. I'm assuming these are bundled in some way.
 16 Q. I think that's the way they were produced to
 17 us.
 18 A. No, this isn't any of the stuff I gave them.
 19 MR. JONES: Why don't you look through it
 20 again, because there should be -- I wasn't in
 21 charge of production, so I can't...
 22 I don't know if you guys brought everything.
 23 MR. BYMAN: It could be that she's looking
 24 for the supplemental things.
 25 BY MR. BYMAN:

1 Q. Ms. Gorman, I didn't mean to mislead you.
 2 That was the initial thing we got at noon yesterday.
 3 Then we got a small supplemental package later. And
 4 I'm going to show you this. Does this look familiar?
 5 A. That one looks familiar.
 6 Q. Let me separately do those, but why don't
 7 you go through that stack and see if there's anything.
 8 A. I didn't produce anything that was a printed
 9 e-mail or report like this.
 10 Q. So nothing in that stack --
 11 A. No, nothing in that stack.
 12 Q. And for the record, the stack is Morgan
 13 Stanley confidential 0112286 through 113899.
 14 Nothing in that stack is something that
 15 looks familiar to you?
 16 A. No.
 17 (Plaintiff's Exhibit 420 was marked for
 18 identification.)
 19 BY MR. BYMAN:
 20 Q. And now let me mark a series of documents.
 21 I'm going to show you first what I'll mark
 22 as CPH 420, document 113912 through 918. Is that one
 23 of the documents that you provided for production to
 24 us?
 25 A. Yes.

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1 Q. And why did you produce that document?
 2 A. Legal asked me to produce documents that
 3 referred to the project and the taper store piece.
 4 Q. I'm sorry, I'm having trouble hearing you.
 5 A. All the documents that related to the e-mail
 6 archive.
 7 Q. All of the documents?
 8 MR. JONES: Well, you're not going to get
 9 into a conversation about the lawyers. You
 10 asked her why did she produce it and you know as
 11 an order we asked her to gather documents. And
 12 this is what we provided to you.
 13 BY MR. BYMAN:
 14 Q. Let's talk about what you have.
 15 And we can tell now, and I'll mark the rest
 16 of these, but we're talking about a fairly thin stack
 17 of documents?
 18 A. Yes.
 19 Q. Am I correct in understanding that you have
 20 not worked for the last nearly seven months, five
 21 months, since August 2004 and generated only about 100
 22 pieces of paper?
 23 In other words, the documentary record of
 24 your efforts on the e-mail project would consume, I
 25 presume, thousands of pieces of paper?

1 A. No, I produce monthly status reports. I've
 2 done -- which actually we skipped December, so it would
 3 be one less. I produced two interim reports. I
 4 produced on -- and a working project list, which I've
 5 tried to keep consolidated, so it's one document that I
 6 update on a regular basis.
 7 Q. But I take it you did not produce all of
 8 those to counsel for production to us?
 9 A. I produced a lot of -- yeah. Did I? I
 10 pretty much produced all my notes and all my status
 11 reports and the project list.
 12 Q. All right. Then let me mark next as Exhibit
 13 421 a document with production numbers 113900
 14 through -- well, it's cut off, but there's a page 910
 15 and the next one doesn't have the number on it, so I
 16 presume it's 911.
 17 (Plaintiff's Exhibit 421 was marked for
 18 identification.)
 19 BY MR. BYMAN:
 20 Q. Is that one of the documents that you
 21 produced?
 22 A. Yes.
 23 (Plaintiff's Exhibit 422 was marked for
 24 identification.)
 25 BY MR. BYMAN:

1 Q. Then as Exhibit 422, a two-page document
 2 with numbers 113919 and 920.
 3 A. Yes.
 4 Q. Is that a document that you produced?
 5 A. Yes.
 6 Q. Next as Exhibit 423, document with
 7 production numbers 921 through 923.
 8 (Plaintiff's Exhibit 423 was marked for
 9 identification.)
 10 BY MR. BYMAN:
 11 Q. Is that a document that you produced?
 12 A. Yes.
 13 Q. And the last one I have is 924 through 926,
 14 which I'll mark as Exhibit 424.
 15 (Plaintiff's Exhibit 424 was marked for
 16 identification.)
 17 BY MR. BYMAN:
 18 Q. Is that a document you produced?
 19 A. Yes.
 20 Q. Ms. Gorman, I'll represent to you that with
 21 those five exhibits that we've just marked I've now
 22 given you everything that was produced to us yesterday
 23 pursuant to the court order.
 24 Is the stack of things that are now in front
 25 of you, Exhibits 420 through 424, the universe of what

1 you gave to counsel, or did you give them a greater
 2 quantity of documents?
 3 A. I gave them a greater quantity of documents.
 4 Q. Again, I don't want to know what's in
 5 that -- actually I do want to know what's in it, but
 6 he's not going to let me find out. But I'd like to
 7 know the bulk difference. How big was the set you gave
 8 them versus the set they gave us?
 9 A. I'd say roughly double.
 10 MR. BYMAN: Mike, I'm inclined to ask her
 11 what was in the other documents, but can I
 12 correctly presume you won't let her tell me?
 13 MR. JONES: That's right. Any documents
 14 that she provided to us that we did not provide
 15 were held on the grounds of privilege.
 16 MR. BYMAN: We can expect a privilege log in
 17 due course?
 18 MR. JONES: Actually, you may already have
 19 one.
 20 MR. BYMAN: We didn't have it at the time we
 21 left for this deposition.
 22 MR. JONES: There will be a privilege log.
 23 MR. BYMAN: On that representation, I will
 24 not inquire now, but obviously we reserve the
 25 right, if it's appropriate, to go further into

1 that.

2 BY MR. BYMAN:

3 Q. Let me go back, Ms. Gorman, to what you've

4 done that got you here today.

5 In addition to what you did to prepare for

6 the deposition, have you had any conversations relating

7 to the migration of e-mails or the restoration of

8 e-mails with Mr. Saunders?

9 A. Yes.

10 Q. How many conversations have you had with him

11 on those subjects?

12 MR. JONES: Object to the question as vague.

13 Time period.

14 BY MR. BYMAN:

15 Q. Well, is he somebody that you talk to

16 frequently?

17 A. I talk to Bob frequently about many things.

18 He provides infrastructure to us, so to quantify that

19 in abstract.

20 Q. Well, did you talk to him about the subject

21 of this upcoming hearing or your depositions?

22 A. We discussed the fact that we were both --

23 we didn't even talk verbally. I knew he was going. We

24 didn't discuss anything, other than we'd both be down

25 here.

1 Q. How often do you interface with

2 Mr. Saunders?

3 A. Sometimes once a week, sometimes not for two

4 weeks. It depends on the time of month. Again, he

5 provides us infrastructure. If I'm waiting for

6 something, I might talk to him every day.

7 Q. You and he are officed in the same building

8 in Manhattan; is that correct?

9 A. Yes.

10 Q. Are you on the same floor?

11 A. No.

12 Q. How many floors separate you?

13 A. About 23.

14 Q. What floor are you on?

15 A. I'm on 34.

16 Q. And what floor is he on?

17 A. He's on 9. I never see him.

18 Q. Are you in separate elevator banks?

19 A. Yes.

20 Q. What about Mr. -- is it pronounced Seickel

21 or Seickel, Glenn Seickel?

22 A. Glenn Seickel, yes.

23 Q. Have you spoken with him on the subject of

24 the upcoming hearing or your depositions?

25 A. No.

1 Q. Were you aware that he was one of the three

2 people that was identified?

3 A. Yes.

4 Q. Have you ever spoken to Mr. Seickel?

5 A. Yes.

6 Q. On what subjects?

7 A. Primarily because his team hands off the --

8 is responsible for taking the data off the tapes and

9 loading it into the staging area. My conversations

10 with Glenn are typically about whether he's passed

11 stuff over to us and status around that.

12 Q. Who is Grant Jonas?

13 A. Grant is responsible for running the inquiry

14 tool, which is the front end to the e-mail archive.

15 Q. By inquiry tool is that what a layman such

16 as myself would call a search engine?

17 A. That would be a little glorified, but, yes.

18 It's the way people pull results out of the e-mail

19 archive.

20 Q. And does he operate that tool, at least in

21 part, to find old e-mails?

22 A. Yes.

23 Q. Was he the designer of the tool?

24 A. No.

25 Q. He simply operates it?

1 A. Yes.

2 Q. Who did design the tool?

3 A. Arthur Reil's team designed the tool.

4 Q. Do you know who specifically designed it?

5 A. No.

6 Q. Once the tool identifies something and

7 actually extracts an e-mail, how does it get put into

8 searchable form?

9 A. That's not --

10 Q. That's not an articulate question because

11 I'm speaking the wrong language.

12 Let's take it in small steps.

13 My understanding is if you get an e-mail

14 while it's still on an operating system of some sort

15 it's searchable by various parameters, for example, an

16 idiot like me can search something by date or by

17 author. There are ways to search things, is that

18 correct?

19 A. Are you thinking of mail in a system where

20 you would have like Outlook in front of it?

21 Q. Yes.

22 A. That would not work based on the way we

23 store mail.

24 Q. How do you store mail?

25 A. We store mail in basically a flat file

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1 format. We search it -- closest equivalent I could
 2 give you would be a text file.
 3 Q. So it would be the equivalent of doing a
 4 word search in a Word document?
 5 A. Yes, only it's all UNIX, so you would have
 6 to do a grep, which means you would have to take a
 7 class.
 8 Q. And the searches that you do, are they case
 9 sensitive or word sensitive?
 10 A. The searches that we do go against our
 11 database, typically -- and our database is case
 12 sensitive.
 13 Q. So that if you were searching for Dunlap,
 14 for example, and you didn't capitalize the "D" you
 15 would not get the name if you did it in all small
 16 letters?
 17 A. You wouldn't search for a word, but, yes.
 18 Q. How would you search?
 19 A. Well, the way the tool operates is it takes
 20 e-mail addresses and date ranges and then it creates an
 21 extract of e-mail that matches that criteria.
 22 Q. I'm sorry, we've been talking about two
 23 different things, I think. And that's the problem with
 24 my not knowing your field.
 25 In the first instance I understand that the

1 inquiry tool that we were talking about that Mr. Jonas
 2 is in charge of is designed to locate the e-mails, so
 3 it searches for the e-mail messages themselves.
 4 My question was: Once you found the
 5 e-mails, in whatever way you do that, is it possible to
 6 load them on to some sort of software so that somebody
 7 can do a search for substance within the e-mails?
 8 A. Yes.
 9 Q. And that's the search that I had moved on
 10 to.
 11 A. Yes. And that would be outside the system
 12 I'm responsible for.
 13 Q. So you don't know how that operates?
 14 A. I don't do that part. We do have limited
 15 key word functionality, if that's what you're asking
 16 me.
 17 Q. Well, what I'm looking for is, let's put it
 18 in the confines of what we actually care about for
 19 purposes of today and Monday. We're looking for old
 20 e-mail, e-mails from the 1998 time period when the
 21 events of this lawsuit were. And we understand that
 22 some of those e-mails may exist on backup tapes.
 23 So the first step is to find out if they
 24 exist.
 25 The next step is to extract them into some

1 sort of searchable form.
 2 And the third is to actually search them so
 3 that we can find out if they really have something to
 4 do with our case?
 5 A. Okay.
 6 Q. Is that a fair way of putting it?
 7 And you fall within the first two steps, if
 8 I understand correctly, and not the third?
 9 MR. JONES: Can I just have that read back?
 10 THE WITNESS: You're using very different
 11 terminology.
 12 (A portion of the record was read by the
 13 reporter.)
 14 MR. JONES: I guess I would first object to
 15 the statement. I was going to say the form of
 16 the statement. It's not clear to me that it was
 17 a question.
 18 I object to the question as vague and
 19 ambiguous.
 20 BY MR. BYMAN:
 21 Q. Were you able to understand that, are you
 22 able to answer it?
 23 A. I understand what you're asking, but it's
 24 hard to answer you accurately based on the way you
 25 painted the system. Based on the steps as you

1 described it.
 2 Q. Put it in your words instead of how I
 3 described it. How do we get something that there might
 4 be something on the backup tape to figure out what's on
 5 the backup tape and finding it?
 6 A. Roughly, relating to the way you phrased it,
 7 we're responsible for the middle piece, the making that
 8 e-mail searchable. Grant's team is responsible for
 9 actually inquiring against that data. We do assist
 10 him. So I would say we do play some role on occasion
 11 in that last piece.
 12 Q. Let me make sure I understand this.
 13 By middle piece you mean you don't find the
 14 missing backup tapes?
 15 A. I don't find the tapes.
 16 Q. But once somebody has found them, you figure
 17 out a way to put them into searchable form?
 18 A. Yes.
 19 Q. And then Mr. Jonas is the one that actually
 20 searches them?
 21 A. He searches them. And if he has a problem,
 22 he contacts my team and we help him.
 23 Q. Who is in charge of the first step of making
 24 sure that we have all of the backup tapes?
 25 A. Bob Saunders' team.

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1 MR. JONES: Hold it. Object to the form of
 2 the question, particularly the statement that
 3 "make sure that we have all the backup tapes."
 4 Are you talking about in the context -- it's
 5 a different question to ask it generally, to
 6 make sure that all the backup tapes have been
 7 found. When you seem to be making it specific
 8 to the Coleman case, I object to that. Because
 9 it may assume a role for this witness that may
 10 or may not exist.
 11 BY MR. BYMAN:
 12 Q. Okay. I think you understood my question
 13 because you already answered that it was Mr. Saunders.
 14 A. I think.
 15 MR. JONES: Fine.
 16 THE WITNESS: You understand the question a
 17 bit better than I did, but, yes.
 18 BY MR. BYMAN:
 19 Q. So Mr. Saunders brings to you whatever it is
 20 he finds. You then load it on the system so that it
 21 becomes searchable in some way?
 22 A. Yes.
 23 Q. And once that's done, unless Mr. Jonas has
 24 some problems doing it, your role is over and he's the
 25 one that actually does the searches?

1 A. No.
 2 Q. Do you know Bruce Buchanan?
 3 A. No.
 4 Q. Have you heard of a firm called NDCI?
 5 A. Yes.
 6 Q. Have you heard of Mr. Buchanan in that
 7 context?
 8 A. No.
 9 Q. What is your understanding of NDCI's role?
 10 A. They're the vendor that was contracted to
 11 take what were our smaller DLT, or any type of tape,
 12 and essentially compress it into a SDLT, a Super DLT
 13 tape, which is then processed, is then handed off and
 14 loaded on to the system for us.
 15 Q. What does the acronym DLT stand for?
 16 A. I do not know.
 17 Q. Digital something?
 18 A. I don't know much about tapes.
 19 Q. But SDL tapes, which is whatever DLT is with
 20 a super in front of it?
 21 A. They're bigger, they hold more data. The
 22 whole purpose is to take lots of little tapes and put
 23 it into one big tape.
 24 Q. And Morgan Stanley is able to internally
 25 work with the SDL tapes?

1 A. Yes.
 2 Q. Who is Wray Stewart,
 3 A. Wray, I believe, works on Bob's team. He's
 4 in that group. I know him as a person.
 5 Q. Do you know what his position or title is?
 6 A. Not right now.
 7 Q. Let me represent to you that there are
 8 e-mails that suggest that he was involved at the same
 9 time that Mr. Reil was involved. Would that suggest
 10 that maybe he is no longer involved if the whole team
 11 has changed, or is he somebody that carried over?
 12 A. His name has come up in the context of the
 13 project; as having played a role from Bob's team.
 14 If you're asking what does he do today? I
 15 don't know the answer.
 16 Q. Who is Kay Gunn, G-U-N-N?
 17 A. I met her once. She works on Bob's team, I
 18 believe.
 19 Q. Who is Donald Haight, H-A-I-G-H-T?
 20 A. Don Haight is a consultant who worked for
 21 Arthur Reil who is responsible for the system, the
 22 archive system.
 23 Q. Is he with NDCI?
 24 A. No.
 25 Q. Do you know what his firm is?

1 A. Yes.
 2 Q. You don't have to go to an outside vendor to
 3 do that?
 4 A. No.
 5 Q. Do you know how many DLT tapes could be put
 6 on an SDL tape?
 7 A. No.
 8 Q. Can you describe physically the size of the
 9 DLT tape? Is it as big as a cassette tape or
 10 videotape?
 11 A. Never saw one.
 12 Q. So you don't have any idea?
 13 A. Not since my main frame days have I seen a
 14 tape or a tape drive.
 15 Q. If somebody was talking about 1,000 DLT
 16 tapes, then you would have no idea whether that would
 17 fit in a bread box or a file cabinet or a book case?
 18 A. No.
 19 Q. Do you know someone named Annaline
 20 Dinkelmann?
 21 A. Yes.
 22 Q. Who is she?
 23 A. She is the integration engineer who -- I
 24 know her a few different ways. She works at Morgan
 25 Stanley. Her current role is she's an integration

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1 engineer.
 2 Q. Does she have anything to do with the e-mail
 3 archive project?
 4 A. She used to.
 5 Q. Was she part of Mr. Reil's team?
 6 A. No, she was in a different part of the
 7 organization that supported Arthur's team.
 8 Q. Do you know John Pamula?
 9 A. No.
 10 Q. Mohammed Hasan?
 11 A. No.
 12 Q. Danny Bailey?
 13 A. No.
 14 Q. Who are the people that are on your team?
 15 A. Horace Sequeira, S-E-Q-U-E-I-R-A.
 16 Q. What is his function?
 17 A. He's the development manager.
 18 Q. Who else is on your team?
 19 A. Tim Brown.
 20 Q. What's Mr. Brown's role?
 21 A. Product manager.
 22 Q. What product does he manage?
 23 A. The e-mail archive and the supervisory
 24 system.
 25 Q. Who else is on your team?

1 A. David Matteo.
 2 Q. What's his role?
 3 A. He's a developer.
 4 Q. What does he develop?
 5 A. He supports the e-mail archive and the
 6 supervisory system.
 7 Q. Who else is on the team?
 8 A. Andrew Brown.
 9 Q. Did we already have a Mr. Brown?
 10 A. Yes.
 11 Q. Different Brown?
 12 A. Yes.
 13 Q. What does the second Mr. Brown do?
 14 A. Same as David Matteo.
 15 Q. Anyone else?
 16 A. Sabita Arumalla, A-R-U-M-A-L-L-A. And she's
 17 also a developer for the two systems.
 18 Q. Anyone else?
 19 A. That's it.
 20 Q. What does Morgan Stanley do to migrate data
 21 from backup tapes on to a searchable database?
 22 A. We run a set of scripts that index the
 23 content on our database and then insert it into our
 24 file system.
 25 Q. And how do you do that? Can you explain it

1 in lay person's terms?
 2 I can tell you that I think the Judge's
 3 computer background is better than mine, but not
 4 perhaps that much better.
 5 A. All the e-mail content is sitting on a file
 6 system, just in a regular file directory structure.
 7 And so we run a set of code, what I would call a
 8 script, that reads through that content, creates
 9 entries on a key database which acts as our index.
 10 Those entries would contain header data, "to," "from,"
 11 "cc," "subject line," "date." Then the address or the
 12 file system location path, really being the proper
 13 word, of the content where it's been inserted into the
 14 file system. And the file system represents where the
 15 actual content, which is e-mails and attachments, sits.
 16 Did that help?
 17 Q. How long does it take once you have an SDLT
 18 tape to load it on and create it in some sort of
 19 searchable form?
 20 A. It is dependent on -- there's no specific
 21 number I could give you. Because the amount of content
 22 that comes off an SDLT can vary. And the insertion
 23 rate can vary depending on whether the messages are
 24 perceived to be duplicates or not in our system.
 25 Q. What's the maximum amount of data that can

1 fit on an SDLT tape? Can you express it in some number
 2 of gigabytes or terabytes?
 3 A. I think it's 200 gig.
 4 Q. So if we assume the maximum amount, can you
 5 give me an approximate amount of time that it takes to
 6 process it?
 7 A. If I were doing an estimate for the
 8 business, I would say five days, give or take a day.
 9 Q. And a terabyte would be five SDLT tapes then
 10 if they were maxed out?
 11 A. Yeah, if it was maxed out.
 12 Q. Is it possible to load more than one tape at
 13 a time? In other words, when you do your five-day
 14 estimate would you have to do one in five days, then
 15 wait to do the next one?
 16 A. By the time we're loading it, it's no longer
 17 a tape. So it doesn't really equate that way. We will
 18 run through as many messages that are in staging. And
 19 as big as they make our file system that we call
 20 staging is as much as we can hold off a tape.
 21 Q. Let me put it this way, if you've got five
 22 full SDLT tapes at the same time and you started
 23 staging them immediately, would it take 25 days or
 24 would it be some shorter period of time because you
 25 could overlap?

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1 A. There would be no overlap. It's not at that
 2 layer. We don't actually read it off the tape. We
 3 copy it off the tape into the file system, then we
 4 process the file system in a serial fashion.
 5 Q. Right. But it doesn't take the five days to
 6 copy the tape?
 7 A. No. No.
 8 Q. How long does that take?
 9 A. Normally -- I don't know. I don't know how
 10 long the copy process takes. I've never calculated
 11 that.
 12 Q. So within the five days, some part is for
 13 copying and some part is for processing?
 14 A. No, I was thinking solely about processing
 15 actually. I'm sorry, because in my mind I pick it up
 16 once it's on disk. So I do not know how long it takes
 17 to copy off the tape.
 18 Q. Can it take as much as a full day?
 19 A. I don't know how long it takes.
 20 MR. JONES: Can we take a
 21 short we've-been-at-this-an-hour break?
 22 MR. BYMAN: Sure.
 23 (A recess was taken.)
 24 BY MR. BYMAN:
 25 Q. Without regard to how long it may take to

1 load the data off of the tape and on to your, I presume
 2 some part of your hard drive?
 3 A. Uh-huh.
 4 Q. Once it's there, would it take 25 days to
 5 process a terabyte of data or would it take less or
 6 more?
 7 A. It would take approximately 25 days give or
 8 take three days. It's not an exact science.
 9 Q. I think even I understand that much of it.
 10 A. Very much depends on what's there.
 11 Q. Does it also depend on what else the
 12 computer is doing, or is this computer dedicated to
 13 this work?
 14 A. It very much depends on what the rest of the
 15 system is doing.
 16 Q. How much of the system's resources has
 17 Morgan Stanley assigned for this particular project
 18 that has us here today?
 19 MR. JONES: Object to the form as vague and
 20 ambiguous, lacking foundation.
 21 BY MR. BYMAN:
 22 Q. Well, let me be more specific. You filed a
 23 declaration in this case in which you said that this
 24 matter is one of your priorities?
 25 A. Yes.

1 Q. What other priorities have you had during
 2 this same period of time?
 3 A. We keep the system running, which is an
 4 operational task.
 5 We support the supervisory system with the
 6 same team. And we have some changes that we're making
 7 to that system as well that are high priority.
 8 And we have been running inquiries
 9 supporting Grant's team, running inquiries.
 10 Q. Does your team for this project have its own
 11 dedicated hardware or does it work on a larger, as a
 12 part of Morgan Stanley's overall system?
 13 A. We have dedicated hardware on the tape side
 14 so the machines that run the tape restores are
 15 dedicated, but the database that they insert into and
 16 the file system that they insert into are the archive.
 17 So if we are running let's say an inquiry at the same
 18 time that we are inserting data, there might be some
 19 contention at that level.
 20 Q. What I'm trying to drive at, Ms. Gorman, and
 21 I'm having trouble articulating the question because of
 22 my lack of education in your field.
 23 I presume that the speed with which you can
 24 process this data has something to do with the speed of
 25 your processors, but also the other tasks that the

1 processor is being asked to do simultaneously. So if
 2 we start with an optimum condition of absolutely
 3 nothing else is happening to the computer system at the
 4 time that you're doing the processing, would it still
 5 take 25 days give or take three?
 6 A. That estimate is based on minimal
 7 contention, yes.
 8 Q. And to the extent that it expands, it's
 9 because there are other competing forces for that
 10 processing capacity?
 11 A. Yes. Hence the give or take a couple days.
 12 Q. But is it only give or take a couple days?
 13 Is there some optimal bad set of circumstance where it
 14 would take 50 days, for example?
 15 A. Yeah. You could hammer a system to the
 16 point where it breaks.
 17 Q. Has that happened to you?
 18 A. No.
 19 Q. When did you first learn that you had some
 20 tapes to load to do your middle step in the process?
 21 A. I knew there was tape restore data waiting
 22 for us in staging in August when I took over.
 23 Q. And did you learn what the quantity was when
 24 you took over in August?
 25 A. I was given rough estimates by nontechnical

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1 people.
 2 Q. Who gave you those rough estimates?
 3 A. Annaline Dinkelman.
 4 Q. What did she tell you?
 5 A. I don't remember exactly. There were some
 6 number of tapes and some -- and some number of gig, a
 7 large number. I don't remember the exact number.
 8 Q. When did you first hear that there was a
 9 lawsuit that related in some way to the restoration of
 10 e-mails?
 11 MR. JONES: Object to the form of the
 12 question.
 13 You can answer if you understand it.
 14 BY MR. BYMAN:
 15 Q. You seem to be confused, so let me step
 16 back.
 17 You're aware that you're here today because
 18 this is a piece of a proceeding in a pending lawsuit?
 19 A. Yes.
 20 Q. You're aware that there's a lawsuit between
 21 CPH, who is the plaintiff in this case?
 22 A. Yes.
 23 Q. And Morgan Stanley, your employer?
 24 A. Yes.
 25 Q. When did you first hear about that lawsuit?

1 A. That lawsuit. Let me just think for a
 2 second.
 3 Mid January.
 4 Q. Of this year?
 5 A. Of this year.
 6 Q. How did you hear about it?
 7 A. We were told there was --
 8 MR. JONES: We don't want to have any
 9 conversations between you and counsel.
 10 THE WITNESS: It was all counsel
 11 conversation.
 12 MR. BYMAN: Well, Mike, respectfully, I
 13 doubt this would be a privileged communication.
 14 MR. JONES: Okay, she can say she learned by
 15 counsel.
 16 THE WITNESS: Yeah.
 17 BY MR. BYMAN:
 18 Q. When was the first time that you learned
 19 that there was some need or requirement that Morgan
 20 Stanley produce e-mails?
 21 A. In general?
 22 Q. For this lawsuit.
 23 A. For this lawsuit. The same time.
 24 Q. Did anyone ever tell you from the time that
 25 you took over in August 2004 until mid January that

1 there was some need to identify and or produce e-mails
 2 for some external purpose?
 3 And what I'm driving at -- that was an
 4 oblique question. Let me try to explain my question,
 5 then maybe it will make more sense.
 6 I understand that you didn't know there was
 7 a lawsuit until January. So you couldn't have known in
 8 August that you needed to produce e-mails for a
 9 lawsuit.
 10 But did anybody tell you prior to mid
 11 January that you needed to produce e-mails, didn't tell
 12 you precisely why, but when you found out later in
 13 January that there's a lawsuit, you would then be able
 14 to make the connection, oh, that's why I was asked to
 15 produce the e-mails.
 16 Do you follow what I'm saying?
 17 You may not have known why somebody asked
 18 you to produce e-mails in August or September?
 19 A. To produce e-mails is part of what I'm --
 20 Q. To identify them?
 21 A. Again, I don't really run the inquiry tool
 22 unless Grant has a problem. So I'm typically not asked
 23 to produce e-mails, maybe that's why I'm having a hard
 24 time with your question.
 25 Q. Were you asked to process tapes and get them

1 into searchable form so that Grant could do his work
 2 and you later figured out, ah-ha, that must have been
 3 for the lawsuit?
 4 A. Yes, to the first part.
 5 Q. No, you never made the connection?
 6 A. I was processing the tapes ahead of the
 7 lawsuit.
 8 Q. I understand. What I'm trying to say is now
 9 that you know that there's a lawsuit, do you realize
 10 that you were processing them at least in part for the
 11 lawsuit?
 12 A. Yes.
 13 MR. JONES: Fine, if you understood it, then
 14 fine.
 15 BY MR. BYMAN:
 16 Q. And that was something that was already --
 17 A. I mean, in January.
 18 Q. And that was something, the processing part
 19 was something that was already underway when you took
 20 over in August and you continued to do it?
 21 A. Yes.
 22 Q. Through the present day, I take it?
 23 A. Yes.
 24 Q. Where are you in that process? Is it almost
 25 done? Is it completely done, is it nowhere near done?

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1 MR. JONES: Object to the question as vague
 2 and ambiguous.
 3 But if you understand it.
 4 THE WITNESS: We're almost done.
 5 BY MR. BYMAN:
 6 Q. What quantity of material have you
 7 processed?
 8 A. We have -- overall? Or in general? Have we
 9 processed or is in the archive, I guess?
 10 Q. Have you processed from tapes that were
 11 discovered after May of 2004?
 12 MR. JONES: Object to the question as vague
 13 and ambiguous.
 14 THE WITNESS: I don't know that I have it
 15 quantified that way.
 16 BY MR. BYMAN:
 17 Q. Do you understand that there were some tapes
 18 discovered after May of 2004?
 19 A. Yes.
 20 Q. Do you have an understanding of the quantity
 21 of those tapes?
 22 A. I've heard a number that is associated with
 23 those tapes, yes.
 24 Q. What number have you heard?
 25 A. 112.

1 Q. You haven't heard a larger number?
 2 A. I'm sorry. I heard 1400 of which 112
 3 contain e-mail.
 4 Q. Were you ever asked to process those 1400 or
 5 112?
 6 A. Yes.
 7 Q. And have you?
 8 A. Yes.
 9 Q. When did you begin that process?
 10 A. Those were imbedded in what was in staging
 11 which we began processing in mid January. Processing
 12 meaning physically moving over.
 13 Q. Is there a reason that that migration didn't
 14 begin until mid January?
 15 A. The preparation for that process began back
 16 in November and it took that long to get the system
 17 ready to begin the processing again.
 18 Q. Why did the preparation only begin in
 19 November?
 20 A. It was in November -- let me see.
 21 In October we prioritized needing to start
 22 the process, but it took us until November to locate
 23 the code that we needed in order to restart the
 24 process. And it took us through January to test, debug
 25 and restart that process.

1 Q. What happened in October, as opposed to some
 2 other time, that suggested you should begin work on
 3 these 112 tapes or 1400, whatever the number was?
 4 A. Conversations with legal that made it
 5 clear --
 6 MR. JONES: Not the content. You can just
 7 say you had a conversation.
 8 BY MR. BYMAN:
 9 Q. You already had the tapes prior to that
 10 conversation, right?
 11 A. We knew there was data in staging.
 12 Q. And you knew that as of the date you took
 13 over in August, isn't that right?
 14 A. Yes.
 15 Q. Is there some reason why those had not been
 16 given a priority until your conversations with counsel?
 17 A. Yes.
 18 Q. What was the reason?
 19 A. We had a small team. And we had a lot of
 20 more critical and time sensitive issues that needed to
 21 be handled.
 22 Q. What were the issues that were more critical
 23 and time sensitive?
 24 A. There were a series. When we took over the
 25 system, we had to figure out what we were doing. And

1 that took several weeks. We had to, for example,
 2 understand an operational procedure that recovered
 3 rotating our database at the end of August, and then
 4 subsequently every month. And so that was our key
 5 focus because everything would have broken if we hadn't
 6 done that.
 7 We had no disk space to unpack our live
 8 content. And so we were focused on making sure that
 9 the system didn't corrupt or drop any of our live
 10 content. And getting disk space in place and moving
 11 things around so if there was an open inquiry that
 12 needed to get to content that was sitting in an
 13 unprocessed fashion, we could get that done.
 14 We were supporting inquiries. And
 15 understanding what it took to support an inquiry from
 16 technical perspective. And we were supporting the
 17 supervisory system, which is a live system, needs to
 18 work every day correctly. And was having ultimately
 19 little problems here and there, but we weren't trained
 20 in it, so.
 21 Q. One of the things you said was, if I heard
 22 you correctly, that you didn't have enough disk space?
 23 A. Yes.
 24 Q. To address the problem?
 25 A. We didn't have any place to unpack the stuff

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1 anyway, until the end of October.
 2 Q. You mean physically unpack the tapes?
 3 A. Physically unpack the tapes.
 4 Q. But once you unpacked the tapes, you also
 5 didn't have any room on your disk to unload them?
 6 A. The place that I call staging where we
 7 actually take the tape and copy it over is a very
 8 different place than our archive. It's locked down in
 9 a very different way and it's a very different type of
 10 disk. Our system is kind of technical. It's a
 11 different kind of disk, think about it that way. So we
 12 didn't have any space in the proper archive until the
 13 end of October.
 14 Q. And what did it take to get that space? Did
 15 you have to buy more hardware?
 16 A. Yes, we did. They installed a whole new
 17 device at the end of October.
 18 Q. Do you know what the cost of that was?
 19 A. No, not offhand.
 20 Q. More than \$10,000, less than \$10,000?
 21 A. More than \$10,000. I assume. The way our
 22 internal finances work, I don't know.
 23 Plus that order was already pending before I
 24 took over. I don't know offhand.
 25 Q. If someone, counsel or anyone had told you

1 in August 2004 that doing something to these 112 tapes
 2 or 1400 tapes, whatever the number was, was a priority,
 3 would you have been able to do something sooner than
 4 October?
 5 A. No.
 6 Q. Why not?
 7 A. We wouldn't have had any place to put the
 8 data, because we didn't have space until October. That
 9 space had been on order for months.
 10 Q. So there was nothing that could have been
 11 moved sooner?
 12 A. It was more than space. No.
 13 Q. Could you have gone to an outside vendor to
 14 have gone through that stage?
 15 A. Going to an outside vendor would not insert
 16 it in our system, so, no.
 17 Q. Well, it would have put it into that other
 18 kind of disk that you needed to get it into that
 19 system, right? Did I misunderstand what your space
 20 limitation was?
 21 A. It --
 22 Q. I thought your archive system itself didn't
 23 have the space limitation, it was a limitation on this
 24 hardware that had this other kind of disk --
 25 A. The hardware is on our premise. A

1 conversation about how long it takes to get hardware
 2 installed is not a conversation that I am well versed
 3 in. I go to Bob's team in this case for disks. He
 4 could speak more appropriately to lead times to getting
 5 disks or servers or anything like that installed.
 6 Q. So the simple answer to my question then
 7 could you have done something in August is something
 8 better addressed to Mr. Saunders than to you?
 9 MR. JONES: Objection, asked and answered.
 10 BY MR. BYMAN:
 11 Q. I genuinely don't understand, Ms. Gorman.
 12 You told me you couldn't have done it any sooner than
 13 October, but then when I asked you why couldn't you go
 14 to a vendor or gotten hardware sooner you said
 15 Mr. Saunders?
 16 A. I said the lead time to getting that stuff
 17 in is something that you would need to talk to Bob
 18 about. So the logistics of ordering a disk and getting
 19 it installed and making it available to my team is
 20 something that Bob would speak to better than myself.
 21 Q. And this thing that has to be done that you
 22 didn't have the capacity for until October, what does
 23 that generate? Does it generate a disk that then gets
 24 fed into the main archive system?
 25 A. We're having a terminology problem, I think.

1 Q. What does it generate?
 2 A. The archive, the container, you can think of
 3 the mail sitting on a disk, it's a device from net app.
 4 So I don't know what your question is. Because I'm not
 5 sure --
 6 Q. Take me through the process. You have one
 7 of these SDLT tapes. You need to take it off of the
 8 tape and put it on to some sort of hard disk drive,
 9 right?
 10 A. Yes.
 11 Q. And is that the same disk drive that then
 12 processes it to make it searchable, or does it have to
 13 migrate from there to something else?
 14 A. We run a script against it. And we take it
 15 and we insert it in the archive, which is a different
 16 place also, hard disk. And we index it on our
 17 database.
 18 Q. So there's a machine --
 19 A. The hard disk that was associated with our
 20 archive was full.
 21 Q. Which you say associated with your archive,
 22 it's not the hard disk on the archive itself that's
 23 full. It's the thing on your piece of hardware that
 24 runs the script?
 25 A. No. Our archive had no more room in it to

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1 accept more content.
 2 Q. Not even current content?
 3 A. No, we were backlogged. They hadn't
 4 unpacked current content since the beginning of August.
 5 They ran out of space.
 6 Q. Did that sneak up on you?
 7 A. It was not my job then. I inherited it.
 8 MR. JONES: So the question is who is the
 9 "you."
 10 MR. BYMAN: I didn't mean you personally.
 11 BY MR. BYMAN:
 12 Q. Couldn't somebody have predicted when the
 13 hard drive was going to fill up?
 14 MR. JONES: Object to the form of the
 15 question.
 16 THE WITNESS: Not a question for me.
 17 BY MR. BYMAN:
 18 Q. A question for Mr. Saunders?
 19 A. Question for Arthur Reil.
 20 Q. And Mr. Reil is in places unknown right now.
 21 A. By me.
 22 Q. So are you suggesting that it wasn't simply
 23 an integrity issue, that it might have been an
 24 incompetence issue with Mr. Reil?
 25 MR. JONES: Object to the form of the

1 question. Both asked and answered previously.
 2 THE WITNESS: It would be speculation on my
 3 part. I don't know.
 4 BY MR. BYMAN:
 5 Q. Well, you took over for the guy. You must
 6 have formed some impressions about whether he did a
 7 good or a bad job based upon what you inherited.
 8 What's your impression?
 9 A. My impression is that he didn't do a very
 10 good job.
 11 Q. And one of the things he didn't do a very
 12 good job on was predicting when he would run out of
 13 disk space?
 14 A. That's on the list.
 15 Q. Is that a pretty major thing on the list?
 16 A. It's huge. It's one of several things, but
 17 it's a big one.
 18 Q. What are the other things?
 19 A. He didn't keep a proper development
 20 environment so when we took over we didn't know where
 21 our source code was located, which is one of the
 22 reasons we couldn't find our scripts right away.
 23 Every technologist has their opinion. So
 24 I'm trying to be a little bit thoughtful in terms of
 25 the things that we think he didn't do well.

1 Not keeping a development environment is bad
 2 practice.
 3 Not predicting disk space well, while I
 4 appreciate the complexity now that I have to do it, it
 5 was bad practice.
 6 And there are certain other flaws in the
 7 system I think they could have done a better job with.
 8 Q. Let me show you what I'm going to mark for
 9 identification, a group of documents that come from
 10 within this stack. And I'll represent to you that I've
 11 taken them out. They are not necessarily in numerical
 12 order. So I've put them together. They're various
 13 production numbers 112286, 291, 296, 301, 306, 311,
 14 312, 313 and 314.
 15 And I've marked that as CPH 425.
 16 (Plaintiff's Exhibit 425 was marked for
 17 identification.)
 18 BY MR. BYMAN:
 19 Q. Have you ever seen this collection of
 20 documents either -- and of course you wouldn't have
 21 seen them this way. I'll represent to you that each of
 22 the cover documents had other documents either as
 23 attachments or things for them.
 24 What I've done is I've pulled out what
 25 appear to be the text of minutes of something called

1 Archive Meeting Minutes without putting the attachments
 2 for each of the minutes behind it, which are comprised
 3 of graphs and things.
 4 Bearing in mind that you may not have seen
 5 them in exactly this form, have you seen this type of
 6 minutes?
 7 MR. JONES: Can I just ask, are you
 8 asking -- we started out by asking had she seen
 9 these. Now you're asking has she seen this
 10 type.
 11 MR. BYMAN: I guess I'd like both.
 12 If she's seen these specific ones, great.
 13 Also if she's seen something like them, I'd also
 14 like to know that.
 15 THE WITNESS: I have seen one of these.
 16 BY MR. BYMAN:
 17 Q. Which one have you seen?
 18 A. The last one that is September 9th.
 19 Q. And that would have been done when you were
 20 in charge of this?
 21 A. Yes.
 22 Q. What about the one on August 13th?
 23 A. No, I don't think so. Looks surprisingly
 24 like the other one, but I recognize the format and I
 25 only saw one and I'm pretty sure it was this last one.

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1 Q. These particular ones appear to have been
2 faxed on October 21st, 2004. And I'll represent to you
3 that the fax number to which they're addressed is the
4 fax number of a law firm in Washington, D.C. Sidley
5 Austin, Brown and Wood I think it is. I keep
6 forgetting what their new name is.

7 Do you have any knowledge as to whether or
8 not these were faxed to a law firm?

9 A. No.

10 Q. Does the fax header of October 21st, 2004
11 help you place in time the directions you got from
12 counsel in October to prioritize the migration of these
13 missing tapes?

14 MR. JONES: Can you just read that back,
15 please?

16 (A portion of the record was read by the
17 reporter.)

18 MR. JONES: Object to the form of the
19 question. It's vague and ambiguous.

20 BY MR. BYMAN:

21 Q. Do you understand my question?

22 A. I think I do. No.

23 Q. At the risk of asking something I have
24 already, let me try to recap.

25 Until some time in October when counsel told

1 A. Okay.

2 Q. I'll show it to you if you'd like.

3 A. Sure.

4 Q. Some time in October of this year I think
5 you've already told us you were told --

6 MR. JONES: First of all, here's the problem
7 I have with that. She never talked about a
8 conversation with counsel. If you go back in
9 the record, you'll see she had a meeting with
10 counsel and then she further described how
11 she -- what she did with the tapes and the
12 processing after that.

13 You seem to, I guess you're assuming that
14 counsel told her to prioritize the tapes. And
15 you've used that in several of your questions.
16 I'm not going to comments as to whether that was
17 or wasn't told. That's really the problem I'm
18 having as to how you're phrasing your questions.

19 I don't know if that's something that could
20 be fixed or not, Bob. If it could be -- because
21 I don't mind her answering the question you
22 asked again about this document if that's
23 ultimately what you're trying to get to.

24 I don't know if all that was helpful or not.

25 MR. BYMAN: Let me try to meet that.

1 you to prioritize the migration of these 112 tapes or
2 1400, whatever the number was, until that time, these
3 were a low priority, is that fair?

4 MR. JONES: First of all, I object to the
5 form of the question. And I object to the
6 extent that you are trying to elicit
7 attorney-client communications.

8 That's my objection. And also it's been
9 asked and answered in a different form.

10 THE WITNESS: Although I lost track of it,
11 could you say it again?

12 BY MR. BYMAN:

13 Q. Sure. You told us earlier that some time in
14 October you had a conversation with counsel and moved
15 these -- let me stop.

16 Let's back up and try to get some shorthand
17 here. We talk about the tapes that you've been
18 processing that are the reason we're here today. We
19 talk about 112 tapes that have been represented to us
20 may contain e-mails that were part of a larger universe
21 of tapes that were reviewed. We've heard various
22 numbers of that. You've used the number 1400. Counsel
23 in a recent hearing said 2200. But whatever that
24 number is, can we call those the found tapes? And I'm
25 going to say that because it's in these e-mails.

1 BY MR. BYMAN:

2 Q. Until some time in October, you did not
3 place any priority on migrating the found tapes, is
4 that fair to say? They were in line, but they were
5 pretty far back in line?

6 A. I would say I didn't prioritize processing
7 the data that was in staging.

8 Q. From these found tapes?

9 A. There was more in staging than the found
10 tapes.

11 Q. I understand. And they were patiently
12 awaiting their turn, but they weren't going to the head
13 of the line?

14 A. I'm being careful. I didn't know about
15 found tapes. It wasn't -- that was not my focus.

16 Q. The set of minutes that you did look at, and
17 this is the last page 0112314.

18 A. I received it. I filed it. I actually
19 didn't read it until later.

20 Q. But I just want to direct your attention
21 towards the bottom there's a series of numbered pending
22 items, number 4 talks about 1423 DL tapes were found to
23 be in the Brooklyn security room, do you see that?

24 A. Right.

25 Q. That's the found tapes I'm talking about.

031483

1 A. Okay.
 2 Q. And they were patiently waiting their turn
 3 in line for processing in October, is that right?
 4 A. Yes.
 5 Q. And I'll represent to you that those found
 6 tapes have been waiting in somebody's line since at
 7 least May of 2004. And if you'd look at the first page
 8 of the document you'll see that there's a reference, at
 9 that time the number is 1,024 but by May it grows to
 10 1421.
 11 A. Okay.
 12 MR. JONES: Was that a question or --
 13 MR. BYMAN: I'm representing to her that
 14 they had been around since May.
 15 BY MR. BYMAN:
 16 Q. Is it fair to say that they were waiting for
 17 processing for at least May, June, July, August,
 18 September, October, six months?
 19 A. I can only speak to August forward. They
 20 were waiting since I took over.
 21 Q. Do you have any reason to believe that they
 22 weren't waiting since May?
 23 A. No reason. I have no knowledge.
 24 Q. Whatever was ahead of them was ahead of
 25 them, whatever was behind them was behind them. But

1 some time in October you moved them to the front of the
 2 line, right?
 3 A. Again, I didn't move these specific tapes to
 4 the front of the line. I prioritized processing the
 5 data that was in the staging.
 6 Q. Meaning all of the data in staging?
 7 A. All of the data in staging.
 8 Q. What was in staging other than these found
 9 tapes?
 10 A. Content from other tapes. We had at the end
 11 about 600 gig in staging. This would have been a
 12 subset of that.
 13 I mean, we didn't -- technically -- it
 14 probably would have taken us longer to identify and try
 15 and put them at the top of the cue, because the data is
 16 fairly extracted at that point. So we focused on
 17 processing everything from staging.
 18 Q. So you had 600 gig in staging in mid
 19 October?
 20 A. Yes.
 21 Q. And I think you've told us that 200 gig, if
 22 it was all on one SDLT tape, could be processing in
 23 five days?
 24 A. But we didn't have scripts that worked in
 25 October, yes. We didn't start in October.

1 Q. And the thing that made you get moving
 2 processing that 600 gigs of data was a conversation
 3 with counsel in October?
 4 A. Over the course of a series of conversations
 5 with counsel.
 6 MR. JONES: Don't talk about the content of
 7 the conversation with counsel.
 8 Besides, this has already been asked and
 9 answered.
 10 THE WITNESS: We prioritized the work.
 11 BY MR. BYMAN:
 12 Q. When in October?
 13 A. I don't remember the exact date.
 14 Q. Was it inside counsel or outside counsel?
 15 A. There was mixture on various calls.
 16 Q. Did you ever participate in a call in
 17 October with anyone from Kirkland and Ellis?
 18 A. Yes.
 19 Q. Do you recall the individual's name?
 20 A. We talked with Lisa Horton, Andy Klubach.
 21 If I say it was a sea of lawyers will I
 22 insult anybody in the room?
 23 Unfortunately, I didn't really check the
 24 names of external counsel in this. I spoke to them
 25 more than a couple of times. So I really couldn't get

1 specific --
 2 Q. But is it your recollection that somebody
 3 identified them as not a Morgan Stanley employee
 4 lawyer, but an outside lawyer?
 5 A. Yes, Kirkland was on the phone and swapped
 6 around enough that I couldn't accurately name who it
 7 was or remember.
 8 Q. Was Mr. Doyle on the phone? Do you know
 9 Mr. Doyle, who is a Morgan Stanley lawyer?
 10 A. Jim was not on the phone, no.
 11 Q. Do you recall what Morgan Stanley lawyers
 12 were on the phone?
 13 A. Again, it was --
 14 Q. By that I mean employees of Morgan Stanley.
 15 A. Different conversations and different
 16 combinations over the course of October. It would have
 17 been Jim Cusick and Jimmy Lee.
 18 Q. In addition to Kirkland and Ellis, did you
 19 have any conversations in October or November with any
 20 other outside lawyers?
 21 A. Not that I remember, no.
 22 Q. Do you recall ever having any conversations
 23 with anyone from Sidley and Austin?
 24 A. Sidley rings a bell, but I don't remember a
 25 specific conversation.

031184

1 Q. Is it fair to say that some time in October
2 of 2004 it became a priority to process the 600
3 gigabytes of data that had been in stage for
4 processing?

5 MR. JONES: Objection, asked and answered
6 four or five times.

7 THE WITNESS: I was going to say, could you
8 say it again? I'm starting to get a headache.

9 (A portion of the record was read by the
10 reporter.)

11 THE WITNESS: Yes.

12 BY MR. BYMAN:

13 Q. And what did you do to actually get it
14 processed once it became a priority?

15 A. In October we looked for the scripts in the
16 location that Don Haight had told us they should be in
17 and they weren't there.

18 So we spent more time hunting around and
19 trying to figure out if we had to rewrite --
20 reconstruct them from scratch what they might have been
21 doing. We knew at a high level what they were doing,
22 but the technical detail of what they're updating is
23 sort of a complicated thing to back into.

24 Somewhere in I think early November we
25 actually located the scripts in a different directory.

1 short months.

2 Q. Right.

3 A. So we weren't working in full staff mode.

4 Q. I understand that those 75 days weren't all
5 working days.

6 A. Yes. Interrupted by a vacation or two that
7 I couldn't force people to cancel.

8 Q. If you had been able to assign more
9 personnel, would you have been able to shorten that
10 75-day period?

11 A. No, because the person who was assigned had
12 spent two to three months coming up to speed on the
13 system. And assigning somebody who was not a part of
14 the team and not educated would have probably slowed it
15 down.

16 Q. Well, it sounds like it wasn't so much a
17 team as a one-person show the way you just described
18 it.

19 A. The staffing that I told you about has
20 grown. So it was pretty much a combination of Horace
21 and Andrew who were focusing on it. And really Horace
22 is the -- in the context of this -- the lead developer
23 on the site. So Andrew was assisting him. It's a
24 skill set break. So it was mostly Horace.

25 Q. Is the processing completed now?

1 And we ran a test. They didn't process the data
2 correctly. And since we hadn't found them where we had
3 been told, we were particularly concerned that we found
4 the right thing.

5 We had Thanksgiving, then it was December.
6 We did more testing. And juggled quite a number of
7 things through December between vacations and testing
8 and inquiries. And some issue on the supervisory
9 system.

10 Then we came into January. Early January we
11 debugged the scripts that we had found, recoded the
12 piece that wasn't working properly and started the
13 processing.

14 Q. When in January did you start the
15 processing?

16 A. On the 14th we kicked it off against, what I
17 would say we started. We had been running tests for
18 the prior two weeks.

19 Q. All right. So it became a priority in
20 October to process it. During all of November and
21 December you were locating the scripts, finally finding
22 them, testing them, debugging them and finally
23 approximately 75 days later were actually ready to
24 start processing?

25 A. Right. I would just keep in mind those were

1 A. All of the data that's been given to us is
2 processed, yes.

3 Q. When was it completely processed?

4 A. In the context of the found tapes?

5 Q. Yes.

6 A. Those were finished on February 2nd. The
7 terabyte -- the terabyte that turned out to be 600 gig
8 was finished on February 2nd, again, the 112 were in
9 there.

10 Q. Well, you anticipated my next question.

11 MR. JONES: Give me 30 seconds.

12 (There was an interruption in the
13 proceedings.)

14 BY MR. BYMAN:

15 Q. We have heard that there was a terabyte of
16 data that needed to be looked at. You've told us that
17 it was actually 600 gigabytes, which is of course 60
18 percent of a terabyte. And that 600 gigs included more
19 than the 112 tapes, is that right?

20 A. Yes.

21 Q. Of the 600 gigabytes that were actually
22 there and processing that you turned to as a priority
23 in October, how much of it was the 112 tapes?

24 A. I do not know.

25 Q. Was it the majority of it, a small fraction

031485

1 of it, can you give any estimation?
 2 A. I have no estimation because I don't know
 3 how big they were.
 4 Q. Okay. But in any event, the processing is
 5 complete, at least your step of the processing is
 6 complete as of February 2nd, right?
 7 A. Yes.
 8 Q. Then you've turned it over to Grant so he
 9 can do the actual searches; is that correct?
 10 A. At that point my team was running the
 11 searches.
 12 Q. So you actually did do some content
 13 searching?
 14 A. Yes.
 15 Q. And who designed those searches?
 16 A. David Matteo.
 17 Q. And what's your understanding of what the
 18 searches were designed to do?
 19 A. Based on the criteria passed to us through
 20 Grant, they pulled back e-mail for the people named in
 21 the list and the date ranges that we were handed.
 22 Q. How long does it take to perform those
 23 searches now that you've got it all on the archive?
 24 A. We were -- the first set of searches that we
 25 ran took longer than they are taking now, because we've

1 optimized the process. So the first set took about a
 2 week. And now we're processing it in about 1 to 2
 3 days.
 4 Q. And what kinds of chunks are you processing?
 5 I take it you can't do a search on the entire 600
 6 gigabytes?
 7 A. No. The 600 gigabytes is inserted into the
 8 archive, so it's now a part of the full body. There's
 9 a -- so for example, all of our e-mail that's pre-2003
 10 is 15 terabytes of data. When we run a search against
 11 the archive, we put the query against the database, the
 12 index and pull all mail that matches that criteria, and
 13 then pull it off the file system.
 14 So we are actually returning a super set,
 15 everything that matches the criteria, not just the mail
 16 that might have come out of the 600 terabytes.
 17 Q. Was that design necessitated by something,
 18 or was that just for your convenience?
 19 A. That is the design. There's no -- it would
 20 be very difficult to -- there's no identifier in the
 21 database telling us this specific mail was inserted as
 22 a part of that 600, that concept is lost.
 23 Q. I take it it takes longer, let's say you're
 24 searching for only one thing you want to find out where
 25 the word "Dunlap" appears on any e-mail anywhere in the

1 system. I take it if you were doing that search
 2 against 600 gigabytes of information as opposed to 15
 3 terabytes, it would be faster if you could do it just
 4 on the 600 gigabytes?
 5 A. Again, we're not searching the 600 gigabytes
 6 we're going against the data base. It would be faster,
 7 but the database doesn't know.
 8 Q. But if somebody had said to you: Speed is
 9 important, so don't insert it into the 15 terabyte
 10 system, let's segregate this data. Let's apply some
 11 sort of software to it so we can get it off by itself
 12 and search that, would it still be faster?
 13 A. I'd still be writing that code potentially.
 14 I'd have to write a whole new database and change the
 15 scripts to write to that data.
 16 Q. What is it about Morgan Stanley's
 17 database --
 18 A. The database schema has no field on it to
 19 indicate that the content is unique in some way that
 20 you would want to identify it. If we really wanted to
 21 keep that 600 gig separate, we would have built a new
 22 database, inserted it into that database and ran it
 23 against that database, that would have probably taken
 24 longer.
 25 Q. So it would not have been possible to have

1 taken --
 2 A. It would have been longer on the front end.
 3 Q. It would not have been possible to have
 4 inserted the 600 gigabytes of data into some other form
 5 of database, some off-the-shelf database that already
 6 exists?
 7 A. Then you wouldn't be using the Morgan
 8 Stanley system at all, so I would be evaluating a
 9 vendor product and installing it.
 10 Q. Could you have gone to a vendor that is in
 11 the database business that already has a database,
 12 simply takes your data and searches it?
 13 MR. JONES: Object to the question.
 14 BY MR. BYMAN:
 15 Q. You know that such vendors exist, don't you?
 16 You know that we've hired a vendor that is going to do
 17 exactly that.
 18 A. It was not my judgment call. I was given
 19 instruction to load that data into the system for the
 20 system I'm responsible. You're asking me to speculate
 21 on a question I was never asked for.
 22 Q. I'm not criticizing you for making a
 23 judgment call when you weren't given the opportunity to
 24 make the judgment.
 25 If somebody had said to you in October:

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1 What is the fastest way to find out what's on those 112
 2 tapes, would a faster way have been to give it to an
 3 outside vendor?
 4 A. I really don't know enough about this to
 5 answer that question.
 6 Q. So you don't know yes or no whether it would
 7 have been faster?
 8 MR. JONES: Objection, asked and answer.
 9 THE WITNESS: I don't know.
 10 BY MR. BYMAN:
 11 Q. Does Morgan Stanley have an outside vendor
 12 who is doing anything with respect to these 112 tapes
 13 presently?
 14 A. NDCI is processing this and handing it to
 15 us. I don't know.
 16 Q. What are they doing? They're giving you the
 17 thing that you then have to load on to your system,
 18 right?
 19 A. They are, yes.
 20 Q. I'm talking about do you have any outside
 21 vendors that are helping you either with the loading or
 22 the analysis of your own database?
 23 A. I give results to legal. However they -- I
 24 believe they have vendors that they use. I'm not well
 25 versed in those vendors.

1 Q. Is there a reason why your team was doing
 2 the searches rather than Grant's team?
 3 A. Yes.
 4 Q. What was the reason?
 5 A. The inquiry tool was not searching the
 6 pre-2003 data in a thorough fashion.
 7 Q. Why was that?
 8 A. There were issues with the way e-mail group
 9 membership was being evaluated. And there were issues
 10 with pulling out e-mail if it had been restored from
 11 our notes, our Lotus Notes e-mail system.
 12 Q. What were those issues?
 13 A. The way that the system works for pulling
 14 data -- when we store the information in the index we
 15 don't actually store all the recipients, if the mail is
 16 sent to a group, restore the e-mail group name. Which
 17 implies you then need to be able to evaluate who was a
 18 part of any given mail group.
 19 The tool when we took it over for pre-2003
 20 e-mail was looking at a snapshot of e-mail group
 21 membership that had been created in early 2003.
 22 So we needed to physically create a data
 23 source that would tell us a more accurate
 24 representation of who was in a group at a point in time
 25 and then run scripts, code in abstract from the inquiry

1 tool in order to leverage that data.
 2 Does that make sense?
 3 Q. And why couldn't Mr. Jonas's team have done
 4 all of that?
 5 A. They're not developers.
 6 Q. So they're simply implementers --
 7 A. They use our tool.
 8 Q. Have you been able to develop it
 9 sufficiently that you've now passed it off to
 10 Mr. Jonas's group?
 11 A. We are in the process of doing that, yes.
 12 We actually used the last set of queries to refine our
 13 scripts, improve the speed of our scripts. And we are
 14 in what I would call the 90 percent turned over so he
 15 can operate them.
 16 Q. And, again, where are we in the process?
 17 When will we be done reviewing and searching all of
 18 these 112 tapes? And when I say "we," I mean you.
 19 A. That should be done.
 20 Q. It was done as of February 2nd?
 21 A. We provided a -- okay, I know my end. So I
 22 don't know when it actually makes its way through all
 23 the other people. But we provided one pull at the end
 24 of last week, which would have been the 4th. That
 25 should have included that data. And then we provided

1 another one early this week that should have also
 2 actually included any potential data that we -- we
 3 inserted some additional data over the weekend.
 4 Q. When you say it was pulled?
 5 A. I'm sorry, I refer to a pull. We run -- the
 6 inquiry was -- all the data was extracted, put in a
 7 file and handed over.
 8 Q. To whom did you hand it over?
 9 A. We hand it to Grant's team.
 10 Q. And what else is left for Grant's team to
 11 do?
 12 A. I'm not sure what he does. He gives it to
 13 counsel or whoever he gives it to.
 14 Q. Is he something more than a messenger?
 15 there some work he has to do on it to your knowledge?
 16 MR. JONES: Object, asked and answered. You
 17 can answer again.
 18 THE WITNESS: There's no work he does on it.
 19 He passes it over.
 20 BY MR. BYMAN:
 21 Q. Does he do any review on it to cull out
 22 something from something else?
 23 A. I don't know. We have a very specific
 24 division of responsibilities. I don't ask Grant what
 25 he does with data when I hand it to him.

031487

1 Q. In terms of when you hand it over to him,
 2 what quantity of material did you give him?
 3 A. I don't know offhand.
 4 Q. Did you hand it over to him in electronic
 5 form?
 6 A. We gave him the file, yes.
 7 Q. And when you say gave him a file, did you
 8 simply e-mail something to him?
 9 A. No, we're all on the -- we zipped up a file
 10 and put it in the file system. And his team had access
 11 to that.
 12 Q. So you don't know if it was 5 gigabytes or
 13 50 gigabytes or 500 gigabytes?
 14 A. Personally, no.
 15 Q. If you don't know the size of the electronic
 16 file I take it you can't tell me how many pages of
 17 e-mails there might be on it?
 18 A. We would not look, no.
 19 Q. Once you've given him that file, is there
 20 anything further that needs to be done to turn it into
 21 something that would be readable? In other words,
 22 somebody that was on your system with that file, would
 23 you be able to see it on a screen and print off from
 24 the screen whatever the information was?
 25 A. Yeah, you would have a giant file full of

1 e-mail.
 2 Q. Would it also be in searchable form at that
 3 point? You've already searched to find something, I
 4 take it, but...
 5 A. At that point we would have done the pull
 6 based on people and dates. And any key word type
 7 search that might need to be done would either be done
 8 with grep or, yeah, or a tool, there's a bunch of tools
 9 that do that.
 10 Q. So further searches could be done?
 11 A. Yeah. We would not be involved in that.
 12 Q. But you've given him a file that is
 13 manipulable and searchable?
 14 A. Yes. There's no index at that point, it's a
 15 blob of mail and contents and attachments.
 16 Q. Would that file, for example, be able to be
 17 reordered by date?
 18 A. I don't know.
 19 Q. Or by recipient?
 20 A. I have not personally seen the file and what
 21 it looks like.
 22 Q. Who in your group has personally seen it?
 23 A. David Matteo wrote the scripts and created
 24 the file.
 25 Q. Have you ever heard of a vendor called

1 Forensic and Heat Restoration?
 2 A. No.
 3 MR. JONES: "And" or "in."
 4 MR. BYMAN: "And." Forensic & Heat
 5 Restoration.
 6 BY MR. BYMAN:
 7 Q. Were you aware that in June of 2004 Mr. Reil
 8 on behalf of Morgan Stanley signed a certification that
 9 all relevant e-mail in this case had been produced?
 10 A. No.
 11 Q. Has anyone ever told you that other than me
 12 just now?
 13 A. That, no.
 14 MR. JONES: Well.
 15 BY MR. BYMAN:
 16 Q. Were you aware that in July of 2004 Morgan
 17 Stanley was aware that there were backup tapes which
 18 contained e-mail going back to 1998 that had not been
 19 searched?
 20 MR. JONES: Object to the form of the
 21 question. And perhaps lack of foundation.
 22 Why don't you read the question back.
 23 (A portion of the record was read by the
 24 reporter.)
 25 MR. JONES: That was my objection to the

1 form and foundation.
 2 THE WITNESS: It's kind of a confusing
 3 question. In July I didn't know anything about
 4 this project.
 5 BY MR. BYMAN:
 6 Q. Well, in terms of getting up to speed to do
 7 your job, did you look at anything that occurred prior
 8 to your getting the job? Did you look at any of the
 9 historical files?
 10 A. I did not look at anything having to do with
 11 investigations. Unless Grant asked us to. And then we
 12 only looked at it from a technical perspective. And
 13 typically I did not personally look at it.
 14 Q. Do you know who Mr. Reil reported to in July
 15 of 2004? Would it have been Mr. Saxe?
 16 A. No.
 17 Q. That's right. He reported to somebody
 18 different than you.
 19 A. Yeah. I'm just not sure when Moyra started.
 20 I can't remember when she started. Yes, in July I
 21 think it was Moyra, yes.
 22 Q. If I were to tell you that an estimate was
 23 made that there were as many as 2,183,000 unique
 24 e-mails on the found tapes, would that be consistent
 25 with the amount of found data that was in processing in

1 October?
 2 MR. JONES: Can I have that read back,
 3 please?
 4 (A portion of the record was read by the
 5 reporter.)
 6 MR. JONES: I guess you can't type a frown,
 7 I better say that I object to the form of the
 8 question as vague and ambiguous.
 9 THE WITNESS: Well, it's really that we
 10 don't look at it in the context of messages. We
 11 look at it in the context of size. I never knew
 12 how many messages there were in the 600. And
 13 since it's a mixture of messages and
 14 attachments, you can't even apply a good
 15 fraction.
 16 BY MR. BYMAN:
 17 Q. If it were simply text, how many pages would
 18 600 gigabytes be?
 19 A. I have no idea.
 20 Q. Would it be 10 million pages?
 21 A. I really don't know.
 22 Q. More than a million? You can't give me even
 23 a --
 24 A. Pages? I really don't think in terms of
 25 pages.

1 Q. All right. How many words?
 2 A. It's getting further away from how I think
 3 about it.
 4 MR. JONES: Let me object. Asked and
 5 answered. She said she didn't know. But you
 6 want to take another shot.
 7 THE WITNESS: I don't know those stats. We
 8 do -- I could sit here and do a little math in
 9 my head, but we don't think about it that way.
 10 Actually I couldn't. Part of the challenge
 11 of even doing the math in my head is that the
 12 attachments are mixed in with the mails. So
 13 even if I tried to say a rough average message
 14 size and use some of the stats that I know from
 15 current processing, it would be way different
 16 back then.
 17 BY MR. BYMAN:
 18 Q. Well, let me try to put it this way,
 19 Ms. Gorman, if I were to represent to you that Bruce
 20 Buchanan of NDCI sent an e-mail to Wray Stewart in
 21 July of 2004 in which he said that they had reviewed
 22 the found tapes and that there were 2,183,331 total
 23 unique messages within those tapes, would that be
 24 consistent with the amount of data that you knew was in
 25 line for processing in October?

1 MR. JONES: Okay. Objection, asked and
 2 answered three or four times already.
 3 BY MR. BYMAN:
 4 Q. You can answer.
 5 A. Again, I can't quantify -- I don't quantify
 6 it that way.
 7 Q. That's not what I'm asking. I'm asking --
 8 A. Try again, I'm sorry.
 9 MR. JONES: It is what you're asking, Bob.
 10 MR. BYMAN: Let me finish, Mike, or we're
 11 going to be here all night.
 12 BY MR. BYMAN:
 13 Q. I want to know if the 600 gigabytes you're
 14 talking about is 2 million individual e-mails a
 15 reasonable number or is it wildly wrong?
 16 A. It's probably a subset, yes.
 17 Q. I take it that you did not give any
 18 instructions to Mr. Jonas, that whatever it is he did
 19 he got his instructions from somebody else?
 20 A. Yes.
 21 Q. Are you familiar with the term brick level
 22 backups?
 23 A. No.
 24 Q. Let me show you a document that I'm going to
 25 mark as Exhibit 426 for identification.

1 (Plaintiff's Exhibit 426 was marked for
 2 identification.)
 3 BY MR. BYMAN:
 4 Q. It has production numbers 112593 through
 5 601.
 6 And of course I don't see your name on this.
 7 Do you have any recollection, however, of ever seeing
 8 it?
 9 A. This mail? No.
 10 Q. Do you see on the very last line on the
 11 first page: "We have experienced restoring brick level
 12 backups." And actually the subject of the e-mail is
 13 brick level backups. Take a look at that and see if it
 14 refreshes your recollection about the term?
 15 A. Oh, no, I've never heard the term.
 16 Q. You've never heard the term?
 17 A. No.
 18 Q. Were you aware that some time in late
 19 January 2005 an issue had arisen with respect to
 20 processing certain tapes?
 21 A. Late January 2005?
 22 Q. Yes.
 23 A. Meaning a couple weeks ago?
 24 Q. Yes.
 25 A. No. No.

1 Q. The information that you processed that was
 2 in line in October when you made it a priority, that
 3 began to be processed in mid January when the scripts
 4 were finally written and debugged, was that a static
 5 set of data?
 6 A. Yes, that was already on hard disk.
 7 Q. So it was data that was already there in
 8 October and may have been there for months or weeks or
 9 days, but it was already there?
 10 A. Yes.
 11 Q. Nobody added anything to it?
 12 A. No, there was no room.
 13 Q. Has any new data come in since then?
 14 A. Yes.
 15 Q. And from what source?
 16 A. There were additional tapes that needed to
 17 be processed that were put on SDLTs and sent to us. In
 18 the middle of December Bob's team asked us if we had
 19 room. We didn't because we were still waiting to
 20 process the stuff out of staging.
 21 We made room for it at the end of January.
 22 Q. And what quantity was that additional data?
 23 A. Although it was two SDLTs it ended up being
 24 only about less than 50 gig.
 25 Q. Has all of that been processed?

1 A. Yes, that was done in two days.
 2 Q. Do you have any understanding where that
 3 data came from?
 4 A. 8 millimeter tapes that had been found.
 5 Very old tapes.
 6 Q. Do you know where they were found?
 7 A. No.
 8 Q. Is that a question better addressed to
 9 Mr. Saunders?
 10 A. Probably.
 11 Q. Was there any e-mail on those tapes?
 12 A. They only give me what has e-mail on it. So
 13 of the 8 millimeters, however much e-mail they found is
 14 what I got.
 15 Q. By the time you get it --
 16 A. By the time I get it, it's e-mail.
 17 Q. Do you have any understanding of whether
 18 anybody did any searches on any of the things that
 19 became e-mail and were sent to you to see if there were
 20 things that were possibly relevant to the lawsuit that
 21 weren't e-mail on those 8 millimeter tapes or the other
 22 tapes?
 23 A. I don't have any knowledge of any searches
 24 that were done against those.
 25 Q. As a result of the search of the 50

1 gigabytes of data from the 8 millimeter tapes, was
 2 there some product that was pulled and forwarded on to
 3 Mr. Jonas?
 4 A. Yes.
 5 Q. So it didn't come up empty, it came up with
 6 something?
 7 A. No. Well, again, we did a full super set.
 8 I do not know if there was a delta.
 9 Q. In other words, you don't know if it was
 10 duplicated?
 11 A. I don't know -- yeah. I don't remember. I
 12 actually didn't get the numbers from my group, this all
 13 happened -- I was actually on vacation the end of last
 14 week.
 15 Q. Good for you.
 16 A. I don't particularly have all the details
 17 because I wasn't standing there. I just know we got
 18 the work done.
 19 Q. I appreciate the fact that you don't know
 20 how many pages it is, how many individual e-mails it
 21 is, the content. But the point is out of the 600
 22 gigabytes of data you do know that your searches
 23 yielded something that was turned over to Mr. Jonas?
 24 A. Yes.
 25 Q. And your search of the 8 millimeter tapes,

1 the 50 gigabytes yielded something that was turned over
 2 to Mr. Jonas?
 3 A. Our next search as well as some additional
 4 data that had been loaded. There were, I believe, some
 5 additional tapes found very recently like in the last
 6 few weeks.
 7 Q. What tapes are those?
 8 A. More DLT tapes that were found. I don't
 9 know the context. I was told like two or three weeks
 10 ago that there were some more tapes coming our way.
 11 And that they need to be processed as quickly as
 12 possible.
 13 Q. What quantity was that?
 14 A. That was also a very small amount. I know
 15 we finished it over the weekend, this last weekend at
 16 the same time we finished the 8 millimeter. So on
 17 February 2nd we finished the big bulk that had been
 18 staging. And then these two smaller amounts came
 19 represented what was on the 8 millimeters and what was
 20 found very recently. We processed all of that by the
 21 weekend and -- that's why we reran the search at the
 22 beginning of this week.
 23 Q. I just want to be sure that I'm clear on
 24 this. So there were three separate sources of things
 25 that you had. One was already in line for processing

1 when you got there?
 2 A. Yes.
 3 Q. Two was the output of the 8 millimeter tapes
 4 that was approximately 50 gigabytes?
 5 A. Yes.
 6 Q. And three was some quantity of tapes that
 7 were found in some other location that were given to
 8 you very recently?
 9 A. Yes.
 10 Q. And can you estimate the size of that third
 11 quantity? Was it also about 50 gigabytes?
 12 A. I know it was small because I know we
 13 processed it very quickly. So I could say, you know,
 14 but that's all I could say. I never got a number from
 15 the person in my group. Horace did the work over the
 16 weekend, but it had to have been small. We did it very
 17 quickly.
 18 Q. We know that as to the first group, the
 19 things that were in line when you got there, there was
 20 some output that you gave to Mr. Jonas.
 21 A. Yes.
 22 Q. As to two and three we know that there was
 23 something for the combination of them, but we don't
 24 know whether it was for both or for each?
 25 A. Again, well, we ran another full search and

1 gave them another, call it a super set. And that data
 2 had been inserted at that point. So anything found
 3 between -- any new data produced between the search --
 4 if you did a difference between what we gave them
 5 Friday and what we gave them Monday, you'd have the
 6 answer to your question, but I don't know. I don't
 7 happen to know the answer.
 8 Q. I think I'm finally starting to get it. So
 9 the search you did most recently would have come up
 10 with the same things you did out of the things you
 11 already had in October?
 12 A. Yes.
 13 Q. So unless we know that the file you first
 14 gave Mr. Jonas was smaller than the file you just gave
 15 Mr. Jonas, we won't know if there's anything in the new
 16 things?
 17 A. Right. And we just gave it to him, so I
 18 haven't had a chance to --
 19 Q. So either Mr. Jonas or Mr. Seickel will have
 20 to tell us that?
 21 A. Glenn would not know that.
 22 Q. Is there anybody on the list of --
 23 A. Bob's team would not know anything about the
 24 size of a pull that we gave to Grant. They shouldn't,
 25 it's not their job.

1 MR. BYMAN: Why don't we take a little
 2 break.
 3 (A recess was taken.)
 4 BY MR. BYMAN:
 5 Q. Ms. Gorman, do you have any reason to
 6 believe, by rumor or by actual statement, that there's
 7 anything else that you might be asked to process in
 8 terms of e-mails that predate 2000?
 9 A. There is another set of data we are waiting
 10 for. And I don't know the dates.
 11 Q. And who has told you that there's more data
 12 coming?
 13 A. The last bucket of tapes that I mentioned we
 14 didn't get all of the data. So the tapes were found,
 15 they were sent to NDCI, NDCI processed some percentage
 16 of that. Sent it to us, we did that and I'm waiting
 17 for the last bit.
 18 Q. Do you know what percentage they've
 19 processed?
 20 A. I don't know.
 21 Q. More than half, less than half?
 22 A. I don't know.
 23 Q. Do you have any information about when you
 24 will get them from NDCI?
 25 A. We're hoping any day, I don't know what day

1 it's going to show up. We're ready.
 2 Q. When was the last time you talked to NDCI
 3 about where they are?
 4 A. I don't talk directly to NDCI. I know I
 5 talked to Horace today, we did not have it yet.
 6 Q. I'm sorry, Horace's last name is?
 7 A. Sequeira.
 8 Q. And Mr. Sequeira is the one that's
 9 interfacing with NDCI?
 10 A. No, he interfaces with Bob Saunders' team.
 11 Q. So again, this is a question for
 12 Mr. Saunders?
 13 A. Yes.
 14 Q. Well, that makes it easier and harder on
 15 Mr. Saunders.
 16 MR. BYMAN: Unless Mr. Hirsch tackles me and
 17 says I forgot something, I have no further
 18 questions.
 19 MR. JONES: Thank you.
 20 (Whereupon, the deposition concluded at 5:30
 21 p.m.)
 22
 23
 24
 25

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CERTIFICATE

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, ALLISON GORMAN NACHTIGAL, hereby certify that I have read the foregoing transcript of my deposition and that the statements contained therein, together with any additions or corrections made on the attached Errata Sheet, are true and correct.

Dated this day of , 2005.

ALLISON GORMAN NACHTIGAL

The foregoing certificate was subscribed to before me this day of , 2005, by the witness who has produced a as identification and who did not take an additional oath.

Notary Public

REPORTER'S CERTIFICATE

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, TRACEY L. SPATARA, RPR, certify that I was authorized to and did stenographically report the foregoing deposition/proceedings; and that the transcript is a true record thereof.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this day of , 2005.

TRACEY L. SPATARA, RPR

CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, the undersigned authority, certify that ALLISON GORMAN NACHTIGAL personally appeared before me and was duly sworn.

WITNESS my hand and official seal this day of , 2005.

TRACEY L. SPATARA
Notary Public
Commission #DD 0327757
Expires July 31, 2008

031492

Exhibit 5

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031493

1 IN THE CIRCUIT COURT FOR THE
2 15TH JUDICIAL CIRCUIT IN AND FOR
3 PALM BEACH COUNTY, FLORIDA
4 CASE NO. 03 CA 005045 AI

5 COLEMAN (PARENT) HOLDINGS, INC.,

6 Plaintiff,

7 vs.

8 MORGAN STANLEY & CO., INC.,

9 Defendant.

10 DEPOSITION OF ROBERT JOHN SAUNDERS

11 Taken before Tracey L. Spatara, Registered
12 Professional Reporter, Notary Public in and for the
13 State of Florida at Large, pursuant to Notice of Taking
14 Deposition filed by the Plaintiff in the above cause.

15 Thursday, February 10, 2004
16 2139 Palm Beach Lakes Boulevard
17 West Palm Beach, Florida
18 9:00 a.m. to 11:40 a.m.

19 2/11/2005 1:49 PM

20 1

21 2/11/2005 1:49 PM

22 3

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Attorneys for Defendant

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1 D E X

2 PAGE

3 DIRECT EXAMINATION 4
4 BY MR. BYMAN:

5 EXHIBITS

6 PAGE

7 Plaintiff's Exhibit 427 40
8 Plaintiff's Exhibit 428 76
9 Plaintiff's Exhibit 429 81
10 Plaintiff's Exhibit 430 89

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1 P R O C E E D I N G S

2 - - -

3 THEREUPON,

4 ROBERT JOHN SAUNDERS

5 having been first duly sworn, was examined and
6 testified as follows:

7 THE WITNESS: I do.

8 DIRECT EXAMINATION

9 BY MR. BYMAN:

10 Q. The record should reflect that this is the
11 deposition of Mr. Robert Saunders taken pursuant to the
12 order of Court dated February 3rd, 2005, and the
13 designation of Mr. Saunders as one of the three persons
14 that Morgan Stanley and Company intends to offer at an
15 evidentiary hearing on Monday.

16 Would you state your full name for the
17 record, please?

18 A. Robert John Saunders.

19 Q. Mr. Saunders, you've given a deposition in
20 this case already on February 10, 2004. Do you recall
21 that?

22 A. Yes.

23 Q. And at that time you told us that was the
24 first time you had ever given a deposition. Have you
25 given any depositions since then?

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1 A. I have not.
 2 Q. So we've had the honor of giving you all of
 3 your deposition experience?
 4 A. Yes.
 5 MR. KLAPPER: All on the same day, February
 6 10th.
 7 THE WITNESS: It was exactly a year ago
 8 today. Better weather, though.
 9 BY MR. BYMAN:
 10 Q. Have your titles or job responsibilities
 11 changed in the last year?
 12 A. They have not.
 13 Q. So you are still an executive director at
 14 Morgan Stanley?
 15 A. Yes.
 16 Q. Do you still report to Joe Sidor?
 17 A. I do not. I have a new manager.
 18 Q. And who is your manager now?
 19 A. His name is Jerry DeMarco. D-E-M-A-R-C-O.
 20 Q. And when did that change occur?
 21 A. Change occurred this summer.
 22 Q. What happened to Mr. Sidor?
 23 A. Mr. Sidor was moved to another area within
 24 information technology.
 25 Q. Are you familiar with an individual named

1 Q. When that team formed?
 2 A. The team has been in existence for several
 3 years. I wouldn't -- I couldn't give an exact time
 4 frame as to when it was formed.
 5 Q. Who are the members of the team?
 6 A. Glenn Seickel is the -- I would call him the
 7 operational manager of that team. John Pamula is
 8 basically the head of the BURP group. He is a Siemens
 9 contractor, and, in fact, the other members of that
 10 team are also Siemens contractors.
 11 Q. So the only Morgan Stanley employees in that
 12 group are yourself and Mr. Seickel?
 13 A. I'd say that's accurate.
 14 Q. And what is your role in the team? If
 15 Mr. Seickel is the operations manager, are you over all
 16 in charge?
 17 A. I'm the senior manager responsible for UNIX
 18 and storage in North America. One of my duties -- one
 19 of the areas that I'm responsible for is the back up
 20 plant, and by nature of that, the backup tapes that
 21 exist in our store.
 22 Q. And what precisely was your team charged
 23 with to help Mr. Reil in whatever it was he was doing?
 24 A. My team was responsible for providing access
 25 to what we call the Legacy Legato DLT tapes and

1 Arthur Reil?
 2 A. Yes.
 3 Q. Did Mr. Sidor's move have anything to do
 4 with the events that precipitated Mr. Reil's being
 5 placed on administrative leave?
 6 A. To my knowledge, no.
 7 Q. What, if anything, was your relationship
 8 with Mr. Reil prior to his being placed on
 9 administrative leave?
 10 A. Can you elaborate on relationship?
 11 Q. Were you colleagues? Did you report to him?
 12 Did he report to you? Did you work together in any
 13 way?
 14 A. I would say that we were colleagues. Part
 15 of my team was responsible for working with Arthur in
 16 providing him with services in order to complete the
 17 e-mail restoration project.
 18 Q. And what services was your team providing to
 19 him?
 20 A. Specifically, access to the DLT Legato tapes
 21 and working with our external vendor, NDCI, to process
 22 those tapes as part of the e-mail restoration project.
 23 Q. Did your team have a title?
 24 A. One of their names is the back up and
 25 restore team, also known as BURP, B-U-R-P.

1 basically working with Arthur Reil's team to have those
 2 tapes delivered from our off-site storage vendor,
 3 Recall -- capital R -- having those tapes delivered to
 4 a third party vendor, a forensics data company called
 5 National Data Conversion Institution, NDCI.
 6 After NDCI was through with their part of
 7 the project, they would deliver back to us SDLT tapes
 8 with the relevant information, a/k/a e-mails. Then my
 9 team would take the information off of those SDLTs,
 10 move that information to disk -- so online storage --
 11 take it off of media, removable media, and basically
 12 provide that to the e-mail archive team where they
 13 could upload that information into the e-mail archive.
 14 Q. Let me go back and try to do this in small
 15 steps. And I apologize, Mr. Saunders, my knowledge of
 16 computers is the on/off button. So if I speak a
 17 different language than you do, please try to help me
 18 with terms.
 19 The Legato DLT tapes are some sort of
 20 magnetic tape; is that correct?
 21 A. That's correct.
 22 Q. What is the storage capacity of each tape?
 23 A. My understanding -- and I am not the most
 24 technical member of my team, as you might imagine --
 25 that the storage capability of a DLT tape is somewhere

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1 on the order of 35 gigabytes per tape.
 2 Q. And what is the storage capacity of a super
 3 DLT tape, an SDLT?
 4 A. Again, my general understanding is it's
 5 around 150 gigabytes per tape.
 6 Q. Is the data that's stored on an SDLT
 7 compressed data?
 8 A. My understanding is that it could either be
 9 compressed or uncompressed, depending on the software
 10 that you use to record data.
 11 Q. On the SDLT tapes that are provided to you
 12 by NDCI, are those compressed or noncompressed?
 13 A. I don't know.
 14 Q. If they were compressed, do you know how
 15 much data they would have when expanded?
 16 A. Again, I don't know.
 17 Q. And if I understand what you've said -- and
 18 I'm going to try to repeat it in what I consider to be
 19 layman's language, but that's a different thing for
 20 different people. And if you could understand what
 21 I've said, then that means I've understood what you've
 22 said.
 23 You take the raw DLT tapes, provide them to
 24 NDCI. They extract what they understand to be the
 25 relevant information you're looking for, and they take

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1 it off of the DLT tapes and put it onto an SDLT,
 2 deliver it back to you so it can be processed in your
 3 system.
 4 A. That's correct.
 5 Q. Does NDCI have the technical capability to
 6 put the information that it culls out of the DLT tapes
 7 into some sort of searchable database itself and
 8 perform searches?
 9 A. I'm not aware of their capacity to do so.
 10 Q. Do you know that they cannot, or you just
 11 don't know --
 12 A. I don't know.
 13 Q. Have you asked them?
 14 A. I personally have not asked.
 15 Q. To your knowledge has anyone at Morgan
 16 Stanley asked them?
 17 A. I don't know.
 18 Q. The work that you've been doing with
 19 Mr. Reil's group -- or had been doing with Mr. Reil's
 20 group before he left, was that related to the e-mail
 21 archive project specifically, or was it related to
 22 something else?
 23 A. The work that we had been performing with
 24 Mr. Reil specifically was an effort chartered in 2003
 25 to go back to a store of tapes that were from prior to

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1 the e-mail archive's existence, prior to January 1st,
 2 2003, take that sum of tapes, extract available e-mail,
 3 duplicate that e-mail, then upload it into the archive
 4 for the purpose of more expeditiously providing search
 5 capability of e-mail prior to 2003 for litigations or
 6 for regulatory requests.
 7 Q. So it was a generic project, but could have
 8 related to this litigation, for example?
 9 A. I was not party to the decision of why to do
 10 the effort. However, I do know that I have been
 11 involved for several years, you know, with providing
 12 response to ad hoc requests from various bodies, some
 13 of them having to do with litigations. And that Morgan
 14 Stanley made a decision in good faith to move forward
 15 with taking that information off of the tapes in a
 16 comprehensive fashion rather than continuing with ad
 17 hoc queries over time, which take a lot more time and
 18 basically were inefficient.
 19 Q. Well, they take a lot more time if you're
 20 doing them one at a time because you're redoing things.
 21 But if you were doing a specific search it would take
 22 less time than reconstructing the entire system,
 23 wouldn't it?
 24 A. It would depend. It would depend on the
 25 scope of the request. Some of the requests we've

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1 received have been, we need information over the period
 2 of 11 or 12 months for 100 people. So it needs to be
 3 very clear what the request would be.
 4 Q. Let me show you something that we marked
 5 yesterday as Exhibit 425.
 6 MR. BYMAN: And I apologize, Tony, I don't
 7 have extra copies of what I gave yesterday to
 8 Mike.
 9 MR. JONES: I'll dig it out.
 10 MR. KLAPPER: You say Exhibit 425?
 11 MR. BYMAN: Yes.
 12 It's possible I have another copy of that.
 13 Let me see if I do.
 14 I do.
 15 BY MR. BYMAN:
 16 Q. Mr. Saunders, let me represent to you that
 17 this is actually a cull of the documents that were
 18 given to us. It does not bear sequential numbers.
 19 MR. KLAPPER: Let me also say if you feel
 20 like you want to review it before any questions
 21 are asked, feel free to do so.
 22 THE WITNESS: Actually, could I have two
 23 minutes to take a look at this?
 24 MR. BYMAN: Of course.
 25 THE WITNESS: Okay.

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031496

1 BY MR. BYMAN:
2 Q. Again, I was starting to explain that I
3 suspect you have not seen these documents in this form,
4 because I have extracted them from a body of other
5 things. Let me tell you what I did so we're on the
6 same page.

7 The materials that were produced to us
8 included a somewhat thicker set of things, all of which
9 included fax headers dated October 21, 2004, with a
10 phone number indicated, that happens to be the fax
11 phone number of the Washington office of the law firm
12 Sidley and Austin.

13 It's apparently a series of different
14 transmissions, because they are different times, and
15 there are different headers for the pages. Some of
16 them, for example, just say page 23. Some say page 2
17 of 6. But they are each of what appear to be cover
18 pages that reflect minutes of e-mail archive meetings
19 on various dates.

20 Have you ever seen these documents, whether
21 or not in this collection?

22 A. Yes.

23 Q. Were you the one that provided these
24 documents to counsel so that they could be provided to
25 us?

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13

1 A. I don't believe so.

2 Q. When did you first see any of these
3 documents?

4 A. Some of these documents I became aware of
5 through discussions with counsel over the last several
6 months.

7 Q. Do you see the "to" indication, e-mail
8 archive space core?

9 A. Uh-huh.

10 Q. Is that an address group?

11 A. Yes.

12 Q. Were you one of the people within that
13 address group?

14 A. I was not.

15 Q. Do you know who is within that address
16 group?

17 A. I could speculate, but I'm not sure.

18 Q. Give me your best estimate of who would be
19 in it?

20 A. My guess of the people that would have been
21 in that e-mail group would have been Arthur Reil, Don
22 Haight, Kay Gunn, Wray Stewart.

23 Q. John Pamula?

24 A. John Pamula, possibly.

25 Q. Annaline Dinkelman?

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14

1 A. I don't know whether or not she would be in
2 that group.

3 Q. There's also a cc to DSMGR-NA; is that
4 another group?

5 A. That is.

6 Q. Who would be within that group?

7 A. I was within that group.

8 Q. Who else is in that group?

9 A. That group is a mix of managers and senior
10 members of the level to UNIX and Windows support team
11 of which I am a manager.

12 Q. And what other persons are within that
13 group?

14 A. Some folks that had previously been in our
15 area that are now affiliated with our area but no
16 longer directly in the group.

17 Q. Can you give me their names?

18 A. I think that Isaac Hollander was still in
19 the group.

20 Joe Peraglia, P-E-R-A-G-L-I-A.

21 Vaughn Turner.

22 I think that's the extent of my
23 recollection.

24 Q. Were you a member of DSMGR-NA as of May
25 2004?

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15

1 A. Yes.

2 Q. Were you still a member of that group as of
3 September 2004?

4 A. Yes.

5 Q. So is it fair to say that you would have
6 received, more or less in real time, copies of each of
7 these documents when they were generated?

8 A. Yes.

9 Q. Did you ever forward any of these documents
10 to any other person?

11 A. No.

12 Q. What would you typically do when you
13 received copies of these minutes?

14 A. These minutes reflect meetings and updates
15 on the status of the e-mail archive restoration project
16 of which I testified a few minutes before. Wray
17 Stewart, who is one of the key members who helps to
18 keep this group moving forward, would send out weekly
19 minutes.

20 I would receive them on a weekly basis. By
21 the summer of 2004, the project had been moving along,
22 was certainly at a run rate capacity. I had stepped
23 away from the effort, and, in fact, my responsibility
24 was solely to provide care and feeding for my team
25 members that were assisting Arthur with the project.

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1 Arthur had responsibility for
2 decision-making and ultimate responsibility to IT
3 management for the successful completion of the effort.

4 So the way I would handle these documents is
5 I would receive them on a weekly basis, but as the
6 information and as the effort largely was well underway
7 and then appeared to be coming to conclusion, I was not
8 reviewing them in real time, as you said.

9 Q. Was there anyone on your team or who
10 reported to you that was charged with reviewing them in
11 greater detail?

12 A. Wray Stewart was -- continued to be
13 affiliated with this project in helping to make sure
14 that the flow of tapes between our vendors and making
15 sure that the information was getting into the staging
16 area so that Arthur's team could upload it. I would
17 say he was the closest to it.

18 Glenn Seickel was also my operational
19 manager, would obviously be continuing to be closely
20 involved to make sure that we were fulfilling our
21 obligations.

22 Q. Were you aware that Mr. Reil was placed on
23 administrative leave in August 2004?

24 A. Could you specify the time frame?

25 Q. Well, I'm not sure I know the date.

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1 Ms. Gorman testified yesterday that it was August 2004,
2 and I don't recall --

3 A. So to be clear with your question, are you
4 asking me am I now aware, or if I was aware at some
5 point?

6 Q. Are you aware?

7 A. I am aware.

8 Q. When did you become aware?

9 A. I believe I became aware, and I think the
10 date you just said was the 18th.

11 Q. Actually, I didn't give you a date. It's
12 August of 2004.

13 A. Okay. I received a phone call in August of
14 '04, and I think my general recollection is it was the
15 18th, a Thursday, that Arthur was no longer with the
16 firm or was no longer responsible for the effort for
17 the e-mail archive effort.

18 Q. Who did you receive that phone call from?

19 A. From Rob Place, P-L-A-C-E. Rob is a direct
20 report of mine. He works in my group.

21 Q. What is Mr. Place's role in your group?

22 A. Rob is responsible for storage and
23 infrastructure. And Glenn Seickel reports to Rob.

24 Q. What did Mr. Place tell you about Mr. Reil?

25 A. He let me know that a meeting had been set

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1 up -- had happened where it was announced that Arthur
2 was no longer responsible for the archive and that
3 where some decisions were made with respect to how to
4 continue to move forward with this effort.

5 Q. Were you aware during that phone call or
6 shortly thereafter that Mr. Reil was replaced by
7 Allison Gorman Nachtigal?

8 A. I was made aware, I believe, within several
9 weeks of that event.

10 Q. Were you consulted by anyone about
11 Mr. Reil's performance prior to the announcement of his
12 departure?

13 A. I was not.

14 Q. So far as you know, you did not play any
15 role in his jettison?

16 A. I do not believe I played any role.

17 Q. Were you ever asked to review his
18 performance?

19 A. No.

20 Q. Did you ever do a peer review of him?

21 A. I did not do a peer review of him.

22 Q. Did you do any kind of review of him?

23 A. I believe I may have been asked by, you
24 know, my previous boss, Joe Sidor, as to how it was to
25 work with Arthur. In sort of an informal kind of way,

1 but not a formal peer review.

2 Q. When did that conversation occur?

3 A. Generally I would guess that it was in
4 earlier -- in the first half of '04.

5 Q. Did you ever form any impressions, whether
6 or not you conveyed them to anybody, about Mr. Reil's
7 competence?

8 A. Could you be more specific?

9 Q. His competence for the e-mail archive
10 project.

11 A. Yes.

12 Q. What was your impression?

13 A. My impression is that Arthur was someone who
14 senior members of IT had entrusted with a large set of
15 responsibilities; that his responsibility was to not
16 only create an application, like a searchable,
17 indexable archive, but to -- so from an application
18 perspective, but also responsible for infrastructure
19 strategy and design.

20 That's a pretty large scope for one
21 individual. In general, in my experience, people are
22 generally experts at one or the other. Although
23 various IT groups, including my own, would provide
24 assistance with infrastructure strategy, et cetera.

25 My overall impression was that he had a

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1 previous history, a lengthy history of experience in
2 the industry and that people were of the opinion that
3 he could deliver over a several-year time frame a tool
4 that the firm needed.

5 Q. So is that a way of saying that you thought
6 he was performing his job adequately?

7 A. I would say the answer to your question
8 right there is, I wasn't going in that direction with
9 my answer. I was merely -- you asked my -- what my
10 understanding of his -- impressions of him were.

11 Q. Well, did you ever form an impression as to
12 whether he was or was not performing his job
13 adequately?

14 A. Yes.

15 Q. And what was your impression?

16 A. My impression was that the archive itself
17 did go live, as was previously planned, on January 1st,
18 2003. So he delivered on time.

19 In terms of working with him specifically on
20 the e-mail restoration project, his team was
21 coordinating getting this information, this Legacy
22 information, prior to 2003, working with various
23 different groups together that -- the group was working
24 together. The information was flowing between the
25 different vendors and coming back to Morgan Stanley,

1 With that understanding, you can answer the
2 question.

3 THE WITNESS: Sure. Since my team is one of
4 the groups responsible for data protection and
5 back ups of documents and information, we have
6 been involved in requests for documents,
7 information, e-mail over the past several years.

8 I've spoken already about the fact that we
9 have a number of tapes which were off-sited to
10 our vendor, Recall, and that we would -- when
11 requests would come in, ad hoc requests for
12 certain information, we would assist legal and
13 IT security in executing those search requests.

14 BY MR. BYMAN:

15 Q. Specifically to this case, first of all, you
16 are aware that this is a lawsuit between Coleman Parent
17 Holdings and Morgan Stanley and Company, Incorporated,
18 are you not?

19 A. Yes.

20 Q. Have you ever been asked by anyone to
21 provide support to the legal team for this specific
22 case?

23 And that's just a yes or no. I'm not trying
24 to find out what you did.

25 A. Yes.

1 and progress did appear to be made.

2 Q. So is that a way of saying that he was or
3 was not performing adequately?

4 A. So from my perspective, he was performing
5 adequately.

6 Q. Did you ever share that view with any of
7 your bosses or his bosses?

8 A. I don't know if I shared my view of his
9 competence with my superiors.

10 Q. Do you ever have interface with lawyers in
11 the performance of your duties, other than getting
12 ready for depositions?

13 A. Would you restate the question?

14 Q. Well, is any part of your duties over the
15 last couple of years been to supply support or other
16 services to legal counsel?

17 A. Yes.

18 Q. And would you describe what that function
19 has been?

20 MR. KLAPPER: And let me just interject,
21 Counsel.

22 You're not to reveal anything about the
23 specific services, conversations that you've had
24 with counsel relating to those services, or
25 discussions that you've had with counsel.

1 Q. And now to the extent that you can do it --
2 and I do not want to invade privileges, but to the
3 extent you can, tell me what task you've been given for
4 this case.

5 MR. KLAPPER: I'm going to object. Because
6 it's unclear to me that in describing the tasks
7 we can somehow protect the privilege. In terms
8 of description of the tasks, that gets into the
9 mental impression of the attorneys in terms of
10 what they've asked him to do in assisting
11 counsel.

12 If you want to ask him questions about who
13 he interacted with, when he had meetings with
14 attorneys, et cetera, those atmospheric, I'm
15 all for it. Go forth. But I believe you're
16 invading the privilege if we start getting into
17 the litany of tasks that he may or may not have
18 been asked to do.

19 MR. BYMAN: Let me see if I can get to at
20 least some specific.

21 BY MR. BYMAN:

22 Q. Have you ever been asked to attempt to
23 locate e-mails that might be relevant to this
24 litigation?

25 MR. KLAPPER: And let me confer with him

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1 with respect to whether or not -- and with
2 co-counsel -- with respect to whether or not
3 this is getting into the privilege area.

4 MR. BYMAN: Sure.

5 (A discussion was held off the record.)

6 (A portion of the record was read by the
7 reporter.)

8 MR. KLAPPER: And I'm just going to go on
9 the record and indicate that it's our position
10 that, feel free to ask him generally about what
11 he has done in terms of searching for e-mails
12 and things of that sort. But if we're going to
13 get into specific questions as to who asked him
14 to perform those functions, we're going to
15 invoke the privilege, and I'm going instruct him
16 not to answer that.

17 With the exception of any -- I guess the
18 order in place in this particular case for
19 purposes of this deposition required us to
20 identify documents that Mr. Saunders may have
21 had in his possession. And feel free to ask
22 about that pursuant to the order.

23 But other than that, in terms of specific
24 tasks asked by lawyers, I'm going to invoke the
25 privilege and instruct the witness not to

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1 answer.

2 MR. BYMAN: I'm confused, Tony. Why would
3 the identity of someone who made the request be
4 privileged.

5 MR. KLAPPER: Because the nature of the
6 question is what are the tasks you've been asked
7 to do. Once you link that up to the attorney,
8 you're getting into the attorneys' mental
9 impressions in terms of what he has decided or
10 not decided to do or asked Mr. Saunders to do.

11 So I'm not suggesting you have nefarious
12 motives here, but it's a backdoor way of getting
13 at what the attorney is intending to do.

14 MR. BYMAN: Well, I disagree with your
15 definition of what falls within the privilege.
16 So I'm going to ask the question and ask you to
17 make whatever you -- instructions you need to
18 do.

19 BY MR. BYMAN:

20 Q. Has anyone ever asked you to aid in the
21 location and identification of e-mails relevant to this
22 specific litigation?

23 MR. KLAPPER: And let me just interject.

24 You can answer that question so long as you
25 don't reveal if it was attorney based or not

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1 attorney based.

2 You may answer.

3 THE WITNESS: To be specific, are you asking
4 whether I've looked at my own e-mails, or I've
5 looked at all e-mails that are available to
6 Morgan Stanley?

7 BY MR. BYMAN:

8 Q. My question is: Have you been asked to
9 search Morgan Stanley files or aid in a search of
10 Morgan Stanley files for any e-mails that are related
11 to this litigation?

12 A. Okay. I was specifically asked to check my
13 own e-mail for any information or documents relevant to
14 this proceeding.

15 Q. And have you or your team provided any
16 support specifically related to this litigation to
17 extract, locate, or identify e-mails for production in
18 this litigation?

19 A. I guess the strict answer to that question
20 is yes, specifically related to the three tranches of
21 tapes that have been under discussion in the last
22 several weeks and in a hearing to which I was party. I
23 believe it was last Friday or Thursday. It was last
24 Friday, I think.

25 Q. Let's make sure that we get the definition

1 of what you mean by the three tranches of tapes. What
2 do you mean?

3 A. Sure. So outside of what we've talked about
4 in general as the 35,000 Legacy Legato tapes or the
5 universe of tapes prior to 2003, some of which
6 contained e-mail, some of which did not, there were
7 some groups of tapes which have become -- which
8 surfaced in this past year that may or may not have
9 contained additional information.

10 And I know that in this proceeding that
11 there's been some concern about that information,
12 whether it's discoverable, whether or not it's
13 privileged, and how to make that available to both
14 sides, the plaintiff and the defendant, in order to
15 help move this matter forward.

16 Q. So the first tranche is the 35,000 tapes?

17 A. So that makes it four tranches. The 35,000
18 would be the original set of tapes.

19 Q. The original set of what Morgan Stanley
20 believed to be the universe of pre-2003 tapes?

21 A. That's correct.

22 Q. And then something surfaced that expanded
23 the universe?

24 A. That's right.

25 Q. And that's tranche two?

031500

1 A. Sure.

2 Q. And what's the quantity of tranche two

3 tapes?

4 A. My understanding is that 1423 DLT tapes that

5 were found this past year.

6 Q. What's tranche three?

7 A. Tranche three is the 8-millimeter tapes.

8 Q. And what's the quantity of those tapes?

9 A. I'm not specifically aware of that number.

10 Q. Do you have any general estimate?

11 A. Somewhere -- I think somewhere around 700.

12 Q. You've told us what the storage capacity was

13 of a DLT tape. What's the storage capacity of an

14 8-millimeter tape?

15 A. I'm really not sure, but I'm thinking it's

16 under 10 gig per tape. But that's a guess.

17 Q. What is tranche four?

18 A. Tranche four would be the 169 tapes, DLT

19 tapes, that were found in the last couple of months.

20 Q. Let's go back to tranche two. As to the

21 1423 DLT tapes, when were those first discovered?

22 A. My understanding is that they were

23 discovered somewhere in -- early in the summer of 2004.

24 Q. Well, take a look at the first document in

25 Exhibit 425, which is dated May 6. Under pending

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1 items, paragraph two, there's a reference to 1,024

2 unlabeled tapes that were found in the Brooklyn

3 security room. Is that a reference to what became the

4 1423 tapes?

5 And if you look at the next page, you'll see

6 it's already grown to 1421 on May 20th. And if you'll

7 look at the next page, we finally get to the 1423.

8 A. Is there a question?

9 Q. Yes. Is this a reference to the tranche two

10 tapes?

11 A. I believe so.

12 Q. So they were found at least as of May 6th,

13 2004; is that right?

14 A. According to this document, that sounds

15 right.

16 Q. Do you have any reason to believe that this

17 document is incorrect?

18 A. I don't.

19 Q. Or that it's dated incorrectly?

20 A. I don't.

21 Q. How were these tapes found on or before May

22 6th, 2004?

23 A. I'm not aware of how they were found.

24 Q. Do you know who found them?

25 A. I do not.

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1 Q. Have you ever asked anyone?

2 A. I don't recall asking anyone how they were

3 found.

4 Q. There's a reference on the first page of

5 Exhibit 425 to Wray Stewart/Glenn to investigate the

6 origin of the tapes. Was someone tasked to find out

7 what the origin of the tapes was?

8 A. It would appear here that Wray or Glenn were

9 going to investigate.

10 Q. But you have no knowledge other than what's

11 on this document?

12 A. I specifically don't remember.

13 Q. Did anyone ever report to you that they

14 figured out why these tapes turned up?

15 A. There were conversations after this event

16 that I'm generally aware of regarding: How did this

17 happen? What do we know about it? What could we do to

18 make sure that we've located the universe of tapes?

19 Q. Who did you have those conversations with?

20 A. Glenn and Wray.

21 Q. When did you have those conversations?

22 A. Again, general knowledge, I would say in the

23 same time period, May, June.

24 Q. Did you come up with some answer as to how

25 you could make sure this wouldn't happen again?

1 A. I believe through conversations with Wray

2 and Glenn, and I'm not sure if it was a directive of

3 mine or whether they took action upon themselves, but

4 we did decide to do a sweep, a physical, visual search

5 of our communication rooms, to go out and look for any

6 other tapes that may have been missed or may have been

7 in a place that wasn't part of normal business

8 practice.

9 Q. Who conducted that sweep?

10 A. Again, general knowledge about what was

11 done, but I believe that the BURP team, that the

12 Siemens contractors, the tape handlers themselves, were

13 sent out to the different comm rooms.

14 Q. How many people would that involve?

15 A. I think it's six people.

16 Q. Were the instructions to the BURP team oral

17 or in writing?

18 A. Again, general knowledge, I do not know.

19 Q. Would it make sense that it be oral? It

20 would have been in writing, wouldn't it?

21 A. Again, I don't know.

22 Q. Let me represent to you that we haven't seen

23 anything in this stack that indicates that any such

24 instructions were sent out. If they were sent out,

25 would you have been copied with those instructions?

031501

1 A. As the senior manager of the team, I am not
 2 always copied on actions that are taken by the team in
 3 this space. And I think that oral instructions were
 4 often the way that we would ask people to take care of
 5 one off requests.
 6 Q. However the instructions were given, you
 7 would have expected to see a report of the results,
 8 would you not, of that sweep?
 9 MR. KLAPPER: Objection, vague and ambiguous
 10 as to the report and whether you're referring
 11 to --
 12 MR. BYMAN: Let me start over.
 13 BY MR. BYMAN:
 14 Q. Did you ever see a report?
 15 A. I generally recall either Wray or Glenn
 16 coming back to me and indicating that a sweep had been
 17 performed and that nothing was found.
 18 Q. So that was an oral report?
 19 A. Yes.
 20 Q. Did you ever see a written report?
 21 A. Not to my knowledge.
 22 Q. What is the Brooklyn security room?
 23 A. The Brooklyn security room is a separate
 24 dedicated area, part of our communication rooms. And
 25 by communication room we mean large floor spaces that

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1 are cooled that contain our computer -- our computing
 2 equipment, so mainframes, Dell computers, Sun
 3 computers, our storage, EMC storage area network
 4 equipment.
 5 Specifically within that communication room
 6 there is a cage, which is actually a physical cage
 7 where some more critical equipment is kept, some
 8 equipment that has higher levels of physical security
 9 than the rest of the room.
 10 Q. Is the Brooklyn security room part of the
 11 same facility located in One Pier Point Plaza in
 12 Brooklyn Heights that you testified about in your first
 13 deposition?
 14 A. Yes.
 15 Q. Is there some reason why that room wasn't
 16 searched initially when the original tranche of 35,000
 17 tapes were put together?
 18 A. So -- with respect to the original universe
 19 of tapes, of the 35,000, those are the tapes that were
 20 located at our Recall off-site facility. Our standard
 21 business practice is to off-site tapes on a regular
 22 basis. And those were the tapes that we believed to be
 23 the sum total of our DLT tapes.
 24 Q. Right. But that's not quite responsive to
 25 my question. The question is: Why didn't somebody

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1 think to look in the Brooklyn security room when you
 2 were developing the original universe?
 3 A. So at the time when the project was
 4 conceived, there was no reasonable -- there was no
 5 reason to believe that there were tapes outside of our
 6 Recall facility in New Jersey.
 7 Q. What changed? Why did you suddenly decide
 8 that you should look in the Brooklyn security room?
 9 A. Again, I testified that I'm not aware of how
 10 they were found. So I can't speak to that question.
 11 Q. Do you have any knowledge as to why somebody
 12 thought that they found 1,024 and then two weeks later
 13 thought that they found 1421 and then a couple of weeks
 14 after that decided it was 1423?
 15 A. I have no knowledge.
 16 Q. How big is a DLT tape? Can you describe it
 17 physically?
 18 A. Not for something on the record.
 19 Q. Well, compare it to a video cassette, a VHS
 20 tape?
 21 A. I guess it's about two-thirds the size of a
 22 VHS tape.
 23 Q. So 1,000 of these would fill up a bookcase
 24 at least, maybe a couple of bookcases?
 25 A. It's possible.

1 Q. 1424 of them would fill up a larger bookcase
 2 or a couple of bookcases, right?
 3 A. Sure.
 4 Q. Have you ever been to the location where
 5 these tapes were found?
 6 A. I have not been in the security area -- the
 7 caged area itself. But I have been to the room in
 8 which that cage area sits.
 9 Q. How big is that caged area?
 10 A. I'm not aware specifically.
 11 Q. So you've never even looked at it from afar?
 12 A. No.
 13 Q. Do you have any understanding of its
 14 dimensions?
 15 A. No, I don't.
 16 Q. So you don't know if this bookcase full of
 17 tapes would be a big part of the room, a small part of
 18 the room?
 19 A. I do not know.
 20 Q. Do you know how they were found? In other
 21 words, were they stored in a bookcase or in a file
 22 cabinet or in a bunch of boxes or behind a coat rack?
 23 A. I have a general knowledge that they were
 24 found in a bin. So something that you might see --
 25 laundry bin kind of comes to mind. Like a cloth type

031502

1 of bin and that the dimensions would be something like
 2 4 feet by 3 feet by 3 feet high would be my general
 3 recollection.
 4 Q. Were there other similar bins in the room?
 5 A. My understanding of what I heard after the
 6 event is that there was just one bin.
 7 Q. What did you hear after the event about this
 8 bin?
 9 A. Merely of its existence and that the tapes
 10 were contained within it.
 11 Q. Who told you that?
 12 A. I do not recall.
 13 Q. Was it somebody on your team?
 14 A. I would guess that it would be Wray or
 15 Glenn, most likely Wray.
 16 Q. Once the second tranche of tapes surfaced
 17 and you realized that Recall did not have the universe,
 18 did Morgan Stanley do anything to cast its net wide to
 19 make sure that there weren't third and fourth tranches?
 20 A. I believe that I've testified already that
 21 we did enter into a comm room sweep to do a visual
 22 inspection of our premises to determine whether there
 23 were any other tapes out there that we weren't aware of
 24 at the time.
 25 Q. And did that sweep result in the discovery

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1 of tranches three and four, or was it something else?
 2 A. My understanding is that three and four were
 3 the result of something else.
 4 Q. What was the something else?
 5 A. For the third tranche, the 8-millimeters, I
 6 actually have very little knowledge about those tapes,
 7 about where they were found. With respect to the 169,
 8 I am aware of that circumstance.
 9 Q. Let's start with the third tranche, even
 10 though you don't know much about it. What do you know
 11 about it?
 12 A. Merely of its existence.
 13 Q. Who told you about it?
 14 A. Again, I believe it was either Wray or
 15 Glenn.
 16 Q. Do you know where those tapes were located?
 17 A. I do not know.
 18 Q. They weren't in Brooklyn?
 19 A. Again, I don't know. You can keep asking
 20 the questions, but I don't know.
 21 Q. I'm sorry. I have to ask the questions. I
 22 get paid by the word.
 23 A. Or the pound.
 24 Q. So you don't know if they were found in
 25 Brooklyn, Houston, Barcelona, Spain, whatever?

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1 A. No, sir.
 2 Q. Do you know when they were found?
 3 A. No.
 4 Q. Let's move on to the -- well, let me just
 5 try to box this out.
 6 Have I exhausted your knowledge of the third
 7 tranche?
 8 A. Yes.
 9 Q. With respect to the fourth tranche, when
 10 were they discovered?
 11 A. My understanding of that event is that John
 12 Pamula had been working with our off-site vendor,
 13 Recall, in late '04. He had knowledge of some tapes
 14 and some boxes of tapes that should have been at Recall
 15 that Recall was indicating they did not have, and that
 16 he made repeated attempts to have those tapes delivered
 17 to Morgan Stanley. And after several attempts, Recall
 18 did discover those tapes and did send them back to
 19 Morgan Stanley.
 20 Q. How did Mr. Pamula, if you know, have
 21 knowledge of these tapes at Recall?
 22 A. He was reviewing logs of deliveries from
 23 Morgan Stanley, from the back up and recovery team, the
 24 BURP team, in a time frame earlier than 2004 -- earlier
 25 than 2003, actually -- and came up with box numbers

1 that we were aware of having sent to Recall.
 2 Q. So these are tapes that should have been in
 3 the universe that Recall had, but for some reason they
 4 didn't recall that they had them?
 5 Other than the Brooklyn facility, how many
 6 other communications rooms are there?
 7 A. From a building perspective, we have
 8 communication rooms in 1585 Broadway, which is Morgan
 9 Stanley's headquarters, a data center and a building in
 10 PAVONIA NEWPORT, which is in Jersey City, New Jersey.
 11 We have a communication room in 757 Seventh
 12 Avenue, which is where a lot of IT staff are staffed
 13 and where my office is.
 14 And the Brooklyn facility.
 15 Each of those buildings has one or multiple
 16 of these comm room or communication room spaces.
 17 If needed, I could count the number of
 18 floors in each of those buildings that specifically
 19 house communication rooms.
 20 Q. I'm going to mark as CPH 427 a piece of
 21 paper, which apparently was faxed to our office this
 22 morning, which bears production number 0113927.
 23 (Plaintiff's Exhibit 427 was marked for
 24 identification.)
 25 BY MR. BYMAN:

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1 Q. Have you ever seen this document before?
 2 A. I have.
 3 Q. Did you provide this to counsel so it could
 4 be provided to us?
 5 A. I did not.
 6 Q. Do you know who provided it?
 7 A. I do not.
 8 Q. When did you see this --
 9 A. Actually, I'm sorry, that's not quite
 10 correct. I believe that I heard that Glenn Seickel
 11 provided this to counsel.
 12 Q. There's a reference to canvassing both
 13 sites, Pavonia and Brooklyn, and finding three other
 14 containers. Do you know what that reference is to?
 15 A. Could you be more specific with your
 16 question?
 17 Q. Well, does it refer to tapes that may
 18 contain e-mail?
 19 A. Could you restate the question?
 20 Q. Is there anything in this document, as you
 21 understand it, that relates to the location of any of
 22 the tranches of documents -- tranches of tapes that
 23 we've identified?
 24 A. My understanding is that this document
 25 speaks to the events around the fourth tranche of

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1 tapes, the 169.
 2 Q. This actually is Mr. Pamula's. I don't know
 3 if this is a note or a letter or a memo, but whatever
 4 it is, this shows his process in figuring out that
 5 Recall should have these additional tapes?
 6 A. That is my understanding.
 7 Q. He ends up by saying, I believe there may be
 8 additional containers at Recall that are not on the
 9 Recall inventory.
 10 Does that refer to something over and above
 11 the 169 tapes, or does it refer simply to tranche four?
 12 A. This is John Pamula's document, and the
 13 first time that I saw this document was this morning.
 14 I would hesitate to speculate about what John Pamula
 15 was indicating or what his state of mind was when he
 16 wrote this document.
 17 Q. So you have not had any conversation with
 18 him about this document?
 19 A. I have not.
 20 Q. Have you had any conversation with him about
 21 whether he believes there may be a fifth tranche out
 22 there?
 23 A. I have not.
 24 Q. Do you have any reason to believe that there
 25 is something else out there?

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1 A. I have no reason to believe.
 2 Q. Do you have any reason to believe that you
 3 have actually located everything that is out there?
 4 A. I believe that we have made repeated efforts
 5 to be comprehensive in our search of Morgan Stanley
 6 premises, areas where tapes have been stored in the
 7 different communication rooms, and that John Pamula, in
 8 addition to the BURP team, have been diligent in their
 9 efforts to make sure that we have found everything that
 10 is out there.
 11 Q. I'm not questioning what may have been done
 12 in the past, Mr. Saunders. Others may. And on Monday
 13 you can expect others will question you, maybe in a
 14 harsher tone of voice.
 15 My question is a little more direct, and
 16 it's innocent. That is: As you sit here today, are
 17 you confident that you've located everything?
 18 A. I'm confident that we've made every effort
 19 to do so.
 20 Q. I understand you've made efforts. Are you
 21 confident that those efforts have been successful?
 22 A. Yes.
 23 Q. And what's the basis of that confidence
 24 given the fact that tranche one didn't work, tranche
 25 two wasn't the end of it, tranche three wasn't the end

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1 of it?
 2 MR. KLAPPER: Objection, argumentative.
 3 You can answer.
 4 THE WITNESS: Again, go back to my earlier
 5 answer, which is: We have made various efforts,
 6 strenuous efforts, to locate the universe of
 7 tapes, and I believe we've done so.
 8 BY MR. BYMAN:
 9 Q. Did anyone ever task you with finding the
 10 most expeditious way of finding out what the content of
 11 the tapes that you located was?
 12 A. Could you restate the question?
 13 Q. Sure. My understanding is your role in this
 14 was to locate tapes that may contain e-mail; is that a
 15 fair characterization?
 16 A. No, that's not a fair characterization.
 17 Q. What's unfair about that?
 18 A. I believe that our responsibility was for
 19 the tapes that Morgan Stanley had from previous
 20 backups, that we would manage the storage and the
 21 production of those tapes to various parts of the
 22 business.
 23 Q. So you were tasked with producing backups
 24 that contained e-mail; is that right?
 25 A. Among other things, yes.

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1 Q. But you were not tasked with actually
 2 searching those e-mails for content?
 3 A. That's correct.
 4 Q. Do you know who was tasked with that
 5 responsibility?
 6 A. Could you be more specific about the
 7 searching, like the specific function you're looking
 8 for?
 9 Q. Sure. I mean, what you delivered was data
 10 which contained e-mails; is that right?
 11 A. What we provided was DLT tapes that
 12 contained backups of data from Morgan Stanley systems.
 13 Some of those contained e-mail.
 14 Q. And some of those e-mails might have related
 15 to the college basketball betting pool or they might
 16 have related to CPH versus Morgan Stanley, right?
 17 A. Yes.
 18 Q. Some of them would have been totally
 19 irrelevant to this litigation; some of them might have
 20 been relevant?
 21 A. Sure.
 22 Q. Someone would have to perform some sort of
 23 search to determine which was which, right?
 24 A. Yes.
 25 Q. And you were not that someone?

1 A. Well, since we, Morgan Stanley, created an
 2 e-mail archive and had it inhouse and then went to the
 3 further length of getting information that was prior to
 4 its existence, prior to 2003, and getting that
 5 information uploaded into said e-mail archive system,
 6 I'd say, no, I'm unaware of any vendor that was capable
 7 of this, which is my understanding of why the firm
 8 decided in the early 2000s to go ahead and create such
 9 a system at considerable expense.
 10 Q. I understand that nobody had the ability to
 11 search the entire Morgan Stanley archive without having
 12 access to the entire Morgan Stanley archive. My
 13 question is a little more specific.
 14 Let's take just the last tranche, for
 15 example, the 169 DLT tapes. It is possible, is it not,
 16 to segregate e-mails from those tapes, put those
 17 e-mails on a searchable database apart from the Morgan
 18 Stanley archive system and search them for key word
 19 searches, is it not?
 20 A. That's possible.
 21 Q. And an outside vendor could do that, right?
 22 A. It's possible.
 23 Q. Does Morgan Stanley have the inhouse
 24 capability of doing that?
 25 A. I would say that other than the archive, the

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1 A. No.
 2 Q. Do you know who that someone was?
 3 A. Can you be specific about the time frame?
 4 Q. At any time.
 5 A. The players have changed over time.
 6 Q. I'm interested in the evolution.
 7 A. It would help me to know when you want to
 8 start.
 9 Q. Start with the first time when you were
 10 tasked with anything having to do with the e-mail
 11 archiving system anytime after this lawsuit, which I
 12 believe was sometime in 2003.
 13 A. So my general understanding of the search
 14 process was that a combination of Arthur Reil's group
 15 and IT security were responsible for carrying out
 16 searches in the e-mail archive to look for discoverable
 17 documents in such a case as this.
 18 Q. You never had any of that responsibility?
 19 A. That's correct.
 20 Q. If somebody had asked you to do it, was it
 21 something that you had the ability to do?
 22 A. No. Neither myself nor my teams have any
 23 access to these systems.
 24 Q. Would you have had the ability to do it
 25 through the use of an outside vendor?

1 comprehensive archive that we created, I would say that
 2 we do not have the ability to do that.
 3 Q. Is that something you could create?
 4 A. In the past, previous to our experience with
 5 and our relationship with NDCI, National Data
 6 Conversion Institute, we did attempt to do some ad hoc
 7 restores. And I believe that -- I'm not sure who was
 8 doing the searching capability at that time, but I can
 9 tell you that our efforts to quickly and accurately
 10 restore data, even in small amounts of tapes, seemingly
 11 small numbers of requests, they were not successful.
 12 And, in fact, when we took those same set of tapes, we
 13 went to an external vendor. They were much more
 14 successful after they had tried.
 15 Q. The outside vendor was much more successful?
 16 A. Yes.
 17 Q. Do you have any knowledge one way or the
 18 other whether sending -- and again, let's talk about
 19 the fourth tranche, the 169 tapes. If you were to send
 20 that quantity of information to an outside vendor to
 21 restore and put into some sort of searchable database,
 22 would that take more or less time than it does to
 23 restore the tapes, load them into the Morgan Stanley
 24 archive and then search them?
 25 A. So -- that information is outside of my area

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1 of expertise and I couldn't answer.
 2 Q. So you don't know one way or the other?
 3 A. No.
 4 Q. Mr. Saunders, in front of us is a stack of
 5 documents bearing production numbers 112286 through
 6 113899. And I'll represent to you, sir, that with the
 7 exception of what I just marked as Exhibit 427 and a
 8 series of documents that we marked as Exhibits 420
 9 through 424 --
 10 MR. KLAPPER: Could you repeat that Bates
 11 range?
 12 MR. BYMAN: 112286, 113899.
 13 BY MR. BYMAN:
 14 Q. And I'm sorry, we've now lost the train of
 15 my question, so I'm going to start over.
 16 The stack of documents that I've just
 17 identified by Bates range, with the exception of what
 18 we marked as Exhibits 420 through 424 and 427,
 19 constitute the universe of materials that were provided
 20 to us pursuant to the court's order of February 3rd,
 21 which require that Morgan Stanley give us all documents
 22 that might be used or related to the testimony that
 23 they expect to give at the hearing scheduled for next
 24 Monday.
 25 I'd like you to just look at the physical

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1 stack, sir, and tell me whether or not any of these
 2 documents are documents that you provided to counsel so
 3 that they could be provided to us.
 4 And while you do that, I suggest that the
 5 rest of us take a little short break.
 6 (A recess was taken.)
 7 BY MR. BYMAN:
 8 Q. Mr. Saunders, I see you've now taken about
 9 15 minutes to go through this entire stack. Were any
 10 of these materials materials that you supplied to
 11 counsel so they could be supplied to us?
 12 A. No.
 13 Q. Were any of these materials documents that
 14 you have seen before today?
 15 A. A few of them.
 16 Q. Which ones?
 17 A. I saw a document in there which had to do
 18 with a discussion of the finances around what NDCI was
 19 charging us, a renegotiation. It was an e-mail, Diane
 20 Kennelly, myself, Wray.
 21 Another document in there which was a kind
 22 of a project plan with a description of a list of
 23 actions to take and how much time it would take. And
 24 that was in Excel format with kind of variation of
 25 colors that Glenn put together for another effort.

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1 And the rest of it I'm generally aware of,
 2 which is communications between NDCI, my staff and
 3 many, many, many pages of Excel spreadsheets with
 4 respect to tapes and states of tapes, e-mails coming
 5 off of tape, duplicated and deduplicated -- or rather
 6 unique and nonunique.
 7 Q. When you say you're generally familiar, you
 8 mean you've seen things like this as opposed to these
 9 particular documents?
 10 A. That's right.
 11 Q. Do you know if you've seen any of these
 12 particular documents?
 13 A. I don't recall.
 14 Q. And I really don't want to burden the record
 15 with thick documents. So I want to just show you
 16 something. If we need to actually mark it, we will.
 17 Bates ranges 0012353 through 112493. This is
 18 apparently a 141-page document that has a long list of
 19 things on it. Would this be representative of the type
 20 of things you saw that simply detailed a quantity of
 21 tapes by numeric description and dates as to when it
 22 was imported and restored?
 23 A. To be quite honest, I'm not familiar with
 24 this document. I'm also not -- I mean, I'm familiar
 25 with lists of tapes, but in terms of the information in

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1 the third and fourth columns, I couldn't really tell
 2 you what it's about. And there's really very little
 3 context around this document.
 4 MR. KLAPPER: Let me know, are you going to
 5 be marking that as an exhibit or just
 6 referencing the Bates range?
 7 MR. BYMAN: I think just referencing the
 8 Bates range is sufficient. Unless you have
 9 stock in a paper company.
 10 MR. KLAPPER: Not yet.
 11 BY MR. BYMAN:
 12 Q. Let me, again, just reference by Bates range
 13 a document with production numbers 0112672 through
 14 2796.
 15 This document -- and it was produced to us
 16 clipped in this way -- but it includes some e-mails.
 17 It includes lists of what appear to be tapes by
 18 numbers. It also has some invoices towards the very
 19 end of it. Is this one of the documents you would have
 20 generally reviewed?
 21 A. Well, so, to be clear, your question is:
 22 Did I generally review these documents in the past,
 23 yes?
 24 Q. Yes.
 25 A. The answer is no, I would not have reviewed

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1 documents like this in the past. My earlier testimony
2 was some of my work with counsel over the past few
3 months I've seen documents like these, but it was not
4 my practice to review communication between NDCI and my
5 staff or to check into the details of the financing and
6 the funding -- or rather the financing, paying of
7 bills, as you indicated at end of this document.

8 Q. So I may have misunderstood you in your
9 earlier question. When you said that you have seen
10 documents like this before, you mean in the last couple
11 of months with counsel as opposed to at the time they
12 were generated?

13 A. So to be specific, I have seen documents,
14 Excel spreadsheets, that contain tapes with various
15 information about those tapes. The documents that are
16 before me, such as e-mails or invoices or discussions
17 between various parties and NDCI where I am not copied,
18 I have not been reviewing them, nor would I have seen
19 them.

20 So of this I would say somewhere around 10
21 inch pile of paper, I would say I'm familiar with less
22 than 1 percent of the information there. You know,
23 specifically personally having reviewed it before.

24 Q. And the 1 percent that you have reviewed
25 before would have been either e-mails addressed to you

1 something about the contents of a particular container
2 by looking at the number?

3 A. I know that there is a nomenclature. I'm
4 not aware of how it works. To answer your question, I
5 would guess that the person who knows the code would
6 know how to interpret this.

7 Q. Do you know who that person would be?

8 A. I would guess the back up and restore team.

9 Q. Somebody that reports to you?

10 A. A team that's under my -- in my area, yes.

11 Q. Would Mr. Seickel be one of those people who
12 might know?

13 A. He might know.

14 Q. Returning to the four tranches that we've
15 identified. Did any of those tranches include
16 information on a storage medium other than magnetic
17 tape?

18 A. Could you be more -- I guess I don't
19 understand the question.

20 Q. Are DLT magnetic tapes?

21 A. Yes.

22 Q. They're not optical tapes?

23 A. No.

24 Q. And are they read by a particular reader?

25 Is there a name of a device that's used to read those

1 or invoices from NDCI?

2 A. So I was not -- I have not been reviewing
3 the NDCI invoices, so I've not seen those. I think I
4 mentioned earlier two documents that I did see in the
5 pack that I had seen.

6 Q. All right. Let me return your attention to
7 Exhibit 427.

8 Do you have any understanding of what
9 Mr. Pamula was referring to by containers? And there
10 are four numbers under the heading these containers are
11 in.

12 A. My guess, not having spoken to John about
13 this document, is that he's talking about containers of
14 tapes.

15 Q. And by container, are we talking about a box
16 that has tapes in it?

17 A. I believe so, yes, a box of tapes.

18 Q. Is there any standard nomenclature for a
19 container, that it contains X number of tapes?

20 A. My general knowledge is that a box of tapes
21 could contain up to about 60 tapes, but does not have
22 to contain 60 tapes.

23 Q. Is there any protocol you're aware of for
24 the numbers system for containers? In other words,
25 would somebody who had the code be able to tell

1 tapes?

2 A. Yes. And actually, in the tranches there
3 are a couple of different types of magnetic media of
4 tapes. And for each of those tape types, there is a
5 type of -- a physical device that would read that tape.

6 Q. And that's what I'm driving at. For all of
7 the tranches I'd like to know what the universe is of
8 the types of media and the types of hardware you would
9 need to read them.

10 A. Okay.

11 Q. Can you tell me that?

12 A. Do you want to walk me through the tranches?

13 Q. Tranche one, the 35,000 tapes that were
14 originally assembled as the universe.

15 A. My understanding is those are DLT tapes, and
16 they are read with a DLT drive. We use storage tech
17 jukeboxes, and a juke -- jukeboxes range from a single
18 tape drive, which could read a single tape all the way,
19 up to essentially a refrigerator-sized jukebox, which
20 could contain 10 to 20 drives, a robotic arm, and an
21 ability to store and manipulate hundreds of tapes,
22 upwards of 700, 800 tapes in a single jukebox.

23 Another word that you'll hear me use is
24 silo. So jukebox and silo is interchangeable.

25 Q. Silo means it stacks the tapes, retrieves

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1 them, and puts them into the player?
 2 A. That sounds right.
 3 Q. Are the players for these kinds of DLT tapes
 4 standard hardware that people can get on the market?
 5 They're not proprietary to Morgan Stanley or your
 6 vendor?
 7 A. No, DLT is a standard. DLT tapes and DLT
 8 drives are industry standard.
 9 Q. Let's move to the second tranche, the 1423
 10 DLT tapes that were found in the Brooklyn security
 11 area. Are those the same -- are they read by the same
 12 kind of hardware?
 13 A. I believe they're also DLT tapes.
 14 Q. And read by the same hardware?
 15 A. I believe so.
 16 Q. The third tranche is the 700 or so
 17 8-millimeter tapes. Is that a different type of
 18 magnetic storage?
 19 A. Yes.
 20 Q. And you physically described a DLT tape as
 21 being about two-thirds the size of a VHS cassette. Can
 22 you physically describe an 8-millimeter tape?
 23 A. I believe, and, again, this is general
 24 knowledge, that an 8-millimeter tape is roughly the
 25 size of an old school audio tape.

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1 Q. Audio cassette?
 2 A. Audio cassette.
 3 Q. The kind that play in people's cars?
 4 A. Yes.
 5 Q. What kind of reader is required to read an
 6 8-millimeter tape?
 7 A. 8-millimeter tape drive.
 8 Q. Is that also standard hardware that's
 9 available?
 10 A. I would say it used to be standard hardware.
 11 It's pretty much been out of spec for a number of years
 12 now, over five years. I would say it's not currently
 13 industry wide available. I would guess it was fairly
 14 difficult to get now.
 15 Q. It would be if you didn't already have one?
 16 A. That's correct.
 17 Q. But if you already had one, it would work as
 18 long as it was functioning?
 19 A. To be honest, in certain cases -- and part
 20 of my responsibilities is for hardware maintenance, we
 21 maintain the storage and the peripherals -- I would not
 22 be surprised if 8-millimeter tapes are no longer
 23 serviced and that it was very expensive and very few
 24 vendors would provide that.
 25 Q. NDCI has that kind of readers?

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1 A. Yes. I would say forensic data firms would
 2 obviously specialize in not just current, but Legacy
 3 media types and their support and infrastructure. My
 4 guess is that's their core business.
 5 Q. Any vendor that holds itself out as a
 6 restoration service is likely to get their hands on
 7 that kind of equipment if they don't already have it?
 8 A. I would guess that to be true.
 9 Q. The fourth tranche was 169 DLT tapes found
 10 in the last few months. Are those the same kind of DLT
 11 tapes, readable in the same kind of hardware as we've
 12 described for tranches one and two?
 13 A. To my knowledge they are the same as
 14 described in tranche one and two, yes.
 15 Q. Is there any storage medium for any of the
 16 tranches other than DLT and 8-millimeter?
 17 A. No.
 18 Q. In terms of your back up storage system, you
 19 mentioned the Legato system -- and I probably lost some
 20 of the other words to describe it -- but is there any
 21 other system that's used by Morgan Stanley for the back
 22 up of its e-mail archives?
 23 A. Can you please be more specific about the
 24 time frame, because obviously some products come into
 25 use and are decommissioned and then are no longer used.

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1 Q. As to the universe now that comprises the
 2 e-mail archive of Morgan Stanley, was that derived
 3 solely from Legato or from some other system?
 4 A. So to be specific -- and I apologize,
 5 because I'm going to have to be very clear here -- are
 6 you asking about what is inside -- what was the origin
 7 of the information inside the archive?
 8 Q. Yes.
 9 A. So my knowledge of the information that's
 10 inside the archive is as of January 1st, 2003, e-mails
 11 that were sent within the firm and to and from
 12 externally from the firm. So new mails going forward.
 13 And then we entered into an effort in 2003
 14 and through 2004 to take the universe of tapes prior to
 15 that time frame and take that information, restore it,
 16 deduplicate it and then enter that into the archive.
 17 So to my knowledge those are the two types
 18 of information that are in the archive.
 19 Q. And does that relate to any particular type
 20 of back up system?
 21 A. So the tapes, the pre-2003 tapes are Legato
 22 based. And Legato is -- Legato is a company. The
 23 software product, the enterprise back up software
 24 product that we used was called LegatoNetworker, one
 25 word. And it's a piece of software that runs on

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1 servers and also on clients that you would use to
2 manage backups for many, you know -- for an enterprise
3 scale type of infrastructure of an enterprise scale
4 UNIX plant.

5 Q. With respect to the e-mail archive itself,
6 what is the total amount of data that's currently on
7 it?

8 A. I am not aware of that information.

9 Q. Is it correct that approximately 14
10 terabytes of data were restored for pre-2003 e-mails?

11 A. Again, I couldn't speculate as to that
12 information. I would direct you to Allison Gorman for
13 that type of information.

14 Q. Let me just ask you to look at Exhibit 425.
15 And on each of these pages there seems to be a format
16 that it talks about under restore status. E-mails
17 restored. Total size of e-mails restored. And then it
18 goes on.

19 And I'm looking at the last page of it,
20 which I presume would be as current as we get, at least
21 in this document of September 9, 2004. Does that
22 indicate that restored e-mails numbered approximately
23 320 million and the total size of the restoration was
24 approximately 14 gigabytes, 14 terabytes?

25 A. According to this document. But, again, I

1 stated I don't have a general knowledge of this.

2 Q. With respect to the data that was in tranche
3 one, the 35,000 tapes, did those tapes contain any
4 information other than stored e-mails?

5 A. Yes.

6 Q. What other information did they contain?

7 A. I do not have a specific knowledge of what
8 those tapes contained.

9 Q. Do you have any general knowledge?

10 A. Yes.

11 Q. What is your knowledge?

12 A. My general knowledge is that the universe of
13 the Legato tapes, the pre-2003 tapes, were UNIX server
14 backups from the period of the 2000 time frame forward
15 to the end of 2002.

16 Q. And what were they backing up?

17 A. They were backing up UNIX servers in North
18 America. So there were e-mail servers. There were
19 Sybase, so database backups. There were trade
20 histories. There were production -- production market
21 data server information. Information of that type.

22 Q. To put this in English that a juror might
23 understand, does that mean it would include internal
24 spreadsheets analyzing individual companies that were
25 being used in Morgan Stanley's day-to-day work?

1 A. So the UNIX infrastructure contains -- does
2 have certain file servers within it. And certain
3 trading business units, fixed income and equities
4 specifically, those users would have both a UNIX home
5 directory where they could store files. They also had
6 a Windows based directory where they could also store
7 their files.

8 From my general knowledge, those traders
9 were basically not of a mind to be able to move
10 documents between a Windows and a UNIX work station, so
11 they would be filing their Excel, Word type documents
12 in their Windows file server space, but they would not
13 go anywhere near their UNIX file server space.

14 Q. Was there a back up for individual users
15 Windows' files?

16 A. As long as those files were stored on the
17 network drive -- and network drive and their home
18 directory is synonymous -- they were Windows based
19 backups. And obviously Windows and UNIX are two
20 separate. So there were back ups.

21 Q. Were any of those Windows backups contained
22 on the 35,000 tapes in tranche one?

23 A. My understanding is no.

24 Q. Can you give me an example of what types of
25 files other than e-mail files would actually be

1 contained on the 35,000 tapes?

2 A. So specifically a database, a Sybase
3 database, in order to back that up, the contents, the
4 row by row contents of that database would be dumped
5 into a text file, that text file would be written to a
6 system on the UNIX server, often it would be the same
7 Sybase server, and the LegatoNetworker back up server
8 would back up to that text file. And that would be the
9 Sybase information.

10 I also mentioned a couple of other data
11 types, market data logs, system log, each of these
12 servers has an operating system. And there would be
13 logs of the operation of that system. They would be
14 backed up.

15 I can go further if necessary.

16 Q. If an individual business person were doing
17 spreadsheets that were too complex or too voluminous to
18 be used with Excel, would those be backed up on the
19 UNIX type server?

20 A. To my knowledge we do not have any
21 UNIX-based spreadsheet capabilities. And, again, I'm
22 outside of my space here, because I'm more
23 infrastructure and not really desktop or business
24 application aligned.

25 But to my knowledge, no, the user base

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1 information was in large part stored in the Windows
 2 user drives.
 3 Q. Did anyone ever ask you or your team to do
 4 any restoration to enable a searchable format for
 5 information other than e-mails?
 6 A. Could you rephrase the question?
 7 Q. I'm sorry. That was awkward.
 8 The 35,000 tapes were specifically -- and I
 9 don't know if manipulated is a fair word, but I don't
 10 mean it pejoratively.
 11 A. Say it again.
 12 Q. Manipulated. They were manipulated or
 13 migrated or something was done to them in order to put
 14 it in a searchable database?
 15 A. Restored.
 16 Q. Did anyone ever ask you to restore any other
 17 types of files in a similar fashion other than e-mail
 18 files?
 19 A. My team was not asked to perform any
 20 restores other than e-mail restores off of the Legato
 21 tapes.
 22 Q. To your knowledge was anyone else's team
 23 asked to do that?
 24 A. I have a general awareness of when in
 25 matters like these, where relevant discoverable

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1 information is requested that requests go to
 2 appropriate business parties to provide relevant
 3 documents in a timely fashion to help these matters
 4 move forward.
 5 Q. Do you know if that was done with these
 6 35,000 tapes?
 7 A. Could you be more specific?
 8 Q. That for anything other than e-mails, was
 9 somebody asked to restore them into a searchable
 10 format?
 11 A. I am not aware of anyone asking for that.
 12 Q. Do you have any knowledge with respect to
 13 what types of e-mail systems were used by Morgan
 14 Stanley from 1997 through the year 2000?
 15 A. Yes.
 16 Q. What systems were used?
 17 A. My recollection is that in the late '90s,
 18 specifically in the pre-'98 time frame, that the
 19 majority of the firm's e-mail was located on mainframe
 20 based systems, and there was the APL system and the EMC
 21 system.
 22 There was also a smattering of users that
 23 were using different types of mail servers. I believe
 24 that investment banking and equity research were using
 25 CC Mail, which was a Lotus product.

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1 There were also some pilots for some newer
 2 e-mail products, which then led to an effort to get the
 3 firm to consolidate. I believe there were seven e-mail
 4 platforms at that time that were consolidated down to
 5 two in the '99, 2000 time frame.
 6 Q. What were the seven and the two?
 7 A. I hope I can come up with them.
 8 So APL, EMC. Those were mainframe based.
 9 Z Mail, which is a UNIX based product. And
 10 I believe that investment management or Morgan Stanley
 11 asset management was on Z Mail.
 12 CC Mail, which was investment management,
 13 banking and equity research.
 14 Pop Mail. So Pop Mail users, there were
 15 many different clients, so what we know of now as
 16 Netscape Mail, that was one back in the day.
 17 That's five.
 18 Simeon, which was iMap Mail, and that was --
 19 Simeon was a client, but iMap Mail was the back end.
 20 Q. Bloomberg?
 21 A. Bloomberg was -- I have no knowledge of
 22 Bloomberg Mail back at that time frame. But that's
 23 also not an inhouse Morgan Stanley product. That's a
 24 third-party product. Until recently it was their own
 25 proprietary box.

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1 I'll let my behind brain work on the
 2 seventh. But I can't think of it right now.
 3 Q. What were the two that you came down to?
 4 A. So eventually between business management
 5 and IT management, it was decided that the firm would
 6 consolidate to two platforms; that was iMap back end,
 7 which was a UNIX-based platform with Netscape Navigator
 8 as the client. And then Lotus Notes. Those were the
 9 two platforms.
 10 Q. And did that remain constant through today,
 11 or has there been some other evolution?
 12 A. Yes, there's been another evolution in the
 13 early 2000, as now in the mid 2000s, that an effort was
 14 taken to move the firm to Microsoft Exchange.
 15 Q. Is that finished?
 16 A. That has happened in large part. I believe
 17 we're 98 percent complete as a firm at this point.
 18 MR. KLAPPER: Just a sense time-wise? Do
 19 you think you've got a half hour, two hours?
 20 Are we going to be taking a lunch break?
 21 MR. BYMAN: I'm sure we'll be done before
 22 lunch.
 23 (A discussion was held off the record.)
 24 BY MR. BYMAN:
 25 Q. With respect to the first tranche of tapes,

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1 the 35,000 universe, what e-mail services or platforms
2 were included in that database?

3 A. Well, to be specific, it's not a database.
4 It was individual tapes.

5 Q. I'm sorry. That set of data?

6 A. Right. That set of data would contain -- so
7 the time frame we're talking about here is the 2000
8 through 2002 time frame. So it would contain
9 UNIX-based data, which would mean you would have iMap
10 servers, so you would have the Netscape iMap mail. And
11 Lotus Notes was also UNIX based. So you would have
12 that type of e-mail.

13 And it would not -- it would obviously not
14 contain any Microsoft Exchange e-mail, because that was
15 Windows based. And I believe there were pilots going
16 on, but there wouldn't be any exchange information in
17 there, to my knowledge.

18 Q. If somebody wanted to find backup tapes for
19 any Windows-based e-mail or other Windows-based
20 documents, where would they go look?

21 A. If you could be more specific with the
22 question, because I think you asked about both tapes
23 and information. Which is it?

24 Q. It's information I really care about.

25 A. So Windows-based documents?

1 Q. Yes.

2 A. Within Morgan Stanley we have file servers,
3 you know, enterprise scale file servers, that contain
4 both group shares of information, where a team would
5 share documents, a document repository, and also be
6 individual user directories, as I indicated previously.

7 The firm's practice is to keep those
8 documents in perpetuity. So if a user placed a file in
9 their home directory and they took no action upon that
10 file, the system itself would also take no action, and
11 that document would sit there in perpetuity.

12 We do have an ability to search through that
13 information, you know, kind of crawling the data from a
14 name perspective. So that information is available
15 online.

16 Q. Do you know if those -- and do we call this
17 a disk?

18 A. Sure. It's disk. It's a file server which
19 has got a very large disk with multiple files on it.

20 Q. Do you know if those disks were searched in
21 this litigation?

22 A. I do not know if they specifically were or
23 not.

24 Q. That would have been outside of your area?

25 A. Right. Legal would work with IT security to

1 perform such a search, or as I previously testified,
2 legal would ask the relevant business units, please
3 search your files for relevant discoverable
4 information.

5 Q. With respect to the second tranche, the 1423
6 tapes, what e-mail platforms were contained in that set
7 of data?

8 A. So -- I know that there's been a great deal
9 of effort over the last several months to get the
10 information extracted from those tapes. I am not
11 specifically aware at this time of what was on there,
12 whether that was UNIX data or not UNIX data.

13 Q. What about the 8-millimeter tapes, the third
14 tranche?

15 A. The 8-millimeter tapes, I do understand that
16 there was e-mail on a subset of those tapes, and that
17 has been extracted.

18 Q. Do you know what e-mail platforms were
19 extracted?

20 A. I do not know.

21 Q. With respect to the fourth tranche, the 169
22 DLT tapes, do you know what e-mail platforms were on
23 that data?

24 A. I do not specifically know.

25 Q. Is there any significance to the fact that

1 some of this data is on 8-millimeter tape versus DLT
2 tape?

3 A. The significance is that the 8-millimeter
4 tapes are significantly older than the DLT tapes.

5 Q. So it would be older data?

6 A. Logically, yes.

7 Q. Do you know when 8-millimeter tape back up
8 was phased out?

9 A. My general knowledge is somewhere in the '98
10 or '99 time frame is when 8-millimeter was phased out.

11 Q. Do you know of any locations that continued
12 to use 8-millimeter tape for back up after 1998?

13 A. Could you be more specific? Within Morgan
14 Stanley? Outside Morgan Stanley?

15 Q. Within Morgan Stanley.

16 A. I'm not aware of Morgan Stanley continuing
17 to use 8-millimeter tape in general after the '99 time
18 frame.

19 Q. Do you know what quantity of material was
20 extracted from the 8-millimeter tapes in terms of data?

21 A. I do not know.

22 Q. Do you know what quantity of data was
23 extracted from any of the tranches, two, three or four?

24 A. No, I do not.

25 Q. Even in a ballpark range? Are we talking

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1 about a gigabyte? 10 gigabytes? 100 gigabytes?
 2 A. I'm really not generally aware of how much
 3 was extracted. I'm not even generally aware of how
 4 much was extracted.
 5 Q. Does the fact that the 8-millimeters tapes
 6 were discovered suggest that somehow they did not get
 7 reused or destroyed after one year, as had been the
 8 case for other backups prior to the 2003 project?
 9 A. Would you mind restating the question?
 10 Q. Yes. I'm having trouble understanding what
 11 I meant by that, too. So let me start over.
 12 The 8-millimeter tapes by definition, since
 13 they're an old, phased-out format from 1998, probably
 14 include old data; is that a fair assumption?
 15 A. Yes.
 16 Q. At least as of the year 2000 it was Morgan
 17 Stanley's practice to recycle backup tapes after one
 18 year; is that correct?
 19 A. That's correct.
 20 Q. Somehow these 8-millimeter tapes did not get
 21 caught up in that general practice, right?
 22 A. That would seem to be the case. Again, I
 23 don't have -- I don't have general knowledge of the
 24 practice prior to my stint in this group. And that
 25 time frame predates my being in this group.

1 Q. Mr. Saunders, I'm going to make a
 2 representation to you that I don't know to be a fact,
 3 but people that I believe in have told me that some
 4 time in the November time frame of last year
 5 approximately 8,000 pages of e-mails were produced to
 6 us in discovery in this case.
 7 Are you aware of a quantity of e-mails that
 8 were identified and produced in the latter part of last
 9 year?
 10 A. Are you asking if I have knowledge of what
 11 has been produced by Morgan Stanley for this case?
 12 Q. Yes.
 13 A. Okay. I have no knowledge of that.
 14 Q. Then I take it you have no knowledge as to
 15 from which tranche those 8,000 pages would have come?
 16 A. That's correct.
 17 Q. When was the first time that Morgan Stanley
 18 knew that tranche two, the 1423 DLT tapes, contained
 19 e-mail?
 20 A. Could you be clear as to what you mean by
 21 Morgan Stanley?
 22 Q. Well, first of all, let me start with when
 23 was the first time you knew.
 24 A. I believe -- per my previous testimony, I
 25 believe I was made generally aware of it in the

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1 Q. Do you have any understanding or explanation
 2 for how those 8-millimeter tapes survived until the
 3 present time?
 4 A. I do not.
 5 Q. Was it an accident or did somebody
 6 consciously try to save them?
 7 A. I have no knowledge of that.
 8 Q. And I apologize. You may have told me this
 9 already. But when did Morgan Stanley first discover
 10 that it had these 700 8-millimeter tapes?
 11 A. I believe my testimony is I'm not aware when
 12 they were found.
 13 Q. Or by whom?
 14 A. Or by whom.
 15 Q. Or where?
 16 A. Or where.
 17 Q. Who would know the answers to those
 18 questions?
 19 A. I believe Glenn Seickel would be more
 20 knowledgeable about that than I would.
 21 THE WITNESS: Why don't we go ahead and take
 22 a five-minute break.
 23 MR. BYMAN: That would be great.
 24 (A recess was taken.)
 25 BY MR. BYMAN:

1 May/June time frame. I can't speak anymore
 2 specifically than that.
 3 Q. You were generally aware in the May/June
 4 time frame that someone had located unlabeled tapes in
 5 the Brooklyn security room. Did you also know whether
 6 or not there was e-mail on those tapes?
 7 A. No, I had no knowledge of what was contained
 8 on those tapes or if anything was contained on those
 9 tapes.
 10 Q. My question is: When was the first time
 11 that you were aware that there was e-mail on those
 12 tapes?
 13 A. My guess would be somewhere in the last two
 14 to three months.
 15 Q. And from what source did you get that
 16 information?
 17 A. I believe that in general I would have
 18 received that knowledge from Glenn Seickel.
 19 MR. BYMAN: I'm going to mark for
 20 identification as CPH 428 a document with
 21 production numbers -- the first page is cropped
 22 off, and, in fact, it was cropped off in the
 23 production that we got, I think.
 24 But the second page is 0112324 through 2330.
 25 (Plaintiff's Exhibit 428 was marked for

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1 identification.)

2 MR. KLAPPER: Was this used during
3 yesterday's deposition, or is this a new
4 exhibit?

5 MR. BYMAN: No, this is new.

6 BY MR. BYMAN:

7 Q. This is a document that was in the stack of
8 things that you looked through earlier this morning,
9 Mr. Saunders. So you have seen it, at least a few
10 minutes ago.

11 But take a moment and take a look
12 specifically at it and see if you have any recollection
13 seeing it before this morning.

14 A. Is there a specific page you would like me
15 to refer to?

16 Q. Yes, actually the third page, 0112327, which
17 has the text of an e-mail that I'm interested in.

18 A. Not to quibble, but it appears in mine that
19 that Bates number is page 5.

20 Q. Okay. You're correct. I had my finger on
21 the wrong place. But it's the number that matters.

22 A. Which section of this page specifically?

23 Q. "Hey, Arthur, we looked at found tapes. We
24 were able to restore, and 90 of them have mail."

25 A. Ah. Okay.

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1 Q. Did anyone ever report to you that on July
2 2nd, 2004 NDCI had reported to Mr. Reil and to others
3 that some of the found tapes, which I'll represent to
4 you are the Brooklyn security tapes, contain mail?

5 A. I have no knowledge of being notified of
6 that.

7 Q. In the e-mail chain in these documents
8 there's another address that we haven't talked about,
9 ECMGR-NA. Do you recognize that address group?

10 A. Yes.

11 Q. Are you a member of that group?

12 A. I am a member of that group.

13 Q. So you would have received this chain of
14 e-mail at the time?

15 A. Honestly, the document I'm looking at right
16 now, I cannot perceive it as a chain. It looks almost
17 as though -- I can't tell if it's a chain or if it's
18 mails that are end to end or a thread, to be honest. I
19 wouldn't be able to represent that this is, in fact, a
20 real thread. Doesn't look like anything I've seen
21 before as a thread, at least printed out.

22 Q. Does this jog your memory in any way that in
23 July of 2004 you were aware that the found tapes
24 included mail?

25 A. No, this does not give me any sort of -- it

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1 does not jog my memory whatsoever.

2 Q. There's also a reference to cataloging of
3 the 8-millimeter tapes and that some of the dates on
4 those tapes are June 16, 1998 and June 6th, 1998. Were
5 you ever aware that some of the mail found in the
6 8-millimeter tapes dates back to that period of time?

7 A. No.

8 Q. Did Mr. Stewart report to you in July of
9 2004?

10 A. No, he did not.

11 Q. Was he on any of the teams you were a member
12 of in 2004?

13 A. Yes.

14 Q. What teams was he a member of that you were
15 also a member of?

16 A. Wray's position, he reported to a colleague
17 of mine, Adrien Salageanu, S-A-L-A-G-E-A-N-U, who was
18 the Windows operations manager. So I'm UNIX and he's
19 Windows.

20 Wray continued being the liaison with NDCI
21 and continued working with the restoration projects as
22 a legacy of work he had started in 2002 under my
23 previous boss, Bill Hollister. So his job was twofold;
24 one was project manager working under Adrien Salageanu,
25 and the second was liaising with my team and Glenn

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1 Seickel with NDCI.

2 Q. So he was part of the e-mail archive restore
3 project?

4 A. Yes.

5 Q. Have you ever met Bruce Buchanan?

6 A. Yes.

7 Q. Did you ever have any conversations with
8 Mr. Buchanan in the summer of 2004 about what he was
9 finding on the tapes that he was restoring on behalf of
10 NDCI?

11 A. No, I did not.

12 Q. Did Mr. Reil ever report to you -- and I
13 don't mean to use the word report in any formal
14 sense -- did he ever say to you in the summer of 2004
15 that he was aware that the tapes found in the Brooklyn
16 security area contained e-mail?

17 A. No, he did not.

18 Q. Did anyone ever tell you that?

19 A. No.

20 Q. So reading this is the first time that
21 you're aware that someone from Morgan Stanley knew that
22 in July of 2004?

23 A. That would be accurate.

24 Q. Have you ever asked any of the members of
25 your team, Mr. Stewart, or anyone else on the teams

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1 that you belonged to, when they first learned that
 2 tranches two, three, or four contained e-mail?
 3 A. I did not.
 4 Q. Do you have any understanding of how much
 5 e-mail was found on tranches two, three, and four?
 6 A. I believe previous to my earlier testimony,
 7 that, no, I have no specific knowledge.
 8 Q. Let me show what you I'm going to mark as
 9 Exhibit 429 for identification, bearing production
 10 numbers 0112888 and 889.
 11 (Plaintiff's Exhibit 429 was marked for
 12 identification.)
 13 BY MR. BYMAN:
 14 Q. Again, that's within the stack of the things
 15 you looked at this morning. Other than looking at it
 16 this morning, do you have any recollection of seeing
 17 either of these two pages before?
 18 A. Please give me a moment to take a look at
 19 this.
 20 Q. Of course.
 21 A. Okay. I've reviewed the document.
 22 Q. Have you ever seen this before this morning?
 23 A. I have not.
 24 Q. There's a reference to IIM exchange mail
 25 tapes. Does that term mean anything to you?

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1 A. My general knowledge of the subject is that,
 2 I don't know when, but Arthur was also asked to take
 3 some Legacy mail tapes from the investment management
 4 area of Morgan Stanley and to work with NDCI to
 5 essentially do the same process that we've been doing
 6 for the other institutional securities group Legacy
 7 tapes, to extract the e-mails, deduplicate the e-mails,
 8 put them on SDLTs, send them to Morgan Stanley, put
 9 them on disk, and then upload them into the archive.
 10 My understanding is that my team had very
 11 little to do with this, because it's a completely
 12 different area with Morgan Stanley. In fact, I think
 13 in terms of legal entity, investment management is
 14 separate from institutional securities group for which
 15 I work and my team's work.
 16 Q. Is IIM an acronym that has to do with
 17 institutional investment management?
 18 A. That's correct. Which it's also known as
 19 IM. So there's a couple names. IIM is one. IM is
 20 another.
 21 So to finish my statement. My team was
 22 really, to my knowledge, not involved with this. That
 23 the tapes were shipped from whoever, from the IT group
 24 within IM, and that was shipped to NDCI for the same
 25 process to occur that had been going on with the DLT

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1 tapes. Arthur responsible for that. And I don't
 2 know anything about the timing, the content, you know,
 3 the directives with respect to prioritization.
 4 Q. If you'll look briefly again at Exhibit 425.
 5 There's a reference in these sets of minutes -- and
 6 don't lose 429, because we're not done with that yet.
 7 There's a reference in pending item number 6
 8 to IMM 2200?
 9 A. Could you be clear about which page?
 10 Q. The very first.
 11 A. The very first, okay.
 12 Q. So that appears to be the IMM tapes that
 13 were within Mr. Reil's purview?
 14 A. This does look like what we have just been
 15 speaking about.
 16 Q. I'll represent to you that there's a
 17 continued reference to the IMM tapes in the next set of
 18 minutes on the next page. And then they appear to have
 19 dropped that from pending items.
 20 A. Is there a question you'd like me to
 21 address?
 22 Q. No, I'm directing you to that. And then I'd
 23 like to go back to Exhibit 429.
 24 Do you know why Mr. Stewart would have been
 25 involved with this IMM restoration project if it wasn't

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1 part of what your team was doing?
 2 A. So my understanding of Wray's
 3 responsibilities were to record the minutes from those
 4 meetings as a way of keeping people informed generally
 5 about what was going on with the effort. And that
 6 while he was not materially involved with the IM tapes,
 7 that he recorded at the meeting that such an event was
 8 going on, and that it was part of the effort overall.
 9 Q. Are you familiar with the term "EDB files"?
 10 A. I am not.
 11 Q. So you don't know what this reference is on
 12 the first page of Exhibit 429 to EDB files?
 13 A. I do not.
 14 Q. On the second page of Exhibit 429, there's
 15 an e-mail from Mr. Buchanan to Mr. Stewart dated July
 16 16, 2004 referring to the Brooklyn found tapes. And
 17 let me, again, represent to you that I believe the
 18 Brooklyn found tapes refers to your -- the 1423 tapes
 19 located in Brooklyn.
 20 By the way, have you ever heard of those
 21 1423 tapes, what we've been calling the second tranche,
 22 referred to as Brooklyn found tapes?
 23 A. Yes.
 24 Q. And Mr. Buchanan reports that at least as of
 25 that date a total of 2,183,031 total unique messages

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1 were found in the Brooklyn found tapes and written to
2 SDLTs.

3 Does that help refresh your recollection
4 about the quantity of e-mail messages that was found?

5 A. It doesn't help refresh my memory. It
6 informs me. I don't believe I've ever been in
7 possession of that knowledge.

8 Q. But you have no knowledge that is contrary
9 to what's expressed here, I take it?

10 A. I have no knowledge about this. You're
11 correct.

12 Q. Were you involved in negotiating with NDCI
13 the charges for the restoration work?

14 A. No.

15 Q. Who was?

16 A. At what period of time?

17 Q. At any period of time.

18 A. I believe that Wray Stewart and Diane
19 Kennelly were involved with negotiating rates with
20 NDCI.

21 Q. Did NDCI propose different rates given
22 different levels of resources that might be applied to
23 the project?

24 A. I have a general knowledge that would lead
25 your statement to be true, that efforts that were more

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1 intensive that might require 24-by-7 type efforts
2 rather than efforts that could be done 9 to 5 during
3 business hours were different charges. I'm not sure
4 what those charges were or how they were
5 differentiated.

6 Q. In addition to expanding beyond a single
7 shift and going to 24/7 shifts, were there also
8 alternatives proposed by putting more hardware or more
9 platoons of people on the project?

10 A. I'm really not more specifically aware than
11 what I just indicated. I do know there was kind of a
12 standard body of work and a time frame and that there
13 were accelerated time frames, but further than that, I
14 couldn't say.

15 Q. Which did Morgan Stanley go with, the
16 standard or the accelerated?

17 A. I think depending on different efforts we
18 would make choices as to which type of service we would
19 require.

20 Q. Are you aware of any particular service for
21 any of the four tranches in which the accelerated
22 approach was accepted?

23 A. I'm not specifically aware of what level of
24 service we asked for, but I know that in the last
25 several months -- and certainly in the wake of the

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1 disruption caused when Arthur Reil left, was no longer
2 part of the e-mail archive and kind of head got cut off
3 of the body -- that there were efforts to expedite
4 getting the information off of these tapes and back to
5 Morgan Stanley. But specifically I can't speak to what
6 choices were made and when.

7 Q. Who would know that?

8 A. Counsel would know. I'm not sure if you can
9 ask them questions.

10 Q. I can ask them. They just won't answer.

11 A. Glenn Seickel is someone you could ask;
12 although, I'm not sure what level of detail he would
13 know about how much was asked for and by when.

14 Q. On the February 4th hearing before the court
15 on which you participated by phone, at least according
16 to the transcript, you referred to a third-party
17 vendor, Forensic and Heat Restoration. Who is Forensic
18 and Heat Restoration?

19 A. I've not -- I've reviewed my -- I'm not sure
20 if it was testimony or what the appropriate word is,
21 but I reviewed my statement.

22 Q. You said it to the judge, so it better be
23 accurate.

24 A. I reviewed my statements this morning, but
25 I've not been asked to amend my statements as I did in

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1 my previous deposition a year ago. That sentence makes
2 very little sense. I believe I was misunderstood over
3 the phone. What I was trying to get at was a forensic
4 and tape investigation over the phone.

5 Q. Was there a firm other than NDCI that you
6 were referring to?

7 A. No.

8 Q. So you were basically just describing --

9 A. I was speaking in general about those types
10 of firms. I know that NDCI is not alone in the
11 universe.

12 Q. So you were simply describing generically
13 the type of vendor you would use. Your specific vendor
14 was and is NDCI?

15 A. That's correct.

16 Q. What other forensic restoration firms are
17 out there besides NDCI?

18 A. I'm not specifically aware of any others
19 other than a company called Renew, which I believe you
20 guys asked us to work with, or rather that we delivered
21 tapes to this past week.

22 Q. Have you ever done any investigation into
23 what other vendors are out there in case NDCI is too
24 busy to help you or you need to go to a different firm?

25 A. NDCI's performance over the last several

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1 years has been timely. They have been excellent
2 partners. And in terms of our relationship with them,
3 it's been satisfactory, very satisfactory. I have not
4 personally gone out and done any investigation into
5 alternative vendors for reasons of not having a need.

6 Q. Let me show you what I'm going to mark as
7 Exhibit 430 for identification.

8 (Plaintiff's Exhibit 430 was marked for
9 identification.)

10 BY MR. BYMAN:

11 Q. Let me represent to you that this is a
12 two-page fax that was addressed to one of my partners,
13 Deirdre Connell, from one of Mr. Klapper's partners,
14 Mr. Clare, on February 8, 2005. And it involved the
15 contract with Renew that the parties were trying to
16 mutually arrive at.

17 Mr. Clare's e-mail suggests a change in
18 paragraph 1-B to the then draft to the agreement,
19 struck out a reference to the 2300 tapes, and then
20 inserted something that talks about Morgan Stanley and
21 Co. believes do not contain e-mail or in some cases
22 contain e-mail that has already been culled onto
23 original tape media.

24 Do you have any understanding as to the
25 meaning of that phrase?

1 A. This is the first time that I'm seeing this
2 document. I wasn't involved in this transaction other
3 than supplying tapes and having them delivered to Renew
4 after our attorneys instructed us that it was time to
5 execute on that.

6 I'm really not sure what this is saying at
7 all, either the original document or the addition by
8 whoever you said made the addition. I couldn't really
9 speculate.

10 Q. The things that you delivered, was there a
11 batch of 120 tapes and another batch of 2300 tapes?
12 And these are approximate numbers.

13 A. Yeah, these numbers are not -- I'm really
14 not sure exactly what they're referring to, to be quite
15 honest. There's really not a lot of context here.

16 What I know as to what we delivered was all
17 of the original tapes, the raw DLT tapes, and the raw
18 8-millimeter tapes. Those were to be delivered. My
19 understanding is that number, I think in total, and I
20 think I did the math afterwards, was 2330 tapes. Those
21 are the original 8-millimeter and DLT tapes.

22 In addition, I believe that your -- the
23 plaintiffs requested not just those, but also the
24 deduplicated and unique -- well, the deduplicated SDLTs
25 that were the product of NDCI.

1 So what we were to provide was the originals
2 and the product of NDCI, which was the SDLTs.

3 Q. Okay. Let me see if I can parse that into
4 pieces.

5 NDCI took the 2330 DLT and 8-millimeter
6 tapes and extracted from those tapes things that they
7 believe to be e-mail content and put them onto
8 approximately 120 SDLT tapes?

9 A. No, that's not my knowledge. I don't know
10 how many SDLTs were the result of the 2330.

11 Q. Putting aside the number, 2330 is the
12 universe that they had to work with from franchises two,
13 three, and four?

14 A. That's correct.

15 Q. They put them on some number of SDLT tapes?

16 A. Yes.

17 Q. And that number might be 120, or it might be
18 some other number?

19 A. Sure.

20 Q. And you don't have any other number that you
21 can offer as a better estimate of that number?

22 A. I do not.

23 And the other point I want to make is, when
24 I talked about deduplicated e-mails, NDCI has a
25 database, and part of their core value add of their

1 projects of restoring the tapes prior to January 1st,
2 2003, they have a record of every single tape and every
3 single e-mail by unique ID that has been restored as
4 part of the project in order to make sure that motor
5 Morgan Stanley was not uploading multiple copies, that
6 we have an efficient archive, so those SDLTs will not
7 contain every single e-mail that is on that original
8 universe of the raw 2330.

9 I made that statement to our counsel last
10 week.

11 Q. And when you talk about deduping, you dedup,
12 you know, things that are identical, you take out
13 duplicates that are identical, but you don't take out
14 something that's contained in a lighter e-mail chain,
15 do you?

16 A. That's correct. So if an e-mail contains
17 multiple -- if it's a long thread with multiple replies
18 back and forth, that multiple thread is the unique
19 e-mail. Affirming your statement, you would not go and
20 remove those thread pieces and just retain the last
21 answer. It would contain the full text of the e-mail
22 thread.

23 Q. So if I sent you an e-mail, you replied, I
24 forwarded it to Mr. Klapper, he forwarded it to
25 Mr. Jones, who then forwarded it back to everybody

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1 else, that would be six separate e-mails, it wouldn't
 2 be just one?
 3 A. That's correct.
 4 Q. And that would be true even if all of that
 5 forwarding and replying had no new information on it
 6 other than just forwarding it and replying it?
 7 A. That's correct.
 8 Q. So that you would at least get the chain of
 9 who had seen the e-mail?
 10 A. That's right.
 11 Q. So we now know that the number of tapes that
 12 were in tranches two, three, and four, if we add them
 13 all up, is 2330?
 14 A. According to me and only me.
 15 Q. But you're a pretty good authority on that
 16 subject?
 17 A. I would say I'm one of the authorities.
 18 Q. We know that 1423 of those 2330 was tranche
 19 two, right?
 20 A. Say that again.
 21 Q. Tranche two was 1423 DLT tapes?
 22 A. I believe that's correct.
 23 Q. And we know that tranche four was 169 DLT
 24 tapes?
 25 A. That's right.

1 Q. The first page at the bottom.
 2 MR. KLAPPER: You've not used this document
 3 in today's deposition, correct?
 4 MR. BYMAN: That's right.
 5 MR. KLAPPER: Do you happen to have an extra
 6 copy?
 7 MR. BYMAN: I don't think I do, Tony. I'm
 8 just asking him to look at the bottom of the
 9 first page. There's a reference to "we have
 10 experienced restoring brick level backups, and
 11 quite frankly, it is not an easy or reliable
 12 process using standard procedures."
 13 BY MR. BYMAN:
 14 Q. I'm just asking if that helps put into
 15 context or refresh your recollection, sir, about the
 16 term "brick level"?
 17 A. I'll take a moment to look at this first and
 18 second page as you requested.
 19 Q. Sure.
 20 A. Okay. I've reviewed the first page and the
 21 top of the second page, so the e-mail from Bruce
 22 Buchanan regarding the brick level back ups to Wray and
 23 Glenn.
 24 Q. And does that help you recall any
 25 understanding of the term "brick level"?

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1 Q. So if we add those two numbers and subtract
 2 them from 2330, we would get the number of 8-millimeter
 3 tapes?
 4 A. And I would guess it would be reasonably
 5 accurate.
 6 Q. If you'll forgive long addition, I'll do
 7 that. I get 1592 by adding 1423 and 169. Would that
 8 leave 738 for the 8-millimeter tapes?
 9 A. That sounds about right.
 10 Can I also get the word "Yahtzee" on the
 11 record?
 12 Q. Are you familiar with the term "brick level"
 13 as used in the restoration business?
 14 A. I'm sorry?
 15 Q. Brick level?
 16 A. I don't believe so.
 17 Q. Let me show you what we marked yesterday as
 18 Exhibit 426. I'm sorry. I don't think I have that
 19 handy.
 20 MR. KLAPPER: That's fine.
 21 THE WITNESS: This is a pretty long
 22 document. Would you like me to review it all,
 23 or would you like to direct my attention to a
 24 certain page?
 25 BY MR. BYMAN:

1 A. It does not. I have no knowledge of this
 2 terminology or of this event. This is the first time
 3 I've seen this thread, and it's the first time I've
 4 heard of this particular topic.
 5 Q. Were you aware that Mr. Buchanan and NDCI
 6 were reviewing a total of 3,030 IMM tapes -- I'm
 7 sorry -- IIM tapes?
 8 A. Previous to -- my previous testimony, I was
 9 aware that many tapes became a matter of the project
 10 during the summer and that NDCI was going to be working
 11 with them at Arthur's direction. I'm not aware of the
 12 number of tapes or any of the issues, the technical
 13 issues with respect to that part of the project.
 14 Q. So I take it that you have no knowledge with
 15 respect to the 293 SDLT tapes and 500 DLT tapes on
 16 which some sort of e-mail appears?
 17 A. If the question is, do I have any knowledge
 18 of the 293 or the 500, the answer is no.
 19 Q. I take it none of those are part of any of
 20 the four tranches we've been talking about today?
 21 A. No. Again, and if we want to call this the
 22 fifth tranche, this is again the investment management
 23 tapes that Arthur Reil was directed to as part of the
 24 effort to restore the information and get it into the
 25 archive. My team really played very little role in

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1 this.

2 And it appears that Bruce Buchanan had a

3 conversation with them about the data and about his

4 feelings as to whether or not it was valid, these

5 backups were going to result in valid data.

6 Q. Are you able, as you sit here today, to

7 exclude the possibility that these 793 tapes that

8 contain e-mail have e-mail that is relevant to this

9 litigation?

10 A. Could you restate the question?

11 MR. BYMAN: Could you read it back?

12 (A portion of the record was read by the

13 reporter.)

14 THE WITNESS: The question is: Am I able to

15 exclude the possibility?

16 MR. BYMAN: Yes.

17 MR. KLAPPER: Let me interject an objection.

18 Vague and ambiguous and calls for speculation.

19 You can answer.

20 THE WITNESS: Investment management -- per

21 my previous testimony, investment management and

22 institutional securities are two separate

23 entities. Knowing what I know today and knowing

24 what I knew then, I would say it's very unlikely

25 that this has anything to do with the Coleman

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1 matter whatsoever.

2 BY MR. BYMAN:

3 Q. And that's because they're different

4 divisions of Morgan Stanley?

5 A. Absolutely. Different servers, different

6 communication rooms, different procedures, different IT

7 staff.

8 Q. I think you even said at one point that IM

9 might be a different legal entity. Do you know what

10 the entity is?

11 A. Right. So I probably shouldn't speculate.

12 But I know that it is a separate entity other than

13 institutional security. And I know that in my previous

14 testimony they were asking what MS & Co means. I'm not

15 sure. Or either ISG and IM are part of that.

16 Q. Is the investment banking company of Morgan

17 Stanley in institutional securities?

18 A. That's correct.

19 Q. Is Morgan Stanley senior funding within

20 institutional securities or IM or some other area?

21 A. Could you restate the question?

22 Q. Are you familiar with an entity called

23 Morgan Stanley senior funding?

24 A. No.

25 Q. Do you know what division or entity within

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1 the Morgan Stanley family does bond underwriting?

2 A. I believe that's within institutional

3 securities.

4 Q. Do you know what entity within the Morgan

5 Stanley family does capital loans?

6 A. I do not know that answer.

7 MR. BYMAN: Let me have a moment to check

8 with my colleague, but I think we're nearing the

9 end.

10 (A discussion was held off the record.)

11 MR. BYMAN: Actually, I think we're going to

12 say we're done.

13 (Whereupon, the deposition concluded at 5:40

14 p.m.)

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2 CERTIFICATE

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6 STATE OF FLORIDA

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8 COUNTY OF PALM BEACH

9 I, ROBERT JOHN SAUNDERS, hereby certify that

10 I have read the foregoing transcript of my deposition

11 and that the statements contained therein, together

12 with any additions or corrections made on the attached

13 Errata Sheet, are true and correct.

14 Dated this day of , 2005.

15

16 ROBERT JOHN SAUNDERS

17

18 The foregoing certificate was subscribed to

19 before me this day of , 2005, by the

20 witness who has produced a as

21 identification and who did not take an additional oath.

22

23

24

25 Notary Public

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CERTIFICATE OF OATH

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STATE OF FLORIDA
COUNTY OF PALM BEACH

I, the undersigned authority, certify that
ROBERT JOHN SAUNDERS personally appeared before me and
was duly sworn.

WITNESS my hand and official seal this
day of _____, 2005.

TRACEY L. SPATARA
Notary Public
Commission #DD 0327757
Expires July 31, 2008

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REPORTER'S CERTIFICATE

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STATE OF FLORIDA
COUNTY OF PALM BEACH

I, TRACEY L. SPATARA, RPR, certify that I
was authorized to and did stenographically report the
foregoing deposition/proceedings; and that the
transcript is a true record thereof.

I further certify that I am not a relative,
employee, attorney, or counsel of any of the parties,
nor am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

Dated this _____ day of _____,
2005.

TRACEY L. SPATARA, RPR

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Exhibit 6

NOT A CERTIFIED COPY

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1
 2 IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
 3 IN AND FOR PALM BEACH COUNTY, FLORIDA
 4 CASE NO.: 03 CA 005045 AI
 5 COLEMAN (PARENT) HOLDINGS, INC.,
 6 Plaintiff,
 7 vs.
 8 MORGAN STANLEY & CO., INC.,
 9 Defendant.

10
 11 DEPOSITION OF GLENN SEICKEL
 12 TAKEN AT THE INSTANCE OF THE PLAINTIFFS

13
 14 West Palm Beach, Florida
 15 Thursday, February 10, 2005
 16 1:24 p.m. - 4:14 p.m.

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1 APPEARANCES:
 2
 3 KIRKLAND & ELLIS, LLP
 4 655 Fifteenth Street, N.W.
 5 Washington, D.C. 20005
 6 Counsel for the Defendants
 7 BY: ANTONY B. KLAPPER, ESQUIRE
 8 and MICHAEL JONES, ESQUIRE
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 10 One IBM Plaza
 11 Chicago, Illinois 60611-7603
 12 Co-Counsel for the Plaintiffs
 13 BY: ROBERT L. BYMAN, ESQUIRE
 14 and SAM HIRSCH, ESQUIRE

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1 IND
 2 WITNESS: PAGE
 3 GLENN SEICKEL
 4 Direct Examination by Mr. Byman 4

1 The deposition of GLENN SEICKEL was taken
 2 before me, BARBARA GALLO, RMR-CRR, Registered Merit
 3 Reporter-Certified Realtime Reporter, Notary Public,
 4 State of Florida at Large, at 2139 Palm Beach Lakes
 5 Boulevard, in the City of West Palm Beach, County of
 6 Palm Beach, State of Florida, beginning at the hour of
 7 1:24 p.m., on Thursday, February 10, 2005, pursuant to
 8 Notice filed herein, at the instance of the Plaintiffs
 9 in the above-entitled cause pending before the
 10 above-named Court.

11 ---
 12 THEREUPON,
 13 GLENN SEICKEL,
 14 being by me first duly sworn to testify the whole
 15 truth, as hereinunder certified, testified as follows:
 16 DIRECT EXAMINATION.

17
 18 MR. BYMAN: The record should reflect that
 19 this is a deposition taken pursuant to the
 20 court's order dated February 3rd, 2005 and
 21 the designation by Morgan Stanley and
 22 company of the witnesses whom it intends
 23 to call at the hearing scheduled for
 24 February 14th, one of whom is Mr. Seickel.
 25 BY MR. BYMAN:

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1 Q. Mr. Seickel, would you state your full name
 2 for the record.
 3 A. Glenn Charles Seickel.
 4 Q. How old are you, sir?
 5 A. 44.
 6 Q. What's your educational background?
 7 A. My highest education is college. I've
 8 completed, you know, normal education through the
 9 public schools. I had a certificate degree with
 10 Hofstra University in computer programming. And I
 11 think that's it other than some certified classes and
 12 professional classes that Morgan Stanley offers.
 13 Q. Your certificate degree in computer
 14 programming is in addition to your BA or BS?
 15 A. Correct.
 16 Q. What is your degree in?
 17 A. Accounting.
 18 Q. When did you receive your degree and from
 19 what institution?
 20 A. It's 1984 from Queens College.
 21 Q. When did you receive your computer
 22 programming certificate?
 23 A. I believe it was '93, summer of '93.
 24 Q. Did you ever sit for the certified public
 25 accountant's exam?

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1 A. No.
 2 Q. Have you ever practiced public accounting?
 3 A. No.
 4 Q. Since 1984 how have you been employed?
 5 A. Since 1984 I started after college with Marsh
 6 McLennan, worked there for about a year and a half,
 7 maybe a little less. I then worked for Intercounty
 8 Mortgagee on Long Island. That company wound up
 9 getting bought by Northstar Bank, then merged with
 10 Fleet Bank. And I was there until, I believe, '95.
 11 Mellon Bank then subsequently bought our division, and
 12 I wound up working for Mellon Bank for two years and
 13 then coming to Morgan Stanley.
 14 Q. When did you arrive at Morgan Stanley?
 15 A. November '98.
 16 Q. Prior to arriving at Morgan Stanley can you
 17 just tell me briefly what kinds of jobs you held
 18 within the institutions you've described?
 19 A. Okay. With Marsh McLennan, I was a corporate
 20 accountant for about -- for the time being, for the
 21 time I was there. When I left there I went to work
 22 for Intercounty Mortgagee. I was a mortgage loan
 23 processor. I subsequently became involved with sales
 24 and then processing mortgages and servicing mortgages.
 25 And that's with --

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1 Q. Does that take us through November of '98?
 2 A. No. Let me think. '98. Yes, it does take
 3 you through '98. I was also, after I took the
 4 certificate program with Hofstra I was also employed
 5 for, I think, three years part time for a small
 6 company writing and debugging software programs.
 7 Mostly database.
 8 Q. What was that company?
 9 A. I think it was called Program Management
 10 Services.
 11 Q. What kinds of databases were you working
 12 with?
 13 A. FoxPro.
 14 Q. Is that an off-the-shelf database?
 15 A. Yes.
 16 Q. Can somebody buy it?
 17 A. Yes.
 18 Q. What sort of programming and debugging were
 19 you doing on FoxPro?
 20 A. It was mostly for printing. They would do a
 21 lot of certificate printing for a pharmacist where
 22 they would issue the certificates and test the
 23 pharmacist and issue certificates for credits, I think
 24 certification credits that they had to maintain.
 25 Q. I thought I heard you say you're doing

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1 database programming. Is FoxPro database programming?
 2 A. Correct.
 3 Q. Then what does it have to do with printing
 4 certificates?
 5 A. That's what the programming, that's what the
 6 programming surrounded. In other words, the
 7 programming that I did and debugging was centered
 8 around printing certificates for this company.
 9 Q. So a portion of the database that you were
 10 working on?
 11 A. Correct.
 12 Q. In November of 1998 when you came to Morgan
 13 Stanley, for what job were you hired?
 14 A. I was hired a Distributor Command Center
 15 shift manager's position.
 16 Q. What does that mean in English?
 17 A. In English basically I supervised three or
 18 four people on a shift for either three or four days a
 19 week.
 20 Q. And what was it you were --
 21 A. The service that we did?
 22 Q. Yes.
 23 A. We monitored the servers for North America.
 24 We had an application that basically told us if there
 25 was issues with a particular server. We would then

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1 evaluate the problem and also involve other people in
 2 resolving the issue. In addition to that, the
 3 Distributor Command Center was involved in monitoring
 4 backups for North America.
 5 Q. Backups of what kind of data?
 6 A. For a UNIX data.
 7 Q. Did you have anything to do with any Windows
 8 data backups?
 9 A. Not at that time, no. There was a separate
 10 group that ran the Windows backups.
 11 Q. For the UNIX backups that you were working
 12 on, was that firmwide or for some particular division
 13 within Morgan Stanley?
 14 A. Repeat that question. I'm sorry.
 15 Q. Sure. It was for all of Morgan Stanley or
 16 for some business unit within Morgan Stanley?
 17 A. It was all of North America.
 18 Q. For all of Morgan Stanley's North American
 19 operations?
 20 A. Correct.
 21 Q. When we say Morgan Stanley, the actual party
 22 to this litigation is Morgan Stanley & Company,
 23 Incorporated. Are you aware of other Morgan Stanley
 24 entities other than that particular legal entity?
 25 A. I'm not sure. No.

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1 Q. Do you know what entity pays your paycheck
 2 now?
 3 A. Institutional is the division that I fall
 4 under, Morgan Stanley Institutional. I'm not sure if
 5 that falls into the category you're saying.
 6 Q. Have you ever heard of an entity called
 7 Morgan Stanley Senior Funding?
 8 A. No.
 9 Q. Do you know how that fits into the corporate
 10 structure of Morgan Stanley?
 11 A. No.
 12 Q. All right. That was the job you were hired
 13 for in November of '98. Did your job title or
 14 responsibilities ever change between then and now?
 15 A. Yes.
 16 Q. Take me through each change that you've had
 17 within Morgan Stanley.
 18 A. So I was hired in November '98. I stayed in
 19 that position until January of 2001. At that time I
 20 became the manager of the Distributor Command Center.
 21 Q. So you were in the same area, but you had a
 22 promotion and more responsibility?
 23 A. Correct.
 24 Q. Now you were supervising a group of
 25 supervisors?

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1 A. Correct.
 2 Q. Other than that were your duties and
 3 responsibilities the same?
 4 A. Yeah, they were -- no. They were basically
 5 the same in that my supervisory duties took me further
 6 away from actually doing the work.
 7 Q. When you were the manager -- I'm sorry. Was
 8 that a division? What do we call that?
 9 A. Group.
 10 Q. When you were the manager of the group, to
 11 whom did you report?
 12 A. I reported to -- when I was a manager of the
 13 group?
 14 Q. No, when you were promoted in '01.
 15 A. When I was promoted in '01 who did I then
 16 report to?
 17 Q. Yes.
 18 A. I reported to Robert Saunders and
 19 Bill Hollister.
 20 Q. And who had you reported to prior to that
 21 promotion?
 22 A. Prior to that promotion I reported to Zender
 23 Morales and also Wray Stewart.
 24 Q. After your promotion did you become at the
 25 same level as Wray Stewart? In other words, you used

1 to report to him. Now you're reporting to
 2 Mr. Saunders. What happened to Mr. Stewart?
 3 A. Mr. Stewart went on to do other things in the
 4 company. I'm not sure at that time what he did.
 5 Q. Did you have any further promotions or
 6 changes in job duties since January of '01?
 7 A. Yes. In December of '03 I relinquished the
 8 management position of the Distributor Command Center,
 9 and I fell under a group called Distributed Storage
 10 reporting to Robert Place.
 11 Q. When you say "relinquished," what does that
 12 mean?
 13 A. The group was being outsourced. My
 14 responsibilities had ended for that group, and I moved
 15 over to the Distributor Storage to focus on things
 16 concerning storage directly.
 17 Q. Was that a lateral move? A promotion?
 18 A. A lateral move.
 19 Q. And it's because the thing that you were
 20 running before was becoming outsourced and wasn't
 21 going to exist anymore?
 22 A. Yes. And also I wanted to focus myself on
 23 distributed -- on storage.
 24 Q. And when you say "storage," what do you mean?
 25 A. Anything regarding where you can save data or

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1 store data.
 2 Q. Were you still working strictly on UNIX data,
 3 or were you also responsible for Windows data?
 4 A. As part of the migration into what we call
 5 net backup, an application that we do backups with,
 6 that also became Windows backups.
 7 Q. And you reported as of December of '03 to
 8 Mr. Place?
 9 A. Correct.
 10 Q. Do you know to whom he reported?
 11 A. Robert Saunders.
 12 Q. So since at least January of '01 you have
 13 reported either directly or indirectly to
 14 Mr. Saunders?
 15 A. Correct.
 16 Q. Have you had any further promotions,
 17 demotion, lateral moves since December of '03?
 18 A. No.
 19 Q. So you are still in Distributed Storage?
 20 A. Correct.
 21 Q. Do you have a title?
 22 A. No. The best thing I can give you is storage
 23 specialist.
 24 Q. Do you have a business card? Do you know
 25 what it says on your business card?

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1 A. Glenn Seickel.
 2 Q. And an address?
 3 A. Pretty much.
 4 Q. Do you have a title within Morgan Stanley?
 5 Are you an officer?
 6 A. I'm an associate.
 7 Q. And in the Morgan Stanley hierarchy...
 8 A. That's the lowest rung.
 9 Q. There's nothing wrong with being at the
 10 lowest rung.
 11 Mr. Seickel, in front of us is a stack of
 12 documents that has been produced to us pursuant to the
 13 court order, which also has produced you to us. They
 14 bear a production range of 112286 to 113899. I'd like
 15 you to take a moment to look through the stack. And
 16 when I say "a moment," take as many moments as you'd
 17 like.
 18 A. It's a big stack.
 19 Q. I'm going to ask you a series of questions
 20 about your familiarity with the stack when you're
 21 done, but what I'm interested in, and at the risk of
 22 making this a compound question --
 23 MR. KLAPPER: I won't object.
 24 MR. BYMAN: Thank you.
 25 MR. KLAPPER: You're welcome.

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1 BY MR. BYMAN:
 2 Q. I'm going to want to know, A, did you provide
 3 any of these documents so that they can be provided to
 4 us; B, have you seen any of these documents before;
 5 or, C, are they documents with which you are familiar
 6 by description. So as you go through the stack, we
 7 can give you some post-it notes or you can put it into
 8 piles of things you have seen and things you haven't
 9 seen, and then I'll have a more focused question.
 10 A. Okay. This pile or this pile or both?
 11 Q. This pile.
 12 A. I was hoping for the smaller one.
 13 MR. KLAPPER: I guess if we're on the
 14 record, the Bates range that you
 15 articulated reflects these documents in
 16 this big stack on the table. Are there
 17 other documents that we produced that's
 18 not in this stack that was part of the
 19 production? Because I know we got a bunch
 20 of stuff that's been marked separately as
 21 Exhibits.
 22 MR. BYMAN: Let me make sure that's
 23 clear, Tony, since you weren't here
 24 yesterday. We received three, I'll use
 25 the word tranches since Mr. Saunders used

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1 it, three tranches of production from
 2 Kirkland & Ellis with respect to the
 3 February 3 order. At approximately noon
 4 on Tuesday we received the set of things
 5 that Mr. Seickel is now looking through.
 6 MR. KLAPPER: Right.
 7 MR. BYMAN: Later in the day we received
 8 additional documents which we marked
 9 Exhibits 420 through 424.
 10 MR. KLAPPER: And those were marked
 11 during Allison Gorman's deposition?
 12 MR. BYMAN: Right. And sometime today
 13 we received a fax which included one piece
 14 of paper we marked as Exhibit 427.
 15 MR. KLAPPER: Okay.
 16 THE WITNESS: There's some stuff stuck
 17 together that -- some of which I'm
 18 familiar with and some I'm not.
 19 BY MR. BYMAN:
 20 Q. Put aside the stuff --
 21 MR. KLAPPER: He's saying it's connected.
 22 MR. BYMAN: We'll sort that out when we
 23 look at individual things. That's how it
 24 was produced to us.
 25 MR. HIRSCH: So put it with the stuff

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1 that looks familiar.
2 THE WITNESS: Anything that has some
3 familiarity I'm putting in one file.

4 MR. HIRSCH: Okay.
5 (A recess was taken from 1:43 p.m. to
6 2:00 p.m.)

7 BY MR. BYMAN:
8 Q. Okay. Let's go back on the record.
9 You've had a chance now over the last
10 approximately 20 or 25 minutes to actually look at
11 this big thick stack that we showed you. And I see
12 it's now in two piles.

13 A. This is -- let me just look to make sure I
14 used...

15 MR. KLAPPER: There's no rush. So,
16 seriously, take your time if you have to
17 do more looking.

18 THE WITNESS: If I don't know what it
19 applies to, then I'm putting it -- this is
20 the only thing I don't think I have any
21 idea of what it applies to specifically.

22 BY MR. BYMAN:
23 Q. And by "this," we're looking at MS-113 --
24 well, we're looking at MS-113450-113500 which is a
25 sheet saying intentionally left blank, so it simply

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19

1 means those 50 pieces of paper got assigned a number,
2 but we didn't get anything for it other than this
3 T-shirt.

4 Then we have 113501 through 113899, which
5 I take it you do not have any familiarity with?

6 A. I'm not -- based on what I see there I'm not
7 sure what it applies to.

8 MR. KLAPPER: And let me just -- I don't
9 know if the Bates numbers are consecutive
10 within that pile. I guess that's my only
11 question. With that caveat -- you're
12 going to give me that job, huh? Let me
13 take a quick peek before we move on.

14 MR. BYMAN: While you're looking at it,
15 Tony, for the record, I'll say this is the
16 third of the three witnesses that we've
17 been given to tell us what this stack of
18 documents is all about. Ms. Gorman had
19 never seen that document before.
20 Mr. Saunders, if I recall his testimony
21 correctly, didn't have anything to do with
22 that document and said that he'd only seen
23 one percent of the entire stack, which
24 would be 16 pages. So I guess we're
25 wondering why it's in the stack if

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1 Mr. Seickel doesn't know what it's all
2 about.

3 MR. KLAPPER: I can't say exactly why
4 they're in the stack, but I believe the
5 reason they're in the stack is because it
6 was responsive to the order. So, you
7 know -- we'll move forward with the
8 questions.

9 MR. BYMAN: The order said you're
10 supposed to give us anything that these
11 three witnesses were going to testify
12 about. I'm just making sure we are not
13 missing something. If it got put in by
14 inadvertence, that's fine, but we don't
15 want to be sandbagged at the hearing if
16 there's something you're not telling us
17 about that document.

18 MR. KLAPPER: I don't know the details
19 of what the first witness said about these
20 documents, and I don't know if we walked
21 through in as organized a fashion with the
22 last witness, Mr. Saunders, what he had
23 seen or had not seen. I know he generally
24 talked about having recalled two
25 documents, et cetera. There's no

1 intention to sandbag you.

2 Sitting here right now, I don't know
3 what, if anything, any of these three
4 witnesses will do with respect to these
5 documents and if they rely upon them. If
6 it becomes an issue, certainly at the
7 hearing, where you feel that our -- the
8 witnesses' reliance upon these documents,
9 if this is the subset, whatever it might
10 be, that none of the three could
11 articulate having some knowledge about
12 those documents, then raise the objection
13 at that point. We're certainly not trying
14 to sandbag you. Sitting here right now, I
15 don't know. We can discuss this off the
16 record if you'd like at some future point
17 to sort of try to figure out if there's a
18 way to parse through this. But sitting
19 here now, I can't do that.

20 MR. BYMAN: Okay. All I'm trying to
21 do, Tony, is make sure somebody doesn't
22 say, gosh, you had a chance to ask a
23 question about it; you didn't.

24 MR. KLAPPER: I know. But I did
25 recognize with the last deponent,

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1 Mr. Saunders, that we hadn't gone through
2 this sort of two-pile in/out dichotomy.
3 It was a little rougher in terms of the
4 line of questions. And I'm not trying to
5 suggest that, you know, you didn't close
6 him out on that issue or you did. I don't
7 know. We didn't go through the clear
8 demarcation that certainly exists right
9 now with Mr. Seickel.

10 MR. BYMAN: I'm confident with his
11 one-percent estimation with a guy as
12 careful as Mr. Saunders that he wouldn't
13 have overlooked a document that thick.

14 MR. KLAPPER: That may be the case. I
15 don't know. But I know he referenced
16 documents that he had familiarity with,
17 and I don't know if he was referencing
18 this collection or not. But the record
19 will speak for itself.

20 MR. BYMAN: I think that's enough tap
21 dancing for now. Why don't we get back to
22 Mr. Seickel.

23 MR. KLAPPER: That's fair enough. If
24 you could indulge me just for a second, I
25 just want to finish thumbing this. I'm

1 but I don't see where.

2 Q. What was the documents that you provided
3 yesterday?

4 A. It was a document from John Pamula that
5 basically described the circumstances of the 169
6 tapes.

7 Q. Is that what we've marked as Exhibit 427?

8 A. Yes.

9 Q. Okay. We'll get back to that later. Other
10 than that one piece of paper did you provide anything
11 in response to any request in connection with this
12 litigation?

13 A. Yes. I submitted e-mails. I don't recall if
14 any specifically are in this pile.

15 Q. What you supplied was done electronically I
16 take it.

17 A. Yes.

18 Q. Do you have any idea what quantity you
19 supplied would comprise in paper once it was printed
20 out?

21 A. If you're asking me to guess as to the end
22 number, I would say 10 or 12.

23 Q. E-mails or pages?

24 A. Yeah, e-mails.

25 Q. With attachments?

1 almost done. All right.

2 MR. BYMAN: All right.

3 MR. KLAPPER: Yes. I'm fine.

4 BY MR. BYMAN:

5 Q. With the exception of the approximately
6 two-and-a-half-inch, three-inch thick document that
7 Mr. Klapper has now verified have consecutive Bates
8 numbers that you haven't seen, you have got some
9 familiarity with the rest of the stack; is that right?

10 A. I have some familiarity with a portion of
11 each of the pieces of this stack.

12 Q. Okay. To your knowledge, were you the person
13 that segregated and identified the documents in this
14 stack so that they could be produced to us?

15 A. I'm not sure what you mean specifically.

16 Q. Did you have any input in compiling this
17 stack of documents for us?

18 A. I may have. I don't recall.

19 Q. Were you asked to compile any documents in
20 connection with this case?

21 A. Yes.

22 Q. And what did you do to respond to that
23 inquiry?

24 A. I supplied them a document yesterday. And I
25 don't see it. This pile. Not that it's not there,

1 A. I don't recall. Maybe.

2 Q. What I'm trying drive at is if you printed
3 out what you gave them, would it be something like
4 this six-inch stack that we have left?

5 A. I didn't print out anything.

6 Q. I know. I'm just saying if you did, can you
7 estimate would it have been a six-inch stack? Would
8 it have been a two-foot stack? Would it have been a
9 one-inch stack?

10 A. I would estimate it would be less than one
11 inch.

12 Q. Why don't you take us through each of the
13 documents in this stack, tell us for the record what
14 the Bates numbers are, and then tell us what it is
15 about each document that you've seen before.

16 A. Where is the Bates number?

17 Q. It's the production number on the bottom.

18 A. Oh, this number right here?

19 MR. KLAPPER: Yes. And "this" referring,
20 just because there was a little ambiguity
21 with stacks, "this" referring to the stack
22 that is in front of him in the deposition
23 today.

24 BY MR. BYMAN:

25 Q. Yes. What we're talking about is from the

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1 universe of the first set of things that were produced
2 to us by your law firm, Tony, Mr. Seickel segregated
3 out the things that you've never seen before. We
4 still have about six inches of it. And now I want you
5 to tell me what in those six inches you've seen and
6 what it is.

7 A. Okay. This is document Bates document
8 0112887.

9 Q. And what's the last number in the range at
10 the last page?

11 MR. KLAPPER: If you turn to the last page
12 and see the number...

13 THE WITNESS: 0112895.

14 MR. KLAPPER: And I would just suggest when
15 you thumb through to make sure the numbers
16 are consecutive. I'm sure they are, but
17 just to make sure.

18 THE WITNESS: 91, 92, 93, and 95...
19 Yes, they are consecutive.

20 BY MR. BYMAN:

21 Q. Okay. What is that document?

22 A. This first document is an e-mail from
23 somebody named Bezak (phonetic) at NDCI.com to Wray
24 Stewart. And then -- actually, it also includes an
25 e-mail from -- it's like a CC or forwarded from an

1 earlier mail to Bruce Buchanan from Wray Stewart.

2 Q. Okay. And what in that set of documents have
3 you seen before?

4 A. Discussion about 112 tapes, number that had
5 mail data.

6 Q. What page are you referring to?

7 A. I'm referring to page three or 0112889.

8 Q. Okay. This is referring to the Brooklyn
9 found tapes?

10 A. Yes.

11 Q. Is that a term that's familiar to you?

12 A. Yes.

13 Q. Does that refer to the 1,423 tapes that were
14 located in Brooklyn?

15 A. I believe so.

16 Q. And this is an update in July of 2004 talking
17 about what NDCI had found on the found tapes; is that
18 right?

19 A. Um-hum.

20 Q. You have to answer audibly for the reporter.

21 A. I'm sorry. Yes.

22 Q. And what they had found as of July 2004 was
23 that there were in excess of 2,183,000 total unique
24 e-mail messages; is that right?

25 A. Okay.

1 Q. Is that right, sir?

2 A. It's saying it here. I don't know that for a
3 fact.

4 Q. Do you have any information that what was
5 reported to you by NDCI was inaccurate?

6 A. I have no reason to believe that.

7 Q. You're not copied on this particular e-mail,
8 but do you have a recollection of it being forwarded
9 to you or shared with you?

10 A. Just in conversations.

11 Q. With Mr. Stewart?

12 A. Yeah.

13 Q. With anyone else?

14 A. Just with legal counsel.

15 Q. Did you have a conversation with Mr. Stewart
16 in July of 2004 about the contents of this tape?

17 A. I don't recall. It's possible.

18 Q. Well, when is the first time you recall being
19 aware that the Brooklyn found tapes contained e-mail?

20 A. The last recall I have was being involved
21 with it in October of this year.

22 Q. You mean of last year?

23 A. I'm sorry. Of last year, 2004.

24 Q. I'm not asking you for the last recall.

25 When's the first time you knew that the Brooklyn found

1 tapes had e-mail on them?

2 A. That's what I meant.

3 Q. So you had a conversation with Mr. Stewart in
4 October of this year?

5 A. Correct.

6 Q. Did he tell you that he knew that they
7 contained e-mail in July?

8 A. I don't recall if he said that to me, no.

9 Q. Well, when you saw this e-mail that's dated
10 July 16, 2004, did you go back to him and say, hey,

11 Wray, you must have known in July that these files had
12 e-mail or words to that effect?

13 A. I don't remember having a conversation like
14 that with him.

15 Q. By the way, I'm going to mark as CPH 31 what
16 I think is the document that you're actually looking
17 for or looking at there.

18 A. Yes. Do you want this document back?

19 Q. Keep the one with the Exhibit on it.

20 MR. BYMAN: And did you get his yes in
21 answer to my question?

22 BY MR. BYMAN:

23 Q. Have you ever actually seen the e-mail that
24 is 112889 prior to today)?

25 A. I don't recall. It's possible, but I don't

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1 recall.

2 Q. What were the circumstances in October of

3 last year that caused you and Mr. Wray to talk about

4 the subject of e-mails being on the found tape?

5 A. We were pursuing getting those, the 112 tapes

6 processed by NDCI, and uploaded to our system.

7 Q. What was it about October that made you

8 pursue it at that point?

9 A. I don't know. That was when it was brought

10 to my attention.

11 Q. Who brought it to your attention?

12 A. Wray Stewart.

13 Q. What did he say?

14 A. He said we have these tapes that we have to

15 process.

16 Q. Did he say that he had just found out about

17 it, or did he say that he had known about it for

18 sometime?

19 MR. KLAPPER: Objection; asked and

20 answered.

21 THE WITNESS: I don't recall.

22 BY MR. BYMAN:

23 Q. Did you ever attempt to find out when he

24 first knew that there were 112 tapes that needed to be

25 processed?

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1 A. I did not ask him that.

2 Q. Was there anybody else present during the

3 conversation you had with Mr. Stewart?

4 A. I don't think so.

5 Q. Was he directing you to do something about

6 the processing, or was he simply saying, hey, we've

7 got to do it, and he was going to have somebody else

8 do it or he was going to do it?

9 A. I think they would be processed as part of

10 the e-mail archive tapes as we would do any other

11 tapes.

12 Q. Well, what was your role in processing the

13 tapes?

14 A. I managed John Pamula who runs the group that

15 handles the tapes, and I helped coordinate his

16 activity to do so.

17 Q. And what I'm trying to drive at,

18 Mr. Seickel -- And it may just be a language problem,

19 and I may not be speaking your language here. I'm

20 trying to find out why it was October that he was

21 doing this.

22 A. I don't know.

23 Q. Was it because he had just received them,

24 because he had just realized that he had received them

25 a long time ago and he should have done it sooner?

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1 Was it because he got some direction? You just don't

2 know?

3 MR. KLAPPER: Objection. Asked and

4 answered, but you can answer.

5 THE WITNESS: If you want me to guess as

6 to why it was October --

7 MR. KLAPPER: He's not asking you to

8 guess.

9 BY MR. BYMAN:

10 Q. I want you to give me your best understanding

11 as to why you were asked to do this then.

12 A. I don't know.

13 Q. What specifically did you do after

14 Mr. Stewart and you had your conversation?

15 A. The tapes were processed by NDCI, meaning

16 they gave us the e-mails on tapes of the 112. Well,

17 they wrote to the tapes and processed them as quickly

18 as they could, sent them to us, and we -- or my

19 understanding is that they were then uploaded to the

20 e-mail archive sometime late last year.

21 Q. So in October when you had your conversation

22 with Mr. Stewart, had these 112 tapes containing

23 e-mail been extracted from the raw tapes?

24 A. When I had my conversation, I believe at that

25 point the raw data was already moved.

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1 Q. Moved into SD --

2 A. SDLT's.

3 Q. And did Morgan Stanley have possession of the

4 SDLT tapes?

5 A. I believe so, yes. I believe so to the best

6 of my knowledge.

7 Q. What's the basis of your belief?

8 A. Conversations with Wray Stewart.

9 Q. Let me make sure I understand the mechanics

10 of how this works. The raw tapes are the 1,423 tapes

11 that were found in Brooklyn, right?

12 A. (Nodding head).

13 Q. You have to answer audibly for me.

14 A. Okay. Yes. Sorry.

15 Q. The raw tapes gets shipped to NDCI?

16 A. Yes.

17 Q. Where is NDCI located?

18 A. Manhattan.

19 Q. So when we say "shipped," we just mean across

20 the river?

21 A. Yes.

22 Q. Then NDCI extracts information from the raw

23 tapes and puts the extracted information on and SDLT

24 tape; is that correct?

25 A. Correct.

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1 Q. And they ship the SDLT tape over to you at
 2 Morgan Stanley?
 3 A. Correct.
 4 Q. Once Morgan Stanley has the SDLT tape, it
 5 loads it onto a hard disk on its mainframe computer;
 6 is that right?
 7 A. Slightly incorrect.
 8 Q. All right. What is correct?
 9 A. It's not a mainframe.
 10 Q. What is it?
 11 A. It's a UNIX or a LINUX based system with
 12 storage attached to it and a tape drive attached to
 13 it.
 14 Q. And once it is loaded onto disk what is the
 15 next step in order to make it searchable?
 16 A. The e-mail archives, the people governing the
 17 e-mail archive application are notified there's data
 18 in the staging area and they have to process it.
 19 Q. And how do they process it?
 20 A. I'm not exactly sure.
 21 Q. Do you understand that a script has to be run
 22 against the data?
 23 A. I'm sure, yeah, from that level.
 24 Q. To your knowledge, does NDCI have the ability
 25 to put the data it extracts from raw tapes into some

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1 sort of searchable database?
 2 A. I'm not aware of it.
 3 Q. Are you aware that they do not have that
 4 capability?
 5 A. No.
 6 Q. So they may or may not have that capability?
 7 A. Correct.
 8 Q. To your knowledge, were they ever -- were
 9 they ever asked if they had that capability?
 10 A. I don't know.
 11 Q. To your knowledge, were they ever asked to
 12 perform any searches of the data that they were
 13 extracting?
 14 A. I don't know.
 15 Q. So in October when you and Mr. Stewart had
 16 your conversation, NDCI had already sent back the SDLT
 17 tapes to Morgan Stanley; is that correct?
 18 A. I believe so, yes.
 19 Q. Did you have anything to do, then, with
 20 loading those tapes onto the UNIX hardware that you
 21 were talking about?
 22 A. No.
 23 Q. Who did?
 24 A. John Pamula and his team.
 25 Q. And when did he complete that task?

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1 A. I don't know.
 2 Q. He was reporting to you at that time, right?
 3 A. He's -- yeah, he reports to me.
 4 Q. Did he ever tell you and you've just
 5 forgotten or he just never told you?
 6 A. No, those communications were dealt with with
 7 Wray Stewart.
 8 Q. Did Mr. Stewart ever tell you when it was
 9 done?
 10 A. No. In other words, not that I recall.
 11 Q. And whether it was loaded then in a day or a
 12 week or a month, it still had to have the scripts run
 13 against it in order to become searchable; is that
 14 right?
 15 A. I don't know. I'm not sure.
 16 Q. Okay. So you don't know when it was loaded
 17 and you don't know when it became searchable?
 18 A. Correct.
 19 Q. Let me show you a document previously marked
 20 as Exhibit 425. And I don't know if we've gotten to
 21 that point in these piles, but is that something that
 22 you've seen before?
 23 A. Yeah. These are meeting minutes that Wray
 24 would send out.
 25 Q. Were you copied with them on the -- at the

1 time?
 2 A. I believe so because one of the groups that
 3 are CC'd on it I'm in.
 4 Q. Is that DSMGR-NA?
 5 A. Yes.
 6 Q. Are you also in the group ECMGR-NA?
 7 A. No.
 8 Q. Do you know who is in that group? Have you
 9 ever heard of that group?
 10 A. I'm not sure.
 11 Q. So you believe you would have seen anything
 12 that was addressed to DSMGR-NA more or less in
 13 realtime?
 14 A. I would have received it in my e-mail box.
 15 Q. So you knew that the Brooklyn found tapes had
 16 been found at least as of May 6, 2004; is that right?
 17 A. That sounds about right.
 18 Q. This, I'll represent to you, is the earliest
 19 that I was able to find in this stack of documents
 20 referring to the Brooklyn found tapes. Do you have
 21 any recollection as to when the actual date of finding
 22 was?
 23 A. No.
 24 Q. Would it have been shortly before May 6th or
 25 some period of time before May 6th?

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1 A. It sounds about right. I'm not sure to be
 2 honest.
 3 Q. Who actually found them?
 4 A. From what I recall in conversations with
 5 John Pamula, that he was alerted to it by facilities,
 6 one of the facilities workers there that there were
 7 tapes that had to be removed or moved, and he, as a
 8 result of that, he alerted both myself and Wray
 9 Stewart in conversations.
 10 Q. According to the first page of Exhibit 425,
 11 Wray and you were to investigate the origin on the
 12 tapes. Do you see that under bullet paragraph number
 13 two?
 14 A. Yes, I see it.
 15 Q. Did you do anything to investigate the origin
 16 of the tapes?
 17 A. The only thing I recall is that we decided to
 18 make it a part of the e-mail archive project to ensure
 19 that we were not missing anything.
 20 Q. And when you say "we decided," who is the we?
 21 A. The group, the e-mail archive group that were
 22 meeting on a weekly basis.
 23 Q. The attendees shown on this, Kay Gunn,
 24 Bruce Buchanan, Annaline Dinkelman, John Pamula,
 25 Wray Stewart. I take it you were also a member of

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1 that group.
 2 A. Yeah. I was one of the attendees from one
 3 time to the other. I was invited to these meetings on
 4 a weekly basis.
 5 Q. Invited, or were you actually part of the
 6 group?
 7 A. I was part of the group that I was supposed
 8 to attend the meetings.
 9 Q. And then who else other than the persons
 10 identified and yourself was a member of the group?
 11 A. Kay Gunn, Bruce Buchanan, Annaline Dinkelman,
 12 John Pamula, Wray Stewart. Other than these members
 13 there was Arthur Riel, Don Haight, and over time it
 14 changed somewhat. Annaline Dinkelman. I'm trying to
 15 think if there's -- Robert Saunders.
 16 Q. Allison Gorman?
 17 A. Allison Gorman. Deb Speyer. I'm not sure
 18 who else.
 19 Q. Mr. Seickel, were you aware that litigation
 20 between Morgan Stanley and CPH, the case that has you
 21 here today, was underway as of May of 2004?
 22 A. No.
 23 Q. When was the first time you heard about this
 24 lawsuit?
 25 A. Recently within the last week, I'd say,

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1 something like that.
 2 Q. Were you aware that as part of his duties
 3 Mr. Riel had certified that production of responsive
 4 documents was complete in this case sometime in 2004?
 5 A. I wasn't aware of that.
 6 Q. Are you aware of that as you sit here today,
 7 or did you just hear about it for the first time from
 8 me?
 9 A. What you just said I heard for the first
 10 time. The general case I've heard about for the past
 11 week.
 12 Q. Had anybody told you prior to the time that
 13 you heard about this lawsuit that there was an
 14 obligation on Morgan Stanley to produce documents in
 15 connection with litigation, e-mail documents?
 16 A. Can you be more specific? I'm not sure what
 17 you're asking.
 18 Q. Let me back up a moment. The archive project
 19 that you were a member of this group for was designed
 20 for the ongoing business of Morgan Stanley, right?
 21 A. (No response).
 22 Q. You have to answer audibly.
 23 A. I'm still trying to understand what the
 24 question is.
 25 MR. KLAPPER: Objection; vague.

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1 MR. BYMAN: If he doesn't understand it, by
 2 definition, it's vague.
 3 BY MR. BYMAN:
 4 Q. What was the business purpose, if you know,
 5 of the e-mail archive group?
 6 A. The e-mail archive group was to congregate or
 7 gather people with different areas of either expertise
 8 and/or responsibility to eventually migrate all the
 9 e-mail messages from tape that existed into this
 10 e-mail archive system.
 11 Q. And that was for all of North America?
 12 A. Yes.
 13 Q. And what was the business purpose for doing
 14 that?
 15 A. My understanding is that it would make it
 16 easier to respond to requests for information.
 17 Q. And would that be requests for use in the
 18 business or for some other reason?
 19 A. Again, my understanding is in relation to
 20 litigation requests and business requests.
 21 Q. So this was going to be something that Morgan
 22 Stanley would use for a variety of purposes; is that
 23 fair to say?
 24 A. I'm not sure.
 25 Q. Did anybody ever explain to you why this

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1 group was assembling on a weekly basis to undertake
2 this project?

3 A. Again, my understanding is to make sure that
4 the e-mails were migrated to this e-mail archive
5 product to preserve the data.

6 Q. Right. That's the task. What was the
7 reason for the task? Did anybody ever explain that to
8 you?

9 A. No.

10 MR. KLAPPER: Let me state the objection.

11 Objection; asked and answered.

12 BY MR. BYMAN:

13 Q. In any of the conversations you had with
14 Mr. Stewart about the need to process these tapes, did
15 he say anything about specific dates of tapes that
16 were of particular significance?

17 A. Not that I recall.

18 Q. Did he say anything about trying to find old
19 e-mails from the 1998 period of time?

20 A. No, he did not.

21 Q. When, if ever, was the first time that you
22 learned that the found tapes included e-mails that
23 might date back to 1998?

24 A. I think this is the first time.

25 Q. You mean with my question?

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1 A. Yes.

2 Q. Were you also aware that in addition to the
3 found tapes there were other groups of tapes that
4 contained e-mail that were discovered by Morgan
5 Stanley?

6 A. Repeat that question. I'm sorry.

7 Q. Sure. Let me back up a bit, and I'm going to
8 make a representation to you. During Mr. Saunders'
9 deposition this morning, we identified actually five
10 tranches of --

11 A. It's a Saunders word.

12 Q. It's not actually his word, but he adapted it
13 for this. It actually is a word, I think. But the
14 five groups of things that we talked about included,
15 number one, something like 35,000 raw tapes of
16 pre-2003 e-mails. Number two was the 1,423 tapes that
17 we've been calling the found tapes from the Brooklyn
18 security area. Number three was 728 eight-millimeter
19 tapes that were located some place else. Number four
20 was 169 DLT tapes found in the last few months that I
21 take it is the subject of Exhibit 427. And number
22 five was 169 -- approximately 2,200 exchange DLT tapes
23 that are referred to on --

24 A. Can we go back a second? Because I think I
25 might have misstated something. You asked me how did

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1 the 1,400 came to your attention.

2 Q. Yes.

3 A. And I think I misstated because I was
4 thinking of the eight-millimeter tapes. The 1,400
5 tapes were in a security room in Brooklyn, and just in
6 conversations I believe sometime in the summer of 2004
7 we had -- well, somebody had an epiphany, I don't
8 recall who, and thought that this security room may
9 have had -- and it was a locked room held by IT
10 security -- had these tapes. And that's how they came
11 to be found.

12 Q. Okay. So let's back up and make sure that
13 we're clear. As to the found tapes, the 1,423, that
14 was somebody's epiphany, and that epiphany occurred
15 just prior to May 6, 2004?

16 A. Yeah, correct.

17 Q. And as to Mr. Saunders' third tranche, the
18 eight-millimeter tapes, how were those located?

19 A. Those were located, as I testified to
20 previously, they were something Facilities would have
21 alerted John Pamula's group that there were tapes
22 there. He then alerted myself and Wray Stewart, and
23 the group decided to then act on those tapes.

24 Q. And what facility alerted Mr. Pamula?

25 A. Facilities. They're a building -- there are

1 certain building people, maintenance people, workers
2 that it was my understanding that one of them alerted
3 them to these tapes.

4 Q. Where were the tapes physically located?

5 A. They were in a com rom in 1221 Avenue of the
6 Americas.

7 Q. In Manhattan?

8 A. Correct.

9 Q. Did anyone attempt to find an explanation of
10 why they had not been located sooner?

11 A. I don't recall.

12 Q. Mr. Saunders told us that by the very fact
13 that these are eight-millimeter tapes they would tend
14 to be older tapes because it's an older technology.
15 Is that consistent with your understanding?

16 A. Yes.

17 Q. Was anything done after the discovery of the
18 728 eight-millimeter tapes to make sure that there
19 weren't others, other similar tapes located in other
20 com rooms somehow?

21 A. It was my understanding based on conversation
22 with John Pamula that he would have himself and his
23 employees do a thorough search of not only the com
24 rooms but any storage areas that he had access to.

25 Q. And when was the first time that Morgan

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1 Stanley knew what was actually on the eight-millimeter
2 tapes?

3 MR. KLAPPER: Objection; foundation. You
4 can answer.

5 THE WITNESS: Last week or a week
6 before that, something like that.

7 Recently.

8 BY MR. BYMAN:

9 Q. How did you come to know what was on the
10 tapes?

11 A. NDCI reported it to us and I was one of the
12 recipients.

13 Q. What did they report?

14 A. They reported a certain number of e-mails on
15 those tapes.

16 Q. Do you remember what number of e-mails?

17 A. I don't recall.

18 Q. Is that report in this stack of documents?
19 Did you see it?

20 A. I didn't see it. I don't recall seeing it.

21 It doesn't mean it's not there. I just didn't recall
22 seeing it.

23 Q. Who else was copied on that report?

24 A. I'm not sure, but definitely myself,

25 Wray Stewart. Beyond that, I can't recall. I would

1 collection of documents produced documents
2 that are responsive unless, of course,
3 they were privileged and in that case
4 would have been placed on the log.

5 MR. BYMAN: Well, that's a pretty fancy
6 way of saying you don't have any way of
7 answering my question.

8 MR. KLAPPER: No, I think I answered
9 your question.

10 MR. BYMAN: I guess the record will reflect
11 that. I'm just asking you if that
12 document that Mr. Seickel just described,
13 the reporting, was on the 728 tapes that
14 have been produced to us, and you don't
15 know the answer to that I take it. You
16 just know if it was privileged, you would
17 have claimed the privilege.

18 MR. KLAPPER: I think I already gave you
19 the answer to the question. So sitting
20 here today, do I know whether or not it
21 was produced? No, I don't know whether or
22 not it was produced. If it was supposed
23 to be produced and -- and existed, I'm
24 sure it would have been produced or placed
25 on the privilege log if there was a

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1 say also that it was reported to legal counsel as soon
2 as we found out. I just can't recall the specific
3 e-mail addresses on it.

4 Q. Do you recall the date of that report?

5 A. No.

6 Q. But it was within the last week?

7 A. If was fairly recently.

8 Q. Well, fairly recently can mean different
9 things to different people.

10 A. It was, I would say, within the last two
11 weeks. That's what I recall. I don't recall to be
12 honest with you. I'm just guessing. But it was
13 recent.

14 MR. BYMAN: Tony, if that document is in
15 that stack, I haven't been able to locate
16 it and identify it. Are you aware of
17 anything being withheld from the
18 production that would constitute the
19 report that Mr. Seickel has described?

20 MR. KLAPPER: I don't know if legal
21 counsel is copied on it and, therefore,
22 would be referenced on a privilege log.

23 Sitting here today, I don't know one way
24 or the other. Certainly there's no --
25 there was no attempt to keep out of this

1 communication with counsel.

2 MR. BYMAN: Well, with all due respect,
3 you better take another look at what
4 constitutes privilege. The mere fact that
5 it's addressed to you doesn't make it
6 privileged.

7 BY MR. BYMAN:

8 Q. What do you recall the report disclosing?
9 Was it one e-mail they found? A million e-mails? A
10 zillion e-mails?

11 A. There was definitely more than one e-mail.
12 Beyond that, I can't speculate.

13 Q. Was there anything about the content of the
14 e-mails disclosed in the report?

15 A. Just that I believe it was broken down to
16 type, like the two types that we have are iMap and
17 notes most notably on UNIX.

18 Q. So by type you're just talking about what
19 platform the e-mails are on; is that right?

20 A. Correct.

21 Q. I take it that NDCIS was never asked to
22 actually search for and identify individual e-mails so
23 they wouldn't be in a position of talking about the
24 subsequent content of an e-mail; is that correct?

25 A. I believe that is correct.

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1 Q. In addition to their report, did you also get
2 some sort of electronic medium from them that included
3 the extracted e-mails they had identified?

4 A. No.

5 Q. Have you gotten those yet?

6 A. Wait. Rephrase that again. I'm sorry.

7 Q. Well, they have --

8 MR. KLAPPER: Let me just direct him. Take
9 your time. Make sure you guys are
10 communicating. If you don't understand
11 the question -- just make sure you
12 understand the question.

13 BY MR. BYMAN:

14 Q. And I second that. I don't want you
15 answering questions you don't understand, sir. You
16 have 728 eight-millimeter tapes that you've sent to
17 NDCI, right?

18 A. Right.

19 Q. A week or two they reported back to you we
20 have confirmed that those tapes contain e-mails in one
21 or more e-mail platforms; is that right, sir?

22 A. Correct.

23 MR. KLAPPER: My objection -- allow me to
24 object. I don't know if he testified the
25 time frame was one or two weeks or he

1 A. No.

2 Q. And who actually made the receipt of those
3 tapes from NDCI?

4 A. John Pamula.

5 Q. What, if you know, did Mr. Pamula do with
6 those tapes when he received them?

7 A. It was my understanding that he had one of
8 his subordinates upload the tapes, the data from the
9 tapes onto the e-mail archive staging area.

10 Q. And how long did that take?

11 A. I think that was completed either Friday or
12 Saturday.

13 Q. So it is possible to load three SDLT tapes in
14 a day or two?

15 MR. KLAPPER: Objection. Vague and
16 ambiguous.

17 BY MR. BYMAN:

18 Q. Whether possible or not, was done between
19 your receipt on Friday and Friday or Saturday; is that
20 right?

21 A. Well, the -- I'm not -- I don't know -- I'm
22 not sure what your whole question is. Are you saying
23 that -- Well, I'll let you explain it.

24 Q. All right. Let me again do this in small
25 pieces. Let's say you get one full SDLT tape which

1 wasn't sure about the time frame.

2 BY MR. BYMAN:

3 Q. Whatever it was you've just gotten done
4 telling us about when you saw this report.

5 A. Um-hum.

6 MR. KLAPPER: Or based on your prior
7 testimony. You may answer.

8 BY MR. BYMAN:

9 Q. In addition to simply reporting to you, we
10 have identified that there are e-mails. Have they
11 also sent back to you either a SDLT tape or some other
12 type of electronic medium that says here, they are?

13 A. Yes.

14 Q. And when did you receive those?

15 A. We received them all by the end of last week,
16 which was, I believe, Friday was the last tape for the
17 eight-millimeters.

18 Q. And what quantity of electronic medium did
19 you receive representing those 728 eight-millimeter
20 tapes?

21 A. Three SDLT tapes.

22 Q. Were those three SDLT tapes full?

23 A. I don't know.

24 Q. Do you know what quantity of data was on
25 those tapes?

1 holds approximately 150 gigabytes; is that right?

2 A. Correct.

3 Q. How long would it take on the assumption that
4 you had nothing else to do, that you could assign all
5 of your resources to do nothing except process that
6 one tape, how long would it take to do the upload that
7 you've been talking about?

8 A. The best estimate I can give you is one day.

9 Q. 24 hours?

10 A. Probably less than -- a business day, like
11 eight hours.

12 Q. All right. And if you got three tapes at the
13 same time and had nothing else to do, no other demands
14 on your resources, would it take three eight-hour
15 shifts, or could you do some of that in parallel?

16 A. If there was no restraint on resources, then
17 you should be able to do them in parallel.

18 Q. What restraints on resources might there be?

19 A. We had two SDLT drives, three tapes. Also
20 two of the tapes were received on Wednesday or
21 Thursday. One of them was received after that.

22 Q. What I'm trying to drive at -- and this is
23 starting to sound like one of these things you get in
24 airline magazines that say you have three ducks and
25 two row boats, and how do you get them across the

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1 river, but would it take one SDLT drive eight hours to
2 upload one full SDLT tape?

3 MR. KLAPPER: Let me just object. This is
4 really unclear to me if we're talking
5 about a tape that is working properly, a
6 tape that has problems, any tape or the
7 particular tapes -- Are you asking him
8 about the particular tapes that came from
9 the eight-millimeter or any tape that may
10 or may not have problems? I just --

11 BY MR. BYMAN:

12 Q. I like my question. Unless you don't
13 understand it, why don't you try answering it. Would
14 you like to hear it again.

15 Let me see if I can simplify this,
16 Mr. Seickel. What I'm trying to find out is in an
17 optimum environment, assume no problems with the
18 tapes, assume that the tape is full, though, so that
19 we know what the maximum amount of time it would take
20 to do it, assume that you have just one tape and one
21 driver. How long would it take to upload the
22 information onto your disk?

23 A. Less than one business day.

24 Q. So less than eight hours?

25 A. (Nodding head).

1 we sit here today or not; is that correct?

2 A. Correct.

3 Q. No one has told you whether or not they've
4 been migrated into searchable form?

5 A. I did receive mail, I believe yesterday,
6 saying that they processed the tapes. I have no idea
7 what that means.

8 Q. So by processed you don't know if that means
9 searchable?

10 A. Correct.

11 Q. Or labeled or something else?

12 A. Correct.

13 Q. Has anyone told you that they've been able to
14 determine what the content, the substantive content of
15 those processed tapes are?

16 A. No.

17 Q. Have you ever been advised that someone at
18 Morgan Stanley was aware in early July 2004 that those
19 728 eight-millimeter tapes contained e-mail dating
20 back to June of 1998?

21 A. Repeat the question.

22 (The record was read as requested.)

23 THE WITNESS: No.

24 BY MR. BYMAN:

25 Q. By the way, I've just been advised it's 738,

1 Q. I need an oral answer. I'm sorry.

2 A. Yes, I'm sorry.

3 Q. So if you have two drivers and two full tapes
4 and two people to load them, you could get two of
5 those taken care of in less than one business day; is
6 that right?

7 A. That's correct.

8 Q. And if you had three tapes, two drivers, and
9 it doesn't really matter how many people at this
10 point, it would take something more than one business
11 day but less than two business days; is that right?

12 A. Correct.

13 Q. With respect to the three tapes you actually
14 received, you received some of them on Wednesday or
15 Thursday, the last one on Friday, and they were all
16 fully loaded by Saturday; is that correct?

17 A. Correct.

18 Q. Once they're loaded do you know how long it
19 takes to migrate them into some sort of searchable
20 form?

21 A. No, I don't.

22 Q. That's something that is in Ms. Gorman's
23 bailiwick?

24 A. Correct.

25 Q. So you don't know if they are searchable as

1 not 28. When I've been saying 28 or 38, we both
2 understand we're talking about the universe of
3 eight-millimeter tapes that were found as you earlier
4 described, is that okay?

5 A. Yes.

6 Q. Let me show you what we previously marked --
7 MR. KLAPPER: It's your call, your call if
8 we need to take a bathroom break. Is this
9 a good breaking point?

10 THE WITNESS: Sure. We can take a
11 bathroom break.
12 (A recess was taken from 2:48 p.m. to
13 2:58 p.m.)

14 BY MR. BYMAN:

15 Q. Mr. Seickel, I'm going to show you what we
16 marked earlier as CPH 428. Have you ever seen the
17 e-mail from Mr. Buchanan to Mr. Riel dated July 2,
18 2004 before?

19 A. Before today?

20 Q. Yes.

21 A. No.

22 Q. Has either Mr. Pamula or Mr. Haight or
23 Mr. Stewart ever told you that they were aware on or
24 about July 2nd, 2004 that the eight-millimeter test
25 tapes included e-mail and that the dates on some of

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1 those e-mails went back to June of 1998.

2 A. No.

3 Q. So reading this --

4 A. I don't recall anything being told to me

5 regarding that.

6 Q. I'll take that back.

7 MR. KLAPPER: What Bates number?

8 BY MR. BYMAN:

9 Q. Okay. I think we wrestled Exhibit 431 to the

10 ground. And what's the stack that you've seen before?

11 Let me identify it for the record as 112672 through

12 796. Would you describe that and what your previous

13 involvement in it was.

14 A. The only part that I recognize at all is and

15 just in general terms from the time periods that I see

16 are the eight-millimeter tapes.

17 Q. And you're referring to the printout of --

18 A. And I'm referring to specifically 0112676

19 where the subject states eight-millimeter tapes.

20 Q. I'm sorry. What specifically on page 676 are

21 you referring to?

22 A. The subject areas that say eight millimeters.

23 Just that I know that there were eight-millimeter

24 tapes. That's the only thing that's familiar.

25 Q. So just the words "eight-millimeter tapes"

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1 sounds familiar?

2 A. Correct.

3 Q. What about the page after page of listing of

4 tapes? For example, 112690?

5 A. 112690. Not specifically. I mean,

6 nothing...

7 Q. So you didn't create this listing, I take it.

8 A. Correct.

9 Q. You're not even sure you ever reviewed it?

10 A. Correct.

11 Q. And other than the fact that the word

12 "eight-millimeter tapes" appears somewhere in the body

13 of that document, you don't know anything else about

14 its substance?

15 A. Correct.

16 Q. Okay. Then let's put this one aside. The

17 next one is 112896 through 969.

18 MR. KLAPPER: Have we established on the

19 record what he's looking at, the full

20 Bates range?

21 MR. BYMAN: I think I just gave those

22 numbers.

23 MR. KLAPPER: I just want to make sure

24 it's a consecutive range. Let me just

25 quickly look.

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1 THE WITNESS: My familiarity with it,

2 again, is that I believe I contributed to

3 some, like the work flow product that was

4 put together and how the tapes were being

5 processed.

6 BY MR. BYMAN:

7 Q. Are you referring to a specific page?

8 A. I'm referring to 0112935.

9 Q. And that's a flow chart schematic diagram of

10 the work?

11 A. Yeah. I believe I was in one of the meetings

12 that discussed this because it looks familiar.

13 Q. Did you actually prepare the flow chart?

14 A. No, I did not.

15 Q. If we were to look at that flow chart, is one

16 of the boxes or diamonds or circles an area in which

17 you fit?

18 A. I don't recall exactly what my contribution

19 was to it.

20 Q. Or whether you're part of the process now

21 that the flow chart has been identified?

22 A. Correct.

23 Q. Other than that flow chart that you've

24 identified is there anything else about the document?

25 A. Just that it talks about 35,000 DLT tapes and

1 eight-millimeter tapes.

2 Q. Other than the fact that you recognize some

3 of the terms or concepts, did you prepare any of these

4 documents?

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

6 Q. Did you receive any of the documents

7 contemporaneously?

8 A. I don't think so. It could be. I don't

9 recall.

10 Q. Let's put that aside. The next set of

11 documents is 113416 through 113449. Would you tell me

12 what the significance of that document is?

13 A. Okay. On 418 -- Can I just refer to the last

14 three digits?

15 Q. Sure.

16 A. This is in regarding the 169 tapes that were

17 recently found. There's some communication between me

18 and Bruce and in re: discussing what we were doing

19 with the 169 tapes.

20 Q. May I see that page a moment?

21 A. Sure.

22 Q. If I understand this chain correctly -- And I

23 apologize. This is the only copy of this that I have

24 with us here today. On January 12th, 2005, you send

25 an e-mail to Mr. Buchanan at NDCI saying, "We've

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1 reviewed your website and found that there are several
2 that they are not on your list as processed. Can you
3 please double-check?" Is that correct?

4 A. Correct.

5 Q. Now was there some sort of intranet that you
6 could get on so that you could check his work in
7 progress over the Internet?

8 A. They have a website that tells us what
9 certain information is. Now I have never accessed the
10 website to look at the data. Wray has from time to
11 time to verify what tapes have been processed. I'm
12 not sure what additional information is on the
13 website. I just don't recall.

14 Q. Is it your understanding, though, that they
15 have some sort of secure site so that they can monitor
16 their work in progress?

17 A. Correct.

18 MR. KLAPPER: Just for the record and for
19 my benefit, if you don't mind, is there a
20 Bates number or an Exhibit Number?

21 MR. BYMAN: Yes, he's identified 113418.

22 BY MR. BYMAN:

23 Q. And then approximately a little over two
24 weeks later he gets back to you on January 28th, hey,
25 Glenn, attached is spread sheet with header dates for

1 of last Friday; is that right?

2 A. Um-hum.

3 Q. When did you get the SDLT tapes from the 169
4 tapes?

5 A. We received two on Thursday of last week, and
6 the final one we did not receive until, what is today?
7 Today is --

8 MR. KLAPPER: The 10th.

9 BY MR. BYMAN:

10 Q. Wednesday. I'm sorry. Thursday. Time
11 flies.

12 A. I believe we received the tape Monday.
13 Tuesday or Monday. Tuesday. The final tape for the
14 169, the SDLT. No, I'm sorry. We received it
15 Wednesday and had it uploaded yesterday.

16 Q. Yesterday was Wednesday.

17 A. Yeah. We received it Wednesday and had it
18 uploaded Wednesday.

19 Q. Let me make sure again that I understand.
20 For the 738 eight-millimeter tapes, you received three
21 SDLT tapes, all of which were uploaded by Saturday?

22 A. Saturday.

23 Q. Of last week? Last Saturday?

24 A. This past Saturday.

25 Q. For the 169 DLT tapes you received, was it

1 the 169 tapes. Do you see that?

2 A. Correct.

3 Q. Now I'm looking at the pages that were
4 produced immediately after that, and they appear to be
5 invoices.

6 A. Correct. I didn't see those. Those usually
7 went through Wray Stewart.

8 Q. And then after the invoices starting at page
9 113426 there does appear to be a listing of tapes.

10 A. Um-hum.

11 Q. Is that the attached spread sheet that he was
12 referred to by Mr. Buchanan?

13 A. I don't -- I don't know if those apply to the
14 169 tapes. I just don't recall.

15 Q. Might be; might not?

16 A. Yeah.

17 Q. And then you respond to him about 18 minutes
18 later saying when will you have the SDLT's with the
19 mail, do you see that?

20 A. Correct.

21 Q. And that's what he eventually responded to?

22 A. I think so, yeah. We were obviously trying
23 to get the SDLT's with the data from the 169 tapes.

24 Q. Now we know that the 738 eight-millimeter
25 tapes, you eventually got all of that on SDLT tape as

1 two or three SDLT's?

2 A. Total of three.

3 Q. And all of those have been uploaded as of
4 yesterday?

5 A. As of late yesterday, yes.

6 Q. The last of which was not loaded until
7 yesterday; is that right?

8 A. Yes.

9 Q. And I've asked you all these questions with
10 respect to the three SDLTs for the 738
11 eight-millimeter tapes. As to the three SDLT's for
12 the 169, have those been processed into searchable
13 form yet?

14 A. I don't know.

15 Q. So your answers would be the same, you don't
16 know what happens once they get uploaded?

17 A. Correct.

18 Q. Or what the time table is for having them
19 into searchable form?

20 A. Correct.

21 Q. While we're on the subject, how were these
22 169 DLT tapes discovered?

23 A. We discovered them at our offsite vendor,
24 Recall.

25 Q. And how was it that you discovered them?

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1 A. We were doing a search for a database that we
2 were trying to restore for a particular server. As
3 part of that, I created a list of tapes for
4 John Pamula to then identify the boxes that they were
5 in and to send them to NDCI. As a result of that,
6 NDCI – Recall, sorry, was able to locate most of the
7 boxes except for a finite amount of them.

8 John Pamula, after processing the boxes
9 that they could find, went back and looked at what
10 they keep as a tape database, a manually maintained
11 database of the location of tapes. According to the
12 database, Recall should have had those boxes. We
13 first did an exhaustive search to try to locate -- my
14 understanding is he did an exhaustive search for those
15 boxes on Morgan Stanley sites to confirm that we
16 didn't have them. He subsequently escalated the issue
17 to a manager at Recall to attempt to locate the boxes.

18 We subsequently obtained those boxes from
19 Recall. In those boxes -- well, number one, those
20 boxes did not have labels that were consistent with
21 boxes that were processed by NDCI, and he brought that
22 to my attention. John Pamula brought it to my
23 attention and to Wray Stewart's attention. We then
24 had confirmed, went ahead and confirmed with
25 Bruce Buchanan, meaning I confirmed with

1 A. I would say sometime in the first two weeks
2 of January.

3 Q. You didn't know whether or not they had
4 e-mail on them at the time?

5 A. Correct.

6 Q. And was any priority placed on finding out if
7 they had e-mail?

8 A. What do you mean by priority?

9 Q. Well, let me make sure that we're clear on
10 the dates. You found out that they had e-mail last
11 week; is that right?

12 A. I found out, yeah, Thursday or Friday when
13 they sent me the spread sheet that they had -- I think
14 it was Thursday or Friday that they had, some of them
15 had e-mail on them.

16 Q. So it was two, two and a half weeks after you
17 discovered that you had these 169 tapes that you
18 discovered that they had e-mail on them?

19 A. Yeah, because they had -- NDCI had processed
20 the tapes.

21 Q. It doesn't take two and a half weeks to take
22 a look at a DLT tape and find out if it has e-mail on
23 it, does it?

24 A. It depends. And I'm not sure what your
25 question means.

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1 Bruce Buchanan that there were tapes in that -- of
2 which in those boxes were not processed by NDCI.

3 We alerted -- at that time we alerted
4 legal counsel that that was the case, that we had
5 additional tapes that were found and that we were
6 going to process them as part of the e-mail archive
7 project.

8 Q. And when was it that you notified legal
9 counsel?

10 A. I believe it was the same day or within a day
11 or two of finding out, which I believe was like the
12 second week in January.

13 Q. How long was the process between figuring out
14 that these 169 tapes existed and notifying legal
15 counsel?

16 A. I don't recall. It was a day. Maybe a day,
17 two days tops. I don't recall exactly.

18 Q. When did you first find out that the 169
19 tapes that had been located contained e-mail?

20 A. That they had e-mail? I learned of that when
21 I got the first spread sheet on the 169 tapes, which I
22 believe I received on Thursday or Friday of last week.

23 Q. So you found out about these tapes in
24 January, the first week or two in January; is that
25 right?

1 Q. Well, in other words, when you sent these to
2 NDCI, it was as part of the e-mail archive project,
3 wasn't it?

4 A. Yes.

5 Q. You suspected that they had e-mail, didn't
6 you?

7 A. Yes.

8 Q. By that time you were sensitive to the fact
9 that there was some legal consideration involved in
10 making sure that these things got produced, right?

11 A. Correct.

12 Q. That's why you contacted legal counsel within
13 a day or two?

14 A. Correct.

15 Q. So why didn't you when you sent these to NDCI
16 in mid January say, we really have to know right away
17 if they have e-mail; don't do this in ordinary course;
18 tell us tomorrow; tell us yesterday?

19 A. I can't -- I can only reply to you what NDCI
20 gave to me. There is a process that they may have to
21 go through to process the tapes, so I can't -- I can't
22 give you information to that. All I can tell you is
23 when I received information on those tapes.

24 Q. I understand that, Mr. Seickel. What I'm
25 driving at is when you told NDCI you had these 169

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1 tapes that you wanted processed, did you say process
2 them, period? Did you say process them as slowly as
3 possible, or did you say process them quickly?

4 A. As I recall, Bruce Buchanan asked me what
5 priority. He goes -- and I said, "The typical
6 priority." And he responded, "Yesterday," meaning as
7 soon as possible. And that's how I believe the
8 conversation went almost word for word.

9 Q. Has it ever taken NDCI as much as two and a
10 half weeks to tell you what the content of a
11 particular tape was before?

12 A. I can't recall. You're asking me for a
13 specific instance. If I would have sent them one tape
14 and said process this tape, I would have a framework
15 to answer your question. But I have no framework to
16 answer that question. Do you understand what I'm
17 saying?

18 Q. You could have done a test on them, right?
19 You sent them 169. You could have said take five or
20 ten of them and test them, right?

21 A. We didn't do that.

22 Q. Any reason why not?

23 A. We wanted them all to be processed, so I
24 don't know how to answer that.

25 Q. Let's move to the next document. This is

1 Q. Okay. And how are you familiar with this?

2 A. It was in discussions with legal and -- legal
3 counsel in regard to this whole project.

4 Q. May I see the page you're looking at? Okay.
5 So this spread sheet was sent to you on or about
6 October 2004; is that right?

7 A. Yeah, if that's the date, yes.

8 Q. And other than it being sent to you, did you
9 have any involvement with it?

10 A. The only involvement was that John Pamula was
11 the one -- these tapes pertained to the population of
12 35,000 tapes or thereabouts that were sent to NDCI for
13 processing.

14 Q. Okay. So this was just a routine report from
15 that process?

16 A. This is one of the reports from that process
17 it looks like.

18 Q. Is there any other significance to the report
19 that you're aware of?

20 A. Nothing really. Some of it was just mundane
21 communication regarding an extension number change.
22 Just it seems like normal communication back and forth
23 other than that.

24 Q. May I see that again? Sorry.

25 A. Sure.

1 113209 through 113415. What's the significance of
2 that document?

3 MR. KLAPPER: Just let me do my little
4 check on the Bates range. And, again,
5 take your time and refresh your memory
6 about the entire stack if necessary.

7 THE WITNESS: Okay. The first page
8 refers to tapes -- it says -- and I'll
9 refer to it as 209, document 209.

10 "Attached spread sheet containing the bar
11 codes numbers from all tapes from the
12 original job that contain no mail data at
13 all."

14 MR. KLAPPER: Slow down for the court
15 reporter.

16 THE WITNESS: "This excludes any error,
17 read error tapes, IIM tapes or any tapes
18 that had no unique mail output. I'm
19 familiar with this --

20 THE COURT REPORTER: IIM?

21 THE WITNESS: IIM. It says, "...any
22 read errors, IIM tapes or any tapes that
23 had unique mail output."

24
25 BY MR. BYMAN:

1 Q. Did receipt of this document on or about
2 October 25, 2004 cause you to consult counsel?

3 A. Cause me to consult counsel?

4 Q. Yes.

5 A. I don't recall. I don't know if it was the
6 cause or the discussion -- I don't recall.

7 Q. Well, did something in October of 2004 cause
8 you to consult counsel?

9 A. Well, just be aware, we consult counsel
10 fairly regularly regarding the e-mail archive project.

11 Q. Was there something in October of 2004
12 relating to finding additional e-mail backup tape that
13 caused you to consult counsel?

14 A. Repeat that. I'm sorry. I just don't
15 understand the question.

16 Q. Sure. Actually, let me represent to you,
17 sir, that in a filing in this case James Doyle -- Are
18 you familiar with Mr. Doyle?

19 A. James Doyle, yeah, he works for Morgan
20 Stanley.

21 Q. He's a Morgan Stanley in-house lawyer?

22 A. I believe so.

23 Q. Mr. Doyle filed a declaration, and I'm going
24 to quote from it. "At the end of October 2004 I
25 learned that additional e-mail backup tapes had been

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1 located within Morgan Stanley and that the data on
2 those tapes had not been restored or searched prior to
3 Morgan Stanley's May 14, 2004 e-mail production."

4 Were you the source of information of
5 Mr. Doyle in 2004?

6 A. No.

7 Q. Do you know who was?

8 A. I'm not sure.

9 Q. Did you have any communications with
10 Mr. Doyle in October of 2004?

11 A. No.

12 Q. Did you have any communications with any
13 lawyer who you know reports to or works with
14 Mr. Doyle?

15 A. In October?

16 Q. Yes.

17 A. I don't think so.

18 Q. Do you recall the names of any Morgan Stanley
19 in-house lawyers that you did have communications with
20 in 2004? And I only want their names. I don't want
21 to know what you talked to them about.

22 A. Soo-Mi-Lee and Zachary Stern.

23 Q. Was there any event in October 2004 relating
24 to the discovery of e-mail backup tapes that had not
25 been previously located?

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1 A. Be more specific.

2 Q. Okay. Going back to our tranches, the 1,423
3 tapes we know were discovered back in May --

4 A. Yeah.

5 Q. The 738 eight-millimeter tapes were
6 discovered when?

7 A. Eight-millimeter tapes were discovered
8 sometime in 2002, I believe.

9 Q. Okay. So way before May of 2004?

10 A. (Nodding head).

11 Q. You have to answer "yes" or "no."

12 A. Yes. I'm sorry. Bad habit.

13 Q. The 169 tapes that we were talking about
14 recently were discovered when?

15 A. In January of 2005.

16 Q. Were there any discoveries of previously
17 undiscovered backup tapes containing e-mail around the
18 October 2004 time frame?

19 A. No.

20 Q. And, in fact, the closest --

21 A. Other than those, no.

22 Q. And those, the closest one to October would
23 have been the one in May or earlier?

24 A. Yeah. Yes.

25 Q. Let's move on to the next document. We have

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1 an intentionally left blank page with the numbers
2 112970 through 113068 and we have 113069 through
3 113208. And I'm assuming that Mr. Klapper wants to
4 make sure I haven't misread the numbers.

5 MR. KLAPPER: It's not meant to suggest
6 that you're trying to misread. Are these
7 two separate? Because the chain that you
8 gave, you ended 113068 and then 113069.
9 You said two different numbers, two
10 ranges. At the end of the first range you
11 went to the beginning of the second range.

12 MR. BYMAN: Tell you what. Rather than
13 debate what I said, let me just say it
14 again. Give it to me again.

15 MR. KLAPPER: Actually, hold on a
16 second. I thought you said -- I see what
17 you're saying. You don't need to.

18 That's fine. We're on the same page.

19 BY MR. BYMAN:

20 Q. What's the significance of that document?
21 And I presume the intentionally left blank you don't
22 know about.

23 A. (Shaking head).

24 Q. Again, you have to answer audibly for the
25 reporter.

1 A. No. I have to get out of that habit.

2 070, it was communication in regard to
3 this database restored that I was referring to
4 earlier. He needed sequencing information for the
5 restorers. I believe this refers to it. And he also
6 needed the exact client that we were looking for.

7 Q. May I see the page you're referring to?

8 A. Sure.

9 Q. This is 113070. There's an e-mail chain that
10 involves you dated December 2004.

11 A. Um-hum.

12 Q. And what, sir, is the significance of this
13 e-mail chain?

14 A. The significance of it was that he needed
15 certain information. We were doing a database
16 restore, and he needed certain sequencing and server
17 information for the restorers to commence.

18 Q. He being Mr. Buchanan?

19 A. Mr. Buchanan at NDCI.

20 Q. Other than that page and that reference is
21 there anything else in that inch-thick bundle of
22 documents?

23 A. Well, just to finalize the significance --

24 Q. Sure.

25 A. -- that was the initiation of the process was

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1 for -- in getting these restorers helped us to
 2 discover the 169 tapes.
 3 Q. It was the beginning of the process because
 4 you were trying to reconcile?
 5 A. Before we started reconciling I provided a
 6 list of tapes that I needed restored to John Pamula.
 7 He identified the boxes. This was the process that
 8 started this.
 9 Q. Okay. But at this point you hadn't
 10 discovered there was something missing?
 11 A. Correct.
 12 Q. All right.
 13 A. No.
 14 Q. There's nothing else of significance there?
 15 A. No.
 16 Q. Next document is 112819 through 112886.
 17 A. This e-mail on page 819 or document 819 looks
 18 like it reflects the same thing that was on the
 19 previous one.
 20 Q. So it's just a dup?
 21 A. It looks like it because it's from -- it's
 22 from December 15th. I don't remember the date on
 23 that, on the previous one.
 24 Q. It was 070, right?
 25 A. Yes. What's the date on this?

1 may have been an inadvertent production as
 2 the e-mails and issues referenced therein
 3 apparently relate to a non-public
 4 investigation that either occurred or may
 5 still be occurring. I'm not sure of the
 6 context. So with that, you know, we're
 7 going to instruct him not to answer any
 8 substantive questions about this document.
 9 MR. BYMAN: And that would be the entire
 10 document?
 11 THE WITNESS: No --
 12 MR. KLAPPER: I asked you to look at it
 13 and see if there's a way to segregate it.
 14 THE WITNESS: Yes. I mean some of it
 15 related to the database restore I was
 16 talking about regarding the finding the
 17 169 tapes.
 18 BY MR. BYMAN:
 19 Q. Okay. Where is that?
 20 A. That's on 799 as well. That's the bottom
 21 part.
 22 Q. So the same page includes things that I can't
 23 ask you about.
 24 A. Correct.
 25 Q. And things that I can?

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1 Q. This one says the 13th.
 2 A. The 13th. Let me just see what -- but this
 3 one is the 15th. Yeah, it's the same date.
 4 Q. Okay. So this is just a duplicate?
 5 A. This particular page. I just want to look
 6 through the rest of it to see. Yes, a lot of it looks
 7 like it's a duplicate. So let me look through the
 8 rest of it to make sure. Yes, this one looks like a
 9 duplicate of the previous one.
 10 Q. Okay. Next we have 112797 through 112818.
 11 A. Some of these mails, and I'll refer to it as
 12 798 -- Wait. The bottom of 798 and going to 799 refer
 13 to another project that we were working on.
 14 Q. It's a project unrelated to e-mail archive?
 15 A. It's a project -- well --
 16 MR. KLAPPER are you looking at me? Is
 17 this getting into attorney-client issues?
 18 THE WITNESS: Yes.
 19 MR. KLAPPER: Okay. Let's confer.
 20 (A recess was taken from 3:37 p.m. to
 21 3:47 p.m.)
 22 MR. KLAPPER: Okay. I don't know what the
 23 last question is, but questions relating
 24 to this document I'm going to instruct the
 25 witness not to respond to. I believe this

1 A. Correct.
 2 Q. Except that there's nothing for you to add to
 3 the things that I can because you already told us
 4 everything you know about the 169 tapes?
 5 A. Correct.
 6 Q. Is there anything on this document that
 7 relates to something I haven't asked you about?
 8 A. I don't think so.
 9 MR. BYMAN: Okay. And for the record,
 10 Tony, my view is that all of these
 11 documents have been inadvertently produced
 12 because apparently nobody is ponying up to
 13 a reason why they're going to be used at
 14 the hearing on Monday. So I'm happy to
 15 move on.
 16 MR. KLAPPER: I'm sorry. What is your
 17 point?
 18 MR. BYMAN: You said this document was
 19 inadvertently produced. As near as I can
 20 tell from the testimony of these three
 21 witnesses, two of the witnesses have never
 22 seen most of these documents. Mr. Seickel
 23 has seen only small tiny portions of thick
 24 documents, and to the extent that he's
 25 seen them, he just says, yep, those relate

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1 to stuff I know. I'm having a lot of
2 trouble figuring out why we have these 600
3 pages -- excuse me -- 1,600 pages of
4 documents because it's my job to make sure
5 we don't get surprised on Monday.

6 MR. KLAPPER: I don't think you'll be
7 surprised. But these documents were only
8 produced --

9 MR. JONES: Bob, you're inviting further
10 conversation, but I didn't interpret it
11 that way. I didn't know.

12 MR. BYMAN: I'm inviting you to tell me
13 what the significance of these 1,600 pages
14 are so we can either stop wasting our time
15 or you can not sandbag us. Because either
16 we're being sandbagged or we're wasting
17 our time. I can't think of any other
18 reason why we've had these 1,600 documents
19 given to us.

20 MR. KLAPPER: We're going to go off the
21 record for a second. I don't know if we
22 are on the record.

23 THE COURT REPORTER: Off the record.
24 (A discussion was held off the record.)

25 BY MR. BYMAN:

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1 Q. Next go to the next document, 112633 through
2 112671. What's the significance of that document,
3 Mr. Seickel?

4 A. 633 is just a process by which we are
5 retrieving the certain data from -- and I'm not clear
6 as to specifically which tapes. And I believe that
7 because of the time frame and what we were doing with
8 the database restores that it relates to the database
9 restores that we were doing, the database restores
10 that lead to finding the 169 tapes.

11 Same thing, same thing.

12 Q. You're flipping pages and saying same thing.

13 A. Meaning that each subject seems to relate to
14 the same thing I just spoke to you about. Do you want
15 me to relate each one?

16 Q. If all these documents do is say, yep, they
17 have words that relate to a subject we're talking
18 about --

19 A. Then we can skip them. Should I just say no,
20 no additional?

21 Q. I just want to know if they add something to
22 your knowledge of the 169 issue or some other issue
23 that you've testified to or if they simply contain --

24 A. No, it doesn't add anything. From what I can
25 see, there's nothing in this one that adds to what

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1 we've already discussed.

2 Q. All right. Does it help refine anything?

3 Does it help you pin down any dates in any way?

4 A. No.

5 Q. Does it change any of the substantive
6 testimony you've given about the 169 tapes?

7 A. Not that I can see.

8 Q. Okay. Let's move to the next document. This
9 is 112602 to 112632.

10 A. 605 -- 605 seems to relate to communications
11 with NDCI regarding read errors, tapes that were
12 identified with read errors that had to be redone.

13 Q. And what's the significance of that?

14 A. The significance, as in my mind, would be
15 giving an idea of the processing time for the project.

16 Q. Is there anything from that document that
17 allowed you to tell how much processing time was
18 consumed as a result of read errors?

19 A. Not -- no. You couldn't quantify it. Just
20 that it would give you an idea of the -- an
21 explanation of it.

22 Q. So it would let you know that that was a
23 potential issue, but you couldn't quantify the issue?

24 A. Correct.

25 Q. Is there anything in the document that allows

1 you to quantify it?

2 A. No.

3 Q. Is there anything else of significance in
4 that document?

5 MR. KLAPPER: And I just encourage you to
6 take a close look at it, make sure that
7 you're comfortable knowing what the
8 document says to be responsive.

9 THE WITNESS: I don't see anything
10 additional that would add to.

11 BY MR. BYMAN:

12 Q. All right. Thank you. Next we have 112593
13 through 601. And actually I think we've marked that
14 very document as an Exhibit 426. What significance do
15 you attach to that document?

16 A. The first page, which is 593 --

17 Q. Um-hum.

18 A. -- this was a question that came up in
19 discussions with Wray Stewart and Bruce Buchanan the
20 week I was sick, which was about two weeks ago, two
21 and a half weeks ago where they were processing these
22 IIM tapes, and they were normally -- these are
23 exchanged backups, backups of exchanged servers, mail
24 servers. And normally we do them as a database, but
25 for some reason there was a period of time where they

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1 weren't done as a database. They were done as a
2 mailbox level, which he's referring to as brick level.
3 And the reason why it came to Bruce's attention was
4 because as he was processing the tapes, these IIM
5 tapes, he was finding a low return of e-mails on those
6 tapes.

7 So they did some investigative work to
8 see, because they knew there was data on the tapes to
9 see what was going on, and they found that there was a
10 period of time that they had switched. And I'm not
11 sure if it was earlier part or later part, they had
12 switched the type of backup they were doing for these
13 e-mail servers. So -- and that's basically it. Just
14 a discussion of what he had to do and that he was
15 going to make sure that he was checking the tapes for
16 both.

17 Q. Is this an example of something that might
18 have slowed down NDCI's work?

19 A. Could you be more specific in relation to the
20 overall project or specific parts of the project?

21 Q. Well, suppose somebody had said to NDCI, and
22 I'm not suggesting they did, but suppose somebody said
23 to them, we need to produce all e-mail relevant to the
24 Morgan Stanley CPH lawsuit, and that means we need to
25 make sure --

1 that was duplicative?

2 A. Yes.

3 Q. Anything else of significance?

4 A. No. A couple of these e-mails look like they
5 were duplicated in one of the others. It was just
6 discussing the list that I sent them of the 169 tapes
7 and getting back a list from him of the creation dates
8 of those tapes. Other than that, no.

9 Q. The next?

10 A. I think there was another one under here.
11 Oh, maybe it's a copy.

12 Q. It's a copy of the same thing?

13 A. Do you want these back as well?

14 Q. Yes, please. We'll keep them together. The
15 next group of documents is production number 0112286
16 through 112493. I'll represent to you, sir, that the
17 thing that I earlier showed you as CPH 425 is a few
18 pages taken within that range that I culled out from
19 this group of documents as the minutes that were
20 produced of the e-mail archive group. But other than
21 those, I'd like you to tell me if there's anything of
22 significance in this package when your attorney has
23 had a chance to look at it. DLT's.

24 MR. KLAPPER: While the question is
25 pending, this is an instruction and

1 A. I don't think it's relevant. That's my
2 personal perspective on it. I don't believe that
3 these -- this piece of the project had anything to do
4 with it.

5 Q. Either for or against it?

6 A. I believe so.

7 Q. Okay. In part because the IIM tapes had
8 nothing to do with the investment banking side of the
9 business, right?

10 A. I think so.

11 Q. Is there anything else of significance in
12 Exhibit 426?

13 A. This is just confirming what we were doing --
14 not really. We had processed a couple of boxes. We
15 had retained boxes, two boxes of duplicate tapes from
16 NDCI prior to the e-mail archive project. So we were
17 doing another project prior to that. They supplied us
18 with duplicate tapes which we used instead of -- at
19 that point we were using DLT's instead of SDLT's, and
20 so we still had those tapes. Those were the two boxes
21 we sent to them to just have them review them to make
22 sure what was on the tape, on those tapes. Even
23 though we thought we knew what they were, we wanted to
24 make certain.

25 Q. So that was just a double-check of something

1 somewhat of an objection. It relates to
2 what you mean by significance, so I'll
3 object to vagueness as a general matter.

4 If you understand what that means, you can
5 answer the question.

6 THE WITNESS: I can't add any more as
7 far as this is, no, nothing notable in
8 addition.

9 BY MR. BYMAN:

10 Q. With respect to the minutes of the e-mail
11 archive group, which we separately culled out of that
12 last document and marked as Exhibit 425, there are,
13 and I may not have counted them accurately, but I
14 think minutes of nine meetings in that set. They
15 don't seem to be on any regular basis, and they seem
16 to skip gaps. For example, they go from May 20th to
17 June 18th, and then there's one on June 25th. How
18 regularly were these meetings held?

19 A. Typically they were scheduled for once a
20 week.

21 Q. Was there any week that stands out in your
22 mind as a week in which the meeting was cancelled?

23 A. Not that I recall. However, I didn't attend
24 every meeting.

25 Q. I understand. But you were copied on the

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1 distribution list for every meeting, right?
 2 A. I believe so.
 3 Q. Do you recall when the meetings began?
 4 A. The closest approximation would be in June,
 5 July time frame of 2003.
 6 Q. And do the meetings still continue to this
 7 day?
 8 A. No.
 9 Q. When did they stop?
 10 A. I don't recall.
 11 Q. Was it sometime in 2004?
 12 A. That would be a guess, but, I think that's
 13 accurate.
 14 Q. Well, was there a meeting this year?
 15 A. No.
 16 Q. And we know that there were meetings in 2004
 17 so it had to be sometime in 2004 if not this year,
 18 right?
 19 A. I agree.
 20 Q. Was it sometime after September of 2004,
 21 which is the last one we have in this group Exhibit?
 22 A. It sounds possible, but I'm not sure. I'm
 23 not absolutely sure.
 24 Q. Do you know if there's anyone charged with
 25 actually maintaining the full set of minutes?

1 your previous testimony?
 2 A. No.
 3 MR. KLAPPER: Let him get the question out
 4 and let me get an objection in. The
 5 objection is vague and ambiguous.
 6 BY MR. BYMAN:
 7 Q. And your answer is no?
 8 A. No.
 9 Q. No, there's nothing else of significance?
 10 A. Correct.
 11 Q. Mr. Seickel, do you have any understanding as
 12 to why Mr. Riel is no longer associated with the
 13 e-mail archive project?
 14 A. No.
 15 Q. Do you have any understanding of whether he
 16 left amicably or was dismissed?
 17 A. Explain further what you mean by that.
 18 Q. Well, let me represent to you, sir, that
 19 Ms. Gorman testified that he was placed on
 20 administrative leave by Morgan Stanley and that he was
 21 removed from his position in charge of this project
 22 both because of questions of integrity and competence.
 23 You don't have to accept her testimony. I'm just
 24 representing to you that that's what she said.
 25 A. I do know that the ownership of the e-mail

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1 A. The full set of minutes meaning every meeting
 2 minutes, I don't think so, but I don't know.
 3 (Telephonic interruption)
 4 MR. KLAPPER: Could you -- I'm sorry. I
 5 was distracted by the cell phone
 6 (The record was read as requested.)
 7 BY MR. BYMAN:
 8 Q. The last, and I'm very happy to use the word
 9 the last set of documents in this stack is production
 10 number 0112494 through 112592. After your attorney
 11 has had a chance to look at it please tell me what the
 12 significance of that document is.
 13 A. I mean, the only significance of 494 is that
 14 we're paying our bills. Well, actually the bottom of
 15 the page on that 494 just relates to the communication
 16 with NDCI/Bruce Buchanan who works for NDCI that a
 17 list was sent to him, and it relates to the 169 tapes.
 18 And I think we've covered that already, so that's not
 19 really significant.
 20 Q. Does this add anything --
 21 A. Let me go through the rest.
 22 Q. I'm sorry.
 23 A. Just let me go through the rest.
 24 Q. While we're on the subject of the 169, does
 25 anything you have looked at add to delete or modify

1 archive was transferred to Allison Gorman. That's
 2 what I know for a fact.
 3 Q. And you don't know of any other reasons for
 4 it?
 5 A. No.
 6 Q. Have you had any contact with Mr. Riel since
 7 August of 2004?
 8 A. I'm not sure -- I know I have not had contact
 9 with him for at least six or seven months, since
 10 before September of '04. I'm not sure if that was
 11 August or much earlier.
 12 Q. What was your last contact with him?
 13 A. Any contact that I would have had with him
 14 would have been in the e-mail archive meeting, and it
 15 would be the last one we both attended.
 16 Q. So it would have been a business contact?
 17 A. Correct.
 18 Q. Do you have any idea where Mr. Riel is today?
 19 A. No.
 20 Q. Do you have any understanding as to whether
 21 he's still a Morgan Stanley employee?
 22 A. No, I don't.
 23 Q. Mr. Seickel, what steps, if any, are you
 24 aware of that Morgan Stanley has made to make sure
 25 that there are no more as yet undiscovered backup

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1 tapes that contain e-mail?
2 A. It's my understanding working with
3 John Pamula that he's performed an exhaustive search
4 of everything on site at Morgan Stanley, on Morgan
5 Stanley premises, and he's requested everything from
6 Recall, and Recall has complied with our request.
7 That's the extent.

8 Q. And when did Mr. Pamula undertake that job?

9 A. As part of the e-mail archive process he
10 started it, but we, again, reiterated it with Recall
11 recently in regard to the 169 tapes.

12 Q. And that was done in mid January?

13 A. In January, correct.

14 Q. I'm sorry. Mid January?

15 A. Correct.

16 MR. BYMAN: Thank you, Mr. Seickel. That's
17 all I have.

18 THE WITNESS: No problem.

19 (The Witness was excused.)

20 (At 4:13 p.m. the proceedings were concluded.)
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22
23
24
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1
2 CERTIFICATE

3
4 THE STATE OF FLORIDA,)
5)

6 COUNTY OF PALM BEACH.)

7 I, BARBARA GALLO, RMR-CRR, Registered
8 Merit Reporter-Certified Realtime Reporter and Notary
9 Public, State of Florida at Large,

10 DO HEREBY CERTIFY that I was authorized to
11 and did stenographically report the foregoing
12 deposition; and that the transcript is a true and
13 correct transcription of the testimony given by the
14 witness.

15 I further certify that I am not a relative,
16 employee, attorney or counsel of any of the parties,
17 nor am I a relative or employee of any of the parties'
18 attorney or counsel connected with the action, nor am
19 I financially interested in the action.

20 Dated this ____ day of _____, 2005.
21
22

23

BARBARA GALLO, RMR-CRR
Notary Public-State of Florida
My Commission Expires September 17, 2007

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Exhibit 7

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031545

Stewart, Wray (IT)

From: Stewart, Wray (IT)
Sent: Thursday, May 06, 2004 5:49 PM
To: emailarchive_core
Cc: dsmgr-na
Subject: Email archive meeting minutes 5/8/04

Attendees: Kay Gunn, Bruce Buchanan, Annaline Dinkelman, John Pamula and Wray Stewart

Restore status:

- Emails restored – 307,427,169
- Total size of emails restored – 13,671.5 GB
- Email data archived – 3.666 TB Compressed

- Tapes shipped to NDCI – 34,291
- Tapes processed – 32,832
- Output (SDLT) tapes received – 124 SDLT
- Output (SDLT) tapes restored – 114 SDLT

- Number of tapes not containing any user mail – 9,107 DLT
- Number of DLT tapes with read errors – 1,519 DLT

Pending Items:

1. Seventy broken DLT tapes were reported by NDCI. Glenn Seickel to follow-up with Bois to see if those tapes can be repaired.
2. 1024 unlabeled tapes were found in the Brooklyn security room. Wray Stewart/Glenn to investigate the origin on the tapes.
3. 150 DLT tapes have conflicting internal and external labels. NDCI will process tapes using the internal labels and change the external to reflect the internal label.
4. Per Arthur Riel, we will start processing the IIM DLT tapes after the Veritas DLT tapes are complete. The 8mm tapes will be processed after the IIM DLT tapes.
5. Arthur Riel requested a restore of all NA emails for three dates in 2003. Kay Gunn and John Pamula to provide timeframe for identifying the required tapes and performing the restores. Per Donald Haight, EI should begin the restores when the 1999-2002 email restore project is complete. In the interim, EI will complete a test restore of data against one of our test servers.
 - 2/26/04 the following dates were requested:
 - 1) 2/15/03 - 2/18/03 – Full backup
 - 2) 5/22/03 Incremental backup
 - 3) 10/30/03 Incremental backup
 - 3/4/04 Due to space issues, the tape restores will be placed on hold until the 1999-2002 email archive is complete, so that we may leverage the NetApp to restore the data.
5. NDCI is receiving more read errors than expected on the DLT tapes and have purchased a DLT tape cleaning and retention unit to help address this issue. NDCI will run each error tape through the DLT tape cleaning and retention device for free, but will charge an additional fee of \$150 to extract all readable data from each DLT error tape not addressed by the cleaner and retention unit. Error tapes will be addressed after the 1999-2002 email archive project.
6. IIM has 2,200 Exchange DLT tapes to restore. NDCI has provided a cost estimate of \$150 per tape. This project is scheduled to start after the 1999-2002 email archives in completed. MER 9MEV191 was approved for this project.

10/21/2004

MORGAN STANLEY
 CONFIDENTIAL
 0112286

16div-028734

031546

Exhibit 8

NOT A CERTIFIED COPY

031547

Stewart, Wray (IT)

From: Stewart, Wray (IT)
Sent: Thursday, May 20, 2004 5:16 PM
To: emailarchive_core
Cc: dsmgr-na
Subject: Email archive meeting minutes 5/20/04

Attendees: Kay Gunn, Bruce Buchanan, Annaline Dinkelman, John Pamula, Arthur Riel and Wray Stewart

Restore status:

- Emails restored – 310,613,395
- Total size of emails restored – 13,922.64 GB
- Email data archived – 3.82TB Compressed

- Tapes shipped to NDCI – 34,415
- Tapes processed – 33,920
- Output (SDLT) tapes received – 139 SDLT
- Output (SDLT) tapes restored – 120 SDLT

- Number of tapes not containing any user mail – 9,732 DLT
- Number of DLT tapes with read errors – 1,755 DLT

Pending Items:

1. NDCI reported that 70 DLT tapes are missing their leaders. NDCI will provide the cost to repair and restore each tape.
2. A few 2002 emails were archived without their message body. Donald Haight to provide John Pamula and Wray Stewart with the list of the SDLT tapes to rescan.
3. 1,421 DLT tapes were found in the Brooklyn security room. John Pamula to ship tapes to NDCI for processing.
4. Per Arthur Riel, we will start processing the IIM DLT tapes after the Veritas DLT tapes are complete. The 8mm tapes will be processed after the IIM DLT tapes.
5. Arthur Riel requested a restore of all NA emails for three dates in 2003. Kay Gunn and John Pamula to provide timeframe for identifying the required tapes and performing the restores. Per Donald Haight, EI should begin the restores when the 1999-2002 email restore project is complete. In the interim, EI will complete a test restore of data against one of our test servers.
 - 2/26/04 the following dates were requested:
 - 1) 2/15/03 - 2/18/03 – Full backup
 - 2) 5/22/03 Incremental backup
 - 3) 10/30/03 Incremental backup
 - 3/4/04 Due to space issues, the tape restores will be placed on hold until the 1999-2002 email archive is complete, so that we may leverage the NetApp to restore the data.
5. NDCI is receiving more read errors than expected on the DLT tapes and have purchased a DLT tape cleaning and retention unit to help address this issue. NDCI will run each error tape through the DLT tape cleaning and retention device for free, but will charge an additional fee of \$150 to extract all readable data from each DLT error tape not addressed by the cleaner and retention unit. Error tapes will be addressed after the 1999-2002 email archive project.
6. IIM has 2,200 Exchange DLT tapes to restore. NDCI has provided a cost estimate of \$150 per tape. This project is scheduled to start after the 1999-2002 email archives in completed. MER 9MEV191 was approved for this project.

10/21/2004

MORGAN STANLEY
 CONFIDENTIAL
 0112291
 16div-028736

031548

Exhibit 9

NOT A CERTIFIED COPY

031549

Stewart, Wray (IT)

From: Stewart, Wray (IT)
Sent: Friday, June 18, 2004 10:23 AM
To: emailarchive_core
Cc: dsmgr-na
Subject: Email archive meeting minutes 6/17/04

Attendees: Bruce Buchanan, Annaline Dinkelman, Donald Haight and Wray Stewart.

Restore status:

- Emails restored – 318,016,210
- Total size of emails restored – 13,995.59 GB
- Email data archived – 4.3 TB Compressed

- Tapes shipped to NDCI – 34,958
- Tapes processed – 34,795
- Output (SDLT) tapes received – 143 SDLT
- Output (SDLT) tapes restored – 120 SDLT

- Number of tapes not containing any user mail – 10,184 DLT
- Number of DLT tapes with read errors – 1,947 DLT

Pending Items:

1. NDCI start processing of IIM DLT and SDLT tapes on Thursday, June 17.
2. NDCI reported that 70 DLT tapes are missing their tape leader. Imitation requested that we ship the tapes to their site for repair.
3. 738 8mm tapes are scheduled to be processed after the IIM tapes.
4. 1,423 DLT tapes were found in the Brooklyn security room. Tapes were shipped to NDCI to be processed.
 - NDCI requested a list of the cemail clients to help with the restore effort. Annaline Dinkelman was able to locate the utility file. John Pamula and Wray Stewart will work to restore the utility file.
5. Arthur Riel requested a restore of all NA emails for three dates in 2003. Per Donald Haight, EI should begin the restores when the 1999-2002 email restore project is complete. In the interim, EI will complete a test restore of data against one of our test servers.
 - 2/26/04 the following dates were requested:
 - 1) 2/15/03 - 2/18/03 – Full backup
 - 2) 5/22/03 Incremental backup
 - 3) 10/30/03 Incremental backup
 - 3/4/04 Due to space issues, the tape restores will be placed on hold until the 1999-2002 email archive is complete, so that we may leverage the NetApp to restore the data.
6. 1,947 DLT tapes are still reporting errors that were not addressed by the DLT tape cleaning and retention device. NDCI will charge an additional fee of \$150 to extract all readable data from each of the error DLT. Error tapes will be addressed after the 1999-2002 email archive project.

10/21/2004

MORGAN STANLEY
CONFIDENTIAL
0112296

16div-028738

031550

Exhibit 10

NOT A CERTIFIED COPY

031551

so again there is pre 2000 mail there.

If you need any more info please let me know.

Have a nice holiday weekend!

Bruce

Bruce Buchanan
National Data Conversion
212.467.7511 ext 716

----- Message from "Stewart, Wray (IT)" <Wray.Stewart@morganstanley.com> on Fri, 2 Jul 2004 13:10:25 -0500 -----

To: "emailarchive_core" <emailarchive_core@morganstanley.com>

Subject: FW: Tape dates

FYI,

From: Bruce Buchanan [mailto:bbuchanan@ndci.com]

Sent: Friday, July 02, 2004 1:47 PM

To: Riel, Arthur (Company IT)

Cc: Pamula, John R Jr. (IT); Haight, Donald (Company IT); Stewart, Wray (IT)

Subject: Tape dates

Importance: High

Hey Arthur

We looked at the "found" tapes we were able to restore and 90 of them had mail. We got the label (internal) off 4 of them and the dates are 5/12/99, 5/14/99, 8/03/99, and 2/18/01. Obviously there is pre 2000 mail.

We also catalogued 2 of the 8mm test tapes we have and the dates on those are 6/16/98 and 6/7/98 so again there is pre 2000 mail there.

If you need any more info please let me know.

Have a nice holiday weekend!

Bruce

Bruce Buchanan
National Data Conversion
212.467.7511 ext 716

----- Message from "Stewart, Wray (IT)" <Wray.Stewart@morganstanley.com> on Thu, 8 Jul 2004 17:32:37 -0500 -----

To: "emailarchive_core" <emailarchive_core@morganstanley.com>

cc: "ecmgr-na" <ecmgr-na@morganstanley.com>

Subject: Email archive meeting minutes 7/8/04

Restore status:

- Emails restored – 317,925,024
- Total size of emails restored – 13,992.25GB
- Email data archived – 4.729 TB Compressed

- Tapes shipped to NDCI – 35,380

031552

MORGAN STANLEY
CONFIDENTIAL
0112321 028740

Exhibit 11

NOT A CERTIFIED COPY

031553

We are now extracting "PSTs" from the "EDBs" and converting the "PSTs" to "IMAP" messages which seems to be working. Obviously this required changing all the setups and processing steps and some programming changes.

We probably lost about 3 weeks on the "IIM" tapes due to this program's inability to perform what it is purported to do. As of yesterday we started processing again. Naturally we backed out all tapes we had processed as there was no way to know which were affected and which weren't.

Wray, Please let me know if you require further information or would like me to discuss in more detail.

Bruce

Bruce Buchanan
National Data Conversion
212.463.7511 ext 116

----- Message from "Bruce Buchanan" <bbuchanan@ndci.com> on Fri, 16 Jul 2004 11:10:11 -0500 -----

To: "Stewart, Wray (IT)" <Wray.Stewart@morganstanley.com>

Subject: Brooklyn "found" tapes

Hi Wray,

Following is information requested at yesterday's meeting regarding the "Brooklyn found" tapes.

Attached is a spreadsheet showing which output SDLTs contain mail from these tapes and which session they are on the tapes. (They were not written to a single SDLT).

Numbers:

Number of tapes processed - 448

Number that had mail data - 112

Total messages processed - 16,822,791

Total unique messages written to SDLTs - 2,183,331

Number of tapes with read errors (final) - 124

Also, the tapes that were damaged have been sent to you. I will e-mail you later regarding the "IIM" exchange tape problems we had.

Let me know if you need anything further,
Have a nice weekend!

Bruce

Bruce Buchanan
National Data Conversion
212.463.7511 ext 116

----- Message from "Bruce Buchanan" <bbuchanan@ndci.com> on Thu, 15 Jul 2004 12:51:08 -0500 -----

To: "Stewart, Wray (IT)" <Wray.Stewart@morganstanley.com>

MORGAN STANLEY
CONFIDENTIAL
16divs028742

031554

Exhibit 12

NOT A CERTIFIED COPY

031555

Stewart, Wray (IT)

From: Stewart, Wray (IT)
Sent: Thursday, May 06, 2004 5:49 PM
To: emailarchive_core
Cc: dsmgr-na
Subject: Email archive meeting minutes 5/8/04

Attendees: Kay Gunn, Bruce Buchanan, Annaline Dinkelmann, John Pamula and Wray Stewart

Restore status:

- Emails restored – 307,427,169
- Total size of emails restored – 13,671.5 GB
- Email data archived – 3.666 TB Compressed

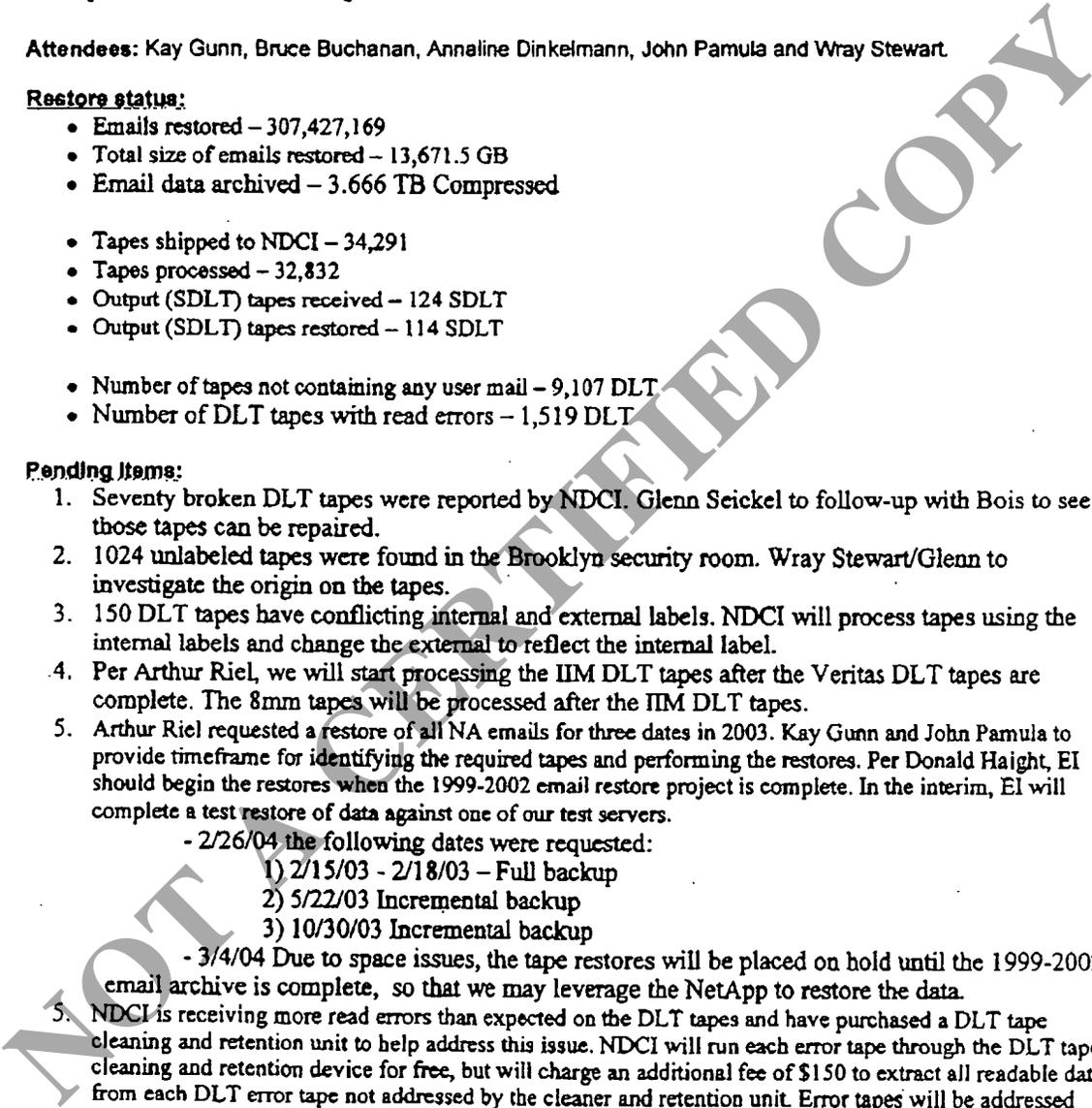
- Tapes shipped to NDCI – 34,291
- Tapes processed – 32,832
- Output (SDLT) tapes received – 124 SDLT
- Output (SDLT) tapes restored – 114 SDLT

- Number of tapes not containing any user mail – 9,107 DLT
- Number of DLT tapes with read errors – 1,519 DLT

Pending Items:

1. Seventy broken DLT tapes were reported by NDCI. Glenn Seickel to follow-up with Bois to see if those tapes can be repaired.
2. 1024 unlabeled tapes were found in the Brooklyn security room. Wray Stewart/Glenn to investigate the origin on the tapes.
3. 150 DLT tapes have conflicting internal and external labels. NDCI will process tapes using the internal labels and change the external to reflect the internal label.
4. Per Arthur Riel, we will start processing the IIM DLT tapes after the Veritas DLT tapes are complete. The 8mm tapes will be processed after the IIM DLT tapes.
5. Arthur Riel requested a restore of all NA emails for three dates in 2003. Kay Gunn and John Pamula to provide timeframe for identifying the required tapes and performing the restores. Per Donald Haight, EI should begin the restores when the 1999-2002 email restore project is complete. In the interim, EI will complete a test restore of data against one of our test servers.
 - 2/26/04 the following dates were requested:
 - 1) 2/15/03 - 2/18/03 – Full backup
 - 2) 5/22/03 Incremental backup
 - 3) 10/30/03 Incremental backup
 - 3/4/04 Due to space issues, the tape restores will be placed on hold until the 1999-2002 email archive is complete, so that we may leverage the NetApp to restore the data.
5. NDCI is receiving more read errors than expected on the DLT tapes and have purchased a DLT tape cleaning and retention unit to help address this issue. NDCI will run each error tape through the DLT tape cleaning and retention device for free, but will charge an additional fee of \$150 to extract all readable data from each DLT error tape not addressed by the cleaner and retention unit. Error tapes will be addressed after the 1999-2002 email archive project.
6. IIM has 2,200 Exchange DLT tapes to restore. NDCI has provided a cost estimate of \$150 per tape. This project is scheduled to start after the 1999-2002 email archives in completed. MER 9MEV191 was approved for this project.

10/21/2004



031556

MORGAN STANLEY
 CONFIDENTIAL
 0112286

16div-028744

Stewart, Wray (IT)

From: Stewart, Wray (IT)
Sent: Thursday, May 20, 2004 5:16 PM
To: emailarchive_core
Cc: dsmgr-na
Subject: Email archive meeting minutes 5/20/04

Attendees: Kay Gunn, Bruce Buchanan, Annaline Dinkelmann, John Pamula, Arthur Riel and Wray Stewart

Restore status:

- Emails restored – 310,613,395
- Total size of emails restored – 13,922.64 GB
- Email data archived – 3.82TB Compressed

- Tapes shipped to NDCI – 34,415
- Tapes processed – 33,920
- Output (SDLT) tapes received – 139 SDLT
- Output (SDLT) tapes restored – 120 SDLT

- Number of tapes not containing any user mail – 9,732 DLT
- Number of DLT tapes with read errors – 1,755 DLT

Pending Items:

1. NDCI reported that 70 DLT tapes are missing their leaders. NDCI will provide the cost to repair and restore each tape.
2. A few 2002 emails were archived without their message body. Donald Haight to provide John Pamula and Wray Stewart with the list of the SDLT tapes to rescan.
3. 1,421 DLT tapes were found in the Brooklyn security room. John Pamula to ship tapes to NDCI for processing.
4. Per Arthur Riel, we will start processing the IIM DLT tapes after the Veritas DLT tapes are complete. The 8mm tapes will be processed after the IIM DLT tapes.
5. Arthur Riel requested a restore of all NA emails for three dates in 2003. Kay Gunn and John Pamula to provide timeframe for identifying the required tapes and performing the restores. Per Donald Haight, EI should begin the restores when the 1999-2002 email restore project is complete. In the interim, EI will complete a test restore of data against one of our test servers.
 - 2/26/04 the following dates were requested:
 - 1) 2/15/03 - 2/18/03 – Full backup
 - 2) 5/22/03 Incremental backup
 - 3) 10/30/03 Incremental backup
 - 3/4/04 Due to space issues, the tape restores will be placed on hold until the 1999-2002 email archive is complete, so that we may leverage the NetApp to restore the data.
5. NDCI is receiving more read errors than expected on the DLT tapes and have purchased a DLT tape cleaning and retention unit to help address this issue. NDCI will run each error tape through the DLT tape cleaning and retention device for free, but will charge an additional fee of \$150 to extract all readable data from each DLT error tape not addressed by the cleaner and retention unit. Error tapes will be addressed after the 1999-2002 email archive project.
6. IIM has 2,200 Exchange DLT tapes to restore. NDCI has provided a cost estimate of \$150 per tape. This project is scheduled to start after the 1999-2002 email archives in completed. MER 9MEV191 was approved for this project.

10/21/2004

MORGAN STANLEY
 CONFIDENTIAL
 0112291

16div-028745

031557

Stewart, Wray (IT)

From: Stewart, Wray (IT)
Sent: Friday, June 18, 2004 10:23 AM
To: emailarchive_core
Cc: dsmgr-na
Subject: Email archive meeting minutes 6/17/04

Attendees: Bruce Buchanan, Annaline Dinkelmann, Donald Haight and Wray Stewart.

Restore status:

- Emails restored - 318,016,210
- Total size of emails restored - 13,995.59 GB
- Email data archived - 4.3 TB Compressed
- Tapes shipped to NDCI - 34,958
- Tapes processed - 34,795
- Output (SDLT) tapes received - 143 SDLT
- Output (SDLT) tapes restored - 120 SDLT
- Number of tapes not containing any user mail - 10,184 DLT
- Number of DLT tapes with read errors - 1,947 DLT

Pending Items:

1. NDCI start processing of IIM DLT and SDLT tapes on Thursday, June 17.
2. NDCI reported that 70 DLT tapes are missing their tape leader. Imitation requested that we ship the tapes to their site for repair.
3. 738 8mm tapes are scheduled to be processed after the IIM tapes.
4. 1,423 DLT tapes were found in the Brooklyn security room. Tapes were shipped to NDCI to be processed.
 - NDCI requested a list of the cemail clients to help with the restore effort. Annaline Dinkelmann was able to locate the utility file. John Pamula and Wray Stewart will work to restore the utility file.
5. Arthur Riel requested a restore of all NA emails for three dates in 2003. Per Donald Haight, EI should begin the restores when the 1999-2002 email restore project is complete. In the interim, EI will complete a test restore of data against one of our test servers.
 - 2/26/04 the following dates were requested:
 - 1) 2/15/03 - 2/18/03 - Full backup
 - 2) 5/22/03 Incremental backup
 - 3) 10/30/03 Incremental backup
 - 3/4/04 Due to space issues, the tape restores will be placed on hold until the 1999-2002 email archive is complete, so that we may leverage the NetApp to restore the data.
6. 1,947 DLT tapes are still reporting errors that were not addressed by the DLT tape cleaning and retention device. NDCI will charge an additional fee of \$150 to extract all readable data from each of the error DLT. Error tapes will be addressed after the 1999-2002 email archive project.

10/21/2004

MORGAN STANLEY
CONFIDENTIAL
0112296

16div-028746

031558

Stewart, Wray (IT)

From: Stewart, Wray (IT)
Sent: Friday, June 25, 2004 4:28 PM
To: emailarchive_core
Cc: dsmgr-na
Subject: Email archive meeting minutes 6/25/04

Attendees: Bruce Buchanan, Annaline Dinkelmann, Donald Haight, John Pamula and Wray Stewart.

Restore status:

- Emails restored – 317,925,024
- Total size of emails restored – 13,992.25GB
- Email data archived – 4.385 TB Compressed

- Tapes shipped to NDCI – 35,380
- Tapes processed – 34,854
- Output (SDLT) tapes received – 143 SDLT
- Output (SDLT) tapes restored – 120 SDLT

- Number of tapes not containing any user mail – 10,244 DLT
- Number of DLT tapes with read errors – 1,947 DLT

Pending Items:

1. NDCI reported that 70 DLT tapes are missing their tape leader. Limitation requested that we ship the tapes to their site for repair.
2. 738 8mm tapes are scheduled to be processed after the JIM tapes.
3. 1,423 DLT tapes were found in the Brooklyn security room. Tapes were shipped to NDCI to be processed.
 - NDCI requested a list of the cmail clients to help with the restore effort. Annaline Dinkelmann was able to locate the utility file. John Pamula and Wray Stewart will work to restore the utility file.
5. Arthur Riel requested a restore of all NA emails for three dates in 2003. Per Donald Haight, EI should begin the restores when the 1999-2002 email restore project is complete. In the interim, EI will complete a test restore of data against one of our test servers.
 - 2/26/04 the following dates were requested:
 - 1) 2/15/03 - 2/18/03 – Full backup
 - 2) 5/22/03 Incremental backup
 - 3) 10/30/03 Incremental backup
 - 3/4/04 Due to space issues, the tape restores will be placed on hold until the 1999-2002 email archive is complete, so that we may leverage the NetApp to restore the data.
6. 1,947 DLT tapes are still reporting errors that were not addressed by the DLT tape cleaning and retention device. NDCI will charge an additional fee of \$150 to extract all readable data from each of the error DLT. Error tapes will be addressed after the 1999-2002 email archive project.

NO UNAUTHORIZED COPIES

031559

10/21/2004

MORGAN STANLEY
CONFIDENTIAL
0112301

16div-028747

Stewart, Wray (IT)

From: Stewart, Wray (IT)
Sent: Thursday, July 08, 2004 6:33 PM
To: emailarchive_core
Cc: dsmgr-na
Subject: Email archive meeting minutes 7/8/04

Restore status:

- Emails restored – 317,925,024
- Total size of emails restored – 13,992.25GB
- Email data archived – 4.729 TB Compressed

- Tapes shipped to NDCI – 35,380
- Tapes processed – 34,854
- Output (SDLT) tapes received – 143 SDLT
- Output (SDLT) tapes restored – 120 SDLT

- Number of tapes not containing any user mail – 10,244 DLT
- Number of DLT tapes with read errors – 1,947 DLT

Pending Items:

1. Due to the high numbers of rejects, the reject directory is running out of space and stopping the email processing scripts. We will look at reallocating space from one of the six processing directories.
2. NDCI reported that 70 DLT tapes are missing their tape leader. Imitation requested that we ship the tapes to their site for repair.
3. 738 8mm tapes are scheduled to be processed after the IIM tapes.
4. 1,423 DLT tapes were found in the Brooklyn security room. Tapes were shipped to NDCI to be processed.
 - NDCI requested a list of the cemail clients to help with the restore effort. Annaline Dinkelmann was able to locate the utility file. John Pamula and Wray Stewart will work to restore the utility file.
5. Arthur Riel requested a restore of all NA emails for three dates in 2003. Per Donald Haight, EI should begin the restores when the 1999-2002 email restore project is complete. In the interim, EI will complete a test restore of data against one of our test servers.
 - 2/26/04 the following dates were requested:
 - 1) 2/15/03 - 2/18/03 – Full backup
 - 2) 5/22/03 Incremental backup
 - 3) 10/30/03 Incremental backup
 - 3/4/04 Due to space issues, the tape restores will be placed on hold until the 1999-2002 email archive is complete, so that we may leverage the NetApp to restore the data.
6. 1,947 DLT tapes are still reporting errors that were not addressed by the DLT tape cleaning and retention device. NDCI will charge an additional fee of \$150 to extract all readable data from each of the error DLT. Error tapes will be addressed after the 1999-2002 email archive project.

10/21/2004

MORGAN STANLEY
CONFIDENTIAL
0112306

16div-028748

031560

Stewart, Wray (IT)

From: Stewart, Wray (IT)
Sent: Friday, July 16, 2004 5:47 PM
To: emailarchive_core
Cc: dsmgr-na
Subject: Email archive meeting minutes 7/15/04

Restore status:

- Emails restored – 317,925,024
- Total size of emails restored – 13,992.25GB
- Email data archived – 4.729 TB Compressed

- Tapes shipped to NDC – 35,937
- IIM tapes shipped to NDC – 1,217
- Tapes processed – 35,811
- Output (SDLT) tapes received – 143 SDLT
- Output (SDLT) tapes restored – 120 SDLT

- Number of tapes not containing any user mail – 10,244 DLT
- Number of DLT tapes with read errors – 1,947 DLT

Attendees: Bruce Buchanan, Annaline Dinkelmann, Arthur Riel and Wray Stewart.

Pending Items:

1. Due to the high numbers of rejects, the reject directory is running out of space and stopping the email processing scripts. Donald Haight will reallocate space from one of the six processing directories.
2. NDCI reported that 70 DLT tapes are missing their tape leader. Imitation requested that we ship the tapes to their site for repair.
3. 738 8mm tapes are scheduled to be processed after the IIM tapes.
4. 1,423 DLT tapes were found in the Brooklyn security room. Tapes were shipped to NDCI to be processed.
 - Arthur Riel has requested that we provide emails restore from the 1,423 DLT tapes on a separate SDLT tape.
5. Arthur Riel requested a restore of all NA emails for three dates in 2003. Per Donald Haight, EI should begin the restores when the 1999-2002 email restore project is complete. In the interim, EI will complete a test restore of data against one of our test servers.
 - 2/26/04 the following dates were requested:
 - 1) 2/15/03 - 2/18/03 – Full backup
 - 2) 5/22/03 Incremental backup
 - 3) 10/30/03 Incremental backup
 - 3/4/04 Due to space issues, the tape restores will be placed on hold until the 1999-2002 email archive is complete, so that we may leverage the NetApp to restore the data.
6. 1,947 DLT tapes are still reporting errors that were not addressed by the DLT tape cleaning and retention device. NDCI will charge an additional fee of \$150 to extract all readable data from each of the error DLT. Error tapes will be addressed after the 1999-2002 email archive project.

10/21/2004

MORGAN STANLEY
CONFIDENTIAL
0112311
16div-028749

031561

Stewart, Wray (IT)

From: Stewart, Wray (IT)
Sent: Friday, July 23, 2004 8:14 PM
To: emailarchive_core
Cc: dsmgr-na
Subject: Email archive meeting minutes 7/22/04

Restore status:

- Emails restored – 317,943,377
- Total size of emails restored – 13,991.78 GB
- Email data archived – 4.729 TB Compressed

- Tapes shipped to NDC – 36,342
- IIM tapes shipped to NDC – 1,217
- Tapes processed – 35,811
- Output (SDLT) tapes received – 143 SDLT
- Output (SDLT) tapes restored – 120 SDLT

- Number of tapes not containing any user mail – 11,209 DLT
- Number of DLT tapes with read errors – 1,948 DLT

Attendees: Bruce Buchanan, Annaline Dinkelman, John Pamula and Wray Stewart.

Pending Items:

1. NDCI experienced issues while processing the IIM Exchange mail tapes, which caused ~3 weeks in processing time. They have refined their process to get around the issue and are currently processing.
2. NDCI reported that 70 DLT tapes are missing their tape leader. Imitation requested that we ship the tapes to their site for repair.
3. 738 8mm tapes are scheduled to be processed after the IIM tapes.
4. 1,423 DLT tapes were found in the Brooklyn security room. Tapes were shipped to NDCI to be processed.
 - Arthur Riel has requested that we provide emails restore from the 1,423 DLT tapes on a separate SDLT tape.
5. Arthur Riel requested a restore of all NA emails for three dates in 2003. Per Donald Haight, EI should begin the restores when the 1999-2002 email restore project is complete. In the interim, EI will complete a test restore of data against one of our test servers.
 - 2/26/04 the following dates were requested:
 - 1) 2/15/03 - 2/18/03 – Full backup
 - 2) 5/22/03 Incremental backup
 - 3) 10/30/03 Incremental backup
 - 3/4/04 Due to space issues, the tape restores will be placed on hold until the 1999-2002 email archive is complete, so that we may leverage the NetApp to restore the data.
6. 1,947 DLT tapes are still reporting errors that were not addressed by the DLT tape cleaning and retention device. NDCI will charge an additional fee of \$150 to extract all readable data from each of the error DLT. Error tapes will be addressed after the 1999-2002 email archive project.

10/21/2004

MORGAN STANLEY
CONFIDENTIAL
0112312

16div-028750

031562

Stewart, Wray (IT)

From: Stewart, Wray (IT)
Sent: Friday, August 13, 2004 6:22 PM
To: emailarchive_core
Cc: dsmgr-na
Subject: Email archive meeting minutes 8/12/04

Restore status:

- Emails restored – 319,864,778
- Total size of emails restored – 13,997.68 GB
- Email data archived – 5.07 TB Compressed

- Tapes shipped to NDC – 36,497
- IIM tapes shipped to NDC – 1,217
- Tapes processed – 36,064
- Output (SDLT) tapes received – 144 SDLT
- Output (SDLT) tapes restored – 121 SDLT

- Number of tapes not containing any user mail – 11,292 DLT
- Number of DLT tapes with read errors – 1,853 DLT

Attendees: Bruce Buchanan, Annaline Dinkelmann, John Pamula, Donald Haight and Wray Stewart.

Pending Items:

1. NDCI experienced issues while processing the IIM Exchange mail tapes. They have refined their process to get around the issue and are currently processing.
 - NDCI has provided us with a new sample SDLT that includes email restored via the new process. The sample SDLT will be restored for Donald Haight to complete the testing.
2. NDCI reported that 70 DLT tapes are missing their tape leader. Imitation requested that we ship the tapes to their site for repair.
3. 738 8mm tapes are scheduled to be processed after the IIM tapes.
4. 1,423 DLT tapes were found in the Brooklyn security room. Tapes were shipped to NDCI to be processed.
 - Arthur Riel has requested that we provide emails restore from the 1,423 DLT tapes on a separate SDLT tape.
5. Arthur Riel requested a restore of all NA emails for three dates in 2003. Per Donald Haight, EI should begin the restores when the 1999-2002 email restore project is complete. In the interim, EI will complete a test restore of data against one of our test servers.
 - 2/26/04 the following dates were requested:
 - 1) 2/15/03 - 2/18/03 – Full backup
 - 2) 5/22/03 Incremental backup
 - 3) 10/30/03 Incremental backup
 - 3/4/04 Due to space issues, the tape restores will be placed on hold until the 1999-2002 email archive is complete, so that we may leverage the NetApp to restore the data.

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031563

10/21/2004

**MORGAN STANLEY
CONFIDENTIAL
0112313**

16div-028751

Stewart, Wray (IT)

From: Stewart, Wray (IT)
Sent: Thursday, September 09, 2004 6:11 PM
To: emailarchive_core
Cc: dsmgr-na
Subject: Email archive meeting minutes 9/09/04

Restore status:

- Emails restored – 319,864,778
- Total size of emails restored – 13,997.68 GB
- Email data archived – 5.07 TB Compressed
- ISG tapes shipped to NDC – 37,612
- ISG tapes processed – 36,419
- IIM tapes shipped to NDC – 1,522
- IIM tapes processed - 406
- Output (SDLT) tapes received – 144 SDLT
- Output (SDLT) tapes restored – 121 SDLT
- Number of tapes not containing any user mail – 11,293 DLT
- Number of DLT tapes with read errors – 1,854 DLT

Pending Items:

1. NDCI experienced issues while processing the IIM Exchange mail tapes. They have refined their process to get around the issue and are currently processing.
 - NDCI has provided us with a new sample SDLT that includes email restored via the new process. The sample SDLT will be restored for Donald Haight to complete the testing.
2. NDCI reported that 70 DLT tapes are missing their tape leader. Imitation requested that we ship the tapes to their site for repair.
3. 738 8mm tapes are scheduled to be processed after the IIM tapes.
4. 1,423 DLT tapes were found in the Brooklyn security room. Tapes were shipped to NDCI to be processed.
 - Arthur Riel has requested that we provide emails restore from the 1,423 DLT tapes on a separate SDLT tape.
5. Arthur Riel requested a restore of all NA emails for three dates in 2003. Per Donald Haight, EI should begin the restores when the 1999-2002 email restore project is complete. In the interim, EI will complete a test restore of data against one of our test servers.
 - 2/26/04 the following dates were requested:
 - 1) 2/15/03 - 2/18/03 – Full backup
 - 2) 5/22/03 Incremental backup
 - 3) 10/30/03 Incremental backup
 - 3/4/04 Due to space issues, the tape restores will be placed on hold until the 1999-2002 email archive is complete, so that we may leverage the NetApp to restore the data.

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10/21/2004

MORGAN STANLEY
CONFIDENTIAL
0112314

16div-028752

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

MORGAN STANLEY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its attorneys, respectfully requests that the Court enter an order, pursuant to Fla. R. Civ. P. 1.350(b), compelling Coleman (Parent) Holdings Inc. ("CPH") to produce MAFCO's non-financial statements and general ledger entries reflecting the "accounting value" or "book value" that MAFCO placed on its Sunbeam investment. Morgan Stanley has only recently learned of the existence of such documents, which are highly relevant to CPH's estimate of its damages in this case and have been subject to an outstanding discovery request for over a year and a half. CPH, has steadfastly refused to produce the documents. Accordingly, Morgan Stanley respectfully requests that the Court enter an order compelling production.

In support of its motion, Morgan Stanley states as follows:

STATEMENT OF FACTS

1. On July 14, 2003, a little over two months after the Complaint was first filed, Morgan Stanley served its first set of discovery requests upon CPH. (See July 14, 2003 Morgan Stanley's 1st Req. for Prod. of Docs. to Plf. (Ex. 1).) Amongst these initial requests, Morgan Stanley specifically requested "[a]ll documents reflecting, referring, or relating to the value of Sunbeam securities." (*Id.* at Req. 9)

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2. Initially, CPH attempted to “interpret” this request so as to narrowly focus on “the market valuation of Sunbeam securities.” (See Aug. 15, 2003 CPH’s Resp. to Morgan Stanley’s 1st Req. for Prod. of Docs. (Ex. 2).) Morgan Stanley objected, noting that this limitation would of course “exclude ... other valuations of Sunbeam’s securities, *such as CPH’s internal valuations.*” (See Aug. 27, 2003 Letter from K. DeBord to M. Brody at 2 (Ex. 3) (emphasis added).) Morgan Stanley asked CPH to reconsider the objection and inquired as to whether CPH had withheld any documents based on it. (*Id.*) In response, CPH represented that it was investigating its production regarding this request, and over a month later, agreed to produce documents responsive to the request without regard to the previous objection. (See Sept. 12, 2003 M. Brody Letter to K. DeBord (Ex. 4); Oct. 8, 2003 M. Brody Letter to K. DeBord (Ex. 5).)

3. Subsequently, over a year later, Morgan Stanley learned that MAFCO maintained non-public financial statements with general ledger entries for Sunbeam investments that reflected MAFCO’s estimation of the “accounting value” or “book value” of those investments, which had been audited by Coleman’s auditors at Ernst & Young. For example, at the deposition of Lawrence Winoker, Morgan Stanley learned that CPH had recorded a \$41.7 million accounting value on its non-public financial statements for the Sunbeam settlement warrants as part of a December 1998 audit even though a MAFCO executive had previously testified under oath that such shares were worthless. (Nov. 18, 2004 Winoker Dep. at 51 (Ex. 6).) Mr. Gittis confirmed this fact and explained that the financial recognition of Sunbeam investments would “always go[] up to the parent” and be reflected in MAFCO’s non-public financial statements. (Nov. 19, 2004 Gittis Dep. at 188-90 (Ex. 7).)

4. Soon thereafter, Morgan Stanley’s counsel requested that CPH immediately remedy its failure to produce these documents in response to its longstanding requests. (See

Nov. 22, 2004 K. DeBord Letter to M. Brody (Ex. 8).) CPH provided a general ledger entry specifying the value that MAFCO had recognized for the Sunbeam settlement warrants, but refused to produce the non-public financial statements and failed to provide any general ledger entries for the Sunbeam shares it had originally received. (See Nov. 24, 2004 CPH's Resps. & Objs. to Morgan Stanley's 8th Req. for Prod. of Docs. (Ex. 9).)

5. After it became apparent that CPH's experts would offer opinion testimony as to the value of the Sunbeam shares and that CPH also likely had general ledger entries for those shares (as it did with the warrants), Morgan Stanley requested that CPH remedy its ongoing discovery failure and produce the requested documents immediately. (See Feb. 3, 2005 L. Bemis Letter to M. Brody (Ex. 10).) Without challenging the existence or obvious relevance of such documents, CPH refused to produce any additional responsive documents. (See Feb. 11, 2005 M. Brody Letter to L. Bemis.)

ARGUMENT

6. MAFCO's non-financial statements and general ledger entries reflecting the "accounting value" or "book value" that MAFCO placed on its Sunbeam investment during the relevant time period are properly discoverable and highly relevant to CPH's claim for billions of dollars of damages as a result of the Sunbeam fraud. Indeed, the value of the 14.1 million Sunbeam shares that CPH received as part of Sunbeam's acquisition of Coleman is one of the most significant damages issues in this case. "In cases involving a fraudulent sale of stock," under either an out-of-pocket or "benefit-of-the-bargain" measure of damages, CPH "must prove the actual value" of the Sunbeam shares it received. *Totale, Inc. v. Smith*, 877 So. 2d 813, 815 (Fla. 4th DCA 2004) (internal quotations & citation omitted). Moreover, if the "benefit-of-the-bargain" measure of damages applies, CPH must establish the expected value of the Sunbeam

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shares at the time of the acquisition. Accordingly, the value that MAFCO placed on its Sunbeam shares at the time of the transaction, after the Sunbeam fraud was revealed, and up to and through the bankruptcy is directly relevant to damages issues in this case.

7. Moreover, the expeditious production of the requested documents would impose little to no burden upon CPH. From the general ledger entries for the Sunbeam settlement warrants previously produced, it appears that CPH was able to simply run a report with specified parameters in its financial database to generate a printout of the requested information. The report was run at 4:00 p.m. on November 23, 2004, and CPH was able to produce it to Morgan Stanley less than 24 hours later. There is no reason that CPH could not simply generate another report for the value of the Sunbeam shares it received and produce the results within a similar amount of time.

CONCLUSION

Morgan Stanley respectfully requests that the Court enter an order, pursuant to Fla. R. Civ. P. 1.350(b), compelling Coleman (Parent) Holdings Inc. to produce MAFCO's non-financial statements and general ledger entries reflecting the "accounting value" or "book value" that MAFCO placed on its Sunbeam investment during the relevant time period. Moreover, as a result of CPH's failure to produce these documents for over a year and a half, Morgan Stanley should be awarded its attorney fees and costs, pursuant to Rules 1.350(b); 1.380(a)(1), (4), incurred in presenting this motion.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and hand delivery on this 15th day of February 2005.

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*Counsel for
Morgan Stanley & Co. Incorporated*

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West Palm Beach, FL 33401
Telephone: (561) 659-7070
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BY: 

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SERVICE LIST

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2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
c/o Mafco Holdings, Inc.
777 S. Flager Drive
Suite 1200 – West Tower
West Palm Beach, FL 22401-6136

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Exhibit 1

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

**MORGAN STANLEY & CO. INCORPORATED'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF**

Pursuant to Rules 1.280 and 1.350 of the Florida Rules of Civil Procedure, Morgan Stanley & Co. Incorporated ("MS & Co.") requests that plaintiff produce the documents and things referred to in the following specific requests. The specific requests are preceded by Instructions and Definitions which shall govern the specific requests. Documents and things responsive to these requests should be produced to counsel for Morgan Stanley & Co. Incorporated at the law firm of Carlton Fields, P.A., 222 Lakeview Avenue, Suite 1200, West Palm Beach, FL 33401, within the time required by Florida Rule of Civil Procedure 1.350(b) or as otherwise agreed to by the parties or specified by the Court.

INSTRUCTIONS

1. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

26. "Synergies" means post-acquisition gains through increased revenue and/or decreased cost.

27. The terms "you" or "your" means "CPH" as defined in Definition 7.

DOCUMENTS TO BE PRODUCED

1. All documents concerning the negotiation, signing, and implementation of the February 27, 1998 Agreements.

2. All documents referring or relating to the Coleman Transaction.

3. All documents reflecting, referring, or relating to communications between CPH and MS & Co. regarding the Coleman Transaction.

4. All documents reflecting, referring, or relating to communications between CPH and its Advisors regarding the Coleman Transaction.

5. All documents referring or relating to the December 1997 Meeting.

6. All documents supporting your allegation that MS & Co. knew about accounting irregularities at Sunbeam.

7. All documents supporting your allegation that MS & Co. developed a "strategy" to "conceal" Sunbeam's accounting fraud.

8. All documents referring or relating to Arthur Andersen's 1996 and 1997 audit of Sunbeam, including without limitation any review, investigation, analysis, and due diligence of the audit conducted by CPH personnel or its Advisors.

9. All documents reflecting, referring, or relating to the value of Sunbeam securities.

10. All documents referring or relating to the January-February 1998 discussions between representatives of CPH and MS & Co. referred to in your complaint.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and e-mail to all counsel of record on the attached service list on this 14th day of July, 2003.

Thomas D. Yannucci, P.C.
Thomas A. Clare
Larissa Paule-Carres
Brett H. McGurk
Kathryn DeBord
KIRKLAND & ELLIS LLP
655 15th Street, N.W. – Suite 1200
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Telephone: (202) 879-5000
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Counsel for Defendant
Morgan Stanley & Co. Incorporated

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BY: Thomas A. Clare
Thomas A. Clare

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SERVICE LIST

<p>John Scarola SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A. 2139 Palm Beach Lakes Boulevard West Palm Beach, Florida 33409</p>	<p>Counsel for Plaintiff</p>
<p>Michael Brody JENNER & BLOCK, LLC One IBM Plaza Suite 4400 Chicago, Illinois 60611</p>	<p>Counsel for Plaintiff</p>

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Exhibit 2

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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

COLEMAN (PARENT) HOLDINGS INC.,)	
)	
Plaintiff,	)	Case No. 2003 CA 005045 AI
)	
v.	)	Judge Elizabeth T. Maass
)	
MORGAN STANLEY & CO., INC.,)	
)	
Defendant.)	

**CPH'S RESPONSE TO MORGAN STANLEY & CO. INCORPORATED'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys and pursuant to Florida Rules of Civil Procedure 1.280 and 1.350, hereby responds and objects to Morgan Stanley & Co. Incorporated's ("Morgan Stanley") First Request for Production of Documents to Plaintiff ("Requests for Production") dated July 15, 2003:

INITIAL OBJECTIONS

1. CPH objects to the Requests for Production, including all Definitions and Instructions, to the extent that they purport to impose upon CPH any requirements that exceed or are inconsistent with the requirements of the Florida Rules of Civil Procedure or any other applicable rule or court order. For example, CPH will not comply with Instructions Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 16 or Definitions Nos. 9 and 15 to the extent that they purport to impose on CPH obligations that are not required by Florida rules and case law. CPH will comply with the applicable rules and law.

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RESPONSE: Subject to and without waiving the foregoing Initial Objections, CPH will produce documents responsive to this request.

REQUEST NO. 7: All documents supporting your allegation that MS & Co. developed a "strategy" to "conceal" Sunbeam's accounting fraud.

RESPONSE: Subject to and without waiving the foregoing Initial Objections, CPH will produce documents responsive to this request.

REQUEST NO. 8: All documents referring or relating to Arthur Andersen's 1996 and 1997 audit of Sunbeam, including without limitation any review, investigation, analysis, and due diligence of the audit conducted by CPH personnel or its advisors.

RESPONSE: CPH objects to this request as overbroad. CPH interprets this request to seek documents relating to any review, investigation, analysis, and due diligence by CPH personnel or CPH's advisors of Arthur Andersen's 1996 and 1997 audit of Sunbeam. Subject to and without waiving this objection or the foregoing Initial Objections, and consistent with CPH's interpretation of this request, CPH will produce documents responsive to this request.

REQUEST NO. 9: All documents reflecting, referring, or relating to the value of Sunbeam securities.

RESPONSE: CPH objects to the phrase "reflecting, referring, or relating to the value" as vague and ambiguous. CPH interprets this request to seek documents referring or relating to the market valuation of Sunbeam securities. Subject to and without waiving these objections or the foregoing Initial Objections, and consistent with CPH's interpretation of this request, CPH will produce documents responsive to this request.

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been served

by facsimile and mail to all counsel on the attached Service List, this 14th day of August, 2003.

Dated: August 14, 2003

COLEMAN (PARENT) HOLDINGS INC.

By: Deirdre Connell
One of Its Attorneys

John Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
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NOT A CERTIFIED COPY

031598

SERVICE LIST

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KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS
222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401

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Exhibit 3

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KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

Kathryn R. DeBord
To Call Writer Directly:
(202) 879-5078
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www.kirkland.com

Facsimile:
202 879-5200
Dir. Fax: (202) 879-5200

August 27, 2003

By Facsimile

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

I write regarding your responses and objections to MS & Co.'s and MSSF's First Request for Production of Documents, which were served on August 15, 2003.

I first address your responses and objections to MS & Co.'s Request for Production. I then address your responses and objections to MSSF's Request for Production, to the extent that those responses and objections are unique to MSSF.

Initial Objections to MS & Co.'s First Request for Production of Documents:

1. Initial Objection 1.

You stated in your Initial Objection Number 1 that you would not comply with MS & Co.'s and MSSF's instructions 3, 4, 5, 6, 7, 8, 9, 10, 11, and 16 to the extent that they exceed or are inconsistent with applicable law. You objected, for example, to MS & Co. and MSSF's instruction number 11, which states: "[i]f the requested documents are maintained in a file, the file folder is included in the request for production of those documents." Likewise, instruction 16 directs that "[u]nless otherwise specified, this Request calls for the production of documents created, delivered, distributed, sent, received, accessed or modified up to the date of your response to this Request." Do you intend to withhold documents (or copies of file folders) based on your objections to any of the enumerated instructions? If so, please inform us promptly what documents you plan to withhold.

In addition, you objected to Definitions 9 (defining "documents") and 15 (defining "identify") to the extent they impose requirements that exceed or are inconsistent with the

Chicago

London

Los Angeles

New York

San Francisco

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KIRKLAND & ELLIS LLP

Michael Brody, Esq.
August 27, 2003
Page 2

applicable rules. Do you intend to withhold documents based on your objections to these definitions? If so, please inform us promptly what documents you plan to withhold.

2. Initial Objection 3.

You narrowed MS & Co. and MSSF's definition of the "Coleman Transaction" to exclude "all related communications, agreements, and transactions, including the February 27, 1998 Agreements and the March 30, 1998 closing." We do not accept this limitation and ask you to reconsider.

Responses and Further Objections to MS & Co.'s First Request for Production

1. Request No. 1.

You objected to Request No. 1 on the grounds that the term "implementation" is vague and ambiguous, and you construed "implementation" to refer to the closing of the transaction by which CPH transferred its interest in the Coleman Company to Sunbeam. Your objection is unclear. "Implementation" means "to put into effect," and we are not sure what, if any, documents you are withholding based on your construction. Please inform us if you intend to withhold documents based on your objection.

2. Request No. 8.

Request No. 8 asks for all documents referring or relating to Arthur Andersen's 1996 and 1997 audit of Sunbeam. You construed this request as seeking only those documents relating to any review, investigation, analysis, and due diligence of Arthur Andersen's audit by *CPH personnel or advisors of CPH*. MS & Co. does not accept your limitation, which excludes documents created by non-CPH entities concerning Arthur Andersen's audit that are equally relevant to this litigation. We ask you to withdraw your objection and limitation. In addition, have you withheld documents based on this objection from your production?

3. Request No. 9.

You construed this request, seeking all documents reflecting, referring or relating to the value of Sunbeam securities, as seeking only those documents referring or relating to the *market* valuation of Sunbeam securities. This limitation excludes other valuations of Sunbeam securities, such as CPH's internal valuations. Furthermore, your own requests 13 (in the MS & Co. action) and 47 (in the MSSF action) seek "[a]ll documents concerning any valuation of Sunbeam or Sunbeam securities," and yet you object to our request -- seeking the very same

031602

KIRKLAND & ELLIS LLP

Michael Brody, Esq.
August 27, 2003
Page 3

types of documents -- as "vague and ambiguous." We ask you to reconsider. In addition, have you withheld documents based on this objection from your production?

4. Request No. 15.

Request 15 seeks "All documents referring or relating to any review, investigation, analysis, or due diligence of Sunbeam conducted by CPH or its Advisors..." You limited this request to seek only those documents referring or relating to any review, investigation, etc. concerning the *valuation of Sunbeam or Sunbeam securities*. This limitation changes the substance of this request and would exclude documents relating to any investigation, analysis, etc. of Sunbeam not necessarily related to the valuation of Sunbeam or Sunbeam Securities. In addition, your own requests 3 (in the MS & Co. action) and 43 (in the MSSF action) are virtually identical to our request. We ask you to withdraw your objection to this request and your limitation of this request. In addition, please inform us if you have withheld documents from your production based on your objection.

5. Request. No. 16.

You limited this request to the due diligence performed by CPH or its Advisors in connection with the transfer of CPH's interest in The Coleman Company to Sunbeam and CPH's general due diligence guidelines or policies. We ask that you also produce to us all due diligence-related materials provided to you by your financial advisors (including general due diligence guidelines or policies). In addition, please inform us if you have withheld documents from your production based on your objection.

7. Request No. 28.

You state in your objection to this request that, due to the manner in which Morgan Stanley has chosen to define "your," there are no documents responsive to this request. Please explain what this means. In addition, your objection to this request for organizational charts limits your production to documents sufficient to show the ownership relationship among CPH and its corporate subsidiaries at the time of the February 27, 1998 Agreements. We object to this limitation, which would exclude documents showing your organizational structure, your corporate relationship, and the reporting relationships within your corporation prior to and post February 27, 1998. We ask you to withdraw your objection and limitation. In addition, please inform us if you have withheld documents from your production based on your objection.

031603

KIRKLAND & ELLIS LLP

Michael Brody, Esq.
August 27, 2003
Page 4

8. Request 31.

You limited our requests for the calendars and dayplanners of "Ronald Perelman, Howard Gittis, William Nesbitt, Lorelie Borland, Steve Fasman, and James Maher from December 1997 through March 1998" to calendar entries that also relate to the "transaction by which CPH transferred its interest in The Coleman Company to Sunbeam." We do not accept this limitation and ask you to withdraw your limitation and objection. In addition, please inform us if you have withheld documents based on your objection.

9. Request No. 32.

With regard to your objections to and enumerated limitations of this request, do you intend to withhold documents otherwise responsive to this request? If so, what documents?

10. Request No. 33.

With regard to your objections to and enumerated limitations of this request, do you intend to withhold documents otherwise responsive to this request? If so, what documents?

11. Request No. 34.

With regard to your objections to and enumerated limitations of this request, do you intend to withhold documents otherwise responsive to this request? If so, what documents?

12. Request No. 35.

With regard to your objections to and enumerated limitations of this request, do you intend to withhold documents otherwise responsive to this request? If so, what documents?

13. Request No. 40.

With regard to your objection to producing documents relating to the settlement agreement between CPH and Arthur Andersen, please provide to us the provisions specifying the circumstances under which the terms of the settlement agreement can be disclosed.

031604

Initial Objections to MSSF's First Request for Production of Documents

1. Initial Objection No. 1.

I refer you to Initial Objection No. 1 in the MS & Co. action discussed above.

KIRKLAND & ELLIS LLP

Michael Brody, Esq.
August 27, 2003
Page 5

2. Initial Objection No. 3

I refer you to Initial Objection No. 3 in the MS & Co. action discussed above.

3. Initial Objection No. 6.

MSSF defined "MAFCO" to mean "MacAndrews & Forbes and any of its officers, directors, former or present employees, representatives and agents." You objected to this definition as "vague and ambiguous" and limited the definition of "MAFCO" to "MacAndrews & Forbes Holdings Inc." You made this limitation despite the fact that you have rejected our efforts to narrow your own definitions of corporate entities and despite the fact that *your own requests* define "MAFCO" to mean "MacAndrews & Forbes or any of their present and former officers, directors, employees, representatives, and agents." We ask you to withdraw this objection and limitation.

Responses and Further Objections to MSSF's First Request for Production

1. Request No. 1.

I refer you to Request No. 1 in the MS & Co. action discussed above.

2. Request No. 6.

There appears to be a typographical error in your response to Request No. 6. Please confirm that, subject to your objections, CPH and MAFCO will produce all documents referring or relating to the December 1997 meeting.

3. Request No. 8.

I refer you to Request No. 15 in the MS & Co. action discussed above.

4. Request No. 9.

Request 9 seeks "All documents referring or relating to any review, investigation, analysis, or due diligence of Sunbeam conducted by MAFCO or its Advisors..." You limited this request to seek only those documents referring or relating to any review, investigation, etc. concerning the *valuation of Sunbeam or Sunbeam securities*. This limitation changes the substance of this request and would exclude documents relating to any investigation, analysis, etc. of Sunbeam not necessarily related to the valuation of Sunbeam or Sunbeam Securities. In

031605

KIRKLAND & ELLIS LLP

Michael Brody, Esq.
August 27, 2003
Page 6

addition, your own Request 3 (in the MS & Co. action) and Request 43 (in the MSSF action) is virtually identical to our request. We ask you to withdraw your objection to this request and your limitation of this request. In addition, please inform us if you have withheld documents from your production based on this objection.

5. Request No. 15.

Your response to this request is ambiguous. Do you intend to withhold documents responsive to this request? If so, please identify those documents.

6. Request No. 22.

You construed this request, seeking all documents reflecting the value of Coleman stock, as seeking only those documents reflecting the *market* valuation of Coleman stock. This limitation excludes other valuations of Coleman stock, such as internal CPH valuations. Furthermore, your own requests 15 (in the MS & Co. action) and 49 (in the MSSF action) seek "[a]ll documents concerning any valuation of Coleman or Coleman securities," and yet you object to our own request -- seeking the very same types of documents -- as "vague and ambiguous." We ask you to withdraw your objections to and limitations of this request. In addition, please inform us if you have withheld documents based on your objection.

7. Request 30.

Your objection to this request for organizational charts limits your production to documents sufficient to show the ownership relationship among CPH and its corporate subsidiaries the time of the February 27, 1998 Agreements. We object to this limitation, which would exclude documents showing CPH and MAFCO's organizational structure, CPH and MAFCO's corporate relationship, and CPH and MAFCO's reporting relationships prior to and post February 27, 1998. We ask you to withdraw this objection and limitation. In addition, please inform us if you have withheld documents based on your objection.

9. Request 34.

I refer you to Request No. 16 in the MS & Co. action discussed above.

10. Request 36.

I refer you to Request No. 31 in the MS & Co. action discussed above.

031606

KIRKLAND & ELLIS LLP

Michael Brody, Esq.
August 27, 2003
Page 7

11. Request 37.

With regard to your objections to and enumerated limitations of this request, do you intend to withhold documents otherwise responsive to this request? If so, what documents?

12. Request 38.

With regard to your objections to and enumerated limitations of this request, do you intend to withhold documents otherwise responsive to this request? If so, what documents?

13. Request 39.

With regard to your objections to and enumerated limitations of this request, do you intend to withhold documents otherwise responsive to this request? If so, what documents?

14. Request 40.

With regard to your objections to and enumerated limitations of this request, do you intend to withhold documents otherwise responsive to this request? If so, what documents?

15. Request 41.

With regard to your objections to and enumerated limitations of this request, do you intend to withhold documents otherwise responsive to this request? If so, what documents?

16. Request 42.

With regard to your objections to and enumerated limitations of this request, do you intend to withhold documents otherwise responsive to this request? If so, what documents?

* * * * *

In addition, of the boxes of documents that you "made available" to us for review, we found that very few of those boxes of documents actually contained CPH or MAFCO documents. The overwhelming majority of those documents were our own documents, third-party documents, or documents from the prior litigations and other related actions. Will your next production include more CPH/MAFCO documents? When can we expect your next production?

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Michael Brody, Esq.
August 27, 2003
Page 8

I look forward to your prompt response.

Sincerely,



Kathryn R. DeBord

cc: Joseph Ianno, Jr., Esq. (by facsimile)
Deirdre Connell, Esq. (by facsimile)
Jerold S. Solovy, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)

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031608

Exhibit 4

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031609

JENNER & BLOCK

September 12, 2003

By Facsimile

Kathryn R. DeBord, Esq.
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Jenner & Block, LLC
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Chicago, IL 60611-7603
Tel 312 222-9350
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Chicago
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Washington, DC

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

**Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co.
Morgan Stanley Senior Funding v. MacAndrews & Forbes Holdings Inc., et al.***

Dear Kathryn:

I write in response to your letter of August 27, 2003 concerning CPH's objections and responses to Morgan Stanley's first requests for production of documents and CPH's and Mafco's objections and responses to MSSF's first requests for production of documents.

Objections and Responses to Morgan Stanley's Requests For Production

Initial Objection 1. CPH and Mafco produced to Morgan Stanley and MSSF over a million pages of documents within 30 days of receiving your documents requests. We have made every effort to provide complete and accurate responses in accordance with the Florida Rules of Civil Procedure. To the extent Morgan Stanley seeks to impose additional burdens or requirements that exceed or are inconsistent with the Florida Rules, we advised you that CPH and Mafco will not comply with your additional demands. Morgan Stanley has lodged many of the same objections to our document requests, including its General Objections Nos. 3, 5, 8, and 10.

You have inquired whether we intend to withhold documents based upon our objections to your instructions and definitions. To the extent your requests call for the production of documents protected by the attorney-client privilege or work product doctrine, we intend to withhold documents that otherwise would be responsive, as we state in our Initial Objection 2. We will comply with the stipulation entered by the court regarding the production of privilege logs. We stand on our objection that Instructions 3, 4, 5, 6, 7, 8, 9, 10, 11, and 16, and Definitions 9 and 15 (Morgan Stanley) and 11 and 17 (MSSF) go beyond the requirements of applicable law. We will address these in turn.

Instructions No. 3 and 8: CPH and Mafco will produce all documents in their possession, custody, or control as required by the Florida Rules. We have produced documents originally in the possession of CPH's prior counsel. We note that Morgan Stanley is willing to produce documents in the possession of certain of its counsel, but not others. You have been unwilling to explain your inconsistent position with respect to documents in the possession of third parties.

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Kathryn R. DeBord, Esq.
September 12, 2003
Page 2

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See Brody to Clare letter, August 20, 2003. CPH and Mafco will not withhold documents on the basis of these objections.

Instruction No. 4: In response to specific document requests, we have identified ambiguities in your requests and have provided the construction we used in our responses to those ambiguous requests. Unless noted in response to a specific request, CPH and Mafco will not withhold documents on the basis of this initial objection.

Instruction No. 5: We will produce a privilege log in accordance with the Florida Rules and in the manner stipulated to by the parties, as entered by the Court on September 4, 2003.

Instruction 6: We object to the production of documents where production would be unduly burdensome. We have not interposed this objection in response to any of your specific requests and therefore will not withhold any documents on the basis of this objection.

Instruction 7: We will produce documents in redacted form when necessary to prevent the production of privileged communications, work product, or non-responsive information in accordance with the Florida Rules. CPH and Mafco will not otherwise withhold documents on the basis of this objection.

Instructions 9 and 10: CPH and Mafco have not withheld documents on the basis of these objections.

Instruction 11: This instruction seeks the production of documents protected from disclosure by the attorney-client privilege or work product doctrine. CPH and Mafco will not produce file folders that were created by Jenner & Block, and which therefore constitute work product.

Instruction 16: This instruction is exceptionally broad, and seeks documents over a longer time frame than is encompassed by Morgan Stanley's or MSSF's responses. We invite you to propose a reasonable time frame for your requests.

Morgan Stanley Definition 9 / MSSF Definition 11: CPH and Mafco stand on their objection to the definition of "documents" to the extent the definition is inconsistent with their obligations under the Florida Rules of Civil Procedure. CPH and Mafco will not withhold any documents based on these objections.

Morgan Stanley Definition 15 / MSSF Definition 17: We objected to your definition of "identify," and your August 27 letter does not offer any explanation of the term. We note, however, that this term, although defined, is not used in your document requests.

Initial Objection 3. We remain unwilling to accept Morgan Stanley's definition of "Coleman Transaction." You have defined that term to mean "Sunbeam's acquisition of Coleman Company, Inc. from CPH," which did not occur, and further to include other "related agreements and transactions," which we do not understand. In our objection, we explained that we would

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Kathryn R. DeBord, Esq.
September 12, 2003
Page 3

JENNER & BLOCK

produce documents concerning the transaction that actually took place. What more are you interested in receiving?

Morgan Stanley Request No. 1. We objected to the use of the term "implementation." We explained that we would construe that term to mean the closing of the transaction. We further explained that if you meant the term to mean the actual integration of the companies, those documents were encompassed by your Request 26, which seeks "all documents concerning potential or actual integration of Coleman, First Alert, and/or Signature Brands with Sunbeam . . ." Your attempt to clarify your Request by defining "implementation" to mean "to put into effect" is unhelpful and does not allow us to further respond to this Request. Based on our construction of Requests 1 and 26, we believe we have fully responded to your requests.

Morgan Stanley Request No. 8. CPH stands on its objection and response to this Request. CPH will not withhold documents based on this objection.

Morgan Stanley Request No. 9. We are investigating our production regarding this request, and we will respond under separate cover.

Morgan Stanley Request No. 15. This Request sought information concerning due diligence, which we agreed to provide. It continues to state: "including without limitation" documents reflecting all "Financial Information" CPH ever obtained about Sunbeam. As we understand your definition, the request for "Financial Information" is broader than the request for due diligence information, in which it is supposedly encompassed. We have not withheld any documents responsive to what we understand this request to seek – due diligence. The further request, for all Financial Information, is overbroad.

Morgan Stanley Request No. 16. In this request, you sought various due diligence materials. We agreed to provide exactly what you have agreed to provide: documents relating to due diligence for this transaction, and general due diligence materials. We are not providing (nor are you) due diligence materials from other transactions. Why are you entitled to receive documents you are not willing to produce to us? Do you intend to modify your prior response to our Request No. 43?

Morgan Stanley Request No. 28. In response to this request, we offered to produce more documents than you requested. Morgan Stanley's definition of "your" was limited to "CPH." CPH does not have an organizational chart or a chart of reporting relationships, and therefore there are no documents responsive to this Request. Nonetheless, we responded by voluntarily producing documents sufficient to show the relationship of CPH with its corporate parent at the time of the February 27, 1998 Agreements. We specifically refer Morgan Stanley to the 10-Ks filed by the Coleman Co., Inc. in 1997 and 1998, which we produced, which explain the relationship between CPH and its parent and subsidiaries at all relevant times. We have also provided a written response describing corporate structure. CPH stands on its objections and response to this Request.

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Kathryn R. DeBord, Esq.
September 12, 2003
Page 4

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Morgan Stanley Request No. 31. CPH produced redacted calendars responsive to this Request that include relevant entries. You apparently want calendar entries that have nothing to do with Coleman or Sunbeam. We invite you to explain what other information from these calendars you believe you are entitled to receive, and why.

Morgan Stanley Request Nos. 32-35. In response to these requests, we outlined precisely what we were producing. We are not producing documents that reflect attorney-client communications or work product from other litigation arising from the Sunbeam transaction. We invite you to explain what other documents you believe you are entitled to receive that we are not providing in our responses.

Morgan Stanley Request No. 40. As we explained in our response, CPH would be in violation of the terms of the settlement agreement between CPH and Arthur Andersen if CPH disclosed any of the terms of the settlement agreement. We therefore are unable to agree to your request to produce a portion of the agreement. We invite you to explain why you believe you are entitled to any portion of the settlement agreement and the legitimate purpose that would be served by disclosure of the terms of the settlement agreement.

Objections and Responses to MSSF's First Request for Production

Certain of the issues you raise relating to the MSSF requests are duplicative of the same issues you raise with regard to the Morgan Stanley requests. I will not repeat the discussion below of items I have already addressed.

Initial Objection No. 6. We objected to MSSF's definition of "MAFCO," because it is incorrect. CPH and Mafco will construe the definition to refer to MacAndrews & Forbes Holdings Inc. and any of its officers, directors, former or present employees, representatives, and agents. We are not withholding any documents based upon this definition, as corrected.

MSSF Request No. 6. Our response to Request No. 6 contained a typographical error. The response should read: "Defendants object to the multiple false premises contained in the request. Subject to and without waiving these objections and the foregoing Initial Objections, including without limitation defendants' objection to the term 'Schedule of Synergies,' CPH and Mafco will produce documents referring or relating to the December 1997 meeting."

MSSF Request No. 9. See our discussion of Morgan Stanley Request No. 15 above.

MSSF Request No. 15. We stand by our objection to this request. There was never any "decision" to make any such "representation," and therefore there are no documents responsive to this Request.

MSSF Request No. 22. We are investigating our production regarding this request, and we will respond under separate cover.

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Kathryn R. DeBord, Esq.
September 12, 2003
Page 5

JENNER & BLOCK

MSSF Request No. 30. We have fully responded to this request. We have produced documents, as you request, sufficient to show the corporate relationships between the relevant entities at the relevant time. CPH and MacAndrews & Forbes Holdings Inc. do not have any organization charts of internal reporting relationships. Please advise me if you believe you are entitled to additional documents.

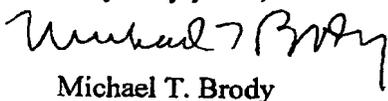
MSSF Request Nos. 37-42. In response to these requests, we outlined precisely what we were producing. We are not producing documents that reflect attorney-client communications or work product from other litigation arising from the Sunbeam transaction. We invite you to explain what other documents you believe you are entitled to receive that we are not providing in our responses.

* * *

Finally, you complain that we have not produced enough documents from CPH or Mafco. CPH and Mafco produced an extraordinary number of documents and other discovery materials to Morgan Stanley and MSSF. As we have advised you on several occasions, a majority of the documents in our production are documents we received from third parties arising from Sunbeam's fraudulent practices and related litigation. We have produced documents from our clients' files relating to the relevant topics. In stark contrast, Morgan Stanley and MSSF, two global financial and investment institutions, have produced a small number of documents and Morgan Stanley has been afforded almost four months to respond to our requests.

Please contact me if you would like to discuss any of these issues.

Very truly yours,



Michael T. Brody

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Jerold S. Solovy, Esq.

Doc. No. 972199

031614

TOTAL P.06

16div-028783

Exhibit 5

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031615

JENNER & BLOCK

October 8, 2003

Jenner & Block, LLC
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Chicago
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Washington, DC

By Telecopy

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KIRKLAND & ELLIS, LLP
655 15th St., NW
Washington, DC 20005

Michael T. Brody
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mbrody@jenner.com

**Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.*
*Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.***

Dear Kathryn:

I write in response to your letter of October 6, 2003. You request our position regarding documents concerning (1) the value of Sunbeam securities, (2) Financial Information, and (3) unredacted calendars.

1. Further to my September 12, 2003 letter to you, we have investigated Mafco's and CPH's productions and will produce additional documents responsive to Morgan Stanley's Request No. 9 (value of Sunbeam securities) and MSSF's Request No. 22 (value of Coleman stock).
2. As stated in my September 12, 2003 letter, Morgan Stanley's request for all Financial Information, as defined by you, is overbroad and goes beyond the documents sought in Request No. 15. CPH advised you in its document responses and in my prior letter that CPH has produced documents that are responsive to Request No. 15, which should resolve this issue.
3. We remain of the view that your request for unredacted calendar entries is an unwarranted invasion of privacy in search of documents that have no bearing on the issues in this case. Nonetheless, we will produce the unredacted calendar pages, subject to the protective order in this case. Our willingness to produce these documents stands in contrast to your refusal to produce the information we seek about the Morgan Stanley personnel who worked on the Sunbeam engagement. Notwithstanding your demand that we produce calendars of Mafco executives pertaining to events that are unrelated to the issues in this case, you have refused to produce documents showing whether the Morgan Stanley employees who worked on this deal were disciplined or rewarded for their actions, among other documents.

Very truly yours,

Michael T. Brody
Michael T. Brody

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Jerold S. Solovy, Esq.

031616

Exhibit 6

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031617

EXHIBIT IS CONFIDENTIAL

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031618

Exhibit 7

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031619

1 IN THE CIRCUIT COURT OF THE
2 FIFTEENTH JUDICIAL CIRCUIT
3 IN AND FOR PALM BEACH COUNTY, FLORIDA

4 COLEMAN (PARENT) HOLDINGS,)
5 INC.,)

6 Plaintiff,)

7 VS.)

8 MORGAN STANLEY & CO., INC.,)

9 Defendant.)

10 -----)

11
12 VIDEOTAPED DEPOSITION
13 OF HOWARD GITTIS
14 New York, New York
15 Friday, November 19, 2004
16
17
18
19
20
21
22

23 Reported by:
24 Robert X. Shaw, CSR
25 CSR NO. 817
JOB NO. 167570

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031629

HOWARD GITTIS, NOVEMBER 19, 2004

1 A. I saw you in the office.

2 Q. You did.

3 A. Pardon me.

4 Q. I did not recognize you. I don't
5 think we met before. Let's get this finished.

6 Let's get back on and get this
7 finished.

8 After the settlement -- withdrawn.

9 Did you value, at any point in 1998,
10 that is MacAndrews & Forbes, the, the warrants
11 received in the settlement, and valuation --
12 that is terrible. I will try again.

13 For financial statement purposes did
14 MacAndrews & Forbes value the warrants in
15 1998?

16 A. I found out that, subsequently, that
17 they did, yes.

18 Q. Do you know what the number was?

19 A. No.. No.

20 Q. Whatever valuation was placed on the
21 warrants, that would have been an item of
22 income; correct?

23 A. No.

24 Q. What would it be?

25 A. It would be an item of just capital

031621

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HOWARD GITTIS, NOVEMBER 19, 2004

1 that you have. It would not be an income
2 item.

3 Q. You are right. It would not. It
4 would be characterized somewhere on the income
5 statement to show that it had been received,
6 though; correct?

7 A. I am not sure of that. Maybe a
8 footnote to the income statement would show
9 you, the capital account -- probably that is
10 where it was.

11 Q. And on -- whose financial statement
12 were the warrants recorded in 1998, which
13 MacAndrews & Forbes Company?

14 A. Oh, it would always be the parent.
15 It always goes up to the parent.

16 Q. Which would be Mafco Holdings, Inc.?

17 A. Yes.

18 Q. Did Mafco Holdings Inc., in 1998,
19 have to file or make filings, excuse me, with
20 the Securities & Exchange Commission?

21 A. I don't think so.

22 Q. Were Mafco Holdings Inc. financial
23 statements for the year, for the year 1998, on
24 a calendar year basis?

25 A. Yes.

031622

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16div-028791

HOWARD GITTIS, NOVEMBER 19, 2004

1 Q. If the settlement was reached in, I
2 believe it was August of 1998, then, however
3 the warrant value was recorded, it would have
4 been reflected in the year-end 1998 financial
5 statements for Mafco Holdings, Inc.; is that
6 correct?

7 A. That is correct.

8 Q. Those statements were audited by --

9 A. E&Y.

10 Q. E&Y. Did they give a clean opinion
11 on the statements?

12 A. Sure. We always get clean opinions.

13 MR. BEMIS: Let's take a break here.
14 We are almost finished. I think you said
15 you needed 30 minutes. You can make your
16 phone call and we will have you out here
17 within 30 minutes of the conclusion of
18 the break.

19 A. That is great. Thank you very much.

20 THE VIDEOGRAPHER: The time is 3:03
21 p.m., and this completes tape number 2.

22 (Recess.)

23 THE VIDEOGRAPHER: Stand by.

24 MR. BEMIS: Back on the record.

25 THE VIDEOGRAPHER: The time is 3:19

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031623

Exhibit 8

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031624

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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November 22, 2004

By Facsimile

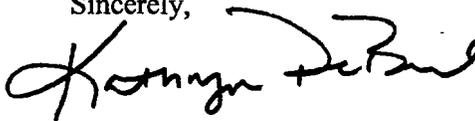
Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

Mr. Winoker and Mr. Gittis testified last week that, as of December, 1998, CPH valued the warrants it received from Sunbeam pursuant to the August 12, 1998 Settlement Agreement at \$41.7 million. Mr. Winoker and Mr. Gittis also testified that CPH's \$41.7 million valuation is reflected on CPH and/or MAFCO's non-public financial statements for the period ending December 1998. These financial statements are responsive to numerous document requests, including Morgan Stanley's First, Third, and Sixth Requests for Production. Please produce those documents immediately.

Sincerely,



Kathryn R. DeBord

cc: Joseph Ianno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hanson, Esq. (by facsimile)

Chicago

London

Los Angeles

San Francisco

Washington, D.C.

031625

16div-028794

Exhibit 9

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031626

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

**COLEMAN (PARENT) HOLDINGS INC.'S RESPONSES AND
OBJECTIONS TO MORGAN STANLEY & CO. INCORPORATED'S
EIGHTH [SIC] REQUEST FOR PRODUCTION OF DOCUMENTS**

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, and pursuant to Rules 1.280 and 1.350 of the Florida Rules of Civil Procedure and the Court's October 14, 2004 Order, objects and responds to Morgan Stanley & Co. Inc.'s ("Morgan Stanley's") Eighth [sic] Request for Production of Documents ("Requests for Production") as follows:

INITIAL OBJECTIONS

1. CPH objects to the Requests for Production, including all Definitions and Instructions, to the extent that they purport to impose upon CPH any requirements that exceed or are inconsistent with the requirements of the Florida Rules of Civil Procedure or any other applicable rule or court order.

2. CPH objects to the Requests for Production to the extent that they seek the production of any documents or information protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity, or rule. CPH reserves the right to assert any and all privileges to which CPH is entitled under the law. CPH will provide a log of documents withheld from production on the basis of the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity, or rule.

031627

3. CPH objects to Instruction 3 to the extent it purports to require CPH's counsel, consultants, and/or experts in this litigation to produce documents. CPH interprets Instruction No. 3 to exclude CPH's counsel, consultants, and experts in this litigation.

4. CPH objects to Definition No. 7 as vague, ambiguous, and overbroad insofar as it purports to include "where applicable" a party's "officers, directors, employees, partners, corporate parent, subsidiaries or affiliates." CPH will interpret the term "plaintiff" to mean CPH and "defendant" to mean Morgan Stanley.

5. CPH objects to the extent that any Request for Production seeks documents that are in the public domain and accessible to all parties. In responding to the Requests for Production, CPH will produce publicly-available documents to the extent that copies exist in CPH's files of otherwise non-public information responsive to these requests.

6. CPH objects to the definitions of "CPH" and "MAFCO" to the extent they include CPH's counsel in this litigation. CPH interprets these definitions to exclude Jenner & Block LLP and Searcy Denney Scarola Barnhart & Shipley P.A., and their respective attorneys.

7. By stating that CPH will produce documents responsive to a particular document request, CPH does not represent that any such documents exist. Rather, CPH is responding that to the extent such documents are located, they will be produced.

8. By stating that CPH will produce responsive documents, CPH does not concede the relevance of any of the produced documents to the subject matter of this litigation or to the admissibility of those documents at trial.

9. CPH's objections and responses are based on a good-faith search for documents within CPH's possession, custody, and control. CPH expressly reserves the right to amend and/or modify its objections and responses.

10. CPH responds to Morgan Stanley's document requests without waiving the Initial Objections. CPH incorporates, as though fully set forth therein, these Initial Objections into each of its responses.

FURTHER OBJECTIONS AND RESPONSES

Request No. 1. All documents not previously produced or provided by CPH that are responsive to any Request for the Production of Documents that Morgan Stanley has served upon CPH in the above captioned cases.

RESPONSE: CPH has not located any documents in its possession responsive to this request.

Request No. 2. All documents concerning any proposed sale of CPH's interest in Coleman, including without limitation all documents concerning communications with potential buyers and investment bankers, between January 1, 1997 and March 31, 1998.

RESPONSE: CPH objects to this request as overbroad and not reasonably calculated to lead to the discovery of admissible evidence. CPH previously has produced all non-privileged documents in its possession responsive to this request.

Request No. 3. All documents from January 1, 1996 to March 31, 1998 concerning the valuation of Coleman, including without limitation all documents concerning any valuation of Coleman performed by Chase Securities and all studies done to support all valuations.

RESPONSE: CPH objects to this request as not reasonably calculated to lead to the discovery of admissible evidence. CPH further objects to this request as overbroad as to the time period requested. CPH further objects to this request as containing an implicit untrue assumption in that CPH is not aware of any valuation of Coleman performed by Chase Securities on behalf of CPH. CPH previously has produced all non-privileged documents in its possession concerning valuations of Coleman prepared in connection with Sunbeam's acquisition of CPH's interest in The Coleman Company, Inc.

Request No. 4. All documents concerning the value of the warrants and other consideration that CPH received from Sunbeam pursuant to the August 12, 1998 Settlement Agreement between CPH and Sunbeam.

RESPONSE CPH objects to this request to the extent that it calls for the production of documents protected by the attorney-client privilege, work product doctrine, and the accountant privilege. CPH further objects to this request to the extent that it calls for the production of "all documents" concerning the value of the warrants. CPH further objects to this request as overbroad and as not reasonably calculated to lead to the discovery of admissible evidence to the extent that the request is not limited as to time. CPH further objects to this request as vague and ambiguous in its use of the term "value," which is susceptible to different meanings. CPH further objects to this request as vague and ambiguous to the extent that it refers to "other consideration" received by CPH pursuant to the August 12, 1998 Settlement Agreement. Subject to and without waiving its Initial or Further Objections, CPH will produce documents reflecting the journal entries that show how CPH recorded the warrants on CPH's books and records.

Dated: November 24, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: *Amelia Connell*
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

031630

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to counsel listed below on this 24th day of November, 2004:

Thomas A. Clare
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr.
CARLTON FIELDS
222 Lakeview Avenue
Suite 1400
West Palm Beach, Florida 33401

Mark C. Hansen
Kellogg, Huber, Hansen, Todd
& EVANS, P .L.L.C.
Sumner Square, 1615 M Street N.W.
Suite 400
Washington, D.C. 20036-3209

By: 

Deirdre E. Connell

NOT A CERTIFIED COPY

031631

MacAndrews & Forbes
Detail General Ledger - Standard
Periods: 01-98 Through 13-00 as of 11/23/2004

Date 11/23/2004 04:00pm
01-98-244

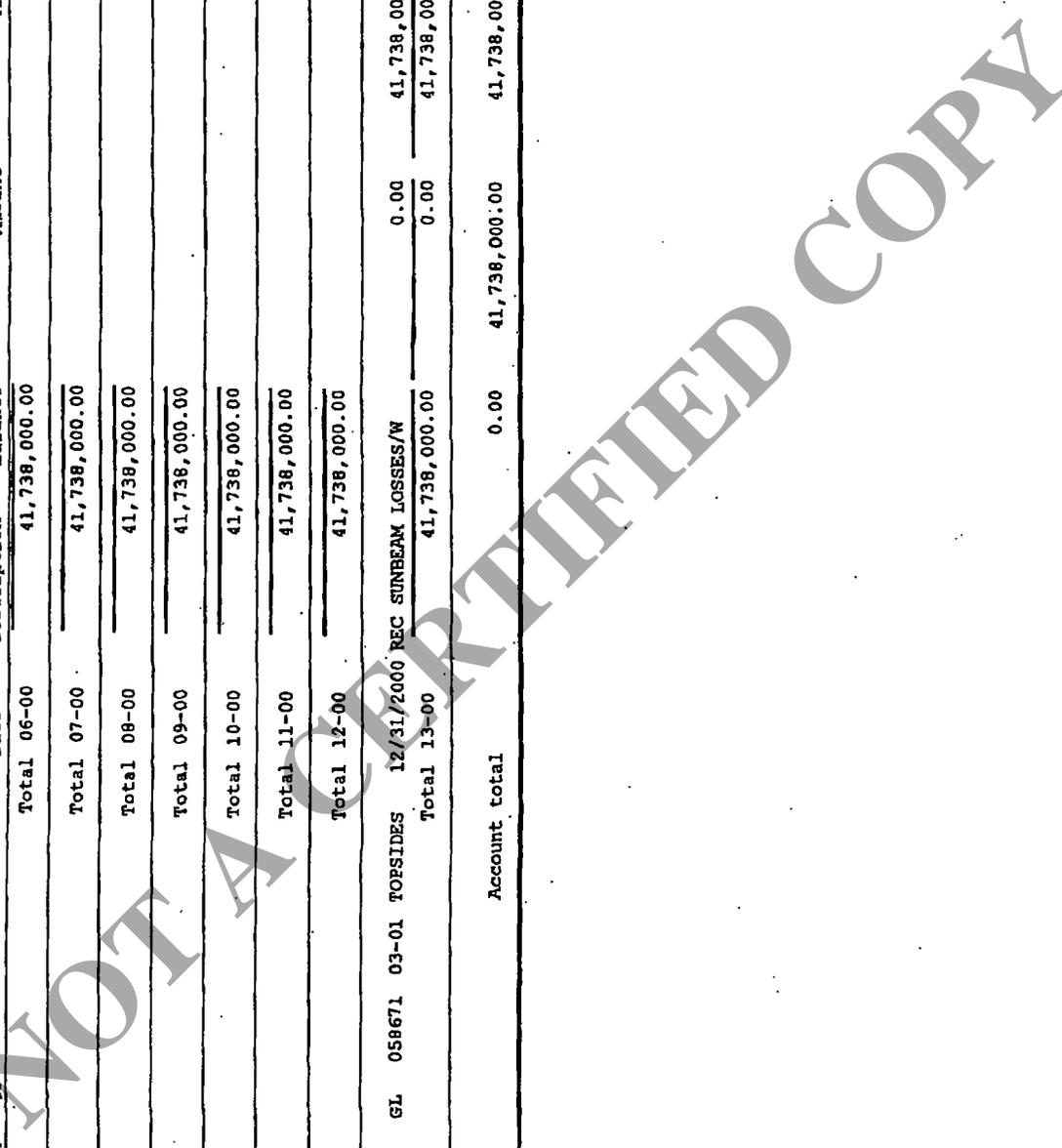
Acct	Sub	Per	Jrnl	Trn	Bat	Per	Ref	Tran	Description	Beginning	Debit	Credit	Ending
		Post	Type	Type	Nbr	Ent	Nbr	Date		Balance	Amount	Amount	Balance
260155	0608-608-0000-000		GL						INVEST -SUNBEAM WARRANTS				
		13-98 *	GJ		GL	049323	03-99	TORSID	12/31/1998 RECORD INVEST - SUNB	41,738,000.00	41,738,000.00	0.00	41,738,000.00
								Total 13-98		0.00	41,738,000.00	0.00	41,738,000.00
								Total 01-99		41,738,000.00			41,738,000.00
								Total 02-99		41,738,000.00			41,738,000.00
								Total 03-99		41,738,000.00			41,738,000.00
								Total 04-99		41,738,000.00			41,738,000.00
								Total 05-99		41,738,000.00			41,738,000.00
								Total 06-99		41,738,000.00			41,738,000.00
								Total 07-99		41,738,000.00			41,738,000.00
								Total 08-99		41,738,000.00			41,738,000.00
								Total 09-99		41,738,000.00			41,738,000.00
								Total 10-99		41,738,000.00			41,738,000.00
								Total 11-99		41,738,000.00			41,738,000.00
								Total 12-99		41,738,000.00			41,738,000.00
								Total 13-99		41,738,000.00			41,738,000.00
								Total 01-00		41,738,000.00			41,738,000.00
								Total 02-00		41,738,000.00			41,738,000.00
								Total 03-00		41,738,000.00			41,738,000.00
								Total 04-00		41,738,000.00			41,738,000.00
								Total 05-00		41,738,000.00			41,738,000.00

NOT A CERTIFIED COPY

* Indicates that the period entered is different from the period post.
** Indicates an account that is out of balance.

CONFIDENTIAL
SUBJECT TO
PROTECTIVE ORDER
CPH2011835

Acct	Sub	Per Post	Jrnl Type	Trn Type	Bat Nbr	Per Ent	Ref Mbr	Tran Date	Description	Beginning Balance	Debit Amount	Credit Amount	Ending Balance
								Total 06-00		41,738,000.00			41,738,000.00
								Total 07-00		41,738,000.00			41,738,000.00
								Total 08-00		41,738,000.00			41,738,000.00
								Total 09-00		41,738,000.00			41,738,000.00
								Total 10-00		41,738,000.00			41,738,000.00
								Total 11-00		41,738,000.00			41,738,000.00
								Total 12-00		41,738,000.00			41,738,000.00
		13-00	* GV	GL	058671	03-01	TOPSIDES	12/31/2000	REC SUNBEAM LOSSES/W		0.00	41,738,000.00	0.00
								Total 13-00		41,738,000.00	0.00	41,738,000.00	0.00
								Account total		0.00	41,738,000.00	41,738,000.00	0.00



* Indicates that the period entered is different from the period post.
** Indicates an account that is out of balance.

CONFIDENTIAL
SUBJECT TO
PROTECTIVE ORDER

CPH2011836

Exhibit 10

NOT A CERTIFIED COPY

031634

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

777 South Figueroa Street
Los Angeles, California 90017

Lawrence P. Bemis
To Call Writer Directly:
213.680.8413
lbemis@kirkland.com

213.680.8400

www.kirkland.com

Facsimile:
213.680.8500

February 3, 2005

VIA FACSIMILE AND MAIL

Michael T. Brody, Esq.
Jenner & Block LLC
One IBM Plaza
330 N. Wabash
Suite 4400
Chicago, IL 60611

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Incorporated*

Dear Mr. Brody:

I write to follow-up on CPH's production of documents relevant to its damages experts' testimony.

Morgan Stanley has long had outstanding requests for CPH to produce documents relating to the value of the Sunbeam shares it received as part of the Transaction. For example, as far back as July 15, 2003, Morgan Stanley requested "all documents reflecting, referring, or relating to the value of Sunbeam securities." See Morgan Stanley & Co. Incorporated's First Request for Production of Documents to Plaintiff (July 15, 2003). At the time, CPH attempted to limit this request to the "market valuation of Sunbeam securities." See CPH Response To Morgan Stanley & Co. Incorporated's First Request for Production of Documents (Aug. 14, 2003). After Morgan Stanley noted that "[t]his limitation excludes other valuations of Sunbeam securities, such as CPH's internal valuations" and asked whether CPH withheld any documents based on this limitation. See August 27, 2003 Letter from Kathryn R. Debord to Michael T. Brody. After initiating promising to investigate this request, CPH agreed to withdraw its limitation and produce additional documents responsive to this request. See October 8, 2003 Letter from Michael T. Brody to Kathryn R. DeBord. Based on this representation, Morgan Stanley accepted and understood that CPH would make a complete production of all materials responsive to this request.

Over a year later, at the deposition of Mr. Winoker, CPH revealed for the first time that MAFCO had recorded an "accounting value" for the Sunbeam stock warrants received as part of the Sunbeam settlement agreement on its general ledger. See Deposition of Laurence Winoker (November 18, 2004). Subsequently, CPH agreed to produce the general ledger entries where this "accounting value" was recognized.

031635

16div-028804

KIRKLAND & ELLIS LLP

Michael T. Brody, Esq.
February 3, 2005
Page 2

Given this recent production, and the fact that CPH's recently disclosed multitude of experts opine on both the expected and actual value of the Sunbeam shares CPH and MAFCO received, please confirm in writing that CPH has in fact produced all documents responsive to Morgan Stanley's longstanding request for such documents. Did CPH or MAFCO ever assign an "accounting value" to the Sunbeam shares it received on its general ledger? Did CPH or MAFCO ever assess the value of its Sunbeam shares as part of the December 1998 audit mentioned by Mr. Winoker? Is it CPH's position that CPH or MAFCO never recognized a value anywhere on its books or elsewhere for its Sunbeam shares at any point in time? Please investigate these questions, and if any such documents exist, please supplement your production immediately.

If we do not receive a response by close of business tomorrow, Morgan Stanley will file a motion to compel and for sanctions.

Very truly yours,



Lawrence P. Bemis

LPB/cmng

cc: Joseph Ianno, Esq.
Mark Hansen, Esq.
Jack Scarola, Esq.

031636

Exhibit 11

NOT A CERTIFIED COPY

031637

JENNER & BLOCK

February 11, 2005

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312-222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

By Telecopy

Lawrence P. Bemis, Esq.
Kirkland & Ellis LLP
777 South Figueroa Street
Los Angeles, CA 90017

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Larry:

I write in response to your letter concerning CPH's accounting treatment of the Sunbeam stock that CPH received in connection with Sunbeam's acquisition of CPH's interest in Coleman. We disagree with your characterization of the discovery record. We carefully have reviewed all of the prior discovery requests, objections, and correspondence, and do not believe that the documents you now seek should have been produced previously. Discovery is now closed, and we decline to produce additional documents.

Very truly yours,

Michael T. Brody
Michael T. Brody

MTB:cjg

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

NOT A CERTIFIED COPY

031638

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: 2003 CA 005045 AI

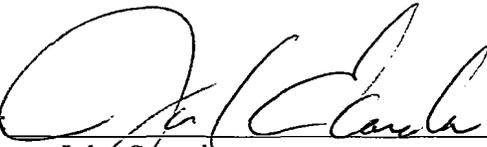
05 FEB 15 PM 3:55
Palm Beach County
Circuit Civil
MVA - LDU

NOTICE OF VOLUNTARY DISMISSAL

COMES NOW the Plaintiff Coleman (Parent) Holdings Inc., by and through its undersigned attorneys, and hereby files this Notice of Voluntary Dismissal of its fraudulent misrepresentation claim (Count I) and its negligent misrepresentation claim (Count IV) against the Defendant, Morgan Stanley & Company, Inc. All other claims remain in full force and effect.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Hand Delivery to all Counsel on the attached list, this 15th day of February, 2005.

COLEMAN (PARENT) HOLDINGS INC.

By 

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

031639

ISSI

NOT A CERTIFIED COPY

COUNSEL LIST

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Thomas A. Clare
Brett McGurk
Kirkland & Ellis
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West Palm Beach, FL 33401

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West Palm Beach, FL 33401

Mark C. Hansen
Kellogg, Huber, Hansen, Todd, Evans
& Figel, P.L.L.C.
222 Lakeview Avenue
Suite 260
West Palm Beach, FL 33401

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NOT A CERTIFIED COPY

031640

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

CASE NO. CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

SUBPOENA FOR TRIAL

THE STATE OF FLORIDA

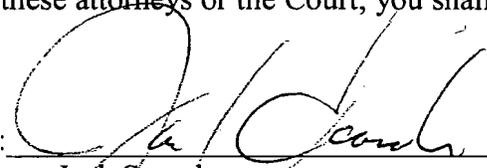
To: James Doyle

YOU ARE COMMANDED to appear before the Honorable Elizabeth Maass, Judge of the Circuit Court, at the Palm Beach County Courthouse, Courtroom 11A, 205 N. Dixie Highway, West Palm Beach, Florida on February 22, 2005 at 9:30 a.m., to testify in this action.

If you fail to appear, you may be in contempt of court.

You are subpoenaed to appear by the following attorneys for Coleman (Parent) Holdings Inc., and unless excused from this subpoena by these attorneys or the Court, you shall respond to this Subpoena as directed.

Dated: February 14, 2005

By: 
Jack Scarola
For the Court

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

Counsel for Plaintiff Coleman (Parent) Holdings Inc.

NOT A CERTIFIED COPY
05 FEB 15 PM 3:56
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 8
KJM

031641

12885

#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

CASE NO: 2003 CA 005045 AI

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.

Defendant.

RETURN OF SERVICE

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Jeffrey T. Shaw, Esq., do hereby affirm that on the 14th day of February, 2005, I served James Doyle individually with a true copy of a Subpoena for Trial in this matter with the date and hour endorsed thereon, pursuant to state statutes.

I am over the age of 18.



JEFFREY T. SHAW
Jenner and Block LLP
777 S. Flagler Drive,
Suite 1200 West Tower
West Palm Beach, FL 33401-6136
561-352-2300

NOT A CERTIFIED COPY

031642

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO.: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

STIPULATION

Morgan Stanley & Co. ("Morgan Stanley") stipulates that the documents listed in Exhibit A are true and correct copies of authentic documents, that those documents were prepared by Morgan Stanley or by Morgan Stanley's accountants pursuant to authorization by Morgan Stanley, and that those documents constitute records of regularly conducted business activity pursuant to Section 90.803(6) of the Florida Evidence Code.

MORGAN STANLEY & CO.

BY: Thomas A. Clare

COLEMAN (PARENT) HOLDINGS INC.

BY: Jerold S. Solovy

Thomas A. Clare
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Dated: February 6, 2005

1285K

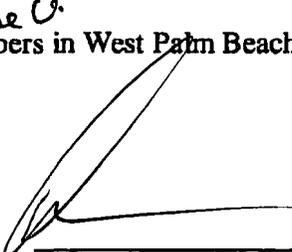
FILED
05 FEB 15 PM 3:24
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 9

031643

ORDER APPROVING STIPULATION

THIS CAUSE, having come before the Court upon the foregoing stipulation, and after having reviewed the agreement of the parties, the Court approves the stipulation.

DONE AND ORDERED in chambers in West Palm Beach, Florida this ^{see U.} 15
day of February, 2005.



Elizabeth Maass
Circuit Judge

✓₃ Copies furnished to:

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, IL 60611

Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas A. Clare, Esq.
655 15th Street, NW, Suite 1200
Washington, DC 20005

Mark C. Hansen, Esq.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036-33401

031644

EXHIBIT A

BATES RANGE
MSC 0112001-0112050
MSC 0112220-0112285
MSC 1112218- 1112219

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031645

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

CASE NO: CA 03-5045 AI

CM

SHANNON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL 3

05 FEB 15 PM 5:02

FILED

MORGAN STANLEY'S SUBMISSION OF TRANSCRIPT
CITATIONS REQUESTED BY THE COURT

Pursuant to the Court's request to provide transcript citations for the statements of Morgan Stanley's counsel at yesterday's hearing, Morgan Stanley submits the following:

Counsel said:

MR. DAVIDSON: We did have testimony on the stand about the process. We know it was uploaded from the storage area. We know that some of the materials from the Brooklyn tapes --

THE COURT: Tell you what, tomorrow morning I want the portion of the transcript you're relying on for that factual assertion.

MR. DAVIDSON: Okay.

(February 14, 2005, Pretrial Conf., Volume III, 302:13-20)

At the end of the hearing, the Court repeated its request for the information.

THE COURT: And then also we're going to isolate for tomorrow morning the portion of the record from today that tells me what those 8,000 pages are, right?

MR. DAVIDSON: Actually, the question I think was that the documents go from the staging area into the archives and that we know that the materials that are sitting there came from the staging areas, because --

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THE COURT: Please understand, I thought there was a representation from you all that that November 18th production was the stuff from the staging area.

MR. DAVIDSON: Yes.

(February 14, 2005, Pretrial Conf., Volume III, 340:12-341:3)

During the evidentiary hearing, witnesses described the process of how tapes are sent to an outside vendor for storage, and then to a different vendor for processing (NDCI), and from there to the staging area to be uploaded into the archive. As Mr. Saunders described the process, “[NDCI] would make a copy of the SDLT, keep one inhouse at NDCI. They would ship us the other copy where my team would load that into an SDLT drive, a drive that could read it. Where we would copy it on to a disk, which is the graphic with the server in light in the box, which is indicating, that’s what we call the staging area. This is where my team’s responsibility would end and the e-mail archives team, the e-mail archive team would work to process the data into the e-mail archive.” (February 14, 2005 Hearing Tr. Volume I, 121:18-122:2 (Robert Saunders).)

Ms Gorman also described the process: “ So as part of the tape restoration process, the Enterprise Computing Group, which is the group that Bob Saunders, for example, is a part of, will get the tapes and load it on a fast disk, which we just refer to as staging. And from there make it available to my team that that we run scripts against that data to do the insertion.” (February 14, 2005 Hearing Tr. Volume I, 49:7-14 (Allison Gorman).) She testified that from the staging area, data then goes into the archive,

MR. JONES: So the staging is data that had been on backup tapes at some point on the archiving and you’re waiting to put it into searchable form?

MS. GORMAN: Yes.

(February 14, 2005, Pretrial Conf., Volume I, 49:15-18)

There was no testimony from any witness that data could get into the archive in any way other than through the staging process.

There is no dispute that Morgan Stanley ran searches of its archive in April of 2004 that resulted in the production of documents in May of 2004. There is also no dispute that Morgan Stanley later ran searches of its archive in November of 2004 that resulted in the production of additional email (the 8,000 pages). Given the above process, the November materials (the 8,000 pages), which came from the archive, would have been material uploaded into the archive, from staging between April and November of 2004.

As for the Brooklyn tapes, Mr. Saunders testified that "my understanding is that we made Arthur Reil aware of the fact that there were some tapes in Brooklyn that had been found. They were sent to NDCI for processing." (February 14, 2005, Pretrial Conf., Volume I, 127:15-18) According to Ms. Gorman's testimony, at least a subset of this data was in staging when she took over for Mr. Reil.

MR. BYMAN: And the Brooklyn found tapes, which were found as of May 6th, 2004, were among the 600 gigabytes of data that you inherited in mid August 2004?

MS. GORMAN: Yes, at least a subset of them.

(February 14, 2005, Pretrial Conf., Volume I, 61:23-62:1)

No more specificity can be provided because, as Ms. Gorman described, once data is in the staging, it is difficult to trace it to any particular tapes:

MR. JONES: Let me ask a different question.

Would there have been a way for the data that was in staging, if somebody had said to you -- one of the questions that were asked by opposing counsel, somebody had said to you: Go into the staging area and from this 600 gigabytes, figure out what part of that comes from Brooklyn tapes, would you have been able to do that?

031652

MS. GORMAN: I don't think so. We lose that association -- the data gets really merged together as it moves through the process, so certain distinctions, like what original DLT tape it came from, get sort of lost in the translation.

(February 14, 2005 Pretrial Conf. Volume I, 79:25-80:¹²~~1~~)
10

NOT A CERTIFIED COPY

031653

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and hand delivery on this 15th day of February 2005.

Jeffrey S. Davidson
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
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Facsimile:(202) 879-5200

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West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

BY: Jeffrey S. Davidson

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
**KELLOGG, HUBER, HANSEN,
TODD, EVANS & FIGEL, P.L.L.C.**
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

*Counsel for
Morgan Stanley & Co. Incorporated*

031654

SERVICE LIST

Jack Scarola
**SEARCY, DENNEY, SCAROLA,
BARNHARDT & SHIPLEY, P.A.**
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
c/o Mafco Holdings, Inc.
777 S. Flager Drive
Suite 1200 – West Tower
West Palm Beach, FL 22401-6136

NOT A CERTIFIED COPY

031655

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

LEGAL ARGUMENT IN SUPPORT OF MORGAN STANLEY'S PRIVILEGE LOG

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its attorneys, respectively submits this legal argument in support of Morgan Stanley's claim of privilege over certain documents identified on its February 8, 9, and 10, 2005 privilege logs.

Coleman (Parent) Holdings Inc. ("CPH") has challenged Morgan Stanley's privilege assertions regarding communications to and from third-party Information Technology ("IT") professionals retained for the purpose of restoring e-mails relevant to this litigation. These documents are quintessential examples of the types of communications protect by Florida Evidence Code 90.502 and Florida Rules of Civil Procedure 1.280(b)(3), and Morgan Stanley's claim of privilege should be upheld.

First, communications between Morgan Stanley's in-house and IT professionals which contain counsel's thoughts, impressions, and legal advice regarding the e-mail restoration process are protected under Florida's attorney-client privilege as codified in section 90.502 of the Florida Evidence Code. Section 90.502(2) states:

A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications when such other person learned of the communications because they were made in the rendition of legal services to the client.

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FILED
05 FEB 11 PM 4:55
HAROLD R. BOCK
CLERK OF COURT
PALM BEACH COUNTY, FLORIDA
CIRCUIT JUDGE
031656

The communications by Morgan Stanley's in-house counsel to the IT professionals deal with e-mail restoration and were made by Morgan Stanley's in-house counsel in connection with the provision of legal services to Morgan Stanley. Thus, such communications fit squarely within the confines of section 90.502 of the Florida Evidence Code.

Second, the communications at issue are also protected by Florida's work product privilege as codified in Rule 1.280(b)(3). It is of no moment that the IT professionals are outside consultants rather than Morgan Stanley employees. "Documents and tangible things prepared in anticipation of litigation or for trial by or for a party or by or for that party's representative, including his attorney, *consultant*, surety, indemnitor, insurer or agent, are a party's work product and, therefore, subject to qualified immunity from discovery." *Procter & Gamble Co. v. Swilley*, 462 So. 2d 1188, 1192-93 (Fla. 1st DCA 1985) (emphasis added) (citing Fla. R. Civ. P. 1.280 and *Burlington Industries v. Exxon Corp.*, 65 F.R.D. 26, 41-42 (D. Md. 1974) (stating that work product includes as protected material those materials which are prepared by non-attorneys so long as the preparation is in anticipation of litigation or preparation for trial, and noting that documents should not be denied the protection of work product merely because they documents include technical data)).

The e-mails and spreadsheets for which Morgan Stanley claims privilege were prepared either by or for IT professionals in the face of ongoing litigation. Consequently, such documents are protected by the work product privilege. *Lifshutz v. Citizens & Southern National Bank of Florida*, 626 So. 2d 252 (Fla. 4th DCA 1993) (holding that materials contained in a party's investigator-consultant's report were subject to work product privilege if claims by or against party were pending at time consultant gathered information in question, litigation was anticipated with respect to those claims, and information was gathered in anticipation of those claims)

The documents at issue here, communications between in-house counsel and IT professionals regarding ongoing litigation, clearly fall within the purview of Florida's rules regarding privilege. Morgan Stanley's claim of privilege should be upheld.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by hand delivery on this 15th day of February, 2005.

Jeffrey S. Davidson
Lawrence P. Bemis (FL Bar No. 618349)
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Washington, D.C. 20005
Telephone: (202) 879-5000
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Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
**KELLOGG, HUBER, HANSEN,
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BY: 

*Counsel for Morgan Stanley
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031658

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

KJM

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PALM BEACH COUNTY CLERK
CIVIL DIVISION, FL

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**MORGAN STANLEY'S MOTION FOR SANCTIONS AND
ADDITIONAL DISCOVERY CONCERNING PLAINTIFF'S IMPROPER
CONCEALMENT OF THE VALUE OF THE SUNBEAM WARRANTS**

CPH settled its claims against Sunbeam in August 1998 for Sunbeam warrants. A critical element of any damages assessment in this case (assuming CPH can prove liability) is the offsetting value of these Sunbeam warrants. CPH withheld documents on this issue, despite repeated discovery requests, and maintained that the warrants never had any value. CPH ultimately forced Morgan Stanley to depose a CPH corporate representative, who revealed that CPH valued the warrants at .¹ Under dogged questioning, CPH's witness repeatedly testified that this was the "only" pre-Sunbeam bankruptcy valuation CPH ever calculated. As pretrial discovery continued and closed, CPH stood by this lone valuation.

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On Sunday, February 20, 2005, CPH finally produced documents showing that its parent MAFCO's internal financial statements estimated that the Sunbeam warrants were, in fact, valued at _____ when the warrants were issued in August 1998. CPH's prior concealment of this fact began to unravel when, on February 17, the Court ordered CPH to produce all documentation on the valuation of its Sunbeam securities. In response to that Order, CPH produced a collection of heavily redacted financial statements and ledger entries. After Morgan Stanley challenged the redactions and pressed CPH for further disclosure, CPH produced what it had "redacted" in its initial production: the _____ valuation appearing on MAFCO's internal financial statements for the years ending 1998 and 1999.

Morgan Stanley vigorously pursued this evidence for over a year and a half. And CPH withheld full disclosure at every turn, even after the Court ordered production on February 17. CPH meanwhile represented that it had provided Morgan Stanley everything and that _____ was the most CPH had ever valued the warrants. By concealing the _____ valuation, CPH was prepared to mislead this Court and Morgan Stanley to the tune of _____ in applying an offset — even more given the effect of any pre- and post-judgment interest that CPH has indicated it will request. Sanctions are indeed warranted for this willful concealment and non-disclosure of relevant, material evidence. Morgan Stanley therefore requests that the Court impose monetary and evidentiary sanctions against CPH and order CPH to produce any and all additional documentation that it may be withholding, along with a certificate of compliance, and to re-open pertinent depositions to explain the reasons for this concealment.

In support of its position, Morgan Stanley states as follows:

I. MORGAN STANLEY SOUGHT DOCUMENTS ON THE SUNBEAM WARRANTS' VALUATION, AND CPH RAISED NO SPECIFIC OBJECTION.

1. On July 15, 2003, Morgan Stanley served its First Request for Production of Documents. Request No. 39 sought “[a]ll documents referring or relating to the settlement agreement between CPH and Sunbeam.” (See 7/15/03 Morgan Stanley’s 1st Req. for Prod., Req. 39.)

2. On August 14, 2003, without reciting any specific objections, CPH responded that it would produce documents responsive to Request No. 39. (See 8/14/03 CPH’s Resp. to Morgan Stanley’s 1st Req. for Prod., Resp. 39 (Ex. 2).)

3. On October 13, 2003, Morgan Stanley served its Third Request for Production of Documents. Request No. 2 sought “[a]ll documents referring or relating to any consideration received by CPH in exchange for CPH’s promise not to sue Sunbeam in connection with the Coleman acquisition or the Settlement Agreement between Sunbeam and CPH, including without limitation all documents related to the *warrants* received from Sunbeam pursuant to the Settlement Agreement ... [and] relating to the *valuation of the warrants* received by CPH pursuant to the Settlement Agreement” (See 10/13/03 Morgan Stanley’s 3d Req. for Prod., Req. 2 (emphasis added).)

4. On November 12, 2003, again without reciting any specific objections, CPH responded that it would produce documents responsive to Request No. 2. (See 11/12/03 CPH’s Resp. to Morgan Stanley’s 3d Req. for Prod. at 2-3 (Ex. 3).)

5. On January 5, 2004, in response to Morgan Stanley’s request to clarify the scope of CPH’s production, CPH confirmed that it “produced all non-privileged documents responsive to [Morgan Stanley’s Third Request for Production of Documents]” and that it did not limit its

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request to “CPH” documents but rather included “all Mafco documents.” (See 1/5/04 M. Brody Letter to K. DeBord (Ex. 4).)

II. AFTER CPH FAILED TO PRODUCE ANY VALUATION OF ITS WARRANTS, MORGAN STANLEY CHALLENGED THE COMPLETENESS OF CPH’S PRODUCTION AND SOUGHT A RULE 1.310(b)(6) DEPOSITION.

6. On January 23, 2004, Morgan Stanley informed CPH that CPH’s production related to Request Nos. 2 and 39 was “woefully inadequate, despite assurances that CPH ‘will produce documents responsive to [these] requests.’” (See 1/23/04 K. DeBord Letter to M. Brody (Ex. 5).) Morgan Stanley noted that “CPH has failed to produce any documents that indicate how CPH or MAFCO recorded the warrants received as part of the Sunbeam Settlement Agreement in their financial records or Statements” and asked CPH to “produce documents responsive to these requests by January 30, 2004.” (*Id.*)

7. On January 29, 2004, CPH stated that it was “puzzled” by Morgan Stanley’s claim that it had failed to produce documents responsive to the two requests and stated that it will “continue to search for responsive documents, and will produce any additional, non-privileged documents that we locate.” (1/29/04 M. Brody Letter to K. DeBord (Ex. 6).)

8. CPH never produced any further documentation, so Morgan Stanley ultimately served a Rule 1.310(b)(6) deposition notice on “[t]he value of the warrants and other consideration that CPH received from Sunbeam pursuant to the August 12, 1998 Settlement Agreement between CPH and Sunbeam.” (See 11/3/04 Morgan Stanley’s Am. Notice of Dep., 1st Topic (Ex. 7).)

III. CPH’S CORPORATE DESIGNEE TESTIFIED THAT THE ONLY VALUATION EVER PERFORMED FOR THE WARRANTS WAS FOR

9. On November 18, 2004, CPH produced Lawrence Winoker, Senior Vice President, Controller and Treasurer of MacAndrews & Forbes Holdings, Inc., as the corporate

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designee on the topic of CPH's valuation of the Sunbeam warrants. (11/18/04 Winoker Dep. at 5:17-6:10, 11:15-12:3 (Ex. 8).) Mr. Winoker's duties include reviewing MAFCO's internal financial statements, and these were his duties at the time of the CPH-Sunbeam settlement in August 1998. (*Id.* at 19:21-22:3.)

10. Mr. Winoker testified that

(*Id.* at 51:2-22.) He further testified, in his capacity as a corporate representative, that

(*Id.* at 52:15-25.)

11. Morgan Stanley's counsel asked Mr. Winoker to clarify whether, in December 1998, CPH wrote down the value of the warrants from the time CPH received the warrants in August 1998. He responded that

(*Id.* at 54:10-55:4.)² According to CPH's

corporate designee,

² Mr. Winoker defined
he testified that

(*Id.* at 79:11-19.) And

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(Continued...)

(*Id.* at 60:19-61:1; *see also id.* at 68:21-69:2 (
); *id.* at 69:16-71:22 (
); *id.* at 73:22-74:6
 (
); *id.* at 77:4-17).)

12. On November 22, 2004, Morgan Stanley, in a follow-up letter, requested documentation of the valuation referred to in Mr. Winoker's deposition. (*See* 11/22/04 K. DeBord Letter to M. Brody (Ex. 9).)

13. Also, a month before the deposition, on October 25, 2004, Morgan Stanley had served its Eighth Request for Production of Documents. Request No. 4 sought "[a]ll documents concerning the value of the warrants and other consideration that CPH received from Sunbeam pursuant to the August 12, 1998 Settlement Agreement between CPH and Sunbeam." (*See* 10/25/04 Morgan Stanley's 8th Req. for Prod., Req. 4 (Ex. 10).)

(*Id.* at 80:16-81:10.)

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14. On November 24, 2004, CPH produced a two-page database print-out indicating that . (11/24/04 CPH Resp. & Objs. to Morgan Stanley’s 8th Req. for Prod. (attaching CPH2011835-36) (Ex. 10).) In its responses and objections served therewith, CPH stated that it “will produce documents reflecting the journal entries that show how CPH recorded the warrants on CPH’s books and records.” (*Id.* at Resp. 4.) CPH also, for the first time, raised a “vagueness” objection to the terms “value” and “other consideration.” (*Id.*)

IV. THE COURT ORDERED CPH TO PRODUCE ALL VALUATIONS OF ITS SUNBEAM INVESTMENT.

15. On February 15, 2005, Morgan Stanley filed a Motion to Compel Production of Documents, seeking internal financial statements and general ledger entries reflecting MAFCO’s valuation of its Sunbeam investment. (2/15/05 Morgan Stanley’s Mot. to Compel Prod. of Docs.)

16. On February 17, 2005, the Court ordered CPH to produce all documents reflecting its internal valuation of Sunbeam stock:

The Motion is hereby Granted. Plaintiffs shall produce for inspection and copying by MS & Co. by 12 noon Feb. 18, 2005 all documents within the care, custody, or control of it or any related entity reflecting the accounting value, book value, balance sheet value, or internal valuation of the Sunbeam stock received by CPH in the transaction, produced during or reflecting a value at any time between the date the transaction closed and the date Sunbeam first sought bankruptcy protection.

(2/17/05 Order on Morgan Stanley’s Mot. to Compel Prod. of Docs.)

V. CPH INITIALLY “REDACTS” AND THEN, UNDER PRESSURE FROM MORGAN STANLEY, REVEALS THAT IT VALUED THE WARRANTS AT

17. CPH already had the documents at issue in their possession and could have produced them immediately. (2/1705 Pretrial Conference Hr’g Tr. Vol. 8 at 996:23-997:2.) But

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CPH waited until the last minute before the Friday deadline to produce the documents — on the eve of a three-day Court holiday weekend. CPH ultimately produced 20 pages of heavily redacted documents. (2/18/05 M. Brody Letter to T. Clare (attaching CPH2012092-111) (Ex. 11).)

18. Morgan Stanley pressed for more disclosure. (2/18/05 T. Clare Letter to M. Brody (Ex. 12).) On February 20, 2005, CPH produced additional heavily redacted documents — half of which (38 out of 81 pages) were nothing more than a blank page containing the single word “REDACTED.” (2/20/05 J. Solovy Letter to T. Clare (attaching CPH2012112-193) (Ex. 13).) Buried in this second production were various duplicate documents that were produced on February 18. But, this time, two of the re-produced documents revealed a previously-redacted

(Compare CPH2012130-31 (unredacted version revealing warrant valuation) with CPH2012110-11 (redacted version concealing warrant valuation).) The valuation appears on financial statements dated December 31, 1998, and December 31, 1999. (See CPH2012130-31.)

19. The documents Bates-stamped CPH2012130 and CPH2012131 contain an admission that CPH spent over a year and a half concealing and contradicting:

(CPH2012130-31; see MS 96 (Ex. 14).) Notably, this document — or at least the information contained therein — was apparently reviewed by Ronald O. Perelman himself. (See CPH2012130 () .)

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20. Incidentally, on the very same day Mr. Winoker first disclosed the figure in deposition testimony, Mr. Perelman testified under oath that the Sunbeam warrants were valued “close to zero” at the time of the settlement:

Q. Did you attempt to value the warrants or the settlement as a whole at the time you entered into the settlement with Sunbeam?

A. Yes.

Q. What did you value the warrants at?

A. Close to zero.

Q. You settled MacAndrews & Forbes, or, as the case may be, Coleman (Parent) Holdings’ claims against Sunbeam for next to zero?

A. Yes. There was nothing to get.

(11/18/05 Perelman Dep. at 539:20-540:7 (Ex. 15).)

21. CPH’s redaction of the valuation appears to be a conscious decision to conceal key evidence that, based on all prior discovery requests and the Court’s Order compelling production, Morgan Stanley was certainly entitled to receive. The fact that CPH was able to produce this evidence so easily in response to the Court’s Order compelling production is telling. Indeed, notations in the production indicate that CPH printed the documents from a database as early as February 9, 2005, a week before Morgan Stanley even filed its motion to compel. (See CPH2012092 (“Date 02/09/2005”); CPH2012095-097, CPH2012100-101, CPH2012108 (same).)

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WHEREFORE, Morgan Stanley requests that the Court sanction CPH for its failure to produce non-privileged, responsive, and highly material documents — despite its repeated representations to that it had produced all such documents — by precluding CPH from offering any evidence or argument that the warrants it received in the Sunbeam settlement were worth less than . See Fla. R. Civ. P. 1.380(b)(2)(B) (allowing a court to bar the offending party from introducing designated matters into evidence after the violation of an order); see also *Rose v. Palm Beach County*, 361 So. 2d 135, 136 n.3 (Fla. 1978) (recognizing courts’ “inherent powers” to administer justice).

Morgan Stanley further requests monetary sanctions, including costs and attorneys’ fees in an amount to be determined later, for all time devoted to CPH’s discovery violations in this instance. See *id.* 1.310(b)(2) (authorizing courts to require the payment of reasonable expenses, including attorneys’ fees, as a sanction for discovery abuse); see also *Weiss v. Rachlin & Cohen*, 745 So. 2d 527 (Fla. 3d DCA 1999) (affirming imposition of sanctions where party failed to produce accounting records despite years of requests); *Nordyne, Inc. v. Florida Mobile Home Supply, Inc.*, 625 So. 2d 1283, 1288 (Fla. 1st DCA 1993) (holding that monetary sanctions are appropriate where a party deliberately fails to produce relevant damages documents that are within the perimeters of the other party’s production requests).

Morgan Stanley further requests that the Court (i) order CPH to produce immediately all documents (unredacted other than for privilege) pursuant to all document requests referenced herein seeking documentation of the valuation of CPH’s Sunbeam warrants and Sunbeam stock; (ii) order CPH to certify that it has provided a full and complete document production in compliance with the Court’s Order; (iii) permit Morgan Stanley to inspect CPH’s responsive documents in their native electronic form; (iv) order CPH to produce a corporate representative

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to be deposed on the issue of CPH's valuation of the Sunbeam warrants, including the previously concealed valuation; and (v) re-open the deposition of Mr. Perelman for the purpose of examining what he knew about the valuation of the warrants, as reflected by handwritten notations on the belatedly-produced documents.

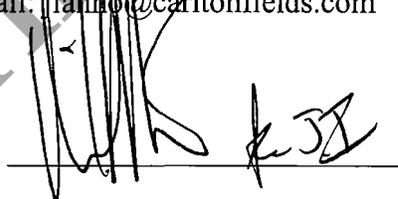
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 22nd day of February, 2005.

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Exhibit 1

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EXHIBIT CONFIDENTIAL

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Exhibit 2

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REQUEST NO. 35: All documents you have received from the SEC or any other state or federal governmental or regulatory body concerning Sunbeam or MS & Co.

RESPONSE: CPH objects to this request on the grounds that it is overbroad and seeks documents that are not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection or the foregoing General Objections, CPH refers Morgan Stanley to CPH's response to Request No. 33.

REQUEST NO. 36: All discovery requests or subpoenas served on you in any of the Litigations, Arbitrations, or SEC Administrative Proceedings.

RESPONSE: CPH objects to this request to the extent that it seeks the same documents that are sought in Request No. 33. CPH refers Morgan Stanley to CPH's response to Request No. 33.

REQUEST NO. 37: All responses and/or objections that you made in response to a discovery request or subpoena served on you in any of the Litigations, Arbitrations or SEC Administrative Proceedings, including without limitation responses to interrogatories and privilege logs.

RESPONSE: CPH objects to this request to the extent that it seeks the same documents that are sought in Request No. 32. CPH refers Morgan Stanley to CPH's response to Request No. 32.

REQUEST NO. 38: All communications concerning any discovery request or subpoena served on you in any of the Litigations, Arbitrations, or SEC Administrative Proceedings.

RESPONSE: Subject to and without waiving the Initial Objections, CPH will produce documents responsive to this request.

REQUEST NO. 39: All documents referring or relating to the settlement agreement between CPH and Sunbeam.

RESPONSE: Subject to and without waiving the foregoing Initial Objections, CPH will produce documents responsive to this request.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 14th day of August, 2003.

Dated: August 14, 2003

COLEMAN (PARENT) HOLDINGS INC.

By: Deirdre Connell
One of Its Attorneys

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Exhibit 3

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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

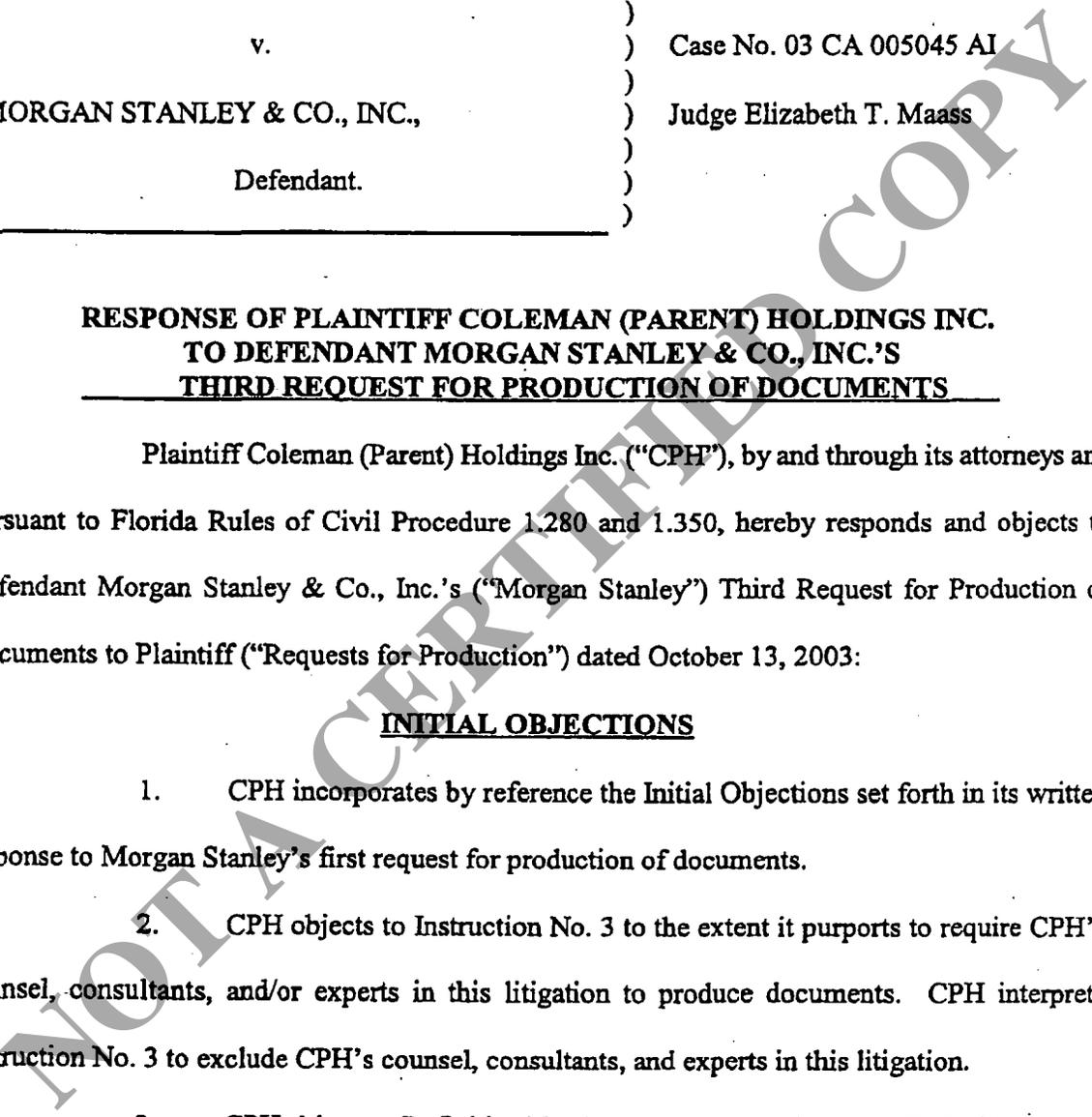
COLEMAN (PARENT) HOLDINGS INC.,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 03 CA 005045 AI
)	
MORGAN STANLEY & CO., INC.,	)	Judge Elizabeth T. Maass
)	
Defendant.)	
)	

**RESPONSE OF PLAINTIFF COLEMAN (PARENT) HOLDINGS INC.
TO DEFENDANT MORGAN STANLEY & CO., INC.'S
THIRD REQUEST FOR PRODUCTION OF DOCUMENTS**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by and through its attorneys and pursuant to Florida Rules of Civil Procedure 1.280 and 1.350, hereby responds and objects to Defendant Morgan Stanley & Co., Inc.'s ("Morgan Stanley") Third Request for Production of Documents to Plaintiff ("Requests for Production") dated October 13, 2003:

INITIAL OBJECTIONS

1. CPH incorporates by reference the Initial Objections set forth in its written response to Morgan Stanley's first request for production of documents.
2. CPH objects to Instruction No. 3 to the extent it purports to require CPH's counsel, consultants, and/or experts in this litigation to produce documents. CPH interprets Instruction No. 3 to exclude CPH's counsel, consultants, and experts in this litigation.
3. CPH objects to Definition No. 6 as vague and ambiguous. CPH will interpret defendant's definition of Mafco to mean "MacAndrews and Forbes Holdings Inc. and any of its officers, directors, former or present employees, representatives and agents."



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4. CPH objects to Definition No. 10 as vague, ambiguous, and overbroad insofar as it purports to include "where applicable" a party's "corporate parent, subsidiaries, or affiliates." CPH will interpret the terms "plaintiff" and "CPH" to mean CPH, which is the only plaintiff to this lawsuit.

5. CPH objects to Definition No. 16 as overbroad and inconsistent with the statement in Definition No. 10: "This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation." Mafoo is not a party in this lawsuit. Accordingly, CPH will interpret the terms "You" and "Your" to mean CPH.

RESPONSES AND FURTHER OBJECTIONS

REQUEST NO. 1: All documents from the personnel files of any CPH or MAFCO employee or former employee in so far as they relate to Sunbeam's acquisition of Coleman; to Coleman Company's financial performance; or to any employee's responsibility for or performance of due diligence for any transaction.

RESPONSE: CPH objects to Request No. 1 on the ground that it seeks information related to employees, current and former, who were not involved in the transaction by which Sunbeam acquired CPH's interest in The Coleman Company, Inc. ("Coleman"). CPH further objects to Interrogatory No. 1 to the extent that it seeks information concerning Coleman's financial performance, which is not relevant to the litigation nor reasonably calculated to the discovery of admissible evidence. Subject to and without waiving the foregoing Initial Objections and Further Objections, CPH will produce documents responsive to this request.

REQUEST NO. 2: All documents referring or relating to any consideration received by CPH in exchange for CPH's promise not to sue Sunbeam in connection with the Coleman acquisition or the Settlement Agreement between Sunbeam and CPH, including without limitation all documents related to the warrants received from Sunbeam pursuant to the Settlement Agreement, all documents related to any exercise of those warrants; documents relating to the negotiation of the Settlement Agreement; documents relating to the valuation of the warrants received by CPH pursuant to the Settlement Agreement, including any reports issued by The Blackstone Group; and for the period June 1, 1998 to the present, documents relating to statements made by Sunbeam or CPH/MAFCO

to any public agency or body, asking that the Settlement Agreement be implemented without seeking shareholder approval.

RESPONSE: Subject to and without waiving the foregoing Initial Objections, CPH states that it will produce documents responsive to this request.

REQUEST NO. 3: All documents relating to MAFCO/CPH's acquisition of the Coleman Company, Inc.

RESPONSE: CPH objects to Request No. 3 on the grounds that it seeks information that is not relevant to the litigation nor reasonably calculated to lead to the discovery of admissible evidence, in part because The Coleman Company, Inc. ("Coleman I") acquired by Mafco/CPH is not the same company as The Coleman Company, Inc. ("Coleman II") that Sunbeam acquired. CPH further objects to this request on the ground that Coleman I was acquired by public tender offer in 1989 and the request is therefore overbroad and unduly burdensome because it requires CPH to locate and produce "all documents" associated with a public transaction that took place approximately 14 years ago.

REQUEST NO. 4: Documents sufficient to show the quarterly revenue, sales, and profits or losses of Coleman Company from the date that it was acquired by MAFCO/CPH until the date that it was acquired by Sunbeam.

RESPONSE: CPH objects to Request No. 4 on the grounds that it seeks information that is not relevant to the litigation nor reasonably calculated to lead to the discovery of admissible evidence, in part because The Coleman Company, Inc. ("Coleman I") acquired by Mafco/CPH is not the same company as The Coleman Company, Inc. ("Coleman II") that Sunbeam acquired. CPH further objects to Request No. 4 as overbroad and unduly burdensome, particularly because it seeks approximately 10 years worth of documents, many of which are publicly available from the Securities and Exchange Commission.

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documents reflecting communications between and among Ronald Perelman, Howard Gittis, Donald Drapkin, Barry Schwartz, James Maher, William Nesbitt, Todd Slotkin, Jerry Levin, Paul Shapiro, Bobby Jenkins, Lorelei Borland, Irwin Engelman, Bruce Slovin, Joram Salig, James Conway, and other Coleman and/or MAFCO employees, on the one hand, and Albert Dunlap, Russell Kersh, David Fannin, or other Sunbeam employees, on the other, for the period November 1, 1997 to June 13, 1998, when Mr. Dunlap was fired by Sunbeam. Subject to and without waiving the foregoing Initial Objections and Further Objections and consistent with its interpretation of this request, CPH will produce documents responsive to this request.

REQUEST NO. 17: All documents referring or relating to the restatement of Sunbeam's 1996, 1997 or 1998 financial statements and the related work performed by any Sunbeam employee, advisor or auditor.

RESPONSE: CPH objects to Request No. 17 on the grounds that it is vague and ambiguous insofar as it fails to define "the related work" to Sunbeam's restated financial statements. Subject to and without waiving the foregoing Initial Objections and Further Objections, CPH will produce documents referring and relating to the restatement of Sunbeam's 1996, 1997, and 1998 first quarter financial statements.

Dated: November 12, 2003

COLEMAN (PARENT) HOLDINGS INC.

By: Deirdre Connell
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Deirdre E. Connell, hereby certify that a true and correct copy of the foregoing has been served upon the parties below via facsimile and U.S. Mail on this 12th day of November, 2003.

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Deirdre E. Connell

Document Number: 1000472

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Exhibit 4

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JENNER & BLOCK

January 5, 2004

By Telecopy

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Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Kathryn:

I write in response to your letter of December 22, 2003 regarding CPH's responses to MS & Co.'s Third Request for Production of Documents.

Instruction No. 3: CPH did not exclude from its production any "otherwise responsive materials generated by or relied upon by testifying experts." Please explain the basis for your contention that we are obligated to produce information or materials generated by consulting experts.

Definition 16: CPH has produced all non-privileged documents responsive to your requests. Given the persistent course taken by Morgan Stanley of limiting definitions in order to exclude documents under its control from production, CPH's objection to the definition of "you" assigned by Morgan Stanley in its request was appropriate. Despite this objection, CPH has produced all non-privileged documents available to it, which includes all Mafco documents. CPH expects that Morgan Stanley will amend its prior responses and do the same.

Request 1: Your letter is correct that we are at an impasse. CPH does not intend to withdraw its objections.

Requests 3 and 4: CPH's objections are well grounded. Your request that we locate and produce documents relating to a transaction from 14 years ago asks CPH to find the proverbial needle in a haystack relating to a matter wholly irrelevant to these proceedings. Consequently, CPH's objection is appropriate. Morgan Stanley's request for financial information is objectionable due to its scope in time and because Coleman Co. Inc.'s financial information is publically available. CPH already has produced several financial statements of Coleman Co. Inc. Moreover, despite your contention that the distinction between "Coleman I" acquired by Mafco/CPH 14 years ago and the "Coleman II" sold to Sunbeam is irrelevant, the differences between them confound any attempt to group them together and make your request more

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Kathryn R. DeBord, Esq.
January 5, 2004
Page 2

burdensome. If Morgan Stanley is more specific about which financial statements it is interested in, and why its requests are relevant to the issues in this case, CPH will reconsider the request.

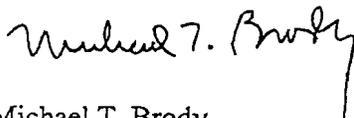
Request 5: CPH has produced all non-privileged documents responsive to this request under its control, including documents prepared by Mafoo, CPH and/or Coleman. Again, we request that Morgan Stanley amend its responses to and do the same.

Requests 6 & 10: CPH has not withheld any non-privileged documents in its possession or control responsive to these requests.

Request 11: Your clarification of this request has narrowed it considerably. As redrafted, CPH is unaware of any non-privileged documents responsive to this request that have not already been produced.

Requests 13, 14 & 15: Beyond what has already been produced, CPH is unaware of any non-privileged documents responsive to these requests.

Very truly yours,



Michael T. Brody

MTB:cjg

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

#1019846

NOT A CERTIFIED COPY

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Exhibit 5

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KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

Kathryn R. DeBord
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January 23, 2004

By Facsimile

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
MSSF v. MacAndrews & Forbes Holdings Inc. et al.

Dear Mike:

I write in regard to CPH's production of documents pursuant to Request No. 39 of MS & Co.'s First Request for Production and Request No. 2 of MS & Co.'s Third Request for Production.

CPH's production related to these requests has been woefully inadequate, despite assurances that CPH "will produce documents responsive to [these] request[s]." For example, no documents have been produced that relate to the negotiations of the Sunbeam Settlement Agreement. Likewise, CPH has failed to produce any documents that indicate how CPH or MAFCO recorded the warrants received as part of the Sunbeam Settlement Agreement in their financial records or statements.

Such documents would invariably fall under Request No. 39 of MS & Co.'s First Request for Production ("All documents referring or relating to the settlement agreement between CPH and Sunbeam."), and Request No. 2 of MS & Co.'s Third Request for Production ("all documents related to the warrants received from Sunbeam pursuant to the Settlement Agreement"). Please produce documents responsive to these requests by January 30, 2004.

Sincerely,



Kathryn R. DeBord

Chicago

London

Los Angeles

New York

San Francisco

16div-028854

032753

KIRKLAND & ELLIS LLP

Michael Brody, Esq.
January 23, 2004
Page 2

cc: Joseph Ianno, Jr., Esq. (by facsimile)
Deirdre Connell, Esq. (by facsimile)
Jerold S. Solovy, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)

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Exhibit 6

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JENNER & BLOCK

January 29, 2004

By Telecopy

Kathryn R. DeBord, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611-7605
Tel 312 222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

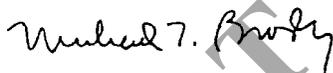
Dear Kathryn:

I write in response to your January 23, 2004 letter regarding CPH's production of documents relating to the settlement agreement between CPH and Sunbeam (Request No. 39 of Morgan Stanley's First Request for Production), and documents relating to the warrants received from Sunbeam pursuant to that settlement (Request No. 2 of Morgan Stanley's Third Request for Production).

We are puzzled by your claim that "no documents have been produced that relate to the negotiations of the Sunbeam Settlement Agreement." CPH has produced numerous documents relating to those negotiations, the warrants, and the ultimate settlement. *See, e.g.*, CPH 1409305-1409344, CPH 1394092-1394107, CPH 1410558-1410566, CPH 1410567-1410599, and CPH 1409401-1409427. In addition, CPH's privilege log identifies several responsive documents that are privileged. *See, e.g.*, Privileged Documents 113, 241, 265, 268, 335, and 341.

It is our understanding that we have produced non-privileged documents that are responsive to Request Nos. 39 and 2. That said, however, we will continue to search for responsive documents, and will produce any additional, non-privileged responsive documents that we locate.

Very truly yours,



Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

NOT A TRUE COPY

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Exhibit 7

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032757

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO. INC.,

Defendant.

CASE NO: CA 03-5045 AI

AMENDED NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") will take the deposition of Coleman (Parent) Holdings, Inc. ("CPH") through a CPH representative or representatives with knowledge on the following topics, pursuant to Florida Rules of Civil Procedure 1.280 and 1.310, on the dates and times set forth below. The oral examination will take place at Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, NY 10022-4611. The deposition will be taken before a person authorized to administer oaths and recorded by stenographic and videographic means. The video operator will be Esquire Deposition Services of 216 E. 45th Street in New York, New York.

Topic	Representative	Date & Time
The value of the warrants and other consideration that CPH received from Sunbeam pursuant to the August 12, 1998 Settlement Agreement between CPH and Sunbeam.	Lawrence Winoker	November 18, 2004, at 1:30 pm
All gains and/or losses experienced by CPH as a result of CPH's investment in The Coleman Company, including the value of all payments, consideration, and other financial benefits received by CPH, directly or indirectly, as a result of that investment.		November 10, 2004, at 9:30 am
CPH's decision not to hedge its position in the Sunbeam stock that CPH received from Sunbeam in connection with the February 27, 1998.	Glenn Dickes	November 18, 2004, at 9:30 am

Topic	Representative	Date & Time
The authenticity, source, creation, use, maintenance, and business purpose of documents produced and/or authored by CPH and/or MacAndrews & Forbes bearing the bates numbers identified in Attachment A.		November 10, 2004, at 9:30 am
The balances due and available under any Mafco Finance Corp. (or Marvel IV Holdings Inc.) Credit Agreement or Mafco Holdings Inc. Guaranty (including any Amendments or Restatements) in the first and second quarters of 1998.		November 10, 2004, at 9:30 am

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 3d day of November, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
Michael C. Occhuzzo
KIRKLAND & ELLIS LLP
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Telephone: (202) 879-5000
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E-mail: jianno@carltonfields.com

BY: 
Michael C. Occhuzzo

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
**KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.**
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Counsel for:
Morgan Stanley & Co. Incorporated.

032760

SERVICE LIST

Jack Scarola
**SEARCY, DENNEY, SCAROLA,
BARNHARDT & SHIPLEY, P.A.**
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

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Attachment A

MS	Ex. No.	Bates
MS	2	CPH 2000000-20000007
MS	5	CPH 2000039-20000040
MS	6	CPH 2000044
MS	11	MSC 0016944-0016945
MS	14	CPH 0090040-0090045
MS	15	CPH 0084310-0084311
MS	31	CPH 0041641-0041648
MS	39	CPH 1075408
MS	40	MSC 0000001-0000175
MS	41	MSC 0028858
MS	42	CPH 0129975-0129977
MS	62	CPH 1433326-1433329
MS	67	
MS	68	
MS	69	CPH 1341551-1341574
MS	70	CPH 1399303-1399316
MS	73	CPH 1421226-1421248
MS	75	CPH 1401525-1401534
MS	77	CPH 1425610-1425629
MS	78	MSC 0026587-0026588
MS	79	CPH 0467007
MS	80	CPH 1426289-01426296
MS	81	CPH 1421814-1421817
MS	82	CPH 1406962-1406964
MS	83	CPH 1427250-1427253
MS	84	CPH 1324756-1324774
MS	86	CPH 2000687-2000707
MS	87	CPH 1422243-1422246
MS	88	CPH 0634056-0634064
MS	89	CPH 0349166-0349167
MS	90-A	
MS	90-B	
MS	90-C	
MS	90-D	
MS	90-E	
MS	90-F	
MS	90-G	
MS	90-H	
MS	90-I	
MS	90-J	
MS	90-K	

MS	Ex. No.	Bates
MS	90-L	
MS	90	
MS	91	CPH 0024757
MS	92	CPH 1429803-1429805
MS	93	MSC 0007947-0008010
MS	94	CPH 1428774-1428775
MS	95	CPH 1429806-1429807
MS	96	CPH 2000731-2000763
MS	97	CPH 1308865-1308870
MS	100	CPH 0282212-0282227
MS	102	CPH 0171292-0171296
MS	103	CPH 1402232-1402234
MS	104	CPH 2000144-2000149
MS	105	CPH 1426299-1426303
MS	106	CPH 1425922-1425931
MS	107	CPH 2000086-2000095
MS	108	CPH 1120631-1120659
MS	112	CPH 1401219-1401238
MS	113	CPH 0634065-0634075
MS	114	CPH 1344526-1344542
MS	115	MSC 0063805-0063811
MS	116	CPH 0014850
MS	117	MSC 0008011-0008066
MS	118	CPH 0634065-0634085
MS	119	CPH 1315399-1315409
MS	121	CPH 2005974-2005978
MS	122	CPH 1433326-1433329
MS	123	CPH 2000848
MS	124	CPH 2000037
MS	125	CPH 2000041
MS	126	CPH 2000044
MS	127	DPW 0014210-0014229
MS	128	DPW 0014376-0014398
MS	129	DPW 0014143-0014144
MS	130	CPH 1406746-1406765
MS	131	CPH 1426091
MS	132	CPH 1414669-1414713
MS	133	CPH 0642925-0642932
MS	135	CPH 1325201-1325202
MS	137	CPH 1393114; 1327092
MS	138	CPH 1327714-1327721

032762

MS	Ex No.	Bates
MS	165	CPH 1426297-1426303
MS	167	CPH 1011319-1011351
MS	168	CPH 1433889-1433890
MS	169	CPH 1402232-1402235
MS	170	CPH 1429981-1429983
MS	171	CPH 2000708-2000715
MS	172	CPH 1429974-1429977
MS	173	MSC 0033256-0033263
MS	176	MSC 0043213-0043216
MS	180	CPH 1408948-1408949
MS	186	CPH 1324775-1324850
MS	187	
MS	188	CPH 1316960-1316962
MS	190	CPH 1406986
MS	191	CPH 1418025
MS	192	CPH 1408944
MS	195	CPH 2000635-2000686
MS	196	CPH1393830-1393831
MS	197	CPH 1392397-1392444
MS	200	CPH 2000103-2000105
MS	205	CPH 1327077-1327081
MS	206	CPH 1327166-1327167
MS	220	CPH 1267964-1267969
MS	224	CPH 1427923-1427924
MS	226	CPH 1392570-1392604
MS	227	CPH 1392708-1392709
MS	228	CPH 1406941
MS	229	CPH 1426262
MS	230	CPH 1121260-1121271
MS	231	CPH 1406939
MS	232	CPH 2000771
MS	233	CPH 1328300-1328301
MS	234	CPH 2000830
MS	236	CPH 0627084-0627210
MS	237	CPH1325251-1325253
MS	238	CPH 1418423-1418499
MS	239	
MS	240	CPH 1144559-1144565
MS	246	DPW 0011015-0011020
MS	248	
MS	250	CPH 0508863-0508898
MS	252	CPH 1292877-1292878
MS	257	CPH 0505156
MS	261	CPH 0599715-0599741

MS	Ex No.	Bates
MS	262	CPH 0648982-0648989
MS	269	CPH 1258270-1258274
MS	271	CPH 1200325-1200441
MS	272	CPH 0642954-0642974
MS	273	WLRK0009189-0009195
MS	274	WLRK0009197-0009199
MS	276	DPW0014400-0014403
MS	277	CPH 1433908-1433911
MS	278	CPH 1094218-1094235
MS	279	CPH 1398266-1398537
MS	282	
MS	283	MSC 0003690
MS	287	CPH 1408297
MS	288	
MS	290	CPH 2008104-2008108
MS	291	CPH 2007915
MS	295	CPH 2010664-2010666
MS	296	CPH 2010681
MS	297	CPH 2010676-2010679
MS	298	CPH 2010668-2010675
MS	299	CPH 2007230-2007296
MS	300	CPH 2006250-2006413
MS	301	CPH 2006677-2006826
MS	302	CPH 2006618-2006669
MS	303	CPH 2007528-2007534
MS	304	DPW 0000719-0000720
MS	305	DPW 0014400-0014403
MS	306	DPW 0011015-0011020
MS	307	CPH 1421212-1421219
MS	308	CPH 2006236-2006249
MS	310	CPH 2011528-2011531
MS	311	CPH 2006641-2006669
MS	313	CPH 2008016-2008020
MS	314	WLRK 0014181-0014295
MS	315	CPH 0643329-0643338
MS	316	
MS	317	CPH 2011532-2011533
MS	318	CPH 1408945-1408947
MS	319	CPH 1407858-1407866
MS	322	CPH 1087788-1087789
MS	323	CPH 1408270
MS	325	CPH 1395054-1395058
MS	326	
MS	327	DPW 0013825-0013827

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MS	Ex No	Bates
MS	328	CPH 1408269
MS	330	CPH 1121275-1121332
MS	337	CPH 1258279-1258282
MS	342	CPH 0642672-0642678
MS	343	WLRK0008557-0008560
MS	344	WLRk0007554-0007562
MS	345	CPH 1167570-1167612
MS	346	CPH 1414454-1414459
MS	347	CPH 1421220-1421223
MS	348	WLRK 0010179
MS	349	CPH 1167561-1167563
MS	350	WLRK 0012067
MS	351	CPH 1411596-1411654
MS	352	CPH 1411183-1411209
MS	353	CPH 2005703
MS	354	CPH 2005706
MS	355	CPH 1278481-1278484
MS	356	CPH 1120685-1120704
MS	357	CPH 1087146-1087148
MS	358	WLRK 0020591-0020595
MS	359	CPH 1010541-1010546
MS	360	CPH 1411943
MS	361	CPH 1192456-1192488
MS	362	WLRK 0012066-0012067
MS	363	CPH 1426259
MS	364	CPH 1433908-1433912
MS	365	CPH 1433895
MS	366	CPH 1428745-1428746
MS	367	DPW 0014300-0014301
MS	368	CPH 1272487-1272536
MS	369	DPW 0014073-0014074
MS	370	DPW 0014028-0014029
MS	371	WLRK 0013747-0013790
MS	372	DPW 0013720-0013723
MS	373	DPW 0013793-0013794
MS	374	WLRK 0003018-0003020
MS	375	DPW 0014137-0014110
MS	376	DPW 0014141-0014142
MS	377	DPW 0013935-0013936
MS	378	DPW 0013821-0013822
MS	379	
MS	380	DPW 0013662
MS	381	
MS	382	

MS	Ex No	Bates
MS	383	
MS	385	CPH 1111639-1111648
MS	388	WLRK 0008777-0008794
MS	395	
MS	402	DPW 0013767-0013768
MS	403	CPH 0637558-0637570

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Exhibit 8

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EXHIBIT CONFIDENTIAL

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Exhibit 9

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KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Kathryn R. DeBord
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New York, New York 10022-4611

212 446-4800

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November 22, 2004

By Facsimile

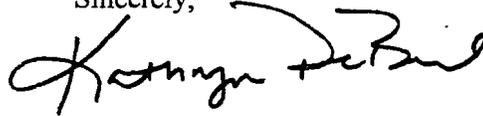
Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*

Dear Mike:

Mr. Winoker and Mr. Gittis testified last week that, as of December, 1998, CPH valued the warrants it received from Sunbeam pursuant to the August 12, 1998 Settlement Agreement at \$41.7 million. Mr. Winoker and Mr. Gittis also testified that CPH's \$41.7 million valuation is reflected on CPH and/or MAFCO's non-public financial statements for the period ending December 1998. These financial statements are responsive to numerous document requests, including Morgan Stanley's First, Third, and Sixth Requests for Production. Please produce those documents immediately.

Sincerely,



Kathryn R. DeBord

cc: Joseph Ianno, Jr., Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Mark Hanson, Esq. (by facsimile)

Chicago

London

Los Angeles

San Francisco

Washington, D.C.

032768

16div-028869

Exhibit 10

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EXHIBIT CONFIDENTIAL

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Exhibit 11

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Exhibit 12

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KIRKLAND & ELLIS LLP

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February 18, 2005

VIA FACSIMILE

Michael T. Brody, Esq.
Jenner & Block, LLC
c/o Mafoo Holdings, Inc.
777 S. Flagler Drive
Suite 1200 — West Tower
West Palm Beach, FL 33401

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Incorporated*

Dear Mike:

I write to address the serious deficiencies in CPH's response to the Court's Order requiring production of documents responsive to Morgan Stanley's motion to compel. As you know, CPH was required by the Court to produce by noon today "[a]ll documents reflecting, referring, or relating to the value of Sunbeam securities," including MAFCO's non-financial statements and general ledger entries reflecting the "accounting value" or "book value" that MAFCO placed on its Sunbeam investment. Instead of a full and complete production of the documents required by the Court's Order, we received only 20 heavily redacted pages with little or no identifying information.

We intend to follow up with a more detailed letter, but CPH's obviously deficient production raises many questions that require immediate correction.

First, as CPH previously (and successfully) argued to the Court, there is no basis to redact any information other than on grounds of privilege. See February 19, 2004 Hearing Transcript at 19-20. The financial documents you produced are obviously not privileged. We are entitled to complete and unredacted copies. Unredacted copies of these documents must be produced before 6:00 p.m. tonight. If you are claiming privilege over these redactions, where is your privilege log?

Second, it appears that many of the documents were generated from electronic sources. Several appear to be Excel spreadsheets and other documents that we are entitled to in electronic form, together with all metadata, document profiles, and document histories. Please produce these electronic documents immediately.

Third, many obviously responsive documents are missing from the production. Where, for example, are the financial statements reflecting the values reflected in the ledger

Chicago

London

Los Angeles

Munich

New York

San Francisco

032774

16div-028875

KIRKLAND & ELLIS LLP

Michael T. Brody, Esq.
February 18, 2005
Page 2

entries that were produced? Where are the documents underlying MAFCO's \$450 million adjusted valuation for its Sunbeam investment? Does CPH now represent that "[a]ll documents reflecting, referring, or relating to the value of Sunbeam securities" have been produced? Did CPH do a new search in response to the Court's order? Were all relevant files checked? Were electronic sources investigated? We find it difficult to believe that these 20 pages are the sum total of documents responsive to this request.

Finally, how long have you had these documents in your possession?

Sincerely,



Thomas A. Clare

Enclosures

cc: Joseph Ianno, Jr., Esq.
John Scarola, Esq.
Mark C. Hansen, Esq.

NOT A CERTIFIED COPY

032775

Exhibit 13

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EXHIBIT CONFIDENTIAL

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Exhibit 14

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EXHIBIT CONFIDENTIAL

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Exhibit 15

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032780

1 IN THE FIFTEENTH JUDICIAL CIRCUIT
2 IN AND FOR PALM BEACH COUNTY,
3 FLORIDA

4 -----x
5 COLEMAN (PARENT) HOLDINGS, INC.,

ORIGINAL

6 Plaintiff,

7 vs. Case No. CA 03-5045 AI

8 MORGAN STANLEY & CO., INC.,

9 Defendants.
10 -----x

11 RONALD O. PERELMAN

12 New York, New York

13 Wednesday, November 17, 2004

14
15
16
17
18
19
20
21
22
23 Reported by: Steven Neil Cohen, RPR

24 Job No. 167561

25

NOT A CERTIFIED COPY

032781

RONALD O. PERELMAN, NOVEMBER 18, 2004

1 record them as income on your income
2 statement for the year 1998?

3 A. I don't know how they were
4 carried. I didn't value them.

5 Q. I am sorry.

6 A. I didn't value them.

7 Q. You didn't value them?

8 A. No.

9 Q. Did someone at MacAndrews &
10 Forbes, or, as the case may be, Coleman
11 (Parent) Holdings value them for purposes
12 of their financial statement?

13 A. I don't believe so.

14 Q. Did you ever see any valuation of
15 the warrants?

16 A. I don't believe so.

17 Q. Did you assign, you, yourself,
18 did you approve the settlement?

19 A. Yes.

20 Q. Did you attempt to value the
21 warrants or the settlement as a whole at
22 the time you entered into the settlement
23 with Sunbeam?

24 A. Yes.

25 Q. What did you value the warrants

RONALD O. PERELMAN, NOVEMBER 18, 2004

1 at?

2 A. Close to zero.

3 Q. You settled MacAndrews & Forbes,
4 or, as the case may be, Coleman (Parent)
5 Holdings' claims against Sunbeam for next
6 to zero?

7 A. Yes. There was nothing to get.

8 Q. Did you ever see any reports from
9 consulting firms valuing the warrants?

10 A. I don't believe so.

11 Q. Did you ever see any valuations
12 by accounting firms?

13 A. I don't believe so.

14 Q. Did you ever take a position in
15 litigation as to the value of the warrants?

16 A. Not that I am aware of.

17 Q. Did MacAndrews & Forbes or
18 Coleman (Parent) Holdings or any of its
19 affiliates?

20 A. Not that I am aware of.

21 Q. Are you aware there was
22 litigation filed over the issuance of the
23 warrants to MacAndrews & Forbes or its
24 affiliates?

25 A. No.

032783

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: 2003 CA 005045 AI

**PLAINTIFF'S MOTION TO COMPEL FURTHER DISCOVERY REGARDING
MORGAN STANLEY'S DESTRUCTION AND NONPRODUCTION OF E-MAILS**

Coleman (Parent) Holdings Inc. ("CPH") respectfully seeks leave to conduct certain discovery relating to the willful failure of Morgan Stanley & Co. Incorporated ("Morgan Stanley") to make full production of responsive e-mails, as it falsely certified it had done prior to June 23, 2004. CPH seeks this discovery not to buttress the record supporting the pending motion for sanctions relating to Morgan Stanley's failure to produce e-mails, but to obtain information for use at trial. The record as to the former issue is complete and justifies the immediate entry of a default judgment as to liability. But as explained below, this discovery is warranted to ascertain the full magnitude of the e-mail problem, which in turn can inform the jury's determinations about liability (if the Court does not grant a default judgment) and about the award of punitive damages.

Specifically, CPH asks that the Court (1) order Morgan Stanley to produce the 46 documents listed on Morgan Stanley's February 10, 2005 Privilege Log (Priv. Nos. 486-524), as well as any other documents reflecting when and how Morgan Stanley agents or employees, including in-house and outside counsel, learned about the existence and discovery of all electronic data storage sources potentially containing e-mail-related discovery materials, the

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failure to make complete production of e-mail-related discovery materials, and when and how Morgan Stanley's agents and employees responded; (2) order Morgan Stanley to make available for deposition in the next two weeks key personnel who were parties to attorney-client communications involving the production of e-mails in this case, including but not limited to Thomas A. Clare, James P. Cusick, James F. Doyle, Grant Jonas, Soo-Mi Lee, Arthur Riel, Zachary Stern, and Wray Stewart; and (3) bar Morgan Stanley from asserting attorney-client privilege to justify withholding documents or instructing deponents not to answer questions about Morgan Stanley's retention, destruction, production, or nonproduction of e-mails or backup tapes, based on the crime/fraud exception recognized in FLA. STAT. ANN. § 90.502(4)(a) (West 2004). For the reasons stated below, Morgan Stanley — which owns and repeatedly has invoked the attorney-client privilege — should no longer be permitted to assert the privilege to hide the fraud it has perpetrated upon this Court and CPH.

CPH needs the opportunity to inquire into these matters to establish the magnitude and seriousness of Morgan Stanley's repeated and egregious violations of the April 16, 2004 Agreed Order — the latest of which was revealed just this weekend when Morgan Stanley once again advised CPH that it had located yet another batch of backup tapes that have not yet been searched. *See* Ex. A (February 19 e-mail advising CPH that "Morgan Stanley has located additional boxes of backup tapes"); *see also* Ex. B (CPH's proposed order presenting a menu of possible sanctions). In recent days, Morgan Stanley has sought to minimize the severity of its misconduct by arguing (1) that Arthur Riel, the former head of Morgan Stanley's e-mail archive project, was a renegade employee who for some unknown reason orchestrated a fraudulent discovery scheme on his own; and (2) that counsel took every appropriate step to address the problem when they learned about it in October. MS Supp. Opp'n at 2-3, 6. Neither argument,

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however, is supported by any record evidence, and Morgan Stanley has used assertions of privilege to block CPH from inquiring into these matters, both in depositions and in open court. Moreover, as explained below, there are multiple reasons to doubt the veracity of these assertions — reasons that fully justify revoking the protections of privilege in view of Morgan Stanley’s failure to satisfy its discovery obligations even today, despite having certified its full compliance eight months ago.

BACKGROUND

As the Court is aware, it is only as a result of CPH’s persistence that Morgan Stanley has begun taking steps in the direction of compliance with the April 16, 2004 Order, eight months after Morgan Stanley certified that it already had fully complied. How close Morgan Stanley now is to full compliance and whether it will ever reach the Court-ordered destination remain unsolved mysteries. If CPH had not made an appropriate motion, it is highly unlikely that Morgan Stanley ever would have located multiple sets of additional, unsearched tapes or would have done anything beyond processing an incomplete set of tapes on its own schedule, at its own pace. *See, e.g.*, Ex. C at 187, 195 (Mr. Clare testifying that he learned only after CPH filed its January 26, 2005 motion that the “Brooklyn found” tapes had been discovered before the certification on June 23); *id.* at 202 (Mr. Clare testifying that he only recently learned that Ms. Gorman had “been instructed [in October] that the processing of these tapes was to be given a higher priority than it had previously”); Ex. D at 155-56 (Mr. Saunders testifying that his deposition inspired additional searches that turned up another 243 tapes); Ex. E (February 16, 2005 notice revoking Morgan Stanley’s June 23, 2004 certificate of compliance).

But the problems continue. Remarkably, just this weekend, Morgan Stanley once again revealed that it was still finding additional backup tapes that have never been analyzed or

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searched. On Saturday afternoon, Morgan Stanley's counsel, Mr. Thomas A. Clare of Kirkland & Ellis LLP, sent CPH's attorneys an e-mail message stating, in full:

We have been informed that Morgan Stanley has located additional boxes of backup tapes in a security room. Morgan Stanley is working to catalog the tapes and determine their contents. We will provide you with this information when it becomes available. As of this morning, however, Morgan Stanley has identified four (unlabelled) DLT tapes among the collection. Those four tapes will be sent to NDCI for further analysis.

Ex. A (e-mail sent at 12:54 p.m. on Saturday, February 19, 2005).¹ This message arrived only days after Morgan Stanley's Robert Saunders twice testified under oath that he was "confident" all tapes had already been located. Ex. D at 152-56 (Saunders's testimony at February 14, 2005 hearing, recounting his February 10, 2005 deposition testimony).

The Court already has determined based on evidence presented at the February 14 hearing that Morgan Stanley's failure to make a complete and timely production of e-mails in compliance with the Court's Order was willful. But the full magnitude of the effort to commit fraud on the Court and on CPH remains unknown. Morgan Stanley continues to assert (1) that this problem was originated by one employee, Mr. Riel, who was subsequently placed on "administrative leave" for incompetence and lack of integrity; and (2) that Morgan Stanley acted appropriately and with dispatch when its legal department learned of the issue in October. MS

¹ This is not the first time Morgan Stanley has been less than forthcoming when describing its discoveries. The Court will recall that Morgan Stanley, the day after it had certified in its brief filed on February 11 that production was 100% complete, sheepishly notified the Court via e-mail that it had found "some" additional backup tapes; yet at the February 14 evidentiary hearing, it became apparent that "some" was actually 243 tapes (whose storage capacity is something like 20 to 30 gigabytes each, a total capacity equal to roughly half a billion printed pages). Now, instead of disclosing how many boxes they have found, or how many tapes, Morgan Stanley merely states it has located "additional boxes of backup tapes." Nor does Morgan Stanley explain why it has chosen to send only four of these tapes to NDCI for further analysis.

Supp. Opp'n at 2-3, 6. This motion seeks a way to test those assertions for purposes of establishing the truth, which can in turn be disclosed at trial.

A review of the chronology of key events reveals why additional discovery is justified and why Morgan Stanley no longer should be allowed to invoke privilege to hamper that discovery:

- On May 14, 2004, Morgan Stanley made what purported to be a complete production of e-mails pursuant to the Agreed Order, based on electronic searches run in April.
- But two years earlier, hundreds of eight-millimeter tapes had been discovered (but not uploaded or searched), and by no later than May 6, 2004 (a full week before the May 14 production), the Morgan Stanley employee responsible for this project, Arthur Riel, knew there were other backup tapes (the "Brooklyn tapes") whose contents also had not been uploaded to the archive and searched. Ex. F, MS 112286 (May 6 minutes). He also knew that Morgan Stanley's vendor, NDCI, had not yet completed processing all of the original 35,000 backup tapes in order to allow them to be uploaded. *See* MS Supp. Opp'n at 8-9 (noting that, as of May 6, 2004, NDCI had yet to process more than 2,000 of the original 35,000 tapes).
- Despite that knowledge, on June 23 Mr. Riel falsely certified in writing that Morgan Stanley had fully complied with the Agreed Order.
- By July 2, Mr. Riel learned that there were potentially responsive e-mails on the tapes still being processed. Ex. G, MS 112327 (July 2 minutes).

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But according to Morgan Stanley, no one in the legal department had any knowledge until late October that the May 14 production was not complete and that the June 23 certificate was therefore false. There are several reasons to doubt this story.

First, it is inherently implausible. No reason is suggested why Mr. Riel would take it upon himself to orchestrate a fraud not only on CPH but on Morgan Stanley's own counsel. Certainly there must have been multiple communications between counsel and Mr. Riel in April, May, and June 2004 about this very topic.

Second, Morgan Stanley has not offered any actual evidence of this story — instead offering only a carefully phrased declaration by Mr. Doyle stating that he learned in late October “that additional e-mail backup tapes had been located within Morgan Stanley, and that the data on those tapes had not been restored or searched prior to Morgan Stanley's May 14, 2004 e-mail production.” Ex. H. Mr. Doyle, who was present but not called as a witness at the February 14 hearing, says nothing in his declaration about whether he was otherwise aware that the May 14 production was incomplete, nor does he describe any inquiry he made of other counsel at Morgan Stanley about when they acquired such knowledge.

Third, and even more glaringly, Morgan Stanley's latest privilege log lists a June 7, 2004 e-mail from Mr. Riel to two in-house Morgan Stanley attorneys, James Cusick and Soo-Mi Lee, “seeking legal advice regarding [the] status of [Morgan Stanley's] e-mail restoration process.” Ex. I (privilege log, entry no. 490). The timing of that June 7 request for legal advice is disturbing, as it came after Mr. Riel oversaw the May 14 production of e-mails but before he signed the June 23 certificate stating that Morgan Stanley had fully complied with the Agreed Order, which he knew at the time was false. Morgan Stanley's attempt to portray Mr. Riel as a renegade employee is undercut by the fact that he affirmatively sought legal guidance from

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Morgan Stanley's counsel before affixing his name to the knowingly false certificate. On the one hand, if in June 2004 Mr. Riel or his staff revealed to Morgan Stanley's counsel that certain backup tapes had not yet been searched, that could serve to establish that Mr. Riel conspired with attorneys at Morgan Stanley to conceal the falsity of Morgan Stanley's certificate and thereby to defraud both this Court and CPH. That misconduct should trigger the crime/fraud exception to the privilege, under FLA. STAT. ANN. § 90.502(4)(a) (West 2004). On the other hand, if Mr. Riel or his staff manipulated counsel to keep them ignorant and thereby to perpetrate a fraud on CPH and on this Court, that too should trigger the crime/fraud exception, as it is the client's knowledge — not the attorney's — that matters for purposes of the exception.

CPH should be allowed to depose both Mr. Riel and the in-house counsel (Mr. Cusick and Ms. Lee) from whom Mr. Riel sought legal advice on June 7, 2004. But the discovery also should go further, to include other key inside and outside counsel and information-technology professionals whose names appear repeatedly on Morgan Stanley's recent privilege log. Roughly half of the 46 documents on that log date from October or November 2004, when there was a flurry of communications about the e-mail production situation. At some point, a decision was made to produce 8,000 pages of e-mails and to tell CPH that these were a first installment of production from "additional e-mail backup tapes" that Morgan Stanley allegedly had discovered "since [its] e-mail production in May 2004." Ex. J (November 17, 2004 letter from Thomas A. Clare to CPH's counsel); *see id.* (referring to "newly discovered tapes"). But Morgan Stanley's own witnesses at the February 14, 2005 hearing testified that the data from the DLT tapes found in Brooklyn and the 8-mm tapes found in Manhattan were not put into searchable form until January 2005. Ex. K at 52, 65, 68-69 (Gorman). Morgan Stanley's false claim that the November production came from "newly discovered" backup tapes apparently was designed to

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conceal the fact that not all of the 35,000 original tapes stored at the Recall facility in New Jersey had been searched in April 2004. CPH should be allowed to take discovery on the genesis of this cover story. CPH and this Court should learn the full story, under oath, with all witnesses fully subject to all the penalties for providing false testimony.

So far, CPH's efforts to learn that full story have been stymied by Morgan Stanley's repeated assertions of privilege. *See, e.g.*, Ex. L at 63-64 (invoking the privilege during Ms. Gorman's February 14, 2005 in-court testimony); Ex. M at 181-82, 196 (invoking the privilege during Mr. Clare's February 14, 2005 in-court testimony); Ex. N at 47, 63-65 (invoking the privilege during Ms. Gorman's February 9, 2005 deposition); Ex. O at 23-27 (invoking the privilege during Mr. Saunders's February 10, 2005 deposition). Those assertions of privilege might have been appropriate if there had been a record here of good faith. But the opposite is the case. Representation after representation of complete production has proved false, as carefully worded declarations obfuscate the truth and leave more questions than answers. The privilege log reveals the fingerprints of counsel on these clumsy, false representations. It is time for the full facts to be aired, under oath and under penalty of perjury.

ARGUMENT

The crime/fraud exception recognizes that the attorney-client privilege "ceas[es] to operate at a certain point, namely, where the desired advice refers not to prior wrongdoing, but to future wrongdoing." *United States v. Zolin*, 491 U.S. 554, 562-63 (1989). Under Florida law, the crime/fraud exception bars any party from claiming as privileged any communications with a lawyer when the lawyer's services "were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew was a crime or fraud." FLA. STAT. ANN. § 90.502(4)(a) (West 2004) (emphasis added); *see Butler, Pappas, Weihmuller v. Coral Reef of Key Biscayne*

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Developers, Inc., 873 So. 2d 339, 342 (Fla. 3d DCA 2004) (requiring showing that communication was part of effort to commit fraud, and party sought attorney's advice in order to further fraud); *First Union Nat'l Bank v. Turney*, 824 So. 2d 172, 187 (1st DCA 2001) (requiring showing that communication with counsel was "in order to obtain advice or assistance in perpetrating what the client knows to be a crime or fraud"). It does not matter whether the lawyers knew of the fraud, so long as the client knew and used its lawyers to commit (or plan to commit) a fraud. *First Union Nat'l Bank v. Turney*, 824 So. 2d at 187. As this Court put it, even counsel's sincere belief that it acted in good faith does not "absolve[] its client of the consequences of any of the client's bad acts. . . . [S]ometimes the [sins] of a client come back and visit the client." Ex. P at 618-19.

Florida law has long recognized "fraud on the court," a species of fraud designed to "produc[e] a judicial act by fraudulent representations to the Judge." *State v. Burton*, 314 So. 2d 136, 137 (Fla. 1975). Furthermore, "fraud on the court" encompasses abuses not only in open court, but also in pretrial discovery. Thus, in *Medina v. Florida East Coast Railway, L.L.C.*, 866 So. 2d 89 (Fla. 3d DCA 2004), where the plaintiff had repeatedly lied under oath at his deposition, the appellate court reaffirmed the principle that a Florida trial court, after giving the plaintiff an opportunity to be heard, has "the inherent authority to dismiss an action when it finds that a plaintiff has perpetrated a fraud on the court." *Id.* at 90.

Courts in Florida and elsewhere have not hesitated to apply the crime/fraud exception to frauds on the court, including discovery abuses, destruction of evidence, and obstruction of justice. *See, e.g., Volcanic Gardens Mgmt. Co. v. Paxson*, 847 S.W.2d 343, 348 (Tex. Ct. App. 1993) ("[U]nder the crime/fraud exception to the lawyer-client privilege, 'fraud' would include the commission and/or attempted commission of fraud on the court or on a third person," as

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when a “client seeks the assistance of an attorney in order to make a false statement or statements of material fact or law to a third person or the court for personal advantage.”).

In *Gutter v. E.I. DuPont de Nemours*, 124 F. Supp. 2d 1291 (S.D. Fla. 2000), a Florida federal court applied the crime/fraud exception when DuPont’s counsel made false and misleading statements to the court regarding privilege logs. Although the court could identify no single lawyer at DuPont who knew all the facts behind the misstatements, there was “ample evidence that DuPont itself had the requisite knowledge and intent” for a finding of fraud on the court. *Id.* at 1313. The parallels to the present case are striking: Certain of the defendant’s lawyers knew that certain documents could be produced (and had been in other litigation), but the defendant withheld the documents and informed the court that the documents could not be produced. *See id.* at 1302. When the pieces were fit together, the defendant’s fraud was revealed.

Such discovery misconduct triggers the crime/fraud exception because the destruction of records eviscerates “the court’s ability to ascertain the truth.” *In re Sealed Case*, 754 F.2d 395, 401 (D.C. Cir. 1985); *see id.* (invoking the crime/fraud exception where a party “perpetrated a continuing fraud connected with, but not limited to, the actual destruction of records”). The destruction of evidence is every bit as troubling with electronic documents as with traditional paper documents. As this Court put it on February 15, “This is a case of fraud. And electronic data is the functional equivalent of a paper trail.” Ex. P at 614-15.

For these reasons, courts do not hesitate to deny the protections of privilege when circumstances suggest, for example, that a party and its lawyers were overseeing the destruction of e-mails and other documents while anticipating litigation. *See Rambus, Inc. v. Infineon Techs. AG*, 220 F.R.D. 264, 283, 287-88 (E.D. Va. 2004). In *Rambus*, a suit involving counterclaims of

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fraud, the defendant sought discovery of documents, including attorney-client communications, relating to the plaintiff's document-retention program, on the theory that the document-retention program resulted in the intentional spoliation of relevant documents, and therefore the crime/fraud exception to the attorney-client privilege applied. In response to the plaintiff's claim that it had destroyed documents to reduce the potential cost of discovery in future cases, not to suppress evidence in this particular case, the court held that even if the plaintiff "did not institute its policy in bad faith, if it reasonably anticipated litigation when it did so, it is guilty of spoliation." *Id.* at 286. The court concluded that "the crime/fraud exception extends to materials or communication created for planning, or in furtherance of, spoliation." *Id.* at 283; *see also State Farm Fire & Cas. Co. v. Superior Court of Los Angeles County*, 54 Cal. App. 4th 625, 648-49 (Cal. Ct. App. 1997) (applying the crime/fraud exception to discovery abuses).

When parties engage in discovery misconduct and abuse the attorney-client privilege, Florida courts similarly have not hesitated to reject those parties' claims of privilege and to require production of documents that otherwise would have been protected from disclosure. *See, e.g., Metabolife Int'l, Inc. v. Holster*, 888 So. 2d 140, 140-41 (Fla. 1st DCA 2004) (holding that defendant's failure timely to file a privilege log waived its claims of privilege and required production of documents that otherwise would have been subject to attorney-client and work-product privileges); *General Motors Corp. v. McGee*, 837 So. 2d 1010, 1032 (Fla. 4th DCA 2002) (holding that defendant's misconduct during discovery justified a finding that defendant had waived its privilege claims); *Omega Consulting Group, Inc. v. Templeton*, 805 So. 2d 1058, 1060 (Fla. 4th DCA 2002) (affirming the trial court's order requiring corporate defendant to disclose three e-mails, and rejecting the corporation's claims that the communications were protected from disclosure by the attorney-client privilege).

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This Court's April 16, 2004 Order gave Morgan Stanley one full month to produce all responsive, nonprivileged e-mails. Today, more than 10 months later, Morgan Stanley has yet to comply with that Order. And for almost the entire period of delay, up until a few days ago (when Morgan Stanley finally revoked its certificate of compliance, *see* Ex. E), Morgan Stanley insisted on telling CPH and this Court that it had complied with the Order. The time has come for this Court to stop accepting Morgan Stanley's blanket claims of attorney-client privilege and to acknowledge that Morgan Stanley has used its lawyers to "carry[] out [its] misrepresentations and concealment." *American Tobacco Co. v. State*, 697 So. 2d 1249, 1257 (Fla. 4th DCA 1997).

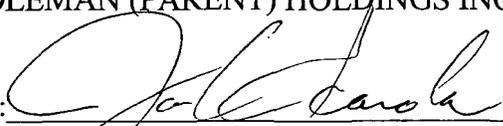
CONCLUSION

For the foregoing reasons, this Court should invoke the crime/fraud exception to order Morgan Stanley (1) to produce the 46 documents listed on Morgan Stanley's February 10, 2005 Privilege Log (Priv. Nos. 486-524), as well as any other documents reflecting when and how Morgan Stanley agents or employees, including in-house and outside counsel, learned about the existence and discovery of all electronic data storage sources potentially containing e-mail-related discovery materials, the failure to make complete production of e-mail-related discovery materials, and when and how Morgan Stanley's agents and employees responded; (2) to make available for deposition in the next two weeks key personnel who were parties to attorney-client communications involving the production of e-mails in this case, including but not limited to Thomas A. Clare, James P. Cusick, James F. Doyle, Grant Jonas, Soo-Mi Lee, Arthur Riel, Zachary Stern, and Wray Stewart; and (3) not to assert attorney-client privilege as a basis for withholding documents or when the deponents are asked questions about Morgan Stanley's retention, destruction, production, or nonproduction of e-mails or backup tapes.

Dated: February 22, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

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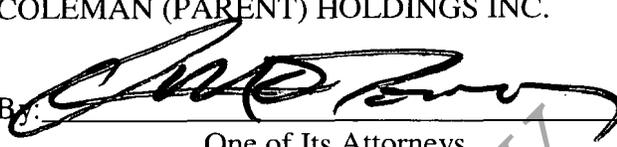
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I HEREBY CERTIFY that a true and correct copy of the foregoing has been served to all counsel on the attached Service List by the means indicated this 21st day of February 2005.

Dated: February 21, 2005

COLEMAN (PARENT) HOLDINGS INC.

By: 

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

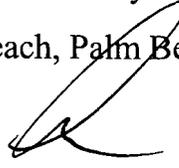
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**ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO
DETERMINE THE APPROPRIATE SCOPE OF DISCOVERY**

THIS CAUSE came before the Court February 24, 2005 on Coleman (Parent) Holdings, Inc.'s Motion to Determine the Appropriate Scope of Discovery, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Coleman (Parent) Holdings, Inc.'s Motion to Determine the Appropriate Scope of Discovery is Denied. CPH shall produce the unredacted versions of the produced documents by 4:00 p.m. February 24, 2005. The redacted documents shall be treated strictly in conformity with the Confidentiality Order in place, as amended, and shall be hand delivered to Lawrence Bemis, Esq., who assumed personal responsibility to ensure that they are treated strictly in conformity with this Order.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 24 day of February, 2005.



ELIZABETH T. MAASS
Circuit Court Judge

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

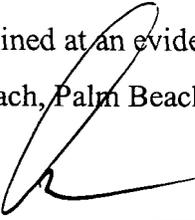
MORGAN STANLEY & CO., INC.,
Defendant(s).

**ORDER ON MORGAN STANLEY'S MOTION FOR ADDITIONAL DISCOVERY
REGARDING MAFCO'S INTERNAL VALUATION OF SUNBEAM STOCK AND
MORGAN STANLEY'S MOTION FOR SANCTIONS AND ADDITIONAL DISCOVERY
CONCERNING PLAINTIFF'S IMPROPER CONCEALMENT OF THE VALUE OF THE
SUNBEAM WARRANTS**

THIS CAUSE came before the Court February 24, 2005 on Morgan Stanley's Motion for Additional Discovery Regarding MAFCO's Internal Valuation of Sunbeam Stock and Morgan Stanley's Motion for Sanctions and Additional Discovery Concerning Plaintiff's Improper Concealment of the Value of the Sunbeam Warrants, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the Motions are Granted. CPH shall produce its corporate representative with the most knowledge of the internal valuation of the Sunbeam stock and warrants for deposition on March 1, 2005. CPH shall produce such other witnesses for deposition on the limited subject of the internal valuation of the stock and warrants and the effect, if any, on CPH's expert testimony on damages as MS & Co. shall reasonably require. CPH shall pay MS & Co. its reasonable costs and fees for the Motions, including those fees incurred in connection with the depositions permitted herein, to be determined at an evidentiary hearing following trial.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 24 day of February, 2005.


ELIZABETH T. MAASS
Circuit Court Judge

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

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**APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S
SUMMARY JUDGMENT FILING**

**VOLUME 11
(EXHIBITS 113-122)**

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS,)
INC.,)

Plaintiff,)

VS.)

MORGAN STANLEY & CO., INC.,)

Defendant.)

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VIDEOTAPED DEPOSITION
OF CHRISTOPHER WHELAN
New York, New York
Wednesday, July 14, 2004

NOT A CERTIFIED COPY

Reported by:
Robert X. Shaw, CSR
CSR NO. 817
JOB NO. 162377

018227

July 14, 2004
9:27 a.m.

Videotaped Deposition of
CHRISTOPHER WHELAN, held at the offices
of Esquire Deposition Services, 216
East 45th Street, New York, New York,
pursuant to Notice, before Robert X.
Shaw, CSR, a Notary Public of the State
of New York.

THE VIDEOGRAPHER: Stand by.
This is tape number 1 of the
videotaped deposition of Mr. Christopher
Whelan in the matter of Coleman Parent
Holdings Inc., Plaintiff, versus Morgan
Stanley & Co., Inc., Defendant, in the
15th Judicial Circuit in and for Palm
Beach County, Florida.

This deposition is being held at 216
East 45th Street, New York, New York on
July 14, 2004 at approximately 9:27 a.m.

My name is Victor Disla from the
firm of Esquire Video Services and I am
the legal video specialist.

The court reporter is Mr. Bob Shaw
in association with Esquire Deposition
Services. Will counsel please introduce
themselves for the video record.

MR. CHORVAT: This is Tim Chorvat
and I represent the plaintiff.

MS. BROWN: This is Zhonette Brown
of Kirkland Ellis on behalf of the Morgan
Stanley entities and the witness.

THE VIDEOGRAPHER: Will the court

APPEARANCES:

JENNER & BLOCK
Attorneys for Plaintiff
One IBM Plaza
Chicago, Illinois 60611
BY: TIMOTHY J. CHORVAT ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for Defendant
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: ZHONETTE M. BROWN, ESQ.

ALSO PRESENT:
Victor Disla, Videographer

reporter please swear in the witness.

CHRISTOPHER WHELAN,
having been first duly sworn by the
Notary Public, testified as follows:

THE WITNESS: I do.

EXAMINATION BY

MR. CHORVAT:

Q. Would you please state your name for
the record, sir.

A. Christopher Whelan.

Q. Mr. Whelan, have you ever been
deposed before?

A. No, I have not.

Q. Okay. Then let me just explain to
you how this will work, though you may already
understand it.

Over the course of today, I will be
asking you a series of questions, and the
court reporter will be taking down a
transcript of my questions, your answers and
any objections that your counsel makes.

There will also be a video record
being made of this.

It is important, because the
transcript is being made, that you answer

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1 audibly, instead of simply nodding or using
 2 some sort of a gesture.
 3 If at any point I ask you a question
 4 that you don't hear, let me know that and I
 5 will try to repeat it.
 6 If at any point I ask you a question
 7 that is unclear or you don't understand, let
 8 me know that and I will try to rephrase it.
 9 Any questions about the process?
 10 A. No.
 11 Q. Are you currently employed?
 12 A. Yes.
 13 Q. With whom?
 14 A. Morgan Stanley.
 15 Q. Do you know which Morgan Stanley
 16 entity is your employer?
 17 A. I am not exactly sure, but it is
 18 probably Morgan Stanley & Co.
 19 Q. What position do you hold with
 20 Morgan Stanley?
 21 A. I am the executive director in the
 22 credit department.
 23 Q. Do you work in New York?
 24 A. Yes, I do.
 25 Q. Would you summarize, please, your

1 Q. During the time that you were vice
 2 president in the credit department, what were
 3 your responsibilities?
 4 A. At that time the department was
 5 called the credit and rating advisory services
 6 group, and my responsibilities were primarily
 7 to cover existing accounts that Morgan Stanley
 8 had credit exposure to, whether it was lending
 9 exposure, derivative exposure, commodities
 10 exposure, um, and I covered certain
 11 industries.
 12 I covered consumer products. I
 13 covered real estate. I covered lodging and
 14 gaming. And my job, primarily, was to provide
 15 unbiased credit analysis to determine whether
 16 the firm should take credit exposure with
 17 certain counterparties.
 18 My other major function was to
 19 provide rating advisory services to
 20 prospective clients and existing clients, when
 21 these clients were in the process of dealing
 22 with the major rating agencies.
 23 Q. When you say "rating advisory
 24 services," was that predicting what rating a
 25 particular offering would achieve?

1 education since high school.
 2 A. Yes.
 3 I received a Bachelor's at Colby
 4 College in economics in 1988.
 5 Then I went to work at Bank of New
 6 York in the credit training program, after
 7 graduating from college.
 8 I left Bank of New York in 1991,
 9 joined Morgan Stanley in July of 1991, and I
 10 have been there ever since.
 11 Q. Briefly describe your employment
 12 track at Morgan Stanley, since 1991.
 13 A. I came in at Morgan Stanley as
 14 associate in 1991. I was promoted to vice
 15 president at the end of 1995 -- sorry, the end
 16 of 1996.
 17 I was then promoted to what used to
 18 be called principal at the end of 2000, but
 19 after the merger with Dean Witter they changed
 20 the principal title to executive director, and
 21 that is what I am today.
 22 Q. Have you been in the credit
 23 department throughout your history with Morgan
 24 Stanley?
 25 A. Yes.

1 A. That is correct. That was part of
 2 the job, yes.
 3 Q. What else?
 4 A. Just a big part of it was advising
 5 clients on how to tell their story to the
 6 rating agencies, um, dealing with certain --
 7 quite frankly, putting together presentations,
 8 effectively large road show presentations, if
 9 you will, to the rating agencies, so the
 10 clients could tell the story and then coach
 11 clients on how to handle certain strengths and
 12 credit issues that the rating agencies would
 13 want to get more information on.
 14 Q. You mentioned that you also were
 15 responsible for providing unbiased credit
 16 analysis. How did you go about doing that?
 17 A. How so?
 18 Q. Describe that part of your job.
 19 A. Well, I mean, simply, if it was a
 20 public company, we would use public filings to
 21 analyze the public financial statements.
 22 And, many times, having
 23 conversations with senior management to
 24 understand what the strategy was, comparing a
 25 particular client to the competitive dynamics

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1 out there.
 2 Looking at equity research. Looking
 3 at fixed income research. Talking to the
 4 rating agencies.
 5 It really just depended on which
 6 situation you were looking at.
 7 Q. The credit analysis was designed for
 8 use by people within Morgan Stanley?
 9 A. The credit analysis was strictly
 10 internal to determine whether Morgan Stanley
 11 should grant credit to a particular client.
 12 Q. How have your responsibilities
 13 changed, if at all, since you have become a
 14 principal or an executive director?
 15 A. Well, the groups changed a bit. Now
 16 it is just called the credit department.
 17 The rating advisory aspect of it has
 18 been taken out of my group and put into
 19 investment banking.
 20 Currently we, my group, reports to
 21 Steve Crawford, who used to be the CFO but now
 22 is head of, basically head of strategy.
 23 And my particular job now is, I
 24 still cover certain industries, but mostly
 25 what I do now is I determine whether to extend

1 reported to someone other than Leslie
 2 Bradford?
 3 A. Yes.
 4 Q. Explain the structure of the
 5 department then, please.
 6 A. Well, the way the department worked
 7 is, we had Rick Felix ran the department, who
 8 was then an MD. Leslie Bradford was an MD
 9 under Rick Felix. And anyone who was dealing
 10 with industrial corporate accounts reported to
 11 Leslie Bradford. Okay.
 12 There was another MD in the
 13 department who is still there, named John
 14 LaMountain. He oversaw, effectively, a number
 15 of people who were in charge of our
 16 counterparty derivatives trading credit
 17 functions, so to speak.
 18 So, for instance, John LaMountain
 19 would have a vice president who had a product,
 20 whether it is foreign exchange or commodities,
 21 or whatnot, and if that particular product
 22 person had a prospective account that fell in
 23 my industry bucket, they would come to me and
 24 ask for a credit overview or a preliminary
 25 rating.

1 credit or not, to all companies in North
 2 America, depending on geography.
 3 Q. Are there other executive directors
 4 in the credit department?
 5 A. Yes.
 6 Q. How many?
 7 A. Worldwide? Worldwide, probably ten.
 8 Q. In New York?
 9 A. Um, probably six.
 10 Q. When you were vice president, to
 11 whom did you report?
 12 A. I reported directly to Les Bradford.
 13 Q. Was that true the entire period from
 14 '96 to 2000?
 15 A. Yes, it was.
 16 Q. Were there other vice presidents at
 17 the same time who also reported to
 18 Ms. Bradford?
 19 A. Yes, there were.
 20 Q. How many in New York?
 21 A. Probably about six, seven. Sorry,
 22 report directly to Leslie Bradford? Somewhere
 23 between four and six, give or take.
 24 Q. Were there other vice presidents in
 25 the credit and rating agency department that

1 I would give it to that person, and
 2 then that person would structure the
 3 derivative or commodity transaction, or
 4 foreign exchange transaction, depending on
 5 what I told them about the nature of the
 6 credit.
 7 Q. During the 1997, '98 time frame, was
 8 your compensation structured as base pay plus
 9 at least the possibility of a bonus?
 10 A. Yes, it was.
 11 Q. During that period of time, was your
 12 compensation in any way related to the Sunbeam
 13 financing?
 14 A. No, it was not.
 15 Q. Describe your compensation package
 16 in 1997 and 1998, please.
 17 A. Um, it is -- you know, off the top
 18 of my head, I am guessing. You know.
 19 Can I -- can I give an estimate?
 20 MS. BROWN: Yes.
 21 MR. CHORVAT: We are looking for
 22 your best estimate.
 23 A. Okay. My base was probably
 24 somewhere in the \$125,000 range. My bonus was
 25 probably in the -- probably in the \$100,000

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1 range.
 2 Q. Would it be correct for both years,
 3 1997 and '98?
 4 A. Probably the base stayed about the
 5 same. The base could have been a little less
 6 and the bonus was probably a little more.
 7 Q. Sorry, which --
 8 A. In 1998. The 125 is really a guess.
 9 I can't remember what it was.
 10 But it was probably, total
 11 compensation was probably in the 225 range in
 12 1997, and probably a little bit higher in
 13 1998.
 14 Q. Do you recall why it would have been
 15 a little higher in 1998?
 16 A. I can't, quite frankly, now that I
 17 think of it, it could have been a little
 18 lower. I don't remember what kind of year we
 19 had that year, so.
 20 Q. Who would have evaluated your
 21 performance in 1997 or 1998?
 22 A. Well, I would have received a
 23 performance evaluation by Leslie Bradford.
 24 Q. Anyone else?
 25 A. No.

1 Q. What, if anything, have you done to
 2 prepare for today's deposition?
 3 A. I met with an attorney yesterday.
 4 Q. Aside from meeting with the
 5 attorney, have you done anything else to
 6 prepare for the deposition?
 7 A. No, sir.
 8 Q. Who did you meet with?
 9 A. I met with Ms. Brown.
 10 Q. How long did that meeting take?
 11 A. Um, about four -- four and a half to
 12 five hours.
 13 Q. Have you spoken to anyone else who
 14 has been deposed in connection with this case?
 15 A. Yes, I have.
 16 Q. Have you spoken to any of those
 17 individuals about the topic of their
 18 depositions?
 19 A. No, I have not.
 20 Q. Have you reviewed any documents that
 21 refreshed your recollection about any of the
 22 events surrounding the Sunbeam matter?
 23 A. Other than some documents yesterday?
 24 No.
 25 Q. What documents have you reviewed at

1 any time that refreshed your recollection with
 2 respect to Sunbeam?
 3 A. Um, again, some documents yesterday.
 4 I can't remember exactly what those documents
 5 were, but some documents yesterday.
 6 Q. Can you describe them in any way?
 7 A. Um, they were various, you know,
 8 internal documents, by and large. Some
 9 perhaps, perhaps some public press releases.
 10 Some financial statements.
 11 Q. Anything else that you can recall?
 12 A. Um, no.
 13 Q. What role did the credit and rating
 14 agency department play in connection with the
 15 Sunbeam financing?
 16 A. Well, we were responsible for
 17 determining, first and foremost, whether the
 18 transaction that Morgan Stanley was looking to
 19 undertake, meaning providing a capital
 20 commitment for the bank financing to close the
 21 acquisitions, was a viable credit going
 22 forward.
 23 It was a very large exposure to
 24 Morgan Stanley.
 25 Our job as in the credit department

1 is to make sure that the capital base of
 2 Morgan Stanley is protected. That was our
 3 first and foremost job.
 4 The second part was to help Sunbeam
 5 get through the rating process with a fair
 6 outcome on the ratings on the bank department,
 7 and by default the ratings on the notes.
 8 Q. In connection with the first part of
 9 your answer, how did the work that the credit
 10 group or the credit and rating agencies group,
 11 how did that fit together with work that other
 12 departments or groups at Morgan Stanley were
 13 doing?
 14 MS. BROWN: Objection to form.
 15 Q. When your counsel objects like that,
 16 you can go ahead and answer the question. The
 17 objection is preserved for the record.
 18 A. Okay, can you repeat the question?
 19 Q. Sure. How did the work that the
 20 credit and rating agencies group at Morgan
 21 Stanley fit in with or work together with
 22 groups that, work that other groups at Morgan
 23 Stanley were doing in connection with the
 24 Sunbeam transaction?
 25 MS. BROWN: Same objection.

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1 A. Well, let me say that we were an
2 independent group, okay, that worked along
3 with a deal team to put together a proposal
4 for the firm's senior managers to determine
5 whether this was a transaction that Morgan
6 Stanley should undertake.

7 There are lots of things that go
8 into that teamwork analysis, so to speak.

9 So, I am not so sure that, you know,
10 if that, I am not so sure if that answered
11 your question.

12 Q. Let me back up a bit.
13 You described the Sunbeam
14 transaction as involving the financing of the
15 acquisitions.

16 Did you have any involvement with
17 Sunbeam at a time prior to its proposed
18 acquisitions of Coleman and the other
19 companies?

20 A. No, sir.

21 Q. Did you have any involvement in a
22 potential transaction involving the
23 acquisition of Black & Decker?

24 A. I don't recall.

25 Q. Do you recall how you first came to

1 A. Probably more.

2 Q. Probably more than 25?

3 A. Well, when you say 25, what exactly
4 are you talking about? 25 what?

5 Q. 25 other transactions that require
6 material amounts of your time.

7 MS. BROWN: Objection to form.

8 A. Um, I am not so sure about material.

9 Q. Anything more than a cursory amount
10 of your time?

11 MS. BROWN: I continue the
12 objection.

13 A. Yes. I am not so sure --

14 Q. I will step back and try it again.
15 Can you describe what your work load
16 was like, the sorts of matters that you were
17 working on in the spring of 1998.

18 A. Um, I can't describe specifically
19 what I was working on.

20 There were probably a number of
21 situations where I would get called and be
22 asked to opine on a potential equity
23 underwriting in the sense of we have a
24 potential client, they are thinking about
25 issuing some equity, what happens to their

1 be involved with Sunbeam?

2 A. No, I do not.

3 Q. What percentage of your time did you
4 devote to the Sunbeam transaction at the
5 highest point?

6 MS. BROWN: Objection to form.

7 A. "Highest point" meaning?

8 Q. I assume that there were times
9 during the period that you worked on the
10 Sunbeam matter when sometimes you would work
11 on it more on some days, and other days you
12 would work on it less; would that be fair?

13 A. That is fair.

14 Q. Would there be days where the
15 Sunbeam transaction would be the predominant
16 thing that you would work on?

17 A. Perhaps, but I don't recall.

18 Q. At a given -- in the spring of 1998,
19 other than the Sunbeam transaction, how many
20 other matters would you have been working on
21 at the same time?

22 A. It is hard to say.

23 Q. Would it be more or less than ten?

24 A. Probably.

25 Q. Probably more or probably less?

1 public rating. Okay.

2 Something like that takes a very
3 little time. Okay.

4 I had other transactions probably,
5 but again, I don't recall where I could have
6 been having some back and forth advisory work
7 with one or two, three clients, again, that
8 took very -- the existing clients that were
9 already rated.

10 Sunbeam was a little different, in
11 the sense that it was not rated, and it was a
12 big transaction.

13 Q. When you say that "it was a big
14 transaction," how did Sunbeam fit in the
15 spectrum of transactions that you worked on at
16 that point in time?

17 MS. BROWN: Objection to form.

18 A. Can you --

19 Q. Sure. I will do it this way. You
20 mentioned that Sunbeam was a big transaction.
21 What do you mean by that?

22 A. What I meant was, it was a, the
23 dollar amount that Morgan Stanley was
24 committing in terms of the capital commitment
25 was, at that time, the largest transaction

1 that I had looked at.
 2 Q. The Sunbeam transaction involved a
 3 senior debt piece and also a convertible
 4 security.
 5 Did your work focus on one or the
 6 other of those elements?
 7 A. I was primarily, almost actually,
 8 almost entirely working on the senior debt
 9 piece.
 10 Q. What role, if any, did Rick Felix
 11 have with respect to the Sunbeam transaction?
 12 A. Well, Rick, as the head of the
 13 credit, department, and as a -- I believe he
 14 was co-chairman of the leveraged finance
 15 commitment committee, and he was responsible,
 16 he had the final credit authorization, so to
 17 speak, for the transaction. So, he ultimately
 18 approved the deal.
 19 Q. You mentioned the leverage finance
 20 commitment committee.
 21 What is that?
 22 A. Well, it doesn't exist anymore in
 23 its present form, but it was a committee of
 24 very senior managers within the firm, business
 25 unit heads, who were responsible for,

1 ultimately, approving whether to undertake
 2 capital commitments or not.
 3 Q. Would the leveraged finance
 4 commitment committee have been involved in
 5 both the senior debt piece and the convertible
 6 security?
 7 A. No.
 8 Q. Just the senior debt piece?
 9 A. Correct.
 10 Q. To your knowledge, did Mr. Felix
 11 have a role in connection with the Sunbeam
 12 transaction, other than an approval function?
 13 MS. BROWN: Objection. Speculation.
 14 Foundation.
 15 A. Yes. I can't recall.
 16 Q. What role, if any, did Leslie
 17 Bradford play in connection with the Sunbeam
 18 transaction?
 19 MS. BROWN: Objection. Foundation.
 20 A. Can you rephrase the question?
 21 Q. Sure. At the time you worked on
 22 Sunbeam, you reported to Ms. Bradford;
 23 correct?
 24 A. Correct.
 25 Q. Did Ms. Bradford have a role in

1 connection with the leveraged finance
 2 commitment committee?
 3 A. Yes. She was also a member.
 4 Q. And you were not; is that correct?
 5 A. That is correct.
 6 Q. Beyond being a member of the
 7 leveraged finance commitment committee, are
 8 you aware of whether Ms. Bradford did anything
 9 else in connection with the Sunbeam matter?
 10 A. No, I am not aware.
 11 Q. In connection with Sunbeam did you
 12 work with someone named Jason -- is it
 13 Kunreuther --
 14 A. Kunreuther, yes.
 15 Q. Who is he?
 16 A. He was an analyst, a two-year
 17 analyst who worked in our department, worked
 18 for myself and other officers in the credit
 19 department.
 20 Q. And he reported to you?
 21 A. Um, he did not report directly to
 22 me. I don't remember who he reported to, but
 23 he reported to someone else in the department.
 24 Q. What did Mr. -- could you say that
 25 again.

1 A. Kunreuther.
 2 Q. What did Mr. Kunreuther do in
 3 connection with the Sunbeam matter, to your
 4 knowledge?
 5 A. Specifically, I don't recall.
 6 Q. Do you recall whether he did
 7 anything in connection with the Sunbeam
 8 matter?
 9 A. He was involved -- I do remember him
 10 attending some diligence meetings with me.
 11 Um, and he -- he most likely spread some
 12 financial statements for me, into our
 13 database; so, it is easy to understand the
 14 financials.
 15 Other than that, I don't recall.
 16 Q. Other than Mr. Felix, Ms. Bradford
 17 and Mr. Kunreuther, is there anyone else from
 18 the credit group that you can recall having
 19 done work in connection with the Sunbeam
 20 matter?
 21 A. No.
 22 Q. Was there, at the time, something
 23 called the credit committee?
 24 A. Credit committee? Um, I am not so
 25 sure what you mean by that.

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1 Q. Well, in 1997 or 1998, was there an
 2 entity called the credit committee at Morgan
 3 Stanley?
 4 A. We had a, and still have an internal
 5 credit committee in the credit department, but
 6 it was not called the credit committee.
 7 Q. What was it called?
 8 A. I believe it was called the
 9 industrial credit committee.
 10 Q. Did the industrial credit committee
 11 play any role in connection with the Sunbeam
 12 transaction?
 13 A. I don't recall.
 14 Q. What work, if any, did you do in
 15 connection with ratings or potential ratings
 16 with respect to any Sunbeam offerings?
 17 MS. BROWN: Objection to form.
 18 A. Can you be a little bit more
 19 specific.
 20 Q. Did you do any rating work in
 21 connection with Sunbeam?
 22 A. Yes, I did.
 23 Q. Please describe what you did.
 24 A. Um, well, I was responsible for
 25 providing expected ratings to the deal team,

1 time you mean.
 2 Q. Let me step back.
 3 Over what period of time did you do
 4 rating work in connection with Sunbeam?
 5 A. Um, I don't recall exactly. Um,
 6 probably somewhere between sometime in the --
 7 with the company itself or with the team?
 8 Well --
 9 Q. Either one.
 10 A. Probably sometimes towards the end
 11 of 1997, where I was providing some
 12 preliminary views on the ratings, and then
 13 more so in the, you know, the early part of
 14 1998.
 15 And then through, really, June.
 16 Q. So, both before and after the
 17 acquisition of Coleman closed?
 18 A. Yes.
 19 Q. Would that time frame that you
 20 described from late 1997 through June of '98,
 21 would that apply to both the senior debt piece
 22 and the convertible security or just one or
 23 the other?
 24 A. I don't recall.
 25 Q. Are you familiar with a rating that

1 so that they could try to provide cost
 2 analysis to the client, because the big part
 3 of the cost on the bank debt is related to, is
 4 tied to ratings.
 5 And at that time, again, Sunbeam was
 6 not rated.
 7 Um, and then I also was responsible
 8 for working with the Sunbeam management, in
 9 preparing them for the meetings with the
 10 rating agencies and helping them along with
 11 some other team members, put together a rating
 12 agency presentation that they would walk
 13 through with the rating agencies at the
 14 meeting.
 15 And then I was involved in some
 16 follow-up conversations with the rating
 17 agencies after those meetings.
 18 Q. Did you do rating work in connection
 19 with both the senior debt piece and the
 20 convertible security?
 21 MS. BROWN: Objection to form.
 22 A. Not directly.
 23 Q. What rating work, if any, did you do
 24 in connection with the convertible security?
 25 A. At what time? I am not sure what

1 would be written B1/B plus?
 2 A. Yes.
 3 Q. How would you describe that rating?
 4 A. Well, on a scale -- on -- I mean, it
 5 is hard to describe it, as you word it that
 6 way, but the highest possible rating at S&P is
 7 a triple A, all the way down to single D.
 8 And the highest possible rating at
 9 Moody's is an A double -- also a triple A.
 10 And so, you have all the way from
 11 triple A down to D, basically, both agencies.
 12 You know. A B1 B plus rating, it
 13 depends on what security you are talking
 14 about. Because that will impact the rating.
 15 It could go higher or could go lower.
 16 Q. What sort of rating would be
 17 required to be considered investment grade?
 18 A. Triple B minus, B double A3.
 19 Big B little A, little A3.
 20 Q. So, would a B1 B plus rating be
 21 considered investment grade?
 22 A. No, it would not.
 23 Q. You mentioned, a couple times in
 24 your testimony, I think you used the phrase
 25 "deal team."

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1 A. Correct.
 2 Q. Who are you referring to by that?
 3 A. Um, specifically, I don't recall
 4 everyone on the deal team, but members
 5 probably came from M&A, corporate finance,
 6 fixed income research. Um, debt capital
 7 markets, which probably, at that time,
 8 included the bank loan group.
 9 That's it.
 10 Q. Who were the consumers of the
 11 information that you generated in connection
 12 with Sunbeam?
 13 MS. BROWN: Objection to form.
 14 A. Can you be -- when you say
 15 consumers --
 16 Q. Sure. When you performed an
 17 analysis in connection with the Sunbeam
 18 matter, to whom did you provide that analysis?
 19 MS. BROWN: Same objection.
 20 A. I guess it would depend on the
 21 situation.
 22 Q. Well, is there a set of people that,
 23 in connection with the entire Sunbeam matter,
 24 that would constitute the people to whom you
 25 provided your analysis?

1 A. I don't recall.
 2 Q. Did you provide your analysis to
 3 Ms. Bradford or Mr. Felix?
 4 A. I am sure I did, but I don't recall
 5 to who, if it was both, one or the other. But
 6 I am sure I did.
 7 Q. Would you have also have provided
 8 your analysis to people on the deal team?
 9 MS. BROWN: Objection to form.
 10 A. Again, I don't recall if I did or
 11 not.
 12 Q. What involvement, if any, did you
 13 have in formulating the amount of senior debt
 14 that would be extended to Sunbeam?
 15 A. None.
 16 Q. What involvement, if any, did you
 17 have in formulating the terms on which the
 18 senior debt would be extended to Sunbeam?
 19 A. None.
 20 Q. What involvement, if any, did you
 21 have in formulating the amount of the
 22 convertible security that Sunbeam would issue?
 23 A. None.
 24 Q. What involvement, if any, did you
 25 have in formulating the terms of the Sunbeam

1 MS. BROWN: Objection to form.
 2 A. Provide my analysis? Which
 3 analysis?
 4 Q. You said that you performed credit
 5 analysis.
 6 A. Correct.
 7 Q. What was the purpose for which you
 8 performed that credit analysis?
 9 MS. BROWN: Asked and answered.
 10 A. Um, the purpose was, again, to make
 11 sure that Morgan Stanley, as a firm, was
 12 making a proper capital commitment, because
 13 again, our job primarily in the credit
 14 department is to protect the capital base of
 15 the firm itself.
 16 Q. And it was not, ultimately, your
 17 decision, as a vice president in the credit
 18 department, as to whether or not that capital
 19 commitment would be made; was it?
 20 A. That is correct.
 21 Q. So, the analysis that you performed
 22 in connection with deciding whether or not
 23 Morgan Stanley should make the capital
 24 commitment, to whom did you provide that
 25 credit analysis?

1 convertible security?
 2 A. None.
 3 Q. Would it be fair to say that you
 4 really took the proposed terms and then
 5 analyzed whether those were a sound credit
 6 decision?
 7 MS. BROWN: Objection to the form.
 8 A. I am not so sure I understand.
 9 Q. Well, your role, as you described
 10 it, was that you performed an analysis to
 11 protect Morgan Stanley's interest in extending
 12 capital to Sunbeam; is that right?
 13 A. That is right.
 14 Q. And in performing that function
 15 would it be fair to say that you took the
 16 proposed terms of the capital that would be
 17 extended as a given and then you evaluated
 18 whether those terms were worth pursuing from
 19 Morgan Stanley's perspective?
 20 MS. BROWN: Objection to form.
 21 A. I am not so sure, when you say
 22 pursue those terms, I am not so sure what you
 23 mean.
 24 Q. You testified that you did not have
 25 a role in setting the terms of the financing

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1 or capital to be extended to Morgan Stanley.
 2 I am trying to ask you, as the flip
 3 side of that, is it correct that you took the
 4 terms of the capital that would be extended to
 5 Morgan Stanley as given, and then analyzed
 6 whether an extension of capital on those terms
 7 was in the interest of Morgan Stanley or not?
 8 A. Well, in the interest of Morgan
 9 Stanley -- are you talking about from a credit
 10 standpoint whether it was an acceptable
 11 credit?
 12 Q. Yes.
 13 A. I think that is a fair statement.
 14 Q. Are you familiar with the term
 15 "Sunbeam corporation working group" at Morgan
 16 Stanley?
 17 MS. BROWN: Objection to form.
 18 A. Not specifically. I am not so sure
 19 what --
 20 Q. All right. In connection with
 21 Morgan Stanley's work on different matters,
 22 are there working groups established?
 23 A. There was a team that was part of
 24 the, you know, what we would call the working
 25 group.

1 but there are, there could have been certain
 2 people on the working group that I never spoke
 3 with.
 4 Q. What does working group mean in the
 5 context of a matter like the Sunbeam
 6 transaction?
 7 A. Um, it most likely would include
 8 everyone at Morgan Stanley who was associated
 9 with the transaction in some form.
 10 It would also include members of
 11 Sunbeam senior management team.
 12 It would also include, potentially,
 13 and I don't recall, but it could potentially
 14 include members from other capital providers,
 15 law firms, accounting firms, consulting firms.
 16 It would include a lot of different entities.
 17 Q. The deal team that you referred to
 18 would be a smaller, like a subset of that
 19 group?
 20 A. That is fair to say.
 21 Q. Who would be part of the deal team?
 22 MS. BROWN: Objection, asked and
 23 answered.
 24 A. Well, it could be -- people from my
 25 department, people from fixed income research,

1 Q. Is "team" another word for working
 2 group, or is there a team within the working
 3 group?
 4 MS. BROWN: Objection.
 5 Q. What do you mean by your last
 6 answer?
 7 A. Um, --
 8 MS. BROWN: Objection. Compound.
 9 A. I guess what I meant was a team, you
 10 know -- how I used it as -- yes, team could be
 11 a subsection of the working group, so to
 12 speak. They are not always interchangeable,
 13 is what I am trying to get at.
 14 Q. Did the working group in connection
 15 with Sunbeam ever meet as an entire group?
 16 MS. BROWN: Objection. Foundation.
 17 A. Um, well, again, working group, I am
 18 not so sure, when you talk about working
 19 group, what we are talking about.
 20 Q. So, is it your testimony that you
 21 are not familiar with any application of the
 22 term working group to the Sunbeam matter?
 23 MS. BROWN: Objection to the extent
 24 it mischaracterizes.
 25 A. I am familiar with a working group,

1 people from M&A, people from corporate
 2 finance.
 3 Um, that is pretty much it.
 4 Leveraged finance.
 5 Q. Was there a particular leader of the
 6 deal team in connection with the Sunbeam
 7 transaction?
 8 MS. BROWN: Objection to form.
 9 A. Yes. I am not so sure what you mean
 10 by "leader."
 11 Q. Was there a particular person who
 12 was, would have been in charge of or primarily
 13 responsible for the deal team?
 14 MS. BROWN: Same objection.
 15 A. Yes, again, I don't know -- I am not
 16 so sure what you mean by "in charge."
 17 Q. Please describe how the deal team
 18 functioned in connection with the Sunbeam
 19 matter.
 20 MS. BROWN: Objection to form.
 21 A. It is kind of a broad question. I
 22 am trying to, I am not so sure what you mean.
 23 Q. Well, I am trying to get a sense of
 24 how the team functioned and how you worked
 25 with others, and so -- I am looking for a

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1 fairly, I am looking for your best description
2 of how this organization, this deal team
3 functioned.

4 A. I don't recall specifics, but again,
5 there was usually a number of people involved
6 from different areas of the group, or
7 different areas of the deal team, again, from
8 my department, from fixed income research,
9 from leverage finance, from corporate finance,
10 and from -- from M&A.

11 In terms of how the deal team
12 worked, it just depended on where we were in
13 the process.

14 Um, normally there was someone in
15 corporate finance who was kind of um, um, in
16 charge of or responsible for making sure that
17 all of the constituencies -- meaning myself,
18 and fixed income research and leverage
19 finance, etc. -- were all kind of working
20 together.

21 Q. Do you consider that you were part
22 of the deal team with respect to Sunbeam?

23 MS. BROWN: Objection to form.

24 A. Um, again, it depends on what time
25 you are talking about.

1 Q. When, if ever, were you part of the
2 deal team in connection with Sunbeam?

3 A. Probably very preliminarily towards
4 the end of 1997, and then more so, probably,
5 in the February, March time frame of 1998.

6 Q. Were there any particular events
7 that led you to become part of the deal team
8 or led you to no longer be part of the deal
9 team?

10 A. Well, I don't recall exactly, but
11 there is no specific event that I can recall
12 that got me involved in Sunbeam.

13 In relation to your second question,
14 um, once Sunbeam had dismissed Mr. Dunlap and
15 it was clear that Mr. Perelman's constituency
16 was going to take over, at that point I was no
17 longer involved.

18 Q. Why was that, if you know?

19 A. Well, at that time we had just hired
20 someone from another institution to monitor
21 and see through distressed situations and I
22 did not have that experience, and he
23 effectively took over, once things transpired
24 as they did.

25 Q. To whom are you referring, in your

1 last answer?

2 A. His name?

3 Q. Yes.

4 A. Morgan Edwards.

5 Q. Did you have occasion to deal
6 directly with any individuals at Sunbeam?

7 A. I am sure I did, but I don't recall
8 specifics.

9 Q. You can't recall any specific
10 individuals that you talked with at Sunbeam?

11 A. Individually or --

12 Q. In any context, individuals that you
13 would have spoken with.

14 A. I had spoken with Russ Kersh. I had
15 spoken with Ron Richter. I had spoken with Al
16 Dunlap.

17 I can't recall any other specific
18 individuals.

19 Q. With respect to Mr. Kersh, did you
20 speak to him in person, on the telephone, or
21 both?

22 A. Both.

23 Q. Did you have one-on-one
24 conversations with Mr. Kersh?

25 A. I believe I did.

1 Q. Did you speak to Mr. Kersh just once
2 or twice, or was it something that, was
3 Mr. Kersh someone with whom you spoke more
4 frequently?

5 A. One on one?

6 Q. Yes.

7 A. No. It was one time.

8 Q. You said that you met Mr. Kersh in
9 person, as well as over the telephone?

10 A. Yes. That's right.

11 Q. On how many occasions?

12 A. I don't recall.

13 Q. More than one or two?

14 A. Yes.

15 Q. With respect to Mr. Richter, did you
16 speak with him in person, on the telephone, or
17 both?

18 A. Both.

19 Q. Did you have one-on-one
20 conversations with Mr. Richter?

21 A. Yes.

22 Q. Just once or twice, or more than
23 that?

24 A. Um, I don't recall.

25 Q. With respect to Mr. Dunlap, did you

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1 speak with him on the telephone, in person, or
 2 both?
 3 A. No. That was only in person.
 4 Q. Was that a one-on-one conversation?
 5 A. No, it was not.
 6 Q. Part of a larger meeting?
 7 A. That is correct.
 8 Q. Is this just one occasion that you
 9 were to meet with Mr. Dunlap, or was it more
 10 than one?
 11 A. It was more than one.
 12 Q. Can you recall how many occasions
 13 you would have attended a meeting with
 14 Mr. Dunlap?
 15 A. No, I can't recall.
 16 Q. More or less than ten?
 17 A. Definitely less than ten.
 18 Q. Can you recall any specific meetings
 19 at which you and Mr. Dunlap were both present?
 20 A. Um, I recall being at a meeting with
 21 Mr. Dunlap. I believe it was an equity
 22 analysts meeting, sometime in the spring of
 23 1998.
 24 I was at another meeting with Mr.
 25 Dunlap again, and I don't recall the primary

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1 reason for being at the meeting, although I
 2 know that he was signing copies of his book.
 3 There may have been a couple of
 4 times, actually, thinking about it, on the
 5 phone, as part of diligence, but, quite
 6 frankly, I can't recall. But I remember those
 7 two specific times with Mr. Dunlap in person.
 8 Q. At the in-person meetings with
 9 Mr. Dunlap that you mentioned, did those both
 10 take place after the Coleman acquisition
 11 closed?
 12 A. When was the date of the Coleman
 13 acquisition?
 14 Q. March 30th.
 15 A. Um, I believe they were, yes.
 16 Q. Can you recall having any
 17 conversations with Mr. Dunlap prior to March
 18 30th, 1998?
 19 A. Again, I believe, um, I can't recall
 20 specifics, but I believe there were a couple
 21 of phone calls with senior management of
 22 Sunbeam and some of the targets where, I
 23 believe, Mr. Dunlap was available by phone.
 24 Q. Were these calls in which Mr. Dunlap
 25 was actually on the call or was he available

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1 to participate; if needed?
 2 A. I don't recall.
 3 Q. With respect to Mr. Kersh, did the
 4 conversations that you had with him take place
 5 before March 30th, after, or both?
 6 A. Both.
 7 Q. What did you talk to Mr. Kersh
 8 about?
 9 A. I don't recall.
 10 Q. With respect to Mr. Richter, do you
 11 recall whether your conversations with him
 12 were before or after March 30th, or both?
 13 A. I believe they were after.
 14 Q. Did they have to do with rating
 15 matters?
 16 A. Perhaps, but I don't recall.
 17 Q. Is there someone that you would
 18 describe as your primary contact at Sunbeam?
 19 A. No.
 20 Q. Other than Mr. Kersh, Mr. Richter
 21 and Mr. Dunlap, is there anyone else at
 22 Sunbeam that you can recall talking to?
 23 A. Specifics? No.
 24 Q. Would there be other people, but you
 25 just can't remember their names?

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1 A. I think that is fair.
 2 Q. Had you heard of Mr. Dunlap prior to
 3 your work for Sunbeam?
 4 A. Ah, I don't recall.
 5 Q. In connection with your work did you
 6 say that the consumer products industry was
 7 one of the areas in which you focused?
 8 A. It was one of them. However, at the
 9 time, and I cannot remember the specifics, a
 10 woman who I worked with, uhm, we had
 11 overlapping industry portfolios and there was
 12 some changing and she was on maternity leave;
 13 so, I believe, at the time of the Sunbeam
 14 transaction, consumer products was my, part of
 15 my portfolio.
 16 Q. In connection with your work with
 17 the consumer products area, did you have
 18 occasion to learn about Mr. Dunlap's work with
 19 Scott Paper?
 20 MS. BROWN: Objection to form.
 21 A. No, I did not.
 22 Q. At the time that you began work on
 23 the Sunbeam matter, did you have an
 24 understanding of Mr. Dunlap's reputation?
 25 MS. BROWN: Objection to form.

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1 A. I don't recall.
 2 Q. You don't recall what Mr. Dunlap's
 3 reputation at the time may have been?
 4 A. I don't.
 5 Q. Have you, subsequently, come to have
 6 an understanding of Mr. Dunlap's reputation?
 7 MS. BROWN: Objection to form.
 8 A. I am not so sure what you mean by
 9 "reputation."
 10 Q. Did you have any understanding of
 11 how Mr. Dunlap is thought of in business
 12 circles?
 13 MS. BROWN: Objection.
 14 A. I can't -- I can't speculate. I
 15 don't know how he is thought of.
 16 Q. I am not asking you to speculate. I
 17 am asking you, based on your work with Sunbeam
 18 and your following of the consumer products
 19 industry, do you have any understanding of how
 20 Mr. Dunlap is viewed, as a matter of general
 21 reputation?
 22 A. Um, well, um, nothing other than
 23 what I have, I guess, I have read in the
 24 papers.
 25 Q. What can you recall having read in

1 A. I don't recall.
 2 Q. In connection with your Sunbeam work
 3 did you have occasion to speak with any
 4 individuals at the Bank of America?
 5 A. Again, I don't recall.
 6 Q. In connection with your Sunbeam work
 7 did you have occasion to speak with any
 8 individuals at Coleman?
 9 A. I believe there was a senior person
 10 from Coleman that we spoke to, as part of the
 11 transaction, but I don't remember that
 12 person's name.
 13 Q. Do you remember their function,
 14 their title?
 15 A. No, I do not.
 16 Q. Is it someone that you spoke with
 17 just once, or twice, or more often?
 18 A. It was -- it was a one-time meeting,
 19 um, as part of a larger group.
 20 Q. Was the meeting in New York or
 21 somewhere else?
 22 A. I don't remember. I don't recall.
 23 Q. More generally, did you have
 24 occasion to travel away from New York in
 25 connection with the Sunbeam matter?

1 the papers?
 2 MS. BROWN: Objection. Time frame.
 3 A. Um, I guess, yes, it depends on what
 4 time frame we are talking about.
 5 Q. What can you recall having read at
 6 any time?
 7 If it has changed over time, then
 8 please indicate that.
 9 A. Um, I -- specifics, obviously, I
 10 can't give, but, you know, obviously, there
 11 was a lot of bad press regarding Mr. Dunlap,
 12 um, um, right -- again, I can't recall a
 13 specific time, but sometime probably in the,
 14 you know, springtime of 1998, probably in the,
 15 well, it was in the May time frame of 1998.
 16 And then, subsequently, after his
 17 dismissal, of course, there was a lot of press
 18 about Mr. Dunlap, following his dismissal.
 19 Q. In connection with your Sunbeam work
 20 did you have occasion to speak with any
 21 individuals at Arthur Andersen?
 22 A. Um, I don't recall.
 23 Q. In connection with your Sunbeam work
 24 did you have occasion to speak with any
 25 individuals at First Union?

1 A. I don't recall if I did or not.
 2 Q. Do you remember if you ever attended
 3 any meetings in Florida?
 4 A. Um, no, I have never been to Florida
 5 in regards to Sunbeam.
 6 Q. Do you remember if you traveled to
 7 Kansas or anywhere else in connection with
 8 Sunbeam?
 9 A. I have never been to Kansas in
 10 connection with Sunbeam.
 11 Q. So, it would be fair to say that the
 12 in-person meetings that you recall with
 13 respect to Sunbeam took place in New York?
 14 A. From -- I don't recall. Most
 15 likely, was in New York.
 16 Q. In connection with Sunbeam did you
 17 do any on-site due diligence in any place
 18 outside of Morgan Stanley's offices?
 19 A. Off-site? Did you say "off-site due
 20 diligence"?
 21 Q. I said "on-site." I basically
 22 mean -- is there something that you are able
 23 to -- is your work for Sunbeam something that
 24 you are able to do from your office or --
 25 A. It could have been. It could have

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1 been.

2 Q. In connection with your Sunbeam work

3 did you have occasion to speak with anyone at

4 MacAndrews and Forbes?

5 A. No, I did not.

6 Q. In connection with your Sunbeam work

7 did you ever, are you aware that an offering

8 memorandum was issued?

9 A. Um, yes, I am aware.

10 Q. What role, if any, did you play in

11 preparing the offering memorandum?

12 A. None.

13 Q. Did you review drafts of the

14 offering memorandum?

15 A. No, I did not.

16 Q. Do you recall discussing the

17 offering memorandum with anyone?

18 A. I don't recall.

19 Q. Please describe the work that you

20 did in connection with Sunbeam prior to the

21 end of 1997.

22 A. Um, the only work I would have done,

23 at the end of 1997, would have been to provide

24 preliminary rating estimates on the

25 transaction.

1 its acquisition of Coleman?

2 A. No, I don't recall specifically, no.

3 Q. If that were the beginning of March

4 of 1998, does that sound right to you?

5 A. That sounds correct.

6 Q. Do you recall what work, if any, you

7 did in connection with Sunbeam, prior to the

8 issuance of the Coleman press release?

9 A. No, I do not specifically recall.

10 Q. Do you recall reviewing the Sunbeam

11 press release announcing the potential

12 acquisition of Coleman?

13 A. That wouldn't have been, that would

14 not have been my job function.

15 Q. In connection with Sunbeam's

16 potential acquisition of Coleman, what is the

17 first thing that you remember doing?

18 A. Um, providing, again, rating

19 estimates on this transaction.

20 Q. Do you recall whether or not you

21 would have participated in an organizational

22 conference call, on or about March 3rd, 1998,

23 in connection with the Sunbeam matter?

24 A. I don't recall participating, but as

25 a matter of course, that is something that our

1 Q. When you say "the transaction," you

2 are referring to the senior debt piece of the

3 convertible, or the convertible piece, or were

4 those even settled at that point in time?

5 A. It wasn't, I don't remember what

6 was, you know, how the capital structure

7 was -- I don't remember.

8 Q. Do you remember what preliminary

9 rating opinions you provided in 1997?

10 A. No, I don't.

11 Q. Moving from 1997 to the first part

12 of 1998, say January and February of 1998,

13 please describe what work, if any, you did in

14 connection with Sunbeam during that period of

15 time.

16 A. Um, I don't remember specifically.

17 Um, I don't remember specifically in January

18 or February, um -- what work I did.

19 Q. Do you recall when press releases

20 were issued concerning Sunbeam's potential

21 acquisitions of Coleman and the two other

22 companies?

23 MS. BROWN: Objection to form.

24 Q. Do you recall when it was that

25 Sunbeam issued a press release with respect to

1 group normally would not be involved in.

2 Q. Why is it that that would be

3 something that your group ordinarily wouldn't

4 be involved in?

5 A. Again, because we were not really

6 part of the client interaction. Our first

7 priority was really -- my client was Morgan

8 Stanley, the capital base of Morgan Stanley.

9 So, we normally did not get involved

10 in organizational meetings, because it really

11 had nothing to do with our department, other

12 than potentially some ratings issues.

13 But normally, as a matter of course,

14 we were not involved in those meetings.

15 MR. CHORVAT: I will mark this as an

16 exhibit.

17 (CPH Exhibit 249, fax, marked for

18 identification as of this date.)

19 Q. I will hand you what has been marked

20 as CPH Deposition Exhibit 249.

21 This is a two-page document bearing

22 Bates numbers Morgan Stanley 36633 and 36634.

23 Can you identify Exhibit 249?

24 A. Well, this is a fax from me to Karen

25 Eltrich, who, I believe, at the time, was

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1 working in fixed income research. And it
 2 looks like a, some type of due diligence
 3 agenda for Coleman.
 4 Q. Why is it that you sent this fax, on
 5 or about March 5th, 1998?
 6 A. I don't recall.
 7 Q. Is the second page of this fax
 8 something that you prepared?
 9 A. I don't recall.
 10 Q. In the course of your work as a vice
 11 president in the credit group, did you have
 12 occasion to prepare due diligence review
 13 agendas?
 14 A. As a matter of course, yes, I did.
 15 Q. When you would prepare a due
 16 diligence review agenda, is that a sort of a
 17 standard form document that you would just
 18 apply to a particular transaction, or is it
 19 something that you would draw up from scratch?
 20 MS. BROWN: Objection to form.
 21 Go ahead.
 22 A. From my standpoint, there is no
 23 standard. Every situation is different.
 24 Every credit is different.
 25 So, from my standpoint, no, there is

1 A. Um, well, from a credit standpoint,
 2 I would describe it as credit due diligence.
 3 And, again, the purpose of our credit due
 4 diligence was to analyze the strengths and
 5 weaknesses of a particular company, to make
 6 sure that Morgan Stanley was going to get its
 7 money back on a capital commitment.
 8 Q. You used the term "credit due
 9 diligence." Were you using that in contrast
 10 to some other kind of due diligence that
 11 someone else might be doing?
 12 A. Um, yes.
 13 Q. What other sorts of due diligence
 14 might someone else at Morgan Stanley have been
 15 doing, in connection with the Coleman --
 16 A. I really can't say.
 17 Q. Other than credit due diligence,
 18 what other sorts of due diligence are you
 19 aware of?
 20 MS. BROWN: Objection to form.
 21 A. I can't say. I was not -- I was not
 22 part of other forms of due diligence.
 23 Q. When you used the phrase "credit due
 24 diligence," what were you distinguishing
 25 credit due diligence from?

1 no standard form.
 2 Q. So, each time you prepared a due
 3 diligence review agenda, you would sit down
 4 and determine what to include for that
 5 particular matter?
 6 A. That is correct, for things I wanted
 7 answers to. That is correct.
 8 Q. But you don't recall whether or not
 9 you prepared this particular due diligence
 10 review agenda for Coleman?
 11 A. I don't recall preparing this.
 12 Q. Do you recall whether there was
 13 someone else in the credit group who might
 14 have prepared this due diligence review agenda
 15 for Coleman?
 16 A. There would have been no one else.
 17 Q. What function does a due diligence
 18 review agenda like this serve?
 19 A. What do you mean by "due diligence"?
 20 Q. Well, you mentioned that, in the
 21 course of your work as a vice president in the
 22 credit group, you would have cause to prepare
 23 due diligence review agendas?
 24 A. Yes.
 25 Q. Why did you do that?

1 A. I guess, I am talking about things
 2 that I am concerned about. It is kind of the
 3 way I look at the situation. That is all that
 4 I care about.
 5 Okay. So, there could be, perhaps,
 6 someone in M&A that did some due diligence,
 7 you know, that had no bearing on my credit due
 8 diligence, so to speak.
 9 Q. When you said that the due diligence
 10 work that someone else may or may not have
 11 done had no bearing on your credit due
 12 diligence, would your inquiry proceed on a
 13 separate track from any other due diligence
 14 inquiry that someone else might be doing?
 15 A. It could. It could.
 16 Q. When you say "it could," does that
 17 mean that there might also be interaction?
 18 A. Um, yes. There could be
 19 interaction.
 20 Q. In connection with Sunbeam do you
 21 recall whether your credit due diligence
 22 proceeded separately from any other due
 23 diligence work that anyone else at Morgan
 24 Stanley did, or whether there was interaction?
 25 A. I am sorry, can you repeat the

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1 question.
2 Q. Yes. In connection with your work
3 for Sunbeam in connection with the Coleman
4 acquisition, do you recall whether your credit
5 due diligence work proceeded separately from
6 any other work that anyone else at Morgan
7 Stanley might have done?

8 A. Um, I think, I believe there was
9 overlap. There were different -- again, I was
10 part of a team, so to speak, and just from a
11 resource standpoint, it was part of the
12 process where I could be part of a larger
13 group of people conducting "due diligence." I
14 was there to conduct credit due diligence.

15 But, at the same time, um, most
16 likely, I was part of um, um, separate
17 diligence that was not part of the team.

18 Q. Outside of the credit group, who
19 else would have been in this larger group of
20 people who were doing due diligence work in
21 connection with Sunbeam and Coleman?

22 MS. BROWN: Objection. Foundation.

23 A. Um, again, specifically, I don't
24 remember individuals, but some people from
25 corporate finance, some people from debt

1 certain diligence topics.
2 Q. It is correct that you don't have
3 any recollection of any specific overlap or
4 meetings of the sort that you described in
5 your last answer in connection with Sunbeam
6 and Coleman?

7 A. Not specifically individuals, no, I
8 do not.

9 Q. In connection with your credit due
10 diligence with respect to Sunbeam, what
11 sources of information did you utilize?

12 A. We relied on the public filings of
13 Sunbeam and the financial statements of the
14 companies that they were acquiring.

15 We relied on information provided to
16 us by Sunbeam management and also management
17 of the target companies.

18 And I don't recall specifics;
19 however, in a situation like this, I probably
20 used some fixed income research reports on
21 some other consumer products companies that we
22 researched -- reports, rating agency reports.
23 That is probably it.

24 Q. You mentioned information from
25 management of Sunbeam and the target

1 capital markets, people from fixed income
2 research, people from my department.

3 People from leverage finance.

4 Q. A moment ago you used the term
5 "overlap" to describe what, I take it, were
6 some interaction between yourself and
7 individuals who were doing, in other groups,
8 that were working on the Sunbeam Coleman
9 matter.

10 Please describe the overlap that you
11 referred to.

12 MS. BROWN: Objection to form.

13 A. Um, well, again, specifically, I
14 can't remember specific times or persons who
15 were there, but, generally speaking, when we
16 undertake a commitment for a bank loan, there
17 is a credit component, because Morgan Stanley
18 is providing a capital commitment and there
19 is, therefore, someone from that product
20 group, being the bank loan group would also be
21 involved in doing due diligence, as an
22 example.

23 So, there may be overlap or a kind
24 of a common diligence session with myself and
25 someone from the loan product group to cover

1 companies.

2 What sorts of information did you
3 request from management?

4 A. I don't recall.

5 Q. Are there types of information that
6 you normally would request from management,
7 beyond what would be in the filings or
8 financial statements?

9 A. Perhaps. But every situation is
10 different.

11 Q. In this instance you don't recall?

12 A. No.

13 Q. Other than public filings, financial
14 statements, or information that you would
15 specifically request, can you recall any other
16 sources of information in connection with your
17 credit due diligence reviews for Sunbeam?

18 MS. BROWN: Could I hear the
19 question back, please.

20 (Record read.)

21 MR. CHORVAT: I will ask that again.

22 Q. In addition to public filings,
23 financial statements from the target companies
24 or information that the management of Sunbeam
25 or the target companies provided to you, do

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1 you recall any other sources of information
 2 that you utilized in connection with your
 3 credit due diligence review?
 4 MS. BROWN: Objection. It
 5 mischaracterizes the prior answer.
 6 A. Specifically, no, I don't.
 7 Q. Did you have occasion to contact any
 8 customers of Sunbeam?
 9 A. I may have, but I don't recall.
 10 Q. What sorts of reviews or analyses
 11 did you perform with the information that you
 12 obtained with respect to Sunbeam?
 13 A. Specifically, I don't recall.
 14 Most of the analysis that I did,
 15 again, was focused on the fundamentals of the
 16 business, the strengths and weaknesses, trying
 17 to determine whether a company with this type
 18 of capital structure was creditworthy --
 19 using, you know, various assumptions which I
 20 don't recall.
 21 Q. What, if anything, do you recall
 22 about the conclusions you reached with respect
 23 to whether or not Sunbeam was creditworthy?
 24 A. Well, based on the information that
 25 we had, and based on the best of my ability,

1 committee meeting.
 2 Q. Did your due diligence work with
 3 respect to Sunbeam essentially end with the
 4 meeting of the leveraged finance commitment
 5 committee?
 6 A. No.
 7 Q. What work in connection with your
 8 credit due diligence review can you recall
 9 doing after the meeting of the leveraged
 10 finance commitment committee?
 11 A. Well, I don't recall specifics, but
 12 again, there was a long time between the
 13 leveraged finance commitment committee meeting
 14 and the time that the company was presenting
 15 to the rating agencies. It was about, I
 16 think, three months.
 17 So, there was ongoing, you know,
 18 work to be done to get the company ready to
 19 meet with the rating agencies.
 20 Q. During that period of time after the
 21 meeting of the leveraged finance commitment
 22 committee would you consider your work, did it
 23 continue to be credit due diligence or did it
 24 sort of shift gears to something else?
 25 A. I really -- I can't say. I don't

1 um, I thought that Sunbeam was a creditworthy
 2 entity. Um, um, and would receive a double B,
 3 BA2 rating by the rating agencies.
 4 Q. Do you recall at what point in time
 5 you reached that opinion?
 6 A. Not specifically, no.
 7 Q. Is that prior to the closing of the
 8 acquisitions?
 9 A. Um, I don't recall when those -- I
 10 don't recall -- I don't recall.
 11 Q. With respect to the information that
 12 Sunbeam management provided to you, did you do
 13 anything to challenge or look into the
 14 dependability of that information?
 15 MS. BROWN: Objection to form.
 16 A. Um, I can't -- I can't say. I don't
 17 recall.
 18 Q. Over what period of time did you
 19 perform your credit due diligence with respect
 20 to Sunbeam?
 21 A. Um, again, I don't remember specific
 22 times, but it was probably sometime, based on
 23 this document that you have shown me here,
 24 sometime between the beginning of March and up
 25 until the time of the leveraged finance

1 recall.
 2 Q. During the course of your credit due
 3 diligence review with respect to Sunbeam, did
 4 you take notes or record the work that you
 5 were doing in some fashion?
 6 A. I am sure I did.
 7 Q. What sorts of notes do you normally
 8 take in connection with the credit due
 9 diligence review?
 10 A. It depends on what's being asked and
 11 what's being said.
 12 Q. Do you recall what was being asked
 13 or being said in connection with the Sunbeam?
 14 A. Not specifically, no.
 15 Q. Do you, typically, take notes on a
 16 pad of paper, like a legal pad?
 17 A. Um, you know, it is a piece of
 18 paper, but I don't remember what form it was
 19 in.
 20 Q. Do you know what has happened to any
 21 notes that you would have prepared in
 22 connection with the Sunbeam --
 23 A. No, I do not.
 24 Q. Do you still have any notes in
 25 connection with Sunbeam?

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1 A. No, I do not.
 2 Q. Do you recall whether you utilized
 3 any e-mail in 1997 or 1998 with respect to
 4 Sunbeam?
 5 A. I don't recall.
 6 Q. Did you ever come to believe that
 7 any information that you had been provided in
 8 connection with Sunbeam was false or
 9 misleading?
 10 A. Um, no, I do not.
 11 Q. Did you ever come to believe that
 12 any information that you had been provided in
 13 connection with Coleman was false or
 14 misleading?
 15 A. I am sorry -- can you repeat the
 16 last question?
 17 Q. The first one was Sunbeam, the
 18 second one was Coleman.
 19 A. Was the question, have you come to
 20 believe or -- or did you believe?
 21 Q. Have you come to believe, at any
 22 point in time.
 23 A. Oh. Well, yes. At a point in time
 24 I have come to believe that some of the
 25 information provided to us was misleading.

1 I will ask more specifically.
 2 Were you referring to Sunbeam's
 3 performance in the first quarter of 1998 or
 4 something else?
 5 A. No. I was talking about basically
 6 what happened after, you know, after the
 7 company basically collapsed.
 8 Q. So, you are talking about
 9 information post dating Sunbeam's acquisition
 10 of Coleman?
 11 MS. BROWN: Objection to form.
 12 Q. Sorry. I want to clarify your last
 13 answer. When you say the company's collapse,
 14 what period of --
 15 A. Sorry.
 16 Q. Please just elaborate on your
 17 answer, if you would, please.
 18 A. I guess what I am trying to say is
 19 that it became clear to myself, um, that after
 20 Mr. Dunlap was dismissed, and subsequently to
 21 that, in the following months, that even
 22 though we did what, I believe, was the best
 23 due diligence to our ability, that we did not
 24 have all of the facts, given that Sunbeam
 25 eventually, you know, um, declared bankruptcy.

1 Q. With respect to Sunbeam, what
 2 information have you come to believe was
 3 misleading?
 4 A. I don't recall specifics.
 5 Q. Do you have a general recollection
 6 that --
 7 A. Um, um, not really. I mean, you
 8 know, again, it has been quite a while, but I
 9 don't specifically remember what was, you
 10 know, what the fact pattern was after the
 11 fact.
 12 But I do believe that yes, there was
 13 information that, you know -- it seemed like
 14 we did not have all of the information or did
 15 not have the whole story.
 16 Q. When you say you did not have all of
 17 the information or have the whole story, are
 18 you referring to information about Sunbeam, or
 19 about Coleman, or something else?
 20 A. Yes, I don't recall. I don't
 21 recall.
 22 Q. A moment ago, you said that you had
 23 come to believe that some information that you
 24 had been provided was misleading. Were you
 25 thinking about Sunbeam information?

1 Q. Is it your recollection that you did
 2 not come to believe that information that had
 3 been provided to you was false or misleading
 4 until sometime after Mr. Dunlap was fired?
 5 A. Yes, I think that is -- yes.
 6 MS. BROWN: Could we take a break?
 7 MR. CHORVAT: That is fine.
 8 THE VIDEOGRAPHER: The time is 10:56
 9 a.m. and this completes tape number 1.
 10 (Recess.)
 11 THE VIDEOGRAPHER: Stand by.
 12 The time is 11:09 a.m. and this
 13 begins tape number 2.
 14 BY MR. CHORVAT:
 15 Q. Mr. Whelan, in connection with your
 16 credit due diligence review in the Sunbeam
 17 matter, did you ever place a phone call, just
 18 yourself, to the management of Sunbeam to
 19 request information?
 20 A. I don't recall.
 21 Q. In connection with the Sunbeam
 22 matter were you ever denied access to any
 23 information that you wanted to review?
 24 A. I don't recall, but -- I don't
 25 believe that would happen as part of, you

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1 know, my responsibility.
 2 Q. Why is it that you don't believe
 3 that that would happen?
 4 A. Um, well, again, the job of
 5 extending credit lay, ultimately, with the
 6 credit department, and not having that
 7 information would not be acceptable.
 8 However, I will, it depends on what
 9 information we are talking about. Okay.
 10 But there should be no reason why
 11 the credit department wants some information
 12 that the client should be willing to give them
 13 that information.
 14 Q. At the time that you did your due
 15 diligence work in connection with Sunbeam, did
 16 you believe that you had information
 17 sufficient to do your job?
 18 A. Um, to the best of my knowledge,
 19 yes, I thought I had all of the information
 20 that I needed.
 21 Q. Did you have sufficient time to
 22 review that information?
 23 A. Um, again, I don't remember the time
 24 frame -- specifically. I think it was perhaps
 25 about a month, maybe a little less. But,

1 MR. CHORVAT: I will show you what
 2 previously has been marked as CPH Exhibit
 3 129.
 4 Q. Is Exhibit 129 a document that you
 5 are familiar with?
 6 A. I am familiar with this document.
 7 Q. What is Exhibit 129?
 8 A. It looks like it is an equity
 9 commitment committee memo to the equity
 10 commitment committee.
 11 Q. What is the equity commitment
 12 committee?
 13 A. I honestly couldn't tell you exactly
 14 what it is, because I have never been to one.
 15 I have never been part of one.
 16 Q. Do you have an understanding as to
 17 what role the equity commitment committee
 18 played in connection with Sunbeam?
 19 A. No, I do not.
 20 Q. Do you know whether the equity
 21 commitment committee would have been involved
 22 with the convertible security, as compared to
 23 the senior debt?
 24 A. Again, I was not part of it, but my
 25 understanding is that they would, most likely,

1 looking back on it, I don't feel like I, I
 2 feel like, yes, I had enough time, based on
 3 the information that I had.
 4 Q. Would you characterize your due
 5 diligence work in connection with Sunbeam as
 6 thorough?
 7 A. Um, again, to the best of my
 8 ability, I thought it was.
 9 Q. Are you familiar with the term
 10 "selling memorandum"?
 11 A. Yes, I am.
 12 Q. What's a selling memoranda?
 13 A. It is, generally, a memorandum that
 14 is used to the sales force, depending, of
 15 course, on what type of instrument we are
 16 selling, to kind of give an overview of a
 17 particular company and/or transaction.
 18 Q. Did you have any role in preparing
 19 any selling memorandum in connection with
 20 Sunbeam?
 21 A. No, I did not.
 22 Q. Would you have reviewed or commented
 23 on any selling memorandum in connection with
 24 Sunbeam?
 25 A. No, I would not.

1 review the convertible offering.
 2 Q. Your name appears here on the first
 3 page of Exhibit 129, among the many others,
 4 after "from" and then a colon.
 5 What role, if any, did you play in
 6 preparing Exhibit 129?
 7 A. None.
 8 Q. Do you know who would have prepared
 9 Exhibit 129?
 10 A. No, I don't.
 11 Q. Would you have reviewed Exhibit 129
 12 before it went to the equity commitment
 13 committee?
 14 A. No, I would not.
 15 Q. In the course of your work on
 16 Sunbeam, did you review Exhibit 129?
 17 A. I don't recall if I actually -- I
 18 don't recall.
 19 Q. On the second page of this document
 20 there is a reference, in the first full
 21 paragraph, the longest paragraph on that page,
 22 to a rating on the zero coupon convertible
 23 security of not more than B1, B plus; do you
 24 see that?
 25 A. Aha.

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1 Q. Do you know who would have come up
 2 with that expected rating?
 3 A. That would be me.
 4 Q. Do you recall what factors led you
 5 to conclude that the convertible security
 6 would be rated not more than B1, B plus?
 7 A. Not specifically, no.
 8 Q. Do you have a general recollection?
 9 A. No.
 10 Q. Would a rating of B1, B plus, what
 11 effect, if any, would that have on the
 12 marketability of a zero coupon convertible
 13 security like the one that Sunbeam was to
 14 issue?
 15 A. I couldn't answer that.
 16 Q. For what purpose did you come up
 17 with the B1, B plus rating with respect to the
 18 zero coupon convertible offering?
 19 A. Um, I was -- I was -- I guess I was
 20 asked that since we were going to be doing a
 21 convert along with a senior debt piece. The
 22 senior debt piece was also going to be rated.
 23 The rating agency eventually would rate the
 24 convert, even though the convert was getting
 25 done prior to. Sunbeam had no rating, prior

1 would affect Morgan Stanley's position, if at
 2 all.
 3 A. By "position," what do you mean?
 4 Q. The risk that Morgan Stanley was
 5 taking in the transaction.
 6 A. That was not something that I really
 7 would opine upon. It was an underwriting. I
 8 was not involved.
 9 I was never involved in the
 10 underwriting process. It was not deemed to be
 11 a capital commitment; so, therefore, that is
 12 not something that I would opine on.
 13 Q. Is it fair to say that the B1, B
 14 plus rating that you predicted or opined on in
 15 connection with the convertible piece was done
 16 as an accommodation to others at Morgan
 17 Stanley or someone else in the transaction?
 18 MS. BROWN: Objection to form.
 19 A. I am not -- I am not so sure what
 20 you mean by "accommodating."
 21 Q. Why is it that you came up with that
 22 rating?
 23 A. Again, I don't recall. I think I
 24 said I was guessing someone had asked me to
 25 come up with a rating just because they knew

1 to the bank deal financing.
 2 I was, again -- again, I can't
 3 recall specifically, but I was, most likely,
 4 asked by someone on the deal team to give a
 5 preliminary view on what we thought the rating
 6 on the convert would be, if it got rated.
 7 Q. The rating of the convertible
 8 security would affect the interest rate that
 9 Sunbeam would have to pay on that security; is
 10 that correct?
 11 A. I couldn't say.
 12 Q. How, if at all, would the rating on
 13 the convertible security affect Morgan
 14 Stanley's position in connection with the
 15 Sunbeam financing?
 16 MS. BROWN: Objection to form.
 17 A. Can you repeat the question, please.
 18 Q. Sure.
 19 You testified earlier that your role
 20 with respect to the Sunbeam transaction was to
 21 protect Morgan Stanley's interest in making a
 22 capital contribution.
 23 A. Aha.
 24 Q. And my question is just how a rating
 25 determination on the convertible security

1 that eventually this convert would probably
 2 get rated once the senior piece got rated.
 3 So, I don't remember exactly who or
 4 under what circumstances I was asked to
 5 provide that rating.
 6 But this rating is a function of the
 7 senior rating; and so, since we were looking
 8 at a senior rating, the rating agencies always
 9 notch two notches below the senior implied
 10 rating, at that time; so, that is probably why
 11 I came up with the B1 B plus, but I can't
 12 remember exactly why.
 13 Q. Providing the rating on the
 14 convertible piece was not part of your credit
 15 due diligence function in the Sunbeam
 16 transaction, or was it?
 17 A. I would not say it was part of the
 18 credit function, per se. It was part of a
 19 function I performed as part of rating
 20 advisory, but it was not part of the credit
 21 function.
 22 Q. Is your recollection that the way
 23 that you got to the B1, B plus rating for the
 24 convertible security was that you provided a
 25 rating for the senior debt piece and then went

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1 down two notches?
 2 A. Again, that would have been the most
 3 likely situation. I don't remember
 4 specifically the timing and whatnot.
 5 And, a lot of times, we would be
 6 providing -- you know, ratings are, they are
 7 not a science. They are not always easy to
 8 predict.
 9 You are trying to predict what a
 10 committee of people, not the rating agencies,
 11 are trying to assess in terms of a credit
 12 risk.
 13 So, but, yes, normally we would,
 14 when we come up with a senior implied rating,
 15 we would come up with a, if there was another
 16 piece of paper in the capital structure, it
 17 would just be kind of, it would just fall into
 18 place, as a matter of fact.
 19 MR. CHORVAT: Let me show you what
 20 previously has been marked as CPH Exhibit
 21 145.
 22 Q. Are you familiar with Exhibit 145?
 23 A. Um, it looks like the leverage
 24 finance commitment committee memo for the
 25 Sunbeam transaction.

1 Q. Either way.
 2 A. I don't recall -- I don't recall
 3 specifics in terms of drafting the memo. I do
 4 recall, to a certain extent, talking about a
 5 downside scenario for this transaction, and
 6 getting comfortable even in the downside
 7 scenario that this was still a worthy, a
 8 viable entity.
 9 Q. What do you recall the downside
 10 scenario for Sunbeam was like?
 11 A. You know, I don't recall. But I do
 12 recall discussing it, um, at committee, but
 13 the specifics of it I don't recall.
 14 Q. You said "discussing it at
 15 committee." Did you attend the meeting with
 16 the leveraged finance committee?
 17 A. I don't believe I was -- I believe I
 18 was there telephonically.
 19 Q. Did that meeting take place on or
 20 about March 20th, 1998?
 21 A. Um, most likely. I mean, it is
 22 dated March. They usually are dated the day
 23 of the committee.
 24 Q. Were you present telephonically for
 25 the entire meeting or just a part?

1 Q. I will just ask, on the first page
 2 here, do you recognize the handwriting?
 3 A. No, I don't.
 4 Q. On the second page, which also looks
 5 sort of like a cover page, your name is
 6 listed, among many others --
 7 A. Yes.
 8 Q. -- as from.
 9 What role, if any, did you play in
 10 preparing Exhibit 145?
 11 A. I had no direct role. Again, I did
 12 not author this document.
 13 I was, most likely, asked to read
 14 and make sure that I was okay with some of the
 15 statements in the document -- really, more so
 16 to the strengths and weaknesses of the credit.
 17 Obviously. The rating, this probably is a
 18 view of the rating, per se. That was my view.
 19 And then, again, I had some input into the
 20 financial model in the back.
 21 Q. Can you recall any particular
 22 thoughts or comments that you would have had
 23 that would have contributed to this
 24 memorandum?
 25 A. Um, verbally or -- or -- written?

1 A. I don't recall. It was, I am sure,
 2 for a very good portion of it.
 3 I don't recall, back then,
 4 whether -- for instance, today, we have a
 5 committee that has replaced this committee,
 6 and once the deal team has gone through the
 7 deal and everyone's questions are answered, it
 8 goes to a kind of core committee, and I don't
 9 remember whether they had that back then or
 10 not.
 11 If they did, I was not there for the
 12 entire meeting. If they did, I was on for the
 13 entire deal team part of the meeting and then
 14 hung up when they went to core committee --
 15 THE REPORTER: Excuse me.
 16 A. -- after we were done.
 17 MS. BROWN: He said, when they went
 18 to core committee.
 19 Q. Would the leveraged finance
 20 committee meeting have been a meeting entirely
 21 devoted to Sunbeam or would there have been
 22 other matters, as well?
 23 A. Um, I don't recall. There could
 24 have been an agenda. Um, if you are asking
 25 were other names discussed on this day -- at a

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1 different time -- there could have been, but
 2 there were no other names discussed during the
 3 Sunbeam transaction.
 4 Q. Do you recall how long the
 5 discussion of the Sunbeam transaction lasted
 6 at the leveraged finance committee meeting?
 7 A. No, I do not.
 8 Q. You mentioned that you recall there
 9 being discussion of the downside.
 10 Are there other topics that you can
 11 recall being discussed?
 12 A. Um, not specifically, no.
 13 Q. Do you recall anything that you
 14 said, either in specific words or general
 15 topics?
 16 A. No.
 17 Again, my function, I think, was to
 18 discuss the rating generally and the rating,
 19 the senior rating. And, again, someone either
 20 had questions or had given a brief overview of
 21 the downside case.
 22 Q. Do you recall whether you made a
 23 presentation, or answered questions, or
 24 something else?
 25 A. Um, I don't recall, again, if

1 rating for the pro forma Sunbeam is expected
 2 to be BB/BA 2," and that is in brackets.
 3 Is that the rating that you were
 4 talking about?
 5 A. Yes.
 6 Q. That is the rating that you would
 7 have developed?
 8 A. Yes.
 9 Q. Do you know why it is in brackets?
 10 A. No.
 11 Q. Would the brackets signify that
 12 rating was still tentative or to be discussed?
 13 A. Definitely not.
 14 Q. By the time that the leveraged
 15 finance commitment committee had met, would
 16 you have pretty much settled in on your
 17 opinion as to what the rating would be?
 18 A. Yes.
 19 Q. Was it the role of the leveraged
 20 finance commitment committee to give final
 21 approval to Morgan Stanley's participation in
 22 the senior debt piece with respect to Sunbeam?
 23 A. Yes, it was.
 24 Q. After the leveraged finance
 25 committee -- well, I will ask this.

1 someone asked me some questions and I answered
 2 them or I just -- I was asked to walk through
 3 the downside case, and I did that, in a, you
 4 know, you know, perhaps two- or three-minute
 5 time frame.
 6 Q. Anything else that you can recall
 7 about the leveraged finance -- is it leveraged
 8 finance committee or leveraged finance
 9 commitment committee?
 10 A. You know, back then it seemed
 11 like -- on the first page it says "leveraged
 12 finance commitment committee." On the next
 13 page it says "leveraged finance committee."
 14 Everyone was calling it different things back
 15 then.
 16 So, I think it was LFCC; so, I think
 17 it was leveraged finance commitment committee.
 18 Q. Anything else that you can remember
 19 about the LFCC meeting with respect to
 20 Sunbeam?
 21 A. No.
 22 Q. On the page that is the next page,
 23 with the number 2 at the bottom, in the
 24 paragraph just under the top box, it says
 25 that: "The anticipated senior-most credit

1 Did the leveraged finance committee
 2 approve participation in the Sunbeam senior
 3 debt piece at its meeting on or about March
 4 20th, 1998?
 5 A. Um, again, I don't remember
 6 specifics. I did not hear anyone say that
 7 they approved this transaction, but I assume
 8 that they did.
 9 Q. Why is it that you assume that?
 10 What's the basis for that?
 11 A. Well, we went forward with the
 12 financing.
 13 Q. After the leveraged finance
 14 commitment committee would approve a
 15 transaction like Sunbeam, what else is left to
 16 do before closing?
 17 MS. BROWN: Objection to form.
 18 A. Can you clarify that?
 19 Q. Sure. In your experience in the
 20 credit group, once the leveraged finance
 21 commitment committee approved a transaction,
 22 what was the process like between that time
 23 and when the transaction would actually close?
 24 MS. BROWN: For the credit group?
 25 MR. CHORVAT: His understanding of

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1 what the process would be.
 2 MS. BROWN: Objection to form.
 3 A. You know, again -- in this specific
 4 situation, I don't remember, and every
 5 situation is, every situation is different.
 6 I mean, there are timing issues.
 7 There are -- you know, there are a lot of
 8 variables that can get you from commitment to
 9 closing.
 10 And I don't recall, in this specific
 11 situation, how that would transpire.
 12 And, again, there is no standard
 13 format, so to speak.
 14 Q. Do you recall whether you continued
 15 to do credit due diligence between the time of
 16 the leveraged finance commitment committee
 17 meeting and the closing?
 18 A. When was the closing?
 19 Q. The Coleman acquisition closed on
 20 March 30th. I think some other pieces closed
 21 on March 27th.
 22 A. No, I don't recall if I did or I did
 23 not.
 24 Q. Did there come a time when you
 25 became aware of an issue as to whether or not

1 Most of the part -- the information was done
 2 on annualized numbers.
 3 So, um, I don't remember
 4 specifically about a particular quarter.
 5 Q. In connection with your --
 6 A. Sorry, in terms of a projection
 7 model like the ones that are in this memo.
 8 Q. Yes, and I don't know exactly how
 9 this is going on the tape, but I guess, my
 10 guess is if your hands are here, (indicating)
 11 they may not be picking everything up.
 12 A. Okay.
 13 Q. In the course of your credit due
 14 diligence work with respect to Sunbeam, did
 15 you have cause to look at sort of Street
 16 expectations as to Sunbeam's performance
 17 during 1998?
 18 A. No. That wouldn't concern me.
 19 Q. Why not?
 20 A. Because I don't -- I don't rely on
 21 what The Street was saying. Remember, we --
 22 um, do our own analysis internally. And
 23 whether a company, um, is above or below
 24 analysts' expectations is nothing, you know --
 25 depending on the situation, again, but it is

1 Sunbeam would fail to meet projections or
 2 expectations for its performance in the first
 3 quarter of 1998?
 4 A. Did there come a time when? I
 5 mean -- I am not so sure what you mean.
 6 Q. Okay. During the course of your
 7 credit due diligence work, with respect to
 8 Sunbeam, did there come a time when you became
 9 aware of an issue as to whether or not
 10 Sunbeam's performance for the current quarter
 11 was falling below what had been anticipated?
 12 MS. BROWN: Objection to form.
 13 A. Um, can you clarify that a little
 14 more?
 15 Q. Okay. What part of it is unclear?
 16 A. You said, in the last part,
 17 "anticipated."
 18 Q. Okay.
 19 In the course of your credit due
 20 diligence work on Sunbeam, did you look at
 21 Sunbeam's projections for how they were going
 22 to do in the first quarter of 1998?
 23 A. Um, I don't recall specifically.
 24 Um, however, um, it would be a little, um,
 25 unusual to look at, um, a quarterly number.

1 something that I wouldn't necessarily pay a
 2 whole lot of attention to.
 3 Q. When you did your credit due
 4 diligence work, was that based entirely on
 5 Sunbeam's historical performance, or did you
 6 also look at projections for future periods?
 7 A. I am certain it was both.
 8 Q. At any point in time, did you become
 9 aware that Sunbeam's performance in the first
 10 quarter of 1998 fell below its equivalent
 11 performance for 1997?
 12 A. Um, at some point, I believe, I did
 13 find out about that. I don't recall exactly
 14 when that was.
 15 Q. Do you recall whether or not it was
 16 before the closing of the Coleman acquisition?
 17 A. Um, again, when was the closing
 18 acquisition?
 19 Q. March 30th.
 20 A. I don't recall specifically. Um,
 21 but I believe -- I recall that there was
 22 something that came out before the end of the
 23 quarter.
 24 Q. What, if anything, do you recall
 25 about the information that came out before the

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1 end of the quarter?

2 A. Um, again, specifics, I don't recall

3 specifics, but I know that their sales were

4 going to be potentially below expectations, or

5 something like that.

6 Q. Do you recall how you learned that?

7 A. I don't recall that, no.

8 Q. What, if anything, did you do when

9 you found that out?

10 A. I don't recall.

11 Q. Did the fact that Sunbeam's

12 performance was going to be below expectations

13 in the first quarter of 1998 have any effect

14 on your credit due diligence work?

15 MS. BROWN: Objection, to the extent

16 that his question mischaracterizes the

17 testimony.

18 A. Um, sorry. Can you repeat the

19 question?

20 (Record read.)

21 MS. BROWN: My objection stands.

22 A. You know, I don't recall.

23 Q. Is it fair to say, in general, that

24 if a company's performance falls short of the

25 projections upon which you based your analysis

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1 to a given point in time, that would be a fact

2 that you would want to know?

3 MS. BROWN: Objection to form.

4 A. Can you be a little bit more

5 specific or clarify.

6 Q. Okay. It is correct, is it not,

7 that the risk that Morgan Stanley would be

8 exposed to in providing money to Sunbeam would

9 be affected by Sunbeam's actual performance?

10 MS. BROWN: Objection to form.

11 A. Um, I think it depends on what

12 you -- you know, how you define "performance."

13 Q. Is it fair to say that the risk that

14 Morgan Stanley would be taking in extending

15 financing to Sunbeam would be affected by the

16 level of sales that Sunbeam would achieve?

17 MS. BROWN: Objection to form.

18 A. No. Not necessarily.

19 Q. Why not?

20 A. Well, there are a lot of things that

21 impact on the creditworthiness. Sales is one

22 of several dozen.

23 Uhm, for instance, a company with

24 declining sales could generate more free cash

25 flow because the company, in simple terms,

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1 with sales declining, is actually collecting

2 receivables and inventory, um, all things

3 being equal.

4 Um, so, that would bring in a level

5 free of cash flow greater than a company that

6 is growing very quickly.

7 So, that is just one possible

8 variable.

9 So, if a company's -- you can't look

10 at one metric and say, um, that is a, you

11 know, a concern.

12 Q. Do you recall, in connection with

13 Sunbeam's performance in the first quarter of

14 1998, whether the sales shortfall that it

15 experienced was a positive or negative

16 development?

17 MS. BROWN: Objection to form.

18 Characterization.

19 A. Can you repeat the question.

20 (Record read.)

21 MS. BROWN: My objection stands.

22 A. Yes. Can you clarify positive from

23 negative, from what standpoint.

24 Q. From your standpoint, in reviewing

25 the risk that Morgan Stanley would be taking

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1 in extending credit.

2 A. I don't recall.

3 Q. What do you recall about Sunbeam's

4 performance in the first quarter of 1998?

5 MS. BROWN: Objection to form.

6 A. When you say "performance," are you

7 talking about earnings? Are you talking about

8 sales? Are you talking about cash flow?

9 Q. Sales, earnings. If you want to

10 talk about cash flow, whatever you recall.

11 That's what I am trying to establish.

12 A. I mean, I do recall there was an,

13 um -- um -- again, it is vague, but there was

14 an issue in terms of sales performance, the

15 first quarter of 1998 versus the first quarter

16 of, I think, the first quarter of 1997.

17 But I don't remember the exact

18 specifics, you know, at the time. I don't

19 recall the exact specifics of what was

20 happening at the time.

21 Q. Beyond the exact specifics, do you

22 recall, generally, whether there had been a

23 substantial shortfall in sales for the first

24 quarter of 1998?

25 A. No, I do not.

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1 Q. Is it fair to say, then, that you
2 don't have any recollection of coming to the
3 conclusion that Sunbeam's performance was at
4 variance from what you had expected in putting
5 together your ratings conclusion?

6 MS. BROWN: Objection to form.

7 A. At the time, I don't recall.

8 Q. Are you familiar with the term
9 "comfort letter"?

10 A. Um, I believe I am familiar with it,
11 but I am not exactly sure, you know, in what
12 context.

13 Q. Well, what is your understanding of
14 what a comfort letter is?

15 A. Um, it is a letter between two
16 parties providing comfort in certain
17 situations.

18 Q. In the course of your work on the
19 Sunbeam matter did you ever have cause to
20 review any letters from Arthur Andersen with
21 respect to Sunbeam?

22 A. I don't recall.

23 Q. I will show you what was previously
24 marked as CPH Exhibit 17.

25 Is that a document that you are

1 review of Sunbeam?

2 A. I can't recall this specific
3 document, no.

4 Q. Do you recall whether Sunbeam's
5 performance for the first quarter of 1998 was
6 a topic that was discussed at the leveraged
7 finance commitment committee meeting on or
8 about March 20th, 1998?

9 A. Um, I can't recall.

10 Q. Is it your view that a press release
11 from Sunbeam indicating that its net sales for
12 the first quarter of 1998 may be lower than
13 the range of Wall Street analysts' estimates
14 for that quarter, is not something that would
15 be relevant to your credit due diligence work
16 with respect to Sunbeam?

17 A. As stated here?

18 Q. Well, I did quote from there, yes.
19 That is the basis for my question.

20 A. Oh. It wouldn't, I would not be
21 overly concerned with it, no.

22 Q. This is not information that you
23 would have wanted to know?

24 MS. BROWN: Objection,
25 mischaracterizes.

1 familiar with?

2 A. Um --

3 MS. BROWN: And, for the record, the
4 witness will, whenever you ask him about
5 documents, exclude any documents that he
6 observed during his preparation for this,
7 that he hasn't already testified about.

8 A. So -- no, this is not a document
9 that I am aware of.

10 Q. This is not a document that you saw
11 during your credit due diligence work with
12 respect to the Sunbeam matter?

13 A. Not to my recollection, no, it is
14 not.

15 Q. Okay. Do you recall whether Sunbeam
16 issued a press release in 1998 concerning its
17 performance in the first quarter?

18 A. Um, again, I don't recall the
19 specifics, no.

20 Q. I will show you what was previously
21 marked as CPH Deposition Exhibit 14.

22 Are you familiar with Exhibit 14?

23 A. Again, no, I am not.

24 Q. This is not something that you can
25 recall seeing during your credit due diligence

1 A. Um, based on what the press release
2 says, um, it is -- again, it is not something
3 that would give me a lot of concern.

4 Q. Why is that?

5 A. Um, because the way it is, the way
6 it is worded, it is very -- it is, again --
7 one, there is a lot more to sales growth or
8 declines from a credit standpoint; and two, it
9 talks about how it is unclear, it is unclear
10 as to whether they are going to miss at all.

11 Q. So, is it fair to say that, in your
12 view, there would be multiple possible
13 explanations and multiple possible effects of
14 the information that is contained in this
15 press release?

16 MS. BROWN: Objection to form.
17 Mischaracterization.

18 A. Um, can you be a little bit more
19 specific?

20 Q. Sure. Is it fair to say that, in
21 your view, the information that is contained
22 in this press release is not necessarily a bad
23 thing?

24 MS. BROWN: Objection to form.

25 A. I would say, based upon what I am

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1 reading, it is not necessarily a bad thing.
 2 Q. If you were aware of the information
 3 contained in this press release, during your
 4 credit due diligence review, would it have
 5 been something that you would have done to
 6 contact management of Sunbeam and ask
 7 follow-up questions to determine whether or
 8 not this was a bad thing?
 9 MS. BROWN: Objection to form.
 10 A. Again, based on my experience and
 11 based on my judgment, if I thought it was
 12 something that I would need to follow up on, I
 13 would do that directly.
 14 Q. Did you call anyone at Sunbeam to
 15 ask them about this press release or the
 16 information that is contained in it?
 17 A. I don't recall.
 18 Q. Do you recall whether you were aware
 19 of the information contained in this press
 20 release prior to the time that the leveraged
 21 finance commitment committee met?
 22 A. I don't recall.
 23 Q. Do you recall whether you were aware
 24 of the information in this press release prior
 25 to the time that the Coleman acquisition

1 aware of during your credit due diligence work
 2 in connection with Sunbeam?
 3 A. I don't recall.
 4 Q. Is that information that would have
 5 been relevant to your credit due diligence
 6 review?
 7 MS. BROWN: Objection to form.
 8 A. Not necessarily.
 9 Q. Why not?
 10 A. Well, again, as I said before, there
 11 are a lot of factors that can impact the
 12 credit. Sales is just one of many.
 13 And there could be a number of
 14 explanations as to why these numbers are
 15 different.
 16 Q. If there are a number of possible
 17 explanations for these numbers, wouldn't it be
 18 relevant to your inquiry to know the numbers,
 19 so that you could seek those explanations?
 20 A. Um, well, as these numbers are
 21 presented, it certainly would excite my
 22 curiosity as to what was happening and would,
 23 most likely, require some follow-up.
 24 Q. On their face, these are numbers
 25 that reflected -- deteriorating performance;

1 closed?
 2 A. Um, again, I can't recall that.
 3 Q. I will show you what has been
 4 previously marked as CPH Exhibit 112.
 5 Are you familiar with Exhibit 112?
 6 In particular, the middle two pages.
 7 A. No, I am not.
 8 Q. Is Exhibit 112, is that something
 9 that you saw during your credit due diligence
 10 work for Sunbeam?
 11 A. I don't recall.
 12 Q. On the second page of the letter,
 13 which is the third page of this exhibit, there
 14 is a little chart towards the top of the page
 15 showing Sunbeam's net sales and net income for
 16 the roughly first two months of 1998, as
 17 compared to 1997; do you see that?
 18 A. Yes, I do.
 19 Q. And the net sales number is down
 20 from 143,499,000 to 72,018,000.
 21 And the net income has gone from a
 22 positive 9,765,000 to a negative 41,190,000.
 23 Do you see that?
 24 A. Yes, I do.
 25 Q. Is that information that you were

1 is that right?
 2 MS. BROWN: Objection to form.
 3 A. Again, not necessarily. The
 4 company -- well --
 5 Q. Sorry.
 6 Explain, please, what you mean by
 7 "not necessarily."
 8 A. Well, again, a lot of things, a lot
 9 of things can happen.
 10 And again, I don't recall the
 11 specifics, but, you know, the company could
 12 have sold a major part of its business in the
 13 first part of the prior, the last part of the
 14 prior year.
 15 Q. Did that happen with Sunbeam?
 16 A. I don't recall.
 17 Q. Do you recall contacting anyone at
 18 Sunbeam for an explanation of the performance
 19 figures that are contained in Exhibit 112?
 20 A. No, I don't recall that.
 21 Q. Do you recall why you did not?
 22 A. Recall why I did not contact them?
 23 Q. Yes.
 24 A. I just don't remember.
 25 Q. Turn back to Exhibit 14 for just one

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1 more moment.
 2 A. Yes.
 3 Q. Were you involved in any discussions
 4 as to whether or not to issue any press
 5 release from Sunbeam?
 6 A. Absolutely not.
 7 Q. Did you have occasion to visit the
 8 global financial press in connection with the
 9 Sunbeam transaction?
 10 A. What's the global financial press?
 11 Q. Financial printer.
 12 A. No, I did not.
 13 Q. In connection with Sunbeam did you
 14 ever have occasion to hear about any
 15 conversations about Sunbeam or its performance
 16 that took place at the global financial press?
 17 A. No, I am not aware of that.
 18 Q. Are you aware of whether or not the
 19 Sunbeam transaction closed as scheduled or
 20 whether there was any advance or delay in the
 21 closing?
 22 A. That doesn't -- I don't recall that
 23 happening, no.
 24 Q. Were you involved in any
 25 conversations as to when to close any aspect

1 A. Sorry, can you repeat the question?
 2 I did not hear it.
 3 (Record read.)
 4 A. Can you be a little bit more
 5 specific?
 6 Q. Sure.
 7 Are you familiar with the word
 8 "synergies" in connection with corporate
 9 acquisitions?
 10 A. Sure.
 11 Q. Are synergies something that you
 12 look at from time to time in your work?
 13 A. To evaluate credit? Yes.
 14 Q. Why is that?
 15 A. Well, depending -- again, every
 16 situation is different, but depending on the
 17 size of the synergies and the nature of the
 18 synergies, it could have an impact on the
 19 credit strength or weakness of the company.
 20 Q. In connection with Sunbeam's
 21 acquisition of Coleman or First Alert or
 22 Signature, did you look at any synergies -- I
 23 guess that is the end of the question. Did
 24 you look at any synergies?
 25 A. Again, specifically, I don't

1 of the Sunbeam transaction?
 2 A. No.
 3 Q. I will show you what has been
 4 previously marked as CPH Deposition Exhibit
 5 36.
 6 Is that a document that you are
 7 familiar with?
 8 A. No, this is not a document that I am
 9 familiar with.
 10 Q. To the best of your recollection,
 11 this is not something that you saw in
 12 connection with your work on the Sunbeam
 13 matter?
 14 A. Well, you know, again, you know -- I
 15 may have seen this in the past six years, but
 16 I don't recall seeing it.
 17 Q. You were not involved in any
 18 discussions as to whether or when to issue a
 19 press release containing the information in
 20 the Exhibit 36?
 21 A. No, I was not.
 22 Q. In connection with your work on
 23 Sunbeam, did you have occasion to consider
 24 potential synergies in Sunbeam's acquisitions?
 25 MS. BROWN: Objection to form.

1 remember the dollar amounts, but I am sure
 2 that we were, at least my analysis entailed
 3 some type of synergies for the transaction.
 4 Q. Do you recall what source of
 5 information you used in considering potential
 6 synergies?
 7 A. Again, not specifically, but -- I am
 8 almost positive that almost all of the sources
 9 of the synergies came from either Sunbeam
 10 directly or their consultants -- I think it
 11 was Coopers & Lybrand.
 12 Q. Did you have cause to work with
 13 Coopers & Lybrand in connection with this
 14 matter?
 15 A. I don't remember having any direct
 16 contact with them, no.
 17 Q. Do you know what Coopers & Lybrand
 18 did in connection with this transaction?
 19 MS. BROWN: Foundation, form.
 20 Objections.
 21 A. Can you be a little bit more
 22 specific?
 23 Q. What understanding, if any, do you
 24 have as to the work that Coopers & Lybrand did
 25 for Sunbeam?

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1 A. Specifically, again, I am not, I
 2 can't recall, but I believe they were hired to
 3 analyze potential synergies for the
 4 transactions.
 5 Q. Let me ask you to turn back to
 6 Exhibit 129, which would be in your stack
 7 there.
 8 A. Aha.
 9 Q. If you would turn to the page
 10 numbered 17 at the bottom.
 11 A. Yes.
 12 Q. There is a question, number 5 in the
 13 middle of the page, that deals with synergies.
 14 A. Aha.
 15 Q. Is that something that you would
 16 have reviewed at the time?
 17 A. For this document?
 18 Q. Yes.
 19 A. No.
 20 Q. At the bottom of the response to
 21 number 5, there is a sentence that says:
 22 "They informed the Sunbeam board of directors
 23 that the synergies are likely to be in the 225
 24 million to \$275 million pre-tax range. Do you
 25 see that?"

1 Q. During the period that you were
 2 doing credit due diligence with respect to the
 3 Sunbeam matter.
 4 A. No, I don't recall that.
 5 Q. If we extend the time period to
 6 include after the closing of the acquisitions
 7 and moving towards the rating presentations,
 8 do you recall whether the synergy estimates
 9 grew or shrank over that period of time?
 10 MS. BROWN: Asked and answered. And
 11 mischaracterizes.
 12 A. Again, I don't recall over that time
 13 frame.
 14 Q. Would you look at Exhibit 145, and
 15 look at page numbered 13 at the bottom,
 16 please.
 17 A. Yes.
 18 Q. The third bullet point there, under
 19 Roman 8, says that: "Synergies were also
 20 reduced on the MS base case."
 21 Do you have an understanding of what
 22 "MS base case" is?
 23 A. Yes. That is the Morgan Stanley
 24 base case.
 25 Q. Who developed that?

1 A. Yes.
 2 Q. Do you know who generated that
 3 estimate of synergies?
 4 MS. BROWN: Objection. Foundation.
 5 THE WITNESS: Sorry, can you read
 6 the question again.
 7 (Record read.)
 8 A. No, I do not.
 9 Q. Did you do any work in estimating
 10 synergies from the acquisitions of Coleman,
 11 Signature and First Alert?
 12 A. I may have. I don't recall. Again,
 13 as part of our credit process it is something,
 14 it is one of the main things that we would
 15 look into.
 16 Q. Do you recall doing anything to
 17 assess the achievability of any synergy
 18 forecasts?
 19 A. Specifically, I don't recall.
 20 Q. Do you recall whether the estimated
 21 synergies grew over time, or were reduced over
 22 time, or changed in some other way?
 23 MS. BROWN: Objection to form.
 24 A. When you say "grew over time," what
 25 time period are you talking about?

1 A. I don't recall.
 2 Q. Someone at Morgan Stanley, other
 3 than yourself?
 4 A. Again, I don't recall the specifics,
 5 but I am sure it was myself along with some
 6 other members of the team.
 7 Q. So, when it says that synergies were
 8 also reduced on the MS base case, is that an
 9 adjustment that someone at Morgan Stanley
 10 would have made?
 11 A. Um, yes. Yes.
 12 Q. The reference, later in that
 13 sentence, to management case, those are
 14 projections that came from Sunbeam management?
 15 MS. BROWN: Objection.
 16 Mischaracterizes the previous testimony.
 17 A. Again, I can't be exact here, but it
 18 says from management case; so, you know.
 19 Q. In ordinary usage, "management case"
 20 would refer to the case developed by
 21 management; is that right?
 22 A. That is correct.
 23 Q. Do you have any recollection of
 24 reducing synergies in projections from the
 25 management case?

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1 A. I don't have any specific
2 recollection, but that is pretty much standard
3 operating procedure from the credit
4 standpoint.

5 Q. How do you go about deciding what
6 synergies to put into a Morgan Stanley case?

7 A. Again, you know -- every situation
8 is different. A lot of factors go into it.

9 I don't remember why we assumed the
10 40 percent reduction, but I am sure there was
11 some, you know, statistical data behind it, in
12 some fashion or another.

13 Q. What sorts of information do you
14 look at in evaluating synergies?

15 A. Um, well, again, a lot of things.
16 One is, are they cost synergies or
17 revenue synergies. Generally speaking, cost
18 savings are easier to generate than revenue
19 synergies.

20 It depends on the, um, the nature of
21 the overlap between, perhaps, some of the
22 businesses that are being folded into the
23 company, um, the factor would be management's
24 past history of achieving synergies.

25 Um, and, you know, there are other

1 haircut. And how you come up with the haircut
2 depends on the situation that you are involved
3 with.

4 But that is, you know, I think any
5 credit analyst, you know, or any rating agency
6 person or any person would take that kind of
7 haircut.

8 Q. Is it fair to say that companies'
9 managements tend to be optimistic in
10 predicting synergies from a transaction?

11 MS. BROWN: Objection to form.

12 A. "Companies' managements." Can you
13 be more specific?

14 Q. Sure.

15 You explained in your testimony why,
16 in looking at a glass half empty, you often
17 reduce synergies. I just wanted to take a
18 little different perspective on that.

19 In your experience, is it fair to
20 say that the management of a company looking
21 at an acquisition or a transaction will often
22 be optimistic about the synergies that can be
23 generated from that transaction?

24 A. Not necessarily, no. There are
25 plenty of times that I can't -- management has

1 things probably, too, that I can't think of
2 off the top of my head.

3 Q. Do you recall if any of those
4 factors came into play with respect to
5 Sunbeam?

6 A. No, I can't.

7 Q. You mentioned, a couple answers ago,
8 that it was, I think you said standard, or
9 common, in any event, to reduce synergies from
10 what management has suggested. Why is that?

11 A. Well, from a credit standpoint we
12 always view synergies as something where --
13 well, for a lot of reasons, from a credit
14 standpoint, we would view the glass as half
15 empty.

16 And to just assume that a company is
17 going to achieve everything that they say they
18 are going to achieve I don't think is all that
19 prudent, regardless of track record.

20 And, also, synergies can happen over
21 a period of time.

22 And folding those in at different
23 time periods is very hard to do.

24 So, again, from a credit standpoint,
25 it is pretty standard to take some type of

1 exceeded synergies. It has happened.

2 Q. In your experience, is it equally
3 likely that a company will exceed previous
4 expectations as to synergies, as it will be to
5 fall below those expectations?

6 MS. BROWN: Objection to form.

7 A. Again, purely from a credit matter,
8 um, it is hard to say, just because, again,
9 you know, things change over time. And the
10 synergies get factored in at potentially
11 different points in time.

12 So, you know, it is hard for me to
13 sit here and categorically say that companies,
14 you know, generally are better or worse than
15 what they originally anticipate in terms of
16 projections. It is just, it is really a
17 case-by-case example. It depends on what
18 industry you are talking about.

19 It depends on the experience of the
20 management team.

21 It depends on what they are buying.

22 I just, I can't give that a, any
23 kind of a kind of blanket answer from an
24 experience standpoint.

25 Q. I will show you what was previously

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1 marked as MS Deposition Exhibit 78.
 2 Is this a document that you reviewed
 3 in connection with your Sunbeam work?
 4 A. It doesn't look familiar, no.
 5 Q. In connection with your Sunbeam
 6 work, did you become familiar with a gentleman
 7 named Andrew Conway?
 8 A. I believe he was the equity analyst
 9 for Morgan Stanley for beverage companies, I
 10 think. I can't really remember.
 11 Q. Do you recall any work that Andrew
 12 Conway did in connection with synergies in
 13 connection with Sunbeam?
 14 A. No, I do not. I don't recall that.
 15 Q. Do you recall any conversations with
 16 Mr. Conway with respect to Sunbeam?
 17 A. No, I do not.
 18 THE WITNESS: Could I take a recess?
 19 MR. CHORVAT: Yes.
 20 THE VIDEOGRAPHER: The time is 12:16
 21 p.m. and we are going off the record.
 22 (Recess.)
 23 THE VIDEOGRAPHER: Stand by. The
 24 time is 12:24 p.m. and we are back on the
 25 video record.

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1 BY MR. CHORVAT:
 2 Q. Again, with reference to Deposition
 3 Exhibit 145, which, I think, you have in front
 4 of you, on page 13.
 5 A. Yes.
 6 Q. There are references there to the MS
 7 base case and MS downside case, and there is
 8 also a Morgan Stanley financing base case.
 9 First of all, is the Morgan Stanley
 10 financing base case, is that the same as MS
 11 base case?
 12 A. I don't know. Where did you see "MS
 13 financing"?
 14 Q. The first sentence of the first
 15 bullet point.
 16 A. Well, as it is worded here, they
 17 would seem to be the same, because there is
 18 only one clarifier. So, the second sentence
 19 is clarifying the first.
 20 So, I am assuming, it seems like
 21 they are the same.
 22 Q. And in the fourth bullet point there
 23 is a reference to an MS downside case.
 24 A. Yes.
 25 Q. What is a downside case, as compared

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1 to a base case?
 2 A. Again, I don't recall specifics, but
 3 usually a downside case would be, perhaps, a
 4 one in 10 or, you know, one out of four
 5 possibility of something that could go
 6 differently, negatively of course, compared to
 7 our base case.
 8 Just to show how much flexibility
 9 there is from a credit standpoint to make it
 10 through a potential downside event, if you
 11 will.
 12 Q. Who at Morgan Stanley would have
 13 generated the MS downside case in connection
 14 with Sunbeam?
 15 MS. BROWN: Objection. Foundation.
 16 A. Again, at the time -- it is done a
 17 little differently now, but at the time it
 18 was, most likely, myself, fixed income
 19 research and, perhaps, corporate financing,
 20 and/or the leverage product group.
 21 Q. In a couple of these bullet points
 22 on page 13 is the acronym CAGR. Is that
 23 compound annual growth rate?
 24 A. Yes.
 25 Q. And in the second bullet point it

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1 notes that the CAGR for sales was reduced from
 2 almost 14 percent in the management case to
 3 9.4 percent in the MS base case.
 4 Do you know why that was done?
 5 A. Specifically, no, I do not.
 6 Q. In general, was it typical in your
 7 work in preparing projections to alter sales
 8 growth rates from what management had
 9 projected, if you found that to be warranted?
 10 MS. BROWN: Objection to form.
 11 A. Well, that could be one factor that
 12 we could, I mean -- that we could change, or
 13 we would really call synthesize.
 14 It could be sales. It could be
 15 EBITDA margin. It could be inventory turn.
 16 It could be, you know, the company generates
 17 certain amount of free cash flow, how much of
 18 that cash flow goes towards back into the
 19 business, versus paying down debt service.
 20 I mean, there are a lot of different
 21 assumptions that we can make here. I don't
 22 recall why we just looked at sales.
 23 There could be other assumptions in
 24 the downside case that just aren't highlighted
 25 in this case, overview of the assumptions, but

1 I don't recall exactly why we chose sales.
 2 Q. As set out in the fourth bullet
 3 point on page 13, the downside case still
 4 assumes that sales will grow on an annual rate
 5 of 4.4 percent, rather than 9.4 percent on the
 6 base case; is that correct?
 7 A. Well, sorry, where does it say that?
 8 Yes. Yes.
 9 Q. And then, the other difference that
 10 is laid out here between the downside case and
 11 the base case is that in the downside case
 12 Morgan Stanley has assumed no synergies from
 13 the transaction, as compared to the synergies
 14 that we talked about earlier that are in the
 15 third bullet point in the base case; is that
 16 right?
 17 A. Aha.
 18 Q. Did there come a time when Morgan
 19 Stanley worked to syndicate any portion of the
 20 Sunbeam financing?
 21 A. Um, well, I am not in the
 22 syndication group and I never was. I can't, I
 23 am not really sure that I can answer that
 24 question.
 25 Q. I will ask it a different way.

1 recall if he was there or not.
 2 Q. Do you recall when that meeting
 3 occurred in relation to Sunbeam's issuing of
 4 its first quarter results for 1998?
 5 A. No. I don't know when they issued
 6 the first quarter results.
 7 Q. Other than the folks that you
 8 testified to as being there for Morgan Stanley
 9 for Sunbeam, how many other people were there?
 10 Roughly.
 11 MS. BROWN: Objection to form.
 12 A. I can't say, really.
 13 Q. Was it held in a conference room or
 14 an auditorium?
 15 A. I don't recall. I don't recall how
 16 big the room was.
 17 Q. What was the purpose of the
 18 analysts' meeting on May 11th, 1998?
 19 A. I don't recall at this time.
 20 Q. You have been to analysts' meetings
 21 before?
 22 A. Yes, I have.
 23 Q. Is there, typically, a reason why
 24 management will meet with analysts in a
 25 meeting like that?

1 What role, if any, did you play in
 2 any attempted syndication of any of the
 3 Sunbeam financing?
 4 A. None.
 5 Q. After March 30th, 1998, when is the
 6 next time that you can recall participating in
 7 a meeting with respect to Sunbeam?
 8 A. I can't recall.
 9 Q. Do you recall whether you
 10 participated in a meeting with analysts on or
 11 about May 11th, 1998?
 12 A. I believe I was at that meeting,
 13 yes.
 14 Q. Where did that meeting take place?
 15 A. I believe it took place at the
 16 Equitable building on 7th Avenue, I believe.
 17 Q. Do you recall who participated in
 18 that meeting from Morgan Stanley?
 19 A. No, I do not.
 20 Well, I was there, and I believe my
 21 analyst Jason Kunreuer was there.
 22 Q. Can you recall who was there for
 23 Sunbeam?
 24 A. Um, Al Dunlap was there. I can't
 25 recall if Russ Kersh was there, but I can't

1 A. There could be a number of reasons
 2 why they meet with the analysts. There is no
 3 one specific.
 4 Q. What are the reasons that you can
 5 think of?
 6 A. It could be to announce the
 7 transaction.
 8 It could be to announce a -- it
 9 could be just kind of a luncheon to kind of
 10 give an update on performance.
 11 It could be a follow-on to an
 12 earnings announcement.
 13 It could be, you know, probably, a
 14 lot of other things that I am thinking about.
 15 Q. You don't recall which, if any, of
 16 those it was in the case of Sunbeam in May of
 17 1998?
 18 A. No, I do not.
 19 Q. Do you recall why you were there?
 20 A. Um, no, I don't recall why I was
 21 there, other than that it was right down the
 22 street from my office and it was convenient to
 23 go, but I can't recall exactly why I was
 24 there.
 25 Q. You were continuing to do some work

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1 for Sunbeam at that point?
 2 A. Um, well, of course, we were
 3 still -- you know, we still had to meet with
 4 rating agencies at the beginning of June.
 5 Q. Is it fair to say that your credit
 6 due diligence work had concluded by that
 7 point?
 8 MS. BROWN: Objection, to the extent
 9 that it mischaracterizes the prior
 10 testimony.
 11 A. Um, it is hard to say in what light.
 12 Q. Well, as of May 11th, 1998, the
 13 acquisitions had already taken place and the
 14 closings had taken place on the financing; and
 15 so, were you continuing to do credit due
 16 diligence at that point?
 17 MS. BROWN: Asked and answered.
 18 A. Um, again, if it was -- most likely,
 19 any credit work was most likely related to the
 20 credit rating agencies, who are concerned
 21 about credits because that is why, how they
 22 rate bonds. So, it was, most likely, in that
 23 regard.
 24 Q. In connection with your work in
 25 advance of the rating agency meetings, what

1 A. Um, I believe Al Dunlap did. I know
 2 he was there, but I can't recall who actually
 3 spoke.
 4 Um, um, I can't -- I believe -- I
 5 believe Michael Price may have been there, but
 6 I can't remember if that was that meeting or
 7 not.
 8 Q. Who is Michael Price?
 9 A. Well, at the time, I believe,
 10 Michael Price was a large shareholder in
 11 Sunbeam.
 12 Q. Can you recall the tenor of the
 13 meeting, whether it was upbeat, or tense, or
 14 something else?
 15 MS. BROWN: Objection to form.
 16 A. You know, I really can't recall the
 17 length or the mood of the meeting.
 18 Q. I will show you what has been
 19 previously marked as CPH Deposition Exhibit
 20 195.
 21 Are you familiar with Exhibit 195?
 22 A. I don't recall it, no.
 23 Q. In connection with the May 11th
 24 analysts' meeting, did you play a role in
 25 preparing any hand-outs or materials, written

1 was it that you were doing? What was your
 2 role?
 3 A. Um, specifically, you know, I don't
 4 recall; but, generally, it would be helping
 5 the client put together, effectively, a
 6 presentation to the rating agencies to tell
 7 the story.
 8 And, as was said before, the rating
 9 presentation is more of a larger road show
 10 presentation, so to speak. It is much more
 11 detailed. And so, that would be one aspect of
 12 it.
 13 The other aspect would be scheduling
 14 the meetings with the constituencies at the
 15 S&P and Moody's, walking them through any
 16 potential issues they may have or things that
 17 they would like to hear about more
 18 specifically, so it is a more effective
 19 meeting.
 20 And then, also, speaking with
 21 management and dealing with potentially some
 22 of the issues that the rating agencies may
 23 have.
 24 Q. Do you recall who spoke at the May
 25 11th analysts' meeting?

1 materials?
 2 A. For this meeting?
 3 Q. Yes.
 4 A. No, I did not.
 5 Q. Did you review any written materials
 6 before the meeting?
 7 A. No, I did not.
 8 Q. Would you have seen any written
 9 materials that were handed out when you were
 10 actually there at the meeting?
 11 A. Are you asking me, if this was
 12 handed out at the meeting, would I have seen
 13 it?
 14 Q. Yes.
 15 A. If they handed it out, I would have
 16 seen it.
 17 Q. Let me ask you to turn to the page
 18 that has the Bates number 40250, also 3546.
 19 There are two Bates numbers.
 20 A. 402 --
 21 Q. 250, cost savings and synergies.
 22 A. Yes.
 23 Q. It says "original estimate of 150
 24 million and actual of 291."
 25 Do you know where either of those

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1 numbers come from?
 2 A. No, I do not.
 3 Q. Do you know whether the \$291,000,000
 4 actual number is a number that was based on
 5 any input from you?
 6 A. The 291, I had nothing to do with
 7 that number.
 8 Q. Do you know if that is a Coopers &
 9 Lybrand number?
 10 A. I have no idea where that number
 11 came from.
 12 Q. Do you recall any discussions with
 13 anyone about the \$291,000,000 synergy number?
 14 A. Not to my recollection, no.
 15 Q. Do you have any understanding of the
 16 model upon which that was based or the
 17 assumptions on which that was based?
 18 A. No, I do not.
 19 Q. Do you have any understanding as to
 20 why the original estimate of cost savings and
 21 synergies would have increased from 150
 22 million to 291 million by May 11th, 1998?
 23 A. No.
 24 Q. In connection with your rating
 25 agency work for Sunbeam, did you have cause to

1 discuss synergies with anyone at Sunbeam?
 2 A. I can't recall specifics, but I
 3 probably did in due course.
 4 Q. It would be a fairly normal topic to
 5 come up, but you don't recall any specific
 6 discussions?
 7 A. Again, the rating agencies are
 8 credit people, and I am assuming that if this
 9 was a big part of the story, that they would
 10 want to have a lot of details as to how the
 11 synergies were going to be achieved.
 12 I think that is a fair statement.
 13 Q. Can you recall discussing synergies
 14 with anyone at Coopers & Lybrand in connection
 15 with Sunbeam?
 16 MS. BROWN: Objection, asked and
 17 answered.
 18 A. No, I can't recall that.
 19 Q. At any point, did you review the
 20 basis for any synergies estimates that Coopers
 21 & Lybrand generated in connection with
 22 Sunbeam?
 23 MS. BROWN: Sorry, could you read
 24 that back.
 25 (Record read.)

1 MS. BROWN: Objection to form and
 2 foundation.
 3 A. Sorry, could you read that again.
 4 (Record read.)
 5 A. I can't recall.
 6 MR. CHORVAT: I am handing you what
 7 has been marked as CPH Deposition Exhibit
 8 250.
 9 Can you identify Exhibit 250?
 10 (CPH Exhibit 250, memorandum,
 11 marked for identification as of this
 12 date.)
 13 A. Yes. This is a memorandum that I
 14 put together in preparation for the -- it is
 15 really just a brief itinerary of the meeting
 16 that Russ Kersh and Ron Richter were going to
 17 have with the rating agencies on, I guess,
 18 June 3rd.
 19 Q. These are the meetings that you have
 20 mentioned from time to time in your prior
 21 testimony; is that right?
 22 A. Yes. That's right.
 23 Q. Were you involved in drafting the
 24 materials to be shared with the rating
 25 agencies at those meetings?

1 A. Yes, I was involved.
 2 (CPH Exhibit 251, documents Bates
 3 Nos. 5547 to 5599, marked for
 4 identification as of this date.)
 5 MR. CHORVAT: I am handing you what
 6 has been marked as CPH Deposition Exhibit
 7 251, which is a fairly lengthy document
 8 which bears Bates stamps MS, Morgan
 9 Stanley 5547 through 5599.
 10 Q. Can you identify Exhibit 251?
 11 A. Yes. This is the rating agency
 12 presentation that Sunbeam gave to the rating
 13 agencies.
 14 Q. Do you know whether this is a final
 15 version or a draft?
 16 A. I don't know.
 17 Q. Exhibit 250 discusses rating agency
 18 meetings on June 3rd. Were there also
 19 meetings on or about May 25th; do you recall?
 20 A. No. There wouldn't have been other
 21 meetings. There was only one set of meetings,
 22 one day of meetings.
 23 Q. Were there drafts of the
 24 presentation materials prepared prior to the
 25 actual rating agency meetings?

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1 A. I am sure there were.
 2 Q. What role did you play in preparing
 3 Exhibit 251?
 4 A. Um, well, I did not physically put
 5 the document together. It was put together
 6 in, just as a matter of, that's how we did it
 7 in terms of efficiency, by the documentation,
 8 or whatever you wanted to call it, that was
 9 part of IBD.
 10 But I -- based on what I knew, the
 11 strengths of the company weren't what the
 12 concerns of the rating agencies were going to
 13 be that crafted this document, to go over what
 14 we thought would be the salient points of what
 15 they would want to hear.
 16 Q. The documentation group in IBD that
 17 you mentioned, that is a group within Morgan
 18 Stanley?
 19 A. Yes. It is, like, word processing.
 20 As a matter of fact, if you -- you
 21 know, there is a date on this document that
 22 says April 15th. I think that is the April
 23 15th --
 24 Q. If this document were prepared on or
 25 about April 15th, then it would be -- the May

1 Q. Other than yourself, who else at
 2 Morgan Stanley would have contributed to the
 3 substance or presentation of Exhibit 251?
 4 A. Specifically, I can't say, but it
 5 would have been probably certain key members
 6 from corporate finance and leveraged finance.
 7 Q. Do you recall who any of those would
 8 have been in connection with Sunbeam?
 9 A. Specifically, or -- just general
 10 people who were involved in the deal?
 11 Q. As specifically as you can recall,
 12 with respect to Sunbeam.
 13 A. Well, I can't recall anyone being
 14 involved in this book. I am sure someone was,
 15 but I can't tell you if someone on the deal
 16 team had a comment on a certain page.
 17 Q. Would this have circulated to the
 18 entire deal team from the March transaction?
 19 A. The recipients would have been
 20 myself, corporate finance -- leveraged
 21 finance, and perhaps fixed income, and that's
 22 it.
 23 Q. I will ask you to turn to the page
 24 that bears the Bates number 5551.
 25 A. Executive summary.

1 25th date on the cover would be sort of a
 2 projected date for the meeting, the analyst
 3 meeting?
 4 A. It could have been.
 5 We could have -- you know, a lot of
 6 times these things are fluid and there could
 7 have been a scheduling conflict that we had to
 8 move the meeting to June 3rd, or something
 9 like that, either from a company standpoint,
 10 or from my standpoint, or from the rating --
 11 most likely, the rating agencies.
 12 Q. With respect to the substance of
 13 Exhibit 251, what sources of information would
 14 you have drawn upon in connection with your
 15 contribution to this document?
 16 A. Again, we would have relied on the
 17 information provided to us by the Sunbeam
 18 management team, along with the management
 19 team of some of the targets that they had
 20 purchased, the historical financials.
 21 Obviously, let's say in the
 22 projection model, which is the management's
 23 projection model, so predominantly this
 24 information comes in some form through
 25 management.

1 Q. Executive summary.
 2 In the second bullet point it says:
 3 "Synergies are projected to be at least \$150
 4 million annually."
 5 A. Aha.
 6 Q. Do you know where that number came
 7 from?
 8 A. No, I do not.
 9 Q. This is not something that you,
 10 personally, prepared?
 11 A. No, it is not.
 12 Q. The prior sentence in that bullet
 13 point talks about the acquisitions of Coleman
 14 Signature Brands and First Alert.
 15 A. Yes.
 16 Q. Do you know whether the
 17 \$150,000,000 number is the combined synergies
 18 of all three acquisitions?
 19 A. I can't say, for certain.
 20 Q. If you turn to the page Bates
 21 numbered 5556.
 22 A. Yes.
 23 Q. It is a summary of acquisitions?
 24 A. Yes. Yes.
 25 Q. Under "Coleman" it says "\$2.2

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1 billion aggregate value"; do you see that?
 2 A. Aha.
 3 Q. Do you know what the source of that
 4 information was?
 5 A. No, I do not.
 6 Q. That is not something that you did,
 7 personally?
 8 A. No. I had nothing to do with that.
 9 Q. So, in instances like this, you and
 10 others at Morgan Stanley would have taken
 11 information that came from a management
 12 source, and then Morgan Stanley put it into
 13 the form of this document?
 14 MS. BROWN: Objection.
 15 Mischaracterizes.
 16 THE WITNESS: Can you read the
 17 question back, please.
 18 (Record read.)
 19 MS. BROWN: Also, objection to form.
 20 A. Um, I think most of the information,
 21 it is fair to say -- I haven't gone through
 22 the document -- is information that has been
 23 provided by management.
 24 Q. With respect to the \$2.2 billion
 25 valuation of Coleman, do you know if that

1 (CPH Exhibit 252, rating agency
 2 presentation, marked for identification
 3 as of this date.)
 4 Q. Can you identify Exhibit 252?
 5 A. Again, it looks like a Sunbeam
 6 rating agency presentation with a later date.
 7 Q. It looks like a little footer is
 8 dated May 31st, 1998.
 9 A. Yes. That looks to be right.
 10 Q. What role, if any, did you play in
 11 preparing Exhibit 252?
 12 A. Um, the same as I indicated before.
 13 It was more to help collect thoughts on the
 14 strengths and weaknesses of the company and
 15 issues that I knew the rating agencies would
 16 want to focus on.
 17 Q. I will ask you to turn to the page
 18 that has the Bates number 19641.
 19 There is some handwriting; do you
 20 recognize that?
 21 A. No, I do not.
 22 Q. That is not your handwriting?
 23 A. I don't believe it is. It is hard
 24 to read, but I don't believe it is.
 25 Q. This document bears Bates numbers

1 number came from Sunbeam management or some
 2 other source?
 3 A. Yes. I don't know where that came
 4 from.
 5 Q. I will ask you to turn to page 5571.
 6 A. Yes.
 7 Q. "Coleman synergies rationale \$122
 8 million."
 9 A. Yes.
 10 Q. Do you know who came up with the
 11 \$122 million number?
 12 A. No, I do not.
 13 Q. There is a whole list of
 14 considerations that seem to go into that. Do
 15 you know who generated those considerations?
 16 A. No, I do not.
 17 Q. Do you know whether it was
 18 management or Coopers & Lybrand?
 19 A. I don't recall who came up with
 20 these figures.
 21 Q. It was not you?
 22 A. Absolutely not.
 23 MR. CHORVAT: I am handing you what
 24 has been marked as CPH Deposition Exhibit
 25 252.

1 19638 through 19725.
 2 Let me ask you to turn to page
 3 19651.
 4 A. Yes.
 5 Q. And here, under "Sunbeam acquisition
 6 rationale," the second bullet point says that
 7 "cost savings/synergies are approximately
 8 \$290,000,000 annually." Do you see that?
 9 A. Aha.
 10 Q. Do you know why that number had
 11 increased from 150 million in the draft we
 12 were looking at a moment ago to about 290?
 13 A. No, I can't. I can't give you an
 14 answer to that.
 15 Q. Do you know who prepared the
 16 \$290,000,000 estimate?
 17 A. No, I do not.
 18 Q. Do you recall any discussions of
 19 synergies in the range of \$290 million with
 20 anyone at Sunbeam?
 21 A. Not specifically, no.
 22 Q. How about anyone at Coopers?
 23 A. No.
 24 Q. How about anyone during the
 25 analysts' meeting in May?

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1 A. Again, I did not specifically have,
 2 I did not have any conversations with anyone
 3 at the analysts' meeting.
 4 Q. Do you recall whether synergies was
 5 a topic that was discussed at that meeting?
 6 A. I don't recall. I can't recall.
 7 Q. Can you recall any discussion of
 8 synergies during the meetings with the rating
 9 agencies in June?
 10 A. Um, I can't recall specifically, no.
 11 But, you know, like I said, I am sure it was a
 12 topic of conversation.
 13 Q. There were two rating agencies
 14 meetings in early June; is that correct?
 15 A. Yes. That is correct.
 16 Q. What can you recall about the
 17 Standard & Poors meeting?
 18 A. Um, nothing really. It was a
 19 non-event.
 20 Q. When you say a non-event --
 21 A. It was not any -- to me, I had gone
 22 to so many of these things in my career, it
 23 doesn't really -- there is nothing that comes
 24 to my mind.
 25 Q. Do you recall who attended?

1 gentleman named Rob McCreary.
 2 Q. Who was Mr. McCreary with?
 3 A. He was with Moody's.
 4 Pam Stump was not there; so, he was
 5 there in her place, I believe.
 6 Q. And Messrs. Kersh and Richter for
 7 Sunbeam?
 8 A. Yes.
 9 Q. And yourself, on behalf of Morgan
 10 Stanley?
 11 A. Yes.
 12 Q. How long did that meeting last?
 13 A. Again, probably a couple hours.
 14 Q. What, if anything, can you remember
 15 about that meeting?
 16 A. I do remember that being a little
 17 contention between Mr. Kersh and
 18 Mr. McCreary. I can't remember specifically
 19 what about, but, quite frankly, that was
 20 pretty much the standard operating procedure
 21 with Mr. McCreary and pretty much anyone that
 22 was brought in to see Moody's.
 23 Q. Do you recall whether synergies were
 24 discussed during that Moody's meeting?
 25 A. I don't recall specifically, no.

1 A. I believe the people on this page,
 2 and I can't recall specifically, but I believe
 3 on this page attended.
 4 Q. When you say "the people on this
 5 page," the people on behalf of Sunbeam would
 6 have been Mr. Kersh and Mr. Richter?
 7 A. Yes. That's right is there.
 8 Q. And yourself, Morgan Stanley?
 9 A. Yes.
 10 Q. And then, the three individuals who
 11 are listed under Standard & Poors under 11A M?
 12 A. Correct.
 13 Q. Is there anyone else at that meeting
 14 that you can recall?
 15 A. Jason Kunreuther, my analyst, but I
 16 can't recall him specifically being there.
 17 Q. You can't recall any particular
 18 topics of conversation?
 19 A. No, I cannot.
 20 Q. How long did the meeting last?
 21 A. I don't recall. A couple hours,
 22 probably.
 23 Q. With respect to the Moody's meeting,
 24 who attended that meeting?
 25 A. Kevin Kusniak (ph) was there, and a

1 Q. What about Sunbeam sales
 2 performance?
 3 A. Not specifically.
 4 Q. The acquisitions?
 5 A. Sorry.
 6 Q. The acquisitions?
 7 A. Well, again, not specifically, but I
 8 am sure that is why they were there.
 9 Finance, I am sure, was part of the
 10 conversation.
 11 Q. How long does it, typically, take
 12 after a rating agency meeting for the agencies
 13 to develop a rating?
 14 A. Um, an official rating or
 15 preliminary rating?
 16 Q. I take it the preliminary one comes
 17 first; right?
 18 A. Yes.
 19 Q. How long does that take?
 20 A. It could take less than a day or so.
 21 Q. Did you get preliminary ratings from
 22 Standard & Poors or Moody's?
 23 A. Yes, I did.
 24 Q. What did they have to say?
 25 A. They both said double B, BA2 senior.

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1 Q. Did they, also, rate the convertible
 2 piece?
 3 A. They did not have to, but I knew, by
 4 default, that it would be rated, because,
 5 again, it is always two notches below that;
 6 rating; so, it would have been B1, B plus.
 7 Q. And did those preliminary ratings
 8 become official at some point?
 9 A. No, they did not.
 10 Q. Why is that?
 11 A. Well, after the rating meetings,
 12 June 3rd, I don't know, it was probably the
 13 following weekend when Mr. Dunlap got fired,
 14 along with Mr. Kersh.
 15 Or, I think -- I don't know where he
 16 was, but -- and, obviously, put the whole
 17 syndication, or whatnot, in kind of disarray,
 18 or kind of suspended syndication process; so,
 19 S&P Moody's had different policies at the
 20 time.
 21 S&P basically said they are not
 22 going to rate it, they are not going to rate
 23 anything, they don't normally rate converts
 24 unless there is another reason to rate.
 25 At the convert meeting they had

1 June 3rd, did you have any further work in
 2 connection with Sunbeam?
 3 A. Um, well, as I said, I had some
 4 follow-up conversations with the rating
 5 agencies.
 6 And I may have, you know, relayed
 7 some of that information to some of the team
 8 members.
 9 But, other than that, I can't
 10 remember -- I can't remember, you know, when
 11 it stopped.
 12 Q. Other than relaying that sort of
 13 rating agency information, had you done
 14 anything else with respect to Sunbeam since
 15 June of 1998?
 16 A. Since June of 1998?
 17 Q. Yes.
 18 A. Um, you know, I can't remember
 19 exactly the date, but it was probably the end
 20 of June where I was pretty much done with the,
 21 done with the company.
 22 Q. Did you continue to monitor
 23 Sunbeam's performance after that?
 24 A. No, I did not.
 25 Q. Did you have any involvement in any

1 something on a piece of paper, like the bank
 2 debt. Since the bank debt was not going to
 3 get rated -- because there was no syndication
 4 at the time, there was no reason to rate the
 5 converts. Okay.
 6 Um, Moody's, on the other hand, the
 7 initial reaction, they were going to rate the
 8 bank debt, but when I told them that, look,
 9 there are three holders of the bank debt -- we
 10 do not need a rating on it because we are
 11 holding it -- us, being they and, I think,
 12 First Union.
 13 We did not need the rating. And so,
 14 however, Moody's had this policy that there
 15 was a convert out there, and they were
 16 claiming that they were getting inquiries
 17 about a rating; and so, they gave it a rating.
 18 Q. How long does it, typically, take to
 19 get an official rating after the rating agency
 20 meetings?
 21 A. It depends, but in this situation,
 22 it is probably a couple weeks.
 23 Q. Is that fairly typical?
 24 A. I would say so.
 25 Q. After the rating agency meetings on

1 reserves established or write-downs or
 2 write-offs in connection with Sunbeam?
 3 A. No, I did not.
 4 Q. Have you had any cause to monitor
 5 American Household or Morgan Stanley's
 6 holdings in American Household, as a result of
 7 its Sunbeam position?
 8 A. I recently, probably in the last
 9 year or so, received some financials on
 10 American Household, but I don't cover the
 11 industry anymore, and I believe I gave them to
 12 the person that covers the industry.
 13 But it is not really a name that we
 14 follow from a portfolio management standpoint.
 15 Q. Who is the person that you gave that
 16 information to?
 17 A. I believe I gave it to a woman named
 18 Tina Trinkle, or I just let her know that we
 19 got these and filed them in our system, but --
 20 I did not look at them.
 21 Q. What group is Ms. Trinkle with?
 22 A. She is in my group.
 23 Q. Are you aware of anyone at Morgan
 24 Stanley who monitors American Household?
 25 MS. BROWN: Objection to form.

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1 A. No, I am not aware.
 2 Q. Are you aware of anyone at Morgan
 3 Stanley who would have valued Morgan Stanley's
 4 interest in American Household?
 5 A. I am not aware of anybody.
 6 Q. You have not?
 7 A. I certainly have not.
 8 Q. Just to step back for a second to
 9 March of 1998.
 10 Were you involved at all in the road
 11 show in connection with the Sunbeam financing?
 12 A. No, I was not.
 13 Q. Did you attend any meetings or
 14 lunches that were part of the road show?
 15 A. I may have, but I don't recall.
 16 Q. Did you attend a lunch in Boston
 17 with respect to the road show?
 18 A. No, I did not.
 19 Q. Can you recall attending any meeting
 20 in New York with respect to the road show?
 21 MS. BROWN: Objection to form.
 22 A. Again, I recall being at a meeting
 23 with Mr. Dunlap, and he was, you know, signing
 24 books, but -- so, you know, that could have
 25 been the road show. I don't know.

1 THE WITNESS: Sorry, can you read
 2 back the question.
 3 Q. I will try it again. It was a
 4 little sloppy.
 5 I take it that during the time that
 6 you were working on Sunbeam you had some
 7 working files or papers that related to the
 8 matter that were in your possession?
 9 A. That's right.
 10 Q. At some point, did those documents
 11 come to be no longer in your possession?
 12 A. Um, once I, uhm, once I was, once we
 13 brought Morgan Edwards on to cover our
 14 distress portfolio, I effectively gave them my
 15 entire file.
 16 Q. You did not keep anything, at that
 17 point?
 18 A. Not that I can recall, no, I did
 19 not.
 20 Q. Would you also have transferred to
 21 Mr. Edwards any computer files that you had,
 22 related to Sunbeam?
 23 THE WITNESS: What was the question,
 24 "could have"?
 25 (Record read.)

1 Q. Is there anything else that you can
 2 recall about that meeting?
 3 A. Actually, no.
 4 Q. Do you recall who else was there?
 5 A. Um, I know, again, Jason Kunreuther
 6 with there with me, but other people, no.
 7 Q. Do you know whether anyone else from
 8 Morgan Stanley was present at that meeting?
 9 A. I can't recall.
 10 Q. At any point, have you been asked
 11 whether you have any documents that relate to
 12 this litigation?
 13 MS. BROWN: Objection to form.
 14 A. Um, I don't recall.
 15 Q. At any point, have you looked for
 16 any documents or electronic files that might
 17 relate to this litigation?
 18 MS. BROWN: Same objection.
 19 A. Um, again, you know, I was -- I was
 20 probably contacted several years ago for some
 21 documents, but I don't remember what those
 22 documents were, and whatnot, so.
 23 Q. What is your understanding of what
 24 happened with respect to any working files
 25 that you had with respect to Sunbeam?

1 A. I don't recall.
 2 Q. At the time that you were working on
 3 Sunbeam, the spreadsheets, word processing
 4 files, other kinds of computer files, those
 5 would have been on your computer; is that
 6 right?
 7 MS. BROWN: Objection to form.
 8 A. I suppose it is possible, but
 9 anything that I would have had he would have
 10 had access to through his, through the L-drive
 11 at Morgan Stanley.
 12 Q. Is it fair to say that you use a
 13 different computer today than you used in
 14 1998?
 15 A. Yes, I think that is a fair
 16 statement.
 17 Q. Do you know whether there are any
 18 files relating to Sunbeam on your current
 19 computer?
 20 A. I don't know.
 21 Q. Do you have cause to look?
 22 A. No.
 23 Q. Do you know whether anyone else has
 24 looked at your computer with respect to
 25 Sunbeam?

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1 A. Not that I am aware of.
 2 Q. Are you aware of any document
 3 retention policy at Morgan Stanley with
 4 respect to papers or computer files like what
 5 you would have had in your possession relating
 6 to Sunbeam?
 7 A. No, I am not aware of what, if any,
 8 what the policy is.
 9 Q. Sorry, as you sit here today, you
 10 don't know where any of the Sunbeam-related
 11 documents that you once would have had or had
 12 access to are today?
 13 A. I have no idea.
 14 THE VIDEOGRAPHER: Five minutes left
 15 on the tape.
 16 MR. CHORVAT: If we can break for a
 17 couple minutes, I think I am just about
 18 done.
 19 MS. BROWN: Okay.
 20 THE VIDEOGRAPHER: The time is 1:12
 21 p.m. and we are going off the video
 22 record.
 23 (Recess.)
 24 THE VIDEOGRAPHER: Stand by. The
 25 time is 1:18 p.m. and we are back on the

1 Q. The same question with respect to
 2 Exhibit 252.
 3 A. The same thing. You know.
 4 Management, along with certain team members,
 5 put together the slides and then, you know, in
 6 hand form. And then they were, obviously, put
 7 together by the word processing group at
 8 Morgan Stanley.
 9 Q. These were prepared in connection
 10 with Morgan Stanley's work in preparation for
 11 the rating agency meetings?
 12 MS. BROWN: Objection to form.
 13 A. I think that is fair.
 14 MR. CHORVAT: Thank you, Mr. Whelan,
 15 that is all that I have.
 16 MS. BROWN: No questions.
 17 THE VIDEOGRAPHER: The time is 1:20
 18 p.m., and this completes tape number 2
 19 and also the videotaped deposition of
 20 Mr. Christopher Whelan.
 21 (Time noted: 1:20 p.m.)
 22
 23
 24
 25

1 video record.
 2 BY MR. CHORVAT:
 3 Q. With respect to Exhibits 251 and
 4 252, I will just ask you again about these
 5 footers that are on the lower left column.
 6 Those are generated by a Morgan
 7 Stanley computer system; is that right?
 8 A. I believe so.
 9 Q. And so, these documents were
 10 generated by someone at Morgan Stanley; is
 11 that right?
 12 MS. BROWN: Objection to form.
 13 A. Can you be a little bit more
 14 specific.
 15 Q. With respect to Exhibit 251,
 16 describe, to the best of your understanding,
 17 the process by which this document came to
 18 exist.
 19 A. Well, it was put together through a
 20 collaborative effort between management of the
 21 company, certain members of the deal team who
 22 put the slides together, and then it was
 23 created in a word document, so to speak, by
 24 the word, I guess it is called the word
 25 processing group at Morgan Stanley.

1
 2
 3
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 5
 6
 7 -----
 8 CHRISTOPHER WHELAN
 9
 10 Subscribed and sworn to before me
 11 this day of 2004.
 12
 13 -----
 14
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 25

018265

1 CERTIFICATE
 2 STATE OF NEW YORK)
 3) ss.
 4 COUNTY OF NEW YORK)
 5 I, ROBERT X. SHAW, CSR, a Notary
 6 Public within and for the State of New
 7 York, do hereby certify:
 8 That CHRISTOPHER WHELAN, the witness
 9 whose deposition is hereinbefore set
 10 forth, was duly sworn by me and that such
 11 deposition is a true record of the
 12 testimony given by such witness.
 13 I further certify that I am not
 14 related to any of the parties to this
 15 action by blood or marriage; and that I
 16 am in no way interested in the outcome of
 17 this matter.
 18 IN WITNESS WHEREOF, I have hereunto
 19 set my hand this 18 day of July, 2004.
 20
 21
 22 _____
 23 ROBERT X. SHAW, CSR
 24
 25

1 ----- I N D E X -----
 2 WITNESS EXAMINATION BY PAGE
 3 MR. WHELAN MR. CHORVAT 5
 4
 5 ----- INFORMATION REQUESTS -----
 6 DIRECTIONS:
 7 TO BE FURNISHED:
 8 REQUESTS:
 9 ----- EXHIBITS -----
 10 CPH FOR ID.
 11
 12 CPH Exhibit 249, fax 53
 13 CPH Exhibit 250, memorandum 128
 14 CPH Exhibit 251, documents Bates 129
 15 Nos. 5547 to 5599
 16 CPH Exhibit 252, rating agency 136
 17 presentation
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 22
 23
 24
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CERTIFIED COPY

018266

1 IN THE CIRCUIT COURT OF THE
2 FIFTEENTH JUDICIAL CIRCUIT
3 IN AND FOR PALM BEACH COUNTY, FLORIDA

4 COLEMAN (PARENT) HOLDINGS, INC.

5 Plaintiff,

6 vs.

Case No.
7 CA 03-5045 AI

8 MORGAN STANLEY & CO., INC.,

9 Defendant.
-----)

10
11 VIDEOTAPED DEPOSITION OF

12 JOSEPH R. PERELLA

13 New York, New York

14 Wednesday, December 8, 2004
15
16
17
18

19 Reported by:
SHAUNA STOLTZ-LAURIE
20 CSR NO. 810490
JOB NO. 168052
21
22
23
24
25

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Page 2

1
2
3
4 December 8, 2004
5 3:10 p.m.
6
7 Videotaped deposition of JOSEPH R.
8 PERELLA, held at the offices of Morgan
9 Stanley, 1585 Broadway, New York, New
10 York, pursuant to notice, before Shauna
11 Stoltz-Laurie, a Notary Public of the
12 State of New York.
13
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25

Page 4

1 (CPH Exhibit 371, Bill Strong 1993
2 performance evaluation package, marked
3 for identification, as of this date.)
4 (CPH Exhibit 372, Bill Strong 1995
5 performance evaluation package, marked
6 for identification, as of this date.)
7 (CPH Exhibit 373, Bill Strong 1996
8 performance evaluation package, marked
9 for identification, as of this date.)
10 (CPH Exhibit 374, Bill Strong 1997
11 performance evaluation package, marked
12 for identification, as of this date.)
13 (CPH Exhibit 375, Bill Strong 1998
14 performance evaluation package, marked
15 for identification, as of this date.)
16 (CPH Exhibit 376, 1998 IBD
17 Evaluation and Development Summary,
18 marked for identification, as of this
19 date.)
20 THE VIDEOGRAPHER: This is the
21 video operator speaking, Joe Barrion, of
22 Esquire Deposition Services, located at
23 216 East 45th Street, New York, New
24 York.
25 Today's date is December 8th, 2004.

Page 3

1 APPEARANCES:
2
3 JENNER & BLOCK
4 Attorneys for Coleman (Parent)
5 Holdings, Inc.
6 One IBM Plaza
7 Chicago, Illinois 60611-7603
8 BY: ROBERT T. MARKOWSKI, ESQ.
9
10 KIRKLAND & ELLIS, LLP
11 Attorneys for the Morgan Stanley entities
12 655 Fifteenth Street, N.W.
13 Washington, D.C. 20005
14 BY: THOMAS YANNUCCI, ESQ.
15 THOMAS A. CLARE, ESQ.
16
17 ALSO PRESENT:
18 JOSEPH BARRION, Videographer
19 JAMES BOYLE (Morgan Stanley)
20
21
22
23
24
25

Page 5

1 The time is 3:07. We are here at the
2 offices of Morgan Stanley, located at
3 1585 Broadway, New York, New York, to
4 take the videotaped deposition of Joseph
5 Perella in the matter of Coleman
6 (Parent) Holdings Incorporated versus
7 Morgan Stanley & Company Incorporated in
8 the 15th Judicial Circuit, In and For
9 Palm Beach County, Florida, Case No.
10 CA 03-5045 AI.
11 Will counsel please voice identify
12 yourselves, and state who you represent.
13 MR. MARKOWSKI: Bob Markowski from
14 Jenner & Block LLP on behalf of Coleman
15 (Parent) Holdings.
16 MR. YANNUCCI: Tom Yannucci,
17 Kirkland & Ellis LLP, on behalf of
18 Morgan Stanley.
19 MR. CLARE: Thomas Claire, Kirkland
20 & Ellis LLP, also on behalf of Morgan
21 Stanley.
22 MR. DOYLE: Jim Doyle,
23 Vice-President Counsel for Morgan
24 Stanley, on behalf of Morgan Stanley.
25 THE VIDEOGRAPHER: Will the court

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1 reporter please swear in the witness.
2 JOSEPH R. PERELLA, called
3 as a witness, having been duly sworn by
4 a Notary Public, was examined and
5 testified as follows:
6 EXAMINATION BY
7 MR. MARKOWSKI:
8 Q. Good afternoon, Mr. Perella.
9 A. Good afternoon.
10 Q. Mr. Perella, would you please state
11 your full name for the record, please?
12 A. Joseph, middle initial R. Perella.
13 Q. Where do you reside, Mr. Perella?
14 A. New York City.
15 Q. And by whom are you currently
16 employed?
17 A. Morgan Stanley.
18 Q. Do you have a title?
19 A. Chairman of Institutional
20 Securities.
21 Q. And to whom do you report in that
22 capacity?
23 A. Phil Purcell.
24 Q. Are there any other individuals at
25 Morgan Stanley who report to you?

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1 A. Two.
2 Q. And who are they?
3 A. Judy Foscale, F-o-s-c-a-l-e, and
4 Ann Johnston, J-o-h-n-s-t-o-n.
5 Q. What is Mr. Purcell's position at
6 Morgan Stanley?
7 A. Chief Executive Officer.
8 Q. He's the top person in the company?
9 A. Yes.
10 Q. And Judy Foscale, what is her
11 title?
12 A. She's one of my two assistants.
13 Q. And Ann Johnston?
14 A. The other assistant.
15 Q. Do they have other administrative
16 responsibilities, other than assisting you?
17 A. No.
18 Q. As the chairman of Institutional
19 Securities what are your responsibilities?
20 A. As Chairman of Institutional
21 Securities my role is really a client-
22 oriented role. Some people refer to me as
23 the senior client person in the firm. That's
24 opposed to a line manager. So I have
25 responsibility for leading the client effort,

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1 for being the senior banker on certain
2 important accounts of the firm, and for -- I
3 would say just as a general statement it's
4 more of a leadership role, not a managerial
5 role.
6 Q. You joined Morgan Stanley in 1993?
7 A. Correct.
8 Q. Could you briefly review for me the
9 course of your employment at Morgan Stanley,
10 the various positions you've held?
11 A. I joined in November '93. I was a
12 manager/director. I had no line
13 responsibilities, as a senior client person.
14 Approximately 18 months later I was asked to
15 become the head of the corporate finance
16 department, which is in an industrial sense
17 the sales arm of the investment bank. 18
18 months after that --
19 Q. I'm sorry, 18 months after you
20 joined in November of '93 would have been
21 late 1995?
22 A. Early 1995.
23 Q. Thanks.
24 A. Well, spring of 1995.
25 Q. Spring of '95?

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1 A. Approximately 18 months later I was
2 asked to become the head of the investment
3 banking division. I -- I held that -- I was
4 in that function for -- until approximately
5 October of 2000.
6 And in October of 2000 I became
7 Chairman of Institutional Securities and
8 Investment Banking, which we shorten really
9 for ease of description, and simply say
10 Chairman of Institutional Securities.
11 I also was on the management
12 committee of the firm from the time I joined,
13 and still am on the management committee of
14 the firm.
15 So that that's basically the
16 11-year -- 11 years I've been at Morgan
17 Stanley.
18 Q. What were your responsibilities as
19 the head of Corporate Finance?
20 A. To run the corporate finance
21 department.
22 Q. What does that consist of? What
23 are the functions of the corporate finance
24 department at Morgan Stanley?
25 A. As I said, it's the -- the

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1 marketing arm and, in an industrial sense,
2 the sales arm of the investment bank, to
3 interface with the client world, and in a
4 sense, the general practitioners who
5 interface and are the first line of contact
6 with companies, and so that group was under
7 my direction for 18 months.
8 Q. And as the head of Corporate --
9 excuse me. As the head of the investment
10 banking division --
11 A. Um-hm.
12 Q. -- what functions within Morgan
13 Stanley are subsumed within that group?
14 A. The head of Investment Banking
15 oversees the investment banking division that
16 consists of corporate finance department,
17 which consists of about half the resources of
18 the division, Human Resources, the merger and
19 acquisition department, the what was then
20 Debt Capital Markets and Equity Capital
21 Markets groups. They've since been combined
22 to form a Global Capital Markets group, and
23 the real estate department. So in effect, at
24 the time I was the head of Investment
25 Banking, that would be I believe six

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1 departments reporting to the head of
2 Investment Banking.
3 Q. In your capacity as the head of the
4 investment banking division to whom did you
5 report?
6 A. The -- I have to think about that
7 for a second, because there were some changes
8 in management. As the head of Investment
9 Banking, my best recollection is that I
10 reported to Peter Karches, who was the head
11 of Institutional Securities, and while I
12 think that's -- during the period I was the
13 head of Investment Banking, I reported to
14 him. He resigned in early September, and in
15 the month between then and the time I became
16 Chairman of Institutional Securities I
17 reported to John Mack, because that would be
18 September of the year 2000.
19 Q. You're represented by counsel here
20 today; are you not, Mr. Perella?
21 A. Yes.
22 Q. Mr. Yannucci's representing you
23 today, and Mr. Claire and Mr. Doyle.
24 A. Um-hm, yes.
25 Q. Did you have an opportunity to

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1 prepare for the deposition today by meeting
2 with them?
3 A. I met with them, yes.
4 Q. To prepare for your deposition
5 today?
6 A. Yes.
7 Q. You've been deposed previously?
8 A. Yes.
9 Q. Approximately how many times?
10 A. Well, I started working on Wall
11 Street in 1972, so I don't think I could
12 recall the number, but significant in terms
13 of number.
14 Q. You know Bill Strong?
15 A. Do I --
16 Q. -- know Bill Strong?
17 A. I certainly do.
18 Q. How long have you known Mr. Strong?
19 A. Since 1993.
20 Q. When you first joined the firm?
21 A. Correct.
22 Q. Did you review Mr. Strong's
23 personal -- personnel evaluations to prepare
24 for today?
25 A. I was shown them, but I -- I don't

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1 -- it would depend on what you meant by
2 review. I looked at some parts of them, but
3 I didn't review them from front to back.
4 Q. Do you know what years you saw?
5 A. I'm -- I'm not confident I could be
6 accurate in telling you what years that I
7 looked at.
8 Q. You've seen Mr. Strong's personnel
9 evaluations previously, correct?
10 A. Previous to?
11 Q. Previous to preparing for today's
12 deposition.
13 A. Well, I was his evaluation
14 director, so by -- by definition, I would
15 have seen them during the evaluation process.
16 Q. Are you aware, sir, that Morgan
17 Stanley opposed our request to take your
18 deposition today?
19 A. I'm not familiar with the details
20 of this lawsuit.
21 Q. You're not aware that we had to get
22 a court order for today's deposition --
23 MR. YANNUCCI: Objection,
24 relevance.
25 Q. -- to move forward?

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1 MR. YANNUCCI: What's relevance is
2 that to his facts you want to get from
3 him?
4 A. As I said, I'm not really familiar
5 with the details of this lawsuit.
6 Q. Mr. Perella, is it fair to say that
7 Morgan Stanley today takes its personnel
8 evaluation process very seriously?
9 A. Today?
10 Q. Yes.
11 A. Today and always, yes.
12 Q. That was my next question.
13 That was true in the 1990s as well,
14 when you first joined Morgan Stanley,
15 correct?
16 A. Yes.
17 Q. Can you estimate for me in any way,
18 whether it's in terms of time or money, the
19 amount of effort each year expended by Morgan
20 Stanley in connection with the personnel
21 evaluation process that the firm engages in?
22 A. Well, I -- I -- I couldn't do it in
23 terms of money, because I have no basis for
24 being able to build that model. I never
25 asked the question.

Page 15

1 In terms of time, I would say it's
2 a significant amount of time in that it --
3 and, of course, it depends on whether you're
4 talking about formal evaluation or informal
5 evaluation. Informal evaluation, what I mean
6 by that is people are encouraged to provide
7 feedback on a regular basis. One of the
8 things people like about the securities
9 industry is that it's an instant feedback
10 kind of business in that the market provides
11 feedback to companies in terms of their
12 performance. If they are performing well,
13 their stocks go up. If they are not
14 performing well, their stocks go down.
15 Our professionals are encouraged to
16 provide advice to their teams as they're
17 going along working on projects. If they see
18 something that needs correction, they should
19 do it on the spot, hopefully in private, and
20 not in front of colleagues. That's what I
21 mean by informal, the informal part of the
22 process.
23 Because there -- there isn't a book
24 that teaches you how to be an investment
25 banker. It's a profession where you

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1 basically learn on the job.
2 The formal part of the evaluation
3 process begins -- and I'm not using months,
4 because our fiscal month has changed several
5 times in the 11 years I've been here, but
6 just to set the example for you, in a fiscal
7 year-ended November 30th the formal
8 evaluation process probably begins sometime
9 in September and concludes in early December,
10 and that evaluation process is for every
11 person in the firm, so in an institutional
12 securities unit that has had in the
13 neighborhood of 10,000 people in it in the
14 period of time that I've been involved with
15 Morgan Stanley, if you just extrapolate the
16 amount of time and the number of people,
17 that's a significant commitment to the
18 evaluation and development process.
19 Q. It'd be tens of thousands of hours,
20 I take it.
21 A. Yes.
22 Q. You took your own involvement in
23 the evaluation process seriously; did you
24 not, sir?
25 A. Yes.

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1 Q. Could you review for me the formal
2 evaluation process as it existed at Morgan
3 Stanley in the period from 1993 to 1998, and
4 if there were any significant changes in that
5 time frame, if you could identify them for
6 me, I'd appreciate it.
7 A. Well, I'll qualify what I say by
8 the fact that I joined in November I believe
9 in a fiscal year that ended either February
10 1st or February 28th of the following year,
11 so as to the 1993 process, as a newcomer I
12 wouldn't really be familiar with the '93
13 year, so as to -- and these are general
14 comments that I make, because these things
15 are fine-tuned from year to year. In the
16 human resource area it seems like people are
17 always trying to make it better every year.
18 They don't think they ever get it right, so
19 they always like to fine-tune the forms. And
20 so I can't really give you an answer as to,
21 for example, how the evaluation development
22 summary might have changed from year to year,
23 or how the evaluation form might have changed
24 from year to year. I'm pretty sure they've
25 changed, but I just can't tell you how and

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1 when.
2 But let me try and at least give
3 you a general description of the process.
4 Each individual, from Dick Fisher and John
5 Mack, who were running the firm when I came
6 here, down to the most junior associate is
7 evaluated. They are evaluated by peers,
8 subordinates and superiors. The process
9 begins by the individual requesting an
10 evaluation of their performance, and that
11 form, the evaluation request form, goes to
12 the evaluation director for approval. The
13 evaluation director reviews the form and
14 ensures in their mind that it has a good
15 cross-section of evaluators, and since it's
16 someone who's responsible -- their
17 responsibility is for the evaluation of that
18 employee, they take some time and effort to
19 make sure it's complete to make sure that
20 someone is not -- we have an expression --
21 gaming the system. In other words, they just
22 put their friends on it. I would say that's
23 not been a problem, because people understand
24 that, you know, they wouldn't look good if
25 they did that.

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1 So the evaluation director reviews
2 it for completeness, approves it, and then
3 the request for an evaluation of that
4 employee goes out to those group of
5 evaluators. They do the evaluation. The
6 human -- that all goes in to the human
7 resource department.
8 There was a time when this was done
9 let's call it manually, meaning not on line,
10 not direct into a computer, and -- and I
11 think over the years it has migrated to be a
12 totally electronic system.
13 So the -- all of these evaluations
14 are then put together into what we call the
15 package for that employee that goes to the
16 evaluation director, and then the evaluation
17 director reviews the package and prepares an
18 evaluation development summary. And
19 subsequent to that the evaluation development
20 summary is reviewed by a committee of
21 partners, and a presentation is made to that
22 committee on the summary and on the package,
23 and that person is -- is giving -- given an
24 overall assessment.
25 And where people feel that the

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1 evaluation development summary might not
2 accurately reflect the package, it could be
3 amended, and then the EDS, Evaluation
4 Development Summary, is reviewed with the
5 employee by their evaluation director,
6 they're given a copy. During the review the
7 package is reviewed in depth with them.
8 Excerpts are read to them from the package,
9 and then the individual signs the Evaluation
10 Development Summary indicating they've
11 received it. If they have any comments, they
12 can indicate it on the form. And that pretty
13 much ends the formal part of the process.
14 And that's given at the end of, as
15 I said, the fiscal year. And we try to get
16 people to focus on the developmental issues,
17 and it's I think a process of awareness, self
18 -- self-improvement and in a sense trying to
19 harness the human potential that exists in
20 the organization by -- I guess the concept is
21 that every day we come to work, we try to do
22 better than we did yesterday, and if you're
23 able to do that with a 2,000-person division
24 better than the competition, that's a
25 competitive advantage. So we always viewed

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1 our evaluation system as a competitive
2 advantage.
3 Q. I've heard the term 360 review --
4 A. Um-hm.
5 Q. -- used to describe the Morgan
6 Stanley formal evaluation process. Is that a
7 term you're familiar with?
8 A. Yes.
9 Q. What does that refer to?
10 A. I think I mentioned that in the
11 early part of my rather long answer to your
12 question, and that is the peer, subordinate,
13 superiors, so 360 means the full spectrum of
14 people that you would interface with.
15 Q. What is the reason for having
16 junior people review their bosses?
17 A. Well, in that model, if you want to
18 call it the Renaissance model that I
19 described, where you learn from someone who's
20 more experienced in the art of investment
21 banking, the ability to teach and lead by
22 example is just as important as the ability
23 to follow direction from a superior, and in
24 the evaluation of a person as a complete
25 professional we look at not only what people

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1 you're reporting to think of your
2 performance, not only what your colleagues
3 think of your performance, but also people
4 who are in a sense under you, junior to you
5 in experience level in the firm think of your
6 performance. So it's designed to be a
7 complete feedback loop rather than a partial
8 one.

9 Q. What use is made of the formal
10 evaluations by the firm?

11 A. I think I answered that question.

12 Q. Well, you indicated that you
13 provide feedback to the employee. Is it used
14 for other purposes by the firm, setting
15 compensation, promoting someone, demoting
16 someone, terminating someone?

17 A. The -- well, let's just --

18 THE WITNESS: Could you repeat his
19 question? Because he used several
20 words.

21 A. (Continuing) Your question is
22 pretty clear to me. I just need to answer
23 them in the sequence that you asked them.

24 Q. Let me rephrase it for you --

25 A. You used a few things.

Page 23

1 Q. -- and break it down.
2 In addition to providing feedback
3 and direction to the person whose performance
4 is being evaluated --

5 A. Um-hm.

6 Q. -- does Morgan Stanley use the
7 formal evaluation process for other things?

8 A. Well, I like the fact that you were
9 being specific about what you think these
10 other things might be. The -- the -- the --

11 MR. YANNUCCI: You want to have
12 that question read back?

13 THE WITNESS: That's really the
14 most helpful, because I think I could
15 answer that.

16 A. (Continuing) And I think I answered
17 it in the sense that the goal is development,
18 growth, and harnessing the human potential in
19 a division and of the firm. Most of the
20 evaluations end with goals for next year, for
21 example. So they point the individual in the
22 direction of things they need to work on.

23 And the beginning of the form tends
24 to state -- usually says how did you do
25 vis-a-vis your goals, for example, in the

Page 24

1 self-evaluation. Excuse me. I forgot that
2 part. Part of the evaluation package that I
3 described earlier is a -- every individual
4 fills out a self-evaluation, which is part of
5 the package the evaluation director gets in
6 doing the summary. Now, if the reporter
7 could read back that original question, then
8 I could address one by one the points that
9 you ticked off.

10 Q. Let me try to address them one by
11 one.

12 A. Okay.

13 Q. Does Morgan Stanley use the formal
14 evaluation process in connection with setting
15 compensation?

16 A. Well, the answer to that is yes and
17 no, and I don't mean -- I mean that in --
18 very sincerely. It's intentionally separate
19 from the comp process, because if -- what we
20 don't want is people to focus on comp at the
21 end of the year; we want them to focus on the
22 developmental messages. So nowhere in the
23 process do we talk about money and the comp.
24 By money I mean the compensation. The focus
25 is on the developmental message, the

Page 25

1 strengths, and the things that employees need
2 to work on.

3 Now, in the course of the people in
4 charge evaluating people, they have usually
5 read the packages of all the managing
6 directors, for example, so they will have in
7 their mind impressions from those packages,
8 which have to filter into their determining
9 comp, but it -- but -- but the reason I say
10 -- that's the reason why I said yes and no.

11 But the no is when they're doing
12 comp, they don't sit there with the
13 evaluation package. That's not in the room.
14 It's not -- it's really they're -- they're
15 two separate processes in the firm's let's
16 say broadly speaking HR function.

17 Q. What is the process for setting
18 compensation for managing directors? Let me
19 focus again on the time period that I'm most
20 interested in, the mid to late 1990s.

21 A. Well, it's really -- this -- this
22 is something I -- I would have to answer with
23 general statements, and -- and it would be as
24 follows. First of all, compensation depends
25 on how well the firm does. It depends on,

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1 within the context of how well the firm does,
2 how well the business unit, the division
3 does, and then it depends on how well or what
4 -- what an individual contribution to that
5 overall effort was. So it's a combination of
6 things that enter into sort of the
7 determination of compensation levels.
8 The -- so within the -- the sort of
9 you want to call it budget that gets created
10 by performance of the enterprise, the
11 managers make a determination of what the
12 total reward should be to the employee -- and
13 that is generally done by a very small group
14 of partners in the business unit -- that is
15 then reviewed by the individual or
16 individuals that that unit reports to, and
17 then would be signed off on by the person
18 ultimately responsible or persons ultimately
19 responsible for the firm, and then finally
20 reviewed -- well, approved by the
21 compensation committee of the board of
22 directors.
23 Q. What role does revenue generation
24 play in determining bonus compensation to the
25 managing directors?

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1 MR. YANNUCCI: I'm going to object
2 to the general nature of the question,
3 ask you if you could focus on the -- I
4 thought the evaluation we're concerned
5 about, Mr. Strong.
6 Q. Okay, can you provide me a general
7 answer, sir, or is that too difficult a
8 question?
9 A. Let me -- if I recall your
10 question, what role does revenue play in
11 determining comp?
12 Q. Bonus compensation, yes.
13 A. Well, it's an important ingredient
14 in determining compensation. And while I was
15 in a position to determine compensation, what
16 -- one of the things I stressed was that I --
17 first of all, my philosophy of investment
18 banking is you don't pay investment bankers
19 like traders, number one. Number two, that
20 is the traders, you know, could have a very
21 big year, and their compensation can spike.
22 I believe investment bankers, being let's say
23 a more -- more of a let's call it profession,
24 should be paid --
25 (Interruption at the door.)

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1 (Mr. Schwartz joined the
2 proceedings.)
3 MR. MARKOWSKI: Take a brief break.
4 THE VIDEOGRAPHER: We are going off
5 the record. The time is 3:41.
6 (Discussion off the record.)
7 THE VIDEOGRAPHER: We are now back
8 on the record. The time is 3:42.
9 A. (Continuing) So I was sharing with
10 you my philosophy of compensation while I was
11 in a managerial post.
12 I think revenue contribution was an
13 important ingredient, but what I -- I
14 stressed was the development of relationships
15 and growth of the professional revenue over
16 time. I didn't want, particularly since we
17 were hiring new people into the firm that
18 hadn't begun their careers at Morgan
19 Stanley -- Morgan Stanley was a private firm
20 up until 1986, and in that environment it
21 tended to grow its own talent, and when it
22 went public -- and this is not a pattern
23 that's unusual for firms on Wall Street --
24 when it went public, it began to hire people
25 from other firms. So when you come into a

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1 culture that's home grown, I didn't want the
2 people to feel like they had to be instantly
3 successful and productive, and I stressed
4 that we would be looking at revenue over
5 time.
6 So what we look at is what I would
7 call overall athleticism, and that is -- and
8 I don't think any different in banking than
9 it would be in the law, for example -- you
10 get a sense, when you're around a
11 professional over a period of time, you know,
12 that certain people have more potential than
13 others. So I would say overall athleticism.
14 A person could have a very bad revenue year
15 but be a good athlete. They're not going to
16 be penalized in our system.
17 A person could have a spectacular
18 revenue year, but we're not going to pay them
19 like a trader, because what we try to do is
20 bring people along. I think if you pay a
21 younger person a lot of money early on in
22 their career because they pay -- they do
23 something spectacular, it creates a -- a
24 system that's to me out of kilter with what I
25 call true banking culture.

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1 So revenue played a part, but in my
2 mind it's just one part of determining
3 overall compensation, salary plus bonus, of
4 our professionals, while I was running the
5 division.
6 Q. Just to refer back for a moment to
7 the formal evaluation process.
8 A. Hm.
9 Q. As I understand your answer, the
10 process culminates in the development of the
11 Evaluation Development Summary?
12 A. Correct.
13 Q. And that's shared with the
14 employee -- correct? -- who actually receives
15 a copy of that to keep.
16 A. But it's reviewed by that committee
17 of partners before it's shared with the
18 employee.
19 Q. It goes through a process of being
20 vetted by people in addition to the
21 evaluation director.
22 A. Correct.
23 Q. And those people have an
24 opportunity to comment on it or revise it if
25 they see problems with the evaluation

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1 summary, correct?
2 A. If they don't think it reflects
3 what's in the package.
4 Q. Is it fair to say that -- that at
5 the end of that process the Evaluation
6 Development Summary reflects a considered
7 judgment of firm management with respect to
8 the employee's performance in that time
9 period?
10 MR. YANNUCCI: Object to the form of
11 the question.
12 You may answer.
13 A. I -- I think to say it reflects
14 firm management is -- is not accurate,
15 because that implies that Dick Fisher and
16 John Mack would somehow have their stamp of
17 approval on that. I think it -- it reflects
18 the -- it's the output of a process that goes
19 on in a division with 2,000 people, and it
20 tries to synthesize the input from usually
21 somewhere between 15 and 30 evaluators so
22 that it can be summarized in a -- in a way
23 that feedback's provided to the employee
24 while at the same time protecting the source
25 of the information, because you can't share

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1 the package with the employee, because that's
2 got everyone's name there, and the whole
3 point is that, you know, you want it to be
4 let's call it a transparent process, one
5 where the people -- people's views are
6 expressed without fear of retribution, and,
7 you know, in an open and constructive manner.
8 Q. Did I understand you to say, Mr.
9 Perella, that when you served as evaluation
10 director that you would read excerpts from
11 the package to the person who was being
12 reviewed?
13 A. Yes.
14 Q. How would you decide what material
15 to read from a package?
16 MR. YANNUCCI: I'm going to object
17 both to relevance and I don't know that
18 he can generalize when he would or when
19 he wouldn't.
20 But go ahead and answer if you can.
21 THE WITNESS: Restate the question.
22 (Record read.)
23 A. Well, one way you can do it is you
24 can read the whole package to the person.
25 That would eliminate the -- the need to pick

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1 and choose. What I tried to do was basically
2 read some portion of every evaluator's
3 comments, so I -- I didn't sort of
4 self-select. You know, if a person had 15
5 evaluators, they heard comments from all 15,
6 because of -- you know, in my mind, if a
7 person is asked to do an evaluation, and
8 they've spent so much time on someone, they
9 deserve to have their view shared.
10 Q. Was there a time, Mr. Perella,
11 where you had managerial responsibility for
12 Bill Strong?
13 A. Yes. When I was head of Corporate
14 Finance Bill would have been under -- you
15 know, in my department.
16 (Coughing) Excuse me.
17 Q. And that time period was
18 approximately the spring of 1995 through
19 early 1997?
20 A. Yes.
21 Q. When you became head of Investment
22 Banking did you have any managerial
23 responsibility for Mr. Strong?
24 A. Well, he was no longer a direct
25 report, so he -- he -- he was not under my

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1 direct reporting line; that when I became the
2 head of Investment Banking my direct reports
3 were the six division heads -- excuse me,
4 department heads running those departments
5 that I mentioned in I think the first early
6 part of your questions.
7 Q. So when you were head of Corporate
8 Finance Bill Strong reported directly to you;
9 is that correct?
10 A. He was one of the individual -- one
11 of the managing directors in Corporate
12 Finance under my jurisdiction. It's -- when
13 you say reported directly to you, it wasn't
14 like he -- he was picking up the phone and
15 telling me what he was doing every day. I
16 mean there were maybe a hundred managing
17 directors in Corporate Finance at the time.
18 I'm saying a hundred -- I don't know the
19 exact number -- as opposed to ten, just to
20 sort of order -- give you the sense of
21 magnitude. So, you know, to say that all
22 hundred reported to me would -- you know, I
23 didn't function like that. So -- but they
24 were -- you know, they were under my
25 supervision and in my department.

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1 Q. And then after that Mr. Strong
2 remained in Corporate Finance, which was one
3 of the departments that you had overall
4 responsibility for, correct?
5 A. Correct.
6 Q. Now, you've already indicated, sir,
7 that you were involved in Mr. Strong's
8 evaluations, his formal evaluations.
9 A. Yes.
10 Q. And what I'd like to show you and
11 have you identify for us today are a set of
12 exhibits that I've prepared. They've been
13 marked by the court reporter as CPH
14 Deposition Exhibit numbers 371 through 376.
15 A. Um-hm.
16 Q. I give you those as a stack and ask
17 you if you can identify each one of them for
18 us, for the record.
19 A. Well, why don't I do it as I go
20 along.
21 Q. Yes. That would be good.
22 A. This appears to be 1993 performance
23 evaluation package for Bill Strong.
24 Q. And you're referring to
25 Exhibit 371, correct?

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1 A. Yes.
2 372 is 1995 performance evaluation
3 package for Bill Strong.
4 373 is 1996 performance evaluation
5 for Bill Strong.
6 374, 1997 performance evaluation
7 package for Bill Strong.
8 1998, Exhibit 375, performance
9 evaluation for Bill Strong.
10 Q. I'm sorry, sir, you said 375 is the
11 1998 --
12 A. Correct.
13 Q. -- evaluation package?
14 A. And there's for some reason -- I
15 was going through all these to make sure
16 there was an EDS. (Perusing documents).
17 There's 376, which appears to be
18 some other document, and I'm not so sure -- I
19 mean it says "1998 IBD Evaluation and
20 Development Summary," but it's not a package,
21 it's just three pieces of paper, all -- and
22 it's 376.
23 Q. Are you familiar with the form of
24 Exhibit 376, sir?
25 A. I -- I --

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1 Familiar with the form?
2 Q. Yes.
3 It's referred to in its title as an
4 "IBD Evaluation and Development Summary."
5 Are you familiar with that form of document?
6 A. Well, I -- you're going back now
7 six years in time, so, you know, if this came
8 out of our system, you know, it's what it is.
9 I just -- you know, as I said, these things
10 have changed from year to year, so I'd have
11 to -- it appears to the EDS from -- for Bill
12 Strong, but for some reason there's two of
13 them in here, one in 375, called "Firm-Wide
14 Performance Evaluation," and the other one
15 says "1998 IBD," so I -- I don't know whether
16 they're the same summary on two different
17 forms or whether the forms changed in the
18 middle of the process, so I'm -- I'm a little
19 puzzled as to why there are two.
20 Q. Now, in 1996 or, excuse me, sir,
21 1995, Exhibit 372, you served as the
22 evaluation director for Mr. Strong's
23 evaluations; is that correct?
24 A. 1995? Yes.
25 Q. And you played that same role again

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1 in 1996, correct?
2 A. Yes.
3 Q. And in 1997 you again played that
4 role, correct?
5 A. Yes.
6 Q. And in 1998 you were co-director of
7 Mr. Strong's annual formal evaluation,
8 correct?
9 A. Yes.
10 Q. And in that year Robert W. Jones
11 was the primary director?
12 A. Yes.
13 Q. How did you come to have the
14 responsibility as the evaluation director or
15 co-director for Mr. Strong's annual
16 evaluation?
17 MR. YANNUCCI: Objection, asked and
18 answered.
19 A. Could -- I -- I -- I lost track of
20 the question. I'm sorry.
21 Q. I can restate it.
22 How did you get the responsibility
23 to serve as the evaluation director or
24 co-director for Mr. Strong?
25 A. For each of these years you've

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1 given me?
2 Q. Yes.
3 A. Well, as we discussed earlier, in
4 '95 and '96 I was the head of -- and for part
5 of '97 the head of Corporate Finance, and I
6 was the evaluation director for many managing
7 directors during that period of time, and --
8 and so that would basically -- I would have
9 the responsibility for being ED.
10 Q. Because of your response -- because
11 of your managerial responsibilities of the
12 firm?
13 A. Yes.
14 Q. Now, you've generally described the
15 responsibility of Evaluation Director. Is
16 that a fair characterization of the role
17 you've played with respect to Mr. Strong's
18 own evaluations?
19 A. That I was his evaluation director?
20 Q. And that you played the role that
21 you've described previously as the role that
22 Evaluation Director plays generally at Morgan
23 Stanley in the annual formal evaluation
24 process.
25 A. Sure.

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1 Q. Did you personally undertake to
2 draft initially the summary of the evaluation
3 comments?
4 MR. YANNUCCI: In any year?
5 MR. MARKOWSKI: In the years that
6 we're looking at here for Mr. Strong.
7 A. As opposed to?
8 Q. Have someone else do it for you.
9 A. No, this is not something I
10 delegated.
11 Q. So you would personally draft the
12 summary statement?
13 A. Yes.
14 Q. Do you know, sir, who other than
15 yourself in the years that we're talking
16 about here, 1995 through 1998, had input into
17 Mr. Strong's evaluation summaries?
18 A. The summary's the responsibility of
19 the evaluation director. I indicated that
20 there's a review process wherein the package
21 is reviewed and the summary is included in
22 the package and reflected on by that what's
23 called a committee, so if you want to call
24 that input, that's fine. I just wouldn't be
25 able to remember whether as a result of

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1 Bill's review in any year a sentence was
2 added, taken out. So when you use the word
3 input, it sort of has0, you know, it could
4 have a broad meaning in -- in developing an
5 answer to your question.
6 Q. Do you know as you sit here today
7 the names of any other people that reviewed
8 your summaries before they were finalized and
9 provided to Mr. Strong in the years we're
10 speaking?
11 A. No. I couldn't remember that now.
12 Q. Is it fair to say, Mr. Perella,
13 that the evaluation summaries that are
14 contained in Exhibits 372 through 375, where
15 you were involved in preparing or serving as
16 the evaluation director, reflect your
17 considered views of the comments that were
18 made by those who evaluated Mr. Strong?
19 A. Yes.
20 Q. In some of the evaluations -- and
21 we'll get to them in some detail shortly,
22 sir, but in some of the evaluations, in some
23 packages you personally evaluated Mr. Strong
24 based on your own experiences with him. Do
25 you recall doing that?

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1 A. Doing?
2 Q. Providing your own personal
3 comments about Mr. Strong in the course of
4 the evaluation process.
5 A. In the 11 years I've been here I've
6 -- I get -- I've probably done between 50 and
7 a hundred of these. I get requests from
8 people to do an evaluation of them, not as
9 their director but as a -- one of the
10 evaluators, so somewhere around 75 to a
11 hundred, so I -- I -- Bill was one of the
12 ones that I would have done during that
13 period of time, but as to specifically
14 remembering sitting down and doing it, no.
15 Q. I assume that --
16 A. The only reason I went on about
17 that is because I'm not doing just -- if it
18 were just one or two that I was doing, I'd
19 probably remember it, but when you're doing a
20 hundred, I think it's a little bit difficult
21 to remember the specific circumstances around
22 which you wrote it.
23 Q. If you lacked a sufficient basis to
24 make a comment in a particular year, what
25 would you do, sir?

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1 A. If I -- I'd say --
2 If I lacked the specific --
3 Q. -- sufficient basis to make a
4 comment, what would you do?
5 A. I'd say I'd be unable to evaluate
6 the person.
7 Q. If the evaluation packages contain
8 summaries or a statement of your personal
9 evaluation of Mr. Strong, I assume it's the
10 case that you made an effort to be fair and
11 accurate in your comments. Is that correct?
12 A. Yes.
13 Q. Did you have any reason during the
14 time period that we're addressing, sir, 1995
15 to 1998, to exaggerate criticisms of Mr.
16 Strong?
17 A. Me exaggerate criticisms?
18 Q. Yes.
19 A. No.
20 Q. Do you have any reason to
21 believe --
22 Do you know Robert Scott?
23 A. Yes.
24 Q. Do you have any reason to believe
25 that Robert Scott would have had a reason to

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1 exaggerate criticisms of Mr. Strong?
2 A. No.
3 Q. Do you know Terry Meguid?
4 A. Meguid.
5 Q. Meguid? Excuse me.
6 A. Yes.
7 Q. Do you have any reason to believe
8 that in the time period we're addressing
9 today, 1995 through 1998, that Mr. Meguid
10 would have had any reason to exaggerate
11 criticisms of Mr. Strong?
12 A. No.
13 Q. What was Mr. Scott's position at...
14 Morgan Stanley in the -- in this time period;
15 do you recall, sir?
16 A. The time period?
17 Q. 1995 through 1998.
18 A. Bob Scott was -- preceded me as
19 head of Corporate Finance, became -- and
20 became head of Investment Banking, so he
21 preceded me also as the head of Investment
22 Banking and then he became Chief Financial
23 Officer of the firm.
24 Q. And ultimately ended up a member of
25 the board of directors, correct?

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1 A. When John -- yeah, I guess he did,
2 when John Mack resigned from the firm in
3 2001.
4 Q. What was Mr. Meguid's position in
5 this time period, nineteen ninety --
6 A. He was my deputy.
7 Q. Mr. Meguid was your number two
8 person in --
9 A. Correct.
10 Q. -- Investment Banking?
11 A. And in Corporate Finance.
12 Q. In both positions.
13 A. Correct.
14 Q. He moved with you?
15 A. Most of the time, yeah.
16 Q. Is Mr. Meguid someone you worked
17 with closely then for a number of years?
18 A. Yes.
19 Q. Do you respect his judgment?
20 A. Yes!
21 When you say number of years, I met
22 him when I joined Morgan Stanley. He was not
23 employed at any of my previous employers.
24 Q. Thank you.
25 A. I think he's been at Morgan Stanley

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1 his whole career.
2 Q. You respect Mr. Meguid's ability --
3 ability to evaluate personnel?
4 A. Yes.
5 Q. Bill Strong was hired -- let me ask
6 you the question.
7 Do you know when Bill Strong joined
8 Morgan Stanley?
9 A. No.
10 Q. It was before you; is that correct?
11 A. I don't know when he joined.
12 Q. You're not certain that he was here
13 when you joined the firm?
14 A. I don't know when he joined. I
15 think he preceded me.
16 Q. Do you know what Mr. Strong's
17 responsibilities were when you first joined
18 the firm in late '93?
19 A. No. I wouldn't --
20 Q. Are you --
21 A. -- be familiar with that.
22 Q. Mr. Strong did have administrative
23 responsibilities when you were running --
24 when you were running the corporate finance
25 department; is that correct?

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1 A. Well, I don't know the time
2 sequence, but there -- there was a point in
3 time when Bill had oversight for regional
4 offices, but the exact start-end date of
5 that, I'm not familiar with.
6 Q. The regional offices you're
7 referring to are what, sir?
8 A. Offices outside of New York, in the
9 United States, and that might have included
10 Canada, although I'm not positive.
11 Q. There came a point where Mr. Strong
12 ceased having that administrative
13 responsibility for the regional offices; is
14 that correct?
15 A. I'm -- I'm -- I'm sure that's true,
16 but I'm not clear on the timing, because
17 there was an interim attempt by the firm to
18 -- when Bob Scott got elevated to head of
19 Investment Banking I was not immediately made
20 head of Corporate Finance. They actually had
21 a three-person, if you believe it, head of
22 Corporate Finance, one in Europe, one in New
23 York and Bill in the region, and John Mack
24 sort of lived with that for all of a few
25 months maybe and decided that a three-headed

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1 corporate finance department really wasn't
2 working well, and it might have been Bob
3 Scott involved in that process, too, because
4 they one day called me up and asked me to do
5 it. But that was a very, very short period
6 of time. I think it was -- you know, I might
7 have even been an interim solution, because
8 when Scott got taken out of the job at
9 Corporate Finance to become the head of IBD
10 having one (sic), they didn't immediately
11 come up with a solution. They asked me to do
12 it a few months later. So that there was a
13 period of time there where they had
14 tri-heads, so during that period of time, I
15 can't be sure that Bill continued to, quote,
16 run the regions, unquote.
17 And then there -- there -- there
18 probably was a time when they transitioned
19 that job to a younger person, which is kind
20 of a typical pattern here of management.
21 (Discussion off the record.)
22 Q. What -- I want to make sure I
23 understand the timing, sir.
24 Is it the case that there was a
25 period of time where you had responsibility

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1 for the corporate finance department while
2 Mr. Strong continued to serve as head of the
3 regional offices?
4 A. Yes.
5 Q. How -- how long a period of time do
6 you believe that was?
7 A. Well, the most it could have been
8 was 18 months.
9 Q. One of Mr. Strong's
10 responsibilities as head of the regional
11 corporate finance department offices was
12 generating revenue through those offices; is
13 that correct?
14 A. I don't know if I would
15 characterize his responsibility was
16 generating revenue.
17 Q. He was given goals of increasing
18 the revenue at the regional offices that he
19 was responsible for, correct?
20 A. Well, everyone at the firm thinks
21 that it's their responsibility to try and
22 enhance our revenue base. I mean it's --
23 it's sort of everyone's responsibility. So
24 when -- I -- I didn't quite understand the
25 question, you know, that it was his

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1 responsibility.
2 Q. Well, as the person who is at the
3 head of the management of the regional
4 offices, Mr. Strong was told to make efforts
5 to increase the revenues generated by the
6 offices under his supervision --
7 MR. YANNUCCI: Objection.
8 Q. -- correct?
9 MR. YANNUCCI: Lack of foundation.
10 A. I never told him that.
11 (Counsel confer off the record.)
12 Q. I want to ask you, sir, to -- do --
13 do you have Exhibit 374, sir, in that stack?
14 It's the 1997 evaluation package.
15 1997 was a year in which you served
16 as Mr. Strong's evaluation director; is that
17 correct?
18 MR. YANNUCCI: Asked and answered.
19 It's also on the front page of the
20 document.
21 A. Yeah.
22 Q. Let me direct your attention to the
23 page -- there are numbers in the right-hand
24 corner of the pages, sir. The last three
25 digits of the page I'd like to direct your

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1 attention to are 470. It's the first page of
2 the evaluation summary, I believe.
3 A. (Perusing document) Got it.
4 Q. Under "1997 Performance Summary"
5 the first two sentences read "Bill has
6 continued to enhance the MS franchise.
7 Regional offices achieved a record with
8 market-by-market share improvements." Do you
9 see those two sentences, sir?
10 A. Yes.
11 Q. Was Mr. Strong's performance at
12 least in part judged by the amount of
13 revenues generated by the regional offices
14 under his supervision?
15 A. Well, that -- that would be one
16 factor in, you know, assessing his
17 performance, yes.
18 MR. YANNUCCI: Just for the record,
19 it says "Summarize the individual's
20 performance relative to the objectives
21 set for the year," end of quote.
22 Q. Let me -- let me direct your
23 attention to page 455 in the same document,
24 sir.
25 A. 455?

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1 Q. That's correct.
2 A. Yeah.
3 Q. This is a portion of Mr. Strong's
4 annual self-evaluation; is that correct?
5 A. It appears to be, yes.
6 Q. And Mr. Strong states at the top of
7 that first page "I am very pleased with my
8 performance in 1997. 1997 is the best year
9 that I've had with the firm since joining in
10 January of 1993. The regional offices for
11 which I am responsible, Chicago, Houston,
12 Los Angeles, San Francisco and Toronto
13 achieved record revenue in 1997."
14 A. Um-hm.
15 Q. "The regional offices have achieved
16 affirmed revenue of 130 million, 205 million,
17 276 million, and will incur revenue in the
18 range of from 375 to 400 million in 1994 and
19 '95, '96 and '97 respective" --
20 "respectively."
21 A. Um-hm.
22 Q. Do you see those statements, sir?
23 A. Yes.
24 Q. Mr. Strong in his annual
25 self-evaluations would take credit for the

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1 revenue accomplishments of the regional
2 offices under his supervision, correct?
3 A. Take credit for the
4 accomplishments? Is that what you said?
5 Q. In -- in discussing his own
6 accomplishments for the year.
7 A. Well, he obviously has.
8 Q. Did you consider Mr. Strong, Mr.
9 Perella, as someone who generated significant
10 revenues for Morgan Stanley?
11 A. Are you referring to any particular
12 year or just in general or --
13 Q. During the time period when you
14 were serving as his evaluation director.
15 A. Well, we had a lot of, you know,
16 significant producers here at the firm, and
17 he was one of them.
18 (Telephone interruption.)
19 Q. And you referred to a significant
20 producer. Significant producer of revenue?
21 A. Yes.
22 Q. Are you familiar with the term
23 rainmaker, sir?
24 A. I've heard it, yeah.
25 Q. What does it mean to you?

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1 A. We don't use it that much around
2 here.
3 Q. What does the term mean to you?
4 A. On Wall Street?
5 Q. Whatever your source of
6 understanding is.
7 A. Well, I read a lot about it. I
8 guess you hear it in the press. It's I guess
9 a term that people use when referring to
10 someone who has the ability to generate
11 revenue for his or her firm.
12 Q. Did you consider Mr. Strong to be a
13 rainmaker, given that definition?
14 A. As I said, we don't use that firm
15 -- that phrase around here that much.
16 Q. But given your definition of it,
17 would you consider Mr. Strong to meet that
18 definition?
19 A. Bill Strong was a significant
20 revenue producer, and has been at Morgan
21 Stanley for quite some time.
22 Q. Is that still true today, to your
23 knowledge?
24 A. What is?
25 Q. Is it still true today that Mr.

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1 Strong continues to generate substantial
2 revenues for the firm?
3 A. I believe he does, yes.
4 Q. Does Morgan Stanley have a system
5 for tracking fee credits or business
6 origination?
7 A. Fee credits?
8 Q. Somehow --
9 A. You mean revenue?
10 Q. Yes.
11 A. What -- we track revenue according
12 to Managing Director's area of
13 responsibility, and it's -- because we try to
14 emphasize teamwork, we generally attribute
15 the revenues to more than one person.
16 Therefore it's -- when you talk about
17 rainmaker, there -- there's this sort of
18 impression that one person's doing everything
19 himself. This firm doesn't run like that.
20 It's antithetical to the culture of Morgan
21 Stanley. So the revenue -- tracking revenue
22 is allocated and distributed to the team
23 members that are a part of an effort to --
24 that were part of the team that -- that
25 worked on the particular business or deal

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1 over time.
2 Q. Is there a tally of some sort kept?
3 A. Well, as I said, there -- there --
4 somewhere in the administrative function they
5 keep track of firm-wide revenues and
6 attribute it to individuals that are working
7 on the deals.
8 Q. Let me refer you again to Mr.
9 Strong's self-evaluation --
10 A. Um-hm.
11 Q. -- for 1997. It's a few lines
12 farther down from where I was just reading.
13 There's a sentence that begins "My personal
14 firm revenue has been 70 million, 73 million
15 and will exceed 90 million in 1995, 1996 and
16 1997 with respect" --
17 A. I haven't found where you're
18 reading here.
19 MR. YANNUCCI: It's right here
20 (indicating).
21 A. (Continuing) Oh, further down.
22 Q. Yes.
23 Do you see it, sir?
24 "My personal firm revenue has been
25 70 million, 73 million and will exceed 90

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1 million --
2 A. Yeah.
3 Q. -- for 1995, 1996 and 1997
4 respectively."
5 A. Yeah.
6 Q. Do you know what those figures
7 consist of?
8 A. No.
9 Q. Do you know how Mr. Strong kept
10 track of those numbers?
11 A. No.
12 Q. Would Mr. Strong be provided some
13 form of a report by the firm, that identified
14 for him the revenue that was attributed to
15 him?
16 A. I don't really know the answer to
17 that question.
18 Q. As his -- as the director of Mr.
19 Strong's evaluation for 1997 would you have
20 seen such a report?
21 A. At some point, but exactly when, I
22 don't know. If I wanted to see it.
23 Q. You personally considered Mr.
24 Strong, sir, as someone who is aggressive in
25 pursuing business for Morgan Stanley; did you

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1 not?
2 A. Yes.
3 Q. There were some people within
4 Morgan Stanley who thought Mr. Strong was too
5 aggressive -- is that the case? -- in
6 pursuing business.
7 A. There were some people at Morgan
8 Stanley that thought Bill was too aggressive?
9 Q. In his pursuit of business.
10 A. Well, that's -- you know, that's a
11 judgmental thing. That's a subjective
12 statement.
13 Q. Did anyone express to you, sir, the
14 point of view that they believed that Mr.
15 Strong was overly aggressive in his pursuit
16 the business or revenue for the firm?
17 A. Well, you're using adjectives like
18 overly. I don't know that I could confirm
19 that word.
20 But, you know, Bill Strong is a
21 high achiever kind of person, and, you know,
22 he doesn't sit still too long, but we have a
23 lot of people around here like that.
24 Q. Did Mr. Meguid ever tell you that
25 Bill Strong, in his personal view, was overly

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1 aggressive in his pursuit of revenue?
2 A. Overly aggressive? Did he tell me?
3 Q. In words -- in those words or in
4 substance?
5 A. Well --
6 MR. YANNUCCI: Object to the form
7 of the question.
8 A. -- I -- I -- he might have. I
9 don't have specific recollection of it
10 sitting here now.
11 Q. Let me direct your attention to
12 page 458 of Mr. Strong's 1997 evaluation --
13 A. Yeah.
14 Q. -- Exhibit 374.
15 A. Page 458?
16 Q. Let me make sure.
17 A. Is that what you said?
18 MR. YANNUCCI: Yeah, that's what he
19 said.
20 A. It says "Phil is a great team
21 player and does as good a job of" (inaudible)
22 as anyone in the firm."
23 Q. It's actually --
24 A. Is that what you're talking about?
25 Q. No. It's actually on the next

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1 page, sir.
2 A. Oh.
3 MR. YANNUCCI: 459?
4 THE WITNESS: (Reading).
5 Q. Are you on page 459, sir?
6 A. I was reading page 458.
7 Go ahead.
8 Q. Do you see Mr. -- there's a -- it's
9 the -- I believe the -- one, two -- the third
10 comment down under "Colleague"? It's the
11 first comment --
12 A. Well, there's seven people
13 commenting on this page. Which one are you
14 referring to, which comment?
15 Q. The first comment under "Colleague
16 Comments"?
17 A. Yeah, but which individual?
18 Q. The first one, Tarek?
19 A. Tarek Meguid?
20 Q. Meguid.
21 A. Yeah, I read that. That's under
22 "Downward Comments." So all the comments on
23 this page to from -- well, no. That's
24 "Downward." These are "Colleagues." Okay.
25 Yeah.

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1 Q. These are Mr. Meguid's, the first
2 comment under "Colleague Comments"; is that
3 correct, sir?
4 A. Yeah, but I'm trying to determine
5 what -- all right. Go ahead.
6 Q. Could read Mr. Meguid's comment out
7 loud for the record, please?
8 A. "Bill" --
9 You want me to read it?
10 Q. Yes, out loud.
11 A. "Bill is an extremely commercial
12 banker and a tenacious competitor. He is
13 highly focused on money-making opportunities
14 sometimes to a fault. He is incredibly
15 energetic, very diligent, very strong
16 commercial results."
17 Q. Let me direct your attention to
18 page 460, two pages farther into the
19 document.
20 A. Yeah.
21 MR. YANNUCCI: 460?
22 MR. MARKOWSKI: 461.
23 A. (Continuing) Right.
24 Q. There's another comment by Mr.
25 Meguid on that page --

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1 A. Right.
2 Q. -- do you see that, sir --
3 A. Yes.
4 Q. -- in the center?
5 Would you read that out loud?
6 A. Yes. "Bill can be overly
7 aggressive in terms of trying to capture
8 transitional opportunities. Makes some
9 judgments which are sometimes very close to
10 if not over the line. A number of
11 individuals have had experience which" --
12 "have had experiences which I have had to
13 deal with on conflicts, et cetera, which
14 reflect this."
15 Q. You personally considered Mr.
16 Strong to be something of a self promotor;
17 did you not, sir?
18 A. I don't recall saying that.
19 Q. Let me direct your attention to
20 your own comment at the bottom of page 461.
21 A. Yeah.
22 Q. Would you read that out loud,
23 please?
24 A. "Bill should engage less in self
25 promotion and focus more on developing a team

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1 approach, giving credit to others. The one
2 problem I continue to have with Bill is that
3 you never seem to get the whole story unless
4 you probe very hard. There are very few
5 people at Morgan Stanley that give me that
6 impression."
7 Q. And those were your views of Mr.
8 Strong in 1997 correct, sir?
9 A. That was a comment I wrote in 1997.
10 That doesn't reflect my entire point of view
11 on the gentleman.
12 Q. But that was --
13 A. I -- I wrote this in 1997, yes.
14 Q. And you were trying to be fair and
15 accurate in that observation, correct?
16 A. Yes.
17 Q. Morgan Stanley set a high revenue
18 objective for Mr. Strong in 1997, did it not,
19 sir?
20 A. I don't know what you mean by that.
21 Q. Well, Mr. Strong was given a -- in
22 his -- in a summary of his evaluation for
23 1997 given a revenue objective for 1998; do
24 you recall that?
25 A. No.

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1 Q. Let me direct your attention to the
2 last page of --
3 A. Um-hm.
4 Q. -- Exhibit 374.
5 A. Right.
6 Q. Under "Business Goals"?
7 A. Yup.
8 Q. Would you read the first sentence?
9 A. "Maintain revenue contribution at
10 or above currently level of 90 million.
11 Provide support for continued improvement in
12 the regional offices. All this will require
13 continued commitment of the kind Bill has
14 demonstrated to all. However, he should try
15 and relax once in a while."
16 Q. That reference to \$90 million there
17 is the reference to the revenue that Mr.
18 Strong should personally attempt to generate
19 for the firm, correct?
20 A. Yes.
21 Q. Do you recall that the Sunbeam
22 engagement was a significant part of Mr.
23 Strong's business backlog at the end of 1997?
24 A. No.
25 Q. Let me refer you to the first page

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1 of the summary.
2 A. Back to the first page?
3 Q. Of the summary.
4 MR. YANNUCCI: For '97.
5 Q. (Continuing) Just the page before
6 it.
7 MR. YANNUCCI: Before '97?
8 MR. MARKOWSKI: 470.
9 A. Yeah.
10 Q. Do you see the -- it's the third
11 sentence under "Performance Summary"?
12 A. Yes.
13 Q. Self-evaluation states "Personal
14 revenue contribution at 90 million with
15 excellent backlog, including the Sunbeam
16 mandate."
17 A. Right.
18 Q. Do you recall that Mr. Strong
19 considered to be -- considered the Sunbeam
20 engagement to be one in which he had obtained
21 a -- a fee arrangement for the firm that was
22 higher than the firm's usual fee, fee
23 structure?
24 A. Do I recall that? No.
25 Q. Let me direct your attention to

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1 page 455 of the exhibit. This is --
2 A. Self-evaluation.
3 Q. Yes. It's immediately after the
4 sentences that we'd been previously focusing
5 on in this page.
6 Mr. Strong states "Highlights from
7 that backlog include the sale of Sunbeam,
8 market capitalization 3.7 billion, signed
9 engagement letter with success fees" --
10 excuse me, "with success fees above fee
11 scale."
12 A. Yeah. It goes on to state a whole
13 bunch of other things that he said he was
14 working on, too.
15 Q. Does this refresh your recollection
16 that Mr. Strong characterizes the Sunbeam fee
17 arrangement as being above scale?
18 A. It says here "the sale of Sunbeam."
19 Is that what you're referring to?
20 Q. I'm referring to the statement that
21 Mr. Strong makes concerning --
22 A. In his self-evaluation?
23 Q. Yes.
24 A. Well, what it says is that the
25 engagement letter has a success fee above fee

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1 scale. That's what it says.
2 Q. Do you have any recollection as you
3 sit here today, sir, whether that was true or
4 not?
5 A. No. It wouldn't be unusual for
6 that to be the case, because some fees are
7 above fee scale and some fees are at fee
8 scale and some fees are below fee scale.
9 Q. Let me direct your attention to Mr.
10 Strong's 1998 self-evaluation. It's
11 Exhibit --
12 A. '98?
13 Q. Yes.
14 -- Exhibit 375.
15 A. '98. Yup.
16 Q. We -- we've seen, sir, in '97 that
17 Mr. Strong's summary set a revenue objective
18 of \$90 million for Mr. Strong for 1998; do
19 you recall that?
20 We just looked at it.
21 A. Could you repeat that question?
22 Q. Do you recall that Mr. Strong's
23 revenue objective given to him in his 1997
24 evaluation was to generate 90 million or more
25 in revenue in 1998?

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1 A. Yeah. That was stated as a
2 business -- one of his business goals.
3 Q. I'd like to refer you to page three
4 -- excuse me, 475 of Exhibit 375.
5 A. 475. "Bill Strong 1998."
6 Q. This is Mr. Strong's
7 self-evaluation -- -
8 A. Yeah.
9 Q. -- of his performance in 1998?
10 A. Right.
11 Q. And my questions at this point,
12 sir, relate to the first paragraph. If you
13 would take a moment to review that to
14 yourself.
15 A. Well, it's a pretty long paragraph.
16 (Reading) Yeah, I've read it.
17 It's pretty impressive.
18 Q. Mr. Strong recounts his success in
19 generating revenue in 1998, correct?
20 MR. YANNUCCI: I'm going to object
21 to that characterization.
22 THE WITNESS: Right.
23 A. It's -- it's an answer to the
24 question "Describe your performance relative
25 to your business goals and to the relative

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1 performance criteria. Your comments should
2 not exceed the space provided." So it's a --
3 it's a description of his commercial
4 accomplishments during that period of time,
5 yes. And it's quite extensive.
6 Q. And the among the things Mr. Strong
7 reports is his successes in generating
8 revenue for Morgan Stanley, correct?
9 A. Well, that's where he worked.
10 Q. That's what he's commenting on, his
11 success in generating revenue.
12 A. I think it's a little more than
13 that.
14 Q. But he is commenting on his success
15 in generating revenue --
16 A. He's commenting on a lot of thing.
17 It's -- it's a long paragraph. Must have
18 three or four hundred words in it.
19 Q. Do you disagree with me, sir, that
20 Mr. Strong in that paragraph is recounting
21 his success in generating revenue in 1998 for
22 Morgan Stanley?
23 A. He is in the course of commenting
24 on his performance, talking about the
25 aggregate revenue of the regional offices for

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1 which he oversaw, with hundreds of people in
2 it, and the revenue growth, his commitment to
3 Toronto. I mean this is a very long
4 sentence, and included in here are several
5 references to "revenue." Yes, "revenue" is
6 stated a number of times.
7 Q. Mr. Strong's success in generating
8 revenue, correct?
9 A. It -- you're making it sound like
10 it's one person did all of this. This -- the
11 regional offices consist of hundreds of
12 people, and they're referred to \$600 million
13 of revenue and six years in a row of record
14 performance. That is the result of a lot of
15 people doing a lot of work. Bill was
16 overseeing all that. That would be like me
17 saying that I had, you know, \$5 billion of
18 revenue because I had a -- I was the head of
19 the investment banking division. So it's --
20 it's -- it's his area of responsibility, and
21 these were the revenues generated in those
22 areas.
23 Q. In addition to talking about the
24 performance of the offices, Mr. Strong in
25 this paragraph also recounts his own personal

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1 success --
2 A. Yes.
3 Q. -- in generating revenue, correct?
4 A. His own personal success? Let me
5 see here. I think he does.
6 (Reading) As I said, it's a long
7 paragraph. I'm looking for reference -- "My
8 personal revenue production has exceeded the
9 previous year," right.
10 Q. Right.
11 A. This year. "My personal revenue
12 production each year at Morgan Stanley has
13 exceeded the previous year. At this point in
14 the year my TSW revenue exceeds \$100 million,
15 which exceeds the comparable number from 1997
16 by over 30 percent."
17 Q. And then Mr. Strong goes further
18 into details what makes up that hundred
19 million dollars by identifying specific
20 transactions.
21 A. Yeah. There's a long -- long --
22 there's a -- quite a long narrative here of
23 the different companies that he was involved
24 in.
25 Q. And he references Sunbeam on three

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1 different occasions, correct, sir?
2 A. I don't know. I didn't count them.
3 Q. There's first --
4 A. "The result includes successful
5 solicitation and execution of IPOs, capital
6 trusts," Silestico (ph.), "LaSalle Hotel,
7 Midway Airlines, Steelcase, True North,
8 Sunbeam's acquisition of Coleman, First" --
9 Q. First Alert.
10 A. -- "Alert and Signature Brands 13
11 and a half million convertible secondary
12 follow-on equity transactions, Fort James,
13 Omniquip, Sunbeam," again Fort Meyer -- "Fred
14 Meyer." I mean there -- and it continues to
15 talk about a lot of other companies,
16 "Allstate, Cargo, Price List," et cetera, et
17 cetera.
18 Q. He identifies a 13 and a half
19 million-dollar M&A fee for Sunbeam's
20 acquisition of Coleman, First Alert and
21 Signature Brands, correct, sir?
22 A. Sunbeam -- well, what it says is
23 "Sunbeam's acquisition of Coleman, First
24 Alert" --
25 (Discussion off the record.)

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1 A. -- "and Signature Brands 13.5
2 million," close paren.
3 Q. And then it refers to a 18.2
4 million-dollar Sunbeam fee relating to
5 convertible debt offering, correct?
6 A. I don't know what it relates to. I
7 can't tell from that.
8 Q. It's behind the phrase "secondary
9 and follow-on equity transactions," correct?
10 A. Well, but it refers to Fort James,
11 and that's a different company, "10.6, Hollow
12 Industries 1.1, Omniquip 2.2, Sunbeam 18.2,"
13 so --
14 Q. And then farther it refers to
15 another 4.9 million-dollar revenue generated
16 by Sunbeam, correct?
17 A. "High yield and senior bank
18 transactions Omniquip 1.6, Scotsman 2.0,
19 Sunbeam 2.9, Focal Communications 1.4." Yes.
20 Q. You have a hundred million dollars
21 that Mr. Strong claimed credit for in this
22 self-evaluation for his personal revenue
23 contributions for the firm. There are three
24 Sunbeam pieces, 13.5 million-dollar fee of
25 revenue, a 18.2 million-dollar revenue and a

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1 4.9 million-dollar revenue, correct, sir?
2 MR. YANNUCCI: I'm going to object.
3 A. Well, you used the word personal.
4 He's talking about his involvement, yes, with
5 -- with revenue relating to the Sunbeam
6 account.
7 Oh, yeah, he does say "my personal
8 revenue," right. So you -- you used his
9 word, "my personal revenue production." He's
10 referring to each year at Morgan Stanley.
11 And then he includes the result with a
12 listing of those names, so Sunbeam would be
13 in that total, I presume.
14 Q. And the Sunbeam total is --
15 A. I don't know what the total is.
16 Q. -- something in excess of
17 \$35 million, correct, sir?
18 A. Well, if it's 13 plus 18 plus five,
19 around \$35 million, yeah.
20 Q. About a third of personal revenue
21 that Mr. Strong was claiming credit for in
22 this self-evaluation, correct?
23 A. It's -- it's a third of -- it's a
24 third of a hundred million. Yes.
25 Q. What is TSW revenue; do you know?

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1 Are you familiar with that phrase that Mr.
2 Strong uses, sir?
3 A. I believe that's the internal
4 document that tracks revenue.
5 Q. Do you know what the -- what the
6 letters TSW stand for?
7 A. I think it stands for -- well, Mr.
8 Meguid would know better -- transaction
9 summary work sheet perhaps?
10 Q. Mr. Strong was a highly ambitious
11 person, was he not, sir, at Morgan Stanley?
12 A. Was Mr. Strong highly ambitious?
13 Well, I guess it depends on -- on how you see
14 it. Some people might have thought he was
15 highly ambitious, yes.
16 Q. Did you consider him to be
17 ambitious?
18 A. It depends on what you mean by
19 ambitious.
20 Q. I'm asking if you consider --
21 A. I thought of him as a high
22 achiever. Some people might call that
23 ambitious.
24 Q. Within two years of joining the
25 firm he announced that he wanted to be some

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1 day a member of the Morgan Stanley board of
2 directors.
3 A. Uh-huh.
4 Q. Do you recall that?
5 A. (Laughing) Do I recall it?
6 Q. Yes.
7 A. I -- I -- I had no recollection of
8 it up until very recently.
9 Q. What reminded you of it?
10 A. I went over in preparing for my
11 deposition.
12 Q. You saw in these documents that Mr.
13 Strong --
14 A. Yeah.
15 Q. -- declared his objectives of
16 becoming a member of the Morgan Stanley board
17 of directors?
18 A. Right.
19 Q. And he did that in 1995.
20 A. Yeah.
21 Q. Do you consider that to be highly
22 ambitious, sir?
23 A. My guess is there probably were at
24 the time several hundred people who would
25 like to have been on the board of Morgan

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1 Stanley, just about every MANAGING DIRECTOR
2 that was reporting to me.
3 Q. Excuse me. Did they all put it in
4 their self-evaluations?
5 A. No.
6 Q. Mr. Strong constantly in his annual
7 self-evaluations complained about the fact
8 that he was not being given more or greater
9 management responsibility for the firm's
10 business; do you recall that, sir?
11 MR. YANNUCCI: I'm going to object
12 to the form of the question and the
13 characterization.
14 A. Yeah, you -- you -- you -- you --
15 you like to characterize what he was doing.
16 He was doing what he was doing. He was
17 saying what he was saying. Bill is a very,
18 you know, direct individual. It's not
19 surprising if he wanted to be on the board,
20 he would put it on his self eval. Other
21 people may not be as direct and honest, quite
22 frankly. They may harbor desires to be on
23 the board but never express it, but they
24 nevertheless would do what they could to get
25 there. We've -- you know, that's just not in

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1 the cards for employees.
2 Q. How many insiders at Morgan Stanley
3 are on the Morgan Stanley board of directors?
4 A. One. One.
5 Q. That's the chief executive officer.
6 A. Right. At the time -- remember
7 what I said. Morgan Stanley was going
8 through a transition when Bill arrived here.
9 Now you've refreshed my memory by referring
10 to his self eval as January of '93. Private
11 ownership to public ownership. As a private
12 firm, whatever you might refer to as a board
13 were all insiders, and as it went into public
14 ownership, they added outside directors. And
15 in the early years the head of the investment
16 banking division was on the board of
17 directors, and then as we became more like a
18 public company, fewer and fewer insiders were
19 on the board, and it evolved. So as people
20 dropped off, they weren't replaced. When
21 Matchalot (ph.) went off the board, he was --
22 because he was replaced as the head of
23 Investment Banking by Bob Scott, Bob Scott at
24 the time did not go on the board. When I
25 took over as the head of Investment Banking I

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1 did not go on the board.
2 So what he's reflecting in his
3 aspiration is something that was in a sense
4 going out of existence, because we were
5 making a transition. And here we are today
6 with only Phil Purcell on our outside board.
7 Q. Do you recall, sir, that Mr. Strong
8 complained each year that his management
9 capabilities were being underutilized by the
10 firm?
11 MR. YANNUCCI: Object to the
12 characterization.
13 A. I -- I -- I don't recall
14 specifically complaining. There may be some
15 reference to wanting to do more, in his
16 evaluation, in his self-evaluation, in terms
17 of goals and objectives.
18 Q. You recall that Mr. Strong wanted
19 to be relocated from Chicago?
20 A. I -- I -- I have -- you know, if
21 you put something in front of me that would
22 indicate what it is that you're aiming at,
23 then I could comment on it, but asking me,
24 who has evaluated hundreds of people over the
25 11 years, to sort of talk about what

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1 individuals wanted to go where and when is
2 kind of difficult.
3 Q. I appreciate that, sir.
4 Let me refer you to Mr. Strong's
5 1997 self-evaluation. It's Exhibit 374.
6 A. Seven, right?
7 Q. 374
8 A. Or '97 you said.
9 Q. Yes, 1997.
10 A. Page -- self eval?
11 Q. Yeah. It's page 457 of the
12 document.
13 A. Yeah, I've got that page.
14 Q. And there's a section at the bottom
15 of that page that starts with the phrase
16 "What skills and abilities would you put to
17 greater use"; do you see that?
18 A. Yes.
19 Q. And would you read Mr. Strong's --
20 this is Mr. Strong's statement.
21 A. Okay. So under the question --
22 under the section "Goals and Objectives" in
23 the self-evaluation, which is at the front of
24 the document, on the third page, it says "In
25 addition to developing business and

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1 professional goals," it says "what skills and
2 abilities would you put to greater use?
3 Describe training or other support that would
4 leverage your effectiveness," and "What are
5 your long term career goals at Morgan
6 Stanley?"
7 And Bill writes "As mentioned in
8 prior years, I continue to aspire to
9 positions of increased responsibility within
10 the firm. I continue to believe that my
11 managerial skills are underutilized. Further
12 and as mentioned last year, at the right time
13 and only if it serves the firm's interests I
14 would like to return to London or New York."
15 Q. Does that refresh your memory that
16 Mr. Strong made those requests?
17 A. Well --
18 MR. YANNUCCI: Object to the
19 description of the request.
20 A. It's written here.
21 THE WITNESS: Right.
22 A. (Continuing) It's written here. He
23 never rang me up and said, hey, I want to
24 move to London, or, hey, I want to come to
25 New York. He's still in Chicago.

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1 Q. That was my question. Why is he
2 still in Chicago?
3 A. Well, first of all, people are
4 generally working in our firm where they want
5 to work.
6 I think he had a family he was
7 raising there. I think they've since grown
8 up. He's Chairman of the Chicago Symphony
9 Board of Directors. He has become a name
10 brand, if you will, in the community. And I
11 think he has a comparative advantage, because
12 continuity in our business is very valuable.
13 So once you kind of weave yourself into the
14 fabric of a community --
15 Goldman had a partner named Jim
16 Gorda there, who for many years that we all,
17 you know, were kind of like always trying to
18 catch in my old firm, First Boston, and even
19 at Wastein Perella (ph.), because he was so
20 interwoven into the community.
21 Now, you know, having worked in
22 London I think for a prior employer, and
23 probably New York, you know, he developed a
24 -- a love of those two cities. Having said
25 that, I think as time went on, you know, Bill

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1 really became the senior-most person in that
2 part of the world doing investment banking
3 business. So I would -- this is a
4 presumption on my part at this point -- think
5 that his -- you know, his value added has
6 never been higher, because of the continuity
7 and the time and grade.
8 And, you know, some company -- now,
9 for example, Boeing moves from Seattle to
10 Chicago. We started doing business with
11 Boeing for the first time when that happened
12 thanks to Bill being there and having a
13 senior person to pursue that business.
14 We had a problem with Eli Lilly as
15 a company. They stopped doing business with
16 Morgan Stanley. Having Bill -- we took it
17 away from New York, gave it to Bill, and we
18 started doing business with Eli Lilly again.
19 So --
20 Let me say something else. You
21 know, people express desires and interests.
22 Bill is not the only one who would say, you
23 know, hey, some day I'd welcome the
24 opportunity to work in London, and if it
25 serves the firm's purpose, we would try and

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1 accommodate that, but, on the other hand, if
2 we think they're a value added at hire
3 somewhere else, we wouldn't do it.
4 And in looking at the whole
5 situation, you know, if you take Bill out of
6 Chicago, then you've got to answer the next
7 question: Who's going to do it? Who's going
8 to run Chicago? And, you know, there wasn't
9 anyone of his stature there who could have
10 filled his shoes that quickly, and so I think
11 his highest and best use was to remain in
12 Chicago, which was where he is, in despite of
13 his from time to time mentioning that, you
14 know, if the opportunity arose, he'd love to
15 be back in London and New York again.
16 Q. Do you know if Mr. Strong has
17 stopped asking to be moved out of Chicago?
18 A. I'm still his evaluation director,
19 and I would have to say in all of years I've
20 been Bill's ED he has never called up and
21 complained about working in Chicago,
22 verbally. I mean he might have written this
23 in his package, but -- I think if I called
24 him up and say, hey, how would you like to
25 move to London, he'd say let me go home and

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1 talk to my wife and see what she thinks.
2 I mean we have these conversations
3 with our people all the time. It's a little
4 bit easier to get them to do that than say
5 how about moving to Tokyo.
6 Q. We're running out of tape. Why
7 don't we take a short break.
8 A. Okay.
9 THE VIDEOGRAPHER: This marks the
10 end of tape number one in the videotaped
11 deposition of Mr. Joseph Perella. We
12 are going off the record. The time is
13 4:57.
14 (Recess taken.)
15 THE VIDEOGRAPHER: This marks the
16 beginning of tape number two in the
17 videotaped deposition of Joseph Perella.
18 We are now back on the record. The time
19 is 5:07.
20 Q. Mr. Perella, during the time period
21 that we've been focusing on here this
22 afternoon, 1995 to 1998, when you served as
23 Mr. Strong's evaluation director there were a
24 number of people that raised concerns during
25 the course of the formal evaluation process

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1 about Mr. Strong's lack of candor in dealing
2 with his colleagues; were there not?
3 A. I am sure if you asked the
4 question, there must be a reference to it
5 somewhere in his files, so I'll just follow
6 your lead and take it wherever it goes in the
7 -- in the package, if you want to go there.
8 Q. Well, as you sit here, before we go
9 into the documents, do you recall that as
10 being the case, that a number of people, when
11 you were serving at Mr. Strong's evaluation
12 director, raised during the course of the
13 formal evaluation process concerns that they
14 had about Mr. Strong's lack of candor in
15 dealing with his colleagues at Morgan
16 Stanley?
17 A. Well, what I recall is the fact
18 that each and every year Bill Strong got
19 evaluated by at least 20 people, and there
20 were people from year to year who had
21 developmental messages for him that included
22 comments about being aggressive, that
23 referred to what I referred to, the word you
24 used, candor, you know, difficulty getting
25 information, and a number of developmental

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1 messages which exist in each and every
2 professional's package here. Otherwise it's
3 not a credible package.
4 So the general answer to your
5 question is yes, there -- there -- there were
6 comments in there, and if you want to refer
7 me to specific comments, I'm happy to focus
8 on them.
9 Q. Well, let's do that. Let me refer
10 you first to one of your own comments. It's
11 in the 1997 evaluation package.
12 A. Yes?
13 Q. Do you have that in front of you?
14 A. Yes, 374.
15 Q. 374?
16 And at page 461, at the bottom
17 there's a comment that you made relating to
18 Mr. Strong.
19 A. (Reading).
20 Q. Do you see your own comment there,
21 sir?
22 A. Yes.
23 Q. Would you read that out loud for
24 us?
25 A. I read it before. "Bill should

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1 engage less in self promotion and focus more
2 on developing a team approach, giving credit
3 to others. The one problem I continue to
4 have with Bill is that you never seem to get
5 the whole story unless you probe very hard.
6 There are very few people at Morgan Stanley
7 that give me that impression."
8 Q. Mr. Meguid also had concerns about
9 Mr. Strong's lack in condor in dealing with
10 his colleagues; do you recall that, sir?
11 A. No, not specifically, but I'm sure
12 there's a comment in there.
13 Q. Well, let me direct your attention:
14 to the first comment on the following page.
15 Do you see Mr. Meguid's comment at
16 the top of 462, sir?
17 A. Oh, I'm on the wrong page. I was
18 reading his comment on the other page.
19 Page 462?
20 Q. Yes.
21 A. Let's see where we are.
22 Q. Mr. Meguid's comment is the first
23 one on that page.
24 A. I'm just trying to see where we are
25 here. (Reading) Yeah.

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1 Q. Do you see that?
2 A. I see a comment on page 461.
3 Q. Would you read --
4 462, sir.
5 A. Oh, sorry.
6 Q. Top of 462?
7 A. Yeah.
8 Q. Would you read Mr. Meguid's
9 comments?
10 A. "Bill continues to suffer the
11 consequences of less than a straightforward
12 approach. Gives people, including me, the
13 impression that he is not completely up
14 front. This needs to improve. There are
15 numerous approaches to me from very credible
16 people on the issue."
17 Q. Do you have any reason as you sit
18 here today to doubt the accuracy of Mr.
19 Meguid's characterization of the -- of his
20 views of Mr. Strong or his comment concerning
21 the approaches to him from other people on
22 the same subject?
23 A. Well, I don't think they reflect
24 his total view of Mr. Strong, but I have no
25 reason to doubt that on this point it

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1 reflected Terry's view at the time.
2 Q. And that it reflected his report on
3 communications that he had had with others
4 within the firm.
5 A. That other people had commented to
6 him about this developmental issue, yes.
7 Q. Did you ever speak to Mr. Meguid
8 about this comment?
9 A. About this specific comment?
10 Q. Yes.
11 When you were serving as the
12 evaluation director for Mr. Strong did you go
13 to Mr. Meguid and say, Terry, tell me what
14 causes you to say this, and tell me what
15 you're hearing from these other credible
16 sources?
17 A. I -- I think it's important for you
18 to understand the nature of the relationship
19 I have with Mr. Meguid. First of all, in
20 terms of proximity, he's in an adjacent
21 office. Secondly, for all the time I was at
22 Morgan Stanley in a managerial post for most
23 of the time he served as my deputy. And so
24 in the course of the period from April of
25 1995 to today, you know, I have had literally

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1 thousands of conversations with Terry Meguid
2 about people at the firm, and discussed the
3 careers of all of our professionals, for that
4 matter, who are let's say at the MD level,
5 and so it's difficult for me to say, aha, on
6 this very specific comment I walked across
7 the hall to Terry Meguid's office and said X,
8 Y or, okay? But, you know, I think it's fair
9 to say that Terry and I have had
10 conversations over the years about all of our
11 senior managing directors, and the
12 development of their careers at the firm.
13 Q. This is not the first time in the
14 formal evaluation process that Mr. Meguid
15 raised concerns about the manner in which Mr.
16 Strong was dealing with his colleagues.
17 MR. YANNUCCI: Is that a question?
18 Q. (Continuing) Do you recall that,
19 sir?
20 A. I -- not specifically, but I'm sure
21 you probably have similar comment in another
22 year.
23 Q. Let me turn you back to 1996.
24 A. Right.
25 Q. Exhibit 373.

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1 A. 373.
2 Page?
3 Oh, oh, oh, Exhibit 373.
4 Q. Correct.
5 A. I'm looking for the page number.
6 Q. Page number 442.
7 A. 442, Bill Strong. One, two, three,
8 four, five, six, seven, eight, nine, ten --
9 there's 25 evaluators.
10 Yeah?
11 Q. Are you on page 442, sir?
12 A. Not yet.
13 I am now.
14 Q. Do you see Mr. Meguid's comment
15 that -- I think it's the third comment on the
16 page?
17 A. Yes.
18 Q. Would you read that out loud, sir?
19 MR. YANNUCCI: Excuse me. I'm just
20 going to object to using the witness as
21 a human highlighter. If you want to ask
22 him what he remembers about these
23 issues, I certainly understand that, but
24 I don't know why you're asking just read
25 verbatim these statements.

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1 Go ahead.
2 A. "His colleagues seem to be wary of
3 his motives generally. I believe," comma,
4 "because the manner in which he deals with
5 certain external and client matters, i.e.
6 with greater shrewdness" -- that's a
7 parenthetical statement -- "is interpreted as
8 the way in which he deals with his
9 colleagues."
10 Q. In other words, that Mr. -- Mr.
11 Meguid was raising the concern that Mr.
12 Strong's colleagues were concerned that he
13 was being shrewd in dealing internally with
14 people at Morgan Stanley, correct?
15 MR. YANNUCCI: Object if you're
16 asking him to interpret what Mr. Meguid
17 thought other people thought about this
18 individual.
19 Q. Is that how you read that comment,
20 sir, as the person who served as Mr. Strong's
21 evaluation director?
22 A. Look, you know, Bill Strong's
23 getting evaluated by 25 people this year. I
24 counted them before I turned to that page.
25 And the thing you have to understand is what

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1 I said earlier, and I probably felt it as
2 much as Bill did. When you come into a firm
3 like Morgan Stanley, Morgan Stanley had been
4 a home grown culture, okay? Terry Meguid,
5 for example, who's my deputy, had never
6 worked anywhere else. Possible Scott retired
7 33 years at the firm. Just about everyone
8 you come in contact with when you come into
9 this firm as an outsider in the early 90s was
10 a home grown Morgan Stanley person. Morgan
11 Stanley had an inheritance, almost a sense of
12 entitlement, in my opinion, which I
13 considered to be a negative, that somehow the
14 world owed them a living, and I think one of
15 the good things that happened when John Mack
16 took over is he believed in hybrid vigor, and
17 believed in bringing in people from outside
18 the firm to give it sort of new blood. And
19 people like myself and like Bill Strong
20 tended to stand out, because they had worked
21 in places where they had to fight to get
22 their market share, they were outside the
23 bus, knocking on the bus to get in, and
24 Morgan Stanley was inside the bus, okay? So
25 when Bill Strong comes to Morgan Stanley

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1 there are going to be people -- I mean he's
2 going to stick out, and so is Joe Perella for
3 that matter, and other lateral hires.
4 And also I think there is a strong
5 feeling on the part of people that they're
6 sort of, you know, not on display. What's
7 the right word? They're being tested, and --
8 and so there's a lot of conflicting emotions
9 here. I think the old guard is kind of not
10 used to this new blood, so they're -- they're
11 not used to the style. I mean these are
12 people who -- you know, they referred to one
13 another "He was in my training class." Well,
14 whose training class was Bill Strong in?
15 Whose training class was Joe Perella in? So
16 they came into the firm, and I think one of
17 the reasons John brought -- you know, these
18 -- these -- these people in was to kind of
19 give it a transfusion or a shot of adrenalin.
20 And I think from time to time people are
21 going to have problems with the style of
22 these outsiders, okay?
23 So Bill's style is a lot different
24 than Bob Scott's. I don't know if you took
25 Bob Scott's deposition, but you would see

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1 that instantaneously if the two guys were
2 before you. And I think mine would be a
3 little different than Bob Scott's.
4 Over time, you know, we I think
5 grew to appreciate one another, but I think
6 in the early -- in this period of transition
7 there -- there were a lot of conflicting
8 styles at work in the firm. But I would have
9 to say, you know, that, you know, we took all
10 the comments seriously, and we transmitted
11 them to whoever the evaluatee was. Bill
12 wasn't treated any differently than anyone
13 else.
14 I think if this kind of thing rose
15 to the level of concern where we thought
16 someone shouldn't be at the firm, we would
17 have done something about it, but I -- I --
18 in the total package and the sort of the
19 evaluation of overall performance that was
20 not the case with Bill. There were other
21 managing directors I had greater concerns
22 about than Bill Strong.
23 Q. Well, you yourself said that Bill
24 Strong was one of the few people at Morgan
25 Stanley that you had a problem with with

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1 respect to --
2 A. No, I didn't say I had a problem
3 with him.
4 Q. Excuse me.
5 -- with respect to trying to get
6 the full story from him, that you had to
7 probe very hard to get the full story from
8 Bill Strong, and that in your experience, as
9 an outsider coming into Morgan Stanley --
10 A. Um-hm.
11 Q. -- that he was one of the few
12 people that you had that experience with;
13 isn't that right?
14 Isn't that what you said in 1997
15 about Mr. Strong?
16 A. Oh, no wonder. This is 1996. I'm
17 looking in the wrong place.
18 Q. It's Exhibit --
19 A. Well, I remember --
20 Q. -- 374 --
21 -- the comment you're referring to.
22 Q. -- page 461.
23 You said about Mr. Strong "The one
24 problem I continue to have with Bill is that
25 you never seem to get the whole story unless

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1 you" --
2 A. Okay.
3 Q. -- "probe very hard."
4 A. Yes.
5 Q. "There are very few people at MS
6 that give me that impression." That was you,
7 Joe Perella, saying that.
8 A. Fine, I said it.
9 People in our business are -- have
10 it beaten into them from the time they come
11 in to the firm about being careful with
12 information, okay? And so at the same time I
13 had made it a goal, when I took over
14 corporate finance and investment banking
15 later, that I thought internal communication
16 at Morgan Stanley was inadequate or
17 insufficient or less than what it should be
18 in what I would called a well-oiled
19 investment banking machine. So I had gone on
20 record with the division and with the
21 department that my number one goal was to
22 improve internal communication. And I said
23 there's some people here who can't spell
24 communication, there's some people here who
25 could give a course in it, and there's some

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1 people here that need improvement. So you
2 have this internal tension, if you will,
3 sharing information on the one hand and
4 protecting information that's privileged, and
5 on the other hand wanting to have the
6 division operate better by having better
7 communications. And everyone, you know,
8 deals with that tension in different ways.
9 And what I was reflecting, I
10 believe, in my comment was that, you know,
11 Bill was --
12 What did you say the page was, 469?
13 Q. I think it's 461.
14 A. Oh, okay. No wonder I couldn't
15 find it.
16 Q. "The one problem I continue to have
17 with Bill is he never seems" --
18 MR. YANNUCCI: He was in the middle
19 of finishing his answer.
20 Q. (Continuing) I'm sorry.
21 A. So with Bill, he was more
22 protective of the information he had than
23 some other people, so I had to work harder --
24 I've had to work hard to get him to be a
25 better communicator.

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1 Q. That's what you say you're
2 referring to on that page?
3 A. Well, that's part of it, isn't it?
4 Getting the whole story, you have to ask, you
5 have to probe, so you have to ask questions,
6 so that's -- that's to me part of
7 communication.
8 Q. Well, let's take a look at the
9 summary for 1997.
10 A. Sure.
11 Q. And see after going through the
12 review process --
13 A. All right.
14 '97 EDS?
15 Q. This is an evaluation summary that
16 you prepared.
17 A. Right. '97.
18 Q. And it was vetted by a group of
19 others within the firm, correct, sir?
20 A. Correct.
21 MR. YANNUCCI: Asked and answered.
22 Go ahead.
23 Q. Let me -- let me direct your
24 attention to the section
25 entitled "Development Needs" --

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1 A. Correct.
2 (Discussion off the record.)
3 Q. -- on page 470.
4 A. Yes.
5 Q. Do you have that in front of you?
6 A. Yes.
7 Q. Read the three comments made.
8 A. Which ones?
9 Q. "Balance." Beginning with
10 "Balance."
11 A. "Developmental needs client skills
12 business development"?
13 Q. Yes.
14 A. Because there's a column marked
15 "Suggestions to Improve."
16 Q. I'm talking about the left-hand
17 column.
18 A. Okay. "Client Skills. Business
19 Development. Balance," colon, "overly
20 aggressive at times in trying to capture
21 transactions so as to miss possible negative
22 impact on resource usage for the franchise.
23 Two" --
24 Sorry. You want me to read the
25 second one?

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1 Q. Yes, please.
2 A. "Prone to exaggeration. Can cause
3 skeptical reaction from client and loss of
4 credibility with teammates. Also a tendency
5 to overcommit clients on certain items which
6 are not in Morgan Stanley's area of
7 expertise. Three, straightforwardness.
8 People have the impression he is not being
9 completely up front. Also certain product
10 areas think he should consult with them
11 before racing to answer a client question.
12 Some suggest he still manages by intimidation
13 or setting artificial deadlines."
14 Q. And next to that the suggestion to
15 improve was what, sir?
16 A. You want me to read those, too?
17 Q. Well, you can, sure.
18 MR. YANNUCCI: Yeah, I'm going to
19 object to having this -- taking the
20 witness' time just to read comments that
21 there's no dispute over.
22 I also for purposes of completeness
23 I'm going to state that this on the same
24 page as or right above it, "Primary
25 Strengths." You're just selecting

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1 certain quotes out of this document and
2 asking him to read them out load on the
3 record, and I think that's highly
4 inappropriate.
5 A. Well, I indicated that, you know,
6 this is a summary, and it's a summary of the
7 comments reflecting 22 people, that were
8 shared by other partners in the firm.
9 MR. YANNUCCI: But it's only the
10 negative comments that he wants you to
11 read.
12 THE WITNESS: I know that, but I'm
13 happy to answer -- to -- to do whatever
14 he likes.
15 A. (Continuing) "Try to be more
16 selective in pursuing business. If there are
17 doubts, seek advice from colleagues. Also,
18 try not to get into details. Your time is
19 better spent. Resources are not endless to
20 prioritize what is important before making
21 requests for work."
22 Q. The next suggestion?
23 A. "Don't oversell. You don't have
24 to. As your stature grows, your salesmanship
25 must mature."

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1 Q. And the suggestion to improve, next
2 to the comment about straightforwardness?
3 A. "Need -- "Needs to work on being
4 more open and transparent with colleagues."
5 Q. And those were the comments you
6 delivered to Mr. Strong during his 1997
7 evaluation, correct, sir, you personally?
8 A. He got a written copy of this.
9 Q. And you personally delivered those
10 comments to him, correct?
11 A. Well, I handed him the page, and I
12 read comments from the package backing up the
13 performance summary, including the many
14 positive things that were said about him that
15 year.
16 Q. And you told him about these
17 specific things, these are things he should
18 improve on, correct?
19 MR. YANNUCCI: Asked and answered.
20 A. Yes, I said that.
21 Q. Let's take a look at 1998, then.
22 A. Yup.
23 Q. Let's start with Mr. Meguid's
24 comment on page 480. This is in Exhibit 375.
25 A. Four --

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1 Q. I'm sorry, it's Exhibit 375, page
2 480.
3 Have you found page 480, sir?
4 A. Yup.
5 Q. Would you read Mr. Meguid's
6 comment?
7 MR. YANNUCCI: 'M going to object
8 again.
9 Go ahead.
10 A. "Bill can be overly aggressive in
11 terms of trying to capture transactional
12 opportunities. Makes some judgments which
13 are sometimes very close to if not over the
14 line. I continue to hear comments about his
15 greater general concerns for his own people
16 business unit relative to the firm's best
17 interest."
18 Q. That's almost word for word the
19 criticism that Mr. Meguid made of Mr. Strong
20 in his 1977 (sic) evaluation correct, sir, on
21 that subject?
22 A. '97?
23 MR. YANNUCCI: '77?
24 Q. 1997, excuse me.
25 A. I don't know. I haven't compared

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1 it.
2 Q. Let's do that. Pull out --
3 MR. YANNUCCI: I'm going to object.
4 A. Why don't you ask Mr. Meguid the
5 question?
6 MR. MARKOWSKI: If the witness
7 would like to compare, I'm content to
8 have him do that.
9 A. Sure.
10 Q. That's Exhibit 374, page 461.
11 A. Right. (Reading).
12 Q. Mr. Meguid reiterates the comment
13 again in 1998, correct, sir?
14 MR. YANNUCCI: Your question was
15 before, I think, it was almost word for
16 word the same.
17 MR. MARKOWSKI: I'm content with
18 that question.
19 A. Mr. Meguid has made a comment in
20 each year, yes.
21 Q. Mr. Meguid repeats the substance of
22 his 1997 criticism in 19 -- his 1998 comment
23 in almost exactly the same words, correct,
24 sir?
25 A. (Reading) Yes.

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1 Q. Let me direct your attention to
2 page 481.
3 A. Which year?
4 Q. This is in the 1998 evaluation
5 summary.
6 A. Eight. Yes?
7 Q. Mr. Meguid makes another comment at
8 the top of the page?
9 A. Yes.
10 Q. Would you read that, please?
11 A. "Bill continues to suffer the
12 consequences of less than a straightforward
13 approach. Gives people including me the
14 impression that he is not completely up
15 front. I have heard fewer negative comments
16 this year than in the past."
17 Q. That again is almost exactly the
18 same comment that Mr. Meguid made in 1997,
19 correct?
20 A. Where is that?
21 Q. Page 462 of Exhibit 374.
22 A. Well, in 1997 it says at the end
23 "this needs to improve," and at the end in
24 1998 it says "I have heard fewer negative
25 comments this year than in the past."

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1 Q. Mr. Meguid continued in 1998 to say
2 that Mr. Strong continued to suffer the
3 consequences of a less than straightforward
4 approach, correct, sir?
5 MR. YANNUCCI: Objection, asked and
6 answered.
7 A. Yeah, no, you're right, he uses the
8 same words in both years.
9 Q. Let's take a look at the summary in
10 1998.
11 A. EDS 1998.
12 MR. YANNUCCI: It's the page on the
13 back.
14 Q. Before we get there --
15 You were co-director of Mr.
16 Strong's evaluation in 1998, sir; is that
17 correct?
18 MR. YANNUCCI: Asked and answered.
19 A. We answered that about two hours
20 ago.
21 Q. Right.
22 What role would you have played in
23 preparing the summary for 1998, given the
24 fact that you were serving as co-director?
25 A. The -- the -- the -- the correct

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1 answer to that is I -- I wouldn't recall, but
2 if -- as a generalization? The -- the
3 primary director would probably do the
4 write-up and share it with the co-director.
5 Q. Do you remember there being any
6 disagreement between you and Mr. Jones in
7 1998 concerning Mr. Strong's evaluation
8 summary?
9 A. Don't recall.
10 Q. Let me direct your attention to the
11 development needs section, page 492 of the
12 1998 evaluation summary.
13 A. Um-hm.
14 Q. Would you read the first one into
15 the record, please?
16 MR. YANNUCCI: I'm going to object
17 again, because you're just again taking
18 his comments out of context, you're not
19 reading the entire -- you're just
20 picking certain sections.
21 But go ahead.
22 A. Well --
23 MR. MARKOWSKI: I'm going to pause
24 for a second. Mr. Yannucci, I have been
25 patient. Florida procedure provides the

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1 opportunity to object to the form of my
2 questions without a speaking objection,
3 and I'd appreciate it if you would limit
4 your comments so that you're not
5 influencing the witness' testimony.
6 MR. YANNUCCI: I don't think I am,
7 counsel, and I would appreciate it if
8 you would conduct the deposition as you
9 should, and not waste the time of the
10 witness to have him read statements that
11 aren't -- aren't in dispute. You have
12 him sit here and just read these
13 documents.
14 Go ahead.
15 A. Well --
16 Q. Would you read --
17 A. -- I will read the ones you want me
18 to read, you know, recognizing, as I'm well
19 aware, that they reflect -- that these
20 packages reflect the thoughts of 25 people,
21 and this is a summary of the developmental
22 needs, which are in everyone's package.
23 "Client skills business
24 development. Overly commercial," colon, "can
25 be overly aggressive in terms of trying to

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1 capture transactional opportunities. Makes
2 some judgments which are sometimes very close
3 to if not over the line. Needs to avoid
4 overcommitting and maintaining" -- "needs to
5 avoid overcommitting and maintain the
6 efficacy of M&A fee scale. Intense style.
7 Has a very intense style which can be
8 off-putting to some clients. Professional
9 and execution skills. Management teamwork.
10 Communication. Although he has made progress
11 and is acutely aware of the concerns he
12 continues to suffer the consequences of less
13 than a straightforward approach. Some
14 colleagues feels" -- "feel he gives people
15 the impression that he is not completely up
16 front and uses information selectively.
17 Oftentimes does not disclose information
18 which others may view important or will
19 disclose some information on a subject but
20 not all. Also there is the perception that
21 he does not properly balance the issues of
22 the people -- of his people," slash, "his
23 region with the best overall interest of the
24 firm. Management. Should let his junior
25 professionals manager" -- "manage the

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1 day-to-day relationships with his clients at
2 the more junior levels. Connects very well
3 with the officers, but needs to spend more
4 time with the associates and analysts in the
5 office."
6 Q. At the time that evaluation summary
7 was prepared, sir, the effort was made to be
8 fair and balanced in reporting to Mr. Strong
9 the results of his evaluation, correct?
10 A. Absolutely.
11 Q. I asked you some questions
12 generally, sir, about Morgan Stanley's
13 compensation structure for managing
14 directors. Do you know -- let me ask this
15 question.
16 When Bill Strong was first hired to
17 join Morgan Stanley from Salomon Brothers, do
18 you know if he was given an employment
19 contract?
20 A. No.
21 Q. You don't know?
22 A. I do not know.
23 Q. Do you know what percentage of Mr.
24 Strong's compensation in the time period that
25 we've been focusing on, 1995 through 1998,

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1 was bonus-based compensation as opposed to
2 salary?
3 A. I don't know, but I know the
4 pattern of our compensation, which is at
5 least 90 percent, probably -- well, somewhere
6 between 80 and 90 percent bonus.
7 Q. Do you know what Mr. Strong's total
8 compensation was during the time period we've
9 been focusing on?
10 A. No, I don't know.
11 Q. Do you know what influence Mr.
12 Strong's -- let me take a step back.
13 Were you personally involved in the
14 process of setting Mr. Strong's bonus in this
15 time period?
16 A. From?
17 Q. '95 through '98?
18 A. Yes.
19 Q. Do you know what influence Mr.
20 Strong's personal success in generating
21 revenue had on the size of his bonus in those
22 years?
23 MR. YANNUCCI: Objection, asked and
24 answered.
25 A. I think over sometime in the last

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1 few hours I answered the question about --
 2 that you asked about what role revenue plays
 3 in comp, and I think that was a pretty
 4 comprehensive answer --
 5 Q. I asked --
 6 A. -- if I'm not mistaken.
 7 Q. I'm sorry to interrupt you.
 8 I had asked a general question.
 9 Now I'm asking specifically about Mr. Strong.
 10 A. Well, the -- the -- I said that
 11 person's compensation is based on a number of
 12 factors, revenue being one of them, and I
 13 said also revenue over time, not revenue in a
 14 specific year, or not wanting to have
 15 investment bankers' comp spike.
 16 It -- it's -- there are some firms
 17 who have -- and I think it's worth
 18 mentioning, since you seem to be focused on
 19 comp. There are some companies who pay
 20 people purely on their revenue production in
 21 a given year. There are some people who like
 22 to be paid that way. We don't have that kind
 23 of system, and whenever a person has come to
 24 a point in their career here where they feel
 25 that's the kind of system they want to be on,

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1 they inevitably are told if they're not happy
 2 here, they can leave, which has happened in
 3 the fast. Some of our biggest producers
 4 wanted to be paid just on revenue less heat,
 5 light, and power, 50 percent for me, 50
 6 percent for you. Firms that have done that
 7 have generally created firms within firms,
 8 created a lot of friction, they blow up. The
 9 most famous of those is Mike Milken, where
 10 people get paid based purely on their revenue
 11 sheet and nothing else. We've never had that
 12 system here.
 13 And so that's why when I say
 14 revenue is just part of it, it's -- it's --
 15 it's one of the factors that's taken into
 16 account in determining comp. And that was
 17 the case with Bill as well. And whenever
 18 people have -- and so when we sit down to
 19 determine comp, we look at all those things
 20 that I talked about that determine the
 21 revenue pool, the comp pool, and then take
 22 all those factors into account in coming up
 23 with that person's comp.
 24 So no one here at the firm has a
 25 deal where they get paid in the investment

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1 banking division a percentage of the
 2 revenues, okay? When someone wanted that
 3 here once, I was in an office that same year
 4 that you're referring to, Bob Scott -- the
 5 guy wrote a written proposal, and Bob Scott
 6 took the proposal, said "Is there anything in
 7 this proposal, anything in your plan that you
 8 want to say that's not in the -- in the
 9 write-up," and the person said no, and he
 10 went like this right in front of him
 11 (indicating), in the garbage pail. Okay?
 12 The biggest producer, the highest paid person
 13 in my department in 1996, and the person left
 14 and went to another firm that gave him that
 15 package, and when his contract expired two
 16 years later another firm gave him the same
 17 package. And you know who that person is if
 18 I tell you, because he's now indicted.
 19 That's all I've got to say about revenue and
 20 compensation at Morgan Stanley.
 21 Q. I have a few more questions about
 22 it, so let's see.
 23 Mr. Strong --
 24 A. Excuse me. Convicted, not
 25 indicted.

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1 Q. Mr. Strong had had success in
 2 generating substantial revenues for Morgan
 3 Stanley over a period of years; had he not,
 4 sir?
 5 A. Yes.
 6 Q. And he was valued by Morgan Stanley
 7 for his ability to generate substantial
 8 revenues for the firm, correct?
 9 MR. YANNUCCI: Objection --
 10 A. Among other things.
 11 MR. YANNUCCI: -- to form of the
 12 question.
 13 A. (Continuing) Among other things.
 14 REQ MR. MARKWSKI: Mr. Yannucci, we
 15 have not received, I'm confident, copies
 16 of the TSW sheets that the witness has
 17 identified today as tracking the fee
 18 credits that Mr. Strong received in
 19 connection with the Sunbeam transaction
 20 or in connection with his evaluation
 21 process generally. I'd ask you to
 22 search Morgan Stanley's files and
 23 produce those documents to us.
 24 Q. Sir, you did not personally have
 25 any involvement in the work that Morgan

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1 Stanley did for Sunbeam, did you?
2 A. None whatsoever.
3 Q. Were you aware that in -- I'll set
4 the time for you, sir. This is not a matter
5 that's in dispute. But Sunbeam acquired my
6 client's 82 percent interest in the Coleman
7 company in March of 1998. Prior to that
8 transaction closing Sunbeam issued a press
9 release. I'll show you a copy of that. It's
10 been previously marked as CPH Exhibit
11 number 14.
12 A. So you were saying -- what is this?
13 Q. This is a press release that
14 Sunbeam issued on March 19, 1998, about ten
15 days or so before Sunbeam closed on the
16 acquisition of my client's interest in the
17 Coleman company. I'd like you to take a
18 moment to read it.
19 A. You want me to read this?
20 Q. Yes, just to yourself.
21 A. (Reading).
22 Q. Have you had an opportunity to read
23 it, sir?
24 A. I read it.
25 Q. Did anyone --

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1 A. For the first time.
2 Q. Okay. Did anyone working on the
3 Sunbeam transaction at Morgan Stanley, Mr.
4 Strong or anyone else on the Morgan Stanley
5 team, come to you to discuss issues relating
6 to Sunbeam's first quarter 1998 performance
7 or the press release that's Sunbeam issued on
8 March 19th?
9 A. No.
10 Q. Ruth Porat is another person at
11 Morgan Stanley who worked on the Sunbeam
12 transaction.
13 Do you know Ruth Porat?
14 A. I do know Ruth Porat.
15 Q. She works in the equity capital
16 markets part of the firm?
17 A. Not today, no.
18 Q. She did back in 1998.
19 A. She did work in Equity Capital
20 Markets, if that was the period.
21 Q. Ruth Porat didn't come to talk to
22 you about the circumstances leading to the
23 issuance of the March 19th press release to
24 ask for counsel from you concerning what
25 Morgan Stanley should do, did she?

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1 MR. YANNUCCI: Objection, asked and
2 answered.
3 A. I think I can cut through a lot of
4 this for you, if it makes a difference, and
5 simply say that in my capacity at Morgan
6 Stanley and whatever role I was playing
7 during the period of time that this
8 transaction developed and was done I had zero
9 involvement, zero involvement in work,
10 conference calls or anything you would refer
11 to as work at Morgan Stanley. So it -- it is
12 my belief that this was one of the many
13 things going on at the firm that I read about
14 when it transpired, and I had no involvement
15 at all on any aspect of the deal, consulting,
16 input, anything. So everything you would be
17 asking me about the deal I'd be hearing for
18 the first time, other than what I learned
19 subsequent to the deal: It was announced. I
20 bumped into Jimmy Maher. I see him. I see
21 Howard Giddis. I see Don Drapkin, or
22 whoever. Okay? You know, we worked on
23 something together. I had -- I didn't even
24 know it was going on when it was going on.
25 But that's not difficult to

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1 understand, I think, if you have 2,000 people
2 in the division working on hundreds of
3 transactions at any given point in time.
4 What I'm familiar with are the things that I
5 was specifically working on or being
6 consulted on, or where issues came to my
7 desk.
8 But the way our system works, which
9 is -- you know, there is a process set up at
10 Morgan Stanley for things to get done, and
11 they don't all flow through the head of the
12 division or the head of the department's
13 desk. If they did, it would be the
14 definition of a bottleneck.
15 Q. If someone working on the Morgan --
16 on the Sunbeam deal for Morgan Stanley did
17 have a concern and sought your counsel with
18 respect to it, what would you have done?
19 A. Tried to help them out.
20 Q. Sir, do you recall being
21 interviewed for an article that the New
22 Yorker in 1999 about Mary Meeker?
23 A. Mary Meeker?
24 Q. Yes.
25 A. Our research analyst?

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1 Q. Yes.
2 A. Not specifically, no.
3 Q. Mary Meeker is an employee of
4 Morgan Stanley, a managing director of Morgan
5 Stanley, correct?
6 A. Yeah, in good standing 500,000
7 e-mails later.
8 Q. I want to just show you a quote
9 that's attributed to you in this article.
10 MR. YANNUCCI: This is in the New
11 Yorker?
12 MR. MARKOWSKI: Yes.
13 We'll mark it as -- that will be
14 CPH Exhibit 377.
15 (CPH Exhibit 377, 4/26/99 Mary
16 Meeker article in The New Yorker, marked
17 for identification, as of this date.)
18 (Discussion off the record.)
19 MR. MARKOWSKI: The date of the
20 article is April 26th, 1999.
21 Q. And there doesn't appear to be a
22 page number, but the quote I'm going to be
23 asking you about is on the fifth page of the
24 exhibit. There's a paragraph that begins in
25 the left-hand column.

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1 A. There's only one column on the
2 page.
3 MR. YANNUCCI: Let me show him my
4 page.
5 A. (Continuing) Oh, I'm on the wrong
6 page.
7 Q. I think it's the fifth page.
8 A. Let me start all over. "The Woman
9 in the Bubble," is that the title of the
10 article?
11 Q. Correct. And it's the fifth page
12 of the exhibit.
13 A. This is in which magazine?
14 Q. The New Yorker.
15 A. The New Yorker. Not New York
16 Magazine.
17 Q. No, the New Yorker.
18 A. Okay.
19 Q. You can see in the upper right-hand
20 column of the --
21 A. Three, four, five. Okay, I'm on
22 the fifth page.
23 Q. -- there are two columns there?
24 And do you see the -- there's a new
25 paragraph that begins in that left-hand

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1 column?
2 A. "Morgan could have"?
3 Q. Yes.
4 It reads "Morgan could have made
5 more money by being selective, but Meeker and
6 her colleagues say that big money investors
7 tend to rely on the firm's seal of approval."
8 Quote, "If Morgan Stanley has its name on
9 it," comma, "investors assume it's greater
10 than Schlock Incorporated," comma, close
11 quote, "Joe Perella, the head of Morgan:
12 Morgan's corporate finance department mused."
13 Do you see that?
14 A. Yes, I certainly do.
15 Q. Do you recall making that statement
16 to the New Yorker?
17 A. No.
18 MR. YANNUCCI: Are you assuming
19 that the quote comes from an interview
20 to the New Yorker, or just was a quote
21 elsewhere?
22 Q. Well, do you recall making that
23 statement, that Morgan Stanley -- if Morgan
24 Stanley has its name on it, investors assume
25 it's better than Schlock Incorporated?

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1 A. I don't recall making that specific
2 statement, no.
3 Q. What does Schlock Incorporated mean
4 to you, sir?
5 MR. YANNUCCI: Object to the
6 relevance of this, but --
7 A. What does it mean to me?
8 Q. Yes.
9 A. Something that's not of high
10 quality.
11 Q. Do you -- do you agree, sir, that
12 if Morgan Stanley has its name on a deal,
13 investors will assume it's something of
14 quality?
15 MR. YANNUCCI: Object to the
16 relevance.
17 A. I think that our firm has very high
18 standards. We have a motto here, first class
19 business in a first class way. We have a
20 tremendous system of checks and balances, a
21 process that people have to go through to vet
22 things, to get things done.
23 For example, in the -- in the case
24 of the -- let's say the bubble, the Internet,
25 Mary was always of the opinion that 90

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1 percent of the companies were going to fail,
2 that you'd only remember who was number one
3 or two, and you'd forget all the rest of the
4 companies. Because she was the leading
5 analyst, everyone wanted her imprimatur. And
6 so I think consistent with, you know, the
7 standards of the firm, we tried to pick firms
8 to work for that we thought were winners in
9 that particular era.
10 Secondly, institutional investors I
11 think believe that we have higher standards
12 or let's say the highest standards on Wall
13 Street, and I think they believe that if we
14 -- they believe that if we put our name on an
15 underwriting, that we've done due diligence
16 at a very high standard, and that we work for
17 quality companies.
18 I think -- and you heard me make
19 the statement 500,000 e-mails later no one
20 has been asked to leave our firm from the
21 research department or the investment banking
22 division. In all of the scandals that have
23 rocked Wall Street, and Elliot Spitzer's
24 investigation for the last I don't know how
25 many years, 500,000 e-mails later our name is

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1 not on Adelphia, it's not on Enron, it's not
2 on WorldCom, it's not on Global Crossing,
3 okay? So they're -- all those, Tyco, Quest.
4 And that I think has a lot to do with the
5 fact that a lot of these companies that were
6 at least 50 percent of business model, and
7 the rest, Omnicom, have passed a very
8 rigorous test to get through the Morgan
9 Stanley system, and when people know you have
10 that kind of rigorous test, a lot of times
11 they don't even have ask you to even go
12 through it; they go somewhere else. And it
13 wasn't because we couldn't have done business
14 with these companies. We wanted to.
15 So, you know, you ask me about what
16 Schlock, Inc. means. It's -- it's -- it's
17 something we don't like to be associated
18 with. We like to be associated with first
19 class companies and do business in a first
20 class way, and try every day to -- to live to
21 that standard.
22 Q. I take it, sir, although you can't
23 recall making the statement to New Yorker
24 reporter, that you'd agree that if Morgan
25 Stanley has its name on it, investors assume

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1 it's better than Schlock Incorporated.
2 MR. YANNUCCI: Object to the
3 relevance.
4 A. I -- I -- I -- I assume that if
5 Morgan Stanley has its name -- I think
6 investors believe that Morgan Stanley has its
7 name on something, that we've done enough
8 work on it, and that it's passed through our
9 system to get to where it is, and we have a
10 very rigorous capital commitment process
11 here, a very rigorous equity commitment
12 process here that is made up of a
13 cross-section of people who are not
14 interested in the particular deal of the
15 moment.
16 Q. Just a moment.
17 A. Yeah.
18 (Counsel confer off the record.)
19 MR. MARKOWSKI: I have no further
20 questions.
21 THE WITNESS: Okay. Thank you very
22 much.
23 THE VIDEOGRAPHER: That's it?
24 This marks the end of tape number
25 two in the videotaped deposition of

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1 Joseph Perella. We are going off the
2 record. The time is 5:56.
3 MR. MARKOWSKI: Actually, let's
4 stay on the record. If you can go back
5 on for a second.
6 THE VIDEOGRAPHER: We're back on
7 the record at 5:56.
8 MR. MARKOWSKI: I just want to make
9 sure that Morgan Stanley has no
10 questions, and that the deposition is
11 concluded.
12 MR. YANNUCCI: If we do, we'll let
13 you know, but not at this time.
14 MR. MARKOWSKI: The deposition's
15 closed then.
16 (Continued on the following page to
17 include jurat.)
18
19
20
21
22
23
24
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1 Will counsel please introduce
2 themselves?
3 MR. MARKOWSKI: Bob Markowski,
4 Jenner & Block LLP, on behalf of Coleman
5 Parent Holdings.
6 MR. O'CONNOR: Chris O'Connor of
7 Jenner & Block LLP, on behalf of Coleman
8 Parent Holdings.
9 MR. CLARE: Tom Clare, Kirkland &
10 Ellis LLP, on behalf of Morgan Stanley
11 and the witness, Ruth Porat, and here
12 with me Jim Doyle, from Morgan Stanley's
13 law department.
14 THE VIDEOGRAPHER: Will the court
15 reporter please swear in the witness.
16 R U T H P O R A T, resumed as a witness,
17 having been previously sworn by the
18 Notary Public, was examined and testified
19 further as follows:
20 EXAMINATION BY
21 MR. MARKOWSKI:
22 Q. Ms. Porat, you understand you're
23 still under oath, do you not?
24 A. Yes, I do.
25 Q. Ms. Porat, how do you feel today?

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1 A. Fine, thank you.
2 Q. Did you do anything to prepare for
3 the resumption of your deposition today?
4 A. I briefly scanned the prior
5 deposition.
6 Q. Did you do anything else?
7 A. No.
8 Q. Did you meet with counsel?
9 A. Just briefly to -- very briefly
10 yesterday.
11 Q. How much time did you spend with
12 counsel preparing for today?
13 A. Fifteen minutes maybe.
14 Q. In reviewing your transcript, did
15 you notice anything that you wish to change
16 or correct?
17 A. No. I scanned it pretty quickly.
18 I saw one typo that may have a confusing
19 reference which I will find for you, but
20 other than that, no.
21 Q. Is there anything that in reviewing
22 that transcript you believe you now recall
23 that you could not recall at the time you
24 gave your testimony on November 23?
25 A. No.

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1 Q. Let me show you what we marked as
2 CPH Exhibit 378. It's a copy of the
3 deposition transcript from your November 23
4 testimony. You said you found a typo. Can
5 you locate it for me?
6 A. I don't remember where it is. I
7 can spend the time to do it now or call you
8 back; whatever you prefer.
9 MR. CLARE: I think we can do it
10 through the errata portion of it.
11 MR. MARKOWSKI: That's fine.
12 Q. There are a couple of things I
13 wanted to bring to your attention, to see if
14 we can clear them up. If you can turn to
15 page 167. You're at page 167 of the
16 transcript, ma'am?
17 A. Yes.
18 Q. You see at the, bottom beginning at
19 line 21, you begin to read from Exhibit
20 CPH 17. It's a copy of the Arthur Andersen
21 November 19, 1998 comfort letter?
22 A. Yes.
23 Q. Do you see on line, 25 and
24 continuing to line 1 on page 168, the text
25 reads: "From November 29, 1997 through

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1 March 1, 1998, which were \$72,018,000 as
2 compared to \$43,499,000 for the corresponding
3 period of the preceding year." Do you see
4 those words?
5 A. Yes.
6 Q. And I don't know if you misspoke,
7 or the court reporter took it down
8 incorrectly, but that reference to
9 \$43,499,000 should be \$143,499,000, shouldn't
10 it?
11 MR. CLARE: Do you want to share a
12 copy of that?
13 MR. MARKOWSKI: I can --
14 Q. But do you recall that?
15 MR. CLARE: Why don't you -- let me
16 show her a copy of the document, so she
17 can know what she was reading from.
18 Q. Let me show, you Ms. Porat, what we
19 previously marked as CPH Exhibit No. 17.
20 It's the Arthur Andersen March 19, 1998
21 letter to Morgan Stanley, and you were
22 reading from paragraph C at the top of page,
23 number five of the exhibit, I believe.
24 A. You're correct. It should have
25 been \$143,499,000.

2 (Pages 226 to 229)

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1 Q. So that's either a typographical
2 error, or you misspoke, correct?
3 A. Correct.
4 Q. Let me direct your attention to one
5 other item that I caught in scanning over the
6 transcript, at page 142 and 143. This time
7 it really says something I said.
8 You see at the bottom of page 142,
9 I asked you a question relating to whether
10 Mr. Tyree had told you that, during the due
11 diligence call with Arthur Andersen on
12 March 12, that Arthur Andersen had advised
13 Morgan Stanley that in Arthur Andersen's view
14 Sunbeam had used a number of aggressive
15 techniques to enhance its 1990 sales revenue.
16 Do you see that?
17 A. Yes.
18 Q. And your answer was "I don't recall
19 hearing that," correct?
20 A. Correct.
21 Q. Did you understand, when I asked
22 that question, that I was asking you about
23 Sunbeam's 1997 sales revenue?
24 A. That would have been the proper
25 comparison.

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1 Q. Right. And I don't know if I
2 misspoke, or the court reporter took it down
3 incorrectly, but you understood me to be
4 asking about 1997, correct?
5 A. Yes.
6 Q. Were either of those the items
7 that --
8 A. Unfortunately not, but I will find
9 it.
10 Q. You can do that at a later time.
11 Do you recall that immediately --
12 let me take a step back. You attended the
13 Sunbeam February 27 board meeting where the
14 Sunbeam board voted to approve the
15 acquisition of my client's interest in
16 Coleman Company, correct?
17 A. I recall being at a board meeting,
18 and I don't recall when that board meeting
19 was, but it was a board meeting at which
20 financing was discussed. And I don't recall
21 whether the acquisition was approved at that
22 board meeting.
23 Q. Let me show you the minutes of the
24 Sunbeam February 27 board meeting, just so we
25 have that point of reference clear.

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1 A. Okay.
2 Q. Let me show you, Ms. Porat, what we
3 previously marked as CPH Exhibit 206. These
4 are the minutes of the February 27, 1998
5 Sunbeam board meeting. I think we covered
6 this in your -- the last session of your
7 deposition, but I believe it's in the second
8 paragraph here that identifies you as a
9 participant or as an attendee at the board
10 meeting. Do you see that?
11 A. Yes I do.
12 Q. You don't need to read the minutes,
13 but I will represent to you that's the board
14 meeting where Sunbeam voted to approve the
15 acquisition of Coleman Company; the Sunbeam
16 board did.
17 Do you recall that immediately
18 after the February 27 board meeting you met
19 with Sunbeam's outside public relations firm?
20 A. I don't recall that.
21 Q. Sunbeam had engaged Hill & Knowlton
22 to act as its public relations firm in
23 connection with the announcement of these
24 acquisitions. Do you recall that?
25 A. I don't recall that.

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1 Q. Let me show you a document that we
2 will be marking for the first time today. It
3 will be CPH Deposition Exhibit 379 I guess.
4 (Plaintiff's Exhibit CPH 379, Copy
5 of an April 28, 1998 letter from Skadden
6 Arps to Michael MacPhail, marked for
7 identification, as of this date.)
8 Q. CPH Exhibit No. 379 is a copy of an
9 April 28, 1998 letter from Skadden Arps to
10 Michael MacPhail at the Securities and
11 Exchange Commission. Just take a look at it
12 briefly, Ms. Porat, and tell me whether
13 you've seen it before?
14 A. I don't believe I've seen it
15 before.
16 Q. Let me direct your attention to
17 page 17 of the attached chronology. Do you
18 see an entry there that reads February 28 -
19 March 1, 1998?
20 A. Yes.
21 Q. And that entry states
22 Messrs. Dunlap, Kersh, Fannin, Goodis of
23 Sunbeam and Messrs. Kits, Fuchs and Porat of
24 Morgan Stanley met with Mauri Hope of
25 Hill & Knowlton to discuss the public

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1 relations aspects of the transactions. Do
2 you see that?
3 A. Yes.
4 Q. Do you recall participating in
5 discussions with that group of people
6 relating to the public relations aspects of
7 Sunbeam's first quarter 1998 acquisitions?
8 A. I don't. I don't remember that
9 name Mauri Hope, either.
10 Q. Do you believe that this is
11 erroneous?
12 A. I have no basis for judging. I
13 just don't remember this meeting or that
14 name.
15 Q. Hill & Knowlton is a public
16 relations firm. You're familiar with that,
17 correct, ma'am?
18 A. Yes.
19 Q. Do you recall any involvement on
20 your part with Hill & Knowlton at any point
21 relating to the public relations aspects of
22 the acquisitions that Sunbeam made in the
23 first quarter of 1998?
24 A. I don't recall. They may have been
25 there and I didn't know it, but I don't

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1 recall Hill & Knowlton; meeting Hill &
2 Knowlton.
3 Q. Do you recall participating in a
4 series of discussions relating to the
5 development of responses that Sunbeam
6 management might consider making to inquiries
7 relating to the transactions?
8 A. I remember meeting with Mr. Dunlap
9 at one point in his apartment on a weekend
10 with Bob Kitts to talk about some questions
11 and answers, but I don't recall whether they
12 were related to the acquisition specifically
13 or the financing. I do remember a Q-and-A
14 discussion, though.
15 Q. Let me show you a calendar for
16 February and March of 1998 just so you can
17 get the timing clear in your mind. I don't
18 think we need to mark this as an exhibit, but
19 let me show you a 1998 calendar. The minutes
20 I showed you from the Sunbeam board meeting
21 were from February 27. Do you see that
22 February 27 was a Friday in 1998?
23 A. Yes.
24 Q. And March 1 -- excuse me. March --
25 February 28 and March 1 are Saturday and

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1 Sunday, correct?
2 A. Correct.
3 Q. So it would be consistent with your
4 recollection of meeting with Mr. Dunlap on a
5 meeting, about a weekend, for you to have met
6 with Mr. Dunlap on March 28 and March 1, or
7 on one or the other of those days, to discuss
8 inquiries that may be made of Sunbeam
9 management relating to the first quarter
10 acquisitions?
11 MR. CLARE: Objection to form.
12 A. Or it could have been March 7th or
13 8th.
14 Q. Do you think the meeting would have
15 occurred prior to the public announcement of
16 the acquisitions so that Mr. Dunlap would be
17 prepared for inquiries immediately upon the
18 first announcement of the public that the
19 acquisitions were taking place?
20 A. As I said, I don't recall whether
21 it was about the financing or whether it was
22 about more than the financing, so I don't
23 know when it occurred. All I remember was it
24 was a weekend.
25 Q. But you do have some recollection

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1 of participating in a meeting in Mr. Dunlap's
2 apartment on a weekend to discuss questions
3 that might be put to Mr. Dunlap relating to
4 -- by people in the public relating to
5 Sunbeam's first quarter 1998 acquisitions, or
6 relating to the financing concerning those
7 acquisitions, correct?
8 A. Just to make sure I'm answering it
9 clearly enough, my involvement would have
10 been as it related to a road show
11 presentation, so what would have been covered
12 are any questions or answers that we thought
13 might have been raised in the context of a
14 road show.
15 That's why I'm not sure whether it
16 was the weekend you asked me about, or the
17 following weekend immediately preceding the
18 road show.
19 Q. Ms. Porat, I'm going to show you
20 four different exhibits. They're numbered
21 CPH Exhibit 140, 141, 142 and 143. I would
22 like you to look at them for a moment and
23 tell me whether or not you have seen one or
24 more of those documents previously.
25 A. I don't remember these documents.

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1 Q. They relate to questions concerning
2 the first quarter 1998 acquisitions, correct?
3 A. Correct.
4 Q. And these draft documents, or these
5 documents contain potential answers to the
6 questions concerning those transactions,
7 correct?
8 A. Correct.
9 Q. You have no recollection of
10 participating in the preparation of these
11 documents?
12 A. I don't recall.
13 Q. You have no recollection of
14 commenting on these documents?
15 A. I don't recall seeing a document
16 like this. I may have, but I just don't
17 recall it.
18 Q. There's handwriting on each of the
19 exhibits, I believe. Do you recognize any of
20 the handwriting on Exhibit 140?
21 A. I don't recognize it. I know it's
22 not mine, but I don't recognize it.
23 Q. Do you recognize any of the
24 handwriting on Exhibit 141?
25 A. No. Same answer.

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1 Q. Do you recognize any of the
2 handwriting on Exhibit 142?
3 A. No. Same answer.
4 Q. I don't see any handwriting on 143.
5 Does looking at these documents
6 refresh your recollection concerning whether
7 your meeting with Mr. Dunlap related to the
8 road show, or to questions that Mr. Dunlap
9 might receive upon the announcement of the
10 acquisitions?
11 A. No.
12 Q. I think we touched on it briefly
13 when we were together last, but do you recall
14 that the debenture offering relating to the
15 financing of the Sunbeam acquisitions
16 required the approval of Morgan Stanley's
17 Equity Commitment Committee?
18 A. Yes.
19 Q. And the committee received a
20 written presentation, do you recall that?
21 A. Yes.
22 Q. Let me show you a copy of
23 CPH Exhibit 129. This document is dated
24 March 10, 1998?
25 A. Correct.

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1 Q. And it's a memorandum to the Morgan
2 Stanley Equity Commitment Committee?
3 A. Correct.
4 Q. You're identified as one of the
5 authors of the document?
6 A. I am identified as one of the
7 authors.
8 Q. In fact, a number of individuals
9 who are involved in Morgan Stanley's work for
10 Sunbeam are identified as author of this
11 document, correct?
12 A. Correct.
13 Q. Is this the formal presentation to
14 the Equity Commitment Committee relating to
15 the Sunbeam debenture offering?
16 A. I'm sorry?
17 Q. Is this the formal presentation,
18 the written presentation, to the Equity
19 Commitment Committee relating to the Sunbeam
20 convertible debenture offering?
21 A. Yes, this looks like the document
22 that would have been distributed to the
23 Equity Commitment Committee.
24 Q. Were you involved in preparing this
25 document?

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1 A. I don't recall if I was.
2 Q. Would you have at least reviewed it
3 before it was presented to the Equity
4 Commitment Committee?
5 A. Yes, I think I would have.
6 Q. You would have reviewed it to
7 verify the accuracy of the things that you at
8 least had knowledge of?
9 A. Yes.
10 Q. Do you know who was involved in
11 preparing this written document?
12 A. I don't remember who wrote it.
13 Q. It was prepared by the Morgan
14 Stanley team working on the Sunbeam
15 transaction though, correct?
16 A. Correct.
17 Q. Mr. Strong, Mr. Kitts and
18 Mr. Stynes are among the individuals who are
19 identified as the authors of this document,
20 correct?
21 A. Correct.
22 Q. All three of them had been working
23 on the Sunbeam transaction for -- the Sunbeam
24 engagement for some period of time by this
25 point, correct?

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1 MR. CLARE: Objection to form. It
2 calls for speculation.
3 You can answer.
4 A. I don't know when each of them
5 began to work on it, but I knew they were all
6 involved in working on it.
7 Q. It was your understanding that they
8 were involved from the outset of Sunbeam's
9 engagement of Morgan Stanley?
10 MR. CLARE: Objection to form.
11 A. No. As I just said, I know they
12 were all involved. I don't know when they
13 each became involved.
14 Q. It was your understanding that
15 Mr. Strong was involved from the outset, in
16 any event, correct?
17 A. Yes.
18 Q. Did you attend the Equity
19 Commitment Committee meeting?
20 A. I believe I did. I don't
21 specifically remember it.
22 Q. Did the committee meet on the date
23 of this memorandum, on March 10, or at some
24 later date?
25 A. I have no idea.

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1 Q. Is there any practice with respect
2 to the date of the preparation of the written
3 report to the committee and the time of the
4 committee's meeting?
5 A. The memo oftentimes would be
6 written and distributed before the meeting,
7 although not always. And I was just looking
8 at the calendar because I think the committee
9 met on Tuesdays, and this happens to be a
10 Tuesday, so I don't know when this was
11 prepared or circulated, and whether this date
12 referred to a committee date. I have no
13 recollection of all those dates; specific
14 dates.
15 Q. Your recollection is that you
16 attended the meeting whenever it occurred,
17 correct?
18 A. I think that's right.
19 Q. Did anyone during the course of
20 the -- let me ask a background question. Who
21 else do you recall attending who was involved
22 in performing work on the Sunbeam engagement?
23 A. I'm sorry?
24 Q. Who else do you recall from the
25 Sunbeam team, the Morgan Stanley Sunbeam team

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1 other than yourself attending the Equity
2 Commitment Committee meeting?
3 A. I don't actually remember the
4 details of the Equity Commitment Committee
5 meeting so I don't know.
6 Q. Do you know if Mr. Strong was
7 there?
8 A. I don't know.
9 Q. Mr. Strong was the relationship
10 officer, I believe is the term some have used
11 to describe his responsibilities for Sunbeam;
12 is that correct?
13 A. Correct.
14 Q. Would it have been typical for the
15 Morgan Stanley relationship officer to attend
16 the Equity Commitment Committee meeting
17 relating to a transaction such as this?
18 A. He could either have attended,
19 dialed in, or not attended, because there
20 were enough other people who could present
21 the issues.
22 Q. Would the Equity Commitment
23 Committee expect to hear from Mr. Strong
24 before approving the transaction?
25 MR. CLARE: Objection to the extent

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1 you're asking Ms. Porat to speak for the
2 committee. Calls for speculation.
3 You can answer.
4 Q. Based on your experience?
5 A. I don't know. I think it varied by
6 case.
7 Q. Do you recall anyone during the
8 course of the Equity Commitment Committee
9 where the Sunbeam convertible debenture
10 offering was presented to the committee
11 advising the committee members that Sunbeam
12 was having problems with respect to its first
13 quarter 1998 sales performance?
14 A. I don't remember, as I said, the
15 meeting itself, but I do know that the first
16 time I heard about any problem with first
17 quarter was much later towards the New York
18 road show, so your question doesn't actually
19 hold for me, because I don't know what
20 happened to the committee. I don't remember
21 that, as I said a couple of times. But I do
22 know when I first remember hearing about a
23 sales problem that was much later.
24 Q. So you know that the committee
25 wasn't advised at the meeting to approve the

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1 Sunbeam convertible debenture offering that
2 there was a problem with respect to Sunbeam's
3 first quarter performance, correct?
4 MR. CLARE: Objection, that
5 misstates her testimony.
6 A. I didn't know that there was, and
7 as I've said I don't remember this meeting.
8 So you're interpreting -- I think that's an
9 extension. I don't know, is the short way of
10 putting it.
11 Q. Let me try to parce through this.
12 You believe you attended the Equity
13 Commitment Committee meeting where the
14 Sunbeam convertible debenture offering was
15 presented to the committee, correct?
16 A. I believe so, but I can't say it
17 specifically.
18 Q. That's your belief, correct?
19 A. Right.
20 Q. You did not learn personally that
21 there was a problem with respect to Sunbeam's
22 first quarter 1998 sales until, I believe you
23 just said, some time significantly after the
24 Equity Commitment Committee had approved the
25 convertible debenture offering, correct?

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1 A. Correct.
2 MR. CLARE: Objection to form. You
3 can answer.
4 A. Correct.
5 Q. So if in fact you were an attendee
6 at the March 10 1998 Equity Commitment
7 Committee meeting, or whatever date that
8 meeting took place concerning the Sunbeam
9 convertible debenture offering, you didn't
10 hear anyone advise the participants in that
11 meeting that there was a problem with respect
12 to Sunbeam's first quarter 1998 sales,
13 correct?
14 A. If I was there, I didn't hear it.
15 Q. Take a brief look, Ms. Porat, at
16 the written report that was provided to the
17 committee. Let me ask this question. You've
18 testified that you didn't learn that there
19 was a problem with respect to Sunbeam's first
20 quarter 1998 sales until sometime
21 significantly after March 10, correct?
22 A. It was -- just to make sure I'm
23 clear on what "significantly" means -- it was
24 in that couple of days prior to pricing, so
25 it was within a week that it was -- I don't

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1 remember hearing it until right prior to
2 pricing.
3 Q. You first heard it, according to
4 the testimony you gave at your last
5 deposition session, at the end of the road
6 show, correct?
7 A. Right.
8 Q. And the Equity Commitment Committee
9 meeting occurred before the beginning of the
10 road show, correct?
11 A. Correct.
12 Q. And you didn't have any knowledge
13 before the road show began that there was a
14 problem with respect to Sunbeam's first
15 quarter 1998 sales, correct?
16 A. Correct.
17 Q. Based on that, are you comfortable
18 saying that there is nothing in this March 10
19 report that alerts any reader of it to a
20 problem with respect to Sunbeam's first
21 quarter 1998 sales, or would you like to take
22 a moment to look at it?
23 MR. CLARE: Objection to the form
24 of the question.
25 A. I would assume there is not.

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1 Q. Well, just take a moment to look at
2 it.
3 A. Can you just tell me?
4 MR. CLARE: Well, the document says
5 what it says.
6 A. I'm assuming there's not, but you
7 know the answer. I will assume there's not.
8 Q. If there had been a problem known
9 to you with respect to Sunbeam's first
10 quarter 1998 sales, is that something you
11 would have brought to the attention of the
12 participants in the Equity Commitment
13 Committee meeting relating to the debenture
14 offering?
15 MR. CLARE: Objection to form and
16 hypothetical. You can answer.
17 A. I believe I would have brought it
18 to their attention.
19 Q. And you didn't do that, correct?
20 A. Correct.
21 Q. We spent some time when we were
22 together last talking about the series of
23 conversations that you were involved in when
24 you did first hear about a problem with
25 Sunbeam's first quarter 1998 sales, correct?

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1 A. Correct.
2 Q. And one of the -- you testified
3 that you received a one-page summary of
4 Sunbeam's sales situation in the first
5 quarter, correct?
6 A. From the company.
7 Q. Correct.
8 A. Yes.
9 Q. Let me show you CPH Exhibit 16
10 again, just to have that in front of you.
11 CPH Exhibit No. 16 is the one-page document
12 that you received from the company on
13 March 18, correct?
14 A. Yes.
15 Q. Did you receive any other written
16 materials from the company on March, 18 or at
17 any time prior to Sunbeam issuing its press
18 release on March 19th, relating to Sunbeam's
19 first quarter 1998 performance?
20 A. I don't recall seeing anything
21 other than this and the draft press release.
22 Q. Do you see the list of companies
23 under the heading "Potential Orders"?
24 A. Yes.
25 Q. What did you understand that to be

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1 a reference to?
2 A. As I recall, the names of companies
3 and the potential orders in dollars that were
4 expected to come from those companies by the
5 end of the quarter.
6 Q. Those were not orders that Sunbeam
7 had in hand at that point, correct?
8 MR. CLARE: Objection. Calls for
9 speculation.
10 Q. Based on your understanding at the
11 time?
12 A. Right. As I read it, it was -- the
13 way it was described, as I recall, is there
14 were verbal -- they had verbal indications
15 that those orders would come in, and that
16 they would come in prior to the end of the
17 quarter.
18 Q. But Sunbeam wasn't describing those
19 to you as orders that had in fact been made
20 at that point, correct?
21 A. No, they were very adamant -- let
22 me just step back. They were not booked yet.
23 They hadn't occurred. They hadn't shipped,
24 which is what the potential orders meant.
25 As I recall a lot of the debate the

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1 evening we were doing due diligence is the
2 company was extremely adamant that those
3 orders would come in, that they had been
4 verified. They knew they would, and that
5 they would not slip. And that was a lot --
6 by that I mean they would come in within the
7 first quarter and not slip over even a day or
8 two into the next quarter.
9 Q. Do you see that this document draws
10 a distinction between open orders and
11 potential orders?
12 A. Yes.
13 Q. What did you understand open orders
14 to mean?
15 A. I don't recall sitting here today
16 the difference between the two, but there was
17 a lot of discussion about every line item on
18 here, and the reason I'm making this point
19 about this list of companies having orders
20 that would close, or would be shipped, or
21 closed, or properly accounted for by the end
22 of the quarter, that was a big part of the
23 debate that we had about -- and question we
24 had about company's confidence that there was
25 no question that those orders would occur in

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1 the first quarter.
2 So to simply answer your question,
3 I can't remember the difference between that
4 prior line and the next set of lines.
5 Q. But that's something that someone
6 would have explained to you in the course of
7 your conversations about this document?
8 A. I believe that's right.
9 Q. The total for potential orders is
10 \$86 million, correct?
11 A. Correct.
12 Q. The company told you that day that
13 that \$86 million was gross sales, not net
14 sales?
15 A. I don't recall sitting here today.
16 Q. Did you ask that question, whether
17 these were gross numbers or net sales
18 numbers, under the heading Potential Orders?
19 A. I don't recall.
20 Q. You understand the difference
21 between net sales and gross sales, do you
22 not, ma'am?
23 A. I've heard that term used and seen
24 that term in many contexts that something --
25 there's some kind of deduction between a

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1 gross and a net. It can vary by company.
2 Q. The size of the deduction can vary?
3 A. The size and the reason and a whole
4 host of things.
5 Q. Do you see the references at the
6 bottom of this page, there is a No. 1 in
7 parenthesis, and a number 2, estimated
8 waterfall of 7 percent, estimated waterfall
9 of 10 percent?
10 A. Yes.
11 Q. Was that explained to you?
12 A. I don't recall if it was. I don't
13 recall what it is sitting here today.
14 Q. What involvement Ms. -- before we
15 move on, is there anything else that you can
16 recall other than what you've previously
17 testified to relating to the activities you
18 were engaged in on March 18 concerning
19 Sunbeam's first quarter 1998 sales
20 performance?
21 A. I don't think so.
22 Q. What involvement did you have,
23 Ms. Porat, after March 18 in monitoring
24 Sunbeam's first quarter 1998 performance?
25 A. I don't recall having involvement.

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1 Q. Is it your belief you had no
2 further involvement at that point in
3 communications with the company about its
4 first quarter performance?
5 A. I don't recall communications with
6 the company.
7 Q. That you were involved in?
8 A. That I was involved in.
9 Q. Do you recall any -- do you recall
10 whether you monitored Sunbeam's performance
11 through conversations with others at Morgan
12 Stanley?
13 A. The only thing I recall is very
14 generally there was a bring-down due
15 diligence session, but I don't remember the
16 details of that.
17 Q. Did you participate in it?
18 A. No.
19 Q. What's a bring-down due diligence
20 session?
21 A. It's just a -- between pricing and
22 closing, it's a further due diligence
23 discussion.
24 Q. Between pricing and closing what,
25 ma'am?

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1 A. Of the securities that were sold.
2 Q. So before Morgan Stanley closed on
3 the debenture offering, there was a final set
4 of due diligence activities?
5 A. I wasn't involved in it. I just
6 vaguely recall there was -- bring-down was
7 done. I don't remember the details of it.
8 Q. Whose responsibility was it to do
9 that?
10 A. That would have been John Tyree.
11 Q. Did you have any responsibility for
12 it?
13 A. No.
14 Q. Did you have any responsibility for
15 making sure it happened?
16 A. Not really. No.
17 Q. Did you have any responsibility for
18 consulting with Mr. Tyree to hear what he had
19 been told in connection with his bring-down
20 due diligence activities?
21 A. I don't think so, no.
22 Q. Did Mr. Tyree make any report to
23 you?
24 A. I don't recall.
25 Q. Were you involved in any

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1 conversations with Arthur Andersen at any
2 point in 1998 relating to Sunbeam's first
3 quarter 1998 performance?
4 A. I don't recall ever being on a call
5 with them, but whether they were on a
6 conference call and I didn't know it, I
7 couldn't say.
8 Q. As far as you know Arthur Andersen
9 was not involved in any of the conversations
10 you had with respect to Sunbeam's first
11 quarter 1998 performance?
12 A. Yes. If they were I don't recall
13 that they were.
14 Q. Let me show you, Ms. Porat, what we
15 previously marked as CPH Exhibit 33. It's a
16 one-page document dated March 19th, 1998 on
17 Morgan Stanley stationery from John Tyree and
18 Johannes Groeller to Bob Gluck, Alan Dean and
19 Greg Femicola, subject bring-down due
20 diligence?
21 A. Yes.
22 Q. Take a moment to look at that
23 document, ma'am. Have you seen it before?
24 A. I believe I have, but it may have
25 been in the prior deposition. I don't

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1 recall.
2 Q. Do you see what the first bullet
3 point is?
4 A. Yes.
5 Q. Could you read that?
6 A. "Top and bottom line outlook for
7 first quarter, first half and the year."
8 Q. What does that relate to, top and
9 bottom line outlook?
10 MR. CLARE: Objection to form and
11 calls for speculation.
12 Q. Are you familiar with those terms,
13 ma'am?
14 A. I would assume it refers to -- top
15 refers to revenues, and bottom would probably
16 refer to net income. But depending on the
17 context could refer to operating income, or
18 operating income before depreciation
19 amortization. It could be a number of
20 different types of references to earnings.
21 Q. In general, it's a reference to the
22 company's sales performance and revenues and
23 its earnings, correct?
24 A. Correct.
25 Q. And this indicates that there will

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1 be an inquiry about Sunbeam's outlook for the
2 first quarter, the first half and for the
3 full year, correct?
4 A. Correct.
5 Q. Were you involved in preparing the
6 bring-down due diligence checklist?
7 A. I don't recall if I was.
8 Q. Do you recall having any
9 involvement in the preparation of this
10 particular document?
11 A. I don't recall being involved in
12 the preparation of this document.
13 Q. Let me show you what we previously
14 marked as CPH Exhibit No. 34. It's a
15 document dated the next day from
16 CPH Exhibit 33. CPH exhibit 34 is a Morgan
17 Stanley memorandum, dated March 20, 1998. Do
18 you see, that, ma'am?
19 A. Yes, I do.
20 Q. And the authors of this document
21 are identified as Ruth Porat, Brooks Harris,
22 John Tyree and Johannes Groeller, and the
23 subject is bring-down due diligence?
24 A. Yes.
25 Q. Did you have involvement in the

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1 preparation of this document?
2 A. I don't recall being involved in
3 the preparation of this document.
4 Q. You indicated to me a few moments
5 ago that you had no involvement personally in
6 the bring-down due diligence activity,
7 correct?
8 A. I don't recall. I should have
9 said -- I may have said I don't recall
10 whether I was involved in the bring-down.
11 Q. Does this document change your
12 testimony?
13 A. It does not.
14 Q. So even seeing CPH Exhibit, 34 the
15 March 20, 1998 memorandum regarding
16 bring-down due diligence, your testimony is
17 that you personally had no involvement in
18 that activity, correct?
19 MR. CLARE: Objection. That
20 misstates the testimony.
21 A. No. My testimony was that I don't
22 recall if I had any involvement.
23 Q. And this document doesn't change
24 that recollection?
25 A. It does not change the

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1 recollection.
2 Q. Do you see that there is a -- you
3 see that the first bullet point from the
4 March 19th memorandum, "top and bottom line
5 outlook for first quarter, first half and
6 year," does not appear in CPH Exhibit No. 34,
7 the March 20 version?
8 A. That sentence does not appear in
9 the second.
10 Q. In fact, there is no reference in
11 the March 20 version of the bring-down due
12 diligence document to making any inquiry
13 relating to Sunbeam's expectations for the
14 first half of 1998; isn't that correct?
15 A. It looks like they had more detail
16 in the first, quarter and they still look at
17 the full year, versus the prior one which had
18 one sentence on first quarter, first half and
19 the year.
20 Q. So the specific inquiry concerning
21 the first half of 1998 that was included in
22 the March 19 due diligence checklist has been
23 dropped from the March 20 version of the
24 bring-down due diligence checklist, correct?
25 MR. CLARE: Objection to form.

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1 A. Those two words, "first half," are
2 not on this second checklist.
3 Q. And there is no reference in the
4 March 20 version of making any inquiry about
5 the second quarter, correct?
6 A. Correct.
7 Q. Do you know why that was dropped?
8 MR. CLARE: Objection. Foundation.
9 Calls for speculation.
10 A. I do not.
11 Q. Your name is on the March 20
12 version of the bring-down due diligence
13 checklist, correct, Ms. Porat?
14 A. Correct.
15 Q. Were you involved in preparing this
16 document, CPH Exhibit 34?
17 A. I think I previously said I don't
18 recall one way or the other.
19 Q. Do you know why your name would be
20 included on this document if you weren't
21 involved in it?
22 A. Unfortunately it happens.
23 Q. What do you mean, "unfortunately it
24 happens"?
25 A. At times people put team members on

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1 even when they're not involved in the
2 preparation of the document.
3 Q. Did you give any instruction to
4 Mr. Tyree in connection with his bring-down
5 due diligence activities to drop the inquiry
6 into the company's expectations for the
7 second quarter of 1998?
8 A. I don't recall doing it, and I
9 don't believe I would do it.
10 Q. Do you think that would have been
11 an inappropriate thing to drop under the
12 circumstances?
13 MR. CLARE: Objection to form and
14 incomplete hypothetical.
15 A. Just to put this in context, this
16 is an outline for a broader discussion, so I
17 guess I objected to your question which
18 implied trying not to review issues, when in
19 fact this second list appears to be a more
20 detailed outline that would guide a fuller
21 discussion.
22 So I don't recall the preparation
23 of it, but I just want to make sure the
24 context in which it is typically used is a
25 bit more clear.

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1 Q. I'm only inquiring about what I can
2 read in the documents, ma'am, and I'm trying
3 to understand the reasons for the
4 differences.
5 CPH Exhibit 33, the March 19th
6 version, indicates that there would be a
7 specific inquiry relating to Sunbeam's
8 expectations for the first half of 1998,
9 correct?
10 A. Correct.
11 Q. And CPH Exhibit No. 34 doesn't
12 contain that same specific reference,
13 correct?
14 A. Correct.
15 Q. And you can't explain that today,
16 correct?
17 A. Correct.
18 Q. Let me show you CPH Exhibit 35,
19 Ms. Porat. CPH Exhibit No. 35 is a March 23
20 1998 Morgan Stanley memorandum from John
21 Tyree, Johannes Groeller and Shanj Boone,
22 subject Sunbeam bring-down due diligence. Do
23 you see that?
24 A. Yes.
25 Q. Have you seen this document

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1 previously?
2 A. I don't recall if I have.
3 Q. Now, your name is not included in
4 the list of authors on this version of the
5 bring-down due diligence checklist, correct?
6 A. Correct.
7 Q. Can you explain that?
8 A. No, I can't explain it.
9 Q. The March 23 bring-down due
10 diligence checklist does not include any
11 reference to making an inquiry of Sunbeam
12 relating to its expectations for the first
13 half of 1998, does it?
14 A. It does not.
15 Q. And it doesn't contain any
16 reference to making an inquiry concerning
17 Sunbeam's expectations for the second quarter
18 of 1998 either, does it?
19 A. I don't see the reference; a
20 reference to the second quarter.
21 Q. You may have just answered this,
22 and if you did I apologize. Have you seen
23 CPH 35 previously?
24 A. I don't recall if I have.
25 Q. Do you recall any involvement in

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1 its preparation?
2 A. I don't recall any involvement in
3 its preparation.
4 Q. Does seeing CPH 33, 34, or 35
5 refresh your recollection, Ms. Porat,
6 concerning your own personal involvement in
7 due diligence activities after the March 19th
8 press release was issued by Sunbeam?
9 A. No it doesn't change my
10 recollection.
11 Q. Ms. Porat, let me show you what we
12 previously marked as CPH Exhibit No. 112.
13 CPH Exhibit 112 is a letter from Arthur
14 Andersen to Morgan Stanley & Company Inc.
15 dated March 25, 1998. Do you see that?
16 A. Yes.
17 Q. Do you recognize this document?
18 A. No.
19 Q. March 25, 1998 is the date on which
20 the debenture offering closed, correct?
21 A. If you're telling me it did. I
22 don't recall when it closed.
23 Q. Ms. Porat, let me show you what I
24 will have the court reporter mark as CPH 380.
25 It is a three-page document bearing Sunbeam

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1 Bates No. SB 251292 to 94 and it's entitled
2 Sunbeam for immediate release, Sunbeam
3 Corporation announces successful private
4 placement of 750 million dollars of
5 convertible debentures.
6 (Plaintiff's Exhibit CPH 380,
7 Three-page document bearing Sunbeam
8 Bates No. SB 251292-94 entitled Sunbeam
9 For Immediate Release, marked for
10 identification, as of this date.)
11 Q. I'm only showing you this at the
12 moment, Ms. Porat, to establish the date of
13 the closing of the debenture offering. This
14 press release announces that the debenture
15 offering closed on March 25, 1998, correct?
16 A. Correct.
17 Q. The date of the Arthur Andersen
18 letter that I just provided you is March 25,
19 1998, correct, Ms. Porat?
20 A. Correct.
21 Q. Would it be consistent with Morgan
22 Stanley's procedures to receive a bring-down
23 comfort letter from Sunbeam's auditors dated
24 as of the date of the closing of the
25 debenture offering?

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1 A. I actually don't know.
2 Q. Do you recognize CPH No. 112 as a
3 bring-down comfort letter?
4 A. It looks that way.
5 Q. What is a bring-down comfort
6 letter, ma'am?
7 A. It is something the auditors would
8 provide at the time of bring-down due
9 diligence prior, you know, in conjunction
10 with a pricing or a closing of a transaction.
11 Q. Among other things, the bring-down
12 comfort letter brings information relating to
13 the company's financial performance current
14 to the date of the closing of the
15 transaction, correct?
16 A. Correct.
17 Q. Let me direct your attention to the
18 second page of CPH Exhibit 112. This letter
19 reports Sunbeam's sales and earnings
20 performance through the first two months of
21 1998, does it not, Ms. Porat?
22 A. I'm sorry. Where are you?
23 Q. The second page of the letter.
24 A. Right.
25 Q. There is a table at the top. Do

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1 you see that?
2 A. Yes.
3 Q. And that table reports Sunbeam's
4 financial performance through the first two
5 months of 1998, correct?
6 A. Correct.
7 Q. And it reports that Sunbeam's net
8 sales through March 1, 1998 are \$72,018,000,
9 correct?
10 A. Correct.
11 Q. And it reports that Sunbeam's net
12 income for the first two months of 1998 is a
13 loss of \$41,190,000, correct?
14 A. Correct.
15 Q. And those numbers compare to sales
16 of \$143,499,000 through the first two months
17 of 1997, correct?
18 A. Correct.
19 Q. And earnings of \$9,765,000 through
20 the first two months of 1997, correct?
21 A. Correct.
22 Q. So Sunbeam's sales for the first
23 two months of 1998, according to this letter,
24 are about half of what they had been in the
25 first two months of 1997, correct?

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1 A. Correct.
2 Q. And its earnings have declined by
3 approximately 50 million dollars, correct?
4 A. Correct.
5 Q. From a profit of \$9.7 million to a
6 loss of a little over \$41 million, correct?
7 A. Correct.
8 Q. Now, the comfort letter identifies
9 one component of that \$41 million loss in the
10 following paragraph, correct?
11 A. Yes.
12 Q. It indicates that the company has
13 incurred a \$30.2 million compensation charge
14 in February 1998 relating to new employment
15 agreements with certain officers of the
16 company?
17 A. Correct.
18 Q. Eliminating the effect of that
19 one-time expense, Ms. Porat, according to
20 this document Sunbeam had still lost
21 approximately \$10 million in the first
22 quarter of -- first two months of 1998,
23 correct?
24 A. Correct.
25 Q. Compared to a profit of about 9.7

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1 million in the first two months of 1997,
2 correct?
3 A. Correct.
4 Q. A negative change of about \$20
5 million in net earnings, correct?
6 A. Correct.
7 Q. Were you aware of those facts at
8 the time the debenture offering closed on
9 March 25?
10 A. I don't recall if I was.
11 Q. Did you talk to Mr. Tyree or anyone
12 else to confirm that Morgan Stanley had
13 received a bring-down comfort letter from
14 Andersen?
15 A. I don't recall specifics around
16 that.
17 Q. Did Mr. Tyree report to you the
18 information contained in Arthur Andersen's
19 bring-down comfort letter relating to
20 Sunbeam's financial performance in the first
21 two months of 1998?
22 A. As I said, I don't recall
23 specifics.
24 Q. Was that a subject that you had
25 interest in, given your participation in the

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1 telephone conferences on March 18 leading to
2 the March 19th press release?
3 A. I'm sorry?
4 Q. Was that a subject in which you had
5 interest given your participation in the
6 events of March 18 that led to the issuance
7 of Sunbeam's March 19th press release?
8 A. Yes.
9 Q. But as you sit here today you have
10 no recollection of being advised that Arthur
11 Andersen had informed Morgan Stanley on
12 March 25 that Sunbeam had lost approximately
13 \$41 million in the first two months of the
14 quarter?
15 A. I don't recall being advised that a
16 problem -- there was a problem. And I don't
17 recall the specifics behind the discussion.
18 Q. You told me when we were together
19 last time, Ms. Porat, that you made it your
20 business on March 18 to gather the facts
21 relating to Sunbeam's sales situation in the
22 first quarter, correct?
23 A. Correct.
24 MR. CLARE: Object to the form of
25 the question.

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1 Q. You agree with me that's something
2 that you took upon yourself, correct?
3 A. Correct.
4 Q. After March 18 did you consider
5 yourself to have no further interest in that
6 issue?
7 A. I don't remember thinking about it
8 that way.
9 Q. Why didn't you make it your
10 business to find out what Sunbeam's
11 performance was after the -- after the
12 issuance of the March 19th press release and
13 prior to the closing of the debenture
14 offering on March 25?
15 MR. CLARE: Objection to form.
16 A. Because we had a due diligence team
17 that was proceeding to prosecute the business
18 the way corporate finance and execution teams
19 do.
20 Q. You left those matters in the hands
21 of other people then?
22 A. Yes. As I said it was not my
23 responsibility to be doing the due diligence.
24 Q. Do you have the March 25 Sunbeam
25 press release in front of you, CPH No. 380?

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1 A. Yes.
2 Q. Take a moment to read it to
3 yourself, ma'am. Have you had an opportunity
4 to do that?
5 A. Yes.
6 Q. This press release relates to the
7 part of the Sunbeam engagement that you were
8 personally involved in, correct?
9 A. It relates to the part that I was
10 personally? Yes.
11 Q. Did you have any involvement in
12 reviewing this press release before it was
13 issued?
14 A. I don't recall reviewing it.
15 Q. Do you believe you did not see this
16 press release before it was issued?
17 A. I don't recall if I did or I
18 didn't.
19 Q. You don't recall one way or the
20 other?
21 A. No I don't.
22 Q. There's nothing in this press
23 release, is there, Ms. Porat, relating to
24 Sunbeam having incurred a loss of something
25 in excess of \$40 million in the first two

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1 months of 1998?
2 A. No, there's not.
3 Q. Would you agree with me that the
4 statements attributed to Mr. Dunlap continue
5 to be bullish with respect to the company's
6 performance and prospects?
7 MR. CLARE: Objection to form and
8 foundation.
9 A. Can you repeat your question?
10 Q. Would you agree with me the
11 comments attributed to Mr. Dunlap in the
12 March 25, 1998 press release continued to be
13 bullish with respect to the company's
14 performance and prospects?
15 MR. CLARE: I renew my objections
16 to form and foundation.
17 A. As I sit here and read it today, he
18 seems bullish about his vision, but I was
19 reading it to see if there was something more
20 specific.
21 Q. You agree with me there is nothing
22 negative in Mr. Dunlap's comments in this
23 press release, correct?
24 MR. CLARE: Same objections.
25 A. I don't see negative comments by

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1 Mr. Dunlap in this.
2 Q. Mr. Dunlap -- the press release
3 notes that the size of the debenture offering
4 has been increased to \$750 million from the
5 originally planned 500 million offering,
6 correct?
7 A. Correct.
8 Q. And Mr. Dunlap cites that as
9 support for the public's view, investors'
10 view, of Sunbeam's success, correct?
11 MR. CLARE: Objection. Calls for
12 speculation as to -- other than what the
13 statement is on the page.
14 Q. Do you agree with me?
15 A. I'm sorry. Can you repeat your
16 question?
17 Q. Mr. Dunlap cites as evidence of the
18 public's support for Sunbeam's success the
19 fact that the debenture offering was
20 increased from \$500 million to \$750 million?
21 MR. CLARE: Same objection.
22 A. As I just said the last time you
23 asked me that, I think you're basically
24 confusing the term vision and prospects.
25 What he says here is a high level

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1 of confidence in Sunbeam's strategic
2 direction. It's not a comment about
3 financial performance.
4 Q. And its prospects for the future,
5 correct?
6 A. Right.
7 Q. And Mr. Dunlap cites the fact that
8 the debenture offering was oversubscribed,
9 correct, as the reason why the size of the
10 offering was increased from 500 million to
11 \$750 million?
12 A. Correct.
13 Q. And he refers to that as the
14 overwhelming response of the investment
15 community to the offering, correct?
16 A. Yes.
17 Q. And he states that that
18 overwhelming response reflects a high level
19 of confidence in Sunbeam's strategic
20 direction and its prospects for the future,
21 correct?
22 A. Correct.
23 Q. No reference to the fact that
24 Sunbeam had lost \$40 million in the first two
25 months of 1998, correct?

14 (Pages 274 to 277)

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1 A. Correct.
2 Q. No reference to the fact that
3 Sunbeam's sales in the first two months of
4 1998 were half of what they had been in the
5 first two months of 1997, correct?
6 A. Correct.
7 Q. Morgan Stanley knew those facts at
8 the time this press release was issued,
9 correct?
10 MR. CLARE: Objection. Foundation.
11 There is none.
12 You can answer if you can.
13 A. Well, based on the bring-down
14 comfort letter from Arthur Andersen, people
15 within Morgan Stanley were aware of the sales
16 trends, et cetera, and from the diligence
17 discussion then that we had had prior to the
18 pricing, we were aware of the sales trends
19 even beyond what was in this letter.
20 Q. Morgan Stanley knew based on, if
21 nothing else, the March 25 letter it received
22 from Arthur Andersen that Sunbeam had lost
23 approximately \$41 million in the first two
24 months of 1998, correct?
25 MR. CLARE: Same objection;

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1 foundation.
2 A. When you keep using the term Morgan
3 Stanley as a blanket I'm uncomfortable. I'm
4 not sure what implication that has. As you
5 said, as I said, the team members involved in
6 bring-down diligence were aware of this.
7 Q. They were aware that Sunbeam, if no
8 other source than this March 25 letter from
9 Arthur Andersen, had lost in excess of
10 \$40 million in the first two months of 1998,
11 correct?
12 A. Correct.
13 Q. The members of Morgan Stanley's
14 Sunbeam team knew that, correct?
15 A. Correct.
16 Q. You don't recall personally being
17 aware of it, correct?
18 A. I don't recall.
19 Q. You may have been; it's just that
20 you're not certain today?
21 A. That's correct.
22 Q. Between the closing of the
23 debenture offering on March 25, Ms. Porat,
24 and the closing of Sunbeam's acquisition of
25 my client's interest in Coleman Company on

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1 March 30, did you have any involvement in any
2 aspect of any work being done by Morgan
3 Stanley for Sunbeam?
4 A. I don't recall having involvement.
5 Q. Ms. Porat, do you recall whether on
6 March 18 or March 19th, or any date before
7 the closing of the debenture offering on
8 March 25, participating in any discussions at
9 Morgan Stanley concerning whether it would be
10 prudent to postpone the closing of the
11 debenture offering?
12 A. I don't recall a discussion about
13 postponing the closing.
14 Q. Did you raise that as a possibility
15 with anyone at any point?
16 A. I don't recall raising it.
17 Q. Do you believe you did not?
18 A. I don't think I did. I don't
19 recall doing it.
20 Q. Did anyone suggest that as an
21 alternative that Morgan Stanley should
22 consider in your presence?
23 A. I don't recall a discussion about a
24 postponed closing.
25 Q. Did Mr. Strong ever raise that as a

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1 possibility?
2 A. I don't recall if he did.
3 Q. Is that something that occurred to
4 you as something to consider?
5 MR. CLARE: Objection. Asked and
6 answered.
7 Q. It's a different question. I want
8 to make sure I'm clear if Mr. Clare didn't
9 perceive the difference.
10 I asked you previously whether or
11 not you made the suggestion to anyone, and
12 I'm asking you now not whether you made the
13 suggestion, but whether you considered it?
14 A. I don't recall considering it.
15 Q. So you gave no consideration to
16 Morgan Stanley postponing the March 25
17 closing of the debenture offering despite the
18 information that came to your attention
19 during the course of the conversations you
20 were involved in on March 18?
21 MR. CLARE: Objection. Misstates
22 the testimony, and argumentative.
23 Q. Is that correct?
24 A. As I have said, I don't recall
25 whether I considered postponing the closing.

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1 Q. In any event, you don't believe you
2 made that suggestion to anyone, correct?
3 A. I don't believe I did, but I don't
4 honestly recall.
5 Q. Ms. Porat, let me show you what we
6 previously marked as CPH Exhibit 36. The
7 cover page is a fax to William Strong, James
8 Stynes, Robert Kitts and John Tyree from
9 David Fannin at Sunbeam, and it attaches a
10 Sunbeam press release dated April 3, 1997.
11 Actually -- I read it correctly. It is dated
12 April 3, 1997, but I believe that the record
13 will show it was issued on April 3, 1998.
14 A. When there is a convenient break
15 point, if we could break.
16 Q. If you want to take a break before
17 we spend a little time with this exhibit,
18 that would be fine with me.
19 A. As you prefer.
20 Q. That's fine.
21 THE VIDEOGRAPHER: The time is
22 2:27, and we're going off the record.
23 (Recess taken.)
24 THE VIDEOGRAPHER: The time is now
25 2:38, and we are back on the record.

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1 Q. Ms. Porat, I do have Exhibit CPH 36
2 in front of you?
3 A. Yes.
4 Q. And you see the first page is a fax
5 cover page from David Fannin dated April 3,
6 1998, and it's directed to four people at
7 Morgan Stanley: William Strong, James
8 Stynes, Robert Kitts and John Tyree.
9 Correct?
10 A. Yes.
11 Q. And in the fax cover sheet
12 Mr. Fannin advises Mr. Strong, Mr. Stynes,
13 Mr. Kitts and Mr. Tyree that the company will
14 be issuing a press release shortly, and he
15 attaches a copy of that press release. Do
16 you see that?
17 A. Yes.
18 Q. Did Mr. Strong or Mr. Stynes or
19 Mr. Kitts or Mr. Tyree share this fax with
20 you when they received it from Mr. Fannin on
21 April 3?
22 A. I don't recall if they did. I
23 don't recall one way or the other.
24 Q. Did you at some point see Sunbeam's
25 April 3 announcement?

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1 A. I believe I did.
2 Q. Among other things, the April 3
3 announcement advises that Sunbeam now expects
4 that its first quarter 1998 sales will be,
5 quote, somewhat below 1997 levels, close
6 quote. Do you see that?
7 A. Yes.
8 Q. And it also indicates that the
9 company now expects to realize a loss in the
10 first quarter of 1998. Do you see that?
11 A. Yes.
12 Q. Do you know what analysts'
13 expectations were as of March 31, 1998 for
14 Sunbeam's first quarter earnings?
15 A. I don't recall.
16 Q. That's something you would have
17 been aware of at the time correct?
18 A. Probably.
19 Q. You testified previously that it
20 was important to the debenture offering that
21 Sunbeam continued to hit its numbers in the
22 first quarter correct?
23 A. Correct.
24 Q. I'm sorry, did you tell me at some
25 point you saw Sunbeam's announcement?

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1 A. I believe I did.
2 Q. How did you see it?
3 A. I remember an announcement. I
4 can't remember if it was this one or some
5 subsequent news that -- across the tape. I
6 don't remember receiving a document like
7 this, but I remember, when there was some bad
8 news, being very surprised.
9 Q. What did you do?
10 A. I don't recall one way or the
11 other. I just remember being surprised.
12 Q. At that point did you have any
13 continuing work-related responsibilities
14 concerning Sunbeam?
15 A. I don't believe I did.
16 Q. After you saw some Sunbeam
17 announcement that surprised you with its bad
18 news, do you recall doing anything?
19 A. I don't recall.
20 Q. Do you recall having any
21 conversations with any members of the Sunbeam
22 team at Morgan Stanley concerning the bad
23 news that you saw?
24 A. I don't recall one way or the
25 other.

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1 Q. Did you have any conversations with
2 anyone within Morgan Stanley management
3 relating to the bad news announcement that
4 you saw?
5 A. I don't recall discussions.
6 Q. Who was your boss at the time?
7 A. Richard Kauffman.
8 Q. Did you have any conversations with
9 Mr. Kauffman?
10 A. I don't recall.
11 Q. You did have a conversation, you
12 testified to previously I believe, that you
13 had a conversation with Mr. Kauffman before
14 the March 19th press release was issued,
15 correct?
16 A. Correct.
17 Q. You don't recall any subsequent
18 conversation with him when Sunbeam announced
19 the bad news that you referred to?
20 A. I don't recall.
21 Q. Were you angry when you saw the
22 Sunbeam announcement that you just referred
23 to?
24 A. It's probably a fair description.
25 Q. What did you do about it?

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1 A. I don't recall.
2 Q. Did you complain to anyone at
3 Sunbeam?
4 A. As I said, I don't recall.
5 Q. As you sit here today you can't
6 remember having any conversations -- let me
7 ask a broader question.
8 Do you recall that there was a
9 series of bad news announcements that Sunbeam
10 made after the closing of its acquisition of
11 my client's interest in Coleman Company?
12 A. No. I was careful when I answered
13 this. I don't remember what specifically I
14 was referring to when I said I remember some
15 bad news crossing the tape. So I don't
16 recall if there were others -- if there was
17 something other than this.
18 Q. Do you recall that by June 15 the
19 Sunbeam board had terminated Al Dunlap?
20 A. I recall at some point they did.
21 Q. Do you recall that during that
22 period of time from the closing of the
23 acquisition of my client's interest in
24 Coleman Company until the termination of
25 Mr. Dunlap in the middle of June 1998, that

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1 Sunbeam's stock price took a precipitous
2 drop?
3 MR. CLARE: Object to the form of
4 the question.
5 A. I don't recall.
6 Q. Were you paying any attention to
7 Sunbeam's stock price during that period of
8 time?
9 MR. CLARE: Same objection.
10 A. I assume I was, but I don't recall
11 what happened.
12 Q. You don't recall Sunbeam's stock
13 price dropping substantially from March 30 or
14 March 31, 1998 until the time that Mr. Dunlap
15 was terminated?
16 MR. CLARE: Same objection.
17 A. I just answered it.
18 Q. I'm sorry, your answer is what?
19 A. I don't.
20 Q. Were you involved in any internal
21 discussions at Morgan Stanley at any time
22 between the closing of Sunbeam's acquisition
23 of my client's interest in Coleman Company
24 and Mr. Dunlap's termination by the board of
25 directors of Sunbeam Corporation to --

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1 concerning what was going on at Sunbeam
2 Corporation during that time period?
3 A. I don't recall if I was, but that's
4 not to say that I wasn't. I don't recall.
5 Q. Do you remember being given any
6 responsibility to try to gather facts
7 relating to those circumstances?
8 A. I don't.
9 Q. Do you remember being briefed by
10 anyone at Morgan Stanley relating to those
11 circumstances?
12 A. I don't recall.
13 Q. During that time period, did you
14 field any complaints from investors that had
15 purchased the Sunbeam convertible debentures?
16 A. I don't recall getting complaints
17 directly to me.
18 Q. Do you know if there were
19 complaints?
20 A. I don't know.
21 Q. Do you know if Morgan Stanley took
22 any actions during that time period or
23 subsequently to appease investors who
24 purchased the Sunbeam convertible debentures?
25 A. I don't know.

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1 Q. You don't know one way or the
2 other?
3 A. I don't know one way or the other.
4 Q. Did anyone make it known to you at
5 some point, Ms. Porat, that investors in the
6 convertible debenture offering were unhappy
7 about their investment?
8 A. I don't recall any discussions.
9 I'm not saying they didn't. I just don't
10 recall.
11 Q. Did anyone advise you that the
12 purchasers of the Sunbeam convertible
13 debentures -- any of them were unhappy with
14 Morgan Stanley?
15 A. I don't recall hearing that.
16 Q. Morgan Stanley was the underwriter
17 of that offering, correct?
18 A. Correct.
19 Q. The sole underwriter, correct?
20 A. I believe that's right.
21 Q. Do you know if Morgan Stanley
22 repurchased any of the debentures from anyone
23 who complained after the problems at Sunbeam
24 began to emerge?
25 MR. CLARE: Objection. Foundation.

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1 A. I don't know.
2 Q. Do you know if Morgan Stanley paid
3 any money to any of the debenture investors?
4 A. I don't know if they did.
5 Q. Do you know if Morgan Stanley
6 offered to give them anything else of value
7 to appease their unhappiness?
8 MR. CLARE: Same objection.
9 A. I don't know.
10 Q. Ms. Porat, at any time before the
11 closing on March 30, 1998 of Sunbeam's
12 acquisition of my client's interest in
13 Coleman Company, did you suggest to anyone
14 that any of the factual information being
15 shared with you or with others at Morgan
16 Stanley relating to the problems that Sunbeam
17 was experiencing in the first quarter of 1998
18 be shared with my client?
19 MR. CLARE: Objection to form.
20 A. I don't recall any discussions.
21 Q. You don't recall making that
22 suggestion to anyone?
23 A. I don't recall.
24 Q. Did anyone make that suggestion in
25 your presence?

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1 A. I don't recall hearing that.
2 Q. Mr. Strong never made that
3 suggestion to you, I take it?
4 MR. CLARE: Objection. Asked and
5 answered.
6 Q. Is that correct?
7 A. I said I didn't recall any
8 conversations along those lines.
9 Q. Ms. Porat, after the convertible
10 debenture offering closed on March 25, 1998,
11 what did you do with materials that were in
12 your possession at that point relating to
13 that transaction?
14 A. I don't recall Sunbeam
15 specifically, but what I have done my entire
16 career is when a transaction is priced, I
17 retain only maybe the selling memo and the
18 prospectus. But if there was anything else,
19 I never would keep it, because there was no
20 need to.
21 Q. You would throw anything else you
22 had away?
23 A. Consistently. So I don't recall on
24 this one, but I would assume I did what I
25 always do.

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1 Q. So it's your best recollection that
2 as of March 19th, when the Sunbeam
3 convertible debenture offering was priced,
4 that you would have thrown away any materials
5 you had relating to your involvement in that
6 transaction except for the offering
7 memorandum?
8 MR. CLARE: Objection. Misstates
9 the testimony. You can answer.
10 A. I don't recall specifically on this
11 one. All I was giving you is what I do at
12 the completion of any transaction, is when
13 it's priced, throw everything out other than
14 the offering memorandum and maybe the selling
15 memo.
16 Q. Was there a point in this case --
17 was there a point, Ms. Porat, when you were
18 asked by someone at Morgan Stanley to gather
19 any materials that you had relating to the
20 work you were involved in concerning Sunbeam?
21 A. I hate to speculate, but I would
22 assume so. But I don't remember it.
23 Q. Do you remember if you had anything
24 other than the offering memorandum?
25 A. If I did, anything I would have had

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1 would have gone directly to legal.
2 Q. But, consistent with your practice,
3 it's likely that the only thing you would
4 have had at that point, if you followed your
5 practice, is the offering memorandum?
6 A. Correct.
7 Q. Ms. Porat, in connection with the
8 work that you were doing on the debenture
9 offering, did you read any analyst reports
10 concerning Sunbeam?
11 A. I don't recall if I did.
12 Q. Would you have, during the time
13 period where the transaction was under way,
14 and before the closing, made it your business
15 to obtain any available current analyst
16 reports concerning Sunbeam, or is that
17 something you wouldn't typically do?
18 MR. CLARE: Objection to form.
19 A. Not necessarily.
20 Q. Well, that was a good objection,
21 then, because now I don't know what your
22 answer means. So let me rephrase it. I
23 asked a poor question.
24 Would it have been your practice,
25 in connection with the work you were doing

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1 relating to the Sunbeam convertible debenture
2 offering and the marketing of those
3 securities, to monitor any analyst reports
4 that were then being issued relating to
5 Sunbeam; issued during that time period?
6 A. Not necessarily, I think is the
7 right response.
8 Q. After the March 19th press release
9 was issued -- that's a press release that you
10 were involved in reviewing before it was
11 released, correct?
12 A. That's the date of the press
13 release you showed me last time?
14 Q. Yes. I can show it to you again if
15 you would like.
16 A. That's fine. If it's the one press
17 release we discussed last time, if that was
18 the date, then yes.
19 Q. After the press release was issued,
20 did you review the analyst reports that were
21 issued concerning that press release?
22 A. I don't recall if I did.
23 Q. Ms. Porat, I would like to take a
24 short break and we may be done with this
25 portion of your job here today.

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1 THE VIDEOGRAPHER: The time is
2 2:53, and we are off the record.
3 (Recess taken.)
4 THE VIDEOGRAPHER: The time is now
5 3:03, and we are back on the record.
6 Q. Ms. Porat, I'm going to show you a
7 document that we've previously marked as
8 CPH Exhibit 377. It's an April 26, 1999
9 article from the New Yorker magazine
10 entitled, "The Woman in the Bubble, How Mary
11 Meeker Helps Internet Entrepreneurs Become
12 Very, Very Rich," by John Cassidy.
13 You've seen that article before,
14 have you not, Ms. Porat?
15 A. Yes I have.
16 Q. It talks about you, does it not?
17 A. It does.
18 Q. Let me direct your attention to the
19 fifth page of the exhibit. Are you there?
20 There is a paragraph that begins in the
21 left-hand column with the words, "Morgan
22 Stanley could have," do you see that?
23 A. Yes.
24 Q. I'll read a couple of sentences to
25 you, ma'am. It reads, quote, "Morgan Stanley

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1 could have made more money by being less
2 selective, but Meeker and her colleagues say
3 that big-money investors tend to rely on the
4 firm's seal of approval." Quote, "If Morgan
5 Stanley has its name on it, investors assume
6 it's better than Schlock Incorporated," close
7 quote, "Joe Perella, the head of Morgan's
8 Corporate Finance Department, mused."
9 Do you see that statement?
10 A. I do.
11 Q. Do you agree with Mr. -- the quote
12 attributed to Mr. Perella?
13 MR. CLARE: I object to the form of
14 the question.
15 A. I agree that if Morgan Stanley has
16 its name on it, investors assume it's better
17 than Schlock Incorporated.
18 Q. That's your personal feeling,
19 correct?
20 A. Yes.
21 MR. MARKOWSKI: I have no further
22 questions for Ms. Porat.
23 MR. CLARE: I don't have any
24 questions for Ms. Porat.
25 MR. MARKOWSKI: The personal

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1 deposition of Ms. Porat is closed.
 2 THE VIDEOGRAPHER: The time is now
 3 3:05, and that concludes the deposition,
 4 and we are off the record.
 5 (Time noted: 3:05 p.m.)
 6
 7
 8 _____
 9 RUTH PORAT
 10 Subscribed and sworn to before me
 11 this day of , 2004.
 12
 13
 14 Notary Public
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1 _____ I N D E X _____
 2
 3 WITNESS EXAMINATION BY PAGE
 4 RUTH PORAT MR. MARKOWSKI 228
 5
 6
 7 _____ E X H I B I T S _____
 8 Plaintiffs
 9 No. Description FOR ID.
 10 CPH Copy of the deposition 225
 11 378 transcript of the November
 12 23rd testimony of Ruth Porat
 13 CPH Copy of an April 28, 1998 233
 14 379 letter from Skadden Arps to
 15 Michael MacPhail
 16 CPH Three-page document bearing 267
 17 380 Sunbeam Bates No. SB 251292-94
 18 entitled Sunbeam For Immediate
 19 Release
 20
 21
 22
 23
 24
 25

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1 CERTIFICATE
 2 STATE OF NEW YORK)
 3 : ss.
 4 COUNTY OF NEW YORK)
 5
 6 I, LINDA SALZMAN, a Notary Public
 7 within and for the State of New York, do
 8 hereby certify:
 9 That RUTH PORAT, the witness whose
 10 deposition is hereinbefore set forth, was
 11 duly sworn by me and that such deposition is
 12 a true record of the testimony given by the
 13 witness.
 14 I further certify that I am not
 15 related to any of the parties to this action
 16 by blood or marriage, and that I am in no way
 17 interested in the outcome of this matter.
 18 IN WITNESS WHEREOF, I have hereunto
 19 set my hand this 13th day of December, 2004.
 20
 21
 22 _____
 23 LINDA SALZMAN
 24
 25

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1 _____ I N D E X _____
 2
 3 WITNESS EXAMINATION BY PAGE
 4 RUTH PORAT MR. MARKOWSKI 228
 5
 6
 7 _____ E X H I B I T S _____
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 15 Michael MacPhail
 16 CPH Three-page document bearing 267
 17 380 Sunbeam Bates No. SB 251292-94
 18 entitled Sunbeam For Immediate
 19 Release
 20
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 22
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20 (Pages 298 to 300)

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	4Q	4Q	%	Year	Year	%	LTM	Year	%
	12/31/1997	12/31/1996	Change	12/31/1997	12/31/1996	Change	12/31/1996	12/31/1996	Change
Net revenues	\$475.3	\$494.0		\$1,154.3	\$1,220.2	-5.4%	\$1,154.3	\$1,220.2	-5.4%
Cost of sales	161.7	191.1		840.3	928.5		840.3	928.5	
Gross profit	61.1	33.3	83.5%	314.0	291.7	7.6%	314.0	291.7	7.6%
Gross Margin	27.43%	14.85%		27.20%	23.91%		27.20%	23.91%	
SG&A	61.2	76.7	-20.3%	266.3	291.7	-8.7%	269.4	291.7	-7.6%
SG&A as % of Sales	27.4%	34.2%		23.1%	23.9%		23.3%	23.9%	
Operating Income	(0.0)	(41.4)	45.3	47.7	0.0		44.6	0.0	
Depreciation & Amortization	5.6	6.5	10	31.3	25.9		31.3	25.9	
Extraordinary Expenses (Gain)	0.4	16.9		36.0	74.2		36.0	74.2	
EBITDA	6.0	(20.0)		115.0	100.1	14.8%	111.9	100.1	11.7%
EBITDA Margin	2.7%	-8.9%		10.0%	8.2%		9.7%	8.2%	
Interest	9.3	9.9	-6.8%	40.9	38.7	5.5%	40.9	38.7	5.5%
Capital Expenditures	11.0	13.7		30.0	41.3		30.0	41.3	
Capital Expenditures/Total Sales	4.9%	6.1%		2.6%	3.4%		2.6%	3.4%	
Total Debt	542.5	617.5	-12.1%	542.5	617.5	-12.2%	550.0	617.5	-10.9%
Total Cash	9.0	17.3		9.0	17.3		9.0	17.3	
Net Debt	533.5	600.2		533.5	600.2		541.0	600.2	
EBITDA/Interest	0.64	(2.02)		2.81	2.59		2.74	2.59	
EBITDA-Capex/Interest	(0.54)	(3.39)		2.08	1.52		2.00	1.52	
Debt/EBITDA				4.72	6.17		4.92	6.17	
Net Debt/EBITDA							4.84	5.99	
Accounts Receivable	221.8	182.4		221.8	182.4		221.8	182.4	
Inventories	245.8	287.5		245.8	287.5		245.8	287.5	
Accounts Payable	155.7	98.9		155.7	98.9		155.7	98.9	

¹ Debt for 3rd quarter and nine month periods represent Long Term Debt, Debt for LTM and annual periods represent total debt

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MORGAN STANLEY
CONFIDENTIAL
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Company	The Coleman Company, Inc.		The Coleman Company, Inc.		The Coleman Company, Inc.	
	4Q97	4Q96	year 1997	year 1996	year 1996	
period	12/31/1997	12/31/1996	12/31/1997	12/31/1996	12/31/1996	
sales	\$222.9	\$224.4	\$1,154.3	\$1,220.2	\$1,220.2	
cost of goods sold	161.7	191.1	840.3	928.5	928.5	
gross profit	61.1	33.3	314.0	291.7	291.7	
gross margin	27.43%	14.85%	27.20%	23.91%	23.91%	
SG&A	61.2	76.7	266.3	291.7	291.7	
D&A	10.3	6.5	34.4	25.9	25.9	
Other	3.9	16.9	36.0	74.2	74.2	
operating profit	(0.0)	(43.4)	47.7	0.0	0.0	
operating margin	-0.01%	-19.34%	4.13%	0.00%	0.00%	
EBITDA	14.2	(36.9)	118.1	100.1	100.1	
EBITDA Margin	6.36%	-16.44%	10.23%	8.21%	8.21%	
Interest	9.3	9.9	40.9	38.7	38.7	
CAPEX	11.0	13.7	30.0	41.3	41.3	
Capex/Sales	4.94%	6.09%	2.60%	3.39%	3.39%	
total debt	542.5	617.5	542.5	617.5	617.5	
cash	9.0	17.3	9.0	17.3	17.3	
Net Debt	533.5	600.2	533.5	600.2	600.2	
EBITDA/Interest	1.53	(3.71)	2.89	2.59	2.59	
EBITDA-Capex/Interest	0.34	(5.09)	2.16	1.52	1.52	
Debt/EBITDA	38.288	(16.744)	4.594	6.167	6.167	
Net Debt/EBITDA	37.65	(16.28)	4.52	5.99	5.99	
accounts receivable	221.8	182.4	221.8	182.4	182.4	
inventories	245.8	287.5	245.8	287.5	287.5	
accounts payable	155.7	98.9	155.7	98.9	98.9	
days of receivables	363.2	296.7	70.1	54.6	54.6	
days of inventories	402.6	467.6	77.7	86.0	86.0	
days of payables	255.0	160.9	49.2	29.6	29.6	
Current Maturities of Long Term Debt		0.7		0.7	0.7	
current maturities of cap leases						
Revolving Credit		33.9		33.9	33.9	
Long Term Debt	479.4	582.9	479.4	582.9	582.9	
cap lease ob						
number of shares		52.2		52.2	52.2	
line of credit		128.1		128.1	128.1	
preferred stock						
shareholders equity	1,064.7	252.9	1,064.7	252.9	252.9	
cash	9.9	17.3	9.9	17.3	17.3	
Centers Open						
Same Center Revenue						
average occupancy						

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS,)
INC.,)
)
Plaintiff,)
)
-v-)
)
MORGAN STANLEY & CO., INC.,)
)
Defendant.)

CA 03-35045

-----)

DEPOSITION OF BLAINE V. FOGG
New York, New York
Thursday, December 16, 2004

NOT A CERTIFIED COPY

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Reported by:
TAMI H. TAKAHASHI, RPR
JOB NO. 167797

Page 2

1 December 16, 2004
2 1:06 p.m.
3
4 Deposition of BLAINE V. FOGG,
5 held at the offices of Skadden, Arps,
6 Slate, Meagher & From, 4 Times Square,
7 New York, New York, pursuant to Notice,
8 before Tami H. Takahashi, a Registered
9 Professional Reporter and a Notary
10 Public of the State of New York.
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Page 4

1 A P P E A R A N C E S (Cont'd):
2
3 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
4 Attorneys for the Witness
5 4 Times Square
6 New York, New York 10036
7 BY: CHRISTOPHER P. MALLOY, ESQ.
8
9
10 ALSO PRESENT:
11
12 MacANDREWS & FORBES HOLDINGS INC.
13 35 East 62nd Street
14 New York, New York 10021
15 BY: STEVEN L. FASMAN, Senior V.P.
16 BARRY F. SCHWARTZ, Executive V.P.
17
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Page 3

1 A P P E A R A N C E S :
2
3 JENNER & BLOCK
4 Attorneys for Plaintiff Coleman (Parent)
5 Holdings Inc.
6 One IBM Plaza
7 Chicago, Illinois 60611-7603
8 BY: ROBERT T. MARKOWSKI, ESQ.
9 JEROLD S. SOLOVY, ESQ.
10 CHRISTOPHER M. O'CONNOR, ESQ.
11
12
13 KIRKLAND & ELLIS LLP
14 Attorneys for Defendant Morgan Stanley &
15 Co., Inc.
16 777 South Figueroa Street
17 Los Angeles, California 90017
18 BY: LAWRENCE P. BEMIS, ESQ.
19 - AND -
20 KIRKLAND & ELLIS LLP
21 655 Fifteenth Street, N.W.
22 Washington, D.C. 20005
23 BY: KATHRYN REED ROTHMAN, ESQ.
24
25

Page 5

1 IT IS HEREBY STIPULATED AND AGREED,
2 by and between counsel for the respective
3 parties hereto, that the filing, sealing and
4 certification of the within deposition shall
5 be and the same are hereby waived;
6 IT IS FURTHER STIPULATED AND AGREED
7 that all objections, except as to the form
8 of the question, shall be reserved to the
9 time of the trial;
10 IT IS FURTHER STIPULATED AND AGREED
11 that the within deposition may be signed
12 before any Notary Public with the same force
13 and effect as if signed and sworn to before
14 the Court.
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Page 6

1 BLAINE V. FOGG, having been
2 first duly sworn by the Notary Public,
3 testified as follows:
4 EXAMINATION BY
5 MR. BEMIS:
6 Q. Good morning, Mr. Fogg. My name is
7 Larry Bemis. I'm with the law firm of
8 Kirkland & Ellis, and I represent Morgan
9 Stanley. Sitting on my right is Kathryn
10 DeBord-Rothman, hyphenated, just recently
11 married. And she will be assisting me in the
12 deposition. She's also an attorney in my
13 office.
14 Would you state your full name for
15 the jury, please.
16 A. Blaine V. Fogg.
17 Q. And where do you live, Mr. Fogg?
18 A. Right now, I live in Paris.
19 Q. Where do you live in Paris?
20 A. I live at 6, Rue, R-U-E, D-E,
21 L'Abbaye, L, apostrophe, A-B-B-A-Y-E, 75006
22 Paris, France.
23 Q. Which arrondissement is that in?
24 A. Sixth.
25 Q. Do you have a residence in New York

Page 7

1 as well?
2 A. Yes.
3 Q. And what is your address in
4 New York?
5 A. 1185 Park Avenue.
6 Q. What is -- what is your ZIP code
7 there?
8 A. 10128.
9 Q. Are you employed today by the law
10 firm of Skadden Arps?
11 A. I am.
12 Q. And how long have you been employed
13 by Skadden Arps?
14 A. I started at Skadden Arps in 1966.
15 I was employed until I became a partner. Then
16 I was a partner until October 1st of this
17 year.
18 Q. Are you of counsel to the firm now?
19 A. I am.
20 Q. Do you maintain a business address
21 in Paris?
22 A. Yes.
23 Q. And where is that?
24 A. That's 68, Rue Du, D-U, Faubourg,
25 F-A-U-B-O-U-R-G, St.-Honore, H-O-N-O-R-E. And

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1 that is in the eighth arrondissement.
2 Q. Do you plan to have an office here
3 in New York, being of counsel to Skadden Arps?
4 A. Yes.
5 Q. And what is your office address here
6 in New York?
7 A. 4 Times Square, in this very
8 building.
9 Q. As I understand, then, you have been
10 of counsel since October of this year?
11 A. Correct.
12 Q. Would that be October of 2004?
13 I wanted to ask you to step back a
14 few years from 2004 and turn to 1997 and 1998.
15 Can your memory go back that far for me?
16 A. I'll try.
17 Q. In 1997, were you a partner resident
18 in the New York office of Skadden Arps?
19 A. 1997? Yes, I was.
20 Q. When did you take up residency in
21 Paris?
22 A. In Paris?
23 Q. Yes.
24 A. This year, October.
25 Q. Just this year in October?

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1 A. Yes.
2 Q. In 1990 -- withdrawn.
3 You're familiar with the
4 Coleman/Sunbeam merger transaction, aren't
5 you, sir?
6 A. Yes.
7 Q. In that transaction, did Skadden
8 Arps act as an attorney for Sunbeam
9 Corporation?
10 A. Yes.
11 Q. And what was your position
12 relative -- withdrawn.
13 Were you the lead attorney for
14 Sunbeam in that transaction?
15 A. I was the lead mergers and
16 acquisitions attorney, yes.
17 Q. And tell the jury what mergers and
18 acquisitions is. 018338
19 A. Companies buying other companies.
20 Q. And selling other companies?
21 A. And selling other companies and
22 merging with other companies.
23 Q. You --
24 A. And doing joint ventures with other
25 companies. It takes in a lot of territory.

Page 10

1 Q. You, in your capacity as an attorney
2 for Sunbeam Corporation, addressed the board
3 of directors of Sunbeam Corporation at the
4 time the merger agreements were approved by
5 the board of directors, correct?
6 A. I don't think that's correct.
7 Q. Did you attend the board of
8 directors meeting of Sunbeam Corporation when
9 the merger was approved?
10 A. I did.
11 Q. And did you -- and is it your
12 recollection you did not speak at the meeting?
13 A. I honestly don't recall. I probably
14 did, but I don't recall.
15 Q. Would the minutes, in your view, if
16 they reflected that you spoke, be an accurate
17 reflection of what transpired?
18 MR. MARKOWSKI: Object to the form.
19 A. I don't recall, so I don't know how
20 to answer that question.
21 Q. Okay. We'll get to it a little bit
22 later.
23 Setting aside the meeting, you were
24 involved, as well, in the issuance of a press
25 release of Sunbeam Corporation dated on or

Page 11

1 about March 19, 1998, were you not?
2 A. I was involved in the events leading
3 up to the issuance of that press release, yes.
4 Q. And you -- at the time that you were
5 involved in those events, you were
6 representing Sunbeam Corporation, correct?
7 A. Yes.
8 Q. Following the issuance of the
9 March 19th, 1998 press release, you were also
10 involved with the -- an investigation of
11 events at Sunbeam Corporation following
12 Mr. Dunlap's termination, were you not?
13 A. Yes.
14 Q. And did you participate in the
15 investigation and the eventual preparation of
16 a report to the board of directors of Sunbeam
17 Corporation about those events?
18 A. I'm not sure what you mean by
19 participate. I certainly reviewed it and
20 drafts of it. I was not one of the
21 draftspersons of it.
22 Q. But you did see the report before it
23 was finally issued; is that fair?
24 A. Yes.
25 Q. And you did attend board meetings of

Page 12

1 Sunbeam Corporation in 1998 while this
2 investigation was ongoing, did you not?
3 A. I did.
4 Q. Is there any part of -- withdrawn.
5 Did you have any participation in
6 the debenture offering that was part of the
7 financing of the Sunbeam transaction
8 debenture? Let me withdraw the question. It
9 was a little too broad.
10 Skadden Arps did represent Sunbeam
11 as counsel in connection with Sunbeam's
12 debenture offering in 1998; is that right?
13 A. Correct.
14 Q. And that -- did you participate as
15 an attorney in any of the drafting of the
16 documentation for the debenture offering?
17 A. I don't believe I did, no.
18 Q. Did you review any of it before it
19 was finalized?
20 A. I don't believe I did, but I don't
21 specifically recall.
22 Q. If you -- who at Skadden Arps was --
23 withdrawn.
24 Was there one attorney, one partner
25 at Skadden Arps who had responsibility for

Page 13

1 Skadden's work in connection with the Sunbeam
2 debenture offer?
3 A. Yes.
4 Q. Who was that?
5 A. Greg Fericola, F-E-R-N-I-C-O-L-A.
6 Q. My understanding is that you have
7 been deposed on at least one occasion in your
8 life; is that fair?
9 A. Yes.
10 Q. And you were deposed in this action,
11 I think, during the arbitration proceeding
12 involved Mr. Dunlap and Mr. Kersh?
13 MR. MALLOY: Object to the form.
14 A. Not this action.
15 Q. I may have misspoken.
16 You were involved in an arbitration
17 proceeding relating to Mr. Dunlap and
18 Mr. Kersh, were you not, as a witness?
19 A. I was deposed in that proceeding,
20 yes.
21 Q. Right. In preparation for your
22 deposition today, did you review your
23 transcript in that proceeding?
24 A. I did read it, yes.
25 Q. When did you do that?

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1 A. I read it in Paris about a week or
2 10 days ago.
3 Q. Let me show you a copy of the
4 transcript that I have and ask if that's a
5 transcript of the proceeding -- of your
6 deposition.
7 A. The copy that I read in Paris had
8 some missing pages.
9 Q. I think mine --
10 MR. MALLOY: Sounds like I might be
11 in trouble.
12 THE WITNESS: No.
13 Q. Let me hand you what the reporter
14 will mark for me as Morgan
15 Stanley Exhibit 529.
16 (Defendant's Exhibit 529, Transcript
17 of deposition of Blaine V. Fogg taken on
18 6/16/20, marked for identification, as of
19 this date.)
20 Q. I've handed you, Mr. Fogg, a copy of
21 what I understand to be your deposition taken
22 on June 16, 2000 in what I referred to as the
23 arbitration proceeding.
24 Do you have that in front of you?
25 A. I do.

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1 Q. Now, is this a copy of the
2 deposition transcript, albeit, I hope, with
3 all of the pages that you reviewed in Paris
4 before you came here for your deposition?
5 A. It appears to be the same document.
6 Q. At the time that you gave your
7 deposition on June 16th of 2000, did you
8 review it after -- after it was taken -- well,
9 withdrawn.
10 After your deposition was taken on
11 June 16, 2000 and before you did your review
12 in Paris for your deposition here, did you
13 read the deposition for corrections or errors
14 or transcript changes?
15 A. I believe so, yes.
16 Q. Did you make any changes in the
17 deposition, that you can recall?
18 A. I don't remember.
19 Q. In your review of the deposition in
20 Paris before you came here for your deposition
21 in New York, did you find any errors in the
22 transcript?
23 A. I honestly read it rather quickly,
24 but, no, I didn't find any -- nothing jumped
25 out at me.

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1 Q. At the time that you -- at the time
2 you gave your deposition on June 16, 2000, the
3 transcript reflects that you were under oath;
4 is that correct?
5 A. I believe I was.
6 Q. The same oath, in effect, that you
7 took here today, right?
8 A. I believe it was substantially
9 similar, yes.
10 Q. In preparation for your deposition,
11 other -- in preparation for your deposition,
12 did you read any other documents -- well,
13 withdrawn.
14 Did you read your deposition, Morgan
15 Stanley Exhibit 529, to refresh your
16 recollection about events in 1997 and 1998 and
17 even thereafter?
18 A. Yes.
19 Q. And did it help you?
20 A. Yes.
21 Q. Did you look at any other documents
22 in preparation for your deposition here today?
23 A. Yes.
24 Q. And did they help you refresh your
25 recollection about events at that time period?

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1 A. I'm trying to remember what
2 documents I saw.
3 MR. MALLOY: He's entitled to ask
4 you which documents actually refreshed
5 your recollection. But, otherwise, he's
6 not entitled to inquire into what you
7 looked at. So, just limit your answer
8 with that concept in mind.
9 A. Yes.
10 Q. Please tell me what documents you
11 reviewed that refreshed your recollection.
12 A. Well, I do recall reviewing a draft
13 of the Sunbeam March 19, 1998 press release
14 which refreshed my recollection.
15 Q. Now, did the draft -- did the draft
16 of the press release that you reviewed in
17 preparation for your deposition have any
18 indication on whether it had been prepared at
19 Skadden Arps' offices, such as a footer at the
20 bottom indicating a word processing source?
21 A. I didn't notice. I don't remember.
22 Q. Okay. We'll get to that later.
23 Did you -- what other documents did
24 you review that refreshed your recollection?
25 A. That refreshed my recollection?

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1 MR. MALLOY: Meaning that it caused
2 you to recall something that you hadn't
3 previously recalled.
4 A. I saw some documents that I hadn't
5 seen before and, therefore, they didn't
6 refresh my recollection.
7 MR. MALLOY: He's not entitled to
8 know what those were.
9 THE WITNESS: I understand.
10 MR. BEMIS: Okay. Could I
11 respectfully not have a -- I'm not -- I
12 understand what you're doing, but not
13 have dialog. If there's an objection,
14 put it on --
15 MR. MALLOY: You're probing into
16 privileged areas, and I'm making sure
17 that the witness answers appropriately.
18 MR. BEMIS: I'm sure you had an
19 opportunity to prep Mr. Fogg before he
20 came today and I don't want to get
21 contentious, I know we have a short
22 amount of time to get this done, so we'll
23 try to get it done.
24 A. I don't really recall whether any of
25 the documents I looked at refreshed my

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1 recollection or not. I really can't say,
2 sitting here today.
3 Q. Did you see the -- did you see, for
4 example, the merger agreements between
5 Sunbeam, Coleman and the various MacAndrews &
6 Forbes companies?
7 MR. MALLOY: Are you asking if he
8 saw them and they refreshed his
9 recollection, or are you asking if he saw
10 them? Because I'm going to instruct him
11 not to answer the question if it's the
12 latter.
13 MR. BEMIS: Let me rephrase the
14 question.
15 Q. Did you see -- did you see the
16 merger agreements between Sunbeam, Coleman and
17 the MacAndrews & Forbes entities and various
18 other corporations in the course of your
19 preparation, and did you -- did they refresh
20 your recollection about events of the matter?
21 MR. MALLOY: Well --
22 A. The answer is no.
23 THE WITNESS: Sorry.
24 Q. Did you review -- withdrawn.
25 Did you see the complaint in this

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1 action that's been brought against Morgan
2 Stanley?
3 A. No, I didn't.
4 Q. Did you read -- see any deposition
5 transcripts from other witnesses who have been
6 deposed either in this proceeding or in
7 earlier proceedings involving Sunbeam?
8 A. No, I didn't.
9 Q. In preparation for -- withdrawn.
10 Have you given any interviews, other
11 than to your attorneys, about the matters in
12 controversy between Morgan Stanley and the
13 MacAndrews & Forbes companies that we are here
14 about today?
15 A. No.
16 Q. You've not spoken to anybody at
17 Mr. Solovy's office, for example?
18 A. No, no one.
19 Q. Have you spoken to anyone, other
20 than your attorneys, about the lawsuit that
21 you are here giving a deposition on?
22 A. I mentioned it to my wife.
23 Q. We'll exclude your wife.
24 A. I don't think so.
25 Q. Okay. I know you do maintain a

Page 21

1 residence in Paris and you told us you have
2 one in New York. You are still a U.S.
3 citizen, right?
4 A. Yes.
5 Q. And where do you -- where -- are you
6 registered to vote in the United States?
7 A. Yes.
8 Q. In what state?
9 A. New York.
10 Q. Do you -- do you have a driver's
11 license in the United States?
12 A. Yes.
13 Q. Where is that issued?
14 A. New York.
15 Q. And how much time do you spend --
16 how much time do you spend -- well, withdrawn
17 Recognizing that you only moved to
18 Paris, I understand, in October, not a very
19 long period of time, how -- how do you plan on
20 allocating your time between the United States
21 and New York?
22 A. Well, I have no plan. I mean, I
23 will be where I need to be when I need to be
24 there.
25 Q. How often have you come back to the

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Page 22

1 United States since you went to -- went to
2 Paris in October of 2004?
3 A. Twice.
4 Q. Twice.
5 Is this the second time?
6 A. Yes.
7 Q. Does your wife reside with you in
8 Paris?
9 A. Yes.
10 Q. And does she reside with you in
11 New York when you come to New York?
12 A. Yes.
13 Q. And do you -- one last question on
14 this. Do you -- do you pay -- do you pay
15 income taxes in the state of New York?
16 A. Yes.
17 Q. Do you pay city income taxes?
18 A. Yes.
19 Q. Do you receive -- do you receive
20 mail at your address in New York City?
21 A. Yes.
22 Q. Where do you consider your -- to be
23 your legal residence, or if you prefer, your
24 domicile today, New York or Paris?
25 MR. MALLOY: Calls for a legal

Page 23

1 conclusion. You can ask him the facts
2 about his -- what you seem -- about
3 his --
4 MR. BEMIS: He can answer the
5 question.
6 MR. MALLOY: -- domicile and you
7 seem to have done that.
8 MR. BEMIS: Well, I'm trying to --
9 he can answer the question subject to
10 your objection, of course.
11 DI MR. MALLOY: He's not here to answer
12 legal questions, so I'll instruct him not
13 to answer.
14 MR. BEMIS: Well --
15 Q. Just so we can get this clear, I'll
16 only ask it one time. If counsel tells you
17 not to answer a question, Mr. Fogg, are you
18 going to follow those instructions?
19 A. Yes.
20 Q. Now, if I understood you correctly,
21 you started work at Skadden Arps in 1966, I
22 think you said; is that right?
23 A. That's correct.
24 Q. Did you go -- did you join the firm
25 right out of law school?

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1 A. No.
2 Q. What did you -- where did you go to
3 law school?
4 A. Harvard Law School.
5 Q. And when did you graduate?
6 A. 1965.
7 Q. And what did you do between 1965 and
8 when you started at Skadden?
9 A. I worked for another law firm.
10 Q. And then -- have you continuously
11 worked for Skadden, then, since 1966?
12 A. Yes, I have.
13 Q. And how long -- withdrawn.
14 When did you become -- I forgot to
15 ask you, how old are you?
16 A. 64.
17 Q. When did you become a partner at
18 Skadden?
19 A. I believe it was 1971.
20 Q. And --
21 A. Maybe '72. I'm just -- '71 or '72.
22 Q. It won't make a difference today
23 whether it's '71 or '72. Either one is fine.
24 During -- during your practice as a
25 partner, has your area of practice been

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1 mergers and acquisitions, as you described it
2 earlier?
3 A. Yes.
4 Q. Has that been true -- was it true
5 continuously from 1971 even up until today?
6 A. Yes, pretty much.
7 Q. Even though you are of counsel
8 today, do you -- do you work a full -- a
9 full-time schedule for the firm?
10 A. I work full-time.
11 Q. In 19 -- in 1997 and 1998, did you
12 consider yourself a specialist in mergers and
13 acquisitions?
14 A. In 1997 and 1998?
15 Q. '98.
16 A. '98.
17 Q. The time of the Sunbeam/Coleman
18 transaction we'll be talking about today.
19 A. Yes. Specialist?
20 Q. Specialist.
21 A. Yes.
22 Q. Did you consider yourself highly
23 respected in the field of mergers and
24 acquisitions?
25 A. I hope so, yes.

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1 Q. When was the first time that you met
2 Mr. Dunlap, Albert Dunlap, former chairman and
3 chief executive officer of Sunbeam
4 Corporation?
5 A. To the best of my recollection, it
6 was in the 1980s, probably the first half of
7 the 1980s.
8 Q. What were the circumstances under
9 which you met him?
10 A. He went to work for a client named
11 Sir James Goldsmith, for whom I did a lot of
12 work.
13 Q. And could you just tell the jury
14 very briefly who Sir James Goldsmith was?
15 A. He was -- he's now deceased. He was
16 a European entrepreneur, who, during this time
17 period, acquired several U.S. companies
18 through a holding company of his.
19 Q. And what was -- what was -- what
20 were the circumstances precisely under which
21 you met Mr. Dunlap in connection with
22 Mr. Goldsmith?
23 A. I don't have a precise recollection
24 of a circumstance in which I met Mr. Dunlap,
25 but it was -- he was hired by Mr. Goldsmith

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1 following Goldsmith's acquisition of Crown
2 Zellebach, a Forest Products company, based on
3 the West Coast.
4 Q. What, if anything, did you do --
5 well, strike that.
6 Did you do any legal work for
7 Mr. Dunlap while he was working for Mr. Sir
8 James Goldsmith?
9 A. For him personally?
10 Q. No, no. In his capacity as an
11 employee of Mr. Goldsmith.
12 A. Yes, I did do work for Goldsmith or
13 his holding companies in which Mr. Dunlap has
14 worked.
15 Q. What kind of work?
16 A. Transactions in which -- I
17 represented Goldsmith and his companies in
18 transactions in which we sold off -- he sold
19 off pieces of Crown Zellebach.
20 Other transactions including a
21 transaction in which he swapped some assets
22 for a big stake in the equity of a company
23 called Hanson Industries, I believe.
24 Subsequent transactions which never
25 took place but which Goldsmith and other

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1 parties tried to take over a British company
2 called BAT. Mr. Dunlap was involved in that
3 aborted effort.
4 MR. MALLOY: If I could just
5 interrupt briefly. I'm sure Mr. Bemis
6 doesn't want you to testify about any
7 confidential matters you might have
8 worked on for Sir James Goldsmith or
9 Mr. Dunlap. Just keep that in mind when
10 you're describing this for him.
11 A. Yes, all the above-mentioned
12 transactions were publicly known at the time.
13 And there may have been others. I
14 just don't have precise recollection.
15 Q. Did you work with Mr. Dunlap in
16 connection with a company called General
17 Oriental?
18 A. General Oriental was the Goldsmith
19 holding company I alluded to earlier.
20 Q. And it was through General Oriental
21 that Crown Zellebach was acquired, correct?
22 A. Correct.
23 Q. And then through a series of
24 transactions various assets of Crown Zellebach
25 were sold off or liquidated in some fashion,

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1 correct?
2 A. Correct.
3 Q. And you provided legal -- legal
4 advice in connection with some of these
5 transactions, I take it?
6 A. Yes.
7 Q. Did you ever represent Mr. Dunlap
8 personally at any time in your career?
9 A. No.
10 Q. Did -- to your knowledge, did the
11 law firm of Skadden Arps ever represent
12 Mr. Dunlap personally?
13 A. No, although I do know that he
14 claims we did, in a shareholder loss, put an
15 appearance on his behalf.
16 Q. I take it, he was a -- he was sued
17 along with other officers and directors --
18 A. Yes.
19 Q. -- of the company and Skadden
20 represented all the parties in the case?
21 A. Yes, up to a point. I mean --
22 Q. All right. We'll set that aside.
23 In addition to -- well, withdrawn.
24 Did there come a time when you
25 worked with Mr. Dunlap after he had left

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1 Mr. Sir James Goldsmith's companies?
2 A. Yes.
3 Q. And when was that that you worked
4 with Mr. Dunlap?
5 A. I can't put a precise time frame on
6 it. It was after the Goldsmith attempt --
7 aborted attempt to take over BAT, which I
8 believe was in the late 1980s. Not too long
9 after that.
10 Q. Did you work at all with Mr. Dunlap
11 while he was the chief executive officer of
12 Scott Paper?
13 A. Yes.
14 Q. And in what -- what was just the
15 general nature of the work that you did with
16 Mr. Dunlap while he was the CEO of Scott
17 Paper?
18 A. Well, the principal transaction that
19 I recall was Scott Paper's merger with
20 Kimberly-Clark. There was a previous
21 transaction in which Scott Paper sold its
22 interest in a paper company, the name of which
23 is escaping me, to another company which was
24 principally handled by one of my partners.
25 Q. And was -- was Scott Paper a Skadden

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1 client -- drawn.
2 Was Scott Paper a Skadden Arps
3 client at the time that you performed this
4 work, or did Mr. Dunlap personally retain you
5 to represent Scott Paper?
6 A. Scott Paper had been a Skadden Arps
7 client for a number of years before Mr. Dunlap
8 went to Scott Paper.
9 Q. The surviving entity in the merger
10 that you described with Scott Paper and
11 Kimberly-Clark was Kimberly-Clark, correct?
12 A. Correct.
13 Q. And is it your understanding that
14 Mr. Dunlap's next job -- withdrawn.
15 When you worked with Mr. Dunlap
16 on -- while he was employed by Scott Paper, he
17 was the chief executive officer, correct?
18 A. He was, yes.
19 Q. And was he, at that time, to your
20 knowledge, largely hailed as turning around
21 Scott Paper?
22 A. Yes.
23 Q. Or is restructuring a word that was
24 used in connection with Mr. Dunlap's work at
25 Scott Paper?

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1 A. I don't specifically recall, but he
2 was regarded as the darling of Wall Street for
3 having turned around Scott Paper and made the
4 shareholders a lot of money.
5 Q. And was the next -- when did you
6 next work with Mr. Dunlap after the merger of
7 Scott Paper and Kimberly-Clark?
8 A. After he joined Sunbeam Corporation.
9 Q. Was -- at the time that Mr. Dunlap
10 joined Sunbeam Corporation, I think the record
11 will fairly reflect it was in 1996 -- did you,
12 that is Skadden Arps, represent Sunbeam
13 Corporation?
14 A. Sunbeam Corporation was a client for
15 a period of time before Mr. Dunlap joined
16 them.
17 Q. Were you -- were you one of Sunbeam
18 Corporation's attorneys before Mr. Dunlap
19 became the chief executive officer of Sunbeam?
20 A. No.
21 Q. Had you done any work for Sunbeam
22 Corporation before Mr. Dunlap became Sunbeam's
23 chief executive officer?
24 A. I had personally not done any work
25 for Sunbeam.

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1 Q. Now, after -- after Mr. Dunlap
2 became the chief executive officer, did you
3 begin to do work for Sunbeam Corporation?
4 A. Yes.
5 Q. And tell the jury how that came
6 about.
7 A. Well, I'm not specifically -- I
8 don't specifically recall, except somebody
9 from Sunbeam called me. I don't know whether
10 it was Mr. Dunlap or someone else.
11 Q. And about when was that after
12 Mr. Dunlap joined Sunbeam?
13 A. I honestly don't recall.
14 Q. What was your first -- what was your
15 first legal assignment for Sunbeam Corporation
16 after -- after you got a call?
17 A. I have to stop here and think about
18 privilege and discuss it with my lawyer.
19 Q. Let me ask the question a little
20 simpler. Maybe I can avoid it for you. If I
21 can't, Mr. Malloy --
22 A. I understand Sunbeam Corporation,
23 which is now called American Household, has
24 not waived the privilege.
25 Q. I'm not --

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1 A. Therefore, I have to respect
2 Sunbeam.
3 Q. I'm not trying to get into any of
4 these privileged conversations, at least at
5 this point.
6 And just, in general terms, what was
7 the first legal matter that you recall
8 addressing on behalf of Sunbeam Corporation,
9 without getting into specific communications
10 with the client?
11 MR. MALLOY: If you want to break
12 and talk about that, we can. Maybe we
13 should. Let's -- let's go off the
14 record.
15 (Discussion off the record.)
16 MR. BEMIS: Do we need the question
17 reread?
18 THE WITNESS: No.
19 MR. MALLOY: Sure.
20 MR. BEMIS: I need the question
21 reread, even if you remember it.
22 (Record read.)
23 MR. BEMIS: Would you, please, read
24 it back and show it repeated in the
25 transcript.

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1 (The following record was read:
2 "Q. I'm not trying to get into
3 any of these privileged conversations at
4 least at this point.
5 And just, in general terms, what was
6 the first legal matter that you recall
7 addressing on behalf of Sunbeam
8 Corporation, without getting into
9 specific communications with the
10 client?")
11 A. I was asked to look at a number of
12 possible acquisition candidates, without
13 naming names.
14 Q. And when did this occur?
15 A. I wouldn't put a time frame on it.
16 It was after he arrived in 1996. It could
17 have been late '96 or early '97 or sometime
18 thereafter. I just don't recall.
19 Q. Let me show you a document that has
20 been marked as Morgan Stanley Exhibit 109.
21 MR. BEMIS: We have a copy problem.
22 We don't have one copy. Is it possible,
23 Chris, we can take a short break and have
24 a copy of this made?
25 MR. MALLOY: Sure.

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1 (Recess taken.)
2 MR. BEMIS: Please mark Exhibit 109,
3 Ms. Reporter, and give it to the witness.
4 (Defendant's Exhibit 109, Skadden
5 chronology, marked for identification, as
6 of this date.)
7 Q. Mr. Fogg, do you have in front of
8 you Exhibit MS 109?
9 A. I have it in front of me.
10 Q. Have you --
11 MR. MALLOY: I instruct him not to
12 answer with his mouth full.
13 Q. Have you ever seen this document
14 before?
15 A. I don't remember.
16 Q. Did you assist at all in the -- in
17 the preparation of a chronology to the
18 Securities And Exchange Commission in the
19 spring of 1998 concerning certain matters
20 related to Sunbeam Corporation?
21 A. Apart from this document, I have no
22 independent recollection.
23 Q. Having reviewed the document, does
24 it, in any way, refresh your recollection of
25 whether you did have a part in the preparation

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1 of a chronology to the Securities And Exchange
2 Commission?
3 A. Doesn't really refresh my
4 recollection.
5 Q. Looking at the document, can you, if
6 you want to -- if you turn to -- I'm using the
7 page numbers which are Bates numbers on the
8 lower right-hand side. Looking at page CPH
9 1042291, will you tell me when you are there?
10 A. I'm there.
11 Q. There are entries -- there is an
12 entry in March or April of 1997. And do you
13 see that?
14 A. Yes.
15 Q. Would you, please, just read it to
16 yourself.
17 (Witness reading document.)
18 A. I did.
19 Q. Did you have -- did you participate
20 in any matters for Sunbeam relating to a
21 possible sale of Sunbeam as referred to in
22 that paragraph to the SEC?
23 MR. MARKOWSKI: Could you read the
24 question back for me, please.
25 (Record read.)

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1 MR. MARKOWSKI: Object to the form.
2 MR. MALLOY: Do you understand the
3 question?
4 THE WITNESS: Yes
5 A. The answer is I believe I did.
6 Q. Just, in general terms, what did you
7 do? What work -- withdrawn.
8 In general terms, what was your
9 participation?
10 A. I don't specifically recall, but I
11 do recall in this time frame Morgan
12 Stanley was retained by Sunbeam to explore,
13 among other things, the possibility of a sale
14 of Sunbeam.
15 Q. Did you have any -- withdrawn.
16 When you started working for
17 Sunbeam, as you've described for us, had you
18 had any discussions with Morgan Stanley about
19 Sunbeam's interest in a possible sale of the
20 company?
21 THE WITNESS: Could you read the
22 question back.
23 MR. BEMIS: It's all right. I don't
24 know if it's the noise or -- is the noise
25 bothering you?

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1 THE WITNESS: No.
2 MR. BEMIS: Okay. Sometimes it's
3 hard -- it is hard to hear.
4 (Record read.)
5 MR. BEMIS: Let me ask the question
6 again.
7 Q. Did you have any discussions with
8 Morgan Stanley at the same -- about the time
9 that you were working with Sunbeam in the
10 manner you've described about a possible sale
11 of Sunbeam?
12 MR. MARKOWSKI: Object to the form.
13 A. I participated in at least one
14 meeting where Morgan Stanley people and
15 Sunbeam people were present, and that
16 possibility was discussed.
17 Q. Was this meeting that you just
18 described your first face-to-face meeting with
19 Sunbeam -- Sunbeam and Morgan Stanley at which
20 a possible sale of Sunbeam was discussed?
21 A. Together?
22 Q. Yes.
23 A. I believe so.
24 Q. And where -- where was this meeting?
25 A. It was at -- it was at Sunbeam in

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1 Del Rey Beach, Florida.
2 Q. Who was present at the meeting?
3 A. Well, I remember Messrs. Dunlap,
4 Kersh and Fannin all being there for Sunbeam.
5 And the principal guy from Morgan Stanley was
6 Bill Strong. I don't remember who else.
7 Q. Did you know Bill Strong at that
8 time?
9 A. I knew Bill from before, yes.
10 Q. How long had you known Bill Strong?
11 A. I don't really remember. A number
12 of years. We worked on things together.
13 Q. At the time -- at the time of this
14 meeting in Del Rey Beach -- withdrawn.
15 Looking at the chronology that I put
16 in front of you that was on the Skadden
17 letterhead, MS 109, can you pinpoint the date
18 of the meeting or the month of the meeting?
19 A. I can't really pinpoint it.
20 MR. MARKOWSKI: Object to the form.
21 A. No.
22 Q. Were you -- withdrawn.
23 How long did this meeting last in
24 Del Rey Beach?
25 A. I recall being there the better part

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1 of the working day.
2 Q. Were there any other attorneys from
3 Skadden Arps, other than yourself at the
4 meeting?
5 A. Rich Easton was there.
6 Q. Was Mr. Easton, at the time of this
7 meeting, a partner at Skadden?
8 A. Yes.
9 Q. Other than the people you've
10 identified for us, Mr. Dunlap, Mr. Kersh and
11 Mr. Fannin for Sunbeam, Mr. Strong from Morgan
12 Stanley and yourself and Rich Easton, did
13 anyone else attend this meeting?
14 A. I think there were other people from
15 Morgan Stanley, but I don't remember who they
16 were exactly. I don't remember if anyone else
17 from Sunbeam was there. I kind of doubt it,
18 but I'm not sure.
19 Q. And you believe that the meeting
20 took the better part of a working day?
21 A. Yes. I remember starting in the
22 morning and we had lunch and it went on into
23 the afternoon.
24 Q. Were there documents used at the
25 meeting?

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1 A. I don't recall.
2 Q. Let me show you a document and ask
3 if either this document -- if this document
4 was used at the meeting.
5 MR. BEMIS: Ms. Reporter, could you
6 mark this document as MS 541.
7 (Defendant's Exhibit 541, Project
8 Laser Discussion Materials for September
9 11, 1997 conference call, marked for
10 identification, as of this date.)
11 THE WITNESS: What's the question?
12 Sorry.
13 Q. I think the question -- there was no
14 question pending.
15 I've handed you a document we've
16 marked as Morgan Stanley 541. Do you have
17 that in front of you?
18 A. I do. 541, I have it, yes.
19 Q. Have you seen that document before?
20 A. I don't remember.
21 Q. And in looking at this document,
22 does that, in any way, refresh your
23 recollection of whether you reviewed a
24 document at the time of your meeting in Del
25 Rey Beach, as you described it?

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1 A. No, it doesn't.
2 Q. Is any of the handwriting on this
3 document yours?
4 A. I haven't looked at every single
5 page, but the handwriting on the first page is
6 certainly not mine. I don't see my
7 handwriting on any of it.
8 Q. Okay. You can hand it back to me.
9 Did you -- let me show you another
10 document which we're going to mark as Morgan
11 Stanley Exhibit 543.
12 A. I would note this is a document
13 which purports to be for a conference call.
14 Somebody wrote the names of the participants
15 in the upper right and didn't include Skadden.
16 MR. BEMIS: Ms. Reporter, could you
17 mark that, please, ma'am.
18 (Defendant's Exhibit 543, Memorandum
19 dated 7/25/97, from Fannin to Strong,
20 marked for identification, as of this
21 date.)
22 Q. I've handed you what's been marked
23 as Exhibit 543. Do you have that in front of
24 you?
25 A. Um-hum.

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1 Q. Would you -- you have to answer yes
2 or no, just for writing down purposes.
3 Do you have it in front of you?
4 A. I have it, yes.
5 Q. Okay, sir --
6 A. Sorry.
7 Q. -- this meeting -- this document
8 refers to a possible meeting with you and
9 Mr. Easton in, it looks like, either July or
10 the early part of August of 1997.
11 Do you -- do you recall -- have you
12 ever seen this document before?
13 A. I don't recall.
14 Q. Does this, in any way, refresh your
15 recollection of when your first meeting was
16 with Sunbeam?
17 A. Actually, I think it does. The
18 reference to a July date brings back memories
19 of how hot and muggy it was when we had the
20 meeting. So, the summer would probably have
21 been the time frame when we had the meeting.
22 Q. Okay. So, the meeting you're
23 referring to is the meeting where Morgan
24 Stanley was present as you've identified,
25 correct?

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1 A. Yes.
2 Q. Now, with that time frame in mind,
3 July, perhaps, of 1997, could you tell us
4 what -- just the general subject matter of the
5 meeting that took the better part of a working
6 day?
7 A. The general subject matter was
8 reviewing the strategic alternatives available
9 to Sunbeam.
10 Q. How did the meeting progress, that
11 is, you know, how did it start and what was
12 the general manner in which the business was
13 discussed throughout the day?
14 A. Let me just ask my counsel something
15 about a privilege.
16 (Discussion off the record.)
17 MR. MALLOY: I think we would
18 consider that to be a privileged
19 conversation to the extent it involved
20 communications related to legal advice.
21 So --
22 MR. BEMIS: Morgan Stanley was at
23 the meeting.
24 MR. MALLOY: Yes, they were acting
25 as Sunbeam's financial advisors, which

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1 doesn't break the privilege. I'm sure
2 Morgan Stanley takes that position as
3 well.
4 But, subject to that, I think the
5 witness can testify generally about what
6 occurred at the meeting, but not as to
7 the specific conversations that he was
8 involved in, if he recalls any.
9 MR. BEMIS: So, you're going to take
10 the position in this deposition that, if
11 he had a conversation with Morgan Stanley
12 where Morgan Stanley was present --
13 MR. MALLOY: Depends on the nature
14 of the conversation.
15 MR. BEMIS: We're not going to go
16 forward with the deposition if that's the
17 position you're going to take.
18 MR. MALLOY: And the capacity in
19 which Morgan Stanley was serving at the
20 time.
21 MR. BEMIS: Well, let's just get a
22 clear record. You're going to instruct
23 the witness not to answer --
24 MR. MALLOY: It depends on what the
25 question and what his -- and what is it

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1 that would be the subject of his
2 testimony.
3 MR. BEMIS: What was the last
4 question that was pending, ma'am, before
5 we hit the point of an objection?
6 MR. MALLOY: My point is, to the
7 extent Morgan Stanley was present when
8 communications between Sunbeam and
9 Mr. Fogg occurred, we don't believe that
10 that would break the privilege. And I
11 think that's fairly elementary.
12 MR. BEMIS: What was the question
13 that was pending, ma'am?
14 (Record read.)
15 MR. BEMIS: Let me ask -- let me ask
16 a fresh question so we can get an
17 objection if we're going to get one.
18 Q. First of all, did Morgan Stanley --
19 did Morgan Stanley speak at the meeting?
20 A. Yes.
21 Q. Did you speak at the meeting?
22 A. Yes.
23 Q. Did Mr. Dunlap speak at the meeting?
24 A. Yes.
25 Q. How did the meeting begin?

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1 A. I don't recall specifically how it
2 began.
3 Q. Now, by that I don't mean
4 pleasantries. I mean, generally, how did the
5 meeting by topic, if you will, begin?
6 A. As I said before, it was a meeting
7 to discuss strategic alternatives. I don't
8 know what particular alternative was discussed
9 first, second or third. But the whole range
10 of alternatives was discussed from the sale of
11 the company to buying another company,
12 et cetera. And it was a -- I'm probably
13 volunteering, it was sort of a free-for-all
14 discussion. It wasn't a formal Morgan Stanley
15 presentation of a book and slide show and
16 everything. It was -- we were sitting around
17 a conference room table just brainstorming.
18 Q. And was there one strategic
19 alternative as opposed to another that
20 predominated the conversation during the
21 working day?
22 A. I don't -- I don't recall. I
23 believe it was Sunbeam management's preference
24 to see if they could find a buyer for the
25 company. That had been Mr. Dunlap's modus

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1 operandi before.
2 Q. What do you mean by that had been
3 his modus operandi before?
4 A. Well, at Scott Paper he came in,
5 sold off chunks, fired people, got the stock
6 price up and then sold it to Kimberly-Clark.
7 I don't think it was any secret that's what he
8 was hoping to do with Sunbeam.
9 MR. BEMIS: Could you read his
10 answer back. I'm sorry. You trailed off
11 a little bit.
12 (Record read.)
13 Q. Did he say that at the meeting?
14 A. I don't remember.
15 Q. Did it -- was there any discussion
16 of buying companies at the meeting?
17 A. There was a discussion of buying
18 companies. I don't know if it was this
19 meeting or a different meeting. I just don't
20 recall.
21 Q. Did Mr. Dunlap say anything about
22 buying other companies?
23 A. I'm sure he did. But I don't have a
24 recollection, sitting here today, what he
25 said.

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1 Q. Did you --
2 A. If I did, I probably wouldn't be
3 able to tell you because it's privileged.
4 Q. Did Mr. Strong say anything at the
5 meeting?
6 A. Oh, I'm sure he did, yes, but I
7 don't recall -- I don't recall who said what,
8 really.
9 Q. So, with regard to anyone --
10 withdrawn.
11 With regard to other Morgan Stanley
12 people who you believe were there, do you
13 recall anything that they said?
14 A. No, not really.
15 Q. And do you recall anything that you
16 or Mr. Easton said?
17 A. No, I don't really recall exactly
18 what we said.
19 Q. Do you recall any of the general
20 substance of what you said without --
21 recognizing that you might not remember your
22 exact words.
23 A. I really don't. I really don't.
24 Q. How was the meeting -- how was --
25 strike that.

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1 As I understand your testimony,
2 there wasn't a booklet of materials, for
3 example, that you recall being handed out?
4 A. There may have been, but I don't
5 recall.
6 Q. And do you recall overhead slides
7 being discussed?
8 A. I recall they were not used.
9 Q. So, this was -- was this more of a
10 working session, as you put it, I think
11 earlier?
12 A. Brainstorming.
13 Q. Brainstorming session?
14 A. Yes.
15 Q. There was no written formal agenda --
16 well, strike that.
17 Was there a written formal agenda,
18 that you recall?
19 A. Not that I recall.
20 Q. How was the meeting left at the end
21 of the working day?
22 A. I don't really remember.
23 Q. I take it that you and Mr. Easton
24 did fly back to New York after the meeting was
25 over?

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1 A. I flew back to New York. I don't
2 know where Rich went. He works in our
3 Delaware office. I don't remember if he flew
4 back with me or somewhere -- or with somebody
5 else.
6 Q. What's the next thing that you
7 recall happening after this first meeting
8 which -- with Sunbeam and Morgan Stanley that
9 you've placed in July of 1997 or thereabouts?
10 MR. MARKOWSKI: Object to the form.
11 A. I mean, the next specific
12 recollection I have was a call I received from
13 Mr. Fannin, general counsel of Sunbeam,
14 sometime in late 1997, but I know there were a
15 lot of stuff happened between July and
16 December that I don't specifically recall.
17 Q. And just, in general -- withdrawn.
18 You said you got a phone call from
19 Mr. Fannin?
20 A. Yes.
21 Q. And when did you say that was, late
22 December?
23 A. I said it was late 1997, probably in
24 December.
25 Q. And what was the subject matter of

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1 the phone call, without telling me exactly
2 what Mr. Fannin said or you said in the call,
3 just the subject matter?
4 MR. MALLOY: Generally.
5 A. Generally? How general -- excuse
6 me. I don't know what my counsel means by
7 generally.
8 MR. MALLOY: Then let's --
9 THE WITNESS: I need to talk about
10 privilege again.
11 MR. BEMIS: Okay.
12 (Discussion off the record.)
13 MR. BEMIS: Okay. Can you answer
14 the question?
15 A. Mr. Fannin called me to say that
16 Sunbeam was thinking of acquiring Coleman.
17 And that was the subject of the call.
18 Q. Were you asked to do anything?
19 A. Yes.
20 Q. What were you asked to do?
21 A. Well, Mr. Fannin knew that we had
22 represented MacAndrews & Forbes, which owned
23 Coleman. And he wanted to make sure that we
24 could represent Sunbeam in the transaction, so
25 we talked about getting a waiver from

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1 MacAndrews & Forbes.
2 Q. Now, at the time that you had this
3 first meeting in Del Rey Beach that you
4 described earlier where Morgan Stanley was
5 present, I think the brainstorming meeting,
6 did Skadden represent MacAndrews & Forbes?
7 A. We've represented them for some
8 time, yes.
9 Q. To your --
10 A. To my knowledge, we represented them
11 before that meeting and after that meeting.
12 Q. To your knowledge, does Skadden
13 still represent MacAndrews & Forbes?
14 A. Yes.
15 Q. Are they presently a client of the
16 firm?
17 A. Yes.
18 (Mr. Schwartz entered the deposition
19 room.)
20 Q. All right. Did you proceed, then,
21 to get -- to get a waiver?
22 A. Yes.
23 Q. Who did that?
24 A. I called my partner, Frank Gittis,
25 who is the partner who interacts most directly

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1 with MacAndrews & Forbes, and we talked about
2 it. And he said he would speak to them and
3 see if they had a problem.
4 Q. Did you eventually obtain a waiver?
5 A. Frank said he obtained their
6 approval, but he didn't put anything in
7 writing.
8 Q. All right. Using the December 1997
9 benchmark that you've just given us and then
10 going back to the July brainstorming meeting,
11 what, if any, involvement did you have with
12 Sunbeam and potential strategic alternatives
13 during that time period?
14 A. I don't have a specific recollection
15 of much, except my partner Rich Easton and I
16 looked at several potential acquisition
17 candidates, without naming names, and rendered
18 advice with respect to that.
19 Q. Was this Black & Decker and Maytag
20 that you testified to earlier in your earlier
21 deposition?
22 THE WITNESS: Can I answer that
23 question?
24 MR. MALLOY: Yes, you can.
25 A. Yes.

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1 Q. Did you have any communications with
2 Morgan Stanley between the date of the
3 brainstorming meeting which you placed in July
4 of 1997 up to the date that Mr. Fannin called
5 you in December of 1997?
6 A. I'm certain that I did, but I don't
7 recall when or the substance of them.
8 Q. Do you recall during that same time
9 period receiving any documents from Morgan
10 Stanley?
11 A. Sitting here today, I don't recall.
12 Q. Do you recall anything at all
13 unusual or out of the ordinary that, in
14 your -- in that time period that involves
15 Morgan Stanley?
16 A. Not really.
17 MR. MALLOY: I'm just wondering if
18 there's a way to move this along. You
19 seem to be rehashing a lot of what he's
20 already testified to.
21 MR. BEMIS: Well, if I thought there
22 was a way to just use his other
23 deposition in the other proceeding, that
24 might have been an option, but I'm not
25 sure how we would do that.

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1 Would you, please, mark this,
2 Ms. Reporter -- excuse me -- this has
3 been previously marked.
4 Q. Let me show you what's been marked
5 as Morgan Stanley Exhibit 82. Excuse me. I
6 misspoke. It's CPH Exhibit 82.
7 MR. MARKOWSKI: Do you have a copy
8 of that for us, Mr. Bemis?
9 MR. BEMIS: After you see that,
10 Mr. Markowski, can I have it back. I
11 only have three of these big ones. It's
12 one of your exhibits. You probably have
13 it in your box.
14 MR. MARKOWSKI: I don't have it
15 memorized.
16 MR. BEMIS: I don't have it
17 memorized either. But I assume you have
18 it in one of your boxes. If you don't,
19 I'll give you another copy.
20 Q. Do you have a copy of CPH Exhibit 82
21 in front of you?
22 A. Yes.
23 Q. Have you ever seen that document
24 before?
25 A. I don't remember.

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1 Q. There's a cover memorandum right
2 behind page 1.
3 A. I see it.
4 Q. Page --
5 A. I'm cc'd on it.
6 Q. Yes, you are, sir.
7 Let me put the page number on the
8 record so it's clear. CPH 0469478. And, yes,
9 you are cc'd.
10 Does -- and after having reviewed
11 the document, do you remember any portion of
12 the document?
13 A. How long is the document?
14 MR. MALLOY: Do you want him to flip
15 through every page, or is there specific
16 issues you want to direct his attention
17 to?
18 MR. BEMIS: I want to have him just
19 take a general review of the document to
20 see if it, in any way, is going to
21 refresh his recollection about whether he
22 participated in any of the information
23 inside of the document.
24 Q. Just let me know when you're done.
25 A. You've asked a question that forces

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1 me to look at every page.
2 Q. Okay. Well, let me withdraw the
3 pending question and let me see if we can move
4 it along for you.
5 Having looked -- having looked at
6 the document and whatever pages you flipped
7 through, does it, in any way -- did you have,
8 at any point, a role in preparing what is
9 referred to as an information memorandum?
10 MR. MARKOWSKI: Object to the form.
11 A. I don't recall.
12 Q. In the period between -- in the
13 period between this July 1997 meeting, the
14 brainstorming meeting and the time Mr. Fannin
15 called you in late 1997, did you receive
16 anything from either Sunbeam or Morgan Stanley
17 in the nature of an information memorandum
18 such as you have in front of you, CPH 82?
19 A. I don't specifically recall.
20 Probably, it's possible. I don't --
21 Q. Have you seen documents like this
22 before in the course of --
23 A. Many.
24 Q. -- mergers --
25 A. Many.

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1 Q. What are they called?
2 A. Various things. Selling memorandum,
3 whatever. That's what this appears to be. I
4 do not recall right here today whether I
5 participated in this preparation or whether --
6 if I saw it.
7 Q. Is it customary, based on your many
8 years of experience, to have something in the
9 nature of a selling memorandum when a company
10 is considering a strategic alternative or
11 option of selling the company?
12 A. Yes.
13 Q. Is it, likewise, similar to have an
14 information memorandum in the nature of CPH 82
15 if the company is interested in making an
16 acquisition?
17 A. Not really.
18 Q. You can hand that back to me. All
19 the way up -- withdrawn.
20 I'd like you now to move toward to
21 the end of 1997 around the time of
22 Mr. Fannin's telephone call.
23 Did Skadden Arps put together an
24 internal team to work on a possible
25 acquisition by Sunbeam of Coleman?

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1 MR. MARKOWSKI: Could you read the
2 question back, please.
3 (Record read.)
4 A. I don't recall whether we did so at
5 that time, because I was informed pretty soon
6 thereafter that the deal was dead.
7 Q. Who told you the deal was dead?
8 A. Mr. Fannin.
9 Q. Was this in a face-to-face
10 conversation or a telephone call?
11 A. No, he called me.
12 Q. And do you recall this being before
13 the -- before year-end 1997?
14 A. Yes.
15 Q. What did Mr. Fannin say to you
16 about -- and what did you say about the deal
17 being dead?
18 MR. MALLOY: Are you asking him to
19 disclose this conversation with Sunbeam's
20 general counsel?
21 MR. BEMIS: Well, he just said that
22 Mr. Fannin said the deal was dead. I'm
23 just asking what he said about the deal
24 was dead. I'm not asking him for legal
25 advice. At this point, it seems like a

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1 fact statement that he's already
2 disclosed.
3 (Discussion off the record.)
4 A. He told me that the principals had
5 met and they could not reach a meeting of the
6 minds on price, and they had parted company.
7 Q. Was -- strike that.
8 Did he identify who the principals
9 were?
10 A. Yes.
11 Q. Who?
12 A. It was Mr. Dunlap, and I'm not sure
13 if anyone else was there from Sunbeam. I
14 think, probably, Kersh and Fannin were there,
15 but I couldn't swear to it. And Mr. Perelman
16 from MacAndrews, Mr. Goudis from MacAndrews.
17 I'm not sure if anyone else was there from
18 MacAndrews. But those were the principal
19 people.
20 Q. Did you ever talk to anyone at
21 MacAndrews & Forbes about this meeting?
22 A. Ever?
23 Q. Yes, ever.
24 A. Yes.
25 Q. Who?

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1 A. I remember talking to Howard Goudis
2 about it.
3 Q. When did you speak to Howard Goudis?
4 A. Much later, after -- much later,
5 after Sunbeam had acquired Coleman, after
6 Mr. Dunlap had been removed from his position,
7 after the events that thereafter unwound.
8 Q. Did Mr. Fannin tell you anything
9 else about the meeting that -- other than what
10 you have told me?
11 A. I think he told me Michael Price was
12 there. I'm not sure.
13 Q. Did he tell you -- did he tell you
14 anything else about the meeting? And, again,
15 now I'm referring to the meeting with
16 Mr. Perelman and Mr. Goudis.
17 A. I think he told me the meeting was
18 quite heated.
19 Q. What did he say about that?
20 A. I don't remember.
21 Q. What did you say to Mr. Fannin?
22 A. I said, okay, too bad, I think.
23 Q. Anything else that you recall?
24 A. No.
25 Q. Did you exchange any documents or

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1 correspondence about the meeting that
2 Mr. Fannin was describing for you?
3 A. Not that I recall.
4 Q. And you said some time later,
5 Mr. Goudis, he gave you some information about
6 this meeting between Mr. Dunlap and
7 Mr. Perelman, correct?
8 A. Yes.
9 Q. What did he tell you?
10 THE WITNESS: This is not
11 privileged, right?
12 A. He told me he was afraid Mr. Dunlap
13 was going to have a heart attack. He got so
14 angry and incensed at Mr. Perelman's suggested
15 purchase price. Then he said that he had told
16 Al to calm down. This is, you know, something
17 you shouldn't get this excited about.
18 Q. Anything else?
19 A. No.
20 Q. What did you say?
21 A. I pretty much listened. I didn't
22 say much of anything, that I recall.
23 Q. Now, in the -- this conversation
24 that you had with Mr. Goudis, this was in
25 reference to the Sunbeam offer to purchase

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1 Coleman, correct?
2 A. Yes.
3 Q. And it was in connection with,
4 indeed, the transaction that Mr. Fannin had
5 called you about earlier, correct?
6 A. Yes, it was about the meeting that
7 he told me had taken place where the parties
8 couldn't come to a meeting of the minds.
9 Q. Did you -- withdrawn.
10 Up to the time of the meeting with
11 Mr. Perelman -- if it helps you, it was
12 December 18, 1997, based on prior testimony --
13 had you participated in the preparation of any
14 term sheets for a transaction between Sunbeam
15 and Coleman?
16 A. Not that I recall.
17 Q. Had you reviewed any, even if you
18 didn't participate in their preparation?
19 A. I don't remember.
20 Q. At the time -- withdrawn.
21 At the end of the year, that is
22 1997 -- withdrawn.
23 Have you ever heard the term data
24 room?
25 A. Have I what?

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1 Q. Heard the term data room?
2 A. Certainly.
3 Q. What is -- tell the jury what a data
4 room is.
5 MR. MARKOWSKI: Object to the form.
6 A. A data room is a -- used to be a
7 physical location in a lawyer's office or an
8 accountant's office for a company seeking to
9 be acquired, they would deposit non-public
10 information about itself to be inspected by
11 potential buyers under -- usually under a
12 confidentiality agreement.
13 Now there are such things as
14 electronic data rooms, but that's not what
15 we're talking about in those days.
16 Q. Had a data room been set up by
17 Sunbeam, to your knowledge, by year-end 1997?
18 A. I have no idea.
19 Q. Was a data room set up at some
20 point?
21 A. I don't remember. By Sunbeam, I
22 don't remember.
23 Q. I'm going to hand you what's
24 previously been marked as Morgan Stanley
25 Exhibit 418. Do you have that exhibit in

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1 front of you, sir.
2 A. Um-hum, yes.
3 Q. Have you ever seen it before?
4 A. I don't remember it.
5 Q. Did you have any role in drafting
6 any press releases -- withdrawn.
7 Did you have a role in drafting this
8 draft of a press release?
9 A. I don't remember.
10 Q. Okay. Can you hand it back.
11 After the deal was announced dead by
12 Mr. Fannin in late December, I think you said,
13 1997, did you discuss that fact with
14 Mr. Dunlap at any point?
15 A. I don't believe I did.
16 Q. What's the next thing that -- well,
17 withdrawn.
18 There comes a point in time when the
19 deal is no longer dead, right?
20 A. Yes.
21 Q. When did you first have knowledge
22 that discussions were, at least, resuming
23 between the parties?
24 A. I believe it was sometime in early
25 1998, but I couldn't pinpoint it.

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1 Q. Now, and what were the circumstances
2 under which you learned the discussions were
3 on again?
4 A. I don't remember who called to let
5 me know. I just don't --
6 Q. What was your next involvement in
7 the Sunbeam/Coleman transaction?
8 A. Well, I know that I got Rich Easton
9 involved and he, in turn, got Allison Amorison
10 involved, both from our Delaware office. I
11 had not previously worked with Allison. I
12 know we looked at a lot of public documents
13 about Coleman, analyzed its indebtedness, did
14 that kind of analysis. I don't recall all of
15 the specifics of that.
16 MR. MALLOY: I don't think he's
17 asking you for the specifics of the work
18 that was performed.
19 A. Well, Skadden did that work and I
20 was involved in it and so was Rich Easton and
21 so was Allison. There was -- agreements were
22 drafted pursuant to which the acquisition
23 would be made, negotiated.
24 Q. Before the agreements were drafted,
25 did you have any role in the drafting of the

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1 confidentiality agreements between the
2 parties?
3 MR. MARKOWSKI: Object to the form.
4 A. I don't remember.
5 Q. Let me show you -- strike that.
6 You did participate in the drafting
7 of the merger agreements, correct?
8 A. In the negotiations, I did
9 participate. I'm not sure if I put pen to
10 paper or not.
11 Q. Did you read them before they were
12 signed?
13 A. Yes.
14 Q. Did you read them carefully?
15 A. Yes.
16 Q. Let me show you -- let me show you
17 first an exhibit which has previously --
18 (Discussion off the record.)
19 (Recess taken.)
20 Q. I'm going to hand you what's been
21 marked as Morgan Stanley Exhibit 93 in
22 previous depositions. I only have two clean
23 copies of this, so I'm sorry but that's all I
24 have. Mr. Markowski may have a copy in his
25 box, I don't know.

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1 MR. MARKOWSKI: We'll share.
2 MR. BEMIS: Or you can share, if you
3 could. I don't have many questions on
4 it.
5 Q. Do you have the Exhibit MS 93 in
6 front of you?
7 A. I do.
8 Q. Did you look at -- strike that.
9 When was the last time you looked at
10 this agreement?
11 A. I looked at it very briefly
12 yesterday.
13 Q. Okay. And you did that in
14 preparation for your deposition?
15 A. Yes.
16 Q. Morgan Stanley Exhibit 93 is one of
17 the two mergers agreements that were part of
18 the Coleman/Sunbeam transaction, correct?
19 A. Yes, there were two.
20 Q. And this is one of the documents
21 that you reviewed carefully before they were
22 executed by the parties, correct?
23 MR. MARKOWSKI: Object to the form.
24 A. Yes.
25 Q. Look at, if you would, page 18 and

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1 19. And I'm going to address your attention
2 briefly to section 6.7.
3 A. 18 and --
4 Q. Pages 18 and 19, section 6.7 --
5 A. Yes.
6 Q. -- is entitled, "access to
7 information, confidentiality."
8 A. Yes.
9 Q. Do you see that?
10 A. Yes.
11 Q. At the end of that section, there's
12 reference to two confidentiality agreements.
13 Tell me when you are there.
14 A. Yes.
15 Q. Did you -- do you see the reference
16 to the agreements dated February 4, 1998 and
17 February 23, 1998?
18 A. I see the reference.
19 Q. Did you have any participation in
20 the drafting of those agreements as referenced
21 in section 6.7?
22 MR. MARKOWSKI: Object to the form.
23 A. The confidentiality agreements?
24 Q. Yes, sir.
25 A. I don't remember.

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1 Q. At the time that you reviewed the
2 merger agreement, MS 93, that you have in
3 front of you, did you take any steps to verify
4 that these two agreements as identified in
5 section 6.7 had been executed by the parties?
6 A. I don't recall.
7 Q. What would be the normal practice?
8 MR. MARKOWSKI: Object to the form.
9 A. The normal practice?
10 Q. Yes, sir.
11 A. I'm not sure I know what you mean.
12 Q. Well, as counsel for one of the
13 parties, you were reviewing, as an attorney,
14 the documents here, the merger document,
15 you're reading it carefully. What would be
16 your normal practice to determine, for
17 example, whether the agreements referred to
18 had, indeed, been executed?
19 MR. MARKOWSKI: Object to the form.
20 A. My normal practice?
21 Q. Your normal practice, right, sir
22 MR. MARKOWSKI: Same objection.
23 A. Not the normal practice?
24 Q. We'll start with your normal
25 practice.

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1 MR. MARKOWSKI: Excuse me. Same
2 objection.
3 A. My normal practice would be to
4 assume that they had been executed and that
5 someone had made sure of that.
6 Q. And when you say someone had made
7 sure of that, that would be someone on the
8 Skadden team representing Sunbeam?
9 MR. MARKOWSKI: Object to the form.
10 A. Someone on the Sunbeam team. Could
11 be Skadden, could be Fannin, could be somebody
12 working for the company. But somebody had
13 made sure they were executed.
14 Q. Have you ever -- withdrawn.
15 Have you ever been told by anyone
16 that either of the two agreements, that is,
17 the February 4th or the February 23rd, 1998
18 confidentiality agreements referenced in 6.7,
19 were not executed by the parties?
20 MR. MARKOWSKI: Object to the form.
21 A. Not in a non-privileged setting.
22 Q. Were you -- were you told something
23 in a privileged setting?
24 MR. MALLOY: You're not asking him
25 to --

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1 MR. BEMIS: Yes or no.
2 MR. MALLOY: You're not asking him
3 to discuss what was --
4 MR. BEMIS: No.
5 MR. MALLOY: -- discussed in his
6 prep sessions. So, excluding that.
7 MR. BEMIS: Well, you may have
8 answered the question, then. That makes
9 it --
10 Q. Can you answer my question? Were
11 you told in a privileged setting, just yes or
12 no?
13 A. Told what?
14 Q. Whether there was any evidence --
15 whether these agreements had or had not been
16 signed.
17 MR. MARKOWSKI: Object to the form.
18 MR. MALLOY: Yes or no?
19 THE WITNESS: Could I have the
20 question read back.
21 MR. BEMIS: Fair enough.
22 (Record read.)
23 Q. Have you been told, in what you
24 referred to as a privileged setting, whether
25 there was any information to the effect that

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1 the confidentiality agreements, either one of
2 them, had been signed?
3 A. Yes.
4 Q. And when was this?
5 A. Recently.
6 Q. Recently during a session with your
7 attorneys in preparing for the deposition?
8 A. Yes.
9 MR. MALLOY: Now, I assume going
10 forward you're not going to -- you can --
11 the witness can understand that nothing
12 that you're asking is asking questions
13 about what he learned or discussed
14 yesterday. So, we can --
15 MR. BEMIS: I'm not asking anything
16 about what he --
17 MR. MALLOY: For your purposes, you
18 can get a cleaner record and we don't
19 have these sort of digressions.
20 MR. BEMIS: I'm not asking about any
21 conversation with you.
22 THE WITNESS: Okay.
23 MR. BEMIS: And I have not tried to
24 do that.
25 MR. MALLOY: You can exclude those

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1 altogether from your --
2 THE WITNESS: Expunge them from my
3 memory, yes.
4 Q. Let me show you Exhibit 117. And,
5 again, I apologize but I only have two clean
6 copies of that one as well.
7 Do you have Exhibit MS 117 in front
8 of you?
9 A. I do.
10 Q. Is this one of the two merger
11 agreements that you reviewed as part of the
12 Sunbeam/Coleman transaction?
13 A. It appears to be, yes.
14 Q. And did you review it in the same
15 degree of detail that you reviewed
16 Exhibit MS 93?
17 A. I would have reviewed them both the
18 same -- the same degree of detail.
19 Q. If you would turn to page 29,
20 section 7.2.
21 A. I'm there.
22 Q. All right. In that section, sir,
23 there is, again, a reference to the two
24 confidentiality agreements dated February 4,
25 1989 and February 23, 1998. Do you see that?

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1 A. I do.
2 Q. Do you understand that the
3 confidentiality agreements that is referenced
4 in section 7.2 of this exhibit, MS 117, are
5 the same confidentiality agreements referred
6 to in MS 93, what we discussed just a moment
7 ago?
8 MR. MARKOWSKI: Object to the form.
9 A. I have no understanding of that
10 issue, except that the documents speak for
11 themselves and say they are the same.
12 Q. Well, did anyone come to your
13 attention in your review of the merger
14 agreements, and in particular here MS 117, to
15 suggest that the documents are different, that
16 is, it's a confidentiality -- that's a
17 terrible question. Let me withdraw it and try
18 again.
19 In your review of the merger
20 agreements, MS 117, did anything come to your
21 attention that the confidentiality agreements
22 referenced in section 7.2 were different from
23 those referenced in Exhibit MS 93?
24 MR. MARKOWSKI: Object to the form.
25 A. No.

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1 Q. You can hand that back to me.
2 You said in your practice you
3 assumed that someone would have checked to
4 determine whether the confidentiality
5 agreements had been executed; is that correct?
6 MR. MARKOWSKI: Object to the form.
7 A. I don't think that's exactly what I
8 did say.
9 Q. Then tell me exactly what you did
10 say, because I don't want to misstate what you
11 said.
12 A. I said it was my practice to assume
13 that -- assume that somebody else did.
14 Q. Was there a person on the Skadden
15 team that -- in particular that you would
16 identify as being the person, if it was a
17 person at Skadden, who would have seen these
18 documents were executed?
19 MR. MARKOWSKI: Object to the form.
20 A. I don't -- I don't know. I don't
21 believe so. I just don't know. I don't
22 recall.
23 MR. BEMIS: Please mark the
24 following document as Morgan Stanley
25 Exhibit 533.

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1 MR. MALLOY: I think Mr. Fogg has a
2 clarification to his answer to the last
3 question.
4 Q. Okay.
5 A. Well, the clarification --
6 Q. Please.
7 A. The clarification is simply that
8 confidentiality agreements have become so
9 standardized that it is not infrequently the
10 practice to have the company or the company's
11 in-house attorneys or even the investment
12 bankers deal and write the confidentiality
13 agreements without outside lawyers like
14 Skadden Arps even being involved.
15 Q. Not even being notified?
16 A. Right.
17 Q. Okay. Please look at Morgan Stanley
18 Exhibit 533, which the court reporter is
19 marking now
20 (Defendant's Exhibit 533, Letter
21 dated 2/3/98, from Fannin to Shapiro,
22 marked for identification, as of this
23 date.)
24 A. Um-hum. I have it in front of me.
25 Q. Thank you, sir.

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1 Did you receive a copy of this -- of
2 this letter from Mr. Shapiro dated February 3,
3 1998 from Mr. Fannin?
4 MR. MARKOWSKI: Excuse me.
5 THE WITNESS: Sorry.
6 MR. MARKOWSKI: I think you
7 misspoke, Mr. Bemis.
8 MR. BEMIS: What was the question?
9 (Record read.)
10 MR. BEMIS: I did misspeak. Thank
11 you.
12 Q. Did you receive a copy of this
13 letter from Mr. Fannin dated February 3, 1998
14 to Mr. Shapiro, the executive vice president
15 general counsel of the Coleman company?
16 MR. MARKOWSKI: Object to the form.
17 A. It's indicated that a copy was sent
18 to me. I'm listed as a cc.
19 Q. Other than that, do you --
20 A. Apart from a reference, I have no
21 recollection.
22 Q. Okay. You may hand it back to me.
23 Having looked at Morgan Stanley
24 Exhibit 533, does it, in any way, refresh your
25 recollection whether you had any involvement

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1 at all with the drafting of the
2 confidentiality agreements?
3 A. The substance of that document
4 suggests that I did not.
5 Q. Does the substance of that document
6 suggest that you, at least, saw one or more of
7 the confidentiality agreements?
8 A. Yes.
9 Q. As you sit here today, do you have
10 any independent recollection of seeing any of
11 the confidentiality agreements referenced in
12 the merger agreements, MS 117 and 93? Let me
13 finish. Go ahead.
14 A. I have no independent recollection.
15 Q. You mentioned in your -- in a prior
16 answer that it was customary to have
17 confidentiality agreements. Did I hear you
18 correctly?
19 A. It was -- it is and was customary.
20 Q. So, it was customary in 1998?
21 MR. MARKOWSKI: Object to the form.
22 A. In this kind of transaction?
23 Q. Yes.
24 A. Absolutely, yes.
25 Q. Why is it absolutely, yes, customary

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1 in transactions such as the Coleman/Sunbeam
2 merger?
3 A. Because each party wants to find out
4 everything they can about the other party.
5 Sunbeam, because it's acquiring Coleman.
6 Coleman, because it's taking part of the
7 purchase price in Sunbeam's stock. The only
8 way to find out information is to get the
9 company to turn over all its information to
10 you, and the only way the company will do that
11 is if you agree to keep it confidential.
12 Q. In the -- at any time either --
13 strike that.
14 At any time either before the
15 execution of the merger agreements or
16 thereafter, other than a conversation with
17 your attorney, did you ever come to -- come to
18 hear from any source that either party, that
19 is, either the Sunbeam side of the transaction
20 or the MacAndrews & Forbes side of the
21 transaction, had refused to execute
22 confidentiality agreements?
23 A. No, I did not.
24 MR. MARKOWSKI: Could you read that
25 back for me, please.

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1 (Record read.)
2 MR. MARKOWSKI: I object to the
3 form.
4 A. No, I did not.
5 Q. Did you review drafts of the merger
6 agreements as they were being prepared by the
7 parties' attorneys? Let me rephrase the
8 question.
9 We've looked at two of the merger
10 agreements, MS 93 and MS 117. Did these
11 documents go through drafts?
12 A. Certainly.
13 Q. And that's customary, correct?
14 A. Customary, yes.
15 Q. Did you review -- did you review
16 drafts of the documents -- withdrawn.
17 Did you review drafts of the merger
18 agreements as they were being negotiated,
19 drafted and circulated?
20 A. I believe so.
21 Q. Do you ever remember a -- withdrawn.
22 At the closing of the merger
23 transactions which took place on March 30,
24 1998, was there someone at your firm, at
25 Skadden, that was responsible for a closing

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1 checklist, if you will, of the documents that
2 needed to be executed as part of the
3 transaction?
4 A. It would have been normal practice
5 to do a closing checklist, but I don't recall
6 anything about it in this case.
7 Q. Do you -- withdrawn.
8 Was there a person at Skadden on the
9 Sunbeam -- representing the Sunbeam side of
10 the transaction that was responsible for a
11 closing checklist?
12 A. Same answer, I don't -- I don't
13 really recall.
14 Q. Did you have anything to do with the
15 actual closing of the transaction itself?
16 A. I don't remember if I was even
17 there. I just don't remember.
18 Q. Let me show you what's been marked
19 as Morgan Stanley Exhibit 344. Do you have
20 that in front of you, sir?
21 A. I do.
22 Q. One of the attorneys that you
23 mentioned earlier was Allison Amorison,
24 correct?
25 A. Amorison.

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1 Q. Amorison. I apologize for
2 mispronouncing her name.
3 She -- am I correct that she worked
4 with Mr. Easton on the -- on the transaction?
5 A. Correct.
6 Q. She also worked with you?
7 A. Correct.
8 Q. And now, this document which has
9 been identified in another deposition as a --
10 is a closing checklist -- as a checklist by
11 title. Do you see that on page 2?
12 A. Yes.
13 Q. Is this -- is the type -- withdrawn.
14 Does this, in any way, refresh your
15 recollection whether there was a closing
16 checklist prepared by Skadden with regard to
17 the closing of one or -- the first merger
18 transaction, which is MS 93?
19 A. Independent of this document, even
20 after reviewing it, I do not recall anything
21 about a closing checklist. This document
22 would seem to indicate on its face that
23 Wachtell Lipton did the closing list and not
24 Skadden.
25 Q. Or Wachtell had a closing checklist,

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1 not -- is there anything on the face of the
2 document that -- strike that -- there -- that
3 this is the only closing checklist?
4 MR. MARKOWSKI: Object to the form.
5 A. I don't -- I don't know. I just
6 don't know.
7 Q. In your practice, sir, in a
8 transaction such as this Coleman/Sunbeam
9 transaction and a closing on one of the merger
10 agreements, in this case MS 93, would it be
11 customary for the two principal law firms to
12 have just a single closing checklist?
13 A. Yes, it would be customary for there
14 to be an agreed closing checklist. One of
15 them, yes, one.
16 Q. Is it customary for one of the firms
17 to be assigned the task of preparing the
18 closing checklist?
19 A. One of the firms has to draft it and
20 the other one comments on it and, hopefully,
21 they reach an agreement.
22 MR. BEMIS: We need to take a short
23 break so the reporter can change the
24 cable on her computer.
25 (Recess taken.)

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1 Q. Am I correct, sir, that, as you sit
2 here today, you do not recall attending the
3 actual closing of the first merger agreement,
4 MS 93; is that correct?
5 A. I don't recall.
6 Q. All right. Up to the time -- I want
7 you to focus now on the period before
8 February 28th, 1998, which is the date the
9 merger agreements were signed, MS 93 and 117.
10 Are you with me time period-wise?
11 A. Yes.
12 Q. All right. Can you tell me --
13 withdrawn.
14 In the time period up to
15 February 28, 1998, are you aware of any due
16 diligence of Sunbeam that was done by Coleman
17 or MacAndrews & Forbes-related companies?
18 MR. MARKOWSKI: Object to the form.
19 Lack of foundation.
20 A. Am I aware of any?
21 Q. Yes, sir.
22 A. I believe some was done, but I don't
23 have any awareness, other than that.
24 Q. And what is it -- strike that.
25 What is it that causes you to

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1 believe that some was done?
2 MR. MARKOWSKI: Same objections.
3 A. Just that it would be highly unusual
4 for none to have been done.
5 Q. Highly unusual in a transaction of
6 this magnitude?
7 MR. MARKOWSKI: Object to the form.
8 A. Highly unusual in a transaction of
9 this magnitude, yes.
10 Q. Would it be highly unusual in a
11 transaction of this magnitude in which one of
12 the parties was receiving stock as
13 consideration in the transaction?
14 A. In a transaction in which one of the
15 parties is buying a company, the other party
16 is receiving stock as part of the
17 consideration, it would be highly unusual if
18 they didn't both do due diligence on the
19 other.
20 Q. Are you aware of, as you sit here
21 today, of any financial due diligence done of
22 Sunbeam by MacAndrews & Forbes-related
23 companies?
24 MR. MARKOWSKI: Object to the form
25 and lack of foundation.

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1 A. Not other than what I just answered.
2 Q. Are you aware of any legal due
3 diligence done of Sunbeam by MacAndrews &
4 Forbes-related companies?
5 MR. MARKOWSKI: Same objections.
6 A. Same answer, I don't really recall.
7 Q. Was -- I'm sorry. I interrupted
8 you.
9 A. I don't really recall.
10 Q. Okay. Was there anyone on the
11 Skadden team representing Sunbeam that acted
12 as the main point of contact, if you will, for
13 due diligence requests, if any, by MacAndrews
14 & Forbes?
15 A. I don't remember.
16 Q. Do you remember there being any
17 disagreements, if you will, about due
18 diligence matters before February 28th, 1998?
19 A. I don't recall any.
20 Q. Do you recall Sunbeam ever declining
21 to provide MacAndrews & Forbes any information
22 before February 28th, 1998 pursuant to a due
23 diligence request by MacAndrews & Forbes?
24 MR. MARKOWSKI: Object to the form
25 and lack of foundation.

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1 A. I don't recall any such instance.
2 Q. Did you receive -- withdrawn.
3 Did you receive from York --
4 withdrawn.
5 Your counterpart legally was
6 Wachtell Lipton, correct?
7 A. Um-hum, yes.
8 Q. And the attorney that you dealt
9 there was Adam Emmerich?
10 A. Correct.
11 Q. Do you recall any correspondence or
12 communications from Mr. Emmerich to the effect
13 that Sunbeam was not cooperating with any due
14 diligence requests from MacAndrews & Forbes in
15 connection with the merger agreements?
16 A. I don't recall any such
17 correspondence.
18 Q. Did you, in the course of your
19 representation of Sunbeam, have any
20 communications either directly or through
21 people who worked with you on the transaction
22 from the accounting firm of Ernst & Young?
23 A. I don't recall any.
24 Q. Again, in the time period up to and
25 including February 28, did you have any

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1 communications with the investment banking
2 firm of Credit Suisse First Boston in
3 connection with due diligence of Sunbeam?
4 A. I don't recall any.
5 Q. Do you remember the Wachtell Lipton
6 firm making any requests of you directly, or
7 one of the people working with you, for
8 matters related to legal due diligence by
9 MacAndrews & Forbes?
10 MR. MARKOWSKI: Object to the form.
11 A. I don't recall any.
12 Q. Up to February 28th of -- strike
13 that.
14 Do you know -- withdrawn.
15 Was there any type of log or record
16 kept, to your knowledge, of any due diligence
17 that was performed by MacAndrews & Forbes up
18 to the signing of the merger agreements on
19 February --
20 A. I don't know.
21 Q. Do you have -- you never saw such a
22 document?
23 A. No, I didn't.
24 MR. MALLOY: Mr. Bemis, you're sort
25 of beating a dead horse here, aren't you?

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1 Q. Let's move forward now from
2 February 28th to March 30th.
3 During that time period, did you,
4 personally or through your team, receive any
5 requests for due diligence from MacAndrews &
6 Forbes up to the point of closing on March 30,
7 1998?
8 MR. MARKOWSKI: Object to the form
9 and lack of foundation.
10 A. I don't recall any. In fact, I
11 don't recall anything about due diligence.
12 Q. You don't recall anyone doing due
13 diligence, do you, after February 28th and up
14 to March 30th?
15 MR. MARKOWSKI: Object to the form.
16 A. I don't remember whether they did or
17 they didn't.
18 Q. I would ask you some questions about
19 the period before February 28th, and I think I
20 understand your testimony is you have no
21 recollection of due diligence from any source,
22 correct?
23 MR. MARKOWSKI: Object to the form.
24 A. Due diligence was not on my radar
25 screen. I don't recall anything about due

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1 diligence.
2 Q. Was it supposed to be on somebody's
3 radar screen?
4 MR. MARKOWSKI: Object to the form.
5 This obviously --
6 Q. Could you tell me who was on your
7 side of the transaction?
8 A. No, I can't. I don't know. Sitting
9 here today, I can't answer that.
10 Q. There comes a point in time in March
11 where you said you were involved with the
12 March 19, 1998 press release, correct?
13 A. Yes.
14 Q. When was the first time -- when was
15 the first time that you had any information
16 about a potential earnings shortfall at
17 Sunbeam?
18 A. March 18th --
19 Q. What happened --
20 A. -- 1998.
21 Q. And what happened on March 18th,
22 1998?
23 MR. MALLOY: I think this may
24 involve some privileged conversations, so
25 I would ask the witness to limit his

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1 testimony to a very general description
2 of what occurred.
3 A. That's what I'm thinking about.
4 Group of people congregated in my office at
5 Skadden to discuss the results for that -- of
6 Sunbeam for that quarter, that first quarter
7 of 1998, trying to find out what the facts
8 were, to try to figure out whether some
9 disclosures should be made publicly about
10 those facts. And then to prepare such a
11 disclosure.
12 Q. Well, if I understand you correctly,
13 you edict and people congregating in your
14 office at some point; is that right?
15 A. Correct.
16 Q. Is that on March 18th?
17 A. Yes.
18 Q. And how did this congregation come
19 into existence?
20 A. I got a call from David Fannin
21 saying he was coming over to see me. He was
22 in New York.
23 Q. So, the first thing that happens on
24 March 18th is a telephone call; is that fair
25 to say?

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1 A. Yes.
2 Q. And it was Mr. Fannin calling you?
3 A. Yes.
4 Q. Was this phone call from
5 Mr. Fannin -- withdrawn.
6 Did Mr. Fannin tell you that he was
7 calling you about this earnings shortfall?
8 THE WITNESS: I have to discuss
9 privilege issues with my counsel.
10 Q. Well, a lot of this you've already
11 testified to. This --
12 MR. MALLOY: I don't think he
13 testified about this conversation.
14 MR. BEMIS: Well, he -- according to
15 his deposition testimony, he learned it
16 directly from Mr. -- he learned it
17 directly from Mr. Fannin on that phone
18 call on that day, just what he said just
19 now.
20 MR. MALLOY: But he didn't discuss
21 what was said during the conversation.
22 MR. BEMIS: He said -- according to
23 his testimony, he learned of an earnings
24 problem from Mr. Fannin in his prior
25 testimony.

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1 MR. MALLOY: Can you testify that
2 far?
3 A. Yes.
4 Q. What did Mr. Fannin say to you in
5 this phone call?
6 DI MR. MALLOY: I instruct you not to
7 answer the question on the grounds of
8 attorney/client privilege.
9 Q. When did Mr. Fannin -- strike that.
10 What time of day did Mr. Fannin call
11 you on March 18? For example, was it the
12 morning, afternoon?
13 A. It was in the morning.
14 Q. In the morning.
15 And what was the -- the substance of
16 the phone call, without telling me what he
17 said to you or you said to him, what was the
18 subject matter of the phone call?
19 MR. MALLOY: He's already testified
20 to that.
21 A. If there -- the substance was --
22 MR. MALLOY: Let's take a break for
23 a minute --
24 A. -- the first quarter results for
25 Sunbeam and whether there had to be some

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1 public announcement about that.
2 Q. What happened -- what happened next?
3 A. Mr. Fannin came to my office -- it
4 was in a conference room, not my office at
5 Skadden. We were there at 919 Third Avenue.
6 I got Greg Fernicola to join us. And I got a
7 fellow named Mark Shehan to join us. Mark is
8 no longer with the firm.
9 Q. Could you spell his name?
10 A. Mark, M-A-R-K.
11 Q. That one I had.
12 A. S-H-E-H-A-N, one E.
13 Q. Thank you.
14 A. And the four of us met. That was
15 the first meeting.
16 Q. How long did you meet?
17 A. That first little session? I can't
18 remember. Not that long. Thereafter, we had
19 several conference calls, some involving
20 Morgan Stanley people and Davis Polk people
21 and company people, other than Fannin. Some
22 involving just Skadden and company people.
23 And this all lasted several hours into the
24 afternoon, perhaps took up the better -- it
25 took up the better part of my working day.

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1 Q. What is the next thing that happened
2 in this sequence after the meeting in your
3 office with Mr. Fannin, Mr. Fernicola,
4 Mr. Shehan and yourself?
5 A. I believe that Mr. Fannin called
6 people at the company, a guy in charge of
7 sales, Don Uzzi, U-Z-Z-I, I believe. And he
8 had somebody else with him. There was a brief
9 discussion and we, also, spoke -- I, also,
10 spoke to Morgan Stanley, Bill strong and
11 Ruth Porat, P-R-O-R-A-T, I believe.
12 Q. P-O-R.
13 A. P-O-R, Porat. Sorry, Ruth. And
14 Davis Polk. And then all of the above got on
15 a big conference call to try to figure out
16 where Sunbeam's first quarter was.
17 Q. Could we step back, again focusing
18 on the very first thing you remember
19 happening. I understand things run together
20 and, please, tell me if they do. Stepping
21 back to the meeting that you had with
22 Mr. Fannin and Mr. Fernicola right after the
23 phone call, what is the next thing that
24 happened in the sequence of events?
25 A. I -- sitting here today, six and a

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1 half years later, I'm not sure I can answer
2 that question.
3 MR. BEMIS: Let's take a break.
4 (Recess taken.)
5 Q. Let me put a question to you so that
6 we have a clear record. Is the next thing
7 that happened after the meeting where
8 Mr. Fannin was in your office following the
9 phone call a series of conference calls with
10 other people?
11 A. Yes.
12 Q. What's the first conference call
13 that you can -- that you can remember today?
14 A. To the best of my recollection, it
15 involved the people sitting in my office,
16 Fannin, Fernicola, Shehan, myself, people from
17 Morgan Stanley, I believe Strong and Porat and
18 one or two or three people from Davis Polk
19 representing Morgan Stanley. A fellow named
20 Deitz, I believe, Alan Deitz.
21 Q. Alan Deitz, yes.
22 A. And a couple of other people. I
23 don't recall who.
24 Q. So, there was a conference call?
25 A. I believe that's the next thing that

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1 happened, best of my recollection.
2 Q. Was this call placed from your
3 office?
4 A. Yes.
5 Q. And how long did that group of
6 people speak on the conference call from your
7 office?
8 A. It wasn't a long call, I don't
9 believe.
10 Q. Who was on the phone representing
11 Mr. Fannin -- well, strike that.
12 Was there anyone else on the call,
13 other than Mr. Fannin, representing Sunbeam?
14 MR. MARKOWSKI: When you say
15 "representing" --
16 MR. BEMIS: Sunbeam's management.
17 MR. MARKOWSKI: Employed by Sunbeam?
18 MR. BEMIS: Yes, Sunbeam management.
19 A. Not on that call, I don't think.
20 Q. How did the conference call get
21 initiated? I don't mean dialing. Who called
22 who?
23 A. We called Morgan Stanley or Davis
24 Polk -- or I don't know. I don't know if we
25 used a dial-in number or we just plugged

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1 people in. I don't remember.
2 Q. What was -- strike that.
3 Have you ever seen any notes of the
4 telephone call, this first conference call?
5 A. I don't remember.
6 Q. Did you see -- I take it, then, you
7 didn't see any in your deposition preparation?
8 A. I thought we weren't asking about
9 that.
10 MR. MALLOY: Yeah, we're not asking
11 about that.
12 MR. BEMIS: Well, if he saw notes in
13 his deposition preparation and he doesn't
14 remember anything, then I want to know
15 about it.
16 MR. MALLOY: I'm not sure I follow
17 you. You already asked him whether there
18 were any documents that refreshed his
19 recollection. Having testified --
20 MR. BEMIS: Why don't you just
21 instruct -- look, just instruct him not
22 to answer, Chris.
23 MR. MALLOY: I just want to -- I'm
24 trying to understand what you're asking
25 him.

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1 MR. BEMIS: I'm asking whether he
2 ever saw any notes of the meeting. If he
3 did not, he did not. Now if he's
4 segregating out something he saw
5 yesterday, I want to know whether the
6 notes exist, that's all. I suspect they
7 do not and we're just going to move right
8 on.
9 Q. So, the question is: Have you ever
10 seen any notes of the conversation at this
11 first conference call at any time?
12 A. I don't believe so.
13 Q. Okay. There we go. That was easy.
14 Now, what do you recall being said
15 by the people who were on the conference call?
16 And as best you can tell me, who said what?
17 A. I can't give you a who said what. I
18 can give you the gist of it.
19 Q. All right. If that's the way you
20 recall it.
21 A. The gist of it --
22 Q. Please.
23 A. -- was there was information
24 indicating that Sunbeam's sales for the
25 quarter were going to be below the range of

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1 analyst estimates. How far below, no one
2 seemed to know on that call. But we needed to
3 find out what the true facts were and decide
4 after we did that whether or not we had to
5 issue a press release.
6 And that was pretty quickly decided
7 on the call. And then we segued into the next
8 call.
9 Q. Well, what was the source of the
10 information that Sunbeam's first quarter sales
11 might not meet analyst expectations?
12 MR. MARKOWSKI: Object to the form.
13 It mischaracterizes the witness's
14 statement.
15 A. I'm not sure I pinpointed that at
16 the time. Fannin told me that's what the
17 company was telling him. I don't know
18 anything more than that.
19 Q. So, as you sit here today, as you
20 recall it --
21 A. And Morgan Stanley knew it, too.
22 Now, exactly how they found out, I don't know
23 either.
24 Q. How is it -- withdrawn.
25 Can you tell me how you know that

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1 Morgan Stanley knew about it -- withdrawn.
2 Are you saying that Morgan Stanley
3 knew about it at the time of the conference
4 call?
5 A. Yes.
6 Q. And how did you come to the
7 conclusion that they knew it?
8 A. Well, I mean, they were -- they were
9 taking the position, we got to find out what
10 the facts are. And we know there's this
11 shortfall and let's find out what they are and
12 what, if anything, we have to say about it.
13 Q. Who spoke on behalf of Morgan
14 Stanley?
15 A. I can't put particular words in
16 particular people's mouths. I think both
17 Bill Strong and Ruth Porat spoke. I know that
18 the people at Davis Polk spoke. I spoke.
19 Greg Fericola spoke. Fannin spoke. I don't
20 recall who said what.
21 Q. Was -- before this first conference
22 call, had you spoken to anyone at Sunbeam's
23 management, other than Mr. Fannin, about the
24 sales shortfall issue?
25 A. I don't believe so.

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1 Q. Did anyone from Morgan Stanley in
2 this first coverage call object to finding out
3 what the facts were?
4 A. No, not at all.
5 Q. What happened next in the sequence
6 of events on March 18th?
7 A. Well, we had determined that the way
8 to find out what the facts were was to call
9 the guy at Sunbeam who was in charge of sales,
10 see where the sales were for the quarter.
11 And that's -- so, I -- then I
12 believe there was a call to people in my
13 office and Mr. Uzzi at Sunbeam. And he had
14 somebody with him, Deborah McDonald, I think,
15 to sort of tell him that the next call was
16 coming involving Morgan Stanley and Davis Polk
17 and we needed to get to the bottom of this. I
18 think that was a pretty short call.
19 Q. Who was on this next conference --
20 withdrawn.
21 Was there a call to Sunbeam? I
22 believe, you're referring to Mr. Uzzi that
23 there was going to be another call and --
24 A. Yeah.
25 Q. Let's set a time for it.

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1 A. With Morgan Stanley. And are you
2 available, and let's do it promptly, and
3 scheduling it, yes.
4 Q. So, the second call is in the nature
5 of, let's schedule a time and here's what
6 we're going to discuss?
7 A. It's a heads up of what is going to
8 happen and scheduling.
9 Q. Now, was this call -- was anyone
10 from Morgan Stanley on this call?
11 A. This particular -- no, I don't think
12 so.
13 Q. So, the next call -- is the next
14 call the first time that you spoke directly
15 to -- well, withdrawn.
16 When did the next conference call or
17 phone call take place on March 18th?
18 A. Promptly after that one.
19 Q. Who was on the line? And, if I can,
20 I'll refer to this as the third call. Who was
21 on the line?
22 A. Uzzi, McDonald, Fannin. I couldn't
23 swear where -- Fernicola was in and out. I
24 think Mark Shehan. He may have been in and
25 out. I just don't recall. Fannin and I

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1 certainly. Bill Strong, Ruth Porat and the
2 people from Davis Polk were all on the big
3 call.
4 Q. Was this -- were the people from
5 Morgan Stanley at their offices?
6 A. I don't know. I don't remember.
7 Q. Fair question. What I was -- let me
8 try again.
9 You were in your office with -- was
10 there anyone from Skadden besides yourself on
11 this call, the third call?
12 A. As I just indicated, I don't recall
13 whether Fernicola -- Fernicola was in and out.
14 Shehan was in and out. I don't recall which
15 particular things they were in for and which
16 particular things they were out for.
17 Q. Was Mr. Fannin with you?
18 A. Yeah, Mr. Fannin was anchored in a
19 chair in front of my desk. I don't think he
20 left there for hours.
21 Q. So, we have now representatives of
22 Sunbeam in Florida on the phone call, Mr. Uzzi
23 and Ms. McDonald, as you recall it; is that
24 fair?
25 A. Yes.

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1 Q. And then yourself and Mr. Fannin in
2 your office and then Morgan Stanley and the
3 people at a location or locations that you
4 don't know for sure?
5 A. Correct.
6 Q. How long does this third conference
7 call last?
8 A. Quite a while. I can't put a time
9 frame on it, but it could have been an hour or
10 more. I just don't recall.
11 Q. Did you have any documents at this
12 third call that you used as a basis for
13 questions or answers -- questions to anyone?
14 A. Yes.
15 Q. Describe the document that you had.
16 A. I think it was a one-page or two --
17 possibly a two-page document prepared by
18 somebody at Sunbeam, presumably Uzzi, but I'm
19 not sure or somebody working for him, which
20 purported to show where Sunbeam stood in terms
21 of sales for the first quarter of 1998, what
22 was already booked and then sort of -- they
23 went down a list of major accounts and
24 indicated potential additional sales to those
25 accounts, I think.

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1 Q. Did you --
2 A. I don't know when we got that
3 document. It was --
4 Q. That my next question. When did you
5 get the document?
6 A. I'm only -- I can't speculate, but
7 I -- I don't remember. I don't think Fannin
8 had it with him when he came over. I believe
9 we got by fax during the day. I just don't
10 remember.
11 Q. Did the people that were not in your
12 office, did they have a copy of the document?
13 A. I believe they did. I think, maybe,
14 we faxed it to them. I don't recall. I'm
15 pretty sure they did. We were all working on
16 the same page.
17 Q. And did Mr. Uzzi, based on your
18 recollection of the phone call, have a copy of
19 the document when he spoke?
20 A. I think so. I think it was prepared
21 by him or somebody working for him, yes. I
22 think he did, but I couldn't swear to it
23 because I wasn't with him, so --
24 Q. But you and Mr. Fannin had a copy of
25 the document?

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1 A. Yeah, yes.
2 Q. Let me show you what been marked as
3 Morgan Stanley Exhibit 411.
4 (Defendant's Exhibit 411, Sales
5 Buildup, marked for identification, as of
6 this date.)
7 Q. Mr. Fogg, I have handed you what has
8 been marked as -- by the reporter, as Morgan
9 Stanley Exhibit 411.
10 Do you have that in front of you?
11 A. Yes, sir.
12 Q. Now, I'm not representing to you
13 that the handwriting on the document is -- was
14 on the document originally. So, for the time
15 being, I'd just ask you to disregard the
16 handwriting.
17 First of all, with -- excluding the
18 handwriting, is this the document that you had
19 in front of you when you spoke to Mr. Uzzi,
20 Ms. McDonald in this third conference call?
21 A. I believe it was, yes.
22 Q. When was the last time that you saw
23 this document?
24 A. Yesterday.
25 Q. And did it refresh your recollection

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1 about the events of March 18th?
2 A. Yes.
3 Q. Is this the same document that you
4 testified to in your deposition in August --
5 excuse me -- June of 2000 that you had in
6 front of you when you spoke to Mr. Uzzi on
7 this conference call?
8 A. I don't remember that testimony,
9 but --
10 Q. It's not a trick question. It
11 wasn't identified in your transcript and
12 that's why I ask you. Let me try it a
13 different way.
14 Do you recall receiving only one
15 document from Mr. Uzzi on the -- on
16 March 18th?
17 A. I don't remember. I think so, but
18 I'm not -- I couldn't be 100 percent sure.
19 Q. All right. Is any of the
20 handwriting on Exhibit MS 411 yours?
21 A. Doesn't appear to be, no, none of
22 it.
23 Q. All right. Could you, as best you
24 can, take me through the conference -- the
25 conference call with Mr. Uzzi which we've

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1 identified as the third conference call.
2 A. Well, again, I'm not sure I can give
3 you a who said what in any great specifics.
4 But the focus of the call was, okay, what
5 sales are already in -- have been booked?
6 What do those add up to? What sales are in
7 the works that probably will be booked? And
8 where does that leave Sunbeam for the quarter
9 compared with the analyst estimates and with
10 the first quarter of 1997?
11 And we discussed all of that at
12 great length. A large part of the call
13 related to going down this list of potential
14 orders and hearing from Uzzi primarily --
15 McDonald didn't say much, as I recall -- from
16 Uzzi why he thought these orders were going to
17 be booked for each of these major accounts.
18 And he was very optimistic they
19 would be booked. He said he talked to the
20 people out in the field, the sales force. And
21 he was just very confident that this was going
22 to happen.
23 And he was pretty optimistic that
24 this was going to come within the range of
25 analyst expectations and ahead of last

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1 year's -- first quarter of 1997.
2 Q. Did I hear you say -- sorry.
3 A. And all us questioned him on each of
4 these items. And what makes you so sure of
5 this and that and the other thing, at great
6 length. I don't know how long the call went
7 on, but it was quite a while.
8 And the Morgan Stanley people asked
9 questions, the Davis Polk people asked
10 questions. I asked questions, Fannin asked
11 questions. And that was it.
12 Q. Did anyone from Morgan Stanley ask
13 questions?
14 A. I just said so, yes.
15 Q. Who on behalf of Morgan Stanley
16 asked -- asked questions?
17 A. I believe both -- I recall both
18 Bill Strong and Ruth Porat asking questions,
19 saying things on the call. I can't, as I
20 indicated earlier, give you a who said what,
21 when. I just can't do that after six years or
22 six and a half years.
23 Q. Was Mr. -- strike that.
24 Did Mr. Uzzi express confidence that
25 he -- that he -- withdrawn.

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1 Was -- withdrawn.
2 Did Mr. Uzzi express confidence in
3 this third call that Sunbeam would meet
4 analyst expectations for Sunbeam sales in the
5 first quarter of 1998?
6 A. He did.
7 Q. Did he express even more confidence
8 that Sunbeam would meet, at least, sales for
9 Sunbeam's first quarter of 1997?
10 A. I'm -- I'm not sure about my earlier
11 answer. I think he was quite confident they
12 were going to beat the first quarter of 1997.
13 I don't know -- and he was very confident on
14 that basis, on that.
15 I'm not sure that he was -- how
16 confident he was about the analyst expect --
17 estimates, meeting those or beating those.
18 But I think he was -- felt there was a good
19 shot at doing so.
20 Q. How would you describe Ms. Porat's
21 questioning?
22 MR. MARKOWSKI: Object to the form.
23 A. As I sit here today, I can't -- I
24 can't really characterize what she said, as
25 opposed to what I said, as opposed to what --

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1 I don't recall who said what.
2 But everyone on the call who was
3 sitting in my office, as well as the Morgan
4 Stanley people and the Davis Polk people,
5 asked a lot of questions. They were, you
6 know, challenging questions, probing
7 questions. How can you possibly think that,
8 this, so forth?
9 Q. You described in your earlier
10 deposition Ms. Porat, in effect, quote,
11 hammering at a point. Do you recall that
12 testimony?
13 MR. MARKOWSKI: Object to the form.
14 A. I don't really recall that
15 testimony, but it sounds like her.
16 Q. Why do you say that?
17 A. She's -- she's a strong person.
18 Q. Well, in your deposition on
19 June 16th, 2000, you were asked the following
20 questions and gave the following answers. And
21 this is on page 73, sir, line 12 through 24:
22 "Q. When Uzzi was going through
23 the numbers on your summary report, did
24 anyone voice the opinion that they didn't
25 believe those numbers?

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1 "A. Well, I think that Morgan
2 Stanley's people, especially Ruth Porat,
3 was of the view that this is all very
4 good, Mr. Uzzi, but there is a real
5 chance you are not going to make these
6 high end numbers the analysts are
7 projecting, isn't there?
8 She was hammering at that point. He
9 finally had to admit yes. He was trying
10 to convince us that all he was -- all he
11 was going to do to make the numbers."
12 Was that testimony accurate at the
13 time you gave it, sir?
14 MR. MARKOWSKI: Object to the form.
15 A. When I testified under oath, what I
16 say is what I believe, so the answer is yes.
17 Q. And your -- your description of --
18 strike that.
19 I think you described Ms. Porat as a
20 strong person?
21 A. Very strong person, yes, capable
22 person.
23 Q. Have you dealt with her -- had you
24 dealt with her before this phone call with
25 Mr. Uzzi?

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1 A. No, no.
2 Q. Do you recall anything --
3 A. I'm sorry. I had.
4 Q. And what was that?
5 A. I think she was involved, at the
6 time of the Sunbeam board meeting, when the
7 merger -- the Coleman and the other two
8 acquisitions were approved and the financing
9 of them was discussed, I believe. I'm not
10 sure, but I believe.
11 Q. Do you recall anything that
12 Mr. Strong said?
13 A. Not specifically, no.
14 Q. Do you recall anything that
15 Mr. Fannin said?
16 A. I'll say it again. I don't recall
17 who said what specifically and when. I just
18 recall the gist of the whole thing.
19 Q. Sometimes when you talk through
20 these things, some things come back. And
21 that's why I'm asking. I'm not trying to make
22 it any longer, but occasionally you do
23 remember something.
24 Is it -- how was the telephone --
25 the third telephone conference left on

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1 March 18th after you went through the items on
2 MS 411?
3 A. Well, the bottom line was that we
4 weren't confident that there was 100 percent
5 sure we were going to make the analyst
6 estimates. Pretty -- we were pretty confident
7 that we were going beat the first quarter of
8 '97. But since the analysts' estimates were
9 out there and since probably the analysts had
10 reached their estimates based on company
11 information, that we ought to correct it,
12 better put out a press release that accurately
13 gives the best picture of where we are.
14 So, a public disclosure of some kind
15 was -- was decided upon. And --
16 Q. Was there any dissent -- I
17 interrupted you. I apologize.
18 Was there any dissent at the
19 conference call amongst those who were in your
20 office or in the Morgan Stanley locations
21 about the wisdom of issuing a press release?
22 A. No dissent.
23 Q. Was the issue of issuing a press
24 release discussed directly with Mr. Uzzi in
25 this phone call?

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1 A. I don't recall -- I really don't
2 recall.
3 Q. Given the consensus that a press
4 release should be issued, was someone assigned
5 the task of taking pen to paper and drafting a
6 press release?
7 A. Yes.
8 Q. Who?
9 A. Well, it was not so much an
10 assignment, but Fannin, I guess, grabbed a
11 yellow pad in my office and started writing.
12 He produced a draft. We had it typed. People
13 in my office looked at it. I don't recall the
14 specifics of what it said versus what the
15 final thing said.
16 And I believe we circulated it to
17 the other people who were on the previous call
18 and discussed it with them. Except I don't
19 think -- I don't think I ever called any -- I
20 had any other discussion with Uzzi or McDonald
21 on this subject.
22 I do recall discussing the press
23 release with the Morgan Stanley people and the
24 Davis Polk people. I'm not sure if we faxed
25 it to them or read it to them or what, but we

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1 did discuss it.
2 Q. Stepping back, Mr. Fannin then --
3 Mr. Fannin started the drafting process, as
4 you remember it?
5 A. Yes.
6 Q. And then you -- your office had the
7 press release typed up; is that fair?
8 A. Yes.
9 Q. I will now hand you what has
10 previously been marked as Morgan Stanley
11 Exhibit 504. Do you have that in front of
12 you, sir?
13 A. I do.
14 Q. If you care to, please, take a
15 moment and look at it. And, please, look at
16 the footers on the document and in
17 particular --
18 A. Yes.
19 Q. Is this document, Morgan Stanley
20 Exhibit 504, a draft of the March 18th
21 press -- or March 19th press release?
22 A. Yes, that's what it appears to be.
23 Q. And on the lower right-hand corner
24 of both pages, it has draft March 18, 1998.
25 And I believe it says 11:12 p.m.; is that

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1 correct?
2 A. That's what it says.
3 Q. Now, does that -- does that date
4 indicate that this is the date that it was
5 prepared and printed at your office?
6 MR. MARKOWSKI: Object to the form.
7 Q. Let me ask it a different way. I'll
8 withdraw the question.
9 What does that date mean?
10 MR. MARKOWSKI: Object to the lack
11 of foundation.
12 A. I believe it means that document was
13 emitted from our word processing equipment on
14 March 18, 1998 at 11:12 p.m.
15 Q. And does the left-hand footer, which
16 has the number 203024.01-New York server 3A,
17 refer to a server here at Skadden -- at
18 Skadden Arps?
19 A. Yes.
20 Q. Now, am I correct, then, based on
21 the -- looking at -- well, withdrawn.
22 Is this, then, a draft of the press
23 release that started with Mr. Fannin's pen to
24 paper, as you described it, and then went
25 through some process of review by others?

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1 A. I believe so.
2 Q. Let's -- let me move forward from
3 the point that Mr. Fannin drafted something.
4 I understand that you did look at
5 what he drafted after it was typed up,
6 correct?
7 A. I, among other people, yeah.
8 Q. Did you make any changes that you
9 can identify for the jury today?
10 A. I don't recall.
11 Q. And who were the -- who were the
12 others at Skadden Arps that reviewed the press
13 release?
14 A. I believe Fernicola and Shehan.
15 Q. Both of these gentlemen were in or
16 in and out of the conversation with Mr. Uzzi
17 we've identified as the third call, correct?
18 A. Correct.
19 Q. Did they make any changes?
20 A. I don't remember.
21 Q. You said that you believed that the
22 draft was also sent or read to Morgan Stanley
23 and Davis Polk. Do you recall that?
24 A. Yes.
25 Q. Starting with Davis -- let's start

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1 with Davis Polk. Do you have any
2 recollection, as you sit here today, of
3 speaking to anyone at Davis Polk?
4 A. I don't recall.
5 MR. MARKOWSKI: You're focused on
6 commenting on the press release because
7 he's testified about conversation with
8 Davis Polk.
9 MR. BEMIS: He said he may have sent
10 it to Davis Polk. I'm now asking whether
11 he had discussions -- I'm now asking
12 about any conversations he had with Davis
13 Polk.
14 Q. Let me put a question to you so
15 we're -- do you recall having any conversation
16 with Davis Polk about a draft of the press
17 release, assuming that you sent one over to
18 them? Or you read it to them on the
19 telephone, if that may be the case?
20 A. I don't recall the gist of any such
21 conversations, or with Morgan Stanley. I just
22 don't recall.
23 Q. So, as you sit here today, you don't
24 recall any -- withdrawn.
25 Did you discuss the press release

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1 with anyone outside -- withdrawn.
2 Did you discuss the press release
3 with Mr. Dunlap?
4 A. Yes.
5 Q. Did you do it -- did you do it
6 before or after the press release was drafted?
7 A. I don't remember.
8 Q. Did you have more than one
9 conversation with him before the press release
10 was issued, about the press release?
11 A. I don't remember.
12 Q. What did you say -- withdrawn.
13 Did you speak to Mr. Dunlap in a
14 face-to-face conversation or were you on the
15 telephone?
16 A. Telephone.
17 Q. Where was Mr. Dunlap, as far as you
18 know?
19 A. Somewhere in New York, but I'm not
20 sure where.
21 Q. Was the subject matter of the phone
22 call the issuance of the press release?
23 A. Yes.
24 Q. What did you say to Mr. Dunlap and
25 what did he say to you?

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1 A. This may be privileged.
2 MR. MALLOY: Can we establish who
3 else was on the call?
4 MR. BEMIS: Sure. Did you want to
5 talk to him about it or --
6 MR. MALLOY: Can you establish who
7 else was on the call?
8 MR. BEMIS: I didn't hear you.
9 Q. Was anyone else on the telephone?
10 A. I believe it was Fannin, myself,
11 Kersh and Dunlap.
12 Q. So, this was a conference call?
13 A. Yeah.
14 Q. And did you place it from your
15 office?
16 A. I believe so.
17 Q. When had you made contact with
18 Mr. Kersh about the press release -- well,
19 withdrawn. Let me try it a different way.
20 Had you spoken to Mr. Kersh about
21 the press release before this conference
22 call --
23 A. No.
24 Q. -- you had with Mr. Dunlap?
25 A. No, I don't think so.

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1 Q. Did Mr. -- to your knowledge, based
2 on your participation in these events, was
3 Mr. Kersh aware there was an issue of whether
4 a press release was going to have to be
5 issued?
6 A. I'm not sure. I'm not sure.
7 Q. What happened in this phone call
8 between Mr. Dunlap, Mr. Kersh, Mr. Fannin --
9 withdrawn.
10 What was said in this telephone
11 call?
12 MR. MALLOY: Well, let me take a
13 break with the witness to discuss a
14 privilege issue.
15 (Recess taken.)
16 THE WITNESS: Can I have the
17 question read back.
18 (Record read.)
19 A. Mr. Dunlap very strongly took the
20 position no press release. Mr. Kersh seconded
21 that motion. Fannin and I tried to explain to
22 them they had no choice. We had to do it and,
23 finally, sort of -- sort prevailed.
24 Q. Having gone through the
25 conversation, at least in your own mind, was

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1 Bill Strong on this call?
2 A. I don't remember.
3 Q. You don't remember one way or the
4 other?
5 A. No.
6 Q. Okay. Given that Mr. Dunlap and
7 Mr. Kersh's position is counter poised, if you
8 will, by yourself and Mr. Fannin, did you
9 receive instructions as to what you were to
10 do?
11 A. Not really. I mean, the -- the
12 instructions were that the press release was
13 going to be issued. But Fannin, I thought,
14 was going to talk further with them about it.
15 But that we had -- we had to issue a press
16 release, Sunbeam had to issue a press release.
17 Q. At the time you spoke with
18 Mr. Dunlap, did you have a draft of the press
19 release reduced to writing?
20 A. I don't really recall, but I think
21 so.
22 Q. What was -- did -- can you recall
23 anything in -- in particular that Mr. Dunlap
24 said?
25 A. Well, he used very colorful

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1 language. He said we were -- never mind.
2 He -- he was very strong and said, the quarter
3 is not over, you can't release a press
4 release. We dont know what the quarter is
5 going to do. How can you possibly do that?
6 You guys are disloyal, et cetera, et cetera,
7 et cetera.
8 Q. You started to tell us what language
9 he used, and I -- it may be inappropriate in
10 other circles, but in these proceedings I
11 would ask you to tell us what he did say.
12 What you remember he said, what language did
13 he use?
14 A. I mean, his language was punctuated
15 with expletives of all kinds.
16 Q. How about Mr. Kersh, did he say
17 anything, other than echo his agreement with
18 Mr. Dunlap on whether a press release should
19 be issued?
20 A. Pretty much echoed.
21 Q. In the sequence of phone calls, this
22 would be the fourth call that you've told me
23 about.
24 Can you tell me what happened next
25 after the telephone call with Mr. Dunlap and

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1 Mr. Kersh?
2 A. Well, I think Mr. Fannin left and --
3 with a draft of the press release, and that
4 was the last I heard of it until after it was
5 issued, I think.
6 Q. Did you have any further
7 conversations with anyone from Morgan Stanley,
8 that you can remember, other than what you've
9 told me about so far?
10 MR. MARKOWSKI: On that day?
11 MR. BEMIS: On that day, yes,
12 March 18th.
13 Q. Let me re-ask the question again.
14 On March 18th, did you have any
15 additional phone calls or face-to-face
16 meetings with Morgan Stanley about the press
17 release?
18 A. Not that I recall.
19 Q. Did you have any more telephone
20 conferences or face-to-face meetings with
21 anyone at Sunbeam, whether it be Mr. Dunlap,
22 Mr. Fannin, Mr. Uzzi, Ms. McDonald, anyone?
23 A. I told you everything that I recall
24 of that day.
25 Q. Were you satisfied -- strike that.

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1 In these conferences and
2 face-to-face meetings as you've described them
3 for us, you -- you were acting as legal
4 counsel to Sunbeam, correct?
5 A. Yes.
6 Q. Did you believe at the time, as
7 their legal counsel, that the press release
8 was accurate?
9 A. Yes.
10 Q. Based on the information that you
11 had at the time?
12 A. Yes.
13 Q. Was there anyone, other than
14 Mr. Dunlap -- withdrawn.
15 Did you ever speak to Mr. Goudis
16 before the press release was issued about the
17 subject of the press release?
18 A. I don't recall.
19 Q. Do you recall sending Mr. Goudis a
20 copy of the press release by facsimile?
21 A. I don't recall.
22 Q. Was there anyone on the Skadden Arps
23 team that reviewed the press release, and
24 you've identified Mr. Fernicola and Mr. Shehan
25 as well as yourself, that echoed -- or I

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1 should say expressed any question about the
2 content of the press release --
3 MR. MARKOWSKI: Objection.
4 Q. -- before it was issued?
5 MR. MARKOWSKI: Excuse me. Object
6 to the form.
7 A. Anybody on the Skadden team?
8 Q. Yes. Let me put the question to you
9 again since there was an objection. I don't
10 know what it was, but let me ask it one more
11 time.
12 Was there anyone on this Skadden
13 team of lawyers, which I believe you've
14 identified as Mr. Fernicola, Mr. Shehan and
15 yourself, who participated in these calls who
16 questioned the truthfulness of the press
17 release as it was issued on March 19th?
18 A. I don't believe so.
19 Q. Other than Mr. -- strike that.
20 As to -- in the group that you've
21 identified or whether it be Morgan Stanley,
22 whether it be Mr. Fannin, whether it be people
23 at Skadden, was there anyone in that group at
24 any point that expressed any dissent as to the
25 need to issue a press release?

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1 A. The group consisting of Fannin,
2 Skadden, Morgan Stanley, and Davis Polk?
3 Q. Yes, sir.
4 A. No dissent, that I recall.
5 Q. Did anyone within that -- withdrawn.
6 Let me show you now what has
7 previously been marked as Morgan Stanley
8 Exhibit 39.
9 THE WITNESS: Do you need to mark
10 this?
11 MR. BEMIS: That has been previously
12 marked, sir.
13 Q. Sir, I've handed you what has
14 previously been marked as a copy of the
15 Sunbeam press release issued on March 19th,
16 1998. Have you seen that before, the press
17 release?
18 A. I probably saw it, yes. I don't
19 recall specifically.
20 Q. After the press release was issued,
21 did you have any communications with anyone
22 about the contents of the press release --
23 withdrawn.
24 Between March 19th and March 30th,
25 1998, did you have any communications with

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1 anyone from MacAndrews & Forbes about the
2 press release?
3 A. MacAndrews & Forbes?
4 Q. MacAndrews & Forbes, yes. And I
5 would include within that Coleman.
6 A. I don't recall.
7 Q. Did you have any -- any
8 communications with anyone between March 19th
9 and March 30th, 1998 with anyone at Wachtell
10 Lipton, the attorneys for Coleman and
11 MacAndrews & Forbes?
12 A. I don't recall.
13 Q. Between March 19th, 1998 and the
14 closing on March 30th, did you have any
15 communications with anyone from Credit Suisse
16 First Boston about the press release?
17 A. I don't recall.
18 Q. Between March 19, 1998 and March 30,
19 1998, did you have any communications with
20 anyone from Arthur Andersen about the press
21 release?
22 A. I don't recall any such
23 communications.
24 Q. Did you have any communications
25 during that same time period with anyone

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1 representing Ernst & Young, Coleman's
2 auditors?
3 A. I don't recall any such
4 communications.
5 Q. Did anyone -- withdrawn.
6 Did you have any further
7 communications with anyone at Sunbeam between
8 the issuance of the press release on March 19,
9 1998 and the closing on March 30th?
10 A. Concerning the press release?
11 Q. The press release, yes, sir.
12 A. Yes.
13 Q. With who?
14 A. Mr. Dunlap.
15 Q. When did you speak to Mr. Dunlap
16 next about the issuance of the press release
17 which we've marked as MS 39?
18 A. It was either on March 19th or
19 shortly thereafter.
20 Q. Was this a face-to-face call -- or
21 withdrawn.
22 Was this a telephone call or a
23 face-to-face meeting?
24 A. He called me.
25 Q. Were you in your office?

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1 A. I believe so, yes.
2 Q. Did he tell you where he was?
3 A. No, I don't recall.
4 Q. Was anyone else on the line?
5 A. No, not -- not on my end.
6 Q. How long did the two of you speak?
7 A. Very shortly, very, very brief.
8 Q. What was the subject matter of the
9 call, the press release?
10 A. He chewed me out for having forced
11 him to make a press release.
12 Q. Did he use colorful language in
13 chewing you out?
14 A. Not as colorful as on other
15 occasions, although he did tell me that I was
16 disloyal, that he could never rely on me in
17 the future. And that I had sold him out down
18 the river.
19 Q. What did you say to him?
20 A. I said, you're wrong, you had no
21 choice, put it behind you and move on, or
22 words to that effect.
23 Q. Was that the end of the
24 conversation?
25 A. Yes.

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1 Q. Did you ever have any other --
2 withdrawn.
3 Did you ever have again a
4 conversation with Mr. Dunlap about the
5 March 19th press release?
6 A. Yes.
7 Q. When was that?
8 A. I remember it was at a board meeting
9 later on.
10 Q. A board meeting of Sunbeam?
11 A. A board meeting of Sunbeam, yes.
12 Q. Was --
13 A. After the first quarter had been
14 completed and the results -- or the
15 then-purported results thereof had been
16 publicly announced --
17 Q. Was --
18 A. -- in which I inquired --
19 Q. Excuse me.
20 A. -- of Mr. Dunlap in front of the
21 board what was the reason for the first
22 quarter being so poor.
23 And he responded by blaming the
24 press release of March 19th saying that the
25 press release of March 19th caused all his

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1 customers to believe that Sunbeam was in a
2 desperate position and they could take all
3 kinds of advantage of it, of Sunbeam.
4 Q. Obviously, this was a board meeting
5 before Mr. Dunlap was terminated?
6 A. Yes.
7 Q. Was this -- was this the May board
8 meeting in advance of the annual shareholders
9 meeting on -- I think it was May 12th?
10 A. I don't remember which -- what date
11 it was or --
12 Q. Did you respond at all to
13 Mr. Dunlap's reasoning?
14 A. I didn't say a word after that about
15 that subject.
16 Q. Was this statement made in front of
17 the other board members?
18 A. Yes.
19 Q. Did any of the other board members
20 say anything?
21 A. I think Russell Kersh echoed Al's
22 views, but nobody else said anything, I don't
23 recall.
24 Q. Was the -- withdrawn.
25 Was this your last face-to-face

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1 conversation with -- as one-sided as it was,
2 with Mr. Dunlap about the March 19th press
3 release?
4 A. Face-to-face?
5 Q. Yes.
6 A. Yes, I think so. I can't recall any
7 others.
8 Q. You were on the phone -- you were --
9 withdrawn.
10 You were at the board meeting when
11 Mr. Dunlap was terminated, correct?
12 A. Yes.
13 Q. He -- but when the actual
14 termination took place, he was on the
15 telephone, correct?
16 A. Yes.
17 Q. Let's go to -- from the press
18 release now to the -- to -- I have a couple of
19 questions I'd like to ask you on the
20 debentures.
21 Did you see the offering memorandum
22 for the debentures?
23 A. Ever?
24 Q. Fair question. Did you see the
25 offering -- withdrawn.

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1 Did you see the offering memorandum
2 for the debentures before the actual purchase
3 of the debentures by Morgan Stanley, which I
4 believe the closing, if it helps you, is
5 March 25, 1998.
6 A. I don't recall, but I believe a copy
7 was sent to me before the closing.
8 Q. And a copy of the March 19th press
9 release was -- withdrawn.
10 Let me show you a document marked in
11 a previous deposition as CPH Exhibit 122.
12 A. Yes.
13 Q. Sir, have you -- you've seen this
14 before, correct?
15 A. I don't recall.
16 Q. Did you review the disclosure of the
17 information in the press release as -- before
18 it was put in the offering memorandum under
19 the caption, I believe it's "recent
20 developments"?
21 A. I don't believe so.
22 Q. Now, according to -- withdrawn.
23 These footers that appear on the
24 document on both the left and the right-hand
25 side, do you see those?

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1 A. Um-hum, yes.
2 Q. And now, this -- although they're
3 slightly different numbers, do these numbers
4 indicate to you that this document was printed
5 from the server and on a Skadden Arps printer
6 at your office here in New York?
7 A. Yes, they do.
8 Q. And do you know whose handwriting
9 this is that appears on the document?
10 A. No, I don't. It's not mine.
11 Q. Did you see the offering --
12 withdrawn.
13 You were aware that -- you were
14 aware that the press -- the press release, in
15 substance, was -- included the offering
16 memorandum for the debentures, right?
17 A. I was aware of it when I saw the
18 offering memorandum after the fact. I don't
19 know if I was aware of it at the time or
20 before the offering memorandum was finalized.
21 I'm not sure I focused on it at that point.
22 Q. Okay. Why don't you hand me that
23 back and I'll just stick it back in the file.
24 Thank you very much.
25 Did you attend any of the road shows

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1 for the debentures?
2 A. No.
3 Q. Did anyone from Skadden, to your
4 knowledge, attend any of the road shows?
5 A. Not to my knowledge.
6 Q. There was a -- a due diligence call,
7 sometimes referred to as a bring-down due
8 diligence call, on or about March 24, 1998.
9 Did you participate in that call?
10 A. I don't recall.
11 Q. Did you discuss the call with
12 anyone?
13 A. I have no recollection of doing so.
14 Q. Let me show you a document we'll
15 mark as Morgan Stanley Exhibit 611.
16 (Defendant's Exhibit 611, Memorandum
17 dated 3/23/98, from Tyree, Groeller and
18 Boone to Kersh, Fannin, Kelly, Uzzi,
19 Gluck, Dean and Fernicola, marked for
20 identification, as of this date.)
21 Q. Mr. Fogg, the reporter has handed
22 you what's been marked as MS 611. Do you have
23 that in front of you?
24 A. I do.
25 Q. If you would take a moment and look

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1 at it. You're not shown as being copied on
2 the document or being from you, but I'd just
3 like you to, please, review it and then I have
4 only a few questions.
5 (Witness reading document.)
6 A. Yeah, okay.
7 Q. Now, I know you're not on the
8 document, but have you ever seen this document
9 before?
10 A. I don't recall.
11 Q. Did you -- did you ever hear from
12 anyone such as, for example, Mr. Fernicola
13 about what occurred at the bring-down due
14 diligence call?
15 A. I don't recall.
16 Q. If you don't remember, you don't
17 remember. Hand it back to me.
18 Did you ever have any conversations
19 with anyone, prior to March 30th, about
20 whether Sunbeam was still comfortable with the
21 statements in its March 19th press release?
22 A. I don't recall.
23 Q. If you had been told -- if you --
24 withdrawn.
25 We covered before that Skadden did

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1 represent Sunbeam in the -- in the debenture
2 offering, correct?
3 A. Correct.
4 Q. And the offering memorandum for the
5 debentures was something that was drafted by
6 Skadden Arps, correct, for Sunbeam?
7 MR. MARKOWSKI: Object to the form.
8 A. Yes, Skadden Arps or Sunbeam or
9 both.
10 Q. Or both.
11 Let me show you what the reporter
12 will mark as MS 530, which is an -- it's a
13 portion of about a 1,000-page document, which
14 is the closing binder for the debentures. For
15 example, we didn't put the entire debenture
16 offering memorandum in here, but we did
17 include the entire tabs.
18 (Defendant's Exhibit 530, Sunbeam
19 Corporation Zero Coupon Convertible
20 Senior Subordinated Debentures Due 2018,
21 dated 3/25/98, marked for identification,
22 as of this date.)
23 Q. All right. Do you have Exhibit
24 MS 530 in front of you?
25 A. Yes.

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1 Q. And was this document prepared by
2 Skadden Arps? I recognize that I did not give
3 you the full 1,000 pages, but everything
4 behind the tabs and the indexes is complete.
5 A. The footers on the pages would
6 indicate no, it wasn't.
7 Q. And who -- who would it indicate
8 prepared it based on the footer?
9 A. I have no idea.
10 Q. Okay. Did -- there is -- if you
11 will -- if you will look at -- I'm going to
12 have to give you a page number here. First of
13 all, you were -- you are, by definition,
14 issuer's counsel, correct?
15 A. Correct.
16 Q. And if you look at page -- if you
17 look at page CPH and then -- the last -- the
18 last three digits will be 379. Just look for
19 379 through 82.
20 A. 379.
21 Q. Through 82.
22 A. Through 82, yes.
23 Q. Now --
24 A. Wait a minute. Oh, yes, sorry.
25 Yes.

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1 Q. This Schedule B is a list of
2 documents that were to be -- which were to be
3 delivered by the issuer, and the issuer in
4 this case would be Sunbeam, correct?
5 A. Sunbeam is the issuer, yes.
6 Q. According to the -- the documents to
7 be delivered, if you look at items -- item 9,
8 it says "comfort letter from the accountants."
9 A. Yes.
10 Q. Do you see that?
11 A. Yes, I do.
12 Q. And does -- am I correct that that
13 indicates that an original copy of the comfort
14 letter was to be provided to the issuer, and
15 that is Sunbeam, right?
16 A. Original --
17 Q. As opposed to a copy?
18 A. Was to be provided to the issuer?
19 Q. Yes. Is that right?
20 A. And the issuer's counsel.
21 Q. Which would be?
22 A. And Morgan Stanley.
23 Q. And Morgan Stanley?
24 A. And Davis Polk.
25 Q. Let me ask the question again if you

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1 didn't get it.
2 Am I reading this correctly, sir,
3 that a copy of the accountant's comfort
4 letter, an original copy was to be provided to
5 the issuer, which is Sunbeam; the issuer's
6 counsel, which is Skadden Arps; the initial
7 purchaser, which was Morgan Stanley; and the
8 purchaser's counsel, which was Davis Polk?
9 A. That's what the document says.
10 Q. Now, did -- did -- at the time of
11 the closing, which is shown as March 25, 1998,
12 did Skadden Arps receive a copy of the
13 accountant's comfort letter?
14 A. I don't know.
15 Q. Who would know? Would it be
16 Mr. Fernicola?
17 A. Mr. Fernicola or Mr. Deitz.
18 Q. Attached to -- let me get the right
19 page number for you. Just give me one second
20 here. Turn to the page CPH 0628849.
21 A. It -- what's the last three?
22 Q. The last three digits are 849.
23 A. 849.
24 Q. It also has Skadden Arps Bates No.
25 SASMF 03665.

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1 A. I have it.
2 Q. Now, this is the -- this is the
3 comfort letter referred to in the index.
4 Did you -- did you ever see a copy
5 of the comfort letter from the auditors that's
6 in the closing binder for the debentures?
7 MR. MARKOWSKI: Object to the form.
8 A. Yes
9 Q. When did you first see it?
10 A. I saw it yesterday, but I don't
11 recall whether I saw it before that or not.
12 Q. Now, Mr. -- do you recall any
13 discussions with Mr. Fernicola between
14 March 25th, 1998, the date of the closing of
15 the debentures, and March 30, 1998, about the
16 Arthur Andersen comfort letter that we've just
17 identified in the closing binder, MS 530?
18 A. I don't recall.
19 Q. Do you recall any internal
20 discussions at all at Skadden Arps about the
21 contents of the comfort letter, which is
22 attached to the March 25th, 1998 closing
23 binder?
24 A. I don't recall.
25 Q. Am I correct, sir, that

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1 Mr. Fernicola would be the person at Skadden
2 Arps who would be the most knowledgeable and
3 the most -- about the debenture -- debenture
4 closing and your -- Skadden's role as issuer's
5 counsel for the debentures?
6 A. Mr. Fernicola and/or Mr. Alan Deitz.
7 Q. Who is the senior -- the most senior
8 of those two gentlemen?
9 A. Mr. Fernicola.
10 Q. Mr. Deitz, at that time, reported to
11 Mr. Fernicola, correct?
12 A. Correct.
13 MR. MARKOWSKI: Can I ask a question
14 about how the document was put together?
15 There's a page before this document. It
16 has a No. 11 on it.
17 MR. BEMIS: Correct.
18 MR. MARKOWSKI: Is that the tab?
19 MR. BEMIS: It is. And the index is
20 off by one.
21 MR. MARKOWSKI: Okay. This is --
22 your understanding is that's a copy of
23 tab 11?
24 MR. BEMIS: It is correct. It was
25 produced to us. I think they mis-indexed

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1 it, is what happened.
2 MR. MARKOWSKI: Because the index
3 does not tie to the tab in the document.
4 MR. BEMIS: It's off by one for that
5 document or, maybe, off two at one point.
6 But it is in the manner in which it was
7 produced to us.
8 Q. If I -- if I've asked you this, I
9 apologize. Mr. Fernicola, is he still with
10 the firm?
11 A. Yes.
12 Q. Is he in this office in New York?
13 A. Um-hum, yes.
14 Q. Would you look at the handwriting on
15 the first page, which appears to be Nick S.
16 Do you see that?
17 A. Yes.
18 Q. Do you know who that is?
19 A. Nick S.?
20 Q. Yes.
21 A. I know a Nick S., but I don't know
22 if it's him.
23 Q. Okay. Who is it -- who is the
24 Nick S. that you know?
25 MR. MALLOY: If you know a Nick S.

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1 A. Nick Saggese.
2 Q. And who is that? Can you spell that
3 for us?
4 A. S-A-G --
5 THE WITNESS: Two Gs?
6 MR. MALLOY: I don't know.
7 A. S-A-G-G-E-S-E, I believe. He's a
8 partner in our Los Angeles office.
9 Q. Is he --
10 A. I don't know why his initials would
11 be -- why his Nick S. would be on the cover
12 page. I have no idea.
13 Q. Is he still in the Los Angeles
14 office --
15 A. Yes.
16 Q. -- of Skadden Arps?
17 A. Yes.
18 Q. Do you have any reason to believe,
19 based on your review of the closing binder
20 which was produced by Skadden in this case,
21 that your firm did not have possession of the
22 comfort letter from Arthur Andersen which
23 we've identified -- withdrawn.
24 Do you have any reason to believe
25 your firm did not have a copy of the comfort

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1 letter which we identified in MS 530 as of the
2 date of the closing, March 25, 1998?
3 A. No reason to believe one way or the
4 other.
5 Q. Is it customary as -- is it
6 customary to prepare closing binders for
7 something as -- like a debenture offering of a
8 \$2 billion face amount of securities?
9 A. Yes.
10 Q. Is it customary for your law firm to
11 prepare the closing binder in the manner --
12 with the indexes such as we have looked at in
13 MS 530?
14 A. Yes.
15 Q. Is it customary in a closing binder
16 for a debenture offering, in which auditors
17 issue comfort letters, to include the comfort
18 letters within the closing binder?
19 A. I don't know, since I don't work on
20 those kinds of things, but I would think so.
21 Q. Would you, please, look at the pages
22 identified with the Bates numbers ending --
23 well, I'll tell you what. I'll use the
24 Skadden Bates numbers. They will be a little
25 shorter. Please look at the page beginning

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1 with the Skadden Arps Bates number 03767.
2 A. 03767, yes.
3 Q. 03767. Are you there?
4 A. Yes.
5 Q. If you'll turn to the -- this --
6 this is a letter to Morgan Stanley addressed
7 to Morgan Stanley in Skadden's capacity as
8 special counsel to Sunbeam, right?
9 A. Yes, it's an opinion letter.
10 Q. It's an opinion letter, right?
11 A. Yes.
12 Q. And it's signed at the end, and the
13 last page I see is 03775.
14 A. Yes.
15 Q. I have to confess the photocopy is
16 pretty bad here, but is that signed Skadden
17 Arps, just the firm's name? Is that how it's
18 signed?
19 A. Yes.
20 Q. Is that the traditional manner in
21 which your opinion letters are provided?
22 A. I believe so, yes.
23 Q. Now, according to -- who would have
24 been responsible for preparing this opinion
25 letter to Morgan Stanley?

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1 A. Greg Fernicola and his team.
2 Q. Okay. Would you ever view this
3 letter before it was signed by Skadden Arps?
4 A. I might have, but I don't recall.
5 Q. Please turn to the page marked
6 03774, again, using the Skadden Arps Bates
7 numbers.
8 A. Yes.
9 Q. If you'll look at the first -- the
10 first paragraph, not the first full paragraph,
11 but the --
12 A. Yes.
13 Q. Is -- there is language midway down
14 that begins, "No facts." Would you please
15 turn your attention to that.
16 A. Yes.
17 Q. Now, that language reads as follows:
18 No facts have come to our attention that have
19 led us to believe that the offering memorandum
20 as of its date and as of the date hereof
21 contained or contains an untrue statement of
22 material fact or omitted or omits to state a
23 material fact necessary in order to make the
24 statements therein, in light of the
25 circumstances under which they were made, not

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1 misleading, except that we express no opinion
2 or belief with respect to the financial
3 statements, schedules or other financial
4 information -- excuse me -- financial and
5 statistical data included therein or excluded
6 therefrom.
7 Do you see that language?
8 A. I do.
9 Q. Is that language a customary
10 language for an opinion letter of this type,
11 assuming that nothing has come to your
12 attention?
13 A. In my limited experience, yes. It's
14 known as a 10(b)(5) opinion.
15 Q. That was my next question. Thank
16 you.
17 All right. You may set this aside.
18 MR. BEMIS: It's 5 o'clock and we
19 said we would break at 5:00. And I will
20 easily finish tomorrow within the time
21 frame that we have.
22 MR. SOLOVY: Whoa, whoa, whoa, say
23 it a little louder.
24 MR. MALLOY: Yes.
25 MR. SOLOVY: You will easily finish?

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1 MR. BEMIS: I will finish within the
2 time frame allotted for us tomorrow.
3 MR. SOLOVY: What does that mean?
4 MR. BEMIS: Well, without getting
5 into an argument, you asked for one-half
6 of the time.
7 MR. SOLOVY: Yes.
8 MR. BEMIS: We reserved a full day
9 today. I've gone four hours.
10 MR. SOLOVY: Okay.
11 MR. BEMIS: So, therefore, I will
12 finish within the allotted time that was
13 given to me.
14 MR. SOLOVY: Well, let's do a little
15 math, okay?
16 MR. BEMIS: I'm not going to do math
17 with you.
18 MR. MALLOY: I want to hear the
19 math.
20 MR. SOLOVY: Come on.
21 MR. MALLOY: You're going to finish
22 in --
23 MR. SOLOVY: Give us a break here.
24 MR. MALLOY: We've given you a day
25 and a half, and you agreed to take half

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1 of it, right?
2 MR. BEMIS: I didn't agree to that,
3 but I'm not going to take more than that.
4 MR. MALLOY: It was represented to
5 me that both parties could finish this
6 deposition in a day and a half.
7 MR. BEMIS: We will -- we're going
8 to finish it in a day and a half with me
9 taking no more --
10 MR. MALLOY: Both parties.
11 MR. BEMIS: Well, I can't speak for
12 them. I will take no more than one-half.
13 MR. SOLOVY: Well, let's figure out
14 what the one-half is.
15 MR. BEMIS: Well, you figure it out
16 and I may agree with you. But I will not
17 take any more -- I'm not going to argue
18 with you.
19 MR. MALLOY: Well, why don't you
20 tell me when you expect to --
21 MR. BEMIS: What time are we going
22 to start tomorrow, at 9 o'clock?
23 MR. SOLOVY: 9 o'clock, we're
24 supposed to start.
25 MR. BEMIS: And I would expect -- I

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1 would expect to be done by 11 o'clock at
2 the absolute latest tomorrow, which
3 leaves you with six hours, Mr. Solovy, if
4 my math is a correct.
5 MR. SOLOVY: Assuming everybody
6 starves and doesn't eat lunch. Or we
7 work past 5:00. That's what my math
8 tells me.
9 Well, Mr. Malloy, you know, I
10 address this issue to you. I mean, if we
11 can go past 5:00 -- and that assumes, of
12 course, that you'll have no redirect.
13 MR. BEMIS: We'll be done on time.
14 Thank you very much, Mr. Fogg. It's nice
15 to meet you finally.
16 MR. SOLOVY: Well, we're not
17 satisfied with the way this is left,
18 Mr. Malloy.
19 MR. BEMIS: You know, what would you
20 like me to do?
21 MR. SOLOVY: I'm saying on the
22 record, Mr. Bemis, to Mr. Malloy we're
23 not satisfied with the way this is left
24 in terms of treating us fairly.
25 MR. MALLOY: It's between you guys.

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1 MR. SOLOVY: Correct. But it's on
2 the record. But you understand the
3 Court's order that, if it's not done,
4 it's their responsibility to reproduce
5 the witness.

6 MR. BEMIS: I don't necessarily
7 agree with any of that, but we are
8 finished for the day.

9 MR. SOLOVY: Well, there's a court
10 order. And the court order says what it
11 says.

12 (Time noted: 5:05 p.m.)

13 _____
14 BLAINE V. FOGG

15
16
17 Subscribed and sworn to before me
18 this ___ day of _____, 2004.
19
20
21
22
23
24
25

1 -----I N D E X-----
2 WITNESS EXAMINATION BY PAGE
3 BLAINE V. FOGG MR. BEMIS 6
4

5 -----INFORMATION REQUESTS-----
6 DIRECTIONS: 23, 96
7 RULINGS:
8 TO BE FURNISHED:
9 REQUESTS:
10 MOTIONS:

11 ----- EXHIBITS -----
12
13 DEFENDANT'S FOR ID.
14 Defendant's Exhibit 529, Transcript
15 of deposition of Blaine V. Fogg
16 taken on 6/16/20..... 14
17 Defendant's Exhibit 109, Skadden
18 chronology..... 36
19 Defendant's Exhibit 541, Project
20 Laser Discussion Materials for
21 September 11, 1997 conference call. 42
22 Defendant's Exhibit 543, Memorandum
23 dated 7/25/97, from Fannin to
24 Strong..... 43
25

1 CERTIFICATE
2 STATE OF NEW YORK)
3 : ss.
4 COUNTY OF NEW YORK)
5

6 I, TAMI H. TAKAHASHI, RPR and Notary
7 Public within and for the State of New
8 York, do hereby certify:

9 That BLAINE V. FOGG, the witness
10 whose deposition is hereinbefore set
11 forth, was duly sworn by me and that such
12 deposition is a true record of the
13 testimony given by the witness.

14 I further certify that I am not
15 related to any of the parties to this
16 action by blood or marriage, and that I
17 am in no way interested in the outcome of
18 this matter.

19 IN WITNESS WHEREOF, I have hereunto
20 set my hand this 20th day of December
21 2004.
22
23
24
25

TAMI H. TAKAHASHI

1 DEFENDANT'S FOR ID.
2 Defendant's Exhibit 533, Letter
3 dated 2/3/98, from Fannin to
4 Shapiro..... 79
5 Defendant's Exhibit 411, Sales
6 Buildup..... 110
7 Defendant's Exhibit 611, Memorandum
8 dated 3/23/98, from Tyree,
9 Groeller and Boone to Kersh,
10 Fannin, Kelly, Uzzi, Gluck, Dean
11 and Ferricola..... 141
12 Defendant's Exhibit 530, Sunbeam
13 Corporation Zero Coupon
14 Convertible Senior Subordinated
15 Debentures Due 2018, dated
16 3/25/98..... 143
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018376

1 IN THE CIRCUIT COURT OF THE
2 FIFTEENTH JUDICIAL CIRCUIT
3 IN AND FOR PALM BEACH COUNTY, FLORIDA

4 COLEMAN (PARENT) HOLDINGS,)
INC.,)

5)
6 Plaintiff,)

7)
8)

9 VS.)

10 MORGAN STANLEY & CO., INC.,)

11)
12 Defendant.)

13 -----)

14 CONTINUED DEPOSITION OF BLAINE FOGG

15 New York, New York

16 Friday, December 17, 2004

17

18

19

20

21

22

23

24 Reported by:
Robert X. Shaw, CSR

25 CSR NO. 817

JOB NO. 167799

NOT A CERTIFIED COPY

018378

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1
2 December 17, 2004
3 9:00 a.m.
4
5 Continued Deposition of BLAINE
6 FOGG, ESQ., held at the offices of
7 Skadden Arps Slate Meagher & Flom, 4
8 Times Square, New York, New York,
9 pursuant to Adjournment, before Robert
10 X. Shaw, CSR, a Notary Public of the
11 State of New York.
12
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17
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19
20
21
22
23
24
25

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1 APPEARANCES:
2
3 JENNER & BLOCK
4 Attorneys for Plaintiff
5 One IBM Plaza
6 Chicago, Illinois 60611
7 BY: JEROLD SOLOVY, ESQ.
8 ROBERT T. MARKOWSKI, ESQ.
9 CHRISTOPHER M. O'CONNOR, ESQ.
10
11 MacANDREWS & FORBES HOLDINGS, INC.
12 36 East 62nd Street
13 New York, New York 10021
14 BY: BARRY SCHWARTZ, ESQ.
15 STEVEN L. FASMAN, ESQ.
16
17 KIRKLAND & ELLIS, LLP
18 Attorneys for Defendant
19 655 Fifteenth Street, N.W.
20 Washington, D.C. 20005
21 BY: LAWRENCE P. BEMIS, ESQ.
22 KATHRYN REED DeBORD, ESQ.
23
24
25

Page 165

1 APPEARANCES (Cont'd):
2
3 SKADDEN ARPS SLATE MEAGHER & FLOM
4 Attorneys for Mr. B. Fogg
5 4 Times Square.
6 New York, New York 10036
7 BY: CHRIS MALLOY, ESQ.
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1 BLAINE FOGG, having been first
2 duly sworn by the Notary Public,
3 testified as follows:
4 EXAMINATION BY
5 MR. BEMIS:
6 Q. Good morning.
7 A. Good morning.
8 Q. Let me hand you MS 530 again, which
9 is the closing binder abstract for the
10 debentures that we looked at yesterday.
11 A. Yes, sir.
12 Q. I only have one question, and that
13 is: Is that your handwriting, "Nick S," at
14 the top?
15 A. No.
16 Q. Do you know whose it is?
17 A. No, I don't.
18 Q. Did Seggese -- is that correct?
19 A. Yes.
20 Q. Did Mr. Saggese work at all on the
21 Sunbeam Coleman transaction?
22 A. Not to my knowledge. That is why I
23 am surprised to see that on there.
24 Q. Let me show you a document that the
25 court reporter, well, that we already have

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1 marked as Morgan Stanley Exhibit 616, but I
2 ask the court reporter to initial this.
3 Would you take that, sir.
4 A. Yes.
5 Q. Do you have Exhibit 616 in front of
6 you?
7 A. I do.
8 Q. Is that your handwriting? Below
9 memo from Finn Fogg.
10 A. It honestly doesn't look like it.
11 It says memo from Finn Fogg, but that does not
12 look like my handwriting.
13 Q. Were you working with Mr. Saggese on
14 any matter around March 29th of 1998?
15 A. I have no recollection.
16 Q. All right. Can you hand that back
17 to me.
18 A. March 29th was my birthday.
19 Q. I would say happy birthday, but it's
20 not the 29th.
21 At any time after March --
22 withdrawn. We looked at the audit comfort
23 letters yesterday in the context of the
24 closing binder for the debentures, MS 530. I
25 am now going to hand you a separate copy which

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1 has previously been marked as MS 9. That is
2 the comfort letter dated March 19th, 1998.
3 A. Yes. I have it in front of me.
4 Q. Have you seen, have you ever seen --
5 MR. MARKOWSKI: Do you have a copy
6 for me, Mr. --
7 A. Yes.
8 MR. BEMIS: Yes, I am getting it for
9 you.
10 Q. Have you ever seen that document
11 before?
12 A. I saw it two days ago.
13 Q. You have never seen it at all in the
14 course -- strike that. Did you ever see the
15 document at any time before March 30th, 1998,
16 the closing date?
17 A. I don't recall.
18 Q. Did you ask to see it?
19 A. I don't recall.
20 Q. All right. Let me show you what has
21 previously been marked, and would you hand
22 those back to me. We are done with it.
23 MR. MALLOY: All right.
24 BY MR. BEMIS:
25 MR. MALLOY: I want to keep copies.

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1 Q. I will show you what has been marked
2 as Morgan Stanley Exhibit 10. Do you have
3 that exhibit in front of you?
4 A. I do, sir.
5 Q. This is the March 25th, 1998 comfort
6 letter, also included in MS 530, that we
7 discussed yesterday. Have you seen this March
8 25th, 1998 comfort letter?
9 A. I don't recall.
10 Q. Did you see it in your preparation
11 yesterday or the day before?
12 A. I don't recall.
13 MR. MALLOY: I think -- oh, we are
14 not going to get into his prep session.
15 MR. BEMIS: He told me what he
16 looked at just a moment ago. As to the
17 other ones, I think it is an appropriate
18 question, but he answered it.
19 Q. At any point before March 30th,
20 1998, did you see Morgan Stanley Exhibit 10,
21 the March 25th, 1998 comfort letter?
22 A. I don't recall.
23 Q. At any time after March 30th, 1998,
24 did anyone ask you or, to your knowledge,
25 anyone at Skadden for a copy of either MS 9 or

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1 MS 10, the two comfort letters that we just
2 looked at?
3 A. I don't recall.
4 Q. As you sit here today, your
5 recollection is that the first time that you
6 saw MS 9, which was the comfort letter of
7 March 19th, was in your deposition
8 preparation; is that correct?
9 A. That is the only time I recall
10 seeing it.
11 Q. As you sit here today, you don't
12 ever recall seeing MS 10, the comfort letter
13 dated March 25th, 1998; correct?
14 A. My recollection is, I don't have any
15 recollection of seeing it, before today.
16 Q. Okay. You can hand it back to me.
17 Thank you.
18 Following the closing, did you
19 review a press release that Sunbeam issued on
20 April 3rd of 1998 announcing some of its first
21 quarter results?
22 MR. MARKOWSKI: Objection to the
23 form.
24 Q. You can answer.
25 A. I have seen a lot of Sunbeam press

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1 releases. I can't say that I did not review
2 it. I can't say, sit here today and say that
3 I did. If you show it to me, it may refresh
4 my recollection.
5 Q. Let me show you what has been marked
6 as MS 58. This is a press release dated April
7 3rd, 1998. The press release is attached
8 behind the cover sheet.
9 A. Yes, I believe I have seen this
10 before.
11 Q. Did you see it before it was issued?
12 A. I believe I did, yes.
13 Q. Please tell me what the
14 circumstances were under which you saw the
15 press release MS 58.
16 A. Well, I believe it was the night
17 before this, and I was at home. It was, like,
18 9 or 10 o'clock at night, and David Fannin
19 called me.
20 MR. MALLOY: Just, I caution you not
21 to reveal the substance of that
22 conversation, other than generally.
23 A. David Fannin called me to tell me
24 more about events at Sunbeam.
25 Q. Did he discuss with you the press

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1 release attached to MS 58?
2 A. I believe he did. He may have even
3 faxed a copy to my home. I don't recall.
4 But, yes, I believe he did.
5 Q. Did you discuss the fax release, on
6 the telephone -- withdrawn. Did you discuss
7 the press release in your telephone call with
8 Mr. Fannin, the night before April 3rd?
9 A. I believe we discussed what's in the
10 press release, the substance of what's in the
11 press release. Whether we discussed the
12 actual press release, I don't know. I don't
13 recall.
14 Q. Was anyone else on the telephone
15 call, other than yourself and Mr. Fannin?
16 A. Just the two of us.
17 Q. What did you say to Mr. Fannin and
18 what did he say to you on the subject of the
19 press release?
20 MR. MALLOY: I will instruct the
21 witness not to answer on the grounds of
22 attorney/client privilege.
23 Q. Did you discuss the April 3rd press
24 release with anyone else, either in its draft
25 form, as you looked at it on April 2nd, or in

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1 the form that it was eventually issued on
2 April 3rd?
3 MR. MALLOY: Ever?
4 MR. BEMIS: Yes. Ever.
5 A. I believe that night, after I spoke
6 to Fannin, I called Rich Easton, my partner in
7 Delaware, and told him about it.
8 I remember, after it was issued,
9 Bill Strong called me and we discussed it.
10 Q. This is Bill Strong from Morgan
11 Stanley?
12 A. Correct.
13 Q. Who else did you speak to about the
14 April 3rd press release, other than Mr. Easton
15 and Mr. Strong and Mr. Fannin?
16 A. Those are the three conversations
17 that stand out in my mind. I may have spoken
18 to other people, I just don't recall.
19 Q. When did you speak -- withdrawn.
20 My understanding is that you did
21 speak to Mr. Easton that evening -- that is, the
22 evening of April 2nd?
23 A. I believe so, yes.
24 Q. Who was on the call, besides
25 yourself and Mr. Easton?

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1 A. Just the two of us.
2 Q. How long did you talk?
3 A. I think it was pretty short.
4 Q. Did you send Mr. Easton a copy of
5 the press release that Mr. Fannin had sent to
6 you, as you --
7 A. I did not. Not that evening, I
8 don't think.
9 Q. Did you read it to him what you had?
10 A. I don't recall if I -- I don't
11 recall whether or not I had the actual draft
12 of the press release. I told him about the
13 events.
14 Q. The events including the termination
15 of Mr. Uzzi?
16 A. Yes.
17 Q. What did you say to Mr. Easton and
18 what did he say to you?
19 DI MR. MALLOY: We would consider that
20 to be a privileged conversation, as well.
21 Q. When did you speak to --
22 MR. BEMIS: You are instructing him
23 not to answer?
24 MR. MALLOY: Yes.
25 Q. When did you speak to Mr. Strong?

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1 A. I believe it was sometime in the
2 afternoon of the day of the press release,
3 which was April 3rd.
4 Q. Did you speak to him in person or on
5 the telephone?
6 A. No. He called me.
7 Q. Did he call you at your office or
8 your home?
9 A. Yes. At my office.
10 Q. How long did the two of you speak?
11 A. It may have been 15 minutes, maybe
12 less. I can't really say.
13 Q. Was anyone else present on the
14 telephone call, other than yourself and
15 Mr. Strong?
16 A. Just the two of us, I believe.
17 Q. Would you believe this call took
18 place on or about April 3rd, right after the
19 issuance of the press release?
20 A. Sometime after the press release,
21 and I believe on the same day of the press
22 release.
23 Q. What did Mr. Strong say to you when
24 he called you, on or about April 3rd?
25 A. In substance, and I can't quote him

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1 because it is, I don't remember exactly what
2 he said, but he was saying that the press
3 release has caused the marketplace to go
4 crazy, and everybody thinks Sunbeam is in
5 disarray, having put out a prior press release
6 about the quarter and now, just two weeks plus
7 later, having to announce that that was an
8 inaccurate estimate.
9 The fact that Uzzi has been fired.
10 And I also think that, and I don't
11 know if it is in the press release or not,
12 that Rich Goudis had left Sunbeam. He was
13 urging me to urge Dunlap to have an analyst
14 conference call to quiet the marketplace and
15 explain Sunbeam is still a viable company, et
16 cetera, et cetera.
17 I told him that I thought such a
18 message to Dunlap would carry more weight if
19 it came from Bill Strong rather than from me.
20 Q. Did you say anything else at all in
21 the call?
22 A. I don't remember.
23 Q. Were you concerned about the April
24 3rd press release?
25 A. Concerned?

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1 Q. Yes.
2 A. Um --
3 Q. I will withdraw the question.
4 Did Mr. Strong appear concerned
5 about the April 3rd press release?
6 A. Absolutely, yes.
7 Q. I think you used the term, he said
8 the market was "in disarray"?
9 A. Yes. We were both concerned. I was
10 concerned -- not about the press release, but
11 about the company, what was really going on.
12 Q. Before April 3rd, did you have any
13 foreshadowing of the results that were going
14 to be announced on April 3rd?
15 A. None whatsoever.
16 MR. MARKOWSKI: Objection to the
17 form.
18 A. David Fannin call the night before,
19 hit me out of the blue, and I was in shock to
20 hear this.
21 Q. You referred to "this." Are you
22 referring to Sunbeam's results for the first
23 quarter?
24 A. That, the firing of Uzzi and, I
25 believe, the leaving of Goudis.

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1 Q. Based on your telephone call with
2 Mr. Strong and the tone of voice that you
3 heard from Mr. Strong, did you conclude that
4 Mr. Strong was of the same state of mind?
5 MR. MARKOWSKI: Objection to the
6 form.
7 A. Yes. I was concerned, as I
8 previously testified, that this press release
9 was causing havoc in the marketplace, ah, and
10 he wanted to see if that situation could be
11 addressed.
12 Q. What if -- withdrawn. Is there
13 anything else that you can recall today, as
14 you sit here, about the telephone call with
15 Mr. Strong, on or about April 3rd?
16 A. No. Not really.
17 Q. Did you make any notes of the phone
18 call?
19 A. I don't remember.
20 Q. Did you create any memoranda about
21 the phone call at a later time?
22 A. I don't recall.
23 Q. Did you make any follow-up phone
24 calls to anyone, or after the April 3rd call
25 with Mr. Strong? For example, you called

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1 Mr. Easton, earlier -- when Mr. Fannin called
2 you --
3 A. Nothing stands out in my mind today.
4 I don't recall. I may have called Fannin. I
5 may have called Easton. I may have called
6 both of them, but I don't really remember.
7 Q. Did you call Mr. Dunlop?
8 A. No, I did not.
9 Q. Did he call you about the April 3rd
10 press release -- that is, Mr. Dunlap?
11 A. I don't recall. I don't recall
12 speaking to him about it, but I may have.
13 Q. Did you speak to anyone else at
14 Morgan Stanley about the April 3rd press
15 release, other than Mr. Strong, in this call
16 on April 3rd?
17 A. I remember the morning of April 3rd
18 noticing that the press release hadn't been
19 issued, the stock was trading, as the day went
20 on.
21 Um, I spoke to Rich Easton. We both
22 got very nervous that this information should
23 be out.
24 MR. MALLOY: Wait a minute.
25 THE WITNESS: I am sorry.

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1 A. I spoke to Easton and Fannin about
2 the fact that the press release, that there
3 seemed to be some delay in the issuance of the
4 press release.
5 Q. Was it ever, did the presses
6 release, at some point, get issued on April
7 3rd?
8 A. I believe it did.
9 Q. Did you ever hear from any source as
10 to the reason there was any delay in issuing
11 the presses release?
12 MR. MALLOY: In a non-privileged
13 context.
14 MR. BEMIS: Just Yes or No at this
15 point.
16 MR. MALLOY: You are asking him for
17 the substance of a --
18 MR. BEMIS: I asked him if he
19 learned the reason, not what the reason
20 was, not who said it to him, not when,
21 but whether he knows, Yes or No, and then
22 I will follow up on that.
23 A. Yes.
24 Q. When did you learn the reason?
25 A. Sometime in April 3rd, in a

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1 conversation with David Fannin.
2 Q. Was anyone else on the call?
3 A. No. I don't think so.
4 Q. Did Mr. Fannin give you the reason
5 for the delay?
6 A. Yes.
7 Q. What time of day was the press
8 release issued?
9 A. I don't remember.
10 Q. How late in the day was it?
11 A. I believe it got out, I don't
12 remember -- I am not even sure that it made it
13 out in the morning. I don't recall.
14 Q. What did Mr. Fannin say about the
15 reason for the delay in issuing the press
16 release?
17 DI MR. MALLOY: I instruct you not to
18 answer that question on the grounds of
19 attorney/client privilege.
20 Q. Was Mr. Fannin seeking your legal
21 advice in telling you the reason for the
22 delay?
23 A. No.
24 Q. What did Mr. Fannin say to you about
25 the delay in issuing the press release?

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1 MR. MALLOY: Let me talk to the
2 witness.
3 MR. BEMIS: No. I don't want you to
4 talk to him. I object to you talking to
5 the witness in the middle of an
6 examination when the witness has just
7 said he wasn't giving legal advice.
8 MR. MALLOY: I need to be satisfied
9 of that before he answers the question on
10 the record.
11 MR. BEMIS: All right. I don't
12 agree with it, but obviously you are his
13 attorney and you can speak to him.
14 Off the record.
15 (Discussion off the record.)
16 MR. MALLOY: I will stand by my
17 instruction.
18 A. I must clarify a prior answer. It
19 was in the context of my giving legal advice.
20 Q. After the -- withdrawn.
21 Was the conversation that you had
22 with Mr. Strong before or after the press
23 release was issued on April 3rd?
24 A. Was my conversation with --
25 Q. With Bill Strong.

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1 A. It was after the press release was
2 issued, I believe.
3 Q. Did you speak to anyone at Sunbeam,
4 other than Mr. Fannin, after the press release
5 was issued -- withdrawn.
6 Did you speak to anyone else, other
7 than Mr. Fannin, about the reason for what you
8 referred to as the delay in issuing the April
9 3rd press release?
10 A. I believe I spoke to Rich Easton
11 about it.
12 Q. Other than Mr. Easton, anyone else?
13 A. I don't recall any such
14 conversation.
15 Q. Did you speak to anyone at Wachtel
16 Lipton about the April 3rd press release,
17 either before or after it was issued?
18 A. I don't recall.
19 Q. Anyone at MacAndrews & Forbes?
20 A. I don't recall.
21 Q. Anyone at Credit Suisse First
22 Boston?
23 A. I don't recall.
24 Q. Anyone at Arthur Andersen?
25 A. I don't recall.

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1 Q. Did you ever speak to Mr. Uzzi again
2 after the phone call on March 18th?
3 A. I don't recall any such
4 conversation.
5 Q. Did you ever speak to Deborah
6 McDonald again, after the phone call on March
7 18th?
8 A. I may have, but I am not sure.
9 Q. After the April 3rd press release,
10 did you ever receive from anyone at MacAndrews
11 & Forbes a request for any information
12 concerning Sunbeam's results of operations for
13 the first quarter of 1998?
14 A. I am not sure how to answer the
15 question.
16 There were many, many discussions
17 involving people at MacAndrews & Forbes about
18 Sunbeam's operations, including the first
19 quarter of 1998, which took place at a later
20 time than what we are talking about.
21 Q. Is this after the change in
22 management at Sunbeam in June of 1998?
23 A. Correct.
24 Q. Let me focus the time period and may
25 I, I would like to use June 15th, just as a

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1 marker point for us for the point, the change
2 of management. Is that a fair date for you to
3 use?
4 A. The record would show what date it
5 was. Is that the date of the board meeting?
6 Q. The board meeting, I think, was on
7 June 13th, and I think -- that is when
8 Mr. Dunlap was terminated, and I think
9 Mr. Levin was hired, I think, on June 14th and
10 15th. Within a day.
11 A. That is a Sunday? That is the right
12 day.
13 Q. We will use that day, subject to
14 correction. I will just ask you a question,
15 posted between March 30th, and June 15th,
16 1998. Did you ever speak to anyone at
17 MacAndrews & Forbes on the matter of any
18 request for financial information about
19 Sunbeam's operations in the first quarter of
20 1998?
21 A. I have no recollection of any such
22 conversation.
23 Q. The same question with regard to
24 Wachtel Lipton.
25 A. I don't recall.

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1 Q. And the same question with regard to
2 Credit Suisse First Boston.
3 A. I don't recall.
4 Q. Ernst & Young?
5 A. I don't recall.
6 Q. During that same, period March 30th,
7 1998, up to and including, say, June 15th,
8 1998, did you ever receive any request for
9 information about Sunbeam on any subject from
10 MacAndrews & Forbes, whether it be financial
11 information, who is who in management?
12 A. I don't recall.
13 Q. The same question with regard to
14 Wachtel Lipton.
15 A. I don't recall.
16 Q. The same question with regard to
17 Credit Suisse First Boston.
18 A. The same answer: I don't recall.
19 Q. The same question with regard to
20 Ernst & Young.
21 A. I don't recall.
22 Q. After your conversation with
23 Mr. Strong, on or about April 3rd, 1998,
24 following the issuance of the press release,
25 did you have any further communications with

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1 him, say, up through June 15th, about Sunbeam?
2 A. I don't remember.
3 Q. Any communications with anyone at
4 Morgan Stanley in that time period, between
5 April 3rd and June 15th, 1998, about, again,
6 Sunbeam?
7 A. I really don't remember. I am
8 trying to remember. There was a, there was an
9 analyst meeting at some point at which Sunbeam
10 executives made presentations and I am, I
11 don't know if Morgan Stanley -- I can't
12 remember if Morgan Stanley was there or not,
13 or if I talked to them or not. It is very
14 possible. I don't remember.
15 Q. Are you referring to the analyst
16 meeting on May 11th, 1998 that you attended?
17 A. I am referring to analyst meeting in
18 the time frame previously indicated, um, which
19 I attended, and I don't remember the date
20 specifically.
21 Q. Did Mr. Dunlap speak at this analyst
22 meeting?
23 A. Yes.
24 Q. Is this the only analyst meeting
25 that you can recall taking place in the period

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1 between April 30th, 1998 and June 15th, 1998?
2 A. It is the only one I attended.
3 Q. Okay.
4 Short of the analyst -- excuse me,
5 withdrawn.
6 Excluding this analyst meeting, do
7 you have any recollection of any communication
8 of any kind with anyone from Morgan Stanley,
9 whether it be written or oral or electronic,
10 between April 3rd, 1998 and June 15th, 1998?
11 A. I don't have any recollection.
12 Q. Do you have any recollection of
13 anyone at Skadden Arps having any such
14 communication with Morgan Stanley, even though
15 you did not, personally, have it?
16 A. I don't have any recollection.
17 Q. Do you have any recollection, as you
18 sit here today, of MacAndrews & Forbes, at any
19 period during the negotiations of the merger
20 agreements and up to the closing on March
21 30th, 1998, requesting copies of Sunbeam's
22 interim financial statements for any period in
23 the first quarter of 1998?
24 A. I don't have any recollection.
25 Q. Do you have any recollection --

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1 strike that.
2 To your knowledge, did anyone from
3 Credit Suisse First Boston make any request
4 for the interim financial statements of
5 Sunbeam for any period in the first quarter of
6 1998 during the negotiation of the merger
7 agreements and up to and including their
8 closing on March 30th, 1998?
9 A. I don't know.
10 MR. MARKOWSKI: Objection. Lack of
11 foundation.
12 MR. BEMIS: What was his answer?
13 (Record read.)
14 Q. To your knowledge, did any
15 representative of Ernst & Young, the
16 accounting firm, make any request that you are
17 aware of for Sunbeam's interim financial
18 statements for any period in 1998 during the
19 negotiations of the merger agreements, up to
20 and including their closing on March 30th,
21 1998?
22 A. I don't have any. I don't recall.
23 Q. Did anyone from the law firm of
24 Wachtel Lipton make any request that you are
25 aware of for copies of Sunbeam interim

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1 financial statements for any period during the
2 first quarter of 1998, either during the
3 negotiations of the merger agreements or in
4 the period up to and including their closing
5 on March 30th, 1998?
6 MR. MARKOWSKI: Objection to the
7 form.
8 A. I don't recall.
9 Q. What, if any, involvement did you
10 have with Sunbeam -- strike that.
11 You did continue to represent
12 Sunbeam after the April 3rd, 1998 press
13 release; correct?
14 A. Yes.
15 Q. What was your involvement, if any,
16 with Sunbeam between the April 3rd, 1998 press
17 release and the analyst meeting, which, for
18 the record, fairly shows was May 11th, 1998?
19 A. I don't remember what I did for
20 Sunbeam during that period. I believe -- I
21 mean -- at some point in that general time
22 frame there was a big meeting with Sunbeam
23 people and their consultants from one of the
24 accounting firms.
25 Q. Coopers & Lybrand?

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1 A. I think it was Coopers. And I was
2 invited to that all-day meeting, which was for
3 the purpose of talking about restructuring
4 Coleman, the other companies Sunbeam had
5 acquired, et cetera. An all-day meeting,
6 management presentations, consultants
7 presentations.
8 I said and did very little at that
9 meeting. There was also a board meeting
10 somewhere in that time frame. I just can't
11 pinpoint it, sitting here today.
12 Q. Let me show you what has been marked
13 as Morgan Stanley 535, first.
14 A. Thank you. I have it, yes, I have
15 read it.
16 Q. Did you receive a copy of this
17 memorandum, as shown on the CC lines at the
18 bottom-left-hand corner?
19 A. I probably did, yes.
20 Q. There are several meetings referred
21 to in this memorandum.
22 A. Yes.
23 Q. Let me ask you: Do you recognize
24 this as being a document received from David
25 Fannin, based on the signatures that appear at

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1 the left top?
2 A. Yes.
3 Q. There are several meetings referred
4 to, and one is a meeting concerning some
5 presentations by Coopers & Lybrand; do you see
6 that?
7 A. I do.
8 Q. You did refer to a meeting
9 concerning Coopers & Lybrand, that Coopers &
10 Lybrand appeared at and there were
11 presentations. Is the meeting that you were
12 testifying to the meeting that is identified
13 in MS 535?
14 A. Um, the first meeting that is
15 identified in MS 535 is a meeting of the board
16 of directors of Sunbeam to be held on May 6th.
17 Q. Correct.
18 A. 1998. There was a prior meeting.
19 Not a board meeting, but a prior meeting with
20 Sunbeam management and Coopers & Lybrand, at
21 Coopers & Lybrand, which I attended, previous
22 to the board meeting.
23 Q. And then there was also a board
24 meeting; correct?
25 A. Yes.

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1 Q. And after the board meeting --
2 withdrawn.
3 Was the board meeting on May 6th,
4 1998, as reflected in MS 535?
5 A. To the best of my recollection, it
6 was -- yes, somewhere around there. I think
7 the record speaks for itself.
8 Q. I have the minutes of the meeting,
9 so I will not -- it is not a guessing contest.
10 The Coopers & Lybrand meeting preceded the
11 board meeting, as best you recall?
12 A. Yes.
13 Q. And then, following the board
14 meeting, there was the analyst meeting?
15 A. Yes. Three meetings. I attended
16 all three.
17 Q. Did you attend the annual meeting of
18 the stockholders of Sunbeam on May 12th?
19 A. I don't remember.
20 Q. All right. Focusing now on the --
21 A. Excuse me. If as this document
22 indicated it was in South Florida, I don't
23 believe I did.
24 Q. Okay. Focusing on the Coopers &
25 Lybrand meeting, first in the sequence, did

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1 anyone from Morgan Stanley attend that
2 meeting?
3 A. I believe so, but I don't recall
4 specifically who.
5 Q. Do you recall if anyone did attend,
6 and what, if anything, the Morgan Stanley
7 representative said?
8 A. No. I don't remember who said what
9 at that meeting.
10 Q. Were the results of Sunbeam's
11 operations for the first quarter, that is
12 financial results discussed at this meeting?
13 A. I don't recall. The focus of the
14 meeting was how can we restructure Sunbeam and
15 these acquired companies, position the company
16 for moving forward, et cetera. The focus of
17 the meeting was on the future.
18 Q. Did Mr. Dunlap speak at the meeting?
19 A. Oh, yes.
20 Q. Where was this meeting?
21 A. At Coopers, I believe.
22 Q. It was at Coopers.
23 A. In New York.
24 Q. In New York. Who attended on behalf
25 of Sunbeam, besides Mr. Dunlap?

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1 A. There were a lot of people. Russ
2 Kersh was there. David Fannin was there. I
3 remember a fellow name Frank Ferako was there.
4 He had just been hired.
5 There were a bunch of other people,
6 and I don't remember exactly.
7 Q. Did anyone from Skadden Arps attend.
8 Other than yourself?
9 A. I think I was a Lone Ranger at that
10 meeting.
11 Q. Do you remember any of the
12 individuals from Coopers & Lybrand who were at
13 the meeting?
14 A. There was a whole troop. I don't
15 remember the guy's name who was in charge, but
16 he was Al Dunlap's go-to guy for
17 restructuring.
18 Q. Does Bennett ring a bell?
19 A. Who? It doesn't ring a bell.
20 Q. How long did this meeting last?
21 A. It was, like, all day.
22 Q. Were there any -- were there
23 documents that were handed out at the meeting?
24 A. I think there were all kinds of
25 documents.

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1 Q. Slides, decks?
2 A. I don't remember slides or decks,
3 but there were all kinds of documents.
4 Q. What was your role at the meeting?
5 A. I had no idea why I was invited to
6 the meeting. I sat there and listened.
7 Q. How did the meeting come to a
8 conclusion?
9 A. They decided to move forward and
10 presented to the board some kind of a
11 restructuring plan, the details of which I no
12 longer recall.
13 Q. Did you attend the board meeting
14 where those details were presented?
15 A. I did.
16 Q. Let me show you the minutes of the
17 board of directors meeting, which we will mark
18 as Morgan Stanley Exhibit 614. I handed you
19 what the reporter has marked for us as Morgan
20 Stanley Exhibit 614. Do you have that in
21 front of you?
22 A. I do.
23 Q. Okay. Have you seen this document
24 before?
25 A. Probably, but I don't have any

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1 specific recollection of having done so.
2 Q. While you represented Sunbeam, was
3 it customary for you to receive copies of the
4 board of directors minutes?
5 A. Um, not all of them. I mean,
6 sometimes I did and sometimes I did not.
7 Q. You are shown as being in attendance
8 in the second paragraph of the minutes of May
9 6th, 1998. Do you see that?
10 A. I was there.
11 Q. You were there.
12 A. Yes.
13 Q. Did you attend the entire meeting?
14 A. I was there from the opening gavel
15 until the board said let's adjourn. Yes.
16 Q. On page 5 --
17 A. Faith Wittlesey was late.
18 Q. Why is it that you remember that?
19 A. Because when she walked in maybe 20
20 minutes late, Mr. Dunlap dressed her down in
21 front of the whole board and said that if she
22 couldn't come on time, she should leave the
23 board.
24 Q. Did she respond?
25 A. Not really.

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1 Q. Did any of the other directors
2 respond?
3 A. I don't think anybody said anything
4 at that point. Burnett, not Bennett, Burnett,
5 that is the guy.
6 Q. I apologize. I thought that is what
7 it was after I told you Burnett.
8 A. You told me Bennett.
9 Q. Excuse me. We were both close.
10 A. Right.
11 Q. Turn to page 5, please, under the
12 heading "first quarter."
13 A. Yes.
14 Q. Did Mr. Kersh make a presentation to
15 the board of directors about the results of
16 Sunbeam's operations for the first quarter,
17 including an analysis of the reason for any
18 shortfall in the results?
19 A. Yes.
20 Q. Do you remember his presentation,
21 other than what is written in the minutes?
22 A. No.
23 MR. MARKOWSKI: Objection to the
24 form.
25 Q. Do you remember anything at all that

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1 Mr. Kersh said about the first quarter
2 operations of Sunbeam?
3 A. Yes.
4 Q. What do you remember that he said?
5 A. Let me just pause for a minute. Is
6 this privileged?
7 MR. MALLOY: Can you read back the
8 question.
9 (Record read.)
10 THE WITNESS: Actually, I testified
11 about it yesterday.
12 Q. Not only that, the minutes reflect
13 that, if it was privileged, it would have been
14 redacted like the rest of the minutes were
15 redacted. I am not your lawyer. I think you
16 did --
17 MR. MALLOY: I think you are on safe
18 ground.
19 A. Well, I remember asking the question
20 as to why, wasn't it a fact that the first
21 quarter was bad because the customers weren't
22 buying the product. And both Dunlap and Kersh
23 responding by saying that press release on
24 March 19th put us in a terribly weak position
25 and the customers took advantage of us.

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1 Q. This is the conversation, I believe,
2 you related to us yesterday?
3 A. Yes. Correct.
4 Q. Do you recall Mr. Dunlap saying
5 anything else?
6 A. No.
7 Q. I believe yesterday you said that
8 Mr. Kersh echoed Mr. Dunlap; is that correct?
9 A. Yes.
10 Q. Do you recall Mr. Kersh saying
11 anything else?
12 A. No. Not really.
13 Q. Did the board of directors say
14 anything in response to Mr. Dunlap's
15 explanation?
16 A. I don't recall.
17 Q. Did you say anything else?
18 A. No, I don't think I did.
19 Q. Do you recall anyone else at the
20 meeting making any other comments or asking
21 any questions about the first quarter results,
22 other than what you have described to us?
23 A. I don't recall.
24 Q. Did anyone from Morgan Stanley make
25 any statements at the meeting that you

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1 remember?
2 A. Not that I recall, no.
3 Q. Did you have any discussions, at or
4 about the time of the meeting, with anyone
5 from Morgan Stanley? Again, about the matters
6 of the meeting.
7 A. I don't recall.
8 Q. Was the Coopers & Lybrand meeting
9 and the discussion of the restructuring
10 efforts discussed with the board of directors?
11 A. I believe so, yes.
12 Q. What was discussed on that subject?
13 A. I believe the general parameters of
14 the restructuring plan proposal was presented
15 to the board by Coopers & Lybrand.
16 Q. Did the board ask any questions?
17 A. I believe that they did, yes, but I
18 don't recall what they were.
19 Q. All right.
20 A. Or who asked them specifically.
21 Q. Mr. Easton is shown in the minutes
22 as attending the meeting.
23 A. He was there.
24 Q. Did you, at the meeting, provide any
25 legal advice to the company?

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1 A. I don't recall doing so.
2 Q. Did Mr. Easton provide any legal
3 advice?
4 A. I don't recall him doing so.
5 MR. BEMIS: You may hand that back
6 to me. Thank you.
7 MR. MALLOY: Off the record.
8 (Discussion off the record.)
9 THE REPORTER: Is this confidential?
10 MR. MALLOY: Yes. We are
11 designating yesterday's transcript as
12 confidential, as well.
13 MR. BEMIS: We are going to
14 challenge that, since we are on the
15 record.
16 Q. I am handing you what has been
17 marked as Morgan Stanley Exhibit 115 at an
18 earlier deposition. Do you have that in front
19 of you, sir?
20 A. I do.
21 Q. Have you seen this document before?
22 A. Yes.
23 Q. What were the circumstances under
24 which you first saw the document?
25 A. It was -- in which I first saw it.

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1 I don't remember. But I did see it before it
2 was issued. And I discussed it with Rich
3 Easton and I discussed it with David Fannin
4 and I discussed it with the people at the PR
5 firm of Sard Verbinnen.
6 The first word is S-A-R-D, George
7 Sard and Maureen Bailey.
8 Q. Did you draft the press release?
9 A. I don't believe so.
10 Q. Do you know who drafted it?
11 A. No. But I think it was somebody at
12 the company and/or George Sard's firm.
13 Q. How did you first -- withdrawn.
14 Did I hear you correctly that you
15 believe you saw a draft of it before it was
16 issued?
17 A. Yes.
18 Q. How did you receive the draft?
19 A. I don't remember.
20 Q. Did you speak to Mr. Easton alone
21 about the press release?
22 A. I believe Rich and I discussed it
23 before we talked to Fannin and Sard and
24 Bailey.
25 Q. Did you talk to --

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1 MR. MALLOY: I would just note that
2 we consider those conversations to be
3 privileged.
4 Q. Did you --
5 MR. MALLOY: I will caution the
6 witness not to go into the substance of
7 those conversations.
8 THE WITNESS: I am sorry, I need a
9 clarification. The substance of all of
10 those conversations?
11 MR. MALLOY: We will let Mr. Bemis
12 establish the nature of the
13 conversations, and then we will take a --
14 we will take them one by one.
15 A. Okay.
16 Q. Are we all set?
17 You spoke as to Mr. Easton first
18 about the draft of Morgan Stanley 115; right?
19 A. I did, yes.
20 Q. Just now I want to go through the
21 sequence, so that I understand who was
22 present. You then had a -- did you then have
23 a conference with Mr. Fannin and Maureen
24 Bailey?
25 A. I believe Easton and I then spoke

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1 probably with Fannin alone first, and then
2 with Fannin and George Sard and Maureen
3 Bailey, and it may be that Dunlap and/or Kersh
4 were at Sard Verbinnen and in the room for
5 that call. I don't remember. All of these
6 were phone calls.
7 Q. Was the conversation with Mr. Easton
8 a phone call?
9 A. Correct. Yes.
10 Q. When you spoke to Mr. Easton, did
11 you have a draft of the press release?
12 A. Yes. We both did.
13 Q. Okay.
14 When you spoke to Mr. Fannin, he had
15 a draft of the press release, as well?
16 A. He was at Sard Verbinnen and they
17 were creating a press release there, as I
18 recall.
19 Q. But you did speak to him separately
20 before you spoke to the larger group,
21 Mr. Fannin, Ms. Maureen Bailey --
22 A. That is my recollection, yes.
23 Q. And possibly Mr. Dunlap and
24 Mr. Kersh; correct?
25 A. Yes.

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1 Q. What did you and Mr. Easton say to
2 each other when you first spoke about the
3 press release?
4 MR. MALLOY: I will instruct you not
5 to answer that question on the grounds of
6 attorney/client privilege.
7 Q. Were you asked -- had you been asked
8 to review the press release?
9 A. Yes.
10 Q. Were you asked to give legal advice
11 about the press release?
12 A. I was asked to comment on it.
13 Q. Were you asked to comment on legal
14 matters, as opposed to business matters?
15 A. Yes. I think the text of the press
16 release is both business and legal.
17 Q. This was now, at least the third
18 press release that you identified that you
19 either reviewed or helped create, correct,
20 because you looked at the March 19th press
21 release, you helped write the March 19th press
22 release, and you also assisted in some fashion
23 with the April 3rd press release; correct?
24 MR. MARKOWSKI: Objection to the
25 form.

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1 MR. MALLOY: I object to that
2 question. It mischaracterizes his
3 testimony.
4 A. I would correct that in that, yes,
5 with respect to the March 19th press release,
6 as I testified at great length yesterday, I
7 was involved in the creation of that press
8 release.
9 Q. Okay. You also --
10 A. With respect to the April --
11 Q. Excuse me.
12 A. With respect to the April 3rd press
13 release, my involvement simply was to get a
14 phone call to Mr. Fannin at home, the night
15 before it was issued, telling me --
16 MR. MALLOY: Well --
17 A. Here is what happened and here is
18 what is being issued.
19 Q. You were asked to comment on it?
20 A. I was.
21 Q. You asserted an attorney/client
22 privilege to your conversation with
23 Mr. Fannin; correct?
24 A. Correct.
25 Q. You refused to tell me what was

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1 said?
2 MR. MALLOY: He was instructed not
3 to answer.
4 A. I was asked not to comment on it.
5 Q. You met with your counsel out in the
6 hall and came back in and said you would not
7 tell me what was said; is that correct?
8 A. I do remember that.
9 Q. Let's move forward -- let's go
10 forward to the April -- excuse me, the May
11 11th press release, 1998, and your testimony
12 is that you are giving both business and legal
13 advice to Sunbeam; correct?
14 A. No. I give legal advice.
15 Q. All right. I thought I heard you
16 say that you were, your advice was both
17 business and legal.
18 MR. MALLOY: He did not say that.
19 Q. If I misheard him, I misheard him.
20 I don't wish to suggest otherwise.
21 A. I believe I said that the press
22 release is both a business matter and a legal
23 matter.
24 Q. You were giving legal advice to
25 Sunbeam on the contents of their press release

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1 of May 11th; correct?
2 A. Correct.
3 Q. All right. You did that first in a
4 conversation with Mr. Easton; right?
5 A. Mr. Easton and I -- we got our
6 comments together on the press release.
7 Q. These were your legal comments?
8 A. Yes.
9 Q. All right. And then, the next thing
10 that happens is -- well, just so we can close
11 the record on this -- what did you and
12 Mr. Easton say to each other?
13 MR. MALLOY: I have instructed him
14 not to answer that question already.
15 MR. BEMIS: Okay.
16 Q. Let's move on, then, to the next
17 telephone call on -- and that is between you
18 and Mr. Fannin.
19 A. And Mr. Easton, I believe.
20 Q. I did not realize that he was on
21 that call. Sorry.
22 A. I think so.
23 Q. Again, was this on May 11th, the
24 same day? Withdrawn.
25 Were all these conversations on May

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1 11th, or were they before May 11th?
2 A. I don't remember. I think they were
3 before May 11th.
4 Q. But close to May 11th?
5 A. Yes. Between the board meeting and
6 the issuance of the press release sometime.
7 Q. What did you say to Mr. Fannin in
8 this three-way call between yourself,
9 Mr. Easton and Mr. Fannin?
10 MR. MALLOY: I will instruct you not
11 to answer that question, on the grounds
12 of privilege.
13 Q. What did Mr. Easton say?
14 MR. MALLOY: Same instructions.
15 Q. What did Mr. Fannin say?
16 MR. MALLOY: Same instruction.
17 Q. And then, after this conversation
18 between Messrs. Fannin, Easton and yourself,
19 there was another phone call which you have
20 identified with the Maureen Bailey and --
21 Sard, is it Michael Sard?
22 A. George Sard.
23 Q. George Sard. Sorry. George Sard.
24 And possibly Mr. Dunlap and Mr. Kersh;
25 correct?

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1 A. Correct.
2 Q. How long did that conversation last?
3 A. It was not a long conversation.
4 Q. On the press release again; correct?
5 A. Yes, correct.
6 Q. What did you say in the telephone
7 call?
8 DI MR. MALLOY: Same instruction. I
9 instruct you not to answers on the
10 grounds of privilege.
11 Q. Were you on this telephone call
12 providing legal advice to George Sard and
13 Maureen Bailey and Mr., Messrs. Fannin, Dunlap
14 and Kersh?
15 A. Yes, we were.
16 Q. Was Mr. Easton, by the way, on this
17 call?
18 A. Yes, I believe he was.
19 Q. How long did the six of you speak?
20 A. I am not sure that Dunlap and Kersh
21 were involved in the phone call. I am not
22 sure that they were at Sard Verbinnen.
23 I think I heard. I think one of
24 them said something, but just with that
25 amendment. The call was not a long call,

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1 maybe ten minutes.
2 Q. Was your legal advice followed?
3 A. No.
4 Q. Did you and/or you and Mr. Easton
5 make specific legal recommendations as to the
6 text of the press release which we have
7 identified as MS 115?
8 DI MR. MALLOY: I will instruct him not
9 to answer that question on the grounds of
10 privilege.
11 Q. What was the general subject matter
12 of the advice that you gave them at the
13 meeting, without telling me what the specific
14 advice was that was rejected?
15 A. Generally, it was about the text of
16 the press release.
17 Q. Did Sunbeam accept any of your
18 recommendations?
19 MR. MALLOY: You can answer that Yes
20 or No.
21 A. Yes.
22 Q. And they rejected others?
23 A. Other.
24 Q. Other. Did you document in any way
25 in your files the legal advice that was

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1 rejected by Sunbeam?
2 A. I don't recall doing so.
3 Q. Was anyone at Morgan Stanley on any
4 of these calls leading up to the issuance of
5 the May 11th press release?
6 A. Not to the best of my recollection.
7 Q. Did you consult with anyone at
8 Morgan Stanley about the legal advice that you
9 gave Sunbeam in these various phone calls
10 concerning MS 115?
11 A. I don't recall doing so.
12 Q. Was there any delay in issuing the
13 March, excuse me, May 11th press release,
14 similar to what you recall of the April 3rd --
15 A. I don't recall any such delay.
16 Q. Did you then attend the May 11th
17 analyst meeting that Mr. Dunlap spoke at?
18 A. Yes.
19 Q. Did you attend the entire meeting?
20 A. Yes.
21 Q. Did you say anything at the analyst
22 meeting?
23 A. Nothing.
24 Q. How would you describe the meeting?
25 A. It was a typical analyst meeting.

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1 Management, Dunlap, Kersh and others made
2 presentations and the analysts asked
3 questions.
4 Q. Anything unusual about the questions
5 or the answers?
6 A. Yes.
7 Q. What?
8 A. There was one analyst who asked some
9 very pointed questions and Mr. Dunlap got
10 very, very heated and dressed him down and
11 called him irresponsible in front of the whole
12 group.
13 I don't think I have ever seen that
14 before or after in an analyst conference.
15 Q. Who was the analyst; do you know?
16 A. I don't recall, sitting here today.
17 I think it was Andrew-something.
18 Q. Andrew Shore?
19 A. Andrew-something.
20 Dunlap kept pointing a finger at
21 him, saying, Andrew you don't know what you
22 are talking about, you are irresponsible,
23 etc., etc.
24 Q. Did you have any discussions with
25 Mr. Dunlap about the analyst meeting after it

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1 took place?
2 A. I don't recall doing so.
3 Q. Did you witness any confrontation
4 between Mr. Shore and Mr. Dunlap at the end of
5 the meeting?
6 A. I saw it from a distance, that the
7 two of them were engaged in what appeared to
8 be an argument, but I did not really witness
9 it.
10 Q. Did you hear about it?
11 A. I think so, but I don't remember who
12 told me what or when.
13 Q. Attached to the press release of
14 Morgan Stanley Exhibit 111 are the -- are the
15 results as presented?
16 A. 115 or 111?
17 Q. I may have misspoke. Let me look
18 here. 115. Let me ask the question again.
19 Do you have Exhibit 115 in front of
20 you?
21 A. I do.
22 Q. If you would turn to the last three
23 pages, as certain condensed consolidated
24 financial information.
25 A. Yes.

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1 Q. Do you see it?
2 A. Yes.
3 Q. Did you see that information in the
4 draft press release that you reviewed before
5 May 11th?
6 A. I don't remember.
7 Q. Referring to specifically the third
8 to the last page, bearing the Bates number
9 0063809, would you look at that, please.
10 A. Yes, sir.
11 Q. The net sales figures that appear at
12 the top under the headings March 31st, 1998,
13 and March 30th, 1997, do you see that?
14 A. I do.
15 Q. When was the first time that you --
16 strike that.
17 Had you seen these figures before?
18 A. I don't remember. The April 3rd
19 press release addressed, in general, this
20 topic. But I don't think it had the figures
21 in there.
22 Q. Okay. You may set this document
23 aside. We are done with it. You can hand it
24 back.
25 MR. MALLOY: Are you going to wrap

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1 up now?
2 MR. BEMIS: Shortly.
3 Q. Did you see the article that
4 appeared in the June 6th, 1998 Barron's
5 magazine?
6 A. Yes.
7 Q. What were the circumstances under
8 which you saw it?
9 A. I think Mr. Fannin called me.
10 Q. Had you seen the article at the time
11 that Mr. Fannin called you?
12 A. No.
13 Q. Let me show you a copy of the
14 document, just so that you have it, the
15 letter -- the one that I will show you is a
16 printout, because the large copy doesn't
17 photocopy very well. I will hand you what has
18 been previously marked as Morgan Stanley
19 Exhibit 74.
20 A. Yes, sir, I have it in front of me.
21 Q. At the time you had spoken to
22 Mr. Fannin, had you seen the article in
23 Barron's, MS 74?
24 A. No. He called and told me about it.
25 Q. Did he send it to you or did you go

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1 out and buy a copy?
2 A. I think I wandered over to my
3 nearest newsstand and picked it up. It was a
4 weekend, if I recall.
5 Q. What did Mr. Fannin say to you about
6 the article when you spoke to him on the
7 telephone?
8 A. He said it is a damaging article and
9 I aught to see it.
10 Q. Not having seen it, what did you
11 say?
12 A. I said that I will go get a copy.
13 Q. Did your read the article after you
14 purchased the Barron's?
15 A. As soon as I bought it.
16 Q. Did you speak to Mr. Fannin or
17 anyone else at Sunbeam after that?
18 A. Sure. Yes.
19 Q. Did you speak to Mr. Easton about
20 it?
21 A. I believe so. I don't recall
22 exactly whom I spoke to and when I spoke to
23 them, but there were a lot of conversations
24 about that article.
25 Q. Did you have a conversation,

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1 conversations with people at Sunbeam?
2 A. Other than Mr. Fannin, I don't
3 believe so.
4 Q. Did you attend the board meeting on
5 June 9th, 1998, at which time the Barron's
6 article was discussed?
7 A. I did.
8 Q. Were you asked to attend the board
9 meeting by Mr. Fannin?
10 A. Yes.
11 Q. I will show you a copy of the
12 minutes of that meeting, which have been
13 previously marked as Morgan Stanley Exhibit
14 605.
15 Now, you -- I think you said that
16 the article, that Mr. Fannin said that the
17 article in Barron's MS 74 was quite damaging.
18 Did I hear you correctly?
19 A. Yes.
20 Q. And what was your reaction to the
21 article in Barron's when you read it?
22 A. It seemed quite damaging.
23 Q. Is it fair to say that you agreed
24 with Mr. Fannin' assessment?
25 A. Yes.

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1 Q. Was it is board meeting -- strike
2 that.
3 You did attend the board meeting,
4 and I have now handed you the minutes of that
5 meeting, MS 605, for June 9th, 1998.
6 A. Yes.
7 Q. Have you seen the minutes of the
8 meeting, MS 605, before that are signed by
9 Mr. Fannin?
10 A. Probably, but I don't recall when.
11 Q. Did the minutes of the meeting,
12 based on your attendance of the meeting,
13 fairly and actually summarize the meeting?
14 A. Let me read them.
15 Q. Please do so.
16 A. Yes. But, with respect to the stuff
17 on page 2, I was not there during that portion
18 of the meeting; so, I can't comment on whether
19 that is an accurate summary or not.
20 Q. All right. Let's limit --
21 A. I was told that that is what
22 happened. The earlier part, in very broad
23 outlines, appears to be an accurate summary.
24 Q. You were there with your partner
25 Mr. Easton; right?

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1 A. Yes.
2 Q. And at this meeting there is also
3 shown in attendance Phil Harlow of Arthur
4 Andersen; is that correct?
5 A. Yes.
6 Q. Did you understand or -- did you
7 know who -- withdrawn.
8 Did you know who Mr. Harlow was?
9 A. Yes.
10 Q. Who was he?
11 A. I am not sure if I had met him
12 before, but I knew he was the partner in
13 charge of the Sunbeam audit at Arthur
14 Andersen.
15 Q. When you saw the partner in charge,
16 is that like you being the partner in charge
17 of the Sunbeam account here at Skadden at the
18 time for the Coleman transaction?
19 MR. MARKOWSKI: Objection to the
20 form.
21 A. I don't know. I -- I don't know
22 what exactly the partner in charge of an audit
23 does; so, I can't really answer that.
24 Q. Did Mr. Harlow use the term "partner
25 in charge," or how did you --

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1 A. No. I just -- I used the term, that
2 is what I thought of him as, um, and I don't
3 know that he ever said it to me, he was the
4 point man at Arthur Andersen with respect to
5 Sunbeam.
6 Q. Did he speak at the meeting?
7 A. Yes.
8 Q. He is reported to have stated in the
9 third paragraph, from the bottom of the
10 minutes: "Mr. Harlow stated that after having
11 reviewed the Barron's article and management's
12 position, Arthur Andersen stood by its opinion
13 with respect to the corporation's 1997 audited
14 financial statements." Do you see that
15 sentence?
16 A. I do.
17 Q. Do you recall Mr. Harlow saying
18 that?
19 A. Yes, I do.
20 Q. Was there any hesitation in his
21 voice when he said that?
22 A. None whatsoever.
23 Q. Did you sense any hesitation in his
24 body language at the meeting?
25 MR. MARKOWSKI: Objection to the

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1 form.
2 A. No. He was unequivocal.
3 Q. Did you have any reason to believe
4 that Arthur Andersen was going to later,
5 within weeks, withdraw its opinion as to
6 Sunbeam's 1997 financial statements?
7 A. Not at that time.
8 Q. What was your reaction when Arthur
9 Andersen withdrew its opinion as to Sunbeam's
10 1997 financial statements?
11 A. I was quite surprised.
12 Q. Were you shocked?
13 A. I am not sure I would characterize
14 it as shocked. I was surprised.
15 Q. Did the board ask any questions of
16 Arthur Andersen and Mr. Harlow at the meeting
17 of June 9th?
18 A. Yes, I think so.
19 Q. It refers to numerous questions
20 being asked.
21 A. Yes.
22 Q. Did you recall any of the questions
23 being asked of Mr. Harlow?
24 MR. MARKOWSKI: Objection to the
25 form of the question.

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1 A. I believe I recall the areas of some
2 of the questions.
3 Q. What were the areas?
4 A. The gist of some of the questions.
5 Q. What were the gist of the questions
6 that you recall?
7 A. Um, well Mr. Harlow, what about bill
8 and hold, was that appropriate. That was one
9 area that they talked about.
10 Q. What did he say?
11 A. He was responded in the affirmative.
12 Q. Any other questions that you recall?
13 A. Not specifically, but there were
14 numerous questions. I don't remember who
15 asked them or exactly what they were, but --
16 Q. Were they questions that tracked
17 some of the allegations in the Barron's
18 article, MS 74?
19 A. I don't recall.
20 Q. Did you ask any questions of
21 Mr. Harlow?
22 A. I don't recall.
23 Q. Did Mr. Easton?
24 A. I don't recall. There were a lot of
25 questions by a lot of people, and I don't know

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1 if I chimed in or Rich chimed in. I just
2 don't remember.
3 Q. Do you recall anyone from Morgan
4 Stanley being present at the meeting?
5 A. No, I don't.
6 Q. Did you leave the meeting after the
7 discussion of the Barron's article?
8 A. Um, there was a discussion of the
9 Barron's article. There was a discussion with
10 Harlow about the 1997 audited statements.
11 There was a discussion about the second
12 quarter brief discussion -- and that, after
13 that, I believe the outsiders were asked to
14 leave, nonboard members. The board members
15 and Fannin stayed and the rest of the people
16 were excused.
17 Q. What do you recall about the
18 discussions of the second quarter?
19 A. I recall myself asking Dunlap and
20 Kersh and whoever else were, management was
21 there, how the second quarter is going.
22 Q. What did they say?
23 A. I believe Mr. Kersh said it is a
24 little soft. And no one followed up on that.
25 Q. Was there any discussion of

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1 Sunbeam's -- withdrawn.
2 Was the next board meeting that you
3 attended of Sunbeam, the board meetings that
4 took place over the weekend, I believe the
5 second week of June, where Mr. Dunlap and
6 Mr. Kersh were terminated?
7 A. Mr. Kersh was not terminated over
8 that week, only Mr. Dunlap.
9 Q. Then I misspoke. Is that -- is the
10 meeting where Mr. Dunlap was terminated the
11 next meeting that you attended?
12 A. Yes. The next meeting of the board,
13 yes.
14 Q. Between the June 9th, 1998 board
15 meeting and Mr. Dunlap's termination, what was
16 your next involvement with Sunbeam?
17 A. I remember a telephone conversation,
18 telephone conversations with Fannin and with
19 Peter Langerman.
20 Q. When was this?
21 A. Between those dates that you just
22 gave.
23 Q. What was the subject matter of those
24 telephone conversations?
25

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1 MR. MALLOY: Generally.
2 A. Generally, I think one of them told
3 me or -- I don't remember who or maybe both of
4 them told me.
5 MR. MALLOY: I caution you not to
6 get into who said what, because we
7 consider this to be a privileged
8 conversation.
9 MR. BEMIS: Just right now, tell me
10 generally what they were about.
11 A. Generally what had happened at the
12 board meeting of June 9th, after the outsiders
13 were excused.
14 Q. You subsequently learned that
15 Mr. Dunlap offered to resign after you left
16 the meeting?
17 A. Yes.
18 Q. Were you asked to do anything on
19 behalf of Sunbeam in these phone calls with
20 Mr. Langerman and Mr. Fannin?
21 A. I don't really recall, other than to
22 come to the meeting on the 13th.
23 Q. The meeting, the board meeting of
24 the 13th?
25 A. Yes. Ah, yes.

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1 Q. Is this the board meeting in which
2 Mr. Dunlap was terminated?
3 A. Yes.
4 Q. Following Mr. Dunlap's termination
5 and the change in management at Sunbeam, did
6 you participate in a --
7 A. I believe I was asked by one of them
8 to look at the employment contracts of
9 Messrs. Dunlap and Kersh.
10 Q. Did you do that?
11 A. I believe so, yes.
12 Q. Did you look at the provisions in
13 the contracts involving termination?
14 DI MR. MALLOY: I instruct him not to
15 answer questions regarding the nature of
16 his review.
17 Q. All right. Following the board
18 meeting when Mr. Dunlap was terminated, did
19 you participate, either yourself or
20 indirectly, -- withdrawn.
21 Following Mr. Dunlap's termination,
22 did Skadden Arps assist Sunbeam in conducting
23 an investigation of the events of Sunbeam,
24 including its, including financial transaction
25 matters that had occurred since Mr. Dunlap was

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1 hired?
2 A. Yes.
3 Q. What was your role in that
4 investigation?
5 A. Well, the investigation was
6 primarily conducted by Bob Zimet, the very
7 able Chris Malloy, and others from the
8 litigation group here at Skadden, and I
9 reviewed drafts of the report.
10 Q. Was a final report prepared?
11 A. I believe so.
12 Q. Was it presented to the board of
13 directors?
14 A. I believe it was presented to the
15 audit committee.
16 Q. The audit committee.
17 A. I believe.
18 Q. Of the board of directors of
19 Sunbeam?
20 A. Yes. Correct. That is my
21 recollection.
22 Q. You have to be a director to be on
23 the audit committee; right?
24 A. Yes.
25 Q. In the report was Morgan Stanley

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1 identified as having been responsible for any
2 wrongdoing at Sunbeam?
3 DI MR. MALLOY: I will instruct the
4 witness not to answer the questions
5 regarding the substance of the
6 investigation or the report.
7 Q. Was Morgan Stanley mentioned in the
8 report?
9 DI MR. MALLOY: Same instruction.
10 Q. When was the last time that you saw
11 this report?
12 A. I don't remember.
13 Q. Do you know who received copies of
14 the report?
15 A. Do I, personally, know who received
16 copies? No. I assume the audit committee
17 received copies.
18 Q. Did you receive a copy yourself?
19 A. Yes.
20 Q. What did you do with your copy?
21 A. I don't remember.
22 Q. Did you ever discuss the audit
23 committee -- strike that.
24 Did you ever discuss this report
25 with anyone at MacAndrews & Forbes?

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1 A. I don't really remember. I mean,
2 there were all kinds of discussions with
3 MacAndrews & Forbes about what went wrong at
4 Sunbeam, and whether the report was discussed
5 with them, I just don't recall.
6 Q. Did you have discussions with
7 MacAndrews & Forbes over what went wrong at
8 Sunbeam?
9 A. Following Mr. Dunlap's termination,
10 there were numerous meetings, telephone calls
11 with people like Howard Gittes, Barry
12 Schwartz, others at MacAndrews & Forbes about
13 Sunbeam, about the whole situation.
14 Q. Did you participate in these
15 conversations?
16 A. A lot of them, yes.
17 Q. Can you separate one conversation
18 from another?
19 A. No. They all sort of meshed
20 together in my mind.
21 Q. What did you tell them about what
22 went wrong at Sunbeam?
23 MR. MARKOWSKI: Objection to the
24 form.
25 MR. MALLOY: Well, you will have

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1 to -- many of these conversations were
2 privileged and you will have to parse it
3 out.
4 MR. BEMIS: He said he can't
5 separate one conversation from another.
6 MR. MALLOY: I will instruct him not
7 to answer.
8 MR. BEMIS: These people are not
9 your clients, MacAndrews & Forbes.
10 MR. MALLOY: Mr. Gittes was a
11 director.
12 MR. BEMIS: Mr. Schwartz wasn't a
13 director.
14 MR. MALLOY: I think you have
15 already gotten a report on that; so, I
16 stand by the instructions.
17 Q. What did you tell, did you tell,
18 what did you tell Mr. Schwartz -- about what
19 went wrong at Sunbeam?
20 A. I don't think I told him anything.
21 Q. Was that discussed?
22 A. I previously testified that there
23 were numerous meetings, telephone
24 conversations which I participated in and
25 people from MacAndrews & Forbes participated

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1 in about the whole Sunbeam situation, and not
2 just the past, but the present and the future,
3 and I can't separate out in my mind any of
4 those with a couple of exceptions.
5 Q. What are the exceptions that you can
6 separate out?
7 A. I remember Howard Gittes taking
8 Peter Langerman and me aside and having a
9 conversation about the situation.
10 Q. When was this?
11 A. Sometime after Mr. Dunlap was
12 terminated, and I don't recall when.
13 Q. What did he say and what did they
14 say?
15 A. Mr. Gittes said that MacAndrews &
16 Forbes has big fraud claims against Sunbeam
17 for having failed to make full disclosure when
18 they issued the stock to them to pay for
19 Coleman, and that it was an intolerable
20 situation for him to be sitting on the board,
21 for other MacAndrews & Forbes people to be
22 involved, ah, while they had these claims.
23 And we had to resolve the situation,
24 one way or the other. The two alternatives he
25 presented to Mr. Langerman and to me were

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1 either we rescind the Coleman transaction or
2 we reach some kind of settlement of the
3 claims.
4 Q. What did you say?
5 A. I said, I don't know -- I don't
6 recall, but I think Peter Langerman and/or I
7 said, it is not really in Sunbeam's interest
8 or practical to even think about rescinding
9 the transaction.
10 In terms of the settlement, at some
11 point I told Mr. Gittes and/or Mr. Langerman
12 that Skadden couldn't represent either party
13 in that, if there are to be settlement
14 negotiations between MacAndrews & Forbes and
15 Sunbeam.
16 Q. What did Mr. Gittes respond?
17 A. I don't recall exactly, but he, I
18 think he wanted us to stay involved and to
19 represent either Sunbeam or MacAndrews, but
20 I took the position that we really couldn't.
21 Q. You said you did remember this
22 conversation. I thought you said that you
23 remembered another one or more than -- perhaps
24 even more than one, or a specific
25 conversation.

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1 A. That is the one that I -- I may have
2 misspoke. That is the one that really stands
3 out in my mind.
4 Q. I thought you said several
5 conversations stood out in your mind. I asked
6 you what was the first.
7 A. We can go back and have the
8 transcript -- I believe I said one or two.
9 Q. If you only remember one, that is
10 all you remember. I don't want to quarrel
11 with you about your words. You may have
12 misspoken.
13 A. That is really the one that I
14 remember, now -- I remember sitting in the
15 MacAndrews & Forbes board room with the
16 beautiful Roy Lichtenstein mural, having all
17 kinds of conversations, but I don't recall all
18 of the substance of those conversations.
19 Q. Did Morgan Stanley ever come up in
20 those conversations?
21 A. I don't recall.
22 MR. MALLOY: You said at the
23 beginning that you would go an hour or an
24 hour and a half. It has been an hour and
25 a half.

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1 MR. BEMIS: I know. I am almost
2 finished.
3 MR. MALLOY: I understand your
4 reluctance to reveal your strategy here.
5 MR. BEMIS: I don't have an overall
6 strategy, but --
7 MR. MALLOY: We really do need to
8 know that you will end today and when
9 your examination will end; so, why don't
10 you tell us how much you will have.
11 MR. BEMIS: As soon as I am done, I
12 will be done --
13 MR. MALLOY: Are you almost done?
14 MR. BEMIS: Yes.
15 MR. MALLOY: Tell us how much more
16 you have, then tell us that you are
17 almost done.
18 MR. BEMIS: I am reviewing my notes.
19 Calm down. Calm down. This is just
20 business.
21 MR. MALLOY: No, you need to wrap
22 up, and you need to not --
23 MR. BEMIS: I need to finish my
24 examination and I intend to do so and I
25 intend to do so properly. Calm down.

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1 (Pause.)
2 MR. BEMIS: I think I am finished,
3 but why don't we take five minutes and I
4 will check with my associate.
5 THE WITNESS: All right. I have to
6 make a phone call.
7 MR. MALLOY: Off the record.
8 (Recess.)
9 MR. BEMIS: Thank you. I have no
10 further questions at this time.
11 MR. MARKOWSKI: I have some
12 questions.
13 EXAMINATION BY
14 MR. MARKOWSKI:
15 Q. Good morning, Mr. Fogg.
16 My name is Bob Markowski, and I
17 represent Coleman (Parent) Holdings in the
18 litigation against Morgan Stanley.
19 Mr. Fogg, do you have a general
20 understanding of the nature of the litigation
21 that my client has brought against Morgan
22 Stanley?
23 A. I have not seen the complaint, but I
24 have a general sort of understanding, yes.
25 Q. In general terms, what's your

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1 understanding of the nature of the litigation?
2 A. That somehow Morgan Stanley
3 participated in a deception of your client in
4 connection with the Coleman transaction.
5 Q. And the Coleman transaction that you
6 are referring to is the transaction by which
7 my client sold its stock in the Coleman
8 Company to Sunbeam in the first quarter of
9 1998; correct?
10 A. Correct.
11 Q. My client, at that time, had an 82
12 percent, approximately, interest in the
13 Coleman Company; is that correct?
14 A. Something like that. I don't recall
15 exactly the percentage.
16 Q. About 44 million shares, I think the
17 record will show.
18 You were a partner at Skadden Arps
19 in the first quarter of 1998; correct, sir?
20 A. Yes.
21 Q. You are now of counsel to the firm;
22 correct?
23 A. Yes.
24 Q. You now work primarily in Paris?
25 A. Yes.

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1 Q. In the first quarter of 1998 you
2 worked in the New York office; correct?
3 A. Yes.
4 Q. You joined Skadden in 1996?
5 A. Yes.
6 MR. BEMIS: Objection. This is all
7 asked and answered.
8 Q. Excuse me. You joined Skadden in
9 1966?
10 A. 1966.
11 Q. In 1998, sir, you acted as Sunbeam's
12 lawyer in connection with the transaction by
13 which my client sold its stock in Coleman
14 Company to Sunbeam; correct?
15 A. Correct.
16 Q. Mr. Dunlap was the person
17 responsible for bringing you into that
18 transaction; is that correct? As Sunbeam's
19 counsel.
20 A. Me, personally?
21 Q. Yes.
22 A. Yes, I would guess that he was the
23 one that got me involved in the Sunbeam
24 account, yes.
25 Q. At the time Skadden was also

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1 representing MacAndrews & Forbes in other
2 matters; correct?
3 A. I believe so, yes.
4 Q. Unrelated to the Sunbeam
5 transaction; correct?
6 A. I believe so, yes.
7 Q. That was your understanding at the
8 time?
9 A. Yes.
10 Q. In this transaction, though, Skadden
11 Arps only represented -- by "this transaction"
12 I mean the Coleman Sunbeam transaction --
13 Skadden Arps only represented Sunbeam's
14 interests; correct?
15 A. Yes.
16 Q. Skadden did not represent MacAndrews
17 & Forbes' interest in that transaction in any
18 way; correct?
19 A. Correct.
20 Q. Skadden Arps did not represent my
21 client Coleman (Parent) Holdings' interest in
22 that transaction, in any way; is that correct?
23 A. That is correct.
24 Q. You were responsible for
25 representing Sunbeam's interests as its

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1 attorney; is that correct?
2 A. That is correct.
3 Q. The Coleman deal was not the only
4 thing that Skadden Arps was doing for Sunbeam
5 in the first quarter of 1998; is that correct?
6 A. That is correct.
7 Q. What other things were you doing?
8 A. There were two other acquisitions.
9 Q. Can you name those?
10 A. Um, Sunbeam was seeking to acquire
11 Mr. Coffee and First Alert. I don't remember
12 the corporate names of those.
13 Q. Does Signature Brands ring a bell?
14 A. Yes.
15 Q. Signature Brands was the owner of
16 Mr. Coffee; correct?
17 A. Right. First Alert was the company,
18 the other company that they were seeking to
19 acquire.
20 Q. In the first quarter of 1998 Sunbeam
21 was seeking to acquire Coleman Company, First
22 Alert and Signature Brands; correct?
23 A. Yes.
24 Q. Skadden Arps was representing
25 Sunbeam in each of those transactions?

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1 A. Correct.
2 Q. And you were, personally, involved
3 in each of those transactions as Sunbeam's
4 counsel; correct?
5 A. Correct.
6 Q. Skadden Arps was also involved in
7 doing certain other things for Sunbeam
8 relating to those transactions in the first
9 quarter of 1998; correct?
10 A. Correct.
11 Q. What were those things?
12 A. Financing transactions.
13 Q. There were two of those; correct?
14 A. Bank financing and a high yield
15 financing.
16 Q. The high yield financing that you
17 referred to is sometimes called the debenture
18 transaction?
19 A. Correct.
20 Q. It was an issuance of zero coupon
21 debentures by Sunbeam; correct?
22 A. Correct.
23 Q. Convertible debentures?
24 A. Convertible, yes.
25 Q. And Skadden Arps was acting as

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1 Sunbeam's lawyer in connection with those two
2 transactions; correct?
3 A. Yes.
4 Q. And you were involved in those two
5 transaction, as well?
6 A. Not very much involved, no.
7 Q. But you were acting as Sunbeam's
8 lawyer to the extent that you were involved in
9 those transaction; correct, sir?
10 A. The firm was acting as Sunbeam's
11 lawyer, yes. I was not really very much
12 involved with the bank financing or the
13 debenture offering. I am an M&A lawyer.
14 Q. To the extent that you had any
15 involvement in it, it was as Sunbeam's
16 counsel?
17 A. Yes.
18 Q. Skadden Arps was also hired in the
19 first quarter of 1998 to draft new employment
20 agreements for Mr. Dunlap, Mr. Fannin, and
21 Mr. Kersh; correct?
22 A. I know that there were new
23 employment agreements, but I don't recall
24 exactly when those were to be drafted or
25 whatever.

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1 Q. Do you recall that before the
2 announcement of the transaction involving the
3 sale of my client's interest in Coleman
4 Company to Sunbeam there was an announcement
5 that Mr. Dunlap had entered into a new
6 three-year employment agreement with Sunbeam?
7 A. Yes. I think it was before the
8 Coleman deal was announced, yes.
9 Q. And Skadden Arps drafted that
10 employment agreement; is that correct?
11 A. I believe we did, yes.
12 Q. Do you recall getting a call from
13 Mr. Fannin asking you to do that; don't you?
14 A. I do, yes.
15 Q. At the time, sir, in addition to the
16 three transactions that Sunbeam had underway
17 and the three acquisitions, excuse me, that
18 Sunbeam had underway, in the first quarter of
19 '98, the acquisition of my client's interest
20 in Coleman, the acquisition of Signature
21 Brands, and the acquisition of First Alert,
22 Mr. Dunlap had also made public statements
23 indicating an invitation to make yet still
24 more acquisitions at some future point; is
25 that correct?

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1 A. I don't recall that.
2 Q. You don't recall Mr. Dunlap
3 indicating a plan to engage in further
4 consolidation of the consumer products
5 business, as part of the long-range strategic
6 plan of Sunbeam?
7 A. I really don't recall.
8 Q. Mr. Dunlap was somebody known for
9 making deals; correct, sir?
10 A. I guess so. He had done the Scott
11 deal. I guess so.
12 Q. He had done the Scott deal after
13 being there for a relatively short period of
14 time; correct, sir?
15 MR. BEMIS: Objection to form.
16 A. I don't remember how long he was
17 there.
18 Q. The Scott deal that you are
19 referring to is the sale of Scott Paper to
20 Kimberly Clark; correct?
21 A. Yes.
22 Q. Mr. Dunlap had been the chief
23 executive officer of Scott Paper; correct?
24 A. He had, yes.
25 Q. He had retained you to assist him in

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1 the sale of Scott Paper to Kimberly Clark;
2 correct, sir?
3 A. To assist Scott, yes.
4 Q. Yes. Sir, I would like to show you
5 a document that has been produced to us by
6 your firm in connection with your deposition.
7 I understand these, sir, based on what we have
8 been told about them, to be a printout of the
9 time records that Skadden Arps maintained for
10 the work being done by the firm on behalf of
11 Sunbeam in the first quarter -- excuse me,
12 March of 1998. I would like to ask you a
13 couple questions about that.
14 MR. MARKOWSKI: Let's mark this as
15 CPH Exhibit 384.
16 (CPH Exhibit 384, documents Bates
17 Nos. 19645 to 687, marked for
18 identification as of this date.)
19 Q. I will ask you some very specific
20 questions about this. You don't need to look
21 at entire document at this point.
22 Have you looked at this document as
23 it has been produced to us before this -- just
24 now?
25 A. Yes.

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1 Q. I will direct your attention to page
2 5 of the document. It is labeled page 543 at
3 the bottom.
4 A. Yes.
5 Q. Are you there?
6 A. Yes. I am there.
7 Q. There are some time entries for you
8 on that page. Do you see that, sir?
9 A. At the bottom?
10 Q. Yes.
11 A. Yes.
12 Q. Do you see those?
13 A. Yes.
14 Q. Under "personnel type," the column
15 to the left of your name -- do you see that
16 the words "of counsel" appear?
17 A. Yes.
18 Q. That was not your position at the
19 firm in the first quarter of 1998; correct,
20 sir?
21 A. No.
22 Q. You were --
23 A. A partner.
24 Q. Let me direct your attention to
25 another reference here that caught my eye,

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1 actually on the first page. There is a
2 reference to an Al Morrison, towards the
3 bottom, or towards the top, as well, actually.
4 Do you see that?
5 A. She was not a partner at that time.
6 Q. That is correct. She was associate?
7 A. She was associate and --
8 Q. She is a partner now?
9 A. She is a partner now.
10 Q. Does this indicate to you that the
11 personnel type designations reflected on this
12 document are those that people hold today at
13 Skadden Arps, as opposed to those that these
14 individuals held back in March of 1998?
15 A. Well, in those two cases, surely.
16 Q. Perhaps your counsel can clarify
17 that for us at some point, and determine
18 whether that is the case.
19 MR. MALLOY: That is the case. This
20 was a, this was run recently at your
21 request and it includes the -- is -- I
22 couldn't hear you.
23 This was run recently at their
24 request and it includes on the personnel
25 type the current designations.

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1 Q. The only other thing I want to cover
2 right now with you, sir, concerning this
3 document, are the matter names.
4 There are a series of matter names,
5 and I think they are in sequence here. And I
6 would like you to go through with me each one
7 of the matter names listed here and have you
8 describe, to the best you can, the general
9 nature of the matter that is the subject of
10 these descriptions.
11 Do you see that the first matter
12 name on the first page of the exhibit is
13 "corporate advice"?
14 A. I do, yes.
15 Q. In general terms, what was that
16 matter to be used for?
17 A. Basically, anything that did not fit
18 into the other specific matters.
19 Q. It was a catchall for corporate
20 work?
21 A. Yes.
22 Q. And then, beneath that, the first
23 change in matter name is on the fourth line;
24 do you see that?
25 A. Yes. Shareholders' meeting.

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1 Q. There was a special file created for
2 a shareholders' meeting for Sunbeam?
3 A. That's what it would appear to be,
4 yes.
5 Q. Are you familiar with the nature of
6 the work that was to be billed to that matter?
7 A. I don't have any independent
8 recollection, other than this document, since
9 all of the work appears to have been done in
10 March.
11 Q. This time record only relates to --
12 A. Only relates to March.
13 Q. I don't want to confuse you.
14 A. It had to do with work in connection
15 with the shareholders' meeting.
16 Q. Do you know which shareholders'
17 meeting?
18 A. It must have been the 1998 meeting.
19 I don't see why work in March would have
20 related to any other shareholders' meeting.
21 Q. Was there a point in time when there
22 was some thought that a shareholder meeting of
23 some sort might be required in connection with
24 any of the three acquisitions?
25 A. Probably a shareholder meeting of

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1 Coleman.
2 Q. Not to speculate, but can you
3 recall?
4 A. I don't recall that the three
5 acquisitions were subject to the Sunbeam
6 shareholder group.
7 Q. As you sit here, you are not sure
8 what this relates to, what time it was billed
9 to?
10 A. No. Not really.
11 Q. The next matter name that appears is
12 on the fourth box from the bottom.
13 A. Averdesian.
14 Q. Do you know what that related to?
15 A. I have not a clue.
16 Q. And the next matter, after that, is
17 "strategy"; do you see that?
18 A. I do.
19 Q. And there are several pages of
20 entries here relating to strategy. I think
21 those entries run through page 17 of the
22 document. Do you see that, sir?
23 A. Well, yes. I have not looked at all
24 17 pages, but --
25 Q. But if you --

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1 A. Yes.
2 Q. Page to page 17, you will see that
3 it continues to that page.
4 A. Yes.
5 Q. In general terms, what was the
6 nature of the Skadden work activity that was
7 to be billed to the strategy matter?
8 A. I think that was the Coleman
9 transaction.
10 Q. The strategy is in reference to
11 Coleman?
12 A. I believe so.
13 THE WITNESS: There is other stuff
14 in there. I am sorry. I am looking at
15 my own entries.
16 A. My own entries indicate Coleman.
17 Also some other stuff, other than work on that
18 transaction. But it is mostly Coleman, I
19 think. I can't say that either.
20 Joe Nisa's time has some First Alert
21 and Signature in it.
22 Q. Does it appear to relate generally,
23 perhaps, to the three acquisitions?
24 A. I thought that there was a separate
25 matter.

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1 Q. I will take you through each of
2 them, sir, perhaps it will become more clear
3 to you. On page 17.
4 A. Yes, sir.
5 Q. The matter names shift from strategy
6 to --
7 A. Creditor.
8 Q. Creditor. Do you know what that
9 matter related to?
10 A. Not really, but most of the time it
11 is by Greg Galardi, who is a bankruptcy or
12 restructuring lawyer in Delaware.
13 And I don't really know what this
14 is. I can only speculate. I will do so if my
15 counsel lets me.
16 Q. In addition to the work that Skadden
17 was doing for Sunbeam in the first quarter of
18 1998 relating to the transactions of the
19 financing and the employment agreements, was
20 Skadden also doing other corporate work for
21 Sunbeam?
22 A. Yes. There was the creditor matter,
23 for example.
24 Q. This appears to be an example of
25 that?

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1 A. It appears to be an example of that.
2 Q. Beneath creditor at the bottom of
3 page 17 there is a matter name --
4 A. Boston.
5 Q. -- that appears there, it is
6 Boston; correct, sir?
7 A. Correct.
8 Q. What did the Boston matter relate
9 to?
10 A. I believe that was supposed to have
11 captured the time dealing with the Signature
12 Brands and First Alert acquisitions -- the
13 so-called Boston, because those companies were
14 owned by funds established by Tom, Thomas Lee
15 Lee & Company, based in Boston.
16 Q. There are quite a few entries for
17 Boston; correct, sir?
18 A. Quite a few.
19 Q. They continue until it looks like
20 the bottom of page 22; correct?
21 A. Correct.
22 Q. It is possible, sir, is it not, that
23 in matters such as this, that people would
24 sometimes bill time to the wrong matter?
25 A. Yes.

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1 MR. BEMIS: Objection to form.
2 Q. The next matter --
3 A. It is not only possible, it is
4 inevitable, in my experience.
5 Q. It is your experiences here.
6 At the top of page 23 there is a new
7 matter.
8 A. Bank financing.
9 Q. What did that matter pertain to?
10 A. The bank financing for the three
11 acquisitions.
12 Q. The three acquisitions, again, are
13 Coleman Company, Signature Brands and First
14 Alert; correct?
15 A. Yes.
16 Q. Beneath that, I think beginning at
17 page 34 -- there are quite a few entries for
18 bank financing here, as well, sir?
19 A. Correct.
20 Q. The bottom of page 34, sir, you see
21 towards the bottom there is a matter named,
22 that is called rule 144A; do you see that?
23 A. Yes, I do.
24 Q. What does that matter pertain to?
25 A. The debenture offering.

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1 Q. The debenture offering also related
2 to obtaining funds to be used by Sunbeam, at
3 least in part, in connection with the three
4 acquisitions; correct, sir?
5 A. Correct.
6 Q. And there are quite a few entries
7 for the 144A matter; correct, sir?
8 A. There are, yes.
9 Q. Those continue to page 43 of the
10 time printout?
11 A. That is the end. Well, yes.
12 Q. And then, there are a few, there are
13 two other matters on page 43 that have a
14 relatively small number of entries; do you see
15 those?
16 A. Mercer and MD Corp.
17 Q. The Mercer matter related to what,
18 sir?
19 A. I don't recall, except since it is
20 Barbara Rubell's time, mostly, it must have
21 had to do with the product liability matter.
22 Q. You see a reference to Hank
23 Marshall; do you see his name?
24 A. Who?
25 Q. Hank Marshall, it is --

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1 A. Hank Marshall.
2 Q. Do you know Hank?
3 A. No.
4 Q. He is a partner at Sidley & Austin,
5 Sidley Austin Brown?
6 A. I don't know Hank.
7 Q. All right. Do you see the matter,
8 the last matter listed in this record, MD
9 Corp., at the bottom?
10 A. Yes.
11 Q. At the bottom of page 43.
12 A. Yes.
13 Q. MD Corp. related to what, sir? I
14 see you billed a little bit of time to them.
15 A. I don't recall. I don't recall.
16 Q. Sir, Skadden Arps was paid about
17 \$3,000,000 for its work on the three
18 acquisitions and the related financings?
19 A. I don't remember.
20 Q. I would like to have the court
21 reporter mark, as CPH Exhibit Number 384, a --
22 385, excuse me, a two-page document. It bears
23 Bates number SAS MF 19691 to 692. It says
24 "Skadden Arps invoice" dated April 27th, 1998.
25 (CPH Exhibit 385, document Bates

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1 SAS MF 19691 to 692, marked for
2 identification as of this date.)
3 Q. Do you have Exhibit 385 in front of
4 you, sir?
5 A. Yes.
6 Q. You have seen this before; correct?
7 A. I don't recall, but I am sure I did.
8 Q. Would you have been the person
9 responsible for billing Sunbeam for the work
10 related to --
11 A. No.
12 Q. To the first quarter transactions?
13 A. No.
14 Q. There was another person at Skadden
15 that did that?
16 A. Rich Easton.
17 Q. Rich Easton was one of the partners
18 that you brought into in to assist you in
19 connection with the work that needed to be
20 done?
21 A. Not exactly. Rich Easton is a
22 partner in our Delaware office, was then and
23 still is. He had represented Sunbeam for some
24 time before Mr. Dunlap got involved and before
25 I got involved.

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1 So, he stayed on the account, and he
2 knew Mr. Fannin from before. He had a good
3 relationship with Mr. Fannin. And so, I came
4 in and we worked together. But he remained
5 the billing partner.
6 Q. This invoice reflects \$3,000,000 in
7 charges for professional services; is that
8 correct, sir?
9 A. Yes, it does.
10 Q. And it indicates that \$900,000 had
11 previously been paid by Sunbeam; correct?
12 A. It does.
13 Q. And that \$2.1 million remained due;
14 correct, sir?
15 A. Yes.
16 Q. It also indicates that the firm was
17 billing Sunbeam for slightly less than
18 \$120,000 in charges of disbursements; correct?
19 A. Yes.
20 Q. And these fees and expenses all
21 relate to the three first quarter acquisitions
22 and the related financings; correct?
23 A. Those are the five matters listed on
24 page 1, yes.
25 Q. It doesn't relate to any other work

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1 that Skadden Arps was doing for Sunbeam?
2 A. It doesn't seem to be, no.
3 Q. These amounts, sir, are not, at
4 least precisely based on the firm's hours;
5 correct?
6 A. Um, not sure in this case. I don't
7 know what our hours were.
8 Q. They are all rounded numbers;
9 correct, sir?
10 A. Yes. But they could have been close
11 to the hours and to the hourly time charges
12 and just rounded. I don't recall.
13 Q. That was going to be my question.
14 Was there some agreement with Sunbeam in
15 advance that the firm would be paid a certain
16 amount of money for the work or was the
17 agreement that the firm would be paid based on
18 the hours, or was it something else?
19 A. I don't recall.
20 Q. In any event, the invoice here is
21 for \$3,000,000 for the work; correct?
22 A. Yes.
23 Q. Do you know whether this represents
24 the entire charge to Sunbeam for professional
25 services relating to the three first quarter

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1 acquisitions and the related financings?
2 A. It purports to. I don't -- I
3 don't -- I don't know any reason to think that
4 there were other charges for these five
5 matters.
6 Q. Your involvement with Sunbeam had
7 started -- had started several months earlier
8 than the first quarter of 1998; correct, sir?
9 A. Yes.
10 Q. You indicated yesterday it was, at
11 least as early as the middle of 1997 that you
12 received a call from Sunbeam requesting your
13 involvement in assisting the company in
14 connection with various strategic
15 alternatives; correct?
16 A. Correct.
17 Q. And that work, at least partially,
18 culminated in the transactions that occurred
19 in the first quarter of 1998; correct, sir?
20 A. Correct.
21 Q. In 1997, sir, did Skadden Arps bill
22 Sunbeam for any out-of-pocket costs or fees
23 incurred in connection with the services that
24 were being performed at that time?
25 A. What time is this?

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1 Q. 1997. The period before the
2 transactions of the first quarter of 1998.
3 A. I don't remember.
4 Q. You don't remember whether the firm,
5 whether you were charging your time to
6 Sunbeam?
7 A. Before the first quarter of 1998?
8 Q. Yes. You testified that --
9 A. I charged some time to Sunbeam
10 before that.
11 Q. Okay. Is it your understanding that
12 that was being billed to Sunbeam?
13 A. I don't recall. I don't recall
14 whether that is included in this bill or not.
15 Q. You are just uncertain about that?
16 A. I don't know.
17 Q. It could have been --
18 A. I don't know. Our records would
19 certainly reflect that.
20 Q. During the work that was being done
21 in the 1997 time period, you were involved in
22 doing various things; correct, sir?
23 You were involved in 1997 in doing
24 various things relating to assisting Sunbeam
25 in connection with assessing strategic

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1 alternatives; correct?
2 A. Correct.
3 Q. Other than yourself, were others at
4 Skadden Arps involved in that activity?
5 A. Rich Easton was involved.
6 Q. Anyone else?
7 A. I am not sure. I don't know.
8 Q. You were involved in at least -- let
9 me take a step back.
10 You had various meetings and
11 conversations with Sunbeam in connection with
12 that activity in 1997; correct, sir?
13 A. Correct.
14 Q. And Morgan Stanley was involved in
15 at least some of those meetings and
16 conversations; correct?
17 A. Correct.
18 Q. And Bill Strong is a person that you
19 recall being involved in that activity for
20 Morgan Stanley; correct, sir?
21 A. Correct.
22 Q. In 1997, sir, when you first became
23 involved, it was your understanding that
24 Mr. Dunlap's preference was to have Morgan
25 Stanley find a firm willing to acquire

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1 Sunbeam; correct?
2 A. Correct.
3 Q. That was his strong preference; is
4 that correct, sir?
5 A. I believe so.
6 Q. Did Mr. Dunlap ever say that in your
7 presence to any representatives of Morgan
8 Stanley, such as Mr. Strong?
9 A. I don't remember.
10 Q. Do you recall Mr. Dunlap, at any
11 point, ever being critical of Mr. Strong for
12 Morgan Stanley's inability to find a company
13 willing to acquire Sunbeam?
14 A. I don't really recall. I am sure he
15 would be. He was critical of everyone else.
16 Q. Mr. Dunlap was a very demonstrative
17 person; correct, sir?
18 A. Very.
19 Q. You had known him, by this point,
20 for a better part of 15 years?
21 A. I am not sure that I ever knew him.
22 I had worked for companies in which he was
23 involved back into the mid-'80s.
24 Q. You were familiar by 1997 with the
25 manner in which Mr. Dunlap communicated with

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1 people; correct, sir?
2 A. I had seen him communicate with
3 quite a few people, yes.
4 Q. He was often quite blunt; correct,
5 sir?
6 A. Often blunt. Yes.
7 Q. As you sit here today, you can't
8 recall any circumstances where Mr. Dunlap was,
9 to use that phrase, "quite blunt" in
10 expressing his disappointment that Morgan
11 Stanley had been unable to find a company
12 willing to acquire Sunbeam?
13 MR. BEMIS: Objection. Asked and
14 answered.
15 A. I really don't recall.
16 Q. You have just mentioned that you had
17 first became involved in doing corporate work,
18 where Mr. Dunlap was also involved in some
19 way, back in the mid-1980s; correct, sir?
20 A. Yes.
21 Q. I think you testified yesterday,
22 sir -- well, let me -- it would be faster if I
23 let you do it.
24 Could you go through,
25 chronologically, for me, sir, the transactions

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1 where you were involved as counsel to
2 accompany where Mr. Dunlap was employed as an
3 executive, beginning with the first
4 transaction that you can recall and then
5 taking us right through the time when you got
6 the call in 1997 to become involved in
7 Sunbeam.
8 A. First, a series of transactions in
9 which Skadden and I represented Sir James
10 Goldsmith and his holding company, General
11 Oriental, and I don't specifically remember
12 all of the transactions, but they took place
13 after Goldsmith had acquired Crown Zellerbach,
14 and it involved, generally, selling off parts
15 of Crown Zellerbach.
16 I remember one very complicated
17 transaction involving James River Corporation,
18 and there were others.
19 Q. You had assisted Sir James Goldsmith
20 in the acquisition of Crown Zellerbach; is
21 that correct?
22 A. I have.
23 Q. Mr. Dunlap was not involved in that
24 activity?
25 A. No. He was hired by Mr. -- to the

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1 best of my recollection, he was hired by
2 Mr. Goldsmith after that acquisition.
3 Q. And then -- what was Mr. Dunlap's
4 role in connection with the transactions
5 relating to the sale of various Crown
6 Zellerbach assets?
7 A. Sir James Goldsmith had the whole
8 staff of people involved in those
9 transactions. Mr. Dunlap was not, at that
10 point, a transaction person, he was a
11 restructuring person. He would come in and
12 fire people and, more than actually
13 handling the transactions themselves. But he
14 was involved in that way.
15 Q. Do you recall his position or his
16 title?
17 A. No, I don't.
18 Q. You had personal contact with him in
19 connection with the legal work that you were
20 doing?
21 A. Yes. Although I had much more
22 contact with Sir James Goldsmith himself and
23 other people working for him.
24 Q. This is just the circumstance in
25 which you first became, in which you first met

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1 Mr. Dunlap; correct?
2 A. Correct.
3 Q. And can you recall, approximately,
4 sir, how many of these sale transactions there
5 were and over what period of time they
6 occurred?
7 A. There was the James River
8 transaction, which was the principal one, and
9 I don't recall whether Dunlap was involved
10 with that at all.
11 There was another transaction that
12 we sold, a leveraged buyout, this was somebody
13 represented by somebody in Chicago. I am very
14 vague on this.
15 There was a transaction in which, I
16 think this was the final transaction in which
17 Sir James Goldsmith swapped his Crown
18 Zellerbach, maybe, other Timberlands, for a
19 big chunk of Hanson.
20 Dunlap was involved in that one.
21 That's all I remember about the Crown
22 Zellerbach exit transactions.
23 Q. Do you think there may have been
24 more?
25 A. It is possible.

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1 Q. Do you recall over what period of
2 time these transactions took place?
3 A. Not really. Probably a couple of
4 years.
5 And the next time I encountered
6 Mr. Dunlap was in London. Still he was
7 working for Sir James Goldsmith and his
8 holding company, and Sir James Goldsmith was
9 teaming up with two other colorful
10 entrepreneurs, Lloyd Jake Rothschild in London
11 and Kerry Packer in Australia, to try to take
12 over a U.K. public company called BAT,
13 represented by Cravath. This was a hostile
14 bid, and Dunlap was part of the Goldsmith team
15 on site in London.
16 And the whole team, including
17 merchant bankers and British lawyers and
18 myself and one of my partners, Goldsmith, and
19 Dunlap, would meet every day to strategize
20 about how to proceed.
21 Q. Is it fair to say that you had more
22 direct contact with Mr. Dunlap in connection
23 with that transaction than you had previously?
24 A. Um, I saw more of him.
25 In these meetings in London he did

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1 not have a lot to contribute.
2 Q. Do you recall when this was?
3 A. The late '80s. That's about the
4 best time frame that I can put on it.
5 Q. What happened in that transaction?
6 A. Um, the group Goldsmith, Rothschild,
7 Packer, formed a company called Hoylake, which
8 made a hostile tender offer for BAT, which was
9 unsuccessful
10 Because BAT had a big U.S. insurance
11 company, Fireman's, and the state insurances
12 regulators in the United States refused to
13 approve the takeover, which killed the deal,
14 but that went on for months.
15 Q. Did you spend a great deal of time
16 on that?
17 A. Yes.
18 Q. What do you recall next?
19 A. Next, I recall that, at some point,
20 Dunlap left Goldsmith, and I am not sure if he
21 left on his own accord or he was pushed, I
22 just don't know.
23 And he went to work for Kerry Packer
24 in Australia, one of the Goldsmith partners on
25 the BAT take over.

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1 And I had one, I did one
2 transaction, or the firm did one transaction
3 for a Packer-controlled company in which
4 Mr. Dunlap was involved. It was a U.S.
5 company called Balassis Communications, and it
6 wanted to, they wanted to take it public.
7 So, we did an initial public
8 offering called Balassis Communications,
9 principally handled by my corporate finance
10 partner, Phyllis Korff.
11 And I was involved in the beginning
12 of that transaction, with Mr. Dunlap and
13 others, in negotiating with the management of
14 Balassis over their employment, what piece of
15 the equity that they would get, et cetera, et
16 cetera.
17 Q. How did Skadden Arps come to be
18 involved in representing Kerry Packer in that
19 transaction?
20 A. Dunlap called.
21 Q. What do you recall next?
22 A. Scott Paper. Dunlap was named CEO
23 of Scott Paper, which -- it was a pre-existing
24 Skadden client, for whom we had been, had done
25 quite a bit of work, and the Scott Paper team

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1 at Skadden at that time was headed by my
2 partner Peter Atkins, and Peter and I went
3 down to visit the new management team at
4 Scott, outside of Philadelphia, um, and met
5 with Dunlap, Kersh and the general counsel
6 whose name escapes me.
7 And, thereafter, Dunlap or the
8 general counsel called me, I can't remember
9 who, to see if we would represent Scott in
10 selling off, I think it was Hammermill Paper,
11 some division of Scott, and my partner Bob
12 Pincus in Delaware handled that transaction
13 pretty much by himself. I did not get much
14 involved.
15 Q. The call for that transaction came
16 in to you either from Mr. Dunlap or the
17 general counsel?
18 A. Yes.
19 And then the Kimberly Clark sale,
20 which Bob Pincus and I, and others,
21 represented Scott Paper in selling out to
22 Kimberly Clark.
23 Q. The sale of Kimberly Clark to Scott
24 Paper was a defining moment in Mr. Dunlap's
25 career; was it, sir?

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1 MR. BEMIS: Objection to the form.
2 A. Defining moment? I don't know.
3 Q. He was given, I think you referred
4 to him yesterday, sir, at least as of 1997,
5 1998, as a darling of Wall Street; correct?
6 A. Correct.
7 Q. And the Kimberly Clark transaction
8 was certainly an important part of Mr. Dunlap
9 becoming, in your opinion, one of the darlings
10 of Wall Street; correct?
11 A. Yes.
12 Q. You indicated yesterday that that
13 transaction made a lot of money for the
14 Kimberly Clark shareholders; correct?
15 A. Not -- for Scott.
16 Q. For the Scott. Mr. Dunlap was
17 working at Scott.
18 A. Yes.
19 Q. And Kimberly Clark acquired Scott;
20 correct?
21 A. Yes.
22 Q. In connection with that sale you
23 represented Scott?
24 A. Scott.
25 Q. And the Scott shareholders, in

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1 connection with that transaction, you said
2 yesterday, made a great deal of money;
3 correct?
4 A. Yes. Scott's stock during
5 Mr. Dunlap's tenure there went way up.
6 Q. Mr. Dunlap was given a great deal of
7 credit for turning Scott Paper around and
8 capitalizing on the sale and the benefits of
9 that turnaround by selling the business to
10 Scott Paper; correct?
11 A. Yes. He became a --
12 Q. Selling the business to Kimberly
13 Clark.
14 A. He became a legend in his own mind,
15 yes.
16 Q. He also became something of a legend
17 on Wall Street; is that correct, sir?
18 A. Yes.
19 Q. What was the nature of Skadden Arps'
20 involvement in that transaction, sir?
21 A. Kimberly Clark?
22 Q. Yes.
23 A. We did everything. I mean, we -- we
24 drafted and negotiated the merger agreement.
25 Drafted and negotiated the SEC documents, the

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1 whole thing. We did the whole transaction.
2 Q. You worked extensively in that
3 transaction personally; correct?
4 A. I certainly did, yes.
5 Q. Mr. Dunlap, personally, made a
6 substantial amount of money as a result of the
7 sale of Scott Paper to Kimberly Clark;
8 correct, sir?
9 A. Yes.
10 Q. Mr. Dunlap held a substantial amount
11 of Scott Paper stock in options; correct?
12 A. That is my recollection.
13 Q. Do you recall that Mr. Dunlap made
14 something in the neighborhood of \$100,000,000
15 as a result of the sale of Scott Paper to
16 Kimberly Clark?
17 A. I couldn't fix a precise amount on
18 it, but that doesn't seem unreasonable.
19 Q. I think you indicated, sir, that you
20 did recall that Skadden Arps prepared a new
21 employment agreement for Mr. Dunlap at
22 Sunbeam, sometime before the three
23 acquisitions were announced in the first
24 quarter of 1998; is that correct, sir?
25 A. Yes.

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1 Q. Let me show you the employment
2 agreement.
3 MR. MARKOWSKI: I will mark this as
4 CPH Exhibit 386, sir. It is a document
5 entitled "employment agreement by and
6 between Sunbeam corporation and Albert J.
7 Dunlap" effective as of February 1st,
8 1998.
9 (CPH Exhibit 386, employment
10 agreement, marked for identification as
11 of this date.)
12 Q. Do you have CPH Exhibit 386 in front
13 of you, sir?
14 A. Yes, sir.
15 Q. This is a copy of the employment
16 agreement that Skadden Arps prepared; is that
17 correct?
18 A. It purports to be, but there is
19 nothing on here to indicate that it came out
20 of our word processor. Yes, there is, on the
21 last page. Sorry.
22 Q. This is the document that Skadden
23 Arps prepared, the employment agreement that
24 Skadden Arps prepared for Sunbeam relating to
25 Mr. Dunlap's employment as chief executive

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1 officer of the company; correct, sir?
2 A. That is what it purports to be, yes.
3 Q. It is effective as of February 1st,
4 1998; is that correct?
5 A. That is what it says.
6 Q. If you turn to the second page, sir,
7 executed according to the document, on
8 February 20th. Do you see that?
9 A. That is what it says.
10 Q. All right. Do you recall that
11 the -- we will get to it later, I am sure, but
12 actually I think you saw some documents
13 already -- that the acquisition agreements
14 relating to the sale of Coleman Company to
15 Sunbeam were dated as of February 27th.
16 A. Right.
17 Q. Do you recall that, sir?
18 A. Yes.
19 Q. So, this agreement is dated about a
20 week before the agreement was entered into
21 between my client and Sunbeam relating to the
22 acquisition of Coleman Company; correct, sir?
23 A. That's what it says, yes.
24 Q. And the term of this agreement, sir,
25 is the employment period, is through January

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1 31st, 2001; correct?
2 You will see that at the bottom of
3 page 2, in the paragraph entitled "Employment
4 Period."
5 A. That's what it says.
6 MR. BEMIS: Objection to the form.
7 He is highlighting the document.
8 He doesn't have any personal
9 knowledge of this. Objection to the
10 form.
11 Q. Sir, do you recall that Morgan
12 Stanley advised Sunbeam that it was important,
13 in connection with the announcement of the
14 three acquisitions and the related financings,
15 that Mr. Dunlap's employment period be
16 extended?
17 A. I don't recall that.
18 Q. You don't recall that becoming a
19 subject of conversation?
20 A. No.
21 MR. BEMIS: Objection. Asked and
22 answered.
23 Q. Do you recall that Mr. Dunlap's
24 employment contract was scheduled to expire in
25 mid-1998, prior to the February 1st, 1998

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1 agreement?
2 MR. BEMIS: Objection. No
3 foundation.
4 A. I don't recall.
5 Q. Do you recall that when the
6 acquisitions were announced, that Mr. Dunlap
7 made it a point to say that he had just signed
8 a new employment agreement and intended to
9 stay with the company to restructure the three
10 companies that were being acquired?
11 A. I don't recall. I have some vague
12 recollection of it, that that was known, but I
13 don't recall specifically saying that.
14 Q. Sir, do you recall that Mr. Dunlap
15 wrote a book?
16 A. Yes.
17 Q. Mean Business?
18 A. Yes.
19 Q. You bought quite a few copies of the
20 book; do you recall that, sir?
21 A. Yes, I do.
22 Q. About a thousand?
23 A. Not me, personally. The firm did.
24 Q. I was going to ask that question. I
25 had seen an indication that you bought 1,000

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1 copies of the book.
2 A. The firm.
3 Q. Skadden Arps bought the book, the
4 1,000 copies?
5 A. Yes.
6 Q. How did that come about?
7 A. Mr. Dunlap instructed me to do that.
8 Q. When did he do that?
9 A. I don't remember.
10 Q. Did you actually take delivery of
11 1,000 copies of his book?
12 A. I believe so.
13 Q. What did you do with them?
14 A. I think I stuck them in the library
15 for anyone who wanted a free copy. There were
16 a lot left over. I don't know what we did
17 with those.
18 Q. Let me show you a document that we
19 are going to mark as CPH Exhibit 387.
20 (CPH Exhibit 387, documents Bates
21 Nos. 598 to 99, marked for
22 identification as of this date.)
23 A. Thank you.
24 Q. Exhibit 387, sir, is a document,
25 two-page document that bears Bates number

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1 HK SOC 598 to 599. I will represent to you,
2 sir, that this was a document that was first
3 produced by Hill & Knowlton.
4 A. All right.
5 Q. Do you see your name there, sir?
6 A. I do.
7 Q. And next to your name it indicates,
8 actually written in hand beneath your hand is
9 written the number 1,000; do you see that,
10 sir?
11 A. Yes, I do.
12 Q. 1,000 is the number of copies of
13 Mr. Dunlap's book, Mean Business, that you
14 recall acquiring?
15 A. I don't specifically recall, but it
16 sounds like it is right.
17 Q. Okay.
18 Do you see, on the bottom of this
19 second page, sir, there is the date September
20 5th, 1997?
21 A. Yes.
22 Q. Does that refresh your recollection
23 that you were approached about buying a large
24 number of copies of Mean Business sometime in
25 the latter part of 1997?

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1 A. Not really, but -- it sounds right.
2 Q. Do you recall that it was during the
3 time period when you were working for Sunbeam?
4 A. Yes.
5 Q. So, sometime before Mr. Dunlap was
6 terminated; correct, sir?
7 A. Yes.
8 Q. And do you recall it was before the
9 acquisitions took place in the first quarter
10 of 1998?
11 A. I believe so.
12 Q. Why did the firm buy 1,000 copies of
13 the book?
14 A. To please a CEO of a good client.
15 Q. You did not, personally, pay for
16 them, I take it?
17 A. No.
18 Q. Sir, Morgan Stanley was a client of
19 Skadden Arps in 1998; correct?
20 A. I believe so. Yes.
21 Q. Are they a client of the firm today?
22 A. I believe so, although I don't know
23 what we are doing for them.
24 Q. In connection with the work that
25 Morgan Stanley -- do you have an

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1 understanding, sir, of, in general terms, of
2 the various things that Morgan Stanley was
3 doing for Sunbeam that related to the first
4 quarter of 1998 acquisitions?
5 A. Yes.
6 Q. Could you tell me what your
7 understanding is.
8 A. They were financial advisers with
9 respect to the acquisitions, which included
10 giving fairness opinions or fairness advice to
11 the Sunbeam board with respect to the
12 acquisition. On the one hand.
13 On the other hand, they were to
14 provide or raise the money needed to finance
15 the acquisitions.
16 Q. And in connection with the
17 fundraising activity that Morgan Stanley
18 itself was involved in, sir, what's your
19 understanding of what Morgan Stanley did to
20 accomplish that? In very general terms.
21 A. Well, there are two pieces of
22 financing. There was a bank financing.
23 Morgan Stanley provided a piece of that and
24 brought other banks into, with respect to the
25 rest of it. On the debenture offering they

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1 placed the debentures.
2 Q. They underwrote the debentures;
3 correct, sir?
4 A. Yes.
5 Q. And then they marketed them; is that
6 correct?
7 A. Yes. Correct.
8 Q. Morgan Stanley was being paid
9 substantial amounts for its activity both as
10 financial adviser to Sunbeam and as the senior
11 lender and as the underwriter of the debenture
12 offering; is that correct?
13 MR. BEMIS: Objection. Form,
14 foundation.
15 Q. Was that your understanding, at the
16 time?
17 A. I believe they did get significant
18 fees in connection with those activities, yes.
19 Q. Is it your understanding, at the
20 time, sir, that if the transactions did not go
21 forward, if for some reason the three
22 acquisitions did not occur, and if the
23 financings were unnecessary, that Morgan
24 Stanley would not be paid those fees?
25 MR. BEMIS: Objection. Form,

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1 foundation.
2 A. I don't recall the nature of their
3 engagement letter.
4 Q. Is it your understanding, based on
5 your involvement in transactions such as this,
6 sir, that the fees that the investment banker
7 typically will be paid are contingent on the
8 transactions actually occurring?
9 MR. BEMIS: Objection. Form,
10 foundation.
11 A. It is customary that all or part of
12 the investment banking fees are success fees,
13 contingent on the successful completion of the
14 transaction.
15 Q. That was your understanding, as of
16 the time these transactions were occurring in
17 the first quarter of 1998; correct, sir?
18 A. Correct.
19 Q. Sir, you have never been involved in
20 representing Coleman (Parent) Holdings,
21 personally; have you?
22 A. No.
23 Q. You have never been involved in
24 representing any MacAndrews & Forbes entities;
25 is that correct?

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1 A. I don't believe I have.
2 Q. When you testified earlier, sir,
3 about the first call that you got from
4 Mr. Fannin, relating to the possibility of
5 Sunbeam acquiring Coleman, the telephone call,
6 I think you placed in late 1997 --
7 A. Yes.
8 Q. Do you recall that testimony,
9 generally?
10 A. Yes.
11 Q. You told Mr. -- or maybe it was
12 Mr. Fannin telling you that he was aware that
13 Skadden Arps, at least sometimes, represented
14 MacAndrews & Forbes entities; correct?
15 A. We both were aware, yes.
16 Q. Mr. Fannin was aware of that when he
17 placed this call?
18 A. I believe so.
19 Q. You certainly were aware of it;
20 correct?
21 A. I certainly was aware.
22 Q. And if Mr. Fannin was not aware of
23 it, you told him during that first telephone
24 call?
25 A. Yes.

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1 THE WITNESS: But I do think he knew
2 of it before we even started talking
3 about it.
4 Q. There was no doubt about the fact
5 that Mr. Fannin was aware of that
6 relationship; correct?
7 A. No doubt.
8 Q. And when Mr. Fannin raised with you
9 the possibility of Skadden Arps becoming
10 involved in the representing of Sunbeam, in
11 connection with the possible acquisition of
12 Coleman Company, you knew that there was a
13 conflict presented by that engagement,
14 potential engagement; correct?
15 A. Yes.
16 Q. And Mr. Fannin understood that, too;
17 correct?
18 A. Yes.
19 MR. BEMIS: Objection to form.
20 Q. It was your understanding that
21 Mr. Fannin, in your conversation with him, was
22 aware of that; correct?
23 MR. BEMIS: Objection to form.
24 A. Yes.
25 Q. And did you tell Mr. Fannin at that

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1 time, sir, that for you to become involved in
2 representing Sunbeam, in connection with the
3 possible acquisition of Coleman Company, you
4 would need to obtain a conflict waiver from
5 MacAndrews & Forbes?
6 A. Yes.
7 Q. Could you explain, sir, everybody in
8 this room, I think understands, but could you
9 explain for the jury what this conflict
10 situation involved, in your mind?
11 A. Well, the ethical rules that govern
12 our profession, as you know, state that a
13 lawyer shall not represent a client in a
14 matter where the interests of another client
15 are adverse.
16 And, therefore, we could not,
17 without the consent of the clients involved,
18 undertake the representation of either Sunbeam
19 or MacAndrews in this transaction between the
20 three of them.
21 Q. That is because the interests of
22 Coleman (Parent) Holdings or MacAndrews &
23 Forbes were adverse to the interests of
24 Sunbeam in connection with this transaction;
25 is that correct, sir?

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1 A. Yes.
2 Q. And Skadden Arps couldn't be both
3 representing the interests of Sunbeam and
4 MacAndrews & Forbes in that transaction;
5 correct?
6 A. Yes.
7 Q. And Skadden Arps couldn't become
8 involved in representing Sunbeam in that
9 transaction, even though it was representing
10 MacAndrews & Forbes in unrelated matters
11 without getting the consent of my client;
12 correct?
13 A. Correct.
14 Q. You followed up to speak to one of
15 your partners with respect to obtaining such a
16 waiver; correct, sir?
17 A. I did.
18 Q. And that person's name, again, is
19 what?
20 A. Frank Gittes.
21 Q. What did you tell Mr. Gittes?
22 THE WITNESS: Is that okay?
23 MR. MALLOY: Well --
24 Q. I will rephrase the question.
25 What did you tell Mr. Gittes that

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1 you wanted him to do?
2 A. I called Frank. Frank and I are
3 good friends -- and I said Frank, I have just
4 learned that your client MacAndrews & Forbes
5 was talking to my client Sunbeam about selling
6 Coleman to Sunbeam, and I told him that
7 Sunbeam wanted us to represent them, and did
8 he think that that would be okay with
9 MacAndrews & Forbes and that he could get
10 their approval.
11 He thought that he could.
12 Q. Did you ask him to do that?
13 A. Yes.
14 Q. Do you know if he did?
15 A. He told me he did, later.
16 Q. When did he tell you that?
17 A. I couldn't put a time frame on it,
18 but it was not a long period.
19 Q. The reason why you made that call to
20 your partner was you wanted to become involved
21 in representing Sunbeam in connection with
22 this transaction; correct, sir?
23 A. Yes.
24 Q. Sunbeam had asked you to become
25 involved; correct?

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1 A. Yes.
2 Q. You had been doing some work with
3 Sunbeam on this general -- in this general
4 area of strategic options for some months;
5 correct?
6 A. Correct.
7 Q. And you had previously done a number
8 of transactions for Mr. Dunlap or other
9 companies that he had been involved in;
10 correct, sir?
11 A. For companies, but not for him,
12 personally.
13 Q. Correct. And I think you testified
14 previously that one of the reasons you bought
15 the firm bought 1,000 copies of Mean Business
16 is that you considered him to be a CEO of an
17 important client; correct?
18 A. Correct.
19 Q. And you wanted to be in a position
20 to provide Mr. Dunlap and Sunbeam, an
21 important client, with the services that they
22 wanted in connection with the possible
23 acquisition of Coleman Company; correct?
24 A. Correct.
25 Q. And that is why you called

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1 Mr. Gittes; correct?
2 A. Correct.
3 Q. I want to skip ahead a little bit
4 and see if you have any knowledge of certain
5 things.
6 There has been a lot of testimony in
7 this case about a meeting that took place on
8 February 23rd, 1998 at the offices of Morgan
9 Stanley. That is about four days before the
10 acquisition agreements relating to Coleman
11 were executed. Do you have that time period
12 in your mind?
13 A. Yes.
14 Q. Do you recall whether you were
15 present at that meeting at Morgan Stanley on
16 February 23rd, where there was a meeting of
17 Morgan Stanley representatives, Coleman
18 representatives, Sunbeam representatives, and
19 representatives of my client?
20 MR. BEMIS: Objection to form.
21 A. I don't have any specific
22 recollection of that meeting.
23 Q. Do you have any recollection of
24 being at a meeting at the offices of Morgan
25 Stanley about four days before the Coleman

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1 merger agreements were executed where
2 Mr. Kersh, Mr. Goudis, perhaps others, made
3 presentations to First Boston, my client,
4 Coleman Company representatives, concerning
5 Sunbeam's strategic plan?
6 A. I don't recall being -- I don't
7 recall.
8 Q. You have no recollection of being at
9 such a meeting; correct, sir?
10 A. I don't.
11 Q. Let me show you a copy of an exhibit
12 that has been identified as a strategic plan
13 presentation that Mr. Kersh and others made at
14 that meeting. It has previously been marked
15 as CPH Exhibit Number 238.
16 I will ask you to take a look at the
17 document, sir, at least sufficiently to see
18 whether it refreshes your recollection about
19 whether you were present at a meeting about
20 four days before the Coleman merger agreements
21 were signed where Mr. Kersh, or perhaps
22 someone else from Sunbeam presented this
23 information to my client.
24 A. No, it doesn't.
25 Q. Looking at this document, sir, does

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1 it lead you to believe that you were not
2 present at this meeting?
3 A. It doesn't provide any basis for me
4 to recall whether I was or wasn't. I doubt
5 that I was there.
6 Q. Have you ever seen this document
7 before, sir?
8 A. I don't recall.
9 Q. If you can exclude the handwritten
10 notes. There are a few handwritten notes.
11 A. I don't recall seeing it, no.
12 Q. Do you see, towards the end of this
13 document, sir, it is a page that has Bates
14 number 332, the last three digits of the Bates
15 number at the bottom. The bottom right-hand
16 corner. Three or four pages.
17 A. My Bates numbers are five --
18 Q. If you turn the page this way, the
19 way that I have it, the bottom --
20 A. Sorry. 332. Yes.
21 Q. Do you see that page is entitled
22 "long-range strategic objectives - earnings
23 from continuing operations"; do you see that?
24 A. Yes.
25 Q. Have you ever seen this before?

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1 A. I don't recall.
2 Q. I will show you a copy of what we
3 previously marked as CPH Exhibit Number 9,
4 sir.
5 It is a document entitled "Sunbeam
6 Corporation discussion materials, February
7 1998," and it has, it is on Morgan Stanley
8 stationery. You will see on the bottom
9 right-hand corner of each page.
10 A. Yes.
11 Q. There has been testimony, sir, that
12 this document was the, was delivered to my
13 client and to the other participants in the
14 February 23rd meeting at Morgan Stanley.
15 MR. BEMIS: Objection to the form.
16 Foundation.
17 Q. Does this document refresh your
18 recollection about whether you participated in
19 the February 23rd meeting?
20 A. No, it doesn't.
21 Q. Have you seen this document
22 previously?
23 A. I don't recall.
24 One of the documents -- I was shown
25 yesterday -- has some pages that look like

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1 this, but I don't --
2 Q. I want you to exclude for this
3 purpose, sir, seeing this in connection with
4 your preparation.
5 A. I don't recall seeing this.
6 Q. Were you aware that Morgan Stanley
7 presented this document to my client, sir?
8 MR. BEMIS: Objection. Form.
9 Foundation.
10 A. I don't have any awareness, one way
11 or other.
12 Q. Did anybody from Morgan Stanley
13 describe to you, sir, the information that was
14 being provided to my client in connection with
15 its due diligence?
16 A. I don't recall.
17 MR. BEMIS: Objection. Form,
18 foundation.
19 Q. Is that something that you would
20 have had interest in?
21 MR. BEMIS: Objection. Form,
22 foundation.
23 Q. Was that outside of what you were
24 doing?
25 MR. BEMIS: Objection. Form.

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1 Foundation.
2 MR. MALLOY: When you say that, what
3 are you referring to?
4 Q. You said that you don't recall being
5 told what Morgan Stanley provided to my client
6 in connection with my client's due diligence;
7 correct, sir?
8 A. Correct.
9 Q. And I think inartfully, just trying
10 to understand whether you viewed that as
11 something that really did not relate to the
12 activities that you were responsible for.
13 MR. BEMIS: Objection. Form,
14 foundation.
15 A. I guess the answer to that is Yes.
16 Q. There has also been testimony, sir,
17 that there was an accounting due diligence
18 call that Morgan Stanley undertook in
19 connection with the three acquisitions where
20 representatives of Morgan Stanley spoke with
21 the outside auditors for the Coleman Company,
22 Signature Brands and First Alert.
23 Do you have any knowledge about the
24 substance of the accounting due diligence
25 conversations that Morgan Stanley had with the

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1 outside auditors for my client?
2 A. No, I don't.
3 Q. Do you have any understanding, sir,
4 of knowledge concerning the information that
5 Morgan Stanley received in connection with its
6 accounting due diligence calls with Sunbeam's
7 outside auditor, Arthur Andersen?
8 A. No.
9 Q. Let me show you a document to see if
10 it refreshes your recollection on that, sir.
11 It is a document that has been previously
12 marked as CPH Exhibit Number 31. It is a
13 document dated March 7th, 1998, on Morgan
14 Stanley letterhead from John Tyree, to the
15 Sunbeam financing team, subject accounting due
16 diligence call.
17 Do you have Exhibit 31 in front of
18 you, sir?
19 A. I do.
20 Q. Do you see that it refers to a
21 planned series of conference calls with the
22 outside auditing firms --
23 A. Yes.
24 Q. -- on March 12th, 1998?
25 A. Yes.

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1 Q. That is after the agreement, the
2 merger agreements were signed relating to the
3 acquisition by Sunbeam of Coleman Company;
4 correct?
5 A. Yes.
6 Q. And this indicates that one of the
7 participants in the scheduled accounting due
8 diligence conference calls was Arthur
9 Andersen; do you see that, sir?
10 A. Yes.
11 Q. There is a reference to a Larry
12 Bornstein next to the name Arthur Andersen; do
13 you see that?
14 A. Yes.
15 Q. Did you participate in the
16 accounting due diligence call on March --
17 A. I don't believe I did.
18 Q. -- on March 12th?
19 A. I don't believe I did.
20 Q. Did you, personally, ever have any
21 conversation with Larry Bornstein?
22 A. I don't recall any.
23 Q. For this purpose, sir, I am focusing
24 on the period before the closing of the
25 transaction, with my client, on March 3rd. Do

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1 you recall that during that time --
2 A. I don't recall any conversations
3 with Larry Bornstein ever.
4 Q. Did anyone report to you, sir, about
5 the substance of the conversations that Arthur
6 Andersen had with representatives of Morgan
7 Stanley relating to Morgan Stanley's
8 accounting due diligence inquiries?
9 A. I don't recall any such report.
10 Q. Did anyone from Morgan Stanley
11 report to you, sir, that in connection with
12 its conversations with Arthur Andersen, as
13 part of its accounting due diligence, that
14 Arthur Andersen advised Morgan Stanley that,
15 in Arthur Andersen's view, Sunbeam had taken a
16 number of aggressive actions in the fourth
17 quarter of 1997 to enhance its net sales
18 revenue?
19 MR. BEMIS: Objection. Form,
20 foundation.
21 A. Could I hear the question back.
22 (Record read.)
23 A. I don't recall any such --
24 Q. Do you know John Tyree, sir, the
25 author of this document?

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1 A. I know the name. I am sure I met
2 him, but -- I -- I am not sure I can pick him
3 out of a lineup.
4 Q. Do you recall Mr. Tyree ever
5 advising you about the substance of his
6 conversations with Arthur Andersen?
7 A. No, I don't.
8 MR. BEMIS: Objection to form.
9 Foundation.
10 Q. You participated in the February
11 27th Sunbeam board meeting, correct, sir, that
12 is the meeting where the board approved the
13 acquisition of Coleman Company?
14 A. Yes.
15 Q. And there were representatives of
16 Morgan Stanley present at that meeting;
17 correct?
18 A. Yes. I believe the meeting was at
19 Morgan Stanley.
20 Q. Do you recall that Mr. Strong was
21 there?
22 A. I believe he was.
23 Q. Do you recall, at that meeting, that
24 Morgan Stanley advised the Sunbeam board that
25 it considered the Coleman acquisition terms

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1 fair to Sunbeam?
2 A. Yes. From a financial point of
3 view, I believe they did advise them.
4 Q. That was important to the Sunbeam
5 board; correct, sir?
6 MR. BEMIS: Objection to the form.
7 A. Yes.
8 Q. Why is that important to the Sunbeam
9 board?
10 A. It supports their decision to do the
11 deal.
12 Q. In what way, sir?
13 A. In what way?
14 Q. Yes.
15 MR. BEMIS: Objection to the form.
16 Q. In what way did the Morgan Stanley
17 fairness opinion support the board's decision
18 to go forward about the deal?
19 MR. BEMIS: Objection to the form.
20 A. It told the board that in the
21 professional opinion of Morgan Stanley the
22 deal was fair to Sunbeam.
23 Q. When you say from a financial point
24 of view, what does that mean?
25 A. Financial point of view. The

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1 financial terms are favorable.
2 Q. What does that mean, the financial
3 terms?
4 A. The price.
5 Q. The price that is being paid for my
6 client's stock; correct, sir?
7 A. Yes. It is a fair price to pay for
8 the asset.
9 Q. That's what Morgan Stanley was
10 saying to the Sunbeam board on February 27th;
11 correct?
12 A. In effect. You would have to look
13 at -- I don't know if there was a written
14 fairness opinion. You have to refresh my
15 recollection on that, but the terminology used
16 by the banker is fair from a financial point
17 of view.
18 Q. I just want to --
19 A. Those are the traditional, customary
20 words used.
21 Q. What that relates to, for lay
22 people, is to the price that is being paid;
23 correct, sir?
24 A. Correct.
25 Q. Do you recall that, in connection

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1 with the Sunbeam board's meeting on the 27th,
2 that Mr. Strong, or perhaps others from Morgan
3 Stanley, addressed the subject of financing?
4 A. I believe they did, yes.
5 Q. Do you recall that Morgan Stanley,
6 at the February 27th board meeting, assured
7 the board that financing for the acquisitions
8 could be obtained?
9 A. I would not sure that I would use
10 the word "assured," but they certainly
11 indicated that, in their judgment, the
12 financing could be obtained.
13 Q. And that Morgan Stanley was willing
14 to play a lead role in connection with
15 arranging that financing; correct?
16 A. Correct.
17 Q. Do you recall, sir, that there was
18 no financing contingency in the Coleman
19 agreement?
20 A. I do.
21 Q. In other words, the agreement was
22 binding and there was no out for Sunbeam if it
23 couldn't arrange financing; correct?
24 A. Correct.
25 MR. MARKOWSKI: I am about to go

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1 into an area that is fairly lengthy. If
2 you want to break now for lunch, we can
3 do that. It is noon. Rather than break
4 up this.
5 MR. MALLOY: It is a little early
6 for lunch. Did you need to take a break
7 for something?
8 THE WITNESS: I am not sure. I
9 don't know when they are setting up
10 there. I would just assume, keep going.
11 MR. MARKOWSKI: We can do that.
12 MR. BEMIS: Could we take a short
13 break?
14 MR. MARKOWSKI: Yes.
15 (Recess.)
16 Q. Mr. Fogg, you indicated that you
17 received a telephone call from David Fannin on
18 March 18th, indicating that he wanted to come
19 over to meet with you; correct?
20 A. Yes.
21 Q. That is the day before Sunbeam
22 issued its press release on March 19th;
23 correct?
24 A. Yes.
25 Q. Did Mr. Fannin indicate in his

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1 initial call to you that he was coming over to
2 discuss issues relating to Sunbeam's first
3 quarter performance?
4 MR. MALLOY: You can answer that Yes
5 or No.
6 A. Yes.
7 Q. Was that the first indication that
8 you had had, sir, of any sort, that there was
9 any issue with respect to Sunbeam's first
10 quarter 1998 performance?
11 A. Yes.
12 Q. You had not heard previously that
13 Sunbeam's first quarter sales were in any way
14 behind plan?
15 A. No.
16 Q. Or that its net income for the
17 quarter was somehow behind plan?
18 A. No.
19 Q. By March 18th, Sunbeam's first
20 quarter was almost over; correct?
21 A. January, February, 18 months of
22 March -- 18 days of March were over, there
23 were 13 days left.
24 Q. And, actually, I do not know if you
25 recall this, sir, but Sunbeam was not on a

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1 calendar year fiscal year; do you recall that?
2 A. A calendar year?
3 Q. Right. Sunbeam's first quarter was
4 going to close on March 29th or 30th.
5 A. Well, okay.
6 Q. Do you recall that?
7 A. Towards the end of March, correct.
8 Q. Do you recall that Sunbeam was not
9 on a December 31st fiscal year?
10 A. Right.
11 Q. And that Sunbeam's first quarter was
12 going to close slightly a few days before
13 March 31st?
14 A. It sounds right.
15 Q. And, in any event, Sunbeam's first
16 quarter was -- January was gone, February was
17 gone and a substantial part of March was gone
18 at that point; correct?
19 A. Correct.
20 Q. And this is the first indication
21 that had been brought to your attention that
22 there was any issue with respect to Sunbeam's
23 first quarter performance?
24 A. Yes.
25 Q. Let me show you, I think we have the

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1 time record, sir, for your activity that day,
2 CPH Exhibit 384. Do you have that in front of
3 you? It should be in the stack of documents,
4 probably the first one.
5 A. Here it is.
6 Q. Let's see if I can find it for you.
7 Would you turn to page 38 of 43.
8 A. 38?
9 Q. Yes.
10 A. Yes.
11 Q. Do you see your time entry for March
12 18th, 1998?
13 A. Yes.
14 Q. And it is billed to the rule 144A
15 matter; correct, sir, that day?
16 A. Yes.
17 Q. And the entry, could you read the
18 description, the narrative that is --
19 A. The first quarter problem.
20 Q. That is how you described your work
21 that day; correct?
22 A. Yes.
23 Q. And how much time did you bill that
24 day to --
25 A. 8 and a half hours.

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1 Q. As you sit here today, is that
2 consistent, in your mind, with the amount of
3 time that you spent on March 18th?
4 A. Yes, it is.
5 Q. When Mr. Fannin arrived in your
6 office, Mr. Fogg, he described in some more
7 detail the first quarter issue than he had
8 during the phone call?
9 A. Yes.
10 Q. And the two of you then began to
11 call others; is that correct?
12 A. That is right.
13 Q. And one of the telephone calls you
14 made, and one of the telephone calls you made
15 after speaking to Morgan Stanley was to
16 Sunbeam; correct?
17 A. Yes.
18 Q. You made a call and spoke to Don
19 Uzzi; correct?
20 A. Yes. A lot of people were on the
21 phone.
22 Q. I think you indicated that there
23 were two telephone calls to Don Uzzi; correct?
24 A. Yes. There was an initial call, for
25 just the people in my office calling Uzzi, to

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1 sort of set up a subsequent call.
2 Q. That is the first call that I want
3 to spend a moment on.
4 A. Yes.
5 Q. The initial call that is made to
6 Mr. Uzzi that day from your office.
7 A. Yes.
8 Q. How far into the discussions you
9 were having that day on this issue do you
10 believe that call took place?
11 A. I couldn't really put a time frame
12 on it. I think it was probably the first
13 third of the day, but I am not sure.
14 Q. It was one of the earlier events;
15 correct, sir?
16 A. Yes. It was the -- first Fannin
17 arrived, then Fernicola and Shehan joined us.
18 Then I think we spoke to Morgan
19 Stanley and Davis Polk, and then the next
20 thing I remember was the people in my room
21 calling Uzzi.
22 Q. The purpose of the call to Uzzi was
23 to essentially give him a heads-up; correct,
24 sir?
25 A. To tell him that we were going to

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1 have a call later on with Morgan Stanley and
2 Davis Polk and to schedule it and make sure
3 that he was available, et cetera.
4 Q. And to give him a chance to prepare
5 for that call; correct?
6 A. I don't know what. I don't know.
7 Q. Was he told, in general, what the
8 subsequent call was going to deal with?
9 A. Yes.
10 Q. Do you recall what he was told about
11 what the second call would deal with?
12 A. Where things stand for the first
13 quarter.
14 Q. Now, you have testified, I think,
15 just now, and then earlier, that the Skadden
16 personnel in your office participating that
17 day in these issues were Mr. Fernicola and
18 Mr. Shehan, in addition to yourself; correct?
19 A. Mark Shehan. Not to be confused
20 with Bob Shehan; yes.
21 Q. Is Greg Fernicola and Mark Shehan?
22 A. Yes.
23 Q. The Skadden personnel involved that
24 day with this issue were the three of you;
25 correct?

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1 A. Correct. And I am not sure -- I was
2 the only one of the three who was there all
3 the time. It was in my office, except to go
4 to the men's room. The other two, I think
5 left for periods and came back, but I don't
6 remember. They were doing other things.
7 Q. Was there anyone else from Skadden
8 Arps that day, that you can recall, involved
9 in dealing with this issue?
10 A. No.
11 Q. Mr. Fernicola and Mr. Shehan had
12 already been involved in doing work for
13 Sunbeam in connection with the first quarter
14 transactions; correct, sir?
15 A. Correct.
16 Q. That is why they were in the room?
17 A. Yes.
18 Q. Mr. Shehan, at the time, was
19 associate, sir; is that correct?
20 A. Yes. Or maybe he was counsel -- he
21 was *not* a partner.
22 Q. He was either associate or of
23 counsel?
24 A. Not of counsel. We have another
25 category called counsel.

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1 THE WITNESS: Is that right?
2 MR. MALLOY: Yes.
3 Q. But in any event, he was not a
4 partner; correct?
5 A. He was not.
6 Q. He was not of counsel?
7 A. No, he was not. He was a senior
8 corporate lawyer and I don't remember his
9 title. I think it was, I think it was
10 associate. Maybe it was counsel.
11 Q. When you say he was a senior
12 corporate lawyer, he was still associate or
13 counsel, correct, sir, he was not a partner?
14 A. He had been there many years, right,
15 but he was not a partner. I worked with him
16 on many, many occasions.
17 Q. What was Mr. Shehan doing before
18 this on the Sunbeam matter; do you recall,
19 generally?
20 A. Yes. I mean, Mark was one of the
21 guys I had working on one of the lead
22 transactions, I forget whether it was
23 signature or First Alert, but one of them was
24 his.
25 Q. Anything else that you can remember

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1 him doing?
2 A. No.
3 Q. Was he involved in the rule 144A
4 matter?
5 A. No.
6 Q. That is the debenture offering;
7 correct?
8 A. Correct.
9 Q. Mr. Shehan wasn't involved in the
10 debenture offering?
11 A. No.
12 Q. Mr. Fernicola was?
13 A. Yes.
14 THE WITNESS: The reason I called
15 Mr. Shehan was because I had worked with
16 him in the past. He was very
17 experienced, and I always find that on
18 difficult issues it is better to have
19 more smart people in the room rather than
20 fewer.
21 Q. You testified earlier that
22 Mr. Dunlap adamantly opposed the issuance of a
23 press release when the question was put to
24 him; correct, sir?
25 A. Yes, sir.

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1 Q. Did that come as a surprise to you?
2 A. Um, certain aspects of it surprised
3 me, yes.
4 Q. Did you expect Mr. Dunlap to
5 immediately embrace the idea of issuing a
6 press release?
7 A. No.
8 Q. Why do you believe that Mr. Dunlap
9 was so adamant in his opposition to the
10 issuance of a press release?
11 MR. BEMIS: *Objection to form.*
12 Foundation.
13 Q. Let me make sure that I ask the
14 question that I intended to ask.
15 I will withdraw the question.
16 At the time, back in the first
17 quarter of 1998, why did you believe that
18 Mr. Dunlap was being so adamant in his
19 opposition to issuing a press release?
20 MR. BEMIS: *Objection to form.*
21 A. I did not ask him why so he did not
22 tell me why. So, I would only be, have been
23 speculating at the time, which I did. And my
24 speculations were that he was very concerned
25 about doing anything that would throw a monkey

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1 wrench into his deals, and he thought the
2 press release might do that.
3 I must add that I would probably
4 have expected any client in the circumstance,
5 similar circumstances to at least push back on
6 the lawyers to at least get them, you know, to
7 challenge their thinking and make sure that
8 they weren't taking the easy way out.
9 Q. Mr. Dunlap did a little bit more
10 than push back; correct, sir?
11 A. Yes.
12 Q. And you already testified that
13 Mr. Dunlap can be very demonstrative in
14 expressing his point of view; correct, sir?
15 A. Yes.
16 Q. He was doing that on this occasion,
17 too?
18 A. He was.
19 Q. Your belief, at the time, was that
20 Mr. Dunlap was being driven here by concerns
21 that a press release would throw a monkey
22 wrench into his deals?
23 A. Yes.
24 Q. And the deals you are referring to,
25 sir, are what?

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1 A. The financing and, without the
2 financing, the acquisitions.
3 Q. And Mr. -- your belief was that
4 Mr. Dunlap was concerned that public
5 disclosure of a first quarter problem at
6 Sunbeam could have an adverse effect on those
7 transactions; correct?
8 A. Correct.
9 And, in addition, I speculated that
10 it might, he was afraid that it might, ah,
11 adversely affect his status as a darling of
12 Wall Street who had never missed a quarter.
13 Q. The debenture offering was scheduled
14 to be priced just the following day; correct?
15 A. I believe so, yes.
16 Q. On March 19th?
17 A. I believe so, yes.
18 Q. Sunbeam, along with Morgan Stanley,
19 had been out on a road show marketing the
20 debentures; correct?
21 A. Yes.
22 Q. And that road show was coming to --
23 A. I am not sure. I am not sure. I
24 don't know when the timing of the road shows
25 took place.

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1 Q. Do you recall, sir, that Mr. Fannin
2 that day was at the New York road show, that
3 is why he was in town?
4 A. I honestly don't recall. I knew
5 they were all in town having something to do
6 with the financing, and whether it was a -- a
7 New York road show or a bank meeting or what
8 the hell it was, I don't remember.
9 Q. Okay. But, in any event, your
10 recollection is that, at the time, you
11 understood that the financing was going to be
12 the debenture offering was going to be priced
13 on March 19th, the day after the
14 discussions -- that were taking place that
15 day; correct?
16 A. Yes.
17 Q. Now, the acquisition of my client's
18 interest in Coleman Company hadn't closed at
19 that point; is that correct?
20 A. The what?
21 Q. The acquisition of my client's
22 interest in Coleman Company had not closed at
23 that point; correct, sir?
24 A. Correct. We just went through the
25 fact that this is taking place on March 18th,

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1 and that deal did not close until March 30th.
2 Q. Correct. Do you recall previously
3 saying, sir, that you thought that Mr. Dunlap
4 opposed the issuance of a press release
5 because he did not want to "screw up his
6 financing"?
7 A. I think I testified to that in the
8 arbitration. That's a different way of saying
9 throw a monkey wrench into it; isn't it?
10 Q. Did you ever hear, sir, anyone from
11 Morgan Stanley who was involved in the
12 debenture offering say to Mr. Dunlap, or
13 anyone else at Sunbeam, that it was important
14 in connection with marketing the debentures
15 that Sunbeam continue to hit its numbers?
16 A. I don't recall any discussion like
17 that, no.
18 Q. In connection with the conversation
19 that you had with Mr. Uzzi, you have testified
20 that you got a one-page piece of paper that
21 had some numbers on it; correct?
22 A. Yes.
23 Q. I will show you another copy of
24 that, this time, with our Exhibit Number on
25 it.

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1 A. All right.
2 Q. Let me show you, sir, what we
3 previously marked as CPH Exhibit Number 16.
4 A. All right.
5 Q. Do you recognize that as the
6 document that you had, excluding the
7 handwriting on it, the documented that you had
8 in front of you during the conversation that
9 you had that day with Mr. Uzzi and others
10 about where Sunbeam was at as of March 19th,
11 1998?
12 A. Yes. And this is a copy including
13 the handwriting of the same document I saw
14 yesterday.
15 Q. You see the fax numbers in the upper
16 corner, sir?
17 A. I do.
18 Q. Next to the -- there are three names
19 up there, route, Allen and David. Do you see
20 those?
21 A. Yes, I do.
22 Q. Next to David, is that your fax
23 number?
24 A. Yes.
25 Q. I would like to spend a moment --

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1 A. Not my current fax number, but my
2 then fax number.
3 Q. That was what I was interested in,
4 sir. Thank you.
5 A. No.
6 Q. I would like to spend a moment with
7 you on the numbers in the document, sir.
8 Do you see, in the upper right-hand
9 corner, the first line indicates "January
10 consolidated net sales actual"; do you see
11 that?
12 A. I do.
13 Q. And the number there is 29; do you
14 see that?
15 A. Yes, I do.
16 Q. Do you understand that to be \$29
17 million?
18 A. Yes.
19 Q. The second line is "February
20 consolidated net sales actual"; do you see
21 that?
22 A. Yes.
23 Q. And next to that, next to that typed
24 number is the number 43; do you see that?
25 A. Yes.

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1 Q. Did you understand that, at the
2 time, to be a reference to \$43 million in net
3 sales in February?
4 A. Yes.
5 Q. Somebody has done the math, I think,
6 next to those two numbers for us, but those
7 two numbers total \$72 million; correct, sir?
8 A. Yes.
9 Q. By the way, that is not your
10 handwriting; correct?
11 A. No.
12 Q. And then do you see, beneath that:
13 March international net sales through March
14 15th, 1998"?
15 A. I do.
16 Q. And the number 6.9 appears there;
17 correct, sir?
18 A. Yes.
19 Q. \$6.9 million in net sales,
20 international sales through March 15th;
21 correct?
22 A. Yes.
23 Q. That's what you understood that to
24 be?
25 A. Yes.

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1 Q. And then, skipping down two lines,
2 do you see a reference to March domestic net
3 sales through March 17th?
4 A. I do.
5 Q. And that number is \$22.7 million; do
6 you see that?
7 A. I do.
8 Q. The total of those four numbers,
9 sir, for the actual net sales in January,
10 February and international net sales for the
11 first two weeks of March and March domestic
12 net sales through March 17th is approximately
13 \$100,000,000; is that correct?
14 A. Do you want me to do the math?
15 Q. Sure. It is 72 plus 6.9.
16 MR. MALLOY: Here is a fresh page.
17 A. 72, 6.9. And 22.7. Is that right?
18 Yes. Right?
19 Q. I believe so.
20 A. 101 million point 6.
21 Q. So, this document advised the people
22 who received it that, as of mid-March, 1998,
23 Sunbeam had total net sales of a little less
24 than \$102 million; correct?
25 A. That is what it purports to show,

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1 yes.
2 Q. And the other numbers on this page
3 all relate to sales that have not taken place
4 yet; correct, sir?
5 A. Um, yes, the line March
6 international net sales forecast was a
7 forecast number.
8 The rest of March.
9 International. And March domestic
10 open orders. I guess they are open orders,
11 yes.
12 Q. And then-- the column for potential
13 orders?
14 A. Yes.
15 Q. Those orders hadn't even occurred
16 yet; correct?
17 A. I don't know. Potential orders.
18 Yes. Correct.
19 Q. It was being represented that those
20 were orders that the company was expecting or
21 hoping to get, but had not actually?
22 A. Yes.
23 Q. Had actually not been made yet;
24 correct?
25 A. Correct.

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1 Q. The reason for this meeting that day
2 was that Wall Street analysts had been led by
3 the company to expect that Sunbeam would
4 achieve sales in the first quarter of 1998 of
5 something in the neighborhood of 285 to 295
6 million dollars; correct, sir?
7 MR. BEMIS: Objection to the form of
8 the question. No foundation.
9 Q. That was your understanding.
10 MR. BEMIS: Objection to the form of
11 the question. No foundation.
12 A. I only would quibble with a couple
13 parts of the question.
14 And that is led to believe, I don't
15 know who led what to whom.
16 I don't know if the analysts arrived
17 at this based on their own analysis or to what
18 extent it was the company information that
19 they had put out. I don't know. But the
20 analysts did have an estimated range, which, I
21 think, was in the neighborhood that you
22 mentioned, but I can't -- I think.
23 Q. Let's see if we can pin that down,
24 sir, and we will move on. I will show you the
25 March 19th press release.

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1 A. All right.
2 Q. You have already seen this. But
3 this is our version of it, March -- the CPH
4 Exhibit 14. Do you see in the first sentence,
5 sir, it states that --
6 A. It refers to the range of -- analyst
7 estimates 285 million to 295 million, yes.
8 Q. That is something that you would
9 have known at the time that these discussions
10 had taken place, leading up to the issuance of
11 the press release; correct, sir?
12 A. I would have known that at that
13 time, yes.
14 Q. So, as of the time that the people
15 are speaking about where Sunbeam stands in the
16 first quarter of 1998, Sunbeam is about 185 to
17 \$195 million short of Wall Street's
18 expectations for first quarter sales at that
19 point; correct?
20 MR. BEMIS: Objection to form.
21 A. Yes. Correct.
22 Q. With about 12 days, or so, left in
23 the quarter; correct, sir?
24 MR. BEMIS: Objection to form.
25 A. Yes.

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1 Q. A question, sir, for you about the
2 column entitled potential orders.
3 A. Yes.
4 Q. Do you see that?
5 A. I do.
6 Q. It sums up at the bottom to 86; do
7 you see that?
8 A. To 86 or 88? I can't -- if you say
9 it is the 6, I will take your, it is a 6, I
10 will take your word for it. I can't.
11 Q. It is either 86 or 88, that is the
12 way you are reading it?
13 A. Yes.
14 Q. My question doesn't relate so much
15 to the number, as to what the number reflects,
16 sir.
17 You indicate that there were probing
18 questions to Mr. Uzzi that day, relating to
19 this document; correct?
20 A. Yes.
21 Q. Do you recall being told that the
22 list of potential orders was a gross sales
23 number, not a net sales number?
24 A. I don't recall.
25 Q. You know the difference between

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1 gross sales and net sales, sir?
2 A. Um, probably varies from company to
3 company. I don't specifically recall.
4 Q. Gross sales would be the amount that
5 customer pays; correct?
6 A. That would be, yes, right.
7 Q. And net sales would be some amount
8 less than that that includes some expenses
9 that the company deducts in calculating its
10 net sales; correct?
11 MR. BEMIS: Objection to form.
12 Foundation.
13 A. Yes. Some expenses, I don't know
14 which ones.
15 Q. And in this case the Wall Street
16 analysts' estimate was a net sales estimate of
17 285 to \$295 million; correct?
18 MR. BEMIS: Objection to form.
19 Foundation.
20 A. I don't recall, except that is what
21 the March 19th press release says; so, that
22 must have been what it was.
23 Q. The focus that day was on what net
24 sales Sunbeam would achieve in the first
25 quarter of 1998. That was the exercise;

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1 correct?
2 A. I believe so.
3 Q. You can't recall, as you sit here
4 today, whether you were alerted to the fact
5 that this \$86 million number was a gross
6 number?
7 A. I don't recall.
8 Q. But it is put in terms of orders,
9 not net sales; correct, sir?
10 A. It says "orders," yes. Potential
11 orders.
12 Q. The total, sir, of all of the
13 numbers that are on this page came to -- well,
14 let's -- there are two numbers that I can
15 focus your attention on, sir. Do you see the
16 grouping of numbers on the top of the page,
17 Janet sales, February, March --
18 A. Yes.
19 Q. International. That total, group of
20 sales totaled to \$168.7 million; correct? Do
21 you see that there?
22 A. Yes. That's what it says.
23 Q. Potential orders totals \$86 million;
24 correct?
25 A. Yes. Okay. It is a 6; right.

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1 Q. And the total of those two numbers
2 is something in the neighborhood of \$255
3 million; correct?
4 A. Correct.
5 Q. Something significantly short of 285
6 to \$295 million; correct?
7 A. Correct.
8 Q. There is no other detail on this
9 page that explains how the company might get
10 from this group of numbers to 285 to \$295
11 million; correct?
12 A. It doesn't seem to be.
13 Q. Did anyone in the course of the
14 conversation that you had with Sunbeam that
15 day, sir, claim that Sunbeam, at any point in
16 the past, had ever accomplished sales of
17 something in the neighborhood of 280 to \$290
18 million in the last 12 days of the quarter?
19 MR. BEMIS: Objection to form.
20 Foundation.
21 A. I don't recall. There is an
22 indication on this document, at the bottom, of
23 a low and a high, and I am trying to figure
24 out what that means. But I don't recall.
25 Q. There are no entries in here

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1 supporting a number higher than \$255 million
2 or so; correct, sir?
3 MR. BEMIS: Objection to form.
4 Foundation.
5 A. Well, the numbers next to low and
6 high are higher, and I don't know what, I
7 don't know how they got to them.
8 Q. There is nothing?
9 A. I don't recall.
10 Q. There is nothing in the document
11 that explains that; correct, sir?
12 A. I don't know what these percentages
13 are next to those numbers, 5.3 and 15.6. I
14 just don't recall.
15 Q. And my question, sir, is simply:
16 There was nothing in the document that
17 explains how they got to those higher numbers;
18 correct?
19 A. I don't see anything.
20 Q. Do you recall, sir, that, as of this
21 time, mid-March, 1998, that Wall Street
22 analysts were expecting Sunbeam to realize a
23 significant first quarter profit, net profit?
24 MR. BEMIS: Objection to form,
25 foundation.

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1 A. I don't recall.
2 Q. Was there any discussion on March
3 18th, sir, relating to where the company stood
4 with respect to net earnings in the first
5 quarter of 1998?
6 MR. MALLOY: Are you referring to
7 the March call that included Morgan
8 Stanley, or a different call?
9 Q. I am asking, generally: Was there
10 any discussion on March 18th that you were
11 privy to, sir, where the subject of where
12 Sunbeam stood with respect to its first
13 quarter net earnings --
14 A. On the large call involving Morgan
15 Stanley, Uzzi, Davis Polk, Fannin, myself,
16 etc., there was something discussed about
17 that, but I don't know, I don't recall the
18 substance.
19 Q. There is nothing on CPH Exhibit 16
20 that relates to net earnings; correct?
21 A. Right. There is nothing in the
22 press release either.
23 Q. As you sit here, you can't recall --
24 A. I can't recall. I am sure it was
25 discussed, I just can't recall what was

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1 discussed.
2 Q. There is no warning in the press
3 release that Sunbeam may fall short of
4 analysts' expectations for first quarter net
5 earnings; correct?
6 A. There is no statement in the press
7 release about net earnings.
8 Q. Do you agree, sir, that the more
9 negative the press release that Sunbeam issued
10 on March 19th, the greater the risk that the
11 press release might throw a monkey wrench into
12 the first quarter deals?
13 MR. BEMIS: Objection to form.
14 MR. MALLOY: Objection.
15 Speculation.
16 A. Yes.
17 Q. That was your understanding at the
18 time; correct, sir?
19 A. Yes.
20 Q. Do you have the March 19th press
21 release in front of you, sir?
22 A. Yes.
23 Q. CPH Exhibit 14.
24 A. Yes.
25 Q. The press release issued on March

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1 19th, does not state that Sunbeam would fall
2 below Wall Street's expectations of 285 to
3 \$295 million for the first quarter net sales;
4 does it, sir?
5 A. No.
6 Q. The March 19th press release doesn't
7 disclose that Sunbeam would fall short of Wall
8 Street's first quarter net earnings estimates,
9 either; does it?
10 A. Nothing in there about earnings.
11 MR. BEMIS: Objection. Asked and
12 answered three times.
13 Q. The March 19th press release doesn't
14 disclose that Sunbeam had net sales of just
15 two \$9,000,000 in January; does it?
16 A. No.
17 Q. It doesn't disclose that Sunbeam had
18 net sales of just \$43 million in February;
19 does it?
20 A. No.
21 Q. It doesn't disclose that Sunbeam had
22 net sales of about \$102 million as of the date
23 of the press release; correct?
24 A. No.
25 Q. The press release doesn't disclose

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1 that Sunbeam's net sales for the first two
2 months of 1998 were about half of the net
3 sales that Sunbeam had realized in the first
4 two months of 1997; does it?
5 MR. MALLOY: I think the press
6 release speaks for itself.
7 A. It doesn't say anything about that.
8 Q. Were you aware of that, sir, that
9 Sunbeam's net sales through the first two
10 months of 1998 were about half of Sunbeam's
11 net sales in the first two months of 1997?
12 MR. BEMIS: Objection to form,
13 foundation.
14 A. I know that on the large call, and
15 on the discussion with Uzzi, we discussed
16 prior quarters, and how "back end loaded" they
17 were, as opposed to this one. We discussed
18 that. And I don't recall any of the details
19 about that.
20 Q. Do you remember anyone from Morgan
21 Stanley, during the call, saying, um, the net
22 sales numbers through January and February are
23 only about half of what Sunbeam's net sales
24 had been in the year ago quarter?
25 A. I don't specifically recall that,

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1 no.
2 Q. The March 19th press release did not
3 disclose that Sunbeam had lost about
4 \$40,000,000 in the first two months of 1998;
5 does it, sir?
6 MR. BEMIS: Objection to form.
7 Foundation.
8 A. It doesn't say anything about losses
9 or earnings.
10 MR. MALLOY: You are wasting our
11 time with this at this point.
12 Q. Sir, on March 20th --
13 A. March 20th.
14 Q. We will move to the day after the
15 press release, the press release issued on
16 March 19th; correct, sir.
17 A. To the best of my recollection, yes.
18 Q. And one of the things that you did
19 on March 20th was monitor Wall Street's
20 reaction to the press release. Do you recall
21 that?
22 A. Monitored Wall Street's reaction to
23 the press release?
24 Q. Do you recall doing that?
25 A. I am not a monitor. No, I don't

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1 think I did that.
2 Q. Let me show you a time entry that I
3 am basing the question on, sir.
4 Do you have Exhibit 384 in front of
5 you, sir?
6 A. Yes.
7 Q. Let's see if I can find it. It is
8 page 38 of 43 again --
9 A. Excuse me.
10 Q. Page 38 of 43. The page we looked
11 at a minute ago.
12 A. Yes, March 20th.
13 Q. Do you see your March 20th time
14 entry?
15 A. Yes, I do.
16 Q. This time entry is billed to the
17 rule 144A matter; correct, sir?
18 A. Yes.
19 Q. And that is the debenture offering;
20 correct?
21 A. Yes.
22 Q. And would you read the time entry
23 that you wrote that day.
24 A. "TC," that means telephone calls,
25 "with Fernicola, Goudis, Kelly," that is Janet

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1 Kelly, who worked for David Fannin; Fannin.
2 "Review Dow Jones and Bloomberg stories,
3 advice on disclosures."
4 Q. Does that refresh your recollection,
5 sir, that one of the things that you did on
6 March 20th was review Wall Street's reaction
7 to the March 19th press release?
8 MR. MALLOY: The question?
9 Q. Did it refresh your recollection?
10 A. The prior question was whether I
11 monitored Wall Street's reaction. I don't
12 think I monitored anything. Did I read media
13 coverage of the press release? Obviously, I
14 would have, yes.
15 Q. That's what that time entry relates
16 to on March 20th; correct?
17 A. Part of it.
18 Q. Mr. Goudis was, do you remember Rich
19 Goudis? You referred to him earlier this
20 morning.
21 A. Yes, he was the PR guy.
22 Q. He was the investor relations
23 person.
24 A. Yes.
25 Q. Do you remember your conversation

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1 with Mr. Goudis that day?
2 A. I do not, no.
3 Q. Do you recall if Mr. Goudis was
4 reporting to you what he was hearing from Wall
5 Street analysts?
6 A. I don't recall.
7 Q. Did you have any conversations with
8 Mr. Goudis where he reported to you what he
9 was hearing from Wall Street analysts relating
10 to the --
11 MR. MALLOY: Well.
12 Q. -- relating to the March 19th press
13 release?
14 DI MR. MALLOY: I will instruct him not
15 to answer questions regarding the
16 conversations that you had with
17 Mr. Goudis.
18 Q. I am not asking about the substance,
19 at this point, as opposed to whether there was
20 such a conversation.
21 MR. MALLOY: You asked whether there
22 was a conversation about particular
23 substance. You are calling for him to
24 reveal the substance of conversations.
25 MR. MARKOWSKI: Are you instructing

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1 him not to answer?
2 MR. MALLOY: Would you read back the
3 question.
4 A. I have no recollection; so, it
5 doesn't matter.
6 Q. Do you see the statement there, sir,
7 at the end of your time entry that, relating
8 to advice on disclosures?
9 A. Yes.
10 Q. Do you recall what that subject
11 related to?
12 A. Not really, no.
13 Q. Do you recall that analysts, do you
14 recall the analyst reaction to the press
15 release, sir?
16 A. No.
17 Q. I will show you two or three
18 analysts' reports to see if it refreshes your
19 recollection.
20 A. I recall it was not positive. Do I
21 recall precisely what they said? No.
22 Q. I will show you what I will ask the
23 court reporter to mark as CPH Exhibit Number
24 388, and it is a two-page document bearing
25 Bear, Stearns' production number 51 and 52.

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1 And it is a research equity, research report
2 issued by Connie Maneaty at Bear, Stearns,
3 relating to Sunbeam.
4 (CPH Exhibit 388, documents Bates
5 Nos. 51 to 52, marked for
6 identification as of this date.)
7 Q. Do you have CPH Exhibit 388 in front
8 of you?
9 A. I have it, yes.
10 Q. This is a report issued by Connie
11 Maneaty at Bear, Stearns on March 19th, 1998,
12 Orelating to Sunbeam; do you see that?
13 A. Yes, I do.
14 Q. And the headline of it states:
15 "Sunbeam SOC - 45 - buy"; do you see that?
16 A. I do.
17 Q. And the headline below that reads:
18 "4-and-one-half point drop unwarranted, buy
19 reaffirmed, one year target remains 60
20 dollars"; do you see that?
21 A. I do.
22 Q. Do you recall seeing this document
23 in connection with your review of Wall Street
24 reaction to the March 19th press release?
25 A. I don't recall it, no.

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1 MR. BEMIS: I would like to show you
2 what we will mark as CPH Exhibit Number
3 389. This is a two-page document that
4 bears Bates number CPH 1393262 to 263.
5 This is a Goldman, Sachs investment
6 research report issued on March 20th,
7 1998, relating to Sunbeam.
8 (CPH Exhibit 389, documents Bates
9 Nos. 3104 to 05, marked for
10 identification as of this date.)
11 A. I have it.
12 Q. Do you recall seeing this document,
13 sir?
14 A. Not really.
15 Q. Do you see the first bullet point
16 underneath the financial information?
17 A. Yes, I do.
18 Q. It states: "Continue to recommend
19 purchase of SOC"; do you see that?
20 A. Yes, I do.
21 Q. Do you see that, further into that
22 paragraph, excuse me, in the second bullet
23 point, you see that Ms. Fontenelli is
24 adjusting her expected net sales target for
25 Sunbeam's first quarter?

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1 A. Yes.
2 Q. And that she indicates that her
3 range previously had been 285 to \$295 million;
4 do you see that?
5 A. Aha.
6 Q. You have to answer Yes or No, sir.
7 A. Yes.
8 Q. And that she is adjusting her range
9 down to 275 to \$280 million, based on the
10 press release; correct?
11 A. Yes.
12 MR. BEMIS: I move to strike that
13 entire section of questioning. There is
14 no foundation. You are asking the
15 witness to read from a document that he
16 has never seen or never saw before.
17 Q. Mr. Fogg, Morgan Stanley had an
18 opportunity to comment on the press release
19 that was issued on March 19th, before that
20 press release was finalized; correct?
21 A. Yes.
22 Q. At the time that the press release
23 was issued, was it your understanding that
24 Morgan Stanley had signed off on it?
25 MR. BEMIS: Objection to form.

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1 Foundation.
2 A. It was my understanding that
3 everyone on the large call had been, had come
4 to an agreement on what we should say, yes.
5 Q. Morgan Stanley was part of that
6 group; correct?
7 A. Yes.
8 Q. And was it your view, sir, that
9 Morgan Stanley was in the driver's seat with
10 respect to what Sunbeam would say in that
11 first quarter 1998 -- excuse me, the March
12 19th, 1998 press release?
13 MR. BEMIS: Objection to form.
14 Foundation.
15 A. "The driver's seat"? No, I would
16 not use that term.
17 Q. If Morgan Stanley wasn't satisfied
18 with the disclosures made in the March 19th
19 press release that Morgan Stanley would have
20 declined to proceed with the pricing of the
21 debenture offering the next day, you
22 understood that, sir; right?
23 MR. BEMIS: Objection to form,
24 foundation.
25 A. Yes.

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1 Q. And Sunbeam wanted that debenture
2 offering to proceed; correct?
3 A. Yes.
4 Q. It was important to Sunbeam's
5 ability to complete the three acquisitions
6 that the debenture offering proceed; correct?
7 A. Yes.
8 Q. If Morgan Stanley took the position
9 that the disclosures in the March 19th press
10 release were inadequate, Morgan Stanley was in
11 the position not to proceed with the pricing
12 of the debenture offering; correct?
13 A. Yes.
14 MR. BEMIS: Objection to form.
15 Foundation, argumentative.
16 Q. That was your understanding at the
17 time; correct, sir?
18 A. Yes.
19 Q. The debenture offering proceeded to
20 pricing the next day; correct?
21 A. Yes.
22 Q. And do you recall, sir, that the
23 plan had been to issue debentures sufficient
24 to raise about \$500 million?
25 A. I wish I had a perfect recollection

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1 of that. If you say that is what it was, I
2 can't quibble with you. I don't recall.
3 MR. MALLOY: He is just asking you
4 what you remember.
5 A. I don't recall exactly how much it
6 was supposed to raise.
7 Q. Do you recall that, at the end,
8 after the March 19th press release was issued,
9 the size of the debenture offering was
10 significantly increased?
11 A. I recall that it was oversubscribed.
12 Q. And the size of the offering was,
13 therefore, increased; do you recall that?
14 A. Correct.
15 Q. Were you involved in the
16 conversations on March 19th, where Morgan
17 Stanley and Sunbeam representatives discussed
18 pricing of the debentures?
19 A. No.
20 Q. Were you involved in any discussions
21 relating to increasing the size of the
22 debenture offering on that day?
23 A. I don't recall being involved in
24 any, no.
25 Q. Did the company seek advice from you

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1 with respect to the advisability of increasing
2 the size of the debenture offering?
3 A. I don't recall any such request to
4 me.
5 Q. Sir, do you recall that after, and
6 we have seen a time entry for you relating to
7 this general subject on March 20th; correct?
8 A. March 20th? Yes.
9 Q. The review of reports relating to
10 reaction to the press release; correct?
11 A. The entry talks about Dow Jones and
12 Bloomberg reports, yes.
13 Q. Your understanding, your
14 recollection today is that that entry related
15 to reviewing matters concerning the March 19th
16 press release; correct?
17 MR. MALLOY: I don't think he
18 testified that he recollected work on
19 that day at all.
20 Q. Do you recall?
21 A. I think I testified that I am sure
22 that I would not have ignored the reaction to
23 the press release.
24 Q. Your belief is that that March 19th,
25 or, excuse me, the March 20th entry related to

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1 reviewing those kinds of reports; correct?
2 A. That's my belief.
3 Q. Do you recall that after that day,
4 after March 20th, you stopped performing work
5 on the Sunbeam transaction for several days?
6 A. No, I don't recall.
7 Q. Let me show you a couple things and
8 see if they refresh your memory. I will show
9 you what we will mark as CPH Exhibit Number
10 390. It is a two-page document, and it is a
11 Skadden Arps fax cover sheet and a March 20th,
12 1998 memorandum from Blaine V. Fogg to Adam
13 Emmerich, re Sunbeam/Coleman.
14 (CPH Exhibit 390, documents Bates
15 Nos. 55 to 56, marked for
16 identification as of this date.)
17 Q. I will also give you your calendars,
18 so that you can have that next to this
19 document.
20 MR. MALLOY: It is 1 o'clock, now.
21 We would like to take --
22 MR. MARKOWSKI: Could I have three
23 more minutes on this and we will be at a
24 breaking point.
25 MR. MALLOY: Yes.

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1 MR. MARKOWSKI: Would you mark this
2 as 391.
3 (CPH Exhibit 391, documents Bates
4 Nos. 19637 to 644, marked for
5 identification as of this date.)
6 Q. Mr. Fogg, can you identify for us
7 what exhibits 390 and 391 are?
8 A. Um, 390 appears to be a one-page
9 memo that I faxed to Adam Emmerich at Wachtel
10 Lipton on March 20th, 1998.
11 391 appears to be a copy of some
12 pages from my appointment calendar starting in
13 late February of 1998 and continuing on into
14 March. Yes.
15 Q. And in your March 20th memorandum to
16 Mr. Emmerich, sir, in the last paragraph --
17 would you read that to us, please.
18 A. "In my absence next week Allison
19 Amorison will be handling these matters, as
20 well as other matters which may arise between
21 now and the closing."
22 Indicating I was going someplace for
23 a week.
24 Q. Ms. Amorison was an associate
25 working on the transaction; correct, sir?

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1 A. Correct.
2 Q. Do you recall -- I do not know if
3 this is at all helpful to you, sir, but your
4 calendar doesn't contain any, I guess it has
5 a, there is something reacted, I hadn't
6 noticed that. There is a redaction from your
7 calendar for the week of March 23rd; do you
8 see that?
9 A. I do.
10 Q. Do these documents assist you in
11 recalling where you were between March 20th
12 and March 30th?
13 A. No.
14 Q. Does this refresh your recollection
15 that there was a hiatus in your involvement in
16 these transactions between shortly after the
17 time the press release was issued, until
18 approximately the day in which Sunbeam's
19 acquisition of my client's Coleman stock
20 occurred?
21 A. It would appear from these documents
22 that there was a hiatus, perhaps even a
23 vacation, but I don't recall.
24 Q. You don't recall what it was.
25 Okay.

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1 MR. MARKOWSKI: We can take our
2 break now.
3 (Luncheon recess: 1:08 p.m.)
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1 sir, that an offering memorandum on a
2 transaction like this is finalized promptly
3 after the pricing takes place?
4 A. I am not sure I have enough
5 experience to answer that question. I know of
6 another situation for a client where I was
7 involved. I don't get involved much in the
8 financing aspects. But, actually,
9 Mr. Fernicola and I handled another
10 transaction for a client, within the last year
11 or so, where we did not have the offering
12 memorandum finalized for days after the deal
13 was priced.
14 Q. In this case the offering memorandum
15 was finalized promptly after pricing; was it
16 not?
17 A. I don't know.
18 Q. Do you recall that two Skadden Arps
19 associates were at the printer of Global
20 Financial Press on the night of March 19th,
21 the day the press release was issued?
22 A. I don't recall who the printer was.
23 I don't recall --
24 MR. MALLOY: He is just asking if
25 you recall that fact.

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1 AFTERNOON SESSION
2 1:35 p.m.
3 BLAINE FOGG, having been
4 previously sworn, resumed the stand and
5 testified further as follows:
6 CONTINUED EXAMINATION
7 BY MR. MARKOWITZ:
8 Q. Good afternoon, Mr. Fogg.
9 A. Good afternoon.
10 Q. Mr. Fogg, between the time the press
11 release was issued and these events that we
12 have spent a little time on on March 20th --
13 A. The March 19th --
14 Q. The March 19th press release. Thank
15 you.
16 -- and the review you did of news
17 stories related to the press release on the
18 20th, the pricing took place with respect to
19 the debentures; do you recall that?
20 A. My understanding, yes.
21 Q. And in connection with the pricing,
22 the offering memorandum for the debentures was
23 finalized.
24 A. It would have been, yes.
25 Q. It is standard practice, is it not,

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1 A. I don't recall.
2 Q. Do you have Exhibit 384 in front of
3 you, sir, the --
4 A. 384, yes.
5 Q. -- the printout of Skadden Arps' big
6 records for March 1998, relating to the
7 Sunbeam transaction?
8 A. Yes.
9 Q. Let me direct your attention to page
10 35 of 43. There is an entry towards the
11 bottom of the page for A.S. Deitz.
12 A. Adrian Deitz.
13 Q. On March 19th.
14 A. On March 19th. Yes.
15 Q. Mr. Deitz spent 22 hours that day
16 working on Sunbeam's rule 144A offering,
17 correct, according to this record?
18 A. That's what it says.
19 Q. Do you see the statement at the end
20 of his time record for that day, the last
21 three sentences, begins with the words "attend
22 printers"?
23 A. Yes.
24 Q. Attend?
25 A. "Attend printers to print final OM,

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1 discuss press release, pricing due diligence
2 call."
3 Q. Who is, or who was Adrian Deitz in
4 March of 1998?
5 A. Adrian Deitz, at that time, was
6 associate here in the New York office. He is
7 now a partner in the London office.
8 Q. In March of 1998 he was an
9 associate?
10 A. Yes.
11 Q. I will direct your attention to page
12 40 of Exhibit 384. Do you see the reference
13 to a T.E. Freed?
14 A. Todd Freed.
15 Q. On March 19th.
16 A. Yes. At the printer.
17 Q. Mr. Freed billed 15 hours that day
18 on Sunbeam's 144A offering?
19 A. Yes. Associate then and associate
20 now. I am not saying that it did not happen,
21 I just don't recall it.
22 Q. So the record is complete,
23 Mr. Freed's entry for that date states
24 "drafting and revising offering memorandum at
25 the printer for the Sunbeam corporation debt

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1 offering"; do you see that?
2 A. That's what it says.
3 Q. That doesn't refresh your
4 recollection that that took place that night?
5 A. No. But obviously it did.
6 MR. MALLOY: He just wants to know
7 your recollection.
8 Q. I will refer you to your time entry
9 for March 19th, sir.
10 A. Where's that?
11 Q. Let's see if I can find it for you.
12 It is on page 38.
13 A. Dinner, et cetera.
14 Q. Yes. Do you recall -- I will show
15 you your calendar, also. Perhaps it will
16 flesh it out.
17 A. I recall the dinner.
18 Q. You do.
19 A. Yes.
20 Q. There is a little more detail
21 relating to this?
22 A. Mr. K's.
23 Q. That is what your calendar says?
24 A. A Chinese restaurant near the
25 Waldorf.

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1 Q. This time that dinner was billed to
2 the 144A offering; correct, sir?
3 A. Yes.
4 Q. Who was present for the dinner?
5 A. Um, Mr. Kersh, Mr. Fannin -- Ruth
6 Porat, several other Morgan Stanley people.
7 Maybe Bill Strong. I don't remember. It was
8 sort of a dinner to celebrate the pricing of
9 the offering.
10 Q. Was there discussion that night
11 relating to the press release, the March 19th
12 press release, during the dinner?
13 A. I don't recall much discussion about
14 it. It was more a social occasion than
15 anything.
16 Q. Can you recall any business
17 discussion relating to the Sunbeam
18 transactions that took place that night, at
19 the dinner?
20 A. I remember they were very happy that
21 the offering was going to be a success. They
22 had oversubscribed. Other than that, I don't
23 recall much of anything.
24 Q. Who is the "they," sir, both Morgan
25 Stanley and Sunbeam?

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1 A. Yes.
2 Q. Other than celebrating the fact that
3 the debenture offering was moving forward, can
4 you recall anything else?
5 A. I don't really recall anything else.
6 Q. Do you recall, sir, that Mr. Freed
7 was a first-year associate at this time?
8 A. I don't remember.
9 Q. Did you receive any calls the night
10 of March 19th, Mr. Fogg, from the Skadden
11 lawyers present at the printer that night
12 working on finalizing the offering memorandum,
13 Mr. Freed or Mr. Deitz?
14 A. I don't recall any. I may have, but
15 I don't know.
16 Q. At any time, sir, did anyone report
17 to you, either that night or subsequently,
18 about the events that took place that night at
19 the printer?
20 A. Other than talking to Mr. Malloy and
21 preparing for the deposition, I don't recall
22 any discussion.
23 Q. Did anyone report to you, excluding
24 Mr. Malloy -- in connection with your
25 preparation for today, did anyone report to

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1 you, sir, that in connection with the activity
2 that night relating to finalizing the offering
3 memorandum for the debentures, that the Arthur
4 Andersen representatives present that night
5 objected to including the press release
6 language in the offering memorandum?
7 A. I don't recall hearing that.
8 Q. Let me direct your attention back to
9 Exhibit 384, the time entry for Mr. Deitz that
10 day, page 35.
11 A. Yes. The time for the 19th.
12 Q. March 19th. It states: "Attend
13 printers to print final OM. Discuss press
14 release." Do you see that? Do you see the
15 entries?
16 A. Yes, I do.
17 Q. Do you know what the entry in
18 Mr. Deitz's time entry on March 19th relating
19 to discussion of the press release related to?
20 MR. BEMIS: Objection to form.
21 Foundation.
22 A. No. No. Other than what the three
23 words are, "discuss press release," I don't.
24 Q. The press release had been issued on
25 March 19th; correct?

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1 A. It had.
2 Q. Mr. Deitz wasn't involved in
3 preparing it; was he?
4 A. No.
5 Q. The entry here wouldn't related to
6 work that Mr. Deitz engaged in in the
7 preparation or issuance of the press release;
8 right?
9 A. Correct.
10 MR. BEMIS: Objection, form.
11 Foundation. Calls for knowledge of a
12 person other than the witness.
13 Q. Your answer, sir?
14 A. That is correct.
15 Q. Did anyone report to you, sir, that
16 there was any upset that night at the printer
17 between the Arthur Andersen personnel present
18 and the Morgan Stanley personnel present?
19 A. I do not recall getting any such
20 report.
21 Q. As you sit here today, you don't
22 recall any report relating to the events of
23 that night; correct?
24 A. I don't recall any report about what
25 happened at the printers, no.

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1 (Pause.)
2 Q. Mr. Fogg, let me show you what has
3 been previously marked as CPH Exhibit 112.
4 It is a copy of the March 25th, 1998
5 letter from Arthur Andersen to Morgan Stanley.
6 A. All right.
7 Q. Is it your testimony, sir, that you
8 don't recall seeing this prior to March 30th,
9 1998?
10 A. I don't recall, yes.
11 Q. Do you believe that you did not, or
12 is it --
13 A. I have no recollection.
14 Q. One way or other?
15 A. One way or the other.
16 Q. Let me direct your attention to the
17 second page of the document, sir.
18 A. All right.
19 Q. Do you see the financial information
20 reported at the top of the page?
21 A. Yes.
22 Q. It reports that Sunbeam's net sales
23 for the period December 29th, 1997 through
24 March 1st, 1998, are \$72,018,000; correct?
25 A. That's what it says.

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1 Q. And that its net sales for the
2 comparable period in the first quarter of 1997
3 were \$143,499,000; correct?
4 A. That is what it says.
5 Q. So, this document would have put the
6 reader of it on notice that Sunbeam's sales in
7 the first two months of 1998 were about half
8 of what they had been in the first quarter of
9 the prior year; correct?
10 A. That's what it says.
11 Q. And this also states that Sunbeam
12 had suffered a loss of \$41,190,000 through the
13 first two months of 1998; do you see that,
14 sir?
15 A. I do.
16 MR. BEMIS: Objection to form.
17 Q. And that compared to a profit of 9
18 point -- 9,765,000, in the first two months of
19 1997?
20 MR. BEMIS: Same objection. You are
21 just reading documents that the witness
22 hasn't seen.
23 A. That is what it says.
24 Q. Did anyone advise you, sir, prior to
25 the closing of Sunbeam's acquisition of my

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1 client's interest in the Coleman Company, the
2 Coleman Company, that Sunbeam had a \$50
3 million swing, negative swing in its net
4 earnings in the first two months of 1998?
5 MR. BEMIS: Objection. Form and
6 foundation.
7 A. Prior to the closing --
8 MR. MALLOY: Can you read back the
9 question.
10 A. I don't recall.
11 MR. BEMIS: Also misleading, the
12 special charge of \$30 million reflected
13 there.
14 (Record read.)
15 MR. BEMIS: Same objections.
16 A. I don't recall receiving any such
17 advice. I don't believe I did receive any
18 such advice because, as I previously
19 testified, Fannin called me a few days later
20 and hit me like a ton of bricks and I was
21 totally shocked that the first quarter had not
22 been as good as the March 19th press release.
23 Q. Let me show you, sir, a document
24 that has previously been marked as CPH Exhibit
25 Number 380. This is a press release dated

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1 March 25th, 1998, issued by Sunbeam
2 Corporation, that bears the headline "Sunbeam
3 Corporation announces successful private
4 placement of \$750 million of convertible
5 debentures."
6 I would like you to take a moment to
7 look at that press release, sir, and tell me
8 whether you can recall seeing it previously.
9 A. I seem to recall having seen it at
10 some point.
11 Q. Do you know whether Skadden Arps was
12 consulted with respect to this press release
13 before it was issued, sir?
14 A. I don't recall.
15 Q. Do you recall whether you were?
16 A. I don't really recall. Probably,
17 but that is only speculation.
18 Q. Well, let me remind you, sir, that
19 we went through some documents right before we
20 broke at lunch that indicated that you were
21 away from your office between March 20th and
22 March 30th. Do you recall that?
23 A. Well --
24 MR. BEMIS: He was away?
25 A. We went through some documents that

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1 said that, I told Adam Emmerich that I was
2 going to be away. I guess I was away. I
3 don't recall.
4 Q. Do you have any recollection of
5 being consulted about the debenture offering
6 press release while you were away from your
7 office?
8 A. I don't recall.
9 Q. There is nothing in this press
10 release, is there, sir, relating to Sunbeam's
11 first quarter performance?
12 MR. BEMIS: Objection to form.
13 Foundation. Argumentative.
14 A. It doesn't appear to be.
15 Q. There is nothing in here about
16 Sunbeam suffering a loss of \$41 million in the
17 first two months of the quarter; is there?
18 A. There doesn't appear to be.
19 MR. BEMIS: Objection. Form.
20 Foundation. Misleading.
21 Q. Sir, I want to go back to the
22 conversation that you described this morning
23 in your testimony, relating to a conversation
24 that you had with Howard Gittes and, I
25 believe, Peter Langerman; do you recall that

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1 testimony?
2 A. Yes.
3 Q. That is one of the conversations
4 that you say that stood out in your mind;
5 correct, sir? That took place after the
6 closing of Sunbeam's acquisition in -- of my
7 client's interest in the Coleman Company?
8 A. It is one of them, yes.
9 Q. Why does it stand out in your mind,
10 sir?
11 A. I don't know.
12 Q. What do you recall Mr. Gittes --
13 Who initiated the conversation; do
14 you recall?
15 A. It was Gittes.
16 Q. How did he do that?
17 A. He said, -- we were at MacAndrews &
18 Forbes offices here in New York, and he asked
19 Peter Langerman and me to step out and go into
20 a smaller conference room.
21 Q. There was a larger group of people
22 congregated that day?
23 A. Yes.
24 Q. What was the purpose for that larger
25 meeting?

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1 A. I don't recall. It was Sunbeam.
2 Q. And Mr. Gittes asked that you and
3 Mr. Langerman meet with him privately; is that
4 correct?
5 A. That is correct.
6 Q. What do you recall happening next?
7 A. You can read back my prior
8 testimony.
9 MR. BEMIS: Objection. Asked and
10 answered.
11 Q. I want to make sure that the record
12 is complete with respect to your recollection.
13 A. Mr. Gittes, who had been named to
14 the Sunbeam board, said that it is an
15 intolerable situation for me to be on the
16 Sunbeam board, for other representatives of
17 MacAndrews & Forbes to be involved on behalf
18 of Sunbeam, while at the same time we have big
19 claims against Sunbeam, MacAndrews & Forbes
20 has big claims against Sunbeam, for duping us
21 into taking Sunbeam's stock in connection with
22 the Coleman acquisition.
23 We have to resolve this somehow.
24 The only way we can do it is either to rescind
25 the Coleman deal or reach some kind of a

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1 settlement. Whereupon, Langerman and/or I,
2 said, Jesus, we don't think it is possible, or
3 in the best interest of Sunbeam to rescind the
4 Coleman deal.
5 Um, so, that is off the table.
6 Settlement we can discuss.
7 Q. For a layperson --
8 A. Then we went on and I said, but I
9 can't represent either of you guys in this
10 transaction.
11 Q. For a layperson, sir, what does it
12 mean to rescind this transaction?
13 A. It means to undo it and put it, put
14 the situation back in the place it would have
15 been if the transaction had never occurred.
16 Q. Mr. Gittes was saying that it would
17 be acceptable to MacAndrews & Forbes if
18 Sunbeam returned Coleman Company's stock to
19 MacAndrews & Forbes; is that what Mr. Gittes
20 was proposing?
21 A. He was proposing a rescission. He
22 did not elaborate as to what that was, but
23 what I thought it was, was Sunbeam gives
24 Coleman back to MacAndrews & Forbes, and
25 MacAndrews & Forbes gives back to Sunbeam that

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1 which it received for Coleman. Stock and
2 cash.
3 Q. And that conversation, either you or
4 Mr. Langerman, or both of you, said, we are
5 not prepared to discuss rescission, that is
6 not on the table?
7 A. Right.
8 Q. What do you recall Mr. Gittes
9 saying?
10 A. Well, we've got to settle somehow.
11 Q. Do you recall anything else about
12 that private conversation that day?
13 A. No. Well, yes, as I testified
14 earlier, that I told them that Skadden
15 couldn't represent either Sunbeam or
16 MacAndrews in that situation.
17 Q. Right. You have already described
18 that to us. There is nothing else that you
19 can recall?
20 A. I don't recall anything.
21 Q. Do you recall when that took place,
22 how close in time to the closing of the
23 acquisition by Sunbeam of my client's Coleman
24 stock?
25 A. It was after Dunlap was terminated,

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1 which took place in the middle of June. It
2 was after a bunch of us, including Jerry
3 Levin, trooped down to Sunbeam on the next
4 day, and we spent sort of a week down there
5 trying to get our hands around where the hell
6 the company was, what was going on. And it
7 took place, it would have to be, I don't know,
8 after June of 1998, certainly.
9 Q. Just so the record is complete with
10 respect to this, Mr. Langerman, at that time,
11 was a member of the Sunbeam board of
12 directors; correct?
13 A. At the time of that conversation he
14 was a chairman of the Sunbeam board of
15 directors.
16 Q. When Mr. Dunlap was terminated,
17 Mr. Langerman replaced him as chairman of the
18 Sunbeam board; correct?
19 A. Correct.
20 Q. I will show you what we previously
21 marked as CPH Exhibit Number 211. CPH Exhibit
22 211, sir, is a fax, the first page is a fax
23 transmittal to James Lurie, Heather Stack and
24 Adrian Deitz, care of Global Financial Press,
25 and it is dated March 19th, 1998; do you see

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1 that, sir?
2 A. Yes.
3 Q. And attached to it is a draft
4 document; do you see that?
5 A. Yes, I guess it is a draft.
6 Q. And the document is entitled "zero
7 coupon convertible senior subordinated
8 debentures, due 2018, purchase agreement."
9 A. Yes. I see that.
10 Q. Do you have an understanding what
11 the purchase agreement is, sir?
12 A. Generally, sure.
13 Q. Can you describe that for us?
14 A. It is the agreement pursuant to
15 which Morgan Stanley agrees to buy the bonds
16 that Sunbeam is issuing, subject to certain
17 terms and conditions, representation and
18 warranties. It is like an underwriting
19 agreement.
20 Q. The way this transaction was
21 structured, Morgan Stanley was the initial
22 pusher of the Sunbeam debentures?
23 A. Yes.
24 Q. And Morgan Stanley then resold those
25 debentures to other parties; correct?

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1 A. Correct.
2 Q. I will direct your attention to --
3 did you see this document, not necessarily
4 this particular version of it, but did you see
5 the purchase agreement, either in final or
6 draft form?
7 A. I don't remember it specifically.
8 Q. I direct your attention to page 5.
9 A. Page 5, yes.
10 Q. You see paragraph L, on page 5?
11 A. Yes.
12 Q. There is some language that is
13 underlined in paragraph L; do you see that?
14 A. Yes.
15 Q. Can you read that, sir? Out loud.
16 A. "It being understood that the
17 information set forth in the company's March
18 19th, 1998 press release shall not, in and of
19 itself, constitute any such material adverse
20 change or prospective material adverse
21 change."
22 Q. Do you have an understanding why, do
23 you have any knowledge why that language was
24 being added to the draft purchase agreement on
25 March 19th?

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1 A. I know why a lawyer representing
2 Sunbeam would have --
3 MR. MALLOY: He is asking you for
4 your recollection.
5 A. No. He did not ask that.
6 MR. MALLOY: I assume you are asking
7 for his understanding based on his
8 knowledge at the time, you are not asking
9 him to formulate an opinion here.
10 BY MR. MARKOWITZ:
11 Q. Do you recall, at the time, sir, any
12 discussion about adding language like this to
13 the purchase agreement?
14 A. No, I don't.
15 Q. Do you know what purpose it serves?
16 A. Yes.
17 Q. Can you explain that?
18 A. So that the facts set forth in the
19 March 19th, 1998 press release cannot serve as
20 a basis for Morgan Stanley deciding not to
21 close.
22 Q. Morgan Stanley and Sunbeam together
23 were agreeing that the information set forth
24 in the press release could not be used by
25 Morgan Stanley as a basis for declining to

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1 close the purchase of the debentures; correct?
2 A. Correct.
3 Q. Do you know, was there any
4 discussion during this time period, sir, or at
5 any time prior to the closing of Sunbeam's
6 purchase of my client's interest in Coleman
7 Company, of raising with my client the
8 question whether my client would view the
9 information known to Morgan Stanley as a
10 material adverse change?
11 MR. BEMIS: Objection to the form of
12 the question.
13 A. I don't have any recollection.
14 Q. In your presence, sir, did you ever
15 see a, hear a Morgan Stanley representative
16 suggest to Sunbeam that Sunbeam should
17 disclose to my client the information
18 contained in the sheet that was the subject of
19 Mr. Uzzi's report to Sunbeam -- excuse me, to
20 Morgan Stanley, about the status of Sunbeam's
21 first quarter sales? CPH Exhibit 16.
22 A. I don't recall.
23 Q. Don't have any recollection of
24 Morgan Stanley saying to Sunbeam, this
25 information needs to be disclosed to

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1 MacAndrews & Forbes, the information in
2 Exhibit CPH 16?
3 A. I don't recall any such statement.
4 Q. Do you recall, sir, that one of the
5 activities that -- let me ask a background
6 question, sir. You previously testified that
7 there were two merger agreements relating to
8 the Coleman Company acquisition; correct?
9 A. Correct.
10 Q. One was an agreement with my client;
11 correct?
12 A. Yes.
13 Q. And what was the second agreement?
14 A. I don't recall.
15 Q. Do you recall that it related to the
16 acquisition of the publicly traded Sunbeam
17 stock?
18 A. I don't recall. I would have to
19 look at the agreements again.
20 Q. Let me show you. While we are
21 getting the document, sir, do you recall that
22 Sunbeam was acquiring 100 percent of Coleman
23 Company in connection with the first quarter
24 transactions?
25 A. In two steps.

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1 Q. The first step was the acquisition
2 of my client's stock; correct?
3 A. Yes.
4 Q. And my client had approximately 82
5 percent of Coleman Company stock?
6 A. Correct.
7 Q. The rest of it was held --
8 MR. BEMIS: Objection to form.
9 Q. Excuse me. The rest of it was held
10 by whom; do you recall?
11 A. It looks like public shareholders, I
12 think.
13 Q. I will show you what we will mark as
14 CPH Exhibit 392.
15 A. I believe the two documents were the
16 first step document with your client and then
17 the second step merger.
18 MR. MARKOWITZ: CPH Exhibit 392,
19 sir, is a document that bears Bates
20 number Morgan Stanley 8011 through 8066.
21 It is entitled "Agreement and plan of
22 merger, among Sunbeam Corporation Camper
23 Acquisition Corp., and the Coleman
24 Company," dated as of February 27th,
25 1998.

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1 (392 Exhibit 392, agreement ,
2 marked for identification as of this
3 date.)
4 A. Yes.
5 Q. Can you identify for us, sir, what
6 the CPH Exhibit 392 is?
7 A. The agreement and plan of merger,
8 among Sunbeam Corporation and the Camper
9 Acquisition Corp and the Coleman Company,
10 dated as of February 27th, 1998. --
11 Q. What was the purpose of this
12 agreement, sir; do you know?
13 A. I'd have to read it to tell you what
14 the purpose was.
15 (Pause.)
16 A. I believe this was for the second
17 step merger.
18 Q. The acquisition of the publicly
19 traded Coleman stock?
20 A. Yes, I believe that is right.
21 Q. As part of the consideration that
22 the public shareholders were to receive under
23 this agreement, sir, Sunbeam was to issue
24 registered shares of Sunbeam stock; is that
25 correct?

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1 A. That is my recollection. Is that
2 what it says?
3 Q. You can look, sir, but is that your
4 recollection of --
5 A. My recollection.
6 Q. And Skadden Arps was involved in the
7 activities relating to Sunbeam's registration
8 of the shares necessary to complete the second
9 stage of the Coleman Company acquisition;
10 correct?
11 A. Yes, sir.
12 Q. That registration was not, did not
13 become final for quite some period of time
14 after this agreement; correct?
15 A. Absolutely right.
16 Q. Why is that?
17 A. Because in the -- first of all --
18 In the interim period, before we
19 could get it filed and/or effective, a lot of
20 things happened, like Arthur Andersen pulling
21 its opinion for 1997 and the situation at
22 Sunbeam unraveled.
23 Q. Do you recall that it was some
24 period of time before Sunbeam was in a
25 position to restate its 1997 financial

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1 statements?
2 A. Yes, I recall it.
3 Q. And that was one of the impediments
4 to registering the --
5 A. Yes.
6 Q. -- the stock to be issued to the
7 Coleman shareholders; correct?
8 A. Yes.
9 Q. And do you recall that the Sunbeam
10 restatement was completed in late 1998?
11 A. In that general time frame, yes. I
12 don't recall when exactly.
13 Q. Do you recall that it was almost
14 another year, perhaps even a little bit more,
15 before the registration statement was
16 finalized and became effective?
17 A. I know that it was a long time.
18 Q. Do you know what the impediment was
19 to that, after Sunbeam filed its restated
20 financial statements?
21 MR. MALLOY: I caution the witness
22 that if any knowledge that you have on
23 the subject comes from conversations with
24 Sunbeam management, that you should break
25 and talk about it to determine whether

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1 there was a privilege issue.
2 THE WITNESS: I don't think so.
3 Q. One impediment was that your client
4 was taking the position that it had a claim
5 against Sunbeam and there was a settlement of
6 that claim, pursuant to which your client was
7 getting some additional consideration and it
8 was thought advisable, maybe even necessary,
9 to include, to give that same additional
10 consideration to the public shareholders.
11 So, we sort of had to wait for the
12 settlement to get finalized.
13 Um, there was a hang-up with the
14 SEC, I know.
15 Q. Are you familiar with that?
16 A. I was involved in some of that, yes.
17 Q. Let me show you a document and see
18 if it helps focus this for us. This is a
19 document that we will mark as CPH Exhibit 393.
20 It bears the Bates number Morgan Stanley
21 confidential 14766 to 14775. It is a
22 memorandum from Steve Daniels to Steve Isko
23 dated July 30th, 1999, re Sunbeam S4 comments.
24 A. I seem to recall that there was also
25 litigation brought by the, I think Coleman

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1 shareholders, that wanted to settle or
2 something. I don't remember specifically.
3 (CPH Exhibit 393, document Bates
4 Morgan Stanley confidential 14766 to
5 14775, marked for identification as of
6 this date.)
7 Q. You do remember that there were also
8 some issues at the SEC after all of that was
9 taken care of?
10 A. I remember one that --
11 Q. Sir, do you have Exhibit 393 in
12 front of you?
13 A. Yes.
14 Q. Have you seen either this document,
15 the July 30th, 1999 memorandum, or the
16 attached August 3rd, 1999 letter from Skadden
17 Arps to the SEC?
18 A. I am sorry?
19 Q. Have you seen either the July 30th,
20 1999 cover memo or the attached August 3rd,
21 1999 letter from Skadden Arps to the SEC?
22 A. Yes.
23 Q. The August 3rd letter is signed by
24 you; correct?
25 A. Well, that is not my handwriting.

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1 Somebody signed it on my behalf.
2 Q. You did see the letter before it was
3 signed?
4 A. Yes, I believe I did.
5 Q. Does this correspondence relate to
6 the registration statement, sir?
7 A. Just let me -- there is also a
8 letter here having to do with the S1, which
9 was the registration statement relating to the
10 debentures, but I guess you are not asking me
11 to look at that one.
12 Q. I am focused on the public stock
13 deal.
14 A. The Coleman, back-end merger deal?
15 Q. Yes.
16 A. What was the question?
17 Q. My question is whether these
18 documents relate to the registration statement
19 relating to that stock.
20 MR. BEMIS: Which documents in this
21 package are you referring to?
22 MR. MARKOWITZ: The cover memo and
23 the August 3rd document that I
24 referred --
25 A. The first, the two-page cover memo

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1 that I am cc'd from Mr. Daniels does relate to
2 that.
3 And then the two-page letter to the
4 SEC, dated August 3rd, 1999, from me, signed
5 by someone on my behalf, does relate to this.
6 Q. Your August 3rd letter to the SEC,
7 sir, seeks, asks that the SEC do whatever it
8 can to expedite receipt of the staff comments
9 relating to the S4; correct?
10 A. Correct.
11 Q. Do you remember there being
12 frustration with getting the SEC's comments on
13 the draft S4?
14 A. I just remember a need to get it
15 done and the SEC was holding us up, and some
16 frustration there.
17 Q. Was there a desire on Sunbeam's part
18 to move as quickly as possible to get this
19 registration statement on file and effective?
20 A. Yes.
21 Q. Why was that?
22 A. They wanted to complete the
23 acquisition of Coleman and own 100 percent of
24 it.
25 Q. And Skadden Arps was doing whatever

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1 it could to expedite that; correct?
2 A. We were trying to move it through
3 the SEC, yes.
4 Q. Do you recall that Sunbeam was
5 incurring penalties under the merger agreement
6 as a result of the delay in registering the
7 stock?
8 MR. BEMIS: Objection to form.
9 A. I don't think there was a merger
10 agreement. I don't recall any penalties on
11 the merger agreement.
12 Q. Do you recall that there were other
13 penalties that Sunbeam was incurring because
14 of the delay?
15 A. Not as a result of that registration
16 statement, but there were penalties under the
17 debentures as a recall for the failure to get
18 the debenture registration statement --
19 registration statement, effectively --
20 Q. You said you could recall one
21 significant SEC issue that delayed final
22 approval of the S4 registration statement, for
23 the stock to be issued to the Coleman public
24 shareholders.
25 A. Right.

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1 Q. What was that issue?
2 A. It was an issue that is under SEC
3 rule 13E3, which relates to going private
4 transactions, which says that the board of the
5 acquiring company, in this case Sunbeam, has
6 to take a position as to whether or not the
7 deal is fair to the shareholders of Coleman.
8 The Sunbeam board was reluctant to do that.
9 MR. MALLOY: I caution you not to
10 get into communications with counsel.
11 A. I told the SEC that the Sunbeam
12 board was reluctant to do that under the
13 circumstances. And they insisted, and we
14 somehow -- and I don't recall exactly how we
15 resolved the issue.
16 Q. You don't recall?
17 A. We did put in some recommendation.
18 Q. Ultimately, it was resolved and the
19 registration became effective in late 1999?
20 A. Right.
21 Q. And the second stage of the
22 transaction, then, closed in the first part of
23 the year 2000; correct?
24 A. Right. Well, I don't remember where
25 exactly, when it closed, but it closed. It

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1 closed.
2 Q. I take it, sir, that Skadden was
3 doing whatever it could to expedite, as best
4 it could, the activities that needed to take
5 place for that transaction to close; correct?
6 A. Yes.
7 MR. MARKOWITZ: We will take a short
8 break. I think I may be completed.
9 MR. MALLOY: Off the record.
10 (Recess.)
11 MR. MARKOWITZ: Thank you. I have
12 no further questions.
13 MR. BEMIS: I have no redirect.
14 Thank you. I have no further
15 questions.
16 (Continued on next page)
17
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**Global High Yield
Investment
Research**

October 9, 1997

Karen H. Eltrich (212) 761-1575
Jake Foley III (212) 761-1598

**Coleman Co.
Making Investors Happy Campers**

STRONG BUY

Amt. \$MM	Cpn.	Mat.	Type	Rating	Offer Price	YTW	Treasury Spread	Int. Cov. LTM	Int. Cov. 97E	Leverage LTM	Leverage 97E	Rating
Coleman Escrow 1 \$600 ¹	0.00%	'01	Sr Disc Nts	B3/B	\$69.50	10.41%	451	1.03	1.52	11.98	8.38	SB
Coleman Escrow 2 \$133 ¹	0.00%	'01	Sr Disc Nts	Caa1/B	\$63.00	13.31%	741	0.90	1.34	13.07	9.03	SB

¹ Full Principal Value, leverage ratios reflect accreted value and are pro forma for refinancing. Leverage ratios are through their respective classes.

Source: Company Financials & Morgan Stanley Estimates

Summary and Investment Conclusion

We have listed the Coleman Escrow 1st & 2nd Priority Discount Notes as Strong Buys as we believe the company is on the brink of an impressive turnaround. After an earnings stumble in 1996, a new management team, lead by Mr. Jerry Levin, is refocusing the company on profitability while attempting to revitalize the industry through increased advertising and new product innovations. The first tangible result from these initiatives appeared in the second quarter of 1997, when the company reported a 30 basis point improvement in their EBITDA margin. With the majority of Mr. Levin's restructuring plan now in place, we are expecting positive earnings comparisons for the last half of 1997 and a return to full earnings momentum in 1998.

Our investment case is not solely based on management's case for a turnaround. Our own research has shown there is an inherent value in Coleman's franchise which cannot be damaged by one year of poor performance. The components of this value are Coleman's dominant marketshare (see exhibit 13), its breadth of distribution, the overall health of the camping industry (see exhibits 10-12) and the equity existing in the Coleman brand name. It is a name that has been around since the 1900's and equates value, quality, reliability and camping to the consumer.

We believe Coleman's turnaround efforts will produce 1997 EBITDA of \$123.7 million and 1998 EBITDA of \$162.1 million. Applying a conservative multiple of 12.0x EBITDA which is below the median take-out multiple of 13.4x EBITDA for consumer products (see appendix 1), we derive a 1998 equity valuation of \$25 per share for Coleman stock, providing equity coverage of 2.3x and 5.9x for the accreted value of the 1st and 2nd Priority issues respectively. Given the historical pricing correlation between the Coleman Escrow issues and Coleman stock, we have set a one year spread target of 350 basis points for the 1st Priority Issue and 450 basis points for the 2nd Priority Notes.

With our Strong Buy opinion, we are placing particular emphasis on the 2nd Priority issue, which we feel trades at a spread to the 1st Priority that is disproportionate to the associated risk. Although we recognize that if earnings continue to deteriorate the value of this issue will decline exponentially (see exhibit 5), we do not foresee any risk of a liquidity crisis at the company, and furthermore view the weighting of the tranches to be favorable to the 2nd Priority issue. Currently, the greatest upside potential exists in this tranche where we view a more appropriate spread between the two issues to be closer to 100 basis points.

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EXHIBIT

CPH 272
10/15/97

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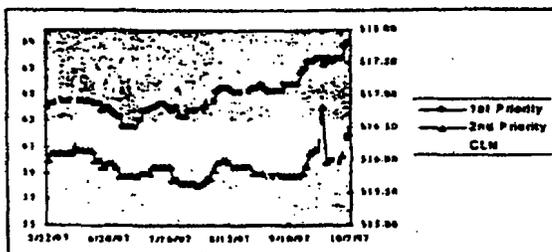
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Exhibit 1

Coleman Holdings Pricing History



Source: Morgan Stanley

Company Description

Coleman is a leading manufacturer and marketer of consumer products for the outdoor recreation and hardware markets. The company was founded in early 1900's, by W. C. Coleman, who began producing and selling the green gas lamps, which today are a Coleman icon and have become synonymous to the brand name. Today the company's products are sold domestically and in over 100 countries under the brand names, Coleman, Camping Gaz, Peak 1, Eastpak, Powermate, Firex, and Maplechase.

Exhibit 2

Recent Events & Historical Perspective

- 1989 MacAndrews & Forbes acquires Coleman
- 1992 Coleman completes initial public offering of common stock.
- 1993 Coleman issues \$575 million of LYONs
MacAndrew's and Forbes ownership interest is transferred to Coleman Worldwide
Coleman Holdings issues approximately \$281.3 (full principal amount) Coleman Holdings Notes
All outstanding capital stock of Coleman Worldwide is transferred to Coleman Holdings...
- Coleman acquires Teymar Group of UK
- 1994 Coleman acquires Metal Yanes of Brazil
Coleman acquires Eastpak
Coleman acquires Sanborn Manufacturing Co.
Germany manufacturing operations restructured
- 1995 Coleman acquires Sierra Corporation
Coleman acquires Active Technologies
- 1996 Coleman acquires Seatt Corporation
Coleman acquires Camping Gaz
Coleman closes Brazilian manufacturing operations acquired from Metal Yanes in 1994
- Feb. 1997 Jerry W. Levin named Chairman & interim CEO
Company announces wider than expected 4Q loss
- March 1997 Coleman announces plans to leave Golden, Colorado headquarters
- April 1997 Coleman announces cost-cutting plan centering on the closure and consolidation of four plants, reducing their workforce by 10% and eliminating 1/3 of their SKUs
- May 1997 Mr. Levin decides to remain as CEO until his business plan has been completed
David Ramon named President of the Outdoor Recreation Group
Coleman decides corporate headquarters will return to Wichita, Kansas
Coleman Escrow completes \$732mm bond offering with proceeds to be used to refinance outstanding discount notes and Liquid Yield Option Notes
- Sept. 1997 Coleman appoints Joseph Page as CFO

Source: Morgan Stanley

NOT A CERTIFIED

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MORGAN STANLEY DEAN WITTER

Exhibit 3

Coleman Escrow Capital Structure (As of 6/30/97)

Short term borrowings	\$86.5
Current Portion of long-term debt	0.6
First Priority Notes	394.8
Second Priority Notes	81.1
Coleman Holding Notes	0.0 ¹
LYONs	0.0 ¹
7.26% Senior Notes due 2007	200.0
7.10% Senior Notes due 2006	85.0
7.25% Senior Notes due 2008	75.0
Revolving Credit Agreement	96.0
Term Loan	66.1
Other	1.3
Total Debt	999.4
Less Current Portion	(0.6)
Total Long Term Debt	998.8

¹ Assumes redemption of these issues

Source: Company Financials

Exhibit 4

Coleman Co. Capital Structure (As of 6/30/97)

Short term borrowings	\$86.5
Current Portion of long-term debt	0.6
7.26% Senior Notes due 2007	200.0
7.10% Senior Notes due 2006	85.0
7.25% Senior Notes due 2008	75.0
Revolving Credit Agreement	96.0
Term Loan	66.1
Other	1.3
Total Debt	610.5
Less Current Portion	(0.6)
Total Long Term Debt	609.9

Source: Company Financials & Morgan Stanley Estimates

Coleman Escrow Corp. Security Description

The notes are secured by a pledge of all of the shares of common stock of Coleman Holdings and guaranteed pursuant to the Coleman Worldwide Non-Recourse Guaranty. With the completion of the Coleman Holding Notes redemption and consummation of the LYONs retirement, the notes will be secured by a total pledge of 44,067,520 shares of the 53,368,726 million shares of outstanding Coleman Common Stock.

The funds will be held in escrow and will be released from time to time upon the satisfaction of certain conditions. The funds will be used to redeem the Coleman Holdings Notes (completed in July, 1997) and the retirement of the LYON's (estimated to be completed by May 27, 1998). As of June 30th, 1997, \$16.5 million aggregate principal amount (\$5.3 million accreted) of the LYONs remained outstanding.

The 1st Priority Notes rank senior in right of payment to the Second Priority Notes, with respect to any collateral securing the Notes and the Coleman Worldwide Non-Recourse guarantee.

Exhibit 5

Equity Coverage of Accreted 1st & 2nd Priority Issues @ final estimated pledged shares of 44.1 million

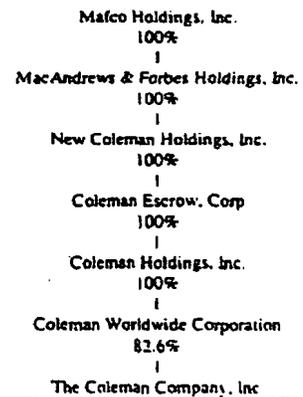
stock price	1st Priority Coverage	2nd Priority Coverage ¹
\$5	0.56	-2.15
6	0.67	-1.61
7	0.78	-1.06
8	0.89	-0.52
9	1.00	0.02
10	1.12	0.57
11	1.23	1.11
12	1.34	1.65
13	1.45	2.20
14	1.56	2.74
15	1.67	3.28
16	1.79	3.83
17	1.90	4.37
18	2.01	4.91
19	2.12	5.46
20	2.23	6.00
21	2.34	6.54
22	2.46	7.09
23	2.57	7.63
24	2.68	8.17
25	2.79	8.72
26	2.90	9.26
27	3.01	9.80
28	3.13	10.35
29	3.24	10.89
30	3.35	11.43

¹ Calculation for 2nd Priority Coverage is as follows: (Equity Valuation - 1st Priority Accreted Value)/2nd Priority Accreted Value

Source: Morgan Stanley

Exhibit 6

Coleman Company Structure



Source: Company Financials

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MORGAN STANLEY DEAN WITTER

Exhibit 7

Mafco Holdings, Inc. Ownership of The Coleman Company, Inc. Stock

(thousands)	Total	% of Total Shares Outstanding
Total Shares Outstanding	53,369	100.0%
Total Mafco Ownership	44,068	82.6%

Source: Company Financials

In our valuation, we apply a 12.0x multiple of EBITDA, which is well below the industry median of 13.4x (see appendix 1). We believe our valuation is conservative given Coleman's strong market share and growth prospects. We have not done a downside valuation in the case of a liquidity crisis as we do not perceive this to be a risk at any time in the near future. Even at its current depressed EBITDA levels, Coleman's operating company has interest coverage of 1.8x and revolver availability of \$174 million, providing ample liquidity to the company should they not deliver a turnaround in the expected time frame.

Exhibit 8

The Coleman Company Valuation (1997 Forecasted EBITDA)

1997 Forecasted EBITDA	\$123.7
x Valuation Multiple	12.0
= Coleman TEV	1,484.4
- Coleman Company Debt	609.9
= Equity Valuation	\$874.5
Total Shares Outstanding	53.4
Value Per Share	\$16.4
# of Shares Securing Coleman Escrow Issue	44.1
Coleman Holdings Secured Equity Valuation	\$722.1
Coleman Escrow 1st Priority Accreted Debt	417.2
1st Priority Equity Coverage	1.7x
Coleman Escrow 2nd Priority Accreted Debt	86.4
2nd Priority Equity Coverage ¹	3.5x
Coleman Escrow 1st Priority Full Principal Debt	600.0
1st Priority Equity Coverage	1.2x
Coleman Escrow 2nd Priority Full Principal Debt	133.0
2nd Priority Equity Coverage ¹	0.9x

¹ Calculation for 2nd Priority Coverage is as follows: (Equity Valuation - 1st Priority Accreted Value) / 2nd Priority Accreted Value

Source: Morgan Stanley

Exhibit 9

The Coleman Company Valuation (1998 Forecasted EBITDA)

1998 Forecasted EBITDA	\$162.1
x Valuation Multiple	12.0
= Coleman TEV	1,945.20
- Coleman Company Debt	609.9
= Equity Valuation	\$1,335.3

Total Shares Outstanding	53.4
Value Per Share	\$25.0
# of Shares Securing Coleman Escrow Issue	44.1

Coleman Holdings Secured Equity Valuation	\$1,102.58
Coleman Escrow 1st Priority Accreted Debt	476.9
1st Priority Equity Coverage	2.3x
Coleman Escrow 2nd Priority Accreted Debt	106.0
2nd Priority Equity Coverage ¹	5.9x

Coleman Escrow 1st Priority Full Principal Debt	600.0
1st Priority Equity Coverage	1.8x
Coleman Escrow 2nd Priority Full Principal Debt	133.0
2nd Priority Equity Coverage ¹	3.8x

¹ Calculation for 2nd Priority Coverage is as follows: (Equity Valuation - 2nd Priority Accreted Value) / 1st Priority Accreted Value

Source: Morgan Stanley

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MORGAN STANLEY DEAN WITTER

Getting Back to Basics

The key credit issue for Coleman is whether or not the company will be able to successfully complete a turnaround. The company experienced a period of growth through acquisition, without creating the infrastructure necessary to channel this growth into profits. The inefficiencies associated with this management error manifested themselves into a 46% decline in EBITDA in 1996. Mr. Levin took the position of Chairman and CEO in February of this year, and although he has been very active in making changes at Coleman, investors are yet to see these efforts translated into positive earnings momentum.

We are believers in Mr. Levin's ability to turn Coleman around. Moderate earnings appreciation will occur in the second half of 1997 as the company begins to receive the benefits of their cost savings plan. Our spread to treasury targets for the end of 1997 are 400 and 600 basis points for the 1st Priority and 2nd Priority issues respectively. The company will have a full return to earnings momentum in 1998 as the full impact from cost savings initiatives are felt coupled with earnings growth from their acquisitions and new products.

Our expectations for 1998 EBITDA are \$160 million, representing a 16% increase over the company's 1995 historic high EBITDA of \$137 million. The company's performance in the first half of 1998 will demonstrate to investors the untapped strength of the Coleman brand and the newly formed existence of an operating base that is exceptionally well-positioned for the growth of the Coleman franchise. This prospect of stable earnings going forward will produce spread to treasuries of 350 basis points for the 1st Priority Notes and 450 basis points for the 2nd Priority Notes, which is in line with comparable consumer product companies.

Our investment hypothesis is based on the overall health of the camping industry, the opportunities associated with this health which are yet to be exploited, the enduring strength of the Coleman brand name and Mr. Levin's ability to bring operational discipline to a neglected infrastructure.

Investment Strengths

- Coleman is the leading brand name in the camping industry with nearly four times the market share of their nearest competitor.
- The Coleman brand name is widely recognized by consumers and is associated with quality and value.
- The camping industry has shown impressive growth over the past 10 years.
- The industry remains highly fragmented with several opportunities for further consolidation.

- Prior to new management, Coleman was run with growth for growth's sake versus a strategy of profitable growth. This has left new management with several opportunities for cost-cutting.
- Coleman exceeds the industry in terms of distribution: selling in mass merchandisers, sporting goods stores, wholesale clubs, sports specialty shops, food and drug chains, catalogue showrooms, home center stores and military exchanges. This is in contrast to their competitors whom generally focus on two or three channels. (Canvas & Camping Equipment, The U.S., Market, September 1996; Euromonitor International).
- Coleman has an advantageous relationship with retailers due to their breadth and scope of product offerings, strong brand recognition and high advertising expenditure. An example of the benefits of this relationship is when Coleman entered the camping accessory market, several retailers removed the market leader, Coughlan's, from their shelves to make room for Coleman.

Investment Weakness

- The camping industry is vulnerable to performance downturns in the event of poor weather
- The industry is highly seasonal, with the majority of sales occurring in the spring and summer seasons.
- The U.S. government has been gradually cutting the budget of the National Park Service, making the maintenance of these parks more difficult and limiting their accessibility. Backlogs in maintenance and reconstruction of trails for the USDA Forest Service are estimated at over \$300 million, while the National Park Service puts its maintenance deficit in the billions of dollars. (1997 State of The Industry Report, The Outdoor Recreation Coalition of America and The Sporting Goods Manufacturers Association).
- The Japanese market, which represents an estimated 10% of Coleman's sales has had poor economic conditions with no expectation of a recovery.
- During 1996 and the first half of 1997, Coleman has reported deteriorating earnings results. New management is currently undertaking a turnaround strategy but it is yet to produce positive earnings comparisons.
- The equity sponsor of Coleman is perceived by some in the high yield market as lacking credibility after a stumble in a Marvel Comics investment. Although this situation was unique and bears no relevance to Coleman, it leaves Coleman securities vulnerable to "sympathetic trade-offs".

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MORGAN STANLEY DEAN WITTER

Nature's First Green is Gold

According to Jim Lyons, assistant U.S. Secretary of Agriculture for Natural Resources and Environment, recreation has replaced mining, grazing and timber harvest as the most important use of U.S. Forest Service Land. The total contri-

bution of Forest Service Land to the U.S. economy is \$130.7 billion. Of this, recreation contributes \$97.8 million, Fish & Wildlife \$12.9 million, mineral production \$10.1 million and timber, \$3.5 million (*National Forest Service*).

Exhibit 10

Domestic Travel in the U.S. According to Purpose of Trip 1991-1995 (million person trips)

Purpose	1991	1992	1993	1994	1995
Visit Friends/Relatives	333	351	375	371	379
Outdoor Recreation	118	96	114	121	139
Entertainment	216	298	296	346	391
Business/Conventions	167	202	205	224	251
Other	146	116	147	154	157
Total	980	1,063	1,137	1,216	1,317

Source: US Travel Data Center/Trade estimates/US Industrial Outlook/Euromonitor Market Direction

A clear indication of this new popularity is attendance levels in the National Parks. With the most popular parks rivaling the attendance at Disneyworld (which offers year-round entertainment versus seasonal) it is little wonder these parks require reservations for guaranteed spaces during peak seasons.

Exhibit 11

Most Popular Sporting Activities in the USA - 1996

Activity	Participants	% Chg from 1993
Bowling	52.2 million	6.5%
Freshwater fishing - excluding fly fishing	45.9 million	(4.0)%
Basketball	45.6 million	8.3%
Billiards	44.5 million	10.4%
Free Weights	42.8 million	38.1%
Tent Camping	38.0 million	9.2%
Stationary cycling	35.0 million	(10.5)%
Treadmill	32.8 million	NA
Fitness Walking	32.5 million	4.8%
Running/Jogging	31.5 million	4.7%

(for U.S. population, over six years old, participated in activity at least once in 1993)

Source: American Sports/ Sporting Goods Manufacturers Association

Fueling this growth is a heightened awareness of America's natural beauties, a desire by families for vacations in child-friendly environments, and a "back to nature" movement attracting the baby boomer generation.

This new breed of campers, which extend beyond the usual backpackers, are not willing to sacrifice the comforts of home in order to experience nature. This has produced an opportunity for Coleman to capitalize on.

Exhibit 12

Top Five Categories for U.S. Sports Equipment Sales - 1996 (Estimated)

Sport	Sales (Wholesale Value)
Exercise Equipment	\$2.632 billion
Golf	\$2.245 billion
Firearms/Hunting	\$1.700 billion
Fishing	\$1.600 billion
Camping	\$1.500 billion

Source: Sporting Goods Manufacturers Association Recreation Report 1993

Campers are no longer satisfied with a backpack, tent and sleeping bag. They require the amenities of home which include comfortable, warm sleeping bags, larger tents, high-tech cooking equipment and everything must be lightweight and compact. This class of consumer is willing to frequently upgrade their existing equipment if the new product is worthwhile and pay more for added convenience and luxury.

New products and innovations also have the ability to draw new users into the category, by increasing consumer awareness and broadening the appeals of camping.

To date, however, manufacturers have failed to fully take advantage of the favorable trends affecting the camping industry. There has been an overall lack of innovation and advertising by manufacturers. Coleman has been cited to us as an exception to this rule by industry observers and in the past year has introduced two exceptional products to appeal to the family camper, the Quick Bed™ air mattress, which inflates in less than three minutes and the 3-person Fast-track™ tent, which is designed to set up in only 60 seconds. Coleman, however, has not yet fully developed their own potential in this category and we expect it to be a source of further growth in the coming years.

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MORGAN STANLEY DEAN WITTER

Exhibit 13

Manufacturers' Shares of Tents and Camping Equipment 1992-1996

	1992	1993	1994	1995	1996
Coleman	28.4	29.6	33.8	37.4	37.7
American Recreation ¹	7.7	7.9	9.5	9.9	10.1
American Camper (Nelson/Weather-Rite) ²	6.3	6.3	6.7	7.2	8.3
Jansport	4.7	6.4	7.8	7.4	7.4
Johnson Camping	4.6	4.5	5.2	5.9	6.7
Avid Outdoors	1.6	1.6	1.7	1.6	1.7
Eastpak ³	3.2	3.8	---	---	---
The North Face	1.8	2.6	3.0	3.4	3.7
Outdoor Products (Outdoor Recreation Group)	2.4	2.8	3.1	3.2	3.1
Henderson Camp (Henderson Products)	2.8	2.6	2.4	2.2	1.7
MZH ⁴	1.5	1.5	1.5	---	---
Lowe Alpine	1.0	0.9	0.7	0.3	0.6
Sierra Designs ⁵	0.7	0.8	---	---	---
Others	33.3	28.7	24.6	21.3	19.0
Total	100.0	100.0	100.0	100.0	100.0

¹ Division of Kellwood; comprised of Kelly/Ridgeway, Sierra Designs, Slumberjack, Wenzel, Travasak, Guarantee Fit-Trekk

² Division of Brunswick; changed name from Nelson/Weather-Rite to American Camper

³ Acquired by Coleman in 1994

⁴ Acquired by Nelson/Weather-Rite in 1995

⁵ Division of American Recreation; acquired by Kellwood in 1994

Source: Sportstyle/EuroMonitor

Coleman dominates the camping equipment industry. The company has nearly four times the market share of their nearest competitor and is the only camping equipment and hardware manufacturer that offers retailers a broad spectrum of products. Historically they have aimed primarily at the middle income consumer, but their acquisition of Camping Gaz has successfully positioned the company in all segments in both Europe and America.

Given its fragmented nature, the industry has undergone a great deal of consolidation over the past 10 years, with Coleman being a very active participant in this trend. The second and third largest players, American Recreation Equipment manufactures with a 10.1% share and American Camper, holding an 8.4% share have also been active on the acquisition front. American Camper's parent Brunswick, was rumored to have been in talks to purchase Coleman in 1995.

Exhibit 14

Manufacturer's U.S. Sales of Camping Equipment

	Sales
1986	\$580 million
1993	\$1,225 million
1994	\$1,375 million
1995	\$1,508 million
1996 (estimated)	\$1,500 million
1997 (projected)	\$1,530 million

Source: Sporting Goods Manufacturers Association Recreation Report

A Period of Growth

When MacAndrews & Forbes first acquired Coleman in 1989, he hired Mr. Levin to serve as Chairman. Mr. Levin immediately lowered debt and improved profitability by selling several non-core divisions. Mr. Levin served as chairman from, 1989 to 1991. After his departure, several leaders served in the intervening period with the final being Mr. Michael Hammes as Chairman and CEO. During this period Coleman underwent a strategy of growth through acquisition. Given the high fragmentation of the industry, and the strong Coleman brand name, the reasoning behind these acquisitions was not unsound. These acquisitions included:

- Eastpak - a leading designer, manufacturer and distributor of branded daypacks, sports bags and related products
- Sanborn Manufacturing Company - a manufacturer of a broad line of portable and stationary air compressors
- Seatt Corporation - a leading designer, manufacturer and distributor of smoke alarms, thermostats and carbon monoxide detectors. The reasoning behind this product extension was the sector would leverage Coleman's reputation for providing safe and reliable products.

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- Active Technologies, Inc. - a manufacturer of technologically advanced lightweight generators and battery charging equipment
- Sierra Corporation of Fort Smith, Inc. - a manufacturer of portable outdoor and recreational folding furniture and accessories.
- Camping Gaz - a leader in the European camping equipment market.

Although each of these acquisitions were good strategic fits, where management made their mistake was in failing to create an infrastructure able to profitably manage the new divisions and maximize the synergies.

All of these mistakes became apparent in 1996, after the acquisition of Camping Gaz. Operating company debt ballooned to \$740 million from \$640 million in the year ago period. EBITDA dropped to \$98.6 million from its 1995 high of \$127.6 million and the company's stock dropped from a high of \$26 in early 1996 to a low of \$12.125 at the end of that year. It was at this time Mr. Levin was asked to return as Chairman and interim CEO.

Returning Home

In returning to Coleman, Mr. Levin is facing several of the challenges seen at Revlon in 1991. Fundamentally, the company lacks a management infrastructure conducive to organic growth and profitability. Strategically, Coleman has neglected the wants of consumers for a prolonged period of time. While it is the leader in a growing market, the company's products are often regarded as commodities. Many consumers still use the same Coleman products they purchased decades ago. Coleman has remained the category leader and continues to offer products that are top-of-the-market in quality, price-points, durability, convenience and safety. But this message has gotten lost - especially with retailers.

The first phase of Mr. Levin's turnaround plan has been to initiate operational improvements to drive profitability.

- In March, Coleman announced plans to leave the company's Golden, Colorado headquarters and sell the corporate jet - legacies of the previous management.

Mr. Levin made the decision to move back to Wichita, Kansas, where Coleman was founded in 1902. Wichita is currently home to Coleman's largest workforce and core operations. Wichita, Sedgewick County and Kansas are providing a combined \$500,000 in economic development funding for the relocation. In addition to closing the Golden, Colorado headquarters, the company closed

its regional headquarters in Geneva Switzerland. The international operations will now be run out of Coleman's New York offices. Eastpak's headquarters will remain in Boston.

We believe this move proved to benefit the company twofold. The first is the obvious cost savings associated with the closure of the pricey Colorado headquarters. More importantly, however, we view the company's decision to return to Wichita, Kansas as an important symbolic action to employees and retailers that Coleman is returning to its roots and remains a focused company committed to its legacy.

- The company closed and consolidated one international and three domestic factories and cut its workforce of 7,000 by approximately 10%. These factories included the Hastings Nebraska, New Ulm, Minnesota and Manchester, UK factories. This legacy of a bloated infrastructure appears to have been the result of previous management neglecting to rationalize product lines and factories as new acquisitions were made.
- The company is in the process of eliminating unprofitable products, representing 1/3 of their SKUs. This has removed approximately \$100 million in low or no-profit revenue. Coleman has exceptional manufacturing capabilities which has always been a source of pride for the company. When a retailer would ask for a product to be manufactured in a new color, Coleman was able and willing to comply. This accommodation was done without undergoing a cost-benefit analysis, causing a proliferation in SKUs. At the end of 1996, Coleman had over 6,000 SKUs, with 1500 of those SKUs being added in one year.
- Liquidity will be improved by \$100 million through reductions in working capital. During the first quarter, inventory was flat despite this quarter being the building period before the peak summer season. By the second quarter of 1997, Coleman had lowered year-over-year inventory and accounts receivables by \$100 million, well ahead of our expectations for timing.
- Coleman plans to sell their pressure-washer business, which historically has been a drag on earnings. Through management's recent operational improvements, this division has since turned around, creating more value, but also creating the possibility that it will no longer be sold. If sold, the net proceeds are estimated to equal the cash restructuring charges, creating a neutral cash flow affect for the year.

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MORGAN STANLEY DEAN WITTER

- Mr. Levin is rebuilding the team around him that will redirect Coleman to profitable levels in both corporate and divisions. In general, he is hiring individuals he or Mr. Perelman have worked with before. Most recently, he hired Joseph Page as Chief Financial Officer. Since 1993, Mr. Page has served as EVP and CFO of Andrews Group, a wholly owned subsidiary of MacAndrews & Forbes. Mr. Page has also served as CFO of New World Communications Group, a company that was previously controlled by MacAndrew & Forbes Holdings.

David Ramon was appointed President of the Outdoor Recreation Group, which represents the core brands and business for Coleman. Mr. Ramon was most recently President and Chief Operating Officer of New World Television Inc.. Prior to joining New World Communications, Mr. Ramon was EVP and CFO of Gillett Holdings, Inc., where he successfully managed and directed the restructuring of Gillett Holdings in three distinct and profitable businesses (Vail Associates, Packerland Packing Co. and New World Television Inc.).

To date, the company has put into place over \$50 million of annualized cost savings against the 1997 plan from reductions in personnel, production facilities and administrative overhead combined with improved productivity and working capital management.

The second phase of Levin's strategy is to change the way in which Coleman does business. This includes establishing a corporate culture that encourages communication, increasing Coleman's profile with the consumer, bringing new excitement to the industry through product innovations, creating global unity through the Coleman brand names, seeking international growth and managing the company as one operation thereby maximizing synergies between divisions.

Employee Development. With the removal of the corporate headquarters to Colorado, Coleman lost touch with one of its most important resources - its employees. Mr. Levin has long recognized the importance of a corporate culture for the long-term success of a company. At Revlon he created an environment which fostered employee development, communication and teamwork while rewarding individual achievements.

We are expecting similar actions to be taken at Coleman. Already, Mr. Levin has accelerated efforts in training and development and has created a new incentive system for management that rewards performance against defined profit, cash flow and globalization goals.

Increased advertising. Coleman's greatest advantage is their brand name. With three times the market share of their nearest competitor, Coleman has the highest consumer brand awareness level of any camping manufacturer. Mr. Levin intends to exploit this advantage with increased advertising and exposure. With the exception of Jansport, the rest of the industry players lack the scope or scale to advertise on a large-scale basis and historically have not attempted to do so.

Traditional advertising for camping equipment has been magazines such as *Camping Magazine*, *Camping Today*, *Field and Stream*, *Outdoor Life*, *Outdoor Retailer* and *Backpacker* (Canvas & Camping Equipment, The U.S. Market, September 1996; *Euromonitor International*). We are expecting Mr. Levin, however, to broaden Coleman's reach into television advertising such as ESPN, ESPN2 and MTV in an effort to tap one of the lowest penetration age groups for camping, the 18-24 year old bracket. Mr. Levin is hoping to increase Coleman's sales through both existing users and new ones.

Product innovation. Camping is not a mature market, it is a growth area and there are new users entering every day. Levin hopes to attract these new users to the Coleman name while enticing old users to update existing products through the excitement of innovations, with these new products being supported by the afore mentioned increased advertising. Mr. Levin has stated his intention to increase Coleman's commitment to Research and Development in order to meet these goals.

The camping market is hungry for new products as the industry has neglected the changing demographics occurring in today's camping population (see appendix 4). Seeking an economical and child-friendly vacation in the splendor of the outdoors, today's campers are older and more likely to have a family. These segments of the population are more inclined to require comfort, convenience and consistency in their camping experience. They are willing to pay more for the added-luxury and to update existing products. This represents a currently untapped sales opportunity for Coleman to develop.

This does not mean Coleman plans to ignore the needs of campers and backpackers who do like to "rough it". These campers also present sales opportunities with product innovations as they are always seeking new products which are lighter, more reliable and mobile. This market also has the added benefit of dedicated press coverage through consumer interest magazines such as *Camping Today*, which provides a higher consumer profile for Coleman.

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MORGAN STANLEY DEAN WITTER

Examples of product innovations with large growth potential that Mr. Levin has identified already in Coleman's repertoire include:

1. The Quick Bed™ air mattress which inflates in less than three minutes.
2. A 22 pound, gas-powered electrical generator that is about one-third the weight of competitive products, the Coleman® Powermate® 1000 Generator. This portable generator weighs 40 pounds less than its nearest competitor.
3. The Peak 1® X-Series™ collapsible backpacking stoves. These stoves won the 1997 Editors's Choice Award from *Backpacker Magazine*.
4. The Liquid Fuel (propane/butane mix) patent pending withdrawal mechanism and patent pending interconnection devise used in the Peak 1® X-Series™ collapsible backpacking stoves. This innovation will also be used in future Coleman Family products.
5. The 3-person Fastrack™ tent, with its attached pre-assembled frame, is designed to set up in only 60 seconds.

Brand Globalization. Levin will be applying his packaged goods to Coleman's strong repertoire of brands, focusing on the core brands of Coleman, Camping Gaz, Powermate and Eastpack. His strategy to maintain and grow Coleman's leadership position in the worldwide outdoor recreation business will be expanding and globalizing the brands with a distinct and uniform image throughout the world.

The obvious operational benefits to this strategy are the significant cost savings to be realized. By globalizing the products, packaging and advertising of these brand names Coleman will be able to further consolidate purchasing, production and marketing. Mr. Levin instituted these measures at Revlon, producing significant operating leverage the company is still benefiting from today.

Overall, we view the globalization of the brands as an important measure in the building of an infrastructure that is conducive to profitable growth. This new structure will enable management to have a greater level of focus with their time, a fundamental that appeared to be lacking previously.

International

International operations currently represent approximately 25% of sales, with the majority of these sales derived from Europe and Japan.

The company plans on growing their presence in emerging markets - believing that to be an investment in the future growth of the company. Currently in Asia, the company has a presence in Hong Kong, South Korea, Indonesia and the Philippines. The main goal in these markets is to increase distribution and establish Coleman as the pre-eminent camping brand. It is not expected to be a major contributor to earnings for the next few years.

One of Coleman's larger international markets, Japan, has suffered recently in the past years. A poor economy, which has shown no indicators for improving, has hampered sales. Management is working to alleviate some of the problems in this difficult operating environment, but a recovery is not expected soon.

The greatest problem the company has had to face is inventories - retailers had never adjusted the levels to reflect the lower sales levels being experienced. Mr. Levin and his team this year have gone in and lowered inventories with wholesalers. This has been a painful process which harmed second quarter earnings for the company, but management believes the majority of reductions have been taken, with little impact expected going forward.

Japan is a large camping market. About 14.6 million people (4 million households) engage in camping, with this number growing by 4-5% per year. There are 3,000 campgrounds in Japan today, with an average occupancy rate of 14%. This compares to the U.S. occupancy rate of 45%. (*Chamber World Network, International U.S. & Foreign Commercial Service*).

The lower usage rate can be attributed to the lack of amenities provided at these campgrounds, most of which don't offer hot showers, sufficient sanitation facilities or organized out-door leisure programs for campers. Only 900 campgrounds actually allow campers to drive to their sites, the remaining ones require campers to park in a central parking area from which the tent must be carried to the campsite. This lack of user-friendliness makes it difficult for campers to spend more than 2-3 days "roughing it" and is a very large obstacle for families camping. In recognition of the dearth of organization in the Japanese camping industry, the U.S. Recreational Vehicle Industry Association, the U.S. Recreational Park Trailer Industry Association and the Commercial Service of the U.S. Embassy in Tokyo filed a joint appeal to the Government of Japan to form a new regulatory framework for the industry (*Chamber World Network, International US&FCS*).

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The first step in formulating this new regulatory framework occurred in March of this year, when the Ministry of Construction issued a notice relaxing the BSL regulations for trailers used in campgrounds for destination camping purposes. Although the wording was highly ambiguous, the notice should suffice to give developers the ability to undertake 10-20 campground upgrades every year. (*Chamber World Network, International US&FCS*).

We believe this upgrading of camping facilities could be a potential boon to Coleman in the future. With the lack of improvement in the Japanese economy we believe more families would turn to camping as a frugal vacation alternative - were it more user-friendly and convenient.

In Europe, the new management team has made the important step of integrating the acquisition Camping Gaz into Coleman's distribution system. The increased presence this will give Camping Gaz coupled with the synergies will create earnings appreciation in 1998.

Camping Gaz is the leading camping manufacturer in Europe but has a similar problem to Coleman, the brand has been taken for granted. Consequently, Camping Gaz required a face-lift. The brand has been the same to consumers since its introduction and needed a new look to serve as a reminder of the higher technology products the company offers. In September, management introduced a new image for the brand to retailers during the Spoga trade show in Cologne, Germany. This is the first step in what management hopes is a rejuvenation of the brand in Europe.

The Coleman Company Financial Forecast

1997 is an unusual year in sales for Coleman, with the elimination of the \$100 million in SKUs, the reduction of inventory in Japan and the exiting of the pressure washer business (approximately 8% of sales). The overall affect should be roughly flat sales, year over year. We are forecasting 1998 sales growth of 7.0%, which we view as conservative given Coleman's many marketing initiatives. Currently, the company is not focused on acquisitions and does not expect to make any unless an opportunistic acquisition were to present itself.

Gross margin will continue to appreciate as the company benefits from their SKU reduction program. In 1998, we expect further appreciation from the globalization of Coleman's brands. This will produce significant savings in procurement, packaging and manufacturing.

Selling General & Administrative Expenses as a % of sales are also expected to continue to improve as Coleman realizes the cost savings associated with their reduction in

workforce and a new focus on cost savings by managers. These savings will be partially offset by increased advertising and research expenditures, which should in turn increase sales and operating leverage for the company.

We are being very conservative with regards to Coleman's capital structure. The company will be generating significant cash flow and we expect continued deleveraging to occur in 1998.

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MORGAN STANLEY DEAN WITTER

Exhibit 15

The Coleman Company 1997 Summary Financial Forecast

	Year 12/31/95	1Q 3/31/96	2Q 6/30/96	3Q 9/30/96	4Q 12/31/96	Year 12/31/96	1Q 3/31/97	2Q 6/30/97	3QE 9/30/97	4QE 12/31/97	YearE 12/31/97
Net revenues	\$933.6	\$273.6	\$452.7	\$269.6	\$224.4	\$1,220.2	\$295.5	\$383.5	\$281.5	\$235.2	\$1,195.6
Cost of sales	649.4	192.6	315.1	229.7	191.1	928.5	214.4	281.6	208.3	174.7	879.0
Gross profit	284.1	81.0	137.5	39.9	33.3	291.7	81.0	101.9	73.2	60.4	316.6
Gross Margin	30.4%	29.6%	30.4%	14.8%	14.8%	23.9%	27.4%	26.6%	26.0%	25.7%	26.5%
SG&A	174.7	46.7	78.9	89.3	76.7	291.7	65.9	70.1	55.2	49.1	240.3
SG&A as % of Sales	18.7%	17.1%	17.4%	33.1%	34.2%	23.9%	22.3%	18.3%	19.6%	20.9%	20.1%
Operating Income	109.5	34.2	58.6	(49.4)	(43.4)	0.0	15.2	31.8	18.0	11.3	76.3
Depreciation & Amortization	18.8	5.3	6.6	7.4	6.5	25.9	6.7	7.0	8.0	7.1	28.9
Extraordinary Expenses (Gain)	(4.1)	0.0	0.0	57.3	16.9	74.2	0.0	18.6	0.0	0.0	18.6
EBITDA	124.1	39.6	65.2	15.3	(20.0)	100.1	21.9	57.4	26.0	18.4	123.7
EBITDA Margin	13.3%	14.5%	14.4%	5.7%	-8.9%	8.2%	7.4%	15.0%	9.2%	7.8%	10.3%
Interest	24.5	8.1	10.7	10.0	9.9	38.7	10.7	11.0	10.5	9.7	41.9
Capital Expenditures	29.1	6.9	11.9	8.9	13.7	41.3	6.3	6.3	7.0	14.1	33.8
Capital Expenditures/Total Sales	3.1%	2.5%	2.6%	3.3%	6.1%	3.4%	2.1%	1.7%	2.5%	6.0%	2.8%
Long Term Debt	374.6	612.7	558.5	573.0	617.5	617.5	\$68.0	522.8	538.8	542.0	542.0
Total Cash	12.1	6.8	11.4	43.8	17.3	17.3	12.9	17.0	13.0	15.0	15.0
Net Debt	362.5	605.9	547.2	529.3	600.2	600.2	555.2	505.8	525.8	527.0	527.0
Available Credit	na	70.7	156.8	137.9	128.1	128.1	135.1	173.5	158.0	154.0	154.0
EBITDA/Interest	5.06	4.90	6.08	1.54	(2.02)	2.59	2.04	5.21	2.48	1.73	2.89
EBITDA-Capex/Interest	3.87	4.05	4.97	0.65	(3.39)	1.52	1.45	4.63	1.81	0.40	2.10
Debt/EBITDA	3.02					6.17					4.38
Net Debt/EBITDA	2.92					5.99					4.26
Coleman Factor											
EBITDA/Interest	2.15	2.33	3.32	0.80	(1.03)	1.33	1.12	2.93	1.09	0.77	1.42
Debt/EBITDA	5.94					9.98					8.53

Extraordinary expenses detailed as following:

1995 = Cost of Sales benefit of \$6.3 mm related to adoption of EITF 95-2

3Q96 = \$33.6 million charge in Cost of Sales and \$23.8 million charge in SG&A relating to integration of Camping Gaz, exit of electric pressure washer business, increase in valuation reserve for certain foreign deferred income tax assets, litigation expenses associated with certain battery powered lights, asset write-offs and foreign tax matters.

4Q96 = \$10.4 million charge Cost of Sales and \$6.4 million charge in SG&A relating to same charges as 3Q96

2Q97 = \$11.4 million charge in Cost of Sales and \$7.2 million charge in SG&A relating to corporate restructuring program.

Source: Company Financials & Morgan Stanley Estimates

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MORGAN STANLEY DEAN WITTER

Exhibit 16

The Coleman Company 1998 Summary Financial Forecast

	Year	1Q	2Q	3QE	4QE	YearE	1QE	2QE	3QE	4QE	YearE
	12/31/96	3/31/97	6/30/97	9/30/97	12/31/97	12/31/97	3/31/98	6/30/98	9/30/98	12/31/98	12/31/98
Net revenues	\$1,220.2	\$295.5	\$383.5	\$281.5	\$235.2	\$1,195.6	\$313.2	\$421.9	\$301.2	\$246.9	\$1,283.2
Cost of sales	928.5	214.4	281.6	208.3	174.7	879.0	223.6	294.9	214.1	178.5	911.2
Gross profit	291.7	81.0	101.9	73.2	60.4	316.6	89.6	127.0	87.0	68.4	372.0
Gross Margin	23.9%	27.4%	26.6%	26.0%	25.7%	26.5%	28.6%	30.1%	28.9%	27.7%	29.0%
SG&A	291.7	65.9	70.1	55.2	49.1	240.3	58.6	71.7	57.5	51.6	239.4
SG&A as % of Sales	23.9%	22.3%	18.3%	19.6%	20.9%	20.1%	18.7%	17.0%	19.1%	20.9%	18.7%
Operating Income	0.0	15.2	31.8	18.0	11.3	76.3	31.0	55.3	29.5	16.8	132.6
Depreciation & Amortization	25.9	6.7	7.0	8.0	7.1	28.9	6.9	7.3	8.2	7.3	29.7
Extraordinary Expenses (Gain)	74.2	0.0	18.6	0.0	0.0	18.6	0.0	0.0	0.0	0.0	0.0
EBITDA	100.1	21.9	57.4	26.0	18.4	123.7	37.9	62.6	37.7	24.1	162.3
EBITDA Margin	8.2%	7.4%	15.0%	9.2%	7.8%	10.3%	12.1%	14.8%	12.5%	9.8%	12.6%
Interest	38.7	10.7	11.0	10.5	10.6	42.8	10.4	9.8	10.1	10.3	40.6
Capital Expenditures	41.3	6.3	6.3	7.0	14.1	33.8	6.8	6.2	7.4	14.7	35.1
Capital Expenditures/Total Sales	3.4%	2.1%	1.7%	2.5%	6.0%	2.8%	2.2%	1.5%	2.5%	6.0%	2.7%
Long Term Debt	617.5	568.0	522.8	538.8	542.0	542.0	564.0	509.0	515.0	519.0	519.0
Total Cash	17.3	12.9	17.0	13.0	15.0	15.0	11.0	14.0	13.0	14.7	14.7
Net Debt	600.2	555.2	505.8	525.8	527.0	527.0	553.0	495.0	502.0	504.3	504.3
Available Credit	128.1	135.1	173.5	158.0	154.0	154.0	139.0	186.0	182.0	186.0	186.0
EBITDA/Interest	2.59	2.04	5.21	2.48	1.73	2.89	3.64	6.38	3.73	2.34	4.00
EBITDA-Capex/Interest	1.52	1.45	4.63	1.81	0.40	2.10	2.99	5.75	3.00	0.91	3.13
Debt/EBITDA	6.17					4.38					3.20
Net Debt/EBITDA	5.99					4.26					3.11
<u>Coleman Escrow</u>											
EBITDA/Interest	1.33	1.12	2.93	1.09	0.77	1.42	1.60	2.51	1.50	0.94	1.63
Debt/EBITDA	9.98					8.53					6.39

1996 = \$54.0 million charge in Cost of Sales and \$30.2 million charge in SG&A relating to integration of Camping Gaz, exit of electric pressure washer business, increase in valuation reserve for certain foreign deferred income tax assets, litigation expenses associated with certain battery powered lights, asset write-offs and foreign tax matters.

2Q97 = \$11.4 million charge in Cost of Sales and \$7.2 million charge in SG&A relating to corporate restructuring program.

Source: Company Financials & Morgan Stanley Estimates

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Appendix I

Prices Paid For Recent Consumer Product Transactions

Announced	Acquiree/Acquirer	Business Description of Acquiree	Equity Aggregate		Aggregate Value/			Premium Price ¹
			Value	Value ²	Revenues	EBITDA	EBIT	
04/09/97	Tambrands/Procter & Gamble	Manufactures feminine hygiene products, home diagnostic, cosmetics and personal care products	\$1,854	\$2,004	3.0x	8.7x	14.4x	15.3%
11/26/96	Armor AJI (McKesson Corporation)/Clorox Company	Develops and markets a broad line of automotive appearance chemicals, including protectants, washes and other cleaning aids. The company also markets several brands of home care products	410	355	1.9	13.9	16.7	14.0
10/29/96	Canter-Wallace/Investor (Marvin/Davis)	Manufacture pharmaceuticals, toiletries, diagnostic equipment and pet food	928	941	1.4	13.0	19.4	60.0
09/13/96	Duracell/Gillette	A worldwide manufacturer of high-performance alkaline batteries and other battery types	7,202	7,733	3.4	14.3	17.4	30.1
02/13/96	Helene Curtis/Unilever PLC	Develops, manufactures and markets personal care products, primarily hair and skin products and antiperspirants and deodorants	739	842	0.6	13.4	24.8	71.8
01/22/96	Maybelline/L'Oréal SA	Maker of Great Lash mascara and other cosmetics and perfumes	627	755	2.1	14.9	19.0	93.4
08/11/95	Schwarzkopf (Hoechst AG) Henkel (KGAA)	Sells best-selling hair care products including top selling shampoo and best-selling hair spray	DM800	DM800	0.9	N.A.	17.3	N.A.
07/17/95	Scott Paper/Kimberly Clark	Consumer paper products	6,800	7,786	N.A.	10.0	16.0	1.9
01/09/95	American Home Products (Kolynos)/Colgate-Palmolive	Oral care division of AHP that operates primarily in Latin America	1,040	1,040	3.6	N.A.	19.2	--
08/22/94	Neutrogena Corp./Johnson & Johnson	U.S. manufacturer of quality skin and hair care products	\$929	\$933	3.2x	19.9x	22.9x	78.5%
09/12/94	Borden Inc./RJR Nabisco (KKR)	Operations include grocery products, snacks, dairy products and packaging products	2,015	3,698	0.6	12.3	32.0	9.9
09/26/94	L&F Products (Eastman Kodak Co.)/Reckitt & Colman plc	Lysol disinfectant, Mop & Glo floor polish, Resolve rug cleaners	1,550	1,550	2.0	N.A.	N.A.	--
10/14/94	Eastman Kodak (L&F Do-It-Yourself Products)/Forstmann Little & Co.	Manufactures and markets a diverse line of Do-It-Yourself products, such as stains, paints, sealants and varnishes for home and commercial applications. Brand names include Thompson, Minwax, Roncraft and Red Devil	700	700	2.1	11.4	12.0	--
10/27/92	Bristol-Meyers Squibb (Drackert)/S.C. Johnson & Son	The company manufactures household products including Windex, glass cleaner, Drano drain opener, Vanish toilet bowl cleaner, Endust cleaning sprays, Behold furniture polish, Renuzit air fresheners, O-Cedar broom	1,150	1,150	2.0	N.A.	N.A.	--

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MORGAN STANLEY DEAN WITTER

Announced	Acquires/Acquirer	Business Description of Acquiree	Equity Value	Aggregate Value ²	Aggregate Value/ ¹		Premium Price ³		
					Revenue	EBITDA		EBIT	
06/20/90	American Cynamid Co. (Shulton Group)/Chlorox Co.	Purchased the worldwide household products portion of the Shulton Group, which includes the Pine-Sol cleaning product and the line of Combat brand insecticides	\$465	\$465	2.5x	N.A.	36.6x	--	
03/09/90	American Home Products (Boyle-Midway Unit) Reckitt & Colman Plc	Products include Woolite soaps, Easy-Off Oven Cleaner, Black Flag and Holiday insecticides, Gulf-Lite charcoal lighter, Wizard air freshener, Sani-Flush toilet bowl cleaner, Old English furniture polish, HRS Floor Care and Zero Cold Wash	1,250	\$1,250	1.9	12.9	13.7	--	
09/22/89	Noxell Corp./Procter & Gamble Co.	Company develops, manufactures and markets cosmetic toiletry and household products. Products include: Noxzema, Clarion Complexion Lotion, Rainree, Cover Girl Cosmetics, Liquid Household Cleaner and Chili Ingredients	1,358	1,291	2.4	13.8	15.2	50.7	
01/22/88	Sterling Drug Inc./Eastman Kodak Co.	Develops, manufactures and markets pharmaceuticals, household products, cosmetics and toiletries. Major products include: Phillips Milk of Magnesia, Midol, Bayer Aspirin, Panadol, Lysol, D-Con and Miniwax	5,267	5,770	2.6	15.6	17.7	97.8	
12/01/86	Cheesebrough Ponds, Inc./Unilever N.V.	Cheesebrough's products include: health and beauty (cosmetics, toiletry and medicinal products); packaged foods: Health Tea (apparel for infants); hospital supplies, Prince (sports equipment); Bass (casual footwear). Trademarks include: Cutex, Dermatology Formula, Groom & Clean, Intensive Care, Pertussin, Pond's, Q-Tips, Rave, Vaseline, Adolph's	3,095	4,413	1.4	N.A.	14.7	61.1	
10/01/86	Richardson-Vicks Inc./Procter & Gamble Co.	Richardson-Vicks develops, manufactures and markets personal care products, including toiletries, hair care products, and health care products, including proprietary medicines. Major brand-name products include Vicks and Nyquil cough and cold products, Oil of Olay and Clearskin skin care products, and Vidal Sassoon and Pantene hair care products	1,708	1,873	1.6	N.A.	19.2	N.A.	
					Mean	2.1x	13.4x	19.3x	48.7%
					Median	2.0	13.4	17.6	46.4%

Source: Morgan Stanley (MK)

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MORGAN STANLEY DEAN WITTER

Appendix 2

The Coleman Company Product Offerings

Product Category	Brands	Competition	Comments
Lanterns & Stoves	Coleman Camping Gaz Peak I	Century Primus American Camper Dayton Hudson Corporation	This is the product that Coleman began its empire with. The company believes themselves to be the leading manufacturer of lanterns and stoves in the world.
Fuel	Coleman Camping Gaz Peak I	nm	
Coolers & Jugs	Coleman Camping Gaz	Rubbermaid, Inc. Igloo Products Corp. The Thermos Co.	
Recreational Soft Goods	Coleman Eastpak Timberland	American Recreation Slumberjack Academy Broadway Corp MZH Sears Wenzel Eureka Nike Outdoor Products Kelty	Backpacks, lead by the Eastpak brand have been the big performer in this category which includes tents and sleeping bags. Eastpak holds the number one share in Europe and Korea and the number two share in America. With their recent acquisition of the exclusive Timberland brand licensing rights for backpacks, the company believes Eastpak can further grow their share in America.
Outdoor Furniture	Coleman Sierra Trails	nm	
Electric Lights	Coleman	Eveready Rayovac Corp.	
Spas	Coleman	Watkins Manufacturing Corp. Clark Manufacturing	
Camping Accessories	Coleman	Coughlan's	Capitalizing on their strong brand name. Coleman recently introduced the Coleman accessory wall to retailers. The entry has been an immediate success as retailers appreciate the brand name recognition associated with the Coleman brand name. Several retailers dropped offerings by Coughlan's to make room for the Coleman products.
Generators	Coleman Powermate	Generac Corporation Honda Motor Company Kawasaki Yamaha	Coleman is the leading manufacturer and distributor of portable generators in the U.S. and worldwide. With the acquisition of ATL, the company now produces advanced light-weight air generators.
Air Compressors	Coleman Powermate	DeVilbiss Campbell Hausfield	
Safety & Security Products	Firex Code I Coleman Shelter	First Alert American Sensor Nighthawk	The majority of these products are distributed primarily through electrical wholesalers, though under the Coleman Shelter brand, the line is gaining share with retailers. Coleman recently made a major innovation in this area with the introduction of an easy-access of button. The large round button can be pushed in order to stop an alarm from sounding if accidentally triggered. This innovation is not offered by any competitors.

Source: Company Financials & Morgan Stanley

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Appendix 3

Coleman Sales by Division for 1996

	Sales	% of Total
Outdoor Recreation Group	\$859.6	70.4%
Hardware	\$360.6	29.6%

Source: Company Financials

Appendix 4

Profile of General Camping Equipment Users - 1993

Category	% of sample population	% users
All adults	9.2	100.0
Sex		
Male	10.4	54.1
Female	8.1	45.9
Age (years)		
18-24	11.1	15.6
25-34	12.1	30.3
35-44	14.6	34.0
45-54	6.9	11.0
55-64	4.8	5.9
65 or older	1.8	3.2
Occupation		
Professional/manager	11.1	20.6
Technical/clerical/sales	11.0	24.2
Precision/craft	12.4	10.1
Other employed	11.6	25.5
Not employed	5.2	19.6
Household income		
\$75,000 or more	9.7	13.7
\$60,000 or more	10.6	25.2
\$50,000 or more	11.2	37.7
\$40,000 or more	11.1	51.8
\$30,000 or more	10.9	67.6
\$20,000-29,999	9.5	16.9
\$10,000-19,999	6.6	11.1
Less than \$10,000	3.9	4.3
Marital Status		
Single	10.5	25.2
Married/cohabiting	10.0	63.5
Widowed/divorced/separated	5.5	11.3
Children in household		
No children	7.5	49.2
0-2	10.2	8.8
2-5	11.2	17.5
6-11	14.0	27.9
12-17	12.5	24.7
Household size		
1 person	4.6	6.5
2 people	7.3	26.0
3 or 4 people	11.7	50.4
5 or more people	11.1	17.1
Region		
North-east	7.2	16.1
Midwest	11.0	30.2
South	8.8	25.6
West	12.2	28.1

Source: SMRB

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16div-029127

1 IN THE FIFTEENTH JUDICIAL CIRCUIT
2 IN AND FOR PALM BEACH COUNTY, FLORIDA

3 COLEMAN (PARENT) HOLDINGS,)
4 INC.,)
5 Plaintiff(s),)

6 vs.)

) Case No.
) CA 03-5045 AI

7)
8 MORGAN STANLEY & CO., INC.,)
9 Defendant(s).)

10 -----)
11 MORGAN STANLEY SENIOR FUNDING,)
12 INC.,)
13 Plaintiff(s),)

14 vs.)

15 MACANDREWS & FORBES HOLDINGS,)
16 INC.,)
17 Defendant(s))

18 VIDEOTAPED DEPOSITION OF KAREN HAYCOX-ELTRICH
19 New York, New York
20 Friday, October 15, 2004

21
22
23
24 Reported by:
25 JOAN WARNOCK
JOB NO. 166116

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1 October 15, 2004
2 9:30 a.m.

3
4 Videotaped deposition of KAREN
5 HAYCOX-ELTRICH held at the offices of
6 Esquire Deposition Services, 216 East
7 45th Street, New York, New York,
8 pursuant to Notice, before Joan
9 Warnock, a Notary Public of the State
10 of New York.

1 VIDEOGRAPHER: This is tape number
2 one of the videotaped deposition of Karen
3 Haycox-Eltrich in the matter Coleman
4 Holdings, Incorporated, versus Morgan
5 Stanley & Company, Incorporated,
6 defendants, Morgan Stanley Senior
7 Funding, Incorporated, plaintiff, versus
8 MacAndrews & Forbes Holdings,
9 Incorporated, et al, the defendants. The
10 case number, CA 03-5165 A1, and case
11 number CA 03-5045 A1. This deposition is
12 in the 15th Judicial Circuit in and for
13 Palm Beach County, Florida. The
14 deposition is being held at Esquire
15 Deposition Services at 216 East 45th
16 Street, New York, New York, on Friday,
17 October 15th, 2004, and the time on my
18 monitor is 9:39 a.m. My name is Mark
19 Granderson with Esquire Deposition
20 Services, and I am the legal video
21 specialist. The court reporter is Joan
22 Warnock also in association with Esquire
23 Deposition Services. Will counsel please
24 introduce themselves.

25 MR. BRODY: Michael Brody and Joanne

1 APPEARANCES:

2
3 JENNER & BLOCK, LLP
4 Attorneys for Coleman (Parent) Holdings,
5 Inc., and MacAndrews & Forbes, Holdings,
6 Inc.

7 One IBM Plaza, Suite 4400
8 Chicago, Illinois 60611-7603

9 BY: MICHAEL T. BRODY, ESQ.
10 JOANNE HANNAWAY SWEENEY, ESQ.

11
12 KIRKLAND & ELLIS, LLP
13 Attorneys for Morgan Stanley & Co.
14 Incorporated and Morgan Stanley Senior
15 Funding, Inc.

16 655 Fifteenth Street, N.W.
17 Washington, D.C. 20005

18 BY: ZHONETTE M. BROWN, ESQ.

19
20 ALSO PRESENT:
21 MARK GRANDERSON, VIDEOGRAPHER
22
23
24
25

1 Sweeney for Coleman (Parent) Holdings and
2 MacAndrews & Forbes Holdings, Inc.
3 MS. BROWN: Zhonette Brown, Kirkland
4 & Ellis, LLP, on behalf of the Morgan
5 Stanley entities and the witness.

6 VIDEOGRAPHER: Will the court
7 reporter please swear in the witness.
8 KAREN HAYCOX-ELTRICH,
9 called as a witness, having been duly
10 sworn by a Notary Public, was examined
11 and testified as follows:

12 COURT REPORTER: Please state your
13 full name and address for the record.

14 THE WITNESS: Karen Haycox-Eltrich,
15 450 North End Avenue, New York, New York
16 10282.

17 EXAMINATION BY

18 MR. BRODY:

19 Q. Good morning, Ms. Haycox-Eltrich.
20 As introduced, my name is Mike Brody. I
21 represent Coleman (Parent) Holdings. I'll be
22 asking you questions today. The address you
23 just gave, is that a home address or work
24 address?

25 A. Home address.

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1 Q. Do you go by names other than the
 2 one you used to introduce yourself?
 3 A. Frankly, it's mainly Karen Eltrich.
 4 Q. Have you ever been deposed before?
 5 A. No, I have not.
 6 Q. Let me tell you a little bit about
 7 the process. You've just taken an oath. It's
 8 the same oath you would take for this case
 9 were you testifying live in front of a judge
 10 or a jury. I will ask you questions, and it
 11 will be your job to answer them to the best of
 12 your ability. If you don't understand any of
 13 my questions, let me know, and I'll try to
 14 rephrase them. If you need to take a break,
 15 just say so. And even though it's being
 16 videotaped, when I ask you questions, it will
 17 be important to give an oral answer rather
 18 than a non-verbal method of communication so
 19 the court reporter can take it down. Are all
 20 those rules acceptable to you?
 21 A. Yes.
 22 Q. You indicated you've never been
 23 deposed. Have you ever testified under oath
 24 in any circumstance?
 25 A. No, I have not.

1 A. No, I do not.
 2 Q. Do you remember what you provided?
 3 Did you provide documents?
 4 A. Absolutely. It wasn't much. I mean
 5 I gave my Coleman model. I gave whatever
 6 notes I had had from my Sunbeam very limited
 7 due diligence, but nothing else. It was
 8 probably like, you know (indicating) -- sorry,
 9 you can't for the camera, for you -- about
 10 half an inch thick of documents. There was
 11 not a lot that I had been involved in.
 12 Q. When you refer to your Coleman
 13 model, what do you mean?
 14 A. I had covered Coleman in the
 15 secondary market as a high yield research
 16 analyst, so I had, obviously, forecasts, etc.,
 17 and it was something even after the deal that
 18 it's not like I delete the model. So it
 19 wasn't an updated model, but it was the
 20 historical perspective.
 21 Q. Was it maintained on a computer?
 22 A. Yes.
 23 Q. Do you know what program the model
 24 was generated in?
 25 A. I'm assuming Excel.

1 Q. Do you remember ever providing any
 2 affidavits or other sworn written testimony?
 3 A. No, I do not.
 4 Q. As you undoubtedly know from talking
 5 to your counsel, this case involves certain
 6 work you did while at Morgan Stanley. What
 7 were the approximate dates of your employment
 8 at Morgan Stanley?
 9 A. I was at Morgan Stanley from
 10 October 1995 to May 2001.
 11 Q. During that time period were you
 12 ever asked to collect documents relating to
 13 the work that you did at Morgan Stanley
 14 insofar as it related to Sunbeam or Coleman or
 15 the litigation that's before us?
 16 A. Once I was, yes.
 17 Q. When was that?
 18 A. Couldn't tell you. I don't recall.
 19 Q. Can you approximate with reference
 20 to your days of employment?
 21 A. Obviously it was after the event,
 22 but no, I really couldn't tell you when it
 23 happened.
 24 Q. Do you remember who asked you for
 25 documents?

1 Q. That's what you used at the time?
 2 A. Yes.
 3 Q. We'll be talking further about the
 4 research you did. I'll ask you more questions
 5 about the model later on.
 6 A. Okay.
 7 Q. But aside from providing the model,
 8 you said you provided some documents relating
 9 to Sunbeam due diligence?
 10 A. It would have been notes I may have
 11 taken or just -- I mean as a research analyst,
 12 you kind of keep whatever you have just in
 13 case it ever takes another life or form. And
 14 I couldn't tell you what I had. But it's just
 15 basically any documents that had been given to
 16 me regarding Sunbeam would have gone to them.
 17 And it, frankly, probably wasn't a lot because
 18 I wasn't that involved in the due diligence
 19 because I was high yield and there was
 20 actually no high yield bonds issued.
 21 Q. Okay. Do you remember what attorney
 22 or other person asked you for these documents?
 23 A. No.
 24 Q. Do you remember who you gave them
 25 to?

1 A. No. It was someone internal from
 2 Morgan Stanley. That's all I know.
 3 Q. Internal legal?
 4 A. Don't know.
 5 Q. Are you represented by counsel
 6 today?
 7 A. Yes, I am.
 8 Q. By Ms. Brown.
 9 A. Yes, I am.
 10 Q. And you know that her firm is
 11 Kirkland & Ellis?
 12 A. Yes.
 13 Q. When did you retain them to
 14 represent you?
 15 A. It was about two months ago, I would
 16 say, six to eight weeks ago.
 17 Q. Is that when you first learned that
 18 there might be a deposition?
 19 A. Yes.
 20 Q. Are you paying for their services?
 21 A. No, I am not.
 22 Q. Do you understand Morgan Stanley to
 23 be paying for their services?
 24 A. Yes, I do.
 25 Q. Did they initially contact you or

1 law department?
 2 A. It was definitely in the legal
 3 department, yes.
 4 Q. Since you left Morgan Stanley and
 5 prior to today, have you had any contact with
 6 people from Morgan Stanley about this
 7 deposition?
 8 A. Absolutely not.
 9 Q. So you haven't spoken with any
 10 in-house attorneys?
 11 A. No, I have not.
 12 Q. Do you have any continuing
 13 involvement in any deals with Morgan Stanley?
 14 A. No.
 15 Q. You don't have continuing
 16 compensation or --
 17 A. I own stock in the company, but
 18 that's it.
 19 Q. Do you maintain professional
 20 contacts with anyone from Morgan Stanley?
 21 A. No professional, but a lot of
 22 personal.
 23 Q. Just people you worked with?
 24 A. People I worked with who are
 25 friends, but there is no professional contact

1 did --
 2 A. Yes.
 3 Q. -- you initially contact them?
 4 A. Well, given that you asked to depose
 5 me, they kind of contacted me.
 6 Q. But it wasn't the sort of thing
 7 where someone from Morgan Stanley called and
 8 told you. The first call came from Kirkland &
 9 Ellis?
 10 A. Yes, it did. Actually, I'm sorry,
 11 the first call came from Goldman Sachs,
 12 because they contacted Goldman Sachs, and then
 13 it was our Goldman Sachs legal representative
 14 who contacted me. But it was, yes, Kirkland.
 15 Q. And is Goldman Sachs your current
 16 employer?
 17 A. Yes, they are.
 18 Q. So you learned of the possibility of
 19 a deposition in this case from someone at
 20 Goldman Sachs?
 21 A. Yes.
 22 Q. Do you remember the name of the
 23 person who talked to you?
 24 A. No, I don't.
 25 Q. Do you know if it's someone in the

1 whatsoever.
 2 Q. Have you discussed the Sunbeam or
 3 Coleman matters with anyone at Morgan Stanley
 4 since you left?
 5 A. No, I have not.
 6 Q. So you haven't discussed this
 7 litigation with anyone?
 8 A. No, I have not.
 9 Q. What did you do to prepare for
 10 today's deposition?
 11 A. Yesterday we met and she showed me
 12 some of the documents that had my name on it,
 13 but that would probably be about it.
 14 Q. Do you remember what documents you
 15 saw?
 16 MS. BROWN: Objection. I instruct
 17 the witness not to answer.
 18 Q. Did any of those documents refresh
 19 your recollection about events in this case?
 20 A. Vaguely, but not really.
 21 Q. Well, which ones even had a vague
 22 effect on refreshing your recollection?
 23 A. Honestly, just reading the press
 24 release that they were missing sales. You
 25 have to understand I was eight and a half

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1 months pregnant when all of this happened, so
2 it wasn't the core focus that I had. And so
3 it was more of just kind of figuring out the
4 time line. I mean obviously I remember the
5 events, but I don't necessarily remember the
6 time line in which they happened. And I would
7 say that was probably all it gave me.

8 Q. Okay. You said you were eight and a
9 half months pregnant. When was your child
10 born?

11 A. March 25th, 1998. A girl. Thank
12 you.

13 Q. Congratulations. That allows us to
14 place this a little bit in time. I think the
15 question I asked you that got us into that was
16 whether any of the documents refreshed your
17 recollection. Which were the documents, if
18 any, that had your name on it that may have
19 refreshed your recollection?

20 A. No.

21 MS. BROWN: Objection. I'm going to
22 instruct the witness not to answer.
23 She's already testified to what refreshed
24 her recollection, and it wasn't anything
25 that relates to the question that you

1 moment. We'll come back to that. I believe
2 you testified that in preparation for the
3 deposition you met with Ms. Brown?

4 A. Yes.

5 Q. Approximately how long did you meet
6 with her?

7 A. Two and a half hours.

8 Q. And that was yesterday?

9 A. Yes.

10 Q. Aside from reviewing documents, did
11 you speak with anyone else --

12 A. No.

13 Q. -- besides Ms. Brown? Did you
14 review any testimony that others had given?

15 A. No.

16 Q. Did you look at any videotapes of
17 testimony?

18 A. No.

19 Q. Have you ever spoken with anyone
20 connected with the New York Stock Exchange or
21 the SEC about the events at Sunbeam or
22 Coleman?

23 A. No, I have not.

24 Q. And I believe I may have asked you
25 this, but have you discussed the substance of

1 just asked.

2 MR. BRODY: Well, I don't think
3 that's exactly right.

4 Q. But which things that you saw
5 yesterday had any effect in refreshing your
6 recollection?

7 A. Exactly as I said. It was more of a
8 time line incident. It was more of a time
9 line issue versus an events issue, and it was
10 the document which basically said that they
11 were going to miss their sales, the sales
12 forecast that the research analyst had.

13 Q. Ms. Eltrich, I'm handing you what
14 has been previously marked as Exhibit 14.
15 When you referred to a document that helped
16 you place this in time, I think you said it
17 was an indication that they were going to miss
18 their sales, were you referring to the
19 document that's been marked as CPH Exhibit 14?

20 A. Yes, I was.

21 Q. Did you see that back in March of
22 1998?

23 A. I saw it when it was released to the
24 Street, yes, I did.

25 Q. Okay. You can put that aside for a

1 this testimony, the testimony you're giving
2 today, with anyone other than Ms. Brown?

3 A. No, I have not.

4 Q. Before we focus on the events at
5 Sunbeam, I would like to address your
6 background a little. Could you describe for
7 us your education after high school.

8 A. I went to NYU Stern School of
9 Business and graduated in 1994 with a bachelor
10 of science in economics and finance.

11 Q. Any other postgraduate education?

12 A. No.

13 Q. While at the Stern School, did you
14 have any concentration within economics and
15 finance? Was there an area that you studied
16 more than any other?

17 A. No.

18 Q. And that was an undergraduate degree
19 from the Stern School?

20 A. Yes, it was.

21 Q. After graduating from the Stern
22 School, did you become employed?

23 A. I became employed in August of '94
24 with Advest as a research assistant.

25 Q. How long were you at Advest?

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1 A. A little less than a year. It was
 2 -- actually, it was a little more than a year.
 3 Q. What was your next job?
 4 A. Then I was at Morgan Stanley.
 5 Q. Now, focusing on your position at
 6 Advest, you said you were a research analyst?
 7 A. Research assistant.
 8 Q. I'm sorry. Research assistant.
 9 What were the responsibilities of a research
 10 assistant at Advest?
 11 A. It was a hybrid between being a
 12 secretary and being a research analyst. There
 13 was one analyst who had me make haircut
 14 appointments for him, and there was another
 15 analyst who had me build his models for him.
 16 So it was a combination between the two.
 17 Q. What types of businesses did you
 18 analyze?
 19 A. It was financial institutions. It
 20 was large cap banks primarily with a few small
 21 caps.
 22 Q. Did anyone report to you?
 23 A. No.
 24 Q. You left Advest in late 1995?
 25 A. It was October, October of 1995,

1 were you an analyst or were you an associate?
 2 A. I was an associate.
 3 Q. And do you know when you became a
 4 vice president?
 5 A. I believe it was either '99 or 2000,
 6 but I couldn't tell you exactly which date
 7 unless I honestly saw my records.
 8 Q. I understand. And you remained a
 9 vice president until you left in May of 2001?
 10 A. Yes.
 11 Q. Returning to the position you held
 12 as an analyst at Morgan Stanley in the high
 13 yield research group, was there a particular
 14 area that you covered?
 15 A. I covered several sectors. I was
 16 working with Jake Foley, who was my senior
 17 analyst, and under him we covered
 18 supermarkets, food and beverage, and
 19 restaurants, and occasionally special retail.
 20 On my own at that point I was covering
 21 consumer products as the lead analyst.
 22 Q. You called that consumer products?
 23 A. Um-hmm.
 24 Q. And Coleman fit within consumer
 25 products?

1 which is when I joined Morgan Stanley.
 2 Q. What was your first position at
 3 Morgan Stanley?
 4 A. I was an analyst. I believe I came
 5 on as a second-year analyst in the high yield
 6 research group.
 7 Q. Describe for us what the high yield
 8 research group analyzed, what types of
 9 issuances?
 10 A. Junk bonds, bonds related -- bonds
 11 that were below investment grade status.
 12 Q. How long were you in the high yield
 13 research group?
 14 A. Up until May of 2001.
 15 Q. That's when you left?
 16 A. Yes.
 17 Q. What positions did you hold aside
 18 from analyst?
 19 A. Analyst, associate, vice president.
 20 Q. When did you become an associate?
 21 A. When did I become an associate.
 22 Q. Well, let me ask it a little
 23 differently if you don't remember the date.
 24 The events we're looking at in this case are
 25 in late '97 into early 1998. At that time

1 A. Yes, it did.
 2 Q. Did Sunbeam fit within consumer
 3 products?
 4 A. It did, but it was not under my
 5 universe of coverage.
 6 Q. At the time you were covering
 7 Coleman did anyone report to you?
 8 A. No.
 9 Q. And you reported to Mr. Foley?
 10 A. Yes.
 11 Q. Do you remember what his title was
 12 at the time?
 13 A. He was a principal.
 14 Q. Principal, is that the next position
 15 up from vice president?
 16 A. Yes, it is.
 17 Q. At the time you were an associate
 18 did you continue coverage of the same areas?
 19 A. Yes, I did.
 20 Q. It was just a promotion, but you
 21 covered the same fields?
 22 A. Yes.
 23 Q. How about when you were vice
 24 president?
 25 A. Same. Well, when I was vice

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1 president, Jake had left the firm, so I
 2 assumed coverage of all the sectors. Or I
 3 should say Jake had left the group. Sorry.
 4 Q. But after Mr. Foley left the group,
 5 you were still covering supermarkets, food and
 6 beverage?
 7 A. Restaurants, retail.
 8 Q. Restaurants, specialty retail?
 9 A. Sorry. Not retail. Specialty
 10 retail. Thank you.
 11 Q. What does specialty retail mean?
 12 A. It's small, very small little
 13 specialized companies. Really it was like one
 14 name, mother's work.
 15 Q. I'm sorry?
 16 A. Mother's work, which is maternity
 17 wear, versus covering the true retail
 18 spectrum.
 19 Q. And you continued in that position
 20 until you left in May 2001?
 21 A. Yes.
 22 Q. Why did you leave Morgan Stanley?
 23 A. Do I really have to put this on the
 24 record? I left Morgan Stanley because I was
 25 very happy under John Mack's leadership. I

1 A. Yes.
 2 Q. And that was in the high yield
 3 research group?
 4 A. Yes.
 5 Q. Was the high yield research group
 6 part of another group?
 7 A. High yield.
 8 Q. Who was in charge of the high yield
 9 group?
 10 A. Dwight Sipprelle and Mike Rankowitz.
 11 Q. The high yield research group that
 12 you were associated with, what was its
 13 business? What did it do?
 14 A. It was several functions. Our
 15 primary goal was to cover bonds in the
 16 secondary market.
 17 Q. Any other functions?
 18 A. We also did do proprietary trading,
 19 so obviously we assisted the trading desk in
 20 their investment decisions.
 21 Q. Trading in high yield bonds?
 22 A. In high yield bonds.
 23 Q. Anything else?
 24 A. And we would as a very third front,
 25 we would assist the investment banking group

1 was less happy under Phil Purcell's
 2 leadership. And Goldman Sachs presented a
 3 great opportunity to me.
 4 Q. And you left Morgan Stanley to go to
 5 Goldman Sachs?
 6 A. Yes.
 7 Q. What position were you hired into at
 8 Goldman Sachs?
 9 A. Exactly the same position, vice
 10 president covering the same sectors adding on
 11 full retail. And, actually, now I did have
 12 consumer products.
 13 Q. And when you say you added full
 14 retail, what types of companies did that
 15 include?
 16 A. Petco, PCA, Pay Less Shoe Source.
 17 Just retail.
 18 Q. What position do you now have at
 19 Goldman Sachs?
 20 A. I am still vice president.
 21 Q. Now, I'm going to focus on the 1997
 22 to 1998 time frame and your employment at
 23 Morgan Stanley during that time frame. You
 24 were a research analyst, and then I guess in
 25 '97, '98, you were an associate?

1 in the underwriting of bonds. But, again, it
 2 wasn't really -- I shouldn't say assisting.
 3 It was working with the investment banking
 4 group to protect our group from what I would
 5 call bad deals, because we live with the bonds
 6 in the secondary, so we were involved in
 7 making the decision of whether or not
 8 something should be underwritten.
 9 Q. And when you say you live with the
 10 bonds, what do you mean by that?
 11 A. I mean bonds on average have a
 12 ten-year life, and I have to cover it in a
 13 secondary, and if I recommend it to my
 14 investor, I want to have that recommendation
 15 and know all the risks.
 16 Q. And that was the business of the
 17 high yield research group. The high yield
 18 research group reported to Mr. Sipprelle and
 19 Mr. Rankowitz as high yield group?
 20 A. Correct.
 21 Q. And the high yield group, did they
 22 do the underwriting of high yield issuances?
 23 A. No, we do not.
 24 Q. What did the high yield group do?
 25 A. We trade the bonds in the secondary.

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1 We obviously assist in the primary in terms of
 2 our sales force placed the bonds with clients.
 3 But our primary function was trading bonds in
 4 the secondary.
 5 Q. Now, are you aware that in the
 6 Sunbeam deal that Morgan Stanley was involved
 7 in, there was a subordinated debenture
 8 offering?
 9 A. The convertible?
 10 Q. Yes.
 11 A. Yes.
 12 Q. Would that be considered a high
 13 yield issuance?
 14 A. No, it was not a high yield
 15 issuance. Some high yield hybrid investors
 16 purchased it, but no. Our sales force was not
 17 as involved.
 18 Q. I'm sorry. Not as involved? What
 19 do you mean?
 20 A. I mean one or two salespeople sold
 21 it to their accounts, but, in general, it was
 22 sold off the convert desk, not the high yield
 23 desk. And it was recognized on their P&L, not
 24 ours.
 25 Q. Meaning if Morgan Stanley had gains

1 particular Morgan Stanley funds, or was it
 2 just undifferentiated Morgan Stanley money?
 3 A. No. It was our book. We were
 4 allocated a certain amount of capital with
 5 which to invest.
 6 Q. And by "us" you mean the high yield
 7 group?
 8 A. The high yield group, which included
 9 emerging markets and bank loans.
 10 Q. What do you mean by bank loans?
 11 A. Leveraged bank loans.
 12 Q. That was considered part of the high
 13 yield group?
 14 A. It was, but they were private. We
 15 were public. So although it was part of our
 16 P&L, there was not as much interaction.
 17 Q. Are you familiar with an entity
 18 known as Morgan Stanley Senior Funding?
 19 A. Not really, no.
 20 Q. Do you understand that to be a part
 21 of Morgan Stanley that made bank loans?
 22 A. That would be my assumption, but I
 23 can't confirm.
 24 Q. Do you know where the entities
 25 within Morgan Stanley that made bank loans got

1 or losses on the sale of those bonds, it was
 2 not attributable to your division? Is that
 3 what you mean?
 4 A. Meaning the underwriting fee we did
 5 not get an allocation of.
 6 Q. You referred to proprietary trading.
 7 What do you mean by that?
 8 A. Meaning we would take positions in
 9 bonds. It was like having your own investment
 10 fund where if we truly believed in a bond, and
 11 it was primarily bonds we underwrote, we would
 12 take a position.
 13 Q. And when you refer to "we," who do
 14 you mean by "we"?
 15 A. Meaning the trader, the group. The
 16 sales force is not involved in that decision.
 17 It's research and trading who makes the
 18 decision of whether or not they think a bond
 19 is undervalued and there is an investment
 20 opportunity.
 21 Q. When a trader took a position in a
 22 bond, a high yield bond, whose money would
 23 that trader be investing? Morgan Stanley's?
 24 A. Morgan Stanley's.
 25 Q. Do you know if that money came from

1 their money?
 2 A. No, I don't. I would assume from
 3 Morgan Stanley.
 4 Q. So just so I understand the
 5 structure, was the issuance of bank loans by
 6 Morgan Stanley considered to be part of its
 7 high yield group?
 8 A. Yes. If it was a levered loan, yes.
 9 Q. What do you mean by levered loan?
 10 Was there a leverage ratio that qualified it?
 11 A. No. It's your investment rating.
 12 Again, if it's below investment grade.
 13 Q. Do you know if there was a bank loan
 14 to Sunbeam in connection with this
 15 transaction?
 16 A. There was, yes.
 17 Q. Was that considered a levered loan?
 18 A. It was off of -- honestly, I cannot
 19 remember what the ratings were, but it was off
 20 of our P&L, so it was from our leveraged
 21 finance group, yes.
 22 Q. So just so I understand, the loan
 23 made to Sunbeam was considered a loan made by
 24 the high yield group?
 25 A. Yes.

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1 Q. So any profits or losses on that
2 loan were attributed to the high yield group?

3 A. Yes, it was.

4 Q. And that was the group that at the
5 time was being headed up by Mr. Sipprelle and
6 Mr. Rankowitz?

7 A. Correct.

8 Q. Do you know who made the investment
9 decisions for those bank loans?

10 MS. BROWN: Object to form.

11 Q. If you know.

12 A. I only know a few names, but the way
13 it worked at Morgan Stanley was it was always
14 -- it was always a consensus, so there was
15 several parties involved. There was
16 investment banking, and there was bank loans,
17 there was high yield. You had equity having
18 to talk about it. So there was not any one
19 party who made the decision. It was, as I
20 say, it was a commitment committee with
21 consensus.

22 Q. So let me see if I can rephrase your
23 answer. Was the decision to make the loan or
24 not make the loan made by a committee?

25 A. Yes.

1 think you have. Did they jointly hold the
2 position?

3 A. Yes, they did. Mr. Rankowitz was
4 primarily head of emerging markets, while
5 Dwight was head of the high yield, but they
6 ran the group together.

7 Q. I understand. You've referred to
8 emerging markets. What does that mean?

9 A. It's countries who are yet to attain
10 an investment grade rating, and we traded
11 their bonds in the secondary.

12 Q. So international bonds?

13 A. Yes.

14 Q. Bonds of other countries?

15 A. Correct.

16 Q. Also traded by your group?

17 A. Yes.

18 Q. Do you know a gentleman by the name
19 of Andrew Conway?

20 A. Yes, I do.

21 Q. Do you remember Mr. Conway's
22 position in '97 and 1998?

23 A. He was the beverage analyst for
24 Morgan Stanley.

25 Q. Was he within the high yield group?

1 Q. I've seen reference to a leveraged
2 finance commitment committee. Is that the
3 committee?

4 A. Yes.

5 Q. And they would decide however they
6 would decide, but they were the ones who made
7 the decision?

8 MS. BROWN: Object to form.

9 Q. The decision would be made by that
10 group; is that right?

11 A. The decision is made by the group
12 with a strong veto voice by anyone who
13 objects.

14 Q. Okay. I understand, I think. You
15 referred to Mr. Foley. Did Mr. Foley report
16 to Mr. Rankowitz or Mr. Sipprelle?

17 A. We had a head of research at the
18 time. I can't remember who it was because we
19 turned so often. But there was a head of
20 research, and then there was Dwight and Rank,
21 yes.

22 Q. Dwight and Rank? That's Mr. --

23 A. Yes. Sorry. That's Mr. Sipprelle
24 and Mr. Rankowitz.

25 Q. And I've referred to them, as I

1 A. No.

2 Q. What group was he within?

3 A. He was in equity research.

4 Q. How did equity research and high
5 yield research relate to one another?

6 A. It would depend on if we covered a
7 name together. In the case of Sunbeam, we
8 would compare notes, but, again, I wasn't
9 covering Sunbeam, so it was more of I could
10 add value to them on Coleman, but it was a
11 completely separate entity. They're analyzing
12 a completely separate asset class than we are.

13 Q. At the time you were covering
14 Coleman's bonds, was there someone covering
15 Coleman's equity?

16 A. No, there was not.

17 Q. And you referred to Mr. Conway. Do
18 you know if Mr. Conway ever initiated coverage
19 of Sunbeam's stock?

20 A. I cannot recall.

21 Q. Do you know if there was anyone that
22 issued coverage of Sunbeam's debt?

23 A. I don't think so, but I cannot
24 recall.

25 Q. Do you know if that was ever under

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1 consideration?
 2 A. No, I do not.
 3 Q. Now, in 1997 and 1998 were you
 4 compensated on a base pay and bonus basis?
 5 A. Yes, I was.
 6 Q. Who made the decisions about what
 7 you were to be paid?
 8 A. Frankly, I'd like --
 9 MS. BROWN: Objection. Foundation.
 10 Q. Do you know?
 11 A. No. I would like to know, but no, I
 12 don't know.
 13 Q. Who told you what you were being
 14 paid?
 15 A. My head of research.
 16 Q. That would be Mr. Foley?
 17 A. No. It would have been whoever was
 18 head of research at the time, which would have
 19 been either John Irish or Ann Short, but I
 20 can't recall who was the head of research at
 21 that time.
 22 Q. And head of research includes both
 23 high yield and equity and other areas of
 24 research?
 25 A. No, it does not. It is only high

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1 yield research.
 2 Q. What were the names of those
 3 individuals you mentioned?
 4 A. John Irish or Ann Short. It was
 5 most likely Ann Short.
 6 Q. Did Mr. Foley report to either
 7 Ms. Short or Mr. Irish?
 8 A. Yes. He reported to them as well.
 9 Q. Okay. I understand. Do you know
 10 how your bonus was determined?
 11 A. No.
 12 Q. Do you know if your pay related in
 13 any way to returns on the instruments that you
 14 followed?
 15 A. No.
 16 Q. Roughly as a percentage of your
 17 compensation, do you know how much your bonus
 18 was in 1997 and '98?
 19 A. No.
 20 Q. Are we talking more than 50 percent,
 21 less than 50 percent?
 22 A. It was probably more than
 23 50 percent.
 24 Q. And --
 25 A. But just to give you a frame of

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1 reference, 1998 was the Russian crisis. It
 2 wasn't a good bonus year period.
 3 Q. Particularly given that your
 4 department had emerging markets, among other
 5 things?
 6 A. Among other things.
 7 Q. Do you know if your -- and this may
 8 be related to the question I just asked, but
 9 do you know if your bonus had any relation to
 10 the returns on the proprietary trading that
 11 you assisted with?
 12 A. No.
 13 Q. Were you ever told that it did?
 14 A. No.
 15 Q. Do you know if any Morgan Stanley
 16 funds invested in Sunbeam?
 17 A. No.
 18 Q. Do you know if any Morgan Stanley
 19 funds invested in Coleman?
 20 A. No. Sorry. My own trading desk had
 21 invested in Coleman, so yes, in that sense.
 22 Q. And that was on the high yield side,
 23 not the equity side?
 24 A. Correct.
 25 Q. Do you know if anyone within Morgan

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1 Stanley invested in Coleman equity?
 2 MS. BROWN: Object to form.
 3 A. Individuals that I know, yes, but
 4 not as a firm, no.
 5 Q. What do you know about individuals
 6 who invested in Coleman? What do you
 7 remember?
 8 A. A couple of my friends, because I
 9 had been covering the bonds, thought the stock
 10 was cheap, so they bought the stock.
 11 Q. And they told you that?
 12 A. Oh, yes.
 13 Q. Did they do well as a result of
 14 their purchase?
 15 A. No.
 16 MS. BROWN: Object to form.
 17 Foundation.
 18 Q. Did they make money or did they lose
 19 money?
 20 MS. BROWN: Objection. Foundation.
 21 Q. Do you know?
 22 A. They lost money because we were
 23 restricted in the period that the stock ran up
 24 because we had done the deal.
 25 Q. Do you remember who or what group

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1 within Morgan Stanley made investment
2 decisions for the Morgan Stanley and Morgan
3 Stanley Dean Witter funds?

4 A. No.

5 Q. Do you ever remember receiving
6 inquiries from any of those funds about
7 Coleman?

8 A. I don't recall, no.

9 Q. Now, I think you testified in
10 response to an earlier question that you
11 assisted investment banking in some work. Can
12 you describe the work that you assisted
13 investment banking in?

14 A. If we were looking at a deal, if we
15 were mandated to do a deal, we were always
16 brought in not to do investment banking's due
17 diligence, but to do due diligence for the
18 trading desk and to do due diligence for our
19 clients, because, again, if we're going to
20 bring a deal to market, if we felt there was
21 imminent danger to bankruptcy, we had the
22 power to turn down a deal. If we felt there
23 were certain risks that should be communicated
24 to our clients, we had the power to
25 communicate those risks to our clients. And

1 make an assessment of a company. And the
2 thing of high yield versus equity is as long
3 as you pay our coupon, we're happy. It's not
4 like equity where the company needs to be a
5 star performer. We just need them to pay
6 their coupons. So it basically is just you
7 assess varying degrees of what is their
8 ability to pay their coupon.

9 Q. So the research that you did would
10 look to the ability of the company to satisfy
11 its high yield obligations?

12 A. Correct.

13 Q. Not its equity obligations?

14 A. Correct.

15 Q. In connection with the Sunbeam and
16 Coleman transaction, did you look at Sunbeam?
17 MS. BROWN: Object to form.

18 Q. You personally.

19 MS. BROWN: Object to form.

20 MR. BRODY: Fine.

21 Q. You can answer.

22 A. I was eight and a half months
23 pregnant, so my ability to do due diligence
24 was highly limited, and it was not a high
25 yield underwriting. So really my only -- my

1 our goal, our job, was to surface those risks
2 so that the bond would be priced accordingly.

3 Q. You referred to being mandated to do
4 a deal. What do you mean by that?

5 A. Meaning that a contract was signed
6 whereby Morgan Stanley would underwrite a bond
7 for a company.

8 Q. So you signed an underwriting
9 agreement?

10 A. Exactly.

11 MS. BROWN: "You" being Morgan
12 Stanley?

13 MR. BRODY: Yes. Exactly.

14 Q. You referred to you'd look at the
15 deal to see if there was imminent risk of
16 bankruptcy; is that correct?

17 A. Correct.

18 Q. What other risks would you be
19 looking for?

20 A. As a research analyst, there's many
21 risks you look for. You know, is there a
22 liquidity crunch, what is the competitive
23 pressures, can the company make their numbers,
24 what is the quality of management. There is
25 many different elements you look at, but you

1 only involvement was my expertise in Coleman.

2 Q. Okay. We'll go into this in greater
3 detail I think when we talk about Coleman, but
4 what research, if any, do you remember doing
5 into Sunbeam as opposed to Coleman?

6 A. I have very vague recollections of a
7 couple of conference calls, but it really,
8 again, was more to see how the company would
9 relate to Coleman than me actually doing due
10 diligence on Sunbeam.

11 Q. Do you remember who was on those
12 calls?

13 A. No, I do not.

14 Q. We'll come back to that and see if
15 you remember any details. Do you know an
16 entity within Morgan Stanley known as the
17 client service group?

18 A. Yes, I do.

19 Q. What was the business of the client
20 service group?

21 MS. BROWN: Objection. Foundation.

22 A. If memory recollects, the client
23 service group, it's either one or two things.
24 Either they were related to private clients of
25 the bank, or it was our actual investment

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1 banking clients of the company. I can't
 2 remember if it was individuals or companies.
 3 Q. Do you know what work, if any, you
 4 did with people in the client service group?
 5 A. No, I do not recall.
 6 Q. Do you know a gentleman by the name
 7 of John Tyree?
 8 A. No, I do not recall.
 9 Q. Andy Savarie?
 10 A. Do not recall.
 11 Q. Within the high yield area is it
 12 correct to say that your research group would
 13 support the traders?
 14 A. That was our primary function, yes.
 15 Q. And by supporting the traders, you
 16 would assist them in making trades that would
 17 be profitable for Morgan Stanley and its
 18 clients?
 19 A. Ideally, yes.
 20 Q. That was your goal?
 21 A. Yes.
 22 Q. Didn't always work that way?
 23 A. Did not always work that way.
 24 Q. Were there metrics by which the high
 25 yield group's performance was measured?

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1 MS. BROWN: Objection. Foundation.
 2 A. Only thing I ever heard was a
 3 year-end P&L.
 4 Q. Were Mr. Rankowitz and Mr. Sipprelle
 5 responsible for maintaining the year-end P&L?
 6 MS. BROWN: Objection to form.
 7 Foundation.
 8 A. I don't know.
 9 Q. In 1997 do you know if the year-end
 10 P&L for the high yield group was a profit or
 11 loss?
 12 A. It was a profit.
 13 Q. What about 1998?
 14 A. I don't know, but I know it was less
 15 than '97.
 16 Q. Were you circulated documents or
 17 emails showing how well the high yield group
 18 was doing?
 19 A. No, we were not.
 20 Q. Did you hear about it?
 21 A. Can't recall.
 22 Q. If I wanted to obtain the P&L for
 23 the high yield group, who would I talk to?
 24 A. I don't know.
 25 Q. Did you ever receive an evaluation

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1 from the people you worked for for the work
 2 you did on Coleman or Sunbeam?
 3 A. No, I did not.
 4 Q. Were you personally evaluated based
 5 on how well your research turned out?
 6 A. There is something called the
 7 Institutional Investor Report, which are
 8 Institutional Investor rankings which would
 9 measure what your clients thought of your
 10 research. But one of the hardest things of
 11 being a research analyst is most of what we do
 12 is subjective.
 13 Q. Sure. Now, the Institutional
 14 Investor rankings, I think that's what you
 15 called it?
 16 A. Um-hmm.
 17 Q. Was that a Morgan Stanley document?
 18 A. No. It's a magazine, Institutional
 19 Investor, and they poll your clients, and they
 20 rank you.
 21 Q. Do you ever remember anyone after
 22 the fact looking back and, you know,
 23 critiquing your research, saying, well, this
 24 turned out to be right, this turned out to be
 25 wrong? Was that done?

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1 A. No.
 2 Q. Now, I believe that you talked
 3 earlier about the kinds of documents that you
 4 would hold on to. When you were at Morgan
 5 Stanley, what was your practice or policy for
 6 maintaining copies of the documents that you
 7 worked with?
 8 A. It varied with the technology. As
 9 more and more things got filed on the web and
 10 SEC, you had to hold less. But at the time of
 11 this, obviously there was less technology, so
 12 you just held on to whatever you were given,
 13 because it could be value added at some point.
 14 Q. Where did you keep it?
 15 A. File cabinets.
 16 Q. And was it in that file cabinet when
 17 you left Morgan Stanley in 2001?
 18 A. Yes.
 19 Q. Do you remember what sorts of things
 20 you kept about Sunbeam and Coleman?
 21 A. No, I don't.
 22 Q. Do you remember anything that you
 23 kept?
 24 A. The most I could remember is a
 25 prospectus.

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1 Q. Did you keep notes of things that
 2 you did?
 3 A. I don't know.
 4 Q. When you put together a research
 5 report, I assume you generated drafts?
 6 A. Well, it's on a computer, so it's
 7 always the same draft. You just type over it.
 8 Q. You wouldn't print out copies and
 9 keep them?
 10 A. No, I would not.
 11 Q. In connection with putting together
 12 a research report, you would gather a variety
 13 of pieces of paper and so on that they were
 14 based on, wouldn't you?
 15 A. No. Most of my research is done on
 16 the web.
 17 Q. Even in 1997 and '98?
 18 A. Even in 1997.
 19 Q. Now, in '97 and '98 did you use
 20 email?
 21 A. Yes.
 22 Q. Did you use email to communicate
 23 with people about Coleman and Sunbeam?
 24 A. I don't recall.
 25 Q. On the Sunbeam deal, there were a

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1 variety of people working on that deal from
 2 offices other than your high yield office; is
 3 that correct?
 4 A. I don't recall, but probably.
 5 Q. Do you remember communicating with
 6 any of them by email?
 7 A. I don't recall.
 8 Q. Did you communicate at all with
 9 people from Sunbeam, the company, in
 10 connection with the work that you did?
 11 A. I don't recall, but highly unlikely.
 12 Q. What about with people from Coleman?
 13 A. While I was covering Coleman, I
 14 communicated frequently with the company to
 15 get updates on how the business was doing.
 16 Q. In what form did you do that?
 17 A. Primarily through the telephone.
 18 Q. Did you keep notes of your calls?
 19 Did you make notes of your calls?
 20 A. No, not really. Probably not.
 21 Q. You wouldn't write stuff down?
 22 A. During a conference call I would
 23 take notes, because I tend to give very great
 24 detail. But in a conversation where your life
 25 and death is resting on whether or not they

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1 meet your numbers, you don't need to write
 2 that down. You remember it.
 3 Q. When did you first hear of the fact
 4 that there was litigation surrounding the
 5 Sunbeam deal? I don't mean this case. I mean
 6 any litigation.
 7 A. I can't recall.
 8 Q. You were at Morgan Stanley at the
 9 time?
 10 A. I don't -- I don't remember.
 11 Q. Well, let's focus on the coverage
 12 that you did of Coleman. You are aware of the
 13 Coleman Company?
 14 A. It was six years ago, but yes, I'm
 15 aware of the Coleman Company.
 16 Q. And what do you understand their
 17 business to be in 1997 and 1998?
 18 A. They were primarily camping goods.
 19 Q. You covered the high yield debt of
 20 Coleman's parent?
 21 A. I covered the escrow bonds.
 22 Q. You didn't have anything to do with
 23 covering the stock?
 24 A. No, I did not.
 25 Q. And I believe you said that Morgan

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1 Stanley did not cover the stock?
 2 A. To my recollection, we did not have
 3 coverage of the stock.
 4 Q. Fair enough. Now, in connection
 5 with the work you did for Coleman covering the
 6 escrow bonds, who did you have contact with?
 7 MS. BROWN: Object to
 8 characterization, but go ahead.
 9 A. At the company?
 10 Q. Yes.
 11 A. Mark Shiffman was my primary
 12 contact.
 13 Q. Do you know where Mr. Shiffman was
 14 located?
 15 A. He started out in New York, and he
 16 ended up in Florida.
 17 Q. Do you understand whether
 18 Mr. Shiffman worked for MacAndrews & Forbes or
 19 for Coleman?
 20 MS. BROWN: Objection. Foundation.
 21 Go ahead.
 22 A. He worked for Coleman, but the rumor
 23 was he was dating Perelman's daughter, so it's
 24 kind of a blurry line.
 25 Q. Did you ever talk to him about that?

1 A. No. Just behind his back.
 2 Q. What did it mean to cover the escrow
 3 bonds? That's the security you covered?
 4 A. Yes. It means that those were the
 5 two bonds which I had a recommendation on. I
 6 did not have opinions on other parts of the
 7 capital structure.
 8 Q. When you covered a company, when you
 9 covered Coleman, you made recommendations as
 10 to those bonds?
 11 A. Yes, I did.
 12 Q. And recommendations about whether to
 13 buy or sell or hold?
 14 A. Correct.
 15 Q. At the time did Morgan Stanley have
 16 certain categories of ratings for securities?
 17 A. We did, but I couldn't tell you what
 18 they were. It changes all the time.
 19 Q. If I were to tell you that I've seen
 20 research reports referring to a strong buy, do
 21 you ever remember there being a rating higher
 22 than a strong buy?
 23 A. No. There was no rating higher than
 24 a strong buy.
 25 Q. I assume there were ratings lower?

1 had very bad management, very disappointing
 2 year. We had Jerry Levin come in from Revlon,
 3 who was highly respected, and by our research
 4 we felt that it was a great brand and a
 5 potentially strong cash flow-generating
 6 company.
 7 Q. When you say the bonds were
 8 oversold, what do you mean?
 9 A. They were trading at a significant
 10 discount to par.
 11 Q. So you expected them to go up?
 12 A. Yes.
 13 Q. To increase in value?
 14 A. Yes. And plus you were getting --
 15 again, this is off of memory, but you were
 16 getting like a ten, eleven percent yield. So
 17 your total return potential was very high.
 18 Q. Now, when you say you made the
 19 decision to do this, you looked at the bonds,
 20 how was it that you happened to notice this?
 21 A. I don't remember.
 22 Q. At the time you noticed this
 23 investment opportunity, could you then just
 24 issue the research report, or did you need to
 25 get approval from others?

1 A. Yes, there were.
 2 Q. Hold, sell, sell right away?
 3 A. Well, no. At Morgan it was more
 4 very strong buy. But no. I don't -- there
 5 was a hold and a sell, but I can't remember
 6 what the exact terminology was. But in
 7 general, there's only three or four ratings
 8 categories.
 9 Q. And the top one was strong buy?
 10 A. Yes, it was.
 11 Q. Before you covered the bonds that
 12 you covered, was there anyone at Morgan
 13 Stanley covering anything for Coleman?
 14 A. Not that I recall, no.
 15 Q. How was it that Morgan Stanley
 16 decided to initiate coverage of the Coleman
 17 bonds?
 18 A. Because of me. I looked at them and
 19 I thought that there was an investment
 20 opportunity.
 21 Q. What do you mean by investment
 22 opportunity?
 23 A. I can't recall the exact parameters
 24 at the time, but I felt the bonds were
 25 oversold. If memory serves correct, they had

1 A. I did not need to get approval from
 2 others. Obviously there are certain channels
 3 you go through. I would confer -- before I
 4 started doing work on the company, I would
 5 confer with my trader to make sure that there
 6 were bonds to be traded. And then obviously
 7 before you write a report, it has to go
 8 through legal to ensure that we're not
 9 violating any Morgan Stanley procedures.
 10 Q. Do you know who the trader was on
 11 the Coleman bonds?
 12 A. Michael Lily.
 13 Q. Do you remember discussing the
 14 Coleman bonds with Mr. Lily?
 15 A. I don't recall specifically.
 16 Q. Yes.
 17 A. But we obviously did discuss it,
 18 yes.
 19 Q. Do you remember anything about that
 20 conversation?
 21 A. No.
 22 Q. And then you said you also had to
 23 get approval from legal?
 24 A. Whenever you draft a report, it has
 25 to go through legal compliance before it can

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1 be published.

2 Q. Was there a person that you dealt
3 with?

4 A. I don't recall.

5 Q. Do you remember if there was a
6 person or a function responsible for reviewing
7 those research reports?

8 A. It was all done by my secretary, so
9 I really don't know.

10 Q. Do you remember if you showed your
11 report to Mr. Foley before it issued?

12 A. I probably did, but I couldn't tell
13 you exactly.

14 Q. Now, once coverage is initiated, did
15 you continue to monitor the performance of
16 those bonds?

17 A. Yes. We did quarterly updates. And
18 if we had the opportunity to see the company
19 on a one-off basis, we would publish on that.

20 Q. You're going to have to -- there is
21 a lot of terminology that goes with this
22 field, and I think I got most of it, but
23 you're going to have to describe it. Now, you
24 said you would do quarterly updates of your
25 research?

1 A. Basically when they report numbers,
2 and we would report on how they did versus our
3 estimates.

4 Q. And then I think you also referred
5 to a one-off?

6 A. For example, Coleman presented at
7 our high yield conference I believe it was in
8 1997, so we would do a written update on that.

9 Q. Did there come a time when you
10 stopped covering the bonds?

11 A. I stopped covering the bonds when
12 the Sunbeam deal was announced. I immediately
13 became restricted.

14 Q. What do you mean by that?

15 A. Meaning Morgan Stanley was handling
16 the deal, and so, consequently, we will not
17 publish research when we're involved on the
18 investment banking side.

19 Q. Got it. Would you then issue
20 something saying, hey, we're not going to
21 cover it anymore?

22 A. No. We just stop publishing. The
23 client base -- our client base is private
24 clients. Sorry. Are institutional clients.
25 So they understand.

1 Q. You're aware that the reports that
2 you issued could have an effect on the market
3 for the securities?

4 MS. BROWN: Object to form.
5 Foundation.

6 A. I disagree with that. As I just
7 said, our clients, our institutional clients,
8 they're extremely sophisticated, and they use
9 our work to help them make their decision, but
10 we don't actually make their decisions for
11 them. It's very rare that a high yield
12 research report will move markets unless they
13 have some truly new information.

14 Q. Did you ever personally buy or sell
15 any securities in Coleman?

16 A. I did not.

17 Q. I don't know if you were allowed to.
18 Were you allowed to under the Morgan Stanley
19 rules?

20 A. No, I was not.

21 Q. But I believe you testified that
22 Morgan Stanley and its traders took positions
23 in the Coleman bonds?

24 A. Morgan Stanley trading did, yes.

25 Q. Did Morgan Stanley make a market --

1 A. Yes, we did.

2 Q. -- in these bonds?

3 A. Yes, we did.

4 Q. In addition to making a market, did
5 it take a long position in the bonds?

6 A. Yes, we did.

7 Q. And by taking a long position, that
8 means that Morgan Stanley held them expecting
9 them to go up in value so they could make
10 money on the bonds?

11 A. Yes.

12 Q. Now, when you do a coverage report,
13 what information do you typically consider?

14 MS. BROWN: Object to form.

15 A. It varies so much company by company
16 and it varies by how much information was
17 already out there. In the case of Coleman, we
18 obviously did what we thought -- you know, we
19 gave the company's investment strengths,
20 weaknesses. The report also included a very
21 comprehensive study of the camping industry
22 and its potential growth and how we felt
23 Coleman was a leader. But there is no
24 template whatsoever to a research report.

25 Q. Okay. I guess I'm not asking the

1 question right. I'm trying to get at the
2 types of information you would consider rather
3 than what the report would look like. Were
4 there types of information you typically
5 considered?

6 MS. BROWN: Object to form.

7 A. As a high yield research analyst,
8 your number one consideration is their
9 ability, as I said, to pay the coupons. So
10 every research report will include a capital
11 structure, your amortization schedule, your
12 model, financial forecast, your free cash
13 flow. That's much more of the financial
14 consideration which every report will contain,
15 but then everything else is far more
16 subjective in terms of, okay, we know this is
17 what they have to pay down their bonds, what
18 is the likelihood based on the fundamentals of
19 the company that they can do that.

20 Q. I guess I'm not asking the question
21 right.

22 A. Okay.

23 Q. I'm focusing less on what the report
24 looks like and more on the information, the
25 raw material that you would use to generate

1 A. You go to a Target. You go to a
2 Wal-Mart.

3 Q. So you would go and look?

4 A. Yes.

5 Q. Did you ever buy any of their
6 products?

7 A. I live in New York City,
8 unfortunately not a big occasion for camping.

9 Q. Hey, people in New York camp, too.
10 I know it happens. Would you participate in
11 conference calls with management?

12 A. Yes.

13 Q. Would you talk to management aside
14 from the regularly scheduled conference calls?

15 A. Only Mark Shiffman.

16 Q. And Mr. Shiffman was the director of
17 investor relations?

18 A. He was. And he was extremely
19 well-informed and very accessible, so he
20 worked -- he was very, very good in that
21 function.

22 Q. Did you speak to other analysts,
23 other people that were covering Coleman?

24 A. Only on the buy side, not on the
25 sell side.

1 it. You would look at financial statements,
2 for example; correct?

3 A. We look at publicly filed SEC
4 filings, yes.

5 Q. Okay. What else?

6 A. We actually went to the -- I can't
7 remember the name now, but we went to some
8 park conservation, national wildlife park to
9 see what their camping numbers were. We
10 commissioned a study from one group to see
11 what camping demand was and the quality of the
12 Coleman name. But I obviously primarily look
13 at financial statements, and, ideally, if you
14 can, you talk to retailers and say, okay, what
15 is the quality of this brand for you.

16 Q. Do you remember if you did talk to
17 retailers about Coleman?

18 A. No, I did not. I did not have those
19 contacts at that time. For us it was more
20 going into the retail channels and seeing the
21 shelf space that they had.

22 Q. And you did that?

23 A. Yes.

24 Q. How did you do that? Do you do that
25 yourself, or do you have --

1 Q. Okay. You're going to have to
2 explain what that means.

3 A. Meaning clients who were investing
4 in the bonds, buying bonds from us, versus
5 other shops that were potentially selling the
6 bonds in the secondary.

7 Q. So you would talk to people who were
8 interested in buying the bonds?

9 A. Correct.

10 Q. To see what they were looking for or
11 looking -- what they saw to be value in
12 Coleman?

13 A. No. It's the reverse. They were
14 asking me why I saw value in Coleman.

15 Q. Did you read the reports of other
16 analysts?

17 A. No, I did not.

18 Q. Of Goldman Sachs or someone else?

19 A. No, I did not.

20 Q. Do you know if other people covered
21 the Coleman bonds?

22 A. I don't recall.

23 Q. Did you track related companies,
24 that is, other companies in the same field?

25 A. Yes, I did.

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1 Q. What companies?
 2 A. Well, within consumer products, but
 3 no other camping companies.
 4 Q. Okay. And you obviously tracked
 5 consumer product companies for other purposes.
 6 Did you track them for purposes of comparing
 7 them to Coleman?
 8 A. There is two answers to that is yes,
 9 on the bond spread basis, and, second, we
 10 would look at where equity comparables were
 11 trading on a total enterprise value, TEV, to
 12 EBITDA basis to get a downside multiple
 13 valuation for Coleman in the event they went
 14 bankrupt.
 15 Q. Okay. We're going to do those one
 16 step at a time. You said you would look at
 17 the bond spread?
 18 A. Meaning I would look at what total
 19 debt to EBITDA, EBITDA to interest and yield
 20 was for varying companies within the sector.
 21 Q. Do you remember what companies you
 22 looked at?
 23 A. No, I do not.
 24 Q. Okay. And on the equity side you
 25 said you looked at the ratio between total

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1 enterprise value --
 2 A. Total enterprise value to EBITDA.
 3 Q. How would you determine total
 4 enterprise value?
 5 A. That's total debt plus the market
 6 equity cap.
 7 Q. And you would compare that to the
 8 company's EBITDA?
 9 A. You would divide -- you would put
 10 that over EBITDA, yes.
 11 Q. And you would compare Coleman's
 12 ratio to the ratio of other companies?
 13 A. No. I would see what the ratio of
 14 other companies were, and I would see what
 15 Coleman's total debt to EBITDA was, and see
 16 what my recovery value was for the bonds.
 17 Q. Okay. In the event of bankruptcy?
 18 A. In the event of bankruptcy.
 19 Q. Now, in connection with the work you
 20 did looking into Coleman, did you ever talk to
 21 Mr. Levin?
 22 A. I don't recall. I mean obviously I
 23 heard him on the conference calls, but I don't
 24 recall if I ever had a one on one meeting with
 25 him.

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1 Q. Did you ever speak to Mr. Page?
 2 A. I don't recall.
 3 Q. Do you know Joe Page, or do you know
 4 who he is?
 5 A. Don't recall.
 6 Q. Did you ever speak to Mr. Shapiro?
 7 A. I don't recall. The name is vaguely
 8 familiar, but I don't recall.
 9 Q. I believe you identified
 10 Mr. Shiffman. Do you remember anyone else at
 11 Coleman that you spoke with?
 12 A. No, I don't.
 13 Q. And you're aware that 82 percent of
 14 the common stock of Coleman was owned by a
 15 MacAndrews & Forbes entity?
 16 A. Yes, I was aware.
 17 Q. Did you speak with anyone at
 18 MacAndrews & Forbes about Coleman?
 19 A. No, I did not.
 20 Q. In connection with the coverage you
 21 did of Coleman, did you ever visit a Coleman
 22 facility?
 23 A. No, I did not.
 24 Q. And I believe you said you went to
 25 the retail outlets and looked how their

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1 products were placed; is that correct?
 2 A. Yes, it is.
 3 Q. Did you talk to retailers?
 4 A. No, I did not. I did not have those
 5 connections.
 6 MS. BROWN: Let's take a break
 7 before we start using the exhibits.
 8 MR. BRODY: Yes. That's fine. We
 9 can take a break now.
 10 VIDEOGRAPHER: The time on the
 11 monitor is now 10:35, and we are off the
 12 record.
 13 (Recess)
 14 (Initiation of coverage for
 15 Coleman marked CPH Exhibit 272 for
 16 identification, as of this date.)
 17 (Document Bates stamped Morgan
 18 Stanley Confidential 23225-23229 marked
 19 CPH Exhibit 273 for identification, as
 20 of this date.)
 21 VIDEOGRAPHER: The time on the
 22 monitor is 10:44, and we're back on the
 23 record.
 24 Q. While we were off the record,
 25 Ms. Eltrich, we marked two exhibits, and I'm

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1 going to show you the first of the two. It's
 2 been marked as Exhibit 272. Do you recognize
 3 that document?
 4 A. Yes, I do.
 5 Q. And what is it?
 6 A. I believe it was my initiation of
 7 coverage for Coleman.
 8 Q. And this is a document that you
 9 wrote?
 10 A. Yes, it is.
 11 Q. Did you prepare this document in the
 12 ordinary course of your business at Morgan
 13 Stanley?
 14 A. Yes, I did.
 15 Q. It's dated October 9th, 1997. Is
 16 that the date on or about the time you created
 17 it?
 18 A. I couldn't recall.
 19 Q. Did you issue this document on or
 20 about October 9th, 1997?
 21 A. It was published on October 9th.
 22 Q. Okay. "Published" is the word you
 23 prefer?
 24 A. Yes.
 25 Q. And then thereafter was a copy of.

1 can't recall the details.
 2 Q. And it's dated August 7, 1997; is
 3 that correct?
 4 A. It appears to be, yes.
 5 Q. And that would be about the time
 6 that a company like Coleman would issue its
 7 second quarter earnings?
 8 A. It would appear so, yes.
 9 Q. Is Exhibit 273, the earnings
 10 document, one of the documents you considered
 11 in connection with issuing the report that is
 12 shown as 272?
 13 A. I don't recall specifically, but I
 14 would assume so.
 15 Q. In any event, though, you would have
 16 read earnings announcements such as
 17 Exhibit 273 before doing the research report
 18 or as part of doing your work?
 19 A. Yes, I would.
 20 Q. Now, at the time you issued your
 21 first research report in October of 1997, did
 22 you understand that Coleman was in the process
 23 of a turnaround?
 24 MS. BROWN: Object to form.
 25 A. To the best of my knowledge, that

1 this document kept in the files of Morgan
 2 Stanley?
 3 MS. BROWN: Object to foundation.
 4 A. I don't know.
 5 Q. Did you keep a copy of it?
 6 A. I believe I kept a copy with my own
 7 personal files.
 8 Q. When you prepared this document,
 9 were you acting within the scope of your
 10 authority at Morgan Stanley?
 11 MS. BROWN: Object to the extent
 12 he's calling for a legal conclusion.
 13 MR. BRODY: I'm not.
 14 A. To my knowledge, I was.
 15 Q. And I would also like to show you
 16 what has been marked as Exhibit 273. Do you
 17 recognize that document?
 18 A. I don't recall.
 19 Q. Your name appears at the top. Do
 20 you see that?
 21 A. Yes, I do.
 22 Q. Do you recognize this as a document
 23 faxed to you or faxed from you?
 24 A. Faxed to me. It basically looks
 25 like a second quarter earnings update, but I

1 was my assumption.
 2 Q. What did you understand that to
 3 mean?
 4 A. To the best of my recollection, it
 5 was that the numbers had been extremely
 6 disappointing, the company had become highly
 7 leveraged, but under new management I felt
 8 that the company could regain its bearings and
 9 service its debt.
 10 Q. Did you understand that the company
 11 had adopted a strategy to improve its
 12 financial performance?
 13 MS. BROWN: Object to form.
 14 A. To the best of my recollection, yes,
 15 they had.
 16 Q. If you look at Exhibit 273, the
 17 earnings announcement that shows that it was
 18 sent to you, the first paragraph refers to
 19 success in its turnaround strategy; correct?
 20 A. Yes, it does.
 21 Q. And that's the sort of thing that
 22 you would have read and analyzed in connection
 23 with doing a research report?
 24 A. One part of it, yes.
 25 Q. Of course. Other things as well. I

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1 understand. If you turn to the next page, the
2 first full paragraph, the one that begins, "We
3 were able to show dramatic progress." Do you
4 see that?

5 A. Yes, I do.

6 Q. And the last sentence of that
7 paragraph says, "Our turnaround strategy has
8 provided us with a strong foundation on which
9 to build Coleman's future." Do you see that?

10 A. Yes, I do.

11 Q. Do you understand that Coleman had
12 started its turnaround but had not finished
13 its turnaround?

14 MS. BROWN: Objection to form.

15 A. I don't recall where we were in the
16 process.

17 Q. Well, do you remember reading this
18 document?

19 A. No, I don't recall.

20 Q. But you don't doubt that you did?

21 A. To the best of my recollection, I
22 read this document.

23 Q. If you look at the research report
24 that you drafted and issued --

25 MS. BROWN: Published.

1 sign off or make approvals of that?

2 MS. BROWN: Object to form.

3 A. To the best of my recollection, at
4 the time it was the autonomy of the analyst to
5 make that conclusion.

6 Q. Now, at the time you issued this
7 report, were you aware that Sunbeam had
8 retained Morgan Stanley to assist it as its
9 investment banker?

10 A. I had no idea whatsoever.

11 Q. Were you aware of any interest of
12 Sunbeam in Coleman?

13 A. None whatsoever.

14 Q. Now, the securities that you're
15 analyzing are the Coleman Escrow I and Coleman
16 Escrow II securities. You understand those to
17 be the first and second priority discount
18 notes?

19 A. To the best of my recollection, yes.

20 Q. Well, if you look at the first line
21 of your summary and investment conclusions,
22 that's how it refers to them.

23 A. I believe they were zeros, yes.

24 Q. And by zeros, you mean a zero coupon
25 bond?

1 Q. Published. Do I keep saying
2 "issued"?

3 A. Published.

4 Q. I'll try to use "published." Let me
5 withdraw that. Let's look at the research
6 report that you published. Better?

7 A. Yes.

8 Q. It lists yourself and Mr. Foley;
9 correct?

10 A. Yes, it does.

11 Q. Do you understand that it's listing
12 the two of you as authors?

13 A. Yes, I do.

14 Q. But I believe your testimony is that
15 this is something that you were the primary
16 drafter of?

17 A. That is correct, with Mr. Foley
18 supervising my work.

19 Q. Do you remember if Mr. Foley made
20 any changes or suggestions?

21 A. I don't recall.

22 Q. The recommendation strong buy, was
23 that your conclusion?

24 A. That was my conclusion.

25 Q. Do you know if anyone else had to

1 A. Correct.

2 Q. And you understand that the bonds
3 were not issued by the operating company
4 Coleman, but by one of its parents?

5 A. Correct.

6 Q. And did you recall that those bonds
7 were secured by stock in Coleman?

8 A. Vaguely to my recollection, yes,
9 that was the case, if it was -- particularly
10 if it was akin to the Revlon structure.

11 That's how Perelman typically did it.

12 Q. You mentioned the Revlon structure.
13 Did you look at the Revlon structure?

14 A. Yes, I did.

15 Q. Did you provide research coverage of
16 Revlon?

17 A. Yes, I did.

18 Q. Who did you do that with?

19 MS. BROWN: Object to form.

20 A. Can't recall, but it was probably
21 primarily myself.

22 Q. Now, you earlier identified the
23 types of companies that you did work on.

24 Would Revlon be a consumer products company?

25 A. Yes, it was.

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1 Q. What research do you remember
2 issuing on Revlon?

3 MS. BROWN: Object to form. Go
4 ahead.

5 A. I remember issuing research on the
6 zeros that were subsequently refinanced prior
7 to 1998, but -- and, actually, I'm sorry. I
8 shouldn't say -- I remember recommending them
9 to my trader, but I'm not sure if we ever
10 published on them. I can't recall.

11 Q. Aside from that issuance, do you
12 remember any other securities that you
13 provided research on?

14 A. I can't recall. I can't recall what
15 I published on. We watched the company, but I
16 can't recall what I published on.

17 Q. Do you know if Morgan Stanley took
18 positions in Revlon?

19 A. We did for the first zero coupon
20 note. And, unfortunately, 1998 we took
21 positions in the stock.

22 Q. Were you long on both?

23 A. Again, the zero coupon, I can't
24 remember when it got refinanced, but it was
25 well ahead of 1998. And then in 1998 I do

1 turnaround, did you understand that to be true
2 at the time you issued it?

3 A. I believe so.

4 Q. Published it. Thank you. I'm going
5 to get this issue, publish before we're done.
6 I apologize for that mistake in language. The
7 next paragraph refers to the earnings stumble
8 in 1996. That's the downturn in earnings you
9 had talked about already?

10 A. I believe so, yes.

11 Q. And then it says, "A new management
12 team led by Mr. Jerry Levin is refocusing the
13 company on profitability while attempting to
14 revitalize the industry through increased
15 advertising and new product innovations."

16 You believed that to be correct when
17 you published it?

18 A. I believe so, yes.

19 Q. And what do you recall, if anything,
20 to be the basis for that statement?

21 A. I can't recall specifically.

22 Q. Do you remember anything?

23 A. I remember an SKU reduction. I
24 remember investments in associating Coleman
25 more with the outdoors, of being the premier

1 very vividly remember having a position in the
2 stock when they preannounced that they were
3 stuffing the trade.

4 Q. When you refer to zeros, you mean
5 zero coupon bonds?

6 A. Yes. They had a discount holding
7 note very similar to Coleman.

8 Q. Now, returning to Exhibit 272, could
9 you just read to yourself what you wrote on
10 the first page of those four paragraphs in
11 italics, then I'll ask you about them.

12 You've had a chance to read it?

13 A. Yes.

14 Q. Thank you. Turning to the first
15 paragraph, you start by saying, "We have
16 listed the Coleman escrow first and second
17 priority discount notes as strong buy as we
18 believe the company is on the brink of an
19 impressive turnaround." You start by saying
20 "We have listed." Does that indicate that
21 this is the first coverage?

22 A. Yes, it is.

23 Q. And your statement that you believe
24 the company is on the brink of a strong
25 turnaround -- excuse me, an impressive

1 brand of choice, and expanding distribution,
2 for example, into Target, but I don't recall
3 any other specifics.

4 Q. But those are things you recall the
5 company had done?

6 A. Yes.

7 Q. The last sentence in that paragraph
8 reads, "With the majority of Mr. Levin's
9 restructuring plan now in place, we are
10 expecting positive earnings comparisons for
11 the last half of '97 and a return to full
12 earnings momentum in 1998." You believed that
13 to be correct at the time you published it?

14 A. I believe so, yes.

15 Q. And what do you mean by positive
16 earnings comparisons for the last half of '97?

17 A. I believe what I meant was that
18 EBITDA would be up year over year.

19 Q. So the second half of '97 would be
20 better than the second half of '96?

21 A. Correct.

22 Q. And then the next phrase, "and a
23 return to full earnings momentum in 1998."
24 What do you mean by that?

25 A. I believe what I meant was that the

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1 full year 1998 would have positive comparisons
 2 to the full year 1997.
 3 Q. Okay. The next paragraph says, "Our
 4 investment case is not solely based on
 5 management's case for a turnaround. Our own
 6 research has shown there is inherent value in
 7 Coleman's franchise which cannot be damaged by
 8 one year of poor performance." You believed
 9 those statements to be correct when you
 10 published them?
 11 A. I believe so. I believe so, yes.
 12 Q. And what research are you referring
 13 to there?
 14 A. I believe this is what I had
 15 referred to earlier where we contacted -- we
 16 hired a consultant to get a brand equity
 17 evaluation, and we talked to people within the
 18 park industry, the camping, you know,
 19 wildlife, conservation park industry to see
 20 what kind of demand they were seeing.
 21 Q. Do you remember the name of the
 22 consultant you used?
 23 A. I should, but I don't.
 24 Q. Did those consultants produce to you
 25 a written report of some kind?

1 Q. And you believed that to be correct
 2 when it was published?
 3 A. I believe so, yes.
 4 Q. Now, where did the 123.7 million and
 5 162.1 million estimates of '97 and '98 EBITDA
 6 come from?
 7 MS. BROWN: Objection. Asked and
 8 answered.
 9 A. I couldn't recall specifically.
 10 Q. And the multiples of 12 times and
 11 13.4 times, do you remember where you got
 12 those multiples?
 13 A. I can't tell you where I came -- how
 14 I derived 12.0 because that was an assumption,
 15 but the 13.4 was the median of all the
 16 takeouts of consumer products which had
 17 happened over probably two to three years.
 18 Q. What do you mean a takeout?
 19 A. Meaning companies that had been
 20 transacted, their TEV to EBITDA at the time.
 21 Q. Okay. So companies that had been
 22 bought or sold?
 23 A. Yes.
 24 Q. Their ratio of total enterprise
 25 value to EBITDA reflected that multiple?

1 A. Yes, they did.
 2 Q. Is that the sort of thing that you
 3 would keep in your files?
 4 A. I would assume so, yes.
 5 Q. The next paragraph states, "We
 6 believe Coleman's turnaround efforts will
 7 produce '97 EBITDA of 123.7 million and '98
 8 EBITDA of 162.1 million." Did you believe
 9 that to be correct when you published it?
 10 A. I believe so, yes.
 11 Q. What do you understand to be the
 12 basis for that?
 13 A. I can't recall.
 14 Q. And it continues by saying,
 15 "Applying a conservative multiple of 12.0
 16 times EBITDA, which is below the median
 17 takeout multiple of 13.4, times EBITDA for
 18 consumer products (see Appendix 1), we derive
 19 a 1998 equity valuation of \$25 per share for
 20 Coleman stock, providing equity coverage of
 21 2.3 times and 5.9 times for the accreted value
 22 of the first and second priority issues,
 23 respectively." That's something that you
 24 published in '97?
 25 A. It's on here, so I assume so, yes.

1 A. Correct.
 2 Q. And so you're saying that using a
 3 12.0 multiple as opposed to the 13.4, which
 4 was the comparable, was conservative?
 5 A. I can't recall what my thought
 6 process was at the time.
 7 Q. But it was you that chose the 12.0
 8 multiple?
 9 A. It was most likely me who chose the
 10 12.0, yes.
 11 Q. Now, the equity valuation of \$25 per
 12 share, was that your prediction or estimate of
 13 what you thought Coleman stock would be worth
 14 in 1998?
 15 A. I believe so, yes.
 16 Q. And then the next ratios, that shows
 17 the coverage of Coleman's earnings to pay for
 18 the debt service on the bonds?
 19 A. No. The next ratio of the 2.3 and
 20 5.9 is because the escrow was secured by the
 21 stock. It was our determination -- and,
 22 again, the bonds had been accreted. It was
 23 not for face value. It was the zero accreted
 24 value. And it was our estimation at \$25 per
 25 share what your collateral was worth and how

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1 many times it covered you.
 2 Q. So if the stock is worth \$25 a share
 3 and Coleman Escrow or whoever had issued the
 4 bonds sold the stock, they would be able to
 5 cover 230 percent of the value of the first
 6 bonds?
 7 A. It's one way of looking at it, but
 8 as a high yield analyst, the way you looked at
 9 it is if the company were to go bankrupt, and
 10 as the escrow you get first claim of the
 11 stock, what is the enterprise value that
 12 covers you.
 13 Q. Okay. The last sentence on this
 14 page reads, "Currently, the greatest upside
 15 potential exists in this tranche," referring
 16 to the second priority notes, "where we view a
 17 more appropriate spread between the two issues
 18 to be closer to 100 basis points." What does
 19 that mean?
 20 A. It means that right now as you see
 21 in this report, the first escrow is yielding
 22 10.41, the second escrow is yielding 13.31,
 23 which is roughly a 300 basis point spread. We
 24 felt it should have been closer to 100 basis
 25 points.

1 not going to remain on the capital structure?
 2 A. To my best recollection, yes.
 3 Q. Exhibit 4 identifies as a source
 4 company financials and Morgan Stanley
 5 estimates. You see that?
 6 A. Yes, I do.
 7 Q. Do you know what Morgan Stanley
 8 estimates you were referring to?
 9 A. I can't recall.
 10 Q. In looking at these documents,
 11 excuse me, in looking at Exhibit 4, can you
 12 tell me which of those numbers came from the
 13 Morgan Stanley estimates as opposed to which
 14 came from the financials?
 15 A. No, I cannot.
 16 Q. Can you explain what Table 5 shows,
 17 what that means?
 18 A. Table 5 is your collateral value of
 19 the stock based on the varying prices. So you
 20 have your first priority coverage, second
 21 priority coverage, and, again, I can't recall
 22 the exact numbers, but you had X number of
 23 stock, theoretically, covering your bonds in
 24 the event of a downside, so at what stock
 25 price what your collateral was. So it's a

1 Q. So you're saying that the return on
 2 the seconds was really a good return?
 3 A. If I recall correctly, that was,
 4 yes, our favorite in terms of total return.
 5 Q. Turn to the third page of the
 6 document. The Exhibit 3 references the
 7 Coleman escrow capital structure, and it says
 8 you obtained that from the company financials?
 9 A. I believe so, yes.
 10 Q. By "company financials" you mean
 11 just the public published financials?
 12 A. It would be the SEC filings, yes.
 13 Q. And in that item there is a
 14 reference to the Lyons, L-y-o-n. Do you see
 15 that?
 16 A. Yes.
 17 Q. Do you have a recollection of what
 18 the Lyons were?
 19 A. Not specifically, no. I remember
 20 they were in the capital structure, but,
 21 again, as you read the footnote, assumes
 22 redemption of these issues. If memory serves
 23 best, they did something to redeem these
 24 issues.
 25 Q. Okay. So you understood those were

1 varying degree of that.
 2 Q. So correct me if I'm wrong, but does
 3 this mean that if the stock price was nine,
 4 there was enough collateral in the stock to
 5 cover the first priority notes?
 6 A. Correct.
 7 Q. And if the stock price was between
 8 ten and eleven, there would be enough to pay
 9 the second priority notes?
 10 A. If it was at eleven, yes.
 11 Q. Somewhere between there?
 12 A. Towards eleven, yes.
 13 Q. Turn to the next page. After
 14 Exhibit 7 there is a paragraph that refers to
 15 the 12.0 multiple.
 16 A. Yes.
 17 Q. See that?
 18 A. Yes.
 19 Q. Is this something that you published
 20 at the time?
 21 A. I believe so, yes.
 22 Q. And at the time you understood it to
 23 be correct?
 24 A. I believe so. Well, no, no, no. At
 25 the time I believed it to be a fair

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1 assumption.
 2 Q. Okay. This was your best
 3 understanding of the multiple to use?
 4 A. It was my best estimate.
 5 Q. Okay. Your text reads, "We believe
 6 our valuation is conservative given Coleman's
 7 strong market share and growth prospects. We
 8 have not done a downside valuation in the case
 9 of a liquidity crisis as we do not perceive
 10 this to be a risk at any time in the near
 11 future." Is that something you wrote?
 12 A. I believe so, yes.
 13 Q. What do you mean by a liquidity
 14 crisis?
 15 A. Meaning they run out of cash and
 16 they're unable to service their debt.
 17 Q. Why did you not think that to be a
 18 risk at the time?
 19 A. I can't specifically recall what the
 20 circumstances were.
 21 Q. Exhibit 8, the valuation based on
 22 1997 forecasted EBITDA, is that something that
 23 you did?
 24 A. I believe so, yes.
 25 Q. And, again, you believed that to be

1 Q. The next paragraph refers to the
 2 overall health of the camping industry. Is
 3 that something that you learned based on the
 4 consultant that you hired?
 5 A. It was through the consultant, and
 6 it was through doing research on the web.
 7 Q. Now, the next section of the report
 8 reads, "Nature's First Green is Gold,"
 9 starting on the next page.
 10 A. Um-hmm.
 11 Q. And it's an analysis of the camping
 12 industry. Is that something that you
 13 prepared?
 14 A. It is something that I researched,
 15 yes.
 16 Q. And did you draft this section of
 17 the report?
 18 A. Yes, I did.
 19 Q. Beginning on Page 7 under the
 20 heading "A Period of Growth" and continuing
 21 for the next couple of pages, there is a
 22 description of Coleman's acquisitions and
 23 Coleman's plans. Do you remember what the
 24 basis was for these statements?
 25 A. No, I do not.

1 a correct calculation at the time?
 2 MS. BROWN: Object to form.
 3 A. I believe it was my best estimation
 4 at the time.
 5 Q. And, likewise, Exhibit 9 is
 6 something that you did as well?
 7 A. It was something I did, yes.
 8 Q. And you believed that to be the best
 9 estimation at the time?
 10 A. I believe it was my best estimation,
 11 yes.
 12 Q. Okay. The next page of the
 13 document, I believe it's Page 5 of the report,
 14 contains some text about the performance of
 15 Coleman. Do you know what the basis, your
 16 basis was for this?
 17 A. No. I can't recall.
 18 Q. The third paragraph refers to the
 19 expectations for 1998 EBITDA. Could you just
 20 read that to yourself.
 21 A. Yes.
 22 Q. After having read that, does that
 23 refresh your recollection as to where that
 24 \$160 million number came from?
 25 A. No, it does not.

1 Q. But these are statements that you
 2 made and published in this report?
 3 A. I believe so, yes.
 4 Q. And you understood them to be
 5 correct when you issued them?
 6 A. I believed them --
 7 MS. BROWN: Object to the form.
 8 A. I believed them to be my best
 9 estimate.
 10 Q. Turn to Page 11 of the report and
 11 read to yourself the Coleman Company financial
 12 forecast. Just let me know when you've
 13 finished reading that.
 14 A. Okay.
 15 Q. And it concludes with the statement,
 16 "We are being very conservative with regard to
 17 Coleman's capital structure. The company will
 18 be generating significant cash flow, and we
 19 expect continued deleveraging to occur in
 20 1998." By that you mean Coleman would be
 21 paying off even more of its debt?
 22 A. I believe so, yes.
 23 Q. That's what deleveraging means?
 24 A. Yes, it does.
 25 Q. Do you believe the statements

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1 contained in that Coleman company financial
 2 forecast to be your best understanding at the
 3 time you wrote them?
 4 A. It was my best estimate, yes.
 5 Q. The next page, the next two pages
 6 are financial forecasts for 1997 and 1998.
 7 And if you look at the bottom of those tables,
 8 they say, "Source: Company financial and
 9 Morgan Stanley estimates." Do you know what
 10 Morgan Stanley estimates went into this?
 11 A. I couldn't tell you specifically.
 12 Well, just basically the third, fourth quarter
 13 in the year were our estimates.
 14 Q. And when you say "our estimates,"
 15 were they estimates that you did or estimates
 16 that you obtained from others?
 17 A. Estimates that I did.
 18 Q. The EBITDA number for the year end
 19 1997 is 123.7 million. Do you know how you
 20 derived that number?
 21 A. I can't recall, no.
 22 Q. And, likewise, if you turn to the
 23 next page, you'll see the year end 1998 EBITDA
 24 is 162.3 million. Is that a number you
 25 derived?

1 Q. What do you mean by a secondary
 2 company?
 3 A. Meaning a company that published
 4 financials, etc. There was no one else. It
 5 was our own. We had the autonomy to determine
 6 our estimates.
 7 Q. Do you remember discussing your
 8 estimates of EBITDA for '97 or '98 with anyone
 9 else at Morgan Stanley?
 10 A. I don't recall, no.
 11 Q. Do you think you might have
 12 discussed them with Mr. Foley?
 13 A. I don't recall.
 14 Q. Turn to the next document.
 15 MS. BROWN: Page?
 16 MR. BRODY: I'm sorry. It's
 17 Page 14.
 18 MS. BROWN: Turn to the next page.
 19 Q. Page 14 and 15. It's Appendix 1;
 20 "Prices Paid for Recent Consumer Product
 21 Transactions." Is this a compilation that you
 22 prepared?
 23 A. No, it is not.
 24 Q. Where did you get it?
 25 A. I got it from the investment banking

1 A. I believe so, yes.
 2 Q. Do you remember how you derived it?
 3 A. No, I couldn't tell you.
 4 Q. But having looked at this document,
 5 do you recognize that to be your best estimate
 6 of 1998 EBITDA?
 7 A. I don't recognize it, but to my best
 8 recollection, it would have been my best
 9 estimate.
 10 Q. You wouldn't have put it in there if
 11 you had some other number?
 12 A. Correct.
 13 Q. Was there a protocol or methodology
 14 or model that you followed to derive numbers
 15 such as that?
 16 MS. BROWN: Object to form.
 17 Q. At the time?
 18 A. No.
 19 Q. Did you receive any guidance or
 20 instruction at Morgan Stanley as to what
 21 estimates to use or what predictions to make
 22 for companies of this type?
 23 MS. BROWN: Object to form.
 24 A. For a secondary company like this,
 25 absolutely not.

1 division.
 2 Q. Do you know who at investment
 3 banking?
 4 A. I do not recall. And, actually, I
 5 should specify. It was either investment
 6 banking or equity research. I'm not sure
 7 which one.
 8 Q. There are some indications for
 9 footnotes. For example, after aggregate value
 10 it has a little footnote two, and after-
 11 premium price it has a little footnote three,
 12 but I don't see the footnotes. Do you know
 13 what that's there for?
 14 A. I can't recall.
 15 Q. Do you have an understanding of what
 16 premium price means?
 17 A. I believe -- no, I can't recall
 18 specifically.
 19 Q. What is your belief?
 20 A. I would believe it's the price over
 21 where the stock was trading at the time.
 22 Q. And if you look at the bottom of
 23 this table, which is found in the next page,
 24 the mean premium price is just under
 25 50 percent, and the median is just over

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1 50 percent?
 2 A. That's what it would appear to say,
 3 yes.
 4 Q. And this is the information that you
 5 included in the report that you published;
 6 correct?
 7 A. I believe so, yes.
 8 Q. Now, if you look at the bottom lines
 9 on Page 15, the mean and median numbers, the
 10 aggregate value column, there is a revenue
 11 column, an EBITDA column, an and EBIT column?
 12 A. Yes.
 13 Q. And there is that 13.4 number. Do
 14 you see that?
 15 A. Yes, I do.
 16 Q. Is this the source of the 13.4
 17 multiple that is referenced earlier in the
 18 paper?
 19 A. I would assume so.
 20 Q. And that reflects that for these
 21 transactions in the consumer product field,
 22 the median multiple of revenue was 2.0, the
 23 median multiple of EBITDA was 13.4, and median
 24 multiple of EBIT was 17.6?
 25 A. That's what it would seem to say,

1 report?
 2 A. No, I do not think so.
 3 Q. And looking back, do you look back
 4 on this and say, oh, gee, I don't think that
 5 was right?
 6 MS. BROWN: Object to form.
 7 A. I don't have the -- I don't have --
 8 Coleman's done, so I don't have the
 9 perspective with which to answer that.
 10 Q. Okay. Well, that answers the
 11 question. I appreciate that. Now, after you
 12 published this report, did you discuss it with
 13 anyone at Morgan Stanley, that you remember?
 14 A. Not specifically, but you would
 15 obviously discuss it with your sales force,
 16 your traders, and your clients.
 17 Q. Was there a particular trader that
 18 was responsible for Coleman?
 19 A. Michael Lily.
 20 Q. And he remained responsible for
 21 Coleman throughout the period?
 22 A. Yes, he did.
 23 MS. BROWN: Object to form.
 24 Q. The '97, '98 time frame?
 25 A. Yes, he was.

1 yes.
 2 Q. For a financial analyst such as
 3 yourself, would you prefer to use the median
 4 or the mean?
 5 A. In general, we use the median.
 6 Q. Why is that?
 7 A. Because it rules out the absolutes.
 8 Q. Meaning the outliers?
 9 A. Yes.
 10 Q. Having looked at this document and
 11 now having really gone through the whole
 12 thing, do you remember any other sources of
 13 information that you used to prepare this
 14 other than the ones you've talked about
 15 already?
 16 A. No, I do not.
 17 Q. Is there anything in here that you
 18 believe to be incorrect?
 19 A. I couldn't recall.
 20 MS. BROWN: Object to form.
 21 Q. Let me state that a little
 22 differently. I think I've asked you this in a
 23 number of places. Is there anything in here
 24 that you didn't believe to be correct or your
 25 best estimate at the time you published the

1 Q. Do you remember any discussions with
 2 Mr. Lily?
 3 A. Not specifically, no.
 4 Q. Do you remember any general topics
 5 of conversation with him?
 6 A. Yes. Whenever earnings came out,
 7 and Coleman, frankly, disappointed a lot, we
 8 would have to have conversations on that.
 9 Q. Do you remember any discussions with
 10 the sales staff?
 11 A. Not specifically, no.
 12 Q. You referred to earnings coming out.
 13 I would like to show you what I'll mark as an
 14 additional exhibit.
 15 MR. BRODY: Mark this as 274.
 16 (Earnings announcement of Coleman
 17 marked CPH Exhibit 274 for
 18 identification, as of this date.)
 19 Q. I've given you what has been marked
 20 as Exhibit 274. Do you recognize that as an
 21 earnings announcement of Coleman?
 22 A. Yes, I do.
 23 Q. And that was earnings for the third
 24 quarter announced in November of 1997?
 25 A. Appears to be, yes.

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1 Q. And it shows that it was sent to
 2 you?
 3 A. Yes, it was.
 4 Q. Is this an earnings report from
 5 Coleman?
 6 A. It appears to be, yes.
 7 Q. Were you on a regular circulation
 8 list that you would receive these documents?
 9 MS. BROWN: Object. Foundation.
 10 A. To my knowledge, I was.
 11 Q. Do you know how that happened, how
 12 you got to be on that?
 13 A. I requested to be on their
 14 distribution list.
 15 Q. You requested that of Coleman?
 16 A. Yes, I did.
 17 Q. If you turn to the fourth page of
 18 this document, there are some financial
 19 numbers, and on the bottom there appears to be
 20 some handwriting?
 21 A. Um- hmm.
 22 Q. Do you recognize the handwriting?
 23 A. It may be mine, but I'm not sure.
 24 Q. Do you have any understanding as to
 25 what it refers to?

1 reports after this date?
 2 A. I can't recollect.
 3 Q. If I were to tell you that the
 4 acquisition of Coleman by Sunbeam, Sunbeam
 5 being a Morgan Stanley client, was publicly
 6 announced at the beginning of March 1998,
 7 would you believe that you would have done
 8 another research report after this one?
 9 A. No, I would not have been allowed
 10 to.
 11 Q. So if the facts I just told you are
 12 correct, and I believe them to be, you believe
 13 this to be your final research report?
 14 A. I can't recollect.
 15 MS. BROWN: Object to form.
 16 Q. Looking at Exhibit 275, is that a
 17 document that you drafted?
 18 A. I believe so, yes.
 19 Q. And at the time you drafted it, you
 20 did so in the course of your responsibilities
 21 at Morgan Stanley?
 22 A. I believe so, yes.
 23 Q. And the document was published by
 24 Morgan Stanley to the recipients of its
 25 research reports, its high yield research

1 A. No, I don't.
 2 Q. After you received this report, did
 3 you modify the research that you put out
 4 there?
 5 A. I couldn't recall.
 6 MR. BRODY: Mark this, please, as
 7 Exhibit 275.
 8 (Research report dated January 26
 9 issued by Ms. Eltrich marked CPH
 10 Exhibit 275 for identification, as of
 11 this date.)
 12 Q. Ms. Eltrich, I'm showing you what
 13 has been marked as Exhibit 275. Do you
 14 recognize that as another research report that
 15 you issued?
 16 A. Yes, I do.
 17 Q. That you published?
 18 A. Yes, I do.
 19 Q. And it's dated January 26th?
 20 A. Yes.
 21 Q. Now, the prior one was dated
 22 October 9th, 1997. Are you aware of any
 23 research reports between those two dates?
 24 A. I can't recollect.
 25 Q. And can you recall any research

1 reports?
 2 MS. BROWN: Object to form.
 3 A. It was distributed on a distribution
 4 list to our clients.
 5 Q. Okay. That's a better way of
 6 stating it. And it was sent to those clients
 7 in the ordinary course of Morgan Stanley's
 8 business?
 9 A. To my knowledge, yes.
 10 Q. Did you keep a copy of this document
 11 in your file?
 12 A. I don't recall.
 13 Q. Do you believe you did?
 14 A. Probably not.
 15 Q. It wasn't your practice to keep
 16 copies of research reports that you issued?
 17 A. It was kept in my computer, not on
 18 file.
 19 Q. So it was kept in electronic form?
 20 A. Correct.
 21 Q. And was it the ordinary course of
 22 your business to keep copies of the research
 23 reports you issued in electronic form on your
 24 computer?
 25 A. It was the firm's practice, yes.

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1 Q. In this report dated January 26,
 2 1998, you continued to recommend a strong buy
 3 for the Coleman Escrow I and Coleman Escrow II
 4 zero coupon notes; correct?
 5 A. It appears to be, yes.
 6 Q. At the time, January 26, 1998, were
 7 you aware that Sunbeam, counseled by Morgan
 8 Stanley, was in conversations with Coleman
 9 about acquiring Coleman?
 10 A. I did not know.
 11 Q. Do you know when you learned that
 12 fact?
 13 A. When it was announced.
 14 Q. Have you had a chance to review this
 15 document recently?
 16 A. Not really, no.
 17 Q. Okay. Well, we'll go through it a
 18 bit at a time. If you look at the summary and
 19 investment conclusions, I'll ask you to read
 20 that first paragraph to yourself.
 21 A. Um-hmm.
 22 Q. You've had a chance to read that
 23 paragraph?
 24 A. Yes, I have.
 25 Q. And those are statements that you

1 A. I believe so, yes.
 2 Q. And you believed them to be correct
 3 at the time you issued them?
 4 A. I believe so.
 5 MS. BROWN: Object to form.
 6 Q. You published them?
 7 A. I believe so, yes.
 8 Q. If you turn to the document that
 9 bears the page number four of the document,
 10 "Coleman Company 1997 Summary Financial
 11 Forecast"?
 12 A. Yes.
 13 Q. Again, that's a financial forecast
 14 that you derived?
 15 A. I believe so, yes.
 16 Q. Some of the numbers are historical
 17 and some of them are estimates that you
 18 created?
 19 A. It appears to be, yes.
 20 Q. And, likewise, the following page is
 21 a similar set of estimates for 1998, some of
 22 which were historical and others reflect work
 23 that you did?
 24 A. I believe --
 25 MS. BROWN: Object to form. You

1 published in January of 1998?
 2 A. To my recollection, yes.
 3 Q. And you believed them to be correct
 4 at the time?
 5 A. I believe so, yes.
 6 Q. Turn to a couple of paragraphs later
 7 that begins, "At the end of 1996." Do you see
 8 that paragraph?
 9 A. Um-hmm.
 10 Q. And about two-thirds of the way
 11 through the paragraph there is a sentence that
 12 reads, "Fundamentally, Coleman is in its best
 13 position in nearly five years."
 14 A. Yes.
 15 Q. You wrote that?
 16 A. Yes, I did.
 17 Q. And you believed that to be true
 18 when you wrote it?
 19 A. I believe so, yes.
 20 Q. Turn to the next page. There is a
 21 listing of investment strengths and
 22 weaknesses. See that?
 23 A. Yes, I do.
 24 Q. Again, those are statements that you
 25 made?

1 said historical for 1998.
 2 MR. BRODY: Well, the document is
 3 entitled 1998, but it contains 1997
 4 numbers, among other things. Let me
 5 start over.
 6 Q. Page No. 5, it's entitled "Coleman
 7 Company 1998 Summary and Financial Forecast."
 8 It contains some historical numbers from 1997?
 9 A. Yes, it does.
 10 Q. And it contains some estimated
 11 numbers for 1997 and 1998?
 12 A. It appears to, yes.
 13 Q. And those estimates are estimates
 14 that you created?
 15 A. I believe so, yes.
 16 Q. And at the time you published these
 17 numbers, you believed them to be the best
 18 estimates that you could come up with; is that
 19 correct?
 20 A. To the best of my recollection, yes.
 21 Q. Now, there is no reference in here,
 22 as best I can tell, to multiples of EBITDA,
 23 the 12.0 and the 13.4 numbers, for example,
 24 that we saw in Exhibit 272. Any reason to
 25 believe that you thought that those had

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1 changed between October of 1997 and January of
 2 1998?
 3 A. I cannot recall.
 4 Q. You cannot recall any reason?
 5 A. Cannot recall.
 6 Q. At the time you published this
 7 report, you believed it to be true and the
 8 best estimate of what you expected to happen?
 9 A. I believe so, yes.
 10 Q. Did you continue to follow Coleman
 11 after this date?
 12 A. I can't recall.
 13 Q. Did you ever come to learn that any
 14 of the statements that you made in the report
 15 we've marked as Exhibit 275 were incorrect?
 16 MS. BROWN: Object to form.
 17 A. Not to my recollection.
 18 Q. Now, when you wrote one of these
 19 documents and they were published, do you know
 20 to whom they were sent?
 21 A. No, I do not.
 22 Q. Do you know how many of them were
 23 sent out?
 24 A. No, I do not.
 25 Q. Can you estimate hundreds or

1 mentioned Coleman.
 2 Q. What do you remember of that
 3 conversation? Who was it with?
 4 A. Bob Kitts.
 5 Q. What do you remember Mr. Kitts
 6 asking you?
 7 A. Do you have any good consumer
 8 product companies in high yield that you feel
 9 could be takeover candidates?
 10 Q. And what did you tell him?
 11 A. I remember Coleman was on the list
 12 and probably Playtex.
 13 Q. Did you cover Playtex?
 14 A. Yes.
 15 Q. Besides those two companies, any
 16 others that you remember?
 17 A. I can't recall.
 18 Q. Do you remember when this
 19 conversation was with Mr. Kitts?
 20 A. No, I do not.
 21 Q. Do you remember giving him copies of
 22 your reports?
 23 A. No, I do not.
 24 Q. Do you know if he had them?
 25 A. He would have had access to them,

1 thousands or any idea?
 2 A. I can safely say less than a
 3 thousand, but that's about all I can give you.
 4 Q. Do you know if it was more than a
 5 hundred?
 6 A. No, I don't.
 7 Q. Now, I believe you testified in
 8 response to an earlier question that you first
 9 learned of the possible transaction between
 10 Sunbeam and Coleman when the deal was publicly
 11 announced; is that correct?
 12 A. That's correct.
 13 Q. Do you know how it was that you came
 14 to learn of it?
 15 A. No, I don't remember.
 16 Q. Prior to that date, that
 17 announcement date, do you remember anyone from
 18 any other division within Morgan Stanley
 19 asking you for information about Coleman?
 20 MS. BROWN: Object to form.
 21 A. No one asked me directly about
 22 Coleman, no.
 23 Q. Did people ask you indirectly?
 24 A. There was one time when I was asked
 25 for potential acquisition targets, and I

1 yes.
 2 Q. How?
 3 A. We're the same firm, and it's all on
 4 a -- it's all on a portal.
 5 Q. Okay. So someone in investment
 6 banking could call up your reports on a
 7 computer portal?
 8 A. Correct.
 9 Q. After that conversation with
 10 Mr. Kitts, did you have any follow-up
 11 conversations with him?
 12 A. No, I did not.
 13 Q. And then when the deal was
 14 announced, did you have further conversations
 15 with Mr. Kitts?
 16 A. I don't recall who -- no, I don't
 17 believe I did directly.
 18 Q. Do you know a Morgan Stanley
 19 employee by the name of Bill Strong, William
 20 Strong?
 21 A. Yes, I do.
 22 Q. Did you ever work with Mr. Strong on
 23 the Coleman or Sunbeam transaction?
 24 A. Not directly, no.
 25 Q. Did you work with him indirectly?

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1 A. Indirectly, yes.
 2 Q. In what way?
 3 A. They had me look at the transaction
 4 from -- basically giving what I knew about
 5 Coleman during that due diligence process.
 6 Q. Can you explain what you mean by
 7 that?
 8 A. In terms of as they were looking at
 9 Coleman as an acquisition target, what I
 10 thought of the company, could I verify
 11 statements by management.
 12 Q. Who did you work with?
 13 A. The only name I can remember
 14 directly is Chris Whelan.
 15 Q. In connection with that work, did
 16 Mr. Whelan or others show you financial
 17 analyses that the investment bankers had
 18 prepared about Coleman?
 19 A. I don't recall.
 20 Q. Well, we'll go through that in a
 21 bit. And you understand Mr. Whelan to be
 22 working in Mr. Strong's organization?
 23 A. No, he was not. Chris Whelan worked
 24 for credit, which is -- they worked with the
 25 rating agencies to determine what rating a

1 A. Yes, I do.
 2 Q. Ms. Eltrich, I'm handing you what
 3 has previously been marked as Exhibit 89. And
 4 up at the top it says "Preliminary Draft," but
 5 I believe the testimony is this is as final as
 6 it got. And there is some handwriting there,
 7 Tyrone Chang, on the first page. Do you know
 8 a Mr. Tyrone Chang?
 9 A. Not to my recollection.
 10 Q. There are some things in here I may
 11 ask you about, but the first thing I'm going
 12 to ask you about this document is have you
 13 ever seen it before?
 14 A. Not my recollection.
 15 Q. Well, that's going to make the other
 16 questions go a little faster. I will
 17 represent to you that this is a presentation
 18 to the board of directors of Sunbeam about
 19 Coleman. The title is, "Presentation to the
 20 Board of Directors Camper," but it's not to
 21 the Coleman board. It's about Coleman. And I
 22 would ask you to turn to the page bearing
 23 number two. It's got the production number in
 24 the corner ending with 64. And it's entitled
 25 "Strategic Rationale Camper." Have you ever

1 bond will be issued with.
 2 Q. What do you mean by saying this was
 3 indirectly from Mr. Strong?
 4 A. Because we're the same firm and it
 5 was the same deal.
 6 Q. Did you understand Mr. Strong to be
 7 in charge of the deal?
 8 A. No.
 9 MS. BROWN: Object to the form.
 10 Q. Ms. Eltrich, were you aware that
 11 Morgan Stanley advised the board of directors
 12 of Sunbeam about the Coleman transaction?
 13 A. I was aware, yes.
 14 Q. Are you aware that Morgan Stanley
 15 made a presentation to the Sunbeam board of
 16 directors?
 17 A. I was not directly aware, no.
 18 Q. Did you ever, to your knowledge, see
 19 a presentation that they made?
 20 A. Not to my knowledge, no.
 21 Q. Were you aware that Morgan Stanley
 22 issued a fairness opinion?
 23 A. Not directly, no.
 24 Q. Do you know what a fairness opinion
 25 is?

1 seen that before?
 2 A. Not to my recollection.
 3 Q. If you turn to Page 16 of the
 4 document, it ends with the production number
 5 82. It's entitled "Summary of Camper
 6 Evaluation Analyses." Do you see that?
 7 A. Yes, I do.
 8 Q. And what is contained therein is a
 9 trading analysis, a precedent transaction
 10 analysis, a discounted cash flow, and an
 11 estimated value of synergies. Do you see
 12 those numbers?
 13 A. Yes, I do.
 14 Q. Prior to this deposition had you
 15 seen those numbers before?
 16 A. Not to my recollection.
 17 Q. If you look at the trading analysis
 18 at the beginning, there are various multiples
 19 of EBITDA and EBIT contained therein, among
 20 other things. Do you ever remember having
 21 consultations with anyone at Morgan Stanley
 22 about what was the appropriate multiple to
 23 use?
 24 A. No, I do not think I did.
 25 Q. And in the precedent trading

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1 analysis, do you remember discussing those
 2 multiples or the appropriate transactions to
 3 use as precedents with anyone at Morgan
 4 Stanley?
 5 A. Not to my recollection.
 6 Q. The last item refers to estimated
 7 value of synergies. Do you remember ever
 8 performing any analysis of synergies that
 9 would or could result from this transaction?
 10 A. Not to my recollection.
 11 Q. If you turn to the appendix of this
 12 document, it's Page 54. It ends Page 22, 022.
 13 There is a description of various premiums
 14 paid in consumer and sporting goods
 15 transactions. Do you see that?
 16 A. Yes, I do.
 17 Q. And it goes on for a couple of
 18 pages. Have you ever seen this before?
 19 A. Not that I recall, no.
 20 Q. Now, when we were looking at
 21 Exhibit 272, your initiation of coverage for
 22 Coleman, at the end of the document you had
 23 various other transactions that you compared
 24 Coleman to.
 25 A. Yes.

1 A. No, I have not.
 2 Q. Do you know if you were ever asked
 3 questions about the fairness of the
 4 transaction to the shareholders of Sunbeam?
 5 A. To my recollection, no.
 6 Q. Now, the record reflects that Morgan
 7 Stanley was retained by Sunbeam to assist it
 8 in the fall of 1997. I'll just state that for
 9 you. You don't have to believe me, but I
 10 believe that's what the record will reflect.
 11 And I believe your testimony is you first
 12 learned of the Coleman transaction in March of
 13 '98?
 14 A. To my recollection, yes.
 15 Q. Between the fall of '97 and March of
 16 98, did you receive any other questions, other
 17 than the ones from Mr. Kitts about potential
 18 takeover candidates, relating to the work that
 19 Morgan Stanley did for Sunbeam?
 20 A. No.
 21 MS. BROWN: Object to form.
 22 A. Not that I recall.
 23 Q. Did you have any knowledge of what
 24 Morgan Stanley was doing for Sunbeam?
 25 A. Not that I recall.

1 Q. Do you believe that the source for
 2 your information was a document such as the
 3 one we're looking at here, Page 55, 56?
 4 MS. BROWN: Objection to form
 5 A. I can't -- like I said, I don't know
 6 if I got it from banking or equity. I don't
 7 know who kept track.
 8 Q. Okay. And this doesn't look
 9 familiar to you?
 10 A. It's the same format as the firm
 11 uses, but, again, I don't know who the source
 12 is.
 13 Q. Okay. When you received that
 14 information from either banking or equity, did
 15 you keep a copy of it in your files?
 16 A. I can't recall.
 17 Q. Do you know if you received it in
 18 hard copy form or electronic form?
 19 A. It would have been electronically.
 20 Q. In addition to making the
 21 presentation we've seen that's been marked as
 22 Exhibit 89, Morgan Stanley prepared a fairness
 23 opinion or a fairness opinion letter relating
 24 to this transaction. Have you ever seen that
 25 before?

1 Q. And I understand you've never worked
 2 in the investment banking division of Morgan
 3 Stanley?
 4 A. No, I have not.
 5 Q. Do you know what they were doing or
 6 what their duties were for Sunbeam?
 7 A. Not that I recall.
 8 Q. At some point Morgan Stanley was
 9 looking for a company to acquire Sunbeam. Did
 10 you have anything to do or were you asked any
 11 questions about efforts to find a company to
 12 acquire Sunbeam?
 13 A. Not that I recall.
 14 Q. And obviously at some point Morgan
 15 Stanley was looking for a company for Sunbeam
 16 to buy, and I believe you testified about your
 17 conversations with Mr. Kitts prior to the
 18 announcement. Do you have any other
 19 involvement or knowledge of the work that
 20 Morgan Stanley did on the buy side?
 21 A. No, I did not.
 22 Q. Are you aware that Morgan Stanley's
 23 chairman was a gentleman by the name of Al
 24 Dunlap?
 25 MS. BROWN: Excuse me? Object.

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1 MR. BRODY: I misspoke. Let me
 2 withdraw that.
 3 Q. Are you aware that Sunbeam's
 4 chairman was an individual by the name of Al
 5 Dunlap?
 6 A. I am now, yes.
 7 Q. Were you aware of that prior to the
 8 announcement of this deal?
 9 A. No. I didn't know who he was.
 10 Q. Between the announcement of the deal
 11 and its closing, did you have anything to do
 12 with Mr. Dunlap?
 13 A. As memory recollects, I listened to
 14 one of his earnings conference calls, but I
 15 can't recall what direct due diligence I had
 16 with him.
 17 Q. Do you believe that earnings
 18 conference call was between the announcement
 19 and the closing?
 20 A. Actually, I shouldn't -- I don't
 21 know if -- I think it was actually the
 22 announcement conference call. I don't think
 23 it was in an earnings conference call. I'm
 24 sorry. It was the actual announcement call.
 25 Q. The announcement of the deal?

1 Paper?
 2 A. I don't recall.
 3 Q. Is it correct that at the time of
 4 this deal, the announcement of this deal,
 5 Morgan Stanley did not cover Sunbeam?
 6 A. I don't recall.
 7 Q. Do you recall any coverage that it
 8 provided?
 9 A. I don't recall any coverage, no.
 10 Q. Were you ever asked to consider
 11 covering Sunbeam securities?
 12 A. It was an investment grade company,
 13 so no.
 14 Q. Do you know if others within the
 15 company were asked to cover --
 16 A. Not to my recollection.
 17 Q. I believe I asked you this before.
 18 You understand that Mr. Conway, Andrew Conway,
 19 was an equity analyst?
 20 A. Yes.
 21 Q. Did you ever have any conversations
 22 with Mr. Conway about Sunbeam or Coleman?
 23 A. Not that I recall. Actually, his
 24 junior, Jim Dormer, was going to do most of
 25 the work if they were to initiate coverage.

1 A. Yes.
 2 Q. We'll get to that. Have you ever
 3 covered any other companies or investigated
 4 covering any other companies that Mr. Dunlap
 5 was involved in?
 6 A. Not that I recall.
 7 Q. Do you know a company by the name of
 8 Scott Paper?
 9 A. I've heard of the company, yes.
 10 Q. Do you know if Morgan Stanley
 11 covered Scott Paper?
 12 A. I don't know.
 13 Q. Did you?
 14 A. No, I did not.
 15 Q. So you didn't do any work on Scott
 16 Paper?
 17 A. No, I've never done work.
 18 Q. Have you ever heard it suggested by
 19 anyone that Mr. Dunlap's turnaround of Scott
 20 Paper was not real?
 21 MS. BROWN: Object to form.
 22 A. No, I have not, can't recollect.
 23 Q. Do you remember any conversations
 24 with anyone at Morgan Stanley about whether
 25 Mr. Dunlap had accomplished anything at Scott

1 Q. Did you have any conversations with
 2 Mr. Dormer?
 3 A. I'm sure I did, but I don't recall
 4 them specifically.
 5 Q. Do you have any general recollection
 6 of items that you discussed with Mr. Dormer?
 7 A. No, I do not.
 8 MR. BRODY: Why don't we go off the
 9 record for a minute. We need to change
 10 the tape.
 11 VIDEOGRAPHER: The time is now
 12 11:39. We've reached the end of tape
 13 number one, and we are off the record.
 14 The time is now 11:41, and this is
 15 tape number two, and we are back on the
 16 record.
 17 (Document Bates stamped CPH
 18 251099-251122 marked CPH Exhibit 276
 19 for identification, as of this date.)
 20 Q. In prior testimony you've talked
 21 about how you learned of the Sunbeam Coleman
 22 transaction through an announcement; is that
 23 correct?
 24 A. Yes.
 25 Q. I'm going to show you what the court

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1 reporter has marked as Exhibit 276, and if you
 2 turn to the page ending with the number 119,
 3 there is a list of participants and a number
 4 -- I'll wait until you're there.
 5 A. Yes.
 6 Q. And at number 257 is your name. And
 7 if you turn to Page 115, it describes that
 8 that's a list of participants, too. And it's
 9 about a conference call on March 2, 1998. See
 10 that?
 11 A. Yes, I do.
 12 Q. Have you ever seen this document
 13 before?
 14 A. No, I have not.
 15 Q. There is some handwriting on the
 16 first couple of pages of the document. Do you
 17 recognize that handwriting?
 18 A. No.
 19 Q. The very beginning.
 20 A. Oh. No, I do not recognize the
 21 handwriting.
 22 Q. There is evidence in the case that
 23 the deal was publicly announced on March 2nd.
 24 Do you recognize this as a list of people who
 25 participated in a conference call on March 2,

1 Q. What do you remember discussing with
 2 him?
 3 A. That we just made a lot of money.
 4 Q. Why is that?
 5 A. Because the Coleman bonds were going
 6 to be taken out.
 7 Q. How did you know that?
 8 A. I believe -- this is to my
 9 recollection, but I believe they announced
 10 that plan in the -- or it may have been our
 11 own speculation, but either way the bonds were
 12 getting taken out or the bonds would be
 13 investment grade because Sunbeam was
 14 investment grade, so they would appreciate in
 15 value.
 16 Q. Your idea was that there would be a
 17 reduced risk of loss on the bonds with Sunbeam
 18 as the ultimate owner?
 19 A. Correct.
 20 Q. Do you know if the bonds were, in
 21 fact, taken out?
 22 A. To my recollection, yes, the bonds
 23 were taken out.
 24 Q. Do you know why they were taken out?
 25 And by "taken out" you mean they were

1 1998?
 2 MS. BROWN: Objection. Foundation.
 3 A. I couldn't tell you.
 4 Q. You believe you learned of the deal
 5 from participating in a conference call; is
 6 that correct?
 7 A. No, it is not.
 8 Q. How did you learn of the deal?
 9 A. I believe it was when it was
 10 publicly announced on the press wire.
 11 Q. Then did you thereafter participate
 12 in a conference call?
 13 A. I can't specifically recall, but I
 14 believe so.
 15 Q. After the deal was publicly
 16 announced on the press wire, did you do
 17 anything?
 18 MS. BROWN: Object to form.
 19 Q. In relation to the deal?
 20 A. I can't recall.
 21 Q. Do you remember discussing the
 22 announcement with anyone?
 23 A. I discussed it with my trader.
 24 Q. That's Mr. Lily?
 25 A. Yes.

1 redeemed?
 2 A. Correct.
 3 Q. They were sold or --
 4 A. They were paid back.
 5 Q. Paid back. Do you know why they
 6 were redeemed?
 7 A. I can't recall specifically what the
 8 capital structure decision was on that.
 9 Q. Do you know who was involved in that
 10 capital structure decision?
 11 A. No, I do not.
 12 Q. Did your trading operation, the high
 13 yield group, in fact, make money on these
 14 bonds?
 15 A. Yes, we did.
 16 Q. Do you remember how big a position
 17 you had?
 18 A. No, I don't remember.
 19 Q. But are we talking millions or?
 20 A. I don't remember.
 21 Q. Aside from the conversation with
 22 Mr. Lily about the fact that you would make
 23 money on the bonds, do you remember any other
 24 conversations you had after the announcement?
 25 A. All I remember talking to

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1 specifically is Chris Whelan.
 2 Q. And that was the conversation you
 3 referred to earlier?
 4 A. There were multiple conversations,
 5 and I couldn't recall any of them
 6 specifically.
 7 Q. Mr. Whelan worked in the credit
 8 group?
 9 A. Correct.
 10 Q. Was his office near yours?
 11 A. It was in the same building.
 12 Q. Where was that?
 13 A. 1585 Broadway. He may have been in
 14 a different building, but he was within
 15 blocks.
 16 Q. What do you remember being your
 17 first conversation with Mr. Whelan about this?
 18 A. I don't remember.
 19 Q. Do you know why Mr. Whelan and the
 20 credit group were involved in the transaction?
 21 A. The credit group's function is to
 22 get a rating from the rating agency. So his
 23 function was to get a rating for the converts.
 24 Q. Did Mr. Whelan, to your knowledge,
 25 prepare a rating agency presentation?

1 Q. Sometimes face to face?
 2 A. I don't recall.
 3 Q. Sometimes on the phone?
 4 A. Most likely, yes.
 5 Q. And I believe you testified that
 6 Mr. Whelan asked you questions about Coleman;
 7 is that correct?
 8 A. Most likely, yes.
 9 Q. Do you remember any of the specifics
 10 he asked you about Coleman?
 11 A. No, I do not.
 12 Q. Do you remember any of the areas or
 13 topics he asked about?
 14 A. No, I do not.
 15 Q. Ms. Eltrich, I'm showing you what
 16 has been marked as Exhibit 9 in a prior
 17 deposition, and like the other big one I gave
 18 you, I'm just going to first ask you if this
 19 is something you've ever seen before.
 20 A. Not to my recollection, no.
 21 Q. In connection with any of the work
 22 that you did for Morgan Stanley beginning on
 23 the date of announcement and going forward, do
 24 you know if you were ever shown any of the
 25 discussion materials or presentation books

1 A. I wouldn't have been involved in
 2 that.
 3 Q. I believe you testified that
 4 Mr. Whelan asked you some questions and asked
 5 you to verify certain statements that they
 6 were making; is that correct?
 7 A. To my recollection, yes.
 8 Q. Do you remember what sorts of things
 9 Mr. Whelan asked you about?
 10 A. No, I don't.
 11 Q. Did you communicate with him face to
 12 face or on the telephone?
 13 A. I don't recall.
 14 Q. Do you know if you sent emails back
 15 and forth to Mr. Whelan?
 16 A. I don't specifically recall.
 17 Q. What do you think?
 18 A. I would say most --
 19 MS. BROWN: Objection. Speculation.
 20 A. Pure speculation would be most
 21 likely, yes.
 22 Q. Most likely yes emails?
 23 A. Yes. Well, did we email, yes. Was
 24 that the primary form of the communication, I
 25 don't recall.

1 that Morgan Stanley prepared for use in its
 2 efforts on behalf of Sunbeam?
 3 A. Not that I recall.
 4 Q. If you turn to the page ending in
 5 290, it's very early in the document, it's
 6 about the fifth or sixth page of the document
 7 entitled "Investment Rationale."
 8 A. Um-hmm.
 9 Q. Got it?
 10 A. Yes.
 11 Q. Is that a document you've ever seen
 12 before?
 13 A. I don't recall.
 14 Q. The first bullet point refers to
 15 Sunbeam being an attractive growth story. Did
 16 you ever see that phraseology contained in
 17 Morgan Stanley presentations or materials?
 18 A. I don't recall specifically.
 19 Q. Do you recall generally that people
 20 discussed Sunbeam as an attractive growth
 21 story?
 22 A. I don't recall.
 23 Q. The next item refers to the profound
 24 transformation at Sunbeam. Do you recall any
 25 discussions within Morgan Stanley or with

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1 Sunbeam about this profound transformation?
 2 MS. BROWN: Object to form.
 3 A. I can't specifically recall
 4 anything.
 5 Q. Do you recall generally?
 6 A. Commitment committee. That would be
 7 it.
 8 Q. Were you at the commitment
 9 committee?
 10 A. I was at meetings. Again, I was --
 11 I can't remember the exact time frame because,
 12 again, I was eight and a half months pregnant,
 13 but I was definitely in meetings discussing
 14 the bridge loan, but I can't remember if it
 15 was -- most likely it was the commitment
 16 committee, but I can't recall.
 17 Q. Okay. We'll get to that in a
 18 moment. The next item refers to tremendous
 19 intrinsic value in the company. Do you recall
 20 any discussions within Morgan Stanley about
 21 that?
 22 MS. BROWN: Object to form.
 23 A. None that I directly participated
 24 in.
 25 Q. Do you remember any discussion about

1 early March 1998 and until the first stage of
 2 the Coleman transaction closed, which I'll
 3 state was on March 30th, 1998, in that March
 4 time frame, and I know you were only there for
 5 part of it, what did you work on relating to
 6 the deal?
 7 A. Very little.
 8 Q. Well, if anything, what do you
 9 recall?
 10 A. All I recall is a couple of
 11 conference calls for due diligence on
 12 different parts of the varying acquisitions
 13 and one for -- I believe one for Sunbeam. But
 14 I would clarify I was not really doing the due
 15 diligence role. It was more just to verify
 16 statements on Coleman.
 17 Q. Now, when you referred to the
 18 different parts of the acquisition, by that do
 19 you mean First Alert --
 20 A. Yes.
 21 Q. -- Signature Brands, and Coleman?
 22 A. Correct.
 23 Q. So you were on conference calls
 24 about those companies?
 25 A. Correct.

1 the intrinsic value of Sunbeam?
 2 A. No.
 3 MS. BROWN: Object to form.
 4 A. I don't recall.
 5 Q. Are you aware that Mr. Dunlap had
 6 published a book?
 7 A. No, I was not aware.
 8 Q. You have not seen his book Mean
 9 Business?
 10 A. Not that I'm aware of, no.
 11 Q. Nobody ever gave you a copy?
 12 A. No. I have plenty of other bad CEOs
 13 who have given me books, so...
 14 Q. Not that one?
 15 A. Not that one.
 16 Q. Were you involved in any efforts at
 17 Morgan Stanley in preparing materials to go to
 18 the public or to go to investors in Sunbeam
 19 about this transaction?
 20 A. No, I was not.
 21 Q. So you weren't involved in any
 22 announcements, any press statements or public
 23 statements about the announcement or the deal?
 24 A. I believe I was not.
 25 Q. Now, after the deal was announced in

1 Q. And you were also on, you believe, a
 2 conference call about Sunbeam?
 3 A. If memory serves correct, yes.
 4 Q. And then you had some role in the
 5 events leading up to the leveraged finance
 6 credit committee?
 7 MS. BROWN: Object to form.
 8 A. I did not have roles in that, no.
 9 Q. But you participated in the meeting?
 10 A. I was at the meeting, again, to
 11 provide my knowledge on Coleman.
 12 Q. Anything else that you remember
 13 doing in that time frame?
 14 A. No.
 15 Q. Now, you had a daughter?
 16 A. Yes.
 17 Q. Your daughter was born when?
 18 A. March 25th.
 19 Q. Did you work up until she was born?
 20 A. Pretty much, yes.
 21 Q. So you were probably, I don't know
 22 what day of the week it was, but were you in
 23 the office on the 24th?
 24 A. No.
 25 Q. Were you there on the 23rd?

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1 A. I don't recall.
 2 Q. Okay. Then I think it's safe to
 3 assume after she was born, you weren't around
 4 for a while?
 5 A. That is correct. I took I believe
 6 twelve or fourteen weeks.
 7 Q. So you didn't come back until
 8 sometime in the summer?
 9 A. I came back the day Al Dunlap was
 10 fired.
 11 Q. June 15th.
 12 A. There you go.
 13 Q. So between sometime around the
 14 25th-ish of March until June 15th or
 15 thereabouts you weren't around?
 16 A. Correct.
 17 Q. And during that time frame did you
 18 get stuff at home? Did you do anything
 19 relating to Sunbeam?
 20 A. I did not.
 21 Q. So let's focus on the time period
 22 between the announcement and the 25th or so of
 23 March when you ceased working for the time
 24 being. Was there a team or group of people
 25 that was put together to work on this deal?

1 listed. Do you know what Mr. Foley did on the
 2 transaction?
 3 A. I don't think he was that involved,
 4 but I can't recall specifically.
 5 Q. Fair enough. If you turn to the
 6 beginning of this document, Page 3 of the fax,
 7 it describes a number of individuals at
 8 Sunbeam. It goes on for two pages. I would
 9 like you to tell me if you recall speaking
 10 with any of those individuals.
 11 A. No, I do not recall.
 12 Q. If you turn to Page 4 of the
 13 document, the first name listed there is Bob
 14 Gluck. Do you recognize Mr. Gluck to be the
 15 controller or senior accounting officer at
 16 Sunbeam?
 17 A. It's what's listed here. If this is
 18 correct, then yes.
 19 Q. Do you know if Mr. Gluck was on the
 20 Sunbeam call that you participated on?
 21 A. I can't recall.
 22 Q. And any of these other names, do you
 23 remember them being involved in that call?
 24 A. I really can't recall.
 25 Q. The next several pages are

1 MS. BROWN: Object to form.
 2 A. I would assume so.
 3 (Revised Working Group List for
 4 Sunbeam Corp. marked CPH Exhibit 277
 5 for identification, as of this date.)
 6 Q. Ms. Eltrich, I've given you what has
 7 been marked as Exhibit 277. And the subject
 8 of the memorandum is "Revised Working Group
 9 List for Sunbeam Corp." Do you see that?
 10 A. Um-hmm.
 11 Q. And you were listed as a recipient
 12 on this memorandum?
 13 A. Yes, I am.
 14 Q. And if you turn to Page 11 of the
 15 fax, it bears the Bates number Morgan Stanley
 16 Confidential 4683.
 17 A. Um-hmm.
 18 Q. There is a list of Morgan Stanley
 19 participants, including yourself; correct?
 20 A. Yes.
 21 Q. Do you recall if you received this
 22 working group list?
 23 A. I don't recall, no.
 24 Q. Mr. Conway and Mr. Dormer are listed
 25 there, who we've spoken about. Mr. Foley is

1 individuals from Morgan Stanley. And I'm
 2 going to ask you just to go through them.
 3 We'll go through it a page at a time, but I'm
 4 just going to ask you if you remember having
 5 any communications, conversations, phone
 6 calls, face to face, email, or otherwise with
 7 these individuals about the Sunbeam deal or
 8 about Coleman.
 9 The first page has Mr. Fiedorek,
 10 Mr. Strong, Mr. Savarie, Mr. Stynes. Do you
 11 remember them, working with them?
 12 A. I remember Bruce Fiedorek, I
 13 remember Bill Strong, but I don't recall any
 14 specific conversations on Sunbeam or Coleman.
 15 Q. Do you remember Mr. Fiedorek and
 16 Mr. Strong from the Sunbeam transaction or
 17 just from being at Morgan Stanley?
 18 A. Just from being at Morgan Stanley.
 19 Q. The next page identifies Mr. Kitts,
 20 and you've spoken about your conversation with
 21 Mr. Kitts.
 22 A. Yes.
 23 Q. Do you remember any other
 24 conversations with him?
 25 A. I don't.

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1 Q. We've spoken about Mr. Chang. There
 2 is Alexander Fuchs. Do you remember any
 3 conversations with him?
 4 A. No, I do not.
 5 Q. Or Mr. Yoo?
 6 A. No, I do not.
 7 Q. The next page identifies the client
 8 services group. Do you remember any
 9 conversations with them or communications of
 10 any kind with them about Sunbeam?
 11 A. No, I do not.
 12 Q. The next page identifies equity
 13 capital markets. Likewise, do you remember
 14 any conversations with them?
 15 A. No, I do not.
 16 Q. Do you know Ruth Porat?
 17 A. I know her through the firm, yes.
 18 Q. You don't remember her from the
 19 Sunbeam deal?
 20 A. No, I do not.
 21 Q. Likewise, Mr. Harris, do you know
 22 him?
 23 A. Actually, I don't recall him.
 24 Q. The next page identifies Mr. Whelan,
 25 and you've testified about him. Do you

1 Q. Likewise, Mr. Burchill or Mr. Seth?
 2 A. I don't recall them.
 3 Q. Next page we've spoken about. The
 4 next page, Page 12, is for a law firm Davis
 5 Polk & Wardell. Did you ever deal with
 6 lawyers on this deal?
 7 A. Not that I recall.
 8 Q. Two pages later there is a listing
 9 of even more lawyers from Skadden Arps. Did
 10 you have any dealings with them?
 11 A. Not that I recall.
 12 Q. Page 16 of the document refers to
 13 Coopers & Lybrand. Did you have any dealings
 14 with Coopers?
 15 A. Not that I recall.
 16 Q. Do you know what Coopers did on this
 17 transaction?
 18 A. No. I was not involved in that.
 19 Q. The next two pages, Ernst & Young,
 20 do you know what they did?
 21 A. I was not involved in that.
 22 Q. Ernst & Young were auditors for
 23 Coleman. On the conference call you were on
 24 about Coleman, do you know if the auditors
 25 were on the call?

1 remember any conversations with
 2 Mr. Kunreuther?
 3 A. No, I do not.
 4 Q. Turn to the next page, it identifies
 5 leveraged finance. And do you understand them
 6 to be the organization within Morgan Stanley
 7 that was making the loan?
 8 A. Correct.
 9 Q. Did you have any dealings with any
 10 of these individuals?
 11 A. I dealt frequently with Rom Smith
 12 and Michael Hart.
 13 Q. Did you have dealings with them on
 14 this deal?
 15 A. I'm sure at some point we had
 16 conversations on it.
 17 Q. You said you frequently dealt with
 18 Mr. Smith and Mr. Hart. What about?
 19 A. Because a lot of companies that have
 20 high yield also have bank debt, so we would
 21 compare notes on the market, etc.
 22 Q. Do you remember comparing notes with
 23 either of those individuals on Coleman or
 24 Sunbeam?
 25 A. No, I do not.

1 A. I don't know.
 2 Q. We're going to skip a couple of
 3 pages and ask you to turn to Page 22 of the
 4 document, and you see the listing for Arthur
 5 Andersen?
 6 A. Yes.
 7 Q. And it continues for a couple of
 8 pages. It lists Mr. Harlow, Mr. Bornstein,
 9 and then some other individuals?
 10 A. Yes.
 11 Q. Did you have any conversations with
 12 those gentlemen?
 13 A. Not that I recall.
 14 Q. Do you remember if there were
 15 accountants from Arthur Andersen on the due
 16 diligence calls or the conference calls that
 17 you participated in?
 18 A. I can't recall.
 19 Q. After the listing of Arthur
 20 Andersen, there is a listing for Bank America
 21 followed by First Union. Do you know what
 22 roles those entities played?
 23 A. I believe they were also
 24 participating in the bridge loan.
 25 Q. Did you have any conversations with

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1 them, with individuals from those companies?
 2 A. Not until after the deal fell apart.
 3 It was after I came back from maternity leave.
 4 Q. And when you refer to the deal
 5 falling apart, what do you mean?
 6 A. Meaning Sunbeam preannouncing that
 7 they were missing numbers, and we were not
 8 able to syndicate the bridge loan.
 9 Q. Were you involved in the efforts to
 10 syndicate?
 11 A. No, I was not.
 12 Q. You indicated that you were on a
 13 number of conference calls. Do you understand
 14 those calls to be part of the due diligence
 15 process?
 16 MS. BROWN: Object to form.
 17 A. To my recollection, I believe so.
 18 Q. What does the term "due diligence"
 19 mean to you?
 20 A. From a research perspective, due
 21 diligence for the available information that
 22 we get is to learn as much as you can and to
 23 identify the risk accordingly so that you can
 24 convey them to your investors.
 25 Q. Do you remember the purpose for your

1 instructional meetings where people told you
 2 how to do this kind of investigation or
 3 research?
 4 MS. BROWN: Object to form.
 5 A. The primary source of learning was
 6 through, as a junior, sitting with the senior
 7 analysts and seeing what they did, and then
 8 within our research group, we tended to invoke
 9 best practices of here's a mistake I made, you
 10 don't make it. And one of my senior analysts
 11 that I worked with kept a due diligence
 12 checklist of questions for different
 13 industries that you should always ask. But
 14 it's not something that you learn in a day.
 15 It's primarily done through experience.
 16 Q. You referred to best practices. How
 17 are those communicated to other people within
 18 your group or within Morgan Stanley?
 19 A. Through research meetings.
 20 Q. Were they communicated in writing or
 21 just --
 22 A. I don't recall.
 23 Q. Do you ever remember getting a memo
 24 or some other --
 25 A. I don't recall. I don't recall.

1 involvement in these various due diligence
 2 calls?
 3 MS. BROWN: Objection. Asked and
 4 answered.
 5 A. It was more to relate on how they --
 6 it was more to provide knowledge on Coleman
 7 than anything else.
 8 Q. When you participated in the
 9 conference calls about Signature Brands and
 10 First Alert, did you say anything?
 11 A. To my recollection, no, I did not.
 12 Q. I take it nobody asked you anything?
 13 A. To my recollection, no.
 14 Q. Do you remember anything that was
 15 said in those conference calls?
 16 A. I really don't recall.
 17 Q. At Morgan Stanley or at Advest where
 18 you had worked before, had you received any
 19 training in how to do the investigation into
 20 the risks that you just described?
 21 MS. BROWN: Object to form.
 22 A. Describe what you mean by
 23 "training."
 24 Q. Well, had there been any within the
 25 firm seminars or written materials or

1 Q. -- some other writing describing
 2 best practices?
 3 A. I don't recall.
 4 Q. You indicated that a colleague of
 5 yours had a due diligence checklist?
 6 A. He did, for example, for financial
 7 institutions, because I subbed for him when he
 8 was in Hong Kong for the summer, and he had
 9 kept a checklist.
 10 Q. Who was that?
 11 A. Emil Costa.
 12 Q. Did you keep a copy of that after
 13 you stopped subbing for him?
 14 A. I did at Morgan Stanley. I was not
 15 able to take my files, obviously, to Goldman
 16 Sachs.
 17 Q. Of course. So while you were
 18 working at Morgan Stanley, you had this
 19 checklist of the sorts of things to look for?
 20 A. For financial --
 21 MS. BROWN: Object to form.
 22 Q. For the sorts of things to look
 23 into?
 24 MS. BROWN: Object to form.
 25 A. For financial institutions.

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1 Q. Did you use that checklist when
 2 looking at companies that were not financial
 3 institutions?
 4 A. Maybe a couple. I mean to the best
 5 of my recollection, maybe a couple of the
 6 bullet points. But every company is
 7 different, and the amounts of information you
 8 get for each company is different. So there
 9 is no cookie-cutter way of looking at due
 10 diligence.
 11 Q. I understand. I understand your
 12 testimony. Aside from what you've just
 13 described, do you remember there being any
 14 documents or manuals on how to do due
 15 diligence?
 16 A. Within research, not that I recall.
 17 Q. Do you recall them being elsewhere
 18 in Morgan Stanley?
 19 A. I would not be aware.
 20 Q. Now, you participated in a number of
 21 conference calls. Aside from the conference
 22 calls, were you ever told what else Morgan
 23 Stanley had done to investigate Sunbeam,
 24 Coleman, First Alert, or Signature Brands?
 25 A. Not that I recall.

1 A. To my recollection, yes.
 2 Q. Do you remember anything that was
 3 said in that call about First Alert?
 4 A. No, I really don't remember.
 5 Q. Signature Brands, that was another
 6 company that Sunbeam was acquiring?
 7 A. Yes.
 8 Q. And you participated in the call
 9 about Signature Brands?
 10 A. To my recollection, yes.
 11 Q. What do you remember about the call?
 12 A. I don't remember anything.
 13 Q. Again, did you dial into that call,
 14 or were you in a room with others?
 15 A. To my recollection, I dialed in.
 16 Q. Do you know anyone else who was on
 17 the call?
 18 A. I don't recall.
 19 Q. Do you remember anything that was
 20 said?
 21 A. No, I don't. I should clarify the
 22 only person I know who would have been on the
 23 call with me is Chris Whelan.
 24 Q. Okay. Do you remember Mr. Whelan
 25 being on the calls or --

1 Q. So your knowledge of the
 2 investigation that was done is limited to
 3 those calls?
 4 MS. BROWN: Object to form and
 5 characterization.
 6 A. I couldn't recall specifically, but
 7 yes, I would say to the best of my
 8 recollection, my knowledge was confined to the
 9 calls.
 10 Q. I would like to deal with each of
 11 the calls individually. There was a call
 12 about First Alert?
 13 A. I believe so.
 14 Q. Do you remember anything about it?
 15 A. I really don't.
 16 Q. Do you know who was on it?
 17 A. No, I don't.
 18 Q. Do you know how long it lasted?
 19 A. No, I don't.
 20 Q. Do you remember participating on
 21 your own phone, or were you in a room with
 22 others speaking on the speaker phone?
 23 A. I believe I was on my own phone.
 24 Q. Was it a type of thing where you
 25 would dial in to a call?

1 A. I don't remember specifically, but I
 2 know he would have been on the calls.
 3 Q. The call about Sunbeam, do you
 4 remember when that took place in relation to
 5 the announcement or the closing?
 6 A. No, I do not.
 7 Q. Do you remember who was on the call?
 8 A. No, I do not.
 9 Q. Were there people other than Morgan
 10 Stanley people on the call?
 11 A. I don't recall.
 12 Q. Do you remember what was said?
 13 A. No, I don't.
 14 Q. Do you recall if you said anything?
 15 A. I don't recall.
 16 Q. Now, for these three calls, the
 17 First Alert, Signature Brands, and Sunbeam
 18 calls, did you take notes?
 19 A. I don't recall.
 20 Q. Would it have been your custom or
 21 practice to take notes?
 22 A. If it was a bond underwriting, yes.
 23 But as this wasn't a bond underwriting and I
 24 wouldn't have to convey the facts to
 25 investors, not necessarily.

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1 Q. Do you remember if there was an
 2 agenda for the calls?
 3 A. I don't recall specifically.
 4 MS. BROWN: Let's just take a ten or
 5 fifteen-minute break and I'll just grab a
 6 snack and we'll start up again.
 7 MR. BRODY: That's fine with me if
 8 it's okay --
 9 THE WITNESS: Yes.
 10 MR. BRODY: Okay. We're off the
 11 record.
 12 VIDEOGRAPHER: The time is 12:01,
 13 and we're off the record.
 14 (Recess)
 15 VIDEOGRAPHER: The time on the
 16 monitor is 12:23, and we are back on the
 17 record.
 18 Q. Ms. Eltrich, when we broke we were
 19 talking about the due diligence calls and what
 20 you remembered from them.
 21 A. Yes.
 22 Q. And I think we talked about
 23 Signature Brands, First Alert, and Sunbeam.
 24 Now I would like to talk about the call about
 25 Coleman.

1 A. I couldn't specifically recall.
 2 Q. If you would look at the fax tag
 3 line at the top, it indicates that it was sent
 4 from Morgan Stanley 212-761-0687 to 0590. Do
 5 you recognize 0590 to be the last digits of
 6 your fax number?
 7 A. I can't remember.
 8 Q. Pull out Exhibit 277. It's the
 9 working group list. It would be that
 10 document. And go to Page 11 of the document.
 11 It lists your fax number. That's your fax
 12 number, isn't it?
 13 A. If this document is correct, yes.
 14 Q. You don't have any reason to doubt
 15 it, do you?
 16 A. No.
 17 Q. If you turn to the second page of
 18 the document that's been marked as
 19 Exhibit 249, it's a due diligence review
 20 agenda for Coleman Company. Do you ever
 21 remember looking at that or seeing that?
 22 A. I don't recall.
 23 Q. Do you know if those topics were
 24 discussed in the conference call that you were
 25 in?

1 A. Okay.
 2 Q. You were on a call in which Coleman
 3 was discussed as well?
 4 A. I believe so, yes.
 5 Q. Do you remember who was on the call?
 6 A. No, I do not.
 7 Q. Do you remember what was discussed?
 8 A. Not specifically, no.
 9 Q. Were you asked any questions on the
 10 call?
 11 A. Not that I recall.
 12 Q. Do you remember anything that you
 13 said on the call?
 14 A. No, I do not.
 15 Q. Anything said by others?
 16 A. Not that I recall, no.
 17 Q. Let me show you what previously has
 18 been marked as I believe Exhibit 249 in a
 19 prior deposition. Do you recognize that as a
 20 fax sent by Mr. Whelan to yourself?
 21 A. I believe so, yes.
 22 Q. And it's sent on March 5th, 1998?
 23 A. It appears to be, yes.
 24 Q. Do you believe that you received
 25 this fax on or about March 5th, 1998?

1 A. I don't recall.
 2 Q. Does this refresh your recollection
 3 at all about what was said?
 4 A. No. It really doesn't.
 5 Q. Do you remember individuals from
 6 outside of the Morgan Stanley companies that
 7 were involved in the Coleman due diligence
 8 call?
 9 A. I don't recall.
 10 Q. Do you know if there were
 11 accountants or Coleman people?
 12 A. I don't recall.
 13 Q. Do you remember taking notes of the
 14 call?
 15 A. I don't recall.
 16 Q. Had you taken notes, are those the
 17 sorts of things you would have kept?
 18 A. On my computer. If I had taken
 19 notes, there would be notes on my computer.
 20 Q. Was it your practice at the time
 21 when you took notes to take them on the
 22 computer?
 23 A. Yes, it was.
 24 Q. What happened to your computer when
 25 you left?

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1 A. I don't know.
 2 Q. The notes that you took on the
 3 computer, were they backed up to a network, or
 4 were they just kept on your computer?
 5 A. I don't recall. You basically had
 6 both drives, a network drive and your own
 7 drive, and I don't know which one I used.
 8 Q. Did you have a custom or a practice
 9 at the time?
 10 A. No, I don't recall.
 11 Q. Do you remember anything about what
 12 was said or not said on this Coleman due
 13 diligence call?
 14 A. No, I don't recall.
 15 Q. Did you participate in any efforts
 16 by Morgan Stanley to look at Sunbeam's
 17 reserves?
 18 A. No, I did not.
 19 Q. To contact any of Sunbeam's
 20 customers?
 21 A. Not to my recollection.
 22 Q. To investigate Sunbeam's current
 23 sales or budgets?
 24 A. Not to my recollection.
 25 Q. To look at how sales were made or

1 term loan was worth, our bridge loan was
 2 worth. It was putting that in context.
 3 Q. In connection with your
 4 investigation of Coleman, either to do your
 5 published research reports or to assist
 6 investment banking in doing due diligence,
 7 prior to the closing of the deal do you know
 8 if people from Morgan Stanley looked at
 9 Coleman's level of sales?
 10 A. I wasn't involved in that.
 11 Q. Or how Coleman made its sales to its
 12 customers?
 13 A. I was not involved in that.
 14 Q. Any conversations with Coleman's
 15 senior or junior management?
 16 A. With regard to their sales?
 17 Q. With regard to anything, aside from
 18 your conversations with Mr. Shiffman.
 19 A. That's all I'm aware of.
 20 Q. Do you remember any communications
 21 with Coleman's accountants?
 22 MS. BROWN: Asked and answered.
 23 Objection.
 24 A. I was not involved.
 25 Q. And did you ever visit any of

1 revenue was recognized?
 2 A. Not to my recollection.
 3 Q. Did you participate in any
 4 conference calls or communications of any kind
 5 with people at Sunbeam other than senior
 6 management?
 7 MS. BROWN: Object to form.
 8 A. Not that I recall.
 9 Q. Did you have any conversations or
 10 communications that you know of with Sunbeam's
 11 inside accountants or auditors?
 12 A. Not that I recall.
 13 Q. Did you personally -- I assume you
 14 weren't traveling much at the time. Did you
 15 ever visit Sunbeam's offices?
 16 A. Not in the month of March, no.
 17 Q. Did you visit thereafter?
 18 A. I can't recall if I went to the
 19 offices. We did tour a couple of plants
 20 after.
 21 Q. After June?
 22 A. After June, yes.
 23 Q. Do you know what purpose you were
 24 doing that for?
 25 A. It was in terms of seeing what our

1 Coleman's offices or facilities?
 2 A. I don't recall so, no.
 3 Q. I'm going to show you a series of
 4 documents that have been marked in other
 5 depositions. And on each of them my first
 6 question is going to be have you ever seen
 7 this before.
 8 A. Okay.
 9 Q. And then we'll see where we go from
 10 there. The first document I'm showing you has
 11 previously been marked as Exhibit 28. Have
 12 you ever seen this before?
 13 A. I don't recall.
 14 Q. I take it this is not a document you
 15 prepared?
 16 A. I don't think so, no.
 17 Q. I'm next showing you what has been
 18 marked as Exhibit 27. Have you ever seen this
 19 before?
 20 A. I don't think so, no.
 21 Q. There is a reference to fast track
 22 due diligence. Do you remember anyone ever
 23 referring to fast track due diligence?
 24 A. Not to my recollection.
 25 Q. You don't know what that means?

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1 A. I don't think so.
 2 Q. I show you what has previously been
 3 marked as Exhibit 31. Have you ever seen that
 4 before?
 5 A. I don't think so, no.
 6 Q. It gives information for calling in
 7 to various conference calls and indicates that
 8 there will be a conference call with the
 9 Coleman auditors at 11:30, the Sunbeam
 10 auditors at 12, the Signature Brand auditors
 11 at 12:30, and the First Alert auditors at one.
 12 Does that refresh your recollection about
 13 whether you participated in any conference
 14 calls with accountants?
 15 A. No, it does not.
 16 Q. That doesn't ring a bell?
 17 A. No.
 18 Q. I'm showing you what has previously
 19 been marked as Exhibit 128. And it says,
 20 "Attached are the agendas for the due
 21 diligence conference calls with First Alert
 22 and Signature Brands." And I believe you
 23 testified that you were on certain calls with
 24 or about First Alert and Signature Brands.
 25 I'm asking first if you've ever seen this

1 as Exhibit 33. It refers to a bring-down due
 2 diligence call. Are you familiar with the
 3 concept of bring-down due diligence?
 4 A. I am not, no.
 5 Q. Are you familiar with the idea that
 6 sometimes shortly before a closing, the
 7 parties will have a follow-up due diligence
 8 call to see if anything has changed since the
 9 last time they talked?
 10 A. I'm aware of the concept, but I'm
 11 not involved in that side of the business.
 12 Q. Do you remember if one of these
 13 calls that you participated in was a
 14 bring-down call, served that purpose?
 15 A. Not to my awareness.
 16 Q. Document 33 that I've shown you,
 17 have you ever seen this before?
 18 A. This, no, I have not.
 19 Q. I've got one last one in this
 20 series, Ms. Eltrich. It's labeled Exhibit 34.
 21 Have you ever seen that document before?
 22 A. I don't recall so, no.
 23 Q. Do any of those documents refresh
 24 your recollection about what was said in the
 25 due diligence calls?

1 before.
 2 A. I don't recall.
 3 Q. And second, do the agendas attached
 4 to this document refresh your recollection
 5 about what was discussed?
 6 A. No, it does not.
 7 Q. Okay. You can put that aside. I'm
 8 now showing you what has been marked
 9 previously as Exhibit 32. And it's entitled
 10 "Accounting Due Diligence." And it's topics
 11 one through 18. Have you ever seen that
 12 before?
 13 A. Not to my recollection.
 14 Q. If you look at item eight it says,
 15 "How aggressive is the company in its
 16 accounting policies?" Do you remember any
 17 conversations with Coleman or Sunbeam about
 18 that topic?
 19 A. No, I do not.
 20 Q. And item 16, "Company is
 21 conservative and leans to full disclosure?"
 22 Do you remember any conversations with either
 23 company about that?
 24 A. I do not recall any, no.
 25 Q. I'm showing you what has been marked

1 A. No, it does not.
 2 Q. In connection with the calls that
 3 you were on, did you learn at any time prior
 4 to the closing on March 30th, 1998, that
 5 Sunbeam had accelerated sales from 1998 into
 6 1997?
 7 MS. BROWN: Object to form.
 8 A. I don't recall so.
 9 Q. Had you heard any discussion about
 10 that?
 11 A. I don't recall any discussions on
 12 that.
 13 Q. When you came back to the company in
 14 June, are those things that you looked into or
 15 were made aware of?
 16 MS. BROWN: Object to form.
 17 A. I believe so, yes.
 18 Q. Prior to the closing on March 30th,
 19 1998, were you aware that Sunbeam had used
 20 bill and hold sales techniques to increase its
 21 revenue in 1997?
 22 MS. BROWN: Object to form.
 23 A. To my recollection, I was not aware.
 24 Q. Was that a topic that you recall
 25 being discussed at all?

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1 A. I do not recall that being
 2 discussed?
 3 Q. In any of the work that you did in
 4 connection with the deal, do you remember
 5 anyone looking at or asking about Sunbeam's
 6 sales in the first quarter of 1998?
 7 A. Yes.
 8 Q. What do you recall being discussed
 9 about Sunbeam's sales in the first quarter of
 10 '98?
 11 A. I can't tell you the event, or I
 12 should say when it happened, but my
 13 recollection, which is vague, is that it came
 14 to our attention that Sunbeam would fall short
 15 of analyst estimates. And so from our
 16 perspective in terms of underwriting the
 17 bridge loan, the banker, who I believe at the
 18 time the person called upon was Bill Strong,
 19 was asked to validate his client and stand up
 20 for his client and say should Morgan Stanley
 21 underwrite this loan on behalf of your client.
 22 Q. And what happened?
 23 A. Again, it's my recollection Bill
 24 Strong did verify his client and did believe
 25 that the credit still stood, that the company

1 I validate this?
 2 MS. BROWN: Object to form. It's a
 3 mischaracterization.
 4 MR. BRODY: Let me withdraw the
 5 question.
 6 Q. Were you there when Mr. Strong
 7 responded to the concern that you just
 8 expressed?
 9 A. To my memory, I was, yes.
 10 Q. Does that suggest to you that it was
 11 the commitment committee meeting?
 12 A. If I had to -- if I had to make a
 13 guess, I would say yes, it was commitment
 14 committee for the bridge loan.
 15 Q. Right. I'm not asking you to guess.
 16 You don't know one way or the other?
 17 A. I don't know one way or another.
 18 Q. Do you know when the meeting was
 19 held?
 20 A. No, I do not.
 21 Q. Obviously before March 25th?
 22 A. It would be, yes.
 23 Q. Because that's when --
 24 A. Correct.
 25 Q. You were gone by then?

1 was still strong.
 2 Q. I believe you said that it came to
 3 Morgan Stanley's attention that Sunbeam would
 4 fall short of analysts' projections. Is that
 5 what you said?
 6 A. I don't remember exactly the context
 7 it was put in, but I know obviously after the
 8 fact that that was the concern.
 9 Q. How did it come to your attention?
 10 How did it come to Morgan Stanley's attention?
 11 A. I don't know.
 12 Q. Do you remember this being discussed
 13 in a particular context?
 14 A. That's -- I can't remember
 15 specifically what context. I remember a
 16 meeting on it, but I can't tell you if it was
 17 commitment committee or if it was a sidebar
 18 meeting.
 19 Q. What do you mean by a sidebar
 20 meeting?
 21 A. Meaning a non-formal meeting.
 22 Q. Okay. Who do you remember speaking
 23 in the meeting?
 24 A. I can't recall specifically.
 25 Q. Were you there when Mr. Strong said,

1 A. Correct.
 2 Q. On maternity leave. You said the
 3 fact that Sunbeam would fall short of the
 4 analysts' sales projections came to Morgan
 5 Stanley's attention in some way. Do you
 6 remember who it was who said that at the
 7 meeting?
 8 A. No, I do not.
 9 Q. In response to that, was Mr. Strong
 10 asked questions?
 11 A. To my memory, yes, he was.
 12 Q. Who did the asking?
 13 A. I don't recall.
 14 Q. Do you remember in words or
 15 substance what they asked?
 16 A. I don't recall specifically.
 17 Q. Generally, do you remember what was
 18 discussed or what was asked of him?
 19 A. The only specific thing I remember
 20 was, you know, can you vouch for your client's
 21 integrity. And after six years, that's what
 22 stood out most as the crux of what they cared
 23 about.
 24 Q. What do you mean by "integrity"?
 25 A. In terms of, you know, it happens.

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1 Companies miss numbers. And that's what they
 2 wanted to say, is this a one-time blip, or is
 3 this a trend we need to be aware of?
 4 Q. And this question was put to
 5 Mr. Strong?
 6 A. To my memory, yes.
 7 Q. Do you remember what Mr. Strong said
 8 in response?
 9 A. My memory is that he stood by his
 10 client.
 11 Q. Do you remember in words or
 12 substance what he said to communicate that?
 13 A. No, I do not.
 14 Q. Do you remember any follow-up asked
 15 of Mr. Strong, why do you stand by your
 16 client, what is your basis, that sort of
 17 thing?
 18 A. I would not have been involved in
 19 those conversations.
 20 Q. In the meeting that you were at do
 21 you remember any follow-up?
 22 A. I can't recall specifically.
 23 Q. Do you remember anything else being
 24 said in that meeting about the fact brought to
 25 Morgan Stanley's attention that Sunbeam would

1 Q. Okay. Well, that's a better answer
 2 than what I asked. I was focusing on that
 3 meeting. Thank you.
 4 Aside from that conversation, do you
 5 remember any other conversations about
 6 Sunbeam's first quarter performance prior to
 7 the closing?
 8 A. None that I recall.
 9 Q. Do you remember any conversations or
 10 communications about whether Sunbeam's
 11 announced turnaround was real?
 12 A. None that I recall.
 13 Q. Do you remember any conversations or
 14 communications, written or oral, about whether
 15 Sunbeam's announced turnaround was
 16 sustainable?
 17 A. None that I recall.
 18 Q. Do you remember any conversations
 19 within Morgan Stanley prior to the closing
 20 about Sunbeam's earnings per share from the
 21 first quarter of '98 or earnings more
 22 generally?
 23 A. None that I recall.
 24 Q. Now, we've spoken about your
 25 conversations with Mr. Shiffman at Coleman.

1 fall short of its numbers?
 2 MS. BROWN: I'm going to object to
 3 the extent it mischaracterizes. Go
 4 ahead.
 5 A. I don't recall anything else.
 6 Q. Okay. Do you remember anything
 7 discussed or communicated orally or in writing
 8 after that meeting about the same topic?
 9 A. I don't recall.
 10 Q. Did you take notes of this leveraged
 11 finance meeting?
 12 A. No, I would not have taken notes.
 13 Q. You testified earlier that sometimes
 14 you took notes on your computer. If you
 15 didn't have your computer with you, did you
 16 ever take notes on paper?
 17 MS. BROWN: Object to form.
 18 A. If I'm with a company, yes, I'll
 19 take notes.
 20 Q. Meaning if you're with a company
 21 that you're covering?
 22 A. Correct.
 23 Q. But I mean at a Morgan Stanley
 24 meeting, was it your practice to take notes?
 25 A. Not at a commitment committee.

1 Did you ever have any conversations with
 2 anyone else at Coleman other than perhaps
 3 participating in a conference call where you
 4 listened to Mr. Levin?
 5 MS. BROWN: Objection. Asked and
 6 answered.
 7 A. What time frame are you talking
 8 about?
 9 Q. Prior to the closing.
 10 A. Only conference calls.
 11 Q. And broadening the question to other
 12 individuals within MacAndrews & Forbes,
 13 Mr. Perelman, Mr. Guinness, some of those
 14 individuals, did you ever have any
 15 conversations with any MacAndrews & Forbes
 16 people?
 17 A. I don't recall so, no.
 18 Q. Did you have conversations with
 19 Mr. Levin and others at MacAndrews & Forbes at
 20 Coleman after you came back in June?
 21 A. Yes, I did.
 22 Q. About what topics?
 23 A. About Sunbeam and Coleman and --
 24 because Mr. Levin had taken over the company.
 25 Q. Okay. We'll get to that in a

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1 moment. Ms. Eltrich, I'm showing you a
 2 document that's been previously marked as
 3 Exhibit 238, and I'm going to ask you if
 4 you've seen it before. Now, first let me do
 5 the easy question. There is some handwriting
 6 on this document. Do you recognize it?
 7 A. No, I do not.
 8 Q. Okay. Then ignoring the
 9 handwriting, is this a document you recall
 10 seeing?
 11 A. I do not recall.
 12 Q. Return, please, to page ending with
 13 32, CP 022332. There are two sets of numbers
 14 on here. Which number are you using?
 15 A. I'm sorry. I was using this one.
 16 Q. Okay. Well, using that one, it's
 17 CPH 1412567.
 18 A. Okay.
 19 Q. There is some handwriting on there.
 20 You don't recognize that; is that correct?
 21 A. I do not recognize that.
 22 Q. Well, then, ignoring the
 23 handwriting, do you recall ever seeing this
 24 page before?
 25 A. I don't recall.

1 A. I don't remember the name.
 2 MS. BROWN: Sayt (phonetic).
 3 MR. BRODY: It's pronounced Sayt?
 4 Thank you.
 5 Q. The fax number that's shown there is
 6 the same fax number we previously saw as being
 7 your number. Do you have any reason to doubt
 8 that you received this document?
 9 A. No, I have no reason.
 10 Q. Having seen this document now having
 11 been sent to you, do you have any recollection
 12 of getting it or doing anything with it?
 13 A. No, I don't.
 14 Q. If you turn to the third page of the
 15 document, the Bates number is Morgan Stanley
 16 Confidential 100. There is some handwriting.
 17 Do you recognize that?
 18 A. No, I do not recognize it.
 19 Q. If you turn to page Morgan Stanley
 20 108, there is some different handwriting. Do
 21 you recognize that?
 22 A. It looks like my handwriting.
 23 Q. Can you read into the record what
 24 those things say?
 25 A. "Primarily private label. Three to

1 Q. Do you recall any conversations
 2 about Sunbeam's long-range strategic plan?
 3 A. I don't recall.
 4 Q. Were you ever at meetings where
 5 Sunbeam's long-range strategic plan was
 6 presented or discussed?
 7 A. I don't recall specifically.
 8 Q. Let me show you one additional
 9 document.
 10 (Document Bates stamped Morgan
 11 Stanley Confidential 36700-36720 marked
 12 CPH Exhibit 278 for identification, as
 13 of this date.)
 14 Q. Ms. Eltrich, I'm showing you what
 15 has been marked as Exhibit 278. There is a
 16 cover page. Then there is a copy of the
 17 long-range strategic plan that is similar but
 18 somewhat different than the one I just showed
 19 you. And the cover page reflects it was faxed
 20 from Mr. Seth to you. Do you recognize the
 21 cover page as Mr. Seth's handwriting?
 22 A. I couldn't tell you. I couldn't
 23 answer.
 24 Q. Do you remember doing any work with
 25 Mr. Seth on this deal?

1 400 million blankets. Five to 600 million
 2 carpets. Do not have leading market share in
 3 Europe or Asia."
 4 Q. And having seen that, does that
 5 refresh your recollection that you had
 6 conversations about this?
 7 A. It does not.
 8 Q. Does this refresh your recollection
 9 that you were at a meeting where this was
 10 presented?
 11 A. No, it does not. I may have been on
 12 a phone call for it, but I don't think I was
 13 in any meetings.
 14 Q. If you turn to page Morgan Stanley
 15 Confidential 114, there is a description of
 16 Sunbeam's long-range strategic plan earnings
 17 per share numbers '98 through 2000. Do you
 18 recall having seen those numbers prior to the
 19 closing?
 20 A. No, I do not recall.
 21 Q. Do you recall doing anything with
 22 them?
 23 A. No, I do not recall anything.
 24 Q. Turn to the last page of this
 25 document. There is a description of Sunbeam's

018499

1 earnings, net sales, gross margin, operating
 2 profit, earnings, then earnings per share,
 3 actual and plan for 1998, and this is a first
 4 quarter statement. Do you remember any
 5 discussions about Morgan Stanley's view of
 6 Sunbeam's earnings for the first quarter?
 7 A. No, I do not.
 8 Q. There was a 32 cent per share number
 9 for 1998. Do you remember any discussions
 10 about that number?
 11 A. I do not recall, no.
 12 Q. You can put that document aside. In
 13 connection with the work that was done by
 14 Morgan Stanley, Morgan Stanley did a merger
 15 consequences analysis. Did you have anything
 16 to do with the merger consequences analysis?
 17 MS. BROWN: Object to form.
 18 A. I don't recall we did, I did, no.
 19 Q. Do you remember ever seeing any
 20 documents that showed whether this merger
 21 would be accretive or dilutive of Sunbeam's
 22 financial performance?
 23 A. I don't recall being part of any of
 24 that.
 25 Q. Do you remember being shown copies

1 generally discussed?
 2 A. Based on some of the sheets that
 3 you've shown me, I believe it was probably
 4 discussed.
 5 Q. Well, aside from what you now see in
 6 the papers, do you remember participating or
 7 being involved in any discussions in which
 8 synergies numbers were raised?
 9 A. I don't recall any.
 10 Q. And just so we're talking about the
 11 same thing, can you just tell us what your
 12 understanding is of the term "synergy" as used
 13 in a merger consequence?
 14 A. Cost savings.
 15 Q. So it would be a savings to the
 16 combined company by combining the two
 17 companies?
 18 A. Correct.
 19 Q. And you didn't perform any analyses
 20 of whether there would be savings?
 21 A. I don't recall doing any, no.
 22 Q. And you don't remember discussions
 23 with others about whether there would be?
 24 A. I don't remember any, no.
 25 Q. Now, the transaction, aside from the

1 of a merger model or an estimate of what the
 2 merger would do?
 3 A. I don't recall.
 4 Q. Ms. Eltrich, I've given you what has
 5 been marked as Exhibit 61. And given your
 6 prior testimony, this one may go quickly.
 7 Have you ever seen this before?
 8 A. Not that I recall.
 9 Q. If you turn to the first page
 10 containing numbers, the second page of the
 11 document, there is a form of financial
 12 analysis that has a pro forma income
 13 statement. Prior to the closing did you see
 14 any pro forma income statements for the
 15 combined company?
 16 A. I can't recall specifically.
 17 Q. Why don't we put this one aside,
 18 although we may come back to this. Did you
 19 participate in any discussions that you recall
 20 in which anyone discussed whether the deal,
 21 the combination of Sunbeam and Coleman, would
 22 produce synergies?
 23 A. I cannot recall any specific
 24 conversations.
 25 Q. Do you remember that topic being

1 merger, also involved a financing piece that
 2 Morgan Stanley was involved in?
 3 A. Yes.
 4 Q. And you've testified about what you
 5 referred to as the bridge loan?
 6 A. Yes. Actually, it wasn't a bridge
 7 loan. It was a term loan.
 8 Q. Okay. And do you remember the
 9 dollar value of that loan?
 10 A. I remember it was over 600 million.
 11 Q. Do you understand that to be Morgan
 12 Stanley's piece or the whole loan?
 13 A. The whole loan.
 14 Q. And then there were also the
 15 convertible debentures?
 16 A. Yes.
 17 Q. And I believe your testimony is that
 18 you were not involved in the convertible
 19 debentures?
 20 A. That is correct.
 21 Q. And so focusing now on the term
 22 loan, what was the nature of your involvement
 23 in that loan?
 24 MS. BROWN: Object to form.
 25 A. It was very limited. It really was

018506

1 only, again, with respect to Coleman.
 2 Q. The loan was ultimately approved by
 3 a committee at Morgan Stanley?
 4 A. To my recollection, yes.
 5 Q. And as you understand the procedures
 6 at Morgan Stanley, a loan of this type would
 7 have to be approved by a committee?
 8 A. To my recollection, yes.
 9 Q. And also as you understand the way
 10 things worked at Morgan Stanley, would there
 11 be a collection of materials presented to the
 12 committee to assist it in deciding whether to
 13 approve the loan?
 14 A. To my recollection, yes.
 15 Q. Did you have anything to do, that
 16 you recall, in preparing those materials?
 17 A. To my recollection, no, I did not.
 18 Q. The committee that approved the
 19 transaction, was that the leveraged finance
 20 commitment committee?
 21 A. I can't recall specifically.
 22 Q. And I believe you testified that you
 23 attended a meeting at which the loan was
 24 discussed, and it may have been the commitment
 25 committee meeting?

1 Q. What do you recognize it as?
 2 A. As a commitment committee memo.
 3 Q. And what is a commitment committee
 4 memo?
 5 A. It is what you referred to earlier
 6 as materials submitted to a commitment
 7 committee to aid them in their investment
 8 decision.
 9 Q. And this one relates to the
 10 investment decision for Sunbeam?
 11 A. It appears to, yes.
 12 Q. The first page is from Mr. R.B.
 13 Smith. Is that Brom Smith?
 14 A. I believe so, yes.
 15 Q. And it identifies the fact that
 16 there is going to be a commitment meeting on
 17 March 20th at 7:30 in the morning?
 18 A. Yes.
 19 Q. Having seen that, does that refresh
 20 your recollection whether you, in fact, were
 21 at that meeting?
 22 A. It doesn't.
 23 Q. Do you have a calendar or some
 24 document where you would have written down
 25 whether you were there or not?

1 A. That is correct.
 2 Q. Let me show you what has previously
 3 been marked --
 4 MR. BRODY: Can we go off the record
 5 for a second.
 6 VIDEOGRAPHER: The time is 12:54,
 7 and we are off the record.
 8 (Discussion off the record)
 9 VIDEOGRAPHER: The time is 12:55.
 10 We're back on the record.
 11 (Commitment Committee memo marked
 12 CPH Exhibit 279 for identification, as of
 13 this date.)
 14 Q. Ms. Eltrich, I'm giving you what has
 15 been marked today as Exhibit 279, and I will
 16 state for the record I thought I had brought
 17 the marked copy. This document has been
 18 marked in another deposition bearing a
 19 different number.
 20 A. Okay.
 21 Q. That's something for the lawyers to
 22 straighten out at some later point, but I'll
 23 just state that for the record. Do you
 24 recognize Exhibit 279?
 25 A. I vaguely recognize it.

1 A. Morgan Stanley would have kept
 2 record, obviously, but no, I don't necessarily
 3 mark it -- now I do, but back then, no, I did
 4 not have electronic measurements to know where
 5 I was.
 6 Q. You said Morgan Stanley would have
 7 kept track. Was there some record of who
 8 attended these meetings?
 9 A. No. They would have kept track if I
 10 was in the office or not. And if I was in the
 11 office, most likely, yes, I would have
 12 attended it.
 13 Q. I understand. Towards the bottom
 14 there is a distribution of a variety of
 15 people. Do you recognize who all of those
 16 people are?
 17 A. Not all of them.
 18 Q. I'm going to go through these names
 19 and ask you first, if you know the individual,
 20 and then, second, if you recall if they were
 21 at the meeting that you remember participating
 22 in.
 23 A. Um-hmm.
 24 Q. Mr. Sipprelle?
 25 A. I know him. I believe he was at the

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1 meeting.
 2 Q. And that was the meeting at which
 3 the loan was discussed?
 4 A. I can't confirm that.
 5 Q. Mr. Rankowitz?
 6 A. I know him. I can't confirm if he
 7 was at the meeting.
 8 Q. Mr. Kourakos?
 9 A. I know him. Can't confirm if he was
 10 at the meeting.
 11 Q. Mr. Felix?
 12 A. I know him. Can't confirm if he was
 13 at the meeting.
 14 Q. Mr. Smith?
 15 A. I know him, and I believe he was at
 16 the meeting.
 17 Q. Mr. Newhouse?
 18 A. I know him. I can't confirm he was
 19 at the meeting.
 20 Q. I don't know if it's a Mr. or Ms.
 21 A. It's Leslie. Leslie Bradford.
 22 Q. Is that a man or woman?
 23 A. Woman.
 24 Q. Was she at the meeting?
 25 A. I believe she was, yes.

1 at the meeting. But whether it was in person
 2 or via phone, but I believe he was in
 3 attendance.
 4 Q. I understand. Now, if you look at
 5 the cover page here, there is some
 6 handwriting. Do you recognize that
 7 handwriting?
 8 A. No, I do not.
 9 Q. Turn to the next page of the
 10 document. This is the memorandum to the
 11 committee about the loan; correct?
 12 A. Correct.
 13 Q. And it shows that it's from a large
 14 number of people; is that correct?
 15 A. Appears to, yes.
 16 Q. And one of the people that it shows
 17 that it's from is K. Eltrich. Do you know if
 18 you drafted any portion of this document?
 19 A. Not to my recollection.
 20 Q. Do you know if you saw drafts of
 21 this document before it was sent out?
 22 A. I don't recall.
 23 Q. Do you recall seeing this document
 24 at any time prior to today?
 25 A. I don't recall.

1 Q. I don't know again Mr. or Ms.
 2 Feldman?
 3 A. Joel Feldman. I know him. I can't
 4 confirm if he was at the meeting.
 5 Q. S. Brown?
 6 A. I don't know.
 7 Q. You don't know him?
 8 A. Him or her, yes. I don't know them.
 9 Q. I believe it's Mr. Pellicchio?
 10 A. I don't know them.
 11 Q. Bunger?
 12 A. I know him. I can't confirm if he
 13 was at the meeting or not.
 14 Q. Is the next individual Mr. Abdel
 15 Meguid?
 16 A. Terry Meguid, I believe. I know
 17 him, but I don't know if he was at the
 18 meeting.
 19 Q. Sanders?
 20 A. Don't know them.
 21 Q. Is that Ann Short?
 22 A. Yes, it is. And I don't know if she
 23 was at the meeting.
 24 Q. And then Mr. Strong?
 25 A. Know him, and I believe, yes, he was

1 Q. As you understand Morgan Stanley's
 2 procedures at the time, do you understand this
 3 to be the document that the leveraged finance
 4 committee would consider in deciding whether
 5 to approve the loan or not?
 6 MS. BROWN: Object to form.
 7 A. I don't know the full process. I
 8 wasn't involved in that side.
 9 Q. Do you know if documents in addition
 10 to this one were circulated to the committee?
 11 A. I don't know.
 12 Q. Turn to the second page of the
 13 document. Below the box there is a paragraph
 14 that starts, "While Morgan Stanley seeks the
 15 committee's approval." Do you see that?
 16 A. Yes.
 17 Q. And about the second or third to
 18 last sentence in that paragraph is the phrase
 19 "due to the accelerated timing of the
 20 transaction, it is MSSF's intention to first
 21 close the transactions at the end of March and
 22 then syndicate its position." Did I read that
 23 correctly?
 24 A. Except you said something instead of
 25 "acquisitions," but otherwise, yes.

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1 Q. Okay. Do you remember any
2 discussions about the accelerated timing of
3 the transaction?

4 MS. BROWN: Object to form.

5 A. I do not recall, no.

6 Q. The document indicates the
7 transactions will be closed at the end of
8 March and then the loan syndicated. Is that
9 customary to close first and syndicate later?

10 A. I don't work in the bank debt world,
11 so I really couldn't give you a good answer on
12 that.

13 Q. The next box, the expected
14 economics, do you have an understanding of
15 what that means?

16 A. I have a vague understanding.

17 Q. And what is that understanding?

18 A. I believe it's reconciling -- for
19 this it looks like what you would make in
20 terms of fees specifically to the bank loan.

21 Q. So these are bank loan fees to
22 Morgan Stanley?

23 MS. BROWN: Objection. Foundation.
24 Mischaracterization.

25 A. I couldn't answer specifically.

1 the document. Under the category
2 "Restructuring," the second sentence reads,
3 "The restructuring portion of the plan has
4 been substantially completed with only the
5 final refinement stage remaining."

6 And the last sentence in this
7 paragraph reads, "Cost reductions are expected
8 to result in annual savings of \$225 million,
9 most of which were already realized in 1997."

10 Do you remember any discussion
11 within Morgan Stanley about how much of
12 Sunbeam's restructuring plan had been
13 completed?

14 A. No, I don't recall.

15 Q. Or the amount of cost savings
16 realized to date or expected to be realized in
17 the future?

18 A. I don't recall.

19 Q. Turn to Page 10. Page 10 contains a
20 description of Coleman. I would like you to
21 look at that and tell me if there is anything
22 that you recall drafting.

23 A. I don't recall being involved in
24 this.

25 Q. In looking at this document today,

1 Q. Well, when you talked about the
2 fees, whose fees were you talking about?

3 A. I would assume for the bank loan,
4 but, again, I don't know if it's for the
5 entire facility or if it's just for Morgan
6 Stanley.

7 Q. I understand your distinction. Turn
8 to Page 4 the document, the category under
9 heading number four there is a reference to
10 due diligence, and I'll ask you just to read
11 that, and when you're done, I'll ask you some
12 questions about it.

13 A. Okay.

14 Q. It describes certain due diligence
15 done on this deal. Does that refresh your
16 recollection about any involvement you may
17 have had in due diligence?

18 A. I believe I was on the calls.

19 Q. That you've already testified about?

20 A. Yes.

21 Q. Aside from that?

22 A. No. I don't think I had any -- to
23 my recollection, I didn't have other
24 involvement.

25 Q. Okay. Turn, please, to Page 7 of

1 is there anything in here that you think is in
2 any way incorrect?

3 MS. BROWN: Object to form.
4 Foundation.

5 A. I couldn't answer that based on the
6 information I have.

7 Q. If you would turn, please, to Page
8 13, there is a description of projections and
9 assumptions, and then four items under there.
10 It talks about the Morgan Stanley financing
11 base case and the downside case and the
12 management case. Did you have anything to do
13 with -- I'm sorry. Are you on the same Page
14 13?

15 A. No, I'm not. Sorry. Which? 15?

16 Q. 13.

17 A. 13. Okay. Oh, I see. Sorry.

18 Okay. Yes.

19 Q. I would just like you to read those.
20 My question is going to be, did you have
21 anything to do with developing any of those
22 cases or commenting on them?

23 A. I don't recall being involved, no.

24 Q. Do you know who did?

25 A. No, I don't know.

018503

1 Q. Turn to the next page. It's a
 2 "Pro Forma Capitalization for 1997" is what
 3 it's entitled, and then it continues
 4 thereafter; is that correct?
 5 A. I believe so, yes.
 6 Q. Do you see the line entitled
 7 "Pre-Tax Synergies"?
 8 A. Yes, I do.
 9 Q. And it shows synergies from 1996,
 10 '97, '98, and thereafter?
 11 A. Yes.
 12 Q. Did you have anything to do with
 13 selecting that number or --
 14 A. I don't believe so, no.
 15 Q. Do you know where it came from?
 16 A. No, I do not.
 17 Q. If you look down at the balance
 18 sheet data at the bottom and the reference to
 19 the debt, this set of projections would
 20 reflect that Sunbeam would be free of both the
 21 bank debt and the zero coupon debt by some
 22 point of 2002?
 23 A. That's what it appears to indicate,
 24 yes.
 25 Q. Do you remember any conversations at

1 Sunbeam. So I'm not a rating agency, so I
 2 could not -- I couldn't say one way or
 3 another. I disagree with them frequently.
 4 Q. Okay. Fair enough. Do you know if
 5 the rating agencies ever rated this debt?
 6 A. To my knowledge, I believe they did,
 7 yes.
 8 Q. Did they rate it after Mr. Dunlap's
 9 termination?
 10 A. I don't know.
 11 Q. Do you know if they rated it before
 12 his termination?
 13 A. I don't know.
 14 Q. Turn to the next page, Page 16,
 15 there is an item that says, "Coleman synergies
 16 rationale, 118 million." Do you see that?
 17 A. Yes, I do.
 18 Q. Do you remember any discussions
 19 about the items contained under that heading?
 20 A. No, I do not recall.
 21 Q. You don't remember that being
 22 discussed at the meeting that you attended?
 23 A. I don't recall.
 24 Q. If you turn, please, to Page 18,
 25 there is a description of Sunbeam among

1 the leveraged finance commitment committee
 2 about how long it would take Sunbeam to clear
 3 itself of this debt?
 4 A. No, I don't recall.
 5 Q. Do you remember any discussions
 6 about whether the debt would be repaid from
 7 earnings or repaid from asset sales or other
 8 sources?
 9 A. I don't recall.
 10 Q. Do you remember Mr. Strong being
 11 asked about that?
 12 A. I don't recall.
 13 Q. Turn to the next page, Page 15,
 14 there are some credit statistics, and it's
 15 various debt coverage ratios.
 16 A. Yes.
 17 Q. Do those debt coverage ratios
 18 reflect the coverage you would expect for a
 19 high yield loan or an investment grade loan?
 20 MS. BROWN: Object to form.
 21 A. It's very much a qualitative
 22 decision, because you can't just look at the
 23 numbers. The rating agencies also look at the
 24 scope and the scale of the company, which I
 25 think was taken into consideration for

1 investment considerations, and the last item
 2 is as follows: "Conservatively estimated
 3 synergies of \$150 million from combination."
 4 Do you see that?
 5 A. Yes, I do.
 6 Q. Do you remember any discussion about
 7 those items?
 8 A. No, I do not recall.
 9 Q. It continues on to the following
 10 page, just in case that refreshes your
 11 recollection.
 12 A. No, it does not.
 13 Q. And then at the bottom of Page 19
 14 carrying onto Page 20, there is a description
 15 of Coleman and the Coleman acquisition. I
 16 would ask you to read that, please.
 17 A. Okay.
 18 Q. Did you provide any of the material
 19 that's contained here?
 20 A. I don't recall anything, no.
 21 Q. Do you remember any discussion about
 22 this either at the committee or before?
 23 A. No, I don't recall.
 24 Q. There is no mention in here of the
 25 fact that Coleman is in the process of

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1 restructuring. Do you remember that being
 2 discussed at the commitment committee?
 3 A. I don't recall.
 4 Q. Would you please turn to Page 23.
 5 There is an item entitled "Ability to attain
 6 synergies." I would like you just to read
 7 that to yourself, and let me know when you've
 8 finished it.
 9 A. Okay.
 10 Q. Did you have anything to do with
 11 drafting this?
 12 A. I don't recall so, no.
 13 Q. Do you remember any discussions
 14 about it?
 15 A. No, I don't recall.
 16 Q. It starts by saying that Morgan
 17 Stanley and Coopers & Lybrand, special
 18 acquisition consultants to Sunbeam, have had
 19 extensive discussions, and so on. Did you
 20 participate in any discussions with Coopers &
 21 Lybrand about potential synergies?
 22 A. I don't recall any.
 23 Q. At the end of this paragraph it says
 24 that Mr. Conway has modeled 150 million in
 25 synergies in '98, and he feels that there

1 through this model, but do you have a
 2 recollection of the difference between the
 3 base case and the downside case?
 4 A. I know one's better than the other,
 5 but --
 6 Q. I think I know that, too.
 7 A. But other than that, specifically,
 8 no.
 9 Q. Okay. Well, that's all I needed to
 10 know. You can put that document aside. Now
 11 having seen this document and going through
 12 the things that we've gone through, does that
 13 refresh your recollection further about the
 14 conversation that you previously testified
 15 about in which Mr. Strong was asked to stand
 16 behind Sunbeam?
 17 A. No, it does not.
 18 (Document Bates stamped Morgan
 19 Stanley Confidential 18885-18942 marked
 20 CPH Exhibit 280 for identification, as
 21 of this date.)
 22 (Document Bates stamped Morgan
 23 Stanley Confidential 59244-59266 marked
 24 CPH Exhibit 281 for identification, as
 25 of this date.)

1 could be upside to this figure. Do you
 2 remember that being discussed?
 3 A. I don't remember that, no.
 4 Q. You know Mr. Conway?
 5 A. I know him, yes.
 6 Q. Do you remember if he was at the
 7 meeting?
 8 A. I don't remember.
 9 Q. Do you remember any discussions
 10 Mr. Conway had or participated in about
 11 synergies?
 12 A. I don't remember, no.
 13 Q. If you turn to the next page and
 14 largely for the remainder of this document are
 15 financial numbers, and it's entitled "Based
 16 Financing Case." You didn't have anything to
 17 do with preparing that document; is that
 18 correct?
 19 A. I don't think I did, no.
 20 Q. And if you turn, please, to Page 40
 21 of the document, it's entitled "Credit
 22 Downside." Did you have anything to do with
 23 preparing that downside case?
 24 A. I don't think so, no.
 25 Q. I'm not going to ask you to go

1 Q. Ms. Eltrich, the court reporter has
 2 marked as Exhibits 280 and 281 some additional
 3 copies of this document, and I suspect you're
 4 not going to have to turn past the cover page
 5 on either one.
 6 A. Okay.
 7 Q. Do you recognize the handwriting on
 8 either one of them?
 9 A. No, I do not.
 10 Q. You testified that you recall a
 11 conversation in which Mr. Strong was asked
 12 about Sunbeam's first quarter performance. Do
 13 you recall any conversations after that date
 14 to ask how Sunbeam was doing, whether
 15 Mr. Strong's representation was correct?
 16 MS. BROWN: Objection to the extent
 17 that mischaracterizes the testimony.
 18 A. I was not -- to my recollection, I
 19 was not involved in any conversations.
 20 Q. Have any been related to you?
 21 A. Not that I recall.
 22 Q. Subsequent to the closing, you've
 23 come to learn that Sunbeam, in fact, did not
 24 meet their numbers for the first quarter of
 25 1998; is that correct?

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1 MS. BROWN: Object to form.
 2 A. I know I learned it at some point.
 3 I couldn't tell you when.
 4 Q. And have you come to learn that one
 5 of the reasons for that was that Sunbeam had
 6 accelerated sales from 1998 into 1997?
 7 MS. BROWN: Objection to form.
 8 A. I learned it at some point, but,
 9 honestly, it took us a while to figure out --
 10 from my memory, it took us a while to figure
 11 out exactly what they had done.
 12 Q. And I think we've established that
 13 you went on maternity leave between the 20th
 14 and the 25th of March?
 15 A. Correct.
 16 Q. And you returned on June 15th?
 17 A. Correct.
 18 Q. When you refer to the figuring out
 19 of what Sunbeam had done, was that after
 20 June 15th or before March 25th?
 21 A. From my own figuring out, it was
 22 after June.
 23 Q. Now, in connection with the
 24 financings, the convertible debenture
 25 offering, are you aware that Morgan Stanley

1 compares roughly the same month in two
 2 different years. The first column is
 3 basically sales in January of '97, and the
 4 second column is basically sales in January of
 5 '98; is that correct?
 6 A. It appears to be.
 7 Q. And it shows that January '97 sales
 8 were about 73 million, and January '98 sales
 9 were about 29 million. Were you aware of that
 10 fact when you were at the leveraged finance
 11 credit committee?
 12 A. I don't recall.
 13 Q. Do you remember if that was
 14 discussed at the meeting?
 15 A. I don't recall.
 16 Q. If you turn to the next page,
 17 Paragraph 6-B, just read that to yourself.
 18 A. Okay.
 19 Q. Prior to the closing had you seen
 20 that language?
 21 A. I don't recall.
 22 Q. You can put that one to the side.
 23 Earlier in this deposition I showed you a
 24 press release that was issued by Sunbeam. And
 25 I believe it's in front of you. It's been

1 received comfort letters from Sunbeam's
 2 accountants?
 3 A. I was not involved in that process.
 4 Q. Whether you were involved in the
 5 process or not, are you aware that Morgan
 6 Stanley, in fact, obtained comfort letters
 7 from Arthur Andersen?
 8 A. I'm not in a position to verify
 9 that.
 10 Q. Okay. So you don't know?
 11 A. I don't know.
 12 Q. To your knowledge, have you ever
 13 seen the comfort letters that Morgan Stanley
 14 received?
 15 A. To my knowledge, no, I have not.
 16 Q. Ms. Eltrich, I'm giving you what has
 17 been marked as Exhibit 17 in a prior
 18 deposition. It's a letter to Morgan Stanley
 19 dated March 19th, 1998, from Arthur Andersen.
 20 Have you ever seen this before?
 21 A. I don't recall.
 22 Q. Now, if you turn a couple of pages
 23 into it, Paragraph 5, it's on Page 3 of the
 24 letter, in item 5-B there at the bottom of the
 25 page it describes Sunbeam's net sales, and it

1 marked CPH Exhibit 14.
 2 A. Um-hmm.
 3 Q. Were you aware of that press release
 4 on or about the date it was issued?
 5 A. I vaguely remember it being issued.
 6 Q. Did you have anything to do with its
 7 issuance, you personally?
 8 A. I don't believe I did, no.
 9 Q. Were you aware it was going to be
 10 issued before it was issued?
 11 A. I can't recall.
 12 Q. Do you remember whether the press
 13 release was discussed at the leveraged finance
 14 commitment committee?
 15 A. I don't recall.
 16 Q. Do you know if any disclosure other
 17 than Exhibit 14 was made to the public about
 18 Sunbeam's first quarter sales?
 19 A. I don't recall.
 20 Q. Do you remember if any disclosure
 21 was made to the public about Sunbeam's first
 22 quarter earnings prior to the closing on
 23 March 30th?
 24 A. I don't recall.
 25 Q. In connection with the work that you

1 did for Morgan Stanley, did you do any
 2 investigation or digging into any of the facts
 3 that are addressed in the press release?
 4 MS. BROWN: Object to form.
 5 A. To my recollection, I was not
 6 involved in that part of the process.
 7 Q. Are you aware of the efforts that
 8 Morgan Stanley went through to attempt to sell
 9 the convertible notes to investors?
 10 MS. BROWN: Object to form.
 11 A. To my recollection, I was not
 12 involved in that process.
 13 Q. So there was a road show you didn't
 14 attend?
 15 A. I do not recall attending the road
 16 show.
 17 Q. Do you remember attending a lunch in
 18 New York, it was part of the road show, but it
 19 was not just a road show presentation, at
 20 which the deal was discussed?
 21 A. I don't recall.
 22 Q. Now, after the leveraged finance
 23 commitment committee meeting, do you recall
 24 doing anything else on this deal prior to
 25 closing?

1 Q. Aside from what's contained in the
 2 research reports we've talked about, would
 3 there be anything else out there that would
 4 reflect the work you did that would have this
 5 implied price, implied value for the stock?
 6 MS BROWN: I'm sorry. Can I hear
 7 that back.
 8 MR. BRODY: Let me withdraw it and
 9 ask it again.
 10 Q. Aside from the two research reports
 11 that we've addressed, are you aware of any
 12 documents that were published by Morgan
 13 Stanley reflecting your work that would
 14 contain an implied price for the equity in
 15 Coleman?
 16 A. To my knowledge, there was nothing
 17 else.
 18 Q. Now, are you aware that Morgan
 19 Stanley opined to Sunbeam that the acquisition
 20 price of Coleman was fair to the Sunbeam
 21 shareholders?
 22 MS. BROWN: Objection. Asked and
 23 answered.
 24 A. I was not involved in that process.
 25 Q. Did you ever hear anyone express a

1 A. I don't recall.
 2 Q. Do you know if anyone at Morgan
 3 Stanley did any further digging after the
 4 commitment committee meeting into Sunbeam's
 5 first quarter performance or Sunbeam's sales
 6 or Sunbeam's earnings?
 7 MS. BROWN: Objection to form and
 8 foundation.
 9 A. I wasn't involved, so I really
 10 can't --
 11 Q. You don't know.
 12 A. I can't comment.
 13 Q. Now, the analysis you did of Coleman
 14 primarily addressed its debt structure, the
 15 debt issuance it had made; correct?
 16 MS. BROWN: I'll object to form.
 17 A. It was specifically on the escrow
 18 notes.
 19 Q. Did you ever prepare an analysis of
 20 the stock value of Coleman, what you thought
 21 the stock should be trading at?
 22 A. Within our research report we put a
 23 valuation on the company, which gave an
 24 implied stock value, but I never put an
 25 opinion or direct valuation on the stock.

1 view that the transaction was not fair to
 2 Sunbeam?
 3 A. To my recollection, I never heard
 4 anything to that nature.
 5 Q. Now, you left on maternity leave a
 6 few days before your daughter was born on the
 7 25th of March; is that correct?
 8 A. I believe so, yes.
 9 Q. And then you returned, you said, you
 10 think the day that Mr. Dunlap was removed?
 11 A. No. I remember the front page of
 12 the Wall Street Journal. It was the day that
 13 Mr. Dunlap was removed.
 14 Q. Okay. After you returned, what work
 15 did you do in connection with Sunbeam?
 16 A. What I remember is touring a couple
 17 of facilities, and I think they were primarily
 18 distribution and manufacturing for Sunbeam
 19 specifically, and I remember a couple of
 20 meetings with Mr. Levin where he was giving
 21 updates as he kind of sorted through the mess.
 22 Q. Do you remember when these facility
 23 tours were?
 24 A. I do not recall.
 25 Q. Do you remember when your meetings

1 with Mr. Levin were?
 2 A. I do not recall.
 3 Q. Can you place them in connection
 4 with your return to the company?
 5 A. No, I really cannot.
 6 Q. When you met with Mr. Levin, was it
 7 just Morgan Stanley people, or was it
 8 representatives of other banks as well?
 9 A. There were representatives of other
 10 banks.
 11 Q. Do you know who was there from
 12 Morgan Stanley?
 13 A. I remember Brom Smith, but that's
 14 it. And I can't say he was at all the
 15 meetings. I just remember him being at one.
 16 Q. Do you know why you participated in
 17 these meetings, why you were invited?
 18 A. Because I was the consumer products
 19 analyst.
 20 Q. Do you remember what Mr. Levin said?
 21 A. No, not specifically.
 22 Q. Do you remember generally what he
 23 addressed?
 24 A. He addressed some of the
 25 inefficiencies throughout the company, but

1 support to the bank group in trying to decide
 2 how the company should proceed?
 3 A. I don't recall any, no.
 4 Q. You're aware that at some point
 5 Sunbeam declared bankruptcy?
 6 A. I was aware, yes.
 7 Q. Were you at Morgan Stanley at the
 8 time?
 9 A. I don't remember.
 10 Q. Do you remember being consulted or
 11 advised about the bankruptcy?
 12 A. I don't recall anything.
 13 Q. Do you remember any further
 14 conversations with Mr. Smith or others from
 15 the bank group at Morgan Stanley about the
 16 loan?
 17 A. I don't remember any.
 18 Q. Do you remember if you or your group
 19 were ever asked to analyze the value of
 20 Sunbeam?
 21 A. I don't remember.
 22 Q. Now, you indicated that in
 23 connection with the work that you do for
 24 evaluating the risk of high yield notes, you
 25 look at the risk of bankruptcy?

1 that's all I can generally state to you. He
 2 was on a steep learning curve as well,
 3 obviously, as he tried to figure out what was
 4 going on.
 5 Q. Okay. So does this indicate to you
 6 that these meetings were probably early in
 7 Mr. Levin's tenure?
 8 A. To my recollection, yes, they were.
 9 Q. Do you remember anything else that
 10 was said at those meetings?
 11 A. I remember Levin saying that Sunbeam
 12 should be able to work, that he should be able
 13 to fix it, that it was a great brand, and that
 14 the category, if you look at what Cuisinart
 15 had done, he felt there was something to be
 16 done there. But that was very preliminary,
 17 obviously.
 18 Q. Do you remember anything else that
 19 was said at the meetings?
 20 A. I don't specifically remember
 21 anything, no.
 22 Q. Thereafter did you play any
 23 additional role in connection with Sunbeam?
 24 A. I don't recall any.
 25 Q. Do you remember providing any

1 A. Yes.
 2 Q. Did you ever perform a bankruptcy
 3 risk analysis for Sunbeam?
 4 A. To my recollection, no, I did not.
 5 Q. Do you know if anyone at Morgan
 6 Stanley did?
 7 A. I don't know.
 8 Q. In connection with the bank loan,
 9 Sunbeam made various communications to Morgan
 10 Stanley about its performance. Were you ever
 11 asked to analyze any of those estimates or
 12 projections?
 13 MS. BROWN: Object to form.
 14 A. To my recollection, no, I was not.
 15 MR. BRODY: Let's go off the record.
 16 I may just have a few minutes.
 17 VIDEOGRAPHER: The time is 1:27, and
 18 we are off the record.
 19 (Recess)
 20 VIDEOGRAPHER: The time is now 1:30,
 21 and we are back on the record.
 22 MR. BRODY: I have no further
 23 questions. Thank you for your time and
 24 your cooperation.
 25 MS. BROWN: I just have a couple of

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1 quick questions.
 2 THE WITNESS: Okay.
 3 EXAMINATION BY
 4 MS. BROWN:
 5 Q. First referring to CPH Exhibits 272
 6 and 275, which were the analysis or analyses
 7 that you published.
 8 A. Yes.
 9 Q. Referring to the first one, which is
 10 dated October 9th, 1997, and marked CPH
 11 Exhibit 272, you answered a number of
 12 questions from Mr. Brody concerning the
 13 estimates or estimations that you had placed
 14 into this document. Do you know whether
 15 Coleman met your estimates?
 16 A. To my recollection, they did not
 17 meet my initial estimates.
 18 Q. And referring to CPH Exhibit 275,
 19 which is dated January 26, 1998, do you recall
 20 one way or the other whether Coleman met the
 21 estimates that you had published in that
 22 document?
 23 A. I don't remember.
 24 Q. When you spoke about the meeting
 25 that you were at where Mr. Strong stood by his

1 Q. So when you spoke about the word
 2 "integrity," were you referring to a moral
 3 integrity or financial integrity?
 4 MR. BRODY: Object to the form.
 5 A. I was referring to a moral
 6 integrity.
 7 Q. And the point of this meeting was to
 8 determine whether or not Morgan Stanley would
 9 make a loan to Sunbeam; is that correct?
 10 A. To my recollection, yes, it was.
 11 Q. What was the consequence to Morgan
 12 Stanley, as you understood it, if Sunbeam
 13 failed to honor its obligations under the
 14 loan?
 15 A. We would lose over \$600 million.
 16 Q. Do you know whether Morgan Stanley
 17 actually lost money on that loan?
 18 A. I believe we lost the entire loan,
 19 yes.
 20 Q. And very early in your testimony you
 21 referred to the fact that Revlon had
 22 preannounced in 1998?
 23 A. Yes.
 24 Q. You were referring to the fact that
 25 they had preannounced that they didn't expect

1 client, and you mentioned that he was asked to
 2 vouch for the integrity of his client, can you
 3 explain what you meant by the word
 4 "integrity"?
 5 A. Meant by do you believe in your
 6 client, is this a client that is what Morgan
 7 Stanley will represent. It's hard to exactly
 8 -- I mean it encompasses many different
 9 things. Is this a quality value client that
 10 we trust, that we are willing to represent for
 11 our investors. And that's what I mean by
 12 integrity.
 13 Q. At the time of this meeting was
 14 there any concern raised that you recall with
 15 regard to Sunbeam's accounting practices?
 16 A. To my recollection, there was
 17 nothing raised.
 18 Q. Do you recall any questions
 19 concerning Sunbeam's accounting practices
 20 discussed within Morgan Stanley prior to the
 21 close of the deal in March of 1998?
 22 A. I don't recall any.
 23 Q. Do you remember having any concerns?
 24 A. I don't remember having any
 25 concerns, no.

1 that they would meet earnings estimates?
 2 A. That is correct.
 3 MR. BRODY: Object to the form.
 4 A. Actually, I'm sorry. That is not
 5 correct. They actually outright missed
 6 numbers in October of 1998. They did not
 7 preannounce. They simply completely missed
 8 their forecast.
 9 Q. And you referred to something called
 10 "stuffing the trade"?
 11 A. Yes.
 12 Q. Could you explain what you were
 13 referring to?
 14 MR. BRODY: Object to form.
 15 A. The process that they had undergone
 16 was they had incentivized the channel to
 17 over-order for what they could sell, and
 18 thereby artificially increasing their sales in
 19 the previous quarters, and then when the third
 20 quarter came, the channel had too much product
 21 and did not reorder, and consequently they
 22 missed their numbers.
 23 Q. And when you say "they," you're
 24 referring to Revlon?
 25 A. I am referring to Revlon.

1 Q. And this occurred in 1998?
 2 A. Yes. This was in October of 1998
 3 that they missed.
 4 Q. And at the time Revlon was owned in
 5 large part indirectly by Mr. Perelman;
 6 correct?
 7 MR. BRODY: Object to form.
 8 A. It was to my knowledge, yes.
 9 MS. BROWN: I have no further
 10 questions.
 11 MR. BRODY: I just have a couple.
 12 BY MR. BRODY:
 13 Q. I think you testified that Morgan
 14 Stanley lost their entire loan?
 15 A. To my knowledge, they had, yes.
 16 Q. Okay. You weren't at Morgan Stanley
 17 when the bankruptcy was resolved, were you?
 18 A. I don't think I was.
 19 Q. Are you aware that as a result of
 20 the bankruptcy, Morgan Stanley became the
 21 largest shareholder of Sunbeam?
 22 A. I'm not aware.
 23 Q. Have you followed Sunbeam after that
 24 to see what's happened to it since then?
 25 A. I have not.

1 MR. BRODY: I have nothing further.
 2 Thank you.
 3 THE WITNESS: Thank you.
 4 VIDEOGRAPHER: The time is now 1:35,
 5 and this ends the deposition, and we are
 6 off the record.
 7 (Time noted: 1:35 p.m.)
 8
 9
 10
 11

 KAREN HAYCOX-ELTRICH

Subscribed and sworn to before me
 this day of , 2004.

1 Q. So you don't know what Morgan
 2 Stanley's investment in Sunbeam has returned
 3 to them?
 4 A. I only know anecdotally from people
 5 that I know that are still at the firm who
 6 have complained about it.
 7 Q. But that's nothing from your
 8 personal knowledge?
 9 A. Nothing from my personal knowledge.
 10 (Continued on next page)
 11
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1 CERTIFICATE
 2 STATE OF NEW YORK)
 3 : ss.
 4 COUNTY OF NEW YORK)
 5 I, JOAN WARNOCK, a Notary Public
 6 within and for the State of New York,
 7 do hereby certify:
 8 That KAREN HAYCOX-ELTRICH, the
 9 witness whose deposition is
 10 hereinbefore set forth, was duly sworn
 11 by me and that such deposition is a
 12 true record of the testimony given by
 13 the witness.
 14 I further certify that I am not
 15 related to any of the parties to this
 16 action by blood or marriage, and that I
 17 am in no way interested in the outcome
 18 of this matter.
 19 IN WITNESS WHEREOF, I have hereunto
 20 set my hand this 18th day of October, 2004.
 21
 22

 JOAN WARNOCK

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1 ----- I N D E X -----

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3 Karen Eltrich Mr. Brody 5

4 Ms. Brown 210

5 Mr. Brody 214

6

7 ----- INFORMATION REQUESTS -----

8 DIRECTIONS: 13, 14

9 RULINGS:

10 TO BE FURNISHED:

11 REQUESTS:

12 MOTIONS:

13

14 ----- EXHIBITS -----

15 CPH FOR ID.

16 272 - Initiation of coverage for 65

17 Coleman

18 273 - Document Bates stamped Morgan 65

19 Stanley Confidential 23225-23229

20 274 - Earnings announcement of 97

21 Coleman

22 275 - Research report dated January 99

23 26 issued by Ms. Eltrich

24 276 - Document Bates stamped CPH 121

25 251099-251122

1 277 - Revised Working Group List for 135

2 Sunbeam Corp.

3 278 - Document Bates stamped Morgan 171

4 Stanley Confidential 36700-36720

5 279 - Commitment Committee memo 179

6 280 - Document Bates stamped Morgan 196

7 Stanley Confidential 18885-18942

8 281 - Document Bates stamped Morgan 196

9 Stanley Confidential 59244-59266

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

DEPOSITION OF PHILLIP E. HARLOW
TAKEN AT THE INSTANCE OF THE DEFENDANT

Fort Lauderdale, Florida
Friday, November 19, 2004
9:04 a.m. - 1:50 p.m.

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1 APPEARANCES:

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 19 BY: SCOTT D. FISCHER, ESQUIRE
 20 and MICHAEL J. MOSCATO, ESQUIRE
 21
 22
 23
 24
 25

1 The deposition of PHILLIP E. HARLOW was
 2 taken before me, BARBARA GALLO, RMR-CRR, Registered
 3 Merit Reporter-Certified Realtime Reporter, Notary
 4 Public, State of Florida at Large, at Ocean Executive
 5 Suites, 515 Seabreeze Boulevard, 2nd Floor, in the
 6 City of Fort Lauderdale, County of Broward, State of
 7 Florida, beginning at the hour of 9:04 a.m., on
 8 Friday, November 19, 2004, pursuant to Notice filed
 9 herein, at the instance of the Defendant in the
 10 above-entitled cause pending before the above-named
 11 Court.
 12

13 THE VIDEOGRAPHER: We're on the record.
 14 This is the 19th day of November, 2004.
 15 The time is 9:04 a.m. This is the
 16 videotaped deposition of Phillip Harlow in
 17 the matter of Coleman Holdings
 18 Incorporated versus Morgan Stanley &
 19 Company, Incorporated. This deposition is
 20 being held at 515 Seabreeze Boulevard, 2nd
 21 Floor, Fort Lauderdale, Florida.
 22 My name is Waltz Waun. I'm the
 23 videographer representing Visual Evidence.
 24 Would the attorneys please announce
 25 their appearances for the record.

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1 MR. JOHNSON: Clark Johnson, Jenner &
 2 Block, Chicago for plaintiff, Coleman
 3 Parent Holdings.
 4 MR. WEBSTER: Jim Webster for
 5 defendant, Morgan Stanley.
 6 MR. MOSCATO: Michael Moscato from the
 7 law firm of Curtis, Mallet for the
 8 witness, Phillip Harlow.
 9 MS. BEYNON: Rebecca Beynon.
 10 MR. MOSCATO: I'm sorry. And with
 11 me -- he's not present now, but he will be
 12 arriving shortly -- Scott Fischer from
 13 Curtis Mallet. Sorry.
 14 MS. BEYNON: Rebecca Beynon on behalf
 15 of Morgan Stanley, defendant.
 16 THEREUPON,
 17 PHILLIP E. HARLOW,
 18 being by me first duly sworn to tell the whole truth,
 19 as hereinafter certified, testified as follows:
 20 DIRECT EXAMINATION
 21 BY MR. WEBSTER:
 22 Q. Good morning, Mr. Harlow.
 23 A. Good morning.
 24 Q. You've been deposed before; is that correct?
 25 A. Many times.

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1 Q. You understand that you have to give verbal
2 answers in response to all my questions?
3 A. Yes.
4 Q. And I'd ask if you don't understand a
5 question of mine that you ask me to rephrase it, and
6 I'll do my best to do that. You understand that?
7 A. Yes.
8 Q. And is it fair for me to assume that if you
9 don't ask me to rephrase it, you understood my
10 question?
11 A. If I -- if I hear you correctly, that's --
12 yes, that's my understanding.
13 Q. What did you do in preparation for today's
14 deposition?
15 A. Just flipped through a couple past
16 depositions and looked at a couple of memos, and that
17 was it.
18 Q. What memos did you look at?
19 A. Looked at a memo from our work papers on
20 discussions with your client, Morgan Stanley.
21 Q. Who wrote that memo?
22 A. That memo was written by Larry Bornstein.
23 Q. Do you know when it was written?
24 A. Sometime in 1998.
25 Q. Do you know when in 1998?

1 A. No, I don't.
2 Q. Was it after March of 1998?
3 A. Yes, after March.
4 Q. Was it in the summer of 1998?
5 A. Somewhere around there, I would guess.
6 Q. What other documents did you review?
7 A. I reviewed an Answer to a Complaint. I don't
8 remember which one it was. And it was just cursory --
9 cursory review. Nothing -- didn't read it in detail.
10 Q. Do you know who, which party was making that
11 answer?
12 A. I don't remember.
13 Q. You don't remember that it was Arthur
14 Andersen or Morgan Stanley?
15 A. I think it was Arthur Andersen, but -- I've
16 seen so many documents over the past six years that I
17 just lose track.
18 Q. Where did you get that Answer?
19 A. From my attorneys.
20 Q. Did you review any other documents in
21 addition to the memo from Mr. Bornstein and the Answer
22 to the Complaint?
23 A. I just looked at a few other things, but I
24 just don't recall where they were.
25 Q. And why did you review these documents?

1 A. Because it's -- you know, so much time has
2 transpired since whatever you want to talk about today
3 has taken place. I've got, you know, lots to do and
4 lots on my mind, and I don't think about Sunbeam much
5 anymore.
6 Q. Did anybody suggest that you review these
7 documents?
8 A. My attorneys thought that I should try to
9 refresh my memory.
10 Q. Did you review any documents that your
11 attorneys did not recommend you to review?
12 A. No.
13 Q. Did you meet with anybody in preparation for
14 today's deposition?
15 A. No one other than my attorneys.
16 Q. Have you met with anybody from Jenner & Block
17 before today?
18 A. Not that I can recall.
19 Q. Have you ever --
20 A. Well, let me think about that. Years ago
21 when I was in Chicago we used to do work with Jenner &
22 Block. They were one of the top firms that my firm
23 worked with, and I worked on transactions with Jenner
24 & Block people. So to answer your question correctly,
25 I would have to say yes.

1 Q. Have you met with anybody from Jenner & Block
2 in connection with this litigation?
3 A. Other than this morning?
4 Q. Yes.
5 A. No.
6 Q. Have you spoken with anybody from Jenner &
7 Block on the phone in connection with this litigation?
8 A. Not to my knowledge.
9 Q. Have you spoken with anybody other than your
10 attorneys about this litigation that -- the case
11 between Coleman and Morgan Stanley?
12 A. No.
13 Q. Have you met with anybody from Coleman
14 regarding this litigation?
15 A. No.
16 Q. Where do you work, Mr. Harlow?
17 A. I'm an office furniture salesman now.
18 Q. And where were you working in March of 1998?
19 A. Arthur Andersen.
20 Q. How long had you been with Arthur Andersen at
21 that point?
22 A. Well, I don't know. If I've got to do math
23 without coffee, that may take a while. I started in
24 1971, so, you know, I guess 27 years maybe. '98 to
25 '71.

1 Q. And in March of 1998 were you part of the
 2 Sunbeam audit team?
 3 A. Well, we completed the audit by then. I --
 4 you know, we had auditors working on various things at
 5 Sunbeam, so I guess you would say yes.
 6 Q. What was your position in the Arthur Andersen
 7 Sunbeam audit team?
 8 A. I was an engagement partner.
 9 Q. Was that the most senior position in the
 10 audit team?
 11 A. I really don't know. I mean, we had all
 12 kinds of senior partners at Arthur Andersen that would
 13 technically be more senior than me.
 14 Q. No, I didn't mean if anybody at Arthur
 15 Andersen was more senior than you. I'm asking if you
 16 were the most senior member of the Sunbeam audit team.
 17 A. No, I would say that Bill Pruitt was more
 18 senior than I was, and he was a member of the audit
 19 team.
 20 Q. What was his position?
 21 A. He was the managing partner of our Florida
 22 practice, and he was the concurring partner that I
 23 would concur with on issues.
 24 Q. Did there come a time in 1998 when you began
 25 to do work in connection with the Sunbeam acquisition

1 Q. When was this meeting in Kansas City?
 2 A. I don't remember the exact date, but it was
 3 prior to the transaction.
 4 Q. Do you remember whether it was in March or
 5 February of 1998?
 6 A. Well, I think, I think the transaction was
 7 announced sometime early March, so it probably was the
 8 latter half of February.
 9 Q. Who else attended the meeting?
 10 A. I had Mr. Gluck was with me who is the
 11 controller of Sunbeam. And I don't remember the
 12 engagement partner from Ernst & Young from Wichita.
 13 You know, I could look in records, but I just don't
 14 remember his name. That's who we met. And we spent
 15 basically time looking at their audit work papers.
 16 Q. Did you other than the Kansas City meeting
 17 did you meet with Ernst & Young any other time in
 18 connection with the acquisition?
 19 A. Which acquisition now?
 20 Q. Sunbeam's acquisition of Coleman.
 21 A. Of Coleman. We're not talking about
 22 other -- any other acquisition, just Coleman. Not to
 23 my knowledge.
 24 Q. Okay. Did you meet with Ernst & Young in
 25 connection with other Sunbeam acquisitions?

1 of Coleman?
 2 MR. MOSCATO: Object to the form. You
 3 can answer.
 4 THE WITNESS: Yes, very very limited
 5 work, yes.
 6 BY MR. WEBSTER:
 7 Q. What work did you do?
 8 A. We spent a day in a Kansas City meeting with
 9 Ernst & Young. We were told we couldn't go to Wichita
 10 to the actual Coleman facility because they didn't
 11 want outsiders coming in to take a look at the
 12 company. And so we spent a grand total of a day
 13 looking at the Coleman acquisition, just meeting with
 14 their outside auditors, no one with the company. And
 15 that was, you know, apparently to help the company do
 16 some due diligence on the transaction.
 17 Q. To help who do due diligence?
 18 A. The company, Sunbeam. We were retained by
 19 Sunbeam for that work.
 20 Q. Did Sunbeam have anybody else helping them do
 21 due diligence on Coleman?
 22 A. My understanding Morgan Stanley did a
 23 tremendous amount of work on that acquisition.
 24 Q. For Sunbeam?
 25 A. For Sunbeam, that's correct.

1 A. I believe I did in earlier years.
 2 Q. Okay.
 3 A. Not Coleman related.
 4 Q. Now you said that you could not go to
 5 Wichita?
 6 A. Yes.
 7 Q. Which is where the Coleman plant was?
 8 A. Yes.
 9 Q. Was that unusual?
 10 MR. MOSCATO: Objection.
 11 MR. JOHNSON: Object to form.
 12 BY MR. WEBSTER:
 13 Q. In your experience was that unusual?
 14 MR. JOHNSON: Same objection.
 15 THE WITNESS: You know, over my years I
 16 had done it both ways. I can understand
 17 why public companies want to keep a
 18 pending acquisition somewhat under wraps,
 19 you know, to avoid leakage of information
 20 about a potential merger acquisition.
 21 But, you know, in my professional opinion
 22 it's more helpful for us to be -- you
 23 know, if I'm going to be helping in due
 24 diligence to actually see the facility and
 25 be familiar with things from a hands-on

1 standpoint rather than from a distance.
 2 BY MR. WEBSTER:
 3 Q. What do you mean by leakage of information?
 4 A. Well, people leak information all the time.
 5 Pending transactions. You know, someone that works at
 6 Coleman could have said, well, Arthur Andersen was in
 7 here doing due diligence for Sunbeam asking a lot of
 8 questions on accounting. That information could get
 9 out to the public, and people could start selling or
 10 buying stock based on that information.
 11 Q. So you're referring to information about the
 12 existence of the acquisition?
 13 A. Yes.
 14 Q. Not financial information about Coleman?
 15 A. No, no, not at all. Leakage of information
 16 which should not be leaked to the public at that point
 17 in time.
 18 Q. Was it your understanding that you had
 19 complete access to Coleman's financial information
 20 when you conducted the due diligence?
 21 A. No, it was not my understanding at all.
 22 Q. What was your understanding?
 23 A. My understanding was I just had access to the
 24 work papers that were provided by Ernst & Young. And
 25 they pulled out a lot of work papers and kept a lot of

1 things from us in that review.
 2 Q. Were there things that you requested that
 3 they kept from you?
 4 A. Yes.
 5 Q. What did they keep from you that you
 6 requested?
 7 A. Specifically items related to internal
 8 control issues, conservatism or lack therein,
 9 preparation of financial statements. I think they --
 10 the internal review memos and so forth that were
 11 prepared by review partners on the engagement. Those
 12 are the things that come to mind.
 13 Q. How did that impact your ability to conduct
 14 the due diligence?
 15 MR. MOSCATO: I object to the form.
 16 You can answer.
 17 THE WITNESS: Well, I -- you know, I was
 18 asked to, you know, spend one day
 19 reviewing work papers and find what I
 20 could find. And, you know, I found a
 21 number of things, a number of issues just
 22 based on that. I probably could have
 23 found some more issues.
 24 BY MR. WEBSTER:
 25 Q. Did you report those all to Sunbeam?

1 A. Yes.
 2 Q. What were the issues that you found that you
 3 reported to Sunbeam?
 4 A. We had issues on reserves not being properly
 5 established. We had, I think, rebates issues that --
 6 were not properly recorded. I think we had some
 7 timing on sales issues improperly reported. That was
 8 just based on a review, quick review of the work
 9 papers.
 10 Q. Did you discuss your findings with Sunbeam?
 11 A. Yes.
 12 Q. Who did you discuss them with?
 13 A. Mr. Gluck.
 14 Q. And what did you say?
 15 A. Oh, he was there right there with me and we
 16 went through them together, so he was nodding his head
 17 yes and taking notes.
 18 Q. How were those issues resolved?
 19 A. Well, you know, the company was aware of
 20 them. I don't know if there was any subsequent
 21 renegotiation of purchase price as a result, but as
 22 far as I know those issues remained at the time the
 23 acquisition was done.
 24 Q. Did you encourage Mr. Gluck to ask for more
 25 access to Coleman financial information?

1 A. I think Mr. Gluck -- I think Mr. Gluck was a
 2 pretty astute, you know, CPA. He was an experienced
 3 controller, senior manager at a big eight accounting
 4 firm, Ernst & Young, I guess. And Mr. Gluck pretty
 5 much made up his mind what he wanted to do. And at
 6 that time he was conferring with Mr. Rus, Rus Kersh on
 7 what should be done.
 8 But I -- I let it be known to Bob that I
 9 thought it was a pretty limited review for this size
 10 of acquisition, but I was assured that there were
 11 others that were taking a very close look at the
 12 company, including Morgan Stanley, and they were very
 13 involved in due diligence of Coleman.
 14 Q. Who told you that?
 15 A. Mr. Gluck, Mr. Kersh, Mr. Fannin.
 16 Q. Do you know if Mr. Gluck or anybody at
 17 Sunbeam pushed for more access to Coleman's financial
 18 information?
 19 MR. MOSCATO: I object to the form.
 20 You can answer.
 21 THE WITNESS: Yes, Mr. Gluck did. I mean,
 22 I was involved in, you know, a number of
 23 conversations after the acquisition was
 24 done where Mr. Gluck was trying to get
 25 more financial information about the

1 company, trying to get his arms around
 2 the, you know, the numbers.
 3 BY MR. WEBSTER:
 4 Q. This is after the acquisition?
 5 A. Yes, yeah.
 6 Q. But before the acquisition do you know if he
 7 pushed for more access to Coleman financial
 8 information?
 9 A. I don't know what he did. He was extremely
 10 busy. There were three acquisitions going on at the
 11 same time. Again, we were -- like I say, our review
 12 was extremely extremely limited for this type of deal.
 13 Q. Did you do any work in connection with the
 14 financing of the acquisition of Coleman?
 15 MR. JOHNSON: Objection to form.
 16 THE WITNESS: Well, we didn't basically
 17 design the -- or come up with the
 18 structure of the financing. I mean, we
 19 just basically were involved in the
 20 financial recording relating to documents
 21 that needed to be filed to complete
 22 financing. But we were not involved in
 23 the structure of the financing or giving
 24 opinions on any aspect of the financing.
 25 That was totally out of our area of

1 responsibility.
 2 BY MR. WEBSTER:
 3 Q. You did do some work in connection with the
 4 debenture offering; is that correct?
 5 A. Debenture?
 6 Q. Yes.
 7 A. Well, we did whatever work was required to
 8 prepare the document as it related to financial
 9 statements and financial information within that
 10 document. But in terms of anything else in that
 11 document, no.
 12 Q. Well, what did that work entail?
 13 A. I don't remember all the details on that. It
 14 was a long time ago. But it was basically doing post
 15 audit review work. I think there was a -- I think
 16 there was a comfort letter in connection with that
 17 work that was requested by Morgan Stanley. You know,
 18 that was basically it. Review of the documents to be
 19 filed.
 20 Q. I want to go back a second to the work that
 21 you did, the due diligence work you did on Coleman.
 22 Did you ever talk to anybody at Morgan Stanley about
 23 your due diligence work on Coleman?
 24 MR. MOSCATO: I object to the form.
 25 You can answer.

1 THE WITNESS: We had discussions with
 2 Morgan Stanley from time to time. I can't
 3 remember if we talked specifically about
 4 the one-day experience related to Coleman.
 5 We had discussions about, you know, Morgan
 6 Stanley couldn't figure out how to
 7 calculate earnings per share. One of my
 8 staff people had to straighten them out on
 9 that. We had, you know, discussions on
 10 synergies that they prepared, synergies
 11 related to the acquisition.
 12 But, you know, as far as, you know,
 13 that one day there I don't think I had any
 14 discussions. And I didn't think it was my
 15 responsibility to report to Morgan Stanley
 16 anyhow, but I did.
 17 BY MR. WEBSTER:
 18 Q. Why is that?
 19 A. It's not my responsibility.
 20 Q. You weren't working for Morgan Stanley?
 21 A. Exactly. I was not working for Morgan
 22 Stanley. I was working for Sunbeam.
 23 Q. Did you ever participate in a due diligence
 24 call with Morgan Stanley?
 25 A. Yes.

1 Q. When was that?
 2 A. I don't remember the date. Sometime in --
 3 sometime in 1998, spring of '98.
 4 MR. WEBSTER: Let's go off the record a
 5 second.
 6 (A discussion was held off the record.)
 7 THE VIDEOGRAPHER: Back on the video
 8 record 9:25 a.m.
 9 (Defendant's Exhibit #MS-600 for i.d.)
 10 BY MR. WEBSTER:
 11 Q. Okay. In front of you, Mr. Harlow, is a
 12 document that's been marked Exhibit MS 600. Have you
 13 had a chance to review that?
 14 A. I'm still looking at it here. Okay. I've
 15 looked at it.
 16 Q. Does this document refresh your recollection
 17 as to when this due diligence phone call was?
 18 A. I don't remember seeing this document, but
 19 this must have been around the time that it took
 20 place.
 21 Q. Do you have any reason to doubt that the due
 22 diligence conference call took place on Thursday,
 23 March 12th?
 24 A. No.
 25 Q. Who else participated in the due diligence

1 call?
 2 MR. MOSCATO: You mean who else besides
 3 him or who else besides --
 4 MR. WEBSTER: Who else besides Mr. Harlow.
 5 THE WITNESS: I don't remember all the
 6 names of the people on the call. There
 7 were, you know, several people from Morgan
 8 Stanley, their attorneys, some other
 9 folks. But I did participate in this even
 10 though it doesn't have my name on it.
 11 BY MR. WEBSTER:
 12 Q. Who else participated from Arthur Andersen?
 13 A. Larry Bornstein who's indicated in this memo.
 14 Q. Anybody else?
 15 A. I don't believe so.
 16 Q. Did you ever speak to a man named John Tyree
 17 from Morgan Stanley?
 18 A. I understand John was on the -- was on that
 19 call. I don't recall ever meeting him face to face.
 20 Q. Was anybody from Sunbeam on the call?
 21 A. I believe Mr. Gluck was on the call.
 22 Q. Were any representatives of Coleman on the
 23 call when you participated?
 24 A. I don't believe so.
 25 Q. And when I say representatives, I mean their

1 Q. What questions did they ask? What type of
 2 questions did they ask?
 3 A. I think they asked about things like passed
 4 adjustments that we might have made, you know,
 5 accounting in accordance with GAAP. You know,
 6 generally accounting type issues.
 7 MR. MOSCATO: For the benefit of the
 8 court reporter, when he says "passed
 9 adjustments," it's p-a-s-s-e-d, not
 10 p-a-s-t.
 11 Sorry.
 12 BY MR. WEBSTER:
 13 Q. Did Morgan Stanley ask any questions about
 14 the first quarter sales of Sunbeam for 1998?
 15 A. I don't recall that on that call at all.
 16 Q. Did you have any idea of what the status of
 17 Sunbeam's first quarter sales were for 1998 at the
 18 time of this call?
 19 A. At the time of this call I don't think we had
 20 done our comfort letter work, and that's when I became
 21 aware of it. I think our comfort letter work was done
 22 after this date. So to answer your question, I don't
 23 believe I knew about it at that time.
 24 Q. Did you have any discussions with
 25 Mr. Bornstein in advance of this call to prepare for

1 auditors, Ernst & Young. Do you remember if anyone
 2 from Ernst & Young was on the call?
 3 A. He might have been on the call, but I don't
 4 remember him being announced on the call or speaking
 5 on the call.
 6 Q. Do you remember whether Coleman had any
 7 financial advisors in connection with the acquisition?
 8 A. I don't remember. Don't recall.
 9 Q. Do you remember whether Credit Suisse First
 10 Boston was involved in the transaction?
 11 A. I don't remember.
 12 Q. Do you remember what counsel Coleman had in
 13 connection with the transaction?
 14 A. No.
 15 Q. Do you know if there were any attorneys on
 16 the phone call?
 17 A. Morgan Stanley's attorneys were. I think
 18 Davis Polk. I don't remember the gentleman's name.
 19 Q. Any other attorneys?
 20 A. Not that I can recall.
 21 Q. What was the purpose of the call?
 22 A. I just asked some questions. Morgan Stanley
 23 had provided kind of an outline as to areas they
 24 wanted to discuss. And, you know, it was just an
 25 opportunity for them to ask us questions.

1 it?
 2 A. Yes.
 3 Q. What did you discuss?
 4 A. Well, we discussed the outline that had been
 5 set by Morgan Stanley and appropriate responses to
 6 those questions.
 7 Q. Did you discuss the possibility of questions
 8 about first quarter sales coming up?
 9 A. I don't recall anything of that nature, no.
 10 Q. Before this call had you asked Mr. Bornstein
 11 to look into Sunbeam's first quarter sales?
 12 A. Specifically, no, not that I can recall.
 13 Q. And did there come a point in time when you
 14 asked Mr. Bornstein to look into Sunbeam's first
 15 quarter sales?
 16 A. Yes, there came a time when we became very
 17 focused on first quarter sales.
 18 Q. When was that?
 19 A. Sometime after this date. I don't remember
 20 the precise date.
 21 Q. What prompted you to begin looking into first
 22 quarter sales for Sunbeam?
 23 A. We were asked to prepare a comfort letter for
 24 Morgan Stanley.
 25 Q. Who asked you to do that?

1 A. I don't recall. We got, one of my team got a
 2 letter from Morgan Stanley or a call. I don't recall,
 3 but, you know, we got a request for a comfort letter.
 4 Q. From Morgan Stanley?
 5 A. From Morgan Stanley, yes.
 6 Q. Had you talked to Sunbeam about the comfort
 7 letter before you got this request from Morgan
 8 Stanley?
 9 A. I don't recall any direct discussion with
 10 Sunbeam.
 11 Q. Do you know if anybody in your team had
 12 talked to Sunbeam about the comfort letter before you
 13 got this request from Morgan Stanley?
 14 A. I don't. I don't know of that -- or those
 15 conversations, but I would assume that Mr. Gluck at
 16 some point in time mentioned to either Larry or, you
 17 know, one of our staff that a comfort letter would be
 18 required. But I don't know that for a fact.
 19 Q. Did you talk to anybody on your staff about
 20 preparation of this comfort letter before you got the
 21 request from Morgan Stanley?
 22 A. I don't recall any discussions before the
 23 request.
 24 Q. Did you anticipate that this request would
 25 come from Morgan Stanley?

1 A. I thought there was a good possibility there
 2 would be one.
 3 Q. Had Arthur Andersen started work on the
 4 comfort letter before this request came in from Morgan
 5 Stanley?
 6 A. No.
 7 Q. Do you remember when the request from Morgan
 8 Stanley came in for the comfort letter?
 9 A. I don't remember that date, but it was
 10 sometime later in March. Sometime after this date.
 11 Q. Okay.
 12 A. But I can't recall the exact date.
 13 Q. During the due diligence call, was there any
 14 discussion of Sunbeam's refusal to agree to certain
 15 accounting treatments on the '97 financial statements?
 16 MR. MOSCATO: I object. I object to
 17 the form of the question.
 18 MR. WEBSTER: Let me withdraw question.
 19 Let me withdraw the question.
 20 BY MR. WEBSTER:
 21 Q. Your team conducted the audit of Sunbeam's
 22 1997 financial statements; is that correct?
 23 A. That's correct.
 24 Q. And at any point in that audit did you
 25 recommend certain -- that Sunbeam change any

1 accounting treatments on their financial statements?
 2 A. Well, in connection with the 1997 audit we
 3 proposed some audit adjustments which we discussed
 4 with the company, and they had valid reasons for not
 5 wanting to record those. They had a different of --
 6 opinion with, you know, our interpretation of GAAP,
 7 but they were, you know, in our mind immaterial,
 8 insignificant and we passed those adjustments.
 9 Q. So they did not take the adjustments that you
 10 recommended; is that correct?
 11 A. They did not pass -- they did notebook the
 12 immaterial adjustments that we proposed, that is
 13 correct.
 14 Q. Was there any discussion of that in the due
 15 diligence call on March 12th of 1998?
 16 A. There was a discussion that passed
 17 adjustments were immaterial, so that would fall within
 18 that category in my opinion.
 19 Q. And who raised that subject?
 20 A. I don't recall. I don't recall who asked the
 21 question, because I couldn't put the voices with the
 22 faces on the other end of the line.
 23 Q. Did you discuss all of the proposed
 24 adjustments with Morgan Stanley in the due diligence
 25 call?

1 A. I don't recall if we discussed each and every
 2 one. We certainly made the point that we had passed
 3 adjustments which were, in our opinion, immaterial.
 4 Q. Now besides this due diligence call with
 5 Morgan Stanley did you ever have any due diligence
 6 call with Coleman, with Coleman's auditors or
 7 financial advisors?
 8 A. Not that I can recall.
 9 Q. Did Coleman ever make any requests for your
 10 audit work papers from 1997?
 11 A. I don't recall. They may have, but I just
 12 don't recall.
 13 Q. Do you know if Coleman made any requests to
 14 discuss the '97 audits with you or anybody else at
 15 Andersen?
 16 A. I don't recall. I don't recall any
 17 discussions with Coleman, the representatives, their
 18 auditors. I just don't recall any conversation on due
 19 diligence.
 20 Q. All right. Now sometime after Morgan Stanley
 21 asked you to prepare a comfort letter did there come a
 22 time when you learned that Sunbeam's sales for the
 23 first quarter of 1998 were lower than expected?
 24 MR. MOSCATO: I'm going to object to
 25 the characterization of the first quarter.

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1 MR. WEBSTER: I'll withdraw the
 2 question.
 3 MR. MOSCATO: I think you know what I
 4 mean. I don't want to make -- give a
 5 talking objection.
 6 BY MR. WEBSTER:
 7 Q. Did there come a time after Morgan Stanley
 8 requested the comfort letter that you learned that
 9 sales for Sunbeam in January and February of '98 were
 10 lower than expected?
 11 A. Can you clarify that question for me as to
 12 whose expectations are we talking about?
 13 Q. Sunbeam's.
 14 A. I'm not -- I'm not sure I ever knew what
 15 Sunbeam's expectations were.
 16 Q. Well, then the analysts' expectations?
 17 A. I was told that the analysts' expectations
 18 were probably not going to be met based on -- based on
 19 the sales at the point in time we were preparing the
 20 comfort letter.
 21 Q. How did you learn this?
 22 A. I learned this through my staff that was
 23 doing the work --
 24 Q. Who finished it --
 25 A. -- doing the work on the comfort letter.

1 Q. Was there any discussion about what you
 2 needed to do about this information?
 3 A. Well, at some point, you know, those
 4 conversations turned into need for disclosure. And
 5 any document that's going to go out, you know, --
 6 where -- you know, any documents that were going to be
 7 used to sell debentures or, you know, we felt that if
 8 there was an analyst expectation of X and, you know,
 9 the company was not going to meet that expectation,
 10 that needed to be disclosed.
 11 Q. Why?
 12 A. Well, it needed to be disclosed because if
 13 you have potential investors, you know, thinking one
 14 thing and then reality is something else, that's
 15 exposure for the company and also exposure for, you
 16 know, anyone working with the company.
 17 Q. So the need for disclosure was to protect
 18 those people who were going to invest in the
 19 debentures?
 20 A. Well, potentially. That wasn't my
 21 responsibility. That was the company's
 22 responsibility. But, you know, we felt we should
 23 point it out.
 24 Q. Did you discuss the need to disclose to
 25 anybody besides potential purchasers of the

1 Q. Who from your staff told you about this?
 2 A. I believe I discussed it with Mr. Bornstein
 3 and -- certainly Mr. Bornstein and Dennis Pastrana.
 4 Q. Do you remember when you discussed it with
 5 them?
 6 A. It was during the time period in which they
 7 were working on the content of the comfort letter.
 8 Q. Do you remember when that was?
 9 A. It was probably within several days after
 10 receiving the Morgan Stanley request for the company,
 11 but I can't -- I don't recall the exact date.
 12 Q. Did you have these discussions with
 13 Mr. Bornstein and Mr. Pastrana over the phone or in
 14 person?
 15 A. Both.
 16 Q. So there was more than one discussion?
 17 A. Oh, yeah, more than one discussion, yes.
 18 Q. And what was said about the sales figures?
 19 A. I don't recall specific conversation, but it
 20 was one of, you know, somewhat disbelief that the
 21 sales levels were what they were compared to, you
 22 know, prior years you know, prior quarters. We were
 23 somewhat surprised that the sales were as low as they
 24 were. So that was the gist of that conversation or
 25 those conversations.

1 debentures?
 2 A. We didn't discuss with the -- well, we
 3 discussed with -- you're referring to Morgan Stanley
 4 as a purchaser of the debenture?
 5 Q. No.
 6 MR. MOSCATO: I was going to have a --
 7 I was going to object to that. You
 8 answered too quick. I thought the
 9 question was vague. I personally couldn't
 10 understand it.
 11 THE WITNESS: That's why I asked the
 12 question.
 13 BY MR. WEBSTER:
 14 Q. I'll rephrase the question. Did you have any
 15 discussions with your team about the need to disclose
 16 these figures?
 17 A. Yes.
 18 Q. Okay. And in your internal discussions with
 19 your team did you discuss the need to disclose this
 20 information to anyone other than potential investors
 21 in the debentures?
 22 MR. JOHNSON: Objection to form.
 23 THE WITNESS: Well, I mean, what do you
 24 mean others? The company -- Sunbeam?
 25 Stanley?

1 BY MR. WEBSTER:
 2 Q. Coleman. Did you discuss the need to
 3 disclose this to Coleman?
 4 A. Well, what we discussed was the need for
 5 disclosure in the documents which all parties
 6 associated with that document would be able to see.
 7 Q. The debenture offering?
 8 A. Um-hum, yes.
 9 Q. Did you discuss, though, the need
 10 specifically to disclose this to Coleman?
 11 A. I don't recall.
 12 Q. Do you recall whether with your Andersen team
 13 you discussed the need to send a letter to Coleman or
 14 place a phone call to Coleman to advise them of these
 15 sales figures?
 16 MR. JOHNSON: Objection to form.
 17 THE WITNESS: I'm pretty certain I didn't
 18 recommend that because that would have
 19 been way out of bound for us to do.
 20 BY MR. WEBSTER:
 21 Q. Why is that?
 22 A. That's the company's responsibility, not our
 23 responsibility.
 24 Q. Okay.
 25 A. We were retained by Sunbeam, not Coleman.

1 Q. Did you discuss within Andersen whether or
 2 not you felt that Sunbeam had a responsibility to
 3 disclose this information to Coleman?
 4 A. Yes.
 5 Q. What was the discussion?
 6 A. I don't recall the discussion, but we felt
 7 that Sunbeam should disclose this to the world.
 8 Q. Well --
 9 A. Make public disclosure. So that would be
 10 disclosure to everybody.
 11 Q. I'm not asking about generally the world.
 12 Did you focus on the need for Sunbeam to disclose
 13 specifically to Coleman?
 14 MR. JOHNSON: Objection to form.
 15 THE WITNESS: I don't recall.
 16 BY MR. WEBSTER:
 17 Q. Now as a result of the discussions with your
 18 team did you come to a decision about what course of
 19 action you needed to take about this information?
 20 A. Yes.
 21 Q. What was that?
 22 A. We felt it was necessary to discuss with
 23 management of the company that it was important that
 24 the company disclose, you know, in some fashion. We
 25 did not craft any wording or come up with, you know,

1 precise disclosure for the company but disclosed that
 2 the company would not meet the expectations that were
 3 on the street, you know, in some fashion, in some
 4 fashion let that be known.
 5 Q. Were you confident at that time that the
 6 company would not meet the expectations of the
 7 analysts?
 8 A. I was -- at the time I first saw it I was not
 9 confident. I was not confident at all. And then
 10 after I had discussions with some of the management
 11 team I was -- I still felt it was a real stretch that
 12 the company was going to be able to show significant
 13 increases in revenues by the end of the month because
 14 they only had at the time we found out 10, 11, 12 days
 15 to go by the end of the month, and they had to make, I
 16 think, in excess of \$100 million in sales. And it had
 17 not been the company's experience in the past to be
 18 able to generate that level of sales in that short
 19 period of time. So I was, I was very skeptical that
 20 the company was going to be able to make their
 21 numbers.
 22 Q. But did you ever conclude that they would not
 23 meet the numbers?
 24 MR. JOHNSON: Objection to form.
 25 MR. MOSCATO: I object. It's just

1 unclear what numbers.
 2 MR. WEBSTER: The analysts'
 3 expectations for sales for the first
 4 quarter of 1998.
 5 BY MR. WEBSTER:
 6 Q. Did you ever conclude that it wasn't just a
 7 stretch but that they, in fact, would not meet those
 8 analysts' expectations?
 9 MR. JOHNSON: Same objection.
 10 THE WITNESS: Yeah, I concluded at some
 11 point on that.
 12 BY MR. WEBSTER:
 13 Q. When was that?
 14 A. When the company -- when the company
 15 concluded.
 16 Q. When was that?
 17 A. Sometime towards the end of March. The
 18 company made a statement, made a public statement that
 19 they would not meet the analyst estimates. I
 20 concluded at that point.
 21 Q. So after the press release came out?
 22 MR. MOSCATO: Objection to form.
 23 MR. JOHNSON: Objection to form.
 24 BY MR. WEBSTER:
 25 Q. Was it after the press release came out that

1 you concluded that they would not meet those
2 expectations?

3 MR. JOHNSON: Same objection. Which press
4 release? There's lots of press releases.

5 BY MR. WEBSTER:

6 Q. Did there come a time when Sunbeam made a
7 press release about these first quarter sales figures?

8 MR. MOSCATO: I'm going to object to
9 that.

10 MR. JOHNSON: I'd object to that.

11 THE WITNESS: There were a number of
12 press releases that the company did put
13 out in, you know, March, April time frame.
14 And some of those press releases talked
15 about sales; some talked about
16 acquisitions. Which ones do we want to
17 talk about?

18 MR. WEBSTER: Can I have MS 39, please?
19 (Defendant's Exhibit #MS-39 for i.d.)

20 BY MR. WEBSTER:

21 Q. Okay. Have you had a chance to review that?

22 A. I didn't read every word in this, but I think
23 I've seen this unless some words have been changed in
24 the original document.

25 Q. MS-39 is a press release from Sunbeam on

1 percent confident.

2 Q. And is this is the press release that
3 convinced you that they, in fact, would not meet the
4 first quarter estimates?

5 A. Yeah, when I saw this press release, I
6 concluded that management is saying they're not going
7 to meet 285 million to 295 million sales in the first
8 quarter.

9 Q. Did you participate in the drafting of this
10 press release?

11 A. No.

12 Q. Did you discuss the creation of this press
13 release with Sunbeam before it was issued?

14 A. I don't know how to answer that. I think
15 that this press release -- and maybe I'm trying to
16 take too much credit, but I think the reason why this
17 press release even came out was because of the
18 discussions I had with the management team about not
19 being able to meet expectations.

20 Q. So you had discussions with management about
21 the inability to meet expectations before this press
22 release?

23 A. I did. I did, but we did not discuss
24 drafting a press release or exactly what we were going
25 to say in it. But this showed up shortly after my

1 March 19th of 1998; is that correct?

2 A. That's correct.

3 Q. And if you could read the first sentence of
4 that, please, in the record.

5 A. Delray Beach, Florida, March 19th, 1998.
6 Sunbeam Corporation New York Stock Exchange SOC said
7 today that it's possible that its net sales for the
8 first quarter of 1998 may be lower than the range of
9 Wall Street analysts' estimates for \$285 million to
10 295 million. But net sales are expected to exceed
11 1997 first quarter net sales of 253.4 million.

12 Q. All right. That sentence -- nowhere in this
13 press release does it say that Sunbeam will not meet
14 analysts' expectations for the first quarter of 1998,
15 does it?

16 A. Well, I think, in my opinion, when a public
17 company puts out a statement like this, in my 30 years
18 they're saying they're not going to make it. It's
19 crystal clear in my opinion.

20 Q. The language in the press release does not
21 say they will not meet their expectations, does it?

22 A. It's clear to me. It's clear to me. The
23 company concluded -- anybody -- any investor that
24 would read this would say they're not going to make it
25 and their stock is going to get hit. I'm a hundred

1 conversation with management.

2 Q. Who did you talk to in management about the
3 need for disclosure?

4 A. I talked to Mr. Gluck. I talked to legal
5 department, Janet Kelley, David Fannin and Mr. Kersh,
6 the company CFO.

7 Q. Gluck, Kelley, Fannin and Kersh?

8 A. Yes.

9 Q. On more than one occasion?

10 A. I don't recall. Well, let me go one by one.
11 Mr. Gluck, yes, on more than one occasion.

12 Miss Kelley, yes, on more than one occasion.
13 Mr. Fannin, probably once before -- well, I talked to
14 Mr. Fannin on a number of issues, but on this
15 particular issue probably once before the press
16 release was prepared. And, once again, Mr. Kersh, I
17 talked to him from time to time on various issues.
18 But in the time frame we're talking about just a few
19 days prior to the release of this probably once.

20 Q. How many times did you talk to Mr. Gluck?

21 A. I don't recall. Five or six times.

22 Q. And what was said about the need for
23 disclosure?

24 A. Mr. Gluck -- I don't remember precisely the
25 words that he used, but the belief and the feeling

1 that I got in talking to him about this issue is that
 2 he felt that it would be good if the company did have
 3 some disclosure on this issue, but he needed some help
 4 from me to get that done, the work on it.
 5 Q. What do you mean by that?
 6 A. To work on other members of management over
 7 him.
 8 Q. Did he say why?
 9 A. No.
 10 Q. What do you mean he needed you to work on
 11 management?
 12 A. Once again, I don't precisely remember the
 13 words, but I had the impression Mr. Gluck had some
 14 difficulty in dealing with Mr. Kersh as the CFO. And
 15 Mr. Kersh and Mr. Gluck had some difference of opinion
 16 as to disclosure specifically related to this issue.
 17 And Mr. Gluck had recommended or suggested that I talk
 18 to Mr. Kersh and Mr. Fannin about this issue and my
 19 concerns.
 20 Q. And did you, in fact, talk to Mr. Kersh and
 21 Mr. Fannin about it?
 22 A. Yes, I did.
 23 Q. What was said?
 24 A. I, in essence, told them that based on where
 25 the sales were year to date for the company that we

1 were not going to meet analysts' expectations.
 2 Q. Did you discuss disclosing it anywhere other
 3 than the offering memorandum?
 4 A. I don't recall.
 5 Q. Did you ever discuss a press release with
 6 them before this press release came out?
 7 MR. JOHNSON: Asked and answered.
 8 THE WITNESS: As I say, this press release
 9 kind of appeared after that discussion.
 10 We didn't say press release or when it was
 11 going to come out or anything like that,
 12 so...
 13 BY MR. WEBSTER:
 14 Q. There were no discussions about a press
 15 release before this came out?
 16 A. No, not that I recall. There may have been,
 17 but I don't recall.
 18 Q. Did you discuss the degree of disclosure with
 19 Sunbeam?
 20 A. No, just the essence of disclosure, that
 21 sales expectations were not going to be met. How that
 22 was said and, you know, the specific wording was not
 23 discussed.
 24 Q. Did you discuss with Sunbeam prior to the
 25 release of this press release the ability to exceed

1 felt that in connection with this offering statement
 2 there should be some disclosures made in the document
 3 indicating the company was not going to perform as,
 4 you know, outside analysts expected.
 5 Q. This is in -- disclosure in the offering
 6 memorandum for the debentures?
 7 A. Yes.
 8 Q. Was there a discussion about disclosure
 9 anywhere else other than the offering memorandum?
 10 MR. JOHNSON: Objection to form.
 11 THE WITNESS: I don't recall. I mean,
 12 I think we were talking in the -- we were
 13 talking in primarily the context of the
 14 offering memorandum to put disclosure in
 15 there because that's what we were working
 16 on at that point in time.
 17 BY MR. WEBSTER:
 18 Q. Did you discuss how it should be disclosed in
 19 the offering memorandum?
 20 A. Not precisely. As far as geography within
 21 the document we thought it should be in a prominent
 22 section of the document. You know, I don't recall if
 23 there was a risk, risk section of that or not. It's
 24 been so long. But, you know, there should be a
 25 prominent display of the fact that the company sales

1 the first quarter results for 1997?
 2 A. I don't recall any direct discussion on that.
 3 Q. Did you discuss the ability to exceed '97
 4 first quarter results within your Arthur Andersen team
 5 before this press release came out?
 6 A. I don't remember specific discussions on
 7 that, but part of the -- as I recall, part of the
 8 comfort letter work was to make comparisons with the
 9 prior quarter. So in the context of putting the
 10 comfort letter together, that probably was looked at.
 11 May have been discussed. I mean, I think that was
 12 specifically reported on the comfort letter. I'd have
 13 to look at a copy to recall, but I think there was a
 14 comparison of prior, you know, prior periods.
 15 Q. Well, you didn't have the full numbers for
 16 the first quarter yet, did you?
 17 A. No. Did not have the full -- no. It was
 18 short of the first quarter, so there were another 10,
 19 11, 12 days to go before the quarter ended.
 20 Q. Just to be clear, you don't have any
 21 recollection of discussing the ability to exceed '97
 22 first quarter results within the Andersen team?
 23 MR. JOHNSON: This is at any time?
 24 THE WITNESS: Oh, no, it was discussed.
 25 MR. JOHNSON: I object.

12 (Pages 42 to 45)

1 THE WITNESS: We certainly discussed
2 it, yes.

3 BY MR. WEBSTER:

4 Q. What was said?

5 A. Well, it was discussed, clearly it was
6 discussed when this press release came out.

7 Q. Before the press release came out?

8 MR. JOHNSON: That's my objection.

9 MR. MOSCATO: Do you understand the
10 question, Phil?

11 THE WITNESS: I think I do.

12 BY MR. WEBSTER:

13 Q. Well, let me rephrase it just to be clear.
14 Before this press release came out did you discuss
15 with other members of your Andersen team the ability
16 of Sunbeam to exceed their '97 first quarter results?

17 A. I believe there were some discussions on
18 that. Like I say, we were doing work on the comfort
19 letter. And, you know, there were schedules prepared.
20 There was a subtotal of sales through March whatever
21 the date was. We had a schedule of the first quarter
22 from 1997. You know, and I'm sure at some point there
23 might have been some discussion as to the difference
24 in those sales compared to the prior quarter.

25 Q. Did you or anybody else in the Andersen team

1 THE WITNESS: I think we did. I think
2 we did have an indirect discussion. I
3 mean, I didn't come out and say, as I
4 recall -- I mean, I may have. But I made
5 it clear in the discussion that the
6 year-to-date sales for 1998 were
7 substantially less than year-to-date sales
8 in 1997.

9 Now did I say you need to disclose
10 you're not going to make, you know, your
11 1997 number? I don't recall. But we
12 talked about the shortfall. And it could
13 be -- you know, I think any accountant
14 could make that assumption that, hey, you
15 know, we've got to take a look at '97 as
16 well as '98 where we were.

17 BY MR. WEBSTER:

18 Q. The 1998 analyst expectation, that was a
19 higher number than the '97 first quarter number,
20 correct?

21 A. That's correct, that's correct.

22 Q. What was the result of your discussion with
23 Mr. Kersh about the need to made this disclosure about
24 the analysts' expectations?

25 A. You know, once again, I don't remember exact

1 express an opinion about whether Sunbeam would be able
2 to exceed the first quarter of '97 results before this
3 press release came out?

4 A. Before this press release. I don't recall.
5 I don't recall.

6 Q. So did you discuss with Morgan -- not Morgan
7 Stanley. Did you discuss with Sunbeam their ability
8 to exceed '97 first quarter results before this press
9 release came out?

10 A. I don't recall. I mean, what I do recall is
11 saying compared to the prior year your sales are
12 substantially less in 1998 than they were in 1997.
13 Now can that be construed to be discussing first
14 quarter shortfall? I don't know. But I would think a
15 reasonable person could draw that conclusion.

16 Q. Just to be clear, you did -- before this
17 press release came out you did discuss with Sunbeam
18 the need to disclose that first quarter '98
19 expectations of the analysts would not be met; is that
20 correct?

21 A. Yes, that's correct.

22 Q. But you did not discuss with Sunbeam before
23 this press release came out whether or not Sunbeam
24 would exceed the '97 first quarter results?

25 MR. JOHNSON: Object to the form.

1 words that were said, but, you know, the impression in
2 my mind from that conversation was the company is
3 going to work hard to make the sales numbers. They
4 felt pretty confident that there were going to be a
5 lot of late sales reported at the end of the quarter.
6 You know, made statements like, you know, the SEC
7 attorneys were drafting the documents and that's their
8 responsibility, not our responsibility. You know,
9 things like that are in my mind, but exact words I
10 don't recall.

11 Q. Now before this press release came out did
12 you discuss with anybody at Morgan Stanley the need to
13 make disclosures about the ability to meet the
14 analysts' expectations for the first quarter of 1998?

15 A. At some point I had a discussion with some
16 folks from Morgan Stanley, including their legal
17 counsel. I don't remember precisely when that
18 discussion was, but it was about the time this
19 document came out.

20 Q. Do you remember whether it was before or
21 after it came out?

22 A. Well, as I recall, it was -- I think it was
23 right about the time this document came out.

24 Q. So it could have been before; could have been
25 after?

1 MR. MOSCATO: I object.
 2 THE WITNESS: Well, I think -- well,
 3 the call was set up by Mr. Bornstein, and
 4 it was not a face-to-face meeting. And
 5 Mr. Bornstein was in New York working on
 6 the offering memorandum along with Morgan
 7 Stanley and counsel and, you know, the
 8 whole team up there. And there was, you
 9 know, some kind of heated discussions
 10 about disclosure of this in the document.
 11 And Mr. Bornstein would give me updates on
 12 those discussions.

13 And then at some point in time he asked
 14 me to participate in a conference call
 15 with Morgan Stanley and attorneys. And I
 16 think -- I think the company's attorneys
 17 were on that call as well, outside
 18 attorneys, not in-house attorneys. But
 19 things got pretty heated between Arthur
 20 Andersen and Morgan Stanley on disclosure
 21 on this particular issue.

22 BY MR. WEBSTER:
 23 Q. Do you remember was Mr. Bornstein in the same
 24 room, same location with people from Morgan Stanley
 25 when this conference call was held?

1 Q. Okay.
 2 A. You know.
 3 Q. You testified that, I believe -- correct me
 4 if I'm wrong -- that you didn't know about the press
 5 release until it came out; is that correct?
 6 A. That's correct.
 7 Q. And the press release was discussed in this
 8 conference call; is that right?
 9 A. I believe it was.
 10 Q. So --
 11 A. Well, I believe the disclosure of this issue
 12 in the press release was discussed on that conference
 13 call.
 14 Q. Do you remember whether the press release was
 15 discussed in the conference call?
 16 A. I don't remember it precisely, but I do
 17 remember talking about this issue, which most likely
 18 would have been generated as a result of the press
 19 release coming out.
 20 Q. Okay. Let's stop for just a second. Someone
 21 is at the door.
 22 THE VIDEOGRAPHER: Off the video
 23 record, 10:07 a.m.
 24 (Brief interruption.)
 25 THE VIDEOGRAPHER: Back on the video

1 A. I had the impression they were in a
 2 conference room. I mean, I was in Florida and they
 3 were in New York. And they were at Morgan Stanley's
 4 office or the printer's office. I don't recall. But
 5 from the -- from the sounds of the conversation it
 6 sounded as if they were on a speaker phone in a
 7 conference room.

8 Q. Did you talk to Mr. Bornstein at all when he
 9 was at the printers?

10 A. Yes.

11 Q. And you don't remember whether this
 12 conference call with Morgan Stanley was when they were
 13 at the printers or at Morgan Stanley's office?

14 MR. MOSCATO: I object. You can
 15 answer.

16 THE WITNESS: I don't recall. It was
 17 one or the other. But they were together
 18 wherever it was.

19 BY MR. WEBSTER:
 20 Q. Do you remember whether the press release had
 21 come out when you had this conference call?

22 A. Well, as I say, I think, I think the
 23 disclosure of the press release in the document was,
 24 you know, one of the basis for our conversation. So I
 25 think the press release was just freshly out.

1 record, 10:07 a.m.
 2 BY MR. WEBSTER:
 3 Q. Okay, Mr. Harlow, I just want to clarify in
 4 this conference call with Morgan Stanley you did
 5 discuss the need to make the disclosure that's in the
 6 press release in the offering memorandum; is that
 7 correct?
 8 MR. MOSCATO: I object to that
 9 characterization.
 10 MR. JOHNSON: Object to the form.
 11 MR. MOSCATO: Misstates his testimony.
 12 THE WITNESS: That's not -- I don't
 13 think I said that. What I said was I
 14 think the contents of this press release
 15 were discussed in that call with Morgan
 16 Stanley. Now how that was -- well, I
 17 think that's what I said.
 18 BY MR. WEBSTER:
 19 Q. The press release was eventually included in
 20 the offering memorandum; is that correct?
 21 A. As I recall, it was.
 22 Q. During this conference call with Morgan
 23 Stanley, did you discuss the need to include this
 24 press release in the offering memorandum?
 25 MR. MOSCATO: Objection.

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1 MR. JOHNSON: Join.
 2 MR. MOSCATO: You can answer.
 3 THE WITNESS: Well, as I recall, what we
 4 discussed was even more disclosure than
 5 what was in the press release, the need
 6 for more disclosure in the offering
 7 memorandum than what was in here.
 8 BY MR. WEBSTER:
 9 Q. Does that mean that you knew about the press
 10 release at the time of this conference call?
 11 A. Well, I think that's one of the things that
 12 generated the call was that press release.
 13 Q. Okay. And what was your opinion about
 14 whether anything more than had been disclosed in the
 15 press release needed to be disclosed in the offering
 16 memorandum?
 17 A. Well, specifically I had a concern about the
 18 last section of that first sentence where the company
 19 made the statement "...but net sales are expected to
 20 exceed 1997 first quarter net sales of \$253.4
 21 million."
 22 Q. What was your concern?
 23 A. My concern was that they should have put a
 24 period after 285 to 295 and eliminate that statement.
 25 Q. Eliminate that statement from the press

1 A. Exactly.
 2 Q. Did you discuss with Morgan Stanley and
 3 Sunbeam the need to include more information than was
 4 in this press release in the offering memorandum?
 5 A. We discussed having stronger language, making
 6 it clear that -- well, what we wanted to do was to
 7 show where the sales were at the point in time the
 8 document was being prepared so the reader could see if
 9 they had a long way to go to make the number. And
 10 there was tremendous kickback from, resistance from,
 11 you know, the other parties up there to do that.
 12 Q. What did they say?
 13 A. I don't recall, but they just thought it was
 14 crazy, didn't make sense; we're stupid; we don't know
 15 what we're doing. They made us feel like idiots
 16 basically.
 17 Q. You don't remember who said that?
 18 A. I think it was the Davis Polk guy and the
 19 Morgan Stanley guy.
 20 Q. Do you remember their names?
 21 THE VIDEOGRAPHER: Let me go off the
 22 record.
 23 (A discussion was held off the record.)
 24 THE VIDEOGRAPHER: Back on the video
 25 record.

1 release or from the offering memorandum?
 2 A. Well, the press release was already out, so
 3 not much I could do about that, but specifically in
 4 the offering memorandum.
 5 Q. Your opinion was that the information in the
 6 press release, except for that last clause of the
 7 first sentence should be disclosed in the offering
 8 memorandum?
 9 MR. MOSCATO: I object. You can
 10 answer.
 11 THE WITNESS: Well, at a minimum. Oh,
 12 I would have -- I would have loved to make
 13 some editorial changes to this press
 14 release.
 15 BY MR. WEBSTER:
 16 Q. Other than cutting out that information did
 17 you suggest that any more information needed to be
 18 disclosed in the offering memorandum?
 19 A. Yeah, but we didn't wordsmith this particular
 20 press release.
 21 Q. It was already out?
 22 A. Yeah, the press release was -- that was a
 23 done deal.
 24 Q. You were focusing on what should go in the
 25 offering memorandum?

1 BY MR. WEBSTER:
 2 Q. Do you remember specifically what you
 3 recommended should be added in the offering memorandum
 4 that wasn't in the press release?
 5 A. The only thing that I specifically remember
 6 was the deletion of the sentence which we discussed
 7 earlier regarding 1997 first quarter net sales. Do I
 8 need to clarify that?
 9 Q. No. You didn't want the whole sentence, just
 10 the last part of that first sentence excluded?
 11 A. Just the last part of sentence which I
 12 previously read.
 13 Q. Okay.
 14 A. And I don't -- I don't recall other comments,
 15 you know, that were made relative to this disclosure.
 16 MR. WEBSTER: MS-117, please.
 17 (Defendant's Exhibit #MS-117 for i.d.)
 18 BY MR. WEBSTER:
 19 Q. Mr. Harlow, before you is a document marked
 20 MS-117, and the first page indicates it's agreement
 21 and plan of merger among Sunbeam Corporation, Camper
 22 Acquisition Corp. and the Coleman Company, Inc. dated
 23 as of February 27th, 1998. Have you ever seen this
 24 document before?
 25 A. At some point I have. I don't recall when.

1 Q. What is this document?
 2 A. It's an agreement and plan of merger between
 3 Sunbeam and Coleman.
 4 Q. Okay.
 5 A. Dated as of February 27th, 1998.
 6 Q. Could you please turn to page 29 of that
 7 document, which is Bates stamped 0008043? And I'd ask
 8 you to read Section 7.2 to yourself and let me know
 9 when you finish.
 10 MR. MOSCATO: Can you just do me a
 11 favor. Who's Laser?
 12 MR. WEBSTER: Laser?
 13 MR. MOSCATO: Yeah.
 14 MR. WEBSTER: Defined --
 15 MR. MOSCATO: You don't have to show
 16 me. Just tell me.
 17 MR. WEBSTER: Laser is defined as
 18 Sunbeam, and the company is defined as
 19 Coleman.
 20 MR. MOSCATO: The company is Coleman?
 21 MR. WEBSTER: Yes.
 22 THE WITNESS: Okay. I'm through.
 23 BY MR. WEBSTER:
 24 Q. Have you ever reviewed this section of this
 25 agreement before, Mr. Harlow?

1 A. No.
 2 Q. What does this Section 7.2 provide for?
 3 MR. JOHNSON: I object to this.
 4 MR. MOSCATO: I object.
 5 MR. JOHNSON: He said he's never even
 6 read it before, and he's not a party to it
 7 either.
 8 MR. MOSCATO: I really do object. The
 9 documents speaks for itself.
 10 BY MR. WEBSTER:
 11 Q. The first sentence of Section 7.2 says that
 12 the company and Laser shall each afford to the other
 13 and to the other's financial advisors legal counsel,
 14 accountants, consultants and other representatives
 15 full access at all reasonable times throughout the
 16 period prior to the company effective time to all of
 17 its books, records, properties, plants and personnel
 18 provided that all such access shall be on reasonable
 19 advanced notice and shall not disrupt normal business
 20 operations. And during such period, each shall
 21 furnish promptly to the other a copy of each report,
 22 schedule and other document filed or received by
 23 pursuant to the requirements of federal or states
 24 securities laws and all other information as such
 25 other party may reasonably request provided that no

1 investigation pursuant to this Section 7.2 shall
 2 affect any representation or warranties made herein or
 3 the conditions to the obligations of the respective
 4 parties to consummate the company merger."
 5 Is that an accurate reading that have
 6 sentence, Mr. Harlow?
 7 A. I don't know. I had my glasses off, but I
 8 assume you can read.
 9 MR. MOSCATO: I will -- I will say that
 10 that was an accurate reading.
 11 MR. WEBSTER: Thank you.
 12 BY MR. WEBSTER:
 13 Q. Mr. Harlow, did you have an understanding
 14 during March of 1998 that Coleman and Sunbeam had a
 15 right to review all of the other parties' books,
 16 records, properties, plants, et cetera?
 17 A. I don't know what their rights were at that
 18 point.
 19 Q. Okay. Did you during the period of March
 20 1998 have any understanding that Coleman might request
 21 to review Sunbeam's books and records?
 22 A. I assume that was a possibility.
 23 Q. Did you discuss that possibility with
 24 Sunbeam?
 25 A. I don't recall direct discussions, but I'm

1 sure at some point in time it came up.
 2 Q. Did you discuss with -- after you learned
 3 that the sales figures for January and February of
 4 1998 were low did you discuss with Sunbeam the
 5 possibility that Coleman might ask to see those sales
 6 figures?
 7 A. I don't recall that discussion. I know they
 8 were Coleman people working with Mr. Gluck. I think
 9 he had their controller down a number of times in his
 10 office. And I assumed that they were discussing
 11 results of the company. But that was not my
 12 responsibility at all to follow up on that.
 13 Q. During the time that you were discussing with
 14 Sunbeam the need to make disclosure about the sales
 15 figures for January and February of 1998, did you
 16 discuss with Sunbeam the possibility that Coleman
 17 might make a request for those figures?
 18 A. I don't recall a discussion, but, you know, I
 19 absolutely assume that they, you know, they were a
 20 pretty sophisticated company, one of Mr. Perelman's
 21 companies, and I'm sure that they look at the numbers.
 22 I was not conducting their due diligence, and I can't
 23 tell them what they should and should not look at.
 24 Q. Did anybody from Sunbeam ever express any
 25 concern to you about the possibility that Coleman

1 would ask to see the sales figures for January and
 2 February of 1998?
 3 A. I don't recall. I don't recall that coming
 4 up.
 5 Q. Did anybody from Morgan Stanley ever express
 6 to you a concern that Coleman might ask to see sales
 7 figures for January or February of 1998?
 8 A. Absolutely not.
 9 Q. Was it your understanding that Coleman could
 10 have received the sales figures for January and
 11 February of 1998 if they had asked for them?
 12 A. Yes.
 13 MR. MOSCATO: Phil, you got to pause
 14 just for a second.
 15 THE WITNESS: That was my assumption.
 16 MR. MOSCATO: I just want to object.
 17 THE WITNESS: Okay. Object.
 18 MR. MOSCATO: Retroactively I will
 19 object.
 20 THE WITNESS: I object to this whole
 21 thing, but doesn't do me any good.
 22 MR. MOSCATO: I can't do that. Well, I
 23 did do that actually.
 24 THE WITNESS: Okay.
 25 BY MR. WEBSTER:

1 letter would be requested?
 2 MR. MOSCATO: I object.
 3 MR. JOHNSON: Join.
 4 THE WITNESS: I just don't recall at all.
 5 BY MR. WEBSTER:
 6 Q. Did you ever discuss with Sunbeam the
 7 possibility that Coleman would ask for a comfort
 8 letter?
 9 MR. MOSCATO: I object.
 10 THE WITNESS: Don't recall.
 11 BY MR. WEBSTER:
 12 Q. Did you ever -- do you know if Ernst & Young
 13 ever prepared a comfort letter for Sunbeam?
 14 MR. MOSCATO: I object.
 15 THE WITNESS: I don't recall.
 16 BY MR. WEBSTER:
 17 Q. Do you know if Ernst & Young ever delivered a
 18 comfort letter to Sunbeam concerning Coleman?
 19 A. I don't know that.
 20 MR. MOSCATO: I object.
 21 BY MR. WEBSTER:
 22 Q. And do you know if anyone delivered a comfort
 23 letter to Coleman regarding Sunbeam?
 24 MR. MOSCATO: Objection.
 25 THE WITNESS: I don't know.

1 Q. You provided, Andersen provided a comfort
 2 letter to Morgan Stanley; is that correct?
 3 MR. MOSCATO: Go ahead.
 4 THE WITNESS: I was going to give you a
 5 chance to object.
 6 MR. MOSCATO: I'm not objecting.
 7 THE WITNESS: That's correct.
 8 BY MR. WEBSTER:
 9 Q. And that was in connection with Morgan
 10 Stanley's underwriting of the debentures; is that
 11 correct?
 12 A. Yes.
 13 Q. Do you know if any comfort letters were
 14 prepared for Coleman or Sunbeam in connection with the
 15 acquisition?
 16 MR. MOSCATO: I object to that. You
 17 can answer if you understand the question.
 18 MR. JOHNSON: I'll join.
 19 THE WITNESS: Do I understand --
 20 BY MR. WEBSTER:
 21 Q. Let me rephrase the question. Did Andersen
 22 ever prepare a comfort letter for Coleman in
 23 connection with the acquisition?
 24 A. I don't recall.
 25 Q. Did you ever anticipate that such a comfort

1 BY MR. WEBSTER:
 2 Q. Do you know if the agreement and plan of
 3 merger required Sunbeam to prepare a comfort letter
 4 for Coleman?
 5 MR. MOSCATO: I object.
 6 MR. JOHNSON: James, I'm going to
 7 object to this line of questioning. If
 8 you're going to get into questions on
 9 Section 7.3, Morgan Stanley has responded
 10 to requests to admit that are absolutely
 11 judicially binding, and that, I think,
 12 foreclosed a lot of questioning you're
 13 about to engage in. Obviously if you want
 14 to engage in the questioning, you can, but
 15 I want to note my objection.
 16 MR. MOSCATO: I'm sorry. I don't
 17 understand what you just said. Can you
 18 explain to me?
 19 MR. JOHNSON: Sure.
 20 MR. MOSCATO: Since I'm representing
 21 the witness, I think I have a right to
 22 know what's going on.
 23 MR. JOHNSON: Why don't we go off the
 24 record.
 25 MR. WEBSTER: Can we go off the record?

1 MR. JOHNSON: Yeah.
 2 THE VIDEOGRAPHER: Off the video record
 3 10:34 a.m.)
 4 (A recess was taken from 10:24 a.m.
 5 to 10:43 a.m.)
 6 (Defendant's Exhibit # MS-31 for i.d.)
 7 BY MR. WEBSTER:
 8 Q. Okay. Mr. Harlow, before you is a document
 9 marked MS-31. Have you seen this document before?
 10 A. Yes, I have.
 11 Q. And the first page is a printout of an
 12 e-mail; is that correct?
 13 A. It appears to be, yes.
 14 Q. And an e-mail from Mr. Pastrana to you,
 15 Mr. Bornstein, and Mark Brockelman; is that correct?
 16 A. That's correct.
 17 Q. On March 18th, 1998?
 18 A. Yes.
 19 Q. And what is attached to this e-mail?
 20 A. This is a draft of a comfort letter addressed
 21 to Morgan Stanley & Company.
 22 Q. Do you know who created this document?
 23 A. No.
 24 Q. Did you participate in the drafting of this
 25 document?

1 A. I don't recall if I did up to this point. At
 2 some point in time I reviewed the final version of the
 3 document, but I don't recall if I participated in the
 4 drafting of this version.
 5 Q. Do you know why this draft was created?
 6 A. I assume it was to just provide Morgan
 7 Stanley and Sunbeam a copy of our -- of what we
 8 thought would be in the comfort letter at the time it
 9 was to be issued.
 10 Q. Was it intended that this draft would be
 11 circulated to -- outside Arthur Andersen?
 12 A. Yes.
 13 Q. Who did you intend to circulate it to?
 14 A. Well, typically a draft of this letter is
 15 sent to the requesting party prior to the issuance
 16 date and also our client.
 17 Q. Who was the requesting party here?
 18 A. Morgan Stanley.
 19 Q. Do you know if this draft was, in fact,
 20 circulated to Morgan Stanley and to Sunbeam?
 21 Actually, strike that.
 22 Do you know if this draft was actually
 23 circulated to Morgan Stanley?
 24 A. I don't know if this draft was. I can't
 25 answer that. I can't tell from the -- I can't tell if

1 this draft was.
 2 Q. Do you know if a draft of the comfort letter
 3 was circulated to Morgan Stanley?
 4 A. Yes, I know that a draft was. I don't know
 5 if this draft was.
 6 Q. Do you know when a draft was circulated to
 7 Morgan Stanley?
 8 A. I don't know the exact time or the exact
 9 date, but prior to the issuance date on the letter
 10 there was a draft sent.
 11 Q. Do you know who at Morgan Stanley it was sent
 12 to?
 13 A. I don't know that.
 14 Q. Do you know how it was delivered to Morgan
 15 Stanley?
 16 A. I don't know.
 17 Q. Did you offer -- Do you know if Andersen
 18 offered a draft of the comfort letter to anyone
 19 besides Morgan Stanley and Sunbeam?
 20 A. I don't know that.
 21 Q. Do you know if Sunbeam offered a draft of the
 22 comfort letter to anybody besides Morgan Stanley?
 23 A. No, I don't know that.
 24 Q. Do you know if anybody requested a copy of
 25 the draft of the comfort letter?

1 MR. MOSCATO: Besides Morgan Stanley.
 2 THE WITNESS: And Sunbeam.
 3 BY MR. WEBSTER:
 4 Q. Yes.
 5 A. No, I don't know.
 6 Q. Was this draft comfort letter available to
 7 Coleman upon request?
 8 MR. JOHNSON: Object to the form.
 9 BY MR. WEBSTER:
 10 Q. Do you know if this draft comfort letter was
 11 available to Coleman upon request?
 12 MR. JOHNSON: Same objection.
 13 THE WITNESS: I don't know.
 14 BY MR. WEBSTER:
 15 Q. Did you have any expectation about whether
 16 Coleman would request a copy of the comfort letter?
 17 MR. JOHNSON: Objection to form.
 18 THE WITNESS: I had no knowledge of that,
 19 no.
 20 BY MR. WEBSTER:
 21 Q. It wasn't whether you had knowledge whether
 22 you had any expectation.
 23 MR. JOHNSON: Same objection.
 24 THE WITNESS: No, I wouldn't expect
 25 Coleman to get this letter.

1 BY MR. WEBSTER:
 2 Q. Why not?
 3 A. Because it's not -- this is a letter that we
 4 have drafted specifically for Morgan Stanley, you
 5 know, to do their thing. And I would not expect this
 6 to go out to any other parties.
 7 Q. And the purpose of the draft is to get
 8 feedback on Morgan Stanley if this is satisfactory for
 9 their purposes; is that correct?
 10 MR. MOSCATO: I object. You can
 11 answer.
 12 MR. JOHNSON: Join.
 13 THE WITNESS: Well, we found that
 14 underwriters have -- they like to pay
 15 attorneys lots of money, you know, to
 16 cross T's and dot I's, so, you know, we
 17 learned long ago you send these out ahead
 18 of time so there's plenty of time for the
 19 attorneys to do their thing and look at
 20 these letters and either get happy or
 21 unhappy with it.
 22 So we sent them out well in advance so
 23 that they can look at them and pick them
 24 apart if they don't like them.
 25

1 Q. Did you talk to Mr. Bornstein about the
 2 feedback that he received?
 3 A. I'm sure we did. I just don't remember the
 4 details.
 5 MR. WEBSTER: Can I have Exhibit MS-48,
 6 please?
 7 (Defendant's Exhibit #MS-48 for i.d.)
 8 BY MR. WEBSTER:
 9 Q. Mr. Harlow, before you is Exhibit MS-48. Is
 10 this another draft of the comfort letter?
 11 A. It appears to be.
 12 Q. I'd like you to compare the two drafts we
 13 have, MS-31 and MS-48. And specifically I'd like you
 14 to look at paragraph nine in MS-48, and I'd like to
 15 ask you whether that was included in MS-31, if that's
 16 new language.
 17 A. I don't know if it's new language or old
 18 language. I don't know which draft was prepared
 19 first.
 20 Q. Do you know if this --
 21 A. I can't tell by these drafts.
 22 MR. WEBSTER: Well, let's pull out MS
 23 Number 9, then.
 24 (Defendant's Exhibit #MS-9 for i.d.)
 25 BY MR. WEBSTER:

1 BY MR. WEBSTER:
 2 Q. What's well in advance?
 3 A. Well in advance of the issuance date.
 4 Q. The issuance of the comfort letter?
 5 A. The issuance of the comfort letter, you know,
 6 the comfort letter requirement for one that needs to
 7 be dated.
 8 Q. Do you know how far in advance of the
 9 issuance of the comfort letter to Morgan Stanley the
 10 draft was sent to them?
 11 A. Oh, this probably, you know, several days at
 12 least would be my guess.
 13 Q. Did you review the draft before it was sent
 14 to Morgan Stanley?
 15 A. I don't recall.
 16 Q. Did you get any feedback from Morgan Stanley
 17 after they received the draft comfort letter?
 18 A. I personally, I don't think I ever received
 19 feedback, but...
 20 Q. Do you know if Andersen received feedback
 21 from Morgan Stanley?
 22 A. Mr. Bornstein got some feedback from the
 23 letter, I think.
 24 Q. Did you discuss --
 25 A. It was my understanding he got some feedback.

1 Q. And before you is Exhibit marked MS Number 9.
 2 Do you recognize this document, Mr. Harlow?
 3 A. Yes, I've seen this before.
 4 Q. Okay. Now the final comfort letter has 13
 5 paragraphs; is that correct?
 6 A. Yes, that's correct.
 7 Q. And MS-48 only has 12, and MS-31 only has 11;
 8 is that correct?
 9 A. That's correct.
 10 Q. One of those new paragraphs, one of those
 11 additional paragraphs in the final comfort letter is
 12 paragraph 10, which was not in MS-31 if you compare
 13 those two documents.
 14 A. Okay. That appears to be a difference
 15 between those two drafts.
 16 Q. Do you know why that paragraph was added to
 17 the final comfort letter?
 18 A. I have no idea.
 19 Q. Do you know who requested that it be added to
 20 the final comfort letter?
 21 A. I don't recall.
 22 Q. All right. Focusing on MS-9, the final
 23 comfort letter, what was the purpose of the comfort
 24 letter?
 25 A. The purpose of a comfort letter is basically

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1 to -- for Morgan Stanley to say that they've done a
2 certain amount of due diligence on a transaction and,
3 you know, get a letter from the accountants.

4 Q. And the transaction in this case was the
5 debenture offering?

6 A. In this case that's what it was, yes.

7 Q. And do you know if a comfort letter was
8 prepared by Ernst & Young on behalf of Coleman?

9 A. I don't know that.

10 Q. Did you have any discussions with Morgan
11 Stanley about the preparation of a comfort letter by
12 Ernst & Young?

13 A. I don't recall any discussion of that nature.

14 Q. Prior to this transaction, the acquisition of
15 Sunbeam by -- the acquisition of Coleman by Sunbeam,
16 had you worked on other acquisition transactions for
17 other clients?

18 A. Yes.

19 Q. And had you worked on other transactions that
20 involved debenture offerings?

21 A. Yes.

22 Q. And had you prepared comfort letters in
23 connection with those other debenture offerings?

24 A. I had previously prepared a number of comfort
25 letters, yes.

1 A. No, I don't recall that. My clients usually
2 were acquiring -- I worked on -- I don't ever recall
3 working on a seller where I provided a comfort letter.
4 Worked on a lot of buyers, but no sellers.

5 Q. You didn't represent any sellers?

6 A. Not that I can recall.

7 Q. Was it your experience that comfort letters
8 were prepared for the sellers in those transactions?

9 MR. JOHNSON: Object to form.

10 MR. MOSCATO: I object to the whole
11 line. I think it misconstrues what a
12 comfort letter is, but go ahead and answer
13 the question.

14 THE WITNESS: I've never really thought
15 about it. I mean, it's, you know, it's
16 typically an investment banker
17 underwriting the transaction is calling
18 the accountants for a letter that they can
19 put in their file for information they
20 already know. So, you know, it's kind of
21 a cover your ass type of document. But I
22 suppose that could be asked by an
23 investment banker for -- representing a
24 seller. I just don't know.

25 BY MR. WEBSTER:

1 Q. And in those prior representations had you
2 represented buyers in the transaction?

3 MR. MOSCATO: I object to the form.

4 You can answer.

5 BY MR. WEBSTER:

6 Q. Well, in this case the debenture offering was
7 to finance Sunbeam's acquisition of Coleman; is that
8 correct?

9 A. That was the purpose of this debenture,
10 right.

11 Q. And in this transaction you were representing
12 the purchaser, which was Sunbeam, correct?

13 MR. MOSCATO: I object to that. You
14 can answer.

15 THE WITNESS: Well, I was doing work for
16 the purchasers, that's correct, yes.

17 BY MR. WEBSTER:

18 Q. And you prepared a comfort letter on behalf
19 of the purchaser for Morgan Stanley, correct?

20 A. No, we prepared the comfort letter for Morgan
21 Stanley. The request came directly from Morgan
22 Stanley.

23 Q. And in your previous work on comfort letters
24 had you also represented parties who were selling to
25 another company?

1 Q. There are provisions in the AICPA rule and
2 accounting standards for the preparation of comfort
3 letters; is that correct?

4 A. There is literature related to comfort letter
5 preparation, that's correct.

6 Q. And do you know what the standards are that
7 govern the preparation of the comfort letters?

8 A. I used to, but I don't -- I haven't practiced
9 accounting for sometime, so I would have to refresh my
10 memory.

11 Q. Did you consult any of those accounting
12 standards in connection with the preparation of this
13 comfort letter?

14 A. Personally, probably not, but my staff did
15 consult, you know, with those documents or those
16 necessary references for comfort letters.

17 Q. And those -- was it your understanding that
18 those standards govern the form in which those comfort
19 letters would take and contents of the comfort letter?

20 MR. MOSCATO: I object. You can
21 answer.

22 THE WITNESS: Form is discussed. I
23 don't know if it governs it because I've
24 had comfort letters take a number of
25 different forms. I've had some pretty

1 screwy requests from underwriters in the
 2 past. They want us to opine on
 3 everything, you know, accounting related
 4 or not accounting related. But I assume
 5 there's some standards in there. I'd have
 6 to read it. I just -- I just don't
 7 recall.

8 BY MR. WEBSTER:
 9 Q. Did those -- do you remember if those
 10 accounting standards governed who was entitled to a
 11 copy of the comfort letter?
 12 A. I don't recall.
 13 Q. Was it your understanding that Coleman could
 14 have requested a copy of this comfort letter?
 15 MR. JOHNSON: Asked and answered.
 16 MR. MOSCATO: That's been asked and
 17 answered actually.
 18 THE WITNESS: It wasn't my
 19 understanding at all. I wasn't even
 20 thinking about that particular issue. So
 21 I suppose they could ask for anything.
 22 You know, I certainly couldn't provide it
 23 to Coleman without any authorization from
 24 my client.
 25 BY MR. WEBSTER:

1 did Andersen get that information?
 2 A. We would have received that from the
 3 company's records. The company would have given that
 4 to us. This was not audited information. This was
 5 merely given to us by the company.
 6 MR. WEBSTER: Can I have MS-44, please?
 7 (Defendant's Exhibit #MS-44 for i.d.)
 8 BY MR. WEBSTER:
 9 Q. Have you had a chance to review MS-44,
 10 Mr. Harlow?
 11 A. I've not reviewed everything in it, but I've
 12 reviewed it.
 13 Q. What is this document, Mr. Harlow?
 14 A. This is a representation letter to Arthur
 15 Andersen from Sunbeam officials related to the -- our
 16 preparation of the comfort letter.
 17 Q. Why was this drafted, do you know?
 18 A. This is received by the auditor preparing the
 19 comfort letter because most of the information in the
 20 comfort letter is not audited, so we require the
 21 company to represent certain things that are disclosed
 22 in the comfort letter.
 23 Q. Is this where Andersen first learned about
 24 Coleman's sales in 1998?
 25 MR. JOHNSON: I think.

1 Q. And where did you get the information that
 2 was in this comfort letter?
 3 MR. MOSCATO: I assume when you say
 4 you, you mean Andersen generally or
 5 Mr. Harlow's specifically?
 6 MR. WEBSTER: Andersen.
 7 THE WITNESS: Well, we started out with
 8 the annual financial statements of the
 9 company, which are as of December 28th,
 10 1997, and then we reviewed minutes of the
 11 board of directors, and we reported on
 12 that in paragraph four. And then in
 13 paragraph 4A we looked at certain
 14 unaudited financial statements of the
 15 company from the beginning of the fiscal
 16 year to February 1, 1998. We talked to
 17 company officials regarding accounting
 18 matters.
 19 BY MR. WEBSTER:
 20 Q. Paragraph five of the comfort letter contains
 21 information about the sales, about Sunbeam sales in
 22 January of 1998 or between December 29th, 1997 and
 23 February 1, 1998; is that correct?
 24 A. Paragraph 5B does, that's correct.
 25 Q. Where did you get that information? Where

1 MR. MOSCATO: I think, number one, you
 2 misspoke. And number two -- you said
 3 Coleman sales.
 4 MR. WEBSTER: I'm sorry. Sunbeam sales
 5 with the first quarter of 1998.
 6 MR. MOSCATO: And even with that
 7 correction I'll object.
 8 MR. JOHNSON: I'll join.
 9 THE WITNESS: Could you repeat the
 10 question?
 11 BY MR. WEBSTER:
 12 Q. Do you know if this is the first time that
 13 Andersen was informed about Sunbeam's sales for the
 14 first month of 1998?
 15 A. For the first month of 1998? For the month
 16 of January?
 17 Q. Yes.
 18 A. I don't know.
 19 Q. Did you --
 20 A. I mean, I guess I'm not -- I'm not clear on
 21 the time frame because are we talking about the
 22 representation letter? Because there was --
 23 Q. This is the representation letter, right?
 24 A. This is the representation letter.
 25 Q. It's dated March 16, 1998.

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1 A. But this would have been signed and completed
 2 after March 16th, so --
 3 Q. Why do you say that?
 4 A. Well, because.
 5 MR. MOSCATO: Why don't you let him
 6 finish before you interrupt. All right.
 7 THE WITNESS: Because it's almost
 8 always impossible to get all signatures on
 9 a representation letter on the day that
 10 you want them. To have all four of these
 11 people in the office on the same day is
 12 probably next to impossible to get done
 13 unless they're having a board meeting.
 14 BY MR. WEBSTER:
 15 Q. This has all four signatures on it, correct?
 16 A. Yes, it does.
 17 Q. Do you have a recollection that this was
 18 received after March 16th of 1998?
 19 A. I don't know. I'm assuming that, you know,
 20 this was received after that date.
 21 Q. Why is that?
 22 A. Just because I don't think we could have
 23 physically got all the signatures on this -- on that
 24 particular date.
 25 Q. Other than that, do you have any reason to

1 doubt that you received this on March 16, 1998?
 2 MR. MOSCATO: I object.
 3 THE WITNESS: It was probably several days
 4 after because if you read paragraph nine,
 5 it actually covers the period up to
 6 March 16th. And it would have been pretty
 7 difficult to do that work, draft this
 8 letter and get it all signed on the same
 9 date. So there's probably some lag time
 10 between March 16th and when this got
 11 finalized.
 12 BY MR. WEBSTER:
 13 Q. Did you review this letter? Did you ever
 14 receive a copy of this letter?
 15 A. At the time we did the work I don't believe
 16 so. I've seen this letter subsequent to that time.
 17 Q. How long after that time?
 18 A. I have no idea.
 19 Q. Did you see it at any time in March of 1998?
 20 A. I don't recall.
 21 Q. Do you know if this representation letter is
 22 the source for the information in paragraph 5B of the
 23 comfort letter?
 24 MR. MOSCATO: I object.
 25 MR. JOHNSON: Join.

1 BY MR. WEBSTER:
 2 Q. Again, the comfort letter is MS-9.
 3 A. Okay. Sorry. The question again.
 4 Q. Do you know if this March 16th letter, MS-44,
 5 is the source for the information in paragraph 5B of
 6 the comfort letter?
 7 A. I would highly doubt it, because this letter
 8 is going to be prepared after the comfort letter, so I
 9 think it's the other way around.
 10 Q. Do you know what was the source of the
 11 information in paragraph 5B of the comfort letter?
 12 A. The source for that would have been the
 13 company.
 14 Q. Do you know how it was conveyed from the
 15 company?
 16 A. I don't know.
 17 Q. Do you know whether it was orally or any
 18 written document?
 19 A. I don't know. I don't know.
 20 Q. In your experience, is the representation
 21 letter typically prepared after the comfort letter is
 22 prepared?
 23 MR. MOSCATO: Objection.
 24 THE WITNESS: They are done about the
 25 same time, but usually the finalization of

1 the representation letter, you know, lags
 2 the preparation of the comfort letter.
 3 BY MR. WEBSTER:
 4 Q. Do you remember in this case whether you
 5 received the representation letter after you prepared
 6 the comfort letter?
 7 MR. MOSCATO: Objection. I think that
 8 was asked and answered.
 9 THE WITNESS: My opinion is it was
 10 received after for the reasons I stated
 11 before.
 12 BY MR. WEBSTER:
 13 Q. Okay. Now you said that Morgan Stanley
 14 requested the comfort letter from Andersen; is that
 15 correct?
 16 A. That's my understanding.
 17 Q. Did you need approval from Sunbeam before you
 18 could go ahead and deliver the comfort letter to
 19 Morgan Stanley?
 20 A. I don't know. I know we provided them
 21 copy. I know that if the company didn't agree with
 22 the comments in there, then we wouldn't issue the
 23 letter, so, you know, kind of a back-ended answer to
 24 your question is probably we needed Sunbeam's
 25 concurrence on that letter to issue it since all the

1 information in the letter was about the company, and
 2 it had been based on unaudited, much of it unaudited
 3 information.
 4 Q. Did you review the contents in the comfort
 5 letter with anybody at Sunbeam before you issued it to
 6 Morgan Stanley?
 7 A. My staff did.
 8 Q. You did not personally, though?
 9 A. I did not personally, no.
 10 Q. Did your staff report to you about those
 11 conversations with Sunbeam?
 12 A. I don't recall.
 13 Q. Other than the comfort letter what other
 14 information, if any, was Morgan Stanley entitled to as
 15 the underwriter from you?
 16 MR. MOSCATO: Well, I object to that.
 17 MR. JOHNSON: Objection to form.
 18 THE WITNESS: I'm sorry. I didn't hear
 19 the last part of your question. From who?
 20 BY MR. WEBSTER:
 21 Q. From Arthur Andersen.
 22 A. From Andersen.
 23 MR. MOSCATO: I object.
 24 THE WITNESS: I don't know. We had no,
 25 you know, contractual relationship with

1 Morgan Stanley. You know, I don't know
 2 what -- other than the comfort letter,
 3 that's all I know, other than discussions
 4 with Morgan Stanley.
 5 BY MR. WEBSTER:
 6 Q. Did you have any expectations that anybody
 7 else would receive a copy of the comfort letter
 8 besides Sunbeam and Morgan Stanley?
 9 MR. JOHNSON: It's asked and answered
 10 several times.
 11 MR. MOSCATO: I object. You can answer
 12 it.
 13 THE WITNESS: No.
 14 BY MR. WEBSTER:
 15 Q. Did you approve the comfort letter before it
 16 was sent out to Morgan Stanley?
 17 A. As I recall, I did.
 18 Q. Did you discuss the 1998 sales figures with
 19 Sunbeam before the comfort letter was sent out to
 20 Morgan Stanley?
 21 MR. JOHNSON: Object to form.
 22 THE WITNESS: Okay. Now are we talking
 23 about a draft of the comfort letter? Are
 24 we talking about the final comfort letter?
 25 BY MR. WEBSTER:

1 Q. Before the final comfort letter went out?
 2 A. Before the time the comfort letter went out.
 3 Q. Did you discuss the sales for January and
 4 February of 1998 with Sunbeam?
 5 MR. JOHNSON: Object to form.
 6 MR. MOSCATO: I thought that was asked
 7 and answered, too, but go ahead.
 8 THE WITNESS: Yeah, I mean, it would
 9 have been right around that time, within,
 10 we're talking about within a day or two.
 11 BY MR. WEBSTER:
 12 Q. What was said?
 13 MR. MOSCATO: I object. That was asked
 14 and answered too.
 15 MR. JOHNSON: He's testified in detail
 16 about somebody in personnel he spoke with.
 17 THE WITNESS: Yes, well, as I testified
 18 before I don't remember exact words, but
 19 do we want to go through it again?
 20 BY MR. WEBSTER:
 21 Q. I just want to make sure I've got it.
 22 MR. MOSCATO: I object to that, but go
 23 ahead. Is there anything that you
 24 remember in addition to what you've
 25 already testified to?

1 THE WITNESS: No, nothing additional.
 2 MR. WEBSTER: All right. Can I have
 3 MS-43.
 4 THE VIDEOGRAPHER: Would this be a good
 5 time to change the tape?
 6 MR. WEBSTER: Yes.
 7 THE VIDEOGRAPHER: Off the video
 8 record, 11:11 a.m.
 9 (Defendant's Exhibit #MS-43 for i.d.)
 10 (a recess was taken from 11:11 a.m.
 11 to 11:15 a.m.)
 12 THE VIDEOGRAPHER: We're back on the
 13 video record. The time is 11:15 a.m.
 14 BY MR. WEBSTER:
 15 Q. Mr. Harlow, before you is a document marked
 16 MS Exhibit 43. Have you had a chance to review the
 17 document?
 18 A. I have flipped through this document.
 19 Q. This appears to be an Arthur Andersen
 20 internal form; is that correct?
 21 A. That's correct.
 22 Q. And what kind of form is this?
 23 A. This is a form that was prepared after
 24 completion of post audit review work in connection
 25 with filings the company might be making. The periods

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1 after -- look at subperiods after an audit was
2 complete. That was kind of a checklist to make
3 certain certain areas are covered in those reviews.

4 Q. And does this document deal with the post
5 audit review of Sunbeam after their 1997 audit?

6 A. Yes.

7 Q. Is this form prepared for distribution
8 outside Andersen?

9 A. No.

10 Q. Solely an internal form?

11 A. Well, you have a copy, so it does get outside
12 every once in a while, so -- but the purpose was an
13 internal document.

14 Q. Have you ever seen this document before?

15 A. Well, I signed it at one point in time, so I
16 would have to say yes.

17 Q. Where is your signature?

18 A. It's on the front page.

19 Q. At the bottom of the front page?

20 A. Yes.

21 Q. There are two signatures there at the bottom
22 of the front page. Which one is yours?

23 A. The bottom signature.

24 Q. Do you know whose signature that is above
25 yours?

1 A. I believe that's Larry Bornstein's.

2 Q. And what is the date of your signature?

3 A. March '98.

4 Q. Now there's a date above there typed in on
5 the fifth line down that says date to which post audit
6 review completed, and it's dated March 16th, 1998.
7 What does that mean?

8 A. That would have been the date up to which the
9 post audit review was done.

10 Q. Okay. So this means this covers information
11 about Sunbeam up to March 16th, 1998?

12 A. Yes.

13 Q. So this form was prepared sometime after
14 March 16th of 1998?

15 A. Yes.

16 Q. Do you know when it was prepared?

17 A. No.

18 Q. Do you know who prepared it?

19 A. I don't know, but I'm assuming
20 Dennis Pastrana prepared it since most of the work was
21 completed by him.

22 Q. Do you know if this document was prepared
23 before the comfort letter was issued?

24 A. I don't think it was prepared in its entirety
25 before the comfort letter was issued.

1 Q. Why do you say that?

2 A. It was probably -- well, typically what we
3 would do is prepare this simultaneous with the
4 completion of the comfort letter. But, once again,
5 this is a case where circulating the document and
6 getting the signatures might take several days
7 internally.

8 Q. Now this document, MS-43, says it covers
9 information. I believe you indicated it covers
10 information at Sunbeam through March 16th of 1998; is
11 that correct?

12 MR. MOSCATO: I object to that.

13 THE WITNESS: Well, I think it covers
14 the period of review up through
15 March 16th. Whether all the information
16 in here is precisely up to March 16th, I
17 don't know. I'd have to review it in more
18 detail.

19 BY MR. WEBSTER:

20 Q. Okay. There's also above those signatures --

21 A. Actually, I can say no because item four on
22 page four we're talking about 1998 budget which is
23 going to go beyond March 16th.

24 Q. Okay.

25 A. So there's probably a few other items in here

1 which are around that date.

2 Q. Okay. Are there any items which indicate
3 that the information contained herein does not go
4 through March 16th of 1998?

5 A. Well, the 1998 budget is going to cover the
6 entire fiscal year.

7 Q. That would go beyond March 16th of 1998,
8 correct?

9 A. Yes. That's for the entire year of 1998, a
10 budget, which is beyond March 16th.

11 Q. So all the information covered in this
12 document is through March 16th, 1998 or beyond?

13 MR. MOSCATO: I object to that.

14 MR. JOHNSON: Join.

15 THE WITNESS: No, I didn't say that
16 either. I was trying to respond to your
17 earlier question does everything go up
18 through March 16th. My answer to that
19 question was not necessarily. I pointed
20 out one thing, and there's probably some
21 more things in here.

22 On item 4B there's a discussion of a
23 1998 plan does not take into account the
24 effects of recent acquisitions. I assume
25 that plan deals with the entire fiscal

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1 year, not just through March 16th. Also,
 2 4A, budget net sales, net income first
 3 quarter 1998, that goes beyond March 16th,
 4 1998.
 5 BY MR. WEBSTER:
 6 Q. Okay. Going back to the first page, there's
 7 some handwriting above the signatures. Do you see
 8 that?
 9 A. Below the signature -- below the typed names?
 10 Yes.
 11 Q. Yes. Do you know whose handwriting that is?
 12 A. I don't know.
 13 Q. If you turn to the second page, the remaining
 14 pages of the documents are in a table form; is that
 15 correct, columns and rows?
 16 A. Yes.
 17 Q. The second column has a heading saying work
 18 done by, and I assume the initials under there are
 19 initials of the individuals that did the work; is that
 20 correct?
 21 A. Yes.
 22 Q. What is the third column?
 23 A. That's work paper reference.
 24 Q. So that column references various work papers
 25 which support the comments and disposition of items

1 that are included in the fourth column?
 2 A. In some cases it would, but really the
 3 purpose is to document where in the work papers
 4 there's documentation to support the first column.
 5 Q. Okay.
 6 A. The work done in the first column. Not
 7 necessarily comments and dispositions. Those might be
 8 elsewhere within the work papers.
 9 Q. If you look at paragraph 2A or box 2A there,
 10 the fourth column discusses a declining sales trend
 11 due to early buy program for outdoor grills which
 12 accelerated sales into the fourth quarter and sales in
 13 first quarter of 1997 of discontinued SKUs and ENO
 14 inventory in connection with the 1996 restructuring;
 15 is that correct?
 16 A. Yes, that's the comment.
 17 Q. What was your understanding of what that
 18 meant?
 19 A. My understanding was the company instituted a
 20 program in which they were attempting to level out the
 21 sale of the grills so that they could get orders in
 22 earlier and not have the problems that they had in
 23 1997 previous year whereby they were not able to
 24 deliver grills on a timely basis to some major
 25 customers, including Wal-Mart.

1 So the company instituted a program
 2 whereby they would attempt to get the orders in
 3 earlier. There were incentives given to the customers
 4 to order the grills on an earlier basis, and that was
 5 known as the early buy program.
 6 Q. Did you discuss the early buy program with
 7 Morgan Stanley?
 8 A. Yes.
 9 Q. Did you discuss the early buy program with
 10 Morgan Stanley before the comfort letter was issued?
 11 A. I don't recall exactly when that discussion
 12 took place, but there was some discussion, you know,
 13 when I referred to that conference call with
 14 Mr. Bornstein at the printers or Morgan Stanley's
 15 office.
 16 Q. After the press release had been issued?
 17 A. That was in connection with the press release
 18 discussion.
 19 Q. What was said?
 20 MR. MOSCATO: I'm sorry. I'm sorry.
 21 Can you read back his answer?
 22 (The record was read as requested.)
 23 MR. MOSCATO: Sorry.
 24 BY MR. WEBSTER:
 25 Q. You discussed the early buy program with

1 Morgan Stanley during the conference call after the
 2 press release was issued; is that correct?
 3 A. That's -- yeah, that's my recollection.
 4 Q. And what was -- what was the discussion about
 5 the early buy program?
 6 A. I don't recall what the detail of the
 7 discussion was, but it was one of the reasons for the
 8 lower sales level for 1998. It was just one of the
 9 reasons given. But there wasn't an extensive
 10 discussion as to exactly what it was. But it was
 11 given as a result of lower sales level in the first
 12 part of 1998.
 13 Q. Did you discuss whether that should be
 14 disclosed in the offering memorandum?
 15 A. I don't recall. I believe it was -- it was
 16 disclosed in the financial statements.
 17 Q. Turn to --
 18 A. And I believe -- I believe it also was
 19 disclosed in the offering memorandum.
 20 Q. Was there any -- did anybody object to
 21 disclosing that in the offering memorandum?
 22 A. Not that I recall.
 23 MR. JOHNSON: Object to form.
 24 BY MR. WEBSTER:
 25 Q. Can you turn to page four, specifically

1 paragraph 4A of that document, please.
 2 A. You -- I don't know if you want a full answer
 3 on your previous question or not, but you asked me
 4 about, you know, 2A, and I only talked about the first
 5 item in 2A. I don't know if you wanted me to talk
 6 about the second item or not. We kind of skipped over
 7 that.
 8 MR. MOSCATO: Well let him ask the
 9 questions.
 10 THE WITNESS: Okay. All right. 4A?
 11 BY MR. WEBSTER:
 12 Q. Actually, going back 2A for a second, was --
 13 you said the information about the early buy program
 14 was in the 10-K already?
 15 A. Yes.
 16 Q. And did the offering memorandum contain
 17 anything different about the early buy program than
 18 had been disclosed in the 10-K?
 19 A. I don't recall anything different. There
 20 should have been the same disclosure, at least at a
 21 minimum the same disclosure.
 22 Q. Was there any discussion about making more
 23 disclosure in the offering memorandum that had been
 24 made in the 10-K?
 25 A. I don't recall.

1 Q. And does the document indicate that the work
 2 described in four and 4A has been completed?
 3 A. Yeah, there's an indication the work was done
 4 and there's a work paper reference.
 5 Q. And do you know who made the comments in the
 6 comment box to 4A?
 7 A. I assume Dennis Pastrana made those comments.
 8 I don't know for certain.
 9 Q. And the last sentence in the comments says,
 10 "Through the second period of 1998 the company has net
 11 sales of approximately \$72 million and a net loss of
 12 approximately \$14.8 million; is that correct?
 13 A. That's correct.
 14 Q. What is the second period 1998?
 15 A. The second period would be the second month.
 16 Essentially Sunbeam was on 52, 53-week fiscal year,
 17 and it's -- in essence, would be the month of
 18 February.
 19 Q. Okay. So through February the comments
 20 indicate that the company had net sales of
 21 approximately 72 million and a net loss of
 22 approximately 14.8 million; is that correct?
 23 A. Yeah. I don't remember the date of the end
 24 of the second period, but it's -- might be
 25 February 28th, might be March 1st. I don't recall.

1 MR. JOHNSON: Objection to form.
 2 BY MR. WEBSTER:
 3 Q. All right. Going back to 4A on four, what
 4 does 4A concern?
 5 MR. MOSCATO: I'll object to that.
 6 You can answer if you understand the
 7 question.
 8 THE WITNESS: Well, 4A says, "To read the
 9 respective financial information and
 10 inquire as to whether it has been prepared
 11 on the same basis as the audited
 12 historical financial statements; compare
 13 such prospective financial information
 14 with historical results; investigate
 15 significant fluctuations."
 16 BY MR. WEBSTER:
 17 Q. And paragraph four, box four above that
 18 indicates this concerns the latest available forecast
 19 projection budget or other prospective financial data;
 20 is that correct?
 21 A. Yeah, it indicates, "Obtain the latest
 22 available forecast projection budget, including
 23 capital and operating or other prospective financial
 24 data, particular data relating to cash flows. State
 25 the periods covered by such prospective information."

1 Q. Now the comfort letter if you look back at
 2 MS-9 in paragraph 5B, that also contains a discussion
 3 of net sales and net income or net loss for 1990 --
 4 for 1998; is that correct?
 5 MR. JOHNSON: I'm sorry. Can I hear that
 6 again?
 7 THE WITNESS: Yeah. Repeat the question.
 8 BY MR. WEBSTER:
 9 Q. The comfort letter also contains in paragraph
 10 5B information about Sunbeam's net sales and net
 11 income or net loss in 1998; is that correct?
 12 A. That's correct. But this is a different
 13 period than what's in this letter.
 14 Q. That was my next question. Do you know why
 15 the comfort letter only goes through February 1st of
 16 1998 on net sales and net loss?
 17 MR. JOHNSON: I object to that.
 18 MR. MOSCATO: I have to object to that.
 19 It really -- I can't imagine it's a
 20 deliberately misleading question. I'm
 21 sure it's an inadvertently misleading
 22 question if one looks at paragraph 6C.
 23 THE WITNESS: Yeah, I do know why
 24 there's a difference.
 25 BY MR. WEBSTER:

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1 Q. Why is that?

2 A. Because the company did not have financial
3 statements prepared for a period beyond that. And,
4 you know, they cover that in --

5 Q. 6C?

6 A. 6C.

7 Q. Thank you.

8 A. And it clearly states --

9 MR. JOHNSON: It's actually 5C for
10 everyone.

11 MR. WEBSTER: There is no 5C in the
12 comfort letter.

13 MR. MOSCATO: You're looking at the
14 wrong one.

15 MR. WEBSTER: MS-9.

16 MR. JOHNSON: I'm sorry.

17 BY MR. WEBSTER:

18 Q. Mr. Harlow, before the comfort letter was
19 issued did you talk to Morgan Stanley about the sales
20 figures for 1998?

21 A. I don't remember when the exact -- I don't
22 know the exact sequence of the timing of the receipt
23 of the comfort letter draft, the final comfort letter
24 into Morgan Stanley's hands, but during that time
25 frame there was clearly a discussion on sales,

1 and everybody was basically beating him up and giving
2 him a very hard time about the need for disclosure.

3 Q. Did Morgan Stanley ever request that the 1998
4 sales information be excluded from the comfort letter?

5 A. I don't -- I think prior to the press release --
6 I think that was the position that they were taking.
7 The impression that we had was Morgan Stanley wanted
8 to get this done, this deal done regardless of, you
9 know, what did or did not get disclosed on this issue.
10 And, you know, I don't remember if they specifically
11 said -- you know, talked about specifics on
12 disclosure. But my -- my strong feeling was there was
13 significant kickback by them on disclosure on this
14 issue.

15 Q. Disclosure in the comfort letter or
16 disclosure to the public?

17 A. Disclosure in the document.

18 MR. MOSCATO: When you say the
19 document, the offering memorandum?

20 THE WITNESS: The offering memorandum.

21 BY MR. WEBSTER:

22 Q. In the offering memorandum?

23 A. I don't think they had a big problem with the
24 comfort letter, but there was certainly concern about
25 documentation in the offering memorandum.

1 shortfalls related to the first part of 1998 and
2 disclosure of that information in the document. But I
3 can't tell you exactly how that falls relative to
4 comfort letter delivery.

5 Q. You did talk to Morgan Stanley about it,
6 though, in that conference call that we've discussed
7 already, correct?

8 A. That's correct.

9 Q. Is that the first time you talked to Morgan
10 Stanley about the sales shortfalls for 1998?

11 A. That's the first time that I recall that I
12 talked to them about it. Mr. Bornstein had called me
13 several times in frustration because he had had verbal
14 battles with Morgan Stanley and Morgan Stanley's
15 attorney about disclosure, and Larry was very
16 frustrated in their inability to listen to him about
17 the need for disclosure and wanted me to have a
18 discussion with them.

19 Q. But were those phone calls the same day as
20 the conference call that you participated in?

21 A. They were in -- if not the same day -- some
22 of them were the same day, and some of them could have
23 been the previous day. I don't recall. But I can
24 remember Larry called, and he was very upset and just
25 felt like he was a lone wolf on this particular issue,

1 Q. Did they express concern about documenting it
2 in the offering memorandum after the press release was
3 issued?

4 A. As I recall, they were okay with the -- after
5 the press release was issued with having the press
6 release as the disclosure in the document. There was
7 a -- there was a strong resistance to our elimination
8 of the reference to the meeting of the 1990 -- 1997
9 first quarter sales with 1998.

10 Q. When you participated in the calls, would you
11 describe them as -- how would you describe the level
12 of discussion?

13 MR. JOHNSON: Object to form.

14 BY MR. WEBSTER:

15 Q. Contentious?

16 A. Yes, contentious.

17 Q. At any time did you threaten to withdraw as
18 auditors for Sunbeam?

19 A. We discussed it internally. We discussed
20 withholding our opinion, giving the company notice
21 that they could no longer rely on our opinion if there
22 was not some disclosure, but we did not threaten
23 anyone externally, but we did have internal
24 discussions on that issue.

25 Q. When did you have those internal discussions?

1 A. About the time we determined sales levels and
 2 the lack of disclosure in the offering memorandum. So
 3 it would have been mid March.
 4 Q. Before this conference call with Morgan
 5 Stanley?
 6 A. It would have been about that time, within
 7 days of that.
 8 Q. Days before or days after?
 9 A. I don't recall. Most likely it would have
 10 been before that call.
 11 Q. Do you remember whether you had internal
 12 discussions about withdrawing after the conference
 13 call with Morgan Stanley?
 14 A. Yes, we did.
 15 Q. How many discussions?
 16 A. One or two.
 17 Q. Who participated in those internal
 18 discussions?
 19 A. Mr. Pruitt, Mr. Bornstein, myself. That's
 20 all I can remember.
 21 Q. What was decided?
 22 A. Well, it was ultimately decided that, you
 23 know, the disclosure was okay based on, you know, the
 24 company's adamant stance that they could meet those
 25 sales levels, and the company's telling us that there

1 their SEC attorney was 100 percent satisfied with
 2 disclosure, and that basically we're accountants and
 3 not attorneys, and you can't tell the company what to
 4 disclose.
 5 But they told us they had done extensive
 6 work, you know, with their chief sales executive and,
 7 you know, actually prepared a schedule showing
 8 detailed sales by customer on how they were going to
 9 meet those first quarter numbers.
 10 Q. Those were documents prepared by Sunbeam?
 11 A. Yes.
 12 Q. Did Morgan Stanley prepare any of those
 13 documents?
 14 A. I don't know. I was told they were involved
 15 in discussions, but I was not a party to those
 16 internal discussions.
 17 Q. And, in fact, you did not end up withdrawing
 18 from representing Sunbeam, did you?
 19 A. At that point, no.
 20 Q. Did you ever have any discussions with
 21 Sunbeam about withdrawing or was it all internal?
 22 A. Oh, at that time it was just internal.
 23 Q. Did you discuss whether you should threaten
 24 to withdraw?
 25 A. No.

1 Q. Internally did you discuss whether you should
 2 threaten to withdraw?
 3 A. Oh, internally we did, but not externally.
 4 Q. And you decided that you shouldn't even
 5 threaten to withdraw?
 6 A. Well, at that point in time we decided not
 7 to.
 8 Q. Do you know if Morgan Stanley took any steps
 9 to review or verify the accuracy of these sales
 10 forecasts that Sunbeam was making?
 11 A. I don't know that for a fact. I was told
 12 they did by the company, but I don't know that.
 13 Q. Who told you that?
 14 A. Mr. Gluck, Mr. Kersh.
 15 Q. What did they say?
 16 A. They said Morgan Stanley is all over the
 17 situation, and they've been very involved in due
 18 diligence. They've done extensive work. And I was
 19 given the impression that they'd done a heck of a lot
 20 more work than we'd done, so... But I don't know that
 21 for a fact.
 22 Q. Now after the press release was issued do you
 23 know if Donald Drapkin from MAFCO ever called
 24 Arthur Andersen?
 25 A. Never heard the name.

1 Q. Did Arthur Andersen receive any calls from
 2 Ronald Perelman from MAFCO about the press release?
 3 A. Ronald Perelman calling us directly, not that
 4 I'm aware of.
 5 Q. Do you know if Ronald Perelman called Sunbeam
 6 about the information in the press release?
 7 A. I don't know.
 8 Q. Do you know if Irwin Engelman of MAFCO called
 9 Andersen about the information in the press release?
 10 A. Not to my knowledge.
 11 Q. Do you know if Mr. Engelman called anybody at
 12 Sunbeam about the information in the press release?
 13 A. No.
 14 Q. Do you know if Mr. Engelman made contact in
 15 any way with Sunbeam about the information in the
 16 press release?
 17 A. No.
 18 Q. Did he make contact in any way with Andersen
 19 about the information in the press release?
 20 A. I don't know.
 21 Q. Do you know if Norman -- did Norman Dinstling
 22 ever -- of MAFCO ever call you about the information
 23 in the press release?
 24 A. I never heard the name before.
 25 Q. Do you know if he ever called --

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1 A. I have no idea.
 2 Q. -- Andersen?
 3 A. I have no idea.
 4 Q. Do you know if he made any contact with
 5 Sunbeam about the information in the press release?
 6 A. I can't say.
 7 Q. Did you ever have a conversation with
 8 Howard Gittis of MAFCO?
 9 A. Yes.
 10 Q. What about?
 11 A. He was showing me some of his fine cigars one
 12 day and wanted to know if I wanted one.
 13 Q. Is that it?
 14 A. He's a cigar connoisseur. I met him several
 15 times. We just had conversations on other issues.
 16 Q. Did you ever meet with him during March of
 17 1998 when this acquisition was going on?
 18 A. No.
 19 Q. Did he ever call you or contact you in any
 20 way during that period of time?
 21 A. In March? No.
 22 Q. April?
 23 A. I think I met Mr. Gittis for the first time
 24 probably in June of '98.
 25 Q. Okay. Did Jerry Levin call you after the

1 issuance of the press release about information that
 2 was disclosed?
 3 A. No.
 4 Q. Do you know if he contacted --
 5 A. Well, I talked to him after, after.
 6 Q. After what?
 7 A. But, once again, it's not in March.
 8 Q. When did you first talk to him?
 9 A. First talked to him in probably June of '98.
 10 Q. Okay. Do you know if he contacted anybody at
 11 Andersen in March or April of 1998 about the
 12 information in the press release?
 13 A. Not to my knowledge.
 14 Q. Do you know if he contacted anybody at
 15 Sunbeam about the information in the press release?
 16 A. It was my understanding that he was having
 17 meetings with management of Sunbeam at that time.
 18 What was discussed, I don't know.
 19 Q. How about James Maher, did you ever receive a
 20 phone call from him after the issuance of the press
 21 release?
 22 A. Not to my knowledge.
 23 Q. Do you know if he made any contact with
 24 Andersen after the issuance of the press release?
 25 A. Not to my knowledge.

1 Q. Do you know if he contacted Sunbeam at all
 2 about the information in the press release?
 3 A. I don't know.
 4 Q. How about William Nesbitt of MAFCO, did you
 5 ever receive a phone call, or did he contact you about
 6 the information in the press release?
 7 A. No.
 8 Q. Do you know if he contacted Andersen about
 9 any of the information in the press release?
 10 A. I don't know.
 11 Q. Do you know if he contacted Sunbeam about any
 12 of the information in the press release?
 13 A. I have no knowledge.
 14 Q. Joseph Paige of Coleman, did he ever contact
 15 you about information in the press release?
 16 A. Can we just condense all of these?
 17 Q. I just want to make sure --
 18 A. Why don't you just name -- why don't you just
 19 give me all the names and the question you want, and I
 20 can take them all in one.
 21 Q. Sure. The other names are Joseph Paige,
 22 Joram Salig, Paul Shapiro, Bruce Slovin, or Barry
 23 Schwartz, all of MAFCO or Coleman. Did you ever hear
 24 from any of them?
 25 A. The only person I heard from is Paul Shapiro.

1 Q. Okay.
 2 A. But, once again, I met Paul Shapiro in June
 3 of 1998, and it was not in the March time frame. The
 4 others I have not met or know of no knowledge of any
 5 questions of me, Arthur Andersen or Sunbeam.
 6 Q. Did anyone from Ernst & Young ever contact
 7 you about the information in the press release?
 8 A. I don't recall. I don't believe so.
 9 Q. Do you know if anybody at Ernst & Young
 10 contacted Andersen about any information in the press
 11 release?
 12 A. Not to my knowledge.
 13 Q. Do you know if anybody at Ernst & Young
 14 contacted anybody at Sunbeam about the information in
 15 the press release?
 16 A. Well, I know that -- I know that Mr. Gluck
 17 met with Ernst & Young in connection with the
 18 transaction, but I don't know what they discussed.
 19 Q. Do you know if --
 20 A. It was about the time the transaction was
 21 consummated.
 22 Q. At the end of March?
 23 A. During the March, late March time frame.
 24 Q. Did anyone at Credit Suisse First Boston
 25 contact you about the information in the press

1 release?
 2 A. Not to my knowledge.
 3 Q. Did anyone at Credit Suisse First Boston
 4 contact Andersen about the information in the press
 5 release?
 6 A. Not to my knowledge.
 7 Q. Did anyone at Credit Suisse First Boston --
 8 do you know if anybody at Credit Suisse First Boston
 9 contacted anyone at Sunbeam about the information in
 10 the press release?
 11 A. I have no knowledge of that.
 12 Q. Did anyone at Wachtell Lipton contact you
 13 about the information in the press release?
 14 A. That name's familiar. I'm just trying to
 15 remember the context of it. I just -- I don't
 16 remember. I don't remember who Wachtell represented,
 17 but the name is familiar. I may have seen it on a
 18 letter or something from them.
 19 Q. Do you know if counsel for Coleman contacted
 20 you about the information in the press release?
 21 A. I don't recall.
 22 Q. Do you know if counsel for Coleman contacted
 23 Andersen about the information in the press release?
 24 A. Not that I'm aware of.
 25 Q. Do you know if counsel for Coleman contacted

1 A. Mr. Levin, Mr. Shapiro, Karen Clark, the
 2 whole shooting match.
 3 Q. So that was June of 1998?
 4 A. Um-hum, yeah.
 5 Q. And that was the first time they asked you
 6 about the sales figures for 1998?
 7 A. Um-hum.
 8 Q. After the issuance of the press release --
 9 Strike that.
 10 Was June of 1998 the first time that you
 11 talked to anybody at Coleman about Sunbeam's business?
 12 A. That I can recall. You know, I think I met
 13 Karen Clark prior to June because she would -- she
 14 came to Delray to meet with Mr. Gluck to talk about
 15 the transition after the transaction was completed.
 16 So I did meet Karen Clark, but that's the only name I
 17 can recall.
 18 Q. That was after the transaction was completed?
 19 A. That was after, probably sometime in April of
 20 '98 when I met her.
 21 Q. Did she ask you about the sales for --
 22 A. No.
 23 Q. -- the first few months?
 24 Do you know if anyone from Coleman
 25 contacted Andersen about sales for '98 after the

1 Sunbeam about the information in the press release?
 2 A. I don't know that. I can't count that one
 3 way or the other. Once again, I know they met with
 4 management, but what was discussed, I don't know.
 5 Q. After the issuance of the press release did
 6 anyone from Coleman call you and ask to talk to you
 7 about the sales figures for 1998?
 8 A. Other than the conversation?
 9 Q. Other than what conversation?
 10 A. At the printers? Did you say Coleman?
 11 Q. Coleman. Was Coleman involved in the
 12 conversation at the printers?
 13 A. No. I thought you said Morgan. No.
 14 Q. Would you like me to repeat the question?
 15 A. Well, I'm getting tired, so I need coffee.
 16 Q. Let me ask you --
 17 A. I'm starting to hear things.
 18 Q. After the press release was issued did
 19 anybody from Coleman call you or contact you to ask
 20 you about the sales figures for 1998?
 21 A. Yes.
 22 Q. Who?
 23 A. It was the -- pretty much the new management
 24 team that came into Sunbeam.
 25 Q. When was this?

1 issuance of the press release?
 2 A. Not to my knowledge.
 3 Q. Do you know if anybody from Coleman contacted
 4 Sunbeam about sales for '98 after the issuance of the
 5 press release?
 6 A. Once again, I know there were meetings
 7 between Sunbeam and Coleman executives. What they
 8 discussed, I don't know.
 9 Q. Did anybody from Sunbeam ever report to you
 10 that Coleman expressed concerns about the sales
 11 figures?
 12 A. I heard something about that, but I don't
 13 remember the details.
 14 Q. Who did you hear that from?
 15 A. Mr. Gluck.
 16 Q. What did he say?
 17 A. Basically that there were some concerns about
 18 those numbers.
 19 Q. On the part of Coleman?
 20 A. On the part of Coleman.
 21 Q. And this was after the press release came
 22 out?
 23 A. Yes.
 24 MR. JOHNSON: Objection to form.
 25

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1 BY MR. WEBSTER:
 2 Q. Did he say what Coleman was going to do about
 3 it?
 4 A. No.
 5 Q. Did he ask you to do anything about it?
 6 A. No.
 7 Q. Did he indicate whether any books and records
 8 of Sunbeam were going to be provided to Coleman?
 9 A. Not that I recall.
 10 Q. Do you remember any other details of the
 11 conversation?
 12 A. No.
 13 Q. Did you have any discussions with Morgan
 14 Stanley after the issuance of the press release about
 15 concern on Coleman's part about the sales figures for
 16 '98?
 17 A. I don't recall any discussion with Morgan
 18 Stanley about Coleman's concern.
 19 Q. Did anybody from Morgan Stanley indicate that
 20 they had inquiries from Coleman about the '98 sales
 21 figures?
 22 A. Not that I'm aware of.
 23 Q. After the issuance of the press release did
 24 anybody at Credit Suisse First Boston contact you or
 25 Andersen to talk about the '98 sales figures?

1 figures?
 2 MR. JOHNSON: That's asked and answered.
 3 THE WITNESS: Are we talking about the
 4 due diligence conference call, or are we
 5 talking about the printers' conference
 6 call?
 7 BY MR. WEBSTER:
 8 Q. Printers'.
 9 A. Printers' conference call. I don't recall
 10 Coleman's name coming up in that conversation.
 11 Q. Did Coleman -- was there any -- well, during
 12 the due diligence conference call, did you know about
 13 the '98 sales figures yet?
 14 MR. MOSCATO: I think that's been asked
 15 and answered.
 16 MR. JOHNSON: Yeah.
 17 THE WITNESS: As I recall, I didn't.
 18 MR. WEBSTER: Let's look at MS-32.
 19 MR. MOSCATO: Do you want him to focus
 20 on both documents or just one document?
 21 MR. WEBSTER: Both.
 22 (Defendant's Exhibit #MS-32 for i.d.)
 23 BY MR. WEBSTER:
 24 Q. Have you had a chance to read the document
 25 yet, Mr. Harlow?

1 MR. JOHNSON: Isn't that asked and
 2 answered?
 3 THE WITNESS: Not that I recall.
 4 BY MR. WEBSTER:
 5 Q. Do you know if anybody at Credit Suisse First
 6 Boston contacted Sunbeam about the '98 sales figures
 7 after the issuance of the press release?
 8 A. I don't know.
 9 Q. Did you have any discussions with Sunbeam
 10 about Coleman inquiring about the '98 sales figures?
 11 A. Yeah, Mr. Gluck brought it up one day. I
 12 don't remember the context of the conversation, but he
 13 mentioned it to me. And I don't remember who the
 14 individual was. I don't know if it was Mr. Perelman
 15 he mentioned or, you know, somebody in the MAFCO. But
 16 it was in the context, you know, that Coleman was a
 17 little surprised when they heard the information. And
 18 that was about the gist of the conversation.
 19 Q. Was there any concern that -- did Sunbeam --
 20 did Mr. Gluck express any concern that Coleman would
 21 back out of the deal?
 22 A. I don't recall. I don't recall that he did.
 23 Q. During that conference call with Morgan
 24 Stanley, did anybody express a concern about how
 25 Coleman would react to the disclosure of the '98 sales

1 A. I've just flipped through it. I haven't read
 2 it.
 3 Q. Are you familiar with these documents?
 4 A. I don't know if I've seen these before or
 5 not.
 6 Q. Do you know what they are?
 7 A. Yeah, they're just drafts.
 8 Q. Drafts of what?
 9 A. The comfort letter and also the
 10 representation letter.
 11 Q. Okay. And the first page of the document is
 12 a printout of an e-mail; is that correct?
 13 A. It appears to be.
 14 Q. Did you ever receive a copy of these
 15 documents that are attached to the e-mail?
 16 A. I don't remember. I doubt it.
 17 MR. MOSCATO: Your question meant these
 18 particular drafts of the document; is that
 19 right?
 20 MR. WEBSTER: Yeah.
 21 BY MR. WEBSTER:
 22 Q. Now after the initial comfort letter did you
 23 receive a representation letter from Sunbeam?
 24 A. I doubt it.
 25 Q. Let's look at MS-47.

1 A. Are you talking about the draft? Are you
 2 talking about the final? The copy in here?
 3 MR. MOSCATO: Well, let him just show you
 4 what he wants.
 5 (Defendant's Exhibit #MS-47 for i.d.)
 6 BY MR. WEBSTER:
 7 Q. Did you get a chance to review that yet,
 8 Mr. Harlow?
 9 A. (Nodding head).
 10 Q. What is MS-47?
 11 A. MS-47 is the signed representation letter
 12 from the company to Arthur Andersen.
 13 Q. What's the date of the letter?
 14 A. This one is dated March 23rd.
 15 Q. Do you know why there's a representation
 16 letter dated March 16th and one dated March 23rd?
 17 A. Well, one's probably relates to the
 18 bring-down letter when the deal was funded.
 19 Q. And that would be the latter one?
 20 A. That would be the latter date.
 21 Q. Why was a second representation letter needed
 22 in connection with the bring-down letter?
 23 MR. MOSCATO: I object to that. You
 24 can answer.
 25 MR. JOHNSON: Join.

1 THE WITNESS: Because there is
 2 additional information in that letter
 3 typically that's different than the
 4 information in the first letter.
 5 BY MR. WEBSTER:
 6 Q. What is a bring-down letter?
 7 A. Just updates the comfort letter to the later
 8 date.
 9 Q. Okay.
 10 A. Just really an updating of the original
 11 comfort letter.
 12 Q. Okay. Did you have any discussions with --
 13 did you personally have any discussions with Morgan
 14 Stanley about the preparation of the bring-down
 15 letter?
 16 A. I don't recall. I don't recall any
 17 discussions with them.
 18 Q. Do you remember -- did you have any
 19 discussions with your team at Arthur Andersen about
 20 the preparation of the come-down letter -- bring down
 21 letter?
 22 A. Yeah, we had some discussions. I don't
 23 remember the details of those discussions.
 24 Q. Did you participate in the drafting of the
 25 bring-down letter?

1 A. I reviewed it.
 2 Q. But did not draft it?
 3 A. I did not draft it, no.
 4 Q. Do you know who drafted it?
 5 A. It was probably Mr. Pastrana.
 6 Q. Okay. And did Arthur Andersen prepare this
 7 representation letter?
 8 A. The representation letter was most likely a
 9 copy of the earlier representation letter with some
 10 modifications. And the client could have made some
 11 modifications to this letter. But most likely it's
 12 what was -- it was pretty much a draft of the first
 13 representation letter with changes in dates.
 14 Q. Did you discuss this representation letter
 15 with Sunbeam?
 16 A. I did not.
 17 Q. Do you know if -- do you know who in your
 18 team discussed this representation letter with
 19 Sunbeam?
 20 A. I don't know who, but, you know, this letter
 21 would have been delivered probably by Mr. Pastrana to
 22 Mr. Gluck, and he would have handled the finalization
 23 of that letter.
 24 Q. Did you have any expectation about whether
 25 Coleman would ask for a copy of this representation

1 letter?
 2 MR. JOHNSON: Object to form.
 3 THE WITNESS: Did I have any expectation?
 4 BY MR. WEBSTER:
 5 Q. Yeah.
 6 A. I wouldn't think they'd want this letter.
 7 Q. Why not?
 8 A. I mean, it's not a letter that they would
 9 normally receive.
 10 Q. Well, after -- this letter was -- is dated
 11 after the press release; is that right?
 12 A. Which press release?
 13 Q. The March 19th press release.
 14 A. Yes. This date is after March 19th.
 15 Q. Did you have any discussions with Sunbeam
 16 about Coleman requesting copies of the representation
 17 letter or bring-down letter after the press release
 18 was issued?
 19 A. No.
 20 Q. Did you have any discussions internally about
 21 the possibility of Coleman requesting copies of these
 22 documents after the March 19th press release was
 23 issued?
 24 A. No, not that I can recall.
 25 Q. Do you have an understanding as to whether

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1 Coleman had a right to these documents if they
 2 requested them?
 3 MR. MOSCATO: I object to that.
 4 MR. JOHNSON: Join.
 5 THE WITNESS: Well, I'm not an attorney,
 6 and I don't know what the agreements say,
 7 but I would say that Coleman did not have
 8 a right to these letters.
 9 BY MR. WEBSTER:
 10 Q. Why is that?
 11 A. Because this is a letter to Arthur Andersen
 12 in a representation by Sunbeam. I just don't see why
 13 they would have a right to receive these letters. We
 14 certainly couldn't give these letters up.
 15 Q. Okay.
 16 MR. WEBSTER: Can I have MS-10, please.
 17 (Defendant's Exhibit #MS-10 for i.d.)
 18 BY MR. WEBSTER:
 19 Q. Have you had a chance to review the document?
 20 A. I've reviewed it. I've not read it in
 21 detail.
 22 Q. Do you recognize what MS-10 is?
 23 A. Yes.
 24 Q. What is it?
 25 A. This is the, what's known as the bring-down

1 figures before this letter was issued?
 2 MR. MOSCATO: I'm sorry. Read back the
 3 question.
 4 (The record was read as requested.)
 5 MR. MOSCATO: I object. The question-
 6 is vague.
 7 MR. WEBSTER: Yeah, I'll rephrase the
 8 question.
 9 BY MR. WEBSTER:
 10 Q. This bring-down letter, Mr. Harlow, contains
 11 updated figures on the '98 sales of Sunbeam since the
 12 comfort letter; is that correct?
 13 MR. MOSCATO: Well, I object to that.
 14 MR. JOHNSON: Object to form.
 15 MR. MOSCATO: I really do object to
 16 that.
 17 BY MR. WEBSTER:
 18 Q. I'll rephrase it.
 19 This letter updates the '98 sales figures
 20 that were in the comfort letter; is that correct?
 21 MR. MOSCATO: Why don't you take the
 22 comfort letter out, Phil, and compare
 23 before you answer that question.
 24 MR. WEBSTER: The comfort letter is
 25 MS-9.

1 comfort letter that Arthur Andersen issued to Morgan
 2 Stanley on March 25th.
 3 Q. Do you know who requested that this document
 4 be drafted?
 5 A. I assume it was a direct request from Morgan
 6 Stanley, but it could have been a request made through
 7 Sunbeam. I don't know.
 8 Q. Would either a request from Morgan Stanley or
 9 through Sunbeam be sufficient for you to draft this
 10 letter?
 11 A. Yes.
 12 Q. Did they have to make the request in a
 13 certain way? Did it have to be written, or could an
 14 oral request generate the drafting of this letter?
 15 A. Either way. I don't recall how they made the
 16 request.
 17 Q. Who was entitled to receive a copy of this
 18 document?
 19 A. Morgan Stanley and Sunbeam.
 20 Q. Did you discuss the 1998 sales figures that
 21 are in this bring-down letter with Morgan Stanley
 22 before it was issued?
 23 A. This particular letter I personally did not.
 24 Q. Do you know if anybody at Andersen had
 25 discussions with Morgan Stanley about the '98 sales

1 MR. MOSCATO: Look at 6C.
 2 THE WITNESS: Okay. What's the question?
 3 BY MR. WEBSTER:
 4 Q. Does the bring-down letter update the figures
 5 on '98 sales for Sunbeam from the comfort letter?
 6 A. No.
 7 Q. Well, if you look at the second page of the
 8 bring-down letter at the bottom of paragraph -- well,
 9 the second page, it includes a figure there for net
 10 loss for Sunbeam for the first two months of 1998; is
 11 that correct?
 12 MR. JOHNSON: Your question was sales.
 13 THE WITNESS: Your question was on
 14 sales.
 15 MR. MOSCATO: Yeah.
 16 THE WITNESS: Not income or loss.
 17 BY MR. WEBSTER:
 18 Q. Well, does it update the net income loss
 19 figures from the comfort letter?
 20 A. Yes, it does, it appears to.
 21 Q. And the net income loss figures that were
 22 indicated in the comfort letter was a net loss of
 23 \$9.510 for the first month of '98; is that correct?
 24 MR. MOSCATO: Objection to form.
 25 That's million. It's in euros.

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1 BY MR. WEBSTER:
 2 Q. Nine million.
 3 MR. MOSCATO: I'm sorry. There was
 4 confusion.
 5 THE WITNESS: Repeat the question.
 6 MR. MOSCATO: Can you try that again?
 7 BY MR. WEBSTER:
 8 Q. The comfort letter indicates that the net
 9 loss for the first month for '98 for Sunbeam was
 10 \$9,510,000; is that correct?
 11 A. Yes, through February 01, 1998.
 12 Q. And the bring-down letter indicates that the
 13 net loss for Sunbeam in the first two months of 1998
 14 was 41,190,000; is that correct?
 15 A. Yes, that's for -- yeah, through March 1st,
 16 1998. Another month, yes.
 17 Q. Did you have any discussions with Sunbeam
 18 about including this figure in the bring-down letter?
 19 A. Not that I recall. I mean, these were the --
 20 these were the facts.
 21 Q. Did Morgan Stanley ask any questions about
 22 the updated net loss figures in the bring-down letter?
 23 A. I don't recall having any direct discussions
 24 with Morgan Stanley on the second letter.
 25 Q. Do you know if they contacted anybody at

1 or worry that Coleman might inquire about '98 sales
 2 figures?
 3 A. No, not to my knowledge.
 4 Q. Did anybody from Sunbeam ever express any
 5 concern that Coleman might inquire about financial
 6 information on Sunbeam?
 7 A. From Arthur Andersen? Not to my knowledge.
 8 Q. Did they express any concern that Coleman
 9 would ask Sunbeam itself for such information?
 10 A. No, I never heard anything like that.
 11 MR. WEBSTER: This is a good time to
 12 break for lunch.
 13 THE VIDEOGRAPHER: Off the video
 14 record, 12:19.
 15 (A lunch recess was taken from 12:19 p.m.
 16 to 1:11 p.m.)
 17 MR. WEBSTER: Let's make this MS-602.
 18 (Defendant's Exhibit #MS-602 for i.d.)
 19 THE VIDEOGRAPHER: Back on the video
 20 record. The time is 1:11 p.m.
 21 BY MR. WEBSTER:
 22 Q. Mr. Harlow, you have a document in front of
 23 you that has been marked MS-602. Have you had a
 24 chance to review the document?
 25 A. Yes.

1 Andersen about the second letter?
 2 A. I believe Larry had some discussions, but I
 3 was not part of those discussions.
 4 Q. Okay. Did anyone from Morgan Stanley
 5 indicate to you that they were conducting due
 6 diligence on Coleman in connection with the debenture
 7 offering?
 8 A. I don't think I -- I can't recall, you know,
 9 someone from Morgan Stanley saying we're doing due
 10 diligence. I mean, the documents I saw indicated that
 11 they were, and the company told me they were. But any
 12 direct discussion with Morgan Stanley about their work
 13 on due diligence, I don't -- I don't remember.
 14 Q. Did anybody at Sunbeam ever discuss with you
 15 or anybody -- Well, strike that.
 16 Did anybody at Sunbeam ever discuss with
 17 you how you should react if Coleman or anybody
 18 representing Coleman inquired about the '98 sales
 19 figures?
 20 A. No.
 21 Q. Did you receive any instructions from Sunbeam
 22 about how you should respond to inquiries for
 23 financial information from Coleman?
 24 A. No, not that I recall.
 25 Q. Did anybody from Sunbeam ever express concern

1 Q. Have you ever seen in before?
 2 A. I don't think I've seen this particular
 3 document.
 4 Q. Do you have any idea who created it?
 5 A. I think this was created by Sunbeam. I've
 6 seen a different version of it.
 7 Q. Okay. Do you know if this was part of
 8 Sunbeam's books and records?
 9 A. I don't know.
 10 Q. Okay. And I'm showing you -- Let's mark this
 11 as -- What was the last one? 602. -- Let's mark this
 12 as MS-603.
 13 (Defendant's Exhibit MS-603 for i.d.)
 14 BY MR. WEBSTER:
 15 Q. Have you had a chance to review MS-603
 16 Mr. Harlow?
 17 A. Yes.
 18 Q. This appears to be another version of MS-602;
 19 is that correct?
 20 A. It appears to be the same schedule, just
 21 different notes, different handwriting than the
 22 previous one.
 23 Q. Is this the version of this document that you
 24 saw?
 25 A. I don't think so.

1 Q. There's handwriting in various parts of this
2 document. Is any of the handwriting yours?
3 A. No.
4 Q. Do you have any idea who prepared this
5 document?
6 A. No. Looks like -- well, any idea. I think
7 the typed portion was prepared by Sunbeam, someone at
8 Sunbeam.
9 Q. Why do you think that?
10 A. Because the version I saw at some point in
11 time I was told is prepared by Sunbeam, which was
12 similar to this. As far as the, you know, the
13 handwritten notes, telephone numbers, I don't know
14 whose those are.
15 Q. Do you remember when you saw a version of
16 this document?
17 A. It would have been sometime in 1998, but I
18 don't remember the exact date.
19 Q. Do you remember whether you saw this before
20 the March 19th press release was issued?
21 A. I'm pretty sure I didn't see it before that
22 date.
23 Q. Do you remember whether you saw it in March
24 of 1998?
25 A. I think it was -- I think I saw it after

1 March 1998.
2 Q. After March of 1998?
3 A. Yep. I can remember discussing items --
4 discussing this document but not actually physically
5 seeing.
6 Q. If you look at the top of the document,
7 there's a fax lug line up there. Do you see that?
8 A. Which one?
9 Q. Both, I think. Well, it's crossed out a
10 little bit on 602. If you look at 603, do you see the
11 fax line up at the top?
12 A. Yes.
13 Q. Do you see where it indicates a date of March
14 19th, '98?
15 A. Yes, um-hum.
16 Q. Does this refresh your recollection as to
17 when you might have seen this document?
18 MR. MOSCATO: Objection.
19 MR. JOHNSON: Join.
20 THE WITNESS: Not really.
21 BY MR. WEBSTER:
22 Q. Okay. All right. Mr. Harlow, I want to go
23 back to a topic that we covered at the beginning of
24 the deposition. You indicated that sometime in March
25 of '98 you went to Kansas City to review Coleman work

1 papers; is that correct?
2 A. No. I actually reviewed -- there were Ernst
3 & Young work papers.
4 Q. Ernst & Young work papers?
5 A. Of the audit of the Coleman Corporation.--
6 Q. And was Ernst & Young present?
7 A. Yes.
8 Q. And did you discuss their work papers with
9 Ernst & Young during that meeting?
10 A. Yes.
11 Q. Who else went with you to that meeting?
12 A. As I testified earlier, it was Mr. Gluck and
13 Mr. Bornstein.
14 Q. Nobody else from Andersen?
15 A. I don't recall anyone other than myself and
16 Larry from Andersen.
17 Q. Okay. Did you review any records regarding
18 Coleman sales in the first part of 1998 during that
19 meeting?
20 A. Those records were not made available to us,
21 so the answer is no.
22 Q. Did you request them?
23 A. We only requested work papers, and there was
24 no -- well, there was no audit done subsequent to that
25 date, so we were just told we'd have access to their

1 audit work papers, which were actually incomplete at
2 that point in time.
3 Q. Did you request that Ernst & Young or
4 somebody from Ernst & Young be present to talk to you
5 about the work papers?
6 A. They required their presence.
7 Q. Do you know why they did that?
8 A. That's just standard operating procedure for
9 accounting firms.
10 Q. Okay.
11 A. When they allow access to their work papers.
12 Q. Do you know if Ernst & Young ever came to
13 review Arthur Andersen's work papers on the Sunbeam
14 audit?
15 A. I don't recall.
16 Q. Was there any discussion at that Kansas
17 meeting about conducting a similar meeting to review
18 the Arthur Andersen work papers of the Sunbeam audit?
19 A. Not to my knowledge.
20 Q. Did you ever discuss with Mr. Gluck or
21 anybody else at Sunbeam the possibility of Ernst &
22 Young coming to do due diligence on your work, audit
23 of Sunbeam?
24 A. We most likely did, but I just -- I don't
25 recall precise dates and how it was discussed.

1 Q. Do you recall any of the details of those
 2 discussions?
 3 A. I don't. I had the assumption that it might
 4 occur in this type of transaction, but I -- and I
 5 think Mr. Gluck and I may have casually discussed it,
 6 but I don't -- I don't remember the details.
 7 Q. Did Mr. Gluck express any concern about that
 8 occurring?
 9 A. Not to my knowledge.
 10 Q. What was the scope of the due diligence that
 11 you performed on Coleman in connection with the
 12 transaction?
 13 MR. MOSCATO: I object to that. You
 14 can answer.
 15 THE WITNESS: There was really no scope
 16 defined by the company. It was
 17 basically -- basically it was dictated by
 18 the amount of time we had at Ernst &
 19 Young's offices. It was a review of their
 20 work papers and to identify issues that
 21 Sunbeam should know about that might be
 22 documented in Ernst & Young's work papers,
 23 but there was no formal scope that, you
 24 know, that certain things were going to be
 25 reviewed, and this work was going to be

1 done.
 2 It was merely, you know, Andersen fly
 3 out -- we actually flew out with Mr. Gluck
 4 and spent a day looking at the work papers
 5 and come up with what we can and catch a
 6 plane that night, and that's it.
 7 BY MR. WEBSTER:
 8 Q. Was a follow-up meeting discussed at that
 9 Kansas City meeting?
 10 A. I don't recall.
 11 Q. Do you know if you or anybody at Andersen
 12 ever requested an opportunity for a follow-up meeting
 13 or further review of the documents?
 14 A. Well, I didn't request further review of the
 15 documents because we basically got everything reviewed
 16 that was made available to us that day. So I
 17 didn't -- I didn't feel another trip to flip through
 18 Ernst & Young work papers was going to do anybody any
 19 good.
 20 Q. Okay. I want to go back to the conference
 21 call that you had with Morgan Stanley and others right
 22 after the issuance of the March 19th press release.
 23 A. Okay. This is the --
 24 MR. MOSCATO: I object to the --
 25 THE WITNESS: The call at the printers or

1 Morgan Stanley's office or wherever?
 2 MR. MOSCATO: Right.
 3 BY MR. WEBSTER:
 4 Q. Right. That's the conference call where you
 5 discussed what should be disclosed in the offering
 6 memorandum.
 7 A. Okay.
 8 Q. Did it -- during that conference call, did
 9 anyone from Morgan Stanley express surprise at the
 10 sales figures for the first part of 1998?
 11 A. I don't recall surprise. I think it was --
 12 it was more -- it seemed to be there was
 13 contentiousness about disclosure of those sales
 14 numbers in the document. I don't remember anybody
 15 saying, gee, whiz, I'm really surprised the numbers
 16 are what they are. I just don't recall that.
 17 Q. Did anyone from Morgan Stanley complain that
 18 the sales figures hadn't been disclosed earlier?
 19 A. They may have, but I wasn't -- I just
 20 don't -- I don't recall them saying Arthur Andersen
 21 should have disclosed those at an earlier point in
 22 time, but...
 23 Q. Did they complain that Sunbeam should have
 24 disclosed?
 25 MR. MOSCATO: Wait. Were you finished

1 with your answer?
 2 THE WITNESS: No, I'm just trying to
 3 recollect. It's possible that there was
 4 some, you know, some disappointment in
 5 Sunbeam in not disclosing that at an
 6 earlier point in time, but I just don't
 7 recall, because most of our, most of our
 8 focus and energy was, okay, it is what it
 9 is; let's get it documented in the
 10 document as professionals should recommend
 11 to their clients. That's where we were
 12 coming from.
 13 BY MR. WEBSTER:
 14 Q. And that conference call was the first time
 15 that you talked to Morgan Stanley -- anybody at Morgan
 16 Stanley about the '98 sales figures?
 17 A. Well, it was the second time I talked to
 18 Morgan Stanley, but the first time that I recall
 19 talking to them about the year-to-date '98 sales.
 20 Q. The first time you talked to them was the due
 21 diligence call?
 22 A. That was the -- yeah, the earlier discussion
 23 on accounting issues.
 24 Q. And that was before you knew about the '98
 25 sales figures?

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1 A. That's right.
 2 Q. Did -- during that March 19th or --
 3 March 19th conference call with Morgan Stanley, did
 4 anybody discuss the possibility of a lawsuit or
 5 litigation in connection with disclosure?
 6 A. Yeah, I think, I believe we brought it up
 7 that there's potential for litigation if you don't
 8 disclose this information.
 9 Q. Litigation by whom?
 10 A. Litigation by the parties harmed as a result
 11 of not knowing that information.
 12 Q. Did you suggest who might sue?
 13 A. No. I don't recall. I don't recall the
 14 detailed discussion, but --
 15 Q. What else was said about the possibility of
 16 litigation?
 17 A. I mean, I don't remember. We had -- we had
 18 attorneys on the call, and they were supposedly the
 19 experts on litigation, so they didn't want to hear us.
 20 Q. Who was it that first alerted you to the '98
 21 sales figures for Sunbeam?
 22 MR. JOHNSON: I'm going to object to form.
 23 THE WITNESS: I assume you're asking about
 24 the sales figures through first month of
 25 January.

1 BY MR. WEBSTER:
 2 Q. Yes.
 3 A. First month of 1998. It would have been
 4 either Mr. Bornstein or Mr. Pastrana. I don't
 5 remember which one. Most likely Mr. Bornstein.
 6 Q. How did they get in touch with you? Were
 7 they a phone call?
 8 A. Probably a phone call because we were in
 9 three separate offices. Mr. Bornstein was in our West
 10 Palm Beach office; Mr. Pastrana was based in our Miami
 11 office; and I ran the Fort Lauderdale office, so a lot
 12 of our conversation on work was over the phone as
 13 opposed to face to face.
 14 Q. And that was sometime after the March 12th
 15 due diligence call?
 16 A. Yeah, that would have been most likely after,
 17 yeah.
 18 Q. Was it before the draft comfort letter was
 19 sent to Morgan Stanley?
 20 A. It would have been about the time because I
 21 saw the draft about the same time it was sent to
 22 Morgan Stanley.
 23 Q. Had you talked to Mr. Bornstein about the
 24 sales figures before you saw the draft comfort letter?
 25 A. I don't recall. I mean, I think -- we had a

1 discussion about the same time I got them. He may
 2 have alerted that they were coming and, you know,
 3 don't be -- don't be surprised when you see it or
 4 something to that effect. But it was -- it was very
 5 close to, if he talked to me before I got it, it was
 6 very close to the time I received it. And it might
 7 have been a case where he was just notifying me.
 8 Q. You've testified numerous times in the past
 9 about your work for Sunbeam; is that correct?
 10 A. That's correct.
 11 Q. And have you had a chance to review all of
 12 the transcripts that were created?
 13 A. Absolutely not. I don't have that kind of
 14 time to waste.
 15 Q. Have you reviewed any of the transcripts?
 16 A. Very little. Very little.
 17 Q. In each of those times that you were deposed
 18 did you make an effort to be truthful and accurate if
 19 all of your answers?
 20 A. Yes, I did.
 21 Q. Do you have any reason to doubt that any of
 22 the answers you gave in those previous depositions
 23 were inaccurate?
 24 MR. JOHNSON: Object to the form.
 25 MR. MOSCATO: I object. You can

1 answer.
 2 THE WITNESS: In reviewing some of the
 3 transcripts, yeah, there are some
 4 inaccuracies in those transcripts.
 5 BY MR. WEBSTER:
 6 Q. I thought you said you haven't. You have
 7 reviewed some of the transcripts?
 8 A. I said in reviewing some -- I haven't -- I
 9 haven't reviewed a lot of those transcripts, but I've
 10 got a pile of transcripts that are probably this high
 11 (indicating) on testimony on Sunbeam. And I have gone
 12 back in some cases prior to other depositions and
 13 found errors in those transcripts.
 14 Q. Did you alert counsel to any of the errors
 15 that you found in the transcripts?
 16 A. In some cases, I have.
 17 Q. Do you know if Errata sheets were filled out
 18 for any of those transcripts?
 19 A. I don't know what an Errata sheet is.
 20 Q. Do you know if a sheet was filled out
 21 indicating what the errors were that you found
 22 those transcripts?
 23 A. I have no idea. A lot of that litigation is
 24 dead litigation and SEC stuff which has been settled,
 25 so I'm not going to worry about it now.

1 Q. Other than those errors that you found, do
2 you have any reason to believe that the transcripts of
3 your previous testimony were inaccurate in any way?

4 MR. MOSCATO: I object. I don't
5 understand the question.

6 MR. JOHNSON: Join.

7 THE WITNESS: I don't know how to
8 answer that. I'd have to identify all the
9 errors, but... Let me see, yeah, it's good
10 testimony as long as I could go through
11 and identify any errors, make those be
12 known.

13 BY MR. WEBSTER:

14 Q. Your counsel has never asked you to go
15 through the transcripts to find errors?

16 A. No.

17 MR. MOSCATO: You know, well, I object
18 to that. That's attorney-client
19 privilege. I'd ask that the answer be
20 stricken.

21 BY MR. WEBSTER:

22 Q. Do you remember how far in advance of
23 March 19th the draft comfort letter was created?

24 A. No.

25 Q. Just sometime between March 12th and

1 March 19th?

2 A. Um-hum. I mean, it was five years ago. No,
3 I don't remember exactly what date it was prepared.

4 Q. Do you know if you saw the first draft of the
5 draft comfort letter?

6 A. I don't know that. Probably didn't see it.

7 Q. Okay.

8 MR. WEBSTER: That's all the questions
9 I have.

10 MR. JOHNSON: I've just got a couple of
11 questions. Now, Mr. Harlow --

12 THE VIDEOGRAPHER: Did you want to get
13 a microphone?

14 MR. JOHNSON: Yeah, I did. Thanks.

15 THE WITNESS: We need to turn the heat
16 back up so he won't talk too long.

17 MR. JOHNSON: What's that?

18 THE WITNESS: We need to turn the heat
19 back up so you won't have too many
20 questions.

CROSS-EXAMINATION

22 BY MR. JOHNSON:

23 Q. I think I just have a few minutes of
24 questions. Mr. Webster asked you about the printer
25 conference call or the Morgan Stanley conference call

1 on several occasions, and I want to explore that
2 testimony a little bit.

3 Is it your testimony that you preferred a
4 disclosure of the net sales information through the
5 first two months of 1998?

6 A. We preferred disclosure of a level of sales
7 through the date in which was, you know, the effective
8 date -- not effective date but the final printing date
9 on the offering memorandum.

10 Q. So sales through some point in March of 1998?

11 A. Yes.

12 Q. And why did you or Andersen have that
13 preference?

14 A. Well, it was our feeling that by doing so, it
15 would give the reader of that document an idea as to
16 the magnitude and the gap between the sales as of
17 March 16th or whatever the date was as compared to a
18 prior period.

19 Q. Did you have any concern that the sales
20 situation was inconsistent with the picture of Sunbeam
21 as a turned-around company?

22 MR. MOSCATO: I object to that.

23 MR. WEBSTER: Object.

24 THE WITNESS: I guess it depends on which
25 way you're turning it around, but, I mean,

1 obviously the thought entered my mind, you
2 know, that, you know, for the first two
3 months we really didn't have a company
4 that looked like it was really going and
5 blowing, you know, as purported by the
6 chairman of the company.

7 BY MR. WEBSTER:

8 Q. Did you -- didn't you testify to Mr. Webster
9 that you discussed bill and hold transactions with
10 Morgan Stanley?

11 A. I don't believe that question came up.

12 Q. Then I'll ask it.

13 A. I believe -- I believe he had asked me about
14 the early buy program.

15 Q. Well, let me --

16 A. And I indicated that this been disclosed in
17 the document.

18 Q. Okay. How about bill and hold in particular,
19 did you ever discuss with Morgan Stanley that some
20 people engaged in bill and hold sales?

21 A. I believe that was discussed in the due
22 diligence conference call on the -- whatever date that
23 was, March 10th or --

24 Q. 12th?

25 A. -- 11th or 12th or 13th or whatever.

1 Q. And your view was that bill and hold was a
2 lousy business practice; is that correct?

3 MR. MOSCATO: I object.

4 MR. WEBSTER: Objection.

5 THE WITNESS: I've testified to that in
6 the past. I'm not a proponent of bill and
7 hold transactions, but doesn't mean
8 they're illegal or anything like that.

9 BY MR. JOHNSON:

10 Q. Putting aside the accounting issues
11 associated with it, your view at the time and today is
12 that it's not a good business practice to engage in
13 bill and hold sales?

14 MR. MOSCATO: I'll object to that.

15 THE WITNESS: Well, you know, there could
16 be in some industries it is an accepted
17 practice, a common practice. You know, I
18 think you can go back and look at my
19 previous testimony. It relates to, you
20 know, this particular situation ultimately
21 had a harmful effect on the company.

22 And, you know, I think my testimony, my
23 previous testimony really is based on
24 hindsight to see what happened as a result
25 of bill and hold, not necessarily knowing

1 Morgan Stanley requesting a comfort letter.

2 Q. Did you receive this document on or about
3 March 11th?

4 A. I assume I did. I just -- it's dated
5 March 11th. I'm sure I got it about that time.

6 Q. Okay. In the middle of the second paragraph
7 of see page Exhibit 12, Morgan Stanley indicates that
8 it will be engaged in a review process substantially
9 consistent with the due diligence review process that
10 Morgan Stanley would perform if the placement of
11 securities were being registered under the 33 Act. Do
12 you see that?

13 A. Yes.

14 Q. Did that portion of this letter have any
15 significance to you?

16 A. Well, when I see that, I -- you know, my
17 reaction is that Morgan Stanley is going to be doing a
18 lot of work to make sure that this complies with SEC
19 rules and regulations, and there would be a
20 significant amount of due diligence in connection with
21 it.

22 Q. Let me give out what's been marked previously
23 as CPH Exhibit 36.

24 MR. MOSCATO: Where do you want this to
25 go, right here?

1 what I know today back in January of 1998
2 or February '98 or March '98. But today I
3 would say bill and hold in this particular
4 situation was not a good idea, not a good
5 business practice.

6 BY MR. JOHNSON:

7 Q. Did anyone from Morgan Stanley ask your
8 opinion about bill and hold as a business practice?

9 A. I don't recall.

10 Q. You don't recall that happening?

11 A. I don't recall that question being asked.

12 Q. Let me show you what's been previously marked
13 as Exhibit 12, see if you can identify this for me.
14 I'm more of an environmentalist than Mr. Webster, so I
15 don't have copies for everybody, but I think all the
16 parties should have one.

17 A. Do you need to mark this?

18 Q. It's been marked already.

19 I wonder if you could identify Exhibit 12,
20 CPH Exhibit 12 for me, Mr. Harlow.

21 A. Okay. I'm sorry. Your question again?

22 Q. I just wonder if you can identify that for
23 me.

24 A. This is a letter addressed to Arthur Andersen
25 specifically to my attention dated March 11th from

1 MR. JOHNSON: Right there is fine. One
2 for the witness there.

3 BY MR. JOHNSON:

4 Q. In particular, Mr. Harlow, I want you to have
5 a look at the press release that is contained on the
6 last four pages of Exhibit 36.

7 A. Do you want me to read the entire document?

8 Q. If you'd just be good enough to skim it.
9 Feel free to study it more carefully if my questions
10 call for that.

11 A. All right.

12 Q. This is the April 3 press release relating to
13 Sunbeam's first quarter '98 sales; is that correct?

14 A. That's correct.

15 Q. Okay. Did you review this press release
16 after it was issued?

17 A. I believe I saw this after, after it was
18 released by the company.

19 Q. Did you have any reaction to this news?

20 A. I've got a lot of testimony on this one. I
21 was -- you know, it was like no big surprise. But I
22 think I called one of their in-house attorneys trying
23 to rub their nose in it a little bit.

24 Q. When you say it was no big surprise, that's
25 because you were of the view that the company would

1 not meet first quarter sales numbers?
 2 A. I was skeptical. As I testified earlier, I
 3 was skeptical at the company's ability to meet their
 4 1997 first quarter sales levels based on what they had
 5 to do in the last ten days of the month of March.
 6 Q. And you turned out to be right?
 7 A. Yeah. I'm not real happy about that, but I
 8 did. I was right.
 9 Q. And you say you called one of the Sunbeam
 10 in-house lawyers, rubbed their nose in it. Is that
 11 Janet Kelley?
 12 A. Yes.
 13 Q. Did she --
 14 A. And later Mr. Fannin.
 15 Q. When you say you rubbed their nose in it, can
 16 you tell me what you mean by that?
 17 A. Oh, I just -- I'm not a very subtle person,
 18 but I tried to be subtle and just let them know that
 19 the wrong decision was made in their previous press
 20 release.
 21 Q. And that was a decision that essentially
 22 ignored Andersen's concerns?
 23 A. Yes.
 24 MR. JOHNSON: No further questions.
 25

1 in the offering memorandum; is that correct?
 2 A. That's correct.
 3 Q. Did you express that preference to Morgan
 4 Stanley?
 5 A. As I testified earlier today, I did.
 6 Q. Had you ever disclosed that kind of detail --
 7 or strike that.
 8 Are you aware of that level of detail ever
 9 being disclosed in a prior offering memorandum in a
 10 transaction you were associated with?
 11 MR. MOSCATO: I object.
 12 MR. JOHNSON: Join.
 13 THE WITNESS: I've seen a lot of things
 14 disclosed over the years. You know, I
 15 didn't -- I had not seen precisely that
 16 kind of disclosure in an offering
 17 memorandum.
 18 MR. WEBSTER: Thank you.
 19 MR. MOSCATO: Are you finished with
 20 your answer?
 21 THE WITNESS: Yeah, that's good enough.
 22 MR. MOSCATO: Okay.
 23 BY MR. WEBSTER:
 24 Q. Did you ever talk to Morgan Stanley about
 25 disclosing the bill and hold practice in the offering

1 REDIRECT EXAMINATION
 2 BY MR. WEBSTER:
 3 Q. Just a couple follow-ups. That press
 4 release, the March 19th press release was issued
 5 before you talked to Morgan Stanley about the '98
 6 sales figures; is that correct?
 7 MR. MOSCATO: You being Phil Harlow
 8 personally?
 9 MR. WEBSTER: Phil Harlow.
 10 THE WITNESS: I mean. What's the 16th
 11 (sic) date?
 12 BY MR. WEBSTER:
 13 Q. The 19th is the date of the press release I'm
 14 talking about.
 15 A. The 19th was the date.
 16 Q. My question is, the March 19th press release
 17 was issued before you ever talked to Morgan Stanley
 18 about the '98 sales figures; is that correct?
 19 A. Before I personally did, as I recall. As I
 20 testified earlier, I think I talked to Morgan Stanley
 21 the day, it was later in the day, the day that press
 22 release was released.
 23 Q. Right. Mr. -- you indicated a moment ago, I
 24 believe, that you preferred disclosure of the '98 net
 25 sales info through the date of the offering memorandum

1 memorandum?
 2 A. I don't recall. I think it was disclosed in
 3 the offering memorandum.
 4 Q. The CPH Exhibit 36, the press release --
 5 A. Which press release?
 6 MR. MOSCATO: It would be the April 3
 7 press release.
 8 THE WITNESS: April 3.
 9 BY MR. WEBSTER:
 10 Q. April 3rd. April 3rd press release indicated
 11 that the company expected first quarter sales for '98
 12 to be approximately five percent below '97's first
 13 quarter sales; is that correct?
 14 A. That's what it says, that's correct.
 15 Q. Was that degree of shortfall about what you
 16 had expected?
 17 MR. MOSCATO: I object.
 18 MR. JOHNSON: Join.
 19 THE WITNESS: I had not calculated a
 20 shortfall percentage to be honest.
 21 BY MR. WEBSTER:
 22 Q. Did you have any expectation about the
 23 magnitude of the shortfall?
 24 A. I -- no, I had not targeted a number.
 25 Q. Did it surprise you that they had come within

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1 five percent of '97's first quarter sales?
 2 MR. MOSCATO: I object.
 3 THE WITNESS: No, I wouldn't say that
 4 surprised me. I mean, I thought it was
 5 going to be below, whether it's five
 6 percent or seven percent, not surprising.
 7 MR. WEBSTER: That's all the questions I
 8 have.
 9 **RE CROSS EXAMINATION**
 10 **BY MR. JOHNSON:**
 11 Q. One more follow-up. You indicated,
 12 Mr. Harlow, that the bill and hold sales were
 13 disclosed in the offering memorandum; is that correct?
 14 A. Well, I can't remember. I mean, it's been
 15 years since I looked at the document. I think the
 16 financial statements if they're not a part of it are
 17 incorporated by reference. And in the financial
 18 statements, 1997 -- or, no -- yeah, 1997 financial
 19 statements they were disclosed.
 20 Q. That's the 10-K for 1997?
 21 A. Yes.
 22 Q. And you've previously testified, haven't you,
 23 that the disclosure of the risks associated with bill
 24 and hold in the '97 10-K was not sufficient, haven't
 25 you?

1 Q. June of 1999. You were then asked the
 2 question, "Now in your view is this sufficient
 3 disclosure of the risks of, well, I'll say the
 4 negative impact of future financial performance?"
 5 Answer, "No, I think I would suggest
 6 better wording than this."
 7 Do you recall giving that testimony?
 8 THE WITNESS: I don't --
 9 MR. MOSCATO: I object.
 10 THE WITNESS: I don't recall.
 11 MR. MOSCATO: Well, let me finish. I
 12 object. I believe that is out of context.
 13 Go ahead.
 14 THE WITNESS: Well, it is out of --
 15 clearly out of context, but, I mean --
 16 MR. MOSCATO: The question is do you
 17 recall the testimony, yes or no.
 18 THE WITNESS: Vaguely. I mean, you
 19 know, I testified 15 days up there. To
 20 remember everything I said would be next
 21 to impossible.
 22 MR. MOSCATO: Are you finished?
 23 MR. JOHNSON: I'm finished, yes.
 24
 25

1 MR. MOSCATO: I object to that.
 2 THE WITNESS: Well, I think my -- you
 3 know, where I am on bill and hold and
 4 disclosure on that, you know, we had
 5 discussed with the company to have
 6 additional disclosures. And originally
 7 the company was not going to put anything
 8 relating to bill and hold transactions in
 9 the financial statements, and we insisted
 10 that that be done.
 11 And they ultimately put in a discussion
 12 of bill and hold and also quantified the
 13 amount of bill and hold in the footnotes
 14 to the financial statements. There was
 15 also a discussion in the MDMA section.
 16 You know, is it adequate or isn't
 17 adequate? I don't know. I can't say.
 18 **BY MR. JOHNSON:**
 19 Q. On your June 8th, 1999 testimony, Mr. Lipman
 20 (phonetic) reviewed the various disclosures in the
 21 10-K for 1997 at pages 157 through 160 relating to
 22 bill and hold.
 23 A. What year was that testimony?
 24 Q. The testimony was 1999.
 25 A. 1999.

1 **REDIRECT EXAMINATION**
 2 **BY MR. WEBSTER:**
 3 Q. To be clear, Mr. Harlow, did you ever
 4 recommend to Morgan Stanley that the offering
 5 memorandum should have more detailed disclosure
 6 regarding bill and hold than was in the 10-K?
 7 A. I don't recall. I don't recall.
 8 MR. MOSCATO: Thank you, everybody.
 9 MR. WEBSTER: Thank you.
 10 (The foregoing proceedings were concluded
 11 at 1:50 p.m.)
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1 THE STATE OF FLORIDA,)
2 COUNTY OF PALM BEACH.)

3
4 I, PHILLIP E. HARLOW, do hereby certify
5 that I have read the foregoing transcript of my
6 deposition given on Friday, November 19, 2004, and
7 that together with any additions or corrections made
8 herein, it is true and correct, to the best of my
9 belief.

10
11
12
13 PHILLIP E. HARLOW

14
15 SWORN TO AND SUBSCRIBED BEFORE ME
16 THIS DAY OF , 2004.

17
18 NOTARY PUBLIC, STATE OF FLORIDA
19 AT LARGE MY COMMISSION EXPIRES:
20
21
22
23
24
25

1 CERTIFICATE
2 THE STATE OF FLORIDA,)
3)
4 COUNTY OF PALM BEACH.)
5 I, BARBARA GALLO, Registered Merit
6 Reporter and Notary Public, State of Florida at Large,
7 DO HEREBY CERTIFY that I was authorized to
8 and did stenographically report the foregoing
9 deposition; and that the transcript is a true and
10 correct transcription of the testimony given by the
11 witness.

12 I further certify that I am not a relative,
13 employee, attorney or counsel of any of the parties,
14 nor am I a relative or employee of any of the parties'
15 attorney or counsel connected with the action, nor am
16 I financially interested in the action.

17 Dated this day of , 2004
18
19
20

21 BARBARA GALLO, RMR-CRR
22 Notary Public State of Florida
23 My Commission Expires September 17, 2007
24
25

1 RULE 1.310 FLORIDA RULES OF CIVIL PROCEDURE PROVIDES:
2
3 (E) ANY CHANGES IN FORM OR SUBSTANCE WHICH THE
4 WITNESS DESIRES TO MAKE SHALL BE ENTERED
5 UPON THE DEPOSITION BY THE OFFICER WITH A
6 STATEMENT OF THE REASONS GIVEN BY THE
7 WITNESS FOR MAKING THEM.

8 PAGE LINE CHANGE REASON
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20 Under penalty of perjury, I declare that I have read
21 my deposition and that it is true and correct subject
22 to any changes in form or substance entered here.
23
24
25

Date:
PHILLIP E. HARLOW

NOT A CERTIFIED COPY

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CONFIDENTIAL
IN THE FIFTEENTH JUDICIAL COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA

-----X
COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

Case No.
vs. CA 03-5045 AI
MORGAN STANLEY & CO., INC.,
Defendant.

-----X
MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

Case No.
vs. CA 03-5165 AI
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.

-----X

VIDEOTAPED DEPOSITION OF BRUCE SLOVIN
New York, New York
Wednesday, May 12, 2004

Reported by:
WENDY D. BOSKIND, RPR
JOB NO. 160109

1
2 APPEARANCES:
3
4 JENNER & BLOCK LLP
5 Attorneys for Coleman (Parent)
6 Holdings Inc., MacAndrews & Forbes,
7 and the witness
8 One IBM Plaza
9 Chicago, Illinois 60611-7603
10 BY: ROBERT T. MARKOWSKI, ESQ.
11
12
13 KIRKLAND & ELLIS LLP
14 Attorneys for Morgan Stanley
15 777 South Figueroa Street
16 Los Angeles, California 90017
17 BY: LAWRENCE P. BEMIS, ESQ.
18 -and-
19 KIRKLAND & ELLIS LLP
20 655 Fifteenth Street, N.W.
21 Washington, D.C. 20005
22 BY: ZHONETTE M. BROWN, ESQ.
23
24 ALSO PRESENT: Ruben Martinez,
25 The Legal Video Specialist

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May 12, 2004
9:10 a.m.

Videotaped Deposition of BRUCE
SLOVIN, held at the offices of
Kirkland & Ellis LLP, 153 East 53rd
Street, New York, New York, pursuant
to Notice, before Wendy D. Boskind,
a Registered Professional Reporter
and Notary Public of the State of
New York.

1
2 THE LEGAL VIDEO SPECIALIST:
3 This is tape number one of the
4 videotaped deposition of Mr. Bruce
5 Slovin, in the matter Coleman
6 (Parent) Holdings, Inc., versus
7 Morgan Stanley & Co., Inc., Case
8 Number CA 03-5045 AI, also Morgan
9 Stanley Senior Funding, Inc. versus
10 MacAndrews & Forbes Holdings, Inc.,
11 Case Number CA 03-5165 AI.
12 This deposition is being held at
13 153 East 53rd Street, Manhattan,
14 New York, on May 12, 2004, at
15 approximately 9:10 a.m. My name is
16 Ruben Martinez, from the firm of
17 Esquire Video Services. The court
18 reporter is Ms. Wendy Boskind, in
19 association with Esquire Deposition
20 Services.
21 Will counsel please introduce
22 themselves.
23 MR. BEMIS: Good morning.
24 Lawrence P. Bemis, Kirkland & Ellis,
25 on behalf of the Morgan Stanley

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1
2 entities.
3 MS. BROWN: Zhonette Brown,
4 Kirkland & Ellis, also on behalf of
5 Morgan Stanley.
6 MR. MARKOWSKI: Bob Markowski,
7 from Jenner & Block, on behalf of
8 Coleman (Parent) Holdings, MacAndrews
9 & Forbes, and the witness.
10 THE LEGAL VIDEO SPECIALIST:
11 Will the court reporter please swear
12 in the witness.
13
14 BRUCE SLOVIN,
15 business address at 1 Eleven
16 Associates, LLC, 111 East 61st
17 Street, New York, New York 10021,
18 having been first duly sworn by the
19 Notary Public, (Wendy D. Boskind),
20 was examined and testified as
21 follows:
22
23 EXAMINATION BY
24 MR. BEMIS:
25 Q. Good morning, Mr. Slovin. Would

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1 Confidential - Slovin
2 you state your full name for the jury,
3 please?
4 A. Bruce Elliot Slovin.
5 Q. How old are you, Mr. Slovin?
6 A. 40 -- 68.
7 Q. What's your date of birth?
8 A. 12-10-35.
9 Q. And you are represented by
10 Mr. Markowski here this morning?
11 A. Yes.
12 Q. What is your current residence
13 address?
14 A. 42 East 65th Street, New York
15 City, New York.
16 Q. And how long have you lived
17 there?
18 A. 18 years.
19 Q. Do you have a listed telephone
20 number there?
21 A. Yes.
22 Q. What is it?
23 A. 212-570-6486.
24 Q. Are you a current resident of
25 the State of New York?

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1 Confidential - Slovin
2 A. Yes.
3 Q. And you carry a New York
4 driver's license?
5 A. Yes.
6 Q. Are you married?
7 A. Yes.
8 Q. Does your spouse live with you
9 at that address that you just gave us?
10 A. Yes.
11 Q. Are you currently employed by
12 any company affiliated with Mr. Ronald
13 Perelman?
14 A. I am a director of M&F
15 Worldwide.
16 Q. Is that the only company that
17 you work for now or that is affiliated in
18 any way with Mr. Perelman?
19 A. Yes.
20 Q. You understand you are being
21 videotaped; correct?
22 A. Yes.
23 Q. And before you came to the
24 deposition, did you have an opportunity to
25 meet with Mr. Markowski?

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1 Confidential - Slovin
2 A. Yes.
3 Q. And did you review any documents
4 with him before --
5 A. Yes.
6 Q. What documents did you review?
7 MR. MARKOWSKI: I am going to
8 instruct the witness not to answer.
9 MR. BEMIS: Grounds?
10 MR. MARKOWSKI: Work product.
11 (DIRECTION NOT TO ANSWER.)
12 Q. You understand that the oath
13 that you took, sir, has the same force and
14 effect as if you were testifying live in
15 front of a jury?
16 A. Yes.
17 Q. Is there any reason that you can
18 think of today that you can't testify
19 truthfully?
20 A. No.
21 Q. You have been deposed before;
22 haven't you?
23 A. Yes.
24 Q. And you are an attorney; aren't
25 you?

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1 Confidential - Slovin
2 A. I am an attorney.
3 Q. Are you still licensed to
4 practice in New York?
5 A. I may be.
6 I don't think I keep my dues up
7 to date but, other than that, I think I
8 probably can practice law, yes.
9 Q. You have been deposed -- you
10 said you have been deposed before. You
11 are then familiar with the process we go
12 through in a deposition, the questions and
13 answers?
14 A. Yes.
15 Q. If there is anything that you
16 don't understand when I ask the question,
17 you let me know. Otherwise, I am going to
18 assume that you understand it. Fair
19 enough?
20 A. Yes.
21 Q. Did you discuss your deposition
22 testimony here today with anyone other
23 than Mr. Markowski, your attorney?
24 A. Yes, Steven Fasman.
25 Q. And would you tell me who

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1 Confidential - Slovin
2 Mr. Fasman is, please?
3 A. He is an attorney for --
4 Q. For MAFCO?
5 A. I believe so.
6 I am not entirely sure who his
7 employment is directly with but, yes, one
8 of the --
9 Q. He is an attorney for one of
10 Mr. Perelman's entities; correct?
11 A. Yes.
12 Q. When did you talk to Mr. Fasman
13 about your deposition?
14 A. Yesterday.
15 Q. Was he present when you were
16 being prepared by Mr. Markowski?
17 A. Yes.
18 Q. How long were you prepared by
19 Mr. Markowski and Mr. Fasman yesterday?
20 A. Approximately an hour-and-a-half
21 to two hours.
22 Q. Was anyone other than
23 Mr. Markowski and Mr. Fasman present
24 during your preparation?
25 A. No.

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1 Confidential - Slovin
2 Q. In the course of your
3 preparation, did you review any deposition
4 transcripts that have been taken in the
5 action?
6 A. No.
7 Q. Any deposition transcripts from
8 other actions at all related to the
9 Sunbeam/Coleman merger transaction?
10 A. No.
11 Q. Did you review any partial
12 transcripts?
13 A. No.
14 Q. Any documents where -- that were
15 segregated out by where your name appeared
16 in them?
17 A. I don't believe so.
18 Q. Have you given any written
19 statements to anyone about the subject
20 matter of the litigation you are here
21 giving testimony on?
22 A. No.
23 Q. Have you given any affidavits on
24 the same subject matter?
25 A. No.

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1 Confidential - Slovin
2 Q. Other than being prepared by
3 Mr. Markowski and Mr. Fasman yesterday for
4 your deposition, have you been interviewed
5 by anyone about the litigation you are
6 here testifying on?
7 A. No.
8 Q. You were a member of the board
9 of directors of The Coleman Company at the
10 time that the agreement and plan of merger
11 dated February 27, 1998 was approved by
12 the board; correct?
13 A. Yes.
14 Q. Let me show you what's been
15 marked as Morgan Stanley Exhibit 117.
16 (Deposition Exhibit Morgan
17 Stanley 117, agreement and plan of
18 merger among Sunbeam Corporation,
19 Camper (phonetic) Acquisition
20 Corporation, and The Coleman Company,
21 dated as of February 27th, marked for
22 identification.)
23 Q. Do you have in front of you
24 Morgan Stanley Exhibit 117?
25 A. Yes.

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1 Confidential - Slovin
2 Q. Please take a moment and look at
3 it, if you choose, and tell me if that is,
4 indeed, the agreement and plan of merger
5 among Sunbeam Corporation, Camper
6 (phonetic) Acquisition Corporation, and
7 The Coleman Company, dated as of February
8 27th.
9 MR. MARKOWSKI: I object to the
10 lack of foundation.
11 Q. You can answer.
12 A. It states that it is.
13 Q. Is this the document that you
14 approved -- excuse me -- is this a copy of
15 the document that you approved as a member
16 of the board of directors at the meeting
17 of February 27th, 1998?
18 MR. MARKOWSKI: Same objection.
19 A. It appears to be, (indicating).
20 Q. Now, at the meeting of February
21 27th, 1998 of the board of directors of
22 The Coleman Company, you were present;
23 correct?
24 A. Yes.
25 Q. And were you present for the

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1 Confidential - Slovin
2 entire meeting?
3 A. My recollection is that I was.
4 Q. At any time during that board of
5 directors meeting, on February 27th of
6 1998 of The Coleman Company, did Morgan &
7 Stanley & Co., Incorporated, which I will
8 refer to as "Morgan Stanley" here, appear
9 before the board of The Coleman Company?
10 A. I don't recall.
11 Q. You don't recall, one way or the
12 other?
13 A. That's right.
14 Q. You voted for the merger, did
15 you not?
16 A. Yes.
17 Q. Did you see the merger agreement
18 before you voted for the merger?
19 A. I don't recall.
20 Q. Did you ever read the merger
21 agreement?
22 A. Uh -- in part.
23 Q. What part did you read?
24 Look at MS 117 and tell me what
25 you read.

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1 Confidential - Slovin
2 A. I don't recall.
3 Q. You don't even want to take a
4 moment to look at it --
5 A. I have.
6 Q. -- and see --
7 A. I have.
8 Q. Okay.
9 A. I have flipped through every
10 page, and I don't recall reading any
11 specific page at the time, in February
12 1998.
13 Q. Well, did you read any portion
14 of it after February 27th, 1998, after
15 your board voted to approve the merger?
16 A. I don't recall.
17 Q. Well, you voted for the merger
18 on behalf of the public shareholders of
19 The Coleman Company, did you not?
20 A. Yes.
21 Q. And you also voted for the
22 merger, as set forth in MS 117, on behalf
23 of MAFCO Holdings Inc., which indirectly
24 owned 82.4 percent of The Coleman Company,
25 Inc. common stock; didn't you?

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1 Confidential - Slovin
2 A. Yes.
3 Q. Did you rely on any information
4 in approving the merger that was provided
5 outside of the board meetings?
6 A. I don't recall that I did.
7 Q. Now, there were two board
8 meetings at which the merger was
9 discussed; correct?
10 A. To the best of my recollection,
11 yes.
12 Q. The first meeting was February
13 25th of 1998; correct?
14 A. I believe so, yes.
15 Q. And that meeting lasted
16 approximately an hour-and-a-half?
17 A. I have no recollection of the
18 time that transpired.
19 Q. Well, let me show you the board
20 minutes and see if that helps you.
21 (Deposition Exhibit Morgan
22 Stanley 88, true and correct copy of
23 the minutes of the board of directors
24 of The Coleman Company, Inc. held on
25 February 25th, 1998 at 4 p.m., marked

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1 Confidential - Slovin
2 for identification.)
3 Q. I show you what's been marked as
4 Morgan Stanley Deposition Exhibit 88, sir.
5 MR. BEMIS: Do you need another
6 copy, Mr. Markowski?
7 MR. MARKOWSKI: (Nodding.)
8 Q. I think I gave you two copies,
9 sir. Let me just see if I did that. I
10 did, I'm sorry.
11 Now, do you have Morgan Stanley
12 Exhibit 88 in front of you, Mr. Slovin?
13 A. Yes, I do -- well -- yes, I did
14 do.
15 Q. Okay. Now, sir, would you
16 confirm for me, sir, that these are -- as
17 a director of the company, that these are
18 a true and correct copy of the minutes of
19 the board of directors of The Coleman
20 Company, Inc. held on February 25th, 1998
21 at 4 p.m.?
22 A. I believe they are.
23 Q. And if you will turn to the last
24 page of the minutes, sir, will you confirm
25 for me, sir, that the minutes reflect that

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1 Confidential - Slovin
2 the meeting was adjourned at 5:30 p.m.
3 that date?
4 A. Yes, I can confirm that based
5 upon the comment on page 6 of these
6 minutes.
7 Q. So the very first meeting in
8 which the Coleman/Sunbeam merger was
9 discussed at a board of directors meeting
10 of the Coleman Corporation lasted
11 one-and-a-half hours, according to the
12 minutes; correct?
13 A. Yes.
14 Q. Do you have any reason to
15 dispute that that is the length of that
16 board meeting, sir, based on the minutes
17 that have been presented to you here this
18 morning?
19 A. No.
20 Q. And just to confirm --
21 withdrawn.
22 Now, let me show you what's been
23 marked as Morgan Stanley Exhibit 119.
24 (Deposition Exhibit Morgan
25 Stanley 119, copy of a court document

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1 Confidential - Slovin
2 filed by Coleman (Parent) Holdings in
3 the lawsuit that was brought against
4 Arthur Andersen, LLP and Mr. Philip
5 E. Harlow in the Circuit Court for
6 Palm Beach County, Florida, marked
7 for identification.)
8 Q. Do you have Plaintiff's --
9 excuse me, "Plaintiffs" -- do you have
10 Morgan Stanley Exhibit 119 in front of
11 you, sir?
12 A. Yes.
13 Q. This, sir, is a copy of a court
14 document filed by Coleman (Parent)
15 Holdings in the lawsuit that was brought
16 against Arthur Andersen, LLP and
17 Mr. Philip E. Harlow in the Circuit Court
18 for Palm Beach County, Florida, as you
19 will see on the caption.
20 Do you see that, sir?
21 A. Yes.
22 Q. And you at one time were the
23 president of (Parent) -- of -- excuse me,
24 of Coleman (Parent) Holdings Inc.; were
25 you not?

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1 Confidential - Slovin
2 A. Which company are you referring
3 to?
4 Q. Coleman (Parent) Holdings Inc.,
5 you were the president of that company at
6 one time.
7 A. I don't have a specific
8 recollection of what title I carried at
9 the time.
10 Q. Well, if -- even if you don't
11 have a specific recollection at a point in
12 time you were president at one time, were
13 you not, sir?
14 A. You are suggesting I was
15 president of a holding company, that
16 held --
17 Q. No.
18 A. -- Coleman?
19 Q. I am suggesting -- I am asking
20 you, really, is what I am asking you, at
21 one time you were the president of Coleman
22 (Parent) Holdings Inc., the Plaintiff in
23 the lawsuit that's captioned in the
24 documents in front of you.
25 A. I actually don't remember --

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1 Confidential - Slovin
2 Q. Okay.
3 A. -- what title I held.
4 Q. But you did hold some title in
5 the company.
6 A. I don't recall precisely what
7 title.
8 Q. No, no, that's not my question.
9 You recall holding a title. If you
10 don't --
11 A. I don't recall holding a title
12 specifically.
13 Q. Well, let me ask you, sir, to
14 turn to page 4 of the filing here by
15 Coleman (Parent) Holdings Inc. and turn to
16 paragraph 7, which is on page 4, and tell
17 me when you are there; page 4, paragraph
18 7.
19 A. (Pause.)
20 I have read that paragraph.
21 Q. All right, sir.
22 Directing your attention to the
23 third sentence, beginning: "This case
24 involves a transaction". Do you see that?
25 A. Yes.

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1 Confidential - Slovin
2 Q. The transaction referred to in
3 this document is the Sunbeam/Coleman --
4 Coleman merger, and I will ask you, sir,
5 do you agree that the lawyer's statement
6 on behalf of Coleman (Parent) Holdings
7 Inc. that the transaction was, quote,
8 "negotiated at arm's-length by two large
9 sophisticated and public-traded
10 corporations"?
11 A. Yes.
12 Q. Would you agree with the next
13 sentence, sir, that: "Each side was
14 represented by prominent highly-paid
15 advisors, Morgan Stanley, Skadden Arps,
16 and Anderson for Sunbeam"? Do you agree
17 with that?
18 A. Yes.
19 Q. And would you agree with the
20 next portion of the sentence, "and CS
21 Boston and Wachtell, Lipton for The
22 Coleman Company"?
23 A. Yes.
24 Q. And did you -- would you agree
25 with the following sentence: "Sunbeam

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1 Confidential - Slovin
2 conducted due diligence of The Coleman
3 Company just like any third-party buyer
4 would do"?
5 A. Yes.
6 Q. Would you agree with me, sir,
7 that The Coleman Company also conducted
8 due diligence of Sunbeam like any buyer or
9 buyer would do?
10 A. In the particular circumstances
11 of this transaction, yes.
12 Q. Thank you. You can set that
13 aside. You can hand it back to me. Thank
14 you.
15 MR. BEMIS: Ms. Reporter, why
16 don't we just take one second and let
17 you mark these, initial these before
18 I forget, and I will try to remember
19 to let you do that as we move along.
20 (Discussion off the record.)
21 Q. Now, I would like now to ask you
22 to direct your attention back to the board
23 of directors meetings on February 27th and
24 February 25th, 1998 of The Coleman
25 Company, Inc.

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1 Confidential - Slovin
2 Are you there, sir, are you
3 thinking, are you with me at that time
4 frame?
5 A. Yes.
6 Q. Okay. The Coleman Company at --
7 board of directors, was represented by
8 Wachtell, Lipton, Rosen & Katz; correct?
9 A. Yes.
10 Q. And that's a New York City law
11 firm?
12 A. Yes.
13 Q. A prominent New York City law
14 firm?
15 A. Yes.
16 Q. And The Coleman Company was also
17 represented by an investment banking firm;
18 right?
19 A. Yes.
20 Q. And that investment banking firm
21 was Credit Suisse First Boston; correct?
22 A. Yes.
23 Q. And, indeed, Credit Suisse First
24 Boston was the exclusive financial advisor
25 to The Coleman Company in the transaction;

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1 Confidential - Slovin
2 was it not, sir?
3 A. That's my belief, that they
4 were.
5 Q. And, in addition, The Coleman
6 Company, Inc. had auditors; did it not?
7 A. Yes.
8 Q. And your auditors were -- excuse
9 me, The Coleman Company's auditors were
10 Ernst & Young, LLP at that time?
11 A. Yes.
12 Q. And those auditors were, indeed,
13 under the terms of the merger agreement,
14 supposed to provide a comfort letter to
15 Sunbeam with regard to the financial
16 statements of The Coleman Company as part
17 of the merger, were they not, sir?
18 MR. MARKOWSKI: Object to lack
19 of foundation.
20 A. I have no specific recollection
21 of that.
22 Q. I will ask you to look at
23 Plaintiff's Exhibit 117. Turn to Section
24 7.3 A on page 29. And read that
25 paragraph, please.

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1 Confidential - Slovin
2 A. Which paragraph are you
3 referring to?
4 Q. Paragraph 7.3, titled Comfort
5 letter, sub-paragraph A.
6 A. Yes. (Pause.)
7 I have read the 7.3.
8 Q. My question was, sir, Arthur --
9 excuse me, Ernst & Young L.L.P., the
10 accountants for The Coleman Company, Inc.,
11 were to provide a comfort letter to Laser,
12 which is a subsidiary of the -- a
13 subsidiary of Sunbeam in connection with
14 the merger pursuant to this paragraph of
15 the merger agreement; correct?
16 MR. MARKOWSKI: Object to the
17 form of the question.
18 Are you asking him whether he
19 recalls that --
20 MR. BEMIS: You can just object
21 to the form of the question --
22 MR. MARKOWSKI: I want to know
23 if you are asking him if he recalls
24 it or whether you are asking him to
25 read this and interpret this. I have

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1 Confidential - Slovin
2 a different objection --
3 MR. BEMIS: I heard your
4 objection.
5 He can answer the question.
6 MR. MARKOWSKI: I am going to
7 object, then.
8 MR. BEMIS: You did, you said
9 "object to form".
10 MR. MARKOWSKI: Excuse me. I am
11 going to object on the grounds that
12 it is a lack of foundation to the
13 extent you are calling for him to
14 interpret it, I object, the document
15 speaks for itself.
16 MR. BEMIS: I have never heard
17 of talking documents, but let's get
18 an answer to the question.
19 A. That's how I interpret the
20 reading of 7.3 sub A.
21 Q. And that's how you would have
22 interpreted it, then, when you reviewed
23 and approved the merger agreement at the
24 board of directors meeting on February
25 27th, 1998 as a fiduciary to the

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1 Confidential - Slovin
2 shareholders; correct?
3 A. I imagine that's so.
4 Q. All right.
5 At the board meeting, on
6 February 27th of 1998, did Credit Suisse
7 First Boston provide a fairness opinion to
8 the board of directors of The Coleman
9 Company?
10 A. My recollection is that they
11 did, yes.
12 Q. Did you see it and was it given
13 in writing or orally?
14 A. I think both.
15 Q. Let me show you what's been
16 marked as Morgan Stanley 120.
17 A. Excuse me, you were talking
18 about Credit Suisse or Morgan Stanley.
19 Q. Credit Suisse First Boston.
20 A. Yes, I have it.
21 Q. I am going to ask the court
22 reporter to mark that, and I will just
23 have a couple questions for you.
24 (Deposition Exhibit Morgan
25 Stanley 120, written fairness opinion

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1 Confidential - Slovin
2 that was provided to the board of
3 directors of The Coleman Company,
4 Inc. on February 27th, 1998, marked
5 for identification.)
6 Q. I hand you now what I have had
7 marked as Morgan Stanley 120.
8 Do you have that in front of
9 you, sir?
10 A. I do.
11 Q. And can you please confirm for
12 me, sir, that this is the written fairness
13 opinion that was provided to the board of
14 directors of The Coleman Company, Inc. on
15 February 27th, 1998 --
16 A. It appears to be that.
17 Q. And this was provided by your
18 exclusive financial advisor, Credit Suisse
19 First Boston Corporation; correct?
20 A. I believe so.
21 Q. All right. You may set that
22 aside for now.
23 At the board of directors
24 meeting of February 27th, 1998, did you,
25 that is, as a director of The Coleman

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1 Confidential - Slovin
2 Company, receive a fairness opinion from
3 Morgan Stanley & Company, Incorporated?
4 A. I actually don't recall.
5 Q. You don't recall one way or the
6 other?
7 A. Yes.
8 Q. Well, in preparation for your
9 deposition, did you see a Morgan Stanley &
10 Company, Incorporated fairness
11 opinion --
12 MR. MARKOWSKI: Objection.
13 Q. -- directed to the board of
14 directors of The Coleman Company?
15 MR. MARKOWSKI: I am going to
16 object, instruct the witness not to
17 answer, calls for work product.
18 (DIRECTION NOT TO ANSWER.)
19 Do you want to ask him whether
20 he has ever seen one --
21 MR. BEMIS: Well, that may be
22 the next question. I don't need your
23 assistance in telling me what
24 questions --
25 MR. MARKOWSKI: I instruct him

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1 Confidential - Slovin
2 not to answer that.
3 I made myself clear with respect
4 to asking questions about what he
5 reviewed with me, so why you ask that
6 question I don't understand.
7 Q. Have you ever seen a fairness
8 opinion prepared by Morgan Stanley &
9 Company, Incorporated addressed to the
10 board of directors of The Coleman Company,
11 Inc.?
12 A. I have no specific recollection
13 one way or another of seeing that.
14 Q. Now, am I correct, sir, that the
15 only fairness opinion that was ever
16 provided to The Coleman Company, Inc. is
17 the document that you have in front of you
18 as Morgan Stanley 120?
19 MR. MARKOWSKI: Would you read
20 the question back, please.
21 MR. BEMIS: Let me rephrase the
22 question.
23 Q. Am I correct that the only
24 written fairness opinion that was provided
25 to The Coleman Company by Credit Suisse

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1 Confidential - Slovin
2 First Boston is Plaintiff's -- excuse me,
3 Morgan Stanley Exhibit 120?
4 A. I do not know.
5 Q. You don't recall one way or the
6 other?
7 A. I do not recall if there were
8 other written documents within the
9 fairness opinion. A legend that was
10 submitted to the board of directors.
11 Q. Did you say "legend"?
12 A. It's an awkward word.
13 The -- I don't know if I saw any
14 other fairness opinions written by First
15 Boston.
16 Q. Other than MS 120 that is in
17 front of you.
18 A. That is my recollection, yes.
19 Q. Now, am I correct, sir, that
20 you, as a member of the board of directors
21 of The Coleman Company, voted to approve
22 the agreement and plan of merger as fair?
23 A. Yes.
24 Q. And did the other -- were there
25 any dissenting directors, to your

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1 Confidential - Slovin
2 knowledge?
3 A. Not to my knowledge.
4 Q. All right. When you voted as a
5 director that the agreement and plan of
6 merger was fair, what did you understand
7 "fair" to mean?
8 A. Reasonable, economic
9 relationships.
10 Q. So it was fair to the -- were
11 you finished?
12 A. Yes.
13 Q. Good, I didn't mean to interrupt
14 you. Sometimes that happens. I will try
15 not to do that.
16 So, in your view, the merger
17 agreement, which we marked as Morgan
18 Stanley 117, it was fair to the public
19 shareholders of The Coleman Company;
20 correct?
21 MR. MARKOWSKI: You are asking
22 him for his view at the time?
23 MR. BEMIS: Yes, as a director
24 when he voted on it.
25 MR. MARKOWSKI: I just wanted to

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1 Confidential - Slovin
2 know if you are asking him today or
3 when he voted on it.
4 MR. BEMIS: I said -- I think I
5 said when he voted, but if you are
6 confused I will ask him again.
7 A. No, you don't have to ask again.
8 Q. Okay.
9 A. Yes, I thought it was fair to
10 the public shareholders.
11 Q. And you thought that the merger
12 agreement was fair to Coleman Worldwide
13 Corporation?
14 A. Yes.
15 Q. By the way, who -- what entity
16 held the shares of The Coleman Company
17 that were owned by Mr. Perelman's
18 affiliates?
19 A. I am not certain.
20 Q. Well, the Plaintiff in one of
21 these cases is Coleman (Parent) Holdings
22 Inc. Did you assume the transaction as a
23 director on February 27th was fair to
24 Coleman (Parent) Holdings?
25 A. Yes.

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1 Confidential - Slovin
2 Q. And there is another entity that
3 in the chain that we will get to, a
4 company called CLN Holdings, Inc. Are you
5 familiar with that?
6 A. No.
7 Q. You are not familiar with it?
8 A. No.
9 Q. Now, let me ask you a couple of
10 specific questions about the company
11 Morgan Stanley & Co., Incorporated, which
12 is one of the parties to the case, that's
13 its full name, and I will refer to them
14 right now as "Morgan Stanley" just to keep
15 the questions a little shorter. Is that
16 okay with you?
17 A. Perfectly okay with me.
18 Q. Okay. Did you ever attend any
19 face-to-face meetings with Morgan Stanley
20 concerning the Sunbeam/Coleman action --
21 acquisition, excuse me, before it was
22 approved on February 27th, 1998 by the
23 board?
24 A. No.
25 Q. Between the approval of the

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1 Confidential - Slovin
2 acquisition on February 27th, 1998, and
3 the closing, which I think the record
4 shows was March 30th of 1998, did you
5 attend any face-to-face meetings with
6 anyone with Morgan Stanley?
7 A. No.
8 Q. Now going forward, from the
9 closing, which -- of March 30th of 1998,
10 and say July 1st, 1998, did you have any
11 face-to-face meetings with anyone at
12 Morgan Stanley concerning the Coleman/
13 Sunbeam merger?
14 A. No.
15 Q. Did you ever have any --
16 withdrawn. Did you ever participate in
17 any conference calls with Morgan Stanley
18 concerning the Sunbeam/Coleman acquisition
19 before it was approved by the Coleman
20 board of directors on February 27th, 1998?
21 A. No.
22 Q. Between the approval of the
23 merger on February 27th, 1998 and the
24 closing on March 30th, of 1998, did you
25 participate in any conference calls with

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1 Confidential - Slovin
2 Morgan Stanley?
3 A. No.
4 Q. After the closing on March 30th
5 of 1998 and up to July 1st of 1998, did
6 you participate in any conference calls
7 with Morgan Stanley concerning the merger
8 transaction?
9 A. No.
10 Q. Did you as a -- did you,
11 individually, receive any documents from
12 Morgan Stanley concerning the
13 Sunbeam/Coleman merger before it was
14 approved by the board of directors of The
15 Coleman Company on February 27th, 1998?
16 A. I don't recall.
17 Q. Have you seen any such documents
18 in the course of your preparation?
19 A. I don't believe so.
20 Q. After the approval by the board
21 of directors of the Sunbeam/Coleman merger
22 on February 27th, and up to the point of
23 closing on March 30th of 1999 -- 1998,
24 excuse me, did you receive any documents
25 from Morgan Stanley concerning the merger?

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1 Confidential - Slovin
2 A. I don't recall.
3 Q. Did you see any in your
4 preparation for your deposition?
5 MR. MARKOWSKI: I have got to --
6 let me make it simple. I have a
7 standing objection and instruction
8 not to answer with respect to any
9 questions you have got relating to
10 materials he saw in meeting with me
11 to prepare for this deposition.
12 MR. BEMIS: I prefer you make
13 your objection rather than have a
14 standing objection because I don't
15 think it's proper.
16 MR. MARKOWSKI: If you want to
17 keep asking the question, I will keep
18 instructing him not to answer.
19 MR. BEMIS: You are entitled to
20 do that, I am not quarrelling with
21 you, we will just deal with it later.
22 MR. MARKOWSKI: That's
23 harassment.
24 Q. I am not trying to harass you.
25 MR. BEMIS: If you think I am,

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1 Confidential - Slovin
2 you can adjourn the deposition and go
3 tell the judge.
4 Q. Did you ever receive any
5 correspondence from anyone at Morgan
6 Stanley concerning the Sunbeam/Coleman
7 acquisition before you voted to approve it
8 at the board of directors meeting on
9 February 27th, 1998?
10 A. I have no recollection.
11 Q. Did you receive any after --
12 withdrawn. Did you receive any
13 correspondence from Morgan Stanley
14 concerning the acquisition after the
15 February 27th, 1998 approval and up unto
16 the point of the closing of March 30th,
17 1998?
18 A. I have no such recollection.
19 Q. After the closing, on March
20 30th, 1998, and up until July 1st, 1998,
21 did you receive any correspondence from
22 anyone at Morgan Stanley concerning the
23 acquisition?
24 A. I have no such recollection.
25 Q. I ask you the same series of

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1 Confidential - Slovin
2 questions, sir, regarding electronic mail.
3 Did you, for example, receive any
4 electronic mail from Morgan Stanley
5 concerning the Sunbeam/Coleman acquisition
6 up to the point it was approved on
7 February 27th, 1998?
8 A. I don't believe so.
9 Q. After the approval and up to
10 July 1st of 1998?
11 A. I don't believe so.
12 Q. Are you -- one of the --
13 withdrawn. One of the other parties in
14 these cases is Morgan Stanley Senior
15 Funding, Inc. Are you familiar with that
16 entity?
17 A. I believe so.
18 Q. Did you -- did you ever attend
19 any face-to-face meetings with Morgan
20 Stanley Senior Funding concerning the
21 Coleman/Sunbeam acquisition before you
22 voted to approve it on February 27th,
23 1998?
24 A. No.
25 Q. Did you receive -- withdrawn.

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1 Confidential - Slovin
2 Did you have any face-to-face meetings
3 with anyone from Morgan Stanley Senior
4 Funding between the approval on February
5 27th of the merger and its closing on
6 March 30th, 1998?
7 A. No.
8 Q. Following the closing on March
9 30th, 1998 and up through July 1st of
10 1998, did you have any face-to-face
11 meetings with Morgan Stanley --
12 A. No.
13 Q. Senior-- excuse me, Morgan
14 Stanley Senior Funding.
15 A. No.
16 Q. Okay, thank you.
17 Did you ever participate in any
18 conference calls with anyone associated
19 with Morgan Stanley Senior Funding
20 concerning the Sunbeam/Coleman acquisition
21 before you voted as a director to approve
22 the acquisition on February 27th, 1998?
23 A. Not to my recollection.
24 Q. Between the approval of the
25 merger on the 27th of February and its

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1 Confidential - Slovin
2 closing on March 30th, 1998, did you
3 participate in any conference calls with
4 Morgan Stanley Senior Funding?
5 A. Not to my recollection.
6 Q. Did you receive any documents
7 from Morgan Stanley Senior Funding
8 concerning the Sunbeam/Coleman merger
9 before you voted to approve it on February
10 27th, 1998?
11 A. I don't recall.
12 Q. You don't recall one way or the
13 other?
14 A. Yes.
15 Q. In your preparation, did you see
16 any documents that you believe that you
17 had received from Morgan Stanley Senior
18 Funding in connection with the merger
19 prior to your voting to approve it on
20 February 27th, 1998?
21 MR. MARKOWSKI: Instruct the
22 witness not to answer.
23 (DIRECTION NOT TO ANSWER.)
24 A. I don't believe so.
25 MR. MARKOWSKI: I instructed you

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1 Confidential - Slovin
2 not to answer on that because he is
3 not entitled to ask you questions
4 about --
5 THE WITNESS: So I should not
6 answer.
7 MR. MARKOWSKI: Right.
8 THE WITNESS: I thought I could
9 answer, even if you object.
10 MR. MARKOWSKI: Not if I
11 instruct you. Questions he has
12 relating to the materials we reviewed
13 yesterday or discussions we had
14 yesterday, those are privileged
15 communications and he's not entitled
16 to know that.
17 THE WITNESS: Very good.
18 Q. Did you receive any electronic
19 mail from anyone from Morgan Stanley
20 Senior Funding concerning the
21 Sunbeam/Coleman merger before you voted to
22 approve it on February 27th, 1998 at the
23 board meeting?
24 A. I have no such recollection.
25 Q. Did you receive any e-mails from

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1 Confidential - Slovin
2 Morgan Stanley Senior Funding between the
3 time of the approval, February 27th, and
4 its closing on March 30th, 1998?
5 A. I have no such recollection.
6 Q. Same question -- withdrawn. Did
7 you receive any e-mails from anyone from
8 Morgan Stanley Senior Funding following
9 the closing on March 30 and up through
10 July 1st of 1998, again concerning the
11 Sunbeam/Coleman acquisition?
12 A. I have no such recollection.
13 Q. As a member of the board of
14 directors, did the board of directors ever
15 authorize the approval of Morgan Stanley
16 to act in any capacity to advise Coleman
17 in connection with the merger agreement
18 dated February 27th, 1998 which we marked
19 as MS 117?
20 A. I have no such recollection.
21 Q. Did The Coleman Company, to your
22 knowledge, authorize or -- any payments to
23 Morgan Stanley in connection with the
24 Sunbeam acquisition of The Coleman
25 Company?

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1 Confidential - Slovin
2 A. I do not know.
3 Q. Are you aware of any payments
4 being made?
5 A. No.
6 Q. Are you aware of Coleman
7 (Parent) Holdings Inc., the company, one
8 of the Plaintiffs on these consolidated
9 actions, making any payments to Morgan
10 Stanley in association with the
11 acquisition of Coleman?
12 A. I have no such recollection.
13 Q. You are familiar with the
14 company called MAFCO Holdings Inc.;
15 correct?
16 A. Yes.
17 Q. You were the president of MAFCO
18 Holdings Inc.; were you not?
19 A. Yes.
20 Q. To your knowledge, did MAFCO
21 Holdings Inc. make any payments to Morgan
22 Stanley in association with Sunbeam's
23 acquisition of Coleman as approved by the
24 board of directors on February 27th, 1998?
25 A. I do not recall.

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1 Confidential - Slovin
2 Q. Now, as a -- as a member of the
3 board of directors, and having reviewed
4 and approved Morgan Stanley 117, which is
5 the merger and acquisition agreement, you
6 were aware as a director, were you not,
7 sir, that The Coleman Company had access
8 to Sunbeam's books and records before the
9 merger agreement was approved; correct?
10 MR. MARKOWSKI: Object to the
11 form of the question.
12 Q. You may answer.
13 A. I believe so.
14 Q. And what steps did -- withdrawn.
15 MR. BEMIS: Would you please
16 mark this as Morgan Stanley 210,
17 please.
18 (Deposition Exhibit Morgan
19 Stanley 210, press release issued by
20 Sunbeam, marked for identification.)
21 Q. Sir, do you have Morgan Stanley
22 Exhibit 210 in front of you, sir?
23 A. Yes.
24 Q. For the record, this is a press
25 release issued by Sunbeam. And I would

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1 Confidential - Slovin
2 ask you to please take a moment to read it
3 and let me know when you are finished.
4 A. (Pause.)
5 I have read it.
6 Q. Okay. Have you seen this press
7 release before today, sir?
8 A. Yes, I believe so.
9 Q. And would you please tell me
10 when you first saw it?
11 A. My recollection is that I saw it
12 when it was issued and I saw it again with
13 counsel.
14 Q. So when you say when it was
15 first issued, you are referring to March
16 19th of 1998?
17 A. The date that appears on this
18 document someplace.
19 Q. And that is March 19th, 1998;
20 correct?
21 A. It is.
22 Q. Now, sir, when you saw the press
23 release, you were still -- were you still
24 a director of The Coleman Company?
25 A. I believe so.

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1 Confidential - Slovin
2 Q. And following your receipt of
3 the press release, did you contact anyone
4 at Morgan Stanley & Company, Incorporated
5 and ask them any questions about the press
6 release?
7 A. No.
8 Q. Did you contact anyone at
9 Sunbeam?
10 A. No.
11 Q. Did you contact -- did you
12 contact any members of the board of
13 directors of The Coleman Company that had
14 participated in the February 27th, 1998
15 meeting approving the acquisition?
16 A. I may have.
17 Q. Do you recall one way or the
18 other?
19 A. I believe I did.
20 Q. And who did you contact?
21 A. I don't recall specifically.
22 Q. Did you contact this person
23 by -- in a face-to-face meeting or a
24 telephone call?
25 A. I don't recall.

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1 Confidential - Slovin
 2 Q. Did you have a conversation when
 3 you contacted this person?
 4 A. I believe I did, these persons
 5 or person or persons, I don't recall if I
 6 had one or many conversations with one or
 7 more than one person, but I do believe I
 8 had some conversation concerning this
 9 release.
 10 Q. I would like to limit myself now
 11 to one time period, and that would be
 12 March 19th up until the closing of March
 13 30th of 1998.
 14 Are you with me on the time
 15 period now?
 16 A. Yes.
 17 Q. Okay. Now, just within that
 18 time period, did you discuss the press
 19 release with anyone on the board of
 20 directors of The Coleman Company?
 21 A. I think I did.
 22 Q. Now, what did you -- what did
 23 you say to the person that you talked to
 24 or persons that you talked to and what did
 25 they say to you?

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1 Confidential - Slovin
 2 A. I don't have specific
 3 recollection.
 4 Q. Do you have general
 5 recollections?
 6 A. Yeah -- yes.
 7 Q. What are your general
 8 recollections?
 9 A. Just that the (indicating) sales
 10 were reported to be off slightly and that
 11 the company attributed that result to a
 12 reorganization of some customer
 13 inventories, but that the company expected
 14 year results to equal what their
 15 predictions were on a sales basis.
 16 Q. And as a consequence --
 17 withdrawn. As a result of these
 18 conversations, as you have generally
 19 related to them, did the board of
 20 directors of The Coleman Company convene
 21 any meetings between March 19th and the
 22 closing to reconsider the merger
 23 agreement?
 24 A. Not to my recollection.
 25 Q. To your -- strike that. Between

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1 Confidential - Slovin
 2 March 19th and March 30th, 1998, were
 3 there any further meetings of the board of
 4 directors to discuss the merger agreement?
 5 A. I do not have such a
 6 recollection.
 7 Q. Did -- after receiving the press
 8 release of March 19th, 1998, did any
 9 member of the board of directors request a
 10 comfort letter from Arthur Andersen
 11 concerning the financial statements of
 12 Sunbeam Corporation?
 13 A. I have no such knowledge.
 14 Q. Please turn to Morgan Stanley
 15 Exhibit 117 again, if you would, sir.
 16 It's in front of you. And look at
 17 paragraph 7.2 -- excuse me, 7.3 entitled
 18 Comfort letters, and sub-paragraph B, and
 19 tell me when you are there.
 20 A. Sub-paragraph B?
 21 Q. Yes, sir, it's on page 30. And
 22 tell me when you are there.
 23 A. (Pause.)
 24 Yes, I have read it.
 25 Q. Sir, following the press release

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1 Confidential - Slovin
 2 of March 19th, 1998, did anyone who was a
 3 director, now of The Coleman Company, make
 4 any request of officers or employees, if
 5 you will, of The Coleman Company, to have
 6 delivered to it a comfort letter from
 7 Arthur Andersen, LLP as set forth in
 8 sub-paragraph 7.2 B of the merger
 9 agreement?
 10 A. I don't have any such
 11 recollection.
 12 Q. When you had these informal
 13 conversations -- withdrawn. When you had
 14 your conversations with your other
 15 directors, between March 19th and when the
 16 press release was issued and the closing
 17 on March 30th, in the course of those
 18 discussions, did any of the directors say
 19 words to the effect: Gentlemen, under the
 20 terms of the merger agreement, we are
 21 entitled to receive from Sunbeam's
 22 auditors, Arthur Andersen, a comfort
 23 letter? Did anyone say that?
 24 A. I don't remember.
 25 Q. Do you think in light of the

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1 Confidential - Slovin
2 March 19th press release of 1998 it would
3 have been a good idea for the directors to
4 do that, given their fiduciary duties to
5 the public shareholders?
6 MR. MARKOWSKI: Object to the
7 form of the question.
8 A. I don't know that they did it or
9 didn't do it.
10 There were people who were in
11 our organization who were more intimately
12 involved, and they may have done what you
13 are suggesting, I do not know.
14 Q. Who were --
15 A. I don't remember.
16 Q. I interrupted, I apologize.
17 Who would be the person in the
18 organization, that is, The Coleman
19 Company, you are referring to, who would
20 be intimately familiar with this topic and
21 would have had the responsibility for
22 requesting the comfort letter from Arthur
23 Andersen that they were -- that Sunbeam
24 was obligated to request pursuant to
25 paragraph 7.2 B of the merger agreement,

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1 Confidential - Slovin
2 Exhibit MS 117?
3 A. Jerry Levin was intimately
4 involved, Jim Maher, our lawyers, and our
5 accountants and our investment banking
6 advisors, those are the people who were
7 intimately involved with this transaction.
8 Q. Okay, you can set 117 aside for
9 now, sir.
10 When you acted as a member of
11 the board of directors of The Coleman
12 Company, in 1998, approving the merger,
13 you were acting as a business person and
14 not as an attorney; correct?
15 A. Yes.
16 Q. You did not -- strike that.
17 At any point when you were a director of
18 The Coleman Company, did you render legal
19 advice to the company as a lawyer?
20 A. No.
21 MR. BEMIS: Ms. Reporter, would
22 you please mark MS 121 for
23 identification, please.
24 (Deposition Exhibit Morgan
25 Stanley 121, copy of Mr. Slovin's

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1 Confidential - Slovin
2 calendar, plus a printout of a
3 monthly calendar that Mr. Slovin kept
4 in 1997 and 1998 for the months
5 indicated on the document, marked for
6 identification.)
7 MR. BEMIS: Mr. Markowski?
8 Q. Mr. Slovin, do you have Morgan
9 Stanley Exhibit 121 in front of you?
10 A. Yes.
11 Q. Is this a copy of your calendar,
12 if you will, plus a printout of a monthly
13 calendar that you kept in the -- 1997 and
14 1998 for the months indicated on the
15 document?
16 A. It appears to be that.
17 Q. Are there any -- well, let me
18 ask you another question.
19 In 1997 and 1998, did you
20 personally keep this calendar which we
21 have marked as Morgan Stanley 121?
22 A. My secretary would have.
23 Q. May I call it your "calendar",
24 is that fair enough, or do you want to
25 call it something else?

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1 Confidential - Slovin
2 A. You can call it my "calendar",
3 if you wish.
4 Q. Okay. So your secretary kept
5 your appointments and meetings for you on
6 this electronic calendar?
7 A. It appears she did.
8 Q. Well, you didn't keep it
9 yourself, I take it?
10 A. No.
11 Q. Did you provide this calendar to
12 your legal counsel in this case pursuant
13 to a request for production of documents?
14 A. I imagine we did.
15 Q. Do you have any recollection of
16 when you did it?
17 A. No.
18 Q. Do you have any recollection of
19 why only the months of December of 1997
20 and February of 1998 were produced?
21 A. No.
22 Q. And you have --
23 MR. MARKOWSKI: I'm sorry, you
24 said only December and February?
25 MR. BEMIS: It's December and

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1 Confidential - Slovin
2 February, that's the only two months
3 I see. Maybe I made a mistake.
4 MR. MARKOWSKI: I have got
5 January in my copy.
6 MR. BEMIS: You know what? I
7 don't have a January front page for
8 it, and that's what confused me. Let
9 me rephrase the question.
10 Q. On the daily planner section,
11 there is just -- there are two dates,
12 December 9th and February 27th. Do you
13 see that? Just take a look at that real
14 quick for us.
15 A. Yes.
16 Q. Are those the only two dates
17 that you had on your daily planner any
18 references to The Coleman Company?
19 A. I do not recall.
20 Q. Do you have -- strike that. Are
21 there any other meetings during the months
22 of December 1997, January and February of
23 1998 that involve The Coleman Company that
24 are not on your calendars?
25 A. I do not remember.

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1 Confidential - Slovin
2 Q. Was your calendar generally
3 accurate, that was kept by your secretary?
4 A. I think so.
5 Q. Okay. Well, one thing that
6 strikes me when looking at your calendar,
7 is you did have a board meeting on
8 February 27th -- excuse me, February 25th
9 of 1998 at 4 p.m., and we marked that
10 as -- the minutes of that, as MS 88, which
11 you have in the pile. Do you recall that?
12 A. Do I recall what?
13 Q. Do you recall that you had a
14 board meeting of The Coleman Company on
15 February 25th of 1998.
16 A. Yes.
17 Q. And when I look at your cal--
18 first of all, you don't have a day planner
19 for that date and you also don't have it
20 on your monthly grid for February, that
21 is, the meeting of the board of directors.
22 Do you see that?
23 A. Yes -- yes.
24 Q. Was the February 25th, 1998
25 board meeting called without any prior

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1 Confidential - Slovin
2 advance notice to you?
3 A. I have no recollection of that.
4 Q. Do you have any explanation of
5 why it would not appear on your calendar
6 under the date February 25th?
7 A. No.
8 Q. Other than the calendar that we
9 have a portion of in Morgan Stanley
10 Exhibit 121, did you keep any other type
11 of calendar in 1997 and 1998?
12 A. I had a big red book,
13 (indicating) --
14 Q. Like a day planner?
15 A. Yeah, but I think (indicating)
16 this was supposed to reflect what was in
17 the book. This was my secretary's
18 product, and I would jot down from time to
19 time things to do as well as appointments
20 to be met.
21 Q. And what -- when you say "a big
22 red book", it had a red cover on it;
23 right?
24 A. Right.
25 Q. I have seen those, a "day

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1 Confidential - Slovin
2 planner" book lawyers call them. Do you
3 still have those?
4 A. Do I have it back in '97 and
5 '98? I don't recall, I might.
6 Q. When you were asked to produce
7 documents in this case, did you look --
8 did you produce those red books to the
9 attorneys?
10 A. I don't remember.
11 Q. Okay. Do you have any current
12 plans to, if you do have the 1997/1998 day
13 planners still in existence, do you have
14 any current plans to dispose of them?
15 A. I haven't thought about that in
16 a while.
17 Q. Okay.
18 MR. BEMIS: I would make a
19 formal request of counsel, if such
20 documents exist that they at least
21 not be destroyed until we have an
22 opportunity to see whether they are
23 subject to production. I am not
24 suggesting you would do that, I am
25 just, for the record, making a

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1 Confidential - Slovin
2 request.
3 (REQUEST.)
4 Q. In addition to your day -- your
5 red book day planner -- I, by the way,
6 gave those up a long time ago, but I do
7 remember them, and what your secretary
8 kept, did you keep any other type of
9 record of your appointments, business or
10 personal?
11 A. No.
12 Q. Nothing like on a home computer,
13 calendar, or something like that?
14 A. No.
15 Q. Did you use electronic mail in
16 1997 and 1998 in your business?
17 A. I don't believe so.
18 Q. When did you first start using
19 it?
20 A. A few years ago, I think.
21 Q. Was it after you -- withdrawn.
22 Did you use it while you worked for any of
23 Mr. Perelman's companies?
24 A. I don't think so.
25 MR. BEMIS: Why don't we take a

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1 Confidential - Slovin
2 five-minute break here.
3 THE LEGAL VIDEO SPECIALIST: The
4 time is 10:10, we are going off the
5 record.
6 (Recess taken.)
7 THE LEGAL VIDEO SPECIALIST: The
8 time is 10:17, we are back on the
9 record.
10 MR. BEMIS: Ms. Reporter, will
11 you mark as Morgan Stanley 127 a
12 document entitled The Coleman
13 Company, Inc. proxy statement, dated
14 May 31, 1996.
15 (Deposition Exhibit Morgan
16 Stanley 127, document entitled The
17 Coleman Company, Inc. proxy
18 statement, dated May 31, 1996, marked
19 for identification.)
20 Q. Do you have Plaintiff's Exhibit
21 127 -- I did it again, do you have Morgan
22 Stanley's Exhibit 127 in front of you,
23 sir?
24 A. Yes.
25 Q. Is this the proxy statement for

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1 Confidential - Slovin
2 The Coleman Company for the meeting to be
3 held May 31, 1996?
4 A. Yes.
5 Q. I am showing you this, sir,
6 because I want to ask you a couple of
7 questions about some companies, and it
8 may help you refresh your recollection, if
9 you so need it, on pages 2 and 3, there
10 are some descriptions, and feel free to
11 look at this.
12 You were the president of a
13 company called MAFCO Holdings Inc.
14 A. Yes.
15 Q. And that company -- was that
16 company, at the time you were the
17 president, owned 100 percent by Ronald O.
18 Perelman?
19 A. I believe so.
20 Q. When were you the president of
21 MAFCO Holdings Inc.?
22 A. I don't recall.
23 Q. Can you give me just a general
24 time period?
25 A. I would say sometime during the

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1 Confidential - Slovin
2 Nineties.
3 Q. Were you the president of MAFCO
4 Holdings Inc. in 1998 at the time the
5 Coleman merger was approved?
6 A. I don't recall.
7 Q. What did you do as the president
8 of MAFCO Holdings Inc.?
9 A. Specifically to that entity, I
10 don't recall.
11 Q. Were you also the -- withdrawn.
12 Were you the president of an entity known
13 as MacAndrews & Forbes Holding Company
14 Inc.?
15 A. Yes.
16 Q. And when were you the president
17 of that entity, sir?
18 A. In the Eighties and Nineties, I
19 believe.
20 Q. Okay. Were you president in
21 1998 at the time of the Sunbeam/Coleman
22 merger?
23 A. I believe so.
24 Q. Could you just generally give us
25 what your job description was as president

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1 Confidential - Slovin
2 of that company?
3 A. It was one of the intermediate
4 holding companies and general discussions
5 of the investments of the company, but no
6 specific responsibilities that I can
7 recall.
8 Q. The Plaintiff in one of the
9 cases that you are here testifying to is
10 Coleman (Parent) Holding Inc. You know
11 that company; right?
12 A. Yes.
13 Q. You were the president of that
14 company; correct?
15 A. Coleman Holdings, Coleman
16 Worldwide, yes.
17 Q. Now, you were talking when you
18 answered the question, and I want to make
19 sure my question -- you were answering my
20 question. You were the president of
21 Coleman (Parent) Holdings Inc.; right?
22 MR. MARKOWSKI: I want to make
23 sure the record is clear because he
24 is reading a document.
25 A. I don't see the parentheses.

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1 Confidential - Slovin
2 The title that is reflected on page 3
3 under my name is Coleman Holdings and
4 Coleman Worldwide, that's my recollection
5 as to those two companies.
6 MR. MARKOWSKI: If you are
7 reading from the document, the
8 reference is to your position as a
9 director.
10 A. As a director, it was Coleman
11 Worldwide and Coleman Holdings.
12 Q. Let's just focus on my question,
13 rather than reading the document. You
14 read the document, if you could, to
15 yourself and it will help the record be a
16 little clearer and just answer the best
17 that you can. If you don't know, you
18 don't know.
19 MR. MARKOWSKI: He is asking
20 that you set the document aside for a
21 moment.
22 Q. You can look at it if you need
23 to refresh your recollection, but I don't
24 need you to read it.
25 My question is, were you the

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1 Confidential - Slovin
2 president at one point of a company called
3 Coleman (Parent) Holdings Inc. as I have
4 described it?
5 A. I believe so.
6 Q. And when was that, sir?
7 A. Mid-1990's.
8 Q. And were you the president of
9 the company at the time of the
10 Sunbeam/Coleman merger in 1998?
11 A. I believe I was.
12 Q. What was your general job
13 description as the president of Coleman
14 (Parent) Holdings Inc. in 1998 at the time
15 of the merger?
16 A. I do not recall.
17 Q. Were you the president -- excuse
18 me. Coleman (Parent) Holdings Inc. was
19 indirectly owned by Mr. Ronald O. Perelman
20 through his other holding companies;
21 correct?
22 A. Yes.
23 Q. And the same would be true for
24 MacAndrews & Forbes Holding Company;
25 correct?

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1 Confidential - Slovin
2 A. Yes.
3 Q. Now I would like to turn to
4 another company, Coleman Worldwide
5 Corporation. You were the president of
6 that company, as well; were you not?
7 A. Yes.
8 Q. And what period of time were you
9 the president?
10 A. Mid-'90 -- mid-Nineties.
11 Q. Were you president in 1998 at
12 the time of the merger?
13 A. I believe I was.
14 Q. What was your general job
15 description as president of Coleman
16 Worldwide Corporation?
17 A. The responsibilities of an
18 executive officer, these were intermediate
19 holding companies, to the best of my
20 recollection.
21 Q. Do you recall anything you did
22 on behalf of the company?
23 A. Not specifically, I don't
24 recall.
25 Q. At one time, were you president

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1 Confidential - Slovin
2 of the Revlon Group, Inc.?
3 A. I believe I was.
4 Q. When was that, sir?
5 A. Sometime late Eighties, early
6 Nineties.
7 Q. Were you president in 1998, at
8 the time of the acquisition?
9 A. I don't recall.
10 Q. Were you president -- withdrawn.
11 Was the Revlon Group, Inc., was it a
12 company owned indirectly by Mr. Ronald O.
13 Perelman through his holding companies?
14 A. I believe it was.
15 Q. And were you also president of a
16 company called Cosmetic Center, Inc.?
17 A. I don't recall.
18 Q. Doesn't recall that one, okay.
19 You were the president of
20 I Eleven Associates; were you not?
21 A. That's my present activity.
22 Q. I remembered that from your
23 business cards.
24 And when did you become
25 president?

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1 Confidential - Slovin
2 A. Approximately three years ago.
3 Q. What does that company do?
4 A. I Eleven?
5 Q. Yes.
6 A. It handles my private
7 investments.
8 Q. Does Mr. Perelman have any
9 interest in this company?
10 A. No.
11 Q. You are the sole owner of the
12 company?
13 A. Yes.
14 Q. Were you the president of a
15 company called Hanson, H-A-N-S-O-N,
16 Industries, Inc.?
17 A. No.
18 Q. Did you have any position with
19 that company at any time?
20 A. I was executive vice president.
21 Q. Is that a company indirectly
22 owned by Mr. Perelman?
23 A. No.
24 Q. Does he have any interest in it
25 at all?

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1 Confidential - Slovin
2 A. Not to my knowledge.
3 Q. What does Hanson Industries do?
4 A. I think it's out of business
5 right now. It was part of an English
6 holding company called Hanson Trust.
7 Q. Is it your understanding the
8 company is out of business today?
9 A. I am uncertain.
10 Q. You said you were an executive
11 vice president. Do you hold any position
12 today in the company?
13 A. No.
14 Q. "No." When did you stop holding
15 a position in the company?
16 A. 1980.
17 Q. 1980?
18 A. (Nodding.)
19 Q. Thank you.
20 Now, let me ask you a couple
21 questions about some other companies in
22 which I believe you were either a director
23 or served on the executive committee.
24 Let me start with the Andrews
25 Group and Corp. Incorporated. Are

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1 Confidential - Slovin
2 familiar are you familiar with that
3 company?
4 A. Vaguely.
5 Q. Were you a vice chairman of the
6 company?
7 A. I don't recall.
8 Q. Were you a director?
9 A. I believe so.
10 Q. When?
11 A. I think in the late Eighties.
12 Q. What did it do?
13 A. I don't recall.
14 Q. Was it owned by Mr. Ronald O.
15 Perelman directly or indirectly through
16 one of his holding companies?
17 A. I think so.
18 Q. Now, one of the companies we
19 talked about earlier was the Coleman
20 Worldwide Corporation. In addition to
21 being president, were you also a director?
22 A. I believe so.
23 Q. And when were you a director of
24 the company?
25 A. Sometime in the Nineties.

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1 Confidential - Slovin
2 Q. And you were a director at the
3 time of the 1998 merger --
4 A. I believe so.
5 Q. -- correct?
6 Now, am I correct that you were
7 a director of The Coleman Company, Inc.
8 since about 1993?
9 A. I believe so.
10 Q. And you served as a director
11 until you resigned as a consequence of the
12 merger; correct?
13 A. Yes, I think so.
14 Q. You were -- in addition to being
15 the -- a director of The Coleman Company,
16 Inc., you were also a member of the
17 executive committee; is that right?
18 A. I believe so.
19 Q. And were the other members of
20 the executive committee of The Coleman
21 Company in 1998, at the time of the
22 merger, Mr. Perelman, Mr. Drapkin,
23 Mr. Levin, and yourself?
24 A. I don't have a specific
25 recollection who the other directors were.

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1 Confidential - Slovin
2 Q. No, not the other directors.
3 Let me rephrase the question, maybe I
4 misspoke.
5 I am referring now to the
6 members of the executive committee of The
7 Coleman Company.
8 A. My answer is the same, I don't
9 recall.
10 (Deposition Exhibit Morgan
11 Stanley 129, document, which on page
12 2 lists on the executive committee
13 the names of Ronald O. Perelman,
14 Mr. Drapkin, Mr. Levin,
15 Mr. Hammas, and Mr. Slovin.)
16 Q. Well, do you recall that
17 Mr. -- let me show you what's been marked
18 as Morgan Stanley 129, and by the court
19 reporter.
20 A. Yes.
21 Q. Okay. If you will look to page
22 2 of this document. And it lists on the
23 executive committee the names of Ronald O.
24 Perelman, Mr. Drapkin, Mr. Levin,
25 Mr. Hammas -- did I pronounce that

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1 Confidential - Slovin
2 correctly? Is it Hammas or Hammas?
3 A. Hammas.
4 Q. Hammas, excuse me -- and
5 yourself, Mr. Slovin. Are these the
6 members of the executive committee of --
7 A. I believe so, yes .
8 Q. Okay. And then in addition to
9 the executive committee of The Coleman
10 Company, you were also on the management
11 and stock option committee, according to
12 this document?
13 A. Yes.
14 Q. And you served on those
15 committees, did you not, until your
16 resignation from The Coleman Company in
17 1998?
18 A. I believe so.
19 Q. You can set that aside, if you
20 like.
21 Now, when you served as a
22 director of The Coleman Company, Inc.,
23 were you compensated for your services as
24 a businessman?
25 A. From Coleman, no.

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1 Confidential - Slovin
2 Q. Who did compensate you -- were
3 you compensated by someone?
4 A. Yes.
5 Q. By whom?
6 A. One of the MacAndrews & Forbes
7 entities.
8 Q. Now when you say the MacAndrews
9 & Forbes entities --
10 A. The holding companies.
11 Q. The holding companies, what was
12 your compensation for attending the board
13 meetings --
14 A. I --
15 Q. In 1998, we will use that.
16 MR. MARKOWSKI: You are focusing
17 on director fees as opposed to his
18 salary.
19 MR. BEMIS: Yes, that's what I
20 am referring to.
21 A. No director's fees.
22 Q. Did you receive any type of
23 compensation at all from The Coleman
24 Company, Inc. in 1997?
25 A. I don't believe so.

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1 Confidential - Slovin
2 Q. In 1998?
3 A. I don't believe so.
4 MR. BEMIS: Ms. Reporter, will
5 you mark, as Morgan Stanley 130, a
6 document entitled Information
7 statement pursuant to Section
8 14 S (f) of the Securities Exchange
9 Act of 1934.
10 (Deposition Exhibit Morgan
11 Stanley 130, document entitled
12 Information statement pursuant to
13 Section 14 S (f) of the Securities
14 Exchange Act of 1934, marked for
15 identification.)
16 Q. All right. Do you have that
17 document in front of you, sir?
18 A. Yes.
19 Q. All right. Can you, sir,
20 confirm for me, sir, that this is, indeed,
21 the information statement filed with the
22 Securities Exchange Commission pursuant to
23 the Securities Exchange Act of 1934 and
24 Section 14 (f) as stated on the front page
25 of the document?

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1 Confidential - Slovin
2 MR. MARKOWSKI: Object, for lack
3 of foundation.
4 A. It appears so.
5 Q. Now, if you would turn, sir, to
6 page -- turn to page 17, please.
7 Tell me when you are there.
8 A. I am there.
9 Q. Now, according to this table, in
10 Exhibit MS 130, as of March 30th, and the
11 close of business that day, you owned
12 either directly or in trust for family
13 members for which you disclaim beneficial
14 ownership 52,600 shares of Coleman stock;
15 is that correct?
16 A. Yes.
17 MR. BEMIS: Ms. Reporter, would
18 you mark as Plaintiff's -- excuse me,
19 Morgan Stanley 237 a -- go ahead.
20 (Deposition Exhibit Morgan
21 Stanley 237, press release, dated
22 March 2nd, 1998, entitled Sunbeam
23 acquires three publicly-traded
24 consumer products companies -
25 Coleman, Signature Brands, and First

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1 Confidential - Slovin
2 Alert, marked for identification.)
3 MR. BEMIS: Before we turn to
4 Exhibit 237, I think I misspoke a
5 minute ago.
6 Q. And let me ask you again if you
7 would look at page 17 of MS 130.
8 The stock ownership of 52,600
9 shares was as of March 3rd, 1998; correct?
10 A. Yes.
11 Q. Thank you, because I think I
12 misspoke and said March 30th.
13 All right. I have handed you
14 now, and the court reporter has marked as
15 Morgan Stanley 237, a press release, dated
16 March 2nd, 1998, entitled Sunbeam acquires
17 three publicly-traded consumer products
18 companies - Coleman, Signature Brands, and
19 First Alert.
20 Do you have that in front of
21 you?
22 A. Yes.
23 Q. If you will turn to the -- first
24 of all, did you see this press release
25 when it was issued?

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1 Confidential - Slovin
2 A. Most likely, but I don't have a
3 specific recollection.
4 Q. All right. Would you turn to
5 the second page and the penultimate
6 paragraph, beginning: "This is a
7 fantastic situation", and tell me when you
8 are there.
9 A. (Pause.)
10 Yes.
11 Q. The press release reads, quote:
12 "This is a fantastic situation for all
13 Sunbeam shareholders but" -- withdrawn.
14 Do you understand this is a press release
15 that is announcing the merger agreement
16 that the board of directors voted on, on
17 February 27th, 1998; correct?
18 A. Yes.
19 Q. And under the terms of the
20 merger agreement, holders of Coleman stock
21 were, in part, to receive Sunbeam stock as
22 part of the merger; correct?
23 A. Yes.
24 Q. So the 56,000, if you will --
25 excuse me, 52600 shares that you owned, or

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1 Confidential - Slovin
2 were held in trust for which you
3 disclaimed a beneficial interest, those
4 eventually would have been exchanged in
5 some fashion for Sunbeam stock; correct?
6 A. Yes.
7 Q. Now, if you will again -- now I
8 would ask you to turn to MS 237 and that
9 penultimate paragraph, which reads as
10 follows, quote: "This is a fantastic
11 situation for all Sunbeam shareholders
12 giving them the opportunity to participate
13 in the wealth that Al Dunlap and his team
14 are building, closed quote, said Ronald
15 O. Perelman, who will become Sunbeam's
16 second largest shareholder after the
17 transaction. Quote Coleman will thrive as
18 a part of Sunbeam's unbeatable family of
19 brands" -- "brands," excuse me, "added
20 Mr. Perelman."
21 Do you see that?
22 A. Yes.
23 Q. Did you agree with that
24 statement at the time it was made?
25 A. I don't recall.

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1 Confidential - Slovin
2 Q. Did you -- following the
3 announcement on March 2nd, did you dispose
4 of any of the 52,600 shares of Coleman
5 stock that you owned?
6 A. Yes.
7 Q. How many did you dispose of?
8 A. I believe all.
9 Q. And you sold those on the open
10 market?
11 A. Yes.
12 Q. In fact, you sold them on March
13 4th, 1998; didn't you?
14 A. I believe so.
15 Q. And, so, you made a decision
16 that it was better to liquidate your
17 Coleman stock than receive Sunbeam stock?
18 A. Yes.
19 Q. Why?
20 A. I thought that I had fair value
21 for my Coleman stock. I held the stock
22 when it was part of the Perelman
23 enterprises and it seemed to me the right
24 financial thing to do.
25 Q. So, as I take it, based on your

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1 Confidential - Slovin
2 due diligence and your -- as a director of
3 The Coleman Company, and your voting for
4 the merger, you thought financially the
5 best thing to do was to sell your Coleman
6 stock rather than participate in what this
7 fantastic opportunity that Mr. Perelman is
8 quoted in the press release as telling the
9 public; is that correct?
10 A. I made --
11 MR. MARKOWSKI: Object to the
12 form of the question.
13 A. I made a judgment on behalf of
14 my children that it was the -- in their
15 best interest and mine, as well, to
16 liquidate the stock, and I had very little
17 or nothing to do with Mr. Perelman's
18 statement.
19 Q. Well, what did you think of
20 Sunbeam as a company under Mr. Dunlap's
21 tutelage in March of 1998?
22 A. I thought it was a fine company.
23 Q. And he was a fine president?
24 A. Oh, well, I am not a
25 hundred-percent sure of my impression of

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1 Confidential - Slovin
2 Mr. Dunlap at that time, it has fused with
3 later events I am afraid. I know he was
4 an experienced manager, having taken over
5 and improved -- and apparently improved
6 and later sold companies. I know he was
7 an experienced businessman from reading
8 the newspapers.
9 That was my recollection of my
10 thoughts about Mr. Dunlap.
11 Q. Did you ever meet Mr. Dunlap?
12 A. No.
13 Q. To this day, you have never met
14 him?
15 A. No.
16 Q. Did you ever read any of his
17 books?
18 A. No.
19 Q. Have you ever read any books
20 about him?
21 A. I have read snippets about him,
22 yes.
23 Q. Did you read his book "Chain
24 Saw"?
25 A. No.

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1 Confidential - Slovin
2 Q. Or the book "Chain Saw", not his
3 book, the book "Chain Saw".
4 A. I have it, but I have not read
5 it.
6 Q. Have you read "Testosterone,
7 Inc." yet?
8 A. That -- authored by Mr. Dunlap?
9 Q. No.
10 A. I don't think I read that,
11 either.
12 Q. Let's shift gears now from the
13 Coleman -- one last question.
14 As a result of your -- the sale
15 of the 52,600 shares of stock identified
16 in Morgan Stanley 130, at page 17, you no
17 longer, as of March 4th, had any equity
18 interest in The Coleman Company; correct?
19 A. That's my belief, yes.
20 Q. So you had no financial or
21 equity participation in the consequences
22 of the merger; right?
23 A. Except as they affected Mr.
24 Perelman's enterprises, with whom I was
25 employed.

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1 Confidential - Slovin
2 Q. Okay. Well, setting aside your
3 employee relationship, your own
4 personal -- from your personal financial
5 standpoint, you liquidated all of yours
6 and your family's and your trust's
7 interests on March 4th, the day or so
8 after the public announcement and you had
9 no further interest in The Coleman
10 Company.
11 A. No direct financial interest,
12 yes.
13 Q. Are you aware of -- if you would
14 look at MS -- if you look at MS 130 again,
15 and again page 117.
16 A. Yes.
17 Q. Are you aware of -- strike that.
18 Do you know whether any of the other
19 individuals listed on page 17 sold their
20 Coleman stock after the public
21 announcement on March 2nd of 1998 of the
22 Coleman/Sunbeam merger acquisition?
23 A. I have no such knowledge.
24 Q. Okay, you can set that aside for
25 the time being, sir.

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1 Confidential - Slovin
2 You were -- withdrawn. I am
3 going to shift directions now to a
4 different company, so if that helps.
5 Were you an off-- a member of
6 the board of directors of The
7 Coleman -- of Coleman Holdings Inc., no
8 comma?
9 A. I think so.
10 Q. And when was that?
11 A. Mid-Nineties.
12 Q. At the time of the merger?
13 A. I believe so.
14 Q. And you were also a director,
15 were you not, of MacAndrews & Forbes Group
16 Inc.?
17 A. I believe so.
18 Q. And were you an officer of that
19 company, as well?
20 A. I think so.
21 Q. Was that during the time of the
22 merger?
23 A. I think so.
24 Q. What did you do as an officer
25 and director of MacAndrews & Forbes Group

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1 Confidential - Slovin
2 with a comma Inc?
3 -A. It was one of the holding
4 companies of the Perelman Group, and from
5 time to time you would discuss
6 investments.
7 Q. So you didn't have any specific
8 responsibilities.
9 A. No.
10 Q. Now, one of the other companies
11 we identified earlier is MAFCO, and that's
12 all capital MAFCO Holdings no comma Inc.,
13 you told me you were the president of that
14 company; right?
15 A. I believe so.
16 Q. And that was at the time of the
17 merger; correct?
18 A. I believe so.
19 Q. And you were also a director of
20 that company; were you not?
21 A. I believe so.
22 Q. And was your job as president
23 and director essentially generalized
24 discussions of the holding operations?
25 A. Yes.

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1 Confidential - Slovin
 2 Q. Are you familiar with a company
 3 called MacAndrews & Forbes Holdings with a
 4 comma Inc.?
 5 A. I think so.
 6 Q. That was one of the holding
 7 companies that -- of Mr. Perelman;
 8 correct?
 9 A. One of the intermediate
 10 companies.
 11 Q. And was -- you know, was the
 12 business of these holding companies to do
 13 deals?
 14 MR. MARKOWSKI: You are talking
 15 about all of them?
 16 MR. BEMIS: The holding
 17 companies he has identified as
 18 opposed to an operating company like
 19 Coleman.
 20 A. There was some kind of a complex
 21 structure designed by Mr. Perelman's
 22 advisors for various reasons. You asked
 23 the question whether they were designed to
 24 do deals.
 25 Q. Yes.

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1 Confidential - Slovin
 2 A. I don't think that was their
 3 sole purpose. It may have been one of the
 4 purposes, assuming many deals were engaged
 5 upon during the time frame you are talking
 6 about.
 7 Q. Now, when I use the term "deals"
 8 and you used the term "deals", were you
 9 comfortable with referring to these as
 10 "mergers and acquisition deals" ?
 11 A. Yes.
 12 Q. Of all kinds, whether they are
 13 state law mergers, buyouts, almost any
 14 combination you can think of under that
 15 caption of mergers and acquisitions?
 16 A. I would say yes.
 17 Q. Okay. Let me show you a
 18 document that we will mark as MS 240.
 19 MR. BEMIS: Ms. Reporter, if you
 20 would please mark that.
 21 (Deposition Exhibit Morgan
 22 Stanley 240, article entitled "The
 23 richest guy in town, the high life
 24 and times of Ron Perelman, master of
 25 Revlon" by Craig Horowitz, marked for

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1 Confidential - Slovin
 2 identification.)
 3 Q. I have handed you what has been
 4 marked as MS 420 -- excuse me, 240, I
 5 misspoke, which is an article entitled
 6 "The richest guy in town, the high life
 7 and times of Ron Perelman, master of
 8 Revlon" by Craig Horowitz,
 9 H-O-R-O-W-I-T-Z.
 10 Do you have that in front of
 11 you?
 12 A. Yes.
 13 Q. If you will turn to page -- the
 14 fourth page of the article, right above
 15 the heading, quote: "We will spend 1
 16 billion to put together a real
 17 entertainment company says Perelman top
 18 gun". Tell me when you are there.
 19 A. Oh, I read the headline, yes.
 20 Q. Okay. Below the headline, there
 21 is a paragraph that begins with "But".
 22 Do you see that?
 23 A. "But Perelman is" --
 24 Q. "Monomaniacal", which I wasn't
 25 going to read into the record, but that is

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1 Confidential - Slovin
 2 where I was referring to.
 3 A. Yes.
 4 Q. Below that, it's read, quote:
 5 "Just because he's" -- referring to
 6 Mr. Perelman -- "done 10 deals or 20 deals
 7 or 30 deals that have been spectacular,"
 8 says Donald Drapkin, Perelman's alter ego
 9 at MacAndrews & Forbes quote doesn't mean
 10 he should slow down or stop. If it was
 11 only about having enough money to live, he
 12 would have stopped a long time ago, but
 13 this is what we do. We do deals. Big
 14 deals, little deals, deals", followed by
 15 an ellipsis, closed quote. Do you see
 16 that quotation?
 17 A. Yes.
 18 Q. Do you know Mr. Drapkin?
 19 A. Yes.
 20 Q. Are you a friend of his?
 21 A. Yes.
 22 Q. Do you serve on the board of
 23 directors of Mr. Perelman's companies with
 24 Mr. Drapkin?
 25 A. I did.

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1 Confidential - Slovin
2 Q. You did -- excuse me, before --
3 for four -- a few years ago.
4 Do you agree with Mr. Drapkin's
5 statement that: "This is what we do, we
6 do big deals, little deals, deals"?
7 A. Yes, we were very active in
8 mergers and acquisitions of all types.
9 Q. And this was true in 1998, as
10 well; correct?
11 A. Yes, we were very active.
12 Q. Okay, you can set that aside.
13 And when you did deals, you
14 customarily retained advisors to assist
15 you in the deals; correct?
16 A. The large deals, yes.
17 Q. And when you did -- the Coleman
18 deal was a large deal; was it not?
19 A. Yes.
20 Q. \$2 billion, roughly?
21 A. Yes.
22 Q. And, so, when you did large
23 deals, you would, that is, Mr. Perelman's
24 companies, would retain advisors such as
25 sophisticated law firms; correct?

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1 Confidential - Slovin
2 A. Yes.
3 Q. In fact, Wachtell, Lipton was a
4 firm that Mr. Perelman's companies had
5 used during the 1990's for his deals;
6 correct?
7 A. One of the firms.
8 Q. What other ones did you use, in
9 big deals?
10 A. I think we used Cravath and we
11 used Skadden, we used Kramer Levin, I
12 believe -- um -- I forgot the name of
13 Judge Rifkind's firm, who passed on --
14 Arthur Liman's firm, I forget the name of
15 it.
16 THE WITNESS: You don't know the
17 name?
18 A. That was another firm, the name
19 just slipped my mind.
20 Q. That's okay. In addition to --
21 would you describe these as all big
22 powerful sophisticated New York law firms?
23 A. Yes.
24 Q. In addition to law firms you --
25 when you did deals, big deals, did you

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1 Confidential - Slovin
2 customarily hire, "retain" may be a better
3 word, a financial advisor?
4 A. When we felt it was necessary,
5 yes.
6 Q. And other than Credit Suisse
7 First Boston, that you identified for me
8 in the Coleman transaction, can you
9 identify any other investment banking
10 firms that you used in these deals?
11 A. I think we employed Goldman
12 Sachs and Lazard.
13 Q. Lazard Freres?
14 A. Yes. I am not certain whether
15 we used Merrill Lynch, but those were --
16 and CS First Boston we used, Morgan
17 Stanley we used, they represented the bulk
18 of our employment of investment bankers.
19 Q. When you needed accounting
20 assistance in these big deals, did you
21 have a preferred accounting firm?
22 A. I don't think we had a preferred
23 accounting firm in the singular. We used
24 Peat Marwick, we used Ernst & Young,
25 primarily.

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1 Confidential - Slovin
2 Q. And was it -- in these large
3 deals, was it customary for the person --
4 the entity on the other side of the
5 transaction, sometimes there may have been
6 more than one, for those entities to
7 retain their own advisors?
8 A. Yes.
9 Q. So they would retain their own
10 law firms?
11 A. The firms on the other side of a
12 buy or sell deal, yes.
13 Q. And would the other -- the
14 person on the other side of the buy or
15 sell deal customarily, again, in these big
16 deals, retain an investment banking firm
17 to advise them?
18 A. Yes.
19 Q. And if accountants were needed,
20 would they customarily retain their own
21 accounting firms?
22 A. Surely.
23 Q. At any point in your big deals,
24 did you ever use private investigators as
25 part of your due diligence investigation?

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1 Confidential - Slovin
2 A. I don't recall.
3 Q. Were any private investigators
4 used in connection with the Coleman
5 transaction?
6 A. Not to my knowledge, I don't
7 have any such recollection.
8 Q. Okay.
9 A. Paul Weiss was the firm that I
10 couldn't recall.
11 Q. Paul Weiss Rifkind?
12 A. Yes, forgive me.
13 Q. You did miss the judge's name.
14 It went by me, too, I'm sorry.
15 I don't -- I apologize if I
16 asked you this, but were you on the board
17 of directors of a company called M & F
18 Worldwide Corporation, as well?
19 A. I may have been, I don't have a
20 specific recollection.
21 Q. Do you recognize the name as
22 being one of Mr. Perelman's holding
23 companies?
24 A. Yes.
25 Q. One of his deal -- companies

1 Confidential - Slovin
2 that did deals --
3 MR. MARKOWSKI: Object, lack of
4 foundation.
5 A. I recall it being one of the
6 companies in his structure. Whether that
7 company was employed for deals
8 specifically, I do not know. But it was a
9 company that I recall being in his
10 grouping of companies.
11 Q. Let me show you what's been
12 marked as 128.
13 MR. BEMIS: Ms. Reporter, would
14 you please mark, as MS 128, a
15 document entitled Corporations listed
16 on Schedule 1.
17 (Deposition Exhibit Morgan
18 Stanley 128, document entitled
19 Corporations listed on Schedule 1,
20 marked for identification.)
21 Q. Do you have Morgan Stanley 128
22 in front of you?
23 A. Yes.
24 Q. Take a look at it, because you
25 are going to see, towards the end of the

1 Confidential - Slovin
2 document, your signature does appear on
3 one of the first ten pages.
4 A. Yes.
5 Q. You are going to see a Schedule
6 1 of companies where it says board of --
7 and tell me when you are at that page
8 where it says "Schedule".
9 A. I have that.
10 Q. Okay. On Schedule 1, on the
11 left-hand side, there is a name of a
12 corporation and then there is a board or
13 executive committee on the right-hand
14 side.
15 Do you see that?
16 A. Yes.
17 Q. Now, this document which was
18 provided in discovery in this case is
19 dated as of November 1st of 1996, and the
20 first page has Mr. Perelman's signature
21 and your signature appears on the page
22 immediately before Schedule 1 and it is
23 Bates numbered DPW 0014390.
24 A. Yes.
25 Q. Is that your signature, sir?

1 Confidential - Slovin
2 A. Yes.
3 Q. Okay. Now, looking at Schedule
4 1, can you just confirm to me, for me,
5 sir, that the companies and -- that list
6 you as either a board or executive
7 committee member, that these are true and
8 accurate, at least as of the date of this
9 document, November 1st, 1996, of positions
10 that you held with the identified
11 companies.
12 A. They appear to be accurate as
13 presented by the MacAndrews & Forbes group
14 of companies.
15 I do not have a specific
16 recollection as to the accuracy of every
17 company in which I am listed as either a
18 board or an executive committee member.
19 Q. (Pause.) By my count, there are
20 79 different companies listed on
21 Schedule 1 and, you know, if I am wrong
22 somebody can re-count them later, but does
23 that seem consistent with the number of
24 companies that were -- that you were aware
25 of in Mr. Perelman's groupings of

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1 Confidential - Slovin
2 companies about this time?
3 A. I had no knowledge as to the
4 precise number of companies in his
5 grouping of companies. He had many,
6 that's what I recall.
7 Q. (Pause.) Well, I count for you
8 24 companies alone that you were on the
9 board of directors or the executive
10 committee. You served on all those
11 companies at one time, 24 companies?
12 A. Well, there are companies, for
13 example, where you will see that I am
14 involved with an Eric Hanson, those
15 companies related to old companies that
16 were owned at one point by Mr. Perelman's
17 group of companies. They were created, as
18 I said, by his advisors for various
19 reasons. They were not all operating
20 companies by any means. I recall that I
21 was an officer or director or served on
22 the executive committee of many of his
23 companies as being one of a small group of
24 people that worked closely with him.
25 That's all I can recall.

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1 Confidential - Slovin
2 Q. Other than -- withdrawn. When
3 you worked -- when you -- withdrawn. When
4 you were on the board of directors or on
5 the executive committee of the companies
6 that are shown on MS 128, Schedule 1, I
7 mean, were you paid a salary for your
8 work?
9 A. No.
10 Q. How were you paid by
11 Mr. Perelman's companies?
12 A. I was employed --
13 Q. Not how much but how you were
14 paid.
15 A. I was employed by one of the top
16 companies in the holding company chain,
17 biweekly and cash.
18 Q. Was your -- the company on your
19 paycheck MAFCO Holdings no comma Inc.?
20 A. I think so, but I am not
21 certain.
22 Q. And that company was the
23 ultimate holding company, then directly
24 above that was Mr. Perelman; correct?
25 A. I believe so, yes.

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1 Confidential - Slovin
2 Q. What did you mean you were paid
3 also in cash?
4 A. I didn't say "also in cash".
5 Q. Oh, I'm sorry, I misheard you.
6 A. I was paid by check on a
7 biweekly basis. I used "cash" as being
8 synonymous with a "check". You asked me
9 how I was paid.
10 Q. I misunderstood you. Thank you.
11 And did you receive -- in
12 addition to your biweekly pay, did you
13 receive an annual bonus?
14 A. No.
15 Q. Did you receive any additional
16 compensation, other than your biweekly
17 pay?
18 A. At one point, I had options in
19 Revlon. But, other than that, I don't
20 think I received any other compensation.
21 Q. Were you given opportunities to
22 participate in deals as an investor?
23 A. No.
24 Q. All right. Let's focus, if we
25 could, on the document which I want to

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1 Confidential - Slovin
2 have the court reporter mark as -- give me
3 one second here, I am trying to move this
4 a little forward. (Pause.)
5 THE LEGAL VIDEO SPECIALIST:
6 Five more minutes remain on the tape.
7 MR. BEMIS: Okay, why don't we
8 take a break here, so he can change
9 the tape and I will locate the
10 exhibit. Every couple hours we have
11 to change the tapes.
12 (Discussion off the record.)
13 THE LEGAL VIDEO SPECIALIST: The
14 time is 11:09, this completes tape
15 number one.
16 (Recess taken.)
17 THE LEGAL VIDEO SPECIALIST: The
18 time is 11:19. This begins tape
19 number two of the videotaped
20 deposition of Mr. Bruce Slovin,
21 Esquire.
22 MR. MARKOWSKI: Before I neglect
23 to do it, I would like to designate
24 the deposition as confidential under
25 the terms of the protective order.

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1 Confidential - Slovin
2 So if you would label the first page
3 appropriately, I would appreciate it.
4 Q. Okay, are you all set?
5 A. Yes, I am.
6 Q. All right, sir. I would like to
7 move to a different topic here, and I am
8 going to ask you some questions, so just
9 organizationally what is the structure of
10 one line of the companies that are
11 involved in this lawsuit, so if you will
12 try to follow along with me. I am going
13 to start at the top and work down to The
14 Coleman Company and, unless it would be
15 easier for you to describe the
16 organizational structure from the bottom
17 to the top. What's easier for you?
18 In other words, Coleman Company
19 is owned by somebody, and we can trace
20 that ownership up all the way to the top
21 or we can start at the top and work
22 downwards.
23 A. I don't think it will make any
24 difference to me.
25 Q. Okay. Well, then let me start

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1 Confidential - Slovin
2 with The Coleman Company Inc. at the
3 bottom.
4 My understanding, and you can
5 correct me if I am wrong, is that the
6 stock of The Coleman Company Inc. that was
7 owned by Mr. Perelman's affiliated
8 companies was owned by Coleman Worldwide
9 Corporation; is that correct?
10 A. I have no specific recollection
11 of that now. I imagine it's correct but
12 my own knowledge, sitting here today, I
13 don't recall the precise names of the
14 intermediate holding companies.
15 MR. MARKOWSKI: Things like
16 this, he is not asking you to guess
17 at, he is asking you whether you know
18 or don't know.
19 A. I don't know, sorry.
20 Q. I am going to show you a
21 document that was in a public filing, or
22 at least a draft public filing for the
23 company, and we will have you look at that
24 and see if that helps you understand the
25 organizational structure or helps you

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1 Confidential - Slovin
2 explain it to me, is probably a better way
3 to put it.
4 Just give me one second. I
5 think I can give you a copy of it, without
6 have to get another copy, which I don't
7 want to do. (Pause.)
8 MR. BEMIS: Could you please
9 mark, as Exhibit 241, a document
10 entitled Offering memorandum, dated
11 May 17th, 1997, for \$732,035,000,
12 Coleman Escrow Corporation, Bates
13 number -- initial Bates number is
14 CPH 1107884.
15 (Deposition Exhibit Morgan
16 Stanley 241, document entitled
17 Offering memorandum, dated May 17th,
18 1997, for \$732,035,000, Coleman
19 Escrow Corporation, initial Bates
20 number is CPH 1107884, marked for
21 identification.)
22 Q. Honestly, sir, you are not
23 expected to read all this, unless you wish
24 to spend the weekend with us. So if you
25 look at MS 241, and turn -- and I am going

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1 Confidential - Slovin
2 to give you a specific page to look at,
3 and the number I am going to give you is
4 going to be the lower right-hand numbers
5 or, actually, I think I can just give you
6 a page number, is page 8 of the document,
7 only eight pages in, please.
8 A. Yes.
9 Q. All right. Just so we are
10 clear on the record, are you at page 8 of
11 MS 241?
12 A. Yes.
13 Q. All right. And this document,
14 which is a 1997 Coleman offering
15 memorandum, has been produced to us in
16 litigation, has an organizational chart
17 which is headed on page 8 Ownership of the
18 issuer and the Company.
19 Do you see that?
20 A. Yes.
21 Q. Okay. For the -- withdrawn.
22 Company, which is capitalized, if you
23 would look on the first page of the
24 document, is defined as The Coleman
25 Company Inc., which is the bottom company

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1 Confidential - Slovin
2 on the chart. Okay?
3 Now, looking at this chart and
4 working our way up, again this is 1997, at
5 the time you were a director of The
6 Coleman Company; correct?
7 A. Yes.
8 Q. And you were also either an
9 officer or director of -- or -- of all of
10 the entities I believe in this chain with
11 the possible exception of Coleman Escrow
12 Corporation; is that true?
13 A. I believe so.
14 Q. Now, looking at this publicly-
15 filed document, does it, based on your
16 personal knowledge, represent the
17 structure of The Coleman Company as of May
18 15th, 1997, when you were a director of
19 the company?
20 MR. MARKOWSKI: Now he's asking
21 you not what the document says, he is
22 asking you whether you can remember
23 that, those facts today.
24 A. I don't remember those facts.
25 Q. Well, do you have --

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1 Confidential - Slovin
2 A. Independent of this document,
3 (indicating).
4 Q. Well, having reviewed the
5 document and given that you were a
6 director of the company, do you have any
7 basis to believe that the representation
8 that you have in front of you, by way of
9 this organization chart, is incorrect --
10 A. No.
11 Q. -- as of the date?
12 A. No.
13 Q. Okay. Now, as of 1998, when you
14 were approving the merger on February
15 27th, can you, as you sit here today based
16 on your personal knowledge as a director,
17 identify any changes in this (indicating)
18 corporate structure as it relates to The
19 Coleman Company and moving up through
20 Mr. Perelman's enterprise?
21 A. No.
22 Q. Now, directly -- the top entry,
23 which is MAFCO Holdings Inc., that company
24 is owned directly by Mr. Perelman 100
25 percent; right?

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1 Confidential - Slovin
2 A. I believe so.
3 Q. All right. You can set aside --
4 put that exhibit back together, we will
5 put a rubber band on it, and we are
6 all -- we are done with that, for the time
7 being.
8 A. That was good exercise, if
9 nothing else.
10 Q. Look at it this way, it was much
11 faster than going through it one at a
12 time.
13 A. You would have had a corpse on
14 your hand.
15 Q. I don't think so.
16 Now, starting at the top,
17 with -- if you want to look at the chart,
18 I don't think you will need it, MAFCO
19 Holdings Inc., who were the -- do you know
20 who the directors of that company were in
21 1998, when you were the president?
22 A. I don't have a recollection
23 today.
24 Q. Okay. Do you know who the
25 directors of MacAndrews & Forbes Holding

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1 Confidential - Slovin
2 Inc. were in 1998 at the time of the
3 acquisition?
4 A. I thought you (indicating)
5 showed me something along the way that
6 showed officers and directors.
7 Q. It showed some directors and it
8 showed -- or executive committee members,
9 so it's not clear whether they were one or
10 the other or both.
11 A. I have no independent
12 recollection. I could guess at it, but
13 that's not what you are asking me to do.
14 Q. Do you know who the directors
15 were of New Coleman Holdings Inc.?
16 A. No.
17 Q. And all my questions now will be
18 for 1998, okay, so we don't have to go
19 back too far.
20 Do you know who the directors of
21 Coleman Escrow --
22 A. No.
23 Q. -- Corporation were.
24 How about Coleman Holdings Inc.?
25 A. No.

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1 Confidential - Slovin
2 Q. Coleman Worldwide Corporation?
3 A. No.
4 Q. And The Coleman Company Inc.
5 A. The Coleman Company is myself, a
6 man by the name of Sporn, Perelman,
7 Gittis, Drapkin, I believe --
8 Q. Would they be the ones listed in
9 the board of directors minutes; correct?
10 A. Of course.
11 Q. So we won't test your memory on
12 that because we have got a document that
13 tells us.
14 A. Correct.
15 Q. Now, with regard to the -- with
16 the exception of The Coleman Company Inc.,
17 on this organization chart we looked at
18 in -- what's the name of it -- MS 241,
19 were all of their offices from MAFCO
20 Holding Inc. all the way down to Coleman
21 Worldwide Corporation, were they in the
22 same building in New York City?
23 A. All the officers and directors?
24 Q. No, "the offices", the physical
25 offices.

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1 Confidential - Slovin
2 A. The top companies, the
3 MacAndrews companies were. All the
4 Coleman companies may or may not have
5 been. I don't recall where their offices
6 were.
7 Q. Well, let's just start with
8 MAFCO Holdings Inc. Were its offices in
9 New York City in 1998?
10 A. Yes.
11 Q. And what was the address?
12 A. 1998, I believe it was 35 East
13 62nd Street.
14 Q. And would that be the same
15 address in 1998 --
16 A. Yes.
17 Q. -- for MacAndrews & Forbes
18 Holding Inc.?
19 A. Yes.
20 Q. And the same for New Coleman
21 Holdings Inc.
22 A. I am uncertain as to what the
23 office -- what offices existed for those
24 intermediary -- intermediate companies, I
25 am uncertain.

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1 Confidential - Slovin
2 Q. When you were on the board of
3 directors of The Coleman Company Inc., did
4 you ever meet at any location other than
5 in New York City?
6 A. I believe we met in Wichita,
7 Kansas.
8 Q. Would that be for an annual
9 meeting?
10 MR. MARKOWSKI: Excuse me.
11 Could you read the question before
12 back that started this.
13 (The record was read.)
14 MR. MARKOWSKI: You are asking
15 about board meetings?
16 MR. BEMIS: Yes, and that was a
17 poor question. Let me rephrase the
18 question, so the record is clear.
19 Thank you for helping me with that.
20 Q. When you were a member of the
21 board of directors of The Coleman Company
22 Inc., did all of the director meetings,
23 board of directors meetings, take place in
24 New York City?
25 A. I don't think so. I think on

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1 Confidential - Slovin
2 occasion a board of directors meeting
3 would be held in Wichita. I recall annual
4 meetings being held in Wichita and I
5 believe, also, that there were board of
6 directors meetings held in Wichita, as
7 well.
8 Q. Would it be fair to say that the
9 majority of the board of directors
10 meetings during the period you were a
11 director were held in New York City?
12 A. Yes.
13 Q. How would you describe your job
14 for all of the companies that you held
15 positions in -- and we counted 28 on that
16 one -- on the exhibit Schedule 1 about a
17 few minutes ago, how would you describe
18 your job?
19 A. Well, I was in the inner circle
20 for many years, from 1980, when I joined
21 Ronald, until the year when I ended, three
22 years ago. We would, you know, consider
23 various subjects that would come up as
24 pertained to that corporation.
25 Primarily, however, my job was

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1 Confidential - Slovin
2 that of a mergers and acquisition
3 executive. I travelled the world, I
4 bought and sold companies for any number
5 of his companies in the structure that you
6 elaborated a moment ago.
7 I did spend more time on the
8 Coleman side operationally, although I am
9 not an operations person, but I spent more
10 time with Coleman than I did with any of
11 his other companies. Wherever they needed
12 my help, I did what I was capable of
13 doing, but my main function, as a business
14 person, was that of one searching for
15 acquisitions to be made or investments, I
16 should say, broader -- more broadly to be
17 made, helping to negotiate them. I was
18 not terribly much involved on a financial
19 side, that is, to structure the finance of
20 any of these companies, the purchase of
21 these companies, or the continued
22 operations, I was not much involved in
23 that. And when a company needed to be
24 sold, I would most often participate in
25 the negotiations to sell that company,

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1 Confidential - Slovin
2 whether it was big or small.
3 Towards the middle and the end
4 of -- towards the middle of the 1990's,
5 Jimmy Maher came to work with us, and he
6 took over some of the role that I had in
7 the negotiating and searching for
8 investment opportunities. Donny Drapkin
9 did more and more of that, as did Howard
10 Gittis, but that was my main function.
11 Q. So, if you put one sentence on
12 your job application for your new job
13 instead of your prior work is you were
14 searching out mergers and acquisition
15 candidates, both on the buy and sell side?
16 A. Yes.
17 Q. And would that be a fair
18 description of your job, recognizing it's
19 somewhat general, for the entire time you
20 worked for Mr. Perelman's companies?
21 A. I would say yes.
22 Q. Why did you spend more time with
23 The Coleman Company, as you have described
24 it, particularly on operations?
25 A. Well, I don't want to exaggerate

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1 Confidential - Slovin
2 my involvement with operations.
3 I spent more time with Coleman,
4 they were changing executive management,
5 Mike Hammas came in to be the chief
6 operating officer. I -- Jerry Levin had
7 originally managed Coleman when Ronald
8 bought it, in 1988, and then he stepped
9 away to work with Revlon, and I am
10 embarrassed to say a man by the name of
11 Larry something, the name slips my mind,
12 once again, took over from that role and
13 he was, you know, getting older and wanted
14 to retire, and I was asked to help find
15 his replacement, which I did, also, for
16 Ronald, searching for personnel, senior
17 personnel. And, so, I was asked to engage
18 in that activity, which I did. And
19 inasmuch as Mike Hammas was new to the
20 enterprise, I was asked to involve myself,
21 because there appeared to be a need to
22 stay close to a new employee and observe
23 his activities, which is what I did.
24 During that period, and prior to Mike
25 Hammas's coming, I tried and did expand

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1 Confidential - Slovin
2 Coleman by purchasing companies in Europe
3 and South America, the United States.
4 When I was needed to do
5 something, and Ronald asked me to do it, I
6 would do it. When we took over
7 Technicolor, in 1982, I spent a year
8 working in Los Angeles, selling the
9 companies that we did not believe were to
10 our best interests to hold. We kept
11 certain core companies and sold others.
12 When Ronald took over the banks, in 1988,
13 he asked me to go down to Texas for a year
14 and to observe the management and to try
15 to report back on how I thought things
16 were going. It was a new investment of
17 his, and he thought I could help in the
18 integration of the banks with the home
19 office, which I did.
20 So, when a need occurred, he
21 would ask me to get involved. And as I
22 said, with Coleman, I was helping to buy
23 companies and, also, to work with Mike
24 Hammas and helping to manage what was then
25 a worldwide company.

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1 Confidential - Slovin
2 Q. Was there within these holding
3 companies reporting to Mr. Perelman a
4 group of close-knit advisors to him, like
5 yourself, Mr. Drapkin?
6 A. No, I think the -- Howard
7 Gittis, Donald Drapkin, myself --
8 Q. I mispronounced his name, I
9 apologize.
10 A. Apologize to him, it's okay what
11 you call him.
12 Q. Okay.
13 A. But he had legal advisors, he
14 had insurance advisors, he had tax
15 advisors, he had public relations
16 advisors, he had real estate advisors.
17 His enterprise was complex and required
18 specialists of all kinds. And, yes, I
19 mean, he had certain people who he went to
20 more often than others in all aspects of
21 the business world and community, the
22 investment banking community was the same
23 thing.
24 Q. Did you consider yourself in
25 Mr. Perelman's inner circle during this

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1 Confidential - Slovin
2 period --
3 A. Uh --
4 Q. -- of advisors?
5 A. I was a little bit slipping out
6 of the inner circle when I joined Ronald
7 in 1980. It was just he and I and then
8 Howard came and Donald came and others
9 of -- you know, of -- excellent
10 businessmen. As he got more complicated,
11 he needed other skills. And I think at
12 this time I was not quite in the inner
13 circle that I had been in prior years.
14 Q. By 1998, at the time of the sale
15 of the -- or, the merger of the Coleman
16 companies with Sunbeam, who would you
17 identify as being on Mr. Perelman's inner
18 circle, most trusted confidants?
19 A. I would say Howard Gittis,
20 Donald Drapkin, he was using Jimmy Maher
21 in the M&A side more and more and he
22 became a close confidant. There was a man
23 by the name of Bill Bevins, who no longer
24 works with us, in the entertainment area
25 that was a confidant of his. Certainly

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1 Confidential - Slovin
2 Jerry Ford in the banking business was
3 very close to Ronald. You know, lawyers
4 like Joe Flom and Arthur Liman, Judge
5 Rifkind, accountants at Peat Marwick, a
6 man by the name of Mike Regan was close to
7 him. He had, as I say, special people in
8 tax and public relations, but I would say
9 the inner circle was Gittis and Drapkin,
10 and on the M&A side it became Maher.
11 Q. Based on all the complex deals
12 that I know you have participated in --
13 well, withdrawn. I will withdraw that.
14 When you were the president of MAFCO
15 Holdings Inc., did it have any employees
16 per se?
17 A. MAFCO --
18 Q. Holdings Inc., the company
19 directly below Mr. Perelman.
20 A. I do not know.
21 I did not participate much in
22 the financial structuring of his
23 businesses. He had lawyers and
24 accountants and tax people who helped him
25 much more intensely than I did, and I do

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1 Confidential - Slovin
2 not recall who were the officers or
3 directors of that company or employees.
4 Q. Let me try this a different way.
5 In 1998, at the time of the
6 merger, if you handed someone your
7 business card --
8 A. Mm-hmm.
9 Q. -- what company name was on your
10 business card? Or maybe you had multiple
11 business cards, I don't know, you tell me.
12 A. No, no, I think it was
13 MacAndrews & Forbes Holdings, I think that
14 was my business card.
15 Q. Okay, which was wholly-owned by
16 MAFCO Holdings Inc.
17 A. Yes.
18 Q. Okay. Now, within these holding
19 companies -- withdrawn. Have you ever
20 heard the term "shared resources" used in
21 operating a business when you -- multiple
22 companies under a single umbrella?
23 MR. MARKOWSKI: Object to the
24 form of the question.
25 Q. You can answer.

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1 Confidential - Slovin
2 A. My understanding of a "shared
3 resource" would be a person like myself,
4 where I was working for MacAndrews &
5 Forbes but I did work for MacAndrews &
6 Forbes by assisting its various
7 investments for whatever they needed at
8 the time, but primarily in the area of
9 buying and selling companies and hiring
10 executives.
11 Q. And that's how I am using the
12 term "shared resource", that a person
13 employed by one entity will also provide
14 resource and assistance to other companies
15 within the same holding group of
16 companies.
17 A. Right.
18 Q. And that's how I am using the
19 terms.
20 Is it fair to say that MAFCO
21 Holdings Inc., either directly or through
22 MacAndrews & Forbes Holdings, Inc.,
23 essentially operated at the holding
24 company level using shared resources among
25 the various holding companies?

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1 Confidential - Slovin
2 MR. MARKOWSKI: Object to the
3 form of the question.
4 A. Well, there were a group of
5 people that worked for MacAndrews & Forbes
6 Holdings, and they had assignments, and
7 often those assignments would be to be
8 working with other corporations which
9 represented Mr. Perelman's investments.
10 Q. Is that why, for example, you
11 had worked -- you had titles at over 28
12 different companies at one point?
13 A. Well, when you structure a
14 complex enterprise, as Mr. Perelman had at
15 that time, you very often use your key
16 lieutenants to be the officers and
17 directors of companies which serve a
18 rather narrow purpose but, yet, an
19 important purpose, and I think that's why
20 you find me as a director of many
21 companies.
22 I told you a moment before
23 you'll find, in the list of companies you
24 gave me, where Eric Hanson, who was an
25 employee at one time, and I were the sole

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1 Confidential - Slovin
2 names because those were little boat
3 companies we had under a boat company
4 investment we had and there did not need
5 to be other officers and directors because
6 the purpose was rather narrow, holding
7 certain assets, holding certain licenses,
8 et cetera.
9 Q. Did you -- did the holding
10 companies, either through MAFCO Holdings
11 Inc. or MacAndrews & Forbes Holding Inc.,
12 did it have an analyst function somewhere,
13 financial analyst function in the
14 companies?
15 A. I don't think we had such a
16 title.
17 The financial people would some
18 do work on their side, the business people
19 would do, you know, their aspect of the
20 work, the lawyers the same, public
21 relations people. We didn't have someone
22 called a "financial analyst".
23 At one point, I had some young
24 men working for me who helped me analyze
25 companies and when I was looking at

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1 Confidential - Slovin
2 acquisitions, but you could call them
3 "analysts" if you wish but they were
4 working specifically for me and helping
5 analyze an acquisition candidate of which,
6 of course, was -- took a good deal of my
7 time.
8 Q. Do you know a man by the name of
9 Elliot Nesbitt?
10 A. Will Nesbitt.
11 Q. Will, I apologize, I get it
12 wrong.
13 A. Yes, he could be called an
14 "analyst".
15 He was working for Jimmy Maher,
16 very bright young guy, and he could be
17 called an "analyst". He helped Jimmy the
18 way other people helped me.
19 Q. And that would be --
20 A. Helping out --
21 Q. -- number-crunching and
22 analyzing the financial consequences of a
23 transaction.
24 A. Yes.
25 Q. And you used to do that

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1 Confidential - Slovin
2 yourself, as well?
3 A. I did some of it myself, I had
4 other people helping. Maher did it
5 himself, too, Perelman did that, as well.
6 We would read documents, we would try to
7 see what opportunities lay in what fields,
8 you know, whether we could make a good
9 investment.
10 So we all did a little bit of
11 the analysis.
12 Q. Let me ask you something, you
13 know, given your years of experience in
14 M&A, I mean, did you consider yourself a
15 successful man in this field?
16 A. Yes.
17 Q. I don't mean to embarrass you,
18 but do you consider yourself a smart man
19 in this field?
20 A. Yeah, I think I am probably
21 smart as most.
22 Q. How about Mr. Perelman, do you
23 think --
24 A. Smart.
25 Q. -- he has been successful?

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1 Confidential - Slovin
2 A. Has he been successful?
3 Q. Yes.
4 A. By what measure?
5 Q. How do we measure -- how would
6 you measure success?
7 A. Well, are you talking about
8 what -- business?
9 Q. Yes, business.
10 A. Or you want to talk about
11 religious?
12 Q. Yes, business.
13 A. Yes, of course he has been
14 successful.
15 Q. A smart man?
16 A. Very smart man.
17 Q. Good analyst?
18 A. Good analyst.
19 Q. And Mr. Maher, a smart man?
20 A. Yes.
21 Q. Good analyst?
22 A. Yes.
23 Q. Successful in his business?
24 A. Yes.
25 Q. And, in fact, this whole group,

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1 Confidential - Slovin
2 let's take Mr. Drapkin, a smart man?
3 A. Yes.
4 Q. Successful in his business?
5 A. Yes.
6 Q. Sharp analyst?
7 A. I wouldn't say that Donny is the
8 type of analyst that Will Nesbitt is, will
9 get into the details, and nor is he as
10 clever analyzing businesses as Ronald.
11 Donny was a lawyer, but in the Wall Street
12 world he's as smart as they come,
13 structuring deals, but analyzing the right
14 or left side of a balance sheet and
15 product lines, that's not really his
16 strength. He is certainly very smart and
17 successful.
18 Q. Taken as a group, the inner
19 circle in 1998, would you categorize them
20 as a smart intelligent group of
21 sophisticated businessmen?
22 A. Yes.
23 MR. BEMIS: Would you please
24 mark a document entitled Notification
25 in report form for certain mergers

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1 Confidential - Slovin
2 and acquisitions as Morgan Stanley
3 132.
4 (Deposition Exhibit Morgan
5 Stanley 132, document entitled
6 Notification in report form for
7 certain mergers and acquisitions,
8 marked for identification.)
9 Q. Do you have Exhibit 132 in front
10 of you?
11 A. Yes, I do.
12 Q. Have you ever seen this form
13 before?
14 A. I don't think so.
15 Q. Not necessarily the particular
16 contents of this form but this type of
17 form, for mergers and acquisitions, a form
18 filed under the Hart Scott Rodino Act.
19 A. Well, I know what the Hart Scott
20 Rodino Act is. I may have reviewed such
21 document in the past. I don't recall this
22 one at all.
23 Q. Do you know what "SIC codes"
24 are, all caps?
25 A. SIC codes.

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1 Confidential - Slovin
2 Q. SIC codes, right.
3 A. I sort of do, some type of a
4 classification.
5 Q. Standard Industrial, does that
6 make sense, Standard Industrial
7 classification or codes?
8 A. Are you asking me or telling me?
9 Q. I am asking you.
10 A. It sounds right.
11 Q. If you would look at page -- and
12 I am going to give you the CPH number
13 because, unfortunately, this isn't
14 numbered in any way I can see easy to work
15 with, turn to CPH 1414678 and it's
16 entitled item 5 A?
17 A. Yes.
18 Q. Are you there?
19 A. Yes.
20 Q. Now, you know, based on, you
21 know, your positions in Mr. Perelman's
22 holding companies, and in the working some
23 of his operating companies, does the list
24 of industries that is reflected here under
25 the name Ronald O. Perelman, starting with

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1 Confidential - Slovin
2 cigars, at SIC code 2121 and carrying all
3 the way down to 9999, does that appear to
4 be a fairly descriptive list of the
5 various businesses that Mr. Perelman's
6 companies were involved in about 1998?
7 MR. MARKOWSKI: Object --
8 A. Well --
9 MR. MARKOWSKI: -- to the form
10 of the question.
11 A. I think the answer is yes. I
12 can't say it's exhaustive or complete, but
13 all the items that I looked at now do
14 relate to one or more businesses that he
15 owned or controlled.
16 Q. Okay, you can set that aside.
17 Did you -- withdrawn. When is the first
18 time that you heard from any source that
19 there were discussions ongoing between
20 Mr. Perelman's companies and Sunbeam
21 concerning a possible deal involving The
22 Coleman Company Inc.?
23 A. I think relatively shortly
24 before the board meetings in February.
25 Q. Could you tell me how it is you

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2 came to learn about these discussions
3 between Mr. Perelman's companies and
4 Sunbeam?
5 A. It could have been Ronald or
6 Jerry Levin or Jim Maher --
7 MR. MARKOWSKI: He -- I don't
8 mean to interrupt, he is not asking
9 you to guess, he is asking whether
10 you can tell him --
11 A. Well, it would have had to have
12 been --
13 MR. MARKOWSKI: Don't guess,
14 when you start out "it would have had
15 to have been".
16 Q. Well, let me put it this way,
17 Mayor Giuliani didn't tell you; right?
18 A. No.
19 Q. All right. So, given the source
20 of people that you work with, what is your
21 best recollection, as you sit here, as to
22 who would have told you or who did tell
23 you?
24 A. I have no specific recollection
25 of any conversation I had, but it --

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2 shortly before I did know that
3 conversations were taking place, and I
4 can't tell you the individual that
5 mentioned it to me because I have no such
6 recollection.
7 Q. Given the people that you work
8 with, what would be the universe of people
9 who you would have heard this information
10 from?
11 MR. MARKOWSKI: Object to the
12 form of the question, calls for
13 speculation.
14 A. Well --
15 Q. Well, I don't want you to
16 speculate because I don't want you to tell
17 me --
18 A. I only could guess, but it would
19 be one of a few people.
20 Q. Right, that's what I am asking
21 you, who are the few people that you would
22 identify --
23 A. Well, the best guess I would
24 have is that I might have heard it that
25 there were discussions from Maher or Levin

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1 Confidential - Slovin
2 or Perelman or Gittis or Drapkin. I am
3 really not sure, the people who were in
4 the inner circle who would be
5 participating in such an activity.
6 Q. I take it that, when you heard
7 this, you were aware the discussions were
8 confidential.
9 A. Absolutely.
10 Q. And you didn't tell anybody
11 about the discussions.
12 A. I hope not.
13 Q. Okay. What did you learn --
14 withdrawn. What were you told by one or
15 more of these individuals in the inner
16 circle about a possible transaction?
17 MR. MARKOWSKI: If you can
18 recall. Don't guess.
19 MR. BEMIS: Excuse me, he
20 understands that, you don't need to
21 interrupt --
22 MR. MARKOWSKI: I don't think so
23 because you are asking him what would
24 you have been, it calls for
25 speculation, the way you phrased the

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1 Confidential - Slovin
2 question.
3 MR. BEMIS: Okay, then object to
4 the form of the question.
5 MR. MARKOWSKI: I am trying.
6 MR. BEMIS: Don't coach the
7 witness.
8 MR. MARKOWSKI: Ask an
9 appropriate question, you are calling
10 for speculation.
11 MR. BEMIS: Then you can object
12 to the form, that's the proper
13 procedure, and you know it and I know
14 it.
15 MR. MARKOWSKI: Ask a proper
16 question, don't call for speculation,
17 we'll get done a lot faster. I don't
18 think it's a worthwhile discovery.
19 MR. BEMIS: Then you make an
20 objection to form and, otherwise, you
21 be quiet.
22 A. (Laughing.) Now we are going.
23 MR. MARKOWSKI: I will make my
24 record the way I make my record.
25 MR. BEMIS: Well, we will see

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1 Confidential - Slovin
2 how you make your record, whether you
3 can dictate the terms of the
4 deposition.
5 Let's try to get back so we can
6 get the gentleman out of here today.
7 Q. The question I had was, from --
8 what were you told, as best you can
9 recall, by one or more of these members of
10 the inner circle about the discussions
11 concerning The Coleman Company and
12 Sunbeam.
13 A. My vague recollection is that
14 there were negotiations under way to do
15 some deal, a deal, with the Sunbeam
16 Corporation.
17 MR. BEMIS: Can we go off the
18 record for one second, please.
19 THE LEGAL VIDEO SPECIALIST: We
20 are going off the record, the time is
21 11:58 a.m.)
22 (Pause in proceedings.)
23 THE LEGAL VIDEO SPECIALIST: The
24 time is 12 p.m., we are back on the
25 record.

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2 MR. BEMIS: Ms. Reporter, could
3 you please give me the courtesy of
4 reading back the last answer.
5 (The record was read.)
6 Q. As a result of these discussions
7 with the inner circle, did you receive any
8 assignment from anyone to do anything in
9 connection with the ongoing discussions?
10 A. No.
11 Q. Following these initial
12 discussions with someone in the inner
13 circle, did you have any further
14 discussions with them or anyone else about
15 the acquisition or discussions about the
16 acquisition before the board meeting on
17 February 25th of 1998?
18 A. I don't recall any such
19 discussions.
20 Q. So, it was the next thing that
21 happened after you had these initial
22 discussions with someone in the inner
23 circle the board meeting on February 25th?
24 A. Well, the "initial discussions"
25 is really mislabeled. I don't think

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2 "discussions" actually describe accurately
3 these conversations. They were brief,
4 they were short, I was not involved. They
5 could have been more than one. They could
6 have taken place in different days but
7 they led up, ultimately, to the board
8 meetings when we were called to discuss in
9 detail the prospective business
10 arrangement with Sunbeam.
11 Q. Is it fair to say that the first
12 substantive presentation, if you will, as
13 opposed to a conversation that you had
14 about the transaction that becomes the
15 merger, was at the board meeting of
16 February 25th?
17 A. For myself.
18 Q. Yes, sir.
19 A. Yes, for myself.
20 Q. I want to ask you about some
21 individuals and if you know what role they
22 played in the --
23 MR. BEMIS: We are going to go
24 off the record.
25 A. No, no, leave them alone.

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1 Confidential - Slovin
2 Q. No.
3 THE LEGAL VIDEO SPECIALIST: We
4 are going off the record, it's 12:03.
5 (Pause in proceedings.)
6 THE LEGAL VIDEO SPECIALIST: The
7 time is 12:03, we are back on the
8 tape, on the record.
9 Q. I'm sorry for the interruption.
10 A. I thought it was rather
11 charming, made my day.
12 Q. We will have to snip that out of
13 the deposition. So let's go back and
14 serious matters here.
15 I would like to ask you some
16 questions now about some individuals
17 within Mr. Perelman's companies and
18 specifically what role they had, if any,
19 that you know about in connection with the
20 merger, discussions that -- ultimately the
21 transaction.
22 Let's start with Mr. Perelman.
23 Do you know what role he had?
24 A. No, not specifically.
25 Q. He did attend the board meeting,

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1 Confidential - Slovin
2 as I understand, on February 25th?
3 A. Yeah.
4 Q. And he was at the board meeting
5 on February 27th, as well?
6 A. My recollection is yes, but I --
7 honestly, I don't quite recall all those
8 who were in attendance.
9 Q. Did Mr. Perelman have the final
10 authority, the "yes" or "no", on the
11 merger transaction?
12 MR. MARKOWSKI: Which merger are
13 you referring to?
14 MR. BEMIS: The February 27th,
15 1998 Coleman, where The Coleman
16 Company was a party to the
17 transaction, not the second
18 agreement.
19 MR. MARKOWSKI: You are
20 referring to the public shareholder
21 transaction.
22 MR. BEMIS: The one we marked as
23 MS 117, I believe.
24 A. I think the board has the final
25 decision, Mr. Perelman could advise of his

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2 opinion but it's a board vote.
3 Q. Did Mr. Perelman, by the way,
4 advise the board of his opinion in either
5 the February 25th or the February 27th,
6 1998 board meetings?
7 A. I don't know if he did it in a
8 formal sense. I know that he was for the
9 arrangement, the business arrangement, but
10 I don't know that he held forth a
11 discourse on whether it was the right
12 thing to do, but I know the board made the
13 final decision.
14 Q. Let me ask you now about
15 Mr. Howard Gittis.
16 What was his role in the merger
17 negotiations?
18 A. I can't say that I know, because
19 I don't know.
20 Q. Okay, so you just said you don't
21 know.
22 Mr. Drapkin?
23 A. I don't know, either.
24 Q. Mr. Maher?
25 A. I think Jimmy was involved most

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 2 directly in negotiating the terms of the
 3 arrangement with the representatives of
 4 Sunbeam.
 5 Q. Barry Schwartz?
 6 A. Barry Schwartz is an attorney,
 7 and a senior officer. He would have been
 8 involved in the crafting of the documents.
 9 Q. Did Barry Schwartz work for The
 10 Coleman Company?
 11 A. Was he an officer? He was
 12 certainly not employed by The Coleman
 13 Company. Was he an officer or director, I
 14 do not recall.
 15 Q. Do you know if he worked --
 16 withdrawn. Do you know the names of any
 17 of Mr. Perelman's companies that he held a
 18 position in?
 19 A. Well, (indicating), you had --
 20 MR. MARKOWSKI: The "he" is
 21 Mr. Schwartz?
 22 MR. BEMIS: Mr. Schwartz, yes.
 23 A. The top companies he was
 24 involved in, (indicating), but I have seen
 25 his name in a multitude of companies --

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 2 documents you presented to me.
 3 Q. That's the 1, the Schedule I
 4 where we went through all those companies?
 5 A. Right, I know that he was
 6 involved as an officer or director in many
 7 of the companies.
 8 Q. But your understanding is that
 9 he provided legal services --
 10 A. Yes, he is one of Perelman's
 11 lead counsels, if not the lead counsel.
 12 Q. But he is employed by
 13 Mr. Perelman's companies.
 14 A. Yes.
 15 Q. And Mr. Nesbitt, you said he was
 16 a financial analyst of sorts?
 17 A. No, a financial analyst of some
 18 intelligence, he is a bright kid, and he
 19 worked mostly with Jimmy Maher, and he
 20 worked -- employed by one of Perelman's
 21 top companies.
 22 Q. But he did not work for The
 23 Coleman Company.
 24 A. No.
 25 Q. I am going to -- I am going to

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1 Confidential - Slovin
 2 mispronounce this gentleman's name, but
 3 Lenny Ajzenman, A-J-Z-E-N-M-A-N?
 4 A. I don't recall that name.
 5 Q. Okay.
 6 A. Maybe it's your pronunciation.
 7 Q. I thought my spelling was bad.
 8 Mr. Levin, he was the president
 9 of The Coleman Company at the time of the
 10 acquisition; correct?
 11 A. Yes.
 12 Q. Do you know if he was involved
 13 in the negotiations --
 14 A. Yes.
 15 Q. -- at all.
 16 Do you know a Paul Shapiro?
 17 A. Paul is a lawyer, as well, but
 18 he had a different role for Ronald. I
 19 am not quite sure of what his
 20 responsibilities were, but I know he was a
 21 practicing lawyer for a long time.
 22 MR. MARKOWSKI: His name is
 23 pronounced "Shapiro".
 24 MR. BEMIS: "Shapiro"? I got
 25 that one wrong, too, but I apologize.

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1 Confidential - Slovin
 2 again.
 3 A. Shapiro is from Philadelphia.
 4 Q. He is from Philadelphia?
 5 A. Yes.
 6 Q. Does he live in Philadelphia?
 7 A. I don't know.
 8 Q. Okay. What was Mr. Ginstling's
 9 role --
 10 A. Tax.
 11 Q. Tax? And did he work for The
 12 Coleman Company Inc.?
 13 A. No, I don't believe so, another
 14 MacAndrews employee.
 15 Q. Glenn Dickes, D-I-C-K-E-S?
 16 A. Lawyer.
 17 Q. He's a lawyer, for one of the
 18 MacAndrews companies?
 19 A. Yes.
 20 Q. And did he work on the
 21 documentation?
 22 A. I do not know.
 23 Q. Joram Salig, S-A-L-I-G?
 24 A. Lawyer.
 25 Q. Did he work --

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 2 A. I do not know.
 3 Q. You have to let me finish the
 4 question. I know you are getting ahead of
 5 me. We are getting close to lunch break.
 6 Steven Isko, I-S-K-O?
 7 A. Steven I think is another
 8 attorney.
 9 Q. For one of Mr. Perelman's
 10 companies?
 11 A. Right.
 12 Q. And Mr. Salig is a --
 13 A. Lawyer.
 14 Q. Salig?
 15 A. Joram Salig.
 16 Q. Is he a lawyer for one of
 17 Mr. Perelman's companies?
 18 A. Yes.
 19 Q. Anthony Ian, I-A-N?
 20 A. Insurance, risk management, as
 21 they say.
 22 Q. For one of Mr. Perelman's
 23 companies?
 24 A. Yes.
 25 Q. Do you know what role he had in

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1 Confidential - Slovin
 2 the negotiations?
 3 A. No.
 4 MR. BEMIS: Did he answer?
 5 (The record was read.)
 6 Q. Okay, I didn't hear you, I
 7 apologize.
 8 Marvin Schaffer, S-C-H--
 9 A. Tax.
 10 Q. -- A-F-F-E-R. Tax? Did he work
 11 with Mr. Ginstling?
 12 A. Yes.
 13 Q. Did he work for one of
 14 Mr. Perelman's holding companies?
 15 A. Yes.
 16 Q. And did he work on the
 17 acquisition?
 18 A. I do not know.
 19 MR. BEMIS: All right. It's
 20 almost -- why don't we break here
 21 before I turn to another topic, and
 22 we will come back. Do you want to
 23 come back at 1 o'clock or as close to
 24 there as we can?
 25 THE WITNESS: Do you have to go

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1 Confidential - Slovin
 2 through that whole book?
 3 MR. BEMIS: No.
 4 THE LEGAL VIDEO SPECIALIST: We
 5 are going off the record, the time is
 6 12:11.
 7 (Discussion off the record.)
 8 THE LEGAL VIDEO SPECIALIST:
 9 We are back on the record, the time
 10 is 12:11.
 11 Q. Now, when you have investigated
 12 companies as potential acquisitions in
 13 your mergers and acquisition work, is it
 14 customary during your investigation to
 15 sign confidentiality agreements with the
 16 companies you are looking at?
 17 A. Often.
 18 Q. Often. Let me show you what's
 19 been marked as MS 133.
 20 MR. BEMIS: Would you please
 21 mark that as MS 133, please.
 22 (Deposition Exhibit MS 133,
 23 document, marked for identification.)
 24 Q. Do you have Plaintiffs --
 25 withdrawn, do you have MS 133 in front of

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1 Confidential - Slovin
 2 you, sir?
 3 A. Yes.
 4 Q. Would you please take a look at
 5 that and will you tell me if that's
 6 Mr. Shapiro's signature that appears --
 7 A. I would not know.
 8 Q. You would not know.
 9 Were you aware that The Coleman
 10 Company Inc., as part of the ongoing
 11 negotiations, had entered into a
 12 confidentiality agreement with the Sunbeam
 13 Corporation?
 14 A. I do not have any recollection
 15 of knowing that fact before this moment.
 16 Q. Well, let me ask you, sir, when
 17 you reviewed the merger --
 18 MR. BEMIS: Let me see the
 19 merger agreement, 113.
 20 I said 113, I meant 117. Thank
 21 you.
 22 Q. Could you take Exhibit 117 out
 23 of the exhibits in front of you, please.
 24 A. (Pause.)
 25 Q. Okay. If you will turn to page

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2 29, sir, of MS 117, which, for the record,
3 is the February 27th, 1998 agreement plan
4 of merger.
5 Tell me when you are at page 29.
6 A. I have it.
7 Q. Please read Section 7--
8 A. I have.
9 Q. Okay. You knew right where to
10 look.
11 A. Well, it does say
12 "confidentiality" in it's heading, and I
13 did notice it says February 4th, 1998
14 referring to the document named Morgan
15 Stanley 133.
16 Q. So when you read -- when you --
17 even though you did not see in advance
18 Morgan Stanley 133, you knew when you
19 approved the merger agreement, as a member
20 of the board of directors, that a
21 confidentiality agreement had been signed
22 dated as of February 4th, 1998; correct?
23 A. I imagine I did know that. I
24 don't have a recollection of everything I
25 knew back in February of 1998. I presume

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1 Confidential - Slovin
2 I did know that because it's imbedded in
3 this document and it may have been
4 discussed but I am guessing at my
5 recollection, though, six years ago.
6 Q. But setting -- withdrawn. For a
7 deal of this size, \$2 billion, roughly,
8 and given your experience in this -- in
9 mergers and acquisitions, it would indeed
10 be customary for such an agreement to be
11 executed between the buyer and the seller,
12 would it not, sir?
13 A. Yes.
14 Q. Okay. Let me show you now a
15 document that is dated February 23 of
16 1998, and that I will have the court
17 reporter mark, and I will show that to
18 you.
19 (Deposition Exhibit Morgan
20 Stanley 134, document dated February
21 23rd, 1998, addressed to The Coleman
22 Company, marked for identification.)
23 Q. Do you have MS 134 in front of
24 you?
25 A. Yes.

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1 Confidential - Slovin
2 Q. Now, this document is dated
3 February 23rd, 1998 and is addressed to
4 The Coleman Company, and the copy that you
5 have in front of you is not signed, but if
6 you would -- if you will look at the
7 document, please, just very briefly, and
8 tell me when you are done.
9 A. Do you want me to read the pages
10 or just to look at it --
11 Q. No, you can just quickly look at
12 it, as much as you are comfortable with.
13 I don't have a specific question about the
14 contents per se.
15 A. Right now, I don't know what
16 this document is, I must read it --
17 Q. Please do so. And, if you like,
18 you might even want to put MS 133 side by
19 side, because you are going to find that,
20 with the exception of I think one
21 paragraph, they are identical, right down
22 to the spacing.
23 A. "Right down to the" what?
24 Q. To the spacing on the documents.
25 A. And your question is?

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1 Confidential - Slovin
2 Q. Well, first of all, tell me when
3 you have had a chance to look at it.
4 A. All right, I have looked at it
5 now.
6 Q. Now, at the time that you
7 approved the -- well, withdrawn. Have you
8 ever seen MS 134 before today?
9 A. I have no recollection.
10 Q. Okay. When you approved the
11 merger agreement, which we have marked as
12 MS 117, there is a specific reference to
13 approving, or, excuse me, as -- a
14 specific -- withdrawn.
15 When you approved the merger
16 agreement, indeed, told me you read the
17 merger agreement, you saw in paragraph 7.
18 a specific reference to a confidentiality
19 agreement dated February 23rd, 1998.
20 A. Right.
21 Q. Do you see that?
22 A. Yeah.
23 Q. Is it your understanding as a
24 director of the company that such a
25 confidentiality agreement was indeed

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1 Confidential - Slovin
2 executed by the parties since it's
3 referenced in the merger agreement?
4 MR. MARKOWSKI: Objection to the
5 lack of foundation.
6 A. I think that the language of 7.2
7 suggests that, yes.
8 Q. All right. You may set those
9 documents aside.
10 Can you tell me what steps The
11 Coleman Company Inc. took in terms of
12 doing due diligence of Sunbeam before the
13 merger agreement was approved on February
14 27th, 1998 by the Coleman board of
15 directors?
16 A. I can only speak to my role as a
17 director.
18 We reviewed (indicating) the
19 agreements presented to us, and we
20 listened to the opinions of CS First
21 Boston, in so far as discussing the
22 adequacy of the -- or fairness to the
23 Coleman side. I listened to other people
24 speaking to the deal who were actively
25 involved in the negotiation and the

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1 Confidential - Slovin
2 analysis of the deal, and I accumulated
3 knowledge of, as presented to me, both
4 orally and in writing, and then voted, as
5 the records indicate.
6 Q. And when you say you accumulated
7 the material presented to you orally and
8 in writing, you are referring to the board
9 meeting information.
10 A. Yes.
11 Q. Was -- withdrawn. As I
12 understand your earlier testimony, the
13 February 25th, 1998 board meeting, which
14 started at 4 p.m. in the afternoon, was
15 indeed the first time that you had
16 received oral or written presentations on
17 the merger that results in the merger
18 agreement we marked as MS 117; is that
19 correct?
20 A. In a detailed fashion, yes.
21 Q. And before this board meeting,
22 your discussions had -- or
23 "conversations", if it's a better term,
24 were strictly, as you have described them,
25 with these members of the inner circle of

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2 Mr. Perelman; right?
3 A. Yes.
4 Q. Did you as a board member,
5 before February 27th, do any independent
6 research at all about Sunbeam or -- at
7 all?
8 A. I knew of the company as a
9 public company, but I didn't do any
10 independent research.
11 Q. Did you read any analyst reports
12 about Sunbeam, for example?
13 A. I might have.
14 Q. But you don't remember as you
15 sit here today?
16 A. No.
17 Q. Okay. Well, let's go, then --
18 let me ask you to look at a couple of
19 documents, and we will start with MS 138.
20 MR. BEMIS: Ms. Reporter, would
21 you mark, as Morgan Stanley Exhibit
22 138, a document entitled Household
23 products PaineWebber, Sunbeam, did Al
24 show his hand too soon.
25 (Deposition Exhibit Morgan

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1 Confidential - Slovin
2 Stanley 138, document entitled
3 Household products PaineWebber,
4 Sunbeam, did Al show his hand too
5 soon, marked for identification.)
6 Q. Do you have MS 138 in front of
7 you, sir?
8 A. Yes.
9 Q. This is a report by analyst
10 Andrew Shore, dated February 6, 1998.
11 Have you ever seen it before?
12 A. I don't think so.
13 Q. Did you see -- withdrawn.
14 Following the consummation of the merger,
15 and closing on March 30th, did you ever go
16 back and look at any of -- any analyst
17 reports for Sunbeam that were written in
18 early 1998?
19 A. No.
20 Q. Okay.
21 MR. BEMIS: Ms. Reporter, will
22 you mark, as MS 137, a document with
23 the heading MAFCO Consolidated Group
24 Inc., January 30th, 1998, and
25 attached to it is an identical

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2 document but one -- it does not have
3 handwriting on it as the first page
4 does.
5 (Deposition Exhibit Morgan
6 Stanley 137, document with the
7 heading MAFCO Consolidated Group
8 Inc., January 30th, 1998, marked for
9 identification.)
10 Q. Do you have Morgan Stanley
11 Exhibit 137 in front of you, sir?
12 A. Yes.
13 Q. This document, which was
14 produced in litigation, has in the upper
15 left-hand corner MAFCO Consolidated Group
16 Inc.
17 Do you see that?
18 A. Yes.
19 Q. What is MAFCO Consolidated Group
20 Inc.?
21 A. What is it? It looks like it's
22 some business enterprise.
23 I don't know precisely what it
24 is.
25 Q. Was there someone -- have you

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1 Confidential - Slovin
2 ever seen this document --
3 A. No.
4 Q. -- before.
5 Were you aware that someone at
6 MAFCO --
7 MR. MARKOWSKI: Before you go
8 on, when you say "this document",
9 look at the Bates numbering on this,
10 and it doesn't appear to me that this
11 has been produced in this form. Is
12 this something that was assembled?
13 MR. BEMIS: Yeah, I said that
14 there were two pages attached to it
15 and one has handwriting and one does
16 not, but they are otherwise
17 identical.
18 MR. MARKOWSKI: They were
19 produced in separate pieces of paper.
20 MR. BEMIS: Yes, they were, they
21 were not stapled together.
22 MR. MARKOWSKI: So when you say
23 "this document", you are referring to
24 the first page?
25 MR. BEMIS: I am referring to

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1 Confidential - Slovin
2 the entire document.
3 MR. MARKOWSKI: Thank you.
4 Q. Have you ever seen either of the
5 two pages of MS 137?
6 A. I don't believe so.
7 Q. Were you aware that someone at
8 MA-- strike that. As a director of The
9 Coleman Company, Inc., and as an employee
10 of Mr. Perelman's company, were you aware
11 that someone at MAFCO Consolidated Group
12 was apparently monitoring analysts'
13 reports of estimates for fourth quarter
14 earnings for Sunbeam?
15 A. I was not aware of that.
16 Q. Okay. You can set that -- you
17 already have, you set that aside. Thank
18 you.
19 Before the board meeting on
20 February 25th, of 1998, had you been told
21 by anyone, or were you aware of
22 indirectly, that one of the MAFCO entities
23 had been doing independent research on
24 Sunbeam Corporation?
25 A. I have no such recollection.

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1 Confidential - Slovin
2 Q. Do you know a man by the name of
3 Michael Katzke, K-A-T-Z-K-E?
4 A. I don't think so.
5 MR. BEMIS: Ms. Reporter, would
6 you mark, as MS 144, a document
7 bearing Bates numbers CPH 1392480.
8 (Deposition Exhibit Morgan
9 Stanley 144, document bearing Bates
10 numbers CPH 1392480, marked for
11 identification.)
12 Q. Do you have MS 144 in front of
13 you, sir?
14 A. Yes.
15 Q. My only question is -- well, put
16 it this way -- withdrawn. My first
17 question is, looking at the handwriting
18 that appears on the first page, which I
19 will tell you is a reproduction of a
20 Post-it note, do you recognize the
21 handwriting?
22 A. No.
23 Q. Which is "Sunbeam Research".
24 Have you ever seen the attached
25 document before?

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2 A. I have no such recollection.
3 Q. Okay, you may set it aside.
4 MR. BEMIS: Okay, let's break
5 for lunch, it's 12:30, and we will
6 come back about 45, 50 minutes. We
7 are moving along.
8 THE LEGAL VIDEO SPECIALIST: The
9 time is 12:31, we are going off the
10 record.
11 (Luncheon recess: 12:31 p.m.)
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1 Confidential - Slovin
2 AFTERNOON SESSION
3 (1:31 p.m.)
4
5 BRUCE SLOVIN,
6 resumed, having been previously duly
7 sworn, was examined and testified as
8 follows:
9
10 CONTINUED EXAMINATION
11 BY MR. BEMIS:
12 THE LEGAL VIDEO SPECIALIST: The
13 time is 1:23, we are back on the
14 record.
15 Q. Everybody ready?
16 A. Yes.
17 Q. Thank you very much for getting
18 back on time.
19 Earlier in your testimony, I
20 recall you saying that you had some
21 analysts that worked with you at one time
22 during your career at Mr. Perelman's
23 companies; am I correct?
24 A. Yes.
25 Q. What were their names?

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1 Confidential - Slovin
2 A. Ron Goldstein, Robert Knibb,
3 K-N-I-B-B, Eric Hanson.
4 Q. Did either -- "either" -- did
5 any of those three do any analyst work for
6 you in connection with the Coleman merger?
7 A. No.
8 Q. Did you, while you were working
9 for Mr. Perelman's companies, subscribe to
10 any financial news services?
11 A. I got The Wall Street Journal,
12 The London Financial Times, Bloomberg's
13 programs -- um -- at one time I know we
14 got the Standard & Poor tearsheets but --
15 I think that's what I got.
16 Q. How about UBS Warburg, anything
17 from them?
18 A. UBS --
19 Q. Mm-hmm.
20 A. The investment banking --
21 Q. Mm-hmm.
22 A. -- firm -- well, I would read
23 continuously reports on companies and the
24 like, but whether I had subscribed to a
25 service or not, I am not entirely sure.

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1 Confidential - Slovin
2 Q. Setting aside what you may have
3 subscribed to, did MAFCO or its affiliate
4 company subscribe to any financial
5 services?
6 A. I am not sure.
7 (Deposition Exhibit Morgan
8 Stanley 166, offering memorandum for
9 \$2,014,000,000 for Sunbeam zero
10 coupon convertible senior
11 subordinated debentures due 2018 with
12 the name Morgan Stanley Dean Witter
13 at the bottom of the March 19, 1998
14 cover page, marked for
15 identification.)
16 Q. Let me show you what's been
17 marked as MS 166 by the court reporter.
18 MR. BEMIS: Thank you.
19 Q. Do you have MS 166 in front of
20 you, sir?
21 A. Yes.
22 Q. For the record, this is an
23 offering memorandum for \$2,014,000,000 for
24 Sunbeam zero coupon convertible senior
25 subordinated debentures due 2018 with the

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1 Confidential - Slovin
2 name Morgan Stanley Dean Witter at the
3 bottom of the March 19, 1998 cover page.
4 Have you ever seen this document
5 before?
6 A. Not to my recollection.
7 Q. So if you haven't seen it before
8 you didn't rely on it in any way in voting
9 for the merger.
10 MR. MARKOWSKI: Object to the
11 form of the question.
12 A. Did I rely on -- no, I don't
13 think I used this document, which I don't
14 recall seeing, to express my opinion as
15 director on the merger, no.
16 Q. You may set the document aside.
17 My understanding is that the
18 information that you relied upon in voting
19 as you did at the board of directors
20 meetings of Coleman Company Inc. on
21 February 27th was the information
22 presented to you at the board meetings;
23 correct?
24 A. Yes.
25 Q. I want to ask you some

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1 Confidential - Slovin
2 questions, although you might not have
3 actually done it, I want to know whether
4 you know if anyone else did it. So, in
5 that context, do you know if anyone from
6 The Coleman Company, either its advisors
7 or employees, in connection with the due
8 diligence in this transaction interviewed
9 any of Sunbeam's middle management?
10 A. I have no such knowledge of such
11 interviews, I don't know anything about
12 it.
13 Q. The same question with regard to
14 the Sunbeam customers.
15 A. I don't know.
16 Q. Are you a-- do you know whether
17 anyone from The Coleman Company or its
18 professional advisors that it retained met
19 with any analysts that were following
20 Sunbeam?
21 A. I have no specific knowledge as
22 to such meetings.
23 Q. Do you know if anyone at Coleman
24 or anyone who was retained by or -- by
25 Coleman or on behalf of Coleman, visited

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1 Confidential - Slovin
2 any Sunbeam plants?
3 A. I have no such knowledge.
4 Q. Do you know whether, as part of
5 the due diligence process, anyone at
6 Coleman, or anyone retained by or on
7 behalf of Coleman, interviewed anyone at
8 Arthur Andersen, the accountants for
9 Sunbeam?
10 A. I have no specific knowledge of
11 any such meetings.
12 Q. Do you -- withdrawn. At or
13 about the time of the closing, which is
14 March 30th, 1998, are you aware of any
15 inquiry by Coleman, its board of
16 directors, or anyone retained by or on
17 behalf of Coleman as to whether there were
18 any quote material adverse changes closed
19 quote in Sun-- in or at Sunbeam before the
20 closing?
21 A. I have no such recollection.
22 Q. Are you aware of whether
23 Coleman's board of directors or anyone
24 retained by or on behalf of Coleman made
25 any inquiry at or about the time of

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1 Confidential - Slovin
2 closing regarding the state of Sunbeam's
3 sales versus projections of its sales?
4 A. I have no such knowledge.
5 Q. I would ask you the same
6 question with regard to revenue
7 projections by Sunbeam.
8 A. No such knowledge.
9 Q. Were you at the closing, by the
10 way?
11 A. No.
12 Q. Where did the closing take
13 place?
14 A. I do not know.
15 Q. I am going to return for a few
16 questions on Credit Suisse First Boston.
17 You had -- my understanding is
18 that you, on behalf of Mr. Perelman's
19 companies, had indeed worked with Credit
20 Suisse First Boston in prior transactions;
21 correct?
22 A. Yes.
23 Q. When was the first time that you
24 recall working with them?
25 A. It was a number of years prior

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1 Confidential - Slovin
2 to this transaction, but I don't have a
3 date or a year in my mind.
4 Q. Do you -- withdrawn. About how
5 many times have you worked with them
6 overall in your career -- on your side of
7 the table as being the person --
8 A. I would say about half a dozen
9 times.
10 Q. What transactions?
11 A. Well --
12 Q. As best you can remember.
13 A. I remember once I was selling a
14 cosmetic line. I think they were involved
15 in some boat deals I did. I can't recall
16 other specifics.
17 Q. Were they involved in the
18 Panavision deal?
19 A. I do not know.
20 Q. How about the Marvel issuance of
21 notes which result--
22 A. I don't recall.
23 Q. Okay. How about the Cal Fed/
24 Golden State merger?
25 A. I don't recall.

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1 Confidential - Slovin
2 Q. In the Coleman/Sunbeam
3 transaction now, we will go forward to
4 1997/1998, do you know the names of the --
5 any of the personnel who worked on the
6 investment banking side of the advice
7 given to Coleman?
8 A. Gordon Rich --
9 MR. MARKOWSKI: I'm sorry, the
10 advice given to Coleman?
11 MR. BEMIS: To Coleman, yes.
12 A. Gordon Rich, from First Boston.
13 Q. How long have you known
14 Mr. Gordon Rich?
15 A. He's dead now, but I knew him
16 for say about ten years prior to the time
17 of this deal.
18 Q. Did you know him professionally,
19 socially, or --
20 A. I knew him professionally and to
21 a lesser extent socially.
22 Q. Was Mr. Rich the senior person
23 on the CSFB team advising Coleman?
24 A. My understanding is that he was,
25 yes.

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1 Confidential - Slovin
2 Q. Do you know Steve Geller?
3 A. Not that I can remember.
4 Q. Ron Duffy?
5 A. No --
6 Q. Or, I'm sorry, I say Ron, Robert
7 Duffy.
8 A. No, I don't recall.
9 Q. Charles Ward?
10 A. No.
11 Q. Ramish (phonetic) Chakrapani,
12 C-H-A-K-R-A-P-A-N-I?
13 A. No.
14 Q. When was the first time that you
15 spoke to, or were spoken to, by anyone
16 from CSFB about the Coleman transaction?
17 A. I think it was at the board
18 meetings you are referring to.
19 Q. That would then be the February
20 25th board meeting?
21 A. I think so, yes.
22 Q. Okay. At the board meeting of
23 the -- withdrawn. At the February 27th
24 board meeting, did the board approve the
25 retention of CSFB as the investment banker

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1 Confidential - Slovin
2 for The Coleman Company Inc. in this
3 Sunbeam/Coleman merger?
4 A. I thought they were already
5 engaged.
6 Q. Well, let me show you the
7 minutes of the meeting of February 27th.
8 MR. BEMIS: And I will ask the
9 court reporter if you would please
10 mark as MS 118 the board of directors
11 minutes for February 27th, 1998.
12 (Deposition Exhibit Morgan
13 Stanley MS 118, board of directors
14 minutes for February 27th, 1998,
15 marked for identification.)
16 MR. BEMIS: There is a copy for
17 you, sir.
18 Q. Do you have Exhibit MS 118 in
19 front of you?
20 A. Yep.
21 Q. Please turn to page 7 and look
22 under the hiding Engagements. Tell me
23 when you are there.
24 A. Yes.
25 Q. Now, would you read that

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1 Confidential - Slovin
2 paragraph to yourself, sir, if you would?
3 A. Yes.
4 Q. Now, before February 27th, 1998,
5 had the board of directors in any way
6 approved CSFB as being the exclusive
7 financial advisor to The Coleman Company
8 Inc.?
9 A. I don't think in a formal way
10 that they had done that, no, before this
11 meeting, that's why this resolution is
12 here.
13 MR. BEMIS: I would like the
14 court reporter to mark for us as
15 MS 169 a letter dated December 10,
16 1997 to The Coleman Company,
17 attention Mr. Jerry W. Levin and
18 signed on the third page by
19 Mr. Shapiro, I believe.
20 (Deposition Exhibit Morgan
21 Stanley 169, letter dated December
22 10, 1997 to The Coleman Company,
23 attention Mr. Jerry W. Levin, marked
24 for identification.)
25 Q. Do you have that in front of

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1 Confidential - Slovin
2 you, sir?
3 A. Yeah.
4 Q. Now, when the board of directors
5 approved the retention of The Coleman
6 Company -- excuse me, when the board of
7 directors of The Coleman Company Inc.
8 approved the engagement of Credit Suisse
9 First Boston as its exclusive financial
10 advisor, as set forth in the first
11 paragraph of MS 169, did the board have
12 the engagement letter at the meeting?
13 A. I don't remember.
14 Q. Have you ever seen the
15 engagement letter before today?
16 A. I don't remember.
17 Q. Have you ever seen a similar
18 engagement letter addressed to The Coleman
19 Company issued by Morgan Stanley & Co.,
20 Incorporated for this transaction?
21 A. I don't believe so.
22 Q. Is it your understanding of the
23 transaction that Morgan Stanley & Co. was
24 the financial advisor for Sunbeam?
25 A. It's my understanding.

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1 Confidential - Slovin
2 Q. And Credit Suisse First Boston
3 was the financial advisor for The Coleman
4 Company and its affiliated companies --
5 A. Yes.
6 Q. -- correct?
7 So you were on opposite sides of
8 the table; right?
9 A. We represented different
10 clients, my recollection, the best that I
11 can tell you.
12 Q. Now, according to the terms of
13 the letter, MS 169, the fee that was to be
14 charged for CSFB services was a \$4 million
15 plus reasonable out-of-pocket expenses.
16 Do you see that?
17 A. Yes.
18 Q. As a director of the company,
19 can you tell us whether that \$4 million
20 was paid as a result of the consummation
21 of the merger?
22 A. I don't have any such knowledge,
23 one way or the next.
24 Q. Would you have any reason to
25 believe that it was not paid?

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1 Confidential - Slovin
2 A. No.
3 Q. There was also attached to
4 MS 169, on the fourth page, a separate
5 document, which is also dated December
6 10th of 1997 which, for lack of a better
7 term, I am going to refer to as an
8 "indemnity agreement". Do you see that
9 page, sir?
10 A. Yes.
11 Q. Was this page of the engagement
12 letter also approved by the board of
13 directors on February 27th, 1998?
14 A. I have no independent
15 recollection other than if I read the
16 minutes I could tell you.
17 Q. Okay, go ahead and read the
18 minutes if you need to, it would begin on
19 page 7.
20 A. (Pause.)
21 MR. MARKOWSKI: I am not clear
22 on what the question is right now.
23 MR. BEMIS: I thought he said he
24 could answer the question if he
25 reviewed the minutes.

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1 Confidential - Slovin
2 A. The best answer -- repeat the
3 question for me, please.
4 Q. Is it your understanding, based
5 on reading the minutes of the board of
6 directors meeting, that the board of
7 directors on February 27th, 1997 approved
8 as part of CSFB's engagement the last page
9 of MS 169, what I call the "indemnity
10 agreement".
11 A. Well, it states in this first
12 resolution that they are -- we authorize
13 the entering of the engagement letter as
14 well as the indemnity arrangements and
15 the -- my answer is yes.
16 Q. You can set that aside for right
17 now.
18 Now, is it your understanding
19 based on the presentations that were made
20 at the board of directors meetings, on
21 both February -- well, withdrawn. CSFB
22 did make presentations to the board both
23 on February 25th and February 27th, 1998;
24 correct?
25 A. I think so, yeah.

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1 Confidential - Slovin
2 Q. And it was based on those --
3 withdrawn. And is it your understanding,
4 as a director, that CSFB evaluated the
5 financial terms of the merger proposal
6 between Sunbeam and Coleman?
7 A. Yes.
8 Q. And is it your understanding, as
9 a director, that as a consequence of their
10 evaluation that they then advised The
11 Coleman Company exclusively on the
12 fairness of the transaction?
13 A. Yes.
14 Q. Are you aware of any facts which
15 suggest that CSFB advised Sunbeam on the
16 fairness of the transaction?
17 A. No.
18 Q. You have to keep your voice up a
19 little bit with the tape. Thank you.
20 (Deposition Exhibit Morgan
21 Stanley 76, marked for
22 identification.)
23 Q. Let me show you what's been
24 marked as Morgan Stanley 76, please. It's
25 already been marked.

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1 Confidential - Slovin
2 Do you have MS 76 in front of
3 you?
4 A. Yes.
5 Q. There is a table of contents on
6 the second page, it tells you what's
7 included. I know it's a relatively thick
8 document.
9 A. Yep.
10 Q. My question is, have you ever
11 seen MS 76 before in any form?
12 A. I don't remember.
13 Q. Okay, you can set that aside.
14 As you sit here today now, you
15 have looked at the retention letter of
16 December 10th, 1997 for CSFB, and you have
17 taken me up to the board meetings starting
18 February 25th, are you aware of any
19 meetings, even if you might not have been
20 present, between representatives of The
21 Coleman Company or representatives of
22 Sunbeam and CSFB in that period?
23 A. No, I am not.
24 Q. By the way, were you in the
25 United States continuously between

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1 Confidential - Slovin
2 December 10th, 1997 and February 25th of
3 1998?
4 A. December 10th, it was my
5 birthday so where I was non compas mentis
6 for weeks after --
7 Q. Okay.
8 A. Yes, I was in -- oh, no, I go to
9 Europe, I have a home in Italy, my wife
10 being Italian, so I go to Europe for
11 Christmastime.
12 Q. So, roughly, when were you out
13 of the United States during that time
14 period?
15 A. The last ten days or so,
16 beginning a few days of the new year, ten
17 days to two weeks.
18 Q. And then you were -- were you in
19 the United States after your return from
20 Italy continuously up until, say, the
21 closing of March 30th, 1998?
22 A. I believe I was.
23 Q. Before we turn to the first
24 board meeting, on March 25th, I would like
25 you to focus on, for a second on, some of

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1 Confidential - Slovin
2 the other issues with regard to any
3 investigation that was done of the merger
4 transactions which the board approved.
5 And the first question is, are you aware
6 of any type of accounting due diligence
7 that was done by Coleman's accountants,
8 Ernst & Young, LLP, in connection with the
9 merger.
10 A. I have no specific knowledge of
11 that type of work.
12 Q. Now, when you say you have "no
13 specific knowledge", have you heard
14 whether they did any work even though you
15 didn't see it yourself?
16 A. I don't remember whether I heard
17 that -- what work they did or did not do.
18 I have no recollection of that subject.
19 Q. Did you personally have any
20 communications with Ernst & Young, LLP
21 that in any way were related to the merger
22 transaction approved by the board on
23 February 27th?
24 A. No.
25 Q. At the February 27th board of

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1 Confidential - Slovin
2 directors meeting, which we have already
3 marked as Exhibit 118, the board also
4 approved the retention of Wachtell, Lipton
5 as its attorneys; correct?
6 A. I believe so.
7 Q. Were you aware, as a director,
8 that Wachtell, Lipton had been retained
9 before February 27th, 1998 to advise The
10 Coleman Company in connection with the
11 Sunbeam/Coleman merger?
12 A. I don't have a specific
13 recollection of when they were first
14 retained.
15 Q. Other than Wachtell, Lipton, was
16 there any other law firm that the Coleman
17 Company retained in connection with the
18 merger transaction?
19 A. I am uncertain.
20 Q. Had you worked with the Wachtell
21 firm before in the merger and acquisition
22 transactions you have been doing over the
23 years?
24 A. I have done some work with them.
25 Q. Had you ever worked with, excuse

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1 Confidential - Slovin
2 me, Adam Emmerich --
3 A. Yes.
4 Q. -- of the firm.
5 And what other transactions had
6 you worked on with Adam Emmerich?
7 A. I can't remember the specifics,
8 but I do remember working with that firm
9 on some deals, but I don't remember which
10 ones.
11 Q. Did they serve bagels in the
12 morning when you came in?
13 A. Better than yours.
14 Q. Okay. I will take that --
15 A. That's a real New York law firm.
16 Q. I will take that to management,
17 (smiling).
18 Are you aware of any due
19 diligence of any kind that Wachtell,
20 Lipton did in connection with the
21 Coleman/Sunbeam merger that was approved
22 on February 27th, 1998 by The Coleman
23 Company board?
24 A. As I sit here today, I have no
25 specific memory of what specific work they

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1 Confidential - Slovin
2 did on this transaction other than to do
3 the documents.
4 Q. So, when you say "do the
5 documents", it would be, for example, do
6 the merger agreements?
7 A. Yeah, the various paperwork
8 would be done.
9 Q. The various confidentiality
10 agreements that we reviewed?
11 A. I imagine that would fall in
12 that category.
13 Q. Other than the two board
14 meetings of February 25th and February
15 27th, 1998, when Mr. Emmerich appeared,
16 did you speak with him about the
17 Coleman/Sunbeam merger?
18 A. No.
19 Q. So, did you speak with him at
20 all after the transaction was assigned on
21 February 27th, about this transaction?
22 A. Not to my recollection.
23 Q. So your -- just to close this
24 out, your sole interface, if you will, as
25 a director with the Wachtell, Lipton firm

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1 Confidential - Slovin
2 in this transaction consisted of the two
3 board meetings.
4 A. To the best of my recollection,
5 that is true.
6 Q. And if Wachtell, Lipton prepared
7 any documents and you saw them, they would
8 have been documents that were presented to
9 you at the board meetings?
10 MR. MARKOWSKI: Object to the
11 form of the question, calls for
12 speculation.
13 A. I am speculating, I could have
14 gotten some documents outside of the board
15 meeting but I have no recollection of
16 getting them.
17 Q. Okay. Well, that's fair, let me
18 ask the question a different way.
19 Wachtell, Lipton did make presentations at
20 both board meetings; correct?
21 A. To my knowledge.
22 Q. And they presented some
23 documents because they are attached to the
24 minutes of the meeting we looked at;
25 right?

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1 Confidential - Slovin
2 A. I think so.
3 Q. Okay. Now, aside from the
4 documents that are attached to the minutes
5 of the meeting, that are identified as
6 being prepared by Wachtell, Lipton, did
7 you receive any documents in connection
8 with the merger from Wachtell, Lipton?
9 A. Not to my recollection.
10 Q. Okay, we are done with that.
11 I would like to show you now
12 what's been marked as MS 170 -- excuse me,
13 MS 79.
14 (Deposition Exhibit Morgan
15 Stanley 79, document, marked for
16 identification.)
17 Q. Do you have MS 79 in front of
18 you, sir?
19 A. Yes.
20 Q. Have you ever seen it before?
21 A. I do not remember seeing it
22 before.
23 Q. Okay, you may set it aside.
24 (Deposition Exhibit Morgan
25 Stanley 78, marked for

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1 Confidential - Slovin
2 identification.)
3 Q. I show you now what's been
4 marked as Morgan Stanley 78, in another
5 deposition.
6 Do you have MS 78 in front of
7 you, sir?
8 A. Yes.
9 Q. Have you ever seen the second
10 page of this document before, either in
11 this form or without the handwriting?
12 A. I have no recollection of seeing
13 this document.
14 Q. Did you ever participate in any
15 discussions or meetings concerning
16 potential synergies that were -- could be
17 achieved in a merger of The Coleman
18 Company with Sunbeam?
19 A. No.
20 Q. You know what "synergies" is;
21 right?
22 A. The Oxford Dictionary
23 definition?
24 Q. No, in an M&A usage.
25 A. Yes.

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1 Confidential - Slovin
2 Q. What is it?
3 A. One and one equals three, that's
4 the M&A definition.
5 Q. So if you put one and one
6 together, you do better than if you just
7 leave them as one and one; right?
8 A. I would say yes.
9 Q. Okay.
10 A. We will publish that together.
11 Q. Slovin and Bemis on M&A
12 synergies, we will sell ten copies.
13 A. Right, if that.
14 Q. If that?
15 MR. BEMIS: Would you please
16 mark this, Ms. Reporter, as MS 178.
17 (Deposition Exhibit Morgan
18 Stanley 175, document entitled Laser
19 Corporation Key assumptions, marked
20 for identification.)
21 Q. I have handed you Exhibit
22 MS 175 --
23 MR. MARKOWSKI: I think you said
24 "178".
25 MR. BEMIS: I misspoke earlier

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2 when I said "178", this exhibit has
3 been marked as 175, paragraph.
4 Q. I am handing you now Exhibit
5 MS 175, entitled Laser Corporation Key
6 assumptions. Do you have that in front of
7 you?
8 A. Yes.
9 Q. Have you ever seen --
10 A. Not to my recollection.
11 Q. Okay. You can set it aside.
12 (Deposition Exhibit Morgan
13 Stanley 82, document, marked for
14 identification.)
15 Q. I will hand you what has been
16 previously marked as MS Deposition Exhibit
17 82.
18 Do you have that in front of
19 you?
20 A. Yes.
21 Q. Have you ever seen it before?
22 A. No, not to my recollection.
23 Q. You may set it aside.
24 (Deposition Exhibit Morgan
25 Stanley 81, document, marked for

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1 Confidential - Slovin
2 identification.)
3 Q. I will hand you what's been
4 marked as MS 81 at a previous deposition.
5 Do you have that exhibit in
6 front of you, sir?
7 A. Yes.
8 Q. Have you ever seen it before?
9 A. I don't believe so.
10 Q. All right, you may hand it back
11 and I will just put it back.
12 (Deposition Exhibit Morgan
13 Stanley 83, document, previously
14 marked for identification.)
15 Q. I will hand you now what's been
16 previously marked as MS 83.
17 Do you have that in front of
18 you?
19 A. Yes.
20 Q. Have you ever seen it before?
21 A. I don't believe so.
22 Q. You can set it back -- oops,
23 thank you.
24 (Deposition Exhibit Morgan
25 Stanley 84, document, previously

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2 marked for identification.)
3 Q. I show you what's been marked
4 previously as MS 84.
5 Do you have that in front of
6 you?
7 A. Yes.
8 Q. Have you ever seen that document
9 before?
10 A. I don't recall ever seeing this
11 document.
12 Q. Okay. You may hand that back to
13 me.
14 MR. BEMIS: Ms. Reporter, will
15 you mark the following exhibit,
16 entitled Sunbeam Corporation table of
17 contents with attachments, as MS 186.
18 (Deposition Exhibit Morgan
19 Stanley 186 document entitled Sunbeam
20 Corporation table of contents with
21 attachments, marked for
22 identification.)
23 MR. BEMIS: Oh, you don't need
24 that one, sorry, sir.
25 Q. Have you had an opportunity to

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1 Confidential - Slovin
2 look at MS 186?
3 A. Yes.
4 Q. Have you ever seen it before?
5 A. I don't recall ever seeing this
6 before.
7 MR. BEMIS: Ms. Reporter, will
8 you mark as MS 188 a facsimile
9 transmittal sheet and attachments for
10 Project Laser Exhibit A: Transaction
11 pricing calculations.
12 (Deposition Exhibit Morgan
13 Stanley 188, facsimile transmittal
14 sheet and attachments for Project
15 Laser Exhibit A: Transaction pricing
16 calculations, marked for
17 identification.)
18 Q. Do you have MS 188 in front of
19 you, sir?
20 A. Yes.
21 Q. This is a fax from Will Nesbitt
22 to Adam Emmerich at Wachtell?
23 A. Yes.
24 Q. With an attachment.
25 Have you ever seen either the

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1 Confidential - Slovin
2 facsimile cover sheet or the attachment?
3 A. Not to my recollection.
4 Q. Do you understand -- looking at
5 the transaction pricing calculations and
6 the date of this document, do you
7 recognize this as pricing calculations
8 that were used in deciding whether to
9 approve the merger agreement?
10 A. I couldn't say, I do not know.
11 Q. Look at the last -- please look
12 at the last page of Mr. Em-- or Mr.
13 Nesbitt's transmittal, please.
14 A. Yes.
15 Q. And, so, for the record it's
16 Bates numbered CPH 1316962. Are you
17 there?
18 A. Yes.
19 Q. Third item under Basis of
20 arrangement to convert to cash and stock,
21 do you see that?
22 A. Yes.
23 Q. It is: "Deliver as much in
24 laser stock as can be permitted, remainder
25 in cash".

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1 Confidential - Slovin
2 Do you see that?
3 A. Yes.
4 Q. At either of the board meetings,
5 was there any discussion of whether the
6 transaction should be structured as a cash
7 transaction as opposed to a transaction
8 that included the common stock of Sunbeam
9 Corporation?
10 A. I just don't have a specific
11 recollection of that -- it may have been a
12 subject, but I just don't have a
13 recollection of it, I'm sorry.
14 Q. You may set that aside, we are
15 done.
16 THE LEGAL VIDEO SPECIALIST:
17 Five more minutes.
18 MR. BEMIS: Why don't we go
19 ahead and change the tape now.
20 THE LEGAL VIDEO SPECIALIST: The
21 time is 2:05, this is the end of tape
22 number two.
23 (Pause in proceedings.)
24 THE LEGAL VIDEO SPECIALIST: The
25 time is 2:08, this begins tape number

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2 three of the videotaped deposition of
3 Mr. Bruce Slovin, Esquire.
4 THE WITNESS: "Esquire."
5 Q. Could you locate in your pile
6 there MS 88, which may be towards the --
7 it's the board of directors minutes
8 meetings, Mr. Slovin. And you might want
9 to pull out, as well, the February 27th
10 minutes, which are 118, those two
11 documents will help.
12 188 and 118, they are both board
13 of directors meetings.
14 A. 188 --
15 (Discussion off the record.)
16 Q. I can give you another one --
17 A. No, it's there. Okay --
18 Q. You have got it. Thank you very
19 much, thank you for your help.
20 All right. Let's -- now that
21 you have the two minutes in front of you,
22 MS 88 and MS 118, let's focus now on --
23 exclusively on the board of directors
24 meetings.
25 What did you understand your

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1 Confidential - Slovin
2 duties to be as a director representing
3 the majority shareholder of Coleman at
4 that meeting?
5 MR. MARKOWSKI: Object to the
6 form of the question.
7 Q. And I will limit it in
8 connection with the approval of the
9 merger.
10 A. As the majority shareholder and
11 the public shareholders?
12 Q. I am going to ask you about them
13 later, but right now I want to start as
14 majority shareholder.
15 MR. MARKOWSKI: Same objection.
16 A. I don't think my sense of duty
17 would have been any different.
18 I was asked to vote on a
19 proposed transaction. I listened to the
20 experts tell me their conclusions based
21 upon the work they had done. I considered
22 what I had heard and comments made at the
23 table by the directors, and concluded that
24 this was a fair and a reasonable
25 transaction for both, the majority

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2 shareholder and the public shareholders
3 and, therefore, I voted for the
4 transaction.
5 Q. Now, with regard to the public
6 shareholders, did you understand as
7 minority shareholders in the Coleman
8 organization that you, as a director, owed
9 them a fiduciary duty under Delaware law?
10 A. Absolutely.
11 Q. Now, as part of the -- as part
12 of the transaction, Sunbeam assumed a
13 large amount of Coleman debt; did it not?
14 A. One of The Coleman Company, not
15 Coleman Inc., I don't believe, I believe
16 it was one of those two companies on top
17 of Coleman, on the chart you showed me
18 before, yes.
19 Q. And how much was that debt that
20 was assumed?
21 MR. MARKOWSKI: I am just going
22 to object to the form of the
23 question, at this point, I think it
24 was unclear what entity we are
25 referring to.

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1 Confidential - Slovin
2 A. My recollection it was in the
3 hundreds of millions of dollars.
4 Q. So by the assumption of that
5 debt under the merger documents, and
6 related documents, that debt was removed
7 from the companies affiliated with
8 Mr. Perelman and became then the
9 obligation of Sunbeam; correct?
10 MR. MARKOWSKI: Could you read
11 the question back for me, please.
12 (The record was read.)
13 MR. MARKOWSKI: I am going to
14 object to the form.
15 A. I believe so.
16 Q. Now, in terms of the public
17 shareholders, that is, those shareholders
18 not affiliated with Mr. Perelman, there
19 was no similar assumption of debt part of
20 the transaction; correct?
21 A. No.
22 Q. Now focusing specifically on the
23 board of directors meeting on the 25th of
24 February 1998, which is memorialized in
25 the minutes of MS 88, if you would look at

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1 Confidential - Slovin
2 that. There are documents -- excuse me,
3 three pages of charts, if you will,
4 attached to the back of the minutes.
5 Would you look at those, please?
6 A. Yes.
7 Q. Now, were you -- strike that.
8 Were these documents -- withdrawn. Were
9 these three pages shown to the directors
10 at the meeting?
11 A. I'm sorry, I have no
12 recollection of whether I saw these three
13 pages at the meeting or not.
14 Q. Well, let's set aside whether
15 the same three pages. Did you see as a
16 part of the presentation by your law firm,
17 Wachtell, Lipton -- when I say "your", I
18 am talking about The Coleman Company --
19 your law firm a presentation on the
20 proposed structure of the merger?
21 A. There was conversation
22 concerning the structure. Whether I saw a
23 chart I cannot tell you because I don't
24 remember.
25 Q. Well, during the meeting which

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1 Confidential - Slovin
2 we have identified lasting approximately
3 1.5 hours, could you tell the jury how the
4 meeting progressed by presen-- in order of
5 presentation?
6 A. I am afraid I cannot do that. I
7 don't recall the precise presentation, the
8 manner in which it was presented.
9 I believe that Jerry Levin was
10 the chair of the meeting, and he
11 introduced the subject matter and
12 introduced Adam Emmerich, the attorney,
13 and I believe then he introduced Gordon
14 Rich, and we had a discussion, and they
15 talked about the prospective deal and my
16 recollection was that at the end of the
17 meeting they said: We are not asking you
18 to do any voting, they can consider it,
19 reflect on it, and we still have some work
20 to do and we will be back to you fairly
21 shortly with what most likely would be a
22 request to approve or disapprove the
23 transaction.
24 Q. So, if I understand correctly,
25 Mr. Levin spoke first; is that right?

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2 A. That's my recollection.
3 Q. Is that your recollection?
4 A. It's reflected by these minutes.
5 This does refresh my recollection a bit.
6 I don't know if I have any independent
7 recollection.
8 Q. The minutes also reflect on page
9 2, in the third paragraph, that Mr. James
10 Maher spoke. Do you recall that?
11 A. Do I recall that? I think I do,
12 yes.
13 Q. Do you recall what Mr. Maher
14 said at the meeting?
15 A. He was talking about the
16 structure of the deal, as I recall, and
17 some of the work he had done and why he
18 thought that was a sensible deal for the
19 Coleman entities.
20 Q. Can you be any more specific in
21 adding what Mr. Maher said, sir?
22 A. No, I cannot. I do not recall
23 his specific comments.
24 Q. Was there a -- withdrawn. Did
25 Mr. Maher give you a history of the

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1 Confidential - Slovin
2 negotiations with Sunbeam up to the time
3 of the board of directors meeting on
4 February 25th, kind of a blow-by-blow, if
5 you will, of the negotiations?
6 A. I don't recall a blow-by-blow.
7 I do recall some general overview, but not
8 step-by-step.
9 Q. Is it, in your experience, as
10 someone who has done many M&A
11 transactions, is it customary for deals to
12 go back and forth between the buyers and
13 the sellers until they reach a final deal?
14 A. Yes.
15 Q. According to the minutes, on
16 page 2, in the third paragraph, it says
17 quote: "Following Mr. Maher's review, the
18 directors asked numerous questions
19 regarding the proposed transaction and a
20 discussion ensued among the directors."
21 Do you see that?
22 A. Where -- I'm sorry.
23 Q. In the third paragraph on the
24 second page, last sentence, sir.
25 A. Yes, I do.

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1 Confidential - Slovin
2 Q. Could you tell the jury what any
3 of the numerous questions were?
4 A. "The jury"?
5 Q. The jury who may watch your
6 tape, yes, sir.
7 A. I don't have a specific
8 recollection of questions, other than they
9 went to the structure of the deal, the
10 consideration of the deal, why it was the
11 right thing to do, in the opinion of
12 Mr. Maher, how he came to the terms that
13 he was working on, those type of general
14 questions, but a specific question I am
15 afraid I can't help you.
16 Q. Do you remember any questions
17 being asked of Mr. Maher concerning why
18 the deal was being structured to take
19 Sunbeam stock, as opposed to cash?
20 A. I do believe there was some
21 conversation to that extent, but precisely
22 what it was I don't remember.
23 Q. Do you remember generally what
24 it was?
25 A. No, I do not.

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1 Confidential - Slovin
2 Q. Did you ask any questions of why
3 the transaction was being structured to
4 take Sunbeam stock rather than an all-cash
5 transaction?
6 A. I think I asked a question or
7 two. I don't know if it was on that
8 particular subject.
9 Q. What questions do you think you
10 asked?
11 A. I don't remember.
12 Q. Okay. There is in the minutes,
13 in that same sentence that we read, after
14 the numerous questions were asked, a
15 discussion ensued among the directors. Do
16 you remember any of the discussion that
17 ensued among the directors after
18 Mr. Maher's presentation?
19 A. Well, it related to the subject
20 of the questions and the answers.
21 Q. I would hope so.
22 A. (Laughing.)
23 Q. Can you be anymore specific than
24 that?
25 A. This was six years ago, my

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1 Confidential - Slovin
2 memory is really not so good, I don't
3 remember details.
4 Q. All right. Well, after
5 Mr. Levin's presentation and Mr. Maher's
6 presentation, according to the minutes,
7 Mr. Levin then introduced Mr. Emmerich.
8 Is that consistent with your recollection?
9 A. My general recollection.
10 Q. What did Mr. Emmerich say at the
11 meeting to the directors and the visitors?
12 A. He talked about the structure of
13 the deal, why it was composed the way it
14 was, from a legal point of view, what some
15 of the ramifications were from a legal
16 point of view, that sort of thing.
17 Q. What did he say about why the
18 deal was structured the way it was and the
19 legal ramifications?
20 A. Well, he said that this was a
21 serious consideration, a thought, that
22 this was the best interests of the Coleman
23 shareholders and the public and majority
24 shareholder.
25 Q. Did Mr. Maher express the same

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1 Confidential - Slovin
2 conclusion, that it was in the best
3 interests of the public and private
4 shareholders of The Coleman Company?
5 A. I think he was an advocate of
6 the deal. What his exact terms were and
7 his expressions, I don't remember. But he
8 did tell us about the deal, and my
9 understanding was he, after his extensive
10 work, was an advocate of it going forward.
11 Q. So in addition to Mr. Emmerich
12 and Mr. Maher, let's go back up to
13 Mr. Levin --
14 A. "Levin."
15 Q. I apologize, Mr. Levin --
16 A. Minnesota, Levin.
17 Q. -- did he, as well, express the
18 view that the transaction was in the best
19 interests of The Coleman Company
20 shareholders?
21 A. My recollection was that he did.
22 Q. Now, when the -- withdrawn.
23 (Discussion off the record.)
24 Q. Did Mr. -- I'm sorry, I don't
25 mean to interrupt. Did Mr. Emmerich go

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1 Confidential - Slovin
2 through any of the additional agreements
3 that are set forth in the merger agreement
4 that -- and if it helps you, that is set
5 forth in Section 7 -- excuse me, Article 7
6 of the merger agreement, MS 117, if you
7 need to look at it.
8 A. I don't remember what other
9 collateral agreements or documents he
10 talked about.
11 Q. Well, one of them was the
12 comfort letters from the -- cross-comfort
13 letters from the two auditing firms.
14 A. Right.
15 Q. Was there any discussion of
16 that?
17 A. My recollection is that -- I
18 have no recollection of specific
19 discussion on that subject. It was a
20 subject that was raised at some point.
21 What level of discussion ensued or who
22 raised the question, what the responses
23 were, I don't remember.
24 Q. But you do remember the subject
25 being raised at one of the board meetings?

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1 Confidential - Slovin
2 A. I do think so, I do think so,
3 but my recollection is fuzzy, and
4 sometimes the suggestion creates a memory,
5 and I don't really want that to happen,
6 so....
7 Q. So, as you sit here today, you
8 can't remember the specific discussions on
9 the cross-comfort letters but you believe
10 it was discussed at some point.
11 A. I think so.
12 Q. Okay. And, just for the record,
13 the cross-comfort letters I am referring
14 to are those set forth in Section 7.2 of
15 the merger agreement, MS 117.
16 Following Mr. Emmerich's
17 presentation, the minutes reflect that the
18 board asked questions and discussion
19 ensued.
20 Do you recall any of the
21 questions that were asked of Mr. Emmerich?
22 A. I recall that there were several
23 questions, but I don't remember the
24 specific ones.
25 Q. Do you remember any of the

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1 Confidential - Slovin
2 discussion that ensued following -- the
3 questions that were asked?
4 A. They related to the questions
5 that were asked, but I don't remember the
6 specifics, I'm sorry.
7 Q. Now, turning to the next
8 presentation at the board meeting, it
9 would appear that Mr. Gordon Rich spoke,
10 as you previously identified. Is that now
11 consistent with your recollection?
12 A. Yes.
13 Q. Did Mr. Rich present any
14 documents at the meeting on February 25?
15 A. I remember reading something in
16 the presentation, I think he passed out
17 some documents.
18 Q. Let me show you two documents,
19 and ask you if those were shown to anyone.
20 (Deposition Exhibit Morgan
21 Stanley 112, document, dated February
22 25th, 1998, marked for
23 identification.)
24 Q. The first document I would like
25 you to look at is marked as Morgan Stanley

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1 Confidential - Slovin
2 112.
3 Do you have Exhibit MS 112 in
4 front of you, sir?
5 A. Yeah.
6 Q. Was this document or any portion
7 of it presented to the board of directors
8 at the May -- "May" -- February 25th, 1998
9 meeting?
10 A. I believe so.
11 Q. Now, is there something in
12 particular that makes you believe that
13 this document was presented, other than
14 it's dated February 25th, 1998?
15 A. Well, it talks to the subject of
16 valuations, and that's what we were all
17 interested in. It talks about, you know,
18 range of values which, again, is something
19 that we were all interested in. These
20 valuations of stock prices and part of
21 consideration are very important, and some
22 are complicated. I sort of remember
23 seeing something like this.
24 Q. Did CSFB use a PowerPoint
25 presentation to present these to you in

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1 Confidential - Slovin
2 slide form or did you have hard copies
3 handed out?
4 A. I think we had hard copies
5 handed out.
6 I have seen Gordon present with
7 slides, and maybe I am confusing them,
8 because he has made many presentations to
9 us. In this one, I don't recall a
10 PowerPoint slide but I recall a hard copy.
11 Q. Okay. So this document, MS 112,
12 would have been one of the documents that
13 you would have considered in approving the
14 merger?
15 A. Yes.
16 Q. On the February 27th; correct?
17 A. Yes.
18 Q. Okay. Let me show you one other
19 document, which is MS 197, which is on a
20 cover -- I have with a cover page of
21 Credit Suisse First Boston, and if the
22 court reporter would mark that, as well.
23 (Deposition Exhibit Morgan
24 Stanley 197, document with a cover
25 page of Credit Suisse First Boston,

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1 Confidential - Slovin
2 marked for identification.)
3 Q. Do you have MS 197 in front of
4 you?
5 A. Yes.
6 Q. Did you see this document at
7 either the February 25th or the 27th board
8 meeting?
9 A. It's hard to say. This is more
10 detail, as it's entitled, it's backup
11 material for the presentation. I am a
12 little confused because what you are
13 showing me in this prior document was
14 draft materials.
15 Q. Right.
16 A. So I am confused whether this
17 was a final version that was presented,
18 the prior one or whether -- I don't recall
19 this backup document, the detail. I don't
20 re-- but you see, some of the material in
21 the backup document is very similar to the
22 material in what is entitled the draft
23 material. So, I remember more receiving
24 this item called Draft materials and I
25 don't remember clearly receiving the

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1 Confidential - Slovin
2 document called Backup materials.
3 Q. All right. So your best
4 recollection is that you think you saw
5 MS 112, but you don't recall --
6 A. Right.
7 Q. -- whether you saw MS 197;
8 right?
9 A. Right.
10 Q. Okay. All right. You can set
11 those two documents aside in your pile.
12 A. Can I take these home with me?
13 Q. You know, we could probably
14 arrange that.
15 MR. MARKOWSKI: Actually, under
16 the form of our protective order, you
17 can't.
18 Q. We can have you sign Exhibit A
19 and then you can take it home, if you
20 want.
21 MR. MARKOWSKI: Even then you
22 can't, but I am sure you don't want
23 them.
24 THE WITNESS: It's just some
25 humor.

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1 Confidential - Slovin
2 Q. One of the -- withdrawn. If you
3 will look at the board of directors
4 minutes again. I hope you didn't put
5 those aside. Look at 188, please, and
6 turn to the second page of the minutes,
7 and focus on the third paragraph. And the
8 second sentence of the third paragraph
9 reads: "Mr. Maher reviewed the history of
10 the proposed transaction, including both
11 the course of discussion between the
12 company and Sunbeam and an inquiry made by
13 the company to what the company believed
14 was the most likely potential bidder,
15 which bidder was not interested."
16 Do you see that sentence?
17 A. Yeah.
18 Q. Did Mr. Maher identify, either
19 directly or in response to questions, who
20 the other potential bidder was?
21 A. I don't recall that he did.
22 Q. When CSFB made its presentation,
23 did Mr. -- what did Mr. Rich say about
24 another buyer would likely discount the
25 First Boston estimates as set forth on

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2 page 4 in the second-to-the-last
3 paragraph? And, again, I am referring to
4 MS 88.
5 A. Which page? Which paragraph?
6 Q. Page 4, next-to-the-last
7 paragraph, and if you would focus on the
8 last sentence, which reads as follows,
9 quote: "Mr. Rich stated that although
10 First Boston did not discount the 1998
11 EBITDA forecast, another buyer would
12 likely discount such estimates resulting
13 in a lower discounted cash flow range of
14 values than those presented by First
15 Boston." Closed quote.
16 What did Mr. Rich say about that
17 topic, other than what's set forth here?
18 A. Well, I think he was suggesting
19 that he thought that this deal perhaps was
20 better valued than another deal might be
21 and because another buyer might be more
22 severe in his discounting the cash flow
23 range, that was, he wasn't sure of that,
24 but he said might be and likely and,
25 therefore, the present deal was likely to

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1 Confidential - Slovin
2 be better for the Coleman people.
3 Q. So, as I understand it, the
4 First Boston's presentation did not
5 discount the current forecast given by
6 Sunbeam for its 1998 earnings; correct?
7 MR. MARKOWSKI: You are asking
8 whether he knows that?
9 MR. BEMIS: Yes, I am asking
10 that.
11 A. I am not sure. You are asking
12 me things about which I don't remember,
13 I'm sorry. And I don't know how to answer
14 that question. I don't remember.
15 Q. Well, let's turn to the next
16 page of the minutes, on page 5. The first
17 paragraph reads: "Mr. Rich then provided
18 a brief overview of Sunbeam, including
19 Wall Street estimates for Sunbeam's stock
20 price and then reviewed a" -- excuse me --
21 "reviewed a summary of the discounted cash
22 flow analysis." Do you see that sentence?
23 A. Yes.
24 Q. What did Mr. Rich --
25 MR. MARKOWSKI: I think that's a

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1 Confidential - Slovin
2 comma.
3 MR. BEMIS: Is that a comma?
4 Let me start over, you are correct,
5 it is a comma.
6 Q. I would ask you, sir, to direct
7 your attention to the first sentence on
8 page 5 of MS 88, which reads as follows:
9 "Mr. Rich then provided a brief overview
10 of Sunbeam, including Wall Street
11 estimates for Sunbeam's stock price and
12 then reviewed a summary of the discounted
13 cash flow analysis, comparable company
14 analysis and comparable acquisition
15 analysis for Sunbeam."
16 Do you see that sentence?
17 A. Yeah.
18 Q. What did Mr. Rich state, by way
19 of overview, of Wall Street's estimates
20 for Sunbeam's stock price?
21 A. Other than what it says in these
22 minutes, I can't tell you more about what
23 he said because I just don't remember.
24 Q. Was this information, Wall
25 Street's estimates for Sunbeam's stock

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1 Confidential - Slovin
2 price, information that you considered in
3 deciding whether to vote for the merger on
4 February 27th?
5 A. Yes, I considered everything
6 that they spoke about. Clearly, I was
7 swayed by their conclusions and judgments,
8 not only First Boston but our entire staff
9 of people who worked on the deal and, yes,
10 their words carried weight with me to help
11 me make my judgment.
12 Q. All right. It states at the end
13 of the paragraph we were reading from:
14 "Following Mr. Rich's presentation, the
15 directors asked questions and a discussion
16 ensued."
17 Can you tell us what, if any,
18 questions the directors asked and what
19 discussion ensued?
20 A. You know, other than that it was
21 about the content of Mr. Rich's
22 presentation, I can't help you.
23 Q. Did Mr. Levin, at the end of the
24 meeting, tell you what the status of the
25 negotiations were as of February 25th?

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2 A. I think he implied that they had
3 reached a very serious point and that they
4 were ongoing and a serious pace, and that
5 we could expect to hear from him shortly
6 as to what final deal they might be
7 presenting to the board, if a final deal
8 was, in fact, reached.
9 Q. Going back up to the first
10 paragraph again, the reference to "Wall
11 Street estimates", do you see that up
12 there, sir?
13 A. Yes.
14 Q. Do you understand "Wall Street
15 estimates" to be estimates of analysts who
16 follow the Sunbeam stock?
17 A. Yes.
18 Q. Such as Mr. Shore, who we looked
19 at earlier from PaineWebber?
20 A. Yeah -- yes.
21 Q. Is that something that, as a man
22 experienced in M&A transactions with the
23 many years that you have described it,
24 that when you are looking at a company you
25 will research and look at analyst reports

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1 Confidential - Slovin
2 on a company if it's being followed by a
3 brokerage house?
4 A. Yes.
5 Q. Now, did any of the directors at
6 the -- at that February 25th meeting, ask
7 to see any of the Wall Street estimates
8 such as what Mr. -- we showed you earlier
9 regarding Mr. Andrew Shore, that he had
10 done with regard to Sunbeam, did you ask
11 to see the actual underlying estimates?
12 MR. MARKOWSKI: I am going to
13 object to the form of the question.
14 A. I don't remember.
15 Q. All right. Let's set aside
16 February 25th and move forward to -- one
17 second before -- withdrawn.
18 Do you have the minutes of the
19 February 27th meeting now in front of you?
20 A. Yes.
21 Q. That should be MS 118. Okay,
22 good.
23 The minutes reflect, on the
24 first page, that the meeting was called to
25 order at 9:30 a.m.

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1 Confidential - Slovin
2 Do you see that?
3 A. Yes.
4 Q. And at the very end of the
5 minutes, it reflects that the meeting had
6 adjourned at 10:30 p.m.
7 Do you see that?
8 A. What page is that?
9 Q. It would be page 11, sir.
10 A. Yes.
11 Q. And did the meeting -- was the
12 meeting continuous from 9:30 in the
13 morning until 10:30 or -- setting aside
14 people taking a quick break for coffee or
15 the restrooms, were you in session for
16 11 -- I mean 13 hours?
17 A. Oh -- hmm -- I don't remember
18 our meeting lasting that long, honestly.
19 I don't remember. It might have. It says
20 it does. There is no reason for me to
21 argue against it. I can't believe that if
22 it lasted that long, that people didn't
23 step in and out of that meeting. Had a
24 lot of old characters on the board, they
25 would definitely be stepping out.

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2 Q. Well, let's start with the
3 people in attendance, starting with the
4 directors again.
5 Based on your recollection, is
6 that an accurate accounting of those
7 directors that attended the meeting?
8 A. I swear I don't remember. I'm
9 sorry.
10 Q. Okay. The others in attendance
11 that are listed on the first page of
12 MS 118, does that appear to be a correct
13 listing of the "quote" "others" who were
14 attending?
15 A. Looked like the cast of
16 characters that would supplement the
17 meeting, other than directors, yeah.
18 Q. Now, I asked you earlier about a
19 Michael Katzke. Do you remember I --
20 A. No, I didn't remember who he
21 was.
22 I see he is one of the attorneys
23 from Wachtell, Lipton.
24 Q. Okay.
25 A. And Richard Duffy, who I didn't

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1 Confidential - Slovin
2 know was one of the Credit Suisse people.
3 Q. Could you tell me how the
4 meeting progressed, regardless of how long
5 it took, on February 27th of 1998.
6 A. To do so, I would have to look
7 over the minutes themselves. I mean, I
8 would start that Mr. Levin called the
9 minute -- the meeting to order at 10:30,
10 and he then related to us some of the
11 changes that had taken place and the
12 consideration and exchange ratios from the
13 time we met, just two days before, and
14 then again --
15 MR. MARKOWSKI: I ask you to
16 read the minutes.
17 A. But that's the way it would
18 progress.
19 I don't have an independent
20 recollection of -- other than the reading
21 of the minutes, of the manner in which the
22 meeting progressed, who spoke first, who
23 spoke second.
24 Q. Well, according to the minutes,
25 it appears that Mr. Levin spoke, then

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1 Confidential - Slovin
2 Mr. Emmerich spoke, Mr. Rich spoke again,
3 and Mr. Levin then reviewed the
4 transactions, and then various motions
5 were put to the board of directors.
6 That's in the first two pages --
7 A. Yeah.
8 Q. -- of one paragraph.
9 A. Yes.
10 Q. Now -- and I am not trying to be
11 facetious, or anything -- is there any
12 reason to believe that it took 13 hours to
13 cover these two pages of the minutes?
14 A. No, I couldn't -- I wouldn't
15 under-- be able to tell you why it would
16 take so long.
17 I -- perhaps there is an error
18 in typing.
19 Q. Well, that's what I am asking --
20 I guess, ultimately, that might be the
21 question, is there an error in the typing
22 "adjourned at 10:30 p.m."?
23 MR. MARKOWSKI: To be fair to
24 the witness, there is an explanation
25 at the end of the minutes, if you

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2 want to see if it refreshes his
3 recollection.
4 Q. You can look at page 10 at the
5 bottom there.
6 A. Thank you for your help.
7 Oh, thank you, there you go. It
8 sounded like it was postponed for a bit
9 until the Sunbeam people finished their
10 work and then we concluded when they
11 concluded.
12 Q. So, is it fair to say there was
13 a meeting starting at 9:30, it concluded
14 at some point, then there was a break and
15 then you-all came back after a Sunbeam
16 meeting, and then you adjourned again at
17 10:30?
18 A. I didn't recall that, honestly,
19 but thanks to counsel's identifying this
20 last penultimate paragraph -- half-
21 paragraph on page 10, that's what would
22 appeared to have happened.
23 Q. Now, did anyone other than the
24 directors and the advisors, that is, First
25 Boston through Mr. Gordon Rich and

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1 Confidential - Slovin
2 Mr. Emmerich on behalf of Wachtell, Lipton
3 and Mr. Levin on behalf of -- not advisor
4 but was employed by Coleman, did anyone
5 else make formal preparations to the
6 board?
7 A. I don't have any recollection of
8 others presenting in a formal manner.
9 Q. There are some documents
10 attached to the minutes beginning right
11 after page 11. If you will turn to those,
12 please.
13 A. Yes.
14 Q. Were these documents presented
15 to the board of directors on February
16 27th?
17 A. Well, this is, once again, those
18 little charts you referred to earlier, and
19 I would have to repeat my remarks, I don't
20 recall.
21 Q. Was there any type of --
22 withdrawn. Was there a PowerPoint or
23 slide presentation given at the meeting on
24 February 27th?
25 A. I don't recall.

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1 Confidential - Slovin
2 Q. Now, having gone through both
3 the meetings on February -- well, strike
4 that. When the board reconvened, after
5 the adjournment and I guess following the
6 Sunbeam meeting, if the minutes are to be
7 believed, what transpired at the second
8 part of the board of directors meeting?
9 A. I'm sorry, I don't remember.
10 Q. Okay. Was the merger agreement,
11 which we have marked as MS 113 --
12 MS. BROWN: 17.
13 Q. Withdrawn. Was the merger
14 agreement, which we marked as MS 117, was
15 that document available to the directors
16 at the board of directors meeting on
17 February 27th, 1998, when they actually
18 voted to approve the merger?
19 A. I don't remember.
20 Q. Would you have approved -- voted
21 to approve the merger without reviewing
22 the merger documents, the merger
23 agreement, MS 117?
24 A. If it was gone over by counsel
25 and those who were responsible for its

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1 Confidential - Slovin
2 drafting and execution, and they explained
3 it to me, I don't think I would feel
4 obliged in the execution of my fiduciary
5 duties to read each page. I had
6 confidence in the lawyers and our staff.
7 We talked extensively about the terms, and
8 I don't think I had to read it in order to
9 execute my authority.
10 Q. Do you know if any of the
11 directors read the merger agreement,
12 MS 117, before they voted to approve the
13 merger on February 27th, 1998?
14 A. I don't know who did what, as
15 far as reading the entire document, no, I
16 do not remember.
17 Q. With regard to the further
18 responsibilities under the merger
19 agreement, MS 117, such as the cross-
20 comfort letters from the auditors, who at
21 the Coleman Company, whether it be the
22 board or employees, were responsible for
23 seeing that these other items were
24 followed up on?
25 A. Well, the people in charge of

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1 Confidential - Slovin
2 the transaction had the responsibility to
3 see that all the requirements of the deal
4 were honored by our side as well as by
5 Sunbeam's side.
6 Q. So who is the person --
7 A. I don't --
8 Q. Is there one person?
9 A. I don't think there is one
10 person that has such a responsibility.
11 I think the lawyers have their
12 area of privilege, and the analysts have
13 theirs, and I would think that Jerry Levin
14 was the generalist on this deal, along
15 with Jim Maher, to make sure that
16 responsibilities were honored on both
17 sides.
18 Q. Let me show you now what's been
19 marked as -- withdrawn. One final
20 question. I asked you earlier whether at
21 either of the board meetings anyone from
22 Morgan Stanley spoke. We have now been
23 through all the meetings, and you have
24 told me the course of proceeding. Do you
25 recall anyone from Morgan Stanley ever

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1 Confidential - Slovin
2 appearing at these board meetings on
3 February 25th or February 27th?
4 A. I'm sorry, but I don't recall.
5 Q. You don't recall them appearing.
6 A. I don't recall either way.
7 Q. Do you see them on the list of
8 attendees under the name Others on either
9 of the board minutes?
10 A. No, no, I do not.
11 MR. BEMIS: So the record will
12 reflect the witness was referring to
13 MS 112 -- excuse me, it's 88 -- you
14 are hiding those -- let the record
15 reflect the witness is referring to
16 the minutes of the board meeting
17 February 25th and February 27th,
18 which are MS 88 and 118.
19 Q. You can set those aside.
20 A. Did you say that was the final
21 question?
22 Q. On that subject. We are doing
23 fine.
24 Do you want to take a break
25 before we get going?

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1 Confidential - Slovin
2 A. No, I want to keep going.
3 MR. BEMIS: How are you doing,
4 Ms. Reporter?
5 (Discussion off the record.)
6 MR. BEMIS: Would you please
7 mark this MS 189, please. This is a
8 two-page document.
9 (Deposition Exhibit Morgan
10 Stanley 189, two-page document, which
11 is addressed to Will Nesbitt from
12 Alexandre J. Fuchs, Morgan Stanley &
13 Co., Incorporated, and there is an
14 attachment of one page to it, marked
15 for identification.)
16 Q. The court reporter has marked
17 for you MS 189, which is addressed to Will
18 Nesbitt from --
19 A. Fuchs.
20 Q. -- from Alexandre J. Fuchs,
21 Morgan Stanley & Co., Incorporated.
22 MR. MARKOWSKI: And could I have
23 mine?
24 MR. BEMIS: Oh, I'm sorry.
25 Q. And there is an attachment of

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1 Confidential - Slovin
2 one page to it.
3 Have you ever seen this
4 document?
5 A. Not to my recollection.
6 Q. Okay. You may set that aside.
7 Do you know what a "road-show"
8 is?
9 A. Yes, I do.
10 Q. Okay. Tell the jury what a
11 "road-show" is.
12 A. My understanding of a
13 "road-show" is this arena would be
14 proponents of a deal of some sort, the
15 sale of some financial instrument,
16 representing a particular company, going
17 out on the road to visit various financial
18 institutions to try to sell the product
19 that they were hawking at the time, and
20 they would go from city to city, from
21 financial institution to financial
22 institution and explain why a bond, for
23 example, they were selling, why some stock
24 that they were selling was good value and
25 that the audience ought to consider

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1 Confidential - Slovin
2 purchasing same.
3 That's what I understand a
4 "road-show" to mean.
5 Q. When you said "hawking", you
6 weren't using that in a pejorative sense;
7 were you?
8 A. Not at all.
9 Q. Could you explain to the jury
10 how in the case of -- say the zero coupon
11 debentures that we looked at earlier that
12 were going to be used as part of the
13 financing of this transaction, how those
14 are underwritten and sold, based on your
15 experience?
16 MR. MARKOWSKI: Could you read
17 that back, please?
18 MR. BEMIS: I will rephrase the
19 question.
20 Q. You remember we looked at the
21 offering memorandum for the zero coupon
22 debentures?
23 A. (Nodding.)
24 Q. I think they are subordinated
25 debentures, that were being offered in

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1 Confidential - Slovin
2 connection with the Sunbeam acquisition.
3 Do you recall that?
4 A. Yes.
5 Q. What is an "underwriter"?
6 A. My understanding is someone who
7 says that -- the financial institution
8 that says that: I will underwrite the
9 success of this deal, whoever doesn't take
10 whatever remains unsold I will see to it
11 that it's taken by our house, if
12 necessary.
13 Q. In this case, when you --
14 withdrawn. Carrying that forward now to
15 the road-show, is it customary for the
16 underwriters to participate in the
17 road-show?
18 A. I think so.
19 Q. Did you attend any of the
20 road-show presentations for the zero
21 coupon notes that were being offered in
22 connection with the financing of the
23 Sunbeam/Coleman transaction?
24 A. No, I did not.
25 Q. Let me just -- I want to show

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1 Confidential - Slovin
2 you what the court reporter will mark as
3 MS 193.
4 (Deposition Exhibit Morgan
5 Stanley 193, on the second page, it's
6 entitled Sunbeam road-show
7 presentation speaking points March
8 15th, 1998, marked for
9 identification.)
10 Q. Do you have MS 193 in front of
11 you?
12 A. Yes, I do.
13 Q. All right, sir.
14 On the second page, it's
15 entitled Sunbeam road-show presentation
16 speaking points March 15th, 1998. I ask
17 you to take a look at this quickly and --
18 or take as much time as you want, and tell
19 me whether you have ever seen this
20 document with or without handwriting.
21 There are some handwritten notes --
22 A. I don't recall ever having seen
23 this document.
24 Q. And have you ever done a
25 road-show?

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1 Confidential - Slovin
2 A. Yes.
3 Q. Have you ever been a presenter
4 at a road-show?
5 A. Did present as the lead
6 presenter? I don't think so, I think I
7 participated.
8 Q. And were you participating along
9 with an underwriter?
10 A. I think the financial
11 institution hired to sell the instrument
12 went along with us, and whether they were
13 underwriters or using best efforts I don't
14 remember, but everybody talked what a good
15 deal was being offered to them and that
16 they should reflect and participate.
17 Q. Well, best efforts is also
18 underwriting, it's a firm underwriting
19 best efforts --
20 A. Fair enough. I was using
21 "underwriting" as a firm underwriting
22 before when I spoke.
23 Q. And I understood that, that's
24 why I wanted to clarify.
25 A. Right.

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1 Confidential - Slovin
 2 Q. But, in your experience --
 3 strike that. You have actually
 4 participated with underwriters whether
 5 they be best efforts --
 6 A. Right.
 7 Q. -- or firm underwriting in a
 8 road-show representing the -- one of the
 9 beneficiaries, if you will, of the debt
 10 obligation and if it happens to be that
 11 that was trying to be sold; correct?
 12 A. Right, right.
 13 Q. So in terms of there being a
 14 road-show, if you will, for these zero
 15 coupon notes, you don't find anything
 16 unusual in that, do you, in this case?
 17 A. Unusual? No. Road-shows, you
 18 know, if you are fortunate, you don't have
 19 to go on the road because the document
 20 sells itself mostly, but most often in a
 21 large offering you have to get out there,
 22 you know, and rub elbows with the
 23 prospective purchaser, and try to convince
 24 them of the quality of the product. I
 25 don't know if it's -- I don't think it's

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1 Confidential - Slovin
 2 unusual.
 3 Q. And, in this case, the offering
 4 that was being made, underwritten by -- I
 5 think it's Morgan Stanley Senior Funding
 6 was --
 7 MR. MARKOWSKI: That's --
 8 MR. BEMIS: No, I misspoke.
 9 Q. It was being offered by Morgan &
 10 Stanley & Co., Incorporated, being
 11 underwritten by them, was in excess of a
 12 billion dollars; wasn't it?
 13 A. Is the document -- can I --
 14 Q. Go ahead, you can look at it.
 15 A. Was it in excess of a billion
 16 dollars?
 17 Q. Yeah.
 18 MR. MARKOWSKI: Are you
 19 referring to the face value of the
 20 note or --
 21 MR. BEMIS: Yes, face value of
 22 the note.
 23 A. \$2,014,000,000.
 24 Q. And on a discounted basis, I
 25 think it was approximately \$1.2 billion;

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1 Confidential - Slovin
 2 correct?
 3 A. I don't know --
 4 MR. MARKOWSKI: That's not --
 5 A. -- what the discount value --
 6 MR. MARKOWSKI: That's not
 7 correct.
 8 Q. What was the number?
 9 MR. MARKOWSKI: It's actually in
 10 the speaking points, if you want to
 11 take a look.
 12 MR. BEMIS: No --
 13 A. What's the relevancy of that?
 14 MR. MARKOWSKI: The fourth page.
 15 Q. Just for the purposes of not
 16 forgetting it, the next time I get asked.
 17 MR. MARKOWSKI: Do you see
 18 the --
 19 THE WITNESS: Help him out, give
 20 him the page.
 21 MR. MARKOWSKI: 398, CPH 255398.
 22 A. Can we switch the camera to you
 23 now?
 24 Q. No, can't do that.
 25 MR. MARKOWSKI: Just trying to

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1 Confidential - Slovin
 2 help.
 3 MR. BEMIS: (Pause.)
 4 Yep. (Pause.)
 5 Q. Now, with that help, which is
 6 probably not necessary at this point, but
 7 let me go on to another topic with you and
 8 show you one additional document and ask
 9 you whether you have seen that before.
 10 And that is MS -- we will mark
 11 as MS 194.
 12 (Deposition Exhibit Morgan
 13 Stanley 194, document entitled
 14 Sunbeam road-show presentation
 15 speaking points March 15th, 1998,
 16 marked for identification.)
 17 Q. I have handed you what has been
 18 marked as MS 194, which is also entitled
 19 Sunbeam road-show presentation speaking
 20 points March 15th, 1998.
 21 Do you see that?
 22 A. Yes.
 23 Q. Now, this -- have you seen this
 24 document or any version of it before --
 25 A. I don't believe so.

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1 Confidential - Slovin
2 Q. Okay. You can set that aside.
3 (Pause.)
4 (Discussion off the record.)
5 THE WITNESS: You don't have to
6 go to the Equinox Club after doing
7 all this jumping up and down, you can
8 go home early tonight.
9 MR. BEMIS: I wish. Would you,
10 Ms. Reporter, please mark as MS 208
11 the Form 10-K for Sunbeam Corporation
12 for -- the as-of date, I think I
13 missed this, I want to say February
14 27th, 1998.
15 (Deposition Exhibit Morgan
16 Stanley 208, Form 10-K for the period
17 ending December 28, 1997 for the
18 Sunbeam Corporation, marked for
19 identification.)
20 MR. MARKOWSKI: Are you
21 referring to the date when it was
22 filed?
23 MR. BEMIS: No, I was referring
24 to the bottom date, I think that was
25 incorrect, I will correct it as soon

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1 Confidential - Slovin
2 as I give it to him.
3 Q. I have handed you what has been
4 marked as MS 208, which is the Form 10-K
5 for the period ending December 28, 1997
6 for Sunbeam Corporation.
7 Do you have that in front of you
8 sir?
9 A. Yes.
10 Q. Have you ever seen that document
11 before?
12 A. I don't remember.
13 Q. Did you look at Sunbeam's Form
14 10-K before you voted to approve the
15 merger on February 27th, 1998 at The
16 Coleman Company board meeting?
17 A. I don't remember.
18 Q. The Form 10-K is a document
19 that, when filed with the Securities and
20 Exchange Commission, is generally
21 considered public information; isn't it?
22 A. Yes.
23 Q. You can go -- you can actually
24 go on line now and a program called Edgar
25 and you can print it out without any

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1 Confidential - Slovin
2 difficulty at all; correct?
3 A. Yes.
4 Q. Have you done that before?
5 A. No.
6 Q. "No"? You have had other people
7 do it for you?
8 A. Yes.
9 Q. Okay, set that aside.
10 Did you look at any analyst
11 reports on Sunbeam Corporation after the
12 press release of March 19th, 1998, which I
13 think we previously identified as MS 210.
14 A. You know, I just don't remember.
15 I do do reading, you know, it
16 sounds like I don't read anything. I just
17 don't remember, in answer to your
18 questions, did I read an analyst's report
19 subsequent to the meetings. I may,
20 indeed, have. I just don't remember.
21 Q. Well, let me show -- let me just
22 show you one of these reports. We will
23 look at Mr. Shore's report on March 19th,
24 1998, which I will ask the court reporter
25 to mark as MS 212.

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2 (Deposition Exhibit Morgan
3 Stanley 212, Mr. Shore's report on
4 March 19th, 1998, marked for
5 identification.)
6 Q. Now, I have handed you --
7 MR. MARKOWSKI: Do you have a
8 copy of that?
9 MR. BEMIS: Yes, I'm sorry.
10 Q. The court reporter has handed
11 you what's been marked as MS 212.
12 Do you have that in front of
13 you?
14 A. Yes.
15 Q. Do you know who Andrew Shore is
16 at PaineWebber?
17 A. Other than he's the author of
18 this document, so I take it he's some form
19 of analyst.
20 Q. Have you ever read any of his
21 reports on Sunbeam?
22 A. I may have, I don't know for
23 sure.
24 Q. Well, Mr. --
25 MR. MARKOWSKI: Before we go on,

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1 Confidential - Slovin
2 the page -- the copy I have got isn't
3 complete.
4 MR. BEMIS: Okay, let me look, 2
5 of 3.
6 A. Nor is mine.
7 Q. You are missing the middle?
8 MR. BEMIS: I have got three
9 pages in mine, let me see.
10 Q. How many pages do you have?
11 A. Two.
12 Q. Okay. Well, we have got a
13 problem, here is 2 --
14 MR. BEMIS: Let's go off the
15 record for a second.
16 THE LEGAL VIDEO SPECIALIST: The
17 time is 3:10, we are going off the
18 record.
19 (Recess taken.)
20 THE LEGAL VIDEO SPECIALIST: The
21 time is 3:16, we are back on the
22 record.
23 Q. All right. Thank you for your
24 patience, we have now corrected the
25 missing page on Exhibit 212.

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2 Do you have in front of you
3 Morgan Stanley 212?
4 A. Yes.
5 Q. And, for the record, this is a
6 report entitled Sunbeam Corp. grilled
7 three exclamation marks by PaineWebber
8 Andrew Shore March 1998.
9 A. Right.
10 Q. Would you take a minute and read
11 this, sir, if you haven't seen it before.
12 A. (Pause.)
13 Yes.
14 Q. Now, my question is, having read
15 it, at any point after the signing of the
16 merger agreement up until I showed you
17 this document, have you ever seen it
18 before?
19 A. I don't remember.
20 Q. Well, reading its contents, had
21 you seen it, would you have taken any
22 action, as a director of The Coleman
23 Company, to consult with your other
24 directors as to the consummation of the
25 merger transaction on March 30th?

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1 Confidential - Slovin
2 A. Would I or did I?
3 Q. Would you have, since you said
4 you didn't see it or don't remember having
5 seen it.
6 MR. MARKOWSKI: I object to the
7 form of the question.
8 A. Well, I mean, this relates to
9 the Sunbeam release which you showed me
10 earlier, saying that the sales were weaker
11 than they expected, and they gave a reason
12 for that, the Sunbeam folks did, that the
13 customers were either restocking or doing
14 something to alter the purchasing of
15 product. Then they go on in the release,
16 I remember, that they would overcome that
17 weakness in the first quarter and they
18 were sticking with their yearly
19 projections. This fellow's going into it
20 in a little more detail than the other --
21 than Sunbeam, but he concludes that, all
22 things considered, he thinks they will get
23 back on track, and he's still recommending
24 the company.
25 Would I, and did I, and would I

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1 Confidential - Slovin
2 have spoken to -- you know, if I read this
3 before, I might have spoken to one of the
4 people involved, saying: Do you think
5 this is serious? Or: Is it as the
6 release suggests that it's going to be
7 overcome, as Shore suggests, it will be
8 overcome? I might have said something.
9 But that is also hypothetical because I
10 don't remember saying it -- I don't
11 remember if I engaged in any conversations
12 concerning the subject matter of the
13 release or this report by Shore.
14 Q. Okay, you can set it aside.
15 Now, let me show you now what we
16 will mark as MS 213.
17 (Deposition Exhibit Morgan
18 Stanley 213, Sands Brothers & Company
19 Limited Investment Bankers document,
20 dated March 19th, 1998, marked for
21 identification.)
22 Q. Do you have MS 213 in front --
23 A. Yes.
24 Q. -- of you.
25 For the record, this is a Sands

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2 Brothers & Company Limited Investment
3 Bankers document, dated March 19th, 1998,
4 following the press release of March 19th
5 that we discussed earlier.
6 Have you ever seen this document
7 before?
8 A. I don't believe so.
9 Q. Okay. Do you know Sands
10 Brothers Limited?
11 A. I know of them, yes, a smaller
12 brokerage house -- a brokerage house,
13 investment banking house, I guess.
14 MR. BEMIS: Would you please
15 mark, Ms. Reporter, as MS 214, a CIBC
16 Oppenheimer report, dated March 19th
17 1998, on Sunbeam Corporation.
18 (Deposition Exhibit Morgan
19 Stanley 214, CIBC Oppenheimer report,
20 dated March 19th 1998, on Sunbeam
21 Corporation, marked for
22 identification.)
23 Q. Do you have MS 214 in front of
24 you, sir?
25 A. Yes.

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1 Confidential - Slovin
2 Q. Have you ever seen this
3 analyst's report?
4 A. Not that I recall.
5 Q. You may set it aside.
6 Let me show you now a document
7 marked as MS 36 by the court reporter.
8 (Deposition Exhibit Morgan
9 Stanley 36, copy of The New York
10 Times article appearing on March
11 20th, 1998, entitled Sunbeam stock
12 falls 9.4 percent on lower
13 projections for revenue, marked for
14 identification.)
15 (Discussion off the record.)
16 Q. Do you have MS 36 in front of
17 you, which is a reprint -- or a copy of
18 The New York Times article appearing on
19 March 20th, 1998, entitled Sunbeam stock
20 falls 9.4 percent on lower projections for
21 revenue.
22 A. Right.
23 Q. Have you seen -- did you see
24 this story in The New York Times?
25 A. I may have.

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2 Q. Well, as a director of The
3 Coleman Company, Inc., who had voted to
4 approve the merger on February 27th, 1998,
5 was the fall in Sunbeam stock of 9.4
6 percent as a result of the March 19th
7 press release a matter of concern to you?
8 A. Yes.
9 Q. After seeing that -- I mean,
10 even if you didn't see the article, you
11 were following the price of the stock;
12 were you not?
13 A. No, I knew that Sunbeam came in
14 with a lower first quarter than they
15 anticipated. Whether I read (indicating)
16 any one of these Shore or this fellow from
17 Sands or this fellow from Oppenheimer,
18 whether I read their report, I don't
19 remember, but I do recall being told
20 and -- that this was nothing to worry
21 about, and that the company had adequately
22 explained the fall in sales, that they
23 thought that it was going to recover. The
24 analysts picked that up and agreed. The
25 stock fell, I think, you know, as often

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2 occurs, there are overreactions, temporary
3 overreactions to news, you see it every
4 day in the paper today, and that doesn't
5 belie value or what something is going
6 to -- the stock is going to be the next
7 day.
8 I did not see that, though, the
9 slight weakness in sales.
10 Don't forget, they didn't talk
11 about earnings weakness, which we would
12 presume would be slightly affected, more
13 affected by the shortfall in sales, but it
14 was still up against the prior year, the
15 momentum still looked like it was carrying
16 forward with the company, and I didn't
17 see, in my judgment, that it was so
18 material. I wasn't happy with it, but not
19 being pleased with an event doesn't
20 require you to act unless it rises to the
21 level of what you conclude or your
22 associates conclude is a "material event".
23 Q. Did you consider the fall in
24 Sunbeam's stock price of 9.4 percent after
25 the March 19th press release, as reported

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1 Confidential - Slovin
2 by the New York Times on March 20th, 1998,
3 as to be a "material event"?
4 A. I didn't view that as a
5 "material event". I viewed it as an
6 overreaction to an earnings report in a
7 stock that was fairly fully valued.
8 Q. Did you rush in and buy any
9 Sunbeam stock as a result of the price
10 dropping 9.4 percent on March 19th?
11 A. I don't believe I did. I would
12 have to review my stock trends.
13 Q. You can set that aside.
14 By the way, when you said that
15 you were told that by someone, as I recall
16 your testimony, that this was only a
17 temporary event or temporary setback, who
18 was it who told you that?
19 A. One of the participants in the
20 deal on our side.
21 Q. So it would have either been --
22 it would have had to have been one of your
23 inner circle people, if you will, or your
24 investment bankers or your lawyers or your
25 accountants; right?

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2 A. Yeah, the people with whom I
3 relied upon to take facts and analyze it
4 for us, because they knew the company much
5 better than I and upon whose judgment I
6 relied a good deal upon.
7 Q. Okay. I show you what's been
8 marked as MS 215, which is a reprint of a
9 Wall Street Journal article, on March
10 20th, 1998.
11 (Deposition Exhibit Morgan
12 Stanley 215, reprint of a Wall Street
13 Journal article, on March 20th, 1998,
14 marked for identification.)
15 Do you have that in front of
16 you?
17 A. Yes.
18 Q. You told me earlier that one of
19 the financial sources that you read is The
20 Wall Street Journal along with the other
21 one was The Financial Times; is that
22 right?
23 A. And The New York Times.
24 Q. And The New York Times.
25 Did you read MS 215, which is a

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1 Confidential - Slovin
2 reprint from an article of The Wall Street
3 Journal, on Friday, March 20th, 1998?
4 A. I'm sorry, I don't remember if I
5 read this article on March 20th, 1998.
6 Q. Well, if you look at the
7 paragraph, which begins: "While
8 Sunbeam's" -- which is one, two -- five
9 paragraphs down: "While Sunbeam's
10 announcements".
11 Do you see that?
12 A. Yes.
13 Q. It says: "While Sunbeam's
14 announcement didn't discuss the company's
15 earnings outlook, analysts said the sales
16 disappointment is bound to affect profits.
17 Sunbeam officials didn't return calls
18 for" -- "calls seeking comment."
19 Do you see that?
20 A. Yes.
21 Q. Now, that's actually consistent
22 with what you said, right, that if sales
23 fall it was bound to affect their profits;
24 correct?
25 A. Yes.

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2 Q. So if you had read The Wall
3 Street Journal on March 20th, 1998, you
4 knew at least by that date, ten days
5 before the closing, that not only had
6 there been a downturn announced in their
7 sales but that was bound to affect the
8 company's profits, as well; didn't you?
9 A. Yes.
10 Q. And the next paragraph, one of
11 the analysts is quoted as saying: "The
12 company has made promises they haven't
13 delivered on and that is certainly being
14 factored into the stock today."
15 Do you see that?
16 A. Yes.
17 Q. And if you had seen that, you
18 would have known at least one of the
19 analysts said the company wasn't
20 delivering on promises they had made;
21 right?
22 A. No, they said, if you read it
23 carefully, hadn't in the past, has made
24 promises that they haven't delivered on,
25 and that is certainly being factored into

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2 the stock today. In other words, they
3 took the stock down, you know, what I
4 viewed as excessive, having, you know,
5 read or been told about the shortfall in
6 sales, which seemed to me fairly slight,
7 it was up against the prior period last
8 year, I still felt that there was momentum
9 in the company, and that they gave a
10 reasonable explanation for the shortfall
11 in sales which, you know, having been in
12 business many years, you do have, every
13 once in a while, your customers
14 rearranging inventory, it has nothing to
15 do with the product acceptance, and often
16 the next quarter or the quarter following
17 picks up on the shortfall.
18 It didn't appear to me -- I
19 wasn't happy with it, but it didn't appear
20 to me to be anything very serious, not the
21 way it was set forth in the release and in
22 the analyst's reviews, which were fairly
23 consistent, saying that they felt that
24 they were going to catch up and that this
25 wasn't a break in the momentum that they

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2 had built up in the last couple of years.
3 Q. When you said "they felt they
4 were going to catch up", that they felt
5 they were going to do better in the
6 future, is that what you mean by that?
7 A. No, I think that in the Sunbeam
8 release it said that: We had a shortfall
9 in sales -- I mean, if I can find it, but
10 that: For the year, we are still on
11 target to meet the projections for the
12 year.
13 Q. That's --
14 A. So you don't --
15 Q. I'm sorry.
16 A. -- you don't do deals based upon
17 quarterly gyrations in sales, you can't do
18 that.
19 Q. Any projections as to what
20 Sunbeam -- well, withdrawn. What's a
21 "forward-looking statement"?
22 A. A statement about the future.
23 Q. And do you rely on forward-
24 looking statements in doing mergers and
25 acquisition agreements?

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2 A. Absolutely. How can you walk
3 out of the office here without knowing
4 what or thinking what's going to happen an
5 hour from now? You know, the world
6 doesn't stop at the minute the clock
7 ticks.
8 Q. So, notwithstanding the March
9 19th press release, the analyst's report,
10 to you the world didn't stop and the clock
11 kept ticking and you just proceeded on to
12 the closing?
13 A. Well, did you read the analysts'
14 reports? They seemed fairly uniform, that
15 this would be a problem overcome and that
16 they were still recommending the company.
17 Q. So as long as the analysts were
18 still recommending the company, it was
19 your considered judgment, as a person who
20 does this as a living, that you would
21 proceed with the merger closing?
22 A. Certainly, analysts' views are
23 not to be dismissed lightly. They are
24 intelligent people from the Wall Street
25 community, good houses, who spent a lot of

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2 time with this particular company. It's
3 their bread and butter.
4 In addition, I relied upon the
5 release of the company -- "relied" is a
6 little bit wrong, but I took into account
7 the words of the release, which was
8 comforting, I spoke to my people who knew
9 much more than I did at the time, and they
10 were not exorcized by it. When I put it
11 all together, I myself was not unduly
12 concerned with the 10 percent fall in
13 sales due to inventory corrections, as I
14 read it.
15 I have seen that happen many
16 times in monitoring businesses, and it
17 didn't seem to be an occasion for too much
18 hand-wringing. No one liked it, but it
19 was one of those events that occur in
20 every business as it moves along from
21 month to month, especially a retail
22 business, where you are depending upon the
23 customer coming every day and you don't
24 know who is going to come in and buy your
25 product. Whether it could be Farrell

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2 (phonetic) or some other event takes
3 place.
4 Q. And was this the view that you
5 articulated the view of your investment
6 advisor, Credit Suisse First Boston?
7 A. You know, again, I don't
8 remember if I had a specific conversation
9 with Gordon Rich or it was with Maher or
10 Perelman or Gittis or Nesbitt, but the
11 conclusion that I recall reaching, based
12 upon what I had read and what
13 conversations I had, that this was not a
14 terribly negative event.
15 (Deposition Exhibit Morgan
16 Stanley 216, report by Goldman Sachs,
17 under the name of Elizabeth
18 Fontanelli (phonetic), dated March
19 20th, 1998, marked for
20 identification.)
21 Q. Let me show you now what's been
22 marked as 216.
23 I have handed you what's been
24 marked as MS 216, which is a report by
25 Goldman Sachs, under the name of Elizabeth

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2 Fontanelli (phonetic), dated March 20th,
3 1998. Have you seen this before?
4 A. I don't recall.
5 Q. You will notice the --
6 withdrawn. Please turn to the last page.
7 A. Yeah.
8 Q. The last sentence reads: "We
9 expect near-term volatility around these
10 fundamental issues until Sunbeam reports
11 earnings in late April".
12 Do you see that?
13 A. Yes.
14 Q. Do you agree with that
15 statement, that there would be near-term
16 volatility in its stock?
17 A. I don't know.
18 Don't forget, the Sunbeam stock
19 was fairly fully priced at the time, it
20 wasn't a stock that was priced on a skimpy
21 basis, it was a full price, and when you
22 have that, you know, you are bound to get
23 down-drafts from time to time based upon a
24 piece of news that isn't positive. And I
25 also read that they continued to recommend

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2 the purchase, this is Goldman Sachs, of
3 the various houses that were reporting on
4 the company, it was the most prestigious,
5 and they stayed with their estimate of
6 1999 earnings.
7 So they are saying to you here:
8 Near-term, you can get bounces in the
9 stock. We certainly just had one, if --
10 9.4 percent, as you point out, and that to
11 expect some volatility, but we are
12 sticking with the company, we think
13 momentum is in place, and we are
14 recommending that you purchase it at these
15 levels, and what was the level, \$45.38, a
16 pretty good price that Goldman Sachs is
17 recommending to buy it at this price at
18 this time, notwithstanding the weakness in
19 the sales of the first quarter, written by
20 a woman who obviously knew the company and
21 had been following it and analyzing it for
22 a period of time.
23 Q. You can set that aside.
24 MR. MARKOWSKI: I think, before
25 we do that, we may have found the

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2 page 3 that we were missing on the
3 other exhibit.
4 MR. BEMIS: It's not on mine.
5 MR. MARKOWSKI: Does yours
6 have --
7 MR. BEMIS: We fixed it.
8 THE WITNESS: Yeah, we fixed it.
9 MR. MARKOWSKI: No, you don't
10 want the wrong -- if this is the
11 official exhibit.
12 MR. BEMIS: My copy was okay,
13 maybe that is what happened.
14 That is what happened.
15 A. So for want of page 3, a case
16 was lost. (Laughing.)
17 (Discussion off the record.)
18 MR. BEMIS: Ms. Reporter, will
19 you mark, as Exhibit 218, a Standard
20 & Poor's stock report on Sunbeam
21 Corporation, dated March 20th, 1998.
22 (Deposition Exhibit Morgan
23 Stanley 218, Standard & Poor's stock
24 report on Sunbeam Corporation, dated
25 March 20th, 1998, marked for

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2 identification.)
3 Q. Do you have Morgan Stanley --
4 excuse me, do you have MS 218 in front of
5 you, sir?
6 A. Yes.
7 Q. And did you or one of
8 Mr. Perelman's affiliates subscribe to the
9 Standard & Poor's stock reports?
10 A. Oh, I did not.
11 I don't know, maybe one of the
12 folks in the office did.
13 Q. Did you see this Standard &
14 Poor's stock report on Sunbeam Corporation
15 on or about March 20th, 1998?
16 A. I do not remember.
17 Q. Do you see that Standard -- what
18 Standard & Poor's had rated Sunbeam stock
19 at this time?
20 A. You mean the three stars?
21 Q. Mm-hmm -- yes, sir.
22 A. Yeah, short-term, six to twelve
23 months, hold.
24 Q. Not buy but hold; right?
25 A. Not sell but hold.

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2 Q. Okay. You can set this aside.
3 I show you now what's been
4 marked as Standard & Poor's -- Standard --
5 withdrawn. Let me show you what the court
6 reporter will mark as MS 219, which is a
7 Standard & Poor's stock report on Sunbeam
8 Corporation, dated March 21st, 1998.
9 (Deposition Exhibit Morgan
10 Stanley 219, Standard & Poor's stock
11 report on Sunbeam Corporation, dated
12 March 21st, 1998, marked for
13 identification.)
14 Q. Do you have Exhibit 219 in front
15 of you, sir?
16 A. Yes.
17 Q. Now, this report is dated one
18 day after the Exhibit 218 that we just
19 looked at from Standard & Poor's. And I
20 would ask you to focus your attention now
21 under Valuation 20 - March 1998.
22 Do you see that?
23 A. Recently downgraded the shares
24 to hold from accumulate; right?
25 Q. Right, that's the paragraph I am

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2 asking you to look at. Are you there?
3 A. I am there.
4 Q. Can you read that sentence --
5 first of all, did you see this report by
6 Standard & Poor's on Sunbeam Corporation
7 which was issued nine days before the
8 closing of the merger?
9 A. I can't tell you that I did, I
10 don't remember.
11 Q. Well, the report notes that,
12 quote: "This would represent the second
13 consecutive quarter that results did not
14 meet projections and suggests more doubt
15 about the company's ability to meet its
16 aggressive financial objectives."
17 Do you see that?
18 A. Yes.
19 Q. Did you know on February 27th,
20 1998, when you voted to approve the
21 merger, that Sunbeam had missed its 1997
22 fourth quarter earnings estimates?
23 A. I think I did.
24 Q. So you knew that at the time you
25 voted on the merger and then --

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2 A. Yeah, because I thought that --
3 I still expected rapid growth, 2-99, and
4 that there was a general positive trend
5 should support the price of the stock,
6 even though the near-term trading would be
7 choppy.
8 I mean, this paragraph you are
9 choosing to select portions of it that are
10 negative, but the paragraph ends on a
11 positive note.
12 Q. So, people -- so analysts
13 following this stock, notwithstanding the
14 information that was in the press release,
15 still were acting on a positive note; is
16 that your conclusion?
17 A. Yeah, I mean, I have read all of
18 these reports.
19 As I said to you, the best house
20 that I see analyzing it was Goldman Sachs,
21 and they recommended purchase at
22 forty-five dollars and change. You know,
23 you can't disregard that.
24 I mean, these houses build up
25 reputations, and Goldman Sachs has the

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2 best reputation of all the companies that
3 we read, although the great majority of
4 them were optimistic.
5 Q. As a result of these press
6 releases that all came out following the
7 March 19th -- excuse me, withdrawn. As a
8 result of these analyst reports that we
9 have been going through following the
10 March 19th press release, did you make any
11 inquiry of anyone at Morgan Stanley at all
12 about Sunbeam's financial performance?
13 A. No.
14 Q. Did you ask -- did anyone from
15 The Coleman Company ask Sunbeam
16 Corporation for any financial update, if
17 you will --
18 A. I don't --
19 Q. -- about its condition, excuse
20 me, following the March 19th press
21 release.
22 A. I do not know.
23 Q. Well, given that under the terms
24 of the -- given that under the terms of
25 the merger agreement, Sunbeam was

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2 obligated to request and provide to The
3 Coleman Company a comfort letter from
4 Arthur Andersen, wouldn't it have been
5 prudent for the directors of the
6 company -- The Coleman Company, to request
7 a comfort letter from Arthur Andersen as
8 they were -- as agreed to in the merger
9 agreement?
10 MR. MARKOWSKI: Hold on, let me
11 object. I am going to object to the
12 form of the question. I think it's
13 misleading and improper.
14 Q. You can answer.
15 A. I relied on seasoned,
16 experienced people to draw conclusions on
17 what action should be taken given the
18 events that we are referring to now. It
19 was their judgment. I don't know things
20 that they did do, what investigations that
21 they did make to comfort them or
22 discomfort them. I just don't know. And
23 I can't answer your question because I
24 don't know what they had done, you know,
25 to comfort themselves based upon the

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2 shortfall of sales.
3 Q. My question is, I think, a
4 little bit different than perhaps you
5 understood it, and let me try it one more
6 time.
7 You were a director of The
8 Coleman Company on March 27th with
9 fiduciary duties to not only the public
10 shareholders but the private shareholders
11 of Mr. Perelman's companies; right?
12 A. Yes.
13 Q. And on March 19th, you get a
14 press release, the second earnings or
15 sales shortfall where Sunbeam had failed
16 to meet street estimates; correct?
17 A. Yes.
18 Q. The stock --
19 (Discussion off the record.)
20 Q. By Sunbeam Corporation.
21 And your answer was "yes";
22 right?
23 A. Yes.
24 Q. Okay. And the stock price
25 falls -- the stock price falls 9.7

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2 percent --
3 A. 4 percent.
4 Q. 9.4 percent, thank you for
5 correcting me -- the stock price of
6 Sunbeam falls 9.4 percent upon the
7 issuance of the press release; correct?
8 A. Yes.
9 Q. And then you -- and you, "you",
10 that is Coleman -- had a right to receive
11 from Sunbeam a comfort letter from
12 Sunbeam's auditors, Arthur Andersen,
13 pursuant to Section 7.2 B of the merger
14 agreement; right?
15 MR. MARKOWSKI: I object, the
16 form of the question, it's
17 misleading.
18 Q. You can answer.
19 A. What's the question?
20 Q. Do you want me to try it again?
21 I will ask it again.
22 Under the terms of the merger
23 agreement, Sunbeam, through the subsidiary
24 Laser, as was described in the merger
25 agreement, was required to use its

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2 reasonable best efforts to cause to be
3 delivered to the company -- company, that
4 is, The Coleman Company, a quote comfort
5 closed quote letters, letters of Arthur
6 Andersen, LLP Lasers, i.e. Sunbeam's
7 independent public accountants; correct?
8 Right?
9 A. Yeah, you are reading from the
10 document.
11 Q. That's right. And that was one
12 of --
13 MR. MARKOWSKI: Could you read
14 the entire sentence, Larry, or did
15 you cut it off?
16 Q. I can continue reading. "Dated
17 the date of the registration shall become
18 effective and as of the date which the
19 information statement is mailed to the
20 company stockholders and addressed to the
21 company and Laser in a form and substance
22 reasonably satisfactory to the company and
23 is reasonably customary in scope and
24 substance for letters delivered by
25 independent public accountants in

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2 connection with transactions such as those
3 contemplated by this agreement." That's
4 the whole sentence.
5 Do you know the date the
6 information statement was mailed to the
7 stockholders of Coleman pursuant to
8 Section 14 F?
9 A. It was sometime later.
10 Q. No, it wasn't sometime later, it
11 was on March 18th.
12 I can show it to you, if you
13 want.
14 A. So that's the day before.
15 Q. Right, the press release.
16 A. The press release, okay.
17 Q. Now, my question to you,
18 wouldn't it have been prudent, given the
19 information that you had as a director
20 with fiduciary duties to the public
21 stockholders, at a minimum, to have
22 requested from Sunbeam that they deliver
23 the comfort letter that they were
24 obligated to seek using reasonable efforts
25 from Arthur Andersen pursuant to Section

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2 7.2 B?
3 A. And you are suggesting that we
4 didn't do that?
5 Q. I asked you whether you did it
6 and you said you didn't know.
7 A. I don't know.
8 Q. Now my question is, even if you
9 don't know, wouldn't it have been prudent
10 for you as a fiduciary to ask for the
11 comfort letter.
12 A. And I said I can't answer that
13 because I don't know the other things that
14 the people did do.
15 In some instances, it would be
16 more prudent and less prudent in other
17 instances. What had they done to satisfy
18 themselves that their actions or inactions
19 were appropriate. And I don't know. So,
20 I can't answer that in a vacuum, because
21 it depends on what other things I have
22 done.
23 It's a thing that -- right that
24 you have, do you determine that it's
25 necessary.

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2 Q. Did you make a conscious
3 decision that it wasn't necessary --
4 A. No --
5 Q. -- to get a comfort letter?
6 A. No, because I wasn't involved in
7 those decisions.
8 As a director, I did not follow
9 each portion of the contract to make sure
10 that it was observed by either side. I
11 just assumed that the people that were
12 handling it abided on both sides by the
13 terms of the contract, so all the
14 warranties and representations by both
15 sides were properly adhered to.
16 Q. Well, let me ask the question,
17 then, a different way.
18 In your judgment, as a director
19 and as a fiduciary to the shareholders,
20 would it have been prudent for those
21 responsible for following, if you will,
22 compliance with the merger agreement, to
23 have requested of Sunbeam that they
24 provide The Coleman Company with the
25 comfort letter from Arthur Andersen set

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2 forth in paragraph 7.2 B of the merger
3 agreement?
4 A. Well, obviously, our people made
5 a decision on a course of action. I don't
6 know what course of action they took and
7 they made a decision based upon an
8 assemblage of facts and circumstances that
9 were satisfactory to themselves. There
10 are a whole range of considerations that
11 go into a final decision in this regard.
12 They made a decision, whatever
13 it was.
14 Q. What --
15 A. And I presume that they were
16 responsible people, because their records
17 indicated that they were. And, you know,
18 if they didn't do it, they probably had
19 good reason because they did other things.
20 I really don't know.
21 Q. Well --
22 A. You are saying why not take
23 advantage of it and, you know, I don't
24 know how to answer you. It's necessary or
25 unnecessary.

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2 I don't know if it would have
3 been a delaying factor of significance,
4 would it have set people's teeth ajar in
5 some ways? I don't know what
6 considerations went into a determination
7 of their decision, which I don't know what
8 it was, again.
9 So there are lots of -- you
10 can't ask these questions in the abstract
11 and say: Oh, they didn't do something
12 they had a right to do, therefore they are
13 not doing their job, it's impossible to
14 answer it that way.
15 Q. Do you know what a "comfort
16 letter" is?
17 A. I think it's a letter that --
18 MR. MARKOWSKI: Do you know what
19 the comfort letter referred to in
20 that paragraph is? Is that your
21 question?
22 Q. Can you answer, sir, my
23 question?
24 MR. MARKOWSKI: Hold on, let
25 me --

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2 A. Okay.
3 MR. MARKOWSKI: -- object to the
4 form of the question, it's vague and
5 misleading.
6 A. I think that a "comfort letter"
7 tells you that they know of nothing
8 material that has been other than from the
9 representations and the warranties in the
10 contract, and you ask is everything more
11 or less okay, you know. And I think
12 that's what a "comfort letter" is. And,
13 normally, if something isn't okay with
14 responsible people are going to tell it to
15 you, so they are obliged to do that
16 pursuant to the contract, whether you ask
17 for it or not. If something material and
18 negative has happened, I think they say:
19 Hey, guys, something has happened. They
20 didn't do that, to my knowledge, because
21 they said it wasn't material because it
22 was a blurred little answer, and everybody
23 seemed to agree to that. All the analysts
24 agreed to it that, that it wasn't anything
25 serious. They all were saying that: It's

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2 going to be choppy, but we are
3 recommending the purchase or hold the
4 stock. And you get an Arthur Andersen,
5 you get a Morgan Stanley, very very
6 responsible people. If something material
7 and negative happened, you know, you
8 expect them to raise their hand and say:
9 Hey, wait a second. They didn't do it.
10 But, once again, I don't know what our
11 guys concluded.
12 You are asking me something in a
13 way that is in the abstract for me,
14 because I don't know the circumstances at
15 the time that led to whatever decision
16 they made.
17 Q. Okay. Are you all done? I
18 don't want to interrupt you.
19 A. (Laughing.)
20 Q. Okay. Let me go back.
21 Do you know what a "comfort
22 letter" is from an auditing firm in the
23 context of this paragraph 7.2 B?
24 A. You know, I am really not that
25 sure.

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2 I thought I told you what I
3 thought it was, and you are asking me the
4 same question again, and you want me to
5 repeat the -- what I said before?
6 Q. No, I don't need you to repeat
7 what you said before. If that is your
8 answer, that's your answer.
9 A. Yeah.
10 MR. BEMIS: Would you please
11 mark, Ms. Reporter, as MS 220, an
12 Andrew Shore analyst report,
13 dated -- let's see -- April 3rd,
14 1998.
15 (Deposition Exhibit Morgan
16 Stanley 220, Andrew Shore analyst
17 report, dated April 3rd, 1998, marked
18 for identification.)
19 Q. Please look at MS 220, and tell
20 me when you are done.
21 A. (Pause.)
22 Yes.
23 Q. Have you seen MS 220 before?
24 A. I don't know if I have seen it,
25 but I knew of the contents.

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2 Q. "The contents" being the
3 downgrade by Mr. Shore at PaineWebber?
4 A. Yes.
5 Q. How did you learn of the
6 contents?
7 A. I might have read it, someone
8 might have told it to me, but I did know
9 that Coleman reported those bad numbers in
10 April, early April.
11 MR. MARKOWSKI: You said
12 "Coleman".
13 THE WITNESS: Uh --
14 A. Sunbeam.
15 Q. And do you see the initials on
16 the right-hand side, it says "ROP" and
17 then, below there, "DD FYI HG", I think?
18 A. Yes.
19 Q. Is that Mr. -- is that
20 Mr. Gittis's writing?
21 A. Yes.
22 Q. Is "ROP" Mr. Perelman?
23 A. I believe, yes, it is, and "DD"
24 is Donald Drapkin.
25 Q. Now, as a result of -- strike

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2 this. This was -- withdrawn. This
3 report by Mr. Shore of April 3rd, 1998 was
4 just -- what, four days after the closing;
5 correct?
6 A. Yes.
7 Q. And did the board of
8 directors -- did the board of directors
9 of -- did the board of directors of
10 any -- withdrawn. Did Mr. -- well,
11 withdrawn.
12 What was your reaction to this
13 downgrade by Mr. Shore on April 3rd and
14 the mentioned press release on the
15 earnings by Sunbeam?
16 A. I was shocked.
17 Q. You were shocked notwithstanding
18 all the other information that you had
19 received in March.
20 A. As I said to you, (indicating),
21 I am going to have to repeat myself again,
22 the great percentage of the analysts and
23 the statement of the company were still
24 upbeat, notwithstanding a small downward
25 turn in the sales with a proper

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2 explanation. It was not negative.
3 This (indicating) report, and
4 the Sunbeam report, is a hundred and
5 eighty degrees opposite what was stated
6 just a few weeks before. One doesn't
7 follow the next. This came as a rude
8 shock to our side, certainly, and you did
9 not have a hint of the degree of trouble
10 that's articulated here from the report
11 and confirmation of the: Don't worry, we
12 still recommend of the entire Wall Street
13 community.
14 This is (indicating) just
15 opposite. This is terrible. Before:
16 This is nothing so bad, we still love the
17 stock, buy it. Goldman Sachs \$53 -- \$45,
18 sorry.
19 Q. So, as long as the analysts
20 were --
21 A. No, no --
22 Q. Let me finish.
23 Your view, in March, as long as
24 the analysts were saying you could still
25 buy the stock, you were going to proceed

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2 with the transaction, notwithstanding any
3 other information you had or had an
4 ability to acquire?
5 A. No, I didn't say that.
6 Q. No, the board of directors of
7 The Coleman Company.
8 A. No, but you said notwithstanding
9 other information out. What other
10 information are you referring to? I don't
11 know.
12 No one told me that this
13 (indicating) was going to happen. I don't
14 think anybody on our side had an inkling
15 that this was going to happen. Why should
16 they? Why would they? They had financial
17 statements audited. They had one of the
18 leading brokerage houses going around --
19 selling the bonds and standing behind the
20 bonds. Why should the company have
21 anticipated this? I don't see it at all.
22 I didn't. There is nothing that have I
23 read or had been told about that would
24 have anticipated this dreadful set of
25 results.

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2 Q. Well, what is it you are telling
3 me?
4 Are you telling me that Morgan
5 Stanley knew something that they should
6 have anticipated these dreadful results?
7 A. I didn't say that.
8 I said that what we had relied
9 upon was audited statements, was a
10 contract put together by serious
11 representatives, by financial advisors of
12 repute, by our own people and their
13 analysis, and that led us to conclude that
14 the transaction -- notwithstanding that
15 the earnings might not hit the top level
16 of the prognostication, we are still a
17 valid and a good acquisition for the
18 shareholders of Coleman, the small ones
19 and the large one. That was our
20 conclusion. And I think we had every
21 right, based upon what I have read, to
22 come to that conclusion, that this was a
23 good arrangement for us, you know,
24 notwithstanding the fact that Sunbeam was
25 not the General Motors of its time, but it

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1 Confidential - Slovin
2 was a company that was moving in the right
3 direction and had momentum behind it,
4 everybody that represented them seemed to
5 think that they were very good,
6 that -- the momentum was good and the
7 pricing was good and that, all things
8 together, it was a very reasonable and
9 fair deal for the Coleman people.
10 This statement (indicating)
11 comes out of the blue, you know, it's
12 nothing that you could have -- that we
13 could have -- I don't believe, divined
14 from the work that -- the documents that
15 were presented to us, that were
16 represented, and that the work that we had
17 done.
18 You know, this (indicating) came
19 from someplace that was a rude shock.
20 Q. Do you think it was -- are you
21 aware -- do you think it was a rude shock
22 to Morgan Stanley?
23 A. I have not the slightest idea
24 what was in Morgan Stanley's mind.
25 All I know --

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1 Confidential - Slovin
2 Q. So you -- I'm sorry, go ahead.
3 A. -- Morgan Stanley is a firm of
4 high repute and, you know, you tend to
5 rely on things that they say.
6 I don't think they gave
7 representations and warranties in the
8 contract but, you know, you see them out
9 on a road-show and the like, you know,
10 they are smart guys. You have every
11 reason to believe that things are okay.
12 Q. With regard to the road-show,
13 you didn't attend any of the road-show
14 meetings; right?
15 A. Wasn't Morgan Stanley the
16 underwriter?
17 Q. And Mr. Perelman's companies,
18 they didn't buy any of the zero coupon
19 notes that were the subject of the
20 road-show; did they?
21 A. No, I don't think so, but I was
22 saying that Morgan Stanley was the
23 underwriter here, so they were backing the
24 sale of bonds of this company right at
25 this -- what time was the road-show, right

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1 Confidential - Slovin
2 around now, or close to it? When was the
3 road-show?
4 Q. March 15th, 1998, before the
5 press release.
6 A. Yeah, two weeks before the press
7 release -- my God, was this a rude shock
8 to Morgan Stanley? I don't know what they
9 knew, and I never talked to any of them.
10 Q. That's right, you never talked
11 to any of them, you never relied on
12 anything they said to you in deciding to
13 approve the merger; did you?
14 A. No. That's not true. Their
15 very presence has a -- as a representative
16 of Sunbeam, gave me some comfort. This
17 was not a small house from some small, you
18 know, backwater town. This was Morgan
19 Stanley.
20 Q. Just like Goldman Sachs was --
21 MR. MARKOWSKI: Don't interrupt
22 him, hold on.
23 Q. I didn't mean to interrupt you.
24 Go ahead.
25 A. I never spoke to Morgan Stanley,

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1 Confidential - Slovin
2 but their very presence, as a
3 representative of Coleman -- excuse me, of
4 Sunbeam, comforted me.
5 Q. So am I -- so are you telling me
6 and the jury, sir, that the mere presence
7 of Morgan Stanley as an investment advisor
8 for Sunbeam caused you to vote for the
9 merger?
10 A. Did I say "the mere presence"?
11 THE WITNESS: Can you read back
12 my prior statements?
13 A. I am afraid you won't hear that
14 I said that.
15 I said that was a fact that
16 comforted me along with all the other
17 things that we did, as prudent
18 businessmen, to analyze and to make a
19 judgment on the fairness of a deal for our
20 shareholders.
21 Q. Are you aware of -- are you
22 aware of any statement that -- whether
23 orally or by -- in a document that Morgan
24 Stanley made to anyone representing The
25 Coleman Company or its affiliates in the

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1 Confidential - Slovin
2 transaction that you --
3 A. No.
4 Q. -- contend was false?
5 A. No, I can't tell you, I do not
6 know because I don't have a recollection
7 of all of their statements and
8 representations as the facts bore them out
9 or challenged them as they occurred. I do
10 not remember.
11 Q. But, as you sit here today, your
12 testimony is Morgan Stanley didn't make
13 any statements to you personally --
14 A. Personally?
15 Q. -- as a director of The Coleman
16 Company --
17 A. Right, I don't recall any
18 statements made to me personally from
19 Morgan Stanley. I might have forgotten
20 something but, sitting here today, I don't
21 remember.
22 Q. Following the closing, on March
23 30th, 1998, were you involved with any
24 discussions with anyone about hedging
25 Mr. Perelman's company's stock interests

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1 Confidential - Slovin
2 in Sunbeam Corporation?
3 A. No.
4 MR. BEMIS: Okay, why don't you
5 give me about five minutes, I think
6 we are about done. I want to go over
7 my notes real quick and check with my
8 colleague here and see if she has
9 anything else. Can you give me about
10 five minutes?
11 A. Should we leave the room?
12 (Discussion off the record.)
13 THE LEGAL VIDEO SPECIALIST: The
14 time is 4:07, we are going off the
15 record.
16 (Recess taken.)
17 THE LEGAL VIDEO SPECIALIST: The
18 time is 4:26, this begins tape number
19 four.
20 MR. BEMIS: Thank you.
21 Q. Would you please, Mr. Slovin,
22 look at MS 220 again. It's the top
23 exhibit. There is a an "X", for a lack of
24 a better descriptor, on the left-hand side
25 of the first page of the document.

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1 Confidential - Slovin
2 Do you see that?
3 A. Yes.
4 Q. Do you know who put that there?
5 A. No.
6 Q. Do you know what it means? Have
7 you ever seen either Mr. Perelman,
8 Mr. Drapkin, Mr. Gittis use that symbol to
9 mean anything?
10 A. I don't know.
11 Q. Okay, you can set it aside.
12 Outside of board meetings at The
13 Coleman Company, did you ever have any
14 discussions with anyone about whether the
15 merger transaction should be structured to
16 receive cash rather than stock?
17 A. I do recall there was
18 conversations about cash and stock. They
19 were both elements of the transaction and
20 ratios, do you take more or less of what
21 was available from the buyer or your
22 merger partner, but details I have no
23 recollection. And I was not part of the
24 decision-making apparatus. So, I listened
25 to a conversation but didn't participate

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1 Confidential - Slovin
2 with my advice.
3 Q. When you say you recall
4 discussions about that outside of the
5 board meetings, with whom were those
6 discussions?
7 A. Well, I have to say, once again,
8 which becomes a common theme, it would
9 have been with one of the men that were
10 actively engaged in the negotiations.
11 Q. That would be the people you
12 previously identified, the inner circle,
13 Mr. Maher, et cetera; correct?
14 A. Yeah, those who worked on this
15 transaction.
16 Q. Do you recall anyone affiliated
17 with Mr. Perelman's company suggesting
18 that the deal should be structured as an
19 all-cash offer, as opposed to taking
20 stock?
21 A. I don't remember, I don't
22 recall.
23 Q. Do you remember anyone, again,
24 outside the board meetings, within this
25 group of the inner circle, advocating the

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1 Confidential - Slovin
2 desire to take stock over cash?
3 A. No. Again, I understood from
4 the beginning, or someplace in the
5 beginning, that this was a cash and a
6 stock deal. What proportions were based
7 upon negotiations, I did not, and I was
8 not -- my opinion was not solicited, and I
9 didn't give it because I did not know
10 enough about the inner workings of the
11 negotiations.
12 Q. When -- strike that. Did you
13 have any discussions outside of board
14 meetings about any potential synergies to
15 be achieved, the one plus one equals three
16 that we talked about earlier, by the
17 combination of Coleman and Sunbeam? And
18 again, I am talking about outside the
19 board meetings.
20 A. Well, it was felt -- and when I
21 say -- when you use the word
22 "discussions", sometimes I use the word
23 "conversations", because they weren't deep
24 discussions, I had no deep discussions on
25 any aspect of this transaction with

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1 Confidential - Slovin
2 anybody except to an extent at the board
3 meetings when people were raising
4 questions and questions were being
5 answered. But, yes, I think it was felt
6 that we both had consumer products, we
7 sold to similar customers. I don't recall
8 if there were conversations about
9 manufacturing synergies, but sales
10 synergies I think yes. Purchasing the raw
11 materials, yes.
12 Q. Were these discussions with the
13 same group of individuals that --
14 A. You --
15 Q. -- inner circle you described
16 earlier?
17 A. Yes, those that knew the deal.
18 Q. Did you -- strike that. When
19 did you retire, again, in 2001; right?
20 A. Uh -- I retired when I became
21 65, I think was December --
22 Q. December 10th, 2001?
23 A. Good memory, 2001?
24 Q. Yes.
25 A. 2000 -- I was born in '35, 65

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1 Confidential - Slovin
2 and '35 are 10 -- right -- 2000 I
3 became --
4 Q. So in 2000 --
5 A. I became 65 in 2000, very end of
6 2000.
7 I think I stayed on for some
8 time afterward, not doing very much, and
9 then left his premises and went to work in
10 my own shop, again, as I say, doing
11 private investments for myself in 2001.
12 Q. Did you have -- withdrawn. So,
13 you would have left the offices of
14 Mr. Perelman's companies about the
15 beginning of 2001 based on your --
16 A. Well, I -- my office and his
17 office are one block apart. I can't get
18 away from them. And, so, I shuttled back
19 and forth. But I did very little.
20 You know, I am trying to
21 remember back in an earlier question you
22 asked me that I might have answered
23 incorrectly.
24 I am on one of his boards,
25 still, M&F -- it's a licorice extract

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2 company, M&F Worldwide, it's a public
3 company, MFW, I think the symbol is, and I
4 do get compensated as a director, an
5 outside director, in that public company.
6 I don't know how I answered the question
7 earlier.
8 Q. I think you answered it
9 correctly earlier, but that's okay.
10 A. Okay.
11 Q. Whatever it is, it's not a big
12 deal.
13 A. But my office is one street away
14 from his, so when I stopped working for
15 him I still stayed in his office. I had
16 to move papers out, and the like, and I
17 had conversations with the people, but
18 very little.
19 Q. Okay. Well, let me just get
20 more focused in regards to when you left
21 the office, did you have any role at all
22 in the decision to bring the lawsuit
23 against Arthur Andersen?
24 A. None whatsoever.
25 Q. And did you have any role

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1 Confidential - Slovin
2 whatsoever in the settlement of that
3 lawsuit?
4 A. None whatsoever.
5 Q. During the entire time that --
6 withdrawn. During the period of time that
7 you were still employed by Mr. Perelman's
8 companies, did you have any discussions
9 with anyone about bringing a lawsuit
10 against Morgan Stanley?
11 A. I had no such discussions.
12 Q. Did you ever hear or even if you
13 didn't participate in any discussions
14 where Morgan Stanley was --
15 A. I don't have a specific
16 recollection of what action they would
17 take based upon events as they were
18 unfolding.
19 Q. But let me finish the question,
20 because I didn't get it out --
21 A. Forgive me.
22 Q. -- before you answered, and I'm
23 sorry, we are almost done, it's getting
24 late.
25 While you were employed by

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1 Confidential - Slovin
2 Mr. Perelman's companies, did you ever
3 hear of any discussions, even if you did
4 not directly participate, in bringing a
5 lawsuit against Morgan Stanley?
6 MR. MARKOWSKI: You should
7 exclude from your answer any
8 conversations involving counsel.
9 A. I have no specific recollection.
10 I mean, I know there was a lot of upset
11 about events as they were transpiring.
12 What conclusions were drawn from the
13 feelings of being upset and shocked, I
14 don't really remember.
15 Q. Do you know what "bill and hold"
16 means?
17 A. Yeah, I think I do.
18 Q. What does it mean, as you
19 understand it?
20 A. As I understand it, it generally
21 refers to an effort of a corporation to
22 create sales when the customer really
23 doesn't need it in order to get the sales
24 that -- the profit margins into a
25 particular financial reporting period. So

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1 Confidential - Slovin
2 they will bill for merchandise bought but
3 they will hold it, either in warehouses
4 outside of their own manufacturing
5 facility or trailers, so they can effect a
6 sale, thereby enhancing the sales line and
7 the earnings line, generally speaking, by
8 the end of a quarter so that they can
9 satisfy Wall Street.
10 Q. Is it your understanding that
11 bill and hold transactions are per se
12 improper under Generally Accepted
13 Accounting Principles or --
14 A. Well, "bill and hold" is a
15 generalized term. It's -- I don't think
16 it's quite a term of art, though it may
17 be, but I don't think it is.
18 I think it depends upon a degree
19 of a bill and hold. If it's an immaterial
20 amount, I think auditors tend to look away
21 from it.
22 If the merchandise didn't leave
23 the warehouse or your warehouse or it's
24 standing, you know, on the factory line, I
25 think they take a dim view of including

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1 Confidential - Slovin
2 that in the sale. If it's out on the road
3 someplace, sometimes they blink at it. It
4 depends on the dimension of it. It's
5 often engaged in -- it's really trying to
6 bring up to date a sale that really hasn't
7 matured yet.
8 Q. Well, my question, though is, it
9 may have been poorly framed, let me try it
10 one more time.
11 Is it your understanding that
12 bill and hold -- bill and hold
13 transactions, are just per se
14 impermissible under --
15 A. No.
16 Q. -- accounting principles?
17 A. I do not know the answer to that
18 per se, I can't answer that.
19 Q. We have previously marked this,
20 this is Exhibit 208, so you don't have to
21 go back into your pile, just please use
22 that one. This is the Sunbeam 10-K,
23 publicly filed with the Securities and
24 Exchange Commission.
25 I recall that you did not know

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1 Confidential - Slovin
2 whether you had seen this before; correct?
3 A. That's right.
4 Q. Were you a -- turn to page
5 F -- let's see, what page number here --
6 (pause. If you will turn to page F 7,
7 it's CHP -- "CHP" -- CPH, it's Bates
8 1428862. See the footnotes to the Arthur
9 Andersen financial statements?
10 A. CPH 1428837 --
11 Q. 62, 1428862.
12 A. Okay.
13 Q. Under Revenue recognition?
14 A. Right.
15 Q. Do you see that, find that
16 heading?
17 A. Yes, right.
18 Q. Do you see there that Sunbeam
19 disclosed in its -- Sunbeam disclosed in
20 its 10-K that it did, indeed, engage in
21 bill and hold transactions?
22 A. Right, to a limited extent.
23 Q. So if you had read this, you
24 would have been aware, as a member of the
25 board of directors of Coleman, you would

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1 Confidential - Slovin
2 have been aware of this; correct?
3 A. Well, I would have been aware
4 that to a limited extent, is it one
5 truckload of a product or is it warehouses
6 full of a product?
7 Q. Well, sir, it says in the last
8 sentence --
9 A. Limited extent.
10 Q. It says -- (inaudible.)
11 That's all right, the court
12 reporter can't take both of us
13 simultaneously, my apologies.
14 If you look at the last sentence
15 here, it says: "The amount of such bill
16 and hold sales is 3 percent of
17 consolidated revenues".
18 A. Right.
19 Q. Let's look at consolidated
20 revenues in the financial statement.
21 A. It's a million one, a million
22 two.
23 Q. It's a billion, those are in --
24 A. Oh, a billion, right, of course.
25 Q. So we have operating --

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1 Confidential - Slovin
 2 A. Three -- 30 million.
 3 Q. So about \$30 million.
 4 A. Right, a billion two.
 5 Q. So it's not a truckload is what
 6 we are talking about; right?
 7 Did you ever come -- withdrawn.
 8 In the mergers and acquisition agreements
 9 that you have -- withdrawn. In the
 10 mergers and acquisition transactions that
 11 you have negotiated and worked on over the
 12 years, you have reviewed, I take it, the
 13 underlying documents such as the merger
 14 agreement that we looked at in this case;
 15 correct?
 16 A. Yes.
 17 Q. And, you know, you told me
 18 earlier you are a lawyer, you read them at
 19 Harvard Law School; right?
 20 A. Yes.
 21 Q. And in the transactions that you
 22 have worked on, have they generally
 23 provided that New York law would be the
 24 controlling law in the transactions?
 25 A. It was often the case but not

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1 Confidential - Slovin
 2 uniformly.
 3 Q. You know, other than New York
 4 law, can you give me some examples of some
 5 where it wasn't, transactions where
 6 New York law was not selected as the
 7 controlling law?
 8 A. Companies in Brazil --
 9 Q. Well, let's exclude
 10 international transactions. Let's take a
 11 U.S.-based transaction, U.S.-based
 12 companies.
 13 A. Well, I mean, I sold companies
 14 out of California to California buyers. I
 15 don't know that we used New York law on
 16 those. I don't remember.
 17 I mean, it's most appropriate to
 18 use New York law if you are dealing with
 19 companies in New York or headquarters in
 20 New York but not all the time. I mean, I
 21 think in California cases I used New York
 22 law. I think that the deals that Ronald
 23 did in the banking world were also not
 24 under New York law, but I am guessing at
 25 that, I don't have a specific

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1 Confidential - Slovin
 2 recollection.
 3 Q. Okay. (Pause.)
 4 Did you have any role in the
 5 negotiation of the settlement with Sunbeam
 6 Corporation as a result of the threatened
 7 litigation by Mr. Perelman's companies
 8 against Sunbeam?
 9 A. No.
 10 MR. BEMIS: That's all I have.
 11 MS. BROWN: Off the record.
 12 THE LEGAL VIDEO SPECIALIST: The
 13 time is 4:45, this completes the
 14 videotaped deposition of Mr. Bruce
 15 Slovin.
 16 (Time noted: 4:45 p.m.)
 17
 18 _____
 19 BRUCE SLOVIN
 20
 21 Subscribed and sworn to
 22 before me this ____ day
 23 of _____, 2004.
 24 _____
 25 Notary Public

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1
 2 CERTIFICATE
 3 STATE OF NEW YORK)
 4 : ss.
 5 COUNTY OF NEW YORK)
 6
 7 I, WENDY D. BOSKIND, an RPR
 8 and Notary Public within and for
 9 the State of New York, do hereby
 10 certify:
 11 That BRUCE SLOVIN,
 12 the witness whose deposition is
 13 hereinbefore set forth, was duly
 14 sworn by me, and that such
 15 deposition is a true and accurate
 16 record of the testimony given by
 17 the witness.
 18 I further certify that I am not
 19 related to any of the parties to this
 20 action by blood or marriage, and that
 21 I am in no way interested in the
 22 outcome of this matter.
 23 IN WITNESS WHEREOF, I have
 24 hereunto set my hand this 17th day
 25 of May, 2004.

 WENDY D. BOSKIND, RPR

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2	ERRATA SHEET
3	
4	STATE OF NEW YORK) Pg_of_Pgs
5	ss:
6	COUNTY OF NEW YORK)
7	
8	I wish to make the following changes,
9	for the following reasons:
10	PAGE LINE
11	_____ CHANGE: _____
12	REASON: _____
13	_____ CHANGE: _____
14	REASON: _____
15	_____ CHANGE: _____
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24	REASON: _____
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IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO.: 502003CA005045XXOCAI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

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**AMENDED ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S MOTION FOR
ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN
STANLEY'S DESTRUCTIONS OF E-MAILS AND MORGAN STANLEY'S
NONCOMPLIANCE WITH THE COURT'S APRIL 16, 2004 AGREED ORDER,
AND MOTION FOR ADDITIONAL RELIEF AND ORDER ON PLAINTIFF'S MOTION
TO COMPEL FURTHER DISCOVERY REGARDING MORGAN STANLEY'S
DESTRUCTION AND NON-PRODUCTION OF E-MAILS**

THIS CAUSE came before the Court on February 14, 2005 on Coleman (Parent) Holdings, Inc.'s ("CPH's") Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, as modified by CPH's February 14, 2005 ore tenus motion for additional relief, and on February 28, 2005 on Plaintiff's Motion to Compel Further Discovery Regarding Morgan Stanley's Destruction and Non-Production of E-Mails, with both counsel present. Based on evidence introduced, the Court finds:

1. CPH has sued Defendant, Morgan Stanley & Co., Inc. ("MS & Co."), for fraud in connection with CPH's sale of its stock in Coleman, Inc., to Sunbeam Corporation in return for Sunbeam stock. Whether MS & Co. had knowledge of the fraudulent scheme undertaken by Sunbeam in 1997 and early 1998 and, if so, the extent of that knowledge, is central to the case. CPH has sought access to MS & Co.'s internal files, including e-mails, since the case was filed.

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2. Though MS & Co. instructed its investment bankers to preserve paper documents in their possession in connection with the Sunbeam transaction in February, 1999, it continued its practice of overwriting e-mails after 12 months, despite an SEC regulation requiring all e-mails be retained in readily accessible form for two years. *See* 17 C.F.R. §240.17a-4 (1997).

3. On April 16, 2004, the Court entered its Agreed Order requiring MS & Co. to (1) search the oldest full backup tape for each of 36 MS & Co. employees involved in the Sunbeam transaction; (2) review e-mails dated from February 15, 1998 through April 15, 1998 and e-mails containing any of 29 specified search terms such as "Sunbeam" and "Coleman", regardless of their date; (3) produce by May 14, 2004 all nonprivileged e-mails responsive to CPH's document requests; (4) give CPH a privilege log; and (5) certify its full compliance with the Agreed Order.

4. On May 14, 2004, MS & Co. produced approximately 1,300 pages of e-mails but failed to provide the required certification. Finally, on June 23, 2004, after inquiries by CPH, MS & Co. provided CPH with a certificate of full compliance with the April 16 Agreed Order signed by Arthur Riel, the MS & Co. manager assigned this task.

5. As organized by MS & Co., the effort to recover e-mails from any remaining backup tapes had several stages. First, the relevant backup tapes (in various formats, such as "DLT" tapes and eight-millimeter tapes) had to be located by searching the potential storage locations. Second, the tapes were sent to an outside vendor, National Data Conversion, Inc. ("NDC"), to be processed, and the data returned to MS & Co. in the form of "SDLT" tapes. Third, MS & Co. had to find a way to upload the contents of these SDLT tapes into its new e-mail archive. Fourth, MS & Co. would run "scripts" to transform this data into a searchable form, so that it could later be searched for responsive e-mails. MS & Co. personnel used the term "staging area" to describe the stage of the

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process when SDLT tapes remained in limbo, waiting to be uploaded to the archive.

6. At some point prior to May 6, 2004, Arthur Riel and his team became aware that more than 1,000 backup tapes had been found at a MS & Co. facility in Brooklyn, New York. These 1,423 DLT tapes had not been processed by NDCI and thus had not been included in the archive or searched when MS & Co. made its supposedly complete production on May 14, 2004, and when Mr. Riel certified full compliance with the Agreed Order on June 23, 2004. Aware of the tapes' discovery, Mr. Riel knew when he executed the certification that it was false. He and others on MS & Co.'s e-mail archive team knew by July 2, 2004 that these "Brooklyn tapes" contained e-mail dating back at least to the late 1990's. MS & Co. neither withdrew its certification nor informed CPH about the potential for additional production of e-mails, however. During the summer of 2004, the Brooklyn tapes were processed and sent to the staging area, but they were not uploaded to the e-mail archive so as to be available to be searched until January 2004, at least eight months after they were found.

7. MS & Co. also failed to timely produce e-mails from 738 8-millimeter backup tapes found at a MS & Co. facility in Manhattan, in 2002. These 738 8-mm tapes, like the 1,423 Brooklyn tapes, had not been processed by NDCI and thus had not been included in the archive and searched when MS & Co. made its supposedly complete production on May 14, 2004, and when Mr. Riel certified full compliance with the Agreed Order on June 23, 2004. Mr. Riel and others were told by their vendor, NDCI, by July 2, 2004 that the 8-mm tapes contained e-mail dating back at least to 1998. MS & Co. neither withdrew its certification nor informed CPH about the potential for additional production of e-mails, though. During the summer of 2004, the 8-mm tapes were processed and sent to the staging area. Like the Brooklyn tapes, though, they also were not uploaded

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to MS & Co.'s e-mail archive.

8. In August 2004, Mr. Riel was relieved of his employment responsibilities. He and his team were replaced by a new team headed by Allison Gorman Nachtigal.

9. Ms. Gorman testified that she was instructed to describe the circumstances of Mr. Riel's replacement as his having been "placed on administrative leave." That same term appears by interlineation over the original typed description in MS & Co.'s memorandum addressing these issues. The typed language stated: "[Mr. Riel was] dismissed for integrity issues." MS & Co. presented no evidence to explain why Mr. Riel would have been placed on administrative leave rather than terminated. CPH argued that it may have been to deprive CPH of the ability to contact him directly.

10. Upon taking over Mr. Riel's responsibilities, Ms. Gorman did not initially make significant efforts to address the backlog of data in the staging area; indeed, she was not informed of the existence of this litigation until five months later, in January 2005. In October 2004, Ms. Gorman met with a group of MS & Co. attorneys. Following that meeting, Ms. Gorman gave the project somewhat greater priority, although even then it clearly did not move as expeditiously as possible. For example, MS & Co. gave no thought to using an outside contractor to expedite the process of completing the discovery, though it had certified completion months earlier; it lacked the technological capacity to upload and search the data at that time, and would not attain that capacity for months; and it knew trial was scheduled to begin in February, 2005. Even at this point, no one from MS & Co. or its outside counsel, Kirkland & Ellis LLP, gave CPH or this Court any hint that the June certification was false.

11. On November 17, 2004, more than six months after the May 14, 2004 deadline for

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producing e-mails in response to the Agreed Order, MS & Co. sent CPH a letter revealing that its June 23 certificate of compliance was incorrect. The letter stated:

Morgan Stanley has discovered additional e-mail backup tapes since our e-mail production in May 2004. The data on some of [the] newly discovered tapes has been restored and, to ensure continued compliance with the agreed order, we have re-run the searches described in the order. Some responsive e-mails have been located as a result of that process. We will produce the responsive documents to you as soon as the production is finalized.

The letter also foreshadowed further delays: “(s)ome of the backup tapes are still being restored. To ensure continued compliance with the agreed order, we intend to re-run the searches again when the restoration process is complete and will produce any responsive documents that result.”

12. The next day, November 18, 2004, MS & Co. produced an additional 8,000 pages of e-mails and attachments. MS & Co.’s November 2004 letter stated that the 8,000 pages came from “newly discovered” tapes; but the testimony now makes clear that this statement was false because Ms. Gorman’s team did not figure out how to upload and make searchable the materials from the staging area until January, 2005.

13. MS & Co. has failed to offer any explanation to reconcile the obvious conflict between its assertions at the time of production that the 8,000 pages came from “newly discovered” tapes (*i.e.*, the “Brooklyn tapes”) and the testimony of its own witness, Ms. Gorman, that data from those newly discovered tapes were not capable of being searched until two months later, in January.

14. After a follow-up inquiry by CPH, on December 17, 2004, MS & Co. produced a privilege log and told CPH that “[n]o additional responsive e-mails have been located since our November production.” MS & Co. refused to answer CPH’s questions about whether MS & Co.

had restored all the backup tapes described in its November 17 letter and why the tapes had not been located earlier, however.

15. On December 30, 2004, CPH sought confirmation that MS & Co. had reviewed all e-mail backup tapes and produced all responsive e-mails and, if not, asked when the review would be completed. On January 11, 2005, MS & Co. informed CPH that the “restoration of e-mail back tapes is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time.”

16. On January 19, 2004, CPH wrote asking MS & Co. to explain the circumstances under which MS & Co. located the “newly discovered” backup tapes and to disclose when the tapes were located. CPH also asked MS & Co. to explain why the backup tapes could not be restored sooner.

17. On January 21, 2005, MS & Co. sent CPH a letter that failed to answer CPH’s questions. Instead, MS & Co. described its efforts to restore the backup tapes as “ongoing”; informed CPH that “there is no way for MS & Co. to know or accurately predict the type or time period of data that might be recovered”; and stated that MS & Co. “cannot accurately estimate when all of the tapes will be restored or whether any recoverable data will be found on the remaining tapes.”

18. On January 26, 2005, CPH filed the Motion at issue here, asking the Court to instruct the jury that MS & Co.’s destruction of e-mails and other electronic documents and MS. & Co.’s noncompliance with the April 16, 2004 Agreed Order can give rise to an adverse inference that the contents of the missing e-mails would be harmful to MS & Co.’s defense in this case.

19. Meanwhile, MS & Co. found another 169 DLT tapes in January, 2005, that allegedly

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had been misplaced by its New Jersey storage vendor, Recall. Again, MS & Co., chose to provide no specifics to CPH or to the Court.

20. At a February 2, 2005 hearing on CPH's Motion, Thomas A. Clare of Kirkland & Ellis, LLP, representing MS & Co., stated that "late October of 2004...[is] the date I represent to Court is the first time that anyone knew that there was recoverable e-mail data" on the Brooklyn tapes. Hr'g Tr. (2/2/05) at 133-34. The actual date, however, was at least three months earlier, by July 2, 2004. Furthermore, MS & Co. refused to provide the Court with definitive answers about when its e-mail production would be complete, merely stating that it would proceed with "all deliberate speed." *Id.* at 139. Also at the February 2 hearing, Mr. Clare neglected to inform the Court about the 8-mm tapes that had been located in 2002, and told the Court that the 1,423 DLT tapes had been found in Brooklyn "sometime during the summer" of 2004. The truth of this assertion is belied by the evidence showing that the tapes were found before May 6, 2004.

21. On February 3, 2005, the Court ordered further discovery and set an evidentiary hearing for February 14, 2005. The discovery took place on February 9 and 10, when CPH deposed the three e-mail witnesses identified by MS. & Co.

22. On Saturday afternoon, February 12, 2005, MS & Co. informed the Court that it had, in the previous 24 hours, discovered additional tapes. Also, MS & Co. stated that its recent production omitted certain "attachments" to e-mails. MS & Co. did not attempt to clarify or substantiate either of these statements to CPH or to the Court until the Monday, February 14, 2005 hearing.

23. At the February 14 hearing, none of the witnesses MS & Co. presented was involved in or familiar with the actual electronic searches conducted using the parameters specified in this

Court's April 16, 2004 Agreed Order, and none explained where the 8,000 pages produced in November, 2004 had come from. MS & Co.'s witnesses did, however, describe three new developments. First, Robert Saunders, a Morgan Stanley executive director in the Information Technology Division, testified that he returned to New York after his February 10 deposition and, concerned about his unqualified assertion that the was "confident" that a complete search for backup tapes had been conducted, decided finally to undertake a personal search of MS & Co.'s "communication rooms," going to the areas he thought most obvious first. By doing so, he and two contractors discovered more than 200 additional backup tapes openly stored in locations known to be used for tape storage. Those discoveries were made on Friday and Saturday, February 11 and 12, 2005. As of the February 14 hearing, NDCI had not yet determined which, if any, of these newly discovered backup tapes contained e-mails. Second, Ms. Gorman reported that on Friday, February 11, 2005 she and her team had discovered that a flaw in the software they had written had prevented MS & Co. from locating all responsive e-mail attachments. Third, Ms. Gorman reported that MS & Co. discovered on Sunday evening, February 13, 2005, that the date-range searches for e-mail users who had a Lotus Notes platform were flawed, so there were at least 7,000 additional e-mail messages that appeared to fall within the scope of the Agreed Order had yet to be fully reviewed by MS. & Co.'s outside counsel for responsiveness and privilege. As counsel for MS & Co. admitted, this problem "dwarf[s]" their previous problems. Hr'g Tr. (2/14/05) at 13. Ms. Gorman indicated she was "90 percent sure" that the problem infected MS & Co.'s original searches in May, which means that even they failed to timely produce relevant materials that had been uploaded into the archive by that point. *Id.* at 82-83. The bulk of the employees using the Lotus Notes platform in the relevant time period came from the Investment Banking Division, the division responsible for the

transaction under review here.

24. On February 19, 2005 MS & Co. informed counsel for CPH that “additional boxes of back up tapes” have been located “in a security room” and that, “(a)s of this morning, Morgan Stanley has identified four (unlabeled) DLT tapes among the collection. Those four tapes will be sent to NDCI for further analysis.” The disclosure did not state when the discovery was made. MS & Co.’s counsel represented to the Court that it was his understanding that about 73 bankers’ boxes of tapes were discovered. No explanation for the late discovery was offered.

25. Throughout this entire process, MS & Co. and its counsels’ lack of candor has frustrated the Court and opposing counsel’s ability to be fully and timely informed.

26. MS & Co.’s failure during the summer and fall of 2004 to timely process a substantial amount of data that was languishing in the “staging area,” rather than being put into searchable form and then searched, was willful and a gross abuse of its discovery obligations.

27. MS & Co.’s failure to time notify CPH of the existence of the DLT and 8-mm tapes, which it had located as early as 2002 and certainly prior to the June 23, 2004 certification, and its failure to timely process those raw backup tapes was willful and a gross abuse of its discovery obligations.

28. MS & Co.’s failure to produce all e-mail attachments was negligent, and it was discovered and revealed only as a result of CPH’s hiring a third-party vendor, pursuant to the Court’s February 4, 2005 Order, to double-check MS & Co.’s compliance with the April 16, 2004 Agreed Order.

29. MS & Co.’s failure to produce all of the Lotus Notes e-mails was negligent, and it was discovered and revealed only as result of CPH’s hiring a third-party vendor, pursuant to the

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Court's February 4, 2005 Order, to double-check MS & Co.'s compliance with the April 16, 2004 Agreed Order.

30. MS & Co.'s failure to locate other potentially responsive backup tapes before Saturday, February 12, 2005 was grossly negligent.

31. Given the history of the discovery, there is no way to know if all potentially responsive backup tapes have been located.

32. In sum, despite MS & Co.'s affirmative duty arising out of the litigation to produce its e-mails, and contrary to federal law requiring it to preserve the e-mails, MS & Co. failed to preserve many e-mails and failed to produce all e-mails required by the Agreed Order. The failings include overwriting e-mails after 12 months; failing to conduct proper searches for tapes that may contain e-mails; providing a certificate of compliance known to be false when made and only recently withdrawn; failing to timely notify CPH when additional tapes were located; failing to use reasonable efforts to search the newly discovered tapes; failing to timely process and search data held in the staging area or notify CPH of the deficiency; failing to write software scripts consistent with the Agreed Order; and discovering the deficiencies only after CPH was given the opportunity to check MS & Co.'s work and the MS & Co.'s attorneys were required to certify the completeness of the prior searches. Many of these failings were done knowingly, deliberately, and in bad faith.

It is clear that e-mails existed which were requested by CPH that have not been produced because of the deficiencies discussed above. Electronic data are the modern-day equivalent of the paper trail. Indeed, because of the informalities of e-mail, correspondents may be less guarded than with paper correspondence. In this case, the paper trail is critical to CPH's ability to make out its prima facie case. Thus, MS & Co.'s acts have severely hindered CPH's ability to

proceed. The only way to test the potentially self-serving testimony of MS & Co. personnel is with the written record of the events.

The failures outlined in this Order are of two types. First, by overwriting e-mails contrary to its legal obligation to maintain them in readily accessible form for two years and with knowledge that legal action was threatened, MS & Co. has spoiled evidence, justifying sanctions. See Martino v. Wal-Mart Stores, Inc., 835 So. 2d 1251 (Fla. 4th DCA 2003). “The appropriateness of sanctions for failing to preserve evidence depends on: (1) willfulness or bad faith of the responsible party, (2) the extent of prejudice suffered by the other party, and (3) what is required to cure the prejudice.” Nationwide Lift Trucks, Inc. v. Smith, 832 So. 2d 824, 826 (Fla. 4th DCA 2002). Second, MS & Co.’s willfull disobedience of the Agreed Order justifies sanctions. See Rule 1.380 (b) (2), Fla. R. Civ. P. The conclusion is inescapable that MS & Co. sought to thwart discovery *in this specific case*.

Sanctions in this context are not meant to be punitive. They are intended, though, to level the playing field.

A reasonable juror could conclude that evidence of MS & Co.’s misconduct demonstrates its consciousness of guilty. It is relevant to the issues before the jury. Further, CPH should not be penalized by being forced to divert the jurors’ attention away from the merits of its claim to focus on highly technical facts going to MS & Co.’s failures here, facts that are not reasonably disputed. Evidence of that failure, though, alone does not make CPH whole. Indeed, it can be said it is not a “sanction” at all, but merely a statement of unrefuted facts that the jury may find relevant. Shifting the burden of proof, though, forces MS & Co. to accept the practical consequence of its failures—that some information will never be known. Obviously, this sanction is of consequence only in the

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marginal case. If there is overwhelming proof of MS & Co.'s knowledge of the fraud and collusion with Sunbeam, CPH would have prevailed on those elements in any event. And, to the contrary, if there is overwhelming evidence MS & Co. did not know of the fraud or conspire with or aid Sunbeam in its commission, it would have prevailed in any event. If the case is close on those issues, though, MS & Co., not CPH, should bear the burden of persuasion. Further, shifting the burden on the fraud issue does not relieve CPH of its obligation to establish the other elements of its claims, most notably reliance, proof of which is independent of the MS & Co. e-mails. Thus, the sanctions chosen are the most conservative available to the Court to address the spoliation of evidence and willfull violation of the Agreed Order.^{1 2}

Finally, the Court notes that CPH has requested the e-mails since May of 2003. MS & Co. was supposed to comply with the April 16, 2004 Order by May 14, 2004. Fact discovery in this case closed November 24, 2004. MS & Co.'s actions have resulted in the diversion of enormous amounts of resources, by both the parties and the Court, into a fact discovery dispute that should have never arisen and which would have long ago been put to bed had MS & Co. timely recognized its obligations to CPH and this Court. Opening argument in this complex case is set for March 21,

¹MS & Co.'s bad acts and pocket book may not be used to gain the continuance it has sought from the beginning. Further, the Court has no confidence that, even if a continuance were granted, MS & Co. would fully comply with discovery in this case.

²The undersigned notes that the sanctions imposed are not enumerated in Rule 1.380 (b) (2), and is aware of the concern expressed in the 2000 Handbook on Discovery Practice, Joint Committee of the Trial Lawyers Section of the Florida Bar and Conferences of Circuit and County Court Judges ("(f)or the trial court to be on solid footing, it is wise to stay within the enumerated orders" [Handbook at p. 4]). However, MS & Co.'s violations involve both the violation of a discovery order and the intentional spoliation of evidence. The sanction imposed is *less* severe than that provided in Rule 1.380 (b) (2) (B), under which the Court could preclude MS & Co. from presenting evidence of its lack of knowledge of or collusion with the Sunbeam fraud, which the Court finds is the least severe enumerated sanction appropriate to place the parties on a level playing field.

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2005. Preliminary jury selection has begun. MS & Co. has controlled the timetable of this portion of the litigation long enough. Consequently, CPH should have the ability to continue to require MS & Co. to attempt to comply with the Agreed Order and the February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search, or to elect to terminate the e-mail discovery and concentrate on trial preparation.

Based on the foregoing, it is

ORDERED AND ADJUDGED that:

1. Plaintiff's Motion for Adverse Interference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Non-Compliance with the Court's April 16, 2004 Agreed Order and Motion for Additional Relief is GRANTED.

2. MS & Co. shall continue to use its best efforts to comply with the April 16, 2004 Agreed Order and shall continue to comply with the February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search until March 21, 2005 or written notice from CPH, which ever first occurs. Either party shall notify the other in writing of its intention to offer into evidence e-mails actually produced to CPH prior to termination of e-mail discovery in conformity with this Order, within 72 hours of the e-mail's production to CPH. The Court shall hear and determine any objections to use of the e-mails.

3. The Court shall read to the jury the statement of facts attached as Exhibit A during whatever evidentiary phase of CPH's case that it requests. These findings of fact shall be conclusive. See Rule 1.380 (b) (2) (A). No instruction shall be given to the jury regarding inferences to be drawn from these facts. However, counsel may make such argument to the jury in favor of whatever inferences that evidence may support. No other evidence concerning the production of e-mails, or

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lack thereof, shall be presented absent further Court order.

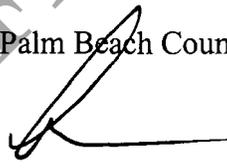
4. CPH will be allowed to argue that MS & Co.'s concealment of its role in the Sunbeam transaction is evidence of its malice or evil intent, going to the issue of punitive damages. See, e.g., General Motors Corp. v. McGee, 837 So.2d 10120.

5. MS & Co. shall bear the burden of proving to the jury, by the greater weight of the evidence, that it lacked knowledge of the Sunbeam fraud and did not aid and abet or conspire with Sunbeam to defraud CPH. The traditional order of proof shall remain unaffected, however.

6. MS & Co. shall compensate CPH for costs and fees associated with the Motion. The amount shall be determined at an evidentiary hearing to be held after the completion of the trial.

7. Plaintiff's Motion to Compel Further Discovery Regarding Morgan Stanley's Destruction and Non-Production of E-Mails is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 1 day of March, 2005.



ELIZABETH T. MAASS
Circuit Court Judge

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EXHIBIT A

A federal regulation in effect in 1997 and all times since required Morgan Stanley to preserve e-mails for three years and to preserve them in a readily accessible place for two years. Beginning in no later than 1997, Morgan Stanley had a practice of overwriting e-mails after 12 months. E-mails could no longer be retrieved once they were overwritten. This practice was discontinued in January, 2001. CPH has sought access to Morgan Stanley's e-mails relating to this transaction since the case was filed in May, 2003.

Prior to 2003, Morgan Stanley recorded e-mails and other electronic data on back up tapes. On April 16, 2004, the Court ordered Morgan Stanley to (1) search the oldest full backup tape for each of 36 Morgan Stanley employees involved in the Sunbeam transaction; (2) review e-mails dated from February 15, 1998 through April 15, 1998 and e-mails containing any of 29 specified search terms such as "Sunbeam" and "Coleman", regardless of their date; (3) produce by May 14, 2004 all e-mails relating to this case found by the search I have just described; and (4) certify its full compliance with the Court's order.

On May 14, 2004, Morgan Stanley produced approximately 1,300 pages of e-mails. It did not produce the required certification. On June 23, 2004, after inquiries by CPH, Morgan Stanley provided CPH with a certificate of full compliance with the April 16 Order signed by Arthur Riel, the Morgan Stanley manager assigned this task.

As organized by Morgan Stanley, the effort to recover e-mails from the backup tapes had several stages. First, the relevant backup tapes had to be located by searching the potential storage locations. Second, the tapes were sent to an outside vendor, National Data Conversion, Inc., which I will call "NDCI", to be processed, and the data returned to Morgan Stanley. Third, Morgan Stanley had to upload the processed data into its e-mail archive. Fourth, Morgan Stanley had to run scripts, or pieces of computer code, to transform this data into a searchable form. Finally, Morgan Stanley had to search the data for e-mails related to this case. Morgan Stanley personnel used the term "staging area" to describe the stage of the process when the processed data returned by NDCI remained in limbo, waiting to be uploaded to Morgan Stanley's archive.

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At some point prior to May 6, 2004, Arthur Riel and his team became aware that 1,423 backup tapes had been found at a Morgan Stanley facility in Brooklyn, New York. These 1,423 tapes had not been processed by NDCI and thus had not been included in the archive or searched when Morgan Stanley made its production to CPH on May 14, 2004. Aware of the tapes' discovery, Mr. Riel knew when he executed the certification of full compliance with the Court's April 16, 2004 Order that it was false. He and others on Morgan Stanley's e-mail archive team knew by July 2, 2004 that these "Brooklyn tapes" contained e-mail dating back at least to the late 1990's. During the summer of 2004, the Brooklyn tapes were processed and the data sent to the staging area. The scripts were not written and tested to permit the search for e-mails relating to this case to begin until the middle of January, 2004. Such a search, even if perfectly done, can take weeks.

Morgan Stanley also failed to timely produce e-mails from 738 backup tapes found at a Morgan Stanley facility in Manhattan in 2002. These 738 tapes, like the 1,423 Brooklyn tapes, had not been processed by NDCI and thus had not been included in the archive and searched by either on May 14, 2004 or June 23, 2004. Mr. Riel and others were told by NDCI by July 2, 2004 that these tapes contained e-mail dating back at least to 1998. During the summer of 2004, the these tapes were processed and sent to the staging area. Like the Brooklyn tapes, though, they also were not searched.

In August 2004, Mr. Riel was relieved of his employment responsibilities. He and his team were replaced by a new team headed by Allison Gorman Nachtigal. At that time, the staging area contained about 600 gigabytes of e-mail data that had not yet been uploaded into the Morgan Stanley archive and had not been searched for e-mails relating to this case.

Upon taking over Mr. Riel's responsibilities, Ms. Gorman did not initially make significant efforts to address the backlog of data in the staging area. Indeed, she was not informed of the existence of this litigation until five months later, in January 2005. In October 2004, Ms. Gorman gave the project somewhat greater priority, although even then it did not move as expeditiously as possible. Morgan Stanley did not consider using an outside contractor to expedite the process.

Morgan Stanley found another 169 DLT tapes in January, 2005, that had been misplaced

by its New Jersey storage vendor. Morgan Stanley discovered more than 200 additional backup tapes openly stored in locations known to be used for tape storage on February 11 and 12, 2005. On February 11, 2005 Morgan Stanley discovered that a flaw in the software it had written had prevented Morgan Stanley from locating all e-mail attachments about the Sunbeam transaction. Morgan Stanley discovered on February 13, 2005, that the date-range searches for e-mail users who had a Lotus Notes platform were flawed, so that additional e-mail messages that appeared to fall within the scope of the April 16, 2004 Order had not been given to CPH. Further, it appears that the problem infected Morgan Stanley's original searches in May of 2004. The bulk of the employees using the Lotus Notes platform in the relevant time period came from the Investment Banking Division, the division responsible for the transaction under review here. On February 16, 2005, Morgan Stanley withdrew its certificate of compliance with the April 16, 2004 Order. On February 19, 2005 Morgan Stanley notified CPH that it had found boxes of additional tapes that have not been uploaded into its archive or searched for responsive e-mails. Morgan Stanley did not tell CPH it had found any tapes that it had not searched until November 17, 2004. Even then, it did not tell CPH how many tapes were found, when they were found, or when they would be searched. MS & Co. did not provide all of this information to CPH until February of 2005. The searches had not yet been completed when this trial was begun, when they were terminated without completion.

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IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

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Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

**ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S MOTION FOR
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TO COMPEL FURTHER DISCOVERY REGARDING MORGAN STANLEY'S
DESTRUCTION AND NON-PRODUCTION OF E-MAILS**

THIS CAUSE came before the Court on February 14, 2005 on Coleman (Parent) Holdings, Inc.'s ("CPH's") Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, as modified by CPH's February 14, 2005 ore tenus motion for additional relief, and on February 28, 2005 on Plaintiff's Motion to Compel Further Discovery Regarding Morgan Stanley's Destruction and Non-Production of E-Mails, with both counsel present. Based on evidence introduced, the Court finds:

1. CPH has sued Defendant, Morgan Stanley & Co., Inc. ("MS & Co."), for fraud in connection with CPH's sale of its stock in Coleman, Inc., to Sunbeam Corporation in return for Sunbeam stock. Whether MS & Co. had knowledge of the fraudulent scheme undertaken by Sunbeam in 1997 and early 1998 and, if so, the extent of that knowledge, is central to the case. CPH has sought access to MS & Co.'s internal files, including e-mails, since the case was filed.

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2. Though MS & Co. instructed its investment bankers to preserve paper documents in their possession in connection with the Sunbeam transaction in February, 1999, it continued its practice of overwriting e-mails after 12 months, despite an SEC regulation requiring all e-mails be retained in readily accessible form for two years. *See* 17 C.F.R. §240.17a-4 (1997).

3. On April 16, 2004, the Court entered its Agreed Order requiring MS & Co. to (1) search the oldest full backup tape for each of 36 MS & Co. employees involved in the Sunbeam transaction; (2) review e-mails dated from February 15, 1998 through April 15, 1998 and e-mails containing any of 29 specified search terms such as "Sunbeam" and "Coleman", regardless of their date; (3) produce by May 14, 2004 all nonprivileged e-mails responsive to CPH's document requests; (4) give CPH a privilege log; and (5) certify its full compliance with the Agreed Order.

4. On May 14, 2004, MS & Co. produced approximately 1,300 pages of e-mails but failed to provide the required certification. Finally, on June 23, 2004, after inquiries by CPH, MS & Co. provided CPH with a certificate of full compliance with the April 16 Agreed Order signed by Arthur Riel, the MS & Co. manager assigned this task.

5. As organized by MS & Co., the effort to recover e-mails from any remaining backup tapes had several stages. First, the relevant backup tapes (in various formats, such as "DLT" tapes and eight-millimeter tapes) had to be located by searching the potential storage locations. Second, the tapes were sent to an outside vendor, National Data Conversion, Inc. ("NDC"), to be processed, and the data returned to MS & Co. in the form of "SDLT" tapes. Third, MS & Co. had to find a way to upload the contents of these SDLT tapes into its new e-mail archive. Fourth, MS & Co. would run "scripts" to transform this data into a searchable form, so that it could later be searched for responsive e-mails. MS & Co. personnel used the term "staging area" to describe the stage of the

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process when SDLT tapes remained in limbo, waiting to be uploaded to the archive.

6. At some point prior to May 6, 2004, Arthur Riel and his team became aware that more than 1,000 backup tapes had been found at a MS & Co. facility in Brooklyn, New York. These 1,423 DLT tapes had not been processed by NDCI and thus had not been included in the archive or searched when MS & Co. made its supposedly complete production on May 14, 2004, and when Mr. Riel certified full compliance with the Agreed Order on June 23, 2004. Aware of the tapes' discovery, Mr. Riel knew when he executed the certification that it was false. He and others on MS & Co.'s e-mail archive team knew by July 2, 2004 that these "Brooklyn tapes" contained e-mail dating back at least to the late 1990's. MS & Co. neither withdrew its certification nor informed CPH about the potential for additional production of e-mails, however. During the summer of 2004, the Brooklyn tapes were processed and sent to the staging area, but they were not uploaded to the e-mail archive so as to be available to be searched until January 2004, at least eight months after they were found.

7. MS & Co. also failed to timely produce e-mails from 738 8-millimeter backup tapes found at a MS & Co. facility in Manhattan, in 2002. These 738 8-mm tapes, like the 1,423 Brooklyn tapes, had not been processed by NDCI and thus had not been included in the archive and searched when MS & Co. made its supposedly complete production on May 14, 2004, and when Mr. Riel certified full compliance with the Agreed Order on June 23, 2004. Mr. Riel and others were told by their vendor, NDCI, by July 2, 2004 that the 8-mm tapes contained e-mail dating back at least to 1998. MS & Co. neither withdrew its certification nor informed CPH about the potential for additional production of e-mails, though. During the summer of 2004, the 8-mm tapes were processed and sent to the staging area. Like the Brooklyn tapes, though, they also were not uploaded

to MS & Co.'s e-mail archive.

8. In August 2004, Mr. Riel was relieved of his employment responsibilities. He and his team were replaced by a new team headed by Allison Gorman Nachtigal.

9. Ms. Gorman testified that she was instructed to describe the circumstances of Mr. Riel's replacement as his having been "placed on administrative leave." That same term appears by interlineation over the original typed description in MS & Co.'s memorandum addressing these issues. The typed language stated: "[Mr. Riel was] dismissed for integrity issues." MS & Co. presented no evidence to explain why Mr. Riel would have been placed on administrative leave rather than terminated. CPH argued that it may have been to deprive CPH of the ability to contact him directly.

10. Upon taking over Mr. Riel's responsibilities, Ms. Gorman did not initially make significant efforts to address the backlog of data in the staging area; indeed, she was not informed of the existence of this litigation until five months later, in January 2005. In October 2004, Ms. Gorman met with a group of MS & Co. attorneys. Following that meeting, Ms. Gorman gave the project somewhat greater priority, although even then it clearly did not move as expeditiously as possible. For example, MS & Co. gave no thought to using an outside contractor to expedite the process of completing the discovery, though it had certified completion months earlier; it lacked the technological capacity to upload and search the data at that time, and would not attain that capacity for months; and it knew trial was scheduled to begin in February, 2005. Even at this point, no one from MS & Co. or its outside counsel, Kirkland & Ellis LLP, gave CPH or this Court any hint that the June certification was false.

11. On November 17, 2004, more than six months after the May 14, 2004 deadline for

producing e-mails in response to the Agreed Order, MS & Co. sent CPH a letter revealing that its June 23 certificate of compliance was incorrect. The letter stated:

Morgan Stanley has discovered additional e-mail backup tapes since our e-mail production in May 2004. The data on some of [the] newly discovered tapes has been restored and, to ensure continued compliance with the agreed order, we have re-run the searches described in the order. Some responsive e-mails have been located as a result of that process. We will produce the responsive documents to you as soon as the production is finalized.

The letter also foreshadowed further delays: “(s)ome of the backup tapes are still being restored. To ensure continued compliance with the agreed order, we intend to re-run the searches again when the restoration process is complete and will produce any responsive documents that result.”

12. The next day, November 18, 2004, MS & Co. produced an additional 8,000 pages of e-mails and attachments. MS & Co.’s November 2004 letter stated that the 8,000 pages came from “newly discovered” tapes; but the testimony now makes clear that this statement was false because Ms. Gorman’s team did not figure out how to upload and make searchable the materials from the staging area until January, 2005.

13. MS & Co. has failed to offer any explanation to reconcile the obvious conflict between its assertions at the time of production that the 8,000 pages came from “newly discovered” tapes (*i.e.*, the “Brooklyn tapes”) and the testimony of its own witness, Ms. Gorman, that data from those newly discovered tapes were not capable of being searched until two months later, in January.

14. After a follow-up inquiry by CPH, on December 17, 2004, MS & Co. produced a privilege log and told CPH that “[n]o additional responsive e-mails have been located since our November production.” MS & Co. refused to answer CPH’s questions about whether MS & Co.

had restored all the backup tapes described in its November 17 letter and why the tapes had not been located earlier, however.

15. On December 30, 2004, CPH sought confirmation that MS & Co. had reviewed all e-mail backup tapes and produced all responsive e-mails and, if not, asked when the review would be completed. On January 11, 2005, MS & Co. informed CPH that the “restoration of e-mail back tapes is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time.”

16. On January 19, 2004, CPH wrote asking MS & Co. to explain the circumstances under which MS & Co. located the “newly discovered” backup tapes and to disclose when the tapes were located. CPH also asked MS & Co. to explain why the backup tapes could not be restored sooner.

17. On January 21, 2005, MS & Co. sent CPH a letter that failed to answer CPH’s questions. Instead, MS & Co. described its efforts to restore the backup tapes as “ongoing”; informed CPH that “there is no way for MS & Co. to know or accurately predict the type or time period of data that might be recovered”; and stated that MS & Co. “cannot accurately estimate when all of the tapes will be restored or whether any recoverable data will be found on the remaining tapes.”

18. On January 26, 2005, CPH filed the Motion at issue here, asking the Court to instruct the jury that MS & Co.’s destruction of e-mails and other electronic documents and MS. & Co.’s noncompliance with the April 16, 2004 Agreed Order can give rise to an adverse inference that the contents of the missing e-mails would be harmful to MS & Co.’s defense in this case.

19. Meanwhile, MS & Co. found another 169 DLT tapes in January, 2005, that allegedly

had been misplaced by its New Jersey storage vendor, Recall. Again, MS & Co., chose to provide no specifics to CPH or to the Court.

20. At a February 2, 2005 hearing on CPH's Motion, Thomas A. Clare of Kirkland & Ellis, LLP, representing MS & Co., stated that "late October of 2004...[is] the date I represent to Court is the first time that anyone knew that there was recoverable e-mail data" on the Brooklyn tapes. Hr'g Tr. (2/2/05) at 133-34. The actual date, however, was at least three months earlier, by July 2, 2004. Furthermore, MS & Co. refused to provide the Court with definitive answers about when its e-mail production would be complete, merely stating that it would proceed with "all deliberate speed." *Id.* at 139. Also at the February 2 hearing, Mr. Clare neglected to inform the Court about the 8-mm tapes that had been located in 2002, and told the Court that the 1,423 DLT tapes had been found in Brooklyn "sometime during the summer" of 2004. The truth of this assertion is belied by the evidence showing that the tapes were found before May 6, 2004.

21. On February 3, 2005, the Court ordered further discovery and set an evidentiary hearing for February 14, 2005. The discovery took place on February 9 and 10, when CPH deposed the three e-mail witnesses identified by MS. & Co.

22. On Saturday afternoon, February 12, 2005, MS & Co. informed the Court that it had, in the previous 24 hours, discovered additional tapes. Also, MS & Co. stated that its recent production omitted certain "attachments" to e-mails. MS & Co. did not attempt to clarify or substantiate either of these statements to CPH or to the Court until the Monday, February 14, 2005 hearing.

23. At the February 14 hearing, none of the witnesses MS & Co. presented was involved in or familiar with the actual electronic searches conducted using the parameters specified in this

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Court's April 16, 2004 Agreed Order, and none explained where the 8,000 pages produced in November, 2004 had come from. MS & Co.'s witnesses did, however, describe three new developments. First, Robert Saunders, a Morgan Stanley executive director in the Information Technology Division, testified that he returned to New York after his February 10 deposition and, concerned about his unqualified assertion that he was "confident" that a complete search for backup tapes had been conducted, decided finally to undertake a personal search of MS & Co.'s "communication rooms," going to the areas he thought most obvious first. By doing so, he and two contractors discovered more than 200 additional backup tapes openly stored in locations known to be used for tape storage. Those discoveries were made on Friday and Saturday, February 11 and 12, 2005. As of the February 14 hearing, NDCI had not yet determined which, if any, of these newly discovered backup tapes contained e-mails. Second, Ms. Gorman reported that on Friday, February 11, 2005 she and her team had discovered that a flaw in the software they had written had prevented MS & Co. from locating all responsive e-mail attachments. Third, Ms. Gorman reported that MS & Co. discovered on Sunday evening, February 13, 2005, that the date-range searches for e-mail users who had a Lotus Notes platform were flawed, so there were at least 7,000 additional e-mail messages that appeared to fall within the scope of the Agreed Order had yet to be fully reviewed by MS & Co.'s outside counsel for responsiveness and privilege. As counsel for MS & Co. admitted, this problem "dwarf[s]" their previous problems. Hr'g Tr. (2/14/05) at 13. Ms. Gorman indicated she was "90 percent sure" that the problem infected MS & Co.'s original searches in May, which means that even they failed to timely produce relevant materials that had been uploaded into the archive by that point. *Id.* at 82-83. The bulk of the employees using the Lotus Notes platform in the relevant time period came from the Investment Banking Division, the division responsible for the

transaction under review here.

24. On February 19, 2005 MS & Co. informed counsel for CPH that “additional boxes of back up tapes” have been located “in a security room” and that, “(a)s of this morning, Morgan Stanley has identified four (unlabeled) DLT tapes among the collection. Those four tapes will be sent to NDCI for further analysis.” The disclosure did not state when the discovery was made. MS & Co.’s counsel represented to the Court that it was his understanding that about 73 bankers’ boxes of tapes were discovered. No explanation for the late discovery was offered.

25. Throughout this entire process, MS & Co. and its counsels’ lack of candor has frustrated the Court and opposing counsel’s ability to be fully and timely informed.

26. MS & Co.’s failure during the summer and fall of 2004 to timely process a substantial amount of data that was languishing in the “staging area,” rather than being put into searchable form and then searched, was willful and a gross abuse of its discovery obligations.

27. MS & Co.’s failure to time notify CPH of the existence of the DLT and 8-mm tapes, which it had located as early as 2002 and certainly prior to the June 23, 2004 certification, and its failure to timely process those raw backup tapes was willful and a gross abuse of its discovery obligations.

28. MS & Co.’s failure to produce all e-mail attachments was negligent, and it was discovered and revealed only as a result of CPH’s hiring a third-party vendor, pursuant to the Court’s February 4, 2005 Order, to double-check MS & Co.’s compliance with the April 16, 2004 Agreed Order.

29. MS & Co.’s failure to produce all of the Lotus Notes e-mails was negligent, and it was discovered and revealed only as result of CPH’s hiring a third-party vendor, pursuant to the

Court's February 4, 2005 Order, to double-check MS & Co.'s compliance with the April 16, 2004 Agreed Order.

30. MS & Co.'s failure to locate other potentially responsive backup tapes before Saturday, February 12, 2005 was grossly negligent.

31. Given the history of the discovery, there is no way to know if all potentially responsive backup tapes have been located.

32. In sum, despite MS & Co.'s affirmative duty arising out of the litigation to produce its e-mails, and contrary to federal law requiring it to preserve the e-mails, MS & Co. failed to preserve many e-mails and failed to produce all e-mails required by the Agreed Order. The failings include overwriting e-mails after 12 months; failing to conduct proper searches for tapes that may contain e-mails; providing a certificate of compliance known to be false when made and only recently withdrawn; failing to timely notify CPH when additional tapes were located; failing to use reasonable efforts to search the newly discovered tapes; failing to timely process and search data held in the staging area or notify CPH of the deficiency; failing to write software scripts consistent with the Agreed Order; and discovering the deficiencies only after CPH was given the opportunity to check MS & Co.'s work and the MS & Co.'s attorneys were required to certify the completeness of the prior searches. Many of these failings were done knowingly, deliberately, and in bad faith.

It is clear that e-mails existed which were requested by CPH that have not been produced because of the deficiencies discussed above. Electronic data are the modern-day equivalent of the paper trail. Indeed, because of the informalities of e-mail, correspondents may be less guarded than with paper correspondence. In this case, the paper trail is critical to CPH's ability to make out its prima facie case. Thus, MS & Co.'s acts have severely hindered CPH's ability to

proceed. The only way to test the potentially self-serving testimony of MS & Co. personnel is with the written record of the events.

The failures outlined in this Order are of two types. First, by overwriting e-mails contrary to its legal obligation to maintain them in readily accessible form for two years and with knowledge that legal action was threatened, MS & Co. has spoiled evidence, justifying sanctions. See Martino v. Wal-Mart Stores, Inc., 835 So. 2d 1251 (Fla. 4th DCA 2003). “The appropriateness of sanctions for failing to preserve evidence depends on: (1) willfulness or bad faith of the responsible party, (2) the extent of prejudice suffered by the other party, and (3) what is required to cure the prejudice.” Nationwide Lift Trucks, Inc. v. Smith, 832 So. 2d 824, 826 (Fla. 4th DCA 2002). Second, MS & Co.’s willfull disobedience of the Agreed Order justifies sanctions. See Rule 1.380 (b) (2), Fla. R. Civ. P. The conclusion is inescapable that MS & Co. sought to thwart discovery *in this specific case*.

Sanctions in this context are not meant to be punitive. They are intended, though, to level the playing field.

A reasonable juror could conclude that evidence of MS & Co.’s misconduct demonstrates its consciousness of guilty. It is relevant to the issues before the jury. Further, CPH should not be penalized by being forced to divert the jurors’ attention away from the merits of its claim to focus on highly technical facts going to MS & Co.’s failures here, facts that are not reasonably disputed. Evidence of that failure, though, alone does not make CPH whole. Indeed, it can be said it is not a “sanction” at all, but merely a statement of unrefuted facts that the jury may find relevant. Shifting the burden of proof, though, forces MS & Co. to accept the practical consequence of its failures—that some information will never be known. Obviously, this sanction is of consequence only in the

marginal case. If there is overwhelming proof of MS & Co.'s knowledge of the fraud and collusion with Sunbeam, CPH would have prevailed on those elements in any event. And, to the contrary, if there is overwhelming evidence MS & Co. did not know of the fraud or conspire with or aid Sunbeam in its commission, it would have prevailed in any event. If the case is close on those issues, though, MS & Co., not CPH, should bear the burden of persuasion. Further, shifting the burden on the fraud issue does not relieve CPH of its obligation to establish the other elements of its claims, most notably reliance, proof of which is independent of the MS & Co. e-mails. Thus, the sanctions chosen are the most conservative available to the Court to address the spoliation of evidence and willfull violation of the Agreed Order.^{1 2}

Finally, the Court notes that CPH has requested the e-mails since May of 2003. MS & Co. was supposed to comply with the April 16, 2004 Order by May 14, 2004. Fact discovery in this case closed November 24, 2004. MS & Co.'s actions have resulted in the diversion of enormous amounts of resources, by both the parties and the Court, into a fact discovery dispute that should have never arisen and which would have long ago been put to bed had MS & Co. timely recognized its obligations to CPH and this Court. Opening argument in this complex case is set for March 21,

¹MS & Co.'s bad acts and pocket book may not be used to gain the continuance it has sought from the beginning. Further, the Court has no confidence that, even if a continuance were granted, MS & Co. would fully comply with discovery in this case.

²The undersigned notes that the sanctions imposed are not enumerated in Rule 1.380 (b) (2), and is aware of the concern expressed in the 2000 Handbook on Discovery Practice, Joint Committee of the Trial Lawyers Section of the Florida Bar and Conferences of Circuit and County Court Judges ("(f)or the trial court to be on solid footing, it is wise to stay within the enumerated orders" [Handbook at p. 4]). However, MS & Co.'s violations involve both the violation of a discovery order and the intentional spoliation of evidence. The sanction imposed is *less* severe than that provided in Rule 1.380 (b) (2) (B), under which the Court could preclude MS & Co. from presenting evidence of its lack of knowledge of or collusion with the Sunbeam fraud, which the Court finds is the least severe enumerated sanction appropriate to place the parties on a level playing field.

2005. Preliminary jury selection has begun. MS & Co. has controlled the timetable of this portion of the litigation long enough. Consequently, CPH should have the ability to continue to require MS & Co. to attempt to comply with the Agreed Order and the February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search, or to elect to terminate the e-mail discovery and concentrate on trial preparation.

Based on the foregoing, it is

ORDERED AND ADJUDGED that:

1. Plaintiff's Motion for Adverse Interference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Non-Compliance with the Court's April 16, 2004 Agreed Order and Motion for Additional Relief is GRANTED.

2. MS & Co. shall continue to use its best efforts to comply with the April 16, 2004 Agreed Order and shall continue to comply with the February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search until March 21, 2005 or written notice from CPH, which ever first occurs. Either party shall notify the other in writing of its intention to offer into evidence e-mails actually produced to CPH prior to termination of e-mail discovery in conformity with this Order, within 72 hours of the e-mail's production to CPH. The Court shall hear and determine any objections to use of the e-mails.

3. The Court shall read to the jury the statement of facts attached as Exhibit A during whatever evidentiary phase of CPH's case that it requests. These findings of fact shall be conclusive. See Rule 1.380 (b) (2) (A). No instruction shall be given to the jury regarding inferences to be drawn from these facts. However, counsel may make such argument to the jury in favor of whatever inferences that evidence may support. No other evidence concerning the production of e-mails, or

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lack thereof, shall be presented absent further Court order.

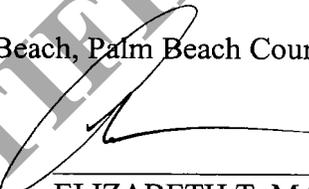
4. CPH will be allowed to argue that MS & Co.'s concealment of its role in the Sunbeam transaction is evidence of its malice or evil intent, going to the issue of punitive damages. See, e.g., General Motors Corp. v. McGee, 837 So.2d 10120.

5. MS & Co. shall bear the burden of proving to the jury, by the greater weight of the evidence, that it lacked knowledge of the Sunbeam fraud and did not aid and abet or conspire with Sunbeam to defraud MS & Co. The traditional order of proof shall remain unaffected, however.

6. MS & Co. shall compensate CPH for costs and fees associated with the Motion. The amount shall be determined at an evidentiary hearing to be held after the completion of the trial.

7. Plaintiff's Motion to Compel Further Discovery Regarding Morgan Stanley's Destruction and Non-Production of E-Mails is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 1 day of March, 2005.


ELIZABETH T. MAASS
Circuit Court Judge

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EXHIBIT A

A federal regulation in effect in 1997 and all times since required Morgan Stanley to preserve e-mails for three years and to preserve them in a readily accessible place for two years. Beginning in no later than 1997, Morgan Stanley had a practice of overwriting e-mails after 12 months. E-mails could no longer be retrieved once they were overwritten. This practice was discontinued in January, 2001. CPH has sought access to Morgan Stanley's e-mails relating to this transaction since the case was filed in May, 2003.

Prior to 2003, Morgan Stanley recorded e-mails and other electronic data on back up tapes. On April 16, 2004, the Court ordered Morgan Stanley to (1) search the oldest full backup tape for each of 36 Morgan Stanley employees involved in the Sunbeam transaction; (2) review e-mails dated from February 15, 1998 through April 15, 1998 and e-mails containing any of 29 specified search terms such as "Sunbeam" and "Coleman", regardless of their date; (3) produce by May 14, 2004 all e-mails relating to this case found by the search I have just described; and (4) certify its full compliance with the Court's order.

On May 14, 2004, Morgan Stanley produced approximately 1,300 pages of e-mails. It did not produce the required certification. On June 23, 2004, after inquiries by CPH, Morgan Stanley provided CPH with a certificate of full compliance with the April 16 Order signed by Arthur Riel, the Morgan Stanley manager assigned this task.

As organized by Morgan Stanley, the effort to recover e-mails from the backup tapes had several stages. First, the relevant backup tapes had to be located by searching the potential storage locations. Second, the tapes were sent to an outside vendor, National Data Conversion, Inc., which I will call "NDCI", to be processed, and the data returned to Morgan Stanley. Third, Morgan Stanley had to upload the processed data into its e-mail archive. Fourth, Morgan Stanley had to run scripts, or pieces of computer code, to transform this data into a searchable form. Finally, Morgan Stanley had to search the data for e-mails related to this case. Morgan Stanley personnel used the term "staging area" to describe the stage of the process when the processed data returned by NDCI remained in limbo, waiting to be uploaded to Morgan Stanley's archive.

At some point prior to May 6, 2004, Arthur Riel and his team became aware that 1,423 backup tapes had been found at a Morgan Stanley facility in Brooklyn, New York. These 1,423 tapes had not been processed by NDCI and thus had not been included in the archive or searched when Morgan Stanley made its production to CPH on May 14, 2004. Aware of the tapes' discovery, Mr. Riel knew when he executed the certification of full compliance with the Court's April 16, 2004 Order that it was false. He and others on Morgan Stanley's e-mail archive team knew by July 2, 2004 that these "Brooklyn tapes" contained e-mail dating back at least to the late 1990's. During the summer of 2004, the Brooklyn tapes were processed and the data sent to the staging area. The scripts were not written and tested to permit the search for e-mails relating to this case to begin until the middle of January, 2004. Such a search, even if perfectly done, can take weeks.

Morgan Stanley also failed to timely produce e-mails from 738 backup tapes found at a Morgan Stanley facility in Manhattan in 2002. These 738 tapes, like the 1,423 Brooklyn tapes, had not been processed by NDCI and thus had not been included in the archive and searched by either on May 14, 2004 or June 23, 2004. Mr. Riel and others were told by NDCI by July 2, 2004 that these tapes contained e-mail dating back at least to 1998. During the summer of 2004, the these tapes were processed and sent to the staging area. Like the Brooklyn tapes, though, they also were not searched.

In August 2004, Mr. Riel was relieved of his employment responsibilities. He and his team were replaced by a new team headed by Allison Gorman Nachtigal. At that time, the staging area contained about 600 gigabytes of e-mail data that had not yet been uploaded into the Morgan Stanley archive and had not been searched for e-mails relating to this case.

Upon taking over Mr. Riel's responsibilities, Ms. Gorman did not initially make significant efforts to address the backlog of data in the staging area. Indeed, she was not informed of the existence of this litigation until five months later, in January 2005. In October 2004, Ms. Gorman gave the project somewhat greater priority, although even then it did not move as expeditiously as possible. Morgan Stanley did not consider using an outside contractor to expedite the process.

Morgan Stanley found another 169 DLT tapes in January, 2005, that had been misplaced

by its New Jersey storage vendor. Morgan Stanley discovered more than 200 additional backup tapes openly stored in locations known to be used for tape storage on February 11 and 12, 2005. On February 11, 2005 Morgan Stanley discovered that a flaw in the software it had written had prevented Morgan Stanley from locating all e-mail attachments about the Sunbeam transaction. Morgan Stanley discovered on February 13, 2005, that the date-range searches for e-mail users who had a Lotus Notes platform were flawed, so that additional e-mail messages that appeared to fall within the scope of the April 16, 2004 Order had not been given to CPH. Further, it appears that the problem infected Morgan Stanley's original searches in May of 2004. The bulk of the employees using the Lotus Notes platform in the relevant time period came from the Investment Banking Division, the division responsible for the transaction under review here. On February 16, 2005, Morgan Stanley withdrew its certificate of compliance with the April 16, 2004 Order. On February 19, 2005 Morgan Stanley notified CPH that it had found boxes of additional tapes that have not been uploaded into its archive or searched for responsive e-mails. Morgan Stanley did not tell CPH it had found any tapes that it had not searched until November 17, 2004. Even then, it did not tell CPH how many tapes were found, when they were found, or when they would be searched. MS & Co. did not provide all of this information to CPH until February of 2005. The searches had not yet been completed when this trial was begun, when they were terminated without completion.

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THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

CASE NO. 2003CA 005045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

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SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
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**MOTION FOR CORRECTION AND CLARIFICATION OF
ORDER ON CPH'S MOTION FOR ADVERSE INFERENCE**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully requests that the Court correct and clarify the form of its March 1, 2005 Amended Order On Coleman (Parent) Holdings, Inc.'s Motion For Adverse Inference Instruction Due To Morgan Stanley's Destructions of E-Mails And Morgan Stanley's Noncompliance With The Court's April 16, 2004 Agreed Order, And Motion For Additional Relief And Order On Plaintiff's Motion To Compel Further Discovery Regarding Morgan Stanley's Destruction And Non-Production of E-Mails (the "Order").

CPH requests entry of a revised form of the Order to correct a few typographical errors and to ensure that the language of the Order, including the attached statement of facts, is entirely clear. CPH attaches to this motion (1) a marked copy of the Order highlighting the insertions and deletions that CPH proposes, and (2) a clean copy of the revised form of the Order that CPH requests be entered. CPH also is providing a disk containing the clean copy of the proposed revised Order.

CPH does not seek any substantive changes to this Court's findings or to the relief that this Court has granted with respect to the specific misconduct addressed in the Court's order.

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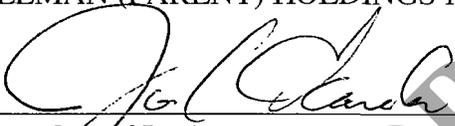
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Rather, the language changes that CPH requests are designed solely to clarify specific parts of the Order and to ensure that the attached statement of facts clearly conveys to the jury the findings that this Court has made.

Dated: March 4, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by
Fax and hand delivery to all counsel on the attached list on this 3rd day of March, 2005.



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CHANGES MARKED

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO.: 502003CA005045XXOCAI

COLEMAN (PARENT) HOLDINGS INC.
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

**FURTHER AMENDED ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S
MOTION FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN
STANLEY'S DESTRUCTIONS OF E-MAILS AND MORGAN STANLEY'S
NONCOMPLIANCE WITH THE COURT'S APRIL 16 2004 AGREED ORDER,
AND MOTION FOR ADDITIONAL RELIEF AND ORDER ON PLAINTIFF'S MOTION
TO COMPEL FURTHER DISCOVERY REGARDING MORGAN STANLEY'S
DESTRUCTION AND NON-PRODUCTION OF E-MAILS**

THIS CAUSE came before the Court on February 14, 2005 on Coleman (Parent) Holdings, Inc.'s ("CPH's") Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, as modified by CPH's February 14, 2005 ore tenus motion for additional relief, and on February 28, 2005 on Plaintiff's Motion to Compel Further Discovery Regarding Morgan Stanley's Destruction and Non-Production of E-Mails, with both counsel present. Based on evidence introduced, the Court finds:

1. CPH has sued Defendant, Morgan Stanley & Co., Inc. ("MS & Co."), for fraud in connection with CPH's sale of its stock in Coleman, Inc., to Sunbeam Corporation in return for Sunbeam stock. Whether MS & Co. had knowledge of the fraudulent scheme undertaken by Sunbeam in 1997 and early 1998 and, if so, the extent of that knowledge, is central to the case. CPH has sought access to MS & Co.'s internal files, including e-mails, since the case was filed.

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2. Though MS & Co. instructed its investment bankers to preserve paper documents in their possession in connection with the Sunbeam transaction in February, 1999, it continued its practice of overwriting e-mails after 12 months, despite an SEC regulationn requiring all e-mails be retained in readily accessible form for two years. *See* 17 C.F.R. §240.17a-4 (1997).

3. On April 16, 2004, the Court entered its Agreed Order requiring MS & Co. to (1) search the oldest full backup tape for each of 36 MS & Co. employees involved in the Sunbeam transaction; (2) review e-mails dated from February 15, 1998 through April 15, 1998 and e-mails containing any of 29 specified search terms such as “Sunbeam” and “Coleman”, regardless of their date; (3) produce by May 14, 2004 all nonprivileged e-mails responsive to CPH’s document requests; (4) give CPH a privilege log; and (5) certify its full compliance with the Agreed Order.

4. On May 14, 2004, MS & Co. produced approximately 1,300 pages of e-mails but failed to provide the required certification. Finally, on June 23, 2004, after inquiries by CPH, MS & Co. provided CPH with a certificate of full compliance with the April 16 Agreed Order signed by Arthur Riel, the MS & Co. manager assigned this task.

5. As organized by MS & Co., the effort to recover e-mails from any remaining backup tapes had several stages. First, the relevant backup tapes (in various formats, such as “DLT” tapes and eight-millimeter tapes) had to be located by searching the potential storage locations. Second, the tapes were sent to an outside vendor, National Data Conversion, Inc. (“NDC”), to be processed, and the data returned to MS & Co. in the form of “SDLT” tapes. Third, MS & Co. had to find a way to upload the contents of these SDLT tapes into its new e-mail archive. Fourth, MS & Co. would run “scripts” to transform this data into a searchable form, so that it could later be searched for responsive e-mails. MS & Co. personnel used the term “staging area” to describe the stage of the process when SDLT tapes remained in limbo, waiting to be uploaded to the archive.

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6. At some point prior to May 6, 2004, Arthur Riel and his team became aware that more than 1,000 backup tapes had been found at a MS & Co. facility in Brooklyn, New York. These 1,423 DLT tapes had not been processed by NDCI and thus had not been included in the archive or searched when MS & Co. made its supposedly complete production on May 14, 2004, and when Mr. Riel certified full compliance with the Agreed Order on June 23, 2004. Aware of the tapes' discovery, Mr. Riel knew when he executed the certification that it was false. He and others on MS & Co.'s e-mail archive team knew by July 2, 2004 that these "Brooklyn tapes" contained e-mail dating back at least to the late 1990's. MS & Co. neither withdrew its certification nor informed CPH about the potential for additional production of e-mails, however. During the summer of 2004, the Brooklyn tapes were processed and sent to the staging area, but they were not uploaded to the e-mail archive so as to be available to be searched until January ~~2005~~2004, at least eight months after they were found.

7. MS & Co. also failed to timely produce e-mails from 738 8-millimeter backup tapes found at a MS & Co. facility in Manhattan, in 2002. These 738 8-mm tapes, like the 1,423 Brooklyn tapes, had not been processed by NDCI and thus had not been included in the archive and searched when MS & Co. made its supposedly complete production on May 14, 2004, and when Mr. Riel certified full compliance with the Agreed Order on June 23, 2004. Mr. Riel and others were told by their vendor, NDCI, by July 2, 2004 that the 8-mm tapes contained e-mail dating back at least to 1998. MS & Co. neither withdrew its certification nor informed CPH about the potential for additional production of e-mails, though. During the summer of 2004, the 8-mm tapes were processed and sent to the staging area. Like the Brooklyn tapes, though, they also were not uploaded to MS & Co.'s e-mail archive.

8. In August 2004, Mr. Riel was relieved of his employment responsibilities. He and his team were replaced by a new team headed by Allison Gorman Nachtigal.

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9. Ms. Gorman testified that she was instructed to describe the circumstances of Mr. Riel's replacement as his having been "placed on administrative leave." That same term appears by interlineation over the original typed description in MS & Co.'s memorandum addressing these issues. The typed language stated: "[Mr. Riel was] dismissed for integrity issues." MS & Co. **represented that the reason for the adverse action taken against Mr. Riel was unrelated to any concern about the accuracy of his June 23, 2004 certification. However, MS & Co.** presented no evidence to explain why Mr. Riel would have been placed on administrative leave rather than terminated. CPH argued that it may have been to deprive CPH of the ability to contact him directly.

10. Upon taping over Mr. Riel's responsibilities, Ms. Gorman did not initially make significant efforts to address the backlog of data in the staging area; indeed, she was not informed of the existence of this litigation until five months later, in January 2005. In October 2004, Ms. Gorman met with a group of MS & Co. attorneys. Following that meeting, Ms. Gorman gave the project somewhat greater priority, although even then it clearly did not move as expeditiously as possible. For example, MS & Co. gave no thought to using an outside contractor to expedite the process of completing the discovery, though it had certified completion months earlier; it lacked the technological capacity to upload and search the data at that time, and would not attain that capacity for months; and it knew trial was scheduled to begin in February, 2005. Even at this point, no one from MS & Co. or its outside counsel, Kirkland & Ellis LLP, gave CPH or this Court any hint that the June certification was false.

11. On November 17, 2004, more than six months after the May 14, 2004 deadline for producing e-mails in response to the Agreed Order, MS & Co. sent CPH a letter revealing that its June 23 certificate of compliance was incorrect. The letter stated:

Morgan Stanley has discovered additional e-mail backup tapes since our e-mail production in May 2004. The data on some of [the] newly discovered tapes has been restored and, to ensure continued compliance

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with the agreed order, we have re-run the searches described in the order. Some responsive e-mails have been located as a result of that process. We will produce the responsive documents to you as soon as the production is finalized.

The letter also foreshadowed further delays: “(s)ome of the backup tapes are still being restored. To ensure continued compliance with the agreed order, we intend to re-run the searches again when the restoration process is complete and will produce any responsive documents that result.”

12. The next day, November 18, 2004, MS & Co. produced an additional 8,000 pages of e-mails and attachments. MS & Co.’s November 2004 letter stated that the 8,000 pages came from “newly discovered” tapes; but the testimony now makes clear that this statement was false because Ms. Gorman’s team did not figure out how to upload and make searchable the materials from the staging area until January, 2005.

13. MS & Co. has failed to offer any explanation to reconcile the obvious conflict between its assertions at the time of production that the 8,000 pages came from “newly discovered” tapes (*i.e.*, the “Brooklyn tapes”) and the testimony of its own witness, Ms. Gorman, that data from those newly discovered tapes were not capable of being searched until two months later, in January.

14. After a follow-up inquiry by CPH, on December 17, 2004, MS & Co. produced a privilege log and told CPH that “[n]o additional responsive e-mails have been located since our November production.” MS & Co. refused to answer CPH’s questions about whether MS & Co. had restored all the backup tapes described in its November 17 letter and why the tapes had not been located earlier, however.

15. On December 30, 2004, CPH sought confirmation that MS & Co. had reviewed all e-mail backup tapes and produced all responsive e-mails and, if not, asked when the review would be completed. On January 11, 2005, MS & Co. informed CPH that the “restoration of e-mail backup tapes

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is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time.”

16. On January 19, 2004, CPH wrote asking MS & Co. to explain the circumstances under which MS & Co. located the “newly discovered” backup tapes and to disclose when the tapes were located. CPH also asked MS & Co. to explain why the backup tapes could not be restored sooner.

17. On January 21, 2005, MS & Co. sent CPH a letter that failed to answer CPH’s questions. Instead, MS & Co. described its efforts to restore the backup tapes as “ongoing”; informed CPH that “there is no way for MS & Co. to know or accurately predict the type or time period of data that might be recovered”; and stated that MS & Co. “cannot accurately estimate when all of the tapes will be restored or whether any recoverable data will be found on the remaining tapes.”

18. On January 26, 2005, CPH filed the Motion at issue here, asking the Court to instruct the jury that MS & Co.’s destruction of e-mails and other electronic documents and MS. & Co.’s noncompliance with the April 16, 2004 Agreed Order can give rise to an adverse inference that the contents of the missing e-mails would be harmful to MS & Co.’s defense in this case.

19. Meanwhile, MS & Co. found another 169 DLT tapes in January, 2005, that allegedly had been misplaced by its New Jersey storage vendor, Recall. Again, MS & Co., chose to provide no specifics to CPH or to the Court.

20. At a February 2, 2005 hearing on CPH’s Motion, Thomas A. Clare of Kirkland & Ellis, LLP, representing MS & Co., stated that “late October of 2004...[is] the date I’m representing to the Court is the first time that anyone knew that there was recoverable e-mail data” on the Brooklyn tapes. Hr’g Tr. (2/2/05) at 133-34. The actual date, however, was at least three months earlier, by July 2, 2004. Furthermore, MS & Co. refused to provide the Court with definitive answers about when its e-mail production would be complete, merely stating that it would proceed with “all deliberate speed.” *Id.* at 139. Also at the February 2 hearing, Mr. Clare neglected to inform the Court about the 8-mm

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tapes that had been located in 2002, and told the Court that the 1,423 DLT tapes had been found in Brooklyn "sometime during the summer" of 2004. The truth of this assertion is belied by the evidence showing that the tapes were found before May 6, 2004.

21. On February 3, 2005, the Court ordered further discovery and set an evidentiary hearing for February 14, 2005. The discovery took place on February 9 and 10, when CPH deposed the three e-mail witnesses identified by MS. & Co.

22. On Saturday afternoon, February 12, 2005, MS & Co. informed the Court that it had, in the previous 24 hours, discovered additional tapes. Also, MS & Co. stated that its recent production omitted certain "attachments" to e-mails. MS & Co. did not attempt to clarify or substantiate either of these statements to CPH or to the Court until the Monday, February 14, 2005 hearing.

23. At the February 14 hearing, none of the witnesses MS & Co. presented was involved in or familiar with the actual electronic searches conducted using the parameters specified in this Court's April 16, 2004 Agreed Order, and none explained where the 8,000 pages produced in November, 2004 had come from. MS & Co.'s witnesses did, however, describe three new developments. First, Robert Saunders, a Morgan Stanley executive director in the Information Technology Division, testified that he returned to New York after his February 10 deposition and, concerned about his unqualified deposition assertion that ~~he~~he was "confident" that a complete search for backup tapes had been conducted, decided finally to undertake a personal search of MS & Co.'s "communication rooms," going to the areas he thought most obvious first. By doing so, he and two contractors discovered more than 200 additional backup tapes openly stored in locations known to be used for tape storage. Those discoveries were made on Friday and Saturday, February 11 and 12, 2005. As of the February 14 hearing, NDCI had not yet determined which, if any, of these newly discovered backup tapes contained e-mails. Second, Ms. Gorman reported that on Friday, February 11, 2005 she and her team had discovered that a flaw in the software they had written had prevented MS & Co. from locating all

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responsive e-mail attachments. Third, Ms. Gorman reported that MS & Co. discovered on Sunday evening, February 13, 2005, that the date-range searches for e-mail users who had a Lotus Notes platform were flawed, so there were at least 7,000 additional e-mail messages that appeared to fall within the scope of the Agreed Order had yet to be fully reviewed by MS. & Co.'s outside counsel for responsiveness and privilege. As counsel for MS & Co. admitted, this problem "dwarf[s]" their previous problems. Hr'g Tr. (2/14/05) at 13. Ms. Gorman indicated she was "90 percent sure" that the problem infected MS & Co.'s original searches in May, which means that MS & Co. even then they failed to timely produce relevant materials that had been uploaded into the archive by that point. *Id.* at 82-83. The bulk of the employees using the Lotus Notes platform in the relevant time period came from the Investment Banking Division, the division responsible for the transaction under review here.

24. On February 19, 2005 MS & Co. informed counsel for CPH that "additional boxes of back up tapes" have been located "in a security room" and that, "(a)s of this morning, Morgan Stanley has identified four (unlabeled) DLT tapes among the collection. Those four tapes will be sent to NDCI for further analysis." The disclosure did not state when the discovery was made. MS & Co.'s counsel represented to the Court that it was his understanding that about 73 bankers' boxes of tapes were discovered. No explanation for the late discovery was offered.

25. Throughout this entire process, MS & Co. and its counsels' lack of candor has frustrated the Court and opposing counsel's ability to be fully and timely informed.

26. MS & Co.'s failure during the summer and fall of 2004 to timely process a substantial amount of data that was languishing in the "staging area," rather than being put into searchable form and then searched, was willful and a gross abuse of its discovery obligations.

27. MS & Co.'s failure to timely notify CPH of the existence of the DLT and 8-mm tapes, which it had located as early as 2002 and certainly prior to the June 23, 2004 certification, and its

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failure to timely process those raw backup tapes was willful and a gross abuse of its discovery obligations.

28. MS & Co.'s failure to produce all e-mail attachments was negligent, and it was discovered and revealed only as a result of CPH's hiring a third-party vendor, pursuant to the Court's February 4, 2005 Order, to double-check MS & Co.'s compliance with the April 16, 2004 Agreed Order.

29. MS & Co.'s failure to produce all of the Lotus Notes e-mails was negligent, and it was discovered and revealed only as result of CPH's hiring a third-party vendor, pursuant to the Court's February 4, 2005 Order, to double-check MS & Co.'s compliance with the April 16, 2004 Agreed Order.

30. MS & Co.'s failure to locate other potentially responsive backup tapes before Saturday, February 12, 2005 was grossly negligent.

31. Given the history of the discovery, there is no way to know if all potentially responsive backup tapes have been located.

32. In sum, despite MS & Co.'s affirmative duty arising out of the litigation to produce its e-mails, and contrary to federal law requiring it to preserve the e-mails, MS & Co. failed to preserve many e-mails and failed to produce all e-mails required by the Agreed Order. The failings include overwriting e-mails after 12 months; failing to conduct proper searches for tapes that may contain e-mails; providing a certificate of compliance known to be false when made and only recently withdrawn; failing to timely notify CPH when additional tapes were located; failing to use reasonable efforts to search the newly discovered tapes; failing to timely process and search data held in the staging area or notify CPH of the deficiency; failing to write software scripts consistent with the Agreed Order; and discovering the deficiencies only after CPH was given the opportunity to check MS & Co.'s work and

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the MS & Co.'s attorneys were required to certify the completeness of the prior searches. Many of these failings were done knowingly, deliberately, and in bad faith.

It is clear that e-mails existed which were requested by CPH that have not been produced because of the deficiencies discussed above. Electronic data are the modern-day equivalent of the paper trail. Indeed, because of the informalities of e-mail, correspondents maybe less guarded than with paper correspondence. In this case, the paper trail is critical to CPH's ability to make out its prima facie case. Thus, MS & Co.'s acts have severely hindered CPH's ability to proceed. The only way to test the potentially self-serving testimony of MS & Co. personnel is with the written record of the events.

The failures outlined in this Order are of two types. First, by overwriting e-mails contrary to its legal obligation to maintain there in readily accessible form for two years and with knowledge that legal action was threatened, MS & Co. has spoiled evidence, justifying sanctions. See Martino v. Wal-Mart Stores Inc., 835 So. 2d 1251 (Fla. 4th DCA 2003). "The appropriateness of sanctions for failing to preserve evidence depends on: (1) willfulness or bad faith of the responsible party, (2) the extent of prejudice suffered by the other party, and (3) what is required to cure the prejudice." Nationwide Lift Trucks Inc. v. Smith, 832 So. 2d 824, 826 (Fla. 4th DCA 2002). Second, MS & Co.'s ~~willful~~ willful disobedience of the Agreed Order justifies sanctions. See Rule 1.380 (b) (2), Fla. R. Civ. P. The conclusion is inescapable that MS & Co. sought to thwart discovery *in this specific case*.

Sanctions in this context are not meant to be punitive. They are intended, though, to level the playing field.

A reasonable juror could conclude that evidence of MS & Co.'s misconduct demonstrates its consciousness of ~~guilt~~ guilty. It is relevant to the issues before the jury. Further, CPH should not be penalized by being forced to divert the jurors' attention away from the merits of its claim to focus on highly technical facts going to MS & Co.'s failures here, facts that are not reasonably disputed. Evidence of that failure, though, alone does not make CPH whole. Indeed, it can be said it is not a "sanction" at all, but

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merely a statement of unrefuted facts that the jury may find relevant. Shifting the burden of proof, though, forces MS & Co. to accept the practical consequence of its failures-that some information will never be known. Obviously, this sanction is of consequence only in the marginal case. If there is overwhelming proof of MS & Co.'s knowledge of the fraud and collusion with Sunbeam, CPH would have prevailed on those elements in any event. And, to the contrary, if there is overwhelming evidence MS & Co. did not know of the fraud or conspire with or aid Sunbeam in its commission, it would have prevailed in any event. If the case is close on those issues, though, MS & Co., not CPH, should bear the burden of persuasion. Further, shifting the burden on the fraud issue does not relieve CPH of its obligation to establish the other elements of its claims, most notably reliance, proof of which is independent of the MS & Co. e-mails. Thus, the sanctions chosen are the most conservative available to the Court to address the spoliation ~~spoliation~~ of evidence and willful ~~willful~~ violation of the Agreed Order.^{1 2}

Finally, the Court notes that CPH has requested the e-mails since May of 2003. MS & Co. was supposed to comply with the April 16, 2004 Order by May 14, 2004. Fact discovery in this case closed November 24, 2004. MS & Co.'s actions have resulted in the diversion of enormous amounts of resources, by both the parties and the Court, into a fact discovery dispute that should have never arisen and which would have long ago been put to bed had MS & Co. timely recognized its obligations to CPH and this Court. Opening argument in this complex case is set for March 21, 2005. Preliminary jury selection has

¹ MS & Co.'s bad acts and pocket book may not be used to gain the continuance it has sought from the beginning. Further, the Court has no confidence that, even if a continuance were granted, MS & Co. would fully comply with discovery in this case.

² The undersigned notes that the sanctions imposed are not enumerated in Rule 1.380 (b) (2), and is aware of the concern expressed in the 2000 Handbook on Discovery Practice, Joint Committee of the Trial Lawyers Section of the Florida Bar and Conferences of Circuit and County Court Judges (“(f)or the trial court to be on solid footing, it is wise to stay within the enumerated orders” [Handbook at p. 4]). However, MS & Co.'s violations involve both the violation of a discovery order and the intentional spoliation ~~spoliation~~ of evidence. The sanction imposed is *less* severe than that provided in Rule 1.380 (b) (2) (B), under which the Court could preclude MS & Co. from presenting evidence of its lack of

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begun. MS & Co. has controlled the timetable of this portion of the litigation long enough. Consequently, CPH should have the ability to continue to require MS & Co, to attempt to comply with the Agreed Order and the February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search, or to elect to terminate the e-mail discovery and concentrate on trial preparation.

Based on the foregoing, it is

ORDERED AND ADJUDGED that:

1. Plaintiff's Motion for Adverse Interference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Non-Compliance with the Court's April 16, 2004 Agreed Order and Motion for Additional Relief is GRANTED.

2. MS & Co. shall continue to use its best efforts to comply with the April 16, 2004 Agreed Order and shall continue to comply with the February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search until March 21, 2005 or written notice from CPH, which ever first occurs. Either party shall notify the other in writing of its intention to offer into evidence e-mails actually produced to CPH prior to termination of e-mail discovery in conformity with this Order, within 72 hours of the e-mail's production to CPH. The Court shall hear and determine any objections to use of the e-mails.

3. The Court shall read to the jury the statement of facts attached as Exhibit A during whatever evidentiary phase of CPH's case that it requests, These findings of fact shall be conclusive. See Rule 1.380 (b) (2) (A). No instruction shall be given to the jury regarding inferences to be drawn from these facts. However, counsel may make such argument to the jury in favor of whatever inferences

knowledge of or collusion with the Sunbeam fraud, which the Court finds is the least severe enumerated sanction appropriate to place the parties on a level playing field.

that evidence may support. No other evidence concerning the production of e-mails, or lack thereof, shall be presented absent further Court order.

4. CPH will be allowed to argue that MS & Co.'s concealment of its role in the Sunbeam transaction is evidence of its malice or evil intent, going to the issue of punitive damages. See, e.g., General Motors Corp. v. McGee, 837 So.2d 10120.

5. MS & Co. shall bear the burden of proving to the jury, by the greater weight of the evidence, that it lacked knowledge of the Sunbeam fraud and did not aid and abet or conspire with Sunbeam to defraud CPH. The traditional order of proof shall remain unaffected, however.

6. MS & Co. shall compensate CPH for costs and fees associated with the Motion. The amount shall be determined at an evidentiary hearing to be held after the completion of the trial.

7. Plaintiff's Motion to Compel Further Discovery Regarding Morgan Stanley's Destruction and Non-Production of E-Mails is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this ____ day of March, 2005.

ELIZABETH T. MAAS
Circuit Court Judge

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EXHIBIT A

A federal regulation in effect in 1997 and all times since required Morgan Stanley to preserve e-mails for three years and to preserve them in a readily accessible place for two years. Beginning in no later than 1997, Morgan Stanley had a practice of overwriting e-mails after 12 months. E-mails could no longer be retrieved once they were overwritten. This practice was discontinued in January, 2001. CPH has sought access to Morgan Stanley's e-mails relating to this transaction since the case was filed in May, 2003.

Prior to 2003, Morgan Stanley recorded e-mails and other electronic data on back up tapes. On April 16, 2004, the Court ordered Morgan Stanley to (1) search the oldest full backup tape for each of 36 Morgan Stanley employees involved in the Sunbeam transaction; (2) review e-mails dated from February 15, 1998 through April 15, 1998 and e-mails containing any of 29 specified search terms such as "Sunbeam" and "Coleman", regardless of their date; (3) produce by May 14, 2004 all e-mails relating to this case found by the search I have just described; and (4) certify its full compliance with the Court's order.

On May 14, 2004, Morgan Stanley produced approximately 1,300 pages of e-mails. It did not produce the required certification. On June 23, 2004, after inquiries by CPH, Morgan Stanley provided CPH with a certificate of full compliance with the April 16 Order signed by Arthur Riel, the Morgan Stanley manager assigned this task.

As organized by Morgan Stanley, the effort to recover e-mails from the backup tapes had several stages. First, the relevant backup tapes had to be located by searching the potential storage locations. Second, the tapes were sent to an outside vendor, National Data Conversion, Inc., which I will call "NDCI", to be processed, and the data returned to Morgan Stanley. Third, Morgan Stanley had to upload the processed data into its e-mail archive. Fourth, Morgan Stanley had to run scripts, or pieces of computer code, to transform this data into a searchable form. Finally, Morgan Stanley had to search the data for e-mails related to this case. Morgan Stanley personnel used the term "staging area" to describe the stage of the process when the processed data returned by NDCI remained in limbo, waiting to be uploaded to Morgan Stanley's archive.

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At some point prior to May 6, 2004, Arthur Riel and his team became aware that 1,423 backup tapes had been found at a Morgan Stanley facility in Brooklyn, New York. These 1,423 tapes had not been processed by NDCI and thus had not been included in the archive or searched when Morgan Stanley made its production to CPH on May 14, 2004. Aware of the tapes' discovery, Mr. Riel knew when he executed the certification of full compliance with the Court's April 16, 2004 Order that it was false. He and others on Morgan Stanley's e-mail archive team knew by July 2, 2004 that these "Brooklyn tapes" contained e-mail dating back at least to the late 1990's. During the summer of 2004, the Brooklyn tapes were processed and the data sent to the staging area. The scripts for e-mails relating to this case were not written and tested to permit the search for e-mails relating to this case to begin until the middle of January, 2004. Such a search, even if perfectly done, can take weeks.

Morgan Stanley also failed to timely produce e-mails from 738 backup tapes found at a Morgan Stanley facility in Manhattan in 2002. These 738 tapes, like the 1,423 Brooklyn tapes, had not been processed by NDCI and thus had not been included in the archive and searched by either on May 14, 2004, when the Court's order required production, or June 23, 2004, when Morgan Stanley falsely certified that full production had been made. Mr. Riel and others were told by NDCI by July 2, 2004 that these tapes contained e-mail dating back at least to 1998. During the summer of 2004, the these tapes were processed and sent to the staging area. Like the Brooklyn tapes, though, they also were not searched.

In the course of these proceedings, Morgan Stanley represented to the Court that the first time anyone knew that there was recoverable e-mail data on the Brooklyn tapes was in October 2004. That statement was false. The actual date was at least three months earlier than that, no later than July 2, 2004.

In August 2004, Mr. Riel was relieved of his employment responsibilities for reasons unrelated to Morgan Stanley's false certification. He and his team were replaced by a new team headed by Allison Gorman Nachtigal. At that time, the staging area contained about 600 gigabytes of e-mail data that had not yet been uploaded into the Morgan Stanley archive and had not been searched for e-mails relating to this case. 600 gigabytes of data is the equivalent of approximately 30 million printed pages.

Upon taking over Mr. Riel's responsibilities, Ms. Gorman did not initially make significant efforts

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to address the backlog of data in the staging area. Indeed, she was not informed of the existence of this litigation until five months later, in January 2005. In October 2004, Ms. Gorman gave the project somewhat greater priority, although even then it did not move as expeditiously as possible. Morgan Stanley did not consider using an outside contractor to expedite the process.

In November 2004, Morgan Stanley produced additional e-mails and attachments to CPH. Morgan Stanley told CPH that those materials came from newly discovered tapes. That statement was false. In fact, Morgan Stanley did not begin searching the materials from the staging area until January 2005.

Morgan Stanley found another 169 DLT tapes in January, 2005, that **according to Morgan Stanley** had been misplaced by its New Jersey storage vendor. Morgan Stanley **later disclosed the existence of** ~~discovered~~ more than 200 additional **unsearched** backup tapes openly stored in locations known to be used for tape storage, **which Morgan Stanley claimed to have discovered** on February 11 and 12, 2005.

On February 11, 2005 Morgan Stanley discovered that a flaw in the software it had written had prevented Morgan Stanley from locating all e-mail attachments about the Sunbeam transaction. Morgan Stanley **also admits** ~~discovered~~ on February 13, 2005, that the date-range searches for e-mail users who had a Lotus Notes platform were flawed, so that additional e-mail messages that appeared to fall within the scope of the April 16, 2004 Order had not been given to CPH. Further, it appears that the problem infected Morgan Stanley's original searches in May of 2004. The bulk of the employees using the Lotus Notes platform in the relevant time period came from the Investment Banking Division, the division responsible for the transaction under review here.

Morgan Stanley claims to have discovered defects in the searches on February 13, 2005. The defects in Morgan Stanley's searches were discovered and revealed only as a result of CPH's hiring of a third-party vendor, pursuant to the Court's Order on February 4, 2005, to double-check Morgan Stanley's compliance with the April 16, 2004 Order. On February 16, 2005, Morgan Stanley withdrew its certificate of compliance with the April 16, 2004 Order.

On February 19, 2005 Morgan Stanley notified CPH that it had found boxes of additional tapes that have not been uploaded into its archive or searched for responsive e-mails. Morgan Stanley did not tell CPH it had found any tapes that it had not searched until November 17, 2004. Even then, it did not

tell CPH how many tapes were found, when they were found, or when they would be searched. MS & Co. did not provide all of this information to CPH until February of 2005. The searches had not yet been completed when this trial was begun, when they were terminated without completion.

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IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO.: 502003CA005045XXOCAI

COLEMAN (PARENT) HOLDINGS INC.
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

**FURTHER AMENDED ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S
MOTION FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN
STANLEY'S DESTRUCTIONS OF E-MAILS AND MORGAN STANLEY'S
NONCOMPLIANCE WITH THE COURT'S APRIL 16 2004 AGREED ORDER,
AND MOTION FOR ADDITIONAL RELIEF AND ORDER ON PLAINTIFF'S MOTION
TO COMPEL FURTHER DISCOVERY REGARDING MORGAN STANLEY'S
DESTRUCTION AND NON-PRODUCTION OF E-MAILS**

THIS CAUSE came before the Court on February 14, 2005 on Coleman (Parent) Holdings, Inc.'s ("CPH's") Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, as modified by CPH's February 14, 2005 ore tenus motion for additional relief, and on February 28, 2005 on Plaintiff's Motion to Compel Further Discovery Regarding Morgan Stanley's Destruction and Non-Production of E-Mails, with both counsel present. Based on evidence introduced, the Court finds:

1. CPH has sued Defendant, Morgan Stanley & Co., Inc. ("MS & Co."), for fraud in connection with CPH's sale of its stock in Coleman, Inc., to Sunbeam Corporation in return for Sunbeam stock. Whether MS & Co. had knowledge of the fraudulent scheme undertaken by Sunbeam in 1997 and early 1998 and, if so, the extent of that knowledge, is central to the case. CPH has sought access to MS & Co.'s internal files, including e-mails, since the case was filed.

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2. Though MS & Co. instructed its investment bankers to preserve paper documents in their possession in connection with the Sunbeam transaction in February, 1999, it continued its practice of overwriting e-mails after 12 months, despite an SEC regulation requiring all e-mails be retained in readily accessible form for two years. *See* 17 C.F.R. §240.17a-4 (1997).

3. On April 16, 2004, the Court entered its Agreed Order requiring MS & Co. to (1) search the oldest full backup tape for each of 36 MS & Co. employees involved in the Sunbeam transaction; (2) review e-mails dated from February 15, 1998 through April 15, 1998 and e-mails containing any of 29 specified search terms such as "Sunbeam" and "Coleman", regardless of their date; (3) produce by May 14, 2004 all nonprivileged e-mails responsive to CPH's document requests; (4) give CPH a privilege log; and (5) certify its full compliance with the Agreed Order.

4. On May 14, 2004, MS & Co. produced approximately 1,300 pages of e-mails but failed to provide the required certification. Finally, on June 23, 2004, after inquiries by CPH, MS & Co. provided CPH with a certificate of full compliance with the April 16 Agreed Order signed by Arthur Riel, the MS & Co. manager assigned this task.

5. As organized by MS & Co., the effort to recover e-mails from any remaining backup tapes had several stages. First, the relevant backup tapes (in various formats, such as "DLT" tapes and eight-millimeter tapes) had to be located by searching the potential storage locations. Second, the tapes were sent to an outside vendor, National Data Conversion, Inc. ("NDC"), to be processed, and the data returned to MS & Co. in the form of "SDLT" tapes. Third, MS & Co. had to find a way to upload the contents of these SDLT tapes into its new e-mail archive. Fourth, MS & Co. would run "scripts" to transform this data into a searchable form, so that it could later be searched for responsive e-mails. MS & Co. personnel used the term "staging area" to describe the stage of the process when SDLT tapes remained in limbo, waiting to be uploaded to the archive.

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6. At some point prior to May 6, 2004, Arthur Riel and his team became aware that more than 1,000 backup tapes had been found at a MS & Co. facility in Brooklyn, New York. These 1,423 DLT tapes had not been processed by NDCI and thus had not been included in the archive or searched when MS & Co. made its supposedly complete production on May 14, 2004, and when Mr. Riel certified full compliance with the Agreed Order on June 23, 2004. Aware of the tapes' discovery, Mr. Riel knew when he executed the certification that it was false. He and others on MS & Co.'s e-mail archive team knew by July 2, 2004 that these "Brooklyn tapes" contained e-mail dating back at least to the late 1990's. MS & Co. neither withdrew its certification nor informed CPH about the potential for additional production of e-mails, however. During the summer of 2004, the Brooklyn tapes were processed and sent to the staging area, but they were not uploaded to the e-mail archive so as to be available to be searched until January 2005, at least eight months after they were found.

7. MS & Co. also failed to timely produce e-mails from 738 8-millimeter backup tapes found at a MS & Co. facility in Manhattan, in 2002. These 738 8-mm tapes, like the 1,423 Brooklyn tapes, had not been processed by NDCI and thus had not been included in the archive and searched when MS & Co. made its supposedly complete production on May 14, 2004, and when Mr. Riel certified full compliance with the Agreed Order on June 23, 2004. Mr. Riel and others were told by their vendor, NDCI, by July 2, 2004 that the 8-mm tapes contained e-mail dating back at least to 1998. MS & Co. neither withdrew its certification nor informed CPH about the potential for additional production of e-mails, though. During the summer of 2004, the 8-mm tapes were processed and sent to the staging area. Like the Brooklyn tapes, though, they also were not uploaded to MS & Co.'s e-mail archive.

8. In August 2004, Mr. Riel was relieved of his employment responsibilities. He and his team were replaced by a new team headed by Allison Gorman Nachtigal.

9. Ms. Gorman testified that she was instructed to describe the circumstances of Mr. Riel's replacement as his having been "placed on administrative leave." That same term appears by interlineation over the original typed description in MS & Co.'s memorandum addressing these issues. The typed language stated: "[Mr. Riel was] dismissed for integrity issues." MS & Co. represented that the reason for the adverse action taken against Mr. Riel was unrelated to any concern about the accuracy of his June 23, 2004 certification. However, MS & Co. presented no evidence to explain why Mr. Riel would have been placed on administrative leave rather than terminated. CPH argued that it may have been to deprive CPH of the ability to contact him directly.

10. Upon taping over Mr. Riel's responsibilities, Ms. Gorman did not initially make significant efforts to address the backlog of data in the staging area; indeed, she was not informed of the existence of this litigation until five months later, in January 2005. In October 2004, Ms. Gorman met with a group of MS & Co. attorneys. Following that meeting, Ms. Gorman gave the project somewhat greater priority, although even then it clearly did not move as expeditiously as possible. For example, MS & Co. gave no thought to using an outside contractor to expedite the process of completing the discovery, though it had certified completion months earlier; it lacked the technological capacity to upload and search the data at that time, and would not attain that capacity for months; and it knew trial was scheduled to begin in February, 2005. Even at this point, no one from MS & Co. or its outside counsel, Kirkland & Ellis LLP, gave CPH or this Court any hint that the June certification was false.

11. On November 17, 2004, more than six months after the May 14, 2004 deadline for producing e-mails in response to the Agreed Order, MS & Co. sent CPH a letter revealing that its June 23 certificate of compliance was incorrect. The letter stated:

Morgan Stanley has discovered additional e-mail backup tapes since our e-mail production in May 2004. The data on some of [the] newly discovered tapes has been restored and, to ensure continued compliance

with the agreed order, we have re-run the searches described in the order. Some responsive e-mails have been located as a result of that process. We will produce the responsive documents to you as soon as the production is finalized.

The letter also foreshadowed further delays: “(s)ome of the backup tapes are still being restored. To ensure continued compliance with the agreed order, we intend to re-run the searches again when the restoration process is complete and will produce any responsive documents that result.”

12. The next day, November 18, 2004, MS & Co. produced an additional 8,000 pages of e-mails and attachments. MS & Co.’s November 2004 letter stated that the 8,000 pages came from “newly discovered” tapes; but the testimony now makes clear that this statement was false because Ms. Gorman’s team did not figure out how to upload and make searchable the materials from the staging area until January, 2005.

13. MS & Co. has failed to offer any explanation to reconcile the obvious conflict between its assertions at the time of production that the 8,000 pages came from “newly discovered” tapes (*i.e.*, the “Brooklyn tapes”) and the testimony of its own witness, Ms. Gorman, that data from those newly discovered tapes were not capable of being searched until two months later, in January.

14. After a follow-up inquiry by CPH, on December 17, 2004, MS & Co. produced a privilege log and told CPH that “[n]o additional responsive e-mails have been located since our November production.” MS & Co. refused to answer CPH’s questions about whether MS & Co. had restored all the backup tapes described in its November 17 letter and why the tapes had not been located earlier, however.

15. On December 30, 2004, CPH sought confirmation that MS & Co. had reviewed all e-mail backup tapes and produced all responsive e-mails and, if not, asked when the review would be completed. On January 11, 2005, MS & Co. informed CPH that the “restoration of e-mail backup tapes

is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time.”

16. On January 19, 2004, CPH wrote asking MS & Co. to explain the circumstances under which MS & Co. located the “newly discovered” backup tapes and to disclose when the tapes were located. CPH also asked MS & Co. to explain why the backup tapes could not be restored sooner.

17. On January 21, 2005, MS & Co. sent CPH a letter that failed to answer CPH’s questions. Instead, MS & Co. described its efforts to restore the backup tapes as “ongoing”; informed CPH that “there is no way for MS & Co. to know or accurately predict the type or time period of data that might be recovered”; and stated that MS & Co. “cannot accurately estimate when all of the tapes will be restored or whether any recoverable data will be found on the remaining tapes.”

18. On January 26, 2005, CPH filed the Motion at issue here, asking the Court to instruct the jury that MS & Co.’s destruction of e-mails and other electronic documents and MS. & Co.’s noncompliance with the April 16, 2004 Agreed Order can give rise to an adverse inference that the contents of the missing e-mails would be harmful to MS & Co.’s defense in this case.

19. Meanwhile, MS & Co. found another 169 DLT tapes in January, 2005, that allegedly had been misplaced by its New Jersey storage vendor, Recall. Again, MS & Co., chose to provide no specifics to CPH or to the Court.

20. At a February 2, 2005 hearing on CPH’s Motion, Thomas A. Clare of Kirkland & Ellis, LLP, representing MS & Co., stated that “late October of 2004...[is] the date I’m representing to the Court is the first time that anyone knew that there was recoverable e-mail data” on the Brooklyn tapes. Hr’g Tr. (2/2/05) at 133-34. The actual date, however, was at least three months earlier, by July 2, 2004. Furthermore, MS & Co. refused to provide the Court with definitive answers about when its e-mail production would be complete, merely stating that it would proceed with “all deliberate speed.” *Id.* at 139. Also at the February 2 hearing, Mr. Clare neglected to inform the Court about the 8-mm

tapes that had been located in 2002, and told the Court that the 1,423 DLT tapes had been found in Brooklyn "sometime during the summer" of 2004. The truth of this assertion is belied by the evidence showing that the tapes were found before May 6, 2004.

21. On February 3, 2005, the Court ordered further discovery and set an evidentiary hearing for February 14, 2005. The discovery took place on February 9 and 10, when CPH deposed the three e-mail witnesses identified by MS. & Co.

22. On Saturday afternoon, February 12, 2005, MS & Co. informed the Court that it had, in the previous 24 hours, discovered additional tapes. Also, MS & Co. stated that its recent production omitted certain "attachments" to e-mails. MS & Co. did not attempt to clarify or substantiate either of these statements to CPH or to the Court until the Monday, February 14, 2005 hearing.

23. At the February 14 hearing, none of the witnesses MS & Co. presented was involved in or familiar with the actual electronic searches conducted using the parameters specified in this Court's April 16, 2004 Agreed Order, and none explained where the 8,000 pages produced in November, 2004 had come from. MS & Co.'s witnesses did, however, describe three new developments. First, Robert Saunders, a Morgan Stanley executive director in the Information Technology Division, testified that he returned to New York after his February 10 deposition and, concerned about his unqualified deposition assertion that he was "confident" that a complete search for backup tapes had been conducted, decided finally to undertake a personal search of MS & Co.'s "communication rooms," going to the areas he thought most obvious first. By doing so, he and two contractors discovered more than 200 additional backup tapes openly stored in locations known to be used for tape storage. Those discoveries were made on Friday and Saturday, February 11 and 12, 2005. As of the February 14 hearing, NDCI had not yet determined which, if any, of these newly discovered backup tapes contained e-mails. Second, Ms. Gorman reported that on Friday, February 11, 2005 she and her team had discovered that a flaw in the software they had written had prevented MS & Co. from locating all

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responsive e-mail attachments. Third, Ms. Gorman reported that MS & Co. discovered on Sunday evening, February 13, 2005, that the date-range searches for e-mail users who had a Lotus Notes platform were flawed, so there were at least 7,000 additional e-mail messages that appeared to fall within the scope of the Agreed Order had yet to be fully reviewed by MS. & Co.'s outside counsel for responsiveness and privilege. As counsel for MS & Co. admitted, this problem "dwarf[s]" their previous problems. Hr'g Tr. (2/14/05) at 13. Ms. Gorman indicated she was "90 percent sure" that the problem infected MS & Co.'s original searches in May, which means that MS & Co. even then failed to timely produce relevant materials that had been uploaded into the archive by that point. *Id.* at 82-83. The bulk of the employees using the Lotus Notes platform in the relevant time period came from the Investment Banking Division, the division responsible for the transaction under review here.

24. On February 19, 2005 MS & Co. informed counsel for CPH that "additional boxes of back up tapes" have been located "in a security room" and that, "(a)s of this morning, Morgan Stanley has identified four (unlabeled) DLT tapes among the collection. Those four tapes will be sent to NDCI for further analysis." The disclosure did not state when the discovery was made. MS & Co.'s counsel represented to the Court that it was his understanding that about 73 bankers' boxes of tapes were discovered. No explanation for the late discovery was offered.

25. Throughout this entire process, MS & Co. and its counsels' lack of candor has frustrated the Court and opposing counsel's ability to be fully and timely informed.

26. MS & Co.'s failure during the summer and fall of 2004 to timely process a substantial amount of data that was languishing in the "staging area," rather than being put into searchable form and then searched, was willful and a gross abuse of its discovery obligations.

27. MS & Co.'s failure to timely notify CPH of the existence of the DLT and 8-mm tapes, which it had located as early as 2002 and certainly prior to the June 23, 2004 certification, and its

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failure to timely process those raw backup tapes was willful and a gross abuse of its discovery obligations.

28. MS & Co.'s failure to produce all e-mail attachments was negligent, and it was discovered and revealed only as a result of CPH's hiring a third-party vendor, pursuant to the Court's February 4, 2005 Order, to double-check MS & Co.'s compliance with the April 16, 2004 Agreed Order.

29. MS & Co.'s failure to produce all of the Lotus Notes e-mails was negligent, and it was discovered and revealed only as result of CPH's hiring a third-party vendor, pursuant to the Court's February 4, 2005 Order, to double-check MS & Co.'s compliance with the April 16, 2004 Agreed Order.

30. MS & Co.'s failure to locate other potentially responsive backup tapes before Saturday, February 12, 2005 was grossly negligent.

31. Given the history of the discovery, there is no way to know if all potentially responsive backup tapes have been located.

32. In sum, despite MS & Co.'s affirmative duty arising out of the litigation to produce its e-mails, and contrary to federal law requiring it to preserve the e-mails, MS & Co. failed to preserve many e-mails and failed to produce all e-mails required by the Agreed Order. The failings include overwriting e-mails after 12 months; failing to conduct proper searches for tapes that may contain e-mails; providing a certificate of compliance known to be false when made and only recently withdrawn; failing to timely notify CPH when additional tapes were located; failing to use reasonable efforts to search the newly discovered tapes; failing to timely process and search data held in the staging area or notify CPH of the deficiency; failing to write software scripts consistent with the Agreed Order; and discovering the deficiencies only after CPH was given the opportunity to check MS & Co.'s work and

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the MS & Co.'s attorneys were required to certify the completeness of the prior searches. Many of these failings were done knowingly, deliberately, and in bad faith.

It is clear that e-mails existed which were requested by CPH that have not been produced because of the deficiencies discussed above. Electronic data are the modern-day equivalent of the paper trail. Indeed, because of the informalities of e-mail, correspondents maybe less guarded than with paper correspondence. In this case, the paper trail is critical to CPH's ability to make out its prima facie case. Thus, MS & Co.'s acts have severely hindered CPH's ability to proceed. The only way to test the potentially self-serving testimony of MS & Co. personnel is with the written record of the events.

The failures outlined in this Order are of two types. First, by overwriting e-mails contrary to its legal obligation to maintain there in readily accessible form for two years and with knowledge that legal action was threatened, MS & Co. has spoiled evidence, justifying sanctions. See Martino v. Wal-Mart Stores Inc., 835 So. 2d 1251 (Fla. 4th DCA 2003). "The appropriateness of sanctions for failing to preserve evidence depends on: (1) willfulness or bad faith of the responsible party, (2) the extent of prejudice suffered by the other party, and (3) what is required to cure the prejudice." Nationwide Lift Trucks Inc. v. Smith, 832 So. 2d 824, 826 (Fla. 4th DCA 2002). Second, MS & Co.'s willful disobedience of the Agreed Order justifies sanctions. See Rule 1.380 (b) (2), Fla. R. Civ. P. The conclusion is inescapable that MS & Co. sought to thwart discovery *in this specific case*.

Sanctions in this context are not meant to be punitive. They are intended, though, to level the playing field.

A reasonable juror could conclude that evidence of MS & Co.'s misconduct demonstrates its consciousness of guilt. It is relevant to the issues before the jury. Further, CPH should not be penalized by being forced to divert the jurors' attention away from the merits of its claim to focus on highly technical facts going to MS & Co.'s failures here, facts that are not reasonably disputed. Evidence of that failure, though, alone does not make CPH whole. Indeed, it can be said it is not a "sanction" at all, but merely a

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statement of unrefuted facts that the jury may find relevant. Shifting the burden of proof, though, forces MS & Co. to accept the practical consequence of its failures-that some information will never be known. Obviously, this sanction is of consequence only in the marginal case. If there is overwhelming proof of MS & Co.'s knowledge of the fraud and collusion with Sunbeam, CPH would have prevailed on those elements in any event. And, to the contrary, if there is overwhelming evidence MS & Co. did not know of the fraud or conspire with or aid Sunbeam in its commission, it would have prevailed in any event. If the case is close on those issues, though, MS & Co., not CPH, should bear the burden of persuasion. Further, shifting the burden on the fraud issue does not relieve CPH of its obligation to establish the other elements of its claims, most notably reliance, proof of which is independent of the MS & Co. e-mails. Thus, the sanctions chosen are the most conservative available to the Court to address the spoliation of evidence and willful violation of the Agreed Order.^{1 2}

Finally, the Court notes that CPH has requested the e-mails since May of 2003. MS & Co. was supposed to comply with the April 16, 2004 Order by May 14, 2004. Fact discovery in this case closed November 24, 2004. MS & Co.'s actions have resulted in the diversion of enormous amounts of resources, by both the parties and the Court, into a fact discovery dispute that should have never arisen and which would have long ago been put to bed had MS & Co. timely recognized its obligations to CPH and this Court. Opening argument in this complex case is set for March 21, 2005. Preliminary jury selection has

¹ MS & Co.'s bad acts and pocket book may not be used to gain the continuance it has sought from the beginning. Further, the Court has no confidence that, even if a continuance were granted, MS & Co. would fully comply with discovery in this case.

² The undersigned notes that the sanctions imposed are not enumerated in Rule 1.380 (b) (2), and is aware of the concern expressed in the 2000 Handbook on Discovery Practice, Joint Committee of the Trial Lawyers Section of the Florida Bar and Conferences of Circuit and County Court Judges ("(f)or the trial court to be on solid footing, it is wise to stay within the enumerated orders" [Handbook at p. 4]). However, MS & Co.'s violations involve both the violation of a discovery order and the intentional spoliation of evidence. The sanction imposed is *less* severe than that provided in Rule 1.380 (b) (2) (B), under which the Court could preclude MS & Co. from presenting evidence of its lack of knowledge of or

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begun. MS & Co. has controlled the timetable of this portion of the litigation long enough. Consequently, CPH should have the ability to continue to require MS & Co, to attempt to comply with the Agreed Order and the February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search, or to elect to terminate the e-mail discovery and concentrate on trial preparation.

Based on the foregoing, it is

ORDERED AND ADJUDGED that:

1. Plaintiff's Motion for Adverse Interference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Non-Compliance with the Court's April 16, 2004 Agreed Order and Motion for Additional Relief is GRANTED.

2. MS & Co. shall continue to use its best efforts to comply with the April 16, 2004 Agreed Order and shall continue to comply with the February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search until March 21, 2005 or written notice from CPH, which ever first occurs. Either party shall notify the other in writing of its intention to offer into evidence e-mails actually produced to CPH prior to termination of e-mail discovery in conformity with this Order, within 72 hours of the e-mail's production to CPH. The Court shall hear and determine any objections to use of the e-mails.

3. The Court shall read to the jury the statement of facts attached as Exhibit A during whatever evidentiary phase of CPH's case that it requests, These findings of fact shall be conclusive. See Rule 1.380 (b) (2) (A). No instruction shall be given to the jury regarding inferences to be drawn from these facts. However, counsel may make such argument to the jury in favor of whatever inferences

collusion with the Sunbeam fraud, which the Court finds is the least severe enumerated sanction appropriate to place the parties on a level playing field.

that evidence may support. No other evidence concerning the production of e-mails, or lack thereof, shall be presented absent further Court order.

4. CPH will be allowed to argue that MS & Co.'s concealment of its role in the Sunbeam transaction is evidence of its malice or evil intent, going to the issue of punitive damages. See, e.g., General Motors Corp. v. McGee, 837 So.2d 10120.

5. MS & Co. shall bear the burden of proving to the jury, by the greater weight of the evidence, that it lacked knowledge of the Sunbeam fraud and did not aid and abet or conspire with Sunbeam to defraud CPH. The traditional order of proof shall remain unaffected, however.

6. MS & Co. shall compensate CPH for costs and fees associated with the Motion. The amount shall be determined at an evidentiary hearing to be held after the completion of the trial.

7. Plaintiff's Motion to Compel Further Discovery Regarding Morgan Stanley's Destruction and Non-Production of E-Mails is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this ____ day of March, 2005.

ELIZABETH T. MAAS
Circuit Court Judge

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EXHIBIT A

A federal regulation in effect in 1997 and all times since required Morgan Stanley to preserve e-mails for three years and to preserve them in a readily accessible place for two years. Beginning in no later than 1997, Morgan Stanley had a practice of overwriting e-mails after 12 months. E-mails could no longer be retrieved once they were overwritten. This practice was discontinued in January, 2001. CPH has sought access to Morgan Stanley's e-mails relating to this transaction since the case was filed in May, 2003.

Prior to 2003, Morgan Stanley recorded e-mails and other electronic data on back up tapes. On April 16, 2004, the Court ordered Morgan Stanley to (1) search the oldest full backup tape for each of 36 Morgan Stanley employees involved in the Sunbeam transaction; (2) review e-mails dated from February 15, 1998 through April 15, 1998 and e-mails containing any of 29 specified search terms such as "Sunbeam" and "Coleman", regardless of their date; (3) produce by May 14, 2004 all e-mails relating to this case found by the search I have just described; and (4) certify its full compliance with the Court's order.

On May 14, 2004, Morgan Stanley produced approximately 1,300 pages of e-mails. It did not produce the required certification. On June 23, 2004, after inquiries by CPH, Morgan Stanley provided CPH with a certificate of full compliance with the April 16 Order signed by Arthur Riel, the Morgan Stanley manager assigned this task.

As organized by Morgan Stanley, the effort to recover e-mails from the backup tapes had several stages. First, the relevant backup tapes had to be located by searching the potential storage locations. Second, the tapes were sent to an outside vendor, National Data Conversion, Inc., which I will call "NDCI", to be processed, and the data returned to Morgan Stanley. Third, Morgan Stanley had to upload the processed data into its e-mail archive. Fourth, Morgan Stanley had to run scripts, or pieces of computer code, to transform this data into a searchable form. Finally, Morgan Stanley had to search the data for e-mails related to this case. Morgan Stanley personnel used the term "staging area" to describe the stage of the process when the processed data returned by NDCI remained in limbo, waiting to be uploaded to Morgan Stanley's archive.

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At some point prior to May 6, 2004, Arthur Riel and his team became aware that 1,423 backup tapes had been found at a Morgan Stanley facility in Brooklyn, New York. These 1,423 tapes had not been processed by NDCI and thus had not been included in the archive or searched when Morgan Stanley made its production to CPH on May 14, 2004. Aware of the tapes' discovery, Mr. Riel knew when he executed the certification of full compliance with the Court's April 16, 2004 Order that it was false. He and others on Morgan Stanley's e-mail archive team knew by July 2, 2004 that these "Brooklyn tapes" contained e-mail dating back at least to the late 1990's. During the summer of 2004, the Brooklyn tapes were processed and the data sent to the staging area. The scripts for e-mails relating to this case were not written and tested to permit the search to begin until the middle of January, 2004. Such a search, even if perfectly done, can take weeks.

Morgan Stanley also failed to timely produce e-mails from 738 backup tapes found at a Morgan Stanley facility in Manhattan in 2002. These 738 tapes, like the 1,423 Brooklyn tapes, had not been processed by NDCI and thus had not been included in the archive and searched by either May 14, 2004, when the Court's order required production, or June 23, 2004, when Morgan Stanley falsely certified that full production had been made. Mr. Riel and others were told by NDCI by July 2, 2004 that these tapes contained e-mail dating back at least to 1998. During the summer of 2004, these tapes were processed and sent to the staging area. Like the Brooklyn tapes, though, they also were not searched.

In the course of these proceedings, Morgan Stanley represented to the Court that the first time anyone knew that there was recoverable e-mail data on the Brooklyn tapes was in October 2004. That statement was false. The actual date was at least three months earlier than that, no later than July 2, 2004.

In August 2004, Mr. Riel was relieved of his employment responsibilities for reasons unrelated to Morgan Stanley's false certification. He and his team were replaced by a new team headed by Allison Gorman Nachtigal. At that time, the staging area contained about 600 gigabytes of e-mail data that had not yet been uploaded into the Morgan Stanley archive and had not been searched for e-mails relating to this case. 600 gigabytes of data is the equivalent of approximately 30 million printed pages.

Upon taking over Mr. Riel's responsibilities, Ms. Gorman did not initially make significant efforts to address the backlog of data in the staging area. Indeed, she was not informed of the existence of this litigation until five months later, in January 2005. In October 2004, Ms. Gorman gave the project

somewhat greater priority, although even then it did not move as expeditiously as possible. Morgan Stanley did not consider using an outside contractor to expedite the process.

In November 2004, Morgan Stanley produced additional e-mails and attachments to CPH. Morgan Stanley told CPH that those materials came from newly discovered tapes. That statement was false. In fact, Morgan Stanley did not begin searching the materials from the staging area until January 2005.

Morgan Stanley found another 169 DLT tapes in January, 2005, that according to Morgan Stanley had been misplaced by its New Jersey storage vendor. Morgan Stanley later disclosed the existence of more than 200 additional unsearched backup tapes openly stored in locations known to be used for tape storage, which Morgan Stanley claimed to have discovered on February 11 and 12, 2005.

On February 11, 2005 Morgan Stanley discovered that a flaw in the software it had written had prevented Morgan Stanley from locating all e-mail attachments about the Sunbeam transaction. Morgan Stanley also admits that the date-range searches for e-mail users who had a Lotus Notes platform were flawed, so that additional e-mail messages that appeared to fall within the scope of the April 16, 2004 Order had not been given to CPH. Further, it appears that the problem infected Morgan Stanley's original searches in May of 2004. The bulk of the employees using the Lotus Notes platform in the relevant time period came from the Investment Banking Division, the division responsible for the transaction under review here.

Morgan Stanley claims to have discovered defects in the searches on February 13, 2005. The defects in Morgan Stanley's searches were discovered and revealed only as a result of CPH's hiring of a third-party vendor, pursuant to the Court's Order on February 4, 2005, to double-check Morgan Stanley's compliance with the April 16, 2004 Order. On February 16, 2005, Morgan Stanley withdrew its certificate of compliance with the April 16, 2004 Order.

On February 19, 2005 Morgan Stanley notified CPH that it had found boxes of additional tapes that have not been uploaded into its archive or searched for responsive e-mails. Morgan Stanley did not tell CPH it had found any tapes that it had not searched until November 17, 2004. Even then, it did not tell CPH how many tapes were found, when they were found, or when they would be searched. MS & Co. did not provide all of this information to CPH until February of 2005. The searches had not yet been completed when this trial was begun, when they were terminated without completion.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

FILED
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PALM BEACH COUNTY, FL
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**MORGAN STANLEY'S MOTION FOR AN
ADVERSE INFERENCE INSTRUCTION**

This Court has already found that "Morgan Stanley knew Sunbeam litigation was likely as of March of 1998," and that, accordingly, Morgan Stanley had an "affirmative duty" to preserve its documents as of that date. (Feb. 15, 2005 Hrg. at 613:19-23.) But just as Morgan Stanley had a duty to preserve documents once it reasonably could anticipate litigation, so too did Plaintiff Coleman (Parent) Holdings Inc. and its affiliates (collectively "CPH"). Yet the record is clear that CPH repeatedly and flagrantly breached its duty by systematically destroying emails and electronic documents relating to the Sunbeam transaction. Indeed, CPH was actually destroying emails and electronic documents *at the very same time* that it was threatening litigation against Sunbeam and its advisors. As a result, the best evidence of what information CPH knew and relied on during the Sunbeam transaction has been lost forever, and Morgan Stanley's ability to defend itself in this lawsuit has been prejudiced irreparably.

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To rectify the fundamental disadvantage at which Morgan Stanley finds itself because of CPH's systematic, intentional and inexcusable destruction of relevant emails and electronic documents concerning Sunbeam, the Court should impose a sanction on CPH that is sufficient to

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“level the playing field.” (Mar. 1, 2005 Order on CPH’s Mot. for Adverse Inference Instruction at 11.) Nothing less than an adverse inference instruction — that CPH either did not rely upon representations made by Morgan Stanley or already knew all of the information that it now claims Morgan Stanley wrongfully withheld, and that the jury is entitled to infer from the fact that CPH intentionally destroyed the materials that those materials would have been harmful to CPH’s case — will be sufficient to remedy the prejudice that Morgan Stanley has suffered. Such an adverse inference instruction is especially appropriate here, given that CPH’s spoliation was only part of a larger pattern of discovery transgressions that included its inexplicable withholding, and then unjustifiable redaction, of documents relating to the valuation of the Sunbeam warrants.

STATEMENT OF FACTS

Although CPH did not file its Complaint in this case until May 2003, CPH knew or should have known that shortly after the late March 1998 closing, litigation involving its Sunbeam transaction was reasonably likely. The likelihood of litigation became even more clear by June 6, 1998, when *Barron’s*, a reputable and widely-read financial newspaper, published a lengthy article detailing a laundry list of accounting and other problems at Sunbeam, including “gimmickry,” “shenanigans,” “puffery” and “wizardry.” (Jonathan R. Laing, “Dangerous Games: Did “Chainsaw Al” Dunlap Manufacture Sunbeam’s Earnings Last Year?” *Barron’s* via *Dow Jones*, June 6, 1998 (CPH Tr. Ex. 321) (Ex. 1).) By June 30, 1998, the problems at Sunbeam were even more clear to CPH. It was on that date that Sunbeam publicly acknowledged that its financial statements, and the report of Arthur Andersen regarding those statements, “should not be relied upon.” (June 30, 1998 Sunbeam Audit Committee to Conduct Review of Company’s 1997 Financial Statements (MS 511) (Ex. 2).) Indeed, one week later, CPH’s Vice Chairman Howard Gittis actually sent a letter to Sunbeam threatening “

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” (July 6, 1998 Gittis Letter to Fannin (MS 232) (Ex. 3).) Not long after, on August 12, 1998, CPH entered into a settlement agreement with Sunbeam. Of great significance to this motion, that August 1998 settlement agreement specifically contemplated future claims against “any financial advisor to Sunbeam” by excluding such litigation from the releases in the agreement. (Aug. 12, 1998 Settlement Agreement between Sunbeam and CPH at 1 (MS 96) (Ex. 4).) Moreover, CPH’s corporate representative on document retention issues, Steven Fasman, admitted at his deposition that CPH was aware of the potential for litigation related to the Sunbeam transaction by 1998. (Sept. 15, 2003 Fasman Dep. at 63:18-64:10 (Ex. 5).)

Despite the fact that CPH reasonably should have anticipated the likelihood of litigation relating to the Sunbeam transaction by shortly after the March 30, 1998 closing, the record is clear that CPH made absolutely no effort to preserve its electronic documents and emails relating to the transaction. Here was the troubling sworn testimony of CPH’s Steven Fasman on this issue:

Q. Were the people who Mr. Golden [CPH’s vice president who was originally charged with CPH’s search for documents] contacted in that instance instructed to provide electronic documents?

A. No.

Q. Were they instructed to search for electronic documents?

A. No.

* * *

Q. In Mr. Golden's collection of documents for the securities litigation did he collect from anyone any electronic documents?

A. No.

(Fasman Dep. at 18:12-17, 99:5-8, 107:12-18; *see also* Fasman Dep. at 96:5-12, 108:6-10 (admission by Golden that he also failed to search for documents on network servers).)

Indeed, far from taking steps to preserve electronic documents as it was legally obligated to do, CPH instead intentionally and systematically destroyed those documents in accordance with a *company-wide policy* instructing employees *to delete* materials. (April 21, 1997 Corporate Email Policy at 3 (MS 62) (Ex. 6); Jan. 21, 2004 Fasman Dep. at 42:3-16 (“2004 Fasman Dep.”) (Ex. 7).) That policy permitted individual CPH employees, without any legal guidance, to use their own discretion about what emails and electronic documents to retain. It further mandated that all emails be _____ from CPH’s computer systems after 30 days:¹

(MS 62 at 3 (emphasis added); *see also* 2004 Fasman Dep. at 42:3-16.)

This policy, obviously, is flatly inconsistent with CPH’s obligation, once it reasonably anticipates litigation, to preserve all documents relevant to such litigation. CPH should have immediately suspended its aggressive document destruction policy and, instead, preserved all relevant emails and electronic documents. But CPH did not do so. Indeed, it was not until 2001, when CPH filed a Sunbeam-related lawsuit against Arthur Andersen, that CPH finally sent a notice to its employees instructing them to halt their systematic destruction of Sunbeam-related

¹ CPH’s corporate representative testified that it was CPH’s policy to automatically delete emails and electronic documents from its servers after 30 days, and to overwrite back-up tapes containing those documents after 60 days. (2004 Fasman Dep. at 42:3-16, 79:14-18.) In comparison, this Court found that Morgan Stanley’s document retention policy during the same time period required the preservation of emails and other electronic documents for a full 12 months.

emails and electronic documents. (2004 Fasman Dep. at 163:17-21, 164:8-11.) But at that point, of course, it was too late. Emails and electronic documents relevant to the Sunbeam transaction were irretrievably gone.

As a result of CPH's conduct, CPH has produced less than 60 pages of emails relating to the Sunbeam transaction in this litigation. In sharp contrast, Morgan Stanley has produced more than 13,300 pages of emails related to the transaction.

CPH's systematic destruction of its emails and electronic documents is only the latest example of CPH's conscious disregard of its discovery obligations in this case. As detailed in two recent Morgan Stanley motions,² CPH deliberately withheld, and then unjustifiably redacted, documents relating to the valuation of the Sunbeam warrants that it received in connection with the Sunbeam settlement. When those documents were finally produced in a proper manner, they revealed for the first time that CPH's key witnesses, including Mr. Perelman and CPH's damages expert, had misrepresented the value of the warrants and overstated CPH's damages claim by tens of millions of dollars. CPH's production of these documents is *still* not complete, as evidenced by its delivery — as recently as 12:15 am on March 8, 2005 — of *more* documents relevant to these key damages issues. Given CPH's overall pattern of multiple discovery transgressions, its destruction of emails and other electronic documents related to the Sunbeam acquisition is all the more egregious.

² See Feb. 23, 2005 Morgan Stanley's Motion for Additional Discovery Regarding MAFCO'S Internal Valuation of Sunbeam Stock and Feb. 22, 2005 Morgan Stanley's Motion for Sanctions and Additional Discovery Concerning Plaintiffs' Improper Concealment of the Value of the Sunbeam Warrant.

ARGUMENT

I. MORGAN STANLEY IS ENTITLED TO AN ADVERSE INFERENCE INSTRUCTION.

A. CPH Had A Duty To Preserve Sunbeam-Related Emails And Electronic Documents.

As this Court knows from its earlier ruling regarding Morgan Stanley, “[a] party has a duty to preserve evidence they know or reasonably should know to be relevant to a pending or potential case.” *Exotic Botanicals, Inc. v. EI DuPont de Nemours & Co.*, No. 99-12597 CA 23, 2000 WL 34016277, at *5 (Fla. 11th Jud. Dist. Jan. 21, 2000); *see also Banco Latino S.A.C.A. v. Gomez Lopez*, 53 F. Supp. 2d 1273, 1277 (S.D. Fla. 1999) (noting that there is a duty to preserve documents that “are or may be relevant to litigation or potential litigation”); *Telectron, Inc. v. Overhead Door Corp.*, 116 F.R.D. 107, 127 (S.D. Fla. 1987) (“Sanctions may be imposed against a litigant who is on notice that documents and information in its possession are relevant to litigation, or potential litigation, or are reasonably calculated to lead to the discovery of admissible evidence, and destroys such documents and information.”); *Zubalake v. UBS Warburg LLC*, 220 F.R.D. 212, 216 (S.D.N.Y. 2003) (a party has a duty to preserve evidence “when the party has notice that the evidence is relevant to litigation or when a party should have known that the evidence may be relevant to future litigation”) (internal quotations & citation omitted).

Here, CPH clearly knew or should have known that its emails and electronic documents related to the Sunbeam transaction were relevant to potential litigation by shortly after the March 30, 1998 closing. It should have been even more obvious to CPH that litigation was likely after *Barron's* published its scathing report about Sunbeam on June 6, 1998 and, again, after Sunbeam publicly acknowledged that its financial statements, and the report of Arthur Andersen regarding those statements “should not be relied upon.” (MS 511.) That latter event actually prompted

CPH's Vice Chairman Howard Gittis — one of CPH's trial witness in this case — to send a letter to Sunbeam threatening

(MS 232.) Moreover, on August 12, 1998, CPH entered into a settlement agreement with Sunbeam that specifically contemplated future litigation against “any financial advisor to Sunbeam” — a clear indication that CPH recognized the likelihood of litigation with Morgan Stanley, in particular. (See MS 96 at 1.) Similarly, the deposition testimony of CPH's own corporate representative further confirms that CPH was fully aware that litigation related to the Sunbeam transaction was imminent during 1998. (Fasman Dep. at 63:18-64:10.)

B. CPH Intentionally And Systematically Breached Its Preservation Duty.

The evidence is undisputed that despite CPH's duty to preserve evidence related to the Sunbeam transaction, CPH did absolutely nothing at that time to preserve its relevant emails and other electronic documents. Significantly, CPH did not even send its employees a preservation notice instructing them to retain their electronic materials related to the Sunbeam transaction, or suspend its practice of deleting emails and other electronic documents, until it commenced its lawsuit against Arthur Andersen in 2001. This was *three years* after CPH knew that litigation related to the Sunbeam acquisition was probable. (2004 Fasman Dep. at 160:9-20.) The law is clear that this kind of lengthy delay is unacceptable. “Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a ‘litigation hold’ to ensure the preservation of relevant documents.” *Zubalake*, 220 F.R.D. at 218; see also *Linnen v. A.H. Robins Co., Inc.*, No. 97-2307, 1999 WL 462015, at *10 (Mass. Super. Ct. June 16, 1999) (explaining that once a party is aware of the need to preserve evidence, “the customary recycling of back-up tapes for the electronic mail system should have been suspended.”). CPH did neither of those things and, as a result, its emails and electronic documents relating to the Sunbeam transaction were permanently destroyed.

C. An Adverse Inference Instruction Is Necessary To “Level The Playing Field.”

When a party destroys evidence that it knows or reasonably should know to be relevant to a pending or potential case, “an instruction may be given concerning the inference that the withheld or missing evidence would be unfavorable to the party failing to produce the evidence.” *Amlan, Inc. v. Detroit Diesel Corp.*, 651 So. 2d 701, 703 (Fla. 4th DCA 1995); *see also Martino v. Wal-Mart Stores, Inc.*, 835 So. 2d 1251, 1257 (Fla. 4th DCA 2003) (“an adverse inference may arise in any situation where potentially self-damaging evidence is in the possession of a party and that party either loses or destroys the evidence”). “The appropriateness of sanctions for failing to preserve evidence depends on: (1) willfulness or bad faith of the responsible party, (2) the extent of prejudice suffered by the other party, and (3) what is required to cure the prejudice.” *Nationwide Lift Trucks, Inc. v. Smith*, 832 So. 2d 824, 826 (Fla. 4th DCA 2002).

Here, there can be little doubt that CPH’s destruction of its emails and electronic documents was done willfully and in bad faith. This conclusion is readily apparent from the fact that CPH was **fully aware** that it had a litigation-related duty to preserve evidence related to the Sunbeam transaction, yet did nothing to live up to that duty. Indeed, CPH’s own corporate representative testified that he knew that “you have a duty to retain documents that you have reasonable belief might be called for in connection with ... litigation.” (Fasman Dep. at 134:15-20.) But despite this awareness of its obligation to preserve relevant evidence, CPH did absolutely nothing to preserve its emails and electronic documents until more than three years later.

The conclusion that CPH’s destruction of its emails and electronic documents was done willfully and in bad faith is buttressed even further by the fact that the destruction of those materials is only one example of CPH’s conscious disregard of its discovery obligations in this case. As discussed above, CPH deliberately withheld and then unjustifiably redacted documents

relating to the valuation of the Sunbeam warrants that it received in connection with the Sunbeam settlement. Given CPH's overall pattern of multiple discovery transgressions, its destruction of emails and other electronic documents related to the Sunbeam acquisition is all the more egregious.³

CONCLUSION

Because CPH's intentional destruction of its emails and electronic documents has severely prejudiced Morgan Stanley's ability to defend itself, the Court should impose a sanction on CPH that is sufficient to "level the playing field." (Mar. 1, 2005 Order at 11.) Nothing less than a suitable adverse inference instruction will be sufficient to remedy the prejudice that Morgan Stanley has suffered as a result of CPH's blatant and intentional spoliation of evidence.

³ Morgan Stanley is mindful that the Court's March 1, 2005 Order granting CPH an adverse inference instruction against Morgan Stanley relied, in part, on the fact that Morgan Stanley had an independent regulatory duty to preserve emails for three years pursuant to 17 C.F.R. § 240.17a-4 (1997). (Mar. 1, 2005 Order ¶ 2.) As will be set forth more fully in a forthcoming motion, Morgan Stanley believes that the Court's reliance on the SEC regulation was based on a misapprehension regarding the effect that Morgan Stanley's compliance with the regulation would have had on its ability to produce additional emails in this case. Given the fact that CPH did not file its Complaint until May 2003, the oldest emails that Morgan Stanley would then have been under an obligation to preserve under the SEC regulation would have dated from May 2000, more than two years *after* the events at issue in this case. As such, the *only* way that CPH could possibly have been prejudiced by the absence of Sunbeam-related emails was based on Morgan Stanley's failure to fulfill its separate duty to preserve evidence relevant to potential litigation. ***CPH, of course, owed that exact same duty.*** In addition, it appears that CPH itself may have failed to fulfill its own regulatory obligation when it submitted Sunbeam-related materials to the Federal Trade Commission as part of Hart-Scott-Rodino Premerger Notification before closing of the Sunbeam transaction. CPH was obligated under the law to produce key documents, such as those upon which it relied in deciding whether to enter into the Sunbeam transaction, whether those materials were in hard-copy or electronic form. Those kinds of deal-related documents, had they been preserved, could be critical to Morgan Stanley's defenses here. Sworn testimony from CPH's Steven Fasman that CPH employees were not asked to search for Sunbeam-related electronic documents until the fall of 2001 calls into question whether CPH ever fulfilled its regulatory duty to the Federal Trade Commission.

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For the foregoing reasons, Morgan Stanley's Motion for An Adverse Inference Instruction should be granted. The Court should instruct the jury that (1) CPH was required to preserve its emails and other electronic documents; (2) despite its legal obligation, CPH destroyed its emails and other electronic documents; and (3) CPH's actions give rise to the inference that (a) CPH either did not rely upon representations made by Morgan Stanley or already knew all of the information that it now claims Morgan Stanley wrongfully withheld, and (b) the jury is entitled to infer from the fact that CPH intentionally destroyed the materials that those materials would have been harmful to CPH's case.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and hand delivery on this 8th day of March, 2005.

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Exhibit 1

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SUNBEAM CORP

MS
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BA: DV Barrons

June 6, 1998 Saturday

Dangerous Games: Did "Chainsaw Al" Dunlap manufacture Sunbeam's earnings last year? — By Jonathan R. Laing

Barron's via Dow Jones

Albert Dunlap likes to tell how confidants warned him in 1996 that taking the top job at the small-appliance maker Sunbeam Corp. would likely be his Vietnam. For a time, the 60-year-old West Point graduate seemingly proved the Cassandras wrong. As the poster boy of 'Nineties-style corporate cost-cutting, he delivered exactly the huge body counts and punishing airstrikes that Wall Street loved. He dumped half of Sunbeam's 12,000 employees by either laying them off or selling the operations where they worked. In all, he shuttered or sold about 80 of Sunbeam's 114 plants, offices and warehouses.

Sunbeam's sales and earnings responded, and so did its stock price, rising from \$12.50 a share the day Dunlap took over in July 1996 to a high of 53 in early March of this year.

But last month Sunbeam suffered a reversal of fortune that was as sudden and traumatic for Dunlap as the Viet Cong's Tet offensive was to U.S. forces in 1968. After several mild warnings of a possible revenue disappointment, Sunbeam shocked Wall Street by reporting a loss of \$44.6 million for the first quarter on a sales decline of 3.6%. In a trice, the Sunbeam cost-cutting story was dead, along with "Chainsaw Al" Dunlap's image as the supreme maximizer of shareholder value. Now Sunbeam stock has fallen more than 50% from its peak, to a recent 22.

And just as suddenly, what was supposed to be an easy sprint, Dunlap's last hurrah as a corporate turnaround artist, has turned into a grinding marathon. Lying in tatters is his growth scenario for Sunbeam, based on supposedly sexy new offerings such as soft-ice cream makers, fancy grills, home water purifiers and air-filter appliances. Many of the new products have bombed in the marketplace or run into serious quality problems. Moreover, Sunbeam has run into all manner of production, quality and delivery problems. It recently announced the closing of two Mexican manufacturing facilities with some 2,800 workers, citing the facilities' lamentable performance. Dozens of key executives, members of what Dunlap just months ago called his Dream Team, are bailing out. And now he faces another year or more of the wrenching restructuring that's needed to mend Sunbeam with its recently announced acquisitions, including the camping-equipment maker Coleman Co., the smoke-detector producer First Alert and Signature Brands USA, best known for its Mr. Coffee line of appliances. These acquisitions will double the size of a company whose wheels are coming off. This may not be Vietnam, but it sure ain't Kansas, Toto.

Sunbeam declined to discuss the company's problems with Barron's. In some ways, Dunlap seems to have morphed into a latter-day Colonel Kurtz of the movie *Apocalypse Now*, increasingly out of touch with the grim realities of Sunbeam's situation and suspicious of friend and foe alike. For example, Wall Street is still buzzing over a confrontation that Dunlap had with PaineWebber analyst Andrew Shore at a Sunbeam meeting with the financial community in New York three weeks ago. Shore had the temerity to ask several questions that Dunlap deemed impertinent, and Dunlap snarled, "You son of a bitch. If you want to come after me, I'll come after you twice as hard."

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Shore, the first major analyst to downgrade Sunbeam's stock in April when word began to circulate of a possible first-quarter earnings debacle, is still upset over the incident. "As far as I'm concerned, Al is the most over-rated CEO in America," he grouses. "He's nothing but a bully who speaks in sound bites and completely lacks substance."

Despite Sunbeam's latest reversal of fortune, don't expect Al Dunlap to be headed for the poorhouse any time soon. Though the swoon in Sunbeam shares has vaporized the value of the options held by most of the company's executives and managers, Dunlap's huge option and stock grants are still worth about \$70 million, down from a peak value of over \$300 million when the stock was at its high. Moreover, in February Dunlap negotiated a new contract, doubling his annual base salary to \$2 million. Under a rich benefits package, Sunbeam even foots the bill for Dunlap and his wife's first-class air fare from Florida, where Sunbeam is headquartered, to Philadelphia so that Dunlap can visit his personal dentist to keep his latest bridge comfy and pearly white. Limo charges and overnights at the Four Seasons hotel are included as well. All this from the self-styled champion of shareholder value.

We can't say we are surprised by Sunbeam's current woes. In a cover story last year entitled "Careful, Al" (June 16), we cast a skeptical eye at Dunlap's growth objectives in the low-margin, cutthroat small-appliance industry. We also pointed out the yawning gap between Sunbeam's performance claims and reality. We took special note of Sunbeam's accounting gimmickry, which appeared to have transmogrified through accounting wizardry the company's monster 1996 restructuring charge (\$337 million before taxes) into 1997's eye-popping sales and earnings rebound. But to no avail. Wall Street remained impressed by Sunbeam's earnings, and the stock continued to rise from a price of 37 at the time of the story.

Sunbeam's financials under Dunlap look like an exercise in high-energy physics, in which time and space seem to fuse and bend. They are a veritable cloud chamber. Income and costs move almost imperceptibly back and forth between the income statement and balance sheet like charged ions, whose vapor trail has long since dissipated by the end of any quarter, when results are reported. There are also some signs of other accounting shenanigans and puffery, including sales and related profits booked in periods before the goods were actually shipped or payment received. Booking sales and earnings in advance can comply with accounting regulations under certain strict circumstances.

"We had an amazing year," Dunlap crowed in Sunbeam's recently released 1997 annual report, taking an impromptu victory lap for the profit of \$109.4 million, or \$1.41 a share, on sales of \$1.2 billion. Sunbeam had every incentive to try to shoot the lights out in 1997. Dunlap and crew were convinced they would be able to attract a buyer for the company just as they had done in the second year of their restructuring of Scott Paper in 1995, when Dunlap managed to fob Scott off on Kimberly-Clark for \$9 billion. They openly shopped Sunbeam around in the second half of last year, but the offer never came. The rising stock price made the company too expensive, and would-be buyers were also deterred by the nightmares Kimberly-Clark experienced after buying Scott.

Yet, sad to say, the earnings from Sunbeam's supposed breakthrough year appear to be largely manufactured. That, at least, is our conclusion after close perusal of the company's recently released 10-K, with a little help from some people close to the company.

Start with the fact that in the 1996 restructuring, Sunbeam chose to write down to zero some \$90 million of its inventory for product lines being discontinued and other perfectly good items. Even if Sunbeam realized just 50 cents on the dollar by selling these goods in 1997 (in some cases, they reportedly did even better), that would account for about a third of last year's net income of \$109.4 million.

One has to go to the 1997 year-end balance sheet to detect more of mother's little helpers. One notes a striking \$23.2 million drop, from \$40.4 million in 1996 to \$17.2 million in 1997, in pre-paid expenses and other current assets. There's no mystery here, according to a former Sunbeam financial type. The huge restructuring charge in 1996 made it a lost year anyway, so Sunbeam pre-paid everything it could, ranging from advertising and packaging costs to insurance premiums and various inventory expenses.

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The result: Costs expensed for 1997 were reduced markedly, if unnaturally. This artifice alone probably yielded an additional \$15 million or so in 1997 after-tax income.

Why did Sunbeam's "Other Current Liabilities" mysteriously drop by \$18.1 million and "Other Long-Term Liabilities" fall by \$19 million in 1997? The answer is simple, according to folks close to the company. Various reserves for product warranties and other items that were set aside during Sunbeam's giant 1996 restructuring were drained down in 1997, creating perhaps an additional \$25 million or so in additional net income for the year.

On top of all that, as part of the 1996 restructuring charge, Sunbeam reduced the value of its property, plant, equipment and trademarks by \$92 million. Though some of these charges applied to assets Sunbeam was selling off, the bulk of the charge related to on-going operations. This allowed Sunbeam to lower its depreciation and amortization expense on the 1997 income statement by nearly \$9 million. That would create about \$6 million of additional after-tax income.

Oddly enough, the figure for net property, plant and equipment on Sunbeam's balance sheet still rose during 1997, to \$241 million from \$220 million the year before. This is likely an indication that such costs as product development, new packaging and some advertising and marketing initiatives were capitalized or put straight on the balance sheet instead of being expensed in the year they were incurred, as was the previous practice. In this manner, expenses could have been shifted from 1997 into future years, when they can be burned off at a slower, more decorous pace afforded by multi-year depreciation schedules. Why else would Sunbeam's advertising and promotion expense drop by some \$15 million, from \$71.5 million in 1996 to \$56.4 million last year? Particularly when Sunbeam trotted out a splashy national television ad campaign in 1997 to boost consumer demand for its new products. This advertising shortfall alone contributed another \$10 million to Sunbeam's 1997 profits.

The company also got a nice boost from a 64% drop in its allowance for doubtful accounts and cash discounts, from \$23.4 million in 1996 to \$8.4 million in 1997. And this decline occurred despite a 19% rise in Sunbeam's sales last year. The milking of this bad debt reserve in 1997 likely puffed net income by an additional \$10 million or so.

Then there's the mystery of why Sunbeam's inventories exploded by some 40%, or \$93 million, during 1997. Quite possibly, Sunbeam was playing games with its inventories to help the income statement. By running plants flat out and building inventories, a company can shift fixed overhead costs from the income statement to the balance sheet where they remain ensconced as part of the value of the inventory until such time as the inventory is sold. To be conservative, let's assume this inventory buildup might have helped Sunbeam's profits to the tune of, say, \$10 million.

Lastly, there are more than superficial indications that Sunbeam jammed as many sales as it could into 1997 to pump both the top and bottom lines. The revenue games began innocently enough early last year. Sales were apparently delayed in late 1996, a lost year anyway, and rammed into 1997. Likewise, The Wall Street Journal reported several instances of "inventory stuffing" during 1997, in which Sunbeam either sent more goods than had been ordered by customers or shipped goods even after an order had been cancelled. But these are comparatively venial sins that companies engage in all the time to make a quarter's results look better. Besides, Sunbeam gave the plausible excuse at the time that glitches in a computer system consolidation in the first quarter had them flying blind for a time.

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Exhibit 2

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Sunbeam

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SUNBEAM AUDIT COMMITTEE TO CONDUCT REVIEW OF COMPANY'S 1997 FINANCIAL STATEMENTS

DELRAY BEACH, FL, June 30, 1998--Sunbeam Corporation today announced that the audit committee of its Board of Directors will conduct a review into the accuracy of its 1997 financial statements.

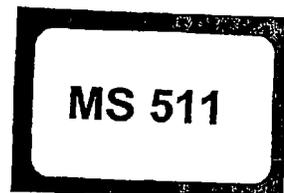
The audit committee has retained Deloitte & Touche LLP to assist in the review, along with Arthur Andersen LLP, Sunbeam's auditors.

The Company said that, pending the completion of the review, its 1997 financial statements and the report of Arthur Andersen LLP should not be relied upon. Such review could result in a restatement of the 1997 financial statements and the first quarter 1998 Form 10Q.

Sunbeam Corporation is a leading consumer products company that designs, manufactures and markets, nationally and internationally, a diverse portfolio of consumer products under such world-class brands as Sunbeam^(R), Oster^(R), Grillmaster^(R), Coleman^(R), Mr. Coffee^(R), First Alert^(R), Powermate^(R), Health o meter^(R), Eastpak^(R) and Campingaz^(R).

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Exhibit 3

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EXHIBIT IS CONFIDENTIAL

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MS
DEPOSITION
EXHIBIT # 96
FOR ID TRN
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SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT, dated as of August 12, 1998, by and between Sunbeam Corporation, a Delaware corporation ("Sunbeam" or the "Company"), and Coleman (Parent) Holdings Inc., a Delaware corporation ("Coleman Parent").

For the purposes of this Agreement, Sunbeam, together with each direct or indirect parent, subsidiary, division, or affiliated corporation or entity, and each employee, agent, attorney, representative, administrator, executor, receiver, officer, director, or stockholder of any such corporation or entity, and any other person, firm, corporation or entity now or hereafter affiliated in any manner with any of them or claiming through or in the right of any of them and all of their respective predecessors, successors, assigns, heirs, executors and administrators (but excluding for all purposes under this Agreement, Mr. Albert J. Dunlap, former Chief Executive Officer of Sunbeam, Mr. Russell A. Kersh, former Executive Vice President of Sunbeam, Arthur Andersen LLP, Sunbeam's independent auditors, PriceWaterhouseCoopers, consultants to Sunbeam, and any financial advisor to Sunbeam, and each employee, agent, attorney, representative, administrator, executor, receiver, officer, director, or stockholder of any such corporation or entity, and any other person, firm, corporation or entity now or hereafter affiliated in any manner with any of them or claiming through or in the right of any of them and all of their respective predecessors, successors, assigns, heirs, executors and administrators), are collectively hereinafter referred to as the "Sunbeam Group"; and Coleman Parent, together with each direct or indirect parent, subsidiary, division, or affiliated corporation or entity, and each employee, agent, attorney, representative, administrator, executor, receiver, officer, director, or stockholder of any such corporation or entity, and any other person, firm, corporation or entity now or hereafter affiliated in any manner with any of them or claiming through or in the right of any of them and all of their respective predecessors, successors, assigns, heirs, executors and administrators, are collectively hereinafter referred to as the "Coleman Group".

WITNESSETH

WHEREAS, CLN Holdings Inc., a Delaware corporation ("CLN Holdings"), was the indirect beneficial owner of approximately 82% of the outstanding common stock, par value \$.01 per share (the "Coleman Common Stock"), of The Coleman Company, Inc., a Delaware corporation ("Coleman"); and

WHEREAS, pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Holdings Merger Agreement"), by and among Sunbeam, Laser Acquisition Corp., a Delaware corporation and, as of such date, a wholly owned subsidiary of Sunbeam ("Laser Acquisition"), CLN Holdings, as of such date, a wholly owned subsidiary of Coleman Parent, and Coleman Parent, CLN Holdings was merged with and into Laser Acquisition (the "Holdings Merger"), with the surviving corporation becoming an indirect wholly owned subsidiary of Sunbeam, and pursuant to which Coleman Parent received certain shares of common stock, par value \$.01 per share, of Sunbeam ("Sunbeam Common Stock"); and

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Exhibit 4

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WHEREAS, pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Coleman Merger Agreement"), by and among Sunbeam, Camper Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Sunbeam ("Camper Acquisition"), and Coleman, Camper Acquisition is to be merged with and into Coleman (the "Coleman Merger"), with the surviving corporation becoming an indirect wholly owned subsidiary of Sunbeam; and

WHEREAS, as a result of the Holdings Merger, Sunbeam acquired an indirect approximately 82% interest in Coleman (the "Coleman Acquisition"); and

WHEREAS, Sunbeam and Coleman Parent are parties to a Registration Rights Agreement, dated as of March 29, 1998 (the "Registration Rights Agreement"), pursuant to which Sunbeam agreed to provide certain registration rights to Coleman Parent; and

WHEREAS, following the dismissal by Sunbeam of certain of its executive officers in mid-June 1998, Coleman Parent has made available to Sunbeam certain senior officers employed by members of the Coleman Group to serve as senior executive officers of Sunbeam (the "Senior Executives") and has provided certain other management support to Sunbeam, and Sunbeam desires to continue the service of the Senior Executives and such management support; and

WHEREAS, Coleman Parent and Sunbeam believe it is desirable that Sunbeam put in place as promptly as possible a permanent management team to prevent jeopardizing the ongoing operations and financial viability of Sunbeam; and

WHEREAS, Coleman Parent believes that it possesses legal and equitable claims against Sunbeam arising out of the Coleman Acquisition and out of what it contends were certain breaches of contract and fraudulent and negligent or other misrepresentations and omissions made to Coleman Parent and its representatives in connection therewith (the "Claims"), and Sunbeam disputes such Claims; and

WHEREAS, there are also now pending or may be filed putative class actions in which Sunbeam is named as a defendant and in which Coleman Parent is a class member (the "Class Actions"), and Sunbeam denies liability with respect to and intends to contest the claims that have been asserted in the Class Actions; and

WHEREAS, the accountants who audited Sunbeam's 1997 financial statements, assisted by another firm of accountants, are in the process of reviewing those financial statements, and believe, as has been publicly announced, that it will be necessary to restate those financial statements by reflecting a variety of adjustments the magnitude of which has not yet been determined; and

WHEREAS, Sunbeam and Coleman Parent desire to terminate the disputes between them, and desire to assure one another that Coleman Parent will not prosecute the Claims or any related or potential claims arising out of or relating to the Coleman Acquisition, directly or indirectly in any capacity, against the Sunbeam Group, so as to avoid the substantial burdens and expense of litigation and the interference with the business and operations of Sunbeam and with the work of its management and employees and to obtain the continued services of certain executives

and employees of the Coleman Group, and in accordance with the terms and provisions hereof, that Coleman Parent and Sunbeam each forever release, waive and discharge any and all manner of actions, causes of action, proceedings, suits, claims, demands, liens, debts, accounts, obligations, rights, costs, contracts, agreements, promises, controversies, judgments, expenses, demands, damages and liabilities, of any nature whatsoever, in law or in equity, whether or not now first seen, known, suspected, matured, accrued or claimed, and whether or not asserted in litigation, including court costs and attorneys' fees (each an "Action and Liability" and collectively, "Actions and Liabilities"), which any member of the Coleman Group controlling, controlled by or under common control with Coleman Parent (such persons, together with Coleman Parent, the "Coleman Controlled Group") may have against any member of the Sunbeam Group and which any member of the Sunbeam Group controlled by Sunbeam (such persons, together with Sunbeam, the "Sunbeam Controlled Group") may have against any member of the Coleman Group as of the effective date hereof or prior thereto in any manner arising out of or relating to the Coleman Acquisition, irrespective of any present lack of knowledge on the part of either of them of any such possible Action and Liability, but excluding any claim for breach of this Agreement or the agreements and documents entered into or delivered pursuant hereto;

NOW, THEREFORE, in consideration of the respective covenants, agreements and conditions hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be bound hereby, the parties hereto agree as follows:

1. Issuance of Warrants; Closing.

(a) On the basis of the representations, warranties, covenants and agreements and subject to the satisfaction or waiver (to the extent permitted) of the applicable conditions expressly set forth herein, at the closing of the transactions contemplated by this Section 1 (the "Closing"):

(i) Sunbeam shall issue to Coleman Parent certain warrants to purchase shares of Sunbeam Common Stock (the "Warrants") by duly executing and delivering to Coleman Parent a Warrant Agreement in the form attached as Exhibit A hereto (the "Warrant Agreement");

(ii) Sunbeam and Coleman Parent shall enter into an amendment to the Registration Rights Agreement, in the form attached as Exhibit B hereto (as so amended, the "Amended Registration Rights Agreement");

(iii) Sunbeam and Coleman Parent agree to be bound by the releases and covenants set forth in Section 2 of this Agreement;

(iv) Coleman Parent agrees to supply management services of the Senior Executives, and to the covenants and provisions of Section 3 of this Agreement; and

(v) Sunbeam and Coleman Parent agree to be bound by the provisions regarding the restrictions on transfer on the shares of Sunbeam Common Stock received by Coleman Parent in the Holdings Merger and the Warrants set forth in Section 4 of this Agreement.

(b) The Closing shall take place on the first day when all conditions thereto set forth herein shall be satisfied or waived or such other date as Sunbeam and Coleman Parent may agree in writing (the "Closing Date"), but in no event sooner than the tenth day following the mailing of the letter to Sunbeam shareholders contemplated by Section 7. The Closing shall take place on the Closing Date at 10:00 a.m., New York City time, at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York and shall be deemed effective as of the opening of business on the Closing Date.

(c) At the Closing, Sunbeam shall deliver or cause to be delivered to Coleman Parent, in addition to the Warrant Agreement, such other instruments or documents as Coleman Parent may reasonably request.

2. Granting of Releases and Indemnification.

(a) At the Closing, simultaneously with receipt by Coleman Parent of the Warrants, and without any further action by any of the parties hereto, each of the following shall be fully and legally effective:

(i) Coleman Parent shall, on behalf of itself and on behalf of each other member of the Coleman Controlled Group, remise, release and forever discharge the Sunbeam Group of and from all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity, against any of the Sunbeam Group or any of their predecessors, successors or assigns, which Coleman Parent or any other member of the Coleman Controlled Group has or ever had from the beginning of the world to the Closing with respect to or arising out of the Coleman Acquisition or any alleged misrepresentations and omissions and/or breach of contract by any member of the Sunbeam Group and parties acting on behalf of any member of the Sunbeam Group in connection with the Coleman Acquisition, including with respect to the Actions and Liabilities; provided that neither the foregoing release nor the dismissals or withdrawals described in this Section 2(a) shall apply to the rights of Coleman Parent and any other member of the Coleman Controlled Group under Article IX of the Holdings Merger Agreement, any breach or failure to comply with this Agreement, the Warrant, the Amended Registration Rights Agreement or the transactions contemplated hereby or thereby, the transactions contemplated by the Coleman Merger Agreement (including the Coleman Merger), which shall not be terminated or amended in any respect hereby, or shall otherwise affect Coleman Parent's right to enforce this Agreement, the Warrant or the Amended Registration Rights Agreement in accordance with its or their terms.

(ii) In the event any member of the Coleman Controlled Group pursues a claim against any person(s) not released hereby involving the matters that are the subject of the release set forth in Section 2(a)(i) and it is finally judicially determined that such person(s) are entitled directly or indirectly to indemnification or contribution from any member of the Sunbeam Controlled Group for any amounts they are required to pay to any member of the Coleman Controlled Group in connection with such claims, or to reimbursement of litigation expenses solely attributable to such claims of any member of the Coleman Controlled Group (each a "Sunbeam Group Indemnification Obligation"), Coleman Parent will indemnify and hold harmless each member of the Sunbeam Controlled Group against such Sunbeam Group Indemnification Obligation. No member of the Sunbeam Controlled Group will enter into any settlement of a Sunbeam Group Indemnification Obligation without the prior written consent of Coleman Parent, which shall not be unreasonably withheld. Any amounts so paid by a member of the Sunbeam Controlled Group in a settlement so consented to by Coleman Parent shall be treated for purposes hereof as a Sunbeam Group Indemnification Obligation.

(iii) Sunbeam, on behalf of itself and on behalf of each other member of the Sunbeam Controlled Group, shall remise, release and forever discharge the Coleman Group of and from all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity, against any of the Coleman Group or any of their predecessors, successors or assigns, which Sunbeam or any member of the Sunbeam Controlled Group has or ever had from the beginning of the world to the Closing with respect to or arising out of the Coleman Acquisition or any alleged misrepresentations and omissions and/or breach of contract by any member of the Coleman Group and parties acting on behalf of any member of the Coleman Group in connection with the Coleman Acquisition, including with respect to the Actions and Liabilities; provided that neither the foregoing release nor the dismissals or withdrawals described in this Section 2(a) shall apply to the rights of Sunbeam and any other member of the Sunbeam Controlled Group under Article IX of the Holdings Merger Agreement, any breach or failure to comply with this Agreement, the Warrant, the Amended Registration Rights Agreement or the transactions contemplated hereby or thereby, the transactions contemplated by the Coleman Merger Agreement (including the Coleman Merger), which shall not be terminated or amended in any respect hereby, or shall otherwise affect Sunbeam's right to enforce this Agreement, the Warrant or the Amended Registration Rights Agreement in accordance with its or their terms.

(iv) In the event any member of the Sunbeam Controlled Group pursues a claim against any person(s) not released hereby involving the matters that are the subject of the release set forth in Section 2(a)(iii) and it is finally judicially determined that such person(s) are entitled directly or indirectly to indemnifica-

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tion or contribution from any member of the Coleman Controlled Group for any amounts they are required to pay to any member of the Sunbeam Controlled Group in connection with such claims, or to reimbursement of litigation expenses solely attributable to such claims of any member of the Sunbeam Controlled Group, (each, a "Coleman Group Indemnification Obligation"), Sunbeam will indemnify and hold harmless each member of the Coleman Controlled Group against such Coleman Group Indemnification Obligation. No member of the Coleman Controlled Group will enter into any settlement of a Coleman Group Indemnification Obligation without the prior written consent of Sunbeam, which shall not be unreasonably withheld. Any amounts so paid by a member of the Coleman Controlled Group in a settlement so consented to by Sunbeam shall be treated for purposes hereof as a Coleman Group Indemnification Obligation.

(v) Sunbeam, on behalf of itself, and on behalf of each other member of the Sunbeam Controlled Group, and Coleman Parent, on behalf of itself and on behalf of each other member of the Coleman Controlled Group, agree to indemnify and hold harmless one another from and against any and all Actions and Liabilities arising from, or in connection with, any action or proceeding, brought by, or prosecuted by, or on the initiative of, either of them, or by any of their predecessors, successors or assigns, contrary to the provisions of this Agreement. It is further agreed that this agreement of indemnity shall be deemed breached and a cause of action shall be deemed to have accrued thereon immediately upon the commencement of any action contrary to this Agreement, and that in any such action this Agreement may be pleaded by either of them as a defense, or either of them may assert this Agreement by way of counterclaim or cross-claim in any such action.

(vi) This Agreement shall inure to the benefit of and shall be binding upon Sunbeam and Coleman Parent, and to the benefit of and shall be binding upon each person or entity in the Sunbeam Group and the Coleman Group.

(b) Coleman Parent agrees that it shall opt out, as to and only as to any claims against any member of the Sunbeam Group, of any class that may be certified in any of the Class Actions or in any other action that may be certified as a class action with respect to or arising out of any other matter released hereby.

3. Provision of Management Services.

(a) The parties hereto acknowledge that Coleman Parent has caused other members of the Coleman Group to make available to Sunbeam the services of certain employees and Senior Executives and has encouraged such persons to continue to provide services to Sunbeam as employees of Sunbeam.

(b) Coleman Parent agrees that it shall, and it shall use its reasonable efforts to cause the other members of the Coleman Group to, continue to, for a minimum period of 36 months from the date hereof, make available to Sunbeam the services of Coleman

Group's employees who are Senior Executives, or who become Senior Executives, for so long as they remain employees of a member of the Coleman Group and otherwise to continue to provide advice and assistance to Sunbeam in connection with the business and operations of Sunbeam consistent with that provided to date; provided, however, that, other than pursuant to the employment arrangements currently in place between such employees and members of the Coleman Group, no member of the Coleman Group shall be required bear any incremental expense with respect to any Senior Executive in order to comply with the foregoing.

(c) Sunbeam agrees to pay the compensation of any such persons who become employees of Sunbeam in accordance with the terms of the employment arrangements entered into by Sunbeam with such persons. This Agreement shall not prevent any of the Senior Executives from continuing to perform services for members of the Coleman Group to the extent that the provision of such services does not materially interfere with the performance of services by the Senior Executive for Sunbeam under his employment arrangements with Sunbeam.

(d) Coleman Parent agrees to use its reasonable efforts to cause the other members of the Coleman Group to continue, for a period of 36 months from the date hereof, to provide assistance and support to Sunbeam on a basis consistent with the manner in which such assistance and support are generally provided to other companies in which members of the Coleman Group have a substantial interest (and without the payment of additional consideration by Sunbeam to Coleman Parent, other than with respect to the reimbursement of out-of-pocket expenses paid to third parties) and of a similar nature to those which have been so provided to Sunbeam from time to time from mid-June 1998 through the date hereof, including as to the following matters:

- (i) financings, and dealings with financing sources and the capital markets;
 - (ii) investor and public relations;
 - (iii) acquisitions, divestitures and other extraordinary transactions;
 - (iv) executive benefits and compensation and other personnel matters;
- and
- (v) compliance, litigation, insurance, regulatory and other legal matters.

4. Restrictions on Transfer of Securities. Coleman Parent hereby agrees not to, directly or indirectly, for a period of three (3) years from the date hereof, Transfer (as such term is defined in Section 7.1 of the Holdings Merger Agreement) (A) any shares of Sunbeam Common Stock received pursuant to the terms of the Holdings Merger Agreement or (B) any of the Warrants or the Warrant Shares (as defined in the Warrant Agreement), in either case in whole or in part, other than to one of its Affiliates (as such term is de-

fined in the Holdings Merger Agreement) who agrees in writing to be bound by the terms of this Section 4, except that (A) the holder or holders of such shares of Sunbeam Common Stock may at any time or from time to time Transfer so many of such shares of Sunbeam Common Stock as represent in the aggregate seventy-five percent (75%) of such shares of Sunbeam Common Stock, and (B) the holder or holders of the Warrants or the Warrant Shares may at any time or from time to time Transfer so many of the Warrants or the Warrant Shares as represent in the aggregate fifty (50%) of the Warrant Shares Amount (as defined in the Warrant Agreement). The provisions of this Section 4 shall not be applicable, and Coleman Parent shall be free to Transfer any and all shares of Sunbeam Common Stock, Warrants and Warrant Shares, (i) following any change of control of Sunbeam or (ii) in connection with any transaction in which the holders of all of the outstanding shares of Sunbeam Common Stock have the opportunity to Transfer at least 50% of their shares of Sunbeam Common Stock on the same terms. The provisions of this Section 4 shall supersede any and all other restrictions on Transfer that Coleman Parent or any of its Affiliates may have agreed to with Sunbeam or any of its Affiliates.

5. Representations and Warranties of Sunbeam. Sunbeam hereby represents and warrants to Coleman Parent as follows:

(a) Due Authorization. This Agreement has been duly authorized by all necessary corporate action on the part of Sunbeam, and no other corporate actions or proceedings on the part of Sunbeam (including any action on the part of its stockholders) are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed by a duly authorized officer of Sunbeam and constitutes a valid and binding agreement of Sunbeam enforceable against it in accordance with its terms. The Audit Committee of the Board of Directors of Sunbeam (the "Audit Committee") has expressly approved the transactions contemplated hereby as contemplated by Paragraph 312 ("Paragraph 312") of the New York Stock Exchange ("NYSE") Listed Company Manual and has determined that delay in securing shareholder approval of the transactions contemplated hereby would seriously jeopardize the financial viability of the Company. Upon application duly made by Sunbeam, the NYSE has advised that it has accepted Sunbeam's reliance on the exception to the shareholder approval policy of Paragraph 312 as contained therein in connection with the transactions contemplated hereby (the "Exception").

(b) Due Organization. Sunbeam is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power to enter into and perform this Agreement and to carry on its business as it is now being conducted.

(c) No Conflicts. No filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Sunbeam of the transactions contemplated hereby, other than as may be required under the Hart-Scott-Rodino Antitrust Improvements Act with respect to the exercise of the Warrants. Neither the execution and delivery of this Agreement by Sunbeam nor the

consummation by Sunbeam of the transactions contemplated hereby, nor compliance by Sunbeam with any of the provisions hereof, will (i) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Sunbeam; (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material contract or of any material license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any governmental authority to which Sunbeam is a party or by which it or any of its properties or assets may be bound; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Sunbeam or any of its properties or assets.

(d) Validity of Warrants and Underlying Shares. At the Closing, the issuance of the Warrants will have been duly authorized and, upon their issuance pursuant to the terms of this Agreement, the Warrants will be validly issued and will not be subject to any preemptive or similar right other than the rights and obligations under the Warrant Agreement. All shares of Sunbeam Common Stock to be issued upon the exercise of the Warrants, when issued, will be duly authorized and validly issued, fully paid and non-assessable and will not be subject to any preemptive or similar right.

(e) Capitalization. The authorized capital stock of Sunbeam consists of 500,000,000 shares of Sunbeam Common Stock, and 2,000,000 shares of preferred stock, par value \$.01 per share, of Sunbeam. As of the date hereof, (i) 100,860,129 shares of Sunbeam Common Stock were issued and outstanding (excluding any shares of Sunbeam Common Stock issued upon the exercise of Sunbeam Stock Options (as defined below) since August 6, 1998); (ii) 7,199,452 shares of Sunbeam Common Stock were issuable upon the consummation of the Coleman Merger Agreement; (iii) 13,242,050 shares of Sunbeam Common Stock were issuable in accordance with the terms of the Zero Coupon Convertible Senior Subordinated Debentures due 2018 of the Company; and (iv) no shares of Sunbeam preferred stock were issued and outstanding. As of the date hereof, not more than 9,000,000 shares of Sunbeam Common Stock were issuable upon exercise of vested and unvested employee and non-employee stock options (the "Sunbeam Stock Options") outstanding under all stock option plans of Sunbeam or granted pursuant to employment agreements (although Sunbeam is contesting the validity of certain of such Sunbeam Stock Options). As of the date hereof, no shares of Sunbeam Common Stock were held as treasury shares. All of the issued and outstanding shares of Sunbeam Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. As of the date hereof, except as set forth above, there are no shares of capital stock of Sunbeam issued or outstanding or, except as set forth above, any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Sunbeam to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities, or the capital stock or securities of Sunbeam. There are no notes, bonds, debentures or other indebtedness of Sunbeam having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of Sunbeam may vote.

(f) Brokers. Other than Blackstone Financial Group, which has acted as financial advisor to the Special Committee of the Sunbeam Board, no broker, investment banker or other person is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Sunbeam or any member of the Sunbeam Group.

6. Representations and Warranties of Coleman Parent. Coleman Parent hereby represents and warrants to Sunbeam as follows:

(a) Due Authorization. This Agreement has been duly authorized by all necessary corporate action on the part of Coleman Parent, and no other corporate actions or proceedings on the part of the Coleman Parent (including any action on the part of its stockholders) are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed by a duly authorized officer of Coleman Parent and constitutes a valid and binding agreement of Coleman Parent enforceable against it in accordance with its terms.

(b) Due Organization. Coleman Parent is a corporation duly organized, validly existing and in good standing under the laws of State of Delaware and has the requisite corporate power to enter into and perform this Agreement.

(c) No Conflicts. No filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Coleman Parent of the transactions contemplated hereby, other than as may be required under the Hart-Scott-Rodino Antitrust Improvements Act with respect to the exercise of the Warrants. Neither the execution and delivery of this Agreement by Coleman Parent nor the consummation by Coleman Parent of the transactions contemplated hereby, nor compliance by Coleman Parent with any of the provisions hereof, will (i) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Coleman Parent; (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material contract or of any material license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any governmental authority to which Coleman Parent is a party or by which it or any of its properties or assets may be bound; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Coleman Parent or any of its properties or assets.

(d) Acquisition of Warrants for Investment. Coleman Parent is acquiring the Warrants (and will acquire any Warrant Shares upon exercise of the Warrants) for its own account for investment purposes only and not with a view toward or for a sale in connection with, any distribution thereof, or with any present intention of distributing or selling any of such in violation of federal or state securities laws.

(e) Brokers. No broker, investment banker or other person is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions

contemplated by this Agreement based upon arrangements made by or on behalf of Coleman Parent or any member of the Coleman Group.

7. Covenants.

(a) Within one day following the date hereof, Sunbeam shall cause to be mailed to all shareholders of Sunbeam a letter informing them of the transactions contemplated hereby as contemplated and required by Paragraph 312 of the NYSE Listed Company Manual and indicating that the Audit Committee has expressly approved the Exception in light of the Audit Committee's determination that delay in securing shareholder approval of the transactions contemplated hereby would seriously jeopardize the financial viability of the Company and that the NYSE has accepted the Company's reliance on the Exception.

(b) The anti-dilution provisions of the Warrant shall be given retroactive effect to the date hereof.

8. Specific Performance. The parties acknowledge that money damages are an inadequate remedy for breach of this Agreement. Therefore, the parties agree that each of them has the right, in addition to (and not in lieu of) any other right they may have under this Agreement or otherwise, to specific performance of this Agreement in the event of any breach hereof by any other party.

9. Conditions to the Obligations of both Parties. The obligations of each of Sunbeam and Coleman Parent to effect the transactions contemplated hereby shall be conditioned on the non-existence of any order, decree or injunction of a court of competent jurisdiction which restrains the consummation of the transactions contemplated by this Agreement.

10. Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual agreement of the Boards of Directors of Coleman Parent and Sunbeam; or

(b) by Coleman Parent if the Warrants to be issued to Coleman Parent pursuant hereto have not been issued or will not be issued at the Closing or if there has been a material violation or breach by Sunbeam of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of Coleman Parent impossible and such violation or breach has not been waived by Coleman Parent; or

(c) by Sunbeam if there has been a material violation or breach by Coleman Parent of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of Sunbeam impossible and such violation or breach has not been waived by Sunbeam.

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In the event of termination and abandonment of this Agreement by Coleman Parent or Sunbeam or both of them pursuant to the terms of this Section 10, written notice thereof shall forthwith be given to the other party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto.

11. Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the party incurring such costs and expenses.

12. Tax Matters. Coleman Parent shall in good faith provide to Sunbeam information concerning the tax treatment under the Internal Revenue Code of 1986, as amended (the "Code"), of the transactions contemplated hereby. Sunbeam shall report such transactions for all tax purposes consistent with such information and take no position with any taxing authority inconsistent therewith. Coleman Parent and Sunbeam shall report the Holdings Merger as a reorganization within the meaning of Code Section 368(a) for all tax purposes.

13. Best Efforts. Each of the parties hereto agrees to use its best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement. In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, the proper officers and directors of each corporation which is a party to this Agreement shall take all such necessary action.

14. Parties in Interest; Assignments. This Agreement is binding upon and is solely for the benefit of the parties hereto, the Sunbeam Group and the Coleman Group and their respective successors and legal representatives.

15. Entire Agreement. This Agreement and the agreements to be entered into and delivered pursuant hereto constitutes the entire agreement between Sunbeam and Coleman Parent with respect to the subject matter hereof, and it is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect or particular whatsoever, except by a writing duly executed by authorized representatives of both Sunbeam and Coleman Parent. No party to this Agreement has relied upon any representation or warranty, written or oral, except as expressly included herein.

16. Amendments. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by the parties hereto.

17. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by telecopy or other standard form of telecommunication, or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Coleman Parent:

Coleman (Parent) Holdings Inc.
c/o MacAndrews & Forbes Holdings Inc.
35 East 62nd Street
New York, New York 10021
Attention: Barry F. Schwartz, Esq.
Facsimile: (212) 572-5056

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Adam O. Emmerich, Esq.
Facsimile: (212) 403-2000

If to Sunbeam:

Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445
Attention: Corporate Secretary
Facsimile: (561) 243-2191

with copies to:

Skadden, Arps, Slate, Meagher & Flom LLP
919 Third Avenue
New York, New York 10022
Attention: Blaine V. Fogg, Esq.
Facsimile: (212) 735-3597

and

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10152
Attention: Stephen E. Jacobs, Esq.
Facsimile: (212) 310-8007

to such other address as any party may have furnished to the other parties in writing in accordance herewith.

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18. Governing Law, Forum.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its conflict of law rules.

(b) The parties hereto irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Delaware and/or of the United States of America located in the State of Delaware for any actions, suits or proceedings out of or relating to this Agreement and the transactions contemplated hereby.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute but one agreement.

20. Effect of Headings. The descriptive headings contained herein are for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

21. Interpretation. When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the day and year first above written.

COLEMAN (PARENT) HOLDINGS INC.

By: Barry F. Schwartz
Name: Barry F. Schwartz
Title: Executive Vice President and General Counsel

SUNBEAM CORPORATION

By: _____
Name: Howard Kristol
Title: Chairman of the Special Committee

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the day and year first above written.

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name: Barry F. Schwartz
Title: Executive Vice President and General Counsel

SUNBEAM CORPORATION

By: Howard H. Kristol
Name: Howard Kristol
Title: Chairman of the Special Committee

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SUNBEAM CORPORATION

WARRANT FOR THE PURCHASE OF SHARES OF
COMMON STOCK OF SUNBEAM CORPORATION

ISSUE DATE: August __, 1998

Warrant No. W-1

23,000,000 Warrant Shares

THIS WARRANT AND THE SHARES OF COMMON STOCK PURCHASEABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED OR DISPOSED OF UNLESS REGISTERED OR QUALIFIED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAWS OR UNLESS SUCH REGISTRATION, QUALIFICATION OR OTHER SUCH ACTIONS ARE NOT REQUIRED UNDER ANY SUCH LAWS.

FOR VALUE RECEIVED, SUNBEAM CORPORATION, a Delaware corporation (the "Company"), hereby certifies that Coleman (Parent) Holdings Inc., its successor or permit- ter assigns (the "Holder"), is entitled, subject to the provisions of this Warrant, to purchase from the Company, at the times specified herein, a number of the fully paid and non-assessable shares of Common Stock of the Company, par value \$.01 per share (the "Common Stock"), equal to the Warrant Share Amount (as hereinafter defined) at a purchase price per share equal to the Exercise Price (as hereinafter defined).

SECTION 1. DEFINITIONS. (a) The following terms, as used herein, have the fol- lowing meanings:

"Affiliate" shall have the meaning given to such term in Rule 12b-2 promulgated under the Securities and Exchange Act of 1934, as amended.

"Business Day" means any day except a Saturday, Sunday or other day on which com- mercial banks in The City of New York are authorized by law to close.

"Certificate of Incorporation" means the Restated Certificate of Incorporation of the Company.

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"Closing Price" on any day means (1) if the shares of Common Stock then are listed and traded on the New York Stock Exchange, Inc. ("NYSE"), the Closing Price on such day as reported on the NYSE Composite Transactions Tape; (2) if shares of Common Stock then are not listed and traded on the NYSE, the Closing Price on such day as reported by the principal national securities exchange on which the shares of Common Stock are listed and traded; (3) if the shares of Common Stock then are not listed and traded on any such securities exchange, the last reported sale price on such day on the National Market of The National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ"); or (4) if the shares of Common Stock then are not traded on the NASDAQ National Market, the average of the highest reported bid and the lowest reported asked price on such day as reported by NASDAQ.

"Common Share Equivalent" means, with respect to any security of the Company and as of a given date, a number which is, (i) in the case of a share of Common Stock, one, (ii) in the case of all or a portion of any right, warrant or other security which may be exercised for a share or shares of Common Stock, the number of shares of Common Stock receivable upon exercise of such security (or such portion of such security), and (iii) in the case of any security convertible or exchangeable into a share or shares of Common Stock, the number of shares of Common Stock that would be received if such security were converted or exchanged on such date.

"Common Stock" shall have the meaning set forth in the first paragraph hereof.

"Company" shall have the meaning set forth in the first paragraph hereof.

"Convertible Securities" shall have the meaning set forth in Section 7(d).

"Determination Date" shall have the meaning set forth in Section 7(f).

"Exercise Price" means a price per Warrant Share equal to \$7.00.

"Expiration Date" means 5:00 p.m. New York City time on August __, 2003 [the fifth anniversary of the date of this Warrant].

"Fair Market Value" as at any date of determination means, as to shares of the Common Stock, if the Common Stock is publicly traded at such time, the average of the daily Closing Prices of a share of Common Stock for the ten (10) consecutive trading days ending on the most recent trading day prior to the date of determination. If the shares of Common Stock are not publicly traded at such time, and as to all things other than the Common Stock, Fair Market Value shall be determined in good faith by an independent nationally recognized investment banking firm selected by the Company and acceptable to a majority of the Holders and which shall have no other substantial relationship with the Company.

"Holder" shall have the meaning set forth in the first paragraph hereof.

"Options" shall have the meaning set forth in Section 7(d).

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"Person" means an individual, partnership, corporation, limited liability company, trust, joint stock company, association, joint venture, or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Securities Act" means the Securities Act of 1933, as amended.

"Subsidiary" means, with respect to any Person, any corporation or other entity of which a majority of the capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

"Warrant Share Amount" means 23,000,000 (Twenty Three Million) shares of Common Stock as such number may be adjusted pursuant to Sections 7 and 8.

"Warrant Shares" means the shares of Common Stock deliverable upon exercise of this Warrant, as adjusted from time to time.

SECTION 2. EXERCISE OF WARRANT. (a) The Holder is entitled to exercise this Warrant in whole or in part at any time, or from time to time, until the Expiration Date or, if such day is not a Business Day, then on the next succeeding day that shall be a Business Day. To exercise this Warrant, the Holder shall deliver to the Company this Warrant, including the Warrant Exercise Subscription Form forming a part hereof duly executed by the Holder, together with payment of the applicable Exercise Price. Upon such delivery and payment, the Holder shall be deemed to be the holder of record of the number of Warrant Shares equal to the Warrant Share Amount (or, in the case of a partial exercise of this Warrant, a ratable number of such shares), notwithstanding that the stock transfer books of the Company shall then be closed or that certificates representing such shares shall not then be actually delivered to the Holder.

(b) At the option of the Holder, the Exercise Price may be paid in cash (including by wire transfer of immediately available funds) or by certified or official bank check or bank cashier's check payable to the order of the Company or by any combination of such cash or check. At the option of the Holder, the Exercise Price may in the alternative be paid in whole or in part by reducing the number of shares of Common Stock issuable to the Holder by a number of shares of Common Stock that have a Fair Market Value equal to the Exercise Price which otherwise would have been paid (so that the net number of shares of Common Stock issued in respect of such exercise shall equal the number of shares of Common Stock that would have been issuable had the Exercise Price been paid entirely in cash, less a number of shares of Common Stock with a Fair Market Value equal to the portion of the Exercise Price paid in kind); provided that this option shall be available only with respect to the exercise of this Warrant with respect to not more than one-half of the total number of Warrant Shares. The Company shall pay any and all documentary, or similar issue or transfer taxes payable in respect of the issue or delivery of the Warrant Shares. The Company shall not, however, be required to pay any transfer tax which may be payable in respect of any transfer involved in the issue or delivery of Warrants or Warrant Shares (or other securities or assets) in a name other than that in which the Warrants so exercised were registered, and no such issue or delivery shall be made unless and until the person requesting such

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issue has paid to the Company the amount of such transfer tax or has established, to the satisfaction of the Company, that such transfer tax has been paid.

(c) If the Holder exercises this Warrant in part, this Warrant shall be surrendered by the Holder to the Company and a new Warrant of the same tenor and for the unexercised number of Warrant Shares shall be executed by the Company. The Company shall register the new Warrant in the name of the Holder or in such name or names of its transferee pursuant to Section 6 as may be directed in writing by the Holder and deliver the new Warrant to the Person or Persons entitled to receive the same.

(d) Upon surrender of this Warrant in conformity with the foregoing provisions, the Company shall, subject to the expiration of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act, transfer to the Holder of this Warrant appropriate evidence of ownership of the shares of Common Stock or other securities or property (including any money) to which the Holder is entitled, registered or otherwise placed in, or payable to the order of, the name or names of the Holder or such transferee as may be directed in writing by the Holder, and shall deliver such evidence of ownership and any other securities or property (including any money) to the Person or Persons entitled to receive the same, together with an amount in cash in lieu of any fraction of a share as provided in Section 5, subject to any required withholding.

SECTION 3. RESTRICTIVE LEGEND. Each certificate representing shares of Common Stock issued pursuant to this Warrant, unless at the time of exercise such shares are registered under the Securities Act, shall bear a legend substantially in the form of the legend set forth on the first page of this Warrant.

SECTION 4. RESERVATION OF SHARES. The Company hereby agrees that at all times there shall be reserved for issuance and delivery upon exercise of this Warrant such number of its authorized but unissued shares of Common Stock or other securities of the Company from time to time issuable upon exercise of this Warrant as will be sufficient to permit the exercise in full of this Warrant. The Company hereby represents and agrees that all such shares shall be duly authorized and, when issued upon such exercise, shall be validly issued, fully paid and non-assessable, free and clear of all liens, security interests, charges and other encumbrances or restrictions on sale and free and clear of all preemptive or similar rights, except to the extent imposed by or as a result of the status, act or omission of, the Holder.

SECTION 5. FRACTIONAL SHARES. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant and in lieu of delivery of any such fractional share upon any exercise hereof, the Company shall pay to the Holder an amount in cash equal to such fraction multiplied by the Fair Market Value thereof; provided, however, that in the event that the Company combines or reclassifies the outstanding shares of its Common Stock into a smaller number of shares, it shall be required to issue fractional shares to the Holder if the Holder exercises all or any part of its Warrants, unless the Holder has consented in writing to such reduction and provided the Company with a written waiver of its right to receive fractional shares in accordance with this Section 5.

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SECTION 6. TRANSFER, EXCHANGE OR ASSIGNMENT OF WARRANT. (a) Each taker and holder of this Warrant by taking or holding the same, consents and agrees that the registered holder hereof may be treated by the Company and all other persons dealing with this Warrant as the absolute owner hereof for any purpose and as the person entitled to exercise the rights represented hereby.

(b) Subject to the requirements of state and federal securities laws, the Holder of this Warrant shall be entitled, without obtaining the consent of the Company to assign and transfer this Warrant, at any time in whole or from time to time in part, to any Person or Persons. Subject to the preceding sentence, upon surrender of this Warrant to the Company, together with the attached Warrant Assignment Form duly executed, the Company shall, without charge, execute and deliver a new Warrant in the name of the assignee or assignees named in such instrument of assignment and, if the Holder's entire interest is not being assigned, in the name of the Holder and this Warrant shall promptly be canceled.

(c) Upon receipt by the Company of evidence satisfactory to it (in the exercise of its reasonable discretion) of the loss, theft, destruction or mutilation of this Warrant, and (in the case of loss, theft or destruction) of indemnification or security reasonably required by the Company, and upon surrender and cancellation of this Warrant, if mutilated, the Company shall execute and deliver a new Warrant of like tenor and date.

(d) The Company shall pay all expenses, taxes (other than transfer taxes) and other charges payable in connection with the preparation, issuance and delivery of Warrants hereunder.

SECTION 7. ANTI-DILUTION PROVISIONS. So long as any Warrants are outstanding, the Warrant Share Amount shall be subject to change or adjustment as follows:

(a) *Common Stock Dividends, Subdivisions, Combinations.* In case the Company shall (i) pay or make a dividend or other distribution to all holders of its Common Stock in shares of Common Stock, (ii) subdivide or split the outstanding shares of its Common Stock into a larger number of shares, or (iii) combine the outstanding shares of its Common Stock into a smaller number of shares (which shall not in any event be done without the express written approval of Holders of a majority of the outstanding Warrants), then in each such case the Warrant Share Amount shall be adjusted to equal the number of such shares to which the holder of this Warrant would have been entitled upon the occurrence of such event had this Warrant been exercised immediately prior to the happening of such event or, in the case of a stock dividend or other distribution, prior to the record date for determination of shareholders entitled thereto. An adjustment made pursuant to this Section 7(a) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(b) *Reorganization or Reclassification.* In case of any capital reorganization or any reclassification of the capital stock of the Company (whether pursuant to a merger or consolidation or otherwise), or in the event of any similar transaction, this Warrant shall thereafter be exercisable for the number of shares of stock or other securities or property receivable upon such capital reorganization or reclassification of capital stock or other transaction, as the case may be, by a holder of the number of shares of Common Stock into which this Warrant was exercisable im-

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mediately prior to such capital reorganization or reclassification of capital stock; and, in any case appropriate adjustment (as determined in good faith by the Board of Directors of the Company) shall be made for the application of the provisions herein set forth with respect to the rights and interests thereafter of the Holder of this Warrant to the end that the provisions set forth herein shall thereafter be applicable, as nearly as reasonably practicable, in relation to any shares of stock or other securities or property thereafter deliverable upon the exercise of this Warrant. An adjustment made pursuant to this Section 7(b) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(c) *Distributions of Assets or Securities Other than Common Stock.* In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of its capital stock (other than Common Stock), or other debt or equity securities or evidences of indebtedness of the Company, or options, rights or warrants to purchase any of such securities, cash or other assets, then in each such case the Warrant Share Amount shall be adjusted by multiplying the Warrant Share Amount immediately prior to the date of such dividend or distribution by a fraction, of which the numerator shall be the Fair Market Value per share of Common Stock at the record date for determining shareholders entitled to such dividend or distribution, and of which the denominator shall be such Fair Market Value per share less the Fair Market Value of the portion of the securities, cash, other assets or evidences of indebtedness so distributed applicable to one share of Common Stock. An adjustment made pursuant to this Section 7(c) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(d) *Below Market Issuances of Common Stock and Convertible Securities.* In case the Company shall issue Common Stock (or options, rights or warrants to purchase shares of Common Stock (collectively, "Options") or other securities convertible into or exchangeable or exercisable for shares of Common Stock (such other securities, collectively, "Convertible Securities")) at a price per share (or having an effective exercise, exchange or conversion price per share together with the purchase price thereof) less than the Fair Market Value per share of Common Stock on the date such Common Stock (or Options or Convertible Securities), is sold or issued (provided that no sale of securities pursuant to an underwritten public offering shall be deemed to be for less than Fair Market Value), then in each such case the Warrant Share Amount shall thereafter be adjusted by multiplying the Warrant Share Amount immediately prior to the date of issuance of such Common Stock (or Options or Convertible Securities) by a fraction, the numerator of which shall be (x) the sum of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (ii) the number of additional Common Share Equivalents represented by all securities so issued multiplied by (y) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance, and the denominator of which shall be (x) the product of (A) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance and (B) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance plus (y) the aggregate consideration received by the Company for the total number of securities so issued plus, (z) in the case of Options or Convertible Securities, the additional consideration required to be received by the Company upon the exercise, exchange or conversion of such securities; provided that no adjustment shall be required in respect of issuances of Common Stock (or

options to purchase Common Stock) pursuant to stock option or other employee benefit plans in effect on the date hereof, or approved by the Board of Directors of the Company after the date hereof. Notwithstanding anything herein to the contrary, (1) no further adjustment to the Warrant Share Amount shall be made upon the issuance or sale of Common Stock pursuant to (x) the exercise of any Options or (y) the conversion or exchange of any Convertible Securities, if in each case the adjustment in the Warrant Share Amount was made as required hereby upon the issuance or sale of such Options or Convertible Securities or no adjustment was required hereby at the time such Option or Convertible Security was issued, and (2) no adjustment to the Warrant Share Amount shall be made upon the issuance or sale of Common Stock upon the exercise of any Options existing on the original issue date hereof, without regard to the exercise price thereof. Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the issuance or sale of Common Stock, Options, or Convertible Securities in a *bona fide* arm's-length transaction to any Person or group that, at the time of such issuance or sale, is not an Affiliate of the Company (including any possible issuance of Common Stock, Options, or Convertible Securities to the public stockholders of The Coleman Company, Inc. ("Coleman") in connection with the acquisition of their shares of Coleman common stock pursuant to the Agreement and Plan of Merger, dated as of February 27, 1998 (the "Coleman Merger Agreement"), by and among Sunbeam, Camper Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Sunbeam, and Coleman, or otherwise). An adjustment made pursuant to this Section 7(d) shall become effective immediately after such Common Stock, Options or Convertible Securities are sold.

(e) *Below Market Distributions or Issuances of Preferred Stock or Other Securities.* In case the Company shall issue non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of the Company (other than Common Stock or Options or Convertible Securities) or options, rights or warrants to purchase any of such securities) at a price per share (or other similar unit) less than the Fair Market Value per share (or other similar unit) of such preferred stock (or other security) on the date such preferred stock (or other security) is sold (provided that no sale of preferred stock or other security pursuant to an underwritten public offering shall be deemed to be for less than its fair market value), then in each such case the Warrant Share Amount shall thereafter be adjusted by multiplying the Warrant Share Amount immediately prior to the date of issuance of such preferred stock (or other security) by a fraction, the numerator of which shall be the product of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (ii) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (B) the Fair Market Value of a share of the Common Stock immediately prior to the date of such issuance minus (y) the difference between (1) the aggregate Fair Market Value of such preferred stock (or other security) and (2) the aggregate consideration received by the Company for such preferred stock (or other security). Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the issuance or sale of preferred stock (or other securities of the Company other than common Stock or Options or Convertible Securities) in a *bona fide* arm's-length transaction to any Person or group that, at the time of such issuance or sale, is not an Affiliate of the Company (including any possible issuance

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of preferred stock (or other securities of the Company other than common Stock or Options or Convertible Securities) to the public stockholders of Coleman in connection with the acquisition of their shares of Coleman common stock pursuant to the Coleman Merger Agreement, or otherwise). An adjustment made pursuant to this Section 7(e) shall become effective immediately after such preferred stock (or other security) is sold.

(f) *Above Market Repurchases of Common Stock.* If at any time or from time to time the Company or any Subsidiary thereof shall repurchase, by self-tender offer or otherwise, any shares of Common Stock of the Company (or any Options or Convertible Securities) at a purchase price in excess of the Fair Market Value thereof, on the Business Day immediately prior to the earliest of (i) the date of such repurchase, (ii) the commencement of an offer to repurchase, or (iii) the public announcement of either (such date being referred to as the "Determination Date"), the Warrant Share Amount shall be determined by multiplying the Warrant Share Amount immediately prior to such Determination Date by a fraction, the numerator of which shall be the product of (1) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date minus the number of Common Share Equivalents represented by the securities repurchased or to be purchased by the Company or any Subsidiary thereof in such repurchase and (2) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to the Determination Date and (B) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date minus (y) the sum of (1) the aggregate consideration paid by the Company in connection with such repurchase and (2) in the case of Options or Convertible Securities, the additional consideration required to be received by the Company upon the exercise, exchange or conversion of such securities. Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the repurchase, by self-tender offer or otherwise, of Common Stock (or any Options or Convertible Security) in a bona fide arms-length transaction from any Person or group that, at the time of such repurchase, is not an Affiliate of the Company.

(g) *Above Market Repurchases of Preferred Stock or Other Securities.* If at any time or from time to time the Company or any Subsidiary thereof shall repurchase, by self-tender offer or otherwise, any shares of non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of the Company (other than Common Stock or Options or Convertible Securities) or options, rights or warrants to purchase any of such securities), at a purchase price in excess of the Fair Market Value thereof, on the Business Day immediately prior to the Determination Date, the Warrant Share Amount shall be determined by multiplying the Warrant Share Amount immediately prior to the Determination Date by a fraction, the numerator of which shall be the product of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date and (ii) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date and (B) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date minus (y) the difference between (1) the aggregate consideration paid by the

Company in connection with such repurchase and (2) the aggregate Fair Market Value of such preferred stock (or other security). Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the repurchase, by self-tender offer or otherwise, of non-convertible and non-exchangeable preferred stock (or other securities of the Company other than Common Stock or Options or Convertible Securities) in a bona fide arm's-length transaction from any Person or group that, at the time of such repurchase, is not an Affiliate of the Company.

(h) *Readjustment of Warrant Share Amount.* If (i) the purchase price provided in any Option or the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities or the rate at which any Convertible Securities, in each case as referred to in paragraphs (b) and (f) above, are convertible into or exchangeable for Common Stock shall change at any time (other than under or by reason of provisions designed to protect against dilution upon an event which results in a related adjustment pursuant to this Section 7), or (ii) any of such Options or Convertible Securities shall have irrevocably terminated, lapsed or expired, the Warrant Share Amount then in effect shall forthwith be readjusted (effective only with respect to an exercise of this Warrant after such readjustment) to the Warrant Share Amount which would then be in effect had the adjustment made upon the issuance, sale, distribution or grant of such Options or Convertible Securities been made based upon such changed purchase price, additional consideration or conversion rate, as the case may be (in the case of any event referred to in clause (i) of this paragraph (h)) or had such adjustment not been made (in the case of any event referred to in clause (ii) of this paragraph (h)).

(i) *Exercise Price Adjustment.* Upon each adjustment of the Warrant Share Amount pursuant to this Section 7, the Exercise Price of each Warrant outstanding immediately prior to such adjustment shall thereafter be equal to an adjusted Exercise Price per Share determined (to the nearest cent) by multiplying the Exercise Price for the Warrant immediately prior to such adjustment by a fraction, the numerator of which shall be the Warrant Share Amount in effect immediately prior to such adjustment and the denominator of which shall be the Warrant Share Amount in effect immediately after such adjustment.

(j) *Consideration.* If any shares of Common Stock, Options or Convertible Securities shall be issued, sold or distributed for cash, the consideration received in respect thereof shall be deemed to be the amount received by the Company therefor, before deduction therefrom of any reasonable, customary and adequately documented expenses incurred in connection therewith. If any shares of Common Stock, Options or Convertible Securities shall be issued, sold or distributed for a consideration other than cash, the amount of the consideration other than cash received by the Company shall be deemed to be the Fair Market Value of such consideration, before deduction of any reasonable, customary and adequately documented expenses incurred in connection therewith. If any shares of Common Stock, Options or Convertible Securities shall be issued in connection with any merger in which the Company is the surviving corporation, the amount of consideration therefor shall be deemed to be the Fair Market Value of such portion of the assets and business of the non-surviving corporation as shall be attributable to such Common Stock, Options or Convertible Securities, as the case may be. If any Options shall be issued in connection with the issuance and sale of other securities of the Company, together comprising one inte-

gral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued without consideration.

(k) *No Impairment.* The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Section 7 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the Holder against impairment. Without limiting the generality of the foregoing, the Company will not increase the par value of any shares of Common Stock receivable on the exercise of the Warrants above the amount payable therefor on such exercise.

(l) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of the Warrant Share Amount pursuant to this Section 7, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to the Holder a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request at any time of the Holder, furnish or cause to be furnished to Holder a like certificate setting forth (1) such adjustments and readjustments and (2) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the exercise of this Warrant.

(m) *Proceedings Prior to Any Action Requiring Adjustment.* As a condition precedent to the taking of any action which would require an adjustment pursuant to this Section 7, the Company shall take any action which may be necessary, including obtaining regulatory approvals or exemptions, in order that the Company may thereafter validly and legally issue as fully paid and non-assessable all shares of Common Stock which the Holders are entitled to receive upon exercise thereof.

(n) *Notice of Adjustment.* Upon the record date or effective date, as the case may be, of any action which requires or might require an adjustment or readjustment pursuant to this Section 7, the Company shall forthwith file in the custody of its Secretary or an Assistant Secretary at its principal executive office and with its stock transfer agent or its warrant agent, if any, an officers' certificate showing the adjusted number of Warrant Shares determined as herein provided, setting forth in reasonable detail the facts requiring such adjustment and the manner of computing such adjustment. Each such officers' certificate shall be signed by the chairman, president or chief financial officer of the Company and by the secretary or any assistant secretary of the Company. Each such officers' certificate shall be made available at all reasonable times for inspection by the Holder or any Holder of a Warrant executed and delivered pursuant to Section 6(b) and the Company shall, forthwith after each such adjustment, mail a copy, by first-class mail, of such certificate to the Holder or any such holder.

(o) *Payments in Lieu of Adjustment.* The Holder shall, at its option, be entitled to receive, in lieu of the adjustment pursuant to Section 7(c) otherwise required thereof, on (but not

price) the date of exercise of the Warrants, the evidences of indebtedness, other securities, cash, property or other assets which such Holder would have been entitled to receive if it had exercised its Warrants for shares of Common Stock immediately prior to the record date with respect to such distribution. The Holder may exercise its option under this Section 7(o) by delivering to the Company a written notice of such exercise simultaneously with its notice of exercise of this Warrant.

SECTION 8. CONSOLIDATION, MERGER OR SALE OF ASSETS. In case of any consolidation of the Company with, or merger of the Company into, any other Person, any merger of another Person into the Company (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock) or any sale or transfer of all or substantially all of the assets of the Company to the Person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, the Holder shall have the right thereafter to exercise this Warrant for the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer by a holder of the number of shares of Common Stock for which this Warrant may have been exercised immediately prior to such consolidation, merger, sale or transfer. Adjustments for events subsequent to the effective date of such a consolidation, merger, sale or transfer of assets shall be as nearly equivalent as may be practicable to the adjustments provided for in this Warrant. In any such event, effective provisions shall be made in the certificate or articles of incorporation of the resulting or surviving corporation, in any contract of sale, merger, conveyance, lease, transfer or otherwise so that the provisions set forth herein for the protection of the rights of the Holder shall thereafter continue to be applicable; and any such resulting or surviving corporation shall expressly assume the obligation to deliver, upon exercise, such shares of stock, other securities, cash and property. The provisions of this Section 8 shall similarly apply to successive consolidations, mergers, sales, leases or transfers.

SECTION 9. WARRANT AGENT. At the written request of the Holders of a majority of the outstanding Warrants, the Company shall as soon as is reasonably practicable:

- (i) appoint a warrant agent to act as agent for the Company in connection with the issuance, transfer and exchange of the Warrants and shall enter into an agreement with such warrant agent reflecting the terms and conditions of such appointment, which terms and conditions shall be customary for such appointments, and such other matters as are customarily included in such agreements so as to facilitate the transfer and registration of the Warrants; and
- (ii) use its reasonable best efforts to cause the Warrants to be eligible to be publicly traded, including, without limitation, amending this Warrant to provide terms and conditions necessary and appropriate for the Warrants to be publicly traded.

SECTION 10. NOTICES. Any notice, demand or delivery authorized by this Warrant shall be in writing and shall be given to the Holder or to the Company, as the case may be, at its address (or facsimile number) set forth below, or such other address (or facsimile number) as shall have been furnished to the party giving or making such notice, demand or delivery:

If to the Company: Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445
Attention: Corporate Secretary
Facsimile: (561) 243-2191

with copies to: Skadden, Arps, Slate, Meagher & Flom LLP
919 Third Avenue
New York, New York 10022
Attention: Blaine V. Fogg, Esq.
Facsimile: (212) 735-3597

and to: Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Stephen E. Jacobs, Esq.
Facsimile: (212) 310-8007

If to the Holder: Coleman (Parent) Holdings Inc.
c/o MacAndrews & Forbes Holdings Inc.
35 East 62nd Street
New York, New York 10021
Attention: Barry F. Schwartz, Esq.
Facsimile: (212) 572-5056

with copies to: Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Adam O. Emmerich, Esq.
Facsimile: (212) 403-2000

Each such notice, demand or delivery shall be effective (i) if given by telecopy, when such telecopy is transmitted to the telecopy number specified herein and the intended recipient confirms the receipt of such telecopy, or (ii) if given by any other means, when received at the address specified herein.

SECTION 11. RIGHTS OF THE HOLDER Prior to the exercise of any Warrant, the Holder shall not, by virtue hereof, be entitled to any rights of a shareholder of the Company, including, without limitation, the right to vote, to receive dividends or other distributions, to exercise any preemptive right or to receive any notice of meetings of shareholders or any notice of any proceedings of the Company except as may be specifically provided for herein.

SECTION 12. GOVERNING LAW. THIS WARRANT AND ALL RIGHTS ARISING HEREUNDER SHALL BE CONSTRUED AND DETERMINED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE,

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CONFIDENTIAL
SUBJECT TO
PROTECTIVE ORDER

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AND THE PERFORMANCE THEREOF SHALL BE GOVERNED AND ENFORCED IN ACCORDANCE WITH SUCH LAWS.

SECTION 13. AMENDMENTS; WAIVERS. Any provision of this Warrant may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the Holder and the Company, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 14. Interpretation. When a reference is made in this Warrant to a Section such reference shall be to a Section of this Warrant unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Warrant, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Warrant shall refer to this Warrant as a whole and not to any particular provision of this Warrant. The definitions contained in this Warrant are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

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SUBJECT TO
PROTECTIVE ORDER

IN WITNESS WHEREOF, the Company has duly caused this Warrant to be signed by its duly authorized officer and to be dated as of the date first above written.

SUNBEAM CORPORATION

By: _____
Name:
Title:

Attest:

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED:

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name:
Title:

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WARRANT EXERCISE SUBSCRIPTION FORM

(To be executed only upon exercise of the Warrant
after delivery of the Warrant Exercise Notice)

To: Sunbeam Corporation

The undersigned irrevocably exercises the Warrant for the purchase of _____ shares (the "Shares") of Common Stock, par value \$.01 per share, of Sunbeam Corporation (the "Company") ("Common Stock") at an exercise price of \$ _____ per Share and herewith makes payment of \$ _____ (such payment being made in cash or by certified or official bank or bank cashier's check payable to the order of the Company or by any permitted combination of such cash or check or by the reduction of the number of shares of Common Stock that otherwise would be issued upon this exercise by the number of shares of Common Stock that have a value equal to such exercise price), all on the terms and conditions specified in this Warrant, surrenders this Warrant and all right, title and interest therein to the Company and directs that the Shares deliverable upon the exercise of this Warrant be registered or placed in the name and at the address specified below and delivered thereto.

Date: _____, _____

(Name - Please Print)

(Signature of Owner)

(Street Address)

(City) (State) (Zip Code)

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Securities and/or check to be issued to:

Please insert social security or identifying number:

Name:

Street Address:

City, State and Zip Code:

Any unexercised portion of the Warrant evidenced by the
within Warrant to be issued to:

Please insert social security or identifying number:

Name:

Street Address:

City, State and Zip Code:

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WARRANT ASSIGNMENT FORM

Dated _____, _____

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers unto
_____ (the "Assignee"),
(please type or print in block letters)

(insert address)
its right to purchase up to _____ shares of Common Stock represented by this Warrant and does
hereby irrevocably constitute and appoint _____ Attorney, to transfer
the same on the books of the Company, with full power of substitution in the premises.

Signature: _____

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Exhibit 5

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1 IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT

2 IN AND FOR PALM BEACH COUNTY, FLORIDA

3 ----- x

4 MORGAN STANLEY SENIOR FUNDING, :

5 INC., :

6 Plaintiff, :

7 vs. : Case No:

8 MACANDREWS & FORBES : 03 CA-005165 AG

9 HOLDINGS, INC., and COLEMAN :

10 (PARENT) HOLDINGS, INC., :

11 Defendants. :

12 ----- x

13 Video Deposition of STEVEN L. FASMAN, held

14 at the offices of KIRKLAND & ELLIS, 655 15th Street,

15 N.W., Washington, D.C. 20005, commencing at 10:00

16 a.m., Monday, September 15, 2003, before Robert M.

17 Jakupciak, RPR and Notary Public.

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1 A. Yes.

2 Q. Who would that be?

3 A. Mr. Schwartz and Eric Golden.

4 Q. Anyone else?

5 A. No.

6 Q. What is Eric Goldman's title?

7 A. Golden.

8 Q. Golden?

9 A. Golden.

10 Q. What is Eric Golden's title?

11 A. He is no longer with the company.

12 Q. What was Eric Golden's title at the time

13 that you spoke with him regarding the litigation?

14 A. I believe vice president.

15 Q. Vice president, legal, or vice president

16 any other subtitle?

17 A. I think it was just vice president.

18 Q. Is Mr. Golden an attorney?

19 A. Yes.

20 Q. Now, you are aware that you are here today

21 to testify as a corporate representative on behalf of

22 Coleman (Parent), correct?

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1 Q. Is the collection of documents completed
2 for this case?

3 A. I would believe it's generally complete.
4 There is always the possibility of something
5 additional turning up I guess, but I'm not aware of
6 any specific effort still ongoing to produce
7 documents.

8 Q. When was CPH or MAFCO first aware of the
9 potential for litigation related to the Sunbeam
10 acquisition of Coleman?

11 A. That's too broad for me to answer.

12 Q. In what way is that too broad for you to
13 answer?

14 A. The question in its breadth suggests that
15 you might be asking several different things, and I'm
16 not sure what you are really asking so I can't answer
17 the question.

18 Q. When was MAFCO first aware of potential for
19 litigation against or by anyone as it relates to the
20 Sunbeam acquisition of Coleman?

21 A. Against or by anyone? So that Joe sues Sam
22 over the transaction or in some way related to the

1 transaction?

2 Q. I'm asking when MAFCO was first aware of
3 the possibility for litigation, yes.

4 A. Between any two people?

5 Q. Yes.

6 A. Over any aspect of it?

7 Q. Yes.

8 A. Relating in any way to it?

9 Q. Correct.

10 A. 1998.

11 Q. In 1998 CPH obtained a settlement from
12 Sunbeam, correct?

13 A. I wouldn't characterize anything of which
14 I'm aware in that way.

15 Q. In 1998 there was a settlement agreement
16 between Sunbeam Corporation and Coleman (Parent)
17 Holdings as it relates to the Sunbeam acquisition of
18 Coleman, correct?

19 A. Yes.

20 Q. How is it then that you would not
21 characterize that as a settlement?

22 A. That wasn't what you said.

1 retains or CPH?

2 A. On any subject?

3 Q. Related to the Sunbeam transaction.

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

5 Q. When Mr. Golden contacted the individuals
6 in 1999 or 2000 to collect documents for the
7 securities litigation, did he collect any documents
8 from the network servers?

9 A. No.

10 Q. Did he search for any documents on the
11 network servers?

12 A. No.

13 Q. Did he search for any documents that had
14 been archived with Pierce-Leahy?

15 A. His search included such document, yes.

16 Q. Were there any documents that had been sent
17 off-site for storage with Pierce-Leahy that were
18 produced in that litigation?

19 A. I don't know.

20 Q. Did the individuals that Mr. Golden
21 contacted search their own files or have their
22 assistant search their files or did Mr. Golden search

1 that the subpoena contained were provided.

2 Q. Do you know which among those three you
3 listed was actually provided as guidance?

4 A. It depends on the individual.

5 Q. In Mr. Golden's collection of documents for
6 the securities litigation did he collect from anyone
7 any electronic documents?

8 A. No.

9 Q. Did Mr. Golden collect from anyone any
10 e-mail in soft copy or hard copy?

11 A. I believe, yes.

12 Q. From whom did he collect e-mail?

13 A. I don't know.

14 Q. Why do you believe that he collected
15 e-mail?

16 A. Because I believe e-mails were produced and
17 hard copies of e-mails were produced in connection
18 with that litigation.

19 Q. Were the assistants and secretaries of the
20 individuals that you referred to who Mr. Golden
21 contacted also contacted and instructed to review
22 files?

1 A. To the extent that they were ever taken
2 from the original providers? I don't know.

3 Q. Did CPH or MAFCO retain any sort of record
4 or index of the documents that it provided to
5 Wachtell?

6 A. I think there were some notes kept, yes.

7 Q. Kept by whom?

8 A. Well, I'm thinking of Mr. Golden, but it
9 certainly wouldn't surprise me if in some instances at
10 least the individuals who provided documents would
11 have made some notes of what was given away.

12 Q. Were the people who Mr. Golden contacted in
13 that instance instructed to provide electronic
14 documents?

15 A. No.

16 Q. Were they instructed to search for
17 electronic documents?

18 A. No.

19 Q. Between 1997 and when Mr. Golden searched
20 for documents for the securities litigation, had MAFCO
21 or CPH changed servers?

22 A. I don't know.

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Exhibit 6

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1 supposed to be assuming the existence of some group of
2 documents, I don't understand the question.

3 Q. Is there any policy at MAFCO or Coleman
4 (Parent) Holdings that would prevent MAFCO or Coleman
5 (Parent) Holdings employees from discarding
6 correspondence between MAFCO or Coleman (Parent)
7 Holdings on the one hand and parties to an acquisition
8 in which MAFCO or Coleman (Parent) Holdings was
9 involved on the other?

10 MR. BRODY: At any time, regardless of
11 pending litigation or other matters? At any time?

12 BY MS. BROWN:

13 Q. Putting aside tax and active instruction
14 regarding litigation.

15 A. I don't understand what you mean by an
16 active instruction regarding litigation. If there is
17 litigation ongoing, you have a duty to retain
18 documents relating to -- you have a duty to retain
19 documents that you have reasonable belief might be
20 called for in connection with that litigation.

21 Q. And during the time that the documents were
22 restored to their original custodians between the 2000

1 Q. Would the outside vending company to which
2 you referred have been responsible for any change in
3 servers at MAFCO?

4 A. They would have changed them if there was a
5 change.

6 Q. Did Mr. Golden undertake any search of the
7 servers in response to the document production or
8 collection in 1999 or 2000 for the securities
9 litigation?

10 A. No.

11 Q. Do you know why not?

12 A. Wachtell, Lipton, on behalf of the company,
13 objected to producing anything electronic. That
14 objection was neither challenged nor overruled.

15 Q. At any point between 1997 and today has
16 there been any effort by MAFCO to collect and retain
17 electronic documents related to the Sunbeam
18 acquisition of Coleman?

19 A. Yes.

20 Q. When was that?

21 A. The first time?

22 Q. Yes.

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Exhibit 7

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IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

MORGAN STANLEY SENIOR)
FUNDING, INC.,)

Plaintiff,)

vs.)

MacANDREWS & FORBES HOLDINGS,)
INC., and COLEMAN (PARENT))
HOLDINGS, INC.,)

Defendant.)

-----)

VIDEOTAPED DEPOSITION OF
STEVEN L. FASMAN, ESQ.
New York, New York
Wednesday, January 21, 2004

Reported by:
ANDREA L. KINGSLEY, RPR
CSR NO. 001055
JOB NO. 156575

COPY

035793

1 Fasman

2 A. Yes.

3 Q. That paragraph reads, "Employees
4 should delete promptly any e-mail messages
5 they send or receive that no longer require
6 action or not necessary to an ongoing
7 project. Employees should audit stored
8 e-mail messages weekly to identify messages
9 that are no longer needed and should be
10 deleted. In addition, the e-mail system
11 will only back-up and preserve messages for
12 a period of 30 days. Accordingly, every 30
13 days all messages will be purged from the
14 e-mail system. Specific documents
15 requiring longer storage will need to be
16 moved elsewhere."

17 Is that the 30 day plan that you
18 were referring to?

19 A. I didn't call it a plan.

20 Q. What did you call it?

21 A. I don't know, whatever I said.

22 Q. Is that what you are referring to
23 when you are referring to a 30 day issue or
24 whatever you called it?

25 A. Yes.

1 Fasman

2 said. It's used on Tuesdays and Fridays so
3 therefore Tuesday's data will be
4 overwritten on Friday.

5 Q. And Wednesday will be overwritten
6 the following Wednesday?

7 A. Yes.

8 Q. And Thursday the following
9 Thursday?

10 A. Yes.

11 Q. That's just for the daily
12 back-ups though; correct?

13 A. Yes.

14 Q. After a month, explain to me the
15 monthly back-up procedure.

16 A. There are two monthly back-up
17 tapes. So that a monthly back-up tape will
18 be overwritten every second month.

19 Q. If the saved folder is on this
20 Proliant server, how does it remain exempt
21 from these back-ups and overwriting?

22 A. It doesn't.

23 Q. Than how is it that the saved
24 folder could possibly still be in
25 existence, an e-mail could be there six

035795

1 Fasman

2 counsel's instruction?

3 A. Yes.

4 (Morgan Stanley Exhibit 67,
5 complaint Coleman (Parent) Holdings
6 filed against Andersen June 8, 2001,
7 marked for identification, as of this
8 date.)

9 Q. You've just been handed what's
10 been marked as Morgan Stanley Exhibit 67.
11 It is the complaint that Coleman (Parent)
12 Holdings filed against Andersen on June 8,
13 2001. Prior to filing this complaint, did
14 MacAndrews & Forbes issue a notice to its
15 employees to preserve e-mail that could
16 potentially be related to this case and the
17 Sunbeam acquisition of Coleman?

18 A. Yes.

19 Q. Was that issued in written form?

20 A. Yes.

21 Q. Who issued that notice?

22 A. Barry Schwartz.

23 Q. And that notice is what has been
24 labeled Exhibit 2? That's a question not a
25 statement.

035796

1 Fasman

2 request that you double check and make
3 sure these letters have been produced
4 to Morgan Stanley. Mr. Fasman has now
5 testified to two letters that have
6 been --

7 MR. BRODY: Is that what you are
8 referring to?

9 THE WITNESS: That's one.

10 MR. BRODY: Exhibit 5 is one such
11 example.

12 THE WITNESS: Exhibit 6 as well.

13 MR. BRODY: Exhibit 6 would be
14 another example. They have been
15 produced and marked.

16 A. I testified about them. By me.

17 Q. After the decision to file the
18 Andersen complaint, did MacAndrews & Forbes
19 suspend the 30 day auto purge function on
20 the Microsoft Outlook and Exchange system?

21 A. Yes.

22 Q. It did?

23 A. Yes.

24 Q. Who arranged for that suspension
25 to occur?

1 Fasman

2 A. Eric Golden.

3 Q. How long did MacAndrews & Forbes
4 suspend the auto purge function of
5 Microsoft Exchange?

6 A. From the day he issued the
7 instruction until today.

8 Q. So from the date -- do you know
9 what day he issued the instruction?

10 A. Sometime in October or November
11 of 2001.

12 Q. But the complaint was filed in
13 June 2001.

14 A. Yes.

15 Q. He issued the instruction four
16 months later?

17 A. As I said, lots of documents had
18 already been collected in an exercise of an
19 abundance of caution based on the breadth
20 of the Arthur Andersen requests just to
21 make sure there was nothing left out
22 through all the previous document
23 collection and production efforts. A
24 supplemental request went out to preserve
25 electronic versions of the e-mails.

035798

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

Material Redacted Without Prior Determination of Protectability by Court

**MORGAN STANLEY & CO. INCORPORATED'S MOTION
FOR SANCTIONS FOR DISCOVERY ABUSES**

Court-ordered discovery in recent weeks has revealed that Coleman (Parent) Holdings Inc. ("CPH") has *intentionally* withheld from production highly relevant and damaging documents. These documents ("Valuation Documents") undermine CPH's \$680 million damage claim, are contrary to sworn testimony by MacAndrews & Forbes Holdings Inc.'s ("MAFCO's") Chief Executive Officer and sole shareholder Ronald O. Perelman, CPH's designated corporate representative — Laurence Winoker — who was deposed on November 18, 2004, and the testimony of CPH's damage expert and others concerning the value of CPH's Sunbeam stock and warrant. The facts warrant severe sanctions.

Morgan Stanley requested Valuation Documents in July 2003 and throughout 2004.¹ There is no *innocent* reason why the Valuation Documents have only been produced on the eve of trial and after motion practice. As this Court has stated, the documents "obviously" were requested at the *earliest stages of this litigation* — and CPH's deliberate "failure to disclose [this

¹ The history of the request was chronicled in Morgan Stanley's Motion to Compel Production of Documents dated February 15, 2005.

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material] is *serious*.” (Mar. 8, 2005 Hr’g at 2398-99.) In sum, CPH has possessed — and known that it had — documents in its most secret files that contradict its damages claim against Morgan Stanley. Only now — after two orders compelling production from this Court and an Order imposing sanctions, days before trial, and well after Morgan Stanley could fairly challenge CPH’s fact and expert witnesses — has CPH begun to produce those documents.

- For over a year, CPH’s counsel repeatedly assured Morgan Stanley that CPH had provided all of its documents relating to damages. On March 1, 2005, a week after finally producing key unredacted Valuation Documents, CPH’s counsel Mr. Solovy promised this Court: “*I can assure the Court there are no other documents, we produced everything we got.*” (Mar. 1, 2005 Hr’g at 1798 (emphasis added).)
- Just days later, however, CPH produced 72 pages of documents relating to damages. (MS 811 (Ex. 1).) In addition, well after the close of discovery and only after being compelled by this Court, CPH produced a MAFCO document (MS 822 (Ex. 2)) that

document, and others like it, also valued Sunbeam’s warrant at
same valuation was used a year later, as well.

That
The

•

MAFCO’s valuation of *flatly contradicts* CPH’s
damages theory as well as Mr. Perelman’s sworn testimony that CPH’s Sunbeam
stock and warrant were worthless.

- On March 8, 2005, MAFCO’s controller, treasurer and custodian of its financial records, Laurence Winoker, admitted

— again, well after
discovery had closed and nearly two years after Morgan Stanley first requested such
information.

- The Court has found Morgan Stanley’s discovery requests regarding CPH’s internal valuation documents to be “obviously clear.” (Mar. 8, 2005 Hr’g 2398-99.) The information requested goes directly to an indisputable element of CPH’s claims.

037225

- Mr. Perelman, as the sole ultimate shareholder of CPH, has an obvious motive in this case to understate the value of Sunbeam stock and the Sunbeam warrant at the time of the transaction. And Morgan Stanley now knows that while Mr. Perelman testified in this case that the relevant figure was _____, during the relevant time period he was providing to _____ documents that reflected a valuation of the same stock at _____

Laurence Winoker, CPH's designated witness pursuant to rule 1.310(b)(6), falsely testified on November 18, 2004, that the Sunbeam warrant was valued by CPH at _____ when in fact, Mr. Winoker and Mr. Perelman agreed the estimated fair value was _____

- Like Morgan Stanley, Dr. Nye, CPH's own damage expert witness, was not provided with the newly-discovered Valuation Documents — even though that information directly contradicts his expert report. For example, Nye erroneously concludes in his expert report that the equity-based value of CPH's stake in Sunbeam in December 1999 was worth, at most, _____

CPH's discovery abuses thus not only improperly prevented Morgan Stanley from questioning Nye about that irreconcilable conflict; it also renders Nye's opinion — and the fundamentally erroneous assumptions he bases it on — patently unreliable.

- As Morgan Stanley discussed in its Motion for an Adverse Inference Instruction, filed March 9, 2005, CPH was actively destroying e-mail and electronic documents at the very same time that it was threatening litigation against Sunbeam.

Perhaps the most striking evidence of CPH's conduct in this regard is that, even though it has been threatening or engaged in litigation about this transaction since at least July 1998 (if not earlier), it has produced only 60 pages of e-mail in this litigation. (See Mar. 8, 2004 Morgan Stanley's Motion for an Adverse Inference at 5.)

Morgan Stanley requests that the Court enter appropriate sanctions against CPH, including striking CPH's damage expert's report and excluding all evidence concerning damages. This sanction is severe, but it is commensurate with the offense. The following table demonstrates the magnitude of the plaintiff's dissembling and legerdemain on damages:

037226

To assist the Court in navigating the extensive record, the following chronology sets forth the events relevant to this motion with citation to the underlying evidence and relevant material.

I. STATEMENT OF FACTS

A. CPH Is Demanding A Verdict Of In Compensatory Damages.

1.

CPH argues entitlement to its benefit-of-the-bargain even though CPH had no bargain with Morgan Stanley and even though CPH never received any warranty of certain value from Sunbeam: CPH negotiated to receive (from Sunbeam) a fixed number of shares of unregistered, restricted, and highly volatile stock. (MS 93 (Ex. 4).)

2. Under Florida law, benefit-of-the-bargain damages are measured by taking the value expected under an agreement and subtracting the actual value received. *Totale, Inc. v. Smith*, 877 So. 2d 813, 815 (Fla. 4th DCA 2004). Here, CPH asserts that, at the time of the Coleman-Sunbeam merger, the total expected value of the 14.1 million shares of Sunbeam stock that CPH received in the transaction was (See Nye Report ¶ 72.) And CPH asserts that the actual value it received was \$0, as a result of Sunbeam's bankruptcy almost three years later.

3. In the event CPH ever could prove liability and entitlement to damages, Morgan Stanley would be entitled to certain offsets, including an offset for the value of the 23 million

Sunbeam warrant that CPH received in its settlement with Sunbeam. (MS 96 (Ex. 5).) CPH maintained through much of this litigation that the Sunbeam warrant were worthless, until revealing last November, for the first time, that it had valued the warrant at, at least,

4. In short, given the astronomical damages figures CPH is suggesting, Morgan Stanley should have been entitled to broad access to all financial documents relating to any valuation of CPH's Sunbeam securities. But CPH withheld such information and misrepresented the existence and contents of such information, thereby severely hampering Morgan Stanley's ability to prepare its defense.

B. CPH Failed To Collect And Preserve Critical Valuation Documents From MAFCO's Finance Department.

5. On March 8, 2005, at a deposition pursuant to this Court's February 24, 2005 Order compelling further discovery regarding CPH's Sunbeam valuation, Morgan Stanley discovered the magnitude of CPH's bad faith in producing documents relevant to its damage claim. Lawrence Winoker, the "custodian" of documents for MAFCO's accounting department, testified that,

6. He was designated as a corporate representative on the issue of the Sunbeam warrant valuation back on November 18, 2004 (Nov. 18, 2004 Winoker Dep. at 11:15-24), where he gave demonstrably false testimony. *See infra*. He was directly responsible for creating many of the critical financial documents that have been produced in the last couple of weeks. *See infra*. And many of the key documents produced only in the last few days — as a result of

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Morgan Stanley's continued prodding following the Court's Orders of February 17 and 24, 2005 — came directly from Mr. Winoker's files. *See infra*.

7. What is more, as is further detailed in Morgan Stanley's Motion for Adverse Inference filed March 8, 2005, CPH systematically destroyed its e-mails even as it threatened and commenced litigation against Sunbeam and Arthur Andersen and even after it filed the instant lawsuit. (*See* Mar. 8, 2005 Morgan Stanley's Mot. for Adverse Inference.) In a document-intensive case such as this, with millions of pages of produced documents, CPH has produced a paltry 60 e-mails, most of which came from sources other than CPH. (*Id.*)

C. CPH Withheld Key Financial Documents From Production Even After The Documents Were Provided To

8.

9.

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10. Morgan Stanley made repeated requests for these Valuation Documents, and CPH, asserting no specific objections, repeatedly claimed that its production was complete. (See, e.g., Jan. 29, 2004 Brody Letter to DeBord (Ex. 13); see generally Feb. 15, 2005 Morgan Stanley's Mot. to Compel; Feb. 22, 2005 Morgan Stanley's Mot. for Sanctions.) In late-February 2005, after the close of discovery, CPH finally produced Mr. Slotkin's documents — but only after the Court issued two orders compelling production and an order imposing sanctions. (See Feb. 17, 2005 Order on MS & Co.'s Mot. to Compel Prod. of Docs.; Feb. 24, 2005 Order on Morgan Stanley's Mot. for Add. Disc. re MAFCO's Internal Valuation of Sunbeam Stock and Mot. for Sanctions and Additional Disc. Re Plf.'s Improper Concealment of the Value of the Sunbeam Warrant.)

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**D. CPH Withheld A
Sunbeam Investment.**

Estimated Fair Value Calculation For Its

11.

12.

13.

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² By the date of the fair value estimate, CPH had settled its claims against Sunbeam, entered into a consulting and management agreement with MAFCO, put in MAFCO insiders as the key officers, and had two seats on Sunbeam's board. (See MS 96 at section 3, providing that CPH will provide management services to Sunbeam.)

E. CPH Provided False Testimony At Its Rule 1.310(b)(6) Deposition Regarding The Sunbeam Warrant Valuation.

14. Mr. Winoker's testimony as a corporate representative back in November 2004 has been shown to be demonstrably false and misleading. Back then, in response to no less than a dozen questions about CPH's valuation of the Sunbeam warrant at the time of the settlement, Mr. Winoker testified repeatedly that

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15. In truth, CPH's parent used a [REDACTED] for the Sunbeam warrant, as revealed during a production in response to the Court's February 17, 2005 Order. This became clear when CPH produced three batches of heavily redacted documents. (Feb. 22, 2005 Mot. for Sanctions Exs. 11-13.) While redacting these documents, CPH initially concealed

16. Morgan Stanley was surprised to learn later that

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17.

F. Ronald O. Perelman Testified Falsely In His November 18, 2004 Deposition.

18. Mr. Perelman, as the 100 percent shareholder of CPH, has the most to gain from any damage award in this case. On the very same day Mr. Winoker first disclosed the figure in deposition testimony, Mr. Perelman testified under oath that

Q. Did you attempt to value the warrant or the settlement as a whole at the time you entered into the settlement with Sunbeam?

A. Yes.

Q. What did you value the warrant at?

A. Close to zero.

Q. You settled MacAndrews & Forbes, or, as the case may be, Coleman (Parent) Holdings' claims against Sunbeam for next to zero?

A. Yes. There was nothing to get.

(Nov. 17-18, 2005 Perelman Dep. at 539:20-540:7 (Ex. 15).)

19.

G.

20.

21.

22.

H. The Opinions Of CPH's Damages Expert Contradicts MAFCO's Internal Financial Statements And Valuations.

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And CPH wanted to prevent Morgan Stanley from adequately cross-examining Dr. Nye with CPH's internal valuations.

I. CPH Misrepresented The Existence Of Tax Valuations For The Sunbeam Stock.

24. On March 2, 2005, following inquiries by Morgan Stanley's counsel, CPH's counsel stated, "We have confirmed that CPH did not create valuations of the Sunbeam stock for tax purposes." (Mar. 2, 2005 Brody Letter to Clare (Ex. 17).)

:

25. Indeed, there were *several* documents calculating the deferred tax liability relating to the Sunbeam shares. (See, e.g., MS 813 at CPH2012204-05, CPH2012209, CPH2012211-13.)

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J. CPH Repeatedly Made False Representations That Its Document Production Was Complete.

26. As set forth in Morgan Stanley's Motion to Compel Production of Documents filed February 15, 2005, and in its Motion for Sanctions filed February 22, 2005, CPH engaged in a misleading pattern of telling Morgan Stanley that it would produce documents without objections, all the while withholding critical documents. And when it appeared that key documents were still missing from CPH's production, CPH again and again represented that everything had been produced, acting "puzzled" by Morgan Stanley's requests.

27. For example, back on January 29, 2004, CPH stated that it was "puzzled" by Morgan Stanley's claim that CPH had failed to produce documents responsive to requests related to the Sunbeam warrant and stated that it will "continue to search for responsive documents, and will produce any additional, non-privileged documents that we locate." (Jan. 29, 2004 Brody Letter to DeBord.) As set forth above, CPH's representations that they would locate and produce documents were empty promises.

28. On February 28, 2005, CPH's counsel represented that "CPH is not aware that any of its discovery responses were not complete when made." (Feb. 28, 2005 First Brody Letter to Bemis (Ex. 18).) And CPH's counsel also incorrectly stated that "CPH does not have any additional responsive documents concerning the \$450 million" figure. (Feb. 28, 2005 Second Brody Letter to Bemis (Ex. 19).) As recently as March 8, 2005, CPH has continued to produce new documents regarding this valuation.

29. In the first letter posted on February 28, 2005, CPH's counsel added that CPH did not review the estimated fair value calculations "until February 17, 2005, after the Court granted Morgan Stanley's motion to compel." (Feb. 28, 2005 First Brody Letter to Bemis.) That representation turned out to be false in light of Mr. Slotkin's testimony that

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30. At the March 1, 2005 hearing, Mr. Solovy stated, with regard to MAFCO's estimated fair value calculations, "I can assure the Court there are no other documents, we produced everything we got." (Mar. 1, 2005 Hr'g at 1798:21-23.) Since that hearing, CPH has produced an additional 72 pages of documents, many of which deal directly with MAFCO's fair value calculations, including transmittals to the government.

31.

K. The Withheld Valuation Documents Show That CPH Was Attempting To Inflate Its Damages By Hundreds Of Millions Of Dollars.

32. The previously-undisclosed documents show that CPH has been inflating its "expected" value by over *\$60 million dollars*.

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33. The previously-undisclosed documents show that CPH has been inflating its actual value received by as much as

34. The previously-undisclosed documents show that CPH attempted to conceal approximately

35. A half a billion dollars is a meaningful amount, particularly when CPH is also requesting punitive damages and interest.

II. ARGUMENT

A. This Manifest Pattern Of Discovery Abuse Warrants Sanctions Under Rule 1.380.

The remedy of sanctions — including the sanctions sought here — should be commensurate with the offense sought to be remedied. *See, e.g., Kelley v. Schmidt*, 613 So. 2d 918, 920 (Fla. 5th DCA 1993). Some forms of extraordinary relief, however, are generally appropriate only if the moving party has suffered prejudice. *See, e.g., Ham v. Dunmire*, 891 So. 2d 492, 496 (Fla. 2004). Morgan Stanley respectfully submits that the Court has full discretion to enter whatever remedy it deems appropriate to rectify the abuses outlined above.

B. Morgan Stanley Has Suffered Prejudice That Cannot Be Cured At This Late Stage In The Litigation.

Indeed, there is no serious question that Morgan Stanley has suffered prejudice on account of CPH's withholding and secreting of relevant evidence. To begin with, as this Court has already recognized, extensive and costly fact and expert discovery has been taken and cannot

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be redone. If Morgan Stanley had had the Valuation Documents at the outset of deposition discovery, at least the following witnesses would have been questioned about the documents:

Ajzenman, Lenny
Bilodennn, Janet
Connolly, Breda
Dickes, Glen
Engelman, Irwin
Fasman, Steven
Gintsling, Norman
Gittis, Howard
Kessler, Gery
Maher, Jerry
Nye, Blaine
Perelman, Ronald
Schwartz, Barry
Wilson, Mark

The evidence at issue here goes to the heart of CPH's case on *both* liability — because a plaintiff's harm is an essential element of any fraud-based claim — and damages. Consequently, the withholding of relevant evidence and the destruction of critical e-mails that are contemporaneous with the facts in dispute severely prejudices Morgan Stanley's ability to present a defense. As this Court has stated: “[T]he only way to test the potentially self-serving testimony [of a party's] personnel is with the written record of events.” (Mar. 1, 2005 Adverse Inference Order at 11.)

Additionally, there is no way at this late stage of the litigation to remedy this prejudice on damages. CPH elected to pursue benefit-of-the-bargain damages but concealed and did not produce documents *directly relevant to CPH's benefit-of-the-bargain*. CPH also concealed from its damages expert its own contemporaneous fair value estimates of Sunbeam stock, which

(perhaps unsurprisingly) flatly contradicted this expert's ultimate opinion. Further, Morgan Stanley cannot at this late date obtain critical discovery from

to whom MAFCO and Mr. Perelman provided those valuations — valuations squarely at odds with the sworn testimony of CPH's own witnesses, including Mr. Perelman.

Accordingly, there is no question this Court has the authority pursuant to rule 1.380 to impose whatever sanction it deems appropriate. The pattern of abuse demonstrates intentional misconduct on the part of CPH and the incurable prejudice to Morgan Stanley — which in eleven days must defend a claim that seeks **\$2.7 billion**. Simply put, thanks entirely to CPH's false testimony and intentional non-production of relevant evidence, Morgan Stanley has never had a chance to prepare a fair defense or hone a trial strategy that suits the evidence now at issue. This prejudice cannot be cured by a few depositions in the jury room before trial.

C. The Most Appropriate Sanction Includes Striking Expert Testimony And Excluding All Evidence on Damages.

Morgan Stanley requests that the Court sanction CPH for its pattern of discovery abuse by striking all testimony of expert witness Blaine Nye and excluding all other evidence related to damages. These sanctions are appropriate because it is simply impossible — on account of CPH's misconduct — to proceed with fairness and due process on the fundamental issue of damages. Indeed, the non-disclosures outlined above are unquestionably relevant and flatly contradict the allegations upon which CPH has (for the entirety of this litigation) based its theory of damages. In the face of such late-breaking disclosure of critical evidence, it would be fundamentally unfair to present this issue to a jury.

Exclusion of an expert witness as a sanction for discovery abuses is proper — and perhaps even *required* — under Florida law. The facts here are similar to *Dolan v. Springlite Bottled Water Corp.*, 656 So. 2d 211, 212 (Fla. 3d DCA 1995), which held that it is proper to

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exclude an “expert witness where the expert repeatedly failed to comply with the court’s discovery orders requiring him to provide materials and information supporting his opinions.” If anything, the case for exclusion *is even greater here*, because CPH did not simply fail to provide evidence that supported Nye’s opinion; instead, CPH *deliberately concealed* information from its own expert — evidence that flatly contradicts Nye’s opinion and analysis and points to a damages figure that is hundreds of millions of dollars less than what CPH intends to seek at trial in eleven days. *See also Acquisition Corp. of Am. v. American Cast Iron Pipe Co.*, 543 So. 2d 878, 881 (Fla. 4th DCA 1989) (proper to exclude expert witness due to violation of pretrial order, especially considering that expert did not become aware of key facts until the day before trial); *Capital Bank v. G & J Inv.*, 468 So. 2d 534, 535 (Fla. 3d DCA 1985) (holding trial court abused its discretion in refusing to exclude expert witness when party “was unprepared to cross examine the witness” due to opposing party’s violation of the pretrial order).

The prejudice Morgan Stanley has suffered can be cured — if at all — only by excluding Nye’s testimony. Additional discovery or depositions, while perhaps appropriate, would only reward CPH for its discovery abuses. Morgan Stanley has been asking for this information since *July 2003*, and since that time Morgan Stanley has conducted numerous depositions (including those of Perelman, Slotkin, Gittis, Nye, and others) in which this information was crucial. Trial is scheduled to begin in days. Simply ordering CPH to tender its employees and other witnesses for re-deposition would unfairly penalize Morgan Stanley as it prepares for trial, and would not cure the deliberate fraud CPH has perpetrated. *See Department of Health & Rehabilitative Servs. v. J.B. ex rel. Spivak*, 675 So. 2d 241, 243-44 (Fla. 4th DCA 1996) (holding “the trial court abused its discretion in permitting testimony” from expert on newly-formed opinions; opportunity to re-depose expert did not cure prejudice to defendant).

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Equally troubling, as detailed above and in Morgan Stanley's Motion for an Adverse Inference Instruction which was filed on March 8, CPH systematically destroyed e-mails and other electronic documents concerning the Sunbeam acquisition at the very same time it was threatening litigation against Sunbeam and its advisors. As a result, simply ordering CPH to produce the documents it has intentionally withheld would be futile. And, in any event, such an order is really no sanction at all, because CPH is still under an obligation to produce the documents that it did not destroy.

At bottom, the only way to "level the playing field" after CPH's intentional concealment of documents that go to the heart of Nye's opinion — and CPH's damages theory — is to preclude Nye from testifying. If CPH has its way, Nye is going to take the stand and offer damage theories that are factually unsupported and appear now to be hopelessly undermined by evidence that CPH has consciously withheld for almost two years. And because Morgan Stanley has not had (and now can never have) the opportunity fully to expose the deficiencies in Nye's damage opinion, allowing his testimony to go forward at this point would infect this case with such taint that no other form of sanction could possibly cure it.

Accordingly, the Court should strike all testimony from Mr. Nye and strongly consider, additionally, whether CPH should be permitted to present a damage case at all. There is simply no basis on which to present reliable and discovery-tested evidence to a jury beginning next week. And any damages award based on such evidence would be fundamentally unfair to Morgan Stanley, which from the beginning of this litigation has been precluded from preparing a meaningful defense on this fundamental issue.

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D. As an Alternative Sanction This Court Should Read An Adverse Inference or Order Other Appropriate Relief.

This Court recognized in its Adverse Inference Order against Morgan Stanley that it has ample discretion to fashion a remedy that cures alleged discovery abuses. (*See* Mar. 1, 2005 Adverse Inference Order.) Morgan Stanley respectfully submits the following remedies as appropriate on the record now before the Court.

1. This Court Should Read An Adverse Inference Against CPH Or Return The Burden Of Proof To CPH.

At the very least, this Court should level the playing field by reading to the jury an adverse inference instruction on damages. Morgan Stanley will promptly submit a proposed adverse inference instruction if the Court so advises. Additionally, there is no sound basis for permitting CPH to retain an adverse inference instruction on liability, without leveling the field to account for CPH's own misconduct in this matter.

2. This Court Should Allow Morgan Stanley to File an Amended Expert Report on Behalf of Professor Grinblatt.

Because the Valuation Documents are at the core of CPH's damage claims, Morgan Stanley should be allowed to file an amended expert report. This is the most minimal relief the Court could order here.

3. This Court Should Require A Certificate of Full Compliance By CPH

This Court should admonish CPH that is obliged to comply immediately and fully with this Court's discovery orders. In addition, CPH should be required to certify full compliance with those orders, stating that all documents related to valuation of Sunbeam stock and warrant — by CPH or MAFCO or any other related entity, and any agent or representative of CPH, MAFCO or any other related entity — have been produced. Such an order will ensure

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additional sanctions in the event that more midnight disclosures are made on the eve or during the trial on the merits.

WHEREFORE, CPH has willfully engaged in a pattern of discovery abuse that has prejudiced

Morgan Stanley's ability to defend meaningfully this lawsuit. Morgan Stanley respectfully requests the following relief:

1. The Court should strike Mr. Nye's report and exclude evidence concerning CPH's damage claims;
2. The Court should return the burden of proof to CPH;
3. Morgan Stanley should be allowed to file an Amended Expert Report;
4. The Court should read a statement to the jury setting forth all relevant facts concerning CPH's course of conduct regarding the production of documents concerning damage issues;
5. The Court should order CPH to produce forthwith all documents relating to damage issues, including but not limited to, documents concerning the valuation of Sunbeam stock and warrant provided to any third party, financial institution, or governmental agency;
6. The Court should order CPH to provide a certificate of full compliance that it has produced all documents relating to damages; and all documents relating to CPH's, MAFCO's or any related entity's valuation of Sunbeam stock, warrant or other value received in connection with CPH's sale of Coleman stock to Sunbeam; and
7. The Court should order all other relief deemed necessary and appropriate in light of CPH's course of conduct regarding discovery.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and hand delivery on this 10th day of March 2005.

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Exhibit 1

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Exhibit 2

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Exhibit 3

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Exhibit 4

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MS
DEPOSITION
EXHIBIT # 93
FOR ID TRN
V-8-04

AGREEMENT AND PLAN OF MERGER

among

SUNBEAM CORPORATION

LASER ACQUISITION CORP.

CLN HOLDINGS INC.

and

COLEMAN (PARENT) HOLDINGS INC.

Dated as of

February 27, 1998

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of February 27, 1998, among Sunbeam Corporation, a Delaware corporation ("Laser"), Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Laser ("Laser Merger Sub"), Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings"), and CLN Holdings Inc. ("Holdings"), a Delaware corporation and a wholly owned subsidiary of Parent Holdings.

WHEREAS, the Boards of Directors of Laser, Laser Merger Sub, Parent Holdings and Holdings deem it advisable and in the best interests of their respective stockholders that Laser Merger Sub merge with and into Holdings (the "Holdings Merger"), and such Boards of Directors have approved the Holdings Merger upon the terms and conditions set forth herein;

WHEREAS, Parent Holdings, as the sole stockholder of Holdings, and Laser, as the sole stockholder of Laser Merger Sub, have approved this Agreement and the transactions contemplated hereby;

WHEREAS, at the Closing (as hereinafter defined), Laser and Parent Holdings shall enter into a registration rights agreement (the "Registration Rights Agreement") relating to the registration of the Laser Shares (as hereinafter defined) issuable to Parent Holdings in the Holdings Merger, in the form of Exhibit A hereto;

WHEREAS, for United States federal income tax purposes, it is intended that the Holdings Merger provided for herein shall qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and that this Agreement shall constitute a plan of reorganization; and

WHEREAS, Laser, Laser Merger Sub and Holdings desire to make certain representations, warranties, covenants and agreements in connection with the Holdings Merger and also to prescribe certain conditions to the Holdings Merger.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND TERMS

Section 1.1. Certain Definitions. As used in this Agreement, the following terms shall have the meanings set forth or as referenced below:

"1998 Notes" shall have the meaning set forth in Section 4.4(a) hereof.

"Affiliate" shall mean, as to any Person (as hereinafter defined), any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interest, by contract or otherwise.

"Affiliate Agreements" shall have the meaning set forth in Section 4.10 hereof.

"Agreement" shall mean this Agreement, as the same may be amended or supplemented from time to time in accordance with the terms hereof.

"Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banks in the City of New York are authorized or obligated by law or executive order to close.

"Cash Payment" shall have the meaning set forth in Section 3.1(a) hereof.

"Certificate of Incorporation" shall have the meaning set forth in Section 2.4 hereof.

"Certificate of Merger" shall have the meaning set forth in Section 2.3 hereof.

"Closing" shall mean the closing of the transactions contemplated by this Agreement, as provided for in Section 2.2 hereof.

"Closing Date" shall have the meaning set forth in Section 2.2 hereof.

"Code" shall have the meaning set forth in the recitals hereof.

"Company" shall mean The Coleman Company, Inc., a Delaware corporation.

"Company Common Stock" shall mean the common stock, par value \$.01 per share, of the Company.

"Company Merger" shall mean the consummation of the merger contemplated by the Company Merger Agreement.

"Company Merger Agreement" shall mean the Agreement and Plan of Merger among Laser, Merger Sub, and the Company, dated as of the date hereof.

"Competition Laws" shall mean foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other foreign laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, lessening of competition or restraint of trade.

"Confidentiality Agreements" shall have the meaning set forth in Section 6.7 hereof.

"Consents" shall mean any consent, approval, waiver, authorization or permit of, or to make any filing with or notification to, any Governmental Entity or third party.

"Contract" shall mean any note, bond, mortgage, indenture, license, contract, or other agreement or other instrument or obligation.

"Credit Suisse First Boston" shall mean Credit Suisse First Boston Corporation, the Company's financial advisor.

"Damages" shall have the meaning set forth in Section 10.1(a) hereof.

"DGCL" shall mean the General Corporation Law of the State of Delaware.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Filed Holdings SEC Reports" shall have the meaning set forth in Section 4.7(b) hereof.

"Filed Worldwide SEC Reports" shall have the meaning set forth in Section 4.7(b).

"GAAP" shall mean United States generally accepted accounting principles and practices in effect from time to time, consistently applied.

"Governmental Entity" shall mean any court, arbitral tribunal, administrative agency or commission or other governmental or regulatory authority or agency.

"Holdings" shall have the meaning set forth in the recitals hereof.

"Holdings Common Stock" shall mean the common stock, par value \$1.00, of Holdings.

"Holdings Disclosure Schedule" shall mean the disclosure schedule being delivered by Holdings concurrently with the execution of this Agreement.

"Holdings Effective Time" shall have the meaning set forth in Section 2.3 hereof.

"Holdings Material Adverse Effect" shall mean a material adverse effect on the business, results of operation or financial condition of Holdings and its subsidiaries, taken as a whole.

"Holdings Merger" shall have the meaning set forth in the recitals hereof.

"Holdings SEC Reports" shall have the meaning set forth in Section 4.7(a) hereof.

"Holdings Shares" shall have the meaning set forth in Section 4.2(a).

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indebtedness" of any Person at any date shall include (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices), (b) any other indebtedness of such Person that is evidenced by a note, bond, debenture or similar instrument, (c) all obligations of such Person in respect of acceptances issued or created for the account of such Person, (d) all liabilities secured by any Lien (as hereinafter defined) on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof, and (e) all direct or indirect guarantees of any of the foregoing for the benefit of another Person.

"Indemnifying Party" shall have the meaning set forth in Section 9.2(c) hereof.

"Indenture" shall mean the Indenture between Holdings, as successor to Coleman Escrow Corp., and First Trust National Association dated May 20, 1997 relating to the Notes.

"IRS" shall mean the Internal Revenue Service of the United States.

"Laser" shall have the meaning set forth in the recitals hereof.

"Laser Common Stock" shall mean the common stock, par value \$.01 per share, of Laser.

"Laser Designees" shall have the meaning set forth in Section 8.3(d) hereof.

"Laser Group" shall have the meaning set forth in Section 10.1(a) hereof.

"Laser Material Adverse Effect" shall mean a material adverse effect on the business, results of operation or financial condition of Laser and its subsidiaries, taken as a whole.

"Laser Merger Sub" shall have the meaning set forth in the recitals hereof.

"Laser Merger Sub Common Stock" shall mean common stock, par value \$.01 per share, of Laser Merger Sub.

"Laser Shares" shall have the meaning set forth in the first clause of Section 3.1 hereof.

"Laws" shall mean any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree, administrative order or decree, administrative or judicial decision, and any other executive or legislative proclamation.

"Liens" shall mean any lien, security interest, mortgage, pledge, charge or similar encumbrance.

"LYONs" shall mean the Liquid Yield Option™ Notes due 2013 of Worldwide.

"LYONs Escrow Fund" shall mean the funds held in the escrow account established in connection with the redemption and exchange of the LYONs.

"Mafco Demand Note" shall mean the demand note issued by an Affiliate of Parent Holdings, and held by Worldwide on the date hereof, in connection with the Tax Sharing Arrangement among certain Affiliates of Parent Holdings.

"Merger Consideration" shall have the meaning set forth in Section 3.1(a)(i) hereof.

"Morgan Stanley" shall mean Morgan Stanley & Co. Incorporated, Laser's financial advisor.

"Notes" shall mean the Senior Secured First Priority Discount Notes due 2001, Senior Secured Second Priority Discount Notes due 2001, Senior Secured First Priority Discount Exchange Notes due 2001, and Senior Secured Second Priority Discount Exchange Notes due 2001 of Holdings, as successor to Coleman Escrow Corp.

"NYSE" shall mean the New York Stock Exchange, Inc.

"Parent Holdings" shall have the meaning set forth in the recitals hereof.

"Person" shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization.

"Pre-Closing Period" shall mean any taxable year or period that ends on or before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period deemed to end on and include the Closing Date.

"Post-Closing Period" shall mean any taxable year or period that begins after the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period deemed to begin after the Closing Date.

"Registration Rights Agreement" shall have the meaning set forth in the recitals hereof.

"SEC" shall mean the Securities and Exchange Commission.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Straddle Period" shall mean any taxable year or period beginning before and ending after the Closing Date.

"subsidiary" shall mean, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other subsidiary of such party is a general partner or (ii) at least 50% of the securities or other interests having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization or at least 50% of the value of the outstanding equity is directly or indirectly owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"Surviving Corporation" shall have the meaning set forth in Section 2.1 hereof.

"Tax" (and, with correlative meaning, "Taxes" and "Taxable") shall mean:

(i) any federal, state, local or foreign net income, gross income, receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any Governmental Entity; and

(ii) any liability for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation under any Tax Sharing Arrangement or Tax indemnity arrangement.

"Tax Claim" shall have the meaning set forth in Section 9.3(b) hereof.

"Tax Proceeding" shall have the meaning set forth in Section 9.3(a) hereof.

"Tax Return" shall mean any return, report or statement required to be filed with respect to any Tax (including any attachments thereto), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

"Tax Sharing Arrangement" shall mean any written or unwritten agreement or arrangement for the allocation or payment of Tax liabilities or payment for Tax benefits with respect to a consolidated, combined or unitary Tax Return.

"Termination Date" shall have the meaning set forth in Section 11.1(b) hereof.

"Third-Party Claims" shall have the meaning set forth in Section 10.2 hereof.

"Transfer" shall have the meaning set forth in Section 7.1 hereof.

"Treasury Regulations" shall mean the regulations promulgated by the Treasury Department with respect to the Code.

"Worldwide" shall mean Coleman Worldwide Corporation, a Delaware corporation and a wholly owned subsidiary of Holdings.

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"Worldwide Common Stock" shall mean the common stock, par value \$1.00 per share, of Worldwide.

"Worldwide SEC Reports" shall have the meaning set forth in Section 4.7(b) hereof.

"Worldwide Shares" shall have the meaning set forth in Section 4.2(b).

Section 1.2. Other Terms. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement.

ARTICLE II

THE HOLDINGS MERGER

Section 2.1. The Holdings Merger. Upon the terms and subject to the conditions set forth herein, and in accordance with the DGCL, at the Holdings Effective Time (as defined in Section 2.3 hereof), Laser Merger Sub shall be merged with and into Holdings. Following the Holdings Effective Time, Holdings shall continue as the surviving corporation (the "Surviving Corporation"), and the separate corporate existence of Laser Merger Sub shall cease. The Holdings Merger shall have the effects set forth in Section 259 of the DGCL.

Section 2.2. Closing. The closing of the Holdings Merger (the "Closing") will take place at 10:00 a.m. on a date to be specified by the parties (the "Closing Date"), which (subject to satisfaction or waiver of the conditions set forth in Article VIII) shall be no later than the third NYSE trading day after satisfaction or waiver of the conditions set forth in Section 8.1, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, unless another time, date or place is agreed to in writing by the parties hereto.

Section 2.3. Effective Time of the Holdings Merger. The Holdings Merger shall become effective on the date and at the time at which a properly executed certificate of merger (the "Certificate of Merger") is duly filed with the Secretary of State of the State of Delaware. The Certificate of Merger shall be filed as soon as practicable on or after the Closing Date. When used in this Agreement, the term "Holdings Effective Time" shall mean the date and time on which the Certificate of Merger is so filed.

Section 2.4. Certificate of Incorporation. From and after the Holdings Effective Time, the certificate of incorporation of Holdings as in effect at the Holdings Effective Time (the "Certificate of Incorporation") shall be the certificate of incorporation of the Surviving Corporation until amended as provided by the DGCL and the Certificate of Incorporation.

Section 2.5. By-Laws. From and after the Holdings Effective Time, the by-laws of Laser Merger Sub as in effect at the Holdings Effective Time shall be the by-laws of the Surviving Corporation until amended as provided by the DGCL, the Certificate of Incorporation of the Surviving Corporation and the terms thereof.

Section 2.6. Directors. The directors of Laser Merger Sub at the Holdings Effective Time shall be the initial directors of the Surviving Corporation and shall hold office from the Holdings Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation or as otherwise provided by Law.

Section 2.7. Officers. The officers of Laser Merger Sub at the Holdings Effective Time shall be the initial officers of the Surviving Corporation and shall hold office from the Holdings Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation, or as otherwise provided by Law.

Section 2.8. Holdings Merger Election. Notwithstanding the foregoing, at any time prior to the Holdings Effective Time, Holdings may elect, in its sole discretion, upon notice to Laser, to effectuate the Holdings Merger such that Holdings will be merged with and into Laser Merger Sub, with Laser Merger Sub as the "Surviving Corporation" for all purposes hereunder. In such event, the parties hereto shall execute an appropriate amendment to this Agreement to reflect the foregoing.

ARTICLE III

CONVERSION OF SHARES

Section 3.1. Effect on Capital Stock. At the Holdings Effective Time, by virtue of the Holdings Merger and without any action on the part of any holder thereof:

(a) Conversion of Holdings Common Stock.

(i) The Holdings Shares shall be converted into the right to receive an aggregate of (A) 14,099,749 fully paid and nonassessable shares of Laser Common Stock (the "Laser Shares") and (B) \$159,956,756 in cash, without interest thereon (the "Cash Payment") and, together with the Laser Shares, the "Merger Consideration").

(ii) If, prior to the Holdings Effective Time, Laser shall (A) pay a dividend in, subdivide, combine into a smaller number of shares or issue by reclassification of its shares, any shares of Laser Common Stock, the number of Laser Shares to be issued pursuant to Section 3.1(a)(i) hereof shall be adjusted appropriately or (B) pay an extraordinary dividend (other than regular quarterly dividend payments, consistent with past practice), whether in cash or property, the amount of the Cash Payment shall be adjusted appropriately, such that the aggregate amount of cash, or if a dividend shall have been paid in other property, cash and other property, shall be equal to that which would have been received had the dividend been paid following the Holdings Effective Time at a time when the Laser Shares were already issued to and the Cash Payment made to Parent Holdings.

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(iii) The shares of Holdings Common Stock converted in accordance with paragraph (i) of this Section 3.1(a) shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and Parent Holdings, as the holder thereof, shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration.

(b) Conversion of Laser Merger Sub Common Stock. Each share of Laser Merger Sub Common Stock issued and outstanding immediately prior to the Holdings Effective Time shall be converted into and become one fully paid and nonassessable share of common stock, par value \$1.00 per share, of the Surviving Corporation.

(i) Exchange of Certificates. At the Closing, Parent Holdings shall surrender certificates representing the Holdings Shares, and Laser shall deliver or cause to be delivered to Parent Holdings a duly executed stock certificate or stock certificates representing the Laser Shares; and the Cash Payment, in immediately available funds by wire transfer to an account specified in writing by Parent Holdings at least one day prior to the Closing Date. In connection with the delivery by Laser of the Laser Shares, Laser shall utilize all shares of Laser Common Stock held by Laser as treasury shares before issuing any authorized but unissued shares of Laser Common Stock.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF HOLDINGS AND PARENT HOLDINGS

Holdings and Parent Holdings hereby represent and warrant to Laser as follows:

Section 4.1. Organization and Qualification.

(a) Each of Holdings and Worldwide is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted.

Section 4.2. Capitalization.

(a) The authorized capital stock of Holdings consists of 1,000 shares of Holdings Common Stock (the "Holdings Shares"), all of which are issued and outstanding and beneficially owned by Parent Holdings. All of the issued and outstanding shares of Holdings Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. Except as set forth above, there are no other shares of capital stock of Holdings issued or outstanding nor any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Holdings to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

(b) The authorized capital stock of Worldwide consists of 1,000 shares of Worldwide Common Stock (the "Worldwide Shares"), all of which are issued and outstanding and beneficially owned by Holdings, free and clear of all Liens, other than the pledge in connec-

tion with the Notes. All of the issued and outstanding shares of Worldwide Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. Except as set forth above, there are no other shares of capital stock of Worldwide issued or outstanding nor any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Worldwide to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

Section 4.3. Authority Relative to this Agreement and the Registration Rights Agreement. Each of Holdings and Parent Holdings has the requisite corporate power and authority to execute and deliver this Agreement and, if a party thereto, the Registration Rights Agreement, to perform its obligations hereunder and, if a party thereto, thereunder and to consummate the transactions contemplated hereby and, if a party thereto, thereby. The execution, delivery and performance of this Agreement and the Registration Rights Agreement, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action on the part of Holdings and Parent Holdings, and no other corporate action on the part of Holdings or Parent Holdings (including on the part of their respective stockholders) is required to authorize the execution, delivery and performance hereof and thereof and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by each of Parent Holdings and Holdings and, assuming that it constitutes a valid and binding agreement of Laser and Laser Sub, constitutes the valid and binding obligation of Parent Holdings and Holdings enforceable against Parent Holdings and Holdings in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or other laws now or hereafter in effect relating to or limiting creditors' rights generally and the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings therefor may be brought. Prior to the Holdings Effective Time, the Registration Rights Agreement will have been duly executed and delivered by Parent Holdings and, assuming that it constitutes the valid and binding agreement of Laser, will constitute the valid and binding obligation of Parent Holdings enforceable against Parent Holdings in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or other laws now or hereafter in effect relating to or limiting creditors' rights generally and the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings therefor may be brought.

Section 4.4. No Business Activities of Holdings and Worldwide.

(a) Since its formation, Holdings has engaged in no business activities or operations, other than in connection with holding the Worldwide Shares and the stock of its predecessor corporation and in connection with the Senior Secured Discount Notes due 1998 of Holdings and the Series B Senior Secured Discount Notes due 1998 of Holdings (collectively, the "1998 Notes") and the Notes. Holdings has no material assets other than Worldwide Common Stock, and has no liabilities other than under the Notes and other de minimis liabilities. Worldwide is the beneficial owner of 44,067,520 shares of Company Common Stock, free and clear of all Liens, other than the pledge pursuant to the LYONs and the Notes.

(b) Since its formation, Worldwide has engaged in no business activities or operations, other than in connection with holding shares of Company Common Stock and in connection with the 1998 Notes, the Notes and the LYONs. Worldwide has no material assets other than the Company Common Stock (other than, as of the date hereof, the Mafo Demand Note and the LYONs Escrow Fund), and has no liabilities other than under the LYONs, the Notes and other de minimis liabilities.

Section 4.5. Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws and state securities or blue sky Laws, no filing with, and no permit, authorization, consent or approval of, any Governmental Entity is necessary for the consummation by Parent Holdings or Holdings of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not individually or in the aggregate (i) have a Holdings Material Adverse Effect or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement. Except as set forth on Section 4.5 of the Holdings Disclosure Schedule, neither the execution and delivery of this Agreement by Parent Holdings or Holdings, nor the consummation by Parent Holdings or Holdings of the transactions contemplated hereby, nor compliance by Parent Holdings or Holdings with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Parent Holdings, Holdings or Worldwide; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any Contract or of any license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any Governmental Entity to which Parent Holdings, Holdings or Worldwide is a party or by which any of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Holdings, Parent Holdings or Worldwide or any of their properties or assets, except in the case of clauses (b) and (c) for violations, breaches or defaults which would not individually or in the aggregate have a Holdings Material Adverse Effect.

Section 4.6. No Litigation. As of the date hereof, there is no suit, action, proceeding or investigation pending against or affecting Holdings or Worldwide.

Section 4.7. SEC Reports.

(a) Holdings has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Holdings SEC Reports"). As of their respective dates, the Holdings SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Filed Holdings SEC Report has been revised, amended or superseded by a later Filed Holdings SEC Report, none of the Filed Holdings SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which

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they were made, not misleading, except that no representation or warranty is made herein with respect to any information relating to the Company and its subsidiaries. For purposes of this Agreement, the Holdings SEC Reports filed and publicly available prior to the date of this Agreement (as revised, amended or superseded by the Holdings SEC Reports filed and publicly available prior to the date of this Agreement) are hereinafter referred to as the "Filed Holdings SEC Reports."

(b) Worldwide has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Worldwide SEC Reports"). As of their respective dates, the Worldwide SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Filed Worldwide SEC Report has been revised, amended or superseded by a later Filed Worldwide SEC Report, none of the Filed Worldwide SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, except that no representation or warranty is made herein with respect to any information relating to the Company and its subsidiaries. For purposes of this Agreement, the Worldwide SEC Reports filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by the Worldwide SEC Reports filed and publicly available prior to the date of this Agreement) are hereinafter referred to as the "Filed Worldwide SEC Reports."

Section 4.8. Acquisition of Shares for Investment. Parent Holdings is not acquiring the Laser Shares with any present intention of distributing or selling any of such Laser Shares in violation of federal or state securities laws.

Section 4.9. Taxes.

(a) Except as would not have a Holdings Material Adverse Effect or as set forth on Section 4.9 of the Holdings Disclosure Schedule:

(i) Each of Holdings and Worldwide (A) has filed (or there has been filed on its behalf) with the appropriate Governmental Entities all Tax Returns required to be filed by it, and all such Tax Returns are true, correct and complete and (B) has paid all Taxes due by it;

(ii) There are no outstanding waivers in writing or comparable consents regarding the application of any statute of limitations in respect of Taxes of Holdings or Worldwide;

(iii) There is no action, suit, investigation, audit, claim or assessment pending or proposed in writing or threatened in writing with respect to Taxes of Holdings or Worldwide and to the best of Holdings' knowledge, no basis exists therefor;

(iv) There are no Liens for Taxes upon the assets of Holdings or Worldwide except Liens relating to current Taxes not yet due;

(v) All Taxes which Holdings or Worldwide are required by law to withhold or to collect for payment have been duly withheld and collected, and have been paid or accrued, reserved against and entered on the books of Holdings in accordance with GAAP; and

(vi) No power of attorney which is currently in force has been granted by or with respect to Holdings or Worldwide with respect to any matter relating to Taxes.

(b) Except as would not have a Holdings Material Adverse Effect, Holdings and its subsidiaries have previously delivered or made available to Laser (and its representatives) complete and accurate copies of:

(i) all audit reports, letter rulings, technical advice memoranda relating to United States federal, state, local and foreign Taxes due from or with respect to Holdings or its subsidiaries;

(ii) United States federal Tax Returns (to the extent that such Tax Returns relate to Holdings and its subsidiaries), and those state, local or foreign Tax Returns filed by (or on behalf of) Holdings or any of its subsidiaries (to the extent that such Tax Returns relate to Holdings and its subsidiaries) (including, in each case, workpapers related to such Tax Returns);

(iii) any closing agreements entered into by Holdings or any of its subsidiaries with any taxing authority, in each case existing on the date hereof; and

(iv) any Tax Sharing Arrangements and Tax indemnity arrangements to which Holdings or any of its subsidiaries was a party at any time prior to the Closing Date. Holdings and its subsidiaries will deliver or make available to Laser (and its representatives) all similar materials for all matters arising after the date hereof.

Section 4.10. Affiliate Agreements. Section 4.10 of the Holdings Disclosure Schedule sets forth a true and complete list of all agreements, Contracts, arrangements, payables, obligations and understandings between Holdings or any of its subsidiaries, on the one hand, and Parent Holdings or any of its Affiliates (other than Holdings or its subsidiaries), on the other hand (the "Affiliate Agreements").

Section 4.11. Brokers. No broker, investment banker or other person, other than Credit Suisse First Boston, the Company's financial advisor, the fees and expenses of which will be paid by the Company (as reflected in an agreement between Credit Suisse First Boston and the Company, a copy of which has been furnished to Laser), is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by

this Agreement based upon arrangements made by or on behalf of the Company or any of its Affiliates.

Section 4.12. LYONs Escrow Fund. The LYONs Escrow Fund is sufficient to fund the redemption, exchange or other retirement in full of the LYONs and related expenses.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF LASER

Laser hereby makes the same representations and warranties to Parent Holdings and Holdings as the representations and warranties made by Laser to the Company in the Company Merger Agreement, and also represents and warrants to Parent Holdings and Holdings as follows:

Section 5.1. Laser Merger Sub. Laser Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Laser Merger Sub is a newly incorporated company formed solely for purposes of consummating the transactions contemplated by this Agreement and has engaged in no activity other than as provided in, or contemplated by, this Agreement. The authorized capital stock of Laser Merger Sub consists of 1,000 shares of Laser Merger Sub Common Stock, all of which are validly issued, fully paid and nonassessable and free of preemptive rights and are owned by Laser. Except as set forth above there are no shares of capital stock of Laser Merger Sub issued or outstanding or any options, warrants, subscription, calls, rights, convertible securities or other agreements or commitments obligating Laser Merger Sub to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

Section 5.2. Authority Relative to this Agreement. Each of Laser and Laser Merger Sub has the corporate power and authority to execute and deliver this Agreement and, if a party thereto, the Registration Rights Agreement, to perform its obligations hereunder and, if a party thereto, thereunder and to consummate the transactions contemplated hereby and, if a party thereto, thereby. The execution, delivery and performance of this Agreement and the Registration Rights Agreement, and the consummation of the transactions contemplated hereby, thereby and by the Company Merger Agreement, have been duly authorized by all necessary corporate action on the part of Laser and Laser Merger Sub and no other corporate action on the part of Laser or Laser Merger Sub (including on the part of their respective stockholders) is required to authorize the execution, delivery and performance hereof or thereof and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Laser and Laser Merger Sub and constitutes the valid and binding obligation of Laser and Laser Merger Sub, assuming it is the valid and binding obligation of Parent Holdings and Holdings, enforceable against Laser and Laser Merger Sub in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally and other forms of equitable relief may be subject to equitable defenses and the discretion of the court before which any proceedings therefore may be brought. Prior to the Holdings Effective Time, the Registra-

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tion Rights Agreement will have been duly executed and delivered by Laser and, assuming that it constitutes the valid and binding agreement of Parent Holdings, will constitute the valid and binding obligation of Laser enforceable against Laser in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or other laws now or hereafter in effect relating to or limiting creditors' rights generally and the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings therefor may be brought.

Section 5.3. Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws and state securities or blue sky Laws, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Laser and Laser Merger Sub of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not (i) individually or in the aggregate have a Laser Material Adverse Effect or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement. Neither the execution and delivery of this Agreement by Laser and Laser Merger Sub nor the consummation by Laser and Laser Merger Sub of the transactions contemplated hereby, nor compliance by Laser and Laser Merger Sub with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Laser or Laser Merger Sub; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any Contract or of any license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any Governmental Entity to which Laser or Laser Merger Sub is a party or by which either of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Laser, Laser Merger Sub or any of their properties or assets, except, in the case of clauses (b) and (c), for violations, breaches or defaults which would not individually or in the aggregate have a Laser Material Adverse Effect.

Section 5.4. Acquisition of Shares for Investment. Laser is acquiring the Holdings Shares for its own account for investment purposes only and not with a view toward or for a sale in connection with any distribution thereof, or with any present intention of distributing or selling any of such in violation of federal or state securities laws.

ARTICLE VI

COVENANTS

Section 6.1. Conduct of Business. Except as expressly permitted by this Agreement or with the prior written consent of Laser, during the period from the date of this Agreement to the Holdings Effective Time, Holdings shall and shall cause Worldwide to conduct its business only in the ordinary course consistent with past practice, except that Holdings and Worldwide shall be permitted (but not required) to (i) effect the merger of Worldwide with

Holdings, and (ii) take all action necessary in connection with the redemption or exchange of the LYONs and payment of any amounts thereunder and distribution to Parent Holdings from the LYONs Escrow Fund of any excess thereof. Without limiting the generality of the foregoing, and except as otherwise expressly permitted by this Agreement, during the period from the date of this Agreement through the Holdings Effective Time, Holdings shall not and shall cause Worldwide not to, without the prior written consent of Laser:

- (a) declare, set aside or pay any dividend or other distribution (whether in cash, securities or property or any combination thereof) in respect of any class or series of its capital stock, other than in respect of the LYONs Escrow Fund or the Mafco Demand Note;
- (b) settle or compromise any Tax liability or agree to any adjustment of any Tax attribute or make any election with respect to its Taxes other than in the ordinary course of business;
- (c) amend its certificate of incorporation or by-laws;
- (d) acquire by merging or consolidating with, or by purchasing a substantial portion of the assets or securities of, or by any other manner, any corporation, partnership or other entity;
- (e) create, incur, assume or guarantee any Indebtedness;
- (f) except as otherwise required by Law or GAAP, change any of the accounting or Tax principles, practices or methods used by Holdings or Worldwide or fail to maintain the accounts, books and records of Holdings or Worldwide in the usual, regular and ordinary manner on a basis consistently applied;
- (g) make any payments, loans, advances or other distributions to, or enter into any transaction, agreement or arrangement with, any of its Affiliates, officers, directors, or stockholders or it or its Affiliates or any associates or family members of any of the foregoing, or make any changes in or modify any of the Affiliate Agreements, other than in the ordinary course of business consistent with past practice or as required by the Affiliate Agreements, other than in respect of the LYONs Escrow Fund or the Mafco Demand Note;
- (h) adjust, split, combine, subdivide or reclassify any shares of its capital stock;
- (i) issue, sell, deliver, transfer, repurchase, redeem, acquire or pledge or authorize or propose the issuance, sale, delivery, transfer, repurchase, redemption, acquisition or pledge of shares of capital stock of any class or series, or any securities (other than the LYONs) convertible into capital stock of any class or series, or grant or enter into any rights, warrants, options, agreements or commitments with respect to the issuance of such capital stock or convertible securities;

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(j) take any action that would make any representation or warranty of Parent Holdings or Holdings contained in this Agreement untrue or incorrect in any material respect and which could reasonably be expected to prevent the satisfaction of any condition to closing set forth in Article VIII hereof or otherwise prevent or materially delay the consummation of the transactions contemplated by this Agreement; or

(k) enter into any agreement or commitment to take any of the foregoing actions.

Section 6.2. Reasonable Best Efforts.

(a) Upon the terms and subject to the conditions of this Agreement, each of the parties hereto agrees to, and Holdings agrees to cause Worldwide and the Company and its subsidiaries to use reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated by this Agreement and the Company Merger Agreement, as applicable, as promptly as practicable (including satisfaction, but not waiver, of the conditions set forth in Article VIII hereof and Article VIII of the Company Merger Agreement).

(b) Laser shall perform all of its obligations under the Company Merger Agreement in accordance with their terms.

Section 6.3. Consents.

(a) Without limiting the generality of Section 6.2(a) hereof, each of the parties hereto shall, and Holdings shall and shall cause Worldwide and the Company and its subsidiaries to, use reasonable best efforts to obtain all Consents of all Governmental Entities and, to the extent that the failure to obtain such Consents would have a Holdings Material Adverse Effect or a Laser Material Adverse Effect, as applicable, all third parties necessary in connection with the consummation of the transactions contemplated by this Agreement and the Company Merger Agreement prior to the Holdings Effective Time. Notwithstanding the foregoing, none of the parties hereto nor Worldwide nor the Company or any of its subsidiaries shall have any obligation to pay any fee to any third party (other than filing or similar fees payable to Governmental Entities) for the purpose of obtaining any Consent or any costs and expenses of any third party resulting from the process of obtaining such Consents. Each of the parties hereto shall make or cause to be made all filings and submissions under laws and regulations applicable to it as may be required for the consummation of the transactions contemplated by this Agreement.

(b) Notwithstanding the foregoing, nothing in this Agreement shall be deemed to require any party hereto to enter into any agreement with any Governmental Entity which requires, or to consent to any order, decree or judgment which requires, such party to hold, separate or divest, or to restrict the dominion or control of such party or any of its Affiliates over, any of the assets, properties or businesses of such party or its Affiliates in existence on the date hereof.

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Section 6.4. HSR Notification. As soon as reasonably practicable, Laser and Parent Holdings shall make, or cause to be made, all filings and submissions under the HSR Act and any other applicable Competition Laws as may be reasonably required to be made in connection with this Agreement and the transactions contemplated hereby. Subject to Section 6.7 hereof, Parent Holdings will furnish to Laser and Laser will furnish to Parent Holdings, such information and assistance as the other may reasonably request in connection with the preparation of any such filings or submissions. Subject to Section 6.7 hereof, Parent Holdings will provide Laser, and Laser will provide Parent Holdings, with copies of all correspondence, filings or communications (or memoranda setting forth the substance thereof) between such party or any of its representatives, on the one hand, and any Governmental Entity or authority or members of their respective staffs, on the other hand, with respect to this Agreement and the transactions contemplated hereby. Parent Holdings and Laser shall consult with one another with respect to any such correspondence, filings or communications and shall engage in any discussions with any Governmental Entity on a joint basis.

Section 6.5. LYONs Refund. Promptly following redemption, exchange or other retirement in full of the LYONs, Laser shall cause to be paid to Parent Holdings all amounts remaining in the LYONs Escrow Fund by wire transfer of immediately available funds to an account(s) designated in writing by Parent Holdings. Until the making of such payment, Laser shall cause Holdings and Worldwide to comply with all of their obligations under the Indenture relating to the LYONs, the Indenture and the related Escrow Agreement, shall not take any action to amend such indenture or agreement in any manner adverse to Parent Holdings and shall use reasonable best efforts to take action to cause the redemption or retirement in full of the LYONs as promptly as practicable. Promptly following the Holdings Effective Time, at the request of Parent Holdings, Laser shall cause Holdings and Worldwide to give the escrow agent under such Escrow Agreement irrevocable written notice of the assignment of all right, title and interest in and to any such amounts to and for the benefit of Parent Holdings, on which notice Parent Holdings may rely. Following the redemption or retirement in full of the LYONs, the Mafco Demand Note shall be canceled automatically without the further action of any Person, and shall be of no further force or effect whatsoever, and, until the time of such cancellation, no demand or request for payment of any kind shall be made with respect to the Mafco Demand Note.

Section 6.6. Listing Application. Laser shall prepare and submit to the NYSE a listing application covering the Laser Shares to be issued in connection with the Holdings Merger, and shall use its reasonable best efforts to obtain as promptly as practicable approval for the listing of such Laser Shares, subject to official notice of issuance.

Section 6.7. Access to Information; Confidentiality. Holdings and Laser shall each afford, and Holdings shall cause Worldwide, the Company and each of its subsidiaries to afford, to the other and to the other's financial advisors, legal counsel, accountants consultants and other representatives full access at all reasonable times throughout the period prior to the Holdings Effective Time to all of its books, records, properties, plants and personnel (provided that all such access shall be on reasonable advance notice and shall not disrupt normal business operations) and, during such period, each shall furnish promptly to the other (a) a copy of each

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report, schedule and other document filed or received by it pursuant to the requirements of federal or state securities laws, and (b) all other information as such other party may reasonably request, provided that no investigation pursuant to this Section 6.7 shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the Holdings Merger. Each party and their respective affiliates, representatives and agents shall hold in confidence all nonpublic information in accordance with the terms of the Confidentiality Agreements between Laser and the Company dated February 4, 1998 and February 23, 1998 (the "Confidentiality Agreements").

Section 6.8. Advice of Changes. Upon obtaining knowledge of any such occurrence, Holdings or Laser shall promptly advise the other party orally and in writing of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect, (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement or (iii) any change or event (x) having, or which, insofar as can reasonably be foreseen, would have, in the case of Laser, a Laser Material Adverse Effect and, in the case of Holdings, a Holdings Material Adverse Effect, (y) having, or which, insofar as can reasonably be foreseen, would have, the effect set forth in clause (i) above or (z) which has resulted, or which, insofar as can reasonably be foreseen, would result, in any of the conditions set forth in Article VIII not being satisfied; provided, however, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

Section 6.9. Affiliate Agreements; Intercompany Accounts. Parent Holdings and Holdings shall cause all intercompany accounts to be settled, and all Affiliate Agreements to be treated, as set forth in Section 4.10 of the Holdings Disclosure Schedule.

Section 6.10. Registration Rights Agreement. Immediately prior to the Holdings Effective Time, Parent Holdings and Laser shall execute and deliver the Registration Rights Agreement.

ARTICLE VII

ADDITIONAL AGREEMENTS

Section 7.1. Sales of Laser Shares. Parent Holdings agrees not to, directly or indirectly, sell, transfer, pledge, assign or otherwise dispose of or otherwise transfer (other than, in any such case, in connection with a pledge to secure *bona fide* indebtedness or other obligations) (collectively, "Transfer"), any Laser Shares received pursuant to the terms hereof as consideration for the Holdings Merger, other than to one of its Affiliates who agrees in writing to be bound by the terms of this Section 7.1, for a period of nine (9) months from and after the Holdings Effective Time, except that Parent Holdings may Transfer (A) from and after the date that is three (3) months following the Holdings Effective Time, twenty-five percent (25%) of the total number of the Laser Shares, and (B) from and after the date that is six (6) months following the

Holdings Effective Time, an additional twenty-five percent (25%) of the total number of the Laser Shares (such that a total of fifty percent (50%) of the total number of the Laser Shares shall be Transferable from and after the date that is six (6) months following the Holdings Effective Time).

Section 7.2. Restrictive Legend. Pursuant to Section 7.1 hereof, each certificate representing the Laser Shares received by Parent Holdings shall be stamped or otherwise imprinted with the following legend:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE RESTRICTIONS ON TRANSFER CONTAINED IN THE AGREEMENT AND PLAN OF MERGER DATED AS OF FEBRUARY 27, 1998 AMONG SUNBEAM CORPORATION, LASER ACQUISITION CORP., CLN HOLDINGS INC. AND COLEMAN (PARENT) HOLDINGS INC. AND MAY NOT BE OFFERED, SOLD, TRANSFERRED, PLEDGED, ASSIGNED, OR OTHERWISE DISPOSED OF OR TRANSFERRED (OTHER THAN, IN ANY SUCH CASE, IN CONNECTION WITH A PLEDGE TO SECURE *BOVA FIDE* INDEBTEDNESS OR OTHER OBLIGATIONS) ("TRANSFERRED") EXCEPT AS PERMITTED BY THE TERMS THEREOF. THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE. THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE TRANSFERRED, AND THE COMPANY WILL NOT REGISTER THE TRANSFER OF SUCH SECURITIES, EXCEPT (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT, (B) PURSUANT TO RULE 144 UNDER THE ACT, OR (C) UPON RECEIPT BY THE COMPANY OF AN OPINION OF COUNSEL, REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH TRANSFER IS EXEMPT FROM REGISTRATION UNDER THE ACT.

Upon request of Parent Holdings, Laser shall cause to be issued certificates representing such Laser Shares as to which the restrictions set forth herein are no longer applicable without such legend.

ARTICLE VIII

CONDITIONS TO CONSUMMATION OF THE HOLDINGS MERGER

Section 8.1. Conditions to Each Party's Obligation to Effect the Holdings Merger. The respective obligations of each party to effect the Holdings Merger shall be subject to the satisfaction or waiver, to the extent permitted by Law, at or prior to the Holdings Effective Time of the following conditions:

(a) Any waiting period applicable to the consummation of the Holdings Merger under the HSR Act shall have expired or been terminated.

(b) All of the Laser Shares shall have been previously approved for listing on the NYSE, subject only to official notice of issuance, if required.

(c) No preliminary or permanent injunction or other order by any federal or state court in the United States of competent jurisdiction which prohibits the consummation of this Agreement or the Holdings Merger shall have been issued and remain in effect.

(d) All authorizations, consents, orders, declarations or approvals of, or filings with, or terminations or expirations of waiting periods imposed by, any Governmental Entity, which the failure to obtain, make or occur would have the effect of making this Agreement or the Holdings Merger Agreement or any of the transactions contemplated hereby illegal.

Section 8.2. Conditions to Obligation of Holdings to Effect the Holdings Merger. The obligation of Holdings to effect the Holdings Merger shall be subject to the satisfaction by Laser or waiver by Holdings or Parent Holdings, to the extent permitted by Law, at or prior to the Holdings Effective Time of the following additional conditions:

(a) The representations and warranties of Laser in this Agreement and the Company Merger Agreement that are qualified as to materiality shall be true and correct, and the representations and warranties of Laser in this Agreement and the Company Merger Agreement that are not so qualified shall be true and correct in all material respects, in each case as of the date hereof, and, except to the extent such representations and warranties refer to a specific date, as of the Closing Date as though made on the Closing Date; provided, however, that this condition shall be deemed satisfied unless the failure or failures of such representations and warranties to be so true and correct (disregarding for this purpose all qualifications in such representations and warranties relating to materiality or knowledge), in the aggregate, would have a Laser Material Adverse Effect.

(b) Laser shall have performed in all material respects all obligations required to be performed by it under this Agreement or under the Company Merger Agreement at or prior to the Closing Date.

(c) Except as disclosed in the Filed Laser SEC Reports, since the date of the most recent audited financial statements included in the Filed Laser SEC Reports, there shall not have been any event, change or development which individually or in the aggregate has had or reasonably would be expected to have a Laser Material Adverse Effect or would impair the ability of Laser to consummate the transactions contemplated by this Agreement or to satisfy its obligations hereunder.

(d) The Registration Rights Agreement shall have been duly executed and delivered by each of the parties thereto.

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Section 8.3. Conditions to Obligation of Laser to Effect the Holdings Merger.
The obligation of Laser to effect the Holdings Merger shall be subject to the satisfaction by Holdings and Parent Holdings or waiver by Laser, to the extent permitted by Law, at or prior to the Holdings Effective Time of the following additional conditions, unless:

(a) The representations and warranties of Holdings and Parent Holdings in this Agreement and the representations of the Company in the Company Merger Agreement that are qualified as to materiality shall be true and correct, and the representations and warranties of Holdings and Parent Holdings in this Agreement and the representations of the Company in the Company Merger Agreement shall be true and correct in all material respects, in each case as of the date hereof, and, except to the extent such representations and warranties refer to a specific date, as of the Closing Date as though made at and as of the Closing Date; provided, however, that this condition shall be deemed satisfied unless the failure or failures of such representations and warranties to be so true and correct (disregarding for this purpose all qualifications in such representations and warranties relating to materiality or knowledge), in the aggregate, would have a Holdings Material Adverse Effect or Company Material Adverse Effect (as defined in the Company Merger Agreement), as the case may be.

(b) Parent Holdings and Holdings shall have performed in all material respects all obligations required to be performed by them under this Agreement at or prior to the Closing Date.

(c) The Company shall have performed in all material respects those obligations required to be performed by it under the Company Merger Agreement on or prior to the Closing Date.

(d) Up to six (6) individuals designated by Laser (the "Laser Designees") shall have been duly elected members of the Board of Directors of the Company and all other members of such Board shall have resigned, all effective as of the later of (i) the Closing and (ii) the eleventh (11th) day following the date on which the Section 14(f) Notice (as defined in the Company Merger Agreement) shall have been filed with the SEC and mailed to all stockholders of record of the Company in accordance with the Company Merger Agreement.

ARTICLE IX

TAX MATTERS

Section 9.1. Taxes.

(a) Parent Holdings shall indemnify and hold Laser and Laser's subsidiaries and Affiliates harmless from and against the following:

(i) any liability for Taxes of any member of the "affiliated group" (within the meaning of Section 1504(a) of the Code) (except for the Company and its subsidiaries) of which Mafco Holdings Inc. (or any predecessor or successor) is the

common parent that arises under the provisions of Treasury Regulation Section 1.1502-6(a) (or any successor provision) or comparable provisions of foreign, state or local law; and

(ii) except to the extent provided in Section 9.1(b)(iii), any liability for Taxes (other than Taxes that arise under the provisions of Treasury Regulatory Section 1.1502-6(a) (or any successor provision) or comparable provisions of foreign, state or local law) imposed on Holdings or Worldwide or for which Holdings or Worldwide may otherwise be liable for any Pre-Closing Period (including, without limitation, any Taxes resulting from Holdings or Worldwide ceasing to be a member of the "affiliated group" of which Masco Holdings Inc. (or any successor) is the common parent, any income Taxes that arise in the Holdings Merger, and any Taxes imposed on Holdings or Worldwide as a result of any transaction effected between (and including) the date hereof and the Closing Date).

(b) Laser shall indemnify and hold Parent Holdings and its Affiliates harmless from and against the following:

(i) Taxes imposed on Holdings or Worldwide for any Post-Closing Period;

(ii) except to the extent provided in Section 9.1(a)(i), any liability for Taxes of the Company and any of its subsidiaries; and

(iii) any liability for Taxes resulting from transactions or actions taken by Holdings or Worldwide on the Closing Date but after the Holdings Effective Time, except for transactions or actions undertaken in the ordinary course of business.

(c) To the extent permitted by law or administrative practice, (i) the taxable year of Holdings or Worldwide which includes the Closing Date shall be treated as closing on (and including) the Closing Date and (ii) all transactions not in the ordinary course of business occurring after the Holdings Effective Time shall be reported on Laser's consolidated United States federal income Tax Return to the extent permitted by Treasury Regulation Section 1.1502-76(b)(1)(ii)(B) and shall be similarly reported on other Tax Returns of Laser or its Affiliates to the extent permitted by Law. For purposes of paragraphs (a) and (b)(i), where it is necessary to apportion between Parent Holdings and Laser the Tax liability of an entity for a Straddle Period (which is not treated under the immediately preceding sentence as closing on the Closing Date), such liability shall be apportioned between the period deemed to end at the close of the Closing Date and the period deemed to begin at the beginning of the day following the Closing Date on the basis of an interim closing of the books, except that Taxes (such as real property Taxes) imposed on a periodic basis shall be allocated on a daily basis.

(d) For purposes of Sections 9.1(a) and (b), whenever it is necessary to allocate an item of income, gain, deduction, loss or credit to either a taxable year or period that is not part of a Straddle Period and that ends on or before the Closing Date or a taxable year or period

that is not part of a Straddle Period and that begins after the Closing Date, such allocation shall be made consistent with the Law.

(e) Any real property transfer or gains Tax, sales Tax, use Tax, stamp Tax, stock transfer Tax, or other similar Tax imposed on Holdings or any of its subsidiaries arising out of or in connection with the transactions contemplated by this Agreement shall be borne by the party primarily obligated for such Tax under applicable Law, and each party shall indemnify the other party for any such Tax for which it is so liable.

(f) (i) Except as set forth in Section 9.1(f)(iii), Laser shall be entitled to any refund of Taxes or the benefit of the utilization of any Tax attribute (including, without limitation, any net operating loss, investment Tax credit, foreign Tax credit, or other credit or deduction) of (x) the Company or any of its subsidiaries and (y) for a Post-Closing Period, Holdings or Worldwide. If Parent Holdings or any of its Affiliates or subsidiaries receives any refund of Tax to which Laser is entitled pursuant to this Section 9.1(f)(i) or utilizes any Tax attribute to which Laser is entitled pursuant to this Section 9.1(f)(i), Parent Holdings shall promptly notify Laser and shall pay the amount of such refund or the benefit realized from such utilization within five (5) days of the receipt of such refund or the realization of such benefit.

(ii) Except as set forth in Section 9.1(f)(iii), Parent Holdings shall be entitled to any refund of Taxes or the benefit of the utilization of any Tax attribute of Holdings or Worldwide for a Pre-Closing Period. If Laser or any of its Affiliates or subsidiaries receives any refund of Tax to which Parent Holdings is entitled pursuant to this Section 9.1(f)(ii) or utilizes any Tax attribute to which Parent Holdings is entitled pursuant to this Section 9.1(f)(ii), Laser shall promptly notify Parent Holdings and shall pay the amount of such refund or the benefit realized from such utilization within five (5) days of the receipt of such refund or the realization of such benefit.

(iii) No payment shall be made in respect of a Tax deduction, Tax credit or other Tax benefit pursuant to this Section 9.1(f) in duplication of payments previously made in respect of the same Tax deduction, Tax credit or other Tax benefit.

(g) Any indemnity payment required under this Article IX as a result of an adjustment shall be paid seven (7) days after a "determination" within the meaning of Section 1313(a) of the Code. Any payment required to be made under this Article IX by one party to the other party that is not made on or before the date specified in this Article IX shall bear interest after such date at the rate specified in Code Section 6621(a)(2) for underpayments.

Section 9.2. Tax Returns. (a) Parent Holdings shall file or cause to be filed when due (i) all Tax Returns that are required to be filed on or before the Closing Date by or with respect to Holdings or any of its subsidiaries and (ii) all consolidated, combined or unitary Tax Returns that are required to be filed by or with respect to Parent Holdings or any entity that will be its Affiliate after the Holdings Merger, on the one hand, and Holdings or any of its subsidiaries, on the other hand, for taxable years or periods that include or precede the Closing Date. Parent Holdings shall remit (or cause to be remitted) any Taxes shown as due on such Tax Returns. In the case of Tax Returns described in clause (ii) above, Laser shall pay Parent Holdings no later

than five (5) days prior to the due date (including extensions) of any such Tax Return the Tax in connection with such Tax Return for which Laser is liable pursuant to this Article IX (or Parent Holdings shall pay Laser on such date the excess, if any, of any estimated Tax payments by the Company or any of its subsidiaries, relating to the period covered by such Tax Return, over the Tax in connection with such Tax Return for which Laser is liable pursuant to this Article IX). Parent Holdings and its subsidiaries shall cooperate in the preparation of any Tax Returns for which Parent Holdings has filing responsibility hereunder. Such cooperation shall include, but not be limited to, furnishing in a timely manner return preparation packages in the form and of the quality provided prior to the Holdings Merger. Such packages shall be prepared in good faith in a manner consistent with past practice.

(b) Laser shall file or cause to be filed when due all other Tax Returns that are required to be filed by or with respect to Holdings or any of its subsidiaries. Laser shall remit (or cause to be remitted) any Taxes shown as due on such Tax Returns. Parent Holdings shall pay Laser no later than five (5) days prior to the due date (including extensions) of any such Tax Return the Tax in connection with such Tax Return for which Parent Holdings is liable pursuant to this Article IX.

(c) The party with filing responsibility under this Section 9.2 for a Tax Return shall, 20 days prior to the due date (including extensions) of such Tax Return, present to the other party (the "Indemnifying Party") for the approval (which approval shall not be unreasonably withheld) of the Indemnifying Party the portion, if any, of the Tax Return reflecting solely the items and positions for which the Indemnifying Party is liable pursuant to this Article IX.

(d) From and after the date hereof, Parent Holdings and each of its Affiliates shall not amend any Tax Return with respect to Taxes for which Laser or any of its Affiliates is liable pursuant to this Agreement, without the written consent of Laser, which consent shall not be unreasonably withheld.

(e) From and after the date hereof, any payment (including any estimated payment) in respect of Taxes pursuant to a Tax Sharing Arrangement that includes Holdings or any of its subsidiaries shall be reduced by any payment that would be owed by the other party pursuant to a Tax Sharing Arrangement.

Section 9.3. Tax Claims.

(a) In the case of any Tax audit, examination or judicial or administrative proceeding (a "Tax Proceeding") relating to a combined, consolidated or unitary Tax Return that includes Mafco Holdings Inc. (or any predecessor or successor thereto), Laser shall be entitled to control the portion of the Tax Proceeding, if any, relating solely to items for which Laser is liable pursuant to this Agreement, and Parent Holdings shall be entitled to control every other portion of the Tax Proceeding; provided, however, that neither Parent Holdings nor any of its Affiliates shall settle or otherwise dispose of any issue in any such Tax Proceeding that could materially affect the Tax liability hereunder of Laser, without the prior written consent of Laser, which consent shall not be unreasonably withheld. Parent Holdings shall be entitled to control the Pre-Closing Period portion of a Tax Proceeding relating to a Straddle Period Tax Return, or a Tax

Return for a Pre-Closing Period ending before the Closing Date, of Holdings or Worldwide; provided, however, that neither Parent Holdings nor any of its Affiliates shall settle or otherwise dispose of any issue in any such Tax Proceeding that could materially affect the Tax liability hereunder of Laser, without the prior written consent of Laser, which consent shall not be unreasonably withheld.

(b) Parent Holdings or Laser, as the case may be, shall promptly notify the other party in writing of any tax claim that could result in liability of the other party under this Agreement (a "Tax Claim"). With respect to any Tax Claim, the party controlling the Tax Proceeding with respect thereto shall (i) not make any submission to any taxing authority without offering the other party the opportunity to review it, (ii) keep the other party informed as to the progress of such Tax Claim, (iii) provide the other party with any information that it receives in connection with the Tax Proceeding, (iv) permit the other party to participate (at its own expense) in all conferences, meetings or proceedings with any taxing authority in which the indemnified Tax Claim is or may be a subject, and (v) permit the other party to participate (at its own expense) in all court appearances in which the indemnified Tax Claim is or may be a subject. With respect to any Tax Claim, the party not controlling the Tax Proceeding with respect thereto shall not take any action or make any representations in connection with such Tax Claim with respect to issues affecting the other party's indemnity hereunder. With respect to any Tax Claim relating to a Pre-Closing Period for which Laser is or may be liable pursuant to this Agreement, Parent Holdings or any of its Affiliates shall either file (or cause to be filed) submissions at Laser's direction or appoint (or cause to be appointed) Laser or its authorized representatives as additional authorized representatives entitled to communicate fully with the Internal Revenue Service or the appropriate state, local or foreign taxing authority with respect to such Tax Claim.

(c) Nothing contained in this Section 9.3 shall be construed as limiting any party's right to indemnification under Section 9.1.

Section 9.4. Assistance and Cooperation. After the Closing Date, each of Parent Holdings and Laser shall (and shall cause their respective Affiliates to):

- (a) timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports with respect to, Taxes described in Section 9.1(e) (relating to sales, transfer and similar Taxes);
- (b) assist the other party in preparing any Tax Returns which such other party is responsible for preparing and filing in accordance with Section 9.2;
- (c) cooperate fully in preparing for any audits of, or disputes with taxing authorities regarding, any Tax Returns of Holdings and each of its subsidiaries;
- (d) make available to the other and to any taxing authority as reasonably requested in connection with any Tax Return described in Section 9.4(b) or any proceeding described in Section 9.4(c), all information relating to any Taxes or any Tax Returns of Holdings

and each of its subsidiaries, including, without limitation, records, returns, schedules, documents, work papers or other relevant materials;

(e) provide timely notice to the other in writing of any Tax audits or assessments of Holdings and each of its subsidiaries that are pending or proposed in writing for taxable periods for which the other may have a liability under this Article IX; and

(f) furnish the other with copies of all correspondence received from any taxing authority in connection with any Tax audit or information request with respect to any such taxable period.

Section 9.5. Adjustment to Merger Consideration. For all Tax purposes, any payment by Laser or Parent Holdings under this Agreement will be an adjustment to the Merger Consideration.

Section 9.6. Survival of Obligations. Notwithstanding anything to the contrary in this Agreement, and notwithstanding Article X of this Agreement, the obligations of the parties set forth in this Article IX shall be unconditional and absolute and shall remain in effect until 90 days after the expiration of the applicable statute of limitations.

Section 9.7. Reorganization. Laser shall not, and shall not permit any of its subsidiaries or Affiliates to, take any action that could prevent the Holdings Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code. Laser and Parent Holdings shall treat, and shall cause their respective Affiliates to treat, the Holdings Merger as a reorganization for all Tax and reporting purposes.

Section 9.8. Tax Sharing Agreements. All rights and obligations of Parent Holdings (and the entities that will be its Affiliates after the Holdings Effective Time) pursuant to any of the Tax Sharing Arrangements or any Tax indemnity arrangements involving Holdings or any of its subsidiaries will terminate on the Closing Date.

Section 9.9. Information. Notwithstanding any other provision of this Agreement or the Company Merger Agreement, neither Laser nor any of its Affiliates nor any other Person shall have any right to receive or obtain any information relating to Taxes of Parent Holdings or any of its Affiliates other than information relating solely to Holdings or any of its subsidiaries.

ARTICLE X

INDEMNIFICATION: SURVIVAL

Section 10.1. Parent Holdings' Agreement to Indemnify.

(a) Subject to the terms and conditions of this Article X, from and after the Closing Date, Parent Holdings shall indemnify, defend and hold harmless Laser and its subsidiaries (including after the Closing Date, the Company and its subsidiaries) and each of their re-

spective successors and permitted assigns, directors, officers, employees, representatives, agents, Affiliates and associates (collectively, the "Laser Group") from and against any and all losses, liabilities, expenses (including reasonable attorneys' fees), claims and damages (collectively, "Damages") asserted against, resulting to, imposed upon or suffered by the Laser Group, or any one of them: arising out of or related to any liability or obligation of Holdings or Worldwide existing on or prior to the Closing Date other than any such liability or obligation (i) arising in connection with the Notes, the LYONs and the 1998 Notes, (ii) which is also a liability or obligation of the Company or its subsidiaries (on a joint basis or otherwise), or (iii) which relates to the conduct, operations or activities of the Company or its subsidiaries.

(b) If there are any conflicts between the provisions of this Section 10.1 and Section 9.3 with respect to Tax Claims, the provisions of Section 9.3 shall control.

(c) Any payment by Parent Holdings under Article IX or this Section 10.1 will be an adjustment to the Merger Consideration.

(d) Anything in this Agreement to the contrary notwithstanding, the liability of Parent Holdings to indemnify the Laser Group pursuant to this Section 10.1 against any Damages sustained by reason of any Laser Claim shall be limited to Laser Claims as to which the Laser Group has given Parent Holdings written notice, setting forth in reasonable detail the basis for such Laser Claim, on or prior to the fourth (4th) anniversary of the Closing Date.

Section 10.2. Conditions of Indemnification With Respect to Third-Party Claims. The obligations and liabilities of Parent Holdings with respect to Laser Claims for Damages which arise or result from claims made by third parties ("Third-Party Claims") shall be subject to the following conditions:

(a) The Laser Group shall give Parent Holdings prompt notice of any such Third-Party Claim, and Parent Holdings shall have the right to undertake the defense thereof by representatives chosen by it; provided, however, that failure to provide prompt notice shall not affect Parent Holdings' obligations hereunder except to the extent that Parent Holdings is actually prejudiced by such failure;

(b) If Parent Holdings undertakes the defense of any such Third-Party Claim, the Laser Group shall, to the best of its ability, assist Parent Holdings, at the expense of Parent Holdings, in the defense of such Third-Party Claim; and shall promptly send to Parent Holdings, at the expense of Parent Holdings, copies of any documents received by the Laser Group which relate to such Third-Party Claim;

(c) If Parent Holdings, within a reasonable time after notice of any such Third-Party Claim, fails to defend the member(s) of the Laser Group against which such Third-Party Claim has been asserted, the Laser Group shall (upon further notice to Seller) have the right to undertake the defense, compromise or settlement of such Third-Party Claim on behalf of and for the account and risk of Parent Holdings, subject to the right of Parent Holdings to assume the defense of such Third-Party Claim at any time prior to settlement, compromise or final determination thereof; and

(d) Anything in this Article X to the contrary notwithstanding, (i) if there is a reasonable probability that a Third-Party Claim may materially and adversely affect the Laser Group other than as a result of money damages or other money payments, the Laser Group shall have the right, at its own cost and expense, to defend, compromise or settle such Third-Party Claim, and shall by doing so release Parent Holdings from any liability to provide indemnification with respect to such Third-Party Claim; and (ii) Parent Holdings shall not, without the written consent of the Laser Group, settle or compromise any Third-Party Claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Laser Group a release from all liability with respect to such Third-Party Claim.

Section 10.3. Survival of Representations; Covenants. The representations and warranties in this Agreement shall terminate upon and not survive the Closing Date. This Section 10.3 shall not limit any covenant or agreement of the parties contained herein which by its terms contemplates performance after the Holdings Effective Time.

ARTICLE XI

TERMINATION

Section 11.1. Termination. This Agreement may be terminated at any time prior to the Holdings Effective Time:

(a) by mutual written agreement of Laser and Holdings;

(b) by either Laser or Holdings if the Holdings Merger shall not have been consummated on or before August 31, 1998 (the "Termination Date"); provided, however, that the right to terminate this Agreement under this Section 11.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Termination Date;

(c) by either Laser or Holdings if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action (which order, decree or ruling the parties shall use their reasonable best efforts to lift), in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement, and such order, decree, ruling or other action shall have become final and nonappealable;

(d) by either Laser or Holdings in the event of a breach by the other party or any of its subsidiaries (including, in the case of Holdings, the Company and its subsidiaries) of any representation, warranty, covenant or other agreement contained in this Agreement or the Company Merger Agreement, as applicable, which would give rise to the failure of a condition set forth in Section 8.2(a) or Section 8.3(a) hereof or Section 8.1 thereof, as applicable, and is not capable of being cured (provided that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained in this Agreement).

Section 11.2. Effect of Termination. In the event of termination of this Agreement as provided in Section 11.1 hereof, this Agreement shall forthwith become void, provided that the last sentence of Section 6.7 and Article XII shall continue, and there shall be no liability on the part of any of the parties, nothing herein shall relieve any party from liability for any willful breach hereof.

ARTICLE XII

MISCELLANEOUS

Section 12.1. Notices. All notices or other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended, if delivered by registered or certified mail, return receipt requested, or by a national courier service, or if sent by telecopier, provided that the telecopy is promptly confirmed by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

If to Holdings:

CLN Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Fax: (954) 772-3352
Attention: General Counsel

with copies to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019-6150
Fax: (212) 403-2000
Attention: Adam O. Emmerich, Esq.

If to Laser:

Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, Florida 33445
Fax: (561) 243-2191
Attention: David Fannin, Esq.

with copies to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Fax: (302) 651-3001
Attention: Richard L. Easton, Esq.

Any such notification shall be deemed delivered (i) upon receipt, if delivered personally, (ii) on the next business day, if sent by national courier service for next business day delivery or (iii) the business day received, if sent by telecopier.

Section 12.2. Amendment. This Agreement may be amended by the parties pursuant to a writing adopted by action taken by all of the parties at any time before the Closing Date. This Agreement may not be amended except by an instrument in writing signed by the Parties.

Section 12.3. Extension; Waiver. At any time before the Closing Date, any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only as against such party and only if set forth in an instrument in writing signed by such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

Section 12.4. Assignment. No party to this Agreement may assign any of its rights or obligations under this Agreement without the prior written consent of the other party hereto.

Section 12.5. Entire Agreement. This Agreement (including all Schedules and Exhibits hereto) contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters, except for the Confidentiality Agreements which will remain in full force and effect for the term provided for therein.

Section 12.6. Parties in Interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than Laser, Holdings, Worldwide, their respective subsidiaries or their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

Section 12.7. Expenses. Whether or not the transactions contemplated by this Agreement are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such expenses.

Section 12.8. Governing Law. This Agreement shall be governed by the laws of the State of Delaware, its rules of conflict of laws notwithstanding.

Section 12.9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

Section 12.10. Headings. The heading references herein and in the table of contents hereto are for convenience purposes only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

Section 12.11. Further Assurances. From time to time after the Closing Date, at the request of the other party hereto and at the expense of the party so requesting, Holdings and Laser shall execute and deliver to such requesting party such documents and take such other action as such requesting party may reasonably request in order to consummate the transactions contemplated hereby.

Section 12.12. Specific Performance. Each party hereto acknowledges that money damages would be both incalculable and an insufficient remedy for any breach of this Agreement by such party and that any such breach would cause the other party hereto irreparable harm. Accordingly, each party hereto also agrees that, in the event of any breach or threatened breach of the provisions of this Agreement by such party, the other party hereto shall be entitled to equitable relief without the requirement of posting a bond or other security, including in the form of injunctions and orders for specific performance.

Section 12.13. Certain Terms. As used herein: (i) the term "material adverse effect" (including as used in any definition) with respect to any Person, shall exclude any change, event, effect or circumstance (a) arising in connection with the announcement or performance of the transactions contemplated by this Agreement and the Company Merger Agreement and (b) affecting in the United States economy generally or such Person's industries generally; and (ii) "to the knowledge of Holdings" shall mean to the actual knowledge of Paul E. Shapiro, Jerry W. Levin and Steven R. Isko.

Section 12.14. Interpretation. When a reference is made to this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The phrase "made available" in this Agreement shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available. All terms defined in this Agreement shall have the defined meanings used in any certificate or other document made or delivered pursuant hereto unless otherwise defined herein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument

that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

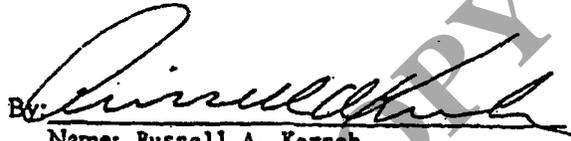
[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the date first written above.

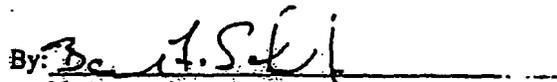
SUNBEAM CORPORATION

By: 
Name: Russell A. Kersch
Title: Executive Vice President

LASER ACQUISITION CORP.

By: 
Name: Russell A. Kersch
Title:

CLN HOLDINGS INC.

By: 
Name: Barry F. Schwartz
Title: Executive Vice President

COLEMAN (PARENT) HOLDINGS INC.

By: 
Name: Barry F. Schwartz
Title: Executive Vice President

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CLN HOLDINGS INC.

DISCLOSURE SCHEDULE

Reference is made to the Agreement and Plan of Merger (the "Merger Agreement") dated as of February 27, 1998, among Sunbeam Corporation ("Laser"), Laser Acquisition Corp. ("Merger Sub"), CLN Holdings Inc. ("Holdings") and Coleman (Parent) Holdings Inc. ("Parent Holdings"). Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to such terms in the Merger Agreement.

This disclosure schedule to the Merger Agreement is qualified in its entirety by reference to specific provisions of the Merger Agreement, and is not intended to constitute, and shall not be construed as constituting, representations or warranties of any party except as and to the extent provided in the Merger Agreement.

Matters reflected herein are not necessarily limited to matters required by the Merger Agreement to be reflected in the schedules. Such additional matters are set forth for information purposes and do not necessarily include other matters of a similar nature.

Any matter disclosed in one provision, sub-provision, section or subsection hereof is deemed disclosed for all purposes hereof to the extent the Merger Agreement requires such disclosure.

Headings and subheadings have been inserted hereon for convenience of reference only and shall to no extent have the effect of amending or changing the express description of the schedules as set forth in the Merger Agreement.

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SCHEDULE 4.5

Consents and Approvals; No Violations

1. LYONs
2. The Notes
3. Consent to the transaction is required under an agreement between Parent Holdings and a third party which consent will be obtained prior to the Closing Date

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SCHEDULE 4.9

Taxes

1. Internal Revenue Service Audit of the Mafco Holdings Inc. ("Mafco Holdings") consolidated federal income tax return for the years 1989 and 1990
2. Waiver through December 31, 1998 of the Statute of Limitations for the Mafco Holdings federal income tax consolidated group for the years 1991, 1992 and 1993

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SCHEDULE 4.10

List of Agreements with Affiliates

Post-Closing

- | | |
|--|---|
| 1. Lease dated as of 7/1/97 between Revlon Consumer Products Corporation and The Coleman Company, Inc. | Survives by its terms |
| 2. Reimbursement Agreement, dated as of February 26, 1992, between The Coleman Company, Inc. and MacAndrews & Forbes Holdings Inc. | Does not survive |
| 3. Reimbursement Agreement dated as of May 27, 1993 between Worldwide and MacAndrews & Forbes Holdings Inc. | Does not survive |
| 4. Reimbursement Agreement dated as of July 22, 1993 between CLN Holdings Inc. (as successor by merger to Coleman Holdings Inc.) and MacAndrews & Forbes Holdings Inc. | Does not survive |
| 5. Tax Sharing Agreement V, dated as of May 27, 1993, among Mafco Holdings, Worldwide, The Coleman Company, Inc., and certain subsidiaries of The Coleman Company, Inc. | Terminates with respect to Mafco Holdings |
| 6. Tax Sharing Agreement VI, dated as of May 27, 1993, between Mafco Holdings and Worldwide | Terminates with respect to Mafco Holdings |
| 7. Cross-Indemnification Agreement, dated as of February 26, 1992, among New Coleman Holdings Inc., Coleman Finance Holdings Inc., The Coleman Company, Inc. and certain subsidiaries of New Coleman Holdings Inc. and The Coleman Company, Inc. | Survives by its terms |
| 8. Executive Employees Deferred Compensation Plan (May 29, 1984) | Transferred to Coleman |
| 9. The New Coleman Company, Inc. Retirement Plan for Salaried Employees (Amended and Restated as of July 1, 1989) | Transferred to Coleman |
| 10. The New Coleman Company, Inc. Retirement Trust Agreement for Salaried Employees (December 28, 1989) | Transferred to Coleman |

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| 11. The Coleman Company, Inc. Excess Benefit Plan | Transferred to Coleman |
| 12. The Coleman Company, Inc. Special Retirement Plan (effective October 1, 1993) | Transferred to Coleman |
| 13. The Coleman Retirement Incentive Savings Plan (Effective as of January 1, 1990) | Transferred to Coleman |
| 14. Coleman Monthly Salaried Retirement Incentive Savings Plan (Effective as of January 1, 1996) | Transferred to Coleman |
| 15. Licensing Agreement with Revlon Consumer Products Corporation | Survives by its terms |
| 16. Pension Plan for Hourly Employees sponsored by New Coleman Holdings Inc. | Transferred to Coleman |
| 17. The Special Medical Plan, The Basic Medical, The Regular Medical Plan | Transferred to Coleman |
| 18. Insurance policies (the "Insurance Policies") purchased by New Coleman Holdings Inc. ("New Coleman") and Mafco Holdings with respect to which the Company derives the benefits, including as a subsidiary or affiliate of New Coleman and Mafco Holdings, in certain cases including forms of self-insurance, self-insured retention, deductibles, retrospective rating plans, and similar arrangements (" <u>Self-Insured Arrangements</u> ") | To the extent any Insurance Policies benefit the Company, they shall be retained; to the extent the Company has obligations to pay amounts or post a letter-of-credit pursuant to the Self-Insured Arrangements, the Company shall perform such obligations |
| 19. Agreement with Tarlow Advertising | Terminates |
| 20. Stock Purchase Agreement, dated as of August 5, 1997, by and among Revlon K.K. (" <u>Revlon</u> ") and the Company, and Transfer Agreement, dated as of March 31, 1997, by and among Revlon Consumer Products Corporation and the Company | Revlon or its affiliates remain entitled to certain tax benefits |

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|---|--|
| 21. Stock Purchase Agreement, dated as of December 12, 1997, between New Coleman Holdings, Inc. and the Company | New Coleman Holdings Inc. remains entitled to certain tax benefits |
| 22. Welfare plans, such as medical, sponsored by New Coleman Holdings or Mafco Holdings | Transferred to Coleman |
| 23. Mafco Demand Note held by Worldwide in connection with advances made for the payment of taxes by Worldwide | Canceled automatically and of no further force or effect on the earlier to occur of (i) the date that all LYONs are redeemed, exchanged or otherwise retired and (ii) May 27, 1998 |
| 24. The Coleman Company, Inc. provides certain data processing services for Mafco Holdings and certain of its subsidiaries and is paid a fee for such services | Services terminated on or prior to the closing |
| 25. The Coleman Company, Inc. assists in the management of certain liabilities and obligations of New Coleman Holdings Inc. generally related to liabilities relating to divested operations of New Coleman Holdings Inc. | Services terminated on or prior to the closing |

All amounts owed pursuant to agreements or arrangements with affiliates shall be paid in the ordinary course and in accordance with the applicable agreement or arrangement except in the case of the Mafco Demand Note, which shall be canceled automatically and of no further force or effect upon the earlier to occur of (i) the date that all LYONs are redeemed, exchanged or otherwise retired and (ii) May 27, 1998.

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SCHEDULE 6.1

Conduct of Business by the Company

1. Sale of the Company's Safety Security Division and other transactions contemplated by the Stock Purchase Agreement, dated February 18, 1998, and certain other agreements related thereto
2. From time to time, the repurchase by the Company of shares of Company Common Stock from certain officers and non-employee directors and cash-out certain Employee Stock Options held by certain officers and non-employee directors to provide a sale under Rule 16b-3 under the Exchange Act
3. The Company may take all action necessary to provide for vesting and exercisability of all outstanding Employee Stock Options as of the Effective Time and to provide for a broker-dealer cashless exercise procedure
4. Assume the sponsorship of all Company Plans maintained by New Coleman Holdings, Inc. pursuant to the Merger Agreement
5. Increase base salaries for Company employees effective as of March 1, 1998
6. Pay discretionary bonuses under the Company's Management Incentive Plan for 1997
7. Mafeo Demand Note will be canceled and of no further force or effect on the earlier to occur of (i) the date that all LYONs are redeemed, exchanged or otherwise retired and (ii) May 27, 1998

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REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT, dated as of _____, 1998 (the "Agreement"), among SUNBEAM CORPORATION, a Delaware corporation ("Laser"), and COLEMAN (PARENT) HOLDINGS INC., a Delaware corporation ("Parent Holdings").

WHEREAS, pursuant to the Agreement and Plan of Merger, dated as of February 27, 1998 (the "Holdings Merger Agreement"), by and among Laser, LASER ACQUISITION CORP., a Delaware corporation and wholly owned subsidiary of Laser ("Laser Merger Sub"), CLN HOLDINGS INC., a Delaware corporation and wholly owned subsidiary of Parent Holdings ("Holdings"), and Parent Holdings, Laser Merger Sub will be merged immediately after the execution of this Agreement with the surviving corporation becoming an indirect wholly owned subsidiary of Laser, upon the terms and subject to the conditions set forth in the Holdings Merger Agreement (the "Holdings Merger"); and

WHEREAS, upon consummation of the Holdings Merger, the shares of Holdings Common Stock (as defined herein) issued and outstanding immediately prior to the effective time of the Holdings Merger shall be converted into the right to receive an aggregate of (A) 14,099,749 fully paid and nonassessable shares of Laser Common Stock (as defined herein) and (B) \$159,956,756 in cash, without interest hereon; and

WHEREAS, it is a condition to the obligations of Holdings to consummate the Holdings Merger that this Agreement be duly executed and delivered by each of the parties hereto; and

WHEREAS, in order to induce Holdings to enter into the Holdings Merger Agreement, Laser has agreed to provide registration rights with respect to the shares of Laser Common Stock to be issued to Parent Holdings upon consummation of the Holdings Merger.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

Section 1.1 *Definitions.*

As used in this Agreement, the following terms shall have the following meanings:

The term "Affiliate" shall have the meaning ascribed to it in Rule 12b-2 of the General Rules and Regulations under the Exchange Act.

The term "Agreement" shall have the meaning ascribed to it in the first paragraph of the Preamble.

The term "Camper" shall mean The Coleman Company, Inc., a Delaware corporation.

The term "Effective Date" shall have the meaning ascribed to it in Section 2.2.

The term "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

The term "Holdings" shall have the meaning ascribed to it in the second paragraph of the Preamble.

The term "Holdings Common Stock" shall mean common stock, par value \$1.00 per share, of Holdings.

The term "Holdings Merger" shall have the meaning ascribed to it in the second paragraph of the Preamble.

The term "Holdings Merger Agreement" shall have the meaning ascribed to it in the second paragraph of the Preamble.

The term "Laser" shall have the meaning ascribed to it in the first paragraph of the Preamble.

The term "Laser Common Stock" shall mean common stock, par value \$.01 per share, of Laser.

The term "Laser Merger Sub" shall have the meaning ascribed to it in the second paragraph of the Preamble.

The term "Laser Offering" shall mean the sale of equity securities of Laser, or securities convertible into or exchangeable or exercisable for equity securities of Laser, pursuant to a registration statement filed by Laser under the Securities Act (other than a registration statement filed on Form S-8 or any successor form) respecting an underwritten offering, whether primary or secondary, that is declared effective by the SEC.

The term "Losses" shall have the meaning ascribed to it in Section 2.6(a).

The term "Parent Holdings" shall have the meaning ascribed to it in the first paragraph of the Preamble.

The term "Person" shall mean an individual, trustee, corporation, partnership, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, union, business association, firm or other entity.

The term "Registrable Securities" shall mean the shares of Laser Common Stock to be issued to Parent Holdings upon consummation of the Holdings Merger and any other securities issued or issuable upon or in respect of such securities by way of conversion, exchange, dividend, split or combination, recapitalization, merger, consolidation, other reorganization or otherwise. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when such securities have been sold or otherwise transferred by Parent Holdings pursuant to the Shelf Registration Statement or pursuant to Rule 144 under the Securities Act.

The term "Registration Expenses" shall have the meaning ascribed to it in Section 2.5.

The term "Rule 144" shall mean Rule 144 promulgated under the Securities Act (or any successor rule).

The term "Rule 415 Offering" shall have the meaning ascribed to it in Section 2.1(a).

The term "SEC" shall mean the United States Securities and Exchange Commission.

The term "Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

The term "Shelf Registration Statement" shall have the meaning ascribed to it in Section 2.1(a).

The term "Transfer" shall mean any attempt to, directly or indirectly, sell, transfer, pledge, assign or otherwise dispose of or otherwise transfer any of the Registrable Securities.

ARTICLE II

REQUIRED REGISTRATION

Section 2.1 Required Registration.

(a) *Form S-3.* Laser shall prepare and file with the SEC a registration statement (the "Shelf Registration Statement") on Form S-3 or another appropriate form permitting registration of the Registrable Securities so as to permit the resale of the Registrable Securities by Parent Holdings pursuant to an offering on a delayed or continuous basis pursuant to Rule 415 (or any successor rule) under the Securities Act (a "Rule 415 Offering") and shall use reasonable best efforts to cause the Shelf Registration Statement to be declared effective by the SEC on or before the date on which any of the Registrable Securities

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may be transferred by Parent Holdings pursuant to Article VII of the Holdings Merger Agreement. Laser shall use reasonable best efforts to permit the Shelf Registration Statement to be used by Affiliates of Camper for resales of shares of Laser Common Stock issued to such Affiliates in the merger of a wholly owned subsidiary of Laser with Camper; provided, however, that any such Affiliate using the Shelf Registration Statement shall agree in writing to be bound by all of the restrictions, limitations and obligations of Parent Holdings contained in this Agreement.

(b) *Effectiveness.* Laser shall use reasonable best efforts to keep the Shelf Registration Statement continuously effective under the Securities Act until the date that is the earliest to occur of (i) the date by which all Registrable Securities covered by the Shelf Registration Statement have been sold and (ii) the second anniversary of the consummation of the Holdings Merger.

(c) *Amendments/Supplements.* Laser shall amend and supplement the Shelf Registration Statement and the prospectus contained therein if required by the rules, regulations or instructions applicable to the registration form used by Laser for such Shelf Registration Statement, if required by the Securities Act.

(d) *Offerings.* At any time from and after the date on which the Shelf Registration Statement is declared effective by the SEC (the "Effective Date"), Parent Holdings, subject to the restrictions and conditions contained herein and in the Merger Agreement, and subject further to compliance with all applicable state and federal securities laws, shall have the right to dispose of all or any portion of the Registrable Securities.

Section 2.2 *Holdback Agreement.*

From and after the Effective Date, upon the request of Laser, Parent Holdings shall not effect any public sale or distribution (including sales pursuant to Rule 144) of Registrable Securities that are equity securities of Laser, or any securities convertible into or exchangeable or exercisable for such securities (other than any such sale or distribution of such securities pursuant to registration of such securities on Form S-8 or any successor form) during the period commencing on the date on which Laser commences a Laser Offering through the sixty (60)-day period immediately following the closing date of such Laser Offering; provided, however, that Parent Holdings shall not be obligated to comply with this Section 2.2 on more than two (2) occasions in any twelve (12)-month period; and provided, further, that notwithstanding anything to the contrary in this Section 2.2 or Section 2.3, in no event shall Parent Holdings be disabled from effecting offers or sales of Registrable Securities for more than one-hundred-and-fifteen (115) days during any twelve (12)-month period.

Section 2.3 *Blackout Provisions.*

In the event that, at any time while the Shelf Registration Statement remains effective, Laser determines in its reasonable judgment and in good faith that the sale of Registrable Securities would require disclosure of material information which Laser has a

bona fide business purpose for preserving as confidential, Parent Holdings shall, upon receiving written notice from Laser of such good faith determination, suspend sales of the Registrable Securities for a period beginning on the date of receipt of such notice and expiring on the earlier of (i) the date upon which such material information is disclosed to the public or ceases to be material or (ii) forty-five (45) days after the receipt of such notice from Laser; provided, however, that Parent Holdings shall not be obligated to comply with this Section 2.3 on more than two (2) occasions in any twelve (12) month period; and provided, further, that notwithstanding anything to the contrary in this Section 2.3 or Section 2.2, in no event shall Parent Holdings be disabled from effecting offers or sales of Registrable Securities for more than one-hundred-and-fifteen (115) days during any twelve (12)-month period.

Section 2.4 Registration Procedures.

(a) *Procedures.* In connection with the registration of the Registrable Securities pursuant to this Agreement, Laser shall use reasonable best efforts to effect the registration and sale of the Registrable Securities in accordance with Parent Holdings' intended method of disposition thereof and, in connection therewith, Laser shall:

(1) prepare and file with the SEC the Shelf Registration Statement and use reasonable best efforts to cause the Shelf Registration Statement to become and remain effective in accordance with Sections 2.1(a) and (b) above;

(2) prepare and file with the SEC amendments and supplements to the Shelf Registration Statement and the prospectuses used in connection therewith in accordance with Section 2.1(c) above;

(3) before filing with the SEC the Shelf Registration Statement or prospectus or any amendments or supplements thereto, Laser shall furnish to one (1) counsel selected by Parent Holdings and one (1) counsel for the underwriter or sales or placement agent, if any, in connection therewith, drafts of all such documents proposed to be filed and provide such counsel with a reasonable opportunity for review thereof and comment thereon, such review to be conducted and such comments to be delivered with reasonable promptness;

(4) promptly (i) notify Parent Holdings of each of (w) the filing and effectiveness of the Shelf Registration Statement and each prospectus and any amendments or supplements thereto, (x) the receipt of any comments from the SEC or any state securities law authorities or any other governmental authorities with respect to any such Shelf Registration Statement or prospectus or any amendments or supplements thereto, (y) any oral or written stop order with respect to such registration, any suspension of the registration or qualification of the sale of the Registrable Securities in any jurisdiction or any initiation or threatening of any pro-

ceedings with respect to any of the foregoing, and (z) of the happening of any event that requires the making of any changes in such Shelf Registration Statement, prospectus or documents incorporated or deemed to be incorporated therein by reference so that they will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and (ii) use reasonable best efforts to obtain the withdrawal of any order suspending the registration or qualification (or the effectiveness thereof) or suspending or preventing the use of any related prospectus in any jurisdiction with respect thereto;

(5) furnish to Parent Holdings, the underwriters or the sales or placement agent, if any, and one (1) counsel for each of the foregoing, a conformed copy of the Shelf Registration Statement and each amendment and supplement thereto (in each case, including all exhibits thereto) and such additional number of copies of such Shelf Registration Statement, each amendment and supplement thereto (in such case, without such exhibits), the prospectus (including each preliminary prospectus) included in such Shelf Registration Statement and prospectus supplements and all exhibits thereto and such other documents as Parent Holdings, its underwriters, agent or such counsel may reasonably request in order to facilitate the disposition of the Registrable Securities by Parent Holdings;

(6) in connection with a sale of Registrable Securities by or through an underwriter, if requested by Parent Holdings or the managing underwriter or underwriters of a Rule 415 Offering, subject to approval of counsel to Laser in its reasonable judgment, promptly incorporate in a prospectus, supplement or post-effective amendment to the Shelf Registration Statement such information concerning underwriters and the plan of distribution of the Registrable Securities as such managing underwriter or underwriters or Parent Holdings reasonably shall furnish to Laser in writing and such request to be included therein, including, without limitation, information with respect to the number of Registrable Securities being sold by Parent Holdings to such underwriter or underwriters, the purchase price being paid therefor by such underwriter or underwriters and with respect to any other terms of the underwritten offering of the Registrable Securities to be sold in such offering; and make all required filings of such prospectus, supplement or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such prospectus, supplement or post-effective amendment;

(7) use reasonable best efforts to register or qualify the Registrable Securities for offer and sale under such securities or "blue sky" laws of such jurisdictions as Parent Holdings reasonably requests and

do any and all other acts and things which may be reasonably necessary or advisable to enable Parent Holdings to consummate the disposition in such jurisdictions in which the Registrable Securities are to be sold and keep such registration or qualification in effect for as long as the Shelf Registration Statement remains effective under the Securities Act (provided that Laser shall not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this paragraph, (ii) subject itself to taxation in any such jurisdiction where it would not otherwise be subject to taxation but for this paragraph or (iii) consent to the general service of process in any jurisdiction where it would not otherwise be subject to general service of process but for this paragraph);

(8) notify Parent Holdings, at any time when a prospectus relating to the Shelf Registration Statement is required to be delivered under the Securities Act, upon the discovery that, or of the happening of any event as a result of which, the Shelf Registration Statement, as then in effect, contains an untrue statement of a material fact or omits to state any material fact required to be stated therein or any fact necessary to make the statements therein not misleading, and promptly prepare and furnish to Parent Holdings a supplement or amendment to the prospectus contained in the Shelf Registration Statement so that the Shelf Registration Statement shall not, and such prospectus as thereafter delivered to the purchasers of such Registrable Securities shall not, contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(9) cause all of the Registrable Securities to be listed on each national securities exchange and included in each established over-the-counter market on which or through which the Laser Common Stock is then listed or traded;

(10) in connection with a sale of Registrable Securities by or through an underwriter, make available for inspection by Parent Holdings, any underwriter participating in any disposition pursuant to the Shelf Registration Statement, and any attorney, accountant or other agent retained by Parent Holdings or its underwriter, all financial and other records, pertinent corporate documents and properties of Laser as shall be reasonably necessary to enable either of them to exercise their due diligence responsibility, and cause Laser's officers, directors, employees, attorneys and independent accountants to supply all information reasonably requested by Parent Holdings, its underwriters, attorneys, accountants or agents in connection with the Shelf Registration Statement; information

which Laser determines, in good faith, to be confidential shall not be disclosed by such persons unless (i) the disclosure of such information is required by applicable federal securities laws or is necessary to avoid or correct a misstatement or omission in such Shelf Registration Statement or (ii) the release of such information is ordered pursuant to a subpoena or other order from a court of competent jurisdiction; Parent Holdings agrees, on its own behalf and on behalf of all of its underwriters, accountants, attorneys and agents, that the information obtained by any of them as a result of such inspections shall be deemed confidential unless and until such is made generally available to the public; Parent Holdings further agrees, on its own behalf and on behalf of all of its underwriters, accountants, attorneys and agents, that Parent Holdings will, upon learning that disclosure of such information is sought in a court of competent jurisdiction, give notice to Laser and allow Laser, at Parent Holdings' expense, to undertake appropriate action to prevent disclosure of the information deemed confidential; nothing contained herein shall require Laser to waive any attorney-client privilege or disclose attorney work product;

(11) use reasonable best efforts to comply with all applicable laws related to the Shelf Registration Statement and offering and sale of securities and all applicable rules and regulations of governmental authorities in connection therewith (including, without limitation, the Securities Act and the Exchange Act, and the rules and regulations promulgated by the SEC) and make generally available to its security holders as soon as practicable (but in any event not later than fifteen (15) months after the effectiveness of the Shelf Registration Statement) an earnings statement of Laser and its subsidiaries complying with Section 11(a) of the Securities Act;

(12) in connection with a sale of Registrable Securities by or through an underwriter, use reasonable best efforts to furnish to Parent Holdings a signed counterpart of (x) an opinion of counsel for Laser (including a "Rule 10b-5" opinion) and (y) a "comfort" letter signed by the independent public accountants who have certified Laser's financial statements included or incorporated by reference in such registration statement, covering such matters with respect to such registration statement and, in the case of the accountants' comfort letter, with respect to events subsequent to the date of such financial statements as are customarily covered in opinions of issuer's counsel and in accountants' comfort letters delivered to the underwriters in underwritten public offerings of securities for the account of, or on behalf of, an issuer of common stock, such opinion and comfort letters to be dated the date that such opinion and comfort letters are customarily dated in such transactions; and

(13) take other actions as Parent Holdings or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of the Registrable Securities.

(b) *Further Agreements.* Without limiting any of the foregoing, in the event that the sale of Registrable Securities is to be made by or through an underwriter, Laser shall enter into an underwriting agreement with a managing underwriter or underwriters selected by Parent Holdings containing representations, warranties, indemnities and agreements customarily included (but not inconsistent with the agreements contained herein) by an issuer of common stock in underwriting agreements with respect to offerings of common stock for the account of, or on behalf of, such issuers; provided, however, that Parent Holdings shall not utilize the Shelf Registration Statement for more than two (2) underwritten offerings during the term of this Agreement. In connection with the sale of Registrable Securities hereunder, Parent Holdings may, at its option, require that any and all representations and warranties by, and the other agreements of, Laser to or for the benefit of such underwriter or underwriters (or which would be made to or for the benefit of such underwriter or underwriter if such sale of Registrable Securities were pursuant to a customary underwritten offering) be made to and for the benefit of Parent Holdings and that any or all of the conditions precedent to the obligations of such underwriter or underwriters (or which would be so for the benefit of such underwriter or underwriters under a customary underwriting agreement) be conditions precedent to the obligations of Parent Holdings in connection with the disposition of Parent Holdings' securities pursuant to the terms hereof. In connection with any offering of Registrable Securities registered pursuant to this Agreement, Laser shall, upon receipt of duly endorsed certificates representing the Registrable Securities, (i) furnish to the underwriter, if any (or, if no underwriter, Parent Holdings), unlegended certificates representing ownership of Registrable Securities being sold, in such denominations as requested, and (ii) instruct any transfer agent and registrar of the Registrable Securities to release any stop-transfer order with respect thereto.

Parent Holdings agrees that upon receipt of any notice from Laser of the happening of any event of the kind described in paragraph (8) of Section 2.4(a), Parent Holdings shall forthwith discontinue its disposition of Registrable Securities pursuant to the Shelf Registration Statement and prospectus relating thereto until Parent Holdings' receipt of the copies of the supplemented or amended prospectus contemplated by paragraph (8) of Section 2.4(a) and, if so directed by Laser, deliver to Laser all copies, other than permanent file copies, then in Parent Holdings' possession of the prospectus current at the time of receipt of such notice relating to the Registrable Securities.

Section 2.5 Registration Expenses.

All expenses incidental to Laser's performance of, or compliance with, its obligations under this Agreement including, without limitation, all registration and filing fees, all fees and expenses of compliance with securities and "blue sky" laws (including, without limitation, the fees and expenses of counsel for underwriters or placement or sales agents in

connection therewith), all printing and copying expenses, all messenger and delivery expenses, all fees and expenses of underwriters and sales and placement agents in connection therewith (excluding underwriters' discounts and commissions and the fees and expenses of counsel therefor), all fees and expenses of Laser's independent certified public accountants and counsel (including, without limitation, with respect to "comfort" letters and opinions) and other Persons retained by Laser in connection therewith (collectively, the "Registration Expenses"), shall be borne by Laser. Laser shall not be responsible for and shall not pay underwriters' discounts and commissions and the fees and expenses of counsel therefor and fees and expenses of legal counsel, accountants, agents or experts retained by Parent Holdings in connection with the sale of the Registrable Securities. Laser will pay its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties, the expense of any annual audit and the expense of any liability insurance) and the expenses and fees for listing the Registrable Securities on the New York Stock Exchange or, if the Laser Common Stock is then not so listed, included in an established over-the-counter market.

Section 2.6 Indemnification.

(a) *By Laser.* Laser agrees to indemnify Parent Holdings and Parent Holdings' directors, officers, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) Laser or such other indemnified Person to the fullest extent lawful, against all losses, claims, damages, liabilities, judgments, and reasonable costs (including, without limitation, reasonable attorneys' fees and expenses) (collectively, the "Losses") as incurred, caused by, arising out of, resulting from or relating to any untrue or alleged untrue statement of material fact contained in the Shelf Registration Statement, any prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as the same are based upon any information furnished in writing to Laser by Parent Holdings or its underwriter or other agent expressly for use therein or by Parent Holdings' failure to deliver, or its underwriter's or other agent's failure to deliver, a copy of the Shelf Registration Statement or prospectus or any amendments or supplements thereto after Laser has furnished Parent Holdings with the requested number of copies of the same. In connection with an underwritten offering and without limiting any of Laser's other obligations under this Agreement, Laser shall indemnify such underwriters, their officers, directors, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriters or such other indemnified Person to the same extent as provided above with respect to the indemnification of Parent Holdings.

(b) *By Parent Holdings.* In connection with the Shelf Registration Statement, Parent Holdings shall furnish to Laser in writing information regarding Parent Holdings' ownership of Registrable Securities and Parent Holdings' intended method of distribution thereof and shall indemnify Laser, its directors, officers, employees and agents

and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) Laser or such other indemnified Person against all Losses caused by, arising out of, resulting from or relating to any untrue or alleged untrue statement of material fact contained in the Shelf Registration Statement, any prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission or alleged untrue statement or omission (i) is caused by, arises out of, results from or relates to, or is alleged to be omitted from, such information so furnished in writing by Parent Holdings or (ii) arises out of or results from Parent Holdings' failure to deliver, or Parent Holdings' underwriter's or other agent's failure to deliver, a copy of the Shelf Registration Statement or prospectus or any amendments or supplements thereto after Laser has furnished Parent Holdings with the requested number of copies of the same. In connection with an underwritten offering and without limiting any of Parent Holdings' other obligations under this Agreement, (i) Parent Holdings shall indemnify such underwriters, their officers, directors, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriters or such other indemnified Person to the same extent as provided above with respect to the indemnification of Laser and (ii) Parent Holdings shall cause each underwriter of an underwritten offering to indemnify Laser, its directors, officers, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) Laser or such indemnified Person, on terms and subject to conditions customary for such indemnification by nationally known investment banking firms, against all Losses caused by, arising out of, resulting from or relating to any untrue or alleged untrue statement of material fact contained in the Shelf Registration Statement, any prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission or alleged untrue statement or omission (x) is caused by, arises out of or results from information furnished in writing by such underwriter specifically for inclusion in the Shelf Registration Statement or (y) arises out of or results from such underwriter's failure to deliver a copy of the Shelf Registration Statement or prospectus or any amendments or supplements thereto after Laser has furnished such underwriter with the requested number of copies of the same.

(c) *Notice.* Any Person entitled to indemnification hereunder shall give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification; provided, however, the failure to give such notice shall not release the indemnifying party from its obligation, except to the extent that the indemnifying party has been prejudiced by such failure to provide such notice.

(d) *Defense of Actions.* In any case in which any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein, and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense

thereof, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not (so long as it shall continue to have the right to defend, contest, litigate and settle the matter in question in accordance with this paragraph) be liable to such indemnified party hereunder for any legal or other expense subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation, supervision and monitoring (unless such indemnified party reasonably objects to such assumption on the grounds that there may be defenses available to it which are different from or in addition to the defenses available to such indemnifying party, in which event the indemnified party shall be reimbursed by the indemnifying party for the reasonable expenses incurred in connection with retaining one separate legal counsel). An indemnifying party shall not be liable for any settlement of an action or claim effected without its consent. The indemnifying party shall lose its right to defend, contest, litigate and settle a matter if it shall fail to diligently contest such matter (except to the extent settled in accordance with the next following sentence). No matter shall be settled by an indemnifying party without the consent of the indemnified party unless such settlement contains a full and unconditional release of the indemnified party.

(e) *Survival.* The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified Person and will survive the transfer of the Registrable Securities.

(f) *Contribution.* If recovery is not available under the foregoing indemnification provisions for any reason or reasons other than as specified therein, any Person who otherwise would be entitled to indemnification by the terms thereof shall nevertheless be entitled to contribution with respect to any Losses with respect to which such Person would be entitled to such indemnification but for such reason or reasons. In determining the amount of contribution to which the respective Persons are entitled, there shall be considered the Persons' relative knowledge and access to information concerning the matter with respect to which the claim was asserted, the opportunity to correct and prevent any statement or omission, and other equitable considerations appropriate under the circumstances. It is hereby agreed that it would not necessarily be equitable if the amount of such contribution were determined by pro rata or per capita allocation. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not found guilty of such fraudulent misrepresentation.

ARTICLE III

TRANSFERS OF REGISTRABLE SECURITIES

Section 3.1 *Transferability of Registrable Securities*

Parent Holdings may not Transfer the Registrable Securities except in accordance with Article VII of the Holdings Merger Agreement and under the following circumstances:

- (a) pursuant to Rule 144;
- (b) pursuant to the Shelf Registration Statement; or
- (c) upon receipt by Laser of an opinion of counsel, reasonably satisfactory to Laser, that such Transfer is exempt from registration under the Securities Act.

Section 3.2 *Restrictive Legends.*

Parent Holdings hereby acknowledges and agrees that, during the term of this Agreement, each of the certificates representing Registrable Securities shall be subject to stop transfer instructions and shall include the legend set forth in Section 7.2 of the Holdings Merger Agreement.

ARTICLE IV

MISCELLANEOUS

Section 4.1 *Effectiveness of Agreement.*

The provisions of this Agreement shall be effective as of the date hereof.

Section 4.2 *Recapitalization.*

In the event that any capital stock or other securities are issued as a dividend or distribution on, in respect of, in exchange for, or in substitution of, any Registrable Securities, such securities shall be deemed to be Registrable Securities for all purposes under this Agreement.

Section 4.3 *Notices.*

All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, by mail (certified or registered mail, return receipt

requested), by reputable overnight courier or by facsimile transmission (receipt of which is confirmed):

(a) If to Laser, to:

Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445
Attention: General Counsel
Facsimile: (561) 243-2191

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Attention: Richard L. Easton, Esq.
Facsimile: (302) 651-3001

(b) If to Parent Holdings, to:

Coleman (Parent) Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Attention: General Counsel
Facsimile: (954) 772-3352

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019-6150
Attention: Adam O. Emmerich, Esq.
Facsimile: (212) 403-2000

or to such other person or address as any party shall specify by notice in writing, given in accordance with this Section 4.3, to the other parties hereto. All such notices, requests, demands, waivers and communications shall be deemed to have been given on the date on which so hand-delivered, on the third business day following the date on which so mailed, on the next business day following the date on which delivered to such overnight courier and on the date of such facsimile transmission and confirmation, except for a notice of change of person or address, which shall be effective only upon receipt thereof.

Section 4.4 *Entire Agreement.*

This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings, oral and written, with respect to its subject matter.

Section 4.5 *Binding Effect; Assignment.*

This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, successors and permitted assigns, but, except as expressly contemplated herein, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, directly or indirectly, by Laser or Parent Holdings without the prior written consent of the other; provided, that in connection with a bona fide pledge of any Registrable Securities to secure indebtedness or other obligations, Parent Holdings may assign its rights, interests and obligations hereunder to the beneficiary of such pledge. Upon any permitted assignment (other than in connection with any such bona fide pledge), this Agreement shall be amended to substitute the assignee as a party hereto in a writing reasonably acceptable to the other party.

Section 4.6 *Amendment, Modification and Waiver.*

This Agreement may be amended, modified or supplemented at any time by written agreement of the parties hereto. Any failure by Parent Holdings, on the one hand, or Laser, on the other hand, to comply with any term or provision of this Agreement may be waived by Laser or Parent Holdings, respectively, at any time by an instrument in writing signed by or on behalf of Laser and Parent Holdings, but such waiver or failure to insist upon strict compliance with such term or provision shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply.

Section 4.7 *Third-Party Beneficiaries.*

Except with respect to Affiliates which have agreed to be bound in accordance with Section 2.1(a), this Agreement is not intended, and shall not be deemed, to confer upon or give any person except the parties hereto and their respective successors and permitted assigns, any remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Agreement.

Section 4.8 *Counterparts.*

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 4.9 *Interpretation.*

The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

Section 4.10 *Governing Law.*

This Agreement shall be governed by the laws of the State of New York, without regard to the principles of conflicts of law thereof.

Section 4.11 *Termination; Restrictive Legend.*

Subject to the provisions of Section 2.1(b) hereof, this Agreement shall terminate on the second anniversary of consummation of the Merger, provided, however, that the provisions of Section 2.6 hereof shall survive termination of this Agreement. It is understood and agreed that any restrictive legends set forth on any Registrable Securities shall be removed by delivery of substitute certificates without such legends and such Registrable Securities shall no longer be subject to the terms of this Agreement, upon the resale of such Registrable Securities in accordance with the terms of this Agreement or, if not theretofore removed, on the third anniversary of the date hereof.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the undersigned hereby agree to be bound by the terms and provisions of this Registration Rights Agreement as of the date first above written.

SUNBEAM CORPORATION

By: _____
Name: _____
Title: _____

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name: _____
Title: _____

NOTA CERTIFIED COPY

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Exhibit 5

NOT A CERTIFIED COPY

037319

MS
DEPOSITION

EXHIBIT # 96
FOR ID TRN
48-04

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT, dated as of August 12, 1998, by and between Sunbeam Corporation, a Delaware corporation ("Sunbeam" or the "Company"), and Coleman (Parent) Holdings Inc., a Delaware corporation ("Coleman Parent").

For the purposes of this Agreement, Sunbeam, together with each direct or indirect parent, subsidiary, division, or affiliated corporation or entity, and each employee, agent, attorney, representative, administrator, executor, receiver, officer, director, or stockholder of any such corporation or entity, and any other person, firm, corporation or entity now or hereafter affiliated in any manner with any of them or claiming through or in the right of any of them and all of their respective predecessors, successors, assigns, heirs, executors and administrators (but excluding for all purposes under this Agreement, Mr. Albert J. Dunlap, former Chief Executive Officer of Sunbeam, Mr. Russell A. Kersh, former Executive Vice President of Sunbeam, Arthur Andersen LLP, Sunbeam's independent auditors, PriceWaterhouseCoopers, consultants to Sunbeam, and any financial advisor to Sunbeam, and each employee, agent, attorney, representative, administrator, executor, receiver, officer, director, or stockholder of any such corporation or entity, and any other person, firm, corporation or entity now or hereafter affiliated in any manner with any of them or claiming through or in the right of any of them and all of their respective predecessors, successors, assigns, heirs, executors and administrators), are collectively hereinafter referred to as the "Sunbeam Group"; and Coleman Parent, together with each direct or indirect parent, subsidiary, division, or affiliated corporation or entity, and each employee, agent, attorney, representative, administrator, executor, receiver, officer, director, or stockholder of any such corporation or entity, and any other person, firm, corporation or entity now or hereafter affiliated in any manner with any of them or claiming through or in the right of any of them and all of their respective predecessors, successors, assigns, heirs, executors and administrators, are collectively hereinafter referred to as the "Coleman Group".

WITNESSETH

WHEREAS, CLN Holdings Inc., a Delaware corporation ("CLN Holdings"), was the indirect beneficial owner of approximately 82% of the outstanding common stock, par value \$.01 per share (the "Coleman Common Stock"), of The Coleman Company, Inc., a Delaware corporation ("Coleman"); and

WHEREAS, pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Holdings Merger Agreement"), by and among Sunbeam, Laser Acquisition Corp., a Delaware corporation and, as of such date, a wholly owned subsidiary of Sunbeam ("Laser Acquisition"), CLN Holdings, as of such date, a wholly owned subsidiary of Coleman Parent, and Coleman Parent, CLN Holdings was merged with and into Laser Acquisition (the "Holdings Merger"), with the surviving corporation becoming an indirect wholly owned subsidiary of Sunbeam, and pursuant to which Coleman Parent received certain shares of common stock, par value \$.01 per share, of Sunbeam ("Sunbeam Common Stock"); and

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CONFIDENTIAL
SUBJECT TO
PROTECTIVE ORDER

16742411

WHEREAS, pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Coleman Merger Agreement"), by and among Sunbeam, Camper Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Sunbeam ("Camper Acquisition"), and Coleman, Camper Acquisition is to be merged with and into Coleman (the "Coleman Merger"), with the surviving corporation becoming an indirect wholly owned subsidiary of Sunbeam; and

WHEREAS, as a result of the Holdings Merger, Sunbeam acquired an indirect approximately 82% interest in Coleman (the "Coleman Acquisition"); and

WHEREAS, Sunbeam and Coleman Parent are parties to a Registration Rights Agreement, dated as of March 29, 1998 (the "Registration Rights Agreement"), pursuant to which Sunbeam agreed to provide certain registration rights to Coleman Parent; and

WHEREAS, following the dismissal by Sunbeam of certain of its executive officers in mid-June 1998, Coleman Parent has made available to Sunbeam certain senior officers employed by members of the Coleman Group to serve as senior executive officers of Sunbeam (the "Senior Executives") and has provided certain other management support to Sunbeam, and Sunbeam desires to continue the service of the Senior Executives and such management support; and

WHEREAS, Coleman Parent and Sunbeam believe it is desirable that Sunbeam put in place as promptly as possible a permanent management team to prevent jeopardizing the ongoing operations and financial viability of Sunbeam; and

WHEREAS, Coleman Parent believes that it possesses legal and equitable claims against Sunbeam arising out of the Coleman Acquisition and out of what it contends were certain breaches of contract and fraudulent and negligent or other misrepresentations and omissions made to Coleman Parent and its representatives in connection therewith (the "Claims"), and Sunbeam disputes such Claims; and

WHEREAS, there are also now pending or may be filed putative class actions in which Sunbeam is named as a defendant and in which Coleman Parent is a class member (the "Class Actions"), and Sunbeam denies liability with respect to and intends to contest the claims that have been asserted in the Class Actions; and

WHEREAS, the accountants who audited Sunbeam's 1997 financial statements, assisted by another firm of accountants, are in the process of reviewing those financial statements, and believe, as has been publicly announced, that it will be necessary to restate those financial statements by reflecting a variety of adjustments the magnitude of which has not yet been determined; and

WHEREAS, Sunbeam and Coleman Parent desire to terminate the disputes between them, and desire to assure one another that Coleman Parent will not prosecute the Claims or any related or potential claims arising out of or relating to the Coleman Acquisition, directly or indirectly in any capacity, against the Sunbeam Group, so as to avoid the substantial burdens and expense of litigation and the interference with the business and operations of Sunbeam and with the work of its management and employees and to obtain the continued services of certain executives

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and employees of the Coleman Group, and in accordance with the terms and provisions hereof, that Coleman Parent and Sunbeam each forever release, waive and discharge any and all manner of actions, causes of action, proceedings, suits, claims, demands, liens, debts, accounts, obligations, rights, costs, contracts, agreements, promises, controversies, judgments, expenses, demands, damages and liabilities, of any nature whatsoever, in law or in equity, whether or not now or hereafter seen, known, suspected, matured, accrued or claimed, and whether or not asserted in litigation, including court costs and attorneys' fees (each an "Action and Liability" and collectively, "Actions and Liabilities"), which any member of the Coleman Group controlling, controlled by or under common control with Coleman Parent (such persons, together with Coleman Parent, the "Coleman Controlled Group") may have against any member of the Sunbeam Group and which any member of the Sunbeam Group controlled by Sunbeam (such persons, together with Sunbeam, the "Sunbeam Controlled Group") may have against any member of the Coleman Group as of the effective date hereof or prior thereto in any manner arising out of or relating to the Coleman Acquisition, irrespective of any present lack of knowledge on the part of either of them of any such possible Action and Liability, but excluding any claim for breach of this Agreement or the agreements and documents entered into or delivered pursuant hereto;

NOW, THEREFORE, in consideration of the respective covenants, agreements and conditions hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be bound hereby, the parties hereto agree as follows:

1. Issuance of Warrants; Closing.

(a) On the basis of the representations, warranties, covenants and agreements and subject to the satisfaction or waiver (to the extent permitted) of the applicable conditions expressly set forth herein, at the closing of the transactions contemplated by this Section 1 (the "Closing"):

(i) Sunbeam shall issue to Coleman Parent certain warrants to purchase shares of Sunbeam Common Stock (the "Warrants") by duly executing and delivering to Coleman Parent a Warrant Agreement in the form attached as Exhibit A hereto (the "Warrant Agreement");

(ii) Sunbeam and Coleman Parent shall enter into an amendment to the Registration Rights Agreement, in the form attached as Exhibit B hereto (as so amended, the "Amended Registration Rights Agreement");

(iii) Sunbeam and Coleman Parent agree to be bound by the releases and covenants set forth in Section 2 of this Agreement;

(iv) Coleman Parent agrees to supply management services of the Senior Executives, and to the covenants and provisions of Section 3 of this Agreement; and

(v) Sunbeam and Coleman Parent agree to be bound by the provisions regarding the restrictions on transfer of the shares of Sunbeam Common Stock received by Coleman Parent in the Holdings Merger and the Warrants set forth in Section 4 of this Agreement.

(b) The Closing shall take place on the first day when all conditions thereto set forth herein shall be satisfied or waived or such other date as Sunbeam and Coleman Parent may agree in writing (the "Closing Date"), but in no event sooner than the tenth day following the mailing of the letter to Sunbeam shareholders contemplated by Section 7. The Closing shall take place on the Closing Date at 10:00 a.m., New York City time, at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York and shall be deemed effective as of the opening of business on the Closing Date.

(c) At the Closing, Sunbeam shall deliver or cause to be delivered to Coleman Parent, in addition to the Warrant Agreement, such other instruments or documents as Coleman Parent may reasonably request.

2. Granting of Releases and Indemnification.

(a) At the Closing, simultaneously with receipt by Coleman Parent of the Warrants, and without any further action by any of the parties hereto, each of the following shall be fully and legally effective:

(i) Coleman Parent shall, on behalf of itself and on behalf of each other member of the Coleman Controlled Group, remise, release and forever discharge the Sunbeam Group of and from all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity, against any of the Sunbeam Group or any of their predecessors, successors or assigns, which Coleman Parent or any other member of the Coleman Controlled Group has or ever had from the beginning of the world to the Closing with respect to or arising out of the Coleman Acquisition or any alleged misrepresentations and omissions and/or breach of contract by any member of the Sunbeam Group and parties acting on behalf of any member of the Sunbeam Group in connection with the Coleman Acquisition, including with respect to the Actions and Liabilities; provided that neither the foregoing release nor the dismissals or withdrawals described in this Section 2(a) shall apply to the rights of Coleman Parent and any other member of the Coleman Controlled Group under Article IX of the Holdings Merger Agreement, any breach or failure to comply with this Agreement, the Warrant, the Amended Registration Rights Agreement or the transactions contemplated hereby or thereby, the transactions contemplated by the Coleman Merger Agreement (including the Coleman Merger), which shall not be terminated or amended in any respect hereby, or shall otherwise affect Coleman Parent's right to enforce this Agreement, the Warrant or the Amended Registration Rights Agreement in accordance with its or their terms.

(ii) In the event any member of the Coleman Controlled Group pursues a claim against any person(s) not released hereby involving the matters that are the subject of the release set forth in Section 2(a)(i) and it is finally judicially determined that such person(s) are entitled directly or indirectly to indemnification or contribution from any member of the Sunbeam Controlled Group for any amounts they are required to pay to any member of the Coleman Controlled Group in connection with such claims, or to reimbursement of litigation expenses solely attributable to such claims of any member of the Coleman Controlled Group (each a "Sunbeam Group Indemnification Obligation"), Coleman Parent will indemnify and hold harmless each member of the Sunbeam Controlled Group against such Sunbeam Group Indemnification Obligation. No member of the Sunbeam Controlled Group will enter into any settlement of a Sunbeam Group Indemnification Obligation without the prior written consent of Coleman Parent, which shall not be unreasonably withheld. Any amounts so paid by a member of the Sunbeam Controlled Group in a settlement so consented to by Coleman Parent shall be treated for purposes hereof as a Sunbeam Group Indemnification Obligation.

(iii) Sunbeam, on behalf of itself and on behalf of each other member of the Sunbeam Controlled Group, shall remise, release and forever discharge the Coleman Group of and from all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity, against any of the Coleman Group or any of their predecessors, successors or assigns, which Sunbeam or any member of the Sunbeam Controlled Group has or ever had from the beginning of the world to the Closing with respect to or arising out of the Coleman Acquisition or any alleged misrepresentations and omissions and/or breach of contract by any member of the Coleman Group and parties acting on behalf of any member of the Coleman Group in connection with the Coleman Acquisition, including with respect to the Actions and Liabilities; provided that neither the foregoing release nor the dismissals or withdrawals described in this Section 2(a) shall apply to the rights of Sunbeam and any other member of the Sunbeam Controlled Group under Article IX of the Holdings Merger Agreement, any breach or failure to comply with this Agreement, the Warrant, the Amended Registration Rights Agreement or the transactions contemplated hereby or thereby, the transactions contemplated by the Coleman Merger Agreement (including the Coleman Merger), which shall not be terminated or amended in any respect hereby, or shall otherwise affect Sunbeam's right to enforce this Agreement, the Warrant or the Amended Registration Rights Agreement in accordance with its or their terms.

(iv) In the event any member of the Sunbeam Controlled Group pursues a claim against any person(s) not released hereby involving the matters that are the subject of the release set forth in Section 2(a)(iii) and it is finally judicially determined that such person(s) are entitled directly or indirectly to indemnifica-

tion or contribution from any member of the Coleman Controlled Group for any amounts they are required to pay to any member of the Sunbeam Controlled Group in connection with such claims, or to reimbursement of litigation expenses solely attributable to such claims of any member of the Sunbeam Controlled Group, (each, a "Coleman Group Indemnification Obligation"), Sunbeam will indemnify and hold harmless each member of the Coleman Controlled Group against such Coleman Group Indemnification Obligation. No member of the Coleman Controlled Group will enter into any settlement of a Coleman Group Indemnification Obligation without the prior written consent of Sunbeam, which shall not be unreasonably withheld. Any amounts so paid by a member of the Coleman Controlled Group in a settlement so consented to by Sunbeam shall be treated for purposes hereof as a Coleman Group Indemnification Obligation.

(v) Sunbeam, on behalf of itself, and on behalf of each other member of the Sunbeam Controlled Group, and Coleman Parent, on behalf of itself and on behalf of each other member of the Coleman Controlled Group, agree to indemnify and hold harmless one another from and against any and all Actions and Liabilities arising from, or in connection with, any action or proceeding, brought by, or prosecuted by, or on the initiative of, either of them, or by any of their predecessors, successors or assigns, contrary to the provisions of this Agreement. It is further agreed that this agreement of indemnity shall be deemed breached and a cause of action shall be deemed to have accrued thereon immediately upon the commencement of any action contrary to this Agreement, and that in any such action this Agreement may be pleaded by either of them as a defense, or either of them may assert this Agreement by way of counterclaim or cross-claim in any such action.

(vi) This Agreement shall inure to the benefit of and shall be binding upon Sunbeam and Coleman Parent, and to the benefit of and shall be binding upon each person or entity in the Sunbeam Group and the Coleman Group.

(b) Coleman Parent agrees that it shall opt out, as to and only as to any claims against any member of the Sunbeam Group, of any class that may be certified in any of the Class Actions or in any other action that may be certified as a class action with respect to or arising out of any other matter released hereby.

3. Provision of Management Services.

(a) The parties hereto acknowledge that Coleman Parent has caused other members of the Coleman Group to make available to Sunbeam the services of certain employees and Senior Executives and has encouraged such persons to continue to provide services to Sunbeam as employees of Sunbeam.

(b) Coleman Parent agrees that it shall, and it shall use its reasonable efforts to cause the other members of the Coleman Group to, continue to, for a minimum period of 36 months from the date hereof, make available to Sunbeam the services of Coleman

Group's employees who are Senior Executives, or who become Senior Executives, for so long as they remain employees of a member of the Coleman Group and otherwise to continue to provide advice and assistance to Sunbeam in connection with the business and operations of Sunbeam consistent with that provided to date; provided, however, that, other than pursuant to the employment arrangements currently in place between such employees and members of the Coleman Group, no member of the Coleman Group shall be required bear any incremental expense with respect to any Senior Executive in order to comply with the foregoing.

(c) Sunbeam agrees to pay the compensation of any such persons who become employees of Sunbeam in accordance with the terms of the employment arrangements entered into by Sunbeam with such persons. This Agreement shall not prevent any of the Senior Executives from continuing to perform services for members of the Coleman Group to the extent that the provision of such services does not materially interfere with the performance of services by the Senior Executive for Sunbeam under his employment arrangements with Sunbeam.

(d) Coleman Parent agrees to use its reasonable efforts to cause the other members of the Coleman Group to continue, for a period of 36 months from the date hereof, to provide assistance and support to Sunbeam on a basis consistent with the manner in which such assistance and support are generally provided to other companies in which members of the Coleman Group have a substantial interest (and without the payment of additional consideration by Sunbeam to Coleman Parent, other than with respect to the reimbursement of out-of-pocket expenses paid to third parties) and of a similar nature to those which have been so provided to Sunbeam from time to time from mid-June 1998 through the date hereof, including as to the following matters:

- (i) financings, and dealings with financing sources and the capital markets;
 - (ii) investor and public relations;
 - (iii) acquisitions, divestitures and other extraordinary transactions;
 - (iv) executive benefits and compensation and other personnel matters;
- and
- (v) compliance, litigation, insurance, regulatory and other legal matters.

4. Restrictions on Transfer of Securities. Coleman Parent hereby agrees not to, directly or indirectly, for a period of three (3) years from the date hereof, Transfer (as such term is defined in Section 7.1 of the Holdings Merger Agreement) (A) any shares of Sunbeam Common Stock received pursuant to the terms of the Holdings Merger Agreement or (B) any of the Warrants or the Warrant Shares (as defined in the Warrant Agreement), in either case in whole or in part, other than to one of its Affiliates (as such term is de-

fined in the Holdings Merger Agreement) who agrees in writing to be bound by the terms of this Section 4, except that (A) the holder or holders of such shares of Sunbeam Common Stock may at any time or from time to time Transfer so many of such shares of Sunbeam Common Stock as represent in the aggregate seventy-five percent (75%) of such shares of Sunbeam Common Stock, and (B) the holder or holders of the Warrants or the Warrant Shares may at any time or from time to time Transfer so many of the Warrants or the Warrant Shares as represent in the aggregate fifty (50%) of the Warrant Shares Amount (as defined in the Warrant Agreement). The provisions of this Section 4 shall not be applicable, and Coleman Parent shall be free to Transfer any and all shares of Sunbeam Common Stock, Warrants and Warrant Shares, (i) following any change of control of Sunbeam or (ii) in connection with any transaction in which the holders of all of the outstanding shares of Sunbeam Common Stock have the opportunity to Transfer at least 50% of their shares of Sunbeam Common Stock on the same terms. The provisions of this Section 4 shall supersede any and all other restrictions on Transfer that Coleman Parent or any of its Affiliates may have agreed to with Sunbeam or any of its Affiliates.

5. Representations and Warranties of Sunbeam. Sunbeam hereby represents and warrants to Coleman Parent as follows:

(a) Due Authorization. This Agreement has been duly authorized by all necessary corporate action on the part of Sunbeam, and no other corporate actions or proceedings on the part of Sunbeam (including any action on the part of its stockholders) are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed by a duly authorized officer of Sunbeam and constitutes a valid and binding agreement of Sunbeam enforceable against it in accordance with its terms. The Audit Committee of the Board of Directors of Sunbeam (the "Audit Committee") has expressly approved the transactions contemplated hereby as contemplated by Paragraph 312 ("Paragraph 312") of the New York Stock Exchange ("NYSE") Listed Company Manual and has determined that delay in securing shareholder approval of the transactions contemplated hereby would seriously jeopardize the financial viability of the Company. Upon application duly made by Sunbeam, the NYSE has advised that it has accepted Sunbeam's reliance on the exception to the shareholder approval policy of Paragraph 312 as contained therein in connection with the transactions contemplated hereby (the "Exception").

(b) Due Organization. Sunbeam is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power to enter into and perform this Agreement and to carry on its business as it is now being conducted.

(c) No Conflicts. No filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Sunbeam of the transactions contemplated hereby, other than as may be required under the Hart-Scott-Rodino Antitrust Improvements Act with respect to the exercise of the Warrants. Neither the execution and delivery of this Agreement by Sunbeam nor the

consummation by Sunbeam of the transactions contemplated hereby, nor compliance by Sunbeam with any of the provisions hereof, will (i) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Sunbeam; (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material contract or of any material license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any governmental authority to which Sunbeam is a party or by which it or any of its properties or assets may be bound; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Sunbeam or any of its properties or assets.

(d) Validity of Warrants and Underlying Shares. At the Closing, the issuance of the Warrants will have been duly authorized and, upon their issuance pursuant to the terms of this Agreement, the Warrants will be validly issued and will not be subject to any preemptive or similar right other than the rights and obligations under the Warrant Agreement. All shares of Sunbeam Common Stock to be issued upon the exercise of the Warrants, when issued, will be duly authorized and validly issued, fully paid and non-assessable and will not be subject to any preemptive or similar right.

(e) Capitalization. The authorized capital stock of Sunbeam consists of 500,000,000 shares of Sunbeam Common Stock, and 2,000,000 shares of preferred stock, par value \$.01 per share, of Sunbeam. As of the date hereof, (i) 100,860,129 shares of Sunbeam Common Stock were issued and outstanding (excluding any shares of Sunbeam Common Stock issued upon the exercise of Sunbeam Stock Options (as defined below) since August 6, 1998); (ii) 7,199,452 shares of Sunbeam Common Stock were issuable upon the consummation of the Coleman Merger Agreement; (iii) 13,242,050 shares of Sunbeam Common Stock were issuable in accordance with the terms of the Zero Coupon Convertible Senior Subordinated Debentures due 2018 of the Company; and (iv) no shares of Sunbeam preferred stock were issued and outstanding. As of the date hereof, not more than 9,000,000 shares of Sunbeam Common Stock were issuable upon exercise of vested and unvested employee and non-employee stock options (the "Sunbeam Stock Options") outstanding under all stock option plans of Sunbeam or granted pursuant to employment agreements (although Sunbeam is contesting the validity of certain of such Sunbeam Stock Options). As of the date hereof, no shares of Sunbeam Common Stock were held as treasury shares. All of the issued and outstanding shares of Sunbeam Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. As of the date hereof, except as set forth above, there are no shares of capital stock of Sunbeam issued or outstanding or, except as set forth above, any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Sunbeam to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities, or the capital stock or securities of Sunbeam. There are no notes, bonds, debentures or other indebtedness of Sunbeam having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of Sunbeam may vote.

(f) Brokers. Other than Blackstone Financial Group, which has acted as financial advisor to the Special Committee of the Sunbeam Board, no broker, investment banker or other person is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Sunbeam or any member of the Sunbeam Group.

6. Representations and Warranties of Coleman Parent. Coleman Parent hereby represents and warrants to Sunbeam as follows:

(a) Due Authorization. This Agreement has been duly authorized by all necessary corporate action on the part of Coleman Parent, and no other corporate actions or proceedings on the part of the Coleman Parent (including any action on the part of its stockholders) are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed by a duly authorized officer of Coleman Parent and constitutes a valid and binding agreement of Coleman Parent enforceable against it in accordance with its terms.

(b) Due Organization. Coleman Parent is a corporation duly organized, validly existing and in good standing under the laws of State of Delaware and has the requisite corporate power to enter into and perform this Agreement.

(c) No Conflicts. No filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Coleman Parent of the transactions contemplated hereby, other than as may be required under the Hart-Scott-Rodino Antitrust Improvements Act with respect to the exercise of the Warrants. Neither the execution and delivery of this Agreement by Coleman Parent nor the consummation by Coleman Parent of the transactions contemplated hereby, nor compliance by Coleman Parent with any of the provisions hereof, will (i) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Coleman Parent; (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material contract or of any material license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any governmental authority to which Coleman Parent is a party or by which it or any of its properties or assets may be bound; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Coleman Parent or any of its properties or assets.

(d) Acquisition of Warrants for Investment. Coleman Parent is acquiring the Warrants (and will acquire any Warrant Shares upon exercise of the Warrants) for its own account for investment purposes only and not with a view toward or for a sale in connection with, any distribution thereof, or with any present intention of distributing or selling any of such in violation of federal or state securities laws.

(e) Brokers. No broker, investment banker or other person is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions

contemplated by this Agreement based upon arrangements made by or on behalf of Coleman Parent or any member of the Coleman Group.

7. Covenants.

(a) Within one day following the date hereof, Sunbeam shall cause to be mailed to all shareholders of Sunbeam a letter informing them of the transactions contemplated hereby as contemplated and required by Paragraph 312 of the NYSE Listed Company Manual and indicating that the Audit Committee has expressly approved the Exception in light of the Audit Committee's determination that delay in securing shareholder approval of the transactions contemplated hereby would seriously jeopardize the financial viability of the Company and that the NYSE has accepted the Company's reliance on the Exception .

(b) The anti-dilution provisions of the Warrant shall be given retroactive effect to the date hereof.

8. Specific Performance. The parties acknowledge that money damages are an inadequate remedy for breach of this Agreement. Therefore, the parties agree that each of them has the right, in addition to (and not in lieu of) any other right they may have under this Agreement or otherwise, to specific performance of this Agreement in the event of any breach hereof by any other party.

9. Conditions to the Obligations of both Parties. The obligations of each of Sunbeam and Coleman Parent to effect the transactions contemplated hereby shall be conditioned on the non-existence of any order, decree or injunction of a court of competent jurisdiction which restrains the consummation of the transactions contemplated by this Agreement.

10. Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual agreement of the Boards of Directors of Coleman Parent and Sunbeam; or

(b) by Coleman Parent if the Warrants to be issued to Coleman Parent pursuant hereto have not been issued or will not be issued at the Closing or if there has been a material violation or breach by Sunbeam of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of Coleman Parent impossible and such violation or breach has not been waived by Coleman Parent; or

(c) by Sunbeam if there has been a material violation or breach by Coleman Parent of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of Sunbeam impossible and such violation or breach has not been waived by Sunbeam.

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In the event of termination and abandonment of this Agreement by Coleman Parent or Sunbeam or both of them pursuant to the terms of this Section 10, written notice thereof shall forthwith be given to the other party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto.

11. Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the party incurring such costs and expenses.

12. Tax Matters. Coleman Parent shall in good faith provide to Sunbeam information concerning the tax treatment under the Internal Revenue Code of 1986, as amended (the "Code"), of the transactions contemplated hereby. Sunbeam shall report such transactions for all tax purposes consistent with such information and take no position with any taxing authority inconsistent therewith. Coleman Parent and Sunbeam shall report the Holdings Merger as a reorganization within the meaning of Code Section 368(a) for all tax purposes.

13. Best Efforts. Each of the parties hereto agrees to use its best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement. In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, the proper officers and directors of each corporation which is a party to this Agreement shall take all such necessary action.

14. Parties in Interest; Assignments. This Agreement is binding upon and is solely for the benefit of the parties hereto, the Sunbeam Group and the Coleman Group and their respective successors and legal representatives.

15. Entire Agreement. This Agreement and the agreements to be entered into and delivered pursuant hereto constitutes the entire agreement between Sunbeam and Coleman Parent with respect to the subject matter hereof, and it is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect or particular whatsoever, except by a writing duly executed by authorized representatives of both Sunbeam and Coleman Parent. No party to this Agreement has relied upon any representation or warranty, written or oral, except as expressly included herein.

16. Amendments. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by the parties hereto.

17. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by telecopy or other standard form of telecommunication, or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

037331

If to Coleman Parent:

Coleman (Parent) Holdings Inc.
c/o MacAndrews & Forbes Holdings Inc.
35 East 62nd Street
New York, New York 10021
Attention: Barry F. Schwartz, Esq.
Facsimile: (212) 572-5056

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Adam O. Emmerich, Esq.
Facsimile: (212) 403-2000

If to Sunbeam:

Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445
Attention: Corporate Secretary
Facsimile: (561) 243-2191

with copies to:

Skadden, Arps, Slate, Meagher & Flom LLP
919 Third Avenue
New York, New York 10022
Attention: Blaine V. Fogg, Esq.
Facsimile: (212) 735-3597

and

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10152
Attention: Stephen E. Jacobs, Esq.
Facsimile: (212) 310-8007

to such other address as any party may have furnished to the other parties in writing in accordance herewith.

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18. Governing Law, Forum.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its conflict of law rules.

(b) The parties hereto irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Delaware and/or of the United States of America located in the State of Delaware for any actions, suits or proceedings out of or relating to this Agreement and the transactions contemplated hereby.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute but one agreement.

20. Effect of Headings. The descriptive headings contained herein are for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

21. Interpretation. When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "therein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

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037333

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the day and year first above written.

COLEMAN (PARENT) HOLDINGS INC.

By: Barry F. Schwartz
Name: Barry F. Schwartz
Title: Executive Vice President and General Counsel

SUNBEAM CORPORATION

By: _____
Name: Howard Kristol
Title: Chairman of the Special Committee

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the day and year first above written.

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name: Barry F. Schwartz
Title: Executive Vice President and General Counsel

SUNBEAM CORPORATION

By: Howard H. Kristol
Name: Howard Kristol
Title: Chairman of the Special Committee

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SUNBEAM CORPORATION

WARRANT FOR THE PURCHASE OF SHARES OF
COMMON STOCK OF SUNBEAM CORPORATION

ISSUE DATE: August __, 1998

Warrant No. W-1

23,000,000 Warrant Shares

THIS WARRANT AND THE SHARES OF COMMON STOCK PURCHASEABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED OR DISPOSED OF UNLESS REGISTERED OR QUALIFIED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAWS OR UNLESS SUCH REGISTRATION, QUALIFICATION OR OTHER SUCH ACTIONS ARE NOT REQUIRED UNDER ANY SUCH LAWS.

FOR VALUE RECEIVED, SUNBEAM CORPORATION, a Delaware corporation (the "Company"), hereby certifies that Coleman (Parent) Holdings Inc., its successor or permit-tee assigns (the "Holder"), is entitled, subject to the provisions of this Warrant, to purchase from the Company, at the times specified herein, a number of the fully paid and non-assessable shares of Common Stock of the Company, par value \$.01 per share (the "Common Stock"), equal to the Warrant Share Amount (as hereinafter defined) at a purchase price per share equal to the Exercise Price (as hereinafter defined).

SECTION 1. DEFINITIONS. (a) The following terms, as used herein, have the following meanings:

"Affiliate" shall have the meaning given to such term in Rule 12b-2 promulgated under the Securities and Exchange Act of 1934, as amended.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized by law to close.

"Certificate of Incorporation" means the Restated Certificate of Incorporation of the Company.

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"Closing Price" on any day means (1) if the shares of Common Stock then are listed and traded on the New York Stock Exchange, Inc. ("NYSE"), the Closing Price on such day as reported on the NYSE Composite Transactions Tape; (2) if shares of Common Stock then are not listed and traded on the NYSE, the Closing Price on such day as reported by the principal national securities exchange on which the shares of Common Stock are listed and traded; (3) if the shares of Common Stock then are not listed and traded on any such securities exchange, the last reported sale price on such day on the National Market of The National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ"); or (4) if the shares of Common Stock then are not traded on the NASDAQ National Market, the average of the highest reported bid and the lowest reported asked price on such day as reported by NASDAQ.

"Common Share Equivalent" means, with respect to any security of the Company and as of a given date, a number which is, (i) in the case of a share of Common Stock, one, (ii) in the case of all or a portion of any right, warrant or other security which may be exercised for a share or shares of Common Stock, the number of shares of Common Stock receivable upon exercise of such security (or such portion of such security), and (iii) in the case of any security convertible or exchangeable into a share or shares of Common Stock, the number of shares of Common Stock that would be received if such security were converted or exchanged on such date.

"Common Stock" shall have the meaning set forth in the first paragraph hereof.

"Company" shall have the meaning set forth in the first paragraph hereof.

"Convertible Securities" shall have the meaning set forth in Section 7(d).

"Determination Date" shall have the meaning set forth in Section 7(f).

"Exercise Price" means a price per Warrant Share equal to \$7.00.

"Expiration Date" means 5:00 p.m. New York City time on August __, 2003 [the fifth anniversary of the date of this Warrant].

"Fair Market Value" as at any date of determination means, as to shares of the Common Stock, if the Common Stock is publicly traded at such time, the average of the daily Closing Prices of a share of Common Stock for the ten (10) consecutive trading days ending on the most recent trading day prior to the date of determination. If the shares of Common Stock are not publicly traded at such time, and as to all things other than the Common Stock, Fair Market Value shall be determined in good faith by an independent nationally recognized investment banking firm selected by the Company and acceptable to a majority of the Holders and which shall have no other substantial relationship with the Company.

"Holder" shall have the meaning set forth in the first paragraph hereof.

"Options" shall have the meaning set forth in Section 7(d).

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"Person" means an individual, partnership, corporation, limited liability company, trust, joint stock company, association, joint venture, or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Securities Act" means the Securities Act of 1933, as amended.

"Subsidiary" means, with respect to any Person, any corporation or other entity of which a majority of the capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

"Warrant Share Amount" means 23,000,000 (Twenty Three Million) shares of Common Stock as such number may be adjusted pursuant to Sections 7 and 8.

"Warrant Shares" means the shares of Common Stock deliverable upon exercise of this Warrant, as adjusted from time to time.

SECTION 2. EXERCISE OF WARRANT. (a) The Holder is entitled to exercise this Warrant in whole or in part at any time, or from time to time, until the Expiration Date or, if such day is not a Business Day, then on the next succeeding day that shall be a Business Day. To exercise this Warrant, the Holder shall deliver to the Company this Warrant, including the Warrant Exercise Subscription Form forming a part hereof duly executed by the Holder, together with payment of the applicable Exercise Price. Upon such delivery and payment, the Holder shall be deemed to be the holder of record of the number of Warrant Shares equal to the Warrant Share Amount (or, in the case of a partial exercise of this Warrant, a ratable number of such shares), notwithstanding that the stock transfer books of the Company shall then be closed or that certificates representing such shares shall not then be actually delivered to the Holder.

(b) At the option of the Holder, the Exercise Price may be paid in cash (including by wire transfer of immediately available funds) or by certified or official bank check or bank cashier's check payable to the order of the Company or by any combination of such cash or check. At the option of the Holder, the Exercise Price may in the alternative be paid in whole or in part by reducing the number of shares of Common Stock issuable to the Holder by a number of shares of Common Stock that have a Fair Market Value equal to the Exercise Price which otherwise would have been paid (so that the net number of shares of Common Stock issued in respect of such exercise shall equal the number of shares of Common Stock that would have been issuable had the Exercise Price been paid entirely in cash, less a number of shares of Common Stock with a Fair Market Value equal to the portion of the Exercise Price paid in kind); provided that this option shall be available only with respect to the exercise of this Warrant with respect to not more than one-half of the total number of Warrant Shares. The Company shall pay any and all documentary, or similar issue or transfer taxes payable in respect of the issue or delivery of the Warrant Shares. The Company shall not, however, be required to pay any transfer tax which may be payable in respect of any transfer involved in the issue or delivery of Warrants or Warrant Shares (or other securities or assets) in a name other than that in which the Warrants so exercised were registered, and no such issue or delivery shall be made unless and until the person requesting such

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issue has paid to the Company the amount of such transfer tax or has established, to the satisfaction of the Company, that such transfer tax has been paid.

(c) If the Holder exercises this Warrant in part, this Warrant shall be surrendered by the Holder to the Company and a new Warrant of the same tenor and for the unexercised number of Warrant Shares shall be executed by the Company. The Company shall register the new Warrant in the name of the Holder or in such name or names of its transferee pursuant to Section 6 as may be directed in writing by the Holder and deliver the new Warrant to the Person or Persons entitled to receive the same.

(d) Upon surrender of this Warrant in conformity with the foregoing provisions, the Company shall, subject to the expiration of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act, transfer to the Holder of this Warrant appropriate evidence of ownership of the shares of Common Stock or other securities or property (including any money) to which the Holder is entitled, registered or otherwise placed in, or payable to the order of, the name or names of the Holder or such transferee as may be directed in writing by the Holder, and shall deliver such evidence of ownership and any other securities or property (including any money) to the Person or Persons entitled to receive the same, together with an amount in cash in lieu of any fraction of a share as provided in Section 5, subject to any required withholding.

SECTION 3. RESTRICTIVE LEGEND. Each certificate representing shares of Common Stock issued pursuant to this Warrant, unless at the time of exercise such shares are registered under the Securities Act, shall bear a legend substantially in the form of the legend set forth on the first page of this Warrant.

SECTION 4. RESERVATION OF SHARES. The Company hereby agrees that at all times there shall be reserved for issuance and delivery upon exercise of this Warrant such number of its authorized but unissued shares of Common Stock or other securities of the Company from time to time issuable upon exercise of this Warrant as will be sufficient to permit the exercise in full of this Warrant. The Company hereby represents and agrees that all such shares shall be duly authorized and, when issued upon such exercise, shall be validly issued, fully paid and non-assessable, free and clear of all liens, security interests, charges and other encumbrances or restrictions on sale and free and clear of all preemptive or similar rights, except to the extent imposed by or as a result of the status, act or omission of, the Holder.

SECTION 5. FRACTIONAL SHARES. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant and in lieu of delivery of any such fractional share upon any exercise hereof, the Company shall pay to the Holder an amount in cash equal to such fraction multiplied by the Fair Market Value thereof; provided, however, that, in the event that the Company combines or reclassifies the outstanding shares of its Common Stock into a smaller number of shares, it shall be required to issue fractional shares to the Holder if the Holder exercises all or any part of its Warrants, unless the Holder has consented in writing to such reduction and provided the Company with a written waiver of its right to receive fractional shares in accordance with this Section 5.

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SECTION 6. TRANSFER, EXCHANGE OR ASSIGNMENT OF WARRANT. (a) Each taker and holder of this Warrant by taking or holding the same, consents and agrees that the registered holder hereof may be treated by the Company and all other persons dealing with this Warrant as the absolute owner hereof for any purpose and as the person entitled to exercise the rights represented hereby.

(b) Subject to the requirements of state and federal securities laws, the Holder of this Warrant shall be entitled, without obtaining the consent of the Company to assign and transfer this Warrant, at any time in whole or from time to time in part, to any Person or Persons. Subject to the preceding sentence, upon surrender of this Warrant to the Company, together with the attached Warrant Assignment Form duly executed, the Company shall, without charge, execute and deliver a new Warrant in the name of the assignee or assignees named in such instrument of assignment and, if the Holder's entire interest is not being assigned, in the name of the Holder and this Warrant shall promptly be canceled.

(c) Upon receipt by the Company of evidence satisfactory to it (in the exercise of its reasonable discretion) of the loss, theft, destruction or mutilation of this Warrant, and (in the case of loss, theft or destruction) of indemnification or security reasonably required by the Company, and upon surrender and cancellation of this Warrant, if mutilated, the Company shall execute and deliver a new Warrant of like tenor and date.

(d) The Company shall pay all expenses, taxes (other than transfer taxes) and other charges payable in connection with the preparation, issuance and delivery of Warrants hereunder.

SECTION 7. ANTI-DILUTION PROVISIONS. So long as any Warrants are outstanding, the Warrant Share Amount shall be subject to change or adjustment as follows:

(a) *Common Stock Dividends, Subdivisions, Combinations.* In case the Company shall (i) pay or make a dividend or other distribution to all holders of its Common Stock in shares of Common Stock, (ii) subdivide or split the outstanding shares of its Common Stock into a larger number of shares, or (iii) combine the outstanding shares of its Common Stock into a smaller number of shares (which shall not in any event be done without the express written approval of Holders of a majority of the outstanding Warrants), then in each such case the Warrant Share Amount shall be adjusted to equal the number of such shares to which the holder of this Warrant would have been entitled upon the occurrence of such event had this Warrant been exercised immediately prior to the happening of such event or, in the case of a stock dividend or other distribution, prior to the record date for determination of shareholders entitled thereto. An adjustment made pursuant to this Section 7(a) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(b) *Reorganization or Reclassification.* In case of any capital reorganization or any reclassification of the capital stock of the Company (whether pursuant to a merger or consolidation or otherwise), or in the event of any similar transaction, this Warrant shall thereafter be exercisable for the number of shares of stock or other securities or property receivable upon such capital reorganization or reclassification of capital stock or other transaction, as the case may be, by a holder of the number of shares of Common Stock into which this Warrant was exercisable im-

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mediately prior to such capital reorganization or reclassification of capital stock; and, in any case appropriate adjustment (as determined in good faith by the Board of Directors of the Company) shall be made for the application of the provisions herein set forth with respect to the rights and interests thereafter of the Holder of this Warrant to the end that the provisions set forth herein shall thereafter be applicable, as nearly as reasonably practicable, in relation to any shares of stock or other securities or property thereafter deliverable upon the exercise of this Warrant. An adjustment made pursuant to this Section 7(b) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(c) *Distributions of Assets or Securities Other than Common Stock.* In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of its capital stock (other than Common Stock), or other debt or equity securities or evidences of indebtedness of the Company, or options, rights or warrants to purchase any of such securities, cash or other assets, then in each such case the Warrant Share Amount shall be adjusted by multiplying the Warrant Share Amount immediately prior to the date of such dividend or distribution by a fraction, of which the numerator shall be the Fair Market Value per share of Common Stock at the record date for determining shareholders entitled to such dividend or distribution, and of which the denominator shall be such Fair Market Value per share less the Fair Market Value of the portion of the securities, cash, other assets or evidences of indebtedness so distributed applicable to one share of Common Stock. An adjustment made pursuant to this Section 7(c) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(d) *Below Market Issuances of Common Stock and Convertible Securities.* In case the Company shall issue Common Stock (or options, rights or warrants to purchase shares of Common Stock (collectively, "Options") or other securities convertible into or exchangeable or exercisable for shares of Common Stock (such other securities, collectively, "Convertible Securities")) at a price per share (or having an effective exercise, exchange or conversion price per share together with the purchase price thereof) less than the Fair Market Value per share of Common Stock on the date such Common Stock (or Options or Convertible Securities), is sold or issued (provided that no sale of securities pursuant to an underwritten public offering shall be deemed to be for less than Fair Market Value), then in each such case the Warrant Share Amount shall thereafter be adjusted by multiplying the Warrant Share Amount immediately prior to the date of issuance of such Common Stock (or Options or Convertible Securities) by a fraction, the numerator of which shall be (x) the sum of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (ii) the number of additional Common Share Equivalents represented by all securities so issued multiplied by (y) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance, and the denominator of which shall be (x) the product of (A) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance and (B) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance plus (y) the aggregate consideration received by the Company for the total number of securities so issued plus, (z) in the case of Options or Convertible Securities, the additional consideration required to be received by the Company upon the exercise, exchange or conversion of such securities; provided that no adjustment shall be required in respect of issuances of Common Stock (or

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options to purchase Common Stock) pursuant to stock option or other employee benefit plans in effect on the date hereof, or approved by the Board of Directors of the Company after the date hereof. Notwithstanding anything herein to the contrary, (1) no further adjustment to the Warrant Share Amount shall be made upon the issuance or sale of Common Stock pursuant to (x) the exercise of any Options or (y) the conversion or exchange of any Convertible Securities, if in each case the adjustment in the Warrant Share Amount was made as required hereby upon the issuance or sale of such Options or Convertible Securities or no adjustment was required hereby at the time such Option or Convertible Security was issued, and (2) no adjustment to the Warrant Share Amount shall be made upon the issuance or sale of Common Stock upon the exercise of any Options existing on the original issue date hereof, without regard to the exercise price thereof. Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the issuance or sale of Common Stock, Options, or Convertible Securities in a *bona fide* arm's-length transaction to any Person or group that, at the time of such issuance or sale, is not an Affiliate of the Company (including any possible issuance of Common Stock, Options, or Convertible Securities to the public stockholders of The Coleman Company, Inc. ("Coleman") in connection with the acquisition of their shares of Coleman common stock pursuant to the Agreement and Plan of Merger, dated as of February 27, 1998 (the "Coleman Merger Agreement"), by and among Sunbeam, Camper Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Sunbeam, and Coleman, or otherwise). An adjustment made pursuant to this Section 7(d) shall become effective immediately after such Common Stock, Options or Convertible Securities are sold.

(e) *Below Market Distributions or Issuances of Preferred Stock or Other Securities.* In case the Company shall issue non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of the Company (other than Common Stock or Options or Convertible Securities) or options, rights or warrants to purchase any of such securities) at a price per share (or other similar unit) less than the Fair Market Value per share (or other similar unit) of such preferred stock (or other security) on the date such preferred stock (or other security) is sold (provided that no sale of preferred stock or other security pursuant to an underwritten public offering shall be deemed to be for less than its fair market value), then in each such case the Warrant Share Amount shall thereafter be adjusted by multiplying the Warrant Share Amount immediately prior to the date of issuance of such preferred stock (or other security) by a fraction, the numerator of which shall be the product of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (ii) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (B) the Fair Market Value of a share of the Common Stock immediately prior to the date of such issuance minus (y) the difference between (1) the aggregate Fair Market Value of such preferred stock (or other security) and (2) the aggregate consideration received by the Company for such preferred stock (or other security). Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the issuance or sale of preferred stock (or other securities of the Company other than common Stock or Options or Convertible Securities) in a *bona fide* arm's-length transaction to any Person or group that, at the time of such issuance or sale, is not an Affiliate of the Company (including any possible issuance

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of preferred stock (or other securities of the Company other than common Stock or Options or Convertible Securities) to the public stockholders of Coleman in connection with the acquisition of their shares of Coleman common stock pursuant to the Coleman Merger Agreement, or otherwise). An adjustment made pursuant to this Section 7(e) shall become effective immediately after such preferred stock (or other security) is sold.

(f) *Above Market Repurchases of Common Stock.* If at any time or from time to time the Company or any Subsidiary thereof shall repurchase, by self-tender offer or otherwise, any shares of Common Stock of the Company (or any Options or Convertible Securities) at a purchase price in excess of the Fair Market Value thereof, on the Business Day immediately prior to the earliest of (i) the date of such repurchase, (ii) the commencement of an offer to repurchase, or (iii) the public announcement of either (such date being referred to as the "Determination Date"), the Warrant Share Amount shall be determined by multiplying the Warrant Share Amount immediately prior to such Determination Date by a fraction, the numerator of which shall be the product of (1) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date minus the number of Common Share Equivalents represented by the securities repurchased or to be purchased by the Company or any Subsidiary thereof in such repurchase and (2) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to the Determination Date and (B) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date minus (y) the sum of (1) the aggregate consideration paid by the Company in connection with such repurchase and (2) in the case of Options or Convertible Securities, the additional consideration required to be received by the Company upon the exercise, exchange or conversion of such securities. Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the repurchase, by self-tender offer or otherwise, of Common Stock (or any Options or Convertible Security) in a *bona fide* arm's-length transaction from any Person or group that, at the time of such repurchase, is not an Affiliate of the Company.

(g) *Above Market Repurchases of Preferred Stock or Other Securities.* If at any time or from time to time the Company or any Subsidiary thereof shall repurchase, by self-tender offer or otherwise, any shares of non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of the Company (other than Common Stock or Options or Convertible Securities) or options, rights or warrants to purchase any of such securities), at a purchase price in excess of the Fair Market Value thereof, on the Business Day immediately prior to the Determination Date, the Warrant Share Amount shall be determined by multiplying the Warrant Share Amount immediately prior to the Determination Date by a fraction, the numerator of which shall be the product of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date and (ii) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date and (B) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date minus (y) the difference between (1) the aggregate consideration paid by the

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Company in connection with such repurchase and (2) the aggregate Fair Market Value of such preferred stock (or other security). Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the repurchase, by self-tender offer or otherwise, of non-convertible and non-exchangeable preferred stock (or other securities of the Company other than Common Stock or Options or Convertible Securities) in a bona fide arm's-length transaction from any Person or group that, at the time of such repurchase, is not an Affiliate of the Company.

(h) *Readjustment of Warrant Share Amount.* If (i) the purchase price provided for in any Option or the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities or the rate at which any Convertible Securities, in each case as referred to in paragraphs (b) and (f) above, are convertible into or exchangeable for Common Stock shall change at any time (other than under or by reason of provisions designed to protect against dilution upon an event which results in a related adjustment pursuant to this Section 7), or (ii) any of such Options or Convertible Securities shall have irrevocably terminated, lapsed or expired, the Warrant Share Amount then in effect shall forthwith be readjusted (effective only with respect to an exercise of this Warrant after such readjustment) to the Warrant Share Amount which would then be in effect had the adjustment made upon the issuance, sale, distribution or grant of such Options or Convertible Securities been made based upon such changed purchase price, additional consideration or conversion rate, as the case may be (in the case of any event referred to in clause (i) of this paragraph (h)) or had such adjustment not been made (in the case of any event referred to in clause (ii) of this paragraph (h)).

(i) *Exercise Price Adjustment.* Upon each adjustment of the Warrant Share Amount pursuant to this Section 7, the Exercise Price of each Warrant outstanding immediately prior to such adjustment shall thereafter be equal to an adjusted Exercise Price per Share determined (to the nearest cent) by multiplying the Exercise Price for the Warrant immediately prior to such adjustment by a fraction, the numerator of which shall be the Warrant Share Amount in effect immediately prior to such adjustment and the denominator of which shall be the Warrant Share Amount in effect immediately after such adjustment.

(j) *Consideration.* If any shares of Common Stock, Options or Convertible Securities shall be issued, sold or distributed for cash, the consideration received in respect thereof shall be deemed to be the amount received by the Company therefor, before deduction therefrom of any reasonable, customary and adequately documented expenses incurred in connection therewith. If any shares of Common Stock, Options or Convertible Securities shall be issued, sold or distributed for a consideration other than cash, the amount of the consideration other than cash received by the Company shall be deemed to be the Fair Market Value of such consideration, before deduction of any reasonable, customary and adequately documented expenses incurred in connection therewith. If any shares of Common Stock, Options or Convertible Securities shall be issued in connection with any merger in which the Company is the surviving corporation, the amount of consideration therefor shall be deemed to be the Fair Market Value of such portion of the assets and business of the non-surviving corporation as shall be attributable to such Common Stock, Options or Convertible Securities, as the case may be. If any Options shall be issued in connection with the issuance and sale of other securities of the Company, together comprising one inte-

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gral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued without consideration.

(k) *No Impairment.* The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Section 7 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the Holder against impairment. Without limiting the generality of the foregoing, the Company will not increase the par value of any shares of Common Stock receivable on the exercise of the Warrants above the amount payable therefor on such exercise.

(l) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of the Warrant Share Amount pursuant to this Section 7, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to the Holder a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request at any time of the Holder, furnish or cause to be furnished to Holder a like certificate setting forth (1) such adjustments and readjustments and (2) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the exercise of this Warrant.

(m) *Proceedings Prior to Any Action Requiring Adjustment.* As a condition precedent to the taking of any action which would require an adjustment pursuant to this Section 7, the Company shall take any action which may be necessary, including obtaining regulatory approvals or exemptions, in order that the Company may thereafter validly and legally issue as fully paid and non-assessable all shares of Common Stock which the Holders are entitled to receive upon exercise thereof.

(n) *Notice of Adjustment.* Upon the record date or effective date, as the case may be, of any action which requires or might require an adjustment or readjustment pursuant to this Section 7, the Company shall forthwith file in the custody of its Secretary or an Assistant Secretary at its principal executive office and with its stock transfer agent or its warrant agent, if any, an officers' certificate showing the adjusted number of Warrant Shares determined as herein provided, setting forth in reasonable detail the facts requiring such adjustment and the manner of computing such adjustment. Each such officers' certificate shall be signed by the chairman, president or chief financial officer of the Company and by the secretary or any assistant secretary of the Company. Each such officers' certificate shall be made available at all reasonable times for inspection by the Holder or any Holder of a Warrant executed and delivered pursuant to Section 6(b) and the Company shall, forthwith after each such adjustment, mail a copy, by first-class mail, of such certificate to the Holder or any such holder.

(o) *Payments in Lieu of Adjustment.* The Holder shall, at its option, be entitled to receive, in lieu of the adjustment pursuant to Section 7(c) otherwise required thereof, on (but not

price) the date of exercise of the Warrants, the evidences of indebtedness, other securities, cash, property or other assets which such Holder would have been entitled to receive if it had exercised its Warrants for shares of Common Stock immediately prior to the record date with respect to such distribution. The Holder may exercise its option under this Section 7(o) by delivering to the Company a written notice of such exercise simultaneously with its notice of exercise of this Warrant.

SECTION 8. CONSOLIDATION, MERGER OR SALE OF ASSETS. In case of any consolidation of the Company with, or merger of the Company into, any other Person, any merger of another Person into the Company (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock) or any sale or transfer of all or substantially all of the assets of the Company to the Person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, the Holder shall have the right thereafter to exercise this Warrant for the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer by a holder of the number of shares of Common Stock for which this Warrant may have been exercised immediately prior to such consolidation, merger, sale or transfer. Adjustments for events subsequent to the effective date of such a consolidation, merger, sale or transfer of assets shall be as nearly equivalent as may be practicable to the adjustments provided for in this Warrant. In any such event, effective provisions shall be made in the certificate or articles of incorporation of the resulting or surviving corporation, in any contract of sale, merger, conveyance, lease, transfer or otherwise so that the provisions set forth herein for the protection of the rights of the Holder shall thereafter continue to be applicable; and any such resulting or surviving corporation shall expressly assume the obligation to deliver, upon exercise, such shares of stock, other securities, cash and property. The provisions of this Section 8 shall similarly apply to successive consolidations, mergers, sales, leases or transfers.

SECTION 9. WARRANT AGENT. At the written request of the Holders of a majority of the outstanding Warrants, the Company shall as soon as is reasonably practicable:

- (i) appoint a warrant agent to act as agent for the Company in connection with the issuance, transfer and exchange of the Warrants and shall enter into an agreement with such warrant agent reflecting the terms and conditions of such appointment, which terms and conditions shall be customary for such appointments, and such other matters as are customarily included in such agreements so as to facilitate the transfer and registration of the Warrants; and
- (ii) use its reasonable best efforts to cause the Warrants to be eligible to be publicly traded, including, without limitation, amending this Warrant to provide terms and conditions necessary and appropriate for the Warrants to be publicly traded.

SECTION 10. NOTICES. Any notice, demand or delivery authorized by this Warrant shall be in writing and shall be given to the Holder or to the Company, as the case may be, at its address (or facsimile number) set forth below, or such other address (or facsimile number) as shall have been furnished to the party giving or making such notice, demand or delivery:

If to the Company: Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445
Attention: Corporate Secretary
Facsimile: (561) 243-2191

with copies to: Skadden, Arps, Slate, Meagher & Flom LLP
919 Third Avenue
New York, New York 10022
Attention: Blaine V. Fogg, Esq.
Facsimile: (212) 735-3597

and to: Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Stephen E. Jacobs, Esq.
Facsimile: (212) 310-8007

If to the Holder: Coleman (Parent) Holdings Inc.
c/o MacAndrews & Forbes Holdings Inc.
35 East 62nd Street
New York, New York 10021
Attention: Barry F. Schwartz, Esq.
Facsimile: (212) 572-5056

with copies to: Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Adam O. Emmerich, Esq.
Facsimile: (212) 403-2000

Each such notice, demand or delivery shall be effective (i) if given by telecopy, when such telecopy is transmitted to the telecopy number specified herein and the intended recipient confirms the receipt of such telecopy, or (ii) if given by any other means, when received at the address specified herein.

SECTION 11. RIGHTS OF THE HOLDER. Prior to the exercise of any Warrant, the Holder shall not, by virtue hereof, be entitled to any rights of a shareholder of the Company, including, without limitation, the right to vote, to receive dividends or other distributions, to exercise any preemptive right or to receive any notice of meetings of shareholders or any notice of any proceedings of the Company except as may be specifically provided for herein.

SECTION 12. GOVERNING LAW. THIS WARRANT AND ALL RIGHTS ARISING HEREUNDER SHALL BE CONSTRUED AND DETERMINED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE,

AND THE PERFORMANCE THEREOF SHALL BE GOVERNED AND ENFORCED IN ACCORDANCE WITH SUCH LAWS.

SECTION 13. AMENDMENTS; WAIVERS. Any provision of this Warrant may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the Holder and the Company, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 14. Interpretation. When a reference is made in this Warrant to a Section such reference shall be to a Section of this Warrant unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Warrant, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Warrant shall refer to this Warrant as a whole and not to any particular provision of this Warrant. The definitions contained in this Warrant are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

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IN WITNESS WHEREOF, the Company has duly caused this Warrant to be signed by its duly authorized officer and to be dated as of the date first above written.

SUNBEAM CORPORATION

By: _____
Name:
Title:

Attest:

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED:

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name:
Title:

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WARRANT EXERCISE SUBSCRIPTION FORM

(To be executed only upon exercise of the Warrant
after delivery of the Warrant Exercise Notice)

To: Sunbeam Corporation

The undersigned irrevocably exercises the Warrant for the purchase of _____ shares (the "Shares") of Common Stock, par value \$.01 per share, of Sunbeam Corporation (the "Company") ("Common Stock") at an exercise price of \$_____ per Share and herewith makes payment of \$_____ (such payment being made in cash or by certified or official bank or bank cashier's check payable to the order of the Company or by any permitted combination of such cash or check or by the reduction of the number of shares of Common Stock that otherwise would be issued upon this exercise by the number of shares of Common Stock that have a value equal to such exercise price), all on the terms and conditions specified in this Warrant, surrenders this Warrant and all right, title and interest therein to the Company and directs that the Shares deliverable upon the exercise of this Warrant be registered or placed in the name and at the address specified below and delivered thereto.

Date: _____

(Name - Please Print)

(Signature of Owner)

(Street Address)

(City) (State) (Zip Code)

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Securities and/or check to be issued to:

Please insert social security or identifying number:

Name:

Street Address:

City, State and Zip Code:

Any unexercised portion of the Warrant evidenced by the
within Warrant to be issued to:

Please insert social security or identifying number:

Name:

Street Address:

City, State and Zip Code:

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-16-

CONFIDENTIAL
SUBJECT TO
PROTECTIVE ORDER

WARRANT ASSIGNMENT FORM

Dated _____

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers unto
_____ (the "Assignee"),
(please type or print in block letters)

_____ *(insert address)*
its right to purchase up to _____ shares of Common Stock represented by this Warrant and does
hereby irrevocably constitute and appoint _____ Attorney, to transfer
the same on the books of the Company, with full power of substitution in the premises.

Signature: _____

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CONFIDENTIAL
SUBJECT TO
PROTECTIVE ORDER

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Exhibit 13

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JENNER & BLOCK

January 29, 2004

By Telecopy

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Washington, DC

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Kathryn:

I write in response to your January 23, 2004 letter regarding CPH's production of documents relating to the settlement agreement between CPH and Sunbeam (Request No. 39 of Morgan Stanley's First Request for Production), and documents relating to the warrants received from Sunbeam pursuant to that settlement (Request No. 2 of Morgan Stanley's Third Request for Production).

We are puzzled by your claim that "no documents have been produced that relate to the negotiations of the Sunbeam Settlement Agreement." CPH has produced numerous documents relating to those negotiations, the warrants, and the ultimate settlement. *See, e.g.*, CPH 1409305-1409344, CPH 1394092-1394107, CPH 1410558-1410566, CPH 1410567-1410599, and CPH 1409401-1409427. In addition, CPH's privilege log identifies several responsive documents that are privileged. *See, e.g.*, Privileged Documents 113, 241, 265, 268, 335, and 341.

It is our understanding that we have produced non-privileged documents that are responsive to Request Nos. 39 and 2. That said, however, we will continue to search for responsive documents, and will produce any additional, non-privileged responsive documents that we locate.

Very truly yours,


Michael T. Brody

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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Exhibit 14

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Exhibit 15

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RONALD O. PERELMAN, NOVEMBER 17, 2004

1 IN THE FIFTEENTH JUDICIAL CIRCUIT
2 IN AND FOR PALM BEACH COUNTY,
3 FLORIDA

4 -----x
5 COLEMAN (PARENT) HOLDINGS, INC.,

ORIGINAL

6 Plaintiff,

7 vs. Case No. CA 03-5045 AI

8 MORGAN STANLEY & CO., INC.,

9 Defendants.
10 -----x

11 RONALD O. PERELMAN

12 New York, New York

13 Wednesday, November 17, 2004
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22

23 Reported by: Steven Neil Cohen, RPR

24 Job No. 167561
25

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APPEARANCES

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BY: KATHRYN DeBORD, ESQ.

BARRY F. SCHWARTZ
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Attorney for MacAndrews &
Forbes Holdings Inc.

ALSO PRESENT: Steven Fasman, Esq.
Heather Zamora-Hagg,
Videographer

037373

RONALD O. PERELMAN, NOVEMBER 18, 2004

1 IN THE FIFTEENTH JUDICIAL CIRCUIT
2 IN AND FOR PALM BEACH COUNTY,
3 FLORIDA

4 -----x
5 COLEMAN (PARENT) HOLDINGS, INC.,

ORIGINAL

6 Plaintiff,

7 vs. Case No. CA 03-5045 AI

8 MORGAN STANLEY & CO., INC.,

9 Defendants.
10 -----x

11 RONALD O. PERELMAN

12 New York, New York

13 Thursday, November 18, 2004
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22

23 Reported by: Steven Neil Cohen, RPR

24 Job No. 167564
25

037374

RONALD O. PERELMAN, NOVEMBER 18, 2004

1 record them as income on your income
2 statement for the year 1998?

3 A. I don't know how they were
4 carried. I didn't value them.

5 Q. I am sorry.

6 A. I didn't value them.

7 Q. You didn't value them?

8 A. No.

9 Q. Did someone at MacAndrews &
10 Forbes, or, as the case may be, Coleman
11 (Parent) Holdings value them for purposes
12 of their financial statement?

13 A. I don't believe so.

14 Q. Did you ever see any valuation of
15 the warrants?

16 A. I don't believe so.

17 Q. Did you assign, you, yourself,
18 did you approve the settlement?

19 A. Yes.

20 Q. Did you attempt to value the
21 warrants or the settlement as a whole at
22 the time you entered into the settlement
23 with Sunbeam?

24 A. Yes.

25 Q. What did you value the warrants

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1 at?

2 A. Close to zero.

3 Q. You settled MacAndrews & Forbes,
4 or, as the case may be, Coleman (Parent)
5 Holdings' claims against Sunbeam for next
6 to zero?

7 A. Yes. There was nothing to get.

8 Q. Did you ever see any reports from
9 consulting firms valuing the warrants?

10 A. I don't believe so.

11 Q. Did you ever see any valuations
12 by accounting firms?

13 A. I don't believe so. ...

14 Q. Did you ever take a position in
15 litigation as to the value of the warrants?

16 A. Not that I am aware of.

17 Q. Did MacAndrews & Forbes or
18 Coleman (Parent) Holdings or any of its
19 affiliates?

20 A. Not that I am aware of.

21 Q. Are you aware there was
22 litigation filed over the issuance of the
23 warrants to MacAndrews & Forbes or its
24 affiliates?

25 A. No.

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Exhibit 16

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Exhibit 17

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JENNER & BLOCK

March 2, 2005

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Michael T. Brody
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mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Tom:

I write in response to your March 2, 2005 letter concerning tomorrow's Rule 1.310 deposition.

1. Mr. Slotkin will be CPH's corporate representative. Subject to the objections set forth in CPH's objections and the guidance provided by the Court on March 1, 2005, Mr. Slotkin will address the topics identified in the Amended Notice of Deposition.
2. We have confirmed that CPH did not create valuations of the Sunbeam stock for tax purposes.
3. We believe the deposition can be completed on Thursday; but we will take under advisement your request to have the witness available on Friday.

Very truly yours,



Michael T. Brody

MTB:cjg

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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Exhibit 18

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JENNER & BLOCK

February 28, 2005

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By Messenger

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Michael T. Brody
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Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Larry:

I write to respond to your February 24, 2005 letter concerning the Sunbeam warrants. We strongly dispute the characterization set forth in your letter. In response to your specific questions:

1. CPH did not review documents bearing Bates numbers CPH 2012110-11 and CPH 2012130-31 until February 17, 2005, after the Court granted Morgan Stanley's motion to compel. CPH had begun to collect other documents, such as those that bear the date-stamp of 2/9/05, earlier.
2. Florida has specific rules that govern the obligation to produce documents and supplement discovery requests. So long as a discovery response was complete when made, there is no obligation to supplement a discovery response. Rule 1.280(e). This question has nothing to do with the date on which discovery closes.
3. Aside from this instance, which CPH already has acknowledged, CPH is not aware that any of its discovery responses were not complete when made.
4. The last sentence of your letter is not consistent with the Court's ruling with respect to redactions. The Court ruled that CPH was not entitled to redact irrelevant portions of documents that otherwise were responsive to proper discovery requests. The Court did not revisit any of its prior relevancy rulings. Thus, apart from producing unredacted versions of documents that the

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Lawrence P. Bemis, Esq.
February 28, 2005
Page 2

JENNER & BLOCK

Court ordered CPH to produce, there is no obligation for CPH now to produce documents, information, and testimony that address matters the Court previously deemed irrelevant.

Very truly yours,

Michael T. Brody

Michael T. Brody

MTB:ty

cc: Thomas A. Clare, Esq. (by telecopy)
Joseph Ianno, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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Exhibit 19

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JENNER & BLOCK

February 28, 2005

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By Messenger

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 West Palm Beach, FL 33401

Michael T. Brody
 Tel 312 923-2711
 Fax 312 840-7711
 mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*

Dear Larry:

I write in response to your February 24, 2005 letter concerning CPH's production of documents in response to the Court's February 17, 2005 Order.

1. You request that CPH produce electronic copies of documents produced in response to the Court's February 17, 2005 Order. We will follow the direction provided by the Court this morning and produce a hard copy displaying the formulas.
2. You requested the documents underlying the \$450 million potential realizable value of CPH's Sunbeam investment. CPH does not have any additional responsive documents concerning the \$450 million potential realizable value of CPH's Sunbeam investment.
3. You seek documents concerning MAFCO's and CPH's deferred tax liability, book value, and goodwill. CPH's deferred tax liability is not relevant, as the Court previously has determined. To the extent that tax information is contained in documents responsive to the Court's February 17, 2005 Order, CPH has produced it. CPH, however, will not produce other documents concerning tax issues. Book value and goodwill calculations are reflected in the documents previously produced.
4. You asked whether all documents associated with certain accounts have been produced. CPH has produced all responsive documents associated with those accounts.
5. You request documents reflecting CPH's tax basis in Sunbeam. To the extent that information is contained in documents responsive to the Court's February 17, 2005 Order, CPH has produced it. However, CPH will not produce additional otherwise non-responsive documents on tax issues because the Court previously has ruled that CPH's profit or loss is not relevant.

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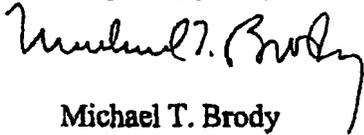
Lawrence P. Bemis, Esq.
February 28, 2005
Page 2

JENNER & BLOCK

6. You have requested that we provide you with the dates of the general ledger entries. We have extracted that information from the accounting system and produce it with this letter.

7. You asked for the "original valuation as of issuance date" for the warrants. That notation refers to Sunbeam's valuation of the warrants, which was disclosed publicly in Sunbeam's financial statements.

Very truly yours,



Michael T. Brody

MTB:ty

cc: Thomas A. Clare, Esq. (by telecopy)
Joseph Ianno, Esq. (by telecopy)
Mark C. Hansen, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

**MORGAN STANLEY'S SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF MOTION FOR AN ADVERSE INFERENCE INSTRUCTION**

Plaintiff Coleman (Parent) Holdings Inc. seeks to hold Morgan Stanley to an adverse inference instruction because of discovery *delays*, even though Coleman (Parent) Holdings and its affiliates (collectively "CPH") repeatedly and flagrantly breached their own duties by *destroying* e-mails and electronic documents relating to the Sunbeam transaction. Because CPH's own privilege log shows that it recognized the likelihood of Sunbeam litigation starting in the spring of 1998 -- thereby triggering its obligation to preserve evidence -- and because CPH proceeded to destroy evidence anyway throughout 1998, 1999, and 2000, Morgan Stanley respectfully submits this supplemental memorandum in support of its Motion for an Adverse Inference Instruction.

FACTUAL BACKGROUND

Although Morgan Stanley incorporates the Statement of Facts in its Motion, the following additional facts bear emphasis and further support an adverse inference against CPH:

First, CPH was fully aware of the potential for Sunbeam litigation, starting in 1998:

- On April 14 and 16, 1998, Skadden Arps drafted legal documents for CPH relating to the Sunbeam matter. *CPH's privilege log admits that the April 14 and 16, 1998*

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05 MAR 14 PM 1:14
MORGAN STANLEY & CO. INCORPORATED
Palm Beach County
15th Judicial Circuit

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drafts were prepared "in anticipation of litigation." (July 15, 2004 CPH Privilege Log at Doc. Nos. 458, 460, 533 (Ex. 1).)

- On May 25, 1998, Adam Emmerich of Wachtell, Lipton, Rosen & Katz prepared a legal memorandum for Barry Schwartz and Howard Gittis of CPH, regarding the Sunbeam matter. *CPH's privilege log admits that the May 25 memorandum was prepared in connection with "anticipated litigation."* (*Id.* at Doc. Nos. 413, 415.)
- On June 19, 1998, Mr. Emmerich sent a document relating to the Sunbeam matter to Richard Easton of Skadden Arps. *CPH's privilege log admits that the June 19 document was prepared in light of "anticipated litigation."* (*Id.* at Doc. No. 489.)
- On June 23, 1998, Todd Freed of Skadden Arps sent a draft document relating to the Sunbeam matter to Mr. Emmerich. *CPH's privilege log admits that the June 23 draft was prepared for "anticipated litigation."* (*Id.* at Doc. No. 488.)
- On July 5 and 6, 1998, Wachtell Lipton drafted letters for CPH relating to the Sunbeam matter. *CPH's privilege log admits that the July 5 and 6 drafts relate to "potential claims" in litigation.* (*Id.* at Doc. Nos. 569, 570.)
- On July 20, 1998, Wachtell Lipton prepared a "[d]raft complaint re potential claims arising out of [the] Sunbeam acquisition." (*Id.* at Doc. No. 136.)
- On July 31, 1998, Blaine Fogg of Skadden Arps drafted letters for CPH to the New York Stock Exchange concerning the Sunbeam matter. *CPH's privilege log admits that the July 31 drafts were prepared "in connection with [the] "Sunbeam/Coleman (Parent) settlement" of litigation.* (*Id.* at Doc. No. 532.)
- On August 14, 1998, Skadden Arps drafted letters for review by Mr. Schwartz, Mr. Emmerich, and others. *CPH's privilege log admits that the August 14 drafts were prepared in connection with "pending litigation."* (*Id.* at Doc. No. 550.)

As these and other entries confirm, CPH expressly recognized the likelihood of Sunbeam litigation in the spring of 1998 -- even *before* the June 6, 1998 *Barron's* article detailing accounting and other problems at Sunbeam, and even *before* CPH entered into a settlement with Sunbeam that specifically reserved its right to bring future claims against "any financial advisor to Sunbeam." (Mar. 8, 2005 Morgan Stanley's Motion for an Adverse Inference Instruction at 2-3.)

Second, although CPH was fully aware of the likelihood of Sunbeam litigation, it deliberately and systematically destroyed e-mails in 1998, 1999, and 2000 -- stopping only in

2001, long after the events giving rise to this case. As Steven Fasman, an in-house lawyer whom CPH designated as its corporate representative on document retention issues, admitted during his January 21, 2004 deposition:

- CPH had a policy and practice of destroying e-mails after only 30 days and overwriting e-mail backup tapes after only 60 days (Jan. 21, 2004 Fasman Dep. at 37:5-8; 79:16-18 (Ex. 2)); *see also* (Apr. 21, 1997 Corporate E-Mail Policy at 3 (MS 62) (Ex. 3));
- CPH continued to purge e-mails from its servers from 1998 until 2001 (*id.* at 132:6-8 (“There was a progressive process which did involve in part the purging of old and unneeded e-mails, yes.”));
- CPH failed to preserve any e-mail back-up tapes relating to the Sunbeam acquisition (*id.* at 132:19-21 (“There are no e-mail back-up tapes relating to the Sunbeam acquisition of Coleman.”)); and
- CPH did not begin preserving e-mails and electronic documents until 2001, but “[b]ecause relevant events were in 1998,” “*everything was long gone by then*” except to the extent that an employee might have archived a document by happenstance (*id.* at 156:19-25 (emphasis added)).

Under these circumstances, CPH’s deliberate and systematic destruction of evidence warrants an adverse inference instruction against it that is at least as strong, if not stronger, than the one presently contemplated against Morgan Stanley. At the very least, we respectfully submit that CPH’s spoliation of the evidence warrants lifting the adverse inference against Morgan Stanley and restoring the burden of proof in order to level the playing field.

ARGUMENT

**MORGAN STANLEY IS ENTITLED TO AN
ADVERSE INFERENCE INSTRUCTION**

**I. CPH’s DELIBERATE AND SYSTEMATIC DESTRUCTION OF EVIDENCE
CONSTITUTES SPOILIATION UNDER NEW YORK AND FLORIDA LAW.**

As these additional facts make crystal clear, CPH recognized as early as the spring of 1998 that Sunbeam litigation was likely, but proceeded to destroy e-mails and electronic documents anyway until it became involved in a lawsuit with Arthur Andersen in 2001. It goes

without saying that the evidence which CPH destroyed must have included substantial information relating to the Sunbeam transaction, particularly given that CPH consisted of only fifteen or so individuals -- all of whom worked on the transaction -- and yet it has produced less than 60 pages of e-mails in this complex case, the overwhelming majority of which comes from the files of third parties, *not* CPH. This is not just a question of *delays* in locating and processing tapes; it is about CPH's admitted *destruction* of evidence that neither Morgan Stanley, nor the Court, nor the jury will ever have a chance to consider.

Although this Court is well versed in Florida law authorizing spoliation sanctions for this kind of misconduct, *Exotic Botanicals, Inc. v. EI DuPont de Nemours & Co.*, No. 99-12597 CA 23, 2000 WL 34016277, at *6 (Fla. 11th Jud. Dist. Jan. 21, 2000), it bears emphasis that New York law also compels the same result against CPH as a New York entity. "Under New York law, spoliation sanctions are appropriate where a litigant, intentionally or negligently, disposes of crucial items of evidence ... before the adversary has an opportunity to inspect them." *Standard Fire Ins. Co. v. Federal Pac. Elec. Co.*, 786 N.Y.S.2d 41, 46 (App. 1st Div 2004). New York courts have adopted the "principle that negligent as well as intentional spoliation of a key piece of evidence may warrant dismissal." *Id.* at 45 (citing *Kirkland v. New York City Hous. Auth.*, 666 N.Y.S.2d 609, 611 (App. Div. 1997)); *see also DiDomenico v. C & S Aeromatik Supplies, Inc.*, 682 N.Y.S.2d 452, 459 (App. Div. 1998) ("This sanction has been applied even if the destruction occurred through negligence rather than willfulness..."). As the court observed in *Squitieri v. City of New York*, spoliation sanctions "are not limited to cases where the evidence was destroyed willfully or in bad faith, since a party's negligent loss of evidence can be just as fatal to the other party's ability to present a defense." 669 N.Y.S.2d 589, 590 (App. Div. 1998).

Of key significance here, courts in New York have long recognized that “the obligation to preserve evidence even arises prior to the filing of a complaint where a party is on notice that litigation is likely to be commenced.” *Turner v. Hudson Transit Lines, Inc.*, 142 F.R.D. 68, 73 (S.D.N.Y. 1991), *cited with approval in Fada Indus., Inc. v. Falchi Bldg. Co.*, 730 N.Y.S.2d 827, 842 (Sup. Ct. 2001). For this reason, the “sanction of striking a pleading has been applied even in instances where the destruction took place before litigation, provided the spoliator was on notice the evidence might be needed for future litigation.” *Standard Fire Ins. Co.*, 786 N.Y.S.2d at 46. As the court observed in *DiDomenico*, striking a pleading may be warranted “even if the evidence was destroyed before the spoliator became a party, provided it was on notice that the evidence might be needed for future litigation.” 682 N.Y.S.2d at 459; *see also Baglio v. St. John’s Queens Hosp.*, 755 N.Y.S. 2d 427, 428 (App. Div. 2003) (quoting *DiDomenico*).

It is no answer for Coleman (Parent) Holdings to say that the evidence was under the control of MAFCO or some other affiliate. As an initial matter, all of those various entities are part of Ronald Perelman’s financial empire, and Coleman (Parent) Holdings has readily been able to find documents from those other entities when beneficial to *its* case. In any event, New York courts have made clear that spoliation can occur even if the party did not own the evidence in question. *See Standard Fire Ins. Co.*, 786 N.Y.S.2d at 46 (“The sanction of dismissal is warranted even though Standard was not the owner of the missing evidence.”); *Amaris v. Sharp Elecs. Co.*, 758 N.Y.S.2d 637, 638 (App. Div. 2003) (granting spoliation sanction for plaintiff’s negligent failure to preserve television as evidence, “notwithstanding the fact that the television set was owned by plaintiff’s employer, a nonparty”).

In sum, CPH’s deliberate and systematic destruction of e-mails and electronic documents, long after it expressly recognized that Sunbeam litigation was likely, constitutes spoliation of the

evidence regardless of whether Florida or New York law applies. In contrast, Morgan Stanley has made a considerable investment to create a more accessible and searchable Archive out of hundreds of millions of unique e-mails from tens of thousands cumbersome and unwieldy magnetic tapes. Those efforts have enabled Morgan Stanley, in this case, to search an Archive containing e-mails from tens of thousands of back-up tapes, rather than just the thirty-six tapes required by the Agreed Order. CPH cannot begin to defend its own discovery practices, when it expressly recognized the likelihood of Sunbeam litigation but then carried out a systematic campaign to “purge” its files of e-mails and electronic documents until “everything was long gone....” (Jan. 21, 2004 Fasman Dep. at 156:19-25.)

II. AN ADVERSE INFERENCE INSTRUCTION IS THE MILDEST OF SANCTIONS FOR CPH’S SPOILIATION OF THE EVIDENCE.

Because CPH has destroyed e-mails and electronic documents, it goes without saying that granting a continuance to allow more discovery, or barring the plaintiff from introducing the materials, are remedies that have no application here. Nothing can cure the prejudice caused to Morgan Stanley by its inability to test whether these materials contained information helpful to its case. Under these circumstances, the Court would be well within its discretion to dismiss CPH’s complaint as a discovery sanction, which makes Morgan Stanley’s request for an adverse inference instruction the mildest of possible sanctions.

CPH’s actions are particularly egregious because it is not a large organization for which electronic discovery would be particularly burdensome. CPH employed only fifteen or so individuals at the time, all of whom worked on the Sunbeam transaction out of the same townhouse in Manhattan. Some of the senior-most officers of CPH, including Messrs. Gittis, Schwartz, and Fasman, are lawyers, which means that they were expected to understand the duty to preserve documents relevant to likely litigation. And all of them assuredly knew that

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Sunbeam litigation was likely, particularly given that CPH, not Morgan Stanley, chose to bring this case in the first place. Under these circumstances, CPH's complaints about Morgan Stanley's delays in processing millions of e-mails from scores of different locations pale in comparison to CPH's destruction of evidence.

The upshot here is that far from representing an extraordinary remedy, the grant of an adverse inference is both necessary and proper given CPH's deliberate and systematic destruction of its e-mails and electronic documents over a three-year time frame -- especially when its own privilege log confirms that it recognized the likelihood of Sunbeam litigation in the spring of 1998.¹ *See, e.g., Amlan, Inc. v. Detroit Diesel Corp.*, 651 So. 2d 701, 703 (Fla. 4th DCA 1995) (emphasizing that when a party destroys evidence that it reasonably should know to be relevant to a pending or potential case, "an instruction may be given concerning the inference that the withheld or missing evidence would be unfavorable to the party failing to produce"). To issue an adverse inference instruction against Morgan Stanley for its tardy productions, while sparing CPH from the consequences of destroying evidence, would be unprecedented.

CONCLUSION

For these reasons, Morgan Stanley requests an adverse inference instruction based on CPH's blatant and intentional spoliation of evidence. A proposed Order is attached.

¹ Indeed, it is particularly remarkable that CPH's corporate representative on this topic, Steven Fasman, is a licensed attorney who was aware of CPH's document destruction policy, but failed to take any steps to stop CPH from "purging" e-mails and electronic documents in 1998, 1999, or 2000. *See* New York Attorney Disciplinary Rule DR 7-102 (stating a lawyer shall not "[c]ounsel or assist the client in conduct that the lawyer knows to be illegal or fraudulent," or "[c]onceal or knowingly fail to disclose that which the lawyer is required by law to reveal").

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and hand delivery on this 14th day of March, 2005.

Jeffrey S. Davidson
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BY: Thomas A. Clare

*Counsel for Morgan Stanley
& Co. Incorporated*

NOT A CERTIFIED COPY

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SERVICE LIST

Jack Scarola
**SEARCY, DENNEY, SCAROLA,
BARNHARDT & SHIPLEY, P.A.**
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
c/o Mafco Holdings Inc.
777 S. Flager Drive
Suite 1200 – West Tower
West Palm Beach, FL 22401-6136

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Exhibit 1

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JENNER & BLOCK

July 15, 2004

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611-7603
Tel 312 222-9350
www.jenner.com
Chicago
Dallas
Washington, DC

*By Federal Express and
By Telecopy (w/o enclosure)*

Michael T. Brody
Tel 312 923-2711
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mbrody@jenner.com

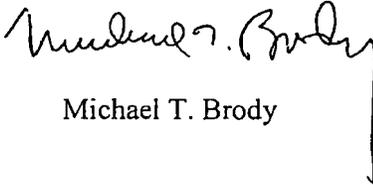
Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.*

Dear Tom:

I enclose CPH's revised privilege log. As to entries involving a common interest, we are consulting with counsel to Sunbeam.

Very truly yours,



Michael T. Brody

MTB:cjg
Enclosure

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
1		00/00/0000	Paul Rowe, Esq.		Attorney-Client	Draft Sunbeam Form S-4 with P. Rowe's handwritten comments prepared for purposes of providing legal advice.
2		00/00/0000	Wachtell Lipton		Attorney-Client	Summary of Sunbeam corporate structure issues prepared for the purpose of providing legal advice.
3		11/05/1998	Michael Schwartz, Esq.	Adam O. Emmerich, Esq., Frank Miller, Esq., Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re In re Sunbeam securities litigation issues.
4		02/03/1999	Wachtell Lipton	Ernst & Young, Barry Schwartz, Esq. (cc), Mitchell Rosendorf (Ernst & Young LLP)	Attorney-Client, Work Product	Letter providing information re litigation.
5		01/14/1999	Barry F. Schwartz, Esq.	Martin Lipton, Esq.	Attorney-Client, Work Product	Letter requesting information re litigation.
6		03/01/1998	Adam O. Emmerich, Esq.	Steven Isko, Esq.	Attorney-Client	Memorandum re attached draft documents prepared for the purpose of providing legal advice.
6	A	03/01/1998	Adam O. Emmerich, Esq.		Attorney-Client	Draft Coleman press release with A. Emmerich's handwritten comments prepared for the purpose of providing legal advice.
6	B	03/01/1998	Adam O. Emmerich, Esq.		Attorney-Client	Draft Sunbeam press release with A. Emmerich's handwritten comments prepared for the purpose of providing legal advice.
7		03/03/1998	Deborah Paul, Esq.	Steven Isko, Esq.	Attorney-Client	Correspondence re attached draft document prepared for the purpose of providing legal advice.
7	A	03/03/1998	Wachtell Lipton		Attorney-Client	Draft Coleman employee disclosure re benefits prepared for the purpose of providing legal advice.
8		03/03/1998	Frank Miller, Esq.	Steven Isko, Esq., Adam O. Emmerich, Esq. (cc)	Attorney-Client	Memorandum re Coleman Form 8-K and attached draft document prepared for the purpose of providing legal advice.
8	A	03/03/1998	Wachtell Lipton		Attorney-Client	Draft Coleman Form 8-K/A prepared for the purpose of providing legal advice.
9		03/04/1998	Michael Katzke, Esq.	Steven Isko, Esq., Joram C. Salig, Esq. (cc), Robert Fieder, Esq. (cc), Adam O. Emmerich, Esq. (cc), Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client	Memorandum re attached draft corporate resolutions prepared for the purpose of providing legal advice.
9	A	03/04/1998	Wachtell Lipton		Attorney-Client	Draft resolution re employee benefit plans prepared for the purpose of providing legal advice.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
9	B	03/04/1998	Wachtell Lipton		Attorney-Client	Draft resolution re employee benefit plans prepared for the purpose of providing legal advice.
9	C	03/04/1998	Wachtell Lipton		Attorney-Client	Draft resolution re employee benefit plans prepared for the purpose of providing legal advice.
10		03/04/1998	Michael Jahnke, Esq.	Barry F. Schwartz, Esq., Paul Shapiro, Esq., Joram Salig, Esq., William Nesblitt, Steven Isko, Esq., Adam O. Emmerich, Esq. (cc), Ilene K. Golts, Esq. (cc), Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client	Memorandum re Hart-Scott-Rodino issues prepared for the purpose of providing legal advice.
11		03/19/1998	Lynn Feldcamp	Steven Isko, Esq.	Attorney-Client	Memorandum re attached document prepared for the purpose of providing legal advice.
11	A	03/19/1998	Wachtell Lipton		Attorney-Client	Section of draft Coleman 10-K prepared for the purpose of providing legal advice.
11	B	03/18/1998	Wachtell Lipton		Attorney-Client	Draft Coleman 10-K prepared for the purpose of providing legal advice.
12		03/09/1998	Adam O. Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Steven Isko, Esq., Joram Salig, Esq.	Attorney-Client	Memorandum re application of federal securities laws.
13		03/10/1998	Michael Katzke, Esq.	Steven Isko, Esq., Joram Salig, Esq., Robert Fieder, Esq. (cc), Adam O. Emmerich, Esq. (cc), Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client	Memorandum re attached draft documents prepared for the purpose of providing legal advice.
13	A	03/10/1998	Wachtell Lipton		Attorney-Client	Draft resolution re employee benefit plans prepared for the purpose of providing legal advice.
13	B	03/10/1998	Wachtell Lipton		Attorney-Client	Draft resolution re employee benefit plans prepared for the purpose of providing legal advice.
13	C	03/10/1998	Wachtell Lipton		Attorney-Client	Draft resolution re employee benefit plans prepared for the purpose of providing legal advice.
14		03/11/1998	Frank Miller, Esq.	Barry F. Schwartz, Esq., Joram Salig, Esq., Steven Isko, Esq., Adam O. Emmerich, Esq. (cc)	Attorney-Client	Memorandum re attached draft document prepared for the purpose of providing legal advice.
14	A	03/11/1998	Wachtell Lipton		Attorney-Client	Draft Section 14(f) Notice prepared for the purpose of providing legal advice.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED GPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
15		03/12/1998	Steven Isko, Esq.	Barry F. Schwartz, Esq., Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Memorandum re attached draft letter regarding pending Coleman litigation.
15	A	03/12/1998	Steven Isko, Esq.		Attorney-Client, Work Product	Draft letter re pending Coleman litigation.
16		04/17/1998	Ilene K. Gotts, Esq.		Attorney-Client	Draft Sunbeam Form S-4 with I. Gotts' handwritten notes prepared in connection with providing legal advice.
17		04/22/1998	Cass G. Adelman, Esq.	Michael Katzke, Esq.	Attorney-Client	Letter re attached document prepared for the purpose of providing legal advice.
17	A	04/09/1998	Kyle Wendt	Cass G. Adelman, Esq., Lynn Feldcamp, Karen Clark, Esq. (cc)	Attorney-Client	Memorandum re employee benefit plans with attorney's handwritten notes provided for purpose of obtaining legal advice.
18		02/24/1998	Steven Isko, Esq.	Michael Katzke, Esq.	Attorney-Client	Correspondence re employee benefit issues provided for purpose of obtaining legal advice.
19		00/00/0000	Michael Katzke, Esq.		Attorney-Client	Handwritten notes re PBGC letter prepared for the purpose of providing legal advice. (Redacted from CP 012505-012506).
20		03/16/1998	Robert Fleder, Esq.	Barry F. Schwartz, Esq., Steven Fasman, Esq., Steven Isko, Esq., Michael Katzke, Esq.	Attorney-Client	Memorandum re attached draft letter prepared for the purpose of providing legal advice.
20	A	03/16/1998	Robert Fleder, Esq.		Attorney-Client	Draft letter to PBGC re Coleman pension plans prepared for the purpose of providing legal advice.
21		03/16/1998	Barbara Allen	Michael Katzke, Esq.	Attorney-Client	Memorandum re Coleman benefit plan information provided for purpose of obtaining legal advice.
22		03/19/1998	Michael Katzke, Esq.	Joram Salig, Esq., Steven Isko, Esq., Robert Fleder, Esq., Cass G. Adelman, Esq.	Attorney-Client	Draft benefit plan agreement with M. Katzke's notes prepared for the purpose of providing legal advice.
23		03/26/1998	Cass G. Adelman, Esq.	Michael Katzke, Esq.	Attorney-Client	Memorandum re attached document prepared for the purpose of providing legal advice.
23	A	03/26/1998	Steven Isko, Esq.	Cass G. Adelman, Esq., Joram Salig, Esq., Robert Fleder, Esq., Jim Rasmus (cc)	Attorney-Client	Memorandum re employee benefit plans with S. Isko's handwritten notes prepared for the purpose of providing legal advice.
24		00/00/0000	Frank Miller, Esq.		Attorney-Client	Handwritten notes re Sunbeam acquisition issues and communications with client re same prepared for the purpose of providing legal advice.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
25		03/12/1998	Frank Miller, Esq.	Barry F. Schwartz, Esq., Joram Salig, Esq., Steven Isko, Esq., Karen Clark, Lenny Ajzenman, Adam O. Emmerich, Esq. (cc)	Attorney-Client	Memorandum re attached draft document prepared for the purpose of providing legal advice.
25	A	03/12/1998	Wachtell Lipton		Attorney-Client	Draft section of Section 14(f) Notice prepared for the purpose of providing legal advice.
25	B	03/12/1998	Frank Miller, Esq.	Lenny Ajzenman	Attorney-Client	Correspondence re attached documents prepared for the purpose of providing legal advice.
26		04/01/1998	Wachtell Lipton		Attorney-Client	Draft Form 144 prepared for the purpose of providing legal advice.
27		00/00/0000	Steven Isko, Esq.		Attorney-Client	Draft minutes of 02/25/98 Board meeting reflecting information provided for purpose of enabling attorney to provide legal services.
28		00/00/0000	Steven Isko, Esq.		Attorney-Client	Draft minutes of 2/27/98 Board meeting reflecting information provided for purpose of enabling attorney to provide legal services.
29		00/00/0000	Wachtell Lipton		Attorney-Client	Draft resolutions re employee benefit plans prepared for the purpose of providing legal advice.
30		03/17/1998	Wachtell Lipton		Attorney-Client	Draft resolution re employee benefit plans prepared for the purpose of providing legal advice.
31		03/18/1998	Wachtell Lipton		Attorney-Client	Draft resolution re employee benefit plans prepared for the purpose of providing legal advice.
32		03/19/1998	Frank Miller, Esq.	Donna Egan	Attorney-Client	Memorandum re corporate resolutions prepared for the purpose of providing legal advice.
33		00/00/0000	Rachelle Silverberg, Esq.		Work Product	Notes re merger agreement prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP016791-016851).
34		00/00/0000	Rachelle Silverberg, Esq.		Work Product	Notes re merger agreement prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman (Redacted from CP017279-017333).
35		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft response to SEC and NYSE requests for information prepared in anticipation of litigation relating to inquiry.
36		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re draft Sunbeam Form S-4 prepared in connection with pending Coleman shareholder litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
37		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re draft Sunbeam Form S-4 prepared in connection with pending litigation.
38		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Draft Sunbeam Form S-4 amendment with R. Silverberg's notes prepared in connection with pending litigation.
39		03/26/1998	Adam O. Emmerich, Esq.	Gary Leshko, Joram Salig, Esq., Barry F. Schwartz, Esq.	Attorney-Client	Memorandum re attached draft letter prepared for the purpose of providing legal advice.
39	A	03/25/1998	Wachtell Lipton		Attorney-Client	Draft letter to Sunbeam re cooperation and access prepared for the purpose of providing legal advice.
40		03/26/1998	Deborah Paul, Esq.	David Einhorn, Esq., Adam O. Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Attorney-Client	E-mail re transaction structure prepared for the purpose of providing legal advice.
41		03/30/1998	Frank Miller, Esq.	Adam O. Emmerich, Esq., Steven Cohen, Esq.	Attorney-Client	E-mail re post-closing SEC filings prepared for the purpose of providing legal advice.
42		03/30/1998	Frank Miller, Esq.	Glenn Dickes, Esq., Joram Salig, Esq.	Attorney-Client	Memorandum re post-closing SEC filings prepared for the purpose of providing legal advice.
43		04/19/1998	Adam O. Emmerich, Esq.	Howard Gitlis, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client	Memorandum re attached draft document prepared in connection with providing legal advice.
43	A	04/19/1998	Wachtell Lipton		Attorney-Client	Draft memorandum re employee benefit issues prepared in connection with providing legal advice.
44		04/28/1998	Glenn Dickes, Esq.	Frank Miller, Esq., Joram C. Salig, Esq. (cc), Barry Schwartz, Esq. (cc)	Attorney-Client	Fax re Sunbeam letter re Coleman employee benefit issues prepared for the purpose of providing legal advice.
45		03/26/1998	Steven Isko, Esq.	Frank Miller, Esq., Glenn P. Dickes, Esq. (cc), Paul Shapiro, Esq. (cc)	Attorney-Client	Memorandum re attached draft document prepared for the purpose of providing legal advice.
45	A	03/26/1998	Steven Isko, Esq.		Attorney-Client	Draft letter re termination of intercompany agreements with S. Isko's handwritten notes prepared for the purpose of providing legal advice.
46		03/26/1998	Michelle Root	Adam O. Emmerich, Esq.	Attorney-Client	Response to request for information re closing provided for purpose of enabling attorney to provide legal services.
47		03/27/1998	Rachelle Silverberg, Esq.	Steven Isko, Esq., Jerry Levin, James Maher, William Nesbitt, Joram Salig, Esq., Marc Shiffman, Barry F. Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document prepared in anticipation of litigation relating to SEC/NYSE inquiry.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
47	A	03/27/1998	Wachtell Lipton	Steven Cohen, Esq., Adam O. Emmerich, Esq., Frank Miller, Esq.	Attorney-Client, Work Product	Draft response to SEC and NYSE requests for information prepared in anticipation of litigation relating to inquiry.
48		03/27/1998	Valerie Radwaner, Esq., Deborah Reiss, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq., James Conroy, Esq., Glenn Dickes, Esq., Steven Isiko, Esq., Joram Salig, Esq., Steven Cohen, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Attorney-Client, Work Product	Correspondence re stock certificate prepared for the purpose of providing legal advice.
49		06/14/1998	Adam O. Emmerich, Esq., Frank Miller, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq., James Conroy, Esq., Glenn Dickes, Esq., Steven Isiko, Esq., Joram Salig, Esq., Steven Cohen, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document prepared in connection with providing legal advice and anticipated litigation.
49	A	06/14/1998	Wachtell Lipton	Steven Cohen, Esq., Adam O. Emmerich, Esq., Frank Miller, Esq.	Attorney-Client, Work Product	Draft Schedule 13D prepared in connection with providing legal advice and anticipated litigation.
50		07/07/1998	Wachtell Lipton	Howard Gittis, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq., James Conroy, Esq., Glenn Dickes, Esq., Steven Isiko, Esq., Joram Salig, Esq., Steven Cohen, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Attorney-Client, Work Product	Draft chronology re potential claims arising out of Sunbeam acquisition prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman.
51		00/00/0000	Alexander Shaknes, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq., James Conroy, Esq., Glenn Dickes, Esq., Steven Isiko, Esq., Joram Salig, Esq., Steven Cohen, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018806-018807).
52		00/00/0000	Alexander Shaknes, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq., James Conroy, Esq., Glenn Dickes, Esq., Steven Isiko, Esq., Joram Salig, Esq., Steven Cohen, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018808-018809).
53		00/00/0000	Alexander Shaknes, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq., James Conroy, Esq., Glenn Dickes, Esq., Steven Isiko, Esq., Joram Salig, Esq., Steven Cohen, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018810-018811).
54		00/00/0000	Alexander Shaknes, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq., James Conroy, Esq., Glenn Dickes, Esq., Steven Isiko, Esq., Joram Salig, Esq., Steven Cohen, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018812-018815).
55		00/00/0000	Alexander Shaknes, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq., James Conroy, Esq., Glenn Dickes, Esq., Steven Isiko, Esq., Joram Salig, Esq., Steven Cohen, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018816-018819).

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
56		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018820-018821).
57		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018838-018848).
58		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018949-018950).
59		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018951-018956).
60		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018959-018960).
61		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018961-018962).
62		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018963-018964).
63		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018965-018966).
64		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018968-018974).
65		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018975-018976).
66		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018977-018981).
67		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018982-018983).

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
68		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018984-018986).
69		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018987).
70		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018988-018989).
71		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018990).
72		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018991-018993).
73		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018994-018995).
74		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018996-018998).
75		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018999).
76		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 019000-019002).
77		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 019003-019006).
78		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 019007-019008).
79		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 019835 and CP 019835).

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
80		02/25/1998	Adam O. Emmerich, Esq.	Frank Miller, Esq., Steven Cohen, Esq.	Attorney-Client	E-mail re merger agreement disclosure schedules: S. Cohen's e-mail response prepared for the purpose of legal advice.
81		02/24/1998	Steven Isko, Esq.	Steven Cohen, Esq.	Attorney-Client	Fax re merger agreement disclosure schedules provided for purpose of enabling attorney to provide legal services.
81	A	02/24/1998	Steven Isko, Esq.	Steven Cohen, Esq.	Attorney-Client	Information re merger agreement disclosure schedules with S. Isko's handwritten notes provided for purpose of enabling attorney to provide legal services.
82		02/24/1998	Steven Isko, Esq.	Steven Cohen, Esq.	Attorney-Client	Information re merger agreement disclosure schedules provided for purpose of enabling attorney to provide legal services.
83		02/25/1998	Frank Miller, Esq.	Frank Miller, Esq.	Attorney-Client	Notes re merger agreement provisions prepared for the purpose of providing legal advice.
84		02/26/1998	Steven Isko, Esq.	Frank Miller, Esq.	Attorney-Client	Information re merger agreement disclosure schedules with attorney's handwritten notes provided for purpose of enabling attorney to provide legal services.
85		02/27/1998	Steven Isko, Esq.	Frank Miller, Esq.	Attorney-Client	Information re merger agreement disclosure schedules with attorney's handwritten notes provided for purpose of enabling attorney to provide legal services.
86		03/01/1998	Michael Katzke, Esq.	Michael Katzke, Esq.	Attorney-Client	Notes re Sunbeam's employee benefit plans prepared for the purpose of providing legal advice. (Redacted from CP 019825-019833).
86	A	03/01/1998	Steven Isko, Esq.	Michael Katzke, Esq.	Attorney-Client	Draft memorandum to J. Levin re employee benefits issues prepared for the purpose of providing legal advice. (Redacted from CP 019825-19833)
87		02/21/1998	Adam O. Emmerich, Esq.	Steven Cohen, Esq., Frank Miller, Esq., Paul Rowe, Esq., Peter Canellos, Esq., David Einhorn, Esq., Karen Krueger, Esq., Michael Byowitz, Esq., Ilene K. Gotts, Esq., Michael Jahnke, Esq.	Attorney-Client	Memorandum re attached draft document prepared for the purpose of providing legal advice.
87	A	02/21/1998	Adam O. Emmerich, Esq.	Steven Cohen, Esq.	Attorney-Client	Draft memorandum in response to Sunbeam's proposed transaction terms prepared for the purpose of providing legal advice.
88		03/25/1998	Steven Isko, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document prepared in anticipation of litigation relating to SEC/NYSE inquiry.

**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
88	A	03/25/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft response to NYSE and SEC requests for information with S. Isko's handwritten notes prepared in anticipation of litigation relating to inquiry.
89		03/25/1998	Rachelle Silverberg, Esq.	Steven Isko, Esq., Jerry Levin, James Maher, William Nesbitt, Joram Salig, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document prepared in anticipation of litigation relating to SEC/NYSE inquiry.
89	A	03/25/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft response to SEC and NYSE requests for information prepared in anticipation of litigation relating to inquiry.
90		03/05/1998	Adam O. Emmerich, Esq., Michael Katzke, Esq.		Attorney-Client	Draft memorandum regarding application of federal securities laws.
91		03/04/1998	Michael Katzke, Esq.	Steven Isko, Esq., Joram Salig, Esq. (cc), Robert Fieder, Esq. (cc), Adam O. Emmerich, Esq. (cc), Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client	Memorandum re attached draft documents prepared for the purpose of providing legal advice.
91	A	03/04/1998	Wachtell Lipton		Attorney-Client	Draft resolution re employee benefit plans with F. Miller's handwritten notes prepared for the purpose of providing legal advice.
91	B	03/04/1998	Wachtell Lipton		Attorney-Client	Draft resolution re employee benefit plans with F. Miller's handwritten notes prepared for the purpose of providing legal advice.
91	C	03/04/1998	Wachtell Lipton		Attorney-Client	Draft resolution re employee benefit plans with F. Miller's handwritten notes prepared for the purpose of providing legal advice.
92		03/17/1998	Ilene K. Gotts, Esq.	Paul Shapiro, Esq., Joram Salig, Esq., Steven Isko, Esq., Adam O. Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Attorney-Client	Memorandum re attached letters prepared for the purpose of providing legal advice.
92	A	03/17/1998	Brian Facey, Esq.	Sarah Strasser, Esq.	Attorney-Client	Letter re foreign antitrust issues prepared for the purpose of providing legal advice.
92	B	03/11/1998	Gabriel Castaneda, Esq.	Ilene K. Gotts, Esq., Sarah Strasser, Esq. (cc)	Attorney-Client	Letter re foreign antitrust issues prepared for the purpose of providing legal advice.
93		02/22/1998	Michael Jahnke, Esq.	Michael Byowitz, Esq., Ilene K. Gotts, Esq.	Attorney-Client	Memorandum re Sunbeam acquisition antitrust issues prepared for the purpose of providing legal advice.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
94		03/04/1998	Adam O. Emmerich, Esq.	Michael Jahnke, Esq., Ilene K. Gotts, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client	E-mail re draft Hart-Scott-Rodino filing; e-mail response from M. Jahnke; and e-mail reply from A. Emmerich reflecting confidential communications with client.
95		03/04/1998	Michael Jahnke, Esq.	Barry F. Schwartz, Esq., Paul Shapiro, Esq., Joram Salig, Esq., Steven Isko, Esq.	Attorney-Client	Memorandum re draft Hart-Scott-Rodino filing prepared for the purpose of providing legal advice.
96		03/04/1998	Heather Van Dever	Steven Isko, Esq., Michael Jahnke, Esq.	Attorney-Client	Correspondence re attached document provided for purpose of enabling attorney to provide legal services.
96	A	03/04/1998	Heather Van Dever	Steven Isko, Esq.	Attorney-Client	Memorandum re Coleman subsidiaries with S. Isko's handwritten notes provided for purpose of enabling attorney to provide legal services.
97		03/06/1998	Sarah Strasser, Esq.	Ilene K. Gotts, Esq., Michael Jahnke, Esq.	Attorney-Client	E-mail re foreign antitrust issues prepared for the purpose of providing legal advice.
98		03/09/1998	Michael Jahnke, Esq.	Steven Isko, Esq., Karen Clark	Attorney-Client	Correspondence re attached article prepared for the purpose of providing legal advice.
98	A	03/03/1998	Michael Jahnke, Esq.		Attorney-Client	Notes re article prepared for the purpose of providing legal advice. (Redacted from CP 020876, CP 019834, and CP 012208).
99		03/24/1998	Ilene K. Gotts, Esq., Michael Jahnke, Esq.	Paul Shapiro, Esq., Steven Isko, Esq.	Attorney-Client	Memorandum re attached draft document prepared for the purpose of providing legal advice.
99	A	03/24/1998	Wachtell Lipton		Attorney-Client	Draft letter to FTC re Sunbeam acquisition antitrust issues prepared for the purpose of providing legal advice.
100		00/00/0000	Michael Jahnke, Esq.		Attorney-Client	Notes re Sunbeam acquisition antitrust issues reflecting information provided by client to attorney for purposes of enabling attorney to perform legal services.
101		03/03/1998	Michael Jahnke, Esq.	Lenny Ajzenman	Attorney-Client	Memorandum re draft Hart-Scott-Rodino filing prepared for the purpose of providing legal advice.
102		03/23/1998	Michael Jahnke, Esq.		Attorney-Client	Draft letter to FTC re Sunbeam acquisition antitrust issues with attorney's handwritten notes prepared for the purpose of providing legal advice.
103		00/00/0000	Michael Jahnke, Esq.		Attorney-Client	Notes re Sunbeam acquisition antitrust issues prepared for the purpose of providing legal advice.
104		03/03/1998	Michael Jahnke, Esq.	Lenny Ajzenman	Attorney-Client	Memorandum re attached draft document prepared for the purpose of providing legal advice.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
104	A	03/03/1998	Michael Jahnke, Esq.		Attorney-Client	Draft Hart-Scott-Rodino filing with attorney's handwritten notes prepared for the purpose of providing legal advice.
105		03/04/1998	Michael Jahnke, Esq.	Paul Shapiro, Esq.	Attorney-Client	Memorandum re attached draft document prepared for the purpose of providing legal advice.
105	A	03/04/1998	Michael Jahnke, Esq.	Barry F. Schwartz, Esq.	Attorney-Client	Memorandum re attached draft document prepared for the purpose of providing legal advice.
105	B	03/04/1998	Michael Jahnke, Esq.		Attorney-Client	Draft Hart-Scott-Rodino filing prepared for the purpose of providing legal advice.
106		03/03/1998	Michael Jahnke, Esq.	Steven Iско, Esq.,	Attorney-Client	Memorandum re draft Hart-Scott-Rodino filing prepared for the purpose of providing legal advice.
107		03/04/1998	Michael Jahnke, Esq.		Attorney-Client	Portion of draft Hart-Scott-Rodino filing with attorney's handwritten notes prepared for the purpose of providing legal advice.
108		03/04/1998	Michael Jahnke, Esq.		Attorney-Client	Draft memorandum re draft Hart-Scott-Rodino filing prepared for the purpose of providing legal advice.
109		03/05/1998	Michael Jahnke, Esq.		Attorney-Client	Notes re foreign antitrust issues prepared for the purpose of providing legal advice.
110		00/00/0000	Paul Rowe, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 021580-21584).
111		00/00/0000	Paul Rowe, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 021585-021586).
112		00/00/0000	Paul Rowe, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 021587-021592).
113		07/07/1998	Adam O. Emmerich, Esq., Frank Miller, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., James Maher, William Nesbitt, Todd Slotkin, Irwin Engelman, Glenn Dickes, Esq., Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re attached draft documents prepared in connection with Sunbeam/Coleman (Parent) settlement.
113	A	07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant agreement prepared in connection with Sunbeam/Coleman (Parent) settlement.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
113	B	07/07/1998	Wachtell Lipton	Paul Rowe, Esq.	Attorney-Client, Work Product	Draft settlement agreement.
114		03/03/1998	John Johnston, Esq.	Steven Isko, Esq., Karen Clark	Attorney-Client	Letter and invoice for legal services re Sunbeam acquisition.
115		03/05/1998	Ilene K. Gotts, Esq., Sarah Strasser, Esq.	Ilene K. Gotts, Esq.	Attorney-Client	Memorandum requesting information re foreign antitrust issues prepared for the purpose of providing legal advice.
116		03/17/1998	Paul Shapiro, Esq.	Ilene K. Gotts, Esq.	Attorney-Client	Memorandum re attached draft document prepared for the purpose of providing legal advice.
116	A	03/17/1998	Paul Shapiro, Esq.	Ilene K. Gotts, Esq.	Attorney-Client	Draft letter re license agreement issues prepared for the purpose of providing legal advice.
117		03/26/1998	Adam O. Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Glenn Dikes, Esq., Anthony Ian, Steven Isko, Esq., Joseph Page, Joram Salig, Esq., Terry Schimek, Esq., Paul Shapiro, Esq., Laurence Winoker, Paul Rowe, Esq., Rachelle Silverberg, Esq., Peter Canellos, Esq., David Einhorn, Esq., Deborah Paul, Esq., Michael Katzke, Esq., Ilene K. Gotts, Esq., Michael Jahnke, Esq.	Attorney-Client	Memorandum re attached draft document prepared for the purpose of providing legal advice.
117	A	03/25/1998	Wachtell Lipton	Steven Isko, Esq., Karen Clark	Attorney-Client	Draft closing checklist prepared for the purpose of providing legal advice.
118		03/05/1998	Ilene K. Gotts, Esq., Sarah Strasser, Esq.	Sarah Strasser, Esq., Karen Clark (cc)	Attorney-Client	Memorandum re foreign antitrust issues prepared for the purpose of providing legal advice.
119		03/06/1998	Steven Isko, Esq.	Steven Isko, Esq.	Attorney-Client	Memorandum re foreign antitrust issues prepared in connection with obtaining legal advice.
119	A	03/06/1998	Dan Peterson	Steven Isko, Esq.	Attorney-Client	Memorandum re foreign antitrust filings providing information for purpose of obtaining legal services.
119	B	03/06/1998	Dan Peterson	Lenny Aizenman	Attorney-Client	Summary of information prepared for foreign antitrust filings with S. Strasser's handwritten notes provided for purposes of obtaining legal advice.
120		03/07/1998	Sarah Strasser, Esq.	Steven Isko, Esq.	Attorney-Client	Memorandum re attached document requesting information in connection with providing legal advice.
120	A	03/07/1998	Sarah Strasser, Esq.	Steven Isko, Esq.	Attorney-Client	Memorandum re attached document prepared for the purpose of providing legal advice.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
120	B	03/06/1998	Lori Cornwall, Esq.	Sarah Strasser, Esq.	Attorney-Client	Memorandum re attached document prepared for the purpose of providing legal advice.
120	C	03/06/1998	Lori Cornwall, Esq.	Sarah Strasser, Esq.	Attorney-Client	Memorandum re foreign antitrust filings prepared for the purpose of providing legal advice.
121		00/00/0000	Wachtell Lipton		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 025560-025563).
122		04/27/1998	Adam O. Emmerich, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client	Memorandum re Sunbeam acquisition prepared for the purpose of providing legal advice.
123		02/24/1998	Steven Cohen, Esq.		Attorney-Client	Notes re draft merger agreement prepared for the purpose of providing legal advice. (Redacted from CP 029890-029931).
124		02/24/1998	Michael Katzke, Esq.	Jerry Levin	Attorney-Client	Draft Coleman severance policy prepared for the purpose of providing legal advice.
125		02/26/1998	Steven Cohen, Esq.		Attorney-Client	Draft merger agreement with attorney's handwritten notes prepared for the purpose of providing legal advice.
126		02/26/1998	Steven Cohen, Esq.		Attorney-Client	Draft merger agreement with attorney's handwritten notes prepared for the purpose of providing legal advice.
127		02/25/1998	David Einhorn, Esq.		Attorney-Client	Draft merger agreement with attorney's handwritten notes prepared for the purpose of providing legal advice.
128		02/25/1998	Frank Miller, Esq.		Attorney-Client	Draft merger agreement with attorney's handwritten notes prepared for the purpose of providing legal advice.
129		02/25/1998	Steven Cohen, Esq.		Attorney-Client	Draft merger agreement with attorney's handwritten notes prepared for the purpose of providing legal advice.
130		02/25/1998	Steven Cohen, Esq.		Attorney-Client	Draft merger agreement with attorney's handwritten notes prepared for the purpose of providing legal advice.
131		02/25/1998	David Einhorn, Esq.		Attorney-Client	Draft merger agreement with attorney's handwritten notes prepared for the purpose of providing legal advice.
132		02/26/1998	Adam O. Emmerich, Esq.	Howard Gittis, Esq., Donald Drapkin, James Maher, Barry F. Schwartz, Esq., Steven Cohen, Esq. (cc), Esq., Frank Miller, Esq. (cc), Paul Rowe, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts,	Attorney-Client	Memorandum re negotiations with Sunbeam prepared for the purpose of providing legal advice.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
133		02/27/1998	Glenn Dickes, Esq.	Esq. (cc), Michael Jahnke, Esq. (cc) Steven Cohen, Esq., Adam O. Emmerich, Esq., Frank Miller, Esq., Valerie Radwaner, Esq., Terry Schimek, Esq.	Attorney-Client	Excerpt of draft merger agreement with G. Dickes' handwritten notes prepared for the purpose of providing legal advice.
133	A	02/27/1998	Steven Cohen, Esq.		Attorney-Client	Handwritten notes re draft merger agreement prepared for the purpose of providing legal advice.
134		02/27/1998	Deborah Paul, Esq.	Norman Ginstling, Esq., Marvin Shaffer	Attorney-Client	Correspondence re tax issues in draft merger agreement prepared for the purpose of providing legal advice.
135		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re Klewin complaint (Redacted from CP 030106-030134).
136		07/20/1998	Wachteill Lipton		Attorney-Client, Work Product	Draft complaint re potential claims arising out of Sunbeam acquisition.
137		00/00/0000	Rachelle Silverberg, Esq.		Work Product	Notes re Goldberg complaint (Redacted from CP 031261-031297).
138		00/00/0000	Rachelle Silverberg, Esq.		Work Product	Notes re Yassin complaint (Redacted from CP 030917-030930).
139		09/09/1998	Eric Golden, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re Joerger, Ulfsson, and Goldstein litigation.
140		00/00/0000	Wachteill Lipton		Attorney-Client	Draft Hart-Scott-Rodino filing with J. Salig's and S. Strasser's handwritten notes prepared for the purpose of providing legal advice.
141		00/00/0000	Wachteill Lipton		Attorney-Client	Draft Hart-Scott-Rodino filing with J. Ladigoski's handwritten notes prepared for the purpose of providing legal advice.
142		03/04/1998	Wachteill Lipton		Attorney-Client	Draft Hart-Scott-Rodino filing with J. Ladigoski's handwritten notes prepared for the purpose of providing legal advice.
143		03/04/1998	Jackie Fortinash, Esq., Sarah Strasser, Esq.	Joram Salig, Esq.	Attorney-Client	Memorandum re attached documents prepared for the purpose of providing legal advice.
143	A	03/02/1998	Sarah Strasser, Esq.	Joram Salig, Esq.	Attorney-Client	Memorandum re attached draft document with J. Salig's handwritten notes prepared for the purpose of providing legal advice.
143	B	03/02/1998	Wachteill Lipton		Attorney-Client	Draft Hart-Scott-Rodino filing with J. Salig's handwritten notes prepared for the purpose of providing legal advice.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
144		00/00/0000	Sarah Strasser, Esq.		Attorney-Client	Draft Hart-Scott-Rodino filing with S. Strasser's handwritten notes prepared for the purpose of providing legal advice.
145		02/25/1998	Adam O. Emmerich, Esq.		Attorney-Client	Draft presentation to Coleman Board of Directors re Sunbeam acquisition prepared for the purpose of providing legal advice.
146		03/01/1998	Michael Jahnke, Esq.	Sarah Strasser, Esq., Ilene K. Gotts, Esq. (cc)	Attorney-Client	E-mail re Sunbeam acquisition antitrust issues with S. Strasser's handwritten notes reflecting information provided by client to attorney for purpose of enabling attorney to provide legal services.
146	A	03/01/1998	Sarah Strasser, Esq.		Attorney-Client	Handwritten notes re Sunbeam acquisition antitrust issues reflecting information provided by client to attorney for purpose of enabling attorney to provide legal services.
147		03/02/1998	Sarah Strasser, Esq.	Gabriel Castaneda, Michael Jahnke, Esq. (cc)	Attorney-Client	Memorandum re foreign antitrust issues prepared for the purpose of obtaining legal advice.
148		03/02/1998	Ricardo Hernandez, Esq.	Sarah Strasser, Esq.	Attorney-Client	Letter re foreign antitrust issues with S. Strasser's handwritten notes prepared for the purpose of providing legal advice.
149		03/06/1998	Sarah Strasser, Esq.	Lori Cornwall, Esq.	Attorney-Client	Memorandum re foreign antitrust issues prepared for the purpose of obtaining legal advice.
150		03/09/1998	Sarah Strasser, Esq.	Karen Clark, Esq. (cc)	Attorney-Client	Memorandum re foreign antitrust legal opinion with S. Strasser's handwritten notes prepared for the purpose of providing legal advice.
151		03/09/1998	Melissa Orme	Steven Isko, Esq., Karen Clark (cc), Sarah Strasser, Esq. (cc)	Attorney-Client	Memorandum re foreign antitrust legal opinion prepared for counsel and reflecting client information provided for purpose of obtaining legal services.
152		03/10/1998	Sarah Strasser, Esq.	Ricardo Hernandez, Esq., Ilene K. Gotts, Esq. (cc)	Attorney-Client	Memorandum re foreign antitrust legal opinion prepared for purpose of obtaining legal advice.
153		02/23/1998	Adam O. Emmerich, Esq.		Attorney-Client	Notes re Sunbeam acquisition issues reflecting client information provided for purpose of obtaining legal advice.
154		02/24/1998	Adam O. Emmerich, Esq.	Barry F. Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client	Memorandum re attached draft document prepared for the purpose of providing legal advice.
154	A	02/24/1998	Adam O. Emmerich, Esq.		Attorney-Client	Draft agenda for Coleman Board meeting prepared for the purpose of providing legal advice.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
155		02/25/1998	Adam O. Emmerich, Esq., Frank Miller, Esq.	Glenn Dickes, Esq., Robert Duffy, Norman Gintising, Esq., Steven Isko, Esq., William Nesbitt, Joram Salig, Esq., Barry F. Schwartz, Esq., Gordon Rich, Paul Shapiro, Esq.	Attorney-Client	Memorandum re attached draft documents prepared for the purpose of providing legal advice.
155	A	02/25/1998	Adam O. Emmerich, Esq., Frank Miller, Esq.	Attorney-Client	Attorney-Client	Draft materials for Coleman Board meeting prepared for the purpose of providing legal advice.
156		03/18/1998	Steven Isko, Esq.	Rachelle Silverberg, Esq., Paul Shapiro, Esq. (cc), Joram Salig, Esq. (cc)	Attorney-Client, Work Product	Memorandum re response to SEC and NYSE requests for information and attached draft document prepared in anticipation of litigation relating to inquiry.
156	A	03/16/1998	Rachelle Silverberg, Esq.	Steven Isko, Esq., Jerry Levin, James Maher, William Nesbitt, Joram Salig, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document prepared in anticipation of litigation relating to inquiry.
156	B	03/16/1998	Wachtell Lipton	Attorney-Client, Work Product	Attorney-Client, Work Product	Draft response to SEC and NYSE requests for information with S. Isko's handwritten notes prepared in anticipation of litigation relating to inquiry.
156	C	03/18/1998	Steven Isko, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re response to SEC and NYSE requests for information prepared in anticipation of litigation relating to inquiry.
157		03/18/1998	Glenn Dickes, Esq.	Adam O. Emmerich, Esq.	Attorney-Client	Memorandum re draft letter to LYONs trustee and draft notice of LYONs redemption prepared for the purpose of providing legal advice.
158		02/21/1998	Adam O. Emmerich, Esq.	Paul Rowe, Esq.	Attorney-Client	Correspondence re Sunbeam's proposed transaction terms prepared for the purpose of providing legal advice.
159		02/25/1998	Paul Rowe, Esq.	Attorney-Client	Attorney-Client	Notes re Coleman Board of Directors meeting prepared for the purpose of providing legal advice.
160		02/25/1998	Paul Rowe, Esq.	Attorney-Client	Attorney-Client	CSFB presentation to Coleman Board of Directors with P. Rowe's handwritten notes prepared for the purpose of providing legal advice.
161		02/26/1998	Paul Rowe, Esq.	Attorney-Client	Attorney-Client	Notes re Coleman Board meeting prepared for the purpose of providing legal advice.
162		00/00/0000	Paul Rowe, Esq.	Attorney-Client, Work Product	Attorney-Client, Work Product	Notes re response to SEC and NYSE requests for information prepared in anticipation of litigation relating to inquiry.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
163		04/16/1998	Paul Rowe, Esq.		Attorney-Client, Work Product	Sunbeam draft response to SEC and NYSE requests for information with P. Rowe's handwritten notes prepared in anticipation of litigation relating to inquiry.
164		03/19/1998	Rachelle Silverberg, Esq.	Steven Isko, Esq., Jerry Levin, James Maher, William Nesbitt, Joram Salig, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document prepared in anticipation of litigation relating to SEC/NYSE inquiry.
164	A	03/19/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft response to SEC and NYSE requests for information prepared in anticipation of litigation relating to inquiry.
165		03/30/1998	Paul Rowe, Esq.		Attorney-Client, Work Product	Notes re response to SEC and NYSE requests for information prepared in anticipation of litigation relating to inquiry.
166		06/15/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Schedule 13D prepared in connection with providing legal advice and anticipated litigation.
167		07/15/1998	Frank Miller, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., Joram Salig, Esq., Glenn Dickes, Esq., William Nesbitt, James Maher	Attorney-Client, Work Product	Memorandum re SEC comments on draft Sunbeam Form S-4 prepared in connection with providing legal advice and anticipated litigation.
168		07/20/1998	Adam O. Emmerich, Esq., Frank Miller, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., James Maher, William Nesbitt, Todd Slotkin, Irwin Engelman, Glenn Dickes, Esq., Joram Salig, Esq., Steven Cohen, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc), Alexander Shaknes, Esq. (cc), Harold Novikoff (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document prepared in connection with Sunbeam / Coleman (Parent) settlement.
168	A	07/20/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Registration Rights Agreement Amendment prepared in connection with Sunbeam / Coleman (Parent) settlement
169		04/19/1998	Frank Miller, Esq.	Barry F. Schwartz, Esq., Joram Salig, Esq., Adam O. Emmerich, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc)	Attorney-Client, Work Product	Memorandum re Sunbeam draft response to SEC and NYSE requests for information prepared in anticipation of litigation relating to inquiry.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
170		02/19/1998	Adam O. Emmerich, Esq., Steven Cohen, Esq.	Steven Cohen, Esq., Frank Miller, Esq., Paul Rowe, Esq., Peter Canellos, Esq., David Einhorn, Esq., Karen Krueger, Esq., Michael Byowitz, Esq., Ilene K. Gotts, Esq., Michael Jahnke, Esq.	Attorney-Client	Memorandum re transaction structure issues prepared for the purpose of providing legal advice.
171		03/02/1998	Frank Miller, Esq.	Barry F. Schwartz, Esq., Glenn Dicks, Esq., Joram Salig, Esq., Steven Isko, Esq., Adam O. Emmerich, Esq. (cc)	Attorney-Client	Memorandum re attached draft documents prepared for the purpose of providing legal advice.
171	A	03/02/1998	Wachtell Lipton		Attorney-Client	Draft Coleman Co. 8-K prepared for the purpose of providing legal advice.
171	B	03/02/1998	Wachtell Lipton		Attorney-Client	Draft Coleman Worldwide 8-K prepared for the purpose of providing legal advice.
171	C	03/02/1998	Wachtell Lipton		Attorney-Client	Draft CLN Holdings 8-K prepared for the purpose of providing legal advice.
172		03/26/1998	Adam O. Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Glenn Dicks, Esq., Norman Gintsling, Esq., Anthony Ian, Steven Isko, Esq., Joseph Page, Valerie Radwaner, Esq., Joram Salig, Esq., Marvin Shaffer, Terry Schimek, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq., Laurence Winoker	Attorney-Client	Memorandum re attached draft documents prepared for the purpose of providing legal advice.
172	A	03/26/1998	Wachtell Lipton		Attorney-Client	Draft closing checklist prepared for the purpose of providing legal advice.
172	B	03/26/1998	Wachtell Lipton		Attorney-Client	Draft amendment to merger agreement prepared for the purpose of providing legal advice.
172	C	03/26/1998	Wachtell Lipton		Attorney-Client	Draft letter re termination of intercompany agreements prepared for the purpose of providing legal advice.
172	D	03/26/1998	Wachtell Lipton		Attorney-Client	Draft letter to Sunbeam re cooperation and access prepared for the purpose of providing legal advice.
173		03/26/1998	Valerie Radwaner, Esq., Deborah Reiss, Esq.	Steven Cohen, Esq., Adam O. Emmerich, Esq., Frank Miller, Esq.	Attorney-Client	Fax response to request for information re closing prepared for the purpose of providing legal advice.
174		02/27/1998	Valerie Radwaner, Esq.	Steven Cohen, Esq., Adam O. Emmerich, Esq., Frank Miller, Esq., Glenn Dicks, Esq. (cc)	Attorney-Client	Memorandum re attached documents prepared for the purpose of providing legal advice.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
174	A	02/27/1998	Valerie Radwaner, Esq.		Attorney-Client	Excerpt of draft merger agreement with attorney's handwritten notes prepared for the purpose of providing legal advice.
175		02/27/1998	Glenn Dicks, Esq.	Steven Cohen, Esq., Adam O. Emmerich, Esq., Frank Miller, Esq.	Attorney-Client	Excerpt of draft merger agreement with G. Dicks' handwritten notes prepared for the purpose of providing legal advice.
176		00/00/0000	Adam O. Emmerich, Esq.	Adam O. Emmerich, Esq.	Attorney-Client	Notes of communication with client re Sunbeam acquisition issues.
177		02/27/1998	Wachtell Lipton		Attorney-Client	Draft Registration Rights Agreement with attorney's handwritten notes prepared for the purpose of providing legal advice.
178		00/00/0000	Adam O. Emmerich, Esq.	Adam O. Emmerich, Esq.	Attorney-Client	Notes re Sunbeam acquisition issues prepared for the purpose of providing legal advice.
179		02/26/1998	Steven Cohen, Esq.	Michael Katzke, Esq., Adam O. Emmerich, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client	E-mail re draft merger agreement prepared for the purpose of providing legal advice.
180		02/26/1998	Michael Katzke, Esq.	Adam O. Emmerich, Esq., Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client	E-mail re draft merger agreement prepared for the purpose of providing legal advice.
181		02/26/1998	Deborah Paul, Esq.	David Einhorn, Esq., Adam O. Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Attorney-Client	E-mail re client communication re draft merger agreement.
182		02/26/1998	Michael Katzke, Esq.	Adam O. Emmerich, Esq.	Attorney-Client	E-mail re draft merger agreement prepared for the purpose of providing legal advice.
183		02/26/1998	Wachtell Lipton		Attorney-Client	Draft summary of proposed Sunbeam acquisition prepared for the purpose of providing legal advice.
184		02/24/1998	Wachtell Lipton		Attorney-Client	Notes re draft merger agreement issues prepared for the purpose of providing legal advice.
185		02/24/1998	Michael Katzke, Esq.	Steven Cohen, Esq., Adam O. Emmerich, Esq., Frank Miller, Esq.	Attorney-Client	E-mail re employee benefit issues in draft merger agreement prepared for the purpose of providing legal advice.
186		02/24/1998	Adam O. Emmerich, Esq.	Michael Katzke, Esq., Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client	E-mail re employee benefit issues in merger agreement and e-mail response by Mr. Katzke prepared for the purpose of providing legal advice.
187		02/24/1998	Michael Katzke, Esq.	Adam O. Emmerich, Esq.	Attorney-Client	E-mail re employee benefit issues in merger agreement prepared for the purpose of providing legal advice.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
188		00/00/0000	Adam O. Emmerich, Esq.		Attorney-Client	Notes of client communication re draft merger agreement.
189		02/24/1998	Adam O. Emmerich, Esq.		Attorney-Client	Notes re draft merger agreement issues prepared for the purpose of providing legal advice.
190		00/00/0000	Paul Rowe, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 02:1577-02:1579).
191		03/06/1998	Steven Isko, Esq.	Sarah Strasser, Esq.	Attorney-Client	Draft foreign antitrust filing with S. Isko's handwritten notes prepared for the purpose of providing legal advice.
192		03/06/1998	Sarah Strasser, Esq.	Steven Isko, Esq.	Attorney-Client	Memorandum re draft foreign antitrust filing prepared for the purpose of providing legal advice.
193		02/27/1998	Sarah Strasser, Esq.	Lenny Aizenman	Attorney-Client	Correspondence re attached draft document prepared for the purpose of providing legal advice.
193	A	02/27/1998	Wachtell Lipton		Attorney-Client	Section of draft Hart-Scott-Rodino filing with S. Strasser's handwritten notes prepared for the purpose of providing legal advice.
194		00/00/0000	Deborah Paul, Esq.		Attorney-Client	Notes re Sunbeam acquisition tax issues and confidential communications with client re same prepared in connection with providing legal advice.
195		00/00/0000	Deborah Paul, Esq.		Attorney-Client	Draft merger agreement with D. Paul's notes prepared for the purpose of providing legal advice.
196		03/03/1998	Michael Katzke, Esq.	Deborah Paul, Esq.	Attorney-Client	Memorandum re attached draft document prepared for the purpose of providing legal advice.
196	A	03/03/1998	Wachtell Lipton		Attorney-Client	Draft Coleman employee disclosure re employee benefits with M. Katzke's handwritten notes prepared for the purpose of providing legal advice.
197		07/30/1998	Adam O. Emmerich, Esq., Frank Miller, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., James Maher	Attorney-Client, Work Product	Memorandum re attached draft document prepared in connection with providing legal advice and anticipated litigation.
197	A	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter to NY Stock Exchange re application for exception prepared in connection with providing legal advice and anticipated litigation.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
198		07/30/1998	Adam O. Emmerich, Esq.	Howard Gitis, Esq., Barry F. Schwartz, Esq., James Maher, Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc), Alexander Shaknes, Esq. (cc), Harold Novikoff (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq., Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Work Product	Memorandum re attached draft document prepared in connection with providing legal advice and anticipated litigation.
198	A	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft memorandum re potential claims arising from Sunbeam acquisition.
199		03/10/1998	Sarah Strasser, Esq.		Attorney-Client	Summary of foreign antitrust issues related to Sunbeam acquisition prepared for the purpose of providing legal advice.
200		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Coleman shareholder litigation.
201		02/02/1999	Adam O. Emmerich, Esq.		Attorney-Client, Work Product	Draft letter to auditor re pending litigation.
202		10/30/1998	Eric Golden, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Fax re complaint (Redacted from CP 13843A).
203		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re shareholder litigation.
204		00/00/0000	Michael Katzke, Esq.		Attorney-Client	Notes re merger agreement issues with M. Katzke's handwritten notes prepared for the purpose of providing legal advice.
205		02/26/1998	Adam O. Emmerich, Esq., Frank Miller, Esq.	Paul Shapiro, Esq., Steven Isko, Esq., Glenn Dikes, Esq., Joram Sallg, Esq., Barry F. Schwartz, Esq., Steven Cohen, Esq. (cc), Paul Rowe, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Attorney-Client	Memorandum re attached draft documents prepared for the purpose of providing legal advice.
205	A	02/26/1998	Wachtell Lipton		Attorney-Client	Draft consents and resolutions re proposed Sunbeam acquisition prepared for the purpose of providing legal advice.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
205	B	02/26/1998	Wachtell Lipton		Attorney-Client	Draft Coleman 8-Ks prepared for the purpose of providing legal advice.
206		04/06/1998	Adam O. Emmerich, Esq., Michael Katzke, Esq.	Glenn Dickes, Esq., Joram Saig, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client	Memorandum re attached draft document prepared in connection with providing legal advice.
206	A	04/06/1998	Wachtell Lipton		Attorney-Client	Draft Sunbeam letter re Coleman employee benefits issues prepared in connection with providing legal advice.
207		03/27/1998	Wachtell Lipton		Attorney-Client	Draft letter re termination of intercompany agreements prepared for the purpose of providing legal advice.
208		02/25/1998	Michael Katzke, Esq.	Steven Isko, Esq.	Attorney-Client	Summary of Coleman severance policy prepared for the purpose of providing legal advice.
209		06/10/1998	Karen Krueger, Esq.	Barry F. Schwartz, Esq., Adam O. Emmerich, Esq. (cc), Michael Katzke, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman.
209	A	06/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment termination agreement prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman.
210		06/11/1998	Karen Krueger, Esq.	Barry F. Schwartz, Esq., Steven Isko, Esq., Paul Shapiro, Esq., Adam O. Emmerich, Esq. (cc), Michael Katzke, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman.
210	A	06/11/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment termination agreement prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman.
211		00/00/0000	Karen Krueger, Esq.		Attorney-Client, Work Product	Excerpt of draft employment termination agreement prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman.
212		08/19/1998	Michael Schwartz, Esq.	Wachtell Lipton Sunbeam Team, Martin Lipton, Adam O. Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq., Harold Novikoff, Esq., Peter Canellos, Esq., David Einhorn, Esq., Deborah Paul, Esq., Michael Katzke, Esq., Michael W. Schwartz, Esq., Paul Rowe, Esq., Rachelle	Attorney-Client, Work Product	Memorandum re Coleman shareholder litigation.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
213		03/31/1998	Michael Katzke, Esq.	Silverberg, Esq., Ilene K. Gotts, Esq., Michael Jahnke, Esq.	Attorney-Client	E-mail re Form 4 filings prepared for the purpose of providing legal advice.
214		03/31/1998	Heidi Anne Hafeken	Adam O. Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Attorney-Client	Transcribed voicemail message from A. Emmerich to F. Miller and S. Cohen re applicability of federal securities laws.
215		03/30/1998	Adam O. Emmerich, Esq.	Frank Miller, Esq., Steven Cohen, Esq.	Attorney-Client	E-mail re applicability of federal securities laws; F. Miller e-mail in response; S. Cohen further e-mail response.
216		03/30/1998	Adam O. Emmerich, Esq.	Steven Cohen, Esq., Frank Miller, Esq.	Attorney-Client	E-mail re applicability of federal securities laws; F. Miller e-mail response; S. Cohen e-mail response; F. Miller e-mail response.
217		02/05/1998	Joram Salig, Esq.	Martin Lipton, Esq.	Attorney-Client	Correspondence re confidentiality agreement between Sunbeam and Coleman for purpose of obtaining legal advice.
218		07/17/1998	Richard Pacheco, Esq.	Paul Rowe, Esq., Adam O. Emmerich, Esq., Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re potential claims arising out of Sunbeam acquisition.
219		09/14/1998	Frank Miller, Esq.	Bary F. Schwartz, Esq., Michael Schwartz, Esq. (cc), Adam O. Emmerich, Esq. (cc)	Attorney-Client, Work Product	Memorandum re litigation arising out of Sunbeam's acquisition of CPH's interest in Coleman.
219	A	09/14/1998	Frank Miller, Esq.		Attorney-Client, Work Product	Analysis of litigation damages issues.
219	B	00/00/0000	Frank Miller, Esq.		Attorney-Client, Work Product	Notes re litigation damages issues.
220		11/06/1998	Adam O. Emmerich, Esq., Frank Miller, Esq.	Bary F. Schwartz, Esq., James Maher, William Nesbitt, Glenn Dicks, Esq., Joram Salig, Esq., James Conroy, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document prepared in connection with Sunbeam/Coleman (Parent) settlement.
220	A	11/06/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Schedule 13D Amendment prepared in connection with Sunbeam (Parent) settlement.
221		04/07/1998	Frank Miller, Esq.	Howard Gittis, Esq., Bary F. Schwartz, Esq., Glenn Dicks, Esq., Paul Shapiro, Esq.	Attorney-Client	Memorandum re Sunbeam corporate structure prepared in connection with providing legal advice.

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222		04/10/1998	Frank Miller, Esq.	Joram Sallig, Esq., Steven Isko, Esq., Adam O. Emmerich, Esq. (cc), Paul Rowe, Esq. (cc)	Attorney-Client	Memorandum re attached draft document.
222	A	04/10/1998	Wachtell Lipton		Attorney-Client	Draft of section of Sunbeam Form S-4 prepared in connection with providing legal advice.
223		03/29/1998	Adam O. Emmerich, Esq.	Frank Miller, Esq.	Attorney-Client	Memorandum re closing issues prepared for the purpose of providing legal advice.
223	A	03/29/1998	Wachtell Lipton		Attorney-Client	Draft closing checklist prepared for the purpose of providing legal advice.
224		03/28/1998	Adam O. Emmerich, Esq.	Glenn Dickes, Esq.	Attorney-Client	Memorandum re attached documents prepared for the purpose of providing legal advice.
224	A	03/28/1998	Wachtell Lipton		Attorney-Client	Draft amendment to merger agreement prepared for the purpose of providing legal advice.
224	B	03/28/1998	Wachtell Lipton		Attorney-Client	Draft letter re termination of intercompany agreements prepared for the purpose of providing legal advice.
224	C	03/28/1998	Wachtell Lipton		Attorney-Client	Draft letter to Sunbeam re cooperation and access prepared for the purpose of providing legal advice.
224	D	03/28/1998	Wachtell Lipton		Attorney-Client	Draft registration rights agreement prepared for the purpose of providing legal advice.
224	E	03/28/1998	Wachtell Lipton		Attorney-Client	Draft cross receipt prepared for the purpose of providing legal advice.
225		03/28/1998	Adam O. Emmerich, Esq.	Glenn Dickes, Esq.	Attorney-Client	Memorandum re closing prepared for the purpose of providing legal advice.
225	A	03/28/1998	Wachtell Lipton		Attorney-Client	Draft closing checklist prepared for the purpose of providing legal advice.
225	B	03/28/1998	Wachtell Lipton		Attorney-Client	Draft letter re termination of intercompany agreements prepared for the purpose of providing legal advice.
226		04/15/1998	Adam O. Emmerich, Esq.	Barry F. Schwartz, Esq.	Attorney-Client	Memorandum re attached draft document prepared in connection with providing legal advice.
226	A	04/15/1998	Adam O. Emmerich, Esq.		Attorney-Client	Draft Sunbeam letter re Coleman employee benefits issues prepared in connection with providing legal advice.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
227		04/12/1998	Michael Katzke, Esq.	Adam O. Emmerich, Esq., Frank Miller, Esq.	Attorney-Client	Correspondence re attached draft document prepared in connection with providing legal advice.
227	A	04/12/1998	Michael Katzke, Esq.		Attorney-Client	Draft Sunbeam Form S-4 with M. Katzke's handwritten notes prepared in connection with providing legal advice.
228		03/31/1998	Frank Miller, Esq.	Glenn Dickes, Esq., Joram Salig, Esq., Adam O. Emmerich, Esq. (cc)	Attorney-Client	Memorandum re attached draft documents prepared for the purpose of providing legal advice.
228	A	03/31/1998	Wachtell Lipton		Attorney-Client	Draft Coleman Schedule 13G prepared for the purpose of providing legal advice.
228	B	03/31/1998	Wachtell Lipton		Attorney-Client	Draft Form 4 prepared for the purpose of providing legal advice.
228	C	03/31/1998	Wachtell Lipton		Attorney-Client	Draft Sunbeam Schedule 13G prepared for the purpose of providing legal advice.
228	D	03/31/1998	Wachtell Lipton		Attorney-Client	Draft Joint Filing Agreement prepared for the purpose of providing legal advice.
228	E	03/31/1998	Wachtell Lipton		Attorney-Client	Draft Form 3 prepared for the purpose of providing legal advice.
228	F	03/31/1998	Wachtell Lipton		Attorney-Client	Draft Form 144 prepared for the purpose of providing legal advice.
229		04/01/1998	Frank Miller, Esq.	Barry F. Schwartz, Esq., Joram Salig, Esq.	Attorney-Client	Memorandum re SEC filings for Sunbeam acquisition prepared for the purpose of providing legal advice.
230		03/27/1998	Paul, Weiss, Rifkind, Wharton & Garrison		Attorney-Client	Draft benefit plan agreement prepared for the purpose of providing legal advice.
230	A	03/27/1998	Cass G. Adelman, Esq.	Joram Salig, Esq., Steven Isko, Esq., Laurence Winkler, Kyle Wendt, Michael Katzke, Esq., Tim Nelson, Neil Leff, Adam O. Emmerich, Esq.	Attorney-Client	Correspondence re attached draft document prepared for the purpose of providing legal advice.
231		04/08/1998	Frank Miller, Esq.	Joram Salig, Esq.	Attorney-Client	Memorandum re Schedule 13G prepared in connection with providing legal advice.
232		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Notes re Sunbeam Credit Agreement prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman (Redacted from CP 027993).

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233		03/28/1998	Cass G. Adelman, Esq.	Joram Salig, Esq., Steven Isko, Esq., Lawrence Winoker, Kyle Wendt, Michael Katzke, Esq., Tim Nelson, Neil Leff, Barry F. Schwartz, Esq., Robert Fieder, Esq.	Attorney-Client	Correspondence re attached draft document prepared for the purpose of providing legal advice.
233	A	03/28/1998	Paul, Weiss, Rifkind, Wharton & Garrison		Attorney-Client	Draft benefit plan agreement prepared for the purpose of providing legal advice.
234		08/18/1998	Frank Miller, Esq.	Joram Salig, Esq., Adam O. Emmerich, Esq. (cc)	Attorney-Client, Work Product	Memorandum re Registration Rights Agreement prepared in connection with Sunbeam/Coleman (Parent) settlement.
235		09/02/1998	Eric Golden, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re Coleman shareholder litigation.
236		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re Sunbeam's 1997 Form 10-K prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman (Redacted from CP 018831-018886).
237		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re article prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 018822-018830).
238		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re Sunbeam 1996 Form 10-K prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman (Redacted from CP 018886-018937).
239		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re Coleman response to SEC and NYSE requests for information prepared in anticipation of litigation relating to inquiry.
240		00/00/0000	Alexander Shaknes, Esq.		Work Product	Notes re Mintz complaint (Redacted from CP 015305-015348).
241		08/12/1998	Adam O. Emmerich, Esq.	Glenn Dicks, Esq., Valerie Radwaner, Esq., Joram Salig, Esq.	Attorney-Client, Work Product	Draft warrant term sheet prepared in connection with Sunbeam/Coleman (Parent) settlement.
242		10/06/1998	Paul Crampton, Esq.	Sarah Strasser, Esq., Adam O. Emmerich, Esq. (cc)	Attorney-Client, Work Product	Letter re legal services performed relating to acquisition.
242	A	08/05/1998	Davies Ward & Beck	Sarah Strasser, Esq.	Attorney-Client, Work Product	Bill for legal services performed relating to acquisition.
243		07/13/1998	Barry F. Schwartz, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Draft press release re Sunbeam with attorney's handwritten notes prepared in connection with providing legal advice and pending litigation.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
244		07/20/1998	Barry F. Schwartz, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Notes re Stapleton complaint.
245		03/13/1998	Rachelle Silverberg, Esq.	Barry F. Schwartz, Esq., Joram Salig, Esq., Steven Isko, Esq., Adam O. Emmerich, Esq. (cc)	Attorney-Client, Work Product	Memorandum re response to NYSE request for information prepared in anticipation of litigation relating to inquiry.
246		03/23/1998	Adam O. Emmerich, Esq.	Joseph Page	Attorney-Client	Memorandum re legal services performed in connection with Sunbeam acquisition.
246	A	03/23/1998	Wachtell Lipton		Attorney-Client	Invoice for legal services performed in connection with Sunbeam acquisition.
247		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Coleman shareholder litigation.
248		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Section of draft proxy statement prepared in connection with providing legal advice and pending litigation.
249		10/18/1999	Adam O. Emmerich, Esq.	Barry F. Schwartz, Esq. (cc), Rachelle Silverberg, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document prepared in connection with providing legal advice and pending litigation.
249	A	10/18/1999	Wachtell Lipton		Attorney-Client, Work Product	Section of draft proxy statement prepared in connection with providing legal advice and pending litigation.
250		11/03/1998	Adam O. Emmerich, Esq., Frank Miller, Esq.	Barry F. Schwartz, Esq., James Maher, William Nesbitt, Glenn Dickes, Esq., Joram Salig, Esq., James Conroy, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document prepared in connection with providing legal advice and pending litigation.
250	A	11/03/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft amendment to Schedule 13D prepared in connection with providing legal advice and pending litigation.
251		11/03/1998	Megan McIntyre, Esq.	Barry F. Schwartz, Esq., Michael Schwartz, Esq. (cc)	Attorney-Client, Work Product	Letter re McCall and Coletta litigation.
252		09/30/1998	Cynthia Calder, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Letter re Joerger litigation. (Redacted from CP 044646.)
253		04/09/1998	Ilene K. Gotts, Esq.	Barry F. Schwartz, Esq.	Attorney-Client	Letter re letter to FTC re Coleman licensing issues prepared for the purpose of providing legal advice.
254		07/29/1998	Howard Gittis, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Note re Sunbeam management proposal prepared for purpose of obtaining legal advice (Redacted from CP 020187, CP 034332, and CP 013779).

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
255		00/00/0000	Karen Krueger, Esq.		Attorney-Client, Work Product	Notes re Kersh employment agreement prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman (Redacted from CP 013791-013808).
256		00/00/0000	Karen Krueger, Esq.		Attorney-Client, Work Product	Notes re Dunlap employment agreement prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman (Redacted from CP 012314-012333).
257		11/13/1998	Megan McIntyre, Esq.	Eric Golden, Esq., Michael Schwartz, Esq. (cc)	Attorney-Client, Work Product	Memorandum re Goldstein litigation.
258		12/01/1998	Megan McIntyre, Esq.	Michael Schwartz, Esq., Eric Golden, Esq.	Attorney-Client, Work Product	Correspondence re Goldstein litigation.
259		09/29/1999	Barry F. Schwartz, Esq.	Adam O. Emmerich, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product	Correspondence re Coleman shareholder litigation.
260		08/04/1998	Paul Rowe, Esq.	Michael Schwartz, Esq., Adam O. Emmerich, Esq., Rachelle Silverberg, Esq. (cc)	Attorney-Client, Work Product	Memorandum re draft settlement agreement provision.
261		11/19/1998	Eric Golden, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Letter re Shallah litigation.
262		04/20/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Sunbeam stock trading history report prepared in connection with litigation (Redacted from CP 005283-005285).
263		08/14/1998	Frank Miller, Esq.	Barry F. Schwartz, Esq., Glenn Dikes, Esq., William Nesbitt, James Maher, Joram Salig, Esq., James Conroy, Esq., Valerie Radwaner, Esq.	Attorney-Client, Work Product	Memorandum re Schedule 13D Amendment prepared in connection with providing legal advice and pending litigation.
264		12/04/1998	Eric Golden, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re Coletta litigation.
265		08/21/1998	Valerie Radwaner, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re Sunbeam warrant prepared in connection with Sunbeam/Coleman (Parent) settlement.
266		08/23/1998	Adam O. Emmerich, Esq.	Glenn Dikes, Esq., Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document prepared in connection with Sunbeam / Coleman (Parent) settlement.
266	A	08/23/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft receipt for warrant prepared in connection with Sunbeam/Coleman (Parent) settlement.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
267		08/23/1998	Adam O. Emmerich, Esq.	Valerie Radwaner, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document prepared in connection with Sunbeam/Coleman (Parent) settlement.
267	A	08/23/1998	Adam O. Emmerich, Esq.		Attorney-Client, Work Product	Draft letter to Shearman & Sterling re Sunbeam warrant prepared in connection with Sunbeam / Coleman (Parent) settlement.
268		08/24/1998	Valerie Radwaner, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re draft letter to Shearman & Sterling re Sunbeam warrant prepared in connection with Sunbeam / Coleman (Parent) settlement.
269		11/03/1998	Jay Eisenhofer, Esq., Megan McIntyre, Esq.	Barry F. Schwartz, Esq., Michael Schwartz, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document.
269	A	11/03/1998	Jay Eisenhofer, Esq., Megan McIntyre, Esq.		Attorney-Client, Work Product	Draft motion for Joergel litigation.
270		01/25/1999	Jay Eisenhofer, Esq., Megan McIntyre, Esq.	Michael Schwartz, Esq., Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re attached draft documents.
270	A	01/25/1999	Grant & Eisenhofer		Attorney-Client, Work Product	Draft motion for Joergel litigation.
270	B	01/25/1999	Grant & Eisenhofer		Attorney-Client, Work Product	Draft motion for In re Sunbeam shareholder litigation.
271		12/16/1998	Megan McIntyre, Esq.	Eric Golden, Esq., Michael Schwartz, Esq. (cc)	Attorney-Client, Work Product	Memorandum re Goldstein litigation.
272		12/03/1998	Megan McIntyre, Esq.	Eric Golden, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re motion in Coleman shareholder litigation.
273		01/08/1999	Jay Eisenhofer, Esq., Megan McIntyre, Esq.	Eric Golden, Esq., Michael Schwartz, Esq. (cc), Rachelle Silverberg, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
273	A	01/08/1999	Grant & Eisenhofer		Attorney-Client, Work Product	Draft motion for In re Sunbeam shareholder litigation.
273	B	01/08/1999	Grant & Eisenhofer		Attorney-Client, Work Product	Draft motion for Joergel litigation.
274		01/08/1999	Megan McIntyre, Esq.	Eric Golden, Esq., Michael Schwartz, Esq. (cc), Rachelle Silverberg, Esq. (cc)	Attorney-Client, Work Product	Memorandum re In re Sunbeam litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
275		01/07/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Draft motion for Joerger litigation with attorney's handwritten notes.
276		11/19/1998	Eric Golden, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Letter re Coletta litigation.
277		08/21/1998	Steven Cohen, Esq., Adam O. Emmerich, Esq.	Barry F. Schwartz, Esq., James Maher, William Nesbitt, Glenn Dicks, Esq., Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
277	A	08/21/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft amendment to Schedule 13D prepared in connection with providing legal advice and pending litigation.
278		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft response to SEC and NYSE requests for information prepared in anticipation of litigation relating to inquiry.
279		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Coleman shareholder litigation.
280		07/07/1998	Paul Rowe, Esq.		Attorney-Client, Work Product	Notes re potential claims arising out of Sunbeam acquisition.
281		07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Memorandum re potential claims arising out of Sunbeam acquisition.
282		07/08/1998	Adam O. Emmerich, Esq., Frank Miller, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., James Maher, William Nesbitt, Todd Slotkin, Irwin Engelman, Glenn Dicks, Esq., Joram Salig, Esq., Valerie Radwagner, Esq. (cc), Steven Cohen, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc), Alexander Shaknes, Esq. (cc), Harold Novikoff, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
282	A	07/08/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant form sheet prepared in connection with Sunbeam/Coleman (Parent) settlement.
282	B	07/08/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant prepared in connection with Sunbeam/Coleman (Parent) settlement.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
282	C	07/08/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft settlement agreement.
283		08/06/1998	Adam O. Emmerich, Esq., Frank Miller, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., James Maher, Irwin Engelman, William Nesbitt, Todd Slotkin, Glenn Dickes, Esq., Joram Salig, Esq., Valerie Radwaner, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
283	A	08/06/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft settlement agreement.
283	B	08/06/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant.
284		07/30/1998	Adam O. Emmerich, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., James Maher	Attorney-Client, Work Product	Memorandum re attached draft document.
284	A	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft memorandum to Sunbeam re potential claims arising from Sunbeam acquisition.
285		07/31/1998	Michael Katzke, Esq.	Glenn Dickes, Esq., Adam O. Emmerich, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
285	A	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement term sheet for J. Levin prepared in connection with providing legal advice and anticipated litigation.
285	B	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for J. Levin prepared in connection with providing legal advice and anticipated litigation.
285	C	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Black-lined version of draft employment agreement for J. Levin with providing legal advice and anticipated litigation.
285	D	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement term sheet for P. Shapiro prepared in connection with providing legal advice and anticipated litigation.
285	E	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for P. Shapiro prepared in connection with providing legal advice and anticipated litigation.
285	F	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement term sheet for B. Jenkins prepared in connection with providing legal advice and anticipated litigation.

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**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
285	G	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for B. Jenkins prepared in connection with providing legal advice and anticipated litigation.
285	H	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement term sheet for G. Wisler prepared in connection with providing legal advice and anticipated litigation.
285	I	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for G. Wisler prepared in connection with providing legal advice and anticipated litigation.
285	J	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement term sheet for J. Nold prepared in connection with providing legal advice and anticipated litigation.
285	K	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for J. Nold prepared in connection with providing legal advice and anticipated litigation.
285	L	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement term sheet for F. Feraco prepared in connection with providing legal advice and anticipated litigation.
285	M	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for F. Feraco prepared in connection with providing legal advice and anticipated litigation.
285	N	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement term sheet for K. Clark prepared in connection with providing legal advice and anticipated litigation.
285	O	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for K. Clark prepared in connection with providing legal advice and anticipated litigation.
286		00/00/0000	Susan Powell, Esq.		Attorney-Client, Work Product	Notes re Sunbeam employment agreements prepared in connection with providing legal advice and anticipated litigation.
287		01/06/1999	Rachelle Silverberg, Esq.	Eric Golden, Esq.	Attorney-Client, Work Product	Memorandum re attached draft documents.
287	A	01/06/1999	Wachtell Lipton		Attorney-Client, Work Product	Draft pleading for Shallah litigation.

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**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
287	B	01/06/1999	Wachtell Lipton		Attorney-Client, Work Product	Draft pleading for Shailal litigation.
288		01/06/1999	Wachtell Lipton		Attorney-Client, Work Product	Draft pleading for Shailal litigation with attorney notes.
289		01/06/1999	Wachtell Lipton		Attorney-Client, Work Product	Draft pleading for Shailal litigation with attorney notes.
290		01/06/1999	Wachtell Lipton		Attorney-Client, Work Product	Draft pleading for Shailal litigation.
291		01/05/1999	Wachtell Lipton		Attorney-Client, Work Product	Draft pleading for Shailal litigation.
292		01/05/1999	Wachtell Lipton		Attorney-Client, Work Product	Draft pleading for Shailal litigation.
293		01/05/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Draft pleading for Shailal litigation with R. Silverberg's handwritten notes.
294		01/05/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Draft pleading for Shailal litigation with R. Silverberg's handwritten notes.
295		12/28/1998	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Draft pleading for Shailal litigation with R. Silverberg's handwritten notes.
296		12/28/1998	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Draft pleading for Shailal litigation with R. Silverberg's handwritten notes.
297		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Attorney notes re Shailal litigation.
298		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft motion for Shailal litigation with R. Silverberg's handwritten notes.
299		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft motion for Shailal litigation with R. Silverberg's handwritten notes.
300		01/25/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Shailal case.
301		00/00/0000	Deborah Paul, Esq.		Attorney-Client	Draft materials for Coleman Board of Directors meeting with attorney's handwritten notes prepared for the purpose of providing legal advice.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
302		00/00/0000	Frank Miller, Esq.		Attorney-Client	Notes re CLN Holdings, Inc. Form 8-K dated 2/27/1998 prepared for the purpose of providing legal advice.
303		02/27/1998	Coleman Company, Inc.	Frank Miller, Esq.	Attorney-Client	Materials re merger agreement disclosure schedules prepared for the purpose of providing legal advice.
304		00/00/0000	Frank Miller, Esq.		Attorney-Client	Notes re Coleman Worldwide Corp. Form 8-K dated 2/27/1998 prepared for the purpose of providing legal advice.
305		00/00/0000	Frank Miller, Esq.		Attorney-Client	Notes re Coleman Company, Inc. Form 8-K dated 2/27/1998 prepared for the purpose of providing legal advice.
306		00/00/0000	Susan Powell, Esq.		Attorney-Client, Work Product	Draft employment agreement for J. Levin with S. Powell's handwritten notes prepared in connection with providing legal advice and anticipated litigation.
307		07/09/1998	Frank Miller, Esq.	Adam O. Emmerich, Esq., Paul Rowe, Esq., Rachelle Silverberg, Esq., Alexander Shalknes, Esq.	Attorney-Client, Work Product	E-mail re draft settlement agreement.
307	A	07/09/1998	Joram Salig, Esq.	Frank Miller, Esq.	Attorney-Client, Work Product	Facsimile re draft settlement agreement.
308		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Notes re Sunbeam / Coleman (Parent) settlement.
309		07/31/1998	Michael Katzke, Esq.		Attorney-Client, Work Product	Memorandum re Sunbeam employment agreements with M. Katzke's handwritten notes prepared in connection with providing legal advice and anticipated litigation.
310		08/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement prepared in connection with providing legal advice and anticipated litigation.
311		08/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Sunbeam employment agreement with S. Powell's handwritten notes prepared in connection with providing legal advice and anticipated litigation.
312		07/31/1998	William Nesbitt	Adam O. Emmerich, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product	Correspondence re warrants and attached documents prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman.
312	A	00/00/0000	William Nesbitt		Attorney-Client, Work Product	Excerpt of Schedule 14A with handwritten notes re warrants prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman.
313		03/02/1998	Steven Isko, Esq.	Michael Katzke, Esq.	Attorney-Client	Memorandum re Coleman stock options information prepared for the purpose of providing legal advice.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
314		12/17/1998	Norman Ginstling, Esq.		Attorney-Client, Work Product	Memorandum re tax issues prepared in connection with Sunbeam/Coleman (Parent) settlement.
315		00/00/0000	Norman J. Ginstling, Esq.		Attorney-Client, Work Product	Excerpt of merger agreement with N. Ginstling's handwritten notes prepared in connection with Sunbeam/Coleman (Parent) settlement.
315	A	00/00/0000	Norman J. Ginstling, Esq.		Attorney-Client, Work Product	Excerpt of Sunbeam / Coleman (Parent) settlement agreement with N. Ginstling's handwritten notes.
316		00/00/0000	Norman Ginstling, Esq.		Attorney-Client, Work Product	Draft legal opinion re tax issues prepared in connection with Sunbeam/Coleman (Parent) settlement.
317		09/06/1998	Norman Ginstling, Esq.	Barry F. Schwartz, Esq., Irwin Engelman	Attorney-Client, Work Product	Fax re attached document prepared in connection with Sunbeam/Coleman (Parent) settlement.
317	A	00/00/0000	Norman Ginstling, Esq.		Attorney-Client, Work Product	Draft analysis re tax issues prepared in connection with Sunbeam/Coleman (Parent) settlement.
318		09/06/1998	Norman Ginstling, Esq.	Barry F. Schwartz, Esq., Irwin Engelman	Attorney-Client, Work Product	Fax re attached document prepared in connection with Sunbeam/Coleman (Parent) settlement.
318	A	00/00/0000	Norman Ginstling, Esq.		Attorney-Client, Work Product	Draft memorandum re tax issues prepared in connection with Sunbeam/Coleman (Parent) settlement.
318	B	00/00/0000	Norman Ginstling, Esq.		Attorney-Client, Work Product	Draft agreement re tax issues prepared in connection with Sunbeam/Coleman (Parent) settlement.
319		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Notes re potential claims arising from Sunbeam's acquisition.
320		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Handwritten notes re potential claims arising from Sunbeam's acquisition.
321		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Handwritten notes re potential claims arising from Sunbeam's acquisition.
322		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Handwritten notes re potential claims arising from Sunbeam's acquisition.
323		07/21/1998	Adam O. Emmerich, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., James Maher, William Nesbitt	Attorney-Client, Work Product	Memorandum re attached draft document.
323	A	07/21/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter to Sunbeam re claims arising out of Sunbeam acquisition.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
324		07/22/1998	Barry F. Schwartz, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re attached draft letter.
324	A	07/22/1998	Barry F. Schwartz, Esq.		Attorney-Client, Work Product	Draft letter to Sunbeam re claims arising out of Sunbeam acquisition.
325		07/22/1998	Barry F. Schwartz, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re H. Gittis' 7/22/98 letter to H. Kristol prepared in connection with providing legal advice and anticipated litigation.
326		08/10/1998	Adam O. Emmerich, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., James Maher, Irwin Engelman, William Nesbitt, Todd Sioklin, Glenn Dickes, Esq., Joram Salig, Esq., Valerie Radwaner, Esq.	Attorney-Client, Work Product	Memorandum re attached draft documents.
326	A	08/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft settlement agreement.
326	B	08/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant prepared in connection with Sunbeam/Coleman (Parent) settlement.
326	C	08/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Amendment to Registration Rights Agreement prepared in connection with Sunbeam/Coleman (Parent) settlement.
327		07/07/1998	Paul Rowe, Esq.		Attorney-Client, Work Product	Draft settlement agreement with P. Rowe's handwritten comments.
328		08/31/1998	Joram Salig, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document prepared in connection with Sunbeam/Coleman (Parent) settlement.
328	A	08/31/1998	Joram Salig, Esq.		Attorney-Client, Work Product	Draft Form 4 prepared in connection with Sunbeam/Coleman (Parent) settlement.
329		02/26/1998	Anthony Ian	Frank Miller, Esq.	Attorney-Client	Memorandum re Coleman insurance issues reflecting information provided by client for purpose of obtaining legal services.
329	A	02/27/1998	Wachtell Lipton		Attorney-Client	Draft provisions re insurance issues prepared for the purpose of providing legal advice.
330		03/20/1998	Robert Fieder, Esq., Cass G. Adelman, Esq.	Joram Salig, Esq., Steven Isko, Esq., John Winkel, Lawrence Winkler, Gerry Kessel, Michael Katzke, Esq., Karen Clark, Kyle Wendt	Attorney-Client	Correspondence re attached draft document prepared for purposes of providing legal advice.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
330	A	03/20/1998	Robert Fieder, Esq., Cass G. Adelman, Esq.		Attorney-Client	Draft agreement re employee benefit plans prepared for the purpose of providing legal advice.
331		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Handwritten notes re Shalial litigation.
332		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Shalial litigation.
333		00/00/0000	Steven Cohen, Esq.		Attorney-Client, Work Product	Handwritten notes re tax issues prepared in connection with Sunbeam/Coleman (Parent) settlement.
334		08/12/1998	Adam O. Emmerlich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Barry F. Schwartz, Esq., Glenn Dickes, Esq., William Nesbitt, James Maher, Joram Saig, Esq.	Attorney-Client, Work Product	Memorandum re attached draft documents.
334	A	08/12/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft consent of Coleman (Parent) Board of Directors re Sunbeam settlement.
334	B	08/12/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Coleman (Parent) Board resolution re Sunbeam settlement.
335		08/11/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant.
336		07/29/1998	Paul Rowe, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re attached notes.
336	A	07/29/1998	Paul Rowe, Esq.		Attorney-Client, Work Product	Handwritten notes re claims arising from Sunbeam acquisition.
337		08/12/1998	Karen Krueger, Esq.		Attorney-Client, Work Product	Draft employment agreement for G. Wisler with attorney's handwritten notes prepared in connection with providing legal advice and anticipated litigation.
338		08/12/1998	Adam O. Emmerlich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Barry F. Schwartz, Esq., Glenn Dickes, Esq., William Nesbitt, James Maher, Joram Saig, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
338	A	08/12/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Schedule 13D Amendment prepared in connection with Sunbeam/Coleman (Parent) settlement.
339		00/00/0000	Steven Cohen, Esq.		Attorney-Client, Work Product	Excerpt of draft settlement agreement with attorney's handwritten notes.
340		08/11/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Amendment to Registration Rights Agreement prepared in connection with Sunbeam/Coleman (Parent) settlement.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
341		07/07/1998	Adam O. Emmerich, Esq., Frank Miller, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq., James Maher, William Nesbitt, Todd Slockin, Irwin Engelman, Glenn Dickes, Esq., Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re attached draft documents.
341	A	07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant term sheet prepared in connection with Sunbeam/Coleman (Parent) settlement.
341	B	07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant.
341	C	07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft settlement agreement.
341	D	07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant.
341	E	07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft settlement agreement.
342		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for G. Wisler prepared in connection with providing legal advice and anticipated litigation.
343		08/19/1998	Susan Powell, Esq.	Joram Salig, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
343	A	08/14/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for J. Levin prepared in connection with providing legal advice and anticipated litigation.
344		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for G. Wisler with P. Shapiro's comments prepared in connection with providing legal advice and anticipated litigation.
345		07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft settlement agreement with attorney's handwritten notes.
346		08/14/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for P. Shapiro prepared in connection with providing legal advice and anticipated litigation.
347		00/00/0000	Susan Powell, Esq.		Attorney-Client, Work Product	Handwritten notes re draft Sunbeam employment agreements prepared in connection with providing legal advice and anticipated litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
348		08/06/1998	Michael Katzke, Esq.	Joram Salig, Esq., Susan Powell, Esq.	Attorney-Client, Work Product	Fax re attached draft document.
348	A	08/06/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement prepared in connection with providing legal advice and anticipated litigation.
349		08/12/1998	Adam O. Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Barry F. Schwartz, Esq., Glenn Dickes, Esq., William Nesbitt, James Maher, Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
349	A	08/12/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant term sheet prepared in connection with Sunbeam/Coleman (Parent) settlement.
350		02/18/1999	Glenn Dickes, Esq.	Todd Slotkin	Attorney-Client, Work Product	Memorandum re attached draft document.
350	A	02/18/1999	Glenn Dickes, Esq.		Attorney-Client, Work Product	Draft confidentiality agreement re Sunbeam prepared in connection with providing legal advice and pending litigation.
351		03/16/1998	Barry F. Schwartz, Esq.	James Conroy, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document prepared in anticipation of litigation relating to SEC/NYSE inquiry.
351	A	03/16/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft response to SEC and NYSE requests for information prepared in anticipation of litigation relating to inquiry.
352		06/15/1998	Wachtell Lipton		Attorney-Client, Work Product	Excerpt of draft Schedule 13D with J. Conroy's handwritten notes prepared in connection with providing legal advice and anticipated litigation.
353		01/25/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Coleman shareholder litigation.
354		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Draft analysis re Sunbeam acquisition prepared in connection with providing legal advice and anticipated litigation.
355		03/17/1998	Wachtell Lipton		Attorney-Client	Draft Section 14(f) notice prepared for the purpose of providing legal advice.
356		07/23/1998	William Nesbitt	Ronald Perelman	Attorney-Client, Work Product	Draft analysis re Sunbeam acquisition prepared in connection with potential litigation re same.
357		04/16/1998	Adam O. Emmerich, Esq.	Howard Gitlis, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client	Memorandum re attached draft document.
357	A	04/16/1998	Wachtell Lipton		Attorney-Client	Draft memorandum re Coleman employee benefits issues prepared in connection with providing legal advice.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
358		03/24/1998	Gary Leshko	Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Letter re attached document.
358	A	00/00/0000	Litigation Counsel to CLN Holdings		Attorney-Client, Work Product	Response to request for information re pending CLN Holdings litigation.
359		00/00/0000	Adam O. Emmerich, Esq.		Attorney-Client	Draft merger agreement with A. Emmerich's handwritten notes prepared for the purpose of providing legal advice.
360		00/00/0000	Wachtell Lipton		Attorney-Client	Summary re merger agreement issues prepared for the purpose of providing legal advice.
360	A	02/24/1998	Adam O. Emmerich, Esq.	Steven Cohen, Esq., Frank Miller, Esq., David Einhorn, Esq. (cc), Michael Katzke, Esq. (cc)	Attorney-Client	E-mail re draft merger agreement prepared for the purpose of providing legal advice.
361		02/24/1998	Michael Katzke, Esq.	Steven Cohen, Esq., Adam O. Emmerich, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client	E-mail re employee benefit issues in merger agreement prepared for the purpose of providing legal advice.
362		03/03/1998	Lenny Ajzenman	Sarah Strasser, Esq.	Attorney-Client	Portion of draft Hart-Scott-Rodino filing with client's handwritten notes provided for purpose of obtaining legal services.
363		00/00/0000	Deborah Paul, Esq.		Attorney-Client	Draft merger agreement disclosure schedules with D. Paul's handwritten notes prepared for the purpose of providing legal advice.
364		02/27/1998	Deborah Paul, Esq.		Attorney-Client	Excerpt of draft merger agreement with attorney's handwritten notes re tax issues prepared for the purpose of providing legal advice.
365		02/27/1998	Deborah Paul, Esq.	Norman Gintsling, Esq., Marvin Shaffer	Attorney-Client	Correspondence re attached draft document prepared for the purpose of providing legal advice.
365	A	02/27/1998	Deborah Paul, Esq.		Attorney-Client	Draft section of merger agreement with attorney's handwritten notes prepared for the purpose of providing legal advice.
366		02/27/1998	Deborah Paul, Esq.	Norman Gintsling, Esq.	Attorney-Client	Draft section of merger agreement prepared for the purpose of providing legal advice.
367		02/24/1998	Steven Isko, Esq.	Michael Katzke, Esq.	Attorney-Client	Materials re employee benefit issues provided for purpose of obtaining legal services.
368		02/24/1998	Steven Isko, Esq.	Michael Katzke, Esq.	Attorney-Client	Materials re employee benefit issues provided for purpose of obtaining legal services.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
369		02/26/1998	Wachtell Lipton		Attorney-Client	Draft Coleman severance policy prepared for the purpose of providing legal advice.
370		06/10/1998	Michael Kazke, Esq.	Karen Krueger, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document with M. Kazke's handwritten notes prepared in connection with providing legal advice and anticipated litigation.
370	A	06/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment termination agreement with M. Kazke's handwritten notes prepared in connection with providing legal advice and anticipated litigation.
371		03/05/1998	Ilene K. Gotts, Esq., Sarah Strasser, Esq.	Steven Isko, Esq., Karen Clark	Attorney-Client	Memorandum re foreign antitrust issues prepared for the purpose of providing legal advice.
373		08/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft resolution re employment terms prepared in connection with providing legal advice and anticipated litigation.
374		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for J. Levin prepared in connection with providing legal advice and anticipated litigation.
375		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for P. Shapiro prepared in connection with providing legal advice and anticipated litigation.
376		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for B. Jenkins prepared in connection with providing legal advice and anticipated litigation.
377		08/12/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for G. Wisler prepared in connection with providing legal advice and anticipated litigation.
378		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for F. Feraco prepared in connection with providing legal advice and anticipated litigation.
379		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for K. Clark prepared in connection with providing legal advice and anticipated litigation.
380		08/12/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for F. Feraco prepared in connection with providing legal advice and anticipated litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
381		08/12/1998	Wachteil Lipton		Attorney-Client, Work Product	Draft employment agreement for K. Clark prepared in connection with providing legal advice and anticipated litigation.
382		05/17/1999	Wachteil Lipton	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Draft pleading for Coleman shareholder litigation with R. Silverberg's notes.
383		02/00/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re 2/27/98 Coleman Co., Inc. board meeting prepared in connection with providing legal advice and pending litigation.
384		05/26/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Draft pleading for Coleman shareholder litigation with R. Silverberg's notes.
385		01/26/1999	Colleen Schmidt	Eric Golden, Esq.	Work Product	Memorandum re shareholder litigation.
386		01/19/2000	Eric Golden, Esq.	Barry F. Schwartz, Esq.	Work Product, Attorney-Client	Fax re attached document prepared in connection with providing legal advice and pending litigation (Redacted from CP 044434).
387		11/18/1998	Barry F. Schwartz, Esq.	Eric Golden, Esq.	Work Product, Attorney-Client	Note re attached document prepared in connection with providing legal advice and pending litigation (Redacted from CP 044435).
388		11/13/1998	Eric Golden, Esq.	Colleen Schmidt	Work Product, Attorney-Client	Notes re attached document prepared in connection with providing legal advice and pending litigation (Redacted from CP 044448).
389		11/02/1998	Barry F. Schwartz, Esq.	Ronald Perelman, Howard Gittis, Esq., James Maher, Irwin Engelman, Todd Slotkin, William Nesbitt	Attorney-Client, Work Product	Memorandum re attached document prepared in connection with providing legal advice and pending litigation (Redacted from CP 044451).
390		11/13/1998	Robert Saunders, Esq.	Janet Kelley, Esq., Barry F. Schwartz, Esq., Eric Golden, Esq., Michael Schwartz, Esq., Thomas Allingham II, Esq. (cc), Timothy Reynolds (cc), Robert Zimet (cc), Kevin Malloy, Esq. (cc)	Attorney-Client, Work Product, Common Interest	Correspondence re attached document.
390	A	11/13/1998	Skadden Aps		Attorney-Client, Work Product, Common Interest	Summary of shareholder litigation status.
391		12/22/1998	Megan McIntyre, Esq.	Thomas Allingham II, Esq., Michael Schwartz, Esq., Rachelle Silverberg, Esq., Eric Golden, Esq.	Attorney-Client, Work Product, Common Interest	Letter re attached draft document.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
391	A	12/22/1998	Grant & Eisenhofer		Attorney-Client, Work Product, Common Interest	Draft motion for Joerger litigation.
392		10/21/1998	Janet Kelley, Esq.	Bairy F. Schwartz, Esq., Paul Shapiro, Esq. (cc), Thomas Allingham II, Esq. (cc)	Attorney-Client, Work Product, Common Interest	Correspondence re Shailal litigation.
393		12/23/1998	Beth Jacobowitz, Esq.	Thomas Allingham II, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Correspondence re attached draft document.
393	A	12/23/1998	Beth Jacobowitz, Esq.		Attorney-Client, Work Product, Common Interest	Draft motion re Shailal litigation.
394		02/23/1998	Wachtell Lipton		Attorney-Client	Draft summary of proposed Sunbeam acquisition terms prepared for the purpose of providing legal advice.
395		11/10/1998	Glenn Dickes, Esq.	Todd Slotkin	Attorney-Client, Work Product	Correspondence re credit agreement prepared in connection with providing legal advice and pending litigation.
396		11/10/1998	Glenn Dickes, Esq.	Todd Slotkin	Attorney-Client, Work Product	Correspondence re credit agreement prepared in connection with providing legal advice and pending litigation.
397		00/00/0000	Michael Katzke, Esq.		Attorney-Client	Handwritten notes re Sunbeam's 401(K) and Profit Sharing plans prepared for the purpose of providing legal advice (Redacted from CP 12664-12672 and CP 27957-27966).
398		03/09/1998	Sarah Strasser, Esq.		Attorney-Client	Memorandum re foreign antitrust filings with S. Strasser's handwritten notes prepared for the purpose of providing legal advice.
398	A	03/09/1998	Coleman Company Inc.'s German Sales Office		Attorney-Client	Summary of foreign competition issues related to Sunbeam acquisition with S. Strasser's notes prepared for the purpose of providing legal advice.
398	B	00/00/0000	Sarah Strasser, Esq.		Attorney-Client	Handwritten notes re foreign competition filings prepared for the purpose of providing legal advice.
399		00/00/0000	Frank Miller, Esq.		Attorney-Client, Work Product	Notes re Sunbeam / Coleman (Parent) settlement issues prepared in connection with Sunbeam/Coleman (Parent) settlement.
400		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Analysis re Sunbeam acquisition issues prepared in connection with Coleman Shareholder litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
401		02/26/1998	Adam O. Emmerich, Esq.		Attorney-Client	Draft letter re Sunbeam acquisition with attorney's handwritten notes prepared for the purpose of providing legal advice.
402		00/00/0000	Jenner & Block		Attorney-Client, Work Product	Notes re discovery response (Redacted from CP 030352).
403		08/27/1999	Steven Daniels, Esq.	Adam O. Emmerich, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document prepared in connection with providing legal advice and pending litigation.
403	A	08/27/1999	Skadden Arps		Attorney-Client, Work Product	Draft amendment to Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
404		01/31/1999	Irwin H. Warren, Esq.	Robert Saunders, Esq., Kevin Maloy, Esq., Rachelle Silverberg, Esq.	Attorney-Client, Work Product, Common Interest	Correspondence re attached draft document.
404	A	01/31/1999	Robert Saunders, Esq.		Attorney-Client, Work Product, Common Interest	Draft pleading for Shallal litigation with I. Warren's handwritten notes.
405		02/01/1999	Kevin Maloy, Esq.	Beth Jacobowitz, Esq., Tim Greensfelder, Esq., Rachelle Silverberg, Esq.	Attorney-Client, Work Product, Common Interest	Correspondence re attached draft documents.
405	A	02/01/1999	Robert Saunders, Esq.		Attorney-Client, Work Product, Common Interest	Draft memorandum re pleading for Shallal litigation with R. Silverberg's handwritten notes.
406		01/31/1999	Robert Saunders, Esq.	Beth Jacobowitz, Esq., Tim Greensfelder, Esq., Rachelle Silverberg, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re attached draft document.
406	A	01/31/1999	Robert Saunders, Esq.		Attorney-Client, Work Product, Common Interest	Draft pleading for Shallal litigation with R. Silverberg's handwritten notes.
407		12/22/1998	Richard Berman, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product, Common Interest	Draft affidavit for Shallal litigation.
408		01/06/1999	Beth Jacobowitz, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product, Common Interest	Correspondence re attached draft documents.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
408	A	01/06/1999	Weil Gotshal		Attorney-Client, Work Product, Common Interest	Draft pleading for Shallal litigation.
408	B	01/06/1999	Weil Gotshal		Attorney-Client, Work Product, Common Interest	Draft pleading for Shallal litigation.
409		12/23/1998	Wachtell Lipton	Beth Jacobowitz, Esq.	Attorney-Client, Work Product, Common Interest	Draft motion re Shallal litigation.
410		00/00/0000	Skadden Aps		Work Product, Common Interest	Report re pending litigation.
411		11/04/1998	Michael Schwartz, Esq.	Adam O. Emmerich, Esq., Rachelle Silverberg, Esq., Frank Miller, Esq.	Attorney-Client, Work Product	Memorandum re attached document.
411	A	10/29/1998	Thomas Allingham II, Esq., Robert Saunders, Esq., Kevin M. Maloy, Esq.	Janet Kelley, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re pending litigation.
412		02/26/1998	Adam O. Emmerich, Esq.		Attorney-Client	Letter re Sunbeam acquisition with attorney's notes prepared for the purpose of providing legal advice.
413		05/25/1998	Adam O. Emmerich, Esq., Michael Katzke, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re Sunbeam prepared in connection with providing legal advice and anticipated litigation.
414		00/00/0000	Eric Golden, Esq.		Work Product	Notes re Ulfsson complaint. (Redacted form as CP 31013-31022).
415		05/25/1998	Adam O. Emmerich, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached document prepared in connection with providing legal advice and anticipated litigation.
415	A	05/25/1998	Wachtell Lipton		Attorney-Client, Work Product	Memorandum re Sunbeam prepared in connection with providing legal advice and anticipated litigation.
416		00/00/0000	Larry Winoker		Attorney-Client, Work Product	Handwritten notes re article prepared in connection with preparation of Doc. No. 417 and at direction of counsel.
417		06/09/1998	William Nesbitt	Ronald Perelman, Donald Drapkin, Esq. (cc), Howard Gittis, Esq. (cc), Jerry Levin (cc), James Maher (cc), Barry F. Schwartz, Esq. (cc)	Attorney-Client, Work Product	Draft memorandum re article prepared at request of B. Schwartz, Esq. prepared in connection with providing legal advice and anticipated litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
418		00/00/0000	Larry Winkler		Attorney-Client, Work Product	Handwritten notes re Sunbeam Form 10-Q for period ending 3/31/1998 prepared in connection with preparation of Doc. No. 419 and at direction of counsel.
419		00/00/0000	Eric Golden, Esq.		Work Product	Notes re Mintz complaint (Redacted from CP 039608-039652, CP 030969-031012).
420		03/11/1998	Steven Isko, Esq.	Barry F. Schwartz, Esq., Joram Salig, Esq., Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re NYSE request for information prepared in anticipation of litigation relating to inquiry.
421		02/24/1998	William Nesbitt	Adam O. Emmerich, Esq.	Attorney-Client	Memorandum re attached document.
421	A	02/24/1998	William Nesbitt		Attorney-Client	Analysis of Sunbeam proposal prepared for the purpose of obtaining legal advice.
422		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes on draft Sunbeam submission to SEC prepared in anticipation of litigation relating to inquiry.
423		04/28/1998	Glenn Dickes, Esq.	Frank Miller, Esq., Joram Salig, Esq. (cc), Barry F. Schwartz, Esq. (cc)	Attorney-Client	Correspondence re Sunbeam letter re employee benefits prepared in connection with providing legal advice.
424		03/04/1998	Adam O. Emmerich, Esq., Michael Katzke, Esq.		Attorney-Client	Draft memorandum re applicability of federal securities laws.
425		03/05/1998	Michael Katzke, Esq.	Barry F. Schwartz, Esq., Steven Isko, Esq., Adam O. Emmerich, Esq. (cc)	Attorney-Client	Memorandum re applicability of federal securities laws.
426		10/28/1998	Barry F. Schwartz, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re Coleman shareholder litigation.
427		05/17/1999	Thomas Allingham II, Esq., Robert Saunders, Esq., Kevin M. Maloy, Esq.	Janet Kelley, Esq., Steven Isko, Esq., Paul Shapiro, Esq., Barry F. Schwartz, Esq., Eric Golden, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re attached draft document.
427	A	05/17/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft pleading for Coleman shareholder litigation.
428		07/30/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft pleading for Coleman shareholder litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
429		06/23/1999	Robert Saunders, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product, Common Interest	E-mail re draft pleading for Coleman shareholder litigation.
430		02/09/1999	Kevin M. Maloy, Esq.	Rachelle Silverberg, Esq.	Work Product, Common Interest	Fax re Coleman shareholder litigation.
430	A	00/00/0000	Skadden Arps		Work Product, Common Interest	Proposed document redactions for document production in Coleman shareholder litigation.
431		11/02/1999	Thomas Allingham II, Esq.	Michael Schwartz, Esq., Paul Shapiro, Esq., Steven Isko, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached draft letter.
431	A	11/02/1999	Thomas Allingham II, Esq.		Work Product, Common Interest	Draft letter to Court in Coleman shareholder litigation.
432		01/12/1999	Robert Saunders, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached document.
432	A	01/12/1999	Robert Saunders, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Report re pending litigation.
433		10/27/1998	Barry F. Schwartz, Esq., William Nesbitt		Attorney-Client, Work Product	Letter re Coleman shareholder litigation with B. Schwartz' and W. Nesbitt's handwritten notes.
434		04/00/1998	William Nesbitt		Attorney-Client	Notes re Sunbeam 1998 proxy materials prepared at the request of B. Schwartz, Esq. prepared in connection with providing legal advice.
434	A	04/29/1998	Barry F. Schwartz, Esq., Esq.	William Nesbitt	Attorney-Client	Memorandum re attached Sunbeam proxy materials prepared in connection with providing legal advice.
434	B	04/00/1998	William Nesbitt		Attorney-Client	Notes re Sunbeam's 1998 proxy statement prepared at the request of B. Schwartz, Esq. prepared in connection with providing legal advice. (Redacted from CP 041844-041860).
434	C	04/00/1998	William Nesbitt		Attorney-Client	Notes re Schedule 14A prepared at the request of B. Schwartz, Esq. prepared in connection with providing legal advice. (Redacted from CP 041861-041906).
435		00/00/0000	William Nesbitt		Attorney-Client, Work Product	Notes re Sunbeam stock options prepared at the request of B. Schwartz, Esq. in connection with potential litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
436		00/00/0000	Rachelle Silverberg, Esq.		Work Product	Notes re Morgan Stanley materials prepared in anticipation of litigation relating to Sunbeam's acquisition of CPH's interest in Coleman. (Redacted from CP 016766).
437		00/00/0000	Rachelle Silverberg, Esq.		Work Product	Notes re witness interview prepared in connection with response to SEC and NYSE's request for information prepared in anticipation of litigation relating to inquiry. (Redacted from CPH2011532).
438		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Handwritten notes re potential claims arising from Sunbeam's acquisition.
438	A	00/00/0000	William Nesbitt, Paul Rowe, Esq.		Attorney-Client, Work Product	Notes re Sunbeam transaction prepared in anticipation of litigation and at the direction of counsel with P. Rowe's handwritten notes.
439		03/29/1999	Eric Golden, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product	Fax re Krim litigation.
440		04/19/1999	Eric Golden, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product	Fax re Krim litigation.
441		11/02/1999	Eric Golden, Esq.	Barry F. Schwartz, Esq.	Attorney-Client, Work Product	Draft letter to court re Coleman shareholder litigation with E. Golden notes.
442		06/30/1998	Barry F. Schwartz, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Fax re attached document.
442	A	06/25/1998	Stacy J. Kanter	Michele Garland, Esq., Leander Gray, Esq., Rosa Testani, Esq. (cc)	Attorney-Client, Work Product	Memorandum re LYONs issues with attorney's notes prepared in connection with providing legal advice and anticipated litigation.
442	B	06/25/1998	Rosa Testani, Esq.	Barry F. Schwartz, Esq., Glenn Dickes, Esq.	Attorney-Client, Work Product	Fax re attached document.
443		00/00/0000	Wachteill Lipton		Attorney-Client, Work Product	Draft Sunbeam response to SEC and NYSE requests for information with attorney's handwritten notes prepared in anticipation of litigation relating to inquiry.
444		05/13/1999	Steven Daniels, Esq.	Paul Shapiro, Esq., Janet Kelley, Esq., Barry F. Schwartz, Esq., Steven Isko, Esq., Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document prepared in connection with providing legal advice and pending litigation.
444	A	05/00/1999	Adam O. Emmerich, Esq.		Attorney-Client, Work Product	Excerpt of draft Sunbeam Form S-4 with A. Emmerich's handwritten notes prepared in connection with providing legal advice and pending litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
445		11/00/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Excerpt of draft Sunbeam Form S-4 with R. Silverberg's handwritten notes prepared in connection with providing legal advice and pending litigation.
446		00/00/0000	Ilene K. Gottis, Esq.		Attorney-Client	Draft Sunbeam Form S-4 with I. Gott's handwritten comments prepared for the purpose of providing legal advice.
447		11/05/1999	Steven Isko, Esq.	Barry F. Schwartz, Esq., Adam O. Emmerich, Esq., Blaine Fogg, Esq., Richard Easton, Esq.	Attorney-Client, Work Product	Fax re attached document prepared in connection with providing legal advice and pending litigation.
447	A	11/00/1999	Steven Isko, Esq., Paul Shapiro, Esq.		Attorney-Client, Work Product	Section of draft Sunbeam Form S-4 with attorney's notes prepared in connection with providing legal advice and pending litigation.
448		11/04/1999	Rachelle Silverberg, Esq.	Steven Isko, Esq.	Attorney-Client, Work Product	Memorandum enclosing section of draft Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
448	A	10/18/1999	Wachtell Lipton		Attorney-Client, Work Product	Section of draft Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
449		10/06/1999	Steven Daniels, Esq.	Steven Isko, Esq., Paul Shapiro, Esq., Karen Clark, Esq., Blaine Fogg, Esq., Michael Schwartz, Esq., Steve Thibault, Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Memorandum re section of draft Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
449	A	10/00/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Section of draft Sunbeam Form S-4 with R. Silverberg's handwritten notes prepared in connection with providing legal advice and pending litigation.
450		07/00/1998	Adam O. Emmerich, Esq.		Attorney-Client, Work Product	Draft Amendment to Credit Agreement with A. Emmerich's handwritten notes prepared in connection with providing legal advice and anticipated litigation.
451		06/29/1998	Adam O. Emmerich, Esq.		Attorney-Client, Work Product	Draft amendment to credit agreement with A. Emmerich's handwritten notes prepared in connection with providing legal advice and anticipated litigation.
455		03/27/1998	Adrian Deitz, Esq.	Adam O. Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Attorney-Client, Common Interest	Correspondence re attached draft document prepared for the purpose of providing legal advice.
455	A	03/27/1998	Skadden Arps		Attorney-Client, Common Interest	Draft CLN Holdings Officer's Certificate prepared for the purpose of providing legal advice.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
456		07/29/1998	Paul Rowe, Esq.		Attorney-Client, Work Product	Handwritten notes re potential claims against Sunbeam.
457		08/12/1998	Steven Cohen, Esq.		Attorney-Client, Work Product	Draft press release re Sunbeam settlement with S. Cohen's notes.
457	A	08/12/1998	Steven Cohen, Esq.		Attorney-Client, Work Product	Draft letter to Sunbeam's shareholders re Sunbeam settlement with S. Cohen's handwritten notes.
458		08/15/1998	Rita W. Gordon, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached document.
458	A	04/14/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft response to SEC's requests for information prepared in anticipation of litigation relating to inquiry.
459		04/17/1998	Frank Miller, Esq.	Richard Easton, Esq., Rita W. Gordon, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re attached draft document.
459	A	00/00/0000	Wachtell Lipton		Attorney-Client, Work Product, Common Interest	Draft response to SEC's requests for information with attorney's notes prepared in anticipation of litigation relating to inquiry.
460		04/16/1998	Rita W. Gordon, Esq.	Frank Miller, Esq., Adam O. Emmerich, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached document.
460	A	04/16/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft response to SEC's requests for information prepared in anticipation of litigation relating to inquiry.
461		03/06/1998	Wachtell Lipton	Ilene K. Gotts, Esq.	Attorney-Client	Fax re attached document prepared for the purpose of providing legal advice.
461	A	03/06/1998	Ioannis Zervas, Esq.	Ilene K. Gotts, Esq.	Attorney-Client, Common Interest	Fax re attached document prepared for the purpose of providing legal advice.
461	B	00/00/0000	Skadden Arps		Attorney-Client, Common Interest	Draft European pre-merger notification prepared for the purpose of providing legal advice.
461	C	03/13/1996	Skadden Arps		Attorney-Client, Common Interest	Draft European pre-merger notification prepared for the purpose of providing legal advice.
461	D	03/04/1996	Skadden Arps		Attorney-Client, Common Interest	Draft European pre-merger notification prepared for the purpose of providing legal advice.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
461	E	03/12/1996	Skadden Arps	Thomas Allingham II, Esq., Richard Easton, Esq., Tom Balliett, Adam O. Emmerich, Esq., Steven Isko, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Common Interest	Draft European pre-merger notification prepared for the purpose of providing legal advice.
462		11/17/1999	Blaine Fogg, Esq.	Thomas Allingham II, Esq., Richard Easton, Esq., Tom Balliett, Adam O. Emmerich, Esq., Steven Isko, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re attached document.
462	A	11/17/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Excerpts of draft Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
463		11/15/1999	Blaine Fogg, Esq.	Thomas Allingham II, Esq., Richard Easton, Esq., Adam O. Emmerich, Esq., Steven Isko, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re attached document.
463	A	11/15/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Excerpts of draft Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
464		11/12/1999	Steven Isko, Esq.	Richard Easton, Esq., Thomas Allingham II, Esq., Adam O. Emmerich, Esq., Barry F. Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached document.
464	A	00/00/0000	Paul Shapiro, Esq.		Attorney-Client, Work Product, Common Interest	Excerpt of draft Sunbeam Form S-4 with P. Shapiro's comments prepared in connection with providing legal advice and pending litigation.
465		11/12/1999	Blaine Fogg, Esq.	Richard Easton, Esq., Thomas Allingham II, Esq., Adrian Deltz, Esq., Steven Isko, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached document.
465	A	11/12/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Excerpt of draft Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
466		11/05/1999	Steven Isko, Esq.	Barry F. Schwartz, Esq., Adam O. Emmerich, Esq., Blaine Fogg, Esq., Richard Easton, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached document.
466	A	00/00/0000	Steven Isko, Esq.		Attorney-Client, Work Product, Common Interest	Excerpt of draft Sunbeam Form S-4 with attorney's notes prepared in connection with providing legal advice and pending litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
467		11/05/1999	Blaine Fogg, Esq.	Richard Easton, Esq., Adam O. Emmerich, Esq., Steven Isko, Esq., Barry F. Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re attached draft document.
467	A	11/00/1999	Blaine Fogg, Esq.		Attorney-Client, Work Product, Common Interest	Excerpt of draft Sunbeam Form S-4 with attorney's notes prepared in connection with providing legal advice and pending litigation.
468		11/19/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft letter to SEC re Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
469		10/06/1999	Steven Daniels, Esq.	Blaine Fogg, Esq. (cc), Richard Easton, Esq. (cc), Paul Shapiro, Esq., Karen Clark, Esq., Steven Isko, Esq., Adam O. Emmerich, Esq., Michael Schwartz, Esq., Steve Thibault, Allison Amorison, Esq., Matthew Greenberg, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re attached draft document.
469	A	10/06/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Excerpt of draft Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
470		01/27/1999	Robert Saunders, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached document.
470	A	01/27/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Excerpt of draft Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
471		03/07/1998	Sarah Strasser, Esq.	Iaonnis Zervas, Esq.	Attorney-Client, Common Interest	Fax re attached draft document prepared for the purpose of providing legal advice.
471	A	03/06/1998	Sarah Strasser, Esq.		Attorney-Client, Common Interest	Draft European pre-merger notification containing S. Strasser notes prepared for the purpose of providing legal advice.
472		05/12/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft response to SEC comments on draft Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
474		04/17/1998	Frank Miller, Esq.	Richard Easton, Esq., Allison Amorison, Esq., Steven Daniels, Esq.	Attorney-Client, Common Interest	Memorandum re attached draft document.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
474	A	04/07/1998	Wachtell Lipton		Attorney-Client, Common Interest	Draft Sunbeam Form S-4 with attorney's notes prepared in connection with providing legal advice.
475		05/07/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft Sunbeam Form S-4 amendment prepared in connection with providing legal advice and pending litigation.
476		05/10/1999	Steven Daniels, Esq.	Adam O. Emmerich, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re Sunbeam Form S-4 amendment prepared in connection with providing legal advice and pending litigation.
476	A	05/10/1999	Allison Amorison, Esq., Steven Daniels, Esq., Matthew Greenberg, Esq.	Paul Shapiro, Esq., Janet Kelley, Esq., Bobby Jenkins, Karen Clark, Esq., John Frederick, Barry F. Schwartz, Esq., Steven Isko, Esq., Blaine Fogg, Esq., Richard Easton, Esq., Mitchell Solomon, Esq., Joseph Halliday, Larry Fishman, Esq., Robert Zimet, Esq., Thomas Allingham, Esq., Matthew Knopf, Esq., William Weiss, Esq., Thomas Gowan, Esq., Robert Saunders, Esq., Prabhat Mehta, Esq., Christopher Malloy, Esq., Kevin Maloy, Esq., Jeffrey Laska, Esq., Steve Thibault, Noel Spiegai, Adam O. Emmerich, Esq., Steven Cohen, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re attached draft document.
477		05/05/1999	Matthew Greenberg, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached draft document.
477	A	05/04/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Section of draft Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
478		03/20/1998	Ionnis Zervas, Esq.	Irene K. Gotts, Esq., Michael Jahnke, Esq.	Attorney-Client, Common Interest	Fax re attached document prepared for the purpose of providing legal advice.
478	A	03/20/1998	Ionnis Zervas, Esq.	Janet Kelley, Esq., Allison Amorison, Esq., Michael Jahnke, Esq., Steven Isko, Esq., Robert Rozenzweig, Barry Hawk (cc), Henry Huser (cc), Joe Nisa (cc)	Attorney-Client, Common Interest	Memorandum re European antitrust issues prepared for the purpose of providing legal advice.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
479		03/03/1998	Ioannis Zervas, Esq.	Sarah Strasser, Esq.	Attorney-Client, Common Interest	Fax re attached documents prepared for the purpose of providing legal advice.
479	A	03/03/1998	Henry Huser, Esq., Ioannis Zervas, Esq.	Richard Easton, Esq. (cc), Joe Nisa (cc), Sarah Strasser, Esq.	Attorney-Client, Common Interest	Memorandum re European antitrust issues prepared for the purpose of providing legal advice.
479	B	03/03/1998	Skadden Arps		Attorney-Client, Common Interest	Outline re European antitrust opinion prepared for the purpose of providing legal advice.
480		03/05/1998	Ioannis Zervas, Esq.	Irene K. Gotts, Esq., Sarah Strasser, Esq.	Attorney-Client, Common Interest	Fax re attached documents prepared for the purpose of providing legal advice.
480	A	03/29/1998	Skadden Arps		Attorney-Client, Common Interest	Outline of draft French submission prepared for the purpose of providing legal advice.
480	B	03/08/1998	Henry Huser, Esq.	Steven Isko, Esq.	Attorney-Client, Common Interest	Letter re European antitrust issues prepared for the purpose of providing legal advice.
481		05/05/1999	Matthew Greenberg, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached draft document prepared in connection with providing legal advice and pending litigation.
481	A	05/04/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Excerpt of draft Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
482		05/10/1999	Steven Daniels, Esq.	Adam O. Emmerich, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re draft Subbeam Form S-4 amendment prepared in connection with providing legal advice and pending litigation.
483		08/06/1998	Thomas Allingham II, Esq.	Barry F. Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached draft document.
483	A	08/06/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Memorandum re draft agreement with former Sunbeam management prepared in connection with Sunbeam/Coleman (Parent) settlement.
484		08/30/1999	Rachelle Silverberg, Esq.	Steven Daniels, Esq., Thomas Allingham, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re attached draft document prepared in connection with providing legal advice and pending litigation.
484	A	00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product, Common Interest	Excerpt of draft Sunbeam Form S-4 with R. Silverberg's notes prepared in connection with providing legal advice and pending litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
485		08/24/1999	Blaine Fogg, Esq.	Thomas Allingham, Esq., Richard Easton, Esq., Robert Saunders, Esq., Karen Clark, Esq., Bobby Jenkins, Paul Shapiro, Esq., Steven Isko, Esq., Barry F. Schwartz, Esq., Adam O. Emmerich, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re draft Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
485	A	08/24/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft response to SEC comments on draft Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
487		05/12/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
488		06/23/1998	Todd E. Freed, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached draft document prepared in connection with providing legal advice and anticipated litigation.
488	A	06/23/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft Sunbeam Form S-3 prepared in connection with providing legal advice and anticipated litigation.
489		06/19/1998	Adam O. Emmerich, Esq.	Richard Easton, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached document prepared in connection with providing legal advice and anticipated litigation.
489	A	06/19/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft insert to Sunbeam Form S-3 prepared in connection with providing legal advice and anticipated litigation.
490		06/19/1998	Blaine Fogg, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached draft document.
490	A	06/19/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft press release re Sunbeam Form S-3 prepared in connection with providing legal advice and anticipated litigation.
491		06/23/1998	Todd E. Freed, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached draft document.
491	A	06/23/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft Sunbeam Form S-3 prepared in connection with providing legal advice and anticipated litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
492		06/19/1998	Todd E. Freed, Esq.	Jerry Levin, Peter Langerman, Janet Kelley, Esq., Robert Gluck, Ron Richter, Blaine Fogg, Esq., Richard Easton, Esq., Gregory Femicola, Esq., Mitchell Solomon, Esq., Peter Neckles, Esq., Michele Gartland, Esq., Allison Amorison, Esq., William Weiss, Esq., Adrian Deitz, Esq., Steven Daniels, Esq., Matthew Greenberg, Esq., Irwin Engelman, Howard Gittis, Esq., Paul Shapiro, Esq., Donald Drapkin, Barry F. Schwartz, Esq., Glenn Dickes, Esq., Adam O. Emmerich, Esq., Michael Schwartz, Esq., Harold Novikoff, Esq., Frank Miller, Esq., Steven Cohen, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum enclosing Draft Sunbeam Form S-3 prepared in connection with providing legal advice and anticipated litigation.
492	A	06/00/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft Press Release re Sunbeam Form S-3 prepared in connection with providing legal advice and anticipated litigation.
492	B	06/22/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft Sunbeam Form S-3 prepared in connection with providing legal advice and anticipated litigation.
493		06/00/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft Sunbeam Form S-3 prepared in connection with providing legal advice and anticipated litigation.
495		04/30/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft Sunbeam Form S-4 prepared in connection with providing legal advice and anticipated litigation.
496		05/12/1999	Adam O. Emmerich, Esq.	Richard Easton, Esq., Steven Isko, Esq., Barry F. Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re attached draft document prepared in connection with providing legal advice and pending litigation.
496	A	05/11/1999	Wachtell Lipton		Attorney-Client, Work Product, Common Interest	Draft Sunbeam Form S-4 amendment with A. Emmerich's notes prepared in connection with providing legal advice and pending litigation.
497		08/18/1999	Steven Isko, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Draft response to SEC comment on Sunbeam Form S-4 prepared in connection with Sunbeam/Coleman (Parent) settlement.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
498		03/19/1998	Steven Daniels, Esq.	Frank Miller, Esq.	Attorney-Client, Common Interest	Correspondence re attached draft document prepared for the purpose of providing legal advice.
498	A	03/19/1998	Skadden Arps		Attorney-Client, Common Interest	Draft outline for Sunbeam Form S-4 prepared for the purpose of providing legal advice.
499		05/07/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft letter to SEC responding to comments on Form S-4 prepared in connection with providing legal advice and pending litigation.
500		05/10/1999	Steven Daniels, Esq.	Adam O. Emmerich, Esq., Michael Schwartz, Esq., Richard Easton, Esq. (cc)	Attorney-Client, Work Product, Common Interest	Memorandum re draft amendment to Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation. (Redacted from CP 044459)
501		05/07/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft Sunbeam Form S-4 amendment prepared in connection with providing legal advice and pending litigation.
502		11/18/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft amendment to Sunbeam Form S-4 prepared in connection with providing legal advice and pending litigation.
503		04/17/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft Sunbeam Form S-4 prepared in connection with providing legal advice and anticipated litigation.
504		04/30/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft Sunbeam Form S-4 prepared in connection with providing legal advice and anticipated litigation.
505		04/24/1998	Frank Miller, Esq.	Barry F. Schwartz, Esq., James Maher, Esq., William Nesbitt, Joram Sallig, Esq., Steve Isko, Esq., Adam O. Emmerich, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents prepared in anticipation of litigation relating to SEC/NYSE inquiry.
505	A	04/23/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft response to SEC and NYSE requests for information prepared in anticipation of litigation relating to inquiry.
507		06/22/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft Sunbeam Form S-3 prepared in connection with providing legal advice and anticipated litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
508		05/14/1999	Adam O. Emmerich, Esq.	Richard Easton, Esq., Steven Daniels, Esq.	Attorney-Client, Work Product, Common Interest	Draft section of Sunbeam Form S-4 with attorney's handwritten notes prepared in connection with providing legal advice and pending litigation.
509		03/13/1998	Allison Amorison, Esq.	Frank Miller, Esq.	Attorney-Client, Common Interest	Correspondence re attached draft document prepared for the purpose of providing legal advice.
509	A	03/13/1998	Skadden Arps		Attorney-Client, Common Interest	Section of draft Section 14(f) Notice with attorney's comments prepared for the purpose of providing legal advice.
510		03/16/1998	Allison Amorison, Esq., Steven Daniels, Esq.	Frank Miller, Esq.	Attorney-Client, Common Interest	Memorandum re attached draft document prepared for the purpose of providing legal advice.
510	A	03/16/1998	Skadden Arps		Attorney-Client, Common Interest	Draft Section 14(f) notice with Skadden comments prepared for the purpose of providing legal advice.
511		03/04/1998	Steven Daniels, Esq.	Frank Miller, Esq., Allison Amorison, Esq. (cc)	Attorney-Client, Common Interest	Memorandum re draft Section 14(f) notice prepared for the purpose of providing legal advice.
512		06/22/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft Sunbeam Form S-3 prepared in connection with providing legal advice and anticipated litigation.
513		06/24/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft insert for Sunbeam Form S-3 prepared in connection with providing legal advice and anticipated litigation.
514		03/20/1998	Ionnis Zervas, Esq.	Janet Kelley, Esq., Allison Amorison, Esq., Michael Jahnke, Esq., Steven Isko, Esq., Robert Rozenzweig, Barry Hawk (cc), Henry Huser (cc), Joe Nisa (cc)	Attorney-Client, Common Interest	Memorandum re German antitrust filing prepared for the purpose of providing legal advice. (Redacted from CP 044102).
515		03/08/1998	Sarah Strasser, Esq.	Dan Peterson, Steven Isko, Esq. (cc), Karen Clark (cc), Ilene K. Gotts, Esq. (cc)	Attorney-Client	Memorandum re foreign antitrust filings and attached document prepared for the purpose of providing legal advice.
515	A	03/06/1998	Sarah Strasser, Esq.		Attorney-Client	Excerpt of draft foreign antitrust filing prepared for the purpose of providing legal advice with S. Strasser's handwritten notes.
516		03/06/1998	Sarah Strasser, Esq.	Iaonnis Zervas, Esq.	Attorney-Client, Common Interest	Memorandum re attached draft document prepared for the purpose of obtaining legal advice.
516	A	03/06/1998	Sarah Strasser, Esq.		Attorney-Client, Common Interest	Draft foreign antitrust filing re Sunbeam acquisition with S. Strasser's handwritten notes prepared for the purpose of obtaining legal advice.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
517		03/05/1998	Michael Jahnke, Esq.	Craig Ronan, Esq.	Attorney-Client	Correspondence re attached draft document prepared for the purpose of providing legal advice.
517	A	03/05/1998	Wachtell Lipton		Attorney-Client	Portion of draft Hart-Scott-Rodino filing prepared for the purpose of providing legal advice.
520		03/05/1998	Michael Jahnke, Esq.	Craig Ronan, Esq.	Attorney-Client	Correspondence re attached draft documents prepared for the purpose of providing legal advice.
520	A	03/04/1998	Wachtell Lipton		Attorney-Client	Portion of draft Hart-Scott-Rodino filing prepared for the purpose of providing legal advice.
522		03/23/1998	Rosa Testani, Esq.	Glenn Dicks, Esq., Martha Sanders, Adam O. Emmerich, Esq. (cc), Blaine Fogg, Esq. (cc), Stacy J. Kanter	Attorney-Client, Common Interest	Memorandum re attached draft document prepared for the purpose of providing legal advice.
522	A	03/23/1998	Skadden Arps		Attorney-Client, Common Interest	Draft letter to LYONs trustees prepared for the purpose of providing legal advice.
522	B	03/23/1998	Skadden Arps		Attorney-Client	Draft notice of LYONs redemption prepared for the purpose of providing legal advice.
523		03/05/1998	Craig V. Ronan, Esq.	Michael Jahnke, Esq.	Attorney-Client	Correspondence re draft Hart-Scott-Rodino filing prepared for the purpose of providing legal advice.
524		08/14/1998	Richard Easton, Esq.	Adam O. Emmerich, Esq., Steven Jacobs, Esq., Janet Kelley, Esq., Peter Langerman, Barry F. Schwartz, Esq., Paul Shapiro, Esq., Blaine Fogg, Esq. (cc), Allison Amorison, Esq. (cc)	Attorney-Client, Work Product, Common Interest	Memorandum re application for NYSE exception prepared in connection with Sunbeam/Coleman (Parent) settlement.
525		08/10/1998	Blaine Fogg, Esq.	Howard Kristol, Peter Langerman, Steven Jacobs, Esq., Irvin Warren, Esq., Jerry Levin, Paul Shapiro, Esq., Barry F. Schwartz, Esq., Adam O. Emmerich, Esq., Michael Schwartz, Esq., Richard Easton, Esq., Allison Amorison, Esq.	Attorney-Client, Work Product, Common Interest	Fax re application to NYSE for exception prepared in connection with Sunbeam/Coleman (Parent) settlement.
526		08/12/1998	Marc Shiffman	Barry F. Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Draft exhibit to NYSE application for exception prepared in connection with Sunbeam/Coleman (Parent) settlement.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
527		08/07/1998	Blaine Fogg, Esq.	Adam O. Emmerich, Esq., David Fannin, Steven Jacobs, Esq., Howard Kristol, Peter Langerman, Barry F. Schwartz, Esq., Paul Shapiro, Esq., Irwin Warren, Esq., Allison Amorison, Esq. (cc)	Attorney-Client, Work Product, Common Interest	Memorandum re attached draft documents prepared in connection with Sunbeam/Coleman (Parent) settlement.
527	A	08/07/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft exhibit to application for NYSE exception prepared in connection with Sunbeam/Coleman (Parent) settlement.
527	B	08/07/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft exhibit to application for NYSE exception with attorney's handwritten notes prepared in connection with Sunbeam/Coleman (Parent) settlement.
527	C	08/07/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft exhibit to application for NYSE exception prepared in connection with Sunbeam/Coleman (Parent) settlement.
528		08/10/1998	Beth Jacobowitz, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Correspondence re attached draft documents prepared in connection with Sunbeam/Coleman (Parent) settlement.
528	A	08/09/1998	Irwin H. Warren, Esq.		Attorney-Client, Work Product, Common Interest	Draft letter to NYSE re application for exception with attorney's notes prepared in connection with Sunbeam/Coleman (Parent) settlement.
528	B	08/09/1998	Irwin H. Warren, Esq.		Attorney-Client, Work Product, Common Interest	Draft letter to NYSE re application for exception with attorney's notes prepared in connection with Sunbeam/Coleman (Parent) settlement.
529		08/03/1998	Blaine Fogg, Esq.	Adam O. Emmerich, Esq., David Fannin, Stephen Jacobs, Esq., Howard Kristol, Peter Langerman, Barry F. Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re attached draft documents prepared in connection with Sunbeam/Coleman (Parent) settlement.
529	A	08/03/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft letter to NYSE re application for exception prepared in connection with Sunbeam/Coleman (Parent) settlement.
529	B	08/03/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft letter to NYSE re application for exception prepared in connection with Sunbeam/Coleman (Parent) settlement.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
530		08/03/1998	Blaine Fogg, Esq.	Adam O. Emmerich, Esq., David Fannin, Stephen Jacobs, Esq., Howard Kristol, Peter Langerman, Barry F. Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Correspondence re attached draft documents prepared in connection with Sunbeam/Coleman (Parent) settlement.
530	A	08/03/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft exhibits to NYSE application for exception prepared in connection with Sunbeam/Coleman (Parent) settlement.
531		07/30/1998	Adam O. Emmerich, Esq.	Blaine Fogg, Esq.	Attorney-Client, Work Product, Common Interest	Draft letter to NYSE re application for exception prepared in connection with Sunbeam/Coleman (Parent) settlement.
532		07/31/1998	Blaine Fogg, Esq.	Adam O. Emmerich, Esq., David Fannin, Stephen Jacobs, Esq., Barry F. Schwartz, Esq., Allison Amorison, Esq.	Attorney-Client, Work Product, Common Interest	Correspondence re attached draft document prepared in connection with Sunbeam/Coleman (Parent) settlement.
532	A	07/31/1998	Blaine Fogg, Esq.		Attorney-Client, Work Product, Common Interest	Draft letter to NYSE re attached draft letter prepared in connection with Sunbeam/Coleman (Parent) settlement.
532	B	07/31/1998	Blaine Fogg, Esq.		Attorney-Client, Work Product, Common Interest	Draft letter to NYSE re application for exception prepared in connection with Sunbeam/Coleman (Parent) settlement.
533		04/16/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft response to SEC's request for information prepared in anticipation of litigation relating to inquiry.
534		03/09/1998	Sarah Strasser, Esq.		Attorney-Client	Draft European antitrust filing with S. Strasser's handwritten notes prepared for the purpose of providing legal advice.
535		04/15/1999	Eric Golden, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
535	A	04/15/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft brief for Krim litigation.
536		11/05/1998	Eric Golden, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product	Correspondence re attached document.
536	A	11/04/1998	Grace M. Aschenbrenner	Eric Golden, Esq., James P. S. Leeshaw (cc)	Attorney-Client, Work Product	Letter re Camden Asset litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
537		04/16/1999	Christopher Malloy, Esq.	Mark Bideau, Esq., Eric Golden, Esq., Michael Mitchell, Esq., Barry F. Schwartz, Esq., Michael Schwartz, Esq., Thomas Allingham II, Esq.	Attorney-Client, Work Product, Common Interest	Correspondence re attached draft document.
537	A	04/16/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft brief for Krim litigation.
538		11/13/1998	William Suston, Esq.	Bairy F. Schwartz, Esq., Michael Schwartz, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
538	A	11/13/1998	Skadden Arps		Work Product, Common Interest	Draft motion to transfer Federal Insurance Co. litigation.
538	B	11/13/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft J. Kelley declaration in Federal Insurance Co. litigation.
538	C	11/13/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft notice of pendency of other actions in Camden Asset Management litigation.
539		12/23/1998	Richard Berman, Esq.		Attorney-Client, Work Product	Draft motion for Kiewit litigation.
540		00/00/0000	Eric Golden, Esq.		Work Product	Notes re Cunningham complaint. (Redacted from CP 030931)
541		00/00/0000	Eric Golden, Esq.		Work Product	Notes re Shaev complaint (Redacted from CP 031023).
542		10/20/1998	Paul Shapiro, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
542	A	10/20/1998	Paul Shapiro, Esq.		Attorney-Client, Work Product	Draft letter to Sunbeam lenders re release of claims against Sunbeam.
543		04/29/1999	Allison Amorison, Esq., Steven Daniels, Esq., Matthew Greenberg, Esq.	Paul Shapiro, Esq., Janet Kelley, Esq., Bobby Jenkins, Karen Clark, Esq., John Frederick, Barry F. Schwartz, Esq., Steven Isko, Esq., Blaine Fogg, Esq., Richard Easton, Esq., Mitchell Solomon, Esq., Joseph Halliday, Gregory Ferricola, Esq., Larry Frishman, Esq., Robert Zimet, Esq., Thomas Allingham, Esq., Matthew Knopf, Esq., William Weiss, Esq., Tom Gowan, Esq.,	Attorney-Client, Work Product, Common Interest	Memorandum re attached document.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
543	A	04/29/1999	Skadden Arps	Robert Saunders, Esq., Prabhat Mehta, Esq., Christopher Malloy, Esq., Kevin Maloy, Esq., Jeffrey Laska, Esq., Steve Tribault, Noel Spiegai, Adam O. Emmerich, Esq., Steven Cohen, Esq.	Attorney-Client, Work Product, Common Interest	Draft Sunbeam Form S-4 amendment prepared in connection with providing legal advice and pending litigation.
544				Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached documents.
544	A	08/20/1998	Susan Powell, Esq.	Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re Sunbeam draft employment agreements prepared in connection with providing legal advice and pending litigation.
544	B	08/19/1998	Wachtell Lipton	Paul Shapiro, Esq.	Attorney-Client, Work Product	Draft employment agreement for G. Wisler prepared in connection with providing legal advice and anticipated litigation.
544	C	08/19/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for K. Clark prepared in connection with providing legal advice and anticipated litigation.
544	D	08/19/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for F. Feraco prepared in connection with providing legal advice and anticipated litigation.
545				Marvin Shaffer, Michael Mullen (cc), Keith Brockman (cc), J. Van Gelder (cc)	Attorney-Client, Work Product	E-mail re tax issues prepared in connection with Sunbeam/Coleman (Parent) settlement.
546				Norman Ginstling, Esq.	Attorney-Client, Work Product	Letter re tax closing agreement.
550				Peter Langerman, Howard Kristol, Barry F. Schwartz, Esq., Paul Shapiro, Esq., Stephen Jacobs, Esq., Irwin Warren, Esq., Adam O. Emmerich, Esq.	Attorney-Client, Work Product, Common Interest	Draft letter re pending litigation.
551				Michael Schwartz, Esq.	Attorney-Client, Work Product	Fax re attached document

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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**REVISED CPH PRIVILEGE LOG
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
551	A	11/02/2000	Blaine Fogg, Esq.	Barry F. Schwartz, Esq., Paul Shapiro, Esq., Bobby Jenkins, Janet Kelley, Esq.	Attorney-Client, Work Product, Common Interest	Fax re correspondence concerning pending litigation.
552		01/23/1998	Paul Rowe, Esq.		Attorney-Client	Notes re Sunbeam proposal prepared for the purpose of providing legal advice. (Redacted CP 016751-58)
554		03/07/1998	Sarah Strasser, Esq.	Iaonnis Zervas, Esq.	Attorney-Client, Common Interest	Fax re attached document prepared for the purpose of providing legal advice.
554	A	03/07/1998	Sarah Strasser, Esq.		Attorney-Client, Common Interest	Draft European antitrust filing with S. Strasser's handwritten notes prepared for the purpose of providing legal advice.
555		04/24/1998	Frank Miller, Esq.	Barry F. Schwartz, Esq., James Maher, William Nesbitt, Joram Salig, Esq., Steven Isko, Esq., Adam O. Emmerich, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document.
555	A	04/23/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Excerpt of draft Sunbeam Form S-4 prepared in connection with providing legal advice and anticipated litigation.
556		03/23/1999	Brian M. Carolan	File	Attorney-Client, Work Product, Common Interest, Accountant-Client	Memorandum regarding valuation of Sunbeam warrants for internal accounting purposes (Redacted from CP041767-CP041770).
556	A	08/14/1998	Ernst & Young, Brian M. Carolan		Accountant-Client	Excerpt of Sunbeam Form 8-K with handwritten marginalia.
556	B	00/00/0000	Ernst & Young, Brian M. Carolan		Accountant-Client Privilege	Summary of Ernst & Young valuation of Sunbeam Warrants.
556	C	08/12/1998	The Blackstone Group, LLP, Arthur Newman		Attorney-Client, Work Product, Common Interest, Accountant-Client	Excerpt from the report prepared by Blackstone Group, LLP for counsel to Sunbeam in connection with threatened litigation.
556	D	00/00/0000	Ernst & Young, Brian M. Carolan		Attorney-Client, Work Product, Common Interest, Accountant-Client	Summary of valuations of Sunbeam warrants performed by Ernst & Young and The Blackstone Group, LLP.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
557		08/12/1998	The Blackstone Group, LLP, Arthur Newman		Attorney-Client, Work Product, Common Interest	Report prepared by The Blackstone Group, LLP for counsel to Sunbeam in connection with threatened litigation; copy provided to B. Schwartz, Esq. on 1/16/1998 in connection with pending litigation.
558		10/30/1998	Adam O. Emmerich, Esq.	Barry F. Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re shareholder litigation.
559		09/15/1998	Joram Saig, Esq.	Barry F. Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re SEC reporting requirements prepared in connection with Sunbeam/Coleman (Parent) settlement.
560		09/04/1998	Barry F. Schwartz, Esq.	Herbert Mondros, Esq.	Attorney-Client, Work Product	Letter re Goldstein litigation.
561		01/19/2000	Eric Golden, Esq.	Barry F. Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached document (Redacted from CP 45289).
562		10/14/1998	Cheryl Jackman	Anthony Ian, Barry F. Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Fax re McCall litigation (Redacted from CP 45458).
563		10/28/1998	Barry F. Schwartz, Esq.	James Maher, William Nesbitt	Attorney-Client, Work Product	Memorandum re attached letter (Redacted from CP 45695).
563	A	10/23/1998	Barry F. Schwartz, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Fax re attached letter (Redacted from CP 45698).
564		07/22/1998	Thomas Allingham II, Esq.	Barry F. Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Fax re In re Coleman Shareholders litigation (Redacted from CP 45720).
565		00/00/0000	Eric Golden, Esq.		Attorney-Client, Work Product	Memorandum re attached Yassin complaint (Redacted from CP 045784).
566		08/13/1998	Barry F. Schwartz, Esq.	Anthony Ian	Attorney-Client, Work Product	Fax message prepared for the purpose of providing legal advice (Redacted from CP 45519).
567		10/28/1998	Barry F. Schwartz, Esq.	Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Fax message re attached document (Redacted from CP 4932).
568		07/05/1998	Adam O. Emmerich, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached draft letter.
568	A	07/05/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter re potential claims against Sunbeam.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
569		07/05/1998	Adam O. Emmerich, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached draft letter.
569	A	07/06/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter re potential claims against Sunbeam.
570		07/05/1998	Adam O. Emmerich, Esq.	Howard Gittis, Esq., Barry F. Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached draft letter.
570	A	07/05/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter re potential claims against Sunbeam.
571		02/24/1998	Steven Cohen, Esq.	Steven Isko, Esq.	Attorney-Client	Memoranda re Coleman prepared for the purpose of providing legal advice.
572		09/14/1998	Frank Miller, Esq.	Barry F. Schwartz, Esq., (cc) Michael W. Schwartz, Esq., (cc) Adam O. Emmerich, Esq.	Attorney-Client, Work Product	Memorandum re attached document.
572	A	09/14/1998	Wachtell Lipton		Attorney-Client, Work Product	Memorandum re Coleman merger.
573		00/00/0000	Wachtell Lipton		Attorney-Client	Summary of Sunbeam corporate structure issues prepared for the purpose of providing legal advice.
574		04/29/1999	Glenn P. Dickes, Esq.	Barry F. Schwartz, Esq.	Attorney-Client, Work Product	Fax discussing attached documents
574	A	00/00/1999	Glenn P. Dickes, Esq.	Barry F. Schwartz, Esq.	Attorney-Client, Work Product	Analysis of stock ownership prepared by in-house counsel for the purpose of providing legal advice.
575		04/29/1999	Barry F. Schwartz, Esq.	Glenn P. Dickes, Esq.	Attorney-Client, Work Product	Fax discussing attached document.
575	A	03/19/1999	Janet Kelley, Esq.	Barry F. Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Fax regarding disclosures in the Sunbeam Proxy Statement prepared in connection with providing legal advice and pending litigation.
576		11/06/1998	Adam O. Emmerich, Esq., Frank Miller, Esq.	Barry F. Schwartz, Esq. James R. Maher, William G. Nesbitt, Glenn P. Dickes, Esq., Joram Salig, Esq., James T. Conroy, Esq.	Attorney-Client, Work Product	Memorandum re attached document.
576	A	11/06/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Schedule 13D prepared in connection with providing legal advice and pending litigation.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
577		10/20/1998	Wachteil Lipton		Attorney-Client, Work Product	Draft letter relating to Sunbeam/Coleman (Parent) settlement.
578		03/30/1998	Deborah A. Reiss, Esq.	Glenn P. Dickes, Esq., Valerie Radwaner, Esq. (cc)	Attorney-Client	Fax regarding Sunbeam shares prepared to provide legal advice.
579		09/25/2000	Stephen R. Blacklocks, Esq.	Davis W. Duke, Esq.	Work Product	Letter regarding Sunbeam litigation.
579	A	09/25/2000	Wachteil Lipton		Work Product	Draft affidavit prepared in connection with pending litigation.
580		09/26/2000	Stephen R. Blacklocks, Esq.	Davis W. Duke, Esq.	Work Product	Letter regarding Sunbeam litigation.
581		09/21/2000	Stephen R. Blacklocks, Esq.	Davis W. Duke, Esq.	Work Product	Letter regarding Sunbeam litigation.
582		00/00/0000	Glenn P. Dickes, Esq.		Attorney-Client, Work Product	Handwritten notes regarding Sunbeam bonds prepared in connection with providing legal advice and pending litigation.
583		00/00/0000	William Nesbitt		Attorney-Client, Work Product	Handwritten notes reflecting communications with counsel prepared in anticipation of litigation arising out of Sunbeam's acquisition of CPH's interest in Coleman.
584		02/17/2000	Stephen R. Blacklocks, Esq.	Eric Golden, Esq., Michael W. Schwartz, Esq. (cc), Rachelle Silverberg, Esq. (cc)	Work Product	Letter re Sunbeam Securities Litigation (redacted from CPH2000365).
585		09/29/2000	Stephen R. Blacklocks, Esq.	Davis W. Duke, Esq.	Work Product	Letter re Sunbeam Securities Litigation (redacted from CPH2000631).
586		10/02/2000	David W. Duke, Jr., Esq.	Stephen R. Blacklocks, Esq.	Work Product	Letter re Sunbeam Securities Litigation (redacted from CPH2000674).
587		12/28/2000	Stephen Blacklocks, Esq.		Work Product	Stephen Blacklocks' handwritten notes prepared in connection with Sunbeam Securities Litigation (redacted from CPH2000744).
588		10/20/1998	Herbert Weiswasser Mondros, Esq.	Eric Golden, Esq., Rachelle Silverberg, Esq.	Work Product	Letter regarding Goldstein and Joerger litigation.
589		08/04/2000	Stephen R. Blacklocks, Esq.		Attorney-Client, Work Product	Draft letter regarding Sunbeam litigation.
590		08/04/2000	Stephen R. Blacklocks, Esq.		Attorney-Client, Work Product	Draft letter regarding Sunbeam litigation.
591		06/29/1999	Robert S. Saunders, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Fax cover sheet regarding attached documents prepared in connection with pending litigation (redacted from CP42021).

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
592		06/30/1998	Howard Gittis, Esq.	Janet Kelley, Esq.; Charles Elson (cc); Howard Kristol (cc); Peter Langerman (cc); William Rutter (cc); Faith Whittlesey (cc)	Attorney-Client, Work Product	Memorandum relating to Sunbeam's restatement investigation prepared for counsel in connection with anticipated litigation.
593		07/24/1998	William Nesbitt	Ronald O. Perelman; Howard Gittis, Esq. (cc); Donald Drapkin, Esq. (cc); James Maher (cc); Barry Schwartz, Esq. (cc)	Attorney-Client, Work Product	Memorandum relating to rescission analysis prepared for counsel in connection with anticipated litigation and legal advice.
593	A	00/00/0000	William Nesbitt		Attorney-Client, Work Product	Document relating to rescission analysis prepared for counsel in connection with anticipated litigation and legal advice.
594		12/31/1998	Skadden, Arps, Slate, Meagher & Flom		Attorney-Client, Work Product, Common Interest	Draft Sunbeam 10-K.
595		12/31/1998	Skadden, Arps, Slate, Meagher & Flom		Attorney-Client, Work Product, Common Interest	Draft Sunbeam 10-K.
596		06/25/1998	Robin Esterson	Jerry Levin; Joe Noid; Paul Shapiro, Esq. (cc); Bobby Jenkins (cc); Ron Dunbar (cc); Bob Knibb (cc); Marc Shiffman (cc); Gwen Wisler (cc)	Attorney-Client, Common Interest	Memorandum seeking legal advice concerning Sunbeam operations.
597		07/10/1998	Robin Esterson	Joe Noid; Karen Clark (cc); Gwen Wisler (cc); Bobby Jenkins (cc); Marc Shiffman (cc); Paul Shapiro, Esq. (cc); Jerry Levin (cc)	Attorney-Client, Common Interest	Memorandum seeking legal advice concerning Sunbeam operations.
598		08/02/1998	Robin Esterson	Jerry Levin; Joe Noid; John McNaboe; Paul Shapiro, Esq. (cc); Ron Dunbar (cc)	Attorney-Client, Common Interest	Memorandum seeking legal advice concerning Sunbeam operations.
599		00/00/0000	MacAndrews & Forbes Holdings Inc.	Ernst & Young	Accountant-Client	Document relating to calculation of balance sheet items for internal accounting purposes.
600		00/00/0000	MacAndrews & Forbes Holdings Inc.	Ernst & Young	Accountant-Client	Document relating to calculation of balance sheet items for internal accounting purposes.
601		00/00/0000	MacAndrews & Forbes Holdings Inc.	Ernst & Young	Accountant-Client	Document relating to calculation of balance sheet items for internal accounting purposes.
602		00/00/0000	MacAndrews & Forbes Holdings Inc.	Ernst & Young	Accountant-Client	Document relating to calculation of balance sheet items for internal accounting purposes.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
603		00/00/0000	MacAndrews & Forbes Holdings Inc.	Ernst & Young	Accountant-Client	Document relating to calculation of balance sheet items for internal accounting purposes.
604		00/00/0000	Paul Shapiro, Esq.	MacAndrews & Forbes Holdings Inc.	Attorney-Client	Document prepared for purposes of providing legal advice relating to Sunbeam's acquisition of CPH's interest in Coleman.
605		00/00/0000	MacAndrews & Forbes Holdings Inc.	Wachtell, Lipton, Rosen & Katz	Attorney-Client, Work Product	Document prepared for counsel in connection with the Sunbeam/Coleman (Parent) Settlement.
606		07/23/1996	Glenn P. Dickes, Esq.	Valerie Radwaner, Esq., Gregory J. Woodland	Attorney-Client	Memorandum re letter agreement with First Trust.
607		00/00/0000	Glenn P. Dickes, Esq.		Attorney-Client	Handwritten notes reflecting legal advice re First Trust.
608		06/14/1996	Valerie E. Radwaner, Esq. (Paul, Weiss, Rifkind, Wharton & Garrison)	Glenn P. Dickes, Esq., Deborah Reiss, Esq.	Attorney-Client	Fax re draft outline concerning LYONs and Citibank.
608		06/13/1996	Paul, Weiss, Rifkind, Wharton & Garrison	Glenn P. Dickes, Esq., Deborah Reiss, Esq.	Attorney-Client	Draft outline re exchange of LYONs for cash and subsequent pledge to Citibank.
609		07/07/1997	Glenn P. Dickes, Esq.	Stacy J. Kanter, Esq. (Skadden, Arps, Slate, Meagher & Flom), Rosa A. Testani, Esq. (Skadden, Arps, Slate, Meagher & Flom), Michelle Root (cc)	Attorney-Client	Fax re Coleman Worldwide Corporation Share Lending.
610		11/20/1997	Glenn P. Dickes, Esq.		Attorney-Client	Handwritten notes reflecting legal advice re Coleman LYONs Purchase.
610	A	11/19/1997	Skadden, Arps, Slate, Meagher & Flom	Glenn P. Dickes, Esq.	Attorney-Client	Draft Exchange Notice re Liquid Yield Option Notes.
610	B	11/19/1997	Skadden, Arps, Slate, Meagher & Flom	Glenn P. Dickes, Esq.	Attorney-Client	Draft letter re Receipt of Exchange.
610	C	11/19/1997	Skadden, Arps, Slate, Meagher & Flom	Glenn P. Dickes, Esq.	Attorney-Client	Draft letter re Exchange and Exercise of Cash Payment Option.
610	D	11/19/1997	Skadden, Arps, Slate, Meagher & Flom	Glenn P. Dickes, Esq.	Attorney-Client	Draft Officer's Certificate of CLN Holdings Inc.
610	E	11/20/1997	Rosa A. Testani, Esq. (Skadden, Arps, Slate, Meagher & Flom)	Glenn P. Dickes, Esq.	Attorney-Client	Fax attaching draft Offer to Accept for Exchange of Cash Any and All Outstanding Liquid Yield Option Notes.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
611		05/09/1997	Stacy J. Kanter, Esq. (Skadden, Arps, Slate, Meagher & Flom), Alan C. Myers, Esq.	Howard Gittis, Esq., Irwin Engelman, Esq., Barry F. Schwartz, Esq., Glenn P. Dickes, Esq.	Attorney-Client	Memorandum re Coleman Refinancing.
612		05/08/1997	Glenn P. Dickes, Esq.	Lenny Aizenman, Terry C. Bridges, Norman Ginstling, Esq., Stephen F. Kaplan, Gerry R. Kesel, Jerry Levin, Michelle Root, Martha L. Sanders, Marvin A. Schaffer, Ernest Toth, Laurence Winoker, Joram C. Salig, Esq. (cc), Barry Schwartz, Esq. (cc)	Attorney-Client	Memorandum re Coleman Holdings Refinancing.
612	A	00/00/0000	Glenn P. Dickes, Esq.	Lenny Aizenman, Terry C. Bridges, Norman Ginstling, Esq., Stephen F. Kaplan, Gerry R. Kesel, Jerry Levin, Michelle Root, Martha L. Sanders, Marvin A. Schaffer, Ernest Toth, Laurence Winoker, Joram C. Salig, Esq. (cc), Barry Schwartz, Esq. (cc)	Attorney-Client	Chart re Coleman Holdings Refinancing.
613		01/17/1997	Rosa A. Testani, Esq. (Skadden, Arps, Slate, Meagher & Flom)	Glenn P. Dickes, Esq., Terry Schlimek, Esq., Stacy J. Kanter, Esq. (Skadden, Arps, Slate, Meagher & Flom)	Attorney-Client	Fax re analysis of an equity investment in The Coleman Company.
613	A	01/17/1997	Stacy J. Kanter, Esq. (Skadden, Arps, Slate, Meagher & Flom), Rosa A. Testani, Esq. (Skadden, Arps, Slate, Meagher & Flom)	Glenn P. Dickes, Esq.	Attorney-Client	Draft memorandum re preliminary analysis of issues relating to an equity investment in The Coleman Company Inc.
614		05/18/1995	Stacy J. Kanter, Esq. (Skadden, Arps, Slate, Meagher & Flom)	Glenn P. Dickes, Esq.	Attorney-Client	Fax re Coleman Holdings indenture.
614	A	00/00/0000	Skadden, Arps, Slate, Meagher & Flom	Glenn P. Dickes, Esq.	Attorney-Client	Portion of draft document re Coleman Holdings indenture.
615		03/25/2000	Glenn P. Dickes, Esq.	Glenn P. Dickes, Esq.	Attorney-Client	Handwritten notes re telephone conference with S. Kanter, Esq.
615		00/00/1996	Glenn P. Dickes, Esq.	Glenn P. Dickes, Esq.	Attorney-Client	Handwritten notes reflecting confidential information re Coleman Worldwide share lending.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
617		00/00/0000	Glenn P. Dickes, Esq.		Attorney-Client	Handwritten notes reflecting confidential information re Coleman Worldwide share lending.
618		03/25/1996	Terry E. Schimek, Esq.	Glenn P. Dickes, Esq.	Attorney-Client	Memorandum re Securities Lending.
618	A	12/25/1995	Terry E. Schimek, Esq.	Glenn P. Dickes, Esq.	Attorney-Client	Draft Securities Lending Authorization Agreement with handwritten comments of counsel.
619		02/24/1997	Paul, Weiss, Rifkind, Wharton & Garrison	Glenn P. Dickes, Esq.	Attorney-Client	Draft Summary of Terms and Conditions for Citibank.
620		02/26/1997	Paul, Weiss, Rifkind, Wharton & Garrison	Glenn P. Dickes, Esq.	Attorney-Client	Draft Second Amendment to Revolving Credit Agreement.
621		04/23/1998	Glenn P. Dickes, Esq.	Barry F. Schwartz, Esq.	Attorney-Client	Memorandum re Sunbeam Equity Hedge.
621	A	04/22/1998	Paul, Weiss, Rifkind, Wharton & Garrison	Glenn P. Dickes, Esq., Barry F. Schwartz, Esq.	Attorney-Client	Draft section of guaranty re equity hedge agreements containing marginalia.
622		05/18/1998	Emmerich, Adam (Wachtell Lipton)	Glenn P. Dickes, Esq.	Attorney-Client	Memorandum re hedge.
623		00/00/0000	Glenn P. Dickes, Esq.		Attorney-Client	Handwritten notes re Sunbeam Equity Hedge and Citibank Issues reflecting legal advice.
624		00/00/0000	Glenn P. Dickes, Esq.		Attorney-Client	Handwritten notes reflecting legal advice re hedge.
625		05/18/1998	Glenn P. Dickes, Esq.	Adam O. Emmerich, Esq., Harold Novikoff, Esq.	Attorney-Client	Fax re Sunbeam equity hedge.
626		04/04/1998	Glenn P. Dickes, Esq.		Attorney-Client	Handwritten notes re Sunbeam hedge reflecting analysis of legal issues.

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Exhibit 2

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IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

MORGAN STANLEY SENIOR)
FUNDING, INC.,)

Plaintiff,)

vs.)

MacANDREWS & FORBES HOLDINGS,)
INC., and COLEMAN (PARENT))
HOLDINGS, INC.,)

Defendant.)

-----)

VIDEOTAPED DEPOSITION OF
STEVEN L. FASMAN, ESQ.
New York, New York
Wednesday, January 21, 2004

Reported by:

ANDREA L. KINGSLEY, RPR
CSR NO. 001055
JOB NO. 156575

ORIGINAL

037994

1 Fasman
2 commodity and that e-mails should be
3 stored, reviewed and dealt with with that
4 thought in mind consistent with legal
5 obligations and such. And says that it is
6 normally the company's objective and its
7 practice to try to remove e-mails that are
8 unnecessary after 30 days.

9 MS. PAULE-CARRES: I would like
10 to have that marked as Morgan Stanley
11 62.

12 (Morgan Stanley Exhibit 62, CPH
13 1433326 through 1433329, marked for
14 identification, as of this date.)

15 Q. You've just been handed what's
16 been marked as Morgan Stanley Exhibit 62.
17 It's label Bates number CPH 1433326 and it
18 should go through 1433329. Do you
19 recognize this document?

20 A. Other than the document control
21 labels, it appears to be an adequate but
22 hardly perfect copy of the company's e-mail
23 policy along with the covering memo when
24 the policy was initially issued.

25 Q. When you say adequate but hardly

1 Fasman

2 said. It's used on Tuesdays and Fridays so
3 therefore Tuesday's data will be
4 overwritten on Friday.

5 Q. And Wednesday will be overwritten
6 the following Wednesday?

7 A. Yes.

8 Q. And Thursday the following
9 Thursday?

10 A. Yes.

11 Q. That's just for the daily
12 back-ups though; correct?

13 A. Yes.

14 Q. After a month, explain to me the
15 monthly back-up procedure.

16 A. There are two monthly back-up
17 tapes. So that a monthly back-up tape will
18 be overwritten every second month.

19 Q. If the saved folder is on this
20 Proliant server, how does it remain exempt
21 from these back-ups and overwriting?

22 A. It doesn't.

23 Q. Than how is it that the saved
24 folder could possibly still be in
25 existence, an e-mail could be there six

037996

1 Fasman

2 from 1998 until the inception of the
3 Andersen litigation in 2001; correct?

4 MR. BRODY: Objection to the form
5 of the question.

6 A. There was a progressive process
7 which did involve in part the purging of
8 old and unneeded e-mails, yes.

9 Q. My question was did you from 1998
10 until the inception of the Andersen
11 litigation on a monthly basis, I'm ignoring
12 the daily stuff now, on a monthly basis
13 overwrite e-mail back-up tapes?

14 A. I think it was every other month.

15 Q. From 1998 until the inception of
16 the Andersen litigation, did MAFCO save any
17 e-mail back-up tapes that related to the
18 Sunbeam acquisition of Coleman?

19 A. There are no e-mail back-up tapes
20 relating to the Sunbeam acquisition of
21 Coleman.

22 Q. Did they save any back-up tapes
23 which contained data which related to the
24 Sunbeam acquisition of Coleman from 1998
25 until the inception of the Andersen

037997

1 Fasman

2 August and September of 2001; correct?

3 A. August or September.

4 Q. Assuming that Shallal was filed
5 at some point in April of 2000 for the time
6 being, those tapes from August and
7 September of 2001 would not have the
8 content that tapes from April of 2000 would
9 have on them; is that correct?

10 MR. BRODY: Objection to the
11 form.

12 A. Relevant to Sunbeam?

13 Q. Um-hmm.

14 A. I have no reason to think they
15 wouldn't or, stated affirmatively, I have
16 every reason to believe they would.

17 Q. Wouldn't the Sunbeam materials
18 have been purged?

19 A. Correct. So that the tapes from
20 2000 would be identical to the tapes of
21 2001, that is neither would have anything.
22 Because relevant events were in 1998 and
23 everything was long gone by then unless
24 somebody had saved it in which case it
25 would still be there.

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Exhibit 3

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Confidential Exhibits
Filed Under Seal

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

Material Redacted Without Prior Determination of Protectability by Court

**PROPOSED ORDER ON
MORGAN STANLEY'S MOTION FOR
AN ADVERSE INFERENCE INSTRUCTION**

THIS CAUSE came before the Court on Morgan Stanley's Motion for an Adverse Inference Instruction against Coleman (Parent) Holdings Inc. Based on the briefs from both parties and the evidence introduced, the Court finds:

1. Coleman (Parent) Holdings Inc. has sued Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), for fraud in connection with the sale of stock in The Coleman Company, Inc., to Sunbeam Corporation in return for Sunbeam stock, Sunbeam warrants, and other consideration. CPH's valuation of the Sunbeam stock and warrants, particularly as CPH may have valued those items in 1998 and 1999, are central to the damages issues in this case.

2. Morgan Stanley has sought access to the internal files, including e-mails and electronic documents, of Coleman (Parent) Holdings Inc. and its affiliates (collectively "CPH") throughout the discovery process in this case. Even so, CPH has produced only a handful of e-mails to date.

3. CPH recognized in the spring of 1998, if not earlier, that litigation concerning the Sunbeam transaction was likely.

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4. On April 14 and 16, 1998, one of CPH's law firms, Skadden Arps, drafted legal documents that related to the Sunbeam matter and that were prepared "in anticipation of litigation." (July 15, 2004 CPH Privilege Log at Doc. Nos. 458, 460, 533.)

5. On May 25, 1998, Adam Emmerich of Wachtell, Lipton, Rosen & Katz ("Wachtell Lipton") -- another one of CPH's law firms -- prepared a legal memorandum regarding the Sunbeam matter for Barry Schwartz and Howard Gittis of CPH. The document again was prepared in connection with "anticipated litigation." (*Id.* at Doc. Nos. 413, 415.)

6. On June 19, 1998, Mr. Emmerich sent a document relating to the Sunbeam matter to Richard Easton, another lawyer at Skadden Arps. The June 19 document was prepared in light of "anticipated litigation." (*Id.* at Doc. No. 489.)

7. On June 23, 1998, Todd Freed, another lawyer at Skadden Arps, sent a draft document relating to the Sunbeam matter to Mr. Emmerich. The June 23 draft was prepared for "anticipated litigation." (*Id.* at Doc. No. 488.)

8. On July 5 and 6, 1998, Wachtell Lipton drafted letters for CPH relating to the Sunbeam matter. The July 5 and 6 drafts were prepared in connection with "potential claims" in litigation. (*Id.* at Doc. Nos. 569, 570.)

9. On July 20, 1998, Wachtell Lipton prepared a draft complaint for CPH addressing "potential claims arising out of [the] Sunbeam acquisition." (*Id.* at Doc. No. 136.)

10. On July 31, 1998, Blaine Fogg, another lawyer at Skadden Arps, drafted letters for CPH to the New York Stock Exchange concerning the Sunbeam matter. The July 31 drafts were prepared "in connection with [the] "Sunbeam/Coleman (Parent) settlement" of litigation. (*Id.* at Doc. No. 532.)

11. On August 14, 1998, Skadden Arps drafted letters for review by Mr. Schwartz, Mr. Emmerich, and others. The August 14 drafts were prepared in connection with "pending litigation." (*Id.* at Doc. No. 550.)

12. CPH was therefore fully aware of the likelihood of Sunbeam litigation, beginning in the spring of 1998. Other evidence also confirm CPH's notice of potential Sunbeam litigation.

13. On June 6, 1998, *Barron's*, a reputable and widely-read financial newspaper, published an in-depth article detailing accounting and other problems at Sunbeam, including "gimmickry," "shenanigans," "puffery," and "wizardry." (Jonathan R. Laing, *Dangerous Games: Did 'Chainsaw Al' Dunlap Manufacture Sunbeam's Earnings Last Year?*, *Barron's* via *Dow Jones*, June 6, 1998 (CPH Tr. Ex. 321).)

14. By June 30, 1998, the problems at Sunbeam -- and the likelihood of litigation -- were even more clear to CPH. On that date, Sunbeam publicly acknowledged that its financial statements, and the report of Arthur Andersen regarding those statements, "should not be relied upon." (Press Release, Sunbeam Audit Committee to Conduct Review of Company's 1997 Financial Statements (June 30, 1998) (MS 511).) One week later, CPH's Vice Chairman, Howard Gittis, sent a letter to Sunbeam

15. On August 12, 1998, CPH entered into a settlement agreement with Sunbeam that confirmed CPH's awareness of other likely litigation, by stating that the settlement did not cover future claims against "any financial advisor to Sunbeam" -- which would include Morgan Stanley. (Aug. 12, 1998 Settlement Agreement between Sunbeam and CPH at 1 (MS 96).)

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16. Although CPH reasonably should have anticipated -- and did anticipate -- the likelihood of Sunbeam litigation shortly after the March 30, 1998 closing, CPH made no effort to preserve e-mails and electronic documents relating to the transaction.

17. Instead of taking steps to preserve and produce e-mails and electronic documents relevant to the Sunbeam transaction, CPH instead deliberately and systematically destroyed those documents

18.

19. CPH continued to purge e-mails and overwrite backup tapes in 1998, 1999, and 2000 -- stopping only in 2001, when CPH became involved in a lawsuit with Arthur Andersen. As Mr. Fasman testified, CPH intentionally engaged in "the purging of old and unneeded e-mails" (*id.* at 132:6-8), and now "[t]here are no e-mail back-up tapes relating to the Sunbeam acquisition of Coleman" (*id.* at 132:19-21).

20. CPH did not begin preserving e-mails or electronic documents until 2001. By that point, electronic files relating to the Sunbeam transaction largely would have been destroyed because the relevant events took place in 1998 and 1999. As Mr. Fasman put it, "everything was long gone by then" except for sporadic documents that an individual might have archived by happenstance. (*Id.* at 156:19-25.)

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21. Indeed, even though Mr. Fasman is a licensed New York attorney who works in-house for CPH, the record does not reflect any steps he took to prevent CPH from destroying e-mails and electronic evidence in 1998, 1999, or 2000.

22. It goes without saying that the evidence which CPH destroyed must have included substantial information relating to the Sunbeam transaction, particularly given that CPH consisted of only fifteen or so individuals -- all of whom worked on the transaction -- and yet it has produced only a handful of e-mails from its own files. CPH's destruction of e-mails and electronic documents therefore has deprived Morgan Stanley of the opportunity to review materials potentially relevant to CPH's claims or Morgan Stanley's defenses.

23. CPH's destruction of e-mails and electronic documents in 1998, 1999, and 2000, when it knew or reasonably should have known that Sunbeam litigation was likely, violated an affirmative duty to preserve and produce those materials. CPH's actions were deliberate and systematic, and at a minimum amount to gross negligence.

24. CPH's actions are particularly egregious because it is not a large organization for which electronic discovery would be particularly burdensome. All of its fifteen or so employees worked on the Sunbeam transaction out of a townhouse in Manhattan. Some of the senior-most officers of CPH, including Messrs. Gittis, Schwartz, and Fasman, are lawyers, which means that they should be expected to understand the duty to preserve documents relevant to likely litigation.

25. As this Court has previously observed, electronic data are the modern-day equivalent of the paper trail. Indeed, because of the informalities of e-mail, correspondents may be less guarded than with paper correspondence. In this case, the paper trail is critical to Morgan Stanley's ability to defend its case. For this reason, CPH's actions have severely hindered

Morgan Stanley's ability to proceed. The only way to test the potentially self-serving testimony of CPH personnel is with the written record of these events.

26. By failing to preserve -- and instead destroying -- e-mails and electronic evidence from the relevant time period in this case, CPH has spoiled evidence, justifying sanctions. "A party has a duty to preserve evidence they know or reasonably should know to be relevant to a pending or potential case." See *Exotic Botanicals, Inc. v. EI DuPont de Nemours & Co.*, No. 99-12597 CA 23, 2000 WL 34016277, at *5 (Fla. 11th Jud. Dist. Jan. 21, 2000); see also *Standard Fire Ins. Co. v. Federal Pacific Elec. Co.*, 786 N.Y.S.2d 41, 46 (App. Div. 2004) ("Under New York law, spoliation sanctions are appropriate where a litigant, intentionally or negligently, disposes of crucial items of evidence ... before the adversary has an opportunity to inspect them.").

27. Sanctions in this context are not meant to be punitive. They are intended, however, to level the playing field. A reasonable juror could conclude that CPH destroyed its e-mails and electronic documents because they would have been damaging to CPH's claims in this case. In addition, Morgan Stanley should not be penalized by being forced to divert the jurors' attention away from the merits of its defenses, to focus on highly technical facts going to CPH's discovery failures here -- facts which cannot be reasonably disputed.

28. Indeed, it can be said that this Order is not a "sanction" at all, but merely a statement of unrefuted facts that the jury may find relevant. And, although the Court previously intended to shift the burden of proof on certain issues from CPH to Morgan Stanley because of Morgan Stanley's discovery *delays*, CPH's *destruction* of the evidence is far more serious and accordingly warrants restoring the traditional burden of proof.

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29. In light of CPH's deliberate and systematic destruction of e-mails and electronic documents, the sanctions chosen are the most conservative available to the Court. Because the evidence has been destroyed, simply allowing more discovery or precluding CPH from relying on the materials are not available remedies that would make Morgan Stanley whole.

Based on the foregoing, it is

ORDERED AND ADJUDGED that:

1. Morgan Stanley's Motion for an Adverse Inference Instruction is GRANTED.
2. The Court shall read to the jury the statement attached as Exhibit A during whatever phase of Morgan Stanley's case that it requests. The findings of fact in this statement shall be conclusive. *See* Rule 1.380(b)(2)(A). No other evidence concerning the production of e-mails, or lack thereof, shall be presented absent further Court order.
3. Morgan Stanley shall be allowed to argue that CPH's destruction of e-mails and electronic documents is evidence of CPH's consciousness of the weaknesses in its case, and that those materials would have been unfavorable to CPH's position.
4. The Court's March 1, 2005 Order, as amended, is further amended to strike Numbered Paragraph 5 on Page 14. The traditional burden of proof shall be restored, and CPH shall have that burden as the plaintiff in this case.
5. CPH shall compensate Morgan Stanley for costs and fees associated with this Motion. The amount shall be determined at an evidentiary hearing to be held after the completion of the trial.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this _____

day of March, 2005.

ELIZABETH T. MAASS
Circuit Court Judge

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EXHIBIT A

A party must preserve e-mails and electronic documents that may be relevant to a lawsuit, even before a lawsuit is filed, as soon as it becomes aware that litigation is likely.

Coleman recognized in the spring of 1998, if not earlier, that litigation concerning the Sunbeam transaction was likely. On April 14 and 16, 1998, one of Coleman's law firms, Skadden Arps, drafted legal documents that related to the Sunbeam matter and that were prepared "in anticipation of litigation." On May 25, 1998, Adam Emmerich of Wachtell, Lipton, Rosen & Katz -- another one of Coleman's law firms -- prepared a legal memorandum regarding the Sunbeam matter for Barry Schwartz and Howard Gittis of Coleman. The document again was prepared in connection with "anticipated litigation."

On June 19, 1998, Mr. Emmerich sent a document relating to the Sunbeam matter to Richard Easton, another lawyer at Skadden Arps. The June 19 document was prepared in light of "anticipated litigation." On June 23, 1998, Todd Freed, another lawyer at Skadden Arps, sent a draft document relating to the Sunbeam matter to Mr. Emmerich. The June 23 draft was prepared for "anticipated litigation."

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On July 31, 1998, Blaine Fogg, another lawyer at Skadden Arps, drafted letters for Coleman to the New York Stock Exchange concerning the Sunbeam matter -- drafts prepared in connection with the settlement of litigation between Sunbeam and Coleman. Finally, on August 14, 1998, Skadden Arps drafted letters for review by Mr. Schwartz, Mr. Emmerich, and others. The August 14 drafts were prepared in connection with "pending litigation."

CPH was therefore aware in the spring of 1998 and afterwards, that litigation concerning the Sunbeam transaction was likely. Other evidence confirm CPH's notice of potential Sunbeam litigation. On June 6, 1998, *Barron's*, a reputable and widely-read financial newspaper, published an in-depth article detailing accounting and other problems at Sunbeam, including "gimmickry," "shenanigans," "puffery," and "wizardry." On June 30, 1998, Sunbeam publicly acknowledged that its financial statements, and the report of Arthur Andersen regarding those statements, "should not be relied upon." One week later, CPH's Vice Chairman, Howard Gittis, sent a letter to Sunbeam

Finally, on August 12, 1998, CPH entered into a settlement agreement with Sunbeam that confirmed CPH's awareness of other likely litigation, by stating that the settlement did not cover future claims against "any financial advisor to Sunbeam" -- which would include Morgan Stanley.

Although CPH reasonably should have anticipated -- and did anticipate -- the likelihood of Sunbeam litigation shortly after the March 30, 1998 closing of the transaction, CPH made no effort to preserve e-mails and electronic documents relating to the matter.

Instead of taking steps to preserve and produce e-mails and electronic documents relevant to the Sunbeam transaction, CPH instead deliberately and systematically destroyed those documents

CPH continued to purge e-mails and overwrite backup tapes in 1998, 1999, and 2000 -- stopping only in 2001, when CPH became involved in a lawsuit with Arthur Andersen. As

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Steven Fasman, one of CPH's attorneys, testified, CPH intentionally engaged in "the purging of old and unneeded e-mails," and now "[t]here are no e-mail back-up tapes relating to the Sunbeam acquisition of Coleman."

CPH did not begin preserving e-mails or electronic documents until 2001. By that point, electronic files relating to the Sunbeam transaction largely would have been destroyed because the relevant events took place in 1998 and 1999. As Mr. Fasman put it, "everything was long gone by then" except for sporadic documents that an individual might have archived by happenstance. Even though Mr. Fasman is a licensed New York attorney who works in-house for CPH, the record does not reflect any steps he took to prevent CPH from destroying e-mails and electronic evidence in 1998, 1999, or 2000.

The evidence which CPH destroyed likely would have included substantial information relating to the Sunbeam transaction. CPH employed only fifteen or so employees at the time -- all of whom worked on the transaction -- and yet it has produced only a handful of e-mails from its own files in this case. CPH is not a large organization that might be expected to have difficulty gathering e-mails and electronic files: its fifteen or so employees all worked out of a single townhouse in Manhattan, and some of its senior-most officers are lawyers.

CPH's destruction of e-mails and electronic documents in 1998, 1999, and 2000, when it knew or reasonably should have known that Sunbeam litigation was likely, violated an affirmative duty to preserve and produce those materials. CPH's actions were deliberate and systematic, and at a minimum amount to gross negligence.

On this basis, you may conclude that CPH destroyed e-mails and electronic documents relating to the Sunbeam transaction because those e-mails and electronic documents would have been damaging to CPH's claims in this case.

580001K

THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

CASE NO. 2003CA 005045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

**COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY'S
MOTION FOR AN ADVERSE INFERENCE INSTRUCTION**

In a transparent response to the sanctions that have been imposed on Morgan Stanley for its willful destruction of e-mails and systematic misconduct in response to Court Orders, Morgan Stanley is seeking an adverse inference instruction stemming from CPH's internal policy of deleting e-mails and electronic documents after 30 days and overwriting backup tapes after 60 days. Morgan Stanley's motion is baseless and has long since been waived.

First, Morgan Stanley has known about CPH's internal e-mail policy since January 2004, but Morgan Stanley expressed no interest in recovering CPH's e-mails from backup tapes until now. Indeed, Morgan Stanley refused repeated efforts by CPH to reach a global resolution of the e-mail restoration issue.

On October 29, 2003, CPH filed a motion to compel concerning Morgan Stanley's e-mails. *See* 10/24/03 Mot. to Compel. Morgan Stanley opposed that motion, arguing that the relief CPH was requesting would be unduly burdensome and faulting CPH for failing to produce its own e-mails. *See* Ex. S, MS 11/5/03 Response. CPH's motion was resolved by an agreement, whereby the parties agreed to reciprocal corporate representative depositions on the

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e-mail issue. *See* Ex. A at 3. Pursuant to that agreement, Morgan Stanley deposited CPH's corporate representative on January 21, 2004, and CPH deposited Morgan Stanley's corporate representative on February 10, 2004. At the January 21, 2004 deposition of CPH's corporate representative, Morgan Stanley inquired about CPH's e-mail policy. In fact, it is that testimony Morgan Stanley cites in its Motion for an Adverse Inference Instruction. *See* MS Mot. at 3 and Ex. 7 thereto. The whole point of the corporate representative depositions was to permit both sides to assess further the issue of obtaining e-mails and other electronic documents.

CPH thereafter attempted to secure Morgan Stanley's agreement to reach a protocol for the mutual restoration of e-mails — but Morgan Stanley repeatedly rejected CPH's efforts at compromise. *See, e.g.*, Ex. B (3/9/04 Letter from M. Brody to T. Clare); Ex. C (3/11/04 Letter from T. Clare to M. Brody); Ex. D (3/15/04 Letter from M. Brody to Clare); Ex. E (3/16/04 Letter from T. Clare to M. Brody); Ex. F (3/17/04 Letter from M. Brody to T. Clare).

Because CPH's efforts to reach agreement on the e-mail issue were going nowhere, on March 12, 2004, CPH filed a motion for permission to have a third party retrieve e-mails. *See* Ex. G. In that motion, CPH proposed that a third-party vendor be given access to both parties' e-mails, restore Morgan Stanley's e-mails at Morgan Stanley's expense, and restore CPH's e-mails at CPH's expense. *See id.* And at the hearing on CPH's motion, CPH's counsel attempted to address any concerns about the cost disparity between restoring CPH's e-mails and Morgan Stanley's e-mails by offering to split the cost down the middle. *See* Ex. H at 19-20. Morgan Stanley opposed all of CPH's proposals, and because the Court did not think it appropriate to impose such an arrangement on the parties without their consent, the Court denied CPH's motion. *See id.* at 18-26. As CPH has shown during the evidentiary hearings this week, Morgan Stanley opposed CPH's efforts to involve a third party because Morgan Stanley knew that a third

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party would uncover at least some of Morgan Stanley's misrepresentations concerning its e-mails.

CPH thereafter continued its efforts to obtain e-mails, subpoenaing Bloomberg, Inc., Morgan Stanley's e-mail vendor, for relevant e-mails. *See* Ex. L. Bloomberg responded that it could not turn over Morgan Stanley e-mails without Morgan Stanley's permission. *See* Ex. M, (3/11/04 Letter from T. Golden to J. Scarola). When permission was sought, Morgan Stanley placed inappropriate limitations and date restrictions on the production. *See* Ex. N (3/17/04 Letter from M. Brody to T. Clare); Ex. O (4/1/04 Letter from T. Clare to T. Golden); Ex. P. (4/2/04 Letter from M. Brody to T. Clare); Ex. Q (4/7/04 Letter from T. Clare to M. Brody).

As a result of Morgan Stanley's continued stonewalling, on April 9, 2004, CPH filed additional e-mail-related motions to compel. *See* Exs. I, J. In response to those motions, this Court entered the April 16, 2004 Agreed Order concerning e-mail retrieval. *See* Ex. K. As CPH also has shown during the evidentiary hearings this week, Morgan Stanley's representations about the possibility of and difficulty involved with retrieving e-mails — representations on which this Court and CPH relied in attempting to resolve the e-mail controversy — were false.

In short, Morgan Stanley has known about CPH's e-mail policy since at least January 2004, when Morgan Stanley took the deposition of CPH's corporate representative on the topic, but Morgan Stanley did not file a motion seeking the restoration of CPH's e-mails, and as indicated above, Morgan Stanley opposed CPH's e-mail restoration proposal. Moreover, tellingly, the April 16, 2004 Agreed Order concerning e-mails addresses only the restoration of Morgan Stanley's e-mails. Morgan Stanley has shown no interest in CPH's e-mails — until Morgan Stanley was sanctioned for its misconduct regarding its own e-mails.

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Second, in Morgan Stanley's Supplemental Memorandum in Support of Motion for an Adverse Inference Instruction, Morgan Stanley makes much of the fact that CPH's privilege log contains entries from April 14, 1998 through August 14, 1998, where CPH has stated that the documents were prepared "in anticipation of litigation." *See* MS Suppl. Mem. at 1-2. CPH first served the privilege log containing those entries on October 6, 2003. *See* Ex. R. CPH's privilege log contained entries asserting work product, and the log specifically included each of the twelve documents Morgan Stanley identifies on Page 2 of its Supplemental Memorandum. Thus, Morgan has known about the work product assertions on CPH's privilege log since October 6, 2003.

Indeed, not only has Morgan Stanley known about the privilege log assertions since October 2003, Morgan Stanley also made almost the same argument based on them in Morgan Stanley's November 4, 2003 opposition to CPH's first motion to compel relating to e-mails. *See* Ex. S. In its November 4, 2003 opposition, Morgan Stanley cited documents listed on the October 6 privilege log, arguing that "CPH was working with its outside counsel to evaluate its options for filing lawsuits against various parties, presumably including MS & Co., as early as July 1998" but did not retain any emails. *See id.* at 14. Nonetheless, as described above, Morgan expressed no interest in obtaining CPH's e-mails and rebuffed CPH's attempts to reach a mutual agreement on the restoration of e-mails.

Third, CPH is a private entity with no statutory obligation to preserve e-mails. In contrast, as the Court is aware, Morgan Stanley is subject to ongoing e-mail retention obligations under federal law. Thus, in attempting to equate CPH's circumstances with its own, Morgan Stanley equates apples with oranges.

Fourth, none of the adverse inference instruction cases cited by Morgan Stanley (at 8) remotely supports a sanction against CPH. See *Amalan, Inc. v. Detroit Diesel Corp.*, 651 So. 2d 701, 703 (Fla. 4th DCA 1995) (sanctions are appropriate when “a party has engaged in a pattern designed to thwart discovery evincing a ‘continuous pattern of willful, contemptuous and contumacious disregard of lawful court orders concerning its obligation to comply with reasonable discovery requests.’”); *Martino v. Wal-Mart Stores, Inc.*, 835 So. 2d 1251, 1257 (Fla. 4th DCA 2003) (plaintiff was entitled to an adverse inference as a result of Wal-Mart’s disposal of a defective shopping cart that injured the plaintiff, notwithstanding the fact that there was evidence that the plaintiff had identified the defective cart for an assistant manager after the accident and requested the assistant manager to preserve the shopping cart and a surveillance videotape that also was destroyed); *Nationwide Lift Trucks, Inc. v. Smith*, 832 So. 2d 824, 826 (Fla. 4th DCA 2002) (striking of the defenses in a case involving a forklift accident where the forklift mechanism that caused the accident was not preserved notwithstanding requests by plaintiffs two months after the accident).

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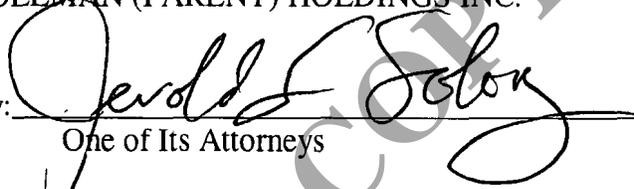
Conclusion

Morgan Stanley's motion is nothing more than an attempt to distract attention from its own misconduct and to blunt the effects of this Court's March 1 sanctions Order. The motion should be denied.

Dated: March 16, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: 
One of Its Attorneys

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Jeffrey T. Shaw
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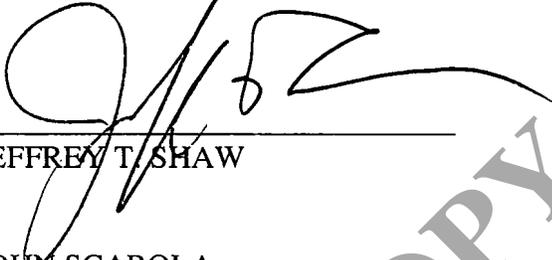
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to all counsel on the attached list on this 16th day of March, 2005.



JEFFREY T. SHAW

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040065

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1 IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
1 IN AND FOR PALM BEACH COUNTY, FLORIDA
2 CASE NUMBER: 2003 CA 005045 AI

2

3

3 COLEMAN (PARENT) HOLDINGS, INC.,

4

4 Plaintiffs,

5 vs.

5

6

6 MORGAN STANLEY & CO., INC.

7

7 Defendant.

8 _____/

8

9

9 PROCEEDINGS BEFORE THE HONORABLE ELIZABETH T. MAASS

10

10

11 APPEARANCES:

11

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12 BARNHART & SHIPLEY, P.A.

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18 BY: THOMAS A. CLARE

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21 ATTORNEYS FOR THE DEFENDANT

22 BY: JOSEPH IANNO, JR., ESQUIRE

22

23

23

24 Thursday, November 6, 2003

24 Palm Beach County Courthouse

25 West Palm Beach, Florida

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1 TRANSCRIPT OF THE PROCEEDINGS, TAKEN BEFORE
2 THE HONORABLE ELIZABETH MAASS IN COURTROOM 11B, PALM
3 BEACH COUNTY COURTHOUSE, WEST PALM BEACH, FLORIDA, ON
4 THURSDAY, NOVEMBER 6, 2003, BEGINNING AT 8:55 A.M.

5 - - -

6 THE COURT: Do we really think we're going to
7 do this this morning?

8 MR. SCAROLA: We are going to surprise Your
9 Honor.

10 THE COURT: Okay. How are we doing that?

11 MR. SCAROLA: We're going to surprise you by
12 telling you first that with regard to the motion
13 to compel production of emails, we have come to an
14 agreement.

15 THE COURT: Okay.

16 MR. SCAROLA: And we will describe the terms
17 of that agreement for the record.

18 For the record, my name is Jack Scarola. I'm
19 hear on behalf of the Plaintiff Coleman (Parent)
20 Holdings. There are two motions. First is motion
21 to compel directed to the production of emails.

22 The agreement that we have reached is that
23 the Defendant Morgan Stanley will produce a
24 witness who is knowledgeable with respect to the
25 retention and retrieval -- the retention policies

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1 and retrieval capabilities with regard to emails.
2 They will also produce all documents that were
3 submitted to federal regulators with regard to
4 Morgan Stanley's email retention policies and
5 retrieval capabilities.

6 THE COURT: I don't think I have that motion.
7 The only one I have deals with the objections to
8 production of the settlement agreement. Are you
9 submitting a proposed agreed order on this?

10 MR. SCAROLA: We will submit a proposed
11 agreed order.

12 THE COURT: You're just telling me stuff and
13 hopefully I'll remember it when I see the order.

14 MR. SCAROLA: Yes.

15 We have agreed reciprocally that we will
16 provide a corporate representative who will
17 address the same issues on behalf of Coleman
18 (Parent) Holdings, Incorporated.

19 THE COURT: Okay.

20 MR. SCAROLA: With regard to the second
21 motion, that's the Defense's motion, so I'll allow
22 them to go first.

23 THE COURT: That's the one. Do we really
24 think we're going to get this done at an 8:45?

25 MR. CLARE: Judge, this is on Morgan

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1 Stanley's motion to compel the production of a
2 single document, the settlement agreement between
3 Coleman (Parent) and Arthur Andersen. And just
4 briefly, I think it's fairly straightforward in
5 terms of the history of this, that prior to
6 initiating the lawsuit against Morgan Stanley,
7 Coleman (Parent) brought a virtually identical
8 lawsuit against Arthur Andersen, same allegations,
9 same claim of damages, and now have settled.

10 THE COURT: Let me ask you this. This is the
11 notebook you gave me for this; right?

12 MR. CLARE: That includes the cases that
13 we've cited.

14 THE COURT: I can't do this on an 8:45.
15 Please understand, 8:45's are things -- I can read
16 everything. I can walk in and not know anything.
17 I can read everything I've got to read, absorb
18 everything I've got to, and I can do it in ten
19 minutes. I can't even read your motion in ten
20 minutes.

21 MR. CLARE: I have one case, City of
22 Homestead case, that --

23 THE COURT: I'm happy to get the book and
24 specially set. I'm happy to do it on an expedited
25 basis. I cannot do this on an 8:45. If you

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JENNER & BLOCK

March 9, 2004

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By Telecopy

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Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

I write to propose a compromise to address Morgan Stanley's pending motion for production of electronic documents in electronic form, and CPH's need to retrieve responsive email and electronic documents from Morgan Stanley's computer backup.

In response to CPH's previous request that Morgan Stanley review backup for emails and other responsive information, Morgan Stanley has refused to do so, citing the purported burden that would be involved in that process. You contend that because of the burden involved, we are not entitled to obtain any of those materials, even if they exist and otherwise should be produced.

In sharp contrast, Morgan Stanley has insisted that CPH go back and retrieve duplicate copies of previously produced documents in electronic form. When we advised you that it would involve a significant burden to locate those documents in electronic form, you moved to compel and took the position that we should bear that burden on the chance that we would produce metadata for documents you already have in paper form.

To address both sides' concerns over burden, and at the same time accommodate our need to obtain information that we believe is discoverable, we propose that a third-party vendor, Kroll Ontrack, be allowed access to both of our systems to search for the materials that each of us has demanded. Having Kroll, a third-party vendor, conduct the search would prevent disputes concerning the thoroughness of the searches, the costs associated with them, and their timelines.

The protocol that we suggest is as follows:

- (1) Kroll would agree in writing to be bound by the protective order in this case;



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Thomas A. Clare, Esq.
March 9, 2004
Page 2

- (2) Kroll would search Mafco's backup tapes for the electronic versions of email and documents at Mafco's expense, and Kroll would search Morgan Stanley's backup tapes for electronic versions of email and documents at Morgan Stanley's expense;
- (3) Kroll would tender the results of its search of a party's files to that party;
- (4) Each party would review the tendered materials for privilege and responsiveness to prior discovery requests;
- (5) Responsive and nonprivileged materials would be produced to the other side; and
- (6) Any materials withheld on privilege grounds would be listed on a supplemental privilege log and the log would be served on the other side.

Please consider my proposal and let me know whether it is acceptable to you by the close of business on Thursday, March 11, 2004.

Very truly yours,

Michael T. Brody

Michael T. Brody

MTB:cjg

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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March 11, 2004

VIA FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
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Re: *Coleman (Parent) Holdings v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding v. MacAndrews & Forbes et al.

Dear Mike:

I write in response to your March 9, 2004 letter regarding (1) Morgan Stanley's pending motion for the production of electronic documents in electronic form; and (2) CPH's apparent desire to force a wasteful and costly restoration of Morgan Stanley's e-mail backup tapes. I will address each of these two issues in turn.

Electronic Documents

Morgan Stanley has consistently produced its electronic documents "in electronic form" in accordance with the parties' written agreement. We are not aware of any electronic server or backup media that might contain additional electronic documents responsive to CPH's document requests. Accordingly, at least as it applies to Morgan Stanley, your suggestion that the parties hire an outside vendor to search backup tapes for additional electronic documents would only result in additional and unnecessary costs.

As for CPH's documents that exist "in electronic form," we have examined the electronic documents that CPH produced in hard-copy form and have reviewed Mr. Fasman's deposition testimony on this point. All of the available evidence squarely rejects the notion that it would impose a "significant burden" on CPH to produce such documents "in electronic form" in accordance with the parties agreement. Specifically:

- We cannot square your "burden" argument with the time- and date-stamp information that appears on the documents. Virtually all of the electronic documents in CPH's latest production appear to have time- and date-stamps in the header or footer that show the date and time that they were printed for production. These time- and date-stamps show that these document were located and printed over the course of a few hours in the two days immediately prior to production. Thus, the burden cannot be as great as you claim.

Chicago

London

Los Angeles

New York



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KIRKLAND & ELLIS LLP

Michael Brody, Esq.
March 11, 2004
Page 2

- Similarly, many of those same hard-copy documents have unique electronic filenames identified in the header or footer of the document. With the assistance of these filenames, it should be relatively easy for CPH to locate and produce documents in electronic form.
- We cannot square your "burden" argument with your prior demands of Morgan Stanley. As you will recall, Morgan Stanley undertook — at your insistence — an *even greater burden* when, after producing several boxes of documents in hard-copy form, CPH made an identical demand that Morgan Stanley "go back and retrieve duplicate copies of previously produced documents in electronic form." Morgan Stanley did just that, and subsequently produced four CDs of electronic documents that had previously been produced in hard-copy form, representing 723 files and 117.5 MB of electronic data.
- We cannot square your "burden" argument with the parties' written agreement. The parties agreed — in a countersigned written agreement that your firm drafted — to produce electronic documents "in electronic form." To the extent there is an additional "burden" associated with re-producing electronic documents in electronic form, that "burden" is solely the result of CPH's failure to comply with the parties' agreement in the first instance. CPH cannot use its failure to comply with the parties' agreement (by producing documents in hard-copy form only) to manufacture an argument that it is now too burdensome to comply.

In short, the requirement that electronic documents be produced "in electronic form" is well-established by the prior course of discovery in this case, and separately is covered by a countersigned written agreement between the parties. Morgan Stanley is entitled to full compliance with the parties' agreement on this issue, and to the same form of production that CPH has previously demanded from Morgan Stanley.

E-Mail Backups

With regard to the restoration and search of e-mail backup tapes, your proposal to use a third-party vendor does not address — in any meaningful way — many of Morgan Stanley's legitimate objections to the wholesale restoration of e-mail backup tapes. Whether the restoration of e-mail backup tapes is performed by Morgan Stanley IT staff or an outside vendor, the burden on Morgan Stanley from such a wholesale restoration, both in terms of dollars and manpower, would be enormous. Regardless of who performs the initial restoration, it would require hundreds (perhaps thousands) of attorney-hours to review millions of irrelevant and non-responsive e-mails, all for the theoretical possibility that an e-mail drafted years after the underlying financial transactions would be discovered and responsive to CPH's requests. Your proposal to hire a third-party vendor does not address

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KIRKLAND & ELLIS LLP

Michael Brody, Esq.
March 11, 2004
Page 3

that issue, and instead seeks to shift the financial costs for such a search to Morgan Stanley instead of CPH, the party insisting on such a fishing expedition.

As we have explained repeatedly in correspondence, depositions, and court filings, Morgan Stanley only has the ability to restore e-mail from backup tapes from January 2000 or later, which (even using the earliest point) is more than a year-and-a-half after the events that allegedly gave rise to CPH's claims and, in many cases, years after the Morgan Stanley employees who worked on Sunbeam-related engagements left the Company. Under these circumstances, there simply is no reason to believe that a wholesale restoration of e-mail backup tapes is reasonably likely to yield relevant and responsive e-mails — or that the theoretical possibility of finding relevant and responsive e-mails from several years after the fact would justify the enormous burden and cost of restoring, reviewing, and producing these backup tapes.

Any workable proposal regarding the restoration of e-mail backup tapes must (1) be narrowly tailored to include only those tapes that are most likely to contain potentially responsive documents; and (2) allocate the costs of the search in a manner that recognizes the enormous burden of the search compared to the theoretical possibility of finding potentially responsive documents. We offer the following proposal:

- (1) Morgan Stanley will identify up to five (5) current or former MAFCO / CPH employees to be included in the e-mail backup search. MAFCO / CPH will search their backup tapes for electronic versions of e-mails from those five (5) individuals for the time period from December 1997 through June 1998. In addition, MAFCO / CPH will search for electronic versions of e-mails on the oldest e-mail backup tape that exists for each of those five (5) individuals (i.e. the backup tape that is closest in time to the December 1997 – June 1998 time period).
- (2) CPH will identify up to five (5) current or former Morgan Stanley employees to be included in the e-mail backup search. Morgan Stanley will search its backup tapes for electronic versions of e-mail from those five (5) individuals for the time period from December 1997 through June 1998. In addition, Morgan Stanley will search for electronic versions of e-mails on the oldest monthly e-mail backup tape that exists for each of those five individuals (i.e. the January 2000 monthly backup tape).
- (3) The parties will agree upon a reasonable set of search terms that will be used to narrow the universe of e-mails.
- (4) Each party will review the resulting e-mails and produce responsive, non-privileged e-mails to the other side.

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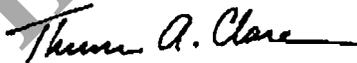
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Michael Brody, Esq.
March 11, 2004
Page 4

- (5) Any materials withheld on privilege grounds would be listed on a supplemental privilege log to be served on the other side. Depending on the volume of privileged materials on either side, an extension of the typical 30-day time period may be warranted.
- (6) If either party wishes to identify additional employees (beyond the original five) whose e-mail backup tapes will be restored, searched, and produced in accordance with steps (1) - (5), the requesting party will thereafter bear all resulting fees and costs, including (without limitation) all fees and costs associated with restoring the e-mail backup tapes, all fees and costs associated with conducting the keyword search, all fees and costs associated with the privilege and responsiveness review (including reasonable attorneys fees), and all fees and costs associated with producing a privilege log (including reasonable attorneys fees).

I am prepared to discuss these issues at your convenience.

Sincerely,



Thomas A. Clare

cc: Joseph Ianno, Esq.
John Scarola, Esq.
Jerold S. Solovy, Esq.

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March 15, 2004

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BY TELECOPY

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Re: Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

This letter concerns our ongoing discussions about your request that we search for documents, which we previously produced to you in paper form, and produce them again in electronic form. In your letter of March 11, you set forth a number of arguments concerning why you believe that we are required to undertake this task, and why you think that task is not very burdensome. We do not agree with your arguments, for reasons we have previously stated, and I do not intend to repeat our contentions in this letter. Instead, the purpose of this letter is to reiterate our desire to reach a compromise, one that accommodates your desire for discovery and our concerns over undue burden.

In your letter of March 11, you identified certain documents with unique codes and certain documents with print dates, from the 320 pages of documents that we previously produced from an electronic backup tape. We have undertaken to locate the documents that you have identified in electronic form, and we will endeavor to produce those documents in that form to you as soon as complete. Our undertaking is consistent with our prior invitation to you to identify the specific documents that you have received in paper form that you also would like to receive in electronic form.

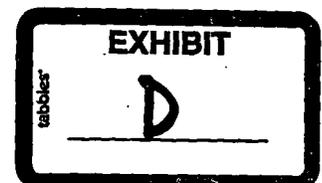
We continue to be willing to entertain reasonable requests to conduct such searches, and alternatively, we reiterate our proposal that both sides retain Kroll for the purposes identified in our pending motion. If you would like to discuss any of these matters further, and thereby avoid having to burden Judge Maass with the motions that each of us have filed relating to this issue, please feel to contact me.

Very truly yours,

Michael T. Brody
Michael T. Brody

MTB:sd

040081



Thomas A. Clare, Esq.
March 15, 2004
Page 2

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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March 16, 2004

BY FACSIMILE

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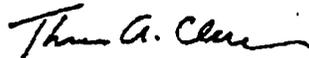
Re: *Coleman (Parent) Holdings v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding v. MacAndrews & Forbes et al.

Dear Mike:

Thank you for your letter of March 15, 2004. We will consider your proposal.

Your letter does not address the proposal outlined in my March 11, 2004 letter for the mutual restoration and search of e-mails. What is your position on that issue?

Sincerely,



Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Jerold S. Solovy, Esq. (by facsimile)

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Chicago

London

Los Angeles

New York

San Francisco



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JENNER & BLOCK

March 17, 2004

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mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

As indicated in CPH's March 12, 2004 Motion for Permission to Have Third Party Retrieve Morgan Stanley E-mail, we do not accept your March 11 proposal that Morgan Stanley conduct searches for pre-January 2000 e-mail of five Morgan Stanley employees, with any additional searches to be conducted by Morgan Stanley at CPH's expense. Given the current circumstances, we believe your proposal invites further disputes as to the sufficiency of Morgan Stanley's searches and the reasonableness of any fees Morgan Stanley wishes to charge CPH. As indicated in the Motion and in our correspondence, having Kroll involved will be more efficient, and we will ask Judge Maass to order that procedure on Friday.

Your proposal requested that CPH search the e-mail archives of five of its employees. As Steven Fasman testified, CPH, unlike Morgan Stanley, already has searched its backup tapes for responsive e-mails.

Very truly yours,



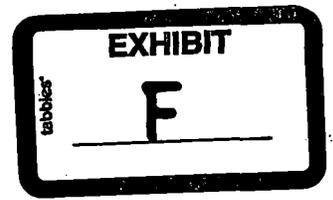
Michael T. Brody

MTB:cjg

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH, COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION

MAR 12 2004

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**COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR PERMISSION
TO HAVE THIRD PARTY RETRIEVE MORGAN STANLEY E-MAIL
AND OTHER RESPONSIVE DOCUMENTS**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully requests that this Court direct Defendant Morgan Stanley and Company, Inc. ("Morgan Stanley") to provide Kroll Ontrack, Inc. ("Kroll"), a third party computer specialist, access to its computer backup tapes (or other storage media) so that Kroll can retrieve e-mail and other responsive documents at Morgan Stanley's expense. In support of this motion, CPH states as follows:

1. As this Court is aware, Morgan Stanley has disclosed that it failed to retain the e-mail that its personnel generated prior to January 1, 2000 — despite having a legal obligation to do so. Based on the depositions taken to date, however, CPH has learned that it is possible that many of these e-mails and other responsive documents could be retrieved from Morgan Stanley's computer backup files. Morgan Stanley, however, has refused to attempt to retrieve those documents on the ground that the retrieval process would be burdensome.

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2. To accommodate CPH's need for discovery, as well as Morgan Stanley's concerns over burden, CPH has proposed that a third party conduct the search for e-mail and other responsive documents in Morgan Stanley's backup files. CPH has proposed that the search be conducted by Kroll, an independent firm with the expertise to conduct such a search. Specifically, CPH has proposed the following procedure: (a) Kroll first would agree in writing to be bound by the terms of the protective order entered in this case; (b) Kroll then would conduct a search of Morgan Stanley's backup files for e-mail and other responsive documents at Morgan Stanley's expense; (c) the e-mails retrieved by Kroll would be delivered to Morgan Stanley for review; (d) Morgan Stanley then would review the retrieved e-mails for privilege and responsiveness to CPH's prior document requests; (e) Morgan Stanley would produce all responsive and nonprivileged documents to CPH; and (f) Morgan Stanley would provide a supplemental log of the retrieved documents withheld on privilege grounds.

3. CPH's proposal addresses Morgan Stanley's concerns over burden while it accommodates CPH's need to discover e-mails and other documents that are responsive to CPH's document requests. The proposal also is fair and equitable because CPH has agreed to make it reciprocal. As shown in CPH's response to Morgan Stanley's motion to compel production of electronic documents in electronic form, CPH has proposed the same procedure for the materials sought by that motion: Kroll would be allowed access to CPH's files and would search them at CPH's expense for electronic documents in electronic form.

4. Despite the fairness of CPH's proposal and the obvious benefits of involving a third party — having a reputable third party conduct the search would prevent the disputes that inevitably would erupt about thoroughness, timeliness, and costs if the parties were to conduct their own searches and bill the other side — Morgan Stanley has rejected CPH's proposal for third-party participation. Instead, Morgan Stanley has responded that it would conduct limited searches for email from the files of five individuals — conditioned upon CPH agreeing to a number of undertakings — and would search in additional files only if CPH pays for the process. That is not sufficient. The initial search proposed by Morgan Stanley is far from adequate, given the involvement of dozens of Morgan Stanley employees in the underlying events. Moreover, having

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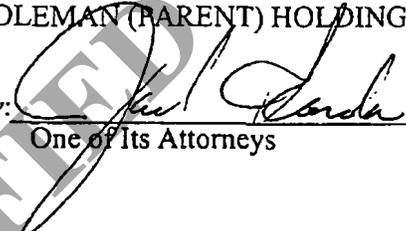
Morgan Stanley instead of a third party conduct the searches would lead to inevitable disputes that could be avoided easily if an independent computer professional were involved. Because CPH's reciprocal proposal constitutes a reasonable accommodation of CPH's need for discovery, and Morgan Stanley's concerns over undue burden, the proposal should be adopted by the Court.

For the foregoing reasons, CPH respectfully requests that this Court direct Morgan Stanley to provide Kroll Ontrack, Inc. access to Morgan Stanley's computer backup files in accordance with the terms discussed above, for the purpose of searching for e-mail and other documents generated prior to January 1, 2000 that are responsive to CPH's prior document requests.

Dated: March 12, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by
Fax and Federal Express to all counsel on the attached list on this 12th day of
March, 2004.



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1 IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
2 IN AND FOR PALM BEACH COUNTY, FLORIDA
3 CASE NO. 2003-CA-005045 AI

4 COLEMAN (PARENT) HOLDINGS, INC.,
5 Plaintiff,
6 vs.
7 MORGAN STANLEY & COMPANY, INC.
8 Defendant.

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TRANSCRIPT OF THE PROCEEDINGS BEFORE
THE HONORABLE ELIZABETH MAASS

Palm Beach County Courthouse
West Palm Beach, Florida
March 19, 2004
3:27 p.m. - 4:33 p.m.
Reported by: Lisa D. Danforth

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1 THE COURT: I appreciate that. Thank you
2 very much.

3 MR. SCAROLA: The next is Coleman (Parent)
4 Holdings' motion for permission to have third
5 party retrieve Morgan Stanley e-mail --

6 THE COURT: Yes.

7 MR. SCAROLA: -- and other responsive
8 documents, which I had spilled over to begin
9 discussing with Your Honor.

10 THE COURT: Okay. Go ahead.

11 MR. SCAROLA: And let me tell Your Honor what
12 the current proposal is that is on the table with
13 regard to these issues, because obviously, there
14 are going to be requests for electronic production
15 and there are going to be arguments about the
16 extent to which it is burdensome and how carefully
17 parties did or did not review the electronic data
18 available to them in order to make the production
19 requested.

20 What we have proposed is that a third party,
21 and we have identified one that we are familiar
22 with and in whom we have confidence, although we
23 are not wed to that particular third-party
24 forensic firm, computer forensic firm, we're open
25 to suggestions if there's somebody else, and

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1 there's been some suggestion and discussion today
2 that there may be somebody else in whom the
3 defendants have greater confidence or who has
4 greater familiarity with the defendant's computer
5 systems, and as long as we're satisfied that
6 they're an independent third party, we really
7 don't care who it is.

8 Our suggestion is this. We both want and
9 need electronic discovery. We think that a third
10 party ought to be designated to conduct the review
11 of the electronic records of both firms.

12 One of the issues of contention was who is
13 going to bear the expense of having that third
14 party come in to conduct the review, and to the
15 extent that there is a disparity between the costs
16 involved in conducting the electronic review of
17 plaintiffs as compared to conducting the
18 electronic review of defendants, the issue was
19 will we bear our own burden initially or will we
20 bear the burden of opposing parties initially.

21 What we suggest to the Court to resolve those
22 concerns is that the third party perform the tasks
23 for both parties, both plaintiff and defendants, a
24 total bill will be presented for all of the work
25 performed, the bill gets divided in the middle,

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1 the cost of electronic discovery is divided
2 without regard to how much was spent reviewing our
3 records and how much was spent reviewing their
4 records, and quite frankly, we have every reason
5 to believe it's going to be far less costly to
6 examine ours than to examine theirs.

7 THE COURT: Okay. Let me stop you, because I
8 want to again make sure I understand where we are
9 procedurally.

10 What you're talking about is sort of a global
11 suggestion to deal with retrieval of electronic
12 documents in this case.

13 MR. SCAROLA: That's correct.

14 THE COURT: Okay.

15 MR. SCAROLA: And there are outstanding
16 requests.

17 THE COURT: That was what I was going to back
18 into.

19 MR. SCAROLA: Yes.

20 THE COURT: Because to generate --

21 MR. SCAROLA: To place this in procedural
22 context --

23 THE COURT: I'm not aware of a procedure that
24 would allow me to force you guys into some sort of
25 an accommodation like this, so really, I have two

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1 questions, I guess one for each of you, and don't
2 answer them quite yet.

3 First is, are defendants even amenable to
4 something like this or not? I mean, are you
5 amenable to a proposal and we're simply fighting
6 over its terms, or are you guys simply not
7 amenable to a proposal?

8 And then, Mr. Scarola, what I need to know
9 from you is sort of have I jumped -- am I really
10 looking at some sort of motion to compel them to
11 respond to a production request for e-mails
12 generated prior to 1997, or is there some specific
13 discovery request I'm now looking at they have
14 objected to, and you're saying, look, Judge, this
15 information is available, and we're willing to
16 bear the cost or at least a portion of it to
17 retrieve it?

18 MR. SCAROLA: I think the latter is correct,
19 Your Honor.

20 THE COURT: Okay.

21 MR. SCAROLA: There have been requests for
22 the production of e-mails, and we'll focus
23 specifically on them, because that's the primary
24 concern.

25 THE COURT: Okay.

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1 MR. SCAROLA: Electronic records of e-mails
2 that have been exchanged.

3 THE COURT: Do we agree that there has been
4 such a request outstanding?

5 MR. CLARE: There has been a request
6 outstanding.

7 THE COURT: And have you-all objected?

8 MR. CLARE: From the very beginning.

9 THE COURT: And what's the basis of the
10 objection?

11 MR. CLARE: We objected to the breadth of the
12 request that they're making. And to answer Your
13 Honor's question directly -- and the burden that
14 is associated with it -- that given the particular
15 e-mail back-up tapes that are in existence five,
16 six years after the fact of these transactions,
17 that the scope of the e-mail request that they are
18 seeking is improperly and unduly burdensome given
19 the enormous costs that would be required, given
20 the fact that the time period for which we have
21 back-up tapes postdates the events by several
22 years.

23 And so what Your Honor will remember --
24 To put the e-mail dispute in broader procedural
25 context, we've been arguing about this since

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1 October. Mr. Scarola filed a motion to compel the
2 production of e-mails, all of the e-mail backups,
3 and we came in with an opposition that gave
4 substantial figures about the cost and the burden
5 to do this. There was an amended motion that was
6 filed where Coleman requested discovery on the
7 burden and the cost, and we had a round of
8 depositions on this point. So now this is the
9 third motion, and what I believe --

10 MR. SCAROLA: I don't mean to interrupt, but
11 I do mean to interrupt.

12 THE COURT: I was going to say, I think you
13 do, Mr. Scarola.

14 MR. SCAROLA: I do mean to interrupt, and the
15 reason I mean to interrupt is because this is my
16 motion, and I don't mind, obviously, Mr. Clare
17 responding to the Court's question, but he's gone
18 considerably beyond that and is now arguing his
19 position --

20 MR. CLARE: Well, I'm --

21 MR. SCAROLA: -- and I'd like the Court to
22 understand what ours is before we get the other
23 side's argument.

24 THE COURT: Let me ask you this. Has there
25 ever been a disposition of a motion to compel

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1 where we have made a determination whether either
2 the scope of the request is overbroad or
3 compliance is unduly burdensome?

4 MR. CLARE: No, Your Honor.

5 THE COURT: Then I guess my question to you,
6 Mr. Scarola, is, are we jumping ahead; do we first
7 need to dispose of that motion absent some sort of
8 agreement to them that, yeah, they're amenable to
9 this type of procedure?

10 MR. SCAROLA: I don't believe so, Your Honor,
11 for this reason. The procedural context is, we
12 filed the motion, they filed their objection, we
13 have made a proposal to meet that objection, and
14 what we're --

15 THE COURT: I don't think I can make a --
16 I mean, essentially what you're trying to do is
17 force them to mediate the issues raised by the
18 motion, and I don't --

19 MR. SCAROLA: No. No. We've attempted --
20 We've attempted to resolve those issues between
21 ourselves. We've been unsuccessful in doing that,
22 and this is by way of a motion to compel
23 compliance and a suggestion as to how compliance
24 ought to be compelled.

25 THE COURT: Okay.

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1 MR. SCAROLA: That's really where we are.

2 THE COURT: I can tell you, I can't do it in
3 this context. I think what -- I'm not aware of
4 any procedure that would allow me to short-circuit
5 ruling on defendant's objections and require the
6 parties to engage in this sort of shared
7 enterprise.

8 I mean, at a bare minimum, this would have to
9 be piggybacked onto any hearing calling up the
10 objections, so this would be --

11 Oh, you gave me an order.

12 MR. SCAROLA: Yes, Your Honor, I did.

13 And I would --

14 THE COURT: Let me finish writing, and then
15 we'll talk.

16 MR. SCAROLA: Yes, surely.

17 THE COURT: Okay. All this says is it's
18 denied without prejudice for plaintiff's right to
19 argue the propriety of the proposal in support of
20 its motion to compel.

21 MR. SCAROLA: And the only thing I wanted to
22 point out to Your Honor is that regardless of how
23 this motion may be styled, it is clear from the
24 motion itself that what we are addressing is the
25 burdensome objection.

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1 THE COURT: I understand that, but again, I'm
2 not prepared for that today.

3 MR. SCAROLA: That's fine.

4 THE COURT: It's not like I've taken out your
5 discovery request, I looked at their objections,
6 I've reviewed the depositions you guys took on
7 this point, and we can now argue it intelligently.

8 MR. SCAROLA: We'll present it to Your Honor
9 in --

10 THE COURT: And please understand when I say
11 without prejudice to their right to argue the
12 propriety of the proposal, I'm not saying I think
13 the proposal is proper; I'm just saying it's
14 something I would really have to go back and think
15 about, and I can't even put it into context until
16 we do the other motion.

17 MR. CLARE: I understand your order to be
18 saying that is step two of what will be a two-step
19 process.

20 THE COURT: Right.

21 MR. SCAROLA: Although, I would hope that we
22 can schedule both at the same time; that is --

23 THE COURT: We can try if my little brain
24 will think that fast, Mr. Scarola.

25 MR. SCAROLA: Okay. Thank you.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH, COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).

**COLEMAN (PARENT) HOLDINGS INC.'S
MOTION TO COMPEL CONCERNING E-MAILS
AND OTHER ELECTRONIC DOCUMENTS**

Pursuant to Fla. R. Civ. P. 1.380(a)(1), Coleman (Parent) Holdings Inc. ("CPH") respectfully requests that the Court direct Morgan Stanley & Co., Inc. ("Morgan Stanley") and Morgan Stanley Senior Funding, Inc. ("MSSF") to: (1) search the information in their possession (including backup tapes and hard drives) for e-mail messages and other electronic documents responsive to CPH's document requests for the period 1997-1998, and (2) produce within 14 days any e-mail and other electronic documents that are located. In support of this motion, CPH states as follows:

1. This motion is being brought because Morgan Stanley and MSSF refuse to retrieve and produce e-mail and other electronic documents responsive to CPH's document requests. All of CPH's document requests have stated that Morgan Stanley's productions should include those materials. *See, e.g.*, Definition No. 7 of CPH's First Document Request to Morgan Stanley (defining

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"documents" to include "computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced." But in the tens of thousands of pages of documents that Morgan Stanley and MSSF have produced so far, there has been only a small handful of e-mail messages.

2. The apparent reason why Morgan Stanley has produced so few e-mail messages is because, until January 2001, Morgan Stanley had an internal policy of overwriting back-up tapes after one year thereby creating a substantial risk of deleting relevant e-mails. That internal policy was contrary to federal law, which requires regulated entities like Morgan Stanley to retain e-mail in a readily accessible fashion and for a longer period of time. As a result, the SEC, NASD, and the New York Stock Exchange launched an investigation into Morgan Stanley's e-mail non-retention policy and Morgan Stanley ended up paying a \$1.65 million fine.

Morgan Stanley's Backup Tapes

3. Despite Morgan Stanley's pre-2001 policy of overwriting backup tapes after one year, we have learned that Morgan Stanley still has backup tapes that likely contain e-mail messages from 1997-1998, the period in which many of the events relevant to this litigation took place. The backup tapes that likely contain those relevant e-mails are the tapes generated in connection with the earliest full backup that Morgan Stanley has performed. We are not certain of the precise number of tapes involved, but based on what Morgan Stanley has told us, we estimate that 25-100 back-up tapes must be searched. Morgan Stanley, however, has refused to attempt to retrieve responsive e-mail and other electronic documents from the backup tapes, despite the likelihood that such materials still exist.

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4. In their interrogatory responses, Morgan Stanley and MSSF have identified 36 employees who worked on various aspects of the transaction whereby Sunbeam Inc. ("Sunbeam") acquired The Coleman Company, Inc. ("Coleman"). See Response Nos. 1, 2, 3, 4, and 5 in Morgan Stanley's Responses to CPH's First Set of Interrogatories and Response Nos. 1, 4, 5, and 6 in MSSF's Responses to Defendants' First Set of Interrogatories. With respect to those 36 individuals, Morgan Stanley and MSSF should be required to search their backup tapes for e-mail and other electronic documents created during 1997-1998, the period when Morgan Stanley and MSSF were involved with Sunbeam and the Coleman transaction.

No Undue Burden Exists

5. Morgan Stanley has not disputed that our request for e-mail and other electronic documents seeks information that could lead to the discovery of admissible evidence. The only ground on which Morgan Stanley has objected to our request is undue burden. Specifically, Morgan Stanley has complained of the alleged burden involved both in retrieving e-mail and other electronic documents, and in reviewing the retrieved materials for responsiveness and privilege. Neither objection withstands scrutiny.

A. With respect to the alleged burden associated with retrieving e-mail, there is no indication that the burden would be undue or unfair. Based on our deposition of Morgan Stanley's Rule 1.310 representative, we know that Morgan Stanley backs up its e-mail several times a week and that, for the three-year period starting in January 2000, Morgan Stanley has about 40,000 backup tapes. We are not asking Morgan Stanley and MSSF to search all of those backup tapes. We are asking Morgan Stanley to search only the earliest full backup that they have — a search that will require a review of only a minuscule fraction of the tapes. Although CPH is not sure of the exact number of tapes involved, based on the total number of backups performed and the total number of

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tapes generated over a three-year period, we estimate that the number of tapes to be searched is probably in the range of 25-100.

The expense associated with that limited search cannot be great, and Morgan Stanley and MSSF should bear that cost entirely. Indeed, Morgan Stanley's Rule 1.310 witness acknowledged that the burden is limited: (a) if the date range of the backup to be searched is short, as is the case here, given that only the earliest full backup, which was performed on a single day or weekend, needs to be searched; and (b) if the number of employees' e-mail to be located is confined, as it is here, given that we are requesting e-mail for only 36 employees.

Nonetheless, if Morgan Stanley decides that it does not want to conduct the search itself at its own expense, then we propose that a mutually agreed-upon third party conduct the search, and split the cost evenly between Morgan Stanley/MSSF and CPH — with the understanding that the expense incurred by the prevailing party in connection with this discovery would be a taxable cost at the conclusion of this case. Given the choice we are proposing — Morgan Stanley can conduct the search itself at its own expense, or if Morgan Stanley so elects, a mutually agreed-upon third party can conduct the search and split the bill 50-50 — Morgan Stanley's objection to the burden associated with retrieving lost e-mail is not well-taken.

B. With respect to the alleged burden associated with reviewing the retrieved e-mail and other electronic documents, that is a baseless contention, because parties customarily bear their own costs when attorneys review materials for responsiveness and privilege. The review of retrieved e-mail and other electronic documents should not be dealt with any differently, especially given that Morgan Stanley has not shown that the review of the still-existing 1997-1998 e-mail and other electronic documents for the 36 employees involved would be unusual or onerous.

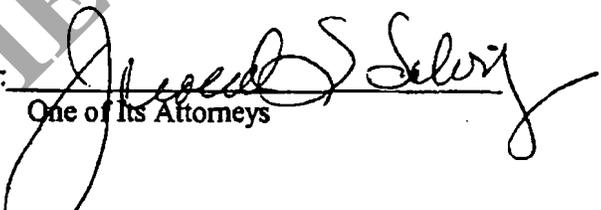
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WHEREFORE, CPH requests that this Court direct Morgan Stanley and MSSF to search the information in their possession (including backup tapes and hard drives) for e-mail messages and other electronic documents responsive to CPH's document requests, for the period 1997-1998, for the 36 individuals listed in Morgan Stanley's and MSSF's interrogatory responses. At the election of Morgan Stanley and MSSF, the search may be conducted by them at their sole expense, or by a third party mutually agreed-upon by the parties, with the resulting bill to be split evenly between Morgan Stanley/MSSF and CPH. CPH further requests that this Court direct Morgan Stanley and MSSF to produce within 14 days any e-mail and other electronic documents that are located.

Dated: April 9, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: 
One of its Attorneys

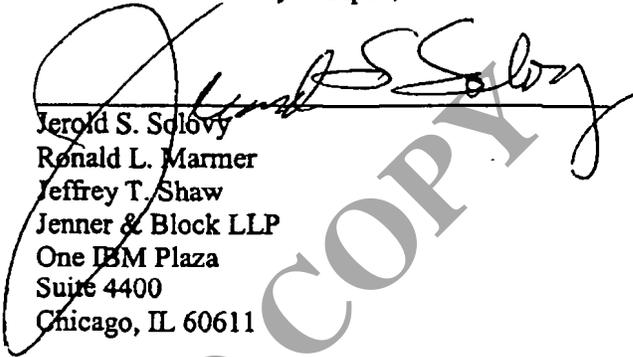
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and E-mail to all counsel on the attached list on this 9th day of April, 2004.


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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH, COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).

**MOTION TO COMPEL MORGAN STANLEY'S CONSENT
TO THIRD PARTY PRODUCTION OF RESPONSIVE E-MAILS**

Coleman (Parent) Holdings Inc. ("CPH") respectfully requests the Court to direct Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc. (collectively, "Morgan Stanley") to consent to the production of e-mail documents responsive to a subpoena CPH served on Bloomberg, Inc. ("Bloomberg"). Bloomberg has in its possession e-mails sent or received by various Morgan Stanley employees who worked on the Sunbeam transaction and who used Bloomberg e-mail accounts. Bloomberg has advised CPH that Bloomberg will not produce the documents without Morgan Stanley's consent. Morgan Stanley, however, has limited its consent to preclude Bloomberg from producing all documents responsive to the subpoena. In further support of this motion, CPH states as follows:

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**Morgan Stanley Has Refused To Permit Bloomberg
To Produce All Documents Responsive To CPH's Subpoena**

1. Throughout discovery in this case, CPH has attempted to discover e-mails sent or received by Morgan Stanley employees concerning the events at issue. In a deposition of Morgan Stanley taken pursuant to Florida Rule 1.310, Morgan Stanley disclosed that certain of its employees used e-mail services provided by Bloomberg, an independent company.

2. CPH thereafter subpoenaed Bloomberg to obtain copies of e-mails sent or received by the 36 individuals Morgan Stanley identified by name in response to interrogatories in this case as having worked on various aspects of the Sunbeam transaction. Of the 36 employees Morgan Stanley identified, 18 maintained Bloomberg e-mail accounts. Ten had accounts before January 1, 2000; the remainder opened their Bloomberg accounts after that date.

3. In response to CPH's subpoena, Bloomberg took the position that under federal law, Bloomberg was unable to produce responsive e-mail without the consent of Morgan Stanley. Specifically, Bloomberg contended that the Federal Electronic Communications Privacy Act prevented Bloomberg from disclosing the e-mails without Morgan Stanley's permission.

4. In response to the position taken by Bloomberg, CPH requested Morgan Stanley to consent to the disclosure of the e-mails.

5. In two material respects, Morgan Stanley has declined to consent to the disclosure of its employees' e-mails:

- *First*, Morgan Stanley has refused to consent to the disclosure of any e-mails sent or received after January 1, 2000;

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- *Second*, Morgan Stanley has refused to consent to the disclosure of any e-mails concerning the employees that Bloomberg does not believe maintained Bloomberg e-mail accounts.

As shown herein, Morgan Stanley's refusal to consent to the disclosure of responsive e-mails by Bloomberg is unjustified.

Morgan Stanley's Refusal To Consent Is Unjustified

6. *First*, Morgan Stanley's refusal to consent to the production of e-mails sent or received after January 1, 2000 is unjustified. E-mails created after January 1, 2000 that refer to issues in this case, or which summarize or describe events concerning Sunbeam that took place at an earlier time, are plainly responsive. There is no basis for Morgan Stanley to prevent Bloomberg from producing those responsive documents.

7. An obvious example illustrates this point. To resolve a recent motion to compel, Morgan Stanley agreed to produce documents created after Sunbeam filed for bankruptcy in February 2001. Nonetheless, in refusing to grant consent for Bloomberg to produce e-mail that was created after January 1, 2000, Morgan Stanley has prevented Bloomberg from producing e-mails that Morgan Stanley itself has agreed to produce if those documents were in Morgan Stanley's files.

8. Morgan Stanley has attempted to justify its refusal to consent on the ground that the production CPH seeks would be burdensome. That claim is wholly unsubstantiated. Because the e-mails at issue are in the possession of Bloomberg, Morgan Stanley cannot describe, divine, or complain about any supposed burden involved in their production.

9. Moreover, the subpoena calls for Bloomberg to produce responsive documents. The only "burden" is of Morgan Stanley's own making. Morgan Stanley wants Bloomberg to produce responsive documents to Morgan Stanley, so that Morgan Stanley can review them

before they are produced to CPH. We have no objection to Morgan Stanley undertaking a privilege review, if Morgan Stanley chooses to do so, but that is not a reason for Morgan Stanley to withhold its consent. Indeed, Morgan Stanley has gone further, asserting that it plans to conduct a review for responsiveness. There is no legitimate reason for Morgan Stanley to insert itself into the Bloomberg production for any such screening process.

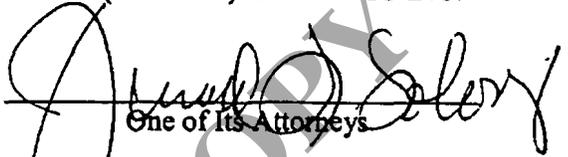
10. *Second*, Morgan Stanley's refusal to consent to the production of any e-mails from 18 of its employees is unjustified. Morgan Stanley has refused to consent to the production of any e-mails from those 18 employees based on a representation from Bloomberg's counsel to Morgan Stanley that those individuals did not have Bloomberg accounts. If Bloomberg has no responsive documents concerning an individual named in the subpoena, Bloomberg will have no such documents to produce, regardless of Morgan Stanley's consent. That consent is relevant only if Bloomberg has responsive documents. By refusing to consent to the disclosure of documents, Morgan Stanley's action will stand in the way of Bloomberg producing documents responsive to CPH's subpoena, should they be found. CPH is entitled to know that Bloomberg has produced the documents it has, not simply the documents Morgan Stanley consents to having produced.

For the foregoing reasons, CPH respectfully requests that this Court direct Morgan Stanley to consent to the production -- without limitation -- to CPH of e-mail responsive to the subpoena CPH served upon Bloomberg.

Dated: April 9, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: 
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, IL 60611
(312) 222-9350

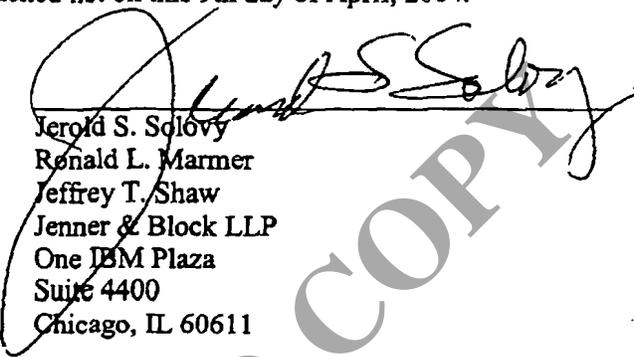
Jack Searola
SEARCY, DENNEY, SCAROLA,
BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33401
(561) 686-6300

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040117

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and E-mail to all counsel on the attached list on this 9th day of April, 2004.



Jerold S. Solovy
Ronald L. Marmor
Jeffrey T. Shaw
Jenner & Block LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611

Jack Scarola
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409

Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

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811070
040118

COUNSEL LIST

Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue
Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
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Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
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655 15th Street, N.W., Suite 1200
Washington, DC 20005
Telephone: (202) 879-5000
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e-mail: tclare@kirkland.com

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040120

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH, COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).

**AGREED ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO
COMPEL CONSENT TO THIRD-PARTY PRODUCTION OF RESPONSIVE E-MAILS**

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings, Inc.'s ("CPH") motion to compel consent to third-party production of responsive e-mails, the parties having reached agreement, it is hereby

ORDERED and ADJUDGED:

I. Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc. (collectively, "Morgan Stanley") will obtain from Bloomberg, Inc., all e-mail, including any e-mail that can be restored from backup, of each of the Morgan Stanley employees or former employees identified in Response Nos. 1, 2, 3, and 5 of MS & Co.'s Responses to CPH's First Set of Interrogatories and Response Nos. 1, 4, 5, and 6 of MSSF's Responses to Defendants' First Set of Interrogatories. Herein, that set of e-mails shall be called "Bloomberg e-mail." Morgan Stanley will advise counsel for CPH of the volume of Bloomberg e-mail provided by Bloomberg.

040121



2. Morgan Stanley attorneys shall review for responsiveness and privilege all Bloomberg e-mail that (a) is dated from February 15, 1998 through April 15, 1998, and/or (b) without regard to date, contains any of the following terms:

- AA
- Andersen
- Anderson
- Bornstein
- Camper
- Coleman
- Colman
- Comfort Letter
- Dunlap
- Early Buy
- Fannin
- Goudis
- Grill
- Harlow
- Kersh
- Laser
- MacAndrews
- MAFCO
- Maher
- Nesbitt
- Pearlman
- Perelman
- Perlman
- Press Release
- Scott
- SOC
- Sunbeam
- Synergies
- Uzzi

The term search shall be neither case-sensitive nor whole word sensitive.

3. ~~Non-privileged~~ Bloomberg e-mails responsive to any CPH or MAFCO document request will be produced by ~~May 14, 2004~~. **REQUESTED IMMEDIATELY AND NON-PRIVILEGED E-MAILS WILL BE WITHIN 25 DAYS OF MORGAN STANLEY'S RECEIPT OF THOSE E-MAILS.**

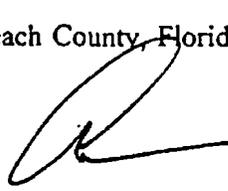
4. Any materials withheld on privilege grounds shall be listed on a privilege log in accordance with this Court's previous orders.

040222

5. An authorized Morgan Stanley representative will certify compliance with Paragraphs 1 through 4 of this Order.

6. Each side shall bear its own costs.

DONE AND ORDERED at West Palm Beach County, Florida, this 16th day of April, 2004.



ELIZABETH T. MAASS
Circuit Court Judge

copies furnished to:

Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci, Esq.
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, IL 60611

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040123

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

_____ /

SUBPOENA DUCES TECUM

THE STATE OF FLORIDA

TO: Custodian of Records
Bloomberg, Inc.
THE PRENTICE-HALL CORPORATION SYSTEM INC.
1201 HAYS STREET SUITE 105
TALLAHASSEE FL 32301

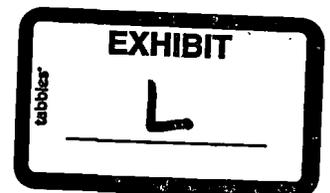
YOU ARE COMMANDED to appear for deposition at Searcy Denrey Scarola
Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Boulevard, West Palm Beach, FL, 33409 on
the 29th day of March, 2004 at 9:30 a.m. and to have with you at that time and place the
documents specified on Attachment A.

If you fail to:

- 1) Appear as specified; or
- 2) Furnish the records instead of appearing as provided above; or
- 3) Object to this subpoena.

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You may be in contempt of court. You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

DATED this 4th day of March, 2004.



JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone (561) 686-6300
Fax: (561) 478-0754
Attorneys for Plaintiff

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040126

CERTIFICATION OF RESPONSE TO
SUBPOENA DUCES TECUM

STATE OF FLORIDA
COUNTY OF _____

The undersigned, as custodian of records for Bloomberg, Inc., certifies that the attached documents consisting of _____ pages represents a true copy of all items within my possession, custody or control which are described in the Subpoena Duces Tecum served on me in the above styled action and each page is numbered by me for identification. Production is complete and has been numbered by the custodian of records.

It is further certified that originals of the items produced are maintained under the direction, custody and control of the undersigned.

The foregoing Certification was acknowledged before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, this _____ day of _____, 20____, who:

- is personally known to me; or
- has produced _____ as identification; and who:
- did or
- did not take an oath.

and who executed the foregoing certification, and who acknowledged the foregoing certification to be freely and voluntarily executed for the purposes therein recited.

Notary Public, State of Florida at Large

My Commission Expires:

040127

**ATTACHMENT A
TO SUBPOENA TO NON-PARTY
BLOOMBERG, INC.**

You are hereby requested to produce the following documents pursuant to the definitions and instructions set forth below.

DOCUMENTS REQUESTED

1. All documents concerning emails or electronic messages of the following Morgan Stanley or MSSF employees:

- Leslie E. Bradford
- Steven L. Brown
- Shani Boone
- Thomas Burchill
- Tyrone Chang
- Andrew Conway
- Benjamin D. Derito
- Karen Eltrich
- Alex Fuchs
- Jake Foley
- Joel P. Feldmann
- Richard B. Felix
- Johannes Groeller
- Michael Hart
- Robert Kitts
- William Kourakos

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- Tarek F. Abdel-Meguid
- Stephen R. Mungcr
- Stephan F. Newhouse
- Ralph L. Pellecchio
- Ruth Porat
- Lily Rafii
- Michael L. Rankowitz
- William J. Sanders
- Andrew B. Savarie
- Ishaan Seth
- Marium A. Short
- Dwight D. Sipprelle
- Bram Smith
- William Strong
- James Stynes
- John Tyree
- Joshua A. Webber
- Chris Whelan
- William H. Wright
- Gene K. Yoo

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DEFINITIONS

1. "Concerning" means concerning, reflecting, relating to, referring to, describing, evidencing, or constituting.
2. "Documents" shall be given the broad meaning provided in Rule 1.350 of the Florida Rules of Civil Procedure and refers to any form or means, whether physical, visual, or electronic, in or by which words, numbers, or ideas are recorded or preserved, whether fixed in tangible medium or electronically stored, including any and all drafts of any final document. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not.

040130

3. "Morgan Stanley" means Morgan Stanley & Co., Inc. and any of its predecessors, successors, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

4. "MSSF" means Morgan Stanley Senior Funding, Inc. and any of its predecessors, successors, affiliates, subsidiaries, and present and former officers, directors, partners, employees, representatives, and agents.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other should not be separated. Documents consisting of items previously produced in the Litigations with Bates numbering shall be produced in Bates number order. Documents stored in an electronic format should be produced in a readable electronic format accessible by a standard database program such as concordance.

2. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from January 1, 1997 through the date of this subpoena, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period. Please supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any respect.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow CPH to test the privilege or protection asserted.

5. The following rules of construction apply:

- A. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside of their scope;
- B. The term "including" shall be construed to mean "without limitation"; and
- C. The use of the singular form of any word includes the plural and vice versa.

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WILLKIE FARR & GALLAGHER LLP

cc: cc - [unclear]

THOMAS H. GOLDEN
OF THE BAR
[unclear]
[unclear]
New York, NY 10019-0001
Tel: 212 778 5000
Fax: 212 778 5111

BY FAX AND U.S. MAIL

March 11, 2004

Jack Scarola, Esq.
Searcy D'orney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409

Re: Coleman (Parent) Holdings, Inc. vs. Morgan Stanley & Co., Inc.,
No. 2003 CA 005045 AI (Palm Beach County)

Dear Mr. Scarola:

This firm represents Bloomberg Inc. ("Bloomberg"). I am writing with regard to your March 4, 2004 subpoena (the "Subpoena") directed to Bloomberg in connection with the referenced matter.

Please note that the Electronic Communications Privacy Act, 18 U.S.C. §2701, *et seq.*, prohibits Bloomberg from producing to you the emails you seek (even in response to your Subpoena) without the consent of Morgan Stanley. So that Bloomberg is able to determine the steps it needs to take, I would appreciate your providing me, by Friday, March 19, 2004, with Morgan Stanley's consent or, if such consent is not forthcoming, with an indication of whether you will withdraw the Subpoena. Of course, you should feel free to call me if you wish to discuss this matter further.

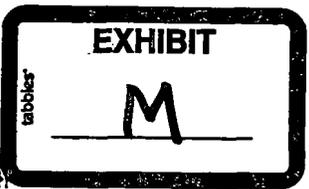
Please note that Bloomberg does not waive any other objections to the Subpoena, all of which are expressly reserved.

Very truly yours,

Thomas H. Golden

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040134



NEW YORK WASHINGTON PARIS LONDON MILAN ROME FRANKFURT AMSTERDAM

TOTAL P.02

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040135

March 17, 2004

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312-222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

By Telecopy

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

Dear Tom:

In response to our subpoena, Bloomberg Inc. has asserted that the Electronic Communications Privacy Act, 18 U.S.C. § 2701 et seq., prohibits Bloomberg from producing Morgan Stanley email unless Bloomberg receives permission from Morgan Stanley. See attached letter from Thomas H. Golden to Jack Scarola, dated March 11, 2004.

Please provide Morgan Stanley's consent to Bloomberg's counsel, Thomas H. Golden, Willkie Farr & Gallagher LLP, 787 Seventh Ave., New York, NY 10019-6099, by March 19, 2004, so that Bloomberg may produce documents responsive to CPH's subpoena. Please copy us on your letter to Mr. Golden.

Very truly yours,

Michael T. Brody

Michael T. Brody

MTB:cjg

cc: Thomas H. Golden, Esq.
Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

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KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

665 Fifteenth Street, N.W.
Washington, D.C. 20005

Thomas A. Clare
To Call Writer Directly:
(202) 878-5203
tclare@kirkland.com

202 878-5000
www.kirkland.com

Facsimile:
202 878-5200

April 1, 2004

By Facsimile and U.S. Mail

Thomas H. Golden, Esq.
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019-6099

Re: Coleman (Parent) Holdings, Inc. vs. Morgan Stanley & Co., Inc.,
No. 2003 CA 005045 AI (Palm Beach County)

Dear Mr. Golden:

I write on behalf of my clients, Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding (collectively "Morgan Stanley"). This letter will confirm our telephone conversation of March 30, 2004 — and set forth the terms of Morgan Stanley's consent for Bloomberg to produce e-mails requested by the March 4, 2004 subpoena (the "Subpoena") directed to Bloomberg in the above-referenced matter.

Individuals Who Do Not Have Bloomberg E-mail Accounts

You informed me that — according to Bloomberg's records — the following individuals listed on Attachment A of the Subpoena did not have Bloomberg e-mail accounts any time during the "relevant time period" defined in the Subpoena.

- | | | |
|--------------------|-------------------|--------------|
| Leslie A. Bradford | Steven L. Brown | Tyrone Chang |
| Richard B. Felix | Johannes Groeller | Robert Kitts |
| Tarek Abdel-Maguid | Ralph Pellecchio | Lily Rafii |
| William J. Sanders | Andrew B. Savarie | Ishaan Seth |
| Mariam A. Short | Bram Smith | James Stynes |
| Chris Whelan | Gene K. Yoo | |

Morgan Stanley does not consent to the production of any e-mails or information regarding these individuals.

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Chicago

London

Los Angeles

New York

Sa



KIRKLAND & ELLIS LLP

Thomas H. Golden
 April 1, 2004
 Page 2

Individuals With Bloomberg Accounts After January 1, 2000

You informed me that — according to Bloomberg's records — the following individuals listed on Attachment A of the Subpoena did not have Bloomberg e-mail accounts any time prior to January 1, 2000:

Andrew Conway	Joel P. Feldmann	Michael Hart
William Kourakos	Stephan F. Newhouse	Ruth Porat
William Strong	John Tyree	

Morgan Stanley does not consent to the production of any e-mails or information regarding these individuals.

Individuals With Bloomberg E-mail Accounts Before January 1, 2000

You informed me that — according to Bloomberg's records — the following individuals listed on Attachment A of the Subpoena had Bloomberg e-mail accounts for some period of time prior to January 1, 2000:

Shani Boone	05/99 to 05/00
Thomas Burchill	05/98 to 06/00
Benjamin D. Derito	11/97 to 08/02
Karen Eltrich	11/97 to present
Alex Fuchs	07/98 to 08/98
Jake Foley	10/98 to 04/99
Stephen R. Munger	10/99 to 05/04
Michael Rankowitz	01/97 to 03/01
Dwight Sippelle	08/99 to 11/00
William H. Wright	09/99 to 12/99

With respect to these individuals, Morgan Stanley consents to the following procedure:

- (1) Bloomberg shall locate the requested e-mail for these employees for the time period up to and including December 1999.
- (2) Bloomberg shall provide the e-mail for this time period to Morgan Stanley's attorneys for responsiveness and privilege review.
- (3) Morgan Stanley shall produce the e-mails directly to Coleman (Parent) Holdings.

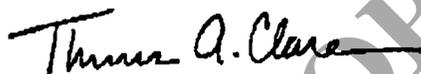
040139

KIRKLAND & ELLIS LLP

Thomas H. Golden
April 1, 2004
Page 3

Please call me if have any questions about the scope of Morgan Stanley's consent — or if you would like to discuss the mechanics of implementing this procedure.

Sincerely,



Thomas A. Clare

cc: Michael T. Brody, Esq.

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171070

April 2, 2004

Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611
Tel 312-222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

By Telecopy

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005.

Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.

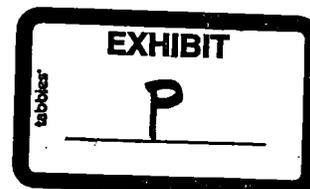
Dear Tom:

I write concerning your letter of April 1, 2004, in which you attempt to redefine the scope of the subpoena we served upon Bloomberg for the production of emails.

You have attempted to limit discovery in two ways. First, you have refused to consent to the production of any emails or information regarding 17 individuals whom you state did not have Bloomberg email accounts at any time during the relevant time period defined in the subpoena. (As you know, the relevant time period in the subpoena is from January 1, 1997 to the date of the subpoena.) Based on my consultation with counsel for Bloomberg, it appears that Bloomberg does not have emails or other responsive information pertaining to these individuals. Thus, to avoid an issue where there is none, I request that you consent to the production sought in the subpoena, and Bloomberg will produce no responsive documents as to those 17 individuals. If, notwithstanding the fact that these individuals did not themselves have Bloomberg email accounts, Bloomberg has responsive documents, your refusal to consent is unjustified.

Second, you have unilaterally imposed a date restriction and have refused to consent to the production of any emails after January 1, 2000. Your restriction has no basis, as the subpoena defines as relevant the entire time period between January 1, 1997 and the date of the subpoena. Nor is your restriction appropriate on the facts of this case. Information contained in emails after January 1, 2000 may be critically relevant. For example, emails sent in 2000 that describe Morgan Stanley's earlier work on the Sunbeam transaction would be responsive and should be produced. Your limitation also is inconsistent with Morgan Stanley's own document production in this case. Morgan Stanley has produced documents generated in or after 2000. In response to our recent motion to compel, you agreed to produce documents created after the Sunbeam bankruptcy in 2001. Thus, your refusal to consent to the production of emails after January 1, 2000 is wholly unjustified.

040142



Thomas A. Clare, Esq.

April 2, 2004

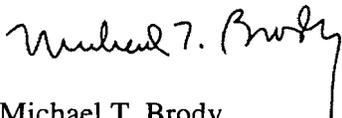
Page 2

By copy of this letter, I am requesting Bloomberg to produce to you all documents responsive to our subpoena. This production would include emails from or concerning individuals who themselves did not have Bloomberg email accounts, emails from or concerning individuals who did not have Bloomberg accounts until after January 1, 2000, and emails created or sent after January 1, 2000 for those individuals who had Bloomberg accounts prior to January 1, 2000, as well as the limited quantity of documents referenced in your letter. I acknowledge that Bloomberg has expressed the concern that it may not produce these documents to CPH without consent. I have requested Bloomberg to produce the documents to you. In the event that you persist in your position and refuse to produce documents to us other than as set forth in your letter of April 1, 2004, we can raise the matter before Judge Maass.

Finally, your letter presents two other issues. In discussing the limited universe of documents that you agree Bloomberg may provide, you state that Morgan Stanley's attorneys will review the documents for responsiveness and privilege. What standards does Morgan Stanley intend to apply? Certainly, all of the documents Bloomberg will provide to you are responsive to our subpoena. Also, your letter omits any mention of Joshua Webber, who is listed in the subpoena. Was this omission intentional?

Please respond to this letter on or before April 5, 2004, or the parties will be at an impasse as to this issue.

Very truly yours,



Michael T. Brody

MTB:cjg

cc: Thomas H. Golden, Esq.
Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.

040143

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KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
Washington, D.C. 20006

202 879-5000

www.kirkland.com

Thomas A. Clare
To Call Writer Directly:
(202) 879-5893
tclare@kirkland.com

Facsimile:
202 879-6200

April 7, 2004

BY FACSIMILE

Michael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603

Re: *Coleman (Parent) Holdings v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding v. MacAndrews & Forbes et al.

Dear Mike:

I write in response to your April 2, 2004 letter regarding CPH's subpoena to Bloomberg. I will address each of the issues raised in your letter in turn:

First, we both agree that Bloomberg does not have any e-mails or other responsive information pertaining to the 17 individuals who did not have Bloomberg e-mail accounts during the time period defined by the subpoena. Morgan Stanley's consent (or refusal to consent) is therefore irrelevant.

Second, with regard to e-mails after January 1, 2000, we have explained repeatedly why it is wasteful and burdensome to require Morgan Stanley to undertake a costly review of e-mails from a time period that does not even *begin* until more than a year-and-a-half after the financial transactions at issue in these cases. I refer you to my March 11, 2004 letter for a detailed explanation of our position in this regard. The instances identified in your letter where Morgan Stanley has agreed to produce certain categories of documents after January 1, 2004 present a different situation. The documents in those categories are expected to be relatively few in number -- and can be obtained from a small number of sources within Morgan Stanley. Those limited categories of documents stand in sharp contrast to CPH's extremely broad subpoena to Bloomberg, which -- on its face -- asks for every e-mail (without limitation and regardless of subject matter) from more than thirty-five individuals over a seven year period. There simply is no reason to believe that CPH's "all-or-nothing" approach to the production of e-mails from after January 1, 2000 is reasonably likely to yield relevant and responsive e-mails -- or that the theoretical possibility of finding relevant and responsive e-mails from several years after the fact would justify the enormous burden and cost of reviewing and producing e-mails from this time period.

Chicago

London

Los Angeles

New York



041070
5

KIRKLAND & ELLIS LLP

Michael Brody, Esq.
April 7, 2004
Page 2

Third, you asked about the criteria that we intend to apply during our responsiveness review. As noted above, CPH's subpoena to Bloomberg does not contain any subject-matter limitation. CPH is not entitled to e-mails that have nothing to do with the transactions and issues in this case. Accordingly, we intend to produce to CPH only those Bloomberg documents that are responsive to CPH's outstanding document requests to Morgan Stanley -- subject to Morgan Stanley's outstanding objections to those requests and the Court's prior rulings on discovery issues.

Fourth, the omission of Joshua Webber from my letter was inadvertent. Mr. Webber should have been included in the list of individuals who did not have a Bloomberg account at any time during the time period defined by the subpoena.

Sincerely,



Thomas A. Clare

cc: Joseph Ianno, Esq. (by facsimile)
John Scarola, Esq. (by facsimile)
Jerold S. Solovy, Esq. (by facsimile)
Thomas H. Golden, Esq. (by facsimile)

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
1		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Draft Sunbeam Form S-4 with P. Rowe's handwritten comments.
2		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Summary of Sunbeam corporate structure issues.
3		11/05/1998	Michael Schwartz, Esq.	Adam Emmerich, Esq., Frank Miller, Esq., Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re In re Sunbeam securities litigation issues.
4		02/03/1999	Wachtell Lipton	Ernst & Young, Barry Schwartz, Esq. (cc)	Attorney-Client, Work Product	Letter providing information re litigation.
5		01/14/1999	Barry Schwartz, Esq.	Martin Lipton, Esq.	Attorney-Client, Work Product	Letter requesting information re litigation.
6		03/01/1998	Adam Emmerich, Esq.	Steven Isko, Esq.	Attorney-Client, Work Product	Memorandum re attached draft documents.
6	A	03/01/1998	Adam Emmerich, Esq.		Attorney-Client, Work Product	Draft Coleman press release with A. Emmerich's handwritten comments.
6	B	03/01/1998	Adam Emmerich, Esq.		Attorney-Client, Work Product	Draft Sunbeam press release with A. Emmerich's handwritten comments.
7		03/03/1998	Deborah Paul, Esq.	Steven Isko, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
7	A	03/03/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Coleman employee disclosure re benefits.
8		03/03/1998	Frank Miller, Esq.	Steven Isko, Esq., Adam Emmerich, Esq. (cc)	Attorney-Client, Work Product	Memorandum re Coleman Form 8-K and attached draft document.
8	A	03/03/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Coleman Form 8-K/A.



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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
9		03/04/1998	Michael Katzke, Esq.	Steven Isko, Esq., Joram Salig, Esq. (cc), Robert Fieder, Esq. (cc), Adam Emmerich, Esq. (cc), Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft corporate resolutions.
9	A	03/04/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft resolution re employee benefit plans.
9	B	03/04/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft resolution re employee benefit plans.
9	C	03/04/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft resolution re employee benefit plans.
10		03/04/1998	Michael Jahnke, Esq.	Barry Schwartz, Esq., Paul Shapiro, Esq., Joram Salig, Esq., William Nesbitt, Steven Isko, Esq., Adam Emmerich, Esq. (cc), Ilene K. Gotts, Esq. (cc), Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client, Work Product	Memorandum re Hart-Scott-Rodino issues.
11		03/19/1998	Lynn Feldcamp	Steven Isko, Esq.	Attorney-Client, Work Product	Memorandum re attached document.
11	A	03/19/1998	Wachtell Lipton		Attorney-Client, Work Product	Section of draft Coleman 10-K.
11	B	03/18/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Coleman 10-K.
12		03/09/1998	Adam Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Steven Isko, Esq., Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re application of federal securities laws.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
13		03/10/1998	Michael Katzke, Esq.	Steven Isko, Esq., Joram Salig, Esq., Robert Fleder, Esq. (cc), Adam Emmerich, Esq. (cc), Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
13	A	03/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft resolution re employee benefit plans.
13	B	03/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft resolution re employee benefit plans.
13	C	03/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft resolution re employee benefit plans.
14		03/11/1998	Frank Miller, Esq.	Barry Schwartz, Esq., Joram Salig, Esq., Steven Isko, Esq., Adam Emmerich, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document.
14	A	03/11/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Section 14(f) Notice.
15		03/12/1998	Steven Isko, Esq.	Barry Schwartz, Esq., Adam Emmerich, Esq.	Attorney-Client, Work Product	Memorandum re attached draft letter.
15	A	03/12/1998	Steven Isko, Esq.		Attorney-Client, Work Product	Draft letter re pending Coleman litigation.
16		04/17/1998	Ilene K. Gotts, Esq.		Attorney-Client, Work Product	Draft Sunbeam Form S-4 with I. Gotts' handwritten notes.
17		04/22/1998	Cass G. Adelman, Esq.	Michael Katzke, Esq.	Attorney-Client, Work Product	Letter re attached document.
17	A	04/09/1998	Kyle Wendt	Cass G. Adelman, Esq., Karen Clark (cc), Lynn Feldcamp	Attorney-Client, Work Product	Memorandum re employee benefit plans with attorney's handwritten notes.
18		02/24/1998	Steven Isko, Esq.	Michael Katzke, Esq.	Attorney-Client, Work Product	Correspondence re employee benefit issues.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
19		00/00/0000	Michael Katzke, Esq.		Attorney-Client, Work Product	Handwritten notes re PBGC letter (Redacted from CP 012505-012506).
20		03/16/1998	Robert Fleder, Esq.	Barry Schwartz, Esq., Steven Fasman, Esq., Steven Isko, Esq., Michael Katzke, Esq.	Attorney-Client, Work Product	Memorandum re attached draft letter.
20	A	03/16/1998	Robert Fleder, Esq.		Attorney-Client, Work Product	Draft letter to PBGC re Coleman pension plans.
21		03/16/1998	Barbara Allen	Michael Katzke, Esq.	Attorney-Client, Work Product	Memorandum re Coleman benefit plan information.
22		03/19/1998	Michael Katzke, Esq.	Joram Salig, Esq., Steven Isko, Esq., Robert Fleder, Esq., Cass G. Adelman, Esq.	Attorney-Client, Work Product	Draft benefit plan agreement with M. Katzke's notes.
23		03/26/1998	Cass G. Adelman, Esq.	Michael Katzke, Esq.	Attorney-Client, Work Product	Memorandum re attached document.
23	A	03/26/1998	Steven Isko, Esq.	Cass G. Adelman, Esq., Joram Salig, Esq., Robert Fleder, Esq.	Attorney-Client, Work Product	Memorandum re employee benefit plans with S. Isko's handwritten notes.
24		00/00/0000	Frank Miller, Esq.		Attorney-Client, Work Product	Handwritten notes re Sunbeam acquisition issues and communications with client re same.
25		03/12/1998	Frank Miller, Esq.	Barry Schwartz, Esq., Joram Salig, Esq., Steven Isko, Esq., Karen Clark, Lenny Ajzenman, Adam Emmerich, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document.
25	A	03/12/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft section of Section 14(f) Notice.
25	B	03/12/1998	Frank Miller, Esq.	Lenny Ajzenman	Attorney-Client, Work Product	Correspondence re attached documents.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
26		04/01/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Form 144.
27		00/00/0000	Steven Isko, Esq.		Attorney-Client, Work Product	Draft minutes of 02/25/98 Board meeting.
28		00/00/0000	Steven Isko, Esq.		Attorney-Client, Work Product	Draft minutes of 2/27/98 Board meeting.
29		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft resolutions re employee benefit plans.
30		03/17/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft resolution re employee benefit plans.
31		03/18/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft resolution re employee benefit plans.
32		03/19/1998	Frank Miller, Esq.	Donna Egan	Attorney-Client, Work Product	Memorandum re corporate resolutions.
33		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re merger agreement (Redacted from CP016791-016851).
34		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re merger agreement (Redacted from CP017279-017333).
35		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft response to SEC and NYSE requests for information.
36		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Notes re draft Sunbeam Form S-4 and pending Coleman shareholder litigation.
37		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re draft Sunbeam Form S-4.
38		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Draft Sunbeam Form S-4 amendment with R. Silverberg's notes.
39		03/26/1998	Adam Emmerich, Esq.	Gary Leshko, Joram Salig, Esq., Barry Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached draft letter.

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October 6, 2003

**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
39	A	03/25/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter to Sunbeam re cooperation and access.
40		03/26/1998	Deborah Paul, Esq.	David Einhorn, Esq., Adam Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Attorney-Client, Work Product	E-mail re transaction structure.
41		03/30/1998	Frank Miller, Esq.	Adam Emmerich, Esq., Steven Cohen, Esq.	Attorney-Client, Work Product	E-mail re post-closing SEC filings.
42		03/30/1998	Frank Miller, Esq.	Glenn Dickes, Esq., Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re post-closing SEC filings.
43		04/19/1998	Adam Emmerich, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
43	A	04/19/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft memorandum re employee benefit issues.
44		04/28/1998	Glenn Dickes, Esq.	Frank Miller, Esq., Joram Salig, Esq. (cc), Barry Schwartz, Esq. (cc)	Attorney-Client, Work Product	Fax re Sunbeam letter re Coleman employee benefit issues.
45		03/26/1998	Steven Isko, Esq.	Frank Miller, Esq., Glenn Dickes, Esq. (cc), Paul Shapiro, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document.
45	A	03/26/1998	Steven Isko, Esq.		Attorney-Client, Work Product	Draft letter re termination of intercompany agreements with S. Isko's handwritten notes.
46		03/26/1998	Michelle Root	Adam Emmerich, Esq.	Attorney-Client, Work Product	Response to request for information re closing.
47		03/27/1998	Rachelle Silverberg, Esq.	Steven Isko, Esq., Jerry Levin, James Maher, William Nesbitt, Joram Salig, Esq., Marc Shiffman, Barry Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
47	A	03/27/1998	Wachtell Lipton	Steven Cohen, Esq., Adam Emmerich, Esq., Frank Miller, Esq.	Attorney-Client, Work Product	Draft response to SEC and NYSE requests for information.
48		03/27/1998	Valerie Radwaner, Esq., Deborah Reiss, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., Paul Shapiro, Esq., James Conroy, Esq., Glenn Dickes, Esq., Steven Isko, Esq., Joram Salig, Esq., Steven Cohen, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Attorney-Client, Work Product	Correspondence re stock certificate.
49		06/14/1998	Adam Emmerich, Esq., Frank Miller, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., Paul Shapiro, Esq., James Conroy, Esq., Glenn Dickes, Esq., Steven Isko, Esq., Joram Salig, Esq., Steven Cohen, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document.
49	A	06/14/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Schedule 13D.
50		07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft chronology re potential claims arising out of Sunbeam acquisition.
51		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018806-018807).
52		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018808-018809).
53		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018810-018811).
54		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018812-018815).

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
55		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018816-018819).
56		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018820-018821).
57		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018838-018848).
58		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018949-018950).
59		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018951-018956).
60		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018959-018960).
61		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018961-018962).
62		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018963-018964).
63		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018965-018966).
64		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018968-018974).
65		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018975-018976).
66		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018977-018981).
67		00/00/0000	Adam Emmerich, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018982-018983).
68		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018984-018986).

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
69		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018987).
70		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018988-018989).
71		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018990).
72		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018991-018993).
73		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018994-018995).
74		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018996-018998).
75		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018999).
76		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 019000-019002).
77		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 019003-019006).
78		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 019007-019008).
79		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Notes re article (Redacted from CP 019835 and CP 019835).
80		02/25/1998	Adam Emmerich, Esq.	Frank Miller, Esq., Steven Cohen, Esq.	Attorney-Client, Work Product	E-mail re merger agreement disclosure schedules; S. Cohen's e-mail response.
81		02/24/1998	Steven Isko, Esq.,	Steven Cohen, Esq.	Attorney-Client, Work Product	Fax re merger agreement disclosure schedules.
81	A	02/24/1998	Steven Isko, Esq.		Attorney-Client, Work Product	Information re merger agreement disclosure schedules with S. Isko's handwritten notes.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
82		02/24/1998	Steven Isko, Esq.		Attorney-Client, Work Product	Information re merger agreement disclosure schedules.
83		02/25/1998	Frank Miller, Esq.		Attorney-Client, Work Product	Notes re merger agreement provisions.
84		02/26/1998	Steven Isko, Esq.	Frank Miller, Esq.	Attorney-Client, Work Product	Information re merger agreement disclosure schedules with attorney's handwritten notes.
85		02/27/1998	Steven Isko, Esq.	Frank Miller, Esq.	Attorney-Client, Work Product	Information re merger agreement disclosure schedules with attorney's handwritten notes.
86		03/01/1998	Michael Katzke, Esq.		Attorney-Client, Work Product	Notes re Sunbeam's employee benefit plans (Redacted from CP 019825-019833).
86	A	03/01/1998	Steven Isko, Esq.	Michael Katzke, Esq.	Attorney-Client, Work Product	Draft memorandum to J. Levin re employee benefits issues.
87		02/21/1998	Adam Emmerich, Esq.	Steven Cohen, Esq., Frank Miller, Esq., Paul Rowe, Esq., Peter Canellos, Esq., David Einhorn, Esq., Karen Krueger, Esq., Michael Byowitz, Esq., Ilene K. Gotts, Esq., Michael Jahnke, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
87	A	02/21/1998	Adam Emmerich, Esq.		Attorney-Client, Work Product	Draft memorandum in response to Sunbeam's proposed transaction terms.
88		03/25/1998	Steven Isko, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
88	A	03/25/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft response to NYSE and SEC requests for information with S. Isko's handwritten notes.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
89		03/25/1998	Rachelle Silverberg, Esq.	Steven Isko, Esq., Jerry Levin, James Maher, William Nesbitt, Joram Salig, Esq., Barry Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
89	A	03/25/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft response to SEC and NYSE requests for information.
90		03/05/1998	Adam Emmerich, Esq., Michael Katzke, Esq.		Attorney-Client, Work Product	Draft memorandum regarding application of federal securities laws.
91		03/04/1998	Michael Katzke, Esq.	Steven Isko, Esq., Joram Salig, Esq. (cc), Robert Fieder, Esq. (cc), Adam Emmerich, Esq. (cc), Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
91	A	03/04/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft resolution re employee benefit plans with F. Miller's handwritten notes.
91	B	03/04/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft resolution re employee benefit plans with F. Miller's handwritten notes.
91	C	03/04/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft resolution re employee benefit plans with F. Miller's handwritten notes.
92		03/17/1998	Ilene K. Gotts, Esq.	Paul Shapiro, Esq., Joram Salig, Esq., Steven Isko, Esq., Adam Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Attorney-Client, Work Product	Memorandum re attached letters.
92	A	03/17/1998	Brian Facey, Esq.	Sarah Strasser, Esq.	Attorney-Client, Work Product	Letter re foreign antitrust issues.
92	B	03/11/1998	Gabriel Castaneda, Esq.	Ilene K. Gotts, Esq., Sarah Strasser, Esq. (cc)	Attorney-Client, Work Product	Letter re foreign antitrust issues.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
93		02/22/1998	Michael Jahnke, Esq.	Michael Byowitz, Esq., Ilene K. Gots, Esq.	Attorney-Client, Work Product	Memorandum re Sunbeam acquisition antitrust issues.
94		03/04/1998	Adam Emmerich, Esq.	Michael Jahnke, Esq., Ilene K. Gots, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client, Work Product	E-mail re draft Hart-Scott-Rodino filing; e-mail response from M. Jahnke; and e-mail reply from A. Emmerich.
95		03/04/1998	Michael Jahnke, Esq.	Barry Schwartz, Esq., Paul Shapiro, Esq., Joram Salig, Esq., Steven Isko, Esq.	Attorney-Client, Work Product	Memorandum re draft Hart-Scott-Rodino filing.
96		03/04/1998	Heather Van Dever	Steven Isko, Esq., Michael Jahnke, Esq.	Attorney-Client, Work Product	Correspondence re attached document.
96	A	03/04/1998	Heather Van Dever	Steven Isko, Esq.	Attorney-Client, Work Product	Memorandum re Coleman subsidiaries with S. Isko's handwritten notes.
97		03/06/1998	Sarah Strasser, Esq.	Ilene K. Gots, Esq., Michael Jahnke, Esq.	Attorney-Client, Work Product	E-mail re foreign antitrust issues.
98		03/09/1998	Michael Jahnke, Esq.	Steven Isko, Esq., Karen Clark	Attorney-Client, Work Product	Correspondence re attached article.
98	A	03/03/1998	Michael Jahnke, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 020876, CP 019834, and CP 012208).
99		03/24/1998	Ilene K. Gots, Esq., Michael Jahnke, Esq.	Paul Shapiro, Esq., Steven Isko, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
99	A	03/24/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter to FTC re Sunbeam acquisition antitrust issues.
100		00/00/0000	Michael Jahnke, Esq.		Attorney-Client, Work Product	Notes re Sunbeam acquisition antitrust issues.
101		03/03/1998	Michael Jahnke, Esq.	Lenny Ajzenman	Attorney-Client, Work Product	Memorandum re draft Hart-Scott-Rodino filing.
102		03/23/1998	Michael Jahnke, Esq.		Attorney-Client, Work Product	Draft letter to FTC re Sunbeam acquisition antitrust issues with attorney's handwritten notes.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
103		00/00/0000	Michael Jahnke, Esq.		Attorney-Client, Work Product	Notes re Sunbeam acquisition antitrust issues.
104		03/03/1998	Michael Jahnke, Esq.	Lenny Ajzenman	Attorney-Client, Work Product	Memorandum re attached draft document.
104	A	03/03/1998	Michael Jahnke, Esq.		Attorney-Client, Work Product	Draft Hart-Scott-Rodino filing with attorney's handwritten notes.
105		03/04/1998	Michael Jahnke, Esq.	Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
105	A	03/04/1998	Michael Jahnke, Esq.	Barry Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
105	B	03/04/1998	Michael Jahnke, Esq.		Attorney-Client, Work Product	Draft Hart-Scott-Rodino filing.
106		03/03/1998	Michael Jahnke, Esq.	Steven Isko, Esq.	Attorney-Client, Work Product	Memorandum re draft Hart-Scott-Rodino filing.
107		03/04/1998	Michael Jahnke, Esq.		Attorney-Client, Work Product	Portion of draft Hart-Scott-Rodino filing with attorney's handwritten notes.
108		03/04/1998	Michael Jahnke, Esq.		Attorney-Client, Work Product	Draft memorandum re draft Hart-Scott-Rodino filing.
109		03/05/1998	Michael Jahnke, Esq.		Attorney-Client, Work Product	Notes re foreign antitrust issues.
110		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 021580-21584).
111		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 021585-021586).
112		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 021587-021592).

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
113		07/07/1998	Adam Emmerich, Esq., Frank Miller, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., James Maher, William Nesbitt, Todd Slotkin, Irwin Engelman, Glenn Dickes, Esq., Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re attached draft documents.
113	A	07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant agreement.
113	B	07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft settlement agreement.
114		03/03/1998	John Johnston, Esq.	Paul Rowe, Esq.	Attorney-Client, Work Product	Letter and invoice for legal services re Sunbeam acquisition.
115		03/05/1998	Ilene K. Gotts, Esq., Sarah Strasser, Esq.	Steven Isko, Esq., Karen Clark	Attorney-Client, Work Product	Memorandum requesting information re foreign antitrust issues.
116		03/17/1998	Paul Shapiro, Esq.	Ilene K. Gotts, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
116	A	03/17/1998	Paul Shapiro, Esq.		Attorney-Client, Work Product	Draft letter re license agreement issues.
117		03/26/1998	Adam Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Glenn Dickes, Esq., Anthony Ian, Steven Isko, Esq., Joseph Page, Joram Salig, Esq., Terry Schimek, Esq., Paul Shapiro, Esq., Laurence Winoker, Paul Rowe, Esq., Rachelle Silverberg, Esq., Peter Canellos, Esq., David Einhorn, Esq., Deborah Paul, Esq., Michael Katzke, Esq., Ilene K. Gotts, Esq., Michael Jahnke, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
117	A	03/25/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft closing checklist.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
118		03/05/1998	Ilene K. Gotts, Esq., Sarah Strasser, Esq.	Steven Isko, Esq., Karen Clark	Attorney-Client, Work Product	Memorandum re foreign antitrust issues.
119		03/06/1998	Steven Isko, Esq.	Sarah Strasser, Esq., Karen Clark (cc)	Attorney-Client, Work Product	Memorandum re foreign antitrust issues.
119	A	03/06/1998	Dan Peterson	Steven Isko, Esq.	Attorney-Client, Work Product	Memorandum re foreign antitrust filings.
120		03/07/1998	Sarah Strasser, Esq.	Lenny Aizenman	Attorney-Client, Work Product	Memorandum re attached document.
120	A	03/07/1998	Sarah Strasser, Esq.	Steven Isko, Esq.	Attorney-Client, Work Product	Memorandum re attached document.
120	B	03/06/1998	Lori Cornwall, Esq.	Sarah Strasser, Esq.	Attorney-Client, Work Product	Memorandum re attached document.
120	C	03/06/1998	Lori Cornwall, Esq.	Sarah Strasser, Esq.	Attorney-Client, Work Product	Memorandum re foreign antitrust filings.
121		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Notes re article (Redacted from CP 025560-025563).
122		04/27/1998	Adam Emmerich, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re Sunbeam acquisition.
123		02/24/1998	Steven Cohen, Esq.		Attorney-Client, Work Product	Notes re draft merger agreement (Redacted from CP 029890-029931).
124		02/24/1998	Michael Katzke, Esq.	Jerry Levin	Attorney-Client, Work Product	Draft Coleman severance policy.
125		02/26/1998	Steven Cohen, Esq.		Attorney-Client, Work Product	Draft merger agreement with attorney's handwritten notes.
126		02/26/1998	Steven Cohen, Esq.		Attorney-Client, Work Product	Draft merger agreement with attorney's handwritten notes.
127		02/25/1998	David Einhorn, Esq.		Attorney-Client, Work Product	Draft merger agreement with attorney's handwritten notes.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
128		02/25/1998	Frank Miller, Esq.		Attorney-Client, Work Product	Draft merger agreement with attorney's handwritten notes.
129		02/25/1998	Steven Cohen, Esq.		Attorney-Client, Work Product	Draft merger agreement with attorney's handwritten notes.
130		02/25/1998	Steven Cohen, Esq.		Attorney-Client, Work Product	Draft merger agreement with attorney's handwritten notes.
131		02/25/1998	David Einhorn, Esq.		Attorney-Client, Work Product	Draft merger agreement with attorney's handwritten notes.
132		02/26/1998	Adam Emmerich, Esq.	Howard Gittis, Esq., Donald Drapkin, James Maier, Barry Schwartz, Esq., Steven Cohen, Esq. (cc), Esq., Frank Miller, Esq. (cc), Paul Rowe, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Attorney-Client, Work Product	Memorandum re negotiations with Sunbeam.
133		02/27/1998	Glenn Dickes, Esq.	Steven Cohen, Esq., Adam Emmerich, Esq., Frank Miller, Esq., Valerie Radwaner, Esq., Terry Schimek, Esq.	Attorney-Client, Work Product	Excerpt of draft merger agreement with G. Dickes' handwritten notes.
133	A	02/27/1998	Steven Cohen, Esq.		Attorney-Client, Work Product	Handwritten notes re draft merger agreement.
134		02/27/1998	Deborah Paul, Esq.	Norman Ginstling, Esq., Marvin Shaffer	Attorney-Client, Work Product	Correspondence re tax issues in draft merger agreement.
135		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re Klewin complaint (Redacted from CP 030106-030134).
136		07/20/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft complaint re potential claims arising out of Sunbeam acquisition.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
137		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Goldberg complaint (Redacted from CP 031261-031297).
138		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Yassin complaint (Redacted from CP 030917-030930).
139		09/09/1998	Eric Golden, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re Joerger, Ulfsson, and Goldstein litigation.
140		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft Hart-Scott-Rodino filing with J. Salig's and S. Strasser's handwritten notes.
141		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft Hart-Scott-Rodino filing with J. Ladigoski's handwritten notes.
142		03/04/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Hart-Scott-Rodino filing with J. Ladigoski's handwritten notes.
143		03/04/1998	Jackie Fortinash, Esq., Sarah Strasser, Esq.	Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re attached documents.
143	A	03/02/1998	Sarah Strasser, Esq.	Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document with J. Salig's handwritten notes.
143	B	03/02/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Hart-Scott-Rodino filing with J. Salig's handwritten notes.
144		00/00/0000	Sarah Strasser, Esq.		Attorney-Client, Work Product	Draft Hart-Scott-Rodino filing with S. Strasser's handwritten notes.
145		02/25/1998	Adam Emmerich, Esq.		Attorney-Client, Work Product	Draft presentation to Coleman Board of Directors re Sunbeam acquisition.
146		03/01/1998	Michael Jahnke, Esq.	Sarah Strasser, Esq., Ilene K. Gotts, Esq. (cc)	Attorney-Client, Work Product	E-mail re Sunbeam acquisition antitrust issues with S. Strasser's handwritten notes.
146	A	03/01/1998	Sarah Strasser, Esq.		Attorney-Client, Work Product	Handwritten notes re Sunbeam acquisition antitrust issues.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
147		03/02/1998	Sarah Strasser, Esq.	Gabriel Castaneda, Michael Jahnke, Esq. (cc)	Attorney-Client, Work Product	Memorandum re foreign antitrust issues.
148		03/02/1998	Ricardo Hernandez, Esq.	Sarah Strasser, Esq.	Attorney-Client, Work Product	Letter re foreign antitrust issues with S. Strasser's handwritten notes.
149		03/06/1998	Sarah Strasser, Esq.	Lori Cornwall, Esq.	Attorney-Client, Work Product	Memorandum re foreign antitrust issues.
150		03/09/1998	Sarah Strasser, Esq.		Attorney-Client, Work Product	Memorandum re foreign antitrust legal opinion with S. Strasser's handwritten notes.
151		03/09/1998	Melissa Orme	Steven Isko, Esq., Karen Clark (cc), Sarah Strasser, Esq. (cc)	Attorney-Client, Work Product	Memorandum re foreign antitrust legal opinion.
152		03/10/1998	Sarah Strasser, Esq.	Ricardo Hernandez, Esq., Ilene K. Gotts, Esq. (cc)	Attorney-Client, Work Product	Memorandum re foreign antitrust legal opinion.
153		02/23/1998	Adam Emmerich, Esq.		Attorney-Client, Work Product	Notes re Sunbeam acquisition issues.
154		02/24/1998	Adam Emmerich, Esq.	Barry Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
154	A	02/24/1998	Adam Emmerich, Esq.		Attorney-Client, Work Product	Draft agenda for Coleman Board meeting.
155		02/25/1998	Adam Emmerich, Esq., Frank Miller, Esq.	Glenn Dickes, Esq., Robert Duffy, Norman Gintling, Esq., Steven Isko, Esq., William Nesbitt, Joram Salig, Esq., Barry Schwartz, Esq., Gordon Rich, Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached draft documents.
155	A	02/25/1998	Adam Emmerich, Esq., Frank Miller, Esq.		Attorney-Client, Work Product	Draft materials for Coleman Board meeting.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
156		03/18/1998	Steven Isko, Esq.	Rachelle Silverberg, Esq., Paul Shapiro, Esq. (cc), Joram Salig, Esq. (cc)	Attorney-Client, Work Product	Memorandum re response to SEC and NYSE requests for information and attached draft document.
156	A	03/16/1998	Rachelle Silverberg, Esq.	Steven Isko, Esq., Jerry Levin, James Maher, William Nesbitt, Joram Salig, Esq., Barry Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
156	B	03/16/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft response to SEC and NYSE requests for information with S. Isko's handwritten notes.
156	C	03/18/1998	Steven Isko, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re response to SEC and NYSE requests for information.
157		03/18/1998	Glenn Dickes, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Memorandum re draft letter to LYONS trustee and draft notice of LYONS redemption.
158		02/21/1998	Adam Emmerich, Esq.	Paul Rowe, Esq.	Attorney-Client, Work Product	Correspondence re Sunbeam's proposed transaction terms.
159		02/25/1998	Paul Rowe, Esq.		Attorney-Client, Work Product	Notes re Coleman Board of Directors meeting.
160		02/25/1998	Paul Rowe, Esq.		Attorney-Client, Work Product	CSFB presentation to Coleman Board of Directors with P. Rowe's handwritten notes.
161		02/26/1998	Paul Rowe, Esq.		Attorney-Client, Work Product	Notes re Coleman Board meeting.
162		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Notes re response to SEC and NYSE requests for information.
163		04/16/1998	Paul Rowe, Esq.		Attorney-Client, Work Product	Sunbeam draft response to SEC and NYSE requests for information with P. Rowe's handwritten notes.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
164		03/19/1998	Rachelle Silverberg, Esq.	Steven Isko, Esq., Jerry Levin, James Maher, William Nesbitt, Joram Salig, Esq., Barry Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
164	A	03/19/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft response to SEC and NYSE requests for information.
165		03/30/1998	Paul Rowe, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., Joram Salig, Esq., Glenn Dickes, Esq., William Nesbitt, James Maher	Attorney-Client, Work Product	Notes re response to SEC and NYSE requests for information.
166		06/15/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Schedule 13D.
167		07/15/1998	Frank Miller, Esq.		Attorney-Client, Work Product	Memorandum re SEC comments on draft Sunbeam Form S-4.
168		07/20/1998	Adam Emmerich, Esq., Frank Miller, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., James Maher, William Nesbitt, Todd Slotkin, Irwin Engelman, Glenn Dickes, Esq., Joram Salig, Esq., Steven Cohen, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc), Alexander Shaknes, Esq. (cc), Harold Novikoff (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gottis, Esq. (cc), Michael Jahnke, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document.

**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
168	A	07/20/1998	Wachtell Lipton	Barry Schwartz, Esq., Joram Salig, Esq., Adam Emmerich, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc)	Attorney-Client, Work Product	Draft Registration Rights Agreement Amendment.
169		04/19/1998	Frank Miller, Esq.	Steven Cohen, Esq., Frank Miller, Esq., Paul Rowe, Esq., Peter Canellos, Esq., David Einhorn, Esq., Karen Krueger, Esq., Michael Byowitz, Esq., Ilene K. Gotts, Esq., Michael Jahnke, Esq.	Attorney-Client, Work Product	Memorandum re Sunbeam draft response to SEC and NYSE requests for information.
170		02/19/1998	Adam Emmerich, Esq., Steven Cohen, Esq.	Barry Schwartz, Esq., Glenn Dickes, Esq., Joram Salig, Esq., Steven Isko, Esq., Adam Emmerich, Esq. (cc)	Attorney-Client, Work Product	Memorandum re transaction structure issues.
171		03/02/1998	Frank Miller, Esq.	Barry Schwartz, Esq., Glenn Dickes, Esq., Joram Salig, Esq., Steven Isko, Esq., Adam Emmerich, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
171	A	03/02/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Coleman Co. 8-K.
171	B	03/02/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Coleman Worldwide 8-K.
171	C	03/02/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft CLN Holdings 8-K.
172		03/26/1998	Adam Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Glenn Dickes, Esq., Norman Gintsling, Esq., Anthony Ian, Steven Isko, Esq., Joseph Page, Valerie Radwaner, Esq., Joram Salig, Esq., Marvin Shaffer, Terry Schimek, Esq., Barry Schwartz,	Attorney-Client, Work Product	Memorandum re attached draft documents.

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
172	A	03/26/1998	Wachtell Lipton	Esq., Paul Shapiro, Esq., Laurence Winoker	Attorney-Client, Work Product	Draft closing checklist.
172	B	03/26/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft amendment to merger agreement.
172	C	03/26/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter re termination of intercompany agreements.
172	D	03/26/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter to Sunbeam re cooperation and access.
173		03/26/1998	Valerie Radwaner, Esq., Deborah Reiss, Esq.	Steven Cohen, Esq., Adam Emmerich, Esq., Frank Miller, Esq.	Attorney-Client, Work Product	Fax response to request for information re closing.
174		02/27/1998	Valerie Radwaner, Esq.	Steven Cohen, Esq., Adam Emmerich, Esq., Frank Miller, Esq., Glenn Dickes, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached documents.
174	A	02/27/1998	Valerie Radwaner, Esq.		Attorney-Client, Work Product	Excerpt of draft merger agreement with attorney's handwritten notes.
175		02/27/1998	Glenn Dickes, Esq.	Steven Cohen, Esq., Adam Emmerich, Esq., Frank Miller, Esq.	Attorney-Client, Work Product	Excerpt of draft merger agreement with G. Dickes' handwritten notes.
176		00/00/0000	Adam Emmerich, Esq.		Attorney-Client, Work Product	Notes of communication with client re Sunbeam acquisition issues.
177		02/27/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Registration Rights Agreement with attorney's handwritten notes.
178		00/00/0000	Adam Emmerich, Esq.		Attorney-Client, Work Product	Notes re Sunbeam acquisition issues.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
179		02/26/1998	Steven Cohen, Esq.	Michael Katzke, Esq., Adam Emmerich, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client, Work Product	E-mail re draft merger agreement.
180		02/26/1998	Michael Katzke, Esq.	Adam Emmerich, Esq., Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client, Work Product	E-mail re draft merger agreement.
181		02/26/1998	Deborah Paul, Esq.	David Einhorn, Esq., Adam Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Attorney-Client, Work Product	E-mail re communication with client re draft merger agreement.
182		02/26/1998	Michael Katzke, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	E-mail re draft merger agreement.
183		02/26/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft summary of proposed Sunbeam acquisition.
184		02/24/1998	Wachtell Lipton		Attorney-Client, Work Product	Notes re draft merger agreement issues.
185		02/24/1998	Michael Katzke, Esq.	Steven Cohen, Esq., Adam Emmerich, Esq., Frank Miller, Esq.	Attorney-Client, Work Product	E-mail re employee benefit issues in draft merger agreement.
186		02/24/1998	Adam Emmerich, Esq.	Michael Katzke, Esq., Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client, Work Product	E-mail re employee benefit issues in merger agreement and e-mail response by M. Katzke.
187		02/24/1998	Michael Katzke, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	E-mail re employee benefit issues in merger agreement.
188		00/00/0000	Adam Emmerich, Esq.		Attorney-Client, Work Product	Notes of client communication re draft merger agreement.
189		02/24/1998	Adam Emmerich, Esq.		Attorney-Client, Work Product	Notes re draft merger agreement issues.
190		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 021577-021579).

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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
191		03/06/1998	Steven Isko, Esq.	Sarah Strasser, Esq.	Attorney-Client, Work Product	Draft foreign antitrust filing with S. Isko's handwritten notes.
192		03/06/1998	Sarah Strasser, Esq.	Steven Isko, Esq.	Attorney-Client, Work Product	Memorandum re draft foreign antitrust filing.
193		02/27/1998	Sarah Strasser, Esq.	Lenny Ajzenman	Attorney-Client, Work Product	Correspondence re attached draft document.
193	A	02/27/1998	Wachtell Lipton		Attorney-Client, Work Product	Section of draft Hart-Scott-Rodino filing with S. Strasser's handwritten notes.
194		00/00/0000	Deborah Paul, Esq.		Attorney-Client, Work Product	Notes re Sunbeam acquisition tax issues and communications with client re same.
195		00/00/0000	Deborah Paul, Esq.		Attorney-Client, Work Product	Draft merger agreement with D. Paul's notes.
196		03/03/1998	Michael Katzke, Esq.	Deborah Paul, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
196	A	03/03/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Coleman employee disclosure re employee benefits with M. Katzke's handwritten notes.
197		07/30/1998	Adam Emmerich, Esq., Frank Miller, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., James Maher	Attorney-Client, Work Product	Memorandum re attached draft document.
197	A	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter to NY Stock Exchange re application for exception.
198		07/30/1998	Adam Emmerich, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., James Maher, Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc), Alexander Shaknes, Esq. (cc), Harold Novikoff (cc),	Attorney-Client	Memorandum re attached draft document.

**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
198	A	07/30/1998	Wachtell Lipton	Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq., Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Attorney-Client, Work Product	Draft memorandum to Sunbeam re potential claims arising from Sunbeam acquisition.
199		03/10/1998	Sarah Strasser, Esq.		Attorney-Client, Work Product	Summary of foreign antitrust issues related to Sunbeam acquisition.
200		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Coleman shareholder litigation.
201		02/02/1999	Adam Emmerich, Esq.		Attorney-Client, Work Product	Draft letter to auditor re pending litigation.
202		10/30/1998	Eric Golden, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Fax re complaint (Redacted from CP 13843A).
203		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re shareholder litigation.
204		00/00/0000	Michael Katzke, Esq.		Attorney-Client, Work Product	Notes re merger agreement issues with M. Katzke's handwritten notes.
205		02/26/1998	Adam Emmerich, Esq., Frank Miller, Esq.	Paul Shapiro, Esq., Steven Isko, Esq., Glenn Dickes, Esq., Joram Salig, Esq., Barry Schwartz, Esq., Steven Cohen, Esq. (cc), Paul Rowe, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gotts, Esq. (cc), Michael Jahnke, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
205	A	02/26/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft consents and resolutions re proposed Sunbeam acquisition.
205	B	02/26/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Coleman 8-Ks.
206		04/06/1998	Adam Emmerich, Esq., Michael Katzke, Esq.	Glenn Dickes, Esq., Joram Salig, Esq., Barry Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
206	A	04/06/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Sunbeam letter re Coleman employee benefits issues.
207		03/27/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter re termination of intercompany agreements.
208		02/25/1998	Michael Katzke, Esq.	Steven Isko, Esq.	Attorney-Client, Work Product	Summary of Coleman severance policy.
209		06/10/1998	Karen Krueger, Esq.	Barry Schwartz, Esq., Adam Emmerich, Esq. (cc), Michael Katzke, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document.
209	A	06/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft termination agreement.
210		06/11/1998	Karen Krueger, Esq.	Barry Schwartz, Esq., Steven Isko, Esq., Paul Shapiro, Esq., Adam Emmerich, Esq. (cc), Michael Katzke, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document.
210	A	06/11/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft termination agreement.
211		00/00/0000	Karen Krueger, Esq.		Attorney-Client, Work Product	Excerpt of draft termination agreement.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
212		08/19/1998	Michael Schwartz, Esq.	Wachtell Lipton Sunbeam Team	Attorney-Client, Work Product	Memorandum re Coleman shareholder litigation.
213		03/31/1998	Michael Katzke, Esq.	Adam Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Attorney-Client, Work Product	E-mail re Form 4 filings.
214		03/31/1998	Heidi Anne Hafeken	Adam Emmerich, Esq.	Attorney-Client, Work Product	Transcribed voicemail message from A. Emmerich to F. Miller and S. Cohen re applicability of federal securities laws.
215		03/30/1998	Adam Emmerich, Esq.	Frank Miller, Esq., Steven Cohen, Esq.	Attorney-Client, Work Product	E-mail re applicability of federal securities laws; F. Miller e-mail in response; S. Cohen further e-mail response.
216		03/30/1998	Adam Emmerich, Esq.	Steven Cohen, Esq., Frank Miller, Esq.	Attorney-Client, Work Product	E-mail re applicability of federal securities laws; F. Miller e-mail response; S. Cohen e-mail response; F. Miller e-mail response; S. Cohen e-mail response; F. Miller e-mail response.
217		02/05/1998	Joram Salig, Esq.	Martin Lipton, Esq.	Attorney-Client, Work Product	Correspondence re confidentiality agreement between Sunbeam and Coleman.
218		07/17/1998	Richard Pacheco, Esq.	Paul Rowe, Esq., Adam Emmerich, Esq., Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re potential claims arising out of Sunbeam acquisition.
219		09/14/1998	Frank Miller, Esq.	Barry Schwartz, Esq., Michael Schwartz, Esq. (cc), Adam Emmerich, Esq. (cc)	Attorney-Client, Work Product	Memorandum re litigation.
219	A	09/14/1998	Frank Miller, Esq.		Attorney-Client, Work Product	Analysis of litigation damages issues.
219	B	00/00/0000	Frank Miller, Esq.		Attorney-Client, Work Product	Notes re litigation damages issues.

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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
220		11/06/1998	Adam Emmerich, Esq., Frank Miller, Esq.	Barry Schwartz, Esq., James Maher, William Nesbitt, Glenn Dickes, Esq., Joram Salig, Esq., James Conroy, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
220	A	11/06/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Schedule 13D Amendment.
221		04/07/1998	Frank Miller, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., Glenn Dickes, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re Sunbeam corporate structure.
222		04/10/1998	Frank Miller, Esq.	Joram Salig, Esq., Steven Isko, Esq., Adam Emmerich, Esq. (cc), Paul Rowe, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document.
222	A	04/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft of section of Sunbeam Form S-4.
223		03/29/1998	Adam Emmerich, Esq.	Frank Miller, Esq.	Attorney-Client, Work Product	Memorandum re closing issues.
223	A	03/29/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft closing checklist.
224		03/28/1998	Adam Emmerich, Esq.	Glenn Dickes, Esq.	Attorney-Client, Work Product	Memorandum re attached documents.
224	A	03/28/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft amendment to merger agreement.
224	B	03/28/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter re termination of intercompany agreements.
224	C	03/28/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter to Sunbeam re cooperation and access.
224	D	03/28/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft registration rights agreement.

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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
224	E	03/28/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft cross receipt.
225		03/28/1998	Adam Emmerich, Esq.	Glenn Dickes, Esq.	Attorney-Client, Work Product	Memorandum re closing.
225	A	03/28/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft closing checklist.
225	B	03/28/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter re termination of intercompany agreements.
226		04/15/1998	Adam Emmerich, Esq.	Bary Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
226	A	04/15/1998	Adam Emmerich, Esq.		Attorney-Client, Work Product	Draft Sunbeam letter re Coleman employee benefits issues.
227		04/12/1998	Michael Katzke, Esq.	Adam Emmerich, Esq., Frank Miller, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
227	A	04/12/1998	Michael Katzke, Esq.		Attorney-Client, Work Product	Draft Sunbeam Form S-4 with M. Katzke's handwritten notes.
228		03/31/1998	Frank Miller, Esq.	Glenn Dickes, Esq., Joram Salig, Esq., Adam Emmerich, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
228	A	03/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Coleman Schedule 13G.
228	B	03/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Form 4.
228	C	03/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Sunbeam Schedule 13G.
228	D	03/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Joint Filing Agreement.
228	E	03/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Form 3.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
228	F	03/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Form 144.
229		04/01/1998	Frank Miller, Esq.	Barry Schwartz, Esq., Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re SEC filings for Sunbeam acquisition.
230		03/27/1998	Paul, Weiss, Rifkind, Wharton & Garrison		Attorney-Client, Work Product	Draft benefit plan agreement.
230	A	03/27/1998	Cass G. Adelman, Esq.	Joram Salig, Esq., Steven Isko, Esq., Laurence Winoker, Kyle Wendt, Michael Katzke, Esq., Tim Nelson, Neil Leff, Adam Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
231		04/08/1998	Frank Miller, Esq.	Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re Schedule 13G.
232		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Notes re Sunbeam Credit Agreement (Redacted from CP 027993).
233		03/28/1998	Cass G. Adelman, Esq.	Joram Salig, Esq., Steven Isko, Esq., Lawrence Winoker, Kyle Wendt, Michael Katzke, Esq., Tim Nelson, Neil Leff, Barry Schwartz, Esq., Robert Fieder, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
233	A	03/28/1998	Paul, Weiss, Rifkind, Wharton & Garrison		Attorney-Client, Work Product	Draft benefit plan agreement.
234		08/18/1998	Frank Miller, Esq.	Joram Salig, Esq., Adam Emmerich, Esq. (cc)	Attorney-Client, Work Product	Memorandum re Registration Rights Agreement.
235		09/02/1998	Eric Golden, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re Coleman shareholder litigation.
236		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re Sunbeam's 1997 Form 10-K (Redacted from CP 018831-018886).

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
237		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re article (Redacted from CP 018822-018830).
238		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re Sunbeam 1996 Form 10-K (Redacted from CP 018888-018937).
239		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re Coleman response to SEC and NYSE requests for information.
240		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes re Mintz complaint (Redacted from CP 015305-015348).
241		08/12/1998	Adam Emmerich, Esq.	Glenn Dickes, Esq., Valerie Radwaner, Esq., Joram Salig, Esq.	Attorney-Client, Work Product	Draft warrant term sheet.
242		10/06/1998	Paul Crampton, Esq.	Sarah Strasser, Esq., Adam Emmerich, Esq. (cc)	Attorney-Client, Work Product	Letter re legal services performed relating to acquisition.
242	A	08/05/1998	Davies Ward & Beck	Sarah Strasser, Esq.	Attorney-Client, Work Product	Bill for legal services performed relating to acquisition.
243		07/13/1998	Barry Schwartz, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Draft press release re Sunbeam with attorney's handwritten notes.
244		07/20/1998	Barry Schwartz, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Notes re Stapleton complaint.
245		03/13/1998	Rachelle Silverberg, Esq.	Barry Schwartz, Esq., Joram Salig, Esq., Steven Isko, Esq., Adam Emmerich, Esq. (cc)	Attorney-Client, Work Product	Memorandum re response to NYSE request for information.
246		03/23/1998	Adam Emmerich, Esq.	Joseph Page	Attorney-Client, Work Product	Memorandum re legal services performed in connection with Sunbeam acquisition.
246	A	03/23/1998	Wachtell Lipton		Attorney-Client, Work Product	Invoice for legal services performed in connection with Sunbeam acquisition.
247		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Coleman shareholder litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
248		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Section of draft proxy statement.
249		10/18/1999	Adam Emmerich, Esq.	Barry Schwartz, Esq., Michael Schwartz, Esq. (cc), Rachelle Silverberg, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document.
249	A	10/18/1999	Wachtell Lipton		Attorney-Client, Work Product	Section of draft proxy statement.
250		11/03/1998	Adam Emmerich, Esq., Frank Miller, Esq.	Barry Schwartz, Esq., James Maher, William Nesbitt, Glenn Dickes, Esq., Joram Salig, Esq., James Conroy, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
250	A	11/03/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft amendment to Schedule 13D.
251		11/03/1998	Megan McIntyre, Esq.	Barry Schwartz, Esq., Michael Schwartz, Esq. (cc)	Attorney-Client, Work Product	Letter re McCall and Coletta litigation.
252		09/30/1998	Cynthia Calder, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Letter re Joerger litigation. (Redacted from CP 044646.)
253		04/09/1998	Ilene K. Gotts, Esq.	Barry Schwartz, Esq.	Attorney-Client, Work Product	Letter re letter to FTC re Coleman licensing issues.
254		07/29/1998	Howard Gittis, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Note re Sunbeam management proposal (Redacted from CP 020187, CP 034332, and CP 013779).
255		00/00/0000	Karen Krueger, Esq.		Attorney-Client, Work Product	Notes re Kersh employment agreement (Redacted from CP 013791-013808).
256		00/00/0000	Karen Krueger, Esq.		Attorney-Client, Work Product	Notes re Dunlap employment agreement (Redacted from CP 012314-012333).
257		11/13/1998	Megan McIntyre, Esq.	Eric Golden, Esq., Michael Schwartz, Esq. (cc)	Attorney-Client, Work Product	Memorandum re Goldstein litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
258		12/01/1998	Megan McIntyre, Esq.	Michael Schwartz, Esq., Eric Golden, Esq.	Attorney-Client, Work Product	Correspondence re Goldstein litigation.
259		09/29/1999	Barry Schwartz, Esq.	Adam Emmerich, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product	Correspondence re Coleman shareholder litigation.
260		08/04/1998	Paul Rowe, Esq.	Michael Schwartz, Esq., Adam Emmerich, Esq., Rachelle Silverberg, Esq. (cc)	Attorney-Client, Work Product	Memorandum re draft settlement agreement provision.
261		11/19/1998	Eric Golden, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Letter re Shallal litigation.
262		04/20/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Sunbeam stock trading history report (Redacted from CP 005283-005285).
263		08/14/1998	Frank Miller, Esq.	Barry Schwartz, Esq., Glenn Dickes, Esq., William Nesbitt, James Maher, Joram Salig, Esq., James Conroy, Esq., Valerie Radwaner, Esq.	Attorney-Client, Work Product	Memorandum re Schedule 13D Amendment.
264		12/04/1998	Eric Golden, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re Coletta litigation.
265		08/21/1998	Valerie Radwaner, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re Sunbeam warrant.
266		08/23/1998	Adam Emmerich, Esq.	Glenn Dickes, Esq., Steven Cohen, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document.
266	A	08/23/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft receipt for warrant.
267		08/23/1998	Adam Emmerich, Esq.	Valerie Radwaner, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
267	A	08/23/1998	Adam Emmerich, Esq.		Attorney-Client, Work Product	Draft letter to Shearman & Sterling re Sunbeam warrant.
268		08/24/1998	Valerie Radwaner, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re draft letter to Shearman & Sterling re Sunbeam warrant.
269		11/03/1998	Jay Eisenhofer, Esq., Megan McIntyre, Esq.	Barry Schwartz, Esq., Michael Schwartz, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document.
269	A	11/03/1998	Jay Eisenhofer, Esq., Megan McIntyre, Esq.		Attorney-Client, Work Product	Draft motion for Joerger litigation.
270		01/25/1999	Jay Eisenhofer, Esq., Megan McIntyre, Esq.	Michael Schwartz, Esq., Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re attached draft documents.
270	A	01/25/1999	Grant & Eisenhofer		Attorney-Client, Work Product	Draft motion for Joerger litigation.
270	B	01/25/1999	Grant & Eisenhofer		Attorney-Client, Work Product	Draft motion for In re Sunbeam shareholder litigation.
271		12/16/1998	Megan McIntyre, Esq.	Eric Golden, Esq., Michael Schwartz, Esq. (cc)	Attorney-Client, Work Product	Memorandum re Goldstein litigation.
272		12/03/1998	Megan McIntyre, Esq.	Eric Golden, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re motion in Coleman shareholder litigation.
273		01/08/1999	Jay Eisenhofer, Esq., Megan McIntyre, Esq.	Eric Golden, Esq., Michael Schwartz, Esq. (cc), Rachelle Silverberg, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
273	A	01/08/1999	Grant & Eisenhofer		Attorney-Client, Work Product	Draft motion for In re Sunbeam shareholder litigation.
273	B	01/08/1999	Grant & Eisenhofer		Attorney-Client, Work Product	Draft motion for Joerger litigation.

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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
274		01/08/1999	Megan McIntyre, Esq.	Eric Golden, Esq., Michael Schwartz, Esq. (cc), Rachelle Silverberg, Esq. (cc)	Attorney-Client, Work Product	Memorandum re In re Sunbeam litigation.
275		01/07/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Draft motion for Joerger litigation with attorney's handwritten notes.
276		11/19/1998	Eric Golden, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Letter re Coletta litigation.
277		08/21/1998	Steven Cohen, Esq., Adam Emmerich, Esq.	Barry Schwartz, Esq., James Maher, William Nesbitt, Glenn Dickes, Esq., Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
277	A	08/21/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft amendment to Schedule 13D.
278		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft response to SEC and NYSE requests for information.
279		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Coleman shareholder litigation.
280		07/07/1998	Paul Rowe, Esq.		Attorney-Client, Work Product	Notes re potential claims arising out of Sunbeam acquisition.
281		07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Memorandum re potential claims arising out of Sunbeam acquisition.
282		07/08/1998	Adam Emmerich, Esq., Frank Miller, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., James Maher, William Nesbitt, Todd Slotkin, Irwin Engelman, Glenn Dickes, Esq., Joram Salig, Esq., Valerie Radwaner, Esq. (cc), Steven Cohen, Esq. (cc), Michael Schwartz, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg,	Attorney-Client, Work Product	Memorandum re attached draft documents.

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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
282	A	07/08/1998	Wachtell Lipton	Esq. (cc), Alexander Shaknes, Esq. (cc), Harold Novikoff, Esq. (cc), Peter Canellos, Esq. (cc), David Einhorn, Esq. (cc), Deborah Paul, Esq. (cc), Michael Katzke, Esq. (cc), Ilene K. Gottis, Esq. (cc), Michael Jahnke, Esq. (cc)	Attorney-Client, Work Product	Draft warrant term sheet.
282	B	07/08/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant.
282	C	07/08/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft settlement agreement.
283		08/06/1998	Adam Emmerich, Esq., Frank Miller, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., James Maher, Irwin Engelman, William Nesbitt, Todd Slotkin, Glenn Dicks, Esq., Joram Salig, Esq., Valerie Radwaner, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
283	A	08/06/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft settlement agreement.
283	B	08/06/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant.
284		07/30/1998	Adam Emmerich, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., James Maher	Attorney-Client, Work Product	Memorandum re attached draft document.
284	A	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft memorandum to Sunbeam re potential claims arising from Sunbeam acquisition.

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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
285		07/31/1998	Michael Katzke, Esq.	Glenn Dickes, Esq., Adam Emmerich, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
285	A	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement term sheet for J. Levin.
285	B	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for J. Levin.
285	C	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Black-lined version of draft employment agreement for J. Levin.
285	D	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement term sheet for P. Shapiro.
285	E	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for P. Shapiro.
285	F	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement term sheet for B. Jenkins.
285	G	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for B. Jenkins.
285	H	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement term sheet for G. Wisler.
285	I	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for G. Wisler.
285	J	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement term sheet for J. Nold.
285	K	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for J. Nold.
285	L	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement term sheet for F. Feraco.
285	M	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for F. Feraco.

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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
285	N	07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement term sheet for K. Clark.
285	O	07/31/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for K. Clark.
286		00/00/0000	Susan Powell, Esq.		Attorney-Client, Work Product	Notes re Sunbeam employment agreements.
287		01/06/1999	Rachelle Silverberg, Esq.	Eric Golden, Esq.	Attorney-Client, Work Product	Memorandum re attached draft documents.
287	A	01/06/1999	Wachtell Lipton		Attorney-Client, Work Product	Draft pleading for Shallal litigation.
287	B	01/06/1999	Wachtell Lipton		Attorney-Client, Work Product	Draft pleading for Shallal litigation.
288		01/06/1999	Wachtell Lipton		Attorney-Client, Work Product	Draft pleading for Shallal litigation with attorney notes.
289		01/06/1999	Wachtell Lipton		Attorney-Client, Work Product	Draft pleading for Shallal litigation with attorney notes.
290		01/06/1999	Wachtell Lipton		Attorney-Client, Work Product	Draft pleading for Shallal litigation.
291		01/05/1999	Wachtell Lipton		Attorney-Client, Work Product	Draft pleading for Shallal litigation.
292		01/05/1999	Wachtell Lipton		Attorney-Client, Work Product	Draft pleading for Shallal litigation.
293		01/05/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Draft pleading for Shallal litigation with R. Silverberg's handwritten notes.
294		01/05/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Draft pleading for Shallal litigation with R. Silverberg's handwritten notes.
295		12/28/1998	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Draft pleading for Shallal litigation with R. Silverberg's handwritten notes.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
296		12/28/1998	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Draft pleading for Shallal litigation with R. Silverberg's handwritten notes.
297		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Attorney notes re Shallal litigation.
298		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft motion for Shallal litigation with R. Silverberg's handwritten notes.
299		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft motion for Shallal litigation with R. Silverberg's handwritten notes.
300		01/25/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Shallal case.
301		00/00/0000	Deborah Paul, Esq.		Attorney-Client, Work Product	Draft materials for Coleman Board of Directors meeting with attorney's handwritten notes.
302		00/00/0000	Frank Miller, Esq.		Attorney-Client, Work Product	Notes re CLN Holdings, Inc. Form 8-K dated 2/27/1998.
303		02/27/1998	Coleman Company, Inc.	Frank Miller, Esq.	Attorney-Client, Work Product	Materials re merger agreement disclosure schedules.
304		00/00/0000	Frank Miller, Esq.		Attorney-Client, Work Product	Notes re Coleman Worldwide Corp. Form 8-K dated 2/27/1998.
305		00/00/0000	Frank Miller, Esq.		Attorney-Client, Work Product	Notes re Coleman Company, Inc. Form 8-K dated 2/27/1998.
306		00/00/0000	Susan Powell, Esq.		Attorney-Client, Work Product	Draft employment agreement for J. Levin with S. Powell's handwritten notes.
307		07/09/1998	Frank Miller, Esq.	Adam Emmerich, Esq., Paul Rowe, Esq., Rachelle Silverberg, Esq., Alexander Shaknes, Esq.	Attorney-Client, Work Product	E-mail re draft settlement agreement.
307	A	07/09/1998	Joram Salig, Esq.	Frank Miller, Esq.	Attorney-Client, Work Product	Facsimile re draft settlement agreement.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
308		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Notes re Sunbeam / Coleman (Parent) settlement.
309		07/31/1998	Michael Katzke, Esq.		Attorney-Client, Work Product	Memorandum re Sunbeam employment agreements with M. Katzke's handwritten notes.
310		08/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement.
311		08/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Sunbeam employment agreement with S. Powell's handwritten notes.
312		07/31/1998	William Nesbitt	Adam Emmerich, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product	Correspondence re warrants and attached documents.
312	A	00/00/0000	William Nesbitt		Attorney-Client, Work Product	Excerpt of Schedule 14A with handwritten notes re warrants.
313		03/02/1998	Steven Isko, Esq.	Michael Katzke, Esq.	Attorney-Client, Work Product	Memorandum re Coleman stock options information.
314		12/17/1998	Norman Ginstling, Esq.		Attorney-Client, Work Product	Memorandum re tax issues.
315		00/00/0000	Norman J. Ginstling, Esq.		Attorney-Client, Work Product	Excerpt of merger agreement with N. Ginstling's handwritten notes.
315	A	00/00/0000	Norman J. Ginstling, Esq.		Attorney-Client, Work Product	Excerpt of Sunbeam / Coleman (Parent) settlement agreement with N. Ginstling's handwritten notes.
316		00/00/0000	Norman Ginstling, Esq.		Attorney-Client, Work Product	Draft legal opinion re tax issues.
317		09/06/1998	Norman Ginstling, Esq.	Barry Schwartz, Esq., Irwin Engelman	Attorney-Client, Work Product	Fax re attached document.
317	A	00/00/0000	Norman Ginstling, Esq.		Attorney-Client, Work Product	Draft analysis re tax issues.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
318		09/06/1998	Norman J. Ginsling	Barry Schwartz, Esq., Irwin Engelman	Attorney-Client, Work Product	Fax re attached document.
318	A	00/00/0000	Norman Ginstling, Esq.		Attorney-Client, Work Product	Draft memorandum re tax issues.
318	B	00/00/0000	Norman Ginstling, Esq.		Attorney-Client, Work Product	Draft agreement re tax issues.
319		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Notes re potential claims arising from Sunbeam's acquisition.
320		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Handwritten notes re potential claims arising from Sunbeam's acquisition.
321		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Handwritten notes re potential claims arising from Sunbeam's acquisition.
322		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Handwritten notes re potential claims arising from Sunbeam's acquisition.
323		07/21/1998	Adam Emmerich, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., James Maher, William Nesbitt	Attorney-Client, Work Product	Memorandum re attached draft document.
323	A	07/21/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter to Sunbeam re claims arising out of Sunbeam acquisition.
324		07/22/1998	Barry Schwartz, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re attached draft letter.
324	A	07/22/1998	Barry Schwartz, Esq.		Attorney-Client, Work Product	Draft letter to Sunbeam re claims arising out of Sunbeam acquisition.
325		07/22/1998	Barry Schwartz, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re H. Gittis' 7/22/98 letter to H. Kristol.
326		08/10/1998	Adam Emmerich, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., James Maher, Irwin Engelman, William Nesbitt, Todd Slotkin, Glenn Dickes,	Attorney-Client, Work Product	Memorandum re attached draft documents.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
326	A	08/10/1998	Wachtell Lipton	Esq., Joram Salig, Esq., Valerie Radwaner, Esq.	Attorney-Client, Work Product	Draft settlement agreement.
326	B	08/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant.
326	C	08/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Amendment to Registration Rights Agreement.
327		07/07/1998	Paul Rowe, Esq.		Attorney-Client, Work Product	Draft settlement agreement with P. Rowe's handwritten comments.
328		08/31/1998	Joram Salig, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
328	A	08/31/1998	Joram Salig, Esq.		Attorney-Client, Work Product	Draft Form 4.
329		02/26/1998	Tony Ian	Frank Miller, Esq.	Attorney-Client, Work Product	Memorandum re Coleman insurance issues.
329	A	02/27/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft provisions re insurance issues.
330		03/20/1998	Robert Fleder, Esq., Cass G. Adelman, Esq.	Joram Salig, Esq., Steven Isko, Esq., John Winkel, Lawrence Winoker, Gerry Kessel, Michael Katzke, Esq., Karen Clark, Kyle Wendt	Attorney-Client, Work Product	Correspondence re attached draft document.
330	A	03/20/1998	Robert Fleder, Esq., Cass G. Adelman, Esq.		Attorney-Client, Work Product	Draft agreement re employee benefit plans.
331		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Handwritten notes re Shallah litigation.
332		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Shallah litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
333		00/00/0000	Steven Cohen, Esq.		Attorney-Client, Work Product	Handwritten notes re tax issues.
334		08/12/1998	Adam Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Barry Schwartz, Esq., Glenn Dickes, Esq., William Nesbitt, James Maher, Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re attached draft documents.
334	A	08/12/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft consent of Coleman (Parent) Board of Directors re Sunbeam settlement.
334	B	08/12/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Coleman (Parent) Board resolution re Sunbeam settlement.
335		08/11/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant.
336		07/29/1998	Paul Rowe, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Memorandum re attached notes.
336	A	07/29/1998	Paul Rowe, Esq.		Attorney-Client, Work Product	Handwritten notes re claims arising from Sunbeam acquisition.
337		08/12/1998	Karen Krueger, Esq.		Attorney-Client, Work Product	Draft employment agreement for G. Wisler with attorney's handwritten notes.
338		08/12/1998	Adam Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Barry Schwartz, Esq., Glenn Dickes, Esq., William Nesbitt, James Maher, Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
338	A	08/12/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Schedule 13D Amendment.
339		00/00/0000	Steven Cohen, Esq.		Attorney-Client, Work Product	Excerpt of draft settlement agreement with attorney's handwritten notes.
340		08/11/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Amendment to Registration Rights Agreement.

**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
341		07/07/1998	Adam Emmerich, Esq., Frank Miller, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., James Maher, William Nesbitt, Todd Slotkin, Irwin Engelman, Glenn Dicks, Esq., Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re attached draft documents.
341	A	07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant term sheet.
341	B	07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant.
341	C	07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft settlement agreement.
341	D	07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant.
341	E	07/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft settlement agreement.
342		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for G. Wisler.
343		08/19/1998	Susan Powell, Esq.	Joram Salig, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
343	A	08/14/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for J. Levin.
344		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for G. Wisler with P. Shapiro's comments.
345		07/30/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft settlement agreement with attorney's handwritten notes.
346		08/14/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for P. Shapiro.
347		00/00/0000	Susan Powell, Esq.		Attorney-Client, Work Product	Handwritten notes re draft Sunbeam employment agreements.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
348		08/06/1998	Michael Katzke, Esq.	Joram Salig, Esq., Susan Powell, Esq.	Attorney-Client, Work Product	Fax re attached draft document.
348	A	08/06/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement.
349		08/12/1998	Adam Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Barry Schwartz, Esq., Glenn Dickes, Esq., William Nesbitt, James Maher, Joram Salig, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
349	A	08/12/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft warrant term sheet.
350		02/18/1999	Glenn Dickes, Esq.	Todd Slotkin	Attorney-Client, Work Product	Memorandum re attached draft document.
350	A	02/18/1999	Glenn Dickes, Esq.		Attorney-Client, Work Product	Draft confidentiality agreement re Sunbeam.
351		03/16/1998	Barry Schwartz, Esq.	James Conroy, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
351	A	03/16/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft response to SEC and NYSE requests for information.
352		06/15/1998	Wachtell Lipton		Attorney-Client, Work Product	Excerpt of draft Schedule 13D with J. Conroy's handwritten notes.
353		01/25/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Coleman shareholder litigation.
354		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Draft analysis re Sunbeam acquisition.
355		03/17/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Section 14(f) notice.
356		07/23/1998	William Nesbitt	Ronald Perelman	Attorney-Client, Work Product	Draft analysis re Sunbeam acquisition prepared in connection with potential litigation re same.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
357		04/16/1998	Adam Emmerich, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
357	A	04/16/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft memorandum re Coleman employee benefits issues.
358		03/24/1998	Gary Leshko	Adam Emmerich, Esq.	Attorney-Client, Work Product	Letter re attached document.
358	A	00/00/0000	MacAndrews & Forbes		Attorney-Client, Work Product	Response to request for information re Coleman litigation.
359		00/00/0000	Adam Emmerich, Esq.		Attorney-Client, Work Product	Draft merger agreement with A. Emmerich's handwritten notes.
360		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Summary re merger agreement issues.
360	A	02/24/1998	Adam Emmerich, Esq.	Steven Cohen, Esq., Frank Miller, Esq., David Einhorn, Esq. (cc), Michael Katzke, Esq. (cc)	Attorney-Client, Work Product	E-mail re draft merger agreement.
361		02/24/1998	Michael Katzke, Esq.	Steven Cohen, Esq., Adam Emmerich, Esq. (cc), Frank Miller, Esq. (cc)	Attorney-Client, Work Product	E-mail re employee benefit issues in merger agreement.
362		03/03/1998	Lenny Aizenman	Sarah Strasser, Esq.	Attorney-Client, Work Product	Portion of draft Hart-Scott-Rodino filing with client's handwritten notes.
363		00/00/0000	Deborah Paul, Esq.		Attorney-Client, Work Product	Draft merger agreement disclosure schedules with D. Paul's handwritten notes.
364		02/27/1998	Deborah Paul, Esq.		Attorney-Client, Work Product	Except of draft merger agreement with attorney's handwritten notes re tax issues.
365		02/27/1998	Deborah Paul, Esq.	Norman Gintsling, Esq., Marvin Shaffer	Attorney-Client, Work Product	Correspondence re attached draft document.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
365	A	02/27/1998	Deborah Paul, Esq.		Attorney-Client, Work Product	Draft section of merger agreement with attorney's handwritten notes.
366		02/27/1998	Deborah Paul, Esq.	Norman Gintsling, Esq.	Attorney-Client, Work Product	Draft section of merger agreement.
367		02/24/1998	Steven Isko, Esq.	Michael Katzke, Esq.	Attorney-Client, Work Product	Materials re employee benefit issues.
368		02/24/1998	Steven Isko, Esq.	Michael Katzke, Esq.	Attorney-Client, Work Product	Materials re employee benefit issues.
369		02/26/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Coleman severance policy.
370		06/10/1998	Michael Katzke, Esq.	Karen Krueger, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document with M. Katzke's handwritten notes.
370	A	06/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Sunbeam agreement with M. Katzke's handwritten notes.
371		03/05/1998	Ilene K. Gotts, Esq., Sarah Strasser, Esq.	Steven Isko, Esq., Karen Clark	Attorney-Client, Work Product	Memorandum re foreign antitrust issues.
372		03/06/1998	Dan Peterson		Attorney-Client, Work Product	Summary of information prepared for foreign antitrust filings with S. Strasser's handwritten notes.
373		08/10/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft resolution re employment terms.
374		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for J. Levin.
375		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for P. Shapiro.
376		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for B. Jenkins.
377		08/12/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for G. Wisler.

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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
378		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for F. Feraco.
379		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for K. Clark.
380		08/12/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for F. Feraco.
381		08/12/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for K. Clark.
382		05/17/1999	Wachtell Lipton	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Draft pleading for Coleman shareholder litigation with R. Silverberg's notes.
383		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re 2/27/98 Coleman Co., Inc. board meeting.
384		05/26/1999	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Draft pleading for Coleman shareholder litigation with R. Silverberg's notes.
385		01/26/1999	Colleen Schmidt	Eric Golden, Esq.	Work Product	Memorandum re shareholder litigation.
386		01/19/2000	Eric Golden, Esq.	Barry Schwartz, Esq.	Work Product, Attorney-Client	Fax re attached document (Redacted from CP 044434).
387		11/18/1998	Barry Schwartz, Esq.	Eric Golden, Esq.	Work Product, Attorney-Client	Note re attached document (Redacted from CP 044435).
388		11/13/1998	Eric Golden, Esq.	Colleen Schmidt	Work Product, Attorney-Client	Notes re attached document (Redacted from CP 044448).
389		11/02/1998	Barry Schwartz, Esq.	Ronald Pereiman, Howard Gittis, Esq., James Maher, Irwin Engelman, Todd Slotkin, William Nesbitt	Attorney-Client, Work Product	Memorandum re attached document (Redacted from CP 044451).
389		11/02/1998	Barry Schwartz, Esq.	Ronald Pereiman, Howard Gittis, Esq., James Maher, Irwin Engelman, Todd Slotkin, William Nesbitt	Attorney-Client, Work Product	Memorandum re attached document (Redacted from CP 044451).

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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
390		11/13/1998	Robert Saunders, Esq.	Janet Kelley, Esq., Barry Schwartz, Esq., Eric Golden, Esq., Michael Schwartz, Esq., Thomas Allingham, Esq. (cc), Timothy Reynolds (cc), Robert Zimet (cc), Kevin Malloy, Esq. (cc)	Attorney-Client, Work Product, Joint Defense	Correspondence re attached document.
390	A	11/13/1998	Skadden Arps		Attorney-Client, Work Product, Joint Defense	Summary of shareholder litigation status.
391		12/22/1998	Megan McIntyre, Esq.	Thomas Allingham, Esq., Michael Schwartz, Esq., Rachelle Silverberg, Esq., Eric Golden, Esq.	Attorney-Client, Work Product, Joint Defense	Letter re attached draft document.
391	A	12/22/1998	Grant & Eisenhofer		Attorney-Client, Work Product, Joint Defense	Draft motion for Joerger litigation.
392		10/21/1998	Janet Kelley, Esq.	Barry Schwartz, Esq., Paul Shapiro, Esq. (cc), Thomas Allingham, Esq. (cc)	Attorney-Client, Work Product, Joint Defense	Correspondence re Shallal litigation.
393		12/23/1998	Beth Jacobowitz, Esq.	Thomas Allingham, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product, Joint Defense	Correspondence re attached draft document.
393	A	12/23/1998	Beth Jacobowitz, Esq.		Attorney-Client, Work Product, Joint Defense	Draft motion re Shallal litigation.
394		02/23/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft summary of proposed Sunbeam acquisition terms.
395		11/10/1998	Glenn Dickes, Esq.	Todd Slatkin	Attorney-Client, Work Product	Correspondence re credit agreement.
396		11/10/1998	Glenn Dickes, Esq.	Todd Slatkin	Attorney-Client, Work Product	Correspondence re credit agreement.

**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
397		00/00/0000	Michael Katzke, Esq.		Attorney-Client, Work Product	Handwritten notes re Sunbeam's 401(K) and Profit Sharing plans (Redacted from CP 12664-12672 and CP 27957-27965).
398		03/09/1998	Sarah Strasser, Esq.		Attorney-Client, Work Product	Memorandum re foreign antitrust filings with S. Strasser's handwritten notes.
398	A	03/09/1998	Coleman Company, Inc.		Attorney-Client, Work Product	Summary of foreign competition issues related to Sunbeam acquisition with S. Strasser's notes.
398	B	00/00/0000	Sarah Strasser, Esq.		Attorney-Client, Work Product	Handwritten notes re foreign competition filings.
399		00/00/0000	Frank Miller, Esq.		Attorney-Client, Work Product	Notes re Sunbeam / Coleman (Parent) settlement issues.
400		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Analysis re Sunbeam acquisition issues.
401		02/26/1998	Adam Emmerich, Esq.		Attorney-Client, Work Product	Draft letter re Sunbeam acquisition with attorney's handwritten notes.
402		00/00/0000	Jenner & Block		Attorney-Client, Work Product	Notes re discovery response (Redacted from CP 030352).
403		08/27/1999	Steven Daniels, Esq.	Adam Emmerich, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
403	A	08/27/1999	Skadden Arps		Attorney-Client, Work Product	Draft amendment to Sunbeam Form S-4.
404		01/31/1999	Irwin H. Warren, Esq.	Robert Saunders, Esq., Kevin Malloy, Esq., Rachelle Silverberg, Esq.	Attorney-Client, Work Product, Joint Defense	Correspondence re attached draft document.
404	A	01/31/1999	Robert Saunders, Esq.		Attorney-Client, Work Product, Joint Defense	Draft pleading for Shalal litigation with I. Warren's handwritten notes.
405		02/01/1999	Kevin Maloy, Esq.	Beth Jacobwitz, Esq., Tim Greenfelder, Esq., Rachelle Silverberg, Esq.	Attorney-Client, Work Product, Joint Defense	Correspondence re attached draft documents.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
405	A	02/01/1999	Robert Saunders, Esq.		Attorney-Client, Work Product, Joint Defense	Draft memorandum re pleading for Shallah litigation with R. Silverberg's handwritten notes.
406		01/31/1999	Robert Saunders, Esq.	Beth Jacobwitz, Esq., Tim Greensfelder, Esq., Rachelle Silverberg, Esq.	Attorney-Client, Work Product, Joint Defense	Memorandum re attached draft document.
406	A	01/31/1999	Robert Saunders, Esq.		Attorney-Client, Work Product, Joint Defense	Draft pleading for Shallah litigation with R. Silverberg's handwritten notes.
407		12/22/1998	Richard Berman, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product, Joint Defense	Draft affidavit for Shallah litigation.
408		01/06/1999	Beth Jacobwitz, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product, Joint Defense	Correspondence re attached draft documents.
408	A	01/06/1999	Weil Gotshal		Attorney-Client, Work Product, Joint Defense	Draft pleading for Shallah litigation.
408	B	01/06/1999	Weil Gotshal		Attorney-Client, Work Product, Joint Defense	Draft pleading for Shallah litigation.
409		12/23/1998	Wachtell Lipton	Beth Jacobwitz, Esq.	Attorney-Client, Work Product, Joint Defense	Draft motion re Shallah litigation.
410		00/00/0000	Skadden Arps		Work Product, Joint Defense	Report re shareholder litigation status.
411		11/04/1998	Michael Schwartz, Esq.	Adam Emmerich, Esq., Rachelle Silverberg, Esq., Frank Miller, Esq.	Attorney-Client, Work Product	Memorandum re attached document.
411	A	10/29/1998	Thomas Allingham, Esq., Robert Saunders, Esq., Kevin M. Malloy, Esq.	Janet Kelley, Esq., Barry Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product, Joint Defense	Memorandum re shareholder litigation status.
412		02/26/1998	Adam Emmerich, Esq.		Attorney-Client, Work Product	Letter re Sunbeam acquisition with attorney's notes.
413		05/25/1998	Adam Emmerich, Esq., Michael Katzke, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re Sunbeam.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
414		00/00/0000	Eric Golden, Esq.		Attorney-Client, Work Product	Notes re Ulfsson complaint.
415		05/25/1998	Adam Emmerich, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached document.
415	A	05/25/1998	Wachtell Lipton		Attorney-Client, Work Product	Memorandum re Sunbeam.
416		00/00/0000	Larry Winoker		Attorney-Client, Work Product	Handwritten notes re article prepared in connection with preparation of Doc. No. 419 and at direction of counsel.
417		06/09/1998	William Nesbitt	Ronald Perelman, Donald Drapkin, Esq. (cc), Howard Gittis, Esq. (cc), Jerry Levin (cc), James Meher (cc), Barry Schwartz, Esq. (cc)	Attorney-Client, Work Product	Draft memorandum re article prepared at request of B. Schwartz, Esq.
418		00/00/0000	Larry Winoker		Attorney-Client, Work Product	Handwritten notes re Sunbeam Form 10-Q for period ending 3/31/1998 prepared in connection with preparation of Doc. No. 419 and at direction of counsel.
419		00/00/0000	Eric Golden, Esq.		Attorney-Client, Work Product	Notes re Mintz complaint (Redacted from CP 039608-039652, CP 030969-031012).
420		03/11/1998	Steven Isko, Esq.	Barry Schwartz, Esq., Joram Salig, Esq., Adam Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re NYSE request for information.
421		02/24/1998	William Nesbitt	Adam Emmerich, Esq.	Attorney-Client, Work Product	Memorandum re attached document.
421	A	02/24/1998	William Nesbitt		Attorney-Client, Work Product	Analysis of Sunbeam proposal prepared for purposes of obtaining legal advice.
422		00/00/0000	Alexander Shaknes, Esq.		Attorney-Client, Work Product	Notes on draft Sunbeam submission to SEC.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
423		04/28/1998	Glenn Dickes, Esq.	Frank Miller, Esq., Joram Salig, Esq. (cc), Barry Schwartz, Esq. (cc)	Attorney-Client, Work Product	Correspondence re Sunbeam letter re employee benefits.
424		03/04/1998	Adam Emmerich, Esq., Michael Katzke, Esq.		Attorney-Client, Work Product	Draft memorandum re applicability of federal securities laws.
425		03/05/1998	Michael Katzke, Esq.	Barry Schwartz, Esq., Steven Isko, Esq., Adam Emmerich, Esq. (cc)	Attorney-Client, Work Product	Memorandum re applicability of federal securities laws.
426		10/28/1998	Barry Schwartz, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re Coleman shareholder litigation.
427		05/17/1999	Thomas Allingham, Esq., Robert Saunders, Esq., Kevin M. Malloy, Esq.	Janet Kelley, Esq., Steven Isko, Esq., Paul Shapiro, Esq., Barry Schwartz, Esq., Eric Golden, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product, Joint Defense	Memorandum re attached draft document.
427	A	05/17/1999	Skadden Arps		Attorney-Client, Work Product, Joint Defense	Draft pleading for Coleman shareholder litigation.
428		07/30/1999	Skadden, Arps		Attorney-Client, Work Product, Joint Defense	Draft pleading for Coleman shareholder litigation.
429		06/23/1999	Robert Saunders, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product, Joint Defense	E-mail re draft pleading for Coleman shareholder litigation.
430		02/09/1999	Kevin M. Malloy, Esq.	Rachelle Silverberg, Esq.	Work Product, Joint Defense	Fax re Shallah litigation.
430	A	00/00/0000	Skadden Arps		Work Product, Joint Defense	Proposed document redactions for document production in Shallah litigation.
431		11/02/1999	Thomas Allingham II, Esq.	Michael Schwartz, Esq., Paul Shapiro, Esq., Steven Isko, Esq.	Attorney-Client, Work Product, Joint Defense	Fax re attached draft letter.
431	A	11/02/1999	Thomas Allingham II, Esq.		Work Product, Joint Defense	Draft letter to Court in Coleman shareholder litigation.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
432		01/12/1999	Robert Saunders, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product, Joint Defense	Fax re attached document.
432	A	01/12/1999	Robert Saunders, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product, Joint Defense	Report re shareholder litigation status.
433		10/27/1998	Barry Schwartz, Esq., William Nesbitt		Attorney-Client, Work Product	Letter re Coleman shareholder litigation with B. Schwartz' and W. Nesbitt's handwritten notes.
434		00/00/0000	William Nesbitt		Attorney-Client, Work Product	Notes re Sunbeam 1998 proxy materials prepared at the request of B. Schwartz, Esq.
434	A	04/29/1998	Barry Schwartz, Esq.	William Nesbitt	Attorney-Client, Work Product	Memorandum re attached Sunbeam proxy materials
434	B	00/00/0000	William Nesbitt		Attorney-Client, Work Product	Notes re Sunbeam's 1998 proxy statement prepared at the request of B. Schwartz, Esq. (Redacted from CP 041844-041860).
434	C	00/00/0000	William Nesbitt		Attorney-Client, Work Product	Notes re Schedule 14A prepared at the request of B. Schwartz, Esq. (Redacted from CP 041861-041906).
435		00/00/0000	William Nesbitt		Attorney-Client, Work Product	Notes re Sunbeam stock options prepared at the request of B. Schwartz, Esq. in connection with potential litigation.
436		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re Morgan Stanley materials (Redacted from CP 016766).
437		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Notes re witness interview prepared in connection with response to SEC and NYSE's request for information.
438		00/00/0000	Paul Rowe, Esq.		Attorney-Client, Work Product	Handwritten notes re potential claims arising from Sunbeam's acquisition.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
438	A	00/00/0000	William Nesbitt, Paul Rowe, Esq.		Attorney-Client, Work Product	Notes re Sunbeam transaction prepared in anticipation of litigation and at the direction of counsel with P. Rowe's handwritten notes.
439		03/29/1999	Eric Golden, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product	Fax re Krim litigation.
440		04/19/1999	Eric Golden, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product	Fax re Krim litigation.
441		11/02/1999	Eric Golden, Esq.	Barry Schwartz, Esq.	Attorney-Client, Work Product	Draft letter to court re Coleman shareholder litigation with E. Golden notes.
442		06/30/1998	Barry Schwartz, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Fax re attached document.
442	A	06/25/1998	Stacy J. Kanter	Michele Gartland, Esq., Leander Gray, Esq., Rosa Testani, Esq. (cc)	Attorney-Client, Work Product	Memorandum re LYONs issues with attorney's notes.
442	B	06/25/1998	Rosa Testani, Esq.	Barry Schwartz, Esq., Glenn Dikes, Esq.	Attorney-Client, Work Product	Fax re attached document.
443		00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft Sunbeam response to SEC and NYSE requests for information with attorney's handwritten notes.
444		05/13/1999	Steven Daniels, Esq.	Paul Shapiro, Esq., Janet Kelley, Esq., Barry Schwartz, Esq., Steven Isko, Esq., Adam Emmerich, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
444	A	00/00/0000	Adam Emmerich, Esq.		Attorney-Client, Work Product	Excerpt of draft Sunbeam Form S-4 with A. Emmerich's handwritten notes.
445		00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Excerpt of draft Sunbeam Form S-4 with R. Silverberg's handwritten notes.
446		00/00/0000	Ilene K. Gotts, Esq.		Attorney-Client, Work Product	Draft Sunbeam Form S-4 with I. Gott's handwritten comments.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
447		11/05/1999	Steven Isko, Esq.	Barry Schwartz, Esq., Adam Emmerich, Esq., Blaine Fogg, Esq., Richard Easton, Esq.	Attorney-Client, Work Product	Fax re attached document.
447	A	00/00/0000	Steven Isko, Esq., Paul Shapiro, Esq.		Attorney-Client, Work Product	Section of draft Sunbeam Form S-4 with attorney's notes.
448		11/04/1999	Rachelle Silverberg, Esq.	Steven Isko, Esq.	Attorney-Client, Work Product	Memorandum enclosing section of draft Sunbeam Form S-4.
448	A	10/18/1999	Wachtell Lipton		Attorney-Client, Work Product	Section of draft Sunbeam Form S-4.
449		10/06/1999	Steven Daniels, Esq.	Steven Isko, Esq., Paul Shapiro, Esq., Karen Clark, Esq., Blaine Fogg, Esq., Michael Schwartz, Esq., Steve Thibault, Adam Emmerich, Esq.	Attorney-Client, Work Product	Memorandum re section of draft Sunbeam Form S-4.
449	A	00/00/0000	Rachelle Silverberg, Esq.		Attorney-Client, Work Product	Section of draft Sunbeam Form S-4 with R. Silverberg's handwritten notes.
450		00/00/0000	Adam Emmerich, Esq.		Attorney-Client, Work Product	Draft Amendment to Credit Agreement with A. Emmerich's handwritten notes.
451		06/29/1998	Adam Emmerich, Esq.		Attorney-Client, Work Product	Draft amendment to credit agreement with A. Emmerich's handwritten notes.
452		10/19/1998	Michele Gartland, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Fax re attached draft document.
452	A	10/19/1998	Skadden Arps		Attorney-Client, Work Product	Draft letter to Sunbeam lenders re Sunbeam credit agreement.
453		10/19/1998	Peter J. Neckles, Esq.	Adam Emmerich, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product	Fax re attached draft document.
453	A	10/19/1998	Skadden Arps		Attorney-Client, Work Product	Draft letter to Sunbeam lenders re Sunbeam credit agreement.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
454		03/20/1998	Michele Gartland, Esq., Leander Gray, Esq.	Steven Isko, Esq., Peter Neckles, Esq. (cc), Adam Emmerich, Esq.	Attorney-Client, Work Product	Memorandum re debt financing.
455		03/27/1998	Adrian Deitz, Esq.	Adam Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
455	A	03/27/1998	Skadden Arps		Attorney-Client, Work Product	Draft CLN Holdings Officer's Certificate.
456		07/29/1998	Paul Rowe, Esq.		Attorney-Client, Work Product	Handwritten notes re potential claims against Sunbeam.
457		08/12/1998	Steven Cohen, Esq.		Attorney-Client, Work Product	Draft press release re Sunbeam settlement with S. Cohen's notes.
457	A	08/12/1998	Steven Cohen, Esq.		Attorney-Client, Work Product	Draft letter to Sunbeam's shareholders re Sunbeam settlement with S. Cohen's handwritten notes.
458		08/15/1998	Rita W. Gordon, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Fax re attached document.
458	A	04/14/1998	Skadden Arps		Attorney-Client, Work Product	Draft response to SEC's requests for information.
459		04/17/1998	Frank Miller, Esq.	Richard Easton, Esq., Rita W. Gordon, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
459	A	00/00/0000	Wachtell Lipton		Attorney-Client, Work Product	Draft response to SEC's requests for information with attorney's notes.
460		04/16/1998	Rita W. Gordon, Esq.	Frank Miller, Esq., Adam Emmerich, Esq.	Attorney-Client, Work Product	Fax re attached document.
460	A	04/16/1998	Skadden Arps		Attorney-Client, Work Product	Draft response to SEC's requests for information
461		03/06/1998	Wachtell Lipton	Ilene K. Gotts, Esq.	Attorney-Client, Work Product	Fax re attached document.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
461	A	03/06/1998	Ioannis Zervas, Esq.	Ilene K. Gotts, Esq.	Attorney-Client, Work Product	Fax re attached document.
461	B	00/00/0000	Skadden Arps		Attorney-Client, Work Product	Draft European pre-merger notification.
461	C	03/13/1996	Skadden Arps		Attorney-Client, Work Product	Draft European pre-merger notification.
461	D	03/04/1996	Skadden Arps		Attorney-Client, Work Product	Draft European pre-merger notification.
461	E	03/12/1996	Skadden Arps		Attorney-Client, Work Product	Draft European pre-merger notification.
462		11/17/1999	Blaine Fogg, Esq.	Thomas Allingham, Esq., Richard Easton, Esq., Tom Balliett, Adam Emmerich, Esq., Steven Isko, Esq., Barry Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached document.
462	A	11/17/1999	Skadden Arps		Attorney-Client, Work Product	Excerpts of draft Sunbeam Form S-4.
463		11/15/1999	Blaine Fogg, Esq.	Thomas Allingham, Esq., Richard Easton, Esq., Adam Emmerich, Esq., Steven Isko, Esq., Barry Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached document.
463	A	11/15/1999	Skadden Arps		Attorney-Client, Work Product	Excerpts of draft Sunbeam Form S-4.
464		11/12/1999	Steven Isko, Esq.	Richard Easton, Esq., Thomas Allingham, Esq., Adam Emmerich, Esq., Barry Schwartz, Esq.	Attorney-Client, Work Product	Fax re attached document.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
464	A	00/00/0000	Paul Shapiro, Esq.	Richard Easton, Esq., Thomas Allingham, Esq., Adrian Deitz, Esq., Steven Isko, Esq., Barry Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Excerpt of draft Sunbeam Form S-4 with P. Shapiro's comments.
465		11/12/1999	Blaine Fogg, Esq.		Attorney-Client, Work Product	Fax re attached document.
465	A	11/12/1999	Skadden Arps		Attorney-Client, Work Product	Excerpt of draft Sunbeam Form S-4.
466		11/05/1999	Steven Isko, Esq.	Barry Schwartz, Esq., Adam Emmerich, Esq., Blaine Fogg, Esq., Richard Easton, Esq.	Attorney-Client, Work Product	Fax re attached document.
466	A	00/00/0000	Steven Isko, Esq.		Attorney-Client, Work Product	Excerpt of draft Sunbeam Form S-4 with attorney's notes.
467		11/05/1999	Blaine Fogg, Esq.	Richard Easton, Esq., Adam Emmerich, Esq., Steven Isko, Esq., Barry Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
467	A	00/00/0000	Blaine Fogg, Esq.		Attorney-Client, Work Product	Excerpt of draft Sunbeam Form S-4 with attorney's notes.
468		11/19/1999	Skadden Arps		Attorney-Client, Work Product	Draft letter to SEC re Sunbeam Form S-4.
469		10/06/1999	Steven Daniels, Esq.	Blaine Fogg, Esq. (cc), Richard Easton, Esq. (cc), Paul Shapiro, Esq., Karen Clark, Esq., Steven Isko, Esq., Adam Emmerich, Esq., Michael Schwartz, Esq., Steve Thibault, Allison Amorison, Esq., Matthew Greenberg, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.

**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
469	A	10/06/1999	Skadden Arps		Attorney-Client, Work Product	Excerpt of draft Sunbeam Form S-4.
470		01/27/1999	Robert Saunders, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product	Fax re attached document.
470	A	01/27/1999	Skadden Arps		Attorney-Client, Work Product	Excerpt of draft Sunbeam Form S-4.
471		03/07/1998	Sarah Strasser, Esq.	Iaonnis Zervas, Esq.	Attorney-Client, Work Product	Fax re attached draft document.
471	A	03/06/1998	Sarah Strasser, Esq.		Attorney-Client, Work Product	Draft European pre-merger notification with S. Strasser notes.
472		05/12/1999	Skadden Arps		Attorney-Client, Work Product	Draft response to SEC comments on draft Sunbeam Form S-4.
473		04/23/1998	Allison Amorison, Esq.	Robert Gluck, David Fannin, Janet Kelley, Esq., Frank Miller, Esq., Alexandre J. Fuchs, Josh Webber, Steve Geller, Robert Duffy, Alessandro DeGiorgis	Attorney-Client, Work Product	Fax re attached document.
473	A	04/23/1998	Richard Easton, Esq., Allison Amorison, Esq., Steven Daniels, Esq., Matthew Greenberg, Esq.	David C. Fannin (Sunbeam), Robert Gluck, Janet Kelley, Esq., Frank Miller, Esq., Alexandre J. Fuchs, Josh Webber, Steve Geller, Robert Duffy, Alessandro DeGiorgis	Attorney-Client, Work Product	Memorandum re attached draft document.
473	B	04/23/1998	Skadden Arps		Attorney-Client, Work Product	Draft Sunbeam Form S-4.
474		04/17/1998	Frank Miller, Esq.	Richard Easton, Esq., Allison Amorison, Esq., Steven Daniels, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
474	A	04/07/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft Sunbeam Form S-4 with attorney's notes.
475		05/07/1999	Skadden Arps		Attorney-Client, Work Product	Draft Sunbeam Form S-4 amendment.
476		05/10/1999	Steven Daniels, Esq.	Adam Emmerich, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re Sunbeam Form S-4 amendment.
476	A	05/10/1999	Allison Amorison, Esq., Steven Daniels, Esq., Matthew Greenberg, Esq.	Paul Shapiro, Esq., Janet Kelley, Esq., Bobby Jenkins, Karen Clark, Esq., John Frederick, Esq., Barry Schwartz, Esq., Steven Isko, Esq., Blaine Fogg, Esq., Richard Easton, Esq., Mitchell Solomon, Esq., Joseph Halliday, Larry Frishman, Esq., Robert Zimet, Esq., Thomas Allingham, Esq., Matthew Knopf, Esq., William Weiss, Esq., Thomas Gowan, Esq., Robert Saunders, Esq., Prabhat Mehta, Esq., Christopher Malloy, Esq., Kevin Malloy, Esq., Jeffrey Laska, Esq., Steve Thibault, Noel Spiegall, Adam Emmerich, Esq., Steven Cohen, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
477		05/05/1999	Matthew Greenberg, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Fax re attached draft document.
477	A	05/04/1999	Skadden Arps		Attorney-Client, Work Product	Section of draft Sunbeam Form S-4.
478		03/20/1998	Ionnis Zervas, Esq.	Ilene K. Gotts, Esq., Michael Jahnke, Esq.	Attorney-Client, Work Product	Fax re attached document.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
478	A	03/20/1998	Ioannis Zervas, Esq.	Janet Kelley, Esq., Allison Amorison, Esq., Michael Jahnke, Esq., Steven Isko, Esq., Robert Rozenzweig, Barry Hawk (cc), Henry Huser (cc), Joe Nisa (cc)	Attorney-Client, Work Product	Memorandum re European antitrust issues.
479		03/03/1998	Ioannis Zervas, Esq.	Sarah Strasser, Esq.	Attorney-Client, Work Product	Fax re attached documents.
479	A	03/03/1998	Henry Huser, Esq., Ioannis Zervas, Esq.	Richard Easton, Esq. (cc), Joe Nisa (cc), Sarah Strasser, Esq.	Attorney-Client, Work Product	Memorandum re European antitrust issues.
479	B	03/03/1998	Skadden Arps		Attorney-Client, Work Product	Outline re European antitrust opinion.
480		03/06/1998	Ioannis Zervas, Esq.	Ilene K. Gotts, Esq., Sarah Strasser, Esq.	Attorney-Client, Work Product	Fax re attached documents.
480	A	03/29/1998	Skadden Arps		Attorney-Client, Work Product	Outline of draft French submission.
480	B	03/06/1998	Henry Huser, Esq.	Steven Isko, Esq.	Attorney-Client	Letter re European antitrust issues.
481		05/05/1999	Matthew Greenberg, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Fax re attached draft document.
481	A	05/04/1999	Skadden Arps		Attorney-Client, Work Product	Excerpt of draft Sunbeam Form S-4.
482		05/10/1999	Steven Daniels, Esq.	Adam Emmerich, Esq., Michael Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re draft Subbeam Form S-4 amendment.
483		08/06/1998	Thomas Allingham II, Esq.	Barry Schwartz, Esq.	Attorney-Client, Work Product, Joint Defense	Fax re attached draft document.
483	A	08/06/1998	Skadden Arps		Attorney-Client, Work Product, Joint Defense	Memorandum re draft agreement with former Sunbeam management.
484		08/30/1999	Rachelle Silverberg, Esq.	Steven Daniels, Esq., Thomas Allingham, Esq.		Memorandum re attached draft document.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
484	A	00/00/0000	Rachelle Silverberg, Esq.	Thomas Allingham, Esq., Richard Easton, Esq., Robert Saunders, Esq., Karen Clark, Esq., Bobby Jenkins, Paul Shapiro, Esq., Steven Isko, Esq., Barry Schwartz, Esq., Adam Emmerich, Esq.	Attorney-Client, Work Product	Excerpt of draft Sunbeam Form S-4 with R. Silverberg's notes.
485		08/24/1999	Blaine Fogg, Esq.		Attorney-Client, Work Product	Memorandum re draft Sunbeam Form S-4.
485	A	08/24/1999	Skadden Arps		Attorney-Client, Work Product	Draft response to SEC comments on draft Sunbeam Form S-4.
486		04/07/1998	Richard Easton, Esq., Allison Amorison, Esq., Steven Daniels, Esq.	David Fannin, Robert Gluck, Janet Kelley, Esq., Steven Dalberth, Adam Emmerich, Esq., Steven Cohen, Esq., Frank Miller, Esq., Paul Rowe, Esq., Deborah Paul, Esq., Alexandre J. Fuchs, Josh Webber, Steve Geller, Robert Duffy, Alessandro DeGiorgis, Blaine Fogg, Esq., Mitchell Solomon, Esq., Gregory Fernicola, Esq., William Weiss, Esq., Mark T. Shehan, Esq., Rita W. Gordon, Esq., Michele D. Gartland, Esq., Adrian Deitz, Esq.	Attorney-Client, Work Product	Memorandum re draft Sunbeam Form S-4.
486	A	04/07/1998	Skadden Arps		Attorney-Client, Work Product	Draft Sunbeam Form S-4
487		05/12/1999	Skadden Arps		Attorney-Client, Work Product	Draft Sunbeam Form S-4.
488		06/23/1998	Todd E. Freed, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Fax re attached draft document.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
488	A	06/23/1998	Skadden Arps		Attorney-Client, Work Product	Draft Sunbeam Form S-3.
489		06/19/1998	Adam Emmerich, Esq.	Richard Easton, Esq.	Attorney-Client, Work Product	Fax re attached document.
489	A	06/19/1998	Skadden Arps		Attorney-Client, Work Product	Draft insert to Sunbeam Form S-3.
490		06/19/1998	Blaine Fogg, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Fax re attached draft document.
490	A	06/19/1998	Skadden Arps		Attorney-Client, Work Product	Draft press release re Sunbeam Form S-3.
491		06/23/1998	Todd E. Freed, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Fax re attached draft document.
491	A	06/23/1998	Skadden Arps		Attorney-Client, Work Product	Draft Sunbeam Form S-3.
492		06/19/1998	Todd E. Freed, Esq.	Jerry Levin, Peter Langerman, Janet Kelley, Esq., Robert Gluck, Ron Richter, Blaine Fogg, Esq., Richard Easton, Esq., Gregory Fericola, Esq., Mitchell Solomon, Esq., Peter Neckles, Esq., Michele Gartland, Esq., Allison Amorison, Esq., William Weiss, Esq., Adrian Deitz, Esq., Steven Daniels, Esq., Matthew Greenberg, Esq., Irwin Engelman, Howard Gittis, Esq., Paul Shapiro, Esq., Donald Drapkin, Barry Schwartz, Esq., Glenn Dickes, Esq., Adam Emmerich, Esq., Michael Schwartz, Esq., Harold	Attorney-Client, Work Product	Memorandum enclosing Draft Sunbeam Form S-3.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
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CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
492	A	00/00/0000	Skadden Arps	Novikoff, Esq., Frank Miller, Esq., Steven Cohen, Esq.	Attorney-Client, Work Product	Draft Press Release re Sunbeam Form S-3.
492	B	06/22/1998	Skadden Arps		Attorney-Client, Work Product	Draft Sunbeam Form S-3.
493		00/00/0000	Skadden Arps		Attorney-Client, Work Product	Draft Sunbeam Form S-3.
494		04/23/1998	Richard Easton, Esq., Allison Amorison, Esq., Steven Daniels, Esq., Matthew Greenberg, Esq.	David Fannin, Robert Gluck, Janet Kelley, Esq., Frank Miller, Esq., Alexandre Fuchs, Josh Webber, Steven Geller, Robert Duffy, Alessandro DeGiorgis	Attorney-Client, Work Product	Memorandum re attached draft document.
494	A	04/23/1998	Skadden Arps		Attorney-Client, Work Product	Draft Sunbeam Form S-4.
495		04/30/1998	Skadden Arps		Attorney-Client, Work Product	Draft Sunbeam Form S-4.
496		05/12/1999	Adam Emmerich, Esq.	Richard Easton, Esq., Steven Isko, Esq., Barry Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
496	A	05/11/1999	Wachtell Lipton		Attorney-Client, Work Product	Draft Sunbeam Form S-4 amendment with A. Emmerich's notes.
497		08/18/1999	Steven Isko, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Draft response to SEC comment on Sunbeam Form S-4.
498		03/19/1998	Steven Daniels, Esq.	Frank Miller, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
498	A	03/19/1998	Skadden Arps		Attorney-Client, Work Product	Draft outline for Sunbeam Form S-4.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
499		05/07/1999	Skadden Arps		Attorney-Client, Work Product	Draft letter to SEC responding to comments on Form S-4.
500		05/10/1999	Steven Daniels, Esq.	Adam Emmerich, Esq., Michael Schwartz, Esq., Richard Easton, Esq. (cc)	Attorney-Client, Work Product	Memorandum re draft amendment to Sunbeam Form S-4. (Redacted from CP 044459)
501		05/07/1999	Skadden Arps		Attorney-Client, Work Product	Draft Sunbeam Form S-4 amendment.
502		11/18/1999	Skadden Arps		Attorney-Client, Work Product	Draft amendment to Sunbeam Form S-4.
503		04/17/1998	Skadden Arps		Attorney-Client, Work Product	Draft Sunbeam Form S-4.
504		04/30/1998	Skadden Arps		Attorney-Client, Work Product	Draft Sunbeam Form S-4.
505		04/24/1998	Frank Miller, Esq.	Barry Schwartz, Esq., James Maher, William Nesbitt, Joram Salig, Esq., Steve Isko, Esq., Adam Emmerich, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
505	A	04/23/1998	Skadden Arps		Attorney-Client, Work Product	Draft response to SEC and NYSE requests for information.
506		03/22/1998	Steven Cohen, Esq.	Richard Easton, Esq., Allison Amorison, Esq., Adrian Deitz, Esq., Joram Salig, Esq. (cc), Steven Isko, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
506	A	03/22/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft insert to Coleman 10-K.
507		06/22/1998	Skadden Arps		Attorney-Client, Work Product	Draft Sunbeam Form S-3.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
508		05/14/1999	Adam Emmerich, Esq.	Richard Easton, Esq., Steven Daniels, Esq.	Attorney-Client, Work Product	Draft section of Sunbeam Form S-4 with attorney's handwritten notes.
509		03/13/1998	Allison Amorison, Esq.	Frank Miller, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
509	A	03/13/1998	Skadden Arps		Attorney-Client, Work Product	Section of draft Section 14(f) Notice with attorney's comments.
510		03/16/1998	Allison Amorison, Esq., Steven Daniels, Esq.	Frank Miller, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.
510	A	03/16/1998	Skadden Arps		Attorney-Client, Work Product	Draft Section 14(f) notice with Skadden comments.
511		03/04/1998	Steven Daniels, Esq.	Frank Miller, Esq., Allison Amorison, Esq. (cc)	Attorney-Client, Work Product	Memorandum re draft Section 14(f) notice.
512		06/22/1998	Skadden Arps		Attorney-Client, Work Product	Draft Sunbeam Form S-3.
513		06/24/1998	Skadden Arps		Attorney-Client, Work Product	Draft insert for Sunbeam Form S-3.
514		03/20/1998	Ionnis Zervas, Esq.	Janet Kelley, Esq., Allison Amorison, Esq., Michael Jahnke, Esq., Steven Isko, Esq., Robert Rozenzweig, Barry Hawk (cc), Henry Huser (cc), Joe Nisa (cc)	Attorney-Client, Work Product	Memorandum re German antitrust filing (Redacted from CP 044102).
515		03/08/1998	Sarah Strasser, Esq.	Dan Peterson, Steven Isko, Esq. (cc), Karen Clark (cc), Ilene K. Gottis, Esq. (cc)	Attorney-Client, Work Product	Memorandum re foreign antitrust filings and attached document.
515	A	03/06/1998	Iaonnis Zervas, Esq.		Attorney-Client, Work Product	Excerpt of draft foreign antitrust filing.
516		03/06/1998	Sarah Strasser, Esq.	Iaonnis Zervas, Esq.	Attorney-Client, Work Product	Memorandum re attached draft document.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
516	A	03/06/1998	Sarah Strasser, Esq.		Attorney-Client, Work Product	Draft foreign antitrust filing re Sunbeam acquisition with S. Strasser's handwritten notes.
517		03/05/1998	Michael Jahnke, Esq.	Craig Ronan, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
517	A	03/05/1998	Wachtell Lipton		Attorney-Client, Work Product	Portion of draft Hart-Scott-Rodino filing.
518		03/24/1998	Michael Jahnke, Esq.	Clifford Aronson, Esq., Ilene K. Gotts, Esq. (cc), Joseph Nisa, Esq. (cc)	Attorney-Client, Work Product	Letter re FTC inquiry re acquisition.
509		03/06/1998	Jackie Fortinash, Esq.	Glenn Dickes, Esq., Donald Drapkin, Norman Gintling, Esq., Howard Gittis, Esq., Anthony Ian, James Maher, William Nesbitt, Joram Salig, Esq., Marvin Shaffer, Barry Schwartz, Esq., Laurence Winoker, Jerry Levin, Paul Shapiro, Esq., Joseph Page, Steven Isko, Esq., Robert Duffy, Steven Geller, Gordon Rich, Terry Schimek, Esq., Valerie Radwaner, Esq., David Einhorn, Esq., Paul Rowe, Esq., Adam Emmerich, Esq., Ilene K. Gotts, Esq., Michael Katzke, Esq., Deborah Paul, Esq., Steven Cohen, Esq., Michael Jahnke, Esq., Frank Miller, Esq., Sarah Strasser, Esq., Blaine Fogg, Esq., Richard Easton, Esq.	Attorney-Client, Work Product	Memorandum re Hart-Scott-Rodino filing.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
520		03/05/1998	Michael Jahnke, Esq.	Craig Ronan, Esq.	Attorney-Client, Work Product	Correspondence re attached draft documents.
520	A	03/04/1998	Wachtell Lipton		Attorney-Client, Work Product	Portion of draft Hart-Scott-Rodino filing.
521		03/04/1998	Sarah Strasser, Esq.	Craig Ronan, Esq.	Attorney-Client, Work Product	Correspondence re attached draft documents.
521	A	03/04/1998	Wachtell Lipton		Attorney-Client, Work Product	Portion of draft Hart-Scott-Rodino filing.
522		03/23/1998	Rosa Testani, Esq.	Glenn Dickes, Esq., Martha Sanders, Adam Emmerich, Esq. (cc), Blaine Fogg, Esq. (cc), Stacy J. Kanter	Attorney-Client, Work Product	Memorandum re attached draft document.
522	A	03/23/1998	Skadden Arps		Attorney-Client, Work Product	Draft letter to LYONs trustees.
522	B	03/23/1998	Skadden Arps		Attorney-Client, Work Product	Draft notice of LYONs redemption.
523		03/05/1998	Craig V. Ronan, Esq.	Michael Jahnke, Esq.	Attorney-Client, Work Product	Correspondence re draft Hart-Scott-Rodino filing.
524		08/14/1998	Richard Easton, Esq.	Adam Emmerich, Esq., Steven Jacobs, Esq., Janet Kelley, Esq., Peter Langerman, Barry Schwartz, Esq., Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re application for NYSE exception.
525		08/10/1998	Blaine Fogg, Esq.	Howard Kristol, Peter Langerman, Steven Jacobs, Esq., Irwin Warren, Esq., Jerry Levin, Paul Shapiro, Esq., Barry Schwartz, Esq., Adam Emmerich, Esq., Michael Schwartz, Esq., Richard	Attorney-Client, Work Product	Fax re application to NYSE for exception.

9120210

**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
526		08/12/1998	Marc Shiffman	Easton, Esq., Allison Amorison, Esq. Barry Schwartz, Esq.	Attorney-Client, Work Product	Draft exhibit to NYSE application for exception.
527		08/07/1998	Blaine Fogg, Esq.	Adam Emmerich, Esq., David Fannin, Steven Jacobs, Esq., Howard Kristol, Peter Langerman, Barry Schwartz, Esq., Paul Shapiro, Esq., Irwin Warren, Esq., Allison Amorison, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
527	A	08/07/1998	Skadden Arps		Attorney-Client, Work Product	Draft exhibit to application for NYSE exception.
527	B	08/07/1998	Skadden Arps		Attorney-Client, Work Product	Draft exhibit to application for NYSE exception with attorney's handwritten notes.
527	C	08/07/1998	Skadden Arps		Attorney-Client, Work Product	Draft exhibit to application for NYSE exception.
528		08/10/1998	Beth Jacobowitz, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product	Correspondence re attached draft documents.
528	A	08/09/1998	Irwin H. Warren, Esq.		Attorney-Client, Work Product	Draft letter to NYSE re application for exception with attorney's notes.
528	B	08/09/1998	Irwin H. Warren, Esq.		Attorney-Client, Work Product	Draft letter to NYSE re application for exception with attorney's notes.
529		08/03/1998	Blaine Fogg, Esq.	Adam Emmerich, Esq., David Fannin, Stephen Jacobs, Esq., Howard Kristol, Peter Langerman, Barry Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached draft documents.
529	A	08/03/1998	Skadden Arps		Attorney-Client, Work Product	Draft letter to NYSE re application for exception.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
529	B	08/03/1998	Skadden Arps		Attorney-Client, Work Product	Draft letter to NYSE re application for exception.
530		08/03/1998	Blaine Fogg, Esq.	Adam Emmerich, Esq., David Fannin, Stephen Jacobs, Esq., Howard Kristol, Peter Langerman, Barry Schwartz, Esq.	Attorney-Client, Work Product	Correspondence re attached draft documents.
530	A	08/03/1998	Skadden Arps		Attorney-Client, Work Product	Draft exhibits to NYSE application for exception.
531		07/30/1998	Adam Emmerich, Esq.	Blaine Fogg, Esq.	Attorney-Client, Work Product	Draft letter to NYSE re application for exception.
532		07/31/1998	Blaine Fogg, Esq.	Adam Emmerich, Esq., David Fannin, Stephen Jacobs, Esq., Barry Schwartz, Esq., Allison Amorison, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
532	A	07/31/1998	Blaine Fogg, Esq.		Attorney-Client, Work Product	Draft letter to NYSE re attached draft letter.
532	B	07/31/1998	Blaine Fogg, Esq.		Attorney-Client, Work Product	Draft letter to NYSE re application for exception.
533		04/16/1998	Skadden Arps		Attorney-Client, Work Product	Draft response to SEC's request for information.
534		03/09/1998	Sarah Strasser, Esq.		Attorney-Client, Work Product	Draft European antitrust filing with S. Strasser's handwritten notes.
535		04/15/1999	Eric Golden, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
535	A	04/15/1999	Skadden Arps		Attorney-Client, Work Product	Draft brief for Krim litigation.
536		11/05/1998	Eric Golden, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product	Correspondence re attached document.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
536	A	11/04/1998	Grace M. Aschenbrenner	Eric Golden, Esq.	Attorney-Client, Work Product	Letter re Camden Asset litigation.
537		04/16/1999	Christopher Malloy, Esq.	Mark Bideau, Esq., Eric Golden, Esq., Michael Mitchell, Esq., Barry Schwartz, Esq., Michael Schwartz, Esq., Thomas Allingham, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
537	A	04/16/1999	Skadden Arps		Attorney-Client, Work Product	Draft brief for Krim litigation.
538		11/13/1998	William Sushon, Esq.	Barry Schwartz, Esq., Michael Schwartz, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft documents.
538	A	11/13/1998	Skadden Arps		Work Product	Draft motion to transfer Federal Insurance Co. litigation.
538	B	11/13/1998	Skadden Arps		Attorney-Client, Work Product	Draft J. Kelley declaration in Federal Insurance Co. litigation.
538	C	11/13/1998	Skadden Arps		Attorney-Client, Work Product	Draft notice of pendency of other actions in Camden Asset Management litigation.
539		12/23/1998	Richard Berman, Esq.		Attorney-Client, Work Product	Draft motion for Kiewit litigation.
540		00/00/0000	Eric Golden, Esq.		Work Product	Notes re Cunningham complaint. (Redacted from CP 030931)
541		00/00/0000	Eric Golden, Esq.		Work Product	Notes re Shaev complaint (Redacted from CP 031023).
542		10/20/1998	Paul Shapiro, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
542	A	10/20/1998	Paul Shapiro, Esq.		Attorney-Client, Work Product	Draft letter to Sunbeam lenders re release of claims against Sunbeam.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
543		04/29/1999	Allison Amorison, Esq., Steven Daniels, Esq., Matthew Greenberg, Esq.	Paul Shapiro, Esq., Janet Kelley, Esq., Bobby Jenkins, Karen Clark, Esq., John Frederick, Barry Schwartz, Esq., Steven Isko, Esq., Blaine Fogg, Esq., Richard Easton, Esq., Mitchell Solomon, Esq., Joseph Halliday, Gregory Fenicola, Esq., Larry Frisman, Esq., Robert Zimet, Esq., Thomas Allingham, Esq., Matthew Knopf, Esq., William Weiss, Esq., Tom Gowan, Esq., Robert Saunders, Esq., Prabhat Mehta, Esq., Christopher Malloy, Esq., Kevin Malloy, Esq., Jeffrey Laska, Esq., Steve Thibault, Noel Spiegai, Adam Emmerich, Esq., Steven Cohen, Esq.	Attorney-Client, Work Product	Memorandum re attached document.
543	A	04/29/1999	Skadden Arps	Paul Shapiro, Esq.	Attorney-Client, Work Product	Draft Sunbeam Form S-4 amendment.
544		08/20/1998	Susan Powell, Esq.		Attorney-Client, Work Product	Memorandum re attached documents.
544	A	08/19/1998	Susan Powell, Esq.	Paul Shapiro, Esq.	Attorney-Client, Work Product	Memorandum re Sunbeam draft employment agreements.
544	B	08/19/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for G. Wisler.
544	C	08/19/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for K. Clark.
544	D	08/19/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft employment agreement for F. Feraco.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
545		08/26/1999	Robert P. Totte	Marvin Shaffer, Michael Mullen (cc), Keith Brockman (cc), J. Van Gelder (cc)	Attorney-Client, Work Product	E-mail re tax issues.
546		07/19/2001	Robert P. Totte	Norman Ginstling, Esq.	Attorney-Client, Work Product	Letter re tax closing agreement.
547		03/09/1998	Frank Miller, Esq.	Glenn Dickes, Esq., Anthony Ian, Donald Drapkin, Norman Ginstling, Esq., James Maher, Howard Gittis, Esq., William Nesbitt, Joram Salig, Esq., Marvin Shaffer, Barry Schwartz, Esq., Laurence Winoker, Gregory Woodland, Jerry Levin, Paul Shapiro, Esq., Joseph Page, Steven Isko, Esq., Robert Duffy, Steve Geller, Gordon Rich, Terry Schimek, Esq., Valerie Radwaner, Esq., James Buchanan, Douglas Greeff, Stephen Selhausen, William Hirschberg, Maura O'Sullivan	Attorney-Client, Work Product, Joint Interest	Memorandum re Forms 8-K/A for CLN Holdings, Inc., Coleman Worldwide Corp., and The Coleman Company, Inc.
548		03/26/1998	Steven Cohen, Esq.	Allison Amorison, Esq.	Attorney-Client, Work Product	Draft Certificate of Merger with S. Cohen's handwritten notes.
549		03/26/1998	Allison Amorison, Esq.	Steven Cohen, Esq.	Attorney-Client, Work Product	Draft Certificate of Merger.
550		08/14/1998	Skadden Arps	Peter Langerman, Howard Kristol, Barry Schwartz, Esq., Paul Shapiro, Esq., Stephen Jacobs, Esq., Irwin Warren, Esq., Adam Emmerich, Esq.	Attorney-Client, Work Product	Draft letter re In re Sunbeam litigation.

**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
551		11/03/1998	Barry Schwartz, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product	Fax re attached document
551	A	11/02/2000	Blaine Fogg, Esq.	Barry Schwartz, Esq., Paul Shapiro, Esq., Bobby Jenkins, Janet Kelley, Esq.	Attorney-Client, Work Product, Joint Defense	Fax re In re Sunbeam litigation letter.
552		01/23/1998	Paul Rowe, Esq.		Attorney-Client, Work Product, Joint Defense	Notes re Sunbeam proposal. (Redacted CP 016751-58)
553		03/18/1998	Adam Emmerich, Esq.	Blaine Fogg, Esq.	Attorney-Client, Work Product	Memorandum re attached documents.
553	A	03/18/1998	Skadden Arps		Attorney-Client, Work Product	Draft letter re LYONs redemption.
553	B	03/18/1998	Skadden Arps		Attorney-Client, Work Product	Draft notice of LYONs redemption.
554		03/07/1998	Sarah Strasser, Esq.	Ioannis Zervas, Esq.	Attorney-Client, Work Product	Fax re attached document.
554	A	03/07/1998	Sarah Strasser, Esq.		Attorney-Client, Work Product	Draft European antitrust filing with S. Strasser's handwritten notes.
555		04/24/1998	Frank Miller, Esq.	Barry Schwartz, Esq., James Maher, William Nesbitt, Joram Salig, Esq., Steven Isko, Esq., Adam Emmerich, Esq. (cc), Paul Rowe, Esq. (cc), Rachelle Silverberg, Esq. (cc)	Attorney-Client, Work Product	Memorandum re attached draft document.
555	A	04/23/1998	Skadden Arps		Attorney-Client, Work Product	Excerpt of draft Sunbeam Form S-4.
556		03/23/1999	Brian M. Carolan	File	Attorney-Client, Work Product, Joint Defense, Accountant-Client	Memorandum regarding valuation of Sunbeam warrants for internal accounting purposes (Redacted from CP041767-CP041770).

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
556	A	08/14/1998	Ernst & Young		Accountant-Client	Excerpt of Sunbeam Form 8-K with handwritten marginalia.
556	B	00/00/0000	Ernst & Young		Accountant-Client Privilege	Summary of Ernst & Young valuation of Sunbeam Warrants.
556	C	08/12/1998	The Blackstone Group, LLP		Attorney-Client, Work Product, Joint Defense, Accountant-Client Privilege	Excerpt from the report prepared by Blackstone Group, LLP for counsel to Sunbeam in connection with threatened litigation.
556	D	00/00/0000	Ernst & Young		Attorney-Client, Work Product, Joint Defense, Accountant-Client Privilege	Summary of valuations of Sunbeam warrants performed by Ernst & Young and The Blackstone Group, LLP.
557		08/12/1998	The Blackstone Group, LLP		Attorney-Client, Work Product, Joint Defense	Report prepared by The Blackstone Group, LLP for counsel to Sunbeam in connection with threatened litigation; copy provided to B. Schwartz, Esq. on 11/16/1998 in connection with pending litigation.
558		10/30/1998	Adam Emmerich, Esq.	Barry Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re shareholder litigation.
559		09/15/1998	Joram Salig, Esq.	Barry Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re SEC reporting requirements.
560		09/04/1998	Barry Schwartz, Esq.	Herbert Mondros, Esq.	Attorney-Client, Work Product, Joint Defense	Letter re Goldstein litigation.
561		01/19/2000	Eric Golden, Esq.	Barry Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached document (Redacted from CP 45289).
562		10/14/1998	Cheryl Jackman	Anthony Ian, Barry Schwartz, Esq.	Attorney-Client, Work Product, Joint Defense	Fax re McCall litigation (Redacted from CP 45458).
563		10/28/1998	Barry Schwartz, Esq.	James Maher, William Nesbitt	Attorney-Client, Work Product	Memorandum re attached letter (Redacted from CP 45695).

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
563	A	10/23/1998	Barry Schwartz, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Fax re attached letter (Redacted from CP 45698).
564		07/22/1998	Thomas Allingham II, Esq.	Barry Schwartz, Esq.	Attorney-Client, Work Product, Joint Defense	Fax re In re Coleman Shareholders litigation (Redacted from CP 45720).
565		00/00/0000	Eric Golden, Esq.		Attorney-Client, Work Product	Memorandum re attached Yassin complaint (Redacted from CP 045784).
566		08/13/1998	Barry Schwartz, Esq.	Anthony Ian	Attorney-Client, Work Product	Fax message (Redacted from CP 45519).
567		10/28/1998	Barry Schwartz, Esq.	Adam Emmerich, Esq.	Attorney-Client, Work Product	Fax message re attached document (Redacted from CP 4032).
568		07/05/1998	Adam Emmerich, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached draft letter.
568	A	07/05/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter re potential claims against Sunbeam.
569		07/05/1998	Adam Emmerich, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached draft letter.
569	A	07/06/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter re potential claims against Sunbeam.
570		07/05/1998	Adam Emmerich, Esq.	Howard Gittis, Esq., Barry Schwartz, Esq.	Attorney-Client, Work Product	Memorandum re attached draft letter.
570	A	07/05/1998	Wachtell Lipton		Attorney-Client, Work Product	Draft letter re potential claims against Sunbeam.
571		02/24/1998	Steven Cohen, Esq.	Steven Isko, Esq.	Attorney-Client, Work Product	Memoranda re Coleman.
572		09/14/1998	Frank Miller, Esq.	Barry Schwartz, Esq., (cc) Michael W. Schwartz, Esq., (cc) Adam Emmerich, Esq.	Attorney-Client, Work Product	Memorandum re attached document.

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Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.

CPH PRIVILEGE LOG

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
572	A	09/14/1998	Wachtell Lipton		Attorney-Client, Work Product	Memorandum re Coleman merger.

NOT A CERTIFIED COPY

NOT A CERTIFIED COPY

040226

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

CONFIDENTIAL -
FILED UNDER SEAL

MORGAN STANLEY & CO. INCORPORATED'S OPPOSITION TO COLEMAN
(PARENT) HOLDINGS, INC.'S MOTION TO COMPEL CONCERNING EMAILS

Defendant Morgan Stanley & Co. Incorporated ("MS & Co."), by and through its undersigned attorneys, files this opposition to plaintiff's Motion to Compel Concerning Emails and states:

Plaintiff Coleman (Parent) Holding, Inc. ("CPH") asks this Court to order a massive safari into the remote corners of MS & Co.'s email backup systems. The restoration efforts demanded by CPH would *cost at least hundreds of thousands of dollars* and require several months to complete. CPH's true purpose in seeking this discovery – to harass and burden MS & Co. with unnecessary and costly discovery demands and to attempt to smear MS & Co. with out-of-context recitations from other proceedings – is clear from the face of its own motion. CPH *concedes* that MS & Co. is only able to restore email from backup tapes from January 2000 and later – *more than a year and a half after the events that allegedly gave rise to CPH's claims* – yet CPH offers no theory to explain the relevance of such documents. Moreover, CPH requests



that MS & Co. complete the location, restoration, review, and production of such documents in 10 days – an impossible task.

CPH's motion is especially brazen since CPH comes to the Court with unclean hands. CPH waited *more than five years* to file this lawsuit – a lawsuit that neither the SEC nor any other class of allegedly aggrieved persons felt was justified. In the meantime, despite knowledge of actual litigation dating back to 1998,¹ *CPH allowed its own email backup tapes to be recycled*, making it impossible for CPH and its parent company, MacAndrews & Forbes ("MAFCO"), to provide reciprocal discovery. CPH should not be permitted to impose such a massive and unjustified burden on MS & Co. and benefit from its own malfeasance.

**STATEMENT REGARDING APPROPRIATENESS
OF THIS MOTION FOR UNIFORM MOTION CALENDAR**

CPH's motion is not appropriate for disposition on the Court's Uniform Motion Calendar. The extraordinary relief that CPH seeks – the restoration and review of more than three years worth of email backup tapes – would impose an extreme burden on MS & Co. and *cost at least hundreds of thousands of dollars*. CPH seeks this extreme result without regard to the near-zero likelihood of discovering relevant evidence. MS & Co. should not be required to incur that burden and expense unless and until the Court has had an opportunity – with the benefit of an evidentiary hearing – to understand fully the scope of CPH's demand.

In opposition to CPH's motion, MS & Co. intends to present evidence – including live testimony from personnel in MS & Co.'s Information Technology department – regarding the technological feasibility of CPH's demands regarding backup media, as well as the enormous burden and costs that would be imposed on MS & Co. if the motion were granted. Accordingly,

¹ "[B]y the year end 1998 there was litigation of which I was aware." (Sept. 15, 2003 Fasman Dep. at 66 (Ex.1).)

unless the Court is prepared to deny CPH's motion in its entirety, MS & Co. requests that the Court set the motion for a special evidentiary hearing.

MS & CO.'S EMAIL BACKUP AND RESTORATION SYSTEMS

Since the evolution of email applications for business use, MS & Co. has deployed email and backup systems throughout its network of over 50,000 employees in over 28 countries, consistently updating and improving its systems as technology evolved along the way. MS & Co. has operated systems for backing up its various email and electronic databases on its mainframe computers, both for business-continuity purposes and for regulatory compliance, ever since it first deployed email throughout the company. Before 2000, MS & Co. relied principally on a commercial product known as "Legato Networker" to backup onto magnetic tapes all data on MS & Co.'s Unix servers, including email. The magnetic tapes were retained for one year, then overwritten and recycled in the normal course of business. Unfortunately, the Legato Networker system encountered technical and operational difficulties that made it difficult for MS & Co. to backup email messages reliably in all circumstances.

In late 2000, MS & Co. migrated to a new email backup system that was more reliable and robust – Veritas Net Backup. The Veritas Net Backup system stores archived email and other documents on magnetic tape without any sort of detailed index. The net result is that, given the operational and technical difficulties experienced with the discontinued Legato Networker system, and because MS & Co., in the normal course of business, recycled its magnetic backup tapes after one year, MS & Co. can only reliably restore electronic documents on back up tapes created after January 2000.²

² CPH's reference to an unrelated \$1.65 million settlement reached by MS & Co. with the SEC, the NASD and the NYSE is irrelevant and nothing more than an attempt to smear MS & Co. without justification. That regulatory (Continued...)

Even for those documents that can be restored, the restoration of backups from magnetic tape is a very long, expensive process. As an initial matter, the sheer volume of MS & Co.'s backup tapes is staggering. For instance, the email backups for the period from January 2000 to May 2001 are stored on over 24,000 Legato magnetic tapes. These 24,000 tapes also contain a considerably greater amount of non-email data, which increases the time required to search for requested materials.

Given the tens of thousands of backup tapes that hold historical data, simply locating the appropriate tapes to restore is a time- and resource-intensive process. First, a list of relevant employees must be identified and agreed upon. Then, MS & Co. IT staff must spend time working with a forensic investigations staff to determine which mail server and partition stores those users' data. But this review only reveals information regarding a user's current storage location. If a user has switched servers or partitions during their time at MS & Co. (an extremely common occurrence that typically happens to every employee who has been with MS & Co. for any length of time), then additional searches must be conducted in order to determine each previous server and partition location for the employee.

Once a user's mail server and partition location are determined, this information is given to the distributed systems IT personnel who must search a database to determine where the respective tapes are located. Typically, tapes are stored offsite by a vendor, and even after they are located, they must be recalled before any restoration can begin. Because of the sheer volume

settlement – which involved not only MS & Co. but also four other major securities firms (Goldman Sachs, Deutsche Bank, Saloman Smith Barney and U.S. Bancorp Piper Jaffray) – reflected the negotiated resolution of a long-standing dispute between the industry and the SEC over the proper interpretation and application of the SEC's regulatory records retention requirements to evolving email technologies. The settlement did not involve any allegation that the firms had intentionally destroyed records to hinder regulatory oversight or otherwise avoid any liability. Moreover, the email at issue in the regulatory settlement related to 1999 and 2000 – *i.e.*, periods well *after* the relevant time period at issue here.

in tapes, and the incidence of human error on the part of storage facility personnel, it is not uncommon for this stage to be subject to additional delays. On average, it takes 1 - 2 weeks per user simply to locate and retrieve appropriate backup tapes.

After the required tapes are located and recalled from storage, they must be restored. Due to the limitations of the hardware and software involved and the incredible demands upon MS & Co.'s IT resources, *MS & Co. is only able to restore, at most, 3 to 5 backup tapes per day*. Indeed, this volume of restoration would only be possible if MS & Co. retained an outside vendor to assist in the restoration process – an undertaking that, given the breadth of CPH's request, would take *months* and *cost at least hundreds of thousands of dollars*. Even then, the restoration is uncertain to yield useful results due to problems that may have been encountered during the backup or to the deterioration of the tapes.

Beyond locating and restoring the backup tapes, MS & Co. also would have to review the restored data for responsiveness, confidentiality and privilege, another time consuming and costly task likely to result, in this case, in the production of only a few responsive documents, if any at all. Backup tapes save information indiscriminately – without regard to source or topic – and they must be restored in the same manner. This means that the vast majority of data that would be restored would be completely unrelated to the transaction at issue. MS & Co. would have to enter into a contract with an outside vendor, solely to assist in MS & Co.'s ability to process these restored emails as efficiently and effectively as possible. This contract would likely cost an additional hundreds of thousands of dollars. The outside vendor would remove exact duplicates through a process known as de-duping and then prepare and format the restored emails for electronic review. The vendor would then send the de-duped data to outside counsel, where technical staff would load it into a database and search it for the necessary terms. Emails

containing those terms are then loaded into review folders for attorney review. The time required for attorney review varies considerably according to the number of documents involved, the complexity of the search criteria, and the medium being reviewed.

Even with such Herculean efforts, MS & Co. can only reliably restore backup tapes created after January 2000 – several *years* after the events that gave rise to the claims CPH seeks to assert in this case. Even for this irrelevant time period, the backup and restoration of email from magnetic tape is at best an uncertain process that will cost well over hundreds of thousands of dollars, take months to complete, and likely yield nothing more than the production of a handful of responsive documents, if any at all.

ARGUMENT

I. CPH CANNOT JUSTIFY THE ENORMOUS BURDEN THAT IT SEEKS TO IMPOSE TO OBTAIN IRRELEVANT DOCUMENTS.

A. CPH Seeks To Impose Extreme Burden And Expense On MS & Co.

The sort of harassing fishing expedition that CPH proposes in its motion is neither justified nor permitted by law. Numerous courts have recognized the enormous burden of restoring magnetic backup tapes. *See, e.g., Murphy Oil USA, Inc. v. Fluor Daniel, Inc.*, No. Civ. A. 99-3564, 2002 WL 246439, at *2 (E.D. La. Feb. 19, 2002) (recognizing that it would take at least 6 months and cost an estimated \$6 million to comply with request to restore backup tapes). Balancing the huge burden of such restoration against the potential benefit, courts routinely refuse a party's attempt to force such an undertaking or shift the cost to the requesting party. *See, e.g., Wright v. AmSouth Bancorporation*, 320 F.3d 1198, 1205 (11th Cir. 2003) (affirming district court order denying motion to compel discovery of all computer tape copies of word processing files created by 5 employees over a two and one-half year period); *McPeck v. Ashcroft*, 212 F.R.D. 33, 36 (D.D.C. 2003) (declining to order searches of certain backup tapes

where the burden on defendant would be great and it was unlikely that a search would produce relevant documents because the time period covered by the tapes was not contemporaneous with the events at issue); *Concord Boat Corp. v. Brunswick Corp.*, No. LRC-95-781, 1997 WL 33352759, at *9 (E.D. Ark. Aug. 29, 1997) (“Fourteen days worth of e-mail, which might contain a few deleted e-mail, seems to hardly justify the expense necessary to obtain it. Similarly, even if earlier backup tapes containing ‘snapshots’ of the system were in existence, the potential limited gains from a search of such tapes would be outweighed by the substantial burden and expense of conducting the search. Accordingly, the Court finds that Defendant will not be required to restore and search any available backup tapes which might contain deleted Fischer e-mail.”).

The process for retrieving, restoring, searching, and producing backup emails is widely recognized as an enormously burdensome task. As an initial matter, magnetic backup tapes “can retain staggering amounts of data.” Martin H. Redish, *Electronic Discovery and the Litigation Matrix*, 51 Duke L.J. 561, 590 (Nov. 2001). For example, “one eight-millimeter backup tape can hold as much information as 1500 boxes of paper.” *Id.* Moreover, even within this vast mass of undifferentiated data, it is extremely time consuming and burdensome to locate any particular piece of information. *See, e.g., McPeck*, 212 F.R.D. at 35 (noting that “the frustration of electronic discovery as it relates to backup tapes is that backup tapes collect information indiscriminately, regardless of topic” and, as a result, one typically “cannot reasonably predict that information is likely to be on a particular tape”).

MS & Co.’s electronic backup system, as described above, is complex and extensive. As a result, the process for retrieving, restoring, searching and producing emails from MS & Co.’s electronic backup system is unreasonably costly and time consuming, and would require

countless man-hours by outside vendors and attorneys, in addition to MS & Co. employees. To put CPH's request in context, it is important to recognize that simply to search the 24,000 Legato Networker magnetic tapes from the January 2000-May 2001 time period would be the equivalent of searching tens of millions of pages of paper – a truly staggering amount.

As MS & Co. intends to show during a evidentiary hearing on this issue, MS & Co.'s Information Technology Department estimates that compliance with CPH's extraordinary request would not only be completely *impossible* to achieve within 10 days – as CPH demands – but would ultimately cripple the progress of this case altogether.

The process of restoring electronic backup tapes proceeds in four distinct stages: retrieval, restoration, processing, and review. On average, during the first stage, it takes 1-2 weeks per specified user just to identify, locate, and retrieve the electronic backup tapes that correspond to a particular server and user. This means that, if MS & Co. were to be forced just to track down and retrieve the electronic backup tapes for each of the 55 employees CPH has indicated that it believes is relevant in this case, *see* Sept. 2, 2003 *CPH's Responses and Objections to MS & Co.'s First Set of Interrogatories* at 6-7 (Ex. 2), and did so seriatim, it would take approximately 27 months to complete just that task. While MS & Co. may be able to complete this task more quickly, it could only do so by applying more resources, at greater cost.

Second, once the pertinent tapes were identified and retrieved, MS & Co. would need to hire an outside forensics vendor – at significant cost and delay – to assist it in the actual restoration process. MS & Co. estimates that the actual restoration phase of this process could take another several months at additional significant cost. *See* Stephen J. Snyder and Abigail E. Crouse, *Applying Rule 1 in the Information Age*, 4 Sedona Conf. J. 165, 168 (Fall 2003) (noting

that it could take an electronic discovery vendor 100 hours just to restore only one month's worth of a company's deleted email).

Next, once the restoration was complete, MS & Co. would likely need to retain yet another outside vendor – at a cost of hundreds of thousands of dollars – to assist in the process of removing exact duplicates and preparing and formatting the restored emails for electronic review. The turnaround time on such a large electronic document processing project could take several months.

Finally, after the processing phase was finished, a phalanx of attorneys would need to be deployed in order to review the mass of restored emails for responsiveness, confidentiality, and privilege.

In total, MS & Co. estimates that it could take over a year and could cost several hundred thousand dollars to comply with CPH's extraordinary demand. The reasonableness of this estimate is confirmed by other cases that have recognized the burden imposed by such requests. *See, e.g., Murphy Oil USA*, 2002 WL 246439, at *2 (recognizing that it would take at least 6 months and cost an estimated \$6 million to comply with request to restore backup tapes); *Rowe Entertainment, Inc. v. William Morris Agency, Inc.*, 205 F.R.D. 421, 425 (S.D.N.Y. 2002) (noting that the estimated cost of producing email off of all of defendant's backup tapes could mushroom to \$9.75 million).

B. CPH Does Not Offer Even A Minimal Theory Of Relevancy To Justify Its Extraordinary Request.

CPH offers *no justification whatsoever* for its request that the Court order MS & Co. to undertake a costly restoration of email backup tapes *created two years after the acquisition and financing transactions* that form the basis of CPH's Complaint. CPH's Complaint focuses exclusively on the time period leading up to Sunbeam's acquisition of The Coleman Company in

March 1998. In particular, CPH focuses its allegations on a narrow two-week time frame between March 17-18, 1998, and March 30, 1998, in which CPH alleges that MS & Co. somehow learned of the fraud at Sunbeam prior to the acquisition. (See May 8, 2003 Compl. ¶¶ 53-77.) Both parties have therefore focused their discovery efforts on documents created in or around these two weeks in March of 1998. (See May 9, 2003 Plf's 1st Req. for Prod. of Docs.)

CPH's present motion, however, seeks to restore electronic documents saved during a wholly different time period. MS & Co., as noted above and acknowledged in CPH's Motion, can only reliably restore electronic documents archived during or after January 2000 from its electronic backup tape systems. But CPH's motion does not even attempt to explain how backup tapes from almost *two years* after the events at issue could contain documents that are even remotely relevant to this case – or responsive to its requests. See *McPeck*, 212 F.R.D. at 35 (“The likelihood of finding relevant data has to be a function of the application of the common sense principle that people generate data referring to an event, whether e-mail or word processing documents, contemporaneous with that event. . . . Conversely, it is unlikely that people, working in an office, generate data about an event that is not contemporaneous unless they have been charged with the responsibility to investigate that event or to create some form of history about it.”).

Indeed, CPH does not even suggest that relevant documents responsive to its document requests are likely to exist in these backup tapes³, because it is obvious that they would not. Nonetheless, consistent with CPH's scorched-earth discovery tactics designed to burden and

³ (Oct. 29, 2003 CPH's Mot. to Compel Concerning E-Mails ¶ 4 (“[W]e do not know whether responsive emails exist and can be retrieved.”).)

harass MS & Co. into an undeserved settlement,⁴ CPH asks this Court to sanction an enormously burdensome recovery process that would cost at least hundreds of thousands of dollars and significantly delay this case without even a minimal showing of relevance. The burden CPH seeks to impose simply cannot be justified given the fact that CPH has not attempted to make even a threshold showing of relevance. *See Wright*, 320 F.3d at 1205 (affirming district court order denying motion to compel discovery of all computer tape copies of word processing files created by 5 employees over a two-and-one-half year period where plaintiff failed to proffer a theory of relevance). At a minimum, MS & Co. should not be forced to incur such extraordinary costs until a decision is made on its pending motion to dismiss.

C. The Court's Prior Discovery Rulings Confirm The Irrelevancy Of Documents Created After January 2000.

It is undisputed that MS & Co. is only able (albeit with considerable burden and expense) to restore backup tapes archived since January 2000. But the Court has *already determined* the irrelevancy of documents created after January 2000. Just last week, the Court limited CPH's far less burdensome request for "all documents concerning Scott Paper" to documents created

⁴ *See McPeck v. Ashcroft*, 202 F.R.D. 31, 34 (D.D.C. 2001) ("It must be recalled that ordering the producing party to restore backup tapes upon a showing of likelihood that they will contain relevant information in every case gives the plaintiff a gigantic club with which to beat his opponent into settlement. No corporate president in her right mind would fail to settle a lawsuit for \$100,000 if the restoration of backup tapes would cost \$300,000. While that scenario might warm the cockles of certain lawyers' hearts, no one would accuse it of being just.") (emphasis added); Bruce Rubenstein, *Electronic Discovery Costs are Leveraging Settlements*, Corporate Legal Times September 1997, at 26 (observing that "[t]he simple threat of forcing a corporation to review thousands of files or backup tapes has become . . . an incredible bargaining chip" and noting that this threat "has leveraged countless settlements in the last decade"); Lawrence Aragon, *E-mail Is Not Beyond the Law*, PC Wk., Oct. 6, 1997, 111 (discussing instance in which defendant chose to settle rather than to incur enormous electronic data discovery costs); Karen L. Hagberg & A. Max Olson, *Shadow Data, E-mail Play a Key Role in Discovery, Trial*, N.Y. L.J., June 16, 1997, at S3 (discussing problem involving plaintiffs using discovery rules to harass defendants); James J. Marcellino & Anthony A. Bongiorno, *E-mail Is the Hottest Topic in Discovery Disputes: One Litigant Seeks Facts Buried in a Data Base; the Other Seeks to Avoid Burdens of Production*, Nat'l L.J., Nov. 3, 1997, at B10 (discussing potential for abuse of discovery rules involving electronically stored data requests); Janet Novack, *Control/All/Discover*, Forbes, Jan. 13, 1997, at 60 (referring to use of cost of electronic data discovery to force settlement as "blackmail"); Geanne Rosenberg, *Electronic Discovery Proves Effective Legal Weapon*, J. Rec., Apr. 21, 1997, available in 1997 WL 14390671 (discussing use of electronically stored data discovery requests as negotiation tool).

between January 1, 1997 and January 1, 2000. (See Oct. 27, 2003 Order on Coleman (Parent) Holding's Motion to Compel Production of Documents Relating to Scott Paper (Ex. 3).) Counsel for CPH agreed with the Court's time limitation. The Court's prior ruling on this issue and counsel's agreement confirms that documents created after January 2000 are irrelevant to CPH's claims. As with the "Scott Paper" document requests, MS & Co. should not be required to undertake the burden and expense of searching email backup tapes from later time periods.

The acquisition and financing transactions that form the basis of CPH's purported claims closed in March 1998. That is the *latest possible date* that CPH could even *argue* that MS & Co.'s documents are relevant to this lawsuit. The Court's prior discovery ruling confirms that documents created years after the fact are not relevant to CPH's claims. The ruling applies with even greater force to CPH's current request, which would impose exponentially greater burdens and expenses on MS & Co.

II. ALTERNATIVELY, IF CPH'S MOTION IS GRANTED, CPH SHOULD BE ORDERED TO ABSORB THE EXTRAORDINARY COSTS OF THE ELECTRONIC RECOVERY PROCESS.

The recovery of email from emergency electronic disaster-recovery backup tapes is, as outlined above, an extraordinarily burdensome, costly, and time-consuming process. In recognition of this fact, those few courts that have ordered production of even a limited set of backup tapes have forced the requesting party to incur the costs associated with such an extraordinary request if they chose to insist upon it. *See, e.g., Murphy Oil USA*, 2002 WL 246439, at *6 (shifting the estimated \$6 million cost of restoring backup tapes to requesting party); *Rowe*, 205 F.R.D. at 433; *Byers v. Illinois State Police*, No. 99 C 8105, 2002 WL 1264004, at *11-12 (N.D. Ill. June 3, 2002); *Kormendi v. Computer Assocs. Int'l, Inc.*, No. 02 Civ. 2996, 2002 WL 31385832, at *3 (S.D.N.Y. Oct. 21, 2002); *Anti-Monopoly, Inc. v. Hasbro*, No. 94-Civ. 2120 LMMAJP, 1996 WL 22976, at *2 (S.D.N.Y. Jan. 23, 1996); *In re Air Crash*

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Disaster at Detroit Metropolitan Airport on Aug. 16, 1987, 130 F.R.D. 634, 636 (E.D. Mich. 1989).

Such cost-shifting has been endorsed by both the American Bar Association and the Sedona Conference Working Group on Best Practices for Electronic Document Retention & Production. See, e.g., Jonathan M. Redgrave, *The Sedona Principles: Best Practices Recommendations & Principles for Addressing Electronic Document Production*, 4 Sedona Conf. J. 197, 230 (Fall 2003) (“Absent special circumstances, costs of electronic discovery involving extraordinary effort or resources (including deleted data, disaster recovery backup tapes, residual data and legacy systems and tapes) should be allocated to the requesting party.”); *id.* (“The discovering party generally should bear any special expenses incurred by the responding party in producing requested electronic information.”) (quoting *ABA Discovery Standard* 29(b)(iiii)). Therefore, should this Court be inclined to grant CPH’s motion, MS & Co. respectfully requests that CPH be ordered to incur the costs associated with the backup recovery process.

III. CPH’S MOTION SHOULD BE DENIED FOR THE ADDITIONAL REASON THAT CPH APPROACHES THIS COURT WITH UNCLEAN HANDS.

In the state of Florida and elsewhere, it is axiomatic that a party that comes to court seeking relief that lies within the sound discretion of the district court must do so with clean hands. See *Ashwood v. Patterson*, 49 So. 2d 848, 850 (Fla. 1951) (invoking a “fundamental equitable principle that ‘no one shall be permitted to profit by his own fraud, or take advantage of his own wrong, or found any claim upon his own iniquity, or profit by his own crime’”). In this case, however, CPH has utterly failed to do so.

Unlike MS & Co., CPH was almost immediately involved in litigation after Sunbeam’s acquisition of Coleman in 1998 – and was under an immediate legal duty to preserve all

documents relating to its claims. Indeed, CPH was working with its outside counsel to evaluate its options for filing lawsuits against various parties, presumably including MS & Co., as early as July 1998.⁵

Yet CPH waited five years – until the eve of the running of the statute of limitations – to institute suit against MS & Co. In that five-year period, despite a legal obligation to preserve documents in anticipation of its successive lawsuits against Sunbeam, Arthur Andersen, and MS & Co., CPH – a company that shuns a formal document retention policy⁶ – admittedly failed to retain a significant amount of documents relating to the events at issue. For instance, CPH never halted the recycling of its email backup tapes.⁷ Indeed, CPH did not even begin to collect documents related to the Sunbeam acquisition of Coleman until sometime around 2000,⁸ and even then, it refused to search for and collect any electronic documents.⁹ As a result, since CPH's electronic backup systems are recycled on approximately a monthly basis, *not a single email or other electronic document* originating from CPH has apparently been retained.

⁵ Indeed, the privilege log provided by CPH in this case reveals that CPH and its outside counsel, Wachtell Lipton, were discussing potential litigation options arising out of the Sunbeam transaction as early as July 5, 1998. (See Oct. 6, 2003 CPH Privilege Log at Documents 50, 136, 198, 198A, 218, 280, 281, 282, 282A-C, 284, 284A, 323, 323A, 324, 324A, 356, 456, 568, 568A, 569, 569A, 570, 570A (Ex. 4).)

⁶ (See Fasman Dep. at 31-32 (“Q: So has Coleman (Parent) ever had a document retention policy? A: No. Q: Has Coleman (Parent) ever had any policy related to the use of electronic documents, including e-mails? A: No. Q: Is it true that MacAndrews & Forbes has no document retention policy? A: Correct. Q: Has MacAndrews & Forbes ever had a document retention policy? A: No.”).)

⁷ (See Fasman Dep. at 49, 55-56.)

⁸ (See Fasman Dep. at 84 (“Q: When is the first time that anyone collected CPH or MAFCO documents related to the Sunbeam acquisition of Coleman? A: Collected documents in connection with a request to produce documents? Q: For any purpose. A: 2000. Or 99, 2000, that period.”).)

⁹ (See Fasman Dep. at 99, 108 (“Q: In Mr. Golden's collection of documents for the securities litigation [in 2000] did he collect from anyone electronic documents? A: No. . . . Q: Did Mr. Golden undertake any search of the servers in response to the document production or collection in 1999 or 2000 for the securities litigation? A: No.”).)

Nonetheless, after it ensured that all of its own electronic documents were destroyed, CPH filed a lawsuit against MS & Co seeking to recover hundreds of millions of dollars.

Undaunted by its own deficiencies, and unwilling to accept efforts at compromise proposed by MS & Co., CPH now asks this Court to order MS & Co. to do what it cannot: restore email off of backup systems. And it asks this Court to order such extraordinarily costly and burdensome discovery *before* a pending motion to dismiss in this case is decided, which could potentially obviate the need to incur hundreds of thousands of dollars in recovery costs altogether. If CPH's motion is granted, it would result in patent unfairness to MS & Co. In essence, CPH could actually benefit from its own destruction of documents. Such a one-sided result should not be sanctioned by this Court. Those with unclean hands should not be heard to complain.

CONCLUSION

For the foregoing reasons, MS & Co. respectfully requests that this Court deny CPH's motion to compel concerning emails. If the motion is granted, however, MS & Co. respectfully requests that CPH be required to pay for the costs of the recovery.

Dated: November 4, 2003

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express and email to all counsel of record on the attached service list on this 4th day of November, 2003.

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THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

CASE NO. 2003CA 005045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

KJM

Material Redacted Without Prior Determination Of Confidentiality By Court

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY'S
MOTION FOR SANCTIONS FOR ALLEGED DISCOVERY ABUSES

In a further attempt to distract attention from its repeated violations of the Court's Orders, Morgan Stanley has filed another motion for sanctions based on so-called discovery "abuses" associated with CPH's recent production of MAFCO Holdings Inc. ("MAFCO") financial information. Morgan Stanley's motion, which addresses discovery disputes that this Court already disposed of in its February 17 and 24, 2005 Orders (see Exs. 1-2), centers on two purported valuation numbers: [REDACTED]

[REDACTED]. As is demonstrated more fully below, Morgan Stanley's motion is without merit and should be denied.

First, with respect to the [REDACTED], CPH produced documents containing that number by noon on February 18, in accordance with this Court's February 17, 2005 Order. Moreover, despite Morgan Stanley's attempt to portray the [REDACTED]

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1611

[REDACTED]

(that is, "Earnings Before Interest and Taxes"). None of those conditions ever happened. In short, the [REDACTED] And indeed, as the undisputed testimony has demonstrated, the [REDACTED]

[REDACTED]

[REDACTED] See Section 2 *infra*.

Second, with respect to the [REDACTED] that CPH produced on February 20, that is hardly news. Morgan Stanley has known for years that Sunbeam [REDACTED] and Morgan Stanley has examined witnesses about that number. [REDACTED]

[REDACTED]

[REDACTED]. Instead, as CPH will show in the post-verdict proceedings that the Court will conduct concerning the value of the warrants, they had no value. See Section 5 *infra*.

Third, Morgan Stanley attempts to spin gold from straw by [REDACTED] (at p. 2) [REDACTED]

[REDACTED]

[REDACTED] that is not correct. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

039914

[REDACTED]

[REDACTED] See Ex. 22 at CPH 2012216. [REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED] See Ex. 25, Perelman 3/10/05 Dep. at 50.

[REDACTED]

[REDACTED] See Section

5 *infra.*

Thus, as is demonstrated more fully below, Morgan Stanley's attempt to obtain additional sanctions is unfounded. Unlike Morgan Stanley, which has fought CPH's legitimate discovery efforts and this Court's Orders every inch of the way, CPH has complied properly and in good faith with this Court's Orders and has not prejudiced Morgan Stanley.

039915

Background

A brief timeline of relevant events would be helpful to place Morgan Stanley's assertions in context:

November 18-19, 2004. In its February 15, 2005 motion to compel, Morgan Stanley concedes that it learned of the existence of the financial documents at issue when it deposed Lawrence Winoker and Howard Gittis. *See* Ex. 3, 2/15/05 Mot. ¶ 3. Morgan Stanley, however, did not file a motion to compel before the November 23 discovery cut-off — instead waiting until February 15, 2005 to file one. At the February 17 hearing on Morgan Stanley's motion, the Court found that the delay from the time CPH responded to Morgan Stanley's original document request through November 18, 2004 was chargeable to CPH, but the delay in the production of documents from November 18, 2004 through February 17, 2005 was Morgan Stanley's fault. *See* Ex. 4, 2/17/05 Tr. 989-90.

November 24, 2004. CPH produced a [REDACTED]

February 15-17, 2005. Morgan Stanley filed its motion to compel, and two days later, CPH responded. That same day, February 17, the Court granted Morgan Stanley's motion, directing that (Ex. 1):

CPH shall produce for inspection and copying by 12 noon February 18, 2005 all documents within the care, custody, or control of it or any related entity reflected in the accounting value, book value, balance sheet value, or internal valuation of the Sunbeam stock received by CPH in the transaction, produced during and/or reflecting a value at any time between the date the transaction closed and the date Sunbeam first sought bankruptcy protection. By 12 noon February 23, 2005, any party may serve motions for discovery directly related to newly produced items, which must be responded to by 12 noon February 25, 2005.

February 18, 2005. By noon on Friday, February 18, CPH produced redacted financial information in response to the Court's February 15 Order. The documents that were produced

[REDACTED] Indeed, although
Morgan Stanley suggests in its motion that the [REDACTED]

[REDACTED]

[REDACTED] See Ex. 5, CPH 2012110.

Also on February 18, because CPH redacted information from the materials produced by Morgan Stanley and had no time to seek guidance from the Court as to the propriety of doing so before the weekend, CPH served a motion to determine whether the information it had provided was in full compliance with this Court's February 17 Order. See Ex. 6. CPH represented in its motion that it was bringing unredacted copies of all of the documents to Court on the next court day and CPH in fact did so. The Court overruled CPH's redactions (Ex. 7, 2/24/05 Tr. 1554-55), and CPH promptly provided unredacted copies of the documents to Morgan Stanley.

CPH subsequently located similar documents containing [REDACTED] and promptly produced those documents to Morgan Stanley. Those additional documents add nothing material beyond what Morgan Stanley already knew from the documents CPH produced on February 18.

February 20, 2005. On Sunday, February 20, before the Court ruled on CPH's motion concerning its redactions, CPH removed redactions from entries concerning [REDACTED]

[REDACTED] CPH produced those documents on that Sunday. [REDACTED]

[REDACTED] See Ex. 8 at CPH 2012131. CPH subsequently located additional documents that [REDACTED]

[REDACTED]
Morgan Stanley acts as if it were unaware of [REDACTED]

before receiving the documents on February 20, 2005, but in fact, CPH produced a document

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reflecting that [REDACTED] during CPH's first document production. That document containing [REDACTED] — which was marked by Morgan Stanley as MS Deposition Exhibit 97 (Ex. 9) — was used at multiple depositions by Morgan Stanley to question witnesses [REDACTED]. See, e.g., Ex. 10, Ginstling Dep. at 266-68; Ex. 24, Winoker 11/18/04 Dep. at 49-50; Ex. 12, Clark Dep. at 152; Ex. 13, Emmerich Dep. at 229; Ex. 14, Engelman Dep. at 108; Ex. 15, Nesbitt Dep. at 476-77. In addition, Su [REDACTED] in a public SEC filing in 1998, which Morgan Stanley also marked as a deposition exhibit in this case. See Ex. 29 at 10.

March 3, 4, 8, 10, and 11, 2005. Morgan Stanley took the depositions of Todd Slotkin as the CPH corporate representative, Lawrence Winoker, Ronald Perelman, and CPH's damages expert Blaine Nye on the issues raised by CPH's recent document production. CPH produced all of those witnesses in West Palm Beach.

Argument

Morgan Stanley contends [REDACTED]

As shown below, those assertions are all false and misleading.

1. **Morgan Stanley Wrongly Asserts That CPH Failed To Collect And Preserve Valuation Documents From MAFCO's Finance Department.**

Morgan Stanley begins by [REDACTED]

[REDACTED]

[REDACTED] (§ 5, emphasis in original, exclamation point omitted); [REDACTED]

[REDACTED]

[REDACTED] *id.* ¶ 6); and (3) [REDACTED]

[REDACTED]

id. ¶ 7). Those assertions are baseless.

First, with regard to the search of MAFCO's accounting department for responsive documents before mid-February 2005, Morgan Stanley fails to advise this Court of a key fact: Mr. Winoker was not even employed by MAFCO at the time that documents were searched and gathered for production in the middle of 2003. [REDACTED]

[REDACTED]

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[REDACTED]

See Ex. 11, Winoker 3/8/05 Dep. at 7.

Mr. Winoker obviously cannot be faulted for failing to search for documents of a company that did not employ him, but, inexplicably, Morgan Stanley omits this important fact of which it is well aware.

Morgan Stanley also fails to disclose that the documents of MAFCO's finance department were in fact searched for relevant documents and those documents were produced to Morgan Stanley.

[REDACTED]

[REDACTED] (Ex. 16, Fasman 9/15/03 Dep. at 140-41):

[REDACTED]

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[REDACTED]

[REDACTED] See Exs. 17-21.

Second, as for [REDACTED]

[REDACTED] Mr. Winoker in fact obtained from other individuals the documents recently produced and the numbers highlighted by Morgan Stanley. For example, Mr. Winoker [REDACTED]

[REDACTED] See Ex. 22 at CPH 2012216; Ex. 11, Winoker 3/08/05 Dep at 37-40.¹

In sum, Morgan Stanley's assertion that [REDACTED] constitutes an attempt to mislead this Court about CPH's discovery compliance efforts. Mr. Winoker was not even employed by MAFCO at the time documents were searched and gathered for production in this litigation during 2003, so, obviously, he was in no position to perform that function. That function was in fact performed by individuals who then were employed in the MAFCO financial department, in concert with attorneys in MAFCO's General Counsel's office, as Morgan Stanley is well aware.

2. Morgan Stanley's Assertion That Key Financial Documents Were Withheld From Production Is A Refresh Of The Issues Addressed In Morgan Stanley's February 15, 2005 Motion to Compel.

Morgan Stanley next accuses (¶¶ 6-10) CPH of withholding key MAFCO financial documents, but this charge is just a repeat of the charges made in Morgan Stanley's February 15, 2005 motion to compel, which this Court already has addressed fully in its February 17 and 24 Orders.

¹ As for Morgan Stanley's recycled assertions that [REDACTED]

CPH's response establishes that: (1) Morgan Stanley never filed a motion to obtain CPH's e-mails and, indeed, successfully opposed a motion filed by CPH offering to have a third party attempt to restore both CPH's e-mails and Morgan Stanley's e-mails; (2) Morgan Stanley's argument about CPH's privilege log is a rehash of an argument Morgan Stanley made in a November 4, 2003 opposition to CPH's motion to compel production of Morgan Stanley's e-mails and then abandoned; (3) CPH, unlike Morgan Stanley, had no statutory obligation to preserve e-mails; and (4) the applicable law does not support any sanction against CPH.

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[REDACTED]

Id. at 74-75.

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] *Id.* at 74.

In sum, far from being material, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. CPH Did Not Provide Deliberately Incorrect Testimony At The Corporate Representative Deposition Concerning [REDACTED]

Morgan Stanley tries (¶¶ 14-17) [REDACTED]

[REDACTED] r. Winoker, testified that the Sunbeam warrants were carried on the books for accounting purposes at \$41.7 million but he [REDACTED]

[REDACTED] At his November 18, 2004 deposition, in response to a question whether he was aware of any other valuation of the warrants that was reflected in any other document besides its financial statements, Mr. Winoker answered “[n]ot that I’m aware of.” See Ex. 24, Winoker 11/18/04 Dep. at 60-61. CPH acknowledges [REDACTED]

[REDACTED] as CPH’s corporate representative, Mr. Winoker should have been aware of it. But there is no basis for concluding that Mr. Winoker’s testimony was deliberately misleading or given in bad faith.

Although Morgan Stanley intends [REDACTED]

[REDACTED], Morgan Stanley is well aware that it has its facts wrong. Mr. Winoker did not “create” [REDACTED] Mr. Winoker generated the chart containing [REDACTED]

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[REDACTED]
[REDACTED] See Ex. 22 at
CPH 2012216; Ex. 11, Winoker 3/8/05 Dep. at 37-40. [REDACTED]

[REDACTED] See Ex. 23, Slotkin 3/3/05 Dep. at 102-03.

In sum, Morgan Stanley is attempting to fault Mr. Winoker for failing to [REDACTED]
[REDACTED]

was asked at his November 18, 2004 deposition whether there were any other warrant valuation numbers. Mr. Winoker's failure to recall the number is regrettable, but it has been remedied fully by this Court's prior Orders, and it does not indicate any deliberate or bad-faith attempt to mislead Morgan Stanley on the part of CPH.

5. Mr. Perelman Testified Truthfully At His November 18, 2004 Deposition About How He Valued The Warrants.

Morgan Stanley accuses (PP 18-19) [REDACTED]
[REDACTED]

[REDACTED] Morgan Stanley's charge is baseless: MAFCO in fact believed then and believes now that the warrants were valueless.

First, the testimony given by Mr. Winoker in November 2004 on the very same day as Mr. Perelman's deposition confirms that MAFCO considered the value of the warrants to be zero. Mr. Winoker testified, as Morgan Stanley observes in its motion, that the warrants were carried on MAFCO's books at \$41.7 million. But Mr. Winoker also testified that this figure was based on accounting rules and used for accounting purposes only, and that MAFCO management actually considered the warrants to be worthless. See Ex. 24, Winoker 11/18/04 Dep. at 79-81.

Morgan Stanley ignores that testimony.

Second, as for Morgan Stanley's contention that [REDACTED]
[REDACTED]

[REDACTED] Morgan Stanley ignores [REDACTED]

[REDACTED]

[REDACTED] See Ex. 25, Perelman 3/10/05 Dep. at 28-32, 50.

There is no basis for suggesting that [REDACTED]

[REDACTED]

[REDACTED] *Id.*

at 53. [REDACTED]

51):

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

Although Morgan Stanley suggests (at p. 2)

[REDACTED]

that is not correct.

[REDACTED]

See Ex. 22 at CPH 2012216-17; see also Ex. 31,

MS 814 at F-3a; Ex. 32, MS 815 at F-3a.

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[REDACTED]

See Ex. 22 at CPH 2012216.

[REDACTED] (Ex. 23, Slotkin 3/3/05 Dep. at 102-03),

[REDACTED]

[REDACTED] See Ex. 24, Winoker

11/18/04 Dep. at 79-81. Morgan Stanley ignores all of that testimony and evidence.

6. MAFCO's General Counsel Did Not Inappropriately Withhold Valuation Information.

Morgan Stanley next attempts (¶¶ 20-22) [REDACTED]

[REDACTED]

[REDACTED] Now, almost six

years later, that document no longer is in the General Counsel's files. The document was found

in an accounting department file, [REDACTED]

[REDACTED] See

Ex. 11, Winoker 3/8/05 Dep. at 27-29. No inference of bad faith can be drawn from that course

of events.

7. The Analysis Of CPH's Damages Expert Does Not Contradict The [REDACTED]

Morgan Stanley asserts (¶ 23) that one of the [REDACTED]

[REDACTED]

[REDACTED] Morgan Stanley contends that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

At the threshold, to the extent Morgan Stanley is trying to [REDACTED]

[REDACTED]

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[REDACTED] See Ex. 26,
Nye 1/12/05 Dep. at 153, 186. [REDACTED]

[REDACTED]

[REDACTED] See Ex. 27, Nye 3/11/05 Dep. at 106-
07. T [REDACTED]

8. CPH Did Not Misrepresent The Existence Of Tax Valuations For The Sunbeam Stock.

Morgan Stanley contends (¶¶ 24-25) that [REDACTED]
[REDACTED]. In fact, it is Morgan Stanley that is misstating the facts.

First, although Morgan Stanley [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] (Ex. 28, Slotkin 3/4/05 Dep. at 284-86):
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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[REDACTED]

Second, in a similar vein, Morgan Stanley tries [REDACTED]

[REDACTED]

[REDACTED] See Ex. 30, MS 813 at CPH 2012204-05, CPH 2012209, CPH 2012211-13.

Third, as Norman Ginstling, CPH's tax department head, testified many months ago,

[REDACTED]

[REDACTED] See Ex. 10, Ginstling

Dep. at 106-07.

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9. **CPH Did Not Make False Representations Concerning The Completion Of Its Document Production.**

Morgan Stanley contends (¶¶ 26-31) [REDACTED]

[REDACTED] the facts, however, do not bear out this accusation.

First, with respect to the time period prior to this Court's February 17, 2005 Order, the facts concerning the circumstances surrounding the deficiency in CPH's document production have been discussed above. No inference of bad faith can be drawn from CPH's positions and conduct.

Second, with respect to Morgan Stanley's contention that CPH asserted on February 28, and March 1, 2005 that there were no further documents with fair value calculations but that CPH produced some documents later, the belated discovery of the additional pages is regrettable, but Morgan Stanley omits to mention that there is no new material information in any of the documents. The additional documents [REDACTED]

[REDACTED] In any event, Morgan Stanley had the ability to question CPH about them, mitigating any prejudice.

Third, with respect to Morgan Stanley's complaint that the stock valuation documents produced on February 18 were in the General Counsel's office, as indicated above, those matters were addressed and remedied fully by the Court's February 17 and 24 Orders. Moreover, also as indicated above, the cited document (MS 857) was found in the accounting department files of Gerry Kessel. That document was not discovered until the discovery dispute leading to the February 17 Order arose.

Fourth, with respect to Morgan Stanley's assertions that Mr. Winoker did not search an offsite archive for documents, that is misleading and irrelevant because the archive in fact was

searched before Mr. Winoker began his current position in connection with prior document productions and again by others very recently.

10. Morgan Stanley's Assertion That CPH Was Withholding Documents In An Attempt To Inflate Its Damages Calculations Is Baseless.

Morgan Stanley lastly accuses (¶¶ 32-35) [REDACTED]

[REDACTED]

[REDACTED] See Ex. 27, Nye 3/11/05 Dep at 79-99. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See id. at 67-68. [REDACTED]

[REDACTED] See id. at 110-11

[REDACTED]

[REDACTED]

[REDACTED] Id.; see also id. at

83-86.

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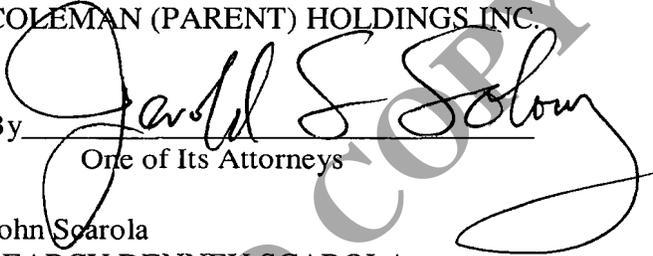
Conclusion

As the foregoing point-by-point refutation of Morgan Stanley's charges shows, CPH has acted in good faith at all times. This Court has already fully addressed this matter. No further sanction therefore is necessary or appropriate.

Dated: March 16, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By 

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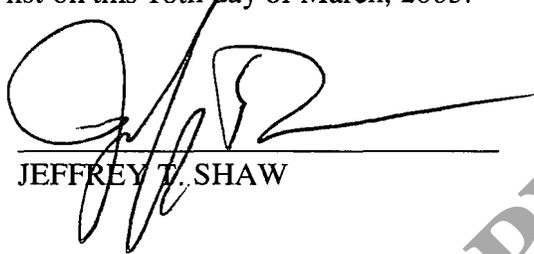
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to all counsel on the attached list on this 16th day of March, 2005.



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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

ORDER ON MS & Co.'s Motion to Compel Production of Documents

THIS CAUSE having come before this Court on Feb. 17, 2005 upon

MS & Co.'s Motion to Compel Production of Documents, and the Court

having heard argument of counsel, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. The Motion is hereby Granted. Plaintiff shall produce for inspection

and copying by MS & Co. by 12 noon Feb. 18, 2005 all account
value, book value documents which be one, copy, or control

of it or any related entity reflecting the account value, book

value, balance sheet value, or internal valuation of the Sunbeam

stock received by CPH in the transaction, produced day of

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17

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day of Feb, 2005.

to reflect a value
to deny the info at
any time between the


ELIZABETH T. MAASS
Circuit Court Judge



Copies furnished to:

date the transaction closed and the
date Sunbeam first sought bankruptcy
protection. By 12 noon Feb. 23, 2005, any party
may serve motions or discovery directly related to any newly produced
items, which must be responded to by 12 noon Feb. 25, 2005

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

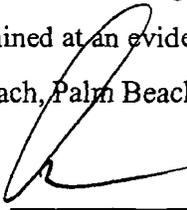
MORGAN STANLEY & CO., INC.,
Defendant(s).

**ORDER ON MORGAN STANLEY'S MOTION FOR ADDITIONAL DISCOVERY
REGARDING MAFCO'S INTERNAL VALUATION OF SUNBEAM STOCK AND
MORGAN STANLEY'S MOTION FOR SANCTIONS AND ADDITIONAL DISCOVERY
CONCERNING PLAINTIFF'S IMPROPER CONCEALMENT OF THE VALUE OF THE
SUNBEAM WARRANTS**

THIS CAUSE came before the Court February 24, 2005 on Morgan Stanley's Motion for Additional Discovery Regarding MAFCO's Internal Valuation of Sunbeam Stock and Morgan Stanley's Motion for Sanctions and Additional Discovery Concerning Plaintiff's Improper Concealment of the Value of the Sunbeam Warrants, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that the Motions are Granted. CPH shall produce its corporate representative with the most knowledge of the internal valuation of the Sunbeam stock and warrants for deposition on March 1, 2005. CPH shall produce such other witnesses for deposition on the limited subject of the internal valuation of the stock and warrants and the effect, if any, on CPH's expert testimony on damages as MS & Co. shall reasonably require. CPH shall pay MS & Co. its reasonable costs and fees for the Motions, including those fees incurred in connection with the depositions permitted herein, to be determined at an evidentiary hearing following trial.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 24th day of February, 2005.


ELIZABETH T. MAASS
Circuit Court Judge

039939



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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

MORGAN STANLEY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its attorneys, respectfully requests that the Court enter an order, pursuant to Fla. R. Civ. P. 1.350(b), compelling Coleman (Parent) Holdings Inc. ("CPH") to produce MAFCO's non-financial statements and general ledger entries reflecting the "accounting value" or "book value" that MAFCO placed on its Sunbeam investment. Morgan Stanley has only recently learned of the existence of such documents, which are highly relevant to CPH's estimate of its damages in this case and have been subject to an outstanding discovery request for over a year and a half. CPH, has steadfastly refused to produce the documents. Accordingly, Morgan Stanley respectfully requests that the Court enter an order compelling production.

In support of its motion, Morgan Stanley states as follows:

STATEMENT OF FACTS

1. On July 14, 2003, a little over two months after the Complaint was first filed, Morgan Stanley served its first set of discovery requests upon CPH. (See July 14, 2003 Morgan Stanley's 1st Req. for Prod. of Docs. to Plf. (Ex. 1).) Amongst these initial requests, Morgan Stanley specifically requested "[a]ll documents reflecting, referring, or relating to the value of Sunbeam securities." (*Id.* at Req. 9)

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EXHIBIT
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2. Initially, CPH attempted to “interpret” this request so as to narrowly focus on “the market valuation of Sunbeam securities.” (See Aug. 15, 2003 CPH’s Resp. to Morgan Stanley’s 1st Req. for Prod. of Docs. (Ex. 2).) Morgan Stanley objected, noting that this limitation would of course “exclude ... other valuations of Sunbeam’s securities, *such as CPH’s internal valuations.*” (See Aug. 27, 2003 Letter from K. DeBord to M. Brody at 2 (Ex. 3) (emphasis added).) Morgan Stanley asked CPH to reconsider the objection and inquired as to whether CPH had withheld any documents based on it. (*Id.*) In response, CPH represented that it was investigating its production regarding this request, and over a month later, agreed to produce documents responsive to the request without regard to the previous objection. (See Sept. 12, 2003 M. Brody Letter to K. DeBord (Ex. 4); Oct. 8, 2003 M. Brody Letter to K. DeBord (Ex. 5).)

3. Subsequently, over a year later, Morgan Stanley learned that MAFCO maintained non-public financial statements with general ledger entries for Sunbeam investments that reflected MAFCO’s estimation of the “accounting value” or “book value” of those investments, which had been audited by Coleman’s auditors at Ernst & Young. For example, at the deposition of Lawrence Winoker, Morgan Stanley learned that CPH had recorded a \$41.7 million accounting value on its non-public financial statements for the Sunbeam settlement warrants as part of a December 1998 audit even though a MAFCO executive had previously testified under oath that such shares were worthless. (Nov. 18, 2004 Winoker Dep. at 51 (Ex. 6).) Mr. Gittis confirmed this fact and explained that the financial recognition of Sunbeam investments would “always go[] up to the parent” and be reflected in MAFCO’s non-public financial statements. (Nov. 19, 2004 Gittis Dep. at 188-90 (Ex. 7).)

4. Soon thereafter, Morgan Stanley’s counsel requested that CPH immediately remedy its failure to produce these documents in response to its longstanding requests. (See

Nov. 22, 2004 K. DeBord Letter to M. Brody (Ex. 8).) CPH provided a general ledger entry specifying the value that MAFCO had recognized for the Sunbeam settlement warrants, but refused to produce the non-public financial statements and failed to provide any general ledger entries for the Sunbeam shares it had originally received. (See Nov. 24, 2004 CPH's Resps. & Objs. to Morgan Stanley's 8th Req. for Prod. of Docs. (Ex. 9).)

5. After it became apparent that CPH's experts would offer opinion testimony as to the value of the Sunbeam shares and that CPH also likely had general ledger entries for those shares (as it did with the warrants), Morgan Stanley requested that CPH remedy its ongoing discovery failure and produce the requested documents immediately. (See Feb. 3, 2005 L. Bemis Letter to M. Brody (Ex. 10).) Without challenging the existence or obvious relevance of such documents, CPH refused to produce any additional responsive documents. (See Feb. 11, 2005 M. Brody Letter to L. Bemis.

ARGUMENT

6. MAFCO's non-financial statements and general ledger entries reflecting the "accounting value" or "book value" that MAFCO placed on its Sunbeam investment during the relevant time period are properly discoverable and highly relevant to CPH's claim for billions of dollars of damages as a result of the Sunbeam fraud. Indeed, the value of the 14.1 million Sunbeam shares that CPH received as part of Sunbeam's acquisition of Coleman is one of the most significant damages issues in this case. "In cases involving a fraudulent sale of stock," under either an out-of-pocket or "benefit-of-the-bargain" measure of damages, CPH "must prove the actual value" of the Sunbeam shares it received. *Totale, Inc. v. Smith*, 877 So. 2d 813, 815 (Fla. 4th DCA 2004) (internal quotations & citation omitted). Moreover, if the "benefit-of-the-bargain" measure of damages applies, CPH must establish the expected value of the Sunbeam

shares at the time of the acquisition. Accordingly, the value that MAFCO placed on its Sunbeam shares at the time of the transaction, after the Sunbeam fraud was revealed, and up to and through the bankruptcy is directly relevant to damages issues in this case.

7. Moreover, the expeditious production of the requested documents would impose little to no burden upon CPH. From the general ledger entries for the Sunbeam settlement warrants previously produced, it appears that CPH was able to simply run a report with specified parameters in its financial database to generate a printout of the requested information. The report was run at 4:00 p.m. on November 23, 2004, and CPH was able to produce it to Morgan Stanley less than 24 hours later. There is no reason that CPH could not simply generate another report for the value of the Sunbeam shares it received and produce the results within a similar amount of time.

CONCLUSION

Morgan Stanley respectfully requests that the Court enter an order, pursuant to Fla. R. Civ. P. 1.350(b), compelling Coleman (Parent) Holdings Inc. to produce MAFCO's non-financial statements and general ledger entries reflecting the "accounting value" or "book value" that MAFCO placed on its Sunbeam investment during the relevant time period. Moreover, as a result of CPH's failure to produce these documents for over a year and a half, Morgan Stanley should be awarded its attorney fees and costs, pursuant to Rules 1.350(b); 1.380(a)(1), (4), incurred in presenting this motion.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and hand delivery on this 15th day of February 2005.

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Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
c/o Mafo Holdings, Inc.
777 S. Flager Drive
Suite 1200 – West Tower
West Palm Beach, FL 22401-6136

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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND
FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 03 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

VOLUME 8

MORGAN STANLEY & CO., INC.,

Defendant.

TRANSCRIPT OF PROCEEDINGS BEFORE
THE HONORABLE ELIZABETH T. MAASS

West Palm Beach, Florida

Thursday, February 17, 2005 16

9:30 a.m. - 12:08 p.m.

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1 any ambiguity about that, the April 9
2 response follows the October 8, 2003
3 letter.

4 THE COURT: But the April 9th
5 response -- I'm sorry -- is a response to
6 the second request.

7 MR. SCAROLA: The April 9, 2004
8 response is the response to the second
9 request.

10 THE COURT: I'll be real honest with
11 you. I think these documents were
12 included within the scope of the first
13 request for production. And I think that
14 October 8th letter, a reasonable
15 interpretation to that is we're
16 withdrawing our objection; we'll give you
17 what we have.

18 MR. SCAROLA: Assuming that to be true,
19 although we disagree, and I understand the
20 court's position in that regard, that
21 brings us to the point that clearly and
22 unequivocally because there has been an
23 acknowledgment of that, as of
24 November 17th and 18th, the dates of the
25 deposition of Mr. Winoker and Mr. Gittis,

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1 the defendant has acknowledged that they
2 at that point knew the documents that they
3 had -- they contend that they requested
4 and that they contend they thought had
5 been produced had not been produced.

6 Although I suggest to Your Honor that
7 the date was clearly much earlier, because
8 as Your Honor has herself reasoned, they
9 had to know these documents existed. But
10 in spite of that, they are now told
11 clearly and unequivocally three months ago
12 and prior to the close of discovery that
13 the documents existed. They then wait
14 until after discovery closes. They wait
15 until the eve of trial three months after
16 having been placed on notice that the
17 documents exist to move to compel the
18 production of these documents, which we
19 still contend are not relevant or material
20 because they don't relate to the issue
21 that will be before the jury, and that
22 issue is the fair market value of these
23 securities, not the value of which they
24 were booked internally for some purpose.
25 And there is no record evidence that there

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1 is some credit application or financial
2 statements produced to third parties upon
3 which they were relying on a
4 representation that we made with respect
5 to value. There's no record evidence with
6 regard to that. That's sheer speculation
7 on counsel's part.

8 The bottom line is that this evidence,
9 if it were produced, would relate to an
10 entirely collateral and extraneous matter.
11 We don't believe that it would be
12 admissible because it would be nothing but
13 confusing to the jury to have to
14 distinguish between internal valuation for
15 purposes unrelated to the fair market
16 value of the stock and the issue that is
17 before the jury, the fair market value.

18 And, finally, what happens is we do
19 need to reopen discovery and add
20 additional witnesses. We're going to here
21 from some expert on the defense part, I
22 would assume, because they can't just put
23 these documents before the jury without
24 any explanation. Someone is going to have
25 to express an opinion as to what the

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1 significance of these numbers are from the
2 defense perspective. And that is going to
3 require us to produce a witness or
4 witnesses to rebut the contention this has
5 some relevance or materiality with regard
6 to fair market value. All of which, if it
7 ever was to be raised, could have been
8 raised prior to the close of fact
9 discovery pursuant to an agreed order and
10 all of which could have been resolved in
11 ample time not to have imposed an eve of
12 trial discovery burden and reopening of
13 discovery.

14 THE COURT: Okay. As I said, it -- I
15 have no trouble determining that that
16 first request for production included
17 these documents and that the, whatever it
18 was --

19 MR. SCAROLA: October 8.

20 THE COURT: -- October 8 letter, a
21 reasonable interpretation of that letter,
22 I believe, is we're withdrawing our
23 objections and we'll give you what we
24 have. So I think sort of the cost of the
25 delay through those November depositions

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1 is properly laid at plaintiff's feet. I
2 think after the November depositions when
3 it became apparent these documents were
4 there and for whatever reason we didn't
5 come in on this motion for some period of
6 time, I think sort of the cost of that
7 delay is placed at defendant's feet. Then
8 the question is how do we reconcile this,
9 because I think you do get the documents.
10 I think potentially there probably is some
11 additional discovery that is generated
12 because of them.

13 How do we want do handle that?

14 MR. BEMIS: May I address that, Your
15 Honor?

16 THE COURT: Sure.

17 MR. BEMIS: First of all, I think the
18 production we're likely to get is simply
19 one or two pages of documents.

20 THE COURT: I assume we're talking
21 about --

22 MR. BEMIS: That's all we got on the
23 warrants.

24 THE COURT: Then I think we have a
25 little fact discovery and probably some

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COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: 2003 CA 005045 AI

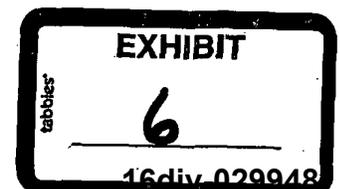
**COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO
DETERMINE THE APPROPRIATE SCOPE OF DISCOVERY**

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court determine the appropriate scope of discovery called for by this Court's February 17, 2005 Order granting Morgan Stanley's motion to compel production of documents. In support of this motion, CPH states as follows:

1. This Court's Order on Morgan Stanley's motion to compel required production, by 12:00 p.m. on February 18, of all documents within the care, custody, and control of CPH or any related entity reflecting the accounting value, book value, balance sheet value, or internal valuation of the 14.1 million shares of Sunbeam stock received by CPH in the transaction produced during or reflecting a value at any point in time between the date the transaction closed and the date Sunbeam first sought bankruptcy protection. Before noon on February 18, CPH complied with this Court's Order by producing responsive documents, which have been redacted to exclude financial information that this Court has ruled to be undiscoverable or irrelevant in prior discovery and *in limine* orders.

2. Out of an abundance of caution, CPH is filing this motion and will be prepared to submit to this Court, should the Court wish to review them, unredacted copies of the documents

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produced to Morgan Stanley as well as certain documents withheld from the production so that this Court can determine whether any further disclosure is required. CPH will present these documents to the Court at the beginning of the hearing on Tuesday, February 22.

Dated: February 18, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: 
One of Its Attorneys

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(561) 686-6300

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Hand Delivery to all counsel on the attached list on this 18th day of February, 2005.



JEFFREY T. SHAW

JOHN SCAROLA
Florida Bar No.: 169440
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Attorneys for Coleman(Parent)Holdings Inc.

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1 IN THE CIRCUIT COURT FOR THE
2 15TH JUDICIAL CIRCUIT IN AND FOR
3 PALM BEACH COUNTY, FLORIDA

4 CASE NO. 03 CA 005045 AI

5 COLEMAN (PARENT) HOLDINGS, INC.,

6 Plaintiff,

7 vs.

8 MORGAN STANLEY & CO., INC.,

9 Defendant.

10
11
12 VOLUME XV

13 PROCEEDINGS BEFORE THE HONORABLE ELIZABETH T. MAASS
14
15
16
17
18

19 Thursday, February 24, 2005

20 Palm Beach County Courthouse

21 Courtroom 11-A

22 205 North Dixie Highway

23 West Palm Beach, Florida 33401

24 9:30 a.m. to 11:00 a.m.
25

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1 clearly understood that compliance with that
2 aspect of the court order with regard to these
3 documents is of special concern to those of us
4 on this side of the case, and particularly
5 Mr. Perelman.

6 THE COURT: Let's talk about a couple of
7 things then I'll let you respond.

8 You sort of raised two points. First is
9 that it's Plaintiff's position that sort of the
10 ability to redact information is larger when
11 I've already made certain evidentiary rulings
12 that would suggest certain of the information is
13 not relevant. And what you're suggesting I do
14 is an in camera inspection to go through the
15 documents, compare it to my prior orders on the
16 motions in limine, and approve redactions that I
17 think fall within matters I've excluded under
18 the order on the motions in limine.

19 In response to that, I think what I would
20 tell you is: We have significant motions this
21 afternoon. I have three significant orders
22 sitting in draft on my desk. I've not done the
23 in camera inspection for Mr. Strong, which I
24 know is critical. I'm not inclined to do an in
25 camera inspection on things that are not truly

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1 subject to a privilege because Mr. Perelman
2 asked me to, which I think, in all honesty, I
3 think what you're asking.

4 MR. SCAROLA: I understand.

5 THE COURT: I would agree, however, that I
6 would expect them to be subject to the
7 confidentiality order in place. And I would
8 strictly construe it.

9 MR. BEMIS: Understood.

10 MR. SOLOVY: Let me just ask you this, Your
11 Honor, just like you did with some of the
12 privilege when we weren't present, I think we
13 could walk you through these redactions in about
14 ten minutes, and you would either say yea or
15 nay.

16 THE COURT: In all honesty, it's not an
17 accommodation I would afford any other litigant,
18 and it's not an accommodation I would afford
19 here.

20 MR. SOLOVY: Well, I think we just --

21 THE COURT: You go back and tell
22 Mr. Perelman you tried real hard, but I wasn't
23 willing to do it.

24 MR. SOLOVY: Normally, Your Honor -- and
25 this is no aspersion on counsel -- but, A, I

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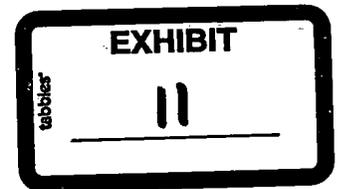
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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,)

Plaintiff,)

vs.)

Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,)

Defendant.)

MORGAN STANLEY SENIOR FUNDING,)
INC.,)

Plaintiff,)

vs.)

Case No. CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS,)
INC.,)

Defendant.)

VIDEOTAPED DEPOSITION OF KAREN C. CLARK

Los Angeles, California

Friday, October 8, 2004

CONFIDENTIAL

Reported by:
REBECCA CORRAL
CSR No. 7021
Job No. 903095



039975

Page 150

1 A The name is familiar, but I can't place her.
2 Q Was she an employee of Sunbeam or an employee
3 of Deloitte & Touche?
4 A Well, given those choices, I would choose the
5 latter because it wasn't the former.
6 Q What was Deloitte & Touche's role as of
7 April 2, 1999 with regard to the Warrant Accounting and
8 Valuation, as this document is headed on page 2?
9 A I can't recall what their role was at that
10 point in time, whether they were an auditor or not. I
11 don't remember the timing.
12 Q Did there come a point in time when Deloitte &
13 Touche did become the auditors of Sunbeam?
14 A I believe so, correct.
15 Q Did they replace Arthur Andersen?
16 A Yes.
17 Q And did -- you were still employed by Sunbeam,
18 as you told us, at year end 1999; correct?
19 A Correct.
20 Q And was Deloitte -- strike that.
21 For the jury's benefit, could you tell us was
22 Deloitte & Touche the auditor for Sunbeam at -- for the
23 year ending December 31, 1999?
24 A I believe that's the case.
25 Q Now, according to the memorandum from Deloitte

Page 151

1 & Touche, if you turn to, I think it is page 4 of the
2 memorandum under Valuation of Warrants, you will see
3 some figures for the valuation. Tell me when you are
4 there.
5 A I am there.
6 Q Ms. Tripp writes that Sunbeam engaged the
7 Blackstone Group, initial capitals, to --
8 A Where are you reading from? I'm sorry.
9 Q Directly under Valuation of Warrants.
10 MR. BRODY: It's the prior page. It's page 4
11 of the exhibit, page 3 of the attachment. That's okay.
12 We are there now.
13 THE WITNESS: Okay, I am there now.
14 BY MR. BEMIS:
15 Q So for the record, we are on Bates No. Page CPH
16 1308868; right?
17 A Correct.
18 Q Good. Under the heading Valuation of Warrants,
19 Ms. Tripp writes, "Sunbeam engaged the Blackstone Group
20 to assist them with the valuation of the warrants."
21 Period.
22 Do you see that?
23 A Yes, I do.
24 Q Based on your position at Sunbeam, that's a
25 correct statement; right?

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1 A I believe that's a correct statement.
2 Q Okay. The next sentence reads, "The Blackstone
3 report estimated a value of the warrants to range from
4 30 million to 107 million with a midpoint of
5 70 million."
6 Do you see that?
7 A Yes.
8 Q Is that consistent with your recollection of
9 the report issued by the Blackstone Group?
10 MR. BRODY: I'll object there. This has been
11 litigated in another case. I know, Mr. Bemis, your
12 client was not a party to it and the court has found the
13 Blackstone report itself to be a privileged document.
14 So I think asking her in this kind of roundabout way to
15 disclose the contents of the Blackstone report violates
16 Sunbeam's privilege, and I instruct her not to answer.
17 I think you could ask some foundational
18 questions to see if there is recollection here, but I
19 think the question, as phrased, would violate the
20 privileges already found by the court.
21 BY MR. BEMIS:
22 Q Did you -- are you going to follow those
23 instructions, and let's close this out.
24 A I will follow his instructions.
25 Q All right. The report continues over onto the

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1 next page of the document, and I'm now on Page CPH
2 1308869. Are you there?
3 A Yes.
4 Q And there is, in paragraph numbered 3, a
5 paragraph below a table identified as Blackstone's,
6 apostrophe S, warrant sensitivity analysis.
7 Do you see that?
8 A Yes.
9 Q It reads as follows, quote, "The boxed range of
10 30 to \$107 million is the range recommended by
11 Blackstone. The company recorded the warrants," plural,
12 "at 70 million, the midpoint of the range."
13 Do you see that -- those two sentences?
14 A I think you missed one word in reading it, but
15 it is there.
16 Q Now, based on reading this, does this refresh
17 your recollection as to what Sunbeam, during your
18 tenure, recorded the warrants that were issued to
19 Coleman Parent Holdings pursuant to the settlement
20 agreement which, I think, was Morgan Stanley Exhibit 96?
21 A That's what Mr. Pass, in her memo, I would
22 guess that she's accurate again. If I really wanted a
23 definitive answer, I would go back to the financials.
24 Q Did you -- Deloitte & Touche concludes on the
25 very last page of the report as follows, quote, "Based

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1 IN THE FIFTEENTH JUDICIAL CIRCUIT
2 IN AND FOR PALM BEACH COUNTY, FLORIDA

3 COLEMAN (PARENT) HOLDINGS,)
4 INC.,)

5 Plaintiff,)

6 vs.)

Case No.
CA 03-5045 AI

7 MORGAN STANLEY & CO., INC.,)

8 Defendant.)

9 -----)
10 MORGAN STANLEY SENIOR FUNDING,)
11 INC.,)

12 Plaintiff,)

13 vs.)

14 MACANDREWS & FORBES HOLDINGS,)
15 INC.,)

16 Defendants.)
17 -----)

18 VIDEOTAPED DEPOSITION OF IRWIN ENGELMAN
19 New York, New York
20 Wednesday, August 4, 2004

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24 Reported by:
JOAN WARNOCK
25 JOB NO. 163377



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1 Coleman transaction where there is this
2 dispute and the warrants are issued for
3 Sunbeam later after the transaction, how are
4 they accounted for on the books -- would they
5 be accounted for on the books of MacAndrews &
6 Forbes or its affiliates?
7 MR. BRODY: Object to the form.
8 A. It's an unusual transaction, and I
9 don't know the right answer to that question.
10 It might be acquired just as you put a value
11 on them and add that to whatever value you
12 had, but since there was a misstatement of the
13 value of Sunbeam at the time we received the
14 original shares, you would have to write those
15 down, write down the value of those shares to
16 reflect the fact that you at the date that you
17 received the shares, shares were overvalued.
18 So it would require some research on my part,
19 and I just don't recall -- I may have known
20 all of it at that time, but I don't recall the
21 whole thought process on what the right value
22 was.
23 Q. Is it fair to say that at some point
24 MacAndrews & Forbes or one of its affiliates,
25 perhaps the party that was actually issued the

Page 107

1 warrants, which I think it's CLN Holdings got
2 the warrants, would have to make some entry on
3 its books for the receipt of the warrants?
4 A. Right.
5 Q. I misspoke. According to the
6 Exhibit A to Exhibit MS 96, the actual warrant
7 holder is Coleman (Parent) Holdings, Inc., or
8 its successor or permitted assigns is the
9 holder of the warrant. Did you ever see any
10 valuations of the warrants by any source?
11 A. No.
12 Q. Did you ever see a valuation of the
13 warrants under what's known as the
14 Black-Sholes, I think it is, model?
15 A. No.
16 Q. Let me show you what has been marked
17 as MS 97. I've handed you what the court
18 reporter previously marked as Morgan Stanley
19 97, which is a document from a Susan C. Tripp,
20 with two p's, dated April 2nd, 1990, to the
21 Sunbeam audit files on the subject of M&F
22 Warrants Accounting and Evaluation. Take a
23 look at that and tell me when you're done. I
24 just have a couple --
25 A. Do you know who Susan Tripp is?

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1 Q. She is with Deloitte & Touche, as I
2 recall, and she is on their audit staff. What
3 exactly her title was, I can't tell you off
4 the top of my head. We'll look while you're
5 looking and see if we can fill that in for
6 you.
7 A. No. I just wanted to know what
8 organization she was with. Go ahead.
9 Q. Have you reviewed MS 97?
10 A. Yes.
11 Q. There is a reference in MS 97 to a
12 report by Blackstone Group, and that is on
13 page numbered -- well, it's Page 4 of the
14 document in front of you right at the bottom
15 below the heading "Valuation of Warrants."
16 A. I don't see the page number, but I'm
17 on the same page as you.
18 Q. I don't see the page numbers either.
19 I'm not sure where they are. In any event,
20 there is a reference to "Sunbeam engaged the
21 Blackstone Group to assist them with the
22 valuation of the warrants." Do you see that
23 sentence?
24 A. Yes.
25 Q. Have you heard of Blackstone Group?

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1 A. Yes. I worked for them for a while.
2 Q. Who are they?
3 A. They're an investment bank.
4 Q. How long did you work for them
5 again?
6 A. Year and a half.
7 Q. And are you familiar with the
8 Black-Sholes model?
9 A. Somewhat.
10 Q. Have you ever used it in your
11 professional work?
12 A. Yes.
13 Q. And what have you used it for?
14 A. Evaluating options.
15 Q. Have you used it ever to value
16 warrants such as was done as suggested in
17 MS 97?
18 A. I think warrants sometimes is
19 another name for options. In this case I
20 think it represented an option.
21 Q. Is the Black Sholes model for
22 valuing options, or in this case warrants,
23 considered in the investment banking community
24 to be a professionally reasonable and reliable
25 method to do valuations for instruments of

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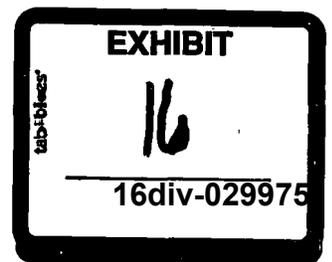
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	EXHIBIT
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1 IN THE CIRCUIT COURT OF THE
2 FIFTEENTH JUDICIAL CIRCUIT
3 IN AND FOR PALM BEACH COUNTY, FLORIDA

4 -----X

5 COLEMAN (PARENT) HOLDINGS, INC.,

6 Plaintiff,

7 vs.

No. CA 03-5045AI

8 MORGAN STANLEY & CO., INC.,

9 Defendant.

-----X

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12
13 CONFIDENTIAL VIDEOTAPED DEPOSITION OF
14 LAURENCE WINOKER
15 New York, New York
16 Thursday, November 18, 2004
17
18
19
20
21
22

23 Reported by:
24 THOMAS R. NICHOLS, RPR
25 JOB NO. 166744B

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EXHIBIT
24
16div-0299 1

Page 46

1 to Sunbeam's audit files dated April 2, 1999,
2 subject: M and F warrants, accounting and
3 valuation.
4 Do you have MS 97 in front of you?
5 A. Yes.
6 Q. Excuse me. Let me trade you documents
7 real quick. May I have MS 96 as well? Thank
8 you. There you go.
9 Do you know who Susan Tripp is?
10 A. I don't know Susan Tripp.
11 Q. Do you recognize this memo as
12 describing the settlement agreement between
13 Coleman and Sunbeam and the accounting and
14 valuation treatment of that settlement
15 agreement?
16 A. Yes.
17 Q. On the bottom right-hand corner there
18 are Bates numbers to the document. I would like
19 you to turn to CPH 1308868, and this page has a
20 header entitled "warrant accounting evaluation."
21 Do you see that?
22 A. Yes.
23 Q. There's a reference to report by the
24 Blackstone Group all the way at the bottom, the
25 last paragraph.

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1 A. I see that.
2 Q. Which reads: "Sunbeam engaged the
3 Blackstone Group to assist them with the
4 evaluation of the warrants."
5 Have you heard of the Blackstone
6 Group?
7 A. Yes.
8 Q. Who are they?
9 A. I know them to be an investment
10 advisory firm.
11 Q. Have you ever used that group in your
12 professional work?
13 A. No.
14 Q. Are you familiar with the
15 Black-Scholes model?
16 A. I know of the Black-Scholes model.
17 Q. What is it?
18 A. A way to value derivatives. My
19 experience has been in valuing stock options.
20 Q. Can you describe the Black-Scholes
21 model in any more detail?
22 A. Nope.
23 Q. That's fine. I hear it's a
24 complicated valuation model; is that correct?
25 A. Well, the way I have used it is is

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1 just to use it as -- using variables to plug
2 into the model to come up with a value.
3 Q. When you do this, when you use
4 variables to plug into the Black-Scholes model,
5 do you have a database or some sort of computer
6 program that you can do this with?
7 A. No, the formula's -- it's a formula.
8 It's very easily obtained. You can get it off
9 the Internet. And it's just anybody -- you
10 don't have to have any understanding of the
11 model, the Black-Scholes model how it's
12 developed to employ it. It just says insert
13 variable X, Y and Z and it comes up with a
14 value.
15 Q. Got it. OK. Have you ever had any
16 discussion with the Blackstone Group as it
17 related to their valuation of the warrants
18 received by McAndrews & Forbes?
19 A. I don't know anybody at the Blackstone
20 Group.
21 Q. Take a look at MS 97. Are you aware
22 on MS 97 or did you review from, based on your
23 review from yesterday, that the Blackstone Group
24 provided McAndrews & Forbes an estimate? Strike
25 that.

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1 Are you aware based on your review of
2 this document from yesterday that the Blackstone
3 Group estimated the value of the warrants that
4 McAndrews & Forbes received as consideration for
5 the settlement agreement between 30 million and
6 107 million?
7 MR. BRODY: Object to form.
8 A. Could you rephrase that?
9 Q. Sure. Take a look at CPH 138869.
10 A. Yes.
11 Q. Halfway down the page it refers to a
12 valuation performed by the Blackstone Group on
13 the warrants that McAndrews & Forbes received.
14 A. Looking here at this box, the table?
15 Q. Correct.
16 A. Yes, I see the table, yes.
17 Q. And Blackstone estimated the value of
18 the warrants between 30 and 107 million; is that
19 right?
20 A. I see that, yes.
21 Q. With a midpoint range of 70 million.
22 Do you see that?
23 A. Yes, I read that from this. Yes, I
24 see that.
25 Q. And then if you look at the paragraph

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1 below, it refers to a valuation done by Deloitte
2 & Touche. Do you see that?
3 A. Yes.
4 Q. And their estimated range was 54 to
5 118?
6 A. I see that.
7 Q. On the very last page, in the very
8 last sentence, it reads, I'm going to summarize,
9 that Deloitte & Touche found \$70 million to be
10 reasonable.
11 A. I see that.
12 Q. When were the warrants received by
13 McAndrews & Forbes?
14 A. I believe to the best of my knowledge
15 based on discussions yesterday with, um, in
16 preparation it was in August of '98.
17 Q. Do you know what date?
18 A. No.
19 Q. And the effective date of the warrant
20 is the date of receipt?
21 A. I don't know.
22 Q. Was the valuation of the warrants
23 recorded in 1998 when the warrants were received
24 by McAndrews & Forbes?
25 A. The value of the warrants. What do

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1 you mean by the value?
2 Q. OK, as a consequence of the issuance
3 of the warrants did McAndrews & Forbes make any
4 entries in its accounting records for the
5 receipt of the warrants?
6 A. Yes.
7 Q. What was that entry?
8 A. In connection with the audit of the
9 financial statements of McAndrews & Forbes in
10 December of '98, for the December '98 financial
11 statements, there was a value, an accounting
12 value recorded of 41.7 million. I believe that
13 was the figure.
14 Q. Was this the first time that the value
15 of the warrants was recorded in any of McAndrews
16 & Forbes' accounting records?
17 A. Yes.
18 MR. BRODY: Object to the form. Go
19 ahead.
20 A. That was the first time it was
21 recorded in McAndrews & Forbes' accounting
22 records.
23 Q. So the warrants were not recorded when
24 they were received in August of 1998?
25 A. We didn't record anything in August of

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1 '98. We don't prepare financial statements on a
2 monthly basis. So there was for us no reason
3 to -- no compelling reason to make an entry at
4 that time.
5 Q. OK. Setting aside McAndrews & Forbes'
6 accounting records and financial statements, was
7 there any internal valuation of the warrants
8 performed by McAndrews & Forbes as of August of
9 1998?
10 MR. BRODY: Object to the form. Do
11 you mean, by way of clarification, do you
12 mean analysis, a mathematical computation
13 kind of thing?
14 MS. DeBORD: Correct.
15 Q. Did McAndrews & Forbes perform any
16 mathematical analysis or valuation of the
17 warrants when they were received in August of
18 1998?
19 A. I didn't. I'm not aware if anybody
20 did.
21 Q. In your capacity as representative
22 from McAndrews & Forbes on this subject, you
23 don't know the answer to that question?
24 A. If anybody prepared anything I don't
25 know.

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1 Q. Do you know who would know that?
2 A. No, I don't.
3 Again, I'm thinking about in an
4 accounting context, if that's what we're talking
5 about. Maybe it needs some clarification. In
6 an accounting context.
7 I don't know -- or any context do I
8 know if anybody prepared, did any analysis.
9 Q. If anybody did do an analysis of the
10 value of the warrants when they were received in
11 August of 1998, where would that analysis be?
12 MR. BRODY: Object to the form.
13 MS. DeBORD: Let me withdraw that and
14 try again.
15 Q. Based on your experience at McAndrews & Forbes
16 & Forbes and as controller and treasurer, when
17 these warrants came in in August of 1998, if
18 somebody, let's say it's Todd Slotkin directed
19 somebody to say -- withdraw that again.
20 Based on your experience at McAndrews
21 & Forbes in your capacity as controller and
22 treasurer, if somebody were to do an analysis or
23 valuation of these warrants when they were
24 received in August of 1998 how would that
25 valuation be done?

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1 closed in March, but I could be wrong. I'm not
2 that knowledgeable about it.
3 Q. I asked you some questions about this,
4 but do you know from any source how McAndrews &
5 Forbes arrived at the \$41.7 million figure for
6 valuing the warrants?
7 A. As I said earlier, I don't have
8 specific recollection of what we discussed, if
9 we had a discussion, and the discussion I'm
10 referring to is a discussion with Ernst & Young.
11 But as I said, our normal practice
12 would be, as is typical, I think most firms,
13 issues of financial statements are discussed
14 with their outside accountants, matters
15 reflected in their financial statements. So --
16 Q. Who would be involved in those
17 discussions?
18 A. From?
19 Q. From the McAndrews & Forbes side.
20 A. I would.
21 Q. Who else?
22 A. Nobody else necessarily would be
23 involved.
24 Q. Do you have any documents that reflect
25 the discussions that took place in late 1998

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1 regarding the valuation of the warrants received
2 by McAndrews & Forbes?
3 A. I don't have any documents, no.
4 Q. Is there anyone else that would recall
5 these discussions or be able to testify as to
6 the discussions between McAndrews & Forbes and
7 Ernst & Young regarding the valuation of the
8 warrants?
9 A. I'm not sure what discussions, what
10 discussions, if any, took place. So therefore I
11 can't, I wouldn't know who else might know.
12 Q. Is there anyone who would know if the
13 discussions took place at all?
14 A. I don't know. I mean, this is six
15 years ago. That's why I still don't recall.
16 Six years ago. It wasn't something that we look
17 at these warrants in connection with these
18 financial statements to be prepared every month.
19 We only prepared this once per year. So I'm
20 trying to recall possibly a single meeting that
21 took place once six years ago. I just -- I just
22 don't recall if we had such a meeting.
23 Q. And you did not personally do any
24 evaluation of the warrants that were received by
25 McAndrews & Forbes, correct?

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1 A. Correct.
2 Q. Does McAndrews & Forbes have any
3 capability of determining the value of the
4 warrants it received pursuant to MS 96 at any
5 given time by for example plugging numbers into
6 a computer database?
7 A. I'm not aware that we have such a
8 computer database. I don't believe we do.
9 Q. Does it have any capability of
10 determining the value of these warrants?
11 A. I don't know. It's not a public
12 security, you know, marketable security readily
13 tradable, so I don't know.
14 Q. Is there anybody who would know?
15 A. If McAndrews had the capability?
16 Q. Yes.
17 MR. BRODY: Object to the form.
18 A. I don't know.
19 Q. OK. So as of December 1998 McAndrews
20 & Forbes had valued the warrants that it
21 received from Sunbeam at \$41.7 million, correct?
22 A. In their financial statements, yes.
23 Q. Was there any other valuation of the
24 warrants that was reflected in any other
25 document besides the financial statements?

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1 A. Not that I'm aware of.
2 Q. After December of 1998 were the
3 warrants marked down at any time by McAndrews &
4 Forbes?
5 A. I believe in the financial statements
6 for the period ended December of 2000 the
7 warrants were written down.
8 Q. Can you describe briefly what it means
9 to, what written down means?
10 A. OK, it -- in this case an asset that's
11 reflected on the company's balance sheet at a
12 value was, um, the value was reduced in its
13 balance sheet.
14 Q. And how much was the value reduced on
15 the balance sheet?
16 A. I think by the full 41.7. Reduced to
17 zero.
18 Q. Did McAndrews & Forbes at any other
19 time reduce the value of the warrants between
20 December of 1998 and December 2002?
21 A. No. You said December of 2000, right?
22 Somehow I heard December 2002. Did you say
23 December 2000?
24 Q. You know, I might have heard you
25 wrong. I thought that you said in December

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1 was not employed by the company in 2000.
2 But, you know, in discussions with
3 counsel I learned, I was reminded that the
4 company filed for bankruptcy, Sunbeam, and that
5 led to McAndrews writing those warrants to zero
6 for financial reporting purposes.
7 Q. Who, if you recall, was your contact
8 at Ernst & Young that you typically dealt with
9 in the discussions that you described?
10 A. There are several people that I might
11 have discussed, who were involved in the account
12 that I may have discussed matters related to the
13 company's financial statements at that time.
14 Q. Who were they?
15 A. Gerry Cohen, Anastasia Economos. She
16 was the partner. Mitch Rosendorf, manager.
17 Those were the senior people who -- one of
18 those, if I had that discussion, I would have
19 discussed with one of them.
20 Q. OK.
21 A. One or all of them.
22 MS. DeBORD: Can I have a few minutes?
23 MR. BRODY: Sure.
24 THE VIDEOGRAPHER: The time is 4:41
25 p.m. and we're going off the record.

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1 (A recess was taken.)
2 THE VIDEOGRAPHER: The time is 4:45
3 p.m. and we're back on the record.
4 MS. DeBORD: Mr. Winoker, at this time
5 I have completed my questioning.
6 MR. BRODY: I have just a few
7 follow-up questions to the representative
8 deposition only.
9 EXAMINATION BY
10 MR. BRODY:
11 Q. Mr. Winoker, you have answered a
12 number of questions in which you've described
13 the accounting value or the value on the
14 accounting records of the warrants.
15 What do you mean by accounting value
16 or accounting number?
17 A. The value that would be reflected in
18 the company's books as well as in its financial
19 statements.
20 Q. What principles are applied in
21 determining what that accounting number should
22 be?
23 A. They're governed by Generally Accepted
24 Accounting Principles.
25 Q. In addition to the accounting number

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1 placed on the books, I believe you testified
2 that you were aware that people in the company
3 and the company's management were of the view
4 the values were actually of no value.
5 What do you understand to be the --
6 what did you mean by that?
7 A. That the warrants that were received
8 in the settlement were worthless.
9 Q. Are you aware if McAndrews & Forbes
10 was ever able to derive any value from the
11 warrants either by selling them or transferring
12 them to someone else?
13 A. I'm not aware.
14 MR. BRODY: I have nothing further.
15 BY MS. DeBORD:
16 Q. I have a couple of more questions.
17 Mr. Winoker, when you referred to accounting
18 value you were referring to a term of art,
19 correct?
20 A. A term of art.
21 Q. Well, by term of art I mean you're
22 talking about the GAAP accounting of the value
23 of the warrants.
24 A. Yes.
25 Q. Is there any other type of value that

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1 McAndrews & Forbes would attribute to the
2 warrants that it received from Sunbeam at any
3 given time?
4 A. I don't know. I just -- I don't know.
5 Q. And you're here today to testify to
6 the value of the warrants that were received by
7 McAndrews & Forbes regardless of whether it's
8 accounting value or any other type of value,
9 right?
10 A. I believe that was, yes.
11 Q. You just answered a couple of
12 questions with Mr. Brody regarding management's
13 views of the value of the warrant being zero.
14 At what time period are you referring
15 to?
16 A. At the time they were issued, in
17 August of '98.
18 Q. Are you aware in your capacity as a
19 representative of McAndrews & Forbes why
20 McAndrews & Forbes would have agreed to a
21 settlement agreement that was worthless?
22 A. No.
23 MS. DeBORD: I don't have any further
24 questions. Hold on, I'm sorry.
25 Q. Mr. Winoker, despite the fact that

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**Exhibit Excluded Without Prior Determination
of Protectability By Court**

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**Exhibit Excluded Without Prior Determination
of Protectability By Court**

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**Exhibit Excluded Without Prior Determination
of Protectability By Court**

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EXHIBIT
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**Exhibit Excluded Without Prior Determination
of Protectability By Court**

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16div-030003

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Originator-Key-Asymmetric:

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CONFORMED SUBMISSION TYPE: 10-Q

PUBLIC DOCUMENT COUNT: 2

CONFORMED PERIOD OF REPORT: 19980930

FILED AS OF DATE: 19981222

FILER:

COMPANY DATA:

COMPANY CONFORMED NAME:	SUNBEAM CORP/FL/
CENTRAL INDEX KEY:	0000003662
STANDARD INDUSTRIAL CLASSIFICATION:	ELECTRIC HOUSEWARES & FANS [
IRS NUMBER:	251638266
STATE OF INCORPORATION:	DE
FISCAL YEAR END:	1229

FILING VALUES:

FORM TYPE:	10-Q
SEC ACT:	
SEC FILE NUMBER:	001-00052
FILM NUMBER:	98774067

BUSINESS ADDRESS:

STREET 1:	1615 SOUTH CONGRESS AVENUE
STREET 2:	SUITE 200
CITY:	DELRAY BEACH
STATE:	FL
ZIP:	33445
BUSINESS PHONE:	5612432100

MAIL ADDRESS:

STREET 1:	1615 SOUTH CONGRESS AVENUE
STREET 2:	SUITE 200
CITY:	DELRAY BEACH
STATE:	FL
ZIP:	33445

FORMER COMPANY:

FORMER CONFORMED NAME:	SUNBEAM OSTER COMPANY INC /DE/
DATE OF NAME CHANGE:	19931210

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UNITED STATES



010015

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

Quarterly Report Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

For the period ended September 30, 1998

OR

Transition Report Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

For the transition period from _____ to _____

Commission File No. 1-52

[GRAPHIC OMITTED]
SUNBEAM CORPORATION
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION) (I.R.S. EMPLOYER IDENTIFICATION NUMBER)

1615 SOUTH CONGRESS AVENUE
SUITE 200
DELRAY BEACH, FLORIDA
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES) 33445
(ZIP CODE)

(561) 243-2100
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

NOT APPLICABLE
(FORMER NAME, FORMER ADDRESS AND FORMER FISCAL YEAR,
IF CHANGED SINCE LAST REPORT)

Indicate by check mark whether the registrant (1) has filed all reports
required to be filed by Section 13 or 15(d) of the Securities Exchange Act of
1934 during the preceding 12 months (or for such shorter period that the
registrant was required to file such reports), and (2) has been subject to such
filing requirements for the past 90 days.

Yes [] No [X]

On December 4, 1998 there were 100,887,545 shares of the registrant's
Common Stock (\$.01 par value) outstanding.

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SUNBEAM CORPORATION AND SUBSIDIARIES

QUARTERLY REPORT
ON FORM 10-Q

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Condensed Consolidated Balance Sheets as of September 30, 1998 (Unaudited) and December 28, 1997.....

Condensed Consolidated Statements of Cash Flows (Unaudited) for the nine months ended September 30, 1998 and September 28, 1997.....

Notes to Condensed Consolidated Financial Statements (Unaudited)

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PART II. OTHER INFORMATION

Item 6. Exhibits and Reports on Form 8-K

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PART I. FINANCIAL INFORMATION

SUNBEAM CORPORATION AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

Three Months

September 30, 1998

(Unaudit

<S>

Net sales
Cost of goods sold.....
Selling, general and administrative expense.....

<C>

\$ 496,039
428,629
228,441

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Operating (loss) earnings.....	(161,031)
Interest expense.....	42,669
Other income, net.....	(10,987)

(Loss) earnings from continuing operations before income taxes, minority interest and extraordinary charges.	(192,713)
Income taxes (benefit):	
Current.....	396
Deferred.....	(2,814)

	(2,418)

Minority interest.....	(1,384)

(Loss) earnings from continuing operations before extraordinary item.....	(188,911)
Loss from discontinued operations, net of taxes.....	-
Extraordinary charges from early extinguishment of debt, net of taxes (Note 3).....	-

Net (loss) earnings.....	\$ (188,911)
	=====
(Loss) earnings per share:	
(Loss) earnings from continuing operations before extraordinary charges:.....	
Basic.....	\$ (1.88)
Diluted.....	(1.88)
Loss from discontinued operations:	
Basic.....	-
Diluted.....	-
Extraordinary charge:	
Basic.....	-
Diluted.....	-

Net (loss) earnings:	
Basic.....	\$ (1.88)
	=====
Diluted.....	\$ (1.88)
	=====
Weighted average common shares outstanding:	
Basic.....	100,722
Diluted.....	100,722
Dividends declared per share of common stock	\$ 0.00
</TABLE>	

See Notes to Condensed Consolidated Financial Statements.

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SUNBEAM CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS

(DOLLARS IN THOUSANDS)

	September 30, 1998	December 1997
	(Unaudited)	
ASSETS	<C>	<C>
Current assets:		
Cash and cash equivalents.....	\$ 52,081	\$ 52,
Restricted investments (Note 3).....	83,681	
Receivables, net.....	435,081	228,
Inventories.....	647,335	304,
Prepaid expenses, deferred income taxes and other current assets.....	65,579	16,
Total current assets.....	1,283,757	602,
Property, plant and equipment, net	407,047	249,
Trademarks, trade names, goodwill and other, net...	1,812,938	207,
	-----	-----
	\$3,503,742	\$1,058,
	=====	=====
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Short-term debt and current portion of long-term debt (Note 3).....	\$1,509,545	\$
Accounts payable.....	158,859	108,
Other current liabilities.....	281,867	124,
Total current liabilities.....	1,950,271	233,
Long-term debt.....	778,791	194,
Other long-term liabilities.....	217,085	159,
Minority interest.....	58,043	
Commitments and contingencies (Note 10)		
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized, none outstanding).....	--	
Common stock (100,708,970 and 89,984,425 shares issued and outstanding)	1,007	
Additional paid-in capital.....	1,030,862	479,
(Accumulated deficit) retained earnings....	(499,143)	89,
Accumulated other comprehensive loss.....	(33,174)	(33,
Other shareholders' equity.....	--	(1,
Total shareholders' equity	499,552	535,
Treasury stock, at cost (4,454,394 shares in 1997)	--	(63,
Total shareholders' equity	499,552	472,
	-----	-----
	\$3,503,742	\$1,058,
	=====	=====

</TABLE>

See Notes to Condensed Consolidated Financial Statements.

<PAGE>

<TABLE>
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SUNBEAM CORPORATION AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)

Nine

September 30
1998

(Unaudited)

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OPERATING ACTIVITIES:

Net (loss) earnings.....	\$ (587,070)
Adjustments to reconcile net (loss) earnings to net cash used in operating activities:	
Depreciation and amortization.....	89,510
Deferred income taxes.....	(1,280)
Minority interest in loss from Coleman.....	(3,447)
Loss on sale of property, plant and equipment.....	2,406
Provision for fixed assets.....	32,642
Provision for excess and obsolete inventory.....	86,167
Warrants charged to expense (see Note 2).....	70,000
Non-cash compensation charges.....	23,359
Loss on sale of discontinued operations, net of taxes.....	--
Restructuring and asset impairment benefit.....	(2,900)
Extraordinary charge from early extinguishment of debt.....	111,715
Changes in working capital and other, net of acquisitions.....	(45,797)
Net cash used in operating activities.....	(224,695)

INVESTING ACTIVITIES:

Capital expenditures.....	(32,766)
Acquisitions of Coleman, Signature Brands and First Alert, net of cash acquired.....	(379,159)
Proceeds from sales of divested operations and other assets.....	307
Net cash (used in) provided by investing activities.....	(411,618)

FINANCING ACTIVITIES:

Issuance of convertible subordinated debentures, net of financing fees.....	729,622
Net borrowings under revolving credit facility.....	1,353,045
Payments of debt obligations, including prepayment penalties.....	(1,464,245)
Proceeds from exercise of stock options.....	19,553
Other, net.....	(1,875)
Net cash provided by financing activities.....	636,096

Net (decrease) increase in cash and cash equivalents.....	(217)
Cash and cash equivalents at beginning of period.....	52,298

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3/13/2005

Cash and cash equivalents at end of period..... \$ 52,081
=====

</TABLE>

See Notes to Condensed Consolidated Financial Statements.

<PAGE>

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

1. OPERATIONS AND BASIS OF PRESENTATION

ORGANIZATION

Sunbeam Corporation ("Sunbeam" or the "Company") is a leading manufacturer and marketer of branded consumer products. The Sunbeam/registered trademark/ and Oster/registered trademark/ brands have been household names for generations, and the Company is a market share leader in many of its product categories.

The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogs, television shopping channels, Company-owned outlet stores, hardware stores, home centers, drug and grocery stores, pet supply retailers, as well as independent distributors and the military. The Company also sells its products to commercial end users such as hotels and other institutions.

As further described in Note 2, on March 30, 1998, the Company, through a wholly-owned subsidiary, acquired approximately 81% of the total number of then outstanding shares of common stock of The Coleman Company, Inc. ("Coleman"). Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically under the Coleman/registered trademark/ brand name since the 1920's.

As further described in Note 2, on April 6, 1998, the Company completed the cash acquisitions of First Alert, Inc. ("First Alert"), a leading manufacturer of smoke and carbon monoxide detectors, and Signature Brands USA, Inc. ("Signature Brands"), a leading manufacturer of consumer and professional products.

PRESENTATION OF FISCAL PERIODS

To standardize the fiscal period ends of the Company and its acquired entities, effective with its 1998 fiscal year, the Company has changed its fiscal year end from the Sunday nearest December 31 to a calendar year. Accordingly, quarterly reporting will follow the calendar quarters. The impact of this change in fiscal periods on net sales for the first quarter and third quarters of 1998 was to increase sales by approximately \$4 million and \$2 million, respectively, and the impact on operating results for the periods was to increase the net loss by approximately \$0.2 million in the first quarter and by \$1.3 million in the third quarter.

040021

BASIS OF PRESENTATION

The Condensed Consolidated Balance Sheet of the Company as of September 30, 1998 and the Condensed Consolidated Statements of Operations for the three and

nine months ended September 30, 1998 and September 28, 1997, and the Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 1998 and September 28, 1997 are unaudited. The unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions of Form 10-Q and Rule 10-01 of Regulation S-X. The December 28, 1997 Condensed Consolidated Balance Sheet was derived from the Company's Annual Report on Form 10-K/A for the year ended December 28, 1997. The condensed consolidated financial statements contained herein should be read in conjunction with the consolidated financial statements and related notes contained in the Company's 1997 Annual Report on Form 10-K/A. In the opinion of management, the unaudited condensed consolidated financial statements furnished herein include all adjustments (consisting of only recurring adjustments) necessary for a fair presentation of the results of operations for the interim periods presented. These interim results of operations are not necessarily indicative of results for the entire year.

RESTATEMENT

On June 30, 1998, the Company announced that the Audit Committee of the Board of Directors was initiating a review into the accuracy of prior financial statements. The Audit Committee's review has since been completed and, as a result of its findings, the Company has restated its previously issued financial statements for 1996, 1997 and the first quarter of 1998. (See Note 8).

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
(UNAUDITED)

1. OPERATIONS AND BASIS OF PRESENTATION - (CONTINUED)

BASIC AND DILUTED LOSS PER COMMON SHARE

In 1997, the Company adopted SFAS No. 128, EARNINGS PER SHARE. Basic earnings per common share calculations are determined by dividing earnings available to common shareholders by the weighted average number of shares of common stock outstanding. Diluted earnings per share are determined by dividing earnings available to common shareholders by the weighted average number of shares of common stock and dilutive common stock equivalents outstanding (all related to outstanding stock options, restricted stock and the Zero Coupon Convertible Senior Subordinated Debentures).

For the third quarter and first nine months of 1998, respectively, 39,090 and 3,017,516 shares related to stock options, 12,717 and 63,016 shares related to restricted stock and 13,150,000 shares in each period related to the conversion feature of the Zero Coupon Convertible Senior Subordinated Debentures were not included in the diluted average common shares outstanding, as the effect would have been antidilutive. For the third quarter and first nine months of 1997, respectively, the dilutive effect of 2,886,577 and 2,602,749 equivalent shares related to stock options and (94,224) and (148,360) equivalent shares related to restricted stock were used in determining the dilutive average shares outstanding. SFAS No. 128 requires the use of dilutive potential common shares in the determination of diluted earnings per share if an entity reports earnings from continuing operations. The use of dilutive potential common shares in the determination of the diluted per share loss from discontinued operations is antidilutive. (See Note 9.)

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NEW ACCOUNTING STANDARDS

In June 1997, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 131, DISCLOSURES ABOUT SEGMENTS OF AN ENTERPRISE AND RELATED INFORMATION. SFAS No. 131 establishes standards for the way that public business enterprises report information about operating segments in annual financial statements and requires that those enterprises report selected information about operating segments in interim financial reports issued to shareholders. It also establishes standards for related disclosures about products and services, geographic areas, and major customers. SFAS No. 131 is effective for financial statements for fiscal years beginning after December 15, 1997 and will be presented in the Company's Annual Report on Form 10-K for the year ending December 31, 1998. Financial statement disclosures for prior periods are required to be restated. The Company is in the process of evaluating the disclosure requirements. The adoption of SFAS No. 131 will have no impact on consolidated results of operations, financial position or cash flow.

In March 1998, the American Institute of Certified Public Accountants ("AICPA") issued Statement of Position 98-1, ACCOUNTING FOR THE COSTS OF COMPUTER SOFTWARE DEVELOPED OR OBTAINED FOR INTERNAL USE ("SOP 98-1"). SOP 98-1 requires computer software costs associated with internal use software to be expensed as incurred until certain capitalization criteria are met. The Company will adopt SOP 98-1 on January 1, 1999. Adoption of this Statement is not expected to have a material impact on the Company's consolidated financial position or results of operations, although actual charges incurred may be material due to Year 2000 issues.

In April 1998, the AICPA issued Statement of Position 98-5, REPORTING ON THE COSTS OF START-UP ACTIVITIES ("SOP 98-5"). SOP 98-5 requires all costs associated with pre-opening, pre-operating and organization activities to be expensed as incurred. The Company will adopt SOP 98-5 beginning January 1, 1999. Adoption of the Statement is not expected to have a material impact on the Company's consolidated financial position or results of operations.

In June 1998, the FASB issued SFAS No. 133, ACCOUNTING FOR DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES for fiscal years beginning after June 15, 1999. SFAS No. 133 requires the recognition of all derivatives in the Consolidated Balance Sheet as either assets or liabilities measured at fair value. The Company will adopt SFAS No. 133 effective for the 2000 calendar year end. The Company has not yet determined the impact SFAS No. 133 will have on its consolidated financial position or results of operations when such statement is adopted.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
(UNAUDITED)

2. ACQUISITIONS

On March 30, 1998, the Company, through a wholly-owned subsidiary, acquired approximately 81% of the total number of then outstanding shares of common stock of Coleman from a subsidiary of MacAndrews & Forbes Holdings, Inc. ("M&F"), in exchange for 14,099,749 shares of the Company's common stock and approximately \$160 million in cash as well as the assumption of \$1,016 million in debt. The value of the common stock issued at the date of acquisition (\$524 million) was

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derived by using the average ending stock price as reported by the New York Stock Exchange Composite Tape for the day before and day of the public announcement of the acquisition, discounted by 15% due to the restrictive nature of the securities.

On August 12, 1998, the Company announced that, following investigation and negotiation conducted by a Special Committee of the Board consisting of four outside directors not affiliated with M&F, the Company had entered into a settlement agreement with a subsidiary of M&F pursuant to which the Company was released from certain threatened claims of M&F and its affiliates arising from the Coleman acquisition and M&F agreed to provide certain management personnel and assistance to the Company in exchange for the issuance to the M&F subsidiary of five-year warrants to purchase up to 23 million shares of the Company's common stock at an exercise price of \$7.00 per share, subject to anti-dilution provisions. Accordingly, a \$70 million non-cash Selling, General and Administrative ("SG&A") expense was recorded in the third quarter of 1998, based on a valuation performed as of August 1998 using facts existing at that time. The valuation was conducted by an independent consultant engaged by the Special Committee of the Board of Directors. (See Note 10.)

The Coleman acquisition was accounted for under the purchase method of accounting; accordingly, the results of operations of Coleman are included in the accompanying Condensed Consolidated Statement of Operations from the date of acquisition. The purchase price of Coleman has been allocated to individual assets acquired and liabilities assumed based on preliminary estimates of fair market value at the date of acquisition. The preliminary fair value of tangible assets acquired was approximately \$747 million (of which \$27 million was cash) and approximately \$1,331 million of liabilities were assumed. The excess of purchase price over net tangible assets acquired of \$1,270 million has been classified as goodwill and is being amortized on a straight-line basis over 40 years. The allocation of purchase price for the acquisition of Coleman will be revised when additional information concerning asset and liability valuations is obtained. Adjustments, which could be significant, will be made during the allocation period based on detailed reviews of the fair values of assets acquired and liabilities assumed and could result in a substantial change in goodwill and other intangible assets.

The Company expects to acquire the remaining equity interest in Coleman pursuant to a merger transaction in which the existing Coleman minority shareholders will receive .5677 shares of the Company's common stock and \$6.44 in cash for each share of Coleman common stock outstanding. In addition, unexercised options under Coleman's stock option plans will be cashed out at a price per share equal to the difference between \$27.50 and the exercise price of such options. The Company expects to issue approximately 6.7 million shares of common stock and expend approximately \$87 million in cash to complete the Coleman acquisition. Although there can be no assurance, it is anticipated the Coleman merger will occur in the first half of fiscal 1999. The acquisition of the remaining outstanding shares of Coleman will be accounted for under the purchase method of accounting on the date of consummation. (See Note 10.)

On April 6, 1998, the Company completed the cash acquisitions of First Alert and Signature Brands, valued at approximately \$178 million and \$253 million, respectively, including the assumption of debt. These acquisitions were accounted for by the purchase method of accounting and the results of operations of the acquired entities were included in the Company's Consolidated Statements of Operations from the date of the acquisitions. The preliminary fair value of tangible assets acquired in the First Alert acquisition was approximately \$127 million (of which \$4 million was cash) and approximately \$79 million of liabilities were assumed, resulting in an excess of purchase price over net tangible assets of \$89 million. For the Signature Brands acquisition, the

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preliminary fair value of tangible assets acquired was approximately \$117 million (of which \$8 million was cash) and approximately \$229 million of liabilities were assumed, resulting in an excess of purchase price over net tangible assets of \$205 million. The excess of purchase price over net tangible assets acquired has been classified as goodwill and is being amortized on a straight-line basis over 40 years. The allocation of purchase price for the acquisitions will be revised when additional information concerning asset and liability valuations is obtained. Adjustments, which could be significant, will be made during the allocation period based on detailed reviews of the fair values of assets acquired and liabilities assumed and could result in a substantial change in goodwill and other intangible assets.

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SUNBEAM CORPORATION AND SUBSIDIARIES
 NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
 (UNAUDITED)

2. ACQUISITIONS - (CONTINUED)

The following unaudited pro forma financial information for the Company gives effect to the three acquisitions as if they had occurred at the beginning of the periods presented. These pro forma results have been prepared for informational purposes only and do not purport to be indicative of the results of operations which actually would have occurred had the acquisitions been consummated on the dates indicated, or which may result in the future. The unaudited pro forma results follow (in millions, except per share data):

<TABLE>
 <CAPTION>

	Nine Months ----- September 30, 1998 -----
<S>	<C>
Net sales.....	\$1,630.6
Loss from continuing operations before extraordinary charge (a), (b).....	(505.8)
Basic and diluted loss per share from continuing operations before extraordinary items.....	(5.03)

</TABLE>

(a) Coleman's loss before extraordinary items have been adjusted to exclude the following one time after tax benefits and charges: (i) a \$15.8 million gain from the sale of Coleman Safety and Security Products, Inc., (ii) \$7.1 million of costs incurred by Coleman associated with the Company's acquisition of Coleman, (iii) the write off of \$2.1 million of capitalized costs associated with the installation of new software which will be abandoned as a result of the acquisition by the Company, (iv) \$1.3 million of costs to terminate a license agreement with a former affiliate of Coleman, and (v) the write off of \$1.7 million of unrealized deferred tax assets as a result of the change of control of Coleman.

(b) In 1998 and 1997, respectively, after tax interest expense was increased \$15.6 million and \$42.2 million, and goodwill amortization, after tax,

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was increased \$6.3 million in 1998 and \$19.9 million in 1997 to reflect the pro forma effect of the acquisition occurring at the beginning of the period. In addition, the minority shareholder percentage was adjusted to reflect the change in the portion of Coleman held by minority shareholders following the transaction. The minority interest in Coleman's losses from continuing operations was adjusted by \$1.2 million in 1998 and \$4.2 million in 1997 to reflect both the change in the proportion of the ownership of Coleman held by minority shareholders and the effects of the pro forma adjustments.

3. CREDIT FACILITIES, LONG-TERM DEBT AND FINANCIAL INSTRUMENTS

In order to finance the acquisitions described in Note 2 and refinance substantially all of the indebtedness of the Company and its acquired entities, the Company consummated: (i) an offering (the "Offering") of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures") at a yield to maturity of 5% (approximately \$2,014 million principal amount at maturity) in March 1998, which resulted in approximately \$730 million of net proceeds and, (ii) entered into a revolving and term credit facility ("New Credit Facility").

The Debentures are exchangeable for shares of the Company's common stock at an initial conversion rate of 6.575 shares for each \$1,000 principal amount at maturity of the Debentures, subject to adjustment upon occurrence of certain events. The Company was required to file a registration statement with the Securities and Exchange Commission to register the Debentures by June 23, 1998, which registration statement has not been filed. From June 23, 1998 until the registration statement is filed and declared effective, the Company is required to pay to the Debenture holders cash liquidated damages accruing, for each day during such period, at a rate per annum equal to 0.25% during the first 90 days and 0.50% thereafter multiplied by the total of the issue price of the Debentures plus the original issue discount thereon on such day. The Company made its first payment of approximately \$525,000 to the Debenture holders on September 25, 1998. (See Note 10.)

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
(UNAUDITED)

3. CREDIT FACILITIES, LONG-TERM DEBT AND FINANCIAL INSTRUMENTS - (CONTINUED)

The New Credit Facility provided for aggregate borrowings of up to \$1.7 billion pursuant to: (i) a revolving credit facility in an aggregate principal amount of up to \$400 million, maturing March 31, 2005; (ii) an \$800 million term loan maturing on March 31, 2005, and (iii) a \$500 million term loan maturing September 30, 2006. Interest accrues at a rate selected at the Company's option of: (i) the London Interbank Offered Rate ("LIBOR") plus an agreed upon interest margin which varies depending upon the Company's leverage ratio, as defined, and other items or, (ii) the base rate of the administrative agent (generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 1/2 of 1%), plus an agreed upon interest margin which varies depending upon the Company's leverage ratio, as defined, and other items. The New Credit Facility contains certain covenants, including limitations on the ability of the Company and its subsidiaries to engage in certain transactions

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and the requirement to maintain certain financial covenants and ratios.

At June 30, 1998, the Company was not in compliance with the financial covenants and ratios required under the New Credit Facility. The Company and its lenders entered into an agreement dated June 30, 1998, which provided that compliance with the covenants would be waived through December 31, 1998. Borrowings under the New Credit Facility are secured by the Company's assets, including its stock interest in Coleman. Pursuant to an amendment dated October 19, 1998, the Company is not required to comply with the original financial covenants and ratios under the New Credit Facility until April 10, 1999, but will be required to comply with an earnings before interest, taxes, depreciation and amortization covenant, the amounts of which are to be determined, beginning February 1999. Concurrent with each of these amendments, interest margin was increased. The margin continues to increase monthly through March 1999 to a maximum of 400 basis points over LIBOR. At the end of November 1998, following the scheduled repayment of a portion of the term loan, the New Credit Facility was reduced to \$1,698 million in total, of which approximately \$1,421 million was outstanding and approximately \$277 million was available. In addition, at the same time, the Company's cash balance available for debt repayment was approximately \$22 million.

The Company is working closely with its bank lenders in an effort to reach agreement on a further amendment to the New Credit Facility containing mutually acceptable revised financial covenants. There can be no assurance that such an amendment, or a further waiver of the existing financial covenants, will be entered into with the bank lenders by April 10, 1999. The failure to obtain such an amendment or further waiver would result in violation of the existing covenants, which would permit the bank lenders to accelerate the maturity of all outstanding borrowing under the New Credit Facility. Accordingly, the debt related to the New Credit Facility and all debt containing cross-default provisions is classified as current in the Condensed Consolidated Balance Sheet as of September 30, 1998.

The Company selectively uses derivatives to manage interest rate and foreign exchange exposures that arise in the normal course of business. No derivatives are entered into for trading or speculative purposes. Foreign exchange option and forward contracts are used to hedge a portion of the Company's underlying exposures denominated in foreign currency. Although the market value of derivative contracts at any single point in time will vary with changes in interest and/or foreign exchange rates, the differences between the carrying value and fair value of such contracts at September 30, 1998 and September 28, 1997 were not considered to be material, either individually or in the aggregate. The Company enters into derivative contracts with counterparties that it believes to be creditworthy. The Company does not enter into any leveraged derivative transactions. At September 30, 1998, the Company held three interest rate swap agreements, one with a notional value of \$25 million and two in a notional amount of \$150 million each. The swap agreements are contracts to exchange floating rate for fixed interest payments periodically over the life of the agreements without the exchange of the underlying notional principal amounts. The swaps expire in January 2003, June 2001 and June 2003 and have strike rates of 6.115%, 5.75% and 5.58%, respectively. The notional amounts of the agreements do not represent the amount of exposure to credit loss.

In March 1998, the Company prepaid a \$75.0 million 7.85% industrial revenue bond related to its Hattiesburg facility originally due in 2009. In connection with the early extinguishment of this debt, the Company recognized an extraordinary charge of \$8.6 million in the first quarter of 1998. As a result of repayment of certain indebtedness assumed in the Coleman acquisition, the Company recognized an extraordinary charge of \$103.1 million, net of income taxes of \$10.7 million, in the second quarter of 1998. In connection with the

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acquisition of Signature Brands, the Company was required to defease \$70.0 million of acquired debt. Cash was placed with a trustee to provide for the defeasance, including \$5.6 million for the related prepayment penalty. This cash was used to purchase Treasury notes. Accordingly, \$83.7 million of restricted investments held by the trustee for the August 1999 liquidation of acquired debt are reflected as an asset in the balance sheet at September 30, 1998.

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SUNBEAM CORPORATION AND SUBSIDIARIES
 NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
 (UNAUDITED)

3. CREDIT FACILITIES, LONG-TERM DEBT AND FINANCIAL INSTRUMENTS - (CONTINUED)

In December 1997, the Company entered into a receivables securitization program under which the Company has received approximately \$130.6 million from the sale of trade accounts receivable through the third quarter of 1998. Costs of the program, which primarily consist of the purchaser's financing cost of issuing commercial paper backed by the receivables, totaled \$0.4 million during the third quarter of 1998 and \$1.9 million for the year-to-date. The Company, as agent for the purchaser of the receivables, retains collection and administrative responsibilities for the purchased receivables. This agreement contains cross-default provisions which provide the purchaser of the receivables an option to cease purchasing receivables from the Company if the Company is in default under the New Credit Facility.

4. COMPREHENSIVE INCOME

The Company adopted SFAS No. 130, REPORTING COMPREHENSIVE INCOME, effective January 1, 1998. SFAS No. 130 establishes standards for reporting and display of comprehensive income and its components in financial statements. The components of the Company's comprehensive (loss) income are as follows (in thousands):

<TABLE>
 <CAPTION>

	Three Months Ended	
	Sept. 30, 1998	Sept. 28, 1997
<S>	<C>	<C>
Net (loss) earnings.....	\$(188,911)	\$24,768
Foreign currency translation adjustment.....	1,395	(272)
Change in minimum pension liability.....	(134)	-
Comprehensive (loss) income.....	\$(187,650)	\$24,496

040028

</TABLE>

5. SUPPLEMENTAL FINANCIAL STATEMENT DATA

Supplementary Balance Sheet data at the end of each period is as follows (in thousands):

<TABLE>
<CAPTION>

	September 30, 1998	Dec
	-----	-----
<S>	<C>	<C>
Receivables:		
Trade.....	\$467,313	\$2
Sundry.....	6,997	--
	-----	-----
	474,310	2
Valuation allowance.....	(39,229)	(
	-----	-----
	\$435,081	\$2
	=====	==
Inventories:		
Finished goods.....	\$465,998	\$1
work in process.....	36,073	--
Raw materials and supplies.....	145,264	--
	-----	-----
	\$647,335	\$3
	=====	==

</TABLE>

The Supplementary Statement of Cash Flows data is as follows (in thousands):

<TABLE>
<CAPTION>

	Three Months Ended		
	Sept. 30, 1998	Sept. 28, 1997	\$
	-----	-----	-----
<S>	<C>	<C>	<
Cash paid during the period for:			
Interest.....	\$11,577	\$ 1,109	\$
	=====	=====	=
Income tax (refunds) payments	\$(6,143)	\$(32,643)	\$
	=====	=====	=

</TABLE>

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
(UNAUDITED)

6. RESTRUCTURING AND ASSET IMPAIRMENT, INVENTORY PROVISION AND RELATED LIABILITIES

In 1997 and the first half of 1998, the Company built inventories in anticipation of 1998 sales volumes which have not materialized. As a result, it has been and will continue to be necessary to dispose of some portions of this excess inventory at amounts less than cost. Accordingly, in the second quarter of 1998, the Company recorded \$46.4 million in charges to properly state this inventory at lower-of-cost-or-market. Of this charge, a nominal amount related to an acquired entity. The Company also recorded a charge of \$11.0 million for

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excess inventories for raw materials and work in process which will not be used due to outsourcing the production of the related products. Additionally, the Company decided to discontinue certain product lines in the second quarter of 1998 and, accordingly, recorded a charge of \$26.6 million to properly state this inventory at lower-of-cost-or-market. In the third quarter, the Company recorded an additional charge of \$2.2 million in an acquired entity.

In the second quarter of 1998, as a result of decisions to outsource or discontinue a substantial number of products previously made by the Company, certain facilities and equipment will either no longer be used or will be used in a significantly different manner. Accordingly, a charge of \$29.6 million was recorded to write certain of these assets down to reflect the fair market value of items held for disposition. Approximately 80% of this charge related to machinery, equipment and tooling at the Company's Mexico City and Hattiesburg, Mississippi manufacturing plants. Personnel at the Mexico City facility were notified in the second quarter of 1998 that the plant is scheduled for closure at year-end 1998, accordingly, a liability of \$1.8 million was recorded in cost of goods sold primarily for employee severance and other facility closure costs. In the third quarter, the Company recorded an additional provision for fixed assets of \$3.1 million in an acquired entity. The Company is in the process of assessing the impairment of certain other assets to be retained by the Company which will be used in a significantly different manner as a result of the decisions to outsource or discontinue certain products. Additionally, the Company is in the process of assessing the expected future performance of its business operations. These assessments are expected to be completed in the fourth quarter and are expected to result in material adjustments to the valuation of assets used in the business.

At December 28, 1997, the Company, before consideration of the Coleman acquisition, had \$5.2 million in liabilities accrued related to a 1996 restructuring plan. The majority of these liabilities related to facility closures and related exit costs. During the first three quarters of 1998 this liability was reduced by \$0.7 million as a result of cash expenditures.

The restated restructuring reserve details and activity as of and for the nine months ended September 28, 1997 are as follows (in millions):

<TABLE>
<CAPTION>

	RESERVE BALANCE AT DECEMBER 29, 1996	CASH REDUCTIONS	NON-C REDUCT
	-----	-----	-----
<S>	<C>	<C>	<C>
Severance and other employee costs	\$ 19.1	\$ 8.3	
Closure and consolidation of facilities and related exit costs	32.6	5.7	
	-----	-----	
Total	\$ 51.7	\$ 14.0	
	=====	=====	

</TABLE>

7. DISCONTINUED OPERATIONS

The Company's discontinued furniture business, which was sold in March 1997, had revenues of \$51.6 million in the first quarter of 1997 prior to the sale and nominal earnings in that period. As a result of the sale of the Company's furniture business assets (primarily inventory, property, plant and equipment), the Company received \$69.0 million in cash, retained approximately

\$50.0 million in accounts receivable and retained certain liabilities. The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the Asset Purchase Agreement and in the first quarter of 1997, after completion of the sale, the Company recorded an additional loss on disposal of \$22.5 million pre-tax.

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SUNBEAM CORPORATION AND SUBSIDIARIES
 NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
 (UNAUDITED)

8. RESTATEMENT

Subsequent to the issuance of the Company's condensed consolidated financial statements for the three months ended March 31, 1998, it was determined that for the years ended December 29, 1996 and December 28, 1997 and the three months ended March 31, 1998, certain revenue was improperly recognized (principally "bill and hold" and guaranteed sales transactions), certain costs and allowances were not accrued or were improperly recorded (principally allowances for returns, cooperative advertising, and customer charge-backs as well as deductions and reserves for product liability and warranty expense) and certain costs were inappropriately included in, and subsequently charged to, restructuring, asset impairment and other costs within the Consolidated Statements of Operations. As a result, the consolidated financial statements as of December 28, 1997 and December 29, 1996 and for the years then ended were restated and a Form 10-K/A was filed with the Securities and Exchange Commission ("SEC") on November 12, 1998. The condensed consolidated financial statements as of March 31, 1998 and March 30, 1997 and for the three months then ended were restated and a Form 10-Q/A was filed with the SEC on November 25, 1998.

A summary of the effects of the restatement as of and for the three and nine months ended September 28, 1997 follows (in thousands, except per share data):

<TABLE>
 <CAPTION>

	Condensed Consoli	
		Three Months End
		September 28, 19
		As Previously
		Reported
<S>		<C>
Net sales	\$289,033	289,033
Cost of goods sold	200,242	200,242
Selling, general and administrative expense	33,863	33,863
Operating earnings	54,928	54,928
Interest expense.....	2,850	2,850
Other (income) expense, net.....	(1,347)	(1,347)
Earnings from continuing operations before income taxes	53,425	53,425
Income taxes.....	18,853	18,853

Earnings from continuing operations.....	34,572	
Loss from discontinued operations, net of taxes.....	-	
	-----	--
Net earnings.....	\$ 34,572	\$
	=====	==

Earnings (loss) per share:

Earnings from continuing operations:		
Basic.....	\$ 0.39	\$
Diluted.....	0.39	
Loss from discontinued operations:		
Basic.....	-	
Diluted.....	-	
	-----	--
Net earnings:		
Basic.....	\$ 0.39	\$
	=====	==
Diluted.....	\$ 0.39	\$
	=====	==

</TABLE>

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
(UNAUDITED)

8. RESTATEMENT - (CONTINUED)

<TABLE>

<CAPTION>

	Condensed Cons (Una A Septemb ----- As Previous Reported
<S>	<C>
ASSETS	
Cash and cash equivalents	\$ 22,811
Receivables, net	309,095
Inventories	290,876
Prepaid expenses, deferred income taxes and other current assets...	69,770
	----- 0
Total current assets	692, 352
Property, plant and equipment, net	229, 152
Trademarks, trade names, goodwill and other, net	223, 367
	----- 6
Total assets	\$1,145, 072
	=====
LIABILITIES AND SHAREHOLDERS' EQUITY	
Short-term debt and current portion of long-term debt	\$ 668
Accounts payable	132,686
Other current liabilities	112,643

Total current liabilities	245,997

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Long-term debt	199,855
Other long-term liabilities	201,403
Shareholders' equity:	
Common stock.....	899
Additional paid-in capital.....	481,679
Retained earnings	100,229
Accumulated other comprehensive loss	(18,553)
Other shareholders' equity.....	(3,307)
Treasury stock	(63,131)

Total shareholders' equity.....	497,816

Total liabilities and shareholders' equity.....	\$1,145,071
	=====

</TABLE>

9. NEW EMPLOYMENT AGREEMENTS

On February 20, 1998 the Company entered into new three-year employment agreements with its then Chairman and Chief Executive Officer and two other senior officers of the Company. These agreements replaced previous employment agreements entered into in July 1996 that were scheduled to expire in July 1999.

The new employment agreement for the Company's then Chairman provided for, among other items, the acceleration of vesting of 200,000 shares of restricted stock and the forfeiture of the remaining 133,333 shares of unvested restricted stock granted under the July 1996 agreement, a new equity grant of 300,000 shares of unrestricted stock, a new grant of a ten-year option to purchase 3,750,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in three equal annual installments beginning on the date of grant and the acceleration of vesting of 833,333 outstanding stock options granted under the July 1996 agreement. In addition, the new employment agreement with the then Chairman and Chief Executive Officer provided for income tax gross-ups with respect to any tax assessed on the equity grant and acceleration of vesting of restricted stock.

The new employment agreements with the two other then senior officers provided for, among other items, the grant of a total of 180,000 shares of restricted stock that vest in four equal annual installments beginning the date of grant, the acceleration of vesting of 44,000 shares of restricted stock and the forfeiture of the remaining 29,332 shares of unvested restricted stock granted under the July 1996 agreements, new grants of ten-year options to purchase a total of 1,875,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in four equal annual installments beginning on the date of grant and the acceleration of vesting of 383,334 outstanding stock options granted under the July 1996 agreements. In addition, the new employment agreements provided for income tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
(UNAUDITED)

9. NEW EMPLOYMENT AGREEMENTS - (CONTINUED)

Compensation expense attributed to the equity grant, the acceleration of

vesting of restricted stock and the related income tax gross-ups was recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups was amortized to expense beginning in the first quarter of 1998 with amortization to continue over the period in which the restrictions lapse. Total compensation expense recognized in the first quarter of 1998 related to these items was approximately \$31 million.

On June 15, 1998, the Company's Board of Directors announced the removal of the then Chairman and Chief Executive Officer and subsequently announced the removal or resignation of other senior officers, including the Company's then Chief Financial Officer. In connection with the removal or resignation of the senior officers and the termination of their restricted stock grants, the unamortized portion of the deferred compensation expense attributable to the restricted stock grants was reversed. Of the approximately \$0.9 million compensation expense recognized in the first quarter of 1998 for unvested restricted stock grants, \$0.8 million was reversed into income in the second quarter of 1998 and the remainder was reversed into income in the third quarter. The Company and certain of its former officers are in disagreement as to the Company's obligations to these individuals under prior employment agreements and arising from their terminations. The Board of Directors has installed a new Chief Executive Officer and senior management team.

10. COMMITMENTS AND CONTINGENCIES

SEC INVESTIGATION

By letter dated June 17, 1998, the staff of the Division of Enforcement of the SEC advised the Company that it was conducting an informal inquiry into the Company's accounting policies and procedures and requested that the Company produce certain documents. On July 2, 1998, the SEC issued a Formal Order of Private Investigation, designating officers to take testimony and pursuant to which a subpoena duces tecum was served on the Company requiring the production of certain documents. On November 4, 1998, another SEC subpoena duces tecum requiring the production of further documents was received by the Company. The Company has provided numerous documents to the SEC staff and continues to cooperate fully with the SEC staff. The Company cannot predict the term of such investigation or its potential outcome.

LITIGATION

On April 23, 1998, two class action lawsuits were filed on behalf of purchasers of the Company's common stock in the U. S. District Court for the Southern District of Florida against the Company and certain of its present and former officers and directors alleging violations of the federal securities laws as discussed below (the "Consolidated Federal Actions"). Since that date, approximately fifteen similar class actions have been filed in the same Court. One of the lawsuits also names as defendant Arthur Andersen LLP, the Company's independent accountants for the period covered by the lawsuit.

The complaints in the Consolidated Federal Actions allege to varying degrees that the defendants (i) failed to disclose that the Company pre-sold approximately \$50 million of products pursuant to its "early buy" marketing program in an effort to boost its 1997 sales and net income figures and (ii) made material misrepresentations regarding the Company's business operations, future prospects and anticipated earnings per share, in an effort to artificially inflate the price of the Company stock long enough for the Company to complete a \$2 billion debt financing (supported with stock incentives) necessary to complete the acquisitions of Coleman, Signature Brands and First Alert, and for the individual defendants to enter into lucrative long-term employment agreements with the Company. Each complaint alleges two counts of

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securities fraud; one count against all defendants and one count against the individual defendants.

On June 16, 1998, the Court entered an Order consolidating all such filed and all such subsequently filed class actions and providing time periods for the filing of a Consolidated Amended Complaint and defendants' response thereto. On June 22, 1998, two groups of plaintiffs made motions to be appointed lead plaintiffs and to have their selection of counsel approved as lead counsel. On July 20, 1998, the Court entered an Order appointing lead plaintiffs and lead counsel (the "Smith Plaintiffs' Group"). This Order also stated that it "shall apply to all subsequently filed actions which are consolidated herewith". On August 28, 1998, plaintiffs in one of the subsequently filed actions filed an objection to having their action consolidated pursuant to the June 16, 1998 Order, arguing that the class period in their action differs from the class periods in the originally filed consolidated actions. On September 29, 1998, the Smith Plaintiffs' Group filed its memorandum in opposition to this objection. On December 9, 1998, the Court entered an Order overruling plaintiff's objections and affirming its prior Order appointing lead plaintiffs and lead counsel.

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SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
(UNAUDITED)

10. COMMITMENTS AND CONTINGENCIES - (CONTINUED)

On April 7, 1998, a purported derivative action was filed in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida against the Company and certain of its present and former officers and directors. The action alleged that the individual defendants breached their fiduciary duties and wasted corporate assets when the Company granted stock options to three of its officers and directors on or about February 2, 1998 at an exercise price of \$36.85. On June 25, 1998, all defendants filed a motion to dismiss the complaint for failure to make a presuit demand on the board of directors of the Company. On October 22, 1998, the plaintiff amended the complaint against all but one of the defendants named in the original complaint. The amended complaint no longer challenges the stock options, but instead alleges that the individual defendants breached their fiduciary duties by failing to have in place adequate accounting and sales controls, which failure caused the inaccurate reporting of financial information to the public, thereby causing an artificial inflation of the Company's financial statements and stock price.

On June 25, 1998, four purported class actions were filed in the Court of Chancery of the State of Delaware in New Castle County by minority shareholders of Coleman against the Company and certain of the Company's present and former officers and directors. An additional class action was filed on August 10, 1998, against the same parties. All of the plaintiffs are represented by the same Delaware counsel and have agreed to consolidate the class actions. These actions allege, in essence, that the existing exchange ratio for the proposed merger between the Company and Coleman is no longer fair to Coleman shareholders as a result of the recent decline in the market value of the Company stock. On October 21, 1998, the Company announced that it had entered into a Memorandum of Understanding to settle, subject to court approval, certain class actions brought by shareholders of Coleman challenging the proposed Coleman Merger. Under the terms of the proposed settlement, the Company will issue to the Coleman public shareholders five-year warrants to purchase 4.98 million shares

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of the Company's common stock at \$7.00 per share. These warrants will generally have the same terms as the warrants previously issued to a subsidiary of M&F and will be issued when the Coleman Merger is consummated, which is now expected to be in the first half of 1999. Issuance of these warrants will be accounted for as additional purchase consideration. There can be no assurance that the Court will approve the settlement as proposed.

During the months of August and October 1998, purported class and derivative actions were filed in the Court of Chancery of the State of Delaware in New Castle County and in the U. S. District Court for the Southern District of Florida by shareholders of the Company against the Company, M&F and certain of the Company's present and former directors. These complaints allege that the defendants breached their fiduciary duties when the Company entered into a settlement agreement with M&F whereby M&F released the Company from any claims it may have had arising out of the Company's acquisition of its interest in Coleman and agreed to provide management support to the Company (the "Settlement Agreement"). Pursuant to the Settlement Agreement, M&F was granted five-year warrants to purchase an additional 23 million shares of the Company's common stock at an exercise price of \$7.00 per share. These complaints also allege that the rights of the public shareholders have been compromised, as the settlement would normally require shareholder approval under the rules and regulations of the New York Stock Exchange ("NYSE"). The Audit Committee of the Company's board determined that obtaining such shareholder approval would have seriously jeopardized the financial viability of the Company which is an allowable exception to the NYSE shareholder approval requirements. The Company has moved to dismiss each of the complaints to which it is a party.

On September 16, 1998, an action was filed in the 56th Judicial District Court of Galveston County, Texas alleging various claims in violation of the Texas Securities Act and Texas Business and Commercial Code as well as common law fraud as a result of the Company's alleged misstatements and omissions regarding the Company's financial condition and prospects during a period beginning May 1, 1998 and ending June 16, 1998, in which the plaintiffs engaged in transactions in the Company's stock. The Company is the only named defendant in this action. The complaint requests recovery of compensatory damages, punitive damages and expenses in an unspecified amount. This action has been removed to the U.S. District Court for the Southern District of Texas and the Company has filed a motion to transfer this case to the Southern District of Florida, the forum for the Consolidated Federal Actions. Plaintiffs have moved to remand the case to Texas state court.

On October 30, 1998, a class action lawsuit was filed on behalf of certain purchasers of the Company's Debentures in the U.S. District Court of the Southern District of Florida against the Company and its prior Chief Executive Officer and Chief Financial Officer, alleging violations of the federal securities laws and common law fraud. The complaint alleges that the Company's offering memorandum used for the marketing of the Debentures contained false and misleading information regarding the Company's financial position and that the defendants engaged in a plan to inflate the Company's earnings for the purpose of defrauding the plaintiffs and others. The Company is seeking to consolidate this lawsuit with the other Consolidated Federal Actions.

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SUNBEAM CORPORATION AND SUBSIDIARIES
 NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (CONTINUED)
 (UNAUDITED)

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10. COMMITMENTS AND CONTINGENCIES - (CONTINUED)

The Company has been named as a defendant in an action filed by HBK Investments, L.P., et al. in the District Court of Tarrant County, Texas, 48th Judicial District, on November 20, 1998. The plaintiffs in this action are purchasers of the Debentures. The plaintiffs allege that the Company violated the Texas Securities Act and the Texas Business & Commercial Code and committed state common law fraud by materially misstating the financial position of the Company in connection with the offering and sale of the Debentures. The complaint seeks rescission, as well as compensatory and exemplary damages in an unspecified amount.

The Company intends to vigorously defend each of the foregoing lawsuits, but cannot predict the outcome and is not currently able to evaluate the likelihood of the Company's success in each case or the range of potential loss. However, if the foregoing actions were determined adversely to the Company, such judgments would likely have a material adverse effect on the Company's financial position, results of operations and cash flows.

On July 2, 1998, the American Insurance Company ("American") filed suit against the Company in the U.S. District Court for the Southern District of New York requesting a declaratory judgment of the court that the directors' and officers' liability insurance policy for excess coverage issued by American was invalid and/or had been properly cancelled by American. The Company has moved to transfer such action to the federal district court in which the Consolidated Federal Actions are currently pending; American is opposing such motion. On October 20, 1998, an action was filed by Federal Insurance Company in the U.S. District Court for the Middle District of Florida requesting the same relief as that requested by American in the previously filed action as to additional coverage levels under the Company's directors' and officers' liability insurance policy. The Company intends to pursue recovery from all of its insurers if damages are awarded against the Company or its indemnified officers and/or directors under any of the foregoing actions. The Company's failure to obtain such insurance recoveries following an adverse judgement against the Company in any of the foregoing actions could have a material adverse impact on the Company's financial position, results of operations and cash flows.

The Company and its subsidiaries are also involved in various lawsuits arising from time to time which the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these routine matters, and of certain matters relating to prior operations of the Predecessor, individually or in the aggregate, will not have a material adverse effect upon the financial position, results of operations or cash flows of the Company.

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ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with the accompanying condensed consolidated financial statements as of and for the three and nine months ended September 30, 1998 and September 28, 1997.

ACQUISITIONS

On March 30, 1998, the Company, through a wholly-owned subsidiary, acquired approximately 81% of the total number of then outstanding shares of common stock of The Coleman Company, Inc. ("Coleman"), in exchange for 14,099,749 shares of the Company's common stock and approximately \$160 million in cash as well as the assumption of \$1,016 million in debt. The Company expects to acquire the remaining equity interest in Coleman pursuant to a merger transaction in which the existing Coleman minority shareholders will receive approximately 6.7 million shares of common stock and approximately \$87 million in cash. Although there can be no assurance, it is anticipated the Coleman merger will occur in the first half of fiscal 1999. (See Note 2 to the condensed consolidated financial statements.) Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically under the Coleman /registered trademark/ brand name since the 1920's.

On April 6, 1998, the Company completed the cash acquisitions of First Alert, Inc. ("First Alert"), a leading manufacturer of smoke and carbon monoxide detectors, and Signature Brands USA, Inc. ("Signature Brands"), a leading manufacturer of consumer and professional products. The First Alert and the Signature Brands acquisitions were valued at approximately \$178 million and \$253 million, respectively, including the assumption of debt.

The acquisitions were recorded under the purchase method of accounting; and accordingly, the results of operations of each acquired entity are included in the accompanying Condensed Consolidated Statements of Operations from the respective dates of acquisition. The purchase prices of the acquired entities have been allocated to individual assets acquired and liabilities assumed based on preliminary estimates of fair market values at the dates of acquisition. The purchase price allocations for the acquisitions will be revised when additional information concerning asset and liability valuations is obtained. Adjustments, which could be significant, will be made during the allocation periods based on detailed reviews of the fair values of assets acquired and liabilities assumed and could result in a substantial change in goodwill and other intangible assets.

To standardize the fiscal period ends of the Company and the acquired entities, effective with its 1998 fiscal year, the Company has changed its fiscal year end from the Sunday nearest December 31 to a calendar year. (See Note 1 to the condensed consolidated financial statements.)

THREE MONTHS ENDED SEPTEMBER 30, 1998 COMPARED TO THREE MONTHS ENDED SEPTEMBER 28, 1997

Results of operations for the three months ended September 30, 1998 include the results of the acquired entities for the entire period. The acquired entities generated net sales of \$326.1 million in the quarter with corresponding gross margin of \$75.2 million, or 23% of sales. SG&A costs recorded by the acquired entities were \$84.3 million in the period, yielding an operating loss of \$9.1 million. Included in cost of sales of the acquired entities for the quarter was approximately \$10 million of expense related to purchase accounting adjustments which require adjusting the values of acquired inventories to fair market value at the date of acquisition. Accordingly, as these inventories are sold, the purchase accounting adjustments related to these inventories (in this case, increases in inventory values) are reflected in cost of sales. A year ago, for the full quarter, these businesses generated sales approximately \$18 million higher than occurred in the third quarter of 1998. The majority of this decrease occurred at Coleman where sales were impacted by fewer product lines resulting from the sale of a portion of the business and exiting the pressure washer business during 1997. First Alert sales were adversely impacted by higher

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returns, as compared with the same period a year ago. Additionally, each acquired business experienced a general disruption due to the acquisitions and management changes. Excluding the impact of the purchase accounting adjustments described above, gross margins in the acquired entities were \$19 million lower in 1998 as compared with their results in the prior year. Lower sales in the acquired entities accounted for approximately 30% of this change. Coleman recorded \$5.3 million in third quarter charges for excess and obsolete inventory and a provision for fixed assets, as described in Note 3 to the condensed consolidated financial statements. In addition, an adverse sales mix at Signature Brands and recent developments on existing environmental remediation at Coleman which resulted in an increase in the environmental provision accounted for the majority of the remaining decrease in margins as compared with those reported by the acquired entities a year ago.

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Net sales as reported by Sunbeam is comprised of gross sales less provisions for estimated customer returns, discounts, promotional allowances, cooperative advertising allowances and costs incurred by the Company to ship product to customers. Net sales for the three months ended September 30, 1998 were \$496.0 million, an increase of \$209.2 million versus the three months ended September 28, 1997. After excluding: (i) \$326.1 million from 1998 sales generated by the acquired entities, as discussed above; (ii) approximately \$2 million from 1998 sales related to the change in fiscal period, as discussed in Note 1 to the condensed consolidated financial statements, and (iii) \$5.4 million from 1998 and \$7.6 million from 1997 sales of excess or discontinued inventory for which the inventory carrying value was substantially equivalent to the sales value, net sales on an adjusted basis ("Adjusted Sales") were \$162.6 million in 1998, a 42% decrease from \$279.2 million in the third quarter of 1997. Overall, Adjusted Sales for the third quarter of 1998 as compared with the prior year were adversely impacted by increasing retail inventory positions in 1997 as compared with decreasing retail inventory positions in 1998, distribution losses and sales timing issues. In addition, the historical Sunbeam operations were adversely impacted by disruption from acquisition activities and management changes in the period.

Domestic Adjusted Sales declined approximately \$89 million from the third quarter of 1997. The Company believes approximately half of the decline in sales between years was attributable to the changes in retail inventory positions. Excluding the impact of the change in retail inventories between periods, the decline in sales was attributable to lower sales levels throughout the business. The single largest component of this decrease in sales was attributable to timing issues related to sales of Personal Care and Comfort products. This decrease as compared with a year ago is expected to be largely recovered in the fourth quarter. Appliance product sales were adversely impacted by significant price reductions for breadmakers. Distribution losses for grills, appliances and Health at Home products accounted for the majority of the remaining sales decrease as compared with last year's third quarter.

International sales, which represented 19% of Adjusted Sales in the third quarter of 1998, were just over half the level achieved in the third quarter of 1997's Adjusted Sales. The Company believes this sales decline was due to three key reasons: decreasing customer inventory levels as compared with the prior year; a decision to stop selling to certain Latin American export distributors, and poor economic conditions in Latin America.

Excluding: (i) the gross margin generated from the inclusion of the acquired entities' operations in the quarter, as discussed above, and (ii) the impact in

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1998 of the change in the fiscal period, as discussed in Note 1 to the condensed consolidated financial statements, gross margin declined to a loss of \$8.0 million for the third quarter of 1998 versus a profit of \$76.5 million for the same period a year ago. The decrease in sales volume between periods, coupled with adverse manufacturing variances and increases in estimated warranty reserves accounted for the majority of the decrease in margins. The adverse manufacturing variances as compared with the third quarter of 1997 arose from lower manufacturing activities in the current year resulting from the high levels of inventory on hand and a less robust demand forecast than existed a year ago. Operating results will be adversely impacted due to higher inventory carrying costs and unabsorbed fixed factory overhead during the remainder of the year.

Excluding the effect of: (i) \$84.3 million of SG&A charges from the acquired entities; (ii) \$70 million related to warrants issued in the period, as discussed in Note 2 to the condensed consolidated financial statements; (iii) approximately \$1.5 million of costs due to the change in fiscal periods; (iii) \$16.9 million of costs incurred in 1998 related to the restatement efforts and related litigation, Year 2000 remediation and costs of relocating the corporate office; (iv) \$4.0 million in 1998 for severance and other costs resulting from the change in management, net of the reversal of certain compensation costs recorded in the first quarter as discussed in Note 9 to the condensed consolidated financial statements; (v) \$7.3 million of benefit in the third quarter of 1997 from the reversal of reserves no longer required, including the restructuring reserve reversal, as shown in Note 6 to the condensed consolidated financial statements; and (vi) \$2.5 million of restructuring related charges recorded in 1997, SG&A expenses were \$51.7 million in 1998, approximately 43% higher than the same period in 1997. Higher freight and warehousing costs resulting from the higher inventory levels in 1998 along with higher costs related to customer service resulted in nearly \$4 million of the increase in costs between years. Increases in required legal and environmental reserves led to approximately \$4 million higher costs between years. Travel and relocation, higher outside service costs and other general SG&A cost increases between years account for the remaining change.

Operating results for the third quarters of 1998 and 1997, on an adjusted basis as described above, were a loss of \$59.7 million in 1998 and a profit of \$40.3 million in 1997. This change resulted from the factors discussed above.

Interest expense increased from \$2.9 million in the third quarter of 1997 to \$42.7 million in the third quarter of 1998 primarily related to higher borrowing levels in 1998 for the acquisitions. (See Note 3 to the condensed consolidated financial statements.)

Other income, net in 1998 of \$11.0 million included approximately \$8 million from the settlement of a lawsuit. The remaining other income, net in 1998 and the \$1.3 million recognized in 1997 were from favorable foreign exchange, primarily from Mexico.

The minority interest reported for the third quarter of 1998 relates to the minority interest held in Coleman by public shareholders.

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Income taxes in the third quarter of 1998 reflect taxes benefits on earnings of foreign operations. A valuation allowance has been provided in 1998 for deferred tax assets generated by Sunbeam's operations. The 1997 rate was higher than the federal statutory income tax rate primarily due to state and local taxes plus the effect of foreign earnings taxed at other rates.

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Due to increased inventory positions at certain customers which resulted from sales in 1997 and the first quarter of 1998, as well as increased inventory positions at the Company, sales and operating income will be affected in the fourth quarter of 1998 and into 1999. Future results are also expected to be impacted materially by charges related to, among other items, changes in business operations resulting in part from acquisitions in 1998, interest costs associated with higher debt levels, asset impairment costs, as well as costs related to Year 2000 issues. (See "Liquidity and Capital Resources", below, and Notes 2, 3, 6, and 10 to the condensed consolidated financial statements.)

NINE MONTHS ENDED SEPTEMBER 30, 1998 COMPARED TO NINE MONTHS ENDED SEPTEMBER 28, 1997

Results of operations for the nine months ended September 30, 1998 include the results of Coleman for March 30 and 31, 1998 and the entire second and third quarters and of Signature Brands and First Alert from April 6, 1998. The acquired entities generated net sales of \$717.2 million in the period since the acquisitions with corresponding gross margin of \$158.3 million, or 22% of sales. SG&A costs recorded by the acquired entities were \$163.9 million in the period, yielding an operating loss of \$5.6 million. Included in cost of sales of the acquired entities was approximately \$30 million of expense related to purchase accounting adjustments which require adjusting the values of acquired inventories to fair market value at the date of acquisition. Accordingly, as these inventories are sold, the purchase accounting adjustments related to these inventories (in this case, increases in inventory values) are reflected in cost of sales. A year ago, on a year-to-date basis, sales of the acquired entities were approximately \$140 million higher than in the comparable nine months of 1998 due to: a decrease in product lines at Coleman resulting from the sale of a portion of the business, a program to reduce SKU's and exiting the pressure washer business in 1997; softness in demand resulting from the domestic retail channel's efforts to lower inventory levels; adverse economic conditions in Japan and Southeast Asia; product availability issues at Signature Brands; higher sales returns at First Alert, and general disruption in the acquired entities due to the acquisitions and management changes. Excluding the impact of the purchase accounting adjustments described above, gross margins generated by the acquired entities were \$65 million lower in 1998 than for the prior year-to-date period. Approximately 60% of the change resulted from the lower sales in 1998. An adverse sales mix at Signature Brands and charges at Coleman and Signature Brands in 1998 related to inventory reserves, provisions for fixed assets and environmental remediation accounted for the majority of the remaining decline in margins as compared with operations in the acquired entities for the first nine months of 1997.

Net sales for the nine months ended September 30, 1998 were \$1,322.1 million, an increase of \$511.4 million versus the nine months ended September 28, 1997. After excluding: (i) \$717.2 million of sales generated by the acquired entities, as discussed above; (ii) approximately \$6 million of higher sales in 1998 resulting from the change in fiscal year end, as described in Note 1 to the condensed consolidated financial statements; (iii) \$5.4 million in 1998 and \$25.7 million from 1997 sales of excess or discontinued inventory for which the inventory carrying value was substantially equivalent to the sales value; (iv) \$4.2 million from 1997 sales relating to divested product lines which are not classified as discontinued operations (time and temperature products and Counselor / registered trademark/ and Borg /registered trademark/ branded scales), and (v) a \$4.0 million benefit from the reduction of cooperative advertising accruals no longer required in 1997, net sales on an adjusted basis ("Adjusted Sales") of \$594.0 million decreased approximately 24% from \$776.8 million in the first nine months of 1997. Overall, product sales were adversely impacted by changes in retail inventory levels, price discounting and higher

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provisions for estimated returns, costs to ship products to customers, rebates and other customer allowances.

Domestic Adjusted Sales declined approximately 25% or \$149 million from the first three quarters of 1997. The Company believes more than half of the sales decline was due to increasing retail inventory levels in 1997 versus decreasing inventory positions at customers in 1998. Excluding this effect, sales were still lower than the prior year throughout the business, with the most significant decline occurring in Outdoor Cooking products sales. During 1997, the Company lost a significant portion of its Outdoor Cooking products distribution, including the majority of its grill parts and accessories products distribution. The Outdoor Cooking products sales decline was attributable to this lost distribution, to price discounting and higher customer allowances. Appliance Adjusted Sales declined between years as a result of higher provisions for returns, freight and co-operative advertising allowances in 1998, lost distribution and price erosion on breadmakers. The sales decline in Personal Care and Comfort products arose principally in the third quarter and was primarily due to sales timing issues which are generally expected to be recovered in the fourth quarter.

International sales, which represented 23% of Adjusted Sales for the first three quarters of 1998, decreased approximately 20% compared with the Adjusted Sales for the same period a year ago. The Company believes this sales decline was primarily attributable to decreasing customer inventory levels as compared with the prior year. Sales were also adversely impacted by a decision to stop selling to certain export distributors in Latin America and by poor economic conditions in that region. In addition, lost distribution in Canada contributed to the sales decline from the prior year.

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Excluding: (i) the gross margin generated from the inclusion of the acquired entities' operations in the period, as discussed above; (ii) the impact of the change in fiscal year-end as discussed in Note 1 to the condensed consolidated financial statements; (iii) \$109.8 million in charges recorded in the second quarter of 1998 related to excess inventory and fixed assets; (iii) \$4.0 million from the benefit in 1997 of reducing the cooperative advertising accrual no longer required, and (iv) a \$2.8 million benefit recorded in the second quarter of 1997 resulting from capitalizing certain manufacturing supplies inventories which were previously expensed, gross margin declined to a loss of \$0.6 million for the first nine months of 1998 versus \$183.2 million for the same period a year ago. Lower sales volume and unfavorable manufacturing efficiencies from lower production levels associated with the lower sales volumes and high inventory levels in 1998 accounted for approximately 50% of the change between years. Approximately 30% of the decrease is attributable to lower price realization and higher costs of customer allowances, rebates and similar incentives in 1998, higher product return reserves and an adverse product sales mix in 1998. The adverse product sales mix was due in part to the loss of a majority of the grill accessory products distribution. Accessories generate significantly better margins than the average margins on sales of grills. During the first half of each year, grill and grill accessory sales are traditionally a higher portion of overall sales in the period than during other quarters of the year. Costs associated with a blanket recall, higher warranty reserves and certain adjustments related to physical inventories drove the remaining increases in cost of goods sold.

Excluding the effect of: (i) \$163.9 million of SG&A charges in the acquired entities; (ii) \$70 million recorded in the second quarter of 1998 related to the

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issuance of warrants; (iii) approximately \$2.3 million of SG&A expense in 1998 from the change in the fiscal period; (iv) a \$5.9 million benefit in the first nine months of 1998 and an \$8.2 million benefit in the same period in 1997 from the reversal of reserves no longer required; (v) \$34.4 million of charges recorded in 1998 related to compensation and severance for certain former employees; (vi) \$16.9 million of costs incurred in 1998 related to the restatement efforts, Year 2000 remediation and the corporate office relocation, and (vii) \$11.9 million of restructuring related charges recorded in 1997, SG&A expenses were \$158.8 million in 1998, 48% higher than the same period in 1997. This increase is due in part to approximately \$8 million in higher advertising and marketing costs between years due to a national television advertising campaign for grills, package redesign costs and market research. Higher inventory levels in 1998 and costs associated with outsourcing small parts fulfillment led to higher distribution and warehousing costs which were \$10 million greater than a year ago. Corporate administrative costs were approximately \$28 million higher between years, resulting primarily from increases in outside service provider fees, including telephone charges, travel and relocation fees, higher legal and environmental reserves and other general administrative costs. Higher bad debt charges in 1998 accounted for the majority of the remaining increase in SG&A costs between years. These bad debt charges resulted nearly equally from collection issues with certain customers in the U.S. and in Latin America.

Operating results for the first three quarters of 1998 and 1997, on an adjusted basis as described above, were a loss of \$159.4 million in 1998 and a profit of \$75.8 million in 1997. This change resulted from the factors discussed above.

Interest expense increased from \$7.8 million in the first nine months of 1997 to \$90.1 million for the same period in 1998. Approximately 80% of the change related to higher borrowing levels in 1998 for the acquisitions, with the remainder due to increased borrowings to fund working capital and the operating losses. (See Note 3 to the condensed consolidated financial statements.)

Other income, in 1998 net of \$5.7 million included approximately \$8 million from the settlement of a lawsuit. Excluding this amount, there was approximately \$2.3 million of net losses from foreign exchange in the period. In 1998, net foreign exchange gains accounted for the majority of the \$0.9 million other income. The foreign exchange gains and losses in each year are primarily from results in Mexico.

The minority interest reported in 1998 relates to the minority interest held in Coleman by public shareholders.

Income taxes in 1998 reflect taxes on earnings of foreign subsidiaries and franchise taxes. A valuation allowance has been provided in 1998 for deferred tax assets generated by Sunbeam's operations. The 1997 rate was higher than the federal statutory income tax rate primarily due to state and local taxes plus the effect of foreign earnings taxed at other rates.

In 1998, the Company prepaid certain debt assumed in the acquisitions and prepaid an industrial revenue bond related to its Hattiesburg facility. In connection with the early extinguishment of this debt, the Company recognized an extraordinary charge of \$111.7 million (\$1.16 per share).

The Company's discontinued furniture business, which was sold in March 1997, had revenues of \$51.6 million in the first quarter of 1997 prior to the sale and nominal earnings for that period. As a result of the sale of the Company's furniture business assets (primarily inventory, property, plant and equipment), the Company received \$69.0 million in cash, retained approximately \$50.0 million

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in accounts receivable and retained certain liabilities. The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the Asset Purchase Agreement and in the first quarter of 1997, after completion of the sale, the Company recorded an additional loss on disposal of \$22.5 million pre-tax.

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FOREIGN OPERATIONS

Approximately 80% of the Company's business is conducted in U.S. dollars (including both domestic sales, U.S. dollar denominated export sales, primarily to certain Latin American markets, Asian sales and the majority of European sales). The Company's non-U.S. dollar denominated sales are made principally by subsidiaries in Europe, Japan and Mexico. Mexico reverted to a hyperinflationary status for accounting purposes in 1997; therefore, translation adjustments related to Mexican net monetary assets are included as a component of net earnings. Mexico is not expected to be considered hyperinflationary as of January 1, 1999.

While Sunbeam's revenues generated in Asia have traditionally not been significant, economic instability in this region is expected to have a negative effect on Coleman's earnings. Economic instability and the political environment in Latin America have also affected sales in that region. It is anticipated that sales in and exports to these regions will continue to decline so long as the economic environments in those regions remain unsettled.

On a limited basis, the Company selectively uses derivatives (foreign exchange option and forward contracts) to manage foreign exchange exposures that arise in the normal course of business. No derivative contracts are entered into for trading or speculative purposes. The use of derivatives did not have a material impact on the Company's financial results in 1998 and 1997. (See Note 3 to the condensed consolidated financial statements.)

SEASONALITY

On a consolidated basis, the Company's sales have not traditionally exhibited substantial seasonality; however, sales have been strongest during the fourth quarter of the calendar year. Additionally, sales of Outdoor Cooking products are strongest in the first half of the year, while sales of Appliances and Personal Care and Comfort products are strongest in the second half of the year. Furthermore, sales of a number of the Company's traditional products, including warming blankets, vaporizers, humidifiers and grills may be impacted by unseasonable weather conditions. After considering the seasonality of the acquired entities, the Company's consolidated sales are not expected to exhibit substantial seasonality; however, sales are expected to be strongest during the second quarter of the calendar year. Additionally, sales of many products sold by the Company may be impacted by unseasonable weather conditions.

LIQUIDITY AND CAPITAL RESOURCES

In order to finance the acquisition of Coleman, First Alert and Signature Brands and to refinance substantially all of the indebtedness of the Company and the acquired entities, the Company consummated: (i) an offering (the "Offering") of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures") at a yield to maturity of 5% (approximately \$2,014 million principal amount at maturity) in March 1998, which resulted in approximately \$730 million of net proceeds and, (ii) entered into a revolving and term credit

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facility ("New Credit Facility").

The Company was required to file a registration statement with the Securities and Exchange Commission to register the Debentures by June 23, 1998, which registration statement has not been filed. From June 23, 1998 until the day on which the registration statement is filed and declared effective, the Company is required to pay to the Debenture holders cash liquidated damages accruing, for each day during such period, at a rate per annum equal to 0.25% during the first 90 days and 0.50% thereafter multiplied by the total of the issue price of the Debentures plus the original issue discount thereon on such day. The Company made its first payment of approximately \$525,000 to the Debenture holders on September 25, 1998. (See Note 3.)

The New Credit Facility provided for aggregate borrowings of up to \$1.7 billion pursuant to: (i) a revolving credit facility in an aggregate principal amount of up to \$400 million, maturing March 31, 2005; (ii) an \$800 million term loan maturing on March 31, 2005, and (iii) a \$500 million term loan maturing September 30, 2006. Interest accrues at a rate selected at the Company's option of: (i) the London Interbank Offered Rate ("LIBOR") plus an agreed upon interest margin which varies depending upon the Company's leverage ratio, as defined, and other items or, (ii) the base rate of the administrative agent (generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 1/2 of 1%), plus an agreed upon interest margin which varies depending upon the Company's leverage ratio, as defined, and other items. The New Credit Facility contains certain covenants, including limitations on the ability of the Company and its subsidiaries to engage in certain transactions and the requirement to maintain certain financial covenants and ratios.

At June 30, 1998, the Company was not in compliance with the financial covenants and ratios required under the New Credit Facility. The Company and its lenders entered into an agreement dated June 30, 1998, which provided that compliance with the covenants would be waived through December 31, 1998. Borrowings under the New Credit Facility are secured by the Company's assets, including its stock interest in Coleman. Pursuant to an amendment dated October 19, 1998, the Company is not required to comply with the original financial covenants and ratios under the New Credit Facility until April 10, 1999, but will be required to comply with an earnings before interest, taxes, depreciation and amortization covenant, the amounts of which are to be determined, beginning February 1999. Concurrent with each of these amendments, interest margin was increased. The

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margin continues to increase monthly through March 1999 to a maximum of 400 basis points over LIBOR. At the end of November 1998, following the scheduled repayment of a portion of the term loan, the New Credit Facility was reduced to \$1,698 million in total, of which approximately \$1,421 million was outstanding and approximately \$277 million was available. In addition, at the same time, the Company's cash balance available for debt repayment was approximately \$22 million.

The Company is working closely with its bank lenders in an effort to reach agreement on a further amendment to the New Credit Facility containing mutually acceptable revised financial covenants. There can be no assurance that such an amendment, or a further waiver of the existing financial covenants, will be entered into with the bank lenders by April 10, 1999. The failure to obtain such an amendment or further waiver would result in violation of the existing covenants, which would permit the bank lenders to accelerate the maturity of all

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outstanding borrowings under the New Credit Facility. Accordingly, the debt related to the New Credit Facility and all debt containing cross-default provisions is classified as current in the Condensed Consolidated Balance Sheet as of September 30, 1998.

At September 30, 1998, the Company had cash and cash equivalents of \$52.1 million. Cash used in operating activities during the first three quarters of 1998 was \$224.7 million compared to \$59.9 million for the same period in 1997. This increase is attributable to lower earnings before non-cash charges. Year-to-date 1998, \$75.7 million in cash was generated by reducing receivables and a similar amount was used as inventories increased. The majority of this cash generation was from Coleman as that operation reduced receivables balances generated in its peak second quarter period. The remaining cash usage for working capital resulted primarily from reducing accounts payable levels.

Cash used in investing activities in the first nine months of 1998 reflects \$379.2 million for the acquisitions. In the first three quarters of 1997, cash provided by investing activities reflected \$90.9 million in proceeds from the sales of divested operations and other assets. Capital spending totaled \$32.8 million in 1998 and was primarily for manufacturing efficiency initiatives, equipment and tooling for new products, and management information systems hardware and software licenses. The new product capital spending principally related to the air and water filtration products which were discontinued in the second quarter, electric blankets, grills, clippers and appliances. As the Company completes its assessment of expected future performance of its business operations, valuation adjustments may be required for certain of the assets acquired in 1998. Capital spending in 1997 was \$41.0 million and was primarily attributable to manufacturing capacity expansion, cost reduction initiatives and equipment to manufacture new products. The Company anticipates 1998 capital spending to be approximately 5% of sales, primarily related to new product introductions, capacity additions and certain facility rationalization initiatives.

Cash provided by financing activities totaled \$636.1 million in the first nine months of 1998 and reflects net proceeds from the Debentures of \$729.6 million, the cancellation and repayment of all outstanding balances under the Company's \$250 million September 1996 revolving credit facility, the repayment of certain debt acquired with the acquisitions and the early extinguishment of the \$75.0 million Hattiesburg industrial revenue bond. In addition, cash provided by financing activities includes \$19.6 million of proceeds from the exercise of stock options. (See Note 3 to the condensed consolidated financial statements.)

The Company expects to acquire the remaining equity interest in Coleman pursuant to a merger transaction in which the existing Coleman minority shareholders will receive approximately 6.7 million shares of common stock and approximately \$87 million in cash. In addition, as a result of litigation related to the merger consideration, the Company has entered into a memorandum of understanding (subject to court approval) pursuant to which the holders of the remaining equity interest in Coleman will also receive five-year warrants to purchase 4.98 million shares of Sunbeam common stock at \$7.00 per share. There can be no assurance that the court will approve the settlement as proposed. Although there can be no assurance, it is anticipated the Coleman merger will occur in the first half of fiscal 1999. (See Note 10 to the condensed consolidated financial statements.)

The Company believes its borrowing capacity under the New Credit Agreement, cash flow from the combined operations of the Company and its acquired companies, existing cash and cash equivalent balances, and its receivable securitization program will be sufficient to support working capital needs,

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capital spending, and debt service for the foreseeable future. However, if the Company is unable to satisfactorily amend the financial covenants and ratio requirements of the New Credit Facility or obtain a further waiver of the existing covenants and ratio requirements prior to April 10, 1999, the Company expects it would, at that time, be in default of the requirements under the New Credit Facility and, as noted above, the lenders could then require the repayment of all amounts then outstanding under the New Credit Facility.

NEW ACCOUNTING STANDARDS

See Note 1 to the Company's condensed consolidated financial statements for a discussion of Statement of Financial Accounting Standards ("SFAS") No. 131, DISCLOSURES ABOUT SEGMENTS OF AN ENTERPRISE AND RELATED INFORMATION, SFAS No. 133, ACCOUNTING FOR DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES, Statement of Position ("SOP") 98-1, ACCOUNTING FOR THE COSTS OF COMPUTER SOFTWARE DEVELOPED OR OBTAINED FOR INTERNAL USE and SOP 98-5, REPORTING ON THE COSTS OF START-UP ACTIVITIES, which are

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required to be adopted for periods beginning after December 15, 1997. The adoption of these standards is not expected to have a material effect on the Company's consolidated results of operations, financial position, or cash flows, although actual charges incurred may be material due to Year 2000 issues, as discussed below.

YEAR 2000 READINESS DISCLOSURE AND OPERATING SYSTEM ENHANCEMENTS

The Company is in the process of assessing the impact of the Year 2000 on its operations, including the Coleman, First Alert and Signature Brands companies which were acquired by the Company in the spring of 1998. The Company established a Year 2000 Program Management Office in the third quarter of 1998 to conduct such assessment with assistance from three consulting firms. The Company's assessment encompasses the Company's information technology functions along with the impact of the effects of noncompliance by its vendors, service providers, customers, and financial institutions. The assessment of the Company's information technology functions is substantially complete. Additionally, the Company is assessing the impact of noncompliance of embedded microprocessors in its products as well as equipment, such as manufacturing equipment, security and telephone systems and controls for lighting, heating/ventilation, and facility access.

The Company relies on its information technology functions to perform many tasks that are critical to its operations. Significant transactions that could be impacted by Year 2000 noncompliance include, among others, purchases of materials, production management, order entry and fulfillment, and payroll processing. Systems and applications that have been identified by the Company to date as not currently Year 2000 compliant and which are critical to the Company's operations include its financial software systems, which process the order entry, purchasing, production management, general ledger, accounts receivable, and accounts payable functions, and critical applications in the Company's manufacturing and distribution facilities, such as the warehouse management application. The Company plans to complete corrective work with respect to the Company's systems by the second quarter of 1999 with final testing and implementation of such systems occurring in the second and third quarters of 1999. Management believes that, although there are significant systems that will need to be modified or replaced, the Company's information

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systems environment will be made Year 2000 compliant prior to January 1, 2000. The Company's failure to timely complete such corrective work could have a material adverse impact on the Company. The Company is not able to estimate possible lost profits arising from such failure.

The Company is in the process of contacting its vendors and suppliers of products and services to determine their Year 2000 readiness and plans. This review includes third party providers to whom the Company has outsourced the processing of its cash receipt and cash disbursement transactions. The Company plans to complete this review during the first quarter of 1999. The failure of certain of these third party suppliers to become Year 2000 compliant could have a material adverse impact on the Company.

The Company's preliminary assessment of the total costs to address and remedy Year 2000 issues and enhance its operating systems, including costs for the acquired companies, is \$50 million. This estimate includes the costs of software and hardware modifications and replacements and fees to third party consultants, but excludes internal resources. The Company expects these expenditures to be financed through operating cash flows or borrowings, as applicable. Through September 30, 1998, the Company had expended approximately \$10 million related to new systems and remediation to address Year 2000 issues of which approximately half was recorded as capital expenditures. Of the total costs, it is anticipated that approximately 25% to 30% will be incurred by year-end 1998, with the remainder in 1999. A significant portion of these expenditures will enhance the Company's operating systems in addition to resolving the Year 2000 issues. As the Company completes its assessment of the Year 2000 issues, the actual expenditures incurred or to be incurred may differ materially from the amounts shown above.

After completing the assessment of the Year 2000 on its operations, the Company plans to establish a contingency plan for addressing any effects of the Year 2000 on its operations, whether due to noncompliance of the Company's systems or those of third parties. The Company expects to complete such contingency plan by September 30, 1999; such contingency plan will address alternative processes, such as manual procedures to replace those processed by noncompliant systems, potential alternative service providers, and plans to address compliance issues as they arise. Subject to the nature of the systems and applications which are not made Year 2000 compliant, the impact of such non-compliance on the Company's operations could be material if appropriate contingency plans cannot be developed prior to January 1, 2000.

OTHER MATTERS

See Notes 3, 6, and 10 of Notes to the condensed consolidated financial statements for information relating to, among other matters, litigation, financing and potential asset impairment issues.

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RESTATEMENT OF RESULTS OF OPERATIONS FOR THE THREE MONTHS ENDED SEPTEMBER 28, 1997 COMPARED TO THE THREE MONTHS ENDED SEPTEMBER 29, 1996

The results of operations previously reported for the three months ended September 28, 1997 as compared with the three months ended September 29, 1996 generally understated the level of expenses incurred in that year. Gross margin was previously reported to have improved 18.3 percentage points from the level achieved in the third quarter of 1996. After restatement, the gross margin improvement was 14.3 percentage points. Operating income was previously reported

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to have improved \$75.6 million to 19.0% of sales, up 27.9 percentage points from 1996's third quarter. After reflecting the results of the restatement, operating earnings were \$45.1 million for the third quarter of 1997, an improvement of \$65.8 million. Operating earnings were 15.7% of sales in 1997, after restatement, up 24.6 percentage points from the prior year. On November 12, 1998, the Company filed a Form 10-K/A setting forth the restated financial statements for December 28, 1997 and December 29, 1996, and the fiscal years then ended. Management's Discussion and Analysis of Financial Condition and Results of Operations for the fiscal years 1997 and 1996 as well as 1996 and 1995 are contained therein. (See Note 8 to the condensed consolidated financial statements.)

RESTATEMENT OF RESULTS OF OPERATIONS FOR THE NINE MONTHS ENDED SEPTEMBER 28, 1997 COMPARED TO THE NINE MONTHS ENDED SEPTEMBER 29, 1996

The results of operations previously reported for the nine months ended September 28, 1997 as compared with the nine months ended September 29, 1996 generally overstated sales in 1997 and understated the level of expenses incurred in 1997. Gross margin was previously reported to have improved 10.5 percentage points from the level achieved in 1996. After restatement, the gross margin improvement was 6.1 percentage points. Operating income for the first nine months of 1997 was previously reported to have improved \$128.6 million to 16.0% of sales, up 15.5 percentage points from 1996's first nine months' results. After reflecting the results of the restatement, operating earnings were \$79.0 million for the first three quarters of 1997, an improvement of \$75.0 million from the prior year. As a percent of sales, operating earnings, after restatement, were 9.7%, an improvement of 10.2 percentage points versus the first nine months of 1996.

CAUTIONARY STATEMENTS

Certain statements in this Quarterly Report on Form 10-Q may constitute "forward-looking" statements within the meaning of the Private Securities Litigation Reform Act of 1995, as the same may be amended from time to time (herein the "Act") and in releases made by the Securities and Exchange Commission ("SEC") from time to time. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance, or achievements of the Company to be materially different from any future results, performance, or achievements expressed or implied by such forward-looking statements. When used in this Quarterly Report on Form 10-Q, the words "estimate," "project," "intend," "expect" and similar expressions, when used in connection with the Company, including its management, are intended to identify forward-looking statements. These forward-looking statements were based on various factors and were derived utilizing numerous important assumptions and other important factors that could cause actual results to differ materially from those in the forward-looking statements. These Cautionary Statements are being made pursuant to the Act, with the intention of obtaining the benefits of the "Safe Harbor" provisions of the Act. The Company cautions investors that any forward-looking statements made by the Company are not guarantees of future performance. Important assumptions and other important factors that could cause actual results to differ materially from those in the forward-looking statements with respect to the Company include, but are not limited to risks associated with (i) high leverage, (ii) Sunbeam's ability to enter into an amendment to its credit agreement containing financial covenants which it and its bank lenders find mutually acceptable, or to continue to obtain waivers from its bank lenders with respect to its compliance with the existing covenants contained in such agreement, and to continue to have access to its revolving credit facility, (iii) Sunbeam's ability to integrate the recently acquired Coleman, Signature Brands and First Alert companies and expenses associated with such integration, (iv) Sunbeam's sourcing of products from

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international vendors, including the ability to select reliable vendors and to avoid delays in shipments, (v) Sunbeam's ability to maintain and increase market share for its products at anticipated margins, (vi) Sunbeam's ability to successfully introduce new products and to provide on-time delivery and a satisfactory level of customer service, (vii) changes in laws and regulations, including changes in tax laws, accounting standards, environmental laws, occupational, health and safety laws, (viii) access to foreign markets together with foreign economic conditions, including currency fluctuations, (ix) uncertainty as to the effect of competition in existing and potential future lines of business, (x) fluctuations in the cost and availability of raw materials and/or products, (xi) changes in the availability and relative costs of labor, (xii) effectiveness of advertising and marketing programs, (xiii) economic uncertainty in Japan, Korea and other Asian countries, as well as in Mexico, Venezuela, and other Latin American countries, (xiv) product quality, including excess warranty costs, product liability expenses and costs of product recalls, (xv) weather conditions which can have an unfavorable impact upon sales of Sunbeam's products, (xvi) the numerous lawsuits against the Company and the SEC investigation into the Company's accounting practices and policies, and uncertainty regarding the Company's available coverage on its directors' and officers' liability insurance, (xvii) the possibility of a recession in the United States or other countries resulting in a decrease in consumer demands for the Company's products, (xviii) failure of the Company and/or its suppliers of goods or services to timely complete the remediation of computer systems

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to effectively process Year 2000 information and (xix) any material error in evaluating historical levels of retail inventories and the related impact on operations of changes therein. Other factors and assumptions not included in the foregoing may cause the Company's actual results to materially differ from those projected. The Company assumes no obligation to update any forward-looking statements or these Cautionary Statements to reflect actual results or changes in other factors affecting such forward-looking statements.

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PART II - OTHER INFORMATION

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K.

- (a) Exhibits
- 27 Financial Data Schedule
- (b) Reports on Form 8-K

The Company filed a Report on Form 8-K on August 14, 1998.

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SIGNATURES

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Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SUNBEAM CORPORATION

BY: /S/ BOBBY G. JENKINS

 Bobby G. Jenkins
 Executive Vice President, and
 Chief Financial Officer
 (Principal Financial Officer)

Dated: December 22, 1998

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EXHIBIT INDEX

EXHIBIT

DESCRIPTION

 27 Financial Data Schedule

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

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CIRCUIT CIVIL 9
COLEMAN

**ORDER ON CPH'S RENEWED MOTION FOR ENTRY OF DEFAULT
JUDGMENT**

THIS CAUSE came before the Court March 14 and 15, 2005, on CPH's Renewed Motion for Entry of Default Judgment, with both parties well represented by counsel.

Coleman (Parent) Holdings, Inc. ("CPH"), has sued Morgan Stanley & Co., Inc. ("MS & Co."), for aiding and abetting and conspiring with Sunbeam to perpetrate a fraud. Early in the case, CPH was concerned that MS & Co. was not thoroughly looking for emails responsive to its discovery requests. On April 16, 2004, the Court entered an Agreed Order ("Agreed Order") that required MS & Co. to search its oldest full backup tapes for emails subject to certain parameters and certify compliance. MS & Co. certified compliance with the Agreed Order on June 23, 2004. On November 17, 2004, CPH learned that MS & Co. had found some backup tapes that had not been searched. On January 26, 2005 it served its Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order ("Adverse Inference Motion"), claiming that MS & Co.'s violation of the Agreed Order, coupled with its systemic overwriting of emails after 12 months, justified an adverse inference against it. The Court ordered certain limited discovery. Responses to that discovery prompted CPH to orally amend its Adverse Inference Motion to seek more severe sanctions.

The Court held an evidentiary hearing on the Adverse Inference Motion on February

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14, 2005. On March 1, 2005 it issued its Amended Order on Coleman (Parent) Holdings Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order ("Adverse Inference Order"). In its current Motion, CPH argues that it has since learned that the discovery abuses addressed in the Adverse Inference Motion and Order represent only a sampling of discovery abuses perpetrated by MS & Co. and that the abuses have continued, unabated. It claims that these abuses, when taken as a whole, infect the entire case. To understand CPH's argument, it is necessary to go back to the beginning.

This case arises out of an acquisition transaction that was negotiated and consummated in late 1997 and early 1998, in which CPH sold its 82% interest in the Coleman Company, Inc., to Sunbeam Corporation. MS & Co. served as financial advisor to Sunbeam for parts of the acquisition transaction and served as the lead underwriter for a \$750,000,000.00 debenture offering that Sunbeam used to finance the cash portion of the deal.

CPH's Complaint¹ alleged claims against MS & Co. arising from this transaction for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy, and sought damages of at least \$485 million.

On May 12, 2003, MS & Co. was served with the Complaint and CPH's First Request for Production of Documents ("Request"). The Request sought, in essence, all documents connected with the Sunbeam deal. "Documents" was broadly defined, and specifically included items electronically stored. Concerned that, out of more than 8,000 pages of documents produced, it had received only a handful of emails, CPH on October 29, 2003, served its Motion to Compel Concerning E-Mails. That motion sought an order requiring MS & Co. to make a full investigation for email messages, including a search of magnetic tapes and hard drives; produce within 10 days all emails located; and produce a Rule 1.310 witness.

¹On February 17, 2005, CPH served its First Amended Complaint, which dropped the claims against MS & Co. for fraudulent and negligent misrepresentation, leaving only the aiding and abetting and conspiracy claims.

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within 20 days "to describe the search that was conducted, identify any gaps in Morgan Stanley's production, and explain the reasons for any gaps."

In its Opposition to Coleman (Parent) Holdings, Inc.'s Motion to Compel served November 4, 2003, MS & Co. argued that CPH wanted "this Court to order a massive safari into the remote corners of MS & Co.'s email backup systems" and represented that "(t)he restoration efforts demanded by CPH would *cost at least hundreds of thousands of dollars* and require several months to complete (emphasis in original). MS & Co. argued that CPH's "true" motive was to "harass and burden MS & Co. with unnecessary and costly discovery demands and attempt to smear MS & Co. with out-of-context recitations from other proceedings" because "CPH *concedes* that MS & Co. is only able to restore email from backup tapes from January 2000 and later - *more than a year and a half after the events that allegedly gave rise to CPH's claims,*" (emphasis in original).

CPH's "concession" was based on representations like the kind made to it by MS & Co.'s counsel in a March 11, 2004 letter that suggested "(t)he burden on Morgan Stanley from . . . a wholesale restoration [of email back up tapes], both in terms of dollars and manpower would be enormous. Regardless of who performs the initial restoration, it would require hundreds (perhaps thousands) of attorney-hours to review millions of irrelevant and non-responsive e-mails . . ." ²

In response to CPH's Motion to Compel, the parties agreed to reciprocal corporate

²Complaints about MS & Co.'s tactics are not new. See Ex. 196 [February 26, 2004, letter from EEOC to Hon. Ronald L. Ellis in EEOC/Schieffelin v. Morgan Stanley & Co., Inc., et al., 01-CV-8421 (RMB) (RLE) (S.D.N.Y.): ("(w)hen EEOC received [Morgan Stanley's] January 27, 2004 Responses to EEOC's Fifth Requests for Production of Documents which did not contain any e-mails, the parties communicated further. At that time, Morgan Stanley took the position that searching for e-mails would be burdensome both in regards to expense and the time it would take to respond. While the parties were in the process of attempting to work out these disputes, EEOC for the first time learned that [Morgan Stanley has] an easy, systematic ability to search for relevant documents. In a February 16, 2004, conversation with an IT representative of [Morgan Stanley], EEOC learned that [Morgan Stanley has] an e-mail system, which, while not yet fully comprehensive, was easily searchable on February 18, 2004, the close of discovery . . . which is certain to produce discoverable information highly relevant to EEOC's and Plaintiff-Intervenor's claims . . . After disclosing their state-of-the-art system to EEOC, [Morgan Stanley] dropped [its] assertion that the process was too expensive, but maintained that they refuse to search for e-mails because it is burdensome for attorneys to review large numbers of documents prior to production.")

depositions on the email issue. CPH deposed Robert Saunders on February 10, 2004.³ After completion of the corporate representative depositions, and unable to obtain MS & Co.'s agreement to a mutual email restoration protocol, CPH served its Motion for Permission to have Third Party Retrieve Morgan Stanley E-Mail and Other Responsive Documents, proposing that a third party vendor be given access to both parties' email systems for restoration at each party's expense. At the hearing on that Motion, CPH offered to split the expenses evenly. MS & Co. refused.

MS & Co.'s continued assertions that the email searches could be conducted only at enormous cost and would be fruitless because there were not backup tapes with email from 1997 and 1998 were confirmed to the Court by MS & Co.'s counsel, Thomas Clare of Kirkland & Ellis, at a hearing held March 19, 2004:

Mr. Scarola: Electronic records of e-mails that have been exchanged.

The Court: Do we agree that there has been such a request outstanding?

Mr. Clare: There has been a request outstanding.

The Court: And have you all objected?

Mr. Clare: From the beginning.

The Court: And what's the basis of the objection?

Mr. Clare: We objected to the breadth of the request that they're making. And to answer Your Honor's question directly – and the burden that is associated with it – that given the particular e-mail back-up tapes that are in existence five, six years after the fact of these transactions, that the scope of the e-mail request that they are seeking is improperly and unduly burdensome given the enormous costs that would be required, given the fact that the time period for which we have back-up tapes post dates the events by several years.

Unable to resolve the email issue, on April 9, 2004, CPH served its Motion to Compete

³Saunders provided misleading information in his deposition. See footnote 12, *infra*.

Concerning E-Mails and Other Electronic Documents. On the eve of the hearing on CPH's Motion to Compel, the parties reached an accommodation, and on April 16, 2004 the Court entered the Agreed Order. Under the Agreed Order, MS & Co. was required to (1) search the oldest full backup tape for each of 36 MS & Co. employees involved in the Sunbeam transaction; (2) review emails dated from February 15, 1998, through April 15, 1998, and emails containing any of 29 specified search terms such as "Sunbeam" and "Coleman" regardless of their date; (3) produce by May 14, 2004, all nonprivileged emails responsive to CPH's document requests; (4) give CPH a privilege log; and (5) certify its full compliance with the Agreed Order.

As required by the Agreed Order, MS & Co. produced about 1,300 pages of emails on May 14, 2004. It did not, however, certify compliance with the Agreed Order. After prompting by CPH, on June 23, 2004, MS & Co. served a certificate of compliance signed by Arthur Riel, an Executive Director and manager of its Law/Compliance IT Group.⁴

CPH got its first indication that the Agreed Order may have been violated in the late fall of 2004.

On November 17, 2004, Clare wrote Michael Brody of Jenner & Block, CPH's outside counsel, that MS & Co. had "discovered additional e-mail backup tapes . . ."; that "(t)he data on some of [the] newly discovered tapes has been restored;" that "we have re-run the searches described in [the Agreed Order]"; that "some responsive e-mails have been located as a result of that process"; and that "(w)e will produce the responsive documents to you as soon as the production is finalized."

On December 14, 2004, Brody wrote Clare back:

in [your November 17, 2004 letter], you state that Morgan Stanley located additional email backup tapes, and that you

⁴Though CPH would not learn for months that the certificate was false, and even then the magnitude of MS & Co.'s misrepresentations would not be admitted, MS & Co. personnel, including in-house counsel, knew the certification of compliance was false when made.

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would be producing documents soon. Within two days of that letter, you produced some emails to us. In your November 17, 2004 letter, however, you also indicated that "some of the backup tapes are still being restored." Have those backup tapes been restored? Have you found additional responsive emails? If so, when will Morgan Stanley produce those emails? How is it that the tapes were only recently located?

On December 17, 2004, Clare wrote back, telling Brody "(n)o additional responsive e-mails have been located since our November production."⁵

Brody wrote back to Clare December 30, 2004, noting the deficiencies in Clare's correspondence:

You do not inform us whether the review of the recently-located backup tapes still is ongoing. Please confirm that all email backup tapes from the relevant time period have been reviewed and all responsive emails have been produced. If the review still is proceeding, please let us know when the review will be completed.

Clare wrote back on January 11, 2005, telling Brody that the "restoration of e-mail backup tapes is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time."

Concerned about Clare's lack of candor, on January 19, 2005 Brody wrote again:

I write in response to your January 11, 2005 letter concerning e-mails back-up tapes. Unfortunately, your letter raises more questions than it answers. As I requested in my December 14, 2004 letter, please explain the circumstances under which Morgan Stanley located these backup tapes and advise us of the date on which the tapes were located.

⁵Not only does this letter fail to answer Brody's legitimate questions, it implies that MS &Co. was still processing and reviewing emails from the newly found tapes. As we now know, though, *no* additional information was migrated to the archives between approximately August 18, 2004 and January 15, 2005. *Of course* "no additional responsive e-mails [would have been] located."

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Further, please explain your statement that "the next set of backup tapes" is scheduled to be restored "at the end of January." How many tapes will be restored by the end of January? When exactly in January will Morgan Stanley complete the process of restoring and searching these tapes for responsive documents? Are there other backup tapes that are not yet in the process of being restored? If so, please advise us of (a) the number of tapes that are not yet in the process of being restored; (b) the time period of the data contained on those tapes; and (c) Morgan Stanley's timetable for restoring and searching those tapes. In addition, please explain why those tapes are not yet in the process of being restored. Please also explain why Morgan Stanley cannot complete the restoration and searching of all remaining backup tapes before "the end of January." As you know, our trial is scheduled to begin on February 22, 2005.

We look forward your complete response to these questions no later than January 21, 2005 so that we can bring this matter to the Court's attention, if necessary.

Conforming to what was by now his usual stonewall tactic, Clare responded by letter dated January 21, 2005:

I write in response to your January 19, 2005 letter regarding Morgan Stanley's production of e-mails restored from backup tapes.

Morgan Stanley completed its initial production of restored e-mail messages on May 14, 2005. The May 2004 production was conducted in accordance with the agreed-upon order governing, and the searches that resulted in that production encompassed data from all of the backup tapes known to exist at the time. Subsequent to the May 2004 production, additional tapes were found in various locations at Morgan Stanley. The discovered tapes were not clearly labeled as to their contents, were not found in locations where e-mail backup tapes customarily were stored, and many of the tapes

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were in a different format than other e-mail backup tapes. In November 2004, once it was determined at least some of the discovered tapes contained recoverable e-mail data, Morgan Stanley re-ran the searches described in the agreed-upon order. Those searches resulted in Morgan Stanley's November 2004 production.

Morgan Stanley's efforts to restore the backup tapes discovered after the May 2004 production are ongoing. It is a time-consuming and painstaking process and, given the absence of clear labels or other index information for the backup tapes, there is no way for Morgan Stanley to know or accurately predict the type or time period of data that might be recovered from tapes that have yet to be restored. While Morgan Stanley cannot accurately estimate when all of the tapes will be restored or whether any recoverable data will be found on the remaining tapes, we understand from Morgan Stanley that, when the agreed-upon searches are run again at the end of January, those searches will include approximately one terabyte of additional data restored since the prior production.

On January 26, 2005, CPH served its Adverse Inference Motion, seeking sanctions based on MS & Co.'s disclosure of the newly found tapes. Hearing was scheduled for February 14, 2005. In preparation for that hearing, on February 3, 2005 the Court ordered MS & Co. to produce by noon on February 8, 2005 "(i) all documents to be referred to or relied on by any of the witnesses in his or her testimony; and (ii) all documents within MS & Co.'s care, custody, or control, addressing or related to the additional email backup tapes, including matters relating to the time or manner in which they were discovered; by whom they were discovered; who else learned of their discovery and when; and the manner and timetable by which they were to be restored and made searchable, including any correspondence to or from outside or prospective outside vendors."

The Adverse Inference Order outlined the discovery abuses shown at the February 14, hearing. They included MS & Co.'s undisclosed discovery of the 1,423 "Brooklyn" tapes no

later than May of 2004; the undisclosed discovery of the 738 8-millimeter backup tapes in 2002; the presence of unsearched data in the staging area; the discovery of 169 DLT tapes in January 2005; the discovery of more than 200 additional tapes on February 11 and 12, 2005; the discovery of a script error that had prevented MS & Co. from locating responsive email attachments; and discovery of another script error that had infected the ability to gather emails from Lotus Notes platform users.

In response to these deficiencies, the Court issued the Adverse Inference Order. That Order reversed the burden of proof on the aiding and abetting and conspiracy elements and included a statement of evidence of MS & Co.'s efforts to hide its emails to be read to the jury, as relevant to both its consciousness of guilt and the appropriateness of punitive damages. It specifically provided that "MS & Co. shall continue to use its best efforts to comply with the April 16, 2004 Agreed Order and . . . February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search."⁶

It is now clear why MS & Co. was so unwilling to provide CPH with basic information about how and when the tapes were found or when production would be complete. First, candor would have required MS & Co. to admit that it had not done a good faith search for the oldest full backup tapes, and that Riel's certificate of compliance was false. Some unsearched tapes had been found by 2002; others had been found no later than May, 2004. Together, over 2,000 tapes had been found which were not searched prior to the May production. It is untrue that the tapes were "not in locations where e-mail backup tapes customarily were stored."

⁶Concerned that MS & Co. had been less than candid with both CPH and the Court, on February 4, 2004, the Court entered its Order on Coleman (Parent) Holding's ore tenus Motion to Participate in Search of Additional E-Mail Backup Tapes or Appoint Third Party to Conduct Search, ordering MS & Co. to pay for a third party vendor to check its compliance with the Agreed Order. The Court previously found that the two scripts errors testified to by Allison Gorman at the February 14, 2005, hearing would not have been discovered or revealed without the threat that the third-party vendor would discover the errors. Given Ms. Gorman's testimony at the March 14, 2005, hearing, though, it now appears MS & Co. knew about the errors before the appointment of the third-party vendor. Consequently, the errors were only revealed, but not discovered, in response to the February 4, 2004, Order.

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Second, MS & Co. desperately wanted to hide an active SEC inquiry into its email retention practices.^{7 8 9 10} Finally, MS & Co. did not want to admit the existence of the historical email archive, which would expose the false representations it had made to the Court and used to induce CPH to agree to entry of the Agreed Order.^{11 12}

⁷On December 17, 2003, CPH served its Third Request for Production seeking "(a)ll materials and documents submitted to the United States Securities and Exchange Commission ("SEC"), received from the SEC, or reflecting communications with the SEC in connection with any investigation, inquiry, or examination concerning or relating to Morgan Stanley's policies and/or procedures with regard to the retention, storage, deletion, and/or back-up of electronic mail (emails) . . ." On October 12, 2004, CPH served its Request for Supplemental Documents seeking to bring MS & Co.'s document production current, requesting "(a)ll documents not previously provided by MS & Co. that are responsive to any Request for Production of Documents that CPH previously has served upon MS & Co. in the litigation, including documents obtained by MS & Co. or its counsel after the date of MS & Co.'s prior productions." No SEC documents were produced in response to either request; no privilege log was generated. On other privilege logs generated in response to court orders, MS & Co. did not show the SEC on the distribution portion of the log. See March 9, 2005 Order Following in Camera Inspection (Riel/SEC Documents) footnotes 1, 2. See, also, footnote 15, infra. Kirland & Ellis, outside counsel for MS & Co. in this litigation, represents MS & Co. in the SEC's inquiry into its email retention practices.

⁸MS & Co. manipulated the unhinging of the SEC's email investigation from the IPO litigation in January, 2005, to conceal the email issues as long as possible.

⁹It is now apparent that MS & Co. chose deliberately to keep its affidavits concerning the informal SEC inquiry submitted to support its privilege claims vague, despite two requests from the Court seeking specific information. See February 28, 2005 Order (Release of Exhibits).

¹⁰See February 25, 2005 Order on Morgan Stanley's Objections to Coleman (Parent) Holding Inc.'s Notice to Produce at Hearing and Motion for Protective Order and March 4, 2005 Order on Plaintiff's ore tenus Motion to Compel Additional Production.

¹¹While MS & Co. contends that its representations to the Court that it would cost "hundreds of thousands of dollars" to search the backup tapes and that there was no pre-2000 backup tapes were not false, they were deliberately misleading: MS & Co. never had an intention to search the back up tapes to respond to the requests and some of the year 2000 backup tapes backed up email back to 1997.

In 2001, MS & Co. decided to create the email archive. By June, 2003, it had decided that the archive should have two components. First, MS & Co. wanted to create an archive that captured and stored email as it was generated. Second, MS & Co. wanted to add historical data to the archive. That task involved searching for all email backup tapes containing historical emails; sending those tapes to an outside processor; loading the processed tapes into a staging area; and migrating the stored data from the staging area onto the archive. As we now know, archive searches are quick and inexpensive. They do not cost "hundreds of thousands of dollars" or "take several months." The restrictions imposed by the Agreed Order were not needed.

¹²On February 10, 2004, Robert Saunders, an executive director of IT for MS & Co., was deposed. He testified that in January, 2003, MS & Co. had put into effect the email archive system. When specifically asked whether the new email archive system would include prior backups or only going forward backups, he testified that "(t)he way it was built was for going forward backup." He was next asked whether "(w)ith respect to backup dated January 2001 and previously, does Morgan Stanley have any new capabilities to restore and search e-mail?" After counsel interposed a vagueness objection, he answered "(t)here are no new capabilities to search that e-mail." That testimony was so misleading as to be false. As Saunders well knew, since he was on the team responsible, the "live" email capture portion of the archive was already operational. The migration of the historical data to the archive was expected to be completed by April of 2004, just two months after his deposition.

MS & Co.'s wrongful conduct has continued unabated.¹³ Since the February 14, 2005, hearing, it has come to light that:

- Only two whole and four partial tapes from the Brooklyn tapes had been migrated to the archive and were thus searched for the November, 2004, production. MS & Co. sought to hide this information to create the impression that all the produced documents came from the Brooklyn tapes, rather than reveal that the production came from material that had migrated from the staging area to the archive since the May, 2004, production or some other, as yet undisclosed, source.¹⁴
- Contrary to MS & Co.'s counsel's November 17, 2004, letter to CPH, *none* of the November, 2004 production came from the "newly found" tapes. MS & Co. carefully crafted its responses to inquiries about the November, 2004, production to avoid both disclosure of the existence of the archive and outright lying.
- The scripts MS & Co. used to process emails into its archive caused the bodies of some messages to be truncated. MS & Co. discovered this problem on February 13, 2005, but did not tell the Court about it until March 14, 2005.
- A migration issue caused about 5% of email harvested by NDCI from the backup tapes not to be captured in the archive, based on testing of a representative sample of tapes. MS & Co. told the SEC about this problem on February 24, 2005, but failed to tell CPH or the Court.
- As of June 7, 2004, only 120 out of 143 SDLT tapes had been processed into the archive.
- An analysis requested by the SEC showed that, based on a representative sample, 10% of backup tapes were overwritten after January, 2001.

¹³MS & Co. sought to use the entry of the Adverse Inference Order as a shield against further inquiry into its email abuses, arguing that the matter was closed by the Adverse Inference Order. It previously used this tactic with the SEC, arguing that the December 3, 2003 Cease and Desist Order shielded it from other sanctions for email retention failures. See Ex. 14 [February 10, 2005 letter from outside counsel for MS & Co. to SEC]

¹⁴MS & Co. argued at the March 14 and 15, 2005 hearing that there were only 13 unique, new emails contained in the November 2004 production when compared to the May 2004 production. Nine of those emails, however, were originally given to MS& Co.'s lawyers for responsiveness review by the IT staff for the May 2004 production. No explanation of why they were not produced in May was offered. This is particularly concerning given the large number of documents Ms. Gorman testified the search parameters found compared with the relatively small number found responsive and produced after review by counsel.

- A software error caused blind carbon copies not to be captured in the archive process. MS & Co. told the SEC about this problem on February 24, 2005. MS & Co. did not tell CPH or the Court.
- A software error caused the searches to be hyper case-sensitive, resulting in a failure to capture all emails. MS & Co. knew of the problem as of December, 2004, but did not tell CPH or the Court. The problem was not purportedly fixed until March, 2005.
- A script error caused the archive to have problems pulling group email in Lotus Notes.
- MS & Co. provided sworn testimony at the February 14, 2005, hearing that it had located 600 gigabytes of data, while contemporaneously telling the SEC it had located a terabyte of data. A gigabyte represents 20,000 to 100,000 pages. Incredibly, MS & Co.'s witness on this point, Allison Gorman, testified on March 14, 2005, that it was simply a "terminology" issue that she did not choose to correct because it could cause "confusion."
- CPH requested MS & Co. to produce responses it had made to third-parties in civil, criminal, or administrative proceedings describing limitations on MS & Co.'s ability to produce emails and all notices in such proceedings that MS & Co. had newly discovered backup tapes containing email. MS & Co. objected, arguing that there were over 300 separate proceedings, involving over 70 outside law firms, and that the cost of compliance would be too great. On March 2, 2005, the Court ordered the production, after shortening the time period involved, and required production within 12 hours after counsel's review of each item for responsiveness but, in any event, within 10 days. At the time MS & Co. objected to CPH's request as unduly burdensome, it knew of its Wells submission to the SEC made on February 10, 2005. Kirkland and Ellis, co-counsel here, was co-counsel for MS & Co. in that SEC proceeding. Consequently, it appears MS & Co.'s real concern was not that expressed to the Court, but was based on its realization that compliance would reveal the existence of the SEC inquiry into its email retention policy and MS & Co.'s efforts to keep the existence of that investigation secret. MS & Co. violated the Court's March 2, 2005, Order on Morgan Stanley's Responses and Objections to Coleman (Parent) Holdings Inc.'s Notice to Produce at the Hearing requiring it to disclose items responsive to CPH's Request for Production within 12 hours of review for responsiveness by waiting *days*, not hours, to produce the Wells submission.

- MS & Co.'s failure to produce or log the SEC documents violated the Court's February 3, 2005, Order.¹⁵
- James Doyle's, the Executive Director of MS & Co.'s Law Division, declaration that he did not learn of additional unsearched backup tapes until the end of October, 2004, was intended to mislead CPH and the Court. Obviously, MS & Co. sought to create the implication in the declaration that *no one* in the Law Division knew of the backup tapes before then. Instead, both Soo-Mi Lee, Doyle's associate, and James Cusick, Doyle's superior, knew of the tapes no later than June 7, 2004.
- In-house counsel for MS & Co. knew as of June 7, 2004, that nearly a third of the restored backup tapes did not contain email, implying they may have been recycled in violation of the December 3, 2002 Cease and Desist Order. They did not tell CPH or the Court.
- MS & Co.'s searches looked for only two types of emails. There are other types of emails that were not included in the searches. CPH did not learn of this deficiency until March 13, 2005.
- MS & Co. improperly failed to produce 125 documents required to be produced by the Court's February 3, 2005, Order Specially Setting Hearing which required limited discovery be made in connection with the February 14, 2005, hearing on the Adverse Inference Motion.
- MS & Co. improperly withheld 13 documents required to be produced by the Court's March 4, 2005, Order on Plaintiff's ore tenus Motion to Compel Additional Production.
- An additional 282 tapes were found on February 23 and 25, 2005; CPH was not told of the discovery until March 13, 2005.
- An additional 3,536 tapes were discovered on February 23, 2005, in a security room.
- An additional 2,718 tapes were found at Recall, MS & Co.'s third party off-site storage vendor, on March 3, 2005.
- An additional 389 tapes were found March 2 through March 5, 2005. CPH was not told

¹⁵The Court previously rejected MS & Co.'s argument that the January 14, 2005, email exchange between its outside and in-house counsel was not required to be produced under the February 3, 2005, Order Specially Setting Hearing because it referred to the "documents issue" and not specifically to the backup tapes. See March 16, 2005 Order on Morgan Stanley's Motion to Disqualify Plaintiff's Counsel Searcy, Denney, Scarola, Barnhart & Shipley, P.A. and Jenner & Block, LLC. MS & Co.'s insistence on a narrow interpretation of the February 3, 2005, Order is not particularly sympathetic, when the only reason that Order confined production to the backup tape issue was because MS & Co. had failed to notify the Court of the other deficiencies in its certificate of compliance.

until March 13, 2005.

- On March 4, 2005, the Court entered its Order on Plaintiff's ore tenus Motion to Compel Additional Production, which ordered MS & Co. to produce by 3:00 p.m. on March 7, 2005, all items within its care, custody, or control dealing with the Riel/SEC investigation, other than documents representing communications between or among MS & Co. inside and outside counsel that were not copied to anyone other than counsel. MS & Co. sought to discredit Riel and thus distance itself from the false June 23, 2004 certificate of compliance; in doing so, it sought to hide Riel's whistle blower status and the existence of an SEC investigation into whether MS & Co. employees sought kick backs from third party vendors; whether MS & Co. employees were improperly pressured into dealing with third-party vendors who may provide business to MS & Co.; and whether MS & Co. continued to overwrite backup tapes contrary to the SEC's December 3, 2002, Cease and Desist Order.
- A script error prevented the insertion of some emails into the archive. MS & Co. produced over 4,600 pages of emails on March 21, 2005, some of which it suggested may have been located on correction of the error; alternatively, it suggested the emails may have been located by NDCI as part of its efforts to verify MS & Co.'s searches.

MS & Co.'s discovery abuses have not been confined to its email production.

William Strong is a MS & Co. managing director and was one of the principal players for it in the Sunbeam deal. He took credit for the fees generated. On May 9, 2003, CPH requested a copy of "(a)ll documents concerning employment contracts, performance evaluations, and/or personnel files (including without limitation any documents that describe or discuss [his] training, experience, competence, and accomplishments) . . ." MS & Co. asserted that the requested documents were not relevant and that production "would unnecessarily infringe on the privacy interests of [Strong]." On March 15, 2004, the Court ordered MS & Co. to produce "(a)ll references (positive or negative) to [Strong's] truthfulness, veracity, or moral turpitude." Some portions of Strong's evaluations were produced in response to that order. Those evaluations noted Strong's colleagues' reservations about his candor and ethics. Two of his evaluators, Joseph Perella and Tarek Abdel-Meguid, were deposed, when some relatively vague testimony about the bases for those conclusions was offered. It now appears Strong was facing criminal prosecution in Italy for complicity in bribery while he was working on the Sunbeam transaction, which his evaluators knew, and that MS & Co. purposely

withheld that information from CPH and the Court.¹⁶

Even once CPH independently discovered evidence of Strong's indictment in Italy, MS & Co. sought to shield its files from discovery. It claimed that virtually *all* of the documents it had were privileged under joint defense agreements in place between it, Strong, and Saloman Brothers, Strong's employer at the time of the incident. As the Court's March 10, 2005 Order Following In Camera Inspection (Strong) details, the documents MS & Co. relied on to support that position, and sought to prevent CPH from obtaining, reflect no such agreement.

The other discovery abuses and misrepresentations by MS & Co. other than those involving its email production practices are outlined in CPH's Chronology of Discovery Abuses by Defendant served March 1, 2005, and would take a volume to recite. They include:

- failing to provide the information retained by MS & Co.'s internal document management system pertaining to MS & Co.'s work for Sunbeam; falsely representing to the Court that no useful information was contained in that information; and producing a Rule 1.310 representative who had made an insufficient inquiry into authenticity, business record status, and authorship of documents; see February 28, 2005 Order on CPH's Motion to Deem Certain Documents Admissible and for Sanctions due to Morgan Stanley's Disregard of Court Order;
- when faced with contempt proceedings for violating the Stipulated Confidentiality Order by providing a copy of a settlement agreement between CPH and Arthur Andersen to other counsel, representing to the Court that the law firm of Kellogg, Huber was retained to handle the "Andersen aspects" of this litigation because of a conflict between Andersen and Kirkland & Ellis; Mark Hansen, a partner at Kellogg, Huber, testified that his firm was hired as co-counsel for all aspects of the case;
- providing answers to interrogatories signed by a corporate representative who performed insufficient verification of the responses;

¹⁶MS & Co. originally argued that documents concerning the Italian proceedings were not in Strong's "personnel file" and so were not required to be produced in response to CPH's initial request. MS & Co.'s practice of filing damaging information about an employee other than in his personnel file and then claiming it was not included in the request is about as convincing as its argument that, since it has a corporate directive not to keep drafts of documents once they are in final form, document drafts cannot be business records exempt from hearsay because they are not "kept in the course of a regularly conducted business activity." See Fla. Stat. §90.803 (6) (a). In any event, there was *no excuse* for not producing its records of the Italian proceedings once the Court's March 15, 2004 Order was entered.

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- routinely asserting unfounded privilege claims;¹⁷ and
- failing to timely comply with the Court's orders; for example, MS & Co. did not produce Strong's 1994 Performance Evaluation until the afternoon of March 15, 2005, though it was obviously included in the Court's March 15, 2004 Order. The failure cannot be excused as oversight since, when CPH specifically asked for the 1994 evaluation in the spring of 2004, MS & Co.'s counsel said it was withheld as non-responsive; see, also, Ex. 197, 198.

In sum, MS & Co. has deliberately and contumaciously violated numerous discovery orders, including the April 16, 2004 Agreed Order; February 3, 2005 Order Specially Setting Hearing; and the March 4, 2005 Order on Plaintiff's ore tenus Motion to Compel Additional Production. At the February 14, 2005, hearing on CPH's Adverse Inference Motion, it chose to hide information about its violations and coach witnesses to avoid any mention of additional, undisclosed problems with its compliance with the Agreed Order. Implicit in the requirement that MS & Co. certify compliance with the Agreed Order was the requirement to disclose impediments to its ability to so certify. As outlined in this Order, MS & Co. employees, and not just counsel, have participated in the discovery abuses. The prejudice to CPH from these failings cannot be cured. Even if all the script errors have been located and corrected, and MS & Co. has failed to show they have, and even if all of the email backup tapes have now been located, and MS & Co. has failed to show they have, the searches cannot be completed in time. The other discovery abuses outlined call into doubt all of MS & Co.'s discovery responses. *The judicial system cannot function this way.* Based on the foregoing and on the Court's March 1, 2005 Amended Order on Coleman (Parent) Holdings, Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, it is

ORDERED AND ADJUDGED that CPH's Renewed Motion for Entry of Default Judgment is Granted, in part. See Robinson v. Nationwide Mut. Fire Ins. Co., 887 So. 2d 328 (Fla. 2004); Mercer v. Raine, 443 So. 2d 944 (Fla. 1983); Precision Tune Auto Care, Inc. v.

¹⁷For example, MS & Co. produced over 260 documents dealing with the Strong investigation over which it had previously claimed privilege once the Court announced its intention to conduct an in camera review; the Court found another 200 documents were not privileged after conducting its review, by its March 10, 2005 Order.

Radcliffe, 804 So. 2d 1287 (Fla. 4th DCA 2002); Rule 1.380 (b) (2) (C), Fla. R. Civ. P. Paragraphs 2 (excluding the last sentence thereof); 3 (excluding the portion of the last sentence beginning with “in order to close . . .”); 8-10, 11 (excluding everything after the first sentence); 12 (excluding all parts following “June 1998”); 13 (excluding the last sentence thereof); 14-27; 28 (excluding everything after “firm” in the second to last sentence thereof); 29-39; 41-52; 53 (excluding the second sentence thereof); 54-57; 58 (excluding “CPH and” in the second line thereof); 59-63; 64 (excluding the third line thereof); 65 (excluding the last sentence thereof); 66 (excluding the last sentence thereof); 67-70; 71 (excluding the first word of the last sentence and the remainder of that sentence after “material”); 72; 73 (excluding the first sentence thereof); 74 (excluding the words “CPH and” in the second to last sentence thereof); 75-81; 85; 86; 87 (excluding (g)); 90, and 91 (excluding (g)) of Plaintiff’s Amended Complaint, as amended by the Court’s Amended Order on Morgan Stanley’s Motion to Dismiss, Motion to Strike, and Motion for More Definite Statement, shall be read to the jury and the jury instructed that those facts are deemed established for all purposes in this action. A copy of a redacted Amended Complaint is attached as Exhibit A. It is further

ORDERED AND ADJUDGED that the Court shall read to the jury a Statement similar to that attached as Exhibit A to the Amended Order on Coleman (Parent) Holdings, Inc.’s Motion for Adverse Inference Instruction Due to Morgan Stanley’s Destructions of E-Mails and Morgan Stanley’s Noncompliance with the Court’s April 16, 2004 Agreed Order, but incorporating the relevant additional findings of this Order, and the jury will be instructed that it may consider those facts in determining whether MS & Co. sought to conceal its offensive conduct when determining whether an award of punitive damages is appropriate. See General Motors Corp. v. McGee, 837 So. 2d 1010 (Fla. 4th DCA 2002), rev. den. 851 So. 2d 728 (Fla. 2003). Counsel are each invited to submit proposed Statements. It is further

ORDERED AND ADJUDGED that CPH shall be entitled to an award of reasonable fees and costs incurred as a result of the Renewed Motion for Entry of Default Judgment and the violations of Court orders recited herein. The amount shall be determined at an evidentiary hearing following trial. It is further

ORDERED AND ADJUDGED that MS & Co. is relieved of any future obligation to

comply with the April 16, 2004 Agreed Order and the February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s Motion to Participate in Search of Additional E-Mail Back-Up Tapes or Appoint Third Party to Conduct Search. It is further

ORDERED AND ADJUDGED that the pro hac vice admission of Thomas Clare is revoked. It is further

ORDERED AND ADJUDGED that the portions of CPH's Motion for Correction and Clarification of Order on CPH's Motion for Adverse Inference that seek to amend the body of that Order to correct clerical and spelling errors, as agreed to by counsel, is Granted, and the corrections deemed made to the body of the Amended Order on Coleman (Parent) Holdings, Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, by interlineation. In all other respects the remainder of the Motion for Correction and Clarification is declared moot.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 23rd day of March, 2005.



ELIZABETH T. MAASS
Circuit Court Judge

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In April 1997, Morgan Stanley began serving as Sunbeam's investment banker. Morgan Stanley originally attempted to find someone to buy Sunbeam. When Morgan Stanley was unable to find a buyer, Morgan Stanley developed a strategy for Sunbeam to use its fraudulently-inflated stock to acquire a large company that Sunbeam would own and operate. Then, trading on Morgan Stanley's relationships with CPH's senior officers, Morgan Stanley found

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Exhibit A

Coleman for Sunbeam. At the time of the sale to Sunbeam, Coleman was a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market, with annual revenues in excess of \$1 billion.

million shares

After Sunbeam announced plans to acquire Coleman, Morgan Stanley agreed to underwrite a \$750 million debenture offering for Sunbeam. Sunbeam needed the proceeds of that debenture offering to complete the acquisition of Coleman. As Sunbeam's investment banker and as the sole underwriter for the \$750 million debenture offering, Morgan Stanley received detailed and specific information concerning Sunbeam's financial condition and performance. Morgan Stanley received information that directly contradicted Sunbeam's and Morgan Stanley's assertions to CPH that Sunbeam had undergone a successful turnaround and that its financial performance had dramatically improved. By no later than March 18, 1998, Morgan Stanley knew that Sunbeam's January and February 1998 sales were only 50% of January and February 1997 sales, and Morgan Stanley also knew that the shortfall was caused by Sunbeam's practice of accelerating sales which otherwise would have occurred in 1998 in order to boost Sunbeam's income in 1997. Although Morgan Stanley and Sunbeam previously had advised CPH that Sunbeam's sales were running ahead of analysts' expectations for the first quarter, Morgan Stanley decided not to correct those material misrepresentations. Instead, in March 1998, Morgan Stanley assisted Sunbeam in concealing the problems with Sunbeam's first quarter 1998 sales

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Plaintiff Coleman (Parent) Holdings Inc. ("CPH") directly or indirectly owned 44,067,520 shares — or approximately 82% — of Coleman prior to the transactions at issue. On March 30, 1998, Sunbeam acquired CPH's interest in Coleman. Sunbeam paid for the Coleman shares with 14.1 million shares of Sunbeam common stock and other consideration.

Defendant Morgan Stanley & Co., Inc. ("Morgan Stanley") is a highly sophisticated investment banking firm that provides a wide range of financial and securities services. Among other things, Morgan Stanley provides advice on mergers and acquisitions and raises capital in the equity and debt markets. Morgan Stanley served as Sunbeam's investment banker and as the underwriter of securities issued by Sunbeam in connection with the events at issue herein.

041510

Sunbeam Corporation ("Sunbeam") was a publicly-traded company headquartered in Delray Beach, Florida. Sunbeam designed and manufactured small household appliances and outdoor consumer products, which it marketed under the Sunbeam and Oster brand names. Sunbeam filed a bankruptcy petition under Chapter 11 of the Bankruptcy Code in February 2001.

Albert Dunlap ("Dunlap") was the Chief Executive Officer of Sunbeam from July 1996 until June 1998 when he was terminated by Sunbeam's Board of Directors.

Russell Kersh ("Kersh") was the Executive Vice President of Sunbeam from July 1996 until June 1998 when he was terminated by Sunbeam's Board of Directors.

Arthur Andersen LLP ("Andersen") provided outside accounting services to Sunbeam through its West Palm Beach, Florida office. Andersen auditors provided information concerning Sunbeam's first quarter 1998 sales and earnings to Morgan Stanley.

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Sunbeam designed and manufactured outdoor and household consumer products, which it marketed under the Sunbeam and Oster brand names. Sunbeam's products included small kitchen appliances, humidifiers, electric blankets, and grills. Many of the country's leading retail stores, including Wal-Mart, Target, and Home Depot, were among Sunbeam's major customers.

Despite Sunbeam's well-known brands and strong customer base, its financial performance was disappointing. In 1994, Sunbeam earned \$1.30 per share. In 1995, Sunbeam's earnings declined to \$0.61 per share. In 1996, Sunbeam's earnings continued to suffer. On March 22, 1996, Sunbeam issued an early warning that its first quarter earnings would be well under analysts' expectations and down from first quarter 1995. Shortly after issuing the March 22 earnings warning, Sunbeam's Chief Executive Officer and two of Sunbeam's directors announced their resignations. Less than a week later, Sunbeam announced that its first quarter 1996 earnings had plunged 42% from first quarter 1995 levels. Sunbeam also announced that its second quarter 1996 earnings would be lower than its second quarter 1995 earnings.

Sunbeam's disappointing earnings caused its stock price to plummet. During 1995, the price at which Sunbeam's stock traded fell 40%, from a high of \$25-1/2. In 1996, Sunbeam's stock price continued to decline until it reached a low of \$12-1/4 in July.

On July 18, 1996, Sunbeam's board of directors hired Albert Dunlap as Sunbeam's new Chief Executive Officer. Based upon brief terms as Chief Executive Officer of other publicly traded companies, including Scott Paper Company ("Scott Paper"), Dunlap was viewed as a "turnaround specialist" — that is, someone who could take a poorly performing company and significantly increase its value by "turning around" its financial performance. Because Dunlap touted the benefits from firing large numbers of employees and closing large numbers of plants, Dunlap became widely known as "Chainsaw Al." Dunlap lived in Boca Raton, Florida, and one of his first tasks at Sunbeam was to consolidate the company's six headquarters into one located in Delray Beach, Florida.

Immediately after joining Sunbeam, Dunlap hired Kersh as Sunbeam's Chief Financial Officer. Kersh had teamed with Dunlap for over 15 years, serving as a senior executive with Dunlap at other companies, including Scott Paper. Dunlap also brought in several other hand-picked executives to make up his senior management team.

Dunlap and his senior management team entered into employment agreements with Sunbeam. Under those agreements, Dunlap and his senior management team stood to make tens of millions of dollars if they were able to boost Sunbeam's apparent value and then sell Sunbeam to another company at a premium.

In order to convince other companies that they should want to purchase Sunbeam, Dunlap needed to improve Sunbeam's reported financial performance quickly and dramatically. It was, of course, no small task to transform Sunbeam from a poorly performing company, with weak sales and declining profits, into a strong company with growing sales and

soaring profits. In fact, as the world later learned, Dunlap did not achieve that change in Sunbeam's fortunes. Instead, Dunlap created the illusion of a dramatic turnaround at Sunbeam by engaging in what SEC officials subsequently described as a "case study" in financial fraud.

Dunlap had a three-step plan at Sunbeam. In the first step, Dunlap overstated Sunbeam's financial problems so that Sunbeam appeared to be in worse shape than it really was. After making Sunbeam look worse, Dunlap moved to step two, where he made Sunbeam look more valuable than it really was by inflating Sunbeam's sales and engaging in other earnings manipulations. In step three, Dunlap planned to sell Sunbeam to another company before it became apparent that the "improved" results were fictional. By doing so, Dunlap would make tens of millions of dollars and would be free to blame his successor for any subsequent problems.

Dunlap began implementing his strategy soon after his arrival at Sunbeam in 1996. Claiming to be engaged in a clean-up of Sunbeam's financial problems, Dunlap recorded artificially high reserves and booked expenses that should not have been recorded until later periods. Both of those actions made Sunbeam's financial condition appear worse than it really was, thus lowering the benchmark for measuring Sunbeam's performance in future years.

The overstated reserves also provided Dunlap a means by which he could inflate Sunbeam's future results during the second step of his plan. Dunlap later could "re-evaluate" and release millions of dollars from the overstated reserves to boost income in later periods. The income from released reserves contributed to the illusion of a rapid turnaround in Sunbeam's performance. Using inflated reserves to enhance income in future periods is a fraudulent practice and overstated reserves are commonly called "cookie jar" reserves.

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After making Sunbeam look worse than it really was in 1996, Dunlap manipulated Sunbeam's sales and expenses in 1997 to create the false appearance of quarter after quarter improvement in financial performance. For example, Dunlap caused Sunbeam to inflate its sales by engaging in phony "bill and hold" sales. Under this practice, Sunbeam recognized revenues from "sales," even though customers did not actually pay for or even take delivery of the products, which continued to sit in Sunbeam's own warehouses. Although Sunbeam recorded the "bill and hold" sales as if they were current sales, they were, in reality, simply sales stolen from future quarters. In 1997, phony "bill and hold" sales added approximately \$29 million in sales and \$4.5 million in income.

Throughout 1997, Sunbeam also engaged in a sales practice known as "channel stuffing" — accelerating sales that otherwise would occur in a later period, sometimes by offering steep discounts or other extraordinary customer inducements. On the grand scale employed by Sunbeam, channel stuffing inevitably leads to major sales shortfalls in later periods when "stuffed" customers simply stop buying. Sunbeam's senior sales officer referred to Sunbeam's unsustainable practice of inflating performance through accelerated sales as the "doom loop."

Dunlap further "enhanced" Sunbeam's income in 1997 by causing Sunbeam to record a "profit" of \$10 million from a sham sale of its warranty and spare parts business. Dunlap also made Sunbeam appear to be more successful than it really was by reaching into the "cookie jar," reversing inflated reserves, and recording \$35 million as income. Sunbeam's 1997 profit margins also looked better than they really were because Dunlap already had recorded millions of dollars of 1997 expenses in 1996.

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In October 1997, Dunlap announced that Sunbeam's "turnaround" was complete. Compared to the third quarter of 1996, Sunbeam's third quarter 1997 performance was remarkable. In the third quarter of 1996, Sunbeam had reported a loss of \$18.1 million. In the third quarter of 1997, however, Sunbeam reported earnings of \$34.5 million — an extraordinary turnaround from substantial losses to hefty profits. Sunbeam's combined results for the first three quarters showed dramatic improvement as well. Sunbeam reported that its profits for the first nine months were up tenfold over the same period the year before — from \$6.5 million in 1996 to \$67.7 million in 1997. Sunbeam's reversal of fortune caused a spectacular increase in the price of its stock. In July 1996, when Dunlap was hired, Sunbeam's shares traded at \$12-1/4. By October 1997, Sunbeam's shares had risen to \$49-13/16.

With steps one and two successfully completed, Dunlap was more than eager to complete the final step of his scheme: to sell Sunbeam to another company and collect tens of millions of dollars for himself before the outside world could learn the truth about Sunbeam's phony "turnaround." To accomplish that third and final step, Dunlap needed an investment banking firm

When Dunlap announced in early 1997 that he would begin interviewing investment bankers, Morgan Stanley immediately began pursuing the job. Although Morgan Stanley had no previous relationship with Sunbeam, one of Morgan Stanley's senior executives, William Strong, had worked closely with Dunlap on other large transactions between 1986 and 1993, when Strong was employed by Salomon Brothers.

Morgan Stanley knew that it was competing with other investment bankers, including Mark Davis, for Dunlap's business. Davis was the head of the mergers and acquisitions department at Chase Securities and had worked previously with Strong at Salomon Brothers. Davis had a very strong relationship with Dunlap, and Davis had served as Dunlap's investment advisor on numerous transactions, including Dunlap's sale of Scott Paper. Shortly after arriving at Sunbeam, Dunlap hired Davis to handle the sale of Sunbeam's furniture business.

Morgan Stanley put together a team headed by its Vice Chairman, Bruce Fiedorek, and Strong. Beginning in April 1997, Morgan Stanley's personnel traveled to Sunbeam's offices in Delray Beach, Florida to study Sunbeam and woo Dunlap. After months of uncompensated work, in September 1997, Morgan Stanley finally persuaded Dunlap to name Morgan Stanley as Sunbeam's exclusive investment banker. Dunlap instructed Morgan Stanley to find a buyer for Sunbeam. Morgan Stanley knew that if it failed to deliver a major transaction, Morgan Stanley would not be compensated for the extensive work it had performed for Sunbeam. Morgan Stanley also knew that Davis and Chase Securities were standing by — ready and willing to reclaim their position as Dunlap's investment banker of choice.

Throughout the fall of 1997, Morgan Stanley aggressively searched for a buyer for Sunbeam. Morgan Stanley put together extensive and detailed materials to use in marketing Sunbeam to potential buyers. Morgan Stanley pitched the transaction to more than 10 companies — including Gillette, Colgate, Sara Lee, Rubbermaid, Whirlpool, and Black & Decker — that Morgan Stanley hoped might have an interest in acquiring Sunbeam. Morgan Stanley, however, was not able to find a buyer.

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As 1998 approached, the pressure on Dunlap increased. Dunlap was aware that Sunbeam would be unable to sustain the appearance of a successful turnaround in 1998 because Sunbeam had stolen sales from 1998 to boost 1997's numbers and the "cookie jar" reserves had been depleted. Dunlap needed a way to conceal Sunbeam's phony turnaround until a buyer could be found. Morgan Stanley provided the solution to Dunlap's problem.

Morgan Stanley knew that its failure to find a buyer for Sunbeam could prove fatal to the relationship it had worked so hard to establish with Dunlap. As the pressure on Dunlap increased, the pressure on Morgan Stanley increased as well. Although Morgan Stanley was not able to find a buyer for Sunbeam, Morgan Stanley responded with a plan that would allow Dunlap to conceal his fraud. Morgan Stanley recommended that Sunbeam acquire other companies, using Sunbeam's stock, which was fraudulently inflated, as the "currency" that would be used to pay for the acquisitions.

Morgan Stanley's strategy was doubly deceptive. First, Morgan Stanley's acquisition strategy would allow Dunlap to consolidate Sunbeam's results with those of the newly-acquired companies. That would help Dunlap camouflage Sunbeam's results and make it difficult to detect any shortfall in Sunbeam's performance. Dunlap simply could label any problems that were detected as attributable to the poor performance of the acquired companies or as a temporary "blip" caused by the distraction of integrating the acquired companies with Sunbeam. Second, Morgan Stanley's strategy would allow Dunlap to take new massive restructuring charges (purportedly relating to the acquisitions) and thus create more "cookie jar" reserves that could be tapped to bolster the future earnings of the combined companies.

Morgan Stanley identified Coleman as one of the key potential acquisition targets. CPH owned 82% of Coleman's stock. Morgan Stanley searched the ranks of its investment bankers to locate those with the best access to CPH. Drawing on relationships between some of Morgan Stanley's investment bankers and senior CPH officers, Morgan Stanley set about trying to persuade CPH to sell its interest in Coleman to Sunbeam — and, most importantly, to accept Sunbeam stock as consideration.

Morgan Stanley laid the groundwork for a meeting to take place in December 1997 in Palm Beach, Florida between Dunlap and Kersh and representatives of CPH. In advance of the Palm Beach meeting, Morgan Stanley provided materials to Sunbeam to prepare Sunbeam for the meeting. Morgan Stanley also met with Kersh and other Sunbeam personnel to prepare for the Palm Beach meeting. However, Dunlap nearly scuttled Morgan Stanley's carefully crafted plan at the outset. During the December 1997 Palm Beach meeting, when CPH rejected Dunlap's initial all-stock offer, Dunlap became so angry that he cursed and ranted at the CPH representatives and stormed out.

Dunlap's tantrum appeared to kill any chance that CPH would sell its interest in Coleman to Sunbeam. Morgan Stanley, however, worked to revive the discussions. Drawing again on Morgan Stanley's relationships with CPH officers, Morgan Stanley was able to restart the discussions with CPH with the promise that Dunlap would be kept away from the negotiating table. Thereafter, Morgan Stanley, through Managing Directors Strong, James Stynes, and Robert Kitts, led the discussions with CPH on Sunbeam's behalf.

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Morgan Stanley knew that it had to persuade CPH not only to sell Coleman, but also to accept Sunbeam stock — ultimately, 14.1 million shares of Sunbeam stock — as a major part of the purchase price. During the course of negotiations, Morgan Stanley prepared and provided CPH with false financial and business information about Sunbeam designed to create the appearance that Sunbeam was prospering and that Sunbeam's stock had great value. For example, Morgan Stanley provided CPH with false 1996 and 1997 sales and revenue figures, as well as false projections that Sunbeam could not expect to achieve. Together, in face-to-face discussions, Morgan Stanley and Sunbeam assured CPH that (a) Sunbeam would meet or exceed its first quarter 1998 earnings estimates; (b) analysts' 1998 earnings estimates for Sunbeam were correct; and (c) Sunbeam's plan to earn \$2.20 per share in 1998 was easily achievable and probably low. Morgan Stanley and Sunbeam also falsely assured CPH that Sunbeam's "early buy" sales program would not hurt Sunbeam's future revenues. However, the "early buy" program was one of Sunbeam's revenue acceleration programs — and the devastating effects of Sunbeam's revenue acceleration programs already had begun to materialize at Sunbeam. Sunbeam's January and February 1998 sales were down drastically, although those results were not disclosed to CPH or the public. To the contrary, Morgan Stanley and Sunbeam together specifically advised CPH that Sunbeam's first quarter 1998 sales were "tracking fine" and running ahead of analysts' estimates.

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On February 27, 1998, Sunbeam's Board of Directors met at Morgan Stanley's offices to consider the purchase of Coleman, as negotiated by Morgan Stanley.

At the February 27, 1998 meeting, Morgan Stanley made an extensive presentation to Sunbeam's Board concerning the proposed transaction. Numerous Morgan Stanley representatives, including Managing Directors Strong, Kitts, Stynes, Ruth Porat, and Vikram Pandit, attended the meeting.

Morgan Stanley presented Sunbeam's board with Morgan Stanley's opinion on the value of Coleman. Using a discounted cash flow analysis, which Morgan Stanley represented was the best gauge of stand-alone economic value and the best method of capturing the unique value of Coleman, Morgan Stanley valued CPH's Coleman stock at a range of \$31.06 to \$53.24 per Coleman share. CPH's 44,067,520 Coleman shares were worth, therefore, between \$1.369 billion and \$2.346 billion.

Following Morgan Stanley's presentation, Sunbeam's Board of Directors voted to acquire Coleman on the very favorable terms that Morgan Stanley had negotiated.

Morgan Stanley spent the following weekend developing Sunbeam's public relations strategy to announce the Coleman transaction. Morgan Stanley scripted the points for Dunlap to make in a conference call with analysts. Morgan Stanley also crafted a list of "key media messages" for Dunlap to use in his communications with the press. On Sunday, March 1, 1998, Morgan Stanley spoke with a reporter for the Wall Street Journal to inform him that Sunbeam would announce its acquisition of Coleman the following morning.

Sunbeam announced its acquisition of Coleman on Monday, March 2, 1998, prior to the opening of the financial markets. Consistent with Morgan Stanley's valuation, investors viewed Sunbeam's purchase of Coleman — and the price that Sunbeam had paid — very favorably. The day before the acquisition was announced, Sunbeam's stock closed at \$41-3/4. In the days following Sunbeam's announcement of the transaction, Sunbeam's stock rose approximately 25%, to a high of \$52.

Dunlap knew that Sunbeam needed to raise funds to pay the cash portion of the acquisition consideration. Dunlap also knew that Sunbeam needed cash to purchase two other smaller companies in addition to Coleman. Morgan Stanley recommended that Sunbeam raise funds through a \$500 million offering of convertible subordinated debentures. To assure the offering's success, Morgan Stanley lent its name to the offering. Indeed, Morgan Stanley agreed to serve as the sole underwriter for the offering.

The money raised from the sale of the debentures was used by Sunbeam to complete the acquisition of Coleman.

Unbeknownst to CPH or the public, Sunbeam's first quarter 1998 sales were a small fraction of the financial community's expectations for the quarter. If Dunlap could consolidate Sunbeam's sales with Coleman's sales, Dunlap knew that he could obscure Sunbeam's actual first quarter sales. As a result, Dunlap was especially anxious to complete the acquisition of Coleman before Sunbeam announced its first quarter 1998 sales. Indeed, the success of the scheme depended upon Sunbeam's ability to complete the Coleman acquisition before Sunbeam's first quarter results

were announced. To satisfy Dunlap's objectives, Morgan Stanley moved up the launch date of the offering.

The debentures were marketed to investors at a series of "road show" meetings and conference calls arranged by Morgan Stanley. Morgan Stanley prepared and distributed a memorandum for its sales force to use in marketing the debentures to investors. Morgan Stanley also developed the script for Dunlap and Kersh to deliver during the road show. In those materials, Morgan Stanley misrepresented Sunbeam's financial performance and emphasized Dunlap's purported "turnaround" accomplishments.

Morgan Stanley launched the debenture offering with a research analyst presentation to the Morgan Stanley sales force. As part of Morgan Stanley's growing relationship with Sunbeam, one of Morgan Stanley's top-rated research analysts planned to initiate equity coverage of Sunbeam. That Morgan Stanley analyst had modeled values for Sunbeam's acquisition of Coleman that were higher than even Sunbeam's management had predicted.

Although Morgan Stanley initially planned to sell \$500 million worth of debentures, Morgan Stanley's efforts were so successful that the size of the offering was increased to \$750 million on March 19, 1998 — the day of the last road show. The debentures were sold to investors nationwide, including investors based in Florida.

As Sunbeam's investment banker and the sole underwriter for the debenture offering, Morgan Stanley had a duty to investigate Sunbeam's finances and business operations.

Morgan Stanley, which had been working hand-in-hand with Sunbeam for

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almost a year and had traveled to Sunbeam's Florida offices, repeatedly asserted that it had satisfied that duty.

Strong, who was one of the senior Morgan Stanley investment bankers involved, has admitted in sworn testimony that he may have had more than 100 telephone conversations with Dunlap and Kersh (whose offices were in Sunbeam's Delray Beach headquarters) and that Strong was "sure" that he would have been apprised of Sunbeam's financial performance during the first two months of 1998.

With the \$750 million debenture offering and the Coleman transaction set to close at the end of March 1998, Sunbeam's Florida-based outside auditors were shocked that Morgan Stanley had not asked them about Sunbeam's financial performance for first quarter 1998. Sunbeam's auditors were alarmed because Sunbeam's first quarter results were a disaster, but Dunlap, Kersh, and Morgan Stanley were telling CPH and the investing public,

that Sunbeam's turnaround was a success, that Sunbeam's sales for the first quarter of 1998 were ahead of the expectations of outside financial analysts, and that Sunbeam was poised for record sales.

On March 17, Sunbeam's auditors forced the issue. From their Florida offices, Sunbeam's auditors sent Morgan Stanley a letter reporting that Sunbeam's net sales through January 1998 were down 60% — \$28 million in January 1998, as compared to \$73 million in January 1997. The March 17 letter explained that the decline was "primarily due to the . . . new early buy program for grills which accelerated grill sales into the fourth quarter of fiscal 1997."

The next day, Morgan Stanley was faxed a schedule from Sunbeam's Florida office that showed that Sunbeam's January and February 1998 net sales totaled \$72 million, an amount that was 50% lower than Sunbeam's January and February 1997 net sales of \$143.5 million.

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Based on information that Sunbeam and Morgan Stanley had disseminated, Wall Street analysts were anticipating that Sunbeam's first quarter 1998 net sales would be in the range of \$285 million to \$295 million. Sales in that range would have been approximately 15% higher than first quarter 1997 sales. Sunbeam's January and February 1998 sales, however, totaled barely 25% of \$285 million. As Sunbeam's outside auditors advised Morgan Stanley in writing, the sales drop-off was caused by Sunbeam's sales acceleration program. The information put into Morgan Stanley's hands on March 17 and March 18 showed that Morgan Stanley's and Sunbeam's assertions to CPH and other investors were false. Contrary to what Morgan Stanley and Sunbeam had represented, Sunbeam had not undergone a successful turnaround, Sunbeam's financial performance had not dramatically improved, and Sunbeam's performance in 1998 was not better than Wall Street analysts' expectations. It was imperative, therefore, that the truth be kept from CPH until the Coleman transaction closed at the end of March 1998.

Morgan Stanley did not disclose Sunbeam's disastrous first quarter, Morgan Stanley did not insist that Sunbeam disclose its disastrous first quarter, Morgan Stanley did not correct any of the false and misleading statements it and Sunbeam had made to CPH about Sunbeam's business or performance, and Morgan Stanley did not suspend any of the critical transactions that were scheduled to close in the next two weeks. Instead, with Morgan Stanley's knowledge and assistance, Sunbeam prepared and issued a false press release on March 19, 1998 that affirmatively misstated and concealed Sunbeam's true condition.

The March 19, 1998 press release stated: "Sunbeam Corporation . . . said today that it is possible that its net sales for the first quarter of 1998 may be lower than the range of

Wall Street analysts' estimates for \$285 million to \$295 million, but net sales are expected to exceed 1997 first quarter net sales of \$253.4 million. . . . The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the Company's major retail customers. The Company further stated that based on the strength of its new product offerings and powerful brand names, it remains highly confident about the overall sales outlook for its products for the entire year."

As Morgan Stanley was fully aware, the March 19, 1998 press release was false, misleading, and failed to disclose material information. The March 19, 1998 press release failed to disclose Sunbeam's actual January and February 1998 sales or the true reasons for the poor results. Instead, the press release held out the false possibility that Sunbeam still could achieve sales of \$285 million to \$295 million and suggested that, if any shortfall occurred, that shortfall would be due to the fact that certain retailers had decided to defer first quarter purchases to the second quarter.

The press release also assured that Sunbeam at least would exceed first quarter 1997 net sales of \$253.4 million.

Based on information that Morgan Stanley had in its hands on March 18, 1998, it was obvious that Sunbeam would not achieve sales of \$285 million to \$295 million and that Sunbeam's first quarter 1998 sales would be below its first quarter 1997 numbers. To simply meet 1997 first quarter sales, Sunbeam needed sales of \$123.3 million over the 12 remaining days of the quarter — an average of \$10.28 million per day. Sales of \$10.28 million per day would be 306% more than the average per day sales in March 1997, and 281% more than the average per day sales for the first 17 days of March 1998. Furthermore, Morgan Stanley knew that the shortfall from analysts' estimates was not caused by retailers' deciding to defer purchases from the first quarter of 1998 to the second quarter, as the press release indicated. Rather, as Sunbeam's outside auditors had

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advised Morgan Stanley in writing, the collapse in first quarter sales was caused by Sunbeam's acceleration of 1998 sales into the fourth quarter of 1997.

After Sunbeam's false press release was issued, Morgan Stanley stood arm-in-arm with Sunbeam while Dunlap and Kersh told CPH, analysts, and investors that the March 19, 1998 release was a purely cautionary statement because some first quarter 1998 sales might simply "spillover" into the second quarter and that Sunbeam still believed that it actually would meet analysts' estimates of \$285 million to \$295 million in first quarter 1998 sales.

Morgan Stanley knew that a full and truthful disclosure of Sunbeam's first quarter sales would doom the debenture offering, which was scheduled to close on March 25, 1998,

As Morgan Stanley was fully aware, the written contract between CPH and Sunbeam gave CPH the express legal right to refuse to close the sale if there was a material adverse change in Sunbeam's "business, results of operation or financial condition."

Furthermore, if the transactions did not close, Morgan Stanley would not be paid its \$10.28 million fee for the Coleman acquisition or its \$22.5 million fee for underwriting the subordinated debenture offering. Morgan Stanley also knew that Sunbeam would promptly replace Morgan Stanley with another investment banking firm – such as the Chase Securities team led by Mark Davis.

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Sunbeam's outside auditors already had made it perfectly clear to Morgan Stanley that Sunbeam's first quarter 1998 sales were a disaster,

One of Sunbeam's senior outside auditors, Lawrence Bornstein, has testified under oath that on March 19, 1998, he told Morgan Stanley's John Tyree that the statement in Sunbeam's March 19, 1998 press release — that Sunbeam would at least exceed first quarter 1997 sales of \$253.4 million — was not credible: "Just do the math . . . they've done a million dollars in sales the first 70 days of the year and now they need to do \$10 million worth of sales for the next . . . I think it was 11 days . . . I mean, something ridiculous." Bornstein also told Tyree: "I've been to every shipping dock domestically, I've been to Hattiesburg, I've been to Neosho, I've been to Mexico City, and I don't think these guys can physically ship this much stuff."

Morgan Stanley knew that the March 19 press release was false and misleading. Despite that knowledge and Bornstein's explicit statements, Morgan Stanley continued with its preparations to close the debenture offering on March 25, 1998 and the Coleman acquisition on March 30, 1998.

As part of those preparations, on March 24, 1998, Morgan Stanley's Tyree spoke by telephone with Sunbeam's Kersh, who was located in Sunbeam's Delray Beach offices, to obtain an updated report concerning Sunbeam's first quarter performance. By the time of that March 24, 1998 call, Sunbeam had fallen even further behind first quarter 1997 sales. As of March 18, 1998, Sunbeam needed to achieve average sales of \$10.28 million per day, over 12 days, to reach

first quarter 1997 sales. Sunbeam's sales between March 18 and March 24, 1998 had averaged only \$6.81 million per day — well short of the \$10.28 million per day that Sunbeam needed to achieve. Sunbeam's March 18 through March 24, 1998 sales were further proof that Sunbeam's March 19, 1998 press release was false and that Sunbeam would not achieve first quarter 1998 sales in excess of first quarter 1997 sales.

Morgan Stanley also knew no later than March 25, 1998, if not much earlier, that Sunbeam's earnings for the first quarter of 1998 were going to miss Wall Street analysts' earnings expectations, which were in the range of \$0.28 to \$0.31 per share (excluding one-time charges). Sunbeam's outside auditors advised Morgan Stanley on March 25 that Sunbeam had suffered a \$41.19 million loss during the first two months of 1998, including a one-time charge of \$30.2 million. Even excluding that one-time charge, Sunbeam's loss for the first two months was \$0.13 per share. To achieve first quarter 1998 operating earnings of \$0.28 per share, which were at the low end of analyst expectations, Sunbeam needed to realize a profit of \$35.5 million during March 1998 alone. A net profit of \$35.5 million in March was 500% more than Sunbeam's net profit for the entire first quarter of 1997. In fact, Sunbeam's first quarter 1998 earnings fell far short of Wall Street's expectations. Sunbeam's first quarter earnings were material,

Having directly participated in misleading CPH Morgan Stanley had a duty to disclose the true facts before the closing of the debenture offering and the Coleman acquisition. Morgan Stanley also could have required Sunbeam to postpone the closings of

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those transactions until the necessary disclosures were made. Morgan Stanley did neither. Instead, Morgan Stanley marched forward and closed the \$750 million debenture offering on March 25, 1998, which was needed to close the Coleman transaction, and assisted Sunbeam in closing the acquisition of Coleman on March 30, 1998.

Morgan Stanley received \$22.5 million for the subordinated debenture offering and \$10.28 million for the Coleman acquisition. Morgan Stanley would have received nothing if the transactions had failed to close.

On April 3, 1998 — just four days after the Coleman transaction closed — Sunbeam announced that sales for the first quarter of 1998 would be approximately 5% below the \$253.4 million in sales that Sunbeam reported in the first quarter of 1997. In other words, Sunbeam was expecting sales in the range of \$240 million. That sales shortfall was shocking news, particularly in view of assurances provided by Sunbeam both in and after its March 19, 1998 press release that \$285 million to \$295 million of sales was still a real possibility. The April 3, 1998 press release also disclosed that Sunbeam expected to show a loss for the quarter, although the release did not disclose the magnitude of the loss or how much of the loss was attributable to operating earnings as opposed to one-time charges. Sunbeam's news stunned the market. On April 3rd, Sunbeam's stock price dropped 25% — from \$45-9/16 to \$34-3/8.

Sunbeam's actual first quarter 1998 performance was even worse than Sunbeam disclosed on April 3, 1998. The April 3, 1998 release indicated that Sunbeam's first quarter sales were in the range of \$240 million. In fact, Sunbeam's first quarter sales were \$224.5

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million. Sunbeam obscured the true shortfall by extending its quarter from March 29 to March 31, 1998 — thereby adding two more days of Sunbeam sales. Sunbeam also failed to disclose that it had included two days of Coleman sales after the Coleman transaction closed on March 30. Further, Sunbeam inflated first quarter 1998 sales with \$29 million of new phony “bill and hold” sales.

Just as Sunbeam’s first quarter 1998 sales had been a disaster, so, too, were Sunbeam’s first quarter 1998 earnings. Morgan Stanley and Sunbeam had represented to CPH that Sunbeam would achieve or exceed analyst first quarter 1998 earnings estimates. At the time of that representation, the consensus among analysts was that Sunbeam would enjoy first quarter 1998 earnings of \$0.33 per share. However, on May 9, 1998, Sunbeam disclosed that it would record a first quarter loss of \$0.09 per share (excluding one-time charges) — more than \$0.40 per share lower than CPH had been told to expect.

Within weeks, Dunlap’s fraudulent scheme began to unravel. In June 1998, after a number of news articles critical of Sunbeam’s practices, Sunbeam’s Board of Directors launched an internal investigation. That investigation led quickly to the firing of Dunlap and Kersh, and, subsequently, to a restatement of Sunbeam’s financial statements for 1996, 1997, and the first quarter of 1998.

As detailed above, Morgan Stanley participated in a scheme to mislead CPH and others and cover up the massive fraud at Sunbeam until Morgan Stanley and Sunbeam could close the purchase of Coleman. Morgan Stanley provided CPH with false information concerning Sunbeam’s 1996 and 1997 financial performance, its business operations, and the value of Sunbeam’s stock. Morgan Stanley also actively assisted Sunbeam in concealing Sunbeam’s

disastrous first quarter 1998 sales and earnings and the true reasons for Sunbeam's poor performance.

Morgan Stanley knew that its statements to CPH were materially false and misleading and omitted the true facts.

Morgan Stanley intended that CPH rely on Morgan Stanley's representations concerning Sunbeam.

As detailed above, Dunlap engaged in a fraudulent scheme to inflate the price of Sunbeam's stock by improperly manipulating Sunbeam's 1996 and 1997 performance, by falsely asserting that Sunbeam had successfully "turned around," and by concealing the collapse of Sunbeam's first quarter 1998 sales and earnings and the reasons for Sunbeam's first quarter 1998 performance.

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86 As detailed above, Morgan Stanley knew of Dunlap's fraudulent scheme and helped to conceal it until after Sunbeam could close the purchase of Coleman.

As detailed above, Morgan Stanley provided substantial assistance to Dunlap and Sunbeam, including: concealing Sunbeam's first quarter 1998 sales collapse; assisting with the false March 19, 1998 press release; arranging road shows and meetings with prospective debenture purchasers at which Morgan Stanley, Dunlap, and others made false statements concerning Sunbeam's financial condition and business operations; preparing and disseminating the preliminary and final offering memoranda for the subordinated debenture offering, both of which contained false information concerning Sunbeam's financial condition and business operations; providing CPH with false financial and business information concerning Sunbeam; scripting Dunlap's false public statements concerning Sunbeam's acquisition of Coleman;

and underwriting the \$750 million convertible debenture offering, proceeds from which were used to fund Sunbeam's purchase of Coleman.

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As detailed above, Morgan Stanley conspired with Dunlap and other senior Sunbeam executives to conceal the truth about Sunbeam's financial performance and business operations.

As detailed above, Morgan Stanley committed overt acts in furtherance of the conspiracy, including: concealing Sunbeam's first quarter 1998 sales collapse; assisting with the false March 19, 1998 press release; arranging road shows and meetings with prospective debenture purchasers at which Morgan Stanley, Dunlap, and others made false statements concerning Sunbeam's financial condition and business operations; preparing and disseminating the preliminary and final offering memoranda for the subordinated debenture offering, both of which contained false information concerning Sunbeam's financial condition and business operations; providing CPH with false financial and business information concerning Sunbeam; scripting Dunlap's false public statements concerning Sunbeam's acquisition of Coleman;

and underwriting the \$750 million convertible debenture offering, proceeds from which were used to fund Sunbeam's purchase of Coleman.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

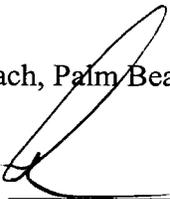
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FIFTEENTH JUDICIAL CIRCUIT CIVIL

**ORDER ON MORGAN STANLEY'S MOTION FOR AN ADVERSE INFERENCE
INSTRUCTION**

THIS CAUSE came before the Court March 21, 2005 on Morgan Stanley's Motion for an Adverse Inference Instruction, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley's Motion for an Adverse Inference Instruction is Denied, without prejudice to MS & Co.'s right to present evidence about CPH's email retention practices and its failure to direct that emails related to the Sunbeam transaction be saved and CPH's right to present evidence of its offer to have a third-party vendor given access to retrieve emails from CPH's system, without reference to discovery requests or court orders, and for either counsel to argue in favor of whatever inferences that evidence may support. See Jordan v. Masters, 821 So. 2d 342 (Fla. 4th DCA 2002) cf.; Amlan, Inc. v. Detroit Diesel Corp., 651 So. 2d 701 (Fla. 4th DCA 1995). If either party intends to present evidence on the issue of CPH's email retention practices or third-party vendor offer it shall, within 5 business days, serve on opposing counsel (i) the name, address, and business title of any witness expected to testify, together with a fair summary of his or her expected testimony; (ii) a designation of any deposition testimony the designating party intends to offer on this issue; and (iii) copies of any documents to be referred to by a witness or offered into evidence on this issue.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 23rd day of March, 2005.



ELIZABETH T. MAASS
Circuit Court Judge



05/16/79

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COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY,
FLORIDA

MORGAN STANLEY & CO., INC.,

Defendant.

CASE NO: 2003 CA 005045-AI

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**PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE COURT'S
MARCH 23, 2005 ORDER ON MORGAN STANLEY'S MOTION FOR AN
ADVERSE INFERENCE INSTRUCTION AND TO BAR THE
EXPERT TESTIMONY OF JOHN F. ASHLEY**

In light of the Court's March 31, 2005 ruling to redraw the bifurcation line and bar evidence of Morgan Stanley's litigation misconduct from Phase I of the trial (*see* Ex. A, 3/31/05 Tr. at 6274), Plaintiff Coleman (Parent) Holdings Inc. ("CPH") hereby moves this Court to reconsider its March 23, 2005 Order on Morgan Stanley's Motion for an Adverse Inference Instruction. It would be unfair to allow Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") to put on evidence during Phase I about CPH's alleged destruction of e-mails when CPH is prevented from telling the jury that Morgan Stanley "deliberately and contumaciously violated numerous discovery orders" involving e-mail and related issues (Ex. B, 3/23/05 Order, at 16). Accordingly, CPH asks this Court to bar Morgan Stanley from introducing any evidence related to CPH's e-mail retention policies or alleged destruction of e-mail. CPH also asks this Court to bar the expert testimony of John F. Ashley, the recent disclosure of which was inadequate and untimely.

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I. Allowing Morgan Stanley To Present Evidence of CPH's Alleged Discovery Misconduct Would Be Unjust.

In its March 23, 2005 Order on Morgan Stanley's Motion for an Adverse Inference Instruction, the Court directed the parties to make certain disclosures "[i]f either party intends to present evidence on the issue of CPH's e-mail retention practices or third-party vendor offer." Ex. C, 3/23/05 Order. Pursuant to that Order, Morgan Stanley disclosed its intent to call Steven L. Fasman, a senior vice president at MacAndrews & Forbes Holdings Inc. ("MAFCO") to testify about "the practices regarding preservation, deletion, purging, and destruction of email at MAFCO; . . . the failure to preserve, recover, restore, or save MAFCO email . . . ; the destruction, erasing, or overwriting of MAFCO email . . . ; and Plaintiff's production or failure to produce email in response to discovery requests." Ex. D, MS Not. of Compliance with Ct. Order, at 1-2. Morgan Stanley also disclosed that it intends to call John F. Ashley, an expert in computer forensics, to testify to "the email software and backup systems in use at MAFCO since 1997; the ability to recover email from overwritten backup tapes; the email backup and destruction policies at MAFCO; and the impact of those policies on the ability/inability to recover MAFCO email from 1997 and 1998 from the existing MAFCO backup tapes." *Id.*

Because the Court's March 31, 2005 Order moves all evidence of litigation misconduct into Phase II of the trial and leaves only the issues of reliance and compensatory damages in Phase I, it appears that Morgan Stanley intends to turn Phase I into a "blame the victim" sideshow. By shining the spotlight on CPH's e-mail policies and practices, Morgan Stanley hopes to distract the jury from Morgan Stanley's own misconduct and to imply that it was CPH, and not Morgan Stanley, that was the culprit here.

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As Morgan Stanley has recently argued: “Under Florida law, evidence of discovery misconduct generally may not be presented to the jury.” Ex. E, MS 3/31/05 Mot. to Clarify, at 5. While evidence of Morgan Stanley’s discovery misconduct is relevant to CPH’s claim for punitive damages and thus will come in during Phase II of the trial, there is no basis for introducing evidence of CPH’s e-mail policy during either phase of the trial. The only evidence relevant in Phase I, according to Morgan Stanley itself, is “evidence directly bearing on reliance or damages.” *Id.* at 4. Any other evidence presenting “purely collateral issues which would serve only to confuse and mislead the jury is too remote and should be excluded” from Phase I. *Donahue v. Albertson’s, Inc.*, 472 So. 2d 482, 483 (Fla. 4th DCA 1985). Evidence about CPH’s alleged destruction of e-mail would be doubly confusing and misleading for the jury because CPH presently is precluded from rebutting Morgan Stanley’s charges by showing that it was Morgan Stanley, and not CPH, that violated numerous Court orders, disregarded its discovery obligations, and concealed e-mail evidence.

As the Court is aware, Morgan Stanley raised the issue of CPH’s e-mail policy for the first time only after the Court’s March 1, 2005 Order imposed sanctions on Morgan Stanley for its own destruction and non-production of e-mails. In a transparent response to the Court’s sanctions, Morgan Stanley went on the attack against CPH’s e-mail policies, despite having known about those very same policies since at least November 5, 2003, when Morgan Stanley raised CPH’s e-mail policy in response to a motion to compel, and despite having refused CPH’s offer to have a third-party vendor restore its e-mails. On March 21, 2005, when Morgan Stanley attempted to equate CPH’s e-mail practices with Morgan Stanley’s deliberate, willful, and calculated discovery misconduct, the Court found that argument “offen[sive].” *See* Ex. F, 3/21/05 Tr. at 4540 (“[I]n all honesty, I’m offended that you would attempt to equate the

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two.”). It would be even more offensive now to allow Morgan Stanley to imply that CPH, and not Morgan Stanley, was the wrongdoer in destroying or hiding e-mails.

II. The Testimony of Expert John F. Ashley Should Be Barred.

Even if the Court determines that Morgan Stanley should be allowed to present evidence of CPH’s e-mail policies, Morgan Stanley should be prohibited from presenting expert testimony on these issues. Mr. Ashley’s testimony does not comply with the detailed stipulation reached by the parties regarding disclosure of expert testimony or with the schedule for expert discovery set forth in this Court’s Orders; it is not contemplated by the Court’s March 23, 2005 Order; and it is beyond the scope of his expertise.

First, the disclosure of an expert witness just days before trial is untimely and violates the parties’ agreed Stipulation, filed with this Court, as well as this Court’s Orders regarding the schedule for expert disclosures. In their September 16, 2004 Stipulation, the parties agreed that “their respective expert witnesses will prepare and produce expert reports.” Ex. G, 9/16/04 Stipulation. Mr. Ashley has prepared no such report. And on October 14, 2004, the Court entered an Order establishing deadlines for initial, responsive, and rebuttal expert reports, as well as expert depositions. Under the Order, “[e]xpert witnesses will not be permitted to testify as to opinions, or the bases therefore, unless the opinions or bases were disclosed with particularity in accordance with this Order.” *See* Ex. H, 10/14/04 Order (deadlines extended by Ex. I, 11/23/04 Agreed Order). Mr. Ashley’s opinions have not been disclosed in accordance with the Court’s Orders and the deadlines for expert discovery have long since passed. Morgan Stanley has known about CPH’s e-mail retention policy since at least November 2003. Its attempt to present an expert on that topic now comes much too late.

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Quoting from an argument Morgan Stanley made when one of CPH's experts was unable (due to significant health problems) to complete his deposition during the agreed-upon timeframe for expert discovery: "[G]iven the highly compressed pretrial schedule, and the limited time remaining before trial to complete expert disclosures, expert depositions, and expert designations," the expert testimony should be excluded to alleviate "prejudice and procedural unfairness." Ex. J, MS Mot. in Limine No. 13, at 5. Because Morgan Stanley has disclosed its expert in the middle of jury selection and only days before opening statements are scheduled, because Morgan Stanley has not followed the agreed-upon protocol in the parties' stipulation and agreed order regarding expert disclosures, and, finally, because CPH has not had the opportunity to depose the witness, Mr. Ashley's testimony should be barred.

Second, the subjects on which Mr. Ashley intends to testify are beyond the scope of the Court's March 23, 2005 Order. The Court's Order contemplates testimony on only two subjects: (1) CPH's e-mail retention policies; and (2) CPH's offer to have a third-party vendor retrieve e-mails from its system. When the Court heard argument on this motion, the Court clarified that Morgan Stanley's position was that it wanted to "present evidence about [CPH's] e-mail retention policy and the failure to deviate from it in this case, and then argue to the jury that they should draw an adverse inference from that evidence." Ex. F, 3/21/05 Tr. at 4538. Morgan Stanley cannot now go beyond the scope of what the Court ordered and demand the right to put on evidence through an expert about additional topics such as "the ability/inability to recover MAFCO e-mail from 1997 and 1998 from the existing MAFCO backup tapes." Ex. D. This testimony would be particularly inappropriate since Morgan Stanley rejected CPH's offer to retrieve e-mails out-of-hand without even considering issues such as CPH's ability or inability to retrieve e-mails. See Ex. K, 3/11/04 Ltr. from T. Clare to M. Brody.

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As is more fully set out in CPH's Response to Morgan Stanley's Motion for an Adverse Inference Instruction, Morgan Stanley has long since waived its right to argue about these topics because Morgan Stanley opposed CPH's e-mail restoration proposal and failed to file a motion seeking the restoration of CPH's e-mails. *See* Ex. L, CPH Resp. to MS Mot., at 1-3. Morgan Stanley should not be allowed to circumvent its earlier discovery waivers by transforming the Court's Order into a license to put on previously undisclosed and inadequately detailed expert opinion testimony.

Third, Mr. Ashley is not qualified to opine on the subject of either CPH's e-mail retention policies or CPH's offer to have a third-party vendor retrieve e-mails from its system. Mr. Ashley has no background or experience related to either CPH or its policies, and Mr. Ashley was not the vendor that CPH offered to retrieve e-mails from CPH's system. Although Mr. Ashley may or may not be generally qualified as an expert in computer forensics, he certainly is not qualified as to the CPH-specific topics the Court has designated as proper subjects for testimony. *See Goodyear Tire & Rubber Co., Inc. v. Ross*, 660 So. 2d 1109, 1111 (Fla. 4th DCA 1995) (“[I]t is not enough that the witness be qualified to propound opinions on a general subject; rather [the witness] must be qualified as an expert on the discrete subject on which [the witness] is asked to opine.”). Mr. Ashley is not a proper expert witness as to CPH's policies, procedures, or offers.

III. In The Alternative, If Morgan Stanley Is Permitted To Raise CPH's E-Mail Policy During Phase I, Then In Fairness CPH Must Be Allowed To Raise Morgan Stanley's Litigation Misconduct And This Court's Associated Findings.

Alternatively, if Morgan Stanley is permitted to introduce evidence of CPH's retention e-mail policy, then in fairness the jury should be allowed to hear about the circumstances leading to the April 16, 2004 Agreed Order, this Court should read its statement to the jury

regarding Morgan Stanley's litigation abuses, and CPH should be permitted to put on evidence regarding those abuses. In particular, the jury should learn in Phase I that:

- Morgan Stanley misrepresented to CPH and the Court that it would cost at least hundreds of thousands of dollars and require several months to search its e-mail from the relevant time period of the transaction all the while knowing that it could quickly and inexpensively search its e-mail archive;
- Morgan Stanley misrepresented to CPH and the Court that no e-mail data existed for any time period before January 2000 when it knew that some backup tapes contained e-mail dating back at least to 1997;
- A Morgan Stanley representative lied under oath about the capabilities of Morgan Stanley's e-mail archive, representing that it could not be used to search old e-mails;
- Morgan Stanley knowingly signed a false certificate of compliance representing that it had fully complied with the Court's Agreed Order to produce e-mails;
- Morgan Stanley continued to find thousands of additional tapes containing possibly relevant e-mail evidence and failed to timely notify CPH or the Court when the tapes were found and failed to timely search the tapes;
- Morgan Stanley ran flawed searches of its e-mail and failed to timely notify CPH or the Court of the problems with the searches and other technical issues;
- Morgan Stanley continued to erase back-up tapes after January 2001 in violation of an obligation to preserve e-mail on those tapes;
- Morgan Stanley failed to provide computer information about the extent of the work it performed in generating Sunbeam-related documents and then falsely represented that it had no such useful information;
- Morgan Stanley provided answers to interrogatories signed by a corporate representative who performed insufficient verification of the responses;
- Morgan Stanley routinely asserted unfounded privilege claims;
- Morgan Stanley failed to provide CPH with materials showing that an employee who played a major role in the Sunbeam transaction had been criminally indicted in Italy, despite the fact that such materials were clearly called for under the Court's Order.

If Morgan Stanley is allowed to present evidence of CPH's e-mail policy, and to attempt to cast CPH as having engaged in inappropriate activity, then CPH in fairness should be allowed to present evidence of the history of the April 16, 2004 Agreed Order and the myriad instances of litigation misconduct by Morgan Stanley.

Conclusion

For the foregoing reasons, CPH respectfully requests that this Court reconsider its March 23, 2005 Order on Morgan Stanley's Motion for an Adverse Inference Instruction and issue an Order precluding Morgan Stanley from offering any evidence regarding CPH's e-mail policies or alleged destruction of e-mail. CPH further requests that the testimony of John F. Ashley be barred.

Dated: April 3, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

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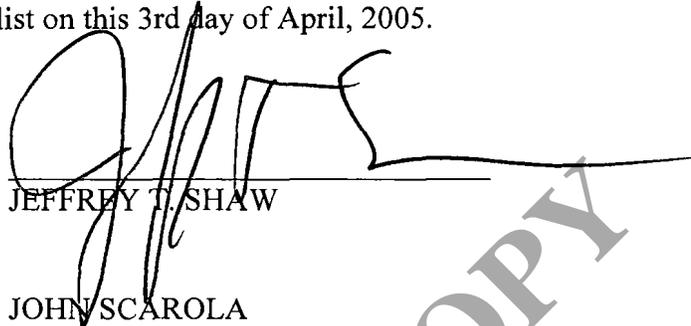
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to all counsel on the attached list on this 3rd day of April, 2005.



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IN THE CIRCUIT COURT FOR THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 03 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

VOLUME 54

PROCEEDINGS BEFORE THE HONORABLE ELIZABETH T. MAASS

Thursday, March 31, 2005

Palm Beach County Courthouse

Courtroom 11-A

205 North Dixie Highway

West Palm Beach, Florida 33401

1:00 p.m. to 5:05 p.m.

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1 But this jury is not being told, as Your
2 Honor's statement presently stands, that Morgan
3 Stanley repeatedly violated court orders. That
4 is a fact. But nonetheless, Mr. Hansen has
5 chosen to say, as a consequence of not following
6 court orders, Morgan Stanley can't defend
7 itself.

8 Well, once he presents that issue to the
9 jury, in fairness to us, the jury is entitled to
10 know that the punishment indeed fits the crime
11 in both phases.

12 THE COURT: I don't need you to respond.
13 I can tell you, this is something I've
14 thought about. And I understand the parties may
15 have different opinions. My purpose here is to
16 have a fair trial. And the only way I think we
17 can protect Morgan Stanley against the
18 inappropriate reference to litigation
19 misconduct, that has nothing to do with
20 liability. And I've already found that on the
21 issues we have left is to segregate that and do
22 both entitlement and amount of punitive damages
23 as a phase two. What that means is I would not
24 read a statement about litigation misconduct to
25 the jury in phase one.

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1 That said, I'm also sensitive to Plaintiff's
2 position, because we spoke about that yesterday,
3 that -- and we spoke about it in conjunction of
4 having the statement of litigation misconduct
5 read in phase one -- that the litigation
6 misconduct that resulted in the order on the
7 renewed motion for default judgment is much
8 broader than the litigation misconduct that will
9 be read to the jury at some point.

10 And I understand Plaintiff's concern that if
11 jurors listen solely to the second statement
12 they might tell themselves, that doesn't seem so
13 bad, I think the Judge was unfair, and I'm going
14 to somehow compensate in the case for it.

15 What we need to do is assure our service
16 with both panels of jurors, that the jurors we
17 select are able to take the statements of fact
18 that I read them and not question them. And we
19 still have both panels with us, and I'm sure
20 we're able to do that.

21 And certainly, if I need to give some
22 further instruction when we get to the statement
23 of facts in phase one, we can certainly do it.

24 That said, Mr. Solovy, yes, sir?

25 MR. SOLOVY: Well, I think what I understood

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

**ORDER ON CPH'S RENEWED MOTION FOR ENTRY OF DEFAULT
JUDGMENT**

THIS CAUSE came before the Court March 14 and 15, 2005, on CPH's Renewed Motion for Entry of Default Judgment, with both parties well represented by counsel.

Coleman (Parent) Holdings, Inc. ("CPH"), has sued Morgan Stanley & Co., Inc. ("MS & Co."), for aiding and abetting and conspiring with Sunbeam to perpetrate a fraud. Early in the case, CPH was concerned that MS & Co. was not thoroughly looking for emails responsive to its discovery requests. On April 16, 2004, the Court entered an Agreed Order ("Agreed Order") that required MS & Co. to search its oldest full backup tapes for emails subject to certain parameters and certify compliance. MS & Co. certified compliance with the Agreed Order on June 23, 2004. On November 17, 2004, CPH learned that MS & Co. had found some backup tapes that had not been searched. On January 26, 2005 it served its Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order ("Adverse Inference Motion"), claiming that MS & Co.'s violation of the Agreed Order, coupled with its systemic overwriting of emails after 12 months, justified an adverse inference against it. The Court ordered certain limited discovery. Responses to that discovery prompted CPH to orally amend its Adverse Inference Motion to seek more severe sanctions.

The Court held an evidentiary hearing on the Adverse Inference Motion on February

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14, 2005. On March 1, 2005 it issued its Amended Order on Coleman (Parent) Holdings Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order ("Adverse Inference Order"). In its current Motion, CPH argues that it has since learned that the discovery abuses addressed in the Adverse Inference Motion and Order represent only a sampling of discovery abuses perpetrated by MS & Co. and that the abuses have continued, unabated. It claims that these abuses, when taken as a whole, infect the entire case. To understand CPH's argument, it is necessary to go back to the beginning.

This case arises out of an acquisition transaction that was negotiated and consummated in late 1997 and early 1998, in which CPH sold its 82% interest in the Coleman Company, Inc., to Sunbeam Corporation. MS & Co. served as financial advisor to Sunbeam for parts of the acquisition transaction and served as the lead underwriter for a \$750,000,000.00 debenture offering that Sunbeam used to finance the cash portion of the deal.

CPH's Complaint¹ alleged claims against MS & Co. arising from this transaction for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy, and sought damages of at least \$485 million.

On May 12, 2003, MS & Co. was served with the Complaint and CPH's First Request for Production of Documents ("Request"). The Request sought, in essence, all documents connected with the Sunbeam deal. "Documents" was broadly defined, and specifically included items electronically stored. Concerned that, out of more than 8,000 pages of documents produced, it had received only a handful of emails, CPH on October 29, 2003, served its Motion to Compel Concerning E-Mails. That motion sought an order requiring MS & Co. to make a full investigation for email messages, including a search of magnetic tapes and hard drives; produce within 10 days all emails located; and produce a Rule 1.310 witness

¹On February 17, 2005, CPH served its First Amended Complaint, which dropped the claims against MS & Co. for fraudulent and negligent misrepresentation, leaving only the aiding and abetting and conspiracy claims.

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within 20 days "to describe the search that was conducted, identify any gaps in Morgan Stanley's production, and explain the reasons for any gaps."

In its Opposition to Coleman (Parent) Holdings, Inc.'s Motion to Compel served November 4, 2003, MS & Co. argued that CPH wanted "this Court to order a massive safari into the remote corners of MS & Co.'s email backup systems" and represented that "(t)he restoration efforts demanded by CPH would *cost at least hundreds of thousands of dollars* and require several months to complete (emphasis in original). MS & Co. argued that CPH's "true" motive was to "harass and burden MS & Co. with unnecessary and costly discovery demands and attempt to smear MS & Co. with out-of-context recitations from other proceedings" because "CPH *concedes* that MS & Co. is only able to restore email from backup tapes from January 2000 and later - *more than a year and a half after the events that allegedly gave rise to CPH's claims,*" (emphasis in original).

CPH's "concession" was based on representations like the kind made to it by MS & Co.'s counsel in a March 11, 2004 letter that suggested "(t)he burden on Morgan Stanley from . . . a wholesale restoration [of email back up tapes], both in terms of dollars and manpower would be enormous. Regardless of who performs the initial restoration, it would require hundreds (perhaps thousands) of attorney-hours to review millions of irrelevant and non-responsive e-mails . . ." ²

In response to CPH's Motion to Compel, the parties agreed to reciprocal corporate

²Complaints about MS & Co.'s tactics are not new. See Ex. 196 [February 26, 2004, letter from EEOC to Hon. Ronald L. Ellis in EEOC/Schieffelin v. Morgan Stanley & Co., Inc., et al., 01-CV-8421 (RMB) (RLE) (S.D.N.Y.): ("(w)hen EEOC received [Morgan Stanley's] January 27, 2004 Responses to EEOC's Fifth Requests for Production of Documents which did not contain any e-mails, the parties communicated further. At that time, Morgan Stanley took the position that searching for e-mails would be burdensome both in regards to expense and the time it would take to respond. While the parties were in the process of attempting to work out these disputes, EEOC for the first time learned that [Morgan Stanley has] an easy, systematic ability to search for relevant documents. In a February 16, 2004, conversation with an IT representative of [Morgan Stanley], EEOC learned that [Morgan Stanley has] an e-mail system, which, while not yet fully comprehensive, was easily searchable on February 18, 2004, the close of discovery . . . which is certain to produce discoverable information highly relevant to EEOC's and Plaintiff-Intervenor's claims . . . After disclosing their state-of-the-art system to EEOC, [Morgan Stanley] dropped [its] assertion that the process was too expensive, but maintained that they refuse to search for e-mails because it is burdensome for attorneys to review large numbers of documents prior to production.")

depositions on the email issue. CPH deposed Robert Saunders on February 10, 2004.³ After completion of the corporate representative depositions, and unable to obtain MS & Co.'s agreement to a mutual email restoration protocol, CPH served its Motion for Permission to have Third Party Retrieve Morgan Stanley E-Mail and Other Responsive Documents, proposing that a third party vendor be given access to both parties' email systems for restoration at each party's expense. At the hearing on that Motion, CPH offered to split the expenses evenly. MS & Co. refused.

MS & Co.'s continued assertions that the email searches could be conducted only at enormous cost and would be fruitless because there were not backup tapes with email from 1997 and 1998 were confirmed to the Court by MS & Co.'s counsel, Thomas Clare of Kirkland & Ellis, at a hearing held March 19, 2004:

Mr. Scarola: Electronic records of e-mails that have been exchanged.

The Court: Do we agree that there has been such a request outstanding?

Mr. Clare: There has been a request outstanding.

The Court: And have you all objected?

Mr. Clare: From the beginning.

The Court: And what's the basis of the objection?

Mr. Clare: We objected to the breadth of the request that they're making. And to answer Your Honor's question directly – and the burden that is associated with it – that given the particular e-mail back-up tapes that are in existence five, six years after the fact of these transactions, that the scope of the e-mail request that they are seeking is improperly and unduly burdensome given the enormous costs that would be required, given the fact that the time period for which we have back-up tapes post dates the events by several years.

Unable to resolve the email issue, on April 9, 2004, CPH served its Motion to Compel

³Saunders provided misleading information in his deposition. See footnote 12, *infra*.

Concerning E-Mails and Other Electronic Documents. On the eve of the hearing on CPH's Motion to Compel, the parties reached an accommodation, and on April 16, 2004 the Court entered the Agreed Order. Under the Agreed Order, MS & Co. was required to (1) search the oldest full backup tape for each of 36 MS & Co. employees involved in the Sunbeam transaction; (2) review emails dated from February 15, 1998, through April 15, 1998, and emails containing any of 29 specified search terms such as "Sunbeam" and "Coleman" regardless of their date; (3) produce by May 14, 2004, all nonprivileged emails responsive to CPH's document requests; (4) give CPH a privilege log; and (5) certify its full compliance with the Agreed Order.

As required by the Agreed Order, MS & Co. produced about 1,300 pages of emails on May 14, 2004. It did not, however, certify compliance with the Agreed Order. After prompting by CPH, on June 23, 2004, MS & Co. served a certificate of compliance signed by Arthur Riel, an Executive Director and manager of its Law/Compliance IT Group.⁴

CPH got its first indication that the Agreed Order may have been violated in the late fall of 2004.

On November 17, 2004, Clare wrote Michael Brody of Jenner & Block, CPH's outside counsel, that MS & Co. had "discovered additional e-mail backup tapes . . ."; that "(t)he data on some of [the] newly discovered tapes has been restored;" that "we have re-run the searches described in [the Agreed Order]"; that "some responsive e-mails have been located as a result of that process"; and that "(w)e will produce the responsive documents to you as soon as the production is finalized."

On December 14, 2004, Brody wrote Clare back:

in [your November 17, 2004 letter], you state that Morgan Stanley located additional email backup tapes, and that you

⁴Though CPH would not learn for months that the certificate was false, and even then the magnitude of MS & Co.'s misrepresentations would not be admitted, MS & Co. personnel, including in-house counsel, knew the certification of compliance was false when made.

would be producing documents soon. Within two days of that letter, you produced some emails to us. In your November 17, 2004 letter, however, you also indicated that "some of the backup tapes are still being restored." Have those backup tapes been restored? Have you found additional responsive emails? If so, when will Morgan Stanley produce those emails? How is it that the tapes were only recently located?

On December 17, 2004, Clare wrote back, telling Brody "(n)o additional responsive e-mails have been located since our November production."⁵

Brody wrote back to Clare December 30, 2004, noting the deficiencies in Clare's correspondence:

You do not inform us whether the review of the recently-located backup tapes still is ongoing. Please confirm that all email backup tapes from the relevant time period have been reviewed and all responsive emails have been produced. If the review still is proceeding, please let us know when the review will be completed.

Clare wrote back on January 11, 2005, telling Brody that the "restoration of e-mail backup tapes is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time."

Concerned about Clare's lack of candor, on January 19, 2005 Brody wrote again:

I write in response to your January 11, 2005 letter concerning e-mails back-up tapes. Unfortunately, your letter raises more questions than it answers. As I requested in my December 14, 2004 letter, please explain the circumstances under which Morgan Stanley located these backup tapes and advise us of the date on which the tapes were located.

⁵Not only does this letter fail to answer Brody's legitimate questions, it implies that MS &Co. was still processing and reviewing emails from the newly found tapes. As we now know, though, *no* additional information was migrated to the archives between approximately August 18, 2004 and January 15, 2005. *Of course* "no additional responsive e-mails [would have been] located."

Further, please explain your statement that "the next set of backup tapes" is scheduled to be restored "at the end of January." How many tapes will be restored by the end of January? When exactly in January will Morgan Stanley complete the process of restoring and searching these tapes for responsive documents? Are there other backup tapes that are not yet in the process of being restored? If so, please advise us of (a) the number of tapes that are not yet in the process of being restored; (b) the time period of the data contained on those tapes; and (c) Morgan Stanley's timetable for restoring and searching those tapes. In addition, please explain why those tapes are not yet in the process of being restored. Please also explain why Morgan Stanley cannot complete the restoration and searching of all remaining backup tapes before "the end of January." As you know, our trial is scheduled to begin on February 22, 2005.

We look forward your complete response to these questions no later than January 21, 2005 so that we can bring this matter to the Court's attention, if necessary.

Conforming to what was by now his usual stonewall tactic, Clare responded by letter dated January 21, 2005:

I write in response to your January 19, 2005 letter regarding Morgan Stanley's production of e-mails restored from backup tapes.

Morgan Stanley completed its initial production of restored e-mail messages on May 14, 2005. The May 2004 production was conducted in accordance with the agreed-upon order governing, and the searches that resulted in that production encompassed data from all of the backup tapes known to exist at the time. Subsequent to the May 2004 production, additional tapes were found in various locations at Morgan Stanley. The discovered tapes were not clearly labeled as to their contents, were not found in locations where e-mail backup tapes customarily were stored, and many of the tapes

were in a different format than other e-mail backup tapes. In November 2004, once it was determined at least some of the discovered tapes contained recoverable e-mail data, Morgan Stanley re-ran the searches described in the agreed-upon order. Those searches resulted in Morgan Stanley's November 2004 production.

Morgan Stanley's efforts to restore the backup tapes discovered after the May 2004 production are ongoing. It is a time-consuming and painstaking process and, given the absence of clear labels or other index information for the backup tapes, there is no way for Morgan Stanley to know or accurately predict the type or time period of data that might be recovered from tapes that have yet to be restored. While Morgan Stanley cannot accurately estimate when all of the tapes will be restored or whether any recoverable data will be found on the remaining tapes, we understand from Morgan Stanley that, when the agreed-upon searches are run again at the end of January, those searches will include approximately one terabyte of additional data restored since the prior production.

On January 26, 2005, CPH served its Adverse Inference Motion, seeking sanctions based on MS & Co.'s disclosure of the newly found tapes. Hearing was scheduled for February 14, 2005. In preparation for that hearing, on February 3, 2005 the Court ordered MS & Co. to produce by noon on February 8, 2005 "(i) all documents to be referred to or relied on by any of the witnesses in his or her testimony; and (ii) all documents within MS & Co.'s care, custody, or control, addressing or related to the additional email backup tapes, including matters relating to the time or manner in which they were discovered; by whom they were discovered; who else learned of their discovery and when; and the manner and timetable by which they were be restored and made searchable, including any correspondence to or from outside or prospective outside vendors."

The Adverse Inference Order outlined the discovery abuses shown at the February 14, hearing. They included MS & Co.'s undisclosed discovery of the 1,423 "Brooklyn" tapes no

later than May of 2004; the undisclosed discovery of the 738 8-millimeter backup tapes in 2002; the presence of unsearched data in the staging area; the discovery of 169 DLT tapes in January 2005; the discovery of more than 200 additional tapes on February 11 and 12, 2005; the discovery of a script error that had prevented MS & Co. from locating responsive email attachments; and discovery of another script error that had infected the ability to gather emails from Lotus Notes platform users.

In response to these deficiencies, the Court issued the Adverse Inference Order. That Order reversed the burden of proof on the aiding and abetting and conspiracy elements and included a statement of evidence of MS & Co.'s efforts to hide its emails to be read to the jury, as relevant to both its consciousness of guilt and the appropriateness of punitive damages. It specifically provided that "MS & Co. shall continue to use its best efforts to comply with the April 16, 2004 Agreed Order and . . . February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search."⁶

It is now clear why MS & Co. was so unwilling to provide CPH with basic information about how and when the tapes were found or when production would be complete. First, candor would have required MS & Co. to admit that it had not done a good faith search for the oldest full backup tapes, and that Riel's certificate of compliance was false. Some unsearched tapes had been found by 2002; others had been found no later than May, 2004. Together, over 2,000 tapes had been found which were not searched prior to the May production. It is untrue that the tapes were "not in locations where e-mail backup tapes customarily were stored."

⁶Concerned that MS & Co. had been less than candid with both CPH and the Court, on February 4, 2004, the Court entered its Order on Coleman (Parent) Holding's ore tenus Motion to Participate in Search of Additional E-Mail Backup Tapes or Appoint Third Party to Conduct Search, ordering MS & Co. to pay for a third party vendor to check its compliance with the Agreed Order. The Court previously found that the two scripts errors testified to by Allison Gorman at the February 14, 2005, hearing would not have been discovered or revealed without the threat that the third-party vendor would discover the errors. Given Ms. Gorman's testimony at the March 14, 2005, hearing, though, it now appears MS & Co. knew about the errors before the appointment of the third-party vendor. Consequently, the errors were only revealed, but not discovered, in response to the February 4, 2004, Order.

Second, MS & Co. desperately wanted to hide an active SEC inquiry into its email retention practices.^{7 8 9 10} Finally, MS & Co. did not want to admit the existence of the historical email archive, which would expose the false representations it had made to the Court and used to induce CPH to agree to entry of the Agreed Order.^{11 12}

⁷On December 17, 2003, CPH served its Third Request for Production seeking "(a)ll materials and documents submitted to the United States Securities and Exchange Commission ("SEC"), received from the SEC, or reflecting communications with the SEC in connection with any investigation, inquiry, or examination concerning or relating to Morgan Stanley's policies and/or procedures with regard to the retention, storage, deletion, and/or back-up of electronic mail (emails) . . ." On October 12, 2004, CPH served its Request for Supplemental Documents seeking to bring MS & Co.'s document production current, requesting "(a)ll documents not previously provided by MS & Co. that are responsive to any Request for Production of Documents that CPH previously has served upon MS & Co. in the litigation, including documents obtained by MS & Co. or its counsel after the date of MS & Co.'s prior productions." No SEC documents were produced in response to either request; no privilege log was generated. On other privilege logs generated in response to court orders, MS & Co. did not show the SEC on the distribution portion of the log. See March 9, 2005 Order Following in Camera Inspection (Riel/SEC Documents) footnotes 1, 2. See, also, footnote 15, *infra*. Kirland & Ellis, outside counsel for MS & Co. in this litigation, represents MS & Co. in the SEC's inquiry into its email retention practices.

⁸MS & Co. manipulated the unhooking of the SEC's email investigation from the IPO litigation in January, 2005, to conceal the email issues as long as possible.

⁹It is now apparent that MS & Co. chose deliberately to keep its affidavits concerning the informal SEC inquiry submitted to support its privilege claims vague, despite two requests from the Court seeking specific information. See February 28, 2005 Order (Release of Exhibits).

¹⁰See February 25, 2005 Order on Morgan Stanley's Objections to Coleman (Parent) Holding Inc.'s Notice to Produce at Hearing and Motion for Protective Order and March 4, 2005 Order on Plaintiff's ore tenus Motion to Compel Additional Production.

¹¹While MS & Co. contends that its representations to the Court that it would cost "hundreds of thousands of dollars" to search the backup tapes and that there was no pre-2000 backup tapes were not false, they were deliberately misleading: MS & Co. never had an intention to search the back up tapes to respond to the requests and some of the year 2000 backup tapes backed up email back to 1997.

In 2001, MS & Co. decided to create the email archive. By June, 2003, it had decided that the archive should have two components. First, MS & Co. wanted to create an archive that captured and stored email as it was generated. Second, MS & Co. wanted to add historical data to the archive. That task involved searching for all email backup tapes containing historical emails; sending those tapes to an outside processor; loading the processed tapes into a staging area; and migrating the stored data from the staging area onto the archive. As we now know, archive searches are quick and inexpensive. They do not cost "hundred of thousands of dollars" or "take several months." The restrictions imposed by the Agreed Order were not needed.

¹²On February 10, 2004, Robert Saunders, an executive director of IT for MS & Co., was deposed. He testified that in January, 2003, MS & Co. had put into effect the email archive system. When specifically asked whether the new email archive system would include prior backups or only going forward backups, he testified that "(t)he way it was built was for going forward backup." He was next asked whether "(w)ith respect to backup dated January 2001 and previously, does Morgan Stanley have any new capabilities to restore and search e-mail?" After counsel interposed a vagueness objection, he answered "(t)here are no new capabilities to search that e-mail." That testimony was so misleading as to be false. As Saunders well knew, since he was on the team responsible, the "live" email capture portion of the archive was already operational. The migration of the historical data to the archive was expected to be completed by April of 2004, just two months after his deposition.

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MS & Co.'s wrongful conduct has continued unabated.¹³ Since the February 14, 2005, hearing, it has come to light that:

- Only two whole and four partial tapes from the Brooklyn tapes had been migrated to the archive and were thus searched for the November, 2004, production. MS & Co. sought to hide this information to create the impression that all the produced documents came from the Brooklyn tapes, rather than reveal that the production came from material that had migrated from the staging area to the archive since the May, 2004, production or some other, as yet undisclosed, source.¹⁴
- Contrary to MS & Co.'s counsel's November 17, 2004, letter to CPH, *none* of the November, 2004 production came from the "newly found" tapes. MS & Co. carefully crafted its responses to inquiries about the November, 2004, production to avoid both disclosure of the existence of the archive and outright lying.
- The scripts MS & Co. used to process emails into its archive caused the bodies of some messages to be truncated. MS & Co. discovered this problem on February 13, 2005, but did not tell the Court about it until March 14, 2005.
- A migration issue caused about 5% of email harvested by NDCI from the backup tapes not to be captured in the archive, based on testing of a representative sample of tapes. MS & Co. told the SEC about this problem on February 24, 2005, but failed to tell CPH or the Court.
- As of June 7, 2004, only 120 out of 143 SDLT tapes had been processed into the archive.
- An analysis requested by the SEC showed that, based on a representative sample, 10% of backup tapes were overwritten after January, 2001.

¹³MS & Co. sought to use the entry of the Adverse Inference Order as a shield against further inquiry into its email abuses, arguing that the matter was closed by the Adverse Inference Order. It previously used this tactic with the SEC, arguing that the December 3, 2003 Cease and Desist Order shielded it from other sanctions for email retention failures. See Ex. 14 [February 10, 2005 letter from outside counsel for MS & Co. to SEC]

¹⁴MS & Co. argued at the March 14 and 15, 2005 hearing that there were only 13 unique, new emails contained in the November 2004 production when compared to the May 2004 production. Nine of those emails, however, were originally given to MS & Co.'s lawyers for responsiveness review by the IT staff for the May 2004 production. No explanation of why they were not produced in May was offered. This is particularly concerning given the large number of documents Ms. Gorman testified the search parameters found compared with the relatively small number found responsive and produced after review by counsel.

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- A software error caused blind carbon copies not to be captured in the archive process. MS & Co. told the SEC about this problem on February 24, 2005. MS & Co. did not tell CPH or the Court.
- A software error caused the searches to be hyper case-sensitive, resulting in a failure to capture all emails. MS & Co. knew of the problem as of December, 2004, but did not tell CPH or the Court. The problem was not purportedly fixed until March, 2005.
- A script error caused the archive to have problems pulling group email in Lotus Notes.
- MS & Co. provided sworn testimony at the February 14, 2005, hearing that it had located 600 gigabytes of data, while contemporaneously telling the SEC it had located a terabyte of data. A gigabyte represents 20,000 to 100,000 pages. Incredibly, MS & Co.'s witness on this point, Allison Gorman, testified on March 14, 2005, that it was simply a "terminology" issue that she did not choose to correct because it could cause "confusion."
- CPH requested MS & Co. to produce responses it had made to third-parties in civil, criminal, or administrative proceedings describing limitations on MS & Co.'s ability to produce emails and all notices in such proceedings that MS & Co. had newly discovered backup tapes containing email. MS & Co. objected, arguing that there were over 300 separate proceedings, involving over 70 outside law firms, and that the cost of compliance would be too great. On March 2, 2005, the Court ordered the production, after shortening the time period involved, and required production within 12 hours after counsel's review of each item for responsiveness but, in any event, within 10 days. At the time MS & Co. objected to CPH's request as unduly burdensome, it knew of its Wells submission to the SEC made on February 10, 2005. Kirkland and Ellis, co-counsel here, was co-counsel for MS & Co. in that SEC proceeding. Consequently, it appears MS & Co.'s real concern was not that expressed to the Court, but was based on its realization that compliance would reveal the existence of the SEC inquiry into its email retention policy and MS & Co.'s efforts to keep the existence of that investigation secret. MS & Co. violated the Court's March 2, 2005, Order on Morgan Stanley's Responses and Objections to Coleman (Parent) Holdings Inc.'s Notice to Produce at Hearing requiring it to disclose items responsive to CPH's Request for Production within 12 hours of review for responsiveness by waiting *days*, not hours, to produce the Wells submission.

- MS & Co.'s failure to produce or log the SEC documents violated the Court's February 3, 2005, Order.¹⁵
- James Doyle's, the Executive Director of MS & Co.'s Law Division, declaration that he did not learn of additional unsearched backup tapes until the end of October, 2004, was intended to mislead CPH and the Court. Obviously, MS & Co. sought to create the implication in the declaration that *no one* in the Law Division knew of the backup tapes before then. Instead, both Soo-Mi Lee, Doyle's associate, and James Cusick, Doyle's superior, knew of the tapes no later than June 7, 2004.
- In-house counsel for MS & Co. knew as of June 7, 2004, that nearly a third of the restored backup tapes did not contain email, implying they may have been recycled in violation of the December 3, 2002 Cease and Desist Order. They did not tell CPH or the Court.
- MS & Co.'s searches looked for only two types of emails. There are other types of emails that were not included in the searches. CPH did not learn of this deficiency until March 13, 2005.
- MS & Co. improperly failed to produce 125 documents required to be produced by the Court's February 3, 2005, Order Specially Setting Hearing which required limited discovery be made in connection with the February 14, 2005, hearing on the Adverse Inference Motion.
- MS & Co. improperly withheld 13 documents required to be produced by the Court's March 4, 2005, Order on Plaintiff's ore tenus Motion to Compel Additional Production.
- An additional 282 tapes were found on February 23 and 25, 2005; CPH was not told of the discovery until March 13, 2005.
- An additional 3,536 tapes were discovered on February 23, 2005, in a security room.
- An additional 2,718 tapes were found at Recall, MS & Co.'s third party off-site storage vendor, on March 3, 2005.
- An additional 389 tapes were found March 2 through March 5, 2005. CPH was not told

¹⁵The Court previously rejected MS & Co.'s argument that the January 14, 2005, email exchange between its outside and in-house counsel was not required to be produced under the February 3, 2005, Order Specially Setting Hearing because it referred to the "documents issue" and not specifically to the backup tapes. See March 16, 2005 Order on Morgan Stanley's Motion to Disqualify Plaintiff's Counsel Searcy, Denney, Scarola, Barnhart & Shipley, P.A. and Jenner & Block, LLC. MS & Co.'s insistence on a narrow interpretation of the February 3, 2005, Order is not particularly sympathetic, when the only reason that Order confined production to the backup tape issue was because MS & Co. had failed to notify the Court of the other deficiencies in its certificate of compliance.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

**ORDER ON MORGAN STANLEY'S MOTION FOR AN ADVERSE INFERENCE
INSTRUCTION**

THIS CAUSE came before the Court March 21, 2005 on Morgan Stanley's Motion for an Adverse Inference Instruction, with both counsel present. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that Morgan Stanley's Motion for an Adverse Inference Instruction is Denied, without prejudice to MS & Co.'s right to present evidence about CPH's email retention practices and its failure to direct that emails related to the Sunbeam transaction be saved and CPH's right to present evidence of its offer to have a third-party vendor given access to retrieve emails from CPH's system, without reference to discovery requests or court orders, and for either counsel to argue in favor of whatever inferences that evidence may support. See Jordan v. Masters, 821 So. 2d 342 (Fla. 4th DCA 2002) cf.; Amlan, Inc. v. Detroit Diesel Corp., 651 So. 2d 701 (Fla. 4th DCA 1995). If either party intends to present evidence on the issue of CPH's email retention practices or third-party vendor offer it shall, within 5 business days, serve on opposing counsel (i) the name, address, and business title of any witness expected to testify, together with a fair summary of his or her expected testimony; (ii) a designation of any deposition testimony the designating party intends to offer on this issue; and (iii) copies of any documents to be referred to by a witness or offered into evidence on this issue.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 23rd day of March, 2005.



ELIZABETH T. MAASS
Circuit Court Judge



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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO. INC.

Defendant.

MORGAN STANLEY'S NOTICE OF COMPLAINE WITH COURT ORDER

DATED MARCH 23, 2005

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its undersigned counsel, hereby gives notice of compliance with this Court's Order on Morgan Stanley's Motion for an Adverse Inference Instruction dated March 23, 2005 and discloses the following witnesses and documents:

WITNESSES

Steven L. Fasman

Defendant will question Mr. Fasman about email policies at MacAndrews & Forbes Holdings, Inc. and its affiliated subsidiaries (collectively "MAFCO"); the practices regarding preservation, deletion, purging, and destruction of email at MAFCO; the history of MAFCO's knowledge of potential and actual litigation involving the subject matter of this case (collectively "Sunbeam litigation"); the failure to preserve, recover, restore, or save MAFCO email in response to notice of Sunbeam litigation; the destruction, erasing, or overwriting of MAFCO

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email after receiving notice of Sunbeam litigation; and Plaintiff's production or failure to produce email in response to discovery requests in this litigation.

John F. Ashley

Mr. Ashley is the Chief Technology Officer of CoreFacts, LLC, and an expert in computer forensics. His Curriculum Vitae is attached as Exhibit A to this Notice. Mr. Ashley will testify regarding the email software and backup systems in use at MAFCO since 1997; the ability to recover email from overwritten backup tapes; the email backup and destruction policies at MAFCO; and the impact of those policies on the ability/inability to recover MAFCO email from 1997 and 1998 from the existing MAFCO backup tapes.

EXHIBITS

Number	Date	Description	Exhibit Number (Bates Range)
1.	Various	E-mail Produced from CPH or MAFCO files	MS 880 (CPH 0204718; CPH 1058927-932; CPH 1082183; CPH 1222826-7; CPH 1223821; CPH 1365131; CPH 1365140; CPH 1365218; CPH 1365244-6; CPH 1365273; CPH 1365402; CPH 1365586; CPH 1365642-4; CPH 1366480-483; CPH 1375284; CPH 1381190; CPH 1383282; CPH 1383299-304; CPH 1383307; CPH 1383313; CPH 1383325-6; CPH 1383353; CPH 1383366-8; CPH 1383834-35; CPH 1434531; CPH 1435766-7; CPH 2000041; CPH 2001364; CPH 2005700-2; CPH 1423914)
2.	04/21/1997	Corporate E-Mail Policy	MS 62 (CPH 1433326-3329)
3.	03/30/1998	Letter from Counsel for Coleman to SEC re: Investigation into trading in the securities of Coleman & Co., Inc., Signature Brands USA, Inc., and First Alert Inc. by insiders	MS 75 (CPH 1401528-1534)

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4.	07/15/2004	Revised CPH Privilege Log	MS 881
5.	06/06/1998	Barron's via Dow Jones, R. Laing, <i>Dangerous Games: Did "Chainsaw Al" Dunlap Manufacture Sunbeam's Earnings Last Year?</i>	MS 882
6.	06/30/1998	Press Release, Sunbeam Audit Committee to Conduct Review of Company's 1997 Financial Statements	MS 511 (CPH 0642892)
7.	08/12/1998	Settlement Agreement between Sunbeam and CPH	MS 96 (CPH 1409665-9704)
8.	08/12/1998	Warrant for the Purchase of Shares of Common Stock of Sunbeam Corporation	MS 96A (CPH 1167614-1167631)
9.	08/12/1998	Amendment to Registration Rights Agreement	MS 96B (CPH 1167632-1167641)
10.	10/20/1998	Verified Derivative Complaint against MAFCO, J. Levin and various other executives, <i>Shallal v. Charles M. Elson, et al.</i> , Civ. Action No. 00-8739 (S.D. Fla., Zloch)	MS 883
11.	11/02/1998	Formal Requests for Production of Documents, including electronic documents, to MAFCO, Howard Gittis and others relating to Sunbeam/Coleman Transaction in <i>Goldstein v. Langerman, et al.</i> , No. 16587-NC (Del. Ch. Ct.)	MS 884 (CPH 2000001-7)
12.	06/25/1999	Class Action Complaint against The Coleman Co., Sunbeam and various executives in <i>Deutscher v. Dunlap, et al.</i> , C.A. No. 16486-NC (Del. Ch. Ct.)	MS 885
13.	01/28/2000, 02/14/2000	Subpoenas to MAFCO seeking electronic documents relating to Sunbeam in <i>In Re Sunbeam Securities Litig.</i> , 98-8258-CIV and 98-8773-CIV and 98-8275 (S.D. Fla.)	MS 886 (CPH 1011022-1086 and CPH 1010995-1021)

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14.	02/28/2000	Responses and Objections of MacAndrews & Forbes Holdings, Inc. to Subpoenas in the U.S. District Court for the S.D.N.Y. in <i>In Re Sunbeam Securities Litig.</i> , 98-8258-CIV and 98-8773-CIV and 98-8275 (S.D. Fla.)	MS 887 (CPH 1011109-1154 and CPH 1011088-1105)
15.	04/14/2000	Verified Derivative Complaint in <i>Shallal v. Charles M. Elson</i> , Civ. Action No. 00-8297 (S.D. Fla., Ferguson)	MS 888
16.	06/08/2001	Complaint in <i>Coleman (Parent) Holdings, Inc. v. Arthur Andersen, LLP</i> (Fla. Cir. Ct., 15th Jud. Cir., Palm Beach Cty.)	MS 67
17.	10/05/2001	E. Golden Memo to MAFCO and CPH employees re: Document Production for <i>Coleman (Parent) v. Arthur Andersen</i>	MS 889 (CPH 2000039-40)
18.	07/14/2003	Morgan Stanley & Co., Inc., First Request for Production of Documents to Plaintiff	MS 890

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by facsimile and first-class mail to all counsel of record on the attached service list on this 30th day of March, 2005.

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BY: James Webster

*Counsel for
Morgan Stanley & Co., Incorporated*

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1 Your Honor to say is then having followed that
2 procedure for the entitlement and the amount
3 stage we can revisit with Your Honor exactly
4 what the misstatement is -- the statement is
5 going to say that you read to the jury.

6 THE COURT: I understand there's some things
7 you want to talk about too as far as what's
8 appropriate, if any, on the issue of punitive
9 damages.

10 MR. WARNER: First of all, you were supposed
11 to let me say something brilliant for a minute
12 or two.

13 THE COURT: I'm concerned, because we've
14 been keeping that jury for so long.

15 MR. WARNER: I'm kidding. But I wanted to
16 claim that I won something -- I'm just kidding.
17 Thank you.

18 So to -- we are only part way through this.
19 So what you are now ruling, and it was part of
20 what we did want to discuss with you, is that
21 the jury in phase one is not going to be
22 specifically told or read something about the
23 litigation misconduct? It will decide liability
24 and amount of compensatory damages based on
25 evidence submitted to them on reliance and

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CERTIFICATE

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, TRACEY L. SPATARA, RPR, Notary Public in
and for the State of Florida at Large, hereby certify
that the foregoing pages are a true and correct
transcription of my stenographic notes of the
proceedings had and testimony taken in the foregoing
case, at the time and place hereinabove set forth.

DATED this day of , 2005.

Tracey L. Spatara, RPR
Notary Public
State of Florida at Large

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

**MORGAN STANLEY'S MOTION TO CLARIFY THE PROPER SCOPE
OF THE LIABILITY AND PUNITIVE PHASES OF TRIAL**

Morgan Stanley & Co. Incorporated ("Morgan Stanley") respectfully moves for an order clarifying the proper scope of the liability and punitive phases of trial in this case.¹ In light of the Court's March 23, 2005 Order (the "Default Order"), granting in part Coleman (Parent) Holdings Inc.'s ("CPH") motion for an entry of default judgment, only two discrete issues remain to be tried in the liability phase of this trial: (1) CPH's justifiable reliance on Dunlap/Sunbeam and/or Morgan Stanley's allegedly fraudulent statements, and (2) the extent of the actual damages suffered by CPH as a result of its purported reliance. See Order On CPH's Renewed Motion For Entry Of Default Judgment at 16-17 (Mar. 23, 2005). Accordingly, this Court should admit only evidence relevant to these issues in the liability phase, instruct the jury that the other necessary elements of CPH's claims have been resolved in favor of CPH, and proceed to the punitive phase if and only if the jury finds that CPH has prevailed on all of the elements of its claims, including reliance and damages, by clear and convincing evidence.

¹ This Motion also responds, in part, to Plaintiff's Motion In Limine No. 28 To Clarify When Evidence Is Admissible To Show Plaintiff's Entitlement To And Amount Of Punitive Damages (filed Mar. 18, 2005) ("CPH MIL No. 28"). Morgan Stanley was unable to fully respond to CPH MIL No. 28 due to time constraints and will instead respond by oral argument this afternoon.

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The Court in turn should not read Attachment A to the Default Order ("Attachment A") or its statement of findings regarding Morgan Stanley's discovery conduct ("Discovery Statement") to the jury in the liability phase. Reading these documents to the jury would constitute an impermissible double sanction against Morgan Stanley for its discovery conduct. If these documents are read to the jury at all, the Court should only admit them at the punitive phase, during which Morgan Stanley has the right to present on its behalf evidence relevant to the jury's determination of the amount of punitive damages to award, if any.²

ARGUMENT

I. BECAUSE OF THE COURT'S DEFAULT ORDER, THE SOLE ISSUES FOR THE JURY IN THE LIABILITY PHASE ARE JUSTIFIABLE RELIANCE AND ACTUAL DAMAGES.

A. A Finding In Favor Of CPH, Based On Clear And Convincing Evidence, On Either One Of Its Claims Is Both Necessary And Sufficient To Trigger The Punitive Phase.

CPH's two claims are for intentional torts. Under Florida law, proof of an intentional tort by clear and convincing evidence is sufficient to allow the jury to consider whether to award punitive damages. Thus, in the liability phase of the trial—where the only issues are Morgan Stanley's liability and CPH's *entitlement* to punitive damages—there is no need to introduce evidence other than that necessary to prove the essential elements of the claims. Evidence of

² Morgan Stanley vociferously objects to the sanctions imposed by the Court in its Default Order and its March 1, 2005 Order On Coleman (Parent) Holding, Inc.'s Motion For Adverse Inference Instruction Due To Morgan Stanley's Destructions Of E-Mails And Morgan Stanley's Noncompliance With The Court's April 16, 2004 Agreed Order, And Motion For Additional Relief And Order On Plaintiff's Motion To Compel Further Discovery Regarding Morgan Stanley's Destruction And Non-Production Of E-Mails ("Adverse Inference Order"). This Motion is submitted solely for the purpose of proposing a structure for the severely limited trial that will take place if the Court declines to reconsider its earlier orders. Morgan Stanley preserves all rights to appeal the Default Order and the Adverse Inference Order.

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"aggravation," relating to the "badness" of Morgan Stanley's conduct and the appropriate amount of any award should be left to the punitive phase.

CPH appears to concede that because this case involves claims of intentional tort, rather than negligence, the only factual issues for the jury to decide in the liability phase are those relating to the elements of the underlying tort claims. See Plaintiff's Motion In Limine No. 28 To Clarify When Evidence Is Admissible To Show Plaintiff's Entitlement To And Amount Of Punitive Damages at 4 (filed Mar. 18, 2005) ("CPH MIL No. 28") ("If CPH proves its case against Morgan Stanley, the question of whether Morgan Stanley should pay punitive damages automatically goes to the jury."). As CPH's cited authorities note, "[a] claim of fraud sufficient to support compensatory damages is sufficient to support a claim for punitive damages being presented to the jury." *Lou Bachrodt Chevrolet, Inc. v. Savage*, 570 So. 2d 306, 308 (Fla. 4th DCA 1990); see CPH MIL No. 28 at 4-5 (citing *First Interstate Dev. Corp. v. Ablanado*, 511 So. 2d 536, 539 (Fla. 1987); *Ingram v. Pettit*, 340 So. 2d 922, 924 (Fla. 1976)). Thus, only evidence directly relevant to the underlying elements of the claims may be admitted at the first phase of the trial; the Court may not admit any evidence that either party wishes to introduce relating to the factors bearing on the jury's determinations as to whether to award punitive damages and if so in what amount.

Moreover, this Court's Default Order purported to "establish[] for all purposes in this action" allegations putatively relevant to all essential elements of PHC's claims except two: (1) PHC's justifiable reliance on the alleged fraudulent statements of Dunlap/Sunbeam, and (2) the amount of actual damages suffered by CPH as a result of its purported reliance. Default Order at 16-17. Accordingly, these are the only issues with respect to Morgan Stanley's liability that remain to be tried in the liability phase of the trial in this case.

Florida law also expressly requires that the jury's findings on these issues be based on "clear and convincing evidence" to the extent they constitute the requisite finding of conduct that subjects a defendant to punitive damages. *See Fla. Stat. § 768.72* ("A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence."). Accordingly, if the jury returns a liability verdict in favor of CPH, it should be required also to render a separate verdict stating whether its liability verdict was based on clear and convincing evidence. An answer in the affirmative would trigger the punitive phase; an answer in the negative would not.

B. Attachment A And The Discovery Statement Are Relevant—If At All—Only To The Jury's Punitive Phase Decision.

The liability phase in this case begins and ends with the two issues left untouched by this Court's Default Order: justifiable reliance and damages. In this regard, the Court should not read Attachment A to the jury in the liability phase. The Default Order plainly relieves CPH of its burden of proving all elements of its claims other than reliance and compensatory damages. Attachment A contains numerous inflammatory allegations that are completely irrelevant to what is left of the liability phase after the Default Order, and any conceivable probative value they might have is substantially outweighed by the unfair prejudice that will result. *See Fla. Stat. § 90.403*. Reading Exhibit A to the jury will prevent Morgan Stanley from obtaining a fair trial on the remaining elements of reliance and damages. For the same reasons, CPH should not be permitted to introduce any evidence in the liability phase except evidence directly bearing on reliance or damages.

The Discovery Statement also should not be admitted in the liability phase. The alleged discovery abuses have no bearing whatsoever on whether CPH justifiably relied on the purported

until March 13, 2005.

- On March 4, 2005, the Court entered its Order on Plaintiff's ore tenus Motion to Compel Additional Production, which ordered MS & Co. to produce by 3:00 p.m. on March 7, 2005, all items within its care, custody, or control dealing with the Riel/SEC investigation, other than documents representing communications between or among MS & Co. inside and outside counsel that were not copied to anyone other than counsel. MS & Co. sought to discredit Riel and thus distance itself from the false June 23, 2004 certificate of compliance; in doing so, it sought to hide Riel's whistle blower status and the existence of an SEC investigation into whether MS & Co. employees sought kick backs from third party vendors; whether MS & Co. employees were improperly pressured into dealing with third-party vendors who may provide business to MS & Co.; and whether MS & Co. continued to overwrite backup tapes contrary to the SEC's December 3, 2002, Cease and Desist Order.
- A script error prevented the insertion of some emails into the archive. MS & Co. produced over 4,600 pages of emails on March 21, 2005, some of which it suggested may have been located on correction of the error; alternatively, it suggested the emails may have been located by NDCI as part of its efforts to verify MS & Co.'s searches.

MS & Co.'s discovery abuses have not been confined to its email production.

William Strong is a MS & Co. managing director and was one of the principal players for it in the Sunbeam deal. He took credit for the fees generated. On May 9, 2003, CPH requested a copy of "(a)ll documents concerning employment contracts, performance evaluations, and/or personnel files (including without limitation any documents that describe or discuss [his] training, experience, competence, and accomplishments) . . ." MS & Co. asserted that the requested documents were not relevant and that production "would unnecessarily infringe on the privacy interests of [Strong]." On March 15, 2004, the Court ordered MS & Co. to produce "(a)ll references (positive or negative) to [Strong's] truthfulness, veracity, or moral turpitude." Some portions of Strong's evaluations were produced in response to that order. Those evaluations noted Strong's colleagues' reservations about his candor and ethics. Two of his evaluators, Joseph Perella and Tarek Abdel-Meguid, were deposed, when some relatively vague testimony about the bases for those conclusions was offered. It now appears Strong was facing criminal prosecution in Italy for complicity in bribery while he was working on the Sunbeam transaction, which his evaluators knew, and that MS & Co. purposely

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withheld that information from CPH and the Court.¹⁶

Even once CPH independently discovered evidence of Strong's indictment in Italy, MS & Co. sought to shield its files from discovery. It claimed that virtually *all* of the documents it had were privileged under joint defense agreements in place between it, Strong, and Saloman Brothers, Strong's employer at the time of the incident. As the Court's March 10, 2005 Order Following In Camera Inspection (Strong) details, the documents MS & Co. relied on to support that position, and sought to prevent CPH from obtaining, reflect no such agreement.

The other discovery abuses and misrepresentations by MS & Co. other than those involving its email production practices are outlined in CPH's Chronology of Discovery Abuses by Defendant served March 1, 2005, and would take a volume to recite. They include:

- failing to provide the information retained by MS & Co.'s internal document management system pertaining to MS & Co.'s work for Sunbeam; falsely representing to the Court that no useful information was contained in that information; and producing a Rule 1.310 representative who had made an insufficient inquiry into authenticity, business record status, and authorship of documents; see February 28, 2005 Order on CPH's Motion to Deem Certain Documents Admissible and for Sanctions due to Morgan Stanley's Disregard of Court Order;
- when faced with contempt proceedings for violating the Stipulated Confidentiality Order by providing a copy of a settlement agreement between CPH and Arthur Andersen to other counsel, representing to the Court that the law firm of Kellogg, Huber was retained to handle the "Andersen aspects" of this litigation because of a conflict between Andersen and Kirkland & Ellis; Mark Hansen, a partner at Kellogg, Huber, testified that his firm was hired as co-counsel for all aspects of the case;
- providing answers to interrogatories signed by a corporate representative who performed insufficient verification of the responses;

¹⁶MS & Co. originally argued that documents concerning the Italian proceedings were not in Strong's "personnel file" and so were not required to be produced in response to CPH's initial request. MS & Co.'s practice of filing damaging information about an employee other than in his personnel file and then claiming it was not included in the request is about as convincing as its argument that, since it has a corporate directive not to keep drafts of documents once they are in final form, document drafts cannot be business records exempt from hearsay because they are not "kept in the course of a regularly conducted business activity." See Fla. Stat. §90.803 (6) (a). In any event, there was *no excuse* for not producing its records of the Italian proceedings once the Court's March 15, 2004 Order was entered.

- routinely asserting unfounded privilege claims;¹⁷ and
- failing to timely comply with the Court's orders; for example, MS & Co. did not produce Strong's 1994 Performance Evaluation until the afternoon of March 15, 2005, though it was obviously included in the Court's March 15, 2004 Order. The failure cannot be excused as oversight since, when CPH specifically asked for the 1994 evaluation in the spring of 2004, MS & Co.'s counsel said it was withheld as non-responsive; see, also, Ex. 197, 198.

In sum, MS & Co. has deliberately and contumaciously violated numerous discovery orders, including the April 16, 2004 Agreed Order; February 3, 2005 Order Specially Setting Hearing; and the March 4, 2005 Order on Plaintiff's ore tenus Motion to Compel Additional Production. At the February 14, 2005, hearing on CPH's Adverse Inference Motion, it chose to hide information about its violations and coach witnesses to avoid any mention of additional, undisclosed problems with its compliance with the Agreed Order. Implicit in the requirement that MS & Co. certify compliance with the Agreed Order was the requirement to disclose impediments to its ability to so certify. As outlined in this Order, MS & Co. employees, and not just counsel, have participated in the discovery abuses. The prejudice to CPH from these failings cannot be cured. Even if all the script errors have been located and corrected, and MS & Co. has failed to show they have, and even if all of the email backup tapes have now been located, and MS & Co. has failed to show they have, the searches cannot be completed in time. The other discovery abuses outlined call into doubt all of MS & Co.'s discovery responses. *The judicial system cannot function this way.* Based on the foregoing and on the Court's March 1, 2005 Amended Order on Coleman (Parent) Holdings, Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, it is

ORDERED AND ADJUDGED that CPH's Renewed Motion for Entry of Default Judgment is Granted, in part. See Robinson v. Nationwide Mut. Fire Ins. Co., 887 So. 2d 328 (Fla. 2004); Mercer v. Raine, 443 So. 2d 944 (Fla. 1983); Precision Tune Auto Care, Inc. v.

¹⁷For example, MS & Co. produced over 260 documents dealing with the Strong investigation over which it had previously claimed privilege once the Court announced its intention to conduct an in camera review; the Court found another 200 documents were not privileged after conducting its review, by its March 10, 2005 Order.

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Radcliffe, 804 So. 2d 1287 (Fla. 4th DCA 2002); Rule 1.380 (b) (2) (C), Fla. R. Civ. P. Paragraphs 2 (excluding the last sentence thereof); 3 (excluding the portion of the last sentence beginning with “in order to close . . .”); 8-10, 11 (excluding everything after the first sentence); 12 (excluding all parts following “June 1998”); 13 (excluding the last sentence thereof); 14-27; 28 (excluding everything after “firm” in the second to last sentence thereof); 29-39; 41-52; 53 (excluding the second sentence thereof); 54-57; 58 (excluding “CPH and” in the second line thereof); 59-63; 64 (excluding the third line thereof); 65 (excluding the last sentence thereof); 66 (excluding the last sentence thereof); 67-70; 71 (excluding the first word of the last sentence and the remainder of that sentence after “material”); 72; 73 (excluding the first sentence thereof); 74 (excluding the words “CPH and” in the second to last sentence thereof); 75-81; 85; 86; 87 (excluding (g)); 90, and 91 (excluding (g)) of Plaintiff’s Amended Complaint, as amended by the Court’s Amended Order on Morgan Stanley’s Motion to Dismiss, Motion to Strike, and Motion for More Definite Statement, shall be read to the jury and the jury instructed that those facts are deemed established for all purposes in this action. A copy of a redacted Amended Complaint is attached as Exhibit A. It is further

ORDERED AND ADJUDGED that the Court shall read to the jury a Statement similar to that attached as Exhibit A to the Amended Order on Coleman (Parent) Holdings, Inc.’s Motion for Adverse Inference Instruction Due to Morgan Stanley’s Destructions of E-Mails and Morgan Stanley’s Noncompliance with the Court’s April 16, 2004 Agreed Order, but incorporating the relevant additional findings of this Order, and the jury will be instructed that it may consider those facts in determining whether MS & Co. sought to conceal its offensive conduct when determining whether an award of punitive damages is appropriate. See General Motors Corp. v. McGee, 837 So. 2d 1010 (Fla. 4th DCA 2002), rev. den. 851 So. 2d 728 (Fla. 2003). Counsel are each invited to submit proposed Statements. It is further

ORDERED AND ADJUDGED that CPH shall be entitled to an award of reasonable fees and costs incurred as a result of the Renewed Motion for Entry of Default Judgment and the violations of Court orders recited herein. The amount shall be determined at an evidentiary hearing following trial. It is further

ORDERED AND ADJUDGED that MS & Co. is relieved of any future obligation to

comply with the April 16, 2004 Agreed Order and the February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s Motion to Participate in Search of Additional E-Mail Back-Up Tapes or Appoint Third Party to Conduct Search. It is further

ORDERED AND ADJUDGED that the pro hac vice admission of Thomas Clare is revoked. It is further

ORDERED AND ADJUDGED that the portions of CPH's Motion for Correction and Clarification of Order on CPH's Motion for Adverse Inference that seek to amend the body of that Order to correct clerical and spelling errors, as agreed to by counsel, is Granted, and the corrections deemed made to the body of the Amended Order on Coleman (Parent) Holdings, Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, by interlineation. In all other respects the remainder of the Motion for Correction and Clarification is declared moot.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 23rd day of March, 2005.



ELIZABETH T. MAASS
Circuit Court Judge

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1 IN THE CIRCUIT COURT FOR THE
2 15TH JUDICIAL CIRCUIT IN AND FOR
3 PALM BEACH COUNTY, FLORIDA

4 CASE NO. 03 CA 005045 AI

5 COLEMAN (PARENT) HOLDINGS, INC.,

6 Plaintiff,

7 vs.

8 MORGAN STANLEY & CO., INC.,

9 Defendant.

10
11
12 VOLUME 42

13 PROCEEDINGS BEFORE THE HONORABLE ELIZABETH T. MAASS
14
15
16
17
18

19 Monday, March 21, 2005

20 Palm Beach County Courthouse

21 Courtroom 11-A

22 205 North Dixie Highway

23 West Palm Beach, Florida 33401

24 9:30 a.m. to 12:25 p.m.
25

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1 the jury the implications, the adverse
2 inference --

3 THE COURT: You're not asking for an
4 instruction? You're just saying you want to
5 present evidence about the e-mail retention
6 policy and the failure to deviate from it in
7 this case, and then argue to the jury that they
8 should draw an adverse inference from that
9 evidence?

10 MR. LANCASTER: Yes, with a caveat; that is,
11 we're not asking for an instruction. We believe
12 that, the way we read this law, that would be
13 viewed with close scrutiny, and it would be --
14 I'm not sure it would be viable.

15 But Your Honor has in its order, in the
16 initial order that dealt with our e-mail
17 destruction, indicated that the path that it
18 intended to follow, which was to read a
19 statement to the jury, that there would be no
20 further instruction given, and no other evidence
21 put out.

22 And we believe that if Your Honor is going
23 to read such a statement to the jury, then under
24 the facts of this case and the law, as Your
25 Honor is applying to this case, that we feel

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1 that Your Honor should read a similar statement
2 of facts.

3 And we are going to tender to Your Honor,
4 and we did a revised version of that that should
5 also be read. Because when it is the issue of
6 the loss of e-mails which Your Honor has already
7 indicated supplies the essential element, it's
8 critical, then the parties do stand in that
9 respect on the same footing.

10 In fact, Your Honor, in all due respect, I
11 would submit that we stand on better footing.
12 Because while we have -- and perhaps we have not
13 done a good job of it and perhaps there have
14 been foot faults -- we have restored some
15 quantum of e-mails.

16 And I know that this exasperates Your Honor,
17 but it is --

18 THE COURT: No, I guess it goes back, quite
19 honestly, to when one of Plaintiff's points in
20 the motion for the default judgment is Morgan
21 Stanley seems wholly unwilling to admit that
22 it's committed egregious violations of the
23 agreed order. And to me this is fundamentally
24 different.

25 The e-mail issues here between Coleman and

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1 Morgan Stanley are fundamentally different. And
2 I have no problem at all with Morgan Stanley's
3 arguing about how Coleman dealt with its e-mails
4 in this case and what evidentiary value that may
5 or may not have for the jury. But in all
6 honesty, I'm offended that you would attempt to
7 equate the two. Because I think they're totally
8 unrelated.

9 MR. LANCASTER: And I accept that from Your
10 Honor. And I'm not doing it from the standpoint
11 of, necessarily, conduct, but I'm attempting to
12 argue to Your Honor that if you're looking at
13 sort of body of evidence, what is available for
14 a jury to consider? There is e-mail as a result
15 of both, I guess, discovery and discovery orders
16 by this Court, and whatever else mix there is
17 that brought these e-mails to potentially the
18 jury.

19 But on the Coleman side, there is no e-mail
20 off those backup tapes, because they brazenly
21 walk into court and say, we just destroyed it
22 all.

23 So in that respect we believe that given the
24 Court's -- the way you're applying the law of
25 the case, statement of facts you're going to

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

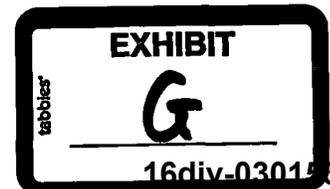
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).

STIPULATION REGARDING DRAFT EXPERT REPORTS

Morgan Stanley & Co. Inc. and Morgan Stanley Senior Funding, Inc. (collectively "Morgan Stanley"), by and through their undersigned attorneys, and Coleman (Parent) Holdings Inc. and MacAndrews & Forbes Holdings, Inc. (collectively "CPH"), by and through their undersigned attorneys, stipulate as follows:

1. Both Morgan Stanley and CPH expect that their respective expert witnesses will prepare and produce expert reports in connection with this action.
2. Counsel for Morgan Stanley and CPH have conferred, and have agreed that the potential discovery of drafts of expert reports, and other documents and communications related to such reports, would add time and cost to the process of preparing such reports, and thus have determined that the parties have a mutual interest in ensuring that such drafts, related documents, or any communications between the parties, their respective counsel, and their respective

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consulting and/or testifying expert regarding any such draft, are not subject to discovery in this action.

3. Consequently, the parties stipulate that:
- a. The drafts of any report prepared in connection with this action, by any consulting and/or testifying expert retained by either party, or any employee or agent of any such expert, will not be discoverable or admissible in evidence in connection with this action. Such drafts will include any revisions to, or mark-ups of, any draft of any report prepared in connection with this action.
- b. Any communications between the parties, their respective counsel, and their respective consulting and/or testifying experts in this action, insofar as that communication relates to any draft of any expert report, as discussed above, also will not be discoverable or admissible in evidence in connection with this action.

Dated: _____
BY: John Scarola

John Scarola
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Dated: Sept 16, 2004
BY: Joseph Ianno, Jr.

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*Counsel for Morgan Stanley & Co. Incorporated
and Morgan Stanley Senior Funding*

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ORDER APPROVING STIPULATION

THIS CAUSE, having come before the Court upon the foregoing stipulation, and after having reviewed the agreement of the parties, the Court approves the stipulation.

DONE AND ORDERED in chambers in West Palm Beach, Florida this _____ day of September, 2004.

SIGNED & DATED

SEP 21 2004

JUDGE ELIZABETH T. MAASS
Elizabeth T. Maass
Circuit Judge

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EXHIBIT A

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Curriculum Vitae

John F. Ashley

Name: John F. Ashley
Address: CoreFacts, LLC
 14030 Thunderbolt Place, Suite 700
 Chantilly, Virginia 20151
Telephone: 703.375.4345
E-mail: jashley@corefacts.net
D/O/B: December 18, 1951
Nationality: British
Marital Status: Married

Professional Experience

July 2000 to December 2000 - CoreFacts Resources, Director of Electronic Evidence Group

January 2001 to present - CoreFacts LLC, Chief Technology Officer

Responsible for designing, equipping and supervising one of the largest corporate computer forensics laboratories on the East Coast. Forensic computer hardware configured to optimize leading forensic software.

Case Studies

- Representation of plaintiff corporation in a contractual dispute with federal government requiring the restoration of 40 back-up tapes held on three different types of magnetic media, containing the Emails and user created data of a staff of 160 persons. The data had been created over a 30-month period and total data size was 183 gigabytes. Three Email packages, MS Outlook, Netscape and ccMail were successfully investigated.
- Defense representation in a software trade secrets dispute requiring the capture of 14 terabytes of data within a 45-day period, without interrupting client's workflow. Data from 320 NT workstations, 90 NT laptops and 15 servers was forensically captured. In excess of 300 search terms were run across the encapsulated data, all relevant Email folders and electronic documents were hosted on secure web servers and reviewed by more than 50 attorneys throughout the US.

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- Plaintiff representation in a breach of fiduciary duty, contract, trade secret and misappropriation of confidential information case requiring the capture of data from five NT laptops and the restoration of six months backup of Email data for five former employees.
- Plaintiff representation in a financial mismanagement case requiring the imaging and investigation of 71 laptop drives.

1998 to July 2000 - Greater Manchester Police, Computer Examination Unit, Unit Head

- Responsible for forensic data retrieval from all computers used in crime, covering a population of 3.5 million people.
- Managed workload increase from 153 cases in 1997 to 263 cases in 1999.
- Designed and installed Microsoft NT4 networks of investigation machines.
- Given additional responsibility for the forensic examination of all computers seized in North Wales and the Isle of Man.
- Wide experience of covert intrusion investigations involving imaging, monitoring and surveillance techniques.
- Employed on a consultative basis to manage the establishment of a number of computer forensics units for a variety of UK police forces.
- Provided vulnerability advice to various public bodies.
- Considerable fraud investigation experience involving the majority of accountancy software packages.
- Advised and assisted in technical interviews of computer skilled offenders on many occasions.

1996 to 1998 - GMP Computer Examination Unit, Senior Forensic Investigator

- Managed the accreditation of the Unit to the internationally accepted ISO 9002 standard.
- Designed and Installed a Novell network of investigation machines.
- Interviewed, appointed and trained forensic investigation detectives.

1989-1996 - GMP Obscene Publications Unit, Supervisor / Investigator

- The first police officer in the UK to investigate computer pornography.
- Responsible for data retrieval from pornographers' and pedophiles' computer systems.
- Investigated all forms of technical crime involving computers: hacking, cracking, virus writing, phreaking, mobile phone cloning and credit card duplication.
- Lead investigator in a number of international obscenity and pedophile cases.

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Expert Witness Testimony

- Expert witness in the investigation and prosecution of Dr. Harold Shipman for the murder of 15 patients. Testified in relation to 12 of the 15 victims regarding the forensic investigation of a complex computer network that revealed back dated and falsely inserted records leading to the identification of victims who were subsequently exhumed. Provided 500 exhibits and 120 witness statements relating to the suspicious deaths of patients. Shipman found guilty on all counts.
Filmed and interviewed in the UK, by Ed Bradley, for CBS's 60 Minutes regarding the computer forensics skills deployed in this case. The program was screened in January and June 2001.
Filmed and interviewed in the UK, by The Learning Channel regarding the computer forensics skills deployed in this case. The program was screened in the US in March 2001.
- Expert witness for the prosecution in a trial involving the large-scale theft of hard drives from Quantum. Performed a forensic financial analysis of the suspect's corporate server accounting packages. Investigation revealed a wide distribution network throughout Europe. Testified in Wolverhampton Crown Court over a five-day period. All five defendants found guilty.
- Expert witness for the prosecution in a trial involving the theft of corporate computers throughout the north of England. Conducted forensic analysis of residual data found on a large number of re-formatted stolen hard disk drives assisted in identifying the original owners of recovered computer equipment. Testified in Manchester Crown Court over a five-day period. Defendant found guilty.
- Expert witness for the prosecution in a trial involving the running of an electronic bulletin board system that was the UK gateway to an international network involved in the worldwide electronic distribution of obscene material. Testified in Maidstone Crown Court. Two defendants found guilty.
- Expert witness for the prosecution in a trial involving the blackmail of 17 individuals. Forensic examination of a word processing system revealed systematic threat letters held in hidden and limbo files. Testified at Manchester Crown Court. Two defendants found guilty.
- Expert witness for the prosecution in a trial involving international disk based distribution of obscene material. Testified at Swindon Crown Court. Defendant found guilty.
- Expert witness for the prosecution in a North Wales case involving distribution of pedophilic material via the Internet. Forensic examination of a computer hard drive refuted defense testimony that an unknown person had used Back Orifice 2000 and Netbus to gain control of the defendant's machine.

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Notable Cases

- On behalf of the Securities and Futures Authority, assisted Guernsey Police and a team of forensic accountants, in the forensic on-site imaging and investigation of two computer networks comprising a total of 22 machines in relation to the Sumitomo Corporation \$2.6 billion copper fraud.
- On behalf of the FBI, carried out UK Home Office authorized house searches relating to the recovery of computer related data from laptops and other storage media in the possession of two Libyan males suspected of involvement in the bombing of US Embassies in Africa.
- On behalf of the Isle of Man Police, investigated a laptop computer that had been surrendered by the user who had found that he was being anonymously blackmailed via Email. Forensic examination uncovered evidence that the user had gained employment within the IT section of a major offshore bank and had accessed customer's private identification information, which was then provided to a criminal group in Belgium. This group had subsequently blackmailed him via an Email service provider in Texas when he had refused to assist them further with their criminal activity.
- In conjunction with the US Customs and Postal Service, forensically investigated the electronic contents of 18 hard drives used in Denmark to run two pedophile electronic bulletin board systems. Recovered evidence led to the identification of individuals who had downloaded pedophilia in the US and the UK.
- Forensic examination of two encrypted hard drives found evidence that led to the simultaneous worldwide arrest of 120 pedophiles. Many of the individuals involved were exchanging digital images of their actual abuse of children via secure web servers, one of which was known as Wonderland and was located in Boston, Massachusetts.
- Forensic examination of a suspect's computer revealed 35 live viruses and plans to infect viruses in a number of UK corporations. Further analysis revealed the breach of a US based grocery company's customer credit card database, where customer credit card details had been posted on bulletin boards and used by group members for international communication. This led to the simultaneous arrest of five individuals who were collectively known as ArcV, a high profile virus-writing group.
- Forensic examination of a re-formatted hard drive revealed more than 100 fraudulent Internet credit card purchase transactions and the distribution network for the illegally purchased goods.
- On behalf of New Scotland Yard gained access to a number of electronic bulletin boards that were distributing pedophilia. Subsequently provided evidence and assistance to their technical experts and the Metropolitan Police Computer Crime Unit.

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Speaking Engagements

- Appeared on a number of television and radio programs in the UK in relation to computer forensics and communications investigation work.
- Profiled on British weekly prime time show "The Cook Report" regarding techniques used in identifying English users of a Danish pedophile Internet bulletin board.
- Lectured on Computer Forensics at Merseyside Police Training College.
- Lectured on Computer Crime at Bramshill Police Staff College.
- Guest speaker at the British Computer Society.
- Lectured on Computer Pornography at the University of Central Lancashire.
- Lectured on Computer Crime at the University of Manchester Institute of Science and Technology.
- Consultant to the Association of Chief Police Officer's Working Group into Computer Pornography.
- Presentations given at the Houses of Parliament and in Manchester to the Home Affairs Select Committee that led to amendments to UK law in relation to the sentencing of child offenders and the creation of a new offence in relation to electronic pseudo photographs.
- Lectured on Computer Forensics to the F3 Forum, a group comprising the majority of UK law enforcement and corporate computer forensic experts.
- Lectured on Computer Forensics at the American University, Washington D.C.
- Lectured on Computer Fraud to the Virginia Society of Certified Public Accountants.

Education

- Educated at Sir John Deane's Grammar School, Northwich, Cheshire graduating in 1969 with Certificates in Mathematics, English Language, Geography and French.
- July 1969 Cheshire Constabulary Police Cadet graduate.
- January to April 1971 Police Training Center Constable graduate.
- October 1977 examination qualification to the rank of Sergeant.
- October 1980 examination qualification to the rank of Inspector.
- November 1989 to December 1993 in force computer investigation training with ongoing IS specialist support.
- 1990 to 1994 various UK based data retrieval and network training seminars.
- 1995 Computer Forensics software and hardware training provided by Computer Forensics Ltd.
- 1996 Advanced Computer Forensics software and hardware training provided by Computer Forensics Ltd.
- 1996 Computer Forensics software and hardware training provided by Authentec Data Recovery specialists.
- 1997 Advanced Computer Forensics techniques software and hardware training provided by Vogon International Ltd.
- 1998 Data Networks and Communications training seminars provided by CLC.
- Computer Forensics experiential learning throughout the period 1989 to 2003.

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US Expert Deposition and Testimony

December 2000, selected as an independent computer forensics expert by the Court of Alexandria, Virginia, to assist in an intellectual property dispute that centered on verifying the electronic time and date stamp information of the plaintiff's software prototypes and supporting electronic presentations. Subsequently deposed at length by the plaintiff's attorney. Four days into trial, the case settled at the plaintiff's request, a day prior to my scheduled testimony.

Dr. Bradley S. Fordham v. OneSoft Corporation, et al.,
Civil Action No. 00-1078-A (Eastern District of Virginia)

June 2001, testified and cross-examined as the defendant's computer forensics expert, before the judicial court of Harris County, Texas, in support of a defendant corporation's motion to mirror image and investigate the plaintiff's electronic storage devices.
Motion granted.

Gyrodata Inc. v. Baker Hughes Inc. and Baker Hughes Inteq.,
Cause No. 2000-40391 (Harris County, Texas 127th Judicial District)

August 2001, United States District Court for the Eastern District of Virginia, deposed as the plaintiff's computer forensics expert in a multi defendant unsolicited bulk email litigation. I provided expert opinion based on my analysis of more than 125,000 member complaints.

AOL v. Netvision Audiotext, dba Cyber Entertainment Network, et al.,
Civil Action No. 99-1186-A (Eastern District of Virginia)

September 2001, testified and cross-examined as the defendant's computer forensics expert, before the judicial court of Harris County, Texas, in support of a defendant corporation's rebuttal of a motion alleging spoliation of electronic evidence.

Gyrodata Inc. v. Baker Hughes Inc. and Baker Hughes Inteq.,
Cause No. 2000-40391 (Harris County, Texas 127th Judicial District)

October 2001, United States District Court for the Eastern District of Virginia, deposed as the defendants' and counter-plaintiffs' computer forensics expert in a breach of contract, breach of fiduciary duty, theft of trade secrets and violation of the Electronic Communications Privacy Act litigation.

Beyond Technology Corp. v. WebMethods, Inc., and K. Alyssa Berg,
Civil Action No. 01-655-A (Eastern District of Virginia)

October 2001, 53rd District Court of Travis County, Texas, deposed as the plaintiff's computer forensics expert in an employee solicitation and theft of trade secrets case.

Advanced Fibre Communications v. Calix Networks, Inc. and Tony Roach
Cause No. GN102712 (53rd District Court of Travis County, Texas)

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June 2002, United States District Court for the Middle District of Florida, Fort Myers Division, deposed as the defendants' and counter-plaintiffs' computer forensics expert in a defamation and tortious interference with business relationships litigation.
Gary Van Meer, and Palm Harbor Medical, Inc. v. Stryker Sales Corp.,
Civil Action No. 2:00-CV-454-FTM-29D (Middle District of Florida)

June 2002, testified and cross-examined as a computer forensics expert, before the United States District Court for the Middle District of Florida, Fort Myers Division, in support of defendants' and counter-plaintiffs' motion alleging spoliation of electronic evidence.
Gary Van Meer, and Palm Harbor Medical, Inc. v. Stryker Sales Corp.,
Civil Action No. 2:00-CV-454-FTM-29D (Middle District of Florida)

September 2002, testified and cross-examined as the plaintiff's computer forensics expert, before the United States District Court for the Southern District of Florida, Miami Division, in support of plaintiff's motion for contempt alleging spoliation of electronic evidence and support of plaintiff's rebuttal of defendant's motion to dismiss preliminary injunction and temporary restraining order.
Plaintiff's motion for contempt upheld, with the defendant being ordered to pay all of the plaintiff's attorney's and expert's fees which were incurred during the investigation and presentation of the contempt motion.
Four Seasons Hotels and Resorts B.V., Four Seasons Hotels (Barbados) Limited, Four Seasons Hotels Limited, and Four Seasons Caracas, C.A. v. Consorcio Barr, S.A., and Carlos L. Barrera,
Case No. 01-4572 CIV-MOORE

October 2002, United States District Court for the Eastern District of Virginia, deposed as the plaintiff's computer forensics expert in a litigation concerning unsolicited bulk email. I provided expert opinion concerning the persons responsible for the transmission of tens of millions of unsolicited bulk commercial emails.
Verizon Internet Services, Inc. v. Alan Ralsky, et al.,
Civil Action No. 01-0432-A (Eastern District of Virginia)

October 2002, testified as the defendant's computer forensics expert, before the United States District Court for the Middle District of Florida, Fort Myers Division, in response to plaintiffs' motion alleging spoliation of electronic evidence.
Gary Van Meer, and Palm Harbor Medical, Inc. v. Stryker Sales Corp.,
Civil Action No. 2:00-CV-454-FTM-29D (Middle District of Florida)

November 2002, testified and cross-examined as the defendant's computer forensics expert, before the United States District Court for the Middle District of Florida, Fort Myers Division, in rebuttal of plaintiffs' computer forensics expert's evidence supporting a motion alleging spoliation of electronic evidence.
Gary Van Meer, and Palm Harbor Medical, Inc. v. Stryker Sales Corp.,
Civil Action No. 2:00-CV-454-FTM-29D (Middle District of Florida)

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January 2003, testified and cross-examined, at trial, as plaintiff's computer forensics expert, before the United States District Court for the Southern District of Florida, Miami Division. Testimony encompassed Computer Fraud and Abuse, Electronic Communication Interception, and Trade Secret Theft.

Four Seasons Hotels and Resorts B.V., Four Seasons Hotels (Barbados) Limited, Four Seasons Hotels Limited, and Four Seasons Caracas, C.A. v. Consorcio Barr, S.A., and Carlos L. Barrera,
Case No. 01-4572 CIV-MOORE

January 2003, rebuttal testimony and cross-examination, at trial, as plaintiff's computer forensics expert, before the United States District Court for the Southern District of Florida, Miami Division. Testimony encompassed Computer Fraud and Abuse, Electronic Communication Interception, and Trade Secret Theft.

Rebuttal testimony proved that one of the defendant's key electronic exhibits was not original, but had been fabricated in an attempt to deceive the court.

Final Judgement issued May 9, 2003 awarded plaintiffs \$4,877,600.00 in damages.

Four Seasons Hotels and Resorts B.V., Four Seasons Hotels (Barbados) Limited, Four Seasons Hotels Limited, and Four Seasons Caracas, C.A. v. Consorcio Barr, S.A., and Carlos L. Barrera,
Case No. 01-4572 CIV-MOORE

May 2003, United States District Court for the District of Columbia, deposed as the defendant's computer forensics expert in a litigation alleging racial bias and discrimination.

Provided testimony in relation to the alteration, fabrication and authentication of email. The plaintiff withdrew his allegations a short time later and the case settled.

Timothy Dean and Michelle Dean v. Starwood Hotels & Resorts Worldwide Inc., d/b/a The St. Regis Washington by Starwood Hotels and Resorts
Civil Action No. 1:02CV00867

July 2003, testified and cross-examined, at trial, as plaintiff's computer forensics expert, before the United States District Court for the Eastern District of Virginia, Alexandria Division. Testimony encompassed tortious interference with business relationships, breach of contract, civil conspiracy and spoliation of data.

Plaintiff's awarded in excess of \$565,000 in damages.

CACI Dynamic Systems, Inc. v. Delphinus Engineering, Inc., and James R. Everitt, Jr.,
Civil Action No. 02-1454-A

January 2004, testified and cross-examined, in arbitration, as claimant's computer forensics expert, before an Arbitration Tribunal of the American Arbitration Association in Charleston, South Carolina. Testimony encompassed tortious interference with business relationships, breach of contract and spoliation of data. Arbitrator subsequently awarded claimant \$10,567,478 and reimbursement of claimant's arbitration costs.

CACI Dynamic Systems, Inc. v. V. Allen Spicer
AAA Case No. 16 160 00725 02

042154

March 2004, United States District Court for the Southern District of New York, deposed as the defendant's computer forensics expert in a litigation alleging unfair dismissal. Provided testimony in relation to the creation and authentication of a document produced in paper form by the plaintiff.

Michelle Bell v. Davis & Partners, LLC and Wolf Management & Leasing, LLC,
Civil Action No. 03CV4175

November 2004, testified and cross-examined as plaintiff's computer forensics expert, at a Preliminary Injunction Hearing, before the United States District Court for the District of Maryland, Northern Division. Testimony encompassed the defendants' co-ordinated use of data destruction utilities to prevent the discovery of the plaintiff's stolen source code and proprietary information.

Bowe Bell + Howell Company v. Document Services Inc., and Albert M. Harris et al,
Civil Action No. 043418

November 2004, testified and cross-examined as plaintiff's computer forensics expert, in rebuttal to counter defendants' testimony and provide pattern analysis to show the extent of defendants' data destruction efforts, at a Preliminary Injunction Hearing, before the United States District Court for the District of Maryland, Northern Division.

The Judge granted the plaintiff broad injunctive relief and found that the defendants had intentionally destroyed relevant documents and indicated that an adverse inference instruction will likely be given to the jury as a sanction.

Bowe Bell + Howell Company v. Document Services Inc., and Albert M. Harris et al,
Civil Action No. 043418

March 2005, provided testimony, in arbitration, as respondent's computer forensics expert, before an Arbitration Tribunal of the American Arbitration Association in Philadelphia, Pennsylvania. Testimony encompassed the restoration of Lotus Notes e-mail and attachments from multiple back-up tapes.

Boston Power Group v. Alstom Power, Inc.
AAA Case No. 14-Y-110-01410-03

March 2005, testified and cross-examined as plaintiff's computer forensics expert, at a Preliminary Injunction Hearing, before the United States District Court for the Eastern District of Michigan, Southern Division. Testimony encompassed the defendants' theft of trade secrets and proprietary information and the defendants' spoliation of evidence. The Judge granted the plaintiff broad injunctive relief and scheduled a spoliation hearing for April 2005.

Henkel Corporation v. Charles K. Cox and Chemtool Corporation,
Civil Action No. 050735

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).

**ORDER CONCERNING PRETRIAL SCHEDULE AND FOLLOWING CASE
MANAGEMENT CONFERENCE**

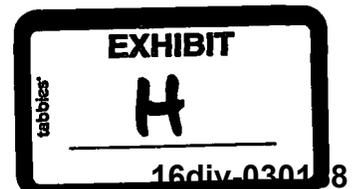
THIS CAUSE came before the Court October 14, 2004 for a case management conference, with all parties well represented by counsel. Based on the proceedings before the Court, it is

ORDERED AND ADJUDGED that objections to all discovery served on or after October 14, 2004 shall be served within 14 days. It is further

ORDERED AND ADJUDGED that this action is specially set for jury trial commencing February 18, 2004. It is further

ORDERED AND ADJUDGED that the proceedings relating to summary judgment will take place on the following schedule:

Summary Judgment Briefs	December 6, 2004
Summary Judgment Response Briefs	December 17, 2004



Summary Judgment Replies December 31, 2004

Summary Judgment Hearing January 21, 2005

It is further

ORDERED AND ADJUDGED that the proceedings relating to mediation will take place on the following schedule:

Mediator Selected December 1, 2004

Mediation January 24, 2005

It is further

ORDERED AND ADJUDGED that the proceedings relating to expert discovery will take place on the following schedule:

Initial Expert Disclosures December 1, 2004

Responsive Expert Disclosures December 13, 2004

Rebuttal Expert Disclosures December 20, 2004

Depositions of Experts December 21, 2004 - January 7, 2005

The parties agree, and the Court orders, that expert witness disclosures shall include:

- (a) the name and business address of the witness;
 - (b) the subject matter about which the expert will testify;
 - (c) the substance of the facts and opinions to which the expert will testify;
 - (d) a summary of the grounds for each opinion;
 - (e) a copy of any written reports issued by the expert regarding this case;
 - (f) a copy of the expert's curriculum vitae;
 - (g) a list of all cases in which the expert has testified during the past five years;
 - (h) a list of all produced documents relied on by the expert; and
 - (i) copies of all non-produced documents relied on by the expert.
- Expert witnesses will not be permitted to testify as to opinions, or the bases therefore, unless the opinions or bases were disclosed with particularity in accordance with this Order. It is further

ORDERED AND ADJUDGED that the remaining pretrial proceedings will take place on the following schedule:

Supplemental Interrogatory Responses Due December 24, 2004

Completion of Fact Discovery	November 24, 2004
Deposition Designations Exchanged-Fact Witnesses	December 20, 2004
Deposition Designations Exchanged-Expert Witnesses	January 14, 2004
Deposition Counter-Designations and Initial Objections Exchanged-Fact Witnesses	January 17, 2005
Deposition Counter-Designations and Initial Objections Exchanged-Expert Witness	January 21, 2005
Motions in Limine	January 10, 2005
Witness Lists and Trial Exhibits Exchanged	January 10, 2005
Motion in Limine Oppositions	January 18, 2005
Objections to Counter-Designations Exchanged-Fact Witnesses	January 24, 2005
Objections to Counter-Designations Exchanged-Expert Witnesses	January 28, 2005
Meet-and-Confer re: Deposition Designations	February 4, 2005
Joint Pretrial Stipulation (in the form directed by the Court's Uniform Pretrial Procedure)	February 9, 2005
Deposition Designations, Counter-Designations, and Objections to Designations and Counter-Designations Provided to the Court	February 11, 2005
Pretrial Conference (3 days)	February 14, 15, and 16, 2004
Final Pretrial Conference	February 17, 2005
Jury Instructions and Verdict Forms Exchanged	February 18, 2005
Initial Jury Screening	February 18, 2005
Jury Trial Begins (15 trial days)	February 22, 2005

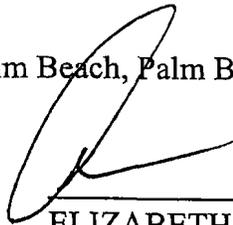
The Court will receive objections to instructions and verdict forms, and the parties'

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counter-instructions on a date to be determined during trial. It is further

ORDERED AND ADJUDGED that hearing on Motions in Limine and objections to deposition designations set December 20 - 22, 2004 is canceled, to be reset after the deadlines established by this Order.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 14 day of October, 2004.



ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

**AGREED ORDER GRANTING MORGAN STANLEY'S MOTION TO EXTEND
EXPERT DISCOVERY AND SUMMARY JUDGMENT DEADLINES BY ONE WEEK**

THIS CAUSE having come before the Court on November 23, 2004 upon Morgan Stanley's Motion to Extend Expert Discovery and Summary Judgment Deadlines by One Week, and the Court having been advised of the agreement between the parties, and being otherwise fully advised in the premises, it is hereby

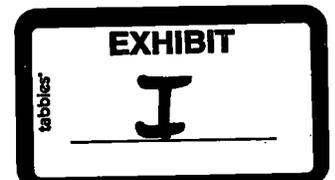
ORDERED AND ADJUDGED that:

1. Morgan Stanley's Motion to Extend Expert Discovery and Summary Judgment Deadlines by One Week is GRANTED in part.

2. The Court's Order of October 14, 2004 shall be amended as follows:

Initial Expert Disclosures	December 7, 2004
Responsive Expert Disclosures	December 17, 2004
Rebuttal Expert Disclosures	December 28, 2004
Depositions of Experts	December 28, 2004-January 14, 2005
Summary Judgment Briefs	December 10, 2004
Summary Judgment Response Briefs	December 23, 2004

WPB#586777.2



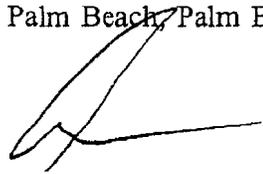
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Summary Judgment Reply Briefs

January 6, 2005

All documents listed above shall be served on or before 5:00 p.m. via facsimile except for responsive expert disclosures on December 17, 2004 which shall be served on or before 3:00 p.m. via facsimile.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 23rd
day of November, 2004.



ELIZABETH T. MAASS
Circuit Court Judge

Copies furnished to:

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IN THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

Material Redacted Without Prior Determination of Protectability by Court

**MORGAN STANLEY'S MOTION IN LIMINE NO. 13
TO STRIKE THE EXPERT OPINION
OF SAMUEL J. KURSH AS UNTIMELY AND CUMULATIVE**

As part of its ongoing expert "shell game," Coleman (Parent) Holdings Inc. ("CPH") has designated *three* experts on damages, including two experts devoted solely to the valuation of The Coleman Company, Inc. ("Coleman") as of March 1998: Samuel J. Kursh, D.B.A. and Michael J. Wagner. If the Court allows CPH to introduce both of these Coleman valuation experts, Morgan Stanley will be unduly prejudiced, most particularly by the delayed and incomplete disclosure of Mr. Kursh's opinions despite a trial that is only a few weeks away. Moreover, while CPH cumulatively offers two experts on the same, exact issue, the experts' methodologies are inconsistent and they arrive at wholly different per share values of Coleman. CPH should not be allowed to avoid disclosing the expert valuation on which it will rely at trial. It is time for CPH to show its cards.

To end these tactics, the Court should strike Mr. Kursh's opinions. Mr. Kursh has been unavailable to file a rebuttal report or sit for a deposition throughout most of December and January, thereby rendering it impossible for Morgan Stanley to depose Mr. Kursh, to begin the lengthy deposition designation process and to engage in extended briefing on the objectionable

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aspects of Mr. Kursh's expert opinion as of the date of this filing. Given the practical realities of Mr. Kursh's current health situation, the cumulative (but conflicting) nature of his testimony, the fact that CPH has another expert ready to testify on the same subject matter, and the rapidly approaching trial date, Morgan Stanley respectfully submits that Mr. Kursh's expert opinion should be stricken as a matter of law. See Fla. R. Civ. P. 1.200(b)(4) ("[T]he court itself may or shall on a timely motion of any party require ... the limitation of the number of expert witnesses ...").

In support of its motion, Morgan Stanley states the following:

STATEMENT OF FACTS

1. On October 14, 2004, the Court entered an Order establishing the pretrial schedule for this case, including provisions for expert disclosures, expert depositions, and expert designations (the "Pretrial Schedule"). The Pretrial Schedule was subsequently amended by the November 23, 2004 Agreed Order.

2. The current Pretrial Schedule required the parties to serve their initial expert disclosures on December 7, 2004. The parties then filed responsive and rebuttal expert disclosures due on December 17, 2004, and December 28, 2004, respectively.

3. The parties took expert depositions between December 28, 2004 and January 14, 2005. Expert deposition designations were due on January 14, 2005, with expert counter-designations and objections to expert counter-designations due on January 21, 2005, and January 28, 2005, respectively.

4. The trial is set to begin February 18, 2005, following the pretrial conference starting on February 14.

5. On December 7, 2004, CPH served initial disclosures for six different experts, including three experts on damages. The sheer volume of paper associated with these initial

disclosures is staggering, with a total page count swelling to well *over 1,000 pages*. Under the Pretrial Schedule, Morgan Stanley had less than *10 days* to respond.

6. CPH submitted two expert reports on the exact, same issue: the value of Coleman as of March 1998. See 12/7/04 Expert Report of S. Kursh at 3 (“Kursh Report”) (“

”) (Ex. 1); 12/7/04 Expert Report of M. Wagner at 1 (“Wagner Report”) (“

”) (Ex. 2).

7. The two expert reports are inconsistent with each other, employ differing methodologies, and arrive at different per share values of Coleman stock as of March 1998.

Mr. Kursh

See Kursh Report at 15 (Ex. 1). Mr. Wagner, in contrast, uses

. See Wagner Report at 1 (Ex. 2). In addition, he opines that the “

. *Id.* Thus, CPH’s proffered evidence regarding the value of Coleman as of March 1998 depends on which CPH expert you ask.

8. This disclosure problem has been compounded by Mr. Kursh’s inability to file a rebuttal report within a reasonable amount of time and his unavailability for deposition

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throughout December and January. Indeed, just two days after CPH's expert reports were served, CPH informed Morgan Stanley that Mr. Kursh was "expected to undergo heart surgery next week."¹ 12/9/04 Letter from M. Brody to T. Clare (Ex. 3). Two weeks later, and with trial rapidly approaching, CPH requested an open-ended extension for Mr. Kursh's rebuttal report and deposition until some unspecified time in the future. 12/21/04 Letter from M. Brody to R. Beynon (Ex. 4).

9. In response, Morgan Stanley agreed to make reasonable accommodations and offered a reasonable extension — indeed, the same extension CPH offered for Morgan Stanley's expert George Fritz — that would not compromise Morgan Stanley's ability to prepare for trial. Morgan Stanley noted that it believed that "this proposal [was] especially reasonable since, if Mr. Kursh's recovery does not permit him to participate in the pretrial disclosures and trial, CPH has at least two other damages experts who address precisely the same subject matter." 12/22/04 Letter from T. Clare to M. Brody (Ex. 5).

10. Another two weeks later, CPH counsel advised that "Mr. Kursh still is insufficiently recovered from his surgery to work" and again requested an open-ended extension because "it still is too early in his recovery for him to provide a firm date on which he will be able to submit his rebuttal report." 1/3/05 Letter from M. Brody to T. Clare (Ex. 6). Given the highly compressed pretrial schedule, and the limited time available to complete the expert disclosures, expert depositions, and expert designations before the trial date, however, Morgan

¹ The timing of the disclosure is curious. Although CPH had initially contacted him in February 2004, Mr. Wagner testified that

1/13/05 M. Wagner Dep. Tr. at 21:6-23:8 (Ex. 7). He assumed that
Id. at 22:21-25. It was only in
October 2004 — with less than two months to go before the expert reports were due to be filed in
(Continued...)

Stanley advised CPH that it could not agree to any further extension without substantially prejudicing the preparation of its case. See 1/4/05 Letter from T. Clare to M. Brody (Ex. 8). In addition, Morgan Stanley again noted that “CPH has at least two other experts who address precisely the same subject matter as Mr. Kursh.” *Id.*

11. CPH then filed a motion to extend the deadline for Mr. Kursh to file a rebuttal report until January 24, 2004, almost a full month after the initial report was due. On January 12, 2005, the Court granted the motion in part “without prejudice to Defendant’s right to seek to exclude all or part of Mr. Kursh’s testimony if it is unduly prejudiced by the delay.” The Court ordered that CPH file Mr. Kursh’s report by 5 p.m. on January 24, 2005.

12. CPH served by e-mail attachment two Kursh reports of 97 pages at 4:53 p.m. EST on January 25, 2005. Later CPH served the reports by facsimile after 5 p.m..

ARGUMENT

13. CPH has played a shell game with its expert disclosures, keeping its options open as long as possible and forcing Morgan Stanley to guess which of its three “damages” experts it will call at trial, and which of their damages methodologies it will actually use. Moreover, given the highly compressed pretrial schedule, and the limited time remaining before trial to complete expert disclosures, expert depositions, and expert designations, Mr. Kursh’s unavailability throughout December and January has exacerbated the prejudice and procedural unfairness created by CPH’s litigation tactics.

14. With trial rapidly approaching, Morgan Stanley still does not have a deposition date for Mr. Kursh or even know whether he or Mr. Wagner will ultimately be called to testify as

this complex case — that CPH again contacted Mr. Wagner and asked him to prepare a damages analysis.

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to the value of Coleman as of March 1998. Accordingly, pursuant to Fla. R. Civ. P. 1.200(b)(4), Morgan Stanley asks the Court to establish a "limitation of the number of expert witnesses" to be called at trial in this case and to strike the expert opinion of Mr. Kursh in its entirety, thereby leaving Mr. Wagner to testify as to Coleman's valuation at trial.

15. *First*, Mr. Kursh's testimony should be stricken as untimely. Mr. Kursh's rebuttal report was due on December 28, 2004. Morgan Stanley did not receive it until 4:53 p.m. on January 24, 2005. *Supra* ¶ 10. Mr. Kursh was supposed to be made available for deposition before January 14, 2005. But Morgan Stanley still has not been able to obtain a deposition date. Designations of Mr. Kursh's depositions were due on January 14, 2005; counter-designations due on January 21, 2005; and objections to counter-designations due on January 28, 2005. Morgan Stanley cannot even begin the designation process until they get a deposition date, Mr. Kursh is deposed, and a transcript is received. All motions directed at experts were to have been filed on January 26, 2005, with oppositions due on February 4, 2005. Morgan Stanley should not be expected to file such a motion with less than two days to digest the 97-page rebuttal report and still no opportunity to depose Mr. Kursh.²

16. Indeed, the Court recognized that Morgan Stanley could be unduly prejudiced by CPH's delay in submitting Mr. Kursh's rebuttal report: "[T]he longer the time goes, the more likely it is that [Morgan Stanley] is going to be prejudiced, which means for whatever reason this evidence isn't going to come in." 1/12/05 Hr'g Tr. at 17:20-18:1. At this point, the Court is faced with a situation where all the dates laid out in the Pretrial Order have come and gone, and Mr. Kursh is almost a month behind a heavily compressed pretrial schedule with little room for

² Morgan Stanley expressly reserves the right, subject to Court order, to file motions directed at Mr. Kursh's expert testimony after reviewing his rebuttal report.

error. With trial just a few weeks away, Morgan Stanley respectfully submits that there is simply no time left for Morgan Stanley to have its experts review Mr. Kursh's latest work, prepare for and depose Mr. Kursh, begin the designation process (on the assumption Mr. Kursh might not testify live), and engage in extended briefing on the objectionable aspects of Mr. Kursh's expert opinion.

17. *Second*, Mr. Kursh's testimony should be stricken in its entirety as a consequence of CPH's failure to comply with this Court's order compelling expert disclosures in this case. Indeed, despite the clear command of the pretrial order, CPH has failed not only to disclose which of its three damages experts it will call, but also which of its two damages experts on the value of Coleman as of March 1998 it will call and what CPH precisely contends is the specific per share value that CPH intends to assert at trial. In essence, CPH's "disclosure" on December 7, 2004 was no disclosure at all.

18. While Mr. Kursh and Mr. Wagner both opine on the same exact issue, they do not proffer the same conclusion. To the contrary, Mr. Kursh and Mr. Wagner utilize totally different methodologies to arrive at entirely different per share values of Coleman. The question then is: will CPH rely upon Mr. Kursh's methodology to assert that

? Or will CPH rely upon Mr. Wagner's methodology to assert that

? Both cannot be correct. But CPH has so far failed to disclose — as required by the spirit, if not the pure letter, of the Pretrial Order — which of these two conflicting expert opinions they intend to rely upon. Again, CPH is playing a "shell game," keeping its options open as long as possible on this key issue and forcing Morgan Stanley to guess at what it intends to assert at trial.

19. This Court has repeatedly stated that it does not wish to preside over a trial by ambush. Indeed, it is precisely for this reason that the Pretrial Scheduling Order specified that neither side would be able to present expert testimony on a contested issue if it was not “disclosed with particularity in accordance with this Order.” See 10/14/04 Pretrial Scheduling Order. The Court subsequently warned of the consequences for incomplete and untimely expert disclosure: “We are talking about what is the spirit of the order and the spirit of the order is we need all of the cards on the table and you can’t be having somebody offering an expert opinion at trial that has not been disclosed.” 12/15/04 Hr’g Tr. at 6:3-6:8. But CPH, preferring gamesmanship to disclosure, has steadfastly refused to show its cards for over a month now. Accordingly, pursuant to well-established Florida law, Mr. Kursh’s expert opinion

See Binger v. King Pest Control, 401 So. 2d 1310, 1314 (Fla. 1981) (affirming trial court’s right to exclude expert testimony for failure to comply with pretrial order in order to help “eliminate surprise and avoid trial by ‘ambush.’”).

20. *Finally*, Mr. Kursh’s testimony should be stricken on the independent ground that it is redundant, duplicative, and cumulative. “[A] trial judge has the discretion to limit the number of witnesses who the parties may call to testify at trial” *Gonzalez v. Martinez*, No. 3D03-918, 2004 WL 17771, at *1 (Fla. 3d DCA, Jan. 3, 2005); *see also Fogel v. Mirmelli*, 413 So. 2d 1204, 1207 (Fla. 3d DCA 1982) (“Without question, the trial court has discretion to limit the number of witnesses which may be called by the parties.” (citation omitted)).

21. And Florida trial courts have not hesitated to limit the number of expert witnesses — even those properly disclosed — where, as here, a party seeks to present duplicative experts on precisely the same subject matter. *See Dones v. Moss*, 884 So.2d 230 (Fla. 2d DCA 2004) (affirming trial court’s decision to limit the number of expert witnesses who presented redundant

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testimony); *Dade County v. Midic Realty, Inc.*, 549 So. 2d 1207 (Fla. 3d DCA 1989) (same); *Stager v. Fla. E. Coast Ry. Co.*, 163 So. 2d 15, 17 (Fla. 3d DCA 1964) (same). *See also* Fla. Evid. Code. § 90.403 (“Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of ... needless presentation of cumulative evidence.”). Mr. Kursh opines on the same subject matter as two other CPH experts and on precisely the same issue as Mr. Wagner. As such, the Court should exclude Mr. Kursh as an expert witness at trial.

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misrepresentations or on whether CPH can establish damages. Under Florida law evidence of discovery misconduct generally may not be presented to the jury, and this case does not fit under the exception created by *General Motors Corp. v. McGee*, 837 So. 2d 1010, 1036 (Fla. 4th DCA 2003). The Court has sanctioned Morgan Stanley for the alleged discovery abuses by entering the partial default judgment; reading the Discovery Statement to the jury or allowing CPH to introduce evidence about the discovery issues would constitute a second, impermissible sanction. Indeed, in analogous circumstances it has been impermissible to sanction a party twice for discovery abuses. See *Werbungs Und Commerz Union Austalt v. Collectors' Guild, Ltd.*, 930 F.2d 1021, 1027 (2d Cir. 1991) (finding trial court "abused its discretion and committed plain error when through its instruction it allowed the jury, in effect, to sanction [party] again for its late production of documents," where court had already sanctioned the party by excluded the belatedly-produced materials) (emphasis added).

Morgan Stanley continues vehemently to object to the Court's Adverse Inference Order; to its Default Order; and to the introduction of either Exhibit A or the Discovery Statement at either phase of the trial. However, if the Court declines to reconsider its Adverse Inference Order and its Default Order, Exhibit A and the Discovery Statement should be admitted, if at all, only in the punitive phase of the trial. During the liability phase, this Court simply should instruct the jury that the other necessary elements of CPH's claims have been resolved in favor of CPH and proceed to the punitive phase upon a jury finding that CPH has prevailed on these two issues by clear and convincing evidence.

II. MORGAN STANLEY IS ENTITLED TO PRESENT EVIDENCE ON ITS BEHALF RELEVANT TO THE JURY'S PUNITIVE PHASE DECISION.

It is well settled that a court may take away neither the jury's "discretion to decline to assess punitive damages or to award only a nominal amount," nor a defendant's right to

introduce "mitigating evidence" that "would have the effect of 'reducing or softening the moral or social culpability attaching to [the defendant's] act.'" *Humana Health Ins. Co. of Fla., Inc. v. Chipps*, 802 So. 2d 492, 496 (Fla. 4th DCA 2001) (quoting *McClelland v. Climax Hosiery Mills*, 169 N.E. 605, 608 (N.Y. 1930) (alteration in original)). Accordingly, in the event the jury returns a verdict on liability in favor of CPH on the basis of clear and convincing evidence and therefore triggers a punitive phase, controlling Florida authority requires this Court to allow Morgan Stanley to present mitigating evidence relevant to the jury's decision as to the appropriate amount of punitive damages to award, if any. A contrary ruling would in effect direct a verdict against Morgan Stanley on punitive damages—a result the Court has repeatedly forsworn.

* * *

WHEREFORE Morgan Stanley respectfully requests that this Court: (1) admit only evidence relevant to the issues of justifiable reliance and damages in the liability phase; (2) instruct the jury only that the other necessary elements of CPH's claims have been resolved in favor of CPH; and (3) proceed to the punitive phase if and only if the jury finds that CPH has prevailed on all of the elements of its claims, including reliance and damages, by clear and convincing evidence. The Court, moreover, should read to the jury Attachment A and/or the Discovery Statement—if at all—only in the punitive phase, during which it should respect Morgan Stanley's right to present on its behalf evidence relevant to the jury's determination of the amount of punitive damages to award, if any.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and hand delivery on this 31st day of March 2005.

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WHEREFORE, Morgan Stanley respectfully requests that this Court enter an order striking the testimony and opinions of CPH expert Samuel J. Kursh.

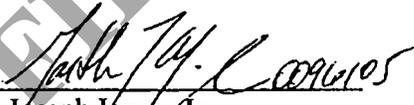
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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 26th day of January, 2005.

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March 11, 2004

VIA FACSIMILEMichael Brody, Esq.
Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603Re: *Coleman (Parent) Holdings v. Morgan Stanley & Co.*
Morgan Stanley Senior Funding v. MacAndrews & Forbes et al.

Dear Mike:

I write in response to your March 9, 2004 letter regarding (1) Morgan Stanley's pending motion for the production of electronic documents in electronic form; and (2) CPH's apparent desire to force a wasteful and costly restoration of Morgan Stanley's e-mail backup tapes. I will address each of these two issues in turn.

Electronic Documents

Morgan Stanley has consistently produced its electronic documents "in electronic form" in accordance with the parties' written agreement. We are not aware of any electronic server or backup media that might contain additional electronic documents responsive to CPH's document requests. Accordingly, at least as it applies to Morgan Stanley, your suggestion that the parties hire an outside vendor to search backup tapes for additional electronic documents would only result in additional and unnecessary costs.

As for CPH's documents that exist "in electronic form," we have examined the electronic documents that CPH produced in hard-copy form and have reviewed Mr. Fasman's deposition testimony on this point. All of the available evidence squarely rejects the notion that it would impose a "significant burden" on CPH to produce such documents "in electronic form" in accordance with the parties agreement. Specifically:

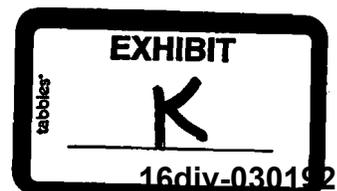
- We cannot square your "burden" argument with the time- and date-stamp information that appears on the documents. Virtually all of the electronic documents in CPH's latest production appear to have time- and date-stamps in the header or footer that show the date and time that they were printed for production. These time- and date-stamps show that these documents were located and printed over the course of a *few hours* in the two days immediately prior to production. Thus, the burden cannot be as great as you claim.

Chicago

London

Los Angeles

New York



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- Similarly, many of those same hard-copy documents have unique electronic filenames identified in the header or footer of the document. With the assistance of these filenames, it should be relatively easy for CPH to locate and produce documents in electronic form.
- We cannot square your "burden" argument with your prior demands of Morgan Stanley. As you will recall, Morgan Stanley undertook — at your insistence — an *even greater burden* when, after producing several boxes of documents in hard-copy form, CPH made an identical demand that Morgan Stanley "go back and retrieve duplicate copies of previously produced documents in electronic form." Morgan Stanley did just that, and subsequently produced four CDs of electronic documents that had previously been produced in hard-copy form, representing 723 files and 117.5 MB of electronic data.
- We cannot square your "burden" argument with the parties' written agreement. The parties agreed — in a countersigned written agreement that your firm drafted — to produce electronic documents "in electronic form." To the extent there is an additional "burden" associated with re-producing electronic documents in electronic form, that "burden" is solely the result of CPH's failure to comply with the parties' agreement in the first instance. CPH cannot use its failure to comply with the parties' agreement (by producing documents in hard-copy form only) to manufacture an argument that it is now too burdensome to comply.

In short, the requirement that electronic documents be produced "in electronic form" is well-established by the prior course of discovery in this case, and separately is covered by a countersigned written agreement between the parties. Morgan Stanley is entitled to full compliance with the parties' agreement on this issue, and to the same form of production that CPH has previously demanded from Morgan Stanley.

E-Mail Backups

With regard to the restoration and search of e-mail backup tapes, your proposal to use a third-party vendor does not address — in any meaningful way — many of Morgan Stanley's legitimate objections to the wholesale restoration of e-mail backup tapes. Whether the restoration of e-mail backup tapes is performed by Morgan Stanley IT staff or an outside vendor, the burden on Morgan Stanley from such a wholesale restoration, both in terms of dollars and manpower, would be enormous. Regardless of who performs the initial restoration, it would require hundreds (perhaps thousands) of attorney-hours to review millions of irrelevant and non-responsive e-mails, all for the theoretical possibility that an e-mail drafted years after the underlying financial transactions would be discovered and responsive to CPH's requests. Your proposal to hire a third-party vendor does not address

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Michael Brody, Esq.
March 11, 2004
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that issue, and instead seeks to shift the financial costs for such a search to Morgan Stanley instead of CPH, the party insisting on such a fishing expedition.

As we have explained repeatedly in correspondence, depositions, and court filings, Morgan Stanley only has the ability to restore e-mail from backup tapes from January 2000 or later, which (even using the earliest point) is more than a year-and-a-half after the events that allegedly gave rise to CPH's claims and, in many cases, years after the Morgan Stanley employees who worked on Sunbeam-related engagements left the Company. Under these circumstances, there simply is no reason to believe that a wholesale restoration of e-mail backup tapes is reasonably likely to yield relevant and responsive e-mails — or that the theoretical possibility of finding relevant and responsive e-mails from several years after the fact would justify the enormous burden and cost of restoring, reviewing, and producing these backup tapes.

Any workable proposal regarding the restoration of e-mail backup tapes must (1) be narrowly tailored to include only those tapes that are most likely to contain potentially responsive documents; and (2) allocate the costs of the search in a manner that recognizes the enormous burden of the search compared to the theoretical possibility of finding potentially responsive documents. We offer the following proposal:

- (1) Morgan Stanley will identify up to five (5) current or former MAFCO / CPH employees to be included in the e-mail backup search. MAFCO / CPH will search their backup tapes for electronic versions of e-mails from those five (5) individuals for the time period from December 1997 through June 1998. In addition, MAFCO / CPH will search for electronic versions of e-mails on the oldest e-mail backup tape that exists for each of those five (5) individuals (i.e. the backup tape that is closest in time to the December 1997 – June 1998 time period).
- (2) CPH will identify up to five (5) current or former Morgan Stanley employees to be included in the e-mail backup search. Morgan Stanley will search its backup tapes for electronic versions of e-mail from those five (5) individuals for the time period from December 1997 through June 1998. In addition, Morgan Stanley will search for electronic versions of e-mails on the oldest monthly e-mail backup tape that exists for each of those five individuals (i.e. the January 2000 monthly backup tape).
- (3) The parties will agree upon a reasonable set of search terms that will be used to narrow the universe of e-mails.
- (4) Each party will review the resulting e-mails and produce responsive, non-privileged e-mails to the other side.

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Michael Brody, Esq.
March 11, 2004
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- (5) Any materials withheld on privilege grounds would be listed on a supplemental privilege log to be served on the other side. Depending on the volume of privileged materials on either side, an extension of the typical 30-day time period may be warranted.
- (6) If either party wishes to identify additional employees (beyond the original five) whose e-mail backup tapes will be restored, searched, and produced in accordance with steps (1) - (5), the requesting party will thereafter bear all resulting fees and costs, including (without limitation) all fees and costs associated with restoring the e-mail backup tapes, all fees and costs associated with conducting the keyword search, all fees and costs associated with the privilege and responsiveness review (including reasonable attorneys fees), and all fees and costs associated with producing a privilege log (including reasonable attorneys fees).

I am prepared to discuss these issues at your convenience.

Sincerely,



Thomas A. Clare

cc: Joseph Ianno, Esq.
John Scarola, Esq.
Jerold S. Solovy, Esq.

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THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

CASE NO. 2003CA 005045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

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MAR 16 2005

SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

**COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY'S
MOTION FOR AN ADVERSE INFERENCE INSTRUCTION**

In a transparent response to the sanctions that have been imposed on Morgan Stanley for its willful destruction of e-mails and systematic misconduct in response to Court Orders, Morgan Stanley is seeking an adverse inference instruction stemming from CPH's internal policy of deleting e-mails and electronic documents after 30 days and overwriting backup tapes after 60 days. Morgan Stanley's motion is baseless and has long since been waived.

First, Morgan Stanley has known about CPH's internal e-mail policy since January 2004, but Morgan Stanley expressed no interest in recovering CPH's e-mails from backup tapes until now. Indeed, Morgan Stanley refused repeated efforts by CPH to reach a global resolution of the e-mail restoration issue.

On October 29, 2003, CPH filed a motion to compel concerning Morgan Stanley's e-mails. *See* 10/24/03 Mot. to Compel. Morgan Stanley opposed that motion, arguing that the relief CPH was requesting would be unduly burdensome and faulting CPH for failing to produce its own e-mails. *See* Ex. S, MS 11/5/03 Response. CPH's motion was resolved by an agreement, whereby the parties agreed to reciprocal corporate representative depositions on the

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e-mail issue. *See* Ex. A at 3. Pursuant to that agreement, Morgan Stanley deposed CPH's corporate representative on January 21, 2004, and CPH deposed Morgan Stanley's corporate representative on February 10, 2004. At the January 21, 2004 deposition of CPH's corporate representative, Morgan Stanley inquired about CPH's e-mail policy. In fact, it is that testimony Morgan Stanley cites in its Motion for an Adverse Inference Instruction. *See* MS Mot. at 3 and Ex. 7 thereto. The whole point of the corporate representative depositions was to permit both sides to assess further the issue of obtaining e-mails and other electronic documents.

CPH thereafter attempted to secure Morgan Stanley's agreement to reach a protocol for the mutual restoration of e-mails — but Morgan Stanley repeatedly rejected CPH's efforts at compromise. *See, e.g.,* Ex. B (3/9/04 Letter from M. Brody to T. Clare); Ex. C (3/11/04 Letter from T. Clare to M. Brody); Ex. D (3/15/04 Letter from M. Brody to Clare); Ex. E (3/16/04 Letter from T. Clare to M. Brody); Ex. F (3/17/04 Letter from M. Brody to T. Clare).

Because CPH's efforts to reach agreement on the e-mail issue were going nowhere, on March 12, 2004, CPH filed a motion for permission to have a third party retrieve e-mails. *See* Ex. G. In that motion, CPH proposed that a third-party vendor be given access to both parties' e-mails, restore Morgan Stanley's e-mails at Morgan Stanley's expense, and restore CPH's e-mails at CPH's expense. *See id.* And at the hearing on CPH's motion, CPH's counsel attempted to address any concerns about the cost disparity between restoring CPH's e-mails and Morgan Stanley's e-mails by offering to split the cost down the middle. *See* Ex. H at 19-20. Morgan Stanley opposed all of CPH's proposals, and because the Court did not think it appropriate to impose such an arrangement on the parties without their consent, the Court denied CPH's motion. *See id.* at 18-26. As CPH has shown during the evidentiary hearings this week, Morgan Stanley opposed CPH's efforts to involve a third party because Morgan Stanley knew that a third

party would uncover at least some of Morgan Stanley's misrepresentations concerning its e-mails.

CPH thereafter continued its efforts to obtain e-mails, subpoenaing Bloomberg, Inc., Morgan Stanley's e-mail vendor, for relevant e-mails. *See* Ex. L. Bloomberg responded that it could not turn over Morgan Stanley e-mails without Morgan Stanley's permission. *See* Ex. M, (3/11/04 Letter from T. Golden to J. Scarola). When permission was sought, Morgan Stanley placed inappropriate limitations and date restrictions on the production. *See* Ex. N (3/17/04 Letter from M. Brody to T. Clare); Ex. O (4/1/04 Letter from T. Clare to T. Golden); Ex. P. (4/2/04 Letter from M. Brody to T. Clare); Ex. Q (4/7/04 Letter from T. Clare to M. Brody).

As a result of Morgan Stanley's continued stonewalling, on April 9, 2004, CPH filed additional e-mail-related motions to compel. *See* Exs. I, J. In response to those motions, this Court entered the April 16, 2004 Agreed Order concerning e-mail retrieval. *See* Ex. K. As CPH also has shown during the evidentiary hearings this week, Morgan Stanley's representations about the possibility of and difficulty involved with retrieving e-mails — representations on which this Court and CPH relied in attempting to resolve the e-mail controversy — were false.

In short, Morgan Stanley has known about CPH's e-mail policy since at least January 2004, when Morgan Stanley took the deposition of CPH's corporate representative on the topic, but Morgan Stanley did not file a motion seeking the restoration of CPH's e-mails, and as indicated above, Morgan Stanley opposed CPH's e-mail restoration proposal. Moreover, tellingly, the April 16, 2004 Agreed Order concerning e-mails addresses only the restoration of Morgan Stanley's e-mails. Morgan Stanley has shown no interest in CPH's e-mails — until Morgan Stanley was sanctioned for its misconduct regarding its own e-mails.

Second, in Morgan Stanley's Supplemental Memorandum in Support of Motion for an Adverse Inference Instruction, Morgan Stanley makes much of the fact that CPH's privilege log contains entries from April 14, 1998 through August 14, 1998, where CPH has stated that the documents were prepared "in anticipation of litigation." *See* MS Suppl. Mem. at 1-2. CPH first served the privilege log containing those entries on October 6, 2003. *See* Ex. R. CPH's privilege log contained entries asserting work product, and the log specifically included each of the twelve documents Morgan Stanley identifies on Page 2 of its Supplemental Memorandum. Thus, Morgan has known about the work product assertions on CPH's privilege log since October 6, 2003.

Indeed, not only has Morgan Stanley known about the privilege log assertions since October 2003, Morgan Stanley also made almost the same argument based on them in Morgan Stanley's November 4, 2003 opposition to CPH's first motion to compel relating to e-mails. *See* Ex. S. In its November 4, 2003 opposition, Morgan Stanley cited documents listed on the October 6 privilege log, arguing that "CPH was working with its outside counsel to evaluate its options for filing lawsuits against various parties, presumably including MS & Co., as early as July 1998" but did not retain any emails. *See id.* at 14. Nonetheless, as described above, Morgan expressed no interest in obtaining CPH's e-mails and rebuffed CPH's attempts to reach a mutual agreement on the restoration of e-mails.

Third, CPH is a private entity with no statutory obligation to preserve e-mails. In contrast, as the Court is aware, Morgan Stanley is subject to ongoing e-mail retention obligations under federal law. Thus, in attempting to equate CPH's circumstances with its own, Morgan Stanley equates apples with oranges.

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Fourth, none of the adverse inference instruction cases cited by Morgan Stanley (at 8) remotely supports a sanction against CPH. See *Amalan, Inc. v. Detroit Diesel Corp.*, 651 So. 2d 701, 703 (Fla. 4th DCA 1995) (sanctions are appropriate when “a party has engaged in a pattern designed to thwart discovery evincing a ‘continuous pattern of willful, contemptuous and contumacious disregard of lawful court orders concerning its obligation to comply with reasonable discovery requests.’”); *Martino v. Wal-Mart Stores, Inc.*, 835 So. 2d 1251, 1257 (Fla. 4th DCA 2003) (plaintiff was entitled to an adverse inference as a result of Wal-Mart’s disposal of a defective shopping cart that injured the plaintiff, notwithstanding the fact that there was evidence that the plaintiff had identified the defective cart for an assistant manager after the accident and requested the assistant manager to preserve the shopping cart and a surveillance videotape that also was destroyed); *Nationwide Lift Trucks, Inc. v. Smith*, 832 So. 2d 824, 826 (Fla. 4th DCA 2002) (striking of the defenses in a case involving a forklift accident where the forklift mechanism that caused the accident was not preserved notwithstanding requests by plaintiffs two months after the accident).

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Conclusion

Morgan Stanley's motion is nothing more than an attempt to distract attention from its own misconduct and to blunt the effects of this Court's March 1 sanctions Order. The motion should be denied.

Dated: March 16, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: 

One of Its Attorneys

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Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
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Chicago, Illinois 60611
(312) 222-9350

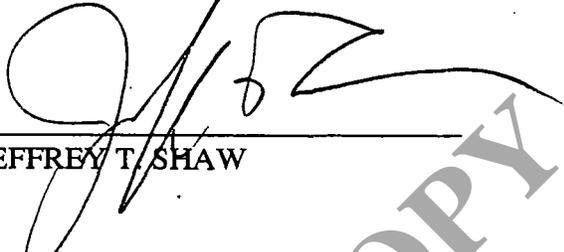
John Scarola
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2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

NOT A CERTIFIED COPY

042491

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to all counsel on the attached list on this 16th day of March, 2005.



JEFFREY T. SHAW

JOHN SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
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Attorneys for Coleman (Parent) Holdings Inc.

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042492

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042493

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AF

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

FILED
05 APR -5 AM 11:02
JANOR 2 JCCY, OF
PALM BEACH COUNTY,
CIRCUIT CIVIL 8

WMA

MORGAN STANLEY'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE COURT'S MARCH 23, 2005 ORDER ON MORGAN STANLEY'S MOTION FOR AN ADVERSE INFERENCE INSTRUCTION

Coleman (Parent) Holding Inc.'s ("CPH") Motion for Reconsideration of the Court's March 23, 2005 Order on Morgan Stanley's Motion for an Adverse Inference Instruction (the "Motion") should be denied because there exists no basis to reconsider this ruling. CPH has deliberately destroyed e-mails, and Morgan Stanley & Co. Incorporated ("Morgan Stanley") is entitled – as this Court has previously ruled – to bring that issue to the attention of the jury in connection with the reliance and damage issues to be tried in Phase I.

A. The Evidence of CPH's Email Destruction is Relevant to the Issues of CPH's Reliance and Damages.

To prevail against Morgan Stanley, CPH must show both reliance and damages. Their destruction of contemporaneous e-mails on these subjects — which undoubtedly existed at the time — has rendered their burden immeasurably easier. Morgan Stanley (despite the problems for which the Court has sanctioned Morgan Stanley) has produced at least *19,000 e-mails* in this case. CPH has produced *fewer than 100*.

E-mails written by CPH as it considered whether to enter into the transaction are vital to Morgan Stanley's defense. These emails, if they still existed, could show that CPH did not rely

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on Morgan Stanley and that CPH was not damaged (this evidence could have included, among other things, evidence concerning CPH's belief as to the benefit of the bargain and how CPH valued Sunbeam stock.) Indeed, there is perhaps no better evidence of the rationale for CPH's consummation of the transaction than the e-mails written as the decision was made.

Unfortunately, when CPH destroyed these e-mails – at a time when *it knew* that litigation was likely – the ability to uncover that evidence was forever lost.

On March 8, 2005, Morgan Stanley filed a Motion for an Adverse Inference Instruction (“MS Adverse Inference Motion”). The basis for this Motion was CPH's systematic and extensive failure to preserve e-mails, including its failure to preserve backup tapes. CPH had an “affirmative duty” to preserve its documents as of the date it knew litigation to be likely. (Feb 15, 2005 Hrg. at 613 (Ex. A).) The evidence adduced through discovery and presented in the MS Adverse Inference Motion clearly shows that CPH knew in April 1998 that litigation would likely arise as a result of the transaction, and had Skadden Arps prepare legal documents that CPH admitted on its privilege log were prepared “in anticipation of litigation.” (July 15, 2004 CPH Privilege Log at Doc. Nos. 458, 460, 533, (Ex. B)). For three years after CPH first anticipated litigation regarding the Sunbeam transaction, it continued to destroy e-mails after only 30 days and overwrite e-mail backup tapes after 60 days, as testified to by Steven L. Fasman, CPH's corporate representative. (Jan. 21, 2004 Fasman Dep. (Ex. C (“Q. From 1998 until the inception of the Andersen litigation, did MAFCO save any e-mail back-up tapes that related to the Sunbeam acquisition of Coleman? A. There are no e-mail backup tapes relating to the Sunbeam acquisition of Coleman.”).) CPH's failure to preserve any backup tapes relating to the Sunbeam transaction insured that it was unable to produce *any* e-mails that could have been used by Morgan Stanley to rebut CPH's arguments on its reliance on Morgan Stanley and on

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damages. (Morgan Stanley's Supplemental Memorandum in Support of Motion for an Adverse Inference Instruction at 3.) The Court's March 25, 2005 Order provides that

Morgan Stanley's Motion for an Adverse Inference Instruction is Denied, without prejudice to *Morgan Stanley's right to present evidence about CPH's email retention practices and its failure to direct that emails related to the Sunbeam transaction be saved* and CPH's right to present evidence of its offer to have a third-party vendor given access to retrieve emails from CPH's system. . .

(Order on Morgan Stanley's Motion for an Adverse Inference Instruction dated March 25, 2005 at 1 ("MS Adverse Inference Order") (emphasis added).) During argument on the Motion, the Court stated: "You're just saying you want to present evidence about the e-mail retention policy and failure to deviate from it in this case, and then argue to the jury that they should draw an adverse inference from that evidence? . . . I have no problem at all with Morgan Stanley's arguing about how Coleman dealt with its e-mails in this case and what evidentiary value that may or may not have for the jury." (Mar. 21, 2005 Hrg. at 4538, 4540. (Ex. D).) Without offering any real basis – other than its belief that the March 25, 2005 order is "unjust" – CPH now seeks reconsideration of this Court's Order.

CPH's request for reconsideration is not supported by any law. CPH argues that, because it may not offer evidence of Morgan Stanley's discovery misconduct during Phase I of the trial, Morgan Stanley should be precluded from presenting evidence regarding "CPH's email retention practices and [CPH's] failure to direct that emails related to the Sunbeam transaction be saved." (Order on Morgan Stanley's Motion for an Adverse Inference Instruction dated March 25, 2005 at 1.) This argument makes no sense, contorts this Court's previous rulings, and ignores the current posture of the case.

The Court has ruled that Morgan Stanley has engaged in discovery misconduct, and, in order to "level the playing field" as a result of this misconduct, entered the default judgment.

(CPH Adverse Inference Order at 11.) As a result of the default judgment, CPH must prove only reliance and damages to prevail during Phase I. Since Morgan Stanley's misconduct does not affect CPH's ability to present its case on reliance and damages, the Court has correctly ruled that CPH can make "no inappropriate reference to litigation misconduct" during Phase I. (See 3/31/05 Tr. at 6274, filed as Ex. A to CPH's Motion.) CPH's argument that it is precluded from mentioning the misconduct conveniently ignores that fact that all Phase I determinations that could have been affected by the misconduct have already been decided in CPH's favor.

CPH's discovery misconduct, on the other hand, goes to the very issues still to be decided during Phase I: reliance and discovery. CPH produced less than 100 pages of emails *total* relating to the Sunbeam transaction.¹ CPH's emails, had they not been deleted, might well have enabled Morgan Stanley to show that CPH did not rely on Morgan Stanley and that CPH was not damaged as claimed. By deliberately overwriting its emails, CPH has deprived Morgan Stanley of this vital evidence, and CPH should be held accountable. While Morgan Stanley believes that this Court should grant an adverse inference instruction based on CPH's willful e-mail destruction, at the very least Morgan Stanley is entitled "to present evidence about CPH's email retention practices and its failure to direct that emails related to the Sunbeam transaction be saved," as the Court ordered. (Order on Morgan Stanley's Motion for an Adverse Inference Instruction dated March 25, 2005 at 1.)

B. John Ashley Should be Permitted to Testify Concerning E-mail Retention, Destruction and Retrieval

CPH, in its Motion, also argues that Morgan Stanley should be precluded from presenting evidence of CPH's e-mail retention and that expert witness John Ashley should not be permitted to testify. As detailed more fully in Morgan Stanley's Opposition To Plaintiff's Motion To Bar

¹ Morgan Stanley, in contrast, has produced over 19,000 pages of emails.

The Expert Testimony Of John F. Ashley, filed on April 4, 2005 and attached as Exhibit E, this argument lacks any legal support.

In response to Morgan Stanley's overwriting of backup tapes, the Court previously ruled that it would read a "conclusive" statement of facts, attached as Exhibit A to the Adverse Inference Order, to the jury. The Court found, in part, that "**E-mails could no longer be retrieved once they were overwritten.**" (Emphasis added.) Since the Court determined conclusively that overwritten e-mails were irretrievable, there was no need for Morgan Stanley to produce a witness to testify to this point (indeed, such testimony would not have been permitted under the Court's Order.)

The Court's March 25 Order quoted above (permitting CPH "to present evidence of its offer to have a third-party vendor given access to retrieve emails from CPH's system") contradicts its Adverse Inference Order, by allowing CPH to show evidence that overwritten e-mail actually is recoverable. As a result of this apparent reversal, Morgan Stanley designated John Ashley, an expert on computer forensics, to (1) show that the Court's finding in Exhibit A that overwritten e-mails cannot be retrieved was correct, and (2) rebut CPH's argument concerning retrieving erased e-mail. Mr. Ashley is the Chief Technical Officer of Corefacts, LLC, and is an expert on e-mail preservation, retention, and destruction.

There is no legal or equitable basis for excluding Mr. Ashley's testimony. The determinations as to the addition of witnesses is based on the extent of the prejudice of the opposing party, as well as the ability to cure any prejudice, the calling party's bad faith, and any possible disruption to the proceedings. *Binger v. King Pest Control*, 401 So.2d 1310, 1313-14 (Fla. 1981). These factors all favor denying CPH's Motion. CPH has not been prejudiced by the date of Morgan Stanley's designation of Mr. Ashley and, indeed, will have the opportunity to

042640

depose Mr. Ashley. There was no bad faith on Morgan Stanley's part and there will be no disruption to the trial by the addition of Mr. Ashley to Morgan Stanley's witness list. Given the Court's determination to allow CPH to present testimony that contradicts the Court's earlier findings, Mr. Ashley's testimony is now relevant and should be permitted to testify.

WHEREFORE, Morgan Stanley respectfully requests an order denying CPH's motion for reconsideration and denying CPH's request to bar John Ashley's testimony.

NOT A CERTIFIED COPY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and hand delivery on this 5th day of April 2005.

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BY:

Rebecca Beynon / *By JMB*

*Counsel for
Morgan Stanley & Co. Incorporated*

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042642

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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND
FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 03 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

VOLUME 5

MORGAN STANLEY & CO., INC.,

Defendant.

TRANSCRIPT OF THE PROCEEDINGS BEFORE
THE HONORABLE ELIZABETH T. MAASS

West Palm Beach, Florida
Tuesday, February 15, 2005
1:25 p.m. - 5:36 p.m.

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Ex. A

00613

1 order entered April 16th of last year
2 required Morgan Stanley to search the
3 oldest full backup that exists for e-mails
4 of certain -- I'm sorry -- for certain
5 identified employees or former employees;
6 required Morgan Stanley to provide its
7 counsel the responses for responsiveness
8 and privilege review all the e-mails that
9 either were dated between February and
10 April 15th of 1998 and all e-mails
11 containing one of 29 keywords; all
12 nonprivileged e-mails responsive to the
13 request had to be produced by May 14th and
14 a privilege log generated and a
15 certificate of compliance completed. The
16 SEC regulations required Morgan Stanley to
17 maintain e-mails readily access -- in
18 readily accessible form for three years.
19 Morgan Stanley knew Sunbeam litigation was
20 likely as of March of 1998. Despite the
21 affirmative duty on Morgan Stanley's part
22 arising out of the litigation to produce
23 its e-mails and contrary to federal law
24 requiring it to preserve the e-mails,
25 Morgan Stanley failed to preserve some

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JENNER & BLOCK

July 15, 2004

Jenner & Block LLP
One IBM Plaza
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Tel 312 222-9350
www.jenner.com

Chicago
Dallas
Washington, DC

*By Federal Express and
By Telecopy (w/o enclosure)*

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

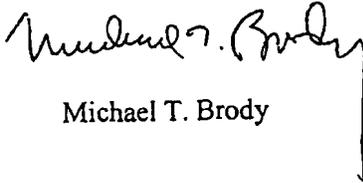
Michael T. Brody
Tel 312 923-2711
Fax 312 840-7711
mbrody@jenner.com

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co.
Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings Inc., et al.*

Dear Tom:

I enclose CPH's revised privilege log. As to entries involving a common interest, we are consulting with counsel to Sunbeam.

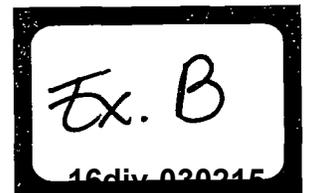
Very truly yours,



Michael T. Brody

MTB:cjg
Enclosure

cc: Joseph Ianno, Esq. (by telecopy)
John Scarola, Esq. (by telecopy)
Jerold S. Solovy, Esq.



**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

**REVISED CPH PRIVILEGE LOG
Dated 07/15/2004**

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
456		07/29/1998	Paul Rowe, Esq.		Attorney-Client, Work Product	Handwritten notes re potential claims against Sunbeam.
457		08/12/1998	Steven Cohen, Esq.		Attorney-Client, Work Product	Draft press release re Sunbeam settlement with S. Cohen's notes.
457	A	08/12/1998	Steven Cohen, Esq.		Attorney-Client, Work Product	Draft letter to Sunbeam's shareholders re Sunbeam settlement with S. Cohen's handwritten notes.
458		08/15/1998	Rita W. Gordon, Esq.	Rachelle Silverberg, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached document.
458	A	04/14/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft response to SEC's requests for information prepared in anticipation of litigation relating to inquiry.
459		04/17/1998	Frank Miller, Esq.	Richard Easton, Esq., Rita W. Gordon, Esq.	Attorney-Client, Work Product, Common Interest	Memorandum re attached draft document.
459	A	00/00/0000	Wachtell Lipton		Attorney-Client, Work Product, Common Interest	Draft response to SEC's requests for information with attorney's notes prepared in anticipation of litigation relating to inquiry.
460		04/16/1998	Rita W. Gordon, Esq.	Frank Miller, Esq., Adam O. Emmerich, Esq.	Attorney-Client, Work Product, Common Interest	Fax re attached document.
460	A	04/16/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft response to SEC's requests for information prepared in anticipation of litigation relating to inquiry.
461		03/06/1998	Wachtell Lipton	Ilene K. Gotts, Esq.	Attorney-Client	Fax re attached document prepared for the purpose of providing legal advice.
461	A	03/06/1998	Ioannis Zervas, Esq.	Ilene K. Gotts, Esq.	Attorney-Client, Common Interest	Fax re attached document prepared for the purpose of providing legal advice.
461	B	00/00/0000	Skadden Arps		Attorney-Client, Common Interest	Draft European pre-merger notification prepared for the purpose of providing legal advice.
461	C	03/13/1998	Skadden Arps		Attorney-Client, Common Interest	Draft European pre-merger notification prepared for the purpose of providing legal advice.
461	D	03/04/1998	Skadden Arps		Attorney-Client, Common Interest	Draft European pre-merger notification prepared for the purpose of providing legal advice.

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**Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.
Morgan Stanley Senior Funding, Inc. v. Coleman (Parent) Holdings Inc., et. al.**

REVISED CPH PRIVILEGE LOG

Dated 07/15/2004

Document No.	Attachment	Date	Author	Recipient	Privilege Asserted	Document Description
530		08/03/1998	Blaine Fogg, Esq.	Adam O. Emmerich, Esq., David Fannin, Stephen Jacobs, Esq., Howard Kristol, Peter Langerman, Barry F. Schwartz, Esq.	Attorney-Client, Work Product, Common Interest	Correspondence re attached draft documents prepared in connection with Sunbeam/Coleman (Parent) settlement.
530	A	08/03/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft exhibits to NYSE application for exception prepared in connection with Sunbeam/Coleman (Parent) settlement.
531		07/30/1998	Adam O. Emmerich, Esq.	Blaine Fogg, Esq.	Attorney-Client, Work Product, Common Interest	Draft letter to NYSE re application for exception prepared in connection with Sunbeam/Coleman (Parent) settlement.
532		07/31/1998	Blaine Fogg, Esq.	Adam O. Emmerich, Esq., David Fannin, Stephen Jacobs, Esq., Barry F. Schwartz, Esq., Allison Amorison, Esq.	Attorney-Client, Work Product, Common Interest	Correspondence re attached draft document prepared in connection with Sunbeam/Coleman (Parent) settlement.
532	A	07/31/1998	Blaine Fogg, Esq.		Attorney-Client, Work Product, Common Interest	Draft letter to NYSE re attached draft letter prepared in connection with Sunbeam/Coleman (Parent) settlement.
532	B	07/31/1998	Blaine Fogg, Esq.		Attorney-Client, Work Product, Common Interest	Draft letter to NYSE re application for exception prepared in connection with Sunbeam/Coleman (Parent) settlement.
533		04/16/1998	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft response to SEC's request for information prepared in anticipation of litigation relating to inquiry.
534		03/09/1998	Sarah Strasser, Esq.		Attorney-Client	Draft European antitrust filing with S. Strasser's handwritten notes prepared for the purpose of providing legal advice.
535		04/15/1999	Eric Golden, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product	Correspondence re attached draft document.
535	A	04/15/1999	Skadden Arps		Attorney-Client, Work Product, Common Interest	Draft brief for Krim litigation.
536		11/05/1998	Eric Golden, Esq.	Michael Schwartz, Esq.	Attorney-Client, Work Product	Correspondence re attached document.
536	A	11/04/1998	Grace M. Aschenbrenner	Eric Golden, Esq., James P. S. Leeshaw (cc)	Attorney-Client, Work Product	Letter re Camden Asset litigation.

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IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

MORGAN STANLEY SENIOR)
FUNDING, INC.,)

Plaintiff,)

vs.)

MacANDREWS & FORBES HOLDINGS,)
INC., and COLEMAN (PARENT))
HOLDINGS, INC.,)

Defendant.)
-----)

VIDEOTAPED DEPOSITION OF
STEVEN L. FASMAN, ESQ.
New York, New York
Wednesday, January 21, 2004

Reported by:
ANDREA L. KINGSLEY, RPR
CSR NO. 001055
JOB NO. 156575



ORIGINAL

0426

1 Fasman
2 from 1998 until the inception of the
3 Andersen litigation in 2001; correct?

4 MR. BRODY: Objection to the form
5 of the question.

6 A. There was a progressive process
7 which did involve in part the purging of
8 old and unneeded e-mails, yes.

9 Q. My question was did you from 1998
10 until the inception of the Andersen
11 litigation on a monthly basis, I'm ignoring
12 the daily stuff now, on a monthly basis
13 overwrite e-mail back-up tapes?

14 A. I think it was every other month.

15 Q. From 1998 until the inception of
16 the Andersen litigation, did MAFCO save any
17 e-mail back-up tapes that related to the
18 Sunbeam acquisition of Coleman?

19 A. There are no e-mail back-up tapes
20 relating to the Sunbeam acquisition of
21 Coleman.

22 Q. Did they save any back-up tapes
23 which contained data which related to the
24 Sunbeam acquisition of Coleman from 1998
25 until the inception of the Andersen

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1 IN THE CIRCUIT COURT FOR THE
2 15TH JUDICIAL CIRCUIT IN AND FOR
 PALM BEACH COUNTY, FLORIDA

3 CASE NO. 03 CA 005045 AI

4 COLEMAN (PARENT) HOLDINGS, INC.,

5 Plaintiff,

6 vs.

7 MORGAN STANLEY & CO., INC.,

8 Defendant.

9 /
10
11 VOLUME 42

12 PROCEEDINGS BEFORE THE HONORABLE ELIZABETH T. MAASS

13
14
15
16
17
18
19 Monday, March 21, 2005

20 Palm Beach County Courthouse

21 Courtroom 11-A

22 205 North Dixie Highway

23 West Palm Beach, Florida 33401

24 9:30 a.m. to 12:25 p.m.

25

042651

Ex. D

1 the jury the implications, the adverse
2 inference --

3 THE COURT: You're not asking for an
4 instruction? You're just saying you want to
5 present evidence about the e-mail retention
6 policy and the failure to deviate from it in
7 this case, and then argue to the jury that they
8 should draw an adverse inference from that
9 evidence?

10 MR. LANCASTER: Yes, with a caveat; that is,
11 we're not asking for an instruction. We believe
12 that, the way we read this law, that would be
13 viewed with close scrutiny, and it would be --
14 I'm not sure it would be viable.

15 But Your Honor has in its order, in the
16 initial order that dealt with our e-mail
17 destruction, indicated that the path that it
18 intended to follow, which was to read a
19 statement to the jury, that there would be no
20 further instruction given, and no other evidence
21 put out.

22 And we believe that if Your Honor is going
23 to read such a statement to the jury, then under
24 the facts of this case and the law, as Your
25 Honor is applying to this case, that we feel

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1 that Your Honor should read a similar statement
2 of facts.

3 And we are going to tender to Your Honor,
4 and we did a revised version of that that should
5 also be read. Because when it is the issue of
6 the loss of e-mails which Your Honor has already
7 indicated supplies the essential element, it's
8 critical, then the parties do stand in that
9 respect on the same footing.

10 In fact, Your Honor, in all due respect, I
11 would submit that we stand on better footing.
12 Because while we have -- and perhaps we have not
13 done a good job of it and perhaps there have
14 been foot faults -- we have restored some
15 quantum of e-mails.

16 And I know that this exasperates Your Honor,
17 but it is --

18 THE COURT: No, I guess it goes back, quite
19 honestly, to when one of Plaintiff's points in
20 the motion for the default judgment is Morgan
21 Stanley seems wholly unwilling to admit that
22 it's committed egregious violations of the
23 agreed order. And to me this is fundamentally
24 different.

25 The e-mail issues here between Coleman and

042653

1 Morgan Stanley are fundamentally different. And
2 I have no problem at all with Morgan Stanley's
3 arguing about how Coleman dealt with its e-mails
4 in this case and what evidentiary value that may
5 or may not have for the jury. But in all
6 honesty, I'm offended that you would attempt to
7 equate the two. Because I think they're totally
8 unrelated.

9 MR. LANCASTER: And I accept that from Your
10 Honor. And I'm not doing it from the standpoint
11 of, necessarily, conduct, but I'm attempting to
12 argue to Your Honor that if you're looking at
13 sort of body of evidence, what is available for
14 a jury to consider? There is e-mail as a result
15 of both, I guess, discovery and discovery orders
16 by this Court, and whatever else mix there is
17 that brought these e-mails to potentially the
18 jury.

19 But on the Coleman side, there is no e-mail
20 off those backup tapes, because they brazenly
21 walk into court and say, we just destroyed it
22 all.

23 So in that respect we believe that given the
24 Court's -- the way you're applying the law of
25 the case, statement of facts you're going to

042654

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

**MORGAN STANLEY'S OPPOSITION TO PLAINTIFF'S MOTION
TO BAR THE EXPERT TESTIMONY OF JOHN F. ASHLEY**

Coleman (Parent) Holding Inc.'s ("CPH") Motion to Exclude Expert Witness John Ashley (the "Motion") should be denied. Morgan Stanley & Co. Incorporated's ("Morgan Stanley") designation of Mr. Ashley has not prejudiced CPH in any way and was made in good faith. This Motion is nothing more than an attempt by CPH to present evidence that directly contradicts a holding by this Court without affording Morgan Stanley the chance for rebuttal. There is no basis in the law for such an exclusion and it should therefore be denied.

ARGUMENT

1. On March 1, 2005, this Court entered the Order on CPH's Motion for Adverse Inference Instruction due to Morgan Stanley's Destructions of E-mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, and Motion for Additional Relief and Order on Plaintiff's Motion to Compel Further Discovery Regarding Morgan Stanley's Destruction and Non-Production of E-mails (the "Adverse Inference Order"). In that Order, the Court found, in part, that Morgan Stanley's actions in overwriting backup tapes containing e-mails "justif[ied] sanctions." (Adverse Inference Order at 11.)

042655

Ex. F

16div-030224

2. As a result of these and other actions, the Court ruled that it would read a statement of facts, attached as Exhibit A to the Adverse Inference Order, to the jury. The Court ruled that the findings in Exhibit A “shall be conclusive.” (*Id.* at 13.) Exhibit A details the Court’s findings concerning, among other things, Morgan Stanley’s practice of overwriting emails. Most notably, the Court found that “**E-mails could no longer be retrieved once they were overwritten.**” (Emphasis added.) Given the twin rulings that overwritten e-mails were irretrievable and that this fact was a conclusive finding by the Court, Morgan Stanley was precluded from presenting a witness on this issue at trial. Indeed, as overwritten emails *are* irretrievable, as the Court correctly found, there would have been no reason to have expert testimony on this matter even if that testimony would have been proper.

3. On March 8, 2005, Morgan Stanley filed a Motion for an Adverse Inference Instruction. The basis for this Motion was CPH’s systematic and extensive failure to preserve e-mails, including its failure to preserve backup tapes. The evidence presented in this Motion clearly showed that for three years after CPH anticipated litigation regarding the Sunbeam transaction, it continued to destroy e-mails after only 30 days and overwrite e-mail backup tapes after 60 days. (Morgan Stanley’s Supplemental Memorandum in Support of Motion for an Adverse Inference Instruction at 3.) The Court denied this Motion on March 25, 2005, ordering that

Morgan Stanley’s Motion for an Adverse Inference Instruction is Denied, without prejudice to Morgan Stanley’s right to present evidence about CPH’s email retention practices and its failure to direct that emails related to the Sunbeam transaction be saved and CPH’s right to present evidence of its offer to have a third-party vendor given access to retrieve emails from CPH’s system. . . .

(Order on Morgan Stanley’s Motion for an Adverse Inference Instruction dated March 25, 2005 at 1.)

4. This Order directly contradicts the Court's earlier finding of fact, as embodied in Exhibit A to the Adverse Inference Order. In those findings, deemed "conclusive" by the Court, the Court found that once e-mails are overwritten, they cannot be recovered. (Adverse Inference Order, Exhibit A at 1.) Now, in direct contravention of its conclusive finding that overwritten e-mails cannot be restored, the Court has ruled that CPH may present evidence concerning CPH's offer to have the e-mails restored. There would be no need to call Mr. Ashley if the Court were to instruct the jury, as the Court was prepared to do previously, that e-mails cannot be retrieved once they are overwritten. Given the Court's surprising and unexpected about-face, however, Morgan Stanley should otherwise be entitled to present evidence, including an expert on computer forensics, to (1) show that the Court's finding in Exhibit A that overwritten e-mails cannot be retrieved was correct, and (2) rebut CPH's argument concerning retrieving erased e-mail. Morgan Stanley believes (and the expert testimony will prove) that the Court's conclusion regarding e-mail retrieval was correct and that CPH should not be able to offer evidence to attempt to show otherwise. However, if CPH is entitled to offer such evidence, Morgan Stanley should clearly be allowed to rebut such evidence.

5. The case law supports Morgan Stanley's argument. "We recognize that excluding the testimony of a witness is one of the most drastic of remedies which should be invoked only under the most compelling of circumstances." *Department of Health and Rehabilitative Services v. J.B. By and Through Spivak*, 675 So.2d 241, 244 (Fla. 4th DCA 1996). Here, there is no legal or equitable basis for such an exclusion. The Florida Supreme Court has ruled that determinations as to the addition of witnesses is up to the discretion of the trial court. This determination is to be based on the extent of the prejudice of the opposing party, as well as the ability to cure any prejudice, the calling party's bad faith, and any possible disruption to the

proceedings. *Binger v. King Pest Control*, 401 So.2d 1310, 1313-14 (Fla. 1981); *Berlin v. Roldan*, 786 So.2d 649, 650 (Fla. 4th DCA 2001) (trial court erred in not allowing the testimony of an unlisted witness when doing so would “not be unfair to the objecting party”).

6. All of the *Binger* factors favor denying CPH’s Motion. CPH has not been prejudiced by the date of Morgan Stanley’s designation of Mr. Ashley as an expert witness. CPH will have the opportunity, if it wishes, to depose Mr. Ashley, and to plan its litigation strategy based on that testimony. There was no bad faith on Morgan Stanley’s part and there will be no disruption to the trial by the addition of Mr. Ashley to Morgan Stanley’s witness list. Given the Court’s March 1 Order, which correctly stated that overwritten e-mails are not recoverable, there was no reason to believe that Mr. Ashley’s testimony would be necessary (or even permitted). With the March 25 Order in which the Court said it would allow CPH to present testimony that contradicts the Court’s findings, Mr. Ashley’s testimony became relevant, and Morgan Stanley subsequently designated him as an expert witness. Thus, there is simply no reason under principles of fairness or Florida law to exclude Mr. Ashley’s testimony.

WHEREFORE, Morgan Stanley respectfully requests an order denying CPH’s motion to exclude expert witness John Ashley. Alternatively, Morgan Stanley respectfully requests that the Court instruct the jury that e-mails cannot be retrieved once they are overwritten, in which case Morgan Stanley will have no need to call Mr. Ashley.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by hand delivery facsimile and hand delivery on this 4th day of April, 2005.

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4-13

IN THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO.
INCORPORATED,

Defendant.

KUM

FILED
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PALM BEACH COUNTY, FL
CIRCUIT CIVIL 8

**DEFENDANT'S MOTION FOR RECONSIDERATION OF THE
COURT'S SANCTION ORDERS AND MEMORANDUM OF LAW**

Morgan Stanley & Co. Incorporated ("Morgan Stanley") moves the Court for reconsideration and modification of its Sanctions Orders. In support of this motion, Morgan Stanley states:

1. Evidence of Morgan Stanley's litigation misconduct should not be introduced in either the liability or the punitive damages phase of the trial. To do so will essentially authorize the jury to punish Morgan Stanley for violations of this Court's orders instead of the wrongful conduct alleged by the Plaintiff in the First Amended Complaint, and prejudice the jury in regard to the compensatory damages claim. Because the litigation misconduct described by the Court is not related to the material issues of the underlying tort claim, nor has it been shown to conceal any smoking gun evidence relevant to Plaintiff's underlying tort claims, introduction of such evidence would violate Morgan Stanley's due process rights under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Sections 2 and 9 of the Florida Constitution. See State Farm Ins. Co. v. Campbell, 123 S. Ct. 1513, 1524 (2003) (the "reprehensibility guidepost [of BMW of N. Am. v. Gore, 517 U.S. 559 (1996)]

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does not permit courts to expand the scope of the case so that a defendant may be punished for any malfeasance”); see also Atkinson v. Orkin Exterminating Co., 604 S.E.2d 385, 392 (S.C. 2004) (Placing Morgan Stanley’s litigation misconduct before the jury will permit CPH “to unfairly exaggerate the degree of reprehensibility” of Morgan Stanley’s conduct with regard to the underlying tort claims).

2. The de facto default on liability for both compensatory and punitive damages directly flowing from the Court’s orders is an unwarranted sanction and deprives Morgan Stanley of its statutory and constitutional rights to defend itself against CPH’s underlying tort claim and its punitive damage claim. The purpose of Florida Rule of Civil Procedure 1.380(b) is to ensure compliance with the discovery rules and any order compelling discovery, not to punish or penalize the party in violation. The Court did not find that Morgan Stanley’s litigation misconduct prevented CPH from prosecuting its claims for the underlying torts. Because punitive damages are by definition penal in nature, the Court’s award of attorneys’ fees and its virtual default constitutes **double punishment** against Morgan Stanley, see Smith v. Wade, 461 U.S. 30, 94 (1983) (O’Connor, J. dissenting) (“awards of compensatory damages and attorney’s fees already provide significant deterrence”), and further deprives Morgan Stanley of:

a) its right to a trial by jury on punitive damages, see Orkin Exterminating Co. of S. Fla. v. Truly Nolen, Inc., 117 So. 2d 419, 422 (Fla. 3d DCA 1960) (equity court is not permitted to award punitive damages because “any different holding would deprive the defendant of his constitutional right of a jury trial before punishment”);

b) due process and a fair trial before punishment in the form of punitive damages is imposed, including its right to confront witnesses in this quasi-criminal proceeding; see Campbell, 123 S. Ct. at 1520 (recognizing that punitive damages “serve the same purposes as criminal penalties”); Honda Motor Co. v. Oberg, 512 U.S. 415, 420 (1994) (“Our recent cases have

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recognized that the Constitution imposes a substantive limit on the size of punitive damages awards"); id. ("the Due Process Clause imposes a limit on punitive damages awards") U.S. Const. Ameds. V, VI, XIV; Fla. Const. Art. 1 §§ 2, 9;

c) the right to contest the degree and nature of its alleged misconduct and offer evidence and circumstances in mitigation, see Humana Health Ins. Co. of Fla. v. Chipps, 802 So. 2d 492, 496 (Fla. 4th DCA 2001) (trial court "improperly prevented Humana from introducing mitigating evidence to rebut testimony that Humana's managed care practices violated industry standards"); id. (in assessing punitive damages, the jury should have been permitted to consider "evidence which would have had the effect of 'reducing or softening the moral or social culpability attaching to [the defendant's] act..."); see also St. Regis Paper Co. v. Watson, 428 So. 2d 243, 246-47 (Fla. 1983) (in assessing punitive damages, a jury should consider "the nature, extent, and enormity of the wrong, the intent of the party committing it and all circumstances attending the particular incident, as well as any mitigating circumstances") (citation omitted); Owens-Corning Fiberglas Corp. v. Ballard, 749 So. 2d 483, 484-85 (Fla.1999);

d) Its due process right to present every available defense to this quasi-criminal proceeding. Lindsey v. Normet, 405 U.S. 56, 66 (1972) (Due Process requires that there be an opportunity to present every available defense), and US v. Armour, 402 U.S. 673, 682 (1971) (a defendant's "right to litigate the issues raised" is "a right guaranteed to him by the Due Process Clause");

e) its constitutional right to have a reviewing court determine the reprehensibility of its conduct, in that, unless Morgan Stanley is permitted to mount a meaningful defense to CPH's punitive damages claim, there is no way to assess how reprehensible Morgan Stanley actually was. See Gore, 517 U.S. at

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575 (exemplary damages imposed on a defendant should reflect the enormity of his offense. This principle reflects the accepted view that some wrongs are more blameworthy than others); *id.* at 576 (“To be sure, infliction of economic injury, especially when done intentionally through affirmative acts of misconduct, ... or when the target is financially vulnerable, can warrant a substantial penalty. But this observation does not convert all acts that cause economic harm into torts that are sufficiently reprehensible to justify a significant sanction in addition to compensatory damages”);

f) the right to force CPH to prove entitlement by **clear and convincing** evidence, see § 768.725, Fla. Stat.; and

g) the right to contest corporate liability for punitive damages, see Schropp v. Crown Eurocars, 654 So. 2d 1158, 1161 (Fla. 1995); Mercury Motors Express v. Smith, 393 So. 2d 545 (Fla. 1981).

3. The constitutional and statutory problems presented by the Court’s Orders could be alleviated by the following corrective actions:

a) withdrawing the decision to read a statement to the jury concerning Morgan Stanley’s litigation misconduct; and

b) rescinding that part of the Court’s order which deems certain paragraphs of the First Amended Complaint “established”.

4. Without waiving any of the foregoing, Morgan Stanley submits that in the punitive damages phase of this trial it should be allowed to contest all of the underlying facts supporting the claims for aiding and abetting and conspiracy to commit fraud, as well as issues regarding the corporate liability for punitive damages and the findings regarding litigation misconduct, both as to entitlement and in mitigation of the amount of punitive damages.

5. By the same token, the jury may not consider any evidence of Morgan Stanley’s litigation misconduct to punish Morgan Stanley. See Jim Gash, Punitive

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Damages, Other Acts Evidence, and the Constitution, 2004 Utah L. Rev. 1191, 1263 (2004) ("the jury ... may not use extraterritorial other acts evidence to punish a defendant, ... the trial court must be similarly required to instruct the jury that it may not use even local other acts to punish a defendant. Whereas the former instruction is mandated by federalism principles, the latter is required by due process") (emphasis added).

6. Morgan Stanley further contests the factual findings and conclusions set forth in the Court's order regarding litigation misconduct and that the failures to comply cannot be cured. See Affidavit of Richard Anfang attached hereto as Exhibit A.

WHEREFORE, Morgan Stanley respectfully requests that this Court reconsider its March 1st and 23rd Orders.

In further support of this motion, Morgan Stanley submits the following memorandum of law to highlight particular issues raised in herein.

MEMORANDUM OF LAW

By imposing these drastic sanctions on Morgan Stanley, the Court exceeded its authority under Florida law and violated Morgan Stanley's constitutional rights. Moreover, the Court's Orders invest in the jury the authority to determine the amount in which Morgan Stanley should be punished for litigation misconduct – a power that the jury simply does not have under Florida law. This unprecedented shift of power from the bench (which has already punished Morgan Stanley with a virtual default) to the jury box (for a second punishment) violates Morgan Stanley's rights and precludes Morgan Stanley from obtaining a fair trial on Plaintiff's punitive damages claim. Stripped of its due process rights, Morgan Stanley will suffer irreparable harm if the trial proceeds on the uneven playing field set by the Sanctions Orders.

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ARGUMENT

I. EVIDENCE OF MORGAN STANLEY'S LITIGATION MISCONDUCT SHOULD NOT BE INTRODUCED INTO EVIDENCE IN EITHER THE LIABILITY OR THE PUNITIVE DAMAGES PHASE OF THE TRIAL

A. Florida Law is Clear that Evidence Related to Pretrial Litigation Misconduct Generally Should Not be Submitted to the Jury.

This Court's Sanctions Orders must be reconsidered because they improperly allow the Courts findings in respect to pretrial litigation misconduct by Morgan Stanley to be introduced to the jury. Florida law grants only courts, not juries, the authority to sanction litigants for litigation misconduct. See Fla. R. Civ. P. 1.380; Emerson Elec. Co. v. Garcia, 623 So. 2d 523, 525 (Fla. 3d DCA 1993) ("an appropriate sanction was a matter for the court and not for the jury."). For precisely that reason, Florida courts have long held that "[e]vidence relating to the history of pretrial discovery should normally not be a matter submitted for the jury's consideration on the issues of liability." Amlan, Inc. v. Detroit Diesel Corp., 651 So. 2d 701, 703 (Fla. 4th DCA 1995) (citing Garcia).

The Fourth District recognized a limited exception to the rule that juries should not hear evidence regarding discovery misconduct in General Motors Corp. v. McGee, 837 So. 2d 1010, 1036 (Fla. 4th DCA 2003). That case is factually distinguishable, however, and the court's reliance on McGee in issuing its Sanctions Orders was misplaced. In McGee, the Fourth District recognized that evidence of pretrial discovery conduct normally should not be submitted to the jury. Nevertheless, under the facts and circumstances of that case, the Fourth District held that evidence of discovery abuse was properly admitted when the defendant intentionally withheld a highly relevant document that effectively established an element of the plaintiff's claim; to wit: that General Motors knew about the dangers associated with its product but did nothing

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about it, and thus subordinated human life to corporate profit. Id. at 1035. Only in the face of all of this evidence about the substance of the withheld document did the Fourth District hold that it was proper to allow the jury to consider concealment of the document. See also Amlan, 651 So. 2d at 703 (distinguishing cases where “the misconduct alleged is the destruction or unexplained disappearance of crucial evidence” from the general rule that evidence of pretrial discovery conduct is not for the jury’s consideration).

McGee did not hold that it is permissible to allow a party to present the jury with evidence of litigation misconduct whenever a plaintiff seeks punitive damages, and it does not support the Court’s Sanctions Orders here – where there were no findings that Morgan Stanley intentionally withheld documents that it knew supported CPH’s claims. To the contrary, “for all we know, any evidence [that was not produced] might be legally irrelevant to the issues framed in the pleadings.” New Hampshire Ins. Co. v. Royal Ins. Co., 559 So. 2d 102, 103 (Fla. 4th DCA 1990). For this Court to allow CPH to ask the jury for punitive damages based on litigation misconduct, in the absence of a showing of a “concealment of offensive conduct,” is tantamount to allowing the jury to award punitive damages as a sanction for litigation misconduct. Such a ruling allows the jury to usurp the role of the Court, in contravention of Florida law.

Allowing the jury to consider litigation misconduct is not only inappropriate; it is unquestionably prejudicial because of the obvious tendency of this sort of evidence to distract the jury from the underlying issues and taint the jury’s perception of the litigants involved. See Emerson Electric Co. v. Garcia, 623 So. 2d 523, 525 (Fla. 3rd DCA 1993) (jury’s verdict was tainted because the plaintiff’s counsel was permitted to accuse the

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defendant's counsel of discovery abuse); see also Werbungs Und Commerz Union Anstalt v. Collectors' Guild, 930 F.2d 1021, 1027 (2d Cir. 1991) (reversing jury verdict because court "permitted the jury to penalize [the defendant] for discovery abuse"); id., at 1028 (Mahoney, J., concurring in part and dissenting in part) ("the instruction regarding discovery abuse by [the defendant] improperly delegated to the jury the authority to participate, in effect, in the imposition of discovery sanctions that are the proper province of the district court"); Jim Gash, Punitive Damages, Other Acts Evidence, and the Constitution, 2004 Utah L. Rev. 1191, 1212 (2004) (introduction of evidence of a defendant's misconduct separate and apart from the allegations of the complaint "creates a real danger that it will be used improperly to punish the party against whom it is being offered. Consequently, whether or not the other acts evidence is relevant, it is almost always highly prejudicial, even devastating, to the party against whom it is offered. This naturally creates powerful incentives for parties to seek to introduce such evidence against their adversaries.").

B. Evidence Supporting Punitive Damages Must Relate to the Conduct That Provides the Basis for CPH's Claims.

The Court's Sanctions Orders allow the jury to consider the Court's findings of litigation misconduct when determining the propriety of punitive damages, in violation of the Due Process Clauses of the Fourteenth Amendment. See State Farm Mutual Auto Insurance v. Campbell, 538 U.S. 408 (2003). Campbell emphasizes the Supreme Court's concern that evidence used to justify punitive damage awards must be closely related to the conduct that gives rise to the plaintiff's claim for punitive damages. "A defendant's dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages. A defendant should be

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punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business." Id. at 422-23.

Here, the approach employed by the Court expressly authorizes the jury to award punitive damages based on litigation conduct, rather than the conduct that gives rise to CPH's claims (*i.e.*, Morgan Stanley's alleged participation in the Sunbeam fraud). Allowing the jury to consider litigation misconduct when deciding punitive damages creates the very real possibility that the jury will award punitive damages based on conduct wholly unrelated to CPH's claims. And, of course, once findings of litigation misconduct are submitted to the jury, it will be impossible for any reviewing court to determine the basis of any subsequent punitive damages award. See id. (rejecting argument that dissimilar evidence submitted to the jury did not form the basis of the punitive damages award.)

As such, it would violate Morgan Stanley's due process rights if the Court reads any statement concerning litigation misconduct to the jury, or if CPH is permitted to introduce any evidence of that litigation misconduct. Accordingly, the Court should reconsider and withdraw its decision to permit the jury to hear about and consider Morgan Stanley's litigation misconduct in any part of the trial.

II. **THE COURT'S SANCTIONS ORDERS ARE IMPROPER, OVERBROAD, AND VIOLATE BOTH FLORIDA LAW AND MORGAN STANLEY'S CONSTITUTIONAL RIGHTS.**

A. **The Court's Sanctions Are Overly Harsh and Not Commensurate with the Litigation Misconduct Found.**

It is well established that discovery sanctions must be commensurate with discovery misconduct. See Garden-Aire Vill. Sea Haven v. Decker, 433 So. 2d 676, 677 (Fla. 4th DCA 1983) (citing Hart v. Weaver, 364 So. 2d 524 (Fla. 2d DCA 1978)),

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and overturning entry of default judgment as a discovery sanction). There can be no question that the Court's Sanctions Orders impose drastic sanctions on Morgan Stanley. Indeed, the Court's sanctions deprive Morgan Stanley of any meaningful ability to defend against CPH's claims – including CPH's claim for punitive damages. By entering a de facto default on most of the elements of CPH's claims, the Court has so thoroughly stacked the deck that it would be impossible for Morgan Stanley to receive a fair and impartial trial. Put simply, the Court has imposed the harshest of sanctions.

The Court, however, never made any finding that Morgan Stanley's litigation misconduct actually affected CPH's ability to prosecute its claims for the underlying torts. It is axiomatic that Morgan Stanley's failure to produce documents could only have hindered CPH's prosecution if the documents that Morgan Stanley failed to produce were relevant to CPH's underlying tort claims.¹ For all anyone knows, the emails that have not been found – and that Morgan Stanley has requested additional time to retrieve and produce – may have nothing to do with any issue in this case and, for all anyone knows, might actually support Morgan Stanley's defense.

¹ The Sanctions Orders are also overbroad in that they purport to punish Morgan Stanley for the alleged violation of SEC regulations. See March 23 Order at 10 ("MS & Co. desperately wanted to hide an active SEC inquiry into its email retention practices."). Any discovery misconduct as it relates to the SEC, including Morgan Stanley's violation of SEC regulations, is inadmissible under the preemption doctrine established by Buckman Co. v. Plaintiffs' Legal Commission, 531 U.S. 341, 350 (2001). The Buckman Court held that allegations of fraud on federal agencies "inevitably conflict" with the federal policy of giving federal agencies broad discretion to balance their objectives in regulating disclosures made to them. Thus, the Supreme Court held that state law fraud-on-the-agency claims conflict with, and are therefore preempted by, federal law, finding that "[s]tate-law fraud-on-the-FDA claims inevitably conflict with the FDA's responsibility to police fraud consistently with the Administration's judgment and objectives." Id. at 350.

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Thus, the Court has improperly issued "death penalty" sanctions without anything more than the possibility that the withheld documents could have been relevant. See generally New Hampshire Ins. Co. v. Royal Ins. Co., 559 So. 2d 102, 103 (Fla. 4th DCA 1990) (reversing judgment entered as discovery sanction because party requesting discovery failed to show prejudice). The Court erred in taking such a leap, and the consequences of the Court's error are dire – Morgan Stanley's rights under Florida law, the Florida and United States Constitutions have been violated.²

The purpose of Florida Rule of Civil Procedure 1.380(b) is to ensure compliance with the discovery rules and any court orders compelling discovery, not to punish or penalize the party in violation. See Garden-Aire Vill. Sea Haven v. Decker, 433 So. 2d 676, 677 (Fla. 4th DCA 1983) (citing Allstate Ins. Co. v. Biddy, 392 So. 2d 938 (Fla. 2d DCA 1980) ("The purpose of reposing in the trial court the authority to enter a default is

² The Court's Sanctions Orders deprive Morgan Stanley of its day in court and thus are excessive. See Baker v. General Motors Corp., 86 F.3d 811, 817 (8th Cir. 1996) (internal citations omitted), rev'd on other grounds, 522 U.S. 222 (1998) ("As this court has stated previously, '[t]here is a strong policy favoring a trial on the merits and against depriving a party of his day in court.' ... The sanction in this case failed to achieve a balance between the policies of preventing discovery delays and deciding cases on the merits. Such a balance recognizes that the opportunity to be heard is a litigant's 'most precious right and should be sparingly denied.' ... GM was not given the right to be heard. Instead, the jury was asked, essentially, to place a monetary value on the loss of human life. Before issuing such a sanction, fairness required the court to consider whether a more 'just and effective' sanction was available. ... In this situation, other, less severe sanctions (including monetary fines against GM and continuances for the plaintiffs) were both available and appropriate. While we do not condone GM's failure to meet its discovery obligations, we find that the sanction chosen by the district court was simply too severe for the facts presented and should have been drawn more narrowly. ... By providing that the fuel pump was defective and continued to operate here, the sanction forced the jury to find for the plaintiffs. Although the case ostensibly proceeded to trial on the issue whether the defect 'directly caused or directly contributed to cause' Garner's death, in effect, the jury instructions had already decided the matter for the jury. Because the district court abused its discretion in entering such a broad sanction, we reverse for imposition of a lesser sanction and for a new trial.").

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to ensure compliance with its order, not to punish or penalize"); see also Carr v. Reese, 788 So. 2d 1067, 1072 (Fla. 2d DCA 2001) (reversing default judgment entered as discovery sanction); United Servs. Auto. Ass'n v. Strasser, 492 So. 2d 399, 402 (Fla. 4th DCA 1986) (same). Here, the Court issued sanctions that far exceed those required to ensure compliance with the Court's discovery orders and, by so doing, crossed the forbidden line into the realm of punishment.

B. The Sanctions Orders Impermissibly Instruct the Jury to Award Punitive Damages and Preclude Morgan Stanley from Introduction Mitigating Evidence.

The law is clear that the Court cannot instruct the jury to award punitive damages. See Humana Health Ins. Co. of Fla. v. Chipps, 802 So. 2d 492 (Fla. 4th DCA 2001); see also FSJI PD 1 a.(2)(a) ("Punitive damages are warranted if you find by clear and convincing evidence ...") (emphasis added). And although the Court may not be proposing to give that exact instruction, the Court's proposed instructions are different only in form, not in substance.³ The Court has held that the jury will be instructed that it must take as true *for all purposes* the Court's findings that Morgan Stanley has engaged in the conduct alleged in the First Amended Complaint. In other words, the jury will effectively be instructed that the Court has all but found that punitive damages are

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³ Although the Court has repeatedly stated that its orders were not defaults, the Court has on at least one occasion noted that its Order was effectively a default. Hrg. Tran. of March 31, 2005 at p 11 In any event, describing the effect of the Orders as anything other than a default clearly fails the "duck" test. See Florida Bar v. Neiman, 816 So. 2d 587, 599 (Fla. 2002) ("In common parlance, Neiman's activities fail the 'duck' test. That is, in common parlance, one would expect that if it looks like a duck, and walks, talks, and acts like a duck, one can usually safely assume it is a duck"); North Broward Hosp. Dist. v. Eldred, 466 So. 2d 1210, 1211 (Fla. 4th DCA 1985) ("we are convinced that if it looks, walks, quacks and swims like a duck, that is what it is").

appropriate⁴, thus denying Morgan Stanley of any of the constitutional protections accorded a defendant in this quasi-criminal proceeding. See Campbell, 123 S. Ct. at 1520 (recognizing that punitive damages “serve the same purposes as criminal penalties”); Oberg, 512 U.S. at 420 (recognizing that the Court has strongly emphasized the importance of the procedural component of the Due Process Clause in dealing with punitive damages issues).

In Humana, the trial court struck the defendant’s pleading as a sanction for discovery misconduct and entered a default judgment. 802 So. 2d at 494. At trial, the sole issue for the jury was damages. After the close of the evidence, the court instructed the jury “that all of the other factors in the standard jury instruction on punitive damages were established as a matter of law, and that [the plaintiff was] ‘entitled’ to recover both compensatory and punitive damages as a matter of law.” Id. at 495. The court further instructed the jury that “Humana’s conduct was ‘so gross and flagrant as to show a reckless disregard of human life or the safety of person exposed to the effects of its conduct’” and that “Humana’s conduct ‘showed such an entire lack of care that Humana must have wantonly and recklessly disregarded the safety and welfare of the public.’” Id. at 496. The court did not instruct the jury that it had the discretion not to award punitive damages. Id. Not surprisingly, the jury awarded approximately \$1.1 million in compensatory damages and \$78.5 million in punitive damages against Humana. Id.

⁴ In order for the case to proceed to the punitive phase, the jury will also be required to find the elements of reliance and damages by clear and convincing evidence. See Defendant’s Motion to Clarify the Proper Scope of the Liability and Punitive Phases of Trial.

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On appeal, the Fourth District held that the trial court's instructions on punitive damages invaded the clear province of the jury by characterizing the conduct of Humana. Id. at 495-96 (court's instructions "interfered with the jury's fact-finding function by characterizing and summarizing the evidence"). In reaching this conclusion, the Fourth District emphasized that even though the trial court had entered a default judgment on the entitlement to punitive damages, "[t]he jury could have awarded no punitive damages if it had determined that Humana's conduct was not as egregious as the court's instruction made it out to be." Id. Thus, the court held that: "While there is overlap between the issues of entitlement to punitive damages and the amount of such damages to be awarded, care should have been taken to let the jury arrive at its own decision regarding the egregiousness of the defendant's conduct." Id. (citing Bankers Multiple Line Ins. Co. v. Farish, 464 So. 2d 530, 532 (Fla. 1985)).

The Fourth District further held that the trial court "improperly prevented Humana from introducing mitigating evidence to rebut testimony that Humana's managed care practices violated industry standards." Humana, 802 So. 2d at 496. Evidence of this sort was relevant to the egregiousness of Humana's conduct and could have impacted the punitive damages award. Id. Thus, the Fourth District held that the jury should have been permitted to consider "evidence which would have had the effect of 'reducing or softening the moral or social culpability attaching to [the defendant's] act...'" McClelland v. Climax Hosiery Mills, 252 N.Y. 347, 169 N.E. 605, 608 (1930) (Cardozo, C.J., concurring); see also St. Regis Paper Co. v. Watson, 428 So. 2d 243, 246-47 (Fla. 1983) (holding the jury, in assessing punitive damages should consider 'the nature, extent, and enormity of the wrong, the intent of the party committing it and all

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circumstances attending the particular incident, as well as any mitigating circumstances') (citation omitted)." Id.

In sum, therefore, the Fourth District held that: (i) a trial court may not interfere with the jury's fact finding role with respect to punitive damages by characterizing the defendant's conduct and summarizing the evidence that would support a punitive damages award; and (ii) a defendant defending a punitive damages claim must be allowed to present mitigating evidence regarding reprehensibility. The Court's Sanctions Orders violate both of these principles. At a minimum, Humana mandates that this Court instruct the jury that the jury has the discretion not to award punitive damages and that the Court allow Morgan Stanley to put on evidence to rebut CPH's claim that punitive damages are warranted in the first instance, and further to put on evidence to defend against the amount of punitive damages, even if that evidence conflicts with the Court's default findings.

C. The Sanctions Orders Violate Morgan Stanley's Constitutional Rights.

This Court's decision on how it intends to conduct the trial of this case necessarily deprives Morgan Stanley of its right to a fair trial on the issue of punitive damages. As the United States Supreme Court has recognized, punitive damages are imposed to redress the state's interest in punishing and deterring unlawful conduct and therefore serve the same purposes as criminal penalties. State Farm Mut. Auto Ins. v Campbell, 538 U.S. 408, 416 (2003). Unlike criminal defendants, however, civil defendants "have not been accorded the protections applicable in a criminal proceeding." Id. at 417-18. As a result, the Supreme Court has expressed grave concern "over the imprecise manner in which punitive damages systems are

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administered.” Id. There is also concern for the potential of juries to “use their verdicts to express biases against big businesses, particularly those without strong local presences.” Id. at 417 (quoting Honda Motor Co v. Oberg, 512 U.S. 415, (1994)). This danger is exacerbated by vague instructions and lack of appropriate guidance for juries in their duty of “assigning appropriate weight to evidence that is relevant and not evidence that is only tangential or only inflammatory.” Id.

In this case, reading the Court’s findings during trial and permitting Plaintiff to bolster those findings with (in accordance with the Court’s statements during hearings) un rebuttable evidence, the Court’s instructions will undoubtedly serve to inflame and unduly prejudice the jury in its consideration of whether to award punitive damages against Morgan Stanley. The Court has relieved CPH of any burden of proving serious misconduct and has indicated that it will instruct the jury that Morgan Stanley is guilty of numerous inflammatory charges made by CPH, including but not limited to the Court’s findings that:

- Morgan Stanley developed a strategy for Sunbeam to use its “fraudulently-inflated” stock in the acquisition of Coleman.
- Morgan Stanley decided not to correct “material misrepresentations.”
- Morgan Stanley assisted Sunbeam in “concealing” problems.
- Morgan Stanley provided Sunbeam with a “plan that would allow [it] to conceal [the] fraud.”
- “Morgan Stanley’s strategy was doubly deceptive.”
- “Morgan Stanley prepared and provided CPH with false financial and business information.”
- “Morgan Stanley misrepresented Sunbeam’s financial performance.”

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- “Morgan Stanley did not correct any of the false and misleading statements it and Sunbeam had made.”
- “[W]ith Morgan Stanley’s knowledge and assistance, Sunbeam prepared and issued a false press release that affirmatively misstated and concealed Sunbeam’s true condition.”
- “As Morgan Stanley was fully aware, the March 19, 1998 press release was false, misleading, and failed to disclose material information.”
- Morgan Stanley knew that if the transactions did not close, it “would not be paid its \$10.28 million fee for the Coleman acquisition or its \$22.5 million fee for underwriting the subordinated debenture offering.”
- “Morgan Stanley received \$22.5 million for the subordinated debenture offering and \$10.28 million for the Coleman acquisition.”
- “Morgan Stanley participated in a scheme to mislead CPH and others and cover up the massive fraud at Sunbeam until Morgan Stanley and Sunbeam could close the purchase of Coleman.”
- “Morgan Stanley provided CPH with false information.”
- “Morgan Stanley also actively assisted Sunbeam in concealing Sunbeam’s disastrous first quarter ...”
- “Morgan Stanley knew that its statements to were materially false and misleading and omitted the true facts.”
- “Morgan Stanley intended that CPH rely on Morgan Stanley’s representations concerning Sunbeam.”
- “Morgan Stanley knew of Dunlap’s fraudulent scheme and helped to conceal it.”
- “Morgan Stanley “script[ed] Dunlap’s false public statements.”
- “Morgan Stanley conspired with Dunlap and other senior Sunbeam executives to conceal the truth about Sunbeam’s financial performance and business operations.”
- “Morgan Stanley committed overt acts in furtherance of the conspiracy.”

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The Court has stated that it will instruct the jury that these unproven facts must be taken as true for all purposes and that the jury may consider these "facts" – as to which no witness will have testified and no documentary evidence submitted -- and other equally damning conclusions (such as the Court's findings of litigation misconduct) in assessing punitive damages. As if this were not enough, the Court stated that it will in effect tell the jury that Morgan Stanley has admitted these facts as true, when it most certainly has not. And further still, the Court has precluded Morgan Stanley from presenting any evidence or testimony to contradict the findings of the Court or the evidence adduced by CPH.

Thus, the Court has officially sanctioned a process in which CPH will be allowed to elicit additional testimony and evidence on these issues even though the jury will have already been instructed that the allegations are true. Again, the Court has forbidden Morgan Stanley to take issue with that evidence or challenge it in any way. In so doing, the Court has substituted its judgment for that of the jury on the essential elements of the case and has virtually preordained that the jury will have no choice but to render a verdict for the compensatory damages CPH seeks.⁵

⁵ Depriving Morgan Stanley of the right to put on evidence fails the three-part test established by the U.S. Supreme Court in Mathews v. Eldridge, 424 U.S. 319, 335 (1976), and refined in Connecticut v. Doehr, 501 U.S. 1 (1991), and thus, violates the Due Process Clause. Under that test, the Court must consider (1) the private interest affected by the challenged procedures; (2) the risk of an erroneous deprivation of that interest presented by those procedures and the probable value of additional safeguards; and (3) the interest of the opposing party, with due regard for any interest the State may have in utilizing the challenged procedure or forgoing the burden associated with providing additional safeguards. Doehr, 501 U.S. at 11. Here, Morgan Stanley's interest in defending against the quasi-criminal punitive damages claim is substantial. In contrast, the only possible justification for conducting a one-sided punitive damages trial is to punish the defendant for its failure to properly respond to discovery. But that objective has already been satisfied by the imposition of other sanctions such as awarding CPH its attorneys fees and costs. Moreover, allowing a fair fight would impose no undue burden on the State since that is the way civil (and criminal) litigation customarily is conducted.

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Moreover, in adopting the First Amended Complaint's highly prejudicial and inflammatory language, the Court in effect makes those words its own. The bias and passion of these inflammatory words will indisputably and profoundly affect a jury sitting within the boundaries of the Court's state-sanctioned authority. At best, the jury will be confused by its role in returning a verdict for compensatory or punitive damages, and at worst, the jury will believe that the Court is mandating a verdict that will punish conduct the Court has already judicially decreed as being fraudulent, misleading, deceptive, and motivated by monetary gain. The process put into place by the Court's Sanctions Orders dispenses with any pretense of conducting a fair trial and ignores the constitutional constraints on the imposition of punitive damages against civil defendants.

Pursuant to BMW of North America, Inc. v. Gore, 517 U.S. 559, 574-75 (1996), reviewing courts must assess punitive damages in light of three guideposts: (i) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. Further, the failure to provide meaningful judicial review of the amount of punitive damage awards offends the due process right to be free of grossly excessive punitive damage awards. See Honda Motor Co., Ltd. v. Oberg, 512 U.S. 415 (1994) (striking down provision in Oregon Constitution that prohibited judicial review where the sole challenge was excessiveness); Owens-Corning Fiberglass Corp. v. Ballard, 749 So. 2d 483 (Fla. 1999). As the U.S. Supreme Court explained, "In the case before us today, we are not directly concerned with the character of the standard that will identify unconstitutionally

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excessive awards; rather we are confronted with the question of what procedures are necessary to ensure that punitive damages are not imposed in an arbitrary manner.” Oberg, 512 U.S. at 420. The Court ultimately held that judicial review must be available as a procedural safeguard to violation of a defendant’s due process rights.

If the Court follows the procedures outlined in its Sanctions Orders, it will be impossible to apply the Gore criteria post-verdict to any award of punitive damages. The Court has mandated that the jury determine whether punitive damages are appropriate without any defense by Morgan Stanley. And according to this Court’s March 23 Order, the jury will be instructed that it can consider Morgan Stanley’s actions, as enumerated by the Court, in “determining whether an award of punitive damages is appropriate.” Therefore, if the jury returns a verdict for punitive damages, this Court (and later appellate courts) will be charged with reviewing the jury’s verdict for reasonableness and in light of the Gore factors. The reviewing court will be severely hamstrung, however, because there will be no meaningful way to assess the Gore factors in the record when Morgan Stanley has been precluded from introducing evidence relevant to those factors.

Finally, the Court’s sanctions Orders violate Morgan Stanley’s due process rights to the extent that the Court has deemed admitted allegations of misconduct that may have been legal in the jurisdictions in which they took place. See State Farm Ins. Co. v. Campbell, 123 S. Ct. 1513, 1522 (2003)(“A State cannot punish a defendant for conduct that may have been lawful where it occurred) (emphasis added); Id. at 1522-23 (“A jury must be instructed, furthermore, that it may not use evidence of out-of-state conduct to punish a defendant for action that was lawful in the jurisdiction where it occurred.”);

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BMW of N. Am. v. Gore, 517 U.S. 559, 672 (1996) ("[A] State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other states.")

The manner in which this Court has decreed that the trial of this case will be conducted thus violates the Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States, as well Section 2 and 9 of Article 1 of the Florida Constitution. These constitutional infirmities require reconsideration of the Court's Sanctions Orders. At the very least, the Court should allow Morgan Stanley to cross-examine witnesses to establish their credibility, bias, and motive.

CONCLUSION

For all the foregoing reason, Defendant Morgan Stanley respectfully requests that this Court reconsider its March 1st and 23rd Orders. Reconsideration of the Sanctions order, coupled with granting the previously requested continuance, would permit a fair trial on the merits and serve the interests of justice. The discovery problems could be addressed. (See Affidavit of Richard Anfang.) Both sides could fairly contest the issues on the merits. The cost to the CPH necessitated by the failures in discovery and any delay, and to the judicial system, would be borne by Morgan Stanley. That cost would be in addition to the monetary sanctions the Court has already imposed (and could additionally impose) on Morgan Stanley for violations of the Court's orders.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and hand delivery on this 4th day of April, 2004.

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EXHIBIT A

042684

IN THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

Affidavit of Richard Anfang

I, Richard Anfang, being first duly sworn under oath, and under penalty of perjury, declare and state as follows:

1. I am a Managing Director of Morgan Stanley & Co. Incorporated, working in Morgan Stanley's Information Technology Division. My business address is 750 7th Avenue, New York, NY 10020. I have personal knowledge of the facts stated herein unless otherwise indicated.

2. After the hearing held by the Court on February 14, 2005 in this matter, I became personally involved in overseeing Morgan Stanley's attempts to cure defects in its previous email productions to CPH and to provide as complete an email production as possible to CPH by no later than March 21, 2005.

3. In its March 23, 2005 Order on CPH's Renewed Motion for Entry of Default Judgment (the "Order", attached hereto as Exhibit A), the Court identified a number of issues of concern relating to Morgan Stanley's email productions in this matter. Specifically, the Court cited:

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- The fact that the scripts Morgan Stanley used to process emails into the Archive caused the bodies of some messages to be truncated (see Order at 11);
- An error in the scripts used to migrate emails from SDLT onto the Archive, causing the loss of what was believed to be approximately 5% of the harvested emails, based on a sample (see id.);
- An analysis requested by the SEC showing that, of a sample of 199 (out of approximately 12,000) tapes, approximately 10% appear to have been overwritten after January 2001 (see id.);
- A software error that prevented the capture of blind carbon copies by the Archive (see id. at 12);
- Certain searches having been conducted using case-sensitive user names (see id.);
- For a time, email group membership for periods prior to early 2003 having been based on group membership as of early 2003, and therefore not reflecting changes to group membership prior to that time (see id.; see also Letter to the SEC, dated February 24, 2005 (“February 24 Letter”), attached hereto as Exhibit B);
- Notwithstanding Morgan Stanley’s understanding to the contrary, (see Transcript of 3/14/05 Hearing at 3646-49, attached hereto as Exhibit C), our third-party vendor National Data Conversion Institute (“NDCI”) not having searched all available tapes for emails from

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certain legacy mail systems that had been in use at Morgan Stanley prior to 2000, including CCMail (see Order at 13); and

- Between approximately February 23 and March 5, 2005, Morgan Stanley's discovery of tapes that we do not believe previously had been processed by NDCI as part of the process of migrating pre-2003 emails onto the Archive. Specifically found were: 282 tapes in communications rooms in Morgan Stanley IT spaces across North America; 3,536 tapes found in a secure IT storage area in Morgan Stanley's IT facility in Brooklyn, NY; 389 tapes found as a result of physical searches of the workspaces of IT personnel in North America; and 2,718 tapes found by Recall, Morgan Stanley's off-site storage vendor, after Morgan Stanley insisted that Recall conduct a physical search of its facilities, see id.

4. It is my understanding and belief that a significant number of these issues have already been resolved, such that they would not affect a search conducted today for emails responsive to the search terms set forth in the April 16, 2004 Agreed Order (the "Agreed Order").

5. As the Court recognized in the Order, Morgan Stanley has remedied the issue relating to case-sensitivity in inquiries. See id. at 12. I understand that this issue was resolved in advance of Morgan Stanley's productions to CPH earlier in March 2005, and would not be an issue if Morgan Stanley were permitted to re-run searches for responsive emails in the future.

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6. Similarly, the issue of group email membership was largely resolved in advance of Morgan Stanley's productions to CPH earlier in March 2005, see February 24 Letter at 1-2, and the resolution would be equally effective for subsequent searches Morgan Stanley undertook in connection with this litigation.

7. The issue of blind carbon copies has not affected searches for emails responsive to the Agreed Order. As the February 24 Letter makes clear, that issue affects users of Microsoft Exchange, the use of which began at Morgan Stanley no earlier than August 2003. See id. at 3.

8. While the Court expressed concern that 10% of the tapes in a sample requested by the SEC appear to have been overwritten after January 2001, this does not mean that Morgan Stanley lost 10% of the unique emails on those tapes. There was significant redundancy in the email backup systems Morgan Stanley utilized in the relevant periods; the preservation of tapes was a prophylactic measure that could preserve multiple copies of any particular email. In fact, in light of the system of multiple backups, and the fact that each email would have been backed up off of the systems of the sender and recipient(s), Morgan Stanley believes that, of the tapes about which the SEC inquired, as a statistical matter, it is likely that only 1.2% of the unique email on those overwritten tapes would have been lost. See February 10, 2005 letter to the SEC (the "Wells Response"), attached hereto as Exhibit D, at 15-20. Of course, if only 1.2% of the unique emails on the overwritten tapes were likely lost, it stands to reason that this overwriting resulted in a loss of far less than 1% of the overall quantum of unique emails that had been preserved on backup tapes.

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9. Morgan Stanley also continues to make diligent and significant efforts to remediate those problems the Court identified in the Order that remain unresolved.

10. With regard to the tapes that were found in February and March 2005 and had not been processed previously by NDCI,¹ many of these tapes (starting with the tapes we believe are most likely to contain email from earlier time periods) have been processed by NDCI in the last few weeks. Morgan Stanley already has uploaded approximately 7 million unique emails from these tapes onto the Archive. NDCI is processing the remaining tapes (other than the 318 tapes that Renew Data has not yet returned to Morgan Stanley) on an expedited basis, and I understand that they currently expect to have completed processing the production email on the tapes within two months.

11. In processing these tapes, NDCI has been directed to look for, extract, and process CCMail and other legacy mail systems that might have been in use at Morgan Stanley prior to 2000. It is my understanding that NDCI has been seeking, finding, and extracting limited amounts of such production mail.

12. We currently are considering how best to resolve the message truncation issue that occurred in the course of the migration process, as well as the problem of emails lost in the migration from SDLT onto the Archive. For purposes of this litigation, I believe these issues should have been solved by two of the searches we directed to be conducted in March 2005: the search of the SDLTs NDCI had, and the search of the DLTs that contained the earliest known full backup, if any, for each of the 36 users identified in the Agreed Order. My understanding is that both these searches were

¹ In addition to the tapes the Court identified in the Order, Recall located 95 tapes on March 14, 2005, which have been sent to NDCI.

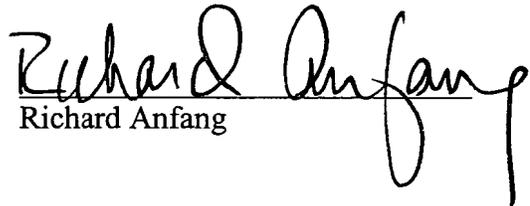
conducted, looking for emails responsive to the search terms of the Agreed Order, and that neither the truncated message nor migration loss issue would have affected these searches. Indeed, it is my understanding that these searches yielded additional emails, which were produced to CPH, that were not found on the Archive.

13. The search of SDLTs for emails responsive to the search terms of the Agreed Order could be run again once NDCI has completed processing the newly-found tapes, including extracting CCMail or other types of production email not previously extracted.

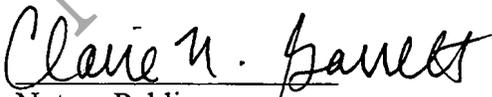
14. Based on my understanding that NDCI expects to complete processing the tapes within two months, I believe that a supplemental search of the SDLTs could likely be completed within three months from today. I further believe that this approach would yield responsive email, if any, found on the over 40,000 backup tapes, and over 8 billion emails, that NDCI will have processed by the time of such supplemental search.

I declare, under penalty of perjury, that the above statements are true and correct.

This 2nd day of April, 2005.


Richard Anfang

Sworn to and subscribed before me this 2nd day of April, 2005.


Notary Public
My Commission Expires:

CLAIRE N. GARRETT
Notary Public, State of New York
No. 01GA6117673
Qualified in Westchester County
Commission Expires November 01, 2008

11/1/08

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EXHIBIT A

042691

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

**ORDER ON CPH'S RENEWED MOTION FOR ENTRY OF DEFAULT
JUDGMENT**

THIS CAUSE came before the Court March 14 and 15, 2005, on CPH's Renewed Motion for Entry of Default Judgment, with both parties well represented by counsel.

Coleman (Parent) Holdings, Inc. ("CPH"), has sued Morgan Stanley & Co., Inc. ("MS & Co."), for aiding and abetting and conspiring with Sunbeam to perpetrate a fraud. Early in the case, CPH was concerned that MS & Co. was not thoroughly looking for emails responsive to its discovery requests. On April 16, 2004, the Court entered an Agreed Order ("Agreed Order") that required MS & Co. to search its oldest full backup tapes for emails subject to certain parameters and certify compliance. MS & Co. certified compliance with the Agreed Order on June 23, 2004. On November 17, 2004, CPH learned that MS & Co. had found some backup tapes that had not been searched. On January 26, 2005 it served its Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order ("Adverse Inference Motion"), claiming that MS & Co.'s violation of the Agreed Order, coupled with its systemic overwriting of emails after 12 months, justified an adverse inference against it. The Court ordered certain limited discovery. Responses to that discovery prompted CPH to orally amend its Adverse Inference Motion to seek more severe sanctions.

The Court held an evidentiary hearing on the Adverse Inference Motion on February

14, 2005. On March 1, 2005 it issued its Amended Order on Coleman (Parent) Holdings Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order ("Adverse Inference Order"). In its current Motion, CPH argues that it has since learned that the discovery abuses addressed in the Adverse Inference Motion and Order represent only a sampling of discovery abuses perpetrated by MS & Co. and that the abuses have continued, unabated. It claims that these abuses, when taken as a whole, infect the entire case. To understand CPH's argument, it is necessary to go back to the beginning.

This case arises out of an acquisition transaction that was negotiated and consummated in late 1997 and early 1998, in which CPH sold its 82% interest in the Coleman Company, Inc., to Sunbeam Corporation. MS & Co. served as financial advisor to Sunbeam for parts of the acquisition transaction and served as the lead underwriter for a \$750,000,000.00 debenture offering that Sunbeam used to finance the cash portion of the deal.

CPH's Complaint¹ alleged claims against MS & Co. arising from this transaction for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy, and sought damages of at least \$485 million.

On May 12, 2003, MS & Co. was served with the Complaint and CPH's First Request for Production of Documents ("Request"). The Request sought, in essence, all documents connected with the Sunbeam deal. "Documents" was broadly defined, and specifically included items electronically stored. Concerned that, out of more than 8,000 pages of documents produced, it had received only a handful of emails, CPH on October 29, 2003, served its Motion to Compel Concerning E-Mails. That motion sought an order requiring MS & Co. to make a full investigation for email messages, including a search of magnetic tapes and hard drives; produce within 10 days all emails located; and produce a Rule 1.310 witness

¹On February 17, 2005, CPH served its First Amended Complaint, which dropped the claims against MS & Co. for fraudulent and negligent misrepresentation, leaving only the aiding and abetting and conspiracy claims.

within 20 days "to describe the search that was conducted, identify any gaps in Morgan Stanley's production, and explain the reasons for any gaps."

In its Opposition to Coleman (Parent) Holdings, Inc.'s Motion to Compel served November 4, 2003, MS & Co. argued that CPH wanted "this Court to order a massive safari into the remote corners of MS & Co.'s email backup systems" and represented that "(t)he restoration efforts demanded by CPH would *cost at least hundreds of thousands of dollars* and require several months to complete (emphasis in original). MS & Co. argued that CPH's "true" motive was to "harass and burden MS & Co. with unnecessary and costly discovery demands and attempt to smear MS & Co. with out-of-context recitations from other proceedings" because "CPH *concedes* that MS & Co. is only able to restore email from backup tapes from January 2000 and later - *more than a year and a half after the events that allegedly gave rise to CPH's claims,*" (emphasis in original).

CPH's "concession" was based on representations like the kind made to it by MS & Co.'s counsel in a March 11, 2004 letter that suggested "(t)he burden on Morgan Stanley from . . . a wholesale restoration [of email back up tapes], both in terms of dollars and manpower would be enormous. Regardless of who performs the initial restoration, it would require hundreds (perhaps thousands) of attorney-hours to review millions of irrelevant and non-responsive e-mails . . ."²

In response to CPH's Motion to Compel, the parties agreed to reciprocal corporate

²Complaints about MS & Co.'s tactics are not new. See Ex. 196 [February 26, 2004, letter from EEOC to Hon. Ronald L. Ellis in *EEOC/Schieffelin v. Morgan Stanley & Co., Inc., et al.*, 01-CV-8421 (RMB) (RLE) (S.D.N.Y.): "(w)hen EEOC received [Morgan Stanley's] January 27, 2004 Responses to EEOC's Fifth Requests for Production of Documents which did not contain any e-mails, the parties communicated further. At that time, Morgan Stanley took the position that searching for e-mails would be burdensome both in regards to expense and the time it would take to respond. While the parties were in the process of attempting to work out these disputes, EEOC for the first time learned that [Morgan Stanley has] an easy, systematic ability to search for relevant documents. In a February 16, 2004, conversation with an IT representative of [Morgan Stanley], EEOC learned that [Morgan Stanley has] an e-mail system, which, while not yet fully comprehensive, was easily searchable on February 18, 2004, the close of discovery . . . which is certain to produce discoverable information highly relevant to EEOC's and Plaintiff-Intervenor's claims . . . After disclosing their state-of-the-art system to EEOC, [Morgan Stanley] dropped [its] assertion that the process was too expensive, but maintained that they refuse to search for e-mails because it is burdensome for attorneys to review large numbers of documents prior to production.")

depositions on the email issue. CPH deposed Robert Saunders on February 10, 2004.³ After completion of the corporate representative depositions, and unable to obtain MS & Co.'s agreement to a mutual email restoration protocol, CPH served its Motion for Permission to have Third Party Retrieve Morgan Stanley E-Mail and Other Responsive Documents, proposing that a third party vendor be given access to both parties' email systems for restoration at each party's expense. At the hearing on that Motion, CPH offered to split the expenses evenly. MS & Co. refused.

MS & Co.'s continued assertions that the email searches could be conducted only at enormous cost and would be fruitless because there were not backup tapes with email from 1997 and 1998 were confirmed to the Court by MS & Co.'s counsel, Thomas Clare of Kirkland & Ellis, at a hearing held March 19, 2004:

Mr. Scarola: Electronic records of e-mails that have been exchanged.

The Court: Do we agree that there has been such a request outstanding?

Mr. Clare: There has been a request outstanding.

The Court: And have you all objected?

Mr. Clare: From the beginning.

The Court: And what's the basis of the objection?

Mr. Clare: We objected to the breadth of the request that they're making. And to answer Your Honor's question directly – and the burden that is associated with it – that given the particular e-mail back-up tapes that are in existence five, six years after the fact of these transactions, that the scope of the e-mail request that they are seeking is improperly and unduly burdensome given the enormous costs that would be required, given the fact that the time period for which we have back-up tapes post dates the events by several years.

Unable to resolve the email issue, on April 9, 2004, CPH served its Motion to Compel

³Saunders provided misleading information in his deposition. See footnote 12, *infra*.

Concerning E-Mails and Other Electronic Documents. On the eve of the hearing on CPH's Motion to Compel, the parties reached an accommodation, and on April 16, 2004 the Court entered the Agreed Order. Under the Agreed Order, MS & Co. was required to (1) search the oldest full backup tape for each of 36 MS & Co. employees involved in the Sunbeam transaction; (2) review emails dated from February 15, 1998, through April 15, 1998, and emails containing any of 29 specified search terms such as "Sunbeam" and "Coleman" regardless of their date; (3) produce by May 14, 2004, all nonprivileged emails responsive to CPH's document requests; (4) give CPH a privilege log; and (5) certify its full compliance with the Agreed Order.

As required by the Agreed Order, MS & Co. produced about 1,300 pages of emails on May 14, 2004. It did not, however, certify compliance with the Agreed Order. After prompting by CPH, on June 23, 2004, MS & Co. served a certificate of compliance signed by Arthur Riel, an Executive Director and manager of its Law/Compliance IT Group.⁴

CPH got its first indication that the Agreed Order may have been violated in the late fall of 2004.

On November 17, 2004, Clare wrote Michael Brody of Jenner & Block, CPH's outside counsel, that MS & Co. had "discovered additional e-mail backup tapes . . ."; that "(t)he data on some of [the] newly discovered tapes has been restored;" that "we have re-run the searches described in [the Agreed Order]"; that "some responsive e-mails have been located as a result of that process"; and that "(w)e will produce the responsive documents to you as soon as the production is finalized."

On December 14, 2004, Brody wrote Clare back:

in [your November 17, 2004 letter], you state that Morgan Stanley located additional email backup tapes, and that you

⁴Though CPH would not learn for months that the certificate was false, and even then the magnitude of MS & Co.'s misrepresentations would not be admitted, MS & Co. personnel, including in-house counsel, knew the certification of compliance was false when made.

would be producing documents soon. Within two days of that letter, you produced some emails to us. In your November 17, 2004 letter, however, you also indicated that "some of the backup tapes are still being restored." Have those backup tapes been restored? Have you found additional responsive emails? If so, when will Morgan Stanley produce those emails? How is it that the tapes were only recently located?

On December 17, 2004, Clare wrote back, telling Brody "(n)o additional responsive e-mails have been located since our November production."⁵

Brody wrote back to Clare December 30, 2004, noting the deficiencies in Clare's correspondence:

You do not inform us whether the review of the recently-located backup tapes still is ongoing. Please confirm that all email backup tapes from the relevant time period have been reviewed and all responsive emails have been produced. If the review still is proceeding, please let us know when the review will be completed.

Clare wrote back on January 11, 2005, telling Brody that the "restoration of e-mail backup tapes is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time."

Concerned about Clare's lack of candor, on January 19, 2005 Brody wrote again:

I write in response to your January 11, 2005 letter concerning e-mails back-up tapes. Unfortunately, your letter raises more questions than it answers. As I requested in my December 14, 2004 letter, please explain the circumstances under which Morgan Stanley located these backup tapes and advise us of the date on which the tapes were located.

⁵Not only does this letter fail to answer Brody's legitimate questions, it implies that MS &Co. was still processing and reviewing emails from the newly found tapes. As we now know, though, *no* additional information was migrated to the archives between approximately August 18, 2004 and January 15, 2005. *Of course* "no additional responsive e-mails [would have been] located."

Further, please explain your statement that "the next set of backup tapes" is scheduled to be restored "at the end of January." How many tapes will be restored by the end of January? When exactly in January will Morgan Stanley complete the process of restoring and searching these tapes for responsive documents? Are there other backup tapes that are not yet in the process of being restored? If so, please advise us of (a) the number of tapes that are not yet in the process of being restored; (b) the time period of the data contained on those tapes; and (c) Morgan Stanley's timetable for restoring and searching those tapes. In addition, please explain why those tapes are not yet in the process of being restored. Please also explain why Morgan Stanley cannot complete the restoration and searching of all remaining backup tapes before "the end of January." As you know, our trial is scheduled to begin on February 22, 2005.

We look forward your complete response to these questions no later than January 21, 2005 so that we can bring this matter to the Court's attention, if necessary.

Conforming to what was by now his usual stonewall tactic, Clare responded by letter dated January 21, 2005:

I write in response to your January 19, 2005 letter regarding Morgan Stanley's production of e-mails restored from backup tapes.

Morgan Stanley completed its initial production of restored e-mail messages on May 14, 2005. The May 2004 production was conducted in accordance with the agreed-upon order governing, and the searches that resulted in that production encompassed data from all of the backup tapes known to exist at the time. Subsequent to the May 2004 production, additional tapes were found in various locations at Morgan Stanley. The discovered tapes were not clearly labeled as to their contents, were not found in locations where e-mail backup tapes customarily were stored, and many of the tapes

were in a different format than other e-mail backup tapes. In November 2004, once it was determined at least some of the discovered tapes contained recoverable e-mail data, Morgan Stanley re-ran the searches described in the agreed-upon order. Those searches resulted in Morgan Stanley's November 2004 production.

Morgan Stanley's efforts to restore the backup tapes discovered after the May 2004 production are ongoing. It is a time-consuming and painstaking process and, given the absence of clear labels or other index information for the backup tapes, there is no way for Morgan Stanley to know or accurately predict the type or time period of data that might be recovered from tapes that have yet to be restored. While Morgan Stanley cannot accurately estimate when all of the tapes will be restored or whether any recoverable data will be found on the remaining tapes, we understand from Morgan Stanley that, when the agreed-upon searches are run again at the end of January, those searches will include approximately one terabyte of additional data restored since the prior production.

On January 26, 2005, CPH served its Adverse Inference Motion, seeking sanctions based on MS & Co.'s disclosure of the newly found tapes. Hearing was scheduled for February 14, 2005. In preparation for that hearing, on February 3, 2005 the Court ordered MS & Co. to produce by noon on February 8, 2005 "(i) all documents to be referred to or relied on by any of the witnesses in his or her testimony; and (ii) all documents within MS & Co.'s care, custody, or control, addressing or related to the additional email backup tapes, including matters relating to the time or manner in which they were discovered; by whom they were discovered; who else learned of their discovery and when; and the manner and timetable by which they were to be restored and made searchable, including any correspondence to or from outside or prospective outside vendors."

The Adverse Inference Order outlined the discovery abuses shown at the February 14, hearing. They included MS & Co.'s undisclosed discovery of the 1,423 "Brooklyn" tapes no

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later than May of 2004; the undisclosed discovery of the 738 8-millimeter backup tapes in 2002; the presence of unsearched data in the staging area; the discovery of 169 DLT tapes in January 2005; the discovery of more than 200 additional tapes on February 11 and 12, 2005; the discovery of a script error that had prevented MS & Co. from locating responsive email attachments; and discovery of another script error that had infected the ability to gather emails from Lotus Notes platform users.

In response to these deficiencies, the Court issued the Adverse Inference Order. That Order reversed the burden of proof on the aiding and abetting and conspiracy elements and included a statement of evidence of MS & Co.'s efforts to hide its emails to be read to the jury, as relevant to both its consciousness of guilt and the appropriateness of punitive damages. It specifically provided that "MS & Co. shall continue to use its best efforts to comply with the April 16, 2004 Agreed Order and . . . February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search."⁶

It is now clear why MS & Co. was so unwilling to provide CPH with basic information about how and when the tapes were found or when production would be complete. First, candor would have required MS & Co. to admit that it had not done a good faith search for the oldest full backup tapes, and that Riel's certificate of compliance was false. Some unsearched tapes had been found by 2002; others had been found no later than May, 2004. Together, over 2,000 tapes had been found which were not searched prior to the May production. It is untrue that the tapes were "not in locations where e-mail backup tapes customarily were stored."

⁶Concerned that MS & Co. had been less than candid with both CPH and the Court, on February 4, 2004, the Court entered its Order on Coleman (Parent) Holding's ore tenus Motion to Participate in Search of Additional E-Mail Backup Tapes or Appoint Third Party to Conduct Search, ordering MS & Co. to pay for a third party vendor to check its compliance with the Agreed Order. The Court previously found that the two scripts errors testified to by Allison Gorman at the February 14, 2005, hearing would not have been discovered or revealed without the threat that the third-party vendor would discover the errors. Given Ms. Gorman's testimony at the March 14, 2005, hearing, though, it now appears MS & Co. knew about the errors before the appointment of the third-party vendor. Consequently, the errors were only revealed, but not discovered, in response to the February 4, 2004, Order.

Second, MS & Co. desperately wanted to hide an active SEC inquiry into its email retention practices.^{7 8 9 10} Finally, MS & Co. did not want to admit the existence of the historical email archive, which would expose the false representations it had made to the Court and used to induce CPH to agree to entry of the Agreed Order.^{11 12}

⁷On December 17, 2003, CPH served its Third Request for Production seeking "(a)ll materials and documents submitted to the United States Securities and Exchange Commission ("SEC"), received from the SEC, or reflecting communications with the SEC in connection with any investigation, inquiry, or examination concerning or relating to Morgan Stanley's policies and/or procedures with regard to the retention, storage, deletion, and/or back-up of electronic mail (emails) . . ." On October 12, 2004, CPH served its Request for Supplemental Documents seeking to bring MS & Co.'s document production current, requesting "(a)ll documents not previously provided by MS & Co. that are responsive to any Request for Production of Documents that CPH previously has served upon MS & Co. in the litigation, including documents obtained by MS & Co. or its counsel after the date of MS & Co.'s prior productions." No SEC documents were produced in response to either request; no privilege log was generated. On other privilege logs generated in response to court orders, MS & Co. did not show the SEC on the distribution portion of the log. See March 9, 2005 Order Following in Camera Inspection (Riel/SEC Documents) footnotes 1, 2. See, also, footnote 15, *infra*. Kirland & Ellis, outside counsel for MS & Co. in this litigation, represents MS & Co. in the SEC's inquiry into its email retention practices.

⁸MS & Co. manipulated the unhooking of the SEC's email investigation from the IPO litigation in January, 2005, to conceal the email issues as long as possible.

⁹It is now apparent that MS & Co. chose deliberately to keep its affidavits concerning the informal SEC inquiry submitted to support its privilege claims vague, despite two requests from the Court seeking specific information. See February 28, 2005 Order (Release of Exhibits).

¹⁰See February 25, 2005 Order on Morgan Stanley's Objections to Coleman (Parent) Holding Inc.'s Notice to Produce at Hearing and Motion for Protective Order and March 4, 2005 Order on Plaintiff's *ore tenus* Motion to Compel Additional Production.

¹¹While MS & Co. contends that its representations to the Court that it would cost "hundreds of thousands of dollars" to search the backup tapes and that there was no pre-2000 backup tapes were not false, they were deliberately misleading: MS & Co. never had an intention to search the back up tapes to respond to the requests and some of the year 2000 backup tapes backed up email back to 1997.

In 2001, MS & Co. decided to create the email archive. By June, 2003, it had decided that the archive should have two components. First, MS & Co. wanted to create an archive that captured and stored email as it was generated. Second, MS & Co. wanted to add historical data to the archive. That task involved searching for all email backup tapes containing historical emails; sending those tapes to an outside processor; loading the processed tapes into a staging area; and migrating the stored data from the staging area onto the archive. As we now know, archive searches are quick and inexpensive. They do not cost "hundred of thousands of dollars" or "take several months." The restrictions imposed by the Agreed Order were not needed.

¹²On February 10, 2004, Robert Saunders, an executive director of IT for MS & Co., was deposed. He testified that in January, 2003, MS & Co. had put into effect the email archive system. When specifically asked whether the new email archive system would include prior backups or only going forward backups, he testified that "(t)he way it was built was for going forward backup." He was next asked whether "(w)ith respect to backup dated January 2001 and previously, does Morgan Stanley have any new capabilities to restore and search e-mail?" After counsel interposed a vagueness objection, he answered "(t)here are no new capabilities to search that e-mail." That testimony was so misleading as to be false. As Saunders well knew, since he was on the team responsible, the "live" email capture portion of the archive was already operational. The migration of the historical data to the archive was expected to be completed by April of 2004, just two months after his deposition.

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MS & Co.'s wrongful conduct has continued unabated.¹³ Since the February 14, 2005, hearing, it has come to light that:

- Only two whole and four partial tapes from the Brooklyn tapes had been migrated to the archive and were thus searched for the November, 2004, production. MS & Co. sought to hide this information to create the impression that all the produced documents came from the Brooklyn tapes, rather than reveal that the production came from material that had migrated from the staging area to the archive since the May, 2004, production or some other, as yet undisclosed, source.¹⁴
- Contrary to MS & Co.'s counsel's November 17, 2004, letter to CPH, *none* of the November, 2004 production came from the "newly found" tapes. MS & Co. carefully crafted its responses to inquiries about the November, 2004, production to avoid both disclosure of the existence of the archive and outright lying.
- The scripts MS & Co. used to process emails into its archive caused the bodies of some messages to be truncated. MS & Co. discovered this problem on February 13, 2005, but did not tell the Court about it until March 14, 2005.
- A migration issue caused about 5% of email harvested by NDCI from the backup tapes not to be captured in the archive, based on testing of a representative sample of tapes. MS & Co. told the SEC about this problem on February 24, 2005, but failed to tell CPH or the Court.
- As of June 7, 2004, only 120 out of 143 SDLT tapes had been processed into the archive.
- An analysis requested by the SEC showed that, based on a representative sample, 10% of backup tapes were overwritten after January, 2001.

¹³MS & Co. sought to use the entry of the Adverse Inference Order as a shield against further inquiry into its email abuses, arguing that the matter was closed by the Adverse Inference Order. It previously used this tactic with the SEC, arguing that the December 3, 2003 Cease and Desist Order shielded it from other sanctions for email retention failures. See Ex. 14 [February 10, 2005 letter from outside counsel for MS & Co. to SEC]

¹⁴MS & Co. argued at the March 14 and 15, 2005 hearing that there were only 13 unique, new emails contained in the November 2004 production when compared to the May 2004 production. Nine of those emails, however, were originally given to MS& Co.'s lawyers for responsiveness review by the IT staff for the May 2004 production. No explanation of why they were not produced in May was offered. This is particularly concerning given the large number of documents Ms. Gorman testified the search parameters found compared with the relatively small number found responsive and produced after review by counsel.

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- A software error caused blind carbon copies not to be captured in the archive process. MS & Co. told the SEC about this problem on February 24, 2005. MS & Co. did not tell CPH or the Court.
- A software error caused the searches to be hyper case-sensitive, resulting in a failure to capture all emails. MS & Co. knew of the problem as of December, 2004, but did not tell CPH or the Court. The problem was not purportedly fixed until March, 2005.
- A script error caused the archive to have problems pulling group email in Lotus Notes.
- MS & Co. provided sworn testimony at the February 14, 2005, hearing that it had located 600 gigabytes of data, while contemporaneously telling the SEC it had located a terabyte of data. A gigabyte represents 20,000 to 100,000 pages. Incredibly, MS & Co.'s witness on this point, Allison Gorman, testified on March 14, 2005, that it was simply a "terminology" issue that she did not choose to correct because it could cause "confusion."
- CPH requested MS & Co. to produce responses it had made to third-parties in civil, criminal, or administrative proceedings describing limitations on MS & Co.'s ability to produce emails and all notices in such proceedings that MS & Co. had newly discovered backup tapes containing email. MS & Co. objected, arguing that there were over 300 separate proceedings, involving over 70 outside law firms, and that the cost of compliance would be too great. On March 2, 2005, the Court ordered the production, after shortening the time period involved, and required production within 12 hours after counsel's review of each item for responsiveness but, in any event, within 10 days. At the time MS & Co. objected to CPH's request as unduly burdensome, it knew of its Wells submission to the SEC made on February 10, 2005. Kirkland and Ellis, co-counsel here, was co-counsel for MS & Co. in that SEC proceeding. Consequently, it appears MS & Co.'s real concern was not that expressed to the Court, but was based on its realization that compliance would reveal the existence of the SEC inquiry into its email retention policy and MS & Co.'s efforts to keep the existence of that investigation secret. MS & Co. violated the Court's March 2, 2005, Order on Morgan Stanley's Responses and Objections to Coleman (Parent) Holdings Inc.'s Notice to Produce at Hearing requiring it to disclose items responsive to CPH's Request for Production within 12 hours of review for responsiveness by waiting *days*, not hours, to produce the Wells submission.

- MS & Co.'s failure to produce or log the SEC documents violated the Court's February 3, 2005, Order.¹⁵
- James Doyle's, the Executive Director of MS & Co.'s Law Division, declaration that he did not learn of additional unsearched backup tapes until the end of October, 2004, was intended to mislead CPH and the Court. Obviously, MS & Co. sought to create the implication in the declaration that *no one* in the Law Division knew of the backup tapes before then. Instead, both Soo-Mi Lee, Doyle's associate, and James Cusick, Doyle's superior, knew of the tapes no later than June 7, 2004.
- In-house counsel for MS & Co. knew as of June 7, 2004, that nearly a third of the restored backup tapes did not contain email, implying they may have been recycled in violation of the December 3, 2002 Cease and Desist Order. They did not tell CPH or the Court.
- MS & Co.'s searches looked for only two types of emails. There are other types of emails that were not included in the searches. CPH did not learn of this deficiency until March 13, 2005.
- MS & Co. improperly failed to produce 125 documents required to be produced by the Court's February 3, 2005, Order Specially Setting Hearing which required limited discovery be made in connection with the February 14, 2005, hearing on the Adverse Inference Motion.
- MS & Co. improperly withheld 13 documents required to be produced by the Court's March 4, 2005, Order on Plaintiff's ore tenus Motion to Compel Additional Production.
- An additional 282 tapes were found on February 23 and 25, 2005; CPH was not told of the discovery until March 13, 2005.
- An additional 3,536 tapes were discovered on February 23, 2005, in a security room.
- An additional 2,718 tapes were found at Recall, MS & Co.'s third party off-site storage vendor, on March 3, 2005.
- An additional 389 tapes were found March 2 through March 5, 2005. CPH was not told

¹⁵The Court previously rejected MS & Co.'s argument that the January 14, 2005, email exchange between its outside and in-house counsel was not required to be produced under the February 3, 2005, Order Specially Setting Hearing because it referred to the "documents issue" and not specifically to the backup tapes. See March 16, 2005 Order on Morgan Stanley's Motion to Disqualify Plaintiff's Counsel Searcy, Denney, Scarola, Barnhart & Shipley, P.A. and Jenner & Block, LLC. MS & Co.'s insistence on a narrow interpretation of the February 3, 2005, Order is not particularly sympathetic, when the only reason that Order confined production to the backup tape issue was because MS & Co. had failed to notify the Court of the other deficiencies in its certificate of compliance.

until March 13, 2005.

- On March 4, 2005, the Court entered its Order on Plaintiff's ore tenus Motion to Compel Additional Production, which ordered MS & Co. to produce by 3:00 p.m. on March 7, 2005, all items within its care, custody, or control dealing with the Riel/SEC investigation, other than documents representing communications between or among MS & Co. inside and outside counsel that were not copied to anyone other than counsel. MS & Co. sought to discredit Riel and thus distance itself from the false June 23, 2004 certificate of compliance; in doing so, it sought to hide Riel's whistle blower status and the existence of an SEC investigation into whether MS & Co. employees sought kick backs from third party vendors; whether MS & Co. employees were improperly pressured into dealing with third-party vendors who may provide business to MS & Co.; and whether MS & Co. continued to overwrite backup tapes contrary to the SEC's December 3, 2002, Cease and Desist Order.
- A script error prevented the insertion of some emails into the archive. MS & Co. produced over 4,600 pages of emails on March 21, 2005, some of which it suggested may have been located on correction of the error; alternatively, it suggested the emails may have been located by NDCI as part of its efforts to verify MS & Co.'s searches.

MS & Co.'s discovery abuses have not been confined to its email production.

William Strong is a MS & Co. managing director and was one of the principal players for it in the Sunbeam deal. He took credit for the fees generated. On May 9, 2003, CPK requested a copy of "(a)ll documents concerning employment contracts, performance evaluations, and/or personnel files (including without limitation any documents that describe or discuss [his] training, experience, competence, and accomplishments) . . ." MS & Co. asserted that the requested documents were not relevant and that production "would unnecessarily infringe on the privacy interests of [Strong]." On March 15, 2004, the Court ordered MS & Co. to produce "(a)ll references (positive or negative) to [Strong's] truthfulness, veracity, or moral turpitude." Some portions of Strong's evaluations were produced in response to that order. Those evaluations noted Strong's colleagues' reservations about his candor and ethics. Two of his evaluators, Joseph Perella and Tarek Abdel-Meguid, were deposed, when some relatively vague testimony about the bases for those conclusions was offered. It now appears Strong was facing criminal prosecution in Italy for complicity in bribery while he was working on the Sunbeam transaction, which his evaluators knew, and that MS & Co. purposely

withheld that information from CPH and the Court.¹⁶

Even once CPH independently discovered evidence of Strong's indictment in Italy, MS & Co. sought to shield its files from discovery. It claimed that virtually *all* of the documents it had were privileged under joint defense agreements in place between it, Strong, and Saloman Brothers, Strong's employer at the time of the incident. As the Court's March 10, 2005 Order Following In Camera Inspection (Strong) details, the documents MS & Co. relied on to support that position, and sought to prevent CPH from obtaining, reflect no such agreement.

The other discovery abuses and misrepresentations by MS & Co. other than those involving its email production practices are outlined in CPH's Chronology of Discovery Abuses by Defendant served March 1, 2005, and would take a volume to recite. They include:

- failing to provide the information retained by MS & Co.'s internal document management system pertaining to MS & Co.'s work for Sunbeam; falsely representing to the Court that no useful information was contained in that information; and producing a Rule 1.310 representative who had made an insufficient inquiry into authenticity, business record status, and authorship of documents; see February 28, 2005 Order on CPH's Motion to Deem Certain Documents Admissible and for Sanctions due to Morgan Stanley's Disregard of Court Order;
- when faced with contempt proceedings for violating the Stipulated Confidentiality Order by providing a copy of a settlement agreement between CPH and Arthur Andersen to other counsel, representing to the Court that the law firm of Kellogg, Huber was retained to handle the "Andersen aspects" of this litigation because of a conflict between Andersen and Kirkland & Ellis; Mark Hansen, a partner at Kellogg, Huber, testified that his firm was hired as co-counsel for all aspects of the case;
- providing answers to interrogatories signed by a corporate representative who performed insufficient verification of the responses;

¹⁶MS & Co. originally argued that documents concerning the Italian proceedings were not in Strong's "personnel file" and so were not required to be produced in response to CPH's initial request. MS & Co.'s practice of filing damaging information about an employee other than in his personnel file and then claiming it was not included in the request is about as convincing as its argument that, since it has a corporate directive not to keep drafts of documents once they are in final form, document drafts cannot be business records exempt from hearsay because they are not "kept in the course of a regularly conducted business activity." See Fla. Stat. §90.803 (6) (a). In any event, there was *no excuse* for not producing its records of the Italian proceedings once the Court's March 15, 2004 Order was entered.

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- routinely asserting unfounded privilege claims;¹⁷ and
- failing to timely comply with the Court's orders; for example, MS & Co. did not produce Strong's 1994 Performance Evaluation until the afternoon of March 15, 2005, though it was obviously included in the Court's March 15, 2004 Order. The failure cannot be excused as oversight since, when CPH specifically asked for the 1994 evaluation in the spring of 2004, MS & Co.'s counsel said it was withheld as non-responsive; see, also, Ex. 197, 198.

In sum, MS & Co. has deliberately and contumaciously violated numerous discovery orders, including the April 16, 2004 Agreed Order; February 3, 2005 Order Specially Setting Hearing; and the March 4, 2005 Order on Plaintiff's ore tenus Motion to Compel Additional Production. At the February 14, 2005, hearing on CPH's Adverse Inference Motion, it chose to hide information about its violations and coach witnesses to avoid any mention of additional, undisclosed problems with its compliance with the Agreed Order. Implicit in the requirement that MS & Co. certify compliance with the Agreed Order was the requirement to disclose impediments to its ability to so certify. As outlined in this Order, MS & Co. employees, and not just counsel, have participated in the discovery abuses. The prejudice to CPH from these failings cannot be cured. Even if all the script errors have been located and corrected, and MS & Co. has failed to show they have, and even if all of the email backup tapes have now been located, and MS & Co. has failed to show they have, the searches cannot be completed in time. The other discovery abuses outlined call into doubt all of MS & Co.'s discovery responses. *The judicial system cannot function this way.* Based on the foregoing and on the Court's March 1, 2005 Amended Order on Coleman (Parent) Holdings, Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, it is

ORDERED AND ADJUDGED that CPH's Renewed Motion for Entry of Default Judgment is Granted, in part. See Robinson v. Nationwide Mut. Fire Ins. Co., 887 So. 2d 328 (Fla. 2004); Mercer v. Raine, 443 So. 2d 944 (Fla. 1983); Precision Tune Auto Care, Inc. v.

¹⁷For example, MS & Co. produced over 260 documents dealing with the Strong investigation over which it had previously claimed privilege once the Court announced its intention to conduct an in camera review; the Court found another 200 documents were not privileged after conducting its review, by its March 10, 2005 Order.

Radcliffe, 804 So. 2d 1287 (Fla. 4th DCA 2002); Rule 1.380 (b) (2) (C), Fla. R. Civ. P. Paragraphs 2 (excluding the last sentence thereof); 3 (excluding the portion of the last sentence beginning with “in order to close . . .”); 8-10, 11 (excluding everything after the first sentence); 12 (excluding all parts following “June 1998”); 13 (excluding the last sentence thereof); 14-27; 28 (excluding everything after “firm” in the second to last sentence thereof); 29-39; 41-52; 53 (excluding the second sentence thereof); 54-57; 58 (excluding “CPH and” in the second line thereof); 59-63; 64 (excluding the third line thereof); 65 (excluding the last sentence thereof); 66 (excluding the last sentence thereof); 67-70; 71 (excluding the first word of the last sentence and the remainder of that sentence after “material”); 72; 73 (excluding the first sentence thereof); 74 (excluding the words “CPH and” in the second to last sentence thereof); 75-81; 85; 86; 87 (excluding (g)); 90, and 91 (excluding (g)) of Plaintiff’s Amended Complaint, as amended by the Court’s Amended Order on Morgan Stanley’s Motion to Dismiss, Motion to Strike, and Motion for More Definite Statement, shall be read to the jury and the jury instructed that those facts are deemed established for all purposes in this action. A copy of a redacted Amended Complaint is attached as Exhibit A. It is further

ORDERED AND ADJUDGED that the Court shall read to the jury a Statement similar to that attached as Exhibit A to the Amended Order on Coleman (Parent) Holdings, Inc.’s Motion for Adverse Inference Instruction Due to Morgan Stanley’s Destructions of E-Mails and Morgan Stanley’s Noncompliance with the Court’s April 16, 2004 Agreed Order, but incorporating the relevant additional findings of this Order, and the jury will be instructed that it may consider those facts in determining whether MS & Co. sought to conceal its offensive conduct when determining whether an award of punitive damages is appropriate. See General Motors Corp. v. McGee, 837 So. 2d 1010 (Fla. 4th DCA 2002), rev. den. 851 So. 2d 728 (Fla. 2003). Counsel are each invited to submit proposed Statements. It is further

ORDERED AND ADJUDGED that CPH shall be entitled to an award of reasonable fees and costs incurred as a result of the Renewed Motion for Entry of Default Judgment and the violations of Court orders recited herein. The amount shall be determined at an evidentiary hearing following trial. It is further

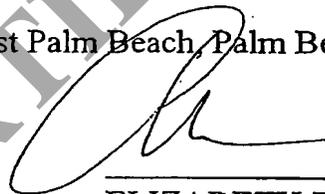
ORDERED AND ADJUDGED that MS & Co. is relieved of any future obligation to
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comply with the April 16, 2004 Agreed Order and the February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s Motion to Participate in Search of Additional E-Mail Back-Up Tapes or Appoint Third Party to Conduct Search. It is further

ORDERED AND ADJUDGED that the pro hac vice admission of Thomas Clare is revoked. It is further

ORDERED AND ADJUDGED that the portions of CPH's Motion for Correction and Clarification of Order on CPH's Motion for Adverse Inference that seek to amend the body of that Order to correct clerical and spelling errors, as agreed to by counsel, is Granted; and the corrections deemed made to the body of the Amended Order on Coleman (Parent) Holdings, Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, by interlineation. In all other respects the remainder of the Motion for Correction and Clarification is declared moot.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 23rd day of March, 2005.



ELIZABETH T. MAASS
Circuit Court Judge

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In April 1997, Morgan Stanley began serving as Sunbeam's investment banker. Morgan Stanley originally attempted to find someone to buy Sunbeam. When Morgan Stanley was unable to find a buyer, Morgan Stanley developed a strategy for Sunbeam to use its fraudulently-inflated stock to acquire a large company that Sunbeam would own and operate. Then, trading on Morgan Stanley's relationships with CPH's senior officers, Morgan Stanley found

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Coleman for Sunbeam. At the time of the sale to Sunbeam, Coleman was a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market, with annual revenues in excess of \$1 billion.

Common shares

After Sunbeam announced plans to acquire Coleman, Morgan Stanley agreed to underwrite a \$750 million debenture offering for Sunbeam. Sunbeam needed the proceeds of that debenture offering to complete the acquisition of Coleman. As Sunbeam's investment banker and as the sole underwriter for the \$750 million debenture offering, Morgan Stanley received detailed and specific information concerning Sunbeam's financial condition and performance. Morgan Stanley received information that directly contradicted Sunbeam's and Morgan Stanley's assertions to CPH that Sunbeam had undergone a successful turnaround and that its financial performance had dramatically improved. By no later than March 18, 1998, Morgan Stanley knew that Sunbeam's January and February 1998 sales were only 50% of January and February 1997 sales, and Morgan Stanley also knew that the shortfall was caused by Sunbeam's practice of accelerating sales which otherwise would have occurred in 1998 in order to boost Sunbeam's income in 1997. Although Morgan Stanley and Sunbeam previously had advised CPH that Sunbeam's sales were running ahead of analysts' expectations for the first quarter, Morgan Stanley decided not to correct those material misrepresentations. Instead, in March 1998, Morgan Stanley assisted Sunbeam in concealing the problems with Sunbeam's first quarter 1998 sales

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Plaintiff Coleman (Parent) Holdings Inc. ("CPH") directly or indirectly owned 44,067,520 shares — or approximately 82% — of Coleman prior to the transactions at issue. On March 30, 1998, Sunbeam acquired CPH's interest in Coleman. Sunbeam paid for the Coleman shares with 14.1 million shares of Sunbeam common stock and other consideration.

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Defendant Morgan Stanley & Co., Inc. ("Morgan Stanley") is a highly sophisticated investment banking firm that provides a wide range of financial and securities services. Among other things, Morgan Stanley provides advice on mergers and acquisitions and raises capital in the equity and debt markets. Morgan Stanley served as Sunbeam's investment banker and as the underwriter of securities issued by Sunbeam in connection with the events at issue herein.

Sunbeam Corporation ("Sunbeam") was a publicly-traded company headquartered in Delray Beach, Florida. Sunbeam designed and manufactured small household appliances and outdoor consumer products, which it marketed under the Sunbeam and Oster brand names. Sunbeam filed a bankruptcy petition under Chapter 11 of the Bankruptcy Code in February 2001.

Albert Dunlap ("Dunlap") was the Chief Executive Officer of Sunbeam from July 1996 until June 1998 when he was terminated by Sunbeam's Board of Directors.

Russell Kersh ("Kersh") was the Executive Vice President of Sunbeam from July 1996 until June 1998 when he was terminated by Sunbeam's Board of Directors.

Arthur Andersen LLP ("Andersen") provided outside accounting services to Sunbeam through its West Palm Beach, Florida office. Andersen auditors provided information concerning Sunbeam's first quarter 1998 sales and earnings to Morgan Stanley.

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Sunbeam designed and manufactured outdoor and household consumer products, which it marketed under the Sunbeam and Oster brand names. Sunbeam's products included small kitchen appliances, humidifiers, electric blankets, and grills. Many of the country's leading retail stores, including Wal-Mart, Target, and Home Depot, were among Sunbeam's major customers.

Despite Sunbeam's well-known brands and strong customer base, its financial performance was disappointing. In 1994, Sunbeam earned \$1.30 per share. In 1995, Sunbeam's earnings declined to \$0.61 per share. In 1996, Sunbeam's earnings continued to suffer. On March 22, 1996, Sunbeam issued an early warning that its first quarter earnings would be well under analysts' expectations and down from first quarter 1995. Shortly after issuing the March 22 earnings warning, Sunbeam's Chief Executive Officer and two of Sunbeam's directors announced their resignations. Less than a week later, Sunbeam announced that its first quarter 1996 earnings had plunged 42% from first quarter 1995 levels. Sunbeam also announced that its second quarter 1996 earnings would be lower than its second quarter 1995 earnings.

Sunbeam's disappointing earnings caused its stock price to plummet. During 1995, the price at which Sunbeam's stock traded fell 40%, from a high of \$25-1/2. In 1996, Sunbeam's stock price continued to decline until it reached a low of \$12-1/4 in July.

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On July 18, 1996, Sunbeam's board of directors hired Albert Dunlap as Sunbeam's new Chief Executive Officer. Based upon brief terms as Chief Executive Officer of other publicly traded companies, including Scott Paper Company ("Scott Paper"), Dunlap was viewed as a "turnaround specialist" — that is, someone who could take a poorly performing company and significantly increase its value by "turning around" its financial performance. Because Dunlap touted the benefits from firing large numbers of employees and closing large numbers of plants, Dunlap became widely known as "Chainsaw Al." Dunlap lived in Boca Raton, Florida, and one of his first tasks at Sunbeam was to consolidate the company's six headquarters into one located in Delray Beach, Florida.

Immediately after joining Sunbeam, Dunlap hired Kersh as Sunbeam's Chief Financial Officer. Kersh had teamed with Dunlap for over 15 years, serving as a senior executive with Dunlap at other companies, including Scott Paper. Dunlap also brought in several other hand-picked executives to make up his senior management team.

Dunlap and his senior management team entered into employment agreements with Sunbeam. Under those agreements, Dunlap and his senior management team stood to make tens of millions of dollars if they were able to boost Sunbeam's apparent value and then sell Sunbeam to another company at a premium.

In order to convince other companies that they should want to purchase Sunbeam, Dunlap needed to improve Sunbeam's reported financial performance quickly and dramatically. It was, of course, no small task to transform Sunbeam from a poorly performing company, with weak sales and declining profits, into a strong company with growing sales and

soaring profits. In fact, as the world later learned, Dunlap did not achieve that change in Sunbeam's fortunes. Instead, Dunlap created the illusion of a dramatic turnaround at Sunbeam by engaging in what SEC officials subsequently described as a "case study" in financial fraud.

Dunlap had a three-step plan at Sunbeam. In the first step, Dunlap overstated Sunbeam's financial problems so that Sunbeam appeared to be in worse shape than it really was. After making Sunbeam look worse, Dunlap moved to step two, where he made Sunbeam look more valuable than it really was by inflating Sunbeam's sales and engaging in other earnings manipulations. In step three, Dunlap planned to sell Sunbeam to another company before it became apparent that the "improved" results were fictional. By doing so, Dunlap would make tens of millions of dollars and would be free to blame his successor for any subsequent problems.

Dunlap began implementing his strategy soon after his arrival at Sunbeam in 1996. Claiming to be engaged in a clean-up of Sunbeam's financial problems, Dunlap recorded artificially high reserves and booked expenses that should not have been recorded until later periods. Both of those actions made Sunbeam's financial condition appear worse than it really was, thus lowering the benchmark for measuring Sunbeam's performance in future years.

The overstated reserves also provided Dunlap a means by which he could inflate Sunbeam's future results during the second step of his plan. Dunlap later could "re-evaluate" and release millions of dollars from the overstated reserves to boost income in later periods. The income from released reserves contributed to the illusion of a rapid turnaround in Sunbeam's performance. Using inflated reserves to enhance income in future periods is a fraudulent practice and overstated reserves are commonly called "cookie jar" reserves.

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After making Sunbeam look worse than it really was in 1996, Dunlap manipulated Sunbeam's sales and expenses in 1997 to create the false appearance of quarter after quarter improvement in financial performance. For example, Dunlap caused Sunbeam to inflate its sales by engaging in phony "bill and hold" sales. Under this practice, Sunbeam recognized revenues from "sales," even though customers did not actually pay for or even take delivery of the products, which continued to sit in Sunbeam's own warehouses. Although Sunbeam recorded the "bill and hold" sales as if they were current sales, they were, in reality, simply sales stolen from future quarters. In 1997, phony "bill and hold" sales added approximately \$29 million in sales and \$4.5 million in income.

Throughout 1997, Sunbeam also engaged in a sales practice known as "channel stuffing"—accelerating sales that otherwise would occur in a later period, sometimes by offering steep discounts or other extraordinary customer inducements. On the grand scale employed by Sunbeam, channel stuffing inevitably leads to major sales shortfalls in later periods when "stuffed" customers simply stop buying. Sunbeam's senior sales officer referred to Sunbeam's unsustainable practice of inflating performance through accelerated sales as the "doom loop."

Dunlap further "enhanced" Sunbeam's income in 1997 by causing Sunbeam to record a "profit" of \$10 million from a sham sale of its warranty and spare parts business. Dunlap also made Sunbeam appear to be more successful than it really was by reaching into the "cookie jar," reversing inflated reserves, and recording \$35 million as income. Sunbeam's 1997 profit margins also looked better than they really were because Dunlap already had recorded millions of dollars of 1997 expenses in 1996.

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In October 1997, Dunlap announced that Sunbeam's "turnaround" was complete. Compared to the third quarter of 1996, Sunbeam's third quarter 1997 performance was remarkable. In the third quarter of 1996, Sunbeam had reported a loss of \$18.1 million. In the third quarter of 1997, however, Sunbeam reported earnings of \$34.5 million — an extraordinary turnaround from substantial losses to hefty profits. Sunbeam's combined results for the first three quarters showed dramatic improvement as well. Sunbeam reported that its profits for the first nine months were up tenfold over the same period the year before — from \$6.5 million in 1996 to \$67.7 million in 1997. Sunbeam's reversal of fortune caused a spectacular increase in the price of its stock. In July 1996, when Dunlap was hired, Sunbeam's shares traded at \$12-1/4. By October 1997, Sunbeam's shares had risen to \$49-13/16.

With steps one and two successfully completed, Dunlap was more than eager to complete the final step of his scheme: to sell Sunbeam to another company and collect tens of millions of dollars for himself before the outside world could learn the truth about Sunbeam's phony "turnaround." To accomplish that third and final step, Dunlap needed an investment banking firm

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When Dunlap announced in early 1997 that he would begin interviewing investment bankers, Morgan Stanley immediately began pursuing the job. Although Morgan Stanley had no previous relationship with Sunbeam, one of Morgan Stanley's senior executives, William Strong, had worked closely with Dunlap on other large transactions between 1986 and 1993, when Strong was employed by Salomon Brothers.

Morgan Stanley knew that it was competing with other investment bankers, including Mark Davis, for Dunlap's business. Davis was the head of the mergers and acquisitions department at Chase Securities and had worked previously with Strong at Salomon Brothers. Davis had a very strong relationship with Dunlap, and Davis had served as Dunlap's investment advisor on numerous transactions, including Dunlap's sale of Scott Paper. Shortly after arriving at Sunbeam, Dunlap hired Davis to handle the sale of Sunbeam's furniture business.

Morgan Stanley put together a team headed by its Vice Chairman, Bruce Fiedorek, and Strong. Beginning in April 1997, Morgan Stanley's personnel traveled to Sunbeam's offices in Delray Beach, Florida to study Sunbeam and woo Dunlap. After months of uncompensated work, in September 1997, Morgan Stanley finally persuaded Dunlap to name Morgan Stanley as Sunbeam's exclusive investment banker. Dunlap instructed Morgan Stanley to find a buyer for Sunbeam. Morgan Stanley knew that if it failed to deliver a major transaction, Morgan Stanley would not be compensated for the extensive work it had performed for Sunbeam. Morgan Stanley also knew that Davis and Chase Securities were standing by — ready and willing to reclaim their position as Dunlap's investment banker of choice.

Throughout the fall of 1997, Morgan Stanley aggressively searched for a buyer for Sunbeam. Morgan Stanley put together extensive and detailed materials to use in marketing Sunbeam to potential buyers. Morgan Stanley pitched the transaction to more than 10 companies — including Gillette, Colgate, Sara Lee, Rubbermaid, Whirlpool, and Black & Decker — that Morgan Stanley hoped might have an interest in acquiring Sunbeam. Morgan Stanley, however, was not able to find a buyer.

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As 1998 approached, the pressure on Dunlap increased. Dunlap was aware that Sunbeam would be unable to sustain the appearance of a successful turnaround in 1998 because Sunbeam had stolen sales from 1998 to boost 1997's numbers and the "cookie jar" reserves had been depleted. Dunlap needed a way to conceal Sunbeam's phony turnaround until a buyer could be found. Morgan Stanley provided the solution to Dunlap's problem.

Morgan Stanley knew that its failure to find a buyer for Sunbeam could prove fatal to the relationship it had worked so hard to establish with Dunlap. As the pressure on Dunlap increased, the pressure on Morgan Stanley increased as well. Although Morgan Stanley was not able to find a buyer for Sunbeam, Morgan Stanley responded with a plan that would allow Dunlap to conceal his fraud. Morgan Stanley recommended that Sunbeam acquire other companies, using Sunbeam's stock, which was fraudulently inflated, as the "currency" that would be used to pay for the acquisitions.

Morgan Stanley's strategy was doubly deceptive. First, Morgan Stanley's acquisition strategy would allow Dunlap to consolidate Sunbeam's results with those of the newly-acquired companies. That would help Dunlap camouflage Sunbeam's results and make it difficult to detect any shortfall in Sunbeam's performance. Dunlap simply could label any problems that were detected as attributable to the poor performance of the acquired companies or as a temporary "blip" caused by the distraction of integrating the acquired companies with Sunbeam. Second, Morgan Stanley's strategy would allow Dunlap to take new massive restructuring charges (purportedly relating to the acquisitions) and thus create more "cookie jar" reserves that could be tapped to bolster the future earnings of the combined companies.

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Morgan Stanley identified Coleman as one of the key potential acquisition targets. CPH owned 82% of Coleman's stock. Morgan Stanley searched the ranks of its investment bankers to locate those with the best access to CPH. Drawing on relationships between some of Morgan Stanley's investment bankers and senior CPH officers, Morgan Stanley set about trying to persuade CPH to sell its interest in Coleman to Sunbeam — and, most importantly, to accept Sunbeam stock as consideration.

Morgan Stanley laid the groundwork for a meeting to take place in December 1997 in Palm Beach, Florida between Dunlap and Kersh and representatives of CPH. In advance of the Palm Beach meeting, Morgan Stanley provided materials to Sunbeam to prepare Sunbeam for the meeting. Morgan Stanley also met with Kersh and other Sunbeam personnel to prepare for the Palm Beach meeting. However, Dunlap nearly scuttled Morgan Stanley's carefully crafted plan at the outset. During the December 1997 Palm Beach meeting, when CPH rejected Dunlap's initial all-stock offer, Dunlap became so angry that he cursed and ranted at the CPH representatives and stormed out.

Dunlap's tantrum appeared to kill any chance that CPH would sell its interest in Coleman to Sunbeam. Morgan Stanley, however, worked to revive the discussions. Drawing again on Morgan Stanley's relationships with CPH officers, Morgan Stanley was able to restart the discussions with CPH with the promise that Dunlap would be kept away from the negotiating table. Thereafter, Morgan Stanley, through Managing Directors Strong, James Stynes, and Robert Kitts, led the discussions with CPH on Sunbeam's behalf.

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Morgan Stanley knew that it had to persuade CPH not only to sell Coleman, but also to accept Sunbeam stock — ultimately, 14.1 million shares of Sunbeam stock — as a major part of the purchase price. During the course of negotiations, Morgan Stanley prepared and provided CPH with false financial and business information about Sunbeam designed to create the appearance that Sunbeam was prospering and that Sunbeam's stock had great value. For example, Morgan Stanley provided CPH with false 1996 and 1997 sales and revenue figures, as well as false projections that Sunbeam could not expect to achieve. Together, in face-to-face discussions, Morgan Stanley and Sunbeam assured CPH that (a) Sunbeam would meet or exceed its first quarter 1998 earnings estimates; (b) analysts' 1998 earnings estimates for Sunbeam were correct; and (c) Sunbeam's plan to earn \$2.20 per share in 1998 was easily achievable and probably low. Morgan Stanley and Sunbeam also falsely assured CPH that Sunbeam's "early buy" sales program would not hurt Sunbeam's future revenues. However, the "early buy" program was one of Sunbeam's revenue acceleration programs — and the devastating effects of Sunbeam's revenue acceleration programs already had begun to materialize at Sunbeam. Sunbeam's January and February 1998 sales were down drastically, although those results were not disclosed to CPH or the public. To the contrary, Morgan Stanley and Sunbeam together specifically advised CPH that Sunbeam's first quarter 1998 sales were "tracking fine" and running ahead of analysts' estimates.

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On February 27, 1998, Sunbeam's Board of Directors met at Morgan Stanley's offices to consider the purchase of Coleman, as negotiated by Morgan Stanley.

At the February 27, 1998 meeting, Morgan Stanley made an extensive presentation to Sunbeam's Board concerning the proposed transaction. Numerous Morgan Stanley representatives, including Managing Directors Strong, Kitts, Stynes, Ruth Porat, and Vikram Pandit, attended the meeting.

Morgan Stanley presented Sunbeam's board with Morgan Stanley's opinion on the value of Coleman. Using a discounted cash flow analysis, which Morgan Stanley represented was the best gauge of stand-alone economic value and the best method of capturing the unique value of Coleman, Morgan Stanley valued CPH's Coleman stock at a range of \$31.06 to \$53.24 per Coleman share. CPH's 44,067,520 Coleman shares were worth, therefore, between \$1.369 billion and \$2.346 billion.

Following Morgan Stanley's presentation, Sunbeam's Board of Directors voted to acquire Coleman on the very favorable terms that Morgan Stanley had negotiated.

Morgan Stanley spent the following weekend developing Sunbeam's public relations strategy to announce the Coleman transaction. Morgan Stanley scripted the points for Dunlap to make in a conference call with analysts. Morgan Stanley also crafted a list of "key media messages" for Dunlap to use in his communications with the press. On Sunday, March 1, 1998, Morgan Stanley spoke with a reporter for the Wall Street Journal to inform him that Sunbeam would announce its acquisition of Coleman the following morning.

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Sunbeam announced its acquisition of Coleman on Monday, March 2, 1998, prior to the opening of the financial markets. Consistent with Morgan Stanley's valuation, investors viewed Sunbeam's purchase of Coleman — and the price that Sunbeam had paid — very favorably. The day before the acquisition was announced, Sunbeam's stock closed at \$41-3/4. In the days following Sunbeam's announcement of the transaction, Sunbeam's stock rose approximately 25%, to a high of \$52.

Dunlap knew that Sunbeam needed to raise funds to pay the cash portion of the acquisition consideration. Dunlap also knew that Sunbeam needed cash to purchase two other smaller companies in addition to Coleman. Morgan Stanley recommended that Sunbeam raise funds through a \$500 million offering of convertible subordinated debentures. To assure the offering's success, Morgan Stanley lent its name to the offering. Indeed, Morgan Stanley agreed to serve as the sole underwriter for the offering.

The money raised from the sale of the debentures was used by Sunbeam to complete the acquisition of Coleman.

Unbeknownst to CPH or the public, Sunbeam's first quarter 1998 sales were a small fraction of the financial community's expectations for the quarter. If Dunlap could consolidate Sunbeam's sales with Coleman's sales, Dunlap knew that he could obscure Sunbeam's actual first quarter sales. As a result, Dunlap was especially anxious to complete the acquisition of Coleman before Sunbeam announced its first quarter 1998 sales. Indeed, the success of the scheme depended upon Sunbeam's ability to complete the Coleman acquisition before Sunbeam's first quarter results

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were announced. To satisfy Dunlap's objectives, Morgan Stanley moved up the launch date of the offering.

The debentures were marketed to investors at a series of "road show" meetings and conference calls arranged by Morgan Stanley. Morgan Stanley prepared and distributed a memorandum for its sales force to use in marketing the debentures to investors. Morgan Stanley also developed the script for Dunlap and Kersh to deliver during the road show. In those materials, Morgan Stanley misrepresented Sunbeam's financial performance and emphasized Dunlap's purported "turnaround" accomplishments.

Morgan Stanley launched the debenture offering with a research analyst presentation to the Morgan Stanley sales force. As part of Morgan Stanley's growing relationship with Sunbeam, one of Morgan Stanley's top-rated research analysts planned to initiate equity coverage of Sunbeam. That Morgan Stanley analyst had modeled values for Sunbeam's acquisition of Coleman that were higher than even Sunbeam's management had predicted.

Although Morgan Stanley initially planned to sell \$500 million worth of debentures, Morgan Stanley's efforts were so successful that the size of the offering was increased to \$750 million on March 19, 1998 — the day of the last road show. The debentures were sold to investors nationwide, including investors based in Florida.

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As Sunbeam's investment banker and the sole underwriter for the debenture offering, Morgan Stanley had a duty to investigate Sunbeam's finances and business operations.

Morgan Stanley, which had been working hand-in-hand with Sunbeam for

almost a year and had traveled to Sunbeam's Florida offices, repeatedly asserted that it had satisfied that duty.

Strong, who was one of the senior Morgan Stanley investment bankers involved, has admitted in sworn testimony that he may have had more than 100 telephone conversations with Dunlap and Kersh (whose offices were in Sunbeam's Delray Beach headquarters) and that Strong was "sure" that he would have been apprised of Sunbeam's financial performance during the first two months of 1998.

With the \$750 million debenture offering and the Coleman transaction set to close at the end of March 1998, Sunbeam's Florida-based outside auditors were shocked that Morgan Stanley had not asked them about Sunbeam's financial performance for first quarter 1998. Sunbeam's auditors were alarmed because Sunbeam's first quarter results were a disaster, but Dunlap, Kersh, and Morgan Stanley were telling CPH and the investing public,

that Sunbeam's turnaround was a success, that Sunbeam's sales for the first quarter of 1998 were ahead of the expectations of outside financial analysts, and that Sunbeam was poised for record sales.

On March 17, Sunbeam's auditors forced the issue. From their Florida offices, Sunbeam's auditors sent Morgan Stanley a letter reporting that Sunbeam's net sales through January 1998 were down 60% — \$28 million in January 1998, as compared to \$73 million in January 1997. The March 17 letter explained that the decline was "primarily due to the . . . new early buy program for grills which accelerated grill sales into the fourth quarter of fiscal 1997."

The next day, Morgan Stanley was faxed a schedule from Sunbeam's Florida office that showed that Sunbeam's January and February 1998 net sales totaled \$72 million, an amount that was 50% lower than Sunbeam's January and February 1997 net sales of \$143.5 million.

Based on information that Sunbeam and Morgan Stanley had disseminated, Wall Street analysts were anticipating that Sunbeam's first quarter 1998 net sales would be in the range of \$285 million to \$295 million. Sales in that range would have been approximately 15% higher than first quarter 1997 sales. Sunbeam's January and February 1998 sales, however, totaled barely 25% of \$285 million. As Sunbeam's outside auditors advised Morgan Stanley in writing, the sales drop-off was caused by Sunbeam's sales acceleration program. The information put into Morgan Stanley's hands on March 17 and March 18 showed that Morgan Stanley's and Sunbeam's assertions to CPH and other investors were false. Contrary to what Morgan Stanley and Sunbeam had represented, Sunbeam had not undergone a successful turnaround, Sunbeam's financial performance had not dramatically improved, and Sunbeam's performance in 1998 was not better than Wall Street analysts' expectations. It was imperative, therefore, that the truth be kept from CPH until the Coleman transaction closed at the end of March 1998.

Morgan Stanley did not disclose Sunbeam's disastrous first quarter, Morgan Stanley did not insist that Sunbeam disclose its disastrous first quarter, Morgan Stanley did not correct any of the false and misleading statements it and Sunbeam had made to CPH about Sunbeam's business or performance, and Morgan Stanley did not suspend any of the critical transactions that were scheduled to close in the next two weeks. Instead, with Morgan Stanley's knowledge and assistance, Sunbeam prepared and issued a false press release on March 19, 1998 that affirmatively misstated and concealed Sunbeam's true condition.

The March 19, 1998 press release stated: "Sunbeam Corporation . . . said today that it is possible that its net sales for the first quarter of 1998 may be lower than the range of

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Wall Street analysts' estimates for \$285 million to \$295 million, but net sales are expected to exceed 1997 first quarter net sales of \$253.4 million. . . . The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the Company's major retail customers. The Company further stated that based on the strength of its new product offerings and powerful brand names, it remains highly confident about the overall sales outlook for its products for the entire year."

As Morgan Stanley was fully aware, the March 19, 1998 press release was false, misleading, and failed to disclose material information. The March 19, 1998 press release failed to disclose Sunbeam's actual January and February 1998 sales or the true reasons for the poor results. Instead, the press release held out the false possibility that Sunbeam still could achieve sales of \$285 million to \$295 million and suggested that, if any shortfall occurred, that shortfall would be due to the fact that certain retailers had decided to defer first quarter purchases to the second quarter. The press release also assured that Sunbeam at least would exceed first quarter 1997 net sales of \$253.4 million. Based on information that Morgan Stanley had in its hands on March 18, 1998, it was obvious that Sunbeam would not achieve sales of \$285 million to \$295 million and that Sunbeam's first quarter 1998 sales would be below its first quarter 1997 numbers. To simply meet 1997 first quarter sales, Sunbeam needed sales of \$123.3 million over the 12 remaining days of the quarter — an average of \$10.28 million per day. Sales of \$10.28 million per day would be 306% more than the average per day sales in March 1997, and 281% more than the average per day sales for the first 17 days of March 1998. Furthermore, Morgan Stanley knew that the shortfall from analysts' estimates was not caused by retailers' deciding to defer purchases from the first quarter of 1998 to the second quarter, as the press release indicated. Rather, as Sunbeam's outside auditors had

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advised Morgan Stanley in writing, the collapse in first quarter sales was caused by Sunbeam's acceleration of 1998 sales into the fourth quarter of 1997.

After Sunbeam's false press release was issued, Morgan Stanley stood arm-in-arm with Sunbeam while Dunlap and Kersh told CPH, analysts, and investors that the March 19, 1998 release was a purely cautionary statement because some first quarter 1998 sales might simply "spillover" into the second quarter and that Sunbeam still believed that it actually would meet analysts' estimates of \$285 million to \$295 million in first quarter 1998 sales.

Morgan Stanley knew that a full and truthful disclosure of Sunbeam's first quarter sales would doom the debenture offering, which was scheduled to close on March 25, 1998,

As Morgan Stanley was fully aware, the written contract between CPH and Sunbeam gave CPH the express legal right to refuse to close the sale if there was a material adverse change in Sunbeam's "business, results of operation or financial condition."

Furthermore, if the transactions did not close, Morgan Stanley would not be paid its \$10.28 million fee for the Coleman acquisition or its \$22.5 million fee for underwriting the subordinated debenture offering. Morgan Stanley also knew that Sunbeam would promptly replace Morgan Stanley with another investment banking firm – such as the Chase Securities team led by Mark Davis.

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Sunbeam's outside auditors already had made it perfectly clear to Morgan Stanley that Sunbeam's first quarter 1998 sales were a disaster,

One of Sunbeam's senior outside auditors, Lawrence Bornstein, has testified under oath that on March 19, 1998, he told Morgan Stanley's John Tyree that the statement in Sunbeam's March 19, 1998 press release — that Sunbeam would at least exceed first quarter 1997 sales of \$253.4 million — was not credible: "Just do the math . . . they've done a million dollars in sales the first 70 days of the year and now they need to do \$10 million worth of sales for the next . . . I think it was 11 days . . . I mean, something ridiculous." Bornstein also told Tyree: "I've been to every shipping dock domestically, I've been to Hattiesburg, I've been to Neosho, I've been to Mexico City, and I don't think these guys can physically ship this much stuff."

Morgan Stanley knew that the March 19 press release was false and misleading. Despite that knowledge and Bornstein's explicit statements, Morgan Stanley continued with its preparations to close the debenture offering on March 25, 1998 and the Coleman acquisition on March 30, 1998.

As part of those preparations, on March 24, 1998, Morgan Stanley's Tyree spoke by telephone with Sunbeam's Kersh, who was located in Sunbeam's Delray Beach offices, to obtain an updated report concerning Sunbeam's first quarter performance. By the time of that March 24, 1998 call, Sunbeam had fallen even further behind first quarter 1997 sales. As of March 18, 1998, Sunbeam needed to achieve average sales of \$10.28 million per day, over 12 days, to reach

first quarter 1997 sales. Sunbeam's sales between March 18 and March 24, 1998 had averaged only \$6.81 million per day — well short of the \$10.28 million per day that Sunbeam needed to achieve. Sunbeam's March 18 through March 24, 1998 sales were further proof that Sunbeam's March 19, 1998 press release was false and that Sunbeam would not achieve first quarter 1998 sales in excess of first quarter 1997 sales.

Morgan Stanley also knew no later than March 25, 1998, if not much earlier, that Sunbeam's earnings for the first quarter of 1998 were going to miss Wall Street analysts' earnings expectations, which were in the range of \$0.28 to \$0.31 per share (excluding one-time charges). Sunbeam's outside auditors advised Morgan Stanley on March 25 that Sunbeam had suffered a \$41.19 million loss during the first two months of 1998, including a one-time charge of \$30.2 million. Even excluding that one-time charge, Sunbeam's loss for the first two months was \$0.13 per share. To achieve first quarter 1998 operating earnings of \$0.28 per share, which were at the low end of analyst expectations, Sunbeam needed to realize a profit of \$35.5 million during March 1998 alone. A net profit of \$35.5 million in March was 500% more than Sunbeam's net profit for the entire first quarter of 1997. In fact, Sunbeam's first quarter 1998 earnings fell far short of Wall Street's expectations. Sunbeam's first quarter earnings were material,

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Having directly participated in misleading CPH Morgan Stanley had a duty to disclose the true facts before the closing of the debenture offering and the Coleman acquisition. Morgan Stanley also could have required Sunbeam to postpone the closings of

those transactions until the necessary disclosures were made. Morgan Stanley did neither. Instead, Morgan Stanley marched forward and closed the \$750 million debenture offering on March 25, 1998, which was needed to close the Coleman transaction, and assisted Sunbeam in closing the acquisition of Coleman on March 30, 1998.

Morgan Stanley received \$22.5 million for the subordinated debenture offering and \$10.28 million for the Coleman acquisition. Morgan Stanley would have received nothing if the transactions had failed to close.

On April 3, 1998 — just four days after the Coleman transaction closed — Sunbeam announced that sales for the first quarter of 1998 would be approximately 5% below the \$253.4 million in sales that Sunbeam reported in the first quarter of 1997. In other words, Sunbeam was expecting sales in the range of \$240 million. That sales shortfall was shocking news, particularly in view of assurances provided by Sunbeam both in and after its March 19, 1998 press release that \$285 million to \$295 million of sales was still a real possibility. The April 3, 1998 press release also disclosed that Sunbeam expected to show a loss for the quarter, although the release did not disclose the magnitude of the loss or how much of the loss was attributable to operating earnings as opposed to one-time charges. Sunbeam's news stunned the market. On April 3rd, Sunbeam's stock price dropped 25% — from \$45-9/16 to \$34-3/8.

Sunbeam's actual first quarter 1998 performance was even worse than Sunbeam disclosed on April 3, 1998. The April 3, 1998 release indicated that Sunbeam's first quarter sales were in the range of \$240 million. In fact, Sunbeam's first quarter sales were \$224.5

million. Sunbeam obscured the true shortfall by extending its quarter from March 29 to March 31, 1998 — thereby adding two more days of Sunbeam sales. Sunbeam also failed to disclose that it had included two days of Coleman sales after the Coleman transaction closed on March 30. Further, Sunbeam inflated first quarter 1998 sales with \$29 million of new phony “bill and hold” sales.

Just as Sunbeam’s first quarter 1998 sales had been a disaster, so, too, were Sunbeam’s first quarter 1998 earnings. Morgan Stanley and Sunbeam had represented to CPH that Sunbeam would achieve or exceed analyst first quarter 1998 earnings estimates. At the time of that representation, the consensus among analysts was that Sunbeam would enjoy first quarter 1998 earnings of \$0.33 per share. However, on May 9, 1998, Sunbeam disclosed that it would record a first quarter loss of \$0.09 per share (excluding one-time charges) — more than \$0.40 per share lower than CPH had been told to expect.

Within weeks, Dunlap’s fraudulent scheme began to unravel. In June 1998, after a number of news articles critical of Sunbeam’s practices, Sunbeam’s Board of Directors launched an internal investigation. That investigation led quickly to the firing of Dunlap and Kersh, and, subsequently, to a restatement of Sunbeam’s financial statements for 1996, 1997, and the first quarter of 1998.

As detailed above, Morgan Stanley participated in a scheme to mislead CPH and others and cover up the massive fraud at Sunbeam until Morgan Stanley and Sunbeam could close the purchase of Coleman. Morgan Stanley provided CPH with false information concerning Sunbeam’s 1996 and 1997 financial performance, its business operations, and the value of Sunbeam’s stock. Morgan Stanley also actively assisted Sunbeam in concealing Sunbeam’s

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disastrous first quarter 1998 sales and earnings and the true reasons for Sunbeam's poor performance.

Morgan Stanley knew that its statements to CPH were materially false and misleading and omitted the true facts.

Morgan Stanley intended that CPH rely on Morgan Stanley's representations concerning Sunbeam.

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As detailed above, Dunlap engaged in a fraudulent scheme to inflate the price of Sunbeam's stock by improperly manipulating Sunbeam's 1996 and 1997 performance, by falsely asserting that Sunbeam had successfully "turned around," and by concealing the collapse of Sunbeam's first quarter 1998 sales and earnings and the reasons for Sunbeam's first quarter 1998 performance.

86. As detailed above, Morgan Stanley knew of Dunlap's fraudulent scheme and helped to conceal it until after Sunbeam could close the purchase of Coleman.

As detailed above, Morgan Stanley provided substantial assistance to Dunlap and Sunbeam, including: concealing Sunbeam's first quarter 1998 sales collapse; assisting with the false March 19, 1998 press release; arranging road shows and meetings with prospective debenture purchasers at which Morgan Stanley, Dunlap, and others made false statements concerning Sunbeam's financial condition and business operations; preparing and disseminating the preliminary and final offering memoranda for the subordinated debenture offering, both of which contained false information concerning Sunbeam's financial condition and business operations; providing CPH with false financial and business information concerning Sunbeam; scripting Dunlap's false public statements concerning Sunbeam's acquisition of Coleman;

and underwriting the \$750 million convertible debenture offering, proceeds from which were used to fund Sunbeam's purchase of Coleman.

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As detailed above, Morgan Stanley conspired with Dunlap and other senior Sunbeam executives to conceal the truth about Sunbeam's financial performance and business operations.

As detailed above, Morgan Stanley committed overt acts in furtherance of the conspiracy, including: concealing Sunbeam's first quarter 1998 sales collapse; assisting with the false March 19, 1998 press release; arranging road shows and meetings with prospective debenture purchasers at which Morgan Stanley, Dunlap, and others made false statements concerning Sunbeam's financial condition and business operations; preparing and disseminating the preliminary and final offering memoranda for the subordinated debenture offering, both of which contained false information concerning Sunbeam's financial condition and business operations; providing CPH with false financial and business information concerning Sunbeam; scripting Dunlap's false public statements concerning Sunbeam's acquisition of Coleman;

and underwriting the \$750 million convertible debenture offering, proceeds from which were used to fund Sunbeam's purchase of Coleman.

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EXHIBIT C

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1 IN THE CIRCUIT COURT FOR THE
2 15TH JUDICIAL CIRCUIT IN AND FOR
3 PALM BEACH COUNTY, FLORIDA
4 CASE NO. 03 CA 005045 AI

5 COLEMAN (PARENT) HOLDINGS, INC.,

6 Plaintiff,

7 vs.

8 MORGAN STANLEY & CO., INC.,

9 Defendant.

10
11
12 VOLUME 35

13 PROCEEDINGS BEFORE THE HONORABLE ELIZABETH T. MAASS

14
15
16
17
18
19 Monday, March 14, 2005
20 Palm Beach County Courthouse
21 Courtroom 11-A
22 205 North Dixie Highway
23 West Palm Beach, Florida 33401
24 1:30 p.m. to 4:30 p.m.
25

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1 respect to those, or did you continue to look for
2 e-mail?

3 A. No, the next step we did was try to
4 determine what kind of tapes they were. We knew what
5 kind of tapes they weren't. We try to determine what
6 tapes they were, so we took a sampling and discovered
7 they were Novell compressed backups.

8 Q. What does that mean?

9 A. That's just a different backup type than
10 what we were processing in the archive.

11 Q. Now, you've determined that they're Novell
12 backups. Did you receive any kind of instructions from
13 Morgan Stanley in terms of whether you should continue
14 to look for e-mail on those tapes?

15 A. Yes, I was to continue to look for e-mail.

16 Q. And did Morgan Stanley place any limitation
17 on your search for e-mails on these Novell tapes?

18 A. No.

19 Q. Did anyone at Morgan Stanley ever give you
20 the impression that they were not interested in finding
21 e-mail on those tapes?

22 A. Oh, absolutely not.

23 Q. And you were looking for any e-mail,
24 including cc mail?

25 A. Correct.

042741

1 Q. What did you do to find e-mail on the Novell
2 backup tapes?

3 A. Well, I can't -- I believe I suggested, in
4 order to figure out what we were going to do next, to
5 list a couple of the tapes, a sample of the tapes and
6 see if we could see, A, if there were indeed any e-mail
7 on the tape, and B, if we did find e-mail, we would
8 figure out exactly what kind of processing we would
9 have to do with it.

10 Q. So one was listing, and did you do anything
11 else with respect to these tapes?

12 A. The first thing was to list, I believe it
13 was two or three tapes, I don't remember the exact
14 number.

15 Q. Did you do anything else?

16 A. I'm sorry?

17 Q. The listing is one thing that you did. Was
18 there anything else that you did?

19 A. Once the listing was produced, yes, we had
20 programs that go against the listing looking for
21 certain criteria to try to identify if there might be
22 e-mail storage places on the tape.

23 And we also had two mail server names from
24 Morgan Stanley that we searched that possibly could
25 have been Lotus Note backup servers. And we searched

0427762

1 the listings for those two mail servers. And I also
2 visually scanned through several of the listings.

3 Q. And did you report back to Morgan Stanley as
4 to the results of those efforts?

5 A. I reported back I did not find any user
6 e-mail.

7 Q. And did you receive any further instructions
8 from Morgan Stanley when you reported that back?

9 A. Yes, keep going.

10 Q. Keep looking for e-mail?

11 A. Yes.

12 Q. Did you ever report back to Morgan Stanley
13 after getting that instruction?

14 A. Yes, what I did next was I did a couple more
15 samples, listings, continued to try to find e-mail.
16 And at some point I reported back that I could not find
17 any e-mail.

18 Q. Are you now aware that there may, in fact,
19 be some e-mail on these Novell backup tapes?

20 A. Yes.

21 Q. How do you explain that?

22 A. Because I didn't -- we didn't process all
23 those tapes. We only processed the samples that I'm
24 talking about.

25 Q. Did you ever tell Morgan Stanley that you

042743

1 did not process or list all of the tapes?

2 A. No.

3 Q. Did you ever send Morgan Stanley the
4 listings that you did process?

5 A. No.

6 Q. If there was a mistake in processing the
7 Novell backup tapes; whose mistake was that?

8 A. I messed up. There's no question about it.

9 Q. You've seen references in an April 29, 2004
10 minute meetings about 700 Legato tapes that were at
11 NDCI?

12 A. Yes.

13 Q. And it says, I think, that they were
14 misplaced at NDCI and will be processed within two
15 weeks.

16 A. Yes.

17 Q. Can you just explain to us what that's all
18 about?

19 A. Well, I would not have worded the minutes
20 that way. But what it was was we had, as you can
21 imagine, we have lots of tapes coming in and out all
22 the time. And we had control processes throughout
23 everyplace the tape goes, even what process it's in on
24 a machine. And I believe what I was doing was trying
25 to find out how many tapes we had left to process prior

042744

EXHIBIT "D" IS CONFIDENTIAL

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042745

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

ORDER AND DIRECTIONS TO THE CLERK

THIS CAUSE came before the Court, in Chambers, on its own Motion. Based on the foregoing, it is

ORDERED AND ADJUDGED that the Clerk is directed to docket and file attorney Bruce Rogow's letter dated June 11, 2007.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this
day of June, 2007.


ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:

Joseph Ianno, Jr., Esq., 222 Lakeview Ave., Suite 1400, West Palm Beach, FL 33401

John Scarola, Esq., 2139 Palm Beach Lakes Blvd., West Palm Beach, FL 33409

Jerold S. Solovy, Esq., One IBM Plaza, Suite 4400, Chicago, IL 60611

Joel Eaton, Esq., 25 West Flagler Street, Suite 800, Miami, FL 33130

Bruce S. Rogow, Esq., Broward Financial Centre, Suite 1930, 500 E. Broward Blvd., Ft. Lauderdale, FL 33394

Faith E. Gay, Esq., 51 Madison Ave., 22nd Floor, New York, NY 10010

FILED
07 JUN 12 AM 9:31
SHARON A. BOSEK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL 6

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BRUCE S. ROGOW, P.A.
BROWARD FINANCIAL CENTRE
500 EAST BROWARD BOULEVARD, SUITE 1930
FORT LAUDERDALE, FLORIDA 33394

June 11, 2007

Bruce S. Rogow*
Cynthia E. Gunther

* Board Certified Appellate Lawyer

Phone (954) 767-8909
Fax (954) 764-1530
guntherc@rogowlaw.com
brogow@rogowlaw.com

VIA HAND DELIVERY
HONORABLE ELIZABETH T. MAASS
PALM BEACH COUNTY COURTHOUSE
205 North Dixie Highway
Room 11.1208
West Palm Beach, FL 33401

RE: *CPH v. Morgan Stanley*
Case No. CA-005045 AI

Dear Judge Maass,

Enclosed are Unopposed Motions to Cancel the Supersedeas Bonds in this case and Agreed Orders on the Motions. I have spoken to Mr. Solovy who agreed to cancelling the bonds and Joel Eaton, CPH's appellate counsel in Miami has been provided with a copy of the Motions and Orders and has no objection to either the Motions or the Orders.

The premiums on the bonds are approximately \$12,000 per day and therefore we would like to expedite their cancellation. If your Judicial Assistant could call Mr. Ianno at (561) 659-7070 upon the signing of the Orders, his office will collect them and secure the bonds from the Clerk.

If you have any questions regarding the Unopposed Motions and Orders we can arrange for a telephone conference call at your convenience with counsel for the parties.

Very truly yours,


BRUCE ROGOW

HARVEY S. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

07 JUN 12 AM 9:32

FILED

cc: Via e-mail and fax to the following:
Jerold Solovy
Joel Eaton
Jack Scarola
Joe Ianno
Sylvia Walbolt
Faith Gay

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INC.,

Defendant.

**MORGAN STANLEY & CO. INC.'S UNOPPOSED
MOTION TO DISCHARGE CIVIL
SUPERSEDEAS BOND FILED JUNE 27, 2005**

Defendant, Morgan Stanley & Co. Inc. ("Morgan Stanley"), moves to discharge the Civil Supersedeas Bond that Morgan Stanley filed on June 27, 2005. In support of this unopposed motion, Morgan Stanley states as follows:

1. On June 23, 2005, the Court entered a Final Judgment in favor of Plaintiff Coleman (Parent) Holdings, Inc., which was recorded in the records of the Palm Beach County Circuit Court on June 23, 2005, Official Records Book 18800 at Page 0095-0096, in the principal sum of One Billion, Five Hundred Seventy-Seven Million, Six Hundred Ninety-Six Thousand, One Hundred Seventy-Five Dollars and 83/100 (\$1,577,696,175.83), plus statutory interest accruing at the rate of seven percent (7%) per annum.

2. Morgan Stanley timely filed a Notice of Appeal of that Final Judgment on June 27, 2005.

3. On June 27, 2005, Morgan Stanley filed a Civil Supersedeas Bond (the "Bond"), in the principal sum of One Billion, Seven Hundred Ninety Eight Million, Five Hundred Seventy Three Thousand, Six Hundred Forty Dollars and 45/100 (\$1,798,573,640.45). The Bond was filed pursuant to Florida Rule of Appellate Procedure 9.310(b)(1), in order to obtain an automatic stay of the money judgment pending appeal. National Union Fire Insurance Company ("Surety") was the surety under the Bond.

4. On March 21, 2007, the Fourth District Court of Appeal reversed that Final Judgment, and remanded the case with instructions to enter judgment in favor of Morgan Stanley.

5. Thereafter, on April 20, 2007, Plaintiff filed motions for rehearing, rehearing en banc, clarification, and certification in the Fourth District. Those motions were denied on June 4, 2007.

6. Because the underlying Final Judgment has been reversed, a Civil Supersedeas Bond is no longer required. Until discharged, however, the substantial costs relating to the Bond continue to accrue.

7. Accordingly, the Bond should be discharged, cancelled, and returned to Morgan Stanley and the Surety, and both parties should be released from any and all liability thereunder. Morgan Stanley reserves its right to seek all costs and expenses, including costs and expenses relating to the Bond, and other damages from Plaintiff in this matter.

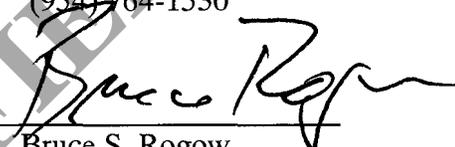
8. Undersigned counsel for Morgan Stanley has contacted Jerold Solovy and Joel Eaton, counsel for Plaintiff, regarding the relief sought in this Motion and has been authorized to state that the Plaintiff does not object to the relief sought in this Motion.

WHEREFORE, Morgan Stanley hereby requests that this Court enter an order discharging and canceling the Bond, releasing Morgan Stanley and the Surety from any and all liability arising from or under that Bond, directing the Clerk of the Court to return the original Bond to Morgan Stanley, reserving all claims for costs, expenses, and damages against Plaintiff, and awarding such other and further relief as is just and proper.

Respectfully submitted,

Sylvia Walbolt
Florida Bar No. 033604
Joseph Ianno, Jr.
Florida Bar No. 655351
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By: 

Bruce S. Rogow

Faith E. Gay
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Facsimile: (212) 849-7100

*Counsel for Morgan Stanley &
Co. Incorporated*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express this 11 day of June, 2007.

Bruce S. Rogow
Florida Bar No. 067999
BRUCE S. ROGOW, P.A.
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By: 
Bruce S. Rogow

SERVICE LIST

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Joel Eaton
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25 West Flagler Street
Suite 800
Miami, FL 33130

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INC.,

Defendant.

**MORGAN STANLEY & CO. INC.'S UNOPPOSED
MOTION TO DISCHARGE CIVIL
SUPERSEDEAS BOND FILED DECEMBER 16, 2005**

Defendant, Morgan Stanley & Co. Inc. ("Morgan Stanley"), moves to discharge the Civil Supersedeas Bond that Morgan Stanley filed on December 16, 2005. In support of this unopposed motion, Morgan Stanley states as follows:

1. On November 22, 2005, the Court entered a "Judgment on CPH's Motion to Tax Costs" in favor of Plaintiff Coleman (Parent) Holdings, Inc., which was recorded in the records of the Palm Beach County Circuit Court at Official Records Book 19597 at Page 0950, in the principal sum of Nine Hundred Fifty Thousand Dollars and 00/100 (\$950,000.00).
2. Morgan Stanley timely filed a Notice of Appeal of that judgment on December 16, 2005.
3. On December 16, 2005, Morgan Stanley filed a Civil Supersedeas Bond (the "Bond"), in the principal sum of One Million Eighty-Three Thousand Dollars and 00/100 (\$1,083,000.00). The Bond was filed pursuant to Florida Rule of Appellate Procedure

9.310(b)(1), in order to obtain an automatic stay of the money judgment pending appeal. Safeco Insurance Company of America (“Surety”) was the surety under the Bond.

4. On March 21, 2007, the Fourth District Court of Appeal reversed the underlying Final Judgment entered in this case, and remanded the case with instructions to enter judgment in favor of Morgan Stanley.

5. Thereafter, on April 20, 2007, Plaintiff filed motions for rehearing, rehearing en banc, clarification, and certification in the Fourth District. Those motions were denied on June 4, 2007.

6. The parties had previously agreed that in the event the underlying Final Judgment was reversed on appeal, the “Judgment on CPH’s Motion to Tax Costs” would have to be vacated as well because Plaintiff would no longer be the prevailing party. Since the underlying Final Judgment has been reversed, a Civil Supersedeas Bond securing the “Judgment on CPH’s Motion to Tax Costs” is no longer required and Plaintiff has consented to the discharge of the Bond at this time.

7. Accordingly, the Bond should be discharged, cancelled, and returned to Morgan Stanley and the Surety, and both parties should be released from any and all liability thereunder. Morgan Stanley reserves its right to seek all costs and expenses, including costs and expenses relating to the Bond, and other damages from Plaintiff in this matter.

8. Undersigned counsel for Morgan Stanley has contacted Jerold Solovy and Joel Eaton, counsel for Plaintiff, regarding the relief sought in this Motion and has been authorized to state that the Plaintiff does not object to the relief sought in this Motion.

WHEREFORE, Morgan Stanley hereby requests that this Court enter an order discharging and canceling the Bond, releasing Morgan Stanley and the Surety from any and all

liability arising from or under that Bond, directing the Clerk of the Court to return the original Bond to Morgan Stanley, reserving all claims for costs, expenses, and damages against Plaintiff, and awarding such other and further relief as is just and proper.

Respectfully submitted,

Sylvia Walbolt
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Joseph Ianno, Jr.
Florida Bar No. 655351
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By: 
Bruce S. Rogow

*Counsel for Morgan Stanley &
Co. Incorporated*

Faith E. Gay
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Facsimile: (212) 849-7100

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express this 17th day of June, 2007.

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By: 
Bruce S. Rogow

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INC.,

Defendant.

FILED
07 JUN 12 AM 9:32
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

**ORDER GRANTING DEFENDANT'S UNOPPOSED MOTION
TO DISCHARGE CIVIL SUPERSEDEAS BOND FILED JUNE 27, 2005**

THIS CAUSE, having come before the Court on in Chambers, 2007 on Defendant Morgan Stanley's unopposed motion to discharge the civil supersedeas bond filed on June 27, 2005 by National Union Fire Insurance Company of Pittsburgh, PA, as surety, and Morgan Stanley & Co. Inc., as principal, in the amount of One Billion, Seven Hundred Ninety-Eight Million, Five Hundred Seventy-Three Thousand, Six Hundred Forty Dollars and 45/100 (\$1,798,573,640.45) (the "Bond").

The Court having considered the motion and the decision of the Fourth District Court of Appeal dated March 21, 2007, reversing the Final Judgment in this case and the June 4, 2007 Order denying rehearing, rehearing en banc and certification, and the Court otherwise having been fully advised in the premises and good cause having been shown and proper notice given:

It is therefore:

ORDERED AND ADJUDGED that the Bond is fully and unconditionally discharged and cancelled and the Defendant and Surety are released and discharged from any and all past, present and future liability, claims, and obligations thereunder.

IT IS FURTHER ORDERED AND ADJUDGED that the Clerk of the Court is hereby authorized and directed to cancel and discharge the Bond, and return the original Bond to the Defendant.

DONE AND ORDERED in Chambers at Palm Beach County, Florida this 12
day of June, 2007.



ELIZABETH T. MAASS
Circuit Judge

Copies to:

Jack Scarola
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Fort Lauderdale, FL 33394

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INC.,

Defendant.

FILED
07 JUN 12 AM 9:32
SHARON R. BUCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

**ORDER GRANTING DEFENDANT'S UNOPPOSED MOTION
TO DISCHARGE CIVIL SUPERSEDEAS BOND FILED DECEMBER 16, 2005**

THIS CAUSE, having come before the Court on in Chambers, 2007 on Defendant Morgan Stanley's unopposed motion to discharge the civil supersedeas bond filed on December 16, 2005 by Safeco Insurance Company of America, as surety, and Morgan Stanley & Co. Inc., as principal, in the amount of One Million Eighty-Three Thousand Dollars and 00/100 (\$1,083,000.00) (the "Bond").

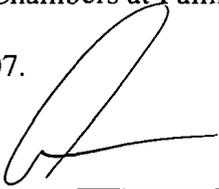
The Court having considered the motion and the decision of the Fourth District Court of Appeal dated March 21, 2007, reversing the underlying Final Judgment in this case and the June 4, 2007 Order denying rehearing, rehearing en banc and certification, and the Court otherwise having been fully advised in the premises and good cause having been shown and proper notice given:

It is therefore:

ORDERED AND ADJUDGED that the Bond is fully and unconditionally discharged and cancelled and the Defendant and Surety are released and discharged from any and all past, present and future liability, claims, and obligations thereunder.

IT IS FURTHER ORDERED AND ADJUDGED that the Clerk of the Court is hereby authorized and directed to cancel and discharge the Bond, and return the original Bond to the Defendant.

DONE AND ORDERED in Chambers at Palm Beach County, Florida this 11 day of June, 2007.



ELIZABETH T. MAASS
Circuit Judge

Copies to:

Jack Scarola
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BARNHARDT & SHIPLEY, P.A.
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500 East Broward Blvd.
Fort Lauderdale, FL 33394

NOT A CERTIFIED COPY

PLEASE DATE, SIGN AND RETURN RECEIPT TO CLERK, PALM BEACH COUNTY

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NUMBER: 502003CA005045 AI

COLEMAN (PARENT) HOLDINGS, INC.
Plaintiff(s)

-vs-

MORGAN STANLEY & CO., INC.,
Defendant(s)

RECEIPT

Received from SHARON R. BOCK, Clerk of the above styled court, the following original documents,
returned per court order dated

JUN 12 2007 # 2464 # 2193

- Original documents filed 6/27/05 AND 12/16/05 (BOND) (rtn via cert mail)
(Date)
- Certified copies of documents filed _____ (rtn via cert mail)
(Date)
- Plain copies of documents filed _____
(Date)

Returned to you via Certified Mail # _____

Including:

- Mortgage (_____)
(# of Mortgages, if more than one)
- Note (_____)
(# of Notes, if more than one)
- Assignment of Mortgage/Note (_____)
(# of Assign., if more than one)
- Riders (_____)
(# of Riders, if more than one)
- Other _____

(Description of items)

This 12th day of June, 20 07

Garth T Yearick Carlton Fields
Please sign name of person receiving BN 0096105

Please print name of person receiving

DK/recept frm DK1 6/98

16div-030332

Phone # 650-0330

FILED
07 JUN 12 AM 11:06
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 3

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M A N D A T E

from

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT**

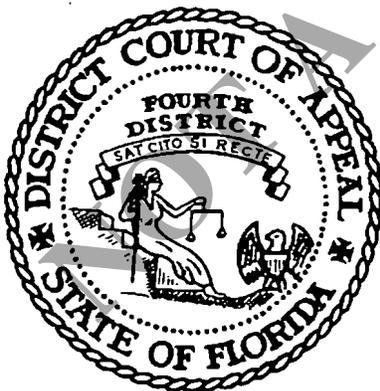
This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable W. MATTHEW STEVENSON, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

DATE: June 22, 2007
CASE NO.: 4D05-2606
COUNTY OF ORIGIN: Palm Beach
T.C. CASE NO.: CA 03-5045 AI, 502003CA005045XXOCAI
STYLE: MORGAN STANLEY & CO., INCORPORATED v. COLEMAN (PARENT) HOLDINGS, INC.

FILED
07 JUN 25 PM 2:01
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 8



Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

ORIGINAL TO: Sharon R. Bock, Clerk

cc:

Joseph Ianno, Jr.
Morgan Stanley & Co., Inc.
Jack Scarola
Ronald L. Marmer
Mark C. Hansen
Michael K. Kellogg
ct

Bruce S. Rogow
Jerold S. Solovy
Michael Brody
Paul M. Smith
Stephen H. Grimes
Sylvia H. Walbolt

Thomas E. Warner
Joel D. Eaton
Jeffrey T. Shaw
Rebecca Beynon
John R. Blue

16div-030333

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

June 4, 2007

CASE NO.: 4D05-2606

L.T. No. : CA 03-5045 AI

MORGAN STANLEY & CO.,
INCORPORATED

v.

COLEMAN (PARENT)
HOLDINGS, INC.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that appellee's consolidated motions filed April 20, 2007, for rehearing and rehearing en banc and certification is hereby denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

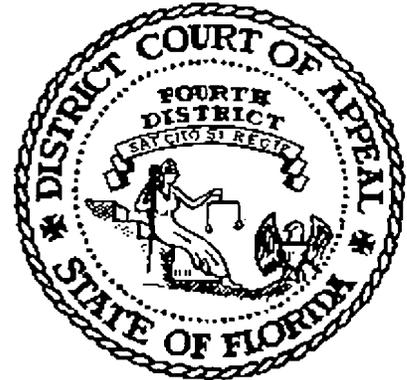
Joseph Ianno, Jr.
Morgan Stanley & Co., Inc.
Jack Scarola
Ronald L. Marmer
Mark C. Hansen
Michael K. Kellogg

Bruce S. Rogow
Jerold S. Solovy
Michael Brody
Paul M. Smith
Stephen H. Grimes
Sylvia H. Walbolt

Thomas E. Warner
Joel D. Eaton
Jeffrey T. Shaw
Rebecca Beynon
John R. Blue

ct

Marilyn Beutenmuller
MARILYN BEUTENMULLER, Clerk
Fourth District Court of Appeal



DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2007

MORGAN STANLEY & CO. INCORPORATED,
Appellant,

v.

COLEMAN (PARENT) HOLDINGS INC.,
Appellee.

No. 4D05-2606

[March 21, 2007]

TAYLOR, J.

This appeal arises from a merger between The Coleman Company, Inc., a manufacturer of camping gear, and Sunbeam, Inc., a manufacturer of household products. Coleman (Parent) Holdings Inc. (CPH), which owned most of the Coleman stock before the merger, exchanged its stock for shares of Sunbeam stock. Later, as reports emerged that Sunbeam's sales were falling and that the company had artificially inflated the value of its stock, Sunbeam's stock price plunged. Sunbeam ultimately declared bankruptcy. CPH sued Morgan Stanley & Co., Inc. (Morgan Stanley), Sunbeam's investment banker in the transaction, alleging that Morgan Stanley helped Sunbeam in carrying out its fraudulent scheme to inflate the price of its stock until after the merger. A jury returned a verdict against Morgan Stanley for conspiracy and aiding and abetting fraud. It awarded CPH compensatory damages of \$604,334,000 and punitive damages of \$850 million. Morgan Stanley appeals the \$1.58 billion judgment entered on the jury verdict. We reverse.

Morgan Stanley raises several issues on appeal, including: (1) whether the trial court improperly entered a partial default against Morgan Stanley as a sanction for discovery misconduct; (2) whether the trial court properly applied Florida law rather than New York law on the issues of justifiable reliance and damages; (3) whether CPH failed to prove compensatory damages by not establishing the fraud-free value of the Sunbeam stock on the date of the merger transaction; (4) whether the trial court erred in denying Morgan Stanley a fair opportunity to

contest and mitigate evidence of litigation misconduct presented during the punitive damages phase of trial; and, (5) whether the punitive damages awarded were excessive. Because our decision on the third issue regarding proof of damages is dispositive, we do not reach the other issues and confine our discussion to compensatory and punitive damages.

A. Compensatory Damages

Pursuant to the merger agreement, Sunbeam bought the Coleman stock and paid CPH approximately half of the purchase price with its own stock. CPH received 14.1 million shares of Sunbeam stock, with an estimated value over \$600 million. The transaction closed on March 30, 1998.

The merger agreement contained a "lockup" restriction, which limited CPH's ability to sell its Sunbeam stock for a specified period. CPH could not sell more than 25% of the Sunbeam stock for 90 days, then could sell another 25% in another 90 days and the remaining 50% in 270 days. A "lockup" provision is customary in situations where, as here, a company is selling a substantial number of shares and wants them sold in an orderly fashion. The shares were unregistered, but Sunbeam had agreed to register them promptly.

On April 3, 1998, Sunbeam issued a press release announcing that first quarter sales would be 5% below 1997 sales and that the company would show a loss for the quarter. Sunbeam stock dropped 10%, to \$34 a share, after this report.

In mid-June 1998, Sunbeam's CEO, Al Dunlap, was fired after an internal investigation revealed fraudulent bookkeeping. Jerry Levin, formerly Coleman's CEO, then took the reins as Sunbeam's CEO and brought several senior Coleman executives with him. By then, the stock price had dropped to \$18. Shortly after Dunlap's firing, Arthur Andersen "pulled" its 1996 and 1997 audit certificates.

By the end of 1998, Levin and his team had been at Sunbeam for almost six months. The company had restated its financials for 1996 and 1997, reducing the loss in 1996 and moving it to 1997. Sunbeam still showed a profit for 1997, even after the restatement, and still had assets of \$3.5 billion.

Originally, CPH had planned to sell the Sunbeam shares after the "lockup" period. However, several circumstances prevented it from doing so. First, because of the fraud and Arthur Andersen's restatement of Sunbeam's financials, registration of the Sunbeam shares could not be completed until late 1999. Registration of a security is required before it can be sold in the public markets. Second, according to CPH, if, at any time after June 1998, the market had learned that CPH was attempting to sell its Sunbeam stock, "the market would clearly have viewed that as CPH abandoning a sinking ship and would have destroyed any value for the CPH stock." Third, because senior executives previously affiliated with CPH had assumed positions on Sunbeam's board and gained access to information concerning Sunbeam's performance, CPH was concerned that selling any of its Sunbeam shares could subject it to liability for insider trading.

On February 6, 2001, nearly three years after the transaction closed, Sunbeam went bankrupt. Howard Gittis, the vice-chairman of CPH, testified that, in his opinion, Sunbeam went bankrupt because it was overleveraged, i.e., had too much debt. As a result of the bankruptcy, CPH's Sunbeam shares became worthless.

At trial, CPH sought benefit-of-the-bargain damages. To establish these, CPH presented the testimony of its expert, Dr. Blaine Nye, a financial economist. Dr. Nye testified that CPH suffered damages between \$634 and \$680 million. He used an expected value for the 14.1 million Sunbeam shares of \$48.26 per share (based on the average share price from the time the deal was publicly disclosed until the day it closed), for a total expected value of more than \$680 million. Dr. Nye stated his opinion that, because CPH never was able to realize any value from the shares, CPH effectively received "zero" value. As an alternative, he assumed that three-quarters of the shares were saleable in the first quarter of 2000, which would have yielded a share price of \$4.35 per share (averaged over the quarter). By that method, CPH's loss amounted to \$634 million.

Morgan Stanley objected to the admission of Dr. Nye's opinion on damages. It argued that Dr. Nye's testimony was incompetent, because he did not factor a valuation date into his analysis. Contrary to the requirements set by settled law on fraud damages, his opinion was not based upon the value of the stock on the March 30, 1998 date of the transaction. The court overruled the objection. During cross-examination of Dr. Nye, Morgan Stanley established that Dr. Nye did not calculate the actual value of Sunbeam shares at any point in time.

Departing from his practice in other securities cases, he did not determine the “fraud-free” price of Sunbeam stock on the date of closing. He simply assumed CPH could not have recovered any value, as he was instructed to do by CPH. He did not consider whether other factors affected the stock price, such as business decisions by the new management team or the stock market crash of 2000. He did not analyze whether Sunbeam’s acquisition of other small companies during this time created problems. He did not look at Sunbeam’s expenses while it was being operated by the new management.

After Dr. Nye’s examination, Morgan Stanley moved to strike Dr. Nye’s testimony and renewed its earlier motions in limine and motion to exclude. Morgan Stanley argued that Dr. Nye’s testimony was legally deficient, pointing out that the expert admitted at trial, as well as in deposition, that he “did not use the date of the deal at all” in his analysis and made no attempt to estimate the value of the loss as of March 30, 1998. The court denied the motions. It also denied Morgan Stanley’s motion to direct a verdict in its favor due to CPH’s failure to prove damages.

On May 16, 2005, the jury returned a verdict finding, by clear and convincing evidence, that CPH relied on the false statements made by Morgan Stanley or Sunbeam, and that it suffered damages as a result. The jury awarded CPH compensatory damages in the amount of \$604,334,000. Two days later, after brief testimony regarding punitive damages, the jury returned a verdict for punitive damages in the amount of \$850 million. Morgan Stanley appealed the entire judgment on these verdicts.

CPH sought benefit-of-the-bargain damages from Morgan Stanley. Under the “flexibility theory” of damages followed in Florida, a defrauded party is entitled to the measure of damages that will fully compensate him. *Nordyne, Inc. v Fla. Mobile Home Supply, Inc.*, 625 So. 2d 1283, 1286 (Fla. 1st DCA 1993) (“The ‘flexibility theory’ permits the court to use either the ‘out-of-pocket’ or the ‘benefit-of-the-bargain’ rule, depending upon which is more likely fully to compensate the injured party.”). At CPH’s request, the trial court concluded that CPH was entitled to benefit-of-the-bargain damages. Damages under the benefit-of-the-bargain rule are measured by the difference between the value of the property as represented and the actual value of the property on the date of the transaction. *Kind v. Gittman*, 889 So. 2d 87, 90 (Fla. 4th DCA 2004); *Totale, Inc. v. Smith*, 877 So. 2d 813, 815 (Fla. 4th DCA 2004); *Teca, Inc. v. WM-TAB, Inc.*, 726 So. 2d 828, 829 (Fla. 4th DCA 1999); *Perlman v.*

Ferman Corp., 611 So. 2d 1340, 1341 (Fla. 4th DCA 1993). Actual value of the property at the time of purchase is a “crucial element in the damage equation.” *Teca*, 726 So. 2d at 829. This is so whether a plaintiff seeks benefit-of-the-bargain damages or an out-of-pocket measure of damages. *Kind*, 889 So. 2d at 90; *Totale*, 877 So. 2d at 815. The same standard is applied in federal securities cases. See *Miller v. Asencio & Co.*, 364 F.3d 223, 227 (4th Cir. 2004) (citing *Affiliated Ute Citizens v. U. S.*, 406 U.S. 128, 155 (1972)) (stating that the measure of damages in 10(b) case was the difference between the fair value of what plaintiff received and the fair value of what they would have received had there been no fraudulent conduct at the time of sale); *In Re Imperial Credit Indus., Inc. Sec. Litig.*, 252 F. Supp. 2d 1005, 1014 (C.D. Cal. 2003).¹

As a general rule, plaintiffs alleging securities fraud rely on expert proof to establish both the fact of damage and the appropriate method of calculation. *Sowell v. Butcher & Singer, Inc.*, 926 F.2d 289, 301 (3d Cir. 1991). CPH’s expert testified as to the bargained-for value of the Sunbeam stock, but he did *not* testify as to the actual value of the Sunbeam stock at the time of purchase – a necessary element of proof. He testified that although he had done such calculations in other cases, in this case he did not isolate the fraud-free price and perform the standard securities analysis to determine what would have been the stock’s value on the date of transaction. Instead, he treated the stock as though it had no value when the transaction occurred in 1998.

CPH defends the evidence it presented at trial on damages. It argues that Morgan Stanley is liable for the full amount of its loss, because Morgan Stanley defrauded CPH into accepting shares that it could not resell. It contends that “in cases where misconduct induces a plaintiff to purchase stock and then hinders the plaintiff from reselling that stock, courts repeatedly have held that the wrongdoer is liable for losses until resale can occur.” CPH maintains that, because it could not sell its stock, it was not bound by the date-of-transaction rule, but could recover for stock price declines until such time as it could resell the stock. Consistent with CPH’s theory of damages, the trial court instructed the

¹ CPH’s argument on appeal that the jury actually awarded it \$600 million in “consequential” damages is unpersuasive. The jury was not instructed on the concept of consequential damages. In any event, CPH’s new theory is not supported by the authorities it cites.

jury to value the stock on the date CPH could first resell it after December 1999, when the shares could be registered.

Morgan Stanley counters that CPH should not be allowed to recover for declines in Sunbeam's stock price during the period that CPH had agreed to a contractual "lockup". By agreeing to the "lockup", CPH bargained for at least part of the stock's illiquidity and accepted the risk of declines in stock price due to market conditions or other non-fraud related factors during the "lockup period". Thus, to allow CPH to recover for non-fraud related losses *during* the "lockup" period, when CPH had effectively agreed to absorb non-fraud related losses for that period, would amount to giving CPH more than what it bargained for. The record shows that Sunbeam lost approximately 90% of its value during the contractual "lockup" timeframe.

CPH maintains that it is entitled to recover for even non-fraud related stock price declines during this period, because it would not have entered the agreement, with its "lockup" clause, but for the fraud. However, CPH's "but for" causation argument disregards the proximate causation required for fraud damages and is at odds with the benefit-of-the-bargain recovery it elected. Benefit-of-the-bargain damages do not turn on what would have happened if CPH had known the representations were false. They measure what CPH would have received had the representations been *true*. By opting for benefit-of-the-bargain damages, CPH does not seek to rescind the transaction; it seeks to affirm the transaction and claim the benefit of the bargain. The bargain, in this case, included sale restrictions.

A plaintiff who seeks a benefit-of-the-bargain measure of damages is not entitled to a better bargain than the one it made. This is true even under Florida's "flexibility theory" of damages. The "flexibility theory" of damages, which allows a plaintiff to choose either benefit-of-the-bargain or out-of-pocket damages in fraud cases, is not so flexible as to allow a plaintiff to pick and choose which parts of the contract it wants to affirm and which parts it wants to disaffirm. Furthermore, applying CPH's "but for" rationale to proving damages would result in recovery of all non-fraud related losses in virtually every fraud case, because the defrauded party would need only assert that it would not have agreed to the contract had it known of the fraud.

To support its argument that it was entitled to all "pre-sale" losses, CPH relies primarily on *Shearson Loeb Rhoades, Inc. v. Medlin*, 468 So. 2d 272, 273 (Fla. 4th DCA 1985). However, *Shearson* hinders rather

than helps CPH's claim. In that case, we held that the measure of damages for delay in delivery of stock certificates is the difference between the value when the certificates should have been delivered and the value when they were actually delivered. We barred damages for subsequent depreciation absent proof that the plaintiff "would have sold" earlier had the stock been properly delivered. Here, CPH introduced no such proof. To the contrary, it had actually agreed *not* to sell during the most critical period when Sunbeam lost 90 % of its value.

As to the date-of-transaction rule, CPH argues that the transaction date is not necessarily the operative valuation date in a case involving stock or other property that, due to fraud, could not be resold when the fraud was exposed. It contends that once it placed in evidence a stock price table showing the daily market price of Sunbeam shares from March 1998 until Sunbeam declared bankruptcy in February 2001, the jury could simply select a date when the effects of the fraud no longer existed and perform its own calculation in making an award. However, even if the jury had chosen a date, such as the date Arthur Andersen restated the Sunbeam financials, other factors existed that could have affected the stock price. As the Supreme Court explained in *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 342-43 (2005):

When a purchaser subsequently resells such shares, even at a lower price, that lower price may reflect, not the earlier misrepresentation, but changed economic circumstances, changed investor expectations, new industry-specific or firm-specific facts, conditions, or other events, which taken separately or together account for some or all of that lower price.

Thus, recovering in a securities case "require[s] elimination of that portion of the price decline that is the result of forces unrelated to the wrong." *Miller*, 364 F.3d at 232 (quoting *In re Executive Telecard, Ltd. Sec. Litig.*, 979 F. Supp. 1021, 1025 (S.D.N.Y. 1997)).

Usually, a securities plaintiff proves the actual, or "fraud-free," value of the stock at the time of purchase by presenting an expert "event study" or "event analysis." In fact, an "event analysis" is often required to support an expert's damages calculation and "generally involves the computation of a statistical regression analysis or, at a minimum, the compilation of a detailed analysis of each particular event that might have influenced the stock price." *Miller*, 364 F.3d at 234. This is the kind of calculation that CPH's expert said he had done in other cases.

In *Miller*, the expert claimed to have done the “event analysis” in his head, never committing any portion of it to paper, other than his final conclusion. The court characterized this analysis as “markedly thin” and upheld a zero verdict, stating that the record was one from which the jury “cannot” have awarded damages. *Id.* at 235.

In *In re Imperial Credit Industries, Inc. Securities Litigation*, 252 F. Supp. 2d 1005 (C.D. Cal. 2003), at the summary judgment stage, the court excluded the defense expert’s damages report as junk science under *Daubert v. Merrell Dow Pharmaceutical, Inc.*, 509 U.S. 579 (1993), then entered summary judgment for the defendant, because the report contained no “event study” or similar analysis. In so doing, it noted:

11. Because of the need “to distinguish between the fraud-related and non-fraud related influences of the stock’s price behavior,” *In re Oracle Sec. Litig.*, 829 F. Supp. 1176, 1181 (N.D. Cal. 1993), a number of courts have rejected or refused to admit into evidence damages reports or testimony by damages experts in securities cases which fail to include event studies or something similar. *See, e.g., In re Northern Telecom Sec. Litig.*, 116 F. Supp.2d 446, 460 (S.D. N.Y.2000) (“Torkelson’s testimony is fatally deficient in that he did not perform an event study or similar analysis to remove the effects on stock price of market and industry information and he did not challenge the event study performed by defendants’ expert.”); *Executive Telecard*, 979 F. Supp. at 1024-26 (finding an expert’s methodology not reliable because he failed to conduct an event study or regression analysis to detect whether stock price declines were the result of forces other than the alleged fraud; applying *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993) to exclude the expert damages report); *Oracle*, 829 F. Supp. at 1181 (“Use of an event study or similar analysis is necessary more accurately to isolate the influences of information specific to Oracle which defendant allegedly have distorted… As a result of his failure to employ such a study, the results reached by [plaintiffs’ expert] cannot be evaluated by standard measures of statistical significance.”)

12. The importance and centrality of the event study methodology in determining damages in securities cases-and

the propriety of rejecting expert damages reports which do not use such a methodology has been conceded by plaintiffs in other securities fraud cases:

“[A]ccording to [plaintiffs], the methodology-‘event study methodology’-used to calculate shareholder damages during the class period ‘has been used by financial economists since 1969 as a tool to measure the effect on market prices from all types of new information relevant to a company’s equity valuation.’ It is so accepted, plaintiffs add, that courts now reject expert damage estimates which do not use event study methodology to evaluate the impact on the market of a company’s disclosures.”

In re Cendant Corp. Sec. Litig., 109 F. Supp. 2d 235, 253-54 (D.N.J. 2000).

Imperial Credit, 252 F. Supp. 2d at 1015.

CPH was not entitled to have the jury speculate as to the value of the stock on the date of sale. Rather, it was required to *prove* the stock’s value on that date. As we explained in *Totale*, “the crucial time for the measurement is the time of the fraudulent representation. Later appreciation or depreciation of the property that is subject of the false representation generally does not alter the fraud damage computation.” 877 So. 2d at 815. The federal cases cited above merely expand on Florida law that requires the plaintiff to prove the actual, “fraud-free” value of the stock at the time of purchase. Although CPH insisted in oral argument that the stock market was doing well and that there were no non-fraud related factors affecting the stock price during the “lockup” period, it failed to present any competent proof at trial establishing the absence of non-fraud related factors.

In sum, CPH failed to meet its burden of proving the actual, “fraud-free” value of the Sunbeam stock on the date of the transaction. Instead, it measured damages based on the stock’s value years after the transaction. Because there was no proof presented at trial on the correct measure of damages, the trial court should have granted Morgan Stanley’s motion for directed verdict. We therefore reverse the final judgment for compensatory damages and remand for entry of a judgment for Morgan Stanley. See *Kind*, 889 So. 2d at 90; *Teca*, 726 So. 2d at 830.

We reject CPH's argument that it should, at the least, be given a new trial to prove damages because the trial court erred in its pretrial rulings and jury instructions concerning the proper measure of damages. CPH cannot complain about rulings that it urged the court to make in accordance with its damages theory. Furthermore, as we held in *Teca*, a plaintiff is not entitled to a second "bite at the apple" when there has been no proof at trial concerning the correct measure of damages. *Id.* at 830.

B. Punitive Damages

The trial was bifurcated, with the jury deciding liability and compensatory damages in Phase I. In Phase II, the jury tried the issue of punitive damages and awarded CPH \$850 million in punitive damages. Because we conclude that Morgan Stanley was entitled to a directed verdict and reversal of the compensatory damages award, we reverse the punitive damages award as well. The punitive damages award cannot stand where, as here, no legally cognizable damage was shown as a result of the alleged fraud. Had the trial court properly directed a verdict for Morgan Stanley, the case would have ended at that point and the punitive damages phase never would have been reached.

CPH argues that we should nevertheless uphold the award of punitive damages. It suggests that even after entering a directed verdict on compensatory damages, the trial court could have submitted the liability issue to the jury as a possible predicate for punitive damages. Relying on *Ault v. Lohr*, 538 So. 2d 454 (Fla. 1989), and *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006), CPH argues that, where an intentional tort is proved, punitive damages are recoverable even in the absence of compensatory damages. We conclude that *Ault* is distinguishable and that *Engle* is not controlling in this case.

Ault was an assault and battery case. The jury in that case awarded the plaintiff punitive damages, but no compensatory damages. The Florida Supreme Court approved the punitive damages award because of the jury's express finding of liability. The court held that "a finding of liability alone will support an award of punitive damages 'even in the absence of financial loss for which compensatory damages would be appropriate.'" 538 So. 2d at 456. Assault and battery torts, however, are fundamentally different from fraud. Unlike in the case of fraud, actual injury or compensatory damages are not essential to stating a cause of action for assault and battery. See, e.g., *Paul v. Holbrook*, 696 So. 2d

1311, 1312 (Fla. 5th DCA 1997); *Lay v. Kremer*, 411 So. 2d 1347, 1349 (Fla. 1st DCA 1982).

It is fundamental that “[a]ctual damages and the measure thereof are essential as a matter of law in establishing a claim of fraud.” *Nat’l Equip. Rental, Ltd. v. Little Italy Rest. & Delicatessen, Inc.*, 362 So. 2d 338, 339 (Fla. 4th DCA 1978). “Damage is of the very essence of an action for fraud or deceit.” *Casey v. Welch*, 50 So. 2d 124, 125 (Fla. 1951). Without proof of actual damage the fraud is not actionable. *Id.*; *Stokes v. Victory Land Co.*, 128 So. 408 (1930); *Pryor v. Oak Ridge Dev. Corp.*, 119 So. 326 (1928); *Wheeler v. Baars*, 15 So. 584 (1894); *Nat’l Aircraft Servs., Inc. v. Aeroserv Int’l, Inc.*, 544 So. 2d 1063 (Fla. 3d DCA 1989); *Nat’l Equip. Rental*, 362 So. 2d at 339. Thus, to prevail in an action for fraud, a plaintiff must prove its actual loss or injury from acting in reliance on the false representation.²

Even if CPH established the *fact* of some unquantified damage (which theoretically could have supported a nominal damage award), this is not enough to justify a punitive damage award in a fraud case. Punitive damages for fraud cannot be based on nominal damages alone. *Nat’l Aircraft Servs.*, 544 So. 2d at 1065. Although the Florida Supreme Court’s recent *Engle* opinion does state that “an award of compensatory damages is not a prerequisite to a finding of entitlement to punitive damages,” we read the opinion as addressing the order of proof in determining entitlement to punitive damages. 945 So. 2d at 1262 (“Therefore we conclude that the order of these determinations is not critical.”).³

² In his specially concurring opinion in *Ault*, Chief Justice Ehrlich observed that if actual damage is an essential element of a tort, then an award of compensatory damages is necessary for an award of punitive damages. Though we recognize that this concurring opinion is not binding precedent, we find it highly persuasive. The alternative view would, for example, permit virtually anyone who ever smoked a cigarette in the State of Florida to recover punitive damages in a fraud action against the tobacco companies, irrespective of a finding of any actual adverse health effects.

³ Even if we were to accept CPH’s argument that some amount of punitive damages would still be awardable after a directed verdict on compensatory damages, due process principles would not have permitted an \$850 million punitive damage award to stand in a case where no compensatory damages were awarded. See *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996) (holding that punitive damages must bear a reasonable relationship to compensatory

Accordingly, we reverse both the compensatory and punitive damage awards and remand this cause with directions to enter judgment for Morgan Stanley.

Reversed and Remanded

SHAHOOD, J., concurs.

FARMER, J., dissents with opinion.

FARMER, J., dissenting.

I have a different perception.⁴ Mine sees differences in the case actually litigated in the trial court from the case on appeal. In sum, I see nothing wrong under Florida law with Coleman's theory of compensatory damages or proof and would affirm that part of the judgment. As for punitive damages, however, I would reverse and remand for a new trial on the issue of *entitlement*⁵ and, if necessary, the amount. I elaborate in the following paragraphs.

Compensatory Damages

Sunbeam sought to buy Coleman's stock to acquire control of the company. It agreed to pay part of the price with its own stock and part in cash. Coleman's reasons for accepting some of the price in the buyer's own securities were doubtlessly based on the tax laws, but there are other considerations as well. For example, one reason to hold the stock would be to receive future earnings from what was represented to be worth \$640,000,000. And so the mere fact that part of the price was paid in securities hardly means that the seller intended to convert such

damages). Under due process principles, only a small fraction of the \$850 million award would conceivably have been recoverable in this situation.

⁴ I do agree with the majority's necessarily implicit affirmance of the trial court's application of Florida law instead of New York. Florida has a significant and undeniable interest in providing remedies for persons injured by false financial statements emanating from this state by companies who have decided to locate their headquarters here. I agree that the trial court did not abuse its discretion in the sanctions imposed on Morgan Stanley for substantial violations of court orders.

⁵ See § 768.725, Fla. Stat. (2005) ("In all civil actions, the plaintiff must establish at trial, by clear and convincing evidence, its entitlement to an award of punitive damages.").

securities into cash, or that buyer's damages should be based only on some hypothetical price the stock might have fetched if resold at some point.

The claim is intentional fraud, not breach of contract. Coleman claimed that Sunbeam and Morgan Stanley deliberately falsified financial reports to induce Coleman to accept Sunbeam stock as part of Sunbeam's acquisition of Coleman. That means that the worth of the stock is critical to measuring Coleman's damages.

The value of stock is affected by an objective factor, which in turn may be enhanced by subjective factors. Objectively, it reflects the intrinsic worth of the corporation: the value of its assets in excess of its liabilities. Its worth might also be enhanced by intangible factors: for example, although heavily in debt, a pending transaction could inject considerable profits.

Theoretically, there are two ways in which the value of the Sunbeam stock could have been falsified by the misrepresentations of Sunbeam and Morgan Stanley. The first would be that the stock really had no objective value at all because the corporation was insolvent and lacked any prospects to rescue it.⁶ The alternative could be that the stock actually retained a value less than the corporate financial reports indicated. In other words, the distinction is the difference between zero and some positive whole number.

Florida law, therefore, understandably gave Coleman different ways to measure the injury it suffered from stock whose value had been deliberately misrepresented.

"Florida has adopted two standards for the measurement of damages in an action for fraudulent representation. *Either may be used to do justice as the circumstances demand.* The first standard is the 'benefit-of-the-bargain' rule.... The second standard is the 'out-of-pocket' rule...." [e.s.]

See Martin v. Brown, 566 So.2d 890, 891 (Fla. 4th DCA 1990); *see also Strickland v. Muir*, 198 So.2d 49, 51 (Fla. 4th DCA 1967), *receded from on*

⁶ Again, even if the stock lacked objective value because of the insolvency of the corporation, the owners of its stock might still avoid a liquidation if they could point to some prospective advantage to conceivably rescue the situation. But without that, the stock would have no value.

other grounds, *TECA, Inc. v. WM-TAB, Inc.*, 726 So.2d 828 (Fla. 4th DCA 1999). Looking at the benefit-of-the-bargain rule, I see nothing wrong with the jurisprudence of allowing the deceived victim of fraud to hold a defendant to his lies for purposes of assessing damages. So if a defendant had represented the thing to be worth \$10,000 when it was actually worth nothing, it is fit and appropriate to mulct him in money damages for the full \$10,000. Let the defendant pay what he said the value was. Essentially that is what the benefit-of-the-bargain theory of damages does.

At trial Coleman measured its damages by the benefit of its bargain. It did not seek to prove that the stock had some reduced value above zero. To the contrary, it contended instead that the stock was worthless. As I understand its evidence at trial if believed by the jury, it could have been properly understood as showing that the stock it received from Sunbeam and Morgan Stanley never really had any real value because of the concealed insolvency of Sunbeam—as the later bankruptcy confirmed.

One important aspect of compensating someone for the intentional deceit of another is to make the damages fit the fraud and place the deceived person where he (it) would have been if the goods (stock) had been as represented. If Sunbeam and Morgan Stanley were guilty of deceiving Coleman into believing that the shares given in payment for the company were worth at least \$640,000,000, even though the stock had no real value because of the corporation's concealed insolvency, then it seems only right to hold Sunbeam indebted to Coleman for the same \$640,000,000 in money damages. Such compensation is just and fair because it vindicates the value (*mis*)represented.

I see no legal reason why the deceiver should be benefited in the measurement of damages by the mere fact that Coleman held on to the stock and refrained from selling it in the market when it might have done so. For one thing, by requiring a resale of inflated stock to an unsuspecting public, the court's reasoning would encourage aggrieved buyers unwittingly to make use of their seller's fraudulent representations concealing its real lack of value. The law of damages can hardly countenance such a perpetuation of fraudulent financial statements. If the tainted stock has no value, there is no reason for one in the position of Coleman to produce evidence of the selling price of the stock for any particular day after the sale and before the lawsuit so long as it instead proved that from the day of the sale it had no real value on account of the hidden financial failure of the company. Moreover,

Coleman's failure to sell the stock at the first chance was obviously weighed by the jury. The verdict demonstrates that the jury apparently found that Coleman's failure to attempt resale was of no consequence.

At trial Morgan Stanley's damages defense was apparently meant to defeat Coleman's benefit-of-the-bargain theory by focusing on the second method of proving fraud damages. To reduce damages it sought to establish that even if the stock fell short of the entire value represented by the financial statements, it was nevertheless still worth some lesser value. Morgan Stanley certainly elicited evidence of a lesser value and so argued to the jury. The problem for Morgan Stanley on appeal is that its theory was substantially rejected by the jury. While there may have been contrary evidence, Coleman produced contrary evidence to support its theory of zero value. The jury relied on Coleman's theory instead of Morgan Stanley's, a reliance that should impel this court on appeal to reject the alternative theory of measuring damages as well.

The principal policy underlying compensation in fraud cases has been explained thus:

"In tort actions, the goal is to restore the injured party to the position it would have been in had the wrong not been committed. In most cases, the measure of damages which will accomplish this goal is that provided by the 'out-of-pocket rule.' However, in some cases, the measure of damages afforded by that rule will prove inadequate to achieve the desired goal. To address those latter cases in which the claim is for fraud, what has been described as the 'flexibility theory' has been developed. The 'flexibility theory' permits the court to use either the 'out-of-pocket' or the 'benefit-of-the-bargain' rule, *depending upon which is more likely fully to compensate the injured party.*" [c.o., e.s.]

Nordyne, Inc. v. Fla. Mobile Home Supply, Inc., 625 So.2d 1283, 1286 (Fla. 1st DCA 1993). Coleman had strong authority under Florida law to rely on the benefit-of-the-bargain rule and succeeded in producing evidence that the stock it received was essentially worthless. While Morgan Stanley was free to hitch its star to the alternative out-of-pocket rule, it was the function of the jury to decide which of the two theories would fully compensate the deceived victim of this particular fraud. From the amount awarded, it is obvious that the jury largely used the benefit-of-the-bargain rule, reducing the amount claimed by Coleman to fit the jury's resolution of the evidence. I do not think the trial judge

abused her discretion in allowing the evidence or by refusing to disturb the jury's compensation verdict.

Punitive Damages

In *Ault v. Lohr*, 538 So.2d 454 (Fla. 1989), the court held that a plaintiff can recover punitive damages when the fact finder has found a breach of duty but compensatory or actual damages have not been proven; nominal damages need not first be awarded before punitive damages are proper. Yet in spite of *Ault*, the majority peremptorily holds that no punitive damages are possible in this intentional fraud case because of its reversal of the jury's award of compensatory damages. Their reasoning is:

“Although the Florida Supreme Court's recent *Engle* opinion does state that ‘an award of compensatory damages is not a prerequisite to a finding of entitlement to punitive damages,’ we read the opinion as addressing the order of proof in determining entitlement to punitive damages, not as eliminating the need for proof of damages establishing the underlying case of fraud.”

(referring to *Engle v. Liggett Group, Inc.*, 945 So.2d 1246, 1262 (Fla. 2006)). To understand why *Engle* does not hold what the majority said it did, I set out the *Engle* court's actual discussion on this subject in its entirety:

A. Phase I Finding on Entitlement to Punitive Damages

“The last question on the Phase I verdict form asked the jury to determine whether ‘[u]nder the circumstances of this case, ... the conduct of any Defendant rose to a level that would permit a potential award or entitlement to punitive damages.’ The jury answered ‘yes’ with respect to each of the defendants. In Phase II-B, the jury awarded a total of \$145 billion in punitive damages to the class.

“The Third District ruled that the trial erred in awarding classwide punitive damages ‘without the necessary findings of liability and compensatory damages.’ *Engle II*, 853 So.2d at 450.⁷ A majority of the Court (**Anstead, Pariente, Lewis and Quince**) concludes that *an award of compensatory damages is not a prerequisite to a finding of entitlement to*

⁷ *Liggett Group, Inc. v. Engle*, 853 So.2d 434, 450 (Fla. 3d DCA 2003).

punitive damages. Compensatory and punitive damages serve distinct purposes. As the United States Supreme Court has explained:

The former are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct. The latter, which have been described as 'quasi-criminal,' operate as 'private fines' intended to punish the defendant and to deter future wrongdoing. A jury's assessment of the extent of a plaintiff's injury is essentially a factual determination, whereas its imposition of punitive damages is an expression of its moral condemnation. *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 432, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001) (citations omitted).'

"Because a finding of entitlement to punitive damages is not dependent on a finding that a plaintiff suffered a specific injury, an award of compensatory damages need not precede a determination of entitlement to punitive damages. Therefore, we conclude that the order of these determinations is not critical. See *Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468, 474 (5th Cir.1986).

"A different majority of the Court (**Wells, Anstead, Pariente and Bell**) concludes that under our decision in *Ault v. Lohr*, 538 So.2d 454, 456 (Fla.1989), a finding of liability is required before entitlement to punitive damages can be determined, and that liability is more than a breach of duty. A finding of liability necessarily precedes a determination of damages, but does not compel a compensatory award. For example, in *Ault*, the jury found that the defendant had committed an assault and battery but awarded \$0 in compensatory damages and \$5000 in punitive damages. See *id.* at 455. Thus, unlike the Phase I jury in this case, the jury in *Ault* found that the plaintiff had proved the underlying cause of action but did not suffer any compensable damage.

"Although we appeared to use 'breach of duty' and 'liability' interchangeably in *Ault*, the Court expressly adopted the principles set forth in dicta in *Lassiter v. International Union of Operating Engineers*, 349 So.2d 622 (Fla.1976). Specifically, we stated that

[n]ominal damages are awarded to vindicate an invasion of one's legal rights where, although no physical or financial injury has been inflicted, the underlying cause of action has been proved to the satisfaction of a jury.

Accordingly, the establishment of liability for a breach of duty will support an otherwise valid punitive damage award even in the absence of financial loss for which compensatory damages would be appropriate. *Ault*, 538 So.2d at 455 (quoting *Lassiter*, 349 So.2d at 625-26).’

“In this case, the Phase I verdict did not constitute a ‘finding of liability’ under *Ault*. This is evidenced by the fact that had the jury found for Tobacco on the legal cause and reliance issues during Phase II, there would have been no opportunity for the jury to award the named plaintiffs damages of any type. In other words, Phase II findings for Tobacco on legal causation and reliance would have precluded the jury from awarding compensatory or punitive damages. It was error for the trial court to allow the jury to consider entitlement to punitive damages before the jury found that the plaintiffs had established causation and reliance.

“In Phase I, the jury decided issues related to Tobacco’s conduct but did not consider whether any class members relied on Tobacco’s misrepresentations or were injured by Tobacco’s conduct. As the Third District noted, the Phase I jury ‘did not determine whether the defendants were liable to anyone.’ *Engle II*, 853 So.2d at 450. It was therefore error for the Phase I jury to consider whether Tobacco was liable for punitive damages.” [e.s.]

945 So.2d at 1262-63. By no stretch of the imagination could this explanation be understood by me as merely fixing an “order of proof in determining entitlement to punitive damages.” *Ault v. Lohr* had already “eliminat[ed] the need for proof of damages establishing the underlying case of fraud,” and *Engle* explicitly proceeded to follow and apply *Ault* in the holding quoted above. *Id.* It is not reasonable to read the above quotation to mean anything other than that an award of some compensatory damages is unnecessary to find an entitlement to punitive damages.

Because the majority’s reading of *Engle* on the punitive damages issue is obviously at odds with the Supreme Court’s earlier holding in *Ault*, it is apparent that the majority thinks that *Engle* has **impliedly** overruled *Ault*. But the Supreme Court has repeatedly made clear that it does not impliedly overrule itself. See *Puryear v. State*, 810 So.2d 901, 905 (Fla. 2002) (“We take this opportunity to expressly state that this Court does not intentionally overrule itself sub silentio. *Where a court encounters an*

express holding from this Court on a specific issue and a subsequent contrary dicta statement on the same specific issue, the court is to apply our express holding in the former decision until such time as this Court recedes from the express holding." [e.s.]); *State v. Ruiz*, 863 So.2d 1205, 1210 (Fla. 2003) ("Further, as we have made clear, 'this Court does not intentionally overrule itself sub silentio.'"); *F.B. v. State*, 852 So.2d 226, 228 (Fla. 2003) ("Thus, while the Second District's reliance ... is understandable, we again remind the courts that this Court does not intentionally overrule itself sub silentio."); *City of Miami v. McGrath*, 824 So.2d 143, 152 (Fla. 2002) ("there is no indication that the Court ... intended to recede from its prior approach to analyzing when a statute is an impermissible special law."). There is absolutely nothing in *Engle* suggesting that *Ault* was being explicitly overruled; indeed the court actually proceeded to apply *Ault*. See *Engle*, 945 So.2d at 1262-63 ("A finding of liability ... does not compel a compensatory award. For example, in *Ault*, the jury found that the defendant had committed an assault and battery but awarded \$0 in compensatory damages and \$5000 in punitive damages. Thus, unlike the Phase I jury in this case, the jury in *Ault* found that the plaintiff had proved the underlying cause of action but did not suffer any compensable damage.").

Ault's actual holding is that zero compensatory damages do not preclude punitive damages. In fact the court granted review specifically to answer that question. *Ault*, 538 So.2d at 456 ("The narrow question for resolution by this Court is whether a plaintiff can recover punitive damages where the factfinder has found a breach of duty but no compensatory or actual damages have been proven."). In holding that liability without at least some compensatory damages does not foreclose an award of punitive damages, *Ault* explained:

"We believe an express finding of a breach of duty should be the critical factor in an award of punitive damages. Accordingly, we hold that a finding of liability alone will support an award of punitive damages 'even in the absence of financial loss for which compensatory damages would be appropriate.' We reject Ault's contention that at least nominal damages must first be awarded before punitive damages are proper. We conclude that nominal damages are in effect zero damages and are defined as those damages flowing from the establishment of an invasion of a legal right where actual or compensatory damages have not been proven. In approving an award of punitive damages upon an express finding of liability by the factfinder, we accept the view that nominal

damages will be presumed from an encroachment upon an established right." [e.s., f.o.]

Id. In a special concurring opinion, Justice Ehrlich contributed the following:

"The crucial element in determining whether punitive damages may be awarded absent an award of compensatory damages is proof of the underlying cause of action. Where actual damage is an essential element of the underlying cause of action, an award of compensatory damages must be a prerequisite to an award of punitive damages. This case involved the torts of assault and battery, which do not require proof of actual damage. Therefore, I agree that in this case, where the jury made an express finding of liability, punitive damages could properly be awarded even absent an award of compensatory damages."

538 So.2d at 457.

The majority has not disturbed the jury's finding of liability for fraud—for which plaintiff was required to present evidence of the *fact* (if not the amount) of some damage. Effectually the majority has resurrected this court's holding in *Buonopane v. Fritz*, 477 So.2d 1030 (Fla. 4th DCA 1985) ("The law in Florida is clear that one cannot recover for punitive damages if no compensatory damages are awarded."). But that holding that was expressly disapproved in *Ault*. 538 So.2d at 456 ("For the reasons expressed, we ... disapprove *Buonopane v. Fritz*, 477 So.2d 1030 (Fla. 4th DCA 1985)..."). There is a world of difference between the fact that one was damaged—i.e., harmed or injured—by a falsehood (fraud being merely one example of an actionable falsehood, defamation another) and the entirely separate issue of its quantification in money damages. *Ault* requires only the former and eschews the latter.

In setting aside the compensatory damages in this case, the majority's premise is that the stock may well have had some lesser value than Morgan Stanley represented but the evidence fails to establish that any precise lesser value on some relevant date. Clearly, however, the evidence supported the inference that Coleman was damaged by the fraud, even if it fails to support the precise amount awarded. In *First Interstate Development Co. v. Ablanado*, 511 So.2d 536 (Fla. 1987), the supreme court held that punitive damages are appropriate for any tortious conduct accomplished through fraud. See also *Winn & Lovett*

Grocery Co. v. Archer, 171 So. 214, 221, 222 (1936) (exemplary damages are given solely as a punishment where torts are committed with fraud; to recover exemplary or punitive damages, the declaration must allege some general facts and circumstances of fraud). If proof of intentional fraud is per se enough for punitive damages, then the failure to establish the precise monetary amount of the actual loss caused by the fraud does not affect the entitlement to punitive damages. It may have an effect on the amount of punitive damages but not entitlement.

In order for the jury in this case to have assessed any compensatory damages, it first had to decide that Coleman had established the fact of damage from Morgan Stanley's intentionally false financial statements. Accordingly, under *Engle* and *Ault*, if the majority could properly decide that Coleman failed to prove any amount of compensatory damages, it would be necessary to presume at least nominal damages for fraud. The result should then be to remand the case to the trial court for a new trial on punitive damages.

But apart from *Engle*, I think a new trial on punitive entitlement is required for an entirely different reason. My reasoning is this.

Liability on the fraud issue was partially established by the trial court's imposition of sanctions on Morgan Stanley and its consequent jury instruction that it must take as established the essential facts Coleman relied on to prove liability for fraud. Later when this bifurcated trial entered the punitive damages phase, Morgan Stanley tried to present evidence contrary to those facts deemed established by the jury instruction for purposes of deciding the liability phase. The trial judge barred Morgan Stanley from doing so. In my opinion, this was error.

In deciding whether to inflict civil punishment by punitive damages, the critical issue turns on "the degree of reprehensibility⁸ of the defendant's misconduct." *State Farm Mutual Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 418 (2003); *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575 (1996). While there are other lesser factors, it is manifest that any "moral outrage" of the jury must arise from conduct suitably blameworthy. See e.g. *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 432 (2001) ("A jury's ... imposition of punitive damages is an expression of its moral condemnation."). The moral condemnation is the censure of a civil society expressed collectively by its representative members on a jury. It is not the individual reaction of a single judge—

⁸ Some synonyms are *blameworthy*, *unpardonable*, *evil*, *wicked*, *iniquitous*.

not even when the judge is imposing sanctions for discovery violations by directing the jury to take certain facts as proven. The facts creating an entitlement to punitive damages are not something that a trial judge can impose on a jury as a presumption. Unavoidably, it is the jury who must find and express that moral condemnation.

A jury cannot make this severe condemnation without admissible evidence confirming that the defendant's conduct was adequately blameworthy. Due process thus requires that defendant must necessarily have the right to offer admissible evidence that members of the community might logically and reasonably consider as mitigating its blameworthiness for such punishment. In this case the trial judge essentially denied Morgan Stanley that right. For that reason I would have a new trial as to both entitlement and (if necessary) any amount.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Elizabeth T. Maass, Judge; L.T. Case No. 502003CA005045XXOCAI.

Bruce S. Rogow of Bruce S. Rogow, P.A., Fort Lauderdale, and Sylvia H. Walbolt of Carlton Fields, P.A., West Palm Beach, for appellant.

Joel D. Eaton of Podhurst Orseck, P.A., Miami, Jerold S. Solovy, Ronald L. Marmer and Paul M. Smith of Jenner & Block LLP, Chicago, IL, and Jack Scarola of Searcy Denney Scarola Barnhart & Shipley, P.A., West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INC.,

Defendant.

MORGAN STANLEY & CO. INC.'S
MOTION TO TAX APPELLATE COSTS
(Case No. 4D05-2606 – Main Appeal)

Pursuant to Florida Rule of Appellate Procedure 9.400(a) and Florida Rule of Civil Procedure 1.525, Defendant, Morgan Stanley & Co. Inc. (“Morgan Stanley”) hereby moves for an order awarding its taxable appellate costs relating to Fourth District Court of Appeal case number 4D05-2606 against Plaintiff, Coleman (Parent) Holdings Inc. (“Coleman”). In support of this motion, Morgan Stanley states as follows:

1. On June 23, 2005, this Court entered a Final Judgment in favor of Plaintiff, Coleman (Parent) Holdings, Inc. Morgan Stanley timely filed a Notice of Appeal of that Final Judgment on June 27, 2005. On March 21, 2007, the Fourth District Court of Appeal reversed the Final Judgment, and remanded the case with instructions to enter judgment in favor of Morgan Stanley.

2. Thereafter, on April 20, 2007, Plaintiff filed motions for rehearing, rehearing en banc, clarification, and certification in the Fourth District. Those motions were denied on June 4, 2007.

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3. On June 22, 2007, the Fourth District issued its mandate, returning jurisdiction in this case to this Court. A copy of the mandate is attached as Exhibit "A".

4. Under rule 9.400(a), taxable appellate costs are to be awarded by the trial court on motion of the prevailing party, to be served within 30 days after issuance of the mandate.

5. Accordingly, because Morgan Stanley prevailed on appeal, this Court should award taxable appellate costs against Coleman and in favor of Morgan Stanley.

6. Morgan Stanley reserves the right to supplement this motion with supporting documentation concerning the reasonable costs incurred and recoverable pursuant to Rule. 9.400.

WHEREFORE, Defendant, Morgan Stanley, respectfully requests this Court to grant its Motion to Tax Appellate Costs and grant such other relief as this Court deems just and proper.

Respectfully submitted,

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By: 
Bruce S. Rogow

*Counsel for Morgan Stanley &
Co. Incorporated*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express this 18th day of July, 2007.

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M A N D A T E

from

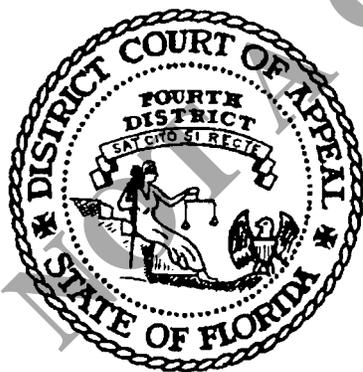
**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT**

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable W. MATTHEW STEVENSON, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

DATE: June 22, 2007
CASE NO.: 4D05-2606
COUNTY OF ORIGIN: Palm Beach
T.C. CASE NO.: CA 03-5045 AI, 502003CA005045XXOCAI
STYLE: MORGAN STANLEY & CO., v. COLEMAN (PARENT)
INCORPORATED HOLDINGS, INC.

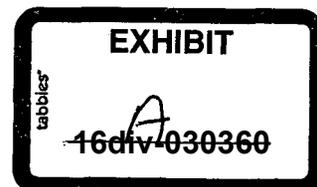


Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

ORIGINAL TO: Sharon R. Bock, Clerk
cc:
Joseph Ianno, Jr.
Morgan Stanley & Co., Inc.
Jack Scarola
Ronald L. Marmer
Mark C. Hansen
Michael K. Kellogg
ct

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Jerold S. Solovy
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Paul M. Smith
Stephen H. Grimes
Sylvia H. Walbolt

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John R. Blue



IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INC.,

Defendant.

**MORGAN STANLEY & CO. INC.'S
MOTION TO TAX TRIAL COSTS**

Pursuant to Florida Rule of Civil Procedure 1.525 and section 57.401, Florida Statutes, Defendant, Morgan Stanley & Co. Inc. ("Morgan Stanley") hereby moves for an order taxing its taxable trial costs against Plaintiff, Coleman (Parent) Holdings Inc. ("Coleman"), and in favor of Morgan Stanley. In support of this motion, Morgan Stanley states as follows:

1. On June 23, 2005, this Court entered a Final Judgment in favor of Plaintiff, Coleman (Parent) Holdings, Inc. Morgan Stanley timely filed a Notice of Appeal of that Final Judgment on June 27, 2005. On March 21, 2007, the Fourth District Court of Appeal reversed the Final Judgment, and remanded the case with instructions to enter judgment in favor of Morgan Stanley.
2. Thereafter, on April 20, 2007, Plaintiff filed motions for rehearing, rehearing en banc, clarification, and certification in the Fourth District. Those motions were denied on June 4, 2007.

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CLERK OF COURT
PALM BEACH COUNTY, FL
FILED

3. On June 22, 2007, the Fourth District issued its mandate, returning jurisdiction in this case to this Court. A copy of the mandate is attached as Exhibit "A".

4. Morgan Stanley has filed a motion for entry of judgment in its favor in accordance with the Fourth District's decision. Pursuant to section 57.041 and Rule 1.525, Morgan Stanley is entitled to recover its taxable trial costs because, based upon the Fourth District's decision, Morgan Stanley will recover a judgment in its favor and will be the prevailing party in this action.

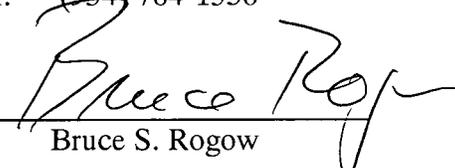
5. Morgan Stanley shall supplement this motion with supporting documentation prior to any hearing on this issue.

WHEREFORE, Defendant, Morgan Stanley, respectfully requests this Court to grant its Motion to Tax Trial Costs and grant such other relief as this Court deems just and proper.

Respectfully submitted,

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*Counsel for Morgan Stanley &
Co. Incorporated*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express this 18th day of July, 2007.

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M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable W. MATTHEW STEVENSON, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

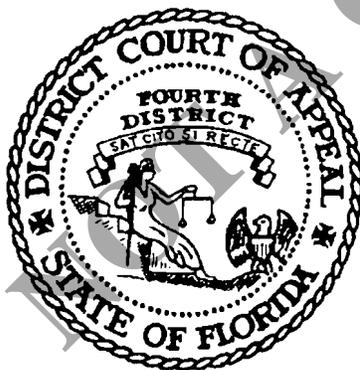
DATE: June 22, 2007

CASE NO.: 4D05-2606

COUNTY OF ORIGIN: Palm Beach

T.C. CASE NO.: CA 03-5045 Al, 502003CA005045XXOCAI

STYLE: MORGAN STANLEY & CO., INCORPORATED v. COLEMAN (PARENT) HOLDINGS, INC.



Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

ORIGINAL TO: Sharon R. Bock, Clerk

cc:

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EXHIBIT

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INC.,

Defendant.

**MORGAN STANLEY & CO., INC.'S
MOTION FOR ENTRY OF FINAL JUDGMENT**

Defendant, Morgan Stanley & Co., Inc. ("Morgan Stanley"), hereby asks this Court to vacate the prior final judgment entered on June 23, 2005 in favor of Plaintiff and enter final judgment in favor of Morgan Stanley pursuant to the Fourth District Court of Appeal's directions in its decision dated March 21, 2007. Plaintiff's consolidated motion for rehearing, rehearing en banc and for certification was denied by the Fourth District on June 4, 2007. The Fourth District issued its mandate on June 22, 2007. A proposed final judgment is attached hereto as Exhibit "A."

WHEREFORE, Morgan Stanley hereby requests that this Court vacate the June 23, 2005 final judgment and enter a final judgment in favor of Morgan Stanley, while reserving jurisdiction to consider Morgan Stanley's claims, as prevailing party, for appellate and trial court costs.

Respectfully submitted,

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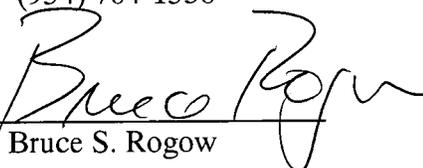
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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INC.,

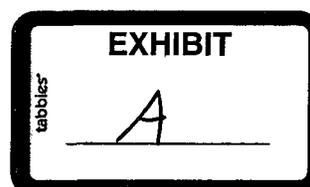
Defendant.

FINAL JUDGMENT

THIS CAUSE, having come before the Court upon remand from the Fourth District Court of Appeal with directions to enter final judgment in favor of Morgan Stanley and upon the mandate issued by the Fourth District on June 22, 2007,

IT IS HEREBY ORDERED AND ADJUDGED that the Final Judgment entered on June 23, 2005 and recorded in the Official Records of Palm Beach County at Book 18800 Page 0095-96, be and the same is hereby VACATED, and

IT IS FURTHER ORDERED AND ADJUDGED that Final Judgment be and the same is now entered in favor of the Defendant, Morgan Stanley & Co., Incorporated, a Delaware corporation, the corporate headquarters of which are located at 1585 Broadway, New York, NY. Plaintiff, Coleman (Parent) Holdings, Inc., a Delaware corporation, the corporate headquarters of which are located at 35 East 62nd Street, New York, NY, shall take nothing by its action for



damages and Defendant shall go hence without day. The Court reserves jurisdiction to consider Defendant's claims for costs.

DONE AND ORDERED in Chambers at Palm Beach County, Florida this _____ day of _____, 2007.

ELIZABETH T. MAASS
Circuit Judge

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

August 17, 2007

CASE NO.: 4D05-4756

L.T. No. : CA 03-5045 AI

MORGAN STANLEY & CO.
INCORPORATED

v. COLEMAN (PARENT) HOLDINGS
INC.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that appellee's motion filed July 19, 2007, to continue stay is granted. The stay of the above-styled appeal is continued pending the Supreme Court of Florida's determination whether to accept jurisdiction.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

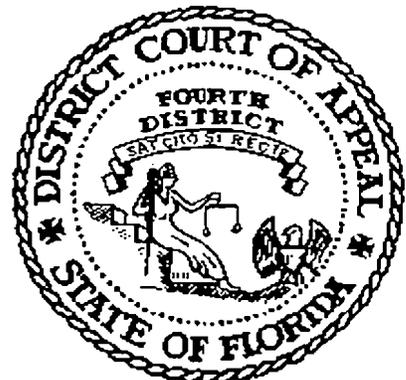
Sharon R. Bock, Clerk
Joseph Ianno, Jr.
Joel D. Eaton

Sylvia H. Walbolt
Jack Scarola
Michael Brody

Bruce S. Rogow
Jerold S. Solovy

cd

Marilyn Beuttenmuller
Marilyn BEUTTENMULLER, Clerk
Fourth District Court of Appeal



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

December 31, 2007

CASE NO.: 4D05-4756

L.T. No. : CA 03-5045 AI

MORGAN STANLEY & CO.
INCORPORATED

v.

COLEMAN (PARENT) HOLDINGS
INC.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that the appellee is directed to file a status report within ten (10) days from the date of this order regarding the stay of the above-styled appeal.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

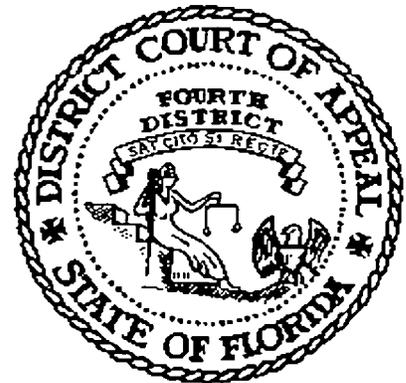
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Sylvia H. Walbolt
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Michael Brody

Bruce S. Rogow
Jerold S. Solovy

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Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal



IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

COLEMAN (PARENT) HOLDINGS INC.'S REQUEST FOR A STATUS CONFERENCE

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, requests a status conference to establish the schedule for additional proceedings in this case. Such a conference is necessary to determine the schedules for briefing certain motions and for conducting discovery that will be necessary in conjunction with those motions.

In May 2005, the jury in this case found Morgan Stanley liable for a massive fraud, and it awarded CPH compensatory damages of \$604 million and punitive damages of \$850 million. The Fourth District Court of Appeal reversed that judgment, reasoning that CPH had not proven damages under a methodology set forth in the Fourth District's decision. On June 22, 2007, that Court's mandate issued, and on December 12, 2007, the Supreme Court denied CPH's petition for review of the Fourth District's decision. Pursuant to the Fourth District's mandate, judgment should now be entered in favor of Morgan Stanley.

A status conference is needed to determine what should happen next. Once judgment is entered, CPH intends to file a motion pursuant to Rule 1.540(b), seeking relief from that judgment inasmuch as it was obtained by fraud. A copy of CPH's motion is attached for the Court's convenience. A status conference will be useful to establish a schedule for discovery, briefing, and an evidentiary hearing on CPH's Rule 1.540(b) motion.

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A status conference also will be useful to determine the schedule for any future proceedings on costs. Because Morgan Stanley's costs motions did not identify the costs they seek, and were not noticed, it is necessary to set a schedule for Morgan Stanley to disclose the costs that it seeks, for discovery into those costs to proceed, and for the parties to brief the requests.

CONCLUSION

For the foregoing reasons, CPH's Request for a Status Conference should be **GRANTED**.

Dated: January 16, 2008

Respectfully submitted,

By: 

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Attorneys for Coleman (Parent) Holdings Inc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by
E-Mail and Federal Express to counsel listed below on this 16th day of January, 2008:

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Deirdre E. Connell

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

**COLEMAN (PARENT) HOLDINGS INC.'S MOTION
TO VACATE THE JUDGMENT AND GRANT A NEW TRIAL ON DAMAGES**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys and pursuant to Rule 1.540(b) of the Florida Rules of Civil Procedure, respectfully requests that this Court vacate the judgment of dismissal entered in favor of Morgan Stanley, enter a default as to all elements of CPH's claim, order a new trial on damages as more fully described herein, and provide such further relief as the Court deems just and proper.

PRELIMINARY STATEMENT

Prior to the jury trial in this case, CPH asked the Court to enter a default against Morgan Stanley based on Morgan Stanley's persistent litigation misconduct, which affected CPH's ability to litigate "[e]very single element" in the case, including damages. 3/15/05 Tr. at 3944. After conducting two remediation hearings, the Court found that remedial action was warranted against Morgan Stanley, but the Court imposed a less severe remedy than the default proposed by CPH. Indeed, as the Court expressly stated in its first remedial order, the remedy it sought to impose was one that was "the most conservative available." 3/2/05 Order at 12. The Court's purpose was not punitive, but simply to "level the playing field," as the Court noted in its Order. 3/23/05 Order at 17-18.

But at the time of the remediation hearings, and continuing to the present day, Morgan Stanley has actively evaded the sanction it deserved by concealing the true extent of its massive wrongdoing. During those hearings, and throughout the trial, Morgan Stanley insisted that any wrongdoing was the fault of its Information Technology (“IT”) department, and that Morgan Stanley’s in-house lawyers were blameless. Morgan Stanley emphatically and repeatedly drew a sharp distinction between its business people and its in-house lawyers. Repeatedly — in the briefing and argument on the remediation motions, in evidentiary proffers submitted to the Court, and in hearings about what CPH could argue to the jury with respect to punitive damages — Morgan Stanley was adamant: its in-house lawyers knew nothing about the misconduct. Morgan Stanley pressed that argument because Morgan Stanley correctly surmised that the Court and the jury would mete out a harsher punishment if they knew that the in-house lawyers responsible for Morgan Stanley’s compliance with the law actually were assisting Morgan Stanley’s business people in subverting the civil justice system.

We now know that Morgan Stanley’s in-house lawyers did know about the misconduct and were culpable participants in it. Our knowledge of those facts is the result of Morgan Stanley’s grudging and piecemeal acknowledgements — which were delivered over the course of almost a two-year period and are as dramatic for what they concede as they are shocking for what they still conceal. As we explain more fully below, there is now no doubt whatsoever that Morgan Stanley’s in-house counsel knew about the misconduct of which they repeatedly professed ignorance. When pressed by the Court at the November 3, 2005 hearing, Morgan Stanley’s outside counsel conceded that at least three senior Morgan Stanley in-house lawyers submitted false statements to the Court concerning the time when they and the Law Division — not just the IT department — knew about the existence of e-mail that Morgan Stanley had

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affirmatively sworn did not exist. 11/3/05 Tr. at 35-36. We now know — not simply suspect, but know — that James P. Cusick (Morgan Stanley's Co-Head of Litigation), Soo-Mi Lee (Executive Director in the Law Division), and James F. Doyle (also an Executive Director in the Law Division, and the person who filed a false Declaration in January 2005) submitted false statements to the Court to the effect that none of them — nor anyone else in the Law Division — knew about the misconduct. In fact, each of them — Cusick, Lee, and Doyle — knew that the backup tapes existed; knew that the tapes contained e-mail; and knew that they, and others at Morgan Stanley, had sworn that no such e-mail tapes existed.¹

Notwithstanding the Court's decision to enter remedial orders less severe than those that CPH requested, and the practical limitations placed on CPH by virtue of Morgan Stanley's continued deception and withholding of evidence, CPH secured a jury verdict in its favor, upon which the Court entered a judgment. On appeal, the Fourth District did not question the remedial orders, but reversed the judgment on the ground that CPH had not properly proved its damages. Pursuant to the Fourth District mandate, this Court has now entered a judgment in favor of Morgan Stanley.

¹ Morgan Stanley has refused to disclose whether others in the Law Division also knew about the misconduct, or whether anyone in the Law Division reported the misconduct to the most senior executives of Morgan Stanley. To be clear, this outrageous conduct was ongoing at the time of the sanctions hearings and the trial. The information already known is sufficient to warrant imposition of the most severe sanctions available to the Court. There also is no doubt that Morgan Stanley has attempted to conceal, to this very day, key facts about when its in-house lawyers learned about Morgan Stanley's e-mail tapes. Morgan Stanley has played a cat-and-mouse game with CPH and the Court concerning the exact dates, the precise tapes, and the circumstances leading to the piecemeal revelations — all important facts that, as we show below in great detail, Morgan Stanley has misrepresented, obscured, or simply concealed. It is not only a fair, but the only plausible, inference that Morgan Stanley has declined to provide further information, because it knows such information would be even more damning.

Until now, CPH has had no reason to pursue Rule 1.540(b) relief because CPH had succeeded in obtaining relief against Morgan Stanley despite Morgan Stanley's continued withholding of the truth from CPH and the Court. That circumstance has now obviously changed with the mandated entry of judgment in Morgan Stanley's favor. However, that judgment is subject to the rules governing all judgments. If a prevailing party has committed fraud, as Morgan Stanley has in this case, its judgment is properly subject to a motion for relief from the judgment under Rule 1.540(b). In these circumstances, that relief should be granted. Indeed, Morgan Stanley's own post-verdict and post-judgment admissions that it defrauded the Court require that result.

In this motion, we show that Morgan Stanley defrauded the Court by concealing the extent of its wrongdoing, and that this concealment has continued to the present, notwithstanding the periodic, partial, and disingenuous disclosures that Morgan Stanley began to make once the trial had concluded. We also show that this concealment resulted in the imposition of a lesser sanction than would have been appropriate. We then show that Rule 1.540(b) requires the granting of discovery and an evidentiary hearing on this motion, and that the present record, together with additional facts to be developed, support the granting of a new trial on damages. Indeed, unless this Court grants this motion and imposes the sanction that Morgan Stanley has always deserved, Morgan Stanley will succeed in its fraud against the Court and will not be called to account, either for its complicity in an enormous fraud or for the egregious litigation misconduct with which it sought to conceal that complicity before, during, and after the trial.

STATEMENT OF FACTS

CPH brought suit against Morgan Stanley for aiding and abetting, and conspiring with, Sunbeam Corporation to perpetrate a massive fraud in connection with Sunbeam's purchase of CPH's interest in The Coleman Company, Inc. As part of the consideration for the sale of that

interest, CPH received unregistered Sunbeam stock that had an expected value of \$680 million but proved to be worthless. Morgan Stanley denied any complicity in the fraud and denied damages. 6/23/03 Answer of MS, at 1, 17-19. Accordingly, access to Morgan Stanley's documents relevant both to liability and amount of damages was critically important. On the damages issue, for example, as CPH explained to the Court during the remedial hearings, Morgan Stanley may well have had documents showing its own valuation of Sunbeam on the closing date of the transaction. 3/15/05 Tr. at 3944.

But Morgan Stanley lied to this Court, defied Court orders, concealed and destroyed documents and electronic data, and engaged in other misconduct to defeat the truth-seeking processes of discovery. CPH moved for sanctions against Morgan Stanley, including a total default. CPH's motion was based in part on Morgan Stanley's false certification on June 23, 2004 that it had produced all relevant e-mail messages — a certification Morgan Stanley made with full knowledge that relevant e-mail backup tapes had not even been searched. In response to CPH's remedial motion, Morgan Stanley argued that it should not be severely punished because its *in-house counsel* were not aware until months later, in October or November 2004, of the existence of potentially relevant e-mail messages on these backup tapes. In March 2005, this Court issued two remedial rulings, ultimately determining that Morgan Stanley's knowledge of the underlying fraud and collusion with Sunbeam should be deemed established.

Although those rulings took account of some portion of Morgan Stanley's misconduct, other misconduct continued during the remediation proceeding itself, *after* the remedial measures were imposed, and even *after* the jury proceedings on reliance, the fact of damage, and the amount of damages had been concluded. In December 2006, Morgan Stanley acknowledged that its in-house attorneys were indeed aware "prior to July 2004" of the existence of e-mail on

the backup tapes, and that these e-mails dated to the time of the Sunbeam-Coleman merger. Notwithstanding Morgan Stanley's artfulness in using the phrase "prior to July 2004," the only fair reading of Morgan Stanley's statements is that Morgan Stanley's in-house lawyers had this knowledge when Morgan Stanley falsely certified, on June 23, 2004, that it had produced all relevant e-mail messages. In addition, those statements show that Morgan Stanley's in-house lawyers clearly knew that numerous statements made to the Court in 2004 and 2005, including those contained in sworn declarations, were utterly false.

A. Misconduct Leading to 2005 Remedial Rulings.

Morgan Stanley's disregard for the integrity of the judicial process and for its obligations to the plaintiff continued unabated throughout the period leading up to the 2005 remedial rulings, taking a variety of different — but consistently reprehensible — forms.

First, Morgan Stanley repeatedly lied to this Court. Morgan Stanley has not challenged this Court's ruling that at least 35 of Morgan Stanley's statements to the Court — including statements made under oath — were "false" or "misleading." *See* 3/23/05 Order at 8-16 (listing statements); 3/2/05 Order at 3-10 (same). Morgan Stanley also submitted false interrogatory answers signed by a corporate representative who had not read them, and falsely represented on numerous occasions that it was unable to retrieve electronic data concerning the authorship and drafting history of important documents. 3/23/05 Order at 15; 2/28/05 Order at 2.

Second, Morgan Stanley repeatedly defied Court orders. As this Court found, Morgan Stanley defied at least seven orders entered between December 2003 and March 2005. 3/23/05 Order at 9-16 & n.10. For example, Morgan Stanley withheld documents regarding the discovery and restoration of e-mail backup tapes, thus defying an April 2004 "Agreed Order" as to electronic discovery and a February 2005 order requiring Morgan Stanley to produce them. *Id.* Morgan Stanley also defied a March 2005 discovery order because, as this Court expressly

found, Morgan Stanley “desperately wanted to hide an active SEC inquiry” into Morgan Stanley’s continued practice of overwriting backup tapes, in violation of an outstanding SEC cease-and-desist order. *Id.* at 10 & n.10, 12-14, 16. In addition, among other orders that Morgan Stanley violated were the following: (1) a February 2005 order requiring discovery on the authenticity, business-record status, and authorship of certain documents that showed Morgan Stanley’s involvement in misleading aspects of the underlying Sunbeam transaction, (2) a February 2005 order mandating e-mail production from certain backup tapes, and (3) a March 2004 order requiring production of certain performance evaluations of Morgan Stanley personnel involved in the transaction, which production would have revealed serious, repeated internal expressions of concern about the candor and ethics of William Strong, the senior Morgan Stanley banker in charge of the Sunbeam deal. *Id.* at 11-16. This Court concluded that those violations of court orders were “deliberate[] and contumacious[.]” *Id.* at 16.

Third, Morgan Stanley “routinely assert[ed] unfounded privilege claims.” *Id.* One example of this strategy involved William Strong. *Id.* at 14-16. Morgan Stanley did not reveal a relevant criminal prosecution against him, and then obstructed discovery by claiming privilege with respect to approximately 700 documents related to that prosecution, many under supposed joint defense agreements that the Court later found did not exist. *Id.* at 16 n.17. After this Court ordered Morgan Stanley to submit those documents for *in camera* review, Morgan Stanley withdrew its privilege claim with respect to more than 260 of the documents. *Id.* Following an *in camera* review, this Court found that 200 more documents were not privileged. *Id.*

Fourth, Morgan Stanley engaged in massive fraud with respect to e-mail production. Because the underlying transaction between Sunbeam and CPH was completed in 1998, documents from the 1990s were obviously critical. In response to a motion to compel, Morgan

Stanley told the Court in December 2003 that all of its pre-January 2000 e-mail backup tapes had been erased. 3/23/05 Order at 3-5; 12/17/03 Tr. at 20. A corporate representative likewise testified at deposition that Morgan Stanley's recently constructed e-mail archive did not contain e-mail from the 1990s, claiming that the archive captured e-mails only "going forward." 3/23/05 Order at 4-5 & n.3, 10-11 & n.12. Both of those representations were false. In fact, Morgan Stanley had e-mails from at least 9,000 backup tapes from the 1990s that it had not searched in response to CPH's discovery requests. 3/14/05 Tr. at 3462; 3/14/05 Hr'g Ex. 1, Tab 87. Moreover, Morgan Stanley was loading these tapes into its e-mail archive for its own internal purposes — and the person leading that effort was the very same corporate representative who committed perjury at the deposition. *Id.* at 8-10 & nn.7-12, 13. But based on Morgan Stanley's false representations, the Court entered an Agreed Order on April 16, 2004, requiring Morgan Stanley to search only the oldest full backup tape that it had for each of 36 individual employees, and then to certify compliance. Of course, the Agreed Order made no mention of the archive, because Morgan Stanley's corporate representative had falsely testified that the archive contained no pre-2003 e-mails. 3/23/05 Order at 4 n.3, 5 n.12.

Purporting to comply with that Agreed Order, Morgan Stanley provided CPH with a few additional e-mails on May 14, 2004, but did not submit the required certification of compliance until June 23, 2004, following CPH's repeated demands. 3/23/05 Order at 5-6. As CPH discovered in subsequent contempt proceedings, Morgan Stanley's legal staff inappropriately attempted to have this certificate signed by a college student who performed data-entry functions. 10/19/05 CPH Verified Motion for Leave to File a Supplemental Affidavit From Arthur Riel, Ex. 1 at 7. The certificate, as ultimately signed by Arthur Riel, Morgan Stanley's Executive Director of Technology, stated that Morgan Stanley had produced all the e-mail from

the oldest full backup tapes as required, but in fact, as Mr. Riel knew, e-mails from thousands of existing tapes — including more than 1,400 e-mail backup tapes that Morgan Stanley found in a store room in Brooklyn (the “Brooklyn tapes”) and more than 700 8-millimeter e-mail backup tapes (the “8-mm tapes”) — had not been searched or produced. 3/23/05 Order at 9-10.

In November 2004 (after the SEC, unbeknownst to CPH and the Court, had uncovered the truth that Morgan Stanley was loading its archive with e-mails from the late 1990s), Morgan Stanley produced to CPH some additional e-mails, which it said were from “newly discovered” tapes. *Id.* at 5, 10 & nn.7-12; 3/2/05 Order at 5-6. That representation was false; Morgan Stanley had not then “newly discovered” any tapes. But Morgan Stanley continued its efforts to avoid any admission that massive quantities of 1990s e-mails were being uploaded to its archive, where they could be quickly and inexpensively searched. 3/23/05 Order at 10 & n.11. Morgan Stanley made the misrepresentation that the produced e-mails were from newly discovered tapes in five separate letters to CPH, and then in a sworn declaration, in-court testimony, and at least a dozen separate representations by counsel. *E.g.*, 1/31/05 MS Opp. re Adv. Inference at 2-4; 3/23/05 Order at 5-11; 6/17/05 MS Notice at 1-2.

Subsequently, in the weeks preceding the scheduled trial date in early 2005, Morgan Stanley repeatedly made new announcements that it had just discovered hundreds or thousands of backup tapes, each containing massive numbers of potentially responsive e-mails, none of which had been processed or analyzed. 3/23/05 Order at 7-8, 10, 14; 3/2/05 Order at 7-10. All of those announcements were false.

B. This Court’s 2005 Remedial Rulings.

1. *The March 1, 2005 Order.* On January 26, 2005, CPH moved for an adverse-inference instruction on the ground that Morgan Stanley had failed to produce responsive e-mails and to comply with this Court’s April 2004 Agreed Order. 3/2/05 Order at 6;

2/4/05 Order re Add'l Search of E-Mail Tapes; 2/3/05 Order Setting Evid. Hr'g. One key issue was when Morgan Stanley's Law Division had learned that Morgan Stanley's June 23, 2004 certificate of compliance with the Agreed Order was false. Morgan Stanley argued that the certification was not false (or at least not knowingly false) because (1) Arthur Riel, the Morgan Stanley Executive Director of Technology who signed the certificate, did not learn until several days after it was filed that the unsearched tapes actually contained e-mails, and (2) Morgan Stanley's in-house lawyers did not learn about the existence of e-mail on the tapes until months later, in October 2004. Morgan Stanley supported its response with a sworn declaration of James F. Doyle, who was a lawyer and an Executive Director in its Law Division. Doyle's declaration averred that "[a]t the end of October 2004, I learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data on those tapes had not been restored or searched prior to Morgan Stanley's May 14, 2004 e-mail production." 2/11/05 Declaration of J. Doyle, at 1. The pleading to which this declaration was attached likewise stated: "At the end of October 2004, James F. Doyle, the attorney at Morgan Stanley who directed Morgan Stanley's prior search for e-mail messages, learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data on those tapes had not been restored or searched prior to the May 14, 2004 e-mail production." Morgan Stanley's Opp'n to CPH's Mot. for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, at 2 (filed Jan. 31, 2005). Lest there be any doubt about the significance of the Doyle declaration, two days later Morgan Stanley told the Court at a hearing: "The headline is that the first time that anyone — that anyone at Morgan Stanley knew that there was recoverable e-mail data that might fall within the

Court's order was not until late October 2004 consistent with Mr. Doyle's declaration." 2/2/05 Tr. at 132.

Nine days later, Morgan Stanley filed a supplemental opposition to CPH's motion, again quoting verbatim from this key passage of the Doyle declaration. See Morgan Stanley's Supp. Opp'n to CPH's Mot. for Adverse Inference Instruction, at 2 (filed Feb. 11, 2005). Later that month, Morgan Stanley quoted from the Doyle declaration again, this time resorting to bold italics: "Morgan Stanley has consistently contended that no one in its Law Division knew of the existence of *additional recoverable e-mail data on the tapes before October 2004.*" Morgan Stanley's Opp'n to CPH's Mot. for a Default Judgment, at 6 (filed Feb. 28, 2005) (emphasis in original).

At an evidentiary hearing on February 14, 2005, as the Court later found, Morgan Stanley continued "to hide . . . its violations and coach witnesses." 3/23/05 Order at 16. For example, one executive's sworn testimony directly contradicted sworn statements she had given the SEC only three days before. *Id.* at 12. Despite these evasions and lies, the hearing finally established that the e-mail archive, contrary to Morgan Stanley's representations, contained large amounts of 1990s e-mails that could be easily searched, but had not been produced. 2/14/05 Tr. at 26-130; 3/23/05 Order at 10 & n.11. CPH then amended its adverse-inference request by also seeking a default judgment. 3/9/05 CPH Renewed Mot. for Entry of Default Judgment.

On March 1, 2005, this Court ruled on CPH's motion. The Court concluded that Morgan Stanley had willfully violated court orders and had acted "knowingly, deliberately, and in bad faith" to "thwart discovery" and "conceal[] its role in the Sunbeam transaction." 3/2/05 Order at 10-11, 14. Calling its chosen sanction the "most conservative available," this Court shifted the burden of proof on the issues of Morgan Stanley's knowledge of the fraud and collusion with

Sunbeam, but continued to require CPH to prove reliance, the fact of damage, and the amount of damages. *Id.* at 12-14. When that decision was rendered, this Court had no access to information that would have contradicted Morgan Stanley's claim that in-house counsel was not aware of the recoverable e-mail until October 2004. This Court's remedial order was therefore based on an assumption that the lawyers of the Morgan Stanley Law Division were not participants in Morgan Stanley's misconduct.

2. *The March 23, 2005 Sanction.* Despite the March 1 ruling, Morgan Stanley's misconduct continued unabated, and CPH moved for a total default on liability. 3/9/05 CPH Renewed Mot. for Entry of Default Judgment. Morgan Stanley again reiterated its story about the Law Division attorneys, once more resorting to bold italics: "When Mr. Riel signed his Certification of Compliance in June 2004, he did not know or suspect that there was *any* e-mail on the so-called 'Brooklyn tapes' Mr. Riel also testified that . . . he learned that *some* of the Brooklyn tapes contained *some* e-mail [but] he does not recall ever communicating that fact to anyone in the Law Division." Morgan Stanley's Opp'n to CPH's Mot. for a Default Judgment, at 11-12 (filed Mar. 14, 2005) (emphasis in original). Morgan Stanley made this point repeatedly throughout its opposition, also stating that, "[w]hile it is true that Mr. Riel and other members of the IT Staff knew in early July 2004 (after Mr. Riel signed his certification) that some of those tapes contained some e-mails going back to the late 1990s, neither Mr. Riel nor anyone else in the IT department informed Morgan Stanley's lawyers of that fact. . . . It was not until late October 2004, when Morgan Stanley's Law Division was working with Ms. Gorman (Mr. Riel's successor) on some issues regarding an unrelated regulatory production of e-mails, that the Law Division learned, for the first time, that some of the tapes contained e-mails." *Id.* at 20. Morgan Stanley insisted that this alleged state of affairs "accounts for Morgan Stanley's

representation to this Court that late October 2004 marks the first time that the in-house legal staff was aware of this fact.” *Id.*

In addition, rather than relying solely on Mr. Doyle’s word, James P. Cusick, Morgan Stanley’s Co-Head of Litigation, was enlisted to oppose the sanctions motion. Morgan Stanley argued: “[W]hether the affidavit had come from Mr. Doyle, Mr. Cusick, or any other member of Morgan Stanley’s Law Division, the content would have been the same: the Law Division did not learn that some of the newly discovered tapes contained some e-mails until October 2004. While Morgan Stanley did not formally withdraw the May [*sic*] 2004 Certification of Compliance at that time, it did promptly alert outside counsel, which promptly alerted CPH that new e-mail tapes had been discovered and that they would be searched for responsive documents.” *Id.* at 31.

Three days later, Morgan Stanley told the Court that “[t]he delay between when the Law Division learned [that the found tapes contained e-mail] (late October 2004) and when [Morgan Stanley’s counsel] wrote CPH’s counsel (November 17, 2004) was minor and did not prejudice CPH.” Morgan Stanley’s Overnight Response to CPH’s Additional Submission in Support of its Motion for Default, at 6 (filed Mar. 15, 2006).

On March 23, 2005, after a further evidentiary hearing, this Court declined to grant the relief that CPH requested, but imposed a further, carefully calibrated remedial order, which was not intended to punish Morgan Stanley, but to “level the playing field.” 3/23/05 Order at 17-18. After stating that Morgan Stanley’s “discovery abuses and misrepresentations . . . would take a volume to recite,” the Court expressly found that Morgan Stanley, still hoping to conceal evidence, had violated two orders entered since March 1 and had coached witnesses to withhold critical information. *Id.* at 15-16. The Court identified 23 additional recent instances of

misconduct. *Id.* at 11-14, 16. The Court also found that Morgan Stanley had failed to notify CPH and the Court in a timely manner concerning the falsehood of the June 2004 certificate of compliance, which averred that all relevant e-mails had been produced — even though, among other deficiencies, the “Brooklyn tapes” and the “8-mm tapes” had not even been searched.

While the Court found that in-house counsel knew at the time the June 2004 certificate of compliance was served that it was false because they knew about “additional unsearched backup tapes,” the Court did not find that these lawyers knew that the “additional unsearched backup tapes” contained e-mails. 3/23/05 Order at 5 n.4, 13. At that point, despite the extensive revelations of misconduct committed by Morgan Stanley, the Court did not have evidence that contradicted Morgan Stanley’s repeated assertions and sworn statements that its in-house counsel did not know until October 2004 about the e-mails contained in the unsearched tapes.

Accordingly, the Court declined to enter the total default that CPH had requested. *Id.* at 16-18. Instead, the Court found that Morgan Stanley’s “acts in depriving CPH of crucial documents and discovery to prove its claims require that certain facts be removed from dispute, in order to level the playing field.” 5/16/05 Order. It was necessary, in this Court’s view, to deem “established for all purposes” those elements as to which the Court previously had reversed the burden of proof. 3/23/05 Order at 17. The Court continued, however, to require CPH to prove reliance, as well as the fact and amount of damages. In addition, the Court relieved Morgan Stanley of any further obligation to produce e-mails.

3. *Morgan Stanley’s Assertions in Conjunction with the Litigation-Misconduct Statement.* The Court’s partial-default order also mandated that a statement describing Morgan Stanley’s e-mail misconduct would be read to the jury for its consideration in determining the propriety of punitive damages. 3/23/05 Order at 17. On May 12, 2005, when

the Court was shaping the precise wording of the litigation-misconduct statement, Morgan Stanley filed a 235-page proffer that made a number of additional important misrepresentations to the Court. Morgan Stanley contended that its failure to comply with court orders relating to e-mail production was merely the result of a series of unfortunate “mistakes,” not a systematic effort to conceal fraud. And Morgan Stanley again claimed that its in-house counsel did not know that there was e-mail on the Brooklyn tapes and the 8-mm tapes until October 2004. 5/12/05 MS Addendum to Opposition to CPH Second Renewed Mot. for Correction. Three high-ranking in-house attorneys for Morgan Stanley — James P. Cusick (Morgan Stanley’s co-head of litigation), Soo-Mi Lee (executive director in Morgan Stanley’s Law Division), and James F. Doyle (the executive director in the Law Division who had filed the false declaration in January 2005) — submitted offers of proof asserting that they had first learned there was e-mail on the Brooklyn tapes in late October 2004 and on the 8-mm tapes in November 2004. Cusick and Lee both asserted that they knew of no one in Morgan Stanley’s Law Division who knew this information earlier. Def.’s Offer of Proof re James P. Cusick at ¶¶ 3-4; Def.’s Offer of Proof re Soo-Mi Lee at ¶¶ 3-4 (filed 5/12/05).

Morgan Stanley continued to press these false contentions at a hearing on May 16, 2005, when arguing about how the Court should instruct the jury with regard to punitive damages. Morgan Stanley asked the Court to tell the jury that “[t]here is no evidence that any lawyer in Morgan Stanley’s Law Division was aware prior to October 2004 that any of the tapes contained any e-mail.” 5/16/05 Tr. at 15266. The Court did not accept Morgan Stanley’s proposal verbatim. *Id.* at 15266, 15267. The Court told the jury that Morgan Stanley’s in-house lawyers knew about the *existence* of the backup tapes before October 2004. In fact, however, Morgan Stanley’s in-house lawyers also actually knew, long before October 2004, that the tapes

contained e-mails — a fact which also should have been brought to the jury’s attention, as CPH requested. The Court did not do so, for the simple reason that the Court accepted Morgan Stanley’s assertions and sworn statements (later shown to be false) that the lawyers knew at that time that there were backup tapes, but not that they contained e-mail. 5/17/05 Tr. at 15459.

Two days later, on May 18, in vetting the PowerPoint presentation that CPH planned to use in its closing argument on punitive damages, Morgan Stanley repeated the same false story, again achieving Morgan Stanley’s desired results. Morgan Stanley told the Court that there was evidence “that people in Morgan Stanley’s Law Division” knew in October 2004 of “backup tapes but not that the backup tapes contained e-mail. And it’s undisputed that they learned that these contained e-mail in October 2004.” 5/18/05 Tr. at 15607. When the Court responded that “It turned out they did contain e-mail,” Morgan Stanley replied, “They didn’t know it, Your Honor.” *Id.* at 15607. The Court then turned to CPH’s counsel and asked: “Can you change it [to] ‘... did not know about unsearched backup tapes later found to contain e-mail’ or something?” *Id.* at 15607. When CPH balked at this suggestion, Morgan Stanley persisted: “Your Honor, it’s undisputed in the record that the lawyers at Morgan Stanley learned that e-mail was on these tapes in October 2004. There’s been no contrary evidence to this. . . . They knew about the tapes in June, but they didn’t know they contained e-mail.” *Id.* at 15608. The Court required CPH to redo its closing PowerPoint presentation, explaining: “We don’t know if [the Morgan Stanley in-house lawyers] knew [the backup tapes] contained e-mail.” *Id.* at 15608. Morgan Stanley had succeeded in convincing the Court that Morgan Stanley’s in-house lawyers, while aware of the tapes’ existence, had somehow remained unaware that the tapes contained e-mail until October 2004. Morgan Stanley’s arguments to that end, as we now know, were part of

the fraud, but those arguments succeeded in ensuring that the arguments made to the jury were deliberately and improperly skewed in Morgan Stanley's favor.

The jury nonetheless found Morgan Stanley liable. The jury found that CPH had relied on Sunbeam's false statements, found that these false statements had damaged CPH, and awarded CPH \$1.45 billion in compensatory and punitive damages.

C. Post-Trial Revelations of Further Morgan Stanley Misconduct.

1. *The June 17, 2005 Notice.* After the jury had rendered its verdicts, and only days after Morgan Stanley had again repeated its false assertions as to when Morgan Stanley's in-house counsel learned of e-mail on the Brooklyn and 8-mm tapes, Morgan Stanley filed a document which it styled a "Notice." The Notice, filed on June 17, 2005, expressly retracted 15 statements, including the entirety of the Doyle declaration filed in conjunction with Morgan Stanley's January 2005 opposition to sanctions and various parts of the May 12, 2005 proffer. Each of the retracted statements had asserted that Morgan Stanley's "Law Division was not aware that any of the Brooklyn Tapes contained e-mail until October 2004 and was not aware of certain 8-mm tapes until November 2004." Without elaboration, the Notice recited that in fact "the Law Division was aware in July 2004 that some of the Brooklyn Tapes contained e-mail and that certain 8-mm tapes existed." 6/17/05 MS Notice at 1-2 & n.1.

By acknowledging that the Law Division knew in July 2004 that the Brooklyn tapes contained e-mail, the June 17, 2005 Notice admitted that Morgan Stanley's repeated representations to the Court about when its Law Division knew of the existence of unsearched e-mail — which critically affected both the severity of the sanctions imposed and the evidence and argument provided to the jury — were false. The June 17 Notice further claimed, without any sworn basis and without even supplying the pertinent documents, that "Morgan Stanley . . . determined" that its prior statements were false "[a]s a result of a review of e-mails discovered

by a new e-mail search.” *Id.* at 1. The Notice contained no explanation of how “Morgan Stanley” could be said to have previously lacked knowledge of facts that were known to its own in-house counsel, including those high-ranking in-house lawyers who made false statements to the Court. Nor did the Notice purport to explain the circumstances of this “new e-mail search” or when exactly it had occurred. Morgan Stanley chose not to identify what “new” information had come to light, how it came to light, when it came to light, or who within Morgan Stanley was aware of it.

2. *The Criminal Contempt Proceedings.* About one month after this Court entered the original final judgment and Morgan Stanley filed its notice of appeal, CPH filed a criminal contempt petition against Morgan Stanley, its general counsel, and three in-house lawyers who had offered false proffers in May 2005 as to when they learned that the Brooklyn tapes contained e-mails and when they learned of the existence of the 8-mm tapes. 7/27/05 CPH Petition re Criminal Contempt. In defense of the contempt proceedings, each of the three in-house lawyers claimed, in unsworn statements, that they realized the falsity of their proffers only after an e-mail search uncovered e-mails showing the state of their knowledge in July 2004. They did not explain why each of them had forgotten the date in so short a period (between July 2004 and the March 2005 date of Morgan Stanley’s assertions about the knowledge of in-house counsel), or why they all believed the same false fact (that they had only learned in October 2004 that the Brooklyn tapes contained e-mails and only learned in November 2004 that the 8-mm tapes existed). 11/3/05 Tr. at 33-36; 6/17/05 MS Notice at 1. It was also supposedly coincidental that they all remembered in June 2005, after the remedial decisions and the trial, that they in fact were aware by July 2004 that the Brooklyn tapes contained e-mails and that the 8-mm tapes existed. There has not yet been any discovery into the circumstances of the e-mail

search that purportedly led to the June 17, 2005 Notice, or about what that search showed as to who at Morgan Stanley knew the key facts about the tapes.

After a hearing, but with the foregoing questions still unanswered, this Court issued an order on November 10, 2005 declining to rule on the criminal contempt petition pending disposition of Morgan Stanley's appeal. The Court concluded that the allegedly contemptuous conduct was sufficiently intertwined with the matters on appeal, including the propriety of the March 2005 sanctions rulings, to divest the Court of jurisdiction.

The Court also noted that, during the hearing on the petition, Morgan Stanley had refused repeated requests to take a clear stand on the meaning of the June 17, 2005 Notice — specifically, whether it should be read to state that Morgan Stanley's in-house lawyers first became aware *in* July 2004, or *no later than* July 2004, that there was e-mail on some of the Brooklyn tapes and that the 8-mm tapes existed. 11/3/05 Tr. at 9-25; 3/23/05 Order at n.4. The distinction was important because Morgan Stanley certified on June 23, 2004, that all relevant e-mails had been produced — even though the Brooklyn and 8-mm tapes had not yet been searched. And Morgan Stanley had previously justified this false certification on the basis that its in-house attorneys were unaware at the time of the certification that the Brooklyn tapes contained e-mail or that the 8-mm tapes existed. If Morgan Stanley's in-house lawyers were aware of e-mail on any of these various tapes prior to July 2004, this justification would simply evaporate.

3. *The December 21, 2006 Notice.* More than a year later, and some six months after the Fourth District had heard oral argument in Morgan Stanley's appeal of the judgment, Morgan Stanley filed a further "Notice" addressing (but not curing) its studied imprecision. The December 21, 2006 Notice stated for the first time that "Morgan Stanley's

Law Division was aware of the existence of the referenced e-mail back-up tapes” — by which Morgan Stanley apparently meant both the Brooklyn tapes and the 8-mm tapes — “and the presence of e-mail on some of those tapes prior to July 2004.”

In filing this December 21, 2006 Notice, Morgan Stanley effectively demonstrated that the peculiar phrasing of its June 17, 2005 Notice — and all the equivocating that it triggered at the criminal contempt hearing — had been no accident. Before, during, and after trial, and, indeed, even now, Morgan Stanley refused to come clean about when its Law Division first learned that the Brooklyn and 8-mm tapes contained e-mail. Instead, Morgan Stanley’s December 21, 2006 Notice — when it finally came (on the eve of a holiday weekend) one year after the criminal contempt hearing — came with no sworn affidavit, no pertinent document, no explanation of any new information that triggered the Notice, and no explanation of how or when that information came to light. Moreover, it “clarified” only one portion of the prior submission, and it did that in a way that raised more questions than answers.

Morgan Stanley’s admission that its in-house counsel knew of unsearched e-mails prior to July 2004 shows the falsity of Morgan Stanley’s claims in its remediation proceedings briefs, in the Doyle declaration, and in its repeated statements in May and June 2005 — after this Court had issued its remedial orders — that in-house counsel were not aware of the falsity of the June 2004 certificate of compliance at, or soon after, the time Morgan Stanley filed it. In other words, this Court’s remedial orders were based on only a part of Morgan Stanley’s sanctionable conduct. Morgan Stanley committed additional sanctionable conduct after this Court entered its remedial orders and continues to conceal its misconduct even today.

There may well be much more sanctionable conduct that Morgan Stanley continues to conceal through the obviously intended imprecision of its “Notices.” We do not yet know, for

example, how the decision to submit the false June 2004 certificate of compliance came about— something that potentially could be revealed by the e-mails Morgan Stanley now has in its possession but has not disclosed. We do not yet know whether Morgan Stanley was already aware, at the time of the June 2005 Notice and the November 2005 contempt hearing, that in-house counsel knew “prior to July 2004” that the tapes contained e-mails. We do not yet know whether the searches Morgan Stanley conducted revealed that even more people within the company were aware that Morgan Stanley was submitting a false certificate of compliance, presenting false facts to the Court, and arguing that these false facts were sufficient to make sanctions inappropriate. And we do not yet know whether Morgan Stanley is even now being truthful in explaining when it found the e-mails showing the knowledge of its in-house counsel. Morgan Stanley’s latest version of its evolving story states that in-house counsel knew “prior to July 2004.” Does that mean that Morgan Stanley had the e-mails demonstrating this knowledge at the time of the sanctions hearings in February and March 2005?

In any event, the post-trial disclosures that already have been made show that this Court was unaware of egregious misconduct by Morgan Stanley’s in-house legal staff at the time the Court entered its remedial orders, and even at the time of trial. Morgan Stanley’s misconduct was more widespread, more shocking, more needful of remediation, and more deserving of punishment than the Court knew. Further investigation into what Morgan Stanley knew, and when it knew it, will demonstrate even more conclusively the extent to which Morgan Stanley corrupted the judicial process, and, hence, the need for relief under Section 1.540(b).

D. Fourth District Court of Appeal’s Ruling.

On appeal, the Fourth District reversed the trial court’s judgment, on the sole ground that CPH had not adequately established its damages because it had not proven the value of the Sunbeam stock on the date of the transaction. The Fourth District did not disturb this Court’s

remedial orders and did not address the misconduct by Morgan Stanley that came to light only long after those sanctions were imposed. Tellingly, on appeal, Morgan Stanley never challenged any of this Court's factual findings about its extensive and egregious litigation misconduct.

ARGUMENT

I. RULE 1.540 PROVIDES AN APPROPRIATE AVENUE FOR RELIEF, AND CPH'S 1.540(b) MOTION IS APPROPRIATE AT THIS TIME.

Florida law provides a means by which a party may reopen a judgment and obtain relief when the prevailing party has committed fraud or other serious misconduct, such as the fraud committed by Morgan Stanley in this case. Florida Rule of Civil Procedure 1.540(b) provides that:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons: . . . (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; [or] (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party The motion shall be made within a reasonable time, and . . . not more than 1 year after the judgment, decree, order, or proceeding was entered or taken

As demonstrated more fully in Section II below, "fraud," "misrepresentation," and "other misconduct of an adverse party," the circumstances in which Rule 1.540(b) authorizes relief from a judgment, precisely describe the facts here. In this case, Morgan Stanley had withheld, and in some cases destroyed, massive amounts of e-mails that should have been produced in discovery.² While the Court was trying to decide on a sanction commensurate with the seriousness of the harm to CPH, and gravity of Morgan Stanley's misconduct, Morgan Stanley

² In its March 23, 2005 Order, this Court found that the SEC had discovered that Morgan Stanley had destroyed e-mails by overwriting backup tapes, notwithstanding a general regulatory requirement that they be maintained and an SEC order expressly requiring their preservation. 3/23/05 Order at 11, 14.

went to great lengths to convince the Court that Morgan Stanley was entitled to leniency because the wrongdoing did not involve Morgan Stanley's in-house lawyers, who purportedly did not know about the presence of e-mails on unsearched backup tapes until "late October 2004." In fact, that representation, to which Morgan Stanley adhered consistently until after the jury had returned its verdict, was false. After the trial was over, Morgan Stanley, having safely avoided the severe sanction merited by the nature and consequences of its conduct, acknowledged for the first time one part of its lies — admitting that its in-house lawyers did in fact have knowledge of the presence of e-mail on unsearched backup tapes "in July 2004." Later, after the case had been argued and was awaiting decision in the Fourth District, Morgan Stanley admitted another part of its lies — that its in-house lawyers actually knew that the backup tapes contained e-mails sometime "prior to July 2004." Even then, Morgan Stanley did not tell the Court or CPH exactly when it was — in the days, months, or years "prior to July 2004" — that the in-house lawyers actually learned that the backup tapes contained e-mails. (Morgan Stanley's intentional vagueness as to the exact date on which its in-house lawyers learned this fact cries out for further investigation, given the June 23, 2004 date of the false certification.) The fraud that Morgan Stanley practiced on the Court when the Court was attempting to decide what sort and severity of sanction was appropriate — and continued to conceal until after the trial had been completed and the jury had rendered its verdict — is precisely the kind of fraud that is meant to be remediable under Rule 1.540(b).

To prevail on a Rule 1.540(b) motion, a "moving party must establish . . . that the verdict was obtained through fraud . . . and that the conduct complained of prevented the losing party from fully and fairly presenting his case or defense." *Wilson v. Charter Marketing Co.*, 443 So.

2d 160, 161 (Fla. 1st DCA 1983).³ Rule 1.540(b) follows Rule 60(b) of the Federal Rules of Civil Procedure, and the Florida courts look to federal law in construing it. *See Molinos Del S.A. v. E.I. DuPont de Nemours and Co.*, 947 So. 2d 521, 524 (Fla. 4th DCA 2006) (Florida courts will look to Rule 60(b) case law). The portion of Rule 60(b) that corresponds to the relevant portion of Rule 1.540(b) “is aimed at providing relief for judgments that were unfairly obtained, not those that are factually inaccurate. The rule is an ‘escape valve to protect the fairness and integrity of litigation in federal courts.’ Therefore, the moving party does not have to prove that he or she would prevail in a retrial in order to secure relief from judgment on the basis of fraud of an adverse party.” 12 J. Moore et al., *MOORE’S FEDERAL PRACTICE*, § 60.43[1][d] (Matthew Bender 3d ed. 2007) (footnotes omitted). Notably, “[t]he not-infrequent assertion that the moving party must have a ‘meritorious’ claim or defense . . . does not contradict . . . what has just been said that proof of a likely different result is not required. A ‘meritorious’ claim or defense, in this context, means only a claim or defense with some legal validity, one that, if the trier of fact believed the moving party, would entitle that party to judgment . . .” *Id.* (citations and footnotes omitted).

The fact that a case has been the subject of proceedings in an appellate court does not alter or diminish the authority of a trial court subsequently to entertain a motion for relief from judgment. *See, e.g., Ohio Casualty Group v. Parrish*, 350 So. 2d 466, 469 (Fla. 1977) (citing

³ The District Courts are split as to the proper statement of the burden of proof. In *Wilson*, the First District held that “clear and convincing” evidence was required, and the Third District adopted that standard in *Santiesteban v. Santiesteban*, 579 So. 2d 891, 892 (Fla. 3rd DCA 1991). The First District has since defined the movant’s burden as requiring only proof by a “preponderance or greater weight of the evidence.” *Furney v. Furney*, 659 So. 2d 364, 365 (Fla. 1st DCA 1995) (citing *Wieczoreck v. H & H Builders*, 475 So. 2d 227, 228 (Fla. 1985)). Whatever the burden, CPH has satisfied it through Morgan Stanley’s own words, including the June 2005 and November 2006 Notices.

Standard Oil Co. of California v. United States, 429 U.S. 17, 17-18 (1976)); *Sellers v. General Motors Corp.*, 735 F.2d 68, 69 (3d Cir. 1984) (“Our affirmance on [the existing record] did not limit the power of the district court to consider Rule 60(b) relief.”); *see also* 11 C. Wright, A. Miller, and M. Kane, *Federal Practice and Procedure* § 2873, p. 439 (2d ed. 1995) (“Of course the district judge is not free to flout the decision of the appellate court so far as it goes, but he should be free to consider whether circumstances not previously known to either court compel a new trial.”).⁴

Rule 1.540(b) provides that a motion must be filed within a year of the judgment from which relief is sought. In a case like this one, where an earlier judgment has been reversed on appeal, the one-year period runs from the date of the new judgment entered pursuant to the appellate court’s mandate. That is because it is the new judgment, rather than the previous, now-reversed judgment, from which relief is being sought. *See Molinos*, 947 So. 2d at 524-25 (reversing denial of Rule 1.540(b) motion).

The situation here closely tracks *Molinos*. In that case, plaintiffs, whose trial court judgments had been overturned on appeal, filed Rule 1.540(b)(2) motions based on evidence of defendants’ discovery violations. *Molinos*, 947 So. 2d at 523-24. Because the Rule 1.540(b)(2) motions were filed more than a year after the original judgments had been entered, the Circuit Court denied the motions as untimely. *Id.* On appeal, the Fourth District reversed, expressly

⁴ The appellate mandate to enter the judgment in favor of Morgan Stanley was itself an outgrowth of Morgan Stanley’s successful concealment of the true magnitude and extent of its litigation misconduct. Had the full extent of that misconduct been known in 2005, this Court certainly could have imposed contempt sanctions, which, among other things, could have precluded Morgan Stanley from pursuing any appeal until it had purged itself of its contempt by complying fully with the Court’s orders. *See, e.g., Davidson v. District Court of Appeal, Fourth Dist.*, 501 So. 2d 603, 604 (Fla. 1987); *Gazil v. Gazil*, 343 So. 2d 595, 597 (Fla. 1977); *Pasin v. Pasin*, 517 So. 2d 742, 742 (Fla. 4th DCA 1987).

concluding that the judgments challenged by the plaintiffs' Rule 1.540(b) motions "were those entered after [the defendant's] successful appeals." *Id.* at 525; *cf. Gegenheimer v. Galan*, 920 F.2d 307, 310 (5th Cir. 1991) ("[i]f an appeal results in a substantive change [in the judgment], then the time [for filing a Rule 60(b)(1) motion] would run from the substantially modified order entered on mandate of the appellate court") (quoting *Transit Cas. Co. v. Security Trust Co.*, 441 F.2d 788, 791 (5th Cir. 1971)).

As was the case in *Molinos*, there was no adverse judgment from which CPH could seek relief until this Court entered its new judgment pursuant to the Fourth District's mandate. Accordingly, this is the appropriate time to address the misconduct by Morgan Stanley that led to the newly entered judgment in its favor.

II. THE JUDGMENT IN THIS CASE SHOULD BE SET ASIDE UNDER RULE 1.540(b).

A. Morgan Stanley Repeatedly Made False Statements About The Knowledge Of Its Law Division.

It was beyond dispute that, on each of the occasions when this Court attempted to remediate Morgan Stanley's misconduct by "leveling the playing field," Morgan Stanley had committed sanctionable conduct. Indeed, Morgan Stanley did not appeal any of this Court's findings in that regard and challenged on appeal only the severity of the final pre-trial misconduct order, imposed on March 23, 2005 — which the Fourth District did not disturb. Among other things, Morgan Stanley contumaciously defied numerous Court orders and lied repeatedly to CPH and the Court, even in sworn statements, about the existence and availability of e-mails and other evidence (such as critical evidence concerning the veracity and trustworthiness of the lead Morgan Stanley banker on the Sunbeam deal).

In January 2005, CPH asked the Court to grant an adverse inference instruction. The Court granted that relief in part, shifting to Morgan Stanley the burden of persuading the jury

that it lacked knowledge of the Sunbeam fraud and that it did not conspire with Sunbeam to defraud CPH. The Court reversed the burden on those two elements in order to “level the playing field.” The Court left with CPH the burden of proving reliance, the fact of damage, and the amount of compensable damages. When Morgan Stanley’s misconduct continued, CPH moved for a total default as to liability. The Court did not grant that relief, but ordered, as also permitted by Rule 1.380, that the elements on which the Court previously had reversed the burden of proof should be deemed to be established.

Morgan Stanley committed fraud on the Court in connection with the sanctions motions by, among other things, repeatedly telling the Court, in pleadings, arguments, and sworn statements, that its in-house lawyers were not aware of the existence of unsearched and unproduced e-mails (or of the improper destruction of e-mails) until “late October 2004” — four months after Morgan Stanley’s false June 2004 certification that its search and production were complete. After repeatedly using these false representations as a basis for arguing that its misconduct should be excused, Morgan Stanley first admitted, in June 2005 (one month after the return of the jury’s verdict), that the Morgan Stanley Law Division was actually aware in July 2004 that the unsearched Brooklyn tapes contained e-mail. Critically, this “admission” continued Morgan Stanley’s deceit that the in-house lawyers did not know that the Brooklyn tapes contained e-mail (or that the 8-mm tapes existed) until after the certification was made. In December 2006, however, Morgan Stanley finally added the admission that “Morgan Stanley’s Law Division was aware of the existence of the [Brooklyn and 8-mm] e-mail backup tapes and the presence of e-mail on some of those tapes *prior to* July 2004” (emphasis added). In light of both the short time between the date of the certification (June 23, 2004) and the beginning of July 2004, and the absence of any compelling reason to be more precise, the only reasonable

inference from these facts is that the Law Division knew that the June 23, 2004, certification was false at the time it was made because the Law Division definitively knew of unsearched e-mails. Indeed, even with these two additional “Notices,” Morgan Stanley has refused to disclose precisely when its Law Division — supposedly charged by Morgan Stanley with complying with applicable law — actually learned for the first time about the existence of e-mail on the Brooklyn or 8-mm tapes. It is therefore fair to assume that the Law Division was aware of these facts from the very beginning of this litigation and lied from the date of its first, fraudulent response to CPH’s Notice to Produce Documents in June 2003.

B. Morgan Stanley’s Fraud With Respect To What Its Law Division Knew Was Critical To The Resolution Of The Remediation Motions, And, Hence, To The Outcome Of The Case.

At the time the Court made its remediation decisions, it was clearly established that Morgan Stanley had committed serious, sanctionable misconduct. The only question was *how* substantial the sanctions should be. For that reason, Morgan Stanley sorely needed to portray itself in as good a light as possible. That is why, in its March 13, 2005 opposition to CPH’s motion for default, Morgan Stanley drew a sharp distinction between what its IT staff knew and what its legal staff (allegedly) knew:

While it is true that Mr. Riel [the IT manager who signed the e-mail certification] and other members of the IT Staff knew in early July 2004 (after Mr. Riel signed his certification) that some of those tapes contained some e-mails going back to the late 1990s, neither Mr. Riel nor anyone else in the IT department informed Morgan Stanley’s lawyers of that fact. . . . It was not until late October 2004, when Morgan Stanley’s Law Division was working with Ms. Gorman (Mr. Riel’s successor) on some issues regarding an unrelated regulatory production of e-mails, that the Law Division learned, for the first time, that some of the tapes contained e-mails. That accounts for Morgan Stanley’s representation to this Court that late October 2004 marks the first time that the in-house legal staff was aware of this fact.

Opp. 20; *see also id.* at 20, 31 (“[W]hether the affidavit had come from Mr. Doyle, Mr. Cusick, or any other member of Morgan Stanley’s Law Division, the content would have been the same:

the Law Division did not learn that some of the newly discovered tapes contained some e-mails until October 2004.”).

That is also why Morgan Stanley repeated this contention to the Court both during and after the remediation proceedings. *See, e.g.*, Morgan Stanley’s Opp’n to CPH’s Mot. for a Default Judgment, at 6 (filed Feb. 28, 2005) (“Morgan Stanley has consistently contended that no one in its Law Division knew of the existence of additional recoverable e-mail data on the tapes before October 2004.”); 5/12/05 MS Addendum to Opposition to CPH Mot. for Correction (May 12, 2005 proffer stating that in-house counsel did not know that there was e-mail on the Brooklyn tapes until October 2004 and did not know of the existence of 8-mm tapes containing e-mails until November 2004); 5/16/05 Tr. at 15266 (May 16, 2005 Morgan Stanley argument to Court that “[t]here is no evidence that any lawyer in Morgan Stanley’s Law Division was aware prior to October 2004 that any of the tapes contained any e-mail”); 5/18/05 Tr. at 15607 (May 18, 2005 Morgan Stanley argument that “it’s undisputed that [in-house counsel] learned that these [backup tapes] contained e-mail in October 2004”).

Of course, that was all a lie, as Morgan Stanley’s December 21, 2006 Notice makes clear. But the lie was critical to Morgan Stanley’s defense of the remedial motions. It was bad enough that Morgan Stanley’s employees were engaged in misconduct relating to the production of e-mails. But the function of in-house counsel, among other things, is to see that employees comply with the law. It would have been devastating to Morgan Stanley’s defense if the Court had known that the Law Division not only had failed to ensure compliance with the Court’s Orders, but had known about the noncompliance even as the Court was being assured that compliance had occurred. The facts would have been particularly devastating because it was not just one junior lawyer in the Law Division who lied to the Court; at least three senior lawyers (and

perhaps others whose identities Morgan Stanley continues to conceal) lied to the Court. But Morgan Stanley went even further: Morgan Stanley traded on the Court's willingness to presume that in-house counsel would comply with the law (which they did not do) to argue that this Court, as a matter of fairness, should not impose the more severe measures that CPH had requested. That ploy worked.⁵

If CPH had known that these sworn statements and representations with respect to in-house counsel's knowledge were false in early 2005, when CPH moved for sanctions — indeed, if it had known how actively Morgan Stanley's in-house lawyers, portrayed as enablers of the truth, had actually worked to conceal the truth from this Court — CPH would have urged sanctions more severe than those it requested. CPH not only would have asked the Court to enter a total default as to liability (which CPH unsuccessfully urged), but CPH also would have asked for a remedial order with respect to damages. Indeed, at oral argument on the remediation issue, CPH argued that the withholding of the truth about the e-mail went to every element of the claim, including the fact of damages. 3/15/05 Tr. at 3944. If CPH had known at the time of the remediation hearing that Morgan Stanley's in-house lawyers had known about the fraud, and had been active participants in it, Morgan Stanley could not have made its central argument for leniency based on its lawyers' lack of participation in any wrongdoing.

Based on the incomplete and deceptive picture presented by Morgan Stanley, the Court limited its orders to remediating some portion of the harm caused by Morgan Stanley's gross misconduct. Based on what it did know, the Court commented that Morgan Stanley's

⁵ Morgan Stanley understood the significance of its actions. Indeed, it called its misrepresentations the “headline” of the story about its conduct: “The headline is that the first time that anyone — that anyone at Morgan Stanley knew that there was recoverable e-mail data that might fall within the Court's order was not until late October 2004 consistent with Mr. Doyle's declaration.” 2/2/05 Tr. at 132.

misconduct was so serious that “[t]he judicial system cannot function this way.” 3/23/05 Order at 16 (emphasis in original). But the Court and CPH were aware of only part of the story. If the Court had been aware of Morgan Stanley’s lies as to the lack of knowledge of its in-house legal department, and had known that Morgan Stanley’s lawyers had deliberately chosen to lie to the Court to secure a less severe sanction than otherwise would have been the case, the Court undoubtedly would have imposed more serious remedial measures than those the Court actually imposed. *See, e.g., Webb v. District of Columbia*, 189 F.R.D. 180, 191 (D.D.C. 1999) (party may be penalized for in-house counsel’s conduct because party “has an unusually broad influence [over in-house lawyers] because of the power to control litigation policies and the entirety of the lawyer’s resources. This consideration, together with the [client’s] own unlawful actions, make the imposition of a default judgment in part for the misconduct of counsel an entirely just and appropriate result.”).

In the circumstances, it would have been appropriate for the Court to have imposed a total default as to liability and to have altered the burden of proof as to damages. If the Court had imposed the more serious sanction that, we now know, Morgan Stanley has always merited, the outcome of this case would have been different, and the granting of relief under Rule 1.540(b) is warranted for that reason.⁶

⁶ The appellate mandate to enter the judgment in favor of Morgan Stanley was itself an outgrowth of Morgan Stanley’s successful concealment of the true magnitude and extent of its litigation misconduct. Had the full extent of that misconduct been known in 2005, the proceedings may well have unfolded in such a way that the question the appellate court decided would never even have been presented. For example, this Court certainly could have imposed contempt sanctions, which, among other things, could have precluded Morgan Stanley from pursuing any appeal until it had purged itself of its contempt by complying fully with the Court’s orders. *See, e.g., Davidson v. District Court of Appeal, Fourth Dist.*, 501 So. 2d 603, 604 (Fla. 1987); *Gazil v. Gazil*, 343 So. 2d 595, 597 (Fla. 1977); *Pasin v. Pasin*, 517 So. 2d 742, 742 (Fla. 4th DCA 1987).

C. Morgan Stanley's Fraud On The Court Resulted In A Change in What The Jury Was Able To Consider In Its Deliberations.

There can be no doubt as to the importance of Morgan Stanley's fraud with respect to how the trial was conducted — Morgan Stanley used its misrepresentations to avoid the likelihood of a remedial measure more severe than the partial default the Court ordered. But Morgan Stanley did more: it used its misrepresentations to secure a change in the arguments presented to the jury.

On May 18, 2005, outside the presence of the jury, the Court heard arguments from the parties concerning the use of demonstrative aids in support of the parties' respective closing arguments in the punitive damages phase of the trial. Morgan Stanley asked the Court to order CPH to change its closing argument and the PowerPoint presentation that supported it. Morgan Stanley told the Court that "it's undisputed in the record that the lawyers at Morgan Stanley learned that e-mail was on these tapes in October 2004. There's been no contrary evidence to this They knew about the tapes in June, but they didn't know they contained e-mail." 5/18/05 Tr. at 15608. The Court, unaware of the truth at that time, required CPH to redo its presentation, explaining: "We don't know if [the Morgan Stanley in-house lawyers] knew [the backup tapes] contained e-mail." *Id.*

In other words, Morgan Stanley persuaded the Court to change what the jury was to hear, and it did so based on its misrepresentations that its in-house attorneys had somehow remained ignorant until October 2004 of the fact that the unsearched Brooklyn tapes contained e-mail (and remained unaware of the very existence of the 8-mm tapes until November 2004). That, of course, was false. As Morgan Stanley unequivocally admitted after jurisdiction of the case had been transferred to the Fourth District — and, indeed, the case had been argued and submitted in that court — the in-house lawyers were aware of the existence of e-mail on the unsearched

Brooklyn tapes prior to July 2004. In addition, it is now clear that sometime before July 2004 members of the Law Division were aware that the 8-mm tapes existed, and that they were aware that some of those tapes contained e-mails.

When the misconduct in question has actually changed what the jury was allowed to hear, there can be no doubt that relief is warranted under Rule 1.540(b).

III. THE COURT SHOULD ORDER DISCOVERY AND BRIEFING ON CPH'S RULE 1.540(b) MOTION, AND SET THE MATTER FOR AN EVIDENTIARY HEARING.

Where a Rule 1.540(b) motion presents a "colorable entitlement to relief," the Court must conduct an evidentiary hearing to determine whether the motion should be granted. *See Schlege v. Stebelsky*, 957 So. 2d 71, 73 (Fla. 4th DCA 2007) (evidentiary hearing required unless allegations and accompanying affidavits fail to show colorable entitlement to relief); *Robinson v. Weiland*, 936 So. 2d 777, 781 (Fla. 5th DCA 2006) (evidentiary hearing required where motion under Rule 1.540(b) "pleads fraud or misrepresentation with particularity, and shows how that fraud or misrepresentation affected the judgment").

Under Florida law, the presentation of a colorable entitlement to relief also requires that the movant be afforded permissible discovery prior to the hearing. *See Southern Bell Tel. & Tel. Co. v. Welden*, 483 So. 2d 487, 489 (Fla. 1st DCA 1986) (applying Rule 1.540(b)). Here, the need for discovery is obvious. Morgan Stanley has deceived and misled the Court and CPH since virtually the beginning of the litigation, starting with Morgan Stanley's response to CPH's first request to produce documents. Morgan Stanley affirmatively misrepresented the extent of its misconduct until long after the verdict; and even now, nearly three years after the trial, Morgan Stanley continues to conceal the full magnitude of its misconduct and that of its Law Division.

As shown above, Morgan Stanley argued forcefully that it should escape the most severe consequences of its actions because its Law Division did not knowingly participate in the discovery misconduct that Morgan Stanley argued was confined to certain personnel in its IT department. *See supra* pages 10 to 16. Although Morgan Stanley's argument succeeded, it was based upon facts that we now know to be false, and that Morgan Stanley knew to be false at the time the argument was made. But we do not yet know the full extent of the Law Division's complicity. Morgan Stanley's June 17, 2005 Notice, its presentation at the November 3, 2005 criminal-contempt hearing, and its December 21, 2006 Notice all reflect a consistent attempt to game the system by creating intentional ambiguities that mask the full extent of the misconduct by its in-house lawyers. Justice will not be done in this case until those responsible are required to answer questions under oath and have their testimony subjected to this Court's most rigorous scrutiny. The need for discovery could not be more acute.

Moreover, this Court should not allow Morgan Stanley to stymie discovery once again by improperly invoking the attorney-client privilege. There is now a resounding factual basis for applying the crime/fraud exception to the privilege. Under Florida law, the crime/fraud exception bars any party from claiming as privileged any communications with a lawyer when the lawyer's services "were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew was a crime or fraud." Fla. Stat. § 90.502(4)(a); *see also American Tobacco Co. v. State*, 697 So. 2d 1249, 1252-56 (Fla. 4th DCA 1997). When a party engages in discovery misconduct and abuses the attorney-client privilege, Florida courts do not hesitate to reject the party's claims of privilege and require disclosure of information that the party otherwise would continue to cloak by having its lawyers participate in the wrongful conduct. *See, e.g., General Motors Corp. v. McGee*, 837 So. 2d 1010, 1032 (Fla. 4th DCA 2002). Here,

CPH asked the Court to pierce the privilege based on the crime/fraud exception on February 21, 2005, when CPH sought to depose Morgan Stanley's in-house counsel about the withholding or destruction of e-mail evidence. 2/21/05 CPH Mot. to Compel Further Discovery. In its March 1, 2005 sanctions order the Court denied that request. 3/2/05 Order. But at that time, of course, Morgan Stanley had insisted that only its IT personnel and not the members of its Law Division were responsible for the misconduct, and the Court did not yet know about the Law Division's complicity. Had the Court known what we know now, it would have had a clear basis for finding that the privilege was defeated by the crime/fraud exception. Otherwise privileged communications involving Morgan Stanley's Law Division attorneys might well contain important admissions relating to all aspects of the case, including admissions that Morgan Stanley's and Sunbeam's fraudulent statements damaged CPH — an essential element of CPH's claims against Morgan Stanley and an element that Morgan Stanley contends CPH failed to prove at trial.

CPH believes that this Court will decide, after allowing for appropriate discovery and then conducting the evidentiary hearing required to resolve a Rule 1.540(b) motion, that the judgment in favor of Morgan Stanley should be vacated. Accordingly, CPH respectfully asks this Court to set a briefing schedule, with adequate time for discovery, to be followed by an evidentiary hearing.

IV. THE JUDGMENT IN FAVOR OF MORGAN STANLEY SHOULD BE VACATED AND ADDITIONAL, MORE SEVERE SANCTIONS AGAINST MORGAN STANLEY SHOULD BE IMPOSED.

Given the record of litigation abuse and deception in this case, CPH respectfully submits that this Court should vacate the judgment in favor of Morgan Stanley and then go on to impose additional, more severe sanctions against Morgan Stanley. Specifically, CPH respectfully requests that the Court (a) enter a complete default on all elements of liability, including reliance

and the fact of damage; (b) shift the burden of proof on damages; (c) order a new trial on compensatory and punitive damages; and (d) provide such further relief as the Court deems just and proper.

A. Entering a Complete Default on All Elements of Liability.

The Court should enter a complete default order on all elements of liability (including the fact of damage), rather than only a partial default order on some (but not all) elements of liability.

In opposing both CPH's rehearing petition in the Fourth District and its jurisdictional brief in the Florida Supreme Court, Morgan Stanley repeatedly argued that a retrial on damages was unavailable because the jury's finding as to the fact of damage — not simply the amount — was tainted by the methodology CPH used for proving the amount of compensatory damages. *See* Resp.'s Notice Respecting Supp. Authority, at 1 (Nov. 20, 2007); Resp.'s Answer Br. in Opp'n to Jurisdiction, at 1, 5-8 (July 24, 2007); Resp. to Mot. for Reh'g *En Banc*, at 11 (May 7, 2007). Had Morgan Stanley received the sanction it deserved based upon all the information we now know, Morgan Stanley would not have been in a position to urge the grounds for reversal upon which the Fourth District decided the appeal. As even Morgan Stanley surely must concede, an undisturbed finding of liability must be followed by proceedings to determine the proper remedy.

There is no question that this Court has the power to enter a complete default judgment as to all elements of liability. The Florida Rules of Civil Procedure authorize trial courts to issue default judgments against parties that willfully and contumaciously disobey discovery orders. *See* Fla. R. Civ. P. 1.380(b)(2)(C). And courts throughout the State have long recognized that such a default judgment may extend to all elements of liability, including the fact of damage. *See, e.g., Levine v. Del American Properties, Inc.*, 642 So. 2d 32, 32-34 (Fla. 5th DCA 1994)

(default judgment as to all elements of fraud, breach of contract, and conversion); *Williams v. Direct Dispensing, Inc.*, 630 So. 2d 1195, 1196-97 (Fla. 3d DCA 1994) (default judgment as to all elements of negligent misrepresentation, breach of contract, and conspiracy to defraud); *Far Out Music, Inc. v. Jordan*, 502 So. 2d 523, 523-24 (Fla. 3d DCA 1987) (default judgment as to all elements of fraud and breach of contract). Such a remedy is clearly appropriate where, as here, the party's misconduct is extreme, and the party has used every means possible to conceal that misconduct.

B. Ordering a New Trial on Damages and Shifting the Burden of Proof.

Florida case law makes clear that sanctions for discovery misconduct may extend beyond the liability phase of the proceeding and into the damages phase. For example, the Florida Supreme Court has recognized that, in entering “a default against a defendant for violation of discovery orders in a negligence action,” a trial court must have the discretion to “preclude that defendant from reducing the amount of his liability by proof of the plaintiff's comparative negligence.” *Harless v. Kuhn*, 403 So. 2d 423, 424 (Fla. 1981) (internal quotation marks omitted).

Florida's appellate courts likewise have held that a defendant that commits discovery misconduct not only may be held liable, but also can be barred from introducing any evidence at the trial on damages. In *Delta Information Services, Inc. v. Joseph R. Jannach M.D. & Associates*, 569 So. 2d 1353 (Fla. 3d DCA 1990), litigation misconduct (including the violation of five discovery orders) led the trial court to find the disobedient party liable and then to prohibit that party from introducing any evidence during the damages trial that should have been disclosed to the other party through court-ordered discovery. *Id.* at 1354 n.4. The Third District affirmed unanimously. *Id.* at 1355.

Similarly, in *Rose v. Clinton*, 575 So. 2d 751 (Fla. 3d DCA 1991), the trial court imposed discovery sanctions that precluded defendants from presenting any evidence whatsoever to controvert plaintiff's proof of damages (though defendants were permitted to cross-examine plaintiff's witnesses and to make objections). *See id.* at 752. After conducting the damages trial, the court entered a final judgment in plaintiff's favor. *Id.* Although the Third District reversed that judgment, it did so solely because the trial judge had not entered written findings that defendants had willfully and deliberately disobeyed a court order to comply with discovery; such written findings are required by the Florida Supreme Court's decision in *Commonwealth Federal Savings & Loan Association v. Tubero*, 569 So. 2d 1271, 1272 (Fla. 1990). *See Rose v. Clinton*, 575 So. 2d at 752. Importantly, the Third District then held that if the trial court on remand conducted the required hearing and entered the required written findings, the trial court would be free to reinstate both its sanctions order and its final judgment awarding damages based on the procedure just described. *Id.* Thus, the Third District approved the trial court's decision to bar defendants from presenting their own damages evidence — and the appellate court expressly found that the trial court's "sanctions were commensurate with the [defendants'] discovery violations." *Id.* at 752 n.3 (citing *Delta Info. Servs.*, *supra*); *see also* Joint Committee of the Trial Lawyers Section of the Florida Bar and the Conferences of Circuit and County Judges, Handbook on Discovery Practice 16 & n.64 (2007 ed.) (citing *Rose v. Clinton* for the proposition that Florida trial courts can allow the award of damages as part of a default sanction for discovery abuse), available at <http://www.flatls.org/Handbook/ Handbook.pdf>.

Here, rather than barring Morgan Stanley from introducing evidence at a new trial on damages, the Court could take a more limited step: requiring Morgan Stanley to show "negative causation" — that is, making Morgan Stanley bear the burden of proving that something other

than fraud caused a decline in the value of CPH's 14.1 million shares of Sunbeam stock. See *McMahan & Co. v. Warehouse Enter., Inc.*, 65 F.3d 1044, 1047-49 (2d Cir. 1995); *Akerman v. Oryx Communications, Inc.*, 810 F.2d 336, 340-43 (2d Cir. 1987).⁷ This request comports with the Fourth District's decision focusing on "the actual, 'fraud-free' value of the Sunbeam stock on the date of the transaction." 955 So. 2d at 1131. The negative-causation defense proposed here and the loss-causation burden that the Fourth District imposed on CPH are mirror-image methods of establishing the actual, fraud-free value on the date of the transaction. "[I]n the former [method], the burden of proving negative causation is on the defendant, and in the latter, the burden of proving the existence of loss causation is on the plaintiff." *In re WorldCom, Inc. Sec. Litig.*, No. 02 Civ. 3288, 2005 WL 375314, at *6 (S.D.N.Y. Feb. 17, 2005). The new trial on damages will arrive at that fraud-free value. But at the new trial, Morgan Stanley will bear the burden of proving negative causation.

Given Morgan Stanley's repeated, willful, and contumacious disregard for this Court's orders and Morgan Stanley's destruction and nonproduction of evidence — potentially including contemporaneous evidence about the value that Morgan Stanley placed on the Sunbeam stock on the date of the transaction — this Court should place the burden on Morgan Stanley to attempt to prove what, if any, portion of the stock's collapse can be attributed to non-fraud-related causes.

⁷ Although CPH asks the Court, as a sanction, to require Morgan Stanley to prove negative causation here, that is how the burden of proof is allocated for claims under the Florida Securities and Investor Protection Act. See Fla. Stat. §§ 517.211(4), 517.301; see also *E.F. Hutton & Co. v. Rousseff*, 537 So. 2d 978, 978-81 (Fla. 1989) (plaintiff need not prove loss causation). The federal securities laws also impose upon the defendant the burden of proving negative causation in claims arising under Section 11 of the Securities Act of 1933. See 15 U.S.C. §§ 77k(e); see also 2 Thomas Lee Hazen, *Treatise on the Law of Securities Regulation* § 7.5[2][b], at 104 (5th ed. 2005) (under the doctrine of "negative causation," if the "value (or price) of the security [has declined] since the purchase, the defendant has the burden of proving that the plaintiff's loss was not attributable to the misrepresentations or omissions").

After the parties have presented their evidence under this evidentiary burden, after the jury has calculated the compensatory damages that Morgan Stanley owes CPH, and after the Court has added the appropriate amount of prejudgment interest to compensate CPH in current dollars, the jury then could determine whether punitive damages are warranted and, if so, what amount is to be assessed. In considering whether punitive damages are warranted, the jury should be instructed about Morgan Stanley's efforts to destroy and withhold evidence of its collusion with Sunbeam, including the role of Morgan Stanley's in-house counsel.

CONCLUSION

Plaintiff CPH respectfully requests that this Court vacate the judgment of dismissal, enter a default judgment as to all elements of liability, order a new trial on damages with Morgan Stanley bearing the burden of proving that something other than the fraud caused part of CPH's loss, and provide such further relief as the Court deems just and proper.

Dated: January __, 2008

Respectfully submitted,

By: _____

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

CASE NO: CA 03-5045 AT

08 JAN 17 PM 4:08
JENNIFER A. BOOK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 3

FILED

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE: January 24, 2008

TIME: 8:45 a.m.

PLACE: Palm Beach County Courthouse, Courtroom 11A
205 North Dixie Highway
West Palm Beach, Florida 33401

BEFORE: Judge Elizabeth T. Maass

CONCERNING: Morgan Stanley & Co. Incorporated's Motion for Entry of
Final Judgment

KINDLY GOVERN YOURSELVES ACCORDINGLY.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

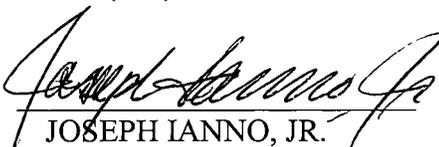
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 10th day of January, 2008.

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

**NOTICE REGARDING COURT'S INTENTION TO
CONDUCT A STATUS CONFERENCE**

We understand that the Court is considering holding a two hour status conference. We respectfully suggest that a much shorter conference would suffice to address the outstanding matters, the first of which will simply be the entry of a judgment in favor of Morgan Stanley per the mandate of the District Court of Appeal. Morgan Stanley's pending Motion for Fees and Costs will be the next order of ordinary business for the Court. Still extant will be Coleman (Parent) Holdings, Inc.'s ("CPH") Motions for Orders to Show Cause, and CPH has now announced that it intends to file a Motion for Relief under Rule 1.540(b), seeking a new trial on damages based on newly discovered evidence of fraud.

That Motion contends that had CPH known of the information set forth in the June 2005 post-trial and the December 2006 appeal-pending Notices filed by Morgan Stanley, CPH would have successfully demanded harsher sanctions from this Court, *i.e.*, a total default or burden shifting on damages. CPH's ingenuity is insufficient to overcome the DCA mandate which was

issued after rejecting CPH's Consolidated Motion for Rehearing and Rehearing *En Banc* in which CPH argued, *inter alia* that the panel decision "exonerate[d] M/S altogether – to set it free with no accountability whatsoever for the massive fraud in which it participated, the enormous damages it causes, *or the extensive litigation conduct in which it admittedly engaged.*" See Exhibit "A" p. 3 (emphasis added). Thus, the DCA's denial of CPH's entreaties, and the issuance of the mandate, put an end to this case, including any discovery sanction issues.

CPH's attempt to evade the mandate is devoid of merit because of, *inter alia*, (1) its failure to have cross-appealed for additional relief after the post-trial, pre-appeal June 2005 Notice and (2) its failure to seek any relief based on the December 2006 Notice which was filed by Morgan Stanley in this Court and the Fourth District while the appeal was pending in that Court. Unlike *Molinos Del S.A. v. E.I. Dupont de Nemours*, 947 So. 2d 521 (Fla. 4th DCA 2006), where the purported discovery misconduct *had never been considered* by the trial court, this Court *had considered* it, entered its level-the-playing field sanction and excused Morgan Stanley from further discovery obligations. CPH accepted those results by not cross-appealing and asking the DCA for a new trial on damages as a sanction. Even after the December 2006 Notice was filed both in the DCA and this Court, CPH took no action asking the DCA to relinquish jurisdiction for this Court to reconsider its sanctions. *Compare Molinos, supra* at 523 ("Dibs and Aquamar moved this court to relinquish jurisdiction to permit the trial court to 'determine whether sanctions (including striking DuPont's pleadings) should be imposed upon DuPont for discovery violations"). Simply put, the flaws in CPH's proposed Rule 1.540(b) motion are quickly apparent.

Thus, we respectfully suggest that the issues the Court will be considering do not need a

two hour status conference. A briefer conference, which may be easier for the Court to arrange, will permit the Court to begin to move this case toward a final conclusion.

Respectfully submitted,

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Counsel for Defendant

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IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA
CASE NO. 4D05-2606
LT NO. CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Appellant,

v.

COLEMAN (PARENT) HOLDINGS INC.,

Appellee.

CONSOLIDATED MOTION FOR REHEARING
AND MOTION FOR REHEARING EN BANC
OF APPELLEE COLEMAN (PARENT) HOLDINGS INC.

On Appeal from the Circuit Court of the Fifteenth Judicial Circuit,
in and for Palm Beach County
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CONSOLIDATED MOTION FOR REHEARING AND MOTION FOR REHEARING EN BANC

INTRODUCTION

Coleman (Parent) Holdings Inc. (“CPH”) sued Morgan Stanley & Co. Incorporated (“MS”) for conspiring with Sunbeam Corporation in a massive corporate fraud that caused CPH enormous damage and ultimately drove Sunbeam into bankruptcy. Before trial, Judge Elizabeth Maass found that MS had concealed and destroyed evidence and presented false testimony in an effort to evade accountability for its wrongdoing. The details of that egregious litigation misconduct have been conceded by MS on appeal. At trial, a jury found MS liable to CPH for \$604 million in compensatory damages and \$850 million in punitive damages.

In a 2-to-1 decision, with Judge Farmer dissenting, the Court reversed both the compensatory and punitive damages awards and directed entry of judgment for MS. The majority did not disturb Judge Maass’ findings concerning MS’s litigation misconduct, nor did it disturb the jury’s finding that MS had defrauded CPH. It also did not disturb the jury’s finding that CPH had been damaged *in fact* by the fraud. Instead, the majority’s reversal was based entirely upon its disagreement with Judge Maass concerning the proper methodology for calculating

the amount of CPH's compensatory damages.

Before trial, MS had proposed that CPH's damages be cut off as of the date of the transaction, when CPH received the fraudulently inflated stock. CPH had proposed a methodology to permit recovery of additional damages that were directly caused by Morgan Stanley's fraud, including drops in stock value that CPH experienced because the fraud made sale of the stock impossible under federal securities regulations for nearly two years. After extensive briefing and argument on the two alternatives, Judge Maass entered a series of orders establishing CPH's methodology as the correct one. The panel majority, however, not only disagreed with Judge Maass' rulings, but also barred CPH from retrying the damages issue using the methodology articulated by the panel.

Had the shoe been on the other foot — that is, had the trial court adopted MS's methodology and had the panel determined that CPH's proposed methodology was the correct one — the only appropriate remedy would have been a new trial at which the amount of CPH's damages would be calculated under the methodology approved by this Court. But notwithstanding the need for evenhandedness in the treatment of litigants, the majority did not permit CPH to prove on remand the amount of its damages under the methodology the majority deemed proper. Instead, it concluded that CPH had failed to prove its damages in any amount and therefore could recover neither compensatory nor punitive

damages from the party that defrauded CPH and caused it enormous harm. And then, in one conclusory paragraph (*see* Op. at 10), the majority held that there should be no retrial and that MS was entitled to judgment as a matter of law.

The effect of this disposition is to exonerate MS altogether — to set it free with no accountability whatsoever for the massive fraud in which it participated, the enormous damage it caused, or the extensive litigation misconduct in which it admittedly engaged. That, we respectfully submit, is an extraordinary result that contravenes both public policy and established precedent, and one that deserves careful and thoughtful reconsideration by the panel and the en banc Court before it is allowed to become final.

To that end, we respectfully move the panel for rehearing of its decision. If the panel is unpersuaded to grant rehearing, we respectfully move the Court for rehearing en banc. Because the arguments directed to the panel provide necessary background to the arguments directed to the en banc Court, and in the interests of efficiency, we have combined the two motions into a single document. In the arguments that follow, we will state with particularity the points of law and fact we believe the panel overlooked or misapprehended in reaching its decision. For the benefit of the en banc Court, we will demonstrate that the panel's decision creates several conflicts with prior decisions of this Court and presents questions of exceptional importance in the administration of justice in this District.

In summary, our arguments for a grant of rehearing or rehearing en banc are as follows:

1. We respectfully submit that it was inappropriate to reverse the punitive damages award solely because, in the panel majority's judgment, the amount of compensatory damages had not been properly computed. The reasons for granting rehearing or rehearing en banc on that issue are straightforward. As Judge Farmer's dissent pointed out, the forfeiture of punitive damages mandated by the panel majority, based solely on its reversal of the compensatory award, flatly contradicts the Florida Supreme Court's decisions in *Ault v. Lohr*, 538 So. 2d 454 (Fla. 1989), and *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006) (per curiam). The panel opinion also is irreconcilable with this Court's prior decision in *Russin v. Richard F. Greminger, P.A.*, 563 So. 2d 1089 (Fla. 4th DCA 1990) (per curiam). Those authorities hold that punitive damages are appropriate even if the plaintiff failed to prove a specific amount of compensatory damages. Departing from that rule was particularly unjustified here, where the evidence indisputably supported the jury finding that CPH had suffered a substantial injury as a direct consequence of MS's fraud.

2. Also warranting rehearing or rehearing en banc is the panel majority's decision to treat its disagreement with the trial court about damages methodology as a basis for ordering entry of judgment for MS rather than a new trial on

damages. In denying a retrial, the panel majority misapplied *Teca, Inc. v. WM-TAB, Inc.*, 726 So. 2d 828, 830 (Fla. 4th DCA 1999) (en banc), which forbids a “second bite at the apple” to a plaintiff whose evidence of damages omitted a necessary element. Here, unlike in *Teca*, CPH conformed its proof to a series of pretrial rulings that carefully analyzed the kinds of damages evidence that would be permissible. CPH believes those pretrial rulings were correct, but even if they were erroneous, neither law nor logic justifies denying CPH a “first bite” under the legal standards articulated by the panel majority, particularly since a defendant facing similar circumstances would receive a retrial.

3. Finally, the panel majority’s decision that CPH was not entitled to recover the full amount of the injuries directly caused by the fraud conflicts with important principles of Florida law embodied in the decisions of this and other Florida courts and presents a question of exceptional importance that the panel or the en banc Court should reconsider. The panel majority held that plaintiffs are confined to compensation for injuries inflicted on the date of the transaction, even if the facts show that the fraud caused additional losses after that date. That ruling is not supported by the governing case law, including decisions of this Court, and is inconsistent with Florida’s adoption of a “flexible” approach to calculating damages to assure full compensation.

I. THE COURT SHOULD GRANT REHEARING OR REHEARING EN BANC BECAUSE THE PANEL IMPROPERLY BARRED CPH FROM RECOVERING PUNITIVE DAMAGES.

The panel majority held that because CPH presented “no proof at trial concerning the correct *measure* of damages” and thus could not recover compensatory damages, CPH also could not recover punitive damages. Op. at 10 (emphasis added). That ruling misapprehends binding Supreme Court authorities and is contrary to other rulings of this Court.

A. The Panel’s Decision Cannot Be Squared with the Supreme Court’s Decisions in *Ault* and *Engle*.

The panel’s decision misapprehends the Supreme Court’s decisions in *Ault v. Lohr*, 538 So. 2d 454 (Fla. 1989), and *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006). Both *Ault* and *Engle* squarely hold that an award of compensatory damages is not a prerequisite for punitive damages, and there is no exception to that categorical rule.

The *Ault* Court considered a certified question: “In Florida, must a compensatory damages award underlie a punitive damages award in a case in which the jury has made express findings against a defendant?” *Ault*, 538 So. 2d at 454-55 (citation omitted). The Supreme Court “answer[ed] the question in the negative, concluding that a jury finding of liability is the equivalent of finding nominal damages and, consequently, the jury may assess punitive damages.” *Id.* at 455. The *Ault* Court rejected the contention that compensatory damages must first

be proved or that “at least nominal damages must first be awarded before punitive damages are proper.” *Id.* at 456.

Engle reaffirmed the rule in *Ault* and applied it in a case where plaintiffs claimed punitive damages for fraud and conspiracy to commit fraud. *Engle*, 945 So. 2d at 1262-63; see *Liggett Group, Inc. v. Engle*, 853 So. 2d 434, 441 (Fla. 3d DCA 2003), *quashed in part per curiam*, 945 So. 2d 1246 (Fla. 2006). *Engle* held that compensatory damages are not a prerequisite for punitive damages because “a finding of entitlement to punitive damages is not dependent on a finding that a plaintiff suffered a specific injury.” 945 So. 2d at 1262.

The panel majority nonetheless concluded that the rule established in *Ault* and *Engle* was inapplicable to fraud cases. But the rule announced in *Ault* is categorical, and *Engle* was a fraud case. The panel majority held that this fraud case is different from *Ault*, which was an assault and battery case, because, “to prevail in an action for fraud, a plaintiff must prove its actual loss or injury.” *Id.* at 11. But while a plaintiff must show actual injury to prove fraud, that does not require proving entitlement to a specific quantum of compensatory damages. As Judge Farmer’s dissent explained, *Ault* requires proof only of “the fact that [the plaintiff] was damaged — *i.e.*, harmed or injured.” *Op.* at 20. *Ault* eschews “the entirely separate issue of [the injury’s] quantification in money damages.” *Id.*

Indeed, the *Ault* Court rejected as a matter of law the panel majority’s

distinction between torts that do and do not include “actual injury” as an essential element of the cause of action. In *Ault*, a special concurrence representing only two Justices’ views proposed exactly that distinction. See 538 So. 2d at 457 (Ehrlich, C.J., specially concurring). But the other five Justices declined to join the concurring opinion. *Ault* thus rejected the distinction the panel majority drew here. Op. at 11 & n.2.

The panel majority also misapprehended *Engle*. *Id.* at 10-11. In *Engle*, the Supreme Court reviewed a Third District decision that had vacated punitive damages in a fraud case in part based on the same theory the panel majority adopted here — that the concurrence in *Ault* shows the *Ault* rule does not apply to torts requiring proof of “actual damage.” See *Liggett Group, Inc. v. Engle*, 853 So. 2d at 450-51. The Supreme Court held that “the Third District [had] misapplied *Ault v. Lohr*” and that punitive damages can be awarded for fraud even when the plaintiff suffers no “compensable damage.” *Engle*, 945 So. 2d at 1254, 1263.

The panel majority read *Engle* as addressing only “the order of proof in determining entitlement to punitive damages.” Op. at 11. But the Supreme Court reached its conclusion about the order of the proceedings based on its conclusion that neither an award of compensatory damages nor a finding that the plaintiff suffered a specific, quantified injury is a prerequisite for awarding punitive damages. *Engle*, 945 So. 2d at 1262.

In sum, Judge Farmer is correct that, under both *Ault* and *Engle*, “an award of some compensatory damages is unnecessary to find an entitlement to punitive damages.” Op. at 18 (dissenting opinion); *see id.* at 19 (“[Z]ero compensatory damages do not preclude punitive damages.”).

B. The Panel’s Decision Is Contrary to This Court’s Decision in *Russin*.

The panel’s decision also conflicts directly with this Court’s decision in *Russin v. Richard F. Greminger, P.A.*, 563 So. 2d 1089 (Fla. 4th DCA 1990). Based “on the authority of *Ault v. Lohr*,” the Court affirmed a final judgment awarding the plaintiff “punitive damages in an action for tortious interference with a business relationship, but awarding no compensatory damages.” *Id.* at 1089. The Court applied *Ault* in a case where the cause of action (tortious interference with a business relationship) required proof of actual damage as an essential element of the tort. *See id.*; *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So. 2d 812, 814 (Fla. 1994) (listing “damage to the plaintiff” as one element of the tort). The *Russin* Court rejected the limitation on *Ault* that the panel majority drew here.

And in *Horizon Leasing v. Leefmans*, 568 So. 2d 73 (Fla. 4th DCA 1990), a case holding the defendant vicariously liable for fraud, Judge Polen’s opinion for the Court observed that “a plaintiff can recover punitive damages where the fact finder has found a breach of duty but no compensatory or actual damages have

been proven.” *Id.* at 75. Again, the Court cited *Ault. Id.* (citing *Ault*, 538 So. 2d at 453). The decisions of other District Courts of Appeal are in accord. *See Mortellite v. American Tower, L.P.*, 819 So. 2d 928, 932, 934-35 (Fla. 2d DCA 2002); *Platte v. Whitney Realty Co.*, 538 So. 2d 1358, 1359-60 (Fla. 1st DCA 1989).

C. CPH Clearly Established that It Was Damaged by the Fraud.

The panel’s conclusion that no punitive damages were warranted here was based on the assumption that a plaintiff cannot show the *fact* of harm needed to establish liability for fraud without proving the precise *quantum* of compensatory damages. *See Op.* at 10-11. That misinterprets binding precedent, as we have just shown. Moreover, as a matter of fact, CPH did show harm.

At trial, the jury was instructed to determine “whether CPH sustained damage” caused by MS’s or Sunbeam’s false statements. R439 14606; *see id.* at 14608 (instructing the jury to decide “whether the fraud caused CPH to suffer loss”). The verdict form asked whether “the fraud was a legal cause of CPH’s damages.” R298 59450. As the panel majority recognized, “the jury returned a verdict finding, by clear and convincing evidence, that CPH relied on the false statements made by Morgan Stanley or Sunbeam, and that it suffered damages as a result.” *Op.* at 4. And as Judge Farmer correctly noted in his dissent, “[t]he majority has not disturbed the jury’s finding of liability for fraud — for which

plaintiff was required to present evidence of the *fact* (if not the amount) of some damage.” *Id.* at 20; *see also id.* at 21.

The jury’s finding was well supported. Given the nature of the fraud itself — dramatically understating Sunbeam’s reported expenses, grossly exaggerating sales, and distorting profit reports to create the false impression of a favorable economic turnaround — CPH undeniably received an interest in a company worth far less than it had been made to appear.

Moreover, the evidence showed that in less than three months after the Sunbeam-Coleman merger closed, as the contours of the fraudulent scheme became public, Sunbeam’s share price plummeted by *more than 76%*, reducing the value of CPH’s Sunbeam holdings by nearly half a billion dollars when measured against the price of publicly traded shares. *See* PX 1296A. Most of that decline came on only six dates — April 3, April 23, May 11, June 8, June 15, and June 25, 1998. *See id.* Not coincidentally, on each of those six dates, Sunbeam made new public disclosures about the fraud. The losses to CPH on those six dates alone totaled roughly \$300 million, based on Sunbeam’s per-share trading price. *See* R388 7548-49; PX 33A; PX 386; PX 471; PX 1257; PX 1296A; DX 74; *see also* R389 7702-06 (expert testimony from Professor Douglas Emery, chair of the Finance Department at the University of Miami’s School of Business, about inferring causation when the price of a company’s stock drops dramatically on the

same day that the company announces bad news).

As Judge Farmer concluded, the evidence “[c]learly . . . supported the inference that [CPH] was damaged by the fraud, even if it fails to support the precise amount” that the jury awarded in compensatory damages. Op. at 20 (dissenting opinion).

D. The Panel’s Due-Process Concerns Are Misplaced.

The panel majority stated that, even if some punitive damages could be justified absent compensatory damages, the \$850 million punitive award was unconstitutionally excessive. Op. at 11-12 n.3. That statement was based on a misreading of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), as “holding that punitive damages must bear a reasonable relationship to *compensatory damages*.” Op. at 11-12 n.3 (emphasis added). Under *Gore* and its progeny, the only relevant ratio is the ratio between punitive damages and the amount of *harm or potential harm*. *Gore*, 517 U.S. at 575, 581; see *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 418 (2003) (focusing on “the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award”).

Indeed, in *Tronzo v. Biomet, Inc.*, 236 F.3d 1342 (Fed. Cir. 2001), the Federal Circuit, applying both Florida and federal standards, recognized that principle in comparable circumstances. The court affirmed the reduction of a

compensatory damages award from \$7 million to \$520. *Id.* at 1344-46, 1352. It then held that the trial court had erred in reducing the punitive damages award from \$20 million to \$52,000 in response to the reduction of the compensatory award. *Id.* In thus approving a punitive-to-compensatory ratio of 38,000-to-1, the court pointed to the “strong suggestion in the record that the *potential* compensatory damages may have been much higher than what was actually awarded.” *Id.* at 1350 (emphasis added). Here, where there is no question that there were hundreds of millions of dollars in potential compensatory damages, the due-process concerns expressed by the panel majority are entirely misplaced.

II. THE COURT SHOULD GRANT REHEARING OR REHEARING EN BANC TO REVIEW THE PANEL’S DECISION TO REMAND FOR ENTRY OF JUDGMENT IN DEFENDANT’S FAVOR RATHER THAN REMAND FOR A NEW TRIAL.

As explained below in Part III, rehearing is warranted because the panel majority misapprehended the law in invalidating the methodology for calculating compensatory damages that Judge Maass approved prior to trial. But even if Judge Maass had erred in that regard, this case raises a procedural question of exceptional importance: whether the correct disposition is (1) to remand for a new trial on damages under the legal standards articulated by the panel majority, or (2) to deny CPH a new trial because of the trial court’s legal error. The panel majority interpreted *Teca, Inc. v. WM-TAB, Inc.*, 726 So. 2d 828 (Fla. 4th DCA 1999) (en banc), as requiring the latter, manifestly unjust result. *Op.* at 9-10 (citing *Teca,*

726 So. 2d at 830, and *Kind v. Gittman*, 889 So. 2d 89, 90 (Fla. 4th DCA 2004), *rev. denied*, 907 So. 2d 1170 (Fla. 2005), which relies entirely on *Teca*). But *Teca*, unlike this case, was a bench trial and did not involve pretrial rulings that shaped the legal theory under which the case was tried. This Court should grant rehearing to reconsider the panel's decision to deny a retrial, which misapprehends *Teca*, violates the right to a jury trial, creates direct intra- and inter-District conflicts, and results in harmful systemic consequences.

A. *Teca* Does Not Apply Where, as Here, the Trial Court Entered Pretrial Orders Determining the Proper Method for Proving Damages and the Appellate Court Later Disagreed with the Trial Court.

Teca involved a business that was purchased in reliance on a false representation. 726 So. 2d at 829. There was no pretrial vetting of the damages methodology issues, and no trial-court ruling on which plaintiff relied in presenting its evidence of damages. To the contrary, it appears that the issue was first raised in a motion filed at the close of the plaintiff's case. *See id.* at 830.

Here, in contrast, the case presented an unusual question whether CPH had to prove injury as of the date of the transaction even though, as a direct effect of Securities & Exchange Commission ("SEC") regulations triggered by the fraud, CPH was forced to hold the stock as its value continued to decline. That question was analyzed by Judge Maass extensively prior to trial. *See, e.g.*, R217 43378; R209 41770; R208 41487. After careful consideration, she excluded expert

evidence basing damages on the value of CPH's stock when it could not have been sold, and ruled that CPH's compensatory damages should equal the difference between the bargained-for value of the Sunbeam stock and the value the stock retained (if any) when CPH was legally able to sell it. That ruling was then reflected in the jury instructions. *See, e.g.*, R217 43378; R439 14609-10.

CPH properly relied on these rulings in presenting its evidence. It thus had no reason to present the specific damages evidence that the panel majority later ruled was necessary. A remand would not give CPH a "second 'bite at the apple,'" Op. at 10; it would give CPH a first bite under the panel majority's standard. This is therefore a very different case from *Teca*.

Notably, this is also not a case in which CPH could have protected itself by presenting alternative evidence in anticipation that an appellate court might disagree with the trial court. As a consequence of the trial court's ruling on the proper damages methodology, the court issued a series of orders excluding expert evidence (from either side) basing damages on the stock's value on dates when it could not have been sold — *i.e.*, evidence that would speak directly to the standard now required by the panel majority. *See, e.g.*, R217 43378; R209 41770. Given that exclusion, the argument that CPH should at least be granted a remand to retry the damages issue becomes all the more compelling.

The panel majority suggested that CPH is at fault because it urged Judge Maass to make the relevant rulings in the first place. *See Op.* at 10 (stating that “CPH cannot complain about rulings that it urged the court to make in accordance with its damages theory”). But this unexceptional fact does not somehow make *Teca* applicable, and the doctrine of invited error, to which the panel majority appears to be referring, is wholly inapposite. That doctrine applies where a party asks the trial court for a particular ruling and then claims on appeal that the ruling it requested was erroneous — in effect, creating its own reason for reversal. *See, e.g., Gupton v. Village Key & Saw Shop, Inc.*, 656 So. 2d 475, 478 (Fla. 1995). CPH did no such thing. It maintained before this Court that the trial court was correct, and it lost. That should not deprive CPH of the right to a retrial.¹

¹ There is yet another way to demonstrate the error of the majority’s disposition of this case. The panel majority believed that it could direct entry of judgment for MS because it held that the trial court should have granted MS’s motion for directed verdict. The trial court’s directed-verdict ruling was not in error, however, because it was adequately supported by the court’s pretrial ruling. If the trial court committed error, that error lay in its pretrial ruling on the proper methodology and the evidence to be denied or permitted as a result. The proper appellate remedy for an erroneous pretrial ruling that permeates the trial, or an erroneous evidentiary ruling that is prejudicial, is a new trial. *See, e.g., Linn v. Fossum*, 946 So. 2d 1032, 1039-41 (Fla. 2006); *Florida East Coast Ry. Co. v. Edwards*, 197 So. 2d 293, 294 (Fla. 1967); *Fino v. Nodine*, 646 So. 2d 746, 751-52 (Fla. 4th DCA 1994); *Botte v. Pomeroy*, 497 So. 2d 1275, 1280-81 (Fla. 4th DCA 1986); *Sea Cabin, Inc. v. Scott, Burk, Royce & Harris, P.A.*, 496 So. 2d 163, 164 (Fla. 4th DCA 1986). In short, if a reversal was required, the majority reversed the wrong ruling in this case. Had the pretrial ruling been reversed, then clearly the case would have been properly remanded for a new trial on damages.

Indeed, judgment for the defendant rather than a new trial is especially inequitable here given the evidence in the existing record making clear that CPH suffered hundreds of millions of dollars in injury as a direct result of the fraud. While the evidence CPH introduced at trial was directed to proving damages under the trial court's rulings, that evidence also shows there were enormous damages as of the date of the transaction. *See supra* pages 10-12.

B. The Panel Majority's Extension of *Teca* Presents an Issue of Exceptional Importance Because It Violates a Plaintiff's Constitutional Right to Have Disputed Issues of Fact Decided by a Jury.

The panel majority's extension of *Teca*'s "second bite at the apple" rule to this case, involving a verdict rendered after a jury trial, presents an issue of exceptional importance because it violates the right to have disputed issues of fact tried to a jury — a right guaranteed by Article 1, Section 22 of the Florida Constitution.

The right to a jury trial, where properly invoked, includes the right to have the facts decided by a *properly instructed* jury. *See, e.g., Brant v. Dollar Rent a Car Sys., Inc.*, 869 So. 2d 767, 768 (Fla. 4th DCA 2004) ("the trial court should have granted a new trial rather than itself determining the amount of unliquidated damages"); *Broward County v. La Rosa*, 484 So. 2d 1374, 1378 (Fla. 4th DCA 1986) (party has an "inalienable right to trial by jury" on the issue of damages), *approved*, 505 So. 2d 422 (Fla. 1987); *see also Tharp v. Kitchell*, 9 So. 2d 457,

460-61 (Fla. 1942) (“Litigants have a constitutional right to have their controversies decided by a jury under appropriate legal instructions”). But under the panel’s ruling, that will never occur here.

It follows that, where an error of law affects the jury’s deliberations, the constitutionally required procedure is to remand for a new jury trial under the correct legal standard. *See Melendez v. Sheriff of Palm Beach County*, 743 So. 2d 1145, 1149 (Fla. 4th DCA 1999); *Gross v. Lyons*, 721 So. 2d 304, 306-08 (Fla. 4th DCA 1998), *approved*, 763 So. 2d 276 (Fla. 2000). Any other result not only would contravene the plaintiff’s jury-trial right, but also would give rise to serious due-process concerns. *See Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964); *see also State v. Gates*, 134 So. 2d 497, 500 (Fla. 1961).

C. Extending *Teca* Creates Direct Intra-District and Inter-District Conflicts.

This Court has not applied *Teca* when a plaintiff has relied on a trial court’s legal ruling in presenting its damages evidence, even where this Court ultimately concluded that, due to that reliance, some necessary proof had not been presented. For instance, in *Boca Developers, Inc. v. Fine Decorators, Inc.*, 862 So. 2d 803 (Fla. 4th DCA 2003), the trial court awarded lost profits arising out of defendant’s breach of a contract, but this Court concluded that the trial court had erred “in allowing [the plaintiff] to calculate its lost profits without allocating fixed overhead costs.” *Id.* at 804. The defendant argued that the proper remedy for the

plaintiff's failure of proof was a directed verdict. This Court expressly disagreed: "It appears from the record . . . that if the judge had correctly ruled that overhead had to be deducted, [the plaintiff] would have been able to establish the amount of that overhead. Although [the plaintiff] may not be able to prove that it would have made a profit under those circumstances, . . . [it] should be given the opportunity to do so." *Id.* at 805-06; *see also, e.g., Safeguard Mgmt., Inc. v. Pinedo*, 865 So. 2d 672, 674 (Fla. 4th DCA 2004).

The exceptional importance of the question presented here is highlighted by the fact that the panel's ruling directly conflicts with decisions of the First, Second, and Third District Courts of Appeal. All three of those courts have mandated retrial in cases where an evidentiary "insufficiency" results from an appellate reversal of a trial court's legal ruling on which the plaintiff relied in shaping its proof. For example, in *Wolfe v. Gencorp, Inc.*, 529 So. 2d 1154 (Fla. 1st DCA 1988), the First District held that remand is required in such a circumstance because where "plaintiffs had presented all the evidence ruled necessary by the trial court . . . [they] were not required to take the next step and present further evidence at that time." *Id.* at 1156. The Second and Third Districts agree. *See Rowland v. Whitehead*, 375 So. 2d 607, 609-10 (Fla. 2d DCA 1979) ("[t]his is not a case in which the plaintiff has changed her position or in which she is seeking to introduce additional evidence which she should have put on in the first place,"

since “[a]t the trial there was no need for her to think in terms of reformation because the judge had concluded that her testimony was admissible”); *Porter v. Vista Bldg. Maint. Servs.*, 630 So. 2d 205, 206 (Fla. 3d DCA 1993) (per curiam) (“[a] party cannot be penalized for his good-faith reliance on a trial court’s incorrect ruling”).²

D. Extending *Teca* Unfairly Penalizes Plaintiffs.

The panel majority’s reading of *Teca* not only directly conflicts with existing law, but also establishes a new procedural rule that promises to have highly damaging systemic consequences. Denying a new trial where the plaintiff designed its presentation based on erroneous pretrial rulings about the nature of the evidence that could satisfy its burden of proof requires the plaintiff to guess correctly, at its peril, about the law that ultimately will be applied. Such an approach is particularly unfair because it is so one-sided. If the defendant succeeds in persuading the trial court to adopt a rule that is erroneously pro-defendant, the

² See also, e.g., *Chasteen v. Chasteen*, 213 So. 2d 509, 511-12 (Fla. 1st DCA 1968) (finding erroneous “the trial judge’s conclusion that the proofs adduced . . . [were] sufficient” and remanding for a new trial); *Cirou v. Naples Awning & Glass, Inc.*, 376 So. 2d 929, 930 (Fla. 2d DCA 1979); *Srybnik v. Ice Tower, Inc.*, 162 So. 2d 294, 296 (Fla. 3d DCA 1964) (remanding for a new trial because trial court had erred in failing to require “proof of . . . the correct measure of damages”); *Wagner v. Nottingham Assocs.*, 464 So. 2d 166, 170 (Fla. 3d DCA 1985) (“even were we to conclude that the case was tried below on the wrong theory, the remedy would have been a new trial, not the entry of judgment for the defendant”); *Sostchin v. Doll Enters., Inc.*, 847 So. 2d 1123, 1129 (Fla. 3d DCA 2003).

worst that can happen, from the defendant's point of view, is a remand for a new trial, because the defendant cannot be accused of failing to carry its burden of proof. But the panel majority's rule would mean that every trial-court ruling that favors the plaintiff on a close question of evidentiary methodology carries with it the risk of immunizing a wrongdoer — even in cases, like this one, where the wrongdoing is established and egregious.

An example drawn from the facts of this case illustrates the problem. Prior to trial, the court ruled on whether New York law or Florida law would govern this case. CPH had two different damages experts at the ready; one was prepared to apply the benefit-of-the-bargain approach permitted under Florida law, and the other was prepared to apply New York's damages measure, which allows fraud victims to recover only out-of-pocket losses. When the trial court ruled that Florida law governed, as CPH had urged, CPH called the former expert. If this Court had then ruled on appeal that New York law applied, a remand would have been necessary to allow the proper proof, and it would have made no sense to say that CPH had failed to carry its burden because it did not present evidence of out-of-pocket loss. *See, e.g., Avis Rent-a-Car Sys., Inc. v. Abrahantes*, 517 So. 2d 25, 27 (Fla. 3d DCA 1987). Yet that is the equivalent of what the panel majority did here, when it overruled the trial judge's determination on the proper damages

measure but then failed to grant a new trial on this issue.³ At a minimum, CPH is entitled to a new trial on damages.

III. THE COURT SHOULD GRANT REHEARING OR REHEARING EN BANC BECAUSE THE PANEL'S ANALYSIS OF BENEFIT-OF-THE-BARGAIN DAMAGES IS CONTRARY TO THIS COURT'S PRIOR DECISIONS AND IS A MATTER OF EXCEPTIONAL IMPORTANCE.

The panel majority held that CPH's evidence of compensatory damages failed because CPH did not measure its damages exclusively as of the date of the transaction, on March 30, 1998. Op. at 7, 9. Rehearing is warranted because the panel decision is contrary to Florida law rejecting a "date of transaction" rule where that rule prevents victims from being fully compensated for injuries caused by tortious conduct. The majority's ruling also rests upon an analysis of a contractual lockup provision that conflicts with cases from this Court confirming that CPH was excused from the contractual lockup because of Sunbeam's material breach.

Prior to trial, Judge Maass ruled that CPH was entitled to recover damages for the full extent of its loss, including fraud-inflicted losses that CPH suffered

³ After MS initially failed to obtain expert proof under a benefit-of-the-bargain measure of damages, the trial court gave MS an opportunity before trial to submit a revised expert report in keeping with the court's legal ruling that a benefit-of-the-bargain measure of damages was appropriate. See R326 477-85; R368 4793-853; R208 41487. But the panel majority's ruling deprives CPH of a similar opportunity to present proof in conformity with the panel majority's view of the law.

after the transaction date. After a careful pretrial analysis of the relevant federal securities laws, Judge Maass ruled that, because of the fraud, “CPH could not have sold its Sunbeam stock prior to November 25, 1999, at which point it could sell no more than a million shares per quarter unless the shares were registered,” and that the fraud prevented the shares from being “registrable [until] December 6, 1999.” R439 14610-11; *see* R209 41770-71; R217 43369-70; R373 5390-460; R397 8654-707; R421 12026-66; *Op.* at 3. MS did not challenge Judge Maass’ rulings concerning *when* CPH could legally sell its Sunbeam shares. But MS did challenge the ruling that CPH could be compensated for fraud-inflicted injuries that CPH suffered after the transaction closed.

At trial, CPH conformed its evidence to the precise rulings Judge Maass made. CPH’s damages expert, Dr. Blaine Nye, calculated what CPH would have obtained had it attempted to sell a million shares per quarter beginning in November 1999. R409 10372-83. CPH also introduced a chart showing the daily prices for Sunbeam stock on the relevant dates. PX 1296A. Taking that evidence into account, the jury awarded CPH compensatory damages of \$604 million, which was \$76 million less than the highest amount of damages that CPH’s expert had calculated. R409 10372-83.

A. Because MS's Fraud Caused Loss After the Date of the Transaction, the Trial Court Properly Rejected a Date-of-Transaction Test.

Judge Maass correctly ruled that CPH was entitled to recover for the entire loss it sustained because of defendant's fraud — both the loss that CPH suffered when it received the fraudulently inflated Sunbeam shares and the loss that it suffered because the fraud prevented CPH from selling those shares as their value continued to decline. A simple example illustrates why this is the case: A defendant engages in a fraud and sells a plaintiff an object that is supposed to have a market value of \$45, but actually has a market value of \$5 on the date of the transaction. In addition, plaintiff, because of defendant's fraud, cannot sell the object until its market value has declined to zero. Under benefit-of-the-bargain damages, the plaintiff should recover \$45 because the defendant's fraud caused *both* the \$40 difference in market value on the date of the transaction (the first result of the fraud) *and* the \$5 difference in market value on the date that the plaintiff could sell the object (the second result of the fraud). Indeed, where the defendant's fraud causes both losses, any other outcome would violate Florida law by failing to compensate the victim for the entire injury actually suffered.

Although the panel majority concluded that Judge Maass erred by not limiting CPH to damages suffered exclusively on the date of the transaction (Op. at 9), the trial court's rulings in fact comport with Florida's public policy embraced

in the “flexibility theory” of damages — that fraud victims should receive full compensation, especially where the particular fact pattern does not fit conventional models.⁴ Judge Maass’ damages rulings also comport with Florida decisions that in various contexts have not applied the date-of-transaction rule when necessary to provide full compensation to a plaintiff.⁵ And Judge Maass’ rulings are in accord with the holdings of numerous other courts that when the defendant’s misconduct interferes with the plaintiff’s ability to escape a challenged securities transaction, the plaintiff is entitled to recover for losses incurred after the transaction date.⁶

⁴ See, e.g., *Gregg v. U.S. Indus., Inc.*, 887 F.2d 1462, 1466 (11th Cir. 1989) (permitting, under Florida law, different damages theories “as justice requires,” depending upon “whichever will more fully compensate the defrauded party”); see also *Restatement (Second) of Torts* § 549 cmt. h (1977); *Restatement (Second) of Contracts* § 344 cmt. a (1981).

⁵ See, e.g., *Department of Agric. & Consumer Serv. v. Polk*, 568 So. 2d 35, 42 (Fla. 1990) (where no market for property exists at time of its taking, value is properly measured when property can be sold); *Batlemento v. Dove Fountain, Inc.*, 593 So. 2d 234, 241-42 (Fla. 5th DCA 1991) (upholding damage award that included three-year period when plaintiff tried to “make a go of the business” he was fraudulently induced to purchase).

⁶ See, e.g., *Silverberg v. Paine, Webber, Jackson & Curtis, Inc.*, 710 F.2d 678, 685-87 (11th Cir. 1983) (applying “flexibility theory” of damages under Florida law and holding that, where the defendant encouraged the plaintiff to retain the stock that the plaintiff had been defrauded into purchasing, “it was well within the trial court’s discretion to instruct the jury to calculate the [plaintiff’s] damages on the common law fraud claim based on the total decline in the value of the stock”); *Dean Witter Reynolds Inc. v. Bork*, 1991 WL 164465, at *6 (E.D. Pa. Aug. 21, 1991) (where investments did not contain a “high degree of liquidity” and plaintiff “had virtually no choice” but to retain the investments after closing his account, loss included diminution in value after account’s termination date); *Alloys Unlimited, Inc. v. Raesler*, 1976 WL 16605, at *4 (N.Y. Sup. Ct. June 22, 1976)

The panel majority's contrary view cannot be reconciled with any of those authorities.

B. The Trial Court's Rulings Conformed with Settled Principles of Causation Under Florida Tort Law.

Judge Maass' damages rulings also followed the principle that a tort plaintiff does not need to show that the defendant's conduct was the *only* cause of its loss; the defendant's conduct need only be a *substantial* cause of the loss for the plaintiff to recover. Indeed, the trial court's jury instruction on causation was taken almost verbatim from *Fla. Std. Jury Instr. (Civ.)* 5.1 (2004). See R439 14608 (instructing that the "fraud was the legal cause of CPH's losses if the fraud committed against CPH directly and in natural and continuous sequence produced or contributed substantially to producing such losses so that it can reasonably be

(where plaintiffs "were unable to sell their stock, pursuant to SEC Rule 133, which restricted such sale without first filing registration statements," the "market price of the stock in question at such time . . . is irrelevant."), *aff'd*, 391 N.Y.S.2d 371 (N.Y. App. Div. 1977); *IDS Bond Fund, Inc. v. Gleacher NatWest Inc.*, 2002 WL 373455, at *9 (D. Minn. Mar. 6, 2002) (issue of material fact existed as to whether plaintiff's losses after date of stock purchase could be attributed to defendant's fraud where the securities were not publicly traded and no market existed once the fraud was uncovered); *Pollen v. Aware, Inc.*, 762 N.E.2d 900, 905 (Mass. App. Ct. 2002) (affirming damages calculation based on date of initial public offering rather than date of breach where there was no public market for stock on date of breach and date of public offering was best indicator of stock's fair market value); *Walden v. Affiliated Computer Servs., Inc.*, 97 S.W.3d 303, 328-29 (Tex. App.-Houston [14th Dist.] 2003) (damages for claim brought by stock option holders against corporation should have been calculated based on stock value on the first day after the corporation's breach on which option holders were entitled to receive and to resell their stock, rather than stock value on date of breach).

said that but for the fraud the losses would not have occurred”). As the Comment to that standard instruction states, Florida law specifically recognizes that the defendant’s conduct may not be the only cause of a loss, yet the defendant remains liable. *Fla. Std. Jury Instr. (Civ.)* 5.1 cmt. (2004).

Based on those principles, the trial court held that it did not matter whether market forces may have caused some of the decline in stock value while CPH could not sell the shares, because the fraud also caused the loss since it left CPH exposed to that injury by preventing sale. At trial, CPH conformed its proof to that standard. CPH presented evidence showing that Sunbeam’s stock price plunged immediately following each new disclosure about the fraud. *See supra* pages 10-12. CPH also presented evidence showing that, upon learning of the fraud after the merger closed, CPH examined ways to escape the transaction, but the fraud prevented CPH from doing so. *See, e.g.*, R415 11163-65; R414 11015-16. Significantly, in this regard, CPH proved that it tried to mitigate damages by rescinding the contract — taking back its Coleman stock in exchange for the purchase price, including the Sunbeam stock. But CPH was unable to rescind because of the fraud. R414 11015-16; R401 9159-60. And CPH introduced evidence showing the decline in the stock’s market value during the time when CPH involuntarily owned it. *See Op.* at 3. The jury concluded, based on proper Florida jury instructions, that the fraud prevented CPH from selling the stock, and

thus the fraud was a “substantial” cause of CPH’s losses. In fact, answering a special interrogatory, the jury made that finding under a clear-and-convincing-evidence standard. R298 59450; Op. at 4.

The panel majority nevertheless imposed a new and different causation requirement for common-law fraud cases involving securities. The majority held that the plaintiff, as part of its own case, must hire an economist to conduct an “event study” in an effort to segregate supposed non-fraud factors from fraud factors affecting a stock price decline. Op. at 7-9. The economist then must retroactively estimate what the stock price would have been on the date of the transaction, absent the fraud. *Id.* To our knowledge, no court has *ever* applied the majority’s event-study requirement in a common-law fraud case.⁷

In short, Judge Maass’ damages rulings properly permitted the jury to determine the entire loss caused by MS’s fraud: both the loss suffered when CPH received the fraudulently inflated Sunbeam shares, and the additional loss that CPH suffered when the fraud prevented CPH from selling those shares. Florida’s test for causation — requiring plaintiff to prove that defendant’s wrongful conduct was a substantial cause of plaintiff’s loss — was the existing standard at the time

⁷ The majority took that approach from statutory securities actions under the federal securities laws, rather than from any common-law precedents. But even in securities cases under federal statutes, event studies have been criticized, especially where (as here) evidence of fraud comes out slowly and leaks into the marketplace. *See, e.g.,* Cornell & Morgan, *Using Finance Theory to Measure Damages in Fraud on the Market Cases*, 37 UCLA L. Rev. 883, 904-06 (1990).

of trial and should remain so.

C. MS's Fraud — Not the Contractual Lockup — Prevented CPH from Selling Its Stock.

The panel majority also held that CPH's prior agreement not to sell the Sunbeam shares for up to nine months (the "contractual lockup") eliminated CPH's right to compensation for all the money it lost when it could not sell its Sunbeam shares as a result of the fraud. The majority criticized the trial court's rulings as having improperly permitted CPH to "pick and choose which parts of the contract it wants to affirm and which parts it wants to disaffirm." Op. at 6. The panel majority correctly observed that if the plaintiff seeks benefit-of-the-bargain damages, the plaintiff is deemed to "affirm the transaction." *Id.* But the premise underlying the majority's position — that CPH consequently was bound to *continue to perform* the contract, including the contract's lockup provisions — is contrary to this Court's prior decisions. This Court follows the blackletter rule that a material breach by one party excuses the other party from further performance. In a recent opinion by Judge May, joined by Judges Klein and Hazouri, the Court stated: "It is axiomatic that the anticipatory breach of a contract by one party excuses contractual compliance by the other." *Fabel v. Masterson*, 32 Fla. Law Weekly D605, 2007 WL 601565, at *2 (Fla. 4th DCA Feb. 28, 2007); *see Hustad v. Edwin K. Williams & Co.-East*, 321 So. 2d 601, 603 (Fla. 4th DCA 1975); *Restatement (Second) of Contracts* § 237 (1981).

Here, Sunbeam materially breached the contract with CPH by, among other things, misrepresenting in the contract that Sunbeam's financial statements and filings with the SEC were true and free of material errors. Because of Sunbeam's material breach, CPH was excused from performing any of its remaining contractual obligations, including the contractual lockup. CPH was not engaged in any improper attempt to "pick and choose" parts of the contract (Op. at 6), but instead was acting in full accord with its contract rights.

The majority's opinion also conflicts with a related blackletter principle recognized by this Court: If a plaintiff responds to a material breach by terminating its future performance, the plaintiff retains its right to benefit-of-the-bargain damages. *See, e.g., Knight Energy Servs., Inc. v. C.R. Int'l Enter., Inc.*, 616 So. 2d 1079, 1080 (Fla. 4th DCA 1993) (per curiam) (nonbreaching party that terminates performance is entitled to benefit-of-the-bargain damages for lost profits); *Restatement (Second) of Contracts* § 347 (1981).

In sum, it was not the contractual lockup that prevented CPH from selling the Sunbeam shares; it was MS's fraud.

D. As Judge Farmer Correctly Observed, the Panel's Ruling Encourages Defrauded Purchasers to Sell Fraudulently Inflated Stock to Unsuspecting Third Parties.

The majority's opinion rests upon another misapprehension: that CPH should have (somehow) sold its Sunbeam shares to someone else. As Judge

Farmer explained in his dissent, “by requiring a sale of inflated stock to an unsuspecting public, the court’s reasoning would encourage aggrieved buyers unwittingly to make use of the seller’s fraudulent representations concealing its real lack of value.” Op. at 14. There is no sound public policy for adopting a rule of damages that simply distributes the losses across more victims, and certainly there is no virtue in excusing MS from bearing responsibility for the entire loss that its fraudulent conduct caused.

In sum, Judge Maass’ damages rulings were correct and reasonable. Under established law, CPH was entitled to pursue a damages theory designed to provide compensation for the full loss CPH suffered as a result of the massive fraud that MS helped perpetrate.

CONCLUSION

The case should be reheard by the panel or the en banc Court, and the judgment below should be affirmed.

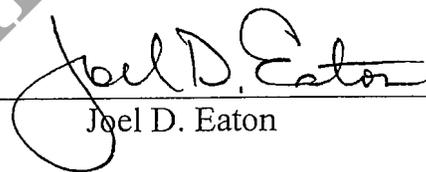
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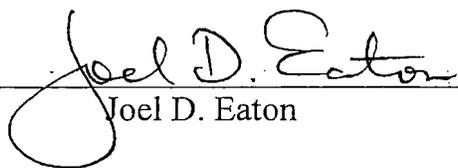
Joel D. Eaton

Dated: April 20, 2007

CERTIFICATE PURSUANT TO RULE 9.331

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is of exceptional importance.

In addition, I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decisions of this Court (as explained at pages 9, 18 to 19, and 29 to 30, *supra*), and that a consideration by the full Court is necessary to maintain uniformity of decisions in this Court: *Russin v. Richard F. Greminger, P.A.*, 563 So. 2d 1089 (Fla. 4th DCA 1990); *Boca Developers, Inc. v. Fine Decorators, Inc.*, 862 So. 2d 803 (Fla. 4th DCA 2003); *Safeguard Mgmt., Inc. v. Pinedo*, 865 So. 2d 672 (Fla. 4th DCA 2004); *Fabel v. Masterson*, 32 Fla. Law Weekly D605 (Fla. 4th DCA Feb. 28, 2007); *Hustad v. Edwin K. Williams & Co.-East*, 321 So. 2d 601 (Fla. 4th DCA 1975); *Knight Energy Servs., Inc. v. C.R. Int'l Enter., Inc.*, 616 So. 2d 1079 (Fla. 4th DCA 1993).



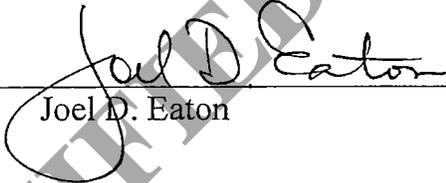
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to counsel of record for Morgan Stanley & Co. Incorporated on the following service list by U.S. Mail on this 20th day of April, 2007:

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Joel D. Eaton

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IN THE FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

2008 JAN 23 PM 12:18
SHARON R. BOON, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL

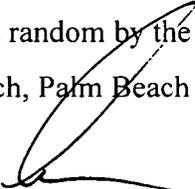
FILED

ORDER OF DISQUALIFICATION

THIS CAUSE came before the Court, in Chambers, on the Court's own Motion. Counsel for Non-Party Respondent James P. Cusick commenced representation of the undersigned's husband, in his capacity as the personal representative of a decedent's estate, on October 29, 2007. The undersigned became aware of the representation on November 19, 2007. Based on the foregoing and pursuant to Canon 3E, Code of Judicial Conduct, City of Fort Lauderdale v. Palazzo Las Olas Group, LLC, 882 So. 2d 1102 (Fla. 4th DCA 2004), and Atkinson Dredging Company v. Henning, 631 So. 2d 1129 (Fla. 4th DCA 1994), it is

ORDERED AND ADJUDGED that the undersigned hereby disqualifies herself from further action in this case. The action shall be reassigned at random by the Clerk.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 23 day of January, 2008.



ELIZABETH T. MAASS
Circuit Court Judge

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IN THE CIRCUIT COURT OF THE
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COLEMAN (PARENT) HOLDING, INC.,

CASE NO: CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

FILED
08 JAN 25 PM 1:15
PATTI H. HANCOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 2

NOTICE OF ERRATA

Defendant filed its Notice Regarding Court's Intention to Conduct a Status Conference on January 22, 2008. That Notice contained a word error on page 2, line 4. The word "conduct" should have been "*misconduct.*"

Respectfully submitted,

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By: 
BRUCE ROGOW

Counsel for Defendant

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BRUCE S. ROGOW

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDING, INC.,

CASE NO: CA 03-5045 AI

Plaintiff,

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By: 
BRUCE ROGOW

Counsel for Defendant

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THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE ID: 502003CA005045XXOCAH
DIVISION: AH

COLEMAN PARENT HOLDINGS INC

Vs

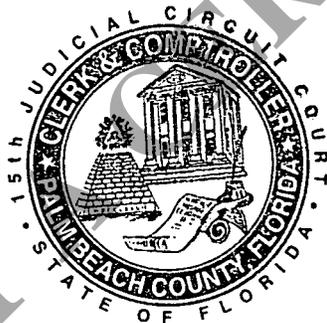
MORGAN STANLEY & COMPANY INC

_____ /

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable JUDGE ELIZABETH T MAASS dated January 23, 2008, the above styled case is reassigned to Division AH, Judge(s) JUDGE EDWARD H FINE for all further proceedings.

WITNESS my hand and seal on JANUARY 28, 2008.



Sharon R. Bock
Clerk & Comptroller

By: Kristin Hamilton
Kristin Hamilton, Deputy Clerk

cc:
CC: ALL PARTIES

FILED
08 JAN 28 AM 9:33
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 5045 AH

COLEMAN (PARENT) HOLDINGS
INC.,

Plaintiff,

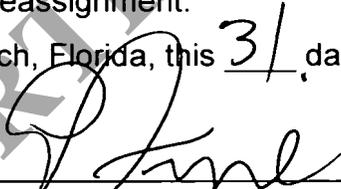
vs.

MORGAN STANLEY & CO.
INCORPORATED,
Defendant.

ORDER OF RECUSAL

The captioned case is presently pending in Civil Division "AH" of the Circuit Court presided over by Judge Edward Fine. Said Judge hereby recuses himself in regard to this case. This case is referred to the Clerk of Court for reassignment and all parties shall be notified by the Clerk of said reassignment.

ORDERED at West Palm Beach, Florida, this 31 day of January, 2008.


EDWARD FINE
Circuit Judge

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DENNEY
SCAROLA
BARNHART
& SHIPLEY P.A.

*Attorneys
at Law*

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PLEASE FILE
JUDGE EDWARD FINE

RECEIVED

JAN 29 2008

JUDGE EDWARD H. FINE

January 28, 2008

The Honorable Edward H. Fine
Palm Beach County Courthouse
205 North Dixie Highway, Room 11.1208
West Palm Beach, FL 33401

ATTORNEYS AT LAW:

ROSALYN SIA BAKER-BARNES
F. GREGORY BARNHART
LANCE BLOCKY
BRIAN R. DENNEY
EARL L. DENNEY, JR.*
SEAN C. DOMINICK*
TODD R. FALZONE
JAMES W. GUSTAFSON, JR.
JACK P. HILL
DAVID K. KELLEY, JR.*
WILLIAM B. KING
DARRYL L. LEWIS*
WILLIAM A. NORTON*
PATRICK E. QUINLAN
DAVID J. SALES*
JOHN SCAROLA*
CHRISTIAN D. SEARCY*
HARRY A. SHEVIN*
JOHN A. SHIPLEY III*
CHRISTOPHER K. SPEED*
KAREN E. TERRY*
C. CALVIN WARRINER III*
DAVID J. WHITE*

*SHAREHOLDERS

PARALEGALS:

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ALYSSA A. DIEDWARDO
MARCIA Y. DODSON
RANDY M. DUFRESNE
DAVID W. GILMORE
JOHN C. HOPKINS
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VINCENT L. LEONARD, JR.
JAMES PETER LOVE
CHRISTOPHER J. PILATO
ROBERT W. PITCHER
KATHLEEN SIMON
STEVE M. SMITH
BONNIE S. STARK
WALTER A. STEIN
BRIAN P. SULLIVAN
LINDA T. WELLS

Re: Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No. 03 CA 005045 AH
Matter No. 230580

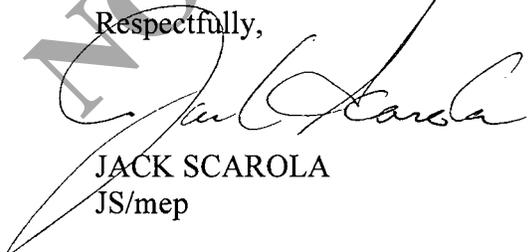
Dear Judge Fine:

Upon inquiry to your office today for availability for a 2 hour hearing in the above-styled matter for purposes of a status conference, scheduling conference and a hearing on pending motions, we were advised by your Judicial Assistant to place this request in writing to your Honor because the amount of time requested exceeds 30 minutes.

At the present time, defense counsel has unilaterally scheduled a hearing on your Honor's Uniform Motion Calendar for January 31, 2008 on Defendant's Motion for Entry of Final Judgment. Counsel for Plaintiff is currently in trial before Judge Garrison beginning at 8:30 a.m. Plaintiff's co-counsel from Chicago desire to attend and have been given insufficient notice.

We are seeking information on the availability of the longer hearing time in the hope that it will enable us to amicably resolve the conflict regarding the January 31 hearing.

Respectfully,


JACK SCAROLA
JS/mep

cc: Joseph Ianno, Esq.
Jenner & Block LLP



WWW.SEARCYLAW.COM

16div-030469

CARLTON FIELDS

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January 29, 2008

JAN 30 2008

JUDGE EDWARD H. FINE
VIA HAND DELIVERY

Honorable Edward H. Fine
Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida 33401

Re: *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Incorporated*
Case No. CA 03-5045 AH

Dear Judge Fine:

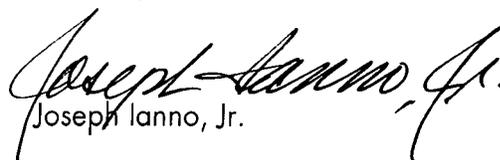
Our law firm, together with Bruce Rogow, P.A. and Quinn Emanuel, represent Morgan Stanley & Co. Incorporated in the above matter. Yesterday, we were provided with a copy of correspondence from Plaintiff's counsel concerning the Plaintiff's request for a status conference and pending motions. We write to clarify and explain the pending motions.

Currently, Morgan Stanley has scheduled a hearing for Uniform Motion Calendar on Thursday, January 31, 2008 to hear its Motion for Entry of Final Judgment after mandate. A copy of the Motion is enclosed for Your Honor's convenience. We believe that the hearing is appropriate for Uniform Motion Calendar because entry of the form final judgment after a mandate from the appellate court is a ministerial act. If counsel for Plaintiff is unavailable on that day, we would accommodate reasonable requests to reschedule the hearing.

With regard to Plaintiff's request for a status conference, we respectfully submit that the Court is not permitted to proceed with any matters, including Plaintiff's request, until the mandate from the appellate court has been complied with and the final judgment is entered in favor of Morgan Stanley. After the judgment has been entered, we believe that the Court should hold a short hearing of thirty minutes or less to determine what additional hearings will be necessary, including Morgan Stanley's pending motions to tax costs.

Thank you for your consideration of this matter.

Sincerely,


Joseph Ianno, Jr.

cc: Counsel of Record (via facsimile)

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INC.,

Defendant.

COPY
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SHARON R. BUCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

**MORGAN STANLEY & CO., INC.'S
MOTION FOR ENTRY OF FINAL JUDGMENT**

Defendant, Morgan Stanley & Co., Inc. ("Morgan Stanley"), hereby asks this Court to vacate the prior final judgment entered on June 23, 2005 in favor of Plaintiff and enter final judgment in favor of Morgan Stanley pursuant to the Fourth District Court of Appeal's directions in its decision dated March 21, 2007. Plaintiff's consolidated motion for rehearing, rehearing en banc and for certification was denied by the Fourth District on June 4, 2007. The Fourth District issued its mandate on June 22, 2007. A proposed final judgment is attached hereto as Exhibit "A."

WHEREFORE, Morgan Stanley hereby requests that this Court vacate the June 23, 2005 final judgment and enter a final judgment in favor of Morgan Stanley, while reserving jurisdiction to consider Morgan Stanley's claims, as prevailing party, for appellate and trial court costs.

Respectfully submitted,

Sylvia Walbolt
Florida Bar No. 033604
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Florida Bar No. 655351
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By: 
Bruce S. Rogow

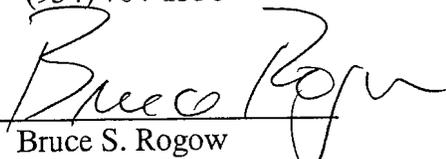
*Counsel for Morgan Stanley &
Co. Incorporated*

Faith E. Gay
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Facsimile: (212) 849-7100

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express this 18th day of July, 2007.

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Florida Bar No. 067999
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By: 
Bruce S. Rogow

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Miami, FL 33130

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INC.,

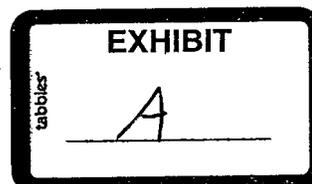
Defendant.

FINAL JUDGMENT

THIS CAUSE, having come before the Court upon remand from the Fourth District Court of Appeal with directions to enter final judgment in favor of Morgan Stanley and upon the mandate issued by the Fourth District on June 22, 2007,

IT IS HEREBY ORDERED AND ADJUDGED that the Final Judgment entered on June 23, 2005 and recorded in the Official Records of Palm Beach County at Book 18800 Page 0095-96, be and the same is hereby VACATED, and

IT IS FURTHER ORDERED AND ADJUDGED that Final Judgment be and the same is now entered in favor of the Defendant, Morgan Stanley & Co., Incorporated, a Delaware corporation, the corporate headquarters of which are located at 1585 Broadway, New York, NY. Plaintiff, Coleman (Parent) Holdings, Inc., a Delaware corporation, the corporate headquarters of which are located at 35 East 62nd Street, New York, NY, shall take nothing by its action for



damages and Defendant shall go hence without day. The Court reserves jurisdiction to consider Defendant's claims for costs.

DONE AND ORDERED in Chambers at Palm Beach County, Florida this _____ day of _____, 2007.

ELIZABETH T. MAASS
Circuit Judge

Copies to:

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THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE ID: 502003CA005045XXOCAB
DIVISION: AB

COLEMAN PARENT HOLDINGS INC

Vs

MORGAN STANLEY & COMPANY INC

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable JUDGE EDWARD H FINE dated January 31, 2008, the above styled case is reassigned to Division AB, Judge(s) JUDGE JONATHAN GERBER for all further proceedings.

WITNESS my hand and seal on FEBRUARY 04, 2008.



Sharon R. Bock
Clerk & Comptroller

By: *Kristin Hamilton*
Kristin Hamilton, Deputy Clerk

cc:
CC: ALL PARTIES

FILED
2008 FEB -4 AM 11:53
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.

CIRCUIT CIVIL DIVISION "AB"

Plaintiff,
vs.

CASE NO. 502003CA005045XXXXMB

MORGAN STANLEY & COMPANY, INC.,

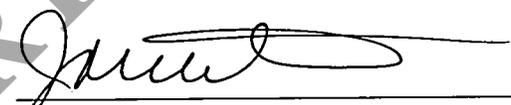
Defendant.

ORDER OF RECUSAL AND DIRECTION TO CLERK TO RE-ASSIGN CASE

THIS CAUSE came before this Court upon the Clerk's notice of reassignment of this case to this Court's division. This Court's wife is an attorney at Greenberg Traurig, P.A., and one of her primary clients is Morgan Stanley on other matters. To avoid any appearance of impropriety, it is

ORDERED AND ADJUDGED that this Court recuses itself from this case. This Court directs the Clerk to randomly re-assign this case to another Circuit Civil Division, and to notify the newly-assigned judge and the parties of the re-assignment.

DONE AND ORDERED in Palm Beach County, Florida, this 7th day of February, 2008.



Jonathan D. Gerber
Circuit Court Judge

NOT A CERTIFIED COPY

HARON R. BUCK
CLERK
Palm Beach County
Judicial Division

08 FEB - 7 PM 11:11

FILED

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THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE ID: 502003CA005045XXOCAG
DIVISION: AG

COLEMAN PARENT HOLDINGS INC

Vs

MORGAN STANLEY & COMPANY INC

_____ /

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable JUDGE JONATHAN GERBER dated February 7, 2008, the above styled case is reassigned to Division AG, Judge(s) JUDGE JOHN J HOY for all further proceedings.

WITNESS my hand and seal on FEBRUARY 08, 2008.



Sharon R. Bock
Clerk & Comptroller

By: Kristin Hamilton
Kristin Hamilton, Deputy Clerk

CC: ALL PARTIES

2008 FEB - 8 AM 11: 58
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: CA-03-005045 AG

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

_____ /

NOTICE OF SPECIALLY SET HEARING

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE: April 9, 2008
TIME: 11:00 a.m. for thirty (30) minutes
PLACE: Palm Beach County Courthouse, Courtroom 9C
205 North Dixie Highway
West Palm Beach, Florida 33401
BEFORE: Judge John J. Hoy
CONCERNING: Morgan Stanley & Co. Incorporated's Motion for Entry of
Final Judgment

KINDLY GOVERN YOURSELVES ACCORDINGLY.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by e-mail and U.S. Mail on this 21st day of February, 2008.

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BY: Joseph Ianno, Jr.
JOSEPH IANNO, JR.
Florida Bar No. 655351

Counsel for Morgan Stanley & Co. Incorporated

cc: Preferred RealTime Reporting

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY,
FLORIDA, CIVIL DIVISION

CASE NO: 2003 CA 5045 AG

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & COMPANY, INC.,

Defendant(s).

08 FEB 27 AM 10:13

FILED

HARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIVIL DIVISION

ORDER OF RECUSAL

THE UNDERSIGNED judge hereby recuses himself from above-captioned case. The clerk is hereby directed to reassign this case and advise all parties of reassignment.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this 27 day of February, 2008.



JOHN J. HOY
CIRCUIT JUDGE

copy furnished:

SEE ANNEXED SHEET FOR SERVICE LIST

NOT A CERTIFIED COPY

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THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE ID: 502003CA005045XXOCAF
DIVISION: AF

COLEMAN PARENT HOLDINGS INC

Vs

MORGAN STANLEY & COMPANY INC

FILED
2008 FEB 28 PM 12:12
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable JUDGE JOHN J HOY dated February 27, 2008, the above styled case is reassigned to Division AF, Judge(s) JUDGE DIANA LEWIS for all further proceedings.

WITNESS my hand and seal on FEBRUARY 28, 2008.



Sharon R. Bock
Clerk & Comptroller

By: *Kristin Hamilton*
Kristin Hamilton, Deputy Clerk

cc:
JACK SCAROLA
JEROLD SOLOVY
JOSEPH IANNI
BRUCE ROGOW
FAITH GAY
ROBERT CRITTON
MORRIS WEINBERG
DOUGLAS DUNCAN
RICHARD LUBIN

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA, CIVIL DIVISION

CASE NO: 2003 CA 5045 AF

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff(s), vs.

MORGAN STANLEY & COMPANY, INC.,

Defendant(s).

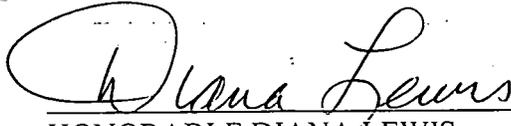
FILED
08 MAR -4 AM 10:00
ARON R. BOCK, CLERK
PALM BEACH COUNTY

ORDER OF RECUSAL

THE UNDERSIGNED judge hereby recuses herself from above-captioned case.

The clerk is hereby directed to randomly reassign this case and advise all parties of the reassignment.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this _____ day of March, 2008.



HONORABLE DIANA LEWIS
CIRCUIT COURT JUDGE

copy furnished:
SEE ATTACHED SHEET FOR SERVICE LIST

NOT A CERTIFIED COPY

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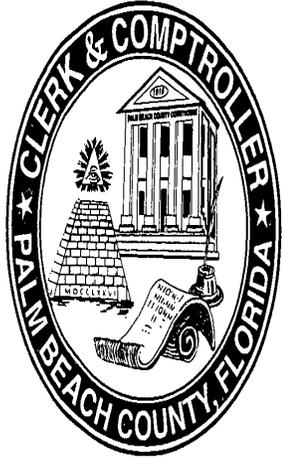
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CIRCUIT CIVIL
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SHARON R. BOCK
Clerk & Comptroller
Palm Beach County



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JAN 31 2008
US POSTAGE
First-Class Mail
MAILED FROM 33401
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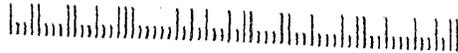
Jerold Solovy
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RETURN TO SENDER
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UNABLE TO FORWARD

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3340204667

BC: 33402466767 *1205-11586-31-39



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CIRCUIT CIVIL &
PALM BEACH COUNTY, FL

08 MAR -4 PM 4:11

FILED

2003C1A005045
AA

16div-030488

THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE ID: 502003CA005045XXOCAH
DIVISION: AH

COLEMAN PARENT HOLDINGS INC

Vs

MORGAN STANLEY & COMPANY INC

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable JUDGE ELIZABETH T MAASS dated January 23, 2008, the above styled case is reassigned to Division AH, Judge(s) JUDGE EDWARD H FINE for all further proceedings.

WITNESS my hand and seal on JANUARY 28, 2008.



Sharon R. Bock
Clerk & Comptroller

By: *Kristin Hamilton*
Kristin Hamilton, Deputy Clerk

cc:
CC: ALL PARTIES

08 JAN 28 AM 9:33

FILED

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

NOT CERTIFIED COPY

THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE ID: 502003CA005045XXOCAJ
DIVISION: AJ

COLEMAN PARENT HOLDINGS INC

Vs

MORGAN STANLEY & COMPANY INC

_____ /

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable JUDGE DIANA LEWIS dated March 4, 2008, the above styled case is reassigned to Division AJ, Judge(s) JUDGE ROBIN L ROSENBERG for all further proceedings.

WITNESS my hand and seal on MARCH 06, 2008.



Sharon R. Bock
Clerk & Comptroller

By: *Kristin Hamilton*
Kristin Hamilton, Deputy Clerk

CC: ALL PARTIES

08 MAR -6 AM 7:46
SHARON R. BOCK, CLERK
PALM BEACH COUNTY,
CIRCUIT CIVIL 5

FILED

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 502003CA005045XXOCAI

FOURTH DISTRICT CASE 4D05-2606

MORGAN STANLEY & CO. INCORPORATED

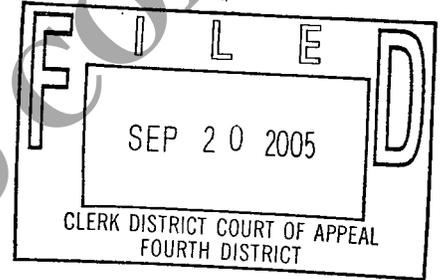
Appellant(s)

vs.

COLEMAN (PARENT) HOLDINGS INC.

Appellee(s)

_____ //



INDEX TO SUPPLEMENT RECORD ON APPEAL

Copy furnished:

Thomas E. Warner, Esq., 222 Lakeview Avenue, Suite 1400
West Palm Beach, Florida 33401

Jerold S. Solovy, Esq., One IBM Plaza, Suite 4400 Chicago
60611

Jack Scarola, Esq., 2139 Palm Beach Lakes Blvd., West Palm Beach
Florida 33409

FILED
08 MAR 10 PM 4:04
HARON R. BOEKER
CLERK
PALM BEACH COUNTY
FLORIDA

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2005 SEP 20 PM 2:19
DISTRICT COURT OF APPEAL
FOURTH DISTRICT

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Report: CZRAPRE
User: MCASTILL
Instance: JISPROD

PALM BEACH CTY CIR CT JISPROD
Record on Appeal Report TEST 03-09-03

RunDate: 12-AUG-2005
RunTime: 03:28 P.M.
Page: 1

Case ID: 2003CA005045
Appeal Seq.: 3
Index No.: 1
Appeal Type: SUPP
Index Type: ORIGINAL

Case Description: COLEMAN PARENT HOLDINGS INC V MORGAN STANLEY & CO

Filing Date	Doc No	Description	Page Range

VOLUME NUMBER ONE			
07/28/2005	00002385	NOTICE OF FILING PROPOSED PHASE I VERDICT FORMS SUBMITTED 5/5/05 & 5/12/05 - ATTACHED	64037 64049

08/12/2005 CERTIFICATE OF CLERK - MAILING INDEX
*** END OF REPORT ***
Number of records printed: 1

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Report : CZREZDK
Instance : JISPROD

CLERK OF THE CIRCUIT COURT
PALM BEACH COUNTY
Docket Print from Easyview

Date : 12-Aug-2005
Time : 3:57:04PM

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Case ID : 2003CA005045 - COLEMAN PARENT HOLDINGS INC V MORGAN STANLEY & CO UCN : 502003CA005045XXOCAI

Docket Date : From 30-Jul-2005

Case Filed : 08-May-2003

Status : RO - REOPEN

Case Type	Court	Location	Division	Jury
OC - OTHER CIRCUIT	CA	MB	AI	J

Type	Party Name	Represented by
JUDGE	MAASS, JUDGE ELIZABETH T.	
PLAINTIFF	COLEMAN PARENT HOLDINGS INC	SCAROLA, JOHN
APPELLANT	MORGAN STANLEY & COMPANY INC	WARNER, THOMAS E. IANNO, JR, JOSEPH WARNER, THOMAS E.
DEFENDANT	MORGAN STANLEY & COMPANY INC	IANNO, JR, JOSEPH
APPELLANT	CLARE, THOMAS A.	HILL III, BENJAMIN H.

Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
01-Aug-2005	2,387		NOTICE OF HEARING	NOH	8/4/05 @ 8:45 AM ON VERIFIED PETITION FOR A SHOW CAUSE ORDER REGARDING MORGAN STANLEY'S CRIMINAL CONTEMPT OF COURT		
01-Aug-2005	2,388		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S MTO REMOVE CONFIDENTIALITY DESIGNATION		
02-Aug-2005	2,389		DIRECTIONS TO CLERK	DCLK	ONLY THE ITEMS LISTED		
02-Aug-2005	2,390		STATEMENT-JUDICIAL ACTS	SJACT	TO BE REVIEWED.		
02-Aug-2005	2,391		ORDER	ORD	MORGAN STANLEY & CO INC'S MTO CLARIFY IS GRANTED. THE STIP CONFIDENTIALITY ORDER IS CLARIFIED TO PROVIDE THAT ATTYS RETAINED AS EXPERTS OR CONSULTANTS IN CONNECTION WITH CPH'S PETITION FO RATTYS FEES & COSTS ARE DEEMED EXPERTS OR CONSULTANTS UNDER PARAGRAPH 9(H) THEREOF. COURT DEFERS RULING ON MORGAN STANLEY & CO INC'S CONTENTION THAT THE PETITION DOES NOT CONTAIN CONFIDENTIAL MATERIALS		

Report : CZREZDK
Instance : JISPROD

CLERK OF THE CIRCUIT COURT
PALM BEACH COUNTY
Docket Print from Easyview

Date : 12-Aug-2005
Time : 3:57:04PM

Page 2 of 3

Case ID : 2003CA005045 - COLEMAN PARENT HOLDINGS INC V MORGAN
STANLEY & CO UCN : 502003CA005045XXOCAI

Docket Date : From 30-Jul-2005

Case Filed : 08-May-2003

Status : RO - REOPEN

Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
04-Aug-2005	2,391 - A		ORDER SETTING HEARING	ORSH	(SPECIAL SET) 10/21/05 @ 8:00 AM ON CPH'S VERIFIED PETITION FOR A SHOW-CAUSE ORDER REGARDING MORGAN STANLEY'S CRIMINAL CONTEMPT OF COURT		
05-Aug-2005	2,392	1	INVOICE	INVO	TO: THOMAS WARNER AMT \$7262.50(4D05-2606)		
05-Aug-2005	2,393	200	INDEX TO RECORD ON APPEAL	IROA	COPIES MAILED TO ALL PARTIES 4D05-2606		
12-Aug-2005	2,394		INDEX TO RECORD ON APPEAL	IROA	4D05-2606 ONE SUPPLEMENTAL VOLUME -COPIES MLD TO ALL PARTIES-		
12-Aug-2005	2,395		INVOICE	INVO	(COST MEMO) TO JOSEPH IANNO, JR. FOR SUPP INDEX/PREP IN THE AMT OF \$5.50		

Report : CZREZDK
Instance : JISPROD

CLERK OF THE CIRCUIT COURT
PALM BEACH COUNTY
Docket Print from Easyview

Date : 12-Aug-2005
Time : 3:57:04PM

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Case ID : 2003CA005045 - COLEMAN PARENT HOLDINGS INC V MORGAN
STANLEY & CO

UCN : 502003CA005045XXOCAI

Docket Date : From 30-Jul-2005

Case Filed : 08-May-2003

Status : RO - REOPEN

Docket Entries : 10

Last Activity :

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*** end of report czezdk ***

(czezdk) Revised : 28-Jul-2003

16div-030495

CERTIFICATE OF CLERK

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

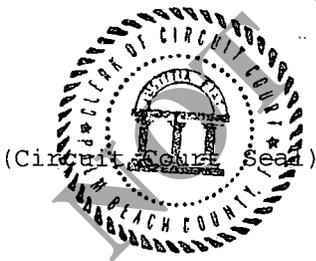
I, SHARON R. BOCK, Clerk of Circuit Court for the County of Palm Beach, State of Florida, do hereby certify that the foregoing pages 64037 to 64049, inclusive, consists of original papers and proceedings in Civil Action Case Number: 502003CA005045XXOCAI/4DCA 4D05-2606
COLEMAN(PARENT) HOLDINGS INC. -VS- MORGAN STANLEY

as appears from the records and files of my office which have been directed to be included in said Record, pursuant to Florida Rules of Appellate Procedure, 9.200(a)(1).

IN WITNESS WHEREOF,
I have hereunto set my hand and affixed the Seal of said Court

this 12TH day of AUGUST, 2005 A.D.

SHARON R. BOCK, Clerk of Circuit Court
Palm Beach County, Florida



By: Marianita Castillo
Deputy Clerk
MARIANITA CASTILLO

#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

ORDER SPECIALLY SETTING HEARING/STATUS CONFERENCE

THIS CAUSE having come to be considered upon request for a Special Set Hearing, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED that a Status Conference is scheduled in this matter for Tuesday, March 18, 2008 at 10:15 a.m. before the Hon. Robin Rosenberg, Circuit Court Judge, in Courtroom 10-A of the Palm Beach County Courthouse, 205 N. Dixie Highway, West Palm Beach, FL 33401.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 17th day of March, 2008.


ROBIN ROSENBERG
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AI
Order Specially Setting Hearing

COUNSEL LIST

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

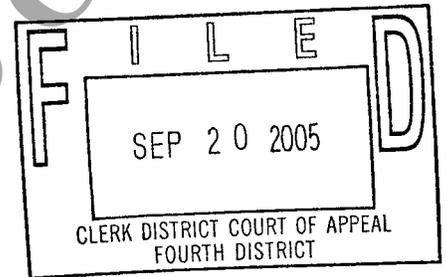
CASE NO. 502003CA005045XXOCAI

FOURTH DISTRICT CASE NO. 4D05-2606

MORGAN STANLEY & CO. INCORPORATED

VS.

COLEMAN(PARENT) HOLDINGS INC.



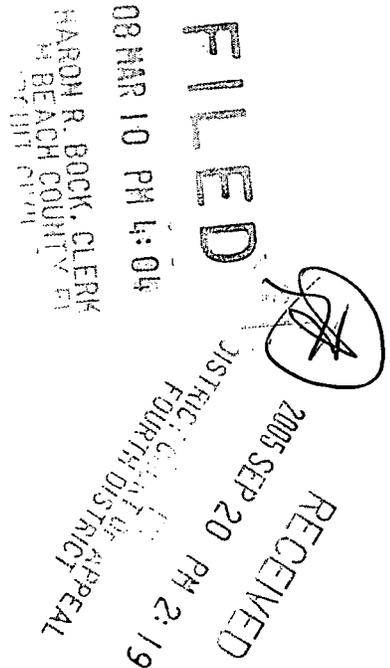
INDEX TO RECORD ON APPEAL

COPIES FURNISHED

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Report: CZRAPRE
User: SSOUSA
Instance: JISPROD

PALM BEACH CTY CIR CT JISPROD
Record on Appeal Report TEST 03-09-03

Date: 04-AUG-2005
RunTime: 09:35 A.M.
Page: 1

Case ID: 2003CA005045
Appeal Seq.: 1
Index No.: 1
Appeal Type: FINAL
Index Type: ORIGINAL

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Filing Date	Doc No	Description	Page	Range
VOLUME NUMBER ONE				
05/08/2003	00000001	COMPLAINT	1	30
05/08/2003	00000002	CIVIL COVER SHEET	31	31
05/08/2003	00000003	SUMMONS ISSUED R/A CT CORPORATION SYSYSTEMS - COUNTER SM-03-010899	32	33
05/09/2003	00000004	REQUEST BY PLTF'S FIRST, FOR PRODUCTION OF DOUCMENTS TO DEFT DEFT	34	45
05/09/2003	00000005	NOTICE OF TAKING DEPOSITION TO JOHN TYREE; ROBERT KITTS; ALEXANDRE FUCHS; LAWRENCE BORNSTEIN; MARK BROCKELMAN; DENNIS PASTRANA; RICHARD GOUDIS; DAVID FANNIN; ALBERT DUNLAP AND DEBORAH MACDONALD	46	47
05/23/2003	00000006	MOTION BY DEFT, FOR ENLARGEMENT OF TIME TO RESPOND TO COMPLAINT AND ESTABLISH BRIEFING SCHEDULE	48	52
05/23/2003	00000007	NOTICE OF HEARING 6/2/03 AT 8:45 AM. ON DEFT'S MOTION FOR ELARGEMETN OF TIME TO RESOND TO CMPLAINT AND ESTABLISH BRIEFING SCHEDULE	53	55
05/29/2003	00000008	NOTICE (COLEMAN (PARENT) HOLDINGS, INC.'S OPPOSITION TO MORGAN RGAN STANLEY'S REQUEST FOR A SEPARATE BRIEFING SCHEDULE DULE ON THE ISSUE OF CHOICE OF LAW)	56	59
06/02/2003	00000009	ORDER ON DFT'S MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO COMPLAINT AND ESTABLISH BRIEFING SCHEDULE IS DENIED. SEE ORDER.	60	61

Case Description: COLEMAN PARENT HOLDINGS INC V MORGAN STANLEY & CO

Filing Date	Doc No	Description	Page	Range
06/23/2003	00000010	ANSWER BY DEFT MORGAN STANLEY & CO., INCORPORATED., TO THE COMPLAINT W/AFFIRMATIVE DEFENSES W/ATTACHED EXHIBITS THERE TO	62	200
VOLUME NUMBER TWO				
06/23/2003	00000010	ANSWER CONTINUED FROM PREVIOUS VOLUME	201	400
VOLUME NUMBER THREE				
06/23/2003	00000010	ANSWER CONTINUED FROM PREVIOUS VOLUME	401	507
06/25/2003	00000011	MOTION BY DEFT MORGAN STANLEY & CO., INCORPORATED, TO STAY DISCOVERY - EXHIBITS ATTACHED	508	530
06/25/2003	00000012	MOTION TO DISMISS BY DEFT, PURSUANT TO FL RULE OF CIVIL PROCEDURE RULE 1.061 OR, IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS	531	600
VOLUME NUMBER FOUR				
06/25/2003	00000012	MOTION TO DISMISS CONTINUED FROM PREVIOUS VOLUME	601	670
06/26/2003	00000013	OBJECTION BY MORGAN STANLEY & CO., INC., TO COLEMAN (PARENT) HOLDINGS, INC. FIRST REQUEST FOR PRODUCTION OF DOCUMENTS	671	717
07/01/2003	00000014	NOTICE OF HEARING 7/8/03 AT 8:45 AM. ON DEFT'S MOTION TO STAY DISCOVERY	718	720

Case Description: COLEMAN PARENT HOLDINGS INC V MORGAN STANLEY & CO

Filing Date	Doc No	Description	Page	Range
		RY		
07/08/2003	00000015	SUBPOENA RETURNED / SERVED 7/3/03 TO R/C BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOC.	721	742
07/08/2003	00000016	SUBPOENA RETURNED / SERVED 7/3/03 TO R/C WACHOVIA BANK, N.A.	743	764
07/08/2003	00000017	RE-NOTICE OF HEARING 7/10/03 AT 8:45 AM. ON DEFT'S MOTION TO STAY DISCOVERY ERY	765	767
07/10/2003	00000018	ORDER THAT DEFT'S MOTION TO STAY DISCOVERY IS DENIED.	768	769
07/11/2003	00000019	OBJECTION BY DEFT, TO SUBPOENAS DIRECTED TO BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOC, AND WACHOVIA BANK, N.A.	770	771
07/14/2003	00000020	REQUEST BY PLTF CPH'S SECOND, FOR PRODUCTION OF DOCUMENTS S	772	776
07/14/2003	00000021	REPLY/RESPONSE BY PLTF, TO ANSWER AND AFFIRMATIVE DEFENSES OF MORGAN RGAN STANLEY & CO., INC.	777	779
07/17/2003	00000022	MOTION TO EXTEND DEADLINE FOR SUBMISSION OF MEMORANDUM	780	781
07/18/2003	00000023	NOTICE OF TAKING DEPOSITION TO MORGAN STANLEY & CO., INC.	782	785
07/23/2003	00000024	NOTICE OF TAKING DEPOSITION TO MORGAN STANLEY & CO., INC.	786	789
07/28/2003	00000025	MOTION BY DEFT'S VERIFIED, TO ADMIT BRETT MCGURK PRO HAC VICE - PROPOSED ORDER ATTACHED THERETO - UP ON 7/30/03 /03	790	795

Case Description: COLEMAN PARENT HOLDINGS INC V MORGAN STANLEY & CO

Filing Date	Doc No	Description	Page	Range
07/28/2003	00000026	MOTION BY DEFT'S VERIFIED, TO ADMIT LARISSA PAULE CARRES PRO PRO HAC VICE - PROPOSED ORDER ATTACHED THERETO - UP ON P ON 7/30/03	796	800
VOLUME NUMBER FIVE				
07/28/2003	00000026	MOTION	801	801
07/28/2003	00000027	CONTINUED FROM PREVIOUS VOLUME MOTION BY DEFT'S VERIFIED, TO ADMIT THOMAS D. YANNUCCI, PRO HAC VICE, W/PROPOSED ORDER ATTACHED THERETO - UP ON 7/30/03	802	807
07/28/2003	00000028	MOTION BY DEFT'S VERIFIED, TO ADMIT THOMAS A. CLARE, PRO HAC VICE -W/PROPOSED ORDER ATTACHED - UP 7/30/03	808	813
07/29/2003	00000029	NOTICE OF TAKING DEPOSITION TO R/C EACHOVIA BANK, N.A.	814	832
07/29/2003	00000030	MOTION CY PLTF, TO PERMIT FOREIGN ATTYS TO APPEAR	833	839
07/29/2003	00000031	NOTICE OF HEARING 8/11/03 AT 8:45 AM. ON PLTF COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO PERMIT FOREIGN ATTYS TO APPEAR	840	842
07/29/2003	00000032	NOTICE OF TAKING DEPOSITION TO R/C BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOC.	843	860
07/30/2003	00000033	REQUEST BY DEFT'S FIRST, FOR PRODUCTION OF DOCUMENTS TO PLTF LTF	861	874
07/30/2003	00000034	NOTICE OF FILING INTERROGS BY MORGAN STANLEY & CO., INCORPORATED'S FIRST TO PLTF TF	875	881

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Filing Date	Doc No	Description	Page Range
07/30/2003	00000035	OBJECTION BY DEFT'S SUPPLEMENTAL, TO PLTF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS	882 923
07/31/2003	00000036	ORDER STIPULATED CONFIDENTIALITY ORDER LITIGATION MATERIALS DESIGNATED "CONFIDENTIAL" THAT ARE FILED WITH COURT SHALL BE FILED UNDER SEAL IN A SEPARATE SEALED ENVELOPE LOPE CONSPICUOUSLY MARKED "FILED UNDER SEAL"	924 934
08/01/2003	00000037	ORDER GRANTING VERIFIED MOTION TO ADMIT THOMAS A CLARE HAC VICE	935 936
08/01/2003	00000038	ORDER GRANTING VERIFIED MOTION TO ADMIT LARISSA PAULE-CARRES PRO HAC VICE	937 938
08/01/2003	00000039	ORDER GRANTING VERIFIED MOTION TO ADMIT THOMAS D YANNUCCI PRO PRO HAC VICE	939 940
08/01/2003	00000040	ORDER GRANTING VERIFIED MOTION TO ADMIT BRETT H MCGURK PRO HAC VICE	941 942
08/05/2003	00000041	SUBPOENA RETURNED / SERVED R/C OF BANK OF AMERICA	943 962
08/05/2003	00000042	SUBPOENA RETURNED / SERVED R/C WACHOVIA BANK	963 983
08/08/2003	00000043	REQUEST DFT FOR COPIES	984 985
08/13/2003	00000043	A NOTICE OF SUBPOENA TO RC/ANDERSEN WORLDWIDE SOCIETE COOPERATIVE C/O GERALD F. RICHMAN, ESQ., NO RETURN OF SERVICE ATTCHD	986 990
08/15/2003	00000044	OBJECTION BY MORGAN STANLEY & CO. INCORPORATED'S, TO COLEMAN	991 1000

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Filing Date	Doc No	Description	Page Range
		(PARENT) HOLDINGS, INC. SECOND REQUEST FOR PRODUCTION OF DOCUMENTS	
		VOLUME NUMBER SIX	
08/15/2003	00000044	OBJECTION	1001 1006
		CONTINUED FROM PREVIOUS VOLUME	
08/15/2003	00000045	OBJECTION BY MORGAN STANLEY & CO. INCORPORATED'S SECOND SUPPLEMENTAL, TO COLEMAN (PARENT) HOLDINGS, INC. FIRST REQUEST FOR PRODUCTION OF DOCUMENTS	1007 1053
08/18/2003	00000046	MOTION VERIFIED-, BY DEFT, TO ADMIT RYAN P. PHAIR, PRO HAC VICE	1054 1059
08/18/2003	00000047	MOTION VERIFIED-, BY DEFT, TO ADMIT KATHRYN R. DEBORD PRO HAC VICE	1060 1065
08/18/2003	00000048	MOTION VERIFIED-, BY DEFT, TO ADMIT ZHONETTE BROWN, PRO HAC VICE	1066 1071
08/18/2003	00000049	RESPONSE TO: BY CPH, TO MORGAN STANLEY & CO. INCORPORATED'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS	1072 1088
08/18/2003	00000050	NOTICE OF FILING BY NON PARTY BANK OF AMERICA'S, RESPONSE AND OBJECTIONS TO SUBPOENAS - EXHIBITS A	1089 1093
08/19/2003	00000051	REQUEST FOR ADMISSIONS BY MORGAN STANLEY & CO. INCORPORATED	1094 1119
08/20/2003	00000052	ORDER THAT DEFT MORGAN STANLEY & CO., INC.'S VERIFIED MOTION TO ADMIT KATHRYN R. DEBORD PRO HAC VICE IS GRANTED. MS. MS. DEBORD MAY PRACTICE BFORE THE COURT IN THIS	1120 1125

Case Description: COLEMAN PARENT HOLDINGS INC V MORGAN STANLEY & CO

Filing Date	Doc No	Description	Page	Range
		ACTION.		
08/20/2003	00000053	ORDER THAT DEFT'S VERIFIED MOTION TO ADMIT ZHONETTE BROWN, PRO HAC VICE IS DENIED, W/O PREJUDICE TO COUNSEL'S FILING A RENEWED MOTION TO ADMIT ZHONETTE BROWN, PRO HAC VICE, CONTAINING THE INFORMATION REQUIRED BY RULE 2.061 B, FLA.R.JUD. ADMIN	1126	1127
08/20/2003	00000054	ORDER THAT DEFT'S VERIFIED MOTION TO ADMIT RYAN P. PHAIR, PRO PRO HAC VICE IS DENIED, W/O PREJUDICE TO COUNSEL'S FILING A RENEWED MOTION TO ADMIT RYAN P. PHAIR, PRO HAC HAC VICE, CONTAINING THE INFORMATION REQUIRED BY RULE 2.061B, FLA. R. JUD. ADMIN.	1128	1129
08/22/2003	00000055	MOTION BY NON PARTY WACHOVIA BANK, N.A., FOR EXTENSION OF TIME - EXHIBITS ATTACHED	1130	1153
08/25/2003	00000056	NOTICE OF TAKING DEPOSITION TO MARGAN STANLEY & CO., INC.	1154	1157
09/02/2003	00000057	NOTICE OF FILING INTERROGS BY PLTF TO DEFT MORGAN STANLEY & CO., INC.	1158	1165
09/02/2003	00000058	AGREED ORDER (REGARDING ENLARGEMENT OF TIME TO PREPARE PRIVILEGE LOG) UPON REVIEW OF THE DOCUMENT REQUESTS SERVED BY THE THE PARTIES IN THIS ACTION, CERTAIN DOCUMENTS MAY BE WITHIN THE SCOPE OF TH EREQUEST THAT ARE PROTECTED BY THE ATTY CLIENT OR WORK PRODUCT PRIVILEGES	1166	1168
09/04/2003	00000059	SEALED PER ORDER DTD. 7/31/03	1169	1169
09/08/2003	00000060	MOTION BY PLTF COLEMAN (PARENT) HOLDINGS INC., TO PERMIT FOREIGN ATTY TO APPEAR	1170	1172
09/11/2003	00000061	MOTION TO APPOINT COMMISSION, AS TO MICHAEL I. ALLEN	1173	1176

Case Description: COLEMAN PARENT HOLDINGS INC V MORGAN STANLEY & CO

Filing Date	Doc No	Description	Page Range
09/15/2003	00000062	MOTION BY DEFT, SS TO SET HEARING ON DEFT'S MOTION TO DISMISS	1177 1179
09/15/2003	00000063	NOTICE OF HEARING 9/29/03 AT 8:45 AM ON DEFT'S MOTION TO SET HEARING ON DEFT'S MOTION TO DISMISS	1180 1182
09/16/2003	00000064	ORDER ON APPOINTMENT OF COMMISSION. CC TO ATTY 9/18/03	1183 1185
09/16/2003	00000065	ORDER AND DIRECTIONS TO THE CLERK TO DOCKET AND FILE ATTY JACK SCAROLA'S LETTER DATED 9/10/03	1186 1186
09/16/2003	00000066	LETTER TO JUDGE MAASS FROM JACK SCAROLA DTD. 9/10/03	1187 1187
09/17/2003	00000067	LETTER TO MR. SCAROLA FROM JUDGE MAASS DTD. 9/17/03	1188 1188
09/18/2003	00000068	MOTION VERIFIED- BY DEFT, VICE- PROPOSED ORDER ATTACHED THERETO TO ADMIT RYAN P. PHAIR, PRO HAC	1189 1194
09/18/2003	00000069	MOTION VERIFIED, BY DEFT, VICE - PROPOSED ORDER ATTACHED THERETO TO ADMIT ZHONETTE BROWN, PRO HAC	1195 1200
VOLUME NUMBER SEVEN			
09/19/2003	00000070	ORDER GRANTING VERIFIED MOTION TO ADMIT ZHONETTE BROWN PRO HAC VICE	1201 1202
09/19/2003	00000071	MOTION TO COMPEL PRODUCTION	1203 1225
09/19/2003	00000072	ORDER GRANTING VERIFIED MOTION TO ADMIT RYAN P PHAIR PRO HAC	1226 1227

Case Description: COLEMAN PARENT HOLDINGS INC V MORGAN STANLEY & CO

Filing Date	Doc No	Description	Page	Range
		VICE		
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09/22/2003	00000074	NOTICE OF TAKING DEPOSITION TO VANCE F. KISTLER; KEVIN C. KRAYER AND URBAN KANTOLA OLA	1262	1264
09/23/2003	00000075	NOTICE OF HEARING 9/29/03 AT 8:45 AM ON MOTION TO COMPEL PRODUCTION	1265	1267
09/23/2003	00000075	A SEALED PER ORDER DTD 7/31/03	1268	1268
09/24/2003	00000076	LETTER TO MR. SCAROLA FROM JUDGE MAASS DTD. 9/17/03	1269	1269
09/25/2003	00000077	RESPONSE TO: BY CPH'S, MORGAN STANLEY & CO INCORPORATED'S FIRST SET OF REQUESTS FOR ADMISSION	1270	1359
09/25/2003	00000078	RESPONSE TO: BY NON PARTY BANK OF AMERICA, N.A., MOTION TO COMPEL MPEL PRODUCTION- W/ATTACHMENTS ATTACHED	1360	1400
		VOLUME NUMBER EIGHT		
09/25/2003	00000078	RESPONSE TO:	1401	1445
		CONTINUED FROM PREVIOUS VOLUME		
09/25/2003	00000079	MOTION BY NON PARTY BANK OF AMERICA, N.A., OF NON PARTY TO Y TO APPEAR THROUGH USE OF COMMUNICATION EQUIPMENT	1446	1448
09/26/2003	00000080	ORDER THAT NON PARTY BANK OF AMERICA, N.A.'S MOTION TO APPEAR PEAR THROUGH USE OF COMMUNICATION EQUIPMENT IS GRANTED. TED. MAY APPEAR BY SPEAKER TELEPHONE AT HEARING SET 9/29/03	1449	1450

Report: CZRAPRE
User: SSOUSA
Instance: JISPROD

FILED BEACH CTY CIR CT JISPROD
Record on Appeal Report TEST 03-09-03

RunDate: 04-AUG-2005
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Page: 10

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Filing Date	Doc No	Description	Page Range
09/26/2003	00000081	NOTICE OF TAKING DEPOSITION TO R/C PRICEWATERHOUSECOOPERS LLP	1451 1453
09/26/2003	00000082	RE-NOTICE OF HEARING 10/2/03 AT 8:45 AM ON MOTION TO COMPEL PRODUCTION	1454 1456
09/30/2003	00000083	MOTION AMENDED- BY NON PARTY BANK OF AMERICA, N.A., TO APPEAR THROUGH USE OF COMMUNICATION EQUIPMENT	1457 1459
09/30/2003	00000084	ORDER SETTING HEARING 12/5/03 AT 8 AM. ON DEFT'S MOTION TO DISMISS	1460 1461
09/30/2003	00000085	ORDER THAT DEFT'S MOTION TO SET HEARING ON DEFT'S MOTION TO DISMISS IS GRANTED. SEE ORDER FOR FURTHER DETAILS	1462 1463
09/30/2003	00000086	ORDER THAT DEFT'S MOTION FOR REHEARING IS DENIED. HEARING ON DEFT'S MOTION TO DISMISS REMAINS SET 12/5/03 AT 8 AM. M.	1464 1465
09/30/2003	00000087	ORDER AND DIRECTIONS TO THE CLERK TO DOCKET AND FILE ATTY JOSEPH IANNO'S LETTER DATED 9/29/03	1466 1467
09/30/2003	00000088	LETTER TO JUDGE MAASS FROM JOSEPH IANNO, JR. DTD. 9/29/03	1468 1468
10/01/2003	00000089	ORDER THAT NON PARTY BANK OF AMERICA, N.A.'S AMENDED MOTION TO APPEAR THROUGH USE OF COMMUNICATION EQUIPMENT IS GRANTED. NON PARTY MAY APPEAR BY SPEAKER TELEPHONE AT HEARING ON 10/1/03 UPON PRIOR ARRANGEMENT IWTH COURT'S JUDICIAL ASSISTANT	1469 1470
10/01/2003	00000090	ORDER THAT THE CLERK IS DIRECTED TO DOCKET AND FILE ATTY JACK JACK SCAROLA'S LETTER DATED 9/29/03	1471 1472
10/01/2003	00000091	LETTER TO JUDGE MAASS FROM JACK SCAROLA DTD. 9/29/03	1473 1473

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10/02/2003	00000092	MOTION TO PERMIT FOREIGN ATTY TO APPEAR	1474 1476
10/03/2003	00000093	SUBPOENA RETURNED / SERVED 10/1/03 TO R/C PRICEWATERHOUSECOOPERS LLP	1477 1492
10/03/2003	00000094	NOTICE OF TAKING DEPOSITION TO ANDREW SAVARIE; VANCE KISTLER; DONALD DENKHAUS; KEVIN KRAYER; TYRONE CHANGE; SCOTT YALES; WILLIAM STRONG; URBAN KANTOLA; WILLIAM FRUITT; LEE GRIFFITH; DEBORAH MACDONALD; R. BRAM SMITH; DEIDRA DEN DANTO	1493 1496
10/03/2003	00000095	SEALED PER ORDER 7/31/03	1497 1497
10/03/2003	00000096	NOTICE OF HEARING 10/9/03 AT 8:45 AM. ON COLEMAN (PARENT) HOLDINGS INC.'S C.'S MOTION TO COMPEL PRODUCTION OF DEPOSITION WITNESS (FILED UNDER SEAL)	1498 1500
10/07/2003	00000097	AGREED ORDER THAT JEROLD S. SOLOVY, RONALD L. MARMER, ROBERT T. MARKOWSKI, MICHAEL T. BRODY, JEFFREY T. SHAW, DEIRDRE E. CONNELL, EIZABETH A. COLEMAN, DENISE K. BOWLER, JOHN JOHN W. JOYCE, CHRISTOPER M. O'CONNOR, STEPHEN P. BAKER, AND DANIEL E. SHAW ARE ADMITTED PRO HAC VICE IN THE MATTER ON BEHALF OF DEFTS	1501 1502
10/07/2003	00000098	ORDER SETTING HEARING (RESETTING) ON DEFT'S MOTION TO DISMISS SET 12/50/3 IS CANCELED AND RESET ON 12/12/03 AT 8:30 AM.	1503 1505
10/07/2003	00000099	SUBPOENA RETURNED / NOT SERVED TO KEVIN C. KRAYER	1506 1509
10/07/2003	00000100	SUBPOENA RETURNED / SERVED 10/2/03 TO URBAN KANTOLA	1510 1513
10/07/2003	00000101	MOTION FOR PROTECTIVE ORDER BY DEFT, SANCTIONS AND IMPOSITION OF A COST BOND	1514 1527

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10/07/2003	00000102	NOTICE OF HEARING 10/16/03 AT 8:45 AM ON DEFT'S MOTION FOR PROTECTIVE RODER, SANCTIONS AND IMPOSITION OF A COST BOND	1528	1530
10/08/2003	00000103	RE-NOTICE OF HEARING 10/16/03 AT 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC.'S C.'S MOTION TO COMPEL PRODUCTION OF DEPOSITION WITNESS (FILED UNDER SEAL)	1531	1533
10/09/2003	00000104	SUBPOENA RETURNED / NOT SERVED TO VANCE F. KISTLER	1534	1537
10/14/2003	00000105	MOTION BY PLTF, TO APPOINT COMMISSIONS	1538	1541
10/14/2003	00000106	NOTICE OF HEARING 10/16/03 AT 8:45 AM. ON PLTF'S MOTION TO APPOINT COMMISSIONS	1542	1544
10/14/2003	00000107	NOTICE OF FILING BY DEFT, ITS CONFIDENTIAL OPPOSITION TO COLEMAN HOLDINGS, INC.'S MOTION TO COMPEL PRODUCTION OF DEPO WITNESS, UNDER SEAL WITH THE CLERK OF HTE COURT	1545	1547
10/14/2003	00000108	SEALED PER ORDER DTD. 7/31/03	1548	1548
10/14/2003	00000109	SEALED PER ORDER 7/31/03	1549	1549
10/16/2003	00000110	SUBPOENA RETURNED / SERVED 10/9/03 TO DONALD DENKHAUS	1550	1553
10/16/2003	00000111	SUBPOENA RETURNED / SERVED 10/8/03 TO KEVIN C. KRAYER	1554	1557
10/16/2003	00000112	NOTICE OF CANCELLATION OF HEARING ON 10/16/03 AT 8:45 AM. ON DEFT'S MOTION FOR FOR PROTECTIVE ORDER, SANCTIONS AND IMPOSITION OF A COST BOND	1558	1559
10/16/2003	00000113	NOTICE	1560	1561

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		BY PLTFS, OF WITHDRAWAL OF MOTION	
10/16/2003	00000114	MOTION FOR PROTECTIVE ORDER BY PRICEWATERHOUSECOOPERS LLP'S, AND OBJECTIONS AND RESONSES TO SUBPOENA DUCES TECUM WITH DEPOSITION	1562 1585
10/17/2003	00000115	SUBPOENA RETURNED / SERVED VANCE F KISTLER	1586 1589
10/17/2003	00000116	MOTION TO COMPEL PRODUCTION OF DOCUMENTS	1590 1600
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10/17/2003	00000117	NOTICE OF HEARING OCT 23 2003 @8:45 RE: MOTION TO COMPEL	1601 1603
10/20/2003	00000118	ORDER (APPOINTMENT OF COMMISSIONS) APPOINTED KATHY BATES, OR ANY OTHER PERSON DULY AUTHORIZED BY HER AND ABLE TO ADMINISTER OATHS PURSUANT TO THE LAW OF ARKANSAS MICHAEL I. ALLEN OR ANY OTHER PERSON DULY AUTHORIZED BY D BY HIM AND ABLE TO ADMINISTER OATHS PURSUANT TO THE LAWS OF GEORGIA MIHCAEL I. ALLEN - C.C. TO PLTF ATTY 10/22/03	1604 1606
10/21/2003	00000119	MOTION BY MORGAN STANLEY & CO INCORPORATED, FOR ISSUANCE OF COMMISSIONS	1607 1611
10/22/2003	00000120	RE-NOTICE OF HEARING 10/27/03 AT 8:45 AM. ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS RELATING TO SCOTT PAPER	1612 1614
10/22/2003	00000121	AGREED ORDER APPOINTING COMMISSIONERS AND COMMISSIONS: ESQUIRE DEPOSITION SERVICES AND SPHERION DEPOSITION SERVICES. CC TO ATTY	1615 1616

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10/27/2003	00000122	SUBPOENA RETURNED / SERVED 10/21/03 TO URBAN KANTOLA	1617 1620
10/27/2003	00000123	ORDER THAT COLEMAN (PARENT) HOLDINGS, INC.'S MOTION TO COMPEL MPEL PRODUCTION OF DOCUMENTS RELATING TO SCOTT PAPER) MOTION IS GRANTED, IN PART.	1621 1622
10/28/2003	00000124	NOTICE OF TAKING DEPOSITION AMENDED- TO ANDREW SAVARIE, TYRONE CHANGE AND WILLIAM STRONG	1623 1625
10/29/2003	00000125	MOTION TO COMPEL BY DEFT, PLTF TO PRODUCE SETTLEMENT AGREEMENT WITH ARTHUR ANDERSEN -W/ATTACHMENTS ATTACHED THERETO	1626 1751
10/29/2003	00000126	NOTICE OF HEARING 11/6/03 AT 8:45 AM. ON DEFT'S MOTION TO COMPEL PLTF TO PRODUCE SETTLEMENT AGREEMENT WITH ARTHUR ANDERSEN	1752 1754
10/29/2003	00000127	NOTICE OF FILING PLEADING UNDER SEAL, BY PLTF	1755 1756
10/29/2003	00000128	SEALED PER ORDER 7/31/03	1757 1757
10/29/2003	00000129	NOTICE OF HEARING 11/6/03 AT 8:45 AM. COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL CONCERNING E MAILS (FILED UNDER SEAL) AL)	1758 1760
10/30/2003	00000130	AGREED ORDER THAT CLARK C. JOHNSON OF JENNER & BLOCK, LLC IS ADMITTED RPO HAC VICE IN THE CASE MATTER ON BEHALF OF THE PLTF	1761 1762
11/03/2003	00000131	AFFIDAVIT OF LOST ORIGINAL SUBPOENA TO URBAN KANTOLA SERVED 10/21/03, BY MICHELLE ROCK	1763 1764
11/04/2003	00000132	NOTICE OF FILING INTERROGS BY COLEMAN (PARENT) HOLDINGS INC.'S SECOND SET TO DEFT	1765 1770

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11/04/2003	00000133	NOTICE OF FILING PLEADING UNDER SEAL, BY DEFT	1771 1772
11/04/2003	00000134	SEALED PER ORDER 7/31/03	1773 1773
11/05/2003	00000135	RESPONSE TO: BY COLEMAN (PARENT) HOLDINGS INC.'S, IN OPPOSITION TO N TO DEFT'S MOTION TO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT WITH ARTHUR ANDERSEN	1774 1780
11/05/2003	00000136	MOTION BY PLTF, TO APPOINT COMMISSIONS	1781 1784
11/12/2003	00000137	NOTICE OF TAKING DEPOSITION TO R/C OF THE LLAMA COMPANY, L.P.	1785 1794
11/14/2003	00000138	RESPONSE TO: BY PLTF, IN OPPOSITION TO DEFT'S MOTION TO DISMISS UNDER RULE 1.061 OR, IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS	1795 1800
		VOLUME NUMBER TEN	
11/14/2003	00000138	RESPONSE TO:	1801 1865
		CONTINUED FROM PREVIOUS VOLUME	
11/14/2003	00000139	RESPONSE TO: BY COLEMAN (PARENT) HOLDINGS INC.'S, AND OBJECTIONS TO DEFT MORGAN STANLEY & CO., INC.'S THIRD SET OF INTERROGS	1866 1869
11/14/2003	00000140	RESPONSE TO: OF PLTF COLEMAN (PARENT) HOLDINGS INC. TO DEFT MORGAN STANLEY & CO., INC.'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS	1870 1879
11/14/2003	00000141	ORDER SETTING HEARING	1880 1881

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		11/25/03 AT 4:30 PM. ON DEFT'S MOTION TO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT WITH ARTHUR ANDERSEN RSEN		
11/14/2003	00000142	ORDER ON APPOINTMENT OF COMMISSIONS JEROLD S. SOLOVY OR MICHAEL I. ALLEN OR MARC M. SELTZER. CC TO ATTY 11/18/03	1882	1885
11/19/2003	00000143	MOTION BY PLTF, FOR ENTRY OF ORDER UPON STIPULATION OF THE PARTIES	1886	1898
11/19/2003	00000144	NOTICE OF HEARING 11/25/03 AT 8:45 AM ON PLTF'S MOTION FOR ENTRY OF ORDER RDER UPON STIPULATION OF THE PARTIES	1899	1900
11/19/2003	00000145	NOTICE OF FILING INTERROGS BY COLEMAN (PARENT) HOLDINGS INC.'S THIRD SET TO DEFT MORGAN STANLEY & CO., INC.	1901	1904
11/19/2003	00000146	NOTICE OF TAKING DEPOSITION TO TYRONE CHANGE	1905	1907
11/20/2003	00000147	ORDER & DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE ATTY JACK SCAROLA'S LETTER DTD 11/18/03	1908	1909
11/20/2003	00000148	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FILE ATTY JACK SCAROLA'S LETTER & ITS ENCLSOURES DTD 11/19/03	1910	1911
11/20/2003	00000149	CORRESPONDENCE TO HONORABLE MAASS FROM JACK SCAROLA DTD 11/19/03	1912	1927
11/20/2003	00000150	ORDER AND DIRECTIONS TO THE CLERK TO DOCKET AND FILE ATTY JOSEPH IANNO, JR.'S LETTER DATED 11/18/03	1928	1929
11/20/2003	00000151	LETTER TO JUDGE MAASS FROM JACK SCAROLA DTD. 11/18/03 -	1930	1933

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		W/ATTACHED PROPOSED ORDER		
11/20/2003	00000152	NOTICE OF FILING OF DEFT, PLEADING UNDER SEAL	1934	1935
11/20/2003	00000153	SEALED PER COURT ORDER 7/31/03	1936	1936
11/20/2003	00000154	LETTER TO JUDGE MAASS FROM JOSEPH IANNO JR DTD. 11/18/03	1937	1938
11/21/2003	00000155	RESPONSE TO: BY DEFT, PLTF'S MOTION FOR ENTRY OF ORDER UPON STIPULATION OF THE PARTIES - EXHIBITS ATTACHED	1939	1954
11/24/2003	00000156	NOTICE OF TAKING DEPOSITION TO ROBERT W. KITTS; ALEXANDRE J. FUCHS; R. BRAM SMITH TH	1955	1978
12/01/2003	00000157	ORDER THAT PLTF'S MOTION FOR ENTRY OF ORDER UPON STIPULATION OF THE PARTIES IS DENIED, W/O PREJUDICE TO ANY PARTY'S RIGHT TO RESET HEARING ON PLTF'S MOTION TO COMPEL (E MAILS)	1979	1980
12/01/2003	00000158	ORDER AND DIRECTIONS TO THE CLERK TO DOCKET AND FILE THE COPY COPY OF THE DEFT MORGAN STANLEY & CO., INC.'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL PLTF TO PRODUCE SETTLEMENT AGREEMENT WITH ARTHUR ANDERSEN DATED 11/20/03	1981	1982
12/01/2003	00000159	REPLY/RESPONSE (COPY) BY DEFT, IN SUPPORT OF ITS MOTION TO COMPEL MPEL PLTF TO PRODUCE SETTLEMENT AGREEMENT WITH ARTHUR ANDERSEN	1983	2000
		VOLUME NUMBER ELEVEN		
12/03/2003	00000160	MOTION TO COMPEL	2001	2005

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		BY PLTF'S AMENDED, CONCERNING EMAILS	
12/03/2003	00000161	RE-NOTICE OF HEARING 12/8/03 AT 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL CONCERNING E MAILS (FILED UNDER SEAL) EAL)	2006 2008
12/03/2003	00000162	ANSWER TO INTERROGATORIES (CONFIDENTIAL TO 2ND SET) TO PLTS	2009 2012
12/04/2003	00000163	RE-NOTICE OF HEARING 12/16/03 AT 8:45 MA. ON COLEMAN (PARENT) HOLDINGS INC.'S AMENDED MOTION TO COMPEL CONCERNING E MAILS (FILED UNDER SEAL)	2013 2015
12/09/2003	00000164	NOTICE OF TAKING DEPOSITION AMENDED- TO ANDREW SAVARIE	2016 2018
12/11/2003	00000165	REPLY/RESPONSE MEMORANDUM IN SUPPORT DEFTS MOTION TO DISMISS OR IN ALTERNATIVE FOR JUDGMENT ON PLEADINGS	2019 2071
12/11/2003	00000166	ORDER CLERK DOCKET AND FILE ALL LEGAL MEMORANDA FILED IN THIS THIS CASE DTD 12/11/03 EM UP TO JUDGE 12/12/03	2072 2073
12/11/2003	00000167	NOTICE OF TAKING DEPOSITION AMENDED VIDEO DEPO R BRAM SMITH 1/13/04 AND ROBERT W KITTS 1/20/04, ANDREW SAVARIE 1/22/04 AND ALEXANDRE J FUCHS 1/27/04	2074 2076
12/11/2003	00000168	AGREED ORDER PLTF'S MOTION TO COMPEL TO NON PARTY BANK OF AMERICA NA A NA BOA NOT PRODUCE DOCS DATED AFTER 2/6/01 DTD 12/2/03 EM	2077 2078
12/12/2003	00000169	NOTICE OF UNAVAILABILITY OF JACK SCAROLA	2079 2080
12/12/2003	00000170	NOTICE (OF DEFT'S OPPOSITION TO COLEMAN (PARENT) HOLDINGS, INC.'S AMENDED MOTION TO COMPEL CONCERNING EMAILS)	2081 2086

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12/15/2003	00000171	NOTICE OF TAKING DEPOSITION AMENDED- TO TYRONE CHANGE	2087 2089
12/15/2003	00000172	ORDER THAT DEFT'S MOTION TO DISMISS PURSUANT TO FL RULE OF CIVIL PROCEDURE 1.061 OR, IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS IS DENIED.	2090 2091
12/15/2003	00000173	ORDER AND DIRECTIONS TO THE CLERK TO DOCKETS AND FILE THE SELECTED MATERIALS ON DEFT'S MOTION TO DISMISS PURSUANT UANT TO FL RULE OF CIVIL PROCEDURE 1.061 OR, IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS.	2092 2093
12/15/2003	00000174	MOTION TO DISMISS BY DEFT'S, PURSUANT TO FL RULE OF CIVIL PROCEDURE 1061 OR, IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS	2094 2140
12/16/2003	00000175	ORDER AND NOTICE OF HEARING ON COLEMAN HOLDINGS INC.'S MOTION TION TO COMPEL CONCERNING E MAILS IS HEREBY SET FOR 12/17/03 AT 10 AM	2141 2142
12/17/2003	00000176	ORDER THAT PLTF'S ORE TENUS MOTION TO SHORTEN TIME IS GRANTED.	2143 2144
12/18/2003	00000177	REQUEST BY PLTF CPH'S THIRD, FOR PRODUCTION OF DOCUMENTS S	2145 2153
12/18/2003	00000178	ORDER AND DIRECTIONS TO THE CLERK TO DOCKET AND FILE THE COPY COPY OF JOHN PLOTNICK'S SEPT 9, 2003 DEPO TRANSCRIPT. T	2154 2155
12/18/2003	00000179	DEPOSITION (COPY) OF JOHN H. PLOTNICK ON 9/9/03 AT 9:30 AM	2156 2200

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12/18/2003	00000179	DEPOSITION	2201 2271
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12/18/2003	00000180	ORDER THAT COLEMAN (PARENT) HOLDINGS INC.'S AMENDED MOTION TO N TO COMPEL CONCERNING EMAILS IS HEREBY GRANTED, IN PART.	2272 2273
12/18/2003	00000181	ORDER THAT DEFT'S MOTION TO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT IS HEREBY GRANTED IN PART, AND DENIED IN PART. COURT HAS SEALED A COMPLETE COPY OF THE SETTLEMENT AGREEMENT AND PLACED IT IN THE COURT FILE E	2274 2289
12/18/2003	00000182	SEALED PER COURT ORDER 12/4/03	2290 2290
12/19/2003	00000183	MOT/NOT TO SET JURY TRIAL BY PLTFS UP ON 12/23/03	2291 2292
12/19/2003	00000184	NOTICE OF TAKING DEPOSITION AMENDED- TO TYRONE CHANG	2293 2295
12/19/2003	00000185	MOTION BY PLTF, FOR A PROTECTIVE ORDER TO BAR CERTAIN NON PARTY DISCOVERY	2296 2334
12/19/2003	00000186	NOTICE OF HEARING 12/30/03 AT 8:45 AM. ON PLTF'S MOTION FOR A PROTECTIVE ORDER TO BAR CERTAIN NON PARTY DISCOVERY	2335 2337
12/29/2003	00000187	MOTION TO COMPEL BY MORGAN STANLEY & CO., INCORPORATED, DISCOVERY	2338 2365
12/29/2003	00000188	MOTION (VERIFIED) BY DEFT MORGAN STANLEY & CO., INC., TO ADMIT MICHAEL C. OCCHUIZZO, PRO HAC VICE - PROPOSED	2366 2371

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		ORDER ATTACHED THERETO		
12/30/2003	00000189	NOTICE (DEFT'S OPPOSITION TO PLTF'S MOTION FOR A PROTECTIVE RODER TO BAR CERTAIN NON PARTY DISCOVERY)	2372	2398
12/30/2003	00000190	RE-NOTICE OF HEARING 1/7/04 AT 8:45 AM ON PLTF'S MOTION FOR A PROTECTIVE ORDER TO BAR CERTAIN NON PARTY DISCOVERY	2399	2400
		VOLUME NUMBER THIRTEEN		
12/30/2003	00000190	RE-NOTICE OF HEARING	2401	2401
		CONTINUED FROM PREVIOUS VOLUME		
12/30/2003	00000191	NOTICE OF TAKING DEPOSITION AMENDED- TO WILLIAM PRIUTT; DENNIS PASTRANA; MARK BROCKELMAN AND LAWRENCE BORNSTEIN	2402	2403
12/31/2003	00000192	NOTICE OF HEARING 1/8/04 AT 8:45 AM. ON DEFT MORGAN STANLEY & CO., INCORPORATED'S MOTION TO COMPEL DISCOVERY	2404	2406
01/05/2004	00000193	RE-NOTICE OF HEARING 1/8/04 AT 8:45 AM MOTION FOR PROTECTIVE ORDER	2407	2409
01/06/2004	00000194	MOTION TO COMPEL DISCOVERY	2410	2425
01/06/2004	00000195	NOTICE OF HEARING 1/12/04 AT 8:45 AM MOTION TO COMPEL	2426	2428
01/06/2004	00000196	ORDER SETTING JUR TRIAL AND DIRECTING PRETRIAL AND MEDIATION PROCEDURES 3/12/04	2429	2433
01/07/2004	00000197	ORDER GRANTING VERIFIED MOTION TO ADMIT MICHAEL C OCCHUIZZO PRO HAC VICE	2434	2435

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01/07/2004	00000198	NOTICE OF HEARING ON 1/12/04 AT 8:45 AM PLTF'S MTN TO COMPEL	2436 2438
01/08/2004	00000198	A AGREED ORDER GRANTING DFTS MOTION TO COMPEL DISCOVERY	2439 2440
01/08/2004	00000198	B ORDER AND NOTICE OF HEARING - 01/08/04 @ 12:30 PM	2441 2442
01/08/2004	00000198	C NOTICE OF WITHDRAWAL OF PLTF'S MOTION TO COMPEL DTD 1/5/04	2443 2444
01/09/2004	00000199	NOTICE OF NON FINAL APPEAL TO 4DCA OF NON FINAL ORDERS-COPIES ATTACHED	2445 2448
01/09/2004	00000200	MOTION TO COMPEL	2449 2455
01/09/2004	00000201	RESPONSE TO: TO MORGAN STANLEY & CO INC. MOTION TO COMPEL DISCOVERY ERY	2456 2460
01/12/2004	00000202	ORDER THAT PLTF MOTION FOR A PROTECTIVE ORDER TO BAR CERTAIN NON-PARTY DISCOVERY IS GRANTED.	2461 2462
01/12/2004	00000203	MOTION FOR SPECIAL TRIAL SETTING	2463 2465
01/14/2004	00000203	A NOTICE OF WITHDRAWAL OF JOSEPH IANNO JR.	2466 2467
01/14/2004	00000203	B ORDER ON DEFTS MOTION TO COMPEL DISCOVERY AND ORE TENUS MOTION TO CONTINUE AND ORDER SETTING CASE MANAGEMENT CONFERENCE IS GRANTED.	2468 2471
01/15/2004	00000205	NOTICE OF TAKING DEPOSITION ROBERT W KITTS	2472 2473
01/15/2004	00000206	NOTICE OF HEARING 2/20/04 AT 3:30 PM MOTION FOR SPECIAL TRIAL SETTING	2474 2475

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01/16/2004	00000207	MOTION FOR ISSUANCE OF COMMISSIONS TO:KAREN KAY CLARK;FRANK N GIFFORD;ROBERT K DUFFY;JOSEPH P PAGE;WILLIAM H SPOOR;ADAM EMMERICH;STEVEN COHEN;STEVEN K GELLER;DONALD NALD UZZI;ANN DIBBLE JORDAN ** UP W/UNSIGNED ORDER 1/21/04	2476	2483
01/20/2004	00000208	NOTICE OF TAKING DEPOSITION MORGAN STANLEY	2484	2487
01/21/2004	00000209	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO ALEXANDRE FUCHS	2488	2489
01/21/2004	00000210	NOTICE OF TAKING DEPOSITION (AMENDED) TO MORGAN STANLEY	2490	2492
01/21/2004	00000211	AGREED ORDER APPOINTING COMMISSIONERS & COMMISSIONS - SEE ORDER ** ** 1/26/04 - 10 CERT COPIES OF COMMISSION MLD TO ATTY ATTY IANNO **	2493	2496
01/22/2004	00000212	RESPONSE TO: SUPPLEMENTAL AND OBJECTIONS TO DEFT MORGAN STANLEY & CO & CO INC THIRD SET OF INTERROG.	2497	2502
01/22/2004	00000213	MOTION TO CLARIFY AND ENFORCE STIPULATIONS MADE BY COLEMAN PARENT HOLDING AT THE JANUARY 8,204 HEARING	2503	2534
01/22/2004	00000214	NOTICE OF HEARING 2/5/04 AT 8:45 AM MOTION TO CLARIFY	2535	2537
02/02/2004	00000215	AMENDED NOTICE OF DEPOSITION OF MORGAN STANLEY	2538	2541
02/02/2004	00000216	AMENDED NOTICE OF DEPOSITION OF ALEXANDRE FUCHS	2542	2543
02/05/2004	00000217	ORDER ON DEFT MORGAN STANLEY &CO INC MOTION TO CLARIFY AND	2544	2546

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		ENFORCE STIPULATIONS MADE BY PLTF AT THE JANUARY 8/2004 2004 HEARING IS DENIED.	
02/11/2004	00000218	NOTICE OF HEARING 2/19/04 @ 8:45 AM - MOTION TO COMPEL	2547 2549
02/11/2004	00000219	MOTION TO COMPEL PRODUCTION OF DOCUMENTS RELATING TO EMPLOYEE PERFORMANCE	2550 2565
02/12/2004	00000220	NOTICE OF FILING PLEADING UNDER SEAL TO DEFT	2566 2567
02/17/2004	00000220	A SEALED PER ORDER DTD 7/31/03	2568 2568
02/17/2004	00000221	STATEMENT OF UNRESOLVED LEGAL ISSUES	2569 2571
02/17/2004	00000222	NOTICE OF FILING JOINT SUBMISSION OF PARTIES FOR FEBRUARY 20, 2004 CASE MGMT CONFERENCE-ATTACHMENTS	2572 2585
02/17/2004	00000223	STATEMENT OF UNRESOLVED LEGAL ISSUES	2586 2588
02/17/2004	00000224	NOTICE OF FILING OPPOSITION TO PLT MOTION TO COMPEL PRODUCTION OF DOCUMENTS RELATING TOEMPLOYEE PERFORMANCE	2589 2600
		VOLUME NUMBER FOURTEEN	
02/19/2004	00000225	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO SHANI BOONE; LILI RAFII; JAMES STYNES; RUTH PORAT; MICHAEL HART; ANDREW CONWAY; GENE YOO & JOSHUA WEBBER	2601 2603
02/20/2004	00000226	MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS PURSUANT TO THE PARTIES' WRITTEN AGREEMENT - W/ATTACHMENTS	2604 2634

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02/20/2004	00000227	NOTICE OF HEARING 2/26/04 @ 8:45 AM ON DEF MORGAN STANLEY & CO INC'S M/TO M/TO COMPEL THE PRODUCTION OF DOCUMENTS PURSUANT TO THE THE PARTIES WRITTEN AGREEMENT	2635 2637
02/23/2004	00000227	A ORDER ON JOINT M/TO CONSOLIDATE & DIRECTIONS TO THE CLERK. ACTIONS (2003CA5045 AI & 2003CA5165 AI) ARE CONSOLIDATED FOR DISCOVERY & TRIAL. ALL FURTHER PLEADINGS SHALL BE FILED IN 2003CA5045 AI	2638 2639
02/23/2004	00000227	B SEALED PER ORDER DTD 7/31/04	2640 2640
02/24/2004	00000228	ORDER FOLLOWING CASE MANAGEMENT CONFERENCE & NOTICE OF HEARINGS. ACTION IS SPECIALLY SET FOR JURY TRIAL 1/17/05 @ 9:30 AM. MOTIONS IN LIMINE & OBJECTIONS TO DEPO DESIGNATIONS SET FOR 12/20/04 THRU 12/22/04 @ 9:30 9:30 AM. CASE MANAGEMENT CONFERENCES & HEARING ON ALL OUTSTANDING MOTIONS SHALL BE HELD 3/19/04 @ 3:30 PM; 4/16/04 @ 4:00PM; 5/7/04 @ 8:00AM; 6/4/04 @ 8:00 AM; 7/2/04 @ 8:00 AM; 7/23/04 @ 9:00 AM; 8/13/04 @ 8:00 AM; AM; 8/27/04 @ 8:00 AM; 9/23/04 @ 3:00PM; 10/15/04 @ 8:00 AM; 11/5/04 @ 8:00 AM AND 12/3/04 @ 8:00AM.	2641 2645
02/27/2004	00000229	MOTION FOR ENTRY OF ORDER	2646 2648
02/27/2004	00000230	NOTICE OF HEARING 3/3/04 @ 8:30 AM ON PLTFS M/FOR ENTRY OF ORDER	2649 2651
03/02/2004	00000231	SEALED PER ORDER DTD 7/31/03	2652 2652
03/02/2004	00000232	SEALED PER ORDER DTD 7/31/03	2653 2653
03/02/2004	00000233	RESPONSE TO: TO MORGAN STANLEY & CO INC'S FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS	2654 2658

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03/03/2004	00000234	ORDER GRANTING IN PART & DENYING IN PART PLTFS M/TO COMPEL PRODUCTION OF DOCUMENTS RELATING TO EMPLOYEE PERFORMANCE. - SEE ORDER	2659 2661
03/03/2004	00000235	RE-NOTICE OF HEARING 3/19/04 @ 3:30 PM ON DEFS M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO DEFS FIRST REQUEST FOR PRODUCTION	2662 2664
03/04/2004	00000236	NOTICE OF TAKING DEPOSITION TO RC OF BLOOMBERG INC	2665 2667
03/04/2004	00000237	NOTICE OF TAKING DEPOSITION TO RC OF HILL & KNOWLTON INC	2668 2670
03/08/2004	00000238	NOTICE OF SERVICE OF CONFIDENTIAL AMENDED ANSWERS TO DEFS FIRST SET OF INTERROG'S	2671 2673
03/12/2004	00000239	APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S M/FOR A RULE TO SHOW SHOW CAUSE	2674 2800
VOLUME NUMBER FIFTEEN			
03/12/2004	00000239	APPENDIX	2801 2876
03/12/2004	00000240	CONTINUED FROM PREVIOUS VOLUME MOTION TO COMPEL CPH'S RESPONSE TO MORGAN STANLEY & CO'S FOURTH SET OF INTERROG'S	2877 2880
03/12/2004	00000241	NOTICE OF JOINT SUBMISSION OF THE PARTIES FOR 3/19/04 CASE MANAGEMENT CONFERENCE	2881 2891
03/12/2004	00000242	MOTION FOR PERMISSION TO HAVE 3RD PARTY RETRIEVE MORGAN STANLEY E-MAIL & OTHER RESPONSIVE DOCUMENTS	2892 2896

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03/12/2004	00000243	NOTICE OF HEARING 3/19/04 @ 3:30 PM ON DEF MORGAN STANLEY & CO INC'S M/TO M/TO COMPEL COLEMAN (PARENT) HOLDINGS INC'S RESPONSE TO E TO FOURTH SET OF INTERROG'S	2897	2899
03/12/2004	00000244	NOTICE OF HEARING 3/19/04 @ 3:30 PM ON (1) COLEMAN (PARENT) HOLDINGS INCS INCS M/FOR A RULE TO SHOW CAUSE (FILED UNDER SEAL) (2) COLEMAN (PARENT) HOLDINGS INC'S M/FOR PERMISSION TO HAVE 3RD PARTY RETRIEVE MORGAN STANLEY E-MAIL & OTHER RESPONSIVE DOCUMENTS	2900	2901
03/12/2004	00000244	A NOTICE OF FILING PLEADING UNDER SEAL	2902	2903
03/12/2004	00000244	B MOTION FOR A RULE TO SHOW CAUSE *** UNSEALED PER ORDER DTD 12/3/04	2904	2917
03/15/2004	00000245	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FILE ATTY JOSEPH IANNO'S LETTER DTD 3/12/04	2918	2919
03/15/2004	00000246	CORRESPONDENCE TO HONORABLE MAAS FROM JOSEPH IANNO JR ESQ DTD 3/12/04 /04	2920	2920
03/15/2004	00000247	ORDER (MODIFIED) GRANTING IN PART & DENYING IN PART PLTF COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL PRODUCTION OF DOCUMENTS RELATING TO EMPLOYEE PERFORMANCE - SEE ORDER	2921	2923
03/17/2004	00000248	SUBPOENA RETURNED / SERVED TO RC OF BLOOMBERG INC	2924	2932
03/17/2004	00000249	RESPONSE TO: TO MORGAN STANLEY'S M/TO COMPEL PURSUANT TO ALLEGED WRITTEN AGREEMENT	2933	2942
03/17/2004	00000250	MOTION (VERIFIED) TO ADMIT MARK C HANSEN PRO HAC VICE	2943	2949

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03/17/2004	00000251	MOTION (VERIFIED) TO ADMIT JAMES M WEBSTER III PRO HAC VICE E	2950 2956
03/17/2004	00000252	MOTION (VERIFIED) TO ADMIT REBECCA A BEYNON PRO HAC VICE	2957 2963
03/17/2004	00000253	NOTICE OF HEARING 3/19/04 @ 3:30 PM ON MORGAN STANLEY & CO INC'S & MORGAN STANLEY SENIOR FUNDING INC'S VERIFIED M/TO ADMIT JAMES M WEBSTER III PRO HAC VICE	2964 2966
03/17/2004	00000253 A	SEALED PER ORDER DTD 7/31/03	2967 2967
03/18/2004	00000254	NOTICE OF FILING & MORGAN STANLEY SENIOR FUNDING INC - PLEADINGS UNDER SEAL	2968 2969
03/18/2004	00000255	NOTICE OF FILING & MORGAN STANLEY SENIOR FUNDING INC, ATTACHED ORIGINAL DECLARATIONS	2970 2977
03/18/2004	00000256	RESPONSE TO: TO MORGAN STANLEY & CO INC'S SECOND SET OF REQUESTS FOR FOR ADMISSION	2978 2988
03/18/2004	00000257	NOTICE OF FILING & MORGAN STANLEY SENIOR FUNDING INC, ATTACHED EXHIBITS TO OPPOSITION TO M/FOR A RULE TO SHOW CAUSE	2989 3000
		VOLUME NUMBER SIXTEEN	
03/18/2004	00000257	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	3001 3200
		VOLUME NUMBER SEVENTEEN	

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03/18/2004	00000258	SEALED PER ORDER DTD 7/31/03	3201 3201
03/19/2004	00000259	AGREED ORDER ON DEF MACANDREWS & FORBES HOLDINGS INC'S & COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO DEFS FIRST REQUEST FOR PRODUCTION - SEE ORDER FOR DETAILS	3202 3203
03/19/2004	00000260	AGREED ORDER CONCERNING PRETRIAL SCHEDULE - SEE ORDER FOR DETAILS ILS	3204 3207
03/22/2004	00000261	ORDER AND NOTICE OF HEARING. W/IN 10 DAYS DEFS SHALL PRODUCE DUCE FOR INSPECTION & COPYING BY PLTF ALL EXHIBIT A'S, DECLARATION OF ACKNOWLEDGEMENT & AGREEMENT TO BE BOUND BY PROTECTIVE ORDER. PLTF'S M/FOR RULE TO SHOW CAUSE & MORGAN STANLEY & CO INC AND MORGAN STANLEY SENIOR FUNDING INCS VERIFIED M/TO ADMIT REBECCA A BEYNON PRO HACE VICE; VERIFIED M/TO ADMIT JAMES M WEBSTER III PRO HAC VICE & VERIFIED M/TO ADMIT MARK C HANSEN POR HACE VICE SHALL BE HELD 4/30/04 STARTING @ 9:00 AM	3208 3210
03/22/2004	00000262	ORDER MORGAN STANLEY'S M/TO COMPEL PURSUANT TO ALLEGED WRITTEN AGREEMENT IS DENIED	3211 3212
03/22/2004	00000263	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/FOR PERMISSION TO HAVE 3RD PARTY RETRIEVE MORGAN STANLEY E-MAIL & OTHER RESPONSIVE DOCUMENTS IS DENIED - W/OUT PREJUDICE	3213 3214
03/22/2004	00000264	ORDER MORGAN STANLEY'S M/TO COMPEL RESPONSE TO FOURTH SET OF INTERROG'S IS GRANTED IN PART. W/IN 30 DAYS PLTF SHALL HALL SERVE ITS AMENDED ANSWER	3215 3216
03/24/2004	00000265	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FILE ATTY SKIP SMITHS LETTER DTD 3/23/04	3217 3218

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03/24/2004	00000266	CORRESPONDENCE TO HONORABLE MAAS FROM D CULVER SMITH III PA DTD 3/23/04	3219	3220
03/29/2004	00000267	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO LILI RAFII	3221	3222
03/29/2004	00000268	MOTION (VERIFIED) OF MACANDREWS & FORBES HOLDINGS INC'S & COLEMAN (PARENT) HOLDINGS INC, TO PERMIT FOREIGN ATTY TO APPEAR	3223	3227
03/30/2004	00000269	RETURNED MAIL TO JEROLD SOLOVY ESQ	3228	3233
04/02/2004	00000270	SUBPOENA RETURNED / SERVED TO RC OF HILL & KNOWLTON INC	3234	3242
04/12/2004	00000271	RESPONSE TO: AND OBJECTIONS TO MORGAN STANLEY & CO INC'S SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS TO PLTF	3243	3248
04/12/2004	00000272	MOTION TO COMPEL CONCERNING E-MAILS & OTHER ELECTRONIC DOCUMENTS	3249	3255
04/12/2004	00000273	MOTION TO COMPEL MORGAN STANLEY'S CONSENT TO 3RD PARTY PRODUCTION OF RESPONSIVE E-MAILS	3256	3262
04/12/2004	00000274	NOTICE OF HEARING 4/16/04 @ 4:00 PM ON M/FOR PROTECTIVE ORDER REGARDING THE USE OF CONFIDENTIAL PERSONNEL EVALUATIONS AND M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO MORGAN STANLEY'S FOURTH REQUEST FOR PRODUCTION	3263	3265
04/12/2004	00000275	MOTION FOR PROTECTIVE ORDER OF DEF MORGAN STANLEY & CO INC & PLTF MORGAN STANLEY SENIOR FUNDING INC, REGARDING THE USE OF CONFIDENTIAL PERSONNEL EVALUATIONS - W/ATTACHMENTS	3266	3278
04/12/2004	00000276	MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO MORGAN STANLEY'S	3279	3283

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FOURTH REQUEST FOR PRODUCTION				
04/12/2004	00000277	NOTICE OF FILING PLEADING UNDER SEAL	3284	3285
04/12/2004	00000278	NOTICE OF FILING PLEADING UNDER SEAL	3286	3287
04/12/2004	00000279	NOTICE OF FILING PLEADING UNDER SEAL	3288	3289
04/12/2004	00000280	NOTICE OF FILING PLEADING UNDER SEAL	3290	3292
04/12/2004	00000281	SEALED PER ORDER DTD 7/31/03	3293	3293
04/12/2004	00000282	SEALED PER ORDER DTD 7/31/03	3294	3294
04/12/2004	00000283	SEALED PER ORDER DTD 7/31/03	3295	3295
04/12/2004	00000284	SEALED PER ORDER DTD 7/31/03	3296	3296
04/13/2004	00000285	NOTICE OF JOINT SUBMISSION OF THE PARTIES FOR 4/16/04 CASE MANAGEMENT CONFERENCE	3297	3300
04/14/2004	00000286	RESPONSE TO: TO M/FOR PROTECTIVE ORDER REGARDING USE OF PERSONNEL EVALUATIONS	3301	3306
04/14/2004	00000287	RESPONSE TO: TO M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO MORGAN STANLEY'S FOURTH REQUEST FOR PRODUCTION	3307	3313
04/14/2004	00000288	NOTICE OF FILING OF MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC, EXHIBIT UNDER SEAL	3314	3316

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04/14/2004	00000289	NOTICE OF MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC, OF OPPOSITION TO COLEMAN (PARENT) HOLDING INC'S M/TO COMPEL ANSWERS TO INTERROG'S	3317	3351
04/14/2004	00000290	NOTICE OF FILING OF MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC, ORIG DECLARATION - ATTACHED	3352	3357
04/14/2004	00000291	RESPONSE TO: OF MORGAN STANLEY, & OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL SUPPLEMENTATION OF PRIVILEGE LEGE LOG & OTHER RELIEF	3358	3382
04/14/2004	00000292	NOTICE OF MORGAN STANLEY, OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL CONSENT TO THIRD PARTY PRODUCTIO OF RESPONSIVE E-MAILS	3383	3400
VOLUME NUMBER EIGHTEEN				
04/14/2004	00000292	NOTICE	3401	3417
04/14/2004	00000293	CONTINUED FROM PREVIOUS VOLUME NOTICE OF FILING OF MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC, PLEADING UNDER SEAL	3418	3420
04/14/2004	00000293 A	SEALED PER ORDER DTD 7/31/03	3421	3421
04/14/2004	00000293 B	SEALED PER ORDER DTD 7/31/03	3422	3422
04/16/2004	00000294	NOTICE OF TAKING DEPOSITION (AMENDED) TO SHANI BOONE	3423	3425
04/16/2004	00000295	NOTICE OF FILING OF MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC, PLEADING UNDER SEAL	3426	3428

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04/16/2004	00000296	SEALED PER ORDER DTD 7/31/03	3429	3429
04/19/2004	00000296	A AGREED ORDER ON COLEMAN'S MOTION TO COMPEL CONCERNING E-MAILS AND OTHER ELECTRONIC DOCUMENTS - SEE ORDER FOR DETAILS.	3430	3432
04/19/2004	00000296	B ORDER ON COLEMANS MOTION TO COMOPEL ANSWERS TO INTERROGS - DENIED.	3433	3434
04/19/2004	00000296	C ORDER ON DFT MORGANS MOTION TO COMPEL PRODUCTION OF DOCUMENTS ENTS RESPONSIVE TO MORGAN STANLEYS 4TH REQUEST FOR PRODUCTION - GRANTED IN PART.	3435	3436
04/19/2004	00000296	D ORDER ON COLEMANS MOTION TO COMPEL ANSWERS TO DEPO QUESTIONS AND FOR OTHER RELIEF - GRANTED IN PART.	3437	3438
04/19/2004	00000296	E ORDER ON COLEMANS MOTION TO COMPEL SUPPLEMENTATION OF PRIVILEGE LOG AND OTHER RELIEF - GRANTED IN PART.	3439	3440
04/19/2004	00000296	F ORDER AND NOTICE OF HEARING ON 4/22/04 @8:45AM ON DFTS MOTION TION FOR PROTECTIVE ORDER.	3441	3442
04/19/2004	00000296	G AGREED ORDER ON COLEMANS MOTION TO COMPEL CONSNET TO THIRD PARTY PRODUCTION OF RESPONSIVE E-MAILS - SEE ORDER FOR DETAILS.	3443	3445
04/19/2004	00000296	H ORDER SPECIALLY RESETTING HEARING ON 6/11/04 @1:30PM.	3446	3447
04/23/2004	00000297	APPENDIX (SUPPLEMENTAL) TO COLEMAN (PARENT) HOLDINGS INC'S REPLY EPLY IN SUPPORT OF ITS M/FOR A RULE TO SHOW CAUSE	3448	3524
04/23/2004	00000298	NOTICE OF TAKING DEPOSITION	3525	3537

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		(AMENDED) TO ANDREW CONWAY - W/ATTACHMENTS		
04/23/2004	00000299	NOTICE OF FILING PLEADING UNDER SEAL	3538	3538
04/23/2004	00000300	NOTICE OF FILING PLEADING UNDER SEAL	3539	3540
04/23/2004	00000301	NOTICE OF HEARING 4/30/04 @ 9:00 AM ON (1) COLEMAN (PARENT) HOLIDNGS INC'S M/FOR REMOVAL OF CONFIDENTIALITY DESIGNATIONS (FILED UNDER SEAL)	3541	3543
04/23/2004	00000302	REPLY/RESPONSE IN SUPPORT OF ITS M/FOR A RULE TO SHOW CAUSE ***** UNSEALED PER ORDER DTD 12/3/04	3544	3563
04/23/2004	00000303	MOTION FOR REMOVAL OF CONFIDENTIALITY DESIGNATIONS - W/ATTACHMENTS *** UNSEALED PER ORDER DTD 12/3/04	3564	3594
04/26/2004	00000304	SEALED PER ORDER DTD 7/31/03	3595	3595
04/26/2004	00000305	NOTICE OF TAKING DEPOSITION OF JOSEPH IANNO JR ESQ. TO JOSEPH PAGE	3596	3599
04/26/2004	00000306	ORDER DEF MORGAN STANLEY & CO INC'S M/FOR PROTECTIVE ORDER REGARDING THE USE OF CONFIDENTIAL PERSONNEL EVALUATIONS IONS IS GRANTED IN PART & DENIED IN PART - SEE ORDER DER	3600	3600
		VOLUME NUMBER NINETEEN		
04/26/2004	00000307	NOTICE OF SERVICE OF AMENDED RESPONSE TO MORGAN STANLEY & CO INC'S FOURTH URTH SET OF INTERROG'S UNDER SEAL	3601	3603
04/28/2004	00000308	NOTICE OF TAKING DEPOSITION	3604	3606

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		(AMENDED/VIDEOTAPE) OF JOSEPH IANNO JR, TO JOSEPH PAGE AGE	
04/30/2004	00000309	MOTION & MORGAN STANLEY SENIOR FUNDING INC, FOR APPLICATION OF N OF NEW YORK LAW	3607 3610
04/30/2004	00000310	NOTICE OF FILING & MORGAN STANLEY SENIOR FUNDING INC, PLEADING UNDER SEAL	3611 3613
04/30/2004	00000311	ORDER CANCELING HEARING SET FOR 5/7/04	3614 3615
04/30/2004	00000312	SEALED PER COURT ORDER DTD 7/31/03	3616 3616
05/03/2004	00000313	AGREED ORDER COLEMAN (PARENT) HOLDINGS INC'S M/FOR REMOVAL OF CONFIDENTIALITY DESIGNATIONS IS GRANTED. THE CONFIDENTIAL DESIGNATION ON THE EXECUTED COPIES OF EXHIBIT A TO THE STIPULATED CONFIDENTIALITY ORDER THAT MORGAN STANLEY PRODUCED TO CPH ON 3/31/04 IS REMOVED D	3617 3618
05/06/2004	00000314	NOTICE OF FILING PLEADING UNDER SEAL	3619 3620
05/06/2004	00000315	MOTION TO ALLOW ARTHUR ANDERSEN LLP ACCESS TO CONFIDENTIAL TRANSCRIPT **** UNSEALED PER ORDER DTD 12/3/04	3621 3622
05/12/2004	00000316	NOTICE OF TAKING DEPOSITION TO JAMES STYNES	3623 3632
05/12/2004	00000317	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO HEATHER STACK; ALAN DEAN & JAMES LURIE IE	3633 3634
05/12/2004	00000318	NOTICE OF TAKING DEPOSITION (AMENDED) TO ANDREW CONWAY	3635 3644

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05/13/2004	00000319	RESPONSE TO: AND OBJECTIONS TO MORGAN STANLEY & CO INC'S 7TH REQUEST UEST FOR PRODUCTION OF DOCUMENTS	3645 3650
05/14/2004	00000320	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO JOSHUA WEBBER, MICHAEL HART & GENE YOO	3651 3653
05/17/2004	00000321	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO HEATHER STACK; ALAN DEAN & JAMES AMES LURIE	3654 3655
05/17/2004	00000322	ORDER PLTFS M/FOR RULE TO SHOW CAUSE IS DEEMED A M/FOR CONTEMPT. DEFS ORE TENUS M/TO STRIKE THE M/FOR CONTEMPT IS DENIED. EITHER SIDE MAY SET THE M/FOR CONTEMPT FOR AN EVIDENTIARY HEARING ONCE DISCOVERY IS COMPLETE	3656 3659
05/17/2004	00000323	NOTICE OF HEARING 5/19/04 @ 8:45 AM ON MACANDREWS & FORBES HOLDINGS INCS & COLEMAN (PARENT) HOLDINGS INC'S VERIFIED M/TO PERMIT FOREIGN ATTY TO APPEAR	3660 3662
05/17/2004	00000324	NOTICE OF HEARING (SPECIAL SET) 5/24/04 @ 8:00 AM ON (1) COLEMAN (PARENT) HOLDINGS INCS M/TO ALLOW ARTHUR ANDERSEN LLP ACCESS TO CONFIDENTIAL INFORMATION	3663 3665
05/18/2004	00000325	ORDER AT LEAST 3 BUSINESS DAYS PRIOR TO ANY HEARING PLTF SHALL PROVIDE OPPOSING COUNSEL & THE UNDERSIGNED A COPY COPY OF THE TRANSCRIPT FROM THE 4/30/04 HEARING, W/THE PORTIONS PLTF SEEKS TO HAVE EXEMPTED FROM THE CONFIDENTIALITY ORDER HIGHLIGHTED.	3666 3667
05/18/2004	00000326	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FILE ATTY JACK SCAROLA'S LETTER DTD 5/12/04	3668 3669
05/18/2004	00000327	CORRESPONDENCE TO HON ELIZABETH MAASS FROM JACK SCAROLA DTD 5/12/04	3670 3672

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05/18/2004	00000328	ORDER AND DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE ATTY JOSEPH IANNO'S LETTER DTD 5/14/04 4	3673 3674
05/18/2004	00000329	CORRESPONDENCE TO HONORABLE MAASS FROM JOSEPH IANNO JR ESQ DTD 5/14/04 4/04	3675 3675
05/18/2004	00000330	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FILE ATTY JEROLD SOLOVY'S LETTER DTD 5/14/04	3676 3677
05/18/2004	00000331	CORRESPONDENCE TO HONORABLE MAASS FROM JEROLD S SOLOVY DTD 5/14/04	3678 3678
05/19/2004	00000332	ORDER MAFCO & CPH'S VERIFIED M/TO PERMIT FOREIGN ATTY SUZANNE ANNE J PRYSAK TO APPEAR PRO HAC VICE IS GRANTED.	3679 3680
05/19/2004	00000333	ORDER SETTING HEARING (SPECIALLY RE-SETTING) HEARING ON COLEMAN (PARENT) HOLDINGS INC'S M/TO ALLOW ARTHUR ANDERSEN LLP ACCESS TO S TO CONFIDENTIAL INFO SET FOR 5/24/04 IS CANCELED & RESET FOR 5/28/04 @ 11:30 AM	3681 3682
05/19/2004	00000333 A	EXHIBIT LIST OF PLTF(S) IN EVIDENCE DEPT. MANDATORY DTD 05-25-04. .	3683 3684
05/20/2004	00000334	NOTICE OF COMPLIANCE W/ORDER OF 5/17/04 **** UNSEALED PER ORDER DTD 12/3/04	3685 3685
05/21/2004	00000335	MOTION FOR ENTRY OF AN ORDER TO CORRECT FILING ERROR	3686 3743
05/21/2004	00000336	NOTICE OF HEARING 5/24/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC &	3744 3746

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		MACANDREWS & FORBES HOLDINGS INC'S M/FOR ENTRY OF AN ORDER TO CORRECT FILING ERROR	
05/21/2004	00000337	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO HEATHER STACK, ALAN DEAN & JAMES AMES LURIE	3747 3749
05/25/2004	00000338	ORDER DIRECTING THE SEALING OF PRIOR FILING. CLERK SHALL SEAL COLEMAN (PARENT) HOLDINGS INC'S NOTICE OF COMPLIANCE BEARING CERT OF SERVICE DATE 5/20/04	3750 3751
05/26/2004	00000339	NOTICE OF FILING PLEADING UNDER SEAL	3752 3754
05/26/2004	00000340	SEALED PER ORDER DTD 7/31/03	3755 3755
05/28/2004	00000341	ORDER AND RE-NOTICE OF HEARING. HEARING ON COLEMAN (PARENT) HOLDING INC'S M/TO ALLOW ARTHUR ANDERSEN LLP ACCESS TO CONFIDENTIAL INFO IS RE-SET FOR 6/7/04 @ 1:30 PM	3756 3758
05/28/2004	00000342	NOTICE OF TAKING DEPOSITION (AMENDED) TO JAMES STYNES	3759 3768
06/01/2004	00000343	REQUEST FOR PRODUCTION OF DOCUMENTS CONCERNING ITS M/FOR CONTEMPT	3769 3771
06/01/2004	00000344	NOTICE OF PRODUCTION NON PARTY	3772 3785
06/01/2004	00000345	NOTICE OF FILING PLEADING UNDER SEAL	3786 3787
06/01/2004	00000346	NOTICE OF FURTHER INTERROG'S CONCERNING ITS M/FOR CONTEMPT **** UNSEALED PER ORDER DTD 12/3/04	3788 3791
06/02/2004	00000347	SEALED PER ORDER DTD 7/31/03	3792 3792

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06/02/2004	00000348	NOTICE OF FILING & OF MORGAN STANLEY SENIOR FUNDING INC, PLEADING UNDER SEAL	3793	3795
06/04/2004	00000349	NOTICE OF FILING PLEADING UNDER SEAL	3796	3798
06/04/2004	00000350	SEALED PER ORDER DTD 7/31/03	3799	3799
06/04/2004	00000351	NOTICE OF FILING PLEADING UNDER SEAL	3800	3800
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06/04/2004	00000351	NOTICE OF FILING	3801	3801
06/04/2004	00000352	CONTINUED FROM PREVIOUS VOLUME SEALED PER ORDER DTD 7/31/03	3802	3802
06/04/2004	00000353	MOTION OF MORGAN STANLEY, TO REMOVE CONFIDENTIAL DESIGNATION FROM INTERROG'S - W/ATTACHMENTS	3803	3836
06/04/2004	00000354	NOTICE OF HEARING 6/11/04 @ 1:30 PM ON MORGAN STANLEY & MSSF'S M/FOR PROTECTIVE ORDER FILED 4/16/04 (FILED UNDER SEAL)	3837	3839
06/07/2004	00000355	NOTICE OF HEARING 6/11/04 @ 1:30 PM ON MORGAN STANLEY & CO INC'S & MORGAN RGAN STANLEY SENIOR FUNDING INC'S M/TO REMOVE CONFIDENTIAL DESIGNATION FROM INTERROG'S	3840	3842
06/08/2004	00000356	ORDER PLTF'S M/TO ALLOW ARTHUR ANDERSEN LLP ACCESS TO CONFIDENTIAL TRANSCRIPT IS GRANTED IN PART - SEE ORDER. DER.	3843	3844
06/08/2004	00000357	NOTICE	3845	3853

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		OF JOINT SUBMISSION OF THE PARTIES FOR 6/11/04 CASE MANAGEMENT CONFERENCE	
06/09/2004	00000358	NOTICE OF FILING PLEADING UNDER SEAL	3854 3855
06/09/2004	00000359	SEALED PER ORDER DTD 7/31/03	3856 3856
06/09/2004	00000360	NOTICE OF FILING PLEADING UNDER SEAL	3857 3858
06/09/2004	00000361	RESPONSE TO: OF COLEMAN (PARENT) HOLDINGS INC, IN OPPOSITION TO M/FOR PROTECTIVE *** UNSEALED PER ORDER DTD12/3/04 04	3859 3936
06/10/2004	00000362	MOTION JOINT TO CANCEL 6/11/04 CASE MANAGEMENT CONFERENCE	3937 3939
06/11/2004	00000363	COPY (FAXED) JOINT MOTION TO CANCEL 6/11/04 CASE MANAGEMENT CONFERENCE	3940 3942
06/11/2004	00000364	AGREED ORDER REGARDING MORGAN STANLEY'S MOTION FOR PROTECTIVE ORDER ON OR BEFORE 6/16/04	3943 3944
06/11/2004	00000365	AGREED ORDER REGARDING MORGAN STANLEY'S MOTION TO REMOVE CONFIDENTIALITY DESIGNATION FROM INTERROG W/OUT PREJUDICE	3945 3946
06/11/2004	00000366	AGREED ORDER CANCELLING 6/11/04 CASE MANAGEMENT CONFERENCE IS GRANTED.	3947 3948
06/11/2004	00000367	NOTICE OF SERVING FURTHER INTERROG CONCERNING COLEMAN (PARENT) ENT) HOLDINGS, INC.'S MOTION FOR CONTEMPT	3949 3950
06/14/2004	00000368	NOTICE OF UNAVAILABILITY	3951 3953

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Filing Date	Doc No	Description	Page Range
06/16/2004	00000369	REQUEST FOR ADMISSIONS (THIRD SET) TO PLTF	3954 3962
06/16/2004	00000370	REQUEST (8TH), FOR PRODUCTION OF DOCUMENTS TO PLTF	3963 3969
06/17/2004	00000371	NOTICE OF SERVICE OF ANSWERS TO COLEMAN (PARENT) HOLDINGS INC'S INTERROG'S	3970 3971
06/18/2004	00000372	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO TODD J SLOTKIN	3972 3974
06/18/2004	00000373	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO FRANK GIFFORD	3975 3977
06/18/2004	00000374	NOTICE OF FILING ORIG DISCOVERY OBJECTIONS & REQUESTS	3978 4000
VOLUME NUMBER TWENTY ONE			
06/18/2004	00000374	NOTICE OF FILING	4001 4019
06/18/2004	00000375	CONTINUED FROM PREVIOUS VOLUME NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO JORAM C SALIG	4020 4022
06/18/2004	00000376	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO FRANK GIFFORD	4023 4025
06/18/2004	00000377	REQUEST (FURTHER) FOR PRODUCTION OF DOCUMENTS CONCERNING COLEMAN (PARENT) HOLDINGS INC'S M/FOR CONTEMPT	4026 4033
06/18/2004	00000378	NOTICE OF FILING INTERROGS (FURTHER) CONCERNING COLEMAN (PARENT) HOLDINGS INC'S M/FOR CONTEMPT	4034 4040
06/21/2004	00000379	SEALED PER ORDER DTD 7/31/03	4041 4041

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06/21/2004	00000380	NOTICE OF FILING PLEADING UNDER SEAL	4042	4044
06/22/2004	00000380	A NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO BARRY SCHWARTZ	4045	4048
06/23/2004	00000381	NOTICE OF DFT MACANDREWS & FORBES HOLDINGS INC'S FIRST SET OF INTERR TO PLTF MORGAN STANLEY SENIOR FUNDING INC	4049	4054
06/23/2004	00000382	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO STEVEN K GELLER	4055	4057
06/23/2004	00000383	NOTICE OF TAKING DEPOSITION (AMENDED) TO JAMES STYNES	4058	4060
06/23/2004	00000384	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO ROBERT J DUFFY	4061	4063
06/25/2004	00000385	NOTICE OF HEARING 7/2/04 @ 8:00 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL RESPONSES TO INTERROG'S DTD 6/25/04 (FILED UNDER SEAL)	4064	4066
06/25/2004	00000386	NOTICE OF FILING PLEADING UNDER SEAL	4067	4068
06/25/2004	00000387	NOTICE OF JOINT SUBMISSION OF THE PARTIES FOR 7/2/04 CASE MANAGEMENT CONFERENCE	4069	4079
06/25/2004	00000388	MOTION TO COMPEL RESPONSES TO INTERROG'S - W/ATTACHMENTS ***** UNSEALED PER ORDER DTD 12/3/04	4080	4200
VOLUME NUMBER TWENTY TWO				
06/25/2004	00000388	MOTION TO COMPEL CONTINUED FROM PREVIOUS VOLUME	4201	4296

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Filing Date	Doc No	Description	Page	Range
06/28/2004	00000389	STIPULATION AND ORDER REGARDING INTERROG'S. COURT APPROVES SAID STIPULATION - SEE ORDER	4297	4300
06/28/2004	00000390	NOTICE OF FILING ORIG DISCOVERY REQUEST - ATTACHED	4301	4311
06/29/2004	00000391	NOTICE OF SERVICE OF SUPPLEMENTAL ANSWERS & OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S INTERROG'S	4312	4313
06/29/2004	00000392	MOTION FOR LEAVE TO PROPOUND ADDITIONAL INTERROG'S	4314	4315
06/29/2004	00000393	NOTICE OF HEARING 7/2/04 @ 8:00 AM ON M/FOR LEAVE TO PROPOUND ADDITIONAL INTERROG'S	4316	4318
06/30/2004	00000394	NOTICE OF OPPOSITION TO PLTFS M/FOR LEAVE TO PROPOUND ADDITIONAL INTERROG'S	4319	4321
06/30/2004	00000395	NOTICE OF SERVICE OF ANSWERS & OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S FURTHER INTERROG'S CONCERNING ITS M/FOR CONTEMPT MPT	4322	4323
06/30/2004	00000396	OBJECTION TO COLEMAN (PARENT) HOLDINGS INC'S REQUEST FOR PRODUCTION OF DOCUMENTS CONCERNING ITS M/FOR CONTEMPT PT	4324	4336
06/30/2004	00000397	RESPONSE TO: TO MORGAN STANLEY & CO INC'S REQUEST FOR PRODUCTION OF DOCUMENTS CONCERNING COLEMAN (PARENT) HOLDINGS INC'S M/FOR CONTEMPT	4337	4345
06/30/2004	00000398	NOTICE OF TAKING DEPOSITION TO WILLIAM WRIGHT	4346	4348
06/30/2004	00000399	NOTICE OF TAKING DEPOSITION TO CHRIS WHELAN	4349	4351

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06/30/2004	00000400	NOTICE OF FILING PLEADING UNDER SEAL	4352	4353
06/30/2004	00000401	ANSWER TO MORGAN STANLEY & CO INC'S INTERROG'S CONCERNING COLEMAN (PARENT) HOLDINGS INC'S M/FOR CONTEMPT ***** UNSEALED PER ORDER DTD 12/3/04	4354	4368
06/30/2004	00000402	NOTICE OF FILING PLEADING UNDER SEAL	4369	4370
06/30/2004	00000403	SEALED PER ORDER DTD 7/31/03	4371	4371
07/01/2004	00000404	OBJECTION & MORGAN STANLEY SENIOR FUNDING INC, TO PLTF'S SUBPOENA DUCES TECUM W/OUT DEPO & M/TO QUASH	4372	4374
07/01/2004	00000405	NOTICE OF UNAVAILABILITY OF JACK SCAROLA ESQ	4375	4377
07/02/2004	00000406	STIPULATION AND ORDER REGARDING INTERROG'S AND ORDER APPROVING STIPULATION N	4378	4380
07/07/2004	00000407	REQUEST FOR ADMISSIONS (SECOND SET) TO DEF MORGAN STANLEY & CO	4381	4383
07/07/2004	00000408	SUBPOENA RETURNED / SERVED TO RC OF WACHOVIA BANK NA	4384	4394
07/09/2004	00000409	MOTION TO RESCHEDULE CASE MANAGEMENT CONFERENCE AND TO AMEND HEARING PROCEDURES	4395	4397
07/09/2004	00000410	NOTICE OF HEARING ON 7/14/04 AT 8:45AM, INRE: DE#410	4398	4400

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07/09/2004	00000411	NOTICE OF UNAVAILABILITY FROM 7/15/04 THRU 7/25/04	4401 4402
07/12/2004	00000412	ORDER ON OCLEMAN (PARENT) HOLDINGS INC'S MOTION TO COMPEL RESPONSES TO INTERROGS	4403 4408
07/13/2004	00000413	NOTICE OF TAKING DEPOSITION RC / WACHOVIA BANK NA	4409 4416
07/14/2004	00000414	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO WILLIAM H SPOOR	4417 4419
07/14/2004	00000415	SUBPOENA RETURNED / SERVED TO RC OF WACHOVIA BANK NA	4420 4427
07/15/2004	00000416	NOTICE OF FILING PLEADING UNDER SEAL	4428 4429
07/15/2004	00000417	MOTION TO COMPEL OF COLEMAN (PARENT) HODLINGS INC'S & MACANDREWS & FORBES HOLDINGS INC, ANSWERS TO INTERROG'S & REQUEST FOR PRODUCTION - W/ATTACHMENTS *** UNSEALED PER COURT OURT ORDER DTD 12/3/04	4430 4561
07/15/2004	00000418	NOTICE OF FILING PLEADING UNDER SEAL	4562 4563
07/15/2004	00000419	MOTION OF COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC, TO REDACT CERTAIN REFERENCES TO ANDERSEN SETTLEMENT AGREEMENT TERMS FROM 7/12/04 ORDER DER *** UNSEALED PER ORDER DTD 12/3/04	4564 4574
07/15/2004	00000420	NOTICE OF FILING PLEADING UNDER SEAL	4575 4576
07/15/2004	00000421	SEALED PER ORDER DTD 7/31/03	4577 4577
07/15/2004	00000422	NOTICE OF FILING PLEADING UNDER SEAL	4578 4579

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07/15/2004	00000423	MOTION OF COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC, TO REMOVE CONFIDENTIALITY DESGINATIONS - W/ATTACHMENTS *** UNSEALED PER ORDER DTD 12/3/04	4580	4600
VOLUME NUMBER TWENTY FOUR				
07/15/2004	00000423	MOTION	4601	4658
07/15/2004	00000424	CONTINUED FROM PREVIOUS VOLUME NOTICE OF FILING PLEADING UNDER SEAL	4659	4660
07/15/2004	00000425	ANSWER TO INTERROGATORIES TO MORGAN STANLEY & CO INC'S FURTHER INTERROG CONCERNING COLEMAN (PARENT) HOLDINGS IN'CS M/FOR CONTEMPT **** UNSEALED PER ORDER DTD 12/3/04	4661	4664
07/15/2004	00000426	MOTION TO SET A HEARING ON THE CONTEMPT MOTION AND EXTEND MERITS DISCOVERY - W/ATTACHMENTS	4665	4708
07/15/2004	00000427	RESPONSE TO: TO MORGAN STANLEY & CO INC'S THIRD SET OF REQUESTS FOR ADMISSION	4709	4724
07/15/2004	00000428	RESPONSE TO: TO MORGAN STANLEY & CO INC'S 8TH REQUEST FOR PRODUCTION TION OF DOCUMENTS	4725	4728
07/15/2004	00000429	RESPONSE TO: TO MORGAN STANLEY & CO INC'S FURTHER REQUEST FOR PRODUCTION OF DOCUMENTS CONCERNING COLEMAN (PARENT) HOLDINGS INC'S M/FOR CONTEMPT	4729	4732
07/15/2004	00000430	ORDER MORGAN STANLEY'S M/TO RESCHEDULE CASE MANAGEMENT CONFERENCE IS DENIED. COURT DEFERS RULING ON DEFS ORE TENUS M/TO CONTINUE HEARING ON PLTF'S MOTIONS TO COMPEL	4733	4734

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		RESPONSES TO DISCOVERY CONTEMPT. MORGAN STANLEY'S M/TO M/TO AMEND HEARING PROCEDURES IS GRANTED.	
07/16/2004	00000431	NOTICE OF PARTIES, OF JOINT SUBMISSION OF THE PARTIES FOR 7/23/04 CASE MANAGEMENT CONFERENCE	4735 4745
07/16/2004	00000432	NOTICE OF HEARING 7/23/04 @ 9:00 AM ON MORGAN STANLEY'S M/TO SET A HEARING ON THE CONTEMPT MOTION AND EXTEND MERITS DISCOVERY	4746 4748
07/16/2004	00000433	NOTICE OF HEARING 7/23/04 @ 9:00 AM ON (1) CPH & MAFCO'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS, FILED UNDER SEAL 7/15/04; /04; (2) CPH & MAFCO'S M/TO STRIKE VERIFICATIONS OF INTERROGS, COMPEL PROPER VERIFICATIONS AND FOR OTHER RELIEF FILED UNDER SEARL 7/15/04; (3) CPH & MAFCO'S M/TO REDACT CERTAIN REFERENCES TO ANDERSEN SETTLEMENT AGREEMENT TERMS FROM 7/12/04 ORDER FILED UNDER SEAL 7/15/04; AND (4) CPH & MAFCO'S M/TO COMPEL ANSWERS TO INTERROG'S & REQUESTS FOR PRODUCTION FILED UNDER SEAL 7/15/04	4749 4751
07/16/2004	00000434	NOTICE OF HEARING 7/23/04 @ 9:00 AM ON COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S SUPPLEMENTAL M/TO COMPEL RE: REQUESTS FOR PRODUCTION (FILED UNDER SEAL L)	4752 4754
07/16/2004	00000435	NOTICE OF FILING PLEADING UNDER SEAL	4755 4756
07/16/2004	00000436	SEALED PER ORDER DTD 7/31/03	4757 4757
07/19/2004	00000437	NOTICE OF FILING & MORGAN STANLEY SENIOR FUNDING INC, CONSENT TO M/TO SET A HEARING ON THE CONTEMPT MOTION AND EXTEND MERITS DISCOVERY - ATTACHED	4758 4761
07/21/2004	00000438	NOTICE OF TAKING DEPOSITION	4762 4764

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		(VIDEOTAPE) TO ISHAAN SETH & THOMAS BURCHILL	
07/21/2004	00000439	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO PAUL SHAPIRO	4765 4767
07/21/2004	00000440	NOTICE OF FILING PLEADING UNDER SEAL	4768 4769
07/21/2004	00000441	SEALED PER ORDER DTD 7/31/03	4770 4770
07/21/2004	00000442	NOTICE OF FILING PLEADING UNDER SEAL	4771 4772
07/21/2004	00000443	SEALED PER ORDER DTD 7/31/03	4773 4773
07/21/2004	00000444	NOTICE OF FILING PLEADING UNDER SEAL	4774 4775
07/21/2004	00000445	SEALED PER ORDER DTD 7/31/03	4776 4776
07/21/2004	00000446	NOTICE OF FILING PLEADING UNDER SEAL	4777 4778
07/21/2004	00000447	SEALED PER ORDER DTD 7/31/03	4779 4779
07/22/2004	00000448	NOTICE OF FILING PLEADING UNDER SEAL	4780 4781
07/22/2004	00000449	SEALED PER ORDER DTD 7/31/03	4782 4782
07/22/2004	00000450	MOTION OF MORGAN STANLEY FUNDING, FOR ENLARGEMENT OF TIME TO RESPOND TO FIRST SET OF INTERROG'S	4783 4795
07/23/2004	00000451	NOTICE OF FILING DEMONSTRATIVE EXHIBITS FROM 7/23/04 HEARING - ATTACHED HED	4796 4800

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		VOLUME NUMBER TWENTY FIVE	
07/23/2004	00000451	NOTICE OF FILING	4801 4823
		CONTINUED FROM PREVIOUS VOLUME	
07/28/2004	00000452	ORDER COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS IONS IS GRANTED - SEE ORDER	4824 4825
07/28/2004	00000453	ORDER COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S M/TO REDACT CERTAIN REFERENCES TO ANDERSEN SETTLEMENT AGREEMENT TERMS FROM 7/12/04 ORDER IS DENIED	4826 4827
07/28/2004	00000454	ORDER PLTFS ORE TENUS M/TO DIRECT CLERK TO SEAL EXHIBIT TO THE COURTS ORDER ON DEFS M/TO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT ENTERED 12/4/03 IS DENIED	4828 4829
07/28/2004	00000455	ORDER COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S M/TO STRIKE VERIFICATIONS OF INTERROG'S, G'S, COMPEL PROPER VERIFICATIONS & FOR OTHER RELIEF IS DENIED.	4830 4831
07/28/2004	00000456	ORDER MORGAN STANLEY'S M/TO SET A HEARING ON THE CONTEMPT MOTION & EXTEND MERITS DISCOVERY IS GRANTED IN PART. TRIAL SHALL BE RESET TO OCCUR IN MARCH 2005. COURT DECLINES TO SET A SCHEDULE FOR DISPOSITION OF THE M/FOR /FOR CONTEMPT, PENDING COMPLETION OF HEARINGS DIRECTED TO THE DISCOVERY ISSUES	4832 4833
07/28/2004	00000457	MOTION FOR ENLARGEMENT OF TIME TO COMPLY W/THIS COURT 7/12 ORDER	4834 4837
07/28/2004	00000458	NOTICE OF HEARING	4838 4840

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		8/2/04 @ 8:45 AM ON MORGAN STANLEY'S M/FOR ENLARGEMENT OF TIME TO COMPLY W/THIS COURTS 7/12/04 ORDER		
07/28/2004	00000458	A NOTICE OF FILING PLEADING UNDER SEAL	4841	4842
07/28/2004	00000458	B SEALED PER ORDER DTD 7/31/03	4843	4843
07/29/2004	00000459	NOTICE OF TAKING DEPOSITION (VIDEOTAPED) OF BROOKS HARRIS	4844	4846
07/29/2004	00000460	MOTION OF NON PARTY WACHOVIA BANK, TO QUASH SUBPOENA OR IN THE THE ALTERNATIVE M/FOR PROTECTIVE ORDER	4847	4851
07/29/2004	00000461	ORDER COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S M/TO COMPEL ANSWERS TO INTERROG'S & REQUESTS FOR PRODUCTION IS GRANTED IN PART, DENIED IN PART & RULING DEFERRED IN PART	4852	4853
07/30/2004	00000462	MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS	4854	4858
07/30/2004	00000463	MOTION FOR ENTRY OF ORDER CONCERNING SUPPLEMENTATION OF INTERROG RESPONSES - W/ATTACHMENTS	4859	4893
07/30/2004	00000464	NOTICE OF HEARING 8/13/04 @ 8:00 AM ON (1) CPH'S & MAFCO'S M/TO COMPEL ANSWERS TO INTERROG'S & REQUESTS FOR PRODUCTION FILED 7/15/04; (2) CPH'S & MAFCO'S SUPPLEMENTAL M/TO COMPEL RE: DOCUMENT REQUESTS FILED 7/16/04; AND (3) CPH'S & MAFCO'S M/FOR ENTRY OF ORDER CONCERNING SUPPLEMENTATION TION OF INTERROG RESPONSES FILED 7/30/04	4894	4896
07/30/2004	00000465	NOTICE OF FILING PLEADING UNDER SEAL	4897	4898
07/30/2004	00000466	SEALED PER ORDER DTD 7/31/03	4899	4899

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07/30/2004	00000467	NOTICE OF FILING PLEADING UNDER SEAL	4900	4901
07/30/2004	00000468	SEALED PER ORDER DTD 7/31/03	4902	4902
07/30/2004	00000468 A	NOTICE OF FILING & MACANDREWS & FORBES HOLDINGS INC, PLEADING UNDER SEAL SEAL	4903	4905
07/30/2004	00000468 B	SEALED PER ORDER DTD 7/31/03	4906	4906
08/02/2004	00000469	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO IRWIN ENGELMAN	4907	4909
08/02/2004	00000470	NOTICE OF HEARING 8/2/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S M/TO CLARIFY THIS COURTS 7/26/04 ORDER ON CPH'S & MAFCO'S ORE TENUS MOTION AND THIS COURTS 12/4/03 ORDER ON MORGAN STANLEY'S M/TO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT	4910	4912
08/02/2004	00000471	MOTION TO DISMISS & MORGAN STANLEY SENIOR FUNDING INC, OR STRIKE PLTFS M/FOR CONTEMPT	4913	4924
08/02/2004	00000472	NOTICE OF HEARING 8/13/04 @ 8:00 AM ON MORGAN STANLEY'S M/TO REMOVE CONFIDENTIALITY DESGINATIONS AND MORGAN STANLEY'S M/TO DISMISS OR STRIKE PLTFS M/FOR CONTEMPT	4925	4927
08/02/2004	00000473	RE-NOTICE OF HEARING ON 8/4/04 AT 8:45AM ON M/TO CLARIFY	4928	4929
08/03/2004	00000474	MOTION (AMENDED) OF MORGAN STANLEY SENIOR FUNDING, FOR ENLAREMENT OF TIME TO RESPOND TO FIRST SET OF INTERROG'S - W/ATTACHMENTS	4930	4942
08/03/2004	00000475	NOTICE OF SERVICE	4943	4944

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		OF CONFIDENTIAL ANSWERS & OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S INTERROG'S PURSUANT TO THE COURTS 7/12/04 ORDER		
08/03/2004	00000476	RE-NOTICE OF HEARING 8/10/04 @ 8:45 AM ON MORGAN STANLEY'S M/FOR ENLARGEMENT MENT OF TIME TO COMPLY W/THIS COURTS 7/12/04 ORDER	4945	4947
08/03/2004	00000477	RE-NOTICE OF HEARING 8/10/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S AND MACANDREWS & FORBES HOLDINGS INC'S M/TO CLARIFY THIS COURTS 7/26/04 ORER ON CPH'S & MAFCO'S ORE TENUS MOTION AND THIS COURTS 12/4/03 ORDER ON MORGAN STANLEY'S M/TO COMPEL PRODUCITON OF SETTLEMENT AGREEMENT	4948	4950
08/04/2004	00000478	MOTION OF COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S, TO RESET DATE FOR FILING MOTIONS IONS TO AMEND PLEADINGS	4951	4954
08/04/2004	00000479	NOTICE OF HEARING 8/13/03 @ 8:00 AM ON COLEMAN (PARENT) HOLDINGS INC'S AND MACANDREWS & FORBES HODLINGS INCS M/TO RESET DATE FOR FILING MOTIONS TO AMEND PLEADINGS	4955	4957
08/04/2004	00000480	NOTICE OF FILING PLEADING UNDER SEAL	4958	4959
08/04/2004	00000481	SEALED PER ORDER DTD 7/31/03	4960	4960
08/05/2004	00000482	REQUEST (FOURTH) FOR PRODUCTION OF DOCUMENTS	4961	4963
08/06/2004	00000483	NOTICE OF FILING PLEADING UNDER SEAL	4964	4965
08/06/2004	00000484	SEALED PER ORDER DTD 7/31/03	4966	4966
08/06/2004	00000485	NOTICE OF FILING	4967	4968

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PLEADING UNDER SEAL			
08/06/2004	00000486	SEALED PER ORDER DTD 7/31/03	4969 4969
08/06/2004	00000487	REQUEST (FIFTH) FOR PRODUCITON OF DOCUMENTS	4970 4972
08/06/2004	00000488	RESPONSE TO: AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S SECOND SET OF REQUESTS FOR ADMISSION	4973 4977
08/06/2004	00000489	NOTICE OF JOINT SUBMISSION OF THE PARTIES FOR 8/13/04 CASE MANAGEMENT CONFERENCE	4978 4990
08/09/2004	00000490	MOTION TO APPOINT COMMISSION - W/ATTACHMENTS	4991 4996
08/10/2004	00000491	ORDER MORGAN STANLEY'S M/FOR ENLARGEMENT OF TIME TO COMPLY W/THIS COURTS 7/12/04 ORDER IS GRANTED IN PART - SEE ORDER	4997 4998
08/10/2004	00000492	ORDER AND NOTICE OF HEARING. COLEMAN (PARENT) HOLDINGS INC'S NC'S & MACANDREWS & FORBES HOLDINGS INC'S M/TO CLARIFY THIS COURTS 7/26/04 ORDER ON CPH'S & MAFCO'S ORE TENUS MOTION & THIS COURTS 12/4/04 ORDER ON MORGAN STANLEY'S M/TO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT IS SET FOR 8/13/04 @ 8:00 AM	4999 5000
VOLUME NUMBER TWENTY SIX			
08/11/2004	00000493	ORDER MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING DING INC'S M/FOR APPLICATION OF NEW YORK LAW IS GRANTED NTED IN PART - SEE ORDER	5001 5013
08/11/2004	00000494	ORDER	5014 5015

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		MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC'S M/TO SUPPLEMENT RECORD ON MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC'S M/FOR APPLICATION OF NEW YORK LAW IS DENIED		
08/11/2004	00000495	NOTICE OF SERVICE OF PLTF, MORGAN STANLEY SENIOR FUNDING, OF RESPONSES & OBJECTIONS TO DEFS FIRST SET OF INTERROG'S	5016	5018
08/12/2004	00000496	RE-NOTICE OF TAKING DEPOSITION OF DONALD R. UZZI	5019	5036
08/13/2004	00000497	ORDER ON CPH & MAFCO'S M/TO RESET DATE FOR FILING MOTIONS TO AMEND PLEADINGS IS GRANTED IN PART. ALL MOTIONS FOR LEAVE TO FILE AMENDED PLEADINGS SHALL BE SERVED BY 9/7/04	5037	5038
08/13/2004	00000498	ORDER AND NOTICE OF HEARING. CASE MANAGEMENT CONFERENCE SET FOR 10/15/04 IS CANCELED & RE-SET FOR 10/14/04 @ 8:00 AM	5039	5040
08/13/2004	00000499	ORDER AND NOTICE SPECIALLY SETTING HEARING. MORGAN STANLEY'S EY'S M/FOR REHEARING ON A PORITON OF THE COURTS 12/4/03 4/03 ORDER IS GRANTED. REHEARING ON PORTION OF THE COURTS 12/4/03 ORDER WHICH SUBJECTED THE REDACTED SETTLEMENT AGREEMENT TO THE 7/31/03 STIPULATED CONFIDENTIALITY ORDER AND ON THE COURTS OWN MOTION, RECONSIDERATION OF THE 7/31/03 CONFIDENTIALITY ORDER IS R IS SPECIALLY SET 8/27/04 @ 8:00 AM	5041	5043
08/13/2004	00000500	ORDER FOLLOWING CASE MANAGEMENT CONFERENCE. AT THE NEXT CASE MANAGEMENT CONFERENCE, COUNSEL SHALL BE PREPARED TO DISCUSS W/SPECIFICITY EACH PARTY'S ABILITY TO BE PREPARED FOR TRIAL BEGINNING 1/18/05	5044	5045
08/13/2004	00000500 A	ORDER ON COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S M/FOR ENTRY OF ORDER CONCERNING	5046	5051

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		SUPPLEMENTATION OF INTERROG RESPONSES. ALL PARTIES SHALL SUPPLEMENT AND UPDATE THEIR INTERROG RESPONSES		
08/16/2004	00000501	REQUEST FOR ADMISSIONS (THIRD SET) TO DEF MORGAN STANLEY & CO	5052	5054
08/17/2004	00000502	REQUEST FOR ADMISSIONS (FOURTH SET) TO DEF MORGAN STANLEY & CO	5055	5057
08/17/2004	00000503	MOTION TO COMPEL AND OF MACANDREWS & FORBES HOLDINGS INC, SUPPLEMENTATION OF RESPONSES TO REQUESTS FOR ADMISSIONS	5058	5072
08/17/2004	00000504	NOTICE OF HEARING 8/27/04 @ 8:00 AM ON (1) CPH & MAFCO'S M/TO COMPEL SUPPLEMENTATION OF RESPONSES TO REQUESTS FOR ADMISION FILED 8/17/04; (2) CPH & MAFCO'S M/TO COMPEL COMPLETE ANSWERS TO INTERROG #1 & 3 IN MAFCO'S FIRST SET OF INTERROG'S TO MORGAN STANLEY SENIOR FUNDING INC; (3) CPH & MAFCO'S M/TO COMPEL ANSWERS TO INT & RTP; (4) CPH & MAFCO'S SUPPLEMENTAL M/TO COMPEL RE: DOCUMENT REQUESTS; AND (5) CPH & MAFCO'S M/TO CLARIFY THIS COURTS 7/26/04 ORDER ON CPH'S & MAFCO'S ORE TENUS MOTION AND THIS COURTS 12/4/03 ORDER ON MORGAN STANLEY'S M/TO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT	5073	5076
08/17/2004	00000505	CORRESPONDENCE TO JOSEPH IANNO JR ESQ FROM ELIZABETH MAASS DTD 8/16/04 6/04	5077	5077
08/17/2004	00000506	ORDER AND DIRECTIONS TO CLERK TO DOCKET AND FILE ATTY JOSEPH IANNO'S LETTER DTD 8/13/04.	5078	5079
08/17/2004	00000507	CORRESPONDENCE TO JUDGE MAASS, FROM JOSEPH IANNO, JR., DTD 8/13/04	5080	5080
08/17/2004	00000508	NOTICE OF FILING	5081	5082

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		PLEADING UNDER SEAL	
08/17/2004	00000509	SEALED PER ORDER DTD 7/31/03	5083 5083
08/18/2004	00000510	MOTION TO COMPEL PRODUCTION OF DOCUMENTS - W/ATTACHMENTS	5084 5126
08/18/2004	00000511	NOTICE OF FILING PLEADING UNDER SEAL	5127 5128
08/18/2004	00000512	SEALED PER ORDER DTD 7/31/03	5129 5129
08/19/2004	00000513	NOTICE OF HEARING 8/27/04 @ 8:00 AM ON MORGAN STANLEY'S M/TO COMPEL PRODUCTION	5130 5132
08/20/2004	00000514	NOTICE OPPOSITION TO COLEMAN (PARENT) HOLDING INC'S AND MACANDREWS & FORBES HOLDINGS INC'S MOTION TO COMPEL SUPPLEMENTATION OF RESPONSES TO REQUESTS FOR ADMISSION	5133 5144
08/23/2004	00000515	NOTICE OF PARTIES, OF JOINT SUBMISSION OF THE PARTIES FOR 8/27/04 CASE MANAGEMENT CONFERENCE	5145 5157
08/23/2004	00000516	NOTICE OF MORGAN STANLEY SENIOR FUNDING INC, OF OPPOSITION TO COLEMAN (PARENT) HOLDING INC'S & MACANDREWS & FORBES HOLDINGS INC'S M/TO COMPEL COMPLETE ANSWERS TO INTERROG RROG #1 & 3 IN MAFCO'S FIRST SET OF INTERROG'S TO MORGAN STANLEY SENIOR FUNDING INC	5158 5200
VOLUME NUMBER TWENTY SEVEN			
08/23/2004	00000517	MEMORANDUM (SUPPLEMENTAL) OF MORGAN STANLEY, IN RESPONSE TO THE COURTS ORDER OF 8/13/04 & M/TO DISMISS OR STRIKE PLTFS	5201 5258

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		M/FOR CONTEMPT	
08/25/2004	00000518	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO WILLIAM NESBITT	5259 5262
08/27/2004	00000519	ORDER MORGAN STANLEY & CO & MORGAN STANLEY SENIOR FUNDING INC'S ORE TENUS M/TO EXTEND STAY IS GRANTED. STAY ON DISCOVERY DEALING W/ISSUES RAISED BY THE M/FOR CONTEMPT EMPT IS STAYED THRU 9/3/04	5263 5264
08/27/2004	00000520	ORDER AND NOTICE OF HEARING. THE CONTINUATION OF THE CASE MANGEMENT CONFERENCE IS SET FOR 9/2/04 @ 4:00 PM	5265 5266
08/30/2004	00000521	MEMORANDUM OF LAW OF 3RD PARTY SUNBEAM CORP NKA AMERICAN HOUSEHOLD INC, IN RESPONSE TO MORGAN STANLEY'S M/TO COMPEL DOCUMENTS - TS - W/ATTACHMENTS	5267 5304
08/30/2004	00000522	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) OF ZHONETTE BROWN, ESQ, TO KAREN K CLARK K	5305 5307
08/30/2004	00000523	ORDER AND NOTICE OF HEARING. HEARING ON MORGAN STANLEY'S M/TO COMPEL PRODUCTION OF DOCUMENTS & ANY M/FOR PROTECTIVE ORDER TO BE FILED BY SUNBEAM SHALL BE HELD 9/23/04 @ 3:00 PM	5308 5310
08/31/2004	00000524	NOTICE OF TAKING DEPOSITION OF MICHAEL C OCCHUIZZO ESQ, TO DONALD R UZZI	5311 5328
09/01/2004	00000525	NOTICE OF TAKING DEPOSITION (REVISED/VIDEOTAPE) TO LAWRENCE JONES	5329 5331
09/14/2004	00000526	MOTION & PLTF MORGAN STANLEY SENIOR FUNDING INC, FOR EXTENSION SION OF STAY OF CONTEMPT DISCOVERY	5332 5335
09/14/2004	00000527	RESPONSE TO: TO DEF COLEMAN (PARENT) HOLDINGS INC'S FIFTH REQUEST	5336 5340

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FOR PRODUCTION OF DOCUMENTS				
09/14/2004	00000528	MOTION TO COMPEL DEPO WITNESSES - W/ATTACHMENTS	5341	5355
09/14/2004	00000529	MOTION AND OF MACANDREWS & FORBES HOLDINGS INC, TO LIFT CONFIDENTIALITY DESIGNATION FROM AMENDED ANSWERS TO INTERROG'S - W/ATTACHMENTS	5356	5385
09/14/2004	00000530	MOTION TO COMPEL & MACANDREWS & FORBES HOLDINGS INC, PRODUCTION OF DEBENTURE-RELATED DOCUMENTS - W/ATTACHMENTS	5386	5400
VOLUME NUMBER TWENTY EIGHT				
09/14/2004	00000530	MOTION TO COMPEL	5401	5413
09/14/2004	00000531	CONTINUED FROM PREVIOUS VOLUME NOTICE OF HEARING 9/23/04 @ 3:00 PM ON (1) CPH & MAFCO'S M/TO LIFT CONFIDENTIALITY DESIGNATION FROM AMENDED ANSWERS TO INTERROGS (2) CPH & MAFCO'S M/TO COMPEL PRODUCTION OF DEBENTURE-RELATED DOCUMENTS (3) CPH & MAFCO'S M/TO COMPEL DEPO WITNESSES (4) CPH & MAFCO'S M/TO COMPEL SUPPLEMENTATION OF RESPONSES TO REQUESTS FOR ADMISSIONS IONS (5) CPH & MAFCO'S M/TO COMPEL COMPLETE ANSWERS TO INTERROG #1 & 3 IN MAFCO'S FIRST SET OF INTERROG'S TO MORGAN STANLEY SENIOR FUNDING INC (6) CPH & MAFCO'S M/TO COMPEL ANSWERS TO INT & RTP (7) CPH & MAFCO'S SUPPLEMENTAL M/TO COMPEL RE: DOCUMENT REQUESTS AND (8) CPH & MAFCO'S M/TO CLARIFY THIS COURTS 7/26/04 ORDER ON R ON CPH'S & MAFCO'E ORE TENUS MOTION & THIS COURTS 12/4/03 ORDER ON MORGAN STANLEY'S M/TO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT (FILED INDER SEAL) L)	5414	5416
09/14/2004	00000532	MOTION FOR ENLARGEMENT OF TIME TO AMEND THE PLEADINGS	5417	5421

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09/14/2004	00000533	ORDER SETTING HEARING 9/2/04 @ 10:30 AM ON CASE MANAGEMENT CONFERENCE	5422	5423
09/15/2004	00000534	NOTICE OF FILING INTERROGS (FOURTH SET) TO MORGAN STANLEY & CO INC	5424	5426
09/15/2004	00000535	MOTION TO APPOINT COMMISSION	5427	5430
09/15/2004	00000536	ORDER AND NOTICE OF HEARING. STATUS CONFERENCE IS SPECIALLY SET FOR 9/15/04 @ 8:45 AM	5431	5432
09/15/2004	00000537	ORDER AND NOTICE OF HEARING. THE CONTINUATION OF THE CASE MANAGEMENT CONFERENCE IS SET FOR 9/23/04 @ 10:00 AM	5433	5435
09/16/2004	00000538	ORDER M/FOR CONTEMPT IS STRICKEN. MORGAN STANLEY'S M/FOR RECONSIDERATION OF 7/12/04 ORDER ON PLTF'S M/TO COMPEL RESPONSES TO INTERROG'S IS GRANTED - SAID ORDER IS VACATED	5436	5440
09/16/2004	00000539	NOTICE OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S AND MACANDREWS & FORBES HOLDINGS INC'S M/TO COMPEL PRODUCTION OF DEBENTURE-RELATED DOCUMENTS	5441	5449
09/16/2004	00000540	NOTICE OF MORGAN STANLEY, OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'A M/TO COMPEL DEPO WITNESSES - W/ATTACHMENTS	5450	5506
09/17/2004	00000541	NOTICE OF JOINT SUBMISSION OF THE PARTIES FOR 9/23/04 CASE MANAGEMENT CONFERENCE	5507	5519
09/17/2004	00000542	NOTICE OF FILING INTERROGS (FIFTH SET) OF PLTF, TO MORGAN STANLEY & CO INC	5520	5522
09/20/2004	00000543	MOTION	5523	5526

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		(AGREED) OF NON PARTY SUNBEAM CORP NKA AMERICAN HOUSEHOLD INC, TO RESCHEDULE HEARING		
09/21/2004	00000544	NOTICE TO MEDIA	5527	5529
09/21/2004	00000545	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO KAREN ELTRICH & JAKE FOLEY	5530	5532
09/21/2004	00000546	RESPONSE TO: AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC FOURTH SET OF REQUESTS FOR ADMISSION	5533	5536
09/21/2004	00000547	NOTICE OF TAKING DEPOSITION OF MICHAEL OCCHUIZZO ESQ, TO DONALD R UZZI	5537	5554
09/21/2004	00000548	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO BROOKS HARRIS	5555	5557
09/21/2004	00000549	MOTION FOR ENLARGEMENT OF TIME TO FILE AMENDED AFFIRM DEFENSES	5558	5561
09/21/2004	00000550	MOTION TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES - W/ATTACHMENTS (AS TO SAME PARTIES	5562	5587
09/21/2004	00000551	MOTION FOR DETERMINATION OF PROTECTABILITY OF MATERIAL REDACTED FROM COURT RECORDS	5588	5591
09/21/2004	00000552	NOTICE OF HEARING 10/14/04 @ 8:00 AM ON CPH'S M/TO AMEND ITS COMPLAINT TO T TO SEEK PUNITIVE DAMAGES (2) CPH'S M/FOR DETERMINATION OF PROTECTABILITY OF MATERIAL REDACTED FROM COURT RECORDS & (3) CPH'S NOTICE TO MEDIA	5592	5595
09/21/2004	00000553	AGREED ORDER SUNBEAM'S AGREED M/TO RESCHEDULE HEARING IS GRANTED. SUNBEAM'S M/FOR PROTECTIVE ORDER & MORGAN STANLEY'S M/TO COMPEL PRODUCTION OF DOCUMENTS IS RESCHEDULED TO THE NEXT STATUS CONFERENCE SCHEDULED ON 10/14/04 @ 8:00	5596	5598

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		8:00 AM	
09/21/2004	00000554	ORDER AND NOTICE OF HEARING. COLEMAN (PARENT) HOLDINGS INC'S NC'S M/TO APPOINT COMMISSION IS SET FOR 9/23/04 @ 10:00 0:00 AM	5599 5600
		VOLUME NUMBER TWENTY NINE	
09/21/2004	00000555	STIPULATION AND ORDER REGARDING DRAFT EXPERT REPORTS - COURT APPROVES STIP P	5601 5603
09/21/2004	00000556	APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES (VOLUME I OF III))	5604 5800
		VOLUME NUMBER THIRTY	
09/21/2004	00000556	APPENDIX	5801 5928
09/21/2004	00000557	CONTINUED FROM PREVIOUS VOLUME APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES (VOLUME II OF III) I)	5929 6000
		VOLUME NUMBER THIRTY ONE	
09/21/2004	00000557	APPENDIX CONTINUED FROM PREVIOUS VOLUME	6001 6200

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VOLUME NUMBER THIRTY TWO			
09/21/2004	00000557	APPENDIX	6201 6256
09/21/2004	00000558	APPENDIX CONTINUED FROM PREVIOUS VOLUME TO COLEMAN (PARENT) HOLDINGS INC'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES (VOLUME III OF III) II)	6257 6355
09/21/2004	00000559	MOTION FOR LEAVE TO AMEND PLEADINGS - W/ATTACHMENTS	6356 6400
VOLUME NUMBER THIRTY THREE			
09/21/2004	00000559	MOTION CONTINUED FROM PREVIOUS VOLUME	6401 6600
VOLUME NUMBER THIRTY FOUR			
09/21/2004	00000559	MOTION CONTINUED FROM PREVIOUS VOLUME	6601 6800
VOLUME NUMBER THIRTY FIVE			
09/21/2004	00000559	MOTION CONTINUED FROM PREVIOUS VOLUME	6801 6850
09/21/2004	00000560	NOTICE OF FILING PLEADING UNDER SEAL	6851 6852
09/21/2004	00000561	SEALED PER COURT ORDER DTD 7/31/03	6853 6853

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09/21/2004	00000562	NOTICE OF APPENDIX TO COLEMAN (PARENT) HOLDING INC MOT TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES (VOLUME I ME I OF IV, EXHIBITS 1-10)	6854 7000
		VOLUME NUMBER THIRTY SIX	
09/21/2004	00000562	NOTICE CONTINUED FROM PREVIOUS VOLUME	7001 7200
		VOLUME NUMBER THIRTY SEVEN	
09/21/2004	00000562	NOTICE CONTINUED FROM PREVIOUS VOLUME	7201 7272
09/21/2004	00000563	NOTICE OF APPENDIX TO COLEMAN (PARENT) HOLDINGS INC MOT TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES (VOLUME IV OF IV, EXHIBITS 44-48)	7273 7400
		VOLUME NUMBER THIRTY EIGHT	
09/21/2004	00000563	NOTICE CONTINUED FROM PREVIOUS VOLUME	7401 7447
09/21/2004	00000564	NOTICE OF APPENDIX TO COLEMAN (PARENT) HOLDINGS INC MOT TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES (VOLUME II OF IV, EXHIBITS 11-21)	7448 7600
		VOLUME NUMBER THIRTY NINE	
09/21/2004	00000564	NOTICE	7601 7800

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09/21/2004	00000564	NOTICE	7801	7869
CONTINUED FROM PREVIOUS VOLUME				
09/21/2004	00000565	NOTICE OF APPENDIX TO COLEMAN (PARENT) HOLDINGS INC MOT TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAES (VOLUME III OF IV, EXHIBITS 22-43)	7870	8000
VOLUME NUMBER FORTY ONE				
09/21/2004	00000565	NOTICE	8001	8200
CONTINUED FROM PREVIOUS VOLUME				
VOLUME NUMBER FORTY TWO				
09/21/2004	00000565	NOTICE	8201	8372
CONTINUED FROM PREVIOUS VOLUME				
09/22/2004	00000566	MOTION (AMENDED) FOR ENLARGEMENT OF TIME TO FILE AMENDED AFFIRM DEFENSES	8373	8375
09/22/2004	00000567	RESPONSE TO: TO DEF COLEMAN (PARENT) HOLDINGS INCS FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS	8376	8378
09/22/2004	00000568	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) OF MICHAEL C OCCHUIZZO ESQ, TO KAREN K CLARK	8379	8381
09/22/2004	00000569	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO JASON KUNREUTHER; R BRAM SMITH & MICHAEL HAEL HART	8382	8384

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09/22/2004	00000570	MOTION TO ALLOW CPH IN EXCESS OF 30 INTERROG'S - W/ATTACHMENTS ENTS	8385	8400
VOLUME NUMBER FORTY THREE				
09/22/2004	00000570	MOTION	8401	8443
09/22/2004	00000571	CONTINUED FROM PREVIOUS VOLUME NOTICE OF HEARING 9/29/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS IN'CS M/TO ALLOW CPH IN EXCESS OF 30 INTERROG'S	8444	8446
09/22/2004	00000572	STIPULATION REGARDING DRAFT EXPERT REPORTS	8447	8449
09/23/2004	00000573	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO JAMES MAHER	8450	8452
09/23/2004	00000574	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO ADAM EMMERICH	8453	8455
09/23/2004	00000574	A EXHIBIT LIST FOR NON-JURY TRIAL EXHIBITS--EXHIBITS IN EVIDENCE ROOM. OOM.	8456	8456
09/24/2004	00000575	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO JERRY LEVIN	8457	8460
09/24/2004	00000576	NOTICE OF HEARING 9/29/04 @ 8:45 AM ON MORGAN STANLEY'S VERIFIED M/TO ADMIT MARK C HANSEN PRO HAC VICE; MORGAN STANLEY'S VERIFIED M/TO ADMIT JAMES M WEBSTER III PRO HAC VICE & MORGAN STANLEY'S VERIFIED M/TO ADMIT REBECCA A BEYNON PRO HAC VICE	8461	8463
09/24/2004	00000577	ORDER CPH & MAFCO'S M/TO COMPEL DEPO WITNESSES IS GRANTED IN PART. MORGAN STANLEY SHALL MAKE MR KOURAKAS AVAILABLE FOR DEPO. SEE ORDER	8464	8465

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09/24/2004	00000578	MOTION (VERIFIED) TO ADMIT JAMES M WEBSTER III PRO HAC VICE E	8466	8472
09/24/2004	00000579	MOTION (VERIFIED) TO ADMIT REBECCA A BEYNON PRO HAC VICE	8473	8479
09/24/2004	00000580	MOTION (VERIFIED) TO ADMIT MARK C HANSEN PRO HAC VICE	8480	8487
09/30/2004	00000581	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO MORGAN STANLEY SENIOR FUNDING INC	8488	8491
09/30/2004	00000582	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO MITCH PETRICK & MICHAEL RANKOWITZ	8492	8494
09/30/2004	00000583	NOTICE OF HEARING 10/5/04 @ 8:45 AM ON MORGAN STANLEY'S VERIFIED M/TO ADMIT MARK C HANSEN PRO HAC VICE; MORGAN STANLEY'S VERIFIED M/TO ADMIT JAMES M WEBSTER III PRO HAC VICE; MORGAN STANLEY'S VERIFIED M/TO ADMIT REBECCA A BEYNON PRO HAC VICE AND MORGAN STANLEY'S M/TO RESET HEARING G	8495	8497
09/30/2004	00000584	MOTION TO RESET HEARING	8498	8500
09/30/2004	00000585	RE-NOTICE OF HEARING 10/7/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO ALLOW CPH IN EXCESS OF 30 INTERROG'S	8501	8503
09/30/2004	00000586	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO MORGAN STANLEY SENIOR FUNDING INC	8504	8507
09/30/2004	00000587	REQUEST (SECOND) FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY SENIOR FUNDING INC	8508	8512
09/30/2004	00000588	REQUEST (SIXTH) FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY & EY & CO INC	8513	8517

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09/30/2004	00000589	ORDER COLEMAN (PARENT) HOLDINGS INC & MACANDREWS & FORBES HOLDINGS INC'S M/TO COMPEL PRODUCTION OF DEBENTURE-RELATED DOCUMENTS IS GRANTED IN PART - SEE ORDER	8518 8519
09/30/2004	00000590	ORDER COLEMAN (PARENT) HOLDINGS INC & MACANDREWS & FORBES HOLDINGS INC'S M/TO COMPEL SUPPLEMENTATION OF RESPONSES NSEES TO REQUEST FOR ADMISSION IS DENIED	8520 8521
09/30/2004	00000591	ORDER ON COLEMAN (PARENT) HOLDINGS INC'S M/TO APPOINT COMMISSION. COURT DEFERS RULING PENDING FILING A SUPPLEMENTAL MOTION ADDRESSING THE COURTS AUTHORITY TO AUTHORIZE A NON RESIDENT TO SUBPOENA A THIRD PARTY FOR DEPO	8522 8523
10/01/2004	00000592	MOTION (VERIFIED) TO PERMIT FOREIGN ATTY, ROBERT L BYMAN, TO APPEAR	8524 8528
10/01/2004	00000593	MOTION (VERIFIED) TO PERMIT FOREIGN ATTY, JOANNE H SWEENEY, TO APPEAR	8529 8532
10/01/2004	00000594	MOTION (VERIFIED) TO PERMIT FOREIGN ATTY, TIMOTHY J CHORVAT, TO APPEAR	8533 8537
10/01/2004	00000595	NOTICE OF HEARING 10/5/04 @ 8:45 AM ON CPH & MAFCO'S THREE VERIFIED M/TO PERMIT FOREIGN ATTY'S (ROBERT L BYMAN; TIMOTHY J CHORVAT & JOANNE H SWEENEY)	8538 8540
10/01/2004	00000596	NOTICE OF HEARING 10/6/04 @ 8:45 AM ON MORGAN STANLEY'S AMENDED M/FOR ENLARGEMENT OF TIME TO FILE AMENDED AFFIRM DEFENSES	8541 8543
10/01/2004	00000597	ORDER FOLLOWING CASE MANAGEMENT CONFERENCE. TRIAL IN THIS	8544 8545

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		ACTION SHALL BEGIN NO LATER THAN 2/22/05 - SEE ORDER FOR FURTHER DETAILS	
10/01/2004	00000598	ORDER COLEMAN (PARENT) HOLDINGS INC & MACANDREWS & FORBES HOLDINGS INC'S M/TO COMPEL COMPLETE ANSWERS TO INTERROG RROG #1 & 3 IN MAFCO'S FIRST SET OF INTERROG'S TO MORGAN STANLEY SENIOR FUNDING INC IS GRANTED IN PART. T.	8546 8547
10/01/2004	00000599	REQUEST (SEVENTH) FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY NLEY & CO INC	8548 8551
10/01/2004	00000600	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO MORGAN STANLEY SENIOR FUNDING INC AND MORGAN STANLEY & CO INC	8552 8556
10/01/2004	00000601	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO MORGAN STANLEY SENIOR FUNDING INC AND MORGAN STANLEY & CO INC	8557 8561
10/01/2004	00000602	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO BROOKS HARRIS	8562 8564
10/01/2004	00000603	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO MORGAN STANLEY SENIOR FUNDING INC & MORGAN STANLEY & CO INC	8565 8569
10/01/2004	00000604	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO WILLIAM KOURAKAS	8570 8572
10/04/2004	00000605	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO RONALD PERELMAN	8573 8575
10/04/2004	00000606	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO HOWARD GITTIS	8576 8578
10/04/2004	00000607	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO GLENN DICKES	8579 8581
10/04/2004	00000608	NOTICE OF TAKING DEPOSITION	8582 8584

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		(VIDEOTAPE) TO LAWRENCE WINOKER	
10/05/2004	00000609	ORDER CPH & MAFCO'S VERIFIED M/TO PERMIT FOREIGN ATTY TO APPEAR (BYMAN, CHORVAT, SWEENEY) IS GRANTED. ABOVE LISTED ATTYs ARE ADMITTED TO PRACTICE IN THIS CASE	8585 8586
10/06/2004	00000610	NOTICE OF FILING OF NON PARTY, SUNBEAM CORP, PLEADING EXHIBITS UNDER SEAL	8587 8588
10/06/2004	00000611	SEALED PER ORDER DTD 7/31/03	8589 8589
10/06/2004	00000612	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO STEVEN R ISKO	8590 8591
10/06/2004	00000613	NOTICE OF FILING OF NON PARTY SUNBEAM CORP, EXHIBITS IN SUPPORT OF ITS M/FOR PROTECTIVE ORDER & MEMO OF LAW IN OPPOSITION TO MORGAN STANLEY'S M/TO COMPEL DOCUMENTS - W/ATTACHMENTS NTS	8592 8600
		VOLUME NUMBER FORTY FOUR	
10/06/2004	00000613	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	8601 8800
		VOLUME NUMBER FORTY FIVE	
10/07/2004	00000614	NOTICE OF HEARING 10/14/04 @ 8:00 AM ON MORGAN STANLEY'S (3) VERIFIED M/TO ADMIT MARK C HANSEN; JAMES M WEBSTER III & REBECCA ECCA A BEYNON PRO HAC VICE AND MORGAN STANLEY'S M/TO ENTER PRETRIAL SCHEDULE	8801 8803
10/07/2004	00000615	MOTION TO ENTER PRETRIAL SCHEDULE - W/ATTACHMENTS	8804 8833

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10/07/2004	00000616	ORDER MORGAN STANLEY'S M/TO RESET HEARING ON COLEMAN (PARENT) ENT) HOLDINGS INC'S M/TO AMEND COMPLAINT TO SEEK PUNITIVE DAMAGES IS GRANTED. COLEMAN (PARENT) HOLDINGS INGS INCS M/TO AMEND COMPLAINT TO SEEK PUNITIVE DAMAGES AGES SHALL BE RESET ON 11/5/04 @ 8:00 AM. MORGAN STANLEY SHALL HAVE UP TO & INCLUDING 10/22/04 TO SERVE ITS RESPONSE TO M/TO AMEND COMPLAINT	8834	8836
10/08/2004	00000617	MEMORANDUM OF COLEMAN (PARENT) HOLDINGS INCS & MACANDREWS & FORBES RBES HOLDINGS INCS, IN SUPPORT OF THEIR PROPOSED PRETRIAL SCHEDULING ORDER	8837	8849
10/08/2004	00000618	NOTICE OF PARTIES, OF JOINT SUBMISSION OF THE PARTIES FOR 10/14/04 CASE MANAGEMENT CONFERENCE	8850	8861
10/08/2004	00000618	A MEMORANDUM OF LAW IN OPPOSITION TO THE PRO HAC VICE MOTIONS OF THE KELLOGG HUBER ATTYS BY COLEMAN (PARENT) HOLDINGS AND MACANDREWS & FORBER - ATTACHMENT	8862	8962
10/12/2004	00000619	NOTICE OPPOSITION TO NON-PARTY SUNBEAM'S MOTION FOR PROTECTIVE TIVE ORDER AND REPLY IN SUPPORT OF ITS MOTION TO COMPEL MPEL DOCUMENTS	8963	9000
VOLUME NUMBER FORTY SIX				
10/12/2004	00000619	NOTICE CONTINUED FROM PREVIOUS VOLUME	9001	9086
10/12/2004	00000620	NOTICE OF TAKING DEPOSITION MICHAEL HART	9087	9089
10/12/2004	00000621	NOTICE OF TAKING DEPOSITION DAVID POLK & WARDELL	9090	9094
10/12/2004	00000622	MOTION	9095	9111

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		SUPPLEMENTAL FOR COMMISSION FOR OUT-OF-STATE DEPOSITION TION OF DWIGHT SIPPRELLE IN NEW JERSEY	
10/12/2004	00000623	NOTICE OF HEARING 10/14/04 @ 8:00 AM - MOTION FOR COMMISSION	9112 9114
10/12/2004	00000624	ORDER ON COLEMAN (PARENT) HOLDINGS INC'S MOTION TO ALLOW CPH IN EXCESS OF 30 INTERROGS - GRANTED	9115 9116
10/12/2004	00000625	ORDER AND NOTICE OF HEARING - 10/12/04 @ 8:45 AM - MOTION FOR FOR ENLARGEMENT OF TIME	9117 9118
10/12/2004	00000626	ORDER DENYING MORGAN STANLEY'S MOTION FOR ENLARGEMENT OF TIME TO FILE FILE AMENDED AFFIRMATIVE DEFENSES - W/O PREJ TO RENEWAL EWAL	9119 9120
10/12/2004	00000627	NOTICE OF FILING PLEADING UNDER SEAL	9121 9122
10/12/2004	00000628	SEALED PER ORDER DTD 7/31/03 *** SEALED DOCUMENT WAS RELEASED TO GREENBERG TRAUIG PER ORDER DATED 12/13/04 ***	9123 9123
10/12/2004	00000628 A	NOTICE OF FIFTH SET OF REQUESTS FOR ADMISSION	9124 9127
10/13/2004	00000628 B	NOTICE OF FILING INTERROGS SIXTH SET TO DFT	9128 9130
10/13/2004	00000628 C	REQUEST FOR SUPPLEMENTAL DOCUMENTS TO DFT MORGAN STANLEY SENIOR NIOR FUNDING INC	9131 9134
10/13/2004	00000628 D	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO RC OF SKADDEN ARPS SLATE MEAGHER & FLOM LLP	9135 9148
10/13/2004	00000628 E	REQUEST	9149 9152

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		FOR PRODUCTION OF SUPPLEMENTAL DOCUMENTS TO MORGAN STANLEY & CO INC	
10/14/2004	00000628	F NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO WILLIAM KOURAKOS; MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC	9153 9156
10/14/2004	00000628	G NOTICE OF FILING OF NON PARTY SUNBEAM CORP NKA AMERICAN HOUSEHOLD INC, AFFID OF CHRISTOPHER P MALLOY - ATTACHED	9157 9162
10/15/2004	00000629	ORDER THAT THE CLERK IS DIRECTED TO UNSEAL & PLACE IN THE COURT FILE DOCKET # 562-565 INCLUSIVE	9163 9164
10/15/2004	00000630	NOTICE OF COMPLIANCE W/COURT ORDER ON MOTION TO ADMIT REBECCA A BEYNON PRO HAC VICE, MARK C HANSEN PRO HAC VICE AND JAMES M WEBSTER III PRO HAC VICE BY PLTF MORGAN STANLEY & CO	9165 9168
10/15/2004	00000630	A ORDER THAT NON PARTY SUNBEAMS MOTION FOR PROTECTIVE ORDER AND AND MOTION TO COMPEL ,THAT WITHIN 10 DAYS COUNSEL FOR NON PARTY SUNBEAM SHALL SUBMIT DIRECTLY IN A SEALED ENVELOPE DOCUMENTS .SEE ORDER FOR DETAILS	9169 9170
10/15/2004	00000630	B ORDER AND DIRECTIONS TO THE CLERK OF FILING JOSEPH IANNO'S FACSIMILE TRANSMISSION DTD 10/14/04 ATTACHED	9171 9176
10/15/2004	00000630	C ORDER SETTING HEARING SPECIALLY SETTING ON 1/21/05 AT 8:00 AM FOR SUMMARY JUDGMENT	9177 9178
10/15/2004	00000630	D ORDER THAT MOTION IS GRANTED FOR REBECAA A BEYNON, MARK C HANSEN AND JAMES M WEBSTER III TO APPEAR ON BEHALF OF MORGAN STANLEY AND CO. (PRO HAC VICE)	9179 9180
10/15/2004	00000630	E ORDER CONCERNING PRETRIAL SCHEDULE AND FOLLOWING CASE	9181 9184

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		MANAGEMENT CONFERENCE (SEE ORDER FOR SCHEDULE) AND HEARING ON MOITON IN LIMINE AND OBJECTINS TO DEPOSITION TION DESIGNATIONS SET 12/20-12/22 IS CANCELLED AND TO D TO BE RESET		
10/15/2004	00000630	F ORDER APPOINTING COMMISSIONER REGARDING THE DEPOSITION OF DWIGHT SIPPRELLE NEWARK, NEW JERSEY 07102 (CC TO ATTY)	9185	9186
10/15/2004	00000630	G ORDER AND DIRECTIONS TO THE CLERK TO FILE AND DOCKET COPY OF 10/5/04 DEPOSITION OF STEVEN ISKO ATTACHED.	9187	9200
		VOLUME NUMBER FORTY SEVEN		
10/15/2004	00000630	G ORDER	9201	9208
10/15/2004	00000630	H MOTION CONTINUED FROM PREVIOUS VOLUME BY NON PARTY LEVINS MOTION FOR PROTECTIVE ORDER	9209	9230
10/15/2004	00000630	I NOTICE OF FILING BY NON PARTY ORIGINAL AFFIDAVIT OF CHRISTOPHER P MALLOY LLOY	9231	9236
10/18/2004	00000631	MOTION FOR LEAVE TO AMEND PLEADINGS	9237	9241
10/18/2004	00000632	ORDER ON NON-PTY JERRY W. LEVIN'S MOTION FOR PROTIECTIVE ORDER IS GRANTED.	9242	9243
10/19/2004	00000633	MOTION FOR ISSUANCE OF ISSUANCE OF COMMISSIONS	9244	9250
10/19/2004	00000634	SUBPOENA RETURNED / SERVED JERRY W. LEVIN JERRY W. LEVIN	9251	9253

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10/19/2004	00000635	MOTION FOR PROTECTIVE ORDER	9254 9265
10/20/2004	00000637	NOTICE OF TAKING DEPOSITION MITCH PETRICK, SIMON RANKIN, MORGAN STANLEY SR FUNDING INC	9266 9272
10/20/2004	00000638	NOTICE OF TAKING DEPOSITION MICHAEL RANKOWITZ, MORGAN STANLEY & CO	9273 9279
10/20/2004	00000639	NOTICE OF FILING SECOND SET INTERROGS TO MORGAN STANLEY SR FUNDING INC NC	9280 9283
10/22/2004	00000640	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO MORGAN STANLEY & CO INC	9284 9287
10/22/2004	00000641	NOTICE OF FILING INTERROGS (SEVENTH SET) TO MORGAN STANLEY & CO INC	9288 9291
10/22/2004	00000642	NOTICE OF PRODUCTION NON PARTY	9292 9302
10/22/2004	00000643	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO MORGAN STANLEY SENIOR FUNDING INC	9303 9306
10/22/2004	00000644	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO MORGAN STANLEY & CO INC	9307 9310
10/22/2004	00000645	REQUEST (EIGHTH) FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY & CO INC	9311 9314
10/22/2004	00000646	NOTICE OF HEARING 11/2/04 @ 8:45 AM ON MORGAN STANLEY'S M/FOR ISSUANCE OF E OF COMMISSION SERVED 10/19/04	9315 9317
10/22/2004	00000647	NOTICE OF HEARING 11/3/04 @ 8:45 AM ON MORGAN STANLEY'S M/FOR LEAVE TO AMEND PLEADINGS SERVED 9/21/04 AND MORGAN STANLEY'S M/FOR LEAVE TO AMEND, SERVED 10/19/04	9318 9320
10/22/2004	00000648	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO JAMES MAHER	9321 9324

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10/22/2004	00000649	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO RONALD PERELMAN	9325 9327
10/22/2004	00000650	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO LAWRENCE WINOKER	9328 9330
10/22/2004	00000651	MOTION FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPO'S SERVED BY COLEMAN (PARENT) HOLDINGS INC ON 10/18/04	9331 9341
10/22/2004	00000652	MOTION FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPO'S SERVED BY MACANDREWS & FORBES HOLDINGS ON 10/18/04	9342 9352
10/22/2004	00000653	NOTICE OF HEARING 11/5/04 @ 8:00 AM ON MORGAN STANLEY'S M/TO STRIKE EVIDENCE FROM CPH'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES	9353 9355
10/22/2004	00000654	NOTICE OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES - W/ATTACHMENTS	9356 9400
		VOLUME NUMBER FORTY EIGHT	
10/22/2004	00000654	NOTICE	9401 9506
		CONTINUED FROM PREVIOUS VOLUME	
10/22/2004	00000655	MOTION TO STRIKE EVIDENCE FROM COLEMAN (PARENT) HOLDINGS INC'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES - W/ATTACHMENTS	9507 9600
		VOLUME NUMBER FORTY NINE	
10/22/2004	00000655	MOTION TO STRIKE	9601 9651

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10/22/2004	00000656	CONTINUED FROM PREVIOUS VOLUME NOTICE OF FILING PLEADING UNDER SEAL	9652 9654
10/22/2004	00000657	SEALED PER ORDER DTD 7/31/03	9655 9655
10/22/2004	00000658	NOTICE OF FILING PLEADING UNDER SEAL	9656 9658
10/22/2004	00000659	SEALED PER ORDER DTD 7/31/03	9659 9659
10/25/2004	00000660	REQUEST FOR ADMISSIONS (SIXTH SET) TO DEF MORGAN STANLEY & CO	9660 9675
10/25/2004	00000660	A MOTION FOR PROTECTIVE ORDER REGARDING THE DEPO NOTICED FOR MR. MR. PERELMAN	9676 9686
10/25/2004	00000660	B MOTION FOR PROTECTIVE ORDER REGARDING THE DEPO NOTICED FOR MR. MR. GITTIS	9687 9695
10/25/2004	00000660	C NOTICE OF TAKING DEPOSITION AS TO MORGAN STANLEY & CO AND MORGAN STANLEY SENIOR FUNDING INC ON 11/9/04	9696 9704
10/25/2004	00000660	D NOTICE OF TAKING DEPOSITION AS TO R/C SUNBEAM CORPORATION NKA AMERICAN HOUSEHOLD INC ON 11/2/04	9705 9708
10/25/2004	00000660	E MOTION TO ALLOW CPH IN EXCESS OF 30 INTERROG'S	9709 9744
10/25/2004	00000660	F MOTION TO COMPEL PRODUCTION OF DOCUMENTS FROM AMERICAN HOUSEHOLD INC	9745 9763
10/25/2004	00000660	G MOTION TO COMPEL PRODUCTION OF FINANCIAL STATEMENTS OF SUNBEAM'S SUCCESSOR COMPANY	9764 9780

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10/25/2004	00000660	H NOTICE OF UNAVAILABILITY ON 12/27/04 - 12/31/04	9781 9783
10/25/2004	00000660	I NOTICE OF TAKING DEPOSITION AS TO R/C ARTHUR ANDERSEN LLP ON 11/5/04	9784 9800
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10/25/2004	00000660	I NOTICE OF TAKING DEPOSITION	9801 9813
10/25/2004	00000660	J NOTICE OF FILING PEADING UNDER SEAL	9814 9816
10/25/2004	00000661	NOTICE OF FILING PLEADING UNDER SEAL	9817 9818
10/25/2004	00000662	MOTION FOR A DETERMINATION OF THE ADMISSIBILITY OF MORGAN STANLEY PERFORMANCE EVALUATIONS - W/ATTACHMENTS (PREVIOUSLY FILED UNDER SEAL - UNSEALED PER COURT ORDER RDER DTD 11/3/04)	9819 9949
10/26/2004	00000663	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO PHILIP HARLOW	9950 9952
10/26/2004	00000664	NOTICE OF FILING SIGNATURE PAGE TO MORGAN STANLEY'S M/TO STRIKE EVIDENCE ENCE FROM CPH'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES	9953 9956
10/26/2004	00000665	MOTION FOR ISSUANCE OF COMMISSION - W/ATTACHMENTS	9957 9961
10/26/2004	00000666	NOTICE OF HEARING 11/3/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO UNSEAL MATERIAL PREVIOUSLY REDACTED FROM COURT RECORDS	9962 9964
10/26/2004	00000667	NOTICE OF TAKING DEPOSITION	9965 9967

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		(VIDEOTAPE) TO MITCH PETRICK & SIMON RANKIN		
10/26/2004	00000668	MOTION TO UNSEAL MATERIAL PREVIOUSLY REDACTED FROM COURT RECORDS	9968	9971
10/26/2004	00000669	NOTICE OF FILING INTERROGS 8TH SET) TO MORGAN STANLEY & CO INC	9972	9974
10/26/2004	00000670	REQUEST (NINTH) FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY & EY & CO INC	9975	9977
10/27/2004	00000671	REQUEST (EIGHTH) FOR PRODUCTION OF DOCUMENTS TO PLTF	9978	9984
10/27/2004	00000672	NOTICE OF FILING INTERROGS (FIFTH SET) TO PLTF COLEMAN (PARENT) HOLDINGS INC	9985	9991
10/27/2004	00000673	RESPONSE TO: AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S FIFTH IFTH SET OF INTERROG'S	9992	9996
10/27/2004	00000674	RESPONSE TO: AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S FOURTH SET OF INTERROG'S	9997	10000
		VOLUME NUMBER FIFTY ONE		
10/27/2004	00000674	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	10001	10001
10/27/2004	00000675	NOTICE OF TAKING DEPOSITION OF COLEMAN (PARENT) HOLDINGS INC THRU A CPH REP W/MOST KNOWLEDGE	10002	10005
10/27/2004	00000676	REQUEST FOR ADMISSIONS (FOURTH SET) TO PLTF	10006	10019
10/27/2004	00000677	RESPONSE TO:	10020	10033

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		(AMENDED) AND OBJECTIONS TO COLEMAN (PARENT) HOLDING INC'S SECOND SET OF INTERROG'S	
10/27/2004	00000678	NOTICE OF TAKING DEPOSITION (AMENDED) TO ANNE JORDAN	10034 10036
10/27/2004	00000679	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO ANNE JORDAN	10037 10039
10/27/2004	00000680	RE-NOTICE OF HEARING 11/2/04 @ 8:45 AM ON CPH'S M/FOR LEAVE TO FILE IN EXCESS OF 30 INTERROG'S	10040 10042
10/27/2004	00000681	NOTICE OF HEARING (SUPPLEMENTAL) 11/5/04 @ 8:00 AM ON MS' M/FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPE DEPOS SERVED BY COLEMAN (PARENT) HOLDINGS INC ON 10/18/04	10043 10045
10/27/2004	00000682	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO TAREK ABDEL-MEGUID; JOSEPH PERELLA; ROBERT SCOTT & BRUCE FIEDOREK	10046 10048
10/27/2004	00000683	NOTICE OF NON PARTY SUNBEAM CORP (NKA AMERICAN HOUSEHOLD INC) OF SUBMISSION OF DOCUMENTS TO COURT FOR IN-CAMERA INSPECTION	10049 10052
10/28/2004	00000684	MOTION TO COMPEL COMPLIANCE W/THIS COURT'S 9/30/04 ORDER - W/ATTACHMENTS	10053 10061
10/28/2004	00000685	NOTICE OF HEARING (SUPPLEMENTAL) 11/5/04 @ 8:00 AM ON COLEMAN (PARENT) HOLDINGS IN'S M/TO COMPEL COMPLAINCE W/THIS COURT'S 9/30/04 ORDER	10062 10064
10/28/2004	00000686	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO JAMES MAHER	10065 10067
10/29/2004	00000687	RESPONSE TO: TO MORGAN STANLEY'S M/FOR PROTECTIVE ORDER	10068 10071

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10/29/2004	00000688	NOTICE OF HEARING 11/5/04 @ 8:00 AM ON MORGAN STANLEY'S M/FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPOS SERVED BY MACANDREWS & FORBES HOLDINGS INC ON 10/18/04 SERVED 10/22/04	10072 10074
10/29/2004	00000689	RESPONSE TO: IN OPPOSITION TO WACHOVIA BANK NA'S M/TO QUASH SUBPOENA OENA OR IN THE ALTERNATIVE M/FOR PROTECTIVE ORDER	10075 10079
10/29/2004	00000690	NOTICE OF OPPOSITION TO COLEMAN (PARENT) HOLDING INC'S M/TO COMPEL PRODUCTION OF FINANCIAL STATEMENTS OF SUNBEAMS SUCCESSOR CO	10080 10084
10/29/2004	00000691	RESPONSE TO: AND OF MACANDREWS & FORBES HOLDINGS INC, TO M/FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPO'S SERVED BY MAFCO ON 10/18/04	10085 10088
10/29/2004	00000692	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S M/FOR PROTECTIVE ORDER TO BAR RULE 1.310 DEPO	10089 10095
11/01/2004	00000693	NOTICE OF OPPOSITION TO MORGAN STANLEY & CO INC'S M/TO STRIKE EVIDENCE FROM CPH'S M/TO AMEND ITS COMPLAINT	10096 10103
11/01/2004	00000694	NOTICE OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S M/FOR A DETERMINATION OF THE ADMISSIBILITY OF MORGAN STANLEY PERFORMANCE EVALUATIONS	10104 10133
11/01/2004	00000695	OBJECTION TO COLEMAN (PARENT) HOLDINGS INC'S 7TH REQUEST FOR PRODUCTION OF DOCUMENTS	10134 10141
11/01/2004	00000696	NOTICE OF FILING OF NON PARTY WACHOVIA BANK - ATTACHED EXHIBIT "A" TO ITS M/TO QUASH SUBPOENA OR IN THE ALTERNATIVE M/FOR PROTECTIVE ORDER FILED 7/29/04	10142 10151

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11/01/2004	00000697	MOTION FOR PROTECTIVE ORDER (EMERGENCY) OF NONPARTY WACOVIA BANK NA	10152 10155
11/01/2004	00000698	NOTICE OF HEARING 11/4/04 @ 8:45 AM ON NON PARTY WACHOVIA BANK NA'S EMERGENCY M/FOR PROTECTIVE ORDER	10156 10158
11/01/2004	00000699	REPLY/RESPONSE IN SUPPORT OF ITS M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES - W/ATTACHMENTS	10159 10200
VOLUME NUMBER FIFTY TWO			
11/01/2004	00000699	REPLY/RESPONSE	10201 10240
11/02/2004	00000700	ORDER NON PARTY SUNBEAM'S M/FOR PROTECTIVE ORDER IS GRANTED. ED. COURT HAS RESEALED THE FILING & PLACED IT IN THE COURT FILE. MORGAN STANLEY'S M/TO COMPEL PRODUCTION OF N OF DOCUMENTS IS DENIED	10241 10242
11/02/2004	00000701	SEALED PER ORDER DTD 11/1/04	10243 10243
11/02/2004	00000702	MOTION FOR PROTECTIVE ORDER CONCERNING DISCOVERY SERVED BY COLEMAN (PARENT) HOLDINGS INC AFTER 10/14/04 & TO EXTEND PRETRIAL DEADLINES	10244 10250
11/02/2004	00000703	MOTION FOR PROTECTIVE ORDER CONCERNING MORGAN STANLEY COLEMAN ESCROW NOTES - W/ATTACHMENTS	10251 10297
11/03/2004	00000704	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO SIMON RANKIN & JOHANNES GROELLER	10298 10300
11/03/2004	00000705	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO UNSEAL MATERIAL PREVIOUSLY REDACTED FROM COURT RECORDS IS GRANTED.	10301 10302

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		CLERK IS DIRECTED TO UNSEAL THE 10/22/04 M/FOR A DETERMINATION OF THE ADMISSIBILITY OF MORGAN STANLEY PERFORMANCE EVALUATIONS & ITS ATTACHMENTS	
11/03/2004	00000706	AGREED ORDER MORGAN STANLEY'S M/FOR LEAVE TO AMEND PLEADINGS DTD 9/21/04 IS GRANTED. MORGAN STANLEY'S AMENDED ANSWER & AMENDED AFFIRM DEFENSES ATTACHED TO ITS M/FOR LEAVE TO AMEND PLEADINGS IS DEEMED FILED	10303 10304
11/03/2004	00000707	ORDER MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING DING INC'S M/FOR ISSUANCE OF COMMISSIONS IS GRANTED - SEE ORDER FOR DETAILS	10305 10306
11/03/2004	00000708	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO ALLOW CPH IN EXCESS OF 30 INTERROG'S IS GRANTED - SEE ORDER	10307 10308
11/03/2004	00000709	ORDER ATTACHED STIP OF THE PARTIES IS ACKNOWLEDGED & RECORDED	10309 10311
11/03/2004	00000710	ORDER AND NOTICE OF HEARING. MANAGEMENT CONFERENCE AND HEARING ON OUTSTANDING MOTIONS IS SET FOR 11/4/04 @ 2:00 PM	10312 10314
11/03/2004	00000711	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S M/FOR PROTECTIVE ORDER CONCERNING DISCOVERY SERVED BY CPH AFTER 10/14/04 4/04 & TO EXTEND PRETRIAL DEADLINES	10315 10325
11/03/2004	00000712	NOTICE OF MORGAN STANLEY OPPOSITION TO COLEMAN (PARENT) HOLDINGS INCS M/TO COMPEL COMPLIANCE W/THIS COURTS 9/30/04 ORDER	10326 10329
11/04/2004	00000713	OBJECTION TO COLEMAN (PARENT) HOLDINGS INC'S 8TH SET OF INTERROG'S TO MORGAN STANLEY & CO INC	10330 10334

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11/04/2004	00000714	MOTION TO COMPEL DEPO OF JERRY LEVIN - W/ATTACHMENT	10335 10339
11/04/2004	00000715	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO MORGAN STANLEY & CO INC	10340 10343
11/04/2004	00000716	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC	10344 10347
11/04/2004	00000717	NOTICE OF JOINT SUBMISSION OF THE PARTIES FOR 11/5/04 CASE MANAGEMENT CONFERENCE	10348 10358
11/04/2004	00000718	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S M/FOR LEAVE TO AMEND PLEADINGS - ATTACHMENTS	10359 10400
VOLUME NUMBER FIFTY THREE			
11/04/2004	00000718	RESPONSE TO:	10401 10456
11/05/2004	00000719	CONTINUED FROM PREVIOUS VOLUME OBJECTION TO COLEMAN (PARENT) HOLDINGS INCS NINTH REQUEST FOR PRODUCTION OF DOCUMENTS	10457 10462
11/05/2004	00000720	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO RONALD PERELMAN & HOWARD GITTIS	10463 10465
11/05/2004	00000721	ORDER MORGAN STANLEY'S M/FOR LEAVE TO AMEND PLEADINGS IS GRANTED. MORGAN STANLEY'S 7TH AFFIRM DEFENSE, ATTACHED CHED TO ITS M/FOR LEAVE TO AMEND PLEADINGS DTD 10/15/04, IS DEEMED FILED	10466 10467
11/05/2004	00000722	MOTION FOR PROTECTIVE ORDER CONCERNING COLEMAN (PARENT) HOLDINGS INC'S 6TH SET OF REQUESTS FOR ADMISSION & CPH'S NOTICE OF TAKING DEPO DTD 10/22/04 - W/ATTACHMENTS	10468 10496

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11/05/2004	00000723	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO WILLIAM REID	10497 10499
11/05/2004	00000724	ORDER MORGAN STANLEY & CO INC'S M/FOR PROTECTIVE ORDER CONCERNING DISCOVERY SERVED BY COLEMAN (PARENT) HOLDINGS INC'S AFTER 10/14/04 & TO EXTEND PRETRIAL DEADLINES IS DENIED	10500 10501
11/05/2004	00000725	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO DWIGHT SIPPRELLE	10502 10504
11/05/2004	00000726	NOTICE OF CANCELLATION OF HEARING SET FOR 11/5/04 @ 8:00 AM	10505 10506
11/05/2004	00000727	ORDER DEF MORGAN STANLEY & CO INC'S M/FOR PROTECTIVE ORDER IS R IS GRANTED. THE CPH DEPO'S SET 10/29/04 SHALL NOT GO T GO FORWARD	10507 10508
11/05/2004	00000728	OBJECTION TO COLEMAN (PARENT) HOLDINGS INC'S 8TH REQUEST FOR PRODUCTION OF DOCUMENTS	10509 10514
11/05/2004	00000729	OBJECTION TO COLEMAN (PARENT) HOLDINGS INC'S NOTICE OF VIDEOTAPED APED DEPO	10515 10519
11/05/2004	00000730	OBJECTION TO COLEMAN (PARENT) HOLDINGS INC'S 7TH SET OF INTERROG'S	10520 10524
11/05/2004	00000731	NOTICE OF SERVICE OF OBJECTIONS TO COLEMAN (PARENT) HOLDING INC'S 7TH SET SET OF INTERROG'S	10525 10527
11/05/2004	00000732	NOTICE OF TAKING DEPOSITION (AMENDED) TO COLEMAN (PARENT) HOLDINGS INC	10528 10534
11/05/2004	00000733	ORDER DEF MORGAN STANLEY & CO INC'S M/FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPO'S	10535 10536

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		SERVED BY MACANDREWS & FORBES HOLDINGS INC ON 10/18/04 IS GRANTED IN PART - SEE ORDER	
11/05/2004	00000734	ORDER ON M/FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPE DEPOS SERVED BY COLEMAN (PARENT) HOLDINGS INC ON 10/18/04. IF DEF STIPULATES IN WRITING TING BY NOON 11/5/04 THAT IT DOES NOT CONTEND THAT PLTF PLTF MADE ANY MISREPRESENTATIONS OR OMISSION IN CONNECTION WITH THE TRANSACTION FORMING THE SUBJECT MATTER OF PLTF'S COMPLAINT OTHER THAN ALLEGED IN PARAGRAPH 43 OF TIS ANSWERS, EXHIBIT A TO THE MOTION SHALL BE DEEMED AMENDED BY INTERLINEATION TO DESIGNATE A CORP REP FOR THE MATTERS RAISED BY PARAGRAPH 43 ONLY. NLY. WHETHER OR NOT THE STIP IS MADE AMENDING EXHIBIT A BY INTERLINEATION, THE MOTION IS DENIED	10537 10538
11/05/2004	00000735	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/FOR PROTECTIVE ORDER REGARDING THE DEPO NOTICE FOR MR PERELMAN IS GRANTED IN D IN PART - SEE ORDER	10539 10540
11/05/2004	00000736	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/FOR PROTECTIVE ORDER REGARDING THE DEPO NOTICED FOR MR GITTIS IS GRANTED IN PART - SEE ORDER	10541 10542
11/05/2004	00000737	RESPONSE TO: (WRITTEN) TO RULE 1.310 TOPICS	10543 10547
11/08/2004	00000738	NOTICE OF HEARING 11/15/04 @ 8:45 AM ON MORGAN STANLEY'S M/TO COMPEL DEPO DEPO OF JERRY LEVIN	10548 10550
11/08/2004	00000739	RE-NOTICE OF HEARING 11/16/04 @ 8:45 AM ON WACHOVIA BANK NA'S M/TO QUASH	10551 10553
11/08/2004	00000740	MOTION FOR PROTECTIVE ORDER OF PHILIP HARLOW - W/ATTACHMENTS	10554 10570
11/08/2004	00000741	RE-NOTICE OF HEARING	10571 10573

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		11/15/04 @ 8:45 AM ON PHILIP HARLOW'S M/FOR PROTECTIVE ORDER	
11/08/2004	00000742	ORDER MORGAN STANLEY & CO INC'S M/TO STRIKE EVIDENCE FROM COLEMAN (PARENT) HOLDINGS INC'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES IS DENIED W/OUT PREJUDICE.	10574 10575
11/09/2004	00000742	A MOTION FOR PROTECTIVE ORDER TO PRECLUDE UNNECESSARY AND DUPLICATIVE RULE 1.310 DEPO TESTIMONY REGARDING FEES & EXPENSES RECEIVED BY MORGAN STANLEY - W/ATTACHMENTS	10576 10600
VOLUME NUMBER FIFTY FOUR			
11/09/2004	00000742	A MOTION FOR PROTECTIVE ORDER	10601 10603
11/09/2004	00000742	B NOTICE OF HEARING CONTINUED FROM PREVIOUS VOLUME 11/15/04 @ 8:45 AM ON (1) COLEMAN (PARENT) HOLDINGS INC'S M/FOR PROTECTIVE ORDER DTD 11/8/04 AND (2) MORGAN STANLEY'S M/FOR PROTECTIVE ORDER RE: CPH'S SIXTH IXTH SET OF REQUESTS FOR ADMISSION & CPH'S NOTICE OF TAKING DEPO DTD 10/22/04 DTD 11/5/04	10604 10606
11/09/2004	00000742	C OBJECTION TO MORGAN STANLEY & CO INC'S FIFTH SET OF INTERROG'S S	10607 10611
11/09/2004	00000742	D OBJECTION TO MORGAN STANLEY & CO INC'S EIGHTH (NINTH) REQUEST FOR FOR PRODUCTION OF DOCUMENTS	10612 10616
11/09/2004	00000742	E OBJECTION TO MORGAN STANLEY & CO INC'S FOURTH SET OF REQUESTS FO RADMISSION	10617 10626
11/09/2004	00000742	F MOTION FOR PROTECTIVE ORDER WATTACHMENTS	10627 10638

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11/10/2004	00000742 G	ANSWER TO INTERROGATORIES TO COLEMAN (PARENT) HOLDINGS INC'S SIXTH SET OF INTERROG'S TO MORGAN STANLEY & CO INC	10639 10642
11/10/2004	00000742 H	RESPONSE TO: AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S FIFTH IFTH SET OF REQUEST FOR ADMISSION	10643 10651
11/10/2004	00000742 I	NOTICE OF TAKING DEPOSITION OF MICHAEL C OCCHUIZZO ESQ, OF DONALD R UZZI	10652 10669
11/10/2004	00000742 J	MOTION TO COMPEL MORGAN STANLEY'S COMPLIANCE W/DISCOVERY REQUESTS CONCERNING COLEMAN ESCROW CORP NOTES - W/ATTACHMENTS S	10670 10701
11/10/2004	00000742 K	MOTION TO COMPEL MORGAN STANLEY'S COMPLIANCE W/RULE 1.310 DEPO NOTICE CONCERNING SUBORDINATED DEBENTURE TRANSACTIONS - W/ATTACHMENTS	10702 10711
11/10/2004	00000742 L	MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO ITS SIXTH REQUEST UEST FOR PRODUCTION - W/ATTACHMENTS	10712 10729
11/10/2004	00000742 M	NOTICE OF HEARING 11/16/04 @ 8:45 AM ON (1) COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL MORGAN STANLEY'S COMPLIANCE W/DISCOVERY REQUESTS CONCERNING COLEMAN ESCROW CORP NOTES; (2) COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO ITS SIXTH REQUEST UEST FOR PRODUCTION; (3) COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL MORGAN STANLEY'S COMPLIANCE W/RULE 1.310 DEPO NOTICE CONCERNING SUBORDINATED DEBENTURE TRANSACTIONS AND (4) MORGAN STANLEY'S M/FOR PROTECTIVE ORDER TO PRECLUDE UNNECESSARY & DUPLICATIVE RULE 1.310 .310 DEPO TESTIMONY REGARDING FEES AND EXPENSES RECEIVED BY MORGAN STANLEY	10730 10732
11/12/2004	00000743	EXHIBIT LIST EXHIBITS INTO EVIDENCE	10733 10733

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11/12/2004	00000744	MOTION TO COMPEL COMPLIANCE W/DEPO NOTICE DIRECTED AT FOUR MORGAN STANLEY EXECUTIVES - W/ATTACHMENTS	10734 10740
11/12/2004	00000745	NOTICE OF HEARING 11/17/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL COMPLIANCE W/DEPO NOTICE DIRECTED AT FOUR MORGAN STANLEY EXECUTIVES	10741 10742
11/12/2004	00000746	MOTION TO ALLOW MORGAN STANLEY IN EXCESS OF THIRY INTERROG'S - 'S - W/ATTACHMENTS	10743 10800
VOLUME NUMBER FIFTY FIVE			
11/12/2004	00000746	MOTION	10801 10804
11/12/2004	00000747	CONTINUED FROM PREVIOUS VOLUME MOTION TO COMPEL RULE 1.310 DEPOS & OPPOSITION TO COLEMAN (PARENT) HOLDING INC'S M/FOR PROTECTIVE ORDER	10805 10810
11/12/2004	00000748	MOTION FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF DEPOS, SERVED BY COLEMAN (PARENT) HOLDINGS INC ON 10/26/04	10811 10840
11/12/2004	00000749	NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF MORGAN STANLEY & CO INC'S OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES AGES - W/ATTACHMENTS	10841 10852
11/12/2004	00000750	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO ALLISON L AMORISON	10853 10855
11/12/2004	00000751	MOTION FOR PROTECTIVE ORDER PREVENTING AND OPPOSITION TO THE M/TO COMPEL, COLEMAN (PARENT) HOLDINGS INC'S NOTICE OF DEPO SERVED ON 11/3/04 - W/ATTACHMENT	10856 10871

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11/12/2004	00000752	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC ON THE TOPICS IDENTIFIED ON EXHIBIT A	10872 10875
11/15/2004	00000753	NOTICE OF FILING OF NON PARTY WACHOVIA BANK NA, AFFID OF JOEL THOMAS IN SUPPORT OF ITS M/TO QUASH SUBPOENA OR IN THE ALTERNATIVE, M/FOR PROTECTIVE ORDER - ATTACHED	10876 10881
11/15/2004	00000754	RE-NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO PHILLIP E HARLOW	10882 10884
11/15/2004	00000755	RESPONSE TO: AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S REQUEST FOR SUPPLEMENTAL DOCUMENTS	10885 10888
11/15/2004	00000756	NOTICE OF TAKING DEPOSITION TO BANK OF NEW YORK TRUST	10889 10897
11/15/2004	00000757	NOTICE OF OPPOSITION TO COLEMAN (PARENT) HOLDING INC'S M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO ITS SIXTH REQUEST FOR PRODUCTION - W/ATTACHMENTS	10898 11000
VOLUME NUMBER FIFTY SIX			
11/15/2004	00000757	NOTICE	11001 11163
11/16/2004	00000758	CONTINUED FROM PREVIOUS VOLUME RESPONSE TO: OF NON PARTY AMERICAN HOUSEHOLD INC, TO COLEMAN (PARENT) HOLDING INC'S RESPONSE IN OPPOSITION TO WACHOVIA BANK NA'S M/TO QUASH SUBPOENA, OR IN THE ALTERNATIVE, M/FOR PROTECTIVE ORDER	11164 11169
11/16/2004	00000759	MOTION FOR PROTECTIVE ORDER OF NON PARTY SUNBEAM, ON RECORDS REC DEPO	11170 11173
11/16/2004	00000760	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO BANK OF NEW YORK CO INC	11174 11180

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11/16/2004	00000761	NOTICE OF TAKING DEPOSITION TO RC OF WACHTELL LIPTON ROSEN & KATZ; RC OF CREDIT SUISSE FIRST BOSTON & BLAINE V FOGG	11181 11183
11/17/2004	00000762	ORDER PHILLIP HARLOW'S M/FOR PROTECTIVE ORDER IS DENIED	11184 11185
11/17/2004	00000763	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/FOR PROTECTIVE ORDER DTD 11/8/04 IS GRANTED IN PART & DENIED IN PART. THE CPH REP SHALL NOT BE DEPOSED ON TOPIC 2, BUT MAY BE DEPOSED ON TOPIC 5	11186 11187
11/17/2004	00000764	ORDER MORGAN STANLEY & CO INC'S M/TO COMPEL DEPO OF JERRY LEVIN IS GRANTED IN PART.	11188 11189
11/17/2004	00000765	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO HOWARD GITTIS	11190 11192
11/17/2004	00000766	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO RONALD PERELMAN	11193 11194
11/17/2004	00000767	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO JERRY LEVIN	11195 11197
11/18/2004	00000768	ORDER WACHOVIA BANK NA'S M/TO QUASH SUBPOENA OR IN THE ALTERNATIVE M/FOR PROTECTIVE ORDER IS GRANTED IN PART & RT & DENIED IN PART. SEE ORDER FOR DETAILS	11198 11199
11/18/2004	00000769	ORDER DEFS M/FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF DEPO'S SERVED BY COLEMAN (PARENT) HOLDINGS INC ON 10/26/04 IS DENIED.	11200 11200
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11/18/2004	00000769	ORDER	11201 11201

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11/18/2004	00000770	CONTINUED FROM PREVIOUS VOLUME ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL COMPLIANCE W/DEPO NOTICE DIRECTED AT FOUR MORGAN STANLEY EXECUTIVES IS GRANTED. THE FOUR LISTED WITNESSES SHALL HALL BE DEPOSED AS NOTICED	11202 11203
11/18/2004	00000771	ORDER DEFS M/FOR PROTECTIVE ORDER CONCERNING MORGAN STANLEY'S EY'S COLEMAN ESCROW NOTES IS DENIED	11204 11205
11/18/2004	00000772	ORDER MORGAN STANLEY & CO INC'S M/FOR PROTECTIVE ORDER CONCERNING COLEMAN (PARENT) HOLDINGS 6TH SET OF REQUESTS FOR ADMISSION & CPH'S NOTICE OF TAKING DEPO DTD 10/22/04 IS DENIED	11206 11207
11/18/2004	00000773	ORDER DEFS M/FOR PROTECTIVE ORDER PREVENTING COLEMAN (PARENT) ENT) HOLDINGS INC'S NOTICE OF DEPO, SERVED ON 11/3/04 IS DENIED	11208 11209
11/18/2004	00000774	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL MORGAN STANLEY'S COMPLIANCE W/DISCOVERY REQUESTS CONCERNING COLEMAN ESCROW CORP NOTES IS GRANTED IN PART - SEE ORDER	11210 11211
11/18/2004	00000775	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO ITS 6TH REQUEST FOR PRODUCTION IS GRANTED IN PART - SEE ORDER	11212 11213
11/18/2004	00000776	ORDER PARAGRAPH 1(ii) OF EXHIBIT A TO THE MOTION IS STRICKEN. KEN. COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL MORGAN STANLEY'S COMPLIANCE W/RULE 1.310 DEPO NOTICE CONCERNING SUBORDINATED DEBENTURE TRANSACTIONS IS GRANTED	11214 11215
11/19/2004	00000777	NOTICE OF HEARING 11/23/04 @ 8:45 AM ON MORGAN STANLEY'S M/TO EXTEND	11216 11218

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		EXPERT DISCOVERY & SUMMARY JUDGMENT DEADLINES BY ONE WEEK	
11/19/2004	00000778	ORDER PLTFs M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES IS GRANTED. THE AD DAMNUM CLAUSES OF COUNTS I, II, II & III OF PLTFs COMPLAINT ARE DEEMED AMENDED TO CLAIM THE DAMAGES SOUGHT IN EXHIBIT A TO THE MOTION	11219 11221
11/19/2004	00000779	MOTION TO EXTEND EXPERT DISCOVERY & SUMMARY JUDGMENT DEADLINES BY ONE WEEK	11222 11224
11/19/2004	00000780	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO TODD FREED	11225 11227
11/19/2004	00000781	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO ALLISON L AMORISON	11228 11230
11/19/2004	00000782	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO TODD FREED	11231 11233
11/22/2004	00000783	MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO SEVENTH REQUEST FOR PRODUCTION - W/ATTACHMENTS	11234 11243
11/22/2004	00000784	MOTION FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S REFUSAL TO COMPLY W/COURT ORDER - W/ATTACHMENTS	11244 11255
11/22/2004	00000785	RESPONSE TO: (WRITTEN) TO RULE 1.310 TOPICS	11256 11263
11/22/2004	00000786	NOTICE OF CANCELLATION OF DEPO	11264 11265
11/22/2004	00000787	NOTICE OF HEARING 12/3/04 @ 8:00 AM ON MORGAN STANLEY'S M/TO REMOVE CONFIDENTIAL DESIGNATIONS	11266 11268

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11/22/2004	00000788	NOTICE OF HEARING 12/3/04 @ 8:00 AM ON (1) NON PARTY SUNBEAM'S M/FOR PROTECTIVE ORDER ON REC CUST DEPO FILED 11/16/04 (2) COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO 7TH REQUEST FOR PRODUCTION FILED 11/22/04 (3) COLEMAN (PARENT) HOLDINGS INCS M/FOR /FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S REFUSAL TO COMPLY W/COURT ORDER FILED 11/22/04	11269 11271
11/22/2004	00000789	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC	11272 11275
11/22/2004	00000790	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC	11276 11279
11/22/2004	00000791	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC	11280 11283
11/23/2004	00000792	RESPONSE TO: TO COLEMAN (PARENT) HOLDINGS INC'S 8TH REQUEST FOR PRODUCTION OF DOCUMENTS	11284 11306
11/23/2004	00000793	ANSWER AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S 7TH SET OF INTERROG'S	11307 11312
11/23/2004	00000794	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO MORGAN STANLEY & CO INC	11313 11316
11/23/2004	00000795	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC	11317 11325
11/23/2004	00000796	MOTION OF NON PARTY SUNBEAM, TO REMOVE SEALED DOCUMENTS FROM COURT FILING & HOLD IN ESCROW	11326 11329
11/23/2004	00000797	MOTION TO ENFORCE STIP CONCERNING PURPORTED MISPREDENTATIONS & OMISSIONS - W/ATTACHMENTS	11330 11346
11/23/2004	00000798	NOTICE OF TAKING DEPOSITION	11347 11350

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		(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC	
11/23/2004	00000799	MOTION FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER - W/ATTACHMENTS	11351 11386
11/23/2004	00000800	RESPONSE TO: IN OPPOSITION TO NON PARTY SUNBEAMS M/FOR PROTECTIVE ORDER ON RECORDS CUSTODIAN DEPO - W/ATTACHMENTS	11387 11400
		VOLUME NUMBER FIFTY EIGHT	
11/23/2004	00000800	RESPONSE TO:	11401 11401
		CONTINUED FROM PREVIOUS VOLUME	
11/23/2004	00000801	AGREED ORDER MORGAN STANLEY'S M/TO EXTEND EXPERT DISCOVERY & SUMMARY MARY JUDGMENT DEADLINES BY ONE WEEK IS GRANTED IN PART - SEE ORDER FOR DETAILS	11402 11403
11/23/2004	00000802	NOTICE OF HEARING 12/3/04 @ 8:00 AM ON (1) NON PARTY SUNBEAMS M/FOR PROTECTIVE ORDER ON REC CUST DEPO FILED 11/16/04 (2) COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO SEVENTH REQUEST FOR PRODUCTION FILED 11/22/04 (3) COLEMAN (PARENT) HOLDINGS INGS INCS M/FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S REFUSAL TO COMPLY W/COURT ORDER FILED 11/22/04 (4) COLEMAN (PARENT) HOLDINGS INC'S M/TO ENFORCE STIP CONCERNING PURPORTED MISREPRESENTATIONS & OMISSIONS (5) COLEMAN (PARENT) HOLDINGS INC'S RESPONSE IN OPPOSITION TO NON PARTY SUNBEAMS M/FOR PROTECTIVE ORDER ON REC CUST DEPO (6) COLEMAN (PARENT) HOLDINGS INC'S M/FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER (7) COLEMAN (PARENT) HOLDINGS INC'S RESPONSE TO MORGAN STANLEY'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS	11404 11406

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11/23/2004	00000803	RESPONSE TO: TO MORGAN STANLEY'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS	11407 11408
11/24/2004	00000804	SUBPOENA RETURNED / SERVED TO PHILLIP E HARLOW	11409 11412
11/24/2004	00000805	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO ERNST & YOUNG LLP	11413 11415
11/24/2004	00000806	MOTION FOR PROTECTIVE ORDER W/ATTACHMENTS	11416 11453
11/24/2004	00000807	MOTION TO COMPEL NON PARTY ARTHUR ANDERSEN LLP TO COMPLY W/SUBPOENA FOR CUSTODIAN OF RECORDS DEPO - W/ATTACHMENTS	11454 11485
11/24/2004	00000808	NOTICE OF HEARING (AMENDED) 12/3/04 @ 8:00 AM ON (1) NON PARTY SUNBEAMS M/FOR PROTECTIVE ORDER ON REC CUSTODIAN DEPO FILED 11/16/04 (2) COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO 7TH REQUEST FOR PRODUCTION FILED 11/22/04 (3) COLEMAN (PARENT) HOLDINGS INC'S M/FOR A FINDING A CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S REFUSAL TO COMPLY W/COURT ORDER FILED 11/22/04 (4) COLEMAN (PARENT) HOLDINGS INC'S M/TO ENFORCE STIPULATION CONCERNING PURPORTED MISREPRESENTATIONS & OMISSIONS (5) (5) COLEMAN (PARENT) HOLDINGS INCS RESPONSE IN OPPOSITION TO NON PARTY SUNBEAM'S M/FOR PROTECTIVE ORDER ON REC CUST DEPO (6) COLEMAN (PARENT) HOLDINGS INC'S M/FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER (7) COLEMAN (PARENT) HOLDINGS INC'S RESPONSE TO MORGAN STANLEY'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS (8) MORGAN STANLEY'S M/FOR PROTECTIVE ORDER FILED 11/23/04 (9) COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL NON PARTY ARTHUR ANDERSEN LLP TO COMPLY W/SUBPOENA FOR CUSTODIAN OF RECORDS DEPO	11486 11488
11/24/2004	00000809	NOTICE OF HEARING (AMENDED) 12/3/04 @ 8:00 AM ON (1) NON PARTY SUNBEAMS	11489 11491

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		M/FOR PROTECTIVE ORDER ON REC CUSTODIAN DEPO FILED 11/16/04 (2) COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO 7TH REQUEST FOR PRODUCTION FILED 11/22/04 (3) COLEMAN (PARENT) HOLDINGS INC'S M/FOR A FINDING A CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S REFUSAL TO COMPLY W/COURT ORDER FILED 11/22/04 (4) COLEMAN (PARENT) HOLDINGS INC'S M/TO ENFORCE STIPULATION CONCERNING PURPORTED MISREPRESENTATIONS & OMISSIONS (5) (5) COLEMAN (PARENT) HOLDINGS INCS RESPONSE IN OPPOSITION TO NON PARTY SUNBEAM'S M/FOR PROTECTIVE ORDER ON REC CUST DEPO (6) COLEMAN (PARENT) HOLDINGS INC'S M/FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER (7) COLEMAN (PARENT) HOLDINGS INC'S RESPONSE TO MORGAN STANLEY'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS (8) MORGAN STANLEY'S M/FOR PROTECTIVE ORDER FILED 11/23/04 (9) COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL NON PARTY ARTHUR ANDERSEN LLP TO COMPLY W/SUBPOENA FOR CUSTODIAN OF RECORDS DEPO	
11/24/2004	00000810	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO ERNST & YOUNG LLP	11492 11494
11/24/2004	00000811	SUBPOENA RETURNED / SERVED TO BANK OF NEW YORK TRUST CO OF FLA NA	11495 11501
11/24/2004	00000812	RESPONSE TO: AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S SIXTH IXTH SET OF REQUESTS FOR ADMISSION	11502 11519
11/29/2004	00000813	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC	11520 11523
11/29/2004	00000814	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC	11524 11527
11/29/2004	00000815	RESPONSE TO: AND OBJECTIONS TO MORGAN STANLEY & CO INC'S FOURTH SET OF REQUESTS FOR ADMISSION	11528 11546
11/29/2004	00000816	RESPONSE TO:	11547 11551

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		AND OBJECTIONS TO MORGAN STANLEY & CO INC'S 8TH REQUEST UEST FOR PRODUCTION OF DOCUMENTS	
11/29/2004	00000817	RESPONSE TO: AND OBJECTIONS TO MORGAN STANLEY & CO INC'S FIFTH SET OF INTERROG'S	11552 11565
11/29/2004	00000818	AGREED ORDER DENYING AS MOOT COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL DTD 7/15/04 & MORGAN STANLEY & CO INC'S M/FOR EXTENSION OF STAY DTD 9/3/04	11566 11567
11/30/2004	00000819	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC	11568 11571
11/30/2004	00000820	RESPONSE TO: TO PLTF'S M/FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF LIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER ER	11572 11577
11/30/2004	00000821	RESPONSE TO: TO M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO SEVENTH REQUEST FOR PRODUCTION	11578 11589
11/30/2004	00000822	MOTION FOR RECONSIDERATION OF THE COURTS ORDER GRANTING COLEMAN (PARENT) HOLDINGS INC'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES - UP ON 12/2/04	11590 11600
		VOLUME NUMBER FIFTY NINE	
11/30/2004	00000822	MOTION	11601 11601
		CONTINUED FROM PREVIOUS VOLUME	
12/01/2004	00000823	NOTICE OF TAKING DEPOSITION OF MICHAEL C OCCHUIZZO ESQ, TO DONALD R UZZI	11602 11619
12/01/2004	00000824	NOTICE OF JOINT SUBMISSION OF THE PARTIES FOR 12/3/04 CASE MANAGEMENT CONFERENCE	11620 11624

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12/01/2004	00000825	NOTICE OF NON PARTY ARTHUR ANDERSEN LLP, OF OPPOSITION TO PLTF PLTF COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL NON PARTY ARTHUR ANDERSEN LLP TO COMPLY W/SUBPOENA FOR CUSTODIAN OF RECORDS DEPO - W/ATTACHMENTS	11625 11656
12/01/2004	00000826	AFFIDAVIT OF SCOTT D FISCHER, IN SUPPORT OF ARTHUR ANDERSEN LLP'S LP'S OPPOSITION TO PLTF COLEMAN (PARENT) HOLDINGS INC'S NC'S M/TO COMPEL NON PARTY ARTHUR ANDERSEN LLP TO COMPLY W/SUBPOENA FOR CUSTODIAN OF RECORDS DEPO	11657 11661
12/02/2004	00000827	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO TAREK ABDEL-MEGUID; JOSEPH PERELLA; ROBERT SCOTT & BRUCE FIEDOREK	11662 11664
12/02/2004	00000828	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC	11665 11668
12/02/2004	00000829	ORDER MORGAN STANLEY & CO INC'S M/FOR RECONSIDERATION OF THE COURTS ORDER GRANTING COLEMAN (PARENT) HOLDINGS INC'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES IS DENIED	11669 11670
12/03/2004	00000830	SUBPOENA RETURNED / SERVED TO ERNST & YOUNG LLP	11671 11673
12/03/2004	00000831	SUBPOENA RETURNED / SERVED TO ERNST & YOUNG LLP	11674 11676
12/03/2004	00000832	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO BRUCE FIEDOREK; JOSEPH PERELLA; ROBERT SCOTT & TAREK ABDEL-MEGUID	11677 11679
12/03/2004	00000833	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO RUTH PORAT	11680 11681
12/03/2004	00000834	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S REFUSAL TO COMPLY W/COURT ORDER IS DENIED AS MOOT	11682 11683

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12/03/2004	00000835	ORDER NON PARTY SUNBEAM'S M/FOR PROTECTIVE ORDER ON REC CUST DEPO IS GRANTED IN PART. ON OR BEFORE 12/17/04 COUNSEL NSEL FOR SUNBEAM & THE PARTIES SHALL CONFER & ATTEMPT TO REACH STIPULATIONS REGARDING DOCUMENTS. IF PARTIES ARE UNABLE TO REACH A STIP THE REC CUST DEPO SHALL BE TAKEN THE WEEK OF 12/20/04	11684 11685
12/03/2004	00000836	ORDER ON DEF MORGAN STANLEY & CO INC'S M/FOR PROTECTIVE ORDER. PARAGRAPHS I & II OF M/FOR PROTECTIVE ORDER IS DENIED AS MOOT. PARAGRAPH III IS DENIED EXCEPT AS MODIFIED BY COURTS 12/3/04 ORDER. PARAGRAPH IV IS DENIED	11686 11687
12/03/2004	00000837	ORDER PARTIES JOINT ORE TENUS M/TO EXTEND TIME TO APPOINT MEDIATOR IS GRANTED. PARTIES SHALL SELECT A MEDIATOR BY 12/10/04	11688 11688
12/03/2004	00000838	ORDER ON COLEMAN (PARENT) HOLDINGS INC'S M/FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER. BY 12/10/04 CPH SHALL NOTIFY MORGAN STANLEY WHICH OF THE DOCUMENTS REQUIRE RESPONSES. COLEMAN (PARENT) HOLDINGS M/TO COMPEL IS GRANTED. MORGAN STANLEY SHALL PRODUCE A DEPO WITNESS IN ACCORDANCE WITH CPH'S NOTICE OF TAKING DEPOS THE WEEK OF 12/20/04	11689 11690
12/03/2004	00000839	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO ENFORCE STIP CONCERNING PURPORTED MISREPRESENTATIONS & OMISSIONS IS GRANTED IN PART. PLTFS ORE TENUS M/IN LIMINE IS GRANTED.	11691 11692
12/03/2004	00000840	ORDER ARTHUR ANDERSEN LLP'S M/FOR PROTECTIVE ORDER IS DENIED. ON OR BEFORE 12/10/04 COUNSEL FOR PARTIES SHALL CONFER & ATTEMPT TO STIPULATE THE PURPOSE OF THE DOCUMENTS ON WHICH COLEMAN SEEKS TO DEPOSE AN ARTHUR ANDERSEN REP	11693 11694

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12/03/2004	00000841	ORDER MORGAN STANLEY & CO INC'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS IS GRANTED. CLERK IS DIRECTED TO UNSEAL THOSE ITEMS LISTED IN SUBPARAGRAPHS 4(A) - (O) OF THE MOTION	11695 11696
12/07/2004	00000842	NOTICE OF HEARING 12/15/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/FOR CLARIFICATION OF OBLIGATIONS TO DISCLOSE OPINION TESTIMONY OF FACT WITNESSES	11697 11699
12/07/2004	00000843	MOTION FOR CLARIFICATION OF OBLIGATIONS TO DISCLOSE OPINION TESTIMONY OF FACT WITNESSES - W/ATTACHMENTS - UP ON 12/9/04	11700 11709
12/07/2004	00000844	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO BLAINE V FOGG	11710 11712
12/08/2004	00000845	MOTION FOR LEAVE TO TAKE DEPO - W/ATTACHMENTS	11713 11733
12/08/2004	00000846	NOTICE OF HEARING 12/15/04 @ 8:45 AM ON DEF MORGAN STANLEY & CO INC'S M/FOR LEAVE TO TAKE DEPO (RE: ERNST & YOUNG LLP REP))	11734 11736
12/08/2004	00000847	MOTION TO COMPEL ANSWERS TO FIFTH SET OF INTERROG'S	11737 11741
12/09/2004	00000848	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC	11742 11745
12/09/2004	00000849	NOTICE OF HEARING 12/15/04 @ 8:45 AM ON MORGAN STANLEY'S M/TO COMPEL ANSWERS TO FIFTH SET OF INTERROG'S	11746 11748
12/09/2004	00000850	MOTION FOR LEAVE TO TAKE DEPO	11749 11757
12/09/2004	00000851	NOTICE OF HEARING 12/15/04 @ 8:45 AM ON DEF MORGAN STANLEY & CO INC'S	11758 11760

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		M/FOR LEAVE TO TAKE DEPO (RE: CPH REP)	
12/09/2004	00000852	MOTION TO DETERMINE SUFFICIENCY OF SERVICE OF PROCESS ON JERRY ERRY LEVIN - W/ATTACHMENTS	11761 11775
12/09/2004	00000853	NOTICE OF HEARING 12/16/04 @ 8:45 AM ON MORGAN STANLEY'S M/TO DETERMINE SUFFICIENCY OF SERVICE OF PROCESS ON JERRY LEVIN	11776 11778
12/10/2004	00000854	NOTICE OF PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT (APPENDIX VOLUME 2) *** UNSEALED PER ORDER DTD 2/4/05 ***	11779 11800
		VOLUME NUMBER SIXTY	
12/10/2004	00000854	NOTICE CONTINUED FROM PREVIOUS VOLUME	11801 12000
		VOLUME NUMBER SIXTY ONE	
12/10/2004	00000854	NOTICE CONTINUED FROM PREVIOUS VOLUME	12001 12195
12/10/2004	00000855	MEMORANDUM IN SUPPORT OF MORGAN STANLEY & CO INC'S M/FOR SUMMARY JUDGMENT *** UNSEALED PER ORDER DTD 2/4/05 ***	12196 12200
		VOLUME NUMBER SIXTY TWO	
12/10/2004	00000855	MEMORANDUM CONTINUED FROM PREVIOUS VOLUME	12201 12237
12/10/2004	00000856	NOTICE OF PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN	12238 12400

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SUPPORT OF ITS M/FOR SUMMARY JUDGMENT (APPENDIX VOLUME 1) *** UNSEALED PER ORDER DTD 2/4/05 ***			
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12/10/2004	00000856	NOTICE	12601 12662
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12/10/2004	00000858	NOTICE	0 0
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12/10/2004	00000859	NOTICE OF PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT (APPENDIX VOLUME 4) *** UNSEALED PER ORDER DTD 2/4/05 ***	13202 13400
VOLUME NUMBER SIXTY EIGHT			
12/10/2004	00000859	NOTICE	13401 13591
		CONTINUED FROM PREVIOUS VOLUME	
12/10/2004	00000860	MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS	13592 13600
VOLUME NUMBER SIXTY NINE			
12/10/2004	00000860	MOTION	13601 13602
		CONTINUED FROM PREVIOUS VOLUME	
12/10/2004	00000861	NOTICE OF FILING PLEADING UNDER SEAL	13603 13605
12/10/2004	00000862	MOTION FOR SUMMARY JUDGMENT	13606 13610
12/10/2004	00000863	NOTICE OF FILING PLEADING UNDER SEAL	13611 13613
12/10/2004	00000864	NOTICE OF FILING PLEADING UNDER SEAL	13614 13616
12/10/2004	00000865	MOTION (AMENDED) TO DETERMINE SUFFICIENCY OF SERVICE OF	13617 13628

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		PROCESS ON JERRY LEVIN - W/ATTACHMENTS	
12/10/2004	00000866	NOTICE OF HEARING 12/16/04 @ 8:45 AM ON MORGAN STANLEY'S AMENDED M/TO DETERMINE SUFFICIENCY OF SERVICE OF PROCESS ON JERRY LEVIN	13629 13631
12/13/2004	00000867	AGREED ORDER MOTION OF AMERICAN HOUSEHOLD INC IS GRANTED. CLERK IS DIRECTED TO RELEASE THE DOCUMENTS FILED BY THIS COURT UNDER SEAL ON 10/12/04 AS REFLECTED IN DE #628 INTO CUSTODY OF GREENBERG TRAUIG PA & SHALL PERMIT EITHER MARK F BIDEAU, ESQ OR KELLY CRAFT TO RETRIEVE & TAKE PHYSICAL CUSTODY OF THE DOCUMENTS - SEE ORDER	13632 13633
12/13/2004	00000868	NOTICE OF SELECTION OF MEDIATOR. PARTIES HAVE AGREED TO THE APPOINTMENT OF JONATHAN B MARKS AS MEDIATOR	13634 13636
12/14/2004	00000869	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S MOTION TO COMPEL ANSWERS TO FIFTH SET OF INTERROGS	13637 13657
12/14/2004	00000870	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S MOTION FOR LEAVE TO TAKE DEPOSITION OF NON-PARTY E&Y	13658 13679
12/14/2004	00000871	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S MOTION FOR LEAVE TO TAKE DEPOSITION OF CPH REP	13680 13696
12/15/2004	00000872	MOTION FOR LEAVE TO TAKE DEPO OF DONALD R UZZI - W/ATTACHMENTS ENTS	13697 13798
12/15/2004	00000873	NOTICE OF HEARING 12/22/04 @ 8:45 AM ON MORGAN STANLEY'S M/FOR LEAVE TO TAKE DEPO OF DONALD R UZZI	13799 13800

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VOLUME NUMBER SEVENTY			
12/15/2004	00000873	NOTICE OF HEARING	13801 13801
		CONTINUED FROM PREVIOUS VOLUME	
12/15/2004	00000874	ORDER DEFS M/FOR LEAVE TO TAKE DEPO IS GRANTED IN PART - SEE ORDER	13802 13803
12/15/2004	00000875	RESPONSE TO: (SUPPLEMENTAL) TO MORGAN STANLEY & CO INC'S FIFTH SET OF INTERROG'S	13804 13808
12/15/2004	00000876	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/FOR CLARIFICATION OF OBLIGATIONS TO DISCLOSE OPINION TESTIMONY OF FACT WITNESSES IS GRANTED.	13809 13810
12/15/2004	00000877	ORDER MORGAN STANLEY & CO INC'S M/TO COMPEL ANSWERS TO FIFTH SET OF INTERROG'S IS GRANTED IN PART - SEE ORDER	13811 13812
12/15/2004	00000878	ORDER DEFS M/FOR LEAVE TO TAKE DEPO (ERNEST & YOUNG) IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS	13813 13814
12/16/2004	00000879	MOTION TO LIMIT EXPERT TESTIMONY & EXPEDITE EXPERT DISCOVERY RY	13815 13821
12/16/2004	00000880	NOTICE OF HEARING 12/22/04 @ 8:45 AM ON MORGAN STANLEY'S M/TO LIMIT EXPERT TESTIMONY & EXPEDITE EXPERT DISCOVERY	13822 13824
12/16/2004	00000881	NOTICE OF TAKING DEPOSITION OF MICHAEL OCCHUIZZO ESQ, TO DONALD R UZZI	13825 13842
12/17/2004	00000882	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC ON THE	13843 13846

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		TOPICS IDENTIFIED ON EXHIBIT A	
12/21/2004	00000883	MOTION TO STRIKE MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT	13847 13852
12/21/2004	00000884	NOTICE OF HEARING 12/21/04 @ 8:45 AM ON (1) COLEMAN (PARENT) HOLDINGS INC'S M/TO STRIKE MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS ITS M/FOR SUMMARY JUDGMENT	13853 13855
12/21/2004	00000885	RESPONSE TO: TO MORGAN STANLEY'S M/TO LIMIT EXPERT TESTIMONY & EXPEDITE EXPERT DISCOVERY	13856 13860
12/21/2004	00000886	RESPONSE TO: TO MORGAN STANLEY'S M/FOR LEAVE TO TAKE DEPO OF DONALD R UZZI	13861 13863
12/21/2004	00000887	RE-NOTICE OF HEARING 12/22/04 @ 8:45 AM ON COLEMAN (PARENT HOLDINGS INC'S M/TO STRIKE MORGAN STANLEY & CO INC'S PROPOSED FINDINGS INGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT	13864 13866
12/22/2004	00000888	ORDER SETTING HEARING (SPECIAL SET) 1/21/05 @ 3:00 PM ON DEF MORGAN STANLEY & CO INC'S M/TO LIMIT EXPERT TESTIMONY & EXPEDITE EXPERT DISCOVERY	13867 13868
12/22/2004	00000889	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO ON TOPICS IDENTIFIED ON EXHIBIT A	13869 13875
12/22/2004	00000890	ORDER MORGAN STANLEY'S M/FOR LEAVE TO TAKE DEPO OF DONALD R UZZI IS GRANTED IN PART. MORGAN STANLEY SHALL HAVE UNTIL 1/19/05 TO TAKE MR UZZI'S DEPO	13876 13877
12/23/2004	00000891	MOTION	13878 13881

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		FOR TEMPORARY RELIEF FROM PROVISION IN 9/15/04 ORDER R	
12/23/2004	00000892	MOTION FOR EXTENSION OF TIME IN WHICH TO RESPOND TO MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT	13882 13884
12/23/2004	00000893	NOTICE OF HEARING 1/4/05 @ 8:45 AM ON (1) CPH'S M/TO STRIKE MS' PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS ITS M/FOR SUMMARY JUDGMENT (2) CPH'S M/FOR EXTENSION OF TIME IN WHICH TO RESPOND TO MS' PROPOSED FINDINGS OF S OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT	13885 13887
12/23/2004	00000894	NOTICE OF FILING PLEADING UNDER SEAL	13888 13889
12/23/2004	00000895	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S M/FOR SUMMARY JUDGMENT *** UNSEALED PER ORDER DTD 2/4/05 ***	13890 13986
12/28/2004	00000896	NOTICE OF TAKING DEPOSITION OF MICHAEL OCCHUIZZO ESQ, TO DONALD R UZZI	13987 14000
		VOLUME NUMBER SEVENTY ONE	
12/28/2004	00000896	NOTICE OF TAKING DEPOSITION CONTINUED FROM PREVIOUS VOLUME	14001 14001
12/28/2004	00000897	MOTION TO STAY PROCEEDINGS PENDING APPEAL	14002 14006
12/29/2004	00000898	NOTICE OF HEARING 1/11/05 @ 8:45 AM ON MORGAN STANLEY'S M/TO STAY PROCEEDINGS PENDING APPEAL	14007 14009
12/30/2004	00000899	NOTICE OF FILING	14010 14011

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		PLEADING UNDER SEAL	
12/30/2004	00000900	SEALED PER ORDER DTD 7/31/03	14012 14012
12/30/2004	00000901	NOTICE OF FILING PLEADING UNDER SEAL	14013 14014
12/30/2004	00000902	SEALED PER ORDER DTD 7/31/03	14015 14015
12/30/2004	00000903	NOTICE OF FILING PLEADING UNDER SEAL	14016 14017
12/30/2004	00000904	SEALED PER ORDER DTD 7/31/03	14018 14018
12/30/2004	00000905	NOTICE OF FILING PLEADING UNDER SEAL	14019 14020
12/30/2004	00000906	SEALED PER ORDER DTD 7/31/03	14021 14021
12/30/2004	00000907	NOTICE OF FILING PLEADING UNDER SEAL	14022 14023
12/30/2004	00000908	SEALED PER ORDER DTD 7/31/04	14024 14024
12/30/2004	00000909	NOTICE OF FILING PLEADING UNDER SEAL	14025 14026
12/30/2004	00000910	SEALED PER ORDER DTD 7/31/03	14027 14027
12/30/2004	00000911	NOTICE OF FILING PLEADING UNDER SEAL	14028 14029
12/30/2004	00000912	SEALED PER ORDER DTD 7/31/03	14030 14030
12/30/2004	00000913	MOTION TO COMPEL	14031 14047

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		A BETTER ANSWER TO INTERROG #2 OF MORGAN STANLEY'S FIFTH SET OF INTERROG'S TO PLTF COLEMAN (PARENT) HOLDINGS INC - W/ATTACHMENTS	
12/30/2004	00000914	NOTICE OF HEARING 1/6/05 @ 8:45 AM ON MORGAN STANLEY'S M/TO COMPEL A BETTER ANSWER TO INTERROG #2 OF MORGAN STANLEY'S FIFTH SET OF INTERROG'S TO PLTF COLEMAN (PARENT) HOLDINGS INC INC	14048 14050
12/30/2004	00000915	NOTICE OF FILING PLEADING UNDER SEAL	14051 14052
12/30/2004	00000916	SEALED PER ORDER DTD 7/31/03	14053 14053
12/30/2004	00000917	NOTICE OF FILING PLEADING UNDER SEAL	14054 14055
12/30/2004	00000918	SEALED PER ORDER DTD 7/31/03	14056 14056
12/30/2004	00000919	NOTICE OF FILING PLEADING UNDER SEAL	14057 14058
12/30/2004	00000920	SEALED PER ORDER DTD 7/31/03	14059 14059
12/30/2004	00000921	NOTICE OF FILING PLEADING UNDER SEAL	14060 14061
12/30/2004	00000922	SEALED PER ORDER DTD 7/31/03	14062 14062
12/30/2004	00000923	NOTICE OF FILING PLEADING UNDER SEAL	14063 14064
12/30/2004	00000924	SEALED PER ORDER DTD 7/31/03	14065 14065
12/30/2004	00000925	NOTICE OF FILING PLEADING UNDER SEAL	14066 14067

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12/30/2004	00000927	NOTICE OF FILING PLEADING UNDER SEAL	14069 14070
12/30/2004	00000928	SEALED PER ORDER DTD 7/31/03	14071 14071
12/30/2004	00000929	NOTICE OF FILING PLEADING UNDER SEAL	14072 14073
12/30/2004	00000930	SEALED PER ORDER DTD 7/31/03	14074 14074
12/30/2004	00000931	NOTICE OF FILING PLEADING UNDER SEAL	14075 14076
12/30/2004	00000932	SEALED PER ORDER DTD 7/31/03	14077 14077
12/30/2004	00000933	NOTICE OF FILING PLEADING UNDER SEAL	14078 14079
12/30/2004	00000934	SEALED PER ORDER DTD 7/31/03	14080 14080
12/30/2004	00000935	NOTICE OF FILING PLEADING UNDER SEAL	14081 14082
12/30/2004	00000936	SEALED PER ORDER DTD 7/31/03	14083 14083
12/30/2004	00000937	NOTICE OF FILING PLEADING UNDER SEAL	14084 14085
12/30/2004	00000938	SEALED PER ORDER DTD 7/31/03	14086 14086
12/30/2004	00000939	NOTICE OF FILING PLEADING UNDER SEAL	14087 14088

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12/30/2004	00000940	SEALED PER ORDER DTD 7/31/03	14089 14089
12/30/2004	00000941	NOTICE OF FILING PLEADING UNDER SEAL	14090 14091
12/30/2004	00000942	SEALED PER ORDER DTD 7/31/03	14092 14092
12/30/2004	00000943	NOTICE OF FILING PLEADING UNDER SEAL	14093 14094
12/30/2004	00000944	SEALED PER ORDER DTD 7/31/03	14095 14095
12/30/2004	00000945	NOTICE OF FILING PLEADING UNDER SEAL	14096 14097
12/30/2004	00000946	SEALED PER ORDER DTD 7/31/03	14098 14098
12/30/2004	00000947	NOTICE OF FILING PLEADING UNDER SEAL	14099 14100
12/30/2004	00000948	SEALED PER ORDER DTD 7/31/03	14101 14101
12/30/2004	00000949	NOTICE OF FILING PLEADING UNDER SEAL	14102 14103
12/30/2004	00000950	SEALED PER ORDER DTD 7/31/03	14104 14104
12/30/2004	00000951	NOTICE OF FILING PLEADING UNDER SEAL	14105 14106
12/30/2004	00000952	SEALED PER ORDER DTD 7/31/03	14107 14107
12/30/2004	00000953	NOTICE OF FILING PLEADING UNDER SEAL	14108 14109

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12/30/2004	00000954	SEALED PER ORDER DTD 7/31/03	14110 14110
12/30/2004	00000955	NOTICE OF FILING PLEADING UNDER SEAL	14111 14112
12/30/2004	00000956	SEALED PER ORDER DTD 7/31/03	14113 14113
01/03/2005	00000957	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO	14114 14120
01/03/2005	00000958	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO	14121 14127
01/03/2005	00000959	RESPONSE TO: (AMENDED SUPPLEMENTAL) TO MORGAN STANLEY & CO INC'S FIFTH SET OF INTERROGS'	14128 14132
01/03/2005	00000960	RESPONSE TO: (SUPPLEMENTAL) TO MORGAN STANLEY & CO INC'S FOURTH SET OF INTERROGS	14133 14137
01/03/2005	00000961	RESPONSE TO: (SUPPLEMENTAL) TO INTERROG #4 AND #6 OF MORGAN STANLEY & CO INC'S SECOND SET OF INTERROG'S	14138 14142
01/03/2005	00000962	RESPONSE TO: (AMENDED) AND OBJECTIONS TO MORGAN STANLEY & CO INC'S FOURTH SET OF REQUESTS FOR ADMISSIONS #27 & 28	14143 14151
01/03/2005	00000963	NOTICE OF FILING PLEADING UNDER SEAL	14152 14153
01/03/2005	00000964	SEALED PER ORDER DTD 7/31/03	14154 14154
01/03/2005	00000965	NOTICE OF FILING PLEADINGS UNDER SEAL (VOLUME 1-12)	14155 14156
01/03/2005	00000966	APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT	14157 14200

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		CONTINUED FROM PREVIOUS VOLUME	
		VOLUME NUMBER SEVENTY THREE	
01/03/2005	00000966	APPENDIX	14401 14570
		CONTINUED FROM PREVIOUS VOLUME	
01/03/2005	00000967	APPENDIX	14571 14600
		TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 2) *** UNSEALED PER ORDER DTD 2/4/05 ***	
		VOLUME NUMBER SEVENTY FOUR	
01/03/2005	00000967	APPENDIX	14601 14800
		CONTINUED FROM PREVIOUS VOLUME	
		VOLUME NUMBER SEVENTY FIVE	
01/03/2005	00000967	APPENDIX	14801 15000
		CONTINUED FROM PREVIOUS VOLUME	
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		VOLUME NUMBER SEVENTY SEVEN	
01/03/2005	00000968	APPENDIX CONTINUED FROM PREVIOUS VOLUME	15201 15400
		VOLUME NUMBER SEVENTY EIGHT	
01/03/2005	00000968	APPENDIX	15401 15439
01/03/2005	00000969	CONTINUED FROM PREVIOUS VOLUME APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 4) *** UNSEALED PER ORDER DTD 2/4/05 ***	15440 15600
		VOLUME NUMBER SEVENTY NINE	
01/03/2005	00000969	APPENDIX CONTINUED FROM PREVIOUS VOLUME	15601 15800
		VOLUME NUMBER EIGHTY	
01/03/2005	00000969	APPENDIX	15801 15818
01/03/2005	00000970	CONTINUED FROM PREVIOUS VOLUME APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 5) ** UNSEALED PER ORDER DTD 2/4/05 **	15819 16000

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01/03/2005	00000970	APPENDIX	16001 16200
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01/03/2005	00000970	APPENDIX	16201 16269
		CONTINUED FROM PREVIOUS VOLUME	
01/03/2005	00000971	APPENDIX	16270 16400
		TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT	
		FILING (VOLUME 6) *** UNSEALED PER ORDER DTD 2/4/05	

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01/03/2005	00000971	APPENDIX	16401 16600
		CONTINUED FROM PREVIOUS VOLUME	
VOLUME NUMBER EIGHTY FOUR			
01/03/2005	00000971	APPENDIX	16601 16706
		CONTINUED FROM PREVIOUS VOLUME	
01/03/2005	00000972	APPENDIX	16707 16800
		TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT	
		FILING (VOLUME 7) ** UNSEALED PER ORDER DTD 2/4/05 **	
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		CONTINUED FROM PREVIOUS VOLUME	
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01/03/2005	00000972	APPENDIX	17001 17137
		CONTINUED FROM PREVIOUS VOLUME	
01/03/2005	00000973	APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 8) ** UNSEALED PER ORDER DTD 2/4/05 **	17138 17200
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01/03/2005	00000973	APPENDIX	17201 17400
		CONTINUED FROM PREVIOUS VOLUME	
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01/03/2005	00000973	APPENDIX	17601 17611
		CONTINUED FROM PREVIOUS VOLUME	
01/03/2005	00000974	APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT	17612 17800

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01/03/2005	00000974	APPENDIX	17801 17944
		CONTINUED FROM PREVIOUS VOLUME	
01/03/2005	00000975	APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 10) ** UNSEALED PER ORDER DTD 2/4/05 **	17945 18000
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01/03/2005	00000975	APPENDIX	18001 18200
		CONTINUED FROM PREVIOUS VOLUME	
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01/03/2005	00000975	APPENDIX	18201 18223
		CONTINUED FROM PREVIOUS VOLUME	
01/03/2005	00000976	APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 11) ** UNSEALED PER ORDER DTD 2/4/05 **	18224 18400
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01/03/2005	00000976	APPENDIX	18401 18600
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01/03/2005	00000976	APPENDIX	18601 18635
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01/03/2005	00000977	APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 12) ** UNSEALED PER ORDER DTD 2/4/05 **	18636 18800
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01/03/2005	00000977	APPENDIX	18801 19000
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01/03/2005	00000977	APPENDIX	19001 19059
		CONTINUED FROM PREVIOUS VOLUME	
01/04/2005	00000978	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/FOR EXTENSION OF TIME TIME IN WHICH TO RESPOND TO MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT IS GRANTED IN PART - SEE ORDER	19060 19061
01/04/2005	00000979	AGREED ORDER REVISING SUMMARY JUDGMENT DEADLINES - SEE ORDER	19062 19063
01/04/2005	00000980	ORDER ON COLEMAN (PARENT) HOLDINGS INC'S M/TO STRIKE MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT. COURT FINDS THERE IS INSUFFICIENT TIME AVAILABLE TO PERMIT THE MOTION TO BE HEARD PRIOR TO	19064 19065

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		HEARING	
01/04/2005	00000981	RE-NOTICE OF HEARING 1/12/05 @ 8:45 AM ON MORGAN STANLEY'S M/TO COMPEL A BETTER ANSWER TO INTERROG #2 OF MORGAN STANLEY'S FIFTH SET OF INTERROG'S TO PLTF, COLEMAN (PARENT) HOLDINGS INC	19066 19068
01/05/2005	00000982	NOTICE OF HEARING 1/12/05 @ 8:45 AM ON CPH'S M/TO COMPEL ADEQUATE ANSWERS WERS TO MORGAN STANLEY'S SUPPLEMENTAL RESPONSES TO CPH'S FIRST SET OF INTERROG'S	19069 19070
01/05/2005	00000983	MOTION TO COMPEL ADEQUATE ANSWERS TO MORGAN STANLEY'S SUPPLEMENTAL RESPONSES TO CPH'S FIRST SET OF INTERROG'S - W/ATTACHMENTS	19071 19090
01/05/2005	00000984	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC	19091 19094
01/05/2005	00000985	NOTICE OF HEARING 1/11/05 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO EXTEND THE TIME FOR SUBMISSION OF THE REBUTTAL EXPERT REPORT OF SAMUEL KURSH	19095 19097
01/05/2005	00000986	MOTION TO EXTEND THE TIME FOR SUBMISSION OF THE REBUTTAL EXPERT REPORT OF SAMUEL KURSH	19098 19101
01/05/2005	00000987	RE-NOTICE OF HEARING 1/12/05 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO EXTEND THE TIME FOR SUBMISSION OF THE REBUTTAL EXPERT REPORT OF SAMUEL KURSH	19102 19104
01/05/2005	00000988	NOTICE OF FILING PLEADING UNDER SEAL	19105 19106
01/05/2005	00000989	SEALED PER ORDER DTD 7/31/03	19107 19107
01/06/2005	00000990	NOTICE OF FILING	19108 19109

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		PLEADING UNDER SEAL	
01/06/2005	00000991	SEALED PER ORDER DTD 7/31/03	19110 19110
01/06/2005	00000992	NOTICE OF FILING PLEADING UNDER SEAL	19111 19112
01/06/2005	00000993	SEALED PER ORDER DTD 7/31/03	19113 19113
01/07/2005	00000994	NOTICE OF FILING AMENDED CERT OF SERVICE	19114 19116
01/07/2005	00000995	NOTICE OF FILING PLEADING UNDER SEAL	19117 19120
01/07/2005	00000996	MEMORANDUM (REPLY) IN SUPPORT OF MORGAN STANLEY & CO INC'S M/FOR SUMMARY JUDGMENT *** UNSEALED PER ORDER DTD 2/4/05 ***	19121 19171
01/07/2005	00000997	NOTICE OF FILING PLEADING UNDER SEAL	19172 19174
01/07/2005	00000998	MEMORANDUM (REPLY) IN SUPPORT OF MORGAN STANLEY & CO INC'S M/FOR SUMMARY JUDGMENT - W/ATTACHMENTS **** UNSEALED PER ORDER DTD 2/4/05 ****	19175 19200
		VOLUME NUMBER NINETY SEVEN	
01/07/2005	00000998	MEMORANDUM CONTINUED FROM PREVIOUS VOLUME	19201 19400
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01/07/2005	00000998	MEMORANDUM	19401 19527

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01/10/2005	00001000	MOTION IN LIMINE #7 TO EXCLUDE EVIDENCE & TESTIMONY CONFLATING TING SUNBEAM & MORGAN STANLEY - W/ATTACHMENTS	19536 19569
01/10/2005	00001001	NOTICE OF FILING PLEADING UNDER SEAL	19570 19572
01/10/2005	00001002	MOTION IN LIMINE #1 TO EXCLUDE PERFORMANCE EVALUATIONS OR OTHER PROPENSITY EVIDENCE - W/ATTACHMENTS	19573 19600
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01/10/2005	00001002	MOTION	19601 19689
01/10/2005	00001003	CONTINUED FROM PREVIOUS VOLUME MOTION IN LIMINE #3 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO CORP CORRUPTION & ACCOUNTING SCANDALS - W/ATTACHMENTS	19690 19779
01/10/2005	00001004	MOTION IN LIMINE #8 TO ESTABLISH PROCEDURE FOR USE OF DEPOS AT S AT TRIAL	19780 19785
01/10/2005	00001005	NOTICE OF FILING PLEADING UNDER SEAL	19786 19788
01/10/2005	00001006	NOTICE OF FILING PLEADING UNDER SEAL	19789 19791
01/10/2005	00001007	NOTICE OF FILING PLEADING UNDER SEAL	19792 19794
01/10/2005	00001008	MOTION	19795 19800

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		IN LIMINE #4 TO EXCLUDE EVIDENCE & TESTIMONY REGARDING EXTRA-CONTRACTUAL REPRESENTATIONS - W/ATTACHMENTS	
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01/10/2005	00001008	MOTION	19801 19813
		CONTINUED FROM PREVIOUS VOLUME	
01/10/2005	00001009	NOTICE OF FILING PLEADING UNDER SEAL	19814 19816
01/10/2005	00001010	MOTION IN LIMINE #6 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO MORGAN STANLEY EMPLOYEES DISCARDGIN ENGAGEMENT MATERIALS IN THE NORMAL COURSE OF BUSINESS BEFORE THIS ACTION WAS FILED	19817 19826
01/10/2005	00001011	MOTION IN LIMINE #5 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO MORGAN STANLEY'S NET WORTH	19827 19837
01/10/2005	00001012	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S M/TO STAY PROCEEDINGS INGS PENDING APPEAL - W/ATTACHMENTS	19838 19871
01/10/2005	00001013	MOTION IN LIMINE #9 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO THE PRIOR MORGAN STANLEY SENIOR FUNDING INC LITIGATION	19872 19882
01/10/2005	00001013	A NOTICE OF FILING PLEADING UNDER SEAL	19883 19884
01/10/2005	00001013	B SEALED PER ORDER DTD 7/31/03	19885 19885
01/10/2005	00001013	C NOTICE OF FILING PLEADING UNDER SEAL	19886 19887
01/10/2005	00001013	D SEALED	19888 19888

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01/10/2005	00001013	G SEALED PER ORDER DTD 7/31/03	19891 19891
01/10/2005	00001013	H SEALED PER ORDER DTD 7/31/03	19892 19892
01/10/2005	00001013	I SEALED PER ORDER DTD 7/31/03	19893 19893
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01/10/2005	00001013	L NOTICE OF FILING PLEADING UNDER SEAL	19897 19898
01/10/2005	00001013	M SEALED PER ORDER DTD 7/31/03	19899 19899
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01/10/2005	00001013	P NOTICE OF FILING PLEADING UNDER SEAL	19903 19903
01/10/2005	00001013	Q SEALED PER ORDER DTD 7/31/03	19904 19905
01/10/2005	00001013	R NOTICE OF FILING	19906 19907

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01/10/2005	00001013	T NOTICE OF FILING PLEADING UNDER SEAL	19909 19910
01/10/2005	00001013	U SEALED PER ORDER DTD 7/31/03	19911 19911
01/11/2005	00001014	MOTION (VERIFIED) TO ADMIT JEFFREY S DAVIDSON, PRO HAC VICE - ATTACHMENTS	19912 19919
01/11/2005	00001015	NOTICE OF FILING PLEADING UNDER SEAL (VOLUME 1-8)	19920 19921
01/11/2005	00001016	SUPPLEMENT APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME I)	19922 20000
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		VOLUME NUMBER ONE HUNDRED ONE	
01/11/2005	00001016	SUPPLEMENT	20001 20200
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		VOLUME NUMBER ONE HUNDRED TWO	
01/11/2005	00001016	SUPPLEMENT	20201 20311
		CONTINUED FROM PREVIOUS VOLUME	
01/11/2005	00001017	RESPONSE TO: TO MORGAN STANLEY'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT ** UNSEALED PER ORDER DTD 2/4/05 **	20312 20400

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01/11/2005	00001017	RESPONSE TO:	20401 20558
		CONTINUED FROM PREVIOUS VOLUME	
01/11/2005	00001018	SUPPLEMENT	20559 20600
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01/11/2005	00001018	SUPPLEMENT	20601 20800
		CONTINUED FROM PREVIOUS VOLUME	

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01/11/2005	00001018	SUPPLEMENT	20801 20898
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01/11/2005	00001019	SUPPLEMENT	20899 21000
		APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY	
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01/11/2005	00001020	SUPPLEMENT	21236 21400
		APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY	
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01/11/2005	00001020	SUPPLEMENT	21401 21531
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01/11/2005	00001021	SUPPLEMENT	21532 21600
		APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY	
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		2/11/05 ***	
		VOLUME NUMBER ONE HUNDRED NINE	
01/11/2005	00001021	SUPPLEMENT	21601 21800
		CONTINUED FROM PREVIOUS VOLUME	
		VOLUME NUMBER ONE HUNDRED TEN	
01/11/2005	00001021	SUPPLEMENT	21801 21976
		CONTINUED FROM PREVIOUS VOLUME	
01/11/2005	00001022	SUPPLEMENT	21977 22000
		APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY	
		JUDGMENT FILING (VOLUME 6)	
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01/11/2005	00001022	SUPPLEMENT	22001 22153
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01/11/2005	00001023	SUPPLEMENT	22154 22200
		APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY	
		JUDGMENT FILING (VOLUME 7)	
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01/11/2005	00001023	SUPPLEMENT	22201 22400
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01/11/2005	00001023	SUPPLEMENT	22401 22556
		CONTINUED FROM PREVIOUS VOLUME	
01/11/2005	00001024	SUPPLEMENT	22557 22600
		APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY	
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01/11/2005	00001024	SUPPLEMENT	22601 22753
		CONTINUED FROM PREVIOUS VOLUME	
01/11/2005	00001025	SEALED	22754 22754
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01/11/2005	00001026	SEALED	22755 22755

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01/11/2005	00001027	MOTION IN LIMINE (#6) TO BAR EVIDENCE & ARGUMENT CONCERNING INQUIRIES BY THE SECURITIES & EXCHANGE COMMISSION & THE THE NEW YORK STOCK EXCHANGE REGARDING THE COLEMAN SUNBEAM TRANSACTION - W/ATTACHMENTS (PLEADING CLO CKED IN 1/10/05)	22756 22762
01/11/2005	00001028	MOTION IN LIMINE (#11) TO BAR EVIDENCE & ARGUMENT CONCERNING ALLEGED BUSINESS PRACTICES OF REVLON INC - W/ATTACHMENTS (PLEADING CLOKED IN 1/10/05)	22763 22771
01/11/2005	00001029	MOTION IN LIMINE (#12) TO BAR EVIDENCE & ARGUMENT CONCERNING THE ACQUISITION OF PANAVISION INC (PLEADING CLOKED IN D IN 1/10/05)	22772 22785
01/11/2005	00001030	MOTION IN LIMINE (#5) TO BAR EVIDENCE & ARGUMENT CONCERNING THE HEALTH OF A MORGAN STANLEY EXECUTIVE (PLEADING CLOKED IN 1/10/05)	22786 22790
01/11/2005	00001031	MOTION IN LIMINE (#10) TO BAR EVIDENCE & ARGUMENT CONCERNING THE FAILURE OF SUNBEAM ZERO COUPON SUBORDINATED DEBENTURE HOLDERS TO SUE MORGAN STANLEY - W/ATTACHMENTS ENTS (PLEADING CLOKED IN 1/10/05)	22791 22799
01/11/2005	00001032	MOTION IN LIMINE (#9) TO BAR EVIDENCE & ARGUMENT CONCERNING THE ABSENCE OF AN ENFORCEMENT ACTION AGAINST DEF BY THE THE SECURITIES & EXCHANGE COMMISSION - W/ATTACHMENTS TS (PLEADING CLOKED IN 1/10/05)	22800 22800
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01/11/2005	00001032	MOTION	22801 22801

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01/11/2005	00001033	CONTINUED FROM PREVIOUS VOLUME MOTION IN LIMINE (#8) TO BAR EVIDENCE & ARGUMENT CONCERNING THE VALUE OF MAFCO'S SETTLEMENT W/SUNBEAM CORP (PLEADING CLOCKED 1/10/05)	22802 22808
01/11/2005	00001034	MOTION IN LIMINE (#7) TO BAR EVIDENCE & ARGUMENT CONCERNING PLTFS SETTLEMENT W/ARTHUR ANDERSEN (PLEADING CLOCKED IN ON 1/10/05)	22809 22813
01/11/2005	00001035	MOTION IN LIMINE (#13) TO BAR EVIDENCE & ARGUMENT CONCERNING SUNBEAM'S 2/23/98 DRAFT CONFIDENTIALITY AGREEMENT - W/ATTACHMENTS (PLEADING CLOCKED ON 1/10/05)	22814 22828
01/11/2005	00001036	MOTION IN LIMINE (#4) TO BAR EVIDENCE & ARGUMENT CONCERNING MONICA LEWINSKY, WEBSTER HUBBELL, THE GRAND JURY INVESTIGATIONS REGARDING LEWINSKY & HUBBELL, & THE REPORT OF THE OFFICE OF THE INDEPENDENT COUNSEL - W/ATTACHMENT (PLEADING CLOCKED IN 1/10/05)	22829 22839
01/11/2005	00001037	MOTION IN LIMINE (#1) TO BAR EVIDENCE & ARGUMENT CONCERNING COLEMAN (PARENT) HOLDINGS INC'S ALLEGED PROFITS FROM ITS INVESTMENT IN THE COLEMAN CO INC - W/ATTACHMENTS (PLEADING CLOCKED ON 1/10/05)	22840 22865
01/11/2005	00001038	MOTION IN LIMINE (#17) TO BAR EVIDENCE & ARGUMENT CONCERNING SALES OF STOCK BY COLEMAN'S OFFICERS & DIRECTORS - W/ATTACHMENTS (PLEADING CLOCKED ON 1/10/05)	22866 22880
01/11/2005	00001039	MOTION IN LIMINE (#3) TO BAR EVIDENCE & ARGUMENT OF MORGAN STANLEY'S SUPPOSED LOSSES IN THE TRANSACTION BETWEEN COLEMAN CO INC & SUNBEAM CORP - W/ATTACHMENTS (PLEADING CLOCKED ON 1/10/05)	22881 22921
01/11/2005	00001040	MOTION IN LIMINE (#16) TO BAR EVIDENCE & ARGUMENT CONCERNING	22922 22927

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		CONDUCT OR COMMUNICATIONS NOT ADEQUATELY DISCLOSED IN MORGAN STANLEY'S 12/04 SUPPLEMENTAL RESPONSES TO INTERROG #1,2,3,4,5 & 10 OF CPH'S FIRST SET OF INTERROG'S (PLEADING CLOCKED IN 1/10/05)	
01/11/2005	00001041	MOTION IN LIMINE (#15) TO BAR EVIDENCE & ARGUMENT THAT SUNBEAM BEAM ASSUMED DEBT OF THE COLEMAN CO INC AS MERGER CONSIDERATION TO CPH - W/ATTACHMENTS (PLEADING CLOCKED IN 1/10/05)	22928 22945
01/11/2005	00001042	MOTION IN LIMINE (#14) TO BAR EVIDENCE & ARGUMENT THAT THE "COMFORT LETTERS" REFERRED TO IN THE PUBLIC MERGER AGREEMENT OR THE HOLDINGS MERGER AGREEMENT INCLUDE THE 3/19/98 & 3/25/98 COMFORT LETTERS - W/ATTACHMENTS (PLEADING CLOCKED ON 1/10/05)	22946 23000
		VOLUME NUMBER ONE HUNDRED SIXTEEN	
01/11/2005	00001042	MOTION	23001 23015
		CONTINUED FROM PREVIOUS VOLUME	
01/11/2005	00001043	MOTION IN LIMINE (#18) TO BAR EVIDENCE & ARGUMENT CONCERNING PLTFS COUNSEL'S RETENTION OF PROFESSOR MARK GRINBLATT AS AN EXPERT IN PRIOR UNRELATED CASES - W/ATTACHMENTS (PLEADING CLOCKED ON 1/10/05)	23016 23021
01/11/2005	00001044	MOTION IN LIMINE (#2) TO BAR EVIDENCE & ARGUMENT CONCERNING THE WEALTH, NET WORTH, INCOME, OR FINANCIAL STATUS OF PERELMAN, GITTIS, OR ANY OTHER MAFCO, CPH, OR COLEMAN EMPLOYEES - W/ATTACHMENTS (PLEADING CLOCKED ON 1/10/05)	23022 23034
01/11/2005	00001045	ORDER DEF'S M/TO STAY PROCEEDINGS PENDING APPEAL IS DENIED W/OUT PREJUDICE	23035 23036

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01/11/2005	00001046	NOTICE OF OPPOSITION TO COLEMAN (PARENT) HOLDING INC'S M/TO COMPEL ADEQUATE ANSWERS TO MORGAN STANLEY'S SUPPLEMENTAL RESPONSES TO CPH'S FIRST SET OF INTERROG'S OG'S	23037 23098
01/11/2005	00001047	NOTICE OF FILING PLEADING UNDER SEAL	23099 23101
01/11/2005	00001048	MOTION IN LIMINE #10 TO EXCLUDE RESTATEMENT INTERVIEW NOTES OF S OF NON PARTY ARTHUR ANDERSEN & NON PARTY SKADDEN	23102 23112
01/11/2005	00001049	RESPONSE TO: TO MORGAN STANLEY'S M/TO COMPEL A "BETTER" ANSWER TO INTERROG #2 OF MORGAN STANLEY'S FIFTH SET OF INTERROG'S OG'S	23113 23119
01/11/2005	00001050	MOTION FOR TEMPORARY RELIEF FROM PROVISION IN 9/15/04 ORDER R	23120 23125
01/11/2005	00001051	NOTICE OF FILING PLEADING UNDER SEAL	23126 23127
01/11/2005	00001052	NOTICE OF FILING PLEADING UNDER SEAL	23128 23130
01/11/2005	00001053	EXHIBIT LIST (TRIAL)	23131 23173
01/11/2005	00001054	WITNESS LIST	23174 23181
01/12/2005	00001055	MOTION TO STRIKE COLEMAN (PARENT) HOLDINGS INC'S RESPONSE TO MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT - W/ATTACHMENTS	23182 23189
01/12/2005	00001056	MOTION FOR PROTECTIVE ORDER W/ATTACHMENTS	23190 23200

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		CONTINUED FROM PREVIOUS VOLUME	
01/12/2005	00001057	MOTION TO COMPEL PRODUCTION OF COLEMAN (PARENT) HOLDINGS INC'S TRIAL EXHIBITS	23202 23213
01/12/2005	00001058	NOTICE OF HEARING 1/19/05 @ 8:45 AM ON MORGAN STANLEY'S M/FOR PROTECTIVE ORDER; MORGAN STANLEY'S M/TO COMPEL PRODUCTION OF COLEMAN'S TRIAL EXHIBITS AND MORGAN STANLEY'S M/TO STRIKE COLEMAN'S RESPONSE TO MORGAN STANLEY'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS ITS M/FOR SUMMARY JUDGMENT	23214 23216
01/12/2005	00001059	WITNESS LIST FOR TRIAL	23217 23220
01/12/2005	00001060	EXHIBIT LIST (TRIAL)	23221 23256
01/12/2005	00001061	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO EXTEND TIME FOR SUBMISSION OF THE REBUTTAL EXPERT REPORT OF SAMUEL KURSH IS GRANTED IN PART - SEE ORDER	23257 23258
01/12/2005	00001062	AGREED ORDER GRANTING VERIFIED M/TO ADMIT JEFFREY S DAVIDSON PRO HAC HAC VICE ON PAYMENT OF THE CLERK'S FEES	23259 23260
01/12/2005	00001063	ORDER COLEMAN (PARENT) HOLDINGS INC'S OBJECTIONS TO THE FILING OF THE AMENDED RESTATED ANSWER ARE OVERRULED IN PART - SEE ORDER (W/ATTACHMENTS)	23261 23295
01/12/2005	00001064	ORDER AND NOTICE OF HEARING. DEFS M/TO COMPEL A BETTER ANSWER TO INTERROG #2 OF MORGAN STANLEY'S FIFTH SET OF	23296 23297

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		INTERRIG'S TO PLTF'S M/TO COMPEL ADEQUATE ANSWERS TO MORGAN STANLEY'S SUPPLEMENTAL RESPONSES TO CPH'S FIRST SET OF INTERROGS IS SET FOR 1/13/05 @ 11:00 AM	
01/13/2005	00001065	MOTION TO COMPEL COMPLIANCE W/PRETRIAL ORDER - W/ATTACHMENT	23298 23312
01/13/2005	00001066	NOTICE OF HEARING (AMENDED) 1/19/05 @ 8:45 AM ON MORGAN STANLEY'S M/FOR PROTECTIVE ORDER; MORGAN STANLEY'S M/TO COMPEL PRODUCTION OF COLEMAN'S TRIAL EXHIBITS; MORGAN STANLEY'S M/TO STRIKE COLEMAN'S RESPONSE TO MORGAN STANLEY'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT AND MORGAN STANLEY'S M/TO COMPEL COMPLIANCE W/PRETRIAL ORDER	23313 23315
01/13/2005	00001067	NOTICE OF FILING DEPO TRANSCRIPT OF W JOHANNES GROELLER - ATTACHED	23316 23400
		VOLUME NUMBER ONE HUNDRED EIGHTEEN	
01/13/2005	00001067	NOTICE OF FILING	23401 23411
		CONTINUED FROM PREVIOUS VOLUME	
01/13/2005	00001068	NOTICE OF FILING DEPO TRANSCRIPT OF SHANI BOONE - ATTACHED	23412 23600
		VOLUME NUMBER ONE HUNDRED NINETEEN	
01/13/2005	00001068	NOTICE OF FILING	23601 23800
		CONTINUED FROM PREVIOUS VOLUME	
		VOLUME NUMBER ONE HUNDRED TWENTY	
01/13/2005	00001068	NOTICE OF FILING	23801 23829

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01/13/2005	00001069	CONTINUED FROM PREVIOUS VOLUME NOTICE OF FILING DEPO TRANSCRIPT OF KAREN HAYCOX-ELTRICH - ATTACHED	23830 24000
		VOLUME NUMBER ONE HUNDRED TWENTY ONE	
01/13/2005	00001069	NOTICE OF FILING	24001 24200
		CONTINUED FROM PREVIOUS VOLUME	
		VOLUME NUMBER ONE HUNDRED TWENTY TWO	
01/13/2005	00001069	NOTICE OF FILING	24201 24318
		CONTINUED FROM PREVIOUS VOLUME	
01/13/2005	00001070	NOTICE OF FILING DEPO TRANSCRIPT OF JOSHUA A WEBBER - ATTACHED	24319 24400
		VOLUME NUMBER ONE HUNDRED TWENTY THREE	
01/13/2005	00001070	NOTICE OF FILING	24401 24600
		CONTINUED FROM PREVIOUS VOLUME	
		VOLUME NUMBER ONE HUNDRED TWENTY FOUR	
01/13/2005	00001070	NOTICE OF FILING	24601 24782
		CONTINUED FROM PREVIOUS VOLUME	
01/13/2005	00001071	NOTICE OF FILING DEPO TRANSCRIPT OF JOHN D'A.TRYREE - ATTACHED	24783 24800
		VOLUME NUMBER ONE HUNDRED TWENTY FIVE	

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01/13/2005	00001071	NOTICE OF FILING	24801 25000
		CONTINUED FROM PREVIOUS VOLUME	
		VOLUME NUMBER ONE HUNDRED TWENTY SIX	
01/13/2005	00001071	NOTICE OF FILING	25001 25200
		CONTINUED FROM PREVIOUS VOLUME	
		VOLUME NUMBER ONE HUNDRED TWENTY SEVEN	
01/13/2005	00001071	NOTICE OF FILING	25201 25345
		CONTINUED FROM PREVIOUS VOLUME	
01/13/2005	00001072	NOTICE OF FILING	25346 25400
		DEPO TRANSCRIPT OF ANDREW SAVARIE - ATTACHED	
		VOLUME NUMBER ONE HUNDRED TWENTY EIGHT	
01/13/2005	00001072	NOTICE OF FILING	25401 25600
		CONTINUED FROM PREVIOUS VOLUME	
		VOLUME NUMBER ONE HUNDRED TWENTY NINE	
01/13/2005	00001072	NOTICE OF FILING	25601 25637
		CONTINUED FROM PREVIOUS VOLUME	
01/13/2005	00001073	NOTICE OF FILING	25638 25800
		DEPO TRANSCRIPT OF LILY RAFII - ATTACHED	
		VOLUME NUMBER ONE HUNDRED THIRTY	
01/13/2005	00001073	NOTICE OF FILING	25801 26000

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VOLUME NUMBER ONE HUNDRED THIRTY ONE			
01/13/2005	00001073	NOTICE OF FILING	26001 26046
CONTINUED FROM PREVIOUS VOLUME			
01/13/2005	00001074	NOTICE OF FILING DEPO TRANSCRIPT OF ROBERT KITTS - ATTACHED	26047 26200
VOLUME NUMBER ONE HUNDRED THIRTY TWO			
01/13/2005	00001074	NOTICE OF FILING	26201 26400
CONTINUED FROM PREVIOUS VOLUME			
VOLUME NUMBER ONE HUNDRED THIRTY THREE			
01/13/2005	00001074	NOTICE OF FILING	26401 26487
CONTINUED FROM PREVIOUS VOLUME			
01/14/2005	00001075	NOTICE OF FILING PLEADING UNDER SEAL	26488 26489
01/14/2005	00001076	SEALED PER ORDER DTD 7/31/03	26490 26490
01/14/2005	00001077	NOTICE OF FILING PLEADING UNDER SEAL	26491 26492
01/14/2005	00001078	SEALED PER ORDER DTD 7/31/03	26493 26493
01/14/2005	00001079	NOTICE OF FILING PLEADING UNDER SEAL	26494 26495
01/14/2005	00001080	SEALED PER ORDER DTD 7/31/03	26496 26496

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01/14/2005	00001081	NOTICE OF FILING PLEADING UNDER SEAL	26497 26498
01/14/2005	00001082	SEALED PER ORDER DTD 7/31/03	26499 26499
01/14/2005	00001083	NOTICE OF FILING PLEADING UNDER SEAL	26500 26501
01/14/2005	00001084	SEALED PER ORDER DTD 7/31/03	26502 26502
01/14/2005	00001085	NOTICE OF FILING PLEADING UNDER SEAL	26503 26504
01/14/2005	00001086	SEALED PER ORDER DTD 7/31/03	26505 26505
01/14/2005	00001087	NOTICE OF FILING PLEADING UNDER SEAL	26506 26507
01/14/2005	00001088	SEALED PER ORDER DTD 7/31/03	26508 26508
01/14/2005	00001089	NOTICE OF FILING PLEADING UNDER SEAL	26509 26510
01/14/2005	00001090	SEALED PER ORDER DTD 7/31/03	26511 26511
01/14/2005	00001091	SEALED PER ORDER DTD 7/31/03	26512 26512
01/14/2005	00001092	NOTICE OF FILING PLEADING UNDER SEAL	26513 26514
01/14/2005	00001093	ORDER DEFS M/TO COMPEL A BETTER ANSWER TO INTERROG #2 OF MORGAN STANLEY'S 5TH SET OF INTERROG'S TO PLTF COLEMAN (PARENT) HOLDINGS INC IS GRANTED IN PART - SEE ORDER R	26515 26516

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01/14/2005	00001094	ORDER ON COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL ADEQUATE UATE ANSWERS TO MORGAN STANLEY'S SUPPLEMENTAL RESPONSES NSES TO CPH'S FIRST SET OF INTERROG'S - SEE ORDER	26517 26518
01/18/2005	00001095	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #3 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO CORP CORRUPTION & ACCOUNTING SCANDALS - W/ATTACHMENTS	26519 26583
01/18/2005	00001096	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #6 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO MORGAN STANLEY EMPLOYEES DISCARDING ENGAGEMENT MATERIALS IN THE NORMAL RMAL COURSE OF BUSINESS BEFORE THIS ACTION WAS FILED - W/ATTACHMENTS	26584 26600
VOLUME NUMBER ONE HUNDRED THIRTY FOUR			
01/18/2005	00001096	RESPONSE TO:	26601 26605
01/18/2005	00001097	CONTINUED FROM PREVIOUS VOLUME RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #7 TO EXCLUDE EVIDENCE & TESTIMONY "CONFLATING" SUNBEAM & MORGAN STANLEY	26606 26609
01/18/2005	00001098	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #8 TO ESTABLISH PROCEDURE FOR USE OF DEPOS AT TRIAL	26610 26615
01/18/2005	00001099	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #4 TO EXCLUDE EVIDENCE & TESTIMONY REGARDING EXTRA-CONTRACTUAL REP'S - W/ATTACHMENTS	26616 26680
01/18/2005	00001100	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #5 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO MORGAN STANLEY'S EY'S NET WORTH - W/ATTACHMENT	26681 26694

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01/18/2005	00001101	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #9 TO EXCLUDE REFERENCES TO THE PRIOR MORGAN STANLEY SENIOR FUNDING INC LITIGATION - W/ATTACHMENTS	26695 26725
01/18/2005	00001102	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #10 TO EXCLUDE RESTATEMENT INTERVIEW NOTES OF NON PARTY ARTHUR ANDERSEN & NON PARTY SKADDEN - W/ATTACHMENTS	26726 26800
VOLUME NUMBER ONE HUNDRED THIRTY FIVE			
01/18/2005	00001102	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	26801 26835
01/18/2005	00001103	NOTICE OF INTENT TO RELY ON ADDITIONAL AUTHORITY IN OPPOSITION TION TO DEFS M/FOR SUMMARY JUDGMENT - W/ATTACHMENT	26836 26843
01/18/2005	00001104	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #1 TO EXCLUDE PERFORMANCE EVALUATIONS OR OTHER PROPENSITY EVIDENCE - W/ATTACHMENTS	26844 26977
01/18/2005	00001105	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #2 TO EXCLUDE SECURITIES & EXCHANGE COMMISSION PROCEEDINGS	26978 26981
01/18/2005	00001106	MOTION TO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER - W/ATTACHMENTS	26982 27000
VOLUME NUMBER ONE HUNDRED THIRTY SIX			
01/18/2005	00001106	MOTION CONTINUED FROM PREVIOUS VOLUME	27001 27091

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01/18/2005	00001107	NOTICE OF HEARING 1/21/05 @ 8:00 AM ON CPH'S M/TO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER	27092 27094
01/18/2005	00001108	RESPONSE TO: TO CPH'S M/IN LIMINE #12 TO BAR EVIDENCE & ARGUMENT CONCERNING THE ACQUISITION OF PANAVISION INC - W/ATTACHMENTS	27095 27126
01/18/2005	00001109	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S M/FOR PROTECTIVE ORDER - W/ATTACHMENTS	27127 27141
01/18/2005	00001110	NOTICE OF FILING UNDER SEAL	27142 27144
01/18/2005	00001111	NOTICE OF EXHIBITS 2 & 4 TO ITS RESPONSE TO CPH'S M/IN LIMINE #12 TO BAR EVIDENCE & ARGUMENT CONCERNING THE ACQUISITION OF PANAVISION INC *** UNSEALED PER ORDER DTD 2/4/05 ***	27145 27155
01/18/2005	00001112	NOTICE OF FILING PLEADING UNDER SEAL	27156 27157
01/18/2005	00001113	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #1 TO EXCLUDE PERFORMANCE EVALUATIONS OR OTHER PROPENSITY EVIDENCE *** UNSEALED PER ORDER DTD 2/4/05 ***	27158 27200
VOLUME NUMBER ONE HUNDRED THIRTY SEVEN			
01/18/2005	00001113	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	27201 27297
01/18/2005	00001114	NOTICE OF FILING PLEADING UNDER SEAL	27298 27299
01/18/2005	00001115	RESPONSE TO:	27300 27331

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		TO MORGAN STANLEY'S M/IN LIMINE #6 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO MORGAN STANLEY EMPLOYEES DISCARDING ENGAGEMENT MATERIALS IN THE NORMAL RMAL COURSE OF BUSINESS BEFORE THIS ACTION WAS FILED *** UNSEALED PER ORDER DTD 2/4/05 ***	
01/18/2005	00001116	NOTICE OF FILING PLEADING UNDER SEAL	27332 27333
01/18/2005	00001117	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #3 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO CORP CORRUPTION & ACCOUNTING SCANDALS *** UNSEALED PER ORDER DTD 2/4/05 ***	27334 27400
		VOLUME NUMBER ONE HUNDRED THIRTY EIGHT	
01/18/2005	00001117	RESPONSE TO:	27401 27413
		CONTINUED FROM PREVIOUS VOLUME	
01/18/2005	00001118	NOTICE OF FILING PLEADING UNDER SEAL	27414 27415
01/18/2005	00001119	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #4 TO EXCLUDE EVIDENCE & TESTIMONY REGARDING EXTRA-CONTRACTUAL REPRESENTATIONS IONS ** UNSEALED PER ORDER DTD 2/4/05 **	27416 27489
01/18/2005	00001120	NOTICE OF FILING UNDER SEAL	27490 27492
01/18/2005	00001121	SEALED PER ORDER DTD 7/31/03	27493 27493
01/18/2005	00001122	NOTICE OF FILING UNDER SEAL	27494 27496
01/18/2005	00001123	SEALED PER ORDER DTD 7/31/03	27497 27497

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01/18/2005	00001124	NOTICE OF FILING UNDER SEAL	27498 27500
01/18/2005	00001125	SEALED PER ORDER DTD 7/31/03	27501 27501
01/18/2005	00001126	NOTICE OF FILING PLEADING UNDER SEAL	27502 27504
01/18/2005	00001127	SEALED PER ORDER DTD 7/31/03	27505 27505
01/18/2005	00001128	NOTICE OF FILING UNDER SEAL	27506 27508
01/18/2005	00001129	MEMORANDUM (REPLY) IN SUPPORT OF MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW *** UNSEALED PER ORDER DTD 2/4/05 ***	27509 27583
01/18/2005	00001130	NOTICE OF FILING UNDER SEAL	27584 27586
01/18/2005	00001131	SEALED PER ORDER DTD 7/31/03	27587 27587
01/18/2005	00001132	NOTICE OF FILING PLEADING UNDER SEAL	27588 27590
01/18/2005	00001133	SEALED PER ORDER DTD 7/31/03	27591 27591
01/18/2005	00001134	NOTICE OF FILING PLEADING UNDER SEAL	27592 27593
01/18/2005	00001135	SEALED PER ORDER DTD 7/31/03	27594 27594
01/18/2005	00001136	NOTICE OF OPPOSITION TO CPH'S M/IN LIMINE #11 TO BAR EVIDENCE & ARGUMENT CONCERNING ALLEGED BUSINESS PRACTICES OF REVLON INC - W/ATTACHMENTS	27595 27600

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01/18/2005	00001136	NOTICE	27601 27673
01/18/2005	00001137	CONTINUED FROM PREVIOUS VOLUME RESPONSE TO: TO CPH'S M/IN LIMINE #6 TO BAR EVIDENCE & ARGUMENT CONCERNING INQUIRIES BY THE SECURITIES & EXCHANGE COMMISSION & THE NEW YORK STOCK EXCHANGE REGARDING THE COLEMAN-SUNBEAM TRANSACTION - W/ATTACHMENTS	27674 27701
01/18/2005	00001138	NOTICE OF OPPOSITION TO CHP'S M/IN LIMINE #10 TO BAR EVIDENCE & ARGUMENT CONCERNING THE FAILURE OF THE SUNBEAM ZERO COUPON SUBORDINATED DEBENTURE HOLDERS TO SUE MORGAN STANLEY - W/ATTACHMENTS	27702 27711
01/18/2005	00001139	RESPONSE TO: TO CPH'S M/IN LIMINE #1 TO BAR EVIDENCE & ARGUMENT CONCERNING COLEMAN (PARENT) HOLDINGS INC'S ALLEGED PROFITS FROM ITS INVESTMENT IN THE COLEMAN CO INC - W/ATTACHMENTS	27712 27721
01/18/2005	00001140	RESPONSE TO: TO CPH'S M/IN LIMINE #3 TO EXCLUDE EVIDENCE & ARGUMENT OF MORGAN STANLEY'S LOSSES IN THE TRANSACTION BETWEEN COLEMAN CO INC & SUNBEAM	27722 27727
01/18/2005	00001141	RESPONSE TO: TO CPH'S M/IN LIMINE #4 TO BAR EVIDENCE & ARGUMENT CONCERNING MONICA LEWINSKY, WEBSTER HUBBELL, THE GRAND JURY INVESTIGATIONS REGARDING LEWINKSY & HUBBELL, AND THE REPORT OF THE OFFICE OF THE INDEPENDENT COUNSEL	27728 27736
01/18/2005	00001142	RESPONSE TO: TO CPH M/IN LIMINE #8 TO BAR EVIDENCE & ARGUMENT CONCERNING THE VALUE OF MAFCO'S SETTLEMENT W/SUNBEAM CORP	27737 27740

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01/18/2005	00001143	RESPONSE TO: TO CPH'S M/IN LIMINE #9 TO BAR EVIDENCE & ARGUMENT CONCERNING THE ABSENCE OF AN ENFORCEMENT ACTION AGAINST INST DEF BY THE SECURITIES & EXCHANGE COMMISSION	27741 27747
01/18/2005	00001144	RESPONSE TO: TO CPH M/IN LIMINE #5 TO BAR EVIDENCE & ARGUMENT CONCERNING THE HEALTH OF A MORGAN STANLEY EXECUTIVE	27748 27750
01/18/2005	00001145	RESPONSE TO: TO CPH'S M/IN LIMINE #16 TO BAR EVIDENCE & ARGUMENT CONCERNING CONDUCT OR COMMUNICATIONS NOT ADEQUATELY DISCLOSED IN MORGAN STANLEY'S 12/04 SUPPLEMENTAL RESPONSES TO INTERROG #1,2,3,4,5 & 10 OF CPH'S FIRST SET OF INTERROG'S	27751 27754
01/18/2005	00001146	RESPONSE TO: TO CPH M/IN LIMINE #15 TO BAR EVIDENCE & ARGUMENT THAT SUNBEAM ASSUMED DEBT OF THE COLEMAN CO INC AS MERGER CONSIDERATION TO CPH	27755 27758
01/18/2005	00001147	RESPONSE TO: TO CPH M/IN LIMINE #18 TO BAR EVIDENCE & ARGUMENT CONCERNING PLTFS COUNSEL'S RETENTION OF PROFESSOR MARK GRINBLATT AS AN EXPERT IN PRIOR UNRELATED CASES	27759 27761
01/18/2005	00001148	RESPONSE TO: TO CPH'S M/IN LIMINE #13 TO EXCLUDE EVIDENCE & ARGUMENT MENT CONCERNING THE NONRELIANCE CLAUSE IN THE 2/23/98 CONFIDENTIALITY AGREEMENT - W/ATTACHMENTS	27762 27774
01/18/2005	00001149	RESPONSE TO: TO CPH M/IN LIMINE #7 TO BAR EVIDENCE & ARGUMENT CONCERNING PLTFS SETTLEMENT W/ARTHUR ANDERSEN	27775 27778
01/18/2005	00001150	RESPONSE TO: IN CPH M/IN LIMINE #2 TO BAR EVIDENCE & ARGUMENT CONCERNING THE WEALTH, NET WORTH, INCOME OR FINANCIAL STATUS OF PERELMAN, GITTIS, OR ANY OTHER MAFCO, CPH OR COLEMAN EMPLOYEES (SIC) - W/ATTACHMENTS	27779 27786

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01/18/2005	00001151	RESPONSE TO: TO CPH'S M/IN LIMINE #17 TO BAR EVIDENCE & ARGUMENT CONCERNING SALES OF STOCK BY COLEMAN'S OFFICERS & DIRECTORS - W/ATTACHMENTS	27787 27800
VOLUME NUMBER ONE HUNDRED FORTY			
01/18/2005	00001151	RESPONSE TO:	27801 27831
CONTINUED FROM PREVIOUS VOLUME			
01/18/2005	00001152	RESPONSE TO: TO CPH'S M/IN LIMINE #14 TO BAR EVIDENCE & ARGUMENT THAT THE "COMFORT LETTERS" REFERRED TO IN THE PUBLIC MERGER AGREEMENT OR THE HOLDINGS MERGER AGREEMENT INCLUDE THE 3/19/98 & 3/25/98 COMFORT LETTERS - W/ATTACHMENTS	27832 27881
01/18/2005	00001153	MEMORANDUM (REPLY) IN SUPPORT OF MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW	27882 27898
01/19/2005	00001154	MOTION TO EXTEND TIME TO DEPOSE DONALD UZZI - W/ATTACHMENTS S	27899 28000
VOLUME NUMBER ONE HUNDRED FORTY ONE			
01/19/2005	00001154	MOTION	28001 28008
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01/19/2005	00001155	ORDER MORGAN STANLEY'S M/FOR PROTECTIVE ORDER DTD 1/12/05 IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS	28009 28010
01/20/2005	00001156	NOTICE OF INTENT TO RELY UPON ADDITIONAL AUTHORITY IN OPPOSITION TO DEFS M/FOR SUMMARY JUDGMENT -	28011 28029

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W/ATTACHMENTS			
01/20/2005	00001157	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC	28030 28033
01/20/2005	00001158	NOTICE OF FILING & INTENT TO RELY UPON THE DEPO TESTIMONY OF ARTHUR H ROSENBLOOM IN OPPOSITION TO DEFS M/FOR SUMMARY JUDGMENT MENT - W/ATTACHMENTS	28034 28119
01/20/2005	00001159	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S M/TO STRIKE CPH'S RESPONSE TO MORGAN STANLEY'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW - W/ATTACHMENTS	28120 28133
01/20/2005	00001160	NOTICE OF FILING PLEADING UNDER SEAL	28134 28135
01/20/2005	00001161	SEALED PER ORDER DTD 7/31/03	28136 28136
01/20/2005	00001162	NOTICE OF FILING PLEADING UNDER SEAL	28137 28138
01/20/2005	00001163	SEALED PER ORDER DTD 7/31/03	28139 28139
01/21/2005	00001164	ORDER AND NOTICE OF HEARING. CPH'S M/TO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD TO COURT ORDER IS SET FOR 1/26/05 @ 05 @ 9:30 AM	28140 28141
01/21/2005	00001165	ORDER MORGAN STANLEY & CO INC'S M/TO EXTEND TIME TO DEPOSE DONALD UZZI IS GRANTED IN PART. DEF SHALL HAVE UNTIL 2/4/05 TO COMPLETE MR UZZI'S DEPO.	28142 28143
01/21/2005	00001166	RESPONSE TO: (SECOND AMENDED SUPPLEMENTAL) TO MORGAN STANLEY & CO INC'S FIFTH SET OF INTERROG'S	28144 28149

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01/21/2005	00001167	ORDER ON MORGAN STANLEY'S M/IN LIMINE #8 TO ESTABLISH PROCEDURE FOR USE OF DEPO'S AT TRIAL. COUNTER-DESIGNATIONS WHICH CONSTITUTE EITHER CROSS EXAM EXAM OR FAIRNESS DESIGNATIONS SHALL BE READ TO THE JURY JURY WHEN THE TESTIMONY'S PROPONENT ORIG OFFERS THE DEPO TESTIMONY	28150 28151
01/24/2005	00001168	NOTICE (Vol. 142) OF OPPOSITION TO CPH'S M/TO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER - W/ATTACHMENTS	28351-28400 28152 28200
		VOLUME NUMBER ONE HUNDRED FORTY TWO	
01/24/2005	00001168	NOTICE (Vol. 143) CONTINUED FROM PREVIOUS VOLUME	28401-28600 28201 28400
		VOLUME NUMBER ONE HUNDRED FORTY THREE	
01/24/2005	00001168	NOTICE (Vol. 144) CONTINUED FROM PREVIOUS VOLUME	28601-28800 D 28401 28600
		VOLUME NUMBER ONE HUNDRED FORTY FOUR	
01/24/2005	00001168	NOTICE	28601-28701
		CONTINUED FROM PREVIOUS VOLUME	
01/24/2005	00001169	SEALED PER ORDER DTD 7/31/03	28801 28702 28702
01/24/2005	00001170	NOTICE OF FILING PLEADING UNDER SEAL	28802-28804 28703 28705
01/24/2005	00001171	NOTICE OF MORGAN STANLEY'S ADDITIONS TO ITS SUPPLEMENTAL	28805-28817 28706 28719

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RESPONSES & OBJECTIONS TO COLEMAN (PARENT) HOLDING INC'S FIRST SET OF INTERROG'S			
01/25/2005	00001172	NOTICE OF THE FIRM OF KELLOGG, HUBER, HANSEN, TODD & EVANS PLLC, OF CHANGE OF FIRM NAME TO KELLOGG, HUBER, HANSEN, SEN, TODD, EVANS & FIGEL PLLC	28720 28722
01/25/2005	00001173	MOTION TO RECONSIDER & REHEAR ORDER DENYING DISMISSAL PURSUANT WANT TO RULE 1.061 FRCP (FORUM NON CONVENIENS) - W/ATTACHMENTS ** UP ON 1/26/05 **	28723 28743
01/26/2005	00001174	ORDER AND NOTICE OF HEARING. PARTIES JOINT ORE TENUS M/TO CONTINUE IS GRANTED. HEARING ON CPH'S M/TO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER SET 1/26/05 IS CANCELED & RESET FOR 2/1/05 @ 8:45 AM	28744 28800
VOLUME NUMBER ONE HUNDRED FORTY FIVE			
01/26/2005	00001174	ORDER	28801 28983
CONTINUED FROM PREVIOUS VOLUME			
01/26/2005	00001175	MOTION IN LIMINE (#19) TO EXCLUDE PORTIONS OF EXPERT WITNESS MARK GRINBLATT'S TESTIMONY - W/ATTACHMENTS	28984 29000
VOLUME NUMBER ONE HUNDRED FORTY SIX			
01/26/2005	00001175	MOTION	29001 29200
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01/26/2005	00001175	MOTION	29201 29215
		CONTINUED FROM PREVIOUS VOLUME	
01/26/2005	00001176	MOTION IN LIMINE (#20) TO EXCLUDE PORTIONS OF EXPERT WITNESS GEORGE P FRITZ'S TESTIMONY - W/ATTACHMENTS	29216 29291
01/26/2005	00001177	MOTION IN LIMINE (#21) TO EXCLUDE PORTIONS OF EXPERT WITNESS ARTHUR H ROSENBLOOM'S TESTIMONY - W/ATTACHMENTS	29292 29320
01/26/2005	00001178	MOTION FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTION OF E-MAILS & MORGAN STANLEY'S NON NON COMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER - W/ATTACHMENTS	29321 29365
01/26/2005	00001179	NOTICE OF HEARING 2/1/05 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTION OF E-MAILS & MORGAN STANLEY'S NONCOMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER	29366 29368
01/26/2005	00001180	RE-NOTICE OF HEARING 2/1/05 @ 8:45 AM ON CPH'S M/TO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER	29369 29371
01/27/2005	00001181	ORDER ON MORGAN STALNEY'S MOTION TO RECONSIDER AND REHEAR ORDER DENYING DISMISSAL PURSUANT TO RULE 1.061 FLA.R.CIV.P. (FORUM NON CONVENIENS) - DENIED	29372 29373
01/27/2005	00001182	MOTION IN LIMINE #15 TO PRECLUDE EXPERT TESTIMONY OF MICHAEL WAGNER BEYOND WHAT IS DISCLOSED IN HIS EXPERT REPORTS - TS - W/ATTACHMENTS	29374 29390
01/27/2005	00001183	MOTION IN LIMINE #16 TO STRIKE THE EXPERT OPINION OF CPH EXPERT BLAINE NYE FOR APPLYING THE INCORRECT DAMAGES STANDARD - W/ATTACHMENTS	29391 29400

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		VOLUME NUMBER ONE HUNDRED FORTY EIGHT	
01/27/2005	00001183	MOTION	29401 29417
		CONTINUED FROM PREVIOUS VOLUME	
01/27/2005	00001184	MOTION IN LIMINE #12 TO EXCLUDE CPH'S EXPERTS FROM IMPROPERLY INFLATING DAMAGES BY APPLYING UNJUSTIFIED "CONTROL PREMIUMS" & A HYPOTHETICAL "INVESTMENT VALUE" - W/ATTACHMENTS	29418 29473
01/27/2005	00001185	MOTION IN LIMINE #13 TO STRIKE THE EXPERT OPINION OF SAMUEL J KURSH AS UNTIMELY & CUMULATIVE - W/ATTACHMENTS	29474 29504
01/27/2005	00001186	MOTION IN LIMINE #17 TO EXCLUDE CPH'S EXPERT BLAINE NYE FROM RELYING ON AN UNPROVEN ASSUMPTION & SIMPLE ARITHMETIC TO CALCULATE CPH'S DAMAGES - W/ATTACHMENTS	29505 29515
01/27/2005	00001187	MOTION IN LIMINE #18 TO EXCLUDE TESTIMONY OF PLTFS EXPERT DOUGLAS EMERY - W/ATTACHMENTS	29516 29529
01/27/2005	00001188	MOTION IN LIMINE #19 TO EXCLUDE THE TESTIMONY OF WILLIAM HORTON - W/ATTACHMENT	29530 29538
01/27/2005	00001189	MOTION IN LIMINE #20 TO EXCLUDE TESTIMONY OF MICHAEL J GILLFILLAN - W/ATTACHMENT	29539 29572
01/27/2005	00001190	MOTION IN LIMINE #14 TO EXCLUDE CPH EXPERTS RELIANCE ON IRRELEVANT DICTA FROM THE DELAWARE CHANCERY COURT OPINION IN PRESCOTT GROUP SMALL CAP LP VS COLEMAN CO - W/ATTACHMENTS	29573 29600

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VOLUME NUMBER ONE HUNDRED FORTY NINE			
01/27/2005	00001190	MOTION	29601 29654
		CONTINUED FROM PREVIOUS VOLUME	
01/27/2005	00001191	NOTICE OF FILING PLEADING UNDER SEAL	29655 29657
01/27/2005	00001192	SEALED PER ORDER DTD 7/31/03	29658 29658
01/27/2005	00001193	NOTICE OF FILING PLEADING UNDER SEAL	29659 29661
01/27/2005	00001194	SEALED PER ORDER DTD 7/31/03	29662 29662
01/27/2005	00001195	NOTICE OF FILING PLEADING UNDER SEAL	29663 29665
01/27/2005	00001196	SEALED PER ORDER DTD 7/31/03	29666 29666
01/27/2005	00001197	NOTICE OF FILING PLEADING UNDER SEAL	29667 29669
01/27/2005	00001198	SEALED PER ORDER DTD 7/31/03	29670 29670
01/27/2005	00001199	NOTICE OF FILING PLEADING UNDER SEAL	29671 29673
01/27/2005	00001200	SEALED PER ORDER DTD 7/31/03	29674 29674
01/27/2005	00001201	NOTICE OF FILING PLEADING UNDER SEAL	29675 29677
01/27/2005	00001202	SEALED PER ORDER DTD 7/31/03	29678 29678

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01/27/2005	00001203	NOTICE OF FILING PLEADING UNDER SEAL	29679 29681
01/27/2005	00001204	SEALED PER ORDER DTD 7/31/03	29682 29682
01/27/2005	00001205	NOTICE OF FILING PLEADING UNDER SEAL	29683 29685
01/27/2005	00001206	SEALED PER ORDER DTD 7/31/03	29686 29686
01/27/2005	00001207	NOTICE OF FILING PLEADING UNDER SEAL	29687 29689
01/27/2005	00001208	SEALED PER ORDER DTD 7/31/03	29690 29690
01/31/2005	00001210	NOTICE OF OPPOSITION TO CPH'S M/FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTION OF E-MAILS & MORGAN STANLEY'S NONCOMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER - W/ATTACHMENTS	29691 29721
01/31/2005	00001211	MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS FROM SUMMARY JUDGMENT-RELATED PLEADINGS FILED BY CPH - W/ATTACHMENTS ENTS	29722 29756
01/31/2005	00001212	NOTICE OF HEARING 2/3/05 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO REMOVE CONFIDEINTIALITY DESIGNATIONS FROM SUMMARY JUDGMENT-RELATED PLEADINGS FILED BY CPH	29757 29759
01/31/2005	00001213	NOTICE OF FILING PLEADING UNDER SEAL	29760 29762
01/31/2005	00001214	SEALED PER ORDER DTD 7/31/03	29763 29763
02/01/2005	00001215	ORDER AND NOTICE OF HEARING. PARTIES JOINT ORE TENUS M/TO	29764 29766

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		CONTINUE IS GRANTED. HEARING ON CPH'S M/TO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER & ON CPH'S M/FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTION OF E-MAILS & MORGAN STANLEY'S NONCOMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER SET 2/1/05 IS CANCELED & RESET FOR 2/2/05 @ 9:30 AM	
02/02/2005	00001216	NOTICE OF HEARING 2/3/05 @ 8:45 AM ON MORGAN STANLEY'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS, DTD 12/10/05, ONLY AS TO BANK OF AMERICAN'S OBJECTIONS TO REMOVAL OF CONFIDENTIALITY DESIGNATIONS	29767 29769
02/02/2005	00001217	ORDER MORGAN STANLEY & CO INC'S M/FOR SUMMARY JUDGMENT IS GRANTED IN PART & DENIED IN PART. CPH IS DETERMINED TO D TO BE A SOPHISTICATED INVESTOR UNDER NEW YORK LAW. IN ALL OTHER RESPECTS THE MOTION IS DENIED	29770 29773
02/02/2005	00001218	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS FORM SUMMARY JUDGMENT-RELATED PLEADINGS FILED BY CPH IS GRANTED W/OUT OBJECTION. PLTF SHALL FILE THE UNREDACTED COPIES PIES REFERRED TO IN THE MOTION	29774 29775
02/03/2005	00001219	MEDIATION REPORT	29776 29777
02/03/2005	00001220	ORDER MORGAN STANLEY'S M/IN LIMINE #9 TO EXCLUDE IRRELEVANT & NT & PREJUDICIAL REFERENCES TO PRIOR MORGAN STANLEY SENIOR FUNDING INC'S LITIGATION IS GRANTED - SEE ORDER DER	29778 29779
02/03/2005	00001221	ORDER PLTFS M/IN LIMINE #5 TO BAR EVIDENCE & ARGUMENT CONCERNING THE HEALTH OF A MORGAN STANLEY EXECUTIVE IS GRANTED	29780 29781
02/03/2005	00001222	ORDER SETTING HEARING (SPECIAL SET) AN EVIDENTIARY HEARING ON COLEMAN	29782 29784

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		(PARENT) HOLDINGS INC'S M/FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTION OF E-MAILS & MORGAN STANLEY'S NONCOMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER IS SPECIALLY SET FOR 2/14/05 @ 9:30 AM - SEE ORDER FOR DETAILS	
02/03/2005	00001223	ORDER MORGAN STANLEY'S M/IN LIMINE #3 TO EXCLUDE IRRELEVANT & NT & PREJUDICIAL REFERENCES TO CORP CORRUPTION & ACCOUNTING SCANDALS IS GRANTED - SEE ORDER	29785 29786
02/03/2005	00001224	ORDER PLTFS M/IN LIMINE #8 TO BAR EVIDENCE & ARGUMENT CONCERNING THE VALUE OF MAFCO'S SETTLEMENT W/SUNBEAM CORP IS GRANTED IN PART - SEE ORDER	29787 29788
02/03/2005	00001225	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER IS GRANTED IN PART - RT - SEE ORDER	29789 29790
02/03/2005	00001226	ORDER PTLFS M/IN LIMINE #7 TO BAR EVIDENCE & ARGUMENT CONCERNING PLTFS SETTLEMENT W/ARTHUR ANDERSEN IS GRANTED IN PART - SEE ORDER	29791 29792
02/03/2005	00001227	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC	29793 29796
02/04/2005	00001228	MOTION (EMERGENCY) TO ENFORCE COURT'S ORDER REGARDING PRETRIAL RIAL EXHIBITS - W/ATTACHMENTS	29797 29800
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02/04/2005	00001228	MOTION CONTINUED FROM PREVIOUS VOLUME	29801 29847
02/04/2005	00001229	ORDER	29848 29850

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02/04/2005	00001230	ORDER COLEMAN (PARENT) HOLDINGS INC'S EMERGENCY M/TO ENFORCE COURTS ORDER REGARDING PRETRIAL EXHIBITS IS GRANTED. PLTF SHALL USE THE EXHIBIT NUMBERING SYSTEM PREVIOUSLY DISCLOSED TO MS & CO	29851 29852
02/04/2005	00001231	ORDER COLEMAN (PARENT) HOLDINGS INC'S ORE TENUS M/TO PARTICIPATE IN SEARCH OF ADDITIONAL E-MAIL BACK UP TAPES OR APPOINT THIRD PARTY TO CONDUCT SEARCH IS GRANTED IN PART - SEE ORDER	29853 29854
02/04/2005	00001232	ORDER MORGAN STANLEY'S M/IN LIMINE #1 TO EXCLUDE PERFORMANCE EVALUATIONS OR OTHER PROPENSITY EVIDENCE IS GRANTED IN PART & DENIED IN PART - SEE ORDER.	29855 29856
02/04/2005	00001233	ORDER AND NOTICE OF HEARING. CPH'S ORE TENUS M/TO PARTICIPATE IN SEARCH OF ADDITIONAL E-MAIL BACK UP TAPES OR APPOINT THIRD PARTY TO CONDUCT SEARCH & PLTFS M/IN LIMINE #14 IS SET FOR 2/4/05 @ 11:30 AM	29857 29858
02/04/2005	00001234	ORDER PLTFS M/IN LIMINE (#18) TO BAR EVIDENCE & ARGUMENT CONCERNING PLTFS COUNSEL'S RETENTION OF PROFESSOR MARK GRINBLATT AS AN EXPERT IN PRIOR UNRELATED CASES IS GRANTED W/OUT PREJUDICE - SEE ORDER	29859 29860
02/07/2005	00001235	RESPONSE TO: TO 2/3/05 COURT ORDER	29861 30000
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02/07/2005	00001235	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	30001 30047
02/07/2005	00001236	NOTICE	30048 30134

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		OF OPPOSITION TO CPH'S M/IN LIMINE #20 TO EXCLUDE PORTIONS OF EXPERT WITNESS GOERGE FRITZ'S TESTIMONY	
02/07/2005	00001237	MOTION IN LIMINE (#22) TO BAR IMPROPER PUNITIVE DAMAGES-RELATED EVIDENCE & ARGUMENT	30135 30140
02/07/2005	00001238	NOTICE OF HEARING 2/14/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE (#22) TO BAR IMPROPER PUNITIVE DAMAGES-RELATED EVIDENCE & ARGUMENT	30141 30143
02/07/2005	00001239	REQUEST (TENTH) FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY & EY & CO INC	30144 30147
02/07/2005	00001240	NOTICE TO PRODUCE AT TRIAL	30148 30152
02/07/2005	00001241	MOTION FOR ENTRY OF UNDISPUTED FACTS PURSUANT TO RULE 1.510 0	30153 30156
02/07/2005	00001242	RESPONSE TO: TO CPH'S M/IN LIMINE #21 TO EXCLUDE PORTIONS OF EXPERT WITNESS ARTHUR H ROSENBLOOM'S TESTIMONY	30157 30172
02/07/2005	00001243	NOTICE OF FILING PLEADING UNDER SEAL	30173 30175
02/07/2005	00001244	SEALED PER ORDER DTD 7/31/03	30176 30176
02/07/2005	00001245	NOTICE OF FILING PLEADING UNDER SEAL	30177 30179
02/07/2005	00001246	SEALED PER ORDER DTD 7/31/03	30180 30180
02/08/2005	00001247	MOTION (VERIFIED) TO ADMIT MICHAEL D JONES PRO HAC VICE	30181 30188

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02/08/2005	00001248	MOTION (VERIFIED) TO ADMIT FREDERICK L BLOCK PRO HAC VICE	30189 30196
02/08/2005	00001249	MOTION TO BIFURCATE TRIAL	30197 30200
VOLUME NUMBER ONE HUNDRED FIFTY TWO			
02/08/2005	00001249	MOTION	30201 30202
02/08/2005	00001250	CONTINUED FROM PREVIOUS VOLUME NOTICE OF HEARING 2/14/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO BIFURCATE	30203 30205
02/08/2005	00001251	MOTION TO DEEM CERTAIN THIRD PARTY DOCUMENTS ADMISSIBLE AT TRIAL - W/ATTACHMENTS	30206 30275
02/08/2005	00001252	NOTICE OF HEARING 2/14/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO DEEM CERTAIN THIRD PARTY DOCUMENTS ADMISSIBLE AT TRIAL	30276 30278
02/09/2005	00001253	MOTION TO ADVANCE MORGAN STANLEY'S TIME FOR ANSWERING CPH'S TENTH REQUEST FOR PRODUCTION - W/ATTACHMENTS	30279 30304
02/09/2005	00001254	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #13 TO STRIKE THE EXPERT OPINION OF DR SAMUEL J KURSH AS UNTIMELY & CUMULATIVE - W/ATTACHMENTS	30305 30330
02/09/2005	00001255	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #14 TO EXCLUDE CPH EXPERTS RELIANCE ON THE DELAWARE CHANCERY COURT OPINION IN PRESCOTT GROUP SMALL CAP LP V COLEMAN CO - W/ATTACHMENT	30331 30345
02/09/2005	00001256	RESPONSE TO:	30346 30350

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		TO MORGAN STANLEY'S M/IN LIMINE #15 TO PRECLUDE TESTIMONY OF MICHAEL WAGNER	
02/09/2005	00001257	NOTICE OF HEARING 2/14/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL PRODUCTION OF DOCUMENTS RELATING TO WILLIAM LIAM STRONG	30351 30353
02/09/2005	00001258	NOTICE OF TAKING DEPOSITION TO GLENN SEICKEL; ALLISON GORMAN NACHTIGAL & ROBERT SAUNDERS	30354 30356
02/09/2005	00001259	NOTICE OF TAKING DEPOSITION (AMENDED) TO MORGAN STANLEY & CO INC	30357 30360
02/09/2005	00001260	NOTICE OF HEARING 2/14/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO ADVANCE MORGAN STANLEY'S TIME FOR ANSWERING CPH'S TENTH REQUEST FOR PRODUCTION	30361 30363
02/09/2005	00001261	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #18 TO EXCLUDE TESTIMONY OF PLTFS EXPERT DOUGLAS EMERY - W/ATTACHMENTS ENTS	30364 30400
		VOLUME NUMBER ONE HUNDRED FIFTY THREE	
02/09/2005	00001261	RESPONSE TO:	30401 30438
		CONTINUED FROM PREVIOUS VOLUME	
02/09/2005	00001262	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO MORGAN STANLEY & CO INC	30439 30442
02/09/2005	00001263	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #19 TO EXCLUDE THE TESTIMONY OF WILLIAM HORTON - W/ATTACHMENTS	30443 30478
02/09/2005	00001264	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #20 TO EXCLUDE TESTIMONY OF MICHAEL J GILLFILLAN - W/ATTACHMENTS	30479 30497

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02/09/2005	00001266	SUPPLEMENT TO MORGAN STANLEY'S M/IN LIMINE #13 TO STRIKE THE EXPERT OPINION OF SAMUEL J KURSH AS UNTIMELY & CUMULATIVE	30506 30510
02/09/2005	00001267	MOTION TO COMPEL PRODUCTION OF DOCUMENTS RELATING TO WILLIAM STRONG - W/ATTACHMENTS	30511 30549
02/09/2005	00001268	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #17 TO EXCLUDE CERTAIN TESTIMONY OF CPH'S DAMAGES EXPERT DR BLAINE NYE - W/ATTACHMENTS	30550 30567
02/09/2005	00001269	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #16 TO STRIKE THE EXPERT OPINION OF CPH EXPERT BLAINE NYE - W/ATTACHMENTS ENTS	30568 30600
VOLUME NUMBER ONE HUNDRED FIFTY FOUR			
02/09/2005	00001269	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	30601 30616
02/09/2005	00001270	RESPONSE TO: TO CPH'S M/IN LIMINE (#19) TO EXCLUDE PORTIONS OF EXPERT WITNESS MARK GRINBLATT'S TESTIMONY - W/ATTACHMENTS	30617 30800
VOLUME NUMBER ONE HUNDRED FIFTY FIVE			
02/09/2005	00001270	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	30801 30830
02/09/2005	00001271	RESPONSE TO:	30831 30968

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		TO MORGAN STANLEY'S M/IN LIMINE #12 TO EXCLUDE CPH'S DAMAGES EXPERTS DR KURSH & MR WAGNER FROM TESTIFYING REGARDING A CONTROL PREMIUM & TO EXCLUDE MR WAGNER FROM FROM TESTIFYING REGARDING INVESTMENT VALUE - W/ATTACHMENTS	
02/09/2005	00001272	MOTION (VERIFIED) TO PERMIT FOREIGN ATTY TO APPEAR	30969 30971
02/09/2005	00001273	MOTION (VERIFIED) TO PERMIT FOREIGN ATTY TO APPEAR	30972 30974
02/11/2005	00001274	MEMORANDUM IN SUPPORT OF ITS E-MAIL MOTION - W/ATTACHMENTS	30975 31000
		VOLUME NUMBER ONE HUNDRED FIFTY SIX	
02/11/2005	00001274	MEMORANDUM	31001 31136
		CONTINUED FROM PREVIOUS VOLUME	
02/11/2005	00001275	MOTION IN LIMINE #21 TO PERMIT CROSS-EXAM OF ARTHUR ANDERSEN LLP WITNESSES REGARDING SUNBEAM'S FINANCIAL CONDITION - ON - W/ATTACHMENTS	31137 31200
		VOLUME NUMBER ONE HUNDRED FIFTY SEVEN	
02/11/2005	00001275	MOTION	31201 31287
		CONTINUED FROM PREVIOUS VOLUME	
02/11/2005	00001276	RESPONSE TO: TO CPH'S M/TO BIFURCATE TRIAL	31288 31294
02/11/2005	00001277	RESPONSE TO: TO CPH'S M/IN LIMINE (#22) TO BAR IMPROPER PUNITIVE DAMAGES-RELATED EVIDENCE & ARGUMENT	31295 31300
02/11/2005	00001278	RESPONSE TO:	31301 31305

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		TO MORGAN STANLEY'S M/FOR ENTRY OF UNDISPUTED FACTS PURSUANT TO RULE 1.510	
02/11/2005	00001279	NOTICE OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S M/TO DEEM CERTIN THIRD PARTY DOCUMENTS ADMISSIBLE AT TRIAL AL	31306 31350
02/11/2005	00001280	AGREED ORDER MORGAN STANLEY'S VERIFIED M/TO ADMIT MICHAEL D JONES, PRO HAC VICE IS GRANTED	31351 31352
02/11/2005	00001281	AGREED ORDER MORGAN STANLEY'S VERIFIED M/TO ADMIT FREDERICK L BLOCK, OCK, PRO HAC VICE IS GRANTED	31353 31354
02/11/2005	00001282	AGREED ORDER MORGAN STANLEY'S VERIFIED M/TO ADMIT ANTONY B KLAPPER, PRO HAC VICE IS GRANTED	31355 31356
02/11/2005	00001283	AGREED ORDER MORGAN STANLEY'S VERIFIED M/TO ADMIT SAM HIRSCH, PRO HAC VICE IS GRANTED - UPON PAYMENT OF FS 77.041 FEE	31357 31358
02/11/2005	00001284	AGREED ORDER MORGAN STANLEY'S VERIFIED M/TO ADMIT PAUL M SMITH, PRO HAC VICE IS GRANTED - UPON PAYMENT OF FS 77.041 FEE	31359 31360
02/11/2005	00001284 A	NOTICE OF FILING PLEADING UNDER SEAL	31361 31363
02/11/2005	00001284 B	SEALED PER ORDER DTD 7/31/03	31364 31364
02/14/2005	00001285	NOTICE (MORGAN STANLEY'S COMBINED OPPOSITION TO CPH'S MOTIONS AND REQUESTS FOR DOCUMETNS RELATING TO WILLIAM STRONG) NG)	31365 31386
02/14/2005	00001285 A	NOTICE OF FILING	31387 31389

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02/14/2005	00001285 B	SEALED PER ORDER DTD 7/31/03	31390 31390
02/14/2005	00001285 C	NOTICE OF SUPPLEMENTAL OPPOSITION TO CPH'S M/FOR ADVERSE INFERENCE INSTRUCTION - W/ATTACHMENTS	31391 31400
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02/14/2005	00001285 C	NOTICE	31401 31565
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02/14/2005	00001285 D	MOTION IN LIMINE (#22) TO EXCLUDE TESTIMONY & EVIDENCE REGARDING PREJUDGMENT INTERST	31566 31572
02/14/2005	00001285 E	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #21 TO PERMIT CROSS-EXAM OF ARTHUR ANDERSEN LLP WITNESSES REGARDING SUNBEAM'S FINANCIAL CONDITION	31573 31577
02/14/2005	00001285 F	STIPULATION AND ORDER THAT DOCUMENTS LISTED IN EXHIBIT A ARE TRUE & CORRECT COPIES	31578 31580
02/14/2005	00001285 G	NOTICE TO PRODUCE AT TRIAL	31581 31584
02/15/2005	00001285 H	MOTION TO COMPEL PRODUCTION OF DOCUMENTS - W/ATTACHMENTS	31585 31600
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02/15/2005	00001285 H	MOTION TO COMPEL	31601 31639
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02/15/2005	00001285	I NOTICE OF VOLUNTARY DISMISSAL AS TO COUNT I & COUNT IV AGAINST DEF MORGAN STANLEY	31640 31641
02/15/2005	00001285	J SUBPOENA RETURNED / SERVED TO JAMES DOYLE	31642 31643
02/15/2005	00001285	K STIPULATION AND ORDER STIP IS APPROVED. THE DOCUMENTS LISTED IN EXHIBIT A ARE TRUE & CORRECT COPIES OF AUTHENTIC DOCUMENTS (STIP IS A FAXED COPY)	31644 31646
02/15/2005	00001285	L NOTICE OF FILING PLEADING UNDER SEAL	31647 31649
02/15/2005	00001285	M SEALED PER ORDER DTD 7/31/03	31650 31650
02/15/2005	00001285	N NOTICE SUBMISSION OF TRANSCRIPT CITATIONS REQUESTED BY THE COURT	31651 31656
02/15/2005	00001285	O NOTICE LEGAL ARGUMENT IN SUPPORT OF MORGAN STANLEY'S PRIVILEGE LEGE LOG	31657 31660
02/15/2005	00001285	P SEALED PER COURT ORDER DTD 7/31/03	31661 31661
02/16/2005	00001286	EXHIBIT LIST EXHIBITS INTO EVIDENCE	31662 31662
02/16/2005	00001287	MOTION TO DEEM CERTAIN DOCUMENTS ADMISSIBLE AND FOR ADDITIONAL ONAL SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER, W/ATTCHD EXHIBITS	31663 31800
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02/16/2005	00001287	MOTION	31801 32000

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02/16/2005	00001287	MOTION	32201 32256
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02/16/2005	00001288	NOTICE OF FILING PROPOSED ORDER ON PLTFS MOTION FOR AN ADVANCE INFERENCE ENCE	32257 32264
02/16/2005	00001289	MOTION TO STRIKE THE PLTFS NOTICE OF VOLUNTARY DISMISSAL	32265 32269
02/16/2005	00001290	MOTION FOR RECONSIDERATION AND CLARIFICATION OF ORDER ON PLTFS LTFs MOTION IN LIMINE (NO 18) TO BAR EVIDENCE AND ARGUMENT CONCERNING PLTFS COUNSEL'S RETENTION OF PROFESSOR MARK GRINBLATT AS AN EXPERT IN PRIOR UNRELATED CASES *** UP 02/18/05 ***	32270 32283
02/16/2005	00001291	MOTION FOR LEAVE TO WITHDRAW COUNTS I AND IV OF ITS COMPLAINT NT	32284 32288
02/16/2005	00001292	RESPONSE TO: DFTS MOTION IN LIMINE (NO 22) TO EXCLUDE TESTIMONY OF EVIDENCE RE: PREJUDGMENT INTEREST	32289 32291
02/16/2005	00001293	ORDER ON PLTFS ORE TENUS MOTION FOR IN CAMERA INSPECTION OF DOCUMENTS ON DFTS E-MAIL PRIVILEGE LOGS - SEE ORDER FOR FOR DETAILS	32292 32293

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02/16/2005	00001294	ORDER ON PLTFS MOTION TO BIFURCATE TRIAL - GRANTED; TRIAL FOR FOR PUNITIVE DAMAGES SHALL BE BIFURCATED FROM REMAINING ISSUES	32294 32295
02/16/2005	00001295	ORDER GRANTING PLTFS MOTION IN LIMINE NO 21	32296 32298
02/16/2005	00001296	ORDER DENYING PLTFS MOTION IN LIMINE NO 20 - W/O PREJ TO PLTFS RIGHT TO OBJECT	32299 32301
02/16/2005	00001297	ORDER ON PLTFS MOTION IN LIMINE NO 19 - GRANTED IN PART AND DENIED IN PART - SEE ORDER FOR DETAILS	32302 32304
02/16/2005	00001298	ORDER DENYING DFTS MOTION IN LIMINE NO 17	32305 32307
02/16/2005	00001299	ORDER ON DFTS MOTION IN LIMINE NO 16 - GRANTED IN PART AND DENIED IN PART - SEE ORDER FOR DETAILS	32308 32310
02/16/2005	00001300	NOTICE OF FILING PLEADING UNDER SEAL	32311 32313
02/16/2005	00001301	SEALED PER COURT ORDER DTD 7/31/03	32314 32314
02/16/2005	00001302	SEALED PER COURT ORDER DTD 7/31/03	32315 32315
02/16/2005	00001303	SEALED PER COURT ORDER DTD 7/31/03	32316 32316
02/16/2005	00001304	SEALED PER COURT ORDER DTD 7/31/03	32317 32317
02/16/2005	00001305	NOTICE OF FILING PLEADING UNDER SEAL	32318 32319
02/16/2005	00001306	SEALED	32320 32320

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		PER COURT ORDER DTD 7/31/03	
02/16/2005	00001307	SEALED PER COURT ORDER DTD 7/31/03	32321 32321
02/16/2005	00001308	MOTION (VERIFIED) TO PERMIT FOREIGN ATTY TO APPEAR	32322 32325
02/16/2005	00001309	AGREED ORDER PERMITTING FOREIGN ATTYS TO APPEAR. THALIA MYRIANTHOPOULOS OF JENNER & BLOCK LLP IS ADMITTED PRO HAC VICE OBO PLTF	32326 32327
02/17/2005	00001310	NOTICE OF WITHDRAWAL OF PARAGRAPH 4 OF DECLARATION OF HTOMAS A AS A CLARE	32328 32330
02/17/2005	00001311	ORDER DEFS M/IN LIMINE #18 IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS	32331 32333
02/17/2005	00001312	ORDER DEFS M/IN LIMINE #19 IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS	32334 32336
02/17/2005	00001313	ORDER DEFS M/IN LIMINE #20 IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS	32337 32339
02/17/2005	00001314	AGREED ORDER DEFS M/TO STRIKE PLTF'S NOTICE OF VOLUNTARY DISMISSAL IS L IS GRANTED - VOL DISMISSAL DTD 2/15/05 IS STRICKEN N	32340 32341
02/17/2005	00001315	RESPONSE TO: TO MORGAN STANLEY'S M/TO COMPEL PRODUCTION OF DOCUMENTS ENTS - W/ATTACHMENTS	32342 32369
02/17/2005	00001316	NOTICE OF WITHDRAWAL OF CERTIFICATION OF ARTHUR RIEL	32370 32372
02/17/2005	00001317	SEALED	32373 32373

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		PER ORDER DTD 7/31/03	
02/17/2005	00001318	SEALED PER ORDER DTD 7/31/03	32374 32374
02/17/2005	00001319	SEALED PER ORDER DTD 7/31/03	32375 32375
02/17/2005	00001320	SEALED PER ORDER DTD 7/31/03	32376 32376
02/17/2005	00001321	SEALED PER ORDER DTD 7/31/03	32377 32377
02/17/2005	00001322	SEALED PER ORDER DTD 7/31/03	32378 32378
02/17/2005	00001323	SEALED PER ORDER DTD 7/31/03	32379 32379
02/18/2005	00001324	SEALED PER ORDER DTD 7/31/03	32380 32380
02/18/2005	00001325	MOTION FOR LEAVE TO FILE ITS FIRST AMENDED COMPLAINT - W/PROPOSED ORIG ATTACHED AS TO SAME PARTIES	32381 32400
		VOLUME NUMBER ONE HUNDRED SIXTY THREE	
02/18/2005	00001325	MOTION	32401 32413
		CONTINUED FROM PREVIOUS VOLUME	
02/18/2005	00001326	ORDER GRANTING M/TO AMEND COMPLAINT. AMENDED COMPLAINT IS DEEMED FILED. DEFS SHALL RESPOND W/IN 5 DAYS	32414 32415
02/18/2005	00001327	ORDER DEFS M/TO COMPEL PRODUCTION OF DOCUMENTS IS GRANTED - SEE ORDER	32416 32417

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02/18/2005	00001328	ORDER PLTFS M/IN LIMINE #1 IS GRANTED IN PART & DEFNIED IN PART - SEE ORDER FOR DETAILS	32418 32420
02/18/2005	00001329	ORDER PLTFS M/IN LIMINE #2 IS GRANTED - SEE ORDER FOR DETAILS AILS	32421 32423
02/18/2005	00001330	ORDER DEFS M/IN LIMINE #2 IS GRNATED - SEE ORDER	32424 32426
02/18/2005	00001331	ORDER PLTFS M/N LIMINE #3 IS GRANTED - SEE ORDER	32427 32429
02/18/2005	00001332	ORDER PLTFS M/IN LIMINE #4 IS GRANTED	32430 32432
02/18/2005	00001333	ORDER PLTFS M/IN LIMINE #6 IS GRANTED IN PART - SEE ORDER FOR FOR DETAILS	32433 32435
02/18/2005	00001334	ORDER PLTFS M/IN LIMINE #9 IS GRANTED - SEE ORDER FOR DETAILS AILS	32436 32438
02/18/2005	00001335	ORDER PLTFS M/IN LIMINE #10 IS GRANTED	32439 32441
02/18/2005	00001336	ORDER PLTFS M/IN LIMINE #11 IS GRANTED IN PART - SEE ORDER FOR DETAILS	32442 32444
02/18/2005	00001337	ORDER PLTFS M/IN LIMINE #12 IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS	32445 32447
02/18/2005	00001338	ORDER PLTFS M/IN LIMINE #13 IS GRANTED IN PART - SEE ORDER FOR DETAILS	32448 32450
02/18/2005	00001339	ORDER PLTFS M/TO COMPEL PRODUCTION OF DOCUMENTS RELATING TO	32451 32452

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		WILLIAM STRONG IS GRANTED - SEE ORDER	
02/18/2005	00001340	ORDER PLTFS M/FOR LEAVE TO W/DRAW COUNTS I & IV OF ITS COMPLAINT IS DENIED W/OUT PREJUDICE	32453 32454
02/18/2005	00001341	ORDER DEFS M/FOR RECONSIDERATION ETC (PLTFS M/IN LIMINE #18) IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS	32455 32456
02/18/2005	00001342	ORDER DEFS M/TO CONTINUE IS GRANTED. CPH'S M/TO DEEM CERTAIN TAIN DOCUMENTS ADMISSIBLE ETC SET 2/17/05 IS CANCELED & ED & RESET TO 2/22/05 - SEE ORDER FOR FURTHER DETAILS LS	32457 32458
02/22/2005	00001343	OBJECTION TO COLEMAN (PARENT) HOLDINGS INC'S NOTICE TO PRODUCE AT E AT HEARING & M/FOR PROTECTIVE ORDER	32459 32462
02/22/2005	00001344	NOTICE OF FILING ATTACHED ORIG RETURN OF SERVICE & TRIAL SUBPOENA'S - ATTACHED	32463 32486
02/22/2005	00001345	NOTICE OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS M/TO DETERMINE THE APPROPRIATE SCOPE OF DISCOVERY	32487 32507
02/22/2005	00001346	NOTICE (AMENDED) OF WITHDRAWAL OF CERTIFICATION OF ARTHUR RIEL RIEL	32508 32513
02/22/2005	00001347	MOTION FOR MORE DEFINITE STATEMENT OF PLTFS FIRST AMENDED COMPLAINT	32514 32520
02/22/2005	00001348	MOTION TO DISMISS PLTFS FIRST AMENDED COMPLAINT	32521 32525
02/22/2005	00001349	MOTION TO STRIKE CERTAIN PARAGRAPHS OF PLTFS FIRST AMENDED COMPLAINT	32526 32533

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		PURSUANT TO RULE 1.140(F)	
02/22/2005	00001350	MOTION TO TAKE JUDICIAL NOTICE PURSUANT TO FS 90.202 & 90.203 203	32534 32537
02/22/2005	00001351	MOTION TO DETERMINE THE APPROPRIATE SCOPE OF DISCOVERY	32538 32540
02/22/2005	00001352	NOTICE TO PRODUCE AT HEARING	32541 32555
02/22/2005	00001353	MOTION TO COMPEL FURTHER DISCOVERY REGARDING MORGAN STANLEY'S DESTRUCTION & NONPRODUCTION OF E-MAILS	32556 32558
02/22/2005	00001354	MOTION TO REVALIDATE TRIAL WITNESS SUBPOENAS	32559 32561
02/22/2005	00001355	RETURNED MAIL TO REBECCA BEYNON	32562 32564
02/22/2005	00001356	ORDER PLTFS' M/TO SET TIME TABLE IS GRANTED - SEE ORDER FOR DETAILS	32565 32566
02/22/2005	00001357	NOTICE OF OPPOSITION TO CPH'S M/TO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR ADDITIONAL SANCTIONS - W/ATTACHMENTS TS	32567 32600
		VOLUME NUMBER ONE HUNDRED SIXTY FOUR	
02/22/2005	00001357	NOTICE	32601 32725
		CONTINUED FROM PREVIOUS VOLUME	
02/22/2005	00001358	MOTION FOR SANCTIONS & ADDITIONAL DISCOVERY CONCERNING PLTFS IMPROPER CONCEALMENT OF THE VALUE OF THE SUNBEAM WARRANTS - W/ATTACHMENTS	32726 32784

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02/22/2005	00001359	NOTICE OF HEARING 2/23/05 @ 9:30 AM ON MORGAN STANLEY'S M/FOR SANCTIONS & NS & ADDITIONAL DISCOVERY CONCERNING PLTFS IMPROPER CONCEALMENT OF THE VALUE OF THE SUNBEAM WARRANTS	32785 32787
02/22/2005	00001360	NOTICE OF FILING PLEADING UNDER SEAL	32788 32790
02/22/2005	00001361	SEALED PER ORDER DTD 2/25/05	32791 32791
02/23/2005	00001362	MOTION FOR ADDITIONAL DISCOVERY REGARDING MAFCO'S INTERNAL VALUATION OF SUNBEAM STOCK	32792 32800
VOLUME NUMBER ONE HUNDRED SIXTY FIVE			
02/23/2005	00001362	MOTION	32801 32801
02/23/2005	00001363	CONTINUED FROM PREVIOUS VOLUME MEMORANDUM OF LAW ON VOIR DIRE & CHALLENGES FOR CAUSE	32802 32823
02/23/2005	00001364	TRANSCRIPT (EXCERPT OF) OF THE PROCEEDINGS BEFORE HONORABLE ELIZABETH MAASS ON 2/22/05	32824 32829
02/23/2005	00001365	NOTICE OF FILING PLEADING UNDER SEAL	32830 32832
02/23/2005	00001366	SEALED PER ORDER DTD 7/31/03	32833 32833
02/24/2005	00001367	NOTICE OF FILING ORIG DECLARATIONS OF JOHN P COONEY JR & JAMES P CUSICK AND COPIES OF THE DECLARATIONS OF CHARLES CHASIN ESQ, JAMES MANGAN ESQ, MICHAEL D MONICO, ROBERT H MUNDHEIM, MONROE R SONNEBORN ESQ & ROBERT SPERLING	32834 32851
02/24/2005	00001368	MEMORANDUM	32852 32856

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REGARDING CRIME-FRAUD PROCEDURES			
02/24/2005	00001369	SUPPLEMENT TO PENDING MOTIONS CONCERNING THE CRIME-FRAUD EXCEPTION TION TO THE ATTY-CLIENT PRIVILEGE	32857 32860
02/24/2005	00001370	NOTICE OF OUTLINE IN SUPPORT OF ITS PENDING M/TO STRIKE MORGAN RGAN STANLEY'S ANSWER & TO HOLD MORGAN STANLEY LIABLE ON BOTH COUNTS OF CPH'S FIRST AMENDED COMPLAINT	32861 32873
02/24/2005	00001371	MOTION FOR ORDER DECLARING ATTY-CLIENT PRIVILEGE WAIVED FOR CERTAIN DOCUMENTS RELATING TO WILLIAM STRONG	32874 32878
02/24/2005	00001372	RESPONSE TO: TO MORGAN STANLEY'S M/FOR SANCTIONS & OTHER RELIEF CONCERNING THE SUNBEAM WARRANTS	32879 32883
02/24/2005	00001373	ORDER FOR IN CAMERA INSPECTION. BY 12 NOON 2/24/05 MS & CO SHALL OFFER AFFID TESTIMONY IDENTIFYING, FOR EACH DOMESTIC COUNSEL IN CONTENTS REPRESENTED MR STRONG, MS & CO, OR ANY OTHER PERSON OR ENTITY IN CONNCECTION W/THE STRONG MATTER - SEE ORDER FOR FURTHER DETAILS (W/ATTACHMENTS)	32884 32971
02/24/2005	00001374	RESPONSE TO: TO MORGAN STANLEY'S M/FOR MORE DEFINITE STATEMENT OF PLTFS FIRST AMENDED COMPLAINT	32972 32975
02/24/2005	00001375	MOTION OF AMY S RUBIN ESQ, TO EXCUSE JUROR	32976 32978
02/24/2005	00001376	RESPONSE TO: TO MORGAN STANLEY'S M/TO STRIKE CERTAIN PARAGRAPHS OF PLTFS FIRST AMENDED COMPLAINT PURSUANT TO RULE 1.140(F) 0(F)	32979 32983
02/24/2005	00001377	RESPONSE TO: TO MORGAN STANLEY'S M/TO DISMISS PLTFS FIRST AMENDED COMPLAINT	32984 32989

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02/24/2005	00001379	NOTICE OF FILING PLEADING UNDER SEAL	32998 33000
VOLUME NUMBER ONE HUNDRED SIXTY SIX			
02/24/2005	00001380	SEALED PER ORDER DTD 7/31/03	33001 33001
02/24/2005	00001381	NOTICE OF FILING PLEADING UNDER SEAL	33002 33004
02/24/2005	00001382	SEALED PER ORDER DTD 7/31/03	33005 33005
02/24/2005	00001383	SEALED PER ORDER DTD 7/31/03	33006 33006
02/24/2005	00001384	SEALED PER ORDER DTD 7/31/03	33007 33007
02/24/2005	00001385	LETTER FROM COURT TO CAPTAIN L. SASSA DTD 2/24/05 REGARDING JUROR #96 COMPLAINT AGAINST BAILIFF & THE TRANSCRIBING OF COMPLAINT FOR FUTURE USE IN INVESTIGATION.	33008 33008
02/24/2005	00001385	A RESPONSE TO: PLTFS MOTION TO COMPEL FURTHER DISCOVERY	33009 33015
02/24/2005	00001385	B NOTICE IN OPPOSITION TO COLEMAN (PARENT) HOLDINGS MOTION TO TAKE JUDICIAL NOTICE - W/ATTACHMENTS	33016 33028
02/25/2005	00001386	NOTICE OF SUBMISSION OF TRANSCRIPT CITATION	33029 33033
02/25/2005	00001387	MEMORANDUM OF LAW	33034 33041

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		(SUPPLEMENTAL) REGARDING PROCEDURES TO BE FOLLOWED IN ESTABLISHING THE CRIME/FRAUD EXECPTION TO ATTY-CLIENT PRIVILEGE	
02/25/2005	00001388	NOTICE OF FILING ORIGINAL RETURN OF SERVICE OF SUBPOENA FOR TRIAL - SVD DONALD DENKHAUS (ATTACHED)	33042 33047
02/25/2005	00001389	NOTICE OF TAKING DEPOSITION (VIDEOTAPED) OF COLEMAN (PARENT) HOLDINGS INC	33048 33051
02/25/2005	00001390	NOTICE OF SUBMISSION OF RECORD CITIATIONS - ATTACHMENT	33052 33087
02/25/2005	00001391	NOTICE OF FILING PLEADING UNDER SEAL	33088 33090
02/25/2005	00001392	NOTICE OF FILING PLEADING UNDER SEAL	33091 33093
02/25/2005	00001393	SEALED PER ORDER DTD 7/31/03	33094 33094
02/25/2005	00001394	SEALED PER ORDER DTD 7/31/03	33095 33095
02/25/2005	00001395	SEALED PER ORDER DTD 7/31/03	33096 33096
02/25/2005	00001396	SEALED PER ORDER DTD 7/31/03	33097 33097
02/25/2005	00001397	SEALED PER ORDER DTD 7/31/03	33098 33098
02/25/2005	00001398	SEALED PER COURT ORDER DTD 7/31/03	33099 33099
02/25/2005	00001399	SEALED PER ORDER DTD 7/31/03	33100 33100
02/25/2005	00001400	SEALED	33101 33101

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		PER ORDER DTD 7/31/03	
02/28/2005	00001401	ORDER MORGAN STANLEY'S M/TO DISMISS IS DENIED. MORGAN STANLEY'S M/TO STRIKE IS DENIED. MORGAN STANLEY'S M/FOR MORE DEFINITE STATEMENT IS GRANTED IN PART - SEE ORDER FOR DETAILS	33102 33103
02/28/2005	00001402	ORDER MORGAN STANLEY'S VERIFIED M/TO ADMIT JOHN T HICKEY JR PC PRO HAC VICE IS GRANTED AND MR HICKEY IS ADMITTED TO D TO PRACTICE IN THIS CASE ON PAYMENT OF THE FEE	33104 33104
02/28/2005	00001403	ORDER MORGAN STANLEY'S VERIFIED M/TO ADMIT WALTER R LANCASTER STER PRO HAC VICE IS GRANTED AND MR LANCASTER IS ADMITTED TO PRACTICE IN THIS CASE ON PAYMENT OF THE FEE FEE	33105 33105
02/28/2005	00001404	MEMORANDUM OF LAW IN SUPPORT OF ITS PENDING M/TO STRIKE MORGAN STANLEY'S ANSWER & TO HOLD MORGAN STANLEY LIABLE ON BOTH COUNTS OF CPH'S FIRST AMENDED COMPLAINT	33106 33112
02/28/2005	00001405	ORDER PORTIONS OF MORGAN STANLEY'S OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S NOTICE TO PRODUCE AT HEARING CHALLENGING THE PROCEDURE EMPLOYED ARE OVERRULED. PLTFS ORE TENUS M/TO COMPEL PRODUCTION & DEPO IS GRANTED IN PART. MS& CO SHALL USE ITS GOOD FAITH EFFORTS TO HAVE MR RIEL APPEAR FOR DEPO & SHALL SUPPLY CPH W/HIS MOST CURRENT ADDRESS BY NOON 2/25/05 - SEE ORDER FOR FURTHER DETAILS	33113 33114
02/28/2005	00001406	ORDER MORGAN STANLEY'S M/IN LIMINE #10 TO EXCLUDE RESTATEMENT INTERVIEW NOTES OF NON PARTY ARTHUR ANDERSEN & NON NON PARTY SKADDEN IS GRANTED IN PART - SEE ORDER FOR DETAILS	33115 33116
02/28/2005	00001407	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO DETERMINE THE	33117 33118

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		APPROPRIATE SCOPE OF DISCOVERY IS DENIED. CPH SHALL PRODUCE THE UNREDACTED VERSIONS OF THE PRODUCED DOCUMENTS BY 4:00PM, 2/24/05 - SEE ORDER FOR FURTHER DETAILS	
02/28/2005	00001408	ORDER MORGAN STANLEY'S M/FOR ADDITIONAL DISCOVERY REGARDING MAFCO'S INTERNAL VALUATION OF SUNBEAM STOCK & MORGAN STANLEY'S M/FOR SANCTIONS & ADDITIONAL DISCOVERY CONCERNING PLTFS IMPROPER CONCEALMENT OF THE VALUE OF THE SUNBEAM WARRANTS ARE GRANTED - SEE ORDER FOR DETAILS	33119 33120
02/28/2005	00001409	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #22 TO BAR IMPROPER PUNITIVE DAMAGES - RELATED EVIDENCE & ARGUMENT IS GRANTED IN PART & RULING IS DEFERRED IN PART. COURTS RULING ON CPH'S M/IN LIMINE #2 IS RECONFIRMED AND ALL OTHER ISSUES RAISED BY THE MOTION ARE DEFERRED TO STAGE II OF THE TRIAL - SEE ORDER	33121 33122
02/28/2005	00001410	ORDER PLTFS ORE TENUS M/FOR CLARIFICATION IS GRANTED - SEE ORDER	33123 33124
02/28/2005	00001411	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FIL THOMAS CLARE'S FAX TRANSMISSION DTD 2/12/05 5	33125 33126
02/28/2005	00001412	CORRESPONDENCE (FAX) TO HONORABLE MAASS, JEROLD SOLOVY ESQ, MICHAEL T BRODY ESQ & JOHN SCAROLA ESQ FTOM THOMAS A CLARE - W/ATTACHMENTS	33127 33128
02/28/2005	00001413	ORDER AND NOTICE OF HEARING. HEARING ON MORGAN STANLEY'S M/TO DISMISS, M/TO STRIKE AND M/FOR MORE DEFINITE STATEMENT IS SET FOR 2/24/05 @ 3:30 PM	33129 33130
02/28/2005	00001414	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET &	33131 33131

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		ET & FILE THE NOTICE TO PROSPECTIVE JUROR	
02/28/2005	00001415	NOTICE TO PROSPECTIVE JUROR	33132 33132
02/28/2005	00001416	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO TAKE JUDICIAL NOTICE PURSUANT TO FS 90.202 & 90.203 IS GRANTED. COURT TAKES JUDICIAL NOTICE OF THE ATTACHED ORDER OF THE UNITED STATES SECURITIES & EXCHANGE COMMISSION (NO (NO ATTACHMENT)	33133 33134
02/28/2005	00001417	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO ADVANCE MORGAN STANLEY'S TIME FOR ANSWERING CPH'S TENTH REQUEST FOR PRODUCTION IS MOOT.	33135 33136
02/28/2005	00001418	ORDER PLTFS M/IN LIMINE #17 TO BAR EVIDENCE & ARGUMENT CONCERNING SALES OF STOCK BY COLEMAN'S OFFICERS & DIRECTORS IS DENIED	33137 33138
02/28/2005	00001419	ORDER REVALIDATING TRIAL WITNESS SUBPOENAS. ALL WITNESS SUBPOENA'S FOR TRIAL ISSUED BY ALL PARTIES HEREIN FOR THE TRIAL PERIOD BEGINNING 2/22/05 SHALL BE REVALIDATED ATED FOR TRIAL PERIOD BEGINNING 3/21/05	33139 33140
02/28/2005	00001420	ORDER MORGAN STANLEY'S M/IN LIMINE #4 TO EXCLUDE EVIDENCE & TESTIMONY REGARDING EXTRA-CONTRACTUAL REP'S IS DENIED ED	33141 33142
02/28/2005	00001421	ORDER PLTFS M/IN LIMINE #15 TO BAR EVIDENCE & ARGUMENT THAT SUNBEAM ASSUMED DEBT OF THE COLEMAN CO INC AS MERGER CONSIDERATION TO CPH IS GRANTED IN PART - SEE ORDER	33143 33144
02/28/2005	00001422	ORDER AND DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE ELECTRONIC TRANSMISSION FROM THOMAS	33145 33145

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		CLARE DTD 2/13/05	
02/28/2005	00001423	CORRESPONDENCE (ELECTRONIC TRANSMISSION) TO JUDGE MAASS FROM THOMAS CLARE DTD 2/13/05	33146 33149
02/28/2005	00001424	ORDER CPH'S M/TO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER IS GRANTED IN PART - SEE ORDER	33150 33152
02/28/2005	00001425	NOTICE OF OPPOSITION TO CPH'S REQUEST FOR DEFAULT JUDGMENT - ATTACHED	33153 33200
VOLUME NUMBER ONE HUNDRED SIXTY SEVEN			
02/28/2005	00001425	NOTICE	33201 33220
02/28/2005	00001426	CONTINUED FROM PREVIOUS VOLUME NOTICE OF SUBMISSION OF RECORD CITATIONS - W/ATTACHMENTS	33221 33249
02/28/2005	00001427	RESPONSE TO: (SUPPLEMENTAL) TO PLTFS CRIME-FRAUD SUBMISSIONS	33250 33256
02/28/2005	00001428	NOTICE OF FILING DECLARATIONS - W/ATTACHMENTS	33257 33271
02/28/2005	00001429	MOTION (VERIFIED) TO ADMIT WALTER R LANCASTER, PRO HAC VICE - W/COPY OF RECEIPT ATTACHED	33272 33278
02/28/2005	00001430	MOTION (VERIFIED) TO ADMIT JOHN T HICKEY JR PC, PRO HAC VICE - CE - W/COPY OF RECEIPT ATTACHED	33279 33285
02/28/2005	00001431	RESPONSE TO: TO PLTFS M/FOR ORDER DECLARING ATTY-CLIENT PRIVILEGE WAIVED FOR CERTAIN DOCUMENTS RELATING TO WILLIAM STRONG	33286 33295

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		RONG	
02/28/2005	00001432	MOTION IN LIMINE #23 TO EXCLUDE EVIDENCE REGARDING WILLIAM STRONG'S ITALIAN ACQUITTAL - W/ATTACHMENTS	33296 33368
02/28/2005	00001433	NOTICE OF FILING PLEADING UNDER SEAL	33369 33371
02/28/2005	00001434	SEALED PER ORDER DTD 7/31/03	33372 33372
02/28/2005	00001435	NOTICE OF FILING PLEADING UNDER SEAL	33373 33375
02/28/2005	00001436	SEALED PER ORDER DTD 7/31/03	33376 33376
02/28/2005	00001437	NOTICE OF FILING PLEADINGS UNDER SEAL	33377 33379
02/28/2005	00001438	SEALED PER ORDER DTD 7/31/03	33380 33380
02/28/2005	00001439	SEALED PER ORDER DTD 7/31/03	33381 33381
02/28/2005	00001440	SEALED PER ORDER DTD 7/31/03	33382 33382
02/28/2005	00001441	SEALED PER ORDER DTD 7/31/03	33383 33383
02/28/2005	00001442	SEALED PER ORDER DTD 7/31/03	33384 33384
02/28/2005	00001443	SEALED PER ORDER DTD 7/31/03	33385 33385
02/28/2005	00001444	SEALED PER ORDER DTD 7/31/03	33386 33386

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02/28/2005	00001445	SEALED PER ORDER DTD 7/31/03	33387 33387
02/28/2005	00001446	SEALED PER ORDER DTD 7/31/03	33388 33388
02/28/2005	00001447	SEALED PER ORDER DTD 7/31/03	33389 33389
02/28/2005	00001448	SEALED PER ORDER DTD 7/31/03	33390 33390
02/28/2005	00001449	NOTICE OF FILING PLEADING UNDER SEAL	33391 33392
02/28/2005	00001450	SEALED PER ORDER DTD 7/31/03 (PACKAGE 1 OF 2)	33393 33393
02/28/2005	00001451	SEALED PER ORDER DTD 7/31/03 (PACKAGE 2 OF 2)	33394 33394
03/01/2005	00001452	ORDER (RELEASE OF EXHIBITS) THE PRIVILEGE CLAIMS ARE OVERRULED IN PART. CPH SHALL HAVE ACCESS TO THOSE DOCUMENTS ATTACHED HERETO AS EXHIBIT 1 & 2, EXCLUDING THOSE PORTIONS REDACTED BY THE COURT. THE AFFID & DOCUMENTS WERE PREVIOUSLY FILED W/THE CLERK UNDER SEAL - SEE ORDER FOR DETAILS (W/ATTACHMENTS)	33395 33400
		VOLUME NUMBER ONE HUNDRED SIXTY EIGHT	
03/01/2005	00001452	ORDER CONTINUED FROM PREVIOUS VOLUME	33401 33600
		VOLUME NUMBER ONE HUNDRED SIXTY NINE	
03/01/2005	00001452	ORDER	33601 33800

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03/01/2005	00001452	ORDER	33801 34000
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VOLUME NUMBER ONE HUNDRED SEVENTY ONE			
03/01/2005	00001452	ORDER	34001 34200
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VOLUME NUMBER ONE HUNDRED SEVENTY TWO			
03/01/2005	00001452	ORDER	34201 34400
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VOLUME NUMBER ONE HUNDRED SEVENTY THREE			
03/01/2005	00001452	ORDER	34401 34600
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03/01/2005	00001452	ORDER	34601 34757
CONTINUED FROM PREVIOUS VOLUME			
03/01/2005	00001453	NOTICE OF FILING PLEADING UNDER SEAL	34758 34759
03/01/2005	00001454	SEALED PER ORDER DTD 7/31/03	34760 34760

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03/01/2005	00001455	NOTICE OF FILING PLEADING UNDER SEAL	34761 34762
03/01/2005	00001456	SEALED PER ORDER DTD 7/31/03	34763 34763
03/01/2005	00001457	SEALED PER ORDER DTD 7/31/03	34764 34764
03/01/2005	00001458	SEALED PER ORDER DTD 7/31/03	34765 34765
03/01/2005	00001459	RESPONSE TO: TO DEFS NOTICE OF VIDEOTAPED DEPO	34766 34772
03/01/2005	00001460	NOTICE OF HEARING 3/1/05 @ 1:30 PM ON MORGAN STANLEY'S OBJECTIONS TO CPH'S NOTICE TO PRODUCE; COLEMAN (PARENT) HOLDINGS INC'S RESPONSE TO NOTICE OF VIDEOTAPED DEPO & THE OBJECTIONS CONTAINED W/IN THAT DOCUMENT AND COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE 14 & 16	34773 34774
03/01/2005	00001461	MEMORANDUM REGARDING THE RELIANCE REQUIREMENT IN FRAUD-BASED CLAIMS	34775 34795
03/01/2005	00001462	NOTICE OF COUNTER-SUBMISSION OF TRANSCRIPT CITATION	34796 34800
		VOLUME NUMBER ONE HUNDRED SEVENTY FIVE	
03/01/2005	00001462	NOTICE	34801 34801
		CONTINUED FROM PREVIOUS VOLUME	
03/01/2005	00001463	MOTION FOR TEMPORARY RELIEF FROM PROVISION IN 9/15/04 ORDER R	34802 34805
03/01/2005	00001464	RESPONSE TO: AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S	34806 34816

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		NOTICE TO PRODUCE AT HEARING	
03/01/2005	00001465	NOTICE OF COMPLIANCE W/COURTS 2/14/05 RULING ON PLTFS ORE TENUS MOTION	34817 34819
03/01/2005	00001466	NOTICE OF FILING ORIG DECLARATION OF JOHN H PLOTNICK, DTD 2/28/05 - ATTACHED	34820 34823
03/01/2005	00001467	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO COLEMAN (PARENT) HOLDINGS INCS THRU A CPH REP OR REP W/MOST KNOWLEDGE	34824 34827
03/01/2005	00001468	RESPONSE TO: TO (1) MORGAN STANLEY'S 2/24/05 SUBMISSION OF RECORD CITATIONS RE WILLIAM STRONG & (2) MORGAN STANLEY'S 2/28/05 SUBMISSION OF RECORD CITATIONS RE WILLIAM STRONG - W/ATTACHMENTS	34828 34889
03/01/2005	00001469	SEALED PER ORDER DTD 7/31/03	34890 34890
03/02/2005	00001470	NOTICE OF FILING RETURN OF SERVICE OF TRIAL SUBPOENA UPON WILLIAM PRUITT UITT	34891 34895
03/02/2005	00001471	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO COLEMAN (PARENT) HOLDINGS INC THRU A CPH REP OR REP W/KNOWLEDGE	34896 34899
03/02/2005	00001472	BRIEF (SUPPLEMENTAL) IN RESPONSE TO PLTFS M/FOR ORDER DECLARING ATTY-CLIENT PRIVILEGE WAIVED FOR CERTAIN DOCUMENTS RELATING TO WILLIAM STRONG	34900 34904
03/02/2005	00001473	ORDER AND NOTICE OF HEARING. ON PLTFS M/IN LIMINE #14 IS SET SET FOR 3/8/05 @ 9:30 AM	34905 34906
03/02/2005	00001474	ORDER AND NOTICE OF HEARING. ON COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE IS SET FOR 3/8/05 @ 9:30AM	34907 34908

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03/02/2005	00001475	ORDER (AMENDED) PLTFS M/FOR ADVERSE INTERFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTIONS OF E-MAILS & MORGAN STANLEY'S NON COMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER & M/FOR ADDITIONAL RELIEF IS GRANTED. PLTFS M/TO COMPEL FURTHER DISCOVERY REGARDING MORGAN STANLEY'S DESTRUCTION & NON PRODUCTION OF E-MAILS IS DENIED - SEE ORDER FOR FURTHER DETAILS	34909 34926
03/02/2005	00001476	ORDER AND NOTICE OF HEARING. PLTFS M/FOR ORDER DECLARING ATTY-CLIENT PRIVILEGE WAIVED FOR CERTAIN DOCUMENTS RELATING TO WILLIAM STRONG IS SET FOR 3/7/05 @ 11:30 AM 0 AM	34927 34928
03/02/2005	00001477	ORDER PLTFS M/FOR ADVERSE INTERFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTIONS OF E-MAILS & MORGAN STANLEY'S NON COMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER & M/FOR ADDITIONAL RELIEF IS GRANTED. PLTFS M/TO M/TO COMPEL FURTHER DISCOVERY REGARDING MORGAN STANLEY'S DESTRUCTION & NON PRODUCTION OF E-MAILS IS DENIED - SEE ORDER FOR FURTHER DETAILS	34929 34946
03/02/2005	00001478	AGREED ORDER NON PARTY WACHOVIA BANK'S M/TO EXCUSE JUROR IS GRANTED. TED. BONNIE MISKEL, JUROR #47 IS EXCUSED & NEED NOT RETURN ON 3/15/05	34947 34947
03/02/2005	00001479	ORDER MS & CO'S OBJECTIONS TO CPH'S NOTICE TO PRODUCE AT HEARING ARE SUSTAINED IN PART & OVERRULED IN PART - SEE SEE ORDER FOR DETAILS	34948 34949
03/02/2005	00001480	ORDER PURSUANT TO THE COURTS 2/17/05 RULING ON CPH'S M/IN LIMINE #6 - SEE ORDER FOR DETAILS - W/ATTACHMENTS	34950 34960
03/02/2005	00001481	NOTICE OF FILING PLEADING UNDER SEAL	34961 34963
03/02/2005	00001482	SEALED	34964 34964

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03/02/2005	00001483	NOTICE OF FILING PLEADING UNDER SEAL	34965 34968
03/02/2005	00001484	SEALED PER ORDER DTD 7/31/03	34969 34969
03/02/2005	00001484	A MOTION TO REOPEN DEPO OF ALLISON GORMAN & FOR RELATED DISCOVERY	34970 34989
03/02/2005	00001484	B NOTICE OF FILING PLEADING UNDER SEAL	34990 34991
03/02/2005	00001484	C SEALED PER ORDER DTD 7/31/03	34992 34992
03/03/2005	00001484	D MOTION TO COMPEL PRODUCTION OF JOINT DEFENSE AGREEMENTS RELATING TO THE STRONG DOCUMENTS	34993 34998
03/03/2005	00001484	E NOTICE OF HEARING 3/4/05 @ 10:20 AM ON CPH'S M/TO COMPEL PRODUCTION OF JOINT-DEFENSE AGREEMENTS RELATING TO THE STRONG DOCUMENTS	34999 35000
		VOLUME NUMBER ONE HUNDRED SEVENTY SIX	
03/03/2005	00001484	E NOTICE OF HEARING	35001 35001
		CONTINUED FROM PREVIOUS VOLUME	
03/03/2005	00001484	F NOTICE OF FILING PLEADINGS UNDER SEAL	35002 35002
03/03/2005	00001484	G SEALED PER ORDER DTD 7/31/03	35003 35003
03/03/2005	00001484	H SEALED PER ORDER DTD 7/31/03	35004 35004

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03/03/2005	00001484	J SEALED PER ORDER DTD 7/31/03	35006 35006
03/03/2005	00001484	K SEALED PER ORDER DTD 7/31/03	35007 35007
03/03/2005	00001484	L SEALED PER ORDER DTD 7/31/03	35008 35008
03/03/2005	00001484	M SEALED PER ORDER DTD 7/31/03	35009 35009
03/03/2005	00001484	N SEALED PER ORDER DTD 7/31/03	35010 35010
03/03/2005	00001484	O SEALED PER ORDER DTD 7/31/03	35011 35011
03/03/2005	00001484	P SEALED PER ORDER DTD 7/31/03	35012 35012
03/03/2005	00001484	Q NOTICE OF FILING PLEADING UNDER SEAL	35013 35014
03/03/2005	00001484	R SEALED PER ORDER DTD 7/31/03	35015 35015
03/04/2005	00001485	MOTION (VERIFIED) TO ADMIT PETER D DOYLE PRO HAC VICE	35016 35022
03/04/2005	00001486	ORDER PLTF'S ORE TENUS M/FOR CLARIFICATION IS GRANTED. BY 5:00 PM, 3/4/05 MS&CO SHALL PROVIDE CPH W/THE AFFIDAVITS, OR PORTIONS OF AFFIDAVITS, BY FOREIGN COUNSEL CONTAINING THE INFO REQUIRED BY PARAGRAPHS 1 THRU 5 OF THE COURTS 2/23/05 ORDER FOR IN CAMERA INSPECTION	35023 35024
03/04/2005	00001487	AGREED ORDER	35025 35026

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		MORGAN STANLEY'S VERIFIED M/TO ADMIT PETER DOYLE, PRO HAC VICE IS GRANTED	
03/04/2005	00001488	ORDER CPH'S M/TO COMPEL PRODUCTION OF JOINT-DEFENSE AGREEMENTS RELATING TO THE STRONG DOCUMENTS IS GRANTED - MS&CO SHALL HAVE UNTIL 3:00 PM 3/4/05	35027 35028
03/04/2005	00001489	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FILE THE LETTER FROM DR BUCKMAN DTD 3/1/05 & THE FAX TRANSMISSION FROM THE CENTER FO RINNER WORK DTD 3/2/05	35029 35029
03/04/2005	00001490	NOTICE OF TAKING DEPOSITION TO ARTHUR J RIEL	35030 35032
03/04/2005	00001491	MOTION FOR CORRECTION & CLARIFICATION OF ORDER ON CPH'S M/FOR ADVERSE INFERENCE - W/ATTACHMENTS	35033 35069
03/04/2005	00001492	NOTICE OF HEARING 3/7/05 @ 1:00 PM ON M/FOR CORRECTION & CLARIFICATION OF N OF ORDER ON CPH'S M/FOR ADVERSE INFERENCE	35070 35072
03/04/2005	00001493	REPLY/RESPONSE TO DEFS RESPONSE & DEFS SUPPLEMENTAL BRIEF IN RESPONSE TO PLTF'S M/FOR ORDER DECLARING ATTY-CLIENT PRIVILEGE WAIVED FOR CERTAIN DOCUMENTS RELATING TO WILLIAM STRONG RONG - W/ATTACHMENT	35073 35097
03/04/2005	00001494	NOTICE OF INTENTION TO OFFER E-MAILS INTO EVIDENCE	35098 35101
03/04/2005	00001495	NOTICE OF FILING PLEADING UNDER SEAL	35102 35104
03/04/2005	00001496	SEALED PER ORDER DTD 7/31/03	35105 35105
03/04/2005	00001497	NOTICE OF FILING PLEADING UNDER SEAL	35106 35107

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03/04/2005	00001498	SEALED PER ORDER DTD 7/31/03	35108 35108
03/04/2005	00001499	SEALED PER ORDER DTD 7/31/03	35109 35109
03/04/2005	00001500	NOTICE OF FILING PLEADING UNDER SEAL	35110 35112
03/04/2005	00001501	SEALED PER ORDER DTD 7/31/03	35113 35113
03/04/2005	00001502	SEALED PER ORDER DTD 7/31/03	35114 35114
03/04/2005	00001503	NOTICE OF FILING PLEADING UNDER SEAL	35115 35116
03/04/2005	00001504	SEALED PER ORDER DTD 7/31/03	35117 35117
03/07/2005	00001505	NOTICE OF FILING PLEADING UNDER SEAL	35118 35120
03/07/2005	00001506	SEALED PER ORDER DTD 7/31/03	35121 35121
03/07/2005	00001507	EXHIBIT RECEIPT ALL EXHIBITS ADMITTED INTO EVIDENCE ARE IN BROWN ENVELOPE IN THE EVIDENCE DEPT - AV	35122 35122
03/07/2005	00001508	NOTICE OF FILING ORIG VERIFICATION PAGE OF ITS VERIFIED M/TO ADMIT PETER ETER D DOYLE, PRO HAC VICE, DTD 3/3/05 - ATTACHED	35123 35126
03/07/2005	00001509	NOTICE OF FILING DECLARATION OF VITTORIO GRIMALDI DTD 3/4/05 - ATTACHED HED	35127 35131
03/07/2005	00001510	NOTICE OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S MEMO REGARDING THE RELIANCE REQUIREMENT IN FRAUD-BASED	35132 35146

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CLAIMS			
03/07/2005	00001511	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO RONALD O PERELMAN	35147 35149
03/07/2005	00001512	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO LAWRENCE WINOKER	35150 35152
03/07/2005	00001513	NOTICE OF TAKING DEPOSITION TO RONALD O PERELMAN	35153 35155
03/07/2005	00001514	NOTICE OF OPPOSITION TO PLTFS M/FOR CORRECTION & CLARIFICATION TION - W/ATTACHMENT	35156 35161
03/07/2005	00001515	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO LAWRENCE WINOKER	35162 35164
03/07/2005	00001516	MEMORANDUM OF LAW (SUPPLEMENTAL) IN SUPPORT OF MORGAN STANLEY'S M/IN LIMINE #23 TO EXCLUDE EVIDENCE REGARDING WILLIAM STRONG'S ITALIAN ACQUITTAL - W/ATTACHMENTS	35165 35185
03/07/2005	00001517	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO DR BLAINE F NYE	35186 35188
03/07/2005	00001518	NOTICE OF FILING ORIG DECLARATION OF GIANBATTISTA ORIGONI DTD 2/28/05 - ATTACHED	35189 35196
03/07/2005	00001519	MOTION TO APPLY NEW YORK LAW TO CPH'S AIDING & ABETTING & CONSPIRACY CLAIMS	35197 35200
VOLUME NUMBER ONE HUNDRED SEVENTY SEVEN			
03/07/2005	00001519	MOTION	35201 35201
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03/07/2005	00001520	ORDER	35202 35203

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		PLTFS ORE TENUS M/TO COMPEL ADDITIONAL PRODUCTION IS GRANTED - SEE ORDER FOR DETAILS	
03/07/2005	00001521	AGREED ORDER M/TO BE EXCUSED IS GRANTED. BRIAN ROSENBLUM, JUROR #101206747 IS EXCUSED FROM FURTHER SERVICE IN THIS CAUSE	35204 35205
03/07/2005	00001522	AGREED ORDER M/TO BE EXCUSED IS GRANTED. JAMES K BROWER, JUROR #100909337 IS EXCUSED FROM FURTHER SERVICE IN THIS CAUSE	35206 35207
03/07/2005	00001523	ANSWER & AFFIRMATIVE DEFENSES TO PLTFS FIRST AMENDED COMPLAINT - W/ATTACHMENTS	35208 35400
		VOLUME NUMBER ONE HUNDRED SEVENTY EIGHT	
03/07/2005	00001524	NOTICE OF FILING PLEADING UNDER SEAL	35401 35600
		VOLUME NUMBER ONE HUNDRED SEVENTY NINE	
03/07/2005	00001524	NOTICE OF FILING	35601 35703
03/07/2005	00001525	CONTINUED FROM PREVIOUS VOLUME SEALED PER ORDER DTD 7/31/03	35704 35704
03/08/2005	00001526	MEMORANDUM REGARDING WORK PRODUCT ASSERTION	35705 35708
03/08/2005	00001527	RESPONSE TO: & OBJECTIONS TO CPH'S TENTH REQUEST FOR PRODUCTION OF DOCUMENTS	35709 35714
03/08/2005	00001528	NOTICE OF FILING DECLARATION OF JOSANNE RIKARD, DTD 3/7/05 - ATTACHMENT	35715 35719

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		ENT	
03/08/2005	00001529	MOTION FOR AN ADVERSE INFERENCE INSTRUCTION - W/ATTACHMENTS S	35720 35791
03/08/2005	00001530	ORDER COLEMAN (PARENT) HOLDINGS INCS EMERGENCY M/TO COMPEL PRODUCTION OF UNREDACTED COPIES OF DOCUMENTS EXCHANGED W/THE SECURITIES & EXCHANGE COMMISSION & OTHER THIRD PARTIES IS GRANTED. MS&CO SHALL IMMEDIATELY PROVIDE CPH W/UNREDACTED COPIES OF ALL THE SEC/RIEL DOCUMENTS PREVIOUSLY REDACTED OR W/HELD AS PRIVILEGED	35792 35793
03/08/2005	00001531	ORDER PLTF CPH'S ORE TENUS M/FOR REHEARING IS GRANTED. COURTS 2/28/05 ORDER (RELEASE OF EXHIBITS) IS AMENDED BY ADDING THE COPY OF PARTIALLY REDACTED PRIV 490.	35794 35796
03/08/2005	00001532	NOTICE OF HEARING 3/8/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC EMERGENCY M/TO COMPEL PRODUCTION OF UNREDACTED COPIES OF DOCUMENTS EXCHANGED W/THE SECURITIES & EXCHANGE COMMISSION & OTHER THIRD PARTIES	35797 35799
03/08/2005	00001533	NOTICE OF FILING PLEADING UNDER SEAL	35800 35800
		VOLUME NUMBER ONE HUNDRED EIGHTY	
03/08/2005	00001533	NOTICE OF FILING	35801 35801
		CONTINUED FROM PREVIOUS VOLUME	
03/08/2005	00001534	SEALED PER ORDER 7/31/03	35802 35802
03/08/2005	00001535	NOTICE OF FILING PLEADING UNDER SEAL	35803 35805
03/08/2005	00001536	SEALED	35806 35806

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03/09/2005	00001537	SEALED PER ORDER DTD 7/31/03	35807 35807
03/09/2005	00001538	NOTICE OF FILING PLEADING UNDER SEAL	35808 35810
03/09/2005	00001539	MOTION TO DEEM THE 2/23 CONFIDENTIALITY AGREEMENT ADMISSIBLE - LE - W/ATTACHMENTS	35811 36000
		VOLUME NUMBER ONE HUNDRED EIGHTY ONE	
03/09/2005	00001539	MOTION	36001 36042
		CONTINUED FROM PREVIOUS VOLUME	
03/09/2005	00001540	MOTION TO STRIKE MORGAN STANLEY'S ANSWER & AFFIRM DEFENSES TO PLTFS FIRST AMENDED COMPLAINT - W/ATTACHMENTS	36043 36200
		VOLUME NUMBER ONE HUNDRED EIGHTY TWO	
03/09/2005	00001540	MOTION TO STRIKE	36201 36235
		CONTINUED FROM PREVIOUS VOLUME	
03/09/2005	00001541	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO DR BLAINE F NYE	36236 36378
03/09/2005	00001542	MOTION (RENEWED) FOR ENTRY OF DEFAULT JUDGMENT & OTHER SANCTIONS - W/ATTACHMENTS	36379 36400
		VOLUME NUMBER ONE HUNDRED EIGHTY THREE	
03/09/2005	00001542	MOTION	36401 36401

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03/09/2005	00001543	CONTINUED FROM PREVIOUS VOLUME RESPONSE TO: TO MORGAN STANLEY'S NOTICE TO APPLY NEW YORK LAW TO CPH'S AIDING & ABETTING & CONSPIRACY CLAIMS - W/ATTACHMENTS	36402 36428
03/09/2005	00001544	ORDER AND NOTICE OF HEARING. HEARING ON COLEMAN (PARENT) HOLDINGS INC'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT & OTHER SANCTIONS IS SET FOR 3/14/05 @ 9:30 AM	36429 36430
03/09/2005	00001545	NOTICE OF HEARING 3/9/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO STRIKE MORGAN STANLEY'S ANSWER & AFFIRM DEFENSES TO PLTFS FIRST AMENDED COMPLAINT	36431 36433
03/09/2005	00001546	ORDER FOLLOWING IN CAMERA INSPECTION (RIEL/SEC DOCUMENTS) CPH SHALL HAVE ACCESS TO THOSE ITEMS LISTED ON EXHIBIT A, ATTACHED. THE ITEMS FOUND TO HAVE RETAINED THEIR PRIVILEGED STATUS HAVE BEEN PLACED IN A SEALED ENVELOPE LOPE MARKED "DO NOT OPEN PER 3/9/05 ORDER" AND TENDERED ERED TO THE CLERK. CLERK SHALL NOT UNSEAL OR RELEASE THE SEALED ENVELOPE FROM HER CUSTODY ABSENT FURTHER ORDER	36434 36438
03/09/2005	00001547	SEALED PER ORDER DTD 3/9/05	36439 36439
03/09/2005	00001548	NOTICE OF FILING PLEADING UNDER SEAL	36440 36442
03/09/2005	00001549	SEALED PER ORDER DTD 7/31/03	36443 36443
03/09/2005	00001550	SEALED PER ORDER DTD 7/31/03	36444 36444
03/09/2005	00001551	SEALED PER ORDER DTD 7/31/03	36445 36445
03/09/2005	00001552	NOTICE OF FILING	36446 36448

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		PLEADING UNDER SEAL	
03/09/2005	00001553	SEALED PER ORDER DTD 7/31/03	36449 36449
03/09/2005	00001554	NOTICE OF FILING PLEADING UNDER SEAL	36450 36451
03/09/2005	00001555	SEALED PER ORDER DTD 7/31/03	36452 36452
03/10/2005	00001556	ORDER FOLLOWING IN CAMERA INSPECTION (STRONG) MS & CO'S OBJECTIONS ARE SUSTAINED, IN PART, & OVERRULED IN PART. ART. COURT CONCLUDES THAT THOSE ITEMS ATTACHED AS EXHIBIT 1 ARE NOT PRIVILEGED. THE SEALED ITEMS REVIEWED SHALL BE NOT UNSEALED OR RELEASED FROM THE CLERK'S CUSTODY ABSENT FURTHER ORDER - ATTACHMENTS	36453 36600
		VOLUME NUMBER ONE HUNDRED EIGHTY FOUR	
03/10/2005	00001556	ORDER CONTINUED FROM PREVIOUS VOLUME	36601 36800
		VOLUME NUMBER ONE HUNDRED EIGHTY FIVE	
03/10/2005	00001556	ORDER CONTINUED FROM PREVIOUS VOLUME	36801 37000
		VOLUME NUMBER ONE HUNDRED EIGHTY SIX	
03/10/2005	00001556	ORDER CONTINUED FROM PREVIOUS VOLUME	37001 37200

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03/10/2005	00001556	ORDER	37201 37222
		CONTINUED FROM PREVIOUS VOLUME	
03/10/2005	00001557	ORDER ON MORGAN STANLEY'S M/TO DEEM THE 2/23/ CONFIDENTIALITY LITY AGREEMENT ADMISSIBLE. COURT RESERVED RULING PENDING ESTABLISHMENT OF THE EVIDENTIARY PREDICATE AT TRIAL	37223 37224
03/10/2005	00001558	MOTION FOR SANCTIONS FOR DISCOVERY ABUSES - W/ATTACHMENTS	37225 37387
03/10/2005	00001559	RESPONSE TO: TO COLEMAN (PARENT) HOLDINGS INCS' M/TO STRIKE MORGAN STANLEY'S ANSWER & AFFIRM DEFENSES TO PLTF'S FIRST AMENDED COMPLAINT	37388 37393
03/10/2005	00001560	ORDER CPH'S ORE TENUS M/TO COMPEL DISCLOSURE IS GRANTED - SEE SEE ORDER FOR DETAILS	37394 37395
03/10/2005	00001561	NOTICE OF FILING PLEADING UNDER SEAL	37396 37398
03/10/2005	00001562	SEALED PER ORDER DTD 7/31/03	37399 37399
03/11/2005	00001563	MOTION (VERIFIED) TO ADMIT ALEXANDER DIMITRIEF PRO HAC VICE E	37400 37400
VOLUME NUMBER ONE HUNDRED EIGHTY EIGHT			
03/11/2005	00001563	MOTION	37401 37406
		CONTINUED FROM PREVIOUS VOLUME	

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03/11/2005	00001564	AGREED ORDER MORGAN STANLEY'S VERIFIED M/TO ADMIT ALEXANDER DIMITRIEF, PRO HAC VICE IS GRANTED. MR DIMITRIEF IS ADMITTED TO PRACTICE IN THIS CASE.	37407 37408
03/11/2005	00001565	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO STRIKE MORGAN STANLEY'S ANSWER & AFFIRM DEFENSES TO PLTFS FIRST AMENDED COMPLAINT IS DENIED.	37409 37410
03/11/2005	00001566	ORDER MORGAN STANLEY'S M/TO COMPEL PRODUCTION OF ARCHIVED DOCUMENTS & CORRESPONDENCE W/BANKS IS GRANTED. BY 2:00 2:00 PM, MARCH 14, 2005, CPH SHALL CERTIFY THAT IT HAS COMPLETED A GOOD FAITH SEARCH FOR ALL DOCUMENTS W/IN ITS CARE, CUSTODY, OR CONTROL RESPONSIVE TO COURTS 2/17/05 ORDER ON MS & CO'S M/TO COMPEL PRODUCTION OF DOCUMENTS.	37411 37412
03/11/2005	00001567	NOTICE IN OPPOSITION TO DEFS M/TO DISQUALIFY PLTFS COUNSEL - W/ATTACHMENTS	37413 37440
03/11/2005	00001568	MOTION TO DISQUALIFY PLTFS COUNSEL SEARCY, DENNEY, SCAROLA BARNHARDT & SHIPLEY PA AND JENNER & BLOCK LLC - W/ATTACHMENTS	37441 37457
03/11/2005	00001569	MOTION TO COMPEL PRODUCTION OF ARCHIVED DOCUMENTS & CORRESPONDENCE W/BANKS - W/ATTACHMENTS	37458 37466
03/11/2005	00001570	NOTICE OF TAKING DEPOSITION (AMENDED/VIDEOTAPE) TO DR BLAINE F NYE	37467 37469
03/11/2005	00001571	MOTION TO TAKE JUDICIAL NOTICE PURSUANT TO FS 90.202 & 90.203 - W/ATTACHMENTS	37470 37481
03/11/2005	00001572	NOTICE OF FILING PLEADING UNDER SEAL	37482 37484

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03/11/2005	00001573	SEALED PER ORDER DTD 7/31/03	37485 37485
03/11/2005	00001574	NOTICE OF FILING PLEADING UNDER SEAL	37486 37488
03/11/2005	00001575	SEALED PER ORDER DTD 7/31/03	37489 37489
03/11/2005	00001576	NOTICE OF FILING PLEADING UNDER SEAL	37490 37491
03/11/2005	00001577	SEALED PER ORDER DTD 7/31/03	37492 37492
03/11/2005	00001578	NOTICE OF FILING PLEADING UNDER SEAL	37493 37494
03/11/2005	00001579	SEALED PER ORDER DTD 7/31/03	37495 37495
03/11/2005	00001579	A MOTION IN LIMINE #24 TO EXCLUDE THE TESTIMONY OF WILLIAM N HORTON - W/ATTACHMENTS	37496 37600
		VOLUME NUMBER ONE HUNDRED EIGHTY NINE	
03/11/2005	00001579	A MOTION	37601 37721
		CONTINUED FROM PREVIOUS VOLUME	
03/11/2005	00001579	B MOTION FOR LEAVE TO FILE SUPPLEMENTAL GRINBLATT REPORT - ATTACHMENTS	37722 37800
		VOLUME NUMBER ONE HUNDRED NINETY	
03/11/2005	00001579	B MOTION	37801 37862

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03/11/2005	00001579	D SEALED PER ORDER DTD 7/31/03	37866 37866
03/14/2005	00001580	MOTION BY PLTF COLEMAN HOLDINGS FOR IN CAMERA INSPECTION OF DOCUMENTS LISTED ON SUPPLEMENTAL PRIVILEGE LOG	37867 37878
03/14/2005	00001581	NOTICE OF HEARING ON 3/15/05 AT 9:30 AM ON MOTION FOR IN CAMERA INSPECTION OF ITEMS LISTED ON SUPPLEMENTAL PRIVILEGE LOG LOG	37879 37881
03/14/2005	00001582	MOTION BY COLEMAN HOLDINGS INC TO REMOVE CONFIDENTIALITY DESIGNATIONS	37882 37886
03/14/2005	00001583	NOTICE OF HEARING ON 3/15/05 AT 9:30 AM ON MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS	37887 37889
03/14/2005	00001584	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FILE THE FAX TRANSMISSION FROM RICHARD REIS, JUROR UROR #151	37890 37890
03/14/2005	00001585	CORRESPONDENCE (FAX) TO JUDGE MAASS FROM VALUED DELL CUSTOMER DTD 3/14/05	37891 37892
03/14/2005	00001586	AGREED ORDER M/TO BE EXCUSED IS GRANTED. RICHARD REIS, JUROR #151 IS EXCUSED FROM FURTHER SERVICE	37893 37894
03/14/2005	00001587	ORDER MORGAN STANLEY'S M/TO DISQUALIFY PLTF'S COUNSEL SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY PA & JENNER & BLOCK LLC IS DENIED	37895 37898

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03/14/2005	00001589	MEMORANDUM (SUPPLEMENTAL) IN SUPPORT OF M/FOR AN ADVERSE INFERENCE ENCE INSTRUCTION - W/ATTACHMENTS	37910 38000
VOLUME NUMBER ONE HUNDRED NINETY ONE			
03/14/2005	00001589	MEMORANDUM	38001 38001
03/14/2005	00001590	CONTINUED FROM PREVIOUS VOLUME MOTION TO RECONSIDER & MODIFY SANCTIONS ORDER - W/ATTACHMENTS NTS	38002 38027
03/14/2005	00001591	NOTICE OF OPPOSITION TO CPH'S M/FOR A DEFAULT JUDGMENT - W/ATTACHMENTS	38028 38200
VOLUME NUMBER ONE HUNDRED NINETY TWO			
03/14/2005	00001591	NOTICE	38201 38324
03/14/2005	00001592	CONTINUED FROM PREVIOUS VOLUME NOTICE OF FILING PLEADING UNDER SEAL	38325 38327
03/14/2005	00001593	SEALED PER ORDER DTD 7/31/03	38328 38328
03/14/2005	00001594	NOTICE OF FILING PLEADING UNDER SEAL	38329 38331
03/14/2005	00001595	SEALED PER ORDER DTD 7/31/03	38332 38332

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03/14/2005	00001596	NOTICE OF FILING PLEADING UNDER SEAL	38333 38335
03/14/2005	00001597	SEALED PER ORDER DTD 7/31/03	38336 38336
03/14/2005	00001598	MOTION IN LIMINE #25 TO EXCLUDE EVIDENCE RELATING TO SEPARATE PROCEEDING	38337 38341
03/15/2005	00001599	RESPONSE TO: TO CPH'S CHRONOLOGY OF PURPORTED DISCOVERY ABUSES - W/ATTACHMENTS	38342 38400
		VOLUME NUMBER ONE HUNDRED NINETY THREE	
03/15/2005	00001599	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	38401 38600
		VOLUME NUMBER ONE HUNDRED NINETY FOUR	
03/15/2005	00001599	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	38601 38800
		VOLUME NUMBER ONE HUNDRED NINETY FIVE	
03/15/2005	00001599	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	38801 39000
		VOLUME NUMBER ONE HUNDRED NINETY SIX	
03/15/2005	00001599	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	39001 39200

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03/15/2005	00001600	RESPONSE TO: (OVERNIGHT) TO COLEMAN (PARENT) HOLDINGS INC'S SUPPLEMENTAL MEMO IN SUPPORT OF ITS RENEWED M/FOR ENTRY NTRY OF DEFAULT JUDGMENT - W/ATTACHMENTS	39201 39375
03/15/2005	00001601	SEALED PER ORDER DTD 7/31/03	39376 39376
03/15/2005	00001602	NOTICE OF FILING PLEADING UNDER SEAL	39377 39379
03/15/2005	00001603	SEALED PER ORDER DTD 7/31/03	39380 39380
03/15/2005	00001604	NOTICE OF FILING PLEADING UNDER SEAL	39381 39383
03/15/2005	00001605	SEALED PER ORDER DTD 7/31/03	39384 39384
03/15/2005	00001606	RESPONSE TO: TO DEFS NOTICE TO PRODUCE PRESCOTT GROUP DOCUMENTS AT TRIAL	39385 39389
03/15/2005	00001607	DEPOSITION OF FRED L BLOCK, TAKEN ON 3/13/05	39390 39400
VOLUME NUMBER ONE HUNDRED NINETY EIGHT			
03/15/2005	00001607	DEPOSITION	39401 39458
		CONTINUED FROM PREVIOUS VOLUME	
03/15/2005	00001608	RESPONSE TO: (OVERNIGHT) TO CPH'S ADDITIONAL SUBMISSION IN SUPPORT OF ITS M/FOR DEFAULT	39459 39469

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03/16/2005	00001609	MOTION IN LIMINE #27 FOR A FINDING AS A MATTER OF LAW THAT THE THE FEDERAL SECURITIES LAWS PROHIBITED PLTF FROM SELLING UNREGISTERED SUNBEAM STOCK - W/ATTACHMENTS	39470 39576
03/16/2005	00001610	RESPONSE TO: TO MORGAN STANLEY'S M/IN LIMINE #23 TO EXCLUDE EVIDENCE ENCE REGARDING THE ITALIAN CRIMINAL PROCEEDINGS - W/ATTACHMENTS	39577 39600
VOLUME NUMBER ONE HUNDRED NINETY NINE			
03/16/2005	00001610	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	39601 39800
VOLUME NUMBER TWO HUNDRED			
03/16/2005	00001610	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	39801 39913
03/16/2005	00001611	RESPONSE TO: TO MORGAN STANLEY'S M/FOR SANCTIONS FOR ALLEGED DISCOVERY ABUSES - W/ATTACHMENTS	39914 40000
VOLUME NUMBER TWO HUNDRED ONE			
03/16/2005	00001611	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	40001 40059
03/16/2005	00001612	RESPONSE TO: TO MORGAN STANLEY'S M/FOR AN ADVERSE INFERENCE INSTRUCTION - W/ATTACHMENTS	40060 40200

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03/16/2005	00001612	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	40201 40244
03/16/2005	00001613	MOTION TO COMPEL CPH TO PROVIDE CHRONOLOGICALLY-SORTED PRIVILEGE LOG - W/ATTACHMENTS	40245 40326
03/16/2005	00001614	NOTICE OF HEARING 3/17/05 @ 9:30 AM ON MORGAN STANLEY'S M/TO COMPEL CPH TO PROVIDE CHRONOLOGICALLY-SORTED PRIVILEGE LOG	40327 40329
03/16/2005	00001615	MOTION IN LIMINE #24 TO BAR EVIDENCE & ARGUMENT CONCERNING MAFCO FINANCIAL INFORMATION - W/ATTACHMENTS	40330 40348
03/16/2005	00001616	NOTICE OF HEARING 3/17/05 @ 9:30 AM ON CPH INC'S M/IN LIMINE #24 TO BAR EVIDENCE & ARGUMENT CONCERNING MAFCO FINANCIAL INFO; PLTFS M/IN LIMINE #25 FOR A FINDING AS A MATTER OF LAW THAT THE EXCULPATORY & INTEGRATION CLAUSES RAISED BY MORGAN STANLEY ARE INEFFECTIVE TO BAR INTENTIONAL-TORT CLAIMS; CPH INC'S M/TO QUASH MORGAN STANLEY'S NOTICE TO E TO PRODUCE MAFCO LOAN AGREEMENTS; PLTFS M/IN LIMINE #26 FOR A FINDING AS A MATTER OF LAW THAT MORGAN STANLEY OWED A DUTY TO ALL PURCHASERS OF SUNBEAM SECURITIES INCLUDING PLTF AND PLTFS M/IN LIMINE #27 FOR FOR A FINDING AS A MATTER OF LAW THAT THE FEDERAL SECURITIES LAWS PROHIBITED PLTF FROM SELLING UNREGISTERED SUNBEAM STOCK	40349 40351
03/16/2005	00001617	MOTION IN LIMINE #26 FOR A FINDING AS A MATTER OF LAW THAT MORGAN STANLEY OWED A DUTY TO ALL PURCHASERS OF SUNBEAM BEAM SECURITIES INCLUDING PLTF - W/ATTACHMENTS	40352 40375
03/16/2005	00001618	MOTION TO QUASH MORGAN STANLEY'S NOTICE TO PRODUCE MAFCO LOAN AGREEMENTS - W/ATTACHMENTS	40376 40400

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VOLUME NUMBER TWO HUNDRED THREE			
03/16/2005	00001618	MOTION	40401 40421
		CONTINUED FROM PREVIOUS VOLUME	
03/16/2005	00001619	MOTION IN LIMINE #25 FOR A FINDING AS A MATTER OF LAW THAT THE THE EXCULPATORY & INTEGRATION CLAUSES RAISED BY MORGAN RGAN STANLEY ARE INEFFECTIVE TO BAR INTENTIONAL TORT CLAIMS - W/ATTACHMENTS	40422 40452
03/16/2005	00001620	AGREED ORDER MOTION TO BE EXCUSED IS GRANTED. HOLLY ASBURY JUROR #90 IS EXCUSED FROM FURTHER SERVICE IN THIS CAUSE	40453 40454
03/16/2005	00001621	ORDER AND DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE HOLLY ASBURY'S FAX TRANSMISSION DTD 3/15/05	40455 40455
03/16/2005	00001622	CORRESPONDENCE (FAX) TO JUDGE MAASS FROM HOLLY ASBURY DTD 3/15/05	40456 40457
03/16/2005	00001623	ORDER MORGAN STANLEY'S M/FOR REHEARING IS DENIED	40458 40459
03/16/2005	00001624	NOTICE OF FILING PLEADING UNDER SEAL	40460 40461
03/16/2005	00001625	SEALED - PER ORDER DTD 7/31/03	40462 40462
03/16/2005	00001626	NOTICE OF FILING PLEADING UNDER SEAL	40463 40463
03/16/2005	00001627	SEALED PER ORDER DTD 7/31/03	40464 40464
03/16/2005	00001628	NOTICE OF FILING PLEADING UNDER SEAL	40465 40466

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03/16/2005	00001629	SEALED PER ORDER DTD 7/31/03	40467 40467
03/16/2005	00001630	NOTICE OF FILING PLEADING UNDER SEAL	40468 40469
03/16/2005	00001631	SEALED PER ORDER DTD 7/31/03	40470 40470
03/16/2005	00001632	NOTICE OF FILING PLEADING UNDER SEAL	40471 40472
03/16/2005	00001633	SEALED PER ORDER DTD 7/31/03	40473 40473
03/16/2005	00001633	A CORRESPONDENCE LETTERS TO COURT FROM PROSPECTIVE JURORS AND/OR EMPLOYERS	40474 40489
03/17/2005	00001634	MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS - W/ATTACHMENTS NTS	40490 40514
03/17/2005	00001635	NOTICE OF HEARING 3/21/05 @ 9:30 AM ON MORGAN STANLEY & CO INC'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS	40515 40517
03/17/2005	00001636	NOTICE OF FILING PRELIMINARY JURY INSTRUCTIONS - ATTACHED	40518 40541
03/17/2005	00001637	NOTICE OF FILING TRIAL EXHIBIT LIST - ATTACHED	40542 40591
03/17/2005	00001638	EXHIBIT IN OPPOSITION TO PLTF'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT	40592 40597
03/18/2005	00001639	NOTICE TO PRODUCE AT HEARING	40598 40600

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		VOLUME NUMBER TWO HUNDRED FOUR	
03/18/2005	00001639	NOTICE	40601 40601
		CONTINUED FROM PREVIOUS VOLUME	
03/18/2005	00001640	ORDER AN DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE LETTER FROM DR ULLOA; ROBERT WACKER'S ER'S LETTER DTD 3/14/05; AND LOREEN FRANCESCANI'S LETTER DTD 3/16/05	40602 40602
03/18/2005	00001641	CORRESPONDENCE FROM LUIS S ULLOA MD; CRAIG H LICHTBLAU MD PA DTD 3/14/05 & LOREEN FRANCESCANI DTD 3/16/05	40603 40605
03/18/2005	00001642	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FILE THE FAX TRANSMISSION FROM LUIS TUR DTD 3/17/05	40606 40606
03/18/2005	00001643	CORRESPONDENCE FROM LUIS TUR DTD 3/17/05	40607 40609
03/18/2005	00001644	SEALED PER ORDER DTD 7/31/03	40610 40610
03/18/2005	00001645	SEALED PER ORDER DTD 7/31/03	40611 40611
03/18/2005	00001646	NOTICE OF FILING PLEADING UNDER SEAL	40612 40613
03/18/2005	00001647	NOTICE OF FILING PLEADING UNDER SEAL	40614 40615
03/18/2005	00001648	MOTION TO TAKE JUDICIAL NOTICE OF CERTAIN STATEMENTS CONCERNING STATEMENTS CONCERNING THE SUNBEAM FRAUD MADE MADE BY MORGAN STANLEY & TO ADMIT THOSE STATEMENTS INTO INTO EVIDENCE AS ADMISSIONS OF MORGAN STANLEY -	40616 40800

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W/ATTACHMENTS			
VOLUME NUMBER TWO HUNDRED FIVE			
03/18/2005	00001648	MOTION	40801 40834
03/18/2005	00001649	CONTINUED FROM PREVIOUS VOLUME RESPONSE TO: TO MORGAN STANLEY, INC'S M/IN LIMINE #25 TO EXCLUDE EVIDENCE RELATING TO SEPARATE PROCEEDING - W/ATTACHMENT	40835 40856
03/18/2005	00001650	NOTICE OF REQUESTED PRELIMINARY JURY INSTRUCTIONS	40857 40870
03/18/2005	00001651	RESPONSE TO: TO MORGAN STANLEY'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS	40871 40887
03/18/2005	00001652	RESPONSE TO: TO MORGAN STANLEY'S 3/17/05 NOTICE TO PRODUCE AT HEARING	40888 40891
03/18/2005	00001653	MOTION IN LIMINE #28 TO CLARIFY WHEN EVIDENCE IS ADMISSIBLE TO E TO SHOW PLTF'S ENTITLEMENT TO AND AMT OF PUNITIVE DAMAGES - W/ATTACHMENTS	40892 40959
03/18/2005	00001654	NOTICE OF OPPOSITION TO MORGAN STANLEY'S M/FOR LEAVE TO FILE SUPPLEMENTAL GRINBLATT REPORT - W/ATTACHMENTS	40960 41000
VOLUME NUMBER TWO HUNDRED SIX			
03/18/2005	00001654	NOTICE	41001 41084
03/18/2005	00001655	CONTINUED FROM PREVIOUS VOLUME RESPONSE TO:	41085 41200

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		TO MORGAN STANLEY'S M/IN LIMINE #24 TO EXCLUDE THE TESTIMONY OF WILLIAM N HORTON - W/ATTACHMENTS	
		VOLUME NUMBER TWO HUNDRED SEVEN	
03/18/2005	00001655	RESPONSE TO:	41201 41227
		CONTINUED FROM PREVIOUS VOLUME	
03/21/2005	00001656	NOTICE OF PROPOSED LIMITING INSTRUCTIONS REGARDING CPH'S DUE DILIGENCE OR LACK THEREOF	41228 41231
03/21/2005	00001657	NOTICE OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S M/TO QUASH MORGAN STANLEY'S NOTICE TO PRODUCE MAFCO LOAN AGREEMENTS - W/ATTACHMENTS	41232 41285
03/21/2005	00001658	RESPONSE TO: TO COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #24 TO BAR EVIDENCE & ARGUMENT CONCERNING MAFCO FINANCIAL INFORMATION - W/ATTACHMENTS	41286 41356
03/21/2005	00001659	EXHIBIT LIST FOR 3/21/05 HEARING ON MORGAN STANLEY'S M/FOR AN ADVERSE INFERENCE INSTRUCTION	41357 41362
03/21/2005	00001660	RESPONSE TO: TO CPH'S M/TO TAKE JUDICIAL NOTICE OF CERTAIN STATEMENTS CONCERNING THE SUNBEAM FRAUD MADE BY MORGAN STANLEY & TO ADMIT THOSE STATEMENTS INTO EVIDENCE AS ADMISSIONS OF MORGAN STANLEY	41363 41374
03/21/2005	00001661	RESPONSE TO: TO PLTF'S M/IN LIMINE #26 FOR A FINDING AS A MATTER OF LAW THAT MORGAN STANLEY OWED A DUTY TO ALL PURCHASERS OF SUNBEAM SECURITIES INCLUDING PLTF	41375 41385
03/21/2005	00001662	NOTICE OF OPPOSITION TO CPH'S M/IN LIMINE #27 FOR A FINDING AS G AS A MATTER OF LAW THAT THE FEDERAL SECURITIES LAWS	41386 41400

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		PROHIBITED PLTF FROM SELLING UNREGISTERED SUNBEAM STOCK TOCK - W/ATTACHMENTS	
		VOLUME NUMBER TWO HUNDRED EIGHT	
03/21/2005	00001662	NOTICE	41401 41405
		CONTINUED FROM PREVIOUS VOLUME	
03/21/2005	00001663	NOTICE OF OPPOSITION TO PLTFs M/IN LIMINE #25 FOR FINDING AS A AS A MATTER OF LAW THAT EXCULPATORY & INTEGRATION CLAUSES RAISED BY MORGAN STANLEY ARE INEFFECTIVE TO BAR BAR INTENTIONAL-TORT CLAIMS - W/ATTACHMENTS	41406 41418
03/21/2005	00001664	MOTION TO COMPEL DISCLOSURE OF DEPO VIDEOS PRIOR TO PRESENTATION TO JURY JURY - W/ATTACHMENTS	41419 41430
03/21/2005	00001665	NOTICE TO PRODUCE AT TRIAL	41431 41434
03/21/2005	00001666	NOTICE OF SUBMISSION OF PROPOSED LIMITING INSTRUCTIONS ON RELIANCE ISSUES	41435 41439
03/21/2005	00001667	NOTICE OF FILING DOCUMENTS UNDER SEAL	41440 41442
03/21/2005	00001668	SEALED PER ORDER DTD 7/31/03	41443 41443
03/21/2005	00001669	NOTICE OF FILING DOCUMENTS UNDER SEAL	41444 41446
03/21/2005	00001670	SEALED PER ORDER DTD 7/31/03	41447 41447
03/21/2005	00001671	NOTICE OF FILING DOCUMENTS UNDER SEAL	41448 41450

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03/21/2005	00001672	SEALED PER ORDER DTD 7/31/03	41451 41451
03/21/2005	00001672 A	SEALED PER ORDER DTD 7/31/03	41452 41452
03/22/2005	00001673	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #24 TO BAR EVIDENCE & ARGUMENT CONCERNING MAFCO FINANCIAL INFORMATION IS DENIED - W/OUT PREJUDICE.	41453 41454
03/22/2005	00001674	NOTICE OF SUBMISSION REGARDING EMAIL-RELATED FACTS THE COURT & RT & CPH KNOW HOW, BUT DID NOT KNOW AS OF 2/14/	41455 41461
03/22/2005	00001675	ORDER (RELEASE OF EXHIBITS - RIEL) MS&CO'S OBJECTIONS ARE OVERRULED, IN PART. CPH SHALL HAVE ACCESS TO THOSE DOCUMENTS ATTACHED HERETO AS EXHIBIT 1, EXCLUDING THOSE HOSE PORTIONS REDACTED BY THE COURT. THE SEALED FILING LING BY MS&CO SHALL NOT BE UNSEALED OR REMOVED - SEE ORDER (ATTACHMENTS)	41462 41479
03/22/2005	00001675 A	CORRESPONDENCE LETTER TO COURT FROM A PROSPECTIVE JUROR	41480 41487
03/23/2005	00001676	ORDER MORGAN STANLEY'S M/FOR LEAVE TO FILE SUPPLEMENTAL GRINBLATT REPORT IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS	41488 41489
03/23/2005	00001677	ORDER CPH'S RENEWED M/FOR ENTRY OF A DEFAULT JUDGMENT IS GRANTED IN PART. COURT SHALL READ TO THE JURY A STATEMENT SIMILAR TO THAT ATTACHED AS EXHIBIT A TO THE AMENDED ORDER ON COLEMAN (PARENT) HOLDINGS INC'S M/FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTIONS OF E-MAILS & MORGAN STANLEY'S NONCOMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER. CPH SHALL BE ENTITLED TO AN AWARD OF REASONABLE FEES & COSTS. MS&CO IS RELIEVED OF ANY FURTHER OBLIGATION TO COMPLY W/THE 4/16/04 AGREED ORDER & THE 2/4/05 ORDER.	41490 41535

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		PRO HAC VICE ADMISSION OF THOMAS CLARE IS REVOKED. PORTIONS OF CPH'S M/FOR CORRECTION & CLARIFICATION OF ORDER ON CPH'S M/FOR ADVERSE INFERENCE THAT SEEK TO AMEND THE BODY OF THAT ORDER TO CORRECT CLERICAL & SPELLING ERRORS IS GRANTED. SEE ORDER FOR FURTHER DETAILS (W/ATTACHMENTS)	
03/23/2005	00001678	MOTION OF KIRKLAND & ELLIS LLP, TO WITHDRAW AS COUNSEL	41536 41538
03/23/2005	00001679	NOTICE OF FILING EXHIBIT "B" TO ITS M/TO ALLOW SUBSTITUTION OF COUNSEL & EL & FOR CONTINUANCE - ATTACHED	41539 41545
03/23/2005	00001680	MOTION TO ALLOW SUBSTITUTION OF COUNSEL & FOR CONTINUANCE - W/ATTACHMENTS	41546 41563
03/23/2005	00001681	NOTICE OF OPPOSITION TO MORGAN STANLEY'S M/FOR CONTINUANCE - W/ATTACHMENTS	41564 41600
		VOLUME NUMBER TWO HUNDRED NINE	
03/23/2005	00001681	NOTICE	41601 41672
		CONTINUED FROM PREVIOUS VOLUME	
03/23/2005	00001682	NOTICE OF FILING PLEADING UNDER SEAL	41673 41674
03/23/2005	00001683	SEALED PER ORDER DTD 7/31/03	41675 41675
03/24/2005	00001684	ORDER KIRKLAND & ELLIS LLP'S M/TO WITHDRAW AS COUNSEL FOR MORGAN STANLEY IS GRANTED - SAID IS RELIEVED OF ANY FURTHER OBLIGATION. CARLTON FIELDS PA & KELLOGG, HUBER, HANSEN, TODD & EVANS & FIGEL PLLC REMAIN AS CO-COUNSEL. MORGAN STANLEY'S M/FOR CONTINUANCE IS GRANTED, IN PART. JURY SELECTION SHALL RECOMMENCE ON	41676 41677

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		3/30/05 @ 9:30 AM. MORGAN STANLEY'S M/TO ALLOW SUBSTITUTION OF COUNSEL IS DEEMED NOT RIPE. NO SUBSTITUTE COUNSEL HAS BEEN OFFERED	
03/24/2005	00001685	ORDER MORGAN STANLEY & CO INC'S M/FOR SANCTIONS FOR DISCOVERY VERY ABUSES IS DENIED	41678 41679
03/24/2005	00001686	ORDER MORGAN STANLEY'S M/FOR AN ADVERSE INFERENCE INSTRUCTION TION IS DENIED, W/OUT PREJUDICE TO MS&CO'S RIGHT TO PRESENT EVIDENCE ABOUT CPH'S EMAIL RETENTION PRACTICES & ITS FAILURE TO DIRECT THAT EMAILS RELATED TO THE SUNBEAM TRANSACTION BE SAVED & CPH'S RIGHT TO PRESENT EVIDENCE OF ITS OFFER TO HAVE A 3RD PARTY VENDOR GIVEN ACCESS TO RETRIEVE EMAILS FROM CPH'S SYSTEM. SEE ORDER RDER FOR DETAILS	41680 41681
03/24/2005	00001687	ORDER MORGAN STANLEY'S M/IN LIMINE #23 TO EXCLUDE EVIDENCE REGARDING WILLIAM STRONG'S ITALIAN ACQUITTAL IS DENIED W/OUT PREJUDICE. SEE ORDER FOR DETAILS	41682 41683
03/24/2005	00001688	SUBPOENA RETURNED / SERVED TO JEFFREY S DAVIDSON	41684 41686
03/24/2005	00001689	SUBPOENA RETURNED / SERVED TO DONALD KEMPF JR	41687 41689
03/24/2005	00001690	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS IS GRANTED IN PART & DENIED IN PART. THE CONFIDENTIALITY DESIGNATIONS ARE REMOVED FROM ALL ITEMS LISTED IN THE MOTION, OTHER THAN THAN THOSE FOUND AT DE # 1496, 1498, 1499, 1501 & 1502 502	41690 41691
03/24/2005	00001691	ORDER ON REVISED PRE-TRIAL SCHEDULE. BY NOON ON 3/26/05, PLTF SHALL SERVE ON DEF, BY ELECTRONIC TRANSMISSION, ITS REVISED WITNESS LIST TOGETHER WITH A FAIR SUMMARY OF EACH WITNESS'S EXPECTED TESTIMONY. BY 3/27/05 @	41692 41693

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		5:00 PM, PLTF SHALL SERVE ON DEF, BY ELECTRONIC TRANSMISSION, ITS REVISED EXHIBIT LIST. BY 3/28/05 @ 9:30 AM, EACH PARTY SHALL SUBMIT ITS REQUESTED STATEMENT TO BE READ TO THE JURY.	
03/24/2005	00001692	ORDER AND DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE JOSEPH KATZ'S FAX TRANSMISSION DTD 3/24/05	41694 41694
03/24/2005	00001693	LETTER FROM JOSEPH KATZ DTD 3/24/05	41695 41695
03/24/2005	00001693	A MOTION TO DISCHARGE JURY PANELS	41696 41702
03/25/2005	00001694	MEMORANDUM OF LAW BY PLTF CPH IN OPPOSITION TO MOTION TO TAKE JUDICIAL NOTICE	41703 41708
03/28/2005	00001695	NOTICE OF SUBMISSION OF PROPOSED STATEMENT TO BE READ TO THE JURY PURSUANT TO COURTS 3/23/05 ORDER ON CPH'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT	41709 41718
03/28/2005	00001696	NOTICE OF FILING ORIG DECLARATION OF DONALD G KEMPF JR - ATTACHED	41719 41721
03/28/2005	00001697	NOTICE OF OPPOSITION TO CPH'S M/FOR LEAVE TO TAKE THE DEPO OF DONALD G KEMPF JR - W/ATTACHMENTS	41722 41736
03/28/2005	00001698	REPLY/RESPONSE TO MORGAN STANLEY'S ANSWER & AFFIRM DEFENSES TO PLTF'S FIRST AMENDED COMPLAINT	41737 41739
03/28/2005	00001699	MOTION FOR LEAVE TO TAKE THE DEPO OF DONALD G KEMPF JR	41740 41745
03/28/2005	00001700	NOTICE OF HEARING 3/28/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/FOR LEAVE TO TAKE THE DEPO OF DONALD G KEMPF JR	41746 41748

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03/28/2005	00001701	STATEMENT (PROPOSED) OF CONCLUSIVE FINDINGS OF FACT REGARDING DESTRUCTION OF EVIDENCE, CONCEALMENT OF EVIDENCE, AND LITIGATION MISCONDUCT - W/ATTACHMENTS	41749 41766
03/28/2005	00001702	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO QUASH MORGAN STANLEY'S NOTICE TO PRODUCE MAFCO LOAN AGREEMENTS IS GRANTED. MS& CO'S NOTICE TO PRODUCE AT TRIAL DOCUMENTS ENTS PERTAINING TO LOAN AGREEMENTS OF MAFCO, SERVED 2/18/05 IS QUASHED	41767 41768
03/28/2005	00001703	ORDER PLTFS M/IN LIMINE #25 FOR A FINDING AS A MATTER OF LAW THAT THE EXCULPATORY & INTEGRATION CLAUSES RAISED BY MORGAN STANLEY ARE INEFFECTIVE TO BAR INTENTIONAL-TORT CLAIMS IS GRANTED	41769 41770
03/28/2005	00001704	ORDER PLTFS M/IN LIMINE #27 FOR A FINDING AS A MATTER OF LAW THAT THE FEDERAL SECURITIES LAWS PROHIBITED PLTF FROM SELLING UNREGISTERED SUNBEAM STOCK IS GRANTED IN PART. RT. CPH'S M/TO COMPEL IS GRANTED - W/IN 5 BUSINESS DAYS, CPH SHALL SERVE ITS SUPPLEMENTAL DISCLOSURE - SEE SEE ORDER FOR DETAILS	41771 41772
03/29/2005	00001705	STATEMENT (COPY/PROPOSED) FOR VOIR DIRE EXAM	41773 41776
03/29/2005	00001706	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/FOR LEAVE TO TAKE THE THE DEPO OF DONALD G KEMPF JR IS GRANTED IN PART. BASED ON DEFS REP THAT JAMES DOYLE IS THE PERSON AT MS&CO RESPONSIBLE FOR COMPLIANCE W/THE COURTS 3/2/05 ORDER - SEE ORDER	41777 41778
03/29/2005	00001707	ORDER MOTION TO EXCUSE JUROR IS DENIED. JUROR JOSEPH KATZ SHALL REPORT FOR JURY SERVICE 3/30/05	41779 41780
03/29/2005	00001708	ORDER PLTFS ORE TENUS M/TO COMPEL IS GRANTED. DR GRINBLATT	41781 41781

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		SHALL APPEAR FOR DEPO ON OR BEFORE 4/5/05.	
03/29/2005	00001709	ORDER PLTFs ORE TENUS M/TO SET SCHEDULE IS GRANTED. MS&CO SHALL SERVE ANY MOTION THE GRANTING OF WHICH WOULD SEEK SEEK TO MODIFY OR ELIMINATE THE BIFURCATION LINE PREVIOUSLY DRAWN BY THE COURT BY NOON 3/31/05. HEARING RING ON SUCH MOTION SHALL BE HELD IN CONJUNCTION W/HEARING ON PLTFs MOTION SEEKING A DETERMINATION OF EVIDENCE RELEVANT TO PHASE I & PHASE II ON 3/31/05 @ 1:00 PM. COUNSEL SHALL PRESENT THEIR PROPOSED JURY INSTRUCTIONS AT 9:30 AM ON 4/4/05	41782 41783
03/29/2005	00001710	ORDER MORGAN STANLEY'S M/TO DISCHARGE JURY PANELS IS DENIED, W/OUT PREJUDICE TO RENEWAL FOLLOWING ADDITIONAL VOIR DIRE	41784 41784
03/29/2005	00001711	MOTION TO STRIKE A PORTION OF ONE SENTENCE FROM EXHIBIT A TO THE COURT'S RT'S 3/23/05 ORDER - W/ATTACHMENTS	41785 41800
		VOLUME NUMBER TWO HUNDRED TEN	
03/29/2005	00001711	MOTION TO STRIKE	41801 41824
		CONTINUED FROM PREVIOUS VOLUME	
03/29/2005	00001712	ORDER MORGAN STANLEY'S M/TO APPLY NEW YORK LAW TO CPH'S AIDING & ABETTING & CONSPIRACY CLAIMS IS DENIED	41825 41831
03/30/2005	00001713	MOTION FOR CORRECTION & CLARIFICATION OF THE STATEMENT TO BE READ TO THE JURY - W/ATTACHMENTS	41832 41859
03/30/2005	00001714	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO DEEM CERTAIN THIRD HIRD PARTY DOCUMENTS ADMISSIBLE AT TRIAL IS GRANTED IN PART.	41860 41861

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03/30/2005	00001715	ORDER PLTFS M/IN LIMINE (#14) TO BAR EVIDENCE & ARGUMENT THAT THAT THE "COMFORT LETTERS" REFERRED TO IN THE PUBLIC MERGER AGREEMENT OR THE HOLDINGS MERGER AGREEMENT INCLUDE THE 3/19/98 & 3/25/98 COMFORT LETTERS IS GRANTED.	41862 41863
03/30/2005	00001716	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO TAKE JUDICIAL NOTICE PURSUANT TO FS 90.202 & 90.203 IS GRANTED	41864 41865
03/30/2005	00001717	AGREED ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO STRIKE A PORTION OF ONE SENTENCE FROM EXHIBIT A TO THE COURTS 3/23/05 ORDER IS GRANTED - SEE ORDER FOR DETAILS	41866 41867
03/30/2005	00001718	ORDER AND DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE CPH'S PROPOSED STATEMENT TO THE JURY, ATTACHED HERETO	41868 41869
03/30/2005	00001719	ORDER AND DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE ORIG OF JAY SORENSEN'S LETTER DTD 3/24/05 & SERVE A COPY UPON ALL COUNSEL, ATTACHING A CERT OF SERVICE. *** CLERKS NOTE: CLERK DID CERT OF SERVICE & MAILING ON 3/31/05 ***	41870 41871
03/30/2005	00001720	CORRESPONDENCE TO COURT FROM JAY SORENSEN DTD 3/24/05	41872 41873
03/30/2005	00001721	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FILE MORGAN STANLEY'S PROPOSED STATEMENT FOR VOIR DIRE EXAM DTD 3/29/05	41874 41874
03/30/2005	00001722	NOTICE OF PROPOSED STATEMENT FOR VOIR DIRE EXAM	41875 41878
03/30/2005	00001723	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FILE THE ORIG OF JACK KAWA'S LETTER RECEIVED BY	41879 41880

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THE UNDERSIGNED 3/30/05 AND SERVE A COPY UPON ALL COUNSEL, ATTACHING A CERT OF SERVICE *** CLERKS NOTE: OTE: CERT OF SERVICE & MAILING DONE ON 3/31/05 ***			
03/30/2005	00001724	CORRESPONDENCE TO JUDGE MAASS FROM JACK KAWA	41881 41888
03/31/2005	00001725	ORDER MORGAN STANLEY'S M/TO CLARIFY THE PROPER SCOPE OF THE LIABILITY & PUNITIVE PHASES OF TRIAL IS GRANTED IN PART. PHASE I OF THE TRIAL SHALL BE LIMITED TO THE LIABILITY, IF ANY, OF MS&CO FOR COMPENSATORY DAMAGES. PHASE II SHALL ADDRESS ENTITLEMENT & IF NECESSARY, AMT OF PUNITIVE DAMAGES TO BE ASSESSED IF LIABILITY IS DETERMINED IN CPH'S FAVOR	41889 41890
03/31/2005	00001726	ORDER AND DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE LETTER FROM ROGER KOCH DTD 3/30/05 5	41891 41891
03/31/2005	00001727	CORRESPONDENCE FROM ROGER L KOCH DTD 3/30/05	41892 41892
03/31/2005	00001728	NOTICE TO PRODUCE AT TRIAL	41893 41895
03/31/2005	00001729	MOTION TO CLARIFY THE PROPER SCOPE OF THE LIABILITY & PUNITIVE TIVE PHASES OF TRIAL	41896 41903
03/31/2005	00001730	NOTICE TO PRODUCE AT TRIAL	41904 41933
03/31/2005	00001731	NOTICE OF COMPLIANCE W/COURT ORDER DTD 3/23/05 - W/ATTACHMENT	41934 41949
03/31/2005	00001732	NOTICE TO PRODUCE AT TRIAL	41950 41953
03/31/2005	00001733	NOTICE	41954 41956

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		(AMENDED) TO PRODUCE AT TRIAL	
03/31/2005	00001734	NOTICE OF FILING ORIG AFFID OF RICK R FUENTES PH.D. - ATTACHED	41957 41965
04/01/2005	00001735	MOTION IN LIMINE #29 TO BAR EVIDENCE & ARGUMENT IDENTIFYING THE BENEFICIARY OF ANY PUNITIVE-DAMAGES AWARD	41966 41970
04/01/2005	00001736	NOTICE OF HEARING 4/4/05 @ 9:30 AM ON PLTFS M/IN LIMINE #29 TO BAR EVIDENCE & ARGUMENT IDENTIFYING THE BENEFICIARY OF ANY PUNITIVE-DAMAGES AWARD	41971 41973
04/01/2005	00001737	NOTICE TO PRODUCE AT TRIAL	41974 41977
04/01/2005	00001738	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO MARK GRINBLATT & JAMES DOYLE	41978 41980
04/04/2005	00001739	MOTION IN LIMINE #27 TO EXCLUDE THE TESTIMONY OF PROFESSOR DOUGLAS R EMERY OR IN THE ALTERNATIVE, TO PRECLUDE PROFESSOR EMERY FROM MAKING ANY COMMENT ON OR REFERENCE ENCE TO EXHIBIT S	41981 41989
04/04/2005	00001740	NOTICE OF HEARING 4/5/05 @ 9:30 AM ON MORGAN STANLEY'S M/IN LIMINE #27 TO 7 TO EXCLUDE THE TESTIMONY OF PROFESSOR DOUGLAS R EMERY MERY OR IN THE ALTERNATIVE, TO PRECLUDE PROFESSOR EMERY MERY FROM MAKING ANY COMMENT ON OR REFERENCE TO EXHIBIT IBIT A	41990 41992
04/04/2005	00001741	NOTICE OF HEARING 4/5/05 @ 9:30 AM ON MORGAN STANLEY & CO INC'S M/TO MODIFY OR REDACT THE PROPOSED STATEMENT TO BE READ TO THE JURY	41993 41995
04/04/2005	00001742	NOTICE OF OPPOSITION TO CPH'S M/IN LIMINE #29 TO BAR EVIDENCE & ARGUMENT IDENTIFYING THE BENEFICIARY OF ANY PUNITIVE-DAMAGES AWARD - W/ATTACHMENT	41996 42000

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VOLUME NUMBER TWO HUNDRED ELEVEN			
04/04/2005	00001743	NOTICE OF OPPOSITION TO PLTFS M/TO BAR THE EXPERT TESTIMONY OF Y OF JOHN F ASHLEY	42001 42006
04/04/2005	00001744	NOTICE OF OPPOSITION TO CPH'S M/TO QUASH AMENDED TRIAL SUBPOENA & NOTICE TO PRODUCE PERSONAL BALANCE SHEETS OF S OF RONALD PERELMAN & CROSS-MOTION TO COMPEL PRODUCTION OF FINANCIAL DOCUMENTS - W/ATTACHMENTS	42007 42041
04/04/2005	00001745	MOTION TO AMEND THE COURTS 3/23/05 ORDER ON CPH'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT - W/ATTACHMENTS	42042 42070
04/04/2005	00001746	NOTICE OF HEARING 4/5/05 @ 9:30 AM ON CPH'S M/TO AMEND THE COURTS 3/23/05 3/05 ORDER ON CPH'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT	42071 42073
04/04/2005	00001747	MOTION IN LIMINE #31 TO BAR EVIDENCE RENDERED IRRELEVANT BY THE COURT'S ORDER ON CPH'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT - W/ATTACHMENTS	42074 42105
04/04/2005	00001748	NOTICE OF HEARING 4/5/05 @ 9:30 AM ON PLTFS M/IN LIMINE #31 TO BAR EVIDENCE RENDERED IRRELEVANT BY THE COURTS ORDER ON CPH'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT	42106 42108
04/04/2005	00001749	MOTION IN LIMINE #30 TO BAR REFERENCES TO COLLATERAL BUSINESS & PERSONAL MATTER INVOLVING MAFCO-RELATED ENTITIES & THEIR PRINCIPALS & EMPLOYEES	42109 42116
04/04/2005	00001750	NOTICE OF HEARING 4/5/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #30 TO BAR REFERENCES TO COLLATERAL BUSINESS & PERSONAL MATTERS INVOLVING MAFCO-RELATED	42117 42119

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ENTITIES & THEIR PRINCIPALS & EMPLOYEES			
04/04/2005	00001751	MOTION TO QUASH AMENDED TRIAL SUBPOENA & NOTICE TO PRODUCE PERSONAL BALANCE SHEETS OF RONALD PERELMAN - W/ATTACHMENTS	42120 42140
04/04/2005	00001752	NOTICE OF HEARING 4/5/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO QUASH AMENDED TRIAL SUBPOENA & NOTICE TO PRODUCE PERSONAL BALANCE SHEETS OF RONALD PERELMAN	42141 42143
04/04/2005	00001753	MOTION TO MODIFY OR REDACT THE PROPOSED STATEMENT TO BE READ TO THE JURY - W/ATTACHMENTS	42144 42200
VOLUME NUMBER TWO HUNDRED TWELVE			
04/04/2005	00001753	MOTION	42201 42249
04/04/2005	00001754	CONTINUED FROM PREVIOUS VOLUME DISCLOSURE (SUPPLEMENTAL) CONCERNING PLTFS INABILITY TO SELL ITS UNREGISTERED SUNBEAM STOCK - W/ATTACHMENTS	42250 42386
04/04/2005	00001755	MOTION FOR RECONSIDERATION OF THE COURTS 3/23/05 ORDER ON MORGAN STANLEY'S M/FOR AN ADVERSE INFERENCE INSTRUCTION & TO BAR THE EXPERT TESTIMONY OF JOHN F ASHLEY - W/ATTACHMENTS	42387 42400
VOLUME NUMBER TWO HUNDRED THIRTEEN			
04/04/2005	00001755	MOTION	42401 42494
04/04/2005	00001756	CONTINUED FROM PREVIOUS VOLUME NOTICE OF HEARING 4/5/05 @ 9:30 AM ON PLTFS M/FOR RECONSIDERATION OF THE	42495 42497

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		COURTS 3/23/05 ORDER ON MORGAN STANLEY'S M/FOR AN ADVERSE INFERENCE INSTRUCTION & TO BAR THE EXPERT TESTIMONY OF JOHN F ASHLEY	
04/04/2005	00001757	NOTICE OF FILING PLEADING UNDER SEAL	42498 42499
04/04/2005	00001758	SEALED PER ORDER DTD 7/31/03	42500 42500
04/05/2005	00001759	NOTICE OF FILING DOCUMENTS UNDER SEAL	42501 42502
04/05/2005	00001760	SEALED PER ORDER DTD 7/31/03	42503 42503
04/05/2005	00001761	MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS	42504 42508
04/05/2005	00001762	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #30 TO BAR REFERENCES TO COLLATERAL BUSINESS & PERSONAL MATTERS INVOLVING MAFCO-RELATED ENTITIES & THEIR PRINCIPALS & EMPLOYEES IS GRANTED IN PART & RULING RESERVED IN PART - SEE ORDER	42509 42510
04/05/2005	00001763	ORDER MORGAN STANLEY'S M/FOR REHEARING IS DENIED	42511 42511
04/05/2005	00001764	ORDER CPH'S ORE TENUS M/IN LIMINE, SEEKING TO INTRODUCE INTO EVIDENCE THE PURCHASE OF SUNBEAM SHARES OR DEBENTURES BY THIRD PARTIES IS DENIED, W/OUT PREJUDICE	42512 42512
04/05/2005	00001765	AGREED ORDER PLTFS M/IN LIMINE #31 TO BAR EVIDENCE RENDERED IRRELEVANT BY THE COURTS ORDER ON CPH'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT IS GRANTED - SEE ORDER	42513 42514
04/05/2005	00001766	ORDER MORGAN STANLEY'S M/TO ADD WITNESSES IS GRANTED IN PART & RULING RESERVED IN PART. JOHN ASHLEY, SCOTT COOK,	42515 42516

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		DAN FISCHER, JEFFREY HAAS & KEVIN WOODRUFF SHALL NOT BE PERMITTED TO TESTIFY AT TRIAL. SEE ORDER FOR DETAILS	
04/05/2005	00001767	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO QUASH AMENDED TRIAL SUBPOENA & NOTICE TO PRODUCE PERSONAL BALANCE SHEETS OF RONALD PERELMAN IS GRANTED - SAID IS QUASHED HED	42517 42518
04/05/2005	00001768	ORDER DEFS M/FOR RECONSIDERATION OF THE COURTS SANCTION ORDERS IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS	42519 42520
04/05/2005	00001769	ORDER GOVERNING PRE-TRIAL PROCEDURE. MS&CO SHALL SERVE DEPO DESIGNATIONS FOR NO FEWER THAN 3 WITNESSES EACH DAY BEGINNING NOON ON 4/5/05 & SHALL SERVE ALL DEPO DESIGNATIONS BY NOON ON 4/8/05. MS&CO SHALL SERVE ITS COUNTERDESIGNATIONS TO CPH'S DESIGNATIONS BY NOON 4/11/05. CPH SHALL SERVE ITS COUNTERDESIGNATIONS W/IN 3 DAYS OF SERVICE OF EACH MS&CO DESIGNATIONS ON IT.	42521 42522
04/05/2005	00001770	ORDER PLTFS M/IN LIMINE #29 TO BAR EVIDENCE & ARGUMENT IDENTIFYING THE BENEFICIARY OF ANY PUNITIVE-DAMAGES AWARD IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS	42523 42524
04/05/2005	00001771	ORDER MORGAN STANLEY'S M/IN LIMINE #27 TO EXCLUDE TESTIMONY OF EMERY OR IN THE ALTERNATIVE, TO PRECLUDE EMERY FROM MAKING COMMENTS REGARDING EXHIBIT A IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAIL	42525 42526
04/05/2005	00001772	ORDER PLTFS ORE TENUS M/TO CLARIFY IS GRANTED - SEE ORDER FOR FOR DETAILS	42527 42528
04/05/2005	00001773	ORDER	42529 42530

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		(LIMITING INSTRUCTION ON RELIANCE) COURT SHALL READ THE ATTACHED INSTRUCTION WHEN TESTIMONY OR EVIDENCE ABOUT CPH'S DUE DILIGENCE, OR LACK THEREOF, IS PLACED BEFORE THE JURY	
04/05/2005	00001774	NOTICE OF PROPOSED JURY INSTRUCTIONS - ATTACHED	42531 42560
04/05/2005	00001775	MOTION (RENEWED) FOR CORRECTION & CLARIFICATION OF THE LITIGATION-MISCONDUCT STATEMENT TO BE READ TO THE JURY - W/ATTACHMENTS	42561 42600
		VOLUME NUMBER TWO HUNDRED FOURTEEN	
04/05/2005	00001775	MOTION	42601 42601
		CONTINUED FROM PREVIOUS VOLUME	
04/05/2005	00001776	ORDER DEFS MOTION REGARDING THE RELIANCE & DAMAGES ISSUES TO BE DETERMINED AT PHASE I OF TRIAL IS DENIED	42602 42602
04/05/2005	00001777	ORDER CPH'S M/TO AMEND THE COURTS 3/23/05 ORDER ON CPH'S RENEWED M/FOR ENTRY OF DEFAULT IS DENIED.	42603 42604
04/05/2005	00001778	RESPONSE TO: TO CPH'S M/IN LIMINE #30 TO BAR REFERENCES TO COLLATERAL BUSINESS & PERSONAL MATTERS INVOLVING MAFCO-RELATED ENTITIES & THEIR PRINCIPALS & EMPLOYEES	42605 42608
04/05/2005	00001779	MOTION TO ADD WITNESSES	42609 42616
04/05/2005	00001780	NOTICE OF OPPOSITION TO CPH'S M/TO AMEND THE COURTS 3/23/05 ORDER ON CPH'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT	42617 42629

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04/05/2005	00001781	MOTION REGARDING THE RELIANCE & DAMAGES ISSUES TO BE DETERMINED AT PHASE I OF TRIAL	42630 42636
04/05/2005	00001782	NOTICE OF OPPOSITION TO PLTFS M/FOR RECONSIDERATION OF THE COURTS 3/23/05 ORDER ON MORGAN STANLEY'S M/FOR AN ADVERSE INFERENCE INSTRUCTION - W/ATTACHMENTS	42637 42661
04/05/2005	00001783	MOTION FOR RECONSIDERATION OF THE COURTS SANCTION ORDERS & MEMO OF LAW - UP ON 4/6/05	42662 42746
04/06/2005	00001784	MOTION IN LIMINE #32 TO BAR REFERENCES TO PLTFS FAILURE TO RETAIN E-MAILS AS "LITIGATION MISCONDUCT" - W/ATTACHMENTS	42747 42750
04/06/2005	00001785	MOTION TO STRIKE UNTIMELY OBJECTIONS TO CPH EXHIBITS - W/ATTACHMENTS	42751 42762
04/06/2005	00001786	NOTICE OF HEARING 4/6/05 @ 8:00 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO STRIKE UNTIMELY OBJECTIONS TO CPH EXHIBITS	42763 42765
04/06/2005	00001787	MOTION TO DEFINE THE SCOPE OF NOTICES TO PRODUCE REGARDING EXPERT BILLING	42766 42771
04/06/2005	00001788	NOTICE OF HEARING 4/6/05 @ 8:00 AM ON PLTFS M/TO DEFINE THE SCOPE OF NOTICES TO PRODUCE REGARDING EXPERT BILLING	42772 42773
04/06/2005	00001789	DISCLOSURE OF POTENTIAL TESTIMONY BY ROB JONES	42774 42776
04/06/2005	00001790	DISCLOSURE IN RESPONSE TO THE COURTS ORDER OF THIS AFTERNOON	42777 42783
04/06/2005	00001791	ORDER CPH'S M/IN LIMINE #32 TO BAR REFERENCES TO PLTFS	42784 42785

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		FAILURE TO RETAIN E-MAILS AS "LITIGATION MISCONDUCT" IS " IS GRANTED	
04/06/2005	00001792	NOTICE OF HEARING 4/6/05 @ 8:00 AM ON CPH'S M/IN LIMINE #32 TO BAR REFERENCES TO PLTFS FAILURE TO RETAIN E-MAILS AS "LITIGATION MISCONDUCT"	42786 42788
04/06/2005	00001793	RESPONSE TO: TO PLTFS SUPPLEMENTAL DISCLOSURE PURSUANT TO THE COURTS URTS ORDER - W/ATTACHMENTS	42789 42800
		VOLUME NUMBER TWO HUNDRED FIFTEEN	
04/06/2005	00001793	RESPONSE TO:	42801 42847
		CONTINUED FROM PREVIOUS VOLUME	
04/07/2005	00001794	ORDER CPH'S ORE TENUS M/TO COMPEL IS GRANTED. MS&CO SHALL SERVE A MORE COMPLETE DISCLOSURE OF MR JONES' EXPECTED TESTIMONY BY 3:00 PM 4/8/05	42848 42848
04/07/2005	00001795	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS IS GRANTED W/OUT OBJECTION. THE CONFIDENTIALITY DESIGNATIONS ARE REMOVED FROM EXHIBITS B & D TO DEFS M/FOR RECONSIDERATION OF SANCTIONS ORDER & MEMO OF LAW DTD 4/4/05	42849 42850
04/07/2005	00001796	EXHIBIT LIST (SECOND FURTHER REVISED TRIAL)	42851 42866
04/07/2005	00001797	DISCLOSURE OF DEMONSTRATIVE EXHIBITS FOR OPENING STATEMENT - W/ATTACHMENTS	42867 42907
04/07/2005	00001798	RESPONSE TO: AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S NOTICE TO PRODUCE AT TRIAL	42908 42916

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04/07/2005	00001799	NOTICE OF OPPOSITION TO PLTF COLEMAN (PARENT) HOLDING INC'S IN S IN LIMINE MOTION #33 TO BAR MORGAN STANLEY FROM CONTROVERTING THE FACTUAL FINDINGS ESTABLISHED BY EXHIBIT A & CORRESPONDING REQUEST FOR RECONSIDERATION - ON - W/ATTACHMENT	42917 42927
04/07/2005	00001800	MOTION IN LIMINE #32 TO BAR MORGAN STANLEY FROM CONTROVERTING THE FACTUAL FINDINGS ESTABLISHED BY EXHIBIT A TO THE 3/23/05 ORDER - W/ATTACHMENTS	42928 42965
04/07/2005	00001801	NOTICE OF HEARING 4/7/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #32 TO BAR MORGAN STANLEY FROM CONTROVERTING THE FACTUAL FINDINGS ESTABLISHED BY EXHIBIT A TO THE 3/23/05 ORDER	42966 42968
04/08/2005	00001802	NOTICE OF FILING RETURNS OF SERVICE OF TRIAL SUBPOENAS	42969 42978
04/08/2005	00001803	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO STRIKE UNTIMELY OBJECTIONS TO CPH EXHIBITS IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS	42979 42980
04/08/2005	00001804	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #33 TO BAR MORGAN STANLEY FROM CONTROVERTING THE FACTUAL FINDINGS ESTABLISHED BY EXHIBIT A TO THE 3/23/05 ORDER IS GRANTED.	42981 42982
04/08/2005	00001805	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO ROB JONES	42983 42985
04/11/2005	00001806	MOTION (VERIFIED) TO ADMIT NEIL M GORSUCH PRO HAC VICE	42986 42992
04/11/2005	00001807	NOTICE OF OPPOSITION TO (I) PLTF'S M/TO DEFINE THE SCOPE OF NOTICES TO PRODUCE REGARDING EXPERT BILLING, AND (II) PLTF'S M/TO COMPEL COMPLIANCE W/NOTICE TO PRODUCE -	42993 43000

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W/ATTACHMENTS			
VOLUME NUMBER TWO HUNDRED SIXTEEN			
04/11/2005	00001807	NOTICE	43001 43001
04/11/2005	00001808	CONTINUED FROM PREVIOUS VOLUME MOTION TO COMPEL COMPLIANCE W/NOTICE TO PRODUCE - W/ATTACHMENTS	43002 43019
04/11/2005	00001809	NOTICE OF HEARING 4/11/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL COMPLIANCE W/NOTICE TO PRODUCE	43020 43022
04/11/2005	00001810	RESPONSE TO: AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S 3/29/05 NOTICE TO PRODUCE AT TRIAL	43023 43029
04/11/2005	00001811	MOTION TO RECONSIDER THE COURTS 4/5/05 ORDER ON A LIMITING INSTRUCTION ON RELIANCE	43030 43037
04/11/2005	00001812	DISCLOSURE (AMENDED) OF POTENTIAL TRIAL TESTIMONY OF ROB JONES	43038 43041
04/11/2005	00001813	MOTION TO BAR UNTIMELY DEPO DESIGNATIONS - W/ATTACHMENTS	43042 43137
04/11/2005	00001814	NOTICE OF HEARING 4/12/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO BAR UNTIMELY DEPO DESIGNATIONS	43138 43140
04/11/2005	00001815	ORDER MORGAN STANLEY'S VERIFIED M/TO ADMIT NEIL M GORSUCH PRO PRO HAC VICE IS GRANTED	43141 43142
04/11/2005	00001816	ORDER MORGAN STANLEY'S M/TO RECONSIDER THE COURTS 4/5/05 ORDER ON A LIMITING INSTRUCTION ON RELIANCE IS DENIED	43143 43144

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04/11/2005	00001817	ORDER MORGAN STANLEY & CO INC'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS IS GRANTED	43145 43146
04/11/2005	00001818	ORDER MORGAN STANLEY'S ORE TENUS M/TO CLARIFY PROCEDURE-DEMONSTRATIVE AIDS IS GRANTED - SEE ORDER FOR FOR DETAILS	43147 43148
04/11/2005	00001819	AGREED ORDER ON SUBMISSION OF PROFFERED TESTIMONY. EVIDENCE THAT EITHER PARTY WISHES TO PROFFER TO THE COURT MAY BE SUBMITTED BY WAY OF A WRITTEN SUBMISSION. THIS ORDER IS W/OUT PREJUDICE FOR EITHER PARTY TO OBJECT TO THE PROFFER ON ANY EVIDENTIARY OR OTHER GROUND	43149 43150
04/11/2005	00001820	ORDER MORGAN STANLEY'S M/TO CLARIFY PROCEDURE-PHASE II IS GRANTED. ALL MOTIONS DIRECTED TO PROCEDURE & PROOF FOR FOR PHASE II OF THE TRIAL SHALL BE SERVED BY 5:00 PM 4/15/05	43151 43151
04/11/2005	00001821	NOTICE OF FILING PLEADING UNDER SEAL	43152 43153
04/11/2005	00001822	SEALED PER ORDER DTD 7/31/03	43154 43154
04/12/2005	00001823	MOTION (VERIFIED) TO DISQUALIFY - W/ATTACHMENT	43155 43189
04/12/2005	00001824	ORDER MORGAN STANLEY'S VERIFIED M/TO DISQUALIFY IS DENIED	43190 43190
04/12/2005	00001825	MOTION TO RECONSIDER RULINGS ON CPH EXPERT BLAINE NYE	43191 43200

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VOLUME NUMBER TWO HUNDRED SEVENTEEN			
04/12/2005	00001825	MOTION	43201 43214
04/12/2005	00001826	CONTINUED FROM PREVIOUS VOLUME MOTION FOR CLARIFICATION OR RECONSIDERATION ON THE COURTS ORDER ON PLTF'S M/IN LIMINE #27 FOR A FINDING AS A MATTER OF LAW THAT THE FEDERAL SECURITIES LAWS PROHIBITED PLTF FROM SELLING UNREGISTERED SUNBEAM STOCK TOCK - W/ATTACHMENTS ** UP ON 4/13/05 **	43215 43254
04/12/2005	00001827	MOTION FOR LEAVE TO UTILIZE REDACTED EXHIBITS AT TRIAL - W/ATTACHMENTS	43255 43302
04/12/2005	00001828	NOTICE OF HEARING 4/12/05 @ 8:15 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/FOR LEAVE TO UTILIZE REDACTED EXHIBITS AT TRIAL	43303 43305
04/12/2005	00001829	DISCLOSURE (AMENDED) OF POTENTIAL TRIAL TESTIMONY OF ROB JONES	43306 43309
04/12/2005	00001830	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL COMPLIANCE W/NOTICE TO PRODUCE IS GRANTED IN PART & DENIED IN PART PART - SEE ORDER	43310 43311
04/12/2005	00001831	ORDER MORGAN STANLEY'S ORE TENUS M/FOR STAY IS DENIED	43312 43312
04/13/2005	00001832	RESPONSE TO: AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S 4/1/05 NOTICE TO PRODUCE AT TRIAL	43313 43320
04/13/2005	00001833	ORDER CPH'S ORE TENUS M/TO QUASH TRIAL SUBPOENAS ON MAHER, PERELMAN & NESBITT IS DENIED	43321 43321

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04/13/2005	00001834	AGREED ORDER COLEMAN (PARENT) HOLDINGS INC'S M/FOR LEAVE TO UTILIZE REDACTED EXHIBITS AT TRIAL IS DENIED W/OUT PREJUDICE E	43322 43323
04/13/2005	00001834 A	EXHIBIT LIST (FURTHER REVISED TRIAL)	43324 43353
04/13/2005	00001834 B	JURY QUESTIONS FOR WITNESS, DR. DOUGLAS EMERY	43354 43360
04/13/2005	00001834 C	JURY QUESTIONS FRO WITNESS. JAMES MAHER	43361 43365
04/13/2005	00001834 D	SEALED SEALED PER JUDGE IN OPEN TRIAL	43366 43366
04/14/2005	00001835	ORDER DESIGNATIONS OF GITTIS, LEVIN, SHAPIRO & DENKHAUS ARE DEEMED W/DRAWN. DESIGNATIONS OF FASMAN ARE LIMITED TO THOSE RELEVANT TO CPH'S POLICIES INVOLVING OVERWRITING EMAILS & OFFER TO ALLOW A 3RD PARTY VENDOR TO RETRIEVE OVERWRITTEN EMAILS. DEPO DESIGNATIONS AS TO PERELMAN ARE STRICKEN. DESIGNATIONS FOR ABDEL-MEGUID SCOTT STRONG PERELLA & TYREE SHALL BE LIMITED TO PHASE II. 4/8/05 DESIGNATIONS WHICH DESIGNATE PARTS OF THE DEPOS OF SLOVIN & DUFFY NOT PREVIOUSLY DESIGNATED ARE STRICKEN. RULING ON ALL DEPO DESIGNATIONS FOR PERSONS NOT SPECIFICALLY MENTIONED IS DEFERRED - SEE ORDER FOR FURTHER DETAILS	43367 43368
04/14/2005	00001836	ORDER MORGAN STANLEY'S M/TO RECONSIDER RULING ON CPH EXPERT BLAINE NYE IS DENIED - SEE ORDER	43369 43369
04/14/2005	00001837	ORDER MORGAN STANLEY'S M/FOR CLARIFICATION OR RECONSIDERATION TION OF THE COURTS ORDER ON PLTF'S M/IN LIMINE #27 FOR A OR A FINDING AS A MATTER OF LAW THAT THE FEDERAL SECURITIES LAWS PROHIBITED PLTF FROM SELLING UNREGISTERED SUNBEAM STOCK IS GRANTED IN PART. COURT SHALL REHEAR ARGUMENT ON 4/15/05 @ 9:30 AM - SEE ORDER	43370 43371

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		FOR DETAILS	
04/15/2005	00001838	ORDER PLTFS ORE TENUS M/IN LIMINE IS GRANTED - SEE ORDER FOR DETAILS	43372 43372
04/15/2005	00001839	ORDER MS & CO'S ORE TENUS M/TO PRODUCE IS GRANTED. CPH SHALL HALL SUBMIT TO THE COURT FOR IN CAMERA INSPECTION THOSE HOSE DOCUMENTS LISTED ON EXHIBIT A, ATTACHED, BY 5:00 PM, 4/19/05	43373 43374
04/15/2005	00001840	ORDER CPH'S ORE TENUS M/IN LIMINE IS GRANTED - SEE ORDER.	43375 43376
04/15/2005	00001841	ORDER MORGAN STANLEY'S M/FOR REHEARING ON THE COURTS 2/15/05 ORDER ON PLTFS M/IN LIMINE #19 IS DENIED - SEE ORDER R	43377 43378
04/15/2005	00001842	ORDER MORGAN STANLEY'S M/FOR CLARIFICATION OR RECONSIDERATION TION OF THE COURTS ORDER ON PLTFS M/IN LIMINE #27 FOR A OR A FINDING AS A MATTER OF LAW THAT THE FEDERAL SECURITIES LAWS PROHIBITED PLTF FROM SELLING UNREGISTERED SUNBEAM STOCK IS GRANTED IN PART - SEE ORDER	43379 43380
04/15/2005	00001843	ORDER PLTFS ORE TENUS M/IN LIMINE IS GRANTED IN PART - SEE ORDER	43381 43382
04/15/2005	00001844	NOTICE OF PROFFER OF EVIDENCE & ARGUMENT REGARDING CPH'S ABILITY TO SELL ITS SUNBEAM STOCK AS EARLY AS 6/30/98 98	43383 43390
04/15/2005	00001845	NOTICE OF OFFER OF PROOF W/RESPECT TO CPH'S ABILITY TO MITIGATE ITS DAMAGES THRU HEDGING STRATEGIES -	43391 43400

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04/15/2005	00001845	NOTICE	43401 43420
04/15/2005	00001846	CONTINUED FROM PREVIOUS VOLUME STATEMENT ON THE RELEVANCE OF HEDGING TO MITIGATION	43421 43425
04/18/2005	00001847	ORDER DEF MORGAN STANLEY & CO INC'S M/FOR REHEARING IS DENIED NIED	43426 43426
04/18/2005	00001848	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #34 TO BAR EVIDENCE OR ARGUMENT CONCERNING PURPORTED INVESTMENT FAILURES OF RONALD PERELMAN IS GRANTED IN PART, AND RULING DEFERRED IN PART. SEE ORDER FOR DETAILS	43427 43428
04/18/2005	00001849	MOTION IN LIMINE #35 TO BAR INAPPROPRIATE OPINION TESTIMONY - W/ATTACHMENTS	43429 43456
04/18/2005	00001850	MOTION IN LIMINE #34 TO BAR EVIDENCE OR ARGUMENT CONCERNING PURPORTED INVESTMENT FAILURES OF RONALD PERELMAN - W/ATTACHMENTS	43457 43486
04/18/2005	00001851	NOTICE OF HEARING 4/18/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INCS M/IN LIMINE #34 TO BAR EVIDENCE OR ARGUMENT CONCERNING PURPORTED INVESTMENT FAILURES OF RONALD PERELMAN	43487 43489
04/18/2005	00001852	MOTION IN LIMINE #28 TO BAR COLEMAN (PARENT) HOLDINGS INC FROM FROM INTRODUCING EVIDENCE OF CPH'S ALLEGED EFFORT TO RESCIND THE COLEMAN-SUNBEAM TRANSCATION	43490 43496
04/18/2005	00001853	NOTICE OF FILING RETURN OF SERVICE OF THE TRIAL SUBPOENA OF JAMES R MAHER - ATTACHED	43497 43501

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04/18/2005	00001854	MOTION IN LIMINE #36 TO CLARIFY WHAT EVIDENCE IS ADMISSIBLE TO E TO SHOW PLTF'S ENTITLEMENT TO & AMT OF PUNITIVE DAMAGES - W/ATTACHMENTS	43502 43551
04/18/2005	00001855	NOTICE TO DEF, TO PRODUCE AT TRIAL FOR IN CAMERA INSPECTION INSTANTER	43552 43555
04/18/2005	00001856	NOTICE TO DEF, TO PRODUCE AT TRIAL INSTANTER	43556 43560
04/18/2005	00001857	NOTICE OF HEARING 4/19/05 @ 9:30 AM ON COLEMAN (PARENT) HODLINGS INC'S M/TO BAR IMPROPER DEPO DESIGNATIONS	43561 43563
04/18/2005	00001858	MOTION TO BAR IMPROPER DEPO DESIGNATIONS - W/ATTACHMENTS	43564 43598
04/18/2005	00001859	NOTICE ON OPPOSITION TO CPH'S M/IN LIMINE #34 TO BAR EVIDENCE OR ARGUMENT CONCERNING PURPORTED INVESTMENT FAILURES OF S OF RONALD PERELMAN	43599 43600
VOLUME NUMBER TWO HUNDRED NINETEEN			
04/18/2005	00001859	NOTICE	43601 43632
04/18/2005	00001859	CONTINUED FROM PREVIOUS VOLUME A JURY QUESTIONS FOR WITNESS, WILLIAM NESBITT	43633 43639
04/19/2005	00001860	ORDER DEFS M/FOR REHEARING IS DENIED	43640 43640
04/19/2005	00001861	ORDER MORGAN STANLEY'S M/IN LIMINE #28 TO BAR COLEMAN (PARENT) HOLDINGS INC FROM INTRODUCING EVIDENCE OF CPH'S ALLEGED EFFORT TO RESCIND THE COLEMAN-SUNBEAM TRANSACTION IS GRANTED IN PART. EITHER PARTY MAY	43641 43642

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		INTRODUCE EVIDENCE OF DEMANDS MADE BY CPH TO RESOLVE ITS CLAIM AGAINST SUNBEAM	
04/19/2005	00001862	MOTION REGARDING DEPO DESIGNATION SCHEDULING	43643 43648
04/19/2005	00001863	MOTION (AND PROFFER) W/RESPECT TO HEDGING	43649 43652
04/19/2005	00001864	BRIEF ON MITIGATION OF DAMAGES	43653 43659
04/19/2005	00001865	NOTICE OF SUBMISSION REGARDING PHASE II ISSUES - W/ATTACHMENTS	43660 43730
04/19/2005	00001866	SEALED PER ORDER DTD 7/31/03	43731 43731
04/19/2005	00001867	NOTICE OF FILING UNDER SEAL	43732 43733
04/20/2005	00001868	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/TO BAR IMPROPER DEPO DESIGNATIONS IS GRANTED IN PART, DENIED IN PART, AND RULING DEFERRED IN PART - SEE ORDER FOR FURTHER DETAILS	43734 43736
04/20/2005	00001869	MOTION TO QUASH TRIAL SUBPOENA SERVED ON DONALD G KEMPFF JR - W/ATTACHMENTS	43737 43800
		VOLUME NUMBER TWO HUNDRED TWENTY	
04/20/2005	00001869	MOTION	43801 43871
		CONTINUED FROM PREVIOUS VOLUME	
04/20/2005	00001870	NOTICE OF SUBMISSION REGARDING ADMISSIBILITY OF EVIDENCE OF CPH'S RELIANCE ON FALSE REPRESENTATIONS IN TEH	43872 43878

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		DEBENTURE OFFERING	
04/20/2005	00001871	NOTICE OF FILING PLEADING UNDER SEAL	43879 43880
04/20/2005	00001872	SEALED PER ORDER DTD 7/31/03	43881 43881
04/21/2005	00001873	MOTION (SECOND RENEWED) FOR CORRECTION & CLARIFICATION OF THE LITIGATION-MISCONDUCT STATEMENT TO BE READ TO THE JURY - W/ATTACHMENTS	43882 43930
04/21/2005	00001874	NOTICE OF HEARING 4/21/05 @ 9:30 AM ON PLTFS SECOND RENEWED M/FOR CORRECTION & CLARIFICATION OF THE LITIGATION MISCONDUCT DUCT STATEMENT TO BE READ TO THE JURY	43931 43933
04/21/2005	00001875	ORDER FOLLOWING IN CAMERA INSPECTION, COURT DECLINES TO CONDUCT A FURTHER INQUIRY INTO CPH'S CLAIMS OF PRIVILEGE. COURT HAS SEALED THE DOCUMENTS TENDERED IN AN ENVELOPE MARKED "DO NOT OPEN BY 4/21/05 COURT ORDER FOLLOWING IN CAMERA INSPECTION" THE ENVELOPE SHALL NOT NOT BE UNSEALED OR REMOVED W/OUT FURTHER ORDER OF COURT	43934 43935
04/21/2005	00001876	SEALED PER ORDER DTD 4/21/05	43936 43936
04/21/2005	00001876 A	JURY QUESTIONS FOR WITNESS, RONALD PERELMAN	43937 43943
04/22/2005	00001877	MOTION TO QUASH COLEMAN (PARENT) HOLDINGS INC'S NOTICE TO PRODUCE AT TRIAL INSTANTER ATTY-CLIENT RECORDS & DOCUMENTS - W/ATTACHMENTS	43944 43955
04/22/2005	00001878	MOTION TO QUASH COLEMAN (PARENT) HOLDINGS INC'S NOTICE TO PRODUCE FOR IN CAMERA INSPECTION INSTANTER	43956 43968

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04/22/2005	00001879	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S M/TO QUASH TRIAL SUBPOENA SERVED ON DONALD J KEMPF JR - W/ATTACHMENTS S	43969 44000
		VOLUME NUMBER TWO HUNDRED TWENTY ONE	
04/22/2005	00001879	RESPONSE TO:	44001 44010
		CONTINUED FROM PREVIOUS VOLUME	
04/22/2005	00001880	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S M/TO QUASH NOTICE TO PRODUCE - W/ATTACHMENTS	44011 44036
04/22/2005	00001881	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S M/TO QUASH CPH'S NOTICE TO PRODUCE FOR IN CAMERA INSPECTION INSTANTER - W/ATTACHMENTS	44037 44068
04/22/2005	00001882	DISCLOSURE (AMENDED TRIAL WITNESS)	44069 44072
04/22/2005	00001883	MOTION IN LIMINE #37 TO BAR EVIDENCE OR ARGUMENT REGARDING PLTFS ALLEGED FAILURE TO PRESERVE E-MAIL - W/ATTACHMENTS	44073 44141
04/22/2005	00001884	NOTICE OF FILING RETURN OF SERVICE OF TRIAL SUBPOENA OF WILLIAM G NESBITT	44142 44146
04/22/2005	00001885	NOTICE OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S SUBMISSION ON CPH'S PURPORTED RELIANCE ON DEBENTURE OFFERING DOCUMENTS	44147 44152
04/22/2005	00001886	MOTION REGARDING ADMISSIBILITY OF CONFIDENTIALITY AGREEMENT - W/ATTACHMENTS	44153 44200

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04/22/2005	00001886	MOTION	44201 44353
		CONTINUED FROM PREVIOUS VOLUME	
04/22/2005	00001887	ORDER CPH'S ORE TENUS M/IN LIMINE RE: DEBENTURE OFFERING IS GRANTED - SEE ORDER	44354 44355
04/22/2005	00001888	NOTICE OF FILING DOCUMENTS UNDER SEAL	44356 44357
04/22/2005	00001889	SEALED PER ORDER DTD 7/31/03	44358 44358
04/25/2005	00001890	MOTION TO BAR PLTF FROM SUGGESTING TO THE JURY THAT THE "DEEMED" FACTS ARE "ESTABLISHED" FACTS	44359 44364
04/25/2005	00001891	NOTICE OF SUBMISSION CONCERNING THE NEED FOR CLEAR & CONVINCING PROOF OF ENTITLEMENT TO PUNITIVE DAMAGES	44365 44370
04/25/2005	00001892	NOTICE TO PLTF TO PRODUCE AT TRIAL INSTANTER	44371 44373
04/25/2005	00001893	MOTION FOR FULL & FAIR EXAMINATION OF WITNESSES W/OUT CONTRADICTION OF THE FACTS "DEEMED" ESTABLISHED BY THE COURTS 3/23 ORDER	44374 44381
04/25/2005	00001894	MOTION FOR A MISTRAL OR OTHER RELIEF FOR PLTF'S VIOLATIONS OF SECTIONS 46.015(3) AND 768.041(3)	44382 44395
04/25/2005	00001895	MOTION TO COMPEL COLEMAN PARENT HOLDINGS INC TO PRODUCE DOCUMENTS REFLECTING LEGAL ADVICE	44396 44400

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04/25/2005	00001895	MOTION TO COMPEL	44401 44401
04/25/2005	00001896	CONTINUED FROM PREVIOUS VOLUME MOTION (RENEWED) FOR MISTRIAL BASED ON RONALD PERELMAN'S FALSE ALSE & INFLAMMATORY ACCUSATION OF ACKNOWLEDGED CRIMINAL INAL ACTIVITY IN THIS CASE	44402 44411
04/25/2005	00001897	BRIEF CONCERNING THE LEGAL PROHIBITION AGAINST USING TWO JURIES IN A BIFURCATED PUNITIVE DAMAGES TRIAL - W/ATTACHMENTS	44412 44426
04/25/2005	00001898	BRIEF REGARDING THE LIMITED APPLICABILITY OF THE "CLEAR AND CONVINCING" STANDARD OF PROOF IN PHASE TWO OF TRIAL - W/ATTACHMENTS	44427 44531
04/25/2005	00001899	MEMORANDUM (SUPPLEMENTAL) IN OPPOSITION TO MORGAN STANLEY'S M/TO QUASH NOTICE TO PRODUCE - W/ATTACHMENTS	44532 44563
04/25/2005	00001900	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FILE THE ORIG OF ATTY JAMES KEENEY'S LETTER & ITS ATTACHMENTS DTD 4/18/05 & SERVE A COPY UPON ALL COUNSEL, ATTACHED A CERT OF SERVICE	44564 44564
04/25/2005	00001901	CORRESPONDENCE TO HONORABLE MAASS FROM JAMES D KEENEY DTD 4/18/05 - W/ATTACHMENTS ** CLK MLD COPIES & ATTACHED A CERT OF SERVICE **	44565 44600
VOLUME NUMBER TWO HUNDRED TWENTY FOUR			
04/25/2005	00001901	CORRESPONDENCE	44601 44601

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04/25/2005	00001902	CONTINUED FROM PREVIOUS VOLUME NOTICE OF FILING PLEADING UNDER SEAL	44602 44604
04/25/2005	00001903	SEALED PER ORDER DTD 7/31/03	44605 44605
04/25/2005	00001903	A JURY QUESTIONS FOR WITNESS, DR. BLAINE FRANCIS NYE	44606 44608
04/26/2005	00001904	ORDER MORGAN STANLEY'S M/TO BAR PLTF FROM SUGGESTING TO THE JURY THAT THE "DEEMED" FACTS ARE "ESTABLISHED" FACTS IS S IS DENIED, W/OUT PREJUDICE TO RENEWAL IN PHASE II, IF , IF PHASE II IS HELD	44609 44609
04/26/2005	00001905	ORDER MORGAN STANLEY'S M/FOR REHEARING IS DENIED W/OUT PREJUDICE. OBJECTIONS SHALL BE HEARD & DETERMINED ON A ON A CASE BY CASE BASIS	44610 44611
04/26/2005	00001906	MOTION TO ALLOW EXPERT TESTIMONY OF PROF. FISCHER TO REBUT UNDISCLOSED TESTIMONY BY DR EMERY - W/ATTACHMENTS	44612 44644
04/26/2005	00001907	MEMORANDUM (SUPPLEMENTAL) CONCERNING THE ADMISSIBILITY OF THE PURPORTED 2/23/98 CONFIDENTIALITY AGREEMENT - W/ATTACHMENTS	44645 44764
04/26/2005	00001907	A AFFIDAVIT OF JAMES COMYNS	44765 44769
04/27/2005	00001908	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S M/TO COMPEL CPH TO PRODUCE DOCUMENTS REFLECTING LEGAL ADVICE	44770 44774
04/27/2005	00001909	EXHIBIT LIST (FURTHER REVISED TRIAL) DTD 4/26/05	44775 44797
04/28/2005	00001910	ORDER CPH'S ORE TENUS M/TO EXCLUDE EVIDENCE OF NON-RELIANCE	44798 44799

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		TERM OF PURPORTED 2/23/98 CONFIDENTIALITY AGREEMENT IS GRANTED, IN PART.	
04/28/2005	00001911	RESPONSE TO: TO DEFS SUBMISSION REGARDING PHASE II ISSUES - W/ATTACHMENTS	44800 44800
		VOLUME NUMBER TWO HUNDRED TWENTY FIVE	
04/28/2005	00001911	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	44801 45000
		VOLUME NUMBER TWO HUNDRED TWENTY SIX	
04/28/2005	00001911	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	45001 45010
04/28/2005	00001912	NOTICE OF OPPOSITION TO MORGAN STANLEY'S M/FOR A MISTRIAL OR OTHER RELIEF FOR PLTFS PURPORTED VIOLATIONS OF SECTIONS IONS 46.015(3) AND 768.041(3) - W/ATTACHMENTS	45011 45110
04/28/2005	00001913	NOTICE OF OPPOSITION TO CPH'S AMENDED WITNESS DISCLOSURE & REPLY IN SUPPORT OF ITS M/TO QUASH - W/ATTACHMENTS	45111 45138
04/28/2005	00001914	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S M/TO ALLOW EXPERT TESTIMONY OF PROFESSOR FISCHER TO REBUT UNDISCLOSED TESTIMONY BY DR EMERY - W/ATTACHMENTS	45139 45166
04/28/2005	00001914	A NOTICE RECEIVED IN OPEN TRIAL BY JUDGE TO FILE- DEFT'S DEMONSTRATIVE AID OBJECTED TO BY PLTF DURING CROSS OF WITNESS, RONALD GITTIS **** CLERK FILE ****	45167 45168
04/28/2005	00001914	B JURY QUESTIONS	45169 45172

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		FOR WITNESS, RONALD GITTIS	
04/29/2005	00001915	REPLY/RESPONSE TO CPH'S BRIEF REGARDING THE REQUIREMENT THAT PLTF PROVE ENTITLEMENT TO AN AWARD OF PUNITIVE DAMAGES BY CLEAR & CONVINCING EVIDENCE IN PHASE II	45173 45178
04/29/2005	00001916	RESPONSE TO: TO PLTF'S SUPPLEMENTAL MEMO CONCERNING THE 2/23/98 CONFIDENTIALITY AGREEMENT	45179 45191
04/29/2005	00001917	MOTION IN LIMINE #39 REGARDING EXCLUSION OF MORGAN STANLEY TRIAL EXHIBIT 1051 (DELAWARE CHANCERY OPINION) - W/ATTACHMENT	45192 45200
		VOLUME NUMBER TWO HUNDRED TWENTY SEVEN	
04/29/2005	00001917	MOTION	45201 45229
04/29/2005	00001918	CONTINUED FROM PREVIOUS VOLUME NOTICE OF HEARING 4/29/05 @ 10:15 AM ON CPH'S M/IN LIMINE #39 REGARDING EXCLUSION OF MORGAN STANLEY TRIAL EXHIBIT 1051 (DELAWARE CHANCERY DIVISION)	45230 45232
04/29/2005	00001919	MOTION IN LIMINE #38 TO BAR EVIDENCE & ARGUMENT CONCERNING JERRY LEVIN'S PERSONAL VIEWS CONCERNING THE VALUE OF COLEMAN SHARES PRIOR TO THE SUNBEAM-COLEMAN TRANSCATION TION - W/ATTACHMENTS	45233 45310
04/29/2005	00001920	NOTICE OF HEARING 4/29/05 @ 10:15 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #38 TO BAR EVIDENCE & ARGUMENT CONCERNING JERRY LEVIN'S PERSONAL VIEWS CONCERNING THE VALUE OF COLEMAN SHARES PRIOR TO SUNBEAM-COLEMAN TRANSACTION	45311 45313
04/29/2005	00001921	NOTICE OF FILING	45314 45319

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		OF NON PARTY JERRY W LEVIN, AFFID OF JERRY W LEVIN IN SUPPORT OF HIS ORE TENUS M/TO BE EXCUSED FROM TRIAL ON 5/3/05 - ATTACHED	
05/02/2005	00001922	NOTICE OF OPPOSITION TO MORGAN STANLEY'S RENEWED M/FOR MISTRIAL RELATED TO RONALD PERELMAN'S TESTIMONY - W/ATTACHMENTS	45320 45339
05/02/2005	00001923	ORDER PARTIES SHALL COMMENCE MEDIATION OF THE ISSUES RAISED IN THIS CAUSE BY 10:00 AM 5/5/05 IN NEW YORK, NEW YORK. ORK. KENNETH FEINBERG ESQ IS APPOINTED AS MEDIATOR.	45340 45341
05/02/2005	00001924	ORDER PLTF'S M/IN LIMINE #37 TO BAR EVIDENCE OR ARGUMENT REGARDING PLTF'S ALLEGED FAILURE TO PRESERVE E-MAIL IS DENIED.	45342 45343
05/02/2005	00001925	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #38 TO BAR EVIDENCE ARGUMENT CONCERNING JERRY LEVIN'S PERSONAL VIEWS CONCERNING THE VALUE OF COLEMAN SHARES PRIOR TO THE SUNBEAM-COLEMAN TRANSACTION IS GRANTED IN PART & DENIED IN PART - SEE ORDER	45344 45345
05/02/2005	00001926	NOTICE TO PRODUCE AT TRIAL INSTANTER	45346 45348
05/02/2005	00001927	MOTION FOR COURT ORDERED DISCOVERY	45349 45351
05/02/2005	00001928	NOTICE OF HEARING 5/2/05 @ 8:15 AM ON DEF MORGAN STANLEY'S M/FOR COURT ORDERED DISCOVERY	45352 45354
05/02/2005	00001929	OBJECTION TO MORGAN STANLEY'S PROFFER OF EVIDENCE REGARDING CPH'S PH'S ABILITY TO SETT ITS SUNBEAM STOCK AS EARLY AS JUNE JUNE 30, 1998 & TO MORGAN STANLEY'S OFFER OF PROOF W/RESPECT TO CPH'S ABILITY TO MITIGATE ITS DAMAGES THRU	45355 45400

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THRU HEDGING STRATEGIES - W/ATTACHMENTS			
VOLUME NUMBER TWO HUNDRED TWENTY EIGHT			
05/02/2005	00001929	OBJECTION	45401 45600
CONTINUED FROM PREVIOUS VOLUME			
VOLUME NUMBER TWO HUNDRED TWENTY NINE			
05/02/2005	00001929	OBJECTION	45601 45800
CONTINUED FROM PREVIOUS VOLUME			
VOLUME NUMBER TWO HUNDRED THIRTY			
05/02/2005	00001929	OBJECTION	45801 45851
CONTINUED FROM PREVIOUS VOLUME			
05/03/2005	00001930	ORDER	45852 45853
GOVERNING PROPOSED JURY INSTRUCTIONS. BY 5/5/05 @ 3:00 3:00 PM EACH PARTY SHALL SERVE ON THE OTHER OBJECTIONS TO ANY PROPOSED JURY INSTRUCTIONS, TOGETHER WITH PROPOSED SUPPLEMENTAL JURY INSTRUCTIONS. BY 3:00 PM, 5/7/05, THE PARTIES SHALL SERVE ANY OBJECTIONS TO OPPOSING COUNSEL'S PROPOSED SUPPLEMENTAL JURY INSTRUCTIONS			
05/03/2005	00001931	ORDER	45854 45855
MORGAN STANLEY'S M/FOR COURT ORDERED DISCOVERY IS GRANTED IN PART. W/IN 3 BUSINESS DAYS, CPH'S COUNSEL SHALL PRODUCE ALL REQUESTED ITEMS IN PARAGRAPH 4. UNREDACTED VERSIONS SHALL BE SUBMITTED DIRECTLY TO COURT, IN A SEALED ENVELOPE MARKED "DON NOT OPEN BY 5/3/05 ORDER OF THE COURT". THE SEALED ENVELOPE SHALL NOT BE UNSEALED OR REMOVED W/OUT FURTHER ORDER OF COURT COURT			

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05/03/2005	00001932	MOTION IN LIMINE #32 TO EXCLUDE SUPPLEMENTAL REPORT OF MICHAEL HAEL J WAGNER	45856 45861
05/03/2005	00001933	MEMORANDUM IN SUPPORT OF M/FOR MISTRIAL BECAUSE OF IMPROPER EX PARTE JUROR COMMUNICATIONS	45862 45878
05/03/2005	00001934	NOTICE OF SUPPLEMENTAL SUBMISSION ON PLTF'S M/IN LIMINE #37 TO BAR EVIDENCE OR ARGUMENT REGARDING PLTF'S ALLEGED FAILURE TO PRESERVE E-MAIL	45879 45896
05/03/2005	00001935	MEMORANDUM IN OPPOSITION TO COLEMAN (PARENT) HOLDINGS INCS M/IN LIMINE #38	45897 45905
05/03/2005	00001936	MOTION FOR A LIMITING INSTRUCTION ON INFERENCES RELATING TO THE ABSENCE OF FURTHER EVIDENCE ON JUDICIALLY "DEEMED FACTS" AT TRIAL	45906 45911
05/04/2005	00001937	RESPONSE TO: IN OPPOSITION TO DEFS M/IN LIMINE #36	45912 45928
05/04/2005	00001938	NOTICE OF CONCURRENCE IN CPH'S BRIEF CONCERNING THE LEGAL PROHIBITION AGAINST USING TWO JURIES IN A BIFURCATED PUNITIVE-DAMAGES TRIAL	45929 45932
05/04/2005	00001939	MEMORANDUM IN SUPPORT OF M/TO INSTRUCT THE JURY ON RELIANCE & DAMAGES UNDER THE CLEAR & CONVINCING EVIDENCE STANDARD IN PHASE I - W/ATTACHMENTS	45933 45962
05/04/2005	00001940	MEMORANDUM CONCERNING ITS EXAM OF JERRY LEVIN BY LEADING QUESTIONS IONS UNDER FS ANNOTATED 90.612	45963 45969
05/04/2005	00001941	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FILE ATTY JOSEPH IANNO'S LETTER & ITS ATTACHMENTS	45970 45970

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		DTD 5/3/05	
05/04/2005	00001942	CORRESPONDENCE TO JUDGE MAASS FROM JOSEPH IANNO JR DTD 5/3/05 - W/ATTACHMENT	45971 45974
05/04/2005	00001943	ORDER CPH'S ORE TENUS M/IN LIMINE IS GRANTED - SEE ORDER	45975 45976
05/04/2005	00001944	ORDER MS& CO'S ORE TENUS M/TO STRIKE TESTIMONY OF DR NYE IS DENIED	45977 45977
05/04/2005	00001945	ORDER MS&CO'S ORE TENUS M/FOR DIRECTED VERDICT IS DENIED	45978 45978
05/04/2005	00001946	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S M/FOR A LIMITING INSTRUCTION ON INFERENCES RELATING TO THE ABSENCE OF FURTHER EVIDENCE ON JUDICIALLY "DEEMED FACTS" AT TRIAL	45979 45982
05/04/2005	00001946	A NOTICE OF PRIVILEGE LOG	45983 46000
		VOLUME NUMBER TWO HUNDRED THIRTY ONE	
05/04/2005	00001946	A NOTICE	46001 46018
		CONTINUED FROM PREVIOUS VOLUME	
05/04/2005	00001946	B JURY QUESTIONS FOR WITNESS, GERALD LEVIN	46019 46022
05/05/2005	00001947	DISCLOSURE (REBUTTAL TRIAL WITNESS)	46023 46027
05/05/2005	00001948	NOTICE OF PROPOSED SUPPLEMENTAL JURY INSTRUCTIONS - ATTACHED ED	46028 46035

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05/05/2005	00001949	AMENDED OF PROPOSED JURY INSTRUCTIONS - ATTACHED	46036 46088
05/05/2005	00001950	NOTICE OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS' M/IN LIMINE MINE #35 TO BAR INAPPROPRIATE OPINION TESTIMONY	46089 46093
05/05/2005	00001951	NOTICE OF FILING PROFFER REGARDING JERRY LEVIN - ATTACHED	46094 46100
05/05/2005	00001952	MOTION TO ADMIT JERRY LEVIN'S TESTIMONY REGARDING THE VALUATION OF COLEMAN STOCK & THE ACCURACY OF SUNBEAMS FINANCIAL STATEMENT	46101 46111
05/05/2005	00001953	OBJECTION TO MORGAN STANLEY'S PROPOSED PHASE ONE JURY INSTRUCTIONS - W/ATTACHMENTS	46112 46200
		VOLUME NUMBER TWO HUNDRED THIRTY TWO	
05/05/2005	00001953	OBJECTION	46201 46208
		CONTINUED FROM PREVIOUS VOLUME	
05/05/2005	00001954	NOTICE OF OPPOSITION TO MORGAN STANLEY'S RENEWED M/FOR MISTRIAL BECAUSE OF IMPROPER EX PARTE JUROR COMMUNICATIONS - W/ATTACHMENTS	46209 46262
05/06/2005	00001955	MOTION TO IMPOSE SANCTIONS FOR FAILURE TO APPEAR AT COURT ORDERED MEDIATION	46263 46266
05/06/2005	00001956	DISCLOSURE (REBUTTAL TRIAL WITNESS)	46267 46270
05/06/2005	00001957	NOTICE OF SUPPLEMENTAL PHASE I REQUESTED JURY INSTRUCTIONS - ATTACHED	46271 46316

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05/06/2005	00001958	NOTICE OF FILING PROFFER REGARDING WILLIAM NESBITT - W/ATTACHMENT	46317 46400
		VOLUME NUMBER TWO HUNDRED THIRTY THREE	
05/06/2005	00001958	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	46401 46600
		VOLUME NUMBER TWO HUNDRED THIRTY FOUR	
05/06/2005	00001958	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	46601 46800
		VOLUME NUMBER TWO HUNDRED THIRTY FIVE	
05/06/2005	00001958	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	46801 47000
		VOLUME NUMBER TWO HUNDRED THIRTY SIX	
05/06/2005	00001958	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	47001 47200
		VOLUME NUMBER TWO HUNDRED THIRTY SEVEN	
05/06/2005	00001958	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	47201 47274
05/06/2005	00001959	NOTICE OF FILING PROFFER REGARDING TODD SLOTKIN - W/ATTACHMENT	47275 47400

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05/06/2005	00001959	NOTICE OF FILING	47401 47600
		CONTINUED FROM PREVIOUS VOLUME	
VOLUME NUMBER TWO HUNDRED THIRTY NINE			
05/06/2005	00001959	NOTICE OF FILING	47601 47718
		CONTINUED FROM PREVIOUS VOLUME	
05/06/2005	00001960	NOTICE OF REVISED PHASE I REQUESTED JURY INSTRUCTIONS RELATING TO NEW YORK LAW	47719 47731
05/06/2005	00001961	OBJECTION TO COLEMAN (PARENT) HOLDINGS INC'S PROPOSED JURY INSTRUCTIONS	47732 47750
05/06/2005	00001962	MOTION FOR CLARIFICATION OF THE ADMISSIBILITY OF THE TESTIMONY OF PROFESSOR MARK GRINBLATT	47751 47752
05/06/2005	00001963	NOTICE OF FILING PROFFER REGARDING PAUL SHAPIRO - W/ATTACHMENTS	47753 47800
VOLUME NUMBER TWO HUNDRED FORTY			
05/06/2005	00001963	NOTICE OF FILING	47801 48000
		CONTINUED FROM PREVIOUS VOLUME	
VOLUME NUMBER TWO HUNDRED FORTY ONE			
05/06/2005	00001963	NOTICE OF FILING	48001 48200

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VOLUME NUMBER TWO HUNDRED FORTY TWO			
05/06/2005	00001963	NOTICE OF FILING	48201 48211
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05/06/2005	00001964	NOTICE OF FILING PROFFER REGARDING BARRY SCHWARTZ - W/ATTACHMENT	48212 48400
VOLUME NUMBER TWO HUNDRED FORTY THREE			
05/06/2005	00001964	NOTICE OF FILING	48401 48600
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VOLUME NUMBER TWO HUNDRED FORTY FOUR			
05/06/2005	00001964	NOTICE OF FILING	48601 48800
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VOLUME NUMBER TWO HUNDRED FORTY FIVE			
05/06/2005	00001964	NOTICE OF FILING	48801 48975
CONTINUED FROM PREVIOUS VOLUME			
05/06/2005	00001965	NOTICE OF FILING PROFFER REGARDING LAWRENCE JONES - W/ATTACHMENTS	48976 49000
VOLUME NUMBER TWO HUNDRED FORTY SIX			
05/06/2005	00001965	NOTICE OF FILING	49001 49200
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05/06/2005	00001965	NOTICE OF FILING	49201 49295
		CONTINUED FROM PREVIOUS VOLUME	
05/06/2005	00001966	NOTICE OF FILING PROFFER REGARDING DONALD DRAPKIN - W/ATTACHMENT	49296 49400
VOLUME NUMBER TWO HUNDRED FORTY EIGHT			
05/06/2005	00001966	NOTICE OF FILING	49401 49600
		CONTINUED FROM PREVIOUS VOLUME	
VOLUME NUMBER TWO HUNDRED FORTY NINE			
05/06/2005	00001966	NOTICE OF FILING	49601 49603
		CONTINUED FROM PREVIOUS VOLUME	
05/06/2005	00001967	NOTICE OF OPPOSITION TO MORGAN STANLEY'S M/FOR CLARIFICATION OF THE ADMISSIBILITY OF THE TESTIMONY OF PROFESSOR MARK MARK GRINBLATT - W/ATTACHMENTS	49604 49630
05/06/2005	00001968	NOTICE OF FILING PROFFER REGARDING BRUCE SLOVIN - W/ATTACHMENT	49631 49800
VOLUME NUMBER TWO HUNDRED FIFTY			
05/06/2005	00001968	NOTICE OF FILING	49801 49860
		CONTINUED FROM PREVIOUS VOLUME	
05/06/2005	00001969	NOTICE OF FILING PROFFER REGARDING ANN JORDAN - W/ATTACHMENT	49861 49991

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05/06/2005	00001970	NOTICE OF FILING PROFFER REGARDING STEVEN GELLER - W/ATTACHMENT	49992 50000
		VOLUME NUMBER TWO HUNDRED FIFTY ONE	
05/06/2005	00001970	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	50001 50200
		VOLUME NUMBER TWO HUNDRED FIFTY TWO	
05/06/2005	00001970	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	50201 50238
05/06/2005	00001971	NOTICE OF FILING PROFFER REGARDING JOSEPH PAGE - ATTACHED	50239 50334
05/06/2005	00001972	NOTICE OF FILING PROFFER REGARDING KAREN CLARK - ATTACHED	50335 50400
		VOLUME NUMBER TWO HUNDRED FIFTY THREE	
05/06/2005	00001972	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	50401 50524
05/06/2005	00001973	NOTICE OF FILING PROFFER REGARDING IRWIN ENGLEMAN - W/ATTACHMENT	50525 50600
		VOLUME NUMBER TWO HUNDRED FIFTY FOUR	
05/06/2005	00001973	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	50601 50800

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		CONTINUED FROM PREVIOUS VOLUME	
VOLUME NUMBER TWO HUNDRED FIFTY SIX			
05/06/2005	00001973	NOTICE OF FILING	51001 51121
		CONTINUED FROM PREVIOUS VOLUME	
05/06/2005	00001974	NOTICE OF FILING PROFFER REGARDING ROBERT DUFFY - ATTACHED	51122 51200
VOLUME NUMBER TWO HUNDRED FIFTY SEVEN			
05/06/2005	00001974	NOTICE OF FILING	51201 51400
		CONTINUED FROM PREVIOUS VOLUME	
VOLUME NUMBER TWO HUNDRED FIFTY EIGHT			
05/06/2005	00001974	NOTICE OF FILING	51401 51600
		CONTINUED FROM PREVIOUS VOLUME	
VOLUME NUMBER TWO HUNDRED FIFTY NINE			
05/06/2005	00001974	NOTICE OF FILING	51601 51662
		CONTINUED FROM PREVIOUS VOLUME	
05/06/2005	00001975	NOTICE OF FILING PROFFER REGARDING JAMES MAHER - ATTACHED	51663 51800

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VOLUME NUMBER TWO HUNDRED SIXTY ONE			
05/06/2005	00001975	NOTICE OF FILING	52001 52200
CONTINUED FROM PREVIOUS VOLUME			
VOLUME NUMBER TWO HUNDRED SIXTY TWO			
05/06/2005	00001975	NOTICE OF FILING	52201 52400
CONTINUED FROM PREVIOUS VOLUME			
VOLUME NUMBER TWO HUNDRED SIXTY THREE			
05/06/2005	00001975	NOTICE OF FILING	52401 52600
CONTINUED FROM PREVIOUS VOLUME			
VOLUME NUMBER TWO HUNDRED SIXTY FOUR			
05/06/2005	00001975	NOTICE OF FILING	52601 52800
CONTINUED FROM PREVIOUS VOLUME			
VOLUME NUMBER TWO HUNDRED SIXTY FIVE			
05/06/2005	00001975	NOTICE OF FILING	52801 53000
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VOLUME NUMBER TWO HUNDRED SIXTY SEVEN			
05/06/2005	00001975	NOTICE OF FILING	53201 53231
CONTINUED FROM PREVIOUS VOLUME			
05/06/2005	00001976	NOTICE OF FILING PLEADING UNDER SEAL	53232 53233
05/06/2005	00001977	SEALED PER ORDER DTD 7/31/03	53234 53234
05/06/2005	00001978	NOTICE OF FILING PLEADING UNDER SEAL	53235 53236
05/06/2005	00001979	SEALED PER ORDER DTD 7/31/03	53237 53237
05/06/2005	00001980	NOTICE OF FILING PLEADING UNDER SEAL	53238 53239
05/06/2005	00001981	SEALED PER ORDER DTD 7/31/03	53240 53240
05/06/2005	00001982	NOTICE OF FILING PLEADING UNDER SEAL	53241 53242
05/06/2005	00001983	SEALED PER ORDER DTD 7/31/03	53243 53243
05/06/2005	00001984	NOTICE OF FILING PLEADING UNDER SEAL	53244 53245
05/06/2005	00001985	SEALED	53246 53246

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05/06/2005	00001987	SEALED PER ORDER DTD 7/31/03	53249 53249
05/06/2005	00001988	NOTICE OF FILING PLEADING UNDER SEAL	53250 53251
05/06/2005	00001989	SEALED PER ORDER DTD 7/31/03	53252 53252
05/06/2005	00001990	NOTICE OF FILING PLEADING UNDER SEAL	53253 53254
05/06/2005	00001991	SEALED PER ORDER DTD 7/31/03	53255 53255
05/06/2005	00001992	NOTICE OF FILING PLEADING UNDER SEAL	53256 53257
05/06/2005	00001993	SEALED PER ORDER DTD 7/31/03	53258 53258
05/06/2005	00001994	NOTICE OF FILING PLEADING UNDER SEAL	53259 53260
05/06/2005	00001995	SEALED PER ORDER DTD 7/31/03	53261 53261
05/06/2005	00001996	NOTICE OF FILING PLEADING UNDER SEAL	53262 53263
05/06/2005	00001997	SEALED PER ORDER DTD 7/31/03	53264 53264
05/06/2005	00001998	NOTICE OF FILING PLEADING UNDER SEAL	53265 53266
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05/06/2005	00002002	NOTICE OF FILING PLEADING UNDER SEAL	53271 53272
05/06/2005	00002003	SEALED PER ORDER DTD 7/31/03	53273 53273
05/06/2005	00002004	NOTICE OF FILING PLEADING UNDER SEAL	53274 53275
05/06/2005	00002005	SEALED PER ORDER DTD 7/31/03	53276 53276
05/06/2005	00002006	NOTICE OF FILING PLEADING UNDER SEAL	53277 53278
05/06/2005	00002007	SEALED PER ORDER DTD 7/31/03	53279 53279
05/06/2005	00002008	NOTICE OF FILING PLEADING UNDER SEAL	53280 53281
05/06/2005	00002009	SEALED PER ORDER DTD 7/31/03	53282 53282
05/06/2005	00002010	NOTICE OF FILING PLEADING UNDER SEAL	53283 53284
05/06/2005	00002011	SEALED PER ORDER DTD 7/31/03	53285 53285
05/06/2005	00002012	ORDER FOLLOWING IN CAMERA INSPECTION. ON REVIEW OF ITEMS PRODUCED, COURT CONCLUDES THAT NONE IS RELATED TO OR HAS ANY BEARING ON ANY OF THE ISSUES RAISED BY MR	53286 53287

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COMYNS APPARENT CONTACT W/JURORS. BECAUSE ITEMS PRODUCED IMPLICATE ATTY-CLIENT & WORK-PRODUCT PRIVILEGES, THEY HAVE BEEN RESEALED & MARKED "DO NOT OPEN BY 5/6/05 COURT ORDER"			
05/06/2005	00002013	SEALED PER ORDER DTD 5/6/05	53288 53288
05/09/2005	00002014	OBJECTION TO MORGAN STANLEY'S PROPOSED SUPPLEMENTAL PHASE ONE JURY INSTRUCTIONS, REVISED PHASE I REQUESTED INSTRUCTIONS REGARDING NEW YORK LAW, AND PROPOSED VERDICT FORMS - W/ATTACHMENTS	53289 53354
05/09/2005	00002015	MEMORANDUM IN OPPOSITION TO MORGAN STANLEY'S M/TO INSTRUCT THE JURY ON RELIANCE & DAMAGES UNDER THE CLEAR-AND-CONVINCING EVIDENCE STANDARD IN PHASE I - W/ATTACHMENTS	53355 53400
VOLUME NUMBER TWO HUNDRED SIXTY EIGHT			
05/09/2005	00002015	MEMORANDUM	53401 53408
CONTINUED FROM PREVIOUS VOLUME			
05/09/2005	00002016	NOTICE OF FILING PROFFER REGARDING ROBERT KITTS - ATTACHED	53409 53500
05/09/2005	00002017	NOTICE OF FILING PROFFER REGARDING DENNIS PASTRANA - ATTACHED	53501 53600
VOLUME NUMBER TWO HUNDRED SIXTY NINE			
05/09/2005	00002017	NOTICE OF FILING	53601 53692
CONTINUED FROM PREVIOUS VOLUME			
05/09/2005	00002018	NOTICE OF FILING PROFFER REGARDING LAURENCE WINOKER - ATTACHED	53693 53795

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05/09/2005	00002019	NOTICE OF FILING PROFFER REGARDING DONALD DENKHAUS - ATTACHED	53796 53800
		VOLUME NUMBER TWO HUNDRED SEVENTY	
05/09/2005	00002019	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	53801 54000
		VOLUME NUMBER TWO HUNDRED SEVENTY ONE	
05/09/2005	00002019	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	54001 54063
05/09/2005	00002020	NOTICE TO PLTF, TO PRODUCE	54064 54066
05/09/2005	00002021	NOTICE OF FILING PROFFER REGARDING PHILLIP E HARLOW - ATTACHED	54067 54103
05/09/2005	00002022	OBJECTION TO COLEMAN (PARENT) HOLDINGS INC'S PROPOSED AMENDED JURY INSTRUCTIONS - W/ATTACHMENTS	54104 54122
05/09/2005	00002023	OBJECTION TO COLEMAN (PARENT) HOLDINGS INC'S PROPOSED SUPPLEMENTAL JURY INSTRUCTIONS -	54123 54131
05/09/2005	00002024	NOTICE OF FILING PROFFER REGARDING LAWRENCE A BORNSTEIN - ATTACHED	54132 54200
		VOLUME NUMBER TWO HUNDRED SEVENTY TWO	
05/09/2005	00002025	NOTICE OF FILING PROFFER REGARDING WILLIAM KOURAKOS - ATTACHED	54201 54206
05/09/2005	00002026	NOTICE OF FILING	54207 54221

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		PROFFER REGARDING WILLIAM H STRONG - ATTACHED	
05/09/2005	00002027	NOTICE OF FILING PROFFER REGARDING JOHANNES GROELLER - ATTACHED	54222 54226
05/09/2005	00002028	NOTICE OF FILING OF MARK F BIDEAU ESQ, AFFID OF NON PARTY DAVID FANNIN - IN - ATTACHED	54227 54231
05/09/2005	00002029	ORDER ON PLTFS M/TO IMPOSE SANCTIONS FOR FAILURE TO APPEAR AT R AT COURT ORDERED MEDIATION. KENNETH FEINBERG IS REQUESTED TO PREPARE A REPORT OF MEDIATOR - TO BE PREPARED BY NOON 5/9/05 - SEE ORDER	54232 54233
05/09/2005	00002030	ORDER CPH'S ORE TENUS M/IN LIMINE IS GRANTED - SEE ORDER FOR DETAILS	54234 54234
05/09/2005	00002031	ORDER MORGAN STANLEY'S M/FOR CLARIFICATION OF THE ADMISSIBILITY OF THE TESTIMONY OF PROFESSOR MARK GRINBLATT IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS	54235 54236
05/09/2005	00002032	ORDER MORGAN STANLEY'S M/TO ALLOW EXPERT TESTIMONY OF PROFESSOR FISCHEL TO REBUT UNDISCLOSED TESTIMONY BY DR EMERY IS DENIED - SEE ORDER	54237 54238
05/09/2005	00002033	DISCLOSURE (SUPPLEMENTAL REBUTTAL TRIAL WITNESS)	54239 54242
05/09/2005	00002034	NOTICE OF ADDITIONAL PROPOSED SUPPLEMENTAL JURY INSTRUCTIONS - NS - ATTACHED	54243 54247
05/09/2005	00002035	NOTICE OF FILING PROFFER REGARDING MARK J BROCKELMAN - ATTACHED	54248 54281
05/09/2005	00002036	NOTICE OF FILING PROFFER REGARDING VANCE KISTLER - ATTACHED	54282 54304

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05/09/2005	00002037	NOTICE OF FILING PROFFER REGARDING ALEXANDRE FUCHS - ATTACHED	54305 54328
05/09/2005	00002038	NOTICE OF FILING PROFFER REGARDING RUTH PORAT - ATTACHED	54329 54368
05/09/2005	00002039	NOTICE OF FILING PLEADING UNDER SEAL	54369 54370
05/09/2005	00002040	SEALED PER ORDER DTD 7/31/03	54371 54371
05/09/2005	00002041	NOTICE OF FILING PLEADING UNDER SEAL	54372 54373
05/09/2005	00002042	SEALED PER ORDER DTD 7/31/03	54374 54374
05/09/2005	00002043	NOTICE OF FILING PLEADING UNDER SEAL	54375 54376
05/09/2005	00002044	SEALED PER ORDER DTD 7/31/03	54377 54377
05/09/2005	00002045	NOTICE OF FILING PLEADING UNDER SEAL	54378 54379
05/09/2005	00002046	SEALED PER ORDER DTD 7/31/03	54380 54380
05/09/2005	00002047	NOTICE OF FILING PLEADING UNDER SEAL	54381 54382
05/09/2005	00002048	SEALED PER ORDER DTD 7/31/03	54383 54383
05/09/2005	00002049	NOTICE OF FILING PLEADING UNDER SEAL	54384 54385
05/09/2005	00002050	SEALED PER ORDER DTD 7/31/03	54386 54386

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05/09/2005	00002051	NOTICE OF FILING PLEADING UNDER SEAL	54387 54388
05/09/2005	00002052	SEALED PER ORDER DTD 7/31/03	54389 54389
05/09/2005	00002053	NOTICE OF FILING PLEADING UNDER SEAL	54390 54391
05/09/2005	00002054	SEALED PER ORDER DTD 7/31/03	54392 54392
05/09/2005	00002055	SERVICE RETURNED (NUMBERED) OF CHARELS DABROWSKI - OF SERVING SUBPOENA UPON DAVID C ID C FANNIN	54393 54393
05/09/2005	00002056	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE FAX TRANSMISSION OF THE REPORT OF MEDIATOR DTD 5/7/05	54394 54394
05/09/2005	00002057	MEDIATION REPORT (FAX)	54395 54396
05/10/2005	00002058	NOTICE OF FILING PROFFER REGARDING MORGAN STANLEY EXHIBITS - ATTACHED D	54397 54400
		VOLUME NUMBER TWO HUNDRED SEVENTY THREE	
05/10/2005	00002058	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	54401 54600
		VOLUME NUMBER TWO HUNDRED SEVENTY FOUR	
05/10/2005	00002058	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	54601 54800

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		VOLUME NUMBER TWO HUNDRED SEVENTY FIVE	
05/10/2005	00002058	NOTICE OF FILING	54801 55000
		CONTINUED FROM PREVIOUS VOLUME	
		VOLUME NUMBER TWO HUNDRED SEVENTY SIX	
05/10/2005	00002058	NOTICE OF FILING	55001 55200
		CONTINUED FROM PREVIOUS VOLUME	
		VOLUME NUMBER TWO HUNDRED SEVENTY SEVEN	
05/10/2005	00002058	NOTICE OF FILING	55201 55400
		CONTINUED FROM PREVIOUS VOLUME	
		VOLUME NUMBER TWO HUNDRED SEVENTY EIGHT	
05/10/2005	00002058	NOTICE OF FILING	55401 55600
		CONTINUED FROM PREVIOUS VOLUME	
		VOLUME NUMBER TWO HUNDRED SEVENTY NINE	
05/10/2005	00002058	NOTICE OF FILING	55601 55800
		CONTINUED FROM PREVIOUS VOLUME	
		VOLUME NUMBER TWO HUNDRED EIGHTY	
05/10/2005	00002058	NOTICE OF FILING	55801 56000
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VOLUME NUMBER TWO HUNDRED EIGHTY ONE			
05/10/2005	00002058	NOTICE OF FILING	56001 56200
		CONTINUED FROM PREVIOUS VOLUME	
VOLUME NUMBER TWO HUNDRED EIGHTY TWO			
05/10/2005	00002058	NOTICE OF FILING	56201 56224
		CONTINUED FROM PREVIOUS VOLUME	
05/10/2005	00002059	NOTICE OF FILING	56225 56400
		PROFFER REGARDING RONALD O PERELMAN - ATTACHED	
VOLUME NUMBER TWO HUNDRED EIGHTY THREE			
05/10/2005	00002059	NOTICE OF FILING	56401 56600
		CONTINUED FROM PREVIOUS VOLUME	
VOLUME NUMBER TWO HUNDRED EIGHTY FOUR			
05/10/2005	00002059	NOTICE OF FILING	56601 56800
		CONTINUED FROM PREVIOUS VOLUME	
VOLUME NUMBER TWO HUNDRED EIGHTY FIVE			
05/10/2005	00002059	NOTICE OF FILING	56801 57000
		CONTINUED FROM PREVIOUS VOLUME	
VOLUME NUMBER TWO HUNDRED EIGHTY SIX			

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05/10/2005	00002059	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME VOLUME NUMBER TWO HUNDRED EIGHTY SEVEN	57001 57200
05/10/2005	00002059	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME VOLUME NUMBER TWO HUNDRED EIGHTY EIGHT	57201 57400
05/10/2005	00002059	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME VOLUME NUMBER TWO HUNDRED EIGHTY NINE	57401 57600
05/10/2005	00002059	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	57601 57699
05/10/2005	00002060	NOTICE OF FILING PROFFER REGARDING HOWARD GITTIS - ATTACHED VOLUME NUMBER TWO HUNDRED NINETY	57700 57800
05/10/2005	00002060	NOTICE OF FILING CONTINUED FROM PREVIOUS VOLUME	57801 57960
05/10/2005	00002061	NOTICE OF FILING PROFFER REGARDING JAMES LURIE - ATTACHED	57961 57965
05/10/2005	00002062	NOTICE OF FILING PROFFER REGARDING MICHAEL J PETRICK - ATTACHED	57966 57970
05/10/2005	00002063	NOTICE OF FILING PROFFER REGARDING JOHN TYREE - ATTACHED	57971 57979

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05/10/2005	00002064	NOTICE OF FILING PROFFER REGARDING ALAN DEAN - ATTACHED	57980 57985
05/10/2005	00002065	NOTICE OF FILING PROFFER REGARDING RICHARD BRAM SMITH - ATTACHED	57986 58000
VOLUME NUMBER TWO HUNDRED NINETY ONE			
05/10/2005	00002065	NOTICE OF FILING	58001 58016
05/10/2005	00002066	CONTINUED FROM PREVIOUS VOLUME NOTICE OF FILING PROFFER REGARDING DAVID C FANNIN - ATTACHED	58017 58023
05/10/2005	00002067	NOTICE OF FILING PROFFER REGARDING MICHAEL A HART - ATTACHED	58024 58200
VOLUME NUMBER TWO HUNDRED NINETY TWO			
05/10/2005	00002067	NOTICE OF FILING	58201 58318
05/10/2005	00002068	CONTINUED FROM PREVIOUS VOLUME NOTICE OF FILING PROFFER REGARDING HEATHER M STACK - ATTACHED	58319 58349
05/10/2005	00002069	NOTICE OF FILING REVISED OFFER OF PROOF W/RESPECT TO CPH'S ABILITY TO MITIGATE ITS DAMAGES THROUGH HEDGING STRATEGIES - ATTACHED	58350 58385
05/10/2005	00002070	NOTICE OF FILING INDEX OF PROFFER EXHIBITS - ATTACHED	58386 58400
VOLUME NUMBER TWO HUNDRED NINETY THREE			
05/10/2005	00002070	NOTICE OF FILING	58401 58409

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05/10/2005	00002071	CONTINUED FROM PREVIOUS VOLUME NOTICE OF FILING INDEX OF MORGAN STANLEY'S PROFFERS FILED ON 5/9/05 - ATTACHED	58410 58556
05/10/2005	00002072	NOTICE OF FILING INDEX OF MORGAN STANLEY PROFFERS FILED ON 5/10/05 - ATTACHED	58557 58600
VOLUME NUMBER TWO HUNDRED NINETY FOUR			
05/10/2005	00002072	NOTICE OF FILING	58601 58718
05/10/2005	00002073	CONTINUED FROM PREVIOUS VOLUME NOTICE OF FILING INDEX OF MORGAN STANLEY PROFFERS FILED ON 5/6/05 - ATTACHED	58719 58800
VOLUME NUMBER TWO HUNDRED NINETY FIVE			
05/10/2005	00002073	NOTICE OF FILING	58801 58841
05/10/2005	00002074	CONTINUED FROM PREVIOUS VOLUME NOTICE OF FILING PLEADING UNDER SEAL	58842 58843
05/10/2005	00002075	SEALED PER ORDER DTD 7/31/03	58844 58844
05/10/2005	00002076	NOTICE OF FILING PLEADING UNDER SEAL	58845 58846
05/10/2005	00002077	SEALED PER ORDER DTD 7/31/03	58847 58847
05/10/2005	00002078	NOTICE OF FILING PLEADING UNDER SEAL	58848 58849

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05/10/2005	00002079	SEALED PER ORDER DTD 7/31/03	58850 58850
05/10/2005	00002080	NOTICE OF FILING PLEADING UNDER SEAL	58851 58852
05/10/2005	00002081	SEALED PER ORDER DTD 7/31/03	58853 58853
05/10/2005	00002082	MOTION TO BAR MORGAN STANLEY FROM ARGUING IN ITS CLOSING ABOUT BOUT LACK OF RELIANCE ON MORGAN STANLEY'S OWN STATEMENTS - W/ATTACHMENTS	58854 58861
05/10/2005	00002083	RESPONSE TO: TO MORGAN STANLEY'S M/TO TAKE JUDICIAL NOTICE PURSUANT TO FS 90.203	58862 58886
05/10/2005	00002084	MOTION FOR A DIRECTED VERDICT	58887 58917
05/10/2005	00002085	NOTICE OF FILING RETURN OF SERVICE OF TRIAL SUBPOENA ISSUED TO RC OF MAFCO HOLDINGS INC & COLEMAN (PARENT) HOLDINGS INC - ATTACHED	58918 58925
05/10/2005	00002086	ORDER MORGAN STANLEY'S M/FOR A MISTRIAL OR OTHER RELIEF FOR PLTFS VIOLATIONS OF SECTIONS 46.015(3) AND 768.041(3) IS DENIED - SEE ORDER	58926 58927
05/10/2005	00002087	MOTION TO STRIKE CPH'S REBUTTAL WITNESSES	58928 58936
05/10/2005	00002088	REQUEST TO TAKE JUDICIAL NOTICE PURSUANT TO FS 90.202 & 90.203 203	58937 58940
05/10/2005	00002089	MOTION FOR RECONSIDERATION OF THE COURTS 3/31 ORDER DEFERRING PRESENTATION OF MORGAN STANLEY'S LITIGATION MISCONDUCT TO PHASE II OF THE TRIAL - W/ATTACHMENTS	58941 58960

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05/10/2005	00002090	ORDER COLEMAN (PARENT) HOLDINGS INC'S M/FOR RECONSIDERATION OF THE COURTS 3/31 ORDER DEFERRING PRESENTATION OF MORGAN STANLEY'S LITIGATION MISCONDUCT TO PHASE II OF THE TRIAL IS DENIED	58961 58962
05/10/2005	00002091	ORDER MORGAN STANLEY'S REQUEST TO TAKE JUDICIAL NOTICE PURSUANT TO FS 90.202 & 90.203 IS DENIED	58963 58963
05/10/2005	00002092	MOTION TO EXCLUDE CPH EXHIBIT 176 - W/ATTACHMENTS	58964 59000
		VOLUME NUMBER TWO HUNDRED NINETY SIX	
05/10/2005	00002092	MOTION	59001 59054
		CONTINUED FROM PREVIOUS VOLUME	
05/10/2005	00002093	STATEMENT (PROPOSED) REGARDING THE ARTHUR ANDERSEN LITIGATION & SETTLEMENT - W/ATTACHMENTS	59055 59064
05/11/2005	00002094	STATEMENT (PROPOSED) REGARDING THE ARTHUR ANDERSEN LITIGATION & SETTLEMENT	59065 59069
05/11/2005	00002095	MOTION TO PRECLUDE DEF FROM MAKING UNSUPPORTED ARGUMENTS CONCERNING DAMAGES	59070 59089
05/11/2005	00002096	NOTICE OF SECOND ADDITIONAL PROPOSED SUPPLEMENTAL JURY INSTRUCTIONS	59090 59096
05/12/2005	00002097	ORDER MORGAN STANLEY'S RENEWED M/TO APPLY NEW YORK LAW IS DENIED	59097 59097
05/12/2005	00002098	NOTICE OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S SECOND	59098 59109

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		COND RENEWED M/FOR CORRECTION & CLARIFICATION OF THE LITIGATION MISCONDUCT STATEMENT TO BE READ TO THE JURY & REPLY IN SUPPORT OF DEFS M/IN LIMINE #30	
05/12/2005	00002099	NOTICE OF FILING PLEADING UNDER SEAL	59110 59112
05/12/2005	00002100	ADDENDUM TO MORGAN STANLEY'S OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S SECOND RENEWED M/FOR CORRECTION & CLARIFICATION OF THE LITIGATION-MISCONDUCT STATEMENT TO T TO BE READ TO THE JURY & REPLY IN SUPPORT OF DEFS M/IN LIMINE #30 *** UNSEALED PER JUDGE'S ORDER IN OPEN COURT - 5/18/05 ***	59113 59200
		VOLUME NUMBER TWO HUNDRED NINETY SEVEN	
05/12/2005	00002100	ADDENDUM	59201 59348
05/12/2005	00002101	CONTINUED FROM PREVIOUS VOLUME ORDER FOLLOWING IN CAMERA INSPECTION. MS&CO'S M/TO COMPEL IS L IS DENIED. THE COURT HAS SEALED THE ITEMS REVIEWED IN CAMERA. THE SEALED ITEMS SHALL NOT BE UNSEALED OR RELEASED FROM THE CLERKS CUSTODY W/OUT FURTHER ORDER OF R OF THIS OR AN APPELATE COURT	59349 59350
05/12/2005	00002102	SEALED PER ORDER DTD 5/12/05	59351 59351
05/13/2005	00002103	NOTICE OF FILING PLEADING UNDER SEAL	59352 59353
05/13/2005	00002104	SEALED PER ORDER DTD 7/31/03	59354 59354
05/13/2005	00002105	NOTICE OF OPPOSITION TO PLTFS PROPOSED SUPPLEMENTAL INSTRUCTION #6	59355 59363

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05/13/2005	00002106	RESPONSE TO: TO PLTFS M/FOR DIRECTED VERDICT	59364 59368
05/13/2005	00002107	REPLY/RESPONSE IN SUPPORT OF M/IN LIMINE #29 TO EXCLUDE DEPO TESTIMONY MONY OF BRAM SMITH IN PHASE II	59369 59373
05/13/2005	00002108	MOTION IN LIMINE #34 TO ALLOW PHASE II MITIGATION EVIDENCE DEMONSTRATING THAT CPH WAS NOT A VULNERABLE VICTIM	59374 59381
05/13/2005	00002109	MOTION (RENEWED) TO APPLY NEW YORK LAW	59382 59389
05/13/2005	00002110	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S M/IN LIMINE #32 TO EXCLUDE SUPPLEMENTAL REPORT OF MICHAEL J WAGNER - W/ATTACHMENTS	59390 59400
VOLUME NUMBER TWO HUNDRED NINETY EIGHT			
05/13/2005	00002110	RESPONSE TO:	59401 59431
		CONTINUED FROM PREVIOUS VOLUME	
05/13/2005	00002111	JURY QUESTIONS	59432 59433
05/13/2005	00002112	JURY QUESTIONS	59434 59435
05/13/2005	00002113	JURY QUESTIONS	59436 59437
05/13/2005	00002114	JURY QUESTIONS	59438 59439
05/16/2005	00002115	NOTE FROM JURY TO COURT	59440 59441
05/16/2005	00002116	REQUESTED JURY INSTRUCTIONS <<< GIVEN >>>	59442 59449
05/16/2005	00002117	VERDICT SIGNED & DATED BY FOREPERSON, LAURINDA KAY STALLONE,	59450 59451

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		5/16/05	
05/16/2005	00002117	A ORDER MS& CO'S ORE TENUS M/FOR CLARIFICATION OF SCOPE OF EXPERT TESTIMONY - PHASE II IS GRANTED IN PART & RULING LING DEFFERED IN PART - SEE ORDER FOR DETAIL	59452 59453
05/16/2005	00002117	B ORDER PLTFS M/IN LIMINE #36 TO CLARIFY WHAT EVIDENCE IS ADMISSIBLE TO SHOW PLTFS ENTITLEMENT TO & AMT OF PUNITIVE DAMAGES IS GRANTED IN PART & RULING DEFFERED IN PART. SEE ORDER FOR DETAILS	59454 59456
05/16/2005	00002117	C ORDER MORGAN STANLEY'S M/IN LIMINE #32 TO EXCLUDE SUPPLEMENTAL REPORT OF MICHAEL J WAGNER IS GRANTED IN PART & DENIED IN PART - SEE ORDER	59457 59458
05/16/2005	00002117	D MOTION TO REMOVE CONFIDENTIALITY DESIGNATION - W/ATTACHMENTS TS	59459 59600
		VOLUME NUMBER TWO HUNDRED NINETY NINE	
05/16/2005	00002117	D MOTION	59601 59655
		CONTINUED FROM PREVIOUS VOLUME	
05/16/2005	00002117	E SEALED PER ORDER DTD 7/31/03	59656 59656
05/17/2005	00002118	EXHIBIT LIST EXHIBITS FROM NON-JURY HEARING TAKEN TO EVIDENCE DEPT PT	59657 59657
05/17/2005	00002119	REQUESTED JURY INSTRUCTIONS DEFT'S PROPOSED CURATIVE INSTRUCTION WITH JUDGE'S INTER-LINEATION - GIVEN	59658 59659
05/17/2005	00002120	REQUESTED JURY INSTRUCTIONS DEFT'S PROPOSED SUPPLEMENT TO JURY INSTRUCTIONS	59660 59661

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05/17/2005	00002120	A NOTICE OF FILING OFFERS OF PROOF IN PHASE II	59662 59668
05/17/2005	00002120	B NOTICE OF FILING PLEADING UNDER SEAL	59669 59670
05/17/2005	00002120	C SEALED PER ORDER DTD 7/31/03	59671 59671
05/18/2005	00002121	NOTICE PLTF'S PROPOSED DEMONSTRATIVES FOR CLOSING	59672 59701
05/18/2005	00002122	NOTICE DEFT'S PROPOSED DEMONSTRATIVES FOR CLOSING	59702 59710
05/18/2005	00002123	REQUESTED JURY INSTRUCTIONS <<<< GIVEN >>>>	59711 59715
05/18/2005	00002124	NOTE FROM JURY	59716 59717
05/18/2005	00002125	VERDICT SIGNED & DATED BY FOREPERSON, LAURINDA STALLONE, 5/18/05	59718 59718
05/18/2005	00002126	MOTION FOR A DIRECTED VERDICT IN PHASE II	59719 59722
05/18/2005	00002127	MEMORANDUM (SUPPLEMENTAL) IN SUPPORT OF M/FOR MISTRIAL BECAUSE OF IMPROPER EX PARTE JUROR COMMUNICATIONS - W/ATTACHMENTS	59723 59775
05/19/2005	00002128	OBJECTION (REVISED & CORRECTED) TO PROPOSED JURY INSTRUCTIONS	59776 59783
05/19/2005	00002129	ORDER SETTING HEARING (SPECIAL SET) 6/20/05 @ 9:30 AM AND 6/21/05 @ 9:30 AM ON ALL POST-VERDICT MOTIONS; REGARDING ENTITLEMENT TO & TO & AMT OF PRE-JUDGMENT INTEREST; ALL MOTIONS DIRECTED CTED TO SET OFF; AND ALL OTHER P ENDING MOTIONS,	59784 59786

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		EXCLUDING ATTYS FEES - SEE ORDER FOR FURTHER DETAILS S	
05/19/2005	00002130	RESPONSE TO: AND OBJECTIONS TO MORGAN STANLEY'S SUMMARY OF OFFER OF PROOF REGARDING DEFS LITIGATION MISCONDUCT & BRIEF ARGUING AGAINST READING TO THE JURY ANY LITIGATION-MISCONDUCT STATEMENT - W/ATTACHMENTS	59787 59800
		VOLUME NUMBER THREE HUNDRED	
05/19/2005	00002130	RESPONSE TO:	59801 59930
		CONTINUED FROM PREVIOUS VOLUME	
05/25/2005	00002130	A ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FILE THE ORIG OF JENNIFER BERTHEUSSEN'S LETTER DTD DTD 5/17/05 & SERVE COPIES UPON COUNSEL, ATTACHING A CERT OF SERVICE	59931 59931
05/25/2005	00002130	B CORRESPONDENCE TO HONORABLE ELIZABETH MAASS FROM JENNIFER BERTHEUSSEN DTD 5/17/05 - W/ATTACHED CERT OF SERVICE FROM CLERK	59932 59933
05/26/2005	00002131	EXHIBIT LIST FROM HEARINGS ON 3/07/05, 3/11/05, 3/28/05 & 5/11/05 IN EVIDENCE DEPT	59934 59934
05/26/2005	00002132	EXHIBIT LIST FROM HEARING ON 3/14/05 - 3/15/05 IN EVIDENCE DEPT	59935 59937
05/26/2005	00002133	EXHIBIT LIST FROM JURY TRIAL (3/17/05 - 4/18/05) IN EVIDENCE DEPT T	59938 59946
05/26/2005	00002134	EXHIBIT LIST FROM HEARING ON 3/21/05 IN EVIDENCE DEPT	59947 59947
05/26/2005	00002135	EXHIBIT LIST	59948 59948

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		FROM MOTION HEARING ON 3/21/05 IN EVIDENCE DEPT	
05/26/2005	00002136	EXHIBIT LIST FROM HEARINGS ON 3/23/05 & 4/05/05 IN EVIDENCE DEPT	59949 59949
05/26/2005	00002137	EXHIBIT LIST FROM HEARINGS ON 2/22/05, 4/12/05, 4/18/05 & 5/3/05 IN EVIDENCE DEPT	59950 59950
05/26/2005	00002138	EXHIBIT LIST FROM JURY TRIAL; JURORS QUESTIONNAIRES IN EVIDENCE DEPT DEPT	59951 59951
05/26/2005	00002139	MOTION FOR JUDGMENT IN ACCORDANCE W/MOTION FOR DIRECTED VERDICT & ALTERNATIVE M/FOR NEW TRIAL - W/ATTACHMENTS TS	59952 60000
		VOLUME NUMBER THREE HUNDRED ONE	
05/26/2005	00002139	MOTION	60001 60032
		CONTINUED FROM PREVIOUS VOLUME	
05/26/2005	00002140	MOTION FOR ORDER ALLOWING INTERVIEW OF JURORS & NOTICE OF INTENT TO INTERVIEW JURORS - W/ATTACHMENTS	60033 60046
05/26/2005	00002141	MOTION (ALTERNATIVE) FOR REDUCTION OF COMPENSATORY DAMAGES UNDER FS SECTIONS 46.015 & 768.041 - W/ATTACHMENTS	60047 60109
05/27/2005	00002142	MOTION FOR JUDGMENT IN ACCORDANCE WITH M/FOR DIRECTED VERDICT IN PHASE II, OR, IN THE ALTERNATIVE, NEW TRIAL ON PUNITIVE DAMAGES OR FOR REMITTITUR OF PUNITIVE DAMAGES GES	60110 60124
05/27/2005	00002143	MOTION FOR PREJUDGMENT INTEREST	60125 60126

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06/06/2005	00002144	BRIEF (INITIAL) IN SUPPORT OF ITS M/FOR PREJUDGMENT INTEREST - W/ATTACHMENTS	60127 60142
06/06/2005	00002145	NOTICE OF HEARING 6/20/05 @ 9:30 AM ON (1) COLEMAN (PARENT) HOLDINGS INCS INCS M/TO MODIFY NOTICE TO PRODUCE & TO COMPEL COMPLIANCE W/THE NOTICE FILED 5/16/05; (2) MORGAN STANLEY'S M/TO QUASH COLEMAN (PARENT) HOLDINGS INC'S NOTICE TO PRODUCE FOR IN-CAMERA INSPECTION INSTANTER FILED 4/17/05; AND (3) MORGAN STANLEY'S M/TO QUASH COLEMAN (PARENT) HOLDINGS INC'S NOTICE TO PRODUCE AT TRIAL INSTANTER ATYT-CLIENT RECORDS AND DOCUMENTS FILED ILED 4/21/05	60143 60145
06/07/2005	00002146	EXHIBIT LIST FOR THE 6/20 - 21/05 POST TRIAL HEARING	60146 60149
06/07/2005	00002147	MEMORANDUM IN OPPOSITION TO CPH'S M/FOR PREJUDGMENT INTEREST	60150 60166
06/07/2005	00002148	MEMORANDUM IN SUPPORT OF ITS M/FOR JUDGMENT IN ACCORDANCE WITH M/FOR DIRECTED VERDICT & ALTERNATIVE M/FOR TRIAL VOLUME NUMBER THREE HUNDRED TWO	60167 60200
06/07/2005	00002148	MEMORANDUM	60201 60272
06/07/2005	00002149	CONTINUED FROM PREVIOUS VOLUME NOTICE OF FILING PLEADING UNDER SEAL	60273 60275
06/07/2005	00002150	SEALED PER ORDER DTD 7/31/03	60276 60276
06/08/2005	00002151	MEMORANDUM IN SUPPORT OF ITS ALTERNATIVE M/FOR REDUCTION OF COMPENSATORY DAMAGES UNDER FS SECTIONS 46.015 & 768.041 .041	60277 60289

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06/08/2005	00002152	DISCLOSURE (WITNESS) FOR THE JUNE 20-21 POST TRIAL HEARING - W/ATTACHMENTS	60290 60336
06/08/2005	00002153	NOTICE OF FILING PLEADING UNDER SEAL	60337 60339
06/08/2005	00002154	SEALED PER ORDER DTD 7/31/03	60340 60340
06/09/2005	00002155	NOTICE OF FILING EXHIBIT TO DEFS MEMO IN OPPOSITION TO CPH'S M/FOR PREJUDGMENT INTEREST - ATTACHED	60341 60356
06/09/2005	00002156	MOTION FOR ENTRY OF PARTIAL FINAL JUDGMENT	60357 60358
06/09/2005	00002157	NOTICE OF HEARING 6/13/05 @ 8:45 AM ON M/FOR ENTRY OF PARTIAL FINAL JUDGMENT	60359 60361
06/10/2005	00002157	A NOTICE OF CANCELLATION OF UNIFORM MOTION CALENDAR HEARING ON PLTFS M/FOR ENTRY NTRY OF PARTIAL F/J SET FOR 6/13/05	60362 60367
06/13/2005	00002158	MOTION (VERIFIED) TO ADMIT MICHAEL K KELLOGG PRO HAC VICE ***UP 6/14/05 W/UNSIGNED ORDER***	60368 60369
06/13/2005	00002159	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO BLAINE NYE	60370 60372
06/13/2005	00002160	MOTION TO ESTABLISH SCHEDULE FOR THE TAKING OF DEPO TESTIMONY ONY	60373 60374
06/13/2005	00002161	NOTICE OF HEARING 6/14/05 @ 8:45 AM ON M/TO ESTABLISH SCHEDULE FOR THE TAKING OF DEPO TESTIMONY	60375 60376
06/13/2005	00002162	MOTION (EMERGENCY) TO ESTABLISH SCHEDULE FOR THE TAKING OF	60377 60379

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		DEPO TESTIMONY ** UP ON 6/15/05 **	
06/13/2005	00002163	NOTICE OF CANCELLATION OF UNIFORM MOTION CALENDAR HEARING ON PLTFS M/TO ESTABLISH SCHEDULE FOR THE TAKING OF DEPO TESTIMONY	60380 60381
06/13/2005	00002164	BRIEF (RESPONSE) IN SUPPORT OF ITS M/FOR PREJUDGMENT INTEREST REST - W/ATTACHMENTS	60382 60400
		VOLUME NUMBER THREE HUNDRED THREE	
06/13/2005	00002164	BRIEF	60401 60501
06/14/2005	00002165	CONTINUED FROM PREVIOUS VOLUME NOTICE OF FILING AMENDED CERTIFICATE OF SERVICE	60502 60504
06/14/2005	00002166	RESPONSE TO: TO CPH'S INITIAL BRIEF SUPPORTING CPH'S MOTION FOR PREJUDGMENT INTEREST	60505 60518
06/14/2005	00002167	WITNESS LIST FOR POST TRIAL HEARING ON JUNE 20-21, 2005	60519 60523
06/14/2005	00002168	EXHIBIT LIST FOR POST-TRIAL HEARING ON JUNE 20-21, 2005	60524 60528
06/14/2005	00002169	OBJECTION TO DEFT'S WITNESS DISCLOSURE	60529 60532
06/14/2005	00002170	OBJECTION TO DEFT'S JUNE 20-21, 2005 HEARING EXHIBITS	60533 60537
06/15/2005	00002170	A MEMORANDUM IN OPPOSITION TO MORGAN STANLEY'S ALTERNATIVE M/FOR REDUCTION OF COMPENSATORY DAMAGES UNDER FS SECTIONS 46.015 & 768.041 - W/ATTACHMENTS	60538 60600

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06/15/2005	00002170 A	MEMORANDUM	60601 60741
06/15/2005	00002170 B	CONTINUED FROM PREVIOUS VOLUME RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S VERIFIED M/FOR ORDER ALLOWING INTERVIEW OF JURORS & NOTICE OF INTENT TO INTERVIEW JURORS - W/ATTACHMENTS	60742 60785
06/15/2005	00002170 C	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO DAVID ROSS	60786 60788
06/15/2005	00002170 D	RESPONSE TO: IN OPPOSITION TO MORGAN STANLEY'S M/FOR JUDGMENT IN ACCORDANCE W/MOTION FOR DIRECTED VERDICT & ALTERNATIVE M/FOR NEW TRIAL & MORGAN STANLEY'S M/FOR JUDGMENT IN ACCORDANCE W/MOTION FOR DIRECTED VERDICT IN PHASE II, OR IN THE ALTERNATIVE NEW TRIAL ON PUNITIVE DAMAGES OR FOR REMITTITUR OF PUNITIVE DAMAGES - W/ATTACHMENTS	60789 60800
VOLUME NUMBER THREE HUNDRED FIVE			
06/15/2005	00002170 D	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	60801 61000
VOLUME NUMBER THREE HUNDRED SIX			
06/15/2005	00002170 D	RESPONSE TO: CONTINUED FROM PREVIOUS VOLUME	61001 61159
06/15/2005	00002170 E	NOTICE OF FILING UNDER SEAL	61160 61161
06/15/2005	00002170 F	SEALED PER ORDER DTD 7/31/03	61162 61162

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06/16/2005	00002171	MOTION TO COMPEL (EMERGENCY) MORGAN STANLEY TO PRODUCE SUBPOENA SVD ON DELOITTE & TOUCHE ***UP 6/16/05***	61163 61167
06/16/2005	00002172	NOTICE OF FILING ADDITIONAL AUTHORITIES IN SUPPORT OF COLEMAN (PARENT) HOLDINGS INC'S OPPOSITION TO MORGAN STANLEY'S ALTERNATIVE M/FOR REDUCTION OF COMPENSATION DAMAGES UNDER FS SECTIONS 46.015 & 768.041 - W/ATTACHMENTS	61168 61181
06/16/2005	00002173	AGREED ORDER MORGAN STANLEY'S VERIFIED M/TO ADMIT MICHAEL KELLOGG, PRO HACE VICE IS GRANTED	61182 61183
06/16/2005	00002174	ORDER AND NOTICE OF HEARING. HEARING ON COLEMAN (PARENT) HOLDINGS INC'S EMERGENCY M/TO COMPEL MORGAN STANLEY TO PRODUCE SUBPOENA SERVED ON DELOITTE & TOUCHE IS SET FOR FOR 6/17/05 @ 8:45 AM	61184 61185
06/16/2005	00002175	NOTICE OF TAKING DEPOSITION (VIDEOTAPE) TO DR BLAINE F NYE	61186 61189
06/17/2005	00002176	WITNESS LIST (AMENDED) FOR POST-TRIAL HEARING ON JUNE 20-21, 2005 5	61190 61193
06/17/2005	00002177	NOTICE OF RETRACT, W/DRAWAL & CORRECTION OF CERTAIN STATEMENT IN THE OFFERS OF PROOF DECLARATION	61194 61197
06/17/2005	00002178	EXHIBIT LIST (AMENDED) FOR POST-TRIAL HEARING ON JUNE 20-21, 2005 5	61198 61200
		VOLUME NUMBER THREE HUNDRED SEVEN	
06/17/2005	00002178	EXHIBIT LIST CONTINUED FROM PREVIOUS VOLUME	61201 61201

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06/17/2005	00002179	ORDER COLEMAN (PARENT) HOLDINGS INC'S EMERGENCY M/TO COMPEL MORGAN STANLEY TO PRODUCE SUBPOENA SERVED ON DELOITTE & TOUCHE IS GRANTED - MS&CO SHALL PROVIDE CPH A COPY COPY OF THE SUBPOENA BY 12 NOON	61202 61203
06/20/2005	00002180	EXHIBIT LIST (SECOND AMENDED) FOR POST-TRIAL HEARING ON JUNE 20-21-2005	61204 61208
06/20/2005	00002181	EXHIBIT LIST (THIRD AMENDED) FOR POST TRIAL HEARING ON JUNE 20-21, 2005	61209 61214
06/21/2005	00002182	ORDER MORGAN STANLEY'S VERIFIED M/FOR ORDER ALLOWING INTERVIEW OF JURORS IS DENIED	61215 61215
06/22/2005	00002182 A	ORDER AND NOTICE OF HEARING ON MS&CO'S ORE TENUS M/TO STAY & ANY WRITTEN M/TO STAY EXECUTION FOR FINAL JUDGMENT IS SET FOR 6/23/05 @ 9:30 AM	61216 61217
06/22/2005	00002182 B	ORDER AND NOTICE OF HEARING. W/IN 25 DAYS OF ENTRY OF F/J EACH SIDE SHALL SERVE ITS PETITION FOR AWARD OF FEES & COSTS. A STATUS CONFERENCE IS SPECIALLY SET ON 8/26/05 6/05 @ 8:45 AM - SEE ORDER FOR DETAILS	61218 61220
06/23/2005	00002183	FINAL JUDGMENT PLTF SHALL RECOVER FROM DEF MORGAN STANLEY & CO INC A TOTAL OF COMPENSATORY DAMAGES OF \$727,696,175.83. PLTF SHALL RECVOER FROM DEF \$850,000,000 FOR PUNITIVE DAMAGES. THE COMBINED TOTAL JUDGMENT AGAINST THE DEF & EF & IN FAVOR OF THE PLTF IN THE AMT OF \$1,577,696,175.83 SHALL BEAR INTEREST AT THE RATE OF 7% F 7%	61221 61222
06/23/2005	00002184	ORDER MORGAN STANLEY'S M/FOR JUDGMENT IN ACCORDANCE W/MOTION FOR DIRECTED VERDICT & ALTERNATIVE M/FOR NEW TRIAL IS DENIED	61223 61224

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06/23/2005	00002185	ORDER MORGAN STANLEY'S M/FOR JUDGMENT IN ACCORDANCE WITH M/FOR DIRECTED VERDICT IN PHASE II OR IN THE ALTERNATIVE, NEW TRIAL ON PUNITIVE DAMAGES OR FOR REMITTITUR OF PUNITIVE DAMAGES IS DENIED	61225 61226
06/23/2005	00002186	MOTION FOR TEMP STAY OF EXECUTION PURSUANT TO FRCP 1.551(B))	61227 61231
06/23/2005	00002187	NOTICE OF FILING DECLARATION OF MARILYN NEEDLEMAN - ATTACHED	61232 61235
06/23/2005	00002188	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FILE THE FAX TRANSMISSIONS FROM ATTYS JACK SCAROLA ROLA & JOSEPH IANNO DTD 6/23/05	61236 61236
06/23/2005	00002189	CORRESPONDENCE (FAX) TO HONORABLE MAASS FROM JACK SCAROLA DTD 6/23/05` '/05`	61237 61239
06/23/2005	00002190	CORRESPONDENCE (FAX COPY) TO HONORABLE MAASS FROM JOSEPH IANNO JR DTD 6/23/05	61240 61243
06/23/2005	00002191	ORDER AND NOTICE OF HEARING. COUNSEL ARE INVITED TO REVIEW THE ATTACHED DRAFT F/J FOR MATHEMATICAL & FORM OBJECTIONS ONLY. A STATUS CONFERENCE SHALL BE HELD 6/23/05 @ 3:30 PM TO DISCUSS ANY OBJECTIONS RECEIVED D	61244 61247
06/24/2005	00002191 A	ORDER AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & ET & FILE ATTY JACK SCAROLA'S LETTER DTD 6/24/05	61248 61249
06/24/2005	00002191 B	CORRESPONDENCE TO HON ELIZABETH MAASS FROM JACK SCAROLA DTD 6/24/05 5	61250 61251
06/24/2005	00002191 C	ORDER	61252 61253

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		AND NOTICE OF HEARING. A STATUS CONFERENCE IS SET FOR 6/24/05 @ 2:30 PM	
06/27/2005	00002192	NOTICE OF APPEAL TO 4DCA ORDER RENDERED ON 6/23/05 W/COPY ATTACHED	61254 61262
06/27/2005	00002193	BOND (CIVIL SUPERSEDEAS) MORGAN STANLEY AS PRINCIPAL, AND NATIONAL UNION FIRE INS CO OF PITTSBURGH PA AS SURETY ARE HELD & FIRMLY BOUND UNTO COLEMAN (PARENT) HOLDINGS INC THE PRINCIPAL SUM OF \$1,798,573,640.45 - W/ATTACHMENT	61263 61266
06/28/2005	00002194	EXHIBIT LIST FROM HEARING ON 6/20 - 6/21/05; PLTF(S) & DEFT(S) EXHIBITS IN EVIDENCE DEPT	61267 61269
07/07/2005	00002196	DIRECTIONS TO CLERK	61270 61273
07/07/2005	00002197	DESIGNATION TO COURT REPORTER	61274 61281
07/07/2005	00002198	NOTICE OF FILING 2/20/04 HEARING TRANSCRIPT	61282 61339
07/07/2005	00002199	NOTICE OF FILING PROPOSED JURY INSTRUCTION	61340 61400
		VOLUME NUMBER THREE HUNDRED EIGHT	
07/07/2005	00002199	NOTICE OF FILING	61401 61449
		CONTINUED FROM PREVIOUS VOLUME	
07/07/2005	00002200	NOTICE OF FILING PROPOSED AMENDED PHASE II JURY INSTRUCTIONS	61450 61476
07/07/2005	00002201	NOTICE OF FILING 11/06/03, 12/16/03, 12/17/03, AND 1/04/05 HEARING TRANSCRIPTS	61477 61555
07/11/2005	00002202	ACKNOWLEDGMENT OF NEW CASE	61556 61558

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07/14/2005	00002203	NOTICE OF FILING TRANSCRIPTS	61559 61561
07/14/2005	00002204	TRANSCRIPT HEARING ON 9/29/03	61562 61570
07/14/2005	00002205	TRANSCRIPT HEARING ON 11/6/03	61571 61578
07/14/2005	00002206	TRANSCRIPT HEARING ON 11/25/03	61579 61600
VOLUME NUMBER THREE HUNDRED NINE			
07/14/2005	00002206	TRANSCRIPT	61601 61620
07/14/2005	00002207	CONTINUED FROM PREVIOUS VOLUME TRANSCRIPT HEARING 12/17/03	61621 61673
07/14/2005	00002208	TRANSCRIPT HEARING ON 1/8/04	61674 61687
07/14/2005	00002209	TRANSCRIPT HEARING ON 2/19/05	61688 61712
07/14/2005	00002210	TRANSCRIPT HEARING ON 2/20/04	61713 61768
07/14/2005	00002211	TRANSCRIPT HEARING ON 3/3/04	61769 61782
07/14/2005	00002212	TRANSCRIPT HEARING ON 4/22/04	61783 61795
07/14/2005	00002213	TRANSCRIPT HEARING ON 4/30/04	61796 61800

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07/14/2005	00002213	TRANSCRIPT	61801 61943
		CONTINUED FROM PREVIOUS VOLUME	
07/14/2005	00002214	TRANSCRIPT HEARING ON 5/28/04	61944 61976
07/14/2005	00002215	TRANSCRIPT HEARING ON 6/7/04	61977 62000
VOLUME NUMBER THREE HUNDRED ELEVEN			
07/14/2005	00002215	TRANSCRIPT	62001 62026
		CONTINUED FROM PREVIOUS VOLUME	
07/14/2005	00002216	TRANSCRIPT HEARING ON 7/14/04	62027 62101
07/14/2005	00002217	TRANSCRIPT HEARING ON 7/23/04	62102 62128
07/14/2005	00002218	TRANSCRIPT HEARING ON 8/13/04	62129 62176
07/14/2005	00002219	TRANSCRIPT HEARING ON 9/15/04	62177 62177
07/14/2005	00002220	TRANSCRIPT HEARING ON 9/23/04	62178 62200
VOLUME NUMBER THREE HUNDRED TWELVE			
07/14/2005	00002220	TRANSCRIPT	62201 62250
		CONTINUED FROM PREVIOUS VOLUME	

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07/14/2005	00002221	TRANSCRIPT HEARING ON 11/5/04	62251 62353
07/14/2005	00002222	TRANSCRIPT HEARING ON 12/15/04	62354 62381
07/14/2005	00002223	TRANSCRIPT HEARING ON 1/4/05	62382 62397
07/14/2005	00002224	TRANSCRIPT HEARING ON 1/11/05	62398 62400
VOLUME NUMBER THREE HUNDRED THIRTEEN			
07/14/2005	00002224	TRANSCRIPT	62401 62414
		CONTINUED FROM PREVIOUS VOLUME	
07/14/2005	00002225	TRANSCRIPT HEARING ON 1/12/05	62415 62435
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07/20/2005	00002327	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/19/05 -VOLUME LUME 76	9146	9232
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07/20/2005	00002328	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/19/05 -VOLUME LUME 77	9233	9387
<u>VOLUME FOUR HUNDRED-THREE</u>				
07/20/2005	00002329	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/20/05 -VOLUME LUME 78	9389	9522

Report: CZRAPRE
User: MCASTILL
Instance: JISPROD

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	Text/Notes		Range	Range
<u>VOLUME FOUR HUNDRED-FOUR</u>				
07/20/2005	00002330	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/20/05 LUME 79	9524	9702
<u>VOLUME FOUR HUNDRED-FIVE</u>				
07/20/2005	00002331	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/21/05 LUME 80	9703	9834
<u>VOLUME FOUR HUNDRED-SIX</u>				
07/20/2005	00002332	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/21/05 LUME 81	9836	10012
<u>VOLUME FOUR HUNDRED-SEVEN</u>				
07/20/2005	00002333	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/22/05 LUME 82	10013	10171
<u>VOLUME FOUR HUNDRED-EIGHT</u>				
07/20/2005	00002334	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/22/05 LUME 83	10172	10330
<u>VOLUME FOUR HUNDRED-NINE</u>				
07/20/2005	00002335	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/22/05 LUME 84	10332	10438
<u>VOLUME FOUR HUNDRED-TEN</u>				
07/20/2005	00002336	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/22/05 LUME 85	10439	10604
<u>VOLUME FOUR HUNDRED-ELEVEN</u>				
07/20/2005	00002337	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/26/05 LUME 86	10606	10717

Report: CZRAPRE
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<u>VOLUME FOUR HUNDRED-TWELVE</u>			
07/20/2005	00002338	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/26/05 -VOLUME LUME 87	10718 10813
<u>VOLUME FOUR HUNDRED-THIRTEEN</u>			
07/20/2005	00002339	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/27/05 -VOLUME LUME 88	10815 10922
<u>VOLUME FOUR HUNDRED-FOURTEEN</u>			
07/20/2005	00002340	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/27/05 -VOLUME LUME 89	10932 11087
<u>VOLUME FOUR HUNDRED-FIFTEEN</u>			
07/20/2005	00002341	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/28/05 -VOLUME LUME 90	11089 11254
<u>VOLUME FOUR HUNDRED-SIXTEEN</u>			
07/20/2005	00002342	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/28/05 -VOLUME LUME 91	11255 11438
<u>VOLUME FOUR HUNDRED-SEVENTEEN</u>			
07/20/2005	00002343	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/29/05 -VOLUME LUME 92	11440 11532
<u>VOLUME FOUR HUNDRED-EIGHTEEN</u>			
07/20/2005	00002344	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/29/05 -VOLUME LUME 93	11533 11670

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<u>VOLUME FOUR HUNDRED-NINETEEN</u>			
07/20/2005	00002345	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/2/05 -VOLUME 94	11672 11828
<u>VOLUME FOUR HUNDRED-TWENTY</u>			
07/20/2005	00002346	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/2/05 -VOLUME 95	11830 11947
<u>VOLUME FOUR HUNDRED-TWENTY-ONE</u>			
07/20/2005	00002347	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/2/05 -VOLUME 96	11948 12083
<u>VOLUME FOUR HUNDRED-TWENTY-TWO</u>			
07/20/2005	00002348	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/3/05 -VOLUME 97	12085 12211
<u>VOLUME FOUR HUNDRED-TWENTY-THREE</u>			
07/20/2005	00002349	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/3/05 -VOLUME 98	12213 12346
<u>VOLUME FOUR HUNDRED-TWENTY-FOUR</u>			
07/20/2005	00002350	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/4/05 -VOLUME 99	12348 12482
<u>VOLUME FOUR HUNDRED-TWENTY-FIVE</u>			
07/20/2005	00002351	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/4/05 -VOLUME 100	12484 12625

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VOLUME FOUR HUNDRED-TWENTY-SIX

07/20/2005	00002352	TRANSCRIPT	12627	12753
		TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/5/05 -VOLUME		
		101		

VOLUME FOUR HUNDRED-TWENTY-SEVEN

07/20/2005	00002353	TRANSCRIPT	12755	12913
		TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/5/05 -VOLUME		
		102		

VOLUME FOUR HUNDRED-TWENTY-EIGHT

07/20/2005	00002354	TRANSCRIPT	12915	13090
		TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/6/05 -VOLUME		
		103		

VOLUME FOUR HUNDRED-TWENTY-NINE

07/20/2005	00002355	TRANSCRIPT	13092	13210
		TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/9/05 -VOLUME		
		104		

VOLUME FOUR HUNDRED-THIRTY

07/20/2005	00002356	TRANSCRIPT	13211	13353
		TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/9/05 -VOLUME		
		105		

VOLUME FOUR HUNDRED-THIRTY-ONE

07/20/2005	00002357	TRANSCRIPT	13356	13488
		TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/9/05 -VOLUME		
		106		

VOLUME FOUR HUNDRED-THIRTY-TWO

07/20/2005	00002358	TRANSCRIPT	13490	13606
		TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/10/05 -VOLUME		
		LUME 107		

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User: MCASTILL
Instance: JISPROD

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<u>VOLUME FOUR HUNDRED-THIRTY-THREE</u>			
07/20/2005	00002359	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/10/05 -VOLUME LUME 108	13607 13758
<u>VOLUME FOUR HUNDRED-THIRTY-FOUR</u>			
07/20/2005	00002360	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/11/05 -VOLUME LUME 109	13760 13886
<u>VOLUME FOUR HUNDRED-THIRTY-FIVE</u>			
07/20/2005	00002361	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/11/05 -VOLUME LUME 110	13886 14037
<u>VOLUME FOUR HUNDRED-THIRTY-SIX</u>			
07/20/2005	00002362	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/11/05 -VOLUME LUME 111	14039 14213
<u>VOLUME FOUR HUNDRED-THIRTY-SEVEN</u>			
07/20/2005	00002363	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/12/05 -VOLUME LUME 112	14215 14390
<u>VOLUME FOUR HUNDRED-THIRTY-EIGHT</u>			
07/20/2005	00002364	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/12/05 -VOLUME LUME 113	14391 14586
<u>VOLUME FOUR HUNDRED-THIRTY-NINE</u>			
07/20/2005	00002365	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/13/05 -VOLUME LUME 114	14588 14686

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<u>VOLUME FOUR HUNDRED FORTY</u>				
07/20/2005	00002366	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/13/05 -VOLUME LUME 115	14687	14860
<u>VOLUME FOUR HUNDRED FORTY-ONE</u>				
07/20/2005	00002367	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/16/05 -VOLUME LUME 116	14862	14980
<u>VOLUME FOUR HUNDRED-FORTY-TWO</u>				
07/20/2005	00002368	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/16/05 -VOLUME LUME 117	14982	15132
<u>VOLUME FOUR HUNDRED-FORTY-THREE</u>				
07/20/2005	00002369	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/16/05 -VOLUME LUME 118	15133	15267
<u>VOLUME FOUR HUNDRED-FORTY-FOUR</u>				
07/20/2005	00002370	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/17/05 -VOLUME LUME 119	15269	15434
<u>VOLUME FOUR HUNDRED-FORTY-FIVE</u>				
07/20/2005	00002371	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/17/05 -VOLUME LUME 120	15436	15573
<u>VOLUME FOUR HUNDRED-FORTY-SIX</u>				
07/20/2005	00002372	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/18/05 -VOLUME LUME 121	15575	15739
<u>VOLUME FOUR HUNDRED-FORTY-SEVEN</u>				
07/20/2005	00002373	TRANSCRIPT TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/18/05 -VOLUME LUME 122	15741	15773

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VOLUME FOUR HUNDRED-FORTY-EIGHT

07/20/2005	00002374	TRANSCRIPT	15775	15896
		TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 6/20/05 -VOLUME		
		LUME 123		

VOLUME FOUR HUNDRED-FORTY-NINE

07/20/2005	00002375	TRANSCRIPT	15897	16123
		TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 6/20/05 -VOLUME		
		LUME 124		

VOLUME FOUR HUNDRED-FIFTY

07/20/2005	00002376	TRANSCRIPT	16125	16265
		TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 6/21/05 -VOLUME		
		LUME 125		

VOLUME FOUR HUNDRED-FORTY-ONE

07/20/2005	00002377	TRANSCRIPT	16266	16418
		TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 6/21/05 -VOLUME		
		LUME 126		

VOLUME FOUR HUNDRED-FIFTY-TWO

07/20/2005	00002378	TRANSCRIPT	16421	16432
		TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 6/23/05 -VOLUME		
		LUME 127		

VOLUME FOUR HUNDRED FIFTY-THREE

07/20/2005	00002379	TRANSCRIPT	16434	16442
		TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 6/23/05 -VOLUME		
		LUME 128		

CERTIFICATE OF CLERK

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

I, SHARON R. BOCK, Clerk of Circuit Court for the County of Palm Beach, State of Florida, do hereby certify that the foregoing pages 1 to 64036, inclusive, consists of original papers and proceedings in Civil Action Case Number: 502003CA005045XXOCAI/4D05-2606

COLEMAN(PARENT) HOLDINGS INC. VS MORGAN STANLEY & CO INCORPORATED

as appears from the records and files of my office which have been directed to be included in said Record, pursuant to Florida Rules of Appellate Procedure, 9.200(a)(1).

IN WITNESS WHEREOF,
I have hereunto set my hand and affixed the Seal of said Court

this 3 day of AUGUST, 2005 A.D.

SHARON R. BOCK, Clerk of Circuit Court
Palm Beach County, Florida

By: Sharon R Bock
Deputy Clerk



Report : CZREZDK
Instance : JISPROD

CLERK OF THE CIRCUIT COURT
PALM BEACH COUNTY
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Time : 4:19:04PM

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Case ID : 2003CA005045 - COLEMAN PARENT HOLDINGS INC V MORGAN STANLEY & CO UCN : 502003CA005045XXOCAI

Case Filed : 08-May-2003 Status : RO - REOPEN

Case Type	Court	Location	Division	Jury
OC - OTHER CIRCUIT	CA	MB	AI	J

Type	Party Name	Represented by
JUDGE	MAASS, JUDGE ELIZABETH T.	
PLAINTIFF	COLEMAN PARENT HOLDINGS INC	SCAROLA, JOHN
APPELLANT	MORGAN STANLEY & COMPANY INC	WARNER, THOMAS E. IANNO, JR, JOSEPH WARNER, THOMAS E.
DEFENDANT	MORGAN STANLEY & COMPANY INC	IANNO, JR, JOSEPH
APPELLANT	CLARE, THOMAS A.	HILL III, BENJAMIN H.

Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
08-May-2003			ADDITIONAL COMMENTS	00000	(SUPERSEDEAS BOND FILED @ DE #2193) ** CLERK TO DOCKET AND FILE ALL LEGAL MEMORANDUM FILED IN THIS CASE. SEE DOCKET ENTRY 166 ***** CASE CONSOLIDATED W/2003CA005165 AI FOR DISCOVERY & TRIAL - ALL PLEADINGS TO BE FILED IN 2003CA005045 AI ***** (SEE DOCKET # 629 AS TO ORDER DIRECTING THE CLERK TO UNSEAL & PLACE IN COURT FILE DOCKET # 562-565, INCLUSIVE)**** *****CASE ON APPEAL BE CAREFUL WHEN DOCKETING***** INDEX 8/5/05 SHIP 10/14/05 (2ND APPEAL) INDEX/PREP 8/31/05 SHIP 11/9/05		

08-May-2003 CAFF 800FF

Report : CZREZDK
Instance : JISPROD

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Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
08-May-2003			PENDING	PE			
08-May-2003			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$206.00 was made on receipt CAMB9034.		

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Case ID : 2003CA005045 - COLEMAN PARENT HOLDINGS INC V MORGAN
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Case Filed : 08-May-2003 Status : RO - REOPEN

Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
08-May-2003			ADDITIONAL COMMENTS	00000	JUROR QUESTIONNAIRES & PRE-TRIAL EXHIBITS PLTF #1 & DEFT #2 ARE IN MARKED BOX IN EVIDENCE RM (JD) 02/23/05.		

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UCN : 502003CA005045XXOCAI

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Instance : JISPROD

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Case Filed : 08-May-2003 Status : RO - REOPEN

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					JUROR QUESTIONNAIRES & PLTF'S EXHIBIT #1 AND DEFT'S EXHIBIT #2 IN MARKED BOX IN EVIDENCE RM - (JD) 02/23/05.		
08-May-2003			ADDITIONAL COMMENTS	00000	JURY TRIAL; JURY SELECTED & SWORN 4/4/05 (JH)		
08-May-2003	1	30	COMPLAINT	CMP			
08-May-2003	2	1	CIVIL COVER SHEET	CCS			
08-May-2003	3		SUMMONS ISSUED	SMIS	R/A CT CORPORATION SYSYSTEMS - COUNTER SM-03-010899		
08-May-2003	Atch - 3 -		SERVICE RETURN (ATTACHED)	SRTN	SERVED 5/12/03 RETD 5/30/03		
09-May-2003	4		REQUEST	REQ	BY PLTF'S FIRST, FOR PRODUCTION OF DOUCMENTS TO DEFT		

Report : CZREZDK
Instance : JISPROD

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Case ID : 2003CA005045 - COLEMAN PARENT HOLDINGS INC V MORGAN
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Case Filed : 08-May-2003 Status : RO - REOPEN

Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
09-May-2003	5		NOTICE OF TAKING DEPOSITION	NOTD	TO JOHN TYREE; ROBERT KITTS; ALEXANDRE FUCHS; LAWRENCE BORNSTEIN; MARK BROCKELMAN; DENNIS PASTRANA; RICHARD GOUDIS; DAVID FANNIN; ALBERT DUNLAP AND DEBORAH MACDONALD		
23-May-2003	6		MOTION	MOT	BY DEFT, FOR ENLARGEMENT OF TIME TO RESPOND TO COMPLAINT AND ESTABLISH BRIEFING SCHEDULE		
23-May-2003	7		NOTICE OF HEARING	NOH	6/2/03 AT 8:45 AM. ON DEFT'S MOTION FOR ELARGEMETN OF TIME TO RESOND TO CMLAINT AND ESTABLISH BRIEFING SCHEDULE		
29-May-2003	8		NOTICE	NOT	(COLEMAN (PARENT) HOLDINGS, INC.'S OPPOSITION TO MORGAN STANLEY'S REQUEST FOR A SEPARATE BRIEFING SCHEDULE ON THE ISSUE OF CHOICE OF LAW)		
02-Jun-2003	9		ORDER	ORD	ON DFT'S MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO COMPLAINT AND ESTABLISH BRIEFING SCHEDULE IS DENIED. SEE ORDER.		
23-Jun-2003	10		ANSWER	ANS	BY DEFT MORGAN STANLEY & CO., INCORPORATED., TO THE COMPLAINT W/AFFIRMATIVE DEFENSES W/ATTACHED EXHIBITS THERETO		
25-Jun-2003	11		MOTION	MOT	BY DEFT MORGAN STANLEY & CO. , INCORPORATED, TO STAY DISCOVERY - EXHIBITS ATTACHED		
25-Jun-2003	12		MOTION TO DISMISS	MDIS	BY DEFT, PURSUANT TO FL RULE OF CIVIL PROCEDURE RULE 1.061 OR, IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS		
26-Jun-2003	13		OBJECTION	OBJ	BY MORGAN STANLEY & CO., INC., TO COLEMAN (PARENT) HOLDINGS, INC. FIRST REQUEST FOR PRODUCTION OF DOCUMENTS		

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Instance : JISPROD

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Case ID : 2003CA005045 - COLEMAN PARENT HOLDINGS INC V MORGAN STANLEY & CO UCN : 502003CA005045XXOCAI

Case Filed : 08-May-2003 Status : RO - REOPEN

Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
01-Jul-2003	14		NOTICE OF HEARING	NOH	7/8/03 AT 8:45 AM. ON DEFT'S MOTION TO STAY DISCOVERY		
08-Jul-2003	15		SUBPOENA RETURNED / SERVED	SRSV	7/3/03 TO R/C BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOC.		
08-Jul-2003	16		SUBPOENA RETURNED / SERVED	SRSV	7/3/03 TO R/C WACHOVIA BANK, N.A.		
08-Jul-2003	17		RE-NOTICE OF HEARING	RNOH	7/10/03 AT 8:45 AM. ON DEFT'S MOTION TO STAY DISCOVERY		
10-Jul-2003	18		ORDER	ORD	THAT DEFT'S MOTION TO STAY DISCOVERY IS DENIED.		
11-Jul-2003	19		OBJECTION	OBJ	BY DEFT, TO SUBPOENAS DIRECTED TO BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOC, AND WACHOVIA BANK, N.A.		
14-Jul-2003	20		REQUEST	REQ	BY PLTF CPH'S SECOND, FOR PRODUCTION OF DOCUMENTS		
14-Jul-2003	21		REPLY/RESPONSE	RPRS	BY PLTF, TO ANSWER AND AFFIRMATIVE DEFENSES OF MORGAN STANLEY & CO., INC.		
17-Jul-2003	22		MOTION	MOT	TO EXTEND DEADLINE FOR SUBMISSION OF MEMORANDUM		
18-Jul-2003	23		NOTICE OF TAKING DEPOSITION	NOTD	TO MORGAN STANLEY & CO., INC.		
23-Jul-2003	24		NOTICE OF TAKING DEPOSITION	NOTD	TO MORGAN STANLEY & CO., INC.		
28-Jul-2003	25		MOTION	MOT	BY DEFT'S VERIFIED, TO ADMIT BRETT MCGURK PRO HAC VICE - PROPOSED ORDER ATTACHED THERETO - UP ON 7/30/03		
28-Jul-2003	26		MOTION	MOT	BY DEFT'S VERIFIED, TO ADMIT LARISSA PAULE CARRES PRO HAC VICE - PROPOSED ORDER ATTACHED THERETO - UP ON 7/30/03		

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Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
28-Jul-2003	27		MOTION	MOT	BY DEFT'S VERIFIED, TO ADMIT THOMAS D. YANNUCCI, PRO HAC VICE, W/PROPOSED ORDER ATTACHED THERETO - UP ON 7/30/03		
28-Jul-2003	28		MOTION	MOT	BY DEFT'S VERIFIED, TO ADMIT THOMAS A. CLARE, PRO HAC VICE -W/PROPOSED ORDER ATTACHED - UP 7/30/03		
29-Jul-2003	29		NOTICE OF TAKING DEPOSITION	NOTD	TO R/C EACHOVIA BANK, N.A.		
29-Jul-2003	30		MOTION	MOT	CY PLTF, TO PERMIT FOREIGN ATTYS TO APPEAR		
29-Jul-2003	31		NOTICE OF HEARING	NOH	8/11/03 AT 8:45 AM. ON PLTF COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO PERMIT FOREIGN ATTYS TO APPEAR		
29-Jul-2003	32		NOTICE OF TAKING DEPOSITION	NOTD	TO R/C BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOC. .		
30-Jul-2003	33		REQUEST	REQ	BY DEFT'S FIRST, FOR PRODUCTION OF DOCUMENTS TO PLTF		
30-Jul-2003	34		NOTICE OF FILING INTERROGS	NOFI	BY MORGAN STANLEY & CO., INCORPORATED'S FIRST TO PLTF		
30-Jul-2003	35		OBJECTION	OBJ	BY DEFT'S SUPPLEMENTAL, TO PLTF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS		
31-Jul-2003	36		ORDER	ORD	STIPULATED CONFIDENTIALITY ORDER LITIGATION MATERIALS DESIGNATED "CONFIDENTIAL" THAT ARE FILED WITH COURT SHALL BE FILED UNDER SEAL IN A SEPARATE SEALED ENVELOPE CONSPICUOUSLY MARKED "FILED UNDER SEAL" .		
01-Aug-2003	37		ORDER	ORD	GRANTING VERIFIED MOTION TO ADMIT THOMAS A CLARE HAC VICE		

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01-Aug-2003	38		ORDER	ORD	GRANTING VERIFIED MOTION TO ADMIT LARISSA PAULE-CARRES PRO HAC VICE		
01-Aug-2003	39		ORDER	ORD	GRANTING VERIFIED MOTION TO ADMIT THOMAS D YANNUCCI PRO HAC VICE		
01-Aug-2003	40		ORDER	ORD	GRANTING VERIFIED MOTION TO ADMIT BRETT H MCGURK PRO HAC VICE		
05-Aug-2003	41		SUBPOENA RETURNED / SERVED	SRSV	R/C OF BANK OF AMERICA		
05-Aug-2003	42		SUBPOENA RETURNED / SERVED	SRSV	R/C WACHOVIA BANK		
08-Aug-2003	43	2	REQUEST	REQ	DFT FOR COPIES		
13-Aug-2003	43 - A		NOTICE	NOT	OF SUBPOENA TO RC/ANDERSEN WORLDWIDE SOCIETE COOPERATIVE C/O GERALD F. RICHMAN, ESQ., NO RETURN OF SERVICE ATTCHD		
15-Aug-2003	44		OBJECTION	OBJ	BY MORGAN STANLEY & CO. INCORPORATED'S, TO COLEMAN (PARENT) HOLDINGS, INC. SECOND REQUEST FOR PRODUCTION OF DOCUMENTS		
15-Aug-2003	45		OBJECTION	OBJ	BY MORGAN STANLEY & CO. INCORPORATED'S SECOND SUPPLEMENTAL, TO COLEMAN (PARENT) HOLDINGS, INC. FIRST REQUEST FOR PRODUCTION OF DOCUMENTS		
18-Aug-2003	46		MOTION	MOT	VERIFIED-, BY DEFT, TO ADMIT RYAN P. PHAIR, PRO HAC VICE		
18-Aug-2003	47		MOTION	MOT	VERIFIED-, BY DEFT, TO ADMIT KATHRYN R. DEBORD PRO HAC VICE		
18-Aug-2003	48		MOTION	MOT	VERIFIED-, BY DEFT, TO ADMIT ZHONETTE BROWN, PRO HAC VICE		

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18-Aug-2003	49		RESPONSE TO:	RESP	BY CPH, TO MORGAN STANLEY & CO. INCORPORATED'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS		
18-Aug-2003	50		NOTICE OF FILING	NOF	BY NON PARTY BANK OF AMERICA'S, RESPONSE AND OBJECTIONS TO SUBPOENAS - EXHIBITS A		
19-Aug-2003	51		REQUEST FOR ADMISSIONS	RQAD	BY MORGAN STANLEY & CO. INCORPORATED		
20-Aug-2003	52		ORDER	ORD	THAT DEFT MORGAN STANLEY & CO., INC.'S VERIFIED MOTION TO ADMIT KATHRYN R. DEBORD PRO HAC VICE IS GRANTED. MS. DEBORD MAY PRACTICE BFORE THE COURT IN THIS ACTION.		
20-Aug-2003	53		ORDER	ORD	THAT DEFT'S VERIFIED MOTION TO ADMIT ZHONETTE BROWN, PRO HAC VICE IS DENIED, W/O PREJUDICE TO COUNSEL'S FILING A RENEWED MOTION TO ADMIT ZHONETTE BROWN, PRO HAC VICE, CONTAINING THE INFORMATION REQUIRED BY RULE 2.061 B, FLA.R.JUD. ADMIN		
20-Aug-2003	54		ORDER	ORD	THAT DEFT'S VERIFIED MOTION TO ADMIT RYAN P. PHAIR, PRO HAC VICE IS DENIED, W/O PREJUDICE TO COUNSEL'S FILING A RENEWED MOTION TO ADMIT RYAN P. PHAIR, PRO HAC VICE, CONTAINING THE INFORMATION REQUIRED BY RULE 2.061B, FLA. R. JUD. ADMIN.		
22-Aug-2003	55		MOTION	MOT	BY NON PARTY WACHOVIA BANK, N.A., FOR EXTENSION OF TIME - EXHIBITS ATTACHED		
25-Aug-2003	56		NOTICE OF TAKING DEPOSITION	NOTD	TO MARGAN STANLEY & CO., INC.		
02-Sep-2003	57		NOTICE OF FILING INTERROGS	NOFI	BY PLTF TO DEFT MORGAN STANLEY & CO., INC.		

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02-Sep-2003	58		AGREED ORDER	AGOR	(REGARDING ENLARGEMENT OF TIME TO PREPARE PRIVILEGE LOG) UPON REVIEW OF THE DOCUMENT REQUESTS SERVED BY THE PARTIES IN THIS ACTION, CERTAIN DOCUMENTS MAY BE WITHIN THE SCOPE OF THE REQUEST THAT ARE PROTECTED BY THE ATTY CLIENT OR WORK PRODUCT PRIVILEGES		
04-Sep-2003	59		SEALED	SEAL	PER ORDER DTD, 7/31/03		
08-Sep-2003	60		MOTION	MOT	BY PLTF COLEMAN (PARENT) HOLDINGS INC., TO PERMIT FOREIGN ATTY TO APPEAR		
11-Sep-2003	61		MOTION	MOT	TO APPOINT COMMISSION, AS TO MICHAEL I. ALLEN		
15-Sep-2003	62		MOTION	MOT	BY DEFT, TO SET HEARING ON DEFT'S MOTION TO DISMISS		
15-Sep-2003	63		NOTICE OF HEARING	NOH	9/29/03 AT 8:45 AM ON DEFT'S MOTION TO SET HEARING ON DEFT'S MOTION TO DISMISS		
16-Sep-2003	64		ORDER	ORD	ON APPOINTMENT OF COMMISSION. CC TO ATTY 9/18/03		
16-Sep-2003	65		ORDER	ORD	AND DIRECTIONS TO THE CLERK TO DOCKET AND FILE ATTY JACK SCAROLA'S LETTER DATED 9/10/03		
16-Sep-2003	66		LETTER	LTR	TO JUDGE MAASS FROM JACK SCAROLA DTD. 9/10/03		
17-Sep-2003	67		LETTER	LTR	TO MR. SCAROLA FROM JUDGE MAASS DTD. 9/17/03		
18-Sep-2003	68		MOTION	MOT	VERIFIED- BY DEFT, TO ADMIT RYAN P. PHAIR, PRO HAC VICE- PROPOSED ORDER ATTACHED THERETO		

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18-Sep-2003	69		MOTION	MOT	VERIFIED, BY DEFT, TO ADMIT ZHONETTE BROWN, PRO HAC VICE - PROPOSED ORDER ATTACHED THERETO		
19-Sep-2003	70		ORDER	ORD	GRANTING VERIFIED MOTION TO ADMIT ZHONETTE BROWN PRO HAC VICE		
19-Sep-2003	71		MOTION TO COMPEL	MCMP	PRODUCTION		
19-Sep-2003	72		ORDER	ORD	GRANTING VERIFIED MOTION TO ADMIT RYAN P PHAIR PRO HAC VICE		
22-Sep-2003	73		REQUEST	REQ	BY PLTF, FOR ADMISSION		
22-Sep-2003	74		NOTICE OF TAKING DEPOSITION	NOTD	TO VANCE F. KISTLER; KEVIN C. KRAYER AND URBAN KANTOLA		
23-Sep-2003	75		NOTICE OF HEARING	NOH	9/29/03 AT 8:45 AM ON MOTION TO COMPEL PRODUCTION		
23-Sep-2003	75 - A		SEALED	SEAL	PER ORDER DTD 7/31/03		
24-Sep-2003	76		LETTER	LTR	TO MR. SCAROLA FROM JUDGE MAASS DTD. 9/17/03		
25-Sep-2003	77		RESPONSE TO:	RESP	BY CPH'S, MORGAN STANLEY & CO INCORPROATED'S FIRST SET OF REQUESTS FOR ADMISSION		
25-Sep-2003	78		RESPONSE TO:	RESP	BY NON PARTY BANK OF AMERICA, N.A., MOTION TO COMPEL PRODUCTION- W/ATTACHMENTS ATTACHED		
25-Sep-2003	79		MOTION	MOT	BY NON PARTY BANK OF AMERICA, N.A., OF NON PARTY TO APPEAR THROUGH USE OF COMMUNICATION EQUIPMENT		

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26-Sep-2003	80		ORDER	ORD	THAT NON PARTY BANK OF AMERICA, N.A.'S MOTION TO APPEAR THROUGH USE OF COMMUNICATION EQUIPMENT IS GRANTED. MAY APPEAR BY SPEAKER TELEPHONE AT HEARING SET 9/29/03		
26-Sep-2003	81		NOTICE OF TAKING DEPOSITION	NOTD	TO R/C PRICEWATERHOUSECOOPERS LLP		
26-Sep-2003	82		RE-NOTICE OF HEARING	RNOH	10/2/03 AT 8:45 AM ON MOTION TO COMPEL PRODUCTION		
30-Sep-2003	83		MOTION	MOT	AMENDED- BY NON PARTY BANK OF AMERICA, N.A., TO APPEAR THROUGH USE OF COMMUNICATION EQUIPMENT		
30-Sep-2003	84		ORDER SETTING HEARING	ORSH	12/5/03 AT 8 AM. ON DEFT'S MOTION TO DISMISS		
30-Sep-2003	85		ORDER	ORD	THAT DEFT'S MOTION TO SET HEARING ON DEFT'S MOTION TO DISMISS IS GRANTED. SEE ORDER FOR FURTHER DETAILS		
30-Sep-2003	86		ORDER	ORD	THAT DEFT'S MOTION FOR REHEARING IS DENIED. HEARING ON DEFT'S MOTION TO DISMISS REMAINS SET 12/5/03 AT 8 AM. .		
30-Sep-2003	87		ORDER	ORD	AND DIRECTIONS TO THE CLERK TO DOCKET AND FILE ATTY JOSEPH IANNO'S LETTER DATED 9/29/03		
30-Sep-2003	88		LETTER	LTR	TO JUDGE MAASS FROM JOSEPH IANNO, JR. DTD. 9/29/03		
01-Oct-2003	89		ORDER	ORD	THAT NON PARTY BANK OF AMERICA, N.A.'S AMENDED MOTION TO APPEAR THROUGH USE OF COMMUNICATION EQUIPMENT IS GRANTED. NON PARTY MAY APPEAR BY SPEAKER TELEPHONE AT HEARING ON 10/1/03 UPON PRIOR ARRANGEMENT IWTH COURT'S JUDICIAL ASSISTANT		

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01-Oct-2003	90		ORDER	ORD	THAT THE CLERK IS DIRECTED TO DOCKET AND FILE ATTY JACK SCAROLA'S LETTER DATED 9/29/03		
01-Oct-2003	91		LETTER	LTR	TO JUDGE MAASS FROM JACK SCAROLA DTD. 9/29/03		
02-Oct-2003	92		MOTION	MOT	TO PERMIT FOREIGN ATTY TO APPEAR		
03-Oct-2003	93		SUBPOENA RETURNED / SERVED	SRSV	10/1/03 TO R/C PRICEWATERHOUSECOOPERS LLP		
03-Oct-2003	94		NOTICE OF TAKING DEPOSITION	NOTD	TO ANDREW SAVARIE; VANCE KISTLER; DONALD DENKHAUS; KEVIN KRAYER; TYRONE CHANGE; SCOTT YALES; WILLIAM STRONG; URBAN KANTOLA; WILLIAM PRUITT; LEE GRIFFITH; DEBORAH MACDONALD; R. BRAM SMITH; DEIDRA DEN DANTO		
03-Oct-2003	95		SEALED	SEAL	PER ORDER 7/31/03		
03-Oct-2003	96		NOTICE OF HEARING	NOH	10/9/03 AT 8:45 AM. ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL PRODUCTION OF DEPOSITION WITNESS (FILED UNDER SEAL)		
07-Oct-2003	97		AGREED ORDER	AGOR	THAT JEROLD S. SOLOVY, RONALD L. MARMER, ROBERT T. MARKOWSKI, MICHAEL T. BRODY, JEFFREY T. SHAW, DEIRDRE E. CONNELL, EIZABETH A. COLEMAN, DENISE K. BOWLER, JOHN W. JOYCE, CHRISTOPER M. O'CONNOR, STEPHEN P. BAKER, AND DANIEL E. SHAW ARE ADMITTED PRO HAC VICE IN THE MATTER ON BEHALF OF DEFTS		
07-Oct-2003	98		ORDER SETTING HEARING	ORSH	(RESETING) ON DEFT'S MOTION TO DISMISS SET 12/50/3 IS CANCELED AND RESET ON 12/12/03 AT 8:30 AM.		

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07-Oct-2003	99		SUBPOENA RETURNED / NOT SERVED	SRNS	TO KEVIN C. KRAYER		
07-Oct-2003	100		SUBPOENA RETURNED / SERVED	SRSV	10/2/03 TO URBAN KANTOLA		
07-Oct-2003	101		MOTION FOR PROTECTIVE ORDER	MFPO	BY DEFT, SANCTIONS AND IMPOSITION OF A COST BOND		
07-Oct-2003	102		NOTICE OF HEARING	NOH	10/16/03 AT 8:45 AM ON DEFT'S MOTION FOR PROTECTIVE RORDER, SANCTIONS AND IMPOSITION OF A COST BOND		
08-Oct-2003	103		RE-NOTICE OF HEARING	RNOH	10/16/03 AT 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL PRODUCTION OF DEPOSITION WITNESS (FILED UNDER SEAL)		
09-Oct-2003	104		SUBPOENA RETURNED / NOT SERVED	SRNS	TO VANCE F. KISTLER		
14-Oct-2003	105		MOTION	MOT	BY PLTF, TO APPOINT COMMISSIONS		
14-Oct-2003	106		NOTICE OF HEARING	NOH	10/16/03 AT 8:45 AM. ON PLTF'S MOTION TO APPOINT COMMISSIONS		
14-Oct-2003	107		NOTICE OF FILING	NOF	BY DEFT, ITS CONFIDENTIAL OPPOSITION TO COLEMAN HOLDINGS, INC.'S MOTION TO COMPEL PRODUCTION OF DEPO WITNESS, UNDER SEAL WITH THE CLERK OF HTE COURT		
14-Oct-2003	108		SEALED	SEAL	PER ORDER DTD. 7/31/03		
14-Oct-2003	109		SEALED	SEAL	PER ORDER 7/31/03		
16-Oct-2003	110		SUBPOENA RETURNED / SERVED	SRSV	10/9/03 TO DONALD DENKHAUS		
16-Oct-2003	111		SUBPOENA RETURNED / SERVED	SRSV	10/8/03 TO KEVIN C. KRAYER		

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16-Oct-2003	112		NOTICE OF CANCELLATION	NCAN	OF HEARING ON 10/16/03 AT 8:45 AM. ON DEFT'S MOTION FOR PROTECTIVE ORDER, SANCTIONS AND IMPOSITION OF A COST BOND		
16-Oct-2003	113		NOTICE	NOT	BY PLTFS, OF WITHDRAWAL OF MOTION		
16-Oct-2003	114		MOTION FOR PROTECTIVE ORDER	MFPO	BY PRICEWATERHOUSECOOPERS LLP'S, AND OBJECTIONS AND RESONSES TO SUBPOENA DUCES TECUM WITH DEPOSITION		
17-Oct-2003	115		SUBPOENA RETURNED / SERVED	SRSV	VANCE F KISTLER		
17-Oct-2003	116		MOTION	MOT	TO COMPEL PRODUCTION OF DOCUMENTS		
17-Oct-2003	117		NOTICE OF HEARING	NOH	OCT 23 2003 @8:45 RE: MOTION TO COMPEL		
20-Oct-2003	118		ORDER	ORD	(APPOINTMENT OF COMMISSIONS) APPOINTED KATHY BATES, OR ANY OTHER PERSON DULY AUTHORIZED BY HER AND ABLE TO ADMINISTER OATHS PURSUANT TO THE LAW OF ARKANSAS MICHAEL I. ALLEN OR ANY OTHER PERSON DULY AUTHORIZED BY HIM AND ABLE TO ADMINISTER OATHS PURSUANT TO THE LAWS OF GEORGIA MIHCAEL I. ALLEN - C.C. TO PLTF ATTY 10/22/03		
21-Oct-2003	119		MOTION	MOT	BY MORGAN STANLEY & CO INCORPORATED, FOR ISSUANCE OF COMMISSIONS		
22-Oct-2003	120		RE-NOTICE OF HEARING	RNOH	10/27/03 AT 8:45 AM. ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS RELATING TO SCOTT PAPER		
22-Oct-2003	121		AGREED ORDER	AGOR	APPOINTING COMMISSIONERS AND COMMISSIONS: ESQUIRE DEPOSITION SERVICES AND SPHERION DEPOSITION SERVICES. CC TO ATTY		
27-Oct-2003	122		SUBPOENA RETURNED / SERVED	SRSV	10/21/03 TO URBAN KANTOLA		

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27-Oct-2003	123		ORDER	ORD	THAT COLEMAN (PARENT) HOLDINGS, INC.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS RELATING TO SCOTT PAPER) MOTION IS GRANTED, IN PART.		
28-Oct-2003	124		NOTICE OF TAKING DEPOSITION	NOTD	AMENDED- TO ANDREW SAVARIE, TYRONE CHANGE AND WILLIAM STRONG		
29-Oct-2003	125		MOTION TO COMPEL	MCMP	BY DEFT, PLTF TO PRODUCE SETTLEMENT AGREEMENT WITH ARTHUR ANDERSEN -W/ATTACHMENTS ATTACHED THERETO		
29-Oct-2003	126		NOTICE OF HEARING	NOH	11/6/03 AT 8:45 AM. ON DEFT'S MOTION TO COMPEL PLTF TO PRODUCE SETTLEMENT AGREEMENT WITH ARTHUR ANDERSEN		
29-Oct-2003	127		NOTICE OF FILING	NOF	PLEADING UNDER SEAL, BY PLTF		
29-Oct-2003	128		SEALED	SEAL	PER ORDER 7/31/03		
29-Oct-2003	129		NOTICE OF HEARING	NOH	11/6/03 AT 8:45 AM. COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL CONCERNING E MAILS (FILED UNDER SEAL)		
30-Oct-2003	130		AGREED ORDER	AGOR	THAT CLARK C. JOHNSON OF JENNER & BLOCK, LLC IS ADMITTED RPO HAC VICE IN THE CASE MATTER ON BEHALF OF THE PLTF		
03-Nov-2003	131		AFFIDAVIT	AFF	OF LOST ORIGINAL SUBPOENA TO URBAN KANTOLA SERVED 10/21/03, BY MICHELLE ROCK		
04-Nov-2003	132		NOTICE OF FILING INTERROGS	NOFI	BY COLEMAN (PARENT) HOLDINGS INC.'S SECOND SET TO DEFT		
04-Nov-2003	133		NOTICE OF FILING	NOF	PLEADING UNDER SEAL, BY DEFT		
04-Nov-2003	134		SEALED	SEAL	PER ORDER 7/31/03		

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05-Nov-2003	135		RESPONSE TO:	RESP	BY COLEMAN (PARENT) HOLDINGS INC.'S, IN OPPOSITION TO DEFT'S MOTION TO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT WITH ARTHUR ANDERSEN		
05-Nov-2003	136		MOTION	MOT	BY PLTF, TO APPOINT COMMISSIONS		
12-Nov-2003	137		NOTICE OF TAKING DEPOSITION	NOTD	TO R/C OF THE LLAMA COMPANY, L.P.		
14-Nov-2003	138		RESPONSE TO:	RESP	BY PLTF, IN OPPOSITION TO DEFT'S MOTION TO DISMISS UNDER RULE 1.061 OR, IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS		
14-Nov-2003	139		RESPONSE TO:	RESP	BY COLEMAN (PARENT) HOLDINGS INC.'S, AND OBJECTIONS TO DEFT MORGAN STANLEY & CO., INC.'S THIRD SET OF INTERROGS		
14-Nov-2003	140		RESPONSE TO:	RESP	OF PLTF COLEMAN (PARENT) HOLDINGS INC. TO DEFT MORGAN STANLEY & CO., INC.'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS		
14-Nov-2003	141		ORDER SETTING HEARING	ORSH	11/25/03 AT 4:30 PM. ON DEFT'S MOTION TO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT WITH ARTHUR ANDERSEN		
14-Nov-2003	142		ORDER	ORD	ON APPOINTMENT OF COMMISSIONS JEROLD S. SOLOVY OR MICHAEL I. ALLEN OR MARC M. SELTZER. CC TO ATTY 11/18/03		
19-Nov-2003	143		MOTION	MOT	BY PLTF, FOR ENTRY OF ORDER UPON STIPULATION OF THE PARTIES		
19-Nov-2003	144		NOTICE OF HEARING	NOH	11/25/03 AT 8:45 AM ON PLTF'S MOTION FOR ENTRY OF ORDER UPON STIPULATION OF THE PARTIES		
19-Nov-2003	145		NOTICE OF FILING INTERROGS	NOFI	BY COLEMAN (PARENT) HOLDINGS INC.'S THIRD SET TO DEFT MORGAN STANLEY & CO., INC.		

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19-Nov-2003	146		NOTICE OF TAKING DEPOSITION	NOTD	TO TYRONE CHANGE		
20-Nov-2003	147		ORDER	ORD	& DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE ATTY JACK SCAROLA'S LETTER DTD 11/18/03		
20-Nov-2003	148		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE ATTY JACK SCAROLA'S LETTER & ITS ENCLSORES DTD 11/19/03		
20-Nov-2003	149		CORRESPONDENCE	COR	TO HONORABLE MAASS FROM JACK SCAROLA DTD 11/19/03		
20-Nov-2003	150		ORDER	ORD	AND DIRECTIONS TO THE CLERK TO DOCKET AND FILE ATTY JOSEPH IANNO, JR.'S LETTER DATED 11/18/03		
20-Nov-2003	151		LETTER	LTR	TO JUDGE MAASS FROM JACK SCAROLA DTD. 11/18/03 - W/ATTACHED PROPOSED ORDER		
20-Nov-2003	152		NOTICE OF FILING	NOF	OF DEFT, PLEADING UNDER SEAL		
20-Nov-2003	153		SEALED	SEAL	PER COURT ORDER 7/31/03		
20-Nov-2003	154		LETTER	LTR	TO JUDGE MAASS FROM JOSEPH IANNO JR DTD. 11/18/03		
21-Nov-2003	155		RESPONSE TO:	RESP	BY DEFT, PLTF'S MOTION FOR ENTRY OF ORDER UPON STIPULATION OF THE PARTIES - EXHIBITS ATTACHED		
24-Nov-2003	156		NOTICE OF TAKING DEPOSITION	NOTD	TO ROBERT W. KITTS; ALEXANDRE J. FUCHS; R. BRAM SMITH		
01-Dec-2003	157		ORDER	ORD	THAT PLTF'S MOTION FOR ENTRY OF ORDER UPON STIPULATION OF THE PARTIES IS DENIED, W/O PREJUDICE TO ANY PARTY'S RIGHT TO RESET HEARING ON PLTF'S MOTION TO COMPEL (E MAILS)		

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01-Dec-2003	158		ORDER	ORD	AND DIRECTIONS TO THE CLERK TO DOCKET AND FILE THE COPY OF THE DEFT MORGAN STANLEY & CO., INC.'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL PLTF TO PRODUCE SETTLEMENT AGREEMENT WITH ARTHUR ANDERSEN DATED 11/20/03		
01-Dec-2003	159		REPLY/RESPONSE	RPRS	(COPY) BY DEFT, IN SUPPORT OF ITS MOTION TO COMPEL PLTF TO PRODUCE SETTLEMENT AGREEMENT WITH ARTHUR ANDERSEN		
03-Dec-2003	160		MOTION TO COMPEL	MCMP	BY PLTF'S AMENDED, CONCERNING EMAILS		
03-Dec-2003	161		RE-NOTICE OF HEARING	RNOH	12/8/03 AT 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL CONCERNING E MAILS (FILED UNDER SEAL)		
03-Dec-2003	162		ANSWER TO INTERROGATORIES	ANTI	(CONFIDENTIAL TO 2ND SET) TO PLTS		
04-Dec-2003	163		RE-NOTICE OF HEARING	RNOH	12/16/03 AT 8:45 MA. ON COLEMAN (PARENT) HOLDINGS INC.'S AMENDED MOTION TO COMPEL CONCERNING E MAILS (FILED UNDER SEAL)		
09-Dec-2003	164		NOTICE OF TAKING DEPOSITION	NOTD	AMENDED- TO ANDREW SAVARIE		
11-Dec-2003	165	1	REPLY/RESPONSE	RPRS	MEMORANDUM IN SUPPORT DEFTS MOTION TO DISMISS OR IN ALTERNATIVE FOR JUDGMENT ON PLEADINGS		
11-Dec-2003	166	1	ORDER	ORD	CLERK DOCKET AND FILE ALL LEGAL MEMORANDA FILED IN THIS CASE DTD 12/11/03 EM UP TO JUDGE 12/12/03		
11-Dec-2003	167	1	NOTICE OF TAKING DEPOSITION	NOTD	AMENDED VIDEO DEPO R BRAM SMITH 1/13/04 AND ROBERT W KITTS 1/20/04, ANDREW SAVARIE 1/22/04 AND ALEXANDRE J FUCHS 1/27/04		

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11-Dec-2003	168	1	AGREED ORDER	AGOR	PLTFS MOTION TO COMPEL TO NON PARTY BANK OF AMERICA NA BOA NOT PRODUCE DOCS DATED AFTER 2/6/01 DTD 12/2/03 EM		
12-Dec-2003	169		NOTICE	NOT	OF UNAVAILABILITY OF JACK SCAROLA		
12-Dec-2003	170		NOTICE	NOT	(OF DEFT'S OPPOSITION TO COLEMAN (PARENT) HOLDINGS, INC.'S AMENDED MOTION TO COMPEL CONCERNING EMAILS)		
15-Dec-2003	171		NOTICE OF TAKING DEPOSITION	NOTD	AMENDED- TO TYRONE CHANGE		
15-Dec-2003	172		ORDER	ORD	THAT DEFT'S MOTION TO DISMISS PURSUANT TO FL RULE OF CIVIL PROCEDURE 1.061 OR, IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS IS DENIED.		
15-Dec-2003	173		ORDER	ORD	AND DIRECTIONS TO THE CLERK TO DOCKETS AND FILE THE SELECTED MATERIALS ON DEFT'S MOTION TO DISMISS PURSUANT TO FL RULE OF CIVIL PROCEDURE 1.061 OR, IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS.		
15-Dec-2003	174		MOTION TO DISMISS	MDIS	BY DEFT'S, PURSUANT TO FL RULE OF CIVIL PROCEDURE 1061 OR, IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS		
16-Dec-2003	175		ORDER	ORD	AND NOTICE OF HEARING ON COLEMAN HOLDINGS INC.'S MOTION TO COMPEL CONCERNING E MAILS IS HEREBY SET FOR 12/17/03 AT 10 AM		
17-Dec-2003	176		ORDER	ORD	THAT PLTF'S ORE TENUS MOTION TO SHORTEN TIME IS GRANTED.		
18-Dec-2003	177		REQUEST	REQ	BY PLTF CPH'S THIRD, FOR PRODUCTION OF DOCUMENTS		

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18-Dec-2003	178		ORDER	ORD	AND DIRECTIONS TO THE CLERK TO DOCKET AND FILE THE COPY OF JOHN PLOTNICK'S SEPT 9, 2003 DEPO TRANSCRIPT.		
18-Dec-2003	179		DEPOSITION	DEPO	(COPY) OF JOHN H. PLOTNICK ON 9/9/03 AT 9:30 AM		
18-Dec-2003	180		ORDER	ORD	THAT COLEMAN (PARENT) HOLDINGS INC'S AMENDED MOTION TO COMPEL CONCERNING EMAILS IS HEREBY GRANTED, IN PART.		
18-Dec-2003	181		ORDER	ORD	THAT DEFT'S MOTION TO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT IS HEREBY GRANTED IN PART, AND DENIED IN PART. COURT HAS SEALED A COMPLETE COPY OF THE SETTLEMENT AGREEMENT AND PLACED IT IN THE COURT FILE		
18-Dec-2003	182		SEALED	SEAL	PER COURT ORDER 12/4/03		
19-Dec-2003	183		MOT/NOT TO SET JURY TRIAL	MSJT	BY PLTFS UP ON 12/23/03		
19-Dec-2003	184		NOTICE OF TAKING DEPOSITION	NOTD	AMENDED- TO TYRONE CHANG		
19-Dec-2003	185		MOTION	MOT	BY PLTF, FOR A PROTECTIVE ORDER TO BAR CERTAIN NON PARTY DISCOVERY		
19-Dec-2003	186		NOTICE OF HEARING	NOH	12/30/03 AT 8:45 AM. ON PLTF'S MOTION FOR A PROTECTIVE ORDER TO BAR CERTAIN NON PARTY DISCOVERY		
29-Dec-2003	187		MOTION TO COMPEL	MCMP	BY MORGAN STANLEY & CO., INCORPORATED, DISCOVERY		
29-Dec-2003	188		MOTION	MOT	(VERIFIED) BY DEFT MORGAN STANLEY & CO., INC., TO ADMIT MICHAEL C. OCCHUIZZO, PRO HAC VICE - PROPOSED ORDER ATTACHED THERETO		

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30-Dec-2003	189		NOTICE	NOT	(DEFT'S OPPOSITION TO PLTF'S MOTION FOR A PROTECTIVE ORDER TO BAR CERTAIN NON PARTY DISCOVERY)		
30-Dec-2003	190		RE-NOTICE OF HEARING	RNOH	1/7/04 AT 8:45 AM ON PLTF'S MOTION FOR A PROTECTIVE ORDER TO BAR CERTAIN NON PARTY DISCOVERY		
30-Dec-2003	191		NOTICE OF TAKING DEPOSITION	NOTD	AMENDED- TO WILLIAM PRIUTT; DENNIS PASTRANA; MARK BROCKELMAN AND LAWRENCE BORNSTEIN		
31-Dec-2003	192		NOTICE OF HEARING	NOH	1/8/04 AT 8:45 AM. ON DEFT MORGAN STANLEY & CO., INCORPORATED'S MOTION TO COMPEL DISCOVERY		
05-Jan-2004	193		RE-NOTICE OF HEARING	RNOH	1/8/04 AT 8:45 AM MOTION FOR PROTECTIVE ORDER		
06-Jan-2004	194		MOTION	MOT	TO COMPEL DISCOVERY		
06-Jan-2004	195		NOTICE OF HEARING	NOH	1/12/04 AT 8:45 AM MOTION TO COMPEL		
06-Jan-2004	196		ORDER	ORD	SETTING JUR TRIAL AND DIRECTING PRETRIAL AND MEDIATION PROCEDURES 3/12/04		
07-Jan-2004	197		ORDER	ORD	GRANTING VERIFIED MOTION TO ADMIT MICHAEL C OCCHUZZO PRO HAC VICE		
07-Jan-2004	198		NOTICE OF HEARING	NOH	ON 1/12/04 AT 8:45 AM PLTF'S MTN TO COMPEL		
08-Jan-2004	198 - A		AGREED ORDER	AGOR	GRANTING DFTS MOTION TO COMPEL DISCOVERY		
08-Jan-2004	198 - B		ORDER	ORD	AND NOTICE OF HEARING - 01/08/04 @ 12:30 PM		
08-Jan-2004	198 - C		NOTICE	NOT	OF WITHDRAWAL OF PLTF'S MOTION TO COMPEL DTD 1/5/04		
09-Jan-2004			CAFF/NOA/	801FF			

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09-Jan-2004			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$60.00 was made on receipt CAMB31436.		
09-Jan-2004	199	4	NOTICE OF NON FINAL APPEAL	NONA	TO 4DCA OF NON FINAL ORDERS-COPIES ATTACHED	016432	006
09-Jan-2004	200		MOTION	MOT	TO COMPEL		
09-Jan-2004	201		RESPONSE TO:	RESP	TO MORGAN STANLEY & CO INC. MOTION TO COMPEL DISCOVERY		
12-Jan-2004	202		ORDER	ORD	THAT PLTF MOTION FOR A PROTECTIVE ORDER TO BAR CERTAIN NON-PARTY DISCOVERY IS GRANTED.		
12-Jan-2004	203		MOTION	MOT	FOR SPECIAL TRIAL SETTING		
14-Jan-2004	203 - A		NOTICE	NOT	OF WITHDRAWAL OF JOSEPH IANNO JR.		
14-Jan-2004	203 - B		ORDER	ORD	ON DEFTS MOTION TO COMPEL DISCOVERY AND ORE TENUS MOTION TO CONTINUE AND ORDER SETTING CASE MANAGEMENT CONFERENCE IS GRANTED.		
15-Jan-2004	204	1	ACKNOWLEDGMENT OF NEW CASE	ACKC	FM 4DCA OF NON FINAL APPEAL FILED 1/9/04 4D04-135		
15-Jan-2004	205		NOTICE OF TAKING DEPOSITION	NOTD	ROBERT W KITTS		
15-Jan-2004	206		NOTICE OF HEARING	NOH	2/20/04 AT 3:30 PM MOTION FOR SPECIAL TRIAL SETTING		
16-Jan-2004	207		MOTION	MOT	FOR ISSUANCE OF COMMISSIONS TO:KAREN KAY CLARK;FRANK N GIFFORD;ROBERT K DUFFY;JOSEPH P PAGE;WILLIAM H SPOOR;ADAM EMMERICH;STEVEN COHEN;STEVEN K GELLER;DONALD UZZI;ANN DIBBLE JORDAN ** UP W/UNSIGNED ORDER 1/21/04		

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20-Jan-2004	208		NOTICE OF TAKING DEPOSITION	NOTD	MORGAN STANLEY		
21-Jan-2004	209		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO ALEXANDRE FUCHS		
21-Jan-2004	210		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED) TO MORGAN STANLEY		
21-Jan-2004	211		AGREED ORDER	AGOR	APPOINTING COMMISSIONERS & COMMISSIONS - SEE ORDER ** 1/26/04 - 10 CERT COPIES OF COMMISSION MLD TO ATTY IANNO **		
22-Jan-2004	212		RESPONSE TO:	RESP	SUPPLEMENTAL AND OBJECTIONS TO DEFT MORGAN STANLEY & CO INC THIRD SET OF INTERROG.		
22-Jan-2004	213		MOTION	MOT	TO CLARIFY AND ENFORCE STIPULATIONS MADE BY COLEMAN PARENT HOLDING AT THE JANUARY 8,204 HEARING		
22-Jan-2004	214		NOTICE OF HEARING	NOH	2/5/04 AT 8:45 AM MOTION TO CLARIFY		
02-Feb-2004	215		AMENDED	AMN	NOTICE OF DEPOSITION OF MORGAN STANLEY		
02-Feb-2004	216		AMENDED	AMN	NOTICE OF DEPOSITION OF ALEXANDRE FUCHS		
05-Feb-2004	217		ORDER	ORD	ON DEFT MORGAN STANLEY & CO INC MOTION TO CLARIFY AND ENFORCE STIPULATIONS MADE BY PLTF AT THE JANUARY 8/2004 HEARING IS DENIED.		
11-Feb-2004	218		NOTICE OF HEARING	NOH	2/19/04 @ 8:45 AM - MOTION TO COMPEL		
11-Feb-2004	219		MOTION TO COMPEL	MCMP	PRODUCTION OF DOCUMENTS RELATING TO EMPLOYEE PERFORMANCE		
12-Feb-2004	220		NOTICE OF FILING	NOF	PLEADING UNDER SEAL TO DEFT		
17-Feb-2004	220 - A		SEALED	SEAL	PER ORDER DTD 7/31/03		
17-Feb-2004	221		STATEMENT	STMT	OF UNRESOLVED LEGAL ISSUES		

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17-Feb-2004	222		NOTICE OF FILING	NOF	JOINT SUBMISSION OF PARTIES FOR FEBRUARY 20, 2004 CASE MGMT CONFERENCE-ATTACHMENTS		
17-Feb-2004	223		STATEMENT	STMT	OF UNRESOLVED LEGAL ISSUES		
17-Feb-2004	224		NOTICE OF FILING	NOF	OPPOSITION TO PLT MOTION TO COMPEL PRODUCTION OF DOCUMENTS RELATING TOEMPLOYEE PERFORMANCE		
19-Feb-2004	225		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO SHANI BOONE; LILI RAFII; JAMES STYNES; RUTH PORAT; MICHAEL HART; ANDREW CONWAY; GENE YOO & JOSHUA WEBBER		
20-Feb-2004	226		MOTION TO COMPEL	MCMP	THE PRODUCTION OF DOCUMENTS PURSUANT TO THE PARTIES' WRITTEN AGREEMENT - W/ATTACHMENTS		
20-Feb-2004	227		NOTICE OF HEARING	NOH	2/26/04 @ 8:45 AM ON DEF MORGAN STANLEY & CO INC'S M/TO COMPEL THE PRODUCTION OF DOCUMENTS PURSUANT TO THE PARTIES WRITTEN AGREEMENT		
23-Feb-2004	227 - A		ORDER	ORD	ON JOINT M/TO CONSOLIDATE & DIRECTIONS TO THE CLERK. ACTIONS (2003CA5045 AI & 2003CA5165 AI) ARE CONSOLIDATED FOR DISCOVERY & TRIAL. ALL FURTHER PLEADINGS SHALL BE FILED IN 2003CA5045 AI		
23-Feb-2004	227 - B		SEALED	SEAL	PER ORDER DTD 7/31/04		

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24-Feb-2004	228		ORDER	ORD	FOLLOWING CASE MANAGEMENT CONFERENCE & NOTICE OF HEARINGS. ACTION IS SPECIALLY SET FOR JURY TRIAL 1/17/05 @ 9:30 AM. MOTIONS IN LIMINE & OBJECTIONS TO DEPO DESIGNATIONS SET FOR 12/20/04 THRU 12/22/04 @ 9:30 AM. CASE MANAGEMENT CONFERENCES & HEARING ON ALL OUTSTANDING MOTIONS SHALL BE HELD 3/19/04 @ 3:30 PM; 4/16/04 @ 4:00PM; 5/7/04 @ 8:00AM; 6/4/04 @ 8:00 AM; 7/2/04 @ 8:00 AM; 7/23/04 @ 9:00 AM; 8/13/04 @ 8:00 AM; 8/27/04 @ 8:00 AM; 9/23/04 @ 3:00PM; 10/15/04 @ 8:00 AM; 11/5/04 @ 8:00 AM AND 12/3/04 @ 8:00AM.		
27-Feb-2004	229		MOTION	MOT	FOR ENTRY OF ORDER		
27-Feb-2004	230		NOTICE OF HEARING	NOH	3/3/04 @ 8:30 AM ON PLTFS MFOR ENTRY OF ORDER		
02-Mar-2004	231		SEALED	SEAL	PER ORDER DTD 7/31/03		
02-Mar-2004	232		SEALED	SEAL	PER ORDER DTD 7/31/03		
02-Mar-2004	233		RESPONSE TO:	RESP	TO MORGAN STANLEY & CO INC'S FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS		
03-Mar-2004	234		ORDER	ORD	GRANTING IN PART & DENYING IN PART PLTFS MTO COMPEL PRODUCTION OF DOCUMENTS RELATING TO EMPLOYEE PERFORMANCE. - SEE ORDER		
03-Mar-2004	235		RE-NOTICE OF HEARING	RNOH	3/19/04 @ 3:30 PM ON DEFS MTO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO DEFS FIRST REQUEST FOR PRODUCTION		
04-Mar-2004	236		NOTICE OF TAKING DEPOSITION	NOTD	TO RC OF BLOOMBERG INC		
04-Mar-2004	237		NOTICE OF TAKING DEPOSITION	NOTD	TO RC OF HILL & KNOWLTON INC		

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08-Mar-2004	238		NOTICE OF SERVICE	NOS	OF CONFIDENTIAL AMENDED ANSWERS TO DEFS FIRST SET OF INTERROG'S		
12-Mar-2004	239		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S M/FOR A RULE TO SHOW CAUSE		
12-Mar-2004	240		MOTION TO COMPEL	MCMP	CPL'S RESPONSE TO MORGAN STANLEY & CO'S FOURTH SET OF INTERROG'S		
12-Mar-2004	241		NOTICE	NOT	OF JOINT SUBMISSION OF THE PARTIES FOR 3/19/04 CASE MANAGEMENT CONFERENCE		
12-Mar-2004	242		MOTION	MOT	FOR PERMISSION TO HAVE 3RD PARTY RETRIEVE MORGAN STANLEY E-MAIL & OTHER RESPONSIVE DOCUMENTS		
12-Mar-2004	243		NOTICE OF HEARING	NOH	3/19/04 @ 3:30 PM ON DEF MORGAN STANLEY & CO INC'S M/TO COMPEL COLEMAN (PARENT) HOLDINGS INC'S RESPONSE TO FOURTH SET OF INTERROG'S		
12-Mar-2004	244		NOTICE OF HEARING	NOH	3/19/04 @ 3:30 PM ON (1) COLEMAN (PARENT) HOLDINGS INCS M/FOR A RULE TO SHOW CAUSE (FILED UNDER SEAL) (2) COLEMAN (PARENT) HOLDINGS INC'S M/FOR PERMISSION TO HAVE 3RD PARTY RETRIEVE MORGAN STANLEY E-MAIL & OTHER RESPONSIVE DOCUMENTS		
12-Mar-2004	244 - A		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
12-Mar-2004	244 - B		MOTION	MOT	FOR A RULE TO SHOW CAUSE *** UNSEALED PER ORDER DTD 12/3/04		
15-Mar-2004	245		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE ATTY JOSEPH IANNO'S LETTER DTD 3/12/04		
15-Mar-2004	246		CORRESPONDENCE	COR	TO HONORABLE MAAS FROM JOSEPH IANNO JR ESQ DTD 3/12/04		

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15-Mar-2004	247		ORDER	ORD	(MODIFIED) GRANTING IN PART & DENYING IN PART PLTF COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL PRODUCTION OF DOCUMENTS RELATING TO EMPLOYEE PERFORMANCE - SEE ORDER		
17-Mar-2004	248		SUBPOENA RETURNED / SERVED	SRSV	TO RC OF BLOOMBERG INC		
17-Mar-2004	249		RESPONSE TO:	RESP	TO MORGAN STANLEY'S MTO COMPEL PURSUANT TO ALLEGED WRITTEN AGREEMENT		
17-Mar-2004	250		MOTION	MOT	(VERIFIED) TO ADMIT MARK C HANSEN PRO HAC VICE		
17-Mar-2004	251		MOTION	MOT	(VERIFIED) TO ADMIT JAMES M WEBSTER III PRO HAC VICE		
17-Mar-2004	252		MOTION	MOT	(VERIFIED) TO ADMIT REBECCA A BEYNON PRO HAC VICE		
17-Mar-2004	253		NOTICE OF HEARING	NOH	3/19/04 @ 3:30 PM ON MORGAN STANLEY & CO INC'S & MORGAN STANLEY SENIOR FUNDING INC'S VERIFIED MTO ADMIT JAMES M WEBSTER III PRO HAC VICE		
17-Mar-2004	253 - A		SEALED	SEAL	PER ORDER DTD 7/31/03		
18-Mar-2004	254		NOTICE OF FILING	NOF	& MORGAN STANLEY SENIOR FUNDING INC - PLEADINGS UNDER SEAL		
18-Mar-2004	255		NOTICE OF FILING	NOF	& MORGAN STANLEY SENIOR FUNDING INC, ATTACHED ORIGINAL DECLARATIONS		
18-Mar-2004	256		RESPONSE TO:	RESP	TO MORGAN STANLEY & CO INC'S SECOND SET OF REQUESTS FOR ADMISSION		
18-Mar-2004	257		NOTICE OF FILING	NOF	& MORGAN STANLEY SENIOR FUNDING INC, ATTACHED EXHIBITS TO OPPOSITION TO M/FOR A RULE TO SHOW CAUSE		
18-Mar-2004	258		SEALED	SEAL	PER ORDER DTD 7/31/03		

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19-Mar-2004	259		AGREED ORDER	AGOR	ON DEF MACANDREWS & FORBES HOLDINGS INC'S & COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO DEFS FIRST REQUEST FOR PRODUCTION - SEE ORDER FOR DETAILS		
19-Mar-2004	260		AGREED ORDER	AGOR	CONCERNING PRETRIAL SCHEDULE - SEE ORDER FOR DETAILS		
22-Mar-2004	261		ORDER	ORD	AND NOTICE OF HEARING. W/IN 10 DAYS DEFS SHALL PRODUCE FOR INSPECTION & COPYING BY PLTF ALL EXHIBIT A'S, DECLARATION OF ACKNOWLEDGEMENT & AGREEMENT TO BE BOUND BY PROTECTIVE ORDER. PLTF'S MFOR RULE TO SHOW CAUSE & MORGAN STANLEY & CO INC AND MORGAN STANLEY SENIOR FUNDING INCS VERIFIED MTO ADMIT REBECCA A BEYNON PRO HACE VICE; VERIFIED MTO ADMIT JAMES M WEBSTER III PRO HAC VICE & VERIFIED MTO ADMIT MARK C HANSEN POR HACE VICE SHALL BE HELD 4/30/04 STARTING @ 9:00 AM		
22-Mar-2004	262		ORDER	ORD	MORGAN STANLEY'S MTO COMPEL PURSUANT TO ALLEGED WRITTEN AGREEMENT IS DENIED		
22-Mar-2004	263		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MFOR PERMISSION TO HAVE 3RD PARTY RETRIEVE MORGAN STANLEY E-MAIL & OTHER RESPONSIVE DOCUMENTS IS DENIED - W/OUT PREJUDICE		
22-Mar-2004	264		ORDER	ORD	MORGAN STANLEY'S MTO COMPEL RESPONSE TO FOURTH SET OF INTERROG'S IS GRANTED IN PART. W/IN 30 DAYS PLTF SHALL SERVE ITS AMENDED ANSWER		

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24-Mar-2004	265		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE ATTY SKIP SMITHS LETTER DTD 3/23/04		
24-Mar-2004	266		CORRESPONDENCE	COR	TO HONORABLE MAAS FROM D CULVER SMITH III PA DTD 3/23/04		
29-Mar-2004	267		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO LILI RAFII		
29-Mar-2004	268		MOTION	MOT	(VERIFIED) OF MACANDREWS & FORBES HOLDINGS INC'S & COLEMAN (PARENT) HOLDINGS INC, TO PERMIT FOREIGN ATTY TO APPEAR		
30-Mar-2004	269		RETURNED MAIL	RMAL	TO JEROLD SOLOVY ESQ		
02-Apr-2004	270		SUBPOENA RETURNED / SERVED	SRSV	TO RC OF HILL & KNOWLTON INC		
12-Apr-2004	271		RESPONSE TO:	RESP	AND OBJECTIONS TO MORGAN STANLEY & CO INC'S SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS TO PLTF		
12-Apr-2004	272		MOTION TO COMPEL	MCMP	CONCERNING E-MAILS & OTHER ELECTRONIC DOCUMENTS		
12-Apr-2004	273		MOTION TO COMPEL	MCMP	MORGAN STANLEY'S CONSENT TO 3RD PARTY PRODUCTION OF RESPONSIVE E-MAILS		
12-Apr-2004	274		NOTICE OF HEARING	NOH	4/16/04 @ 4:00 PM ON M/FOR PROTECTIVE ORDER REGARDING THE USE OF CONFIDENTIAL PERSONNEL EVALUATIONS AND MTO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO MORGAN STANLEY'S FOURTH REQUEST FOR PRODUCTION		
12-Apr-2004	275		MOTION FOR PROTECTIVE ORDER	MFPO	OF DEF MORGAN STANLEY & CO INC & PLTF MORGAN STANLEY SENIOR FUNDING INC, REGARDING THE USE OF CONFIDENTIAL PERSONNEL EVALUATIONS - W/ATTACHMENTS		

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12-Apr-2004	276		MOTION TO COMPEL	MCMP	PRODUCTION OF DOCUMENTS RESPONSIVE TO MORGAN STANLEY'S FOURTH REQUEST FOR PRODUCTION		
12-Apr-2004	277		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
12-Apr-2004	278		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
12-Apr-2004	279		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
12-Apr-2004	280		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
12-Apr-2004	281		SEALED	SEAL	PER ORDER DTD 7/31/03		
12-Apr-2004	282		SEALED	SEAL	PER ORDER DTD 7/31/03		
12-Apr-2004	283		SEALED	SEAL	PER ORDER DTD 7/31/03		
12-Apr-2004	284		SEALED	SEAL	PER ORDER DTD 7/31/03		
13-Apr-2004	285		NOTICE	NOT	OF JOINT SUBMISSION OF THE PARTIES FOR 4/16/04 CASE MANAGEMENT CONFERENCE		
14-Apr-2004	286		RESPONSE TO:	RESP	TO M/FOR PROTECTIVE ORDER REGARDING USE OF PERSONNEL EVALUATIONS		
14-Apr-2004	287		RESPONSE TO:	RESP	TO M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO MORGAN STANLEY'S FOURTH REQUEST FOR PRODUCTION		
14-Apr-2004	288		NOTICE OF FILING	NOF	OF MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC, EXHIBIT UNDER SEAL		
14-Apr-2004	289		NOTICE	NOT	OF MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC, OF OPPOSITION TO COLEMAN (PARENT) HOLDING INC'S MTO COMPEL ANSWERS TO INTERROG'S		
14-Apr-2004	290		NOTICE OF FILING	NOF	OF MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC, ORIG DECLARATION - ATTACHED		

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14-Apr-2004	291		RESPONSE TO:	RESP	OF MORGAN STANLEY, & OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL SUPPLEMENTATION OF PRIVILEGE LOG & OTHER RELIEF		
14-Apr-2004	292		NOTICE	NOT	OF MORGAN STANLEY, OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL CONSENT TO THIRD PARTY PRODUCTIO OF RESPONSIVE E-MAILS		
14-Apr-2004	293		NOTICE OF FILING	NOF	OF MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC, PLEADING UNDER SEAL		
14-Apr-2004	293 - A		SEALED	SEAL	PER ORDER DTD 7/31/03		
14-Apr-2004	293 - B		SEALED	SEAL	PER ORDER DTD 7/31/03		
16-Apr-2004	294		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED) TO SHANI BOONE		
16-Apr-2004	295		NOTICE OF FILING	NOF	OF MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC, PLEADING UNDER SEAL		
16-Apr-2004	296		SEALED	SEAL	PER ORDER DTD 7/31/03		
19-Apr-2004	296 - A		AGREED ORDER	AGOR	ON COLEMAN'S MOTION TO COMPEL CONCERNING E-MAILS AND OTHER ELECTRONIC DOCUMENTS - SEE ORDER FOR DETAILS.		
19-Apr-2004	296 - B		ORDER	ORD	ON COLEMANS MOTION TO COMPEL ANSWERS TO INTERROGS - DENIED.		
19-Apr-2004	296 - C		ORDER	ORD	ON DFT MORGANS MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO MORGAN STANLEYS 4TH REQUEST FOR PRODUCTION - GRANTED IN PART.		

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19-Apr-2004	296 - D		ORDER	ORD	ON COLEMANS MOTION TO COMPEL ANSWERS TO DEPO QUESTIONS AND FOR OTHER RELIEF - GRANTED IN PART.		
19-Apr-2004	296 - E		ORDER	ORD	ON COLEMANS MOTION TO COMPEL SUPPLEMENTATION OF PRIVILEGE LOG AND OTHER RELIEF - GRANTED IN PART.		
19-Apr-2004	296 - F		ORDER	ORD	AND NOTICE OF HEARING ON 4/22/04 @8:45AM ON DFTS MOTION FOR PROTECTIVE ORDER.		
19-Apr-2004	296 - G		AGREED ORDER	AGOR	ON COLEMANS MOTION TO COMPEL CONSNET TO THIRD PARTY PRODUCTION OF RESPONSIVE E-MAILS - SEE ORDER FOR DETAILS.		
19-Apr-2004	296 - H		ORDER	ORD	SPECIALLY RESETTING HEARING ON 6/11/04 @1:30PM.		
23-Apr-2004	297		APPENDIX	APNX	(SUPPLEMENTAL) TO COLEMAN (PARENT) HOLDINGS INC'S REPLY IN SUPPORT OF ITS M/FOR A RULE TO SHOW CAUSE		
23-Apr-2004	298		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED) TO ANDREW CONWAY - W/ATTACHMENTS		
23-Apr-2004	299		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
23-Apr-2004	300		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
23-Apr-2004	301		NOTICE OF HEARING	NOH	4/30/04 @ 9:00 AM ON (1) COLEMAN (PARENT) HOLIDNGS INC'S M/FOR REMOVAL OF CONFIDENTIALITY DESIGNATIONS (FILED UNDER SEAL)		
23-Apr-2004	302		REPLY/RESPONSE	RPRS	IN SUPPORT OF ITS M/FOR A RULE TO SHOW CAUSE **** UNSEALED PER ORDER DTD 12/3/04		
23-Apr-2004	303		MOTION	MOT	FOR REMOVAL OF CONFIDENTIALITY DESIGNATIONS - W/ATTACHMENTS *** UNSEALED PER ORDER DTD 12/3/04		

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26-Apr-2004	304		SEALED	SEAL	PER ORDER DTD 7/31/03		
26-Apr-2004	305		NOTICE OF TAKING DEPOSITION	NOTD	OF JOSEPH IANNO JR ESQ, TO JOSEPH PAGE		
26-Apr-2004	306		ORDER	ORD	DEF MORGAN STANLEY & CO INC'S MFOR PROTECTIVE ORDER REGARDING THE USE OF CONFIDENTIAL PERSONNEL EVALUATIONS IS GRANTED IN PART & DENIED IN PART - SEE ORDER		
26-Apr-2004	307		NOTICE OF SERVICE	NOS	OF AMENDED RESPONSE TO MORGAN STANLEY & CO INC'S FOURTH SET OF INTERROG'S UNDER SEAL		
28-Apr-2004	308		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) OF JOSEPH IANNO JR, TO JOSEPH PAGE		
30-Apr-2004	309		MOTION	MOT	& MORGAN STANLEY SENIOR FUNDING INC, FOR APPLICATION OF NEW YORK LAW		
30-Apr-2004	310		NOTICE OF FILING	NOF	& MORGAN STANLEY SENIOR FUNDING INC, PLEADING UNDER SEAL		
30-Apr-2004	311		ORDER	ORD	CANCELING HEARING SET FOR 5/7/04		
30-Apr-2004	312		SEALED	SEAL	PER COURT ORDER DTD 7/31/03		
03-May-2004	313		AGREED ORDER	AGOR	COLEMAN (PARENT) HOLDINGS INC'S MFOR REMOVAL OF CONFIDENTIALITY DESIGNATIONS IS GRANTED. THE CONFIDENTIAL DESIGNATION ON THE EXECUTED COPIES OF EXHIBIT A TO THE STIPULATED CONFIDENTIALITY ORDER THAT MORGAN STANLEY PRODUCED TO CPH ON 3/31/04 IS REMOVED		
06-May-2004	314		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2004	315		MOTION	MOT	TO ALLOW ARTHUR ANDERSEN LLP ACCESS TO CONFIDENTIAL TRANSCRIPT **** UNSEALED PER ORDER DTD 12/3/04		

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12-May-2004	316		NOTICE OF TAKING DEPOSITION	NOTD	TO JAMES STYNES		
12-May-2004	317		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO HEATHER STACK; ALAN DEAN & JAMES LURIE		
12-May-2004	318		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED) TO ANDREW CONWAY		
13-May-2004	319		RESPONSE TO:	RESP	AND OBJECTIONS TO MORGAN STANLEY & CO INC'S 7TH REQUEST FOR PRODUCTION OF DOCUMENTS		
14-May-2004	320		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO JOSHUA WEBBER, MICHAEL HART & GENE YOO		
17-May-2004	321		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO HEATHER STACK; ALAN DEAN & JAMES LURIE		
17-May-2004	322		ORDER	ORD	PLTFS M/FOR RULE TO SHOW CAUSE IS DEEMED A M/FOR CONTEMPT. DEFS ORE TENUS M/TO STRIKE THE M/FOR CONTEMPT IS DENIED. EITHER SIDE MAY SET THE M/FOR CONTEMPT FOR AN EVIDENTIARY HEARING ONCE DISCOVERY IS COMPLETE		
17-May-2004	323		NOTICE OF HEARING	NOH	5/19/04 @ 8:45 AM ON MACANDREWS & FORBES HOLDINGS INCS & COLEMAN (PARENT) HOLDINGS INC'S VERIFIED M/TO PERMIT FOREIGN ATTY TO APPEAR		
17-May-2004	324		NOTICE OF HEARING	NOH	(SPECIAL SET) 5/24/04 @ 8:00 AM ON (1) COLEMAN (PARENT) HOLDINGS INCS M/TO ALLOW ARTHUR ANDERSEN LLP ACCESS TO CONFIDENTIAL INFORMATION		

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18-May-2004	325		ORDER	ORD	AT LEAST 3 BUSINESS DAYS PRIOR TO ANY HEARING PLTF SHALL PROVIDE OPPOSING COUNSEL & THE UNDERSIGNED A COPY OF THE TRANSCRIPT FROM THE 4/30/04 HEARING, W/THE PORTIONS PLTF SEEKS TO HAVE EXEMPTED FROM THE CONFIDENTIALITY ORDER HIGHLIGHTED.		
18-May-2004	326		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE ATTY JACK SCAROLA'S LETTER DTD 5/12/04		
18-May-2004	327		CORRESPONDENCE	COR	TO HON ELIZABETH MAASS FROM JACK SCAROLA DTD 5/12/04		
18-May-2004	328		ORDER	ORD	AND DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE ATTY JOSEPH IANNO'S LETTER DTD 5/14/04		
18-May-2004	329		CORRESPONDENCE	COR	TO HONORABLE MAASS FROM JOSEPH IANNO JR ESQ DTD 5/14/04		
18-May-2004	330		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE ATTY JEROLD SOLOVY'S LETTER DTD 5/14/04		
18-May-2004	331		CORRESPONDENCE	COR	TO HONORABLE MAASS FROM JEROLD S SOLOVY DTD 5/14/04		
19-May-2004	332		ORDER	ORD	MAFCO & CPH'S VERIFIED M/TO PERMIT FOREIGN ATTY SUZANNE J PRYSAK TO APPEAR PRO HAC VICE IS GRANTED.		
19-May-2004	333		ORDER SETTING HEARING	ORSH	(SPECIALLY RE-SETTING) HEARING ON COLEMAN (PARENT) HOLDINGS INC'S M/TO ALLOW ARTHUR ANDERSEN LLP ACCESS TO CONFIDENTIAL INFO SET FOR 5/24/04 IS CANCELED & RESET FOR 5/28/04 @ 11:30 AM		

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19-May-2004	333 - A	1	EXHIBIT LIST	EXLT	OF PLTF(S) IN EVIDENCE DEPT. MANDATORY DTD 05-25-04.		
20-May-2004	334		NOTICE OF COMPLIANCE	NCOM	W/ORDER OF 5/17/04 **** UNSEALED PER ORDER DTD 12/3/04		
21-May-2004	335		MOTION	MOT	FOR ENTRY OF AN ORDER TO CORRECT FILING ERROR		
21-May-2004	336		NOTICE OF HEARING	NOH	5/24/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC & MACANDREWS & FORBES HOLDINGS INC'S MFOR ENTRY OF AN ORDER TO CORRECT FILING ERROR		
21-May-2004	337		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO HEATHER STACK, ALAN DEAN & JAMES LURIE		
25-May-2004	338		ORDER	ORD	DIRECTING THE SEALING OF PRIOR FILING. CLERK SHALL SEAL COLEMAN (PARENT) HOLDINGS INC'S NOTICE OF COMPLIANCE BEARING CERT OF SERVICE DATE 5/20/04		
26-May-2004	339		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
26-May-2004	340		SEALED	SEAL	PER ORDER DTD 7/31/03		
28-May-2004	341		ORDER	ORD	AND RE-NOTICE OF HEARING. HEARING ON COLEMAN (PARENT) HOLDING INC'S MTO ALLOW ARTHUR ANDERSEN LLP ACCESS TO CONFIDENTIAL INFO IS RE-SET FOR 6/7/04 @ 1:30 PM		
28-May-2004	342		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED) TO JAMES STYNES		
01-Jun-2004	343		REQUEST	REQ	FOR PRODUCTION OF DOCUMENTS CONCERNING ITS MFOR CONTEMPT		
01-Jun-2004	344		NOTICE OF PRODUCTION NON PARTY	NPNP			

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01-Jun-2004	345		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
01-Jun-2004	346		NOTICE	NOT	OF FURTHER INTERROG'S CONCERNING ITS M/FOR CONTEMPT **** UNSEALED PER ORDER DTD 12/3/04		
02-Jun-2004	347		SEALED	SEAL	PER ORDER DTD 7/31/03		
02-Jun-2004	348		NOTICE OF FILING	NOF	& OF MORGAN STANLEY SENIOR FUNDING INC, PLEADING UNDER SEAL		
04-Jun-2004	349		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
04-Jun-2004	350		SEALED	SEAL	PER ORDER DTD 7/31/03		
04-Jun-2004	351		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
04-Jun-2004	352		SEALED	SEAL	PER ORDER DTD 7/31/03		
04-Jun-2004	353		MOTION	MOT	OF MORGAN STANLEY, TO REMOVE CONFIDENTIAL DESIGNATION FROM INTERROG'S - W/ATTACHMENTS		
04-Jun-2004	354		NOTICE OF HEARING	NOH	6/11/04 @ 1:30 PM ON MORGAN STANLEY & MSSF'S M/FOR PROTECTIVE ORDER FILED 4/16/04 (FILED UNDER SEAL)		
07-Jun-2004	355		NOTICE OF HEARING	NOH	6/11/04 @ 1:30 PM ON MORGAN STANLEY & CO INC'S & MORGAN STANLEY SENIOR FUNDING INC'S M/TO REMOVE CONFIDENTIAL DESIGNATION FROM INTERROG'S		
08-Jun-2004	356		ORDER	ORD	PLTFS M/TO ALLOW ARTHUR ANDERSEN LLP ACCESS TO CONFIDENTIAL TRANSCRIPT IS GRANTED IN PART - SEE ORDER.		
08-Jun-2004	357		NOTICE	NOT	OF JOINT SUBMISSION OF THE PARTIES FOR 6/11/04 CASE MANAGEMENT CONFERENCE		
09-Jun-2004	358		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
09-Jun-2004	359		SEALED	SEAL	PER ORDER DTD 7/31/03		

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09-Jun-2004	360		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
09-Jun-2004	361		RESPONSE TO:	RESP	OF COLEMAN (PARENT) HOLDINGS INC, IN OPPOSITION TO M/FOR PROTECTIVE *** UNSEALED PER ORDER DTD12/3/04		
10-Jun-2004	362		MOTION	MOT	JOINT TO CANCEL 6/11/04 CASE MANAGEMENT CONFERENCE		
11-Jun-2004	363		COPY	CPY	(FAXED) JOINT MOTION TO CANCEL 6/11/04 CASE MANAGEMENT CONFERENCE		
11-Jun-2004	364		AGREED ORDER	AGOR	REGARDING MORGAN STANLEY'S MOTION FOR PROTECTIVE ORDER ON OR BEFORE 6/16/04		
11-Jun-2004	365		AGREED ORDER	AGOR	REGARDING MORGAN STANLEY'S MOTION TO REMOVE CONFIDENTIALITY DESIGNATION FROM INTERROG W/OUT PREJUDICE		
11-Jun-2004	366		AGREED ORDER	AGOR	CANCELLING 6/11/04 CASE MANAGEMENT CONFERENCE IS GRANTED.		
11-Jun-2004	367		NOTICE	NOT	OF SERVING FURTHER INTERROG CONCERNING COLEMAN (PARENT) HOLDINGS, INC.'S MOTION FOR CONTEMPT		
14-Jun-2004	368		NOTICE OF UNAVAILABILITY	NOUN			
16-Jun-2004	369		REQUEST FOR ADMISSIONS	RQAD	(THIRD SET) TO PLTF		
16-Jun-2004	370		REQUEST	REQ	(8TH), FOR PRODUCTION OF DOCUMENTS TO PLTF		
17-Jun-2004	371		NOTICE OF SERVICE	NOS	OF ANSWERS TO COLEMAN (PARENT) HOLDINGS INC'S INTERROG'S		
18-Jun-2004	372		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO TODD J SLOTKIN		
18-Jun-2004	373		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO FRANK GIFFORD		

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18-Jun-2004	374		NOTICE OF FILING	NOF	ORIG DISCOVERY OBJECTIONS & REQUESTS		
18-Jun-2004	375		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO JORAM C SALIG		
18-Jun-2004	376		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO FRANK GIFFORD		
18-Jun-2004	377		REQUEST	REQ	(FURTHER) FOR PRODUCTION OF DOCUMENTS CONCERNING COLEMAN (PARENT) HOLDINGS INC'S M/FOR CONTEMPT		
18-Jun-2004	378		NOTICE OF FILING INTERROGS	NOFI	(FURTHER) CONCERNING COLEMAN (PARENT) HOLDINGS INC'S M/FOR CONTEMPT		
21-Jun-2004	379		SEALED	SEAL	PER ORDER DTD 7/31/03		
21-Jun-2004	380		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
22-Jun-2004	380 - A		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO BARRY SCHWARTZ		
23-Jun-2004	381		NOTICE	NOT	OF DFT MACANDREWS & FORBES HOLDINGS INC'S FIRST SET OF INTERR TO PLTF MORGAN STANLEY SENIOR FUNDING INC		
23-Jun-2004	382		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO STEVEN K GELLER		
23-Jun-2004	383		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED) TO JAMES STYNES		
23-Jun-2004	384		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO ROBERT J DUFFY		
25-Jun-2004	385		NOTICE OF HEARING	NOH	7/2/04 @ 8:00 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL RESPONSES TO INTERROG'S DTD 6/25/04 (FILED UNDER SEAL)		
25-Jun-2004	386		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		

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25-Jun-2004	387		NOTICE	NOT	OF JOINT SUBMISSION OF THE PARTIES FOR 7/2/04 CASE MANAGEMENT CONFERENCE		
25-Jun-2004	388		MOTION TO COMPEL	MCMP	RESPONSES TO INTERROG'S - W/ATTACHMENTS **** UNSEALED PER ORDER DTD 12/3/04		
28-Jun-2004	389		STIPULATION AND ORDER	STOR	REGARDING INTERROG'S. COURT APPROVES SAID STIPULATION - SEE ORDER		
28-Jun-2004	390		NOTICE OF FILING	NOF	ORIG DISCOVERY REQUEST - ATTACHED		
29-Jun-2004	391		NOTICE OF SERVICE	NOS	OF SUPPLEMENTAL ANSWERS & OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S INTERROG'S		
29-Jun-2004	392		MOTION	MOT	FOR LEAVE TO PROPOUND ADDITIONAL INTERROG'S		
29-Jun-2004	393		NOTICE OF HEARING	NOH	7/2/04 @ 8:00 AM ON MFOR LEAVE TO PROPOUND ADDITIONAL INTERROG'S		
30-Jun-2004	394		NOTICE	NOT	OF OPPOSITION TO PLTFS MFOR LEAVE TO PROPOUND ADDITIONAL INTERROG'S		
30-Jun-2004	395		NOTICE OF SERVICE	NOS	OF ANSWERS & OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S FURTHER INTERROG'S CONCERNING ITS MFOR CONTEMPT		
30-Jun-2004	396		OBJECTION	OBJ	TO COLEMAN (PARENT) HOLDINGS INC'S REQUEST FOR PRODUCTION OF DOCUMENTS CONCERNING ITS MFOR CONTEMPT		
30-Jun-2004	397		RESPONSE TO:	RESP	TO MORGAN STANLEY & CO INC'S REQUEST FOR PRODUCTION OF DOCUMENTS CONCERNING COLEMAN (PARENT) HOLDINGS INC'S MFOR CONTEMPT		
30-Jun-2004	398		NOTICE OF TAKING DEPOSITION	NOTD	TO WILLIAM WRIGHT		

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30-Jun-2004	399		NOTICE OF TAKING DEPOSITION	NOTD	TO CHRIS WHELAN		
30-Jun-2004	400		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Jun-2004	401		ANSWER	ANS	TO MORGAN STANLEY & CO INC'S INTERROG'S CONCERNING COLEMAN (PARENT) HOLDINGS INC'S M/FOR CONTEMPT **** UNSEALED PER ORDER DTD 12/3/04		
30-Jun-2004	402		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Jun-2004	403		SEALED	SEAL	PER ORDER DTD 7/31/03		
01-Jul-2004	404		OBJECTION	OBJ	& MORGAN STANLEY SENIOR FUNDING INC, TO PLTFS SUBPOENA DUCES TECUM W/OUT DEPO & MTO QUASH		
01-Jul-2004	405		NOTICE OF UNAVAILABILITY	NOUN	OF JACK SCAROLA ESQ		
02-Jul-2004	406		STIPULATION AND ORDER	STOR	REGARDING INTERROG'S AND ORDER APPROVING STIPULATION		
07-Jul-2004	407		REQUEST FOR ADMISSIONS	RQAD	(SECOND SET) TO DEF MORGAN STANLEY & CO		
07-Jul-2004	408		SUBPOENA RETURNED / SERVED	SRSV	TO RC OF WACHOVIA BANK NA		
09-Jul-2004	409		MOTION	MOT	TO RESCHEDULE CASE MANAGEMENT CONFERENCE AND TO AMEND HEARING PROCEDURES		
09-Jul-2004	410		NOTICE OF HEARING	NOH	ON 7/14/04 AT 8:45AM, INRE: DE#410		
09-Jul-2004	411		NOTICE OF UNAVAILABILITY	NOUN	FROM 7/15/04 THRU 7/25/04		
12-Jul-2004	412		ORDER	ORD	ON OCLEMAN (PARENT) HOLDINGS INC'S MOTION TO COMPEL RESPONSES TO INTERROGS		
13-Jul-2004	413		NOTICE OF TAKING DEPOSITION	NOTD	RC / WACHOVIA BANK NA		

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14-Jul-2004	414		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO WILLIAM H SPOOR		
14-Jul-2004	415		SUBPOENA RETURNED / SERVED	SRSV	TO RC OF WACHOVIA BANK NA		
15-Jul-2004	416		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
15-Jul-2004	417		MOTION TO COMPEL	MCMP	OF COLEMAN (PARENT) HODLINGS INC'S & MACANDREWS & FORBES HOLDINGS INC, ANSWERS TO INTERROG'S & REQUEST FOR PRODUCTION - W/ATTACHMENTS *** UNSEALED PER COURT ORDER DTD 12/3/04		
15-Jul-2004	418		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
15-Jul-2004	419		MOTION	MOT	OF COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC, TO REDACT CERTAIN REFERENCES TO ANDERSEN SETTLEMENT AGREEMENT TERMS FROM 7/12/04 ORDER *** UNSEALED PER ORDER DTD 12/3/04		
15-Jul-2004	420		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
15-Jul-2004	421		SEALED	SEAL	PER ORDER DTD 7/31/03		
15-Jul-2004	422		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
15-Jul-2004	423		MOTION	MOT	OF COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC, TO REMOVE CONFIDENTIALITY DESGINATIONS - W/ATTACHMENTS *** UNSEALED PER ORDER DTD 12/3/04		
15-Jul-2004	424		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
15-Jul-2004	425		ANSWER TO INTERROGATORIES	ANTI	TO MORGAN STANLEY & CO INC'S FURTHER INTERROG CONCERNING COLEMAN (PARENT) HOLDINGS INCS M/FOR CONTEMPT ***** UNSEALED PER ORDER DTD 12/3/04		

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15-Jul-2004	426		MOTION	MOT	TO SET A HEARING ON THE CONTEMPT MOTION AND EXTEND MERITS DISCOVERY - W/ATTACHMENTS		
15-Jul-2004	427		RESPONSE TO:	RESP	TO MORGAN STANLEY & CO INC'S THIRD SET OF REQUESTS FOR ADMISSION		
15-Jul-2004	428		RESPONSE TO:	RESP	TO MORGAN STANLEY & CO INC'S 8TH REQUEST FOR PRODUCTION OF DOCUMENTS		
15-Jul-2004	429		RESPONSE TO:	RESP	TO MORGAN STANLEY & CO INC'S FURTHER REQUEST FOR PRODUCTION OF DOCUMENTS CONCERNING COLEMAN (PARENT) HOLDINGS INC'S M/FOR CONTEMPT		
15-Jul-2004	430		ORDER	ORD	MORGAN STANLEY'S MTO RESCHEDULE CASE MANAGEMENT CONFERENCE IS DENIED. COURT DEFERS RULING ON DEFS ORE TENUS MTO CONTINUE HEARING ON PLTFS MOTIONS TO COMPEL RESPONSES TO DISCOVERY CONTEMPT. MORGAN STANLEY'S MTO AMEND HEARING PROCEDURES IS GRANTED.		
16-Jul-2004	431		NOTICE	NOT	OF PARTIES, OF JOINT SUBMISSION OF THE PARTIES FOR 7/23/04 CASE MANAGEMENT CONFERENCE		
16-Jul-2004	432		NOTICE OF HEARING	NOH	7/23/04 @ 9:00 AM ON MORGAN STANLEY'S MTO SET A HEARING ON THE CONTEMPT MOTION AND EXTEND MERITS DISCOVERY		

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16-Jul-2004	433		NOTICE OF HEARING	NOH	7/23/04 @ 9:00 AM ON (1) CPH & MAFCO'S MTO REMOVE CONFIDENTIALITY DESIGNATIONS, FILED UNDER SEAL 7/15/04; (2) CPH & MAFCO'S MTO STRIKE VERIFICATIONS OF INTERROGS, COMPEL PROPER VERIFICATIONS AND FOR OTHER RELIEF FILED UNDER SEARL 7/15/04; (3) CPH & MAFCO'S MTO REDACT CERTAIN REFERENCES TO ANDERSEN SETTLEMENT AGREEMENT TERMS FROM 7/12/04 ORDER FILED UNDER SEAL 7/15/04; AND (4) CPH & MAFCO'S MTO COMPEL ANSWERS TO INTERROG'S & REQUESTS FOR PRODUCTION FILED UNDER SEAL 7/15/04		
16-Jul-2004	434		NOTICE OF HEARING	NOH	7/23/04 @ 9:00 AM ON COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S SUPPLEMENTAL MTO COMPEL RE: REQUESTS FOR PRODUCTION (FILED UNDER SEAL)		
16-Jul-2004	435		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
16-Jul-2004	436		SEALED	SEAL	PER ORDER DTD 7/31/03		
19-Jul-2004	437		NOTICE OF FILING	NOF	& MORGAN STANLEY SENIOR FUNDING INC, CONSENT TO MTO SET A HEARING ON THE CONTEMPT MOTION AND EXTEND MERITS DISCOVERY - ATTACHED		
21-Jul-2004	438		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO ISHAAN SETH & THOMAS BURCHILL		
21-Jul-2004	439		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO PAUL SHAPIRO		
21-Jul-2004	440		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
21-Jul-2004	441		SEALED	SEAL	PER ORDER DTD 7/31/03		
21-Jul-2004	442		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		

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21-Jul-2004	443		SEALED	SEAL	PER ORDER DTD 7/31/03		
21-Jul-2004	444		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
21-Jul-2004	445		SEALED	SEAL	PER ORDER DTD 7/31/03		
21-Jul-2004	446		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
21-Jul-2004	447		SEALED	SEAL	PER ORDER DTD 7/31/03		
22-Jul-2004	448		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
22-Jul-2004	449		SEALED	SEAL	PER ORDER DTD 7/31/03		
22-Jul-2004	450		MOTION	MOT	OF MORGAN STANLEY FUNDING, FOR ENLARGEMENT OF TIME TO RESPOND TO FIRST SET OF INTERROG'S		
23-Jul-2004	451		NOTICE OF FILING	NOF	DEMONSTRATIVE EXHIBITS FROM 7/23/04 HEARING - ATTACHED		
28-Jul-2004	452		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S MTO REMOVE CONFIDENTIALITY DESIGNATIONS IS GRANTED - SEE ORDER		
28-Jul-2004	453		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S MTO REDACT CERTAIN REFERENCES TO ANDERSEN SETTLEMENT AGREEMENT TERMS FROM 7/12/04 ORDER IS DENIED		
28-Jul-2004	454		ORDER	ORD	PLTFS ORE TENUS MTO DIRECT CLERK TO SEAL EXHIBIT TO THE COURTS ORDER ON DEFS MTO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT ENTERED 12/4/03 IS DENIED		

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28-Jul-2004	455		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S MTO STRIKE VERIFICATIONS OF INTERROG'S, COMPEL PROPER VERIFICATIONS & FOR OTHER RELIEF IS DENIED.		
28-Jul-2004	456		ORDER	ORD	MORGAN STANLEY'S MTO SET A HEARING ON THE CONTEMPT MOTION & EXTEND MERITS DISCOVERY IS GRANTED IN PART. TRIAL SHALL BE RESET TO OCCUR IN MARCH 2005. COURT DECLINES TO SET A SCHEDULE FOR DISPOSITION OF THE M/FOR CONTEMPT, PENDING COMPLETION OF HEARINGS DIRECTED TO THE DISCOVERY ISSUES		
28-Jul-2004	457		MOTION	MOT	FOR ENLARGEMENT OF TIME TO COMPLY W/THIS COURT 7/12 ORDER		
28-Jul-2004	458		NOTICE OF HEARING	NOH	8/2/04 @ 8:45 AM ON MORGAN STANLEY'S M/FOR ENLARGEMENT OF TIME TO COMPLY W/THIS COURTS 7/12/04 ORDER		
28-Jul-2004	458 - A		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
28-Jul-2004	458 - B		SEALED	SEAL	PER ORDER DTD 7/31/03		
29-Jul-2004	459		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPED) OF BROOKS HARRIS		
29-Jul-2004	460		MOTION	MOT	OF NON PARTY WACHOVIA BANK, TO QUASH SUBPOENA OR IN THE ALTERNATIVE M/FOR PROTECTIVE ORDER		
29-Jul-2004	461		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S MTO COMPEL ANSWERS TO INTERROG'S & REQUESTS FOR PRODUCTION IS GRANTED IN PART, DENIED IN PART & RULING DEFERRED IN PART		

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30-Jul-2004	462		MOTION	MOT	TO REMOVE CONFIDENTIALITY DESIGNATIONS		
30-Jul-2004	463		MOTION	MOT	FOR ENTRY OF ORDER CONCERNING SUPPLEMENTATION OF INTERROG RESPONSES - W/ATTACHMENTS		
30-Jul-2004	464		NOTICE OF HEARING	NOH	8/13/04 @ 8:00 AM ON (1) CPH'S & MAFCO'S MTO COMPEL ANSWERS TO INTERROG'S & REQUESTS FOR PRODUCTION FILED 7/15/04; (2) CPH'S & MAFCO'S SUPPLEMENTAL MTO COMPEL RE: DOCUMENT REQUESTS FILED 7/16/04; AND (3) CPH'S & MAFCO'S MFOR ENTRY OF ORDER CONCERNING SUPPLEMENTATION OF INTERROG RESPONSES FILED 7/30/04		
30-Jul-2004	465		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Jul-2004	466		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Jul-2004	467		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Jul-2004	468		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Jul-2004	468 - A		NOTICE OF FILING	NOF	& MACANDREWS & FORBES HOLDINGS INC, PLEADING UNDER SEAL		
30-Jul-2004	468 - B		SEALED	SEAL	PER ORDER DTD 7/31/03		
02-Aug-2004	469		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO IRWIN ENGELMAN		
02-Aug-2004	470		NOTICE OF HEARING	NOH	8/2/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S MTO CLARIFY THIS COURTS 7/26/04 ORDER ON CPH'S & MAFCO'S ORE TENUS MOTION AND THIS COURTS 12/4/03 ORDER ON MORGAN STANLEY'S MTO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT		
02-Aug-2004	471		MOTION TO DISMISS	MDIS	& MORGAN STANLEY SENIOR FUNDING INC, OR STRIKE PLTF'S M/FOR CONTEMPT		

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02-Aug-2004	472		NOTICE OF HEARING	NOH	8/13/04 @ 8:00 AM ON MORGAN STANLEY'S MTO REMOVE CONFIDENTIALITY DESIGNATIONS AND MORGAN STANLEY'S MTO DISMISS OR STRIKE PLTFS MFOR CONTEMPT		
02-Aug-2004	473		RE-NOTICE OF HEARING	RNOH	ON 8/4/04 AT 8:45AM ON MTO CLARIFY		
03-Aug-2004	474		MOTION	MOT	(AMENDED) OF MORGAN STANLEY SENIOR FUNDING, FOR ENLAREMENT OF TIME TO RESPOND TO FIRST SET OF INTERROG'S - W/ATTACHMENTS		
03-Aug-2004	475		NOTICE OF SERVICE	NOS	OF CONFIDENTIAL ANSWERS & OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S INTERROG'S PURSUANT TO THE COURTS 7/12/04 ORDER		
03-Aug-2004	476		RE-NOTICE OF HEARING	RNOH	8/10/04 @ 8:45 AM ON MORGAN STANLEY'S MFOR ENLARGEMENT OF TIME TO COMPLY W/THIS COURTS 7/12/04 ORDER		
03-Aug-2004	477		RE-NOTICE OF HEARING	RNOH	8/10/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S AND MACANDREWS & FORBES HOLDINGS INC'S MTO CLARIFY THIS COURTS 7/26/04 OREER ON CPH'S & MAFCO'S ORE TENUS MOTION AND THIS COURTS 12/4/03 ORDER ON MORGAN STANLEY'S MTO COMPEL PRODUCITON OF SETTLEMENT AGREEMENT		
04-Aug-2004	478		MOTION	MOT	OF COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S, TO RESET DATE FOR FILING MOTIONS TO AMEND PLEADINGS		
04-Aug-2004	479		NOTICE OF HEARING	NOH	8/13/03 @ 8:00 AM ON COLEMAN (PARENT) HOLDINGS INC'S AND MACANDREWS & FORBES HODLINGS INCS MTO RESET DATE FOR FILING MOTIONS TO AMEND PLEADINGS		
04-Aug-2004	480		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		

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04-Aug-2004	481		SEALED	SEAL	PER ORDER DTD 7/31/03		
05-Aug-2004	482		REQUEST	REQ	(FOURTH) FOR PRODUCTION OF DOCUMENTS		
06-Aug-2004	483		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-Aug-2004	484		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-Aug-2004	485		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-Aug-2004	486		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-Aug-2004	487		REQUEST	REQ	(FIFTH) FOR PRODUCTION OF DOCUMENTS		
06-Aug-2004	488		RESPONSE TO:	RESP	AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S SECOND SET OF REQUESTS FOR ADMISSION		
06-Aug-2004	489		NOTICE	NOT	OF JOINT SUBMISSION OF THE PARTIES FOR 8/13/04 CASE MANAGEMENT CONFERENCE		
09-Aug-2004	490		MOTION	MOT	TO APPOINT COMMISSION - W/ATTACHMENTS		
10-Aug-2004	491		ORDER	ORD	MORGAN STANLEY'S M/FOR ENLARGEMENT OF TIME TO COMPLY W/THIS COURTS 7/12/04 ORDER IS GRANTED IN PART - SEE ORDER		
10-Aug-2004	492		ORDER	ORD	AND NOTICE OF HEARING. COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S M/TO CLARIFY THIS COURTS 7/26/04 ORDER ON CPH'S & MAFCO'S ORE TENUS MOTION & THIS COURTS 12/4/04 ORDER ON MORGAN STANLEY'S M/TO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT IS SET FOR 8/13/04 @ 8:00 AM		
11-Aug-2004	493		ORDER	ORD	MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC'S M/FOR APPLICATION OF NEW YORK LAW IS GRANTED IN PART - SEE ORDER		

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11-Aug-2004	494		ORDER	ORD	MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC'S MTO SUPPLEMENT RECORD ON MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC'S MFOR APPLICATION OF NEW YORK LAW IS DENIED		
11-Aug-2004	495		NOTICE OF SERVICE	NOS	OF PLTF, MORGAN STANLEY SENIOR FUNDING, OF RESPONSES & OBJECTIONS TO DEFS FIRST SET OF INTERROG'S		
12-Aug-2004	496		RE-NOTICE OF TAKING DEPOSITION	RNTD	OF DONALD R. UZZI		
13-Aug-2004	497		ORDER	ORD	ON CPH & MAFCO'S MTO RESET DATE FOR FILING MOTIONS TO AMEND PLEADINGS IS GRANTED IN PART. ALL MOTIONS FOR LEAVE TO FILE AMENDED PLEADINGS SHALL BE SERVED BY 9/7/04		
13-Aug-2004	498		ORDER	ORD	AND NOTICE OF HEARING. CASE MANAGEMENT CONFERENCE SET FOR 10/15/04 IS CANCELED & RE-SET FOR 10/14/04 @ 8:00 AM		
13-Aug-2004	499		ORDER	ORD	AND NOTICE SPECIALLY SETTING HEARING. MORGAN STANLEY'S M/FOR REHEARING ON A PORITON OF THE COURTS 12/4/03 ORDER IS GRANTED. REHEARING ON PORTION OF THE COURTS 12/4/03 ORDER WHICH SUBJECTED THE REDACTED SETTLEMENT AGREEMENT TO THE 7/31/03 STIPULATED CONFIDENTIALITY ORDER AND ON THE COURTS OWN MOTION, RECONSIDERATION OF THE 7/31/03 CONFIDENTIALITY ORDER IS SPECIALLY SET 8/27/04 @ 8:00 AM		

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13-Aug-2004	500		ORDER	ORD	FOLLOWING CASE MANAGEMENT CONFERENCE. AT THE NEXT CASE MANAGEMENT CONFERENCE, COUNSEL SHALL BE PREPARED TO DISCUSS W/SPECIFICITY EACH PARTY'S ABILITY TO BE PREPARED FOR TRIAL BEGINNING 1/18/05		
13-Aug-2004	500 - A		ORDER	ORD	ON COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'S MFOR ENTRY OF ORDER CONCERNING SUPPLEMENTATION OF INTERROG RESPONSES. ALL PARTIES SHALL SUPPLEMENT AND UPDATE THEIR INTERROG RESPONSES		
16-Aug-2004	501		REQUEST FOR ADMISSIONS	RQAD	(THIRD SET) TO DEF MORGAN STANLEY & CO		
17-Aug-2004	502		REQUEST FOR ADMISSIONS	RQAD	(FOURTH SET) TO DEF MORGAN STANLEY & CO		
17-Aug-2004	503		MOTION TO COMPEL	MCMP	AND OF MACANDREWS & FORBES HOLDINGS INC, SUPPLEMENTATION OF RESPONSES TO REQUESTS FOR ADMISSIONS		
17-Aug-2004	504		NOTICE OF HEARING	NOH	8/27/04 @ 8:00 AM ON (1) CPH & MAFCO'S MTO COMPEL SUPPLEMENTATION OF RESPONSES TO REQUESTS FOR ADMISION FILED 8/17/04; (2) CPH & MAFCO'S MTO COMPEL COMPLETE ANSWERS TO INTERROG #1 & 3 IN MAFCO'S FIRST SET OF INTERROG'S TO MORGAN STANLEY SENIOR FUNDING INC; (3) CPH & MAFCO'S MTO COMPEL ANSWERS TO INT & RTP; (4) CPH & MAFCO'S SUPPLEMENTAL MTO COMPEL RE: DOCUMENT REQUESTS; AND (5) CPH & MAFCO'S MTO CLARIFY THIS COURTS 7/26/04 ORDER ON CPH'S & MAFCO'S ORE TENUS MOTION AND THIS COURTS 12/4/03 ORDER ON MORGAN STANLEY'S MTO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT		

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17-Aug-2004	505		CORRESPONDENCE	COR	TO JOSEPH IANNO JR ESQ FROM ELIZABETH MAASS DTD 8/16/04		
17-Aug-2004	506		ORDER	ORD	AND DIRECTIONS TO CLERK TO DOCKET AND FILE ATTY JOSEPH IANNO'S LETTER DTD 8/13/04.		
17-Aug-2004	507		CORRESPONDENCE	COR	TO JUDGE MAASS, FROM JOSEPH IANNO, JR., DTD 8/13/04		
17-Aug-2004	508		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
17-Aug-2004	509		SEALED	SEAL	PER ORDER DTD 7/31/03		
18-Aug-2004	510		MOTION TO COMPEL	MCMP	PRODUCTION OF DOCUMENTS - W/ATTACHMENTS		
18-Aug-2004	511		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
18-Aug-2004	512		SEALED	SEAL	PER ORDER DTD 7/31/03		
19-Aug-2004	513		NOTICE OF HEARING	NOH	8/27/04 @ 8:00 AM ON MORGAN STANLEY'S M/TO COMPEL PRODUCTION		
20-Aug-2004	514		NOTICE	NOT	OPPOSITION TO COLEMAN (PARENT) HOLDING INC'S AND MACANDREWS & FORBES HOLDINGS INC'S MOTION TO COMPEL SUPPLEMENTATION OF RESPONSES TO REQUESTS FOR ADMISSION		
23-Aug-2004	515		NOTICE	NOT	OF PARTIES, OF JOINT SUBMISSION OF THE PARTIES FOR 8/27/04 CASE MANAGEMENT CONFERENCE		
23-Aug-2004	516		NOTICE	NOT	OF MORGAN STANLEY SENIOR FUNDING INC, OF OPPOSITION TO COLEMAN (PARENT) HOLDING INC'S & MACANDREWS & FORBES HOLDINGS INC'S M/TO COMPEL COMPLETE ANSWERS TO INTERROG #1 & 3 IN MAFCO'S FIRST SET OF INTERROG'S TO MORGAN STANLEY SENIOR FUNDING INC		

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23-Aug-2004	517		MEMORANDUM	MEMO	(SUPPLEMENTAL) OF MORGAN STANLEY, IN RESPONSE TO THE COURTS ORDER OF 8/13/04 & MTO DISMISS OR STRIKE PLTFS MFOR CONTEMPT		
25-Aug-2004	518		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO WILLIAM NESBITT		
27-Aug-2004	519		ORDER	ORD	MORGAN STANLEY & CO & MORGAN STANLEY SENIOR FUNDING INC'S ORE TENUS MTO EXTEND STAY IS GRANTED. STAY ON DISCOVERY DEALING W/ISSUES RAISED BY THE MFOR CONTEMPT IS STAYED THRU 9/3/04		
27-Aug-2004	520		ORDER	ORD	AND NOTICE OF HEARING. THE CONTINUATION OF THE CASE MANGEMENT CONFERENCE IS SET FOR 9/2/04 @ 4:00 PM		
30-Aug-2004	521		MEMORANDUM OF LAW	MLAW	OF 3RD PARTY SUNBEAM CORP NKA AMERICAN HOUSEHOLD INC, IN RESPONSE TO MORGAN STANLEY'S MTO COMPEL DOCUMENTS - W/ATTACHMENTS		
30-Aug-2004	522		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) OF ZHONETTE BROWN, ESQ, TO KAREN K CLARK		
30-Aug-2004	523		ORDER	ORD	AND NOTICE OF HEARING. HEARING ON MORGAN STANLEY'S MTO COMPEL PRODUCTION OF DOCUMENTS & ANY MFOR PROTECTIVE ORDER TO BE FILED BY SUNBEAM SHALL BE HELD 9/23/04 @ 3:00 PM		
31-Aug-2004	524		NOTICE OF TAKING DEPOSITION	NOTD	OF MICHAEL C OCCHUIZZO ESQ, TO DONALD R UZZI		
01-Sep-2004	525		NOTICE OF TAKING DEPOSITION	NOTD	(REVISED/VIDEOTAPE) TO LAWRENCE JONES		

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14-Sep-2004	526		MOTION	MOT	& PLTF MORGAN STANLEY SENIOR FUNDING INC, FOR EXTENSION OF STAY OF CONTEMPT DISCOVERY		
14-Sep-2004	527		RESPONSE TO:	RESP	TO DEF COLEMAN (PARENT) HOLDINGS INC'S FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS		
14-Sep-2004	528		MOTION TO COMPEL	MCMP	DEPO WITNESSES - W/ATTACHMENTS		
14-Sep-2004	529		MOTION	MOT	AND OF MACANDREWS & FORBES HOLDINGS INC, TO LIFT CONFIDENTIALITY DESIGNATION FROM AMENDED ANSWERS TO INTERROG'S - W/ATTACHMENTS		
14-Sep-2004	530		MOTION TO COMPEL	MCMP	& MACANDREWS & FORBES HOLDINGS INC, PRODUCTION OF DEBENTURE-RELATED DOCUMENTS - W/ATTACHMENTS		

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14-Sep-2004	531		NOTICE OF HEARING	NOH	9/23/04 @ 3:00 PM ON (1) CPH & MAFCO'S M/T O LIFT CONFIDENTIALITY DESIGNATION FROM AMENDED ANSWERS TO INTERROGS (2) CPH & MAFCO'S M/T O COMPEL PRODUCTION OF DEBENTURE-RELATED DOCUMENTS (3) CPH & MAFCO'S M/T O COMPEL DEPO WITNESSES (4) CPH & MAFCO'S M/T O COMPEL SUPPLEMENTATION OF RESPONSES TO REQUESTS FOR ADMISSIONS (5) CPH & MAFCO'S M/T O COMPEL COMPLETE ANSWERS TO INTERROG #1 & 3 IN MAFCO'S FIRST SET OF INTERROG'S TO MORGAN STANLEY SENIOR FUNDING INC (6) CPH & MAFCO'S M/T O COMPEL ANSWERS TO INT & RTP (7) CPH & MAFCO'S SUPPLEMENTAL M/T O COMPEL RE: DOCUMENT REQUESTS AND (8) CPH & MAFCO'S M/T O CLARIFY THIS COURTS 7/26/04 ORDER ON CPH'S & MAFCO'E ORE TENUS MOTION & THIS COURTS 12/4/03 ORDER ON MORGAN STANLEY'S M/T O COMPEL PRODUCTION OF SETTLEMENT AGREEMENT (FILED IN DER SEAL)		
14-Sep-2004	532		MOTION	MOT	FOR ENLARGEMENT OF TIME TO AMEND THE PLEADINGS		
14-Sep-2004	533		ORDER SETTING HEARING	ORSH	9/2/04 @ 10:30 AM ON CASE MANAGEMENT CONFERENCE		
15-Sep-2004	534		NOTICE OF FILING INTERROGS	NOFI	(FOURTH SET) TO MORGAN STANLEY & CO INC		
15-Sep-2004	535		MOTION	MOT	TO APPOINT COMMISSION		
15-Sep-2004	536		ORDER	ORD	AND NOTICE OF HEARING. STATUS CONFERENCE IS SPECIALLY SET FOR 9/15/04 @ 8:45 AM		

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15-Sep-2004	537		ORDER	ORD	AND NOTICE OF HEARING. THE CONTINUATION OF THE CASE MANAGEMENT CONFERENCE IS SET FOR 9/23/04 @ 10:00 AM		
16-Sep-2004	538		ORDER	ORD	MFOR CONTEMPT IS STRICKEN. MORGAN STANLEY'S MFOR RECONSIDERATION OF 7/12/04 ORDER ON PLTFS MTO COMPEL RESPONSES TO INTERROG'S IS GRANTED - SAID ORDER IS VACATED		
16-Sep-2004	539		NOTICE	NOT	OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S AND MACANDREWS & FORBES HOLDINGS INC'S MTO COMPEL PRODUCTION OF DEBENTURE-RELATED DOCUMENTS		
16-Sep-2004	540		NOTICE	NOT	OF MORGAN STANLEY, OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S & MACANDREWS & FORBES HOLDINGS INC'A MTO COMPEL DEPO WITNESSES - W/ATTACHMENTS		
17-Sep-2004	541		NOTICE	NOT	OF JOINT SUBMISSION OF THE PARTIES FOR 9/23/04 CASE MANAGEMENT CONFERENCE		
17-Sep-2004	542		NOTICE OF FILING INTERROGS	NOFI	(FIFTH SET) OF PLTF, TO MORGAN STANLEY & CO INC		
20-Sep-2004	543		MOTION	MOT	(AGREED) OF NON PARTY SUNBEAM CORP NKA AMERICAN HOUSEHOLD INC, TO RESCHEDULE HEARING		
21-Sep-2004	544		NOTICE	NOT	TO MEDIA		
21-Sep-2004	545		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO KAREN ELTRICH & JAKE FOLEY		
21-Sep-2004	546		RESPONSE TO:	RESP	AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC FOURTH SET OF REQUESTS FOR ADMISSION		
21-Sep-2004	547		NOTICE OF TAKING DEPOSITION	NOTD	OF MICHAEL OCCHUIZZO ESQ, TO DONALD R UZZI		

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21-Sep-2004	548		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO BROOKS HARRIS		
21-Sep-2004	549		MOTION	MOT	FOR ENLARGEMENT OF TIME TO FILE AMENDED AFFIRM DEFENSES		
21-Sep-2004	550		MOTION	MOT	TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES - W/ATTACHMENTS (AS TO SAME PARTIES		
21-Sep-2004	551		MOTION	MOT	FOR DETERMINATION OF PROTECTABILITY OF MATERIAL REDACTED FROM COURT RECORDS		
21-Sep-2004	552		NOTICE OF HEARING	NOH	10/14/04 @ 8:00 AM ON CPH'S MTO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES (2) CPH'S M/FOR DETERMINATION OF PROTECTABILITY OF MATERIAL REDACTED FROM COURT RECORDS & (3) CPH'S NOTICE TO MEDIA		
21-Sep-2004	553		AGREED ORDER	AGOR	SUNBEAM'S AGREED MTO RESCHEDULE HEARING IS GRANTED. SUNBEAM'S M/FOR PROTECTIVE ORDER & MORGAN STANLEY'S MTO COMPEL PRODUCTION OF DOCUMENTS IS RESCHEDULED TO THE NEXT STATUS CONFERENCE SCHEDULED ON 10/14/04 @ 8:00 AM		
21-Sep-2004	554		ORDER	ORD	AND NOTICE OF HEARING. COLEMAN (PARENT) HOLDINGS INC'S MTO APPOINT COMMISSION IS SET FOR 9/23/04 @ 10:00 AM		
21-Sep-2004	555		STIPULATION AND ORDER	STOR	REGARDING DRAFT EXPERT REPORTS - COURT APPROVES STIP		
21-Sep-2004	556		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S MTO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES (VOLUME I OF III)		

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21-Sep-2004	557		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S MTO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES (VOLUME II OF III)		
21-Sep-2004	558		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S MTO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES (VOLUME III OF III)		
21-Sep-2004	559		MOTION	MOT	FOR LEAVE TO AMEND PLEADINGS - W/ATTACHMENTS		
21-Sep-2004	560		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
21-Sep-2004	561		SEALED	SEAL	PER COURT ORDER DTD 7/31/03		
21-Sep-2004	562		NOTICE	NOT	OF APPENDIX TO COLEMAN (PARENT) HOLDING INC MOT TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES (VOLUME I OF IV, EXHIBITS 1-10)		
21-Sep-2004	563		NOTICE	NOT	OF APPENDIX TO COLEMAN (PARENT) HOLDINGS INC MOT TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES (VOLUME IV OF IV, EXHIBITS 44-48)		
21-Sep-2004	564		NOTICE	NOT	OF APPENDIX TO COLEMAN (PARENT) HOLDINGS INC MOT TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES (VOLUME II OF IV, EXHIBITS 11-21)		
21-Sep-2004	565		NOTICE	NOT	OF APPENDIX TO COLEMAN (PARENT) HOLDINGS INC MOT TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAES (VOLUME III OF IV, EXHIBITS 22-43)		
22-Sep-2004	566		MOTION	MOT	(AMENDED) FOR ENLARGEMENT OF TIME TO FILE AMENDED AFFIRM DEFENSES		
22-Sep-2004	567		RESPONSE TO:	RESP	TO DEF COLEMAN (PARENT) HOLDINGS INCS FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS		

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22-Sep-2004	568		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) OF MICHAEL C OCCHUIZZO ESQ, TO KAREN K CLARK		
22-Sep-2004	569		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO JASON KUNREUTHER; R BRAM SMITH & MICHAEL HART		
22-Sep-2004	570		MOTION	MOT	TO ALLOW CPH IN EXCESS OF 30 INTERROG'S - W/ATTACHMENTS		
22-Sep-2004	571		NOTICE OF HEARING	NOH	9/29/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S MTO ALLOW CPH IN EXCESS OF 30 INTERROG'S		
22-Sep-2004	572		STIPULATION	STIP	REGARDING DRAFT EXPERT REPORTS		
23-Sep-2004	573		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO JAMES MAHER		
23-Sep-2004	574		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO ADAM EMMERICH		
23-Sep-2004	574 - A	1	EXHIBIT LIST	EXLT	FOR NON-JURY TRIAL EXHIBITS--EXHIBITS IN EVIDENCE ROOM.		
24-Sep-2004	575		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO JERRY LEVIN		
24-Sep-2004	576		NOTICE OF HEARING	NOH	9/29/04 @ 8:45 AM ON MORGAN STANLEY'S VERIFIED MTO ADMIT MARK C HANSEN PRO HAC VICE; MORGAN STANLEY'S VERIFIED MTO ADMIT JAMES M WEBSTER III PRO HAC VICE & MORGAN STANLEY'S VERIFIED MTO ADMIT REBECCA A BEYNON PRO HAC VICE		
24-Sep-2004	577		ORDER	ORD	CPH & MAFCO'S MTO COMPEL DEPO WITNESSES IS GRANTED IN PART. MORGAN STANLEY SHALL MAKE MR KOURAKAS AVAILABLE FOR DEPO. SEE ORDER		
24-Sep-2004	578		MOTION	MOT	(VERIFIED) TO ADMIT JAMES M WEBSTER III PRO HAC VICE		

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24-Sep-2004	579		MOTION	MOT	(VERIFIED) TO ADMIT REBECCA A BEYNON PRO HAC VICE		
24-Sep-2004	580		MOTION	MOT	(VERIFIED) TO ADMIT MARK C HANSEN PRO HAC VICE		
30-Sep-2004	581		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO MORGAN STANLEY SENIOR FUNDING INC		
30-Sep-2004	582		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO MITCH PETRICK & MICHAEL RANKOWITZ		
30-Sep-2004	583		NOTICE OF HEARING	NOH	10/5/04 @ 8:45 AM ON MORGAN STANLEY'S VERIFIED MTO ADMIT MARK C HANSEN PRO HAC VICE; MORGAN STANLEY'S VERIFIED MTO ADMIT JAMES M WEBSTER III PRO HACE VICE; MORGAN STANLEY'S VERIFIED MTO ADMIT REBECCA A BEYNON PRO HAC VICE AND MORGAN STANLEY'S MTO RESET HEARING		
30-Sep-2004	584		MOTION	MOT	TO RESET HEARING		
30-Sep-2004	585		RE-NOTICE OF HEARING	RNOH	10/7/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S MTO ALLOW CPH IN EXCESS OF 30 INTERROG'S		
30-Sep-2004	586		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO MORGAN STANLEY SENIOR FUNDING INC		
30-Sep-2004	587		REQUEST	REQ	(SECOND) FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY SENIOR FUNDING INC		
30-Sep-2004	588		REQUEST	REQ	(SIXTH) FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY & CO INC		
30-Sep-2004	589		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC & MACANDREWS & FORBES HOLDINGS INC'S MTO COMPEL PRODUCTION OF DEBENTURE-RELATED DOCUMENTS IS GRANTED IN PART - SEE ORDER		

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30-Sep-2004	590		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC & MACANDREWS & FORBES HOLDINGS INC'S MTO COMPEL SUPPLEMENTATION OF RESPONSES TO REQUEST FOR ADMISSION IS DENIED		
30-Sep-2004	591		ORDER	ORD	ON COLEMAN (PARENT) HOLDINGS INC'S MTO APPOINT COMMISSION. COURT DEFERS RULING PENDING FILING A SUPPLEMENTAL MOTION ADDRESSING THE COURTS AUTHORITY TO AUTHORIZE A NON RESIDENT TO SUBPOENA A THIRD PARTY FOR DEPO		
01-Oct-2004	592		MOTION	MOT	(VERIFIED) TO PERMIT FOREIGN ATTY, ROBERT L BYMAN, TO APPEAR		
01-Oct-2004	593		MOTION	MOT	(VERIFIED) TO PERMIT FOREIGN ATTY, JOANNE H SWEENEY, TO APPEAR		
01-Oct-2004	594		MOTION	MOT	(VERIFIED) TO PERMIT FOREIGN ATTY, TIMOTHY J CHORVAT, TO APPEAR		
01-Oct-2004	595		NOTICE OF HEARING	NOH	10/5/04 @ 8:45 AM ON CPH & MAFCO'S THREE VERIFIED MTO PERMIT FOREIGN ATTY'S (ROBERT L BYMAN; TIMOTHY J CHORVAT & JOANNE H SWEENEY)		
01-Oct-2004	596		NOTICE OF HEARING	NOH	10/6/04 @ 8:45 AM ON MORGAN STANLEY'S AMENDED M/FOR ENLARGEMENT OF TIME TO FILE AMENDED AFFIRM DEFENSES		
01-Oct-2004	597		ORDER	ORD	FOLLOWING CASE MANAGEMENT CONFERENCE. TRIAL IN THIS ACTION SHALL BEGIN NO LATER THAN 2/22/05 - SEE ORDER FOR FURTHER DETAILS		

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01-Oct-2004	598		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC & MACANDREWS & FORBES HOLDINGS INC'S MTO COMPEL COMPLETE ANSWERS TO INTERROG #1 & 3 IN MAFCO'S FIRST SET OF INTERROG'S TO MORGAN STANLEY SENIOR FUNDING INC IS GRANTED IN PART.		
01-Oct-2004	599		REQUEST	REQ	(SEVENTH) FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY & CO INC		
01-Oct-2004	600		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO MORGAN STANLEY SENIOR FUNDING INC AND MORGAN STANLEY & CO INC		
01-Oct-2004	601		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO MORGAN STANLEY SENIOR FUNDING INC AND MORGAN STANLEY & CO INC		
01-Oct-2004	602		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO BROOKS HARRIS		
01-Oct-2004	603		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO MORGAN STANLEY SENIOR FUNDING INC & MORGAN STANLEY & CO INC		
01-Oct-2004	604		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO WILLIAM KOURAKAS		
04-Oct-2004	Atch - 578 -		FEE/PRO HAC VICE (\$100.00)	0PRHV			
04-Oct-2004	Atch - 578 -		RECEIPT FOR PAYMENT	RCPT	A Payment of -\$300.00 was made on receipt CAMB55692.		
04-Oct-2004	Atch - 579 -		FEE/PRO HAC VICE (\$100.00)	0PRHV			
04-Oct-2004	Atch - 580 -		FEE/PRO HAC VICE (\$100.00)	0PRHV			
04-Oct-2004	605		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO RONALD PERELMAN		
04-Oct-2004	606		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO HOWARD GITTIS		
04-Oct-2004	607		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO GLENN DICKES		

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04-Oct-2004	608		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO LAWRENCE WINOKER		
05-Oct-2004	609		ORDER	ORD	CPH & MAFCO'S VERIFIED M/TO PERMIT FOREIGN ATTY TO APPEAR (BYMAN, CHORVAT, SWEENEY) IS GRANTED. ABOVE LISTED ATTYS ARE ADMITTED TO PRACTICE IN THIS CASE		
06-Oct-2004	610		NOTICE OF FILING	NOF	OF NON. PARTY, SUNBEAM CORP, PLEADING EXHIBITS UNDER SEAL		
06-Oct-2004	611		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-Oct-2004	612		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO STEVEN R ISKO		
06-Oct-2004	613		NOTICE OF FILING	NOF	OF NON PARTY SUNBEAM CORP, EXHIBITS IN SUPPORT OF ITS M/FOR PROTECTIVE ORDER & MEMO OF LAW IN OPPOSITION TO MORGAN STANLEY'S M/TO COMPEL DOCUMENTS - W/ATTACHMENTS		
07-Oct-2004	614		NOTICE OF HEARING	NOH	10/14/04 @ 8:00 AM ON MORGAN STANLEY'S (3) VERIFIED M/TO ADMIT MARK C HANSEN; JAMES M WEBSTER III & REBECCA A BEYNON PRO HAC VICE AND MORGAN STANLEY'S M/TO ENTER PRETRIAL SCHEDULE		
07-Oct-2004	615		MOTION	MOT	TO ENTER PRETRIAL SCHEDULE - W/ATTACHMENTS		
07-Oct-2004	616		ORDER	ORD	MORGAN STANLEY'S M/TO RESET HEARING ON COLEMAN (PARENT) HOLDINGS INC'S M/TO AMEND COMPLAINT TO SEEK PUNITIVE DAMAGES IS GRANTED. COLEMAN (PARENT) HOLDINGS INCS M/TO AMEND COMPLAINT TO SEEK PUNITIVE DAMAGES SHALL BE RESET ON 11/5/04 @ 8:00 AM. MORGAN STANLEY SHALL HAVE UP TO & INCLUDING 10/22/04 TO SERVE ITS RESPONSE TO M/TO AMEND COMPLAINT		

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08-Oct-2004	617		MEMORANDUM	MEMO	OF COLEMAN (PARENT) HOLDINGS INCS & MACANDREWS & FORBES HOLDINGS INCS, IN SUPPORT OF THEIR PROPOSED PRETRIAL SCHEDULING ORDER		
08-Oct-2004	618		NOTICE	NOT	OF PARTIES, OF JOINT SUBMISSION OF THE PARTIES FOR 10/14/04 CASE MANAGEMENT CONFERENCE		
08-Oct-2004	618 - A		MEMORANDUM OF LAW	MLAW	IN OPPOSITION TO THE PRO HAC VICE MOTIONS OF THE KELLOGG HUBER ATTYS BY COLEMAN (PARENT) HOLDINGS AND MACANDREWS & FORBER - ATTACHMENT		
12-Oct-2004	619		NOTICE	NOT	OPPOSITION TO NON-PARTY SUNBEAM'S MOTION FOR PROTECTIVE ORDER AND REPLY IN SUPPORT OF ITS MOTION TO COMPEL DOCUMENTS		
12-Oct-2004	620		NOTICE OF TAKING DEPOSITION	NOTD	MICHAEL HART		
12-Oct-2004	621		NOTICE OF TAKING DEPOSITION	NOTD	DAVID POLK & WARDELL		
12-Oct-2004	622		MOTION	MOT	SUPPLEMENTAL FOR COMMISSION FOR OUT-OF-STATE DEPOSITION OF DWIGHT SIPPRELLE IN NEW JERSEY		
12-Oct-2004	623		NOTICE OF HEARING	NOH	10/14/04 @ 8:00 AM - MOTION FOR COMMISSION		
12-Oct-2004	624		ORDER	ORD	ON COLEMAN (PARENT) HOLDINGS INC'S MOTION TO ALLOW CPH IN EXCESS OF 30 INTERROGS - GRANTED		
12-Oct-2004	625		ORDER	ORD	AND NOTICE OF HEARING - 10/12/04 @ 8:45 AM - MOTION FOR ENLARGEMENT OF TIME		

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12-Oct-2004	626		ORDER DENYING	ORDD	MORGAN STANLEY'S MOTION FOR ENLARGEMENT OF TIME TO FILE AMENDED AFFIRMATIVE DEFENSES - W/O PREJ TO RENEWAL		
12-Oct-2004	627		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
12-Oct-2004	628		SEALED	SEAL	PER ORDER DTD 7/31/03 *** SEALED DOCUMENT WAS RELEASED TO GREENBERG TRAUIG PER ORDER DATED 12/13/04 ***		
12-Oct-2004	628 - A		NOTICE	NOT	OF FIFTH SET OF REQUESTS FOR ADMISSION		
13-Oct-2004	628 - B		NOTICE OF FILING INTERROGS	NOFI	SIXTH SET TO DFT		
13-Oct-2004	628 - C		REQUEST	REQ	FOR SUPPLEMENTAL DOCUMENTS TO DFT MORGAN STANLEY SENIOR FUNDING INC		
13-Oct-2004	628 - D		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO RC OF SKADDEN ARPS SLATE MEAGHER & FLOM LLP		
13-Oct-2004	628 - E		REQUEST	REQ	FOR PRODUCTION OF SUPPLEMENTAL DOCUMENTS TO MORGAN STANLEY & CO INC		
14-Oct-2004	Atch - 592 -		FEE/PRO HAC VICE (\$100.00)	OPRHV			
14-Oct-2004	Atch - 592 -		RECEIPT FOR PAYMENT	RCPT	A Payment of -\$300.00 was made on receipt CAMB56795.		
14-Oct-2004	Atch - 593 -		FEE/PRO HAC VICE (\$100.00)	OPRHV			
14-Oct-2004	Atch - 594 -		FEE/PRO HAC VICE (\$100.00)	OPRHV			
14-Oct-2004	628 - F		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO WILLIAM KOURAKOS; MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC		
14-Oct-2004	628 - G		NOTICE OF FILING	NOF	OF NON PARTY SUNBEAM CORP NKA AMERICAN HOUSEHOLD INC, AFFID OF CHRISTOPHER P MALLOY - ATTACHED		

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15-Oct-2004	629		ORDER	ORD	THAT THE CLERK IS DIRECTED TO UNSEAL & PLACE IN THE COURT FILE DOCKET # 562-565 INCLUSIVE		
15-Oct-2004	630		NOTICE OF COMPLIANCE	NCOM	W/COURT ORDER ON MOTION TO ADMIT REBECCA A BEYNON PRO HAC VICE, MARK C HANSEN PRO HAC VICE AND JAMES M WEBSTER III PRO HAC VICE BY PLTF MORGAN STANLEY & CO		
15-Oct-2004	630 - A		ORDER	ORD	THAT NON PARTY SUNBEAMS MOTION FOR PROTECTIVE ORDER AND MOTION TO COMPEL ,THAT WITHIN 10 DAYS COUNSEL FOR NON PARTY SUNBEAM SHALL SUBMIT DIRECTLY IN A SEALED ENVELOPE DOCUMENTS .SEE ORDER FOR DETAILS		
15-Oct-2004	630 - B		ORDER	ORD	AND DIRECTIONS TO THE CLERK OF FILING JOSEPH IANNO'S FACSIMILE TRANSMISSION DTD 10/14/04 ATTACHED		
15-Oct-2004	630 - C		ORDER SETTING HEARING	ORSH	SPECIALY SETTING ON 1/21/05 AT 8:00 AM FOR SUMMARY JUDGMENT		
15-Oct-2004	630 - D		ORDER	ORD	THAT MOTION IS GRANTED FOR REBECAA A BEYNON, MARK C HANSEN AND JAMES M WEBSTER III TO APPEAR ON BEHALF OF MORGAN STANLEY AND CO. (PRO HAC VICE)		
15-Oct-2004	630 - E		ORDER	ORD	CONCERNING PRETRIAL SCHEDULE AND FOLLOWING CASE MANAGEMENT CONFERENCE (SEE ORDER FOR SCHEDULE) AND HEARING ON MOITON IN LIMINE AND OBJECTINS TO DEPOSITION DESIGNATIONS SET 12/20-12/22 IS CANCELLED AND TO BE RESET		
15-Oct-2004	630 - F		ORDER	ORD	APPOINTING COMMISSIONER REGARDING THE DEPOSITION OF DWIGHT SIPPRELLE NEWARK, NEW JERSEY 07102 (CC TO ATTY)		

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15-Oct-2004	630 - G		ORDER	ORD	AND DIRECTIONS TO THE CLERK TO FILE AND DOCKET COPY OF 10/5/04 DEPOSITION OF STEVEN ISKO ATTACHED.		
15-Oct-2004	630 - H		MOTION	MOT	BY NON PARTY LEVINS MOTION FOR PROTECTIVE ORDER		
15-Oct-2004	630 - I		NOTICE OF FILING	NOF	BY NON PARTY ORIGINAL AFFIDAVIT OF CHRISTOPHER P MALLOY		
18-Oct-2004			FEE/PRO HAC VICE (\$100.00)	OPRHV	The fee PRHV in the amount of 300.00 was added on CBAACCD.		
18-Oct-2004			FEE/PRO HAC VICE (\$100.00)	OPRHV	The fee PRHV in the amount of 300.00 was added on CBAACCD. FOR NOTICE DE#630.		
18-Oct-2004			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$300.00 was made on receipt CAMB57064.		
18-Oct-2004			VOIDED RECEIPT	VOID	Receipt Number CAMB57042 has been voided.		
18-Oct-2004	631		MOTION	MOT	FOR LEAVE TO AMEND PLEADINGS		
18-Oct-2004	632		ORDER	ORD	ON NON-PTY JERRY W. LEVIN'S MOTION FOR PROTECTIVE ORDER IS GRANTED.		
19-Oct-2004	633	7	MOTION	MOT	FOR ISSUANCE OF ISSUANCE OF COMMISSIONS		
19-Oct-2004	634	3	SUBPOENA RETURNED / SERVED	SRSV	JERRY W. LEVIN SER 10/14/04		
19-Oct-2004	635	12	MOTION FOR PROTECTIVE ORDER	MFPO			
20-Oct-2004	636		DOCKET NBR ASSIGNED IN ERROR	DNAE			
20-Oct-2004	637	1	NOTICE OF TAKING DEPOSITION	NOTD	MITCH PETRICK, SIMON RANKIN, MORGAN STANLEY SR FUNDING INC		
20-Oct-2004	638	1	NOTICE OF TAKING DEPOSITION	NOTD	MICHAEL RANKOWITZ, MORGAN STANLEY & CO		

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20-Oct-2004	639	1	NOTICE OF FILING	NOF	SECOND SET INTERROGS TO MORGAN STANLEY SR FUNDING INC		
22-Oct-2004	640		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO MORGAN STANLEY & CO INC		
22-Oct-2004	641		NOTICE OF FILING INTERROGS	NOFI	(SEVENTH SET) TO MORGAN STANLEY & CO INC		
22-Oct-2004	642		NOTICE OF PRODUCTION NON PARTY	NPNP			
22-Oct-2004	643		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO MORGAN STANLEY SENIOR FUNDING INC		
22-Oct-2004	644		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO MORGAN STANLEY & CO INC		
22-Oct-2004	645		REQUEST	REQ	(EIGHTH) FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY & CO INC		
22-Oct-2004	646		NOTICE OF HEARING	NOH	11/2/04 @ 8:45 AM ON MORGAN STANLEY'S M/FOR ISSUANCE OF COMMISSION SERVED 10/19/04		
22-Oct-2004	647		NOTICE OF HEARING	NOH	11/3/04 @ 8:45 AM ON MORGAN STANLEY'S M/FOR LEAVE TO AMEND PLEADINGS SERVED 9/21/04 AND MORGAN STANLEY'S M/FOR LEAVE TO AMEND, SERVED 10/19/04		
22-Oct-2004	648		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO JAMES MAHER		
22-Oct-2004	649		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO RONALD PERELMAN		
22-Oct-2004	650		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO LAWRENCE WINOKER		
22-Oct-2004	651		MOTION FOR PROTECTIVE ORDER	MFPO	CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPO'S SERVED BY COLEMAN (PARENT) HOLDINGS INC ON 10/18/04		

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22-Oct-2004	652		MOTION FOR PROTECTIVE ORDER	MFPO	CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPO'S SERVED BY MACANDREWS & FORBES HOLDINGS ON 10/18/04		
22-Oct-2004	653		NOTICE OF HEARING	NOH	11/5/04 @ 8:00 AM ON MORGAN STANLEY'S M/TO STRIKE EVIDENCE FROM CPH'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES		
22-Oct-2004	654		NOTICE	NOT	OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES - W/ATTACHMENTS		
22-Oct-2004	655		MOTION TO STRIKE	MSTR	EVIDENCE FROM COLEMAN (PARENT) HOLDINGS INC'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES - W/ATTACHMENTS		
22-Oct-2004	656		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
22-Oct-2004	657		SEALED	SEAL	PER ORDER DTD 7/31/03		
22-Oct-2004	658		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
22-Oct-2004	659		SEALED	SEAL	PER ORDER DTD 7/31/03		
25-Oct-2004	660		REQUEST FOR ADMISSIONS	RQAD	(SIXTH SET) TO DEF MORGAN STANLEY & CO		
25-Oct-2004	660 - A		MOTION	MOT	FOR PROTECTIVE ORDER REGARDING THE DEPO NOTICED FOR MR. PERELMAN		
25-Oct-2004	660 - B		MOTION	MOT	FOR PROTECTIVE ORDER REGARDING THE DEPO NOTICED FOR MR. GITTIS		
25-Oct-2004	660 - C		NOTICE OF TAKING DEPOSITION	NOTD	AS TO MORGAN STANLEY & CO AND MORGAN STANLEY SENIOR FUNDING INC ON 11/9/04		
25-Oct-2004	660 - D		NOTICE OF TAKING DEPOSITION	NOTD	AS TO R/C SUNBEAM CORPORATION NKA AMERICAN HOUSEHOLD INC ON 11/2/04		
25-Oct-2004	660 - E		MOTION	MOT	TO ALLOW CPH IN EXCESS OF 30 INTERROG'S		

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25-Oct-2004	660 - F		MOTION	MOT	TO COMPEL PRODUCTION OF DOCUMENTS FROM AMERICAN HOUSEHOLD INC		
25-Oct-2004	660 - G		MOTION	MOT	TO COMPEL PRODUCTION OF FINANCIAL STATEMENTS OF SUNBEAM'S SUCCESSOR COMPANY		
25-Oct-2004	660 - H		NOTICE OF UNAVAILABILITY	NOUN	ON 12/27/04 - 12/31/04		
25-Oct-2004	660 - I		NOTICE OF TAKING DEPOSITION	NOTD	AS TO R/C ARTHUR ANDERSEN LLP ON 11/5/04		
25-Oct-2004	660 - J		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
25-Oct-2004	660 - K		NOTICE OF HEARING	NOH	ON 11/5/04 AT 8:00 A.M. MOTION TO COMPEL		
25-Oct-2004	661		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
25-Oct-2004	662		MOTION	MOT	FOR A DETERMINATION OF THE ADMISSIBILITY OF MORGAN STANLEY PERFORMANCE EVALUATIONS - W/ATTACHMENTS (PREVIOUSLY FILED UNDER SEAL - UNSEALED PER COURT ORDER DTD 11/3/04)		
26-Oct-2004	663		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO PHILIP HARLOW		
26-Oct-2004	664		NOTICE OF FILING	NOF	SIGNATURE PAGE TO MORGAN STANLEY'S MTO STRIKE EVIDENCE FROM CPH'S MTO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES		
26-Oct-2004	665		MOTION	MOT	FOR ISSUANCE OF COMMISSION - W/ATTACHMENTS		
26-Oct-2004	666		NOTICE OF HEARING	NOH	11/3/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S MTO UNSEAL MATERIAL PREVIOUSLY REDACTED FROM COURT RECORDS		
26-Oct-2004	667		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO MITCH PETRICK & SIMON RANKIN		

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26-Oct-2004	668		MOTION	MOT	TO UNSEAL MATERIAL PREVIOUSLY REDACTED FROM COURT RECORDS		
26-Oct-2004	669		NOTICE OF FILING INTERROGS	NOFI	8TH SET) TO MORGAN STANLEY & CO INC		
26-Oct-2004	670		REQUEST	REQ	(NINTH) FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY & CO INC		
27-Oct-2004	671		REQUEST	REQ	(EIGHTH) FOR PRODUCTION OF DOCUMENTS TO PLTF		
27-Oct-2004	672		NOTICE OF FILING INTERROGS	NOFI	(FIFTH SET) TO PLTF COLEMAN (PARENT) HOLDINGS INC		
27-Oct-2004	673		RESPONSE TO:	RESP	AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S FIFTH SET OF INTERROG'S		
27-Oct-2004	674		RESPONSE TO:	RESP	AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S FOURTH SET OF INTERROG'S		
27-Oct-2004	675		NOTICE OF TAKING DEPOSITION	NOTD	OF COLEMAN (PARENT) HOLDINGS INC THRU A CPH REP W/MOST KNOWLEDGE		
27-Oct-2004	676		REQUEST FOR ADMISSIONS	RQAD	(FOURTH SET) TO PLTF		
27-Oct-2004	677		RESPONSE TO:	RESP	(AMENDED) AND OBJECTIONS TO COLEMAN (PARENT) HOLDING INC'S SECOND SET OF INTERROG'S		
27-Oct-2004	678		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED) TO ANNE JORDAN		
27-Oct-2004	679		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO ANNE JORDAN		
27-Oct-2004	680		RE-NOTICE OF HEARING	RNOH	11/2/04 @ 8:45 AM ON CPH'S M/FOR LEAVE TO FILE IN EXCESS OF 30 INTERROG'S		

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27-Oct-2004	681		NOTICE OF HEARING	NOH	(SUPPLEMENTAL) 11/5/04 @ 8:00 AM ON MS' M/FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPOS SERVED BY COLEMAN (PARENT) HOLDINGS INC ON 10/18/04		
27-Oct-2004	682		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO TAREK ABDEL-MEGUID; JOSEPH PERELLA; ROBERT SCOTT & BRUCE FIEDOREK		
27-Oct-2004	683		NOTICE	NOT	OF NON PARTY SUNBEAM CORP (NKA AMERICAN HOUSEHOLD INC) OF SUBMISSION OF DOCUMENTS TO COURT FOR IN-CAMERA INSPECTION		
28-Oct-2004	684		MOTION TO COMPEL	MCMP	COMPLIANCE W/THIS COURT'S 9/30/04 ORDER - W/ATTACHMENTS		
28-Oct-2004	685		NOTICE OF HEARING	NOH	(SUPPLEMENTAL) 11/5/04 @ 8:00 AM ON COLEMAN (PARENT) HOLDINGS IN'CS M/TO COMPEL COMPLAINEE W/THIS COURT'S 9/30/04 ORDER		
28-Oct-2004	686		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO JAMES MAHER		
29-Oct-2004	687		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/FOR PROTECTIVE ORDER		
29-Oct-2004	688		NOTICE OF HEARING	NOH	11/5/04 @ 8:00 AM ON MORGAN STANLEY'S M/FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPOS SERVED BY MACANDREWS & FORBES HOLDINGS INC ON 10/18/04 SERVED 10/22/04		
29-Oct-2004	689		RESPONSE TO:	RESP	IN OPPOSITION TO WACHOVIA BANK NA'S M/TO QUASH SUBPOENA OR IN THE ALTERNATIVE M/FOR PROTECTIVE ORDER		

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29-Oct-2004	690		NOTICE	NOT	OF OPPOSITION TO COLEMAN (PARENT) HOLDING INC'S M/TO COMPEL PRODUCTION OF FINANCIAL STATEMENTS OF SUNBEAMS SUCCESSOR CO		
29-Oct-2004	691		RESPONSE TO:	RESP	AND OF MACANDREWS & FORBES HOLDINGS INC, TO M/FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPO'S SERVED BY MAFCO ON 10/18/04		
29-Oct-2004	692		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S M/FOR PROTECTIVE ORDER TO BAR RULE 1.310 DEPO		
01-Nov-2004	693		NOTICE	NOT	OF OPPOSITION TO MORGAN STANLEY & CO INC'S M/TO STRIKE EVIDENCE FROM CPH'S M/TO AMEND ITS COMPLAINT		
01-Nov-2004	694		NOTICE	NOT	OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S M/FOR A DETERMINATION OF THE ADMISSIBILITY OF MORGAN STANLEY PERFORMANCE EVALUATIONS		
01-Nov-2004	695		OBJECTION	OBJ	TO COLEMAN (PARENT) HOLDINGS INC'S 7TH REQUEST FOR PRODUCTION OF DOCUMENTS		
01-Nov-2004	696		NOTICE OF FILING	NOF	OF NON PARTY WACHOVIA BANK - ATTACHED EXHIBIT "A" TO ITS M/TO QUASH SUBPOENA OR IN THE ALTERNATIVE M/FOR PROTECTIVE ORDER FILED 7/29/04		
01-Nov-2004	697		MOTION FOR PROTECTIVE ORDER	MFPO	(EMERGENCY) OF NONPARTY WACOVIA BANK NA		
01-Nov-2004	698		NOTICE OF HEARING	NOH	11/4/04 @ 8:45 AM ON NON PARTY WACHOVIA BANK NA'S EMERGENCY M/FOR PROTECTIVE ORDER		

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01-Nov-2004	699		REPLY/RESPONSE	RPRS	IN SUPPORT OF ITS MTO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES - W/ATTACHMENTS		
02-Nov-2004	700		ORDER	ORD	NON PARTY SUNBEAM'S MFOR PROTECTIVE ORDER IS GRANTED. COURT HAS RESEALED THE FILING & PLACED IT IN THE COURT FILE. MORGAN STANLEY'S MTO COMPEL PRODUCTION OF DOCUMENTS IS DENIED		
02-Nov-2004	701		SEALED	SEAL	PER ORDER DTD 11/1/04		
02-Nov-2004	702		MOTION FOR PROTECTIVE ORDER	MFPO	CONCERNING DISCOVERY SERVED BY COLEMAN (PARENT) HOLDINGS INC AFTER 10/14/04 & TO EXTEND PRETRIAL DEADLINES		
02-Nov-2004	703		MOTION FOR PROTECTIVE ORDER	MFPO	CONCERNING MORGAN STANLEY COLEMAN ESCROW NOTES - W/ATTACHMENTS		
03-Nov-2004	704		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO SIMON RANKIN & JOHANNES GROELLER		
03-Nov-2004	705		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MTO UNSEAL MATERIAL PREVIOUSLY REDACTED FROM COURT RECORDS IS GRANTED. CLERK IS DIRECTED TO UNSEAL THE 10/22/04 MFOR A DETERMINATION OF THE ADMISSIBILITY OF MORGAN STANLEY PERFORMANCE EVALUATIONS & ITS ATTACHMENTS		
03-Nov-2004	706		AGREED ORDER	AGOR	MORGAN STANLEY'S MFOR LEAVE TO AMEND PLEADINGS DTD 9/21/04 IS GRANTED. MORGAN STANLEY'S AMENDED ANSWER & AMENDED AFFIRM DEFENSES ATTACHED TO ITS MFOR LEAVE TO AMEND PLEADINGS IS DEEMED FILED		
03-Nov-2004	707		ORDER	ORD	MORGAN STANLEY & CO INC & MORGAN STANLEY SENIOR FUNDING INC'S MFOR ISSUANCE OF COMMISSIONS IS GRANTED - SEE ORDER FOR DETAILS		

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03-Nov-2004	708		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MTO ALLOW CPH IN EXCESS OF 30 INTERROG'S IS GRANTED - SEE ORDER		
03-Nov-2004	709		ORDER	ORD	ATTACHED STIP OF THE PARTIES IS ACKNOWLEDGED & RECORDED		
03-Nov-2004	710		ORDER	ORD	AND NOTICE OF HEARING. MANAGEMENT CONFERENCE AND HEARING ON OUTSTANDING MOTIONS IS SET FOR 11/4/04 @ 2:00 PM		
03-Nov-2004	711		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S M/FOR PROTECTIVE ORDER CONCERNING DISCOVERY SERVED BY CPH AFTER 10/14/04 & TO EXTEND PRETRIAL DEADLINES		
03-Nov-2004	712		NOTICE	NOT	OF MORGAN STANLEY OPPOSITION TO COLEMAN (PARENT) HOLDINGS INCS MTO COMPEL COMPLIANCE W/THIS COURTS 9/30/04 ORDER		
04-Nov-2004	713		OBJECTION	OBJ	TO COLEMAN (PARENT) HOLDINGS INC'S 8TH SET OF INTERROG'S TO MORGAN STANLEY & CO INC		
04-Nov-2004	714		MOTION TO COMPEL	MCMP	DEPO OF JERRY LEVIN - W/ATTACHMENT		
04-Nov-2004	715		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO MORGAN STANLEY & CO INC		
04-Nov-2004	716		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC		
04-Nov-2004	717		NOTICE	NOT	OF JOINT SUBMISSION OF THE PARTIES FOR 11/5/04 CASE MANAGEMENT CONFERENCE		
04-Nov-2004	718		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S M/FOR LEAVE TO AMEND PLEADINGS - ATTACHMENTS		
05-Nov-2004	719		OBJECTION	OBJ	TO COLEMAN (PARENT) HOLDINGS INCS NINTH REQUEST FOR PRODUCTION OF DOCUMENTS		

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Case ID : 2003CA005045 - COLEMAN PARENT HOLDINGS INC V MORGAN
STANLEY & CO UCN : 502003CA005045XXOCAI

Case Filed : 08-May-2003 Status : RO - REOPEN

Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
05-Nov-2004	720		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO RONALD PERELMAN & HOWARD GITTIS		
05-Nov-2004	721		ORDER	ORD	MORGAN STANLEY'S M/FOR LEAVE TO AMEND PLEADINGS IS GRANTED. MORGAN STANLEY'S 7TH AFFIRM DEFENSE, ATTACHED TO ITS M/FOR LEAVE TO AMEND PLEADINGS DTD 10/15/04, IS DEEMED FILED		
05-Nov-2004	722		MOTION FOR PROTECTIVE ORDER	MFPO	CONCERNING COLEMAN (PARENT) HOLDINGS INC'S 6TH SET OF REQUESTS FOR ADMISSION & CPH'S NOTICE OF TAKING DEPO DTD 10/22/04 - W/ATTACHMENTS		
05-Nov-2004	723		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO WILLIAM REID		
05-Nov-2004	724		ORDER	ORD	MORGAN STANLEY & CO INC'S M/FOR PROTECTIVE ORDER CONCERNING DISCOVERY SERVED BY COLEMAN (PARENT) HOLDINGS INC'S AFTER 10/14/04 & TO EXTEND PRETRIAL DEADLINES IS DENIED		
05-Nov-2004	725		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO DWIGHT SIPPRELLE		
05-Nov-2004	726		NOTICE OF CANCELLATION	NCAN	OF HEARING SET FOR 11/5/04 @ 8:00 AM		
05-Nov-2004	727		ORDER	ORD	DEF MORGAN STANLEY & CO INC'S M/FOR PROTECTIVE ORDER IS GRANTED. THE CPH DEPO'S SET 10/29/04 SHALL NOT GO FORWARD		
05-Nov-2004	728		OBJECTION	OBJ	TO COLEMAN (PARENT) HOLDINGS INC'S 8TH REQUEST FOR PRODUCTION OF DOCUMENTS		
05-Nov-2004	729		OBJECTION	OBJ	TO COLEMAN (PARENT) HOLDINGS INC'S NOTICE OF VIDEOTAPED DEPO		
05-Nov-2004	730		OBJECTION	OBJ	TO COLEMAN (PARENT) HOLDINGS INC'S 7TH SET OF INTERROG'S		

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05-Nov-2004	731		NOTICE OF SERVICE	NOS	OF OBJECTIONS TO COLEMAN (PARENT) HOLDING INC'S 7TH SET OF INTERROG'S		
05-Nov-2004	732		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED) TO COLEMAN (PARENT) HOLDINGS INC		
05-Nov-2004	733		ORDER	ORD	DEF MORGAN STANLEY & CO INC'S MFOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPED DEPO'S SERVED BY MACANDREWS & FORBES HOLDINGS INC ON 10/18/04 IS GRANTED IN PART - SEE ORDER		
05-Nov-2004	734		ORDER	ORD	ON MFOR PROTECTIVE ORDER CONCERNING THE NOTICE OF TAKING VIDEOTAPE DEPOS SERVED BY COLEMAN (PARENT) HOLDINGS INC ON 10/18/04. IF DEF STIPULATES IN WRITING BY NOON 11/5/04 THAT IT DOES NOT CONTEND THAT PLTF MADE ANY MISREPRESENTATIONS OR OMISSION IN CONNECTION WITH THE TRANSACTION FORMING THE SUBJECT MATTER OF PLTF'S COMPLAINT OTHER THAN ALLEGED IN PARAGRAPH 43 OF TIS ANSWERS, EXHIBIT A TO THE MOTION SHALL BE DEEMED AMENDED BY INTERLINEATION TO DESIGNATE A CORP REP FOR THE MATTERS RAISED BY PARAGRAPH 43 ONLY. WHETHER OR NOT THE STIP IS MADE AMENDING EXHIBIT A BY INTERLINEATION, THE MOTION IS DENIED		
05-Nov-2004	735		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MFOR PROTECTIVE ORDER REGARDING THE DEPO NOTICE FOR MR PERELMAN IS GRANTED IN PART - SEE ORDER		
05-Nov-2004	736		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MFOR PROTECTIVE ORDER REGARDING THE DEPO NOTICED FOR MR GITTIS IS GRANTED IN PART - SEE ORDER		

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05-Nov-2004	737		RESPONSE TO:	RESP	(WRITTEN) TO RULE 1.310 TOPICS		
08-Nov-2004	738		NOTICE OF HEARING	NOH	11/15/04 @ 8:45 AM ON MORGAN STANLEY'S M/TO COMPEL DEPO OF JERRY LEVIN		
08-Nov-2004	739		RE-NOTICE OF HEARING	RNOH	11/16/04 @ 8:45 AM ON WACHOVIA BANK NA'S M/TO QUASH		
08-Nov-2004	740		MOTION FOR PROTECTIVE ORDER	MFPO	OF PHILIP HARLOW - W/ATTACHMENTS		
08-Nov-2004	741		RE-NOTICE OF HEARING	RNOH	11/15/04 @ 8:45 AM ON PHILIP HARLOW'S M/FOR PROTECTIVE ORDER		
08-Nov-2004	742		ORDER	ORD	MORGAN STANLEY & CO INC'S M/TO STRIKE EVIDENCE FROM COLEMAN (PARENT) HOLDINGS INC'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES IS DENIED W/OUT PREJUDICE.		
09-Nov-2004	742 - A		MOTION FOR PROTECTIVE ORDER	MFPO	TO PRECLUDE UNNECESSARY AND DUPLICATIVE RULE 1.310 DEPO TESTIMONY REGARDING FEES & EXPENSES RECEIVED BY MORGAN STANLEY - W/ATTACHMENTS		
09-Nov-2004	742 - B		NOTICE OF HEARING	NOH	11/15/04 @ 8:45 AM ON (1) COLEMAN (PARENT) HOLDINGS INC'S M/FOR PROTECTIVE ORDER DTD 11/8/04 AND (2) MORGAN STANLEY'S M/FOR PROTECTIVE ORDER RE: CPH'S SIXTH SET OF REQUESTS FOR ADMISSION & CPH'S NOTICE OF TAKING DEPO DTD 10/22/04 DTD 11/5/04		
09-Nov-2004	742 - C		OBJECTION	OBJ	TO MORGAN STANLEY & CO INC'S FIFTH SET OF INTERROG'S		
09-Nov-2004	742 - D		OBJECTION	OBJ	TO MORGAN STANLEY & CO INC'S EIGHTH (NINTH) REQUEST FOR PRODUCTION OF DOCUMENTS		
09-Nov-2004	742 - E		OBJECTION	OBJ	TO MORGAN STANLEY & CO INC'S FOURTH SET OF REQUESTS FO RADMISSION		

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09-Nov-2004	742 - F		MOTION FOR PROTECTIVE ORDER	MFPO	WATTACHMENTS		
10-Nov-2004	742 - G		ANSWER TO INTERROGATORIES	ANTI	TO COLEMAN (PARENT) HOLDINGS INC'S SIXTH SET OF INTERROG'S TO MORGAN STANLEY & CO INC		
10-Nov-2004	742 - H		RESPONSE TO:	RESP	AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S FIFTH SET OF REQUEST FOR ADMISSION		
10-Nov-2004	742 - I		NOTICE OF TAKING DEPOSITION	NOTD	OF MICHAEL C OCCHUIZZO ESQ, OF DONALD R UZZI		
10-Nov-2004	742 - J		MOTION TO COMPEL	MCMP	MORGAN STANLEY'S COMPLIANCE W/DISCOVERY REQUESTS CONCERNING COLEMAN ESCROW CORP NOTES - W/ATTACHMENTS		
10-Nov-2004	742 - K		MOTION TO COMPEL	MCMP	MORGAN STANLEY'S COMPLIANCE W/RULE 1.310 DEPO NOTICE CONCERNING SUBORDINATED DEBENTURE TRANSACTIONS - W/ATTACHMENTS		
10-Nov-2004	742 - L		MOTION TO COMPEL	MCMP	PRODUCTION OF DOCUMENTS RESPONSIVE TO ITS SIXTH REQUEST FOR PRODUCTION - W/ATTACHMENTS		

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10-Nov-2004	742 - M		NOTICE OF HEARING	NOH	11/16/04 @ 8:45 AM ON (1) COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL MORGAN STANLEY'S COMPLIANCE W/DISCOVERY REQUESTS CONCERNING COLEMAN ESCROW CORP NOTES; (2) COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO ITS SIXTH REQUEST FOR PRODUCTION; (3) COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL MORGAN STANLEY'S COMPLIANCE W/RULE 1.310 DEPO NOTICE CONCERNING SUBORDINATED DEBENTURE TRANSACTIONS AND (4) MORGAN STANLEY'S MFOR PROTECTIVE ORDER TO PRECLUDE UNNECESSARY & DUPLICATIVE RULE 1.310 DEPO TESTIMONY REGARDING FEES AND EXPENSES RECEIVED BY MORGAN STANLEY		
12-Nov-2004	743	1	EXHIBIT LIST	EXLT	EXHIBITS INTO EVIDENCE		
12-Nov-2004	744		MOTION TO COMPEL	MCMP	COMPLIANCE W/DEPO NOTICE DIRECTED AT FOUR MORGAN STANLEY EXECUTIVES - W/ATTACHMENTS		
12-Nov-2004	745		NOTICE OF HEARING	NOH	11/17/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL COMPLIANCE W/DEPO NOTICE DIRECTED AT FOUR MORGAN STANLEY EXECUTIVES		
12-Nov-2004	746		MOTION	MOT	TO ALLOW MORGAN STANLEY IN EXCESS OF THIRY INTERROG'S - W/ATTACHMENTS		
12-Nov-2004	747		MOTION TO COMPEL	MCMP	RULE 1.310 DEPOS & OPPOSITION TO COLEMAN (PARENT) HOLDING INC'S MFOR PROTECTIVE ORDER		
12-Nov-2004	748		MOTION FOR PROTECTIVE ORDER	MFPO	CONCERNING THE NOTICE OF DEPOS, SERVED BY COLEMAN (PARENT) HOLDINGS INC ON 10/26/04		

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12-Nov-2004	749		NOTICE	NOT	OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF MORGAN STANLEY & CO INC'S OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S MTO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES - W/ATTACHMENTS		
12-Nov-2004	750		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO ALLISON L AMORISON		
12-Nov-2004	751		MOTION FOR PROTECTIVE ORDER	MFPO	PREVENTING AND OPPOSITION TO THE MTO COMPEL, COLEMAN (PARENT) HOLDINGS INC'S NOTICE OF DEPO SERVED ON 11/3/04 - W/ATTACHMENT		
12-Nov-2004	752		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC ON THE TOPICS IDENTIFIED ON EXHIBIT A		
15-Nov-2004	753		NOTICE OF FILING	NOF	OF NON PARTY WACHOVIA BANK NA, AFFID OF JOEL THOMAS IN SUPPORT OF ITS MTO QUASH SUBPOENA OR IN THE ALTERNATIVE, MFOR PROTECTIVE ORDER - ATTACHED		
15-Nov-2004	754		RE-NOTICE OF TAKING DEPOSITION	RNTD	(VIDEOTAPE) TO PHILLIP E HARLOW		
15-Nov-2004	755		RESPONSE TO:	RESP	AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S REQUEST FOR SUPPLEMENTAL DOCUMENTS		
15-Nov-2004	756		NOTICE OF TAKING DEPOSITION	NOTD	TO BANK OF NEW YORK TRUST		
15-Nov-2004	757		NOTICE	NOT	OF OPPOSITION TO COLEMAN (PARENT) HOLDING INC'S MTO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO ITS SIXTH REQUEST FOR PRODUCTION - W/ATTACHMENTS		

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16-Nov-2004	758		RESPONSE TO:	RESP	OF NON PARTY AMERICAN HOUSEHOLD INC, TO COLEMAN (PARENT) HOLDING INC'S RESPONSE IN OPPOSITION TO WACHOVIA BANK NA'S M/TO QUASH SUBPOENA, OR IN THE ALTERNATIVE, M/FOR PROTECTIVE ORDER		
16-Nov-2004	759		MOTION FOR PROTECTIVE ORDER	MFPO	OF NON PARTY SUNBEAM, ON RECORDS REC DEPO		
16-Nov-2004	760		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO BANK OF NEW YORK CO INC		
16-Nov-2004	761		NOTICE OF TAKING DEPOSITION	NOTD	TO RC OF WACHTELL LIPTON ROSEN & KATZ; RC OF CREDIT SUISSE FIRST BOSTON & BLAINE V FOGG		
17-Nov-2004	762		ORDER	ORD	PHILLIP HARLOW'S M/FOR PROTECTIVE ORDER IS DENIED		
17-Nov-2004	763		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/FOR PROTECTIVE ORDER DTD 11/8/04 IS GRANTED IN PART & DENIED IN PART. THE CPH REP SHALL NOT BE DEPOSED ON TOPIC 2, BUT MAY BE DEPOSED ON TOPIC 5		
17-Nov-2004	764		ORDER	ORD	MORGAN STANLEY & CO INC'S M/TO COMPEL DEPO OF JERRY LEVIN IS GRANTED IN PART.		
17-Nov-2004	765		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO HOWARD GITTIS		
17-Nov-2004	766		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO RONALD PERELMAN		
17-Nov-2004	767		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO JERRY LEVIN		
18-Nov-2004	768		ORDER	ORD	WACHOVIA BANK NA'S M/TO QUASH SUBPOENA OR IN THE ALTERNATIVE M/FOR PROTECTIVE ORDER IS GRANTED IN PART & DENIED IN PART. SEE ORDER FOR DETAILS		

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18-Nov-2004	769		ORDER	ORD	DEFS M/FOR PROTECTIVE ORDER CONCERNING THE NOTICE OF DEPO'S SERVED BY COLEMAN (PARENT) HOLDINGS INC ON 10/26/04 IS DENIED.		
18-Nov-2004	770		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL COMPLIANCE W/DEPO NOTICE DIRECTED AT FOUR MORGAN STANLEY EXECUTIVES IS GRANTED. THE FOUR LISTED WITNESSES SHALL BE DEPOSED AS NOTICED		
18-Nov-2004	771		ORDER	ORD	DEFS M/FOR PROTECTIVE ORDER CONCERNING MORGAN STANLEY'S COLEMAN ESCROW NOTES IS DENIED		
18-Nov-2004	772		ORDER	ORD	MORGAN STANLEY & CO INC'S M/FOR PROTECTIVE ORDER CONCERNING COLEMAN (PARENT) HOLDINGS 6TH SET OF REQUESTS FOR ADMISSION & CPH'S NOTICE OF TAKING DEPO DTD 10/22/04 IS DENIED		
18-Nov-2004	773		ORDER	ORD	DEFS M/FOR PROTECTIVE ORDER PREVENTING COLEMAN (PARENT) HOLDINGS INC'S NOTICE OF DEPO, SERVED ON 11/3/04 IS DENIED		
18-Nov-2004	774		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL MORGAN STANLEY'S COMPLIANCE W/DISCOVERY REQUESTS CONCERNING COLEMAN ESCROW CORP NOTES IS GRANTED IN PART - SEE ORDER		
18-Nov-2004	775		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO ITS 6TH REQUEST FOR PRODUCTION IS GRANTED IN PART - SEE ORDER		

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18-Nov-2004	776		ORDER	ORD	PARAGRAPH 1(ii) OF EXHIBIT A TO THE MOTION IS STRICKEN. COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL MORGAN STANLEY'S COMPLIANCE W/RULE 1.310 DEPO NOTICE CONCERNING SUBORDINATED DEBENTURE TRANSACTIONS IS GRANTED		
19-Nov-2004	777		NOTICE OF HEARING	NOH	11/23/04 @ 8:45 AM ON MORGAN STANLEY'S M/TO EXTEND EXPERT DISCOVERY & SUMMARY JUDGMENT DEADLINES BY ONE WEEK		
19-Nov-2004	778		ORDER	ORD	PLTFS M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES IS GRANTED. THE AD DAMNUM CLAUSES OF COUNTS I, II & III OF PLTFS COMPLAINT ARE DEEMED AMENDED TO CLAIM THE DAMAGES SOUGHT IN EXHIBIT A TO THE MOTION		
19-Nov-2004	779		MOTION	MOT	TO EXTEND EXPERT DISCOVERY & SUMMARY JUDGMENT DEADLINES BY ONE WEEK		
19-Nov-2004	780		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO TODD FREED		
19-Nov-2004	781		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO ALLISON L AMORISON		
19-Nov-2004	782		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO TODD FREED		
22-Nov-2004	783		MOTION TO COMPEL	MCMP	PRODUCTION OF DOCUMENTS RESPONSIVE TO SEVENTH REQUEST FOR PRODUCTION - W/ATTACHMENTS		
22-Nov-2004	784		MOTION	MOT	FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S REFUSAL TO COMPLY COMPLY W/COURT ORDER - W/ATTACHMENTS		
22-Nov-2004	785		RESPONSE TO:	RESP	(WRITTEN) TO RULE 1.310 TOPICS		

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22-Nov-2004	786		NOTICE OF CANCELLATION	NCAN	OF DEPO		
22-Nov-2004	787		NOTICE OF HEARING	NOH	12/3/04 @ 8:00 AM ON MORGAN STANLEY'S MTO REMOVE CONFIDENTIAL DESIGNATIONS		
22-Nov-2004	788		NOTICE OF HEARING	NOH	12/3/04 @ 8:00 AM ON (1) NON PARTY SUNBEAM'S M/FOR PROTECTIVE ORDER ON REC CUST DEPO FILED 11/16/04 (2) COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO 7TH REQUEST FOR PRODUCTION FILED 11/22/04 (3) COLEMAN (PARENT) HOLDINGS INCS M/FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S REFUSAL TO COMPLY W/COURT ORDER FILED 11/22/04		
22-Nov-2004	789		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC		
22-Nov-2004	790		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC		
22-Nov-2004	791		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC		
23-Nov-2004	792		RESPONSE TO:	RESP	TO COLEMAN (PARENT) HOLDINGS INC'S 8TH REQUEST FOR PRODUCTION OF DOCUMENTS		
23-Nov-2004	793		ANSWER	ANS	AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S 7TH SET OF INTERROG'S		
23-Nov-2004	794		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO MORGAN STANLEY & CO INC		
23-Nov-2004	795		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC		
23-Nov-2004	796		MOTION	MOT	OF NON PARTY SUNBEAM, TO REMOVE SEALED DOCUMENTS FROM COURT FILING & HOLD IN ESCROW		

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23-Nov-2004	798		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC		
23-Nov-2004	799		MOTION	MOT	FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER - W/ATTACHMENTS		
23-Nov-2004	800		RESPONSE TO:	RESP	IN OPPOSITION TO NON PARTY SUNBEAMS M/FOR PROTECTIVE ORDER ON RECORDS CUSTODIAN DEPO - W/ATTACHMENTS		
23-Nov-2004	801		AGREED ORDER	AGOR	MORGAN STANLEY'S M/TO EXTEND EXPERT DISCOVERY & SUMMARY JUDGMENT DEADLINES BY ONE WEEK IS GRANTED IN PART - SEE ORDER FOR DETAILS		

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23-Nov-2004	802		NOTICE OF HEARING	NOH	12/3/04 @ 8:00 AM ON (1) NON PARTY SUNBEAMS M/FOR PROTECTIVE ORDER ON REC CUST DEPO FILED 11/16/04 (2) COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO SEVENTH REQUEST FOR PRODUCTION FILED 11/22/04 (3) COLEMAN (PARENT) HOLDINGS INCS M/FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S REFUSAL TO COMPLY W/COURT ORDER FILED 11/22/04 (4) COLEMAN (PARENT) HOLDINGS INC'S M/TO ENFORCE STIP CONCERNING PURPORTED MISREPRESENTATIONS & OMISSIONS (5) COLEMAN (PARENT) HOLDINGS INC'S RESPONSE IN OPPOSITION TO NON PARTY SUNBEAMS M/FOR PROTECTIVE ORDER ON REC CUST DEPO (6) COLEMAN (PARENT) HOLDINGS INC'S M/FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER (7) COLEMAN (PARENT) HOLDINGS INC'S RESPONSE TO MORGAN STANLEY'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS		
23-Nov-2004	803		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS		
24-Nov-2004	804		SUBPOENA RETURNED / SERVED	SRSV	TO PHILLIP E HARLOW		
24-Nov-2004	805		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO ERNST & YOUNG LLP		
24-Nov-2004	806		MOTION FOR PROTECTIVE ORDER	MFPO	W/ATTACHMENTS		
24-Nov-2004	807		MOTION TO COMPEL	MCMP	NON PARTY ARTHUR ANDERSEN LLP TO COMPLY W/SUBPOENA FOR CUSTODIAN OF RECORDS DEPO - W/ATTACHMENTS		

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24-Nov-2004	808		NOTICE OF HEARING	NOH	(AMENDED) 12/3/04 @ 8:00 AM ON (1) NON PARTY SUNBEAMS M/FOR PROTECTIVE ORDER ON REC CUSTODIAN DEPO FILED 11/16/04 (2) COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO 7TH REQUEST FOR PRODUCTION FILED 11/22/04 (3) COLEMAN (PARENT) HOLDINGS INC'S M/FOR A FINDING A CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S REFUSAL TO COMPLY W/COURT ORDER FILED 11/22/04 (4) COLEMAN (PARENT) HOLDINGS INC'S MTO ENFORCE STIPULATION CONCERNING PURPORTED MISREPRESENTATIONS & OMISSIONS (5) COLEMAN (PARENT) HOLDINGS INCS RESPONSE IN OPPOSITION TO NON PARTY SUNBEAM'S M/FOR PROTECTIVE ORDER ON REC CUST DEPO (6) COLEMAN (PARENT) HOLDINGS INC'S M/FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER (7) COLEMAN (PARENT) HOLDINGS INC'S RESPONSE TO MORGAN STANLEY'S MTO REMOVE CONFIDENTIALITY DESIGNATIONS (8) MORGAN STANLEY'S M/FOR PROTECTIVE ORDER FILED 11/23/04 (9) COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL NON PARTY ARTHUR ANDERSEN LLP TO COMPLY W/SUBPOENA FOR CUSTODIAN OF RECORDS DEPO		

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Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
24-Nov-2004	809		NOTICE OF HEARING	NOH	(AMENDED) 12/3/04 @ 8:00 AM ON (1) NON PARTY SUNBEAMS M/FOR PROTECTIVE ORDER ON REC CUSTODIAN DEPO FILED 11/16/04 (2) COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO 7TH REQUEST FOR PRODUCTION FILED 11/22/04 (3) COLEMAN (PARENT) HOLDINGS INC'S MFOR A FINDING A CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S REFUSAL TO COMPLY W/COURT ORDER FILED 11/22/04 (4) COLEMAN (PARENT) HOLDINGS INC'S MTO ENFORCE STIPULATION CONCERNING PURPORTED MISREPRESENTATIONS & OMISSIONS (5) COLEMAN (PARENT) HOLDINGS INC'S RESPONSE IN OPPOSITION TO NON PARTY SUNBEAM'S MFOR PROTECTIVE ORDER ON REC CUST DEPO (6) COLEMAN (PARENT) HOLDINGS INC'S MFOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER (7) COLEMAN (PARENT) HOLDINGS INC'S RESPONSE TO MORGAN STANLEY'S MTO REMOVE CONFIDENTIALITY DESIGNATIONS (8) MORGAN STANLEY'S MFOR PROTECTIVE ORDER FILED 11/23/04 (9) COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL NON PARTY ARTHUR ANDERSEN LLP TO COMPLY W/SUBPOENA FOR CUSTODIAN OF RECORDS DEPO		
24-Nov-2004	810		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO ERNST & YOUNG LLP		
24-Nov-2004	811		SUBPOENA RETURNED / SERVED	SRSV	TO BANK OF NEW YORK TRUST CO OF FLA NA		

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24-Nov-2004	812		RESPONSE TO:	RESP	AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S SIXTH SET OF REQUESTS FOR ADMISSION		
29-Nov-2004	813		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC		
29-Nov-2004	814		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC		
29-Nov-2004	815		RESPONSE TO:	RESP	AND OBJECTIONS TO MORGAN STANLEY & CO INC'S FOURTH SET OF REQUESTS FOR ADMISSION		
29-Nov-2004	816		RESPONSE TO:	RESP	AND OBJECTIONS TO MORGAN STANLEY & CO INC'S 8TH REQUEST FOR PRODUCTION OF DOCUMENTS		
29-Nov-2004	817		RESPONSE TO:	RESP	AND OBJECTIONS TO MORGAN STANLEY & CO INC'S FIFTH SET OF INTERROG'S		
29-Nov-2004	818		AGREED ORDER	AGOR	DENYING AS MOOT COLEMAN (PARENT) HOLDINGS INC'S M/TO COMPEL DTD 7/15/04 & MORGAN STANLEY & CO INC'S M/FOR EXTENSION OF STAY DTD 9/3/04		
30-Nov-2004	819		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC		
30-Nov-2004	820		RESPONSE TO:	RESP	TO PLTFS M/FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER		
30-Nov-2004	821		RESPONSE TO:	RESP	TO M/TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO SEVENTH REQUEST FOR PRODUCTION		
30-Nov-2004	822		MOTION	MOT	FOR RECONSIDERATION OF THE COURTS ORDER GRANTING COLEMAN (PARENT) HOLDINGS INC'S M/TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES - UP ON 12/2/04		

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Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
01-Dec-2004	823		NOTICE OF TAKING DEPOSITION	NOTD	OF MICHAEL C OCCHUIZZO ESQ, TO DONALD R UZZI		
01-Dec-2004	824		NOTICE	NOT	OF JOINT SUBMISSION OF THE PARTIES FOR 12/3/04 CASE MANAGEMENT CONFERENCE		
01-Dec-2004	825		NOTICE	NOT	OF NON PARTY ARTHUR ANDERSEN LLP, OF OPPOSITION TO PLTF COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL NON PARTY ARTHUR ANDERSEN LLP TO COMPLY W/SUBPOENA FOR CUSTODIAN OF RECORDS DEPO - W/ATTACHMENTS		
01-Dec-2004	826		AFFIDAVIT	AFF	OF SCOTT D FISCHER, IN SUPPORT OF ARTHUR ANDERSEN LLP'S OPPOSITION TO PLTF COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL NON PARTY ARTHUR ANDERSEN LLP TO COMPLY W/SUBPOENA FOR CUSTODIAN OF RECORDS DEPO		
02-Dec-2004	827		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO TAREK ABDEL-MEGUID; JOSEPH PERELLA; ROBERT SCOTT & BRUCE FIEDOREK		
02-Dec-2004	828		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC		
02-Dec-2004	829		ORDER	ORD	MORGAN STANLEY & CO INC'S M/FOR RECONSIDERATION OF THE COURTS ORDER GRANTING COLEMAN (PARENT) HOLDINGS INC'S MTO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES IS DENIED		
03-Dec-2004	830		SUBPOENA RETURNED / SERVED	SRSV	TO ERNST & YOUNG LLP		
03-Dec-2004	831		SUBPOENA RETURNED / SERVED	SRSV	TO ERNST & YOUNG LLP		

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03-Dec-2004	832		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO BRUCE FIEDOREK; JOSEPH PERELLA; ROBERT SCOTT & TAREK ABDEL-MEGUID		
03-Dec-2004	833		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO RUTH PORAT		
03-Dec-2004	834		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S REFUSAL TO COMPLY W/COURT ORDER IS DENIED AS MOOT		
03-Dec-2004	835		ORDER	ORD	NON PARTY SUNBEAM'S M/FOR PROTECTIVE ORDER ON REC CUST DEPO IS GRANTED IN PART. ON OR BEFORE 12/17/04 COUNSEL FOR SUNBEAM & THE PARTIES SHALL CONFER & ATTEMPT TO REACH STIPULATIONS REGARDING DOCUMENTS. IF PARTIES ARE UNABLE TO REACH A STIP THE REC CUST DEPO SHALL BE TAKEN THE WEEK OF 12/20/04		
03-Dec-2004	836		ORDER	ORD	ON DEF MORGAN STANLEY & CO INC'S M/FOR PROTECTIVE ORDER. PARAGRAPHS I & II OF M/FOR PROTECTIVE ORDER IS DENIED AS MOOT. PARAGRAPH III IS DENIED EXCEPT AS MODIFIED BY COURTS 12/3/04 ORDER. PARAGRAPH IV IS DENIED		
03-Dec-2004	837		ORDER	ORD	PARTIES JOINT ORE TENUS M/TO EXTEND TIME TO APPOINT MEDIATOR IS GRANTED. PARTIES SHALL SELECT A MEDIATOR BY 12/10/04		

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03-Dec-2004	838		ORDER	ORD	ON COLEMAN (PARENT) HOLDINGS INC'S M/FOR A FINDING OF CONTEMPT & FOR OTHER RELIEF DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER. BY 12/10/04 CPH SHALL NOTIFY MORGAN STANLEY WHICH OF THE DOCUMENTS REQUIRE RESPONSES. COLEMAN (PARENT) HOLDINGS M/TO COMPEL IS GRNATED. MORGAN STANLEY SHALL PRODUCE A DEPO WITNESS IN ACCORDANCE WITH CPH'S NOTICE OF TAKING DEPOS THE WEEK OF 12/20/04		
03-Dec-2004	839		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/TO ENFORCE STIP CONCERNING PURPORTED MISREPRESENTATIONS & OMISSIONS IS GRANTED IN PART. PLTFS ORE TENUS M/IN LIMINE IS GRANTED.		
03-Dec-2004	840		ORDER	ORD	ARTHUR ANDERSEN LLP'S M/FOR PROTECTIVE ORDER IS DENIED. ON OR BEORE 12/10/04 COUNSEL FOR PARTIES SHALL CONFER & ATTEMPT TO STIPULATE THE PURPOSE OF THE DOCUMENTS ON WHICH COLEMAN SEEKS TO DEPOSE AN ARTHUR ANDERSEN REP		
03-Dec-2004	841		ORDER	ORD	MORGAN STANLEY & CO INC'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS IS GRANTED. CLERK IS DIRECTED TO UNSEAL THOSE ITEMS LISTED IN SUBPARAGRAPHS 4(A) - (O) OF THE MOTION		
07-Dec-2004	842		NOTICE OF HEARING	NOH	12/15/04 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/FOR CLARIFICATION OF OBLIGATIONS TO DISCLOSE OPINION TESTIMONY OF FACT WITNESSES		
07-Dec-2004	843		MOTION	MOT	FOR CLARIFICATION OF OBLIGATIONS TO DISCLOSE OPINION TESTIMONY OF FACT WITNESSES - W/ATTACHMENTS - UP ON 12/9/04		

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07-Dec-2004	844		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO BLAINE V FOGG		
08-Dec-2004	845		MOTION	MOT	FOR LEAVE TO TAKE DEPO - W/ATTACHMENTS		
08-Dec-2004	846		NOTICE OF HEARING	NOH	12/15/04 @ 8:45 AM ON DEF MORGAN STANLEY & CO INC'S MFOR LEAVE TO TAKE DEPO (RE: ERNST & YOUNG LLP REP)		
08-Dec-2004	847		MOTION TO COMPEL	MCMP	ANSWERS TO FIFTH SET OF INTERROG'S		
09-Dec-2004	848		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC		
09-Dec-2004	849		NOTICE OF HEARING	NOH	12/15/04 @ 8:45 AM ON MORGAN STANLEY'S MTO COMPEL ANSWERS TO FIFTH SET OF INTERROG'S		
09-Dec-2004	850		MOTION	MOT	FOR LEAVE TO TAKE DEPO		
09-Dec-2004	851		NOTICE OF HEARING	NOH	12/15/04 @ 8:45 AM ON DEF MORGAN STANLEY & CO INC'S MFOR LEAVE TO TAKE DEPO (RE: CPH REP)		
09-Dec-2004	852		MOTION	MOT	TO DETERMINE SUFFICIENCY OF SERVICE OF PROCESS ON JERRY LEVIN - W/ATTACHMENTS		
09-Dec-2004	853		NOTICE OF HEARING	NOH	12/16/04 @ 8:45 AM ON MORGAN STANLEY'S MTO DETERMINE SUFFICIENCY OF SERVICE OF PROCESS ON JERRY LEVIN		
10-Dec-2004	854		NOTICE	NOT	OF PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS MFOR SUMMARY JUDGMENT (APPENDIX VOLUME 2) *** UNSEALED PER ORDER DTD 2/4/05 ***		
10-Dec-2004	855		MEMORANDUM	MEMO	IN SUPPORT OF MORGAN STANLEY & CO INC'S MFOR SUMMARY JUDGMENT *** UNSEALED PER ORDER DTD 2/4/05 ***		

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10-Dec-2004	856		NOTICE	NOT	OF PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT (APPENDIX VOLUME 1) *** UNSEALED PER ORDER DTD 2/4/05 ***		
10-Dec-2004	857		NOTICE	NOT	OF PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT *** UNSEALED PER ORDER DTD 2/4/05 ***		
10-Dec-2004	858		NOTICE	NOT	OF PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT (APPENDEX VOLUME 3) *** UNSEALED PER ORDER DTD 2/4/05 ***		
10-Dec-2004	859		NOTICE	NOT	OF PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT (APPENDIX VOLUME 4) *** UNSEALED PER ORDER DTD 2/4/05 ***		
10-Dec-2004	860		MOTION	MOT	TO REMOVE CONFIDENTIALITY DESIGNATIONS		
10-Dec-2004	861		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Dec-2004	862		MOTION FOR SUMMARY JUDGMENT	MFSJ			
10-Dec-2004	863		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Dec-2004	864		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Dec-2004	865		MOTION	MOT	(AMENDED) TO DETERMINE SUFFICIENCY OF SERVICE OF PROCESS ON JERRY LEVIN - W/ATTACHMENTS		

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10-Dec-2004	866		NOTICE OF HEARING	NOH	12/16/04 @ 8:45 AM ON MORGAN STANLEY'S AMENDED M/T0 DETERMINE SUFFICIENCY OF SERVICE OF PROCESS ON JERRY LEVIN		
13-Dec-2004	867		AGREED ORDER	AGOR	MOTION OF AMERICAN HOUSEHOLD INC IS GRANTED. CLERK IS DIRECTED TO RELEASE THE DOCUMENTS FILED BY THIS COURT UNDER SEAL ON 10/12/04 AS REFLECTED IN DE #628 INTO CUSTODY OF GREENBERG TRAURIG PA & SHALL PERMIT EITHER MARK F BIDEAU, ESQ OR KELLY CRAFT TO RETRIEVE & TAKE PHYSICAL CUSTODY OF THE DOCUMENTS - SEE ORDER		
13-Dec-2004	868		NOTICE	NOT	OF SELECTION OF MEDIATOR. PARTIES HAVE AGREED TO THE APPOINTMENT OF JONATHAN B MARKS AS MEDIATOR		
14-Dec-2004	869		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S MOTION TO COMPEL ANSWERS TO FIFTH SET OF INTERROGS		
14-Dec-2004	870		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S MOTION FOR LEAVE TO TAKE DEPOSITION OF NON-PARTY E&Y		
14-Dec-2004	871		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S MOTION FOR LEAVE TO TAKE DEPOSITION OF CPH REP		
15-Dec-2004	872		MOTION	MOT	FOR LEAVE TO TAKE DEPO OF DONALD R UZZI - W/ATTACHMENTS		
15-Dec-2004	873		NOTICE OF HEARING	NOH	12/22/04 @ 8:45 AM ON MORGAN STANLEY'S M/FOR LEAVE TO TAKE DEPO OF DONALD R UZZI		
15-Dec-2004	874		ORDER	ORD	DEFS M/FOR LEAVE TO TAKE DEPO IS GRANTED IN PART - SEE ORDER		
15-Dec-2004	875		RESPONSE TO:	RESP	(SUPPLEMENTAL) TO MORGAN STANLEY & CO INC'S FIFTH SET OF INTERROGS		

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15-Dec-2004	876		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/FOR CLARIFICATION OF OBLIGATIONS TO DISCLOSE OPINION TESTIMONY OF FACT WITNESSES IS GRANTED.		
15-Dec-2004	877		ORDER	ORD	MORGAN STANLEY & CO INC'S M/TO COMPEL ANSWERS TO FIFTH SET OF INTERROG'S IS GRANTED IN PART - SEE ORDER		
15-Dec-2004	878		ORDER	ORD	DEFS M/FOR LEAVE TO TAKE DEPO (ERNEST & YOUNG) IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS		
16-Dec-2004	879		MOTION	MOT	TO LIMIT EXPERT TESTIMONY & EXPEDITE EXPERT DISCOVERY		
16-Dec-2004	880		NOTICE OF HEARING	NOH	12/22/04 @ 8:45 AM ON MORGAN STANLEY'S M/TO LIMIT EXPERT TESTIMONY & EXPEDITE EXPERT DISCOVERY		
16-Dec-2004	881		NOTICE OF TAKING DEPOSITION	NOTD	OF MICHAEL OCCHUIZZO ESQ, TO DONALD R UZZI		
17-Dec-2004	882		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC ON THE TOPICS IDENTIFIED ON EXHIBIT A		
21-Dec-2004	883		MOTION TO STRIKE	MSTR	MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT		
21-Dec-2004	884		NOTICE OF HEARING	NOH	12/21/04 @ 8:45 AM ON (1) COLEMAN (PARENT) HOLDINGS INC'S M/TO STRIKE MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT		
21-Dec-2004	885		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/TO LIMIT EXPERT TESTIMONY & EXPEDITE EXPERT DISCOVERY		

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21-Dec-2004	886		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/FOR LEAVE TO TAKE DEPO OF DONALD RUZZI		
21-Dec-2004	887		RE-NOTICE OF HEARING	RNOH	12/22/04 @ 8:45 AM ON COLEMAN (PARENT HOLDINGS INC'S MTO STRIKE MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT		
22-Dec-2004	888		ORDER SETTING HEARING	ORSH	(SPECIAL SET) 1/21/05 @ 3:00 PM ON DEF MORGAN STANLEY & CO INC'S MTO LIMIT EXPERT TESTIMONY & EXPEDITE EXPERT DISCOVERY		
22-Dec-2004	889		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO ON TOPICS IDENTIFIED ON EXHIBIT A		
22-Dec-2004	890		ORDER	ORD	MORGAN STANLEY'S M/FOR LEAVE TO TAKE DEPO OF DONALD R UZZI IS GRANTED IN PART. MORGAN STANLEY SHALL HAVE UNTIL 1/19/05 TO TAKE MR UZZI'S DEPO		
23-Dec-2004	891		MOTION	MOT	FOR TEMPORARY RELIEF FROM PROVISION IN 9/15/04 ORDER		
23-Dec-2004	892		MOTION	MOT	FOR EXTENSION OF TIME IN WHICH TO RESPOND TO MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT		
23-Dec-2004	893		NOTICE OF HEARING	NOH	1/4/05 @ 8:45 AM ON (1) CPH'S MTO STRIKE MS' PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT (2) CPH'S M/FOR EXTENSION OF TIME IN WHICH TO RESPOND TO MS' PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT		
23-Dec-2004	894		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		

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23-Dec-2004	895		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S M/FOR SUMMARY JUDGMENT *** UNSEALED PER ORDER DTD 2/4/05 ***		
28-Dec-2004	896		NOTICE OF TAKING DEPOSITION	NOTD	OF MICHAEL OCCHUIZZO ESQ, TO DONALD R UZZI		
28-Dec-2004	897		MOTION	MOT	TO STAY PROCEEDINGS PENDING APPEAL		
29-Dec-2004	898		NOTICE OF HEARING	NOH	1/11/05 @ 8:45 AM ON MORGAN STANLEY'S M/TO STAY PROCEEDINGS PENDING APPEAL		
30-Dec-2004	899		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	900		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	901		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	902		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	903		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	904		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	905		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	906		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	907		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	908		SEALED	SEAL	PER ORDER DTD 7/31/04		
30-Dec-2004	909		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	910		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	911		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	912		SEALED	SEAL	PER ORDER DTD 7/31/03		

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30-Dec-2004	913		MOTION TO COMPEL	MCMP	A BETTER ANSWER TO INTERROG #2 OF MORGAN STANLEY'S FIFTH SET OF INTERROG'S TO PLTF COLEMAN (PARENT) HOLDINGS INC - W/ATTACHMENTS		
30-Dec-2004	914		NOTICE OF HEARING	NOH	1/6/05 @ 8:45 AM ON MORGAN STANLEY'S MTO COMPEL A BETTER ANSWER TO INTERROG #2 OF MORGAN STANLEY'S FIFTH SET OF INTERROG'S TO PLTF COLEMAN (PARENT) HOLDINGS INC		
30-Dec-2004	915		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	916		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	917		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	918		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	919		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	920		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	921		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	922		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	923		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	924		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	925		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	926		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	927		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	928		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	929		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	930		SEALED	SEAL	PER ORDER DTD 7/31/03		

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30-Dec-2004	931		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	932		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	933		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	934		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	935		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	936		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	937		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	938		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	939		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	940		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	941		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	942		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	943		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	944		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	945		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	946		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	947		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	948		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	949		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	950		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	951		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	952		SEALED	SEAL	PER ORDER DTD 7/31/03		

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30-Dec-2004	953		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	954		SEALED	SEAL	PER ORDER DTD 7/31/03		
30-Dec-2004	955		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
30-Dec-2004	956		SEALED	SEAL	PER ORDER DTD 7/31/03		
03-Jan-2005	957		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO		
03-Jan-2005	958		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO		
03-Jan-2005	959		RESPONSE TO:	RESP	(AMENDED SUPPLEMENTAL) TO MORGAN STANLEY & CO INC'S FIFTH SET OF INTERROGS'		
03-Jan-2005	960		RESPONSE TO:	RESP	(SUPPLEMENTAL) TO MORGAN STANLEY & CO INC'S FOURTH SET OF INTERROGS		
03-Jan-2005	961		RESPONSE TO:	RESP	(SUPPLEMENTAL) TO INTERROG #4 AND #6 OF MORGAN STANLEY & CO INC'S SECOND SET OF INTERROGS		
03-Jan-2005	962		RESPONSE TO:	RESP	(AMENDED) AND OBJECTIONS TO MORGAN STANLEY & CO INC'S FOURTH SET OF REQUESTS FOR ADMISSIONS #27 & 28		
03-Jan-2005	963		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
03-Jan-2005	964		SEALED	SEAL	PER ORDER DTD 7/31/03		
03-Jan-2005	965		NOTICE OF FILING	NOF	PLEADINGS UNDER SEAL (VOLUME 1-12)		
03-Jan-2005	966		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 1) *** UNSEALED PER ORDER DTD 2/4/05 ***		
03-Jan-2005	967		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 2) *** UNSEALED PER ORDER DTD 2/4/05 ***		

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03-Jan-2005	968		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 3) *** UNSEALED PER ORDER DTD 2/4/05 ***		
03-Jan-2005	969		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 4) *** UNSEALED PER ORDER DTD 2/4/05 ***		
03-Jan-2005	970		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 5) ** UNSEALED PER ORDER DTD 2/4/05 **		
03-Jan-2005	971		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 6) *** UNSEALED PER ORDER DTD 2/4/05 ***		
03-Jan-2005	972		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 7) ** UNSEALED PER ORDER DTD 2/4/05 **		
03-Jan-2005	973		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 8) ** UNSEALED PER ORDER DTD 2/4/05 **		
03-Jan-2005	974		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 9) ** UNSEALED PER ORDER DTD 2/4/05 **		
03-Jan-2005	975		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 10) ** UNSEALED PER ORDER DTD 2/4/05 **		
03-Jan-2005	976		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 11) ** UNSEALED PER ORDER DTD 2/4/05 **		
03-Jan-2005	977		APPENDIX	APNX	TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 12) ** UNSEALED PER ORDER DTD 2/4/05 **		

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04-Jan-2005	978		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MFOR EXTENSION OF TIME IN WHICH TO RESPOND TO MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS MFOR SUMMARY JUDGMENT IS GRANTED IN PART - SEE ORDER		
04-Jan-2005	979		AGREED ORDER	AGOR	REVISING SUMMARY JUDGMENT DEADLINES - SEE ORDER		
04-Jan-2005	980		ORDER	ORD	ON COLEMAN (PARENT) HOLDINGS INC'S MTO STRIKE MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS MFOR SUMMARY JUDGMENT. COURT FINDS THERE IS INSUFFICIENT TIME AVAILABLE TO PERMIT THE MOTION TO BE HEARD PRIOR TO HEARING		
04-Jan-2005	981		RE-NOTICE OF HEARING	RNOH	1/12/05 @ 8:45 AM ON MORGAN STANLEY'S MTO COMPEL A BETTER ANSWER TO INTERROG #2 OF MORGAN STANLEY'S FIFTH SET OF INTERROG'S TO PLTF, COLEMAN (PARENT) HOLDINGS INC		
05-Jan-2005	982		NOTICE OF HEARING	NOH	1/12/05 @ 8:45 AM ON CPH'S MTO COMPEL ADEQUATE ANSWERS TO MORGAN STANLEY'S SUPPLEMENTAL RESPONSES TO CPH'S FIRST SET OF INTERROG'S		
05-Jan-2005	983		MOTION TO COMPEL	MCMP	ADEQUATE ANSWERS TO MORGAN STANLEY'S SUPPLEMENTAL RESPONSES TO CPH'S FIRST SET OF INTERROG'S - W/ATTACHMENTS		
05-Jan-2005	984		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC		

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05-Jan-2005	985		NOTICE OF HEARING	NOH	1/11/05 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S MTO EXTEND THE TIME FOR SUBMISSION OF THE REBUTTAL EXPERT REPORT OF SAMUEL KURSH		
05-Jan-2005	986		MOTION	MOT	TO EXTEND THE TIME FOR SUBMISSION OF THE REBUTTAL EXPERT REPORT OF SAMUEL KURSH		
05-Jan-2005	987		RE-NOTICE OF HEARING	RNOH	1/12/05 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S MTO EXTEND THE TIME FOR SUBMISSION OF THE REBUTTAL EXPERT REPORT OF SAMUEL KURSH		
05-Jan-2005	988		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
05-Jan-2005	989		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-Jan-2005	990		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-Jan-2005	991		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-Jan-2005	992		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-Jan-2005	993		SEALED	SEAL	PER ORDER DTD 7/31/03		
07-Jan-2005	994		NOTICE OF FILING	NOF	AMENDED CERT OF SERVICE		
07-Jan-2005	995		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
07-Jan-2005	996		MEMORANDUM	MEMO	(REPLY) IN SUPPORT OF MORGAN STANLEY & CO INC'S M/FOR SUMMARY JUDGMENT *** UNSEALED PER ORDER DTD 2/4/05 ***		
07-Jan-2005	997		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
07-Jan-2005	998		MEMORANDUM	MEMO	(REPLY) IN SUPPORT OF MORGAN STANLEY & CO INC'S M/FOR SUMMARY JUDGMENT - W/ATTACHMENTS **** UNSEALED PER ORDER DTD 2/4/05 ****		
10-Jan-2005	999		MOTION	MOT	IN LIMINE #2 TO EXCLUDE SECURITIES & EXCHANGE COMMISSION PROCEEDINGS		

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10-Jan-2005	1,000		MOTION	MOT	IN LIMINE #7 TO EXCLUDE EVIDENCE & TESTIMONY CONFLATING SUNBEAM & MORGAN STANLEY - W/ATTACHMENTS		
10-Jan-2005	1,001		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Jan-2005	1,002		MOTION	MOT	IN LIMINE #1 TO EXCLUDE PERFORMANCE EVALUATIONS OR OTHER PROPENSITY EVIDENCE - W/ATTACHMENTS		
10-Jan-2005	1,003		MOTION	MOT	IN LIMINE #3 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO CORP CORRUPTION & ACCOUNTING SCANDALS - W/ATTACHMENTS		
10-Jan-2005	1,004		MOTION	MOT	IN LIMINE #8 TO ESTABLISH PROCEDURE FOR USE OF DEPOS AT TRIAL		
10-Jan-2005	1,005		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Jan-2005	1,006		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Jan-2005	1,007		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Jan-2005	1,008		MOTION	MOT	IN LIMINE #4 TO EXCLUDE EVIDENCE & TESTIMONY REGARDING EXTRA-CONTRACTUAL REPRESENTATIONS - W/ATTACHMENTS		
10-Jan-2005	1,009		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Jan-2005	1,010		MOTION	MOT	IN LIMINE #6 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO MORGAN STANLEY EMPLOYEES DISCARDGIN ENGAGEMENT MATERIALS IN THE NORMAL COURSE OF BUSINESS BEFORE THIS ACTION WAS FILED		
10-Jan-2005	1,011		MOTION	MOT	IN LIMINE #5 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO MORGAN STANLEY'S NET WORTH		

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10-Jan-2005	1,012		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S MTO STAY PROCEEDINGS PENDING APPEAL - W/ATTACHMENTS		
10-Jan-2005	1,013		MOTION	MOT	IN LIMINE #9 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO THE PRIOR MORGAN STANLEY SENIOR FUNDING INC LITIGATION		
10-Jan-2005	1,013 - A		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Jan-2005	1,013 - B		SEALED	SEAL	PER ORDER DTD 7/31/03		
10-Jan-2005	1,013 - C		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Jan-2005	1,013 - D		SEALED	SEAL	PER ORDER DTD 7/31/03		
10-Jan-2005	1,013 - E		SEALED	SEAL	PER ORDER DTD 7/31/03		
10-Jan-2005	1,013 - F		SEALED	SEAL	PER ORDER DTD 7/31/03		
10-Jan-2005	1,013 - G		SEALED	SEAL	PER ORDER DTD 7/31/03		
10-Jan-2005	1,013 - H		SEALED	SEAL	PER ORDER DTD 7/31/03		
10-Jan-2005	1,013 - I		SEALED	SEAL	PER ORDER DTD 7/31/03		
10-Jan-2005	1,013 - J		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Jan-2005	1,013 - K		SEALED	SEAL	PER ORDER DTD 7/31/03		
10-Jan-2005	1,013 - L		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Jan-2005	1,013 - M		SEALED	SEAL	PER ORDER DTD 7/31/03		
10-Jan-2005	1,013 - N		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Jan-2005	1,013 - O		SEALED	SEAL	PER ORDER DTD 7/31/03		
10-Jan-2005	1,013 - P		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Jan-2005	1,013 - Q		SEALED	SEAL	PER ORDER DTD 7/31/03		

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10-Jan-2005	1,013 - R		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Jan-2005	1,013 - S		SEALED	SEAL	PER ORDER DTD 7/31/03		
10-Jan-2005	1,013 - T		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Jan-2005	1,013 - U		SEALED	SEAL	PER ORDER DTD 7/31/03		
11-Jan-2005	1,014		MOTION	MOT	(VERIFIED) TO ADMIT JEFFREY S DAVIDSON, PRO HAC VICE - ATTACHMENTS		
11-Jan-2005	Atch - 1,014 -		FEE/PRO HAC VICE (\$100.00)	OPRHV			
11-Jan-2005	Atch - 1,014 -		RECEIPT FOR PAYMENT	RCPT	A Payment of -\$100.00 was made on receipt CAMB65198. ****GOES W/DE#1014****		
11-Jan-2005	1,015		NOTICE OF FILING	NOF	PLEADING UNDER SEAL (VOLUME 1-8)		
11-Jan-2005	1,016		SUPPLEMENT	SUP	APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 1) *** UNSEALED PER ORDER DTD 2/4/05 ***		
11-Jan-2005	1,017		RESPONSE TO:	RESP	TO MORGAN STANLEY'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT ** UNSEALED PER ORDER DTD 2/4/05 **		
11-Jan-2005	1,018		SUPPLEMENT	SUP	APPENDIX TO COLEMAN (PARENT) HOLDINGS INCS SUMMARY JUDGMENT FILING (VOLUME 2) *** UNSEALED PER ORDER DTD 2/4/05 ***		
11-Jan-2005	1,019		SUPPLEMENT	SUP	APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 3) *** UNSEALED PER ORDER DTD 2/4/05 ***		
11-Jan-2005	1,020		SUPPLEMENT	SUP	APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 4) *** UNSEALED PER ORDER DTD 2/4/05 ***		
11-Jan-2005	1,021		SUPPLEMENT	SUP	APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 5) *** UNSEALED PER ORDER DTD 2/11/05 ***		

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11-Jan-2005	1,022		SUPPLEMENT	SUP	APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 6) **** UNSEALED PER ORDER DTD 2/4/05 ****		
11-Jan-2005	1,023		SUPPLEMENT	SUP	APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 7) *** UNSEALED PER ORDER DTD 2/4/05 ***		
11-Jan-2005	1,024		SUPPLEMENT	SUP	APPENDIX TO COLEMAN (PARENT) HOLDINGS INC'S SUMMARY JUDGMENT FILING (VOLUME 8) ***UNSEALED PER ORDER DTD 2/4/05 ***		
11-Jan-2005	1,025		SEALED	SEAL	PER ORDER DTD 7/31/03		
11-Jan-2005	1,026		SEALED	SEAL	PER ORDER DTD 7/31/03		
11-Jan-2005	1,027		MOTION	MOT	IN LIMINE (#6) TO BAR EVIDENCE & ARGUMENT CONCERNING INQUIRIES BY THE SECURITIES & EXCHANGE COMMISSION & THE NEW YORK STOCK EXCHANGE REGARDING THE COLEMAN SUNBEAM TRANSACTION - W/ATTACHMENTS (PLEADING CLOCKED IN 1/10/05)		
11-Jan-2005	1,028		MOTION	MOT	IN LIMINE (#11) TO BAR EVIDENCE & ARGUMENT CONCERNING ALLEGED BUSINESS PRACTICES OF REVLON INC - W/ATTACHMENTS (PLEADING CLOCKED IN 1/10/05)		
11-Jan-2005	1,029		MOTION	MOT	IN LIMINE (#12) TO BAR EVIDENCE & ARGUMENT CONCERNING THE ACQUISITION OF PANAVISION INC (PLEADING CLOCKED IN 1/10/05)		
11-Jan-2005	1,030		MOTION	MOT	IN LIMINE (#5) TO BAR EVIDENCE & ARGUMENT CONCERNING THE HEALTH OF A MORGAN STANLEY EXECUTIVE (PLEADING CLOCKED IN 1/10/05)		

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11-Jan-2005	1,031		MOTION	MOT	IN LIMINE (#10) TO BAR EVIDENCE & ARGUMENT CONCERNING THE FAILURE OF SUNBEAM ZERO COUPON SUBORDINATED DEBENTURE HOLDERS TO SUE MORGAN STANLEY - W/ATTACHMENTS (PLEADING CLOCKED IN 1/10/05)		
11-Jan-2005	1,032		MOTION	MOT	IN LIMINE (#9) TO BAR EVIDENCE & ARGUMENT CONCERNING THE ABSENCE OF AN ENFORCEMENT ACTION AGAINST DEF BY THE SECURITIES & EXCHANGE COMMISSION - W/ATTACHMENTS (PLEADING CLOCKED IN 1/10/05)		
11-Jan-2005	1,033		MOTION	MOT	IN LIMINE (#8) TO BAR EVIDENCE & ARGUMENT CONCERNING THE VALUE OF MAFCO'S SETTLEMENT W/SUNBEAM CORP (PLEADING CLOCKED 1/10/05)		
11-Jan-2005	1,034		MOTION	MOT	IN LIMINE (#7) TO BAR EVIDENCE & ARGUMENT CONCERNING PLTFS SETTLEMENT W/ARTHUR ANDERSEN (PLEADING CLOCKED IN ON 1/10/05)		
11-Jan-2005	1,035		MOTION	MOT	IN LIMINE (#13) TO BAR EVIDENCE & ARGUMENT CONCERNING SUNBEAM'S 2/23/98 DRAFT CONFIDENTIALITY AGREEMENT - W/ATTACHMENTS (PLEADING CLOCKED ON 1/10/05)		
11-Jan-2005	1,036		MOTION	MOT	IN LIMINE (#4) TO BAR EVIDENCE & ARGUMENT CONCERNING MONICA LEWINSKY, WEBSTER HUBBELL, THE GRAND JURY INVESTIGATIONS REGARDING LEWINSKY & HUBBELL, & THE REPORT OF THE OFFICE OF THE INDEPENDENT COUNSEL - W/ATTACHMENT (PLEADING CLOCKED IN 1/10/05)		

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11-Jan-2005	1,037		MOTION	MOT	IN LIMINE (#1) TO BAR EVIDENCE & ARGUMENT CONCERNING COLEMAN (PARENT) HOLDINGS INC'S ALLEGED PROFITS FROM ITS INVESTMENT IN THE COLEMAN CO INC - W/ATTACHMENTS (PLEADING CLOCKED ON 1/10/05)		
11-Jan-2005	1,038		MOTION	MOT	IN LIMINE (#17) TO BAR EVIDENCE & ARGUMENT CONCERNING SALES OF STOCK BY COLEMAN'S OFFICERS & DIRECTORS - W/ATTACHMENTS (PLEADING CLOCKED ON 1/10/05)		
11-Jan-2005	1,039		MOTION	MOT	IN LIMINE (#3) TO BAR EVIDENCE & ARGUMENT OF MORGAN STANLEY'S SUPPOSED LOSSES IN THE TRANSACTION BETWEEN COLEMAN CO INC & SUNBEAM CORP - W/ATTACHMENTS (PLEADING CLOCKED ON 1/10/05)		
11-Jan-2005	1,040		MOTION	MOT	IN LIMINE (#16) TO BAR EVIDENCE & ARGUMENT CONCERNING CONDUCT OR COMMUNICATIONS NOT ADEQUATELY DISCLOSED IN MORGAN STANLEY'S 12/04 SUPPLEMENTAL RESPONSES TO INTERROG #1,2,3,4,5 & 10 OF CPH'S FIRST SET OF INTERROG'S (PLEADING CLOCKED IN 1/10/05)		
11-Jan-2005	1,041		MOTION	MOT	IN LIMINE (#15) TO BAR EVIDENCE & ARGUMENT THAT SUNBEAM ASSUMED DEBT OF THE COLEMAN CO INC AS MERGER CONSIDERATION TO CPH - W/ATTACHMENTS (PLEADING CLOCKED IN 1/10/05)		
11-Jan-2005	1,042		MOTION	MOT	IN LIMINE (#14) TO BAR EVIDENCE & ARGUMENT THAT THE "COMFORT LETTERS" REFERRED TO IN THE PUBLIC MERGER AGREEMENT OR THE HOLDINGS MERGER AGREEMENT INCLUDE THE 3/19/98 & 3/25/98 COMFORT LETTERS - W/ATTACHMENTS (PLEADING CLOCKED ON 1/10/05)		

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11-Jan-2005	1,043		MOTION	MOT	IN LIMINE (#18) TO BAR EVIDENCE & ARGUMENT CONCERNING PLTF'S COUNSEL'S RETENTION OF PROFESSOR MARK GRINBLATT AS AN EXPERT IN PRIOR UNRELATED CASES - W/ATTACHMENTS (PLEADING CLOCKED ON 1/10/05)		
11-Jan-2005	1,044		MOTION	MOT	IN LIMINE (#2) TO BAR EVIDENCE & ARGUMENT CONCERNING THE WEALTH, NET WORTH, INCOME, OR FINANCIAL STATUS OF PERELMAN, GITTIS, OR ANY OTHER MAFCO, CPH, OR COLEMAN EMPLOYEES - W/ATTACHMENTS (PLEADING CLOCKED ON 1/10/05)		
11-Jan-2005	1,045		ORDER	ORD	DEFS MTO STAY PROCEEDINGS PENDING APPEAL IS DENIED W/OUT PREJUDICE		
11-Jan-2005	1,046		NOTICE	NOT	OF OPPOSITION TO COLEMAN (PARENT) HOLDING INC'S MTO COMPEL ADEQUATE ANSWERS TO MORGAN STANLEY'S SUPPLEMENTAL RESPONSES TO CPH'S FIRST SET OF INTERROG'S		
11-Jan-2005	1,047		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
11-Jan-2005	1,048		MOTION	MOT	IN LIMINE #10 TO EXCLUDE RESTATEMENT INTERVIEW NOTES OF NON PARTY ARTHUR ANDERSEN & NON PARTY SKADDEN		
11-Jan-2005	1,049		RESPONSE TO:	RESP	TO MORGAN STANLEY'S MTO COMPEL A "BETTER" ANSWER TO INTERROG #2 OF MORGAN STANLEY'S FIFTH SET OF INTERROG'S		
11-Jan-2005	1,050		MOTION	MOT	FOR TEMPORARY RELIEF FROM PROVISION IN 9/15/04 ORDER		
11-Jan-2005	1,051		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
11-Jan-2005	1,052		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		

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11-Jan-2005	1,053		EXHIBIT LIST	EXLT	(TRIAL)		
11-Jan-2005	1,054		WITNESS LIST	WLIS			
12-Jan-2005	1,055		MOTION TO STRIKE	MSTR	COLEMAN (PARENT) HOLDINGS INC'S RESPONSE TO MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT - W/ATTACHMENTS		
12-Jan-2005	1,056		MOTION FOR PROTECTIVE ORDER	MFPO	W/ATTACHMENTS		
12-Jan-2005	1,057		MOTION TO COMPEL	MCMP	PRODUCTION OF COLEMAN (PARENT) HOLDINGS INC'S TRIAL EXHIBITS		
12-Jan-2005	1,058		NOTICE OF HEARING	NOH	1/19/05 @ 8:45 AM ON MORGAN STANLEY'S M/FOR PROTECTIVE ORDER; MORGAN STANLEY'S MTO COMPEL PRODUCTION OF COLEMAN'S TRIAL EXHIBITS AND MORGAN STANLEY'S MTO STRIKE COLEMAN'S RESPONSE TO MORGAN STANLEY'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT		
12-Jan-2005	1,059		WITNESS LIST	WLIS	FOR TRIAL		
12-Jan-2005	1,060		EXHIBIT LIST	EXLT	(TRIAL)		
12-Jan-2005	1,061		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MTO EXTEND TIME FOR SUBMISSION OF THE REBUTTAL EXPERT REPORT OF SAMUEL KURSH IS GRANTED IN PART - SEE ORDER		
12-Jan-2005	1,062		AGREED ORDER	AGOR	GRANTING VERIFIED MTO ADMIT JEFFREY S DAVIDSON PRO HAC VICE ON PAYMENT OF THE CLERK'S FEES		

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12-Jan-2005	1,063		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S OBJECTIONS TO THE FILING OF THE AMENDED RESTATED ANSWER ARE OVERRULED IN PART - SEE ORDER (W/ATTACHMENTS)		
12-Jan-2005	1,064		ORDER	ORD	AND NOTICE OF HEARING. DEFS M/T O COMPEL A BETTER ANSWER TO INTERROG #2 OF MORGAN STANLEY'S FIFTH SET OF INTERRIG'S TO PLTF'S M/T O COMPEL ADEQUATE ANSWERS TO MORGAN STANLEY'S SUPPLEMENTAL RESPONSES TO CPH'S FIRST SET OF INTERROGS IS SET FOR 1/13/05 @ 11:00 AM		
13-Jan-2005	1,065		MOTION TO COMPEL	MCMP	COMPLIANCE W/PRETRIAL ORDER - W/ATTACHMENT		
13-Jan-2005	1,066		NOTICE OF HEARING	NOH	(AMENDED) 1/19/05 @ 8:45 AM ON MORGAN STANLEY'S M/FOR PROTECTIVE ORDER; MORGAN STANLEY'S M/T O COMPEL PRODUCTION OF COLEMAN'S TRIAL EXHIBITS; MORGAN STANLEY'S M/T O STRIKE COLEMAN'S RESPONSE TO MORGAN STANLEY'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW IN SUPPORT OF ITS M/FOR SUMMARY JUDGMENT AND MORGAN STANLEY'S M/T O COMPEL COMPLIANCE W/PRETRIAL ORDER		
13-Jan-2005	1,067		NOTICE OF FILING	NOF	DEPO TRANSCRIPT OF W JOHANNES GROELLER - ATTACHED		
13-Jan-2005	1,068		NOTICE OF FILING	NOF	DEPO TRANSCRIPT OF SHANI BOONE - ATTACHED		
13-Jan-2005	1,069		NOTICE OF FILING	NOF	DEPO TRANSCRIPT OF KAREN HAYCOX-ELTRICH - ATTACHED		
13-Jan-2005	1,070		NOTICE OF FILING	NOF	DEPO TRANSCRIPT OF JOSHUA A WEBBER - ATTACHED		

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13-Jan-2005	1,071		NOTICE OF FILING	NOF	DEPO TRANSCRIPT OF JOHN D'ATBYREE - ATTACHED		
13-Jan-2005	1,072		NOTICE OF FILING	NOF	DEPO TRANSCRIPT OF ANDREW SAVARIE - ATTACHED		
13-Jan-2005	1,073		NOTICE OF FILING	NOF	DEPO TRANSCRIPT OF LILY RAFII - ATTACHED		
13-Jan-2005	1,074		NOTICE OF FILING	NOF	DEPO TRANSCRIPT OF ROBERT KITTS - ATTACHED		
14-Jan-2005	1,075		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
14-Jan-2005	1,076		SEALED	SEAL	PER ORDER DTD 7/31/03		
14-Jan-2005	1,077		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
14-Jan-2005	1,078		SEALED	SEAL	PER ORDER DTD 7/31/03		
14-Jan-2005	1,079		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
14-Jan-2005	1,080		SEALED	SEAL	PER ORDER DTD 7/31/03		
14-Jan-2005	1,081		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
14-Jan-2005	1,082		SEALED	SEAL	PER ORDER DTD 7/31/03		
14-Jan-2005	1,083		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
14-Jan-2005	1,084		SEALED	SEAL	PER ORDER DTD 7/31/03		
14-Jan-2005	1,085		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
14-Jan-2005	1,086		SEALED	SEAL	PER ORDER DTD 7/31/03		
14-Jan-2005	1,087		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
14-Jan-2005	1,088		SEALED	SEAL	PER ORDER DTD 7/31/03		
14-Jan-2005	1,089		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
14-Jan-2005	1,090		SEALED	SEAL	PER ORDER DTD 7/31/03		
14-Jan-2005	1,091		SEALED	SEAL	PER ORDER DTD 7/31/03		

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14-Jan-2005	1,092		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
14-Jan-2005	1,093		ORDER	ORD	DEFS MTO COMPEL A BETTER ANSWER TO INTERROG #2 OF MORGAN STANLEY'S 5TH SET OF INTERROG'S TO PLTF COLEMAN (PARENT) HOLDINGS INC IS GRANTED IN PART - SEE ORDER		
14-Jan-2005	1,094		ORDER	ORD	ON COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL ADEQUATE ANSWERS TO MORGAN STANLEY'S SUPPLEMENTAL RESPONSES TO CPH'S FIRST SET OF INTERROG'S - SEE ORDER		
18-Jan-2005	1,095		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/WIN LIMINE #3 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO CORP CORRUPTION & ACCOUNTING SCANDALS - W/ATTACHMENTS		
18-Jan-2005	1,096		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/WIN LIMINE #6 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO MORGAN STANLEY EMPLOYEES DISCARDING ENGAGEMENT MATERIALS IN THE NORMAL COURSE OF BUSINESS BEFORE THIS ACTION WAS FILED - W/ATTACHMENTS		
18-Jan-2005	1,097		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/WIN LIMINE #7 TO EXCLUDE EVIDENCE & TESTIMONY "CONFLATING" SUNBEAM & MORGAN STANLEY		
18-Jan-2005	1,098		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/WIN LIMINE #8 TO ESTABLISH PROCEDURE FOR USE OF DEPOS AT TRIAL		
18-Jan-2005	1,099		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/WIN LIMINE #4 TO EXCLUDE EVIDENCE & TESTIMONY REGARDING EXTRA-CONTRACTUAL REP'S - W/ATTACHMENTS		

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18-Jan-2005	1,100		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #5 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO MORGAN STANLEY'S NET WORTH - W/ATTACHMENT		
18-Jan-2005	1,101		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #9 TO EXCLUDE REFERENCES TO THE PRIOR MORGAN STANLEY SENIOR FUNDING INC LITIGATION - W/ATTACHMENTS		
18-Jan-2005	1,102		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #10 TO EXCLUDE RESTATEMENT INTERVIEW NOTES OF NON PARTY ARTHUR ANDERSEN & NON PARTY SKADDEN - W/ATTACHMENTS		
18-Jan-2005	1,103		NOTICE	NOT	OF INTENT TO RELY ON ADDITIONAL AUTHORITY IN OPPOSITION TO DEFS M/FOR SUMMARY JUDGMENT - W/ATTACHMENT		
18-Jan-2005	1,104		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #1 TO EXCLUDE PERFORMANCE EVALUATIONS OR OTHER PROPENSITY EVIDENCE - W/ATTACHMENTS		
18-Jan-2005	1,105		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #2 TO EXCLUDE SECURITIES & EXCHANGE COMMISSION PROCEEDINGS		
18-Jan-2005	1,106		MOTION	MOT	TO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER - W/ATTACHMENTS		
18-Jan-2005	1,107		NOTICE OF HEARING	NOH	1/21/05 @ 8:00 AM ON CPH'S M/TO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER		

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18-Jan-2005	1,108		RESPONSE TO:	RESP	TO CPH'S M/IN LIMINE #12 TO BAR EVIDENCE & ARGUMENT CONCERNING THE ACQUISITION OF PANAVISION INC - W/ATTACHMENTS		
18-Jan-2005	1,109		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S M/FOR PROTECTIVE ORDER - W/ATTACHMENTS		
18-Jan-2005	1,110		NOTICE OF FILING	NOF	UNDER SEAL		
18-Jan-2005	1,111		NOTICE	NOT	OF EXHIBITS 2 & 4 TO ITS RESPONSE TO CPH'S M/IN LIMINE #12 TO BAR EVIDENCE & ARGUMENT CONCERNING THE ACQUISITION OF PANAVISION INC *** UNSEALED PER ORDER DTD 2/4/05 ***		
18-Jan-2005	1,112		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
18-Jan-2005	1,113		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #1 TO EXCLUDE PERFORMANCE EVALUATIONS OR OTHER PROPENSITY EVIDENCE *** UNSEALED PER ORDER DTD 2/4/05 ***		
18-Jan-2005	1,114		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
18-Jan-2005	1,115		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #6 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO MORGAN STANLEY EMPLOYEES DISCARDING ENGAGEMENT MATERIALS IN THE NORMAL COURSE OF BUSINESS BEFORE THIS ACTION WAS FILED *** UNSEALED PER ORDER DTD 2/4/05 ***		
18-Jan-2005	1,116		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
18-Jan-2005	1,117		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #3 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO CORP CORRUPTION & ACCOUNTING SCANDALS *** UNSEALED PER ORDER DTD 2/4/05 ***		
18-Jan-2005	1,118		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		

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18-Jan-2005	1,119		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #4 TO EXCLUDE EVIDENCE & TESTIMONY REGARDING EXTRA-CONTRACTUAL REPRESENTATIONS ** UNSEALED PER ORDER DTD 2/4/05 **		
18-Jan-2005	1,120		NOTICE OF FILING	NOF	UNDER SEAL		
18-Jan-2005	1,121		SEALED	SEAL	PER ORDER DTD 7/31/03		
18-Jan-2005	1,122		NOTICE OF FILING	NOF	UNDER SEAL		
18-Jan-2005	1,123		SEALED	SEAL	PER ORDER DTD 7/31/03		
18-Jan-2005	1,124		NOTICE OF FILING	NOF	UNDER SEAL		
18-Jan-2005	1,125		SEALED	SEAL	PER ORDER DTD 7/31/03		
18-Jan-2005	1,126		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
18-Jan-2005	1,127		SEALED	SEAL	PER ORDER DTD 7/31/03		
18-Jan-2005	1,128		NOTICE OF FILING	NOF	UNDER SEAL		
18-Jan-2005	1,129		MEMORANDUM	MEMO	(REPLY) IN SUPPORT OF MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW *** UNSEALED PER ORDER DTD 2/4/05 ***		
18-Jan-2005	1,130		NOTICE OF FILING	NOF	UNDER SEAL		
18-Jan-2005	1,131		SEALED	SEAL	PER ORDER DTD 7/31/03		
18-Jan-2005	1,132		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
18-Jan-2005	1,133		SEALED	SEAL	PER ORDER DTD 7/31/03		
18-Jan-2005	1,134		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
18-Jan-2005	1,135		SEALED	SEAL	PER ORDER DTD 7/31/03		

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18-Jan-2005	1,136		NOTICE	NOT	OF OPPOSITION TO CPH'S M/IN LIMINE #11 TO BAR EVIDENCE & ARGUMENT CONCERNING ALLEGED BUSINESS PRACTICES OF REVLON INC - W/ATTACHMENTS		
18-Jan-2005	1,137		RESPONSE TO:	RESP	TO CPH'S M/IN LIMINE #6 TO BAR EVIDENCE & ARGUMENT CONCERNING INQUIRIES BY THE SECURITIES & EXCHANGE COMMISSION & THE NEW YORK STOCK EXCHANGE REGARDING THE COLEMAN-SUNBEAM TRANSACTION - W/ATTACHMENTS		
18-Jan-2005	1,138		NOTICE	NOT	OF OPPOSITION TO CHP'S M/IN LIMINE #10 TO BAR EVIDENCE & ARGUMENT CONCERNING THE FAILURE OF THE SUNBEAM ZERO COUPON SUBORDINATED DEBENTURE HOLDERS TO SUE MORGAN STANLEY - W/ATTACHMENTS		
18-Jan-2005	1,139		RESPONSE TO:	RESP	TO CPH'S M/IN LIMINE #1 TO BAR EVIDENCE & ARGUMENT CONCERNING COLEMAN (PARENT) HOLDINGS INC'S ALLEGED PROFITS FROM ITS INVESTMENT IN THE COLEMAN CO INC - W/ATTACHMENTS		
18-Jan-2005	1,140		RESPONSE TO:	RESP	TO CPH'S M/IN LIMINE #3 TO EXCLUDE EVIDENCE & ARGUMENT OF MORGAN STANLEY'S LOSSES IN THE TRANSACTION BETWEEN COLEMAN CO INC & SUNBEAM		
18-Jan-2005	1,141		RESPONSE TO:	RESP	TO CPH'S M/IN LIMINE #4 TO BAR EVIDENCE & ARGUMENT CONCERNING MONICA LEWINSKY, WEBSTER HUBBELL, THE GRAND JURY INVESTIGATIONS REGARDING LEWINKSY & HUBBELL, AND THE REPORT OF THE OFFICE OF THE INDEPENDENT COUNSEL		
18-Jan-2005	1,142		RESPONSE TO:	RESP	TO CPH M/IN LIMINE #8 TO BAR EVIDENCE & ARGUMENT CONCERNING THE VALUE OF MAFCO'S SETTLEMENT W/SUNBEAM CORP		

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18-Jan-2005	1,143		RESPONSE TO:	RESP	TO CPH'S M/IN LIMINE #9 TO BAR EVIDENCE & ARGUMENT CONCERNING THE ABSENCE OF AN ENFORCEMENT ACTION AGAINST DEF BY THE SECURITIES & EXCHANGE COMMISSION		
18-Jan-2005	1,144		RESPONSE TO:	RESP	TO CPH M/IN LIMINE #5 TO BAR EVIDENCE & ARGUMENT CONCERNING THE HEALTH OF A MORGAN STANLEY EXECUTIVE		
18-Jan-2005	1,145		RESPONSE TO:	RESP	TO CPH'S M/IN LIMINE #16 TO BAR EVIDENCE & ARGUMENT CONCERNING CONDUCT OR COMMUNICATIONS NOT ADEQUATELY DISCLOSED IN MORGAN STANLEY'S 12/04 SUPPLEMENTAL RESPONSES TO INTERROG #1,2,3,4,5 & 10 OF CPH'S FIRST SET OF INTERROG'S		
18-Jan-2005	1,146		RESPONSE TO:	RESP	TO CPH M/IN LIMINE #15 TO BAR EVIDENCE & ARGUMENT THAT SUNBEAM ASSUMED DEBT OF THE COLEMAN CO INC AS MERGER CONSIDERATION TO CPH		
18-Jan-2005	1,147		RESPONSE TO:	RESP	TO CPH M/IN LIMINE #18 TO BAR EVIDENCE & ARGUMENT CONCERNING PLTFS COUNSEL'S RETENTION OF PROFESSOR MARK GRINBLATT AS AN EXPERT IN PRIOR UNRELATED CASES		
18-Jan-2005	1,148		RESPONSE TO:	RESP	TO CPH'S M/IN LIMINE #13 TO EXCLUDE EVIDENCE & ARGUMENT CONCERNING THE NONRELIANCE CLAUSE IN THE 2/23/98 CONFIDENTIALITY AGREEMENT - W/ATTACHMENTS		
18-Jan-2005	1,149		RESPONSE TO:	RESP	TO CPH M/IN LIMINE #7 TO BAR EVIDENCE & ARGUMENT CONCERNING PLTFS SETTLEMENT W/ARTHUR ANDERSEN		

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Case Filed : 08-May-2003 Status : RO - REOPEN

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18-Jan-2005	1,150		RESPONSE TO:	RESP	IN CPH M/WIN LIMINE #2 TO BAR EVIDENCE & ARGUMENT CONCERNING THE WEALTH, NET WORTH, INCOME OR FINANCIAL STATUS OF PERELMAN, GITTIS, OR ANY OTHER MAFCO, CPH OR COLEMAN EMPLOYEES (SIC) - W/ATTACHMENTS		
18-Jan-2005	1,151		RESPONSE TO:	RESP	TO CPH'S M/WIN LIMINE #17 TO BAR EVIDENCE & ARGUMENT CONCERNING SALES OF STOCK BY COLEMAN'S OFFICERS & DIRECTORS - W/ATTACHMENTS		
18-Jan-2005	1,152		RESPONSE TO:	RESP	TO CPH'S M/WIN LIMINE #14 TO BAR EVIDENCE & ARGUMENT THAT THE "COMFORT LETTERS" REFERRED TO IN THE PUBLIC MERGER AGREEMENT OR THE HOLDINGS MERGER AGREEMENT INCLUDE THE 3/19/98 & 3/25/98 COMFORT LETTERS - W/ATTACHMENTS		
18-Jan-2005	1,153		MEMORANDUM	MEMO	(REPLY) IN SUPPORT OF MORGAN STANLEY & CO INC'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW		
19-Jan-2005	1,154		MOTION	MOT	TO EXTEND TIME TO DEPOSE DONALD UZZI - W/ATTACHMENTS		
19-Jan-2005	1,155		ORDER	ORD	MORGAN STANLEY'S M/FOR PROTECTIVE ORDER DTD 1/12/05 IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS		
20-Jan-2005	1,156		NOTICE	NOT	OF INTENT TO RELY UPON ADDITIONAL AUTHORITY IN OPPOSITION TO DEFS M/FOR SUMMARY JUDGMENT - W/ATTACHMENTS		
20-Jan-2005	1,157		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC		

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20-Jan-2005	1,158		NOTICE OF FILING	NOF	& INTENT TO RELY UPON THE DEPO TESTIMONY OF ARTHUR H ROSENBLUM IN OPPOSITION TO DEFS M/FOR SUMMARY JUDGMENT - W/ATTACHMENTS		
20-Jan-2005	1,159		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S M/TO STRIKE CPH'S RESPONSE TO MORGAN STANLEY'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW - W/ATTACHMENTS		
20-Jan-2005	1,160		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
20-Jan-2005	1,161		SEALED	SEAL	PER ORDER DTD 7/31/03		
20-Jan-2005	1,162		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
20-Jan-2005	1,163		SEALED	SEAL	PER ORDER DTD 7/31/03		
21-Jan-2005	1,164		ORDER	ORD	AND NOTICE OF HEARING. CPH'S M/TO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD TO COURT ORDER IS SET FOR 1/26/05 @ 9:30 AM		
21-Jan-2005	1,165		ORDER	ORD	MORGAN STANLEY & CO INC'S M/TO EXTEND TIME TO DEPOSE DONALD UZZI IS GRANTED IN PART. DEF SHALL HAVE UNTIL 2/4/05 TO COMPLETE MR UZZI'S DEPO.		
21-Jan-2005	1,166		RESPONSE TO:	RESP	(SECOND AMENDED SUPPLEMENTAL) TO MORGAN STANLEY & CO INC'S FIFTH SET OF INTERROG'S		

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21-Jan-2005	1,167		ORDER	ORD	ON MORGAN STANLEY'S M/IN LIMINE #8 TO ESTABLISH PROCEDURE FOR USE OF DEPO'S AT TRIAL. COUNTER-DESIGNATIONS WHICH CONSTITUTE EITHER CROSS EXAM OR FAIRNESS DESIGNATIONS SHALL BE READ TO THE JURY WHEN THE TESTIMONY'S PROPONENT ORIG OFFERS THE DEPO TESTIMONY		
24-Jan-2005	1,168		NOTICE	NOT	OF OPPOSITION TO CPH'S MTO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER - W/ATTACHMENTS		
24-Jan-2005	1,169		SEALED	SEAL	PER ORDER DTD 7/31/03		
24-Jan-2005	1,170		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
24-Jan-2005	1,171		NOTICE	NOT	OF MORGAN STANLEY'S ADDITIONS TO ITS SUPPLEMENTAL RESPONSES & OBJECTIONS TO COLEMAN (PARENT) HOLDING INC'S FIRST SET OF INTERROG'S		
25-Jan-2005	1,172		NOTICE.	NOT	OF THE FIRM OF KELLOGG, HUBER, HANSEN, TODD & EVANS PLLC, OF CHANGE OF FIRM NAME TO KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL PLLC		
25-Jan-2005	1,173		MOTION	MOT	TO RECONSIDER & REHEAR ORDER DENYING DISMISSAL PURSUANT TO RULE 1.061 FRCP (FORUM NON CONVENIENS) - W/ATTACHMENTS ** UP ON 1/26/05 **		

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26-Jan-2005	1,174		ORDER	ORD	AND NOTICE OF HEARING. PARTIES JOINT ORE TENUIS M/TTO CONTINUE IS GRANTED. HEARING ON CPH'S M/TTO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER SET 1/26/05 IS CANCELED & RESET FOR 2/1/05 @ 8:45 AM		
26-Jan-2005	1,175		MOTION	MOT	IN LIMINE (#19) TO EXCLUDE PORTIONS OF EXPERT WITNESS MARK GRINBLATT'S TESTIMONY - W/ATTACHMENTS		
26-Jan-2005	1,176		MOTION	MOT	IN LIMINE (#20) TO EXCLUDE PORTIONS OF EXPERT WITNESS GEORGE P FRITZ'S TESTIMONY - W/ATTACHMENTS		
26-Jan-2005	1,177		MOTION	MOT	IN LIMINE (#21) TO EXCLUDE PORTIONS OF EXPERT WITNESS ARTHUR H ROSENBLOOM'S TESTIMONY - W/ATTACHMENTS		
26-Jan-2005	1,178		MOTION	MOT	FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTION OF E-MAILS & MORGAN STANLEY'S NON COMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER - W/ATTACHMENTS		
26-Jan-2005	1,179		NOTICE OF HEARING	NOH	2/1/05 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTION OF E-MAILS & MORGAN STANLEY'S NONCOMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER		
26-Jan-2005	1,180		RE-NOTICE OF HEARING	RNOH	2/1/05 @ 8:45 AM ON CPH'S M/TTO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER		

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27-Jan-2005	1,181		ORDER	ORD	ON MORGAN STALNEY'S MOTION TO RECONSIDER AND REHEAR ORDER DENYING DISMISSAL PURSUANT TO RULE 1.061 FLA.R.CIV.P. (FORUM NON CONVENIENS) - DENIED		
27-Jan-2005	1,182		MOTION	MOT	IN LIMINE #15 TO PRECLUDE EXPERT TESTIMONY OF MICHAEL WAGNER BEYOND WHAT IS DISCLOSED IN HIS EXPERT REPORTS - W/ATTACHMENTS		
27-Jan-2005	1,183		MOTION	MOT	IN LIMINE #16 TO STRIKE THE EXPERT OPINION OF CPH EXPERT BLAINE NYE FOR APPLYING THE INCORRECT DAMAGES STANDARD - W/ATTACHMENTS		
27-Jan-2005	1,184		MOTION	MOT	IN LIMINE #12 TO EXCLUDE CPH'S EXPERTS FROM IMPROPERLY INFLATING DAMAGES BY APPLYING UNJUSTIFIED "CONTROL PREMIUMS" & A HYPOTHETICAL "INVESTMENT VALUE" - W/ATTACHMENTS		
27-Jan-2005	1,185		MOTION	MOT	IN LIMINE #13 TO STRIKE THE EXPERT OPINION OF SAMUEL J KURSH AS UNTIMELY & CUMULATIVE - W/ATTACHMENTS		
27-Jan-2005	1,186		MOTION	MOT	IN LIMINE #17 TO EXCLUDE CPH'S EXPERT BLAINE NYE FROM RELYING ON AN UNPROVEN ASSUMPTION & SIMPLE ARITHMETIC TO CALCULATE CPH'S DAMAGES - W/ATTACHMENTS		
27-Jan-2005	1,187		MOTION	MOT	IN LIMINE #18 TO EXCLUDE TESTIMONY OF PLTFS EXPERT DOUGLAS EMERY - W/ATTACHMENTS		
27-Jan-2005	1,188		MOTION	MOT	IN LIMINE #19 TO EXCLUDE THE TESTIMONY OF WILLIAM HORTON - W/ATTACHMENT		
27-Jan-2005	1,189		MOTION	MOT	IN LIMINE #20 TO EXCLUDE TESTIMONY OF MICHAEL J GILLFILLAN - W/ATTACHMENT		

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27-Jan-2005	1,190		MOTION	MOT	IN LIMINE #14 TO EXCLUDE CPH EXPERTS RELIANCE ON IRRELEVANT DICTA FROM THE DELAWARE CHANCERY COURT OPINION IN PRESCOTT GROUP SMALL CAP LP VS COLEMAN CO - W/ATTACHMENTS		
27-Jan-2005	1,191		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
27-Jan-2005	1,192		SEALED	SEAL	PER ORDER DTD 7/31/03		
27-Jan-2005	1,193		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
27-Jan-2005	1,194		SEALED	SEAL	PER ORDER DTD 7/31/03		
27-Jan-2005	1,195		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
27-Jan-2005	1,196		SEALED	SEAL	PER ORDER DTD 7/31/03		
27-Jan-2005	1,197		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
27-Jan-2005	1,198		SEALED	SEAL	PER ORDER DTD 7/31/03		
27-Jan-2005	1,199		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
27-Jan-2005	1,200		SEALED	SEAL	PER ORDER DTD 7/31/03		
27-Jan-2005	1,201		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
27-Jan-2005	1,202		SEALED	SEAL	PER ORDER DTD 7/31/03		
27-Jan-2005	1,203		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
27-Jan-2005	1,204		SEALED	SEAL	PER ORDER DTD 7/31/03		
27-Jan-2005	1,205		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
27-Jan-2005	1,206		SEALED	SEAL	PER ORDER DTD 7/31/03		
27-Jan-2005	1,207		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
27-Jan-2005	1,208		SEALED	SEAL	PER ORDER DTD 7/31/03		

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31-Jan-2005	1,209		MANDATE	MAND	4D04-135 1/28/05 DECISION FILED 12/8/04 -AFFIRMED.		
31-Jan-2005	1,210		NOTICE	NOT	OF OPPOSITION TO CPH'S M/FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTION OF E-MAILS & MORGAN STANLEY'S NONCOMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER - W/ATTACHMENTS		
31-Jan-2005	1,211		MOTION	MOT	TO REMOVE CONFIDENTIALITY DESIGNATIONS FROM SUMMARY JUDGMENT-RELATED PLEADINGS FILED BY CPH - W/ATTACHMENTS		
31-Jan-2005	1,212		NOTICE OF HEARING	NOH	2/3/05 @ 8:45 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO REMOVE CONFIDEINTIALITY DESIGNATIONS FROM SUMMARY JUDGMENT-RELATED PLEADINGS FILED BY CPH		
31-Jan-2005	1,213		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
31-Jan-2005	1,214		SEALED	SEAL	PER ORDER DTD 7/31/03		
01-Feb-2005	1,215		ORDER	ORD	AND NOTICE OF HEARING. PARTIES JOINT ORE TENUS M/TO CONTINUE IS GRANTED. HEARING ON CPH'S M/TO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER & ON CPH'S M/FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTION OF E-MAILS & MORGAN STANLEY'S NONCOMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER SET 2/1/05 IS CANCELED & RESET FOR 2/2/05 @ 9:30 AM		

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02-Feb-2005	1,216		NOTICE OF HEARING	NOH	2/3/05 @ 8:45 AM ON MORGAN STANLEY'S MTO REMOVE CONFIDENTIALITY DESIGNATIONS, DTD 12/10/05, ONLY AS TO BANK OF AMERICAN'S OBJECTIONS TO REMOVAL OF CONFIDENTIALITY DESIGNATIONS		
02-Feb-2005	1,217		ORDER	ORD	MORGAN STANLEY & CO INC'S MFOR SUMMARY JUDGMENT IS GRANTED IN PART & DENIED IN PART. CPH IS DETERMINED TO BE A SOPHISTICATED INVESTOR UNDER NEW YORK LAW. IN ALL OTHER RESPECTS THE MOTION IS DENIED		
02-Feb-2005	1,218		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MTO REMOVE CONFIDENTIALITY DESIGNATIONS FORM SUMMARY JUDGMENT-RELATED PLEADINGS FILED BY CPH IS GRANTED W/OUT OBJECTION. PLTF SHALL FILE THE UNREDACTED COPIES REFERRED TO IN THE MOTION		
03-Feb-2005	1,219		MEDIATION REPORT	MRPT			
03-Feb-2005	1,220		ORDER	ORD	MORGAN STANLEY'S M/IN LIMINE #9 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO PRIOR MORGAN STANLEY SENIOR FUNDING INC'S LITIGATION IS GRANTED - SEE ORDER		
03-Feb-2005	1,221		ORDER	ORD	PLTFS M/IN LIMINE #5 TO BAR EVIDENCE & ARGUMENT CONCERNING THE HEALTH OF A MORGAN STANLEY EXECUTIVE IS GRANTED		

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03-Feb-2005	1,222		ORDER SETTING HEARING	ORSH	(SPECIAL SET) AN EVIDENTIARY HEARING ON COLEMAN (PARENT) HOLDINGS INC'S M/FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTION OF E-MAILS & MORGAN STANLEY'S NONCOMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER IS SPECIALLY SET FOR 2/14/05 @ 9:30 AM - SEE ORDER FOR DETAILS		
03-Feb-2005	1,223		ORDER	ORD	MORGAN STANLEY'S M/WIN LIMINE #3 TO EXCLUDE IRRELEVANT & PREJUDICIAL REFERENCES TO CORP CORRUPTION & ACCOUNTING SCANDALS IS GRANTED - SEE ORDER		
03-Feb-2005	1,224		ORDER	ORD	PLTFS M/WIN LIMINE #8 TO BAR EVIDENCE & ARGUMENT CONCERNING THE VALUE OF MAFCO'S SETTLEMENT W/SUNBEAM CORP IS GRANTED IN PART - SEE ORDER		
03-Feb-2005	1,225		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/TO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER IS GRANTED IN PART - SEE ORDER		
03-Feb-2005	1,226		ORDER	ORD	PTLFS M/WIN LIMINE #7 TO BAR EVIDENCE & ARGUMENT CONCERNING PLTFS SETTLEMENT W/ARTHUR ANDERSEN IS GRANTED IN PART - SEE ORDER		
03-Feb-2005	1,227		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO MORGAN STANLEY & CO INC		
04-Feb-2005	1,228		MOTION	MOT	(EMERGENCY) TO ENFORCE COURT'S ORDER REGARDING PRETRIAL EXHIBITS - W/ATTACHMENTS		0
04-Feb-2005	1,229		ORDER	ORD	DIRECTING THE UNSEALING OF DOCUMENTS		

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04-Feb-2005	1,230		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S EMERGENCY MTO ENFORCE COURTS ORDER REGARDING PRETRIAL EXHIBITS IS GRANTED. PLTF SHALL USE THE EXHIBIT NUMBERING SYSTEM PREVIOUSLY DISCLOSED TO MS & CO		
04-Feb-2005	1,231		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S ORE TENUS MTO PARTICIPATE IN SEARCH OF ADDITIONAL E-MAIL BACK UP TAPES OR APPOINT THIRD PARTY TO CONDUCT SEARCH IS GRANTED IN PART - SEE ORDER		
04-Feb-2005	1,232		ORDER	ORD	MORGAN STANLEY'S M/IN LIMINE #1 TO EXCLUDE PERFORMANCE EVALUATIONS OR OTHER PROPENSITY EVIDENCE IS GRANTED IN PART & DENIED IN PART - SEE ORDER.		
04-Feb-2005	1,233		ORDER	ORD	AND NOTICE OF HEARING. CPH'S ORE TENUS MTO PARTICIPATE IN SEARCH OF ADDITIONAL E-MAIL BACK UP TAPES OR APPOINT THIRD PARTY TO CONDUCT SEARCH & PLTF'S M/IN LIMINE #14 IS SET FOR 2/4/05 @ 11:30 AM		
04-Feb-2005	1,234		ORDER	ORD	PLTF'S M/IN LIMINE (#18) TO BAR EVIDENCE & ARGUMENT CONCERNING PLTF'S COUNSEL'S RETENTION OF PROFESSOR MARK GRINBLATT AS AN EXPERT IN PRIOR UNRELATED CASES IS GRANTED W/OUT PREJUDICE - SEE ORDER		
07-Feb-2005	1,235		RESPONSE TO:	RESP	TO 2/3/05 COURT ORDER		
07-Feb-2005	1,236		NOTICE	NOT	OF OPPOSITION TO CPH'S M/IN LIMINE #20 TO EXCLUDE PORTIONS OF EXPERT WITNESS GOERGE FRITZ'S TESTIMONY		
07-Feb-2005	1,237		MOTION	MOT	IN LIMINE (#22) TO BAR IMPROPER PUNITIVE DAMAGES-RELATED EVIDENCE & ARGUMENT		

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07-Feb-2005	1,238		NOTICE OF HEARING	NOH	2/14/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE (#22) TO BAR IMPROPER PUNTIIVE DAMAGES-RELATED EVIDENCE & ARGUMENT		
07-Feb-2005	1,239		REQUEST	REQ	(TENTH) FOR PRODUCTION OF DOCUMENTS TO MORGAN STANLEY & CO INC		
07-Feb-2005	1,240		NOTICE	NOT	TO PRODUCE AT TRIAL		
07-Feb-2005	1,241		MOTION	MOT	FOR ENTRY OF UNDISPUTED FACTS PURSUANT TO RULE 1.510		
07-Feb-2005	1,242		RESPONSE TO:	RESP	TO CPH'S M/IN LIMINE #21 TO EXCLUDE PORTIONS OF EXPERT WITNESS ARTHUR H ROSENBLUM'S TESTIMONY		
07-Feb-2005	1,243		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
07-Feb-2005	1,244		SEALED	SEAL	PER ORDER DTD 7/31/03		
07-Feb-2005	1,245		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
07-Feb-2005	1,246		SEALED	SEAL	PER ORDER DTD 7/31/03		
08-Feb-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$200.00 was made on receipt CAMB67961.		
08-Feb-2005	1,247		MOTION	MOT	(VERIFIED) TO ADMIT MICHAEL D JONES PRO HAC VICE		
08-Feb-2005	Atch - 1,247 -		FEE/PRO HAC VICE (\$100.00)	OPRHV			
08-Feb-2005	1,248		MOTION	MOT	(VERIFIED) TO ADMIT FREDERICK L BLOCK PRO HAC VICE		
08-Feb-2005	Atch - 1,248 -		FEE/PRO HAC VICE (\$100.00)	OPRHV			
08-Feb-2005	1,249		MOTION	MOT	TO BIFURCATE TRIAL		
08-Feb-2005	1,250		NOTICE OF HEARING	NOH	2/14/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO BIFURCATE		

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08-Feb-2005	1,251		MOTION	MOT	TO DEEM CERTAIN THIRD PARTY DOCUMENTS ADMISSIBLE AT TRIAL - W/ATTACHMENTS		
08-Feb-2005	1,252		NOTICE OF HEARING	NOH	2/14/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S MTO DEEM CERTAIN THIRD PARTY DOCUMENTS ADMISSIBLE AT TRIAL		
09-Feb-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$100.00 was made on receipt CMB68135.		
09-Feb-2005	1,253		MOTION	MOT	TO ADVANCE MORGAN STANLEY'S TIME FOR ANSWERING CPH'S TENTH REQUEST FOR PRODUCTION - W/ATTACHMENTS		
09-Feb-2005	1,254		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/WIN LIMINE #13 TO STRIKE THE EXPERT OPINION OF DR SAMUEL J KURSH AS UNTIMELY & CUMULATIVE - W/ATTACHMENTS		
09-Feb-2005	1,255		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/WIN LIMINE #14 TO EXCLUDE CPH EXPERTS RELIANCE ON THE DELAWARE CHANCERY COURT OPINION IN PRESCOTT GROUP SMALL CAP LP V COLEMAN CO - W/ATTACHMENT		
09-Feb-2005	1,256		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/WIN LIMINE #15 TO PRECLUDE TESTIMONY OF MICHAEL WAGNER		
09-Feb-2005	1,257		NOTICE OF HEARING	NOH	2/14/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL PRODUCTION OF DOCUMENTS RELATING TO WILLIAM STRONG		
09-Feb-2005	1,258		NOTICE OF TAKING DEPOSITION	NOTD	TO GLENN SEICKEL; ALLISON GORMAN NACHTIGAL & ROBERT SAUNDERS		
09-Feb-2005	1,259		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED) TO MORGAN STANLEY & CO INC		

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09-Feb-2005	1,260		NOTICE OF HEARING	NOH	2/14/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO ADVANCE MORGAN STANLEY'S TIME FOR ANSWERING CPH'S TENTH REQUEST FOR PRODUCTION		
09-Feb-2005	1,261		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #18 TO EXCLUDE TESTIMONY OF PLTFS EXPERT DOUGLAS EMERY - W/ATTACHMENTS		
09-Feb-2005	1,262		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO MORGAN STANLEY & CO INC		
09-Feb-2005	1,263		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #19 TO EXCLUDE THE TESTIMONY OF WILLIAM HORTON - W/ATTACHMENTS		
09-Feb-2005	1,264		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #20 TO EXCLUDE TESTIMONY OF MICHAEL J GILLFILLAN - W/ATTACHMENTS		
09-Feb-2005	1,265		MOTION	MOT	(VERIFIED) TO ADMIT ANTONY B KLAPPER PRO HAC VICE		
09-Feb-2005	Atch - 1,265 -		FEE/PRO HAC VICE (\$100.00)	OPRHV			
09-Feb-2005	1,266		SUPPLEMENT	SUP	TO MORGAN STANLEY'S M/IN LIMINE #13 TO STRIKE THE EXPERT OPINION OF SAMUEL J KURSH AS UNTIMELY & CUMULATIVE		
09-Feb-2005	1,267		MOTION TO COMPEL	MCMP	PRODUCTION OF DOCUMENTS RELATING TO WILLIAM STRONG - W/ATTACHMENTS		
09-Feb-2005	1,268		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #17 TO EXCLUDE CERTAIN TESTIMONY OF CPH'S DAMAGES EXPERT DR BLAINE NYE - W/ATTACHMENTS		
09-Feb-2005	1,269		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #16 TO STRIKE THE EXPERT OPINION OF CPH EXPERT BLAINE NYE - W/ATTACHMENTS		

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09-Feb-2005	1,270		RESPONSE TO:	RESP	TO CPH'S M/IN LIMINE (#19) TO EXCLUDE PORTIONS OF EXPERT WITNESS MARK GRINBLATT'S TESTIMONY - W/ATTACHMENTS		
09-Feb-2005	1,271		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #12 TO EXCLUDE CPH'S DAMAGES EXPERTS DR KURSH & MR WAGNER FROM TESTIFYING REGARDING A CONTROL PREMIUM & TO EXCLUDE MR WAGNER FROM TESTIFYING REGARDING INVESTMENT VALUE - W/ATTACHMENTS		
09-Feb-2005	1,272		MOTION	MOT	(VERIFIED) TO PERMIT FOREIGN ATTY TO APPEAR		
09-Feb-2005	1,273		MOTION	MOT	(VERIFIED) TO PERMIT FOREIGN ATTY TO APPEAR		
11-Feb-2005			FEE/PRO HAC VICE (\$100.00)	OPRHV			
11-Feb-2005			FEE/PRO HAC VICE (\$100.00)	OPRHV			
11-Feb-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$200.00 was made on receipt CAMB68404.		
11-Feb-2005	1,274		MEMORANDUM	MEMO	IN SUPPORT OF ITS E-MAIL MOTION - W/ATTACHMENTS		
11-Feb-2005	1,275		MOTION	MOT	IN LIMINE #21 TO PERMIT CROSS-EXAM OF ARTHUR ANDERSEN LLP WITNESSES REGARDING SUNBEAM'S FINANCIAL CONDITION - W/ATTACHMENTS		
11-Feb-2005	1,276		RESPONSE TO:	RESP	TO CPH'S M/TO BIFURCATE TRIAL		
11-Feb-2005	1,277		RESPONSE TO:	RESP	TO CPH'S M/IN LIMINE (#22) TO BAR IMPROPER PUNITIVE DAMAGES-RELATED EVIDENCE & ARGUMENT		
11-Feb-2005	1,278		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/FOR ENTRY OF UNDISPUTED FACTS PURSUANT TO RULE 1.510		

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11-Feb-2005	1,279		NOTICE	NOT	OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S MTO DEEM CERTIN THIRD PARTY DOCUMENTS ADMISSIBLE AT TRIAL		
11-Feb-2005	1,280		AGREED ORDER	AGOR	MORGAN STANLEY'S VERIFIED MTO ADMIT MICHAEL D JONES, PRO HAC VICE IS GRANTED		
11-Feb-2005	1,281		AGREED ORDER	AGOR	MORGAN STANLEY'S VERIFIED MTO ADMIT FREDERICK L BLOCK, PRO HAC VICE IS GRANTED		
11-Feb-2005	1,282		AGREED ORDER	AGOR	MORGAN STANLEY'S VERIFIED MTO ADMIT ANTONY B KLAPPER, PRO HAC VICE IS GRANTED		
11-Feb-2005	1,283		AGREED ORDER	AGOR	MORGAN STANLEY'S VERIFIED MTO ADMIT SAM HIRSCH, PRO HAC VICE IS GRANTED - UPON PAYMENT OF FS 77.041 FEE		
11-Feb-2005	1,284		AGREED ORDER	AGOR	MORGAN STANLEY'S VERIFIED MTO ADMIT PAUL M SMITH, PRO HAC VICE IS GRANTED - UPON PAYMENT OF FS 77.041 FEE		
11-Feb-2005	1,284 - A		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
11-Feb-2005	1,284 - B		SEALED	SEAL	PER ORDER DTD 7/31/03		
14-Feb-2005	1,285		NOTICE	NOT	(MORGAN STANLEY'S COMBINED OPPOSITION TO CPH'S MOTIONS AND REQUESTS FOR DOCUMETNS RELATING TO WILLIAM STRONG)		
14-Feb-2005	1,285 - A		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
14-Feb-2005	1,285 - B		SEALED	SEAL	PER ORDER DTD 7/31/03		
14-Feb-2005	1,285 - C		NOTICE	NOT	OF SUPPLEMENTAL OPPOSITION TO CPH'S M/FOR ADVERSE INFERENCE INSTRUCTION - W/ATTACHMENTS		
14-Feb-2005	1,285 - D		MOTION	MOT	IN LIMINE (#22) TO EXCLUDE TESTIMONY & EVIDENCE REGARDING PREJUDGMENT INTERST		

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14-Feb-2005	1,285 - E		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #21 TO PERMIT CROSS-EXAM OF ARTHUR ANDERSEN LLP WITNESSES REGARDING SUNBEAM'S FINANCIAL CONDITION		
14-Feb-2005	1,285 - F		STIPULATION AND ORDER	STOR	THAT DOCUMENTS LISTED IN EXHIBIT A ARE TRUE & CORRECT COPIES		
14-Feb-2005	1,285 - G		NOTICE	NOT	TO PRODUCE AT TRIAL		
15-Feb-2005	1,285 - H		MOTION TO COMPEL	MCMP	PRODUCTION OF DOCUMENTS - W/ATTACHMENTS		
15-Feb-2005	1,285 - I		NOTICE OF VOLUNTARY DISMISSAL	NOVD	AS TO COUNT I & COUNT IV AGAINST DEF MORGAN STANLEY		
15-Feb-2005	1,285 - J		SUBPOENA RETURNED / SERVED	SRSV	TO JAMES DOYLE		
15-Feb-2005	1,285 - K		STIPULATION AND ORDER	STOR	STIP IS APPROVED. THE DOCUMENTS LISTED IN EXHIBIT A ARE TRUE & CORRECT COPIES OF AUTHENTIC DOCUMENTS (STIP IS A FAXED COPY)		
15-Feb-2005	1,285 - L		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
15-Feb-2005	1,285 - M		SEALED	SEAL	PER ORDER DTD 7/31/03		
15-Feb-2005	1,285 - N		NOTICE	NOT	SUBMISSION OF TRANSCRIPT CITATIONS REQUESTED BY THE COURT		
15-Feb-2005	1,285 - O		NOTICE	NOT	LEGAL ARGUMENT IN SUPPORT OF MORGAN STANLEY'S PRIVILEGE LOG		
15-Feb-2005	1,285 - P		SEALED	SEAL	PER COURT ORDER DTD 7/31/03		
16-Feb-2005	1,286	1	EXHIBIT LIST	EXLT	EXHIBITS INTO EVIDENCE		
16-Feb-2005	1,287		MOTION	MOT	TO DEEM CERTAIN DOCUMENTS ADMISSIBLE AND FOR ADDITIONAL SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER, W/ATTCHD EXHIBITS		

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16-Feb-2005	1,288		NOTICE OF FILING	NOF	PROPOSED ORDER ON PLTFS MOTION FOR AN ADVANCE INFERENCE		
16-Feb-2005	1,289		MOTION TO STRIKE	MSTR	THE PLTFS NOTICE OF VOLUNTARY DISMISSAL		
16-Feb-2005	1,290		MOTION	MOT	FOR RECONSIDERATION AND CLARIFICATION OF ORDER ON PLTFS MOTION IN LIMINE (NO 18) TO BAR EVIDENCE AND ARGUMENT CONCERNING PLTFS COUNSEL'S RETENTION OF PROFESSOR MARK GRINBLATT AS AN EXPERT IN PRIOR UNRELATED CASES *** UP 02/18/05 ***		
16-Feb-2005	1,291		MOTION	MOT	FOR LEAVE TO WITHDRAW COUNTS I AND IV OF ITS COMPLAINT		
16-Feb-2005	1,292		RESPONSE TO:	RESP	DFTS MOTION IN LIMINE (NO 22) TO EXCLUDE TESTIMONY OF EVIDENCE RE: PREJUDGMENT INTEREST		
16-Feb-2005	1,293		ORDER	ORD	ON PLTFS ORE TENUS MOTION FOR IN CAMERA INSPECTION OF DOCUMENTS ON DFTS E-MAIL PRIVILEGE LOGS - SEE ORDER FOR DETAILS		
16-Feb-2005	1,294		ORDER	ORD	ON PLTFS MOTION TO BIFURCATE TRIAL - GRANTED; TRIAL FOR PUNITIVE DAMAGES SHALL BE BIFURCATED FROM REMAINING ISSUES		
16-Feb-2005	1,295		ORDER	ORD	GRANTING PLTFS MOTION IN LIMINE NO 21		
16-Feb-2005	1,296		ORDER DENYING	ORDD	PLTFS MOTION IN LIMINE NO 20 - W/O PREJ TO PLTFS RIGHT TO OBJECT		
16-Feb-2005	1,297		ORDER	ORD	ON PLTFS MOTION IN LIMINE NO 19 - GRANTED IN PART AND DENIED IN PART - SEE ORDER FOR DETAILS		
16-Feb-2005	1,298		ORDER DENYING	ORDD	DFTS MOTION IN LIMINE NO 17		

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16-Feb-2005	1,299		ORDER	ORD	ON DFTS MOTION IN LIMINE NO 16 - GRANTED IN PART AND DENIED IN PART - SEE ORDER FOR DETAILS		
16-Feb-2005	1,300		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
16-Feb-2005	1,301		SEALED	SEAL	PER COURT ORDER DTD 7/31/03		
16-Feb-2005	1,302		SEALED	SEAL	PER COURT ORDER DTD 7/31/03		
16-Feb-2005	1,303		SEALED	SEAL	PER COURT ORDER DTD 7/31/03		
16-Feb-2005	1,304		SEALED	SEAL	PER COURT ORDER DTD 7/31/03		
16-Feb-2005	1,305		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
16-Feb-2005	1,306		SEALED	SEAL	PER COURT ORDER DTD 7/31/03		
16-Feb-2005	1,307		SEALED	SEAL	PER COURT ORDER DTD 7/31/03		
16-Feb-2005	1,308		MOTION	MOT	(VERIFIED) TO PERMIT FOREIGN ATTY TO APPEAR		
16-Feb-2005	1,309		AGREED ORDER	AGOR	PERMITTING FOREIGN ATTYS TO APPEAR. THALIA MYRIANTHOPOULOS OF JENNER & BLOCK LLP IS ADMITTED PRO HAC VICE OBO PLTF		
17-Feb-2005	1,310		NOTICE	NOT	OF WITHDRAWAL OF PARAGRAPH 4 OF DECLARATION OF HTOMAS A CLARE		
17-Feb-2005	1,311		ORDER	ORD	DEFS M/IN LIMINE #18 IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS		
17-Feb-2005	1,312		ORDER	ORD	DEFS M/IN LIMINE #19 IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS		
17-Feb-2005	1,313		ORDER	ORD	DEFS M/IN LIMINE #20 IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS		

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17-Feb-2005	1,314		AGREED ORDER	AGOR	DEFS M/T0 STRIKE PLTFS NOTICE OF VOLUNTARY DISMISSAL IS GRANTED - VOL DISMISSAL DTD 2/15/05 IS STRICKEN		
17-Feb-2005	1,315		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/T0 COMPEL PRODUCTION OF DOCUMENTS - W/ATTACHMENTS		
17-Feb-2005	1,316		NOTICE	NOT	OF WITHDRAWAL OF CERTIFICATION OF ARTHUR RIEL		
17-Feb-2005	1,317		SEALED	SEAL	PER ORDER DTD 7/31/03		
17-Feb-2005	1,318		SEALED	SEAL	PER ORDER DTD 7/31/03		
17-Feb-2005	1,319		SEALED	SEAL	PER ORDER DTD 7/31/03		
17-Feb-2005	1,320		SEALED	SEAL	PER ORDER DTD 7/31/03		
17-Feb-2005	1,321		SEALED	SEAL	PER ORDER DTD 7/31/03		
17-Feb-2005	1,322		SEALED	SEAL	PER ORDER DTD 7/31/03		
17-Feb-2005	1,323		SEALED	SEAL	PER ORDER DTD 7/31/03		
18-Feb-2005	1,324		SEALED	SEAL	PER ORDER DTD 7/31/03		
18-Feb-2005	1,325		MOTION	MOT	FOR LEAVE TO FILE ITS FIRST AMENDED COMPLAINT - W/PROPOSED ORIG ATTACHED AS TO SAME PARTIES		
18-Feb-2005	1,326		ORDER	ORD	GRANTING M/T0 AMEND COMPLAINT. AMENDED COMPLAINT IS DEEMED FILED. DEFS SHALL RESPOND W/IN 5 DAYS		
18-Feb-2005	1,327		ORDER	ORD	DEFS M/T0 COMPEL PRODUCTION OF DOCUMENTS IS GRANTED - SEE ORDER		
18-Feb-2005	1,328		ORDER	ORD	PLTFS M/IN LIMINE #1 IS GRANTED IN PART & DEFNIED IN PART - SEE ORDER FOR DETAILS		

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18-Feb-2005	1,329		ORDER	ORD	PLTFS M/IN LIMINE #2 IS GRANTED - SEE ORDER FOR DETAILS		
18-Feb-2005	1,330		ORDER	ORD	DEFS M/IN LIMINE #2 IS GRANTED - SEE ORDER		
18-Feb-2005	1,331		ORDER	ORD	PLTFS M/N LIMINE #3 IS GRANTED - SEE ORDER		
18-Feb-2005	1,332		ORDER	ORD	PLTFS M/IN LIMINE #4 IS GRANTED		
18-Feb-2005	1,333		ORDER	ORD	PLTFS M/IN LIMINE #6 IS GRANTED IN PART - SEE ORDER FOR DETAILS		
18-Feb-2005	1,334		ORDER	ORD	PLTFS M/IN LIMINE #9 IS GRANTED - SEE ORDER FOR DETAILS		
18-Feb-2005	1,335		ORDER	ORD	PLTFS M/IN LIMINE #10 IS GRANTED		
18-Feb-2005	1,336		ORDER	ORD	PLTFS M/IN LIMINE #11 IS GRANTED IN PART - SEE ORDER FOR DETAILS		
18-Feb-2005	1,337		ORDER	ORD	PLTFS M/IN LIMINE #12 IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS		
18-Feb-2005	1,338		ORDER	ORD	PLTFS M/IN LIMINE #13 IS GRANTED IN PART - SEE ORDER FOR DETAILS		
18-Feb-2005	1,339		ORDER	ORD	PLTFS M/TO COMPEL PRODUCTION OF DOCUMENTS RELATING TO WILLIAM STRONG IS GRANTED - SEE ORDER		
18-Feb-2005	1,340		ORDER	ORD	PLTFS M/FOR LEAVE TO W/DRAW COUNTS I & IV OF ITS COMPLAINT IS DENIED W/OUT PREJUDICE		
18-Feb-2005	1,341		ORDER	ORD	DEFS M/FOR RECONSIDERATION ETC (PLTFS M/IN LIMINE #18) IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS		
18-Feb-2005	1,342		ORDER	ORD	DEFS M/TO CONTINUE IS GRANTED. CPH'S M/TO DEEM CERTAIN DOCUMENTS ADMISSIBLE ETC SET 2/17/05 IS CANCELED & RESET TO 2/22/05 - SEE ORDER FOR FURTHER DETAILS		

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22-Feb-2005	1,343		OBJECTION	OBJ	TO COLEMAN (PARENT) HOLDINGS INC'S NOTICE TO PRODUCE AT HEARING & MFOR PROTECTIVE ORDER		
22-Feb-2005	1,344		NOTICE OF FILING	NOF	ATTACHED ORIG RETURN OF SERVICE & TRIAL SUBPOENA'S - ATTACHED		
22-Feb-2005	1,345		NOTICE	NOT	OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS MTO DETERMINE THE APPROPRIATE SCOPE OF DISCOVERY		
22-Feb-2005	1,346		NOTICE	NOT	(AMENDED) OF WITHDRAWAL OF CERTIFICATION OF ARTHUR RIEL		
22-Feb-2005	1,347		MOTION	MOT	FOR MORE DEFINITE STATEMENT OF PLTFS FIRST AMENDED COMPLAINT		
22-Feb-2005	1,348		MOTION TO DISMISS	MDIS	PLTFS FIRST AMENDED COMPLAINT		
22-Feb-2005	1,349		MOTION TO STRIKE	MSTR	CERTAIN PARAGRAPHS OF PLTFS FIRST AMENDED COMPLAINT PURSUANT TO RULE 1.140(F)		
22-Feb-2005	1,350		MOTION	MOT	TO TAKE JUDICIAL NOTICE PURSUANT TO FS 90.202 & 90.203		
22-Feb-2005	1,351		MOTION	MOT	TO DETERMINE THE APPROPRIATE SCOPE OF DISCOVERY		
22-Feb-2005	1,352		NOTICE	NOT	TO PRODUCE AT HEARING		
22-Feb-2005	1,353		MOTION TO COMPEL	MCMP	FURTHER DISCOVERY REGARDING MORGAN STANLEY'S DESTRUCTION & NONPRODUCTION OF E-MAILS		
22-Feb-2005	1,354		MOTION	MOT	TO REVALIDATE TRIAL WITNESS SUBPOENAS		
22-Feb-2005	1,355		RETURNED MAIL	RMAL	TO REBECCA BEYNON		
22-Feb-2005	1,356		ORDER	ORD	PLTFS' MTO SET TIME TABLE IS GRANTED - SEE ORDER FOR DETAILS		

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22-Feb-2005	1,357		NOTICE	NOT	OF OPPOSITION TO CPH'S MTO DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR ADDITIONAL SANCTIONS - W/ATTACHMENTS		
22-Feb-2005	1,358		MOTION	MOT	FOR SANCTIONS & ADDITIONAL DISCOVERY CONCERNING PLTFS IMPROPER CONCEALMENT OF THE VALUE OF THE SUNBEAM WARRANTS - W/ATTACHMENTS		
22-Feb-2005	1,359		NOTICE OF HEARING	NOH	2/23/05 @ 9:30 AM ON MORGAN STANLEY'S MFOR SANCTIONS & ADDITIONAL DISCOVERY CONCERNING PLTFS IMPROPER CONCEALMENT OF THE VALUE OF THE SUNBEAM WARRANTS		
22-Feb-2005	1,360		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
22-Feb-2005	1,361		SEALED	SEAL	PER ORDER DTD 2/25/05		
23-Feb-2005	1,362		MOTION	MOT	FOR ADDITIONAL DISCOVERY REGARDING MAFCO'S INTERNAL VALUATION OF SUNBEAM STOCK		
23-Feb-2005	1,363		MEMORANDUM OF LAW	MLAW	ON VOIR DIRE & CHALLENGES FOR CAUSE		
23-Feb-2005	1,364		TRANSCRIPT	TRNS	(EXCERPT OF) OF THE PROCEEDINGS BEFORE HONORABLE ELIZABETH MAASS ON 2/22/05		
23-Feb-2005	1,365		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
23-Feb-2005	1,366		SEALED	SEAL	PER ORDER DTD 7/31/03		
24-Feb-2005	1,367		NOTICE OF FILING	NOF	ORIG DECLARATIONS OF JOHN P COONEY JR & JAMES P CUSICK AND COPIES OF THE DECLARATIONS OF CHARLES CHASIN ESQ, JAMES MANGAN ESQ, MICHAEL D MONICO, ROBERT H MUNDHEIM, MONROE R SONNEBORN ESQ & ROBERT SPERLING		
24-Feb-2005	1,368		MEMORANDUM	MEMO	REGARDING CRIME-FRAUD PROCEDURES		

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24-Feb-2005	1,369		SUPPLEMENT	SUP	TO PENDING MOTIONS CONCERNING THE CRIME-FRAUD EXCEPTION TO THE ATTY-CLIENT PRIVILEGE		
24-Feb-2005	1,370		NOTICE	NOT	OF OUTLINE IN SUPPORT OF ITS PENDING M/TO STRIKE MORGAN STANLEY'S ANSWER & TO HOLD MORGAN STANLEY LIABLE ON BOTH COUNTS OF GPH'S FIRST AMENDED COMPLAINT		
24-Feb-2005	1,371		MOTION	MOT	FOR ORDER DECLARING ATTY-CLIENT PRIVILEGE WAIVED FOR CERTAIN DOCUMENTS RELATING TO WILLIAM STRONG		
24-Feb-2005	1,372		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/FOR SANCTIONS & OTHER RELIEF CONCERNING THE SUNBEAM WARRANTS		
24-Feb-2005	1,373		ORDER	ORD	FOR IN CAMERA INSPECTION. BY 12 NOON 2/24/05 MS & CO SHALL OFFER AFFID TESTIMONY IDENTIFYING, FOR EACH DOMESTIC COUNSEL IN CONTENDS REPRESENTED MR STRONG, MS & CO, OR ANY OTHER PERSON OR ENTITY IN CONNCECTION W/THE STRONG MATTER - SEE ORDER FOR FURTHER DETAILS (W/ATTACHMENTS)		
24-Feb-2005	1,374		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/FOR MORE DEFINITE STATEMENT OF PLTFS FIRST AMENDED COMPLAINT		
24-Feb-2005	1,375		MOTION	MOT	OF AMY S RUBIN ESQ, TO EXCUSE JUROR		
24-Feb-2005	1,376		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/TO STRIKE CERTAIN PARAGRAPHS OF PLTFS FIRST AMENDED COMPLAINT PURSUANT TO RULE 1.140(F)		
24-Feb-2005	1,377		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/TO DISMISS PLTFS FIRST AMENDED COMPLAINT		

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UCN : 502003CA005045XXOCAI

Case Filed : 08-May-2003

Status : RO - REOPEN

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24-Feb-2005	1,378		MOTION	MOT	FOR ORDER DECLARING ATTY-CLIENT PRIVILEGE WAIVED FOR CERTAIN DOCUMENTS RELATING TO WILLIAM STRONG		
24-Feb-2005	1,379		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
24-Feb-2005	1,380		SEALED	SEAL	PER ORDER DTD 7/31/03		
24-Feb-2005	1,381		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
24-Feb-2005	1,382		SEALED	SEAL	PER ORDER DTD 7/31/03		
24-Feb-2005	1,383		SEALED	SEAL	PER ORDER DTD 7/31/03		
24-Feb-2005	1,384		SEALED	SEAL	PER ORDER DTD 7/31/03		
24-Feb-2005	1,385		LETTER	LTR	FROM COURT TO CAPTAIN L. SASSA DTD 2/24/05 REGARDING JUROR #96 COMPLAINT AGAINST BAILIFF & THE TRANSCRIBING OF COMPLAINT FOR FUTURE USE IN INVESTIGATION.		
24-Feb-2005	1,385 - A		RESPONSE TO:	RESP	PLTFS MOTION TO COMPEL FURTHER DISCOVERY		
24-Feb-2005	1,385 - B		NOTICE	NOT	IN OPPOSITION TO COLEMAN (PARENT) HOLDINGS MOTION TO TAKE JUDICIAL NOTICE - W/ATTACHMENTS		
25-Feb-2005	1,386		NOTICE	NOT	OF SUBMISSION OF TRANSCRIPT CITATION		
25-Feb-2005	1,387		MEMORANDUM OF LAW	MLAW	(SUPPLEMENTAL) REGARDING PROCEDURES TO BE FOLLOWED IN ESTABLISHING THE CRIME/FRAUD EXECPTION TO ATTY-CLIENT PRIVILEGE		
25-Feb-2005	1,388		NOTICE OF FILING	NOF	ORIGINAL RETURN OF SERVICE OF SUBPOENA FOR TRIAL - SVD DONALD DENKHAUS (ATTACHED)		
25-Feb-2005	1,389		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPED) OF COLEMAN (PARENT) HOLDINGS INC		

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25-Feb-2005	1,390		NOTICE	NOT	OF SUBMISSION OF RECORD CITIATIONS - ATTACHMENT		
25-Feb-2005	1,391		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
25-Feb-2005	1,392		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
25-Feb-2005	1,393		SEALED	SEAL	PER ORDER DTD 7/31/03		
25-Feb-2005	1,394		SEALED	SEAL	PER ORDER DTD 7/31/03		
25-Feb-2005	1,395		SEALED	SEAL	PER ORDER DTD 7/31/03		
25-Feb-2005	1,396		SEALED	SEAL	PER ORDER DTD 7/31/03		
25-Feb-2005	1,397		SEALED	SEAL	PER ORDER DTD 7/31/03		
25-Feb-2005	1,398		SEALED	SEAL	PER COURT ORDER DTD 7/31/03		
25-Feb-2005	1,399		SEALED	SEAL	PER ORDER DTD 7/31/03		
25-Feb-2005	1,400		SEALED	SEAL	PER ORDER DTD 7/31/03		
28-Feb-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$200.00 was made on receipt CAMB69929.		
28-Feb-2005	1,401		ORDER	ORD	MORGAN STANLEY'S M/TO DISMISS IS DENIED. MORGAN STANLEY'S M/TO STRIKE IS DENIED. MORGAN STANLEY'S M/FOR MORE DEFINITE STATEMENT IS GRANTED IN PART - SEE ORDER FOR DETAILS		
28-Feb-2005	1,402		ORDER	ORD	MORGAN STANLEY'S VERIFIED M/TO ADMIT JOHN T HICKEY JR PC PRO HAC VICE IS GRANTED AND MR HICKEY IS ADMITTED TO PRACTICE IN THIS CASE ON PAYMENT OF THE FEE		

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28-Feb-2005	1,403		ORDER	ORD	MORGAN STANLEY'S VERIFIED MTO ADMIT WALTER R LANCASTER PRO HAC VICE IS GRANTED AND MR LANCASTER IS ADMITTED TO PRACTICE IN THIS CASE ON PAYMENT OF THE FEE		
28-Feb-2005	1,404		MEMORANDUM OF LAW	MLAW	IN SUPPORT OF ITS PENDING MTO STRIKE MORGAN STANLEY'S ANSWER & TO HOLD MORGAN STANLEY LIABLE ON BOTH COUNTS OF CPH'S FIRST AMENDED COMPLAINT		
28-Feb-2005	1,405		ORDER	ORD	PORTIONS OF MORGAN STANLEY'S OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S NOTICE TO PRODUCE AT HEARING CHALLENGING THE PROCEDURE EMPLOYED ARE OVERRULED. PLTFS ORE TENUS MTO COMPEL PRODUCTION & DEPO IS GRANTED IN PART. MS& CO SHALL USE ITS GOOD FAITH EFFORTS TO HAVE MR RIEL APPEAR FOR DEPO & SHALL SUPPLY CPH W/HIS MOST CURRENT ADDRESS BY NOON 2/25/05 - SEE ORDER FOR FURTHER DETAILS		
28-Feb-2005	1,406		ORDER	ORD	MORGAN STANLEY'S M/IN LIMINE #10 TO EXCLUDE RESTATEMENT INTERVIEW NOTES OF NON PARTY ARTHUR ANDERSEN & NON PARTY SKADDEN IS GRANTED IN PART - SEE ORDER FOR DETAILS		
28-Feb-2005	1,407		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MTO DETERMINE THE APPROPRIATE SCOPE OF DISCOVERY IS DENIED. CPH SHALL PRODUCE THE UNREDACTED VERSIONS OF THE PRODUCED DOCUMENTS BY 4:00PM, 2/24/05 - SEE ORDER FOR FURTHER DETAILS		

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28-Feb-2005	1,408		ORDER	ORD	MORGAN STANLEY'S M/FOR ADDITIONAL DISCOVERY REGARDING MAFCO'S INTERNAL VALUATION OF SUNBEAM STOCK & MORGAN STANLEY'S M/FOR SANCTIONS & ADDITIONAL DISCOVERY CONCERNING PLTFS IMPROPER CONCEALMENT OF THE VALUE OF THE SUNBEAM WARRANTS ARE GRANTED - SEE ORDER FOR DETAILS		
28-Feb-2005	1,409		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #22 TO BAR IMPROPER PUNITIVE DAMAGES - RELATED EVIDENCE & ARGUMENT IS GRANTED IN PART & RULING IS DEFERRED IN PART. COURTS RULING ON CPH'S M/IN LIMINE #2 IS RECONFIRMED AND ALL OTHER ISSUES RAISED BY THE MOTION ARE DEFERRED TO STAGE II OF THE TRIAL - SEE ORDER		
28-Feb-2005	1,410		ORDER	ORD	PLTFS ORE TENUS M/FOR CLARIFICATION IS GRANTED - SEE ORDER		
28-Feb-2005	1,411		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FIL THOMAS CLARE'S FAX TRANSMISSION DTD 2/12/05		
28-Feb-2005	1,412		CORRESPONDENCE	COR	(FAX) TO HONORABLE MAASS, JEROLD SOLOVY ESQ, MICHAEL T BRODY ESQ & JOHN SCAROLA ESQ FTOM THOMAS A CLARE - W/ATTACHMENTS		
28-Feb-2005	1,413		ORDER	ORD	AND NOTICE OF HEARING. HEARING ON MORGAN STANLEY'S M/TO DISMISS, M/TO STRIKE AND M/FOR MORE DEFINITE STATEMENT IS SET FOR 2/24/05 @ 3:30 PM		
28-Feb-2005	1,414		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE NOTICE TO PROSPECTIVE JUROR		
28-Feb-2005	1,415		NOTICE	NOT	TO PROSPECTIVE JUROR		

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28-Feb-2005	1,416		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MTO TAKE JUDICIAL NOTICE PURSUANT TO FS 90.202 & 90.203 IS GRANTED. COURT TAKES JUDICIAL NOTICE OF THE ATTACHED ORDER OF THE UNITED STATES SECURITIES & EXCHANGE COMMISSION (NO ATTACHMENT)		
28-Feb-2005	1,417		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MTO ADVANCE MORGAN STANLEY'S TIME FOR ANSWERING CPH'S TENTH REQUEST FOR PRODUCTION IS MOOT.		
28-Feb-2005	1,418		ORDER	ORD	PLTFS M/IN LIMINE #17 TO BAR EVIDENCE & ARGUMENT CONCERNING SALES OF STOCK BY COLEMAN'S OFFICERS & DIRECTORS IS DENIED		
28-Feb-2005	1,419		ORDER	ORD	REVALIDATING TRIAL WITNESS SUBPOENAS. ALL WITNESS SUBPOENA'S FOR TRIAL ISSUED BY ALL PARTIES HEREIN FOR THE TRIAL PERIOD BEGINNING 2/22/05 SHALL BE REVALIDATED FOR TRIAL PERIOD BEGINNING 3/21/05		
28-Feb-2005	1,420		ORDER	ORD	MORGAN STANLEY'S M/IN LIMINE #4 TO EXCLUDE EVIDENCE & TESTIMONY REGARDING EXTRA-CONTRACTUAL REP'S IS DENIED		
28-Feb-2005	1,421		ORDER	ORD	PLTFS M/IN LIMINE #15 TO BAR EVIDENCE & ARGUMENT THAT SUNBEAM ASSUMED DEBT OF THE COLEMAN CO INC AS MERGER CONSIDERATION TO CPH IS GRANTED IN PART - SEE ORDER		
28-Feb-2005	1,422		ORDER	ORD	AND DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE ELECTRONIC TRANSMISSION FROM THOMAS CLARE DTD 2/13/05		
28-Feb-2005	1,423		CORRESPONDENCE	COR	(ELECTRONIC TRANSMISSION) TO JUDGE MAASS FROM THOMAS CLARE DTD 2/13/05		

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28-Feb-2005	1,424		ORDER	ORD	CPH'S M/T0 DEEM CERTAIN DOCUMENTS ADMISSIBLE & FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF COURT ORDER IS GRANTED IN PART - SEE ORDER		
28-Feb-2005	1,425		NOTICE	NOT	OF OPPOSITION TO CPH'S REQUEST FOR DEFAULT JUDGMENT - ATTACHED		
28-Feb-2005	1,426		NOTICE	NOT	OF SUBMISSION OF RECORD CITATIONS - W/ATTACHMENTS		
28-Feb-2005	1,427		RESPONSE TO:	RESP	(SUPPLEMENTAL) TO PLTFS CRIME-FRAUD SUBMISSIONS		
28-Feb-2005	1,428		NOTICE OF FILING	NOF	DECLARATIONS - W/ATTACHMENTS		
28-Feb-2005	1,429		MOTION	MOT	(VERIFIED) TO ADMIT WALTER R LANCASTER, PRO HAC VICE - W/COPY OF RECEIPT ATTACHED		
28-Feb-2005	1,430		MOTION	MOT	(VERIFIED) TO ADMIT JOHN T HICKEY JR PC, PRO HAC VICE - W/COPY OF RECEIPT ATTACHED		
28-Feb-2005	1,431		RESPONSE TO:	RESP	TO PLTFS M/FOR ORDER DECLARING ATTY-CLIENT PRIVILEGE WAIVED FOR CERTAIN DOCUMENTS RELATING TO WILLIAM STRONG		
28-Feb-2005	1,432		MOTION	MOT	IN LIMINE #23 TO EXCLUDE EVIDENCE REGARDING WILLIAM STRONG'S ITALIAN ACQUITTAL - W/ATTACHMENTS		
28-Feb-2005	1,433		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
28-Feb-2005	1,434		SEALED	SEAL	PER ORDER DTD 7/31/03		
28-Feb-2005	1,435		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
28-Feb-2005	1,436		SEALED	SEAL	PER ORDER DTD 7/31/03		
28-Feb-2005	1,437		NOTICE OF FILING	NOF	PLEADINGS UNDER SEAL		

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28-Feb-2005	1,438		SEALED	SEAL	PER ORDER DTD 7/31/03		
28-Feb-2005	1,439		SEALED	SEAL	PER ORDER DTD 7/31/03		
28-Feb-2005	1,440		SEALED	SEAL	PER ORDER DTD 7/31/03		
28-Feb-2005	1,441		SEALED	SEAL	PER ORDER DTD 7/31/03		
28-Feb-2005	1,442		SEALED	SEAL	PER ORDER DTD 7/31/03		
28-Feb-2005	1,443		SEALED	SEAL	PER ORDER DTD 7/31/03		
28-Feb-2005	1,444		SEALED	SEAL	PER ORDER DTD 7/31/03		
28-Feb-2005	1,445		SEALED	SEAL	PER ORDER DTD 7/31/03		
28-Feb-2005	1,446		SEALED	SEAL	PER ORDER DTD 7/31/03		
28-Feb-2005	1,447		SEALED	SEAL	PER ORDER DTD 7/31/03		
28-Feb-2005	1,448		SEALED	SEAL	PER ORDER DTD 7/31/03		
28-Feb-2005	1,449		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
28-Feb-2005	1,450		SEALED	SEAL	PER ORDER DTD 7/31/03 (PACKAGE 1 OF 2)		
28-Feb-2005	1,451		SEALED	SEAL	PER ORDER DTD 7/31/03 (PACKAGE 2 OF 2)		
01-Mar-2005	1,452		ORDER	ORD	(RELEASE OF EXHIBITS) THE PRIVILEGE CLAIMS ARE OVERRULED IN PART. CPH SHALL HAVE ACCESS TO THOSE DOCUMENTS ATTACHED HERETO AS EXHIBIT 1 & 2, EXCLUDING THOSE PORTIONS REDACTED BY THE COURT. THE AFFID & DOCUMENTS WERE PREVIOUSLY FILED W/THE CLERK UNDER SEAL - SEE ORDER FOR DETAILS (W/ATTACHMENTS)		
01-Mar-2005	1,453		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
01-Mar-2005	1,454		SEALED	SEAL	PER ORDER DTD 7/31/03		
01-Mar-2005	1,455		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		

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01-Mar-2005	1,456		SEALED	SEAL	PER ORDER DTD 7/31/03		
01-Mar-2005	1,457		SEALED	SEAL	PER ORDER DTD 7/31/03		
01-Mar-2005	1,458		SEALED	SEAL	PER ORDER DTD 7/31/03		
01-Mar-2005	1,459		RESPONSE TO:	RESP	TO DEFS NOTICE OF VIDEOTAPED DEPO		
01-Mar-2005	1,460		NOTICE OF HEARING	NOH	3/1/05 @ 1:30 PM ON MORGAN STANLEY'S OBJECTIONS TO CPH'S NOTICE TO PRODUCE; COLEMAN (PARENT) HOLDINGS INC'S RESPONSE TO NOTICE OF VIDEOTAPED DEPO & THE OBJECTIONS CONTAINED W/IN THAT DOCUMENT AND COLEMAN (PARENT) HOLDINGS INC'S W/IN LIMINE 14 & 16		
01-Mar-2005	1,461		MEMORANDUM	MEMO	REGARDING THE RELIANCE REQUIREMENT IN FRAUD-BASED CLAIMS		
01-Mar-2005	1,462		NOTICE	NOT	OF COUNTER-SUBMISSION OF TRANSCRIPT CITATION		
01-Mar-2005	1,463		MOTION	MOT	FOR TEMPORARY RELIEF FROM PROVISION IN 9/15/04 ORDER		
01-Mar-2005	1,464		RESPONSE TO:	RESP	AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S NOTICE TO PRODUCE AT HEARING		
01-Mar-2005	1,465		NOTICE OF COMPLIANCE	NCOM	W/COURTS 2/14/05 RULING ON PLTFS ORE TENUIS MOTION		
01-Mar-2005	1,466		NOTICE OF FILING	NOF	ORIG DECLARATION OF JOHN H PLOTNICK, DTD 2/28/05 - ATTACHED		
01-Mar-2005	1,467		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO COLEMAN (PARENT) HOLDINGS INCS THRU A CPH REP OR REP W/MOST KNOWLEDGE		

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01-Mar-2005	1,468		RESPONSE TO:	RESP	TO (1) MORGAN STANLEY'S 2/24/05 SUBMISSION OF RECORD CITATIONS RE WILLIAM STRONG & (2) MORGAN STANLEY'S 2/28/05 SUBMISSION OF RECORD CITATIONS RE WILLIAM STRONG - W/ATTACHMENTS		
01-Mar-2005	1,469		SEALED	SEAL	PER ORDER DTD 7/31/03		
02-Mar-2005	1,470		NOTICE OF FILING	NOF	RETURN OF SERVICE OF TRIAL SUBPOENA UPON WILLIAM PRUITT		
02-Mar-2005	1,471		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO COLEMAN (PARENT) HOLDINGS INC THRU A CPH REP OR REP W/KNOWLEDGE		
02-Mar-2005	1,472		BRIEF	BRF	(SUPPLEMENTAL) IN RESPONSE TO PLTFS M/FOR ORDER DECLARING ATTY-CLIENT PRIVILEGE WAIVED FOR CERTAIN DOCUMENTS RELATING TO WILLIAM STRONG		
02-Mar-2005	1,473		ORDER	ORD	AND NOTICE OF HEARING. ON PLTFS M/IN LIMINE #14 IS SET FOR 3/8/05 @ 9:30 AM		
02-Mar-2005	1,474		ORDER	ORD	AND NOTICE OF HEARING. ON COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE IS SET FOR 3/8/05 @ 9:30AM		
02-Mar-2005	1,475		ORDER	ORD	(AMENDED) PLTFS M/FOR ADVERSE INTERFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTIONS OF E-MAILS & MORGAN STANLEY'S NON COMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER & M/FOR ADDITIONAL RELIEF IS GRANTED. PLTFS M/TO COMPEL FURTHER DISCOVERY REGARDING MORGAN STANLEY'S DESTRUCTION & NON PRODUCTION OF E-MAILS IS DENIED - SEE ORDER FOR FURTHER DETAILS		

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02-Mar-2005	1,476		ORDER	ORD	AND NOTICE OF HEARING. PLTFS M/FOR ORDER DECLARING ATTY-CLIENT PRIVILEGE WAIVED FOR CERTAIN DOCUMENTS RELATING TO WILLIAM STRONG IS SET FOR 3/7/05 @ 11:30 AM		
02-Mar-2005	1,477		ORDER	ORD	PLTFS M/FOR ADVERSE INTERFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTIONS OF E-MAILS & MORGAN STANLEY'S NON COMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER & M/FOR ADDITIONAL RELIEF IS GRANTED. PLTFS M/TO COMPEL FURTHER DISCOVERY REGARDING MORGAN STANLEY'S DESTRUCTION & NON PRODUCTION OF E-MAILS IS DENIED - SEE ORDER FOR FURTHER DETAILS		
02-Mar-2005	1,478		AGREED ORDER	AGOR	NON PARTY WACHOVIA BANK'S M/TO EXCUSE JUROR IS GRANTED. BONNIE MISKEL, JUROR #47 IS EXCUSED & NEED NOT RETURN ON 3/15/05		
02-Mar-2005	1,479		ORDER	ORD	MS & CO'S OBJECTIONS TO CPH'S NOTICE TO PRODUCE AT HEARING ARE SUSTAINED IN PART & OVERRULED IN PART - SEE ORDER FOR DETAILS		
02-Mar-2005	1,480		ORDER	ORD	PURSUANT TO THE COURTS 2/17/05 RULING ON CPH'S MIN LIMINE #6 - SEE ORDER FOR DETAILS - W/ATTACHMENTS		
02-Mar-2005	1,481		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
02-Mar-2005	1,482		SEALED	SEAL	PER ORDER DTD 7/31/03		
02-Mar-2005	1,483		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
02-Mar-2005	1,484		SEALED	SEAL	PER ORDER DTD 7/31/03		
02-Mar-2005	1,484 - A		MOTION	MOT	TO REOPEN DEPO OF ALLISON GORMAN & FOR RELATED DISCOVERY		

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02-Mar-2005	1,484 - B		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
02-Mar-2005	1,484 - C		SEALED	SEAL	PER ORDER DTD 7/31/03		
03-Mar-2005	1,484 - D		MOTION TO COMPEL	MCMP	PRODUCTION OF JOINT DEFENSE AGREEMENTS RELATING TO THE STRONG DOCUMENTS		
03-Mar-2005	1,484 - E		NOTICE OF HEARING	NOH	3/4/05 @ 10:20 AM ON CPHS MTO COMPEL PRODUCTION OF JOINT-DEFENSE AGREEMENTS RELATING TO THE STRONG DOCUMENTS		
03-Mar-2005	1,484 - F		NOTICE OF FILING	NOF	PLEADINGS UNDER SEAL		
03-Mar-2005	1,484 - G		SEALED	SEAL	PER ORDER DTD 7/31/03		
03-Mar-2005	1,484 - H		SEALED	SEAL	PER ORDER DTD 7/31/03		
03-Mar-2005	1,484 - I		SEALED	SEAL	PER ORDER DTD 7/31/03		
03-Mar-2005	1,484 - J		SEALED	SEAL	PER ORDER DTD 7/31/03		
03-Mar-2005	1,484 - K		SEALED	SEAL	PER ORDER DTD 7/31/03		
03-Mar-2005	1,484 - L		SEALED	SEAL	PER ORDER DTD 7/31/03		
03-Mar-2005	1,484 - M		SEALED	SEAL	PER ORDER DTD 7/31/03		
03-Mar-2005	1,484 - N		SEALED	SEAL	PER ORDER DTD 7/31/03		
03-Mar-2005	1,484 - O		SEALED	SEAL	PER ORDER DTD 7/31/03		
03-Mar-2005	1,484 - P		SEALED	SEAL	PER ORDER DTD 7/31/03		
03-Mar-2005	1,484 - Q		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
03-Mar-2005	1,484 - R		SEALED	SEAL	PER ORDER DTD 7/31/03		
04-Mar-2005			FEE/PRO HAC VICE (\$100.00)	OPRHV	***GOES W/DE#1485*****		
04-Mar-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$100.00 was made on receipt CAMB70344. ****GOES W/DE#1485*****		

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04-Mar-2005	1,485		MOTION	MOT	(VERIFIED) TO ADMIT PETER D DOYLE PRO HAC VICE		
04-Mar-2005	1,486		ORDER	ORD	PLTFS ORE TENUS M/FOR CLARIFICATION IS GRANTED. BY 5:00 PM, 3/4/05 MS&CO SHALL PROVIDE CPH W/THE AFFIDAVITS, OR PORTIONS OF AFFIDAVITS, BY FOREIGN COUNSEL CONTAINING THE INFO REQUIRED BY PARAGRAPHS 1 THRU 5 OF THE COURTS 2/23/05 ORDER FOR IN CAMERA INSPECTION		
04-Mar-2005	1,487		AGREED ORDER	AGOR	MORGAN STANLEY'S VERIFIED M/TO ADMIT PETER DOYLE, PRO HAC VICE IS GRANTED		
04-Mar-2005	1,488		ORDER	ORD	CPH'S M/TO COMPEL PRODUCTION OF JOINT-DEFENSE AGREEMENTS RELATING TO THE STRONG DOCUMENTS IS GRANTED - MS&CO SHALL HAVE UNTIL 3:00 PM 3/4/05		
04-Mar-2005	1,489		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE LETTER FROM DR BUCKMAN DTD 3/1/05 & THE FAX TRANSMISSION FROM THE CENTER FO RINNER WORK DTD 3/2/05		
04-Mar-2005	1,490		NOTICE OF TAKING DEPOSITION	NOTD	TO ARTHUR J RIEL		
04-Mar-2005	1,491		MOTION	MOT	FOR CORRECTION & CLARIFICATION OF ORDER ON CPH'S M/FOR ADVERSE INFERENCE - W/ATTACHMENTS		
04-Mar-2005	1,492		NOTICE OF HEARING	NOH	3/7/05 @ 1:00 PM ON M/FOR CORRECTION & CLARIFICATION OF ORDER ON CPH'S M/FOR ADVERSE INFERENCE		

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04-Mar-2005	1,493		REPLY/RESPONSE	RPRS	TO DEFS RESPONSE & DEFS SUPPLEMENTAL BRIEF IN RESPONSE TO PLTFS M/FOR ORDER DECLARING ATTY-CLIENT PRIVILEGE WAIVED FOR CERTAIN DOCUMENTS RELATING TO WILLIAM STRONG - W/ATTACHMENT		
04-Mar-2005	1,494		NOTICE	NOT	OF INTENTION TO OFFER E-MAILS INTO EVIDENCE		
04-Mar-2005	1,495		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
04-Mar-2005	1,496		SEALED	SEAL	PER ORDER DTD 7/31/03		
04-Mar-2005	1,497		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
04-Mar-2005	1,498		SEALED	SEAL	PER ORDER DTD 7/31/03		
04-Mar-2005	1,499		SEALED	SEAL	PER ORDER DTD 7/31/03		
04-Mar-2005	1,500		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
04-Mar-2005	1,501		SEALED	SEAL	PER ORDER DTD 7/31/03		
04-Mar-2005	1,502		SEALED	SEAL	PER ORDER DTD 7/31/03		
04-Mar-2005	1,503		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
04-Mar-2005	1,504		SEALED	SEAL	PER ORDER DTD 7/31/03		
07-Mar-2005	1,505		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
07-Mar-2005	1,506		SEALED	SEAL	PER ORDER DTD 7/31/03		
07-Mar-2005	1,507		EXHIBIT RECEIPT	EXRC	ALL EXHIBITS ADMITTED INTO EVIDENCE ARE IN BROWN ENVELOPE IN THE EVIDENCE DEPT - AV		
07-Mar-2005	1,508		NOTICE OF FILING	NOF	ORIG VERIFICATION PAGE OF ITS VERIFIED M/TO ADMIT PETER D DOYLE, PRO HAC VICE, DTD 3/3/05 - ATTACHED		
07-Mar-2005	1,509		NOTICE OF FILING	NOF	DECLARATION OF VITTORIO GRIMALDI DTD 3/4/05 - ATTACHED		

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07-Mar-2005	1,510		NOTICE	NOT	OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S MEMO REGARDING THE RELIANCE REQUIREMENT IN FRAUD-BASED CLAIMS		
07-Mar-2005	1,511		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO RONALD O PERELMAN		
07-Mar-2005	1,512		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO LAWRENCE WINOKER		
07-Mar-2005	1,513		NOTICE OF TAKING DEPOSITION	NOTD	TO RONALD O PERELMAN		
07-Mar-2005	1,514		NOTICE	NOT	OF OPPOSITION TO PLTFS M/FOR CORRECTION & CLARIFICATION - W/ATTACHMENT		
07-Mar-2005	1,515		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO LAWRENCE WINOKER		
07-Mar-2005	1,516		MEMORANDUM OF LAW	MLAW	(SUPPLEMENTAL) IN SUPPORT OF MORGAN STANLEY'S M/IN LIMINE #23 TO EXCLUDE EVIDENCE REGARDING WILLIAM STRONG'S ITALIAN ACQUITTAL - W/ATTACHMENTS		
07-Mar-2005	1,517		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO DR BLAINE F NYE		
07-Mar-2005	1,518		NOTICE OF FILING	NOF	ORIG DECLARATION OF GIANBATTISTA ORIGONI DTD 2/28/05 - ATTACHED		
07-Mar-2005	1,519		MOTION	MOT	TO APPLY NEW YORK LAW TO CPH'S AIDING & ABETTING & CONSPIRACY CLAIMS		
07-Mar-2005	1,520		ORDER	ORD	PLTFS ORE TENUS M/TO COMPEL ADDITIONAL PRODUCTION IS GRANTED - SEE ORDER FOR DETAILS		
07-Mar-2005	1,521		AGREED ORDER	AGOR	M/TO BE EXCUSED IS GRANTED. BRIAN ROSENBLUM, JUROR #101206747 IS EXCUSED FROM FURTHER SERVICE IN THIS CAUSE		

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07-Mar-2005	1,522		AGREED ORDER	AGOR	M/TO BE EXCUSED IS GRANTED. JAMES K BROWER, JUROR #100909337 IS EXCUSED FROM FURTHER SERVICE IN THIS CAUSE		
07-Mar-2005	1,523		ANSWER & AFFIRMATIVE DEFENSES	ANAD	TO PLTFS FIRST AMENDED COMPLAINT - W/ATTACHMENTS		
07-Mar-2005	1,524		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
07-Mar-2005	1,525		SEALED	SEAL	PER ORDER DTD 7/31/03		
08-Mar-2005	1,526		MEMORANDUM	MEMO	REGARDING WORK PRODUCT ASSERTION		
08-Mar-2005	1,527		RESPONSE TO:	RESP	& OBJECTIONS TO CPH'S TENTH REQUEST FOR PRODUCTION OF DOCUMENTS		
08-Mar-2005	1,528		NOTICE OF FILING	NOF	DECLARATION OF JOSANNE RIKARD, DTD 3/7/05 - ATTACHMENT		
08-Mar-2005	1,529		MOTION	MOT	FOR AN ADVERSE INFERENCE INSTRUCTION - W/ATTACHMENTS		
08-Mar-2005	1,530		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INCS EMERGENCY M/TO COMPEL PRODUCTION OF UNREDACTED COPIES OF DOCUMENTS EXCHANGED W/THE SECURITIES & EXCHANGE COMMISSION & OTHER THIRD PARTIES IS GRANTED. MS&CO SHALL IMMEDIATELY PROVIDE CPH W/UNREDACTED COPIES OF ALL THE SEC/RIEL DOCUMENTS PREVIOUSLY REDACTED OR W/HELD AS PRIVILEGED		
08-Mar-2005	1,531		ORDER	ORD	PLTF CPH'S ORE TENUS M/FOR REHEARING IS GRANTED. COURTS 2/28/05 ORDER (RELEASE OF EXHIBITS) IS AMENDED BY ADDING THE COPY OF PARTIALLY REDACTED PRIV 490.		

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08-Mar-2005	1,532		NOTICE OF HEARING	NOH	3/8/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC EMERGENCY M/TO COMPEL PRODUCTION OF UNREDACTED COPIES OF DOCUMENTS EXCHANGED W/THE SECURITIES & EXCHANGE COMMISSION & OTHER THIRD PARTIES		
08-Mar-2005	1,533		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
08-Mar-2005	1,534		SEALED	SEAL	PER ORDER 7/31/03		
08-Mar-2005	1,535		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
08-Mar-2005	1,536		SEALED	SEAL	PER ORDER DTD 7/31/03		
09-Mar-2005	1,537		SEALED	SEAL	PER ORDER DTD 7/31/03		
09-Mar-2005	1,538		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
09-Mar-2005	1,539		MOTION	MOT	TO DEEM THE 2/23 CONFIDENTIALITY AGREEMENT ADMISSIBLE - W/ATTACHMENTS		
09-Mar-2005	1,540		MOTION TO STRIKE	MSTR	MORGAN STANLEY'S ANSWER & AFFIRM DEFENSES TO PLTFS FIRST AMENDED COMPLAINT - W/ATTACHMENTS		
09-Mar-2005	1,541		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO DR BLAINE F NYE		
09-Mar-2005	1,542		MOTION	MOT	(RENEWED) FOR ENTRY OF DEFAULT JUDGMENT & OTHER SANCTIONS - W/ATTACHMENTS		
09-Mar-2005	1,543		RESPONSE TO:	RESP	TO MORGAN STANLEY'S NOTICE TO APPLY NEW YORK LAW TO CPH'S AIDING & ABETTING & CONSPIRACY CLAIMS - W/ATTACHMENTS		
09-Mar-2005	1,544		ORDER	ORD	AND NOTICE OF HEARING. HEARING ON COLEMAN (PARENT) HOLDINGS INC'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT & OTHER SANCTIONS IS SET FOR 3/14/05 @ 9:30 AM		

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09-Mar-2005	1,545		NOTICE OF HEARING	NOH	3/9/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S MTO STRIKE MORGAN STANLEY'S ANSWER & AFFIRM DEFENSES TO PLTFS FIRST AMENDED COMPLAINT		
09-Mar-2005	1,546		ORDER	ORD	FOLLOWING IN CAMERA INSPECTION (RIEL/SEC DOCUMENTS) CPH SHALL HAVE ACCESS TO THOSE ITEMS LISTED ON EXHIBIT A, ATTACHED. THE ITEMS FOUND TO HAVE RETAINED THEIR PRIVILEGED STATUS HAVE BEEN PLACED IN A SEALED ENVELOPE MARKED "DO NOT OPEN PER 3/9/05 ORDER" AND TENDERED TO THE CLERK. CLERK SHALL NOT UNSEAL OR RELEASE THE SEALED ENVELOPE FROM HER CUSTODY ABSENT FURTHER ORDER		
09-Mar-2005	1,547		SEALED	SEAL	PER ORDER DTD 3/9/05		
09-Mar-2005	1,548		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
09-Mar-2005	1,549		SEALED	SEAL	PER ORDER DTD 7/31/03		
09-Mar-2005	1,550		SEALED	SEAL	PER ORDER DTD 7/31/03		
09-Mar-2005	1,551		SEALED	SEAL	PER ORDER DTD 7/31/03		
09-Mar-2005	1,552		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
09-Mar-2005	1,553		SEALED	SEAL	PER ORDER DTD 7/31/03		
09-Mar-2005	1,554		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
09-Mar-2005	1,555		SEALED	SEAL	PER ORDER DTD 7/31/03		

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10-Mar-2005	1,556		ORDER	ORD	FOLLOWING IN CAMERA INSPECTION (STRONG) MS & CO'S OBJECTIONS ARE SUSTAINED, IN PART, & OVERRULED IN PART. COURT CONCLUDES THAT THOSE ITEMS ATTACHED AS EXHIBIT 1 ARE NOT PRIVILEGED. THE SEALED ITEMS REVIEWED SHALL BE NOT UNSEALED OR RELEASED FROM THE CLERK'S CUSTODY ABSENT FURTHER ORDER - ATTACHMENTS		
10-Mar-2005	1,557		ORDER	ORD	ON MORGAN STANLEY'S MTO DEEM THE 2/23/ CONFIDENTIALITY AGREEMENT ADMISSIBLE. COURT RESERVED RULING PENDING ESTABLISHMENT OF THE EVIDENTIARY PREDICATE AT TRIAL		
10-Mar-2005	1,558		MOTION	MOT	FOR SANCTIONS FOR DISCOVERY ABUSES - W/ATTACHMENTS		
10-Mar-2005	1,559		RESPONSE TO:	RESP	TO COLEMAN (PARENT) HOLDINGS INCS' MTO STRIKE MORGAN STANLEY'S ANSWER & AFFIRM DEFENSES TO PLTFS FIRST AMENDED COMPLAINT		
10-Mar-2005	1,560		ORDER	ORD	CPH'S ORE TENUS MTO COMPEL DISCLOSURE IS GRANTED - SEE ORDER FOR DETAILS		
10-Mar-2005	1,561		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-Mar-2005	1,562		SEALED	SEAL	PER ORDER DTD 7/31/03		
11-Mar-2005			FEE/PRO HAC VICE (\$100.00)	OPRHV	***GOES W/DE#1563*****		
11-Mar-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$100.00 was made on receipt CAMB71116. ***GOES W/DE#1563*****		
11-Mar-2005	1,563		MOTION	MOT	(VERIFIED) TO ADMIT ALEXANDER DIMITRIEF PRO HAC VICE		

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11-Mar-2005	1,564		AGREED ORDER	AGOR	MORGAN STANLEY'S VERIFIED MTO ADMIT ALEXANDER DIMITRIEF, PRO HAC VICE IS GRANTED. MR DIMITRIEF IS ADMITTED TO PRACTICE IN THIS CASE.		
11-Mar-2005	1,565		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MTO STRIKE MORGAN STANLEY'S ANSWER & AFFIRM DEFENSES TO PLTFS FIRST AMENDED COMPLAINT IS DENIED.		
11-Mar-2005	1,566		ORDER	ORD	MORGAN STANLEY'S MTO COMPEL PRODUCTION OF ARCHIVED DOCUMENTS & CORRESPONDENCE W/BANKS IS GRANTED. BY 2:00 PM, MARCH 14, 2005, CPH SHALL CERTIFY THAT IT HAS COMPLETED A GOOD FAITH SEARCH FOR ALL DOCUMENTS W/IN ITS CARE, CUSTODY, OR CONTROL RESPONSIVE TO COURTS 2/17/05 ORDER ON MS & CO'S MTO COMPEL PRODUCTION OF DOCUMENTS.		
11-Mar-2005	1,567		NOTICE	NOT	IN OPPOSITION TO DEFS MTO DISQUALIFY PLTFS COUNSEL - W/ATTACHMENTS		
11-Mar-2005	1,568		MOTION	MOT	TO DISQUALIFY PLTFS COUNSEL SEARCY, DENNEY, SCAROLA BARNHARDT & SHIPLEY PA AND JENNER & BLOCK LLC - W/ATTACHMENTS		
11-Mar-2005	1,569		MOTION TO COMPEL	MCMP	PRODUCTION OF ARCHIVED DOCUMENTS & CORRESPONDENCE W/BANKS - W/ATTACHMENTS		
11-Mar-2005	1,570		NOTICE OF TAKING DEPOSITION	NOTD	(AMENDED/VIDEOTAPE) TO DR BLAINE F NYE		
11-Mar-2005	1,571		MOTION	MOT	TO TAKE JUDICIAL NOTICE PURSUANT TO FS 90.202 & 90.203 - W/ATTACHMENTS		
11-Mar-2005	1,572		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
11-Mar-2005	1,573		SEALED	SEAL	PER ORDER DTD 7/31/03		

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11-Mar-2005	1,574		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
11-Mar-2005	1,575		SEALED	SEAL	PER ORDER DTD 7/31/03		
11-Mar-2005	1,576		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
11-Mar-2005	1,577		SEALED	SEAL	PER ORDER DTD 7/31/03		
11-Mar-2005	1,578		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
11-Mar-2005	1,579		SEALED	SEAL	PER ORDER DTD 7/31/03		
11-Mar-2005	1,579 - A		MOTION	MOT	IN LIMINE #24 TO EXCLUDE THE TESTIMONY OF WILLIAM N HORTON - W/ATTACHMENTS		
11-Mar-2005	1,579 - B		MOTION	MOT	FOR LEAVE TO FILE SUPPLEMENTAL GRINBLATT REPORT - ATTACHMENTS		
11-Mar-2005	1,579 - C		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
11-Mar-2005	1,579 - D		SEALED	SEAL	PER ORDER DTD 7/31/03		
14-Mar-2005	1,580		MOTION	MOT	BY PLTF COLEMAN HOLDINGS FOR IN CAMERA INSPECTION OF DOCUMENTS LISTED ON SUPPLEMENTAL PRIVILEGE LOG		
14-Mar-2005	1,581		NOTICE OF HEARING	NOH	ON 3/15/05 AT 9:30 AM ON MOTION FOR IN CAMERA INSPECTION OF ITEMS LISTED ON SUPPLEMENTAL PRIVILEGE LOG		
14-Mar-2005	1,582		MOTION	MOT	BY COLEMAN HOLDINGS INC TO REMOVE CONFIDENTIALITY DESIGNATIONS		
14-Mar-2005	1,583		NOTICE OF HEARING	NOH	ON 3/15/05 AT 9:30 AM ON MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS		
14-Mar-2005	1,584		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE FAX TRANSMISSION FROM RICHARD REIS, JUROR #151		

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14-Mar-2005	1,585		CORRESPONDENCE	COR	(FAX) TO JUDGE MAASS FROM VALUED DELL CUSTOMER DTD 3/14/05		
14-Mar-2005	1,586		AGREED ORDER	AGOR	MTO BE EXCUSED IS GRANTED. RICHARD REIS, JUROR #151 IS EXCUSED FROM FURTHER SERVICE		
14-Mar-2005	1,587		ORDER	ORD	MORGAN STANLEY'S MTO DISQUALIFY PLTFS COUNSEL SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY PA & JENNER & BLOCK LLC IS DENIED		
14-Mar-2005	1,588		MEMORANDUM	MEMO	(SUPPLEMENTAL) IN SUPPORT OF ITS RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT & OTHER SANCTIONS		
14-Mar-2005	1,589		MEMORANDUM	MEMO	(SUPPLEMENTAL) IN SUPPORT OF M/FOR AN ADVERSE INFERENCE INSTRUCTION - W/ATTACHMENTS		
14-Mar-2005	1,590		MOTION	MOT	TO RECONSIDER & MODIFY SANCTIONS ORDER - W/ATTACHMENTS		
14-Mar-2005	1,591		NOTICE	NOT	OF OPPOSITION TO CPH'S M/FOR A DEFAULT JUDGMENT - W/ATTACHMENTS		
14-Mar-2005	1,592		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
14-Mar-2005	1,593		SEALED	SEAL	PER ORDER DTD 7/31/03		
14-Mar-2005	1,594		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
14-Mar-2005	1,595		SEALED	SEAL	PER ORDER DTD 7/31/03		
14-Mar-2005	1,596		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
14-Mar-2005	1,597		SEALED	SEAL	PER ORDER DTD 7/31/03		
14-Mar-2005	1,598		MOTION	MOT	IN LIMINE #25 TO EXCLUDE EVIDENCE RELATING TO SEPARATE PROCEEDING		

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15-Mar-2005	1,599		RESPONSE TO:	RESP	TO CPH'S CHRONOLOGY OF PURPORTED DISCOVERY ABUSES - W/ATTACHMENTS		
15-Mar-2005	1,600		RESPONSE TO:	RESP	(OVERNIGHT) TO COLEMAN (PARENT) HOLDINGS INC'S SUPPLEMENTAL MEMO IN SUPPORT OF ITS RENEWED MFOR ENTRY OF DEFAULT JUDGMENT - W/ATTACHMENTS		
15-Mar-2005	1,601		SEALED	SEAL	PER ORDER DTD 7/31/03		
15-Mar-2005	1,602		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
15-Mar-2005	1,603		SEALED	SEAL	PER ORDER DTD 7/31/03		
15-Mar-2005	1,604		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
15-Mar-2005	1,605		SEALED	SEAL	PER ORDER DTD 7/31/03		
15-Mar-2005	1,606		RESPONSE TO:	RESP	TO DEFS NOTICE TO PRODUCE PRESCOTT GROUP DOCUMENTS AT TRIAL		
15-Mar-2005	1,607		DEPOSITION	DEPO	OF FRED L BLOCK, TAKEN ON 3/13/05		
15-Mar-2005	1,608		RESPONSE TO:	RESP	(OVERNIGHT) TO CPH'S ADDITIONAL SUBMISSION IN SUPPORT OF ITS MFOR DEFAULT		
16-Mar-2005	1,609		MOTION	MOT	IN LIMINE #27 FOR A FINDING AS A MATTER OF LAW THAT THE FEDERAL SECURITIES LAWS PROHIBITED PLTF FROM SELLING UNREGISTERED SUNBEAM STOCK - W/ATTACHMENTS		
16-Mar-2005	1,610		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/WIN LIMINE #23 TO EXCLUDE EVIDENCE REGARDING THE ITALIAN CRIMINAL PROCEEDINGS - W/ATTACHMENTS		
16-Mar-2005	1,611		RESPONSE TO:	RESP	TO MORGAN STANLEY'S MFOR SANCTIONS FOR ALLEGED DISCOVERY ABUSES - W/ATTACHMENTS		

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16-Mar-2005	1,612		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/FOR AN ADVERSE INFERENCE INSTRUCTION - W/ATTACHMENTS		
16-Mar-2005	1,613		MOTION TO COMPEL	MCMP	CPH TO PROVIDE CHRONOLOGICALLY-SORTED PRIVILEGE LOG - W/ATTACHMENTS		
16-Mar-2005	1,614		NOTICE OF HEARING	NOH	3/17/05 @ 9:30 AM ON MORGAN STANLEY'S M/TO COMPEL CPH TO PROVIDE CHRONOLOGICALLY-SORTED PRIVILEGE LOG		
16-Mar-2005	1,615		MOTION	MOT	IN LIMINE #24 TO BAR EVIDENCE & ARGUMENT CONCERNING MAFCO FINANCIAL INFORMATION - W/ATTACHMENTS		
16-Mar-2005	1,616		NOTICE OF HEARING	NOH	3/17/05 @ 9:30 AM ON CPH INC'S M/IN LIMINE #24 TO BAR EVIDENCE & ARGUMENT CONCERNING MAFCO FINANCIAL INFO; PLTFS M/IN LIMINE #25 FOR A FINDING AS A MATTER OF LAW THAT THE EXCULPATORY & INTEGRATION CLAUSES RAISED BY MORGAN STANLEY ARE INEFFECTIVE TO BAR INTENTIONAL-TORT CLAIMS; CPH INC'S M/TO QUASH MORGAN STANLEY'S NOTICE TO PRODUCE MAFCO LOAN AGREEMENTS; PLTFS M/IN LIMINE #26 FOR A FINDING AS A MATTER OF LAW THAT MORGAN STANLEY OWED A DUTY TO ALL PURCHASERS OF SUNBEAM SECURITIES INCLUDING PLTF AND PLTFS M/IN LIMINE #27 FOR A FINDING AS A MATTER OF LAW THAT THE FEDERAL SECURITIES LAWS PROHIBITED PLTF FROM SELLING UNREGISTERED SUNBEAM STOCK		
16-Mar-2005	1,617		MOTION	MOT	IN LIMINE #26 FOR A FINDING AS A MATTER OF LAW THAT MORGAN STANLEY OWED A DUTY TO ALL PURCHASERS OF SUNBEAM SECURITIES INCLUDING PLTF - W/ATTACHMENTS		

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16-Mar-2005	1,618		MOTION	MOT	TO QUASH MORGAN STANLEY'S NOTICE TO PRODUCE MAFCO LOAN AGREEMENTS - W/ATTACHMENTS		
16-Mar-2005	1,619		MOTION	MOT	IN LIMINE #25 FOR A FINDING AS A MATTER OF LAW THAT THE EXCULPATORY & INTEGRATION CLAUSES RAISED BY MORGAN STANLEY ARE INEFFECTIVE TO BAR INTENTIONAL TORT CLAIMS - W/ATTACHMENTS		
16-Mar-2005	1,620		AGREED ORDER	AGOR	MOTION TO BE EXCUSED IS GRANTED. HOLLY ASBURY JUROR #90 IS EXCUSED FROM FURTHER SERVICE IN THIS CAUSE		
16-Mar-2005	1,621		ORDER	ORD	AND DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE HOLLY ASBURY'S FAX TRANSMISSION DTD 3/15/05		
16-Mar-2005	1,622		CORRESPONDENCE	COR	(FAX) TO JUDGE MAASS FROM HOLLY ASBURY DTD 3/15/05		
16-Mar-2005	1,623		ORDER	ORD	MORGAN STANLEY'S M/FOR REHEARING IS DENIED		
16-Mar-2005	1,624		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
16-Mar-2005	1,625		SEALED	SEAL	PER ORDER DTD 7/31/03		
16-Mar-2005	1,626		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
16-Mar-2005	1,627		SEALED	SEAL	PER ORDER DTD 7/31/03		
16-Mar-2005	1,628		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
16-Mar-2005	1,629		SEALED	SEAL	PER ORDER DTD 7/31/03		
16-Mar-2005	1,630		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
16-Mar-2005	1,631		SEALED	SEAL	PER ORDER DTD 7/31/03		
16-Mar-2005	1,632		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		

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16-Mar-2005	1,633		SEALED	SEAL	PER ORDER DTD 7/31/03		
16-Mar-2005	1,633 - A	16	CORRESPONDENCE	COR	LETTERS TO COURT FROM PROSPECTIVE JURORS AND/OR EMPLOYERS		
17-Mar-2005	1,634		MOTION	MOT	TO REMOVE CONFIDENTIALITY DESIGNATIONS - W/ATTACHMENTS		
17-Mar-2005	1,635		NOTICE OF HEARING	NOH	3/21/05 @ 9:30 AM ON MORGAN STANLEY & CO INC'S MTO REMOVE CONFIDENTIALITY DESIGNATIONS		
17-Mar-2005	1,636		NOTICE OF FILING	NOF	PRELIMINARY JURY INSTRUCTIONS - ATTACHED		
17-Mar-2005	1,637		NOTICE OF FILING	NOF	TRIAL EXHIBIT LIST - ATTACHED		
17-Mar-2005	1,638		EXHIBIT	EXHB	IN OPPOSITION TO PLTF'S RENEWED MFOR ENTRY OF DEFAULT JUDGMENT		
18-Mar-2005	1,639		NOTICE	NOT	TO PRODUCE AT HEARING		
18-Mar-2005	1,640		ORDER	ORD	AN DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE LETTER FROM DR ULLOA; ROBERT WACKER'S LETTER DTD 3/14/05; AND LOREEN FRANCESCANI'S LETTER DTD 3/16/05		
18-Mar-2005	1,641		CORRESPONDENCE	COR	FROM LUIS S ULLOA MD; CRAIG H LICHTBLAU MD PA DTD 3/14/05 & LOREEN FRANCESCANI DTD 3/16/05		
18-Mar-2005	1,642		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE FAX TRANSMISSION FROM LUIS TUR DTD 3/17/05		
18-Mar-2005	1,643		CORRESPONDENCE	COR	FROM LUIS TUR DTD 3/17/05		
18-Mar-2005	1,644		SEALED	SEAL	PER ORDER DTD 7/31/03		
18-Mar-2005	1,645		SEALED	SEAL	PER ORDER DTD 7/31/03		
18-Mar-2005	1,646		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		

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18-Mar-2005	1,647		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
18-Mar-2005	1,648		MOTION	MOT	TO TAKE JUDICIAL NOTICE OF CERTAIN STATEMENTS CONCERNING STATEMENTS CONCERNING THE SUNBEAM FRAUD MADE BY MORGAN STANLEY & TO ADMIT THOSE STATEMENTS INTO EVIDENCE AS ADMISSIONS OF MORGAN STANLEY - W/ATTACHMENTS		
18-Mar-2005	1,649		RESPONSE TO:	RESP	TO MORGAN STANLEY, INC'S M/IN LIMINE #25 TO EXCLUDE EVIDENCE RELATING TO SEPARATE PROCEEDING - W/ATTACHMENT		
18-Mar-2005	1,650		NOTICE	NOT	OF REQUESTED PRELIMINARY JURY INSTRUCTIONS		
18-Mar-2005	1,651		RESPONSE TO:	RESP	TO MORGAN STANLEY'S MTO REMOVE CONFIDENTIALITY DESIGNATIONS		
18-Mar-2005	1,652		RESPONSE TO:	RESP	TO MORGAN STANLEY'S 3/17/05 NOTICE TO PRODUCE AT HEARING		
18-Mar-2005	1,653		MOTION	MOT	IN LIMINE #28 TO CLARIFY WHEN EVIDENCE IS ADMISSIBLE TO SHOW PLTF'S ENTITLEMENT TO AND AMT OF PUNITIVE DAMAGES - W/ATTACHMENTS		
18-Mar-2005	1,654		NOTICE	NOT	OF OPPOSITION TO MORGAN STANLEY'S M/FOR LEAVE TO FILE SUPPLEMENTAL GRINBLATT REPORT - W/ATTACHMENTS		
18-Mar-2005	1,655		RESPONSE TO:	RESP	TO MORGAN STANLEY'S M/IN LIMINE #24 TO EXCLUDE THE TESTIMONY OF WILLIAM N HORTON - W/ATTACHMENTS		
21-Mar-2005	1,656		NOTICE	NOT	OF PROPOSED LIMITING INSTRUCTIONS REGARDING CPH'S DUE DILIGENCE OR LACK THEREOF		

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21-Mar-2005	1,657		NOTICE	NOT	OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S MTO QUASH MORGAN STANLEY'S NOTICE TO PRODUCE MAFCO LOAN AGREEMENTS - W/ATTACHMENTS		
21-Mar-2005	1,658		RESPONSE TO:	RESP	TO COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #24 TO BAR EVIDENCE & ARGUMENT CONCERNING MAFCO FINANCIAL INFORMATION - W/ATTACHMENTS		
21-Mar-2005	1,659		EXHIBIT LIST	EXLT	FOR 3/21/05 HEARING ON MORGAN STANLEY'S M/FOR AN ADVERSE INFERENCE INSTRUCTION		
21-Mar-2005	1,660		RESPONSE TO:	RESP	TO CPH'S M/TO TAKE JUDICIAL NOTICE OF CERTAIN STATEMENTS CONCERNING THE SUNBEAM FRAUD MADE BY MORGAN STANLEY & TO ADMIT THOSE STATEMENTS INTO EVIDENCE AS ADMISSIONS OF MORGAN STANLEY		
21-Mar-2005	1,661		RESPONSE TO:	RESP	TO PLTF'S M/IN LIMINE #26 FOR A FINDING AS A MATTER OF LAW THAT MORGAN STANLEY OWED A DUTY TO ALL PURCHASERS OF SUNBEAM SECURITIES INCLUDING PLTF		
21-Mar-2005	1,662		NOTICE	NOT	OF OPPOSITION TO CPH'S M/IN LIMINE #27 FOR A FINDING AS A MATTER OF LAW THAT THE FEDERAL SECURITIES LAWS PROHIBITED PLTF FROM SELLING UNREGISTERED SUNBEAM STOCK - W/ATTACHMENTS		
21-Mar-2005	1,663		NOTICE	NOT	OF OPPOSITION TO PLTF'S M/IN LIMINE #25 FOR FINDING AS A MATTER OF LAW THAT EXCULPATORY & INTEGRATION CLAUSES RAISED BY MORGAN STANLEY ARE INEFFECTIVE TO BAR INTENTIONAL-TORT CLAIMS - W/ATTACHMENTS		
21-Mar-2005	1,664		MOTION TO COMPEL	MCMP	DISCLOSURE OF DEPO VIDEOS PRIOR TO PRESENTATION TO JURY - W/ATTACHMENTS		

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21-Mar-2005	1,665		NOTICE	NOT	TO PRODUCE AT TRIAL		
21-Mar-2005	1,666		NOTICE	NOT	OF SUBMISSION OF PROPOSED LIMITING INSTRUCTIONS ON RELIANCE ISSUES		
21-Mar-2005	1,667		NOTICE OF FILING	NOF	DOCUMENTS UNDER SEAL		
21-Mar-2005	1,668		SEALED	SEAL	PER ORDER DTD 7/31/03		
21-Mar-2005	1,669		NOTICE OF FILING	NOF	DOCUMENTS UNDER SEAL		
21-Mar-2005	1,670		SEALED	SEAL	PER ORDER DTD 7/31/03		
21-Mar-2005	1,671		NOTICE OF FILING	NOF	DOCUMENTS UNDER SEAL		
21-Mar-2005	1,672		SEALED	SEAL	PER ORDER DTD 7/31/03		
21-Mar-2005	1,672 - A		SEALED	SEAL	PER ORDER DTD 7/31/03		
22-Mar-2005	1,673		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #24 TO BAR EVIDENCE & ARGUMENT CONCERNING MAFCO FINANCIAL INFORMATION IS DENIED - W/OUT PREJUDICE.		
22-Mar-2005	1,674		NOTICE	NOT	OF SUBMISSION REGARDING EMAIL-RELATED FACTS THE COURT & CPH KNOW HOW, BUT DID NOT KNOW AS OF 2/14/		
22-Mar-2005	1,675		ORDER	ORD	(RELEASE OF EXHIBITS - RIEL) MS&CO'S OBJECTIONS ARE OVERRULED, IN PART. CPH SHALL HAVE ACCESS TO THOSE DOCUMENTS ATTACHED HERETO AS EXHIBIT 1, EXCLUDING THOSE PORTIONS REDACTED BY THE COURT. THE SEALED FILING BY MS&CO SHALL NOT BE UNSEALED OR REMOVED - SEE ORDER (ATTACHMENTS)		
22-Mar-2005	1,675 - A	7	CORRESPONDENCE	COR	LETTER TO COURT FROM A PROSPECTIVE JUROR		

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23-Mar-2005	1,676		ORDER	ORD	MORGAN STANLEY'S M/FOR LEAVE TO FILE SUPPLEMENTAL GRINBLATT REPORT IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS		
23-Mar-2005	1,677		ORDER	ORD	CPH'S RENEWED M/FOR ENTRY OF A DEFAULT JUDGMENT IS GRANTED IN PART. COURT SHALL READ TO THE JURY A STATEMENT SIMILAR TO THAT ATTACHED AS EXHIBIT A TO THE AMENDED ORDER ON COLEMAN (PARENT) HOLDINGS INC'S M/FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S DESTRUCTIONS OF E-MAILS & MORGAN STANLEY'S NONCOMPLIANCE W/THE COURTS 4/16/04 AGREED ORDER. CPH SHALL BE ENTITLED TO AN AWARD OF REASONABLE FEES & COSTS. MS&CO IS RELIEVED OF ANY FURTHER OBLIGATION TO COMPLY W/THE 4/16/04 AGREED ORDER & THE 2/4/05 ORDER. PRO HAC VICE ADMISSION OF THOMAS CLARE IS REVOKED. PORTIONS OF CPH'S M/FOR CORRECTION & CLARIFICATION OF ORDER ON CPH'S M/FOR ADVERSE INFERENCE THAT SEEK TO AMEND THE BODY OF THAT ORDER TO CORRECT CLERICAL & SPELLING ERRORS IS GRANTED. SEE ORDER FOR FURTHER DETAILS (W/ATTACHMENTS)		
23-Mar-2005	1,678		MOTION	MOT	OF KIRKLAND & ELLIS LLP, TO WITHDRAW AS COUNSEL		
23-Mar-2005	1,679		NOTICE OF FILING	NOF	EXHIBIT "B" TO ITS M/TO ALLOW SUBSTITUTION OF COUNSEL & FOR CONTINUANCE - ATTACHED		
23-Mar-2005	1,680		MOTION	MOT	TO ALLOW SUBSTITUTION OF COUNSEL & FOR CONTINUANCE - W/ATTACHMENTS		
23-Mar-2005	1,681		NOTICE	NOT	OF OPPOSITION TO MORGAN STANLEY'S M/FOR CONTINUANCE - W/ATTACHMENTS		

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23-Mar-2005	1,682		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
23-Mar-2005	1,683		SEALED	SEAL	PER ORDER DTD 7/31/03		
24-Mar-2005	1,684		ORDER	ORD	KIRKLAND & ELLIS LLP'S MTO WITHDRAW AS COUNSEL FOR MORGAN STANLEY IS GRANTED - SAID IS RELIEVED OF ANY FURTHER OBLIGATION. CARLTON FIELDS PA & KELLOGG, HUBER, HANSEN, TODD & EVANS & FIGEL PLLC REMAIN AS CO-COUNSEL. MORGAN STANLEY'S MFOR CONTINUANCE IS GRANTED, IN PART. JURY SELECTION SHALL RECOMMENCE ON 3/30/05 @ 9:30 AM. MORGAN STANLEY'S MTO ALLOW SUBSTITUTION OF COUNSEL IS DEEMED NOT RIPE. NO SUBSTITUTE COUNSEL HAS BEEN OFFERED		
24-Mar-2005	1,685		ORDER	ORD	MORGAN STANLEY & CO INC'S MFOR SANCTIONS FOR DISCOVERY ABUSES IS DENIED		
24-Mar-2005	1,686		ORDER	ORD	MORGAN STANLEY'S MFOR AN ADVERSE INFERENCE INSTRUCTION IS DENIED, W/OUT PREJUDICE TO MS&CO'S RIGHT TO PRESENT EVIDENCE ABOUT CPH'S EMAIL RETENTION PRACTICES & ITS FAILURE TO DIRECT THAT EMAILS RELATED TO THE SUNBEAM TRANSACTION BE SAVED & CPH'S RIGHT TO PRESENT EVIDENCE OF ITS OFFER TO HAVE A 3RD PARTY VENDOR GIVEN ACCESS TO RETRIEVE EMAILS FROM CPH'S SYSTEM. SEE ORDER FOR DETAILS		
24-Mar-2005	1,687		ORDER	ORD	MORGAN STANLEY'S MWIN LIMINE #23 TO EXCLUDE EVIDENCE REGARDING WILLIAM STRONG'S ITALIAN ACQUITTAL IS DENIED W/OUT PREJUDICE. SEE ORDER FOR DETAILS		
24-Mar-2005	1,688		SUBPOENA RETURNED / SERVED	SRSV	TO JEFFREY S DAVIDSON		

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24-Mar-2005	1,689		SUBPOENA RETURNED / SERVED	SRSV	TO DONALD KEMPF JR		
24-Mar-2005	1,690		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/TO REMOVE CONFIDENTIALITY DESIGNATIONS IS GRANTED IN PART & DENIED IN PART. THE CONFIDENTIALITY DESIGNATIONS ARE REMOVED FROM ALL ITEMS LISTED IN THE MOTION, OTHER THAN THOSE FOUND AT DE # 1496, 1498, 1499, 1501 & 1502		
24-Mar-2005	1,691		ORDER	ORD	ON REVISED PRE-TRIAL SCHEDULE. BY NOON ON 3/26/05, PLTF SHALL SERVE ON DEF, BY ELECTRONIC TRANSMISSION, ITS REVISED WITNESS LIST TOGETHER WITH A FAIR SUMMARY OF EACH WITNESS'S EXPECTED TESTIMONY. BY 3/27/05 @ 5:00 PM, PLTF SHALL SERVE ON DEF, BY ELECTRONIC TRANSMISSION, ITS REVISED EXHIBIT LIST. BY 3/28/05 @ 9:30 AM, EACH PARTY SHALL SUBMIT ITS REQUESTED STATEMENT TO BE READ TO THE JURY.		
24-Mar-2005	1,692		ORDER	ORD	AND DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE JOSEPH KATZ'S FAX TRANSMISSION DTD 3/24/05		
24-Mar-2005	1,693		LETTER	LTR	FROM JOSEPH KATZ DTD 3/24/05		
24-Mar-2005	1,693 - A		MOTION	MOT	TO DISCHARGE JURY PANELS		
25-Mar-2005	1,694		MEMORANDUM OF LAW	MLAW	BY PLTF CPH IN OPPOSITION TO MOTION TO TAKE JUDICIAL NOTICE		
28-Mar-2005	1,695		NOTICE	NOT	OF SUBMISSION OF PROPOSED STATEMENT TO BE READ TO THE JURY PURSUANT TO COURTS 3/23/05 ORDER ON CPH'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT		

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28-Mar-2005	1,696		NOTICE OF FILING	NOF	ORIG DECLARATION OF DONALD G KEMPFF JR - ATTACHED		
28-Mar-2005	1,697		NOTICE	NOT	OF OPPOSITION TO CPH'S M/FOR LEAVE TO TAKE THE DEPO OF DONALD G KEMPFF JR - W/ATTACHMENTS		
28-Mar-2005	1,698		REPLY/RESPONSE	RPRS	TO MORGAN STANLEY'S ANSWER & AFFIRM DEFENSES TO PLTFS FIRST AMENDED COMPLAINT		
28-Mar-2005	1,699		MOTION	MOT	FOR LEAVE TO TAKE THE DEPO OF DONALD G KEMPFF JR		
28-Mar-2005	1,700		NOTICE OF HEARING	NOH	3/28/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/FOR LEAVE TO TAKE THE DEPO OF DONALD G KEMPFF JR		
28-Mar-2005	1,701		STATEMENT	STMT	(PROPOSED) OF CONCLUSIVE FINDINGS OF FACT REGARDING DESTRUCTION OF EVIDENCE, CONCEALMENT OF EVIDENCE, AND LITIGATION MISCONDUCT - W/ATTACHMENTS		
28-Mar-2005	1,702		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/TO QUASH MORGAN STANLEY'S NOTICE TO PRODUCE MAFCO LOAN AGREEMENTS IS GRANTED. MS& CO'S NOTICE TO PRODUCE AT TRIAL DOCUMENTS PERTAINING TO LOAN AGREEMENTS OF MAFCO, SERVED 2/18/05 IS QUASHED		
28-Mar-2005	1,703		ORDER	ORD	PLTFS M/IN LIMINE #25 FOR A FINDING AS A MATTER OF LAW THAT THE EXCULPATORY & INTEGRATION CLAUSES RAISED BY MORGAN STANLEY ARE INEFFECTIVE TO BAR INTENTIONAL-TORT CLAIMS IS GRANTED		

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28-Mar-2005	1,704		ORDER	ORD	PLTFS M/IN LIMINE #27 FOR A FINDING AS A MATTER OF LAW THAT THE FEDERAL SECURITIES LAWS PROHIBITED PLTF FROM SELLING UNREGISTERED SUNBEAM STOCK IS GRANTED IN PART. CPH'S MTO COMPEL IS GRANTED - W/IN 5 BUSINESS DAYS, CPH SHALL SERVE ITS SUPPLEMENTAL DISCLOSURE - SEE ORDER FOR DETAILS		
29-Mar-2005	1,705		STATEMENT	STMT	(COPY/PROPOSED) FOR VOIR DIRE EXAM		
29-Mar-2005	1,706		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MFOR LEAVE TO TAKE THE DEPO OF DONALD G KEMPFF JR IS GRANTED IN PART. BASED ON DEFS REP THAT JAMES DOYLE IS THE PERSON AT MS&CO RESPONSIBLE FOR COMPLIANCE W/THE COURTS 3/2/05 ORDER - SEE ORDER		
29-Mar-2005	1,707		ORDER	ORD	MOTION TO EXCUSE JUROR IS DENIED. JUROR JOSEPH KATZ SHALL REPORT FOR JURY SERVICE 3/30/05		
29-Mar-2005	1,708		ORDER	ORD	PLTFS ORE TENUS MTO COMPEL IS GRANTED. DR GRINBLATT SHALL APPEAR FOR DEPO ON OR BEFORE 4/5/05.		
29-Mar-2005	1,709		ORDER	ORD	PLTFS ORE TENUS MTO SET SCHEDULE IS GRANTED. MS&CO SHALL SERVE ANY MOTION THE GRANTING OF WHICH WOULD SEEK TO MODIFY OR ELIMINATE THE BIFURCATION LINE PREVIOUSLY DRAWN BY THE COURT BY NOON 3/31/05. HEARING ON SUCH MOTION SHALL BE HELD IN CONJUNCTION W/HEARING ON PLTFS MOTION SEEKING A DETERMINATION OF EVIDENCE RELEVANT TO PHASE I & PHASE II ON 3/31/05 @ 1:00 PM. COUNSEL SHALL PRESENT THEIR PROPOSED JURY INSTRUCTIONS AT 9:30 AM ON 4/4/05		

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29-Mar-2005	1,710		ORDER	ORD	MORGAN STANLEY'S MTO DISCHARGE JURY PANELS IS DENIED, W/OUT PREJUDICE TO RENEWAL FOLLOWING ADDITIONAL VOIR DIRE		
29-Mar-2005	1,711		MOTION TO STRIKE	MSTR	A PORTION OF ONE SENTENCE FROM EXHIBIT A TO THE COURT'S 3/23/05 ORDER - W/ATTACHMENTS		
29-Mar-2005	1,712		ORDER	ORD	MORGAN STANLEY'S MTO APPLY NEW YORK LAW TO CPH'S AIDING & ABETTING & CONSPIRACY CLAIMS IS DENIED		
30-Mar-2005	1,713		MOTION	MOT	FOR CORRECTION & CLARIFICATION OF THE STATEMENT TO BE READ TO THE JURY - W/ATTACHMENTS		
30-Mar-2005	1,714		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MTO DEEM CERTAIN THIRD PARTY DOCUMENTS ADMISSIBLE AT TRIAL IS GRANTED IN PART.		
30-Mar-2005	1,715		ORDER	ORD	PLTFS M/IN LIMINE (#14) TO BAR EVIDENCE & ARGUMENT THAT THE "COMFORT LETTERS" REFERRED TO IN THE PUBLIC MERGER AGREEMENT OR THE HOLDINGS MERGER AGREEMENT INCLUDE THE 3/19/98 & 3/25/98 COMFORT LETTERS IS GRANTED.		
30-Mar-2005	1,716		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MTO TAKE JUDICIAL NOTICE PURSUANT TO FS 90.202 & 90.203 IS GRANTED		
30-Mar-2005	1,717		AGREED ORDER	AGOR	COLEMAN (PARENT) HOLDINGS INC'S MTO STRIKE A PORTION OF ONE SENTENCE FROM EXHIBIT A TO THE COURTS 3/23/05 ORDER IS GRANTED - SEE ORDER FOR DETAILS		
30-Mar-2005	1,718		ORDER	ORD	AND DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE CPH'S PROPOSED STATEMENT TO THE JURY, ATTACHED HERETO		

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30-Mar-2005	1,719		ORDER	ORD	AND DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE ORIG OF JAY SORENSEN'S LETTER DTD 3/24/05 & SERVE A COPY UPON ALL COUNSEL, ATTACHING A CERT OF SERVICE. *** CLERKS NOTE: CLERK DID CERT OF SERVICE & MAILING ON 3/31/05 ***		
30-Mar-2005	1,720		CORRESPONDENCE	COR	TO COURT FROM JAY SORENSEN DTD 3/24/05		
30-Mar-2005	1,721		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE MORGAN STANLEY'S PROPOSED STATEMENT FOR VOIR DIRE EXAM DTD 3/29/05		
30-Mar-2005	1,722		NOTICE	NOT	OF PROPOSED STATEMENT FOR VOIR DIRE EXAM		
30-Mar-2005	1,723		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE ORIG OF JACK KAWA'S LETTER RECEIVED BY THE UNDERSIGNED 3/30/05 AND SERVE A COPY UPON ALL COUNSEL, ATTACHING A CERT OF SERVICE *** CLERKS NOTE: CERT OF SERVICE & MAILING DONE ON 3/31/05 ***		
30-Mar-2005	1,724		CORRESPONDENCE	COR	TO JUDGE MAASS FROM JACK KAWA		
31-Mar-2005	1,725		ORDER	ORD	MORGAN STANLEY'S M/T O CLARIFY THE PROPER SCOPE OF THE LIABILITY & PUNITIVE PHASES OF TRIAL IS GRANTED IN PART. PHASE I OF THE TRIAL SHALL BE LIMITED TO THE LIABILITY, IF ANY, OF MS&CO FOR COMPENSATORY DAMAGES. PHASE II SHALL ADDRESS ENTITLEMENT & IF NECESSARY, AMT OF PUNITIVE DAMAGES TO BE ASSESSED IF LIABILITY IS DETERMINED IN CPH'S FAVOR		

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31-Mar-2005	1,726		ORDER	ORD	AND DIRECTIONS TO THE CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE LETTER FROM ROGER KOCH DTD 3/30/05		
31-Mar-2005	1,727		CORRESPONDENCE	COR	FROM ROGER L KOCH DTD 3/30/05		
31-Mar-2005	1,728		NOTICE	NOT	TO PRODUCE AT TRIAL		
31-Mar-2005	1,729		MOTION	MOT	TO CLARIFY THE PROPER SCOPE OF THE LIABILITY & PUNITIVE PHASES OF TRIAL		
31-Mar-2005	1,730		NOTICE	NOT	TO PRODUCE AT TRIAL		
31-Mar-2005	1,731		NOTICE OF COMPLIANCE	NCOM	W/COURT ORDER DTD 3/23/05 - W/ATTACHMENT		
31-Mar-2005	1,732		NOTICE	NOT	TO PRODUCE AT TRIAL		
31-Mar-2005	1,733		NOTICE	NOT	(AMENDED) TO PRODUCE AT TRIAL		
31-Mar-2005	1,734		NOTICE OF FILING	NOF	ORIG AFFID OF RICK R FUENTES PH.D. - ATTACHED		
01-Apr-2005	1,735		MOTION	MOT	IN LIMINE #29 TO BAR EVIDENCE & ARGUMENT IDENTIFYING THE BENEFICIARY OF ANY PUNITIVE-DAMAGES AWARD		
01-Apr-2005	1,736		NOTICE OF HEARING	NOH	4/4/05 @ 9:30 AM ON PLTFS M/IN LIMINE #29 TO BAR EVIDENCE & ARGUMENT IDENTIFYING THE BENEFICIARY OF ANY PUNITIVE-DAMAGES AWARD		
01-Apr-2005	1,737		NOTICE	NOT	TO PRODUCE AT TRIAL		
01-Apr-2005	1,738		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO MARK GRINBLATT & JAMES DOYLE		
04-Apr-2005	1,739		MOTION	MOT	IN LIMINE #27 TO EXCLUDE THE TESTIMONY OF PROFESSOR DOUGLAS R EMERY OR IN THE ALTERNATIVE, TO PRECLUDE PROFESSOR EMERY FROM MAKING ANY COMMENT ON OR REFERENCE TO EXHIBIT S		

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04-Apr-2005	1,740		NOTICE OF HEARING	NOH	4/5/05 @ 9:30 AM ON MORGAN STANLEY'S M/IN LIMINE #27 TO EXCLUDE THE TESTIMONY OF PROFESSOR DOUGLAS R EMERY OR IN THE ALTERNATIVE, TO PRECLUDE PROFESSOR EMERY FROM MAKING ANY COMMENT ON OR REFERENCE TO EXHIBIT A		
04-Apr-2005	1,741		NOTICE OF HEARING	NOH	4/5/05 @ 9:30 AM ON MORGAN STANLEY & CO INC'S M/TO MODIFY OR REDACT THE PROPOSED STATEMENT TO BE READ TO THE JURY		
04-Apr-2005	1,742		NOTICE	NOT	OF OPPOSITION TO CPH'S M/IN LIMINE #29 TO BAR EVIDENCE & ARGUMENT IDENTIFYING THE BENEFICIARY OF ANY PUNITIVE-DAMAGES AWARD - W/ATTACHMENT		
04-Apr-2005	1,743		NOTICE	NOT	OF OPPOSITION TO PLTFS M/TO BAR THE EXPERT TESTIMONY OF JOHN F ASHLEY		
04-Apr-2005	1,744		NOTICE	NOT	OF OPPOSITION TO CPH'S M/TO QUASH AMENDED TRIAL SUBPOENA & NOTICE TO PRODUCE PERSONAL BALANCE SHEETS OF RONALD PERELMAN & CROSS-MOTION TO COMPEL PRODUCTION OF FINANCIAL DOCUMENTS - W/ATTACHMENTS		
04-Apr-2005	1,745		MOTION	MOT	TO AMEND THE COURTS 3/23/05 ORDER ON CPH'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT - W/ATTACHMENTS		
04-Apr-2005	1,746		NOTICE OF HEARING	NOH	4/5/05 @ 9:30 AM ON CPH'S M/TO AMEND THE COURTS 3/23/05 ORDER ON CPH'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT		
04-Apr-2005	1,747		MOTION	MOT	IN LIMINE #31 TO BAR EVIDENCE RENDERED IRRELEVANT BY THE COURT'S ORDER ON CPH'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT - W/ATTACHMENTS		

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04-Apr-2005	1,748		NOTICE OF HEARING	NOH	4/5/05 @ 9:30 AM ON PLTFS M/IN LIMINE #31 TO BAR EVIDENCE RENDERED IRRELEVANT BY THE COURTS ORDER ON CPH'S RENEWED MFOR ENTRY OF DEFAULT JUDGMENT		
04-Apr-2005	1,749		MOTION	MOT	IN LIMINE #30 TO BAR REFERENCES TO COLLATERAL BUSINESS & PERSONAL MATTER INVOLVING MAFCO-RELATED ENTITIES & THEIR PRINCIPALS & EMPLOYEES		
04-Apr-2005	1,750		NOTICE OF HEARING	NOH	4/5/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #30 TO BAR REFERENCES TO COLLATERAL BUSINESS & PERSONAL MATTERS INVOLVING MAFCO-RELATED ENTITIES & THEIR PRINCIPALS & EMPLOYEES		
04-Apr-2005	1,751		MOTION	MOT	TO QUASH AMENDED TRIAL SUBPOENA & NOTICE TO PRODUCE PERSONAL BALANCE SHEETS OF RONALD PERELMAN - W/ATTACHMENTS		
04-Apr-2005	1,752		NOTICE OF HEARING	NOH	4/5/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/TO QUASH AMENDED TRIAL SUBPOENA & NOTICE TO PRODUCE PERSONAL BALANCE SHEETS OF RONALD PERELMAN		
04-Apr-2005	1,753		MOTION	MOT	TO MODIFY OR REDACT THE PROPOSED STATEMENT TO BE READ TO THE JURY - W/ATTACHMENTS		
04-Apr-2005	1,754		DISCLOSURE	DISC	(SUPPLEMENTAL) CONCERNING PLTFS INABILITY TO SELL ITS UNREGISTERED SUNBEAM STOCK - W/ATTACHMENTS		

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04-Apr-2005	1,755		MOTION	MOT	FOR RECONSIDERATION OF THE COURTS 3/23/05 ORDER ON MORGAN STANLEY'S M/FOR AN ADVERSE INFERENCE INSTRUCTION & TO BAR THE EXPERT TESTIMONY OF JOHN F ASHLEY - W/ATTACHMENTS		
04-Apr-2005	1,756		NOTICE OF HEARING	NOH	4/5/05 @ 9:30 AM ON PLTFS M/FOR RECONSIDERATION OF THE COURTS 3/23/05 ORDER ON MORGAN STANLEY'S M/FOR AN ADVERSE INFERENCE INSTRUCTION & TO BAR THE EXPERT TESTIMONY OF JOHN F ASHLEY		
04-Apr-2005	1,757		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
04-Apr-2005	1,758		SEALED	SEAL	PER ORDER DTD 7/31/03		
05-Apr-2005	1,759		NOTICE OF FILING	NOF	DOCUMENTS UNDER SEAL		
05-Apr-2005	1,760		SEALED	SEAL	PER ORDER DTD 7/31/03		
05-Apr-2005	1,761		MOTION	MOT	TO REMOVE CONFIDENTIALITY DESIGNATIONS		
05-Apr-2005	1,762		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #30 TO BAR REFERENCES TO COLLATERAL BUSINESS & PERSONAL MATTERS INVOLVING MAFCO-RELATED ENTITIES & THEIR PRINCIPALS & EMPLOYEES IS GRANTED IN PART & RULING RESERVED IN PART - SEE ORDER		
05-Apr-2005	1,763		ORDER	ORD	MORGAN STANLEY'S M/FOR REHEARING IS DENIED		
05-Apr-2005	1,764		ORDER	ORD	CPH'S ORE TENUS M/IN LIMINE, SEEKING TO INTRODUCE INTO EVIDENCE THE PURCHASE OF SUNBEAM SHARES OR DEBENTURES BY THIRD PARTIES IS DENIED, W/OUT PREJUDICE		

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05-Apr-2005	1,765		AGREED ORDER	AGOR	PLTFS M/WIN LIMINE #31 TO BAR EVIDENCE RENDERED IRRELEVANT BY THE COURTS ORDER ON CPH'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT IS GRANTED - SEE ORDER		
05-Apr-2005	1,766		ORDER	ORD	MORGAN STANLEY'S M/TO ADD WITNESSES IS GRANTED IN PART & RULING RESERVED IN PART. JOHN ASHLEY, SCOTT COOK, DAN FISCHEL, JEFFREY HAAS & KEVIN WOODRUFF SHALL NOT BE PERMITTED TO TESTIFY AT TRIAL. SEE ORDER FOR DETAILS		
05-Apr-2005	1,767		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/TO QUASH AMENDED TRIAL SUBPOENA & NOTICE TO PRODUCE PERSONAL BALANCE SHEETS OF RONALD PERELMAN IS GRANTED - SAID IS QUASHED		
05-Apr-2005	1,768		ORDER	ORD	DEFS M/FOR RECONSIDERATION OF THE COURTS SANCTION ORDERS IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS		
05-Apr-2005	1,769		ORDER	ORD	GOVERNING PRE-TRIAL PROCEDURE. MS&CO SHALL SERVE DEPO DESIGNATIONS FOR NO FEWER THAN 3 WITNESSES EACH DAY BEGINNING NOON ON 4/5/05 & SHALL SERVE ALL DEPO DESIGNATIONS BY NOON ON 4/8/05. MS&CO SHALL SERVE ITS COUNTERDESIGNATIONS TO CPH'S DESIGNATIONS BY NOON 4/11/05. CPH SHALL SERVE ITS COUNTERDESIGNATIONS W/IN 3 DAYS OF SERVICE OF EACH MS&CO DESIGNATIONS ON IT.		

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05-Apr-2005	1,770		ORDER	ORD	PLTFS M/IN LIMINE #29 TO BAR EVIDENCE & ARGUMENT IDENTIFYING THE BENEFICIARY OF ANY PUNITIVE-DAMAGES AWARD IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS		
05-Apr-2005	1,771		ORDER	ORD	MORGAN STANLEY'S M/IN LIMINE #27 TO EXCLUDE TESTIMONY OF EMERY OR IN THE ALTERNATIVE, TO PRECLUDE EMERY FROM MAKING COMMENTS REGARDING EXHIBIT A IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAIL		
05-Apr-2005	1,772		ORDER	ORD	PLTFS ORE TENUIS MTO CLARIFY IS GRANTED - SEE ORDER FOR DETAILS		
05-Apr-2005	1,773		ORDER	ORD	(LIMITING INSTRUCTION ON RELIANCE) COURT SHALL READ THE ATTACHED INSTRUCTION WHEN TESTIMONY OR EVIDENCE ABOUT CPH'S DUE DILIGENCE, OR LACK THEREOF, IS PLACED BEFORE THE JURY		
05-Apr-2005	1,774		NOTICE	NOT	OF PROPOSED JURY INSTRUCTIONS - ATTACHED		
05-Apr-2005	1,775		MOTION	MOT	(RENEWED) FOR CORRECTION & CLARIFICATION OF THE LITIGATION-MISCONDUCT STATEMENT TO BE READ TO THE JURY - W/ATTACHMENTS		
05-Apr-2005	1,776		ORDER	ORD	DEFS MOTION REGARDING THE RELIANCE & DAMAGES ISSUES TO BE DETERMINED AT PHASE I OF TRIAL IS DENIED		
05-Apr-2005	1,777		ORDER	ORD	CPH'S MTO AMEND THE COURTS 3/23/05 ORDER ON CPH'S RENEWED M/FOR ENTRY OF DEFAULT IS DENIED.		

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05-Apr-2005	1,778		RESPONSE TO:	RESP	TO CPH'S M/IN LIMINE #30 TO BAR REFERENCES TO COLLATERAL BUSINESS & PERSONAL MATTERS INVOLVING MAFCO-RELATED ENTITIES & THEIR PRINCIPALS & EMPLOYEES		
05-Apr-2005	1,779		MOTION	MOT	TO ADD WITNESSES		
05-Apr-2005	1,780		NOTICE	NOT	OF OPPOSITION TO CPH'S MTO AMEND THE COURTS 3/23/05 ORDER ON CPH'S RENEWED M/FOR ENTRY OF DEFAULT JUDGMENT		
05-Apr-2005	1,781		MOTION	MOT	REGARDING THE RELIANCE & DAMAGES ISSUES TO BE DETERMINED AT PHASE I OF TRIAL		
05-Apr-2005	1,782		NOTICE	NOT	OF OPPOSITION TO PLTFS M/FOR RECONSIDERATION OF THE COURTS 3/23/05 ORDER ON MORGAN STANLEY'S M/FOR AN ADVERSE INFERENCE INSTRUCTION - W/ATTACHMENTS		
05-Apr-2005	1,783		MOTION	MOT	FOR RECONSIDERATION OF THE COURTS SANCTION ORDERS & MEMO OF LAW - UP ON 4/6/05		
06-Apr-2005	1,784		MOTION	MOT	IN LIMINE #32 TO BAR REFERENCES TO PLTFS FAILURE TO RETAIN E-MAILS AS "LITIGATION MISCONDUCT" - W/ATTACHMENTS		
06-Apr-2005	1,785		MOTION TO STRIKE	MSTR	UNTIMELY OBJECTIONS TO CPH EXHIBITS - W/ATTACHMENTS		
06-Apr-2005	1,786		NOTICE OF HEARING	NOH	4/6/05 @ 8:00 AM ON COLEMAN (PARENT) HOLDINGS INC'S MTO STRIKE UNTIMELY OBJECTIONS TO CPH EXHIBITS		
06-Apr-2005	1,787		MOTION	MOT	TO DEFINE THE SCOPE OF NOTICES TO PRODUCE REGARDING EXPERT BILLING		
06-Apr-2005	1,788		NOTICE OF HEARING	NOH	4/6/05 @ 8:00 AM ON PLTFS MTO DEFINE THE SCOPE OF NOTICES TO PRODUCE REGARDING EXPERT BILLING		

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06-Apr-2005	1,789		DISCLOSURE	DISC	OF POTENTIAL TESTIMONY BY ROB JONES		
06-Apr-2005	1,790		DISCLOSURE	DISC	IN RESPONSE TO THE COURTS ORDER OF THIS AFTERNOON		
06-Apr-2005	1,791		ORDER	ORD	CPH'S M/IN LIMINE #32 TO BAR REFERENCES TO PLTFS FAILURE TO RETAIN E-MAILS AS "LITIGATION MISCONDUCT" IS GRANTED		
06-Apr-2005	1,792		NOTICE OF HEARING	NOH	4/6/05 @ 8:00 AM ON CPH'S M/IN LIMINE #32 TO BAR REFERENCES TO PLTFS FAILURE TO RETAIN E-MAILS AS "LITIGATION MISCONDUCT"		
06-Apr-2005	1,793		RESPONSE TO:	RESP	TO PLTFS SUPPLEMENTAL DISCLOSURE PURSUANT TO THE COURTS ORDER - W/ATTACHMENTS		
07-Apr-2005	1,794		ORDER	ORD	CPH'S ORE TENUS MTO COMPEL IS GRANTED. MS&CO SHALL SERVE A MORE COMPLETE DISCLOSURE OF MR JONES' EXPECTED TESTIMONY BY 3:00 PM 4/8/05		
07-Apr-2005	1,795		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MTO REMOVE CONFIDENTIALITY DESIGNATIONS IS GRANTED W/OUT OBJECTION. THE CONFIDENTIALITY DESIGNATIONS ARE REMOVED FROM EXHIBITS B & D TO DEFS MFOR RECONSIDERATION OF SANCTIONS ORDER & MEMO OF LAW DTD 4/4/05		
07-Apr-2005	1,796		EXHIBIT LIST	EXLT	(SECOND FURTHER REVISED TRIAL)		
07-Apr-2005	1,797		DISCLOSURE	DISC	OF DEMONSTRATIVE EXHIBITS FOR OPENING STATEMENT - W/ATTACHMENTS		
07-Apr-2005	1,798		RESPONSE TO:	RESP	AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S NOTICE TO PRODUCE AT TRIAL		

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07-Apr-2005	1,799		NOTICE	NOT	OF OPPOSITION TO PLTF COLEMAN (PARENT) HOLDING INC'S IN LIMINE MOTION #33 TO BAR MORGAN STANLEY FROM CONTROVERTING THE FACTUAL FINDINGS ESTABLISHED BY EXHIBIT A & CORRESPONDING REQUEST FOR RECONSIDERATION - W/ATTACHMENT		
07-Apr-2005	1,800		MOTION	MOT	IN LIMINE #32 TO BAR MORGAN STANLEY FROM CONTROVERTING THE FACTUAL FINDINGS ESTABLISHED BY EXHIBIT A TO THE 3/23/05 ORDER - W/ATTACHMENTS		
07-Apr-2005	1,801		NOTICE OF HEARING	NOH	4/7/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #32 TO BAR MORGAN STANLEY FROM CONTROVERTING THE FACTUAL FINDINGS ESTABLISHED BY EXHIBIT A TO THE 3/23/05 ORDER		
08-Apr-2005	1,802		NOTICE OF FILING	NOF	RETURNS OF SERVICE OF TRIAL SUBPOENAS		
08-Apr-2005	1,803		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/TO STRIKE UNTIMELY OBJECTIONS TO CPH EXHIBITS IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS		
08-Apr-2005	1,804		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #33 TO BAR MORGAN STANLEY FROM CONTROVERTING THE FACTUAL FINDINGS ESTABLISHED BY EXHIBIT A TO THE 3/23/05 ORDER IS GRANTED.		
08-Apr-2005	1,805		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO ROB JONES		
11-Apr-2005			FEE/PRO HAC VICE (\$100.00)	OPRHV	****GOES W/DE#1806****		
11-Apr-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$100.00 was made on receipt CAMB74232. ***GOES W/DE#1806*****		

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11-Apr-2005	1,806		MOTION	MOT	(VERIFIED) TO ADMIT NEIL M GORSUCH PRO HAC VICE		
11-Apr-2005	1,807		NOTICE	NOT	OF OPPOSITION TO (I) PLTFS MTO DEFINE THE SCOPE OF NOTICES TO PRODUCE REGARDING EXPERT BILLING, AND (II) PLTFS MTO COMPEL COMPLIANCE W/NOTICE TO PRODUCE - W/ATTACHMENTS		
11-Apr-2005	1,808		MOTION TO COMPEL	MCMP	COMPLIANCE W/NOTICE TO PRODUCE - W/ATTACHMENTS		
11-Apr-2005	1,809		NOTICE OF HEARING	NOH	4/11/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL COMPLIANCE W/NOTICE TO PRODUCE		
11-Apr-2005	1,810		RESPONSE TO:	RESP	AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S 3/29/05 NOTICE TO PRODUCE AT TRIAL		
11-Apr-2005	1,811		MOTION	MOT	TO RECONSIDER THE COURTS 4/5/05 ORDER ON A LIMITING INSTRUCTION ON RELIANCE		
11-Apr-2005	1,812		DISCLOSURE	DISC	(AMENDED) OF POTENTIAL TRIAL TESTIMONY OF ROB JONES		
11-Apr-2005	1,813		MOTION	MOT	TO BAR UNTIMELY DEPO DESIGNATIONS - W/ATTACHMENTS		
11-Apr-2005	1,814		NOTICE OF HEARING	NOH	4/12/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INC'S MTO BAR UNTIMELY DEPO DESIGNATIONS		
11-Apr-2005	1,815		ORDER	ORD	MORGAN STANLEY'S VERIFIED MTO ADMIT NEIL M GORSUCH PRO HAC VICE IS GRANTED		
11-Apr-2005	1,816		ORDER	ORD	MORGAN STANLEY'S MTO RECONSIDER THE COURTS 4/5/05 ORDER ON A LIMITING INSTRUCTION ON RELIANCE IS DENIED		

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11-Apr-2005	1,817		ORDER	ORD	MORGAN STANLEY & CO INC'S MTO REMOVE CONFIDENTIALITY DESIGNATIONS IS GRANTED		
11-Apr-2005	1,818		ORDER	ORD	MORGAN STANLEY'S ORE TENUS MTO CLARIFY PROCEDURE-DEMONSTRATIVE AIDS IS GRANTED - SEE ORDER FOR DETAILS		
11-Apr-2005	1,819		AGREED ORDER	AGOR	ON SUBMISSION OF PROFFERED TESTIMONY. EVIDENCE THAT EITHER PARTY WISHES TO PROFFER TO THE COURT MAY BE SUBMITTED BY WAY OF A WRITTEN SUBMISSION. THIS ORDER IS W/OUT PREJUDICE FOR EITHER PARTY TO OBJECT TO THE PROFFER ON ANY EVIDENTIARY OR OTHER GROUND		
11-Apr-2005	1,820		ORDER	ORD	MORGAN STANLEY'S MTO CLARIFY PROCEDURE-PHASE II IS GRANTED. ALL MOTIONS DIRECTED TO PROCEDURE & PROOF FOR PHASE II OF THE TRIAL SHALL BE SERVED BY 5:00 PM 4/15/05		
11-Apr-2005	1,821		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
11-Apr-2005	1,822		SEALED	SEAL	PER ORDER DTD 7/31/03		
12-Apr-2005	1,823		MOTION	MOT	(VERIFIED) TO DISQUALIFY - W/ATTACHMENT		
12-Apr-2005	1,824		ORDER	ORD	MORGAN STANLEY'S VERIFIED MTO DISQUALIFY IS DENIED		
12-Apr-2005	1,825		MOTION	MOT	TO RECONSIDER RULINGS ON CPH EXPERT BLAINE NYE		
12-Apr-2005	1,826		MOTION	MOT	FOR CLARIFICATION OR RECONSIDERATION ON THE COURTS ORDER ON PLTF'S M/IN LIMINE #27 FOR A FINDING AS A MATTER OF LAW THAT THE FEDERAL SECURITIES LAWS PROHIBITED PLTF FROM SELLING UNREGISTERED SUNBEAM STOCK - W/ATTACHMENTS ** UP ON 4/13/05 **		

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12-Apr-2005	1,827		MOTION	MOT	FOR LEAVE TO UTILIZE REDACTED EXHIBITS AT TRIAL - W/ATTACHMENTS		
12-Apr-2005	1,828		NOTICE OF HEARING	NOH	4/12/05 @ 8:15 AM ON COLEMAN (PARENT) HOLDINGS INC'S MFOR LEAVE TO UTILIZE REDACTED EXHIBITS AT TRIAL		
12-Apr-2005	1,829		DISCLOSURE	DISC	(AMENDED) OF POTENTIAL TRIAL TESTIMONY OF ROB JONES		
12-Apr-2005	1,830		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MTO COMPEL COMPLIANCE W/NOTICE TO PRODUCE IS GRANTED IN PART & DENIED IN PART - SEE ORDER		
12-Apr-2005	1,831		ORDER	ORD	MORGAN STANLEY'S ORE TENUIS MFOR STAY IS DENIED		
13-Apr-2005	1,832		RESPONSE TO:	RESP	AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC'S 4/1/05 NOTICE TO PRODUCE AT TRIAL		
13-Apr-2005	1,833		ORDER	ORD	CPH'S ORE TENUIS MTO QUASH TRIAL SUBPOENAS ON MAHER, PERELMAN & NESBITT IS DENIED		
13-Apr-2005	1,834		AGREED ORDER	AGOR	COLEMAN (PARENT) HOLDINGS INC'S MFOR LEAVE TO UTILIZE REDACTED EXHIBITS AT TRIAL IS DENIED W/OUT PREJUDICE		
13-Apr-2005	1,834 - A		EXHIBIT LIST	EXLT	(FURTHER REVISED TRIAL)		
13-Apr-2005	1,834 - B	7	JURY QUESTIONS	JUQT	FOR WITNESS, DR. DOUGLAS EMERY		
13-Apr-2005	1,834 - C	4	JURY QUESTIONS	JUQT	FRO WITNESS. JAMES MAHER		
13-Apr-2005	1,834 - D		SEALED	SEAL	SEALED PER JUDGE IN OPEN TRIAL		

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14-Apr-2005	1,835		ORDER	ORD	DESIGNATIONS OF GITTIS, LEVIN, SHAPIRO & DENKHAUS ARE DEEMED W/DRAWN. DESIGNATIONS OF FASMAN ARE LIMITED TO THOSE RELEVANT TO CPH'S POLICIES INVOLVING OVERWRITING EMAILS & OFFER TO ALLOW A 3RD PARTY VENDOR TO RETRIEVE OVERWRITTEN EMAILS. DEPO DESIGNATIONS AS TO PERELMAN ARE STRICKEN. DESIGNATIONS FOR ABDEL-MEGUID SCOTT STRONG PERELLA & TYREE SHALL BE LIMITED TO PHASE II. 4/8/05 DESIGNATIONS WHICH DESIGNATE PARTS OF THE DEPOS OF SLOVIN & DUFFY NOT PREVIOUSLY DESIGNATED ARE STRICKEN. RULING ON ALL DEPO DESIGNATIONS FOR PERSONS NOT SPECIFICALLY MENTIONED IS DEFERRED - SEE ORDER FOR FURTHER DETAILS		
14-Apr-2005	1,836		ORDER	ORD	MORGAN STANLEY'S M/TO RECONSIDER RULING ON CPH EXPERT BLAINE NYE IS DENIED - SEE ORDER		
14-Apr-2005	1,837		ORDER	ORD	MORGAN STANLEY'S M/FOR CLARIFICATION OR RECONSIDERATION OF THE COURTS ORDER ON PLTFS M/IN LIMINE #27 FOR A FINDING AS A MATTER OF LAW THAT THE FEDERAL SECURITIES LAWS PROHIBITED PLTF FROM SELLING UNREGISTERED SUNBEAM STOCK IS GRANTED IN PART. COURT SHALL REHEAR ARGUMENT ON 4/15/05 @ 9:30 AM - SEE ORDER FOR DETAILS		
15-Apr-2005	1,838		ORDER	ORD	PLTFS ORE TENUS M/IN LIMINE IS GRANTED - SEE ORDER FOR DETAILS		

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15-Apr-2005	1,839		ORDER	ORD	MS & CO'S ORE TENUS M/T0 PRODUCE IS GRANTED. CPH SHALL SUBMIT TO THE COURT FOR IN CAMERA INSPECTION THOSE DOCUMENTS LISTED ON EXHIBIT A, ATTACHED, BY 5:00 PM, 4/19/05		
15-Apr-2005	1,840		ORDER	ORD	CPH'S ORE TENUS M/IN LIMINE IS GRANTED - SEE ORDER.		
15-Apr-2005	1,841		ORDER	ORD	MORGAN STANLEY'S M/FOR REHEARING ON THE COURTS 2/15/05 ORDER ON PLTFS M/IN LIMINE #19 IS DENIED - SEE ORDER		
15-Apr-2005	1,842		ORDER	ORD	MORGAN STANLEY'S M/FOR CLARIFICATION OR RECONSIDERATION OF THE COURTS ORDER ON PLTFS M/IN LIMINE #27 FOR A FINDING AS A MATTER OF LAW THAT THE FEDERAL SECURITIES LAWS PROHIBITED PLTF FROM SELLING UNREGISTERED SUNBEAM STOCK IS GRANTED IN PART - SEE ORDER		
15-Apr-2005	1,843		ORDER	ORD	PLTFS ORE TENUS M/IN LIMINE IS GRANTED IN PART - SEE ORDER		
15-Apr-2005	1,844		NOTICE	NOT	OF PROFFER OF EVIDENCE & ARGUMENT REGARDING CPH'S ABILITY TO SELL ITS SUNBEAM STOCK AS EARLY AS 6/30/98		
15-Apr-2005	1,845		NOTICE	NOT	OF OFFER OF PROOF W/RESPECT TO CPH'S ABILITY TO MITIGATE ITS DAMAGES THRU HEDGING STRATEGIES -		
15-Apr-2005	1,846		STATEMENT	STMT	ON THE RELEVANCE OF HEDGING TO MITIGATION		
18-Apr-2005	1,847		ORDER	ORD	DEF MORGAN STANLEY & CO INC'S M/FOR REHEARING IS DENIED		

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18-Apr-2005	1,848		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S M/WIN LIMINE #34 TO BAR EVIDENCE OR ARGUMENT CONCERNING PURPORTED INVESTMENT FAILURES OF RONALD PERELMAN IS GRANTED IN PART, AND RULING DEFERRED IN PART. SEE ORDER FOR DETAILS		
18-Apr-2005	1,849		MOTION	MOT	IN LIMINE #35 TO BAR INAPPROPRIATE OPINION TESTIMONY - W/ATTACHMENTS		
18-Apr-2005	1,850		MOTION	MOT	IN LIMINE #34 TO BAR EVIDENCE OR ARGUMENT CONCERNING PURPORTED INVESTMENT FAILURES OF RONALD PERELMAN - W/ATTACHMENTS		
18-Apr-2005	1,851		NOTICE OF HEARING	NOH	4/18/05 @ 9:30 AM ON COLEMAN (PARENT) HOLDINGS INCS M/WIN LIMINE #34 TO BAR EVIDENCE OR ARGUMENT CONCERNING PURPORTED INVESTMENT FAILURES OF RONALD PERELMAN		
18-Apr-2005	1,852		MOTION	MOT	IN LIMINE #28 TO BAR COLEMAN (PARENT) HOLDINGS INC FROM INTRODUCING EVIDENCE OF CPH'S ALLEGED EFFORT TO RESCIND THE COLEMAN-SUNBEAM TRANSCATION		
18-Apr-2005	1,853		NOTICE OF FILING	NOF	RETURN OF SERVICE OF THE TRIAL SUBPOENA OF JAMES R MAHER - ATTACHED		
18-Apr-2005	1,854		MOTION	MOT	IN LIMINE #36 TO CLARIFY WHAT EVIDENCE IS ADMISSIBLE TO SHOW PLTF'S ENTITLEMENT TO & AMT OF PUNITIVE DAMAGES - W/ATTACHMENTS		
18-Apr-2005	1,855		NOTICE	NOT	TO DEF, TO PRODUCE AT TRIAL FOR IN CAMERA INSPECTION INSTANTER		
18-Apr-2005	1,856		NOTICE	NOT	TO DEF, TO PRODUCE AT TRIAL INSTANTER		

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18-Apr-2005	1,857		NOTICE OF HEARING	NOH	4/19/05 @ 9:30 AM ON COLEMAN (PARENT) HODLINGS INC'S M/TO BAR IMPROPER DEPO DESIGNATIONS		
18-Apr-2005	1,858		MOTION	MOT	TO BAR IMPROPER DEPO DESIGNATIONS - W/ATTACHMENTS		
18-Apr-2005	1,859		NOTICE	NOT	ON OPPOSITION TO CPH'S M/IN LIMINE #34 TO BAR EVIDENCE OR ARGUMENT CONCERNING PURPORTED INVESTMENT FAILURES OF RONALD PERELMAN		
18-Apr-2005	1,859 - A	8	JURY QUESTIONS	JUQT	FOR WITNESS, WILLIAM NESBITT		
19-Apr-2005	1,860		ORDER	ORD	DEFS M/FOR REHEARING IS DENIED		
19-Apr-2005	1,861		ORDER	ORD	MORGAN STANLEY'S M/IN LIMINE #28 TO BAR COLEMAN (PARENT) HOLDINGS INC FROM INTRODUCING EVIDENCE OF CPH'S ALLEGED EFFORT TO RESCIND THE COLEMAN-SUNBEAM TRANSACTION IS GRANTED IN PART. EITHER PARTY MAY INTRODUCE EVIDENCE OF DEMANDS MADE BY CPH TO RESOLVE ITS CLAIM AGAINST SUNBEAM		
19-Apr-2005	1,862		MOTION	MOT	REGARDING DEPO DESIGNATION SCHEDULING		
19-Apr-2005	1,863		MOTION	MOT	(AND PROFFER) W/RESPECT TO HEDGING		
19-Apr-2005	1,864		BRIEF	BRF	ON MITIGATION OF DAMAGES		
19-Apr-2005	1,865		NOTICE	NOT	OF SUBMISSION REGARDING PHASE II ISSUES - W/ATTACHMENTS		
19-Apr-2005	1,866		SEALED	SEAL	PER ORDER DTD 7/31/03		
19-Apr-2005	1,867		NOTICE OF FILING	NOF	UNDER SEAL		

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20-Apr-2005	1,868		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MTO BAR IMPROPER DEPO DESIGNATIONS IS GRANTED IN PART, DENIED IN PART, AND RULING DEFERRED IN PART - SEE ORDER FOR FURTHER DETAILS		
20-Apr-2005	1,869		MOTION	MOT	TO QUASH TRIAL SUBPOENA SERVED ON DONALD G KEMPF JR - W/ATTACHMENTS		
20-Apr-2005	1,870		NOTICE	NOT	OF SUBMISSION REGARDING ADMISSIBILITY OF EVIDENCE OF CPH'S RELIANCE ON FALSE REPRESENTATIONS IN TEH DEBENTURE OFFERING		
20-Apr-2005	1,871		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
20-Apr-2005	1,872		SEALED	SEAL	PER ORDER DTD 7/31/03		
21-Apr-2005	1,873		MOTION	MOT	(SECOND RENEWED) FOR CORRECTION & CLARIFICATION OF THE LITIGATION-MISCONDUCT STATEMENT TO BE READ TO THE JURY - W/ATTACHMENTS		
21-Apr-2005	1,874		NOTICE OF HEARING	NOH	4/21/05 @ 9:30 AM ON PLTFS SECOND RENEWED MFOR CORRECTION & CLARIFICATION OF THE LITIGATION MISCONDUCT STATEMENT TO BE READ TO THE JURY		
21-Apr-2005	1,875		ORDER	ORD	FOLLOWING IN CAMERA INSPECTION. COURT DECLINES TO CONDUCT A FURTHER INQUIRY INTO CPH'S CLAIMS OF PRIVILEGE. COURT HAS SEALED THE DOCUMENTS TENDERED IN AN ENVELOPE MARKED "DO NOT OPEN BY 4/21/05 COURT ORDER FOLLOWING IN CAMERA INSPECTION" THE ENVELOPE SHALL NOT BE UNSEALED OR REMOVED W/OUT FURTHER ORDER OF COURT		
21-Apr-2005	1,876		SEALED	SEAL	PER ORDER DTD 4/21/05		
21-Apr-2005	1,876 - A	7	JURY QUESTIONS	JUQT	FOR WITNESS, RONALD PERELMAN		

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22-Apr-2005	1,877		MOTION	MOT	TO QUASH COLEMAN (PARENT) HOLDINGS INC'S NOTICE TO PRODUCE AT TRIAL INSTANTER ATTY-CLIENT RECORDS & DOCUMENTS - W/ATTACHMENTS		
22-Apr-2005	1,878		MOTION	MOT	TO QUASH COLEMAN (PARENT) HOLDINGS INC'S NOTICE TO PRODUCE FOR IN CAMERA INSPECTION INSTANTER		
22-Apr-2005	1,879		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S M/TO QUASH TRIAL SUBPOENA SERVED ON DONALD J KEMPF JR - W/ATTACHMENTS		
22-Apr-2005	1,880		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S M/TO QUASH NOTICE TO PRODUCE - W/ATTACHMENTS		
22-Apr-2005	1,881		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S M/TO QUASH CPH'S NOTICE TO PRODUCE FOR IN CAMERA INSPECTION INSTANTER - W/ATTACHMENTS		
22-Apr-2005	1,882		DISCLOSURE	DISC	(AMENDED TRIAL WITNESS)		
22-Apr-2005	1,883		MOTION	MOT	IN LIMINE #37 TO BAR EVIDENCE OR ARGUMENT REGARDING PLTFS ALLEGED FAILURE TO PRESERVE E-MAIL - W/ATTACHMENTS		
22-Apr-2005	1,884		NOTICE OF FILING	NOF	RETURN OF SERVICE OF TRIAL SUBPOENA OF WILLIAM G NESBITT		
22-Apr-2005	1,885		NOTICE	NOT	OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S SUBMISSION ON CPH'S PURPORTED RELIANCE ON DEBENTURE OFFERING DOCUMENTS		
22-Apr-2005	1,886		MOTION	MOT	REGARDING ADMISSIBILITY OF CONFIDENTIALITY AGREEMENT - W/ATTACHMENTS		

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22-Apr-2005	1,887		ORDER	ORD	CPH'S ORE TENU M/WIN LIMINE RE: DEBENTURE OFFERING IS GRANTED - SEE ORDER		
22-Apr-2005	1,888		NOTICE OF FILING	NOF	DOCUMENTS UNDER SEAL		
22-Apr-2005	1,889		SEALED	SEAL	PER ORDER DTD 7/31/03		
25-Apr-2005	1,890		MOTION	MOT	TO BAR PLTF FROM SUGGESTING TO THE JURY THAT THE "DEEMED" FACTS ARE "ESTABLISHED" FACTS		
25-Apr-2005	1,891		NOTICE	NOT	OF SUBMISSION CONCERNING THE NEED FOR CLEAR & CONVINCING PROOF OF ENTITLEMENT TO PUNITIVE DAMAGES		
25-Apr-2005	1,892		NOTICE	NOT	TO PLTF TO PRODUCE AT TRIAL INSTANTER		
25-Apr-2005	1,893		MOTION	MOT	FOR FULL & FAIR EXAMINATION OF WITNESSES W/OUT CONTRADICTION OF THE FACTS "DEEMED" ESTABLISHED BY THE COURTS 3/23 ORDER		
25-Apr-2005	1,894		MOTION	MOT	FOR A MISTRIAL OR OTHER RELIEF FOR PLTF'S VIOLATIONS OF SECTIONS 46.015(3) AND 768.041(3)		
25-Apr-2005	1,895		MOTION TO COMPEL	MCMP	COLEMAN PARENT HOLDINGS INC TO PRODUCE DOCUMENTS REFLECTING LEGAL ADVICE		
25-Apr-2005	1,896		MOTION	MOT	(RENEWED) FOR MISTRIAL BASED ON RONALD PERELMAN'S FALSE & INFLAMMATORY ACCUSATION OF ACKNOWLEDGED CRIMINAL ACTIVITY IN THIS CASE		
25-Apr-2005	1,897		BRIEF	BRF	CONCERNING THE LEGAL PROHIBITION AGAINST USING TWO JURIES IN A BIFURCATED PUNITIVE DAMAGES TRIAL - W/ATTACHMENTS		

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25-Apr-2005	1,898		BRIEF	BRF	REGARDING THE LIMITED APPLICABILITY OF THE "CLEAR AND CONVINCING" STANDARD OF PROOF IN PHASE TWO OF TRIAL - W/ATTACHMENTS		
25-Apr-2005	1,899		MEMORANDUM	MEMO	(SUPPLEMENTAL) IN OPPOSITION TO MORGAN STANLEY'S MTO QUASH NOTICE TO PRODUCE - W/ATTACHMENTS		
25-Apr-2005	1,900		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE ORIG OF ATTY JAMES KEENEY'S LETTER & ITS ATTACHMENTS DTD 4/18/05 & SERVE A COPY UPON ALL COUNSEL, ATTACHED A CERT OF SERVICE		
25-Apr-2005	1,901		CORRESPONDENCE	COR	TO HONORABLE MAASS FROM JAMES D KEENEY DTD 4/18/05 - W/ATTACHMENTS ** CLK MLD COPIES & ATTACHED A CERT OF SERVICE **		
25-Apr-2005	1,902		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
25-Apr-2005	1,903		SEALED	SEAL	PER ORDER DTD 7/31/03		
25-Apr-2005	1,903 - A	3	JURY QUESTIONS	JUQT	FOR WITNESS, DR. BLAINE FRANCIS NYE		
26-Apr-2005	1,904		ORDER	ORD	MORGAN STANLEY'S MTO BAR PLTF FROM SUGGESTING TO THE JURY THAT THE "DEEMED" FACTS ARE "ESTABLISHED" FACTS IS DENIED, W/OUT PREJUDICE TO RENEWAL IN PHASE II, IF PHASE II IS HELD		
26-Apr-2005	1,905		ORDER	ORD	MORGAN STANLEY'S MFOR REHEARING IS DENIED W/OUT PREJUDICE. OBJECTIONS SHALL BE HEARD & DETERMINED ON A CASE BY CASE BASIS		
26-Apr-2005	1,906		MOTION	MOT	TO ALLOW EXPERT TESTIMONY OF PROF. FISCHER TO REBUT UNDISCLOSED TESTIMONY BY DR EMERY - W/ATTACHMENTS		

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26-Apr-2005	1,907		MEMORANDUM	MEMO	(SUPPLEMENTAL) CONCERNING THE ADMISSIBILITY OF THE PURPORTED 2/23/98 CONFIDENTIALITY AGREEMENT W/ATTACHMENTS		
26-Apr-2005	1,907 - A		AFFIDAVIT	AFF	OF JAMES COMYNS		
27-Apr-2005	1,908		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S M/TO COMPEL CPH TO PRODUCE DOCUMENTS REFLECTING LEGAL ADVICE		
27-Apr-2005	1,909		EXHIBIT LIST	EXLT	(FURTHER REVISED TRIAL) DTD 4/26/05		
28-Apr-2005	1,910		ORDER	ORD	CPH'S ORE TENUS M/TO EXCLUDE EVIDENCE OF NON-RELIANCE TERM OF PURPORTED 2/23/98 CONFIDENTIALITY AGREEMENT IS GRANTED, IN PART.		
28-Apr-2005	1,911		RESPONSE TO:	RESP	TO DEFS SUBMISSION REGARDING PHASE II ISSUES - W/ATTACHMENTS		
28-Apr-2005	1,912		NOTICE	NOT	OF OPPOSITION TO MORGAN STANLEY'S M/FOR A MISTRIAL OR OTHER RELIEF FOR PLTF'S PURPORTED VIOLATIONS OF SECTIONS 46.015(3) AND 768.041(3) - W/ATTACHMENTS		
28-Apr-2005	1,913		NOTICE	NOT	OF OPPOSITION TO CPH'S AMENDED WITNESS DISCLOSURE & REPLY IN SUPPORT OF ITS M/TO QUASH - W/ATTACHMENTS		
28-Apr-2005	1,914		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S M/TO ALLOW EXPERT TESTIMONY OF PROFESSOR FISCHEL TO REBUT UNDISCLOSED TESTIMONY BY DR EMERY - W/ATTACHMENTS		
28-Apr-2005	1,914 - A	2	NOTICE	NOT	RECEIVED IN OPEN TRIAL BY JUDGE TO FILE- DEFT'S DEMONSTRATIVE AID OBJECTED TO BY PLTF DURING CROSS OF WITNESS, RONALD GITTIS **** CLERK FILE ****		
28-Apr-2005	1,914 - B	4	JURY QUESTIONS	JUQT	FOR WITNESS, RONALD GITTIS		

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29-Apr-2005	1,915		REPLY/RESPONSE	RPRS	TO CPH'S BRIEF REGARDING THE REQUIREMENT THAT PLTF PROVE ENTITLEMENT TO AN AWARD OF PUNITIVE DAMAGES BY CLEAR & CONVINCING EVIDENCE IN PHASE II		
29-Apr-2005	1,916		RESPONSE TO:	RESP	TO PLTF'S SUPPLEMENTAL MEMO CONCERNING THE 2/23/98 CONFIDENTIALITY AGREEMENT		
29-Apr-2005	1,917		MOTION	MOT	IN LIMINE #39 REGARDING EXCLUSION OF MORGAN STANLEY TRIAL EXHIBIT 1051 (DELAWARE CHANCERY OPINION) - W/ATTACHMENT		
29-Apr-2005	1,918		NOTICE OF HEARING	NOH	4/29/05 @ 10:15 AM ON CPH'S M/IN LIMINE #39 REGARDING EXCLUSION OF MORGAN STANLEY TRIAL EXHIBIT 1051 (DELAWARE CHANCERY DIVISION)		
29-Apr-2005	1,919		MOTION	MOT	IN LIMINE #38 TO BAR EVIDENCE & ARGUMENT CONCERNING JERRY LEVIN'S PERSONAL VIEWS CONCERNING THE VALUE OF COLEMAN SHARES PRIOR TO THE SUNBEAM-COLEMAN TRANSACTION - W/ATTACHMENTS		
29-Apr-2005	1,920		NOTICE OF HEARING	NOH	4/29/05 @ 10:15 AM ON COLEMAN (PARENT) HOLDINGS INC'S M/IN LIMINE #38 TO BAR EVIDENCE & ARGUMENT CONCERNING JERRY LEVIN'S PERSONAL VIEWS CONCERNING THE VALUE OF COLEMAN SHARES PRIOR TO SUNBEAM-COLEMAN TRANSACTION		
29-Apr-2005	1,921		NOTICE OF FILING	NOF	OF NON PARTY JERRY W LEVIN, AFFID OF JERRY W LEVIN IN SUPPORT OF HIS ORE TENUS MTO BE EXCUSED FROM TRIAL ON 5/3/05 - ATTACHED		

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Case Filed : 08-May-2003 Status : RO - REOPEN

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02-May-2005	1,922		NOTICE	NOT	OF OPPOSITION TO MORGAN STANLEY'S RENEWED M/FOR MISTRIAL RELATED TO RONALD PERELMAN'S TESTIMONY - W/ATTACHMENTS		
02-May-2005	1,923		ORDER	ORD	PARTIES SHALL COMMENCE MEDIATION OF THE ISSUES RAISED IN THIS CAUSE BY 10:00 AM 5/5/05 IN NEW YORK, NEW YORK. KENNETH FEINBERG ESQ IS APPOINTED AS MEDIATOR.		
02-May-2005	1,924		ORDER	ORD	PLTFS W/IN LIMINE #37 TO BAR EVIDENCE OR ARGUMENT REGARDING PLTFS ALLEGED FAILURE TO PRESERVE E-MAIL IS DENIED.		
02-May-2005	1,925		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S W/IN LIMINE #38 TO BAR EVIDENCE ARGUMENT CONCERNING JERRY LEVIN'S PERSONAL VIEWS CONCERNING THE VALUE OF COLEMAN SHARES PRIOR TO THE SUNBEAM-COLEMAN TRANSACTION IS GRANTED IN PART & DENIED IN PART - SEE ORDER		
02-May-2005	1,926		NOTICE	NOT	TO PRODUCE AT TRIAL INSTANTER		
02-May-2005	1,927		MOTION	MOT	FOR COURT ORDERED DISCOVERY		
02-May-2005	1,928		NOTICE OF HEARING	NOH	5/2/05 @ 8:15 AM ON DEF MORGAN STANLEY'S M/FOR COURT ORDERED DISCOVERY		
02-May-2005	1,929		OBJECTION	OBJ	TO MORGAN STANLEY'S PROFFER OF EVIDENCE REGARDING CPH'S ABILITY TO SETT ITS SUNBEAM STOCK AS EARLY AS JUNE 30, 1998 & TO MORGAN STANLEY'S OFFER OF PROOF W/RESPECT TO CPH'S ABILITY TO MITIGATE ITS DAMAGES THRU HEDGING STRATEGIES - W/ATTACHMENTS		

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Case Filed : 08-May-2003

Status : RO - REOPEN

Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
03-May-2005	1,930		ORDER	ORD	GOVERNING PROPOSED JURY INSTRUCTIONS. BY 5/5/05 @ 3:00 PM EACH PARTY SHALL SERVE ON THE OTHER OBJECTIONS TO ANY PROPOSED JURY INSTRUCTIONS, TOGETHER WITH PROPOSED SUPPLEMENTAL JURY INSTRUCTIONS. BY 3:00 PM, 5/7/05, THE PARTIES SHALL SERVE ANY OBJECTIONS TO OPPOSING COUNSEL'S PROPOSED SUPPLEMENTAL JURY INSTRUCTIONS		
03-May-2005	1,931		ORDER	ORD	MORGAN STANLEY'S M/FOR COURT ORDERED DISCOVERY IS GRANTED IN PART. W/IN 3 BUSINESS DAYS, CPH'S COUNSEL SHALL PRODUCE ALL REQUESTED ITEMS IN PARAGRAPH 4. UNREDACTED VERSIONS SHALL BE SUBMITTED DIRECTLY TO COURT, IN A SEALED ENVELOPE MARKED "DON NOT OPEN BY 5/3/05 ORDER OF THE COURT". THE SEALED ENVELOPE SHALL NOT BE UNSEALED OR REMOVED W/OUT FURTHER ORDER OF COURT		
03-May-2005	1,932		MOTION	MOT	IN LIMINE #32 TO EXCLUDE SUPPLEMENTAL REPORT OF MICHAEL J WAGNER		
03-May-2005	1,933		MEMORANDUM	MEMO	IN SUPPORT OF M/FOR MISTRIAL BECAUSE OF IMPROPER EX PARTE JUROR COMMUNICATIONS		
03-May-2005	1,934		NOTICE	NOT	OF SUPPLEMENTAL SUBMISSION ON PLTFS W/IN LIMINE #37 TO BAR EVIDENCE OR ARGUMENT REGARDING PLTFS ALLEGED FAILURE TO PRESERVE E-MAIL		
03-May-2005	1,935		MEMORANDUM	MEMO	IN OPPOSITION TO COLEMAN (PARENT) HOLDINGS INCS M/IN LIMINE #38		
03-May-2005	1,936		MOTION	MOT	FOR A LIMITING INSTRUCTION ON INFERENCES RELATING TO THE ABSENCE OF FURTHER EVIDENCE ON JUDICIALLY "DEEMED FACTS" AT TRIAL		

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04-May-2005	1,937		RESPONSE TO:	RESP	IN OPPOSITION TO DEFS M/IN LIMINE #36		
04-May-2005	1,938		NOTICE	NOT	OF CONCURRENCE IN CPH'S BRIEF CONCERNING THE LEGAL PROHIBITION AGAINST USING TWO JURIES IN A BIFURCATED PUNITIVE-DAMAGES TRIAL		
04-May-2005	1,939		MEMORANDUM	MEMO	IN SUPPORT OF M/TO INSTRUCT THE JURY ON RELIANCE & DAMAGES UNDER THE CLEAR & CONVINCING EVIDENCE STANDARD IN PHASE I - W/ATTACHMENTS		
04-May-2005	1,940		MEMORANDUM	MEMO	CONCERNING ITS EXAM OF JERRY LEVIN BY LEADING QUESTIONS UNDER FS ANNOTATED 90.612		
04-May-2005	1,941		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE ATTY JOSEPH IANNO'S LETTER & ITS ATTACHMENTS DTD 5/3/05		
04-May-2005	1,942		CORRESPONDENCE	COR	TO JUDGE MAASS FROM JOSEPH IANNO JR DTD 5/3/05 - W/ATTACHMENT		
04-May-2005	1,943		ORDER	ORD	CPH'S ORE TENUS M/IN LIMINE IS GRANTED - SEE ORDER		
04-May-2005	1,944		ORDER	ORD	MS& CO'S ORE TENUS M/TO STRIKE TESTIMONY OF DR NYE IS DENIED		
04-May-2005	1,945		ORDER	ORD	MS&CO'S ORE TENUS M/FOR DIRECTED VERDICT IS DENIED		
04-May-2005	1,946		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S M/FOR A LIMITING INSTRUCTION ON INFERENCES RELATING TO THE ABSENCE OF FURTHER EVIDENCE ON JUDICIALLY "DEEMED FACTS" AT TRIAL		
04-May-2005	1,946 - A		NOTICE	NOT	OF PRIVILEGE LOG		
04-May-2005	1,946 - B	4	JURY QUESTIONS	JUQT	FOR WITNESS, GERALD LEVIN		

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05-May-2005	1,947		DISCLOSURE	DISC	(REBUTTAL TRIAL WITNESS)		
05-May-2005	1,948		NOTICE	NOT	OF PROPOSED SUPPLEMENTAL JURY INSTRUCTIONS - ATTACHED		
05-May-2005	1,949		AMENDED	AMN	OF PROPOSED JURY INSTRUCTIONS - ATTACHED		
05-May-2005	1,950		NOTICE	NOT	OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS' MIN LIMNE #35 TO BAR INAPPROPRIATE OPINION TESTIMONY		
05-May-2005	1,951		NOTICE OF FILING	NOF	PROFFER REGARDING JERRY LEVIN - ATTACHED		
05-May-2005	1,952		MOTION	MOT	TO ADMIT JERRY LEVIN'S TESTIMONY REGARDING THE VALUATION OF COLEMAN STOCK & THE ACCURACY OF SUNBEAMS FINANCIAL STATEMENT		
05-May-2005	1,953		OBJECTION	OBJ	TO MORGAN STANLEY'S PROPOSED PHASE ONE JURY INSTRUCTIONS - W/ATTACHMENTS		
05-May-2005	1,954		NOTICE	NOT	OF OPPOSITION TO MORGAN STANLEY'S RENEWED MFOR MISTRIAL BECAUSE OF IMPROPER EX PARTE JUROR COMMUNICATIONS - W/ATTACHMENTS		
06-May-2005	1,955		MOTION	MOT	TO IMPOSE SANCTIONS FOR FAILURE TO APPEAR AT COURT ORDERED MEDIATION		
06-May-2005	1,956		DISCLOSURE	DISC	(REBUTTAL TRIAL WITNESS)		
06-May-2005	1,957		NOTICE	NOT	OF SUPPLEMENTAL PHASE I REQUESTED JURY INSTRUCTIONS - ATTACHED		
06-May-2005	1,958		NOTICE OF FILING	NOF	PROFFER REGARDING WILLIAM NESBITT - W/ATTACHMENT		
06-May-2005	1,959		NOTICE OF FILING	NOF	PROFFER REGARDING TODD SLOTKIN - W/ATTACHMENT		

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06-May-2005	1,960		NOTICE	NOT	OF REVISED PHASE I REQUESTED JURY INSTRUCTIONS RELATING TO NEW YORK LAW		
06-May-2005	1,961		OBJECTION	OBJ	TO COLEMAN (PARENT) HOLDINGS INC'S PROPOSED JURY INSTRUCTIONS		
06-May-2005	1,962		MOTION	MOT	FOR CLARIFICATION OF THE ADMISSIBILITY OF THE TESTIMONY OF PROFESSOR MARK GRINBLATT		
06-May-2005	1,963		NOTICE OF FILING	NOF	PROFFER REGARDING PAUL SHAPIRO - W/ATTACHMENTS		
06-May-2005	1,964		NOTICE OF FILING	NOF	PROFFER REGARDING BARRY SCHWARTZ - W/ATTACHMENT		
06-May-2005	1,965		NOTICE OF FILING	NOF	PROFFER REGARDING LAWRENCE JONES - W/ATTACHMENTS		
06-May-2005	1,966		NOTICE OF FILING	NOF	PROFFER REGARDING DONALD DRAPKIN - W/ATTACHMENT		
06-May-2005	1,967		NOTICE	NOT	OF OPPOSITION TO MORGAN STANLEY'S W/FOR CLARIFICATION OF THE ADMISSIBILITY OF THE TESTIMONY OF PROFESSOR MARK GRINBLATT - W/ATTACHMENTS		
06-May-2005	1,968		NOTICE OF FILING	NOF	PROFFER REGARDING BRUCE SLOVIN - W/ATTACHMENT		
06-May-2005	1,969		NOTICE OF FILING	NOF	PROFFER REGARDING ANN JORDAN - W/ATTACHMENT		
06-May-2005	1,970		NOTICE OF FILING	NOF	PROFFER REGARDING STEVEN GELLER - W/ATTACHMENT		
06-May-2005	1,971		NOTICE OF FILING	NOF	PROFFER REGARDING JOSEPH PAGE - ATTACHED		
06-May-2005	1,972		NOTICE OF FILING	NOF	PROFFER REGARDING KAREN CLARK - ATTACHED		

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06-May-2005	1,973		NOTICE OF FILING	NOF	PROFFER REGARDING IRWIN ENGLEMAN - W/ATTACHMENT		
06-May-2005	1,974		NOTICE OF FILING	NOF	PROFFER REGARDING ROBERT DUFFY - ATTACHED		
06-May-2005	1,975		NOTICE OF FILING	NOF	PROFFER REGARDING JAMES MAHER - ATTACHED		
06-May-2005	1,976		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	1,977		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	1,978		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	1,979		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	1,980		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	1,981		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	1,982		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	1,983		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	1,984		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	1,985		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	1,986		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	1,987		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	1,988		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	1,989		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	1,990		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	1,991		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	1,992		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	1,993		SEALED	SEAL	PER ORDER DTD 7/31/03		

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06-May-2005	1,994		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	1,995		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	1,996		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	1,997		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	1,998		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	1,999		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	2,000		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	2,001		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	2,002		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	2,003		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	2,004		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	2,005		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	2,006		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	2,007		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	2,008		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	2,009		SEALED	SEAL	PER ORDER DTD 7/31/03		
06-May-2005	2,010		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
06-May-2005	2,011		SEALED	SEAL	PER ORDER DTD 7/31/03		

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06-May-2005	2,012		ORDER	ORD	FOLLOWING IN CAMERA INSPECTION, ON REVIEW OF ITEMS PRODUCED, COURT CONCLUDES THAT NONE IS RELATED TO OR HAS ANY BEARING ON ANY OF THE ISSUES RAISED BY MR COMYNS APPARENT CONTACT W/JURORS. BECAUSE ITEMS PRODUCED IMPLICATE ATTY-CLIENT & WORK-PRODUCT PRIVILEGES, THEY HAVE BEEN RESEALED & MARKED "DO NOT OPEN BY 5/6/05 COURT ORDER"		
06-May-2005	2,013		SEALED	SEAL	PER ORDER DTD 5/6/05		
09-May-2005	2,014		OBJECTION	OBJ	TO MORGAN STANLEY'S PROPOSED SUPPLEMENTAL PHASE ONE JURY INSTRUCTIONS, REVISED PHASE I REQUESTED INSTRUCTIONS REGARDING NEW YORK LAW, AND PROPOSED VERDICT FORMS - W/ATTACHMENTS		
09-May-2005	2,015		MEMORANDUM	MEMO	IN OPPOSITION TO MORGAN STANLEY'S MTO INSTRUCT THE JURY ON RELIANCE & DAMAGES UNDER THE CLEAR-AND-CONVINCING EVIDENCE STANDARD IN PHASE I - W/ATTACHMENTS		
09-May-2005	2,016		NOTICE OF FILING	NOF	PROFFER REGARDING ROBERT KITTS - ATTACHED		
09-May-2005	2,017		NOTICE OF FILING	NOF	PROFFER REGARDING DENNIS PASTRANA - ATTACHED		
09-May-2005	2,018		NOTICE OF FILING	NOF	PROFFER REGARDING LAURENCE WINOKER - ATTACHED		
09-May-2005	2,019		NOTICE OF FILING	NOF	PROFFER REGARDING DONALD DENKHAUS - ATTACHED		
09-May-2005	2,020		NOTICE	NOT	TO PLTF, TO PRODUCE		

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09-May-2005	2,021		NOTICE OF FILING	NOF	PROFFER REGARDING PHILLIP E HARLOW - ATTACHED		
09-May-2005	2,022		OBJECTION	OBJ	TO COLEMAN (PARENT) HOLDINGS INC'S PROPOSED AMENDED JURY INSTRUCTIONS - W/ATTACHMENTS		
09-May-2005	2,023		OBJECTION	OBJ	TO COLEMAN (PARENT) HOLDINGS INC'S PROPOSED SUPPLEMENTAL JURY INSTRUCTIONS -		
09-May-2005	2,024		NOTICE OF FILING	NOF	PROFFER REGARDING LAWRENCE A BORNSTEIN - ATTACHED		
09-May-2005	2,025		NOTICE OF FILING	NOF	PROFFER REGARDING WILLIAM KOURAKOS - ATTACHED		
09-May-2005	2,026		NOTICE OF FILING	NOF	PROFFER REGARDING WILLIAM H STRONG - ATTACHED		
09-May-2005	2,027		NOTICE OF FILING	NOF	PROFFER REGARDING JOHANNES GROELLER - ATTACHED		
09-May-2005	2,028		NOTICE OF FILING	NOF	OF MARK F BIDEAU ESQ, AFFID OF NON PARTY DAVID FANNIN - ATTACHED		
09-May-2005	2,029		ORDER	ORD	ON PLTFS M/T O IMPOSE SANCTIONS FOR FAILURE TO APPEAR AT COURT ORDERED MEDIATION. KENNETH FEINBERG IS REQUESTED TO PREPARE A REPORT OF MEDIATOR - TO BE PREPARED BY NOON 5/9/05 - SEE ORDER		
09-May-2005	2,030		ORDER	ORD	CPH'S ORE TENUS M/IN LIMINE IS GRANTED - SEE ORDER FOR DETAILS		
09-May-2005	2,031		ORDER	ORD	MORGAN STANLEY'S M/FOR CLARIFICATION OF THE ADMISSIBILITY OF THE TESTIMONY OF PROFESSOR MARK GRINBLATT IS GRANTED IN PART & DENIED IN PART - SEE ORDER FOR DETAILS		

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09-May-2005	2,032		ORDER	ORD	MORGAN STANLEY'S M/TO ALLOW EXPERT TESTIMONY OF PROFESSOR FISCHER TO REBUT UNDISCLOSED TESTIMONY BY DR EMERY IS DENIED - SEE ORDER		
09-May-2005	2,033		DISCLOSURE	DISC	(SUPPLEMENTAL REBUTTAL TRIAL WITNESS)		
09-May-2005	2,034		NOTICE	NOT	OF ADDITIONAL PROPOSED SUPPLEMENTAL JURY INSTRUCTIONS - ATTACHED		
09-May-2005	2,035		NOTICE OF FILING	NOF	PROFFER REGARDING MARK J BROCKELMAN - ATTACHED		
09-May-2005	2,036		NOTICE OF FILING	NOF	PROFFER REGARDING VANCE KISTLER - ATTACHED		
09-May-2005	2,037		NOTICE OF FILING	NOF	PROFFER REGARDING ALEXANDRE FUCHS - ATTACHED		
09-May-2005	2,038		NOTICE OF FILING	NOF	PROFFER REGARDING RUTH PORAT - ATTACHED		
09-May-2005	2,039		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
09-May-2005	2,040		SEALED	SEAL	PER ORDER DTD 7/31/03		
09-May-2005	2,041		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
09-May-2005	2,042		SEALED	SEAL	PER ORDER DTD 7/31/03		
09-May-2005	2,043		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
09-May-2005	2,044		SEALED	SEAL	PER ORDER DTD 7/31/03		
09-May-2005	2,045		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
09-May-2005	2,046		SEALED	SEAL	PER ORDER DTD 7/31/03		
09-May-2005	2,047		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
09-May-2005	2,048		SEALED	SEAL	PER ORDER DTD 7/31/03		
09-May-2005	2,049		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		

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09-May-2005	2,050		SEALED	SEAL	PER ORDER DTD 7/31/03		
09-May-2005	2,051		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
09-May-2005	2,052		SEALED	SEAL	PER ORDER DTD 7/31/03		
09-May-2005	2,053		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
09-May-2005	2,054		SEALED	SEAL	PER ORDER DTD 7/31/03		
09-May-2005	2,055		SERVICE RETURNED (NUMBERED)	SVRT	OF CHARELS DABROWSKI - OF SERVING SUBPOENA UPON DAVID C FANNIN		
09-May-2005	2,056		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE FAX TRANSMISSION OF THE REPORT OF MEDIATOR DTD 5/7/05		
09-May-2005	2,057		MEDIATION REPORT	MRPT	(FAX)		
10-May-2005	2,058		NOTICE OF FILING	NOF	PROFFER REGARDING MORGAN STANLEY EXHIBITS - ATTACHED		
10-May-2005	2,059		NOTICE OF FILING	NOF	PROFFER REGARDING RONALD O PERELMAN - ATTACHED		
10-May-2005	2,060		NOTICE OF FILING	NOF	PROFFER REGARDING HOWARD GITTIS - ATTACHED		
10-May-2005	2,061		NOTICE OF FILING	NOF	PROFFER REGARDING JAMES LURIE - ATTACHED		
10-May-2005	2,062		NOTICE OF FILING	NOF	PROFFER REGARDING MICHAEL J PETRICK - ATTACHED		
10-May-2005	2,063		NOTICE OF FILING	NOF	PROFFER REGARDING JOHN TYREE - ATTACHED		
10-May-2005	2,064		NOTICE OF FILING	NOF	PROFFER REGARDING ALAN DEAN - ATTACHED		
10-May-2005	2,065		NOTICE OF FILING	NOF	PROFFER REGARDING RICHARD BRAM SMITH - ATTACHED		

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10-May-2005	2,066		NOTICE OF FILING	NOF	PROFFER REGARDING DAVID C FANNIN - ATTACHED		
10-May-2005	2,067		NOTICE OF FILING	NOF	PROFFER REGARDING MICHAEL A HART - ATTACHED		
10-May-2005	2,068		NOTICE OF FILING	NOF	PROFFER REGARDING HEATHER M STACK - ATTACHED		
10-May-2005	2,069		NOTICE OF FILING	NOF	REVISED OFFER OF PROOF W/RESPECT TO OPH'S ABILITY TO MITIGATE ITS DAMAGES THROUGH HEDGING STRATEGIES - ATTACHED		
10-May-2005	2,070		NOTICE OF FILING	NOF	INDEX OF PROFFER EXHIBITS - ATTACHED		
10-May-2005	2,071		NOTICE OF FILING	NOF	INDEX OF MORGAN STANLEY'S PROFFERS FILED ON 5/9/05 - ATTACHED		
10-May-2005	2,072		NOTICE OF FILING	NOF	INDEX OF MORGAN STANLEY PROFFERS FILED ON 5/10/05 - ATTACHED		
10-May-2005	2,073		NOTICE OF FILING	NOF	INDEX OF MORGAN STANLEY PROFFERS FILED ON 5/6/05 - ATTACHED		
10-May-2005	2,074		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-May-2005	2,075		SEALED	SEAL	PER ORDER DTD 7/31/03		
10-May-2005	2,076		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-May-2005	2,077		SEALED	SEAL	PER ORDER DTD 7/31/03		
10-May-2005	2,078		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-May-2005	2,079		SEALED	SEAL	PER ORDER DTD 7/31/03		
10-May-2005	2,080		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
10-May-2005	2,081		SEALED	SEAL	PER ORDER DTD 7/31/03		

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10-May-2005	2,082		MOTION	MOT	TO BAR MORGAN STANLEY FROM ARGUING IN ITS CLOSING ABOUT LACK OF RELIANCE ON MORGAN STANLEY'S OWN STATEMENTS - W/ATTACHMENTS		
10-May-2005	2,083		RESPONSE TO:	RESP	TO MORGAN STANLEY'S MTO TAKE JUDICIAL NOTICE PURSUANT TO FS 90.203		
10-May-2005	2,084		MOTION	MOT	FOR A DIRECTED VERDICT		
10-May-2005	2,085		NOTICE OF FILING	NOF	RETURN OF SERVICE OF TRIAL SUBPOENA ISSUED TO RC OF MAFCO HOLDINGS INC & COLEMAN (PARENT) HOLDINGS INC - ATTACHED		
10-May-2005	2,086		ORDER	ORD	MORGAN STANLEY'S MFOR A MISTRIAL OR OTHER RELIEF FOR PLTF'S VIOLATIONS OF SECTIONS 46.015(3) AND 768.041(3) IS DENIED - SEE ORDER		
10-May-2005	2,087		MOTION TO STRIKE	MSTR	CPH'S REBUTTAL WITNESSES		
10-May-2005	2,088		REQUEST	REQ	TO TAKE JUDICIAL NOTICE PURSUANT TO FS 90.202 & 90.203		
10-May-2005	2,089		MOTION	MOT	FOR RECONSIDERATION OF THE COURTS 3/31 ORDER DEFERRING PRESENTATION OF MORGAN STANLEY'S LITIGATION MISCONDUCT TO PHASE II OF THE TRIAL - W/ATTACHMENTS		
10-May-2005	2,090		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S MFOR RECONSIDERATION OF THE COURTS 3/31 ORDER DEFERRING PRESENTATION OF MORGAN STANLEY'S LITIGATION MISCONDUCT TO PHASE II OF THE TRIAL IS DENIED		
10-May-2005	2,091		ORDER	ORD	MORGAN STANLEY'S REQUEST TO TAKE JUDICIAL NOTICE PURSUANT TO FS 90.202 & 90.203 IS DENIED		
10-May-2005	2,092		MOTION	MOT	TO EXCLUDE CPH EXHIBIT 176 - W/ATTACHMENTS		

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10-May-2005	2,093		STATEMENT	STMT	(PROPOSED) REGARDING THE ARTHUR ANDERSEN LITIGATION & SETTLEMENT - W/ATTACHMENTS		
11-May-2005	2,094		STATEMENT	STMT	(PROPOSED) REGARDING THE ARTHUR ANDERSEN LITIGATION & SETTLEMENT		
11-May-2005	2,095		MOTION	MOT	TO PRECLUDE DEF FROM MAKING UNSUPPORTED ARGUMENTS CONCERNING DAMAGES		
11-May-2005	2,096		NOTICE	NOT	OF SECOND ADDITIONAL PROPOSED SUPPLEMENTAL JURY INSTRUCTIONS		
12-May-2005	2,097		ORDER	ORD	MORGAN STANLEY'S RENEWED MTO APPLY NEW YORK LAW IS DENIED		
12-May-2005	2,098		NOTICE	NOT	OF OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S SECOND RENEWED MFOR CORRECTION & CLARIFICATION OF THE LITIGATION MISCONDUCT STATEMENT TO BE READ TO THE JURY & REPLY IN SUPPORT OF DEFS M/IN LIMINE #30		
12-May-2005	2,099		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
12-May-2005	2,100		ADDENDUM	ADN	TO MORGAN STANLEY'S OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S SECOND RENEWED MFOR CORRECTION & CLARIFICATION OF THE LITIGATION-MISCONDUCT STATEMENT TO BE READ TO THE JURY & REPLY IN SUPPORT OF DEFS M/IN LIMINE #30 *** UNSEALED PER JUDGE'S ORDER IN OPEN COURT - 5/18/05 ***		

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12-May-2005	2,101		ORDER	ORD	FOLLOWING IN CAMERA INSPECTION. MS&CO'S M/TO COMPEL IS DENIED. THE COURT HAS SEALED THE ITEMS REVIEWED IN CAMERA. THE SEALED ITEMS SHALL NOT BE UNSEALED OR RELEASED FROM THE CLERKS CUSTODY W/OUT FURTHER ORDER OF THIS OR AN APPELATE COURT		
12-May-2005	2,102		SEALED	SEAL	PER ORDER DTD 5/12/05		
13-May-2005	2,103		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
13-May-2005	2,104		SEALED	SEAL	PER ORDER DTD 7/31/03		
13-May-2005	2,105		NOTICE	NOT	OF OPPOSITION TO PLTFS PROPOSED SUPPLEMENTAL INSTRUCTION #6		
13-May-2005	2,106		RESPONSE TO:	RESP	TO PLTFS M/FOR DIRECTED VERDICT		
13-May-2005	2,107		REPLY/RESPONSE	RPRS	IN SUPPORT OF M/IN LIMINE #29 TO EXCLUDE DEPO TESTIMONY OF BRAM SMITH IN PHASE II		
13-May-2005	2,108		MOTION	MOT	IN LIMINE #34 TO ALLOW PHASE II MITIGATION EVIDENCE DEMONSTRATING THAT CPH WAS NOT A VULNERABLE VICTIM		
13-May-2005	2,109		MOTION	MOT	(RENEWED) TO APPLY NEW YORK LAW		
13-May-2005	2,110		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S M/IN LIMINE #32 TO EXCLUDE SUPPLEMENTAL REPORT OF MICHAEL J WAGNER - W/ATTACHMENTS		
13-May-2005	2,111	2	JURY QUESTIONS	JUQT			
13-May-2005	2,112	2	JURY QUESTIONS	JUQT			
13-May-2005	2,113	2	JURY QUESTIONS	JUQT			
13-May-2005	2,114	2	JURY QUESTIONS	JUQT			
16-May-2005	2,115	2	NOTE	NOTE	FROM JURY TO COURT		

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16-May-2005	2,116	8	REQUESTED JURY INSTRUCTIONS	RQJI	<<< GIVEN >>>		
16-May-2005	2,117	2	VERDICT	VER	SIGNED & DATED BY FOREPERSON, LAURINDA KAY STALLONE, 5/16/05	018592	001
16-May-2005	2,117 - A		ORDER	ORD	MS& CO'S ORE TENUS M/FOR CLARIFICATION OF SCOPE OF EXPERT TESTIMONY - PHASE II IS GRANTED IN PART & RULING DEFFERED IN PART - SEE ORDER FOR DETAIL		
16-May-2005	2,117 - B		ORDER	ORD	PLTFS M/IN LIMINE #36 TO CLARIFY WHAT EVIDENCE IS ADMISSIBLE TO SHOW PLTFS ENTITLEMENT TO & AMT OF PUNITIVE DAMAGES IS GRANTED IN PART & RULING DEFFERED IN PART. SEE ORDER FOR DETAILS		
16-May-2005	2,117 - C		ORDER	ORD	MORGAN STANLEY'S M/IN LIMINE #32 TO EXCLUDE SUPPLEMENTAL REPORT OF MICHAEL J WAGNER IS GRANTED IN PART & DENIED IN PART - SEE ORDER		
16-May-2005	2,117 - D		MOTION	MOT	TO REMOVE CONFIDENTIALITY DESIGNATION - W/ATTACHMENTS		
16-May-2005	2,117 - E		SEALED	SEAL	PER ORDER DTD 7/31/03		
17-May-2005	2,118		EXHIBIT LIST	EXLT	EXHIBITS FROM NON-JURY HEARING TAKEN TO EVIDENCE DEPT		
17-May-2005	2,119	2	REQUESTED JURY INSTRUCTIONS	RQJI	DEFT'S PROPOSED CURATIVE INSTRUCTION WITH JUDGE'S INTER-LINEATION - GIVEN		
17-May-2005	2,120	2	REQUESTED JURY INSTRUCTIONS	RQJI	DEFT'S PROPOSED SUPPLEMENT TO JURY INSTRUCTIONS		
17-May-2005	2,120 - A		NOTICE OF FILING	NOF	OFFERS OF PROOF IN PHASE II		
17-May-2005	2,120 - B		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
17-May-2005	2,120 - C		SEALED	SEAL	PER ORDER DTD 7/31/03		

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18-May-2005	2,121	30	NOTICE	NOT	PLTF'S PROPOSED DEMONSTRATIVES FOR CLOSING		
18-May-2005	2,122	9	NOTICE	NOT	DEFT'S PROPOSED DEMONSTRATIVES FOR CLOSING		
18-May-2005	2,123	5	REQUESTED JURY INSTRUCTIONS	RQJI	<<<< GIVEN >>>>		
18-May-2005	2,124	2	NOTE	NOTE	FROM JURY		
18-May-2005	2,125	1	VERDICT	VER	SIGNED & DATED BY FOREPERSON, LAURINDA STALLONE, 5/18/05	018608	00055
18-May-2005	2,126		MOTION	MOT	FOR A DIRECTED VERDICT IN PHASE II		
18-May-2005	2,127		MEMORANDUM	MEMO	(SUPPLEMENTAL) IN SUPPORT OF M/FOR MISTRIAL BECAUSE OF IMPROPER EX PARTE JUROR COMMUNICATIONS - W/ATTACHMENTS		
19-May-2005	2,128		OBJECTION	OBJ	(REVISED & CORRECTED) TO PROPOSED JURY INSTRUCTIONS		
19-May-2005	2,129		ORDER SETTING HEARING	ORSH	(SPECIAL SET) 6/20/05 @ 9:30 AM AND 6/21/05 @ 9:30 AM ON ALL POST-VERDICT MOTIONS; REGARDING ENTITLEMENT TO & AMT OF PRE-JUDGMENT INTEREST; ALL MOTIONS DIRECTED TO SET OFF; AND ALL OTHER PENDING MOTIONS, EXCLUDING ATTYS FEES - SEE ORDER FOR FURTHER DETAILS		
19-May-2005	2,130		RESPONSE TO:	RESP	AND OBJECTIONS TO MORGAN STANLEY'S SUMMARY OF OFFER OF PROOF REGARDING DEFS LITIGATION MISCONDUCT & BRIEF ARGUING AGAINST READING TO THE JURY ANY LITIGATION-MISCONDUCT STATEMENT - W/ATTACHMENTS		

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25-May-2005	2,130 - A		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE ORIG OF JENNIFER BERTHEUSSEN'S LETTER DTD 5/17/05 & SERVE COPIES UPON COUNSEL, ATTACHING A CERT OF SERVICE		
25-May-2005	2,130 - B		CORRESPONDENCE	COR	TO HONORABLE ELIZABETH MAASS FROM JENNIFER BERTHEUSSEN DTD 5/17/05 - W/ATTACHED CERT OF SERVICE FROM CLERK		
26-May-2005	2,131	1	EXHIBIT LIST	EXLT	FROM HEARINGS ON 3/07/05, 3/11/05, 3/28/05 & 5/11/05 IN EVIDENCE DEPT		
26-May-2005	2,132	3	EXHIBIT LIST	EXLT	FROM HEARING ON 3/14/05 - 3/15/05 IN EVIDENCE DEPT		
26-May-2005	2,133	9	EXHIBIT LIST	EXLT	FROM JURY TRIAL (3/17/05 - 4/18/05) IN EVIDENCE DEPT		
26-May-2005	2,134	1	EXHIBIT LIST	EXLT	FROM HEARING ON 3/21/05 IN EVIDENCE DEPT		
26-May-2005	2,135	1	EXHIBIT LIST	EXLT	FROM MOTION HEARING ON 3/21/05 IN EVIDENCE DEPT		
26-May-2005	2,136	1	EXHIBIT LIST	EXLT	FROM HEARINGS ON 3/23/05 & 4/05/05 IN EVIDENCE DEPT		
26-May-2005	2,137	1	EXHIBIT LIST	EXLT	FROM HEARINGS ON 2/22/05, 4/12/05, 4/18/05 & 5/3/05 IN EVIDENCE DEPT		
26-May-2005	2,138	1	EXHIBIT LIST	EXLT	FROM JURY TRIAL; JURORS QUESTIONNAIRES IN EVIDENCE DEPT		
26-May-2005	2,139		MOTION	MOT	FOR JUDGMENT IN ACCORDANCE W/MOTION FOR DIRECTED VERDICT & ALTERNATIVE MFOR NEW TRIAL - W/ATTACHMENTS		
26-May-2005	2,140		MOTION	MOT	FOR ORDER ALLOWING INTERVIEW OF JURORS & NOTICE OF INTENT TO INTERVIEW JURORS - W/ATTACHMENTS		

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26-May-2005	2,141		MOTION	MOT	(ALTERNATIVE) FOR REDUCTION OF COMPENSATORY DAMAGES UNDER FS SECTIONS 46.015 & 768.041 - W/ATTACHMENTS		
27-May-2005	2,142		MOTION	MOT	FOR JUDGMENT IN ACCORDANCE WITH M/FOR DIRECTED VERDICT IN PHASE II, OR, IN THE ALTERNATIVE, NEW TRIAL ON PUNITIVE DAMAGES OR FOR REMITTITUR OF PUNITIVE DAMAGES		
27-May-2005	2,143		MOTION	MOT	FOR PREJUDGMENT INTEREST		
06-Jun-2005	2,144		BRIEF	BRF	(INITIAL) IN SUPPORT OF ITS M/FOR PREJUDGMENT INTEREST - W/ATTACHMENTS		
06-Jun-2005	2,145		NOTICE OF HEARING	NOH	6/20/05 @ 9:30 AM ON (1) COLEMAN (PARENT) HOLDINGS INCS MTO MODIFY NOTICE TO PRODUCE & TO COMPEL COMPLIANCE W/THE NOTICE FILED 5/16/05; (2) MORGAN STANLEY'S MTO QUASH COLEMAN (PARENT) HOLDINGS INC'S NOTICE TO PRODUCE FOR IN-CAMERA INSPECTION INSTANTER FILED 4/17/05; AND (3) MORGAN STANLEY'S MTO QUASH COLEMAN (PARENT) HOLDINGS INC'S NOTICE TO PRODUCE AT TRIAL INSTANTER ATYT-CLIENT RECORDS AND DOCUMENTS FILED 4/21/05		
07-Jun-2005	2,146		EXHIBIT LIST	EXLT	FOR THE 6/20 - 21/05 POST TRIAL HEARING		
07-Jun-2005	2,147		MEMORANDUM	MEMO	IN OPPOSITION TO CPH'S M/FOR PREJUDGMENT INTEREST		
07-Jun-2005	2,148		MEMORANDUM	MEMO	IN SUPPORT OF ITS M/FOR JUDGMENT IN ACCORDANCE WITH M/FOR DIRECTED VERDICT & ALTERNATIVE M/FOR TRIAL		
07-Jun-2005	2,149		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
07-Jun-2005	2,150		SEALED	SEAL	PER ORDER DTD 7/31/03		

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08-Jun-2005	2,151		MEMORANDUM	MEMO	IN SUPPORT OF ITS ALTERNATIVE M/FOR REDUCTION OF COMPENSATORY DAMAGES UNDER FS SECTIONS 46.015 & 768.041		
08-Jun-2005	2,152		DISCLOSURE	DISC	(WITNESS) FOR THE JUNE 20-21 POST TRIAL HEARING - W/ATTACHMENTS		
08-Jun-2005	2,153		NOTICE OF FILING	NOF	PLEADING UNDER SEAL		
08-Jun-2005	2,154		SEALED	SEAL	PER ORDER DTD 7/31/03		
09-Jun-2005	2,155		NOTICE OF FILING	NOF	EXHIBIT TO DEFS MEMO IN OPPOSITION TO CPH'S M/FOR PREJUDGMENT INTEREST - ATTACHED		
09-Jun-2005	2,156		MOTION	MOT	FOR ENTRY OF PARTIAL FINAL JUDGMENT		
09-Jun-2005	2,157		NOTICE OF HEARING	NOH	6/13/05 @ 8:45 AM ON M/FOR ENTRY OF PARTIAL FINAL JUDGMENT		
10-Jun-2005	2,157 - A		NOTICE OF CANCELLATION	NCAN	OF UNIFORM MOTION CALENDAR HEARING ON PLTFS M/FOR ENTRY OF PARTIAL F/J SET FOR 6/13/05		
13-Jun-2005			FEE/PRO HAC VICE (\$100.00)	OPRHV			
13-Jun-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$100.00 was made on receipt CAMB80631. ***GOES W/MOTION DE#2158*****		
13-Jun-2005	2,158		MOTION	MOT	(VERIFIED) TO ADMIT MICHAEL K KELLOGG PRO HAC VICE ***UP 6/14/05 W/UNSIGNED ORDER***		
13-Jun-2005	2,159		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO BLAINE NYE		
13-Jun-2005	2,160		MOTION	MOT	TO ESTABLISH SCHEDULE FOR THE TAKING OF DEPO TESTIMONY		
13-Jun-2005	2,161		NOTICE OF HEARING	NOH	6/14/05 @ 8:45 AM ON M/TO ESTABLISH SCHEDULE FOR THE TAKING OF DEPO TESTIMONY		

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13-Jun-2005	2,162		MOTION	MOT	(EMERGENCY) TO ESTABLISH SCHEDULE FOR THE TAKING OF DEPO TESTIMONY ** UP ON 6/15/05 **		
13-Jun-2005	2,163		NOTICE OF CANCELLATION	NCAN	OF UNIFORM MOTION CALENDAR HEARING ON PLTFS MTO ESTABLISH SCHEDULE FOR THE TAKING OF DEPO TESTIMONY		
13-Jun-2005	2,164		BRIEF	BRF	(RESPONSE) IN SUPPORT OF ITS MFOR PREJUDGMENT INTEREST - W/ATTACHMENTS		
14-Jun-2005	2,165		NOTICE OF FILING	NOF	AMENDED CERTIFICATE OF SERVICE		
14-Jun-2005	2,166		RESPONSE TO:	RESP	TO CPH'S INITIAL BRIEF SUPPORTING CPH'S MOTION FOR PREJUDGMENT INTEREST		
14-Jun-2005	2,167		WITNESS LIST	WLIS	FOR POST TRIAL HEARING ON JUNE 20-21, 2005		
14-Jun-2005	2,168		EXHIBIT LIST	EXLT	FOR POST-TRIAL HEARING ON JUNE 20-21, 2005		
14-Jun-2005	2,169		OBJECTION	OBJ	TO DEFT'S WITNESS DISCLOSURE		
14-Jun-2005	2,170		OBJECTION	OBJ	TO DEFT'S JUNE 20-21, 2005 HEARING EXHIBITS		
15-Jun-2005	2,170 - A		MEMORANDUM	MEMO	IN OPPOSITION TO MORGAN STANLEY'S ALTERNATIVE MFOR REDUCTION OF COMPENSATORY DAMAGES UNDER FS SECTIONS 46.015 & 768.041 - W/ATTACHMENTS		
15-Jun-2005	2,170 - B		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S VERIFIED MFOR ORDER ALLOWING INTERVIEW OF JURORS & NOTICE OF INTENT TO INTERVIEW JURORS - W/ATTACHMENTS		
15-Jun-2005	2,170 - C		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO DAVID ROSS		

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15-Jun-2005	2,170 - D		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S M/FOR JUDGMENT IN ACCORDANCE W/MOTION FOR DIRECTED VERDICT & ALTERNATIVE M/FOR NEW TRIAL & MORGAN STANLEY'S M/FOR JUDGMENT IN ACCORDANCE W/MOTION FOR DIRECTED VERDICT IN PHASE II, OR IN THE ALTERNATIVE NEW TRIAL ON PUNITIVE DAMAGES OR FOR REMITTITUR OF PUNITIVE DAMAGES - W/ATTACHMENTS		
15-Jun-2005	2,170 - E		NOTICE OF FILING	NOF	UNDER SEAL		
15-Jun-2005	2,170 - F		SEALED	SEAL	PER ORDER DTD 7/31/03		
16-Jun-2005	2,171		MOTION TO COMPEL	MCMP	(EMERGENCY) MORGAN STANLEY TO PRODUCE SUBPOENA SVD ON DELOITTE & TOUCHE ***UP 6/16/05***		
16-Jun-2005	2,172		NOTICE OF FILING	NOF	ADDITIONAL AUTHORITIES IN SUPPORT OF COLEMAN (PARENT) HOLDINGS INC'S OPPOSITION TO MORGAN STANLEY'S ALTERNATIVE M/FOR REDUCTION OF COMPENSATION DAMAGES UNDER FS SECTIONS 46.015 & 768.041 - W/ATTACHMENTS		
16-Jun-2005	2,173		AGREED ORDER	AGOR	MORGAN STANLEY'S VERIFIED M/TO ADMIT MICHAEL KELLOGG, PRO HACE VICE IS GRANTED		
16-Jun-2005	2,174		ORDER	ORD	AND NOTICE OF HEARING. HEARING ON COLEMAN (PARENT) HOLDINGS INC'S EMERGENCY M/TO COMPEL MORGAN STANLEY TO PRODUCE SUBPOENA SERVED ON DELOITTE & TOUCHE IS SET FOR 6/17/05 @ 8:45 AM		
16-Jun-2005	2,175		NOTICE OF TAKING DEPOSITION	NOTD	(VIDEOTAPE) TO DR BLAINE F NYE		
17-Jun-2005	2,176		WITNESS LIST	WLIS	(AMENDED) FOR POST-TRIAL HEARING ON JUNE 20-21, 2005		

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17-Jun-2005	2,177		NOTICE	NOT	OF RETRACT, W/DRAWAL & CORRECTION OF CERTAIN STATEMENT IN THE OFFERS OF PROOF DECLARATION		
17-Jun-2005	2,178		EXHIBIT LIST	EXLT	(AMENDED) FOR POST-TRIAL HEARING ON JUNE 20-21, 2005		
17-Jun-2005	2,179		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S EMERGENCY M/TO COMPEL MORGAN STANLEY TO PRODUCE SUBPOENA SERVED ON DELOITTE & TOUCHE IS GRANTED - MS&CO SHALL PROVIDE CPH A COPY OF THE SUBPOENA BY 12 NOON		
20-Jun-2005	2,180		EXHIBIT LIST	EXLT	(SECOND AMENDED) FOR POST-TRIAL HEARING ON JUNE 20-21-2005		
20-Jun-2005	2,181		EXHIBIT LIST	EXLT	(THIRD AMENDED) FOR POST TRIAL HEARING ON JUNE 20-21, 2005		
21-Jun-2005	2,182		ORDER	ORD	MORGAN STANLEY'S VERIFIED M/FOR ORDER ALLOWING INTERVIEW OF JURORS IS DENIED		
22-Jun-2005	2,182 - A		ORDER	ORD	AND NOTICE OF HEARING ON MS&CO'S ORE TENUS M/TO STAY & ANY WRITTEN M/TO STAY EXECUTION FOR FINAL JUDGMENT IS SET FOR 6/23/05 @ 9:30 AM		
22-Jun-2005	2,182 - B		ORDER	ORD	AND NOTICE OF HEARING. W/IN 25 DAYS OF ENTRY OF F/J EACH SIDE SHALL SERVE ITS PETITION FOR AWARD OF FEES & COSTS. A STATUS CONFERENCE IS SPECIALLY SET ON 8/26/05 @ 8:45 AM - SEE ORDER FOR DETAILS		

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23-Jun-2005	2,183	2	FINAL JUDGMENT	FJUD	PLTF SHALL RECOVER FROM DEF MORGAN STANLEY & CO INC A TOTAL OF COMPENSATORY DAMAGES OF \$727,696,175.83. PLTF SHALL RECVOER FROM DEF \$850,000,000 FOR PUNITIVE DAMAGES. THE COMBINED TOTAL JUDGMENT AGAINST THE DEF & IN FAVOR OF THE PLTF IN THE AMT OF \$1,577,696,175.83 SHALL BEAR INTEREST AT THE RATE OF 7%		
23-Jun-2005	Atch - 2,183 -		DISPOSED BY JURY TRIAL	DY			
23-Jun-2005	2,184		ORDER	ORD	MORGAN STANLEY'S MFOR JUDGMENT IN ACCORDANCE W/MOTION FOR DIRECTED VERDICT & ALTERNATIVE MFOR NEW TRIAL IS DENIED		
23-Jun-2005	Atch - 2,184 -		REOPEN	RO			
23-Jun-2005	Atch - 2,184 -		REDISPOSED	AS			
23-Jun-2005	2,185		ORDER	ORD	MORGAN STANLEY'S MFOR JUDGMENT IN ACCORDANCE WITH MFOR DIRECTED VERDICT IN PHASE II OR IN THE ALTERNATIVE, NEW TRIAL ON PUNITIVE DAMAGES OR FOR REMITTITUR OF PUNITIVE DAMAGES IS DENIED		
23-Jun-2005	Atch - 2,185 -		REOPEN	RO			
23-Jun-2005	Atch - 2,185 -		REDISPOSED	AS			
23-Jun-2005	2,186		MOTION	MOT	FOR TEMP STAY OF EXECUTION PURSUANT TO FRCP 1.551(B)		
23-Jun-2005	Atch - 2,186 -		REOPEN	RO			
23-Jun-2005	2,187		NOTICE OF FILING	NOF	DECLARATION OF MARILYN NEEDLEMAN - ATTACHED		

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23-Jun-2005	2,188		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE THE FAX TRANSMISSIONS FROM ATTYS JACK SCAROLA & JOSEPH IANNO DTD 6/23/05		
23-Jun-2005	2,189		CORRESPONDENCE	COR	(FAX) TO HONORABLE MAASS FROM JACK SCAROLA DTD 6/23/05		
23-Jun-2005	2,190		CORRESPONDENCE	COR	(FAX COPY) TO HONORABLE MAASS FROM JOSEPH IANNO JR DTD 6/23/05		
23-Jun-2005	2,191		ORDER	ORD	AND NOTICE OF HEARING. COUNSEL ARE INVITED TO REVIEW THE ATTACHED DRAFT F/J FOR MATHEMATICAL & FORM OBJECTIONS ONLY. A STATUS CONFERENCE SHALL BE HELD 6/23/05 @ 3:30 PM TO DISCUSS ANY OBJECTIONS RECEIVED		
24-Jun-2005	2,191 - A		ORDER	ORD	AND DIRECTIONS TO CLERK. CLERK IS DIRECTED TO DOCKET & FILE ATTY JACK SCAROLA'S LETTER DTD 6/24/05		
24-Jun-2005	2,191 - B		CORRESPONDENCE	COR	TO HON ELIZABETH MAASS FROM JACK SCAROLA DTD 6/24/05		
24-Jun-2005	2,191 - C		ORDER	ORD	AND NOTICE OF HEARING. A STATUS CONFERENCE IS SET FOR 6/24/05 @ 2:30 PM		
27-Jun-2005			CAFF/NOA/	801FF			
27-Jun-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$61.50 was made on receipt CAMB82060.		
27-Jun-2005	2,192	9	NOTICE OF APPEAL	NOA	TO 4DCA ORDER RENDERED ON 6/23/05 W/COPY ATTACHED		

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27-Jun-2005	2,193		BOND	BOND	(CIVIL SUPERSEDEAS) MORGAN STANLEY AS PRINCIPAL, AND NATIONAL UNION FIRE INS CO OF PITTSBURGH PA AS SURETY ARE HELD & FIRMLY BOUND UNTO COLEMAN (PARENT) HOLDINGS INC THE PRINCIPAL SUM OF \$1,798,573,640.45 - W/ATTACHMENT		
28-Jun-2005	2,194	3	EXHIBIT LIST	EXLT	FROM HEARING ON 6/20 - 6/21/05; PLTF(S) & DEFT(S) EXHIBITS IN EVIDENCE DEPT		
28-Jun-2005	2,195		NOTICE OF SERVICE	NOS	OF CIVIL SUPERSEDEAS BOND		
07-Jul-2005	2,196	4	DIRECTIONS TO CLERK	DCLK			
07-Jul-2005	2,197	8	DESIGNATION TO COURT REPORTER	DCR			
07-Jul-2005	2,198	58	NOTICE OF FILING	NOF	2/20/04 HEARING TRANSCRIPT		
07-Jul-2005	2,199	110	NOTICE OF FILING	NOF	PROPOSED JURY INSTRUCTION		
07-Jul-2005	2,200	28	NOTICE OF FILING	NOF	PROPOSED AMENDED PHASE II JURY INSTRUCTIONS		
07-Jul-2005	2,201	79	NOTICE OF FILING	NOF	11/06/03, 12/16/03, 12/17/03, AND 1/04/05 HEARING TRANSCRIPTS		
11-Jul-2005	2,202		ACKNOWLEDGMENT OF NEW CASE	ACKC	APPEAL FILED 6/27/05 CASE NO. 4D05-2606		
14-Jul-2005	2,203	3	NOTICE OF FILING	NOF	TRANSCRIPTS		
14-Jul-2005	2,204		TRANSCRIPT	TRNS	HEARING ON 9/29/03		
14-Jul-2005	2,205		TRANSCRIPT	TRNS	HEARING ON 11/6/03		
14-Jul-2005	2,206		TRANSCRIPT	TRNS	HEARING ON 11/25/03		
14-Jul-2005	2,207		TRANSCRIPT	TRNS	HEARING 12/17/03		
14-Jul-2005	2,208		TRANSCRIPT	TRNS	HEARING ON 1/8/04		
14-Jul-2005	2,209		TRANSCRIPT	TRNS	HEARING ON 2/19/05		

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14-Jul-2005	2,210		TRANSCRIPT	TRNS	HEARING ON 2/20/04		
14-Jul-2005	2,211		TRANSCRIPT	TRNS	HEARING ON 3/3/04		
14-Jul-2005	2,212		TRANSCRIPT	TRNS	HEARING ON 4/22/04		
14-Jul-2005	2,213		TRANSCRIPT	TRNS	HEARING ON 4/30/04		
14-Jul-2005	2,214		TRANSCRIPT	TRNS	HEARING ON 5/28/04		
14-Jul-2005	2,215		TRANSCRIPT	TRNS	HEARING ON 6/7/04		
14-Jul-2005	2,216		TRANSCRIPT	TRNS	HEARING ON 7/14/04		
14-Jul-2005	2,217		TRANSCRIPT	TRNS	HEARING ON 7/23/04		
14-Jul-2005	2,218		TRANSCRIPT	TRNS	HEARING ON 8/13/04		
14-Jul-2005	2,219		TRANSCRIPT	TRNS	HEARING ON 9/15/04		
14-Jul-2005	2,220		TRANSCRIPT	TRNS	HEARING ON 9/23/04		
14-Jul-2005	2,221		TRANSCRIPT	TRNS	HEARING ON 11/5/04		
14-Jul-2005	2,222		TRANSCRIPT	TRNS	HEARING ON 12/15/04		
14-Jul-2005	2,223		TRANSCRIPT	TRNS	HEARING ON 1/4/05		
14-Jul-2005	2,224		TRANSCRIPT	TRNS	HEARING ON 1/11/05		
14-Jul-2005	2,225		TRANSCRIPT	TRNS	HEARING ON 1/12/05		
14-Jul-2005	2,226		TRANSCRIPT	TRNS	HEARING ON 1/13/05		
14-Jul-2005	2,227		TRANSCRIPT	TRNS	HEARING ON 1/26/05		
14-Jul-2005	2,228		TRANSCRIPT	TRNS	BEFORE HON MAASS 1/19/05		
19-Jul-2005	2,228 - A		MOTION	MOT	FOR AN AWARD OF ATTY FEES AND COSTS W/ATTACHMENTS		
19-Jul-2005	2,228 - B		AMENDED	AMN	EXHIBIT LIST FOR THE 6/20/05-6/21/05 POST TRIAL HEARING W/ATTACHMENTS		

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20-Jul-2005	2,229		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 6/2/03		
20-Jul-2005	2,230		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 12/12/03		
20-Jul-2005	2,231		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 01/12/04		
20-Jul-2005	2,232		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 3/19/04		
20-Jul-2005	2,233		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 4/16/04		
20-Jul-2005	2,234		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 6/28/04		
20-Jul-2005	2,235		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 7/2/04		
20-Jul-2005	2,236		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 10/7/04		
20-Jul-2005	2,237		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 10/14/04		
20-Jul-2005	2,238		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 11/4/04		
20-Jul-2005	2,239		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 11/15/04		
20-Jul-2005	2,240		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 11/16/04		
20-Jul-2005	2,241		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 11/17/04		
20-Jul-2005	2,242		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 12/3/04		

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20-Jul-2005	2,243		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 12/22/04		
20-Jul-2005	2,244		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 01/21/05		
20-Jul-2005	2,245		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 2/5/05		
20-Jul-2005	2,246		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 2/3/05		
20-Jul-2005	2,247		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 2/4/05		
20-Jul-2005	2,247 - A		TRANSCRIPT	TRNS	HEARING PROCEEDINGS BEFORE JUDGE MAASS ON 6/17/05		
20-Jul-2005	2,248		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/14/05 - VOLUME I		
20-Jul-2005	2,249		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/14/05 - VOLUME II		
20-Jul-2005	2,250		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/14/05 - VOLUME III		
20-Jul-2005	2,251		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/15/05 - VOLUME IV		
20-Jul-2005	2,252		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/15/05 - VOLUME 5		
20-Jul-2005	2,253		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/16/05 - VOLUME 6		
20-Jul-2005	2,254		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/16/05 - VOLUME 7		
20-Jul-2005	2,255		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/17/05 - VOLUME 8		

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20-Jul-2005	2,256		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/17/05 - VOLUME 9		
20-Jul-2005	2,257		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/18/05 - VOLUME 10		
20-Jul-2005	2,258		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/18/05 - JURY VOLUME I		
20-Jul-2005	2,259		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/18/05 - JURY VOLUME II		
20-Jul-2005	2,260		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/22/05 - VOLUME XI		
20-Jul-2005	2,261		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/22/05 - JURY VOLUME III		
20-Jul-2005	2,262		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/22/05 - JURY VOLUME 4		
20-Jul-2005	2,263		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/22/05 - VOLUME 12		
20-Jul-2005	2,264		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/23/05 - VOLUME XIII		
20-Jul-2005	2,265		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/23/05 - VOLUME 14		
20-Jul-2005	2,266		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/24/05 - VOLUME 15		
20-Jul-2005	2,267		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/24/05 - VOLUME 16		
20-Jul-2005	2,268		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 2/28/05 - VOLUME 17		
20-Jul-2005	2,269		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/1/05 - VOLUME 18		

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20-Jul-2005	2,270		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/2/05 - VOLUME 19		
20-Jul-2005	2,271		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/3/05 - VOLUME 20		
20-Jul-2005	2,272		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/3/05 - VOLUME 21		
20-Jul-2005	2,273		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/4/05 - VOLUME 22		
20-Jul-2005	2,274		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/4/05 - VOLUME 23		
20-Jul-2005	2,275		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/7/05 - VOLUME 24		
20-Jul-2005	2,276		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/8/05 - VOLUME 25		
20-Jul-2005	2,277		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/8/05 - VOLUME 26		
20-Jul-2005	2,278		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/9/05 - VOLUME 27		
20-Jul-2005	2,279		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/9/05 - VOLUME 28		
20-Jul-2005	2,280		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/10/05 - VOLUME 29		
20-Jul-2005	2,281		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/10/05 - VOLUME 30		
20-Jul-2005	2,282		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/11/05 - VOLUME 31		
20-Jul-2005	2,283		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/11/05 - VOLUME 32		

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20-Jul-2005	2,284		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/11/05 - VOLUME 33		
20-Jul-2005	2,285		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/14/05 - VOLUME 34		
20-Jul-2005	2,286		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/14/05 - VOLUME 35		
20-Jul-2005	2,287		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/15/05 - VOLUME 36		
20-Jul-2005	2,288		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/15/05 - VOLUME 37		
20-Jul-2005	2,289		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/16/05 - VOLUME 38		
20-Jul-2005	2,290		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/16/05 - VOLUME 39		
20-Jul-2005	2,291		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/17/05 - VOLUME 40		
20-Jul-2005	2,292		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/17/05 - VOLUME 41		
20-Jul-2005	2,293		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/21/05 - VOLUME 42		
20-Jul-2005	2,294		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/21/05 - VOLUME 43		
20-Jul-2005	2,295		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/22/05 - VOLUME 44		
20-Jul-2005	2,296		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/22/05 - VOLUME 45		
20-Jul-2005	2,297		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/23/05 - VOLUME 46		

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20-Jul-2005	2,298		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/24/05 - VOLUME 47		
20-Jul-2005	2,299		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/24/05 - VOLUME 48		
20-Jul-2005	2,300		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/28/05 - VOLUME 49		
20-Jul-2005	2,301		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/29/05 - VOLUME 50		
20-Jul-2005	2,302		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/30/05 - VOLUME 51		
20-Jul-2005	2,303		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/30/05 - VOLUME 52		
20-Jul-2005	2,304		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/31/05 - VOLUME 53		
20-Jul-2005	2,305		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 3/31/05 - VOLUME 54		
20-Jul-2005	2,306		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/4/05 - VOLUME 55		
20-Jul-2005	2,307		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/4/05 - VOLUME 56		
20-Jul-2005	2,308		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/5/05 - VOLUME 57		
20-Jul-2005	2,309		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/5/05 - VOLUME 58		
20-Jul-2005	2,310		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/6/05 - VOLUME 59		
20-Jul-2005	2,311		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/6/05 - VOLUME 60		

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Case ID : 2003CA005045 - COLEMAN PARENT HOLDINGS INC V MORGAN
STANLEY & CO

UCN : 502003CA005045XXOCAI

Case Filed : 08-May-2003

Status : RO - REOPEN

Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
20-Jul-2005	2,312		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/6/05 -VOLUME 61		
20-Jul-2005	2,313		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/6/05 -VOLUME 62		
20-Jul-2005	2,314		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/11/05 -VOLUME 63		
20-Jul-2005	2,315		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/11/05 -VOLUME 64		
20-Jul-2005	2,316		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/12/05 -VOLUME 65		
20-Jul-2005	2,317		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/12/05 -VOLUME 66		
20-Jul-2005	2,318		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/13/05 -VOLUME 67		
20-Jul-2005	2,319		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/13/05 -VOLUME 68		
20-Jul-2005	2,320		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/13/05 -VOLUME 69		
20-Jul-2005	2,321		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/14/05 -VOLUME 70		
20-Jul-2005	2,322		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/14/05 -VOLUME 71		
20-Jul-2005	2,323		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/15/05 -VOLUME 72		
20-Jul-2005	2,324		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/18/05 -VOLUME 73		
20-Jul-2005	2,325		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/18/05 -VOLUME 74		

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UCN : 502003CA005045XXOCAI

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20-Jul-2005	2,326		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/19/05 -VOLUME 75		
20-Jul-2005	2,327		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/19/05 -VOLUME 76		
20-Jul-2005	2,328		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/19/05 -VOLUME 77		
20-Jul-2005	2,329		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/20/05 -VOLUME 78		
20-Jul-2005	2,330		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/20/05 -VOLUME 79		
20-Jul-2005	2,331		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/21/05 -VOLUME 80		
20-Jul-2005	2,332		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/21/05 -VOLUME 81		
20-Jul-2005	2,333		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/22/05 -VOLUME 82		
20-Jul-2005	2,334		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/22/05 -VOLUME 83		
20-Jul-2005	2,335		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/22/05 -VOLUME 84		
20-Jul-2005	2,336		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/22/05 -VOLUME 85		
20-Jul-2005	2,337		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/26/05 -VOLUME 86		
20-Jul-2005	2,338		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/26/05 -VOLUME 87		
20-Jul-2005	2,339		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/27/05 -VOLUME 88		

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Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
20-Jul-2005	2,340		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/27/05 -VOLUME 89		
20-Jul-2005	2,341		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/28/05 -VOLUME 90		
20-Jul-2005	2,342		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/28/05 -VOLUME 91		
20-Jul-2005	2,343		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/29/05 -VOLUME 92		
20-Jul-2005	2,344		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 4/29/05 -VOLUME 93		
20-Jul-2005	2,345		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/2/05 -VOLUME 94		
20-Jul-2005	2,346		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/2/05 -VOLUME 95		
20-Jul-2005	2,347		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/2/05 -VOLUME 96		
20-Jul-2005	2,348		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/3/05 -VOLUME 97		
20-Jul-2005	2,349		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/3/05 -VOLUME 98		
20-Jul-2005	2,350		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/4/05 -VOLUME 99		
20-Jul-2005	2,351		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/4/05 -VOLUME 100		
20-Jul-2005	2,352		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/5/05 -VOLUME 101		
20-Jul-2005	2,353		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/5/05 -VOLUME 102		

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Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
20-Jul-2005	2,354		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/6/05 -VOLUME 103		
20-Jul-2005	2,355		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/9/05 -VOLUME 104		
20-Jul-2005	2,356		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/9/05 -VOLUME 105		
20-Jul-2005	2,357		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/9/05 -VOLUME 106		
20-Jul-2005	2,358		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/10/05 -VOLUME 107		
20-Jul-2005	2,359		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/10/05 -VOLUME 108		
20-Jul-2005	2,360		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/11/05 -VOLUME 109		
20-Jul-2005	2,361		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/11/05 -VOLUME 110		
20-Jul-2005	2,362		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/11/05 -VOLUME 111		
20-Jul-2005	2,363		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/12/05 -VOLUME 112		
20-Jul-2005	2,364		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/12/05 -VOLUME 113		
20-Jul-2005	2,365		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/13/05 -VOLUME 114		
20-Jul-2005	2,366		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/13/05 -VOLUME 115		
20-Jul-2005	2,367		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/16/05 -VOLUME 116		

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Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
20-Jul-2005	2,368		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/16/05 -VOLUME 117		
20-Jul-2005	2,369		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/16/05 -VOLUME 118		
20-Jul-2005	2,370		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/17/05 -VOLUME 119		
20-Jul-2005	2,371		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/17/05 -VOLUME 120		
20-Jul-2005	2,372		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/18/05 -VOLUME 121		
20-Jul-2005	2,373		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 5/18/05 -VOLUME 122		
20-Jul-2005	2,374		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 6/20/05 -VOLUME 123		
20-Jul-2005	2,375		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 6/20/05 -VOLUME 124		
20-Jul-2005	2,376		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 6/21/05 -VOLUME 125		
20-Jul-2005	2,377		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 6/21/05 -VOLUME 126		
20-Jul-2005	2,378		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 6/23/05 -VOLUME 127		
20-Jul-2005	2,379		TRANSCRIPT	TRNS	TRIAL PROCEEDINGS BEFORE JUDGE MAASS ON 6/23/05 -VOLUME 128		
22-Jul-2005			CAFF/NOA	801FF			
22-Jul-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$56.50 was made on receipt CAMB84508.		
22-Jul-2005	2,380	4	NOTICE OF APPEAL	NOA	ORDER RENDERED JUNE 23 2005 COPY ATTACHED		

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Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
25-Jul-2005	2,381		MOTION	MOT	TO TAX COST W/ATTACHMENTS		
26-Jul-2005	2,382		MOTION	MOT	TO REMOVE CONFIDENTIALITY DESIGNATION		
26-Jul-2005	2,383		NOTICE OF HEARING	NOH	8/2/05 @ 8:45 AM ON MORGAN STANLEY'S MTO REMOVE CONFIDENTIALITY DESIGNATION		
27-Jul-2005	2,384		PETITION	PET	(VERIFIED) FOR A SHOW-CAUSE ORDER REGARDING MORGAN STANLEY CRIMINAL CONTEMPT OF COURT - W/ATTACHMENTS		
28-Jul-2005	2,385		NOTICE OF FILING	NOF	PROPOSED PHASE I VERDICT FORMS SUBMITTED 5/5/05 & 5/12/05 - ATTACHED		
29-Jul-2005	2,386		ACKNOWLEDGMENT OF NEW CASE	ACKC	APPEAL FILED 7/22/05 CASE NO. 4D05-2936		

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STANLEY & CO

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Case Filed : 08-May-2003

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Docket Entries : 2,612

Last Activity :

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*** end of report czezdk ***

M A N D A T E

from

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT**

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable GEORGE A. SHAHOOD, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

DATE: March 14, 2008

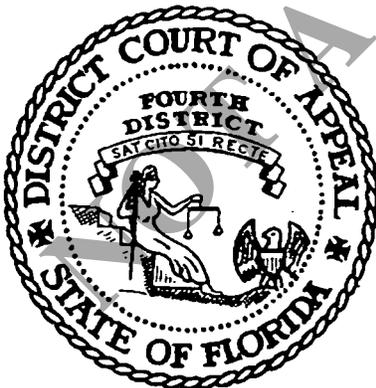
CASE NO.: 4D05-4756

COUNTY OF ORIGIN: Palm Beach

T.C. CASE NO.: CA 03-5045 AI, 502003CA005045XXOCAI

STYLE: MORGAN STANLEY & CO. INCORPORATED v. COLEMAN (PARENT) HOLDINGS INC.

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CIRCUIT CLERK



Marilyn Beutenmuller
MARILYN BEUTENMULLER, Clerk
Fourth District Court of Appeal

ORIGINAL TO: Sharon R. Bock, Clerk

cc:
Sylvia H. Walbolt
Jack Scarola
Michael Brody

Bruce S. Rogow
Jerold S. Solovy

Joseph Ianno, Jr.
Joel D. Eaton

16div-031049

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2008

MORGAN STANLEY & CO. INCORPORATED,
Appellant,

v.

COLEMAN (PARENT) HOLDINGS INC.,
Appellee.

No. 4D05-4756

[February 27, 2008]

PER CURIAM.

By order dated January 27, 2006, this appeal was stayed pending the outcome of case No. 4D05-2606, which was Morgan Stanley's appeal of the final judgment awarding damages in favor of Coleman. This instant appeal was taken from the post-verdict cost judgment entered in favor of Coleman.

In the earlier case, this court reversed the award in favor of Coleman and directed that a judgment be entered in favor of Morgan Stanley. *Morgan Stanley & Co. v. Coleman (Parent) Holdings Inc.*, 955 So. 2d 1124 (Fla. 4th DCA 2007). Coleman then sought review in the Florida Supreme Court, but the Supreme Court denied review by order dated December 12, 2007. Accordingly, the stay previously entered in this case was lifted by order dated January 16, 2008.

We further ordered appellee Coleman to advise this court whether, in light of the finality of our decision reversing the award of damages, the cost judgment should now be similarly reversed. Appellee has responded that there is no reason not to reverse the cost judgment.

The cost judgment entered by the trial court on November 22, 2005, is therefore reversed.

SHAHOOD, C.J., POLEN and MAY, JJ., concur.

* * *

#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

ORDER SPECIALLY SETTING HEARING/STATUS CONFERENCE

THIS CAUSE having come to be considered upon request for a Special Set Hearing, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED that a Status Conference is scheduled in this matter for Tuesday, March 18, 2008 at 10:15 a.m. before the Hon. Robin Rosenberg, Circuit Court Judge, in Courtroom 10-A of the Palm Beach County Courthouse, 205 N. Dixie Highway, West Palm Beach, FL 33401.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 17th day of March, 2008.


ROBIN ROSENBERG
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

16div-031051

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AI
Order Specially Setting Hearing

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: 03 CA-005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INC.,

Defendant.

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Palm Beach County
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FINAL JUDGMENT

THIS CAUSE, having come before the Court upon remand from the Fourth District Court of Appeal with directions to enter final judgment in favor of Morgan Stanley and upon the mandate issued by the Fourth District on June 22, 2007,

IT IS HEREBY ORDERED AND ADJUDGED that the Final Judgment entered on June 23, 2005 and recorded in the Official Records of Palm Beach County at Book 18800 Page 0095-96, be and the same is hereby VACATED, and

IT IS FURTHER ORDERED AND ADJUDGED that Final Judgment be and the same is now entered in favor of the Defendant, Morgan Stanley & Co. Incorporated, a Delaware corporation, the corporate headquarters of which are located at 1585 Broadway, New York, NY dismissing this action with prejudice. Plaintiff, Coleman (Parent) Holdings, Inc., a Delaware corporation, the corporate headquarters of which are located at 35 East 62nd Street, New York,

NY, shall take nothing by its action for damages and Defendant shall go hence without day. The Court reserves jurisdiction to consider Defendant's claims for costs and the pending criminal contempt proceedings.

DONE AND ORDERED in Chambers at Palm Beach County, Florida this 18th
day of March, 2008.


ROBIN L. ROSENBERG
Circuit Judge

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16div-031054

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

**COLEMAN (PARENT) HOLDINGS INC.'S VERIFIED MOTION
TO VACATE THE JUDGMENT AND GRANT A NEW TRIAL ON DAMAGES**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys and pursuant to Rule 1.540(b) of the Florida Rules of Civil Procedure, respectfully requests that this Court vacate the judgment of dismissal entered in favor of Morgan Stanley & Co. Incorporated, enter a total default as to all elements of CPH's claims, order a new trial on damages as more fully described below, and provide such further relief as the Court deems just and proper.

PRELIMINARY STATEMENT

CPH asks the Court to vacate the recently entered judgment in favor of Morgan Stanley because Morgan Stanley has now admitted that it committed a massive fraud on the Court. Morgan Stanley's fraud on the Court was part of a scheme designed to conceal Morgan Stanley's role as a co-conspirator in the largest securities fraud in Florida history.

Prior to trial, some aspects of Morgan Stanley's fraud on the Court — including the destruction and nonproduction of key e-mail evidence — came to light. That led the Court to enter a partial default against Morgan Stanley, but not the total default that CPH had requested. Now, however, it has become clear that the scope of Morgan Stanley's fraud on the Court was far broader than previously realized. In a series of cryptic but revealing "Notices" filed with this

Court, Morgan Stanley has admitted that, in its efforts to forestall a total default, it repeatedly lied to the Court and CPH about what Morgan Stanley's in-house lawyers knew about the e-mails and when they knew it.

Morgan Stanley waited until after the trial had concluded and the jury had announced its verdict before issuing the first of these "Notices." And Morgan Stanley released its most recent Notice only after this Court was divested of jurisdiction over the case and the appeal had been fully briefed and argued before the Fourth District. Even with the admissions contained in these Notices, the full scope of Morgan Stanley's fraud on the Court has yet to be revealed. But there is already more than enough evidence to conclude that this case was adjudicated under false pretenses and that Morgan Stanley thereby escaped proper sanctions for its perjurious litigation misconduct. Therefore, the recently entered judgment favoring Morgan Stanley cannot stand.

In 1997 and 1998, Morgan Stanley conspired with Sunbeam Corporation to defraud CPH and others of billions of dollars. CPH sued Morgan Stanley for conspiracy to commit fraud and sought production of relevant documents, including e-mails. Claiming that e-mails from the late 1990s were no longer retrievable, Morgan Stanley offered what turned out to be perjurious testimony from its information-technology (IT) staff. Those lies soon began to unravel. As it became clear that Morgan Stanley had willfully disobeyed this Court's discovery orders and in some instances had destroyed e-mail evidence, Morgan Stanley tried to contain the scandal by scapegoating the IT staff and claiming that Morgan Stanley's in-house lawyers had been completely unaware of the e-mail fiasco.

Morgan Stanley emphatically and repeatedly drew a sharp distinction between its business and IT people and its in-house lawyers. In the briefing and arguing of the sanctions motions that CPH filed, in evidentiary proffers submitted to the Court, and in hearings about

what CPH could argue to the jury with respect to punitive damages, Morgan Stanley was adamant: Its in-house lawyers knew nothing about the misconduct. Morgan Stanley pressed that argument because it correctly surmised that the Court and the jury would mete out a harsh punishment if they knew that the in-house lawyers ostensibly responsible for ensuring Morgan Stanley's compliance with the law actually were assisting Morgan Stanley's business people in subverting the justice system.

We now know that Morgan Stanley's in-house lawyers *did* know about the misconduct and *were* culpable participants in it. Our knowledge of those facts comes from Morgan Stanley's grudging and piecemeal acknowledgements — which were delivered in cryptic “Notices” filed over a nearly two-year period and are as dramatic for what they concede as they are appalling for what they still attempt to conceal. As we explain more fully below, there is now no doubt that Morgan Stanley's in-house counsel knew about the misconduct of which they repeatedly professed ignorance.

But Morgan Stanley's “our lawyers were not in the loop” defense largely succeeded, leading the Court to enter only a partial default against Morgan Stanley, rather than the total default as to all elements that CPH had requested. Because the Court entered only a partial default, CPH retained the burden of proving at trial both the fact of damage and the amount of damages. This lesser sanction turned out to be critically important on appeal, when the Fourth District instructed this Court to enter judgment for Morgan Stanley after rejecting CPH's method for calculating the amount of damages and implicitly holding that CPH had thus failed to prove actual damage, an essential element of CPH's fraud claims against Morgan Stanley. Had this Court been fully apprised of Morgan Stanley's fraud and had it therefore granted CPH's motion for a total default as to all elements, there would have been no question about the adequacy of

CPH's proof of actual damage and thus no basis to enter judgment for Morgan Stanley. The prejudice that CPH has suffered as a direct result of Morgan Stanley's fraud on the Court could not be clearer: the loss of hundreds of millions of dollars in compensatory damages, as well as interest and punitive damages. Unless this Court grants this motion and imposes the sanction that Morgan Stanley has always deserved, Morgan Stanley will succeed in its fraud against the Court and will not be called to account, either for its complicity in a securities fraud of enormous proportion or for the egregious litigation misconduct with which it sought to conceal that complicity before, during, and after trial.

But there is more at stake here. Left unchecked, the kind of egregious litigation abuses that Morgan Stanley carried out during this litigation are devastating to the integrity of our justice system and public confidence in it. Indeed, the Court expressly recognized that point when, based on its incomplete knowledge of Morgan Stanley's misconduct, the Court entered the partial default prior to trial. For the Court now to allow a final judgment for Morgan Stanley to stand — in the wake of Morgan Stanley's post-verdict and post-judgment "Notices" admitting its fraud upon the Court — would not only injure CPH and grant a windfall to Morgan Stanley, but would send a troubling message to every litigant whose rights are entrusted to this Court and the Florida justice system. CPH therefore respectfully requests relief from the judgment, a judgment that Morgan Stanley obtained not on the merits, but by disobeying, disrespecting, and defrauding this Court.

STATEMENT OF FACTS

CPH brought suit against Morgan Stanley for aiding and abetting, and conspiring with, Sunbeam Corporation to perpetrate a massive fraud in connection with Sunbeam's purchase of CPH's interest in The Coleman Company, Inc. As part of the consideration for the sale of that interest, CPH received unregistered Sunbeam stock that had an expected value of \$680 million

but proved to be worthless. Morgan Stanley denied any complicity in the fraud and denied damages. CPH App. 1 (6/23/03 Answer of MS, at 1, 17-19). Accordingly, Morgan Stanley documents relating to both liability and amount of damages was critically important. On the damages issue, for example, Morgan Stanley may well have had documents showing its own valuation of Sunbeam on the closing date of the transaction. CPH App. 19 (3/15/05 Tr. at 3944).

But Morgan Stanley lied to the Court, defied Court orders, concealed and destroyed documents and electronic data, and engaged in other misconduct to defeat the truth-seeking processes of discovery. CPH moved for sanctions against Morgan Stanley, including a total default. CPH's motion was based in part on Morgan Stanley's false certification on June 23, 2004 that it had produced all relevant e-mail messages — a certification Morgan Stanley made with full knowledge that relevant e-mail backup tapes had not even been searched. In response to CPH's remedial motion, Morgan Stanley argued that it should not be severely punished because its *in-house counsel* were not aware until months later, in October or November 2004, of the existence of potentially relevant e-mail messages on these backup tapes. In March 2005, this Court issued two remedial rulings, ultimately determining that Morgan Stanley's knowledge of the underlying fraud and collusion with Sunbeam should be deemed established.

Although those rulings took account of some portion of Morgan Stanley's misconduct, other misconduct continued during the proceeding itself, *after* the sanctions were imposed, and even *after* the conclusion of the jury proceedings on reliance, the fact of damage, and the amount of damages. In December 2006, while its appeal from the judgment was pending in the Fourth District, Morgan Stanley acknowledged that its in-house attorneys were indeed aware “prior to July 2004” of the existence of e-mail on the backup tapes, and that these e-mails dated to the time of the Sunbeam-Coleman merger. Notwithstanding Morgan Stanley's artfulness in using

the phrase “prior to July 2004,” the only fair reading of Morgan Stanley’s statements is that Morgan Stanley’s in-house lawyers knew these facts on June 23, 2004, when Morgan Stanley falsely certified that it had produced all relevant e-mail messages. In addition, those statements show that Morgan Stanley’s in-house lawyers clearly knew that numerous statements made to the Court in 2004 and 2005, including those contained in sworn declarations, were false.

A. Misconduct Leading to 2005 Remedial Proceedings.

Morgan Stanley’s disregard for the integrity of the judicial process and for its obligations to the plaintiff continued unabated throughout the period leading up to the 2005 remedial rulings, taking a variety of different — but consistently reprehensible — forms.

First, Morgan Stanley repeatedly lied to the Court. Morgan Stanley has not challenged this Court’s ruling that at least 35 of Morgan Stanley’s statements to the Court — including statements made under oath — were “false” or “misleading.” *See* CPH App. 20 (3/23/05 Order at 8-16 (listing statements)); CPH App. 13 (3/2/05 Order at 3-10 (same)). Morgan Stanley also submitted false interrogatory answers signed by a corporate representative who had not read them, and falsely represented on numerous occasions that it was unable to retrieve electronic data concerning the authorship and drafting history of important documents. CPH App. 20 (3/23/05 Order at 15); CPH App. 12 (2/28/05 Order at 2).

Second, Morgan Stanley repeatedly defied Court orders. As the Court found, Morgan Stanley defied at least seven orders entered between December 2003 and March 2005. CPH App. 20 (3/23/05 Order at 9-16 & n.10). For example, Morgan Stanley withheld documents regarding the discovery and restoration of e-mail backup tapes, thus defying an April 2004 “Agreed Order” as to electronic discovery as well as a February 2005 order requiring Morgan Stanley to produce its documents. *Id.* Morgan Stanley also defied a March 2005 discovery order because, as this Court expressly found, Morgan Stanley “desperately wanted to hide an active

SEC inquiry” into Morgan Stanley’s continued practice of overwriting backup tapes, in violation of an outstanding SEC cease-and-desist order. *Id.* at 10 & n.10, 12-14, 16. In addition, among other orders that Morgan Stanley violated were the following: (1) a February 2005 order requiring discovery on the authenticity, business-record status, and authorship of certain documents that showed Morgan Stanley’s involvement in misleading aspects of the underlying Sunbeam transaction, (2) a February 2005 order mandating e-mail production from certain backup tapes, and (3) a March 2004 order requiring production of certain performance evaluations of Morgan Stanley personnel involved in the transaction, which production would have revealed serious, repeated internal expressions of concern about the candor and ethics of William Strong, the senior Morgan Stanley banker in charge of the Sunbeam deal. *Id.* at 11-16. This Court concluded that those violations of court orders were “deliberate[] and contumacious[.]” *Id.* at 16.

Third, Morgan Stanley “routinely assert[ed] unfounded privilege claims.” *Id.* For example, Morgan Stanley did not reveal a relevant criminal prosecution against William Strong, and then obstructed discovery by claiming privilege with respect to approximately 700 documents related to that prosecution — many under supposed joint defense agreements that the Court later found did not exist. *Id.* at 14-16 & n.17. After this Court ordered Morgan Stanley to submit those documents for *in camera* review, Morgan Stanley withdrew its privilege claim with respect to more than 260 of the documents. *Id.* Following an *in camera* review, this Court found that 200 more documents were not privileged. *Id.*

Fourth, Morgan Stanley engaged in massive fraud with respect to e-mail production. Because the underlying transaction between Sunbeam and CPH was completed in 1998, documents from the 1990s were obviously critical. In response to a motion to compel, Morgan

Stanley told the Court in December 2003 that all of its pre-January 2000 e-mail backup tapes had been erased. CPH App. 20 (3/23/05 Order at 3-5); CPH App. 2 (12/17/03 Tr. at 20). A corporate representative likewise testified at deposition that Morgan Stanley's recently constructed e-mail archive did not contain e-mail from the 1990s, claiming that the archive captured e-mails only "going forward." CPH App. 20 (3/23/05 Order at 4-5 & n.3, 10-11 & n.12). Both of those representations were false. In fact, Morgan Stanley had e-mails from at least 9,000 backup tapes from the 1990s that it had not searched in response to CPH's discovery requests. CPH App. 17 (3/14/05 Tr. at 3462); CPH App. 16 (3/14/05 Hr'g Ex. 1, Tab 87). Moreover, Morgan Stanley was loading these tapes into its e-mail archive for its own internal purposes — and the person leading that effort was the very same corporate representative who committed perjury at the deposition. CPH App. 20 (3/23/05 Order at 8-10 & nn.7-12, 13). But based on Morgan Stanley's false representations, the Court entered an Agreed Order on April 16, 2004, requiring Morgan Stanley to search only the oldest full backup tape that it had for each of 36 individual employees, and then to certify compliance. Of course, the Agreed Order made no mention of the archive, because Morgan Stanley's corporate representative had falsely testified that the archive contained no pre-2003 e-mails. *Id.* at 4 n.3, 5 n.12.

Purporting to comply with that Agreed Order, Morgan Stanley provided CPH with a few additional e-mails on May 14, 2004, but did not submit the required certification of compliance until June 23, 2004, following CPH's repeated demands. CPH App. 20 (3/23/05 Order at 5-6). As CPH discovered in subsequent contempt proceedings, Morgan Stanley's legal staff inappropriately attempted to have this certificate signed by a college student who performed data-entry functions. CPH App. 28 (10/20/05 Affidavit of Arthur Riel, filed Nov. 1, 2005). The certificate, as ultimately signed by Arthur Riel, Morgan Stanley's Executive Director of

Technology, stated that Morgan Stanley had produced all the e-mail from the oldest full backup tapes as required, but in fact, as Mr. Riel knew, e-mails from thousands of existing tapes — including more than 1,400 e-mail backup tapes that Morgan Stanley found in a store room in Brooklyn (the “Brooklyn tapes”) and more than 700 8-millimeter e-mail backup tapes (the “8-mm tapes”) — had not been searched or produced. CPH App. 20 (3/23/05 Order at 9-10).

In November 2004 (after the SEC, unbeknownst to CPH and the Court, had uncovered the truth that Morgan Stanley was loading its archive with e-mails from the late 1990s), Morgan Stanley produced to CPH some additional e-mails, which it said were from “newly discovered” tapes. *Id.* at 5, 10 & nn.7-12; CPH App. 13 (3/2/05 Order at 5-6). That representation was false; Morgan Stanley had not “newly discovered” any tapes at that time. But Morgan Stanley continued its efforts to avoid any admission that massive quantities of 1990s e-mails were being uploaded to its archive, where they could be quickly and inexpensively searched. CPH App. 20 (3/23/05 Order at 10 & n.11). Morgan Stanley made the misrepresentation that the produced e-mails were from newly discovered tapes in five separate letters to CPH, and then in a sworn declaration, in testimony in court, and in at least a dozen separate representations by counsel. *E.g.*, CPH App. 4 (1/31/05 MS Opp. re Adv. Inference at 2-4); CPH App. 20 (3/23/05 Order at 5-11); CPH App. 26 (6/17/05 MS Notice at 1-2).

Subsequently, in the weeks preceding the scheduled trial date in early 2005, Morgan Stanley repeatedly made new announcements that it had just discovered hundreds or thousands of backup tapes, each containing massive numbers of potentially responsive e-mails, none of which had been processed or analyzed. CPH App. 20 (3/23/05 Order at 7-8, 10, 14); CPH App. 13 (3/2/05 Order at 7-10). As we now know, the existence of those tapes was known to Morgan Stanley long before those announcements were made.

B. The Court's 2005 Pre-Trial Remedial Rulings.

1. The March 1, 2005 Order.

On January 26, 2005, CPH moved for an adverse-inference instruction on the ground that Morgan Stanley had failed to produce responsive e-mails and to comply with this Court's April 2004 Agreed Order. CPH App. 13 (3/2/05 Order at 6); CPH App. 7 (2/4/05 Order re Add'l Search of E-Mail Tapes); CPH App. 6 (2/3/05 Order Setting Evid. Hr'g). One key issue was when Morgan Stanley's Law Division had learned that Morgan Stanley's June 23, 2004 certificate of compliance with the Agreed Order was false. Morgan Stanley argued that the certification was not false (or at least not knowingly false) because (1) Arthur Riel, the Morgan Stanley Executive Director of Technology who signed the certificate, did not learn until several days after it was filed that the unsearched tapes actually contained e-mails, and (2) Morgan Stanley's in-house lawyers did not learn about the existence of e-mail on the tapes until months later, in October 2004.

Morgan Stanley supported its response with a sworn declaration of James F. Doyle, who was a lawyer and an Executive Director in its Law Division. Doyle's declaration averred that "[a]t the end of October 2004, I learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data on those tapes had not been restored or searched prior to Morgan Stanley's May 14, 2004 e-mail production." CPH App. 3 (1/31/05 Declaration of J. Doyle, at 1). The pleading to which this declaration was attached likewise stated: "At the end of October 2004, James F. Doyle, the attorney at Morgan Stanley who directed Morgan Stanley's prior search for e-mail messages, learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data on those tapes had not been restored or searched prior to the May 14, 2004 e-mail production." CPH App. 4 (1/31/05 MS Opp'n to CPH's Mot. for Adverse Inference Instruction at 2). Lest there be any doubt about the significance of the Doyle

declaration, two days later Morgan Stanley told the Court at a hearing: “The headline is that the first time that anyone — that anyone at Morgan Stanley knew that there was recoverable e-mail data that might fall within the Court’s order was not until late October 2004 consistent with Mr. Doyle’s declaration.” CPH App. 5 (2/2/05 Tr. at 132).

Nine days later, Morgan Stanley filed a supplemental opposition to CPH’s motion, again quoting verbatim from this key passage of the Doyle declaration. *See* CPH App. 8 (2/11/05 MS Supp. Opp’n to CPH’s Mot. for Adverse Inference Instruction, at 2). Later that month, Morgan Stanley quoted from the Doyle declaration again, this time resorting to bold italics: “Morgan Stanley has consistently contended that no one in its Law Division knew of the existence of ***additional recoverable e-mail data on the tapes before October 2004.***” CPH App. 11 (2/28/05 MS Opp’n to CPH’s Mot. for a Default Judgment, at 6 (emphasis in original)).

At an evidentiary hearing on February 14, 2005, as the Court later found, Morgan Stanley continued “to hide . . . its violations and coach witnesses.” CPH App. 20 (3/23/05 Order at 16). For example, one executive’s sworn testimony directly contradicted sworn statements she had given the SEC only three days before. *Id.* at 12. Despite these evasions and lies, the hearing finally established that the e-mail archive, contrary to Morgan Stanley’s representations, contained large amounts of 1990s e-mails that could be easily searched, but had not been produced. CPH App. 9 (2/14/05 Tr. at 26-130); CPH App. 20 (3/23/05 Order at 10 & n.11). CPH then amended its adverse-inference request to seek a default judgment. CPH App. 9 (2/14/05 Tr. at 242-95); CPH App. 14 (3/9/05 CPH Renewed Mot. for Entry of Default Judgment).

On March 1, 2005, this Court ruled on CPH’s motion. The Court concluded that Morgan Stanley had willfully violated court orders and had acted “knowingly, deliberately, and in bad

faith” to “thwart discovery” and “conceal[] its role in the Sunbeam transaction.” CPH App. 13 (3/2/05 Order at 10-11, 14). Calling its chosen sanction the “most conservative available,” this Court shifted the burden of proof on the issues of Morgan Stanley’s knowledge of the fraud and collusion with Sunbeam, but continued to require CPH to prove reliance, the fact of damage, and the amount of damages. *Id.* at 12-14. When that decision was rendered, this Court had no access to information that would have contradicted Morgan Stanley’s claim that in-house counsel was not aware of the recoverable e-mail until October 2004. This Court’s remedial order was therefore based on an assumption that Morgan Stanley’s in-house lawyers were not participants in Morgan Stanley’s misconduct.

2. The March 23, 2005 Remedial Order.

Despite the March 1 ruling, Morgan Stanley’s misconduct continued unabated, and CPH moved for a total default on liability. CPH App. 14 (3/9/05 CPH Renewed Mot. for Entry of Default Judgment). Morgan Stanley again reiterated its story that in-house counsel lacked knowledge or culpability, once more resorting to bold italics: “When Mr. Riel signed his Certification of Compliance in June 2004, he did not know or suspect that there was *any* e-mail on the so-called ‘Brooklyn tapes’ Mr. Riel also testified that . . . he learned that *some* of the Brooklyn tapes contained *some* e-mail . . . , [but] he does not recall *ever* communicating that fact to anyone in the Law Division.” CPH App. 15 (3/13/05 MS Opp’n to CPH Mot. for a Default Judgment (Corrected Version), at 11-12 (emphasis in original)). Morgan Stanley made this point repeatedly throughout its opposition, also stating that, “[w]hile it is true that Mr. Riel and other members of the IT Staff knew in early July 2004 (after Mr. Riel signed his certification) that some of those tapes contained some e-mails going back to the late 1990s, neither Mr. Riel nor anyone else in the IT department informed Morgan Stanley’s lawyers of that fact. . . . It was not until late October 2004, when Morgan Stanley’s Law Division was working with Ms. Gorman

(Mr. Riel's successor) on some issues regarding an unrelated regulatory production of e-mails, that the Law Division learned, for the first time, that some of the tapes contained e-mails." *Id.* at 20. Morgan Stanley insisted that this alleged state of affairs "accounts for Morgan Stanley's representation to this Court that late October 2004 marks the first time that the in-house legal staff was aware of this fact." *Id.*

In addition, rather than relying solely on Mr. Doyle's word, Morgan Stanley also enlisted James P. Cusick, Morgan Stanley's Co-Head of Litigation, to oppose the sanctions motion. Morgan Stanley argued: "[W]hether the affidavit had come from Mr. Doyle, Mr. Cusick, or any other member of Morgan Stanley's Law Division, the content would have been the same: the Law Division did not learn that some of the newly discovered tapes contained some e-mails until October 2004. While Morgan Stanley did not formally withdraw the May [sic] 2004 Certification of Compliance at that time, it did promptly alert outside counsel, which promptly alerted CPH that new e-mail tapes had been discovered and that they would be searched for responsive documents." *Id.* at 31.

Three days later, Morgan Stanley told the Court that "[t]he delay between when the Law Division learned [that the found tapes contained e-mail] (late October 2004) and when [Morgan Stanley's counsel] wrote CPH's counsel (November 17, 2004) was minor and did not prejudice CPH." CPH App. 18 (3/15/06 Morgan Stanley's Overnight Response to CPH's Additional Submission in Support of its Motion for Default, at 6).

On March 23, 2005, after a further evidentiary hearing, this Court declined to grant the sanction that CPH requested, but imposed a second, carefully calibrated remedial order, which was not intended to punish Morgan Stanley, but to "level the playing field." CPH App. 20 (3/23/05 Order at 17-18). After stating that Morgan Stanley's "discovery abuses and

misrepresentations . . . would take a volume to recite,” the Court expressly found that Morgan Stanley, still hoping to conceal evidence, had violated two orders entered since March 1 and had coached witnesses to withhold critical information. *Id.* at 15-16. The Court identified 23 additional recent instances of misconduct. *Id.* at 11-14, 16. The Court also found that Morgan Stanley had failed to notify CPH and the Court in a timely manner concerning the falsehood of the June 2004 certificate of compliance, which averred that all relevant e-mails had been produced — even though, among other deficiencies, the “Brooklyn tapes” and the “8-mm tapes” had not even been searched.

While the Court found that in-house counsel knew at the time the June 2004 certificate of compliance was served that it was false because they knew about “additional unsearched backup tapes,” the Court did not find that these lawyers knew that the “additional unsearched backup tapes” contained e-mails. CPH App. 20 (3/23/05 Order at 5 n.4, 13). At that point, despite the extensive revelations of misconduct committed by Morgan Stanley, the Court did not have evidence that contradicted Morgan Stanley’s repeated assertions and sworn statements that its in-house counsel did not know until October 2004 about the e-mails contained in the unsearched tapes.

Accordingly, the Court declined to enter the total default that CPH had requested. *Id.* at 16-18. Instead, the Court found that Morgan Stanley’s “acts in depriving CPH of crucial documents and discovery to prove its claims require that certain facts be removed from dispute, in order to level the playing field.” CPH App. 22 (5/16/05 Order). It was necessary, in this Court’s view, to deem “established for all purposes” those elements as to which the Court previously had reversed the burden of proof. CPH App. 20 (3/23/05 Order at 17). The Court continued, however, to require CPH to prove reliance, as well as the fact and amount of

damages. In addition, the Court relieved Morgan Stanley of any further obligation to produce e-mails. Without evidence of Morgan Stanley's lawyers' misconduct, the Court chose to afford relief that was remedial rather than punitive, and designed to "level the playing field," rather than vindicate the authority of the Court.

3. Morgan Stanley's False Statements in Conjunction with the Litigation-Misconduct Statement.

The Court's partial-default order also mandated that a statement describing Morgan Stanley's e-mail misconduct would be read to the jury for its consideration in determining the propriety of punitive damages. CPH App. 20 (3/23/05 Order at 17). On May 12, 2005, when the Court was shaping the precise wording of the litigation-misconduct statement, Morgan Stanley filed a 235-page proffer that made a number of additional important misrepresentations to the Court. Morgan Stanley contended that its failure to comply with court orders relating to e-mail production was merely the result of a series of unfortunate "mistakes," not a systematic effort to conceal fraud. And Morgan Stanley again claimed that its in-house counsel did not know that there was e-mail on the Brooklyn tapes and the 8-mm tapes until October 2004. CPH App. 21 (5/12/05 MS Addendum to Opposition to CPH Second Renewed Mot. for Correction). Three high-ranking in-house attorneys for Morgan Stanley — James P. Cusick (Morgan Stanley's co-head of litigation), Soo-Mi Lee (executive director in Morgan Stanley's Law Division), and James F. Doyle (the executive director in the Law Division who had filed the false declaration in January 2005) — submitted offers of proof asserting that they had first learned there was e-mail on the Brooklyn tapes in late October 2004 and on the 8-mm tapes in November 2004. Cusick and Lee both asserted that they knew of no one in Morgan Stanley's Law Division who knew this information earlier. CPH App. 21 (Def.'s Offer of Proof re James P. Cusick at ¶¶ 3-4; Def.'s Offer of Proof re Soo-Mi Lee at ¶¶ 3-4 (filed 5/12/05)).

Morgan Stanley continued to press these false contentions at a hearing on May 16, 2005, in the context of an argument about how the Court should instruct the jury with regard to punitive damages. Morgan Stanley asked the Court to tell the jury that “[t]here is no evidence that any lawyer in Morgan Stanley’s Law Division was aware prior to October 2004 that any of the tapes contained any e-mail.” CPH App. 23 (5/16/05 Tr. at 15266). The Court did not accept Morgan Stanley’s proposal verbatim. *Id.* at 15266, 15267. The Court told the jury that Morgan Stanley’s in-house lawyers knew about the *existence* of the backup tapes before October 2004. In fact, however, Morgan Stanley’s in-house lawyers also actually knew, long before October 2004, that the tapes contained e-mails — a fact which also should have been brought to the jury’s attention, as CPH requested. Because the Court accepted Morgan Stanley’s assertions and sworn statements (later shown to be false) that the lawyers knew at that time that there were backup tapes, but not that they contained e-mail, the Court denied CPH’s request. CPH App. 24 (5/17/05 Tr. at 15459).

Two days later, on May 18, in vetting the PowerPoint presentation that CPH planned to use in its closing argument on punitive damages, Morgan Stanley repeated the same false story, again achieving Morgan Stanley’s desired results. Morgan Stanley told the Court that there was evidence “that people in Morgan Stanley’s Law Division” knew in October 2004 of “backup tapes but not that the backup tapes contained e-mail. And it’s undisputed that they learned that these contained e-mail in October 2004.” CPH App. 25 (5/18/05 Tr. at 15607). When the Court responded that “It turned out they did contain e-mail,” Morgan Stanley replied, “They didn’t know it, Your Honor.” *Id.* at 15607. The Court then turned to CPH’s counsel and asked: “Can you change it [to] ‘... did not know about unsearched backup tapes later found to contain e-mail’ or something?” *Id.* at 15607. When CPH balked at this suggestion, Morgan Stanley

persisted: “Your Honor, it’s undisputed in the record that the lawyers at Morgan Stanley learned that e-mail was on these tapes in October 2004. There’s been no contrary evidence to this. . . . They knew about the tapes in June, but they didn’t know they contained e-mail.” *Id.* at 15608. The Court required CPH to redo its closing PowerPoint presentation, explaining: “We don’t know if [the Morgan Stanley in-house lawyers] knew [the backup tapes] contained e-mail.” *Id.* at 15608. Morgan Stanley had succeeded in convincing the Court that Morgan Stanley’s in-house lawyers, while aware of the tapes’ existence, had somehow remained unaware that the tapes contained e-mail until October 2004. Morgan Stanley’s arguments to that end, as we now know, were part of the fraud, but those arguments succeeded in ensuring that the arguments made to the jury were deliberately and improperly skewed in Morgan Stanley’s favor.

The jury nonetheless found Morgan Stanley liable. The jury found that CPH had relied on Sunbeam’s false statements, found that these false statements had damaged CPH, and awarded both compensatory and punitive damages to CPH. The jury found that CPH had suffered \$604,334,000 in actual damages, and it awarded CPH \$850 million in punitive damages.

C. Post-Trial Revelations of Previously Undisclosed Morgan Stanley Misconduct.

1. The June 17, 2005 Notice.

On June 17, 2005, after the jury had rendered its verdicts, and only days after Morgan Stanley, in post-trial motions, had repeated its false assertions as to when Morgan Stanley’s in-house counsel learned of e-mail on the Brooklyn and 8-mm tapes, Morgan Stanley filed a document which it styled a “Notice.” The Notice expressly retracted 15 statements, including the entirety of the Doyle declaration filed in conjunction with Morgan Stanley’s January 2005 opposition to sanctions and various parts of the May 12, 2005 proffer. Each of the retracted statements had asserted that Morgan Stanley’s “Law Division was not aware that any of the

Brooklyn Tapes contained e-mail until October 2004 and was not aware of certain 8-mm tapes until November 2004.” Without elaboration, the Notice recited that in fact “the Law Division was aware in July 2004 that some of the Brooklyn Tapes contained e-mail and that certain 8-mm tapes existed.” CPH App. 26 (6/17/05 MS Notice at 1-2 & n.1).

By acknowledging that the Law Division knew in July 2004 that the Brooklyn tapes contained e-mail, the June 17, 2005 Notice admitted that Morgan Stanley’s repeated representations to the Court about when its Law Division knew of the existence of unsearched e-mail — which critically affected both the severity of the sanctions imposed and the evidence and argument provided to the jury — were false. The June 17 Notice further claimed, without any sworn basis and without even supplying the pertinent documents, that “Morgan Stanley . . . determined” that its prior statements were false “[a]s a result of a review of e-mails discovered by a new e-mail search.” *Id.* at 1. The Notice contained no explanation of how “Morgan Stanley” could be said to have previously lacked knowledge of facts that were known to its own in-house counsel, including those high-ranking in-house lawyers who made false statements to the Court. Nor did the Notice purport to explain the circumstances of this “new e-mail search” or when exactly it had occurred. Morgan Stanley chose not to identify what “new” information had come to light, how it came to light, when it came to light, or who within Morgan Stanley was aware of it.

2. The Criminal Contempt Proceedings.

About one month after this Court entered the original final judgment and Morgan Stanley filed its notice of appeal, CPH filed a criminal contempt petition against Morgan Stanley, its general counsel, and three in-house lawyers who had offered false proffers in May 2005 as to when they learned that the Brooklyn tapes contained e-mails and when they learned of the existence of the 8-mm tapes. CPH App. 27 (7/27/05 CPH Petition re Criminal Contempt). In

defense of the contempt proceedings, each of the three in-house lawyers claimed, in unsworn statements, that they realized the falsity of their proffers only after an e-mail search uncovered e-mails showing the state of their knowledge in July 2004. They did not explain why each of them had forgotten the date in so short a period (between July 2004 and the March 2005 date of Morgan Stanley's assertions about the knowledge of in-house counsel), or why they all believed the same false fact (that they had only learned in October 2004 that the Brooklyn tapes contained e-mails and only learned in November 2004 that the 8-mm tapes existed). CPH App. 29 (11/3/05 Tr. at 33-36); CPH App. 26 (6/17/05 MS Notice at 1). It was also supposedly coincidental that they all remembered in June 2005, after the remedial decisions and the trial, that they in fact were aware by July 2004 that the Brooklyn tapes contained e-mails and that the 8-mm tapes existed. There has not yet been any discovery into the circumstances of the e-mail search that purportedly led to the June 17, 2005 Notice, or about what that search showed as to who at Morgan Stanley knew the key facts about the tapes.

After a hearing, but with the foregoing questions still unanswered, this Court issued an order on November 10, 2005 declining to rule on the criminal contempt petition pending disposition of Morgan Stanley's appeal. The Court concluded that the allegedly contumacious conduct was sufficiently intertwined with the matters on appeal, including the propriety of the March 2005 remedial rulings, to divest the Court of jurisdiction.

The Court also noted that, during the hearing on the petition, Morgan Stanley had refused repeated requests to take a clear stand on the meaning of the June 17, 2005 Notice — specifically, whether it should be read to state that Morgan Stanley's in-house lawyers first became aware *in* July 2004, or *no later than* July 2004, that there was e-mail on some of the Brooklyn tapes and that the 8-mm tapes existed. CPH App. 29 (11/3/05 Tr. at 9-25); CPH

App. 20 (3/23/05 Order at n.4). The distinction was important because Morgan Stanley certified on June 23, 2004, that all relevant e-mails had been produced — even though the Brooklyn and 8-mm tapes had not yet been searched. And Morgan Stanley had previously justified this false certification on the basis that its in-house attorneys were unaware at the time of the certification that the Brooklyn tapes contained e-mail or that the 8-mm tapes existed. If Morgan Stanley's in-house lawyers were aware of e-mail on any of these various tapes prior to July 2004, this justification would simply evaporate.

3. The December 21, 2006 Notice.

More than a year later, and some six months after the Fourth District had heard oral argument in Morgan Stanley's appeal from the judgment, Morgan Stanley filed a further "Notice" addressing (but not curing) its studied imprecision. The December 21, 2006 Notice stated for the first time that "Morgan Stanley's Law Division was aware of the existence of the referenced e-mail back-up tapes" — by which Morgan Stanley apparently meant both the Brooklyn tapes and the 8-mm tapes — "and the presence of e-mail on some of those tapes prior to July 2004." CPH App. 30 (12/21/06 MS Notice).

In filing this December 21, 2006 Notice, Morgan Stanley effectively demonstrated that the peculiar phrasing of its June 17, 2005 Notice — and all the equivocating that it triggered at the criminal contempt hearing — had been no accident. Before, during, and after trial, and, indeed, even now, Morgan Stanley refused to come clean about when its Law Division first learned that the Brooklyn and 8-mm tapes contained e-mail. Instead, Morgan Stanley's December 21, 2006 Notice — when it finally came (on the eve of a holiday weekend) one year after the criminal contempt hearing — came with no sworn affidavit, no pertinent document, no explanation of any new information that triggered the Notice, and no explanation of how or when

that information came to light. Moreover, it “clarified” only one portion of the prior submission, and it did that in a way that raised more questions than answers.

Morgan Stanley’s admission that its in-house counsel knew of unsearched e-mails prior to July 2004 shows the falsity of the claims Morgan Stanley made — in its remediation proceedings briefs, in the Doyle declaration, and in its repeated statements in May and June 2005 (after this Court had issued its remedial orders) — that Morgan Stanley’s in-house counsel were not aware of the falsity of the June 2004 certificate of compliance at, or soon after, the time it was filed. In other words, this Court’s remedial orders were based on only a part of Morgan Stanley’s sanctionable conduct. Morgan Stanley committed additional sanctionable conduct after this Court entered its remedial orders and continues to conceal its misconduct even today.

There may well be much more sanctionable conduct that Morgan Stanley continues to conceal through the obviously intended imprecision of its “Notices.” We do not yet know, for example, how the decision to submit the false June 2004 certificate of compliance came about — something that potentially could be revealed by the e-mails Morgan Stanley now has in its possession but has not disclosed. We do not yet know whether Morgan Stanley was already aware, at the time of the June 2005 Notice and the November 2005 contempt hearing, that in-house counsel knew “prior to July 2004” that the tapes contained e-mails. We do not yet know whether the searches Morgan Stanley conducted revealed that even more people within the company were aware that Morgan Stanley was submitting a false certificate of compliance, presenting false facts to the Court, and arguing that these false facts were sufficient to make sanctions inappropriate. And we do not yet know whether Morgan Stanley is even now being truthful in explaining when it found the e-mails showing the knowledge of its in-house counsel. Morgan Stanley’s latest version of its evolving story states that in-house counsel knew “prior to

July 2004.” Does that mean that Morgan Stanley had the e-mails demonstrating this knowledge at the time of the remedial order hearings in February and March 2005?

In any event, the post-trial disclosures that already have been made show that the Court was unaware of egregious misconduct by Morgan Stanley’s in-house legal staff at the time the Court entered its remedial orders, and even at the time of trial. Morgan Stanley’s misconduct was more widespread, more shocking, more needful of remediation, and more deserving of punishment than the Court knew. Further investigation into what Morgan Stanley knew, and when it knew it, will demonstrate even more conclusively the extent to which Morgan Stanley corrupted the judicial process, and, hence, the need for relief under Section 1.540(b).

D. Fourth District Court of Appeal’s Ruling.

On appeal, the Fourth District reversed the trial court’s judgment, on the sole ground that CPH had not adequately established its damages because it had not proven the value of the Sunbeam stock on the date of the transaction. The Fourth District did not disturb this Court’s remedial orders and did not address the misconduct by Morgan Stanley that came to light only long after those sanctions were imposed. Tellingly, on appeal, Morgan Stanley never challenged any of this Court’s factual findings about its extensive and egregious litigation misconduct.

ARGUMENT

I. RULE 1.540(b) PROVIDES AN APPROPRIATE AVENUE OF RELIEF FROM MORGAN STANLEY’S FRAUD, AND A RULE 1.540(b) MOTION IS PROPERLY BROUGHT AT THIS TIME.

For business executives to hide or destroy evidence is a serious affront to the administration of justice. But when lawyers — officers of the court — connive, conceal, or cooperate in hiding or destroying evidence, the justice system simply cannot work, and the severest of sanctions must be imposed on those who are caught.

Thus, while the Court was considering appropriate remedial orders for Morgan Stanley's discovery misconduct, Morgan Stanley repeatedly argued for leniency on the specific ground that its in-house lawyers were not involved in the misconduct, and, indeed, were not aware until "late October 2004" that Morgan Stanley's unsearched backup tapes contained emails. Morgan Stanley repeated that story — which was not true — through the end of the trial. After the trial was over, Morgan Stanley acknowledged that its in-house lawyers actually knew about the email "in July 2004." That was not true either — at least insofar as the statement was meant to imply that the in-house lawyers acquired this knowledge in July 2004, which the statement clearly was meant to do. Many months later, Morgan Stanley once more revised its story, telling a bit more of the truth: its in-house lawyers actually knew that the backup tapes contained emails sometime "prior to July 2004."

To this day, Morgan Stanley has not told the Court or CPH exactly when it was — in the days, months, or years "prior to July 2004" — that its in-house lawyers actually learned these facts.¹ But the point is that Morgan Stanley, in an effort to avoid serious sanctions, lied — repeatedly — to the Court about what its in-house lawyers knew and when they knew it. The fraud that Morgan Stanley practiced on the Court and CPH is precisely the kind of fraud that Florida Rule of Civil Procedure 1.540(b) was meant to address.

Rule 1.540(b)(3), which allows the setting aside of a judgment infected by fraud or other serious misconduct, provides that:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons: . . . (3) fraud (whether heretofore denominated intrinsic or

¹ Morgan Stanley's artful lack of precision as to the exact date on which its in-house lawyers learned this fact cries out for further investigation, given the June 23, 2004 date of the false certification.

extrinsic), misrepresentation, or other misconduct of an adverse party The motion shall be made within a reasonable time, and . . . not more than 1 year after the judgment, decree, order, or proceeding was entered or taken . . . This rule does not limit the power of a court . . . to set aside a judgment or decree for fraud upon the court.

The purpose of this part of Rule 1.540(b), like that of Federal Rule 60(b), upon which it is modeled, is to "provid[e] relief for judgments that were unfairly obtained, not those that are factually inaccurate. The rule is an 'escape valve to protect the fairness and integrity of litigation in federal courts.'" 12 J. Moore et al., *Moore's Federal Practice*, § 60[1][d] (Matthew Bender 3d ed. 2007) (footnotes omitted).² Rule 1.540(b) permits the court to set aside a judgment based on a fraud perpetrated by the prevailing party, whether the fraud is directed against only the adverse party or against the judicial process. Here, the fraud perpetrated by Morgan Stanley was both "a fraud upon the court" and a fraud against CPH, and the judgment should be set aside for each of these reasons.

CPH's motion is properly brought at this time. The fact that a case has been the subject of an appeal does not alter the authority of a trial court to entertain a motion for relief from judgment on remand. *See, e.g., Ohio Casualty Group v. Parrish*, 350 So. 2d 466, 469 (Fla. 1977) (citing *Standard Oil Co. of California v. United States*, 429 U.S. 17, 17-18 (1976)); *Sellers v. General Motors Corp.*, 735 F.2d 68, 69 (3d Cir. 1984) ("Our affirmance on [the existing record] did not limit the power of the district court to consider Rule 60(b) relief.")³

² *See Molinos Del S.A. v. E.I. DuPont de Nemours and Co.*, 947 So. 2d 521, 524 (Fla. 4th DCA 2006) (Rule 1.540(b) follows Rule 60(b) of the Federal Rules of Civil Procedure, and the Florida courts look to federal law in construing it).

³ The Fourth District's direction to enter the judgment in favor of Morgan Stanley was itself an outgrowth of Morgan Stanley's successful concealment of the true magnitude and extent of its litigation misconduct. Had the falsity of Morgan Stanley's representations concerning the involvement of its in-house attorneys been known in 2005, this Court certainly could have imposed contempt sanctions, which, among other things, could have precluded Morgan

Some types of Rule 1.540(b) motions must be brought within a year from the entry of the judgment from which relief is sought.⁴ If that requirement is applicable to this case, it is clearly met. In a case like this one, where an earlier judgment has been reversed on appeal, the one-year period runs from the date of the new judgment entered pursuant to the appellate court's mandate. That is because it is the new judgment, rather than the previous, now-reversed judgment, from which relief is being sought. *See Molinos*, 947 So. 2d at 524-25 (reversing denial of Rule 1.540(b) motion).

In *Molinos*, trial court judgments in favor of the plaintiffs had been reversed on appeal. The plaintiffs then filed Rule 1.540(b)(2) motions based on newly discovered evidence of defendants' discovery violations. *Molinos*, 947 So. 2d at 523-24. (Motions for relief from a judgment based on newly-discovered evidence are among those that must be made within one year of the entry of judgment.) Because the Rule 1.540(b)(2) motions in *Molinos* were filed more than a year after the original judgments had been entered, the Circuit Court denied the motions as untimely. *Id.* On appeal, the Fourth District reversed, holding that the Rule 1.540(b)(2) motions were timely because the relevant judgments "were those entered after [the defendant's] successful appeals." *Id.* at 525; *cf. Gegenheimer v. Galan*, 920 F.2d 307, 310 (5th Cir. 1991) ("[i]f an appeal results in a substantive change [in the judgment], then the time

Stanley from pursuing any appeal until it had purged itself of its contempt by complying fully with the Court's orders. *See, e.g., Davidson v. District Court of Appeal, Fourth Dist.*, 501 So. 2d 603, 604 (Fla. 1987); *Gazil v. Gazil*, 343 So. 2d 595, 597 (Fla. 1977); *Pasin v. Pasin*, 517 So. 2d 742, 742 (Fla. 4th DCA 1987).

⁴ As we show below, motions for relief from a judgment based on fraud against a party must be made within one year of the entry of the judgment to which the motion relates. However, a motion for relief from a judgment based on fraud against the court may be made at any time. While this distinction is immaterial to the facts of the present case, the distinction is important insofar as it figures in some of the cases discussed in the Motion.

[for filing a Rule 60(b)(1) motion] would run from the substantially modified order entered on mandate of the appellate court”) (quoting *Transit Cas. Co. v. Security Trust Co.*, 441 F.2d 788, 791 (5th Cir. 1971)).

As in *Molinos*, there was no adverse judgment from which CPH could have sought relief until this Court entered the judgment mandated by the Fourth District. Accordingly, this is the appropriate time to address CPH’s motion for relief from the judgment based on Morgan Stanley’s fraud.

II. THE JUDGMENT IN THIS CASE SHOULD BE SET ASIDE UNDER RULE 1.540(b).

The fraud committed by Morgan Stanley was both a fraud upon the Court and a fraud on CPH, and it must be redressed for each of these reasons. First, Morgan Stanley and its attorneys committed a fraud upon the Court, which perverted the course of justice and was an affront to the proper administration of justice and the integrity of the judicial system. Second, the fraud committed by Morgan Stanley and its attorneys also constituted a massive fraud that severely impacted CPH and deprived it of its right to a fair and effective adjudication of its claims against Morgan Stanley. Because this case involves a fraud upon the Court, the law does not require that actual prejudice be established. The very fact of the fraud mandates remedial action. Even if prejudice were relevant, however, the law would assign to Morgan Stanley the burden of proving that CPH was not prejudiced by Morgan Stanley’s fraud. In fact, the prejudice to CPH is manifest.

A. Morgan Stanley Concealed From The Court And CPH The Fact That Its Law Division Knew And Participated In The Concealment And Destruction Of Evidence, Thereby Misrepresenting The True Scope Of Its Wrongdoing.

It is beyond dispute that, on each of the occasions when this Court attempted to “level the playing field,” Morgan Stanley had committed sanctionable conduct that warranted corrective

action. On appeal, Morgan Stanley did not challenge any of the Court's findings in that regard; Morgan Stanley challenged only the severity of the final pre-trial sanction order, imposed on March 23, 2005 — which the Fourth District did not disturb. As the Court's unchallenged findings show, Morgan Stanley contumaciously defied numerous Court orders and lied repeatedly to CPH and the Court, even in sworn statements, about the existence and availability of emails and other evidence.

Morgan Stanley committed fraud on the Court in connection with the sanctions motions by repeatedly telling the Court, in pleadings, arguments, offers of proof, and sworn statements, that its in-house lawyers were not aware of the existence of unsearched and unproduced emails (or of the improper destruction of emails) until "late October 2004" — four months after Morgan Stanley's false June 2004 certification that its search and production were complete. After repeatedly using these false representations to support its pleas for leniency, Morgan Stanley admitted, in June 2005 (one month after the return of the jury's verdict), that the Morgan Stanley Law Division was actually aware in July 2004 that the unsearched Brooklyn tapes contained email. But even this "admission" continued Morgan Stanley's deceit that the in-house lawyers did not know — until after the certification was made — that the Brooklyn tapes contained email (or that the 8-mm tapes existed). In December 2006, however, Morgan Stanley finally added the admission that "Morgan Stanley's Law Division was aware of the existence of the [Brooklyn and 8-mm] email backup tapes and the presence of email on some of those tapes *prior to* July 2004" (emphasis added). The only reasonable inference to be drawn from these tortured "admissions" is that the Law Division knew of unsearched emails, and thus knew that the June 23, 2004, certification was false, at the time the certification was made. Indeed, even with these two additional "Notices," Morgan Stanley has refused to disclose precisely when its Law Division —

supposedly charged with ensuring compliance with applicable law — actually learned for the first time about the existence of email on the Brooklyn or 8-mm tapes. It seems plausible that the Law Division was aware of these facts from the very beginning of this litigation and lied from the date of its first, fraudulent response to CPH's Notice to Produce Documents in June 2003.

B. Morgan Stanley's Actions Constitute Fraud Upon The Court And Therefore Require The Setting Aside Of The Judgment Without Any Need To Demonstrate Prejudice To CPH.

Morgan Stanley repeatedly lied about the Law Division's knowledge of the discovery misconduct to ensure that the Court would not impose the more substantial sanctions that would have been imposed for lawyer, rather than simply lay, misconduct. That pattern of lies and concealment as to the Law Division's knowledge constituted a fraud upon the Court warranting relief from the judgment under Rule 1.540(b). In cases of fraud upon the court, the granting of relief does not require proof of prejudice, but such proof is abundant here in any event.

1. The Involvement Of Morgan Stanley's Law Division In Its Unconscionable Scheme To Conceal Documents And Misrepresent Their Existence Resulted In A Fraud Upon The Court Sufficient To Set Aside The Judgment Under Rule 1.540(b).

Under the saving clause of Rule 1.540(b), courts retain the power to "set aside a judgment or decree for fraud upon the court." Fla. R. Civ. P. 1.540(b). Fraud upon the court is a ground for relief that may be raised at any time, including in a Rule 1.540(b) motion. *DeClaire v. Yohanan*, 453 So. 2d 375 (Fla. 1984), *superseded by rule on other grounds as recognized in Cerniglia v. Cerniglia*, 679 So. 2d 1160, 1163 n. 3 (Fla. 1996). Fraud upon the court occurs where "a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense."

Andrews v. Palmas De Majorca Condominium, 898 So. 2d 1066, 1069 (Fla. 5th DCA 2005) (citing *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989)). Morgan Stanley's own admissions to the Court — that it misrepresented its in-house attorneys' knowledge of the email back-up tapes — demonstrates that Morgan Stanley sought to influence the Court improperly and to effectuate an unconscionable scheme designed to interfere with the Court's ability to adjudicate the original case fairly, impartially, and with full knowledge of all relevant facts.

Although Florida courts have not previously addressed a situation identical to that presented here, other jurisdictions have set aside judgments because of frauds upon the court nearly identical to that perpetrated by Morgan Stanley. For example, in *Chewning v. Ford Motor Co.*, 579 S.E.2d 605 (S.C. 2003), the South Carolina Supreme Court held that an attorney's subornation of perjury or intentional concealment of documents constituted a fraud upon the court that warranted setting aside a prior judgment under the South Carolina version of Rule 1.540(b). *Id.* at 610-11. Ford's attorneys and expert witness had devised a secret strategy that involved paying an expert witness substantial sums of money to give favorable testimony for Ford, with Ford's attorneys concealing documents concerning this arrangement as well as other documents damaging to Ford's case. *Id.* at 611-12.

The *Chewning* court emphasized that the misconduct was especially egregious because of the involvement of Ford's lawyers: "Attorney fraud calls into question the integrity of the judiciary and erodes public confidence in the fairness of our system of justice. Accordingly, where an attorney embarks on a scheme to either suborn perjury or intentionally conceal documents, . . . a fraud upon the court occurs." *Id.* at 611. Unlike perjury or document concealment by a party or witness, "where an attorney — an officer of the court — suborns perjury or intentionally conceals documents, he or she effectively precludes the opposing party

from having his day in court,” thereby interfering with the court’s ability to adjudicate a case impartially. *Id.* at 611.

Similarly, in *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1131 (9th Cir. 1995), the U.S. Court of Appeals for the Ninth Circuit vacated a judgment because the defendant, through Edward Bartlett, its in-house general counsel, had worked “an unconscionable scheme” designed to defraud the court through “misleading, inaccurate, and incomplete responses to discovery requests, the presentation of fraudulent evidence, and the failure to correct the false impression created by [the defense expert’s] testimony.” *Id.* at 1131-32. The Ninth Circuit found that Bartlett, who had “participated significantly” in the original litigation, by “attending the trial on [the defendant’s] behalf, gathering information to respond to discovery requests and framing the answers,” was responsible to the court for his actions during discovery, even though he was not admitted to practice in the state, did not “enter an appearance in [the original litigation], was not admitted pro hac vice, and did not sign any documents filed with the court.” *Id.* Nonetheless, the court treated his misconduct as that of an “officer of the court” and thus sufficient to warrant relief from the judgment. *Id.*

As *Chewing* and *Pumphrey* demonstrate, the involvement of a party’s in-house lawyers in a deliberate scheme to conceal evidence and misrepresent its existence constitutes fraud upon the court and warrants setting aside a judgment. *See also Synanon Foundation, Inc. v. Bernstein*, 502 A.2d 1254 (D.C. 1985) (where plaintiff’s in-house attorneys concealed, altered, and destroyed evidence responsive to defendants’ discovery requests and later misrepresented its existence to the trial court, plaintiff and its attorneys perpetrated a fraud upon the court).

Here, there is no question that Morgan Stanley, with substantial involvement from its in-house attorneys, deliberately concealed responsive discovery and lied and misrepresented the

existence of responsive discovery to the trial court and CPH. Several high-ranking lawyers in Morgan Stanley's Law Division submitted offers of proof or sworn statements to the trial court, asserting that no one in the Law Division was aware until October 2004 that numerous back-up tapes contained email from relevant time periods. Morgan Stanley itself later admitted that these declarations and offers of proof were false and that Morgan Stanley's in-house attorneys actually knew the back-up tapes contained emails "prior to July 2004." Furthermore, the fraud Morgan Stanley perpetrated on this Court was so pervasive and so well-planned that it fully and completely interfered with both the jury's and the Court's ability to provide a fair and impartial adjudication of the matter. Morgan Stanley's repeated misrepresentations, effectuated through its Law Division's offers of proof and sworn statements, improperly influenced the Court's decisions regarding sanctions and jury instructions. Morgan Stanley's conduct clearly amounted to a fraud upon the trial court and CPH is entitled to relief from the judgment.

2. Because Morgan Stanley And Its In-House Lawyers Perpetrated A Fraud On The Court, CPH Need Not Show That Morgan Stanley's Fraudulent Conduct Caused Prejudice To CPH To Secure Relief From The Judgment.

As numerous courts have held, fraud upon the court is such "an affront to the administration of justice" that "a litigant who has been defrauded need not establish prejudice" to secure relief from the judgment. *Chewning*, 579 So. 2d at 611 n.7 (citation omitted); *see also Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 247 (1944) (litigant who attempts to defraud the court cannot deny effectiveness of fraud after the fact), *overruled on other grounds by Standard Oil Co. of California v. United States*, 429 U.S. 17 (1976); *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1120 (1st Cir. 1989) (same); *In re Intermagnetics America, Inc.*, 926 F.2d 912 (9th Cir. 1991) (prejudice is not relevant to inquiry regarding whether judgment should

be set aside for fraud on the court); *Pumphrey*, 62 F.3d at 1132-1133 (same); *Dixon v. C.I.R.*, 316 F.3d 1041, 1046 (9th Cir. 2003) (“Prejudice is not an element of fraud on the court.”).

Rather, “the inquiry as to whether a judgment should be set aside for fraud upon the court focuses on . . . whether the alleged fraud harms the integrity of the judicial process.” *In re Intermagnetics America, Inc.*, 926 F.2d at 917. In *Pumphrey*, for example, the Ninth Circuit held that the defendant’s in-house counsel undermined the judicial process when he failed to disclose responsive discovery materials, mischaracterized test results in response to plaintiff’s discovery requests, and failed to correct false and misleading testimony given by the defense expert witness at trial. *Pumphrey*, 62 F.3d at 1133. Quoting the district court, the Ninth Circuit emphasized that the lawyer, as a “licensed attorney,” was aware of the “damage failure to abide by [discovery rules] and the rules of professional responsibility can wreck . . . [on] the larger framework of confidence in the adversary trial system.” *Id.* (citation omitted). It did not matter, the Ninth Circuit emphasized, whether the plaintiff could show that it would have prevailed in the original litigation if the lawyer had not perpetrated a fraud on the court. *Id.* at 1132. Because of the damage done to the integrity of the judicial process itself, the plaintiff was entitled to relief from the fraudulently procured judgment and a new trial on all issues. *Id.* at 1133-34.

Like the misconduct of the attorneys in *Pumphrey* and *Chewning*, Morgan Stanley’s in-house attorneys engaged in fraudulent conduct that not only severely hampered CPH’s access to responsive discovery materials, but also interfered with the Court’s ability to adjudicate the original action impartially. Morgan Stanley cannot now be heard to claim that its conduct did not have the consequences it intended. CPH is entitled to a fair, impartial trial, and is therefore entitled to relief from the judgment.

C. Morgan Stanley's Fraud Had A Prejudicial Effect on the Outcome of the Litigation And Prevented CPH From Fully and Fairly Presenting Its Case.

As we have shown, the granting of relief from a judgment procured by fraud upon the court does not require a showing of prejudice to the non-prevailing party. The harm to the justice system is enough. Even in those few cases in which courts have found prejudice to be relevant, however, they have held that the existence of prejudice should be presumed, and that the party defending the judgment should be required to prove the absence of prejudice by clear and convincing evidence. *See, e.g., Anderson v. Cryovac, Inc.* 862 F.2d 910, 925-26 (1st Cir. 1988) (showing of knowing or deliberate misconduct creates presumption of prejudice sufficient to decide the issue unless rebutted by clear and convincing evidence, with any uncertainties “redound[ing] to the movant’s benefit”); *Venture Indus. Corp. v. Autoliv ASP, Inc.*, 457 F.3d 1322, 1332-34 (Fed. Cir. 2006) (same).

In any event, it is clear beyond doubt in the present case that Morgan Stanley’s fraudulent conduct had a prejudicial effect on the outcome of the litigation and prevented CPH from fully and fairly presenting its case. Under any relevant standard, therefore, CPH is entitled to relief.

1. Morgan Stanley's Fraud With Respect To What Its Law Division Knew Was Critical To The Resolution Of The Sanctions Motions, And, Hence, To The Outcome Of The Case.

It was clear, when the Court made its sanctions decisions, that Morgan Stanley had committed serious, sanctionable misconduct. The only question was *how* substantial the sanction should be. Thus, Morgan Stanley needed to portray itself in as good a light as possible. That is why, in its March 13, 2005 opposition to CPH’s motion for default, Morgan Stanley drew a sharp distinction between what its IT staff knew and what its legal staff (allegedly) knew:

While it is true that Mr. Riel [the IT manager who signed the e-mail certification] and other members of the IT Staff knew in early July 2004 (after Mr. Riel signed his certification) that some of those tapes contained some e-mails going back to the late 1990s, neither Mr. Riel nor anyone else in the IT department informed

Morgan Stanley's lawyers of that fact. . . It was not until late October 2004, when Morgan Stanley's Law Division was working with Ms. Gorman (Mr. Riel's successor) on some issues regarding an unrelated regulatory production of e-mails, that the Law Division learned, for the first time, that some of the tapes contained e-mails. That accounts for Morgan Stanley's representation to this Court that late October 2004 marks the first time that the in-house legal staff was aware of this fact.

CPH App. 15 (3/13/05 MS Opp'n to CPH Mot. for a Default Judgment at 20); see also *id.* at 20, 31 (“[W]hether the affidavit had come from Mr. Doyle, Mr. Cusick, or any other member of Morgan Stanley's Law Division, the content would have been the same: the Law Division did not learn that some of the newly discovered tapes contained some emails until October 2004.”).

That is also why Morgan Stanley repeated this contention to the Court both during and after the sanctions proceedings. *See, e.g.*, CPH App. 11 (2/28/05 Morgan Stanley's Opp'n to CPH's Mot. for a Default Judgment, at 6) (“Morgan Stanley has consistently contended that no one in its Law Division knew of the existence of additional recoverable email data on the tapes before October 2004.”); CPH App. 21 (5/12/05 MS Addendum to Opposition to CPH Mot. for Correction) (May 12, 2005 proffer stating that in-house counsel did not know that there was email on the Brooklyn tapes until October 2004 and did not know of the existence of 8-mm tapes containing emails until November 2004); CPH App. 23 (5/16/05 Tr. at 15266) (May 16, 2005 Morgan Stanley argument to Court that “[t]here is no evidence that any lawyer in Morgan Stanley's Law Division was aware prior to October 2004 that any of the tapes contained any e-mail”); CPH App. 25 (5/18/05 Tr. at 15607) (May 18, 2005 Morgan Stanley argument that “it's undisputed that [in-house counsel] learned that these [backup tapes] contained e-mail in October 2004”).

Of course, all of these representations were false, as Morgan Stanley's December 21, 2006 Notice eventually made clear. They were all part of a lie. And the lie was critical to Morgan Stanley's defense of the sanctions motions — a defense that was aimed at avoiding the

severe sanctions that Morgan Stanley truly deserved. It was bad enough that Morgan Stanley's employees were engaged in misconduct relating to the production of emails. But one of the principal responsibilities of in-house counsel is to see that the company and its employees comply with the law. It would have been devastating to Morgan Stanley's defense if the Court had known that the Law Division not only had failed to ensure compliance with the Court's Orders, but that the Law Division had actually known about the noncompliance even at the very time the Court was being assured that compliance had occurred. The facts would have been particularly devastating because the Law Division lawyers who lied to the Court were not junior, inexperienced lawyers; the in-house lawyers who lied to the Court included at least three of the most senior lawyers in company (and perhaps others whose identities Morgan Stanley continues to conceal). But Morgan Stanley went even further: Morgan Stanley traded on the Court's willingness to presume that in-house counsel would comply with the law (which they did not do) to argue that the Court, as a matter of fairness, should not impose the sanctions that CPH had requested. That ploy worked.

If CPH had known in early 2005 (when it moved for sanctions) that these sworn statements and representations about in-house counsel's knowledge were false — indeed, if CPH had known that Morgan Stanley's in-house lawyers, portrayed as enablers of the truth, were actually enablers of deceit — CPH would have urged sanctions more severe than those it requested. CPH not only would have asked the Court to enter a total default as to liability (which CPH unsuccessfully urged), but CPH also would have asked for a remedial order with respect to damages. Indeed, at oral argument on the request for sanctions, CPH argued that the withholding of the truth about the email went to every element of the claim, including the fact of damages. CPH App. 19 (3/15/05 Tr. at 3944). If CPH had known at the time of the sanctions

hearing that Morgan Stanley's in-house lawyers had known about the fraud, and had been active participants in it, Morgan Stanley could not have succeeded in its central argument for leniency, which was based on its lawyers' lack of participation in any wrongdoing.

Based on the incomplete and deceptive picture presented by Morgan Stanley, the Court limited the severity of its remedial orders. Based on what it did know, the Court commented that Morgan Stanley's misconduct was so serious that "[t]he judicial system cannot function this way." CPH App. 20 (3/23/05 Order at 16) (emphasis in original). But the Court and CPH were aware of only part of the story. If the Court had known that Morgan Stanley was lying about what the Law Division knew, or that Morgan Stanley's lawyers had deliberately chosen to lie to the Court to secure a less severe remedy for Morgan Stanley's misconduct, the Court undoubtedly would have responded to those facts by imposing the more serious sanctions Morgan Stanley deserved rather than the purely remedial measures the Court actually imposed. *See, e.g., Webb v. District of Columbia*, 189 F.R.D. 180, 191 (D.D.C. 1999) (party may be penalized for in-house counsel's conduct because party "has an unusually broad influence [over in-house lawyers] because of the power to control litigation policies and the entirety of the lawyer's resources. This consideration, together with the [client's] own unlawful actions, make the imposition of a default judgment in part for the misconduct of counsel an entirely just and appropriate result.").

In the circumstances, it would have been appropriate for the Court to have imposed a total default as to liability and to have altered the burden of proof as to damages. If the Court had imposed the serious sanction that, we now know, Morgan Stanley has always merited, the outcome of this case would have been different, and the granting of relief under Rule 1.540(b) is warranted for that reason.

2. Morgan Stanley's Fraud On The Court Infected The Jury's Deliberations.

There can be no doubt as to the importance of Morgan Stanley's fraud with respect to how the trial was conducted — Morgan Stanley used its misrepresentations to avoid the likelihood of a remedy more severe than the partial default the Court ordered. But Morgan Stanley did more: it used its misrepresentations to secure a change in the arguments presented to the jury.

On May 18, 2005, outside the presence of the jury, the Court heard arguments from the parties concerning the use of demonstrative aids in support of the parties' respective closing arguments in the punitive damages phase of the trial. Morgan Stanley asked the Court to order CPH to change its closing argument and the PowerPoint presentation that supported it. Morgan Stanley told the Court that "it's undisputed in the record that the lawyers at Morgan Stanley learned that email was on these tapes in October 2004. There's been no contrary evidence to this They knew about the tapes in June, but they didn't know they contained e-mail." CPH App. 25 (5/18/05 Tr. at 15608). The Court, unaware of the truth at that time, required CPH to redo its presentation, explaining: "We don't know if [the Morgan Stanley in-house lawyers] knew [the backup tapes] contained e-mail." *Id.*

In other words, Morgan Stanley persuaded the Court to change what the jury was to hear, and it succeeded in doing so by misrepresenting to the Court that its in-house attorneys had somehow remained ignorant until October 2004 of the fact that the unsearched Brooklyn tapes contained email (and that they remained unaware until November 2004 of even the existence of the 8-mm tapes). That, of course, was false. As Morgan Stanley unequivocally admitted after jurisdiction of the case had been transferred to the Fourth District — and, indeed, the case had been argued and submitted in that court — the in-house lawyers were aware of the existence of

email on the unsearched Brooklyn tapes prior to July 2004. In addition, it is now clear that sometime before July 2004 members of the Law Division were aware that the 8-mm tapes existed, and that some of those tapes contained emails.

Where, as here, the misconduct has actually changed what the jury was allowed to hear, there can be no doubt that relief is warranted under Rule 1.540(b).

III. THE COURT SHOULD ORDER DISCOVERY AND BRIEFING ON CPH'S RULE 1.540(b) MOTION, AND SET THE MATTER FOR AN EVIDENTIARY HEARING.

Where a Rule 1.540(b) motion presents a “colorable entitlement to relief,” the Court must conduct an evidentiary hearing to determine whether the motion should be granted. *See Schlege v. Stebelsky*, 957 So. 2d 71, 73 (Fla. 4th DCA 2007) (evidentiary hearing required unless allegations and accompanying affidavits fail to show colorable entitlement to relief); *Robinson v. Weiland*, 936 So. 2d 777, 781 (Fla. 5th DCA 2006) (evidentiary hearing required where motion under Rule 1.540(b) “pleads fraud or misrepresentation with particularity, and shows how that fraud or misrepresentation affected the judgment”).

Under Florida law, the presentation of a colorable entitlement to relief also requires that the movant be afforded permissible discovery prior to the hearing. *See Southern Bell Tel. & Tel. Co. v. Welden*, 483 So. 2d 487, 489 (Fla. 1st DCA 1986) (applying Rule 1.540(b)). Here, the need for discovery is obvious. Morgan Stanley has deceived and misled the Court and CPH since virtually the beginning of the litigation, starting with Morgan Stanley's response to CPH's first request to produce documents. Morgan Stanley affirmatively misrepresented the extent of its misconduct until long after the verdict; and even now, nearly three years after the trial, Morgan Stanley continues to conceal the full magnitude of its misconduct and that of its Law Division.

As shown above, Morgan Stanley argued forcefully that it should escape the most severe consequences of its actions on the ground that its in-house lawyers did not knowingly participate in the discovery misconduct that Morgan Stanley argued was confined to certain personnel in its IT department. *See supra* pages 10 to 16. Although Morgan Stanley's argument succeeded, it was based upon facts that we now know to be false — facts that Morgan Stanley knew to be false at the time Morgan Stanley made the argument. But we do not yet know the full extent of the Law Division's complicity. Morgan Stanley's June 17, 2005 Notice, its presentation at the November 3, 2005 criminal-contempt hearing, and its December 21, 2006 Notice all reflect a consistent attempt to game the system by creating intentional ambiguities that mask the full extent of its in-house lawyers' misconduct. Justice will not be done in this case until those responsible are required to answer questions under oath and have their testimony subjected to this Court's most rigorous scrutiny. The need for discovery could not be more acute.

Moreover, this Court should not allow Morgan Stanley to stymie discovery once again by improperly invoking the attorney-client privilege. There is now a resounding factual basis for applying the crime/fraud exception to the privilege. Under Florida law, the crime/fraud exception bars any party from claiming as privileged any communications with a lawyer when the lawyer's services "were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew was a crime or fraud." Fla. Stat. § 90.502(4)(a); *see also American Tobacco Co. v. State*, 697 So. 2d 1249, 1252-56 (Fla. 4th DCA 1997). When a party engages in discovery misconduct and abuses the attorney-client privilege, Florida courts do not hesitate to reject the party's claims of privilege and require disclosure of information that the party otherwise would continue to cloak in the privilege by having its lawyers participate in the

wrongful conduct. *See, e.g., General Motors Corp. v. McGee*, 837 So. 2d 1010, 1032 (Fla. 4th DCA 2002).

Here, CPH asked the Court to pierce the privilege based on the crime/fraud exception on February 21, 2005, when CPH sought to depose Morgan Stanley's in-house counsel about the withholding or destruction of e-mail evidence. CPH App. 10 (2/21/05 CPH Mot. to Compel Further Discovery). In its March 1, 2005 sanctions order the Court denied that request. CPH App. 13 (3/2/05 Order). But at that time, of course, Morgan Stanley had insisted that only its IT personnel and not the members of its Law Division were responsible for the misconduct, and the Court did not yet know about the Law Division's complicity. Had the Court known what we know now, it would have had a clear basis for finding that the privilege was defeated by the crime/fraud exception. Otherwise privileged communications involving Morgan Stanley's Law Division attorneys might well contain important admissions relating to all aspects of the case, including admissions that Morgan Stanley's and Sunbeam's fraudulent statements damaged CPH — an essential element of CPH's claims against Morgan Stanley and an element that Morgan Stanley contends CPH failed to prove at trial.

CPH believes that this Court will decide, after allowing for appropriate discovery and then conducting the evidentiary hearing required to resolve a Rule 1.540(b) motion, that the judgment in favor of Morgan Stanley should be vacated. Accordingly, CPH respectfully asks this Court to set a briefing schedule, with adequate time for discovery, to be followed by an evidentiary hearing.

IV. THE JUDGMENT IN FAVOR OF MORGAN STANLEY SHOULD BE VACATED AND APPROPRIATELY SEVERE SANCTIONS SHOULD BE IMPOSED AGAINST MORGAN STANLEY.

Given the record of litigation abuse and deception in this case, CPH respectfully submits that this Court should vacate the judgment in favor of Morgan Stanley and then go on to impose

additional, more severe sanctions against Morgan Stanley. Specifically, CPH respectfully requests that the Court (a) enter a complete default on all elements of liability, including reliance and the fact of damage; (b) shift the burden of proof on damages; (c) order a new trial on compensatory and punitive damages; and (d) provide such further relief as the Court deems just and proper.

A. Entering a Complete Default on All Elements of Liability.

The Court should enter a complete default order on all elements of liability (including the fact of damage), rather than only a partial default order on some (but not all) elements of liability.

In opposing both CPH's rehearing petition in the Fourth District and its jurisdictional brief in the Florida Supreme Court, Morgan Stanley repeatedly argued that a retrial on damages was unavailable because the jury's finding as to the fact of damage — not simply the amount — was tainted by the methodology CPH used for proving the amount of compensatory damages. *See* CPH App. 33 (Resp.'s Notice Respecting Supp. Authority, at 1 (Nov. 20, 2007)); CPH App. 32 (Resp.'s Answer Br. in Opp'n to Jurisdiction, at 1, 5-8 (July 24, 2007)); CPH App. 31 (Resp. to Mot. for Reh'g *En Banc*, at 11 (May 7, 2007)). Had Morgan Stanley received the sanction it deserved based upon all the information we now know, Morgan Stanley would not have been in a position to urge the grounds for reversal upon which the Fourth District decided the appeal. As even Morgan Stanley surely must concede, an undisturbed finding of liability must be followed by proceedings to determine the proper remedy.

There is no question that this Court has the power to enter a complete default judgment as to all elements of liability. The Florida Rules of Civil Procedure authorize trial courts to issue default judgments against parties that willfully and contumaciously disobey discovery orders. *See* Fla. R. Civ. P. 1.380(b)(2)(C). And courts throughout the State have long recognized that

such a default judgment may extend to all elements of liability, including the fact of damage. *See, e.g., Levine v. Del American Properties, Inc.*, 642 So. 2d 32, 32-34 (Fla. 5th DCA 1994) (default judgment as to all elements of fraud, breach of contract, and conversion); *Williams v. Direct Dispensing, Inc.*, 630 So. 2d 1195, 1196-97 (Fla. 3d DCA 1994) (default judgment as to all elements of negligent misrepresentation, breach of contract, and conspiracy to defraud); *Far Out Music, Inc. v. Jordan*, 502 So. 2d 523, 523-24 (Fla. 3d DCA 1987) (default judgment as to all elements of fraud and breach of contract). Such a remedy is clearly appropriate where, as here, the party's misconduct is extreme, and the party has used every means possible to conceal that misconduct.

B. Ordering a New Trial on Damages and Shifting the Burden of Proof.

Florida case law makes clear that sanctions for discovery misconduct may extend beyond the liability phase of the proceeding and into the damages phase. For example, the Florida Supreme Court has recognized that, in entering “a default against a defendant for violation of discovery orders in a negligence action,” a trial court must have the discretion to “preclude that defendant from reducing the amount of his liability by proof of the plaintiff's comparative negligence.” *Harless v. Kuhn*, 403 So. 2d 423, 424 (Fla. 1981) (internal quotation marks omitted).

Florida courts likewise have held that a defendant that commits discovery misconduct not only may be held liable, but also can be barred from introducing any evidence at the trial on damages. In *Delta Information Services, Inc. v. Joseph R. Jannach M.D. & Associates*, 569 So. 2d 1353 (Fla. 3d DCA 1990), litigation misconduct (including the violation of five discovery orders) led the trial court to find the disobedient party liable and then to prohibit that party from introducing any evidence during the damages trial that should have been disclosed to the other

party through court-ordered discovery. *Id.* at 1354 n.4. The Third District affirmed unanimously. *Id.* at 1355.

Similarly, in *Rose v. Clinton*, 575 So. 2d 751 (Fla. 3d DCA 1991), the trial court imposed discovery sanctions that precluded defendants from presenting any evidence whatsoever to controvert plaintiff's proof of damages (though defendants were permitted to cross-examine plaintiff's witnesses and to make objections). *See id.* at 752. After conducting the damages trial, the court entered a final judgment in plaintiff's favor. *Id.* Although the Third District reversed that judgment, it did so solely because the trial judge had not entered written findings that defendants had willfully and deliberately disobeyed a court order to comply with discovery; such written findings are required by the Florida Supreme Court's decision in *Commonwealth Federal Savings & Loan Association v. Tubero*, 569 So. 2d 1271, 1272 (Fla. 1990). *See Rose v. Clinton*, 575 So. 2d at 752. Importantly, the Third District held that the trial court, on remand, would be free to reinstate both its sanctions order and its final judgment awarding damages so long as it conducted the required hearing and entered the required written finding. *Id.* Thus, the Third District approved the trial court's decision to bar defendants from presenting their own damages evidence — and the appellate court expressly found that the trial court's "sanctions were commensurate with the [defendants'] discovery violations." *Id.* at 752 n.3 (citing *Delta Info. Servs., supra*); *see also* Joint Committee of the Trial Lawyers Section of the Florida Bar and the Conferences of Circuit and County Judges, Handbook on Discovery Practice 16 & n.64 (2007 ed.) (citing *Rose v. Clinton* for the proposition that Florida trial courts can allow the award of damages as part of a default sanction for discovery abuse), available at <http://www.flatls.org/Handbook/ Handbook.pdf>.

The Court could also take a more limited step. Rather than barring Morgan Stanley from introducing evidence at a new trial on damages, the Court could require Morgan Stanley to show “negative causation” — that is, make Morgan Stanley bear the burden of proving that something other than fraud caused a decline in the value of CPH’s 14.1 million shares of Sunbeam stock. *See Akerman v. Oryx Communications, Inc.*, 810 F.2d 336, 340-43 (2d Cir. 1987).⁵ This request comports with the Fourth District’s decision focusing on “the actual, ‘fraud-free’ value of the Sunbeam stock on the date of the transaction.” 955 So. 2d at 1131. The negative-causation defense proposed here and the loss-causation burden that the Fourth District imposed on CPH are mirror-image methods of establishing the actual, fraud-free value on the date of the transaction. “[I]n the former [method], the burden of proving negative causation is on the defendant, and in the latter, the burden of proving the existence of loss causation is on the plaintiff.” *In re WorldCom, Inc. Sec. Litig.*, No. 02 Civ. 3288, 2005 WL 375314, at *6 (S.D.N.Y. Feb. 17, 2005). The new trial on damages will arrive at that fraud-free value. But at the new trial, Morgan Stanley will bear the burden of proving negative causation.

Given Morgan Stanley’s repeated, willful, and contumacious disregard for this Court’s orders and Morgan Stanley’s destruction and nonproduction of evidence — potentially including contemporaneous evidence about the value that Morgan Stanley placed on the Sunbeam stock on

⁵ Although CPH asks the Court, as a sanction, to require Morgan Stanley to prove negative causation here, that is how the burden of proof is allocated for claims under the Florida Securities and Investor Protection Act. *See Fla. Stat. §§ 517.211(4), 517.301; see also E.F. Hutton & Co. v. Rousseff*, 537 So. 2d 978, 978-81 (Fla. 1989) (plaintiff need not prove loss causation). The federal securities laws also impose upon the defendant the burden of proving negative causation in claims arising under Section 11 of the Securities Act of 1933. *See 15 U.S.C. §§ 77k(e); see also 2 Thomas Lee Hazen, Treatise on the Law of Securities Regulation § 7.5[2][b]*, at 104 (5th ed. 2005) (under the doctrine of “negative causation,” if the “value (or price) of the security [has declined] since the purchase, the defendant has the burden of proving that the plaintiff’s loss was not attributable to the misrepresentations or omissions”).

the date of the transaction — this Court should place the burden on Morgan Stanley to attempt to prove what, if any, portion of the stock's collapse can be attributed to non-fraud-related causes.

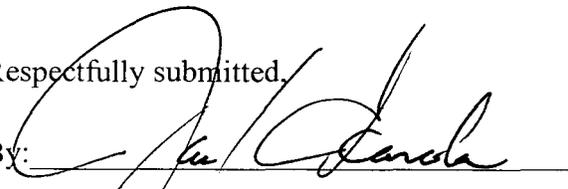
After the parties have presented their evidence under this evidentiary burden, after the jury has calculated the compensatory damages that Morgan Stanley owes CPH, and after the Court has added the appropriate amount of prejudgment interest to compensate CPH in current dollars, the jury then could determine whether punitive damages are warranted and, if so, what amount is to be assessed. In considering whether punitive damages are warranted, the jury should be instructed about Morgan Stanley's efforts to destroy and withhold evidence of its collusion with Sunbeam, including the important role of Morgan Stanley's in-house counsel.

CONCLUSION

Plaintiff CPH respectfully requests that this Court vacate the judgment of dismissal, enter a default judgment as to all elements of liability, order a new trial on damages with Morgan Stanley bearing the burden of proving that something other than the fraud caused part of CPH's loss, and provide such further relief as the Court deems just and proper.

Dated: March ^{AS} 25, 2008

Respectfully submitted,

By: 

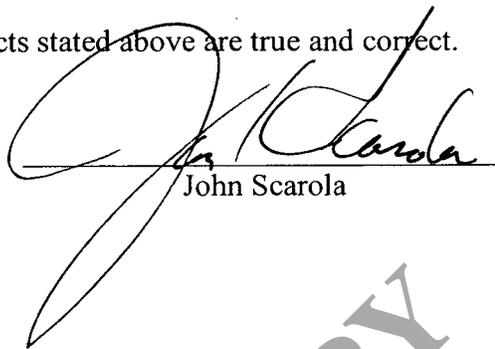
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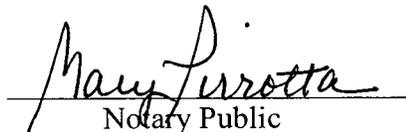
Attorneys for Coleman (Parent) Holdings Inc.

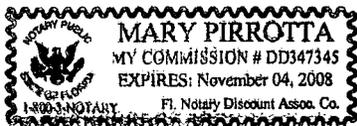
VERIFICATION

I hereby swear under penalty of perjury that the facts stated above are true and correct.


John Scarola

Sworn before me this 25th day of
March, 2008.


Notary Public



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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

APPENDIX TO
COLEMAN (PARENT) HOLDINGS INC.'S VERIFIED MOTION
TO VACATE THE JUDGMENT AND GRANT A NEW TRIAL ON DAMAGES

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Palm Beach County
Circuit Court
Civil

**APPENDIX TO
COLEMAN (PARENT) HOLDINGS INC.'S
VERIFIED MOTION TO VACATE THE JUDGMENT
AND GRANT A NEW TRIAL ON DAMAGES**

TAB	DATE	DESCRIPTION
1	06/23/03	Answer of Morgan Stanley
2	12/17/03	Transcript of Proceedings (excerpt), p. 20
3	01/31/05	Declaration of James Doyle
4	01/31/05	Morgan Stanley's Opposition to CPH Motion for Adverse Inference Instruction
5	02/02/05	Transcript of Proceedings (excerpt), p. 132
6	02/03/05	Order Specially Setting Hearing
7	02/04/05	Order on CPH's Ore Tenus Motion to Participate in Search of Additional E-mail Back Up Tapes or Appoint Third Party to Conduct Search
8	02/11/05	MS Supplemental Opposition to CPH's Motion for Adverse Inference Instruction
9	02/14/05	Transcript of Proceedings (excerpt), pp. 26-132; 242-95
10	02/21/05	CPH's Motion to Compel Further Discovery
11	02/28/05	Morgan Stanley's Opposition to CPH's Motion for a Default Judgment
12	02/28/05	Order on CPH's Motion to Deem Certain Documents Admissible and for Sanctions Due to MS's Disregard of Court Order
13	03/02/05	Amended Order on CPH's Motion for Adverse Inference Instruction
14	03/09/05	CPH's Renewed Motion for Entry of Default Judgment
15	03/13/05	Morgan Stanley's Opposition to CPH's Motion for a Default Judgment (Corrected Version) [FILED UNDER SEAL BY MORGAN STANLEY]
16	03/14/05	Hearing on CPH Renewed Motion for Entry of Default Judgment: Exhibit 1, Tab 87
17	03/14/05	Transcript of Proceedings (excerpt), p. 3462
18	03/15/05	Morgan Stanley's Overnight Response to CPH's Additional Submission in Support of its Motion for Default
19	03/15/05	Transcript of Proceedings (excerpt), p. 3944
20	03/23/05	Order on CPH's Renewed Motion for Entry of Default Judgment
21	05/12/05	Addendum to Opposition to CPH Motion for Correction (excerpted): Defendant's Offer of Proof re James P. Cusick; Defendant's Offer of Proof re Soo-Mi Lee)
22	05/16/05	Order on Plaintiff's Motion in Limine No. 36
23	05/16/05	Transcript of Proceedings (excerpt), pp. 15266-267
24	05/17/05	Transcript of Proceedings (excerpt), p. 15459
25	05/18/05	Transcript of Proceedings (excerpt), pp. 15607-08
26	06/17/05	Morgan Stanley Notice

APPENDIX TO
COLEMAN (PARENT) HOLDINGS INC.'S
VERIFIED MOTION TO VACATE THE JUDGMENT
AND GRANT A NEW TRIAL ON DAMAGES

TAB	DATE	DESCRIPTION
27	07/27/05	CPH Verified Petition For a Show Cause Order Regarding Morgan Stanley's Criminal Contempt of Court
28	11/01/05	Notice of Filing Affidavit of Arthur Riel (dated October 20, 2005)
29	11/03/05	Transcript of Proceedings (excerpt), pp. 9-36
30	12/21/06	Morgan Stanley Notice
31	05/07/07	Morgan Stanley's Response to Motion for Rehearing En Banc
32	07/24/07	Morgan Stanley Respondent's Answer Brief in Opposition to Jurisdiction
33	11/20/07	Morgan Stanley's Notice Respecting Supplemental Authority

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

2003 CA 005045 AI

Judge Elizabeth T. Maass

ANSWER OF MORGAN STANLEY & CO. INCORPORATED

Defendant Morgan Stanley & Co. Incorporated ("MS & Co.") responds to Plaintiff Coleman (Parent) Holdings, Inc.'s ("CPH") Complaint by denying generally that MS & Co. engaged in any fraudulent or negligent misrepresentations, any conspiracy to defraud, that MS & Co. assisted Sunbeam Corporation ("Sunbeam") or any employee, director or agent of Sunbeam in the commission of a fraudulent scheme, or that MS & Co. otherwise defrauded CPH in any manner. Specifically, MS & Co. responds to CPH's allegations as follows:

Nature of the Action

1. MS & Co. denies the allegations contained in Paragraph 1.
2. MS & Co. admits that, beginning in mid-1997, MS & Co. served as an investment banker for Sunbeam. MS & Co. admits that it attempted to identify a party interested in purchasing Sunbeam, and that those efforts were ultimately unsuccessful. MS & Co. admits that it recommended that Sunbeam's management consider acquiring other companies instead and suggested, as is common in corporate mergers and acquisitions, that Sunbeam consider, among other options, using Sunbeam stock as part of the consideration for such an acquisition. MS & Co. denies that it had any knowledge as to the accuracy of the value of Sunbeam's stock, or that

MS & Co. knew (or even suspected) that the value of Sunbeam's stock had been "fraudulently inflated." MS & Co. admits that it facilitated communications between Sunbeam and Coleman, but denies that it in any way "persuaded" CPH to sell its interest in Coleman. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 2 and consequently denies them.

3. MS & Co. admits that it agreed to serve as underwriter of a \$750 million debenture offering for Sunbeam. MS & Co. admits that, as an advisor to Sunbeam, it had access to certain financial documents, and further states that those same documents were made available to CPH during the acquisition negotiations. Further, in that regard, MS & Co. specifically disclaimed any independent evaluation of Sunbeam's financial records, and expressly stated that it relied solely on documentation and information provided by Sunbeam and Sunbeam's audited financial statements. MS & Co. admits that on March 18, 1998, it learned that Sunbeam's first quarter 1998 sales were "soft." Sunbeam insisted that its sales would meet expectations, but MS & Co. insisted that Sunbeam issue a press release to warn the market of the softening sales. Additionally, MS & Co. received two "comfort letters" from Sunbeam's auditors, Arthur Andersen. MS & Co. performed all of its obligations as an underwriter of Sunbeam securities. MS & Co. denies that it had any role in the accounting judgments described in the complaint, or any obligations to audit or independently examine Sunbeam's accounting records. MS & Co. denies that it owed any duties to CPH. MS & Co. denies that it had any independent knowledge as to the reasons behind Sunbeam's soft sales, that Sunbeam had a "practice of accelerating sales," or that it "materially misrepresent[ed]" information to CPH. Further, MS & Co. specifically denies that it in any manner assisted Sunbeam in concealing its 1998 first quarter sales numbers in order to close the transaction. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 3 and consequently denies them.

4. MS & Co. admits that CPH has brought this action against MS & Co. alleging fraudulent misrepresentation, aiding and abetting, conspiracy, and negligent misrepresentation,

but denies that there is any merit to the suit. MS & Co. specifically denies that it made any fraudulent or negligent representations to CPH, that it in any way aided or abetted a fraudulent scheme against CPH, or that it participated in a conspiracy to defraud CPH. MS & Co. denies that any losses that CPH suffered resulted from fraud or any wrongful conduct on the part of MS & Co. MS & Co. denies the remaining allegations contained in Paragraph 4.

5. MS & Co. admits that CPH purports to seek compensatory damages against MS & Co., but denies that such claim is valid, for MS & Co. denies that it was engaged in any wrongful conduct. MS & Co. denies the remaining allegations contained in Paragraph 5.

Jurisdiction and Venue

6. MS & Co. admits the allegations contained in Paragraph 6. MS & Co. further admits that it is incorporated in Delaware and has its principal place of business in New York.

7. MS & Co. denies that venue is proper in this district.

Parties and Other Key Participants

8. MS & Co. admits that CPH represented, in negotiations with Sunbeam, that it owned, directly or indirectly, approximately 82% of Coleman prior to March 30, 1998. MS & Co. admits that on March 30, 1998, Sunbeam acquired CPH's interest in Coleman by paying CPH with 14.1 million shares of Sunbeam common stock and other consideration, including a cash payment by Sunbeam to CPH in the amount of \$159,956,756.00. (See Feb. 27, 1998 Merger Agmt. § 3.1(a)(i) (Ex. 1).) MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 8 and consequently denies them.

9. MS & Co. admits that it is an investment banking firm providing financial and securities services. MS & Co. admits that, as part of its business operations, it at times provides advice on mergers and acquisitions, and raises capital in equity and debt markets, depending on the needs of its clients. MS & Co. admits that it served as Sunbeam's investment banker for

certain aspects of Sunbeam's acquisition of Coleman, and served as underwriter of certain securities issued by Sunbeam in connection with the acquisition. MS & Co. denies any remaining allegations contained in Paragraph 9.

10. MS & Co. admits that Sunbeam was a publicly-traded company which manufactures and markets household and specialty consumer products, including outdoor cooking products. MS & Co. admits that Sunbeam marketed these products under several brand names, including Sunbeam and Oster. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 10 and consequently denies them.

11. MS & Co. admits that Albert Dunlap had served as the Chief Executive Officer of Sunbeam. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 11 and consequently denies them.

12. MS & Co. admits that Russell Kersh had served as the Executive Vice President of Sunbeam. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 12 and consequently denies them.

13. MS & Co. admits that Arthur Andersen LLP served as Sunbeam's auditors and provided independent/outside accounting services to Sunbeam. MS & Co. further admits that, during the performance of its engagement, it received "comfort letters" from Arthur Andersen. MS & Co. never served as auditor for Sunbeam, and never provided Sunbeam with any accounting or accounting-related services. MS & Co. lacks sufficient knowledge or information to know the location of Lawrence Bornstein or to form a belief as to the truth of any allegations pertaining to him, and consequently denies them. MS & Co. denies any remaining allegations contained in Paragraph 13.

Factual Background

14. MS & Co. admits the allegations contained in Paragraph 14.

15. MS & Co. responds that the allegations contained in Paragraph 15 pertain to publicly available information, and refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 15 and consequently denies them.

16. MS & Co. responds that the allegations contained in Paragraph 16 pertain to publicly available information, and refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 16 and consequently denies them.

17. MS & Co. admits, on information and belief, that Albert Dunlap was hired as Sunbeam's Chief Executive Officer on or about July 18, 1996. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 17 and consequently denies them.

18. MS & Co. admits, on information and belief, that Russell Kersh was hired as Sunbeam's Chief Financial Officer. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 18 and consequently denies them.

19. MS & Co. admits, on information and belief, that Albert Dunlap and members of his senior management team entered into employment agreements with Sunbeam. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 19 and consequently denies them.

20. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 20 and consequently denies them.

21. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 21 and consequently denies them.

22. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 22 and consequently denies them.

23. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 23 and consequently denies them.

24. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 24 and consequently denies them.

25. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 25 and consequently denies them.

26. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 26 and consequently denies them.

27. MS & Co. admits, on information and belief, that Sunbeam reported a loss of \$18.1 million in the third quarter of 1996, and that it had a \$34.5 million gain in the third quarter 1997. MS & Co. further admits, on information and belief, that Sunbeam reported an increase in profits from \$6.5 million in 1996 to \$67.7 million in 1997. MS & Co. responds that the allegations contained in Paragraph 27 regarding stock prices pertain to publicly available information and MS & Co. refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 27 and consequently denies them.

28. MS & Co. admits that it was engaged by Sunbeam to explore a possible sale of Sunbeam's core business and/or the initiation of one or more acquisitions. MS & Co. denies that it ever served as Dunlap's "shell." MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 28 and consequently denies them.

29. MS & Co. admits that William Strong and other MS & Co. employees met with Sunbeam in the spring of 1997 to discuss Sunbeam's investment banking requirements. Further, MS & Co. admits that, although it was not engaged in a previous relationship with Sunbeam,

William Strong had worked with Dunlap before, during Strong's previous employment with Salomon Brothers. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 29 and consequently denies them.

30. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 30 and consequently denies them.

31. MS & Co. admits that William Strong and other MS & Co. employees met with Sunbeam in the spring of 1997 to discuss Sunbeam's investment banking requirements. MS & Co. admits that it was engaged by Sunbeam to explore a possible sale of Sunbeam's core business and/or the initiation of one or more acquisitions. MS & Co. admits that it initially sought a buyer for Sunbeam. To the extent this Paragraph alleges that MS & Co. was motivated to participate in a fraud in order to retain a single client and receive a customary fee, that allegation is foreclosed, among other reasons, by the fact that MS & Co.'s own affiliate lent hundreds of millions of dollars to Sunbeam two days after the Coleman acquisition closed. (June 1998 Credit Facilities Mem. (Ex. 2).) MS & Co. denies any remaining allegations contained in Paragraph 31.

32. MS & Co. admits that it searched for a buyer for Sunbeam. MS & Co. further admits that it assembled marketing materials based on financial documentation and audited financial statements provided to MS & Co. by Sunbeam and Arthur Andersen, for use in meetings with potential acquirers. MS & Co. admits that, despite contacting many companies, it was unable to find a buyer for Sunbeam. MS & Co. specifically denies CPH's allegation that MS & Co. knew that it would not be compensated if "it failed to deliver a major transaction," or that "Davis and Chase were standing by . . . to reclaim their position as Dunlap's investment banker of choice." MS & Co. denies any remaining allegations contained in Paragraph 32.

33. MS & Co. denies that it provided the "solution" to any "problem" alleged in Paragraph 33. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 33 and consequently denies them.

34. MS & Co. admits after its unsuccessful attempts to locate a purchaser for Sunbeam, it suggested that Sunbeam acquire one or more other companies instead. MS & Co. admits that it proposed to Sunbeam, among other options, the possibility of paying for any such acquisition in part with Sunbeam's stock. MS & Co. specifically denies any knowledge to the effect that a "failure to find a buyer for Sunbeam could prove fatal to [their] relationship." MS & Co. further denies any involvement in or knowledge of fraudulently inflated Sunbeam stock or concealment of any fraud at Sunbeam. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 34 and consequently denies them.

35. MS & Co. admits that, beginning in mid-1997, MS & Co. served as an investment banker for Sunbeam. MS & Co. admits that it attempted to identify a party interested in purchasing Sunbeam, and that those efforts were ultimately unsuccessful. MS & Co. admits that it recommended that Sunbeam's management consider, among other options, acquiring other companies instead and suggested, as is common in corporate mergers and acquisitions, that Sunbeam consider using Sunbeam stock as part of the consideration for such an acquisition. MS & Co. denies that it developed "acquisition strategies" for Sunbeam or that the services or potential transactions it discussed with Sunbeam's management were deceptive or in any way designed to facilitate fraud. MS & Co. specifically denies that it in any way knew of or knowingly assisted Dunlap to "camouflage Sunbeam's results" thereby making it "difficult to detect any shortfall in Sunbeam's performance," or that it knew of or assisted Dunlap in taking "new massive restructuring charges," which thereby created increased "cookie jar reserves." MS & Co. denies any remaining allegations contained in Paragraph 35.

36. MS & Co. admits that, in its capacity as advisor to Sunbeam, it identified Coleman as a potential acquisition candidate. MS & Co. admits that it communicated with representatives of Coleman to discuss a potential acquisition, but denies that it "persuade[d] CPH to sell its interest in Coleman to Sunbeam." MS & Co. admits that CPH represented, in

negotiations with Sunbeam, that it owned, directly or indirectly, approximately 82% of Coleman prior to March 30, 1998. MS & Co. denies the remaining allegations contained in Paragraph 36.

37. MS & Co. admits that it facilitated a meeting between representatives from Sunbeam and MacAndrews & Forbes Holdings, Inc. ("MAFCO") in December 1997. MS & Co. admits that it prepared Sunbeam's representatives for that meeting. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 37 and consequently denies them.

38. MS & Co. admits that discussions between Sunbeam, MAFCO and CPH resumed in early 1998. MS & Co. further admits that its Managing Directors James Stynes and Robert Kitts worked on MS & Co.'s engagement for Sunbeam. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 38 and consequently denies them.

39. MS & Co. denies that it "persuade[d]" CPH to sell Coleman in exchange for Sunbeam stock. MS & Co. denies that it "prepared" financial information for CPH. There is, in any event, no factual allegation contained in Paragraph 39 or elsewhere that identifies such alleged information at all, let alone with particularity. MS & Co. further denies that it knowingly "provided" CPH with false financial and business information, or otherwise knowingly relayed false information to CPH which created an appearance that "Sunbeam was prospering and that Sunbeam's stock had great value." Specifically, MS & Co. denies that it knowingly provided CPH with false 1996 and 1997 sales and revenue figures or with false projections. MS & Co. denies that it "falsely assured CPH that Sunbeam's 'early buy' sales program would not hurt Sunbeam's future revenues," that "Sunbeam would meet or exceed" first quarter 1998 estimates, that 1998 earnings estimates were accurate, that a plan to earn \$2.20/share was attainable or even low, or that it "specifically advised CPH that Sunbeam's first quarter 1998 sales were 'tracking fine' and running ahead of analysts' estimates."

In any event CPH could not have relied on such alleged representations in light of (i) the Merger Agreement's representations and warranties (Merger Agmt. §§ 5.1-5.4), none of

which refer to any alleged representation contained in this Paragraph, (ii) the representations and warranties in a separate agreement that was executed by Coleman and Sunbeam (Feb. 27, 1998 Company Merger Agmt. § 5.1-5.12 (Ex. 3)), which are expressly incorporated into the Merger Agreement and none of which refer to any alleged representation contained in this Paragraph, and (iii) the Merger Agreement's broad integration clause which forecloses reliance on any alleged representation contained in this Paragraph (Merger Agmt. § 12.5). MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 39 and consequently denies them.

40. MS & Co. admits that CPH agreed to sell its shares in Coleman to Sunbeam, and that CPH agreed to accept Sunbeam stock as partial payment for the sale, but denies that MS & Co. "persuaded" CPH to make the deal. CPH is a sophisticated party and was represented by its own expert advisors and attorneys. (*Id.* §§ 1.1; 4.11.) CPH and its advisors also enjoyed full access to Sunbeam's "books, records, properties, plants and personnel." (*Id.* § 6.7.) CPH also expressly disclaimed reliance on statements allegedly made during negotiations. (*Id.* § 12.5.) MS & Co. responds that the allegations contained in Paragraph 40 regarding stock value pertain to publicly available information, and refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 40 and consequently denies them.

41. MS & Co. admits that on February 27, 1998, Sunbeam's Board of Directors met at Morgan Stanley's New York offices to discuss Sunbeam's possible purchase of Coleman. MS & Co. denies the remaining allegations contained in Paragraph 41.

42. MS & Co. admits it made a presentation during the February 27, 1998 Sunbeam Board of Directors Meeting. MS & Co. further admits that MS & Co. representatives, including William Strong, Robert Kitts, James Stynes and Ruth Porat, were present at this meeting. MS &

Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 42 and consequently denies them.

43. MS & Co. admits that at that February 27, 1998 New York meeting, it provided Sunbeam with a written "fairness opinion" regarding the fair acquisition price of Coleman. This opinion was based on financial information provided to MS & Co. by Sunbeam, Coleman, and Arthur Andersen, and on synergy analyses which MS & Co. received from CPH. The written fairness opinion explicitly stated that MS & Co. "[has] not made any independent valuation or appraisal of the assets or liabilities of [Sunbeam]." (Feb. 27, 1998 Fairness Op. at 3 (Ex. 4).) MS & Co. denies any remaining allegations contained in Paragraph 43.

44. MS & Co. admits that the Sunbeam Board of Directors approved the Coleman acquisition at the February 27, 1998 meeting in New York. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 44 and consequently denies them.

45. MS & Co. admits that it continued to provide investment banking services to Sunbeam after the Coleman acquisition was approved. MS & Co. denies any remaining allegations contained in Paragraph 45.

46. MS & Co. admits that the Coleman acquisition was announced on March 2, 1998. MS & Co. responds that the allegations contained in Paragraph 46 regarding stock prices pertain to publicly available information, and refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 46 and consequently denies them.

47. MS & Co. admits that it agreed to serve as underwriter for Sunbeam's subordinated debentures. The "cash portion" of the consideration set forth in the Merger Agreement was also financed in part through a \$680 million loan made by Morgan Stanley Senior Funding, an affiliate of MS & Co. (See Credit Facilities Mem.) MS & Co. lacks

sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 47 and consequently denies them.

48. MS & Co. admits that the money raised from the sale of the debentures was used in part to finance Sunbeam's acquisition of Coleman.

49. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 49 and consequently denies them.

50. MS & Co. admits that the convertible debentures were presented to potential investors at a series of "road show" meetings and conference calls. MS & Co. admits that it reviewed and commented on the offering memorandum and other materials used to present the debentures to potential investors. MS & Co. denies that it "misrepresented Sunbeam's financial performance" or "emphasized Dunlap's purported 'turnaround' accomplishments." To the contrary, the offering memorandum expressly stated that MS & Co. assumed no responsibility for the accuracy or completeness of Sunbeam's audited financial information and warned investors not to rely on any projections of future performance. (March 19, 1998 Note Offering Mem. at 2-3, 12-17, 72 (Ex. 5).) MS & Co. denies any remaining allegations contained in Paragraph 50.

51. MS & Co. admits that it launched the debenture offering with a presentation to the Morgan Stanley sales force, but denies the remaining allegations contained in Paragraph 51.

52. MS & Co. admits that the debenture offering was increased from \$500 million to \$750 million. MS & Co. admits that the debentures were offered to investors nationwide. MS & Co. denies any remaining allegations contained in Paragraph 52.

53. MS & Co. admits that its employees traveled on one occasion to Sunbeam's Florida offices. MS & Co. denies the remaining allegations contained in Paragraph 53, except to the extent that they constitute legal conclusions to which no response is required.

54. MS & Co. admits that William Strong worked on MS & Co.'s engagement for Sunbeam. MS & Co. also admits that Strong has provided deposition testimony discussing conversations with Sunbeam officials. MS & Co. denies that Strong or any other MS & Co.

employee was accurately apprised of Sunbeam's financial condition because MS & Co. at all times relied on information provided by Sunbeam management and Arthur Andersen, including Sunbeam's audited financial statements. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 54 and consequently denies them.

55. MS & Co. denies CPH's allegation that it was "telling CPH and the investing public . . . that Sunbeam's turnaround was a success, that Sunbeam's sales for the first quarter of 1998 were ahead of expectations of outside analysts, and that Sunbeam was poised for record sales." Furthermore, any information communicated by MS & Co. was based on financial data and information provided to it by Sunbeam and Arthur Andersen — a fact that MS & Co. regularly publicized through disclaimer statements. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 55 and consequently denies them.

56. MS & Co. denies the allegations contained in Paragraph 56.

57. MS & Co. admits that it received a facsimile schedule regarding Sunbeam's finances on or about March 18, 1998. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 57 and consequently denies them.

58. MS & Co. admits that on or about March 18, 1998, it received a faxed financial schedule which reflected that Sunbeam's January and February 1998 sales were below those of January and February 1997. MS & Co. denies that it made assertions or otherwise disseminated information to CPH or others that it knew to be false. MS & Co. denies any knowledge of the fact that Sunbeam had not undergone a successful turnaround, or that Sunbeam's financial performance had not improved in the manner presented by Sunbeam's management and audited financial statements. MS & Co. admits that on March 18, 1998, it learned that Sunbeam's first quarter 1998 sales were "soft." Sunbeam insisted that its sales would meet expectations, but MS & Co. insisted that Sunbeam issue a press release to warn the market of the softening sales.

Additionally, MS & Co. received two "comfort letters" from Sunbeam's auditors, Arthur Andersen. MS & Co. performed all of its obligations as an underwriter of Sunbeam securities. MS & Co. denies that it had any role in the accounting judgments described in the complaint, or any obligations to audit or independently examine Sunbeam's accounting records. MS & Co. denies that it owed any duties to CPH. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 58 and consequently denies them.

59. MS & Co. admits that on March 18, 1998, it learned that Sunbeam's first quarter 1998 sales were "soft." Sunbeam insisted that its sales would meet expectations, but MS & Co. insisted that Sunbeam issue a press release to warn the market of the softening sales. Additionally, MS & Co. received two "comfort letters" from Sunbeam's auditors, Arthur Andersen. MS & Co. performed all of its obligations as an underwriter of Sunbeam securities. MS & Co. denies that it had any role in the accounting judgments described in the Complaint, or any obligations to audit or independently examine Sunbeam's accounting records. MS & Co. denies that it owed any duties to CPH. MS & Co. denies all remaining allegations contained in Paragraph 59.

60. MS & Co. admits that Sunbeam issued a press release on March 19, 1998 that included language selectively quoted in Paragraph 60. MS & Co. further states that the March 19, 1998 press release contained the following additional statement, omitted in the Complaint:

Cautionary Statements - Statements contained in this press release, including statements relating to the Company's expectations regarding anticipated performance in the future, are "forward looking statements," as such term is defined in the Private Securities Litigation Reform act of 1995. Actual results could differ materially from the Company's statements in this release regarding its expectations, goals or projected results, due to various factors, including those set forth in the Company's Cautionary Statements contains in its Annual Report on Form 10-K for its fiscal year ended December 31, 1997 filed with the Securities and Exchange Commission.

(March 19, 1998 Press Release (Ex. 6).)

61. MS & Co. admits that Sunbeam issued a press release on March 19, 1998 that included language selectively quoted in Paragraph 61. MS & Co. further states that the March 19, 1998 press release contained the following additional statement, omitted in the Complaint:

Cautionary Statements - Statements contained in this press release, including statements relating to the Company's expectations regarding anticipated performance in the future, are "forward looking statements," as such term is defined in the Private Securities Litigation Reform act of 1995. Actual results could differ materially from the Company's statements in this release regarding its expectations, goals or projected results, due to various factors, including those set forth in the Company's Cautionary Statements contains in its Annual Report on Form 10-K for its fiscal year ended December 31, 1997 filed with the Securities and Exchange Commission.

(*Id.*) MS & Co. denies all remaining allegations contained in Paragraph 61.

62. MS & Co. denies the allegation that it knew that the "shortfall from analysts' estimates was . . . caused by Sunbeam's acceleration of 1998 sales into the fourth quarter of 1997." MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 62 and consequently denies them.

63. MS & Co. denies the allegations contained in Paragraph 63.

64. MS & Co. specifically denies that it "knew that a full and truthful disclosure . . . would doom the debenture offering," or that it had any knowledge that the press release was untruthful or otherwise misleading. MS & Co. denies the allegations contained in Paragraph 64.

65. MS & Co. denies the allegations contained in Paragraph 65. To the extent that this Paragraph quotes the Merger Agreement, that document speaks for itself and contradicts the allegations contained in the Complaint.

66. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 66 and consequently denies them.

67. MS & Co. denies the allegations contained in Paragraph 67.

68. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 68 and consequently denies them.

69. MS & Co. admits that it continued to serve as Sunbeam's investment banker, and continued to prepare to close the debenture offering and the acquisition of Coleman, but denies any knowledge as to the alleged falsity of the March 19, 1998 press release. MS & Co. denies the remaining allegations contained in Paragraph 69.

70. MS & Co. admits that throughout its service to Sunbeam, MS & Co. employees, including Tyree, spoke via telephone with representatives of Sunbeam. MS & Co. denies any knowledge that the press release was untruthful or otherwise misleading. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 70 and consequently denies them.

71. MS & Co. admits that it received "comfort letters" from Arthur Andersen. MS & Co. denies the allegation that it knew that "Sunbeam's earnings for the first quarter of 1998 were going to miss Wall Street analysts' earning expectations." MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 71 and consequently denies them.

72. MS & Co. admits that it continued to prepare to close both the debenture offering and the acquisition of Coleman. MS & Co. denies any allegation of its "having directly participated in misleading CPH and other investors." MS & Co. responds that the allegation that MS & Co. "had a duty to disclose the true facts" to CPH is a legal conclusion to which no response is required. MS & Co. denies the remaining allegations contained in Paragraph 72.

73. MS & Co. admits that it received compensation for investment banking work performed by MS & Co. for Sunbeam. MS & Co. denies the allegation that it facilitated Sunbeam's fraud. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 73 and consequently denies them.

74. MS & Co. admits that on March 19, 1998, Sunbeam issued a press release which stated that "net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates of \$285 million to \$295 million." MS & Co. lacks sufficient knowledge or

information to form a belief as to the truth of the remaining allegations contained in Paragraph 74 and consequently denies them.

75. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 75 and consequently denies them.

76. MS & Co. admits that it advocated issuing a press release to warn the market of the softening sales, but denies that it represented that Sunbeam's sales would exceed analysts' projections. MS & Co. denies the remaining allegations contained in Paragraph 76.

77. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 77 and consequently denies them.

Count I – Fraudulent Misrepresentation

78. MS & Co. repeats and realleges its responses to Paragraphs 1 through 77 as if set forth herein.

79. MS & Co. denies the allegations contained in Paragraph 79.

80. MS & Co. denies the allegations contained in Paragraph 80.

81. MS & Co. denies the allegations contained in Paragraph 81.

82. MS & Co. denies the allegation contained in Paragraph 82.

83. MS & Co. denies the allegation contained in Paragraph 83.

Count II – Aiding and Abetting Fraud

84. MS & Co. repeats and realleges its responses to Paragraphs 1 through 77 as if set forth herein.

85. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 85 and consequently denies them.

86. MS & Co. denies the allegation contained in Paragraph 86.

87. MS & Co. admits that, beginning in mid-1997, MS & Co. served as an investment banker and underwriter for Sunbeam. MS & Co. admits that it attempted to identify a party

interested in purchasing Sunbeam, and that those efforts were ultimately unsuccessful. MS & Co. admits that it recommended that Sunbeam's management consider acquiring other companies instead and suggested, as is common in corporate mergers and acquisitions, that Sunbeam consider using Sunbeam stock as part of the consideration for such an acquisition. MS & Co. denies that it had any knowledge as to the accuracy of the value of Sunbeam's stock, or that MS & Co. knew (or even suspected) that the value of Sunbeam's stock had been "fraudulently inflated."

MS & Co. admits that it facilitated communications between Sunbeam and Coleman, but denies that it in any way "persuaded" CPH to sell its interest in Coleman.

MS & Co. admits that on March 18, 1998, it learned that Sunbeam's first quarter 1998 sales were "soft." Sunbeam insisted that its sales would meet expectations, but MS & Co. insisted that Sunbeam issue a press release to warn the market of the softening sales. Additionally, MS & Co. received two "comfort letters" from Sunbeam's auditors, Arthur Andersen. MS & Co. performed all of its obligations as an underwriter of Sunbeam securities.

MS & Co. admits that the convertible debentures were presented to potential investors at a series of "road show" meetings and conference calls. MS & Co. admits that it reviewed and commented on the offering memorandum and other materials used to present the debentures to potential investors. MS & Co. denies the remaining allegations contained in Paragraph 87.

88. MS & Co. denies the allegations contained in Paragraph 88.

Count III -- Conspiracy

89. MS & Co. repeats and realleges its responses to Paragraphs 1 through 77 as if set forth herein.

90. MS & Co. denies the allegations contained in Paragraph 90.

91. MS & Co. admits that it served as a financial advisor to Sunbeam and an underwriter of Sunbeam securities, but denies that it in any way committed "overt acts in furtherance of a conspiracy." MS & Co. denies that it performed an independent financial analysis of Sunbeam; to the contrary, MS & Co. informed CPH that it was relying solely on financial data and information provided to it by Sunbeam and Arthur Andersen. MS & Co. admits that it underwrote the \$750 million convertible debenture offering. MS & Co. denies the remaining allegations contained in Paragraph 91.

92. MS & Co. denies the allegations contained in Paragraph 92.

Count IV -- Negligent Misrepresentation

93. MS & Co. repeats and realleges its responses to Paragraphs 1 through 77 as if set forth herein.

94. MS & Co. admits that it served as a financial advisor to Sunbeam and an underwriter of Sunbeam securities. MS & Co. responds that the allegations contained in Paragraph 94 constitute legal conclusions to which no response is required. Alternatively, MS & Co. denies the remaining allegations contained in Paragraph 94.

95. MS & Co. denies the allegations contained in Paragraph 95.

96. MS & Co. denies the allegations contained in Paragraph 96.

AFFIRMATIVE DEFENSES

In addition to the foregoing responses, MS & Co. asserts the following affirmative defenses to the claims stated in CPH's Complaint. MS & Co. does not assume the burden of proof on these defenses where the substantive law provides otherwise.

First Affirmative Defense

CPH's claims must be dismissed on *forum non conveniens* grounds pursuant to Florida Rule of Civil Procedure 1.061(a).

Second Affirmative Defense

CPH's alleged claims are barred, in whole or in part, for failure to state a claim upon which relief can be granted.

Third Affirmative Defense

CPH's alleged claims are barred, in whole or in part, by the doctrine of laches.

Fourth Affirmative Defense

CPH's alleged claims are barred, in whole or in part, by the doctrine of estoppel.

Fifth Affirmative Defense

CPH's alleged claims are barred, in whole or in part, by the doctrine of waiver.

Sixth Affirmative Defense

CPH's alleged claims are barred, in whole or in part, by the doctrine of unclean hands.

Seventh Affirmative Defense

CPH's alleged claims are barred, in whole or in part, by plaintiff's failure to mitigate its damages.

Eighth Affirmative Defense

CPH's alleged claims are barred because CPH has experienced no damages, and any claimed loss is speculative and/or was avoidable.

Ninth Affirmative Defense

CPH's alleged claims are barred, in whole or in part, because the claimed injuries were not proximately caused by any acts or omissions of MS & Co.

Tenth Affirmative Defense

To the extent CPH's fraud-claim relies on non-disclosure, that claim is barred, in whole or in part, because MS & Co. was under no duty to disclose.

Eleventh Affirmative Defense

CPH's claims are barred, in whole or in part, because of MS & Co.'s repeated disclaimers of reliance.

Twelfth Affirmative Defense

Any future claim by CPH for punitive damages is barred, in whole or in part, because (i) the allegedly tortious conduct is not gross, wanton, willful, or otherwise morally culpable; and (ii) the alleged conduct was not part of a pattern directed at the public generally.

WHEREFORE, MS & Co. denies that CPH is entitled to any relief whatsoever, and to the extent that CPH should recover any damage award, that award should be offset by CPH's failure to take appropriate steps to mitigate its damages. MS & Co. respectfully requests that the Court enter judgment for MS & Co. dismissing the complaint with prejudice, award MS & Co. its attorneys' fees, costs and expenses, and grant such other and further relief as may be just and proper.

Dated: June 23, 2003

Respectfully Submitted,


Joseph Ianno, Jr. (FL Bar # 655351)
CARLTON FIELDS
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West Palm Beach, FL 33401
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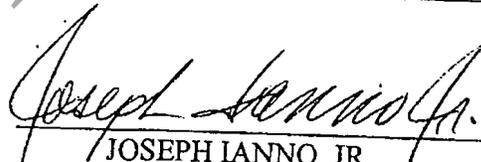
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ATTORNEYS FOR DEFENDANT,
MORGAN STANLEY & CO. INCORPORATED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express to all counsel of record listed below on this 23rd day of June, 2003.

John Scarola SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A. 2139 Palm Beach Lakes Boulevard West Palm Beach, Florida. 33409	Counsel for Defendants
Jerold S. Solovy JENNER & BLOCK, LLC One IBM Plaza Suite 4400 Chicago, Illinois 60611	Counsel for Defendants


JOSEPH LANNO, JR.

1 IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
2 IN AND FOR PALM BEACH COUNTY, FLORIDA
3 CIVIL DIVISION
4 CASE NUMBER: 2003-CA 005045 AJ

5 COLEMAN (PARENT) HOLDINGS, INC.,
6
7 Plaintiffs,

8 vs.

9 MORGAN STANLEY & CO., INC.,
10
11 Defendant.

12 _____/

13

14

15 PROCEEDINGS BEFORE THE HONORABLE ELIZABETH T. MAASS

16

17

18 APPEARANCES:

19

20 On behalf of the Plaintiff:
21 SEARCY, DENNEY, SCAROLA,
22 BARNHART & SHIPLEY, P.A.
23 2139 Palm Beach Lakes Blvd.
24 West Palm Beach, Florida 33409
25 BY: JACK SCAROLA, ESQUIRE

26

27 On behalf of the Defendant:
28 CARLTON FIELDS
29 222 Lakeview Avenue, Suite 1400
30 West Palm Beach, Florida 33401-6149
31 BY: JOSEPH IANNO, JR., ESQUIRE

32

33

34

35

36

37

38 Wednesday, December 17, 2003
39 PALM BEACH COUNTY COURTHOUSE
40 WEST PALM BEACH, FLORIDA

PINNACLE REPORTING, INC.
(561) 820-9066

1 THE COURT: Right.

2 MR. IANNO: The problem is, there is no
3 E-mails that predate 2000. That was the basis
4 for the relevance objection. And I believe
5 somebody will testify to that on the second
6 phrase of Mr. Scarola's wherefor clause
7 concerning the ability, including the
8 procedures, time and labor expenses involved to
9 retrieve E-mails. And that will explain that.
10 I think that's what he needs to do.

11 But the point that we've always made and
12 the point I made yesterday at the Uniform
13 Motion Calendar is, there is no deposition
14 notice that asked for that second phrase.
15 We're trying to agree that we will produce a
16 corporate representative on that second phrase
17 of the wherefor clause. But to say motion to
18 compel --

19 THE COURT: Let me stop you. Give me an
20 example from the September 18th letter, for
21 instance, that you think requests information
22 that either Mr. Plotnick did provide, but was
23 not included in the ambient of the taking of
24 the deposition.

25 MR. IANNO: I would love to, but I have to

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

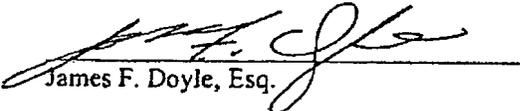
DECLARATION OF JAMES F. DOYLE

1. I am James F. Doyle. I am employed as an Executive Director in the Law Division of Morgan Stanley & Co. Incorporated ("Morgan Stanley"). In that capacity, I have personal knowledge of the matters set forth herein.

2. On information and belief, Morgan Stanley produced restored e-mail documents in the above-captioned matter on May 14, 2004.

3. At the end of October 2004, I learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data on those tapes had not been restored or searched prior to Morgan Stanley's May 14, 2004 e-mail production. Upon learning that information, I directed that the electronic searches described in the April 16, 2004 Agreed Order be conducted for any backup tapes that had been restored and made searchable at that point, and that the process of restoring the remaining backup tapes continue as expeditiously as possible.

UNDER PENALTY OF PERJURY, I HEREBY DECLARE THAT THE FOREGOING
IS TRUE AND CORRECT.


James F. Doyle, Esq.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

**MORGAN STANLEY'S OPPOSITION TO CPH'S MOTION
FOR ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN STANLEY'S
DESTRUCTION OF E-MAILS AND MORGAN STANLEY'S
NONCOMPLIANCE WITH THE COURT'S APRIL 16, 2004 AGREED ORDER**

Coleman (Parent) Holdings Inc.'s ("CPH") motion is factually baseless and squarely contrary to settled law. CPH's conclusory allegations that Morgan Stanley destroyed e-mails relating to Sunbeam are not supported by any evidence, and its allegations that Morgan Stanley failed to comply with the April 16, 2004 Agreed Order are contradicted by the written record. Morgan Stanley has spent enormous sums to locate, restore, and produce Sunbeam-related e-mails to CPH in this litigation, as evidenced by its production of more than 9,000 pages of e-mail messages responsive to CPH's requests. Moreover, Morgan Stanley did exactly what it was supposed to do when it learned that some backup tapes had not been searched: it promptly notified CPH, began restoring the additional tapes and searching the discovered data, and produced additional responsive e-mails to CPH.

CPH's motion also runs afoul of Florida law. Florida courts have repeatedly held that the instruction sought by CPH improperly "invades the province of the jury" and *constitutes reversible error* where, as here, the party seeking the instruction (1) has not established the existence of any "missing" evidence; (2) has not established that the missing evidence is

“essential” to its prima facie case; and (3) has not established that the evidence is missing due to an intentional or deliberate act of the opposing party. CPH has not (and cannot) establish any one of these requirements, and its motion must therefore be denied.

FACTS

1. This lawsuit arises from Sunbeam’s acquisition of The Coleman Company. The acquisition was negotiated in late 1997 and early 1998 and closed on March 30, 1998. CPH filed this lawsuit against Morgan Stanley in May 2003, more than five years after the relevant events.

2. On April 16, 2004, this Court entered an Agreed Order governing the search and production of Morgan Stanley e-mail messages restored from e-mail backup tapes. (Apr. 16, 2004 Agreed Order on CPH’s Motion to Compel Concerning E-mails & Other Elec. Docs. (“Agreed Order”).) The Agreed Order was necessary because due to the passage of time and technical limitations, Morgan Stanley only was able to reliably restore electronic documents on backup tapes created after January 2000. Nevertheless, pursuant to the Agreed Order, Morgan Stanley agreed that it would undertake an electronic search of data from the oldest available backup tapes for certain employees’ e-mail accounts, using certain agreed-upon keywords. (*Id.* ¶ 2.)

3. Morgan Stanley produced e-mails pursuant to the Agreed Order on May 14, 2004. Morgan Stanley’s May 14, 2004 production consisted of more than 1300 pages of responsive e-mails. (May 14, 2004 Letter from K. DeBord to M. Brody (Ex. 1).)

4. At the end of October 2004, James F. Doyle, the attorney at Morgan Stanley who directed Morgan Stanley’s prior search for e-mail messages, learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data on those tapes had not been restored or searched prior to the May 14, 2004 e-mail production. (J. Doyle Decl. ¶ 3 (Ex. 2)). Mr. Doyle directed that the electronic searches described in the Agreed Order be conducted

for any backup tapes that had been restored and made searchable at that point. (*Id.*) Mr. Doyle further directed that the process of restoring the remaining backup tapes continue as expeditiously as possible. (*Id.*)

5. In early November 2004, Morgan Stanley's Information Technology Department conducted electronic searches on all e-mail data that had been restored and made searchable since May 14, 2004. (G. Jonas Decl. ¶ 2 (Ex. 3).) The results of those searches were provided to Morgan Stanley's outside counsel in mid-November. (*Id.*)

6. On November 15, 2004, Morgan Stanley's outside counsel first determined that the data generated by the new searches included e-mail messages responsive to CPH's discovery requests. (T. Clare Decl. ¶ 2 (Ex. 4).) Two days later, on November 17, 2004, counsel for Morgan Stanley wrote to CPH and informed it that: (1) additional e-mail backup tapes had been discovered; (2) additional responsive e-mails had been identified; and (3) e-mail backup tapes were still being restored. (Nov. 17, 2004 Letter from T. Clare to M. Brody (Ex. 5).)

7. On November 18, 2004, Morgan Stanley produced all responsive e-mails located on the backup tapes that had been restored and made searchable at that point. (Nov. 18, 2004 Letter from M. Occhuzzo to M. Brody (Ex. 6).) Morgan Stanley's November 18, 2004 production consisted of over 8,000 pages of e-mail messages.

8. Since November 2004, Morgan Stanley has worked continuously and diligently to migrate the data from the remaining backup tapes onto a searchable database. (A. Nachtigal Decl. ¶ 2 (Ex. 7).) The restoration of these tapes is still underway, but Morgan Stanley is proceeding with the restoration of the remaining tapes as quickly and accurately as possible. (*Id.*)

9. The restoration of the remaining backup tapes has been one of Morgan Stanley's priorities since November 2004. (*Id.*) However, given the technical limitations and other difficulties associated with restoring e-mail backup tapes, Morgan Stanley's Information Technology staff is unable to estimate with certainty when the data from all of the remaining backup tapes will be restored. (*Id.* ¶ 3.)

10. To ensure continued compliance with the Agreed Order, Morgan Stanley intends, in parallel with finalizing the restoration of the remaining tapes, to run the electronic searches described in the Agreed Order periodically as the restored data becomes available in searchable form. This process will allow Morgan Stanley to provide the results of those searches to outside counsel on a rolling basis and determine, as expeditiously as possible, whether any additional responsive e-mails exist. (*Id.* ¶ 4.) Morgan Stanley's technical staff estimates that the results of these searches will begin to be available on or about February 7, 2005. (*Id.*) Until these searches have been conducted and the resulting data reviewed by counsel, there is no way to determine whether there are any additional materials responsive to the Agreed Order. (*Id.* ¶ 5.)

ARGUMENT

I. THE LEGAL STANDARD

It is well-established in Florida that, except in "limited" situations not applicable here, an adverse inference instruction "invades the province of the jury" and constitutes reversible error. *See Jordan ex rel. Shealey v. Masters*, 821 So. 2d 342, 346-47 (Fla. 4th DCA 2002) (discussing the "limited function of the presumption"). Indeed, virtually every case cited in CPH's motion rejects the propriety of adverse inference instructions and reverses judgments entered in trials where such instructions were given. *See Palmas Y. Bambu v. E.I. Dupont de Nemours & Co.*, 881 So. 2d 565, 580 (Fla. 3d DCA 2004) (adverse inference instruction "invaded the province of the jury and constitute[d] reversible error"); *Jordan*, 821 So. 2d at 348 (reversing in part on an

adverse inference jury instruction which “constituted a comment on the evidence by the trial court and approval for the jury to conclude that all of that evidence would be unfavorable”); *Martino v. Wal-Mart Stores, Inc.*, 835 So. 2d 1251, 1257 n.2 (Fla. 4th DCA 2003) (conclusion that jury instruction concerning the adverse inference created by Wal-Mart’s failure to produce a shopping cart and security videotape “is not appropriate”).¹ Other Florida cases reach the same conclusion. See, e.g., *Southern Pine Co. v. Powell*, 37 So. 570 (Fla. 1904) (concluding that a jury instruction on the facts constituted error sufficient to warrant reversal); *Bessett v. Hackett*, 66 So. 2d 694, 701 (Fla. 1953) (“The rule is that the court’s instructions to the jury must not assume the truth of facts which are controverted, or impose upon either party a duty not shown by the evidence to exist.”).

The only exception to the general rule prohibiting adverse inference instructions was established (and carefully circumscribed) in *Public Health Trust of Dade County v. Valcin*, 507 So. 2d 596 (Fla. 1987). In *Valcin*, the Florida Supreme Court approved the adoption of a rebuttable presumption of negligence in a medical malpractice case where the operative notes were either missing or inadequate due to the negligence of the hospital or doctors. *Id.* at 599-600. The Florida Supreme Court stressed the “limited” function of an adverse inference instruction, and expressly limited such instructions to situations in which the plaintiff establishes

¹ The only other case cited by CPH, *Amlan, Inc. v. Detroit Diesel Corp.*, 651 So. 2d 701 (Fla 4th DCA 1995), had nothing to do with an adverse inference or a jury instruction. Moreover, more recent Florida cases (including those cited by CPH) *rejected* the argument that *Amlan* stands for the proposition that an adverse inference instruction to the jury is proper. See *Palmas Y. Bambu*, 881 So. 2d 565 (Fla 3d DCA 2004) (holding that trial court’s adverse inference instruction was reversible error and stating that trial court’s reliance on *Amlan* was improper because the facts of *Amlan* did not involve an adverse inference or a jury instruction).

"to the satisfaction of the court that the absence of the records hinders his ability to establish a prima facie case." *Id.* at 599.

Jordan ex rel. Shelly v. Masters establishes the rigorous showing that must be made by a party seeking an adverse inference instruction in the Fourth District. First, the party seeking an adverse inference instruction must establish that "the allegedly missing evidence should have or did exist." *Jordan*, 821 So. 2d at 347. Then, the Court must determine whether the missing evidence "hindered the plaintiff's ability to proceed." *Id.* To satisfy this requirement, the Fourth District held, "*Valcin* requires that the missing evidence be *essential* to the opposing party's prima facie case." *Id.* (emphasis added).² The trial court must make *both* of these findings before giving an adverse inference instruction. *Jordan*, 821 So. 2d at 347 (reversing judgment where "the trial court . . . should have determined *both* issues before giving *Jordan's* adverse inference instruction, but it determined neither") (emphasis in original).

Similarly, the law is clear that an adverse inference jury instruction is not permitted where the only allegation is a failure to produce evidence. *See id.* at 346 ("We have found no case approving an instruction for an adverse inference to be drawn from the failure to produce evidence."); *Palmas Y. Bambu*, 881 So. 2d at 581 ("Like the Fourth District, we have been unable to locate any Florida decision approving an instruction for an adverse inference to be drawn from the failure to produce nonessential evidence.").

Finally, it is improper — and risks reversible error — to allow one party to argue to the jury an inference of misconduct, where that party has not (and cannot) show that the opposing

² *See also Palmas Y. Bambu*, 881 So. 2d at 582 ("In this case, the trial court correctly found that the nurseries' ability to establish a prima facie case was not hindered by the loss of the Monte Vista evidence. Under these circumstances, *Valcin* is inapplicable.").

party engaged in a pattern of discovery misconduct, committed fraud on the Court, or willfully defied a court order. Indeed, one of the primary cases cited by CPH recognizes that “[e]vidence related to the history of pretrial discovery conduct should normally not be a matter submitted for the jury’s consideration on the issues of liability.” *Amlan, Inc.*, 651 So. 2d at 703 (citing *Emerson Elec. Co. v. Garcia*, 623 So. 2d 523, 525 (Fla. 3d DCA 1993)).

II. CPH HAS NOT OFFERED ANY EVIDENCE TO SUPPORT ITS CLAIMS.

CPH has had ample opportunity to develop evidence, if any existed, in support of its motion. On September 9, 2003, CPH deposed a Morgan Stanley corporate representative, John Plotnick, to address topics related to Morgan Stanley’s document collection efforts in this case, and its document retention policies for hard copy and electronic documents.³ In addition, on February 10, 2004, CPH deposed a Morgan Stanley corporate representative, Robert Saunders, regarding Morgan Stanley’s e-mail retention policies and its ability to restore e-mail. CPH also deposed numerous fact witness regarding e-mail messages. Despite these extensive discovery efforts, CPH has not offered a any evidence to support its required showing that (1) additional Sunbeam-related e-mails existed; (2) Sunbeam-related e-mails were destroyed; and (3) the “missing” Sunbeam-related e-mails are “essential” to its prima facie case.

³ CPH has cited Mr. Plotnick’s testimony for the proposition that Morgan Stanley did not retain e-mail messages from 1997 and 1998, when Morgan Stanley was not a party to any Sunbeam-related litigation. It is absurd for CPH to attempt to make an issue of Morgan Stanley’s retention of e-mail when, by its own admission, CPH has never enacted or enforced a written document retention policy to prevent destruction of relevant documents, including emails, by its employees. See Part III.

A. **There Are No “Missing” E-Mails**

CPH argues — *without any evidentiary support whatsoever* — that “Morgan Stanley destroyed most or all of its 1998 e-mails concerning Sunbeam.” (Jan. 26, 2005 CPH’s Mot. for Adverse Inference Instruction Due to MS Destruction of E-Mails and MS’s Noncompliance with the Court’s Apr. 16, 2004 Agreed Order at 2 (“Mot.”).) As “proof” of this allegation, CPH states that Morgan Stanley produced “only a small handful of e-mails in response to CPH’s document requests.” (*Id.*) But this is a gross mischaracterization of Morgan Stanley’s prior production. Morgan Stanley has produced more than 9,000 pages of e-mail. (*See Facts* ¶¶ 3, 7.) Virtually all of these e-mails “concern Sunbeam,” and many are from the relevant 1997 and 1998 time period.

CPH’s motion misleadingly describes, again without any evidentiary support, a “general destruction of e-mails in 1999” (Motion at 1) and refers, without any explanation, to a industry-wide 2002 settlement with the Securities and Exchange Commission (SEC) (*Id.* at 2). CPH juxtaposes these arguments in an attempt to create the false impression that the SEC fined Morgan Stanley for destroying e-mail messages. That is not the case. The SEC settlement, which was industry-wide, addressed only the failure of certain registered broker-dealers, including Morgan Stanley, to comply with regulatory requirements that require broker-dealers to preserve certain electronic communications for a three-year period, and to preserve those electronic communications for the first two years in a readily accessible place.⁴ Nothing in the SEC settlement supports a “general destruction of e-mails in 1999,” or any inference that any Sunbeam-related e-mails were ever destroyed.

⁴ The recycling of e-mail tapes at Morgan Stanley ended in January 2001, years before CPH ever threatened or filed suit against Morgan Stanley.

Simply put, conclusory allegations are not enough. If CPH believes it has evidence that additional Sunbeam-related e-mails existed and were destroyed, it should have provided that evidence in its motion. Otherwise, its motion is deficient and must be denied. *See Jordan*, 821 So. 2d at 347 (finding reversible error where a negative inference instruction was given and the requesting party “failed to offer any evidence to support the existence of the videotape”). CPH has not offered any such evidence here, and its motion should be denied on this ground alone.

B. CPH Is Not Entitled To An Adverse Inference Instruction Based On Materials That *Might* Exist On The Tapes Still Being Restored

CPH argues that a negative inference is warranted because Morgan Stanley produced additional responsive e-mails in November 2004 and is still in the process of restoring and searching e-mail backup tapes that were not identified or searched as part of Morgan Stanley’s May 14, 2004 e-mail production. But Morgan Stanley did *exactly* what a responsible litigant is *supposed* to do when it discovers the existence of additional materials that are (or may be) responsive to an opposing party’s discovery requests or a court order. As set forth in detail above, Morgan Stanley’s in-house and outside counsel: (1) notified CPH that Morgan Stanley had discovered additional potentially responsive materials; (2) searched restored data for responsive emails; (3) produced responsive documents; and (4) took affirmative steps to continue the process of restoring the remaining tapes. (*See Facts* ¶¶ 6-8.) Clearly, no adverse inference instruction is warranted under these circumstances.

CPH next argues that an adverse inference instruction is warranted because responsive materials *might* exist on backup tapes that are still in the process of being restored. *First*, such an assertion is purely speculative. Until the data from those tapes is restored, searched, and received by counsel, there is no way to determine whether the additional tapes contain any responsive materials. (*See Facts* ¶ 10.) *Second*, even if the contents of the additional tapes were

known, such allegations are insufficient, as a matter of Florida law, to entitle CPH to the instruction it seeks. See *Jordan*, 821 So. 2d at 346 (holding it was reversible error to give adverse inference instruction and noting that “[w]e have found no case approving an instruction for an adverse inference to be drawn from the failure to produce evidence”).

Morgan Stanley has worked hard and with great diligence to complete the restoration of the additional backup tapes located since its May 14, 2004 production, and it expects that data from those tapes will begin to be available for review. If and when additional responsive e-mails are located, Morgan Stanley will promptly produce them. But there is no basis — in fact or in law — for CPH to bootstrap the mere *possibility* that additional responsive e-mails exist into an entitlement to an adverse inference instruction.

C. CPH Has Not Offered Any Proof That “Missing” E-Mails Are “Essential” To Its Prima Facie Case.

“*Valcin* requires that the missing evidence be essential to the opposing party’s prima facie case.” *Jordan*, 821 So. 2d at 347. Here, CPH has offered no evidence whatsoever regarding the subject matter of the allegedly “missing” e-mails, no explanation how the allegedly “missing” e-mails might relate to the subject matter of this lawsuit, and no argument as to how such e-mails are “essential” to its ability to establish its prima facie case. These defects are fatal to CPH’s motion. See *Palmas Y. Bambu*, 881 So. 2d at 580-81 (finding reversible error where a negative inference instruction was given and the requesting party “has not demonstrated an inability to proceed without the [missing] evidence”); *Bulkmatic Transport Co. v. Taylor*, 860 So. 2d 436, 449 (Fla. 1st DCA 2003) (instruction improper where plaintiff’s ability to establish prima facie case is not hindered by the absence of evidence).

III. CPH'S OWN FAILURE TO RETAIN E-MAILS PRECLUDES THE ADVERSE INSTRUCTION IT NOW SEEKS.

It is absurd for CPH to attempt to make an issue of Morgan Stanley's retention of e-mail when, by its own admission, CPH has never enacted or enforced a written document retention policy to prevent destruction of relevant documents, including emails, by its employees and has maintained a policy of recycling its own e-mail backup tapes every month — even after it threatened Sunbeam with a lawsuit, even after its executives became named parties to litigation related to the Sunbeam/Coleman transaction, even after it sued Arthur Andersen, and even after the onset of litigation in the present case. (See Sept. 15, 2003 Fasman Dep. at 31, 49 (Ex. 8); MS 1 (Ex. 9).)

CONCLUSION

CPH's motion invites the Court to commit reversible error at a critical stage of the case. Morgan Stanley has produced thousands of e-mails, and it acted reasonably and expeditiously when additional potentially responsive materials were discovered. CPH failed to offer any evidence to support the existence of additional Sunbeam-related e-mails, the destruction of a single Sunbeam-related e-mail, or its inability to present a prima facie case without them. Accordingly, its motion should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 31st day of January, 2005.

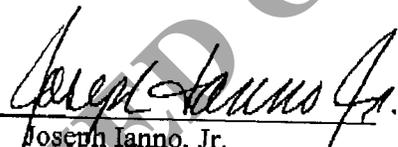
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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND
FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 03 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

TRANSCRIPT OF THE PROCEEDINGS BEFORE
THE HONORABLE ELIZABETH T. MAASS

West Palm Beach, Florida
Wednesday, February 2, 2005
9:21 a.m. - 3:23 p.m.

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1 MR. CLARE: The headline is that the
2 first time that anyone -- that anyone at
3 Morgan Stanley knew that there was
4 recoverable e-mail data that might fall
5 within the court's order was not until
6 late October 2004 consistent with
7 Mr. Doyle's declaration. And I'm prepared
8 to walk the court through and explain
9 where the tapes were found, how they were
10 found.

11 THE COURT: Why don't you make a
12 proffer, and we'll figure out where we're
13 going.

14 MR. CLARE: Very good. In the summer of
15 2004 -- I do not have a precise date on
16 that, but sometime during the summer,
17 1,400 DLT tapes were found in a closet, in
18 a closet in an off-site storage facility
19 in Brooklyn. Those tapes --

20 THE COURT: What's DLT mean?

21 MR. CLARE: DLT is a type of tape that
22 describes the capacity of the tape. It's
23 a digital tape. And DLT is an indication
24 that indicates how much data it can
25 containment and I'll get to how -- who wit

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

ORDER SPECIALLY SETTING HEARING

THIS CAUSE having come before the Court, it is hereby
ORDERED AND ADJUDGED that an evidentiary hearing on Coleman (Parent)
Holdings Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's
Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16,
2004 Agreed Order is specially set before the Honorable Elizabeth T. Maass on February
14, 2005, at 9:30 a.m., in Courtroom 11A, 205 N. Dixie Hwy, WPB, FL 33401. By 12
noon February 8, 2005, MS & Co. shall provide CPH with a list of the name, address, and
business title of each person it intends to present as a witness at hearing on the Motion,
together with a summary of his or her expected testimony. Those individuals shall appear
in Palm Beach County for deposition on either February 9, February 10, or February 11,
2005, as noticed by CPH. By 12 noon February 8, 2005, MS & Co. shall produce to CPH
(i) all documents to be referred to or relied on by any of the witnesses in his or her
testimony; and (ii) all documents within MS & Co.'s care, custody, or control addressing or
related to the additional e-mail back up tapes, including matters relating to the time or
manner in which they were discovered; by whom they were discovered; who else learned of
their discovery and when; and the manner and timetable by which they were to be restored
and made searchable, including any correspondence to or from outside or prospective
outside vendors. "Documents" as used herein shall refer to the standard definition used by

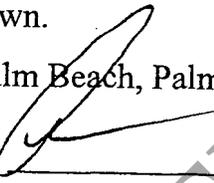
CPH in its requests for production of documents to MS & Co. It is further

ORDERED AND ADJUDGED that the attorneys/parties must submit to the Court two (2) days before the hearing:

1. copies of all relevant pleadings;
2. a copy of any memorandum of law; and
3. copies of all case law authority.

This hearing shall not be canceled unless the issues of this motion have been settled, and an order entered, or the motion withdrawn.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 3rd day of February, 2005.


ELIZABETH T. MAASS
Circuit Court Judge

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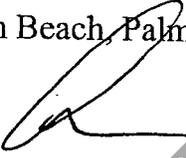
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shall review it as expeditiously as possible; devoting at least the amount of resources it devoted to the original review, and which shall certify whether the universe of documents reviewed is the same universe as produced by MS & Co.'s in-house search. MS & Co. shall produce each responsive e-mail pursuant to the Agreed Order or its privilege log for any withheld responsive e-mail, within 12 hours of review by counsel of a responsive e-mail not previously produced. The sole cost of the third party vendor shall be borne by MS & Co. The third party vendor shall be required to sign a confidentiality agreement acceptable to the parties, which consent may not be unreasonably withheld.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 4
day of February, 2005.



ELIZABETH T. MAASS
Circuit Court Judge

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

**MORGAN STANLEY'S SUPPLEMENTAL OPPOSITION
TO CPH'S MOTION FOR ADVERSE INFERENCE INSTRUCTION**

INTRODUCTION

As ordered by the Court, Morgan Stanley now has processed and produced responsive emails from the additional tapes. Moreover, the testimony of witnesses deposed pursuant to the Court's Order shows that Morgan Stanley acted with good faith and diligence in searching for and processing data from these tapes.

I. CPH'S MOTION IS MOOT BECAUSE THE TAPES HAVE NOW BEEN PROCESSED AND THE RESPONSIVE E-MAILS HAVE NOW BEEN PRODUCED.

During the February 2, 2005 hearing on CPH's motion for an adverse inference instruction, this Court recognized that "it would be a mistake to impose evidentiary sanctions when if we wait two weeks we'll know whether there's any prejudice or not. I mean we've come this far. I'm not interested in doing that." (Ex. 1, 2/2/05 Tr. at 150). That is precisely the case.

Since the hearing on February 5th, Morgan Stanley has reviewed thousands of e-mails for privilege and responsiveness and has produced a total of 21 documents. (Ex. 2, T. Clare Aff. at ¶ 6) Out of these 21 documents, 10 are exact duplicates of documents previously produced to CPH. (*Id.* at ¶ 6(a)) One of the 21 documents contains the same text as an e-mail

document Morgan Stanley previously produced to CPH but bears a different date. (*Id.* at ¶ 6(b)) Two of the 21 e-mails are duplicates of each other with the only difference that they contain a message that the e-mail was not delivered to one of the intended recipients. (*Id.* ¶ 6(c)) One of the 21 e-mails is a computer-generated e-mail message informing the recipient that Sunbeam made a public form 10-K/A filing. (*Id.* at ¶ 6(d)) And two more of the 21 documents are substantial duplicates of e-mails Morgan Stanley already produced to CPH with the only slight difference being the inclusion of a reply message. (*Id.* at ¶ 6(e))

As a result, Morgan Stanley produced only 8 documents that contain e-mail threads that were not produced, in whole or in substantial part, to CPH. (*Id.* at ¶ 7) And none of the e-mail threads in this production are dated between February 1998 and April 30, 1998. (*Id.* at ¶¶ 7-8)

II. THE EVIDENCE IS CLEAR THAT THE LAWYERS IN THIS LITIGATION WERE RESPONSIBLE FOR SPEEDING UP THE PROCESSING OF THE TAPES AT ISSUE

Affidavit of Counsel

Morgan Stanley has previously submitted an affidavit of James F. Doyle, the lawyer with responsibility for the Coleman case, attesting that it was only at the end of October, 2004, that he first “learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data insert on those tapes had not been restored or searched prior to Morgan Stanley’s May 14, 2004 e-mail production.” (Ex. 3, Doyle Aff. at ¶ 3) He further states that “[u]pon learning that information, I directed that the electronic searches described in the April 16, 2004 Agreed Order be conducted for any backup tapes that had not been restored and made searchable at that point, and that the process of restoring the remaining backup tapes continue as expeditiously as possible.” (Doyle Aff. at ¶ 3) From this October discovery by Mr. Doyle, Morgan Stanley outside counsel reviewed the output of this work and produced the first batch of

additional documents in November. The reason that the outside counsel and the in-house lawyer responsible for this case did not learn until October/November of a limited number of additional backup tapes is because of a series of missteps by a Morgan Stanley employee, issues that did not come to light until after he was placed on administrative leave in August 2004. The employee is Arthur Riel, who was the architect of Morgan Stanley's newly implemented optical disk e-mail archivel system. Unknown to Morgan Stanley, this employee took advantage of access to the emails of other employees. (Ex. 4, 02/09/05 A. Gorman Dep. at 13). His replacement, Ms. Allison Gorman, discovered a number of issues with Mr. Riel's work in connection with the email archiving project—problems which hampered her ability to more quickly process the emails into the archive system.

**The Testimony of Allison Gorman – Replacement for the
Employee Placed on Administrative Leave**

As described by Ms. Gorman, Mr. Riel and his team were placed on administrative leave for taking advantage of access to people's emails without authorization. (Gorman Dep. at 12-13) She took over certain of his responsibilities in August of 2004 and brought in her own team. The result was a nearly complete turnover in the entire group responsible for setting up and using Morgan Stanley's archive system to review e-mails. (Gorman Dep. at 13-14) Mr. Riel's team designed the tools that allowed the archive system to be searched. (Gorman Dep. at 28) When Ms. Gorman's team took over the system in 2004, they were faced with lots of time sensitive and critical issues left from Mr. Riel's performance. (Gorman Dep. at 51) She discovered that the system was out of disk space, that the code which was written to allow searches to be run had technical issues, and the system was dangerously close to not capturing live content. (Gorman Dep. at 52) Throughout September and October,

Ms. Gorman and her team worked diligently to try to correct these issues. Ms. Gorman and her team were able to create “space” for additional archives in October 2004 with the purchase of new hardware which allowed them to store more data. (Gorman Dep. at 53) Allowing the system to run out of space was one of the problems that occurred under Mr. Riel. (Gorman Dep. at 58) In addition, Mr. Riel did not keep a proper development environment, such that when the new group took over they did not know where the source codes used to run the system were located. (Gorman Dep. at 58).

One of the issues facing Ms. Gorman was a large amount of data in the “staging area.” The “staging area” is a part of the e-mail archive system that is used after backup tapes are processed by a third-party vendor, National Data Conversion, Inc. (“NDCI”) The data returned from NDCI is stored in this “staging area” until the system is properly programmed to allow the new data to be migrated into the e-mail archive. Because of the numerous challenges she faced in just keeping the current system operating when she first came on the job, Ms. Gorman did not make the processing of data in the “staging area” a priority until after an October meeting with Morgan Stanley’s counsel. (Gorman Dep. at 64-65, 69-70) After her conversations with counsel, Ms. Gorman made it a priority to ensure that all data currently in the “staging area” would be migrated to the e-mail archive system as soon as possible. (Gorman Dep. at 66-67)

Among the data in the “staging area” at this time, were e-mails harvested from backup tapes in a security room in Brooklyn. (Gorman Dep. at 65-66) The total data in the staging area was approximately 600 gigabytes of data. (Gorman Dep. at 66-67) There would have been no way for Ms. Gorman to migrate this data from the “staging area” in August 2004 because of the instability and lack of space in the system at that time. (Gorman Dep. at 55) As

noted above, Ms. Gorman and her team worked diligently in August, September and October to correct these issues.

Processing the data required the use of scripts, which are computer programming “that index the context on [Morgan Stanley’s] database” that assist in inserting the data into Morgan Stanley’s file system.¹ (Gorman Dep. at 39-40) The data in the “staging area” could not be completely migrated into the e-mail archive system because of problems with the “scripts” needed to complete the task. (Gorman Dep. at 67) Ms. Gorman’s predecessor had not properly documented where the “scripts” were located and they could not be found until November 2004 - - where they were found in a completely different directory than would be expected. (Gorman Dep. at 70-71) When Ms. Gorman’s team tested these “scripts,” they realized they did not process the data in the “staging area” correctly. (Gorman Dep. at 71) Ms. Gorman and her team did more testing on the scripts in December and by January had completely debugged the system by recoding the piece that was not working properly. On January 14, 2005, Ms. Gorman’s team started processing the data. (Gorman Dep. at 71)

Simply put, Ms. Gorman and her team worked diligently to correct the issues that they inherited from a previous team. Ms. Gorman was provided with all the resources she needed to complete the task. Processing e-mail into the e-mail archive system is a time-

¹ As Mrs. Gorman explained in her deposition: “All the e-mail content is sitting on a file system, just in a regular file directory structure. And so we run a set of code, what I would call a script, that reads through the content, creates entries on a key database which acts as our index. Those entries would contain header date, ‘to,’ ‘from,’ ‘cc,’ ‘subject line,’ ‘date.’ Then the address or the file system location path, really being the proper word, of the content were it’s been inserted into the file system. And the file system represents where the actual content, which is e-mails and attachments, sits.” (Gorman Dep. at 40)

consuming and technical task. Indeed, it would take anyone doing the work two to three months to even get up to speed on the various technicalities inherent in the project. (Gorman Dep. at 71)

Mr. Riel's responsibilities included apprising legal staff of the existence of emails on back-up recovery tapes. But this was another of his failings. He learned of the existence of additional tapes in approximately May of 2004 and learned that they contained email in July 2004, but it was only after his departure, and replacement by Ms. Gorman that legal staff learned of the existence of additional backup tapes that needed to be migrated onto the e-mail archive system. (Doyle Aff. at ¶ 3; Gorman Dep. at 69-70) After learning that there was additional data that needed to be migrated into the e-mail archive system, Morgan Stanley's in-house legal staff made sure that the IT staff understood that this task needed to be completed accurately and as soon as practicable. (Doyle Aff. at ¶ 3.)

III. ALTHOUGH MORGAN STANLEY'S INFORMATION TECHNOLOGY DEPARTMENT EXPERIENCED SOME SET-BACKS IN ITS ATTEMPT TO COMPREHENSIVELY IDENTIFY, AND RETRIEVE BACKUP E-MAILS FROM BEFORE 2003, THE EVIDENCE SHOWS IT SUCCESSFULLY IMPLEMENTATED A NEW AND IMPROVED MIGRATION SYSTEM

Development of the Email Archive System

On April 16, 2004, this Court entered an Agreed Order governing the search and production of Morgan Stanley e-mail messages restored from e-mail backup tapes. The Agreed Order was necessary because due to the passage of time and technical limitations, Morgan Stanley only was able to reliably restore electronic documents on backup tapes created after January 2000. Nevertheless, pursuant to the Agreed Order, Morgan Stanley agreed that it would undertake an electronic search of data from the oldest available backup tapes for certain employees' e-mail accounts, using certain agreed-upon keywords.

Before this Agreed Order, Morgan Stanley, for reasons unrelated to this particular litigation, had set in motion a process by which it could more efficiently and quickly restore and review these older backup tapes -- those from before January 1, 2003. Discussed more fully below, these efforts coincided with the requirements outlined in the Agreed Order.

As background, beginning in the 2001 and 2002 timeframe, Morgan Stanley frequently received "ad hoc requests" to search its backup tapes for e-mail responsive to various and sundry litigation and regulatory matters. (Ex. 5, 02/10/05 Saunders Dep. at 11, 48) In response to these requests, Morgan Stanley used its in-house resources to retrieve e-mails from backup tapes that it believed captured data relevant to the particular litigation or regulatory matter at issue. The result, however, was that the Company was often unsuccessful in retrieving significant data, often reinvented the wheel -- searching time and again the same backup tapes on an individual basis -- and often did so at a pace perceived by the Company to be too slow to satisfy its legal and regulatory obligations. (Saunders Dep. at 48)

As a result of these inefficiencies, the company implemented what it believed at the time were two improvements to the retrieval and review process. First, Morgan Stanley contracted with an outside vendor, NDCI, to extract from raw backup tapes (known as "DLT Legato tapes") relevant information and place that information on a SDLT tape. NDCI would then return those tapes to Morgan Stanley's back-up and restore group ("BURP"), which would arrange to load the SDLTs onto a disk and into a staging area where Arthur Riel's group would take over and further process the tapes. Morgan Stanley implemented this process because it believed it would allow it to "more expeditiously provid[e] search capability of e-mail prior to

2003 for litigations or for regulatory requests.” (Saunders Dep. at 11, 17)² This e-mail restoration project is what is referred to as the “migration process.” (Saunders Dep. at 6-8)

The second improvement related to the uploading and review of those tapes. As noted earlier, Arthur Riel, on behalf of the company, had designed a program that Morgan Stanley at the time believed would allow the Company to upload information into a searchable archive system where, with search terms, Morgan Stanley could locate potentially relevant e-mails housed anywhere in the *ENTIRE* e-mail backup collection. (Saunders Dep. at 11 (noting the benefits of a “comprehensive” process)) No longer would individual tapes have to be searched; instead, *ALL* e-mails collected in Morgan Stanley backup tapes would be housed in an archived and searchable database.

The Migration Process From December 2003 to May 2004

The migration process for these DLT Legato tapes began in approximately December, 2003. (Saunders Dep. at 10) Morgan Stanley monitored this process through a group dubbed the E-mail Archive group, comprised of representatives from BURP, Arthur Riel’s group and NDCI. For a period of time, the group met almost every week to review and record its own progress. (Saunders Dep. at 16; Ex. 6, 02/10/05 Seickel Dep. at 88-89.)

The process began with the BURP group. It brought back backup tapes being housed at Recall, its outside storage vendor, and forwarded those tapes to its e-mail retrieval vendor, NDCI. At the beginning of the process, Morgan Stanley had approximately 35,000 backup tapes at Recall, which it endeavored to bring back and forward to NDCI. The backup

² Morgan Stanley has identified both Glenn Seickel, the operational manager of BURP, and his boss, Robert Saunders, as individuals with knowledge about this process. Both have been deposed.

tapes were at Recall because Morgan Stanley had sent them there over the course of the past several years as part of its standard backup business practices. (Saunders Dep. at 34.) At the time, Morgan Stanley believed that the 35,000 tapes represented the complete universe of Morgan Stanley backup tapes. (Saunders Dep. at 35.)

With the approximately 35,000 tapes in hand, NDCI worked on retrieving and deduping e-mail data from the tapes during the early months of 2004. Although this process was fraught with problems (broken tapes, read errors, etc.), NDCI was able to report by May 6, 2004, that it had finished processing 32,832 of 35,000 tapes, resulting in the restoration of 114 SDLTs. (MS 0112286, attached as Ex. 7) As Robert Saunders noted, by the summer of 2004, the “project had been moving along . . . at a run rate capacity.” (Saunders Dep. at 16.) And NDCI’s performance had been “timely” and “very satisfactory.” (Saunders Dep. at 89) Pursuant to the Morgan Stanley protocol, these tapes were then placed in a staging area where Arthur Riel’s group was tasked with the responsibility of uploading the data into the new optical disc e-mail archive system for review.

The Brooklyn Tapes

Although Morgan Stanley believed during this early phase of the restoration process that it had identified all the backup tapes that needed to be converted (i.e., those that had, over time, been sent to Morgan Stanley’s Recall off-site facility), on or around May 6, 2004, over a thousand additional unlabeled DLT tapes were found in a security room in Brooklyn. (Saunders Dep. at 33-34.) According to Glenn Seickel, a facilities worker at the security room alerted John Pamula, a member of the E-Mail Archive group, that tapes had been found and needed to be moved. Pamula then notified Mr. Seickel. (Seickel Dep. at 37) Being unlabeled, it was unclear how old these tapes were, whether the tapes contained e-mails, and whether those e-

mails were recoverable. The tapes were found in a bin in a cage in a locked room. (Seickel Dep. at 43.) After this discovery, the BURP group did a sweep and physically looked for any additional tapes that may have been missed or misplaced. (Saunders Dep. at 32, 37-38; Seickel Dep. at 44.) They found none.

Having found these "Brooklyn" tapes, Morgan Stanley tasked John Pamula, a contract employee from Siemens, to ship them to NDCI for processing. (Ex. 8, May 20, 2004 Minutes; 0112291) By June 18, 2004, the minutes to the E-mail archive group meeting reflect that these additional tapes (determined to number 1423 DLTs) had, in fact, been shipped to NDCI for processing. (Ex. 9, June 18, 2004 Minutes, 0112296) It is not clear when NDCI finished restoring and converting these tapes to SDLTs, but a mid-summer e-mail from NDCI's Bruce Buchanan to Arthur Riel suggests that by July 2, 2004, NDCI had restored at least some of the tapes and determined that 90 of those found in Brooklyn contained e-mails. Of the 90, Buchanan was able to determine dates for four of those tapes, three of the four falling in the May or August, 1999 timeframe, and one in 2001. (Ex. 10; MS 0112327) By July 2, 2004, NDCI had not yet identified any tapes with e-mails dated from February 15th to April 15th, 1998 -- the relevant timeframe identified in this Court's April Order.

By July 16, 2004, NDCI reported that it had identified an additional 22 tapes that contained e-mails data, bringing the total tally to 112 DLTs that contained e-mail data (Ex. 11, MS 0112889) The processed data from these tapes were in the staging area when Arthur Riel ^{placed on administrative leave} was ~~dismissed for integrity issues~~ in August 2004. (Gorman Dep. at 66-67)

The 8 mm Tapes

In addition to the Brooklyn tapes, there were also 738 8 mm tapes that were not uploaded into the e-mail archive system until ~~the Fall~~ ^{February} of 2004. Like the Brooklyn tapes, these tapes were placed at the end of the NDCI processing queue, and their processing progress was tracked during each of the E-mail archive meetings. (See, e.g., Ex. 12, MS 0112286, 0112291, 0112296, 0112301, 0112306, 0112311, 0112312, 0112313, 0112314) As Allison Gorman noted, once the script problems with the archival system were resolved, these tapes were promptly reviewed and any responsive documents produced.

¹⁶⁹ The 168 Tapes Found at Recall

In November or December, 2004, Glenn Seickel and John Pamula came to believe that there might be some backup tape containers at Recall that had not yet been processed by NDCI. (Seickel Dep. at 64-66) They learned this after identifying some discrepancies between boxes retrieved from Recall and those on the Recall Inventory List. (*Id.*) Legal counsel was alerted within no more than two days. (Seickel Dep. at 65) By ~~and January~~ ^{February}, NDCI had processed the tapes found within these misplaced boxes and returned them to Morgan Stanley for uploading and archival review. (Seickel Dep. at 74).

CONCLUSION

The Morgan Stanley E-mail Restoration And Review Process was a major undertaking, and has been a success. It has resulted in the production of thousands of pages of email messages in this litigation. The fact that the tapes found in the Brooklyn security room, the 8 millimeter tapes, and the tapes at Recall yielded virtually nothing is testament that Morgan Stanley was right in its prioritization, organization and processing of tapes as a part of the comprehensive E-mail Restoration and Review Process. Moreover, rather than delaying the

processing of tapes potentially relevant to this case, the Morgan Stanley lawyers actually sped up the processing of those tapes. Accordingly, Plaintiff's motion should be dismissed as moot and without merit.

NOT A CERTIFIED COPY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and hand delivery on this 11th day of February 2005.

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1 IN THE CIRCUIT Court FOR THE
2 15TH JUDICIAL CIRCUIT IN AND FOR
3 PALM BEACH COUNTY, FLORIDA

4 CASE NO. 03 CA 005045 AI

5 COLEMAN (PARENT) HOLDINGS, INC.,

6 Plaintiff,

7 vs.

8 MORGAN STANLEY & CO., INC.,

9 Defendant.

10
11
12 VOLUME I

13 PROCEEDINGS BEFORE THE HONORABLE ELIZABETH T. MAASS

14
15
16
17
18
19 Monday, February 14, 2004

20 Palm Beach County Courthouse

21 Courtroom 11-A

22 205 North Dixie Highway

23 West Palm Beach, Florida 33401

24 9:30 a.m. to 12:15 p.m.

25

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 4 COLEMAN (PARENT) HOLDINGS, INC.,
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 6 vs.
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 9 /
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 12 VOLUME I
 13 PROCEEDINGS BEFORE THE HONORABLE ELIZABETH T. MAASS
 14
 15
 16
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 18
 19 Monday, February 14, 2004
 20 Palm Beach County Courthouse
 21 Courtroom 11-A
 22 205 North Dixie Highway
 23 West Palm Beach, Florida 33401
 24 9:30 a.m. to 12:15 p.m.
 25

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3:1 I N D E X PAGE
 2 Witnesses: ALLISON GORMAN NACHTIGAL
 3 DIRECT EXAMINATION BY MR. JONES: 25
 4 CROSS EXAMINATION BY MR. BYMAN: 58
 5 REDIRECT EXAMINATION BY MR. JONES: 78
 6 ROBERT J. SAUNDERS
 7 DIRECT EXAMINATION 84 BY MR. KLAPPER:
 8
 9 EXHIBITS ID IN EVD
 10 Defendant's Hearing Exhibit 1 89 91 Defendant's Hearing E
 11 Defendant's Hearing Exhibit 3 126
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4:1 P R O C E E D I N G S
 2
 3 THE COURT: Good morning, have a seat.
 4 Now, do we have new folks here who need to
 5 be introduced or not?
 6 MR. SCAROLA: We do, Your Honor. Let me
 7 introduce Mr. Bob Byman, who will be helping us
 8 with the first matter on Your Honor's calendar.
 9 Mr. Byman is with Jenner & Block.
 10 MR. BYMAN: Good morning, Your Honor, I
 11 didn't know I would be shanghaied here, so I
 12 only brought a sport coats.
 13 THE COURT: I wouldn't have noticed.
 14 MR. DAVIDSON: Jeff Davidson from Morgan
 15 Stanley. And I have with me my partners Mike
 16 Jones and Tony Klapper.
 17 THE COURT: Great. And I appreciate your
 18 name tags.
 19 Do we want to start with the hearing we had
 20 set first up?
 21 MR. DAVIDSON: Yes, Your Honor.
 22 MR. SCAROLA: The e-mail matter.
 23 THE COURT: Did you all want to give any
 24 preliminary statement or begin with testimony?
 25 MR. DAVIDSON: Your Honor, if I might, for

25:1 everything.

2 THE COURT: Sure.

3 THEREUPON,

4 ALLISON GORMAN NACHTIGAL

5 having been first duly sworn, was examined and

6 testified as follows:

7 THE COURT: Raise your right hand.

8 Do you swear to tell the truth, the whole

9 truth and nothing but the truth?

10 THE WITNESS: I do.

11 THE COURT: Mr. Scarola, I'll take yours.

12 DIRECT EXAMINATION

13 BY MR. JONES:

14 Q. Good morning. Would you please state your

15 name for the record?

16 A. Allison Gorman Nachtigal.

17 THE COURT: What was your last name?

18 THE WITNESS: Nachtigal, N-A-C-H-T-I-G-A-L.

19 BY MR. JONES:

20 Q. Do you from time to time also use the last

21 name Gorman?

22 A. Yes. Professionally I just use Gorman.

23 Q. Just so there's no discrepancy this morning

24 when I was discussing this issue with the Court I was

25 referring to you as Ms. Gorman.

26:1 A. Yes.

2 Q. For purposes of today, do you have a

3 preference whether you use Gorman or Nachtigal?

4 A. Gorman is fine.

5 Q. Where do you work, Ms. Gorman?

6 A. I work at Morgan Stanley.

7 Q. If you could again keep your voice up.

8 You work at Morgan Stanley?

9 A. Yes.

10 Q. In what capacity?

11 A. In the Information Technology Department,

12 part of a team called Enterprise and Client

13 Technologies.

14 Q. Now, what does that department do?

15 A. We have a variety of responsibilities

16 including all of our messaging systems, collaboration

17 systems. We're responsible for the e-mail archive as

18 well as other data retention initiatives around the

19 web. We're responsible for the internet facing

20 infrastructure. I'll go on.

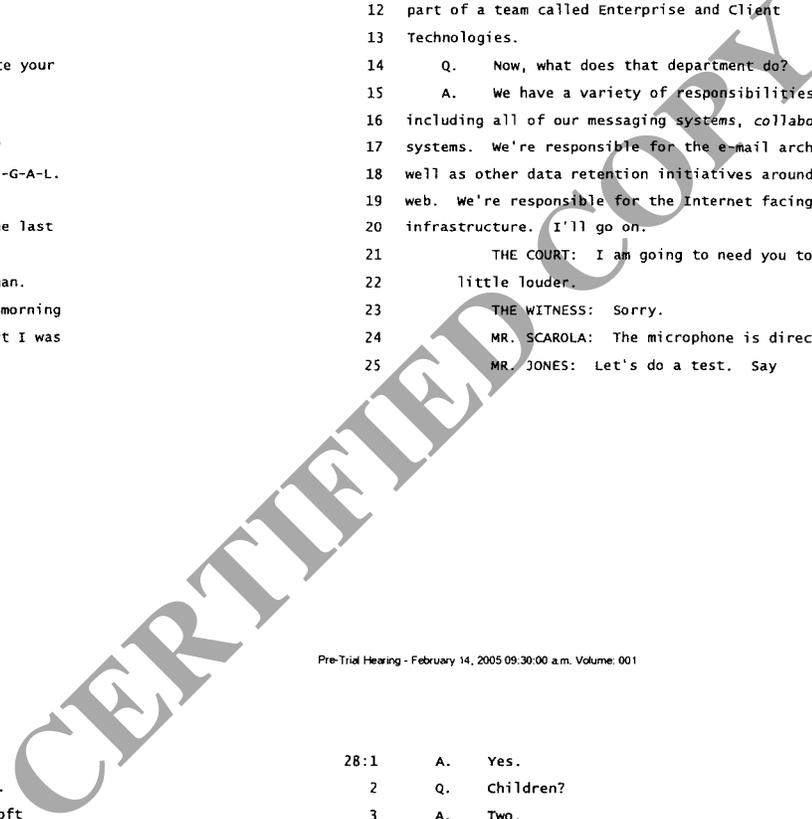
21 THE COURT: I am going to need you to talk a

22 little louder.

23 THE WITNESS: Sorry.

24 MR. SCAROLA: The microphone is directional.

25 MR. JONES: Let's do a test. Say



27:1 information technology.

2 THE WITNESS: Information technology.

3 THE COURT: You still are a little soft

4 spoken.

5 (A discussion was held off the record.)

6 BY MR. JONES:

7 Q. So let me just, with the Court's indulgence,

8 just back up a little bit.

9 You work for information technology?

10 A. Yes.

11 Q. And then you use another description?

12 A. The department within IT that I am in is

13 called Enterprise and Client Technologies. We're

14 responsible for a variety of messages, e-mail,

15 web-based infrastructure both internal and client

16 facing, collaboration systems, work flow systems and we

17 also have responsibility for the e-mail archive as well

18 as other data retention.

19 Q. I want to talk to you about the e-mail

20 archive in a little bit more detail in a minute. But

21 if you would just briefly describe for the Court your

22 educational background.

23 A. I have a BA in computer science from

24 Hamilton College.

25 Q. You are married?

28:1 A. Yes.

2 Q. Children?

3 A. Two.

4 Q. Now, you mentioned the e-mail archive

5 system. Can you tell us, first of all, what that

6 system is?

7 A. It's a system that collects -- really

8 there's three parts to the system. There's a component

9 that captures e-mail and other types of messaging

10 information like instant messaging out of our

11 infrastructure, indexes it on a database and inserts it

12 into our archive. There is an inquiry tool that sits

13 in front of that that allows us to pull information

14 from the archive. And there is a supervisory system

15 used by the business in order to monitor e-mail

16 communications at the business level. In addition, we

17 have data that we pulled in from tapes that completes

18 the overall data that is available in the archive.

19 Q. I wonder if you would describe for us,

20 please, your responsibility with respect to the e-mail

21 archive system?

22 A. I am the manager of the development team

23 that is responsible for the -- basically the three

24 components I just described, the development of those

25 components.

29:1 Q. Can I just back you up. Those three
 2 components are what?
 3 A. Data capture component. And that's coupled
 4 with the actual archive where the data is retained.
 5 Q. What does data capture mean?
 6 A. Data capture is the way we refer to the
 7 process where we pick the information out of the
 8 environment to insert into the file system and database
 9 which makes up the archive.
 10 Q. And then what's the second component?
 11 A. The inquiry tool.
 12 Q. Say it again.
 13 A. Inquiry tool.
 14 Q. Inquiry tool, what in the world does that
 15 mean?
 16 A. An inquiry tool is a web-based user
 17 interface that we give to our users so that they can
 18 run an inquiry into the data that is available in the
 19 archive.
 20 Q. A search?
 21 A. A search, yes.
 22 Q. So what's the third component?
 23 A. The third component is a supervisory system.
 24 The mail is shunted off and made available in a random
 25 nature to the business to do e-mail supervision.

30:1 Q. How long have you had some responsibility
 2 for the e-mail archive system?
 3 A. Since mid August.
 4 Q. How long have you been at Morgan Stanley?
 5 A. 13 years.
 6 Q. Now, what were you doing prior to mid
 7 August, mid August of '04?
 8 A. Going backwards to the beginning?
 9 Q. Just generally.
 10 A. Generally, I had responsibility for
 11 infrastructure that connects Morgan Stanley to the
 12 acquisitions we made several years ago, the former Dean
 13 Witter and Discover, responsible for that
 14 infrastructure.
 15 Responsible for product management of our
 16 directory infrastructure.
 17 Responsible for product management of the
 18 Internet.
 19 And responsible for product management of
 20 our distance learning tools.
 21 Q. What's your current title?
 22 A. Executive director.
 23 Q. How long have you been an executive
 24 director?
 25 A. Since the end of 2000, four years.

31:1 Q. When did you first become aware of this
 2 particular lawsuit?
 3 A. In mid January.
 4 THE COURT: Of what year?
 5 THE WITNESS: Of 2005.
 6 BY MR. JONES:
 7 Q. Does your department -- is your department
 8 involved in conducting any e-mail searches for this
 9 case?
 10 A. For this case right now, yes.
 11 Q. Who is actually conducting the searches?
 12 A. Combination of David Matteo is the lead
 13 assisted by two other people on my name.
 14 Q. David Matteo is the lead?
 15 A. Yes.
 16 Q. And who are the additional two people?
 17 A. Horace Sequeira.
 18 Q. What's the last name?
 19 A. S-E-Q-U-E-I-R-A.
 20 Q. And who is the third person?
 21 A. Andrew Brown.
 22 Q. And what is your role with respect to the
 23 searches conducted for this case?
 24 A. I am a manager of the team. I interface
 25 with the investigations team that needs to escalate to

32:1 us.
 2 THE COURT: I'm sorry, that needs to
 3 escalate to us?
 4 THE WITNESS: So the tool is typically run
 5 by the IT investigations team. They are our
 6 users. As the manager of the team, one of my
 7 primary responsibilities is an interface point
 8 to them, an interface point to legal as well as
 9 overseeing the activities of group.
 10 BY MR. JONES:
 11 Q. What's the total size of your team in
 12 addition to the two people that you were just
 13 describing to the Court?
 14 A. Five. In addition to myself.
 15 THE COURT: Including the two we just spoke
 16 about?
 17 THE WITNESS: Yes, including the two.
 18 BY MR. JONES:
 19 Q. Why don't we, if you don't mind, get out the
 20 names of the other ones?
 21 A. Tim Brown.
 22 THE COURT: There's a Tim Brown and an
 23 Andrew Brown?
 24 THE WITNESS: Yes.
 25 And Sabita Arumalla, A-R-U-M-A-L-L-A.

33:1 BY MR. JONES:

2 Q. And then is that everybody? Or are we
3 missing one?
4 A. That should be five. You have Horace?
5 Q. Yes.
6 A. Yes.
7 Q. You gave a deposition in this case last
8 week, Wednesday, February the 9th, do you recall that?
9 A. Yes.
10 Q. Do you recall what time you got to Florida
11 on last Wednesday?
12 A. 2:30.
13 Q. And when did you leave Florida?
14 A. I took a 7:15 out.
15 Q. What time did you get back to -- you live in
16 New York?
17 A. Yes.
18 Q. What time did you get back to New York?
19 A. We landed around 10 or 10:30.
20 Q. That's Wednesday. Let's now go to Thursday.
21 Did you go to work on Thursday?
22 A. Yes.
23 Q. Did you do anything related to searching
24 e-mails for this particular case?
25 A. On Thursday, I think they were done with

34:1 that piece by Thursday.

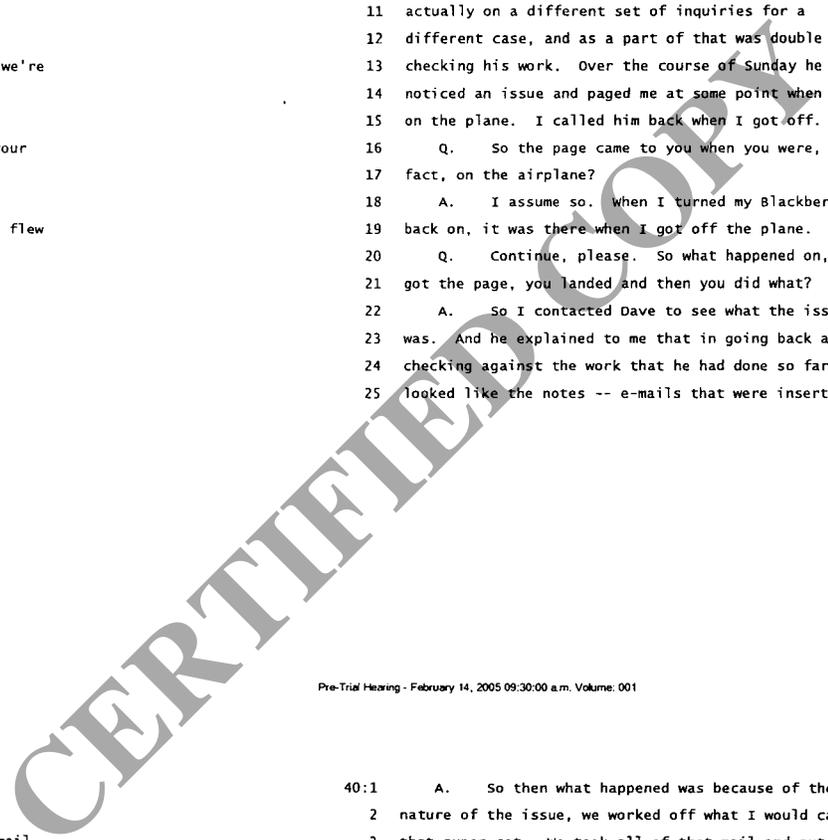
2 Q. Did you go to work on Friday?
3 A. Yes.
4 Q. Did you or your team do anything related to
5 e-mail searches in this case on Friday?
6 A. Yes. On Friday, as a part of double
7 checking work that he had done, Dave found an issue
8 related to pulling all of the attachments.
9 Q. And you say he was double checking his work,
10 please explain to the Court why he would be double
11 checking his work?
12 A. Well, there's really two reasons. We have
13 been working this process very quickly. And so in the
14 spirit of turning out results as quickly as possible,
15 we've been executing the scripts. We're running these
16 scripts against more than one case. We're using it for
17 multiple activities. So as a part of that, he's been
18 very meticulously and carefully back checking any
19 results that he pulled.
20 THE COURT: I'm sorry, what do you mean when
21 you say you have more than one activity?
22 THE WITNESS: We have multiple activities at
23 one time.
24 THE COURT: Related to this case?
25 THE WITNESS: No, multiple. In this date

35:1 range, pre-2000 date range. So we were using
2 these scripts for more than just this case.
3 BY MR. JONES:
4 Q. Can you just please explain to us in Court
5 what a script is?
6 A. A script is a piece of code -- in this case
7 we use perl -- that you can use to push an inquiry or
8 a search against your database and subsequently use
9 another piece of code to extract e-mails from a file
10 system and put them into a separate file. So the
11 script is the piece of code that we run.
12 Q. The script is the thing that you need to do
13 to conduct the search?
14 A. Yes, we've written scripts to do that
15 specifically.
16 Q. So did you learn -- the problem that you
17 learned about that you described in terms of the
18 attachments, when did you learn about this?
19 A. I was informed Friday afternoon.
20 Q. Do you remember the approximate time?
21 A. Would have been between 3 and 4.
22 Q. Can you just explain in a little bit more
23 detail than you have already what was the nature of the
24 scope of this problem?
25 A. Yes, so the way that the archive in -- let

36:1 me explain that the pre-2003 data specifically related
2 to the tape restores and is therefore handled in a very
3 different way than the post 2003. I want to draw that
4 distinction.
5 For pre-2003 the attachments are
6 unfortunately handled in multiple ways. So the
7 inquiries were pulling back attachments, which is why
8 it was a subtle problem. There was a category of
9 attachments they were not capturing.
10 Q. What category of attachments was that?
11 A. It was just a set in terms of the way they
12 were -- so they were attachments that had been detached
13 and indexed in separate tables versus attachments that
14 had not been detached. The ones that were still
15 imbedded in the e-mail were picked up. The ones that
16 were detached were missed.
17 Q. What's the best term to use to describe this
18 kind of error? Is this a software --
19 A. This is a software bug. He thought he was
20 picking them up. There was a bug in his code.
21 Q. So who -- I mean, if we can describe this as
22 an error, might I just pointedly ask you who made the
23 error?
24 A. Dave made the error coding the script.
25 Q. When was the script coded?

37:1 A. The scripts have been evolving since late
 2 December. And I say that because, again, we've been
 3 writing, running and refining these continually since
 4 about that time.
 5 Q. And were the -- to your knowledge were these
 6 attachments ultimately processed?
 7 A. Yes.
 8 THE COURT: I'm sorry, you're talking about
 9 over the weekend they were processed.
 10 THE WITNESS: So we gave the attachments
 11 over to legal department Friday night.
 12 BY MR. JONES:
 13 Q. So this is Friday, this Friday that we're
 14 talking about. Did you work on Saturday?
 15 A. I did not.
 16 Q. Did your team work on Saturday, to your
 17 knowledge?
 18 A. Yes.
 19 Q. Now we're at Sunday, yesterday. You flew
 20 from New York to West Palm Beach?
 21 A. Yes.
 22 Q. What time did you leave New York?
 23 A. It was a 4:40 flight.
 24 Q. What time did you arrive?
 25 A. 7:30.

38:1 Q. Can you just please explain to the Court
 2 what, if anything, happened on Sunday that's relevant
 3 to the e-mail searches that your team is responsible
 4 for?
 5 A. Yes.
 6 Q. And if I can just urge you to speak, one, a
 7 little louder, as you have been doing, and then,
 8 secondly, a little bit more slowly both for our benefit
 9 and the court reporter.
 10 A. David continued working over the weekend
 11 actually on a different set of inquiries for a
 12 different case, and as a part of that was double
 13 checking his work. Over the course of Sunday he
 14 noticed an issue and paged me at some point when I was
 15 on the plane. I called him back when I got off.
 16 Q. So the page came to you when you were, in
 17 fact, on the airplane?
 18 A. I assume so. When I turned my Blackberry
 19 back on, it was there when I got off the plane.
 20 Q. Continue, please. So what happened on, you
 21 got the page, you landed and then you did what?
 22 A. So I contacted Dave to see what the issue
 23 was. And he explained to me that in going back and
 24 checking against the work that he had done so far, it
 25 looked like the notes -- e-mails that were inserted



39:1 into the archive from Notes backups --
 2 THE COURT: I'm sorry, from Notes?
 3 THE WITNESS: Yes, Lotus Notes is a mail
 4 system.
 5 -- had been missed in his query scripts.
 6 And he was in the process of repulling those,
 7 correcting his error and pulling those out.
 8 BY MR. JONES:
 9 Q. And was he ultimately able to figure out the
 10 number of e-mails that might have been missed?
 11 A. Yes. We gave e-mails over to legal in two
 12 batches over the course of the night.
 13 Q. Did he describe to you a number of e-mails?
 14 Did he give any particular number in terms of the
 15 magnitude of the problem?
 16 A. He gave me the -- the initial number that he
 17 gave me represented a super set of e-mail, e-mail that
 18 matched the criteria of having been sent to or from the
 19 people who were the target of the inquiries. He had
 20 not refined it for the two additional search parameters
 21 that then decreased the numbers.
 22 Q. So was that initial number 11,680?
 23 A. Yes.
 24 Q. What was the -- and then the search was
 25 redone?

40:1 A. So then what happened was because of the
 2 nature of the issue, we worked off what I would call
 3 that super set. We took all of that mail and put it in
 4 a file. And we parsed it for the two conditions that
 5 were the parameters we were given to subset that data.
 6 So we had one pull that we were doing that
 7 was a three-month super set -- sorry, subset.
 8 Q. What were those three months?
 9 A. Mid February through mid April. Was that
 10 two months? Two months, sorry.
 11 Q. I'm sorry, what was the smaller number that
 12 was arrived at? The smaller estimate?
 13 A. 166 e-mails fell into that time period.
 14 Q. Now, when we're talking about the number
 15 11,680 e-mails, are we also talking about attachments?
 16 A. Yes.
 17 Q. Or is that just e-mails?
 18 A. That's just an e-mail count. There were
 19 also attachments found.
 20 Q. How many attachments were found?
 21 A. About 2400.
 22 Q. What's the best way to describe this
 23 particular kind of error? Is this a programming error
 24 or software error?
 25 A. This error was the result of the way the

41:1 information was indexed.

2 Q. Explain that, please.

3 A. So before we took over, the team that
4 preceded ours wrote a set of scripts that moved e-mail
5 from the staging area into the archive and indexed it.

6 In all cases, both the tape restore context
7 for what I'll call Netscape mail, which is the vast
8 majority of our e-mail, as well as in our current
9 system there is a field that is a date/time stamp field
10 that represents the received date of the mail.

11 For all of that mail, that field represents
12 the time that the mail was actually received. So some
13 date in 1998. In the case of Lotus Notes restores, we
14 discovered that instead of inserting that date, the
15 scripts that we had inherited inserted the actual date
16 that the mail was inserted into the archive, which
17 would be something more along the lines of a 2004 date.

18 And so our inquiries were missing these
19 because the date/time stamp was inaccurate.

20 Q. So far as the search engine were concerned
21 these e-mails didn't exist, though, they in fact did
22 exist?

23 A. Yes.

24 Q. When were the -- are you able to give us an
25 approximate date as to when these particular scripts

42:1 were written?

2 A. I inherited them. It would have been -- I'm
3 not sure, early '04, potentially late 2003.

4 Q. Legal staff have any involvement in writing
5 scripts?

6 A. No.

7 Q. Now, we talked about e-mails and attachments
8 that were missed. Are you able to identify for the
9 Court the group that these e-mails and attachments
10 belonged to?

11 A. I'm not sure what you mean.

12 Q. Were these from the Investment Banking
13 Division?

14 A. The bulk of the people who use Lotus Notes
15 in that time period, or actually throughout the years
16 that are relevant is the Investment Banking Division.

17 Q. From what time period do you believe these
18 e-mails to be?

19 A. The criteria that we were given to search in
20 the larger span was 1997 through 2000.

21 THE COURT: I want to make sure I'm
22 understanding your testimony. The 11,680, was
23 that the 1999 to 2000 or the two months from
24 February to April?

25 THE WITNESS: Because there was a problem

43:1 with the way the date/time stamp was formed on
2 the database, what we had to do, there's one
3 database that holds all the 2000 and earlier
4 data, which goes back to way earlier.

5 THE COURT: Goes back much earlier?

6 THE WITNESS: The data there goes well
7 earlier than 1998 or 1997. What we did was we
8 just pulled all the e-mail to those people that
9 were available. And then we created a data set
10 that had that. And then we had to work on just
11 that data set and parse the dates separately.

12 Was that confusing?

13 THE COURT: I want to get the agreed order
14 in front of me.

15 The 11,680 represented what universe?

16 THE WITNESS: Represented all mail sent to
17 or from the 36 people we were handed any time
18 before January of 2000.

19 THE COURT: So it had a date parameter
20 before January 2000. Other than that, it was by
21 person, by person generated.

22 THE WITNESS: Yes, it had no date parameter.

23 THE COURT: I thought you said it had to be
24 before January 2000.

25 THE WITNESS: We had a database that had

44:1 pre-2000 e-mail.

2 THE COURT: All you were searching for
3 initially were e-mails generated by a listed
4 person?

5 THE WITNESS: Sent to or from the people on
6 our list, the names that we were given.

7 THE COURT: And then to get to the smaller
8 subset of the 166, that's just the percentage of
9 those that fell within that two-month period?

10 THE WITNESS: Yes.

11 THE COURT: And when you were testifying,
12 you said you made a smaller subset by searching
13 the two parameters in the order. Then you
14 mentioned the time parameter. What was the
15 second parameter?

16 THE WITNESS: We pulled the initial subset
17 using the "to" and "from." So we pulled the
18 overly inclusive set of mail just by name. That
19 was the first set.

20 THE COURT: And that got you to the 166.

21 THE WITNESS: That got us to the 11,000.
22 Then we went into that data set and we searched
23 by date.

24 THE COURT: And that got you to the 166.

25 THE WITNESS: That got us to the 166 for two

45:1 months.
 2 THE COURT: Did you ever search by term?
 3 When you say name, are you talking the name of a
 4 person or just a word?
 5 THE WITNESS: Name of a person.
 6 THE COURT: Okay.
 7 BY MR. JONES:
 8 Q. At this point, Ms. Gorman, two sort of big
 9 questions. One, how could this problem have occurred?
 10 And secondly, why wasn't it discovered earlier?
 11 So the first question: Can you explain to
 12 us how this problem could have occurred?
 13 A. This problem occurred because the data was
 14 highly inconsistent within our database. So the Notes
 15 data was inserted in a completely different format than
 16 any of the rest of the data. And, therefore, the
 17 developer made what turned out to be a bad assumption,
 18 but not necessarily a surprising assumption, because
 19 one would assume consistency.
 20 And then beyond that, I think just the rush
 21 has made it very difficult for us to do the types of
 22 controlled testing that we would like to do when
 23 performing this type of work.
 24 Q. Can you just then describe what's the normal
 25 procedure and time period for developing, widely

46:1 testing scripts?
 2 A. So normally if we were writing an inquiry
 3 tool like this, we would give an estimate of at least
 4 three months for proper development and QA. I'm sorry,
 5 QA is quality assurance.
 6 Q. Now, to bring that into sort of some sharper
 7 focus. You took over in August of 2004?
 8 A. Yes.
 9 Q. And can you just please describe for the
 10 Court the state of affairs in terms of the archiving
 11 project when you took over in August? Let me back up.
 12 Who did you take over for?
 13 A. I took over for Arthur Reil.
 14 Q. And he had been in charge of it in advance
 15 of that?
 16 THE COURT: I'm sorry, did you start in
 17 August or in October?
 18 THE WITNESS: August.
 19 BY MR. JONES:
 20 Q. So you started in August of '04?
 21 A. Yes.
 22 Q. Now, is Mr. Reil, this is the individual you
 23 described in your deposition as having been placed on
 24 administrative leave and you took his place?
 25 A. Yes.

47:1 Q. What kind of -- what was the state of
 2 affairs when you took over in August?
 3 A. The system, we were focused primarily on the
 4 live capture system. And there was --
 5 Q. What does that mean?
 6 A. So the system that runs every day and
 7 collects e-mail out of the environment every day needs
 8 to be properly managed from an operational perspective
 9 or you could lose data. So that immediately became our
 10 focus.
 11 I would say from the start when we took over
 12 we had no documentation. We had some people -- sorry.
 13 Q. Can I just ask you: What do you mean you
 14 had no documentation?
 15 A. There was no documentation around how to
 16 operate the system from a technology perspective. So,
 17 for example, there were a set of operational procedures
 18 that needed to be performed to keep the system beating.
 19 One key example that hit us, because we took over sort
 20 of mid, late August, was at the end of the month
 21 there's a set of operational procedures that need to
 22 take place on the database in order for the system not
 23 to lose any data. One of our key focuses when we took
 24 over was how to do this, perform what is basically
 25 called rotate the database.

48:1 Q. How could it be that there was no
 2 documentation? I'm not sure that I get that.
 3 A. Arthur's team kept no documentation. I was
 4 not involved at that point.
 5 Q. So you were focused on capturing the live
 6 data?
 7 A. So we were focused on understanding how to
 8 make sure that we didn't lose any information in the
 9 live capture system as well as under a lot of strain
 10 because there was no disk space available in the
 11 archive. So we were accumulating essentially what we
 12 call tar balls, which are giant zipped up files of
 13 e-mail and trying to find them all a home so we
 14 wouldn't lose any data; as well as bringing ourselves
 15 up to speed as a team with respect to how to support
 16 the system, both the operational capture piece as well
 17 as the supervisory systems; and on top of that,
 18 supporting the inquiries.
 19 Q. So why wasn't there disk space available?
 20 A. They had run out and were waiting for a
 21 delivery that was due in October.
 22 Q. Isn't anticipating disk space need something
 23 that your predecessor should have been concerned with?
 24 A. Should have been concerned with it. I don't
 25 think he was very good at it.

49:1 Q. So when you took over, you described, I
2 believe in your deposition, that there was some data
3 that you called it the staging area. Just to sort of
4 speed us through this, can you first of all explain to
5 Your Honor what the staging area is and how does that
6 fit into the e-mail archive system?

7 A. So as a part of the tape restoration
8 process, the Enterprise Computing Group, which is the
9 group that Bob Saunders, for example, is a part of,
10 will get the tapes back from our vendor and take the
11 data off the tape and load it on to fast disk, which we
12 just refer to as staging. And from there make it
13 available to my team that we run scripts against that
14 data to do the insertion.

15 Q. So the staging is data that had been on
16 backup tapes at some point on the archiving and you're
17 waiting to put it into searchable form?

18 A. Yes.

19 Q. And in sort of waiting, you call staging?

20 A. Yes.

21 Q. How much data was in staging when you took
22 over in August?

23 A. In retrospect we found that to be what we
24 thought was first a terabyte, and when we ran through
25 it turned out to be about 600 gig.

50:1 Q. And is there some other way to describe
2 that? Is that a lot of data? How much data is that?

3 A. It's a good bit of data.

4 Q. Did you begin processing this data in
5 August?

6 A. No.

7 Q. Why not?

8 A. We had no space and we were far more
9 concerned with supporting the other components of the
10 system that I just mentioned, the daily capture
11 process, the inquiries that were running, the
12 supervisory system that was live. The data was sitting
13 in staging and to my knowledge it wasn't going
14 anywhere, it was somewhat lower priority.

15 Q. So it was a lower priority in August. At
16 some point did the priority change in terms of
17 processing the data which was in storage?

18 A. Yes.

19 Q. When did it change?

20 A. In the October time frame.

21 Q. Now, you described in your deposition that
22 you had a meeting with Morgan Stanley counsel in
23 October?

24 A. Yes. We had a series of meetings.

25 Q. And after that meeting your priorities

51:1 changed to focus on processing the data that was in
2 storage?

3 A. Yes.

4 Q. So this is October then. Can you then just
5 walk us through month by month, to the best you can,
6 what you did to process the data that was in storage?

7 A. So in October it became clear that there
8 were inquiries waiting on this data and that's why it
9 got prioritized. We went looking for the scripts and
10 it took us a bit of time to locate them.

11 Q. Can I just stop you there?

12 A. Sure.

13 Q. When you say you went looking for the
14 scripts, you mean you literally walked around in
15 different locations?

16 A. In different directories in the
17 infrastructure. So the code for this system was not
18 well organized. It was not all in a central
19 repository, it was spread around different home
20 directories from the various people who were a part of
21 the team that had preceded us as well as various parts
22 of our development file system. And so the scripts
23 were not in the -- we had interviewed the team that we
24 took over from. They told us -- they thought they told
25 us where they were, and when we didn't find them there,

52:1 we had to look around essentially.

2 Q. Did you ever find the scripts?

3 A. We found scripts that we believed to be
4 those scripts. We found scripts that had the right
5 names that appeared to perform the right operations, so
6 we began to test those.

7 Q. When did you find the scripts?

8 A. In early November.

9 Q. You said you began testing them when?

10 A. Right around there.

11 Q. Tell us what you did in December and
12 January.

13 A. So in November we ran initial tests on the
14 scripts and we weren't comfortable with the scripts.
15 It looked like the scripts weren't processing messages
16 properly. So we spent a good bit of December, albeit
17 months somewhat chopped up because of the holidays,
18 testing those scripts and debugging them and
19 essentially came into January, really got our arms
20 wrapped around and put some fixes in the code. And in
21 mid January we began the process of loading the data
22 out of staging.

23 Q. When you say you were debugging the scripts
24 in November, December, can you just please explain to
25 Your Honor what that means and what that entails?

53:1 A. We were taking a subset of the data that was
2 in staging and we were running the scripts against that
3 trying to understand exactly what they were supposed to
4 be doing. So it was a little bit more complicated than
5 it might sound, because there's a lot of details under
6 the covers of inserting data into a database.

7 THE COURT: What was your understanding of
8 what these scripts were going to do?

9 THE WITNESS: At a high level, they should
10 index the data in the database and insert them
11 in the file system.

12 THE COURT: So it had nothing to do with
13 this litigation?

14 THE WITNESS: No, just processing the
15 information that we knew was pending.

16 BY MR. JONES:

17 Q. Now, did you at some point come to learn
18 that -- before I ask you that. Let me just ask you
19 this. In terms of the processing of the data that was
20 in staging, is there some way that this could have been
21 done faster?

22 A. Not safely. We really needed to go through
23 the testing cycles that we went through. We had to
24 write the code to fix the scripts. And then it's just
25 a simple matter of physics that it takes a certain

54:1 amount of time to move data.

2 Q. Did you at some point come to learn that the
3 data that was in staging that you would ultimately
4 process, some of it came from the tapes that have been
5 discussed like Brooklyn tapes?

6 A. Yes.

7 Q. Now, is your group still rechecking scripts
8 even as we speak here today?

9 A. Yes.

10 Q. Why are they doing that?

11 A. Well, we found two issues over the weekend,
12 so we certainly want to go back through and actually
13 have another set of eyes look over our shoulder and
14 make sure that we don't have any other errors, either
15 in our code or in how our code perceives the data to be
16 structured in the system.

17 Q. Now, I think you might have misspoke. I
18 think you said the 11,680 e-mail super set is 2000 and
19 earlier, I wonder, if you know, in say 2001 and earlier
20 or do you know?

21 A. I'm sorry, January 2000 and back.

22 THE COURT: I'm sorry, what's your
23 understanding of the date parameter on that? If
24 you don't know, just tell me you don't know.

25 THE WITNESS: I'm not sure working from

55:1 memory, but I thought we only went up through
2 2000.

3 THE COURT: Up through 2000 or up until
4 January of 2000?

5 THE WITNESS: Up until January of 2000.
6 Depending on how you want to split it. It's
7 2001 back considering we're getting what would
8 be the end of December, for some reason January
9 7th in my mind.

10 THE COURT: Of what year?

11 THE WITNESS: Of 2000 and back.

12 THE COURT: Earlier than that?

13 THE WITNESS: Yes.

14 THE COURT: So the latest date I believe we
15 were picking up is January 7th, 2000, but I'm
16 working from memory. And the person in my group
17 is working from an official document. So if my
18 memory is wrong --

19 BY MR. JONES:

20 Q. Who is the person?

21 A. Dave Matteo. And the other people I
22 mentioned as well.

23 Q. Do you have in mind some particular kind of
24 additional tests and checking that your group is doing
25 or planning to do?

56:1 A. One of the ways that you make sure your code
2 is correct is you run it against information that
3 you're familiar with. So, for example, the way that
4 Dave found this last issue was to run an inquiry
5 against himself and see how it behaved.

6 You have to know your results in order to
7 know if they're accurate. So we will both spot check
8 the information in the database to confirm how it's
9 stored and make sure that it is consistent so we know
10 we can write a consistent inquiry against it as well as
11 rerun the various -- do what we would call component
12 testing. So reconfirm that the various parts of our
13 logic are accurately handing us results. And we would
14 do that by running it against information that we're
15 familiar with so we'd know the expected results and we
16 could confirm that they're accurate.

17 Q. Anything else?

18 A. Other than bringing in -- we have one other
19 person in our department who has a fairly good skill
20 set so we're going to try and engage him today as well.

21 Q. Do you -- I think I'll just ask you. Do you
22 think you found all the problems now or do you not
23 know?

24 A. I don't know. We need to keep looking.

25 Q. Do you have some level of confidence that we

57:1 can -- what percentage confidence are you that you
 2 found all the problems in the script?
 3 A. Sir?
 4 Q. Do you know what I mean? You are not sure
 5 that you found all the problems. Are you able to
 6 quantify where you are in terms of how much more there
 7 is to do? 10 percent sure, 15, 20, 70? Do you
 8 understand?
 9 A. I think I'm, you know, at about a 75 percent
 10 comfort level just given that we found a lot of issues
 11 we didn't anticipate and, therefore, I have to be
 12 critical, and make sure that everything gets retested.
 13 MR. JONES: Let me have a second, Your
 14 Honor.
 15 BY MR. JONES:
 16 Q. Ms. Gorman, I'd like to take you back to the
 17 discussion of the searches that were done last night.
 18 THE COURT: I'm sorry, that were done when?
 19 MR. JONES: Last night.
 20 BY MR. JONES:
 21 Q. Did you run a second search or a key word
 22 search on the 11,680 super set in addition to the date
 23 search?
 24 A. Yes, we did.
 25 MR. JONES: That's all I have, Your Honor.

58:1 THE COURT: Who will be questioning on
 2 Plaintiff's side?
 3 MR. SCAROLA: Mr. Byman is our "e-male."
 4 That's A-L-E.
 5 MR. BYMAN: That means I know how to use
 6 e-mail, Your Honor, but I don't know much more.
 7 CROSS EXAMINATION
 8 BY MR. BYMAN:
 9 Q. I'm 75 percent more confident that I have
 10 fewer questions for you today than I did last week.
 11 A. That's good.
 12 Q. Ms. Gorman, I want to establish one thing
 13 that I think is self-evident: The problems that you
 14 encountered when you took over for Mr. Reil's team, the
 15 problems that you didn't discover until last week or
 16 last night, these are all internal problems at Morgan
 17 Stanley, right?
 18 A. Yes.
 19 Q. Certainly CPH had nothing to do with causing
 20 any of them?
 21 A. No. This is our system. This is our
 22 internal code.
 23 Q. And Mr. Reil wasn't a lone wolf working out
 24 there, he had a team of other people working with him,
 25 right?

59:1 A. Yes, he had a small team.
 2 Q. And some of that team are still employed by
 3 Morgan Stanley, even though he has been, is it
 4 discharged, administrative leave, fired?
 5 A. Administrative leave is the term I
 6 understand to be appropriate.
 7 Q. Well, I don't know that it's appropriate or
 8 not, but it's the term you've been told?
 9 A. It's the term I've been told to use. The
 10 developers who worked on the system, they are all gone.
 11 Q. What about Mr. Wray Stewart, he was involved
 12 in some of the team?
 13 A. Wray is a part of the Enterprise Computing
 14 Group. He is familiar with the piece that leads up to
 15 the component that I'm responsible for.
 16 Q. I just want to make sure that we're clear on
 17 this. The people that were aware that this data was in
 18 staging -- when you got there in August you found 600
 19 gigabytes of data, right?
 20 A. We were told what was in there.
 21 Q. And some of that was the Brooklyn found
 22 tapes?
 23 A. Yes. We came to understand that later.
 24 Q. And I'm going to show you a copy of Morgan
 25 Stanley's supplemental opposition mainly so that I can

60:1 show you the exhibits that are attached to it, Exhibit
 2 12.
 3 May I approach, Your Honor?
 4 THE COURT: Sure.
 5 BY MR. BYMAN:
 6 Q. You'll recall those are the minutes of the
 7 e-mail archive group?
 8 A. Yes.
 9 Q. And we talked about those when I met you for
 10 the first time at your deposition last week, right?
 11 A. Yes.
 12 Q. And the people that were given copies of
 13 those minutes included not just Mr. Reil, but somebody
 14 named Kay Gunn?
 15 A. Yes.
 16 Q. And she still works for Morgan Stanley,
 17 doesn't she?
 18 A. I believe she does.
 19 Q. And Bruce Buchanan, who is an outside vendor
 20 for Morgan Stanley, he still is an outside vendor for
 21 Morgan Stanley, right?
 22 A. Yes, I think so.
 23 Q. Annaline Dinklemann, she's still with Morgan
 24 Stanley?
 25 A. Yes.

61:1 Q. John Pamula, he's still with Morgan Stanley?
 2 A. Still haven't met him.
 3 Q. Have you heard his name?
 4 A. Only from here.
 5 Q. Wray Stewart you know, right?
 6 A. Yes, I know Wray.
 7 Q. And then there are a couple of address
 8 lists, e-mail archive core and DGR-NA?
 9 A. Yes.
 10 Q. And you know that some of the people in
 11 those bigger address groups are still Morgan Stanley
 12 employees?
 13 A. Yes.
 14 Q. And all of these people would have gotten,
 15 on May 6th, 2004, a copy of this set of minutes of the
 16 e-mail archive group that disclosed that there were
 17 more than 1,000 unlabelled tapes which had been found
 18 in the Brooklyn security room?
 19 A. According to the mail.
 20 Q. And that became known as the Brooklyn found
 21 tapes, right?
 22 A. It would seem to be, yes.
 23 Q. And the Brooklyn found tapes, which were
 24 found as of May 6th, 2004, were among the 600 gigabytes
 25 of data that you inherited in mid August 2004?

62:1 A. Yes, at least a subset of them.
 2 Q. And that data, which was ready to be
 3 uploaded into your computers, it had already been
 4 extracted by your outside vendor; is that right?
 5 A. Yes.
 6 Q. It was ready for uploading, but you gave it
 7 no priority in August; is that right?
 8 A. We gave a lower priority in August.
 9 Q. By lower?
 10 A. We had a long list and it was closer to the
 11 bottom. Actually, we researched it. I had someone on
 12 my team looking into it.
 13 THE COURT: I'm sorry, looking into what?
 14 THE WITNESS: Someone on my team, our
 15 product manager, who is not a developer, working
 16 with Wray and that team to get a handle on what
 17 the process was and where we were.
 18 BY MR. BYMAN:
 19 Q. When you took over in mid August nobody told
 20 you it was a priority to process that data, right?
 21 A. Not in relation to the longer list, no.
 22 Q. Nobody told you that there was some problem
 23 that needed to be addressed with respect to it?
 24 A. No, they told us it needed to be processed.
 25 There was no problem pointed out.

63:1 Q. In the fullness of time?
 2 A. In the fullness of -- yeah, sooner than
 3 later, but in some logical order given --
 4 Q. In October it became a priority when counsel
 5 told you that it was, right?
 6 A. Yes.
 7 Q. And by the way, I think that there was some
 8 reference in your testimony to Morgan Stanley counsel,
 9 that October meeting also included Kirkland and Ellis,
 10 didn't it?
 11 A. Yes, some of them did.
 12 Q. You understood that they were outside
 13 counsel to Morgan Stanley?
 14 A. Yes, sir.
 15 Q. Was there some event in October that moved
 16 that data from low priority to higher priority other
 17 than counsel contacted you?
 18 A. A series of discussions with counsel --
 19 MR. JONES: Your Honor, I would object to
 20 the content of discussions with counsel or
 21 attorney-client privilege. Talk about she had a
 22 meeting, but I would invoke the privilege as to
 23 discussions with counsel.
 24 MR. BYMAN: I don't know that my question
 25 asked for that. I wasn't trying to do that.

64:1 THE COURT: Why don't we complete the
 2 question.
 3 MR. SCAROLA: But do ask.
 4 BY MR. BYMAN:
 5 Q. Let me make sure that my question was clear.
 6 I wanted to know if there was some event, other than
 7 counsel, in October that moved it from low priority to
 8 priority?
 9 A. No, it was prioritized as a result of
 10 discussions with counsel.
 11 Q. And what was it that made it a priority,
 12 what were you told?
 13 MR. JONES: Objection, Your Honor,
 14 attorney-client privilege.
 15 THE COURT: Any response?
 16 MR. BYMAN: Your Honor, it's their burden to
 17 try to show why this wasn't --
 18 THE COURT: And I think they're alleging to
 19 privilege.
 20 BY MR. BYMAN:
 21 Q. In any event, in October -- by the way,
 22 early October, mid October, late October, do you
 23 remember the date?
 24 A. Don't remember the date.
 25 Q. Was it before Halloween, after Halloween?

65:1 A. That would be the very end. It was mid, not
 2 the first week, not the last week, one of those two in
 3 the middle.
 4 Q. Sort of mid October?
 5 A. Sort of mid October.
 6 Q. And it took us until sort of mid January
 7 before you were actually ready to start processing that
 8 data, right, because you were finding scripts,
 9 debugging scripts?
 10 A. Yes.
 11 Q. Quality controlling scripts?
 12 A. Yes.
 13 Q. Roughly the three months you said it takes
 14 to develop a program to do all of that, right?
 15 A. No. When I was referring to the program I
 16 was referring to the search tool, not the scripts.
 17 Q. Well, the search tool was already in
 18 existence, wasn't it? You didn't have any trouble
 19 finding that.
 20 A. No, the search tool was in existence, but
 21 the search tool had certain issues and those are the
 22 scripts that we were writing to compensate for those
 23 issues. We were doing those two things in parallel.
 24 Q. When you were told in mid October that this
 25 was a priority, that it was a rush, did it move from

66:1 low priority or no priority to mid priority, high
 2 priority, utmost priority? What was your sense of
 3 urgency?
 4 A. It moved to high priority and took a spot
 5 amongst two or three other very high priority tasks.
 6 So we split work across the team.
 7 Q. So there were three or four things now that
 8 were your highest priority items?
 9 A. Yes, we had multiple customers, so, yes.
 10 Q. In fact, what you were really trying to do
 11 here was not develop information for this particular
 12 lawsuit for this particular agreed order to comply for
 13 your obligations in this case, it was to do something
 14 firm wide, right?
 15 A. It was generally making sure that the
 16 archive had all the data in it, yes, it was not
 17 specific to this case.
 18 Q. For Morgan Stanley's convenience for all
 19 kinds of inquiries and all kinds of lawsuits?
 20 A. Yes.
 21 Q. Do you know how many other lawsuits were
 22 pending that you were planning to use the results of
 23 this work for?
 24 A. No.
 25 Q. So, and I want to make sure that I

67:1 understand this, because I think we established that my
 2 knowledge of computers is the on/off button. And you
 3 and I speak different languages, but this is the
 4 equivalent of: I want a room for the night and the
 5 hotel says, sure, we'll give you one as soon as we've
 6 taken care of all the rooms in the hotel and they're
 7 all clean. You weren't trying to just take care of my
 8 needs, you were trying to take care of the global needs
 9 of the hotel?
 10 MR. JONES: Your Honor, I object to the
 11 question.
 12 MR. BYMAN: I agree with him. It was a
 13 terrible analogy and I'll withdraw it.
 14 THE COURT: When did you first learn of this
 15 litigation?
 16 THE WITNESS: January, about mid.
 17 THE COURT: Mid January?
 18 THE WITNESS: Yes.
 19 BY MR. BYMAN:
 20 Q. Was it right around the time that you
 21 started actually running the data in this case?
 22 A. Data in this case? I don't remember the
 23 order, but it would have been roughly the same time
 24 frame probably.
 25 Q. Now, you could have done this faster --

68:1 let's not even talk about between August and October.
 2 From the point that you were told that it
 3 was a priority, you know you could have done it faster
 4 if you had gone to an outside vendor and focused just
 5 on this subset of data; isn't that right?
 6 A. No.
 7 Q. You don't know that?
 8 A. An outside vendor can't insert data into our
 9 system.
 10 Q. I'm not talking about getting it into your
 11 firm-wide system.
 12 I agree with you that only you know how to
 13 take care of your 15 terabytes of firm-wide data, but
 14 you do know there are vendors out there that can take
 15 600 gigabytes of data and process it and search it
 16 independent of your system, right?
 17 A. I suspect there are, yes.
 18 Q. Did you do any research to find out whether
 19 those vendors were available and could do it faster
 20 than you do?
 21 A. I was not asked to, so I did not do that.
 22 Q. When you were told that this was the utmost
 23 priority, did it occur to you that, hey, we could do
 24 this faster if we went to an outside vendor?
 25 A. The priority I was given was first to insert

69:1 the data into the archive and then to later in January
2 run the inquiries for this case. I would say by the
3 time that came up, we could run an inquiry into our
4 system faster than a vendor could have.

5 Q. By mid January.

6 I'm asking if somebody had told you in
7 August when you took over for Mr. Reil, it's really
8 important, we have a Court order that says we're
9 supposed to produce everything. We want to do it as
10 quickly as possible. You know you could have done it
11 faster with an outside vendor, don't you?

12 MR. JONES: I object to the form of the
13 question.

14 THE COURT: What's the legal objection?

15 MR. JONES: Because the question was you've
16 got an order that you should have produced
17 everything, it's not been established that this
18 witness really is familiar with this Court
19 order.

20 THE COURT: Do you want to -- why don't you
21 rephrase it eliminating that?

22 BY MR. BYMAN:

23 Q. Let's put aside Court orders. Lawyers very
24 seldom tell you why they're doing anything because they
25 don't know themselves.

70:1 But suppose somebody said to you: It's
2 really important that we find e-mail with these search
3 characteristics and we find it as soon as possible. If
4 somebody had told you that in August when you took
5 over, you know you could have done it sooner than
6 February by going to an outside vendor, isn't that
7 right?

8 MR. JONES: Your Honor, I object to the form
9 of that question, too, as vague and ambiguous.

10 THE COURT: Overruled.

11 So we're all clear, particularly in the
12 trial, what I want are legal objections like the
13 one or two words and if I need an argument, I'll
14 ask for it. But vague and ambiguous I would
15 overrule.

16 Go ahead.

17 MR. BYMAN: Do you remember the question?

18 THE COURT: Try again.

19 BY MR. BYMAN:

20 Q. You arrive on the scene on August 15th, you
21 might as well have been from Mars with respect to this
22 project, because you don't know any of the history.
23 But somebody tells you: It's really important that we
24 find all responsive e-mail that fall within certain
25 search parameters. We have 600 gigabytes of data that

71:1 we need to search. What's faster, inserting it into
2 your total archive or sending that limited amount of
3 data out to an outside vendor and asking them to search
4 it?

5 MR. JONES: Objection, vague and ambiguous.

6 THE COURT: Overruled.

7 THE WITNESS: It would be somewhat
8 speculative for me to answer that question
9 because I don't know anything directly about
10 outside vendors that might process the data.
11 That is not something I deal with directly. So
12 the process of pulling data off tapes is
13 actually something that's typically done between
14 the enterprise computing team that's responsible
15 for tapes and the IT investigations team that
16 under normal circumstances drives an inquiry.
17 So no one asked me that question, nor would they
18 have.

19 And I wouldn't really consider myself an
20 expert enough in the area of what vendors can
21 and can't do to answer it.

22 BY MR. BYMAN:

23 Q. So you just don't know?

24 A. It's just really not my responsibility and I
25 have no experience with it.

72:1 Q. If I were to represent to you that we had an
2 outside vendor that Morgan Stanley and we are dealing
3 with directly together --

4 MR. JONES: Your Honor.

5 THE COURT: You need to let him finish the
6 question.

7 BY MR. BYMAN:

8 Q. -- who told us they can get the whole
9 process done and getting the actual output after
10 searching it, they can get it done between last week
11 when they first got the tapes and March 15th when
12 they've promised to deliver it, would that be
13 inconsistent with what you know or don't know?

14 A. It would be what you've told me.

15 Q. You have no reason to believe that that's
16 not accurate?

17 A. No, I have no reason to believe that's not
18 accurate.

19 Q. The 166 e-mails that apparently were
20 identified last night as fitting within the parameters,
21 the various search parameters, how thick of a stack of
22 documents are we talking about?

23 A. It was about 2 meg of data and we didn't
24 print it.

25 Q. 166 individual e-mails?

73:1 A. Yes.
 2 Q. And do you have any reason to believe that
 3 each e-mail or its chain was multiple pages?
 4 A. I didn't really look.
 5 Q. Meg of data is what, about 50 pages
 6 ordinarily if it's printed owed words?
 7 A. I guess.
 8 Q. I'm sorry, how many megs of data was this?
 9 A. 2 meg, I believe.
 10 Q. So maybe 100 pages?
 11 A. I don't know.
 12 Q. You don't happen to have those 100 pages in
 13 your briefcase someplace that we could take a look at
 14 them?
 15 A. I do not review mail for a living, I just
 16 try and pull it out.
 17 Q. Was that data provided to anybody, that
 18 2 megs of data?
 19 A. Yes.
 20 Q. By the way, that's a small enough size file
 21 that it could be e-mailed to someone and get through
 22 firewalls?
 23 A. Yes, I helped to pull it up, actually.
 24 Q. So it was submitted to counsel for their
 25 review?

74:1 A. Yes, we sent it -- my team made it available
 2 to counsel and I helped them get access to it.
 3 Q. You testified earlier that one of the
 4 glitches that David had made, one of the errors that he
 5 made was that he had written something that didn't
 6 capture certain attachments, do you remember that?
 7 A. Yes.
 8 Q. What kinds of attachments did the program
 9 fail to capture?
 10 A. It wasn't really what types. It would be
 11 any old kind of attachment. It was a category. So
 12 certain attachments were never decoupled from the
 13 e-mail. And at some point it looks like they changed
 14 the system so that the attachments were decoupled. In
 15 the case where the attachments were decoupled, there
 16 were additional entries made into the database so that
 17 you could retrieve those. And it was that latter
 18 category of attachments that we were missing.
 19 Q. What I'm trying to figure out and,
 20 unfortunately, I have to ask you this for the first
 21 time because we didn't know about this to ask you about
 22 it earlier. Are we talking about particular types of
 23 attachments, would they be PDF files, Excel
 24 spreadsheets, Word documents?
 25 A. It would be everything. And probably, my

75:1 expectation, it would have more to do with -- well, it
 2 wouldn't even be that clean. This data was not
 3 processed in any logical date order or I could tell you
 4 it was stuff that was processed later, but that would
 5 likely not map back to a date.
 6 So it was really any type of attachment
 7 processed at some date in time where the scripts were
 8 adjusted to detach this data. And I do not know that
 9 date.
 10 Q. So if somebody had sent a spreadsheet in
 11 June of 1998 to one of their colleagues, we might not
 12 have that yet, it may be in the 2400 attachments you've
 13 found out?
 14 A. The 2400 maps to the Lotus Notes issue. It
 15 would be in the attachment set that we handed over on
 16 Friday night.
 17 Q. Handed over to who?
 18 A. Legal.
 19 Q. But not handed over to us?
 20 A. I don't know what they do after I give it to
 21 them.
 22 MR. BYMAN: May I have a moment, Your Honor?
 23 THE COURT: Yes.
 24 BY MR. BYMAN:
 25 Q. One thing that I'd like to clarify. When

76:1 you talked about the two conditions that you ran
 2 against the 11,280 e-mails, one condition was the
 3 two-month time period, right?
 4 A. Yes.
 5 Q. And the other was that you searched it
 6 against names?
 7 A. We searched against the key words that we
 8 were given.
 9 Q. What key words did you use? What number of
 10 key words?
 11 A. I think I counted them. There were probably
 12 just under 30 key words that had been given to us as a
 13 part of the search criteria.
 14 Q. Did you get them in the form of a copy of an
 15 agreed order or were they given to you in some other
 16 form?
 17 A. I had it in the form of an e-mail that was
 18 passed to me by the IT investigations team.
 19 Q. So it wasn't an attachment, it wasn't a
 20 document you saw, somebody actually listed out the
 21 things you were supposed to search?
 22 A. Yes.
 23 Q. Do you have a copy of that with you today?
 24 A. Copy of the e-mail?
 25 Q. Well, just so that we can find out whether

77:1 or not the things you searched are the same as the
 2 things that we think you searched because of Court
 3 proceedings.
 4 A. I don't have the document that was used
 5 by -- no, I don't have it with me. I don't have the
 6 document that was used by my team.
 7 Q. Let me back up to one sort of global thing.
 8 We've put a couple of stacks here just to show what
 9 1300 pages are, that's the little stack about a foot
 10 high; 8,000 pages looks like about 3 and a half feet
 11 high. All of that together would represent about 250
 12 megabytes, right?
 13 A. I don't know.
 14 Q. Isn't it true that a megabyte is usually
 15 about 50 printed pages in general?
 16 A. I don't know.
 17 Q. You don't have any idea about that?
 18 A. No.
 19 Q. The quantity of data that you inherited in
 20 August when you came in and took over from Mr. Reil was
 21 600 gigabytes, right?
 22 A. The quantity of information in staging was
 23 600 gigabytes.
 24 Q. And so that is roughly 2400 times the amount
 25 of material that we've got printed out here, is that

78:1 fair?
 2 A. Presuming you just did that math correctly.
 3 I didn't do it in my head, yes.
 4 Q. Even I can do 600 times 4.
 5 A. I'm a little coffee deprived right now.
 6 Q. We know that there were a limited number of
 7 e-mail messages in that 600 gigabytes of data. What
 8 other kinds of data were on that --
 9 A. No, the 600 gig was purely e-mail. By the
 10 time we get data in staging it is e-mail and
 11 attachments.
 12 Q. Out of all of that we've managed to find
 13 this, is that right? I'm sorry, you don't know what
 14 this is?
 15 MR. JONES: Object to the form of the
 16 question.
 17 MR. BYMAN: I've withdrawn it already. I
 18 think, unless somebody wants to tackle me, I've
 19 done enough to Ms. Gorman.
 20 THE COURT: Do you have any other questions?
 21 MR. JONES: Yes, I do.
 22 REDIRECT EXAMINATION
 23 BY MR. JONES:
 24 Q. Ms. Gorman, you were just asked by Mr. Byman
 25 about the key word search that was done last night. Do

79:1 you have that in mind?
 2 A. I'm sorry?
 3 Q. Do you have it in mind?
 4 A. Yes.
 5 Q. What was the volume of data or documents
 6 that that key word search yielded?
 7 A. Around 32,000, potentially a little more.
 8 And change.
 9 Q. And that's a different search than the date
 10 search that you described earlier?
 11 A. Yes.
 12 Q. Questioning you about staging. 600
 13 gigabytes of data in staging, some of which you now
 14 know included data from the so-called Brooklyn tapes?
 15 A. Yes.
 16 Q. What would have been involved -- would it
 17 have been easier to try to figure out how to go in,
 18 segregate out, find out which of this data goes back to
 19 the Brooklyn tapes, would that have been easier to do?
 20 Or would it have been easier to process everything that
 21 was in staging? First of all, do you even understand
 22 the question?
 23 A. Would it have been easier to search the
 24 subset? Is that what you're asking.
 25 Q. Let me ask a different question.

80:1 Would there have been a way for the data
 2 that was in staging, if somebody had said to you -- one
 3 of the questions that were asked by opposing counsel,
 4 somebody had said to you: Go into the staging area and
 5 from this 600 gigabytes, figure out what part of that
 6 comes from the Brooklyn tapes, would you have been able
 7 to do that?
 8 A. I don't think so. We lose that
 9 association -- the data gets really merged together as
 10 it moves through the process, so certain distinctions,
 11 like what original DLT tape it came from, get sort of
 12 lost in the translation.
 13 MR. JONES: That's all I have.
 14 THE COURT: Can I just ask a couple of
 15 questions? And I apologize, I want to make sure
 16 I'm understanding your testimony. And please
 17 correct me if I'm wrong.
 18 As I understand what you're telling me,
 19 there were sort of three problems here. The
 20 first is that there was a large part of, or 600
 21 gigabytes of information in the staging area
 22 that just hadn't been searched?
 23 THE WITNESS: Yes.
 24 THE COURT: Problem number two is sort of
 25 Friday's problem when we discovered under the

81:1 script that was being used attachments that had
 2 been decoupled were not picked up in the search?
 3 THE WITNESS: Yes.
 4 THE COURT: And problem three is the Sunday
 5 problem when we discovered that the e-mails
 6 inserted from Lotus weren't being searched at
 7 all either?
 8 THE WITNESS: Yes. Weren't being pulled up,
 9 yes.
 10 THE COURT: The attachment problem. Do we
 11 know, can we quantify that?
 12 THE WITNESS: There was a number of
 13 attachments that got passed off on Friday night.
 14 We did not deduplicate that number.
 15 THE COURT: You mean you don't know the
 16 number?
 17 THE WITNESS: No, no. So the number, so
 18 the -- I heard a 4,000 type number. I can't
 19 remember the exact number. But the distinction
 20 there is we didn't make any attempt to what I
 21 would call deduplicate those attachments. So if
 22 we found an e-mail and it was associated with an
 23 attachment and another one was associated with
 24 the same attachment, we pulled it twice. We
 25 were very simple and straight in the way we

82:1 extracted the data.
 2 THE COURT: The Sunday issue, the Lotus
 3 issue, we know the quantity of that that gets us
 4 down to the 166.
 5 THE WITNESS: For the two months, yes.
 6 THE COURT: Were you aware that there was
 7 apparently a search done in May of 2004 looking
 8 for these same parameters?
 9 THE WITNESS: I've heard that, yes.
 10 THE COURT: Did you ever go back and try to
 11 find the code used to run that search?
 12 THE WITNESS: My expectation is that that
 13 was the standard inquiry tool run by our -- now
 14 run by the IT investigations team. I don't know
 15 if had it any enhancements done between May and
 16 when I showed up.
 17 THE COURT: But your team didn't go back and
 18 check those searches?
 19 THE WITNESS: No.
 20 THE COURT: Do you know if these two
 21 problems we've discussed, the Lotus and the
 22 decoupling problem, existed in that search?
 23 THE WITNESS: Based on what we saw of the
 24 inquiry tool, I am 90 percent sure that the
 25 Lotus content would not have been pulled back in

83:1 that search.
 2 Because the reason that we built scripts
 3 was -- one of the reasons was to compensate for
 4 that. The attachment I would expect was handled
 5 properly, but having not inspected it.
 6 THE COURT: The numbers we talked about on
 7 Lotus is that on the 600 gigabytes or did you
 8 rerun from May?
 9 THE WITNESS: We run everything against the
 10 full archive.
 11 THE COURT: That was in the archive and
 12 you've ran everything?
 13 THE WITNESS: Once we've gotten everything
 14 inserted, we run searches to make sure that in
 15 total nothing is missed.
 16 THE COURT: Any other questions from either
 17 side?
 18 Thank you very much.
 19 (Witness excused.)
 20 THE COURT: Who is going to testify next on
 21 behalf of Morgan Stanley?
 22 MR. KLAPPER: Your Honor, that would be
 23 Robert Saunders.
 24 THEREUPON,
 25 ROBERT J. SAUNDERS

84:1 having been first duly sworn, was examined and
 2 testified as follows:
 3 THE COURT: Do you swear to tell the truth,
 4 the whole truth and nothing but the truth?
 5 THE WITNESS: I do.
 6 DIRECT EXAMINATION
 7 BY MR. KLAPPER:
 8 Q. Would you please state your name for the
 9 record?
 10 A. Robert John Saunders.
 11 Q. Mr. Saunders, where do you work?
 12 A. I work for Morgan Stanley.
 13 Q. And what do you do for Morgan Stanley?
 14 A. I'm an executive director in the Information
 15 Technology Division as a part of Institutional
 16 Securities.
 17 Q. What do your job responsibilities include
 18 within that division?
 19 A. I'm responsible for the operation of the
 20 UNIX and storage plant in North America.
 21 Q. Are you responsible for things other than
 22 operation? In other words, hardware, other issues like
 23 that?
 24 A. Sure. So specifically my groups are
 25 responsible for the maintenance of the server hardware,

85:1 so the Dell, Sun Computers, Hewlett Packard, the
2 operating system that run on top of those such as UNIX
3 variants and also the storage associated with those
4 servers.

5 Q. For purposes of the issues that are before
6 the Court today, the retrieval, restoration and review
7 of e-mails, where within those three categories of
8 topics does your expertise and your responsibilities
9 lie at Morgan Stanley?

10 A. Sure. So the teams that I'm responsible for
11 are responsible for the retrieval and the restoration
12 process is the part of what you described.

13 Q. So the first two prongs?

14 A. That's right.

15 Q. The third prong, the review process, you're
16 not responsible for that; is that correct?

17 A. That's correct.

18 Q. Regarding today's testimony, are you
19 prepared to talk today about the steps that are taken
20 by Morgan Stanley and its vendors to process backup
21 tapes on to an archive system to review e-mails?

22 A. Yes.

23 Q. Are you also prepared to talk today about
24 the events of the past year and this past weekend,
25 including last night, regarding the discovery of

86:1 additional tapes?

2 A. Yes.

3 Q. Let's start first with this past weekend.

4 At your deposition, which was taken last
5 week, you were asked a number of times, were you not,
6 by counsel for the other side if you had searched for
7 additional tapes in the spring and summer of 2004. Do
8 you remember being asked questions along that line?

9 A. Yes.

10 Q. And what was your testimony, sir?

11 A. My testimony was that to the best of my
12 knowledge at that time that there were searches
13 performed in the spring and summer of 2004 and that
14 those searches were successful, meaning that further
15 tapes were not found.

16 Q. And just for clarification for the Court,
17 when you say searches, you mean computer searches or
18 what do you mean by searches?

19 A. By searches I would indicate physical sweep
20 of technology spaces that could possibly have contained
21 backup tapes.

22 Q. Was the testimony that you gave during your
23 deposition accurate, sir?

24 A. It was. To the best of my knowledge at that
25 point, you know, I was aware of conversations with

87:1 people that had worked for me that such searches were
2 performed and were successful. However, my knowledge
3 was not personal in nature in that I had not performed
4 said searches.

5 Q. After your deposition, which took place I
6 believe last Wednesday or Thursday, did you take any
7 steps to engage in any other sweeps looking for
8 additional tapes?

9 A. Yes, I did.

10 Q. Why? Why did you do that?

11 A. Well, during my deposition on Thursday, as
12 you indicated, I was asked a number of times by counsel
13 regarding what had happened in the previous year, what
14 searches, how did I know that searches had occurred,
15 what types of reporting had been given to me about it.
16 On reflection of my testimony, I realized
17 that my testimony was based on comments from people who
18 had worked for me or were associated with my groups,
19 but I didn't have personal knowledge.

20 So I took it upon myself to ask the tape
21 management team to execute a further search this past
22 weekend, specifically Saturday morning and to search
23 the New York City data centers of Morgan Stanley for
24 additional tapes.

25 Q. Precisely when did these searches -- or I

88:1 should say sweeps, when did these sweeps begin?

2 A. Sure. So as I just indicated, I asked that
3 the tape management team execute a search in the data
4 centers on Saturday.

5 I took a further step of on Friday afternoon
6 I personally went to two sites in midtown Manhattan of
7 which I'm very familiar due to my role at Morgan
8 Stanley and some of the previous positions that I've
9 had, and I executed those searches Friday.

10 And then the Brooklyn and the Jersey city
11 centers were searched on Saturday morning and Saturday
12 afternoon.

13 Q. In the context of these searches both in
14 Manhattan and in Brooklyn, what specifically were you
15 looking for? And let me also add: What was your
16 understanding of the team who was assisting you as
17 looking for?

18 A. Sure. Specifically we were looking for the
19 existence of electronic backup data tapes of any sort,
20 whether they were in current use or whether they had
21 been in use in previous years.

22 Also, we were looking for containers that
23 may have been used either in the present or in the past
24 with respect to managing those tapes.

25 Q. Why were you looking in the particular

89:1 places you looked in Manhattan and Brooklyn? What
 2 caused you to pick those particular places to do this
 3 additional sweep?
 4 A. We went to the data centers where at various
 5 points in the last number of years that tape backups
 6 had occurred, whether they were the enterprise type
 7 backups of our more recent backup infrastructure or
 8 whether they were kind of Legacy stand-alone backups
 9 for individual servers that were more likely to have
 10 happened in the late '90s.
 11 Q. What I'd like to do now is talk a little bit
 12 about what you found and what the group who worked for
 13 you found when you did these searches. I understand
 14 you have prepared, with the assistance of counsel, a
 15 chart to help you discuss that; is that correct?
 16 A. That's correct. It would help if I could
 17 speak to that chart.
 18 MR. BYMAN: May we get a copy of that chart?
 19 MR. KLAPPER: Absolutely.
 20 (Defendant's Exhibit 1 was marked for
 21 identification.)
 22 BY MR. KLAPPER:
 23 Q. I'm showing you what has been marked as
 24 Defendant's Demonstrative Hearing Exhibit number 1.
 25 Take a look at that.

90:1 Do you recognize that document?
 2 A. I do.
 3 Q. Could you identify what that is for the
 4 Court?
 5 A. Yes, it's a document that I prepared with
 6 counsel to explain the tapes that were found this past
 7 Friday and Saturday.
 8 Q. All right. Is the chart that you're looking
 9 at an accurate summary of what you did and what you
 10 found and what your group found this weekend?
 11 A. Yes, it is.
 12 Q. Would it assist you for purposes of your
 13 testimony today to use that chart?
 14 A. Yes, sir.
 15 MR. KLAPPER: Your Honor, with your
 16 permission, may I publish the chart in a blow-up
 17 form?
 18 MR. SCAROLA: We'd be happy to have it
 19 introduced into evidence.
 20 THE COURT: Sure. Do you want to offer it
 21 into evidence?
 22 MR. KLAPPER: Yes, Your Honor.
 23 MR. SCAROLA: We have one with an evidence
 24 sticker on it.
 25 MR. KLAPPER: Multiple stickers.

91:1 (Defendant's Exhibit 1 was marked in
 2 evidence.)
 3 BY MR. KLAPPER:
 4 Q. Okay. I'd like you to walk us, if you
 5 could, Mr. Saunders, through each of these rows
 6 starting with the location 1585 Broadway, New York
 7 City. First of all, what is located there?
 8 A. I'm sorry, what's in 1585 Broadway?
 9 Q. Yes.
 10 A. 1585 Broadway is the worldwide headquarters
 11 of Morgan Stanley.
 12 Q. And why specifically did you look there?
 13 A. The sites that I searched in midtown
 14 Manhattan, there are three floors in 1585 Broadway
 15 which contain technology, so servers, storage, tape
 16 drive, etcetera.
 17 And in the next building that I'll speak
 18 about, 1221, there's one site where we used to have
 19 technology. So one floor in that building.
 20 Specifically in 1585 it's the 8th, 9th and 29th floors.
 21 Q. Did you search the 8th, 9th and 29th floors?
 22 A. That's correct.
 23 Q. And did you find tapes on any of those
 24 floors?
 25 A. I found tapes only on the 9th floor.

92:1 Q. What tapes did you find?
 2 A. According to this chart I found 12, and this
 3 is going to get a little granular, so I apologize, but
 4 to be specific 12 DLT type IV tapes, 31 DLT type III
 5 tapes and 10 4-millimeters tapes.
 6 The 12 DLT type IVs, those are relatively
 7 current tapes. And they are like the tapes that we
 8 talked about in terms of the 35,000 e-mail tapes that
 9 we know as the e-mail tapes.
 10 Q. All right. Now, just to stop you there.
 11 When you say "current," for the benefit of the Court
 12 and all in the room, what do you mean by that?
 13 A. They're currently in use as an enterprise
 14 practice to backup data today. Some of these other
 15 types are out of use and we call them Legacy.
 16 Q. Do you know when the DLT type IV tapes first
 17 began to be used at Morgan Stanley?
 18 A. I believe that time frame was around 1999.
 19 Q. Moving down, stopping there for a second,
 20 you found 12 of those tapes?
 21 A. That's right.
 22 Q. And then you have a notation regarding type
 23 III tapes, how old are those?
 24 A. Those were in use definitely in the '98 and
 25 '99 time frame. They were out of use, I would say, by

93:1 end of '99, early 2000, but I couldn't tell you when we
2 started using them.

3 Q. How many of those tapes did you find?

4 A. I found 31.

5 Q. Did you find any additional tapes at the
6 1585 location?

7 A. Sure. 10 4-millimeter tapes. I don't
8 believe we ever used those as backup tapes in terms of
9 in a large scale. And these particular tapes didn't
10 appear to be kind of what I would consider to be normal
11 Morgan Stanley backup tapes.

12 Q. Why did you look on the particular floors
13 you looked at for tapes? I think you mentioned 8, 9,
14 29.

15 A. Sure. So these are the main technology
16 sites in 1585 Broadway. So in previous years, so in
17 the '98, '99 time frame when technology really serviced
18 one building. These were the sites where the
19 technology that would support the businesses, whether
20 it be data basis or e-mail servers or web servers or
21 any type of application server that might serve the
22 business, like a financial analytics package. So these
23 floors actually contained the computer on racks with
24 the storage. And they supported the businesses in
25 1585.

94:1 Q. And you found tapes, was it the 9th floor?

2 A. That's right.

3 Q. Could you explain, walk us through what
4 happened. You obviously went up to the 9th floor and
5 started looking, can you walk the Court through that
6 search and sweep?

7 A. Certainly. So there are racks of equipment.
8 Some of them older, some of them newer. I proceeded to
9 step through each of the rows, in fact, I did each row
10 twice and was looking for any tapes that may be
11 freestanding or that may have been in a jukebox. And a
12 jukebox is just a fancy name for a tape drive for any
13 freestanding tape drive.

14 Q. And how confident do you feel today that you
15 have, from that sweep of 1585 Broadway, identified,
16 located all of the tapes, all the backup tapes that
17 exist there?

18 A. Very confident.

19 Q. And what's the basis for your confidence?

20 A. Well, at this point I took it upon myself on
21 Friday to go. In the past my knowledge was based on
22 others' comments. But I felt strongly in that I've
23 been in the technology department for eight years. And
24 previous to this job I was someone who would be in the
25 comm rooms for certain parts of my job. And since

95:1 these are older spaces, I knew that the tape management
2 team, who largely spend their time in Brooklyn and
3 Pavonia, that they would have less knowledge of this
4 area. And I would be the best person to perform an
5 exhaustive search.

6 Q. How much time have you spent in Manhattan to
7 know where to look?

8 A. Eight years.

9 Q. Is there anyone you know who has
10 significantly more knowledge at that location other
11 than yourself?

12 A. No.

13 Q. And the total tapes you found, what was it?

14 A. In 1585, 53 tapes.

15 Q. Was that the first place you looked?

16 A. No, first place was 1221 Avenue of the
17 Americas also known as 1221 6th Avenue.

18 Q. For the benefit of the Court, could you walk
19 us through what you were looking for, where you went
20 within that building to sweep for tapes?

21 A. Sure. This actually goes to why I went to
22 1585 in the first place.

23 After reviewing my testimony and thinking
24 about this on Friday morning and realizing I had a
25 couple holes in my schedule on Friday afternoon, the

96:1 third floor comm room in 1221 is no longer used by
2 Institutional Securities, it's used by IIG, which is
3 the Individual Investor Group. So it's a different
4 line of business.

5 We cleared out of there, I believe, two and
6 a half years ago and removed all but two or three
7 servers that basically support connectivity between
8 building, but that's all, there's no computing going on
9 in that building from an ISG perspective.

10 Q. Just to set the stage a bit, this is the
11 third floor at 1221 Avenue of the Americas?

12 A. That's right.

13 Q. Were there any other floors at 1221 Avenue
14 of the Americas that you went to look?

15 A. No. This was the main communication room
16 where our technology was kept.

17 Q. Are there any other floors at 1221?

18 A. Not to my knowledge, no.

19 Q. So you're on the third floor and what do you
20 see?

21 A. So I went to the third floor, knowing that
22 we had not been in that room for several years. And my
23 thought was if I want personal knowledge and where is
24 the place that someone may not have looked if they did
25 not have as exhaustive a knowledge of the area and

97:1 that's where I went. And I did find, when you walk
2 into the room it's essentially a large room full of
3 empty racks at this point. Because the technology has
4 been pulled, other than the IIG technology, which is in
5 a separate part of the room. There is a metal
6 freestanding file cabinet on the west wall and on top
7 of it neatly stacked were 129 tapes of various formats.

8 Q. Do you know how those tapes got there?

9 A. My -- I do not know how they got there.

10 Q. I should have asked that earlier with
11 respect to the 53 at 1585 Broadway, do you have any
12 idea how they got there?

13 A. I do not.

14 Q. Walk the Court, if you could, through what
15 you saw in this neatly arranged stack.

16 A. Sure. According to the chart, I found 7 DLT
17 type IV tapes, which, as I indicated previously, are
18 fairly recent tapes in that they're still in use, but
19 they do go back to the late '90s. 60 DLT type III
20 tapes, which are no longer in use. 36 8-millimeter
21 tapes, which we did use in the late '90s and two sets
22 of tapes which I have no knowledge of whatsoever, 23
23 90-millimeter.

24 Q. So that's an error, it should be meters?

25 A. There's two Ms and it should be 1 M.

98:1 Q. Any other tapes that you found at 1221
2 Avenue of the Americas?

3 A. That was the total tape.

4 Q. And the total was?

5 A. 129.

6 Q. You have two other locations listed, Pavonia
7 Newport and 1 PierrePont Plaza, did you personally
8 inspect those places?

9 A. I did not. I asked members of the tape
10 management team to inspect those areas. Those are
11 areas where they spend 90 percent of their time, day in
12 day out, 24 by 7. And I asked them to search those
13 sites.

14 Q. Who in particular did you ask?

15 A. John Pamula and Robert Volk, V-O-L-K.

16 Q. Who do they work for?

17 A. They work for Glenn Seickel. They are the
18 tape management team also known as the burden of proof
19 team. And Glenn works for Rob Place, who works for me.

20 Q. Are the two gentlemen who went to the
21 Brooklyn locations employees of Morgan Stanley?

22 A. They are not, they are contractors.

23 Q. What involvement did you personally have in
24 their search in these two locations in Brooklyn?

25 A. On Friday afternoon, previous to my going to

99:1 1221 and subsequently to 1585, I spoke to John Pamula,
2 who is the manager of the tape management team. I
3 called him personally to let me know I wanted him to
4 execute a search on the weekend of those two sites. I
5 let him know that he was going to be reporting to me in
6 this capacity and that I would be giving him
7 instruction as to what to look for and how exhaustive
8 to be and how to report to me.

9 Q. Were you on the phone with him, on the cell
10 phone with him on a regular basis?

11 A. Yes, we spoke a couple of times on Friday
12 just to kind of get a sense. I spoke to him before I
13 performed my own search and after the search to
14 indicate that I had found tapes, which I wasn't
15 expecting to, and that as a result I wanted him to be
16 aware that when he performed his search on Saturday to
17 be of a mind that he could very well find tapes.

18 THE COURT: Again, I want to make sure I'm
19 following as we go. Did you tell me both
20 Mr. Pamula and Mr. Volk are contractors not
21 employees?

22 THE WITNESS: They are not employees. They
23 work for Siemens. We have contracted with
24 Siemens to perform our tape management function
25 at Morgan Stanley.

100:1 BY MR. KLAPPER:

2 Q. Do you have an understanding based on this
3 sweep that Mr. Pamula and his colleague engaged in, do
4 you have an understanding of exactly what they did,
5 where they went within these buildings and what they
6 found?

7 A. I do.

8 Q. Let's start with Pavonia, Newport, Jersey
9 City?

10 A. There are two main data center spaces in
11 that building for Morgan Stanley, the 9th and the 11th
12 floors. They walked those floors. And they're kind of
13 open aisle rows and rows of computing equipment. There
14 are also a couple of storage spaces within that area
15 and a couple of spaces where there are desks for people
16 to sit with computers, basically to do system work, if
17 necessary.

18 Q. Do you know if Mr. Pamula and his colleague
19 searched both the 9th and 11th floor?

20 A. They did.

21 Q. Did they search both those areas?

22 A. They did.

23 Q. How do you know that?

24 A. Because I asked him and he gave me specific
25 information to my question.

101:1 Q. And what did he find? What is your
2 understanding as to what Mr. Pamula found and his
3 colleague found on Saturday at these locations?

4 A. In the sweep on the 11th floor in a storage
5 room they found two boxes that appeared to be Recall
6 boxes. And I'm not sure this has been in front of
7 Court yet, but we use a company called Recall for our
8 off-site tape storage. It's a company based in New
9 Jersey. He found two Recall boxes of tapes and they
10 contain 30 tapes each. And they appeared to be boxes
11 of tapes appropriately labelled from the 2002 time
12 frame.

13 In addition, he found one freestanding tape,
14 which was not labelled, on a shelf in that facility.
15 And that is the total of the 61 from Pavonia.

16 Q. Please explain, again, if you could, why
17 Mr. Pamula, pursuant to your instructions and his
18 colleague looked at that particular location in Jersey
19 City?

20 A. So our current backup practice is to, in
21 light of 9/11 and other events where a physical
22 disaster occurred, we would backup data outside the
23 location. I mentioned earlier in our history
24 technology sitting in a specific building, say 1585,
25 would support just that building.

102:1 Post 9/11 we've moved to an off-site backup
2 methodology. What that means is let's say 80 percent
3 of our technology is now housed between the Brooklyn
4 data center, so one PierrePont Plaza and the Pavonia
5 Jersey City location that you backup the Pavonia data
6 to Brooklyn and the Brooklyn data to Pavonia. Even if
7 a physical event occurred, the backup tapes would be at
8 the other location. And even just for a short period
9 of time they'd be there because what we do is we
10 off-site them in a time period after the data is backed
11 up.

12 Q. So the fourth and final you mentioned, I
13 think PierrePont Plaza, the fourth and final location
14 that was searched or swept was that location in
15 Brooklyn, correct?

16 A. Yes.

17 Q. And tell me what your understanding is as to
18 what Mr. Pamula and his colleague found there?

19 A. Sure. So they searched the second, third
20 and fourth floors which contain data centers in
21 Brooklyn. The fourth and the second floors are
22 recently built within the last couple of years. And
23 after having my searching the 1221 third floor, which
24 was decommissioned, I was also aware of the fact that
25 the third floor of Brooklyn is an older space and does

103:1 contain some of the older technology from that time
2 frame. And I indicated to John that that was a place
3 to search, perhaps more carefully because some of these
4 older tapes like I found in 1221 could have been there.
5 None were found.

6 Q. Let me ask you, did Mr. Pamula also look on
7 the second and fourth floors?

8 A. That's right.

9 Q. But he also looked thinking he may find
10 something on the third floor?

11 A. Right.

12 Q. What was found, if anything?

13 A. Nothing.

14 Q. All these tapes, where are they now and what
15 did you do with them, if anything?

16 A. Sure. So I discovered the tapes in 1585 and
17 1221 on Friday afternoon. I spoke to John Pamula about
18 executing the search. I made counsel aware of the fact
19 that I had found tapes. And I had, at that point I
20 contacted NDCI, our forensics vendor, that I would need
21 their assistance over the weekend in basically going
22 through these tapes in an expedited manner.

23 Q. Where is NDCI located?

24 A. Manhattan, 41 Madison.

25 Q. If you could explain to the Court exactly,

104:1 if you know, what it is they do, what it is you were
2 having NDCI do?

3 A. Sure. NDCI stands for National Data
4 Conversion Institute. And they are expert in the field
5 of extracting data from either current technology
6 sources or legacy data technologies.

7 Q. And what is your understanding as to what
8 they were looking for, this weekend when they received
9 these tapes?

10 A. Sure. So my knowledge of these tapes is
11 largely based on knowledge of Morgan Stanley's backup
12 practices going back to '98 and '99, it was also based
13 on either handwritten or printed instructions on the
14 tapes, but I didn't have a knowledge of what was
15 actually on the tapes.

16 So the best course of action and what I did
17 was I had the tapes gathered and delivered on Saturday
18 afternoon to NDCI so that they could go through the sum
19 total of 182 tapes, specifically looking for e-mail.
20 And, secondly, specifically looking for e-mail in or
21 about the time frame that would be relevant to this
22 matter.

23 Q. And have they started that process?

24 A. They have.

25 Q. And how far into that process are they?

105:1 A. As of 8 a.m. this morning when I got an
2 update from my contact, they had gone through 47
3 percent of the tapes. It's 85 out of the 182. And in
4 addition to my instructing them to look for e-mail, and
5 if e-mail were found, what the time frame would be, I
6 instructed them to -- I'm sorry, I just lost my train
7 of thought.

8 Q. You were instructing them --

9 A. I instructed them not only to look for
10 e-mail and what time frame, but I did give them a
11 listing of the tapes that I thought might be more
12 likely to have e-mail from this time period that would
13 be more relevant to this Court.

14 Q. Do you know if they looked at that list and
15 searched to see if those particular tapes contained
16 e-mails?

17 A. Yes. So the three priorities that I gave
18 them, basically the first three sets. They have gone
19 through those and no e-mail has been found.

20 Q. Could you, using the chart that we've marked
21 and admitted as Demonstrative Exhibit 1, could you tell
22 the Court which tapes that you thought might contain
23 e-mail were searched and turned out not to contain
24 e-mail?

25 A. Yes. From the 1585 tapes there were two

106:1 sets that peaked my interest for some reason --

2 Q. Let me stop you, you're talking now first
3 row?

4 A. First row, 1585. Of that first line, the 12
5 DLT type IVs there were two tapes that were labeled
6 with, and I apologize, I'll say it slowly, HQNTLD2 and
7 that's a server name at Morgan Stanley. And what that
8 indicates is a 1585 Lotus Notes Windows based server.

9 Q. And why did you give higher priority to
10 those particular tapes when you communicated with NDCI?

11 A. In the late '90s and early 2000s Morgan
12 Stanley entered into a pilot of e-mail with Lotus
13 Notes. And they were specifically based on the Windows
14 platform. And in my mind that was quite possibly an
15 e-mail server in that time frame.

16 Q. And those tapes that you suspected might
17 contain e-mail, those have been searched?

18 A. That's correct.

19 Q. And the result again?

20 A. No e-mail was found.

21 Q. What was the second group of tapes that you
22 have ascribed some level of priority to?

23 A. Sure. The second group are again, on that
24 first line, in 1585 Broadway, the 31 DLT type IIIs.

25 The reason why they peaked my interest was, one, the

107:1 vast majority were unlabeled since they were the type
2 III tapes which were in use in the '98 and '99 time
3 frame. And, lastly, three of the 31 did have a
4 handwritten date including the year 1998. That peaked
5 my interest.

6 Q. All right. And have those tapes also been
7 searched by NDCI?

8 A. All 31 of those have been searched. No
9 e-mail was found.

10 Q. What was the third group of tapes that you
11 ascribed some level of priority to?

12 A. The third group of tapes were a group of 30
13 plus tapes, they were the 8 millimeters from 1221. So
14 I'm now in the second row of the chart. And the server
15 name, which is escaping me to some degree at this
16 point, but I could refresh my memory. They were
17 basically -- the server name indicated quite possibly a
18 Novell Netware server from 1221 and it is likely with
19 the server name, which I believe was NYPUBF03,
20 N-Y-P-U-B-F-O-3, that it could have been an e-mail
21 server in the time frame of '98/'99, could have
22 contained cc mail.

23 Q. Has NDCI reviewed those tapes?

24 A. They have reviewed the majority of those
25 tapes, not all of them. And so far no mail was found.

108:1 Q. What is the status? You've talked about
2 they've gone through 47 percent of the tapes. Maybe I
3 should phrase it this way: When are they likely to
4 finish getting through 100 percent of the tapes?

5 A. I believe that they'll either finish late
6 tonight or early tomorrow. They've been working on
7 this round-the-clock since I would say 2 p.m. Saturday
8 afternoon when I dropped off the tapes.

9 Q. Are you receiving regular updates on them?

10 A. I am.

11 Q. If you could help us help the Court
12 understand how these tapes, the ones you've described
13 on this chart, could have been found so late?

14 A. Sure. Obviously, I've testified that on
15 Thursday my comments, which were truthful and to my
16 knowledge at that point that we had performed searches,
17 that we had exhausted the information and that we
18 weren't going to find further tapes. We went ahead and
19 executed a further search. And when I came upon the
20 tapes in the decommissioned comm room in 1221 I was
21 obviously not happy about that. I had gone to a room
22 that really hadn't been touched by people from my area
23 for some time and found that someone had kind of
24 co-located a number of tapes. They were not hard to
25 find, they were just sitting on that metal shelf.

109:1 At that point I realized that some of these
 2 older tapes that do not look like, in large part, the
 3 tapes that are in use and have been in use since the
 4 '99 to 2002 time frame that we've been extracting
 5 e-mail off of to put into the e-mail archive, even
 6 though they didn't look like it, they didn't have bar
 7 codes, they clearly had not been used in a large tape
 8 silo such as we've been using for the last four or five
 9 years. I didn't have personal knowledge of what was on
 10 those tapes. So as a result I wanted to execute a --
 11 not just recovering the tapes, but having them, the
 12 data recovered so that I could know for sure and
 13 testify today that, in fact, no e-mail was found.

14 Q. What was the process that you had in place
 15 prior to this weekend, prior to doing the sweep? What
 16 was the process you had in place to do retrieval and to
 17 do restores?

18 A. As part of preparation for my testimony I
 19 worked with counsel on creating a document that might
 20 better help explain this. I'm wondering if we might be
 21 able to make that useful.

22 MR. KLAPPER: Your Honor, may I approach?

23 THE COURT: Yes. Why don't you show it to
 24 Plaintiff's counsel first.

25 Any objection to the witness referring to?

110:1 MR. BYMAN: Since we can't understand it
 2 until he tells us what it is.

3 MR. KLAPPER: It was meant to facilitate
 4 things.

5 THE COURT: Do you have an extra copy or
 6 not?

7 MR. KLAPPER: I do.

8 BY MR. KLAPPER:

9 Q. I'm showing you this document which has been
 10 marked for demonstrative purposes as Exhibit 2.

11 (Defendant's Exhibit 2 was marked for
 12 identification.)

13 BY MR. KLAPPER:

14 Q. Do you recognize that?

15 A. I do.

16 Q. Could you identify for the Court what that
 17 is?

18 A. Yes, it's a pictorial representation of the
 19 retrieval, restoration and review process. I put this
 20 together with counsel in order to better explain some
 21 of the work that my teams do.

22 Q. Do you feel it accurately reflects the
 23 process you're about to talk about?

24 A. Yes.

25 Q. Will it help with your testimony?

111:1 A. I believe so.

2 MR. KLAPPER: Your Honor, with your
 3 permission, I'd like to offer this into evidence
 4 as Demonstrative Exhibit number 2, Hearing
 5 Exhibit number 2.

6 MR. BYMAN: We don't have any problem with
 7 this. I don't know --

8 THE COURT: I don't think it comes into
 9 evidence. It's labelled and I'm happy to make
 10 it part of the record.

11 MR. KLAPPER: I was trying to be consistent
 12 with the last exhibit.

13 THE COURT: Well, this we'll just keep
 14 marked for identification.

15 MR. KLAPPER: May I publish?

16 THE COURT: I've seen it. It's been sitting
 17 in front of me. I'm not sure what you mean.

18 MR. KLAPPER: May I put it up here?

19 MR. BYMAN: Your Honor, I think he's afraid
 20 of perishing, so he wants to publish.

21 MR. JONES: There are a lot of Federal
 22 Judges that make you say those words, Your
 23 Honor.

24 THE COURT: I'm not going to comment.

25 BY MR. KLAPPER:

112:1 Q. If you could, Mr. Saunders, walk the Court
 2 through what this document, which you've labelled
 3 Retrieval, Restoration and Review process. And as
 4 you're doing that, explain what your role and your
 5 group's role is in that process?

6 A. Certainly. So speaking about our usual
 7 corporate backup practice, starting in the upper
 8 left-hand corner, you see users working at work
 9 stations and the arrows pointing up to copy data.
 10 That's to indicate information on their work stations
 11 basically being copied to a central repository, a
 12 server, it could be an e-mail server, it could be a
 13 file server.

14 Then, so those servers would contain the
 15 data.

16 The arrow to the right --

17 Q. Let me stop you there. Explain, if you
 18 could, the backup process. This is individuals working
 19 at their individual computers?

20 A. That's right. So the standard practice at
 21 Morgan Stanley is information is not kept on individual
 22 work station computers. Work, whether it be individual
 23 or work group products, are saved to network drives or
 24 network file servers. And, obviously, e-mail, we have
 25 a corporate e-mail practice. So the e-mail is kept on

113:1 corporate servers, not on individual desktops.
 2 Q. And these e-mails are saved within the
 3 server?
 4 A. That's right.
 5 Q. Where do they go from there?
 6 A. Sure. So our backup practice is that we
 7 have processes that run on a nightly basis which would
 8 copy that data to central tape silos, which are
 9 basically large refrigerator-size devices that contain
 10 tape libraries. They can contain several hundred tapes
 11 and they can contain a robotic arm which would have the
 12 ability to manipulate those tapes.
 13 And in the middle of the document on the top
 14 those are the location of the tape silos. And the
 15 arrow is to duplicate the software process of copying
 16 that data into the silos.
 17 Q. Do the tapes just stay in those silos?
 18 A. The tapes stay in the silo until they fill,
 19 at which point the software would indicate to the tape
 20 management team that the tapes are to be pulled, boxed
 21 and shipped off-site to our vendor.
 22 Q. Sort of an automatic notification process?
 23 A. That's right.
 24 Q. You say boxed and shipped to your outside
 25 vendor, what vendor is that?

114:1 A. We use Recall. Capital R-E-C-A-L-L.
 2 Q. And who is responsible for shipping these
 3 tapes to Recall? Is that individuals within your
 4 group?
 5 A. That's correct. The tape management team is
 6 responsible for getting those tapes to the Recall
 7 facility in Jersey.
 8 Q. Are there particular individuals within that
 9 group who have principal responsibilities of packing
 10 that up and sending it Recall?
 11 A. Yes, the members of that team.
 12 Q. I mean, is there a name?
 13 A. John Pamula is the manager of that team.
 14 Q. When the tapes get to Recall, what happens
 15 there to the extent you know?
 16 A. Certainly. Recall records the delivery of
 17 the boxes of the shipments into their systems. And
 18 then they are stored with other Morgan Stanley boxes
 19 of, you know, similar type.
 20 Q. And do they just stay at Recall, what
 21 happens with these boxes filled with backup tapes?
 22 A. Certainly. So if they are not requested,
 23 those tapes stay at the Recall site in perpetuity.
 24 Q. Under what circumstances would someone
 25 request that these tapes be pulled out of Recall?

115:1 A. There are two types of request that I would
 2 speak to; one is a normal business-as-usual restore
 3 practice, for example, a couple months down the line a
 4 user happened to delete either a folder or some other
 5 documents in their home directory. And they make a
 6 request of my team to perform a restore.
 7 Since the data is not kept on site or
 8 depending on the type of data, we would go to request
 9 the tapes from Recall, bring them back on site and
 10 restore the data for the user.
 11 The second type of restore would be for
 12 something relating to a legal matter, say a litigation
 13 or a regulatory matter.
 14 Q. I don't want to simplify this too much, but
 15 does the retrieval prong of this process take us from
 16 here to here?
 17 A. That's correct.
 18 Q. Does it go all the way up to the point of
 19 getting to Recall?
 20 A. That is correct.
 21 Q. And at that point what's the next step?
 22 A. Well, it would depend on the time frame that
 23 you're looking into, because the process changed
 24 significantly post January '03 and then prior to that.
 25 Q. Let's talk, if we could, about -- if you

116:1 could let us know what the process was prior to January
 2 1st, 2003 and then we'll move forward to after 2003.
 3 And before you do, let me ask you, is the pre-January
 4 1st, 2003 process depicted on this demonstrative?
 5 A. It is not. I tried to put something
 6 together for that, but it's a very complicated process
 7 that really did not -- it didn't come well with
 8 pictures and, in fact, I'm going to take a moment to
 9 kind of explain in more detail the lengthy process and
 10 the difficulties that were associated with it.
 11 Q. Could you explain to the Court how the
 12 process worked prior to January 1st, 2003?
 13 A. Certainly.
 14 So at that point when we were working with
 15 the group IT security and working with legal to perform
 16 ad hoc restores to be responsive either to litigation
 17 or regulatory requests, the process would begin where
 18 legal would contact IT security, which is another group
 19 within Institutional Securities IT. That's not my
 20 team. They would work with them to explain the scope
 21 of the request: How many users, what type of data, for
 22 what time frame.
 23 Once that was understood, they would send
 24 that information to -- if this was e-mail, they would
 25 involve the messaging team. Depending on the time

117:1 frame, they would have to identify the set of users, as
 2 I said, they'd have to identify what e-mail system
 3 those users were on at the time. Once you understand
 4 the e-mail users, you have to go back and search for
 5 what e-mail servers they were on. And because we run a
 6 large enterprise plant and we don't have many hundreds
 7 of e-mail servers, once you got to the particular
 8 e-mail server, there would be data partitions which
 9 would contain multiple users on each partition.

10 Once you get to the partition level, the
 11 messaging team was able to tell us the tape management
 12 and the backup team what particular partition and for
 13 what days they wanted a restore.

14 Q. And this whole process is happening inhouse
 15 at Morgan Stanley?

16 A. This is all inhouse people at this point.
 17 So to continue, once they indicated to my
 18 team that the partition, the server and the time frame
 19 required, we would go and look at our Legacy backup
 20 databases to determine whether or not there was a valid
 21 backup for that date. And if there was, what tapes
 22 were required. Once we understood what tapes were
 23 required, and in some cases it could be a single digit
 24 in some cases it could be hundreds of tapes, we would
 25 go to check our database of what boxes at Recall those

118:1 tapes were contained in.

2 We would then make a request of Recall to
 3 ship those boxes back to Morgan Stanley. We would put
 4 them in the room and we would have to manually go
 5 through the boxes of tapes looking for the right tape,
 6 separating them and then we would begin performing
 7 restores over the period of time.

8 Q. You did have a fairly lengthy process it
 9 sounds like, but did you have direct responsibility for
 10 that process prior to January 1st, 2003?

11 A. I had -- well, to be specific, and I've been
 12 specifically responsible for this area since December
 13 of 2003, but I was one of the managers in the area.
 14 Prior to 2003 we were very involved with our own
 15 inhouse staff in the retrieval and restoration process,
 16 but not in the review process.

17 Q. How effective, from your vantage point
 18 either as a manager or director within this group, how
 19 effective was the pre-2003 process that you just
 20 described working?

21 A. It was not very effective. We were taking
 22 our own time, people who had been working on different
 23 efforts like project managing certain technology
 24 rollouts, all of a sudden we were managing a large
 25 number of tapes, we were managing a large number of

119:1 restore requests. And when we got to the end of the
 2 process of getting all the way through what is the
 3 scope of the request, what tapes are required
 4 performing the restores, legal and other folks were
 5 commenting that it was not fast enough and we were not
 6 producing as much as they would need.

7 At that point we got National Data
 8 Conversion involved. And just to give you an example
 9 of why I have knowledge of why I felt we were
 10 inefficient, once we gave them a couple of the restore
 11 processes that we our service had undertaken, they were
 12 at least 20 to 30 percent more successful of getting
 13 data e-mails off of those tapes than we were.

14 Q. How have you felt or what are your views as
 15 to the effectiveness of NDCI throughout the entire
 16 process that you've worked with them?

17 A. Sure. So beginning when we started with
 18 them in the 2002 time frame coming through to now,
 19 they've been very good partners. They've been
 20 responsive. And they've done very good work for us.

21 Q. After January 1st, 2003 you started working
 22 with NDCI?

23 A. That's right.

24 Q. Could you explain to the Court what the
 25 process is that is now in place post 2003?

120:1 A. If I could direct Your Honor's attention to
 2 the graphic, the bottom half of the graphic now
 3 indicates the process of working with NDCI. So to
 4 start with, we would make requests of boxes of tapes.
 5 And then the arrow kind of coming down on the bottom
 6 right which then points to the microscope. NDCI, which
 7 is actually, they're an expert in data retrieval. So
 8 they're able to, whether it be a current type of tape
 9 or media or whether it be a legacy, they have
 10 installations to get that information off of it quickly
 11 and efficiently. And, inevitably, because we're
 12 dealing with physical media, we all have experience
 13 with VHS tapes or audio cassettes that sometimes
 14 there's errors. They are trained in how to either
 15 clean or make the best available data off of the tape
 16 in a timely manner.

17 So this process would, they would do the
 18 extraction off of the data. And then they would take
 19 the e-mails and they would put them into a condensed
 20 format, which is basically they would deduplicate mails
 21 that we had previously already brought inhouse.

22 Q. And let me just stop you there.

23 They're working off of what? These are the
 24 original backup tapes that they receive from the Recall
 25 facilities?

121:1 A. Yes. So these are the tapes prior to the
 2 2003 time frame, I guess what's been known as the
 3 greater than 35,000 DLT tapes.
 4 Q. When they do their processing, when NDCI
 5 does their processing, what comes out, what's the
 6 output from that work?
 7 A. Sure. So the output is -- starting with the
 8 process, they were looking at not just every tape that
 9 they had used, but every unique e-mail that they had
 10 processed. They would take e-mails and copy them on to
 11 an SDLT, which is a super DLT, which is different than
 12 the DLT I mentioned. It's a denser tape. I believe
 13 the capacity is 150 gigabytes.
 14 Q. For the benefit of the Court reporter and
 15 the Court, try to slow down.
 16 A. Sorry.
 17 Q. You may continue.
 18 A. They would make a copy of the SDLT, keep one
 19 inhouse at NDCI. They would ship us the other copy
 20 where my team would load that into an SDLT drive, a
 21 drive that could read it. Where we would copy it on to
 22 a disk, which is the graphic with the server in light
 23 in the box, which is indicating, that's what we call
 24 the staging area. This is where my team's
 25 responsibility would end and the e-mail archives team,

122:1 the e-mail archive team would work to process the data
 2 into the e-mail archive.
 3 Q. Prior to August 2004, who was responsible
 4 once you passed the SDLTs into the staging area, who
 5 took over the process from there?
 6 A. Arthur Reil and his team.
 7 Q. And after August 2004 who took over that
 8 responsibility once you got these SDLTs into the
 9 staging area?
 10 A. Allison Gorman.
 11 Q. Did your group or did you personally have
 12 any other involvement in this process as depicted in
 13 this exhibit after the tapes entered the staging area?
 14 A. No, I did not.
 15 Q. Did your group focus at all on whether the
 16 tapes that came from Morgan Stanley that were processed
 17 by NDCI whether they contained e-mails responsive to
 18 litigation?
 19 A. We were not responsible for the content of
 20 the tapes. As I've indicated, we were responsible for
 21 participating in the process to make sure that the sum
 22 total of tapes were delivered from the off-site vendor
 23 to NDCI, that NDCI performed their conversion and then
 24 once the SDLT, the condensed deduplicated results
 25 became available, that we would upload that on to

123:1 online disk at Morgan Stanley and make it available to
 2 the e-mail archive team.
 3 Q. What is the extent or what was the extent of
 4 your group's and your personal interaction with legal
 5 in the context of this process?
 6 A. I personally and my team had no contact with
 7 legal through this process. And we tend to call this
 8 the e-mail restoration project. That's how we refer to
 9 it.
 10 Q. In terms of implementation of this e-mail
 11 restoration project, how did that go? Did it go well
 12 during the initial stages?
 13 A. Sure. So, as I testified earlier, we kicked
 14 the effort off formally at the end of 2003. And in the
 15 January time frame of 2004 there was a weekly meeting
 16 where a number of team people from different parts of
 17 IT, including Arthur Reil, myself, Glenn Seickel, Wray
 18 Stewart would meet to talk about how the project was
 19 going, what pitfalls or what issues had come up, and to
 20 basically work to get it to a run rate where it would
 21 run and complete in a time frame that was appropriate
 22 to IT management. NDCI was also present at those
 23 meetings. Bruce Buchanan personally attended those
 24 meetings with us.
 25 Q. So your group, Arthur Reil's group and NDCI

124:1 were in attendance?
 2 A. That's right.
 3 Q. Were there any other groups represented
 4 during these meetings?
 5 A. Yes, there was another group as part of
 6 Institutional Securities which would assist the Arthur
 7 Reil space and they were known as Company IT. They had
 8 some representatives that would help Arthur keep track
 9 of details, essentially project managed in some way.
 10 And they were participants as well.
 11 Q. Were members of the legal staff in
 12 attendance during those meetings?
 13 A. No, they were not.
 14 Q. How many tapes, you've described the process
 15 to the Court about tapes being at Recall and then going
 16 to NDCI. During these first few months of this
 17 conversion or this restoration project, how many tapes
 18 actually went through that process?
 19 A. For the first six to eight weeks, as you
 20 might expect, involving thousands of pieces of media
 21 and new technologies that were being developed both
 22 inhouse and out of house, there were some bumps. So we
 23 sent a smaller number of tapes in the first couple of
 24 weeks.
 25 We knew that we would be extracting older

125:1 Lotus Notes mails, iMap mails, but we also knew that we
2 might find some surprises and there were some e-mail
3 format types that NDCI had not expected. And as a
4 result, their software had to be rewritten, recoded to
5 take advantage of those.

6 Q. And what effect did that have on the process
7 that was being implemented by Morgan Stanley, this
8 e-mail restoration process?

9 A. Sure. I would think that in terms of a
10 project that the initial spin up is going to be a
11 little slower than when you get to a sustained pace.
12 In fact, we did get to a sustained pace after these
13 weeks of growing pains.

14 Q. Was the 35,000 tapes that you've referenced
15 the complete universe of tapes that we now know today
16 contain e-mail?

17 A. Unfortunately not.

18 Q. Let's move forward in time and tell me the
19 circumstances in which you and your group located
20 additional tapes in addition to the 35,000.

21 A. So as I testified on Thursday, I have a
22 general knowledge that in the May or June time frame
23 that I personally became aware of the fact that a
24 number of tapes, in fact, a number greater than a
25 thousand tapes were located in Brooklyn in our Brooklyn

126:1 data center facility.

2 Q. You've created, as I understand, a chart
3 again to help understand this process, correct?

4 A. Yes, that's correct.

5 MR. SCAROLA: We'll agree to skip the
6 predicate and just go straight to the chart.

7 THE COURT: You're not putting it in
8 evidence?

9 MR. KLAPPER: I'm not.

10 (Defendant's Exhibit 3 was marked for
11 identification.)

12 BY MR. KLAPPER:

13 Q. I'm showing you what's been marked as
14 demonstrative exhibit 3. Given that I can pass through
15 the predicate, you were involved in the creation of
16 this chart; is that correct?

17 A. That's right.

18 Q. Can you help the Court walk through the
19 particulars of where additional tapes were located and
20 when?

21 A. Certainly. So the first line indicates a
22 group of DLT III and DLT IV tapes in the number of 1423
23 that were located in Brooklyn. And as it indicates
24 here, that they were located before June of 2004.

25 Q. And do you know the circumstances as to who

127:1 actually located these tapes that were found in
2 Brooklyn?

3 A. I am not aware.

4 Q. Did you know at the time, or do you know if
5 others at the time when these tapes were first located
6 whether they contained e-mails responsive to this
7 particular litigation?

8 A. I'm also not aware of that.

9 Q. Were the tapes labelled when they were
10 found?

11 A. No, they were not.

12 Q. What is your understanding as to what
13 happened after this collection of 1423 tapes were
14 located in Brooklyn?

15 A. My understanding is that we made Arthur Reil
16 aware of the fact that there were some tapes in
17 Brooklyn that had been found. They were then sent to
18 NDCI for processing.

19 Q. And after NDCI went through its processing,
20 what role or involvement did your group have with those
21 tapes?

22 A. At that point to my earlier testimony, we're
23 responsible for getting the SOLT tapes with the unique
24 e-mails brought into the staging area where it is set
25 up for the e-mail archive's use to upload into the

128:1 archive. So that's the extent of our involvement.

2 Q. Moving to the second collection of tapes.
3 Should that be meters or millimeters?

4 A. These are in fact 8-millimeter tapes. 738
5 8-millimeter tapes which were originally located in
6 1221 Avenue of the Americas before 2004 which were also
7 sent to NDCI this past summer.

8 Q. And when they were returned by NDCI to
9 Morgan Stanley, do you know what happened after that?

10 A. Could you be more specific?

11 Q. Yes. After NDCI, after you forwarded the
12 tapes or your group forwarded the tapes to NDCI, what
13 happened after that? Did NDCI process those tapes?

14 A. Yes, they were processed, e-mail was looked
15 for. And if e-mail was found, then it was deduplicated
16 and sent back to Morgan Stanley.

17 Q. Do you know personally when those tapes were
18 sent back?

19 A. I do not.

20 Q. How about the third category that you have
21 listed there, 169 Recall tapes?

22 A. Sure. So I have a little more knowledge of
23 this as I was more personally involved with this.

24 In the latter part of 2004, specifically in
25 the December time frame, John Pamula was working with

129:1 our off-site storage vendor Recall. He had knowledge
2 of a couple of boxes of tapes, and I believe it was
3 five that he had on a log from 2002 and indicated that
4 we had shipped them to Recall.

5 And we had a need for some of those tapes.
6 The initial two requests of those tapes of Recall
7 resulted in them saying they didn't have them. That
8 caused him some concern and --

9 Q. Let me stop you there. How did you learn
10 that Recall did not have these tapes? Was this a call
11 you made or Mr. Pamula made?

12 A. Mr. Pamula made the calls. And I was made
13 aware of this when actually on his, I believe, third
14 attempt that, in fact, Recall did find those boxes and
15 did send them back to Morgan Stanley.

16 Q. And when those boxes were returned to Morgan
17 Stanley, what happened next?

18 A. At that point Glenn Seickel made me aware of
19 this issue and of the time frame. And knowing the
20 sensitivity of the different issues that are going on,
21 we made counsel aware. And we began efforts to get
22 these processed by NDCI in an expedited manner.

23 Q. Is your group today still searching, or I
24 should say sweeping for any additional tapes?

25 A. No.

130:1 Q. Do you personally believe that you have
2 identified or located all the existing backup tapes
3 that are meant to be processed through the e-mail
4 archive restoration project?

5 A. Yes, I do.

6 MR. KLAPPER: I have no further questions,
7 Your Honor.

8 THE COURT: Probably this is a good time to
9 take a lunch break. I just want to make sure I
10 understand.

11 The last one on the chart we just looked at,
12 the type IV DLT tapes, are those the ones you're
13 telling me that was in December of last year
14 that we discovered this was an issue they
15 couldn't find the tapes he was looking for?

16 THE WITNESS: Yes.

17 THE COURT: Then the chart says located
18 January 2004, should that be 5?

19 MR. KLAPPER: Your Honor, that should be
20 2005.

21 THE WITNESS: January 2005 is when they were
22 located, yes.

23 THE COURT: And that's when they were
24 located at Recall?

25 THE WITNESS: Yes.

131:1 THE COURT: For planning purpose, how many
2 other witnesses do you have and how long do you
3 think you're going to take?

4 MR. JONES: Your Honor, we don't have any
5 other witnesses. I believe that there are some
6 documents and exhibits that are already a part
7 of the record, declarations and deposition
8 testimony that was cited in opposition.

9 Now, whether we would just refer the Court
10 to it or make it a part of the record here, I
11 leave it up to the Court. That won't take very
12 long, we don't propose any additional witnesses.

13 THE COURT: Thank you. What about
14 Plaintiff?

15 MR. BYMAN: Your Honor, if I did my cross
16 examination now, it would be 10 minutes. If
17 it's over lunch, Mr. Scarola will give me
18 another 30 minutes of material.

19 THE COURT: Are you suggesting we do it now?
20 That's fine.

21 MR. BYMAN: We have one witness whose
22 testimony will be three minutes with his short
23 form resume' and 40 with his long form. But his
24 testimony is very short.

25 MR. JONES: Your Honor, I was talking that

132:1 we actually object to their calling a witness.
2 They did not, as we did, provide disclosure
3 forms and present our witness for depositions.
4 They didn't do that. And so --

5 THE COURT: But you all did it pursuant to a
6 Court order. And there wasn't any suggestion at
7 that hearing that they should be required to do
8 the same thing.

9 MR. JONES: That's true. I do recall the
10 order, the transcript. But I also don't recall
11 from the transcript, Your Honor, their
12 volunteering that they were in fact going to --

13 THE COURT: If the objection is to their
14 presenting evidence because the order I did that
15 required you to do the disclosure based on the
16 deficiencies up to that point did not include
17 them, I would deny it.

18 MR. JONES: If the Court is going to allow
19 him to testify, I would at least like some
20 leeway in the cross examination of things.

21 MR. BYMAN: Your Honor, I would like to
22 state for the record, which in our brief, which
23 counsel has seen on Friday, we disclosed that we
24 were going to have a third party vendor here for
25 purposes of talking about what a vendor could

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do.

So we've already told them what they were planning to do. If they had called us over the weekend --

THE COURT: My ruling is that the witness can testify. I'm not sure what you mean by leeway on cross examination. Obviously, if you ask a question that they think is objectionable, we'll listen to the objection.

We still want the 10 minutes?

MR. BYMAN: Your Honor, I think lunch would be appropriate.

MR. JONES: Your Honor, just so we're clear, we would also like to, over the lunch break, I said we hadn't planned to call any additional witnesses, I hadn't had a chance to talk to Mr. Davidson about that, I don't expect that will change.

THE COURT: Why don't we be back at 1:20.
(A lunch recess was taken at 12:15 p.m.)

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242:1 understood you to tell me is that you
2 don't think they're entitled to any
3 sanctions in any event, so you have no
4 objection to their asking for more severe
5 sanctions because you don't think they're
6 getting anything, and if that's the case,
7 that's fine, and we can go forward and
8 argue now.

9 MR. JONES: what I think -- what I was
10 intending to convey to the court, that we
11 are prepared to argue based on what is in
12 the record now on a current motion. And
13 if they filed another one, we'll respond
14 to that.

15 THE COURT: I think all Mr. -- Maybe I
16 misunderstood. I thought you were saying,
17 hey, based on the evidence today we think
18 we're entitled to other sanctions, and we
19 want the leeway to argue other sanctions
20 are appropriate.

21 MR. SCAROLA: Absolutely. Your Honor
22 understood exactly what I was requesting.
23 We want to amend our motion to request
24 severer sanctions than those explicitly
25 requested in the pending motion. We

243:1 acknowledge that that might prejudice the
2 defense and are willing to give them
3 additional time to respond. If they say
4 they don't need it, we're ready to go
5 forward, too, but we want to go forward on
6 the basis of a pending motion that asks
7 for sanctions up to and including a
8 directed verdict in favor of the
9 plaintiff.

10 THE COURT: Okay. And as I understand,
11 Mr. Jones, and correct me if I'm wrong,
12 you're willing to allow that to be argued
13 now.

14 MR. JONES: Yes.

15 THE COURT: So that motion is granted.
16 And the adverse inference motion is
17 amended by interlineation to ask for any
18 appropriate sanctions.

19 And, Mr. Scarola, I think you are --
20 oh, just remind me we need to go back to
21 ore tenus motion number one before we
22 break today. Okay? Thanks.

23 MR. SCAROLA: Your Honor, let me begin
24 with a very brief discussion of the
25 applicable law and then review what we

244:1 believe has been established from a
2 factual basis. First, Florida definitely
3 recognizes a duty to preserve evidence
4 after a lawsuit has been filed. That
5 principle is expressly stated in the case
6 of Rockwell International Corporation
7 versus Minzees (phonetic) at 561 So.2d 677
8 at page 680. That's a 1990 Third DCA
9 case.

10 But beyond that, Florida law also
11 recognizes that once a party anticipates
12 litigation, they have a duty to preserve
13 evidence. Silhan versus Allstate. It is
14 a federal case applying federal law,
15 236 F. Supp. 2d 1303 North District of
16 Florida, 2002.

17 Silhan talks about two types of
18 spoliation of evidence. First is an
19 independent cause of action, which is not
20 involved here, and the second is the type
21 where the loss or destruction of the
22 evidence is treated as a discovery
23 violation subject to sanctions. Where one
24 of the parties to the litigation causes
25 the spoliation, the courts should make an

245:1 attempt to craft a solution to the problem
2 which is less than the ultimate sanction
3 of dismissal or directed verdict in favor
4 of a plaintiff but will still give the
5 parties a fair trial. So the objective is
6 to do justice under the circumstances of
7 the particular case.

8 That general recognition comes from a
9 4th DCA case decided in 1993 called
10 Federal Insurance Company versus Allister
11 Manufacturing Company, 622 So.2d 1348.
12 And it is recognized by the Florida
13 Supreme Court that the trial court has
14 many sanctions available to it when
15 evidence establishes an intentional
16 interference with a party's access to
17 records. That case is one that is
18 recognized as a leading case in the area
19 of spoliation, Public Health Trust of Dade
20 County versus Valcin, 507 So.2d 596.

21 And the same principle is also
22 discussed in Metropolitan Dade County
23 versus Bermudes (phonetic), a First DCA
24 case, 648 So.2d 197 where the First DCA
25 talked about the fact that where

246:1 intentional destruction of evidence
 2 occurs, the courts will almost always
 3 impose sanctions against the offending
 4 party. And the court has the
 5 discretionary authority to enter sanctions
 6 as severe as the entry of a default upon
 7 making express findings of a willful
 8 failure to comply with discovery
 9 obligations.

10 So the predicate to the death penalty
 11 imposition, if I might refer to it that
 12 way, would be a finding of willful
 13 failure, and we recognize that that is the
 14 obligation that we must meet.

15 where the defendant had actual control
 16 and knowledge of the documents requested,
 17 as clearly it did here; where the
 18 materials requested were relevant to the
 19 lawsuit, and within the scope of the
 20 plaintiff's discovery requests, standards
 21 met here; where the defendant failed to
 22 produce or intentionally destroyed the
 23 documents, standards met here; where
 24 misrepresentations were made concerning
 25 the discovery, standards met here; and the

247:1 discovery could not be obtained in spite
 2 of a duty to preserve evidence in the case
 3 even absent a court order, although we had
 4 a court order in this case, courts have
 5 upheld dismissal as an appropriate remedy.
 6 And I refer specifically to the Figgy
 7 (phonetic) International case at page 563
 8 and Federal Insurance Company case at page
 9 1350.

10 The court has discretionary authority
 11 to enter sanctions against a party upon
 12 making express findings of a willful
 13 failure to comply with discovery
 14 obligations. The court must determine the
 15 appropriate sanctions, must determine the
 16 appropriate sanctions when a party fails
 17 to preserve evidence in its custody based
 18 upon the willfulness, bad faith, if any,
 19 of the party responsible for the loss, the
 20 extent of the prejudice suffered by the
 21 other party, and what is required to cure
 22 the prejudice.

23 In Valcin, the Florida Supreme Court
 24 adopted a shifting of the burden of
 25 producing evidence when essential records

248:1 are found to be either missing or
 2 inadequate through the defendant's
 3 negligence. I suggest that certainly that
 4 same shifting burden, the obligation in
 5 this case of the defendant to explain
 6 fully its failure to abide by this court's
 7 order of April 2004, that shifting burden
 8 would apply even more strongly where there
 9 is evidence that the failure was willful
 10 if it applies where the failure was
 11 negligent.

12 In other words, although opposing
 13 counsel has stated to Your Honor at the
 14 outset of this proceeding that it was
 15 their position that they had no burden of
 16 proof, the Florida Supreme Court says
 17 otherwise. The holding in Valcin is that
 18 the burden shifts to the party failing to
 19 make production under circumstances such
 20 as this.

21 Valcin is a case where the Florida
 22 Supreme Court recognized the propriety of
 23 establishing a rebuttable presumption. In
 24 that case, which was a medical malpractice
 25 case, and where records disappeared with

249:1 regard to the relevant healthcare
 2 procedures, what the Supreme Court
 3 affirmed was the shifting of the burden of
 4 proof to the defendant to prove
 5 non-negligence, compliance with the
 6 general accepted standard of care rather
 7 than requiring the plaintiff to prove
 8 negligence.

9 Let's focus for just a moment, then, on
 10 what it is that we were attempting, have
 11 been for a very long time attempting to
 12 discover in this case. Clearly, a central
 13 issue in this case is what Morgan Stanley
 14 knew and when it learned what it knew.
 15 Certainly the content of communications
 16 among Morgan Stanley employees during the
 17 key time period and after as well, but
 18 certainly during the key time period
 19 identified in Your Honor's order between
 20 February 15 and April 15 of 1998 is highly
 21 significant, relevant, probative evidence.

22 I am reminded by Mr. Byman that the
 23 evidence that brought Arthur Andersen down
 24 was a single e-mail communication from an
 25 Arthur Andersen employee that had to do

250:1 with instructions about how documents were
2 to be handled within Arthur Andersen, and
3 it was that single key piece of evidence
4 that jurors in post-trial interviews, as
5 reported in the press, found to be most
6 damning against Arthur Andersen.

7 It doesn't take 1,000 pages of
8 documents for any document to be relevant
9 and material. It takes just a single
10 document. And we know, we know that such
11 documents do exist because at least some
12 of them have been identified to us even if
13 only in privilege logs at this point in
14 time.

15 But there is, for example, a disclosure
16 in a privilege log, and it's referenced at
17 the bottom of the e-mail chronology that I
18 provided to Your Honor, a June 22nd, 1998
19 e-mail from Mr. Strong to in-house
20 counsel. And it is described in the
21 privilege log as seeking legal advice
22 regarding Sunbeam press coverage.

23 Now, had Morgan Stanley and its lawyers
24 complied in good faith with this court's
25 orders, when Mr. Strong was deposed, just

251:1 knowing that Mr. Strong was seeking legal
2 advice in June -- on June 22nd, 1998
3 regarding matters relating to Sunbeam and
4 press coverage of Sunbeam would certainly
5 have been the subject of significant
6 examination of Mr. Strong during the
7 course of his deposition. But we were
8 deprived of that knowledge. And we don't
9 need to ask Mr. Strong what Mr. Strong
10 said to his lawyers. But we know that
11 Mr. Strong had some concern, and we
12 certainly would have been asking what
13 prompted that concern, what was the
14 concern, what were you worried about at
15 that point in time. And as we sit here
16 today, we don't know what those answers
17 would have been.

18 Now that's one example, and there are
19 many many others that we would be able to
20 give Your Honor, not only from what has
21 been withheld from us but what we have
22 received at this point as well, and we
23 have no idea what else is out there.

24 Let's go back and take a look at the
25 facts as they have been developed before

252:1 the court up to this point in time.

2 It was in March of 1998 that Morgan
3 Stanley recognizes the likelihood of
4 Sunbeam related litigation but fails to
5 preserve its e-mails, and we know that
6 because of the assertion of
7 attorney-client and work-product privilege
8 based upon the privilege log that we have
9 received. It was February of 1999 when in
10 anticipation of Sunbeam related litigation
11 Morgan Stanley gathers up hard copies of
12 Sunbeam related documents by communicating
13 with the bankers involved in this
14 transaction and telling them to preserve
15 that evidence for them.

16 Morgan Stanley does not, however, at
17 the same time it is instructing third
18 parties to preserve evidence for Morgan
19 Stanley's use do anything to preserve its
20 own records with regard to the same
21 anticipated litigation.

22 THE COURT: The last factual assertion
23 you made, where would I look in the record
24 of this hearing for that?

25 MR. SCAROLA: The request with regard

253:1 to --

2 THE COURT: To the bankers to keep the
3 hard copies.

4 MR. SCAROLA: We'll get that reference
5 to you in just a moment, Your Honor.

6 THE COURT: Okay.

7 MR. SCAROLA: I can tell you that
8 Mr. Plotnick (phonetic) in his testimony
9 at page 65 acknowledges that he called all
10 bankers involved in the merger to tell
11 them to preserve documents.

12 THE COURT: That's fine. I understand
13 that. But you're making factual
14 assertions that weren't established today,
15 and I don't know if we're agreeing to go
16 outside of what was established today or
17 not.

18 MR. SCAROLA: Actually, I think you're
19 right. We did not introduce
20 Mr. Plotnick's deposition. I would
21 request that we be permitted to reopen for
22 the purposes of doing that.

23 MR. JONES: I'd object to that. It's
24 hearsay.

25 THE COURT: You'd object to what, sir?

254:1 MR. JONES: I'd object to it as hearsay.
 2 THE COURT: What's your response to the
 3 hearsay objection to Mr. Plotnick's depo?
 4 MR. SCAROLA: Mr. Plotnick is a Morgan
 5 Stanley employee. These are admissions
 6 against interest.
 7 MR. JONES: Your Honor, it has to be
 8 established. Asserting it doesn't make it
 9 so.
 10 THE COURT: Well, it doesn't even have
 11 to really be --
 12 MR. SCAROLA: He identifies himself in
 13 his deposition as a Morgan Stanley
 14 employee.
 15 MR. JONES: My point is asserting it's a
 16 statement against interest doesn't make it
 17 so.
 18 THE COURT: It doesn't have to be
 19 adverse to the interest. It just has to
 20 deal with Morgan Stanley's interest. I
 21 mean -- what we have to establish is a
 22 statement by Morgan Stanley. What's the
 23 response to that?
 24 MR. JONES: Statement by Morgan Stanley
 25 against Morgan Stanley's interest is in

255:1 the hearsay exception.
 2 THE COURT: I'm not sure it has to be
 3 adverse, but, frankly, I think it probably
 4 is.
 5 MR. JONES: And he has to be authorized
 6 to make the admission. That has not been
 7 established.
 8 MR. SCAROLA: No, he must be speaking
 9 within the scope of his authority.
 10 THE COURT: I thought we went through
 11 this whole legal argument a week or two
 12 ago, what was an admission by a party
 13 opponent. I would grant the motion to
 14 reopen the evidence.
 15 Do you want to share with him the parts
 16 that that you want to rely on and publish
 17 and see if there's an objection other than
 18 what I've heard?
 19 Again, I'm looking at the statute,
 20 which is 90.803 18, and I certainly don't
 21 see that it has to be adverse to the
 22 interest.
 23 But, in any event, did you share with
 24 them --
 25 MR. JONES: They did, Your Honor. I'm

256:1 advised that there actual actually is a
 2 motion in limine going to Mr. Plotnick's
 3 testimony. So it may well be that that
 4 issue, this little discussion will be
 5 subsumed within that motion in limine.
 6 THE COURT: Any other argument against
 7 what they want to publish?
 8 MR. JONES: I will incorporate whatever
 9 objections we make in that motion in
 10 limine.
 11 THE COURT: I'm happy to hear them now
 12 if you can tell me what they are.
 13 MR. DAVIDSON: Just one moment, Your
 14 Honor.
 15 THE COURT: Sure.
 16 MR. DAVIDSON: AS I understand the
 17 motion, the motion has to do generally
 18 with this whole subject that has been
 19 raised, which would include this testimony
 20 but also other testimony. It's the
 21 subject of Morgan Stanley's normal
 22 business practice of bundling up
 23 engagement materials and the destruction
 24 of those materials after a matter is
 25 closed. And that is the subject.

257:1 THE COURT: Is there any part of that
 2 relevant for purposes of this? What I
 3 really need to know, is there any other
 4 grounds for objection other than the
 5 hearsay we've already got?
 6 MR. DAVIDSON: Other than the fact of
 7 relevancy, Your Honor, because there is no
 8 showing that that was done in any way,
 9 shape or form to hide evidence, prevent
 10 the production of evidence, or anything of
 11 that sort. There's just simply no
 12 evidence, although inquiries were made in
 13 that regard, there was anything like that
 14 at all.
 15 THE COURT: I would overrule the
 16 relevancy. I don't think that's why
 17 you're offering it. So did you want to go
 18 ahead and publish it?
 19 MR. SCAROLA: Yes, Your Honor.
 20 THE COURT: How long are we talking
 21 about, the part that you want to publish?
 22 MR. SCAROLA: Actually, there are a
 23 number of sections in the deposition that
 24 relate to issues, to issues that are
 25 covered in this chronology. Mr. Plotnick

258:1 was actually designated as the corporate
2 representative for purposes of addressing
3 Morgan Stanley's knowledge of the
4 imposition of the SEC fine for document
5 destruction. And that's the purpose for
6 which his deposition was taken.

7 There is the two issues that I wish to
8 make reference to from Mr. Plotnick's
9 deposition, and perhaps we can agree
10 without having to read it all to Your
11 Honor, that both of these points are
12 covered, are first, the point that I just
13 made that there was no general internal
14 direction to preserve documents within
15 Morgan Stanley, but that Mr. Plotnick
16 issued directions to investment bankers
17 involved in the merger transaction for
18 them to preserve their documents.

19 The second point is that pursuant to a
20 12-month retention policy Morgan Stanley
21 was routinely destroying e-mails after a
22 12-month period of time throughout 1998
23 which was in violation of SEC regulations
24 requiring that e-mails be preserved at a
25 readily accessible form for a period of

259:1 three years. Those are the points
2 established by Mr. Plotnick.

3 THE COURT: I thought in the original
4 factual assertion you made there was a
5 time frame attached to when he told
6 investment bankers to hold --

7 MR. SCAROLA: Yes, February of 1999,
8 Your Honor.

9 THE COURT: February of '99.

10 MR. SCAROLA: That's correct.

11 THE COURT: So, as I understand it,
12 what you're asking for is a stipulation
13 that Mr. Plotnick testified in deposition
14 that Morgan Stanley had no general
15 internal direction to preserve documents
16 but for this specific transaction in
17 February of 1999 he instructed the
18 investment bankers to preserve their
19 documents?

20 MR. SCAROLA: That's correct.

21 THE COURT: And that number two, Morgan
22 Stanley had a policy in place in 1998 of
23 routinely destroying e-mails after 12
24 months despite an SEC rule that required
25 they be kept for three years.

260:1 MR. SCAROLA: In readily accessible
2 form.

3 THE COURT: Okay. Can you all
4 stipulate that that's what Mr. Plotnick
5 testified to?

6 MR. DAVIDSON: I will certainly
7 stipulate in February of '99 he asked --
8 actually went out and asked people have
9 you heard of Sunbeam litigation to
10 preserve documents.

11 THE COURT: Okay.

12 MR. DAVIDSON: Second of all, I will
13 also stipulate that up until January of
14 2001, as I recall, Morgan Stanley's
15 practice was to overwrite on backup tapes
16 the next cycle of backup recording. That
17 was not confined to e-mail. But the
18 backup tapes for data in general, which
19 was a dump for different kinds of
20 electronic information, after a period of
21 12 months that tape would be recycled, and
22 the material that was on it would be
23 overwritten.

24 THE COURT: And that's a functional
25 equivalent of destroying them. Was there

261:1 any ability to recall the information that
2 was first on the tape?

3 MR. DAVIDSON: There was not.

4 THE COURT: So it's a functional
5 equivalent of not having these e-mails
6 exist anymore.

7 MR. DAVIDSON: I think I would say it
8 would have the same effect.

9 THE COURT: The last point, I think,
10 was that there was no general internal
11 direction to preserve documents.

12 MR. DAVIDSON: Prior to that time, that
13 is correct.

14 MR. SCAROLA: I can read that one
15 answer, Your Honor, if there's any
16 question about this.

17 MR. DAVIDSON: As a general proposition,
18 I think that's true just so long as it's
19 clear it's not specifically related to
20 this case but as a general proposition,
21 that's true.

22 THE COURT: What is specifically
23 related to this case was the request in
24 February of '99 to the investment bankers?
25 Okay. If those three, if it's stipulated

262:1 those three points were testified to by
2 Mr. Plotnick, I don't -- is that all you
3 need from that?

4 MR. SCAROLA: Yes, Your Honor. I just
5 would like to publish this one question
6 and answer from page 65, question, "was a
7 firm-wide preservation notice ever
8 circulated directing Morgan Stanley
9 employees to preserve materials relating
10 to Sunbeam?"

11 Answer, "I'm not aware of it."

12 Okay.

13 THE COURT: Um-hum.

14 MR. SCAROLA: Thank you. That saves us
15 having to go --

16 THE COURT: We're back to where we were
17 in the argument.

18 MR. SCAROLA: Okay. Your Honor, we then
19 know from the testimony that we have heard
20 that in 2002 Morgan Stanley found 738
21 eight-millimeter backup tapes in
22 Manhattan. On December 3rd, 2002 is when
23 the SEC fine was imposed of \$1.65 million
24 for violating federal regulations.

25 THE COURT: Mr. Byman is laughing

263:1 because you're telling me stuff I don't
2 know. Are we going to find that some
3 place?

4 MR. BYMAN: That's Exhibit D.

5 MR. SCAROLA: That's the SEC ruling that
6 is.

7 THE COURT: Are you offering that now?

8 MR. SCAROLA: Yes.

9 THE COURT: Is there an objection?

10 MR. JONES: That's hearsay.

11 THE COURT: What's the response?

12 MR. SCAROLA: It is hearsay. Our
13 lawsuit was filed on May 8, 2003. On
14 May 9, 2003, we served our first request
15 for production of documents. On
16 July 25, 2003, Morgan Stanley responded to
17 our first request of production and
18 provided us with a handful of e-mails.

19 In October of 2003, because it was our
20 sense that there simply had to be a
21 greater volume of e-mails than those
22 produced, and after repeated attempts to
23 resolve the e-mail dispute, we filed a
24 motion to compel the production of
25 e-mails. And months of negotiation

264:1 followed leading to the April 16, 2004
2 agreed order.

3 Sometime before May 6, 2004, and we
4 don't know the exact date, Morgan Stanley
5 finds more than 1,000 DLT tapes, the
6 Brooklyn tapes. We know it was sometime
7 before May 6, 2004 because that date is
8 established in the minutes of the
9 committee that was dealing with these
10 issues.

11 On May 14, 2004, Morgan Stanley
12 produced 1,300 pages of e-mails but no
13 certification, established through the
14 testimony that Your Honor has heard in the
15 courtroom. And between June 3rd and
16 June 17, 2004, we know that Morgan Stanley
17 sent to its outside vendor, National Data
18 Conversion, Incorporated, the Brooklyn
19 tapes. There is, I note, a one-month
20 delay between the discovery of the tapes
21 and transferring those tapes for
22 processing.

23 On June 23rd, 2004, after repeated
24 requests, we get the certificate that was
25 supposed to have accompanied the

265:1 production pursuant to Your Honor's order
2 of April 16, 2004. That certification is
3 a certification that comes from
4 Arthur Reil. Mr. Reil was a party to the
5 communications regarding the Brooklyn
6 tapes. Mr. Reil knew that there were over
7 a thousand unsearched tapes when Mr. Reil,
8 the Morgan Stanley employee charged with
9 providing this certification to us,
10 falsely certified that a full and complete
11 search had been made.

12 On July 2nd, 2004, NDCI informs
13 Arthur Reil and others at Morgan Stanley
14 that the 738 eight-millimeter tapes found
15 back in 2002 contained e-mails dating back
16 to at least 1998 and that 1,423 DLT's
17 contain e-mails dating back at least to
18 1999. The information that the tapes
19 contained e-mails was provided to Mr. Reil
20 on July 2nd, 2004, less than two weeks
21 following his certification.

22 On July 16, 2004 -- Actually I don't
23 know that that point has been established
24 in the evidence. I'm going to skip it.

25 MS. BYMAN: It's Exhibit 11 to their

266:1 brief.
 2 MR. SCAROLA: It has been established by
 3 way of the submission that Morgan Stanley
 4 has made to Your Honor. On July 16, 2004,
 5 NDCI informs Morgan Stanley that the 1,423
 6 DLT tapes contain more than 2,100,000
 7 unique e-mails. Now neither CPH nor the
 8 court are informed of the false
 9 certification.

10 At the time that Mr. Reil is informed
 11 on July 2nd that the certification is not
 12 only false from the standpoint that a
 13 complete search hasn't been made but now
 14 also false from the standpoint that all
 15 relevant e-mails have been produced. The
 16 same omissions occur again on July 16,
 17 2004. No notice to us or to the court.
 18 Mr. Reil is terminated. I'm sorry.
 19 Placed on administrative leave, which is
 20 really rather interesting. And it's
 21 interesting from two standpoints.

22 I know Your Honor took note because you
 23 could not help but noting that when
 24 Miss Gorman testified about this what she
 25 said was that I was told that what I

267:1 should do is to call this an
 2 administrative leave. Now that has
 3 significance, because under Florida law
 4 terminated employees can be contacted
 5 directly. Someone who is still an
 6 employee of Morgan Stanley can not be
 7 contacted directly. So one way to keep
 8 Mr. Reil from any discussions with
 9 opposing counsel outside the presence of
 10 Morgan Stanley and its lawyers is to keep
 11 him technically on the payroll. I don't
 12 know whether Your Honor received the
 13 same --

14 THE COURT: That's what I was looking
 15 for.

16 MR. SCAROLA: -- copy of the memorandum
 17 we received.

18 THE COURT: with the handwritten
 19 interlineations. I was looking for it so
 20 I could get the exact terminology that was
 21 changed.

22 MR. SCAROLA: The exact terminology is
 23 the process data from these tapes were the
 24 staging area when Arthur Reil was
 25 dismissed for integrity issues in August

268:1 2004. Dismissed for integrity issues is
 2 crossed out and interlineated above it is
 3 "placed on administrative leave."

4 Now we are here relating to issues
 5 dealing with candor to the court and
 6 candor to the opposing parties. And for
 7 Morgan Stanley in the context of this
 8 motion and for Morgan Stanley's counsel in
 9 the context of this motion to instruct a
 10 witness that she should refer to Mr. Reil
 11 as an employee who's been placed on
 12 administrative leave when there is a
 13 strong suspicion that, in fact, Mr. Reil
 14 was terminated for integrity reasons is
 15 not something that displays candor.

16 Now can we prove that Mr. Reil was
 17 terminated for integrity reasons? No.
 18 But the Supreme Court says we don't have
 19 that burden of proof. The burden of proof
 20 to prove good faith, to prove
 21 inadvertence, to prove reasonable neglect
 22 is not upon us but upon them. And this
 23 kind of evidence indicates that they have
 24 fallen far short of the mark to satisfy
 25 that burden, although it clearly is not

269:1 the only evidence by any means of a lack
 2 of candor, and we'll get to that in more
 3 detail.

4 At any rate, Mr. Reil isn't with Morgan
 5 Stanley or isn't actively with Morgan
 6 Stanley as of August of 2004. And we know
 7 that upon his termination from the
 8 testimony we've heard from Miss Gorman,
 9 all sorts of problems, if her testimony is
 10 to be believed, are found within the
 11 department, the kinds of problems that
 12 clearly indicate that there is going to be
 13 significant difficulty and substantial
 14 delay if the information needed in this
 15 case is going to be obtained by
 16 integrating the large volume of
 17 information that remains unprocessed into
 18 a system that does not have the capacity
 19 to handle it.

20 The response by Morgan Stanley is to
 21 say, so what? Who cares? We're going to
 22 do this our way, whatever time it may
 23 take, as long as it is most convenient to
 24 us. And our data is placed in a staging
 25 area along with a whole bunch of other

270:1 data down at the bottom of a list because
2 other things have got greater priority,
3 and we're not told what they were or why
4 they have greater priority, but we must
5 accept on faith that they do. And we'll
6 get to this when and if we can get to it,
7 in spite of the fact that there is hanging
8 out there a knowingly false certification.

9 So those are the circumstances that
10 exist as of August of 2004. We were
11 initially lead to believe that it was late
12 October 2004 when Miss Gorman finally
13 makes processing the tapes a priority of
14 sorts. We now know Mrs. Gorman upon
15 cross-examination clarifies it wasn't late
16 October but mid October when she is told
17 to make processing the tapes a priority
18 after conversations with counsel. The
19 party with the burden of proof to explain
20 these circumstances chooses, as it has a
21 right to, to assert attorney-client
22 privilege to preclude inquiry into those
23 conversations to make a determination as
24 to what it is that prompts this
25 reassignment of priorities, whether it's

271:1 got anything at all to do with this case.

2 THE COURT: Isn't it fair to assume it
3 does not if Mrs. Gorman didn't even know
4 about this case until January of 2005?

5 MR. SCAROLA: Well, it is certainly fair
6 to assume that Miss Gorman's actions are
7 not prompted by any concern about this
8 case because she has no knowledge of this
9 case until January.

10 THE COURT: That's what I'm saying.
11 Even if it prompted counsel, it certainly
12 didn't prompt a discussion between the two
13 of them of why this was necessary at least
14 relative to this action.

15 MR. SCAROLA: That's correct. We know
16 that Miss Gorman was not motivated by
17 anything having to do with this lawsuit
18 because she knew nothing about it. We're
19 precluded from finding out by virtue of
20 the assertion of privilege what it is that
21 prompted counsel to request that she place
22 a priority on these matters, whether it
23 had anything to do with this lawsuit or
24 didn't have anything to do with this
25 lawsuit. Whether it was a fear that maybe

272:1 the SEC was coming back down on them again
2 for some reason or what it was, we don't
3 know.

4 But what we do know is that this was a,
5 again, a somewhat strange kind of priority
6 because we're still not trying to do what
7 we can to find out how quickly we can get
8 the data that we need in this case. We've
9 just moved up the list to be integrated
10 into the system so that when requests are
11 made to respond in litigation generally or
12 for administrative inquiries, generally
13 Morgan Stanley has got the capacity to be
14 able to respond, which up to this point it
15 still doesn't have. So we still don't
16 have any knowledge as to whether Morgan
17 Stanley's lawyers did or did not know as
18 early as October of 2004 that the
19 certifications were false. But what some
20 lawyer knew was -- excuse me. That's not
21 true. As of October 2004, we know that
22 the lawyers know the certifications are
23 false, because now they are telling Morgan
24 Stanley, you've got to prioritize the
25 processing of this data. We've got to

273:1 find out what's on there.

2 So at least as of October 2004, mid
3 October 2004 some lawyer, some lawyer for
4 Morgan Stanley knows that there are false
5 certifications hanging out there, there is
6 the potential at least that relevant and
7 material information that is the subject
8 of a long outstanding discovery request
9 and a court order has not been searched
10 for compliance. At the very least, in mid
11 October, 2004 a party and a law firm
12 acting in good faith should have
13 immediately placed both the court and the
14 opposing party and counsel on notice that
15 they could not rely upon the certification
16 that had previously been made.

17 November 17, 2004, a month after
18 October 2004 Morgan Stanley reveals to CPH
19 for the first time that additional backup
20 tapes exist. I think that the
21 correspondence regarding those matters has
22 already been provided to Your Honor where
23 inquiries were made with regard to the
24 circumstances and left unanswered.

25 Do you remember I handed up a whole

274:1 series of letters to the court?
 2 THE COURT: I recall that. Are we
 3 going back and offering those now?
 4 MR. SCAROLA: Sure. I think we ought to
 5 make those a part of the record.
 6 MR. JONES: I would object to any
 7 hearsay, letters coming into record.
 8 THE COURT: I don't know that they're
 9 being offered for the truth.
 10 MR. SCAROLA: They're not being offered
 11 for the truth, only to demonstrate those
 12 exchanges occurred with respect to the
 13 requests.
 14 MR. JONES: This is communication --
 15 THE COURT: Between counsel. Why don't
 16 you pull them out and show them to Mr.
 17 Jones and see if there is an objection.
 18 MR. JONES: I don't have any objection.
 19 THE COURT: You want to bring them up
 20 and let me mark them as plaintiff's
 21 composite number one?
 22 MR. SCAROLA: Sure. They're Exhibits to
 23 our original motion, and we'll extract
 24 them and mark them as a composite.
 25 THE COURT: I can mark them if you just

275:1 have them.
 2 MR. SCAROLA: Pardon me?
 3 THE COURT: I'll mark them if you have
 4 them.
 5 MR. SCAROLA: Yes. It's -- we'll give
 6 you the letter references in just a
 7 moment. Exhibits O through U, Your Honor.
 8 I've got this copy.
 9 THE COURT: I'm going to attach them
 10 right now, and that way I have them.
 11 Thank you.
 12 (Plaintiff's Exhibit No. 1)
 13 MR. SCAROLA: You may remember the
 14 circumstances under which those letters
 15 were provided to the court. They were in
 16 response to an assertion by counsel that
 17 we had somehow been dilatory in pursuing
 18 this matter, that there was, I think the
 19 term that was used radio silence if I
 20 remember correctly.
 21 And, again, in and of itself, standing
 22 alone, not a particularly significant
 23 matter that counsel may have mistakenly
 24 made such a representation to the court,
 25 but when taken in the context of all of

276:1 the inaccurate statements made to the
 2 court, it takes on significantly greater
 3 significance, and there clearly have been
 4 misrepresentation after misrepresentation
 5 after misrepresentation. That was one of
 6 them.
 7 On November 17, 2004, as I said, the
 8 disclosure is first made to CPH. That's
 9 six months after the Brooklyn tapes were
 10 found, five months after they are known to
 11 contain e-mails and five months after the
 12 false certification.
 13 On November 18, 2004, we get 8,000
 14 pages of e-mails, six months after the
 15 agreed order required production. Now let
 16 me make an observation regarding these
 17 8,000 pages of documents that are included
 18 in this stack that we have made reference
 19 to. The witnesses have told us and the
 20 representations have been made that those
 21 were -- that was the product of the
 22 Brooklyn tape review. But the testimony
 23 that we heard today was that the
 24 processing of those tapes had not been
 25 completed at that time. So we now based

277:1 upon the record before this court don't
 2 know where these did come from, but we
 3 know where they didn't come from.
 4 We know that representations that this
 5 was the Brooklyn tape production are
 6 inaccurate, so something else is going on
 7 and the party with the burden of proof
 8 hasn't yet explained what that is. It was
 9 not until sometime in November of 2004
 10 that Morgan Stanley finally locates the
 11 software necessary to process the data
 12 from the 1,423 Brooklyn tapes. But we are
 13 told they're not able to run it properly,
 14 so the production obviously can't be the
 15 Brooklyn tape production.
 16 In November or December of 2004, 169
 17 additional tapes are found at Recall.
 18 Counsel was notified within two days of
 19 the documents being found, but no notice
 20 to CPH and no notice to the court.
 21 In mid January of 2005, Morgan Stanley
 22 debugs the software necessary to process
 23 the tapes. So the Brooklyn tape
 24 processing begins in January, long after
 25 the 8,000 pages are produced that came

278:1 from somewhere. And then also in January
2 of 2005 Morgan Stanley finds another 169
3 DLT tapes, allegedly lost by a storage
4 vendor, by Recall, but, again, we don't
5 get notice of that, and the court isn't
6 told.

7 On January 26, 2005, we file another
8 e-mail related motion. On February 2nd,
9 2005 after we have filed that motion
10 Morgan Stanley counsel tells the court
11 that the Brooklyn tapes were found
12 sometime during the summer of 2004.
13 That's the open court misrepresentation
14 that was made to Your Honor.

15 Because we know from the testimony that
16 the Brooklyn tapes were not found sometime
17 during the summer of 2004. They were
18 actually found two months earlier in May,
19 early May, May 6 of 2004. Not quite two
20 months, a month and a half before summer
21 begins. You know, again, May, summer.
22 Maybe not a big deal standing all by
23 itself except when we're talking about
24 matters as to which time is of the essence
25 because the concern that the court has

279:1 that's been addressed with counsel when
2 those representations are made is how long
3 did you delay before you told us.

4 So it serves counsel's purpose to bend
5 the truth and to tell Your Honor that we
6 didn't find out until the summer of 2004
7 when, in fact, it was a month and a half
8 earlier than the first day of summer 2004
9 when the documents indeed were found. It
10 was also at that February 2nd, 2005
11 hearing that Morgan Stanley's counsel made
12 the representation, Mr. Clare, that was
13 the subject of cross-examination.

14 And having occurred as recently as it
15 occurred, I don't need to remind Your
16 Honor about that testimony, but clearly it
17 is another example of a clear lack of
18 candor on the part of Morgan Stanley's
19 counsel. Now whether the
20 misrepresentations to Your Honor were made
21 willfully, that is, with a conscious
22 awareness of their falsity or whether they
23 were simply made recklessly, either
24 alternative is intolerable under these
25 circumstances.

280:1 The appropriate response to a question
2 from the court when the answer is not
3 known with some relative degree of
4 certainty is, I'm sorry, Your Honor, I do
5 not know. But those aren't the responses
6 that were made. The responses that were
7 repeatedly made to us and to the court
8 were responses that were couched in terms
9 of certainty but were clearly false. The
10 same way the certification was couched in
11 terms of certainty but was clearly false
12 and known to be false.

13 February 9th and 10th we deposed the
14 three witnesses designated by Morgan
15 Stanley with those persons with knowledge
16 with regard to the issues that were
17 specifically identified as issues of
18 concern. And what we find out is we're
19 talking to people who don't have direct
20 knowledge of who knew what when. And as
21 many questions, almost as many questions
22 remain unanswered after their depositions
23 as before their depositions:

24 On February 11 we get three additional
25 e-mail pages and, again, an announcement

281:1 that the e-mail production is complete and
2 a request in pleadings submitted to the
3 court that CPH's motion be dismissed as
4 moot because here's all the information,
5 and now you've got everything, and there's
6 nothing in there that amounts to a hill of
7 beans. Except that representation is also
8 false because there's still, as we stand
9 here today, significant data that has yet
10 to be searched and yet to be produced.

11 On the 12th of February, Morgan Stanley
12 informs the court that it has in the last
13 24 hours discovered additional tapes. And
14 we learned -- excuse me -- we learn the
15 attachments to the e-mails have not been
16 produced. And we have no firm, no firm
17 commitment as to when we are going to have
18 that information.

19 So where does that place us? It places
20 us in a situation where the party with the
21 burden to prove good faith and
22 inadvertence and to establish the
23 circumstances of their failure to abide by
24 the court's order has totally and
25 egregiously failed to meet its burden of

282:1 proof.

2 what has been established is repeated

3 misrepresentations to opposing counsel and

4 to the court. What has been established

5 is a wreckless disregard, at the very

6 least, of the obligations imposed by the

7 court order of April of 2004. And what

8 has been established is that days before

9 we are scheduled to begin jury selection

10 in an extremely significant case both from

11 the standpoint of the issues involved and

12 the dollars involved, within days of the

13 commencement of that case the plaintiffs

14 are placed in the terrible position of

15 having conducted months and months and

16 months of extraordinarily expensive

17 discovery and having moved 30 people from

18 Chicago into residence here in Palm Beach

19 County, renting office space, working day

20 and night to be properly prepared for this

21 trial while being diverted by issues that

22 never should have arisen at all, we are

23 placed in the position where the only way

24 in which justice can be done under the

25 circumstances that we presently confront

283:1 is for the death penalty to be imposed

2 against the defendants. A default

3 judgment should be entered against them.

4 we should be going to trial on issues of

5 liability alone.

6 THE COURT: Damages you mean.

7 MR. SCAROLA: Issues of damages alone.

8 Thank you. Appreciate that help.

9 THE COURT: Can I ask you just a few

10 questions?

11 MR. SCAROLA: Yes.

12 THE COURT: And I understand your

13 position, and, quite honestly, I need to

14 digest the evidence for a bit. If I were

15 to do something less than entry of default

16 on liability, what is it you suggest? And

17 I just want to work through what the

18 practical implications of that would be.

19 For instance, first you were asking for an

20 adverse inference instruction.

21 MR. SCAROLA: Correct.

22 THE COURT: And my question would be

23 would you then contemplate we would

24 present a lot of the evidence we heard

25 today before the jury so they could try to

284:1 rebut the adverse inference? I just -- or

2 what other sanctions short of entry of a

3 default did you consider?

4 MR. SCAROLA: Let me, if I could, sort

5 of take it step by step and review with

6 Your Honor what I perceive the hierarchy

7 of sanctions to be.

8 THE COURT: Just while I'm thinking of

9 it, and I apologize, sort of another

10 collateral issue I may have to think about

11 is are they required to continue the

12 search and provide you information, and if

13 so, I think you would want the same thing

14 you asked for before, which is you have

15 the ability to use any information it

16 found, but they don't. Or do we want

17 to -- at some point it would just strike

18 me you want to abort this and say we need

19 to try the case on what we know however

20 we're going to try it.

21 I'm trying to figure out what it is you

22 want and what are the implications of it.

23 MR. SCAROLA: what we want are in terms

24 of continuing efforts on the part of the

25 defendants. The implications will

285:1 obviously depend upon the sanction that

2 your Honor determines to impose.

3 THE COURT: Sure. I understand that.

4 MR. SCAROLA: What I have in

5 abbreviated fashion referred to as the

6 death penalty imposed, then subsequent

7 production from the defendants on

8 liability -- on issues that will only

9 relate to liability just doesn't make any

10 sense. It becomes irrelevant.

11 THE COURT: Sure.

12 MR. SCAROLA: Anything short of that, at

13 least as I have thought through it up to

14 this point in time, and obviously I'll

15 confess to the court that we haven't

16 deliberated on this issue as much as we

17 would ordinarily under similar

18 circumstances because all of this is

19 evolving quickly, it seems to me anything

20 short of the death penalty would require

21 ongoing efforts on the part of Morgan

22 Stanley to produce anything and everything

23 they can as quickly as they're able to

24 produce it, and we'd have to deal with

25 what is produced, including anything your

286:1 Honor may order as a consequence of our
2 challenge of the privilege assertions that
3 have been made based upon what it is that
4 gets produced when we see it.

5 So that -- I can't go beyond saying
6 that they ought to be continued, they
7 ought to be obliged to continue under very
8 strict orders an effort to produce
9 everything that can be produced as quickly
10 as possible.

11 So let's look at what the potential
12 hierarchy is. And I think that we get
13 good guidance in that regard from
14 Rule 1.380 subsection (b)(2), which deals
15 generally with failure to comply with
16 court orders and the sanctions to be
17 imposed.

18 And as I read the rule, the potential
19 sanctions, A, B and C are basically a
20 graduated hierarchy of severity. And then
21 D treating the noncompliance as a contempt
22 is not only an alternative to A, B and C
23 but also may be used in conjunction with
24 A, B and C. So the possibilities as
25 described in the rule taking them in

287:1 ascending order of severity are an order
2 that the matters regarding which the
3 questions were asked or other designated
4 facts shall be taken to be established for
5 the purposes of the action in accordance
6 with the claim of the party making the
7 order.

8 In this case, the e-mails, as I said,
9 relate to the issue of what Morgan Stanley
10 knew and when Morgan Stanley knew it. And
11 we would have to fashion a statement that
12 the court would make to the jury
13 establishing Morgan Stanley's knowledge of
14 the fraud and the point at which they knew
15 the fraud to exist. And since the
16 discovery relates to a period commencing
17 February 15, basically we'd need to work
18 on the language, but basically the court
19 would be telling the jury that as of
20 February 15, 2005, Morgan Stanley was
21 aware of the Sunbeam fraud.

22 THE COURT: Well, at least it would
23 shift the burden to Morgan Stanley to show
24 they were not. Or you don't want to do
25 that?

288:1 MR. SCAROLA: That's another
2 alternative. And that's one that I don't
3 know -- that's not specifically addressed
4 here. But that's the Valcin remedy. The
5 Valcin remedy is that Morgan Stanley has
6 the burden of proving that it did not know
7 of the fraud commencing as of February 15.
8 So that really gets added to the list as a
9 consequence of the Valcin, Supreme Court's
10 decision in Valcin as a specifically
11 identified alternative. So one way is
12 you're saying these facts are established.
13 The other way is saying I'm not
14 establishing these facts, but the burden
15 to prove the nonexistence of these facts
16 rests on Morgan Stanley. It is not the
17 plaintiff who has the burden of this
18 element of the claim.

19 THE COURT: We would have to give some
20 thought of when we say fraud, what is it
21 even that we're referring to?

22 MR. SCAROLA: And my response to that
23 would be the broadest definition that
24 could possibly have been established under
25 the evidence had the e-mails been

289:1 discovered.

2 THE COURT: I would not expect less,
3 Mr. Scarola.

4 MR. SCAROLA: And I think that that's
5 the only logical response since what we're
6 talking about is the absence of evidence.
7 So if, in fact, we were to determine that
8 was the appropriate remedy under the
9 circumstances, I think that would be the
10 scope of the remedy, the only logical
11 scope of the remedy.

12 As B recognizes, another alternative is
13 we get to put our evidence on with regard
14 to knowledge. They don't get to put any
15 evidence on with regard to knowledge. But
16 the burden of proof remains with us. We
17 still have the burden of proving it. We
18 get to elicit our proof. They're not
19 allowed to challenge that proof.

20 So there's clearly, there's a lot to
21 think about in terms of what is required
22 to do justice under these circumstances.
23 But the reason why I suggest to Your Honor
24 that it is, in fact, the most serious
25 sanction that is appropriate under these

290:1 circumstances is because we are still in a
 2 position today of simply not knowing how
 3 much more is out there. And it's because
 4 we're in the position of not knowing how
 5 much more is out there that the only
 6 reasonable sanction is one that
 7 establishes our liability case under these
 8 circumstances.

9 And obviously this discovery is
 10 directed at the heart of our liability
 11 case. It is the primary contested issue
 12 that we have been seeking this discovery
 13 concerning.

14 I've been speaking a long time, and I
 15 want to close, but before I do that I do
 16 want to remind the court, because I think
 17 that it is very significant, that even the
 18 multiplicity of violations that have
 19 occurred with respect to these e-mails,
 20 and it has been a long list of violations
 21 with regard to the e-mails, those multiple
 22 violations are not the only violations
 23 that have occurred in this case. I bring
 24 Your Honor back to all the circumstances
 25 relating to the motion for contempt that

291:1 was pending for a long time. And while
 2 Your Honor understandably decided that it
 3 was not appropriate to go further with
 4 that, it is certainly an appropriate
 5 consideration in making a determination as
 6 to the extent to which the defendant has
 7 or has not acted in good faith in its
 8 compliance with court orders.

9 There have been numerous other matters
 10 that have been the subject of focus of the
 11 court's attention in the past.
 12 Mr. Bram Smith (phonetic) walking out of
 13 the room in the middle of his deposition
 14 in violation of discovery procedures
 15 refusing to answer a question, consulting
 16 with counsel and then coming back in while
 17 that question is pending; the incredible
 18 problems that we have gone through in
 19 order to attempt to establish the
 20 admissibility of documents as business
 21 records; and the games that have been
 22 played with regard to requests for
 23 admissions; and the inadequate
 24 interrogatory responses that we have
 25 received that clearly indicate a lack of

292:1 good faith and due diligence and
 2 appropriate respect for discovery
 3 obligations with regard to those issues.
 4 There are others. And if it becomes of
 5 significance, we would be prepared to
 6 provide a comprehensive list. But I think
 7 that not even needing to go beyond the
 8 e-mail issues, the repetition of
 9 misconduct with regard to e-mail issues in
 10 and of itself is not, but placed in the
 11 context even of just those limited numbers
 12 of examples that I've been able to give
 13 Your Honor indicates a pattern of
 14 misconduct, a pattern of disregard on the
 15 part of the defendant and defendant's
 16 counsel, which justifies the admittedly
 17 unusual and harsh penalty that we are
 18 seeking to have imposed.

19 Before I sit down I do want to check
 20 with my co-counsel to make sure that there
 21 isn't something of major importance that I
 22 missed.

23 There is something of importance that I
 24 ought to mention, and that is the fact
 25 that this record clearly establishes that

293:1 had we not been diligent in pressing these
 2 matters, it is highly unlikely that any of
 3 this ever would have come to light. We've
 4 got Mr. Saunders taking the witness stand
 5 after having been deposed last week and
 6 swearing under oath, I'm confident that we
 7 have fully and completely complied, and
 8 then going back after his deposition to
 9 conduct the search that should have been
 10 conducted April 17th if the order was the
 11 16th, April 17, 2004 at the very latest,
 12 and probably many months earlier when the
 13 request for production was first made. He
 14 tells us he is the man with the most
 15 knowledge regarding these things. He's
 16 been there for, I think he said 17 years.
 17 And for him to have waited until after he
 18 was deposed to conduct the search that
 19 should have been conducted over a year ago
 20 is extraordinary.

21 You can not help but wonder how much of
 22 this got done because Your Honor accepted
 23 our suggestion and strong request that the
 24 time had come to have somebody looking
 25 over Morgan Stanley's shoulder and we

294:1 needed an outside vendor to be able to
 2 double-check the work that they were
 3 doing. If they did not know that there
 4 was going to be somebody else who was
 5 going to discover everything that they are
 6 now admitting, they didn't find and never
 7 looked for, I don't think there's any
 8 question about the fact that we would not
 9 have had voluntary disclosures. These
 10 aren't voluntary disclosures. These are
 11 disclosures that are made under the shadow
 12 of somebody looking over their shoulder,
 13 breathing down their necks and ready to
 14 come into the courtroom to tell Your Honor
 15 about what a wreckless approach they took
 16 to the discovery in this case.

17 I think that that's it, Your Honor, and
 18 thank you very much for your patience with
 19 me.

20 THE COURT: Thanks. You ready to go
 21 forward?

22 MR. JONES: Well, Your Honor, by my
 23 count, Mr. Scarola took an hour. It's
 24 five of 5:00. It's going to take me much
 25 longer than five minutes.

295:1 THE COURT: Do you want to take a break
 2 and come back?

3 MR. JONES: I'd like to take a break and
 4 come back.

5 THE COURT: I think we need to finish
 6 this argument today. I can tell you, just
 7 so you're prepared, the first question I'd
 8 like to put to bed is what those 8,000
 9 pages of documents are. I mean, that's
 10 the first question I was going to ask you,
 11 so if you can sort of address that factual
 12 assertion first and then go back into the
 13 argument...

14 MR. CLARE: We can do that after the
 15 break.

16 THE COURT: Okay. Thanks.

17 (A recess was taken at 5:12 p.m.)
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296:1 C E R T I F I C A T E

2
 3 THE STATE OF FLORIDA))
 4 COUNTY OF PALM BEACH)

5 I, Barbara Gallo, RMR-CRR, Registered Merit
 6 Reporter-Certified Realtime Reporter, do hereby
 7 certify that I was authorized to and did report the
 8 foregoing proceedings at the time and place herein
 9 stated, and that the foregoing is a true and correct
 10 transcription of my stenotype notes taken during said
 11 proceedings.

12
 13 IN WITNESS WHEREOF, I have hereunto set my
 14 hand this ____ day of _____, 2005

15
 16
 17
 18 _____ BARBARA GALLO
 19 Registered Merit Reporter Certified Realtime R
 20
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 22
 23
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COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: 2003 CA 005045 AI

**PLAINTIFF'S MOTION TO COMPEL FURTHER DISCOVERY REGARDING
MORGAN STANLEY'S DESTRUCTION AND NONPRODUCTION OF E-MAILS**

Coleman (Parent) Holdings Inc. ("CPH") respectfully seeks leave to conduct certain discovery relating to the willful failure of Morgan Stanley & Co. Incorporated ("Morgan Stanley") to make full production of responsive e-mails, as it falsely certified it had done prior to June 23, 2004. CPH seeks this discovery not to buttress the record supporting the pending motion for sanctions relating to Morgan Stanley's failure to produce e-mails, but to obtain information for use at trial. The record as to the former issue is complete and justifies the immediate entry of a default judgment as to liability. But as explained below, this discovery is warranted to ascertain the full magnitude of the e-mail problem, which in turn can inform the jury's determinations about liability (if the Court does not grant a default judgment) and about the award of punitive damages.

Specifically, CPH asks that the Court (1) order Morgan Stanley to produce the 46 documents listed on Morgan Stanley's February 10, 2005 Privilege Log (Priv. Nos. 486-524), as well as any other documents reflecting when and how Morgan Stanley agents or employees, including in-house and outside counsel, learned about the existence and discovery of all electronic data storage sources potentially containing e-mail-related discovery materials, the

failure to make complete production of e-mail-related discovery materials, and when and how Morgan Stanley's agents and employees responded; (2) order Morgan Stanley to make available for deposition in the next two weeks key personnel who were parties to attorney-client communications involving the production of e-mails in this case, including but not limited to Thomas A. Clare, James P. Cusick, James F. Doyle, Grant Jonas, Soo-Mi Lee, Arthur Riel, Zachary Stern, and Wray Stewart; and (3) bar Morgan Stanley from asserting attorney-client privilege to justify withholding documents or instructing deponents not to answer questions about Morgan Stanley's retention, destruction, production, or nonproduction of e-mails or backup tapes, based on the crime/fraud exception recognized in FLA. STAT. ANN. § 90.502(4)(a) (West 2004). For the reasons stated below, Morgan Stanley — which owns and repeatedly has invoked the attorney-client privilege — should no longer be permitted to assert the privilege to hide the fraud it has perpetrated upon this Court and CPH.

CPH needs the opportunity to inquire into these matters to establish the magnitude and seriousness of Morgan Stanley's repeated and egregious violations of the April 16, 2004 Agreed Order — the latest of which was revealed just this weekend when Morgan Stanley once again advised CPH that it had located yet another batch of backup tapes that have not yet been searched. *See* Ex. A (February 19 e-mail advising CPH that "Morgan Stanley has located additional boxes of backup tapes"); *see also* Ex. B (CPH's proposed order presenting a menu of possible sanctions). In recent days, Morgan Stanley has sought to minimize the severity of its misconduct by arguing (1) that Arthur Riel, the former head of Morgan Stanley's e-mail archive project, was a renegade employee who for some unknown reason orchestrated a fraudulent discovery scheme on his own; and (2) that counsel took every appropriate step to address the problem when they learned about it in October. MS Supp. Opp'n at 2-3, 6. Neither argument,

however, is supported by any record evidence, and Morgan Stanley has used assertions of privilege to block CPH from inquiring into these matters, both in depositions and in open court. Moreover, as explained below, there are multiple reasons to doubt the veracity of these assertions — reasons that fully justify revoking the protections of privilege in view of Morgan Stanley's failure to satisfy its discovery obligations even today, despite having certified its full compliance eight months ago.

BACKGROUND

As the Court is aware, it is only as a result of CPH's persistence that Morgan Stanley has begun taking steps in the direction of compliance with the April 16, 2004 Order, eight months after Morgan Stanley certified that it already had fully complied. How close Morgan Stanley now is to full compliance and whether it will ever reach the Court-ordered destination remain unsolved mysteries. If CPH had not made an appropriate motion, it is highly unlikely that Morgan Stanley ever would have located multiple sets of additional, unsearched tapes or would have done anything beyond processing an incomplete set of tapes on its own schedule, at its own pace. *See, e.g.*, Ex. C at 187, 195 (Mr. Clare testifying that he learned only after CPH filed its January 26, 2005 motion that the "Brooklyn found" tapes had been discovered before the certification on June 23); *id.* at 202 (Mr. Clare testifying that he only recently learned that Ms. Gorman had "been instructed [in October] that the processing of these tapes was to be given a higher priority than it had previously"); Ex. D at 155-56 (Mr. Saunders testifying that his deposition inspired additional searches that turned up another 243 tapes); Ex. E (February 16, 2005 notice revoking Morgan Stanley's June 23, 2004 certificate of compliance).

But the problems continue. Remarkably, just this weekend, Morgan Stanley once again revealed that it was still finding additional backup tapes that have never been analyzed or

searched. On Saturday afternoon, Morgan Stanley's counsel, Mr. Thomas A. Clare of Kirkland & Ellis LLP, sent CPH's attorneys an e-mail message stating, in full:

We have been informed that Morgan Stanley has located additional boxes of backup tapes in a security room. Morgan Stanley is working to catalog the tapes and determine their contents. We will provide you with this information when it becomes available. As of this morning, however, Morgan Stanley has identified four (unlabelled) DLT tapes among the collection. Those four tapes will be sent to NDCI for further analysis.

Ex. A (e-mail sent at 12:54 p.m. on Saturday, February 19, 2005).¹ This message arrived only days after Morgan Stanley's Robert Saunders twice testified under oath that he was "confident" all tapes had already been located. Ex. D at 152-56 (Saunders's testimony at February 14, 2005 hearing, recounting his February 10, 2005 deposition testimony).

The Court already has determined based on evidence presented at the February 14 hearing that Morgan Stanley's failure to make a complete and timely production of e-mails in compliance with the Court's Order was willful. But the full magnitude of the effort to commit fraud on the Court and on CPH remains unknown. Morgan Stanley continues to assert (1) that this problem was originated by one employee, Mr. Riel, who was subsequently placed on "administrative leave" for incompetence and lack of integrity; and (2) that Morgan Stanley acted appropriately and with dispatch when its legal department learned of the issue in October. MS

¹ This is not the first time Morgan Stanley has been less than forthcoming when describing its discoveries. The Court will recall that Morgan Stanley, the day after it had certified in its brief filed on February 11 that production was 100% complete, sheepishly notified the Court via e-mail that it had found "some" additional backup tapes; yet at the February 14 evidentiary hearing, it became apparent that "some" was actually 243 tapes (whose storage capacity is something like 20 to 30 gigabytes each, a total capacity equal to roughly half a billion printed pages). Now, instead of disclosing how many boxes they have found, or how many tapes, Morgan Stanley merely states it has located "additional boxes of backup tapes." Nor does Morgan Stanley explain why it has chosen to send only four of these tapes to NDCI for further analysis.

Supp. Opp'n at 2-3, 6. This motion seeks a way to test those assertions for purposes of establishing the truth, which can in turn be disclosed at trial.

A review of the chronology of key events reveals why additional discovery is justified and why Morgan Stanley no longer should be allowed to invoke privilege to hamper that discovery:

- On May 14, 2004, Morgan Stanley made what purported to be a complete production of e-mails pursuant to the Agreed Order, based on electronic searches run in April.
- But two years earlier, hundreds of eight-millimeter tapes had been discovered (but not uploaded or searched), and by no later than May 6, 2004 (a full week before the May 14 production), the Morgan Stanley employee responsible for this project, Arthur Riel, knew there were other backup tapes (the "Brooklyn tapes") whose contents also had not been uploaded to the archive and searched. Ex. F, MS 112286 (May 6 minutes). He also knew that Morgan Stanley's vendor, NDCI, had not yet completed processing all of the original 35,000 backup tapes in order to allow them to be uploaded. *See* MS Supp. Opp'n at 8-9 (noting that, as of May 6, 2004, NDCI had yet to process more than 2,000 of the original 35,000 tapes).
- Despite that knowledge, on June 23 Mr. Riel falsely certified in writing that Morgan Stanley had fully complied with the Agreed Order.
- By July 2, Mr. Riel learned that there were potentially responsive e-mails on the tapes still being processed. Ex. G, MS 112327 (July 2 minutes).

But according to Morgan Stanley, no one in the legal department had any knowledge until late October that the May 14 production was not complete and that the June 23 certificate was therefore false. There are several reasons to doubt this story.

First, it is inherently implausible. No reason is suggested why Mr. Riel would take it upon himself to orchestrate a fraud not only on CPH but on Morgan Stanley's own counsel. Certainly there must have been multiple communications between counsel and Mr. Riel in April, May, and June 2004 about this very topic.

Second, Morgan Stanley has not offered any actual evidence of this story — instead offering only a carefully phrased declaration by Mr. Doyle stating that he learned in late October “that additional e-mail backup tapes had been located within Morgan Stanley, and that the data on those tapes had not been restored or searched prior to Morgan Stanley's May 14, 2004 e-mail production.” Ex. H. Mr. Doyle, who was present but not called as a witness at the February 14 hearing, says nothing in his declaration about whether he was otherwise aware that the May 14 production was incomplete, nor does he describe any inquiry he made of other counsel at Morgan Stanley about when they acquired such knowledge.

Third, and even more glaringly, Morgan Stanley's latest privilege log lists a June 7, 2004 e-mail from Mr. Riel to two in-house Morgan Stanley attorneys, James Cusick and Soo-Mi Lee, “seeking legal advice regarding [the] status of [Morgan Stanley's] e-mail restoration process.” Ex. I (privilege log, entry no. 490). The timing of that June 7 request for legal advice is disturbing, as it came after Mr. Riel oversaw the May 14 production of e-mails but before he signed the June 23 certificate stating that Morgan Stanley had fully complied with the Agreed Order, which he knew at the time was false. Morgan Stanley's attempt to portray Mr. Riel as a renegade employee is undercut by the fact that he affirmatively sought legal guidance from

Morgan Stanley's counsel before affixing his name to the knowingly false certificate. On the one hand, if in June 2004 Mr. Riel or his staff revealed to Morgan Stanley's counsel that certain backup tapes had not yet been searched, that could serve to establish that Mr. Riel conspired with attorneys at Morgan Stanley to conceal the falsity of Morgan Stanley's certificate and thereby to defraud both this Court and CPH. That misconduct should trigger the crime/fraud exception to the privilege, under FLA. STAT. ANN. § 90.502(4)(a) (West 2004). On the other hand, if Mr. Riel or his staff manipulated counsel to keep them ignorant and thereby to perpetrate a fraud on CPH and on this Court, that too should trigger the crime/fraud exception, as it is the client's knowledge — not the attorney's — that matters for purposes of the exception.

CPH should be allowed to depose both Mr. Riel and the in-house counsel (Mr. Cusick and Ms. Lee) from whom Mr. Riel sought legal advice on June 7, 2004. But the discovery also should go further, to include other key inside and outside counsel and information-technology professionals whose names appear repeatedly on Morgan Stanley's recent privilege log. Roughly half of the 46 documents on that log date from October or November 2004, when there was a flurry of communications about the e-mail production situation. At some point, a decision was made to produce 8,000 pages of e-mails and to tell CPH that these were a first installment of production from "additional e-mail backup tapes" that Morgan Stanley allegedly had discovered "since [its] e-mail production in May 2004." Ex. J (November 17, 2004 letter from Thomas A. Clare to CPH's counsel); *see id.* (referring to "newly discovered tapes"). But Morgan Stanley's own witnesses at the February 14, 2005 hearing testified that the data from the DLT tapes found in Brooklyn and the 8-mm tapes found in Manhattan were not put into searchable form until January 2005. Ex. K at 52, 65, 68-69 (Gorman). Morgan Stanley's false claim that the November production came from "newly discovered" backup tapes apparently was designed to

conceal the fact that not all of the 35,000 original tapes stored at the Recall facility in New Jersey had been searched in April 2004. CPH should be allowed to take discovery on the genesis of this cover story. CPH and this Court should learn the full story, under oath, with all witnesses fully subject to all the penalties for providing false testimony.

So far, CPH's efforts to learn that full story have been stymied by Morgan Stanley's repeated assertions of privilege. *See, e.g.*, Ex. L at 63-64 (invoking the privilege during Ms. Gorman's February 14, 2005 in-court testimony); Ex. M at 181-82, 196 (invoking the privilege during Mr. Clare's February 14, 2005 in-court testimony); Ex. N at 47, 63-65 (invoking the privilege during Ms. Gorman's February 9, 2005 deposition); Ex. O at 23-27 (invoking the privilege during Mr. Saunders's February 10, 2005 deposition). Those assertions of privilege might have been appropriate if there had been a record here of good faith. But the opposite is the case. Representation after representation of complete production has proved false, as carefully worded declarations obfuscate the truth and leave more questions than answers. The privilege log reveals the fingerprints of counsel on these clumsy, false representations. It is time for the full facts to be aired, under oath and under penalty of perjury.

ARGUMENT

The crime/fraud exception recognizes that the attorney-client privilege "ceas[es] to operate at a certain point, namely, where the desired advice refers not to prior wrongdoing, but to future wrongdoing." *United States v. Zolin*, 491 U.S. 554, 562-63 (1989). Under Florida law, the crime/fraud exception bars any party from claiming as privileged any communications with a lawyer when the lawyer's services "were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew was a crime or fraud." FLA. STAT. ANN. § 90.502(4)(a) (West 2004) (emphasis added); *see Butler, Pappas, Weihmuller v. Coral Reef of Key Biscayne*

Developers, Inc., 873 So. 2d 339, 342 (Fla. 3d DCA 2004) (requiring showing that communication was part of effort to commit fraud, and party sought attorney's advice in order to further fraud); *First Union Nat'l Bank v. Turney*, 824 So. 2d 172, 187 (1st DCA 2001) (requiring showing that communication with counsel was "in order to obtain advice or assistance in perpetrating what the client knows to be a crime or fraud"). It does not matter whether the lawyers knew of the fraud, so long as the client knew and used its lawyers to commit (or plan to commit) a fraud. *First Union Nat'l Bank v. Turney*, 824 So. 2d at 187. As this Court put it, even counsel's sincere belief that it acted in good faith does not "absolve[] its client of the consequences of any of the client's bad acts. . . . [S]ometimes the [sins] of a client come back and visit the client." Ex. P at 618-19.

Florida law has long recognized "fraud on the court," a species of fraud designed to "produc[e] a judicial act by fraudulent representations to the Judge." *State v. Burton*, 314 So. 2d 136, 137 (Fla. 1975). Furthermore, "fraud on the court" encompasses abuses not only in open court, but also in pretrial discovery. Thus, in *Medina v. Florida East Coast Railway, L.L.C.*, 866 So. 2d 89 (Fla. 3d DCA 2004), where the plaintiff had repeatedly lied under oath at his deposition, the appellate court reaffirmed the principle that a Florida trial court, after giving the plaintiff an opportunity to be heard, has "the inherent authority to dismiss an action when it finds that a plaintiff has perpetrated a fraud on the court." *Id.* at 90.

Courts in Florida and elsewhere have not hesitated to apply the crime/fraud exception to frauds on the court, including discovery abuses, destruction of evidence, and obstruction of justice. See, e.g., *Volcanic Gardens Mgmt. Co. v. Paxson*, 847 S.W.2d 343, 348 (Tex. Ct. App. 1993) ("[U]nder the crime/fraud exception to the lawyer-client privilege, 'fraud' would include the commission and/or attempted commission of fraud on the court or on a third person," as

when a “client seeks the assistance of an attorney in order to make a false statement or statements of material fact or law to a third person or the court for personal advantage.”).

In *Gutter v. E.I. DuPont de Nemours*, 124 F. Supp. 2d 1291 (S.D. Fla. 2000), a Florida federal court applied the crime/fraud exception when DuPont’s counsel made false and misleading statements to the court regarding privilege logs. Although the court could identify no single lawyer at DuPont who knew all the facts behind the misstatements, there was “ample evidence that DuPont itself had the requisite knowledge and intent” for a finding of fraud on the court. *Id.* at 1313. The parallels to the present case are striking: Certain of the defendant’s lawyers knew that certain documents could be produced (and had been in other litigation), but the defendant withheld the documents and informed the court that the documents could not be produced. *See id.* at 1302. When the pieces were fit together, the defendant’s fraud was revealed.

Such discovery misconduct triggers the crime/fraud exception because the destruction of records eviscerates “the court’s ability to ascertain the truth.” *In re Sealed Case*, 754 F.2d 395, 401 (D.C. Cir. 1985); *see id.* (invoking the crime/fraud exception where a party “perpetrated a continuing fraud connected with, but not limited to, the actual destruction of records”). The destruction of evidence is every bit as troubling with electronic documents as with traditional paper documents. As this Court put it on February 15, “This is a case of fraud. And electronic data is the functional equivalent of a paper trail.” Ex. P at 614-15.

For these reasons, courts do not hesitate to deny the protections of privilege when circumstances suggest, for example, that a party and its lawyers were overseeing the destruction of e-mails and other documents while anticipating litigation. *See Rambus, Inc. v. Infineon Techs. AG*, 220 F.R.D. 264, 283, 287-88 (E.D. Va. 2004). In *Rambus*, a suit involving counterclaims of

fraud, the defendant sought discovery of documents, including attorney-client communications, relating to the plaintiff's document-retention program, on the theory that the document-retention program resulted in the intentional spoliation of relevant documents, and therefore the crime/fraud exception to the attorney-client privilege applied. In response to the plaintiff's claim that it had destroyed documents to reduce the potential cost of discovery in future cases, not to suppress evidence in this particular case, the court held that even if the plaintiff "did not institute its policy in bad faith, if it reasonably anticipated litigation when it did so, it is guilty of spoliation." *Id.* at 286. The court concluded that "the crime/fraud exception extends to materials or communication created for planning, or in furtherance of, spoliation." *Id.* at 283; *see also State Farm Fire & Cas. Co. v. Superior Court of Los Angeles County*, 54 Cal. App. 4th 625, 648-49 (Cal. Ct. App. 1997) (applying the crime/fraud exception to discovery abuses).

When parties engage in discovery misconduct and abuse the attorney-client privilege, Florida courts similarly have not hesitated to reject those parties' claims of privilege and to require production of documents that otherwise would have been protected from disclosure. *See, e.g., Metabolife Int'l, Inc. v. Holster*, 888 So. 2d 140, 140-41 (Fla. 1st DCA 2004) (holding that defendant's failure timely to file a privilege log waived its claims of privilege and required production of documents that otherwise would have been subject to attorney-client and work-product privileges); *General Motors Corp. v. McGee*, 837 So. 2d 1010, 1032 (Fla. 4th DCA 2002) (holding that defendant's misconduct during discovery justified a finding that defendant had waived its privilege claims); *Omega Consulting Group, Inc. v. Templeton*, 805 So. 2d 1058, 1060 (Fla. 4th DCA 2002) (affirming the trial court's order requiring corporate defendant to disclose three e-mails, and rejecting the corporation's claims that the communications were protected from disclosure by the attorney-client privilege).

This Court's April 16, 2004 Order gave Morgan Stanley one full month to produce all responsive, nonprivileged e-mails. Today, more than 10 months later, Morgan Stanley has yet to comply with that Order. And for almost the entire period of delay, up until a few days ago (when Morgan Stanley finally revoked its certificate of compliance, *see* Ex. E), Morgan Stanley insisted on telling CPH and this Court that it had complied with the Order. The time has come for this Court to stop accepting Morgan Stanley's blanket claims of attorney-client privilege and to acknowledge that Morgan Stanley has used its lawyers to "carry[] out [its] misrepresentations and concealment." *American Tobacco Co. v. State*, 697 So. 2d 1249, 1257 (Fla. 4th DCA 1997).

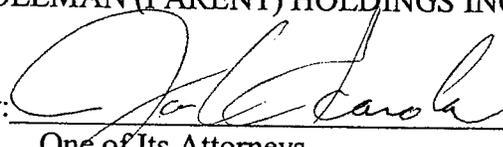
CONCLUSION

For the foregoing reasons, this Court should invoke the crime/fraud exception to order Morgan Stanley (1) to produce the 46 documents listed on Morgan Stanley's February 10, 2005 Privilege Log (Priv. Nos. 486-524), as well as any other documents reflecting when and how Morgan Stanley agents or employees, including in-house and outside counsel, learned about the existence and discovery of all electronic data storage sources potentially containing e-mail-related discovery materials, the failure to make complete production of e-mail-related discovery materials, and when and how Morgan Stanley's agents and employees responded; (2) to make available for deposition in the next two weeks key personnel who were parties to attorney-client communications involving the production of e-mails in this case, including but not limited to Thomas A. Clare, James P. Cusick, James F. Doyle, Grant Jonas, Soo-Mi Lee, Arthur Riel, Zachary Stern, and Wray Stewart; and (3) not to assert attorney-client privilege as a basis for withholding documents or when the deponents are asked questions about Morgan Stanley's retention, destruction, production, or nonproduction of e-mails or backup tapes.

Dated: February 22, 2005

Respectfully submitted,

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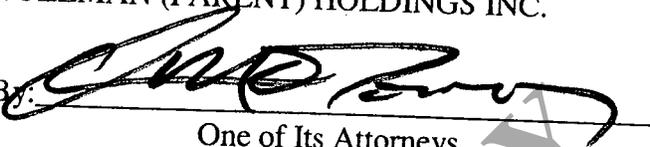
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I HEREBY CERTIFY that a true and correct copy of the foregoing has been served to all counsel on the attached Service List by the means indicated this 21st day of February 2005.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

**MORGAN STANLEY OPPOSITION TO
CPH'S REQUEST FOR DEFAULT JUDGMENT**

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Coleman (Parent) Holdings Inc.'s ("CPH's") request for a default judgment should be denied because this extraordinary relief is not warranted, and cannot be squared with Florida Supreme Court precedent. CPH has not, and cannot, show that Morgan Stanley willfully and deliberately disregarded this Court's authority. CPH has also failed to show that its case has been prejudiced on the merits. And CPH has offered no credible reason why less onerous sanctions are inappropriate. Finally, CPH's own failure to retain evidence, including emails, as well as its failure to produce documents evidencing both the value of the Sunbeam warrants and the Sunbeam stock CPH received as part of the Sunbeam-Coleman transaction, bar the relief requested here as a matter of equity.

I. FLORIDA LAW DOES NOT PERMIT DEFAULT JUDGMENTS EXCEPT UNDER EXTRAORDINARY CIRCUMSTANCES NOT PRESENT IN THIS CASE.

A default judgment "is the most severe of all sanctions" and "should be employed *only* in *extreme circumstances*." *Ham v. Dunmire*, No. SC03-2038, 2004 WL 2973857, at *2 (Fla. Dec. 23, 2004) (internal quotations & citation omitted; emphasis added); *Wallraff v. TGI Friday's Inc.*, 490 So. 2d 50, 51 (Fla. 1986). Default judgments are strongly disfavored under Florida law because "the right of access to [Florida] courts is constitutionally protected" and, except under the most extraordinary circumstances, may not be denied. *USB Acquisition Co. v. U.S. Block Corp.*, 564 So. 2d 221, 222 (Fla. 4th DCA 1990) (emphasis added) (citing Art. I., § 21 Fla. Const.). The Florida Supreme Court has held that if any other sanction "appears to be a viable alternative, the trial court should employ such an alternative." *Ham*, 2004 WL 2973857, at *3 (internal quotations & citation omitted); *see also id.* at *6 (dismissal is unwarranted where more appropriate sanctions are available).

Rule 1.380(b) governs sanctions for failure to comply with discovery orders. Florida courts have recognized that default judgments, like dismissals with prejudice, should be used "as

a discovery sanction only as a last resort.” *Muhtar v. Aetna Ins. Co.*, 456 So. 2d 586, 587 (Fla. 3d DCA 1984) (abuse of discretion to dismiss suit as a sanction for failure to comply with discovery order where plaintiffs, while not responding as quickly or fully as parties to litigation might like, made a good-faith effort to, and in fact did, substantially comply with the discovery order) (per curiam). CPH asserts that the ultimate sanction of default judgment is appropriate because (1) Morgan Stanley has allegedly engaged in a pattern of discovery abuses; and (2) Morgan Stanley has allegedly destroyed evidence that may have been useful to its case. Neither allegation provides grounds for relieving CPH of its burden of proving the merits of its claims.

Rather, to justify the severe sanction of default under Rule 1.380(b), the moving party — here CPH — bears the heavy burden of proving with clear and conclusive evidence: (i) that discovery violations were made in deliberate disregard of the court’s authority, and; (ii) that the moving party has been prejudiced in a meaningful way. *See Beaver Crane Serv., Inc. v. National Surety Corp.*, 373 So. 2d 88, 89 (Fla. 3d DCA 1979) (default judgment held to be inappropriate where party “ha[s] not demonstrated [that it was] prejudiced in any meaningful way by” discovery abuses). CPH can prove neither.

II. CPH HAS NOT PRESENTED EVIDENCE THAT WOULD JUSTIFY THE SANCTION OF DEFAULT FOR ALLEGED DISCOVERY VIOLATIONS

A. CPH Has Not Shown That Morgan Stanley Deliberately And Contumaciously Disregarded The Court’s Authority.

A default judgment or dismissal with prejudice is justified only when the court finds by clear and conclusive evidence that a party has shown “[a] *deliberate and contumacious disregard of the court’s authority.*” *Ham*, 2004 WL 2973857, at *2 (internal quotations & citation omitted; alteration in original; emphases added). Before imposing such extreme sanctions, the Court must make “express written findings of fact supporting the conclusion that the failure to obey the court order demonstrated willful or deliberate disregard.” *Id.* As the

Second District Court of Appeal observed recently in *Smith Original Homes, Inc. v. Carpet King Carpets, Inc.*, imposing the ultimate sanction of a default judgment on “[a]nything short of this standard is an abuse of discretion.” No. 2D03-4759, 2005 WL 415082, at *2 (Fla. 2d DCA Feb. 23, 2005).

A party’s negligent failure to respond to discovery requests does not justify a default judgment. As even CPH concedes, “[m]ere negligence does not suffice” to justify the sanction of a default judgment. *Baja Village Markets, Inc. v. Baja Supermarket, Inc.*, 712 So. 2d 465, 466 (Fla. 3d DCA 1998) (per curiam). Likewise, the mere fact that a party exhibits “a continuing and repeated failure to comply” with a court’s pre-trial orders is not enough to warrant the ultimate sanction. *See Kelley v. Schmidt*, 613 So. 2d 918, 919-21 (Fla. 5th DCA 1993).

CPH nonetheless argues that the Court should enter default judgment against Morgan Stanley for its “[r]epeated and prolonged failures to carry out a thorough search for back-up tapes.” (Feb. 24, 2005 CPH’s Outline in Supp. of its Pending Mot. to Strike Morgan Stanley’s Answer at 2.) CPH further suggests that this extreme sanction is justified because Morgan Stanley supposedly engaged in a “conscious avoidance of discovery” and a “cover-up effort[.]” (*Id.*) The record does not support CPH’s contentions. The record evidence shows just the opposite. Morgan Stanley disclosed the existence of both the additional tapes and the potential problems with the search scripts and set about correcting them. In fact, Morgan Stanley has gone to extraordinary lengths — and expense — to make whatever relevant, non-privileged information exists on those tapes available to CPH.

CPH argues that Morgan Stanley discovered the additional tapes and script problems because Morgan Stanley “was facing independent third-party verification of the production that had been made.” (Feb. 23, 2005 Hrg. at 1325-26.) That is not correct. The record shows that

months before the Court suggested in the February 2, 2005 hearing that a third-party vendor be hired to review the additional tapes, Morgan Stanley had notified CPH that (1) additional e-mail backup tapes had been discovered; (2) additional responsive e-mails had been identified; and (3) e-mail backup tapes were still being restored. (Nov. 17, 2004 T. Clare Letter to M. Brody (Ex. 1).) Likewise, Morgan Stanley's IT group had been working on discovering and correcting errors with the "scripts" well before the Court suggested that a third-party vendor might be an appropriate sanction. (Feb. 14, 2003 Hrg. at 52-53; Feb. 9, 2005 L. Gorman Dep. at 70-71 Ex. 2.)

In the end, CPH's motion must be denied because Morgan Stanley has never deliberately disregarded this Court's authority. To the contrary, Morgan Stanley is working diligently and expending huge resources to bring prompt closure to this issue. There is not one shred of evidence in the record that Morgan Stanley's finding of additional backup tapes or errors in the script program amount to a "cover-up" or a "conscious avoidance of discovery" as CPH suggests. *See In re Southeast Banking Corp.*, 204 F.3d 1322, 1332 (11th Cir. 2000) (If a litigant's alleged discovery violation is "caused by simple negligence, misunderstanding, or inability to comply" a default judgment is not appropriate) (internal quotations & citation omitted).

B. CPH Has Not Shown That It Has Been Prejudiced On The Merits Of Its Case.

The motion for default judgment should also be denied because CPH has not shown that it suffered any significant prejudice on the merits as a result of the alleged discovery abuses. As the Florida Supreme Court has recognized, default judgments are generally not appropriate unless the moving party has suffered substantial prejudice. *See Ham*, 2004 WL 2973857, at *6 ("[D]ismissal is far too extreme as a sanction in those cases where discovery violations have no

absolutely prejudice to the opposing party.”); *but see USB Acquisition Co., Inc.*, 564 So. 2d 221, 222 (Fla. 4th DCA 1990) (“Lack of prejudice is irrelevant” in determining whether a plaintiff’s complaint should be dismissed for discovery abuse.). Florida courts have therefore held that in sanctioning discovery abuses the trial court’s discretion “should be guided largely” by whether such abuses “will prejudice the opposing party.” *Green v. Shoop*, 240 So. 2d 85, 86 (Fla. 3d DCA 1970); *see also Fuller v. Rinebolt*, 382 So. 2d 1239, 1241 (Fla. 4th DCA 1980) (holding that trial court, in absence of showing of prejudice, should not exclude testimony of witness whose name had not been disclosed to opposing party).

This rule reflects the core principle that the Court’s “authority to sanction is not unbridled; the sanction imposed must be commensurate with the offense.” *Kelley*, 613 So. 2d at 920. Because the “purpose of reposing in the trial court the authority to enter a default is to ensure compliance with its order, not to punish or penalize,” *Garden-Aire Vill. Sea Haven, Inc. v. Decker*, 433 So. 2d 676, 677 (Fla. 4th DCA 1983) (per curiam), it is “imperative that trial courts strike the appropriate balance between the severity of the infraction and the impact of the sanction when exercising their discretion to discipline parties to an action.” *Ham*, 2004 WL 2973857, at *6. Accordingly, unless discovery abuses prevent a part from proving its prima facie case the ultimate sanction of default is not appropriate.

1. CPH Has Not Suffered Any Prejudice Demonstrable Prejudice By Morgan Stanley’s Recent Discovery Of Additional E-Mail Tapes.

CPH argues that Morgan Stanley: (1) failed to disclose the existence of 738 8-millimeter tapes when they were found; (2) failed to disclose the Brooklyn tapes when they were found; (3) made false representations to the Court about when the Brooklyn tapes were found; and (4) made false representations to the Court about when the first time anyone knew that there was recoverable e-mail data on the Brooklyn tapes. None of these allegations, even if true, supports

the issuance of a default judgment because CPH has not shown that any of these hotly-contested “facts” prejudiced the merits of its case.

First, the Brooklyn tapes, no matter when they were found, have been searched, and responsive non-privileged documents have been produced to CPH. In addition, the Brooklyn tapes have been turned over to a third-party vendor to run its own searches for responsive e-mails. CPH has not identified any e-mails from the Brooklyn tapes that CPH claims are needed to establish its prima facie case. As a result, the late production of the Brooklyn tapes cannot support the relief CPH requests.

Second, the 738 8-millimeter tapes have likewise been searched and responsive non-privileged documents have been produced to CPH. These tapes have been given to the same third-party vendor to run its own searches for responsive e-mails. Again, CPH has not identified any e-mails from these tapes that it claims are needed to establish its prima facie case.

Third, CPH’s claim that Morgan Stanley made “false representations” about when the Brooklyn tapes were found is wrong, and irrelevant to the issue of a default. The fact that the Brooklyn Tapes were located in May 2004 and not the summer of 2004 does not rebut the evidence that the Brooklyn Tapes have been searched and responsive documents have been produced to CPH. CPH has therefore suffered no prejudice. *See Muhtar*, 456 So. 2d at 587 (default judgment is an abuse of discretion because of the lack of prejudice to complaining party when opposing party substantially complies with order, albeit not as quickly or fully as the Court would have liked).

Fourth, Morgan Stanley has consistently contended that no one in its Law Division knew of the existence of *additional recoverable e-mail data on the tapes before October 2004*. Morgan Stanley has previously submitted an affidavit of the individual attorney with

responsibility for the Coleman case, attesting that it was at the end of October 2004 when he first “learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data insert on those tapes had not been restored or searched prior to Morgan Stanley’s May 14, 2004 e-mail production.” (Jan. 31, 2005, Doyle Decl. ¶ 3 (Ex. 3).) That attorney has further testified that “[u]pon learning that information, I directed that the electronic searches described in the April 16, 2004 Agreed Order be conducted for any backup tapes that had not been restored and made searchable at that point, and that the process of restoring the remaining backup tapes continue as expeditiously as possible.” (*Id.* ¶ 3.) To the extent CPH relies on an out-of-context statement at the February 2, 2005 hearing to support its assertion that Morgan Stanley somehow misrepresented to the Court about the first time someone knew that there was recoverable e-mail data on the Brooklyn tapes, CPH’s motion should be denied because Morgan Stanley has repeatedly clarified any alleged ambiguity in the statement. (*See* Feb. 14, 2005 Hrg. at 213-15.) And CPH cannot show that it suffered any prejudice as a result of the representation.

Finally, the comprehensive e-mail restoration and review process that Morgan Stanley began on its own initiative, separate and apart from this litigation, has been a success despite the many issues encountered by Morgan Stanley along the way in organizing and searching a massive amount of electronic information. Approximately 35,000 backup e-mail tapes have been searched, and the process has resulted in the production of thousands of pages of e-mail messages in this litigation. Morgan Stanley does not dispute that the tapes found in the Brooklyn security room and the 8-millimeter tapes should have been found and produced earlier, but when they were found they were disclosed and searched for responsive email. CPH simply has not suffered any prejudice because the tapes were not found before May 14, 2004.

2. **CPH Has No Demonstrable Evidence Of Prejudice Resulting From A Purported "Pattern Of Conduct"**

CPH has combed the record and assembled every "historic" discovery disagreement between the parties in an effort to cobble together what it deems to be a "well-established pattern of disregard for [Morgan Stanley's] litigation related obligations." (CPH Outline at 6.) The eighteen-month discovery period is now closed, and it is a matter of record that the parties engaged in hard-fought discovery battles *going both ways* and that *both sides* lost motions to compel and produced evidence not previously-produced. These other disputes hardly rise to the level of "deliberate and contumacious disregard of this Court's authority." Moreover, none of these disputes have irreparably prejudiced CPH's prima facie case.

In its outline and argument on this issue, CPH focuses on two categories of purported discovery misconduct (apart from the e-mail tapes) from which it urges the Court to conclude that there is no alternative but to grant judgment in CPH's favor. The first category is PC Docs data that Morgan Stanley searched for and produced in response to the Court's February 3, 2005 Order. Morgan Stanley did not disregard the Court's order as CPH must show — Morgan Stanley *fully complied* with the Court's order and CPH does not claim otherwise. Nor does CPH have any credible claim of prejudice with respect to these documents which relate solely to the authenticity and admissibility of six documents. In fact, the Court has already ruled on that issue in CPH's favor and imposed the costs of additional discovery leading to the PC Docs profiles on Morgan Stanley.

The second category of alleged misconduct relates to documents regarding the Italian charge against William Strong. Again, Morgan Stanley did not *disregard this Court's authority* but rather *complied* with the Court's order to produce these documents. These documents are not relevant or admissible at trial (for the reasons set forth in Morgan Stanley's Motion in Limine

No. 23), but even if they were, CPH has no credible claim of prejudice because it is in possession of the documents.¹

Tacitly conceding that it cannot show prejudice with respect to any specific category of documents, as it is required to do under the law, CPH has resorted to two last-ditch prejudice arguments, neither of which hold water. The first is that Morgan Stanley's purported misconduct has made it necessary to "start the discovery process from the beginning" and re-do "almost all of the discovery that has already been completed":

page 1337 MR. SCAROLA:

9 Based upon the fragmentary production to
10 date, documents disclosed after the close of
11 discovery would require that almost all of the
12 discovery that has already been completed be
13 redone, because the disclosures that have been
14 made to date implicate in one way or another the
15 key testimony of almost every witness from whom
16 deposition testimony has been taken.
17 We would need to start this discovery
18 process from the beginning. I provided the
19 Court with a list of the new witnesses we would
20 need to depose. That in and of itself is a
21 lengthy list.

(Feb. 23, 2005 Hrg. at 1337.) This argument is disingenuous. The "list of new witness" are word processing employees and temp secretaries employed by Morgan Stanley in 1997-1998. There is no dispute that they typed keystrokes on some of the six documents at issue. But their typing is not an issue. Morgan Stanley has never denied that the documents were resident on

¹ CPH has not, and cannot, claim that the other out-of-context, unrelated incidents cited by CPH in its attempt to "pile on" grievances (Morgan Stanley's purported disclosure of a document already in the public record, a witnesses taking a break from a deposition in frustration from being asked the same question repeatedly, or a witness' verification of interrogatory responses his best knowledge as of the time of the verification) resulted in any prejudice to CPH's ability to make its claims. Moreover, CPH cannot show that Morgan Stanley violated any Court orders.

Morgan Stanley's document management system. Rather the issue is whether the documents are objectionable for the reasons before the Court. In short, the issue is the admissibility in evidence of the documents — nothing more.²

CPH's final argument is that default judgment is warranted because CPH simply does not trust Morgan Stanley, and that CPH has no confidence in the "integrity of the pretrial process" or the integrity of the individual lawyers in the case. (Feb. 23, 2005 Hrg. at 1345-46, 1425-26.) Morgan Stanley respectfully submits that if the standard for granting default judgment in Florida was that opponents in litigation must have complete confidence in each other then no major litigation would ever get to a jury. Moreover, Morgan Stanley, too, would be entitled to default judgment on liability, on the basis of, among other things, CPH's purposeful non-disclosure and subsequent wrongful redaction of arguably the most damaging documents in the case. Because Florida law requires willful disregard of the Court and specific prejudice to impose the "death penalty" sanction of default, and because CPH has not made any showing of either requirement, its motion must be denied.

III. CPH CANNOT JUSTIFY A DEFAULT FOR PURPORTED EVIDENCE SPOILATION BECAUSE CPH HAS NOT SHOWN THAT MORGAN STANLEY DELIBERATELY DESTROYED RELEVANT EVIDENCE.

Florida courts have recognized that the sanction of a default judgment is not appropriate unless missing evidence has been intentionally destroyed maliciously and in bad faith. *See Federal Ins. Co. v. Allister Mfg. Co.*, 622 So. 2d 1348, 1351 (Fla. 4th DCA 1993) ("except

² Notably, the *only* outstanding discovery predicated on discovery misconduct is the additional document and deposition discovery *Morgan Stanley* must now take in the midst of trial preparation as a result of CPH's admitted non-disclosure and improper redaction of documents that alter its claimed damages by hundreds of millions of dollars. (Feb. 17, 2005 Order on MS's Mot. to Compel Prod. of Docs.)

perhaps where there has been a malicious destruction of evidence, the ultimate sanction should be avoided if possible”) (discussing *Headley v. Chrysler Motor Corp.*, 141 F.R.D. 362 (D. Mass. 1991)). “Mere negligence in losing or destroying the records is not enough for an adverse inference as it does not sustain an inference of consciousness of a weak case.” *Bashir v. Amtrak*, 119 F.3d 929, 931 (11th Cir. 1997); see also *Vick v. Texas Employment Comm’n*, 514 F.2d 734, 737 (5th Cir. 1975). In fact, as recognized by the Fourth Circuit Court of Appeals, “the vast weight of authority ... holds that **absent bad-faith conduct** applying a rule of law that results in dismissal on the grounds of spoliation of evidence **is not authorized.**” *Cole v. Keller Indus.*, 132 F.3d 1044, 1047 (4th Cir. 1998). If the moving party does not come forward with extrinsic evidence proving that missing materials would have been unfavorable to the opposing party or relevant to the issues in the lawsuit, there can be no sanctions. See *id.* (finding that dismissal was improper where “there is no evidence that [the plaintiff’s] actions were undertaken in an effort to prevent the defendant from inspecting and testing the [evidence]”).

Here, CPH has no evidence that Morgan Stanley maliciously and purposefully destroyed evidence related to the Sunbeam-Coleman transaction. As a substitute for clear and convincing evidence, CPH asks the Court to choose between three hypothetical “possible constructions” for Morgan Stanley’s over-writing of e-mail tapes, ranging from negligence on Morgan Stanley’s part to an intentional destruction of tapes to conceal incriminating evidence in this case. (CPH Outline at 1.) Again, having no evidence that Morgan Stanley intended to conceal any evidence related to this case, CPH asks the Court **simply to assume** that this was Morgan Stanley’s “actual intent” for two reasons: (1) Morgan Stanley’s routine over-writing of e-mail tapes was the subject of an SEC inquiry and settlement; and (2) Morgan Stanley purportedly failed to preserve or gather e-mail relating to the Sunbeam transaction in connection with this case. (*Id.*)

First, contrary to CPH's representation, the SEC settlement was an industry-wide SEC proceeding that addressed the failure of certain registered broker-dealers, of which Morgan Stanley was one, to comply with regulatory requirements that broker-dealers preserve certain electronic communications for three years in a readily accessible place.³ Nothing in the SEC settlement — in which none of the broker-dealers admitted any wrongdoing — supports an inference that any Sunbeam-related e-mails were ever destroyed with malicious intent.⁴ And CPH has provided nothing but lawyer hyperbole to show that Sunbeam-related e-mails existed and were destroyed, and that those tapes would have contained damning evidence against Morgan Stanley. The inference is just as likely that any overwritten tapes contained e-mail evidencing that CPH knew about Sunbeam's slow first quarter sales and yet decided not to do any financial due diligence of Sunbeam including reading its interim financial statements. There is no evidence that Morgan Stanley did anything other than routinely overwrite tapes as was common in the industry at the time, and as *CPH itself did and continues to do to this day*. (Jan. 21, 2004 Fasman Dep. at 41-43, 68-69, 131-33 (Ex. 5).)

Second, CPH argued in writing to the Court that Morgan Stanley "issued specific instructions to gather hard copies of Sunbeam-related documents but failed to include any effort to preserve or gather e-mail." (CPH Outline at 1.) CPH reiterated this assertion at the February 23 hearing:

³ The recycling of e-mail tapes at Morgan Stanley ended in January 2001, (Feb. 10, 2004 Saunders Dep. at 57-60, 82-83 (Ex. 4)), over two years before CPH filed suit against Morgan Stanley.

⁴ The Court took judicial notice of the SEC proceeding without considering Morgan Stanley response to the plaintiff's request. Morgan Stanley respectfully suggests the Court erred in doing so for the reasons stated in Morgan Stanley's submission on February 21, 2005.

Page 1323 MR. SCAROLA:

13 I remind the Court that the record has
14 already established the fact that Morgan Stanley
15 issued specific instructions to gather hard
16 copies of Sunbeam related documents, but clearly
17 excluded from its instructions to its own staff
18 any instructions to preserve electronic data,
19 specifically any instructions to preserve any
20 e-mail.

(Feb. 23, 2005 Hrg. at 1323.) CPH provided no record cite for this alleged “already established fact.” The record squarely contradicts this assertion. John Plotnick, Morgan Stanley’s corporate representative for document collection in this case, testified in no uncertain terms that he contacted all of the Morgan Stanley bankers who worked on the Sunbeam transaction and directed them “over and over again” to send him “all their electronic documents, including e-mail”:

Page 54

6 Q. With respect to any of the
7 employees who -- Morgan Stanley employees who
8 had any involvement with Sunbeam, have you
9 determined whether any of them backed up
10 information residing on the hard drives of
11 their PC’s?

12 A. I called *all of the bankers that*
13 *worked on the Sunbeam transaction and directed*
14 *them to send me all of their hard copy and*
15 *printouts of all their electronic documents,*
16 *including e-mail,* anything that would be on
17 their PC’s.

18 Q. Okay, did you refer specifically to
19 any backup that they may have made from their
20 hard drives from that time period?

21 A. *I directed them over and over, all*
22 *hard copy and all electronic files.*

(Sept. 9, 2003 Plotnick Dep. at 54 (emphasis added) (Ex. 6).) Indeed, before the November 24, 2004 close of discovery, Morgan Stanley had produced over 9,400 pages of e-mail related to the Sunbeam transaction. (See May 14, 2004 K. DeBord Letter to M. Brody and Nov. 18, 2004 M.

Occhuizzo Letter to M. Brody (Ex. 7).) CPH, in contrast, has produced *less than forty e-mails* from its files.

Third, CPH is not entitled to a default judgment also is not justified because CPH has not shown — and cannot show — that there is any specific “missing evidence” that is essential to its prima facie case. Indeed, Florida courts have held that even an instruction for an adverse inference — a sanction far less serious than default — is not warranted unless the missing evidence is absolutely “necessary to prove a prima facie case.” *Jordan v. Masters*, 821 So. 2d 342, 347 (Fla. 4th DCA 2002) (a jury instruction for an adverse inference is not appropriate when nonmoving party has failed to produce nonessential evidence); *see also Public Health Trust of Dade County v. Valcin*, 507 So. 2d 596, 599 (Fla. 1987) (holding that to obtain an adverse inference, the plaintiff must “establish to the satisfaction of the court that the absence of the records hinders his ability to establish a prima facie case”).

Nonetheless, CPH would have this Court eliminate altogether the requirement that prejudice is a necessary condition of any default judgment. Not once in its written submission does CPH mention the prejudice requirement — let alone make any effort to demonstrate that the hypothetical missing evidence somehow “hinders [CPH’s] ability to establish a prima facie case.” *Id.* Nor could CPH make that showing given the size of the discovery record, which includes over eighty witness depositions, over 450,000 pages of documents and numerous additional CDs containing additional electronic information.

In any event, the claim of prejudice here is not supported by the record. As noted above, Morgan Stanley has already produced responsive e-mails from the files of the Brooklyn tapes and the “738 8-millimeter tapes.” Likewise, Morgan Stanley is reviewing whether there are any script errors remaining in its e-mail archive system. If there are, Morgan Stanley will re-run the

agreed-upon searches against the entirety of the e-mail archive system and produce all remaining non-privileged responsive materials, if any exist. Further, Morgan Stanley has provided each of the "additional tapes" to a third-party vendor so that it can run searches independent of Morgan Stanley's work. Consequently, CPH cannot realistically claim that it is somehow prejudiced when it either has already received responsive e-mails or will receive them as soon as they are available.

New York State National Organization for Women v. Cuomo, No. 93 Civ. 7146 (RLC) JCF, 1998 WL 395320 (S.D.N.Y. July 14, 1998) is analogous to the situation here. In that case, the plaintiff sought sanctions against New York's governor for failing to preserve computer database evidence that included letters and reports, internal memoranda, monthly summary reports, and electronic mail. Although the Court determined that the Governor's obligation to preserve evidence arose when the plaintiff filed its complaint, sanctions were not appropriate even though the computer database, including its e-mail, had been destroyed. *Id.* at *2. The Court explained that sanctions were not warranted because there was no evidence that defendants "deleted computer databases or destroyed monthly summary reports in order to impede [the] litigation." *Id.* Moreover, the plaintiffs had not demonstrated "that they were prejudiced by the loss of the records." *Id.* at *3. In fact, the plaintiffs had not identified "with any specificity what information they would have been reasonably likely to find." *Id.* The Court refused to impose the requested sanctions because plaintiffs' only prejudice in that case, as here, was that "the defendants' conduct deprived them of a pond in which they would like to have gone on a fishing expedition." *Id.*

IV. THE CASES RELIED ON BY CPH ARE READILY DISTINGUISHED AND DO NOT SUPPORT A DEFAULT

In the fourteen cases cited in CPH's motion, not one resembles the procedural posture of this case: a motion for default judgment *after* discovery has closed and *after* the plaintiff has prevailed on summary judgment. And, as noted above, in the few cases that have actually found default warranted, discovery had come to a virtual halt because of repeated failures to comply with court orders and no communication on the part of the defaulting party with the court or opposing party about the status of discovery requests. Discovery in this case, by contrast, was extensive and is now complete with the exception of e-mail backup tapes currently in the collection and production process.

CPH purports to cite three "cases whose fact patterns more closely resemble those at issue here." (Feb. 24, 2005 Plf's Mem. of Law in Supp. Of Its Pending Mot. To Strike Morgan Stanley's Answer at 3-4 (citing *Precision Tune Auto Care, Inc. v. Radcliffe*, 804 So. 2d 1287 (Fla. 4th DCA 2002); *HZJ, Inc. v. Wysocki*, 511 So. 2d 1088, 1089 (Fla. 3d DCA 1987); *Weck v. Weck*, 464 So. 2d 619 (Fla. 4th DCA 1985) (per curiam).) The comparison lacks all merit.

In *Wysocki*, the trial court order lacked any factual discussion and referred in the abstract to the defendant "thwarting the discovery process and this Court's Orders requiring the production of documentation and witnesses in this cause." 511 So. 2d at 1089. This thin opinion suggests at the very least that discovery had come to a halt in light of the defendant's willful failure to comply with specific court orders — a holding that would not justify default here. Similarly, in *Weck*, the *entire opinion* consists of nine lines of text, at least two of which are citations. There is no discussion of the underlying conduct at issue other than an off-hand reference to an "intentional delay and abuse of the system." 464 So. 2d at 618 (internal quotations & citation omitted). Once again, there is no basis whatever for inducing some

connection between the facts of that case and this one. Furthermore, both *Wysocki* and *Weck* pre-date *Tubero*, in which the Supreme Court held that any default judgment must be based upon an explicit written finding of willful noncompliance. Neither opinion can survive that standard.

The final case, *Precision Tune Auto Care*, 807 So. 2d 1287, is more recent but equally inapposite. There, after the plaintiff had moved for sanctions on three separate occasions, the court ordered the defendant to produce three witnesses for deposition, set "an exact deadline," and specifically admonished the defendant that if it did not comply its pleadings would be struck. *Id.* at 1291. The defendant did not produce the witnesses and "simply disregarded the order of trial court because it was inconvenient to the company's officer." *Id.* at 1291. As the Fourth District emphasized, no attempt was even made to contact opposing counsel to explain why witnesses could not appear; instead, the defendant and its attorney "had a cavalier attitude regarding the necessity to comply with the court's order." *Id.*

Here, by contrast, Morgan Stanley initiated this whole sequence of discovery hearings because it notified the plaintiff of the discovery of additional tapes that needed to be searched for e-mail, and then produced its corporate representative and its Information Technology employees to give testimony in Florida. Morgan Stanley is financing the expedited processing of all remaining backup tapes and has repeatedly expressed its willingness to work with CPH and the Court to set a reasonable "drop dead date" for ensuring that all remaining responsive e-mails, if any exist, are produced. There is no evidence that Morgan Stanley has refused to comply with the Court's orders because they have been "inconvenient to the company's officers." *Id.* at 1291. Rather, Morgan Stanley has spent significant amounts of money and employee time to attempt to ensure compliance with the Court's orders.

V. **CPH'S OWN FAILURE TO RETAIN EVIDENCE AND ITS OWN DISCOVERY ABUSES PRECLUDE ENTERING A DEFAULT JUDGMENT.**

CPH's request for a default judgment should also be denied because CPH has itself engaged in flagrant discovery abuses. *See Fayemi v. Hambrecht & Quist, Inc.*, 174 F.R.D. 319, 326 (S.D.N.Y. 1997) (employer disqualified under unclean hands doctrine from obtain sanctions because he had himself acted "unconscionabl[y]"). As courts have long recognized, a court "considering sanctions can and should consider the equities involved before rendering a decision." *Schlaifer Nuance & Co., v. Estate of Warhol*, 194 F.3d 323, 341 (2d Cir. 1999).

Here, by its own admission, CPH has never enacted or enforced a document retention policy to prevent the destruction of relevant documents, including e-mails. (Sept. 15, 2003 Fasman Dep. at 31 (Ex. 5).) When CPH undertook its first document collection related to the Sunbeam matter in 1999 or 2000, it did not search its electronic servers for documents, nor did it instruct employees who provided documents to provide electronic documents. (*Id.* at 84-85, 96, 107-08.) Indeed, even after CPH threatened Sunbeam with a lawsuit, even after its executives became named parties to litigation related to the Sunbeam/Coleman transaction, even after it sued Arthur Andersen, and even after the onset of litigation in the present case, CPH continued to override its backup tapes. (*Id.* at 31, 49, 63; MS 1 (Ex. 8).)

Unlike Morgan Stanley, CPH systematically and intentionally destroyed *all* of its e-mail tapes related to the Sunbeam acquisition in the face of threatened and *pending litigation*. It is fundamentally unfair to impose outcome-determinative sanctions on Morgan Stanley — when Morgan Stanley has gone to unprecedented lengths to locate, upload, and produce thousands of pages of e-mails in this case — when CPH, through identical conduct, has deprived Morgan Stanley of *all e-mail evidence* relating to what its executives and employees knew and what they did.

Moreover, CPH — not Morgan Stanley — is the party who has been shown to have deliberately withheld “smoking gun” documents that require re-opening of fact and expert discovery. (Feb. 17, 2005 Order on MS’s Mot. to Compel Prod. of Docs.) Despite Morgan Stanley’s efforts to pursue such discovery for over a year and a half, CPH withheld its internal valuations which seriously undercut CPH’s claimed damages and expose that CPH is seeking a windfall of hundreds of millions of dollars more than what it actually believed that it lost prior to filing this lawsuit. (See Feb. 23, 2005 Morgan Stanley’s Motion for Additional Discovery Regarding MAFCO’s Internal Valuation of Sunbeam Stock.) Even more troubling, the documents revealed for the first time that CPH’s representatives misrepresented the value of the warrants it received as a result of the Sunbeam settlement by tens of millions of dollars, stated under oath that CPH had not performed any valuation at their issuance date when CPH had done such a valuation, and then attempted to conceal the valuation by redacting portions of the documents once the Court ordered them produced. (See Feb. 22, 2005 Morgan Stanley’s Motion for Sanctions and Additional Discovery Concerning Plaintiffs’ Improper Concealment of the Value of the Sunbeam Warrant.) For these reasons, even if CPH had met the requirements under Florida law for the extraordinary sanction of default judgment, which it has not, its own “unclean hands” make such a sanction unfair and inappropriate in this case.

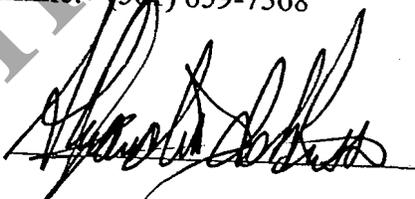
WHEREFORE, CPH has failed to carry its burden of showing willful disobedience of this Court's orders, deliberate and malicious destruction of evidence relating to this case, or any evidence of prejudice beyond monetary sanctions, which the Court has already imposed. Therefore, CPH's motion for default judgment should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and hand delivery on this 28th day of February 2005.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO.: 502003CA005045XXOCAI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

**ORDER ON CPH'S MOTION TO DEEM CERTAIN DOCUMENTS ADMISSIBLE
AND FOR SANCTIONS DUE TO MORGAN STANLEY'S DISREGARD OF
COURT ORDER**

THIS CAUSE came before the Court February 22 and 23, 2005 on CPH's Motion to Deem Certain Documents Admissible and for Sanctions Due to Morgan Stanley's Disregard of Court Order, with both parties well represented by counsel.

Throughout this case, CPH has been trying to determine MS & Co.'s role in creating certain disputed documents. On January 8, 2004, Tyrone Chang was deposed and disclosed that in 1997 and 1998 MS & Co. had the ability to retrieve electronic data regarding authors and editors of documents stored on MS & Co.'s network. In response, on January 20, 2004, counsel for CPH wrote counsel for MS & Co. and stated:

Third, Mr. Chang testified that in 1997 and 1998, Morgan Stanley's internal document network utilized a version of PC Docs. That program allows users to identify authors and editors of documents stored on the network. Please produce all information retained by this document management system pertaining to the documents concerning Morgan Stanley's work for Sunbeam.

Counsel for MS & Co. responded:

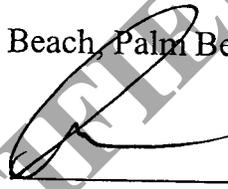
Third, we utilized the PC Docs program, including its ability to identify authors of documents, to conduct our search for responsive documents by authors and keywords--a search which we described in our September 2, 2003 written response to the 1.310 topics. All responsive documents that were located using that program have already been produced. In addition, the time records you addressed in your January 23, 2004 letter to Tom Clare also have already been produced.

Thus, there seems to have been a basic miscommunication between counsel: CPH asked for information available from the PC Docs program; MS & Co. responded that it had used the information to locate requested documents, without providing the information.

On October 22, 2004, CPH served its Sixth Request for Admission, seeking predicate admissions to establish that certain documents were business records. In addition, CPH served its Rule 1.310 Notice of Deposition, seeking deposition of a corporate representative should MS & Co. deny any of the requests. MS & Co. sought a protective order, which was denied November 17, 2004. On November 22, 2004 MS & Co. served its responses to the requests. On December 3, 2004, the Court overruled MS & Co.'s objections and compelled both better answers and the deposition of the corporate representative. On January 12, 2005, MS & Co. produced its in-house counsel, James Doyle, as its 1.310 representative. Mr. Doyle was wholly unprepared to fulfill his duties. Consequently, on February 3, 2005, the Court ordered MS & Co. to provide a sworn statement averring to all information conveyed by or inferable from the word processing stamp or computer footer and, at CPH's election, for it to produce a 1.310 representative to be deposed. Mr. Doyle was again produced, on February 11, 2005. While Mr. Doyle provided some information at his second deposition, taken as a whole he once again failed to faithfully fulfill his duty to testify as to matters known or reasonably available to MS & Co..

Based on the foregoing and the proceedings before the Court, it is
ORDERED AND ADJUDGED that the Motion is Granted, in part. MS & Co. is
hereby found to be the author of those documents designated as CPH 9 and 182 and the
jury shall be so told, subject to MS & Co.'s right to present evidence that it relied on
information supplied by a third party in authoring the documents. All information
conveyed by the profile and profile histories provided as to all documents shall be
admissible in evidence before the jury. See Rule 1.380 (b) (2) (A), Fla. R. Civ. P. CPH
shall be entitled to recover 50% of its reasonable fees and costs incurred in taking Mr.
Doyle's February 11, 2005 deposition, which the Court reserves jurisdiction to award after
an evidentiary hearing following trial in this matter. See 1.380 (b) (2), Fla. R. Civ. P.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 28
day of February, 2005.


ELIZABETH T. MAASS
Circuit Court Judge

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IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO.: 502003CA005045XXOCAI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

**AMENDED ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S MOTION FOR
ADVERSE INFERENCE INSTRUCTION DUE TO MORGAN
STANLEY'S DESTRUCTIONS OF E-MAILS AND MORGAN STANLEY'S
NONCOMPLIANCE WITH THE COURT'S APRIL 16, 2004 AGREED ORDER,
AND MOTION FOR ADDITIONAL RELIEF AND ORDER ON PLAINTIFF'S MOTION
TO COMPEL FURTHER DISCOVERY REGARDING MORGAN STANLEY'S
DESTRUCTION AND NON-PRODUCTION OF E-MAILS**

THIS CAUSE came before the Court on February 14, 2005 on Coleman (Parent) Holdings, Inc.'s ("CPH's") Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, as modified by CPH's February 14, 2005 ore tenus motion for additional relief, and on February 28, 2005 on Plaintiff's Motion to Compel Further Discovery Regarding Morgan Stanley's Destruction and Non-Production of E-Mails, with both counsel present. Based on evidence introduced, the Court finds:

1. CPH has sued Defendant, Morgan Stanley & Co., Inc. ("MS & Co."), for fraud in connection with CPH's sale of its stock in Coleman, Inc., to Sunbeam Corporation in return for Sunbeam stock. Whether MS & Co. had knowledge of the fraudulent scheme undertaken by Sunbeam in 1997 and early 1998 and, if so, the extent of that knowledge, is central to the case. CPH has sought access to MS & Co.'s internal files, including e-mails, since the case was filed.

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2. Though MS & Co. instructed its investment bankers to preserve paper documents in their possession in connection with the Sunbeam transaction in February, 1999, it continued its practice of overwriting e-mails after 12 months, despite an SEC regulation requiring all e-mails be retained in readily accessible form for two years. *See* 17 C.F.R. §240.17a-4 (1997).

3. On April 16, 2004, the Court entered its Agreed Order requiring MS & Co. to (1) search the oldest full backup tape for each of 36 MS & Co. employees involved in the Sunbeam transaction; (2) review e-mails dated from February 15, 1998 through April 15, 1998 and e-mails containing any of 29 specified search terms such as "Sunbeam" and "Coleman", regardless of their date; (3) produce by May 14, 2004 all nonprivileged e-mails responsive to CPH's document requests; (4) give CPH a privilege log; and (5) certify its full compliance with the Agreed Order.

4. On May 14, 2004, MS & Co. produced approximately 1,300 pages of e-mails but failed to provide the required certification. Finally, on June 23, 2004, after inquiries by CPH, MS & Co. provided CPH with a certificate of full compliance with the April 16 Agreed Order signed by Arthur Riel, the MS & Co. manager assigned this task.

5. As organized by MS & Co., the effort to recover e-mails from any remaining backup tapes had several stages. First, the relevant backup tapes (in various formats, such as "DLT" tapes and eight-millimeter tapes) had to be located by searching the potential storage locations. Second, the tapes were sent to an outside vendor, National Data Conversion, Inc. ("NDC"), to be processed, and the data returned to MS & Co. in the form of "SDLT" tapes. Third, MS & Co. had to find a way to upload the contents of these SDLT tapes into its new e-mail archive. Fourth, MS & Co. would run "scripts" to transform this data into a searchable form, so that it could later be searched for responsive e-mails. MS & Co. personnel used the term "staging area" to describe the stage of the

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process when SDLT tapes remained in limbo, waiting to be uploaded to the archive.

6. At some point prior to May 6, 2004, Arthur Riel and his team became aware that more than 1,000 backup tapes had been found at a MS & Co. facility in Brooklyn, New York. These 1,423 DLT tapes had not been processed by NDCI and thus had not been included in the archive or searched when MS & Co. made its supposedly complete production on May 14, 2004, and when Mr. Riel certified full compliance with the Agreed Order on June 23, 2004. Aware of the tapes' discovery, Mr. Riel knew when he executed the certification that it was false. He and others on MS & Co.'s e-mail archive team knew by July 2, 2004 that these "Brooklyn tapes" contained e-mail dating back at least to the late 1990's. MS & Co. neither withdrew its certification nor informed CPH about the potential for additional production of e-mails, however. During the summer of 2004, the Brooklyn tapes were processed and sent to the staging area, but they were not uploaded to the e-mail archive so as to be available to be searched until January 2004, at least eight months after they were found.

7. MS & Co. also failed to timely produce e-mails from 738 8-millimeter backup tapes found at a MS & Co. facility in Manhattan, in 2002. These 738 8-mm tapes, like the 1,423 Brooklyn tapes, had not been processed by NDCI and thus had not been included in the archive and searched when MS & Co. made its supposedly complete production on May 14, 2004, and when Mr. Riel certified full compliance with the Agreed Order on June 23, 2004. Mr. Riel and others were told by their vendor, NDCI, by July 2, 2004 that the 8-mm tapes contained e-mail dating back at least to 1998. MS & Co. neither withdrew its certification nor informed CPH about the potential for additional production of e-mails, though. During the summer of 2004, the 8-mm tapes were processed and sent to the staging area. Like the Brooklyn tapes, though, they also were not uploaded

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to MS & Co.'s e-mail archive.

8. In August 2004, Mr. Riel was relieved of his employment responsibilities. He and his team were replaced by a new team headed by Allison Gorman Nachtigal.

9. Ms. Gorman testified that she was instructed to describe the circumstances of Mr. Riel's replacement as his having been "placed on administrative leave." That same term appears by interlineation over the original typed description in MS & Co.'s memorandum addressing these issues. The typed language stated: "[Mr. Riel was] dismissed for integrity issues." MS & Co. presented no evidence to explain why Mr. Riel would have been placed on administrative leave rather than terminated. CPH argued that it may have been to deprive CPH of the ability to contact him directly.

10. Upon taking over Mr. Riel's responsibilities, Ms. Gorman did not initially make significant efforts to address the backlog of data in the staging area; indeed, she was not informed of the existence of this litigation until five months later, in January 2005. In October 2004, Ms. Gorman met with a group of MS & Co. attorneys. Following that meeting, Ms. Gorman gave the project somewhat greater priority, although even then it clearly did not move as expeditiously as possible. For example, MS & Co. gave no thought to using an outside contractor to expedite the process of completing the discovery, though it had certified completion months earlier; it lacked the technological capacity to upload and search the data at that time, and would not attain that capacity for months; and it knew trial was scheduled to begin in February, 2005. Even at this point, no one from MS & Co. or its outside counsel, Kirkland & Ellis LLP, gave CPH or this Court any hint that the June certification was false.

11. On November 17, 2004, more than six months after the May 14, 2004 deadline for

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producing e-mails in response to the Agreed Order, MS & Co. sent CPH a letter revealing that its June 23 certificate of compliance was incorrect. The letter stated:

Morgan Stanley has discovered additional e-mail backup tapes since our e-mail production in May 2004. The data on some of [the] newly discovered tapes has been restored and, to ensure continued compliance with the agreed order, we have re-run the searches described in the order. Some responsive e-mails have been located as a result of that process. We will produce the responsive documents to you as soon as the production is finalized.

The letter also foreshadowed further delays: "(s)ome of the backup tapes are still being restored. To ensure continued compliance with the agreed order, we intend to re-run the searches again when the restoration process is complete and will produce any responsive documents that result."

12. The next day, November 18, 2004, MS & Co. produced an additional 8,000 pages of e-mails and attachments. MS & Co.'s November 2004 letter stated that the 8,000 pages came from "newly discovered" tapes; but the testimony now makes clear that this statement was false because Ms. Gorman's team did not figure out how to upload and make searchable the materials from the staging area until January, 2005.

13. MS & Co. has failed to offer any explanation to reconcile the obvious conflict between its assertions at the time of production that the 8,000 pages came from "newly discovered" tapes (*i.e.*, the "Brooklyn tapes") and the testimony of its own witness, Ms. Gorman, that data from those newly discovered tapes were not capable of being searched until two months later, in January.

14. After a follow-up inquiry by CPH, on December 17, 2004, MS & Co. produced a privilege log and told CPH that "[n]o additional responsive e-mails have been located since our November production." MS & Co. refused to answer CPH's questions about whether MS & Co.

had restored all the backup tapes described in its November 17 letter and why the tapes had not been located earlier, however.

15. On December 30, 2004, CPH sought confirmation that MS & Co. had reviewed all e-mail backup tapes and produced all responsive e-mails and, if not, asked when the review would be completed. On January 11, 2005, MS & Co. informed CPH that the "restoration of e-mail back tapes is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time."

16. On January 19, 2004, CPH wrote asking MS & Co. to explain the circumstances under which MS & Co. located the "newly discovered" backup tapes and to disclose when the tapes were located. CPH also asked MS & Co. to explain why the backup tapes could not be restored sooner.

17. On January 21, 2005, MS & Co. sent CPH a letter that failed to answer CPH's questions. Instead, MS & Co. described its efforts to restore the backup tapes as "ongoing"; informed CPH that "there is no way for MS & Co. to know or accurately predict the type or time period of data that might be recovered"; and stated that MS & Co. "cannot accurately estimate when all of the tapes will be restored or whether any recoverable data will be found on the remaining tapes."

18. On January 26, 2005, CPH filed the Motion at issue here, asking the Court to instruct the jury that MS & Co.'s destruction of e-mails and other electronic documents and MS. & Co.'s noncompliance with the April 16, 2004 Agreed Order can give rise to an adverse inference that the contents of the missing e-mails would be harmful to MS & Co.'s defense in this case.

19. Meanwhile, MS & Co. found another 169 DLT tapes in January, 2005, that allegedly

had been misplaced by its New Jersey storage vendor, Recall. Again, MS & Co., chose to provide no specifics to CPH or to the Court.

20. At a February 2, 2005 hearing on CPH's Motion, Thomas A. Clare of Kirkland & Ellis, LLP, representing MS & Co., stated that "late October of 2004...[is] the date I represent to Court is the first time that anyone knew that there was recoverable e-mail data" on the Brooklyn tapes. Hr'g Tr. (2/2/05) at 133-34. The actual date, however, was at least three months earlier, by July 2, 2004. Furthermore, MS & Co. refused to provide the Court with definitive answers about when its e-mail production would be complete, merely stating that it would proceed with "all deliberate speed." *Id.* at 139. Also at the February 2 hearing, Mr. Clare neglected to inform the Court about the 8-mm tapes that had been located in 2002, and told the Court that the 1,423 DLT tapes had been found in Brooklyn "sometime during the summer" of 2004. The truth of this assertion is belied by the evidence showing that the tapes were found before May 6, 2004.

21. On February 3, 2005, the Court ordered further discovery and set an evidentiary hearing for February 14, 2005. The discovery took place on February 9 and 10, when CPH deposed the three e-mail witnesses identified by MS. & Co.

22. On Saturday afternoon, February 12, 2005, MS & Co. informed the Court that it had, in the previous 24 hours, discovered additional tapes. Also, MS & Co. stated that its recent production omitted certain "attachments" to e-mails. MS & Co. did not attempt to clarify or substantiate either of these statements to CPH or to the Court until the Monday, February 14, 2005 hearing.

23. At the February 14 hearing, none of the witnesses MS & Co. presented was involved in or familiar with the actual electronic searches conducted using the parameters specified in this

Court's April 16, 2004 Agreed Order, and none explained where the 8,000 pages produced in November, 2004 had come from. MS & Co.'s witnesses did, however, describe three new developments. First, Robert Saunders, a Morgan Stanley executive director in the Information Technology Division, testified that he returned to New York after his February 10 deposition and, concerned about his unqualified assertion that the was "confident" that a complete search for backup tapes had been conducted, decided finally to undertake a personal search of MS & Co.'s "communication rooms," going to the areas he thought most obvious first. By doing so, he and two contractors discovered more than 200 additional backup tapes openly stored in locations known to be used for tape storage. Those discoveries were made on Friday and Saturday, February 11 and 12, 2005. As of the February 14 hearing, NDCI had not yet determined which, if any, of these newly discovered backup tapes contained e-mails. Second, Ms. Gorman reported that on Friday, February 11, 2005 she and her team had discovered that a flaw in the software they had written had prevented MS & Co. from locating all responsive e-mail attachments. Third, Ms. Gorman reported that MS & Co. discovered on Sunday evening, February 13, 2005, that the date-range searches for e-mail users who had a Lotus Notes platform were flawed, so there were at least 7,000 additional e-mail messages that appeared to fall within the scope of the Agreed Order had yet to be fully reviewed by MS. & Co.'s outside counsel for responsiveness and privilege. As counsel for MS & Co. admitted, this problem "dwarf[s]" their previous problems. Hr'g Tr. (2/14/05) at 13. Ms. Gorman indicated she was "90 percent sure" that the problem infected MS & Co.'s original searches in May, which means that even they failed to timely produce relevant materials that had been uploaded into the archive by that point. *Id.* at 82-83. The bulk of the employees using the Lotus Notes platform in the relevant time period came from the Investment Banking Division, the division responsible for the

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transaction under review here.

24. On February 19, 2005 MS & Co. informed counsel for CPH that "additional boxes of back up tapes" have been located "in a security room" and that, "(a)s of this morning, Morgan Stanley has identified four (unlabeled) DLT tapes among the collection. Those four tapes will be sent to NDCI for further analysis." The disclosure did not state when the discovery was made. MS & Co.'s counsel represented to the Court that it was his understanding that about 73 bankers' boxes of tapes were discovered. No explanation for the late discovery was offered.

25. Throughout this entire process, MS & Co. and its counsels' lack of candor has frustrated the Court and opposing counsel's ability to be fully and timely informed.

26. MS & Co.'s failure during the summer and fall of 2004 to timely process a substantial amount of data that was languishing in the "staging area," rather than being put into searchable form and then searched, was willful and a gross abuse of its discovery obligations.

27. MS & Co.'s failure to time notify CPH of the existence of the DLT and 8-mm tapes, which it had located as early as 2002 and certainly prior to the June 23, 2004 certification, and its failure to timely process those raw backup tapes was willful and a gross abuse of its discovery obligations.

28. MS & Co.'s failure to produce all e-mail attachments was negligent, and it was discovered and revealed only as a result of CPH's hiring a third-party vendor, pursuant to the Court's February 4, 2005 Order, to double-check MS & Co.'s compliance with the April 16, 2004 Agreed Order.

29. MS & Co.'s failure to produce all of the Lotus Notes e-mails was negligent, and it was discovered and revealed only as result of CPH's hiring a third-party vendor, pursuant to the

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Court's February 4, 2005 Order, to double-check MS & Co.'s compliance with the April 16, 2004 Agreed Order.

30. MS & Co.'s failure to locate other potentially responsive backup tapes before Saturday, February 12, 2005 was grossly negligent.

31. Given the history of the discovery, there is no way to know if all potentially responsive backup tapes have been located.

32. In sum, despite MS & Co.'s affirmative duty arising out of the litigation to produce its e-mails, and contrary to federal law requiring it to preserve the e-mails, MS & Co. failed to preserve many e-mails and failed to produce all e-mails required by the Agreed Order. The failings include overwriting e-mails after 12 months; failing to conduct proper searches for tapes that may contain e-mails; providing a certificate of compliance known to be false when made and only recently withdrawn; failing to timely notify CPH when additional tapes were located; failing to use reasonable efforts to search the newly discovered tapes; failing to timely process and search data held in the staging area or notify CPH of the deficiency; failing to write software scripts consistent with the Agreed Order; and discovering the deficiencies only after CPH was given the opportunity to check MS & Co.'s work and the MS & Co.'s attorneys were required to certify the completeness of the prior searches. Many of these failings were done knowingly, deliberately, and in bad faith.

It is clear that e-mails existed which were requested by CPH that have not been produced because of the deficiencies discussed above. Electronic data are the modern-day equivalent of the paper trail. Indeed, because of the informalities of e-mail, correspondents may be less guarded than with paper correspondence. In this case, the paper trail is critical to CPH's ability to make out its prima facie case. Thus, MS & Co.'s acts have severely hindered CPH's ability to

proceed. The only way to test the potentially self-serving testimony of MS & Co. personnel is with the written record of the events.

The failures outlined in this Order are of two types. First, by overwriting e-mails contrary to its legal obligation to maintain them in readily accessible form for two years and with knowledge that legal action was threatened, MS & Co. has spoiled evidence, justifying sanctions. See Martino v. Wal-Mart Stores, Inc., 835 So. 2d 1251 (Fla. 4th DCA 2003). “The appropriateness of sanctions for failing to preserve evidence depends on: (1) willfulness or bad faith of the responsible party, (2) the extent of prejudice suffered by the other party, and (3) what is required to cure the prejudice.” Nationwide Lift Trucks, Inc. v. Smith, 832 So. 2d 824, 826 (Fla. 4th DCA 2002). Second, MS & Co.’s willfull disobedience of the Agreed Order justifies sanctions. See Rule 1.380 (b) (2), Fla. R. Civ. P. The conclusion is inescapable that MS & Co. sought to thwart discovery *in this specific case*.

Sanctions in this context are not meant to be punitive. They are intended, though, to level the playing field.

A reasonable juror could conclude that evidence of MS & Co.’s misconduct demonstrates its consciousness of guilty. It is relevant to the issues before the jury. Further, CPH should not be penalized by being forced to divert the jurors’ attention away from the merits of its claim to focus on highly technical facts going to MS & Co.’s failures here, facts that are not reasonably disputed. Evidence of that failure, though, alone does not make CPH whole. Indeed, it can be said it is not a “sanction” at all, but merely a statement of unrefuted facts that the jury may find relevant. Shifting the burden of proof, though, forces MS & Co. to accept the practical consequence of its failures—that some information will never be known. Obviously, this sanction is of consequence only in the

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marginal case. If there is overwhelming proof of MS & Co.'s knowledge of the fraud and collusion with Sunbeam, CPH would have prevailed on those elements in any event. And, to the contrary, if there is overwhelming evidence MS & Co. did not know of the fraud or conspire with or aid Sunbeam in its commission, it would have prevailed in any event. If the case is close on those issues, though, MS & Co., not CPH, should bear the burden of persuasion. Further, shifting the burden on the fraud issue does not relieve CPH of its obligation to establish the other elements of its claims, most notably reliance, proof of which is independent of the MS & Co. e-mails. Thus, the sanctions chosen are the most conservative available to the Court to address the spoliation of evidence and willfull violation of the Agreed Order.^{1 2}

Finally, the Court notes that CPH has requested the e-mails since May of 2003. MS & Co. was supposed to comply with the April 16, 2004 Order by May 14, 2004. Fact discovery in this case closed November 24, 2004. MS & Co.'s actions have resulted in the diversion of enormous amounts of resources, by both the parties and the Court, into a fact discovery dispute that should have never arisen and which would have long ago been put to bed had MS & Co. timely recognized its obligations to CPH and this Court. Opening argument in this complex case is set for March 21,

¹MS & Co.'s bad acts and pocket book may not be used to gain the continuance it has sought from the beginning. Further, the Court has no confidence that, even if a continuance were granted, MS & Co. would fully comply with discovery in this case.

²The undersigned notes that the sanctions imposed are not enumerated in Rule 1.380 (b) (2), and is aware of the concern expressed in the 2000 Handbook on Discovery Practice, Joint Committee of the Trial Lawyers Section of the Florida Bar and Conferences of Circuit and County Court Judges ("(f)or the trial court to be on solid footing, it is wise to stay within the enumerated orders" [Handbook at p. 4]). However, MS & Co.'s violations involve both the violation of a discovery order and the intentional spoliation of evidence. The sanction imposed is *less* severe than that provided in Rule 1.380 (b) (2) (B), under which the Court could preclude MS & Co. from presenting evidence of its lack of knowledge of or collusion with the Sunbeam fraud, which the Court finds is the least severe enumerated sanction appropriate to place the parties on a level playing field.

2005. Preliminary jury selection has begun. MS & Co. has controlled the timetable of this portion of the litigation long enough. Consequently, CPH should have the ability to continue to require MS & Co. to attempt to comply with the Agreed Order and the February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search, or to elect to terminate the e-mail discovery and concentrate on trial preparation.

Based on the foregoing, it is

ORDERED AND ADJUDGED that:

1. Plaintiff's Motion for Adverse Interference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Non-Compliance with the Court's April 16, 2004 Agreed Order and Motion for Additional Relief is GRANTED.
2. MS & Co. shall continue to use its best efforts to comply with the April 16, 2004 Agreed Order and shall continue to comply with the February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search until March 21, 2005 or written notice from CPH, whichever ever first occurs. Either party shall notify the other in writing of its intention to offer into evidence e-mails actually produced to CPH prior to termination of e-mail discovery in conformity with this Order, within 72 hours of the e-mail's production to CPH. The Court shall hear and determine any objections to use of the e-mails.
3. The Court shall read to the jury the statement of facts attached as Exhibit A during whatever evidentiary phase of CPH's case that it requests. These findings of fact shall be conclusive. See Rule 1.380 (b) (2) (A). No instruction shall be given to the jury regarding inferences to be drawn from these facts. However, counsel may make such argument to the jury in favor of whatever inferences that evidence may support. No other evidence concerning the production of e-mails, or

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lack thereof, shall be presented absent further Court order.

4. CPH will be allowed to argue that MS & Co.'s concealment of its role in the Sunbeam transaction is evidence of its malice or evil intent, going to the issue of punitive damages. See, e.g., General Motors Corp. v. McGee, 837 So.2d 10120.

5. MS & Co. shall bear the burden of proving to the jury, by the greater weight of the evidence, that it lacked knowledge of the Sunbeam fraud and did not aid and abet or conspire with Sunbeam to defraud CPH. The traditional order of proof shall remain unaffected, however.

6. MS & Co. shall compensate CPH for costs and fees associated with the Motion. The amount shall be determined at an evidentiary hearing to be held after the completion of the trial.

7. Plaintiff's Motion to Compel Further Discovery Regarding Morgan Stanley's Destruction and Non-Production of E-Mails is Denied.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 1 day of March, 2005.


ELIZABETH T. MAASS
Circuit Court Judge

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EXHIBIT A

A federal regulation in effect in 1997 and all times since required Morgan Stanley to preserve e-mails for three years and to preserve them in a readily accessible place for two years. Beginning in no later than 1997, Morgan Stanley had a practice of overwriting e-mails after 12 months. E-mails could no longer be retrieved once they were overwritten. This practice was discontinued in January, 2001. CPH has sought access to Morgan Stanley's e-mails relating to this transaction since the case was filed in May, 2003.

Prior to 2003, Morgan Stanley recorded e-mails and other electronic data on back up tapes. On April 16, 2004, the Court ordered Morgan Stanley to (1) search the oldest full backup tape for each of 36 Morgan Stanley employees involved in the Sunbeam transaction; (2) review e-mails dated from February 15, 1998 through April 15, 1998 and e-mails containing any of 29 specified search terms such as "Sunbeam" and "Coleman", regardless of their date; (3) produce by May 14, 2004 all e-mails relating to this case found by the search I have just described; and (4) certify its full compliance with the Court's order.

On May 14, 2004, Morgan Stanley produced approximately 1,300 pages of e-mails. It did not produce the required certification. On June 23, 2004, after inquiries by CPH, Morgan Stanley provided CPH with a certificate of full compliance with the April 16 Order signed by Arthur Riel, the Morgan Stanley manager assigned this task.

As organized by Morgan Stanley, the effort to recover e-mails from the backup tapes had several stages. First, the relevant backup tapes had to be located by searching the potential storage locations. Second, the tapes were sent to an outside vendor, National Data Conversion, Inc., which I will call "NDCI", to be processed, and the data returned to Morgan Stanley. Third, Morgan Stanley had to upload the processed data into its e-mail archive. Fourth, Morgan Stanley had to run scripts, or pieces of computer code, to transform this data into a searchable form. Finally, Morgan Stanley had to search the data for e-mails related to this case. Morgan Stanley personnel used the term "staging area" to describe the stage of the process when the processed data returned by NDCI remained in limbo, waiting to be uploaded to Morgan Stanley's archive.

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At some point prior to May 6, 2004, Arthur Riel and his team became aware that 1,423 backup tapes had been found at a Morgan Stanley facility in Brooklyn, New York. These 1,423 tapes had not been processed by NDCI and thus had not been included in the archive or searched when Morgan Stanley made its production to CPH on May 14, 2004. Aware of the tapes' discovery, Mr. Riel knew when he executed the certification of full compliance with the Court's April 16, 2004 Order that it was false. He and others on Morgan Stanley's e-mail archive team knew by July 2, 2004 that these "Brooklyn tapes" contained e-mail dating back at least to the late 1990's. During the summer of 2004, the Brooklyn tapes were processed and the data sent to the staging area. The scripts were not written and tested to permit the search for e-mails relating to this case to begin until the middle of January, 2004. Such a search, even if perfectly done, can take weeks.

Morgan Stanley also failed to timely produce e-mails from 738 backup tapes found at a Morgan Stanley facility in Manhattan in 2002. These 738 tapes, like the 1,423 Brooklyn tapes, had not been processed by NDCI and thus had not been included in the archive and searched by either on May 14, 2004 or June 23, 2004. Mr. Riel and others were told by NDCI by July 2, 2004 that these tapes contained e-mail dating back at least to 1998. During the summer of 2004, the these tapes were processed and sent to the staging area. Like the Brooklyn tapes, though, they also were not searched.

In August 2004, Mr. Riel was relieved of his employment responsibilities. He and his team were replaced by a new team headed by Allison Gorman Nachtigal. At that time, the staging area contained about 600 gigabytes of e-mail data that had not yet been uploaded into the Morgan Stanley archive and had not been searched for e-mails relating to this case.

Upon taking over Mr. Riel's responsibilities, Ms. Gorman did not initially make significant efforts to address the backlog of data in the staging area. Indeed, she was not informed of the existence of this litigation until five months later, in January 2005. In October 2004, Ms. Gorman gave the project somewhat greater priority, although even then it did not move as expeditiously as possible. Morgan Stanley did not consider using an outside contractor to expedite the process.

Morgan Stanley found another 169 DLT tapes in January, 2005, that had been misplaced

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by its New Jersey storage vendor. Morgan Stanley discovered more than 200 additional backup tapes openly stored in locations known to be used for tape storage on February 11 and 12, 2005. On February 11, 2005 Morgan Stanley discovered that a flaw in the software it had written had prevented Morgan Stanley from locating all e-mail attachments about the Sunbeam transaction. Morgan Stanley discovered on February 13, 2005, that the date-range searches for e-mail users who had a Lotus Notes platform were flawed, so that additional e-mail messages that appeared to fall within the scope of the April 16, 2004 Order had not been given to CPH. Further, it appears that the problem infected Morgan Stanley's original searches in May of 2004. The bulk of the employees using the Lotus Notes platform in the relevant time period came from the Investment Banking Division, the division responsible for the transaction under review here. On February 16, 2005, Morgan Stanley withdrew its certificate of compliance with the April 16, 2004 Order. On February 19, 2005 Morgan Stanley notified CPH that it had found boxes of additional tapes that have not been uploaded into its archive or searched for responsive e-mails. Morgan Stanley did not tell CPH it had found any tapes that it had not searched until November 17, 2004. Even then, it did not tell CPH how many tapes were found, when they were found, or when they would be searched. MS & Co. did not provide all of this information to CPH until February of 2005. The searches had not yet been completed when this trial was begun, when they were terminated without completion.

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COLEMAN (PARENT) HOLDINGS INC.,

CASE NO. 2003CA 005045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

Filed Under Seal — Subject To Confidentiality Order

**COLEMAN (PARENT) HOLDINGS INC.'S RENEWED MOTION
FOR ENTRY OF DEFAULT JUDGMENT AND OTHER SANCTIONS**

Coleman (Parent) Holdings Inc. ("CPH") respectfully requests that this Court strike Morgan Stanley's answer, enter a default judgment against Morgan Stanley on the issue of liability, and impose other sanctions and relief. The appropriateness of such an Order has become clear following the entry of this Court's March 1, 2005 sanctions Order. Since that time, additional facts have come to light showing that Morgan Stanley has deliberately engaged in — and is continuing to engage in, notwithstanding prior Court Orders and sanctions — a pattern of abusive conduct aimed at obstructing justice. The record described below establishes that Morgan Stanley persists in failing to comply with this Court's Orders and persists in making willful misrepresentations and omissions to the Court. For example, as this Court found the morning of March 8, Morgan Stanley "intentionally omitted" from a privilege log the fact that a key document was disclosed to the SEC "precisely so Coleman (Parent) Holdings would not know of even the existence of the SEC investigation" into former Morgan Stanley executive Arthur Riel's charge that Morgan Stanley destroyed approximately 10,000 e-mail backup tapes.

See Ex. 1, 3/8/05 Tr. at 2409. Moreover, in addition to finding this willful omission, the Court further found that Morgan Stanley had violated a previous Order to disclose documents concerning problems with e-mail retrieval and processing within 12 hours of their receipt by counsel by failing to produce the SEC documents until March 7. See *id.* at 2409-10. Finally, it became perfectly apparent at the March 8 hearing that the non-production of the SEC materials also violated the Court's February 3, 2005 Order setting the February 14 hearing on e-mail issues and requiring production by February 8 of documents relating in any way to the discovery, recovery, or production of additional e-mail backup tapes.

In its March 1 Order, while opting for lesser sanctions, this Court recognized serious misconduct relating to e-mail production and observed that the Court possessed the discretion to default Morgan Stanley and bar it from defending against CPH's claims. See Ex. 2 at 12 n.2. Florida law clearly confirms that discretion. Rule 1.380(b) authorizes trial courts to enter orders "striking out pleadings or parts of them, . . . or dismissing the action or proceeding or any part of it, or rendering a judgment by default against the disobedient party." The Florida Supreme Court has held repeatedly that a "deliberate and contumacious disregard of the [trial] court's authority will justify application of the severest sanctions, . . . as will bad faith, willful disregard or gross indifference to an order of the court, or conduct which evinces deliberate callousness." *Mercer v. Raine*, 443 So. 2d 944, 946 (Fla. 1983) (citing *Herold v. Computer Components International, Inc.*, 252 So. 2d 576 (Fla. 4th DCA 1971); *Swindle v. Reid*, 242 So. 2d 751 (Fla. 4th DCA 1970)); see *McCord Commonwealth Fed. Sav. & Loan Ass'n v. Tubero*, 569 So. 2d 1271, 1273 (Fla. 1990).

The pattern of abuse by Morgan Stanley, including disclosures subsequent to the March 1 Sanctions Order, now warrants entry of the sanction that this Court recognized but reserved in

the March 1 Order. Since that time, additional, serious misconduct has come to light concerning: (1) Morgan Stanley's violations of e-mail-related Orders and attempts to cover up SEC proceedings relating to Morgan Stanley's deliberate and systematic destruction of countless e-mails; (2) Morgan Stanley's willful refusal to comply with prior orders of this Court relating to the Italian criminal proceedings involving William Strong; and (3) other intentional and contumacious misconduct on the part of Morgan Stanley. These additional instances of serious wrongdoing, when viewed in light of the many instances of misconduct already found by this Court, confirm beyond any question that the more serious sanction of a default judgment against Morgan Stanley is necessary to preserve the integrity of the system of justice and to prevent irreparable prejudice to CPH.

ARGUMENT

I. In Light of New Information Concerning Misconduct with Regard to E-Mail Retention and Production, the Court's Existing Sanctions Order Is Insufficient.

The SEC documents CPH received on March 7 and 8 reveal a number of key facts that were previously concealed from CPH and the Court. These new facts require further action from this Court.

Suppression of the Existence of the SEC Investigation. Since last fall, Morgan Stanley has been facing at least three serious legal problems involving its failure to preserve e-mails — (1) this lawsuit; (2) an SEC investigation into the alleged massive destruction of e-mails in violation of federal law and the 2002 SEC cease-and-desist order (SEC File Number MHO-10086) (the “Riel investigation”); and (3) the alleged failure of Morgan Stanley to produce e-mails sought in connection with the SEC's IPO investigation (SEC File Number HO-09140) (the “TPO investigation”). Morgan Stanley's strategy has been to keep the SEC investigations hermetically sealed off from this lawsuit — not telling the SEC the truth about events in this case

and not revealing anything to this Court about the SEC investigations. Obviously, the handling of e-mail has become a major issue here. Simultaneously, the SEC staff was assessing whether Morgan Stanley had produced all of its e-mails in connection with the IPO investigation, and the staff was probing in detail the extent to which Morgan Stanley had failed to maintain e-mails as part of the Riel investigation.

Morgan Stanley was desperate to keep secret that both SEC investigations had exposed Morgan Stanley's failure to preserve e-mails. Thus, in January 2005, in connection with Morgan Stanley's negotiations with the SEC to resolve the IPO matter, Morgan Stanley decided that it would seek assurance from the SEC's Director of Enforcement that the e-mail destruction issues would not be made public or, alternatively, Morgan Stanley would insist that the IPO settlement contain an express condition that the SEC would make no public statement concerning the e-mail issues. In a January 14, 2005 e-mail from Paul Gerlach (Morgan Stanley's counsel from Sidley) to Andrew Clubok (Morgan Stanley's counsel from Kirkland) and Donald Kempf (Morgan Stanley's General Counsel), Gerlach reported on a conversation he had earlier that day with the SEC. *See* Ex. 39. Gerlach stated:

Staff willing to go forward with Reg. M settlement [Regulation M deals with trading in connection with securities offerings] with no reference to document issue. (Note — Chion [a member of the SEC staff] noted that she can not control Commission regarding public statement on doc. issue. Don [presumably Don Kempf, Morgan Stanley's General Counsel] should get comfort from Cutler [presumably Stephen Cutler, the SEC's Director of Enforcement] on this or expressly condition settlement of Reg M on no public statement being made re doc. issue). Reg M case to be considered by Commission on Tuesday 1/18.

Gerlach also reported that the SEC staff extended the date for "Wells response on document issue," the staff requested that "Morgan Stanley continue sharing info we are gathering re tape overwriting," and the staff requested that "MS provide source docs re IT [information

technology] work being done on tape history.” *Id.* Pointedly, the staff also had requested “copies of all instructions given by legal or others to retain and preserve docs covered by SEC requests or subpoenas.” *Id.* Importantly here, the staff “[a]sked whether Morgan Stanley had done analysis whether it had satisfied its obligations in private litigation given potential document issues now under review.” *Id.* (emphasis added).

Despite Morgan Stanley’s efforts to keep the SEC investigations of Morgan Stanley’s “document issue” secret, we now know that the SEC staff recommended a permanent injunction and imposition of a \$10 million fine. But Morgan Stanley went to great lengths not to have the SEC investigation revealed to the Court and CPH. The obvious reason was that the allegations in the SEC investigations would have had a huge impact on this litigation. Morgan Stanley wanted to present Riel as a prime malefactor who failed to produce responsive documents on his own — not as an important source in an ongoing SEC investigation. Moreover, a claim that 10,000 backup tapes had been destroyed during the time when it was represented that they would be preserved would have triggered a whole new round of inquiry in this case into the completeness of the May 14, 2004 production of e-mail. That, in turn, would have led to revelation of other facts known to Riel — including the fact that the May 14 production did not come close to covering responsive e-mails from all of the backup tapes that Morgan Stanley knew to exist at that time.

Moreover, if this investigation had come to light sooner, Morgan Stanley would have had to admit to this Court that some substantial amount of destruction of e-mail backup tapes continued after 2001, contrary to Morgan Stanley’s prior representations. The February 10 Wells submission to the SEC disputes the figure of 10,000 tapes supplied by Riel, but it acknowledges that tapes did continue to be overwritten even after the 2001 Morgan Stanley

policy barring such destruction supposedly was in place. In fact, Morgan Stanley reported to the SEC on February 10, 2005 that it had tested a 199-tape sample of the 12,000 tapes that had been used to back-up e-mail in the year 2000. *See* Ex. 14 at 11. Morgan Stanley concluded that 22 of the 199 had been overwritten in violation of the 2001 policy and one had been overwritten in violation of the 2002 SEC cease-and-desist order. *Id.* at 12. Extrapolating to the full set of 12,000 tapes used to back up pre-2001 e-mail, that would mean that more than 1,300 tapes had been overwritten after Morgan Stanley says it stopped doing so in 2001!

The effort to suppress knowledge of the SEC investigations included testimony from Morgan Stanley's witnesses before this Court who obviously had been coached to avoid mentioning the SEC investigations. For example, Allison Gorman recalled that her efforts to address the problem of archiving a backlog of old e-mail began after a meeting with counsel from Kirkland sometime in October in which the entire problem was discussed in detail. *See* Ex. 3, 2/14/04 Tr. at 50-51, 63-64; Ex. 4, Gorman Dep. at 69. Since the law firms of Sidley Austin and Kirkland & Ellis were counsel in the SEC's Riel investigation, and the timing fits, there can be little doubt how this meeting came about: The SEC had contacted Morgan Stanley concerning Riel's allegations. But various witnesses, from Ms. Gorman to Mr. Saunders to Mr. Clare, all of whom were heavily involved, testified in this case about the circumstances under which Morgan Stanley focused attention on the e-mail production issue in the fall of 2004 — but not one of those witnesses disclosed the fact that there were two major SEC investigations probing Morgan Stanley's destruction of its e-mails. This occurred even though Ms. Gorman, Mr. Saunders, and James Cusick from the Morgan Stanley Law Division had recently been interviewed by the SEC in connection with the Riel investigation.

But the suppression efforts went beyond coaching of witnesses. As explained in Court on March 8, it is clear that under a document request served on October 12, 2004, Morgan Stanley had a duty to produce all documents relating to the SEC's Riel investigation. But Morgan Stanley represented on November 12, 2004 that it had no responsive documents.¹

In addition, production of the SEC documents was required by the terms of several of this Court's recent Orders preceding the March 4 directive to produce SEC-related material. In particular, the February 3 Order setting the February 14 hearing on e-mail issues provided that Morgan Stanley was to produce, by noon on February 8, "all documents . . . related to the additional e-mail backup tapes, including matters relating to the time in which they were discovered; by whom discovered, who else learned of their discovery and when; and the manner and timetable by which they were to be restored and made searchable." Ex. 8. There can be no

¹ On October 12, 2004, CPH had served on Morgan Stanley a document request designed to bring prior document productions current. It sought all documents responsive to CPH's prior requests that had not been previously produced. *See* Ex. 5, Req. No. 1. The prior requests included CPH's Third Request for Production (dated December 17, 2003), which asked for all communications to or from the SEC relating to "Morgan Stanley's policies and/or procedures with regard to the retention, storage, deletion, and/or backup of electronic mail (e-mails)." *See* Ex. 6, Req. No. 1. When Morgan Stanley did not produce a significant volume of documents in response to this earlier request in January 2004, there followed a series of letters from Morgan Stanley's counsel culminating in an assurance on January 26, 2004 that Morgan Stanley had produced "all nonprivileged documents that were submitted to the SEC or received from the SEC, and all documents reflecting communications with the SEC in connection with any investigation, inquiry, or examination concerning or relating to Morgan Stanley's policies and/or procedures with regard to the retention, storage, deletion, and/or backup of electronic mail." Ex. 36. Eleven months later, Morgan Stanley answered the October 12, 2004 follow-up Request for Production by saying that it had "not located any additional responsive, non-privileged documents." *See* Ex. 7, Resp. No. 1. At that time, however, Morgan Stanley had in its possession a number of responsive documents relating to communications with the SEC about its e-mail retention policies and practices, including (1) a September 28, 2004 certification by James Cusick of complete production in connection with a prior SEC investigation (Ex. 32); (2) at least two notices from the SEC seeking documents and information relating to the IPO investigation (Exs. 33, 15); (3) a letter to the SEC from Sidley on behalf of Morgan Stanley providing requested information in connection with that investigation (Ex. 34); and (4) correspondence from counsel for Morgan Stanley to the SEC in connection with the separate Riel investigation (Exs. 37, 38).

doubt that Morgan Stanley had such documents in its possession on February 8 and its counsel was busily preparing still more, including the February 10 Wells submission to the SEC.

On March 2, the Court ordered that Morgan Stanley produce, within 12 hours of their coming into possession of counsel, documents from other court cases and administrative proceedings involving e-mail production. *See* Ex. 9. Since Kirkland & Ellis was co-counsel in the SEC matters, it obviously had possession of the SEC documents. Thus, they had an obligation to produce them immediately under the March 2 Order. But this Order was disobeyed as well: The documents were first produced on March 7.

Similarly, when Morgan Stanley claimed privilege on the June 7, 2004 e-mail from Riel to Cusick, Morgan Stanley had a duty to reveal on the privilege log that the document had been disclosed to the SEC. But Morgan Stanley failed to do so. As explained above, the Court already has found that the purpose of this intentional and improper action was to avoid telling CPH about the SEC investigation.

Finally, when the Court was reviewing other documents on the same privilege log, Morgan Stanley did not respond to the Court's invitations to provide more specific affidavits that would establish a factual basis to support its assertion of the work-product privilege. Indeed, Morgan Stanley's counsel only began to describe portions of the SEC's Riel investigation in response to the Court's very pointed questioning during the March 4, 2005 hearing. *See* Ex. 43, 3/4/05 Tr. at 2182-92. In light of the March 7 disclosures, it is apparent that Morgan Stanley had intentionally avoided making further disclosures in hopes of avoiding revelation of the substance of the SEC investigations.

Additional Evidence Relating to the Intentional Violation of the April 16, 2004 Order. Now that we have some of the documents supplied to the SEC in an attempt to fend off

an injunction and a \$10 million fine for destruction and non-production of e-mail backup tapes, we have learned significant new information relating to the very issues already litigated in this Court at the February 14 hearing. This information, found primarily in the February 10, 2005 Wells submission to the SEC by Morgan Stanley and its counsel (both the Sidley firm and the Kirkland firm), reinforces the Court's findings of misconduct and compels the conclusion that the existing sanctions must be strengthened.

First, CPH may now have uncovered the actual source of the 8,000 pages of e-mails that were produced in November 2004 — and that source is certainly not what Morgan Stanley has told this Court on numerous occasions. As the Court will recall, Morgan Stanley has repeatedly attributed that production to “newly discovered” backup tapes, but — as far as CPH has been able to determine — Morgan Stanley had not in fact discovered any additional backup tapes in the six months immediately prior to the November 2004 production. So the “newly discovered tapes” story was a hoax. Furthermore, the 8,000 pages could not have come from the 1,423 “Brooklyn” DLT tapes that Morgan Stanley found in the spring of 2004 or from the 738 eight-millimeter tapes that Morgan Stanley found in 2002, because neither of those sets of tapes was processed and searched until 2005.

A document provided to the SEC in the Wells submission, but not (until now) to CPH, may explain this mystery: The April 29, 2004 minutes from Morgan Stanley's e-mail archive group reveal an entirely different cache of backup tapes that — unlike any of the tapes Morgan Stanley has previously pointed to (the “Brooklyn found” tapes, the 8mm tapes, etc.) — could have been searched in October or November 2004 but not in April or May 2004. The minutes state that “NDCI [Morgan Stanley's tape-restoration vendor] discovered an additional ~700 Legato tapes that were not been [sic] processed. They expect to have them done within two

weeks.” Ex. 10. Thus, right in the midst of the four-week period that the Court gave Morgan Stanley to produce all responsive e-mail — April 16 through May 14, 2004 — Morgan Stanley knew that 700 unprocessed tapes had just been located. E-mails from those tapes could not possibly have been included in the May 14 Court-ordered production, since NDCI’s processing would not even be completed until mid-May. Yet, rather than tell CPH or the Court of this new discovery, Morgan Stanley simply produced 1,300 pages of e-mails on May 14 and then certified that this May production was complete and fully compliant with the Court’s April 16 Order.

Second, the same April 29, 2004 minutes — which, again, were produced to the SEC but not to CPH — indicate that “a final sweep of the NY comm rooms to search for stray DLT tapes” was planned, but had not yet been completed. Even if those sweeps were conducted the very next day — which likely did not happen, since sweeps of the same “N[ew] Y[ork] comm[unications] rooms” in February 2005 turned up an additional 243 tapes, according to Robert Saunders’s in-Court testimony — any “stray DLT tapes” that might have turned up could not possibly have been processed and searched before the Court-imposed deadline of May 14. *Id.* But again, Morgan Stanley’s knowledge that the May 14 production was incomplete did not deter Morgan Stanley from certifying the contrary.

Third, CPH has now confirmed from the SEC documents that the declaration Morgan Stanley filed with this Court on January 31, 2005, by James F. Doyle, an Executive Director in Morgan Stanley’s Law Division, was intentionally misleading. Doyle swore that he did not learn of additional, unsearched e-mail backup tapes until “the end of October 2004.” Ex. 11. But CPH has now learned that Doyle’s colleague in the Law Division, Soo-Mi Lee, and their boss — James P. Cusick — were informed on June 7, 2004, that “[t]he storage folks [had] found an additional 1,600 backup tapes in a closet.” Ex. 12.

It seems clear that Morgan Stanley hand-picked Mr. Doyle to file with this Court a declaration stating that he — and implicitly, but only implicitly, the entire Law Division of which he is the Executive Director — was unaware of additional tapes until late October, when in fact the Law Division was aware of the tapes by June 7, 2004. Doyle's declaration was intentionally misleading.

Fourth, that same June 7, 2004 e-mail message to Cusick and Lee in the Law Division stated that nearly one third of the backup tapes that had been restored — 10,138 out of 34,926 — “did not contain email (which implies they were recycled despite the order from [C]ompliance not to do so).” *Id.* This allegation — that Morgan Stanley overwrote, and thus deleted e-mails from, more than 10,000 tapes in violation of the SEC's December 2002 cease-and-desist order — is a key part of the SEC's currently pending investigation of Morgan Stanley, in which the SEC staff has recommended a permanent injunction and a \$10 million fine.

Fifth, the February 10 Wells submission reveals for the first time that a large percentage of the e-mails in the original set of 35,000 backup tapes that were to be archived had been prepared for insertion in the archive but not actually inserted by last June. *See* Ex. 14 at 25. Of the 143 SDLT tapes containing e-mails processed by NDCI, only 120 had been actually put into the archive. *Id.* The rest were not in fact put into the archive until sometime after November. The February 10 letter indicates that these facts were known to Ms. Gorman and the Law Division by November, *id.* at 26, but that fact was never revealed until now. Indeed, the constant focus on newly discovered tapes likely was a device intended to prevent revelation of the fact that the original tapes were never fully archived.

Conflicts Between Representations to this Court and to the SEC. The newly produced documents also show that Morgan Stanley did not always tell the same story to the SEC as it did to this Court.

First, Morgan Stanley got off on the same wrong foot with the SEC investigation in October/November as it did with CPH — lying about the origins of the unsearched backup tapes. According to a November 8, 2004 letter from the SEC, Morgan Stanley told the SEC that it had only “recently found” the “700 eight millimeter tapes.” Ex. 15 at 2. But in this Court, Morgan Stanley has acknowledged that these tapes were located in 2002. At his February 10, 2005 deposition, Morgan Stanley’s Glenn Seickel testified that the 700-plus 8mm tapes were found sometime in 2002. Ex. 15 at 2. Moreover, a document that Morgan Stanley later produced to the SEC reveals that several high-level IT professionals knew about the 8mm tapes no later than January 2004. *See* Ex. 16 (Jan. 25, 2004 e-mail re 8mm tapes from Bob Saunders to Arthur Riel and Don Haight).

In addition, the February 10 Wells submission included this remarkable factual assertion: “Finally, since settling its e-mail issues with the Commission [in 2002], Morgan Stanley voluntarily undertook to overcome the limitations of its backup tapes by migrating all of its pre-2003 e-mail to a new archive system. This migration was recently completed, and Morgan Stanley’s pre-2003 e-mails are now indexed, searchable, and readily accessible in response to investigatory demands.” Ex. 14 at 2 (emphasis in original). In fact, as we know, the process of archiving the pre-2003 e-mail for production was anything but purely voluntary. By April 16, 2004, Morgan Stanley was under a Court Order to produce a substantial amount of material and the archive was the mechanism it was using to do so. Moreover, Morgan Stanley’s notice to the

SEC that the process of putting e-mails into the archive is now "completed" is flatly contrary to multiple representations made to this Court in recent weeks.

In deciding whether the existing sanctions relating to e-mails are sufficient in light of this additional factual record, it is important to consider how Morgan Stanley responded to those sanctions. Far from being chastened by those sanctions, Morgan Stanley immediately sought to use them to avoid disclosure of the SEC investigations. When CPH asked for documents from other court cases and administrative proceedings reflecting representations made by Morgan Stanley about production of e-mails, Morgan Stanley argued that the existing sanctions made that further inquiry unnecessary. Morgan Stanley also pointed to the burdensomeness of undertaking such a task, as it allegedly would involve 320 court cases and 75 law firms. But in fact, what Morgan Stanley had in mind was the February 10 Wells submission to the SEC that it had in hand but desperately did not want to produce. Regrettably, the fair conclusion is that the lesson has not yet been learned and further action by this Court is required.

II. Morgan Stanley Willfully Violated the Court's March 3, 2004 Order and Made Baseless Claims of Privilege Regarding Documents Related to the Italian Proceedings Against William Strong.

Morgan Stanley's conduct with regard to the production of documents relating to William Strong and the Italian criminal proceedings also must be considered as part of the basis for an additional sanction. On March 3, 2004, this Court expressly required Morgan Stanley to produce "[a]ll references (positive or negative) to [any relevant] employee's truthfulness, veracity or moral turpitude." Ex. 18, 3/3/04 Order at 2. On March 11, 2004, James Mangan of Morgan Stanley's litigation department transmitted an Italian "legal document" to a New York translation service. See Ex. 19, J. Mangan Fax Transmittal Page to K. Bayegan, 3/11/04. Despite the fact that this transmittal came eight days after the Court's Order, no Italian "legal document" was

provided to CPH. Indeed, although Morgan Stanley's litigation department was continuously monitoring the Italian proceedings regarding William Strong since at least late 1993, at the time of the Court's March 3, 2004 Order nothing about the Italian investigation of Strong was produced to CPH.

More than ten months later, on January 25, 2005 — with still no production of materials from Morgan Stanley related to the Italian investigation — CPH obtained a copy of a November 10, 1998 Bloomberg article describing Strong's involvement in an Italian corruption scandal. The article quotes a Morgan Stanley spokeswoman who stated that Morgan Stanley conducted its own investigation into the charges against Strong. See Ex. 20, Bloomberg, "Italian Judge Orders Salomon Executives To Face Trial," 11/10/98. CPH concluded that Morgan Stanley's failure to produce any documents related to the Italian investigation was a direct violation of the Court's March 3, 2004 Order.

On February 9, 2005, CPH filed a motion asking the Court to direct Morgan Stanley to produce documents related to the Strong proceedings which it had improperly withheld. The Court held a hearing on that motion on February 17, 2005. At that hearing, Morgan Stanley's counsel attempted to argue that the Italian documents were "not within the document request" and that there was "nothing in [Strong's] personnel file on this." Ex. 21, 2/17/05 Tr. at 1154. The Court found that the documents related to Strong's involvement in the Italian proceedings were "without doubt fairly included in [CPH's] request for production" and described Morgan Stanley's conduct as "egregious." *Id.* at 1155. The Court noted that this was symptomatic of a "problem that's permeated the case. Morgan Stanley wants to take the position, if we don't think it's relevant, we don't have to give it. And we're going to weed it out of the discovery request." *Id.* at 1161 (emphasis added).

On February 17, 2005, this Court ordered the immediate production of the documents, and directed that a privilege log be served by February 20, 2005. *See Ex. 22, 2/17/05 Order.* On February 18, 2005, two years after the fact, but just one day after the Court's Order, Mr. Strong filed with the National Association of Securities Dealers ("NASD") a Form U-4 Amendment to include comments concerning his appeal and the ruling of the Italian Court of Appeal. *See Ex. 23, W. Strong Form U-4, 2/18/05.*

Morgan Stanley identified "fully complying with NASD Rules to avoid adverse regulatory action" as one of the common legal interests it shared with Strong in its response to CPH's motion requesting an Order declaring the attorney-client privilege waived for certain documents relating to Strong. *Ex. 24, Resp. at 7.* Morgan Stanley noted that "[o]ne of these rules requires individuals and their employers to amend the individual's Form U-4 (application for NASD registration) within 30 days after learning of the facts or circumstances giving rise to the amendment." *Id.* (emphasis added). Yet clearly, it appears that the Court's Order, and not Morgan Stanley's or Strong's legal interests, prompted Strong to amend his U-4 on February 18, 2005. Indeed, Strong also failed to timely file an amended U-4 when he learned of the Italian investigation, which occurred no later than when he received the "Notice of Prosecution" from the Milan Public Prosecutor by April 1996.

On February 20, 2005, Morgan Stanley filed a privilege log regarding the documents it had been ordered to produce, and then filed revised logs on February 23 and 28, 2005. On their face, the privilege logs demonstrate a willful disregard for the basic tenets of privilege. Morgan Stanley asserted the privilege where it had no common legal interest with Strong or with Strong's former employer, Salomon Brothers International ("Salomon Brothers"). The February 28 logs also were deficient in several respects, including that the logs obviously did not disclose

all the recipients of the documents. For example, numerous entries contain no Morgan Stanley names in the "Recipient(s)" column despite the fact that most of the documents were produced from Morgan Stanley's own files. See *TIG Ins. Corp. of Am. v. Johnson*, 799 So. 2d 339, 341 (Fla. 4th DCA 2001), *rev. den.*, 821 So. 2d 304 (Fla. 2002).

The privilege logs reveal that senior Morgan Stanley in-house litigation attorneys were well aware of the existence of the documents relating to the Italian authorities' investigation of Strong — documents that clearly fell within the Court's March 3, 2004 Order to produce "[a]ll references (positive or negative) to [any relevant] employee's truthfulness, veracity or moral turpitude." James Cusick, the Morgan Stanley Managing Director responsible for litigation, appears on more than 60 entries in the February 23, 2005 logs. Monroe Sonnenborn, the former head of litigation for Morgan Stanley, appears on more than 200 entries in the February 23, 2005 logs. Donald Kempf, Morgan Stanley's General Counsel, and Christine Edwards, Mr. Kempf's predecessor, also are listed on the February 23, 2005 logs. It is inconceivable that Morgan Stanley's in-house attorneys did not know that the documents relating to the Italian authorities' investigation of Strong fell squarely within the ambit of the Court's March 3, 2004 Order. See Ex. 21, 2/17/05 Tr. at 1155 (THE COURT: "I cannot accept that any fair interpretation of this request didn't include that information.").

Given Morgan Stanley's baseless assertions of privilege over documents listed on its privilege logs for which Morgan Stanley had only a business interest and not a legal interest, CPH filed a motion requesting an order declaring the attorney-client privilege waived for certain documents relating to Strong on February 24, 2005. CPH argued that with respect to certain documents that may have originally been privileged, the voluntary act of Strong, Salomon Brothers, or their attorneys sharing documents with Morgan Stanley constituted a waiver, and

that communications directly among Morgan Stanley and Salomon Brothers, Strong, or their attorneys were never privileged in the first place.

On February 28, 2005, Morgan Stanley filed a response to CPH's motion. Morgan Stanley asserted that it had a "contractual duty to assert the joint defense privilege" under two alleged joint-defense agreements it had entered into with Strong and Salomon Brothers. Morgan Stanley argued that "because they so accurately capture the parties' intentions, these joint defense agreements should be accorded significant weight." Ex. 24, Resp. at 5. Yet Morgan Stanley refused to produce these alleged joint-defense agreements to CPH, claiming that they were privileged. *See id.* at 4 n.4.

On March 3, 2005, CPH filed a motion to compel production of the alleged joint-defense agreements relating to the Strong documents. The Court held a hearing on that motion on March 4, 2005. At that hearing, Morgan Stanley's counsel alleged that the two "joint-defense agreements" it refused to produce to CPH "reflect[ed] defense strategy, specifically the thought process of the attorneys in maintaining and advocating the same legal defense strategy, and so this constitutes work product." Ex. 25, 3/4/05 Tr. at 2139. After conducting an *in camera* review, the Court found that it was not possible to "read either of these letters as disclosing any trial strategy or containing any work product other than what has been voluntarily disclosed already by Morgan Stanley." *Id.* at 2149-50.

On March 4, 2005, over Morgan Stanley's objection, this Court ordered Morgan Stanley to turn over two letters that Morgan Stanley asserted were "joint-defense agreements" involving Morgan Stanley. The Court stated: "I don't think either item reflects any legal interest on behalf of Morgan Stanley or any understanding that Morgan Stanley was entering into a common

defense agreement. I think they were published to Morgan Stanley for business purposes, not for legal purposes.” *Id.* at 2150.

CPH received the alleged “joint-defense agreements” on March 4, 2005. These letters reveal that (1) Morgan Stanley’s claims of privilege with respect to the letters were meritless; (2) Morgan Stanley was not engaged in a joint defense with Salomon Brothers or Strong; and (3) the only possible protected joint defense was between Strong and Salomon Brothers, but Strong waived the privilege with respect to the documents associated with that defense by making documents available to Morgan Stanley. Those so-called “joint-defense” letters therefore establish the bad faith of Morgan Stanley’s assertion of the joint-defense privilege. Morgan Stanley’s letter to Salomon Brothers notes that the only “common interest” is between Strong and Salomon Brothers, and Mr. Cooney’s letter to Mr. Mayhew refers to Davis Polk’s representation of Strong, and Clifford Chance’s representation of Salomon Brothers. Morgan Stanley is not named as a party with a “common interest” in any supposed “joint-defense” agreement. *See* Ex. 26, Ltr. from J. Cooney to D. Mayhew, 5/11/95; Ex. 27, Ltr. from M. Sonnenborn to Salomon Brothers, 5/11/95.

On March 7, 2005, the Court held a hearing on CPH’s motion requesting an Order declaring the attorney-client privilege waived for certain documents relating to Strong. At that hearing, Morgan Stanley’s counsel asserted that Documents 935 through 1074 on the Strong privilege log had been provided to Morgan Stanley for the first time in connection with this litigation by John Cooney, a Davis Polk attorney who purportedly represented both Strong and Morgan Stanley during the Italian proceedings (despite Morgan Stanley’s lack of a legal interest in those proceedings). *See* Ex. 28, 3/7/05 Tr. at 2235-45; *id.* at 2236-37 (“So they have only been shared with Morgan Stanley by us going to Mr. Strong’s counsel Davis Polk and requesting

them for review and production in this matter.”). The Court found this a “bizarre development” in Morgan Stanley’s position and requested that Mr. Cooney prepare a declaration attesting to which documents he had not previously shared with Morgan Stanley. *Id.* at 2243.

On March 8, 2005, Morgan Stanley’s counsel backed away from these prior statements about the Davis Polk documents. Instead, counsel stated that there were a “small handful of documents” consisting of Mr. Cooney’s handwritten notes that were not shared with Morgan Stanley. Ex. 29, 3/8/05 Tr. at 2463. The remainder of the documents would not be privileged because Mr. Cooney could not affirm that he had not shared them with Morgan Stanley, which had no common legal interest with Strong or Salomon Brothers.

In sum, CPH’s attempts to get information about Strong’s Italian criminal proceedings have been thwarted by Morgan Stanley at every turn. Morgan Stanley has made itself the arbiter of what is and is not relevant; it has decided on its own what is and is not called for by CPH’s requests for production; it has invoked baseless claims of privilege over documents that clearly are not privileged; and it has misrepresented to the Court the nature both of documents and of its attempts to retrieve those documents. William Strong was a key player in the Sunbeam fraud. He signed the engagement letter with Sunbeam on behalf of Morgan Stanley in September 1997, led the firm’s work for Sunbeam, and took credit for all the fees received. At that time, he knew that he was facing prosecution by the Milan Public Prosecutor for the crime of complicity in bribery. *See* Ex. 30, U.S. Department of Justice Ltr. to W. Strong, 4/17/96, attaching 11/6/95 “Notice of Prosecution.” This matter was a “heavy millstone around [Strong’s] neck” (*see* Ex. 31, e-mail from B. Gans to W. Strong, 9/27/01), no doubt motivating him to generate as much revenue as possible in the Sunbeam transaction in the hope that Morgan Stanley would look the other way regarding the criminal proceedings in Italy.

Morgan Stanley has done its best to hide these facts from CPH, and it is only through CPH's relentless pursuit of this information that these facts have finally come to light. By hiding the facts, Morgan Stanley has tried to accomplish two things. First, Morgan Stanley has tried to suppress key evidence going to Strong's motive to aid and abet the Sunbeam fraud. Second, Morgan Stanley has tried to conceal evidence that corroborates damning criticisms of Strong by some of the most senior executives at Morgan Stanley — Joseph Perella and Tarek Abdel-Meguid. As the Court is aware, Perella's 1997 evaluation of Strong stated: "The one problem I continue to have with Bill is that you never seem to get the whole story unless you probe very hard." Ex. 40, 1997 Performance Evaluation at MS 85461. Meguid's 1997 evaluation of Strong states: "Bill can be overly aggressive in terms of trying to capture transaction opportunities. Makes some judgments which are sometimes very close to, if not over, the line." Ex. 41, 1998 Performance Evaluation at MS 85480.

At their depositions in this case, both Perella and Meguid variously failed to recall specifics concerning their criticisms of Strong or sought to explain away those criticisms. *See, e.g.,* Ex. 42, Perella Dep. at 98 (Perella trying to explain away his critical evaluation of Strong as referring only to a "goal to improve internal communication"). If CPH had received the documents concerning the criminal proceedings in Italy, CPH could have confronted Perella and Meguid with those documents at their depositions. CPH could have tested whether Perella and Meguid's explanations and lack of recall concerning their 1997 evaluations of Strong were credible or whether the senior executives at Morgan Stanley were closing ranks as CPH exposed Morgan Stanley's willingness to look the other way, so long as Strong remained a major rainmaker for the firm.

III. Morgan Stanley's Systematic Misconduct in All Stages and All Facets of This Case Warrants the Relief CPH Seeks.

The foregoing willful violations by Morgan Stanley of the Court's Orders and efforts to cover up those willful violations are not isolated incidents, but part of a pattern of abuse stretching back to the beginning of this litigation. For example, although Morgan Stanley ultimately escaped being sanctioned, it is clear that Morgan Stanley willfully violated the Court's December 4, 2003 and July 31, 2003 Orders governing the use and disclosure of the terms of the settlement agreement between CPH and Arthur Andersen ("Andersen"). See Ex. 35, CPH's 3/1/05 Chronology of Discovery Abuses by Defendant ("Chronology") at 16-19 (filed on March 1, 2005); see 3/1/05 Chronology Appendix ("Chronology App.") Ex. 88 (12/4/03 Order); *id.* Ex. 87 (7/31/03 Order).² In violation of those Orders, sometime prior to March 1, 2004, Morgan Stanley used the information derived from the settlement agreement for the improper purpose of devising a scheme to commence separate litigation against Andersen. See Chronology at 18, ¶¶ 7-9. Counsel admitted that the Andersen agreement precipitated the separate suit: "I think Your Honor would know the reasons we would bring Arthur Andersen in now that we have the settlement agreement, which we didn't get, by the way, until December, so it's a fairly recent development." Chronology App. Ex. 92 at 14-15. Morgan Stanley also improperly disclosed the terms of the Andersen agreement to lawyers who were not counsel of record in this litigation. Chronology at 18, ¶ 10. And during the resulting contempt proceedings, Morgan Stanley attempted to cover its tracks by repeatedly misrepresenting to the Court that these outside lawyers were retained to handle only the "Andersen aspects" of the case, an assertion that even

² At the Court's request, CPH filed the Chronology of Discovery Abuses by Defendant — and the accompanying three-volume appendix — on March 1, 2005.

its own counsel revealed to be untrue. *See* Chronology App. Ex. 99 at 47-48, 51, 62-64, 107-09; *see id.* at 115 (outside lawyers to serve as co-counsel “in all aspects of the case”).

Morgan Stanley exhibited the same pattern of abuse by intentionally failing to produce electronic information related to the authenticity and authorship of Morgan Stanley’s own documents and then misleading the Court to conceal the violation. *See* Chronology at 9-13. Morgan Stanley had maintained since as early as January 20, 2004 that it had disclosed all the electronic information retained by Morgan Stanley’s document management system pertaining to documents concerning Morgan Stanley’s work for Sunbeam. *See* Chronology at 9-10, ¶¶ 1-3, 12. In a further attempt to stonewall CPH’s efforts, Morgan Stanley repeatedly disobeyed the Court’s successive Orders requiring Morgan Stanley to respond adequately to CPH’s Sixth Set of Requests for Admission concerning authenticity, business record status, and authorship of specified documents. *See* Chronology at 10, ¶¶ 6-10. At the February 2, 2005 hearing on CPH’s Motion to Deem Certain Documents Admissible and for Sanctions, counsel for Morgan Stanley repeatedly misrepresented to the Court that Morgan Stanley had no more information pertaining to the specified documents. *See* Chronology at 11, ¶ 13. Yet, on February 7, 2005 — in response to the Court’s Order on CPH’s motion and on the eve of trial — Morgan Stanley produced 83 pages of electronic data relating to the documents that clearly identified, among other things, authorship of the documents and when and for how long Morgan Stanley employees viewed and edited them. *See* Chronology App. Ex. 72. Moreover, according to the testimony of Morgan Stanley’s corporate representative on February 11, 2005, Morgan Stanley has had the ability to retrieve electronic data regarding documents since 1997, and it took only one to two days to generate the 83-page production. *See* Chronology App. Ex. 73 at 133. He

further admitted that Morgan Stanley had made no attempt to access this electronic data until after the Court's February 3, 2005 Order. *See id.* at 132.

These are by no means the only instances of Morgan Stanley's lack of candor with the Court and with CPH. For example, Morgan Stanley repeatedly made misrepresentations to CPH when it claimed that one key witness could not be deposed for months, thereby avoiding her deposition until the very end of fact discovery, by claiming that she could not be deposed for health reasons — while all the while she was working 12-hour days and leading an active social life. *See Chronology* at 19, ¶ 1. Morgan Stanley similarly misrepresented that other witnesses were unavailable for deposition on certain dates, when Morgan Stanley later admitted that it had not even contacted those witnesses — and denied representing witnesses it had previously indicated were under its control. *See Chronology* at 22, ¶ 7.

Even when CPH was able to depose Morgan Stanley's employees, many of the witnesses gave nonresponsive answers to CPH's questions. For instance, John Tyree refused to say whether he authored correspondence which named Tyree as the sender and which had been produced to CPH by the named recipients of the correspondence. *See Chronology App. Ex. 107* at 160, 207; *Chronology App. Ex. 108*; *Chronology App. Ex. 109*. Similarly, Johannes Groeller denied all but the most limited involvement in the Sunbeam transaction, even in the face of document after document related to the Sunbeam engagement that listed him as the document's sender, and even in the face of a performance review that credited him for his great contributions to Morgan Stanley's Sunbeam team. *See Chronology App. Ex. 132* at 40, 19, 38, 45, 56, 60-61.

Morgan Stanley's pattern of abuse extended to the suit Morgan Stanley Senior Funding ("MSSF") filed against CPH alleging that MSSF relied on CPH's purported misrepresentations about the "synergies" that Sunbeam could expect from acquiring Coleman. Morgan Stanley's

answers to CPH's First Set of Interrogatories — requesting the names of Morgan Stanley employees who relied on the purported synergies misrepresentations — were improper, merely listing individuals who “may have relied, directly or indirectly” on CPH's and MAFCO's supposed misrepresentations, and who “may have” prepared or used Morgan Stanley's synergy-related documents. *See* Chronology App. Ex. 111. When CPH deposed the individual who verified Morgan Stanley's answers, he conceded that he “did not have personal knowledge” of the matters asserted in MSSF's responses and did not recall what he had done to verify them, nor had he detected blatantly obvious errors — even those about his own position at Morgan Stanley. *See* Chronology App. Ex. 105 at 108, 148-49; 155; Chronology App. Ex. 106 at 351-52. Tellingly, after avoidance tactics such as those, MSSF voluntarily dismissed its case rather than comply with the Court's September 30, 2004 Order requiring MSSF to provide an answer to the interrogatories that “fairly meets the question posed.” *See* Chronology App. Ex. 113 (Order); *id.* Ex. 112 (Voluntary Dismissal).

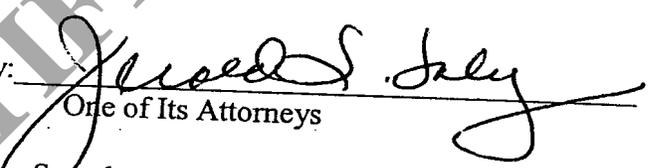
CONCLUSION

In sum, Morgan Stanley's discovery abuses, lack of candor with the Court and CPH, and interference with the proper administration of justice have been a glaring constant throughout this litigation. In light of Morgan Stanley's deliberate misconduct, which continues unabated to this very day, this Court should strike Morgan Stanley's pleadings, enter a default judgment, and impose such other sanctions as may be appropriate, including without limitation informing the jury of Morgan Stanley's further misconduct during this litigation and the imposition of monetary sanctions. The Court's prior sanctions simply have not persuaded Morgan Stanley of the need to comply with its obligations to this Court and the system of justice.

Dated: March 9, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

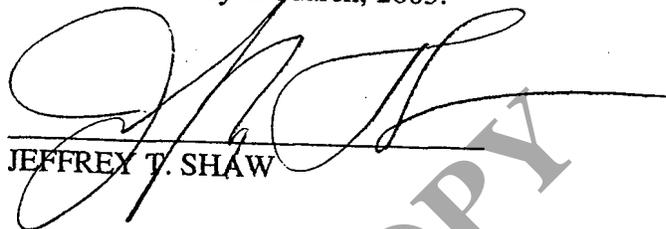
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to all counsel on the attached list on this 9th day of March, 2005.



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**FILED UNDER SEAL
BY MORGAN STANLEY**

Morgan Stanley's Opposition to
CPH's Motion for a Default Judgment
(Corrected Version)

Dated March 13, 2005

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Electronic Evidence Reference Card

Media and Environment Types

Media Type		Data Capacity (GB) Native/Compressed	Max Data Capacity (Pages)
DLT/LTO	LTO		
	LTO 1	100/200	20,000,000
	LTO 2	200/400	40,000,000
DLTape III	LTO 3	400/800	80,000,000
	DLT 200	2.6/2.6	260,000
	DLT 800	6/6	600,000
DLTape IIIXT	DLT 2000	10/20	2,000,000
	DLT 2000XT	15/30	3,000,000
DLTape IV	DLT 4000	20/40	4,000,000
	DLT 7000	35/70	7,000,000
SuperDLT 1	DLT 8000	40/80	8,000,000
	DLT VS 80	40	4,000,000
	DLT VS 126	80	8,000,000
	DLT 1	40/80	8,000,000
	SDLT 220	110/220	22,000,000
	SDLT 320	160	16,000,000
	SDLT 600	300	30,000,000
4mm	DDS1(60M)	1.3/1.3	130,000
	DDS1(90M)	2/2	200,000
	DDS-DC(60M)	1.3/2.6	260,000
	DDS-DC(90M)	2/4	400,000
	DDS-2	4/8	800,000
	DDS-3	12/24	2,400,000
	DDS-4	20/40	4,000,000
	DAT 72-170	72/144	14,400,000
8mm Exabyte DAT	8200/8205	2.5/2.5	250,000
	8200C/8205C	2.5/5	500,500
	8200XL/8205XL	3.5/7	700,000
	8500/8505	5/5	500,000
	8500C/8505C	5/10	1,000,000
	8500XL/8505XL	7/14	1,400,000
	8700	7/14	1,400,000
	Elmeri 820	7/14	1,400,000
	Mammoth-LT	14/28	2,800,000
	Mammoth	20/40	4,000,000
Mammoth-2	60/120	12,000,000	
DTF	DTF-1		
	GW240S	12	1,200,000
	GW730L	42	4,200,000
DTF-2	GW260GS	60	6,000,000
	GW2200GL	200	20,000,000
8mm AIT	AIT-1		
	SDX-T3N	25/50	5,000,000
	SDX-T3C	25/50	5,000,000
AIT-2	SDX1-35C	35/70	7,000,000
	SDX2-38C	36/72	7,200,000
AIT-3	SDX2-50C	50/100	10,000,000
	SDX3-100C	100/200	20,000,000

Media Type		Data Capacity (GB) Native/Compressed	Max Data Capacity (Pages)
1/4" (QIC) Cartridge	3.5" Mini Format DC		
	2120 Series	0.12-0.4/0.24-0.8	24,000-80,000
	MC 3000 Series	0.34-2/0.68-4	68,000-400,000
	Travan 1-5	0.4-10/0.8-20/40	80,000-4,000,000
	Ditto Max	1.5-5/3-10	300,000-1,000,000
	Altra Bolt	3.3-5/6.6-10	660,000-1,000,000
	Sony Superstation	3.3-5/6.6-10	660,000-1,000,000
	C4429 - HP 5GB	2.5/5	500,000
	C4436 - HP 14GB	7/14	1,400,000
	5.25" Full Format		
DC 8000 Series	0.06-0.525/0.06-0.525	6,000-52,500	
DC 9000 Series	1-5/1-5	100,000-500,000	
SLR Series	4-50/8-100	800,000-10,000,000	
1/2" Tape	3570	5	500,000
	3590	10	1,000,000
	9840	40	4,000,000
	9940	60	6,000,000
Hard Drives	Fujitsu		
	IBM	0.1-400	10,000-40,000,000
	Maxtor		
	Quantum		
	Hitachi		
	Samsung		
	Seagate		
	Toshiba		
	Western Digital		
Multi-Drive Servers	RAID 0	0.1-400	10,000-40,000,000
	RAID 1		
	RAID 5		
	Network Area Storage	256-multi-terabyte	40,000-billions
	Storage Area Network		
Other Media	CD-ROM	0.7	70,000
	CD-R	0.7	70,000
	CD-RW	0.7	70,000
	DVD-ROM	4.7	470,000
	DVD-R	4.7	470,000
	DVD-RW	4.7	470,000
	Floppy Disks	0.014	1,400
	Jaz Disks	1/2	100,000-200,000
	PDA (Palm, Pocket PC)	0.05	500
	WORM Platter	1-5	10,000-500,000
Zip Disks	1-25	10,000-25,000	

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EXHIBIT

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Key Terms and Definitions

Admissible - evidence that is acceptable or allowable in court.

Archive - a long-term computer storage area.

Attachments - any file type associated with or attached to an e-mail.

Backup tapes - tape media used to backup data.

Chain-of-custody - a process used to maintain and document the chronological history of electronic evidence. A chain-of-custody ensures that the data presented is "as originally acquired" and has not been altered prior to admission into evidence. RenewData maintains an electronic chain-of-custody link between all electronic data and its original physical media throughout the production process.

Data extraction - the process of removing files and meta-data from backup tapes.

Deleted files and data - recoverable information from deleted files and data may be stored in unallocated or slack space on a computer hard drive.

De-duplication - the process of providing one instance of an item when there was once two or more identical copies. This process usually involves landing all files into a database and then searching for duplicate files.

Basic de-duplication: performed on a select and limited basis, such as for file names and types, and is usually based on the hash value of the entire electronic document.

Dynamic de-duplication: RenewData's proprietary dynamic de-duplication technology handles large volumes of information and ensures that unique meta-data and original content are stored only once. This dynamic de-duplication process is executed as the data flows off the tapes, avoiding large and expensive processing and storage requirements.

Discovery - a pre-trial process in which each party tries to find all the information held by the other party and by certain third parties that is relevant, probative and can be admitted into evidence at trial. Each party is required to cooperate with the other to the extent required by the relevant rules of civil procedure.

Electronic Evidence - according to Black's law dictionary, evidence is "any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc. for the purpose of inducing belief in the minds of the court or jury as to their contention." Electronic information (like paper) generally is admissible into evidence in a legal proceeding.

E-mail - the whole of an electronic document containing the message envelope and message content (attachments, etc.).

Filtering - electronic filtering of e-mails and files for privilege or by keyword, file type or name. Filtering removes files that don't fit the search criteria and reduces the volume of data that requires further investigation.

Forensically sound procedures - procedures used for acquiring electronic information in a manner that ensures it is "as originally discovered" and is reliable enough to be admitted into evidence. Such procedures are defined in part by the US Department of Justice publication "Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations."

Hard drives - the primary computer storage medium in desktop and laptop computers.

Hash - an algorithm that creates a value to verify duplicate electronic documents. A hash mark serves as a digital thumbprint.

Images (or forensic duplicates or mirror images) - a bit-by-bit duplicate of a backup tape or hard drive that is forensically sound.

Internal inquiries - a close examination of a matter in a search for information or truth that is internal to a company.

Investigation - an inquiry usually initiated by a government agency.

Media - the physical material used to store electronic data. Media includes hard drives, backup tapes, computer disks, CD, DVD, PDA, memory, etc.

Media conversion - moving data from one type of media to another such as tape to CD.

Merge - the process of combining various e-mail files (i.e. Microsoft Outlook's .pst) into one file for de-duplication purposes.

Meta-data - meta-data is data about data. Meta-data captures data elements or attributes (name, size, date, type, etc.), data about records or data structures (length, fields, columns, etc.) and data about data (where it is located, how it is associated, ownership, etc.).

Native environment - the original configuration (software, passwords, server configuration, etc.) of a backup tape or e-mail system (i.e. Microsoft Exchange).

Native File - a file saved in the format of the original application used to create the file. Dealing with native files can minimize expensive per-page costs for the traditional TIFF and/or PDF processing and will maximize the relevant information available from the file.

Non-native environment - proprietary RenewData process in which electronic data is obtained directly from backup tapes without the need to recreate a native environment.

Obstruction of Justice - according to Black's law dictionary, obstruction of justice means "impeding or obstructing those who seek justice in a court, or those who have duties or powers of administering justice therein."

Onsite extraction - the extraction of high volumes of data from backup tapes at a client site (no risk of loss of original evidence) - RenewData patent-pending technology.

Paper - the traditional method of printing electronic files.

PDF - (Portable Document Format) a proprietary format of Adobe Corporation, it has become a de facto standard for transmitting documents that the sender does not want to be altered and for transmitting documents to commercial printers and to the Web for online publishing.

Production - delivery of data or information in response to an interrogatory, subpoena or discovery order or a similar legal process.

Repository - a centralized database stored on a computer that houses specific information.

Searching - the ability to look within the data and search by a name, date or keyword to find desired information.

Slack Space - remnant data from deleted files still located in clusters on a hard drive.

Spoilation - generally, the intentional or negligent destruction or alteration of evidence when there is current litigation or an investigation or there is reasonable anticipation that either may occur in the near future. Some jurisdictions also define it as a failure to preserve information that may become evidence.

TIFF - (Tagged Image File Format) a widely used bit-mapped graphics file format. This is essentially a picture of a document.

Unallocated Space - space on a hard drive that potentially contains intact files, remnants of files, subdirectories or temporary files which were created and then deleted by either a computer application, the operating system or the operator.

Unstructured Data - Data that is not in tabular or delimited format. File types include word processing files, html files (web pages), project plans, presentation files, spreadsheets, graphics, audio files, video files and emails.

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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND
FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 03 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

VOLUME 34

TRANSCRIPT OF THE PROCEEDINGS BEFORE
THE HONORABLE ELIZABETH T. MAASS

West Palm Beach, Florida
Monday, March 14, 2005
10:05 a.m. - 12:27 p.m.

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1 A. The review indicated that there were e-mail
2 within the files that I looked at.

3 Q. Actual e-mail messages?

4 A. Yes.

5 Q. I don't want to try to oversell this. How
6 many of these files did you actually open up and look
7 at?

8 A. I selected two NSF files and two PST.

9 THE COURT: I'm sorry. Two of each?

10 THE WITNESS: (Nodding head). From a single
11 tape.

12 BY MR. BYMAN:

13 Q. That's hardly a statistical sample, is it?

14 A. No, it's not. It was done as an overview of
15 our processing to -- with one of our quality control
16 personnel to ensure that I understood how this data had
17 been processed.

18 Q. So at this point let me make sure that we're
19 clear. You can't state with any certainty the quantity
20 of e-mail that you found on these 917 tapes, actual
21 e-mail messages?

22 A. We have not completed that analysis.

23 Q. You can state with some certainty that there
24 are at least 11,000 archive files in which one might
25 expect to find e-mail messages; is that right?

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.

Defendant.

**MORGAN STANLEY & CO., INC.'S OVERNIGHT RESPONSE TO CPH'S
ADDITIONAL SUBMISSION IN SUPPORT OF ITS MOTION FOR DEFAULT**

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CPH's "Issue"	What CPH Represented to this Court	What CPH Misrepresented or Omitted
<p>Can we have any confidence that Morgan Stanley has located, much less searched and processed all relevant existing email?</p>	<p>CPH correctly notes that Morgan Stanley has found a number of new tapes since May 14, 2004. CPH also claims that various statements of Mr. Clare, Mr. Saunders and Morgan Stanley in February 2005 that all back-up tapes had been found were untrue when made.</p>	<p>While subsequent events have shown that additional tapes existed, there is no evidence that these statements were known or suspected to be false when made.</p>
<p>What do we know about Morgan Stanley's willful destruction of email? In violation of Federal law, Morgan Stanley overwrote – destroyed – emails after one year. Morgan Stanley supposedly put an end to that systematic destruction in January 2001. But did it?</p>	<p>CPH contends that Morgan Stanley has admitted to the SEC that more than 10% of its back-up tapes continued to be overwritten despite Federal law and its own directive.</p>	<p>Morgan Stanley's analysis of 7,482 tapes for the SEC showed that 53, fewer than 1%, were overwritten. And, the substantial duplication inherent in the back-up tapes likely means that few unique emails were lost. (Feb. 10, 2005 Letter at 15-16.)</p> <p>SEC Rule 17a-4 only requires the retention of documents for three years, so that relevant 1997-1998 emails would have been recycled in any event before CPH filed suit.</p>
<p>CPH moves to compel email production in October 2003.</p> <p>Was Morgan Stanley's response in good faith?</p>	<p>CPH suggests Morgan Stanley has lied about the cost and extreme burden of restoring email, contrasting one statement that it is burdensome and expensive with a different statement that it is quickly accessible.</p> <p>CPH claims Morgan Stanley misled the Court and CPH by not disclosing that it had begun building an Archive in January 2003.</p>	<p>CPH's own chart belies its false comparison. One statement (cost and extreme burden) relates to restoring email off back-up tapes, while the other statement (quickly accessible) relates to restoring email off the Archive.</p> <p>No good deed goes unpunished. In 2003, the Archive only captured and contained email <i>from 2003 forward</i>, and, thus, could not be used to produce relevant <i>Coleman</i> email. (Feb. 10, 2005 Letter at 25.) It was only in 2004, when Morgan Stanley voluntarily migrated email from its old back-up tapes to the Archive, that the Archive became useful in this litigation -- at which time Morgan Stanley used it to produce emails to comply with (and go well beyond) the Agreed Order. (Feb. 10, 2005</p>

CPH's "Issue"	What CPH Represented to this Court	What CPH Misrepresented or Omitted
		Letter at 7, 20; Riel Dep. at 50-56.)
<i>How complete/reliable was the Archive when Morgan Stanley used it in May 2004 to produce documents and certify completeness?</i>	CPH asserts that Morgan Stanley failed to disclose to CPH and the Court that, as of June 7, 2004, only 120 of the 143 SDLT output tapes produced by NDCI had been processed into the Archive. CPH suggests Mr. Riel's Certificate of Compliance was, therefore, false.	It is uncontroverted that Morgan Stanley understood that NDCI was processing, and the Archive was being loaded with, the <i>oldest</i> tapes first. (Riel Dep. at 67-68; 139-140.) The Agreed Order required Morgan Stanley to produce emails off the <i>oldest</i> full back-up tapes. Thus, when Mr. Riel searched the Archive for old emails in April-May 2004, he reasonably believed it contained the emails from the earliest full backup tape available for each person identified. (Riel Dep. at 57-58; 65-66.)
<i>How complete/reliable was the Archive at the time of the February 14 Hearing?</i>	CPH points out that Mr. Saunders was mistaken when he expressed confidence a month ago that all back-up tapes had been found, and that Morgan Stanley was likely mistaken when it told the SEC that all recoverable pre-2003 email had been migrated to the Archive.	There is no evidence that Mr. Saunders or Morgan Stanley knew or should have known that their statements were false when made. It is true that additional back-up tapes have been found since mid-February, which may contain recoverable email. But it is not known whether any of these tapes contain responsive email under the Agreed Order. (Mar. 14, 2005 Tr. at 258-263.) Previous new-found tapes have not resulted in many new, unique responsive emails because of the substantial redundancy inherent in Morgan Stanley's back-up tapes. (Mar. 14, 2005 Tr. at 255-256.)
<i>What problems existed at the time the May search was made which affected the completeness of the search?</i>	CPH claims every time it asks, it gets a different list of problems.	There is no questions that coding errors and other glitches existed in the Archive when searches were run in May 2004. (Feb. 14, 2005 Tr. at 41-42, 52.) As Microsoft Corporation's many product patches demonstrate, software

CPH's "Issue"	What CPH Represented to this Court	What CPH Misrepresented or Omitted
		<p>glitches are common in large, complex IT projects. (Mar. 7, 2005 Gorman Dep. at 53.) Morgan Stanley has worked hard to identify and resolve these problems, and in any event, its Archive search was much more robust than the search required by the Agreed Order. (Mar. 14, 2005 Tr. at 256.)</p>
	<p>CPH cites Mr. Riel for the notion that 10,138 tapes that did not contain email had been recycled.</p>	<p>Morgan Stanley, in its SEC Wells submission, analyzed these 10,138 tapes and determined that only 31 were non-redundant back-ups of email servers that had been overwritten in violation of Morgan Stanley's January 2001 directive. And, even on those 31 tapes, statistical analysis indicates that it is likely that only a tiny fraction (around 1%) of unique emails were lost. (Feb. 10, 2005 Letter at 15-16.) There is no evidence that any of these emails related to this case, and it remains undisputed that none of Morgan Stanley's email retention or retrieval practices was driven by this case.</p>
<p>Why did Morgan Stanley create the email Archive?</p>	<p>CPH claims Morgan Stanley attempted to curry favor with the SEC by claiming voluntarily to have migrated old email to its Archive, while at the same time telling CPH and the Court that it should not be required to make full production because of the burden of searching back-up tapes.</p>	<p>Morgan Stanley did not simply <i>claim</i> voluntarily to have migrated old email to its Archive, it <i>had</i> voluntarily migrated old email to its Archive. (Mar. 13, 2005 Anfang Dep. at 74-75.) And, CPH's fiction that Morgan Stanley cried "burden" to limit its email production to a handful of tapes is remarkable given that it is undisputed that Morgan Stanley used its comprehensive Archive, not individual back-up tapes, to produce emails in this case. (Riel Dep. at 54, 67-68.)</p>
	<p>CPH claims "Morgan Stanley never told the SEC that it had obligations under the April Order which</p>	<p>Morgan Stanley has no obligation to inform the SEC how it intends to meet its discovery</p>

CPH's "Issue"	What CPH Represented to this Court	What CPH Misrepresented or Omitted
	it intended to meet by using the Archive."	obligations in civil litigation. Also, the Archive was not created, updated or loaded with new tapes to satisfy Morgan Stanley's obligations in this case, although Morgan Stanley did choose to capitalize on this investment for plaintiff's benefit.
<i>Was there anything extraordinary about Morgan Stanley's decision to create an Archive?</i>	CPH claims that Morgan Stanley's statements that "everybody on the street was building an email archive" and that "no other firm [was] taking similar steps to migrate email" "cannot [both] be true. One is false."	CPH's statement is disingenuous. The simple truth is that everyone on the street was building an Archive for <i>current/future</i> email, but Morgan Stanley is the only firm (of which it is aware) that has voluntarily and at great expense elected to migrate its <i>old</i> emails from back-up tapes to its new Archive to make them more accessible. (Feb. 10, 2005 Letter at 8, 20.)
<i>Was the June 23, 2004 Completeness Certificate true or false?</i>	CPH contends that Mr. Riel's Certificate of Completeness was false when made because 1,423 DLT and 738 8mm tapes had not been processed. CPH goes so far as to suggest that Mr. Riel only signed the Certificate to keep Morgan Stanley's lawyers happy.	It is undisputed that Mr. Riel did not know or suspect that the Brooklyn and 8mm tapes contained email, much less responsive email, when he signed his Certificate (Riel Dep. at 75-78), and that he believed then, and now, that his Certificate was accurate (Riel Dep. at 50-58; 64-68; 162).
	CPH suggests that Mr. Riel's deposition supports the notion that Mr. Riel's Certificate was false because he did not search back-up tapes, as required by the Agreed Order.	Another remarkable statement. Mr. Riel made clear at his deposition, over and over again, that he believed emails from Morgan Stanley's oldest back-up tapes were migrated to the Archive before he ran his search, so that his search picked up responsive emails from back-up tapes. (Riel Dep. at 53-54; 57-58; 67-68.)
<i>What is Arthur Riel's status?</i>	CPH suggests that Morgan Stanley changes its view of Mr. Riel from "trusted employee" to "untrustworthy" to suit its purposes.	Morgan Stanley trusted Mr. Riel when he signed the Certificate in June 2004, but lost faith in his trustworthiness when it learned

CPH's "Issue"	What CPH Represented to this Court	What CPH Misrepresented or Omitted
<i>Where did the 8,000 pages of production made in November 2004 come from?</i>	CPH correctly points out that Morgan Stanley's representations about the November 2004 production of 8,000 pages have been confused.	months later that Mr. Riel had been secretly monitoring the emails of his supervisors, without authorization and in violation of Morgan Stanley's Code of Conduct. (Riel Dep. p. 16; 146-154.) Morgan Stanley apologizes for unintentionally confusing CPH and the Court. Past misstatements have resulted from haste, honest misunderstandings, and the difficulty of determining which pages of the production came from which of the tapes whose email had been migrated into the Archive. As adduced at this week's hearing, the evidence is that, of the 8000 pages, most are duplicates of emails and attached reports, with only 13 unique emails (some with attachments) in the production. Of these 13 unique emails, three were inserted into the Archive in May-August 2004, nine were captured by the May 2004 search of the Archive but withheld as non-responsive by Kirkland & Ellis, and one was in the Archive in May 2004 but not captured by the query. (Mar. 14, 2005 Tr. at 174-75.)
<i>When were the "newly discovered" tapes actually discovered?</i>	CPH claims that Morgan Stanley's representations about the timing of the discovery of the Brooklyn tapes vary slightly from internal IT meeting minutes.	The "discrepancy" between "sometime during the summer" and "May 6" is insignificant.
<i>The 1423 Brooklyn "Found" Tapes</i>		
<i>When were the "newly discovered" tapes actually</i>	CPH highlights the difference between when Morgan Stanley's IT department learned of the	While the miscommunication is unfortunate, CPH has failed to supply any evidence that the

CPH's "Issue"	What CPH Represented to this Court	What CPH Misrepresented or Omitted
<p>discovered?</p> <p><i>The 738 8mm Tapes</i></p>	<p>8mm tapes (2002) and when the Law Division did (2004).</p>	<p>Law Division knew about the 8mm tapes before November 2004.</p>
<p><i>When did Morgan Stanley learn that the newly discovered tapes actually contained email?</i></p>	<p>CPH correctly notes that the IT Department learned that a portion of the Brooklyn tapes contained some email in July 2004, while the Law Division only learned in October 2004.</p>	<p>Again, while the miscommunication is regrettable, CPH offers no evidence that IT told the Law Division before October 2004 that email existed on some Brooklyn tapes.</p>
<p><i>When did Morgan Stanley learn that the newly discovered tapes actually contained 1998 email?</i></p>	<p>CPH notes that IT determined in July 2004 that one or more Brooklyn tapes had some email from 1998 and 1999, and then purports to contrast that with statements in January and February 2005 that Morgan Stanley could not determine the type or time period of data that might be recovered from tapes that had yet to be restored.</p>	<p>The IT Department did not inform the lawyers that it had found pre-2000 email on the Brooklyn tapes until October 2004. (Feb. 10, 2005 Letter at 25.) And, knowledge that the Brooklyn tapes had some pre-2000 email is not inconsistent with the statements that only by restoring new-found tapes could Morgan Stanley determine what email, if any, was on them.</p>
<p><i>Not that it matters, but when did Mr. Riel share with lawyers what Morgan Stanley knew, that the found tapes contained email?</i></p>	<p>CPH cites Mr. Riel's deposition for the suggestion that Mr. Riel may have had a conversation with Morgan Stanley's lawyers after June 2004 in which he may have told them that the Brooklyn tapes contained email.</p>	<p>CPH's surmise is flatly contradicted by Mr. Riel's testimony. He does not recall telling Morgan Stanley's lawyers that the Brooklyn tapes had email (Riel Dep. 86-87; 142), and, indeed, he voluntarily retracted the testimony CPH cites later in his deposition and said he was not sure he had <i>any</i> conversation with Morgan Stanley's lawyers after June 2004 (Riel Dep. 123-124).</p>
<p><i>When did Morgan Stanley disclose the existence of the found tapes and the fact that they contained email?</i></p>	<p>CPH claims Morgan Stanley delayed telling CPH that the found tapes contained email.</p>	<p>The delay between when the Law Division learned (late October 2004) and when Kirkland & Ellis wrote CPH's counsel (November 17, 2004) was minor and did not prejudice CPH.</p>

CPH's "Issue"	What CPH Represented to this Court	What CPH Misrepresented or Omitted
<p><i>When did Morgan Stanley counsel know that the Archive was not complete as of May 14, 2004?</i></p>	<p>CPH suggests that Morgan Stanley's counsel knew the Archive was not complete in May 2004, rather than October 2004.</p>	<p>Morgan Stanley's counsel learned from Mr. Riel that "tapes" had been found in June 2004, but Mr. Riel specifically told them that he did not know whether the tapes were email tapes. It is uncontroverted that counsel did not learn that some of the found tapes contained email until late October 2004. (Feb. 10, 2005 Letter at 50.)</p>
<p><i>When - and why - did Morgan Stanley put any priority on getting the data in staging into the Archive?</i></p>	<p>CPH suggests that the only reason Morgan Stanley prioritized moving email data from "staging" into the Archive in October 2004 was because the SEC initiated an inquiry into Morgan Stanley's alleged destruction of email back-up tapes.</p>	<p>Ms. Gorman testified that the migration of email data from "staging" into the Archive stopped shortly after Mr. Riel was placed on administrative leave in late August 2004. (Feb. 14, 2005 Tr. at 50.) Morgan Stanley began to prioritize the process of migrating email data again in October 2004, after the Law Division was alerted. (Feb. 14, 2005 Tr. at 50, 61.)</p>
<p><i>Why did it take so long to process the data in staging?</i></p>	<p>CPH cites Mr. Riel's self-serving testimony for the notion that <i>he</i> could have speeded up the processing of the email data in "staging."</p>	<p>As noted above, Mr. Riel was placed on administrative leave in August 2004 for unauthorized monitoring of his superiors' emails in violation of Morgan Stanley's Code of Conduct. (Riel Dep. at 16.) The Firm's actions with regard to Mr. Riel may have slowed the migration process, but were an unfortunate and unavoidable consequence of his misconduct.</p>
	<p>CPH suggests that the processing of email data would have gone faster had Morgan Stanley simply accepted CPH's proposal to use a third-party vendor to process and search back-up tapes.</p>	<p>CPH's self-serving speculation, which parrots the bravado of its expert, Quintin Gregor from eMag Solutions, at the February 14, 2005 hearing, is belied by events of the last month. Mr. Gregor claimed that email data could be completely extracted from 2,160 back-up tapes within six weeks -- or four weeks, if expedited. (Feb. 14, 2005 Tr. at 229.) However, after having the tapes an entire month, Renew Data</p>

CPH's "Issue"	What CPH Represented to this Court	What CPH Misrepresented or Omitted
		<p>was able to process only 1-2% of the data. (Mar. 13, 2005 Wolfe Dep. at 50-54.) Morgan Stanley was quick by comparison, largely processing more than 35,000 tapes in about six months. (Feb. 10, 2005 Letter at 8, 25-26.)</p>
<p>How much data – how much potential email – is on the “found” tapes?</p>	<p>CPH tries to make much of Morgan Stanley’s varying descriptions of the quantity of information in “staging.”</p>	<p>Morgan Stanley regrets that it has given different estimates of the amount of email in “staging.” Any miscommunication was unintentional and did not prejudice CPH. Moreover, regardless of the precise amount of email data in the staging area, all of the data that was in “staging” at the time Ms. Gorman assumed Mr. Riel’s responsibilities was migrated to the Archive by early February 2005. (Mar. 14, 2005 Tr. at 197.)</p>
<p>The Bottom Bottom-Line</p>	<p>Morgan Stanley has made a considerable investment to create a more accessible and searchable Archive out of hundreds of millions of unique e-mails from tens of thousands of cumbersome and unwieldy magnetic tapes. Those efforts have enabled Morgan Stanley, in this case, to search an Archive containing emails from tens of thousands of back-up tapes rather than just the thirty-six tapes required by the Agreed Order. CPH cannot begin to defend its own discovery practices, when it expressly recognized the likelihood of Sunbeam litigation but then carried out a systematic campaign to “purge” its files of emails and electronic documents until “everything was long gone...” (Jan. 21, 2004 Fasman Dep. at 156.)</p>	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by hand delivery on this 15th day of March 2005.

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1 IN THE CIRCUIT COURT FOR THE
2 15TH JUDICIAL CIRCUIT IN AND FOR
3 PALM BEACH COUNTY, FLORIDA

4 CASE NO. 03 CA 005045 AI

5 COLEMAN (PARENT) HOLDINGS, INC.,

6 Plaintiff,

7 vs.

8 MORGAN STANLEY & CO., INC.,

9 Defendant.

10
11
12 VOLUME 37

13 PROCEEDINGS BEFORE THE HONORABLE ELIZABETH T. MAASS
14
15
16
17
18

19 Tuesday, March 15, 2005

20 Palm Beach County Courthouse

21 Courtroom 11-A

22 205 North Dixie Highway

23 West Palm Beach, Florida 33401

24 1:30 p.m. to 6:40 p.m.
25

1 You know, I don't think it takes a great
2 deal of imagination to conceive of all sorts of
3 communications on every issue involved.

4 The damage issue was part of that little
5 sheet I handed you. You know, he's accepting
6 14.1 million shares of stock, the current value
7 is 680 million dollars, he's going to take a 680
8 million dollar hit because this company is going
9 to tank when this information comes out.
10 Relevant to damages? Seems to me it would be.

11 There is not an element in this case as to
12 which we cannot imagine an e-mail that they
13 would clearly want to destroy because it proves
14 that element of the case without any further
15 inquiry. Every single element. There is a
16 response with regard to every single element.

17 THE COURT: Although, with some of them, for
18 instance, reliance there would be not direct
19 evidence of reliance.

20 MR. SCAROLA: It could be very direct
21 evidence. It could be a statement that is made
22 by a Coleman (Parent) Holdings executive saying:
23 Are you sure about this? Because I'm relying on
24 this.

25 THE COURT: It would be a statement in an

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

**ORDER ON CPH'S RENEWED MOTION FOR ENTRY OF DEFAULT
JUDGMENT**

THIS CAUSE came before the Court March 14 and 15, 2005, on CPH's Renewed Motion for Entry of Default Judgment, with both parties well represented by counsel.

Coleman (Parent) Holdings, Inc. ("CPH"), has sued Morgan Stanley & Co., Inc. ("MS & Co."), for aiding and abetting and conspiring with Sunbeam to perpetrate a fraud. Early in the case, CPH was concerned that MS & Co. was not thoroughly looking for emails responsive to its discovery requests. On April 16, 2004, the Court entered an Agreed Order ("Agreed Order") that required MS & Co. to search its oldest full backup tapes for emails subject to certain parameters and certify compliance. MS & Co. certified compliance with the Agreed Order on June 23, 2004. On November 17, 2004, CPH learned that MS & Co. had found some backup tapes that had not been searched. On January 26, 2005 it served its Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order ("Adverse Inference Motion"), claiming that MS & Co.'s violation of the Agreed Order, coupled with its systemic overwriting of emails after 12 months, justified an adverse inference against it. The Court ordered certain limited discovery. Responses to that discovery prompted CPH to orally amend its Adverse Inference Motion to seek more severe sanctions.

The Court held an evidentiary hearing on the Adverse Inference Motion on February

14, 2005. On March 1, 2005 it issued its Amended Order on Coleman (Parent) Holdings Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order ("Adverse Inference Order"). In its current Motion, CPH argues that it has since learned that the discovery abuses addressed in the Adverse Inference Motion and Order represent only a sampling of discovery abuses perpetrated by MS & Co. and that the abuses have continued, unabated. It claims that these abuses, when taken as a whole, infect the entire case. To understand CPH's argument, it is necessary to go back to the beginning.

This case arises out of an acquisition transaction that was negotiated and consummated in late 1997 and early 1998, in which CPH sold its 82% interest in the Coleman Company, Inc., to Sunbeam Corporation. MS & Co. served as financial advisor to Sunbeam for parts of the acquisition transaction and served as the lead underwriter for a \$750,000,000.00 debenture offering that Sunbeam used to finance the cash portion of the deal.

CPH's Complaint¹ alleged claims against MS & Co. arising from this transaction for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy, and sought damages of at least \$485 million.

On May 12, 2003, MS & Co. was served with the Complaint and CPH's First Request for Production of Documents ("Request"). The Request sought, in essence, all documents connected with the Sunbeam deal. "Documents" was broadly defined, and specifically included items electronically stored. Concerned that, out of more than 8,000 pages of documents produced, it had received only a handful of emails, CPH on October 29, 2003, served its Motion to Compel Concerning E-Mails. That motion sought an order requiring MS & Co. to make a full investigation for email messages, including a search of magnetic tapes and hard drives; produce within 10 days all emails located; and produce a Rule 1.310 witness.

¹On February 17, 2005, CPH served its First Amended Complaint, which dropped the claims against MS & Co. for fraudulent and negligent misrepresentation, leaving only the aiding and abetting and conspiracy claims.

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within 20 days "to describe the search that was conducted, identify any gaps in Morgan Stanley's production, and explain the reasons for any gaps."

In its Opposition to Coleman (Parent) Holdings, Inc.'s Motion to Compel served November 4, 2003, MS & Co. argued that CPH wanted "this Court to order a massive safari into the remote corners of MS & Co.'s email backup systems" and represented that "(t)he restoration efforts demanded by CPH would *cost at least hundreds of thousands of dollars* and require several months to complete (emphasis in original). MS & Co. argued that CPH's "true" motive was to "harass and burden MS & Co. with unnecessary and costly discovery demands and attempt to smear MS & Co. with out-of-context recitations from other proceedings" because "CPH *concedes* that MS & Co. is only able to restore email from backup tapes from January 2000 and later - *more than a year and a half after the events that allegedly gave rise to CPH's claims,*" (emphasis in original).

CPH's "concession" was based on representations like the kind made to it by MS & Co.'s counsel in a March 11, 2004 letter that suggested "(t)he burden on Morgan Stanley from . . . a wholesale restoration [of email back up tapes], both in terms of dollars and manpower would be enormous. Regardless of who performs the initial restoration, it would require hundreds (perhaps thousands) of attorney-hours to review millions of irrelevant and non-responsive e-mails . . ."²

In response to CPH's Motion to Compel, the parties agreed to reciprocal corporate

²Complaints about MS & Co.'s tactics are not new. See Ex. 196 [February 26, 2004, letter from EEOC to Hon. Ronald L. Ellis in EEOC/Schieffelin v. Morgan Stanley & Co., Inc., et al., 01-CV-8421 (RMB) (RLE) (S.D.N.Y.): "(w)hen EEOC received [Morgan Stanley's] January 27, 2004 Responses to EEOC's Fifth Requests for Production of Documents which did not contain any e-mails, the parties communicated further. At that time, Morgan Stanley took the position that searching for e-mails would be burdensome both in regards to expense and the time it would take to respond. While the parties were in the process of attempting to work out these disputes, EEOC for the first time learned that [Morgan Stanley has] an easy, systematic ability to search for relevant documents. In a February 16, 2004, conversation with an IT representative of [Morgan Stanley], EEOC learned that [Morgan Stanley has] an e-mail system, which, while not yet fully comprehensive, was easily searchable on February 18, 2004, the close of discovery . . . which is certain to produce discoverable information highly relevant to EEOC's and Plaintiff-Intervenor's claims . . . After disclosing their state-of-the-art system to EEOC, [Morgan Stanley] dropped [its] assertion that the process was too expensive, but maintained that they refuse to search for e-mails because it is burdensome for attorneys to review large numbers of documents prior to production.")

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depositions on the email issue. CPH deposed Robert Saunders on February 10, 2004.³ After completion of the corporate representative depositions, and unable to obtain MS & Co.'s agreement to a mutual email restoration protocol, CPH served its Motion for Permission to have Third Party Retrieve Morgan Stanley E-Mail and Other Responsive Documents, proposing that a third party vendor be given access to both parties' email systems for restoration at each party's expense. At the hearing on that Motion, CPH offered to split the expenses evenly. MS & Co. refused.

MS & Co.'s continued assertions that the email searches could be conducted only at enormous cost and would be fruitless because there were not backup tapes with email from 1997 and 1998 were confirmed to the Court by MS & Co.'s counsel, Thomas Clare of Kirkland & Ellis, at a hearing held March 19, 2004:

Mr. Scarola: Electronic records of e-mails that have been exchanged.

The Court: Do we agree that there has been such a request outstanding?

Mr. Clare: There has been a request outstanding.

The Court: And have you all objected?

Mr. Clare: From the beginning.

The Court: And what's the basis of the objection?

Mr. Clare: We objected to the breadth of the request that they're making. And to answer Your Honor's question directly – and the burden that is associated with it – that given the particular e-mail back-up tapes that are in existence five, six years after the fact of these transactions, that the scope of the e-mail request that they are seeking is improperly and unduly burdensome given the enormous costs that would be required, given the fact that the time period for which we have back-up tapes post dates the events by several years.

Unable to resolve the email issue, on April 9, 2004, CPH served its Motion to Compel

³Saunders provided misleading information in his deposition. See footnote 12, infra.

Concerning E-Mails and Other Electronic Documents. On the eve of the hearing on CPH's Motion to Compel, the parties reached an accommodation, and on April 16, 2004 the Court entered the Agreed Order. Under the Agreed Order, MS & Co. was required to (1) search the oldest full backup tape for each of 36 MS & Co. employees involved in the Sunbeam transaction; (2) review emails dated from February 15, 1998, through April 15, 1998, and emails containing any of 29 specified search terms such as "Sunbeam" and "Coleman" regardless of their date; (3) produce by May 14, 2004, all nonprivileged emails responsive to CPH's document requests; (4) give CPH a privilege log; and (5) certify its full compliance with the Agreed Order.

As required by the Agreed Order, MS & Co. produced about 1,300 pages of emails on May 14, 2004. It did not, however, certify compliance with the Agreed Order. After prompting by CPH, on June 23, 2004, MS & Co. served a certificate of compliance signed by Arthur Riel, an Executive Director and manager of its Law/Compliance IT Group.⁴

CPH got its first indication that the Agreed Order may have been violated in the late fall of 2004.

On November 17, 2004, Clare wrote Michael Brody of Jenner & Block, CPH's outside counsel, that MS & Co. had "discovered additional e-mail backup tapes . . ."; that "(t)he data on some of [the] newly discovered tapes has been restored;" that "we have re-run the searches described in [the Agreed Order]"; that "some responsive e-mails have been located as a result of that process"; and that "(w)e will produce the responsive documents to you as soon as the production is finalized."

On December 14, 2004, Brody wrote Clare back:

in [your November 17, 2004 letter], you state that Morgan Stanley located additional email backup tapes, and that you

⁴Though CPH would not learn for months that the certificate was false, and even then the magnitude of MS & Co.'s misrepresentations would not be admitted, MS & Co. personnel, including in-house counsel, knew the certification of compliance was false when made.

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would be producing documents soon. Within two days of that letter, you produced some emails to us. In your November 17, 2004 letter, however, you also indicated that "some of the backup tapes are still being restored." Have those backup tapes been restored? Have you found additional responsive emails? If so, when will Morgan Stanley produce those emails? How is it that the tapes were only recently located?

On December 17, 2004, Clare wrote back, telling Brody "(n)o additional responsive e-mails have been located since our November production."⁵

Brody wrote back to Clare December 30, 2004, noting the deficiencies in Clare's correspondence:

You do not inform us whether the review of the recently-located backup tapes still is ongoing. Please confirm that all email backup tapes from the relevant time period have been reviewed and all responsive emails have been produced. If the review still is proceeding, please let us know when the review will be completed.

Clare wrote back on January 11, 2005, telling Brody that the "restoration of e-mail backup tapes is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time."

Concerned about Clare's lack of candor, on January 19, 2005 Brody wrote again:

I write in response to your January 11, 2005 letter concerning e-mails back-up tapes. Unfortunately, your letter raises more questions than it answers. As I requested in my December 14, 2004 letter, please explain the circumstances under which Morgan Stanley located these backup tapes and advise us of the date on which the tapes were located.

⁵Not only does this letter fail to answer Brody's legitimate questions, it implies that MS & Co. was still processing and reviewing emails from the newly found tapes. As we now know, though, no additional information was migrated to the archives between approximately August 18, 2004 and January 15, 2005. Of course "no additional responsive e-mails [would have been] located."

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Further, please explain your statement that "the next set of backup tapes" is scheduled to be restored "at the end of January." How many tapes will be restored by the end of January? When exactly in January will Morgan Stanley complete the process of restoring and searching these tapes for responsive documents? Are there other backup tapes that are not yet in the process of being restored? If so, please advise us of (a) the number of tapes that are not yet in the process of being restored; (b) the time period of the data contained on those tapes; and (c) Morgan Stanley's timetable for restoring and searching those tapes. In addition, please explain why those tapes are not yet in the process of being restored. Please also explain why Morgan Stanley cannot complete the restoration and searching of all remaining backup tapes before "the end of January." As you know, our trial is scheduled to begin on February 22, 2005.

We look forward your complete response to these questions no later than January 21, 2005 so that we can bring this matter to the Court's attention, if necessary.

Conforming to what was by now his usual stonewall tactic, Clare responded by letter dated January 21, 2005:

I write in response to your January 19, 2005 letter regarding Morgan Stanley's production of e-mails restored from backup tapes.

Morgan Stanley completed its initial production of restored e-mail messages on May 14, 2005. The May 2004 production was conducted in accordance with the agreed-upon order governing, and the searches that resulted in that production encompassed data from all of the backup tapes known to exist at the time. Subsequent to the May 2004 production, additional tapes were found in various locations at Morgan Stanley. The discovered tapes were not clearly labeled as to their contents, were not found in locations where e-mail backup tapes customarily were stored, and many of the tapes

were in a different format than other e-mail backup tapes. In November 2004, once it was determined at least some of the discovered tapes contained recoverable e-mail data, Morgan Stanley re-ran the searches described in the agreed-upon order. Those searches resulted in Morgan Stanley's November 2004 production.

Morgan Stanley's efforts to restore the backup tapes discovered after the May 2004 production are ongoing. It is a time-consuming and painstaking process and, given the absence of clear labels or other index information for the backup tapes, there is no way for Morgan Stanley to know or accurately predict the type or time period of data that might be recovered from tapes that have yet to be restored. While Morgan Stanley cannot accurately estimate when all of the tapes will be restored or whether any recoverable data will be found on the remaining tapes, we understand from Morgan Stanley that, when the agreed-upon searches are run again at the end of January, those searches will include approximately one terabyte of additional data restored since the prior production.

On January 26, 2005, CPH served its Adverse Inference Motion, seeking sanctions based on MS & Co.'s disclosure of the newly found tapes. Hearing was scheduled for February 14, 2005. In preparation for that hearing, on February 3, 2005 the Court ordered MS & Co. to produce by noon on February 8, 2005 "(i) all documents to be referred to or relied on by any of the witnesses in his or her testimony; and (ii) all documents within MS & Co.'s care, custody, or control, addressing or related to the additional email backup tapes, including matters relating to the time or manner in which they were discovered; by whom they were discovered; who else learned of their discovery and when; and the manner and timetable by which they were be restored and made searchable, including any correspondence to or from outside or prospective outside vendors."

The Adverse Inference Order outlined the discovery abuses shown at the February 14, hearing. They included MS & Co.'s undisclosed discovery of the 1,423 "Brooklyn" tapes no

later than May of 2004; the undisclosed discovery of the 738 8-millimeter backup tapes in 2002; the presence of unsearched data in the staging area; the discovery of 169 DLT tapes in January 2005; the discovery of more than 200 additional tapes on February 11 and 12, 2005; the discovery of a script error that had prevented MS & Co. from locating responsive email attachments; and discovery of another script error that had infected the ability to gather emails from Lotus Notes platform users.

In response to these deficiencies, the Court issued the Adverse Inference Order. That Order reversed the burden of proof on the aiding and abetting and conspiracy elements and included a statement of evidence of MS & Co.'s efforts to hide its emails to be read to the jury, as relevant to both its consciousness of guilt and the appropriateness of punitive damages. It specifically provided that "MS & Co. shall continue to use its best efforts to comply with the April 16, 2004 Agreed Order and . . . February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search."⁶

It is now clear why MS & Co. was so unwilling to provide CPH with basic information about how and when the tapes were found or when production would be complete. First, candor would have required MS & Co. to admit that it had not done a good faith search for the oldest full backup tapes, and that Riel's certificate of compliance was false. Some unsearched tapes had been found by 2002; others had been found no later than May, 2004. Together, over 2,000 tapes had been found which were not searched prior to the May production. It is untrue that the tapes were "not in locations where e-mail backup tapes customarily were stored."

⁶Concerned that MS & Co. had been less than candid with both CPH and the Court, on February 4, 2004, the Court entered its Order on Coleman (Parent) Holding's ore tenus Motion to Participate in Search of Additional E-Mail Backup Tapes or Appoint Third Party to Conduct Search, ordering MS & Co. to pay for a third party vendor to check its compliance with the Agreed Order. The Court previously found that the two scripts errors testified to by Allison Gorman at the February 14, 2005, hearing would not have been discovered or revealed without the threat that the third-party vendor would discover the errors. Given Ms. Gorman's testimony at the March 14, 2005, hearing, though, it now appears MS & Co. knew about the errors before the appointment of the third-party vendor. Consequently, the errors were only revealed, but not discovered, in response to the February 4, 2004, Order.

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Second, MS & Co. desperately wanted to hide an active SEC inquiry into its email retention practices.^{7 8 9 10} Finally, MS & Co. did not want to admit the existence of the historical email archive, which would expose the false representations it had made to the Court and used to induce CPH to agree to entry of the Agreed Order.^{11 12}

⁷On December 17, 2003, CPH served its Third Request for Production seeking "(a)ll materials and documents submitted to the United States Securities and Exchange Commission ("SEC"), received from the SEC, or reflecting communications with the SEC in connection with any investigation, inquiry, or examination concerning or relating to Morgan Stanley's policies and/or procedures with regard to the retention, storage, deletion, and/or back-up of electronic mail (emails) . . ." On October 12, 2004, CPH served its Request for Supplemental Documents seeking to bring MS & Co.'s document production current, requesting "(a)ll documents not previously provided by MS & Co. that are responsive to any Request for Production of Documents that CPH previously has served upon MS & Co. in the litigation, including documents obtained by MS & Co. or its counsel after the date of MS & Co.'s prior productions." No SEC documents were produced in response to either request; no privilege log was generated. On other privilege logs generated in response to court orders, MS & Co. did not show the SEC on the distribution portion of the log. See March 9, 2005 Order Following in Camera Inspection (Riel/SEC Documents) footnotes 1, 2. See, also, footnote 15, *infra*. Kirland & Ellis, outside counsel for MS & Co. in this litigation, represents MS & Co. in the SEC's inquiry into its email retention practices.

⁸MS & Co. manipulated the unhinging of the SEC's email investigation from the IPO litigation in January, 2005, to conceal the email issues as long as possible.

⁹It is now apparent that MS & Co. chose deliberately to keep its affidavits concerning the informal SEC inquiry submitted to support its privilege claims vague, despite two requests from the Court seeking specific information. See February 28, 2005 Order (Release of Exhibits).

¹⁰See February 25, 2005 Order on Morgan Stanley's Objections to Coleman (Parent) Holding Inc.'s Notice to Produce at Hearing and Motion for Protective Order and March 4, 2005 Order on Plaintiff's ore tenus Motion to Compel Additional Production.

¹¹While MS & Co. contends that its representations to the Court that it would cost "hundreds of thousands of dollars" to search the backup tapes and that there was no pre-2000 backup tapes were not false, they were deliberately misleading: MS & Co. never had an intention to search the back up tapes to respond to the requests and some of the year 2000 backup tapes backed up email back to 1997.

In 2001, MS & Co. decided to create the email archive. By June, 2003, it had decided that the archive should have two components. First, MS & Co. wanted to create an archive that captured and stored email as it was generated. Second, MS & Co. wanted to add historical data to the archive. That task involved searching for all email backup tapes containing historical emails; sending those tapes to an outside processor; loading the processed tapes into a staging area; and migrating the stored data from the staging area onto the archive. As we now know, archive searches are quick and inexpensive. They do not cost "hundred of thousands of dollars" or "take several months." The restrictions imposed by the Agreed Order were not needed.

¹²On February 10, 2004, Robert Saunders, an executive director of IT for MS & Co., was deposed. He testified that in January, 2003, MS & Co. had put into effect the email archive system. When specifically asked whether the new email archive system would include prior backups or only going forward backups, he testified that "(t)he way it was built was for going forward backup." He was next asked whether "(w)ith respect to backup dated January 2001 and previously, does Morgan Stanley have any new capabilities to restore and search e-mail?" After counsel interposed a vagueness objection, he answered "(t)here are no new capabilities to search that e-mail." That testimony was so misleading as to be false. As Saunders well knew, since he was on the team responsible, the "live" email capture portion of the archive was already operational. The migration of the historical data to the archive was expected to be completed by April of 2004, just two months after his deposition.

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MS & Co.'s wrongful conduct has continued unabated.¹³ Since the February 14, 2005, hearing, it has come to light that:

- Only two whole and four partial tapes from the Brooklyn tapes had been migrated to the archive and were thus searched for the November, 2004, production. MS & Co. sought to hide this information to create the impression that all the produced documents came from the Brooklyn tapes, rather than reveal that the production came from material that had migrated from the staging area to the archive since the May, 2004, production or some other, as yet undisclosed, source.¹⁴
- Contrary to MS & Co.'s counsel's November 17, 2004, letter to CPH, *none* of the November, 2004 production came from the "newly found" tapes. MS & Co. carefully crafted its responses to inquiries about the November, 2004, production to avoid both disclosure of the existence of the archive and outright lying.
- The scripts MS & Co. used to process emails into its archive caused the bodies of some messages to be truncated. MS & Co. discovered this problem on February 13, 2005, but did not tell the Court about it until March 14, 2005.
- A migration issue caused about 5% of email harvested by NDCI from the backup tapes not to be captured in the archive, based on testing of a representative sample of tapes. MS & Co. told the SEC about this problem on February 24, 2005, but failed to tell CPH or the Court.
- As of June 7, 2004, only 120 out of 143 SDLT tapes had been processed into the archive.
- An analysis requested by the SEC showed that, based on a representative sample, 10% of backup tapes were overwritten after January, 2001.

¹³MS & Co. sought to use the entry of the Adverse Inference Order as a shield against further inquiry into its email abuses, arguing that the matter was closed by the Adverse Inference Order. It previously used this tactic with the SEC, arguing that the December 3, 2003 Cease and Desist Order shielded it from other sanctions for email retention failures. See Ex. 14 [February 10, 2005 letter from outside counsel for MS & Co. to SEC]

¹⁴MS & Co. argued at the March 14 and 15, 2005 hearing that there were only 13 unique, new emails contained in the November 2004 production when compared to the May 2004 production. Nine of those emails, however, were originally given to MS & Co.'s lawyers for responsiveness review by the IT staff for the May 2004 production. No explanation of why they were not produced in May was offered. This is particularly concerning given the large number of documents Ms. Gorman testified the search parameters found compared with the relatively small number found responsive and produced after review by counsel.

- A software error caused blind carbon copies not to be captured in the archive process. MS & Co. told the SEC about this problem on February 24, 2005. MS & Co. did not tell CPH or the Court.
- A software error caused the searches to be hyper case-sensitive, resulting in a failure to capture all emails. MS & Co. knew of the problem as of December, 2004, but did not tell CPH or the Court. The problem was not purportedly fixed until March, 2005.
- A script error caused the archive to have problems pulling group email in Lotus Notes.
- MS & Co. provided sworn testimony at the February 14, 2005, hearing that it had located 600 gigabytes of data, while contemporaneously telling the SEC it had located a terabyte of data. A gigabyte represents 20,000 to 100,000 pages. Incredibly, MS & Co.'s witness on this point, Allison Gorman, testified on March 14, 2005, that it was simply a "terminology" issue that she did not choose to correct because it could cause "confusion."
- CPH requested MS & Co. to produce responses it had made to third-parties in civil, criminal, or administrative proceedings describing limitations on MS & Co.'s ability to produce emails and all notices in such proceedings that MS & Co. had newly discovered backup tapes containing email. MS & Co. objected, arguing that there were over 300 separate proceedings, involving over 70 outside law firms, and that the cost of compliance would be too great. On March 2, 2005, the Court ordered the production, after shortening the time period involved, and required production within 12 hours after counsel's review of each item for responsiveness but, in any event, within 10 days. At the time MS & Co. objected to CPH's request as unduly burdensome, it knew of its Wells submission to the SEC made on February 10, 2005. Kirkland and Ellis, co-counsel here, was co-counsel for MS & Co. in that SEC proceeding. Consequently, it appears MS & Co.'s real concern was not that expressed to the Court, but was based on its realization that compliance would reveal the existence of the SEC inquiry into its email retention policy and MS & Co.'s efforts to keep the existence of that investigation secret. MS & Co. violated the Court's March 2, 2005, Order on Morgan Stanley's Responses and Objections to Coleman (Parent) Holdings Inc.'s Notice to Produce at Hearing requiring it to disclose items responsive to CPH's Request for Production within 12 hours of review for responsiveness by waiting *days*, not hours, to produce the Wells submission.

- MS & Co.'s failure to produce or log the SEC documents violated the Court's February 3, 2005, Order.¹⁵
- James Doyle's, the Executive Director of MS & Co.'s Law Division, declaration that he did not learn of additional unsearched backup tapes until the end of October, 2004, was intended to mislead CPH and the Court. Obviously, MS & Co. sought to create the implication in the declaration that *no one* in the Law Division knew of the backup tapes before then. Instead, both Soo-Mi Lee, Doyle's associate, and James Cusick, Doyle's superior, knew of the tapes no later than June 7, 2004.
- In-house counsel for MS & Co. knew as of June 7, 2004, that nearly a third of the restored backup tapes did not contain email, implying they may have been recycled in violation of the December 3, 2002 Cease and Desist Order. They did not tell CPH or the Court.
- MS & Co.'s searches looked for only two types of emails. There are other types of emails that were not included in the searches. CPH did not learn of this deficiency until March 13, 2005.
- MS & Co. improperly failed to produce 125 documents required to be produced by the Court's February 3, 2005, Order Specially Setting Hearing which required limited discovery be made in connection with the February 14, 2005, hearing on the Adverse Inference Motion.
- MS & Co. improperly withheld 13 documents required to be produced by the Court's March 4, 2005, Order on Plaintiff's ore tenus Motion to Compel Additional Production.
- An additional 282 tapes were found on February 23 and 25, 2005; CPH was not told of the discovery until March 13, 2005.
- An additional 3,536 tapes were discovered on February 23, 2005, in a security room.
- An additional 2,718 tapes were found at Recall, MS & Co.'s third party off-site storage vendor, on March 3, 2005.
- An additional 389 tapes were found March 2 through March 5, 2005. CPH was not told

¹⁵The Court previously rejected MS & Co.'s argument that the January 14, 2005, email exchange between its outside and in-house counsel was not required to be produced under the February 3, 2005, Order Specially Setting Hearing because it referred to the "documents issue" and not specifically to the backup tapes. See March 16, 2005 Order on Morgan Stanley's Motion to Disqualify Plaintiff's Counsel Searcy, Denney, Scarola, Barnhart & Shipley, P.A. and Jenner & Block, LLC. MS & Co.'s insistence on a narrow interpretation of the February 3, 2005, Order is not particularly sympathetic, when the only reason that Order confined production to the backup tape issue was because MS & Co. had failed to notify the Court of the other deficiencies in its certificate of compliance.

until March 13, 2005.

On March 4, 2005, the Court entered its Order on Plaintiff's ore tenus Motion to Compel Additional Production, which ordered MS & Co. to produce by 3:00 p.m. on March 7, 2005, all items within its care, custody, or control dealing with the Riel/SEC investigation, other than documents representing communications between or among MS & Co. inside and outside counsel that were not copied to anyone other than counsel. MS & Co. sought to discredit Riel and thus distance itself from the false June 23, 2004 certificate of compliance; in doing so, it sought to hide Riel's whistle blower status and the existence of an SEC investigation into whether MS & Co. employees sought kick backs from third party vendors; whether MS & Co. employees were improperly pressured into dealing with third-party vendors who may provide business to MS & Co.; and whether MS & Co. continued to overwrite backup tapes contrary to the SEC's December 3, 2002, Cease and Desist Order.

A script error prevented the insertion of some emails into the archive. MS & Co. produced over 4,600 pages of emails on March 21, 2005, some of which it suggested may have been located on correction of the error; alternatively, it suggested the emails may have been located by NDCI as part of its efforts to verify MS & Co.'s searches.

MS & Co.'s discovery abuses have not been confined to its email production.

William Strong is a MS & Co. managing director and was one of the principal players for it in the Sunbeam deal. He took credit for the fees generated. On May 9, 2003, CPH requested a copy of "(a)ll documents concerning employment contracts, performance evaluations, and/or personnel files (including without limitation any documents that describe or discuss [his] training, experience, competence, and accomplishments) . . ." MS & Co. asserted that the requested documents were not relevant and that production "would unnecessarily infringe on the privacy interests of [Strong]." On March 15, 2004, the Court ordered MS & Co. to produce "(a)ll references (positive or negative) to [Strong's] truthfulness, veracity, or moral turpitude." Some portions of Strong's evaluations were produced in response to that order. Those evaluations noted Strong's colleagues' reservations about his candor and ethics. Two of his evaluators, Joseph Perella and Tarek Abdel-Meguid, were deposed, when some relatively vague testimony about the bases for those conclusions was offered. It now appears Strong was facing criminal prosecution in Italy for complicity in bribery while he was working on the Sunbeam transaction, which his evaluators knew, and that MS & Co. purposely

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withheld that information from CPH and the Court.¹⁶

Even once CPH independently discovered evidence of Strong's indictment in Italy, MS & Co. sought to shield its files from discovery. It claimed that virtually *all* of the documents it had were privileged under joint defense agreements in place between it, Strong, and Saloman Brothers, Strong's employer at the time of the incident. As the Court's March 10, 2005 Order Following In Camera Inspection (Strong) details, the documents MS & Co. relied on to support that position, and sought to prevent CPH from obtaining, reflect no such agreement.

The other discovery abuses and misrepresentations by MS & Co. other than those involving its email production practices are outlined in CPH's Chronology of Discovery Abuses by Defendant served March 1, 2005, and would take a volume to recite. They include:

- failing to provide the information retained by MS & Co.'s internal document management system pertaining to MS & Co.'s work for Sunbeam; falsely representing to the Court that no useful information was contained in that information; and producing a Rule 1.310 representative who had made an insufficient inquiry into authenticity, business record status, and authorship of documents; see February 28, 2005 Order on CPH's Motion to Deem Certain Documents Admissible and for Sanctions due to Morgan Stanley's Disregard of Court Order;
- when faced with contempt proceedings for violating the Stipulated Confidentiality Order by providing a copy of a settlement agreement between CPH and Arthur Andersen to other counsel, representing to the Court that the law firm of Kellogg, Huber was retained to handle the "Andersen aspects" of this litigation because of a conflict between Andersen and Kirkland & Ellis; Mark Hansen, a partner at Kellogg, Huber, testified that his firm was hired as co-counsel for all aspects of the case;
- providing answers to interrogatories signed by a corporate representative who performed insufficient verification of the responses;

¹⁶MS & Co. originally argued that documents concerning the Italian proceedings were not in Strong's "personnel file" and so were not required to be produced in response to CPH's initial request. MS & Co.'s practice of filing damaging information about an employee other than in his personnel file and then claiming it was not included in the request is about as convincing as its argument that, since it has a corporate directive not to keep drafts of documents once they are in final form, document drafts cannot be business records exempt from hearsay because they are not "kept in the course of a regularly conducted business activity." See Fla. Stat. §90.803 (6) (a). In any event, there was *no excuse* for not producing its records of the Italian proceedings once the Court's March 15, 2004 Order was entered.

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- routinely asserting unfounded privilege claims;¹⁷ and
- failing to timely comply with the Court's orders; for example, MS & Co. did not produce Strong's 1994 Performance Evaluation until the afternoon of March 15, 2005, though it was obviously included in the Court's March 15, 2004 Order. The failure cannot be excused as oversight since, when CPH specifically asked for the 1994 evaluation in the spring of 2004, MS & Co.'s counsel said it was withheld as non-responsive; see, also, Ex. 197, 198.

In sum, MS & Co. has deliberately and contumaciously violated numerous discovery orders, including the April 16, 2004 Agreed Order; February 3, 2005 Order Specially Setting Hearing; and the March 4, 2005 Order on Plaintiff's ore tenus Motion to Compel Additional Production. At the February 14, 2005, hearing on CPH's Adverse Inference Motion, it chose to hide information about its violations and coach witnesses to avoid any mention of additional, undisclosed problems with its compliance with the Agreed Order. Implicit in the requirement that MS & Co. certify compliance with the Agreed Order was the requirement to disclose impediments to its ability to so certify. As outlined in this Order, MS & Co. employees, and not just counsel, have participated in the discovery abuses. The prejudice to CPH from these failings cannot be cured. Even if all the script errors have been located and corrected, and MS & Co. has failed to show they have, and even if all of the email backup tapes have now been located, and MS & Co. has failed to show they have, the searches cannot be completed in time. The other discovery abuses outlined call into doubt all of MS & Co.'s discovery responses. *The judicial system cannot function this way.* Based on the foregoing and on the Court's March 1, 2005 Amended Order on Coleman (Parent) Holdings, Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, it is

ORDERED AND ADJUDGED that CPH's Renewed Motion for Entry of Default Judgment is Granted, in part. See Robinson v. Nationwide Mut. Fire Ins. Co., 887 So. 2d 328 (Fla. 2004); Mercer v. Raine, 443 So. 2d 944 (Fla. 1983); Precision Tune Auto Care, Inc. v.

¹⁷For example, MS & Co. produced over 260 documents dealing with the Strong investigation over which it had previously claimed privilege once the Court announced its intention to conduct an in camera review; the Court found another 200 documents were not privileged after conducting its review, by its March 10, 2005 Order.

Radcliffe, 804 So. 2d 1287 (Fla. 4th DCA 2002); Rule 1.380 (b) (2) (C), Fla. R. Civ. P. Paragraphs 2 (excluding the last sentence thereof); 3 (excluding the portion of the last sentence beginning with "in order to close . . ."); 8-10, 11 (excluding everything after the first sentence); 12 (excluding all parts following "June 1998"); 13 (excluding the last sentence thereof); 14-27; 28 (excluding everything after "firm" in the second to last sentence thereof); 29-39; 41-52; 53 (excluding the second sentence thereof); 54-57; 58 (excluding "CPH and" in the second line thereof); 59-63; 64 (excluding the third line thereof); 65 (excluding the last sentence thereof); 66 (excluding the last sentence thereof); 67-70; 71 (excluding the first word of the last sentence and the remainder of that sentence after "material"); 72; 73 (excluding the first sentence thereof); 74 (excluding the words "CPH and" in the second to last sentence thereof); 75-81; 85; 86; 87 (excluding (g)); 90, and 91 (excluding (g)) of Plaintiff's Amended Complaint, as amended by the Court's Amended Order on Morgan Stanley's Motion to Dismiss, Motion to Strike, and Motion for More Definite Statement, shall be read to the jury and the jury instructed that those facts are deemed established for all purposes in this action. A copy of a redacted Amended Complaint is attached as Exhibit A. It is further

ORDERED AND ADJUDGED that the Court shall read to the jury a Statement similar to that attached as Exhibit A to the Amended Order on Coleman (Parent) Holdings, Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, but incorporating the relevant additional findings of this Order, and the jury will be instructed that it may consider those facts in determining whether MS & Co. sought to conceal its offensive conduct when determining whether an award of punitive damages is appropriate. See General Motors Corp. v. McGee, 837 So. 2d 1010 (Fla. 4th DCA 2002), rev. den. 851 So. 2d 728 (Fla. 2003). Counsel are each invited to submit proposed Statements. It is further

ORDERED AND ADJUDGED that CPH shall be entitled to an award of reasonable fees and costs incurred as a result of the Renewed Motion for Entry of Default Judgment and the violations of Court orders recited herein. The amount shall be determined at an evidentiary hearing following trial. It is further

ORDERED AND ADJUDGED that MS & Co. is relieved of any future obligations to

comply with the April 16, 2004 Agreed Order and the February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s Motion to Participate in Search of Additional E-Mail Back-Up Tapes or Appoint Third Party to Conduct Search. It is further

ORDERED AND ADJUDGED that the pro hac vice admission of Thomas Clare is revoked. It is further

ORDERED AND ADJUDGED that the portions of CPH's Motion for Correction and Clarification of Order on CPH's Motion for Adverse Inference that seek to amend the body of that Order to correct clerical and spelling errors, as agreed to by counsel, is Granted, and the corrections deemed made to the body of the Amended Order on Coleman (Parent) Holdings, Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, by interlineation. In all other respects the remainder of the Motion for Correction and Clarification is declared moot.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 23rd day of March, 2005.


ELIZABETH T. MAASS
Circuit Court Judge

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In April 1997, Morgan Stanley began serving as Sunbeam's investment banker. Morgan Stanley originally attempted to find someone to buy Sunbeam. When Morgan Stanley was unable to find a buyer, Morgan Stanley developed a strategy for Sunbeam to use its fraudulently-inflated stock to acquire a large company that Sunbeam would own and operate. Then, trading on Morgan Stanley's relationships with CPH's senior officers, Morgan Stanley found

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Exhibit A

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Coleman for Sunbeam. At the time of the sale to Sunbeam, Coleman was a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market, with annual revenues in excess of \$1 billion.

ION shares

After Sunbeam announced plans to acquire Coleman, Morgan Stanley agreed to underwrite a \$750 million debenture offering for Sunbeam. Sunbeam needed the proceeds of that debenture offering to complete the acquisition of Coleman. As Sunbeam's investment banker and as the sole underwriter for the \$750 million debenture offering, Morgan Stanley received detailed and specific information concerning Sunbeam's financial condition and performance. Morgan Stanley received information that directly contradicted Sunbeam's and Morgan Stanley's assertions to CPH that Sunbeam had undergone a successful turnaround and that its financial performance had dramatically improved. By no later than March 18, 1998, Morgan Stanley knew that Sunbeam's January and February 1998 sales were only 50% of January and February 1997 sales, and Morgan Stanley also knew that the shortfall was caused by Sunbeam's practice of accelerating sales which otherwise would have occurred in 1998 in order to boost Sunbeam's income in 1997. Although Morgan Stanley and Sunbeam previously had advised CPH that Sunbeam's sales were running ahead of analysts' expectations for the first quarter, Morgan Stanley decided not to correct those material misrepresentations. Instead, in March 1998, Morgan Stanley assisted Sunbeam in concealing the problems with Sunbeam's first quarter 1998 sales.

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Plaintiff Coleman (Parent) Holdings Inc. ("CPH") directly or indirectly owned 44,067,520 shares — or approximately 82% — of Coleman prior to the transactions at issue. On March 30, 1998, Sunbeam acquired CPH's interest in Coleman. Sunbeam paid for the Coleman shares with 14.1 million shares of Sunbeam common stock and other consideration.

Defendant Morgan Stanley & Co., Inc. ("Morgan Stanley") is a highly sophisticated investment banking firm that provides a wide range of financial and securities services. Among other things, Morgan Stanley provides advice on mergers and acquisitions and raises capital in the equity and debt markets. Morgan Stanley served as Sunbeam's investment banker and as the underwriter of securities issued by Sunbeam in connection with the events at issue herein.

041510

Sunbeam Corporation ("Sunbeam") was a publicly-traded company headquartered in Delray Beach, Florida. Sunbeam designed and manufactured small household appliances and outdoor consumer products, which it marketed under the Sunbeam and Oster brand names. Sunbeam filed a bankruptcy petition under Chapter 11 of the Bankruptcy Code in February 2001.

Albert Dunlap ("Dunlap") was the Chief Executive Officer of Sunbeam from July 1996 until June 1998 when he was terminated by Sunbeam's Board of Directors.

Russell Kersh ("Kersh") was the Executive Vice President of Sunbeam from July 1996 until June 1998 when he was terminated by Sunbeam's Board of Directors.

Arthur Andersen LLP ("Andersen") provided outside accounting services to Sunbeam through its West Palm Beach, Florida office. Andersen auditors provided information concerning Sunbeam's first quarter 1998 sales and earnings to Morgan Stanley.

Sunbeam designed and manufactured outdoor and household consumer products, which it marketed under the Sunbeam and Oster brand names. Sunbeam's products included small kitchen appliances, humidifiers, electric blankets, and grills. Many of the country's leading retail stores, including Wal-Mart, Target, and Home Depot, were among Sunbeam's major customers.

Despite Sunbeam's well-known brands and strong customer base, its financial performance was disappointing. In 1994, Sunbeam earned \$1.30 per share. In 1995, Sunbeam's earnings declined to \$0.61 per share. In 1996, Sunbeam's earnings continued to suffer. On March 22, 1996, Sunbeam issued an early warning that its first quarter earnings would be well under analysts' expectations and down from first quarter 1995. Shortly after issuing the March 22 earnings warning, Sunbeam's Chief Executive Officer and two of Sunbeam's directors announced their resignations. Less than a week later, Sunbeam announced that its first quarter 1996 earnings had plunged 42% from first quarter 1995 levels. Sunbeam also announced that its second quarter 1996 earnings would be lower than its second quarter 1995 earnings.

Sunbeam's disappointing earnings caused its stock price to plummet. During 1995, the price at which Sunbeam's stock traded fell 40%, from a high of \$25-1/2. In 1996, Sunbeam's stock price continued to decline until it reached a low of \$12-1/4 in July.

041512

On July 18, 1996, Sunbeam's board of directors hired Albert Dunlap as Sunbeam's new Chief Executive Officer. Based upon brief terms as Chief Executive Officer of other publicly traded companies, including Scott Paper Company ("Scott Paper"), Dunlap was viewed as a "turnaround specialist" — that is, someone who could take a poorly performing company and significantly increase its value by "turning around" its financial performance. Because Dunlap touted the benefits from firing large numbers of employees and closing large numbers of plants, Dunlap became widely known as "Chainsaw Al." Dunlap lived in Boca Raton, Florida, and one of his first tasks at Sunbeam was to consolidate the company's six headquarters into one located in Delray Beach, Florida.

Immediately after joining Sunbeam, Dunlap hired Kersh as Sunbeam's Chief Financial Officer. Kersh had teamed with Dunlap for over 15 years, serving as a senior executive with Dunlap at other companies, including Scott Paper. Dunlap also brought in several other hand-picked executives to make up his senior management team.

Dunlap and his senior management team entered into employment agreements with Sunbeam. Under those agreements, Dunlap and his senior management team stood to make tens of millions of dollars if they were able to boost Sunbeam's apparent value and then sell Sunbeam to another company at a premium.

In order to convince other companies that they should want to purchase Sunbeam, Dunlap needed to improve Sunbeam's reported financial performance quickly and dramatically. It was, of course, no small task to transform Sunbeam from a poorly performing company, with weak sales and declining profits, into a strong company with growing sales and

soaring profits. In fact, as the world later learned, Dunlap did not achieve that change in Sunbeam's fortunes. Instead, Dunlap created the illusion of a dramatic turnaround at Sunbeam by engaging in what SEC officials subsequently described as a "case study" in financial fraud.

Dunlap had a three-step plan at Sunbeam. In the first step, Dunlap overstated Sunbeam's financial problems so that Sunbeam appeared to be in worse shape than it really was. After making Sunbeam look worse, Dunlap moved to step two, where he made Sunbeam look more valuable than it really was by inflating Sunbeam's sales and engaging in other earnings manipulations. In step three, Dunlap planned to sell Sunbeam to another company before it became apparent that the "improved" results were fictional. By doing so, Dunlap would make tens of millions of dollars and would be free to blame his successor for any subsequent problems.

Dunlap began implementing his strategy soon after his arrival at Sunbeam in 1996. Claiming to be engaged in a clean-up of Sunbeam's financial problems, Dunlap recorded artificially high reserves and booked expenses that should not have been recorded until later periods. Both of those actions made Sunbeam's financial condition appear worse than it really was, thus lowering the benchmark for measuring Sunbeam's performance in future years.

The overstated reserves also provided Dunlap a means by which he could inflate Sunbeam's future results during the second step of his plan. Dunlap later could "re-evaluate" and release millions of dollars from the overstated reserves to boost income in later periods. The income from released reserves contributed to the illusion of a rapid turnaround in Sunbeam's performance. Using inflated reserves to enhance income in future periods is a fraudulent practice and overstated reserves are commonly called "cookie jar" reserves.

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After making Sunbeam look worse than it really was in 1996, Dunlap manipulated Sunbeam's sales and expenses in 1997 to create the false appearance of quarter after quarter improvement in financial performance. For example, Dunlap caused Sunbeam to inflate its sales by engaging in phony "bill and hold" sales. Under this practice, Sunbeam recognized revenues from "sales," even though customers did not actually pay for or even take delivery of the products, which continued to sit in Sunbeam's own warehouses. Although Sunbeam recorded the "bill and hold" sales as if they were current sales, they were, in reality, simply sales stolen from future quarters. In 1997, phony "bill and hold" sales added approximately \$29 million in sales and \$4.5 million in income.

Throughout 1997, Sunbeam also engaged in a sales practice known as "channel stuffing" — accelerating sales that otherwise would occur in a later period, sometimes by offering steep discounts or other extraordinary customer inducements. On the grand scale employed by Sunbeam, channel stuffing inevitably leads to major sales shortfalls in later periods when "stuffed" customers simply stop buying. Sunbeam's senior sales officer referred to Sunbeam's unsustainable practice of inflating performance through accelerated sales as the "doom loop."

Dunlap further "enhanced" Sunbeam's income in 1997 by causing Sunbeam to record a "profit" of \$10 million from a sham sale of its warranty and spare parts business. Dunlap also made Sunbeam appear to be more successful than it really was by reaching into the "cookie jar," reversing inflated reserves, and recording \$35 million as income. Sunbeam's 1997 profit margins also looked better than they really were because Dunlap already had recorded millions of dollars of 1997 expenses in 1996.

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In October 1997, Dunlap announced that Sunbeam's "turnaround" was complete. Compared to the third quarter of 1996, Sunbeam's third quarter 1997 performance was remarkable. In the third quarter of 1996, Sunbeam had reported a loss of \$18.1 million. In the third quarter of 1997, however, Sunbeam reported earnings of \$34.5 million — an extraordinary turnaround from substantial losses to hefty profits. Sunbeam's combined results for the first three quarters showed dramatic improvement as well. Sunbeam reported that its profits for the first nine months were up tenfold over the same period the year before — from \$6.5 million in 1996 to \$67.7 million in 1997. Sunbeam's reversal of fortune caused a spectacular increase in the price of its stock. In July 1996, when Dunlap was hired, Sunbeam's shares traded at \$12-1/4. By October 1997, Sunbeam's shares had risen to \$49-13/16.

With steps one and two successfully completed, Dunlap was more than eager to complete the final step of his scheme: to sell Sunbeam to another company and collect tens of millions of dollars for himself before the outside world could learn the truth about Sunbeam's phony "turnaround." To accomplish that third and final step, Dunlap needed an investment banking firm

When Dunlap announced in early 1997 that he would begin interviewing investment bankers, Morgan Stanley immediately began pursuing the job. Although Morgan Stanley had no previous relationship with Sunbeam, one of Morgan Stanley's senior executives, William Strong, had worked closely with Dunlap on other large transactions between 1986 and 1993, when Strong was employed by Salomon Brothers.

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Morgan Stanley knew that it was competing with other investment bankers, including Mark Davis, for Dunlap's business. Davis was the head of the mergers and acquisitions department at Chase Securities and had worked previously with Strong at Salomon Brothers. Davis had a very strong relationship with Dunlap, and Davis had served as Dunlap's investment advisor on numerous transactions, including Dunlap's sale of Scott Paper. Shortly after arriving at Sunbeam, Dunlap hired Davis to handle the sale of Sunbeam's furniture business.

Morgan Stanley put together a team headed by its Vice Chairman, Bruce Fiedorek, and Strong. Beginning in April 1997, Morgan Stanley's personnel traveled to Sunbeam's offices in Delray Beach, Florida to study Sunbeam and woo Dunlap. After months of uncompensated work, in September 1997, Morgan Stanley finally persuaded Dunlap to name Morgan Stanley as Sunbeam's exclusive investment banker. Dunlap instructed Morgan Stanley to find a buyer for Sunbeam. Morgan Stanley knew that if it failed to deliver a major transaction, Morgan Stanley would not be compensated for the extensive work it had performed for Sunbeam. Morgan Stanley also knew that Davis and Chase Securities were standing by — ready and willing to reclaim their position as Dunlap's investment banker of choice.

Throughout the fall of 1997, Morgan Stanley aggressively searched for a buyer for Sunbeam. Morgan Stanley put together extensive and detailed materials to use in marketing Sunbeam to potential buyers. Morgan Stanley pitched the transaction to more than 10 companies — including Gillette, Colgate, Sara Lee, Rubbermaid, Whirlpool, and Black & Decker — that Morgan Stanley hoped might have an interest in acquiring Sunbeam. Morgan Stanley, however, was not able to find a buyer.

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As 1998 approached, the pressure on Dunlap increased. Dunlap was aware that Sunbeam would be unable to sustain the appearance of a successful turnaround in 1998 because Sunbeam had stolen sales from 1998 to boost 1997's numbers and the "cookie jar" reserves had been depleted. Dunlap needed a way to conceal Sunbeam's phony turnaround until a buyer could be found. Morgan Stanley provided the solution to Dunlap's problem.

Morgan Stanley knew that its failure to find a buyer for Sunbeam could prove fatal to the relationship it had worked so hard to establish with Dunlap. As the pressure on Dunlap increased, the pressure on Morgan Stanley increased as well. Although Morgan Stanley was not able to find a buyer for Sunbeam, Morgan Stanley responded with a plan that would allow Dunlap to conceal his fraud. Morgan Stanley recommended that Sunbeam acquire other companies, using Sunbeam's stock, which was fraudulently inflated, as the "currency" that would be used to pay for the acquisitions.

Morgan Stanley's strategy was doubly deceptive. First, Morgan Stanley's acquisition strategy would allow Dunlap to consolidate Sunbeam's results with those of the newly-acquired companies. That would help Dunlap camouflage Sunbeam's results and make it difficult to detect any shortfall in Sunbeam's performance. Dunlap simply could label any problems that were detected as attributable to the poor performance of the acquired companies or as a temporary "blip" caused by the distraction of integrating the acquired companies with Sunbeam. Second, Morgan Stanley's strategy would allow Dunlap to take new massive restructuring charges (purportedly relating to the acquisitions) and thus create more "cookie jar" reserves that could be tapped to bolster the future earnings of the combined companies.

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Morgan Stanley identified Coleman as one of the key potential acquisition targets. CPH owned 82% of Coleman's stock. Morgan Stanley searched the ranks of its investment bankers to locate those with the best access to CPH. Drawing on relationships between some of Morgan Stanley's investment bankers and senior CPH officers, Morgan Stanley set about trying to persuade CPH to sell its interest in Coleman to Sunbeam — and, most importantly, to accept Sunbeam stock as consideration.

Morgan Stanley laid the groundwork for a meeting to take place in December 1997 in Palm Beach, Florida between Dunlap and Kersh and representatives of CPH. In advance of the Palm Beach meeting, Morgan Stanley provided materials to Sunbeam to prepare Sunbeam for the meeting. Morgan Stanley also met with Kersh and other Sunbeam personnel to prepare for the Palm Beach meeting. However, Dunlap nearly scuttled Morgan Stanley's carefully crafted plan at the outset. During the December 1997 Palm Beach meeting, when CPH rejected Dunlap's initial all-stock offer, Dunlap became so angry that he cursed and ranted at the CPH representatives and stormed out.

Dunlap's tantrum appeared to kill any chance that CPH would sell its interest in Coleman to Sunbeam. Morgan Stanley, however, worked to revive the discussions. Drawing again on Morgan Stanley's relationships with CPH officers, Morgan Stanley was able to restart the discussions with CPH with the promise that Dunlap would be kept away from the negotiating table. Thereafter, Morgan Stanley, through Managing Directors Strong, James Stynes, and Robert Kitts, led the discussions with CPH on Sunbeam's behalf.

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Morgan Stanley knew that it had to persuade CPH not only to sell Coleman, but also to accept Sunbeam stock — ultimately, 14.1 million shares of Sunbeam stock — as a major part of the purchase price. During the course of negotiations, Morgan Stanley prepared and provided CPH with false financial and business information about Sunbeam designed to create the appearance that Sunbeam was prospering and that Sunbeam's stock had great value. For example, Morgan Stanley provided CPH with false 1996 and 1997 sales and revenue figures, as well as false projections that Sunbeam could not expect to achieve. Together, in face-to-face discussions, Morgan Stanley and Sunbeam assured CPH that (a) Sunbeam would meet or exceed its first quarter 1998 earnings estimates; (b) analysts' 1998 earnings estimates for Sunbeam were correct; and (c) Sunbeam's plan to earn \$2.20 per share in 1998 was easily achievable and probably low. Morgan Stanley and Sunbeam also falsely assured CPH that Sunbeam's "early buy" sales program would not hurt Sunbeam's future revenues. However, the "early buy" program was one of Sunbeam's revenue acceleration programs — and the devastating effects of Sunbeam's revenue acceleration programs already had begun to materialize at Sunbeam. Sunbeam's January and February 1998 sales were down drastically, although those results were not disclosed to CPH or the public. To the contrary, Morgan Stanley and Sunbeam together specifically advised CPH that Sunbeam's first quarter 1998 sales were "tracking fine" and running ahead of analysts' estimates.

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On February 27, 1998, Sunbeam's Board of Directors met at Morgan Stanley's offices to consider the purchase of Coleman, as negotiated by Morgan Stanley.

At the February 27, 1998 meeting, Morgan Stanley made an extensive presentation to Sunbeam's Board concerning the proposed transaction. Numerous Morgan Stanley representatives, including Managing Directors Strong, Kitts, Stynes, Ruth Porat, and Vikram Pandit, attended the meeting.

Morgan Stanley presented Sunbeam's board with Morgan Stanley's opinion on the value of Coleman. Using a discounted cash flow analysis, which Morgan Stanley represented was the best gauge of stand-alone economic value and the best method of capturing the unique value of Coleman, Morgan Stanley valued CPH's Coleman stock at a range of \$31.06 to \$53.24 per Coleman share. CPH's 44,067,520 Coleman shares were worth, therefore, between \$1.369 billion and \$2.346 billion.

Following Morgan Stanley's presentation, Sunbeam's Board of Directors voted to acquire Coleman on the very favorable terms that Morgan Stanley had negotiated.

Morgan Stanley spent the following weekend developing Sunbeam's public relations strategy to announce the Coleman transaction. Morgan Stanley scripted the points for Dunlap to make in a conference call with analysts. Morgan Stanley also crafted a list of "key media messages" for Dunlap to use in his communications with the press. On Sunday, March 1, 1998, Morgan Stanley spoke with a reporter for the Wall Street Journal to inform him that Sunbeam would announce its acquisition of Coleman the following morning.

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Sunbeam announced its acquisition of Coleman on Monday, March 2, 1998, prior to the opening of the financial markets. Consistent with Morgan Stanley's valuation, investors viewed Sunbeam's purchase of Coleman — and the price that Sunbeam had paid — very favorably. The day before the acquisition was announced, Sunbeam's stock closed at \$41-3/4. In the days following Sunbeam's announcement of the transaction, Sunbeam's stock rose approximately 25%, to a high of \$52.

Dunlap knew that Sunbeam needed to raise funds to pay the cash portion of the acquisition consideration. Dunlap also knew that Sunbeam needed cash to purchase two other smaller companies in addition to Coleman. Morgan Stanley recommended that Sunbeam raise funds through a \$500 million offering of convertible subordinated debentures. To assure the offering's success, Morgan Stanley lent its name to the offering. Indeed, Morgan Stanley agreed to serve as the sole underwriter for the offering.

The money raised from the sale of the debentures was used by Sunbeam to complete the acquisition of Coleman.

Unbeknownst to CPH or the public, Sunbeam's first quarter 1998 sales were a small fraction of the financial community's expectations for the quarter. If Dunlap could consolidate Sunbeam's sales with Coleman's sales, Dunlap knew that he could obscure Sunbeam's actual first quarter sales. As a result, Dunlap was especially anxious to complete the acquisition of Coleman before Sunbeam announced its first quarter 1998 sales. Indeed, the success of the scheme depended upon Sunbeam's ability to complete the Coleman acquisition before Sunbeam's first quarter results

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were announced. To satisfy Dunlap's objectives, Morgan Stanley moved up the launch date of the offering.

The debentures were marketed to investors at a series of "road show" meetings and conference calls arranged by Morgan Stanley. Morgan Stanley prepared and distributed a memorandum for its sales force to use in marketing the debentures to investors. Morgan Stanley also developed the script for Dunlap and Kersh to deliver during the road show. In those materials, Morgan Stanley misrepresented Sunbeam's financial performance and emphasized Dunlap's purported "turnaround" accomplishments.

Morgan Stanley launched the debenture offering with a research analyst presentation to the Morgan Stanley sales force. As part of Morgan Stanley's growing relationship with Sunbeam, one of Morgan Stanley's top-rated research analysts planned to initiate equity coverage of Sunbeam. That Morgan Stanley analyst had modeled values for Sunbeam's acquisition of Coleman that were higher than even Sunbeam's management had predicted.

Although Morgan Stanley initially planned to sell \$500 million worth of debentures, Morgan Stanley's efforts were so successful that the size of the offering was increased to \$750 million on March 19, 1998 — the day of the last road show. The debentures were sold to investors nationwide, including investors based in Florida.

As Sunbeam's investment banker and the sole underwriter for the debenture offering, Morgan Stanley had a duty to investigate Sunbeam's finances and business operations.

Morgan Stanley, which had been working hand-in-hand with Sunbeam for

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almost a year and had traveled to Sunbeam's Florida offices, repeatedly asserted that it had satisfied that duty.

Strong, who was one of the senior Morgan Stanley investment bankers involved, has admitted in sworn testimony that he may have had more than 100 telephone conversations with Dunlap and Kersh (whose offices were in Sunbeam's Delray Beach headquarters) and that Strong was "sure" that he would have been apprised of Sunbeam's financial performance during the first two months of 1998.

With the \$750 million debenture offering and the Coleman transaction set to close at the end of March 1998, Sunbeam's Florida-based outside auditors were shocked that Morgan Stanley had not asked them about Sunbeam's financial performance for first quarter 1998. Sunbeam's auditors were alarmed because Sunbeam's first quarter results were a disaster, but Dunlap, Kersh, and Morgan Stanley were telling CPH and the investing public,

that Sunbeam's turnaround was a success, that Sunbeam's sales for the first quarter of 1998 were ahead of the expectations of outside financial analysts, and that Sunbeam was poised for record sales.

On March 17, Sunbeam's auditors forced the issue. From their Florida offices, Sunbeam's auditors sent Morgan Stanley a letter reporting that Sunbeam's net sales through January 1998 were down 60% — \$28 million in January 1998, as compared to \$73 million in January 1997. The March 17 letter explained that the decline was "primarily due to the . . . new early buy program for grills which accelerated grill sales into the fourth quarter of fiscal 1997."

The next day, Morgan Stanley was faxed a schedule from Sunbeam's Florida office that showed that Sunbeam's January and February 1998 net sales totaled \$72 million, an amount that was 50% lower than Sunbeam's January and February 1997 net sales of \$143.5 million.

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Based on information that Sunbeam and Morgan Stanley had disseminated, Wall Street analysts were anticipating that Sunbeam's first quarter 1998 net sales would be in the range of \$285 million to \$295 million. Sales in that range would have been approximately 15% higher than first quarter 1997 sales. Sunbeam's January and February 1998 sales, however, totaled barely 25% of \$285 million. As Sunbeam's outside auditors advised Morgan Stanley in writing, the sales drop-off was caused by Sunbeam's sales acceleration program. The information put into Morgan Stanley's hands on March 17 and March 18 showed that Morgan Stanley's and Sunbeam's assertions to CPH and other investors were false. Contrary to what Morgan Stanley and Sunbeam had represented, Sunbeam had not undergone a successful turnaround, Sunbeam's financial performance had not dramatically improved, and Sunbeam's performance in 1998 was not better than Wall Street analysts' expectations. It was imperative, therefore, that the truth be kept from CPH until the Coleman transaction closed at the end of March 1998.

Morgan Stanley did not disclose Sunbeam's disastrous first quarter, Morgan Stanley did not insist that Sunbeam disclose its disastrous first quarter, Morgan Stanley did not correct any of the false and misleading statements it and Sunbeam had made to CPH about Sunbeam's business or performance, and Morgan Stanley did not suspend any of the critical transactions that were scheduled to close in the next two weeks. Instead, with Morgan Stanley's knowledge and assistance, Sunbeam prepared and issued a false press release on March 19, 1998 that affirmatively misstated and concealed Sunbeam's true condition.

The March 19, 1998 press release stated: "Sunbeam Corporation . . . said today that it is possible that its net sales for the first quarter of 1998 may be lower than the range of

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Wall Street analysts' estimates for \$285 million to \$295 million, but net sales are expected to exceed 1997 first quarter net sales of \$253.4 million. . . . The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the Company's major retail customers. The Company further stated that based on the strength of its new product offerings and powerful brand names, it remains highly confident about the overall sales outlook for its products for the entire year."

As Morgan Stanley was fully aware, the March 19, 1998 press release was false, misleading, and failed to disclose material information. The March 19, 1998 press release failed to disclose Sunbeam's actual January and February 1998 sales or the true reasons for the poor results. Instead, the press release held out the false possibility that Sunbeam still could achieve sales of \$285 million to \$295 million and suggested that, if any shortfall occurred, that shortfall would be due to the fact that certain retailers had decided to defer first quarter purchases to the second quarter. The press release also assured that Sunbeam at least would exceed first quarter 1997 net sales of \$253.4 million.

Based on information that Morgan Stanley had in its hands on March 18, 1998, it was obvious that Sunbeam would not achieve sales of \$285 million to \$295 million and that Sunbeam's first quarter 1998 sales would be below its first quarter 1997 numbers. To simply meet 1997 first quarter sales, Sunbeam needed sales of \$123.3 million over the 12 remaining days of the quarter — an average of \$10.28 million per day. Sales of \$10.28 million per day would be 306% more than the average per day sales in March 1997, and 281% more than the average per day sales for the first 17 days of March 1998. Furthermore, Morgan Stanley knew that the shortfall from analysts' estimates was not caused by retailers' deciding to defer purchases from the first quarter of 1998 to the second quarter, as the press release indicated. Rather, as Sunbeam's outside auditors had

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advised Morgan Stanley in writing, the collapse in first quarter sales was caused by Sunbeam's acceleration of 1998 sales into the fourth quarter of 1997.

After Sunbeam's false press release was issued, Morgan Stanley stood arm-in-arm with Sunbeam while Dunlap and Kersh told CPH, analysts, and investors that the March 19, 1998 release was a purely cautionary statement because some first quarter 1998 sales might simply "spillover" into the second quarter and that Sunbeam still believed that it actually would meet analysts' estimates of \$285 million to \$295 million in first quarter 1998 sales.

Morgan Stanley knew that a full and truthful disclosure of Sunbeam's first quarter sales would doom the debenture offering, which was scheduled to close on March 25, 1998,

As Morgan Stanley was fully aware, the written contract between CPH and Sunbeam gave CPH the express legal right to refuse to close the sale if there was a material adverse change in Sunbeam's "business, results of operation or financial condition."

Furthermore, if the transactions did not close, Morgan Stanley would not be paid its \$10.28 million fee for the Coleman acquisition or its \$22.5 million fee for underwriting the subordinated debenture offering. Morgan Stanley also knew that Sunbeam would promptly replace Morgan Stanley with another investment banking firm – such as the Chase Securities team led by Mark Davis.

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Sunbeam's outside auditors already had made it perfectly clear to Morgan Stanley that Sunbeam's first quarter 1998 sales were a disaster,

One of Sunbeam's senior outside auditors, Lawrence Bornstein, has testified under oath that on March 19, 1998, he told Morgan Stanley's John Tyree that the statement in Sunbeam's March 19, 1998 press release — that Sunbeam would at least exceed first quarter 1997 sales of \$253.4 million — was not credible: "Just do the math . . . they've done a million dollars in sales the first 70 days of the year and now they need to do \$10 million worth of sales for the next . . . I think it was 11 days . . . I mean, something ridiculous." Bornstein also told Tyree: "I've been to every shipping dock domestically, I've been to Hattiesburg, I've been to Neosho, I've been to Mexico City, and I don't think these guys can physically ship this much stuff."

Morgan Stanley knew that the March 19 press release was false and misleading. Despite that knowledge and Bornstein's explicit statements, Morgan Stanley continued with its preparations to close the debenture offering on March 25, 1998 and the Coleman acquisition on March 30, 1998.

As part of those preparations, on March 24, 1998, Morgan Stanley's Tyree spoke by telephone with Sunbeam's Kersh, who was located in Sunbeam's Delray Beach offices, to obtain an updated report concerning Sunbeam's first quarter performance. By the time of that March 24, 1998 call, Sunbeam had fallen even further behind first quarter 1997 sales. As of March 18, 1998, Sunbeam needed to achieve average sales of \$10.28 million per day, over 12 days, to reach

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first quarter 1997 sales. Sunbeam's sales between March 18 and March 24, 1998 had averaged only \$6.81 million per day — well short of the \$10.28 million per day that Sunbeam needed to achieve. Sunbeam's March 18 through March 24, 1998 sales were further proof that Sunbeam's March 19, 1998 press release was false and that Sunbeam would not achieve first quarter 1998 sales in excess of first quarter 1997 sales.

Morgan Stanley also knew no later than March 25, 1998, if not much earlier, that Sunbeam's earnings for the first quarter of 1998 were going to miss Wall Street analysts' earnings expectations, which were in the range of \$0.28 to \$0.31 per share (excluding one-time charges). Sunbeam's outside auditors advised Morgan Stanley on March 25 that Sunbeam had suffered a \$41.19 million loss during the first two months of 1998, including a one-time charge of \$30.2 million. Even excluding that one-time charge, Sunbeam's loss for the first two months was \$0.13 per share. To achieve first quarter 1998 operating earnings of \$0.28 per share, which were at the low end of analyst expectations, Sunbeam needed to realize a profit of \$35.5 million during March 1998 alone. A net profit of \$35.5 million in March was 500% more than Sunbeam's net profit for the entire first quarter of 1997. In fact, Sunbeam's first quarter 1998 earnings fell far short of Wall Street's expectations.

Sunbeam's first quarter earnings were material,

Having directly participated in misleading CPH Morgan Stanley had a duty to disclose the true facts before the closing of the debenture offering and the Coleman acquisition. Morgan Stanley also could have required Sunbeam to postpone the closings of

those transactions until the necessary disclosures were made. Morgan Stanley did neither. Instead, Morgan Stanley marched forward and closed the \$750 million debenture offering on March 25, 1998, which was needed to close the Coleman transaction, and assisted Sunbeam in closing the acquisition of Coleman on March 30, 1998.

Morgan Stanley received \$22.5 million for the subordinated debenture offering and \$10.28 million for the Coleman acquisition. Morgan Stanley would have received nothing if the transactions had failed to close.

On April 3, 1998 — just four days after the Coleman transaction closed — Sunbeam announced that sales for the first quarter of 1998 would be approximately 5% below the \$253.4 million in sales that Sunbeam reported in the first quarter of 1997. In other words, Sunbeam was expecting sales in the range of \$240 million. That sales shortfall was shocking news, particularly in view of assurances provided by Sunbeam both in and after its March 19, 1998 press release that \$285 million to \$295 million of sales was still a real possibility. The April 3, 1998 press release also disclosed that Sunbeam expected to show a loss for the quarter, although the release did not disclose the magnitude of the loss or how much of the loss was attributable to operating earnings as opposed to one-time charges. Sunbeam's news stunned the market. On April 3rd, Sunbeam's stock price dropped 25% — from \$45-9/16 to \$34-3/8.

Sunbeam's actual first quarter 1998 performance was even worse than Sunbeam disclosed on April 3, 1998. The April 3, 1998 release indicated that Sunbeam's first quarter sales were in the range of \$240 million. In fact, Sunbeam's first quarter sales were \$224.5

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million. Sunbeam obscured the true shortfall by extending its quarter from March 29 to March 31, 1998 — thereby adding two more days of Sunbeam sales. Sunbeam also failed to disclose that it had included two days of Coleman sales after the Coleman transaction closed on March 30. Further, Sunbeam inflated first quarter 1998 sales with \$29 million of new phony “bill and hold” sales.

70. Just as Sunbeam’s first quarter 1998 sales had been a disaster, so, too, were Sunbeam’s first quarter 1998 earnings. Morgan Stanley and Sunbeam had represented to CPH that Sunbeam would achieve or exceed analyst first quarter 1998 earnings estimates. At the time of that representation, the consensus among analysts was that Sunbeam would enjoy first quarter 1998 earnings of \$0.33 per share. However, on May 9, 1998, Sunbeam disclosed that it would record a first quarter loss of \$0.09 per share (excluding one-time charges) — more than \$0.40 per share lower than CPH had been told to expect.

Within weeks, Dunlap’s fraudulent scheme began to unravel. In June 1998, after a number of news articles critical of Sunbeam’s practices, Sunbeam’s Board of Directors launched an internal investigation. That investigation led quickly to the firing of Dunlap and Kersh, and, subsequently, to a restatement of Sunbeam’s financial statements for 1996, 1997, and the first quarter of 1998.

As detailed above, Morgan Stanley participated in a scheme to mislead CPH and others and cover up the massive fraud at Sunbeam until Morgan Stanley and Sunbeam could close the purchase of Coleman. Morgan Stanley provided CPH with false information concerning Sunbeam’s 1996 and 1997 financial performance, its business operations, and the value of Sunbeam’s stock. Morgan Stanley also actively assisted Sunbeam in concealing Sunbeam’s

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disastrous first quarter 1998 sales and earnings and the true reasons for Sunbeam's poor performance.

Morgan Stanley knew that its statements to CPH were materially false and misleading and omitted the true facts.

Morgan Stanley intended that CPH rely on Morgan Stanley's representations concerning Sunbeam.

As detailed above, Dunlap engaged in a fraudulent scheme to inflate the price of Sunbeam's stock by improperly manipulating Sunbeam's 1996 and 1997 performance, by falsely asserting that Sunbeam had successfully "turned around," and by concealing the collapse of Sunbeam's first quarter 1998 sales and earnings and the reasons for Sunbeam's first quarter 1998 performance.

86 As detailed above, Morgan Stanley knew of Dunlap's fraudulent scheme and helped to conceal it until after Sunbeam could close the purchase of Coleman.

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As detailed above, Morgan Stanley provided substantial assistance to Dunlap and Sunbeam, including: concealing Sunbeam's first quarter 1998 sales collapse; assisting with the false March 19, 1998 press release; arranging road shows and meetings with prospective debenture purchasers at which Morgan Stanley, Dunlap, and others made false statements concerning Sunbeam's financial condition and business operations; preparing and disseminating the preliminary and final offering memoranda for the subordinated debenture offering, both of which contained false information concerning Sunbeam's financial condition and business operations; providing CPH with false financial and business information concerning Sunbeam; scripting Dunlap's false public statements concerning Sunbeam's acquisition of Coleman;

and underwriting the \$750 million convertible debenture offering, proceeds from which were used to fund Sunbeam's purchase of Coleman.

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As detailed above, Morgan Stanley conspired with Dunlap and other senior Sunbeam executives to conceal the truth about Sunbeam's financial performance and business operations.

As detailed above, Morgan Stanley committed overt acts in furtherance of the conspiracy, including: concealing Sunbeam's first quarter 1998 sales collapse; assisting with the false March 19, 1998 press release; arranging road shows and meetings with prospective debenture purchasers at which Morgan Stanley, Dunlap, and others made false statements concerning Sunbeam's financial condition and business operations; preparing and disseminating the preliminary and final offering memoranda for the subordinated debenture offering, both of which contained false information concerning Sunbeam's financial condition and business operations; providing CPH with false financial and business information concerning Sunbeam; scripting Dunlap's false public statements concerning Sunbeam's acquisition of Coleman;

and underwriting the \$750 million convertible debenture offering, proceeds from which were used to fund Sunbeam's purchase of Coleman.

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**Excerpted sections of
MS Addendum**

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ADDENDUM

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Exhibit 4

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Defendant's Offer of Proof re: James P. Cusick

If called to testify, James P. Cusick would state under oath as follows:

Mr. Cusick is a Managing Director in Morgan Stanley & Co. Incorporated's ("Morgan Stanley") Law Division and is Co-Head of Global Litigation at Morgan Stanley. Mr. Cusick is responsible for representing and advising Morgan Stanley in his professional capacity as an attorney in a number of litigation and regulatory matters and for overseeing a number of litigation and regulatory matters involving Morgan Stanley, including the instant action. In connection with this role, Mr. Cusick supervises Soo-Mi Lee and James F. Doyle and represents Morgan Stanley in this litigation.

On or about June 6, 2004, Mr. Cusick first learned that backup tapes had been found at one of Morgan Stanley's facilities in Brooklyn ("Brooklyn Tapes"). At the same time, Mr. Cusick also learned that it was not known whether the Brooklyn Tapes contained e-mail. On or about October 25, 2004, Mr. Cusick first learned that there was e-mail on some of the Brooklyn Tapes. To Mr. Cusick's knowledge, no one in Morgan Stanley's Law Division learned that there was e-mail on some of the Brooklyn Tapes before October 25, 2004.

In early November 2004, Mr. Cusick first learned that certain 8-millimeter tapes had been found and that some of these 8-millimeter tapes contained e-mail. To Mr. Cusick's knowledge, no one in Morgan Stanley's Law Division learned that there was e-mail on these 8-millimeter tapes before early November 2004.

Exhibit 5

NOT A CERTIFIED COPY

Defendant's Offer of Proof re: James F. Doyle

If called to testify, James F. Doyle would state under oath as follows:

Mr. Doyle is an Executive Director in the Law Division of Morgan Stanley & Co. Incorporated ("Morgan Stanley"). He has been employed in Morgan Stanley's Law Division since October 2000. Mr. Doyle is responsible for representing and advising Morgan Stanley in his professional capacity as an attorney in a number of litigation and regulatory matters, including the instant action. In that role, Mr. Doyle represents Morgan Stanley in this litigation.

Mr. Doyle has sought in good faith to assist Morgan Stanley to meet fully its discovery obligations to CPH and the Court.

At no time in connection with this case did Mr. Doyle have any intent to conceal or withhold responsive, non-privileged documents from CPH or the Court.

Mr. Doyle did not learn of the existence of the e-mail backup tapes which have been referenced as the Brooklyn Tapes until late October 2004. At that time, Mr. Doyle understood that the e-mail contained on those tapes had already been migrated to the Archive. In submitting his January 31, 2004 Declaration to the Court, Mr. Doyle did not intend to mislead the Court or CPH regarding Morgan Stanley's discovery of the Brooklyn Tapes.

Mr. Doyle did not learn of the existence of 8-millimeter tapes containing e-mails until November 2004.

Exhibit 8

NOT A CERTIFIED COPY

Defendant's Offer of Proof re: Soo-Mi Lee

If called to testify, Soo Mi-Lee would state under oath as follows:

Ms. Lee is an Executive Director in the Law Division at Morgan Stanley & Co. Incorporated ("Morgan Stanley"). She has been employed in Morgan Stanley's Law Division since 1998. Ms. Lee is responsible for representing and advising Morgan Stanley in her professional capacity as an attorney in a number of litigation and regulatory matters, including the instant action. In this role, Ms. Lee supervises James F. Doyle, and represents Morgan Stanley in this litigation.

On or about June 6, 2004, Ms. Lee was notified that backup tapes had been found at one of Morgan Stanley's facilities in Brooklyn ("Brooklyn Tapes"). At the same time, Ms. Lee was also apprised that it was not known whether the Brooklyn Tapes contained e-mail. Ms. Lee recalls first learning in late October that there was e-mail on some of the Brooklyn Tapes. To Ms. Lee's knowledge, no one in Morgan Stanley's Law Division learned that there was e-mail on some of the Brooklyn Tapes before that time.

Ms. Lee recalls that in or about early November 2004, she first learned that certain 8-millimeter tapes had been found and that some of these 8-millimeter tapes contained e-mail. To Ms. Lee's knowledge, no one in Morgan Stanley's Law Division learned that there was e-mail on these 8-millimeter tapes before that time.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

**ORDER ON PLAINTIFF'S MOTION IN LIMINE NO. 36 TO CLARIFY WHAT
EVIDENCE IS ADMISSIBLE TO SHOW PLAINTIFF'S ENTITLEMENT TO AND
AMOUNT OF PUNITIVE DAMAGES**

THIS CAUSE came before the Court May 13, 2005 on Plaintiff's Motion in Limine No. 36 to Clarify what Evidence is Admissible to Show Plaintiff's Entitlement to and Amount of Punitive Damages, with both parties well represented by counsel.

By its March 1, 2005 Amended Order on Coleman (Parent) Holdings, Inc.'s Motion for Adverse Inference Instruction, the Court found that MS & Co. sought to hide evidence in this specific case. By its March 23, 2005 Order on CPH's Renewed Motion for Entry of Default Judgment, the Court found that the discovery failings could not be cured, and deemed certain facts not subject to dispute. Both Orders were predicated, in part, on a finding that MS & Co. had manipulated the record in this case, depriving CPH to access to documents crucial to its claims. CPH claims that the deemed facts should apply for all purposes in the punitive damages phase of the trial, if any. MS & Co. claims that they should have no further effect. CPH claims that the Court's findings of litigation misconduct remain relevant in any punitive damages phase. MS & Co. claims they do not.

Four principles are clear. First, the legal significance in the punitive damages phase of facts admitted by default is narrow. See Humana Health Insurance Company of Florida, Inc. v. Chipps, 802 So. 2d 492 (Fla. 4th DCA 2001). Second, punitive damages are focused on a defendant's conduct, not a plaintiff's harm. See Nordyne, Inc., v. Florida

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Mobile Home Supply, Inc., 625 So. 2d 1283 (Fla. 1st DCA 1993). Third, evidence of general pre-trial discovery disputes is not relevant. Amlan, Inc. v. Detroit Diesel Corp., 651 So. 2d 701 (Fla. 4th DCA 1995). Finally, evidence of concealment of a fraud, even if during the discovery phase, is relevant in the punitive damages phase as indicative of malice. See General Motors Corp. v. McGee, 837 So. 2d 1010 (Fla. 4th DCA 2003).

Applying these principles, it is clear that the consequences of MS & Co.'s litigation misconduct carry forward into Phase II in two discrete ways. First, as described in the March 23, 2005 Order on CPH's Renewed Motion for Entry of Default Judgment, MS & Co.'s acts in depriving CPH of crucial documents and discovery to prove its claims require that certain facts be removed from dispute, in order to level the playing field. Second, MS & Co.'s efforts to hide its fraud may be indicative of malice. Were it otherwise, a defendant whose liability is clear facing a claim for punitive damages would have a strong economic motive to destroy all incriminating documents: at worst, liability for compensatory damages, which was already clear, would be admitted; at best, neither the documents nor their destruction would be available in the punitive damages phase.

The Court concludes, then, that (i) the deemed facts should continue to bind MS & Co., but only for the specific fraud under review and should not be permitted to be used as a predicate for a separate fraud¹; and (ii) MS & Co.'s attempts to hide direct evidence of its wrongdoing remain relevant as indicative of malice.

Based on the foregoing, it is

ORDERED AND ADJUDGED that the Motion is Granted, in part, and ruling deferred, in part. If this action proceeds to Phase II on punitive damages, the facts established by Exhibit A to the Court's March 23, 2005 Order on CPH's Renewed Motion for Entry of Default Judgment shall be binding on the parties to support a claim for punitive damages predicated solely on the fraud against CPH. If CPH seeks to argue entitlement or amount of punitive damages based on any other bad acts or collateral consequences, all predicate facts, including MS & Co.'s knowledge of and participation in the fraud, shall be

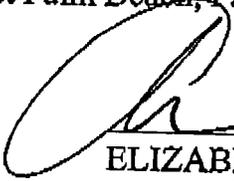
¹This ruling balances the need to keep the playing field level with the need to focus on MS & Co.'s acts, not CPH's harm.

independently proved. It is further

ORDERED AND ADJUDGED that the statement concerning litigation misconduct to be read to the jury shall be limited to the email issue. MS & Co. shall be permitted to offer evidence not inconsistent with its findings such as would permit a reasonable juror to conclude that MS & Co. did not intend to conceal evidence of the fraud.² It is further

ORDERED AND ADJUDGED that the Court shall consider the admissibility of evidence of similar misconduct on a case-by-case basis.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 16 day of May, 2005.


ELIZABETH T. MAASS
Circuit Court Judge

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²MS & Co. cannot refute the deemed facts, because their misconduct prevented a full trial on the merits. In contrast, those facts found by the Court following evidentiary inquiry are binding on the parties to this litigation, but may be supplemented.

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1 IN THE CIRCUIT COURT FOR THE
2 15TH JUDICIAL CIRCUIT IN AND FOR
 Palm Beach County, Florida

3 CASE NO. 03 CA 005045 AI

4 COLEMAN (PARENT) HOLDINGS, INC.,

5 Plaintiff,

6 vs.

7 MORGAN STANLEY & CO., INC.,

8 Defendant.

9
10
11
12 VOLUME 118

13 PROCEEDINGS BEFORE THE HONORABLE ELIZABETH T. MAASS

14
15
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18
19 Monday, May 16, 2005

20 Palm Beach County Courthouse

21 Courtroom 11-A

22 205 North Dixie Highway

23 West Palm Beach, Florida 33401

24 5:30 p.m. to 8:00 p.m.

25

1 MR. SOLOVY: Your Honor, their proffer
2 says --

3 MS. BEYNON: We're withdrawing that.

4 We would request a final sentence on that
5 paragraph that states: "There is no evidence
6 that any lawyer in Morgan Stanley's law division
7 was aware prior to October 2004 that any of the
8 tapes contained any e-mail."

9 MR. SOLOVY: I don't think that's true.

10 THE COURT: That's against the evidence, I
11 think. I'd have to go back and look.

12 MS. BEYNON: We'd request that the entire
13 paragraph come out, Your Honor. We think that
14 this is unduly focusing on the lawyers and
15 conduct in a way that, unless this is explained
16 in the context of what the lawyers knew
17 regarding, or what they didn't know regarding
18 whether e-mails were on these tapes, is
19 extremely prejudicial to Morgan Stanley and
20 should not be put before the jury.

21 This is the same concept that you raised
22 before with respect to the lawyers do something
23 that's considered much more seriously perhaps by
24 a jury. And we think that the entire paragraph
25 really needs to come out and we request that

1 it --

2 MR. SOLOVY: My only comment is, A, it's in
3 the record and, B, the lawyers really should
4 consider it seriously.

5 THE COURT: We're talking about what inhouse
6 counsel of Morgan Stanley did and, quite
7 honestly, it was done in an effort to mislead
8 opposing counsel and me.

9 MS. BEYNON: Very well, Your Honor. The
10 last number 14, Morgan Stanley sought to
11 discredit Mr. Riel. We'd say on unrelated
12 issues.

13 THE COURT: No, that's the same concept we
14 talked about before.

15 MS. BEYNON: Okay. And we thought that --

16 THE COURT: Is that everything for today?

17 MS. BEYNON: We are still going to be
18 providing you with the final two concepts that
19 we talked about earlier. And we will provide
20 that to Plaintiff's counsel.

21 THE COURT: Okay. We'll see you in the
22 morning. Have a good evening.

23 MR. SOLOVY: You, too, Your Honor.

24 (Trial adjourned at 8:00 p.m.)

25

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1 IN THE CIRCUIT COURT FOR THE
2 15TH JUDICIAL CIRCUIT IN AND FOR
3 PALM BEACH COUNTY, FLORIDA

4 CASE NO. 03 CA 005045 AI

5 COLEMAN (PARENT) HOLDINGS, INC.,

6 Plaintiff,

7 vs.

8 MORGAN STANLEY & CO., INC.,

9 Defendant.

10
11
12 VOLUME 120

13 PROCEEDINGS BEFORE THE HONORABLE ELIZABETH T. MAASS

14
15
16
17
18
19 Tuesday, May 17, 2005

20 Palm Beach County Courthouse

21 Courtroom 11-A

22 205 North Dixie Highway

23 West Palm Beach, Florida 33401

24 1:30 p.m. to 4:30 p.m.

25

1 Thirteen, an executive director of Morgan
2 Stanley's law division filed a sworn declaration
3 stating that he did not learn of additional
4 unsearched backup tapes until the end of October
5 2004. The declaration suggested that no one in
6 Morgan Stanley's law division knew of the backup
7 tapes before then. Instead, at least two Morgan
8 Stanley inhouse lawyers, including the executive
9 director's superior, knew of the tapes no later
10 than June 7th, 2004.

11 Fourteen, Morgan Stanley sought to discredit
12 Mr. Riel and, thus, distance itself from the
13 false June 23rd, 2004 certificate of compliance
14 that he had signed. In doing so, Morgan Stanley
15 sought to conceal that Mr. Riel might be the
16 source of additional negative evidence regarding
17 Morgan Stanley's backup procedures.

18 Morgan Stanley did not disclose any of these
19 problems to CPH, as Morgan Stanley was obligated
20 to do. I'm sorry, was obliged to do.

21 The searches for e-mail evidence had not
22 been completed when this trial was begun, and
23 they were terminated without completion.

24 As I read to you, Morgan Stanley did produce
25 some e-mails to CPH. Some of the e-mails

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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND
FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 03 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

VOLUME 121

MORGAN STANLEY & CO., INC.,

Defendant.

TRANSCRIPT OF THE PROCEEDINGS BEFORE
THE HONORABLE ELIZABETH T. MAASS

West Palm Beach, Florida
Wednesday, May 18, 2005
9:28 a.m. - 12:38 p.m.

1 misconduct statement does not say that people in
2 Morgan Stanley's law division knew of e-mail on
3 the backup tapes the end of October 2004.

4 There's evidence they knew of backup tapes but
5 not that the backup tapes contained e-mail. And
6 it's undisputed that they learned that these
7 contained e-mail in October 2004 which set these
8 events in motion basically.

9 THE COURT: It turned out they did contain
10 e-mail.

11 MS. BEYNON: They didn't know it, Your
12 Honor. It's inaccurate for plaintiffs to be
13 able to use a slide --

14 THE COURT: I understand the point. We'll
15 come back to it. It would be falsely --

16 MR. SCAROLA: I have edited as follows.

17 THE COURT: Go ahead.

18 MR. SCAROLA: "Morgan Stanley presented a
19 sworn declaration intended to mislead CPH and
20 the Court indicating that Morgan Stanley's
21 in-house lawyers did not know about unsearched
22 e-mail backup tapes when they did know."

23 THE COURT: Can you change it "...did not
24 know about unsearched backup tapes later found
25 to contain e-mail" or something? I think that

1 the problem is, to make it clear to the jury --
2 well, frankly, I don't know whether they knew
3 they had e-mail or not when the declaration was
4 made. They certainly knew they existed.

5 MR. SOLOVY: I don't know why we have to be
6 tarnished with all the caveats for a
7 certification made by them.

8 MS. BEYNON: Your Honor, it's undisputed in
9 the record that the lawyers at Morgan Stanley
10 learned that e-mail was on these tapes in
11 October 2004. There's been no contrary evidence
12 to this. And to say as a fact they falsely
13 misrepresented --

14 THE COURT: There's no contrary evidence,
15 but we also know the in-house attorneys knew
16 about the tapes in June.

17 MS. BEYNON: They knew about the tapes in
18 June, but they didn't know they contained
19 e-mail.

20 THE COURT: We don't know if they knew they
21 contained e-mail.

22 MR. SOLOVY: They never put them on the
23 stand.

24 THE COURT: I was going to say the first
25 we -- again, I don't think the absence of

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

NOTICE

Morgan Stanley & Co. Incorporated ("Morgan Stanley") hereby notifies the court and Plaintiff that it retracts, withdraws and corrects certain statements in the offers of proof, declaration, and related statements more fully described and listed below.

1. In the listed offers of proof and related statements, Morgan Stanley asserted that its Law Division was not aware that any of the Brooklyn Tapes contained e-mail until October 2004 and was not aware of certain 8-mm tapes until November 2004.
2. As a result of a review of e-mails discovered by a new e-mail search, Morgan Stanley has determined that the offers of proof and related statements should be corrected to state that the Law Division was aware in July 2004 that some of the Brooklyn Tapes contained e-mail and that certain 8-mm tapes existed.
3. Morgan Stanley submits this Notice to: (a) correct Defendant's Offers of Proof from James P. Cusick, Soo-Mi Lee, and James F. Doyle (the first sentence of paragraph 4 and the entirety of paragraph 5); (b) withdraw the Declaration of James F. Doyle of January 31,

Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Incorporated
Case No. CA 03-5045 AI
Notice

2005; and (c) correct related statements that reference or were based on the foregoing submissions¹.

4. Morgan Stanley does not limit this notice and correction to the specific documents described or listed herein. Morgan Stanley retracts, withdraws and corrects any and all statements, written or oral, made or submitted on its behalf, to the effect that its Law Division was not aware that any of the Brooklyn Tapes contained e-mail until October 2004 and was not aware of certain 8-mm tapes until November 2004.

¹ The related statements include: paragraph 4 on pages 2-3 of Morgan Stanley's Opposition to CPH's Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, dated January 31, 2005; the first two sentences of the second full paragraph on page 2 of Morgan Stanley's Supplemental Opposition to CPH's Motion for Adverse Inference Instruction, dated February 11, 2005; the last paragraph on page 6 that carries over to page 7 of Morgan Stanley Opposition to CPH's Motion for a Default Judgment, dated February 28, 2005; the last clause of the fourth sentence from the bottom and the last two sentences on page 20, and the first two sentences of the second full paragraph on page 31 of Morgan Stanley's Opposition to CPH's Motion for a Default Judgment (corrected version filed March 13, 2005 and original version served March 12, 2005); the second sentence in the second full paragraph on page 7 of Morgan Stanley's Submission of Proposed Statement to be Read to the Jury Pursuant to Court's March 23, 2005 Order on CPH's Renewed Motion for Entry of Default Judgment, dated March 28, 2005; the second sentence of the first full paragraph on page 24, the second sentence on page 26, the heading for Section C and the second and third sentences in that section on page 26, the last clause in the second to last sentence and the last sentence in that section on page 27, the final sentence on page 33 that carries over to the top of page 34, and the first clause of the second sentence of the first full paragraph on page 35 of the Summary of Offer of Proof Regarding Defendant's Alleged Litigation Misconduct (Addendum to Morgan Stanley's Opposition to Coleman (Parent) Holdings Inc.'s Second Renewed Motion for Correction and Clarification of the Litigation-Misconduct Statement) ("Summary of Offer of Proof"), originally filed May 12, 2005 and re-filed on May 17, 2005 in Phase II; February 2, 2005 Hr'g Tr. 132:1-7, 133:6-11, 147:22-25 (statements by counsel); the second half of the heading for Section C on page 15 and the first paragraph of page 17 of Morgan Stanley's Response to CPH's Chronology of Purported Discovery Abuses, dated March 15, 2005; the second, third and fifth rows (first sentence) on page 6 of Morgan Stanley & Co. Inc.'s Overnight Response to CPH's Additional Submission in Support of its Motion for Default, dated March 15, 2005; May 16, 2005 Hr'g Tr. 15266:4-8; and May 18, 2005 Hr'g Tr. 15607:4-8, 11-13, 15608:8-13, 17-19.

Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Incorporated
Case No. CA 03-5045 AT
Notice

Respectfully submitted,

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BY: 

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 17th day of June, 2005.

Mark C. Hansen (*pro hac vice*)
James M. Webster, III (*pro hac vice*)
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Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Incorporated
Case No. CA 03-5045 AI
Notice

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IN THE FIFTEENTH JUDICIAL COURT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

**VERIFIED PETITION FOR A SHOW-CAUSE ORDER
REGARDING MORGAN STANLEY'S CRIMINAL CONTEMPT OF COURT**

Coleman (Parent) Holdings Inc. ("CPH") hereby petitions the Court pursuant to Florida Rule of Criminal Procedure 3.840 for an Order to show cause why Morgan Stanley & Co. Incorporated ("Morgan Stanley"), Donald G. Kempf, Jr., James P. Cusick, Soo-Mi Lee, and James F. Doyle should not be held in criminal contempt for (1) deliberately and obstructively misleading the Court about when Morgan Stanley's in-house lawyers knew of the existence of unsearched backup tapes and knew that those tapes contained potentially responsive e-mail, and (2) continuing to mislead the Court in the very June 17, 2005 pleading in which Morgan Stanley admitted the prior false statements. As we show, the facts of the current situation amply justify the additional disciplinary sanction of criminal contempt.

STATEMENT OF FACTS

In support of this Petition, CPH alleges as follows:

1. In its March 1 and March 23, 2005 Orders regarding Morgan Stanley's "deliberate[] and contumacious[]" misconduct, this Court found that Morgan Stanley had engaged in a systematic effort to prevent CPH from obtaining e-mail evidence in Morgan Stanley's possession. Ex. A, 3/23/05 Order, at 16; *see also* Ex. B, 3/1/05 Order.

2. A key issue in the controversy involved when Morgan Stanley's Law Division learned that Morgan Stanley's certification of compliance with this Court's April 2004 Agreed Order on e-mail production was false. On June 23, 2004, Arthur Riel certified that Morgan Stanley had fully complied with the April 2004 Agreed Order. At that time, both he and Morgan Stanley in-house lawyers James Cusick and Soo-Mi Lee knew that there were hundreds of backup tapes found in Brooklyn that had not been searched. In its defense, Morgan Stanley argued that the certification was not false because (1) Mr. Riel did not learn until several days later that the unsearched tapes (of which he and in-house counsel were already aware) contained e-mail, and (2) Morgan Stanley in-house lawyers did not learn about the existence of e-mail on the tapes until months later, in October. See, e.g., Ex. C, Morgan Stanley's Opp'n to CPH's Mot. for a Default Judgment, at 11 (filed Mar. 12, 2005) ("When Mr. Riel signed his Certification of Compliance in June 2004, he did not know or suspect that there was any e-mail on the so-called 'Brooklyn tapes' . . .") (emphasis in the original); *id.* at 11-12 ("Mr. Riel also testified that . . . he learned that some of the Brooklyn tapes contained some e-mail . . . , [but] he does not recall ever communicating that fact to anyone in the Law Division.") (emphasis in the original); Ex. D, Morgan Stanley's Opp'n to CPH's Mot. for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, at 2 (filed Jan. 31, 2005) ("At the end of October 2004, James F. Doyle, the attorney at Morgan Stanley who directed Morgan Stanley's prior search for e-mail messages, learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data on those tapes had not been restored or searched prior to the May 14, 2004 e-mail production."); Ex. E, Declaration of James F. Doyle of January 31, 2005 (attesting to the same facts).

3. The same claim — that in-house counsel did not learn about the existence of unsearched e-mail until October 2004 — was repeated as recently as May 16, 2005, when Morgan Stanley's counsel argued that the Court should delete from the Litigation Misconduct Statement all references to the knowledge and participation of in-house counsel on the ground that "unless this is explained in the context of what the lawyers knew regarding, or what they didn't know regarding whether e-mails were on these tapes, [it] is extremely prejudicial to Morgan Stanley and should not be put before the jury." Ex. F, Tr. 5/16/05, at 15266. Then, on May 18, 2005, the same point was made when Morgan Stanley's counsel argued for changes in CPH's proposed demonstratives. Ex. G, Tr. 5/18/05, at 15606-07. And on June 6, 2005, in Morgan Stanley's Memorandum in Support of its Motion for Judgment in Accordance with Motion for Directed Verdict and Alternative Motion for New Trial, Morgan Stanley repeated its argument that the Court erred in refusing to excise from the Litigation Misconduct Statement "all references to what certain individuals in Morgan Stanley's Law Division knew." Ex. H, at 75-76.

4. On June 17, 2005, Morgan Stanley filed a Notice admitting that the repeated representations it had made to this Court about when its Law Division knew about the existence of unsearched e-mail were false — because "the Law Division was aware in July 2004 that some of the Brooklyn Tapes contained e-mail and that certain 8-mm tapes existed." Ex. I, 6/17/05 Notice, at 1. The statements withdrawn pursuant to the Notice include the January 31, 2005 declaration of Mr. Doyle in which he stated that he personally did not learn about the existence of unsearched e-mail on the Brooklyn Tapes until the "end of October 2004." *Id.* at 1-2. It thus appears that Mr. Doyle himself was among those aware of unsearched e-mail in July, despite his sworn declaration to the contrary.

5. The Notice further claims, without any sworn basis and without even supplying the pertinent documents, that “Morgan Stanley . . . determined” that its prior statements were false “[a]s a result of a review of e-mails discovered by a new e-mail search.” *Id.* at 1. The Notice contains no explanation of how “Morgan Stanley” can be said to have previously lacked knowledge of facts that were known to its own in-house counsel, including those who made false statements to the Court. Nor does it explain the circumstances of this “new e-mail search,” which presumably occurred after the end of the trial in May 2005 and, indeed, after the briefing on the June 2005 post-trial motions had been completed. Morgan Stanley chose not to identify what “new” information has come to light, how it came to light, and who within Morgan Stanley was aware of that information.

6. Morgan Stanley waited to file this Notice until after the jury had returned its \$1.45 billion verdict, and after CPH had submitted its final briefing on Morgan Stanley’s motions for remittitur, judgment notwithstanding the verdict, and a new trial. A few days later, the Court denied Morgan Stanley’s motions. Ex. J, 6/23/05 Order. Given Morgan Stanley’s record of delaying e-mail disclosure to gain strategic advantage, Morgan Stanley should not be allowed to conceal when and how the facts set forth in its June 17 Notice first came to the attention of Morgan Stanley’s officers, employees, and attorneys.

ARGUMENT

I. MORGAN STANLEY’S MISCONDUCT SATISFIES THE ELEMENTS FOR CRIMINAL CONTEMPT.

Under Florida law, the sanction of criminal contempt exists to punish any act that is designed to “embarrass, hinder or obstruct the trial court in the administration of justice, or which is calculated to lessen the court’s authority or dignity.” *Murrell v. State*, 595 So. 2d 1049, 1050 (Fla. 4th DCA 1992). For criminal-contempt proceedings based on a party’s or witness’s

false statements, Florida courts have settled on a three-element test: (1) there must exist judicial knowledge of the falsity of the statements; (2) the false statements must be pertinent to the issues at trial; and (3) the false statements must have an obstructive effect. *Duff v. Southern Bell Tel. & Tel. Co.*, 386 So. 2d 253, 255 (Fla. 5th DCA 1980). An Order to show cause is clearly warranted here based on the facts already known. Moreover, the relevant facts may well be supplemented if the Court, exercising its authority under Florida Rule of Criminal Procedure 3.840, chooses to further investigate the matters that Morgan Stanley's Notice seeks to finesse, such as when and how "Morgan Stanley" supposedly learned that its own in-house lawyers had not previously been telling the truth about when they became aware of unsearched e-mail.

There can be no doubt regarding whether the three requisite elements already have been met in this instance. First, with regard to the element of "judicial knowledge" of the prior statements' falsity, Morgan Stanley has now admitted its prior misstatements to the Court. In the June 17 Notice, Morgan Stanley concedes that it made misrepresentations to the Court in fifteen different pleadings and transcripts — and Morgan Stanley "does not limit this notice and correction to the specific documents described or listed herein." Ex. I, 6/17/05 Notice, at 2 & n.1. No further evidence is needed to satisfy the judicial-knowledge-of-falsity requirement.

Second, the Court already has found that the misconduct at issue was "pertinent to the issues at trial," as the second element requires. *Duff*, 386 So. 2d at 255. The misrepresentations about Morgan Stanley's e-mail capabilities are relevant not only because they demonstrate Defendant's "consciousness of guilt," but because they were part of a massive effort to keep from the jury the best evidence of the elements of the offense. Ex. B, 3/1/05 Order, at 11. Thus, the Court has found expressly that Morgan Stanley's e-mail misconduct "is relevant to the issues before the jury," *id.*, and "infect[s] the entire case," Ex. A, 3/23/05 Order, at 2.

Third, Morgan Stanley's acknowledged misconduct satisfies the third element because it obstructed the justice process. *See id.* at 16 ("The judicial system cannot function this way." (emphasis in the original)). The misconduct was part of an ongoing effort designed to mislead CPH and the Court. The isolated misrepresentations that Morgan Stanley specifically acknowledges in its June 17, 2005 Notice are but the tip of the iceberg. *See id.* at 11-14 (requiring three single-spaced pages to list misconduct that came to light after this Court's February 14 hearing). And Florida law is clear that "[r]epeated disregard of court orders and lack of candor by a party toward the Court justifies findings of either civil or indirect criminal contempt." *Lo v. Lo*, 878 So. 2d 424, 426 (Fla. 3d DCA 2004). This Court already has found that Morgan Stanley "deliberately and contumaciously violated numerous discovery orders." Ex. A, 3/23/05 Order, at 16. Indeed, "[i]t is well established that perjured testimony obstructs the proper administration of justice." *Duff*, 386 So. 2d at 255; *see also* Ex. I, 6/17/05 Notice, at 1-2 (withdrawing James F. Doyle's declaration); *cf. Vega v. Vega*, 110 So. 2d 29, 32-33 (Fla. 3d DCA 1959) (concluding that when testimony "misled the court in at least three major respects, . . . a gross and wanton fraud had been perpetrated upon it").

Criminal-contempt proceedings are appropriate here. And because the contumacious conduct at issue here involved withholding information known to Morgan Stanley's Law Division, it is also appropriate to include in the show-cause Order the in-house attorneys involved. They include Mr. Doyle, who made the sworn declaration now withdrawn; Mr. Cusick and Ms. Lee, who personally learned of the Brooklyn Tapes' existence by early June 2004; and Mr. Kempf, who as the Court is aware became heavily and personally involved in supervising this litigation at least as early as March 2005.

II. MORGAN STANLEY WAIVED ITS ATTORNEY-CLIENT PRIVILEGE BY VOLUNTARY DISCLOSURE.

By making sworn statements about when Morgan Stanley's lawyers knew key facts, and then stating that "Morgan Stanley" had only recently learned that these prior statements were false, Morgan Stanley has waived any attorney-client privilege. Section 507 of the Evidence Code provides that "[a] person who has a privilege against the disclosure of a confidential matter or communication waives the privilege if the person . . . voluntarily discloses . . . or consents to disclosure of any significant part of the matter or communication." FLA. STAT. ANN. § 90.507 (West 2005). And disclosure of a single communication results in disclosure of all other communications related to the same subject matter. *See, e.g., Hoyas v. State*, 456 So. 2d 1225, 1229 (Fla. 3d DCA 1984). As Professor Ehrhardt has explained, "[w]hen a party injects into litigation issues that necessarily require exploration of otherwise privileged matters, a waiver of that privilege will be implied. Fairness requires that a party not be permitted to affirmatively insert an issue into the case and then assert a privilege to protect information that is relevant to the issue raised." CHARLES W. EHRHARDT, FLORIDA EVIDENCE § 507.1, at 418 (2004 ed.) (footnotes and citations omitted).

Here, Morgan Stanley has repeatedly and voluntarily disclosed communications involving its in-house counsel. Just to take a single example, there are no fewer than nine statements in Morgan Stanley's May 2005 Summary of Offer of Proof about communications involving Morgan Stanley's in-house attorneys and the timing of their awareness that the Brooklyn Tapes contained e-mail and that the 8-millimeter tapes existed:

- "Cusick and Lee would not learn that there was e-mail on some of these tapes until the end of October 2004." (p. 24)

- “Upon learning there was e-mail on some of those tapes, he [Arthur Riel] did not inform in-house counsel.” (p. 26)
- “Morgan Stanley attorneys learn[ed] in October 2004 that there was some e-mail on some of the Brooklyn Tapes.” (heading on p. 26, capitalization omitted)
- “It was not until late October 2004, however, that they [Cusick and Lee] and other lawyers in Morgan Stanley’s Law Division learned that there was e-mail on some of these back-up tapes.” (p. 26)
- “Additionally, these lawyers did not learn of the existence of the 8-mm Tapes or that e-mail existed on some of those tapes until November 2004.” (p. 26)
- “[T]he operative fact in Doyle’s Declaration was when lawyers learned of e-mail, and, in that respect, there is no confusion.” (p. 27)
- “Neither Doyle nor Lee nor Cusick knew that there were e-mails on the Brooklyn Tapes until late October 2004.” (p. 27)
- “And, indeed, while some IT personnel learned that there was some e-mail on the Brooklyn and 8-mm Tapes in July 2004, Morgan Stanley’s Law Division only learned of e-mail on the Brooklyn Tapes and 8-mm Tapes in October and November 2004, respectively.” (pp. 33-34)
- “[T]his statement [— that late October 2004 was the first time anyone at Morgan Stanley knew that there was recoverable e-mail data on the Brooklyn Tapes —] was true as to the Law Division.” (p. 35)

The unsworn, unsigned “Offers of Proof” from the individual contemnors echo these same points. The Offer of Proof for James P. Cusick, the Managing Director of Morgan Stanley’s Law Division and Co-Head of Global Litigation at Morgan Stanley, who is supervised

by Donald G. Kempf, Jr., states: "On or about October 25, 2004, Mr. Cusick first learned that there was e-mail on some of the Brooklyn Tapes. To Mr. Cusick's knowledge, no one in Morgan Stanley's Law Division learned that there was e-mail on some of the Brooklyn Tapes before October 25, 2004. . . . In early November 2004, Mr. Cusick first learned that certain 8-millimeter tapes had been found and that some of these 8-millimeter tapes contained e-mail. To Mr. Cusick's knowledge, no one in Morgan Stanley's Law Division learned that there was e-mail on these 8-millimeter tapes before early November 2004." Ex. K, at 1. The Offer of Proof for Soo-Mi Lee, an Executive Director in Morgan Stanley's Law Division who is supervised by Mr. Cusick, states: "Ms. Lee recalls first learning in late October [2004] that there was e-mail on some of the Brooklyn Tapes. To Ms. Lee's knowledge, no one in Morgan Stanley's Law Division learned that there was e-mail on some of the Brooklyn Tapes before that time. . . . Ms. Lee recalls that in or about early November 2004, she first learned that certain 8-millimeter tapes had been found and that some of these 8-millimeter tapes contained e-mail. To Ms. Lee's knowledge, no one in Morgan Stanley's Law Division learned that there was e-mail on these 8-millimeter tapes before that time." Ex. L, at 1. And the Offer of Proof for James F. Doyle, an Executive Director in Morgan Stanley's Law Division who is supervised by Ms. Lee, states: "Mr. Doyle did not learn of the existence of the e-mail backup tapes which have been referenced as the Brooklyn Tapes until late October 2004. . . . Mr. Doyle did not learn of the existence of the 8-millimeter tapes containing e-mails until November 2004." Ex. M, at 1.

CPH's Response to Morgan Stanley's Offers of Proof correctly noted that "[t]he proffers from Mr. Cusick and Ms. Lee, as well as Mr. Doyle, constitute waivers of the attorney-client privilege." Ex. N, at 12 n.4. Indeed, the same is true of the June 17 Notice itself: By filing that Notice, Morgan Stanley again waived the privilege, as the Notice states that "the Law Division

was aware in July 2004 that some of the Brooklyn Tapes contained e-mail and that certain 8-mm tapes existed.” Ex. I, 6/17/2005 Notice, at 1.

Regardless of whether some of Morgan Stanley’s communications with its attorneys may have been confidential and privileged at one time, there can be no doubt that these communications have now been repeatedly and voluntarily injected into this litigation and thus disclosed to CPH, to this Court, and to the public. Under Section 507 of the Evidence Code, that voluntary disclosure waives the attorney-client privilege as to all communications related to the subject matter at issue here, and any assertion of privilege to protect information relevant to that subject matter must be rejected.

III. THE COURT HAS BROAD DISCRETION TO ENTER APPROPRIATE CRIMINAL-CONTEMPT SANCTIONS, INCLUDING REVOCATION OF STATE LICENSES, FINES, AND IMPRISONMENT.

Florida law grants trial judges broad discretion when sentencing defendants found guilty of criminal contempt. Potential punishments include revocation of privileges and licenses, fines, and imprisonment for a fixed term.

The breadth of the trial courts’ discretion flows from the fact that the power to punish for contempt is an inherent power of the judiciary under the Florida Constitution. *Walker v. Bentley*, 678 So. 2d 1265, 1267 (Fla. 1996) (“[T]he power of a court to punish for contempt is an inherent one that exists independent of any statutory grant of authority and is essential to the execution, maintenance, and integrity of the judiciary.”).

Among the appropriate sanctions for contempt are garnishment of wages, the delivery of certain assets, and the revocation of licenses. *See Parisi v. Broward County*, 769 So. 2d at 365 (listing “a broad arsenal” of civil-contempt sanctions available to trial courts); *Gifford v. Payne*, 432 So. 2d 38, 38-39 (Fla. 1983) (listing Florida Bar grievance proceedings and judicial

disciplinary proceedings — resulting in potential disbarment — as appropriate sanctions for an attorney-contemnor's litigation misconduct); *see also* *Cunningham v. State*, 349 So. 2d 702, 704-07 (Fla. 4th DCA 1977), *cert. denied*, 362 So. 2d 1052 (Fla. 1978). Morgan Stanley & Co. Incorporated has licenses to do business in the State of Florida as a broker dealer, a broker dealer branch, and an investment adviser. *See* Office of Financial Regulation, Florida Department of Financial Services, Licensing Data Download Site, *available at* <http://www.fldfs.com/OFR/licensing> (using "BD" to indicate "broker dealer," BDB to indicate "broker dealer branch," and IA to indicate "investment adviser").

A person who commits criminal contempt also may be fined. *See, e.g.,* *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. United States Fire Ins. Co.*, 639 So. 2d 606, 609 (Fla. 1994); *Pennekamp v. Circuit Court of Eleventh Judicial Circuit In and For Dade County*, 21 So. 2d 41, 41 (Fla. 1945); *Shook v. Alter*, 729 So. 2d 527, 528 (Fla. 4th DCA 1999); *see also* *Levine v. Keaster*, 862 So. 2d 876, 880 & n.4 (Fla. 4th DCA 2003); *Pollock v. T & M Inv., Inc.*, 346 So. 2d 620, 621 (Fla. 3d DCA 1977). In setting the amount of a fine for contempt, the court must consider the contemnor's financial resources. *See* *Parisi v. Broward County*, 769 So. 2d 359, 366 (Fla. 2000); *Condren v. Bell*, 792 So. 2d 578, 579 (Fla. 4th DCA 2001). Both a corporation and its officers or employees may be held in contempt. *See* *Florida Cent. & P.R. Co. v. Williams*, 33 So. 991, 991-93 (Fla. 1903).

Florida courts also can impose fixed sentences of imprisonment to punish a defendant for a completed act of contempt. *See* *Parisi v. Broward County*, 769 So. 2d at 364-65. The sentencing court must pronounce a "definite, determinate, and certain" sentence. *See* *Senterfitt v. Oaks*, 775 So. 2d 431, 432 n.1 (Fla. 1st DCA 2001).

IV. THE COURT SHOULD APPOINT CPH'S COUNSEL TO ASSIST IT IN PREPARING FOR AND CONDUCTING THE CONTEMPT HEARING.

The June 17 Notice has every appearance of being another example of Morgan Stanley trying to avoid a full and fair disclosure of relevant information. To get to the bottom of this latest controversy, the Court should appoint CPH's counsel to assist in preparing for and conducting the contempt hearing. *See* FLA. R. CRIM. P. 3.840(d) (West 2005) ("The judge may conduct a hearing without assistance of counsel or may be assisted by the prosecuting attorney or by an attorney appointed for that purpose."). Appointed counsel should be authorized to subpoena documents and to depose key witnesses in advance of the hearing.

The need for further investigation is twofold. To begin with, the timing of Morgan Stanley's Notice is suspicious. In a series of well over a dozen separate filings and in-Court arguments, dating from January 2005 right up through the last day of trial, Morgan Stanley persisted in claiming that its in-house attorneys were unaware until October 2004 that the Brooklyn Tapes contained e-mail and were unaware until November 2004 that the 8-millimeter tapes even existed. Equally strange is Morgan Stanley's claim in the June 17 Notice that "Morgan Stanley" only recently determined that its own in-house lawyers had prior knowledge. Who within Morgan Stanley had this knowledge prior to June 17? The Court should not simply accept without explanation Morgan Stanley's unsupported and facially illogical claim that facts known by its senior in-house counsel working on this case were unknown to "Morgan Stanley" for many months.

The Court's investigation — which could be most efficiently conducted with the assistance of undersigned counsel — need not be complex or lengthy. Videotaped depositions could be held in the Court's jury room and would focus primarily on a handful of witnesses, including the four individual contemnors named in this Petition. And the subpoena directed at

Morgan Stanley's document custodian would cover about half a dozen discrete categories of documents.¹

¹ The principal categories of documents would include:

- all analyses of, responses to, or documents concerning Morgan Stanley's June 17, 2005 Notice and/or the statements contained in that Notice;
- all analyses of, responses to, or documents concerning Morgan Stanley's allegedly "new" e-mail search;
- all e-mails discovered by Morgan Stanley's allegedly "new" e-mail search responsive to any of CPH's prior document-production requests;
- all documents concerning Morgan Stanley's review of the e-mails discovered by Morgan Stanley's allegedly "new" e-mail search;
- all documents concerning Mr. Doyle's January 31, 2005 declaration, now withdrawn;
- all documents concerning Morgan Stanley's Offers of Proof from Mr. Cusick, Ms. Lee, and Mr. Doyle; and
- all documents concerning any communication (whether oral, written, or electronic) between, among, or involving any of the following: Mr. Kempf, Mr. Cusick, Ms. Lee, Mr. Doyle, any attorneys or employees at the law firms of Kellogg Huber Hansen Todd Evans & Figel PLLC, Kirkland & Ellis LLP, Carlton Fields PA, Sidley Austin Brown & Wood LLP, or Shearman & Sterling LLP; and concerning the allegedly "new" e-mail search, the accuracy and comprehensiveness of prior e-mail searches, or the accuracy of any oral testimony, affidavit, declaration, representation by counsel, or statement in any paper served or filed in this action concerning any of the e-mail issues that were the subject of CPH's motions or of the Court's March 1 or March 23, 2005 Orders.

CONCLUSION

For the foregoing reasons, this Court should (1) order Morgan Stanley & Co. Incorporated, Donald G. Kempf, Jr., James P. Cusick, Soo-Mi Lee, and James F. Doyle to appear before the Court to show cause why they should not be held in criminal contempt of Court; and (2) appoint undersigned counsel to assist the Court in preparing for and conducting the contempt hearing pursuant to Florida Rule of Criminal Procedure 3.840(d).

Dated: July 27, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

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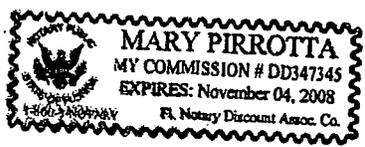
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I hereby swear under penalty of perjury that the facts stated above are true and correct.

Sworn before me this 27th day of July, 2005

Mary Pirrotta
Notary Public

John Scarola



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by
Fax and Federal Express to all counsel on the attached list on this 27th day of July,
2005.



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#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

CASE NO: 2003 CA 005045 AI

Plaintiff,

vs.

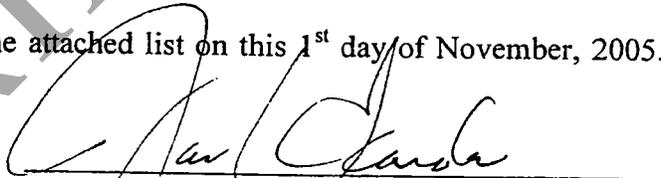
MORGAN STANLEY & CO., INC.,

Defendant.

NOTICE OF FILING AFFIDAVIT OF ARTHUR RIEL

Notice is hereby given of the filing of the original Affidavit of Arthur Riel dated October 20, 2005 in the above-styled matter.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 1st day of November, 2005.



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COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 2003 CA 005045 AI

AFFIDAVIT OF ARTHUR RIEL

Arthur Riel, being first duly sworn, on oath states as follows:

1. From September 11, 2000 through September 27, 2005 I was employed by Morgan Stanley & Co., Inc. ("Morgan Stanley"); my title was Executive Director of Technology. I was placed on administrative leave by Morgan Stanley on August 18, 2004 and my employment was terminated by Morgan Stanley on September 27, 2005.

2. In the spring of 2001, I occupied the position of Executive Director in charge of the Law and Compliance IT Organization ("Law IT Organization"). The Law IT Organization handles technology solutions for Morgan Stanley's Law Division ("Law Division"). The Law Division is comprised of several units, including Litigation and Compliance, all of which report directly to the Chief Legal Officer, Donald Kempf. Throughout my tenure within the Law IT Organization, I interacted with Morgan Stanley attorneys in Litigation and Compliance of the Law Division

including, Donald Kempf, David Elston, Scott Rockoff, Robert Koppenol and Mihal Nahari in Compliance, and James Cusick, Soo-Mi Lee, Zach Stern, James Magnan, Mary Lou Peters and James Doyle in Litigation.

3. In January 2001 Shelley Leibowitz, who I reported to at the time, requested that I architect a solution to the e-mail retention issues as requested by Donald Kempf which had previously been analyzed by the Institutional IT Division of Morgan Stanley. This project was de-prioritized by Compliance of the Law Division in the Spring of 2001, at which time the Law IT Organization stopped analyzing the project. In early 2002, Compliance of the Law Division restarted the project and David Elston assigned to the Law IT Organization the responsibility to develop and manage an e-mail archive system designed to capture, save and maintain in searchable form all Morgan Stanley e-mail created after January 1, 2003. Initially a date was not set as to when the total project was to be accomplished. However, in May 2002 the Law IT Organization created a schedule with an internal deadline of October 2002 and a "published" deadline of January 1, 2003. An SEC order against Morgan Stanley required the archive be operational by March 1, 2003.

4. In Spring of 2002 I became aware of 39,000 back-up tapes while attending meetings with William Hollister and Robert Saunders of the Institutional IT Storage Group ("Saunders' Group") in order to prepare for a meeting with the SEC concerning e-mail production requirements.

5. During the first quarter of 2003 I was requested by James Cusick of Litigation of the Law Division to architect a solution that would allow Morgan Stanley to integrate into the archive e-mails dated earlier than January 1, 2003 contained in Morgan Stanley back-up tapes. The Law IT Organization was first to target the approximately 35,000 back-up tapes, that Mr. Hollister indicated were known to contain some e-mail data. In the Spring of 2003 Mr. Hollister explained in a meeting that the 4,000 tape discrepancy was due to his review of the 39,000 tapes revealed that 4,000 did not have any e-mail data within the tape and were therefore recycled. So in Mr. Hollister's and Mr. Saunders' view the total number of back-up tapes was 35,000. I presented an integration plan directly to Donald Kempf sometime toward the end of the second quarter 2003, which included specific information relating to the existence of over 35,000 back-up tapes that needed to be processed and placed in the archive as part of the project. Mr. Kempf approved the integration plan and signed a multi-million dollar expense request to fund the project.

6. The Law IT Organization did not have the responsibility at Morgan Stanley to locate, control or otherwise inventory pre-2003 back-up tapes containing e-mail. The responsibility to locate, control or otherwise inventory pre-2003 back-up tapes was the responsibility of the Saunders' Group headed by Robert Saunders or William Hollister who was Robert Saunders' superior at the time that the solution was designed. As the Saunders' Group located the back-up tapes, they sent the tapes to an

outside vendor to restore and "de-dupe" (eliminate duplicative messages) the e-mails. The vendor would then return the culled e-mail messages on SDLT tapes to Ms. Gunn within the Saunders' Group who in turn would arrange for the data to be entered on a disk in order to provide it to the Law IT Organization for loading in the archive. Until the data was placed on a disk the Law IT Organization, had no access, control or responsibility for e-mail data or back-up tapes not processed as of that time.

7. By May 2004 the Saunders' Group and the vendor had restored in excess of 300,000,000 pre-2003 e-mails from 35,000 back-up tapes, although the restoration process was not complete at that time. In May of 2004, I became aware that the Saunders' Group had acknowledged the existence of in excess of 1,000 DLT tapes located in a Brooklyn Security Office ("Brooklyn tapes"). I believe it was the fall 2003 that the Saunders' Group disclosed the existence of a cache of 8mm tapes, all of which might contain e-mail. (Exhibit A, E-mail Archive Meeting Minutes, 5/6/04)

8. On June 7, 2004 I advised James Cusick and Soo-Mi Lee in Litigation of the Law Department of the existence of the Brooklyn tapes and the fact that they may contain e-mail:

The storage folks found an additional 1,600 backup tapes in a closet. We are not sure if they have email on them, but it is expected that they predate 1/2000. Unless you say otherwise, I have told the storage team to process them like the other backup tapes (i.e. dump them, screen for email, dedupe the email, and give it to us). I will inform you if any pre-2000 email tapes are found in this batch.

(Exhibit B, E-mail, 6/7/04)

9. As early as July 2, 2004, I knew that the Brooklyn and 8mm tapes contained e-mail dating back at least to 1998:

We looked at the "found" tapes we were able to restore and 90 of them had mail. We got the label (internal) off 4 of them and the dates are 5/12/99, 5/14/99, 8/03/99, and 2/18/01. Obviously there is pre 2000 mail.

We also catalogued 2 of the 8mm test tapes we have and the dates on those are 6/16/98 and 6/7/98 so again there is pre 2000 mail there.

(Exhibit C, E-mail, 7/2/04)

10. In this regard, in a report to Compliance of the Law Division relating to issues existing as of July 2, 2004, Mr. Elston and members of Compliance of the Law Division was forwarded information and I informed Mr. Elston and many of his direct reports that e-mail was contained in the Brooklyn tapes. I made a presentation in this regard directly to Mr. Elston and many of his direct reports who attended the meeting held on or about July 8, 2004:

Notes: All tapes in the original project have been archived. Currently working on 1600 additional tapes.

7/10/04: 1000 discovered tapes have different format from others. Vendor had to modify code. Will start receiving data from tapes the week of 7/15.

(Exhibit D, Priority Project Status Report, 7/2/04)

11. I have been informed that Allison Gorman has asserted that "unexpected delays" in producing e-mails were caused by "unknown software clichés." To my knowledge, two software issues indicated by Ms. Gorman arose regarding the project for which the Law IT Organization was responsible, which was

with respect to (i) pre-2003 e-mails that were rejected during initial processing by the Law IT Organization and (ii) less than accurate group membership data. With respect to (i) above Compliance of the Law Division was informed of this software issue early in the project by January 2004 and decided that corrective action if at all, would take place at the end of the project. This software issue was again discussed and reported in the August 2004 Compliance Status meeting. With respect to (ii) above I was informed by Ms. Zhang of Institutional IT, that e-mail group membership data prior to January 1, 2003 was not available. I immediately notified Compliance of the Law Division, specifically Scott Rockoff, who determined the Law IT Organization should use the January 2003 e-mail group membership data for pre-January 2003 e-mail production. Therefore, Ms. Gorman's assertion be it directly or indirectly, that these two issues were unknown to Morgan Stanley as of October 2004 are false.

12. In the August 2004 Compliance Status meeting I attended with Mr. Elston and many of his direct reports, I reported on the status of the pre-2003 e-mail migration to the archive. I informed them at this meeting that the archiving of the e-mail data from the Brooklyn tapes was ongoing and expected to be completed by August 30, 2004. This status report was formalized in writing and distributed that month.

13. On June 23, 2004 I executed a Certification of Compliance ("Certification") at the request of either Jim Doyle, Jim Magnan or Zach Stern, which I

ultimately determined was Jim Doyle. Mr. Doyle had not initially sought me to execute the Certification, but rather addressed the request to Anush Danilyan, a college student who performed data entry functions, a relatively junior and a low level position within the Law IT Organization. Ms. Danilyan sought guidance from Christopher Muscatella, her supervisor, who promptly brought the Certification to my attention. I determined that Ms. Danilyan was too junior to execute such a document. My understanding of what I was certifying was that a search of the archive had been conducted and that everything responsive that resulted from the search had been produced. I did not understand that by signing the Certification I was certifying that all responsive e-mail from any Morgan Stanley source whatsoever, including any particular set of back-up tapes was produced. Indeed, I could not make such a certification nor should Morgan Stanley even request such of the Law IT Organization, because it was known that the Saunders' Group possessed a substantial quantity of as yet unprocessed tapes. I would have been surprised that anyone connected to the Law Division particularly Litigation ask any person employed in the Law IT Organization to make such a certification since the Law Division was aware that the Law IT Organization was not in a position to do so. The Saunders' Group, not the Law IT Organization, controlled the collection, processing and inventorying of tapes for pre-2003 e-mail, so only the Saunders' Group could certify whether all

possible tapes had been located, processed and produced. The Law IT Organization could only attest to what it had done with the data provided by the Saunders' Group.

14. On or about April 26, 2005 it was requested by Zach Stern within Litigation of the Law Division to review a draft of a proffer of testimony. The draft proffer submitted by Mr. Stern included a paragraph that stated I did not advise the Law Division after June 7, 2004 about any knowledge I may have that there were e-mails contained on the Brooklyn tapes and 8mm tapes. On or about April 28, 2005 Mr. Stern's proffer was rejected and he was informed that I had recalled informing Mr. Elston and many of his direct reports in Compliance of the Law Division on July 8, 2004, both orally and in writing, that the Brooklyn tapes contained e-mail data. While I do not have absolute recollection of advising Mr. Cusick in Litigation of the Law Division, it is my strong conviction that he requested e-mail data from the Brooklyn tapes be placed on a separate SDLT tape. This would have been requested by Litigation of the Law Division in my experience at Morgan Stanley, although I had already informed Compliance of the Law Division. The Morgan Stanley monthly Compliance Status meeting will document my recollection of informing Compliance of the Law Division in this regard.

15. I have been made aware that Morgan Stanley has, on June 17, 2005, retracted a number of statements it previously made, and now concedes that its Law

Division was aware in July 2004 that the Brooklyn tapes contained e-mail and that the 8mm tapes existed:

1. In the listed offers of proof and related statements, Morgan Stanley asserted that its Law Division was not aware that any of the Brooklyn Tapes contained e-mail until October 2004 and was not aware of certain 8-mm tapes until November 2004.

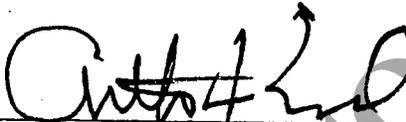
2. As a result of a review of e-mails discovered by a new e-mail search, Morgan Stanley has determined that the offers of proof and related statements should be corrected to state that the Law Division was aware in July 2004 that some of the Brooklyn Tapes contained e-mail and that certain 8-mm tapes existed.

16. Morgan Stanley's current claim of finding e-mail(s) in a "new search" of the archive does not make sense to me. Any e-mail dated January 1, 2003 or later was captured in near real-time from Morgan Stanley's mail hubs. Unlike e-mail dated before January 1, 2003, to the best of my knowledge there can not be a more complete source of data than the archive.

17. Any search for 2004 e-mails made in 2005—whether in February, March, April or June – should have identified exactly the same search results. There is a simple, inexpensive way to verify exactly when Morgan Stanley did discover the e-mail or e-mails that it represents led it to the June 17, 2005 retraction. The archive is designed so that every e-mail is assigned a unique message ID number. The archive is further designed to log all searches and the message ID's of all returned results. Thus armed with the message ID of the subject e-mail, it is a simple process to generate a

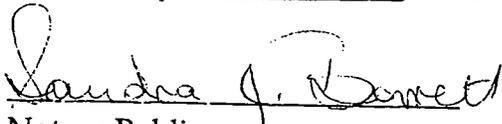
log which will show exactly when the message was first identified in a search, as of my last day of active employment or August 18, 2004.

18. I am ready and willing to appear for live testimony to affirm or supplement the matters addressed in this affidavit.


Arthur Riel

Dated: October 20, 2005

Subscribed and sworn to before me
this 20th day of October, 2005


Notary Public

SANDRA J. BARRETT
NOTARY PUBLIC
MY COMMISSION EXPIRES APRIL 30, 2009

16060

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1 IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND
 2 FOR PALM BEACH COUNTY, FLORIDA
 3 CIVIL DIVISION
 4 CASE NO.: 03 CA 005045 AI

5 COLEMAN (PARENT) HOLDINGS, INC.,
 6 Plaintiff,
 7 vs.
 8 MORGAN STANLEY & CO., INC.,
 9 Defendant.

10 ---
 11 TRANSCRIPT OF THE PROCEEDINGS BEFORE
 12 THE HONORABLE ELIZABETH T. MAASS
 13 ---

14 West Palm Beach, Florida
 15 Thursday, November 3, 2005
 16 2:56 p.m. - 6:10 p.m.

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1 BE IT REMEMBERED that the foregoing
 2 proceedings were had before the HONORABLE ELIZABETH T.
 3 MAASS, in Chambers, in the Palm Beach County
 4 Courthouse, West Palm Beach, Florida, on Thursday,
 5 November 3, 2005 starting at 2:56 p.m., with
 6 appearances as hereinabove noted, to wit:
 7 * * *
 8 THE COURT: Good afternoon. Have a seat.
 9 MR. IANNO: Afternoon, Your Honor.
 10 MR. SCAROLA: Good afternoon, Your Honor.
 11 THE COURT: And we're here on Coleman's
 12 verified petition for show cause order regarding
 13 Morgan Stanley's criminal contempt of court.
 14 Why don't we all introduce ourselves. Front row
 15 I know.
 16 MR. SCAROLA: Do we have enough time, Your
 17 Honor? We'll skip our introductions.
 18 THE COURT: The folks I don't know or
 19 haven't met personally probably should introduce
 20 themselves, maybe starting in the back row.
 21 Mr. Shaw, obviously I know you.
 22 MR. SCHWARTZ: Barry Schwartz.
 23 MR. HIRSCH: Sam Hirsch.
 24 THE COURT: I know you.
 25 MR. DUNCAN: Douglas Duncan.

1 speaking of.
 2 MR. HANSEN: We've withdrawn the offers of
 3 proof, I believe, totally, Your Honor. The
 4 Doyle one must be the one that refers to the
 5 fifth paragraph.
 6 THE COURT: I have an offer of proof as to
 7 three, as I understand it. I also have the
 8 declaration as to Mr. Doyle. The declaration as
 9 to Mr. Doyle is paragraph 3B of your motion.
 10 I'm talking about of the notice.
 11 MR. HANSEN: There's also a proffer for
 12 Mr. Doyle.
 13 THE COURT: Right. And isn't that the offer
 14 of proof?
 15 MR. HANSEN: Yes, Your Honor.
 16 THE COURT: Right. So what I'm talking
 17 about now is 3A. Do you have that in front of
 18 you with the notice?
 19 MR. HANSEN: I do have it, Your Honor.
 20 THE COURT: Okay. The parenthetical, is
 21 that meant to apply only to the offer of proof
 22 for Mr. Doyle or as to all three?
 23 MR. HANSEN: I believe that's as to
 24 Mr. Doyle, Your Honor.
 25 THE COURT: Okay. So if we go to Mr. Doyle,

1 October 2004; to the best of my knowledge,
 2 nobody in the law division knew about it until
 3 October of 2004; and then have it turn out, oh,
 4 somebody in the law division did actually know
 5 in July of 2004. Those are not three
 6 inconsistent statements.
 7 So I'm trying to figure out when you say
 8 you're correcting... for instance, when you
 9 withdraw Miss Lee's statement that she didn't
 10 know until October of 2004, I'm assuming you are
 11 now saying she did know before then or simply
 12 that she was mistaken in believing nobody in the
 13 law division knew before then.
 14 MR. HANSEN: Your Honor, I would leave that
 15 to Miss Lee's counsel. From Morgan Stanley's
 16 standpoint we didn't want to make any
 17 representation. We're withdrawing any
 18 suggestion from any witness proffered to the
 19 court that members of the law division, and that
 20 includes all those people, didn't know.
 21 THE COURT: What are you affirmatively
 22 representing now, that Morgan Stanley is
 23 correcting the record to show these three
 24 individuals did know in July of 2004 or simply
 25 some unnamed person in the law division knew?

1 I want to make sure first I understand what
 2 you're withdrawing as to him. You're
 3 withdrawing the first sentence of one, two,
 4 three -- you're withdrawing the statement
 5 Mr. Doyle did not learn of the existence of the
 6 e-mail backup tapes which had been referred to
 7 as the Brooklyn tapes until late October, 2004.
 8 MR. HANSEN: Yes, Your Honor.
 9 THE COURT: And you're withdrawing the
 10 statement Mr. Doyle did not learn of the
 11 existence of the eight-millimeter tapes
 12 containing e-mail until November 2004.
 13 MR. HANSEN: Morgan Stanley is withdrawing
 14 those things, yes, has withdrawn those.
 15 THE COURT: Okay. Now as to the other two,
 16 you're withdrawing them in their entirety as to
 17 Cusick and Lee, or are you withdrawing still
 18 just -- I'm trying to figure out what you're
 19 withdrawing first.
 20 MR. HANSEN: The gist of it is what we're
 21 withdrawing is anything that relates to the
 22 subject matter.
 23 THE COURT: I'm still sort of trying to
 24 clarify it. To me it's not inconsistent for
 25 Miss Lee to say I didn't know about it until

1 MR. HANSEN: Your Honor, I think the proffer
 2 through the notice --
 3 THE COURT: I don't understand. Again, if I
 4 understood it, I wouldn't ask the questions. I
 5 mean, if you're saying that that's not something
 6 you're prepared to clarify, that's fine, we can
 7 go forward.
 8 MR. HANSEN: Your Honor, I guess I'm not
 9 prepared to go beyond what the notice says. To
 10 the extent it's unclear, I apologize. But we
 11 have withdrawn any suggestion on the subject
 12 from those proffers. In other words -- there's
 13 no -- in other words, Your Honor, previously
 14 there was a representation and a proffer from
 15 Miss Lee on that subject. Take her for example.
 16 THE COURT: Miss Lee said I didn't know
 17 before October. I'm using her as an example. I
 18 didn't know before October of 2004. And to the
 19 best of my knowledge, nobody from the law
 20 division did.
 21 MR. HANSEN: And that's withdrawn.
 22 THE COURT: But now you've said you've
 23 corrected that to say someone in the law
 24 division did know in July of 2004. Well, those
 25 three statements are not inconsistent with each

1 other, so I'm not sure why -- I'm not sure -- By
2 withdrawing the first two, are you telling me
3 they were simply wrong, or are you just saying
4 you want to just take them out of the record,
5 you're not telling me whether they're wrong or
6 right?

7 MR. HANSEN: Well, I think what we're
8 saying, Your Honor, is several things. Maybe
9 there's some things we're saying, some things
10 we're not saying. What we're saying is we want
11 no representation to the Court from Morgan
12 Stanley about any members of the law division
13 and when they were aware of those subjects.
14 We've taken them out. There were proffers on
15 that subject. We've withdrawn the proffers on
16 that subject. They don't exist in the record.
17 We have not made affirmative representation on
18 behalf of the individuals as to what they knew
19 and when they knew it.

20 THE COURT: So you're not taking out when
21 Miss Lee said she didn't know until October of
22 2004. You're not prepared to admit that was
23 incorrect. You're just taking -- we're taking
24 it out of the record? How are we doing that?

25 MR. HANSEN: We're correcting the record,

1 affirmatively representing the members of the
2 law division were aware. We previously made an
3 argument based on that.

4 THE COURT: But what you want to do is
5 remove the proffer that Miss Lee did not know
6 until October 2004. And I need to know are you
7 just trying to reopen the proffer and remove
8 that and put it to the side and not tell me
9 anything about the subject, or are you telling
10 me that was wrong?

11 MR. HANSEN: Your Honor, we have stated that
12 we did not believe those proffers and those
13 subjects should be relied upon by the Court, so
14 we've withdrawn them.

15 THE COURT: But you're not prepared to
16 say --

17 MR. HANSEN: I can't make a representation.

18 THE COURT: -- you believe it was wrong --

19 MR. HANSEN: I can't make representation of
20 Miss Lee's knowledge or lack of knowledge.

21 THE COURT: But it was a notice filed by
22 Morgan Stanley. I'm trying to figure out what
23 you meant.

24 MR. HANSEN: We've asked Your Honor not to
25 credit that. We've said it is erroneous.

1 Your Honor.

2 THE COURT: Then I need to know what -- are
3 you saying we submitted a proffer from Miss Lee
4 that said she didn't know until October 2004.
5 We have an ethical obligation. We recognize
6 that that's erroneous, and we're now correcting
7 it to say she did know July of 2004, or are you
8 saying we made a proffer; it's in the record
9 Miss Lee knew in October 2004. We're not
10 prepared to say that was wrong, but we want to
11 somehow open up the record and remove that piece
12 of paper --

13 MR. HANSEN: We've withdrawn the
14 representation.

15 THE COURT: Then -- We can talk procedurally
16 what that means, but I had understood from a
17 prior discussion that Morgan Stanley felt it had
18 an ethical obligation to correct erroneous --
19 it's in the testimony, but erroneous proffers in
20 the record. Now what you're telling me is
21 you're not correcting an erroneous proffer
22 because you're not suggesting what she said was
23 wrong. You simply want to remove a part of
24 proffer.

25 MR. HANSEN: No, Your Honor, we're

1 THE COURT: I can think of a bunch of
2 procedural questions, but I understand what, I
3 think, you're telling me, and that's you're not
4 willing to add what we have.

5 MR. HANSEN: No, Your Honor. Let me see if
6 I can be more clear. I don't think we can stand
7 here and supplement, I don't, frankly, think
8 we're required or should be required to provide
9 additional evidence. The question is whether
10 there's a record about a lie. So I don't want
11 to get bypassed.

12 THE COURT: I understand.

13 MR. HANSEN: But if you're asking what the
14 technical -- what we have done here, we have
15 said, as Morgan Stanley, not as Miss Lee or her
16 counsel --

17 THE COURT: No, I understand.

18 MR. HANSEN: -- we have said, Your Honor,
19 these proffers were made on this subject, and we
20 don't believe you should rely on them. Members
21 of the law department were aware of these facts
22 in July of '04.

23 THE COURT: That's a little bit different
24 than what -- and maybe I misunderstood what you
25 told me at a prior hearing. I thought what

1 Morgan Stanley was saying -- and, again, I'm a
2 little confused by the whole notice, but I
3 thought what Morgan Stanley was saying is we
4 made representations to you. We now know as
5 officers of the Court and a party before the
6 Court they were incorrect, and we want to make
7 them correct. What you're now telling me is,
8 well, I'm not really prepared to say they were
9 incorrect, but we just want to remove them.

10 MR. HANSEN: From Morgan Stanley's
11 standpoint, Your Honor, we believe they were
12 incorrect and we take them back. But, Your
13 Honor, I just don't think it's appropriate to
14 ask me to represent Miss Lee's knowledge.

15 THE COURT: I'm not at all.

16 MR. HANSEN: I can tell you as Morgan
17 Stanley's lawyer we put in a proffer from her.
18 We've told the Court that's inaccurate. We
19 don't want it relied upon.

20 THE COURT: All I'm asking -- And let me ask
21 a simple question. In submitting the notice, is
22 it Morgan Stanley's position that Ms. Lee's
23 proffer that she was not aware of the existence
24 of the e-mail or the tapes until October or
25 November of 2004, is that incorrect?

1 withdrawn in their entirety because we believe
2 them to be inaccurate on that subject.

3 THE COURT: The second question I had about
4 the notice, and you tell me, is you say you want
5 to correct the record to state the law division
6 was aware in July of 2004 that some Brooklyn
7 tapes contained e-mail and certain
8 eight-millimeter tapes existed. Do you mean to
9 say "first aware" or do you mean simply to say
10 "aware"?

11 MR. HANSEN: Your Honor, it says what it
12 says. The prior discussion had been whether
13 July or October. Those were the suggested
14 dates. And this says that -- it says what it
15 says.

16 THE COURT: So you're not attempting to say
17 that was when Morgan Stanley was first aware?
18 You're simply saying they were aware?

19 MR. HANSEN: We have said they were aware at
20 that time.

21 THE COURT: Okay.

22 MR. HANSEN: And that was the focus of the
23 issue before us, so we've addressed the focus of
24 the issue before. Again, this is not a
25 representation -- I wish to be very clear --

1 MR. HANSEN: That is Morgan Stanley's
2 position, Your Honor.

3 THE COURT: That that was not a correct
4 statement?

5 MR. HANSEN: That there would be evidence to
6 suggest notice to the people for proffers
7 submitted. Yeah, we're not talking about --

8 THE COURT: Notice to Miss Lee. Not just
9 that somebody in the law department knew about
10 it.

11 MR. HANSEN: Not just somebody. As to
12 Miss Lee's representation, we believe that was
13 inaccurate, and we have sought to have it, as
14 Morgan Stanley, withdrawn. But I can't say,
15 Your Honor, and I don't have Miss Lee's state of
16 mind or what she knew and when she knew it.

17 And I assert in the strongest terms that
18 there is nothing to suggest that Ms. Lee or any
19 other Morgan Stanley person deliberately
20 misstated their knowledge. But I am stating
21 that from Morgan Stanley's standpoint we have
22 corrected the prior representations to take out
23 things we believe to be inaccurate. And
24 Ms. Lee's representation about her knowledge of
25 the e-mail, Mr. Doyle, Mr. Cusick have been

1 THE COURT: I just don't want to
2 misapprehend what it is the notice is saying.
3 The notice is not saying we were first aware in
4 July 2004. It's not saying it was. It's just
5 saying we were aware in July of 2004.

6 MR. HANSEN: It's -- Certainly the
7 implication of notice would suggest first aware,
8 Your Honor.

9 THE COURT: It is, and that's why I want
10 to -- before I accept that implication as what
11 you intended to convey I want to know what
12 that --

13 MR. HANSEN: That's the implication of the
14 notice. I suspect the way -- again, we're
15 getting into the drafting of it. That was the
16 issue before July versus October. So I think
17 the implication of the notice is that was when
18 it came, the new information came --

19 THE COURT: But is Morgan Stanley standing
20 on that implication that what you intend to say
21 is that you, Morgan -- the law division was
22 first aware in July of 2004? Because that is
23 the implication. And before we argue from that
24 I want to make sure we're all clear on what
25 we're talking about.

1 MR. HANSEN: Your Honor, on that particular
2 point, this notice corrected previous
3 statements. I'm aware Mr. Reil comes into Court
4 on his third affidavit and says he told people
5 in January of '04 about the eight-millimeter
6 tapes, for example. That's a recent allegation
7 by Mr. Riel.

8 THE COURT: As I said, when I first read
9 this, to me what it said was that the law
10 division was first aware in July of 2004. And,
11 again, I agree with you, that was the
12 implication. If that's not what Morgan Stanley
13 intends it to say, that's fine. I just need to
14 know what it says.

15 MR. HANSEN: I think that's the fair reading
16 of the notice, Your Honor.

17 THE COURT: But is that what you intend --
18 is Morgan Stanley telling me the law division
19 was first aware July of 2004 of the existence of
20 the e-mail and the eight-millimeter tapes?

21 MR. HANSEN: Morgan Stanley is making that
22 representation to the Court based on its
23 knowledge at the time.

24 THE COURT: Right here now?

25 MR. HANSEN: Right here now? Your Honor --

1 opposition papers you talk about the law
2 division being informed in July of 2004. Was
3 that just a -- well, I mean informed -- that
4 there was some affirmative act in July of 2004.
5 Although I didn't see that from the notice. Is
6 that -- are we just parsing words or?

7 MR. HANSEN: Was aware -- they were on
8 notice. I think, you know, that could be a
9 number of things.

10 THE COURT: When you say informed can we
11 just say they knew?

12 MR. HANSEN: Could have been from a
13 conversation, could have been from an e-mail.

14 THE COURT: Sure.

15 MR. HANSEN: They were on notice. They were
16 made aware. They are informed.

17 THE COURT: We agree the notice doesn't tell
18 me something specific happened in July of 2004
19 to inform Morgan Stanley's law division of the
20 e-mail or the tapes?

21 MR. HANSEN: Judge, again, I think all we
22 can do is stand on what we filed as the notice.

23 THE COURT: I appreciate that.

24 MR. HANSEN: As to the extent there are any
25 new -- I don't want to provide additional

1 THE COURT: Or as of even the day you filed
2 this, June 17th of 2005?

3 MR. HANSEN: As of the day we filed it
4 Morgan Stanley -- this was the correction Morgan
5 Stanley sought to make.

6 THE COURT: Okay. Again, I just want to
7 make sure we're both really clear. Are you
8 telling me I should read this and Morgan Stanley
9 intends me to read it as saying it's corrected
10 to state that the law division was first aware
11 in July of 2004?

12 MR. HANSEN: I think that's the fair reading
13 of it, Your Honor.

14 THE COURT: Is that the reading Morgan
15 Stanley wants me to accept for purposes of this
16 hearing?

17 MR. HANSEN: Your Honor, I think for
18 purposes of this hearing we should stand on what
19 we've provided.

20 THE COURT: If you just want to say stand on
21 the words, that's fine. Anything more?

22 MR. HANSEN: I don't want to provide any
23 more or less.

24 THE COURT: That's fine. The final question
25 I have, and it's a minor point, in some of your

1 testimony. I'm not in a position to make
2 representations of fact as to what's true and
3 what's not true. This was the notice supplied
4 by Morgan Stanley.

5 THE COURT: Again, I just want to understand
6 what you meant. That's all. So as I understand
7 it, you are telling me that it's Morgan
8 Stanley's position that the statements by
9 Mr. Cusick, Mr. Doyle and Miss Lee that they
10 were unaware of the e-mail or the
11 eight-millimeter tapes until October, November
12 of 2004 was simply incorrect. And we can talk
13 about whether it was an intentional or -- I'm
14 not -- was simply incorrect. That their
15 statements to the best of their knowledge nobody
16 in the law division even knew about the e-mail
17 or eight-millimeter tapes until October or
18 November 2004 was simply incorrect. And, in
19 addition, a third fact was at least somebody in
20 the law division knew of the e-mail and
21 eight-millimeter tapes in July of 2004.

22 MR. HANSEN: It says the law division.

23 THE COURT: Right. We don't know -- we
24 don't know who.

25 MR. HANSEN: Not further specified.

1 That's --
 2 THE COURT: Is that what you're telling me?
 3 MR. HANSEN: That's accurate.
 4 THE COURT: And what you're saying is that
 5 the law division or someone in it was aware of
 6 the e-mail and the tapes in July of 2004, but
 7 that doesn't necessarily imply when it was first
 8 learned?
 9 MR. HANSEN: I just don't think I can do any
 10 better than -- say any other words.
 11 THE COURT: I appreciate the clarification.
 12 Thanks. That's all I needed to know.
 13 How do you want to divide up time?
 14 MR. SCAROLA: May I make a suggestion, Your
 15 Honor, that perhaps one additional clarification
 16 would be helpful?
 17 THE COURT: And what would that be?
 18 MR. SCAROLA: In the June 17 notice there is
 19 a reference to a new e-mail search and a review
 20 of e-mails discovered by new e-mail search. I'm
 21 wondering whether Morgan Stanley would like to
 22 tell us what that means.
 23 THE COURT: That's not -- I understand your
 24 client's curiosity, and I don't think that's
 25 material to what I'm doing today.

1 would say ten minutes.
 2 THE COURT: Okay.
 3 MR. FISKE: Maybe a little more.
 4 THE COURT: Sure.
 5 MR. LUBIN: Your Honor, on behalf of
 6 Mr. Doyle probably about 15 minutes is what it
 7 would take depending on the questions the Court
 8 may have.
 9 THE COURT: Sure.
 10 MS. STRAUSS: Your Honor, on behalf of
 11 Miss Lee, about 10 to 15 minutes as well.
 12 THE COURT: Okay.
 13 MR. DUNCAN: And on behalf of Mr. Kempf, the
 14 same, Your Honor.
 15 THE COURT: That's fine. Okay.
 16 Mr. Scarola, I guess you're first up. And I can
 17 tell you, I'm sure you have your presentation.
 18 I had a couple questions. Maybe I can just pose
 19 them, and you can hit them when you do your
 20 presentation.
 21 MR. SCAROLA: Certainly.
 22 THE COURT: First of all, one is not a
 23 question. It's merely a request. I need to be
 24 very clear from the presentation what you think
 25 were the contemptuous acts as to each of the

1 MR. SCAROLA: Thank you, Your Honor.
 2 THE COURT: How do we want to divide our
 3 time?
 4 MR. SCAROLA: Is it my understanding that we
 5 have a total of two hours?
 6 THE COURT: We do. Obviously we'll go until
 7 we're done. I mean, I'm not going to stop at
 8 6:00 if we're not done by then. So tell me how
 9 long you need and how you want me to divide it
 10 up.
 11 MR. SCAROLA: I would think Your Honor
 12 initially I need somewhere between 15 minutes
 13 and 25 minutes for introductory remarks and
 14 would save the balance of my time for rebuttal.
 15 THE COURT: Okay.
 16 MR. SCAROLA: Might take a whole lot less
 17 than that initially.
 18 THE COURT: Okay. We'll see. Mr. Hansen,
 19 you're responding on behalf of Morgan Stanley?
 20 MR. SCAROLA: Yes, Your Honor. I expect 20
 21 minutes, Your Honor.
 22 THE COURT: I'm not going to time. I'm
 23 trying to figure out about how long we think
 24 we'll go.
 25 MR. FISKE: Your Honor, for Mr. Cusick I

1 attorneys you're seeking to have me issue orders
 2 to show cause against. In particular, I need to
 3 have you address, the only thing I think I saw
 4 under oath was something from Mr. Doyle and
 5 whether it's contemptuous to do an offer proof,
 6 for Morgan Stanley to give me an offer of proof
 7 unsigned by an in-house counsel and have it
 8 contain something erroneous and how that would
 9 give rise to a contempt against the person named
 10 in the offer of proof.
 11 Also looking at the case law cited by both
 12 sides you have to show, as I understand it, that
 13 the false statement obstructed, had the effect
 14 of obstructing the judicial process. And I
 15 guess what would be the response to the
 16 contention that that even if we had had the
 17 knowledge at the time we were doing all this,
 18 the law division knew of this in July as opposed
 19 to November, we may have spent less time, but
 20 the outcome would have been the same, so
 21 ultimately it did not obstruct the judicial
 22 process. We maybe spun our wheels for a while
 23 longer, but it didn't effect the outcome of the
 24 case.
 25 MR. SCAROLA: Would you like me to start

1 with a response to the last question first?

2 THE COURT: However you want to start is
3 fine.

4 MR. SCAROLA: Thank you. Let me address the
5 last question first, if I could, Your Honor. It
6 really ties in the first point --

7 THE COURT: I'm sorry. Go ahead.

8 MR. SCAROLA: It ties into the first point I
9 wanted to make, and that's an answer to the
10 question why bother? At this point why should
11 we become bothering with any of this? I think
12 it is incorrect to dismiss misinformation,
13 outright false representations to the Court and
14 failure to comply with direct court orders on
15 the basis that all they did was cause us to
16 waste time. I think that the efficiency of the
17 civil justice system is a very legitimate
18 concern on the part of the Court. And if, in
19 fact, all that happened, although I concede it
20 is not, I suggest it is not, but if all that
21 happened was that we spent hours, days, dealing
22 with issues that we should not have dealt with
23 because of the misrepresentations and the
24 failure to produce documents in direct violation
25 of the Court orders, that in and of itself would

1 November of 2004 that was really known in July
2 of 2004.

3 MR. SCAROLA: Or, more accurately, we
4 believe, in December of 2003 or January of 2004
5 giving credence, as I suggest we should be, to
6 Mr. Riel's affidavit.

7 THE COURT: Sure. But we're still sort of
8 back to where we are. Going back -- I did go
9 back and re-read the sanctions orders to try to
10 recreate in my head where we were because it's a
11 while ago now, at least for me. And obviously
12 what I found, which was that the Morgan Stanley
13 personnel knew about the e-mail and the
14 eight-millimeter tapes, and whether or not they
15 choose to share that information with in-house
16 counsel probably had some bearing on the
17 appropriateness of the continuance and the
18 timing of some of the discovery items, but
19 didn't change the underlying fact that Morgan
20 Stanley itself had information that it simply
21 chose not to share with the Court.

22 MR. SCAROLA: I suggest, Your Honor, that of
23 equal significance is the fact that in the midst
24 of proceedings focusing on Morgan Stanley's
25 litigation misconduct, Morgan Stanley,

1 be a sufficient obstruction to warrant the
2 Court's dealing with these matters by virtue of
3 criminal contempt.

4 But that isn't all that happened. There
5 were indeed substantial arguments about how the
6 jury should be instructed concerning Morgan
7 Stanley's litigation misconduct. And I venture
8 to say that if we knew what we now know, and if
9 we had available to us the information that
10 apparently is readily available that Morgan
11 Stanley continues to choose to conceal from us
12 that what the jury would have been told about
13 Morgan Stanley's litigation misconduct may have
14 very well have been stated in different and far
15 stronger terms.

16 THE COURT: Maybe. But what you're
17 suggesting there is that you think Morgan
18 Stanley continued to fail to comply with the
19 court's discovery orders throughout the trial.
20 And whether or not that's true is not an issue
21 in front of me now. All we're talking about is
22 whether it was contemptuous to file, as I
23 understand it, the declaration and the three
24 offers of proof and make arguments to the court
25 based on them that something was not known until

1 regardless of what the individual respondents
2 did or did not know and when they did or did not
3 know, Morgan Stanley in the midst of hearings
4 relating to litigation misconduct chose to
5 continue to intentionally engage in litigation
6 misconduct to conceal the true nature and extent
7 of the litigation misconduct that was under
8 investigation.

9 I don't know -- I don't know how this court,
10 which has clearly recognized in its past orders
11 the significance of protecting the integrity of
12 the civil justice system, in light of the
13 information now before this court could possibly
14 choose not to proceed further.

15 THE COURT: Let's stop a moment and back up.
16 Let me have you address one of the questions I
17 asked. Be very specific to me as to each, both
18 as to Morgan Stanley and as to each of the
19 respondents what you think is the act or failure
20 to act that give -- that can give rise to
21 issuing an order to show cause for contempt.

22 MR. SCAROLA: Sure. Let's start with Morgan
23 Stanley first. Morgan Stanley repeatedly
24 represented to the Court under oath in the form
25 of Mr. Doyle's affidavit, unsworn to in the form

1 of the offers of proof. It repeatedly
2 misrepresented facts to this court that were
3 material to the Court's inquiry regarding what
4 Morgan Stanley's in-house counsel knew and when
5 Morgan Stanley's in-house counsel knew it.

6 THE COURT: Okay.

7 MR. SCAROLA: Those facts are now absolutely
8 beyond dispute as a consequence of the June 17
9 filing. Because we have -- we have received a
10 clarification at this point. If there were any
11 doubt about it before, at least as I understood
12 the tortured clarification that we ultimately
13 got this afternoon, they are acknowledging that
14 the statements that were made were false
15 statements. And they have withdrawn those false
16 statements.

17 THE COURT: Well, I think what they're
18 acknowledging, not to parse it, is that Morgan
19 Stanley believes they were false. Is that
20 accurate? You're not saying whether they were
21 false or not. You're just saying you believe
22 they were false based on a review of e-mails.

23 MR. HANSEN: We believe they're inaccurate,
24 Your Honor.

25 THE COURT: Okay.

1 correcting the statements. It repeatedly says
2 we are correcting the statements and repeatedly
3 says that. They knew these statements would say
4 we didn't know until October. They're saying we
5 knew in July. I still am not sure --

6 THE COURT: Are we saying Mr. -- does Morgan
7 Stanley intend to say that its belief is that
8 Miss Lee knew in July? I'm still confused.

9 MR. HANSEN: I'm sorry, Your Honor. I don't
10 mean to parse words. Morgan Stanley is saying
11 that when we made those representations about --
12 proffered that testimony, Mr. Cusick, Mr. Doyle,
13 Miss Lee, any one of the witnesses about when
14 they knew something, that was incorrect. They
15 knew it in July.

16 THE COURT: Miss Lee knew it in July;
17 Mr. Cusick knew in July; and Mr. Doyle knew it
18 in July --

19 MR. HANSEN: That's Morgan Stanley's view.

20 THE COURT: Those three individuals knew in
21 July.

22 MR. HANSEN: And the law division.

23 THE COURT: And maybe others in the law
24 division but at a minimum those three.

25 MR. HANSEN: I didn't mean to parse words,

1 MR. HANSEN: False has the connotation, and
2 Mr. Scarola takes it as people were deliberately
3 lying to the court. We, Morgan Stanley, have
4 clarified that those statements about that
5 subject were not accurate. That's our -- that's
6 Morgan Stanley's position.

7 THE COURT: Okay. Go ahead.

8 MR. SCAROLA: This -- it astounds me that
9 after all we have been through in front of this
10 court about the tortured use of language on
11 Morgan Stanley's part throughout these
12 proceedings that they continue to torture
13 language as they do. If it -- if the statements
14 were not accurate, then they were false.
15 They're either true and accurate statements or
16 they are false statements. These statements
17 were false. The law department, the law
18 department knew prior to October of 2004 each of
19 the individuals who they have said made
20 statements that they didn't know prior to
21 October 2004, knew prior to October 2004.
22 That's what the June 17 statement says. It
23 doesn't just say we're withdrawing these
24 statements because we no longer know whether
25 they are true or false. It says we are

1 Your Honor, but I just didn't want to let it
2 pass this is somehow an intentional falsehood.
3 We concede. It's not an issue in this court as
4 to whether Morgan Stanley believes those are
5 accurate statements. They were not. They were
6 wrong and they've been corrected.

7 THE COURT: Okay. Go ahead.

8 MR. SCAROLA: With regard to Morgan Stanley
9 itself, the corporate entity, it is a basic
10 principle of Florida law that a corporation is
11 charged, a principal is charged with knowledge
12 of its agents acquired within the course and
13 scope of their agency.

14 THE COURT: Is that true as a concept of
15 criminal law as well?

16 MR. SCAROLA: It's true as a concept of all
17 Florida law as far as I know, Your Honor, that a
18 corporation --

19 THE COURT: I would need to look to see what
20 you need -- frankly, I haven't looked at
21 criminal stuff in a long enough time that I
22 understand --

23 MR. SCAROLA: It's my understanding that a
24 corporation being an imaginary being enjoying
25 the privilege of existence through the law, one

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: CA 03-005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

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SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

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NOTICE

Defendant, Morgan Stanley & Co. Incorporated, by and through its undersigned counsel, hereby files this Notice and states as follows:

At the November 3, 2005 contempt hearing the Court inquired about the meaning of certain language in the Notice filed on June 17, 2005. The Notice is attached as Appendix "A." A copy of the colloquy with the Court is attached as Appendix "B." The Court's November 10, 2005 Order noted that the colloquy left the issue unresolved. See Appendix C. p.4, n.4. This Notice resolves any ambiguity. Morgan Stanley's Law Division was aware of the existence of the referenced e-mail back-up tapes and the presence of e-mail on some of those tapes prior to July 2004.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 21st day of December, 2006.

CARLTON FIELDS, P.A.
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BY


JOSEPH IANNO, JR.
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APPENDIX A

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

NOTICE

Morgan Stanley & Co. Incorporated ("Morgan Stanley") hereby notifies the court and Plaintiff that it retracts, withdraws and corrects certain statements in the offers of proof, declaration, and related statements more fully described and listed below.

1. In the listed offers of proof and related statements, Morgan Stanley asserted that its Law Division was not aware that any of the Brooklyn Tapes contained e-mail until October 2004 and was not aware of certain 8-mm tapes until November 2004.
2. As a result of a review of e-mails discovered by a new e-mail search, Morgan Stanley has determined that the offers of proof and related statements should be corrected to state that the Law Division was aware in July 2004 that some of the Brooklyn Tapes contained e-mail and that certain 8-mm tapes existed.
3. Morgan Stanley submits this Notice to: (a) correct Defendant's Offers of Proof from James P. Cusick, Soo-Mi Lee, and James F. Doyle (the first sentence of paragraph 4 and the entirety of paragraph 5); (b) withdraw the Declaration of James F. Doyle of January 31,

2005; and (c) correct related statements that reference or were based on the foregoing submissions¹.

4. Morgan Stanley does not limit this notice and correction to the specific documents described or listed herein. Morgan Stanley retracts, withdraws and corrects any and all statements, written or oral, made or submitted on its behalf, to the effect that its Law Division was not aware that any of the Brooklyn Tapes contained e-mail until October 2004 and was not aware of certain 8-mm tapes until November 2004.

¹ The related statements include: paragraph 4 on pages 2-3 of Morgan Stanley's Opposition to CPH's Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, dated January 31, 2005; the first two sentences of the second full paragraph on page 2 of Morgan Stanley's Supplemental Opposition to CPH's Motion for Adverse Inference Instruction, dated February 11, 2005; the last paragraph on page 6 that carries over to page 7 of Morgan Stanley Opposition to CPH's Motion for a Default Judgment, dated February 28, 2005; the last clause of the fourth sentence from the bottom and the last two sentences on page 20, and the first two sentences of the second full paragraph on page 31 of Morgan Stanley's Opposition to CPH's Motion for a Default Judgment (corrected version filed March 13, 2005 and original version served March 12, 2005); the second sentence in the second full paragraph on page 7 of Morgan Stanley's Submission of Proposed Statement to be Read to the Jury Pursuant to Court's March 23, 2005 Order on CPH's Renewed Motion for Entry of Default Judgment, dated March 28, 2005; the second sentence of the first full paragraph on page 24, the second sentence on page 26, the heading for Section C and the second and third sentences in that section on page 26, the last clause in the second to last sentence and the last sentence in that section on page 27, the final sentence on page 33 that carries over to the top of page 34, and the first clause of the second sentence of the first full paragraph on page 35 of the Summary of Offer of Proof Regarding Defendant's Alleged Litigation Misconduct (Addendum to Morgan Stanley's Opposition to Coleman (Parent) Holdings Inc.'s Second Renewed Motion for Correction and Clarification of the Litigation-Misconduct Statement) ("Summary of Offer of Proof"), originally filed May 12, 2005 and re-filed on May 17, 2005 in Phase II; February 2, 2005 Hr'g Tr. 132:1-7, 133:6-11, 147:22-25 (statements by counsel); the second half of the heading for Section C on page 15 and the first paragraph of page 17 of Morgan Stanley's Response to CPH's Chronology of Purported Discovery Abuses, dated March 15, 2005; the second, third and fifth rows (first sentence) on page 6 of Morgan Stanley & Co. Inc.'s Overnight Response to CPH's Additional Submission in Support of its Motion for Default, dated March 15, 2005; May 16, 2005 Hr'g Tr. 15266:4-8; and May 18, 2005 Hr'g Tr. 15607:4-8, 11-13, 15608:8-13, 17-19.

Respectfully submitted,

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BY: 

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 17th day of June, 2005.

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APPENDIX B

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND
FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 03 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

TRANSCRIPT OF THE PROCEEDINGS BEFORE
THE HONORABLE ELIZABETH T. MAASS

West Palm Beach, Florida
Thursday, November 3, 2005
2:56 p.m. - 6:10 p.m.

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1 APPEARANCES:

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BY: ALAN LEVINE, ESQUIRE and
STEVEN COHEN, ESQUIRE

1 BE IT REMEMBERED that the foregoing
2 proceedings were had before the HONORABLE ELIZABETH T.
3 MAASS, in Chambers, in the Palm Beach County
4 Courthouse, West Palm Beach, Florida, on Thursday,
5 November 3, 2005 starting at 2:56 p.m., with
6 appearances as hereinabove noted, to wit:

7 * * *

8 THE COURT: Good afternoon. Have a seat.

9 MR. IANNO: Afternoon, Your Honor.

10 MR. SCAROLA: Good afternoon, Your Honor.

11 THE COURT: And we're here on Coleman's
12 verified petition for show cause order regarding
13 Morgan Stanley's criminal contempt of court.
14 Why don't we all introduce ourselves. Front row
15 I know.

16 MR. SCAROLA: Do we have enough time, Your
17 Honor? We'll skip our introductions.

18 THE COURT: The folks I don't know or
19 haven't met personally probably should introduce
20 themselves, maybe starting in the back row.

21 Mr. Shaw, obviously I know you.

22 MR. SCHWARTZ: Barry Schwartz.

23 MR. HIRSCH: Sam Hirsch.

24 THE COURT: I know you.

25 MR. DUNCAN: Douglas Duncan.

1 MR. SIFFERT: John Siffert from New York,
2 Your Honor, for Don Kempf.

3 MS. STRAUSS: Audrey Strauss from New York
4 for Soo Mi-Lee.

5 MR. WEINBERG: Sandy Weinberg from Tampa for
6 Soo Mi-Lee.

7 THE COURT: Okay.

8 MR. FISKE: Bob Fiske from New York for Jim
9 Cusick.

10 MR. LUBIN: Richard Lubin, Your Honor, for
11 James Doyle.

12 MR. LEVINE: Alan Levine for James Doyle.

13 MR. CRITTON: Bob Critton for Jim Cusick.

14 THE COURT: Did they not give you a chair?

15 MR. CRITTON: They relegated me.

16 THE COURT: We can find you a chair.

17 That's --

18 MR. CRITTON: That's okay. Would you prefer
19 that I be here?

20 THE COURT: I don't care. I don't want you
21 to think we didn't have room for you.

22 MR. CRITTON: I get better service here than
23 I do at my office.

24 THE COURT: I'm assuming that says a lot.

25 Thank you.

1 MR. CRITTON: It does. Thank you.

2 THE COURT: About your office.

3 I don't know how you want to best proceed or
4 how you want to divide up your time. I -- in
5 reviewing the papers, it strikes me that a large
6 part of Coleman's argument is based on the
7 notice that was filed by Morgan Stanley. I have
8 some questions about some of the statements in
9 the notice and what they mean, and I don't know
10 if Morgan Stanley is able to clarify those
11 first. And then maybe we can talk about how we
12 want to divide up time and go forward. Are you
13 willing --

14 MR. SCAROLA: We would be happy to proceed
15 in that fashion, Your Honor.

16 THE COURT: And, Mr. Hansen, I'm not
17 suggesting your client -- Let me ask you what my
18 questions are first on the notice and maybe you
19 can help.

20 MR. HANSEN: Yes, Your Honor.

21 THE COURT: Do you have a copy in front of
22 you?

23 MR. HANSEN: I will have one, Your Honor.

24 THE COURT: Okay, great. Thanks. As I said
25 at a prior hearing, I'm still a little befuddled

1 about the purpose of the notice. If we're going
2 to have -- I'd like to at least understand it.
3 Paragraph two, all right, it says, as a result
4 of review of e-mails discovered by a new e-mail
5 search, Morgan Stanley determined that the
6 offers of proof and related statements should be
7 corrected to state the law -- and then corrected
8 to state something. Sort of I guess I have two
9 questions. First I want to understand
10 specifically what's being corrected in the
11 offers of proofs, because it strikes me that
12 what Morgan Stanley is saying here is that it
13 has since discovered its law division was aware
14 of e-mail on the Brooklyn tapes and the
15 eight-millimeter tapes in July of 2004, correct?

16 MR. HANSEN: Yes, Your Honor.

17 THE COURT: That's not inconsistent with
18 what's in the offers of proof as I understand
19 them. And I want to know are you withdrawing --
20 tell me what you're withdrawing in the offers of
21 proof.

22 MR. HANSEN: Your Honor, I think you put
23 your finger on it. I don't want to go beyond
24 the words. I just want to be clear on what the
25 notice says and what we think it does. We

1 wanted to withdraw any suggestion to the court
2 that had previously been made, whether an offer
3 of proof or argument of counsel the law division
4 was not on notice of those facts in July of '04.

5 THE COURT: Sure, but, for instance, if you
6 go to paragraph three, it submits the notice to,
7 A, correct Defendant's offers of proof from the
8 three individuals. Although when it -- sort of
9 has the parenthetical, the first sentence
10 paragraph four and the entirety of paragraph
11 five, is that only the offer of proof as to
12 Mr. Doyle, or is it all three?

13 MR. HANSEN: All three, Your Honor.

14 THE COURT: On the offers of proof all
15 you're amending is the first sentence of
16 paragraph four and the entirety of paragraph
17 five?

18 MR. HANSEN: That's where that subject was
19 addressed, I believe, Your Honor.

20 THE COURT: Okay. Then if we go to the
21 offers of proof, I didn't see a paragraph five,
22 unless we're counting paragraphs differently.
23 So tell me exactly when you say the first
24 paragraph of -- first sentence of paragraph four
25 what we're talking about, what verbiage we're

1 speaking of.

2 MR. HANSEN: We've withdrawn the offers of
3 proof, I believe, totally, Your Honor. The
4 Doyle one must be the one that refers to the
5 fifth paragraph.

6 THE COURT: I have an offer of proof as to
7 three, as I understand it. I also have the
8 declaration as to Mr. Doyle. The declaration as
9 to Mr. Doyle is paragraph 3B of your motion.
10 I'm talking about of the notice.

11 MR. HANSEN: There's also a proffer for
12 Mr. Doyle.

13 THE COURT: Right. And isn't that the offer
14 of proof?

15 MR. HANSEN: Yes, Your Honor.

16 THE COURT: Right. So what I'm talking
17 about now is 3A. Do you have that in front of
18 you with the notice?

19 MR. HANSEN: I do have it, Your Honor.

20 THE COURT: Okay. The parenthetical, is
21 that meant to apply only to the offer of proof
22 for Mr. Doyle or as to all three?

23 MR. HANSEN: I believe that's as to
24 Mr. Doyle, Your Honor.

25 THE COURT: Okay. So if we go to Mr. Doyle,

1 I want to make sure first I understand what
2 you're withdrawing as to him. You're
3 withdrawing the first sentence of one, two,
4 three -- you're withdrawing the statement
5 Mr. Doyle did not learn of the existence of the
6 e-mail backup tapes which had been referred to
7 as the Brooklyn tapes until late October, 2004.

8 MR. HANSEN: Yes, Your Honor.

9 THE COURT: And you're withdrawing the
10 statement Mr. Doyle did not learn of the
11 existence of the eight-millimeter tapes
12 containing e-mail until November 2004.

13 MR. HANSEN: Morgan Stanley is withdrawing
14 those things, yes, has withdrawn those.

15 THE COURT: Okay. Now as to the other two,
16 you're withdrawing them in their entirety as to
17 Cusick and Lee, or are you withdrawing still
18 just -- I'm trying to figure out what you're
19 withdrawing first.

20 MR. HANSEN: The gist of it is what we're
21 withdrawing is anything that relates to the
22 subject matter.

23 THE COURT: I'm still sort of trying to
24 clarify it. To me it's not inconsistent for
25 Miss Lee to say I didn't know about it until

1 October 2004; to the best of my knowledge,
2 nobody in the law division knew about it until
3 October of 2004; and then have it turn out, oh,
4 somebody in the law division did actually know
5 in July of 2004. Those are not three
6 inconsistent statements.

7 So I'm trying to figure out when you say
8 you're correcting... for instance, when you
9 withdraw Miss Lee's statement that she didn't
10 know until October of 2004, I'm assuming you are
11 now saying she did know before then or simply
12 that she was mistaken in believing nobody in the
13 law division knew before then.

14 MR. HANSEN: Your Honor, I would leave that
15 to Miss Lee's counsel. From Morgan Stanley's
16 standpoint we didn't want to make any
17 representation. We're withdrawing any
18 suggestion from any witness proffered to the
19 court that members of the law division, and that
20 includes all those people, didn't know.

21 THE COURT: What are you affirmatively
22 representing now, that Morgan Stanley is
23 correcting the record to show these three
24 individuals did know in July of 2004 or simply
25 some unnamed person in the law division knew?

1 MR. HANSEN: Your Honor, I think the proffer
2 through the notice --

3 THE COURT: I don't understand. Again, if I
4 understood it, I wouldn't ask the questions. I
5 mean, if you're saying that that's not something
6 you're prepared to clarify, that's fine, we can
7 go forward.

8 MR. HANSEN: Your Honor, I guess I'm not
9 prepared to go beyond what the notice says. To
10 the extent it's unclear, I apologize. But we
11 have withdrawn any suggestion on the subject
12 from those proffers. In other words -- there's
13 no -- in other words, Your Honor, previously
14 there was a representation and a proffer from
15 Miss Lee on that subject. Take her for example.

16 THE COURT: Miss Lee said I didn't know
17 before October. I'm using her as an example. I
18 didn't know before October of 2004. And to the
19 best of my knowledge, nobody from the law
20 division did.

21 MR. HANSEN: And that's withdrawn.

22 THE COURT: But now you've said you've
23 corrected that to say someone in the law
24 division did know in July of 2004. Well, those
25 three statements are not inconsistent with each

1 other, so I'm not sure why -- I'm not sure -- By
2 withdrawing the first two, are you telling me
3 they were simply wrong, or are you just saying
4 you want to just take them out of the record,
5 you're not telling me whether they're wrong or
6 right?

7 MR. HANSEN: Well, I think what we're
8 saying, Your Honor, is several things. Maybe
9 there's some things we're saying, some things
10 we're not saying. What we're saying is we want
11 no representation to the Court from Morgan
12 Stanley about any members of the law division
13 and when they were aware of those subjects.
14 We've taken them out. There were proffers on
15 that subject. We've withdrawn the proffers on
16 that subject. They don't exist in the record.
17 We have not made affirmative representation on
18 behalf of the individuals as to what they knew
19 and when they knew it.

20 THE COURT: So you're not taking out when
21 Miss Lee said she didn't know until October of
22 2004. You're not prepared to admit that was
23 incorrect. You're just taking -- we're taking
24 it out of the record? How are we doing that?

25 MR. HANSEN: We're correcting the record,

1 Your Honor.

2 THE COURT: Then I need to know what -- are
3 you saying we submitted a proffer from Miss Lee
4 that said she didn't know until October 2004.
5 We have an ethical obligation. We recognize
6 that that's erroneous, and we're now correcting
7 it to say she did know July of 2004, or are you
8 saying we made a proffer; it's in the record
9 Miss Lee knew in October 2004. We're not
10 prepared to say that was wrong, but we want to
11 somehow open up the record and remove that piece
12 of paper --

13 MR. HANSEN: We've withdrawn the
14 representation.

15 THE COURT: Then -- We can talk procedurally
16 what that means, but I had understood from a
17 prior discussion that Morgan Stanley felt it had
18 an ethical obligation to correct erroneous --
19 it's in the testimony, but erroneous proffers in
20 the record. Now what you're telling me is
21 you're not correcting an erroneous proffer
22 because you're not suggesting what she said was
23 wrong. You simply want to remove a part of
24 proffer.

25 MR. HANSEN: No, Your Honor, we're

1 affirmatively representing the members of the
2 law division were aware. We previously made an
3 argument based on that.

4 THE COURT: But what you want to do is
5 remove the proffer that Miss Lee did not know
6 until October 2004. And I need to know are you
7 just trying to reopen the proffer and remove
8 that and put it to the side and not tell me
9 anything about the subject, or are you telling
10 me that was wrong?

11 MR. HANSEN: Your Honor, we have stated that
12 we did not believe those proffers and those
13 subjects should be relied upon by the Court, so
14 we've withdrawn them.

15 THE COURT: But you're not prepared to
16 say --

17 MR. HANSEN: I can't make a representation.

18 THE COURT: -- you believe it was wrong --

19 MR. HANSEN: I can't make representation of
20 Miss Lee's knowledge or lack of knowledge.

21 THE COURT: But it was a notice filed by
22 Morgan Stanley. I'm trying to figure out what
23 you meant.

24 MR. HANSEN: We've asked Your Honor not to
25 credit that. We've said it is erroneous.

1 THE COURT: I can think of a bunch of
2 procedural questions, but I understand what, I
3 think, you're telling me, and that's you're not
4 willing to add what we have.

5 MR. HANSEN: No, Your Honor. Let me see if
6 I can be more clear. I don't think we can stand
7 here and supplement, I don't, frankly, think
8 we're required or should be required to provide
9 additional evidence. The question is whether
10 there's a record about a lie. So I don't want
11 to get bypassed.

12 THE COURT: I understand.

13 MR. HANSEN: But if you're asking what the
14 technical -- what we have done here, we have
15 said, as Morgan Stanley, not as Miss Lee or her
16 counsel --

17 THE COURT: No, I understand.

18 MR. HANSEN: -- we have said, Your Honor,
19 these proffers were made on this subject, and we
20 don't believe you should rely on them. Members
21 of the law department were aware of these facts
22 in July of '04.

23 THE COURT: That's a little bit different
24 than what -- and maybe I misunderstood what you
25 told me at a prior hearing. I thought what

1 Morgan Stanley was saying -- and, again, I'm a
2 little confused by the whole notice, but I
3 thought what Morgan Stanley was saying is we
4 made representations to you. We now know as
5 officers of the Court and a party before the
6 Court they were incorrect, and we want to make
7 them correct. What you're now telling me is,
8 well, I'm not really prepared to say they were
9 incorrect, but we just want to remove them.

10 MR. HANSEN: From Morgan Stanley's
11 standpoint, Your Honor, we believe they were
12 incorrect and we take them back. But, Your
13 Honor, I just don't think it's appropriate to
14 ask me to represent Miss Lee's knowledge.

15 THE COURT: I'm not at all.

16 MR. HANSEN: I can tell you as Morgan
17 Stanley's lawyer we put in a proffer from her.
18 We've told the Court that's inaccurate. We
19 don't want it relied upon.

20 THE COURT: All I'm asking -- And let me ask
21 a simple question. In submitting the notice, is
22 it Morgan Stanley's position that Ms. Lee's
23 proffer that she was not aware of the existence
24 of the e-mail or the tapes until October or
25 November of 2004, is that incorrect?

1 MR. HANSEN: That is Morgan Stanley's
2 position, Your Honor.

3 THE COURT: That that was not a correct
4 statement?

5 MR. HANSEN: That there would be evidence to
6 suggest notice to the people for proffers
7 submitted. Yeah, we're not talking about --

8 THE COURT: Notice to Miss Lee. Not just
9 that somebody in the law department knew about
10 it.

11 MR. HANSEN: Not just somebody. As to
12 Miss Lee's representation, we believe that was
13 inaccurate, and we have sought to have it, as
14 Morgan Stanley, withdrawn. But I can't say,
15 Your Honor, and I don't have Miss Lee's state of
16 mind or what she knew and when she knew it.

17 And I assert in the strongest terms that
18 there is nothing to suggest that Ms. Lee or any
19 other Morgan Stanley person deliberately
20 misstated their knowledge. But I am stating
21 that from Morgan Stanley's standpoint we have
22 corrected the prior representations to take out
23 things we believe to be inaccurate. And
24 Ms. Lee's representation about her knowledge of
25 the e-mail, Mr. Doyle, Mr. Cusick have been

1 withdrawn in their entirety because we believe
2 them to be inaccurate on that subject.

3 THE COURT: The second question I had about
4 the notice, and you tell me, is you say you want
5 to correct the record to state the law division
6 was aware in July of 2004 that some Brooklyn
7 tapes contained e-mail and certain
8 eight-millimeter tapes existed. Do you mean to
9 say "first aware" or do you mean simply to say
10 "aware"?

11 MR. HANSEN: Your Honor, it says what it
12 says. The prior discussion had been whether
13 July or October. Those were the suggested
14 dates. And this says that -- it says what it
15 says.

16 THE COURT: So you're not attempting to say
17 that was when Morgan Stanley was first aware?
18 You're simply saying they were aware?

19 MR. HANSEN: We have said they were aware at
20 that time.

21 THE COURT: Okay.

22 MR. HANSEN: And that was the focus of the
23 issue before us, so we've addressed the focus of
24 the issue before. Again, this is not a
25 representation -- I wish to be very clear --

1 THE COURT: I just don't want to
2 misapprehend what it is the notice is saying.
3 The notice is not saying we were first aware in
4 July 2004. It's not saying it was. It's just
5 saying we were aware in July of 2004.

6 MR. HANSEN: It's -- Certainly the
7 implication of notice would suggest first aware,
8 Your Honor.

9 THE COURT: It is, and that's why I want
10 to -- before I accept that implication as what
11 you intended to convey I want to know what
12 that --

13 MR. HANSEN: That's the implication of the
14 notice. I suspect the way -- again, we're
15 getting into the drafting of it. That was the
16 issue before July versus October. So I think
17 the implication of the notice is that was when
18 it came, the new information came --

19 THE COURT: But is Morgan Stanley standing
20 on that implication that what you intend to say
21 is that you, Morgan -- the law division was
22 first aware in July of 2004? Because that is
23 the implication. And before we argue from that
24 I want to make sure we're all clear on what
25 we're talking about.

1 MR. HANSEN: Your Honor, on that particular
2 point, this notice corrected previous
3 statements. I'm aware Mr. Reil comes into Court
4 on his third affidavit and says he told people
5 in January of '04 about the eight-millimeter
6 tapes, for example. That's a recent allegation
7 by Mr. Riel.

8 THE COURT: As I said, when I first read
9 this, to me what it said was that the law
10 division was first aware in July of 2004. And,
11 again, I agree with you, that was the
12 implication. If that's not what Morgan Stanley
13 intends it to say, that's fine. I just need to
14 know what it says.

15 MR. HANSEN: I think that's the fair reading
16 of the notice, Your Honor.

17 THE COURT: But is that what you intend --
18 is Morgan Stanley telling me the law division
19 was first aware July of 2004 of the existence of
20 the e-mail and the eight-millimeter tapes?

21 MR. HANSEN: Morgan Stanley is making that
22 representation to the Court based on its
23 knowledge at the time.

24 THE COURT: Right here now?

25 MR. HANSEN: Right here now? Your Honor --

1 THE COURT: Or as of even the day you filed
2 this, June 17th of 2005?

3 MR. HANSEN: As of the day we filed it
4 Morgan Stanley -- this was the correction Morgan
5 Stanley sought to make.

6 THE COURT: Okay. Again, I just want to
7 make sure we're both really clear. Are you
8 telling me I should read this and Morgan Stanley
9 intends me to read it as saying it's corrected
10 to state that the law division was first aware
11 in July of 2004?

12 MR. HANSEN: I think that's the fair reading
13 of it, Your Honor.

14 THE COURT: Is that the reading Morgan
15 Stanley wants me to accept for purposes of this
16 hearing?

17 MR. HANSEN: Your Honor, I think for
18 purposes of this hearing we should stand on what
19 we've provided.

20 THE COURT: If you just want to say stand on
21 the words, that's fine. Anything more?

22 MR. HANSEN: I don't want to provide any
23 more or less.

24 THE COURT: That's fine. The final question
25 I have, and it's a minor point, in some of your

1 opposition papers you talk about the law
2 division being informed in July of 2004. Was
3 that just a -- well, I mean informed -- that
4 there was some affirmative act in July of 2004.
5 Although I didn't see that from the notice. Is
6 that -- are we just parsing words or?

7 MR. HANSEN: Was aware -- they were on
8 notice. I think, you know, that could be a
9 number of things.

10 THE COURT: When you say informed can we
11 just say they knew?

12 MR. HANSEN: Could have been from a
13 conversation, could have been from an e-mail.

14 THE COURT: Sure.

15 MR. HANSEN: They were on notice. They were
16 made aware. They are informed.

17 THE COURT: We agree the notice doesn't tell
18 me something specific happened in July of 2004
19 to inform Morgan Stanley's law division of the
20 e-mail or the tapes?

21 MR. HANSEN: Judge, again, I think all we
22 can do is stand on what we filed as the notice.

23 THE COURT: I appreciate that.

24 MR. HANSEN: As to the extent there are any
25 new -- I don't want to provide additional

1 testimony. I'm not in a position to make
2 representations of fact as to what's true and
3 what's not true. This was the notice supplied
4 by Morgan Stanley.

5 THE COURT: Again, I just want to understand
6 what you meant. That's all. So as I understand
7 it, you are telling me that it's Morgan
8 Stanley's position that the statements by
9 Mr. Cusick, Mr. Doyle and Miss Lee that they
10 were unaware of the e-mail or the
11 eight-millimeter tapes until October, November
12 of 2004 was simply incorrect. And we can talk
13 about whether it was an intentional or -- I'm
14 not -- was simply incorrect. That their
15 statements to the best of their knowledge nobody
16 in the law division even knew about the e-mail
17 or eight-millimeter tapes until October or
18 November 2004 was simply incorrect. And, in
19 addition, a third fact was at least somebody in
20 the law division knew of the e-mail and
21 eight-millimeter tapes in July of 2004.

22 MR. HANSEN: It says the law division.

23 THE COURT: Right. We don't know -- we
24 don't know who.

25 MR. HANSEN: Not further specified.

1 That's --

2 THE COURT: Is that what you're telling me?

3 MR. HANSEN: That's accurate.

4 THE COURT: And what you're saying is that
5 the law division or someone in it was aware of
6 the e-mail and the tapes in July of 2004, but
7 that doesn't necessarily imply when it was first
8 learned?

9 MR. HANSEN: I just don't think I can do any
10 better than -- say any other words.

11 THE COURT: I appreciate the clarification.
12 Thanks. That's all I needed to know.

13 How do you want to divide up time?

14 MR. SCAROLA: May I make a suggestion, Your
15 Honor, that perhaps one additional clarification
16 would be helpful?

17 THE COURT: And what would that be?

18 MR. SCAROLA: In the June 17 notice there is
19 a reference to a new e-mail search and a review
20 of e-mails discovered by new e-mail search. I'm
21 wondering whether Morgan Stanley would like to
22 tell us what that means.

23 THE COURT: That's not -- I understand your
24 client's curiosity, and I don't think that's
25 material to what I'm doing today.

1 any kind of intent.

2 THE COURT: Other than Mr. Hansen's -- if I
3 accept the clarification from Morgan Stanley
4 today that at least there is an e-mail that
5 would suggest that he knew it was false --

6 MR. LUBIN: In other words, if we were in a
7 different courtroom on a different matter and
8 that had been included, this the verified
9 petition --

10 MR. HANSEN: Your Honor, that's not what I
11 said.

12 THE COURT: Are you saying that they -- I
13 understood you to say Lee, Cusick and Doyle
14 Morgan Stanley believed knew in July of 2004 the
15 Brooklyn tapes had e-mail and the
16 eight-millimeter tapes existed.

17 MR. HANSEN: We're saying that there was
18 notice to them at that time. That does not mean
19 then they submitted subsequent false --

20 THE COURT: Right, but you're saying in July
21 of 2004 they knew of those items. They may have
22 forgotten them in January of 2005 or May of
23 2005.

24 MR. HANSEN: Morgan Stanley's view is -- We
25 don't want the Court to rely on the

1 misrepresentations on a contrary basis from
2 Morgan Stanley's view what they were informed on
3 in July of 2004. But we did not, I want to be
4 absolutely clear, we do not make any
5 representation or any sort of suggestion they
6 intentionally did anything false.

7 THE COURT: Yes, but that they did make
8 misstatements in at least the offers of proof.

9 MR. HANSEN: It was inaccurate. The
10 statement as to when they first learned was
11 inaccurate. I'm not sure there's evidence to
12 the contrary at an earlier time. That's all I
13 have.

14 THE COURT: Okay.

15 MR. LUBIN: But if you follow it along the
16 way, Counsel isn't going to be a witness at a
17 final hearing. And when we're talking about how
18 could we ever prove that James Doyle had
19 knowledge or that he intentionally lied to the
20 court? Not from an argument of counsel. I
21 mean, from evidence. And there's no evidence
22 alleged by CPH here. There's no evidence.

23 THE COURT: Well, that goes back to the
24 statement I asked you before. Were you
25 contending that the information conveyed by

NOT A CERTIFIED COPY

APPENDIX C

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

**ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S VERIFIED PETITION
FOR A SHOW-CAUSE ORDER REGARDING MORGAN STANLEY'S CRIMINAL
CONTEMPT OF COURT**

THIS CAUSE came before the Court November 3, 2005 on CPH's Verified Petition for a Show-Cause Order Regarding Morgan Stanley's Criminal Contempt of Court, with counsel for CPH, MS & Co., and non-party respondents Donald G. Kempf, Jr., James P. Cusick, Soo-Mi Lee, and James F. Doyle present.

CPH sued MS & Co. for aiding and abetting and conspiring with Sunbeam Corporation to perpetrate a fraud. Early in the case, CPH was concerned that MS & Co. was not thoroughly looking for emails responsive to its discovery requests. On April 16, 2004, the Court entered an Agreed Order that required MS & Co. to search its oldest full backup tapes for emails subject to certain search parameters and certify compliance ("Agreed Order"). MS & Co. served a certificate of compliance signed by Arthur Riel, an Executive Director of Technology, on June 23, 2004 ("Certificate of Compliance").

On November 17, 2004 CPH learned that MS & Co. had found some backup tapes that had not been searched. Over the next ten weeks it sought more information about both how and when the tapes were found and when they would be searched. When MS & Co. failed to provide meaningful responses, on January 26, 2005 CPH served its Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Agreed Order ("Adverse Inference Motion.")

On January 31, 2005, MS & Co. served the Declaration of James F. Doyle ("Doyle Declaration"), an Executive Director in its Law Division, in support of its opposition to the Adverse Inference Motion. The Doyle Declaration was signed under penalty of perjury. In it, Doyle averred that "(a)t the end of October 2004, I learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data on those tapes had not been restored or searched prior to Morgan Stanley's May 14, 2004 e-mail production."

The court held an evidentiary hearing on the Adverse Inference Motion on February 14, 2005. In preparation for that hearing, on February 3, 2005 the court ordered MS & Co. to produce by noon on February 8, 2005 all documents within its "care, custody, or control, addressing or related to the additional email back up tapes, including matters relating to the time or manner in which they were discovered; by whom they were discovered; who else learned of their discovery and when; and the manner and timetable by which they were to be restored and made searchable . . ." ("February 3, 2005 Order"). The court issued its ruling on the Adverse Inference Motion March 1, 2005 ("Adverse Inference Order"), finding MS & Co. had engaged in discovery abuses and shifting the burden of proof on two elements of CPH's claims.

Thereafter, CPH discovered that MS & Co. had not been candid with it or the court at the February 14, 2005 hearing, prompting it to serve its Renewed Motion for Entry of Default Judgment ("Renewed Motion"). The court held an evidentiary hearing on the Renewed Motion on March 14 and 15, 2005. On March 23, 2005 it issued its Order on CPH's Renewed Motion for Entry of Default Judgment ("Default Order"), which built on the Adverse Inference Order. The Default Order found that MS & Co. had deliberately violated numerous discovery requests and orders, to the permanent prejudice of CPH. The violations included MS & Co.'s failure to timely notify CPH and the court that Riel's Certificate of Compliance was false because, among other deficiencies, 1,423 tapes found in a store room in Brooklyn (the "Brooklyn tapes") and 738 8 millimeter backup tapes ("8 millimeter tapes") had not been searched. The Default Order removed certain facts to

which the discovery had been directed from dispute and provided that a statement of MS & Co.'s failures would be read to the jury to consider in determining the propriety of a punitive damage award. The Default Order left the exact wording and content of the statement to be read open and invited counsel to submit proposals.

Kempf was general counsel for MS & Co. at all pertinent times. Cusick was Co-Head of Global Litigation. Lee was an Executive Director in MS & Co.'s Law Division and Doyle's supervisor. In May of 2005 in connection with the court's consideration of the litigation misconduct statement to be read to the jury, MS & Co. filed Offers of Proof for Lee, Doyle, and Cusick. In general, the Offers asserted that each first learned¹ there was email on the Brooklyn tapes in late October 2004 and on the 8 millimeter tapes in November 2004. Cusick and Lee asserted that each knew of no one in the Law Division who knew the information earlier.²

Based on the Offers of Proof, counsel for MS & Co. asked the court to instruct the jury that MS & Co.'s counsel did not know there was email on the Brooklyn and 8 millimeter tapes until October 2004. CPH contends that Kempf was sitting in the courtroom at the time of those arguments on May 16 and 18, 2005. The jury returned verdicts in CPH's favor for compensatory and punitive damages. The court rendered its Final Judgment in CPH's favor based on the verdicts on June 23, 2005. MS & Co. served its Notice of Appeal and posted a supersedeas bond June 27, 2005.

On June 17, 2005 MS & Co. served a document entitled "Notice".³ The Notice

¹Lee's Offer qualifies her statements by asserting they are based on recollection.

²The Offer of Proof for Doyle stated that if called to testify he would state that he did not learn of the existence of email on the Brooklyn tapes until late October 2004 and that he "did not learn of the existence of 8 millimeter tapes containing emails until November 2004." It is unclear whether Doyle's proffered testimony is that he was unaware of the existence of the 8 millimeter tapes until November 2004, when he learned both that they existed and that some contained email, or that he may or may not have been aware of the tapes' existence, but was not aware that they contained email, prior to November 2004. Unlike Cusick and Lee, Doyle's Offer did not state that he knew of no one in the Law Division who knew that tapes contained email before he did.

³The Notice's legal effect, if any, on the proceedings is unclear to the court.

stated that

1. In the listed offers of proof and related statements, Morgan Stanley asserted that its Law Division was not aware that any of the Brooklyn Tapes contained e-mail until October 2004 and was not aware of certain 8-mm tapes until November 2004.
2. As a result of a review of emails discovered by a new email search, Morgan Stanley has determined that the offers of proof and related statements should be corrected to state that the Law Division was aware⁴ in July 2004 that some of the Brooklyn Tapes contained email and that certain 8-mm tapes existed.
3. Morgan Stanley submits this Notice to: (a) correct Defendant's Offers of Proof from James P. Cusick, Soo-Mi Lee, and James Doyle (the first sentence of paragraph 4 and the entirety of paragraph 5);⁵ (b) withdraw the Declaration of James F. Doyle of January 31 2005; and (c) correct related statements that reference or were based on the foregoing submissions. (footnote omitted).
4. Morgan Stanley does not limit this notice and correction to the specific documents described or listed herein. Morgan Stanley retracts, withdraws and corrects any and all statements, written or oral, made or submitted on its behalf, to the effect that its Law Division was not aware that any of the Brooklyn Tapes contained email until

⁴The court asked MS & Co. to clarify whether the Notice was to be interpreted to state that MS & Co. first became aware that there was email on some of the Brooklyn tapes and that the 8 millimeter tapes existed in July 2004, or simply that MS & Co. knew those things in July 2004, without regard to whether it first learned them. While initially acknowledging that the Notice implied that MS & Co. first became aware of the items in July 2004, MS & Co. chose to stand on the language in the Notice, leaving unresolved whether it first learned of the items in July 2004 or simply knew of them as of that time.

⁵It would not be inconsistent for MS & Co. to assert that (i) Cusick, Lee, and Doyle did not know the Brooklyn tapes contained email or that the 8 millimeter tapes existed and contained email until late October and early November 2004, respectively; (ii) Cusick, Lee, and Doyle did not think any one else in the Law Division knew those facts before they did; and (iii) others in the Law Division did know those facts in July 2004. Counsel for MS & Co. clarified at the hearing that the Notice was intended to convey MS & Co.'s belief that Cusick, Lee, and Doyle themselves knew that some of the Brooklyn tapes had email and the 8 millimeter tapes existed in July 2004, though not convey that MS & Co. believes Cusick, Lee, or Doyle intentionally misstated their recollections when the Offers and Declaration were prepared.

October 2004 and was not aware of certain 8-mm tapes until November 2004.

In response to the Notice, CPH filed its Verified Petition for a Show-Cause Order Regarding Morgan Stanley's Criminal Contempt of Court, taking the position that by the Notice MS & Co. admitted it made false statements to the Court.

CPH filed, too, an Affidavit and Second Affidavit of Arthur Riel. Riel avers that in the first quarter of 2003 Cusick asked him to design the historical email archive; that Kempf approved the plan late in the second quarter of 2003; that MS & Co. knew of the Brooklyn tapes by May of 2004; that he believes that MS & Co. knew of the existence of the 8 millimeter tapes in the fall of 2003; that he knew by July 2, 2004 that the Brooklyn and 8 millimeter tapes had email dating back to at least 1998; that he told an attorney in MS & Co.'s Compliance of the Law Division and others within the division in a meeting on July 8, 2004 that the Brooklyn tapes contained email; that he told MS & Co.'s counsel on or about April 28, 2005 that he had told the Law Division that there was email on the Brooklyn tapes on July 8, 2004; that he told Cusick and others that the 8 millimeter tapes existed no later than January 2004; that Doyle asked him to sign the Certificate of Compliance after first asking a college student who performed data entry functions to sign it; and, finally, that MS & Co. had monthly reports and meeting minutes which could show when people within MS & Co. were notified of the existence of the tapes and the fact that some contained email.

CPH seeks to have this court initiate criminal contempt proceedings against MS & Co., Kempf, Cusick, Lee, and Doyle. It contends that MS & Co. is in contempt of court for (i) offering the Declaration and Offers of Proof with knowledge they contained false information; (ii) repeatedly arguing for favorable rulings based on the allegedly false information; and (iii) failing to comply with the Court's discovery orders. It contends Kempf is in contempt for failing to correct the misrepresentations of fact made to the Court in his presence on May 16 and 18, 2005. It contends Lee and Cusick are in contempt for

proffering allegedly false statements to the court with the intention the court rely on them. Finally, it contends Doyle is in contempt for the same, together with signing the allegedly false Declaration with knowledge it would be submitted to the court. It contends each of these acts was intended to and did obstruct the administration of justice.⁶

Here, the allegedly contemptuous acts fall within two general classes. First, CPH contends that MS & Co. failed to comply with the court's orders to produce documents relating to the email issue, including the February 3, 2005 Order requiring it to produce all documents addressing or related to the backup tapes. It asserts that Riel's affidavit would allow a reasonable person to conclude that reports and minutes were generated that were responsive to the court's February 3, 2005 Order and that MS & Co. deliberately failed to produce those items.⁷ Second, CPH contends that MS & Co.'s assertions in the Notice together with Riel's affidavits would allow a reasonable person to conclude that Kempf, Cusick, Lee, and Doyle knew that Law Division personnel were aware of the existence of email on some of the Brooklyn tapes and the 8 millimeter tapes in July 2004 and that representations to the contrary were intended to mislead the Court and obstruct the administration of justice. As a subcategory, CPH contends that Doyle's Declaration was perjurious.

It is reasonable to assume that on appeal MS & Co. will question both the factual findings in the Default Order and the sanctions imposed. This will, of necessity, implicate the Offers and the assertions of counsel, which were used in argument about the jury statement given as a result of the Default Order; the Declaration, which was used to oppose the Adverse Inference Motion; and the propriety of and level of compliance with the

⁶See, e.g., Milian v. State, 764 So. 2d 860 (Fla. 4th DCA 2000), rev. den. 786 So. 2d 579 (Fla. 2001); M.W. v. Lafthiem, 855 So. 2d 683 (Fla. 2d DCA 2003); Murrell v. State, 595 So. 2d 1049 (Fla. 4th DCA 1992); see, also, Duff v. Southern Bell Telephone and Telegraph Co., 386 So. 2d 253 (Fla. 5th DCA 1980) (action can be obstructionist even if ultimate outcome unaffected); Milian; Thomson v. State, 398 So. 2d 514 (Fla. 2d DCA 1981).

⁷CPH argues, too, that the Notice itself refers to yet other emails responsive to the February 3, 2005 Order not timely produced.

February 3, 2005 Order, among others, violation of which were used to support the Default Order.

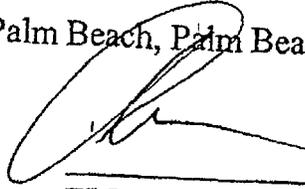
Once an appellate court's jurisdiction attaches the trial court is divested of jurisdiction to consider matters that may affect the matters on appeal. See Willey v. W.J. Hoggson Corp., 89 Fla. 446, 105 So. 126 (1925); Waltham A. Condominium Association v. Village Management, Inc., 330 So. 2d 227 (Fla. 4th DCA 1976). While post-judgment proceedings collateral to and independent of the subject matter may proceed while a judgment is on appeal, the trial court lacks jurisdiction where the matter is "directly intertwined" with the matter on appeal. Amlan, Inc. v. Detroit Diesel Corporation, 651 So. 2d 701, 706 (Fla. 4th DCA 1995); Publix Supermarkets, Inc. v. Griffin, 837 So. 2d 1139 (Fla. 2d DCA 2003); cf. Miseveth v. Stafford, 667 So. 2d 1012 (Fla. 3d DCA 1996).

If the court were to pursue criminal contempt as requested,⁸ it could alter the current record of what MS & Co. knew and when it knew it. It could add to the judicial response to MS & Co.'s litigation misconduct. The current record of MS & Co.'s litigation misconduct, and the propriety and correctness of this court's rulings based on it, are presently before the appellate court. Indeed the argument that the appeal divested in court of jurisdiction to consider contempt of court based on discovery violations is stronger here than in Amlan. In Amlan, all requested documents were eventually produced, albeit at extraordinary cost, thus the record before the appellate court on the point was complete. Here, CPH argues all discovery was not made and, therefore, pursuit of the contempt allegations could result in a separate record of discovery abuses, perhaps one inconsistent with the record currently before the appellate court. The court determines, then, that the allegedly contemptuous conduct is directly intertwined with the matters on appeal, and that this court lacks jurisdiction to consider CPH's Verified Petition for a Show-Cause Order Regarding Morgan Stanley's Criminal Contempt of Court. Based on the foregoing, it is

⁸The Court has made no determination that it could or should. MS & Co. and the non-party respondents vigorously contend that they are not guilty of contempt.

ORDERED AND ADJUDGED that this court declines to rule on CPH's Verified Petition for a Show-Cause Order Regarding Morgan Stanley's Criminal Contempt of Court pending disposition of the primary action on appeal.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 10th day of November, 2005.



ELIZABETH T. MAASS
Circuit Court Judge

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IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT

MORGAN STANLEY & CO.
INCORPORATED,

CASE NO: 4D05-2606
L.T. No. CA 03-5045 AI

Appellant,

vs.

COLEMAN (PARENT) HOLDINGS INC.,

Appellee.

**RESPONSE OF MORGAN STANLEY & CO. INCORPORATED
TO COLEMAN (PARENT) HOLDINGS INC. CONSOLIDATED
MOTION FOR REHEARING AND MOTION FOR REHEARING
EN BANC, AND TO COLEMAN'S MOTION FOR CERTIFICATION**

In this submission Morgan Stanley responds to all of CPH's post-opinion filings. The CPH Consolidated Motion should be denied. The panel decision did not overlook or misapprehend any facts or law, does not present a matter of exceptional importance as that phrase applies to *en banc* proceedings, and does not present any conflict with prior decisions of this Court. The Motion for Certification should be denied because the panel decision does not present any issue of great public importance, and does not expressly and directly conflict with a decision of another district court on the same question of law.

I.

**THERE IS NO CONFLICT WITH
AULT AND ENGLE**

CPH is wrong to suggest that *Ault v. Lohr*, 538 So. 2d 454 (Fla. 1989), *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006), or any other decision allows punitive damages for fraud absent compensatory damages. There is no freestanding cause of action for punitive damages for fraud. *Ault* involved an assault. Actual damages are not an essential element of that claim. Fraud is different. “[A]ctual damages *and the measure thereof* are essential as a matter of law in establishing a claim of fraud.” *Nat’l Equipment Rental Ltd. v. Little Italy Rest. & Delicatessen, Inc.*, 362 So. 2d 338, 339 (Fla. 4th DCA 1978) (emphasis supplied); *Nat’l Aircraft Serv., Inc. v. Aeroserv Int’l, Inc.*, 544 So. 2d 1063, 1065 (Fla. 3d DCA 1989).

Justice Ehrlich’s concurrence in *Ault* spelled out the applicable principle: “where actual damage is an essential element of the underlying cause of action, an award of compensatory damages must be a prerequisite to an award of punitive damages.” *Ault, supra* at 457 (Ehrlich, C.J., concurring specially). CPH incorrectly asserts that other justices “rejected” that distinction. Motion at 8. This Court was right to rely on Justice Ehrlich’s concurrence as “highly persuasive.” Opinion at 11, n.2. Here CPH failed to prove damages, an essential element of its fraud claim. *Ault* does not give CPH the right to recover punitive damages.

Nor does *Engle*. *Engle* does not hold that a punitive damage award can be made in a fraud case without an award of compensatory damages. Indeed, the Court made a special effort to say exactly what it “held,” and that holding was what the panel found – that *Engle* dealt with “the order of proof in determining the entitlement to punitive damages.” Opinion at 11. The Supreme Court wrote:

More specifically we hold as follows:

* * *

A majority of the Court (Anstead, Pariente, Lewis, and Quince) also concludes that the Third District misapplied *Ault v. Lohr*, 538 So. 2d 454, 456 (Fla. 1989) by holding that compensatory damages must be determined before a jury can consider entitlement to punitive damages.

Engle, 945 So. 2d at 1254 (emphasis supplied); see also *id.* at 1262 (stating that a jury may consider entitlement to punitive damages before setting the amount of compensatory damages because “the order of these determinations is not critical”) (emphasis supplied). So *Engle* was about timing, just as the panel decision stated.

CPH wrongly reads *Engle*, a class action case, as altering the substantive requirements for when punitive damages may be recovered in single plaintiff fraud actions. *Engle* does not hold that a punitive damage award can be made in a fraud case without an award of compensatory damages, nor did it rely on *Ault* for such a broad proposition. CPH misapprehends the limited reach of *Engle*. There is no substance to CPH’s arguments as to *Ault* and *Engle* conflicts.

II.

THERE IS NO CONFLICT WITH OTHER DECISIONS

CPH claims conflict with *Russin v. Richard F. Greminger, P.A.*, 563 So. 2d 1089 (Fla. 4th DCA 1990) and *Horizon Leasing v. Leefmans*, 568 So. 2d 73 (Fla. 4th DCA 1990). Again, not so. This court's brief *per curiam* decision in *Russin*, which CPH cited in its Answer Brief, did not involve a fraud claim. While *Horizon Leasing* is a fraud case, compensatory damages were awarded in that case. 568 So. 2d at 75. Thus, neither decision presents a reason for *en banc* review of the panel decision.

Likewise, none of the cases cited by CPH from other districts holds that punitive damages can be awarded on a fraud claim without proof of compensatory damages. Thus, they do not pose conflict with the panel decision either.

III.

THE FAILURE OF PROOF WAS FATAL; THE *BMW v. GORE* RELATIONSHIP REQUIREMENT WAS RELEVANT

CPH incorrectly asserts that footnote 3 of the panel opinion about why punitive damages would be minimal without compensatory damages "was based on a misreading of *BMW North America, Inc. v. Gore*, 517 U.S. 559 (1996)." Motion at 12. But *Gore* and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 418 (2003) leave no doubt that there must be a reasonable

relationship between compensatory and punitive damages. In addition to the constitutional restraints on punitive damages, Florida Statute section 768.73 requires a ratio between compensatory and punitive damages. It also establishes a cap on punitive damages of three times compensatory damages, which cannot be exceeded here because CPH did not request the findings necessary to exceed the cap.

CPH's reliance on *Tronzo v. Biomet*, 236 F. 3d 1342 (Fed. Cir. 2001) for its "potential harm" theory for punitive damages is inapposite because the "potential harm" concept addresses thwarted schemes, not situations where a plaintiff has failed to prove actual damages from an alleged fraud. See *Bains LLC v. Arco Prods. Co.*, 405 F. 3d 764 (9th Cir. 2005). Nor can CPH's repeated contention that the jury found "substantial" damages be credited where the only finding was the product of improper proof of damages. See, e.g., Motion at 4.

Thus, CPH's submission that it was damaged by the claimed fraud is unproven, and its claim that the panel misread *Gore* is wrong. Neither is a basis for revisiting the panel decision.

IV.

TECA WAS PROPERLY APPLIED. THERE IS NO CONFLICT, NO DENIAL OF JURY TRIAL AND NO REASON FOR REHEARING, REHEARING EN BANC OR CERTIFICATION

CPH argues that the “decision to deny a retrial . . . misapprehends *Teca*, [*Inc. v. WM-TAB, Inc.*, 726 So. 2d 828 (Fla. 4th DCA 1999) (*en banc*)]” Motion at 14. CPH claims *Teca* creates “direct intra – and inter – District conflicts” and “violates the right to a jury trial.” *Id.* CPH ignores the fact that the Court has twice recently followed the *Teca en banc* opinion. See *T.A. Enterprises, Inc. v. Olarte, Inc.*, Case No. 4D05-829, 4D05-3052, 2007 WL 750614, *1 (Fla. 4th DCA Mar. 14, 2007) and *M.A. Hajianpour, M.D., P.A. v. Khosrow Maleki, P.A.*, 932 So. 2d 459 (Fla. 4th DCA 2006), *rev. den.* 949 So. 2d 198 (Fla. 2007).

CPH’s claims of the unfairness of applying *Teca* are unpersuasive. *Teca* simply acknowledges the plaintiff’s burden to prove actual damages in a fraud case. Because CPH did not do so, a directed verdict was required, as Morgan Stanley urged at trial, post-trial, and on appeal. Had the issue on appeal been whether Morgan Stanley failed to present competent evidence supporting an affirmative defense, it would not have been given a new trial. See *Estate of Myra Engskow v. Cullen*, 428 So. 2d 388 (Fla. 4th DCA 1983). The result mandated by *Teca* is not one-sided.

CPH makes an extended argument (Motion at 14-17) that it relied on the trial court's rulings in presenting its evidence and "thus had no reason to present the specific damages evidence that the panel majority later ruled was necessary." *Id.* at 15. But CPH overlooks the fact that Morgan Stanley repeatedly pointed out the evidentiary damages defect and the consequences of that defect under *Teca* before CPH's damages expert testified at trial. *See, e.g.*, R217 43219 (arguing, "If CPH fails to provide evidence fixing the value 'on the date of the sale, a crucial element in the damage[s] equation,' Morgan Stanley is entitled to judgment as a matter of law. *See Teca*, 726 So. 2d at 829 (emphasis supplied)."); *see also* R148 29402-03; R207 41388; R216 43192-94. CPH nonetheless chose to proceed with its flawed measure of damages proof.

The trial court did not decide what evidence CPH should present to prove its damages. To the contrary, CPH submitted its expert report calculating damages as of a date other than the date of the transaction *before* any of the trial court's rulings on that issue. *See* R147 29398-99. CPH's counsel, not the trial court, instructed that expert to "assume" that the Sunbeam stock was worthless because CPH was never able to realize any value from it later on. Opinion at 3-4.

Moreover, CPH is incorrect to claim that this is "not a case in which [it] could have protected itself by presenting alternative evidence in anticipation that an appellate court might disagree with the trial court." Motion at 15. In fact, the

trial court *expressly ruled* that the parties could prove damages *either* on the date when CPH could first sell the stock *or* on an earlier date when the stock could not be sold, such as the date of the transaction, so long as “an appropriate liquidity discount has been established, is not required, or is implicit in the figure offered.” R217 43378. CPH could have presented alternative damage evidence. It chose not to do so.

In sum, CPH hoisted itself on the petard of its desire to obtain the best of two worlds: to seek benefit-of-the-bargain damages, but to seek a better bargain than it made. CPH chose its measurement of damages for its own reasons. It cannot blame its strategic decisions on the trial court. As the panel wrote: “CPH cannot complain about rulings that it urged the court to make in accordance with its damages theory.” Opinion at 10. In *Arky, Freed, Stearns, Watson, Greer, Weaver & Harris P.A. v. Bowmar Instrument Corporation*, 537 So. 2d 561 (Fla. 1989), the Court required a directed verdict, not a new trial, when a party chose the wrong course:

In this case, Bowmar was on notice that Arky, Freed considered Bowmar’s evidence beyond the scope of the pleadings. Rather than reevaluating this position, Bowmar opposed the motion for continuance and chose to proceed to trial under the risk that Arky, Freed might have been correct. This “reliance” is no different than that of any lawyer who, at trial, chooses to present evidence over opposing counsel’s overruled

objection. By “relying” on the trial court’s ruling, counsel always proceeds at the clear risk of reversal if the trial court was wrong.

* * *

Our growing, complex society and diminishing resources mandate the requirement that litigants present all claims to the extent possible, at one time, and one time only.

Id. at 563; *DuPont v. Desarrolle Industrial Bioacuatico*, 857 So. 2d 925, 930 (Fla. 4th DCA 2003) (following *Arky*). See also *Cordoba v. Rodriguez*, 939 So. 2d 319, 323 (Fla. 4th DCA 2006) (“[a] party may not *make* or invite error at trial and then take advantage of the error on appeal”), quoting *Goodwin v. State*, 751 So. 2d 537 (Fla. 1999) (emphasis supplied).

Nor does CPH make a case for conflict between *Teca* and other cases in this district or other districts. There is no conflict with *Boca Developers, Inc. v. Fine Decorators, Inc.*, 862 So. 2d 803 (Fla. 4th DCA 2003), which does not even discuss *Teca*. Moreover, it affirmatively “appear[ed] from the record” in *Boca Developers* that the plaintiff could have presented adequate proof, but for the erroneous pretrial ruling. *Id.* at 805. In contrast, none of CPH’s experts properly determined the value of the stock at the time of the transaction, although the trial court’s ruling expressly allowed CPH to present such evidence.

CPH also cites *Safeguard Mgmt., Inc. v. Pinedo*, 865 So. 2d 672, 674 (Fla. 4th DCA 2004), without explaining why that decision creates conflict. It does not.

The decision does not discuss *Teca* or whether to reverse for judgment in accordance with a motion for directed verdict.

The remainder of the cases cited by CPH on this point are from outside this district and do not support a motion for rehearing *en banc*. Each is factually distinguishable. *Rowland* involved a plaintiff who was not "seeking to introduce additional evidence which she should have put on in the first place." *Rowland v. Whitehead*, 375 So. 2d 607, 609 (Fla. 2d DCA 1979). That is what CPH seeks to do here, so *Rowland* is inapposite. *Wolfe v. Gencorp, Inc.*, 529 So. 2d 1154 (Fla. 1st DCA 1988) and *Porter v. Vista Building Maintenance Services, Inc.*, 630 So. 2d 205 (Fla. 3d DCA 1993) did not involve failures of proof in the plaintiff's substantive case. *Chasteen v. Chasteen*, 213 So. 2d 509 (Fla. 1st DCA 1968), *Srybnik v. Ice Tower, Inc.*, 162 So. 2d 294 (Fla. 3d DCA 1964) and *Sostchin v. Doll Enters., Inc.*, 847 So. 2d 1123 (Fla. 3d DCA 2003) addressed the remedy issue so perfunctorily that they cannot fairly be viewed as holdings on the issue. In *Cirou v. Naples Awning & Glass, Inc.*, 376 So. 2d 929 (Fla. 2d DCA 1979), the trial judge affirmatively prevented the plaintiff from meeting his burden of proof. And in *Wagner v. Nottingham Assocs.*, 464 So. 2d 166 (Fla. 3d DCA 1985), the plaintiff in fact met his burden of proof. No inter-district conflict exists.

CPH's claim that the application of *Teca* denies it a constitutional right to a jury trial is also unavailing. Motion at 17-18. The cases cited by CPH stand for

the unexceptional proposition that there is a right to a jury trial with proper instructions, a right that CPH availed itself of here. CPH simply failed, by its own choice, to prove an essential element of its cause of action. None of the cases it cites involve the failure of proof at trial. CPH's lead offering (*id.* at 17), *Brant v. Dollar Rent a Car Sys. Inc.*, 869 So. 2d 767, 768 (Fla. 4th DCA 2004), remanded for a new trial because the jury, not the judge, should have determined the damages from the evidence presented. Neither *Brant* nor any other cited cases required a remand for a new trial where the plaintiff failed to prove its claim in the original proceeding.

v.

THE PANEL'S ANALYSIS OF BENEFIT-OF-THE-BARGAIN DAMAGES POSES NO BASIS FOR REHEARING, REHEARING EN BANC OR CERTIFICATION

CPH devotes the last ten pages of its Motion to rearguing why it should be entitled to use the damage methodology it used at trial. Motion at 22-31. Since CPH's arguments were considered and addressed by the panel decision, the prohibition against reargument in a rehearing motion is enough to require denial of the motion.

CPH repeatedly says again that it sought damages for "fraud inflicted losses . . . after the transaction date" (*id.* at 22-23); that "fraud prevented CPH from

selling those shares.” *Id.* at 28. But it was the agreement that prevented CPH from selling its shares, not the fraud. As the panel observed:

Benefit-of-the-bargain damages do not turn on what would have happened if CPH had known the representations were false. They measure what CPH would have received had the representations been *true*. By opting for benefit-of-the-bargain damages, CPH does not seek to rescind the transaction; it seeks to affirm the transaction and claim the benefit of the bargain. The bargain, in this case, included sale restrictions.

Opinion at 6 (emphasis in original).

The cases CPH cites (Motion at 25-26 nn. 5&6) are all distinguishable. *Silverberg v. Paine Webber, Jackson & Curtis, Inc.*, 710 F. 2d 678 (11th Cir. 1983); *Dean Witter Reynolds Inc. v. Bork*, 1991 WL 164465 (E.D. Pa. Aug. 21, 1991); *Alloys Unlimited, Inc. v. Raesler*, 1976 WL 16605 (N.Y. Sup. Ct. June 22, 1976); and *IDS Bond Fund, Inc. v. Gleacher Nat. West Inc.*, 2002 WL 373455 (D. Minn. Mar. 6, 2002) were all cited in CPH’s appellate brief. Those cases involved out-of-pocket damages, not benefit-of-the-bargain damages. CPH ignores a critical distinction between benefit-of-the-bargain damages and out-of-pocket damages that justifies a different treatment of contractual sale restrictions under each measure. The plaintiff who claims out-of-pocket damages chooses to *reject* the contract rather than claim its benefits, asserting that, but for the fraud, he would not have accepted the bargain at all.

By contrast, when the plaintiff claims the benefit of his bargain, the contractual sale restrictions (and any losses that would have resulted during their duration even absent the fraud) are part of the bargain the plaintiff chose to reaffirm and seeks to recover the benefit of. CPH continues to ignore the distinction, and the other cases it offers do not support CPH's continuing attempt to craft a measure of benefit-of-the-bargain damages that would give it a deal better than the one it made.

The panel decision did not impose "a new and different causation requirement for common law fraud cases." Motion at 28. It carefully considered CPH's arguments and the applicable cases (Opinion at 6-9) and held CPH to the unexceptional principle of Florida (and federal) law that "requires the plaintiff to prove the actual 'fraud free' value of the stock at the time of the purchase." Opinion at 9. Finally, CPH's argument that the panel's decision would encourage defrauded purchasers to sell their fraudulently inflated stock to another buyer (Motion at 30-31) is incorrect. Reselling artificially inflated stock would only reduce the seller's own damages *vis à vis* the original seller and expose the reseller to a fraud claim by the new purchaser. CPH's parade of horrors is as unpersuasive as its litany of reasons for rehearing and rehearing *en banc*.

VI.

THERE IS NO BASIS FOR CERTIFICATION OF ANY QUESTION TO THE SUPREME COURT OF FLORIDA

As we have set forth above, there is no conflict, there is no exceptional importance, and there is no issue of great public importance. The three “questions” for certification posited by CPH are completely deficient. For example, questions 1 and 2 incorrectly assume that CPH proved “significant” and “substantial” damage, when in fact it was the absence of competent proof of damages that led to reversal. Question 3 omits the critical facts that underlie the Court’s decision on this point – i.e., that the proscription of immediate sale was part of the bargain CPH sought the benefit of, and that CPH affirmatively elected not to pursue consequential damages, but rather only benefit-of-the-bargain damages.

Finally, this Court’s decision is not in “direct conflict” with any of the six cases cited by CPH in its Motion for Certification. This Court reversed on the ground that a directed verdict should have been granted because CPH failed to offer proof of the actual value of the stock it received on the transaction date, under the benefit-of-the-bargain measure of damages CPH elected to pursue as its sole remedy. The Court also held there can be no punitive damages in this fraud case, where no actual damages were proven by CPH.

None of the cases cited for alleged conflict involved a claim for benefit-of-the-bargain damages in a complex corporate merger which provided substantial

benefits to the party claiming fraud (here CPH received approximately \$160 million in cash and over \$500 million in debt relief in addition to stock in Sunbeam). R404 9659-60. None of the cases involved a directed verdict for lack of competent evidence at trial. None hold that a plaintiff should get a new trial where a directed verdict should have been granted at trial. None hold that punitive damages always may be recovered in a fraud case, even where no actual damages are proven.

The cited cases involved errors in admission of evidence (*Wolfe, Rowland, Porter*); granting summary judgment (*Platte*); and trial court error (in a non-jury trial) in applying the proper measure of damages (*Mortellite; Srybnik*). Four of the cases (*Wolfe, Rowland, Porter, and Srybnik*) did not involve any issue of punitive damages. *Mortellite* and *Platte* involved claims for punitive damages, without proof of compensatory damages, on breach of fiduciary duty, libel, and intentional interference with a business relationship claims – not claims for punitive damages for fraud. In sum, there is no basis for certification.

CONCLUSION

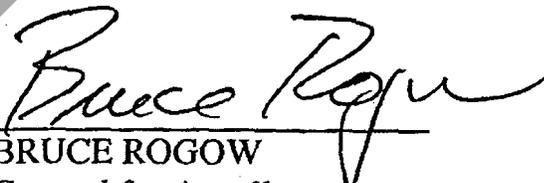
For all the foregoing reasons, CPH's Consolidated Motion for Rehearing and Rehearing *En Banc* and its separate Motion for Certification should be denied.

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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-1251

COLEMAN (PARENT) HOLDINGS INC.,

Petitioner,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Respondent.

**RESPONDENT'S ANSWER BRIEF IN
OPPOSITION TO JURISDICTION**

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SUMMARY OF THE ARGUMENT

There is no express and direct conflict with *Ault v. Lohr*, 538 So. 2d 454 (Fla. 1989) and *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006). Neither case holds that a party may recover punitive damages for fraud even though it failed to prove it suffered actual, compensable damages, an essential element of a cause of action for fraud. Rather, as the Fourth District correctly held, “[t]he punitive damages award cannot stand where, as here, no legally cognizable damage was shown as a result of the alleged fraud.” Appendix A, p. 10.

Nor is there express and direct conflict with *Webb Furniture Co. v. Everett*, 105 Fla. 292, 141 So. 115 (1932). Contrary to Petitioner’s contention, *Webb* does not require a new trial where, as here, the plaintiff failed to present legally sufficient evidence of an essential element of its claim. There also is no conflict with *Goldberg v. Florida Power & Light Co.*, 899 So. 2d 1105 (Fla. 2005) or *McCain v. Florida Power Corp.*, 593 So. 2d 500 (Fla. 1992). Those cases do not address benefit-of-the-bargain damages. None of the other cases cited by Petitioner presents express and direct conflict, the prerequisite for this Court’s jurisdiction.

ARGUMENT

I

THERE IS NO EXPRESS AND DIRECT CONFLICT WITH *AULT* OR *ENGLE*

There is no express and direct conflict with *Ault v. Lohr*, 538 So. 2d 454 (Fla. 1989). *Ault* held that an assault plaintiff could recover punitive damages without proving actual, compensable damages. *Id.* at 456. Actual damages are not an essential element of the tort of assault. Appendix A, p. 10. But this was a fraud case. “[D]amage” is the “very essence of an action [for] fraud,” and without proof of damages, a fraud is not actionable. *Casey v. Welch*, 50 So. 2d 124, 125 (Fla. 1951).

Petitioner’s assertion that it “prove[d] conclusively that it was injured in fact” (Jur. Br., p. 4) is incorrect. The Fourth District stated: “[N]o legally cognizable damage was shown as a result of the alleged fraud.” Appendix A, p. 10. Because Petitioner did not prove a critical element of fraud – compensable injury – there could be no liability for fraud and no punitive damages. Indeed, “[h]ad the trial court properly directed a verdict for Morgan Stanley, the case would have ended at that point and the punitive damages phase never would have been reached.” *Id.* There is no conflict with *Ault*, which was not a fraud case.

Nor is there an express and direct conflict with *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006). Petitioner incorrectly says that in *Engle* this Court “held

that a fraud plaintiff seeking punitive damages need not prove a ‘specific injury’ or a specific amount of compensatory damages,” and that “*Engle’s holding* [was] that a party found liable for fraud can be required to pay punitive damages even if the plaintiff ‘did not suffer any compensable damage.’” Jur. Br., p. 4-5 and n.1 (emphasis supplied). This Court did not so “hold.” It said this:

More specifically, we *hold* as follows:

* * *

A majority of the Court (Anstead, Pariente, Lewis, and Quince) also concludes that the Third District misapplied *Ault v. Lohr*, 538 So. 2d 454, 456 (Fla. 1989), by holding that compensatory damages must be determined *before* a jury can determine *entitlement* to punitive damages.

945 So. 2d at 1254 (emphasis supplied).

As the Fourth District correctly recognized, that holding addressed the timing of proof, *i.e.*, whether a jury in a class action can, before individual compensatory damages are decided, find that the defendant’s conduct was sufficiently wrongful to warrant a potential punitive damages award. *Engle* did not hold that punitive damages may be awarded to an individual fraud plaintiff that ultimately fails to prove the essential element of compensable damages.

The different opinions in *Engle* confirm that the Court did not create a free-standing claim for punitive damages in the absence of proof of a prima facie case. A majority (Lewis, C.J., Quince, J., Wells, J., and Bell, J.) recognized that an award of punitive damages to the individual plaintiffs in *Engle* must be predicated on proof of actual injury. See 945 So. 2d at 1280 (Lewis, C.J., concurring in part and dissenting in part, joined by Quince, J.) (“[N]o plaintiff in the Engle Class may ultimately receive an award of punitive damages without proving that he or she suffered actual damages in Phase III”); *id.* at 1284-85 (Wells, J., concurring in part and dissenting in part, joined by Bell, J.) (“The [United States] Supreme Court has made it clear that punitive damages must be in ratio to compensatory damages. . . . It necessarily follows, then, that there must be compensatory damages in order for punitive damages to be in ratio to compensatory damages.”).¹

In addition, *Engle* recognized that “the amount of compensatory damages must be determined in advance of a determination of the amount of punitive damages

¹ *Engle*, moreover, was addressing the order of proof for a variety of tort claims – there were also product liability claims and claims for intentional infliction of emotional distress, *id.* at 1257 & n.4 – and the Court not only decertified the class but set aside findings of fraud on various grounds, *id.* at 1255, 1267-69, 1276-77. Given that, *Engle* cannot reasonably be read as singling out the tort of fraud to hold that a plaintiff can recover punitive damages for fraud without proving the actual damages necessary to establish liability. For that reason too, there is no conflict with *Engle*.

awardable, if any, so that the relationship between the two may be reviewed for reasonableness.” 945 So. 2d at 1265. Moreover, section 768.73, Fla. Stat., imposes a cap of three times compensatory damages. Here, “no legally cognizable damage was shown.” Appendix A, p. 10. Thus, not only is there no conflict with *Engle* and *Ault*, there is no practical need to exercise discretionary jurisdiction in this case.

II
THERE IS NO EXPRESS AND DIRECT CONFLICT
WITH THIS COURT’S 1932 DECISION IN *WEBB FURNITURE*
OR WITH OTHER DECISIONS

The Fourth District’s decision does not expressly and directly conflict with *Webb Furniture Co. v. Everett*, 105 Fla. 292, 141 So. 115 (1932), a case which Petitioner did not even cite below. Nothing in *Webb* establishes a rule that a remand for entry of judgment cannot follow a reversal based on insufficient evidence of a claim. *Webb* pre-dates the 1950 rule changes allowing trial courts to enter judgment in accordance with a motion for directed verdict. Moreover, *Webb* did not require a new trial on a previously tried claim that failed for insufficient proof. It remanded for a trial *only on claims that had not yet been tried*, claims that the plaintiff had sought to add after a prior appeal. *Webb*, 105 Fla. at 293-97, 141 So. at 115-16. That is entirely different from the relief Petitioner seeks, a remand to retry the same claim it failed to prove at trial.

Petitioner offers *Webb*'s statement that, after a reversal, parties on remand should be "restored to the position they found themselves [in] at the time the error was committed" and that, "when error occurs in the trial, . . . the cause must be tried again." 141 So. at 116. The Fourth District did not hold otherwise. It recognized that the trial court's error occurred when that court failed to "grant[] Morgan Stanley's motion for directed verdict" *after* the close of Petitioner's evidence. Appendix A, p. 9. At that point, Respondent should have been granted judgment as a matter of law. The remand for the entry of judgment "restored [the parties] to the position they found themselves [in] at the time the error was committed." 141 So. at 116. That poses no conflict with *Webb*.

Petitioner asserts that it relied on the trial court's rulings in presenting its damages evidence at trial and thus should receive a new trial. However, the decision below is not about evidentiary rulings; it is based on Petitioner's failure to present legally sufficient evidence to prove its claimed benefit-of-the-bargain damages. Petitioner, not the trial court, instructed its expert to "[d]epart[] from his practice in other securities cases" and "simply assume[] CPH could not have recovered any value." Appendix A, p. 4. Having made that strategic decision before the trial court's rulings, Petitioner cannot blame its failure of proof on the trial court.

Petitioner's failure at trial to present legally sufficient evidence to prove the benefit-of-the-bargain damages it elected to pursue required the directed verdict Respondent had sought. In *Arky, Freed, Stearns, Watson, Greer, Weaver & Harris, P.A. v. Bowmar Instrument Corporation*, 537 So. 2d 561, 563 (Fla. 1989), the Court required entry of judgment, not a new trial, when the plaintiff chose to proceed over the other party's overruled objection. The similar outcome here created no conflict with *Webb*.

There also is no express and direct conflict with Petitioner's other cited cases. Those decisions either (1) do not involve failure to prove an element of the tort, *Linn v. Fossum*, 946 So. 2d 1032 (Fla. 2006); *Wolfe v. Gencorp, Inc.*, 529 So. 2d 1154 (Fla. 1st DCA 1988); (2) predate the 1950 rule changes, *Jones v. Tampa Elec. Co.*, 143 Fla. 693, 197 So. 385 (1940); (3) have no analysis demonstrating conflict, *Srybnik v. Ice Tower, Inc.*, 162 So. 2d 294, 296 (Fla. 3d DCA 1964); or (4) involve unique and utterly dissimilar facts, such as a trial premised on an unconstitutional statute, see *Florida E. Coast Ry. Co. v. Edwards*, 197 So. 2d 293 (Fla. 1967). None holds that a plaintiff gets a new trial if it fails to prove an essential element of its claim at trial.

Rowland v. Whitehead, 375 So. 2d 607 (Fla. 2d DCA 1979), also is inapposite. That court allowed a new trial because it was "not a case in which the plaintiff . . . is

seeking to introduce additional evidence which she should have put on in the first place.” *Id.* at 609. Here, Petitioner could have introduced the required damages evidence at trial, and having chosen not to do so, now seeks a new trial to introduce the evidence it should have presented in the first place. *See, e.g., St. Petersburg Hous. Auth. v. J.R. Dev.*, 706 So. 2d 1377, 1377 (Fla. 2d DCA 1998) (reversing order granting rehearing on damages because such a hearing “improperly allows appellee a ‘second bite at the apple’ at proving damages, an element of proof that should have been proven at trial”). None of Petitioner’s cases poses express and direct conflict with the decision below.

III
THERE IS NO EXPRESS AND DIRECT CONFLICT
WITH *GOLDBERG* OR *MCCAIN*

The decision below likewise does not conflict with *McCain* or *Goldberg*, neither of which was cited by Petitioner below. Those personal injury cases, involving issues of foreseeability and intervening cause, have nothing to do with the proper test for proving benefit-of-the-bargain damages in a commercial fraud case. Benefit-of-the-bargain damages are the difference between what the plaintiff was promised and what it actually received. Petitioner failed to prove the value of what it received, and thus failed to prove that difference. That is a damages issue, and presents no express and direct conflict with *Goldberg* or *McCain*.

Petitioner claims the Fourth District created a “new fraud damages rule” by holding that a plaintiff “must conduct an ‘event study’ to prove the amount of its damages.” Jur. Br., p. 8. Not so. The Fourth District merely observed that securities fraud plaintiffs “[u]sually” employ an event study to prove damages, and that other jurisdictions had “often” required such studies. Appendix A, p. 7. But the court ultimately held only that Petitioner had to prove, by any proper means, “the actual ‘fraud-free’ value of the stock at the time of purchase.” *Id.* at 9.

Petitioner was not entitled to assume the stock’s value was zero and thereby recover three years of unrelated stock-price declines. Sunbeam did not go bankrupt for nearly three years after the transaction at issue. Appendix A, p. 3. Furthermore, well after the alleged fraud was disclosed and Sunbeam restated its 1997 financials, “Sunbeam still showed a profit for 1997, even after the restatement, and still had assets of \$3.5 billion.” *Id.* at 2. Whatever may have motivated Petitioner to avoid proving the fraud-free value of the stock at the time of its purchase, one thing is clear: the failure to do so, and its consequences, present no conflict with decisions of this Court or any other District Court of Appeal.

Petitioner claims that it suffered losses during the three years it held the Sunbeam stock (when its own officers ran Sunbeam, Appendix A, p. 2) because the alleged fraud prevented it from selling the stock earlier. But Petitioner’s bargain with

Sunbeam included a “lockup” that prevented it from selling during that period. Appendix A, p. 2. Petitioner cannot claim benefit-of-the-bargain damages while ignoring the part of its bargain that required it to assume the risk of stock price declines from ordinary market events. Petitioner did not seek consequential damages, *id.* at 5 n.1, and a “plaintiff who seeks a benefit-of-the-bargain measure of damages is not entitled to a better bargain than the one it made.” *Id.* at 6. On this issue too Petitioner has demonstrated no express and direct conflict with any decisions.

Finally, we note that Petitioner’s assertion that Respondent had a “proven role” (Jur. Br., p. 1) in Sunbeam’s fraud is misleading. A discovery sanction precluded Respondent from contesting its alleged involvement, an issue the Fourth District did not need to reach because Petitioner “fail[ed] to prove compensatory damages by not establishing the fraud-free value of the Sunbeam stock on the date of the merger transaction.” Appendix A, pp. 1-2.

CONCLUSION

For the foregoing reasons, the Court should decline to exercise its express and direct conflict jurisdiction in this case because there is no express and direct conflict.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following parties by U.S. Mail this 24th day of July, 2007:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Answer Brief is in compliance with Rule 9.210, Fla.R.App.P., and is prepared in Times New Roman 14 point font.

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APPENDIX

NOT A CERTIFIED COPY

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2007

MORGAN STANLEY & CO. INCORPORATED,
Appellant,

v.

COLEMAN (PARENT) HOLDINGS INC.,
Appellee.

No. 4D05-2606

[March 21, 2007]

TAYLOR, J.

This appeal arises from a merger between The Coleman Company, Inc., a manufacturer of camping gear, and Sunbeam, Inc., a manufacturer of household products. Coleman (Parent) Holdings Inc. (CPH), which owned most of the Coleman stock before the merger, exchanged its stock for shares of Sunbeam stock. Later, as reports emerged that Sunbeam's sales were falling and that the company had artificially inflated the value of its stock, Sunbeam's stock price plunged. Sunbeam ultimately declared bankruptcy. CPH sued Morgan Stanley & Co., Inc. (Morgan Stanley), Sunbeam's investment banker in the transaction, alleging that Morgan Stanley helped Sunbeam in carrying out its fraudulent scheme to inflate the price of its stock until after the merger. A jury returned a verdict against Morgan Stanley for conspiracy and aiding and abetting fraud. It awarded CPH compensatory damages of \$604,334,000 and punitive damages of \$850 million. Morgan Stanley appeals the \$1.58 billion judgment entered on the jury verdict. We reverse.

Morgan Stanley raises several issues on appeal, including: (1) whether the trial court improperly entered a partial default against Morgan Stanley as a sanction for discovery misconduct; (2) whether the trial court properly applied Florida law rather than New York law on the issues of justifiable reliance and damages; (3) whether CPH failed to prove compensatory damages by not establishing the fraud-free value of the Sunbeam stock on the date of the merger transaction; (4) whether the trial court erred in denying Morgan Stanley a fair opportunity to

contest and mitigate evidence of litigation misconduct presented during the punitive damages phase of trial; and, (5) whether the punitive damages awarded were excessive. Because our decision on the third issue regarding proof of damages is dispositive, we do not reach the other issues and confine our discussion to compensatory and punitive damages.

A. Compensatory Damages

Pursuant to the merger agreement, Sunbeam bought the Coleman stock and paid CPH approximately half of the purchase price with its own stock. CPH received 14.1 million shares of Sunbeam stock, with an estimated value over \$600 million. The transaction closed on March 30, 1998.

The merger agreement contained a "lockup" restriction, which limited CPH's ability to sell its Sunbeam stock for a specified period. CPH could not sell more than 25% of the Sunbeam stock for 90 days, then could sell another 25% in another 90 days and the remaining 50% in 270 days. A "lockup" provision is customary in situations where, as here, a company is selling a substantial number of shares and wants them sold in an orderly fashion. The shares were unregistered, but Sunbeam had agreed to register them promptly.

On April 3, 1998, Sunbeam issued a press release announcing that first quarter sales would be 5% below 1997 sales and that the company would show a loss for the quarter. Sunbeam stock dropped 10%, to \$34 a share, after this report.

In mid-June 1998, Sunbeam's CEO, Al Dunlap, was fired after an internal investigation revealed fraudulent bookkeeping. Jerry Levin, formerly Coleman's CEO, then took the reins as Sunbeam's CEO and brought several senior Coleman executives with him. By then, the stock price had dropped to \$18. Shortly after Dunlap's firing, Arthur Andersen "pulled" its 1996 and 1997 audit certificates.

By the end of 1998, Levin and his team had been at Sunbeam for almost six months. The company had restated its financials for 1996 and 1997, reducing the loss in 1996 and moving it to 1997. Sunbeam still showed a profit for 1997, even after the restatement, and still had assets of \$3.5 billion.

Originally, CPH had planned to sell the Sunbeam shares after the "lockup" period. However, several circumstances prevented it from doing so. First, because of the fraud and Arthur Andersen's restatement of Sunbeam's financials, registration of the Sunbeam shares could not be completed until late 1999. Registration of a security is required before it can be sold in the public markets. Second, according to CPH, if, at any time after June 1998, the market had learned that CPH was attempting to sell its Sunbeam stock, "the market would clearly have viewed that as CPH abandoning a sinking ship and would have destroyed any value for the CPH stock." Third, because senior executives previously affiliated with CPH had assumed positions on Sunbeam's board and gained access to information concerning Sunbeam's performance, CPH was concerned that selling any of its Sunbeam shares could subject it to liability for insider trading.

On February 6, 2001, nearly three years after the transaction closed, Sunbeam went bankrupt. Howard Gittis, the vice-chairman of CPH, testified that, in his opinion, Sunbeam went bankrupt because it was overleveraged, i.e., had too much debt. As a result of the bankruptcy, CPH's Sunbeam shares became worthless.

At trial, CPH sought benefit-of-the-bargain damages. To establish these, CPH presented the testimony of its expert, Dr. Blaine Nye, a financial economist. Dr. Nye testified that CPH suffered damages between \$634 and \$680 million. He used an expected value for the 14.1 million Sunbeam shares of \$48.26 per share (based on the average share price from the time the deal was publicly disclosed until the day it closed), for a total expected value of more than \$680 million. Dr. Nye stated his opinion that, because CPH never was able to realize any value from the shares, CPH effectively received "zero" value. As an alternative, he assumed that three-quarters of the shares were saleable in the first quarter of 2000, which would have yielded a share price of \$4.35 per share (averaged over the quarter). By that method, CPH's loss amounted to \$634 million.

Morgan Stanley objected to the admission of Dr. Nye's opinion on damages. It argued that Dr. Nye's testimony was incompetent, because he did not factor a valuation date into his analysis. Contrary to the requirements set by settled law on fraud damages, his opinion was not based upon the value of the stock on the March 30, 1998 date of the transaction. The court overruled the objection. During cross-examination of Dr. Nye, Morgan Stanley established that Dr. Nye did not calculate the actual value of Sunbeam shares at any point in time.

Departing from his practice in other securities cases, he did not determine the "fraud-free" price of Sunbeam stock on the date of closing. He simply assumed CPH could not have recovered any value, as he was instructed to do by CPH. He did not consider whether other factors affected the stock price, such as business decisions by the new management team or the stock market crash of 2000. He did not analyze whether Sunbeam's acquisition of other small companies during this time created problems. He did not look at Sunbeam's expenses while it was being operated by the new management.

After Dr. Nye's examination, Morgan Stanley moved to strike Dr. Nye's testimony and renewed its earlier motions in limine and motion to exclude. Morgan Stanley argued that Dr. Nye's testimony was legally deficient, pointing out that the expert admitted at trial, as well as in deposition, that he "did not use the date of the deal at all" in his analysis and made no attempt to estimate the value of the loss as of March 30, 1998. The court denied the motions. It also denied Morgan Stanley's motion to direct a verdict in its favor due to CPH's failure to prove damages.

On May 16, 2005, the jury returned a verdict finding, by clear and convincing evidence, that CPH relied on the false statements made by Morgan Stanley or Sunbeam, and that it suffered damages as a result. The jury awarded CPH compensatory damages in the amount of \$604,334,000. Two days later, after brief testimony regarding punitive damages, the jury returned a verdict for punitive damages in the amount of \$850 million. Morgan Stanley appealed the entire judgment on these verdicts.

CPH sought benefit-of-the-bargain damages from Morgan Stanley. Under the "flexibility theory" of damages followed in Florida, a defrauded party is entitled to the measure of damages that will fully compensate him. *Nordyne, Inc. v. Fla. Mobile Home Supply, Inc.*, 625 So. 2d 1283, 1286 (Fla. 1st DCA 1993) ("The 'flexibility theory' permits the court to use either the 'out-of-pocket' or the 'benefit-of-the-bargain' rule, depending upon which is more likely fully to compensate the injured party."). At CPH's request, the trial court concluded that CPH was entitled to benefit-of-the-bargain damages. Damages under the benefit-of-the-bargain rule are measured by the difference between the value of the property as represented and the actual value of the property on the date of the transaction. *Kind v. Gittman*, 889 So. 2d 87, 90 (Fla. 4th DCA 2004); *Totale, Inc. v. Smith*, 877 So. 2d 813, 815 (Fla. 4th DCA 2004); *Teca, Inc. v. WM-TAB, Inc.*, 726 So. 2d 828, 829 (Fla. 4th DCA 1999); *Pertman v.*

Ferman Corp., 611 So. 2d 1340, 1341 (Fla. 4th DCA 1993). Actual value of the property at the time of purchase is a "crucial element in the damage equation." *Teca*, 726 So. 2d at 829. This is so whether a plaintiff seeks benefit-of-the-bargain damages or an out-of-pocket measure of damages. *Kind*, 889 So. 2d at 90; *Totale*, 877 So. 2d at 815. The same standard is applied in federal securities cases. See *Miller v. Asencio & Co.*, 364 F.3d 223, 227 (4th Cir. 2004) (citing *Affiliated Ute Citizens v. U. S.*, 406 U.S. 128, 155 (1972)) (stating that the measure of damages in 10(b) case was the difference between the fair value of what plaintiff received and the fair value of what they would have received had there been no fraudulent conduct at the time of sale); *In Re Imperial Credit Indus., Inc. Sec. Litig.*, 252 F. Supp. 2d 1005, 1014 (C.D. Cal. 2003).¹

As a general rule, plaintiffs alleging securities fraud rely on expert proof to establish both the fact of damage and the appropriate method of calculation. *Sowell v. Butcher & Singer, Inc.*, 926 F.2d 289, 301 (3d Cir. 1991). CPH's expert testified as to the bargained-for value of the Sunbeam stock, but he did *not* testify as to the actual value of the Sunbeam stock at the time of purchase – a necessary element of proof. He testified that although he had done such calculations in other cases, in this case he did not isolate the fraud-free price and perform the standard securities analysis to determine what would have been the stock's value on the date of transaction. Instead, he treated the stock as though it had no value when the transaction occurred in 1998.

CPH defends the evidence it presented at trial on damages. It argues that Morgan Stanley is liable for the full amount of its loss, because Morgan Stanley defrauded CPH into accepting shares that it could not resell. It contends that "in cases where misconduct induces a plaintiff to purchase stock and then hinders the plaintiff from reselling that stock, courts repeatedly have held that the wrongdoer is liable for losses until resale can occur." CPH maintains that, because it could not sell its stock, it was not bound by the date-of-transaction rule, but could recover for stock price declines until such time as it could resell the stock. Consistent with CPH's theory of damages, the trial court instructed the

¹ CPH's argument on appeal that the jury actually awarded it \$600 million in "consequential" damages is unpersuasive. The jury was not instructed on the concept of consequential damages. In any event, CPH's new theory is not supported by the authorities it cites.

jury to value the stock on the date CPH could first resell it after December 1999, when the shares could be registered.

Morgan Stanley counters that CPH should not be allowed to recover for declines in Sunbeam's stock price during the period that CPH had agreed to a contractual "lockup". By agreeing to the "lockup", CPH bargained for at least part of the stock's illiquidity and accepted the risk of declines in stock price due to market conditions or other non-fraud related factors during the "lockup period". Thus, to allow CPH to recover for non-fraud related losses *during* the "lockup" period, when CPH had effectively agreed to absorb non-fraud related losses for that period, would amount to giving CPH more than what it bargained for. The record shows that Sunbeam lost approximately 90% of its value during the contractual "lockup" timeframe.

CPH maintains that it is entitled to recover for even non-fraud related stock price declines during this period, because it would not have entered the agreement, with its "lockup" clause, but for the fraud. However, CPH's "but for" causation argument disregards the proximate causation required for fraud damages and is at odds with the benefit-of-the-bargain recovery it elected. Benefit-of-the-bargain damages do not turn on what would have happened if CPH had known the representations were false. They measure what CPH would have received had the representations been *true*. By opting for benefit-of-the-bargain damages, CPH does not seek to rescind the transaction; it seeks to affirm the transaction and claim the benefit of the bargain. The bargain, in this case, included sale restrictions.

A plaintiff who seeks a benefit-of-the-bargain measure of damages is not entitled to a better bargain than the one it made. This is true even under Florida's "flexibility theory" of damages. The "flexibility theory" of damages, which allows a plaintiff to choose either benefit-of-the-bargain or out-of-pocket damages in fraud cases, is not so flexible as to allow a plaintiff to pick and choose which parts of the contract it wants to affirm and which parts it wants to disaffirm. Furthermore, applying CPH's "but for" rationale to proving damages would result in recovery of all non-fraud related losses in virtually every fraud case, because the defrauded party would need only assert that it would not have agreed to the contract had it known of the fraud.

To support its argument that it was entitled to all "pre-sale" losses, CPH relies primarily on *Shearson Loeb Rhoades, Inc. v. Medlin*, 468 So. 2d 272, 273 (Fla. 4th DCA 1985). However, *Shearson* hinders rather

than helps CPH's claim. In that case, we held that the measure of damages for delay in delivery of stock certificates is the difference between the value when the certificates should have been delivered and the value when they were actually delivered. We barred damages for subsequent depreciation absent proof that the plaintiff "would have sold" earlier had the stock been properly delivered. Here, CPH introduced no such proof. To the contrary, it had actually agreed *not* to sell during the most critical period when Sunbeam lost 90 % of its value.

As to the date-of-transaction rule, CPH argues that the transaction date is not necessarily the operative valuation date in a case involving stock or other property that, due to fraud, could not be resold when the fraud was exposed. It contends that once it placed in evidence a stock price table showing the daily market price of Sunbeam shares from March 1998 until Sunbeam declared bankruptcy in February 2001, the jury could simply select a date when the effects of the fraud no longer existed and perform its own calculation in making an award. However, even if the jury had chosen a date, such as the date Arthur Andersen restated the Sunbeam financials, other factors existed that could have affected the stock price. As the Supreme Court explained in *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 342-43 (2005):

When a purchaser subsequently resells such shares, even at a lower price, that lower price may reflect, not the earlier misrepresentation, but changed economic circumstances, changed investor expectations, new industry-specific or firm-specific facts, conditions, or other events, which taken separately or together account for some or all of that lower price.

Thus, recovering in a securities case "require[s] elimination of that portion of the price decline that is the result of forces unrelated to the wrong." *Miller*, 364 F.3d at 232 (quoting *In re Executive Telecard, Ltd. Sec. Litig.*, 979 F. Supp. 1021, 1025 (S.D.N.Y. 1997)).

Usually, a securities plaintiff proves the actual, or "fraud-free," value of the stock at the time of purchase by presenting an expert "event study" or "event analysis." In fact, an "event analysis" is often required to support an expert's damages calculation and "generally involves the computation of a statistical regression analysis or, at a minimum, the compilation of a detailed analysis of each particular event that might have influenced the stock price." *Miller*, 364 F.3d at 234. This is the kind of calculation that CPH's expert said he had done in other cases.

In *Miller*, the expert claimed to have done the "event analysis" in his head, never committing any portion of it to paper, other than his final conclusion. The court characterized this analysis as "markedly thin" and upheld a zero verdict, stating that the record was one from which the jury "cannot" have awarded damages. *Id.* at 235.

In *In re Imperial Credit Industries, Inc. Securities Litigation*, 252 F. Supp. 2d 1005 (C.D. Cal. 2003), at the summary judgment stage, the court excluded the defense expert's damages report as junk science under *Daubert v. Merrell Dow Pharmaceutical, Inc.*, 509 U.S. 579 (1993), then entered summary judgment for the defendant, because the report contained no "event study" or similar analysis. In so doing, it noted:

11. Because of the need "to distinguish between the fraud-related and non-fraud related influences of the stock's price behavior," *In re Oracle Sec. Litig.*, 829 F. Supp. 1176, 1181 (N.D. Cal. 1993), a number of courts have rejected or refused to admit into evidence damages reports or testimony by damages experts in securities cases which fail to include event studies or something similar. *See, e.g., In re Northern Telecom Sec. Litig.*, 116 F. Supp.2d 446, 460 (S.D. N.Y.2000) ("Torkelson's testimony is fatally deficient in that he did not perform an event study or similar analysis to remove the effects on stock price of market and industry information and he did not challenge the event study performed by defendants' expert."); *Executive Telecard*, 979 F. Supp. at 1024-26 (finding an expert's methodology not reliable because he failed to conduct an event study or regression analysis to detect whether stock price declines were the result of forces other than the alleged fraud; applying *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993) to exclude the expert damages report); *Oracle*, 829 F. Supp. at 1181 ("Use of an event study or similar analysis is necessary more accurately to isolate the influences of information specific to Oracle which defendant allegedly have distorted... As a result of his failure to employ such a study, the results reached by [plaintiffs' expert] cannot be evaluated by standard measures of statistical significance.")

12. The importance and centrality of the event study methodology in determining damages in securities cases-and

the propriety of rejecting expert damages reports which do not use such a methodology-has been conceded by plaintiffs in other securities fraud cases:

"[A]ccording to [plaintiffs], the methodology-'event study methodology'-used to calculate shareholder damages during the class period 'has been used by financial economists since 1969 as a tool to measure the effect on market prices from all types of new information relevant to a company's equity valuation.' It is so accepted, plaintiffs add, that courts now reject expert damage estimates which do not use event study methodology to evaluate the impact on the market of a company's disclosures."

In re Cendant Corp. Sec. Litig., 109 F. Supp. 2d 235, 253-54 (D.N.J. 2000).

Imperial Credit, 252 F. Supp. 2d at 1015.

CPH was not entitled to have the jury speculate as to the value of the stock on the date of sale. Rather, it was required to *prove* the stock's value on that date. As we explained in *Totale*, "the crucial time for the measurement is the time of the fraudulent representation. Later appreciation or depreciation of the property that is subject of the false representation generally does not alter the fraud damage computation." 877 So. 2d at 815. The federal cases cited above merely expand on Florida law that requires the plaintiff to prove the actual, "fraud-free" value of the stock at the time of purchase. Although CPH insisted in oral argument that the stock market was doing well and that there were no non-fraud related factors affecting the stock price during the "lockup" period, it failed to present any competent proof at trial establishing the absence of non-fraud related factors.

In sum, CPH failed to meet its burden of proving the actual, "fraud-free" value of the Sunbeam stock on the date of the transaction. Instead, it measured damages based on the stock's value years after the transaction. Because there was no proof presented at trial on the correct measure of damages, the trial court should have granted Morgan Stanley's motion for directed verdict. We therefore reverse the final judgment for compensatory damages and remand for entry of a judgment for Morgan Stanley. See *Kind*, 889 So. 2d at 90; *Teca*, 726 So. 2d at 830.

We reject CPH's argument that it should, at the least, be given a new trial to prove damages because the trial court erred in its pretrial rulings and jury instructions concerning the proper measure of damages. CPH cannot complain about rulings that it urged the court to make in accordance with its damages theory. Furthermore, as we held in *Teca*, a plaintiff is not entitled to a second "bite at the apple" when there has been no proof at trial concerning the correct measure of damages. *Id.* at 830.

B. Punitive Damages

The trial was bifurcated, with the jury deciding liability and compensatory damages in Phase I. In Phase II, the jury tried the issue of punitive damages and awarded CPH \$850 million in punitive damages. Because we conclude that Morgan Stanley was entitled to a directed verdict and reversal of the compensatory damages award, we reverse the punitive damages award as well. The punitive damages award cannot stand where, as here, no legally cognizable damage was shown as a result of the alleged fraud. Had the trial court properly directed a verdict for Morgan Stanley, the case would have ended at that point and the punitive damages phase never would have been reached.

CPH argues that we should nevertheless uphold the award of punitive damages. It suggests that even after entering a directed verdict on compensatory damages, the trial court could have submitted the liability issue to the jury as a possible predicate for punitive damages. Relying on *Ault v. Lohr*, 538 So. 2d 454 (Fla. 1989), and *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006), CPH argues that, where an intentional tort is proved, punitive damages are recoverable even in the absence of compensatory damages. We conclude that *Ault* is distinguishable and that *Engle* is not controlling in this case.

Ault was an assault and battery case. The jury in that case awarded the plaintiff punitive damages, but no compensatory damages. The Florida Supreme Court approved the punitive damages award because of the jury's express finding of liability. The court held that "a finding of liability alone will support an award of punitive damages 'even in the absence of financial loss for which compensatory damages would be appropriate.'" 538 So. 2d at 456. Assault and battery torts, however, are fundamentally different from fraud. Unlike in the case of fraud, actual injury or compensatory damages are not essential to stating a cause of action for assault and battery. See, e.g., *Paul v. Holbrook*, 696 So. 2d

1311, 1312 (Fla. 5th DCA 1997); *Lay v. Kremer*, 411 So. 2d 1347, 1349 (Fla. 1st DCA 1982).

It is fundamental that “[a]ctual damages and the measure thereof are essential as a matter of law in establishing a claim of fraud.” *Nat’l Equip. Rental, Ltd. v. Little Italy Rest. & Delicatessen, Inc.*, 362 So. 2d 338, 339 (Fla. 4th DCA 1978). “Damage is of the very essence of an action for fraud or deceit.” *Casey v. Welch*, 50 So. 2d 124, 125 (Fla. 1951). Without proof of actual damage the fraud is not actionable. *Id.*; *Stokes v. Victory Land Co.*, 128 So. 408 (1930); *Pryor v. Oak Ridge Dev. Corp.*, 119 So. 326 (1928); *Wheeler v. Baars*, 15 So. 584 (1894); *Nat’l Aircraft Servs., Inc. v. Aeroserv Int’l, Inc.*, 544 So. 2d 1063 (Fla. 3d DCA 1989); *Nat’l Equip. Rental*, 362 So. 2d at 339. Thus, to prevail in an action for fraud, a plaintiff must prove its actual loss or injury from acting in reliance on the false representation.²

Even if CPH established the *fact* of some unquantified damage (which theoretically could have supported a nominal damage award), this is not enough to justify a punitive damage award in a fraud case. Punitive damages for fraud cannot be based on nominal damages alone. *Nat’l Aircraft Servs.*, 544 So. 2d at 1065. Although the Florida Supreme Court’s recent *Engle* opinion does state that “an award of compensatory damages is not a prerequisite to a finding of entitlement to punitive damages,” we read the opinion as addressing the order of proof in determining entitlement to punitive damages. 945 So. 2d at 1262 (“Therefore we conclude that the order of these determinations is not critical.”).³

² In his specially concurring opinion in *Ault*, Chief Justice Ehrlich observed that if actual damage is an essential element of a tort, then an award of compensatory damages is necessary for an award of punitive damages. Though we recognize that this concurring opinion is not binding precedent, we find it highly persuasive. The alternative view would, for example, permit virtually anyone who ever smoked a cigarette in the State of Florida to recover punitive damages in a fraud action against the tobacco companies, irrespective of a finding of any actual adverse health effects.

³ Even if we were to accept CPH’s argument that some amount of punitive damages would still be awardable after a directed verdict on compensatory damages, due process principles would not have permitted an \$850 million punitive damage award to stand in a case where no compensatory damages were awarded. See *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996) (holding that punitive damages must bear a reasonable relationship to compensatory

Accordingly, we reverse both the compensatory and punitive damage awards and remand this cause with directions to enter judgment for Morgan Stanley.

Reversed and Remanded

SHAHOOD, J., concurs.
FARMER, J., dissents with opinion.

FARMER, J., dissenting.

I have a different perception.⁴ Mine sees differences in the case actually litigated in the trial court from the case on appeal. In sum, I see nothing wrong under Florida law with Coleman's theory of compensatory damages or proof and would affirm that part of the judgment. As for punitive damages, however, I would reverse and remand for a new trial on the issue of *entitlement*⁵ and, if necessary, the amount. I elaborate in the following paragraphs.

Compensatory Damages

Sunbeam sought to buy Coleman's stock to acquire control of the company. It agreed to pay part of the price with its own stock and part in cash. Coleman's reasons for accepting some of the price in the buyer's own securities were doubtlessly based on the tax laws, but there are other considerations as well. For example, one reason to hold the stock would be to receive future earnings from what was represented to be worth \$640,000,000. And so the mere fact that part of the price was paid in securities hardly means that the seller intended to convert such

damages). Under due process principles, only a small fraction of the \$850 million award would conceivably have been recoverable in this situation.

⁴ I do agree with the majority's necessarily implicit affirmance of the trial court's application of Florida law instead of New York. Florida has a significant and undeniable interest in providing remedies for persons injured by false financial statements emanating from this state by companies who have decided to locate their headquarters here. I agree that the trial court did not abuse its discretion in the sanctions imposed on Morgan Stanley for substantial violations of court orders.

⁵ See § 768.725, Fla. Stat. (2005) ("In all civil actions, the plaintiff must establish at trial, by clear and convincing evidence, its entitlement to an award of punitive damages.").

securities into cash, or that buyer's damages should be based only on some hypothetical price the stock might have fetched if resold at some point.

The claim is intentional fraud, not breach of contract. Coleman claimed that Sunbeam and Morgan Stanley deliberately falsified financial reports to induce Coleman to accept Sunbeam stock as part of Sunbeam's acquisition of Coleman. That means that the worth of the stock is critical to measuring Coleman's damages.

The value of stock is affected by an objective factor, which in turn may be enhanced by subjective factors. Objectively, it reflects the intrinsic worth of the corporation: the value of its assets in excess of its liabilities. Its worth might also be enhanced by intangible factors: for example, although heavily in debt, a pending transaction could inject considerable profits.

Theoretically, there are two ways in which the value of the Sunbeam stock could have been falsified by the misrepresentations of Sunbeam and Morgan Stanley. The first would be that the stock really had no objective value at all because the corporation was insolvent and lacked any prospects to rescue it.⁶ The alternative could be that the stock actually retained a value less than the corporate financial reports indicated. In other words, the distinction is the difference between zero and some positive whole number.

Florida law, therefore, understandably gave Coleman different ways to measure the injury it suffered from stock whose value had been deliberately misrepresented.

"Florida has adopted two standards for the measurement of damages in an action for fraudulent representation. *Either may be used to do justice as the circumstances demand.* The first standard is the 'benefit-of-the-bargain' rule.... The second standard is the 'out-of-pocket' rule...." [e.s.]

See Martin v. Brown, 566 So.2d 890, 891 (Fla. 4th DCA 1990); *see also Strickland v. Muir*, 198 So.2d 49, 51 (Fla. 4th DCA 1967), *receded from on*

⁶ Again, even if the stock lacked objective value because of the insolvency of the corporation, the owners of its stock might still avoid a liquidation if they could point to some prospective advantage to conceivably rescue the situation. But without that, the stock would have no value.

other grounds, *TECA, Inc. v. WM-TAB, Inc.*, 726 So.2d 828 (Fla. 4th DCA 1999). Looking at the benefit-of-the-bargain rule, I see nothing wrong with the jurisprudence of allowing the deceived victim of fraud to hold a defendant to his lies for purposes of assessing damages. So if a defendant had represented the thing to be worth \$10,000 when it was actually worth nothing, it is fit and appropriate to mulct him in money damages for the full \$10,000. Let the defendant pay what he said the value was. Essentially that is what the benefit-of-the-bargain theory of damages does.

At trial Coleman measured its damages by the benefit of its bargain. It did not seek to prove that the stock had some reduced value above zero. To the contrary, it contended instead that the stock was worthless. As I understand its evidence at trial if believed by the jury, it could have been properly understood as showing that the stock it received from Sunbeam and Morgan Stanley never really had any real value because of the concealed insolvency of Sunbeam—as the later bankruptcy confirmed.

One important aspect of compensating someone for the intentional deceit of another is to make the damages fit the fraud and place the deceived person where he (it) would have been if the goods (stock) had been as represented. If Sunbeam and Morgan Stanley were guilty of deceiving Coleman into believing that the shares given in payment for the company were worth at least \$640,000,000, even though the stock had no real value because of the corporation's concealed insolvency, then it seems only right to hold Sunbeam indebted to Coleman for the same \$640,000,000 in money damages. Such compensation is just and fair because it vindicates the value (*mis*)represented.

I see no legal reason why the deceiver should be benefited in the measurement of damages by the mere fact that Coleman held on to the stock and refrained from selling it in the market when it might have done so. For one thing, by requiring a resale of inflated stock to an unsuspecting public, the court's reasoning would encourage aggrieved buyers unwittingly to make use of their seller's fraudulent representations concealing its real lack of value. The law of damages can hardly countenance such a perpetuation of fraudulent financial statements. If the tainted stock has no value, there is no reason for one in the position of Coleman to produce evidence of the selling price of the stock for any particular day after the sale and before the lawsuit so long as it instead proved that from the day of the sale it had no real value on account of the hidden financial failure of the company. Moreover,

Coleman's failure to sell the stock at the first chance was obviously weighed by the jury. The verdict demonstrates that the jury apparently found that Coleman's failure to attempt resale was of no consequence.

At trial Morgan Stanley's damages defense was apparently meant to defeat Coleman's benefit-of-the-bargain theory by focusing on the second method of proving fraud damages. To reduce damages it sought to establish that even if the stock fell short of the entire value represented by the financial statements, it was nevertheless still worth some lesser value. Morgan Stanley certainly elicited evidence of a lesser value and so argued to the jury. The problem for Morgan Stanley on appeal is that its theory was substantially rejected by the jury. While there may have been contrary evidence, Coleman produced contrary evidence to support its theory of zero value. The jury relied on Coleman's theory instead of Morgan Stanley's, a reliance that should impel this court on appeal to reject the alternative theory of measuring damages as well.

The principal policy underlying compensation in fraud cases has been explained thus:

"In tort actions, the goal is to restore the injured party to the position it would have been in had the wrong not been committed. In most cases, the measure of damages which will accomplish this goal is that provided by the 'out-of-pocket rule.' However, in some cases, the measure of damages afforded by that rule will prove inadequate to achieve the desired goal. To address those latter cases in which the claim is for fraud, what has been described as the 'flexibility theory' has been developed. The 'flexibility theory' permits the court to use either the 'out-of-pocket' or the 'benefit-of-the-bargain' rule, depending upon which is more likely fully to compensate the injured party." [c.o., e.s.]

Nordyne, Inc. v. Fla. Mobile Home Supply, Inc., 625 So.2d 1283, 1286 (Fla. 1st DCA 1993). Coleman had strong authority under Florida law to rely on the benefit-of-the-bargain rule and succeeded in producing evidence that the stock it received was essentially worthless. While Morgan Stanley was free to hitch its star to the alternative out-of-pocket rule, it was the function of the jury to decide which of the two theories would fully compensate the deceived victim of this particular fraud. From the amount awarded, it is obvious that the jury largely used the benefit-of-the-bargain rule, reducing the amount claimed by Coleman to fit the jury's resolution of the evidence. I do not think the trial judge

abused her discretion in allowing the evidence or by refusing to disturb the jury's compensation verdict.

Punitive Damages

In *Ault v. Lohr*, 538 So.2d 454 (Fla. 1989), the court held that a plaintiff can recover punitive damages when the fact finder has found a breach of duty but compensatory or actual damages have not been proven; nominal damages need not first be awarded before punitive damages are proper. Yet in spite of *Ault*, the majority peremptorily holds that no punitive damages are possible in this intentional fraud case because of its reversal of the jury's award of compensatory damages. Their reasoning is:

"Although the Florida Supreme Court's recent *Engle* opinion does state that 'an award of compensatory damages is not a prerequisite to a finding of entitlement to punitive damages,' we read the opinion as addressing the order of proof in determining entitlement to punitive damages, not as eliminating the need for proof of damages establishing the underlying case of fraud."

(referring to *Engle v. Liggett Group, Inc.*, 945 So.2d 1246, 1262 (Fla. 2006)). To understand why *Engle* does not hold what the majority said it did, I set out the *Engle* court's actual discussion on this subject in its entirety:

"A. Phase I Finding on Entitlement to Punitive Damages

"The last question on the Phase I verdict form asked the jury to determine whether '[u]nder the circumstances of this case, ... the conduct of any Defendant rose to a level that would permit a potential award or entitlement to punitive damages.' The jury answered 'yes' with respect to each of the defendants. In Phase II-B, the jury awarded a total of \$145 billion in punitive damages to the class.

"The Third District ruled that the trial erred in awarding classwide punitive damages 'without the necessary findings of liability and compensatory damages.' *Engle II*, 853 So.2d at 450.⁷ A majority of the Court (**Anstead, Pariente, Lewis and Quince**) concludes that *an award of compensatory damages is not a prerequisite to a finding of entitlement to*

⁷ *Liggett Group, Inc. v. Engle*, 853 So.2d 434, 450 (Fla. 3d DCA 2003).

punitive damages. Compensatory and punitive damages serve distinct purposes. As the United States Supreme Court has explained:

The former are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct. The latter, which have been described as 'quasi-criminal,' operate as 'private fines' intended to punish the defendant and to deter future wrongdoing. A jury's assessment of the extent of a plaintiff's injury is essentially a factual determination, whereas its imposition of punitive damages is an expression of its moral condemnation. *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 432, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001) (citations omitted).

"Because a finding of entitlement to punitive damages is not dependent on a finding that a plaintiff suffered a specific injury, an award of compensatory damages need not precede a determination of entitlement to punitive damages. Therefore, we conclude that the order of these determinations is not critical. See *Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468, 474 (5th Cir.1986).

"A different majority of the Court (**Wells, Anstead, Pariente and Bell**) concludes that under our decision in *Ault v. Lohr*, 538 So.2d 454, 456 (Fla.1989), a finding of liability is required before entitlement to punitive damages can be determined, and that liability is more than a breach of duty. A finding of liability necessarily precedes a determination of damages, but does not compel a compensatory award. For example, in *Ault*, the jury found that the defendant had committed an assault and battery but awarded \$0 in compensatory damages and \$5000 in punitive damages. See *id.* at 455. Thus, unlike the Phase I jury in this case, the jury in *Ault* found that the plaintiff had proved the underlying cause of action but did not suffer any compensable damage.

"Although we appeared to use 'breach of duty' and 'liability' interchangeably in *Ault*, the Court expressly adopted the principles set forth in dicta in *Lassiter v. International Union of Operating Engineers*, 349 So.2d 622 (Fla.1976). Specifically, we stated that

[n]ominal damages are awarded to vindicate an invasion of one's legal rights where, although no physical or financial injury has been inflicted, the underlying cause of action has been proved to the satisfaction of a jury.

Accordingly, the establishment of liability for a breach of duty will support an otherwise valid punitive damage award even in the absence of financial loss for which compensatory damages would be appropriate. *Ault*, 538 So.2d at 455 (quoting *Lassiter*, 349 So.2d at 625-26).'

"In this case, the Phase I verdict did not constitute a 'finding of liability' under *Ault*. This is evidenced by the fact that had the jury found for Tobacco on the legal cause and reliance issues during Phase II, there would have been no opportunity for the jury to award the named plaintiffs damages of any type. In other words, Phase II findings for Tobacco on legal causation and reliance would have precluded the jury from awarding compensatory or punitive damages. It was error for the trial court to allow the jury to consider entitlement to punitive damages before the jury found that the plaintiffs had established causation and reliance.

"In Phase I, the jury decided issues related to Tobacco's conduct but did not consider whether any class members relied on Tobacco's misrepresentations or were injured by Tobacco's conduct. As the Third District noted, the Phase I jury 'did not determine whether the defendants were liable to anyone.' *Engle II*, 853 So.2d at 450. It was therefore error for the Phase I jury to consider whether Tobacco was liable for punitive damages." [e.s.]

945 So.2d at 1262-63. By no stretch of the imagination could this explanation be understood by me as merely fixing an "order of proof in determining entitlement to punitive damages." *Ault v. Lohr* had already "eliminat[ed] the need for proof of damages establishing the underlying case of fraud," and *Engle* explicitly proceeded to follow and apply *Ault* in the holding quoted above. *Id.* It is not reasonable to read the above quotation to mean anything other than that an award of some compensatory damages is unnecessary to find an entitlement to punitive damages.

Because the majority's reading of *Engle* on the punitive damages issue is obviously at odds with the Supreme Court's earlier holding in *Ault*, it is apparent that the majority thinks that *Engle* has **impliedly** overruled *Ault*. But the Supreme Court has repeatedly made clear that it does not impliedly overrule itself. See *Puryear v. State*, 810 So.2d 901, 905 (Fla. 2002) ("We take this opportunity to expressly state that this Court does not intentionally overrule itself sub silentio. *Where a court encounters an*

express holding from this Court on a specific issue and a subsequent contrary dicta statement on the same specific issue, the court is to apply our express holding in the former decision until such time as this Court recedes from the express holding." [e.s.]); *State v. Ruiz*, 863 So.2d 1205, 1210 (Fla. 2003) ("Further, as we have made clear, 'this Court does not intentionally overrule itself sub silentio.'"); *F.B. v. State*, 852 So.2d 226, 228 (Fla. 2003) ("Thus, while the Second District's reliance ... is understandable, we again remind the courts that this Court does not intentionally overrule itself sub silentio."); *City of Miami v. McGrath*, 824 So.2d 143, 152 (Fla. 2002) ("there is no indication that the Court ... intended to recede from its prior approach to analyzing when a statute is an impermissible special law."). There is absolutely nothing in *Engle* suggesting that *Ault* was being explicitly overruled; indeed the court actually proceeded to apply *Ault*. See *Engle*, 945 So.2d at 1262-63 ("A finding of liability ... does not compel a compensatory award. For example, in *Ault*, the jury found that the defendant had committed an assault and battery but awarded \$0 in compensatory damages and \$5000 in punitive damages. Thus, unlike the Phase I jury in this case, the jury in *Ault* found that the plaintiff had proved the underlying cause of action but did not suffer any compensable damage.").

Ault's actual holding is that zero compensatory damages do not preclude punitive damages. In fact the court granted review specifically to answer that question. *Ault*, 538 So.2d at 456 ("The narrow question for resolution by this Court is whether a plaintiff can recover punitive damages where the factfinder has found a breach of duty but no compensatory or actual damages have been proven."). In holding that liability without at least some compensatory damages does not foreclose an award of punitive damages, *Ault* explained:

"We believe an express finding of a breach of duty should be the critical factor in an award of punitive damages. Accordingly, we hold that a finding of liability alone will support an award of punitive damages 'even in the absence of financial loss for which compensatory damages would be appropriate.' We reject Ault's contention that at least nominal damages must first be awarded before punitive damages are proper. We conclude that nominal damages are in effect zero damages and are defined as those damages flowing from the establishment of an invasion of a legal right where actual or compensatory damages have not been proven. In approving an award of punitive damages upon an express finding of liability by the factfinder, we accept the view that nominal

damages will be presumed from an encroachment upon an established right." [e.s., f.o.]

Id. In a special concurring opinion, Justice Ehrlich contributed the following:

"The crucial element in determining whether punitive damages may be awarded absent an award of compensatory damages is proof of the underlying cause of action. Where actual damage is an essential element of the underlying cause of action, an award of compensatory damages must be a prerequisite to an award of punitive damages. This case involved the torts of assault and battery, which do not require proof of actual damage. Therefore, I agree that in this case, where the jury made an express finding of liability, punitive damages could properly be awarded even absent an award of compensatory damages."

538 So.2d at 457.

The majority has not disturbed the jury's finding of liability for fraud—for which plaintiff was required to present evidence of the *fact* (if not the amount) of some damage. Effectually the majority has resurrected this court's holding in *Buonopane v. Fritz*, 477 So.2d 1030 (Fla. 4th DCA 1985) ("The law in Florida is clear that one cannot recover for punitive damages if no compensatory damages are awarded."). But that holding that was expressly disapproved in *Ault*. 538 So.2d at 456 ("For the reasons expressed, we ... disapprove *Buonopane v. Fritz*, 477 So.2d 1030 (Fla. 4th DCA 1985)..."). There is a world of difference between the fact that one was damaged—i.e., harmed or injured—by a falsehood (fraud being merely one example of an actionable falsehood, defamation another) and the entirely separate issue of its quantification in money damages. *Ault* requires only the former and eschews the latter.

In setting aside the compensatory damages in this case, the majority's premise is that the stock may well have had some lesser value than Morgan Stanley represented but the evidence fails to establish that any precise lesser value on some relevant date. Clearly, however, the evidence supported the inference that Coleman was damaged by the fraud, even if it fails to support the precise amount awarded. In *First Interstate Development Co. v. Ablanado*, 511 So.2d 536 (Fla. 1987), the supreme court held that punitive damages are appropriate for any tortious conduct accomplished through fraud. See also *Winn & Lovett*

Grocery Co. v. Archer, 171 So. 214, 221, 222 (1936) (exemplary damages are given solely as a punishment where torts are committed with fraud; to recover exemplary or punitive damages, the declaration must allege some general facts and circumstances of fraud). If proof of intentional fraud is per se enough for punitive damages, then the failure to establish the precise monetary amount of the actual loss caused by the fraud does not affect the entitlement to punitive damages. It may have an effect on the amount of punitive damages but not entitlement.

In order for the jury in this case to have assessed any compensatory damages, it first had to decide that Coleman had established the fact of damage from Morgan Stanley's intentionally false financial statements. Accordingly, under *Engle* and *Ault*, if the majority could properly decide that Coleman failed to prove any amount of compensatory damages, it would be necessary to presume at least nominal damages for fraud. The result should then be to remand the case to the trial court for a new trial on punitive damages.

But apart from *Engle*, I think a new trial on punitive entitlement is required for an entirely different reason. My reasoning is this.

Liability on the fraud issue was partially established by the trial court's imposition of sanctions on Morgan Stanley and its consequent jury instruction that it must take as established the essential facts Coleman relied on to prove liability for fraud. Later when this bifurcated trial entered the punitive damages phase, Morgan Stanley tried to present evidence contrary to those facts deemed established by the jury instruction for purposes of deciding the liability phase. The trial judge barred Morgan Stanley from doing so. In my opinion, this was error.

In deciding whether to inflict civil punishment by punitive damages, the critical issue turns on "the degree of reprehensibility⁸ of the defendant's misconduct." *State Farm Mutual Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 418 (2003); *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575 (1996). While there are other lesser factors, it is manifest that any "moral outrage" of the jury must arise from conduct suitably blameworthy. See e.g. *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 432 (2001) ("A jury's ... imposition of punitive damages is an expression of its moral condemnation."). The moral condemnation is the censure of a civil society expressed collectively by its representative members on a jury. It is not the individual reaction of a single judge—

⁸ Some synonyms are *blameworthy*, *unpardonable*, *evil*, *wicked*, *iniquitous*.

not even when the judge is imposing sanctions for discovery violations by directing the jury to take certain facts as proven. The facts creating an entitlement to punitive damages are not something that a trial judge can impose on a jury as a presumption. Unavoidably, it is the jury who must find and express that moral condemnation.

A jury cannot make this severe condemnation without admissible evidence confirming that the defendant's conduct was adequately blameworthy. Due process thus requires that defendant must necessarily have the right to offer admissible evidence that members of the community might logically and reasonably consider as mitigating its blameworthiness for such punishment. In this case the trial judge essentially denied Morgan Stanley that right. For that reason I would have a new trial as to both entitlement and (if necessary) any amount.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Elizabeth T. Maass, Judge; L.T. Case No. 502003CA005045XXOCAI.

Bruce S. Rogow of Bruce S. Rogow, P.A., Fort Lauderdale, and Sylvia H. Walbolt of Carlton Fields, P.A., West Palm Beach, for appellant.

Joel D. Eaton of Podhurst Orseck, P.A., Miami, Jerold S. Solovy, Ronald L. Marmer and Paul M. Smith of Jenner & Block LLP, Chicago, IL, and Jack Scarola of Searcy Denney Scarola Barnhart & Shipley, P.A., West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-1251

COLEMAN (PARENT) HOLDINGS INC.,

Petitioner,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Respondent.

**RESPONDENT'S NOTICE RESPECTING
SUPPLEMENTAL AUTHORITY**

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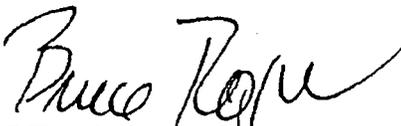
Counsel for Respondent

The Petitioner's November 15, 2007 Notice of Supplemental Authority stated that the authority "can appropriately *be added* to the decisions cited at pages 6-7 of the Petitioner's Brief on Jurisdiction." Notice of Supplemental Authority, p. 2 (emphasis supplied). We respectfully direct the Court to Respondent's Answer Brief in Opposition to Jurisdiction, pp. 5-8, especially points (1) and (3) on p. 7, which address the reasons why the Petitioner's former, and now supplemental, decisions did not create express and direct conflict with the decision below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following parties by U.S. Mail this 20 day of November, 2007:

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BRUCE S. ROGOW

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO.: CA 03-5045 (A)

vs.

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

FILED
08 MAR 25 PM 4:04
JANICE R. BOYD, CLERK
COURT REPORTER
CLERK

**DEFENDANT MORGAN STANLEY & CO. INC.'S OPPOSITION
TO VERIFIED MOTION OF COLEMAN (PARENT) HOLDINGS INC.
TO VACATE THE JUDGMENT AND GRANT A NEW TRIAL ON DAMAGES**

Having lost on appeal to the Fourth District Court of Appeal, Plaintiff Coleman (Parent) Holdings Inc. ("CPH") now seeks to avoid the Fourth District's mandate by invoking Fla. R. Civ. P. 1.540. CPH suggests that the Court should vacate the new judgment entered pursuant to the Fourth District's mandate and grant it a new trial on damages by imposing greater discovery sanctions on Morgan Stanley & Co. Incorporated ("MS & Co.") than were initially sought or imposed. This Court should reject CPH's motion.

First, a new trial is foreclosed by the decision and mandate of the Fourth District. The Fourth District reversed the judgment for CPH on the sole ground that CPH had failed to present legally sufficient proof of damages, and hence the Fourth District did not address the discovery sanctions imposed prior to trial (or any other issue on appeal). Finding that the damages error had resulted from CPH's choice of a flawed damages theory, the Fourth District expressly denied CPH a new trial and directed this Court to enter judgment in favor of MS & Co. The Fourth District denied CPH's request for rehearing and the Florida Supreme Court denied review. CPH's motion is an improper effort to escape those binding appellate decisions.

Second, Rule 1.540(b) is a limited exception to the rule of finality that requires a showing of new information whose absence prevented a party from fully and fairly presenting his case. CPH has failed to meet this high standard. The information CPH now relies upon was fully available to CPH and this Court prior to entry of judgment, as well as to the Fourth District prior to issuance of the mandate, and CPH cannot establish that any earlier disclosure would have changed the sanctions, the trial, or the appellate outcome. To the contrary, the trial court sought to impose sanctions narrowly tailored to “level the playing field,” and expressly recognized that the non-production of MS & Co.’s internal e-mails was “independent” of CPH’s ability to prove damages. Similarly, the date on which MS & Co.’s in-house lawyers knew of the existence of e-mails on certain backup tapes was irrelevant to CPH’s ability to fully and fairly prove its damages.

Finally, CPH is barred by its earlier strategic decisions. In addition to its choice of a flawed damage theory, CPH made tactical choices in pursuit of sanctions that it now seeks to revisit, despite the mandate. CPH could have raised the arguments it now makes prior to entry of judgment or on appeal. CPH chose not to do so. Given those decisions, CPH has no right to revisit discovery sanctions at this late date.

CPH’s motion should be denied.

FACTUAL BACKGROUND

This case arose from the merger between The Coleman Company (“Coleman”) and Sunbeam Inc. (“Sunbeam”) in 1998. *See Morgan Stanley & Co. Inc. v. Coleman (Parent) Holdings Inc.*, 955 So. 2d 1124, 1125-26 (Fla. 4th DCA 2007). In connection with the merger, CPH exchanged its stock in Coleman for, *inter alia*, shares of Sunbeam stock, and received other benefits amounting to \$660 million. On February 6, 2001, nearly three years after the transaction closed, Sunbeam went bankrupt. (*Id.* at 1127).

A. Overview of the Case and Trial

In May 2003, CPH sued MS & Co., which acted as Sunbeam's investment banker in the merger, claiming that MS & Co. had participated in Sunbeam's fraud, and that the shares of Sunbeam stock which were part of the purchase price were overvalued. (*Id.* at 1125-26). Because CPH elected benefit-of-the-bargain damages, a crucial element of its case was the *actual* value of the Sunbeam stock it received, measured at the time of the transaction. (*Id.* at 1127-28). At trial, however, CPH's expert did *not* testify as to the actual value of the Sunbeam stock at the time of the merger. (*Id.* at 1128-29). In fact, CPH instructed its expert *not* to conduct an "event study" to establish the "fraud-free" value of the Sunbeam stock on the date of the merger, contrary to his normal practice. (*Id.* at 1127-28, 1130). Instead, CPH told its expert to assume that the value of the Sunbeam stock it received was zero (the value it held three years later, after Sunbeam had filed for bankruptcy). (*Id.* at 1127).

On March 21, 2007, the Fourth District reversed "both the compensatory and punitive damage awards and remand[ed] this cause *with directions to enter judgment for Morgan Stanley.*" (*Id.* at 1133) (emphasis supplied). The Fourth District concluded that CPH failed to prove the actual, "fraud-free" value of the Sunbeam stock on the date of the merger, as required by settled Florida law. (*Id.* at 1131). The Fourth District faulted CPH for not having its expert conduct an event study to account for factors, independent of the fraud, that might have contributed to the declining value of the Sunbeam stock and its ultimate bankruptcy. (*Id.* at 1130-31). This was significant because Sunbeam had been solvent -- and for a time profitable -- during the nearly three years following the merger (*id.* at 1126-27), and there were numerous factors, such as CPH's installation of its new management team to run Sunbeam, the stock

market crash of 2000, and Sunbeam's other acquisitions, that might have contributed to Sunbeam's bankruptcy. (*Id.* at 1127).

The Fourth District expressly rejected CPH's argument that it should be entitled to a new trial on damages. CPH attempted to evade responsibility for its failure to prove damages by arguing that "the trial court erred in its pretrial rulings and jury instructions concerning the proper measure of damages," but the Fourth District held that "CPH cannot complain about rulings that it urged the court to make in accordance with its damages theory." (*Id.* at 1131). Furthermore, the Fourth District stated, "as we held in *Teca*, a plaintiff is not entitled to a second 'bite at the apple' when there has been no proof at trial concerning the correct measure of damages." (*Id.* (citing *Teca, Inc. v. WM-TAB, Inc.*, 726 So. 2d 828, 830 (Fla. 4th DCA 1999))). That decision is final and the mandate on it has issued to this Court.

B. The Trial Court's Discovery Sanctions and MS & Co.'s June 2005 Notice

Discovery disputes led to an "Agreed Order" on April 16, 2004, which required MS & Co. to conduct certain e-mail searches. Before trial, CPH twice filed motions for discovery sanctions based, *inter alia*, on MS & Co.'s failure to comply fully with the Agreed Order, including the failure to search for e-mails on certain sets of backup tapes. After initially seeking only an adverse inference, CPH later requested a complete default judgment as to liability in connection with its first motion. The Court, however, chose instead to impose the lesser, though still severe, sanction of granting CPH an adverse inference as to all elements of CPH's claims except reliance and damages.

The Court justified the scope of its sanctions by explaining:

[S]hifting the burden on the fraud issue does not relieve CPH of its obligation to establish the *other elements* of its claims, most notably reliance, *proof of which is independent of the MS & Co. e-mails*. Thus, the sanctions chosen are the most

conservative available to the Court to address the spoliation of evidence and willful violation of the Agreed Order.

(3/1/05 Am. Order at 12) (emphasis supplied). The Court stated that its purpose in imposing these sanctions was to “level the playing field” rather than be “punitive.” (*Id.* at 11).

Accordingly, the Court stated that it would tailor the adverse inference to all elements of proof that were potentially impacted by MS & Co.’s failure to produce e-mail, but still require CPH to carry its burden as to elements that were “*independent* of the MS & Co. e-mails” (i.e., reliance and damages). (*Id.* at 12) (emphasis supplied).

CPH’s second motion raised additional discovery violations and sought as sanctions “a default judgment against Morgan Stanley on the issue of liability,” not a default or any burden shifting on the issue of damages. (3/9/05 Renewed Motion at 1). Upon finding additional discovery violations by MS & Co., which included the conduct of MS & Co. in-house lawyers (3/23/05 Order at 13), the Court (1) entered a partial default against MS & Co. on all elements of CPH’s claims other than reliance and damages; (2) ordered a statement of deemed facts to be read to the jury that MS & Co. could not contradict, including the statement that MS & Co. participated in and covered up the massive fraud alleged by CPH; and (3) ordered a discovery misconduct statement to be read to the jury that MS & Co. could not contradict, and which the jury could consider in determining punitive damages. (*Id.* at 16-18).

CPH opposed MS & Co.’s request for a continuance that would allow it an opportunity to produce the outstanding e-mails, and the Court denied that request in light of the trial schedule and relieved MS & Co. from any further e-mail discovery obligations. (*Id.*). CPH did not challenge this ruling or seek additional discovery from MS & Co. with respect to the discovery misconduct.

During arguments relating to the discovery misconduct statement, and again during arguments relating to the demonstrative exhibits CPH proposed to use during summations in the punitive damages phase of trial, MS & Co. unsuccessfully asserted that the Court should draw a distinction between what MS & Co.'s Information Technology professionals knew about its backup tapes and what MS & Co.'s Law Division knew. (See 5/16/05 Tr. at 15266:4-15267:8; 5/18/05 Tr. at 15605:5-15609:15). The Court consistently rejected this argument, expressing the view that MS & Co.'s in-house lawyers then handling the litigation were involved in the discovery misconduct the Court had found to have occurred. (See 5/16/05 Tr. at 15267:5-8 (“We’re talking about what inhouse {sic} counsel of Morgan Stanley did and, quite honestly, it was done in an effort to mislead opposing counsel and me.”))).

Following trial but before judgment, MS & Co. filed a Notice on June 17, 2005, stating it had discovered, following new e-mail searches, that its “Law Division was aware in July 2004 that some of the [backup] tapes contained e-mail and that certain 8-mm [backup] tapes existed.” (MS & Co. 6/17/05 Notice at 1). The Notice withdrew and/or corrected prior statements to the Court addressing when MS & Co.'s Law Division knew about these matters. (*Id.* at 2).

At the June 20, 2005, hearing on MS & Co.'s post-trial motions, in which MS & Co. had asserted, *inter alia*, that it should be granted judgment due to CPH's failure to prove its “benefit-of-the-bargain” damages, CPH focused on the June 2005 Notice, arguing it “was quite a revelation.” The Court disagreed, stating that “[f]rankly, I’m not sure it tells me anything that I hadn’t already found.” When CPH pressed the issue, the Court reiterated that it did not believe the June 2005 Notice had “any effect on what we're doing,” *i.e.*, on the post-trial motions. CPH agreed. (6/20/05 Tr. at 15778:14-15779:4).

C. CPH Did Not Appeal the Court's Sanctions Rulings or Argue on Appeal that the Notices Established that MS & Co. Should Have Received Sanctions that Would Have Relieved CPH of Any Burden to Prove Damages

MS & Co. appealed the final judgment, seeking review of, among other things, the Court's choice of law, the sufficiency of CPH's proof of damages and reliance, and the severity of the Court's sanctions rulings. CPH did not cross appeal the Court's sanctions rulings, though it could have contended, just as it does now, that the June 2005 Notice warranted the imposition of even greater sanctions relieving it of its burden to prove damages. Instead, CPH embraced the narrowed sanctions on appeal, arguing that "the lesser sanctions imposed by the trial court are unassailable." (CPH 2/10/06 Answer Br. at 24). In fact, CPH argued that MS & Co.'s June 2005 Notice *confirmed* that the Court's sanctions had been appropriate. (*Id.* at 11, 15, 23). Importantly, CPH never argued that the Notice had any bearing on its right to a new trial in the event that its judgment was reversed.

On December 21, 2006, while the appeal was pending, MS & Co. filed an additional Notice with the Court and the Fourth District stating that "Morgan Stanley's Law Division was aware of the existence of the referenced e-mail backup tapes and the presence of e-mail on some of those tapes prior to July 2004." (MS & Co. 12/21/06 Notice at 1). The trial court had previously recognized that while the June 2005 Notice could be given this reading, the Notice was ambiguous as to when the Law Division first became aware of the information. (11/10/05 Order at 4 n. 4). The December 2006 Notice clarified any ambiguity.

Even then, CPH did not argue (as it does now) that the December 2006 Notice shows that the Court should have imposed greater sanctions on MS & Co. To the contrary, CPH relied on this Notice, just as it had with the June 2005 Notice, to defend the scope of the challenged sanction already imposed, telling the Fourth District that the December 2006 Notice "should serve to underscore that the trial court was justified in sanctioning Morgan Stanley." (CPH

12/26/06 Notice of Supp. Authority at 2). CPH never requested that the appellate court relinquish jurisdiction to the trial court to explore the content or significance of either Notice or to expand the record on appeal. Nor did it argue that the facts disclosed in the Notices precluded judgment in MS & Co.'s favor even if the Court concluded CPH's damages proof was legally insufficient.

In March 2007, the Fourth District reversed the judgment in favor of CPH as to both compensatory and punitive damages, unanimously denied CPH's motions for rehearing and rehearing en banc, and then issued the mandate directing this Court to enter judgment for MS & Co. In so doing, the Court rejected the argument in CPH's motion for rehearing that it should receive a new trial to prevent MS & Co. from escaping accountability for "the extensive litigation misconduct in which it admittedly engaged." (CPH 4/20/07 Consol. Mtn. for Rehearing at 3). Notably, CPH did not advance their current argument that the Notices provided a basis for imposing additional discovery sanctions entitling CPH to a new trial. CPH sought review by the Florida Supreme Court based on the denial of a new trial on damages, but review was denied.

ARGUMENT

Rule 1.540(b), like Fed. R. Civ. P. 60(b), is a limited exception to the rule of finality. It is to be used sparingly. As relevant here, it requires a party to show that "the verdict was obtained through fraud ... [and] the conduct complained of prevented the losing party from fully and fairly presenting his case or defense." *Wilson v. Charter Mktg. Co.*, 443 So. 2d 160, 161 (Fla. 1st DCA 1983) (emphasis supplied); *see also* 11 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2873, p. 439 (2d ed. 1995) ("FP&P") (court should consider whether "circumstances not previously known to [the trial or the appellate] court compel a new trial"). CPH cannot satisfy this demanding standard.

Rule 1.540 does not permit a trial court to “flout the decision of the appellate court.” FP&P § 2873, p. 439. CPH’s Rule 1.540 motion improperly invites this Court to do just that, arguing the Court should ignore the Fourth District’s mandate that CPH is not entitled to a new trial on damages. This is not a proper use of Rule 1.540. *See, e.g., Glatstein v. City of Miami*, 391 So. 2d 297, 298 n. 1 (Fla. 3d DCA 1980) (“[A] trial court may not entertain a post-mandate motion, made under the guise of Rule 1.540(b), which seeks the very same relief which the appellate court has denied.”).

Moreover, Rule 1.540 motions are not to be used “to rehash a matter fully explored at trial.” *Flemenbaum v. Flemenbaum*, 636 So. 2d 579, 580 (Fla. 4th DCA 1994) (“In many cases, the term ‘fraud’ is loosely used to label all conduct which has displeased an opposing party.”). CPH attempts just such a misuse of the rule. MS & Co.’s litigation misconduct, including the involvement of in-house counsel in that misconduct, was vigorously pursued by CPH prior to trial, resulting in the severe discovery sanctions entered by the Court. The facts asserted in CPH’s motion were either already known or apparent to the Court, or were merely cumulative of facts previously found by the Court. Equally important, *these facts have absolutely nothing to do with the issue the appellate court found dispositive*: CPH’s own failure to prove its benefit-of-the-bargain damages at trial under the controlling legal standard. That standard precluded CPH from seeking damages based on the value of the Sunbeam stock years after the merger rather than the date of the transaction, which is what CPH tried to do at trial. That failure had nothing to do with when MS & Co.’s in-house lawyers knew about the existence of e-mails on certain backup tapes.

Finally, Rule 1.540 is not intended as an invitation for a party to revisit its strategic decisions. The rule “does not have as its purpose or intent the reopening of lawsuits to allow

parties to state new claims or offer new evidence omitted by oversight or inadvertence,” and this reasoning applies, “with equal force, to new legal arguments that trial counsel overlooked or chose not to use.” *Phenion Dev. Group, Inc. v. Love*, 940 So. 2d 1179, 1183-84 (Fla. 5th DCA 2006) (affirming denial of appellants’ motion based on mistake) (quoting *Viking Gen. Corp. v. Diversified Mortg. Investors*, 387 So. 2d 983, 985 (Fla. 2d DCA 1980)). Having chosen previously not to pursue the relief it now seeks, CPH is foreclosed from doing so under a Rule 1.540 motion.

I. CPH’s Request To Retry Its Damages Case is Foreclosed By The Decision And Mandate Of The Fourth District Court Of Appeal

Because CPH’s motion attempts to circumvent the Fourth District’s holding that CPH’s damage theory was fatally flawed and no new trial on damages should be had, it improperly exceeds the limited purpose of Rule 1.540. The Fourth District reversed the judgment on the sole basis that CPH chose to utilize a damage theory unsupportable under Florida law. The Fourth District’s decision had nothing to do with sanctions, just as the sanctions requested and awarded at trial had nothing to do with CPH’s choice to use a flawed damages theory that was held to be legally insufficient by the Fourth District. CPH’s attempt to connect these two wholly unrelated issues is contrary to the Court’s sanctions rulings and without merit.

CPH contends that “[h]ad Morgan Stanley received the sanction it deserved based upon all the information we now know, Morgan Stanley would not have been in a position to urge the grounds for reversal upon which the Fourth District decided the appeal.” (Motion at 41). But the record shows that is incorrect. The Fourth District was aware of the facts disclosed in the Notices; thus, it *did know* “all the information we now know” and *still* refused to permit CPH a new trial. The Fourth District *rejected* CPH’s rehearing argument that denying CPH a new trial

would allow MS & Co. to escape accountability for the “extensive litigation misconduct in which it admittedly engaged.” (CPH 4/20/07 Consol. Mtn. for Rehearing at 3).

Those holdings are the law of the case, and CPH’s motion fails to identify any fact or law that would now entitle CPH to the same new trial on damages that the Fourth District expressly denied. *See, e.g., Dept. of Transportation v. Juliano*, 801 So. 2d. 101, 105 (Fla. 2001) (“The doctrine of the law of the case requires that questions of law actually decided on appeal must govern the case in the same court and the trial court, through all subsequent stages of the proceedings.”). Rule 1.540 does not permit CPH to avoid the Fourth District’s clear mandate that CPH does not have a second chance to obtain a judgment for its alleged damages.

II. CPH’s “New Evidence” is Not “New” and Does Not Justify the Extraordinary Relief that CPH is Seeking

To “demonstrate a prima facie case of fraud” under Rule 1.540(b), CPH must identify not only supposed misrepresentations, but also show that those representations were material and relied upon by CPH and the Court. *Hembd v. Dauria*, 859 So. 2d 1238, 1240 (Fla. 4th DCA 2003); *see also Quittner v. Quittner*, 725 So. 2d 1168, 1169 (Fla. 3d DCA 1998) (reversing relief granted under Rule 1.540(b) because of insufficiency of reliance and materiality). The facts raised may not be merely cumulative or impeaching; they must go to the “substantial matters in dispute” or have “a legitimate and effective influence or bearing on the decision of the case.” *E.I. DuPont De Nemours & Co. v. Native Hammock Nursery, Inc.*, 698 So. 2d 267, 269 (Fla. 3d DCA 1997) (vacating relief granted under Rule 1.540(b) motion); *accord Quittner*, 725 So. 2d at 1169 (rejecting claimed fraud as “not material” and “de minimis”).

CPH contends that the June 2005 and December 2006 Notices materially altered facts on which CPH and the Court had relied on in sanctioning MS & Co. That is incorrect. The information contained in the post-trial Notices was merely cumulative and would not have

altered the Court's findings with respect to the type of sanction necessary to "level the playing field," the deliberations by the jury, or the relief available to CPH. Because CPH cannot show that the disclosures in the Notices would have produced a different sanction or a different judgment that would have cured its flawed damages proof, it cannot demonstrate a *prima facie* case of fraud under Rule 1.540.

A. There is No Basis for Finding a Damages Default Would Have Been Imposed Based on the Notices' Contents

CPH cannot show the Notices' contents would have been material to the Court's ruling with respect to the nature of the sanctions to be entered. When CPH initially raised the June 2005 Notice, the Court was not surprised, stating "[f]rankly, I'm not sure it tells me anything that I hadn't already found." (6/20/05 Tr. at 15778:24-25). In response to CPH's insistence that the Notice was nonetheless significant because "now they're admitting that," the Court replied, "I understand that. I'm not sure that has any effect on what we're doing." (6/20/05 Tr. at 15779:1-4). At the time, CPH was addressing MS & Co.'s post-trial motions, which included a request for judgment in its favor due to CPH's flawed damages proof. Clearly, the Court did not consider the June 2005 Notice as relevant to that issue.

As noted above, the Court's response to the June 2005 Notice was consistent with its rulings weeks earlier when MS & Co. had attempted to distinguish between what MS & Co.'s Information Technology professionals knew about its backup tapes and what MS & Co.'s Law Division knew. The Court refused to accept that MS & Co.'s Law Division was aware of the existence of tapes, but not aware that they contained e-mails, and so that distinction was never made to the jury. The Court had already reached the conclusion CPH now offers as the premise for its new trial motion -- that MS & Co.'s in-house counsel had engaged in discovery misconduct. The Court's Order on CPH's second motion for default specifically refers to

misconduct by MS & Co.'s in-house lawyers. (3/23/05 Order at 13). The litigation misconduct statement the Court read to the jury refers to misconduct by in-house lawyers. (Litigation Misconduct Statement, at 8). The Court did not preclude CPH from making arguments to the jury about in-house lawyers' misconduct. Thus, it is clear that the June 2005 Notice was cumulative and would not have changed the Court's or jury's perception of MS & Co.'s discovery conduct.

Nor did the December 2006 Notice provide a significant new disclosure. It only clarified the "imprecision" of the June 2005 Notice (Motion at 21) -- an imprecision that the Court expressly acknowledged in 2005. (11/3/05 Tr. at 25:4-12; 11/10/05 Order at 4 n. 4).

But beyond all this, *the fact remains now, just as then, that the June 2005 and December 2006 Notices had no bearing on CPH's earlier decision to instruct its damages expert to assume a zero value for the Sunbeam stock at the time of the merger.* Even if the Court had determined the Notices' content warranted some form of additional sanction, this would not have created any need for damages-related sanctions because the Court's sanctions determinations were based solely on the principle of "leveling the playing field."

The timing of the in-house lawyers' knowledge that certain backup tapes had e-mail on them had nothing to do with the contents of the e-mails. More importantly, as the Court expressly recognized when tailoring its original adverse inference sanction, CPH's decision on how to instruct its damages expert was independent of the contents of MS & Co. e-mails. (3/1/05 Am. Order at 12) ("shifting the burden on the fraud issue does not relieve CPH of its obligation to establish *the other elements* of its claims, most notably reliance, *proof of which is independent of the MS & Co. e-mails*") (emphasis supplied). The Court subsequently adhered to this point in granting a default sanction as to all elements of CPH's claims *but* reliance and

damages. Moreover, CPH's failure to prove damages was due solely to its instruction to its expert to *ignore* evidence relating to Sunbeam's value on the date of the merger, so any additional evidence from MS & Co. e-mails on that issue would not have affected CPH's damages case. *Because CPH's ability to prove damages was always wholly within its control, nothing in the Notices would have led the Court to impose a sanction relating to damages.*

B. The Sanctions Sought Now Are Not and Were Not Obtainable

CPH cannot be heard to say post-appeal that it would have requested the damages-default sanction it now seeks. CPH aggressively pursued sanctions during trial based on litigation misconduct, and while it frequently sought a total default *on liability*, it never requested a default or burden-shifting on the *amount* of its damages,¹ even though MS & Co. was expressly challenging the sufficiency of CPH's damages evidence under controlling Fourth District precedent. (*See* 1/26/05 Motion in Limine No. 16 of MS & Co. at 7-9 (seeking exclusion of expert's damages opinion); 5/2/05 Tr. at 12066:15-12070:8 (arguing MS & Co. *ore tenus* Motion for Directed Verdict as to damages)). CPH's belated suggestion that it would also have sought sanctions as to damages based on these Notices is made only in hindsight because of the appellate court's decision that CPH's damages case was fatally flawed.

Moreover, the greater sanctions CPH now requests are without legal support. CPH argues it might have obtained a "negative causation" sanction requiring MS & Co. to bear the

¹ CPH cites its counsel's assertion that the litigation misconduct "went to every element of the claim, including the *fact* of damages" (Motion at 35) (emphasis supplied) without also noting that the Court was dismissive of this "exercise in imagination," (*see* 3/15/05 Tr. at 3944:17-3945:13) and ultimately rejected the argument by carving out both reliance and damages from the default sanction. If the litigation misconduct had in fact affected CPH's proof of damages, CPH should have made that argument in response to MS & Co.'s post-trial motions and on appeal. It did not do so.

burden of proving that CPH's losses were *not* caused by fraud. But CPH cites no Florida decision granting such relief as a sanction.

Nor can CPH show that it might have obtained a default sanction effectively awarding it damages. Florida law is clear that even where there is a total default, there must still be a hearing to determine the amount of damages. *See Talucci v. Matthews*, 960 So. 2d 9, 10 (Fla. 4th DCA 2007) ("For more than a century it has been the law in Florida that a defaulted defendant has the right to contest the amount of unliquidated damages and may offer evidence in mitigation thereof."). Even in those cases cited by CPH to suggest that default judgments may be entered as to the "fact of damage," (Motion at 41-42), the *amount* of any damages may not be determined on a default (absent liquidated damages).

In *Levine v. Del American Properties, Inc.*, 642 So. 2d 32 (Fla. 5th DCA 1994), the court reversed the lower court's determination of damages "without allowing Levine the opportunity for a trial on the issue of damages." *Id.* at 34. Likewise, in *Williams v. Direct Dispensing, Inc.*, 630 So. 2d 1195 (Fla. 3d DCA 1994), the Court held that "a trial with proper notice is necessary to establish unliquidated damages." *Id.* at 1196. Under Florida law, CPH was always going to have to prove its damages and it was CPH's own strategic choices as to that proof that led the Fourth District to reverse the judgment.

C. CPH Cannot Show the Jury Would Have Rendered a Materially Different Verdict

CPH cannot show that any of the purported misrepresentations were material to the jury's deliberations on the dispositive issue of damages. While CPH cites MS & Co.'s efforts to make a distinction between its in-house attorneys' knowledge of backup tapes and knowledge of whether there was e-mail on those tapes (Motion at 15-17), the Court rejected this distinction when imposing its sanctions and when instructing the jury.

As part of its sanction, the Court read a detailed statement of deemed facts to the jury identifying willful litigation misconduct by MS & Co., including that of its in-house attorneys. CPH emphasized MS & Co.'s discovery misconduct to the jury. Whatever else CPH could have argued to the jury about MS & Co.'s discovery misconduct would not have resulted in damages that could have survived appellate review. CPH failed to prove actual damages solely because it directed its expert not to perform an event study of the value of Sunbeam stock at the time of the transaction, and instead simply assume a zero value, not because of the nature or extent of the discovery sanction entered against MS & Co. Similarly, CPH cannot establish that the Notices' content could possibly have led to a different appellate decision because the Fourth District was clearly aware of their content *before* it issued its decision.

D. CPH is Not Entitled to Further Discovery or an Evidentiary Hearing

CPH is not entitled to any further discovery or an evidentiary hearing on these issues. The Fourth District considered this case and had all the evidence underlying CPH's motion and nevertheless issued a clear mandate ordering this Court to issue a judgment for MS & Co. and denying CPH a new trial.

Evidentiary hearings concerning Rule 1.540(b) motions are limited to narrow circumstances where the motion itself sets forth facially sufficient grounds for relief. *See Flemenbaum*, 636 So. 2d at 580. For the reasons set forth above, CPH's motion fails to establish any such grounds.

As the Court itself correctly recognized, MS & Co.'s failure to produce all of its e-mails did not preclude CPH's ability to prove damages; further discovery on the issue of when MS & Co. in-house lawyers learned of the existence of e-mails on certain backup tapes will not justify any "remedial" sanction as to damages because CPH itself is responsible for the fatal flaw in its

damages case. *See, e.g., Scutieri v. Paige*, 808 F.2d 785, 795 (11th Cir. 1987) (district court did not err in denying a motion for further discovery and an evidentiary hearing where petitioner did not indicate how discovery would have aided the court's determination of a trial witness's competency and qualifications); *USX Corp. v. Tieco, Inc.*, 132 Fed. Appx. 237, 239 (11th Cir. 2005) (“[W]e agree with the district court that none of the discovery [petitioner] could obtain would change in any meaningful or relevant way the earlier ruling of this Court.”).

III. CPH Waived Its Ability to Seek Further Sanctions

As the Florida Supreme Court has emphasized, “[i]t has never been the role of the trial courts of this state to relieve attorneys of their tactical mistakes. The rules of civil procedure were never designed for that purpose, and nothing in Rule 1.540(b) suggests otherwise.” *Randle-Eastern Ambulance Serv., Inc. v. Vasta*, 360 So. 2d 68, 69 (Fla. 1978). CPH’s Rule 1.540 motion is just an attempt to avoid the consequences of its prior strategic decisions, including the decision to instruct its expert to value the Sunbeam stock not at the date of the merger, but at a much later date when it was worth nothing.

MS & Co. contended even before the trial ended that CPH failed to properly prove its damages and judgment should be entered for MS & Co. CPH thus had good reasons to advance any legal argument it could muster -- including an argument for greater sanctions -- to uphold the judgment in the event of a reversal on its damages proof. CPH is not permitted to hold back to see how the appellate court rules on a particular issue before raising arguments it could have made prior to and during the appeal to sustain the judgment in its favor.

CPH had numerous opportunities to revisit the Court’s sanctions rulings prior to MS & Co.’s appeal, but chose not to pursue them. For example, after receiving the June 2005 Notice,

CPH might have sought to renew its sanctions motion for greater relief, reopen discovery, or otherwise expand the record, as an additional ground for opposing MS & Co.'s post-trial motion for judgment in its favor based on CPH's failure to prove its damages. *See, e.g., Commercial Garden Mall v. Success Acad., Inc.*, 453 So. 2d 934, 936 (Fla. 4th DCA 1984) ("trial court had the discretion to entertain a petition for rehearing"). It did not do so.

After entry of judgment in its favor, CPH could have cross appealed the Court's sanctions decision as too lenient and pressed for the broader and more severe sanctions it had originally requested. *See Breakstone v. Baron's of Surfside, Inc.*, 528 So. 2d 437, 439 (Fla. 3d DCA 1988) ("The function of a cross-appeal is to call into question error in the judgment appealed, which, *although substantially favorable to the appellee*, does not completely accord the relief to which the appellee believes itself entitled." (emphasis supplied) (quoting *Webb Gen. Contracting, Inc. v. PDM Hydrostorage, Inc.*, 397 So. 2d 1058, 1059-60 (Fla. 3d DCA 1981))). It did not do so, instead defending as "unassailable" the Court's award of sanctions narrower than CPH had requested. (CPH 2/10/06 Answer Br. at 24).

CPH also could have urged the Fourth District to grant CPH a new trial on damages, should its damages proof be found inadequate, advancing the exact same reason it now asserts through its Rule 1.540 motion. It did not do so.

CPH could have also moved the Fourth District to relinquish jurisdiction so that the Court could develop a further record regarding the Notices. *See, e.g., Murphy v. Centlivre*, 850 So. 2d 600, 602-03 (Fla. 4th DCA 2003) (appellate court granted motion to relinquish jurisdiction to permit additional discovery relating to matter on appeal and ruled that it was error for trial court to deny motion for rehearing based on new discovery obtained following relinquishment of jurisdiction). Indeed, that is exactly what the plaintiffs did in *Molinos Del S.A. v. E.I. DuPont de*

Nemours & Co., 947 So. 2d 521 (Fla. 4th DCA 2006), a case CPH relies upon. (Motion at 25-26). Those plaintiffs asked the appellate court to relinquish jurisdiction when they learned during appeal that the defendant had engaged in discovery misconduct that they believed had limited their substantial damages award at trial. CPH did not do so.

To the contrary, CPH argued on appeal that the Notices affirmatively supported the appropriateness of the Court's sanctions. (CPH 2/10/06 Answer Brief at 11, 15, 23). And even when seeking rehearing from the Fourth District saying that a new trial on damages should be granted in order to hold MS & Co. accountable for its litigation misconduct, CPH did not argue it was entitled to greater sanctions as a result of the Notices, although it could have easily advanced that particular point as a part of its motion.

CPH has thus waived any claim that even more severe sanctions should have been entered. Where a party fails to make arguments before the trial or appeals court that could have been raised and decided on appeal, those arguments are waived in any subsequent proceedings and the prior rulings become the law of the case. *See Generazio v. State*, 727 So. 2d 333 (Fla. 4th DCA 1999) (holding that where defendant did not raise issue by cross-appeal in previous appeal, law of the case barred claim of trial error); *Airvac, Inc. v. Ranger Ins. Co.*, 330 So. 2d 467, 469 (Fla. 1976) (holding that defendant "had full opportunity to perfect an appeal, assign as error or otherwise present the issue of the denial of its motion to the appellate court on the initial appeal but did not, thereby waiving any objection to the trial court's rejection of its amendment on this issue"). Under well-settled principles, CPH's motion should be denied.

CONCLUSION

CPH's motion, resting on matters that (1) were already brought to the attention of the parties, the trial court and the Fourth District; (2) were not material to the decisions of either the

trial court or the Fourth District on the discrete issue of damages; and (3) were never the subject of the argument CPH makes now, provides no basis for CPH to avoid the binding decision of the Fourth District reversing the judgment below and denying a new trial. CPH's motion should be denied, thereby respecting the finality of the judgment ordered on appeal.

Respectfully submitted,

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Ph: (212) 849-7220
Fax: (212) 849-7100

By: 

BRUCE S. ROGOW
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided to the following counsel listed below, by Facsimile and U.S. Mail this 25 day of March 2008:

JACK SCAROLA, ESQ.
SEARCY, DENNEY, SCAROLA, et. al.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

JEROLD S. SOLOVY, ESQ.
JENNER & BLOCK, LLC
One IBM Plaza
Chicago, IL 60611-7603



BRUCE S. ROGOW

NOT A CERTIFIED COPY

#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

SCHEDULING ORDER

THIS MATTER was before the Court on March 18, 2008 upon the Plaintiff's request for a scheduling conference. Upon consideration of the matters presented, the parties are directed to comply with the following schedule:

1. Defendant shall file its Motion to Tax the Cost Appeal Costs on or before **April 1, 2008**.
2. Defendant shall supplement its Motions to Tax Trial Costs and Cost Appeal Costs on or before **April 1, 2008**.
3. Plaintiff shall set forth its position on Defendant's entitlement to the costs sought in the Motions to Tax Costs on or before **April 11, 2008**.
4. Defendant shall reply to Plaintiff's position on entitlement on or before **April 21, 2008**.
5. The Court shall set oral argument on the issue of entitlement by separate order after coordinating the date and time of the hearing with counsel set forth below.

FILED
08 MAR 31 PM 4:17
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 2

6. If the Defendant is found to be entitled to recover taxable costs on any of its motions, the Court will then schedule such further hearing or hearings as may be necessary following the conduct of discovery relating to the amount of costs properly taxable.

7. Defendant shall file its response in opposition to Plaintiff's Motion for New Trial on or before **March 25, 2008**.

8. Plaintiff will reply to Defendant's response on or before **April 7, 2008**.

9. The Court shall set oral argument on the issues of whether Plaintiff's motion pursuant to Fla. R. Civ. P. 1.540(b) is legally sufficient, and, if so, whether Plaintiff shall be permitted to conduct discovery and the scope of any discovery by separate order after coordinating the date and time of the hearing with counsel set forth below.

10. If Plaintiff's motion pursuant to Fla. R. Civ. P. 1.540(b) is legally sufficient, the timing for an evidentiary hearing on the merits of Plaintiff's motion will be addressed at the hearing scheduled pursuant to paragraph 9 above.

11. In addition to counsel on the attached service list, notice of the hearing scheduled pursuant to paragraph 9 above shall be given to all parties with an interest in the pending Verified Petition For A Show-Cause Order Regarding Morgan Stanley's Criminal Contempt of Court notifying all counsel that a status conference with respect to that matter will be conducted at the hearing for the purpose of scheduling the Court's determination of the propriety of issuing the requested Order to Show Cause and related

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AJ
Scheduling Order

procedural issues. The list of additional counsel to receive notice pursuant to this paragraph is attached hereto.

12. Joseph Ianno, Esq. and Jack Scarola, Esq. are designated as liaison counsel for the purpose of facilitating communication between the Court and all participants in this matter.

DONE AND ORDERED ^{in Chambers} at Palm Beach County, Florida, this 31st day of march, 2008.


ROBIN L. ROSENBERG
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AJ
Scheduling Order

SERVICE LIST

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Attorneys for Coleman (Parent) Holdings,
Inc.

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AJ
Scheduling Order

ADDITIONAL COUNSEL TO BE SERVED WITH NOTICE

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INC.,

Defendant.

MORGAN STANLEY & CO. INC.'S
MOTION TO TAX APPELLATE COSTS RELATING TO COST APPEAL
(Appeal No. 4D05-4756)

Pursuant to Florida Rule of Appellate Procedure 9.400(a) and Florida Rule of Civil Procedure 1.525, Defendant, Morgan Stanley & Co. Inc. ("Morgan Stanley") hereby moves for an order awarding its taxable appellate costs relating to Fourth District Court of Appeal case number 4D05-4756 against Plaintiff, Coleman (Parent) Holdings Inc. ("Coleman"). In support of this motion, Morgan Stanley states as follows:

BACKGROUND AND PROCEDURAL HISTORY

1. On June 23, 2005, a Final Judgment was entered in favor of Coleman. Morgan Stanley timely filed a Notice of Appeal of that Final Judgment on June 27, 2005. That appeal was docketed at the Fourth District as 4D05-2606 (the "main appeal").

2. On November 22, 2005, a "Judgment on CPH's Motion to Tax Costs" (the "cost judgment") was entered in favor of Coleman. Morgan Stanley timely filed a Notice of Appeal of the cost judgment on December 16, 2005. That appeal was docketed at the Fourth District as 4D05-4756 (the "cost appeal").

3. On March 21, 2007, the Fourth District Court of Appeal reversed the Final Judgment in the main appeal, and remanded the case with instructions to enter judgment in favor of Morgan Stanley. Thereafter, on April 20, 2007, Plaintiff filed motions for rehearing, rehearing en banc, clarification, and certification in the Fourth District. Those motions were denied on June 4, 2007.

4. On July 5, 2007, the Fourth District ordered Coleman to show cause why the cost judgment should not be reversed in light of the Fourth District's opinion in the main appeal. Coleman responded by seeking and obtaining a stay of the cost appeal pending a decision on its petition seeking review at the Florida Supreme Court. When the Florida Supreme Court denied review, Coleman agreed that the stay should be lifted.

5. On June 22, 2007, the Fourth District issued its mandate in the main appeal, returning jurisdiction to this Court. A copy of the mandate is attached as Exhibit "A".

6. On January 16, 2008, the Fourth District again ordered Coleman to show cause why the cost judgment in its favor should not be reversed. On January 30, 2008, Coleman responded by stating that "no reason presently exists why the cost judgment should not be reversed.". Thereafter, on February 27, 2008, the Fourth District issued an opinion reversing the cost judgment "in light of the finality of [its] decision reversing the award of damages". *Morgan Stanley & Co. Inc. v. Coleman (Parent) Holdings Inc.*, 974 So. 2d 631 (Fla. 4th DCA 2008). The Fourth District's mandate reversing the cost judgment was issued on March 14, 2008. A copy of that mandate is attached as Exhibit "B".

7. Along with this Motion, Morgan Stanley has filed the Affidavit of Joseph Ianno, Jr. to itemize the costs incurred in the cost appeal. Pursuant to rule 9.400(a), the affidavit sets forth categories of costs such as filing fees, record preparation costs, and supersedeas bond

premiums. The recoverable appellate costs for the cost appeal total \$6,600.00 plus all available pre-judgment and post-judgment interest.

8. Notably, the vast majority of the appellate costs claimed by Morgan Stanley relating to the cost appeal are supersedeas bond premiums and bond costs. As set forth in Mr. Ianno's affidavit, Coleman was given the opportunity to waive the bonding requirement, but refused. But for the posting of the bond, Coleman could have executed upon the judgment being appealed. If Morgan Stanley's offer had been accepted, Morgan Stanley would not have been required to incur the bulk of the costs that it now seeks to recover relating to the cost judgment.

9. Morgan Stanley reserves the right to supplement this Motion with further supporting documentation concerning the reasonable costs incurred and recoverable pursuant to Rule 9.400.

ARGUMENT

MORGAN STANLEY IS AUTOMATICALLY ENTITLED TO RECOVER ITS COSTS INCURRED IN THE COST APPEAL

Under rule 9.400(a), taxable appellate costs are to be awarded by the trial court on motion of the prevailing party, to be served within 30 days after issuance of the mandate. Fla. R. App. P. 9.400(a). Morgan Stanley timely filed a motion to tax appellate costs relating to the cost appeal. Because Morgan Stanley prevailed in the cost appeal, this Court is required by law to award taxable appellate costs against Coleman and in favor of Morgan Stanley.

Florida law is crystal clear that Morgan Stanley is "automatically entitled" to an award of its appellate costs in the cost appeal as set forth in rule 9.400(a). *Schoettle v. State of Florida*, 522 So. 2d 962, 962 (Fla. 1st DCA 1988) (stating that the language of rule 9.400(a) "automatically entitles the prevailing party to the taxation of certain enumerated costs."); *Di Teodoro v. Lazy Dolphin Devel. Co.*, 432 So. 2d 625 (Fla. 3d DCA 1983) ("Under [rule]

9.400(a), the prevailing party in [the appellate court] is automatically entitled to taxation of certain enumerated costs unless otherwise directed by the respective courts of appeal.”). The Fourth District’s mandate in favor of Morgan Stanley has issued in the cost appeal, making Morgan Stanley the prevailing party as a matter of law.

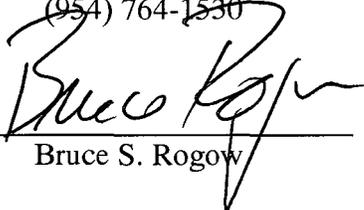
WHEREFORE, Defendant, Morgan Stanley, respectfully requests this Court enter an order granting Morgan Stanley’s Motion to Tax Appellate Costs Relating to Cost Appeal, with the amount of those costs to be determined at a subsequent hearing, and grant such other relief as this Court deems just and proper.

Respectfully submitted,

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Fax: (954) 764-1530

By: 
Bruce S. Rogow

*Counsel for Morgan Stanley &
Co. Incorporated*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and U.S. Mail on this 1st day of April, 2008.

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Bruce S. Rogow

SERVICE LIST

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Jerold S. Solovy
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Chicago, Illinois 60611

M A N D A T E

from

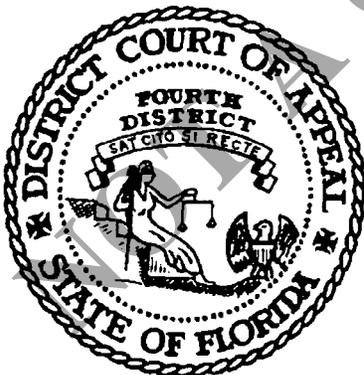
**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT**

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable W. MATTHEW STEVENSON, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

DATE: June 22, 2007
CASE NO.: 4D05-2606
COUNTY OF ORIGIN: Palm Beach
T.C. CASE NO.: CA 03-5045 AI, 502003CA005045XXOCAI
STYLE: MORGAN STANLEY & CO., INCORPORATED v. COLEMAN (PARENT) HOLDINGS, INC.



Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

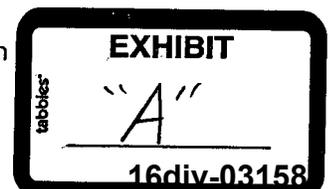
ORIGINAL TO: Sharon R. Bock, Clerk

cc:

Joseph Ianno, Jr.
Morgan Stanley & Co., Inc.
Jack Scarola
Ronald L. Marmer
Mark C. Hansen
Michael K. Kellogg
ct

Bruce S. Rogow
Jerold S. Solovy
Michael Brody
Paul M. Smith
Stephen H. Grimes
Sylvia H. Walbolt

Thomas E. Warner
Joel D. Eaton
Jeffrey T. Shaw
Rebecca Beynon
John R. Blue



M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable GEORGE A. SHAHOOD, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

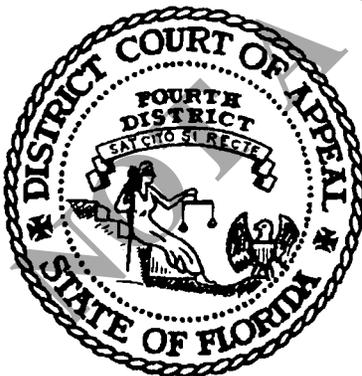
DATE: March 14, 2008

CASE NO.: 4D05-4756

COUNTY OF ORIGIN: Palm Beach

T.C. CASE NO.: CA 03-5045 Al, 502003CA005045XXOCAI

STYLE: MORGAN STANLEY & CO. INCORPORATED v. COLEMAN (PARENT) HOLDINGS INC.



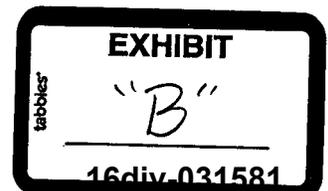
Marilyn Beutenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

ORIGINAL TO: Sharon R. Bock, Clerk

cc:
Sylvia H. Walbolt
Jack Scarola
Michael Brody

Bruce S. Rogov
Jerald S. Solovy

Joseph Ianno, Jr.
Joel D. Eaton



IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

CASE NO: 2003 CA-005045 AJ

v.

MORGAN STANLEY & CO. INC.,

Defendant.

**MORGAN STANLEY & CO. INCORPORATED'S
AMENDED MOTION TO TAX TRIAL COSTS**

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its undersigned counsel, pursuant to Florida Rule of Civil Procedure 1.525 and section 57.041, Florida Statutes, hereby moves for an order taxing its trial costs against Plaintiff, Coleman (Parent) Holdings Inc. ("Coleman"), and in favor of Morgan Stanley. In support of this motion, Morgan Stanley states as follows:

1. On June 23, 2005, this Court entered a Final Judgment in favor of Coleman. Morgan Stanley timely filed a Notice of Appeal of that Final Judgment on June 27, 2005. On March 21, 2007, the Fourth District Court of Appeal reversed the Final Judgment, and remanded the case with instructions to enter judgment in favor of Morgan Stanley.

2. Thereafter, on April 20, 2007, Plaintiff filed motions for rehearing, rehearing en banc, clarification, and certification in the Fourth District. Those motions were denied on June 4, 2007.

3. On June 22, 2007, the Fourth District issued its mandate, returning jurisdiction in this case to this Court. A copy of the mandate is attached as Exhibit "A".

4. On March 18, 2008, this Court entered Final Judgment in favor of Morgan Stanley and reserved jurisdiction to award costs to Morgan Stanley. Consequently, Morgan Stanley is the prevailing party in this action and entitled to an award of costs. Indeed, the Fourth District reversed a cost judgment entered for Coleman for trial costs "in light of the finality of [the Fourth District's] decision reversing the award of damages." *Morgan Stanley & Co. Inc. v. Coleman (Parent) Holdings Inc.*, 974 So. 2d 631 (Fla. 4th DCA 2008). When the Fourth District queried whether Coleman had any objection, Coleman responded that there was no reason not to reverse the cost judgment. *Id.* Based upon the Fourth District's decision and this Court's March 18, 2008 Final Judgment, Morgan Stanley, not Coleman, is now the prevailing party.

5. Morgan Stanley is submitting affidavits in support of this Amended Motion that will itemize the trial costs for which it seeks to recover. The total amount of trial costs claimed by Morgan Stanley in accordance with this Amended Motion is \$2,019,183.09 plus all available pre-judgment and post-judgment interest.

ARGUMENT

MORGAN STANLEY IS ENTITLED TO RECOVER ITS TAXABLE TRIAL COSTS AS THE PREVAILING PARTY

In accordance with the mandate of the Fourth District, this Court entered a Final Judgment in favor of Morgan Stanley. Costs in this matter are awarded pursuant to Section 57.041, Fla. Stat. (2007) which provides: "(1) The party recovering judgment **shall** recover all his or her legal costs and charges which shall be included in the judgment . . ." (emphasis added). In this action, Morgan Stanley is without question the party recovering judgment. Therefore, an

award of all Morgan Stanley's legal costs is mandatory, with the only decision being the amount of costs to be awarded.

It is well established that the trial court does not have discretion to deny the entitlement of a party recovering judgment to an award of costs. See *Connell v. City of Plantation*, 901 So. 2d 317 (Fla. 4th DCA 2005). In *Connell*, the Fourth District noted that section 57.041 provided that "the prevailing party in a civil action is entitled to recover all of his or her costs associated with the underlying litigation." *Id.* at 320 (emphasis added). The Court further stated: "[t]his provision requires the trial court to award costs to the prevailing party." *Id.* (emphasis added).

Similarly, in *Oriental Imports, Inc. v. Alilin*, 559 So. 2d 442, 443 (Fla. 5th DCA 1990), the Court stated that section 57.041 "mandates that every party who recovers a judgment in a legal proceeding is entitled as a matter of right to recover lawful court costs and that a trial judge has no discretion under that statute to deny court costs to the party recovering the judgment." *Id.* at 443 (quoting *Governing Bd. of St. Johns River Water Mgmt. Dist. v. Lake Pickett Ltd.*, 543 So. 2d 883 (Fla. 5th DCA 1989) (internal quotes omitted and emphasis added). This rule is also followed by other courts. See *Dragstrem v. Butts*, 370 So. 2d 416 (Fla. 1st DCA 1979); *Warren Hunnicutt, Jr., Inc. v. Gleason*, 462 So. 2d 878 (Fla. 2d DCA 1985); *Weitzer Oak Park Estate, Ltd. v. Petto*, 573 So. 2d 990 (Fla. 3d DCA 1991).

"[E]very party who recovers a judgment in a legal proceeding is entitled as a matter of right to recover lawful court costs, and a trial judge has no discretion to deny costs to the parties recovering judgment." *Weitzer Oak*, 573 So. 2d at 991 (emphasis added). The *Dragstrem* court was particularly clear when it held that a prevailing party in an action at law is "absolutely entitled" to the taxing of costs in his or her favor under section 57.041. *Dragstrem*, 370 So. 2d at 417. Further, the Court concluded: "the trial court was required to tax costs in favor of [the

prevailing party], regardless of the equities involved.” *Id.* The *Alilin* court similarly concluded: “[t]he determination of the amount and type of costs that are appropriate . . . is the task of the trial court rather than the initial determination of whether the successful litigant is entitled to costs.” *Alilin*, 559 So. 2d at 442 (emphasis in original).

Accordingly, this Court should review the costs itemized by Morgan Stanley to determine if they were reasonable and necessary under Florida law. If, based upon the evidence presented, the Court finds them to be reasonable and necessary under the Uniform Guidelines for Taxation of Costs, the Court is required by law to enter a cost judgment in favor of Morgan Stanley. Final Judgment has now been entered in Morgan Stanley’s behalf in this case, making it the prevailing party as a matter of law.

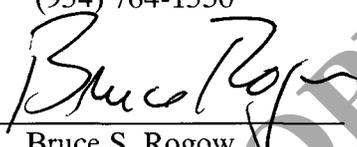
WHEREFORE, Morgan Stanley requests that the Court enter an order finding that Morgan Stanley is entitled to an award of its trial court costs,¹ with the amount of those costs to be determined at a subsequent hearing, and grant such other relief as this Court deems just and proper.

¹ Morgan Stanley has separately sought an award of its appellate costs in connection with the two appeals in this action.

Respectfully submitted,

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Facsimile: (212) 849-7100

*Counsel for Morgan Stanley &
Co. Incorporated*

NOT A CERTIFIED COPY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and U.S. Mail on this 1st day of April, 2008.

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Phone: (954) 767-8909
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By: 
Bruce S. Rogow

SERVICE LIST

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M A N D A T E

from

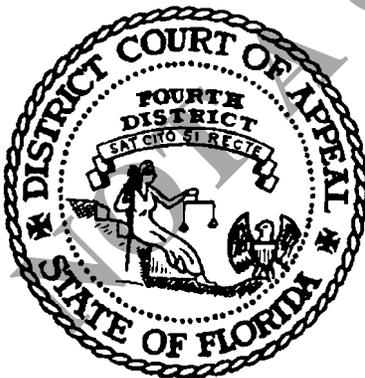
**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT**

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable W. MATTHEW STEVENSON, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

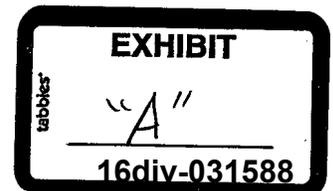
DATE: June 22, 2007
CASE NO.: 4D05-2606
COUNTY OF ORIGIN: Palm Beach
T.C. CASE NO.: CA 03-5045 AI, 502003CA005045XXOCAI
STYLE: MORGAN STANLEY & CO., v. COLEMAN (PARENT)
INCORPORATED HOLDINGS, INC.



Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

ORIGINAL TO: Sharon R. Bock, Clerk
cc:
Joseph Ianno, Jr. Bruce S. Rogow
Morgan Stanley & Co., Inc. Jerold S. Solovy
Jack Scarola Michael Brody
Ronald L. Marmer Paul M. Smith
Mark C. Hansen Stephen H. Grimes
Michael K. Kellogg Sylvia H. Walbolt
ct

Thomas E. Warner
Joel D. Eaton
Jeffrey T. Shaw
Rebecca Beynon
John R. Blue



IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INC.,

Defendant.

**MORGAN STANLEY & CO. INC.'S
AMENDED MOTION TO TAX APPELLATE COSTS FOR MAIN APPEAL
(Appeal No. 4D05-2606)**

Pursuant to Florida Rule of Appellate Procedure 9.400(a) and Florida Rule of Civil Procedure 1.525, Defendant, Morgan Stanley & Co. Inc. ("Morgan Stanley") hereby moves for an order awarding its taxable appellate costs relating to Fourth District Court of Appeal case number 4D05-2606 against Plaintiff, Coleman (Parent) Holdings Inc. ("Coleman"). In support of this Motion, Morgan Stanley states as follows:

BACKGROUND AND PROCEDURAL HISTORY

1. On June 23, 2005, a Final Judgment was entered in favor of Coleman. Morgan Stanley timely filed a Notice of Appeal of that Final Judgment on June 27, 2005. That appeal was docketed at the Fourth District as 4D05-2606 (the "main appeal.")

2. On March 21, 2007, the Fourth District Court of Appeal reversed the Final Judgment, and remanded the case with instructions to enter judgment in favor of Morgan Stanley. Thereafter, on April 20, 2007, Plaintiff filed motions for rehearing, rehearing en banc,

clarification, and certification in the Fourth District. Those motions were denied on June 4, 2007.

3. On June 22, 2007, the Fourth District issued its mandate in the main appeal, returning jurisdiction in this case to this Court. A copy of the mandate is attached as Exhibit "A".

4. On January 23, 2008, Morgan Stanley filed the Affidavit of Joseph Ianno, Jr. in support of its pending motion for appellate costs relating to the main appeal. Pursuant to the Court's Order permitting Morgan Stanley to supplement its previously filed motion, Morgan Stanley is filing an Amended Affidavit of Joseph Ianno, Jr. in support of this amended motion. Pursuant to rule 9.400(a), the affidavit sets forth categories of costs such as filing fees, copy costs, record preparation costs, and supersedeas bond premiums. The recoverable amount of appellate costs for the main appeal is \$9,141,898.72 plus all available pre-judgment and post-judgment interest.

5. Notably, the vast majority of the appellate costs claimed by Morgan Stanley relate to supersedeas bond premiums and bond costs. As set forth in Mr. Ianno's affidavit, Coleman was given the opportunity to waive the bonding requirement, but refused. But for the posting of the bond, Coleman could have executed upon the judgment being appealed. If Morgan Stanley's offer had been accepted, Morgan Stanley would not have incurred the enormous premium obligations required to obtain the bond.

6. Morgan Stanley reserves the right to supplement this motion with further supporting documentation concerning the reasonable costs incurred and recoverable pursuant to rule 9.400.

ARGUMENT

MORGAN STANLEY IS AUTOMATICALLY ENTITLED TO RECOVER ITS COSTS INCURRED IN THE MAIN APPEAL

Under rule 9.400(a), taxable appellate costs are to be awarded by the trial court on motion of the prevailing party, to be served within 30 days after issuance of the mandate. Fla. R. App. P. 9.400(a). Morgan Stanley timely filed a motion to tax appellate costs for costs relating to the main appeal and now supplements that motion. Because Morgan Stanley prevailed in the main appeal, this Court is required by law to award taxable appellate costs against Coleman and in favor of Morgan Stanley.

Florida law is crystal clear that Morgan Stanley is “automatically entitled” to an award of its appellate costs in the main appeal as set forth in rule 9.400(a). *Schoettle v. State of Florida*, 522 So. 2d 962, 962 (Fla. 1st DCA 1988) (stating that the language of rule 9.400(a) “automatically entitles the prevailing party to the taxation of certain enumerated costs.”); *Di Teodoro v. Lazy Dolphin Devel. Co.*, 432 So. 2d 625 (Fla. 3d DCA 1983) (“Under [rule] 9.400(a), the prevailing party in [the appellate court] is automatically entitled to taxation of certain enumerated costs unless otherwise directed by the respective courts of appeal.”). The Fourth District’s mandate in favor of Morgan Stanley has issued in the main appeal, making Morgan Stanley the prevailing party as a matter of law.

WHEREFORE, Defendant, Morgan Stanley, respectfully requests this Court enter an order granting Morgan Stanley’s Motion to Tax Appellate Costs for Main Appeal, with the amount of those costs to be determined at a subsequent hearing, and grant such other relief as this Court deems just and proper.

Respectfully submitted,

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NOT A CERTIFIED COPY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the service list below by facsimile and U.S. Mail on this 1st day of April, 2008.

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M A N D A T E

from

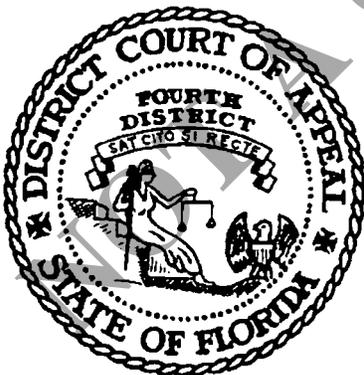
**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT**

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable W. MATTHEW STEVENSON, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

DATE: June 22, 2007
CASE NO.: 4D05-2606
COUNTY OF ORIGIN: Palm Beach
T.C. CASE NO.: CA 03-5045 AI, 502003CA005045XXOCAI
STYLE: MORGAN STANLEY & CO., INCORPORATED v. COLEMAN (PARENT) HOLDINGS, INC.



Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

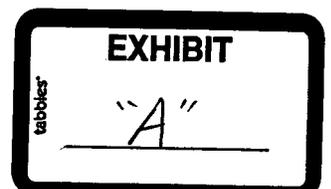
ORIGINAL TO: Sharon R. Bock, Clerk

cc:

Joseph Ianno, Jr.
Morgan Stanley & Co., Inc.
Jack Scarola
Ronald L. Marmer
Mark C. Hansen
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ct

Bruce S. Rogow
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Thomas E. Warner
Joel D. Eaton
Jeffrey T. Shaw
Rebecca Beynon
John R. Blue



1601V-031594

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AJ

vs.

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

**COLEMAN (PARENT) HOLDINGS INC.'S VERIFIED REPLY BRIEF
IN SUPPORT OF ITS
VERIFIED MOTION TO VACATE THE JUDGMENT**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys and pursuant to Rule 1.540(b) of the Florida Rules of Civil Procedure, respectfully submits this verified reply brief in support of its Verified Motion to Vacate the Judgment and Grant a New Trial on Damages.

INTRODUCTION

Morgan Stanley's fatally flawed procedural objections cannot divert attention from the straightforward inquiry required under Florida law: If the facts alleged in CPH's verified motion raise a "colorable entitlement" to relief from the judgment, CPH is legally entitled to discovery and an evidentiary hearing. Given the egregious wrongdoing described in CPH's verified motion, the "colorable entitlement" standard has been easily met in this case. Indeed, Morgan Stanley's unverified opposition never denies that its in-house counsel flatly lied to the Court and to CPH. It never takes issue with CPH's assertion that there are yet more Morgan Stanley lies to be uncovered. And it never comes close to suggesting that it is not guilty of egregious litigation misconduct that has undermined the Florida justice system and public confidence in it. Nor does

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Morgan Stanley ever argue that these uncontradicted facts lack sufficient specificity or otherwise fail as a substantive matter to make out a colorable claim under Rule 1.540(b).

By its silence, Morgan Stanley effectively concedes that its in-house lawyers committed a fraud on the Court. When lawyers, as officers of the court, perpetrate a fraud on the court in the course of procuring a favorable judgment, the opposing party is entitled to relief from the judgment — without regard to whether the fraud changed the outcome of the case. That principle is borne out in a series of cases that CPH cited in its motion. Morgan Stanley has not even attempted to refute or distinguish those cases. Morgan Stanley thus cannot defeat this motion by arguing that CPH has not shown prejudice. As a matter of law, prejudice is not required. *See infra* Part I-A.

As a matter of fact, however, prejudice is manifest in this case. Morgan Stanley made every effort to conceal the truth about its wrongdoing, disclosing as little as possible, as late as possible. Morgan Stanley made these disclosures after the trial and appellate proceedings officially were closed and only after the fraud had achieved its intended purpose of materially misleading the Court. Morgan Stanley's strategy of late, partial, sporadic disclosures accomplished just what Morgan Stanley wanted: No court has ever had the opportunity to address the full scope of Morgan Stanley's misconduct. No court has ever had the opportunity to rule on the allegations contained in CPH's Rule 1.540(b) motion. Indeed, the trial court expressly acknowledged in its post-trial ruling on criminal contempt that Morgan Stanley's additional, untimely disclosures about the role of its in-house attorneys raised issues beyond those in the existing trial record and therefore could not be addressed without potentially affecting the issues then on appeal. For that reason, the trial court declined to consider these issues at that time. *See infra* Part I-B.

Morgan Stanley's other procedural arguments are meritless. CPH's motion is not foreclosed by the Fourth District's mandate. The Fourth District did not address the issues presented by CPH's Rule 1.540(b) motion (*see infra* Part II-A), and the law-of-the-case doctrine applies only to issues that actually were considered and decided by the appellate court, which clearly was not the case here (*see infra* Part II-B). Further, Morgan Stanley's unclean hands bar it from invoking the equitable doctrine of waiver. In any event, CPH had no ability or was under no obligation to present the arguments in its Rule 1.540(b) motion at any earlier stage in the proceedings. *See infra* Part III.

As discussed in more detail below, there can be no doubt that the Rule 1.540(b) motion is proper and that CPH has made a colorable claim. The Court therefore should permit CPH to present in full the depths of Morgan Stanley's misdeeds, with the benefit of the discovery and the evidentiary hearing to which CPH is entitled (*see infra* Part IV), and then grant relief that will vindicate the defrauded courts and help restore public confidence in Florida's judicial system.

ARGUMENT

I. CPH Has Demonstrated a Colorable Entitlement to Relief Under Rule 1.540(b).

A party seeking relief under Rule 1.540(b) need only "raise a colorable entitlement" to relief to obtain discovery and an evidentiary hearing. *Dynasty Express Corp. v. Weiss*, 675 So. 2d 235, 239 (Fla. 4th DCA 1996) (quoting *Southern Bell Tel. & Tel. Co. v. Welden*, 483 So. 2d 487, 489 (Fla. 1st DCA 1986)); *see Schleger v. Stebelsky*, 957 So. 2d 71, 71-73 (Fla. 4th DCA 2007). Here, therefore, CPH need do no more than allege facts that, if proved, would entitle it to relief from judgment. *See, e.g., Dynasty Express Corp.*, 675 So. 2d at 239. CPH unquestionably

has alleged such facts. Morgan Stanley does not contend otherwise,¹ and there is no merit to any of the technical arguments that Morgan Stanley puts forth as a basis for denying discovery and an evidentiary hearing on CPH's motion.

A. Because Morgan Stanley Committed a Fraud on the Court, No Showing of Prejudice Is Required.

Morgan Stanley premises most of its argument that CPH is not entitled to relief on the assumption that CPH must demonstrate some prejudice. According to Morgan Stanley, CPH must show that Morgan Stanley's lies prevented CPH from fully and fairly presenting its case, so that the outcome of the proceedings to date necessarily would have been different if the full facts about Morgan Stanley's lies had been known at the relevant time. MS Opp'n at 8; *see also id.* at 2, 11.

That premise is dead wrong. Relief from a judgment procured by defrauding a court requires *no* showing of prejudice. That is the clear legal principle stated in numerous cases that CPH has cited to the court (*see* CPH Mot. at 26-32), but which Morgan Stanley fails to address in its brief. Indeed, CPH is not aware of a single case in which any court has considered the issue and rejected this principle. Morgan Stanley's failure even to address this issue amounts to a clear concession that this well-established principle of law is unassailable.

The cases CPH has cited make clear that fraud on the court is particularly egregious when it is perpetrated by attorneys, who are officers of the court and are held to the highest standards of conduct in their dealings with the court. *See, e.g., Chewing v. Ford Motor Co.*, 579 S.E.2d 605, 611 (S.C. 2003) ("Attorney fraud calls into question the integrity of the judiciary and erodes public confidence in the fairness of our system of justice."); *Synanon Found., Inc. v. Bernstein*,

¹ Indeed, Morgan Stanley's opposition is unverified. *See Rosso v. Golden Surf Towers Condo. Ass'n*, 711 So. 2d 1298, 1299 (Fla. 4th DCA 1998) (noting that an "unverified" response to a "verified" Rule 1.540(b) motion "did not dispute" the facts alleged (emphasis in original)).

503 A.2d 1254, 1264 (D.C. 1986) (“[C]ounsel’s behavior was such a violation of a lawyer’s duty to the court — a duty imposed not alone by principles of honesty and good morals but also by a code of ethics adopted as rules of court — as to amount to a fraud on the court for which equity will grant relief.” (internal quotation marks omitted)); *see also Ramey v. Thomas*, 382 So. 2d 78, 81 (Fla. 5th DCA 1980) (“An attorney is first an officer of the court, bound to serve the ends of justice with openness, candor, and fairness to all.”); Rules Reg. Fla. Bar, Chapter 4, Florida Rules of Professional Conduct, Preamble and Rule 4-3.3 (2006) (requiring “candor toward the tribunal” and stating that lawyers are “officers of the court” who “should demonstrate respect for the legal system and for those who serve it”). If lawyers do not adhere to these high standards, the courts simply cannot function. That is precisely why, in the original trial-court proceedings, Morgan Stanley emphasized the opposite — but false — point that its in-house attorneys were unaware of Morgan Stanley’s lies and deceptions, which Morgan Stanley tried to pass off as the renegade efforts of some information-technology staffers.

With no answer to the authorities that CPH has cited, Morgan Stanley pretends they do not exist. Instead, Morgan Stanley recites several inapposite cases that do not involve allegations of fraud on the court, and focus on matters that are utterly irrelevant here. *See* MS Opp’n at 11 (citing *Quittner v. Quittner*, 725 So. 2d 1168, 1169 (Fla. 3d DCA 1998) (discussing elements of a substantive claim of fraud, not fraud on the court), and *E.I. DuPont De Nemours & Co. v. Native Hammock Nursery, Inc.*, 698 So. 2d 267, 268-69 (Fla. 3d DCA 1997) (discussing the standard for a new-trial motion based on new evidence rather than fraud on the court)). Because CPH alleges that Morgan Stanley perpetrated a fraud on the Court, CPH need not show prejudice.

B. Although CPH Is Not Legally Obligated to Show Prejudice, the Evidence of Actual Prejudice in this Case Is Overwhelming.

Even if prejudice were required, CPH has adequately alleged that the pretrial remedial orders addressing Morgan Stanley's known misconduct — and the outcome of the case — would have been different here if the Court had known the true scope of the misconduct. *See* CPH Mot. at 1-22, 33-38.

Morgan Stanley seeks to obfuscate this obvious point by asserting that the trial court already knew the facts, and that Morgan Stanley's two Notices were nothing but "cumulative." MS Opp'n at 9, 11-13. That is not a proper argument at this stage of the proceeding, when the Court is concerned with assessing the sufficiency of the facts stated in the pleading, rather than with resolving factual disputes. But the argument is wrong in any event.

If the Notices were merely "cumulative," Morgan Stanley would have had no reason to bother filing them at all. Furthermore, it is clear that the Court never had the opportunity to consider the information contained in the two Notices when it issued its remedial orders. On several occasions the Court said as much with reference to the June 2005 Notice — which was filed well after entry of the remedial orders and the jury's verdict. For instance, the Court declined to rule on CPH's criminal-contempt petition specifically because it believed that pursuing CPH's allegations based on the June 2005 Notice "*could alter the current record of what MS & Co. knew and when it knew it. It could add to the judicial response to MS & Co.'s litigation misconduct.*" Ex. A, 11/10/2005 Crim. Contempt Order at 7 (emphasis added). Thus, while it is true that the Court's pretrial remedial orders take account of certain failings of Morgan Stanley's in-house lawyers (which Morgan Stanley claimed were inadvertencies), they simply do

not take account of the additional and very serious misconduct detailed in CPH's Rule 1.540(b) motion. *See* CPH Mot. at 15-22.²

Further, the critical information contained in the December 2006 Notice was not available to the Court until long after the first judgment had been entered. That Notice was filed almost 18 months after the entry of judgment and more than 12 months after the criminal-contempt hearing. Even now, almost three years after the original entry of judgment, the full extent of Morgan Stanley's fraud on the Court remains unknown due to the studied ambiguity and cryptic content of Morgan Stanley's two Notices.³

² The Court's remedial orders did not (and could not) account for Morgan Stanley's additional misconduct, because Morgan Stanley persistently misrepresented what its in-house attorneys knew and when they knew it. *See, e.g.*, Ex. B, 2/28/05 MS Opp'n to CPH's Mot. for a Default Judgment, at 6 (“[N]o one in [the] Law Division knew of the existence of *additional recoverable e-mail data on the tapes before October 2004.*” (emphasis in original)); Ex. C, 3/13/05 MS Opp'n to CPH Mot. for a Default Judgment (Corrected Version), at 31 (“[T]he Law Division did not learn that some of the newly discovered tapes contained some e-mails until October 2004.”); Ex. D, 5/18/05 Tr. at 15607:4-7 (“There's evidence they knew of backup tapes but not that the backup tapes contained e-mail. And it's undisputed that they learned that these contained e-mail in October 2004.”); Ex. D, 5/18/05 Tr. at 15608:8-11 (“Your honor, it's undisputed in the record that the lawyers at Morgan Stanley learned that e-mail was on these tapes in October 2004.”); Ex. D, 5/18/05 Tr. at 15608:17-19 (“They knew about the tapes in June, but they didn't know they contained e-mail.”).

³ Notably, Morgan Stanley asserts without explanation that the December 2006 Notice “clarified any ambiguity” in the June 2005 Notice as to when its in-house lawyers first became aware that the backup tapes contained e-mail. MS Opp'n at 7, 13. This is an astonishing assertion, since the December 2006 Notice itself does nothing to solve the mystery of exactly when and who among Morgan Stanley's in-house counsel learned that the backup tapes contained e-mail. Most tantalizingly, Morgan Stanley acknowledges that its in-house counsel knew the backup tapes contained e-mail “prior to July 2004,” but refuses to state whether they knew before Morgan Stanley falsely certified (on June 23, 2004) that it had found and produced all relevant e-mails. Nor does Morgan Stanley “clarify” whether in-house counsel knew this fact before a corporate representative lied under oath, at a February 2004 deposition, that Morgan Stanley's e-mail archive did not contain e-mail from the 1990s. Nor does it “clarify” whether they knew this fact when Morgan Stanley lied to the Court, in December 2003, saying that all of Morgan Stanley's pre-2000 e-mail backup tapes had been erased. Morgan Stanley's opposition brief does nothing to clarify these matters or to contradict CPH's allegation that Morgan Stanley continues to conceal egregious and sanctionable conduct.

Had the trial court known that Morgan Stanley's in-house lawyers defrauded the Court to the extent that we now know they did, there is no question that events would have played out very differently. In response to such egregious misconduct, the Court likely would have granted CPH's March 2005 motion for a total default judgment on all liability issues, thus deeming established the fact of damage (as an element of liability) and entitling CPH to some recovery. *See* CPH Mot. at 33-36; *see also id.* at 3-4 (explaining that the Fourth District's decision denying CPH all relief hinged on CPH's supposed failure to prove the "fact" of damage, an element of liability). CPH might well have sought and been granted a greater sanction than the one it was misled to request. *See id.* at 35-36, 40-45. For example, CPH might have asked the Court to bar Morgan Stanley from introducing certain damages evidence. *See id.* at 42-43 (citing cases). Or CPH might have asked the Court to place on Morgan Stanley the burden of proving "negative causation," thus forcing Morgan Stanley to attempt to prove what part of CPH's loss, if any, could be attributed to causes other than the securities fraud that Morgan Stanley helped commit. *See id.* at 44-45 & n.5.

Morgan Stanley insists that none of these things would have happened because the Court's only goal in responding to Morgan Stanley's misconduct was to "level the playing field" and to address issues as to which Morgan Stanley's e-mail likely contained evidence. MS Opp'n at 2, 13-14. This contention ignores the fact that the Court adopted this conservative approach precisely because Morgan Stanley and its in-house lawyers had kept it in the dark about the full extent of their fraud upon the Court. Due to Morgan Stanley's falsehoods, the Court mistakenly believed that Morgan Stanley's in-house lawyers had very little knowledge of or involvement in the investment bank's bad acts. Had the Court been fully informed that Morgan Stanley's in-house attorneys were heavily implicated in — even possibly orchestrating — Morgan Stanley's

wrongdoing, the Court might well have acted to vindicate its own authority and to redress the public wrong inherent whenever lawyers defraud a court. The Court likely would not have restricted itself to the most moderate relief available. *See Babe Elias Builders, Inc. v. Pernick*, 765 So. 2d 119, 120-21 (Fla. 3d DCA 2000) (trial courts have inherent authority to severely sanction parties that perpetrate fraud on the court); *Tramel v. Bass*, 672 So. 2d 78, 83 (Fla. 1st DCA 1996) (same). It is thus clear beyond doubt that Morgan Stanley's fraudulent conduct had a prejudicial effect.

Morgan Stanley tries to escape that conclusion by asserting that sanctions relating to a trial's damages phase are never appropriate. *See MS Opp'n at 14-15*. But that is both incorrect and highly disingenuous. Throughout the appeal, Morgan Stanley repeatedly insisted on the need to distinguish between the fact of damage, which is an element of liability, and the amount of damages, which is a remedial issue. Now, however, Morgan Stanley tries to blur that distinction. As CPH's motion explains, if the trial court had defaulted Morgan Stanley as to all elements of liability, including the fact of damage, the Fourth District could not have later ruled as it did, directing entry of judgment for an adjudicated fraudfeasor, with no possibility of a new trial. *See CPH Mot. at 3-4, 41-42*. And the remedial phase of the trial, when the jury determines the amount of damages, can be the proper subject of sanctions as well. *See id. at 42-45*. Although Morgan Stanley relies on some general authority for the unexceptional proposition that unliquidated damages must be quantified in an adversarial proceeding (MS Opp'n at 15), Morgan Stanley never rebuts CPH's showing that the Court properly could have ordered Morgan Stanley to prove "negative causation" in that proceeding, or limited the damages evidence that Morgan Stanley could introduce at trial. Such requirements are often placed on defendants without any suggestion that the right to a damages trial has thereby been taken away. *See CPH*

Mot. at 44-45 & n.5 (collecting cases). Indeed, requiring the defendant to prove negative causation is standard practice in many securities-fraud cases. *See id.* (collecting Florida and federal authorities).

Thus, although no showing of prejudice is necessary for CPH to prevail on this motion, CPH has amply demonstrated a “colorable” claim of prejudice.

II. CPH’s Rule 1.540(b) Motion Is Not Foreclosed by the Fourth District’s Mandate.

A. The Fourth District Did Not Address the Issue Presented by CPH’s Rule 1.540(b) Motion.

Morgan Stanley claims that CPH’s Rule 1.540(b) motion should be denied out of hand because CPH is seeking to “retry its damages case,” which allegedly would violate the Fourth District’s mandate. MS Opp’n at 10. That, too, is wrong.

The whole point of a Rule 1.540(b) motion is to set aside a judgment. The Rule applies equally to judgments in cases that were never appealed and to judgments entered following an appeal and remand. *See, e.g., Ohio Cas. Group v. Parrish*, 350 So. 2d 466, 469 (Fla. 1977); *Molinos Del S.A. v. E.I. DuPont De Nemours & Co.*, 947 So. 2d 521, 523-25 (Fla. 4th DCA 2006).

Here, the Fourth District never addressed the issue presented by CPH’s Rule 1.540(b) motion — whether sanctions relating to the fact or amount of damages were warranted by the fraud on the trial court that Morgan Stanley’s in-house attorneys committed and concealed before and during trial. All that the appellate court decided was that CPH’s proof of damages was insufficient on the existing trial-court record — a record that necessarily was limited because of Morgan Stanley’s continuing fraud and concealment. Indeed, the fact that the issues raised by the June 2005 Notice were not squarely before the Fourth District is clear from the trial court’s November 2005 decision not to address the merits of the criminal-contempt petition at

that time and thereby alter the trial-court record. Specifically, the trial court chose not to pursue CPH's allegations based on the June 2005 Notice because doing so "could alter the current record of what MS & Co. knew and when it knew it" and "*could add to the judicial response to MS & Co.'s litigation misconduct.*" Ex. A, 11/10/2005 Crim. Contempt Order at 7 (emphasis added). So we need not speculate about whether the trial court would have considered evidence of additional misconduct in assessing the need for further sanctions. The trial court explicitly stated that is exactly what would happen.

Since the trial court expressly declined to expand the misconduct record, it is clear that the Fourth District could not and did not consider whether further sanctions should be ordered, or what the result of such an order would be. Therefore, nothing about the Fourth District's decision stands in the way of CPH's post-judgment application for Rule 1.540(b) relief and sanctions against Morgan Stanley. *See* CPH Mot. at 24-26 (collecting cases holding that a trial court has authority to decide a Rule 1.540(b) motion brought by appellee following a reversal on appeal).

B. Morgan Stanley Has No Basis for Asserting the Law-of-the-Case Doctrine.

Morgan Stanley next claims that the Fourth District was fully aware of all the facts alleged in CPH's Rule 1.540(b) motion, and that the Fourth District's remand for entry of judgment therefore somehow establishes "law of the case," which bars CPH's current application for relief. *See* MS Opp'n at 10-11.

Nothing could be further from the truth. Morgan Stanley may pretend that it approached the Fourth District in a spirit of candor and transparency, but its conduct was quite the opposite. When Morgan Stanley decided (without explanation) to file its December 2006 Notice, the appeal already had been argued orally and submitted for decision for nearly six months. In

addition, the significance of the information contained in the Notice was not at all obvious, and the Notice did not even pretend to answer the mystery of *when*, prior to July 2004, Morgan Stanley's in-house attorneys became aware of the facts they concealed. And, of course, the appellate court also was not aware of the additional evidence of falsity that CPH expects to develop in the context of this Rule 1.540(b) motion.

Most important, the Fourth District did not actually consider and rule on the issue presented here. Indeed, the Fourth District did not address any issue even tangentially related to Morgan Stanley's litigation misconduct. The court decided the case on other grounds. In these circumstances, the law-of-the-case doctrine has no conceivable applicability, as the Fourth District has squarely held. In *Analyte Diagnostics, Inc. v. D'Angelo*, 792 So. 2d 1271 (Fla. 4th DCA 2001), while the case was on appeal to the Fourth District, the appellants became aware of facts suggesting that the appellees had committed fraud on the trial court. *See id.* at 1272. That issue was brought to the appellate court's attention and raised in the parties' briefs. *See id.* But the issue was not addressed by the appellate court, which affirmed the judgment. *See id.* The appellants then filed a Rule 1.540(b) motion to vacate the judgment in the trial court. *See id.* The trial court denied that motion, holding that the appellate court's affirmance of the judgment had effectively resolved the issues raised in the Rule 1.540(b) motion and constituted the law of the case. *See id.* The Fourth District reversed and remanded, holding that the law-of-the-case doctrine applied only to those issues that were actually considered and decided on the former appeal: "[E]ven though the issue was presented to this court, it was not properly before it as the question had neither been considered nor ruled upon below." *Id.*; *see Whitby v. Infinity Radio Inc.*, 951 So. 2d 890, 895-96 (Fla. 4th DCA 2007); *see also, e.g., Florida Dep't of Transp. v.*

Juliano, 801 So. 2d 101, 107 (Fla. 2001) (law-of-the-case doctrine “bars consideration only of those legal issues that were actually considered and decided in a former appeal”).⁴

III. CPH Did Not Waive Its Right to Bring the Rule 1.540(b) Motion.

Finally, Morgan Stanley presses the extraordinary argument that CPH has waived its right to further sanctions by failing to seek them sooner — even though Morgan Stanley concealed the relevant information about its misconduct from the courts and from CPH at every step of the way, and is thus in no position to invoke any equitable doctrine. *See, e.g., Goodwin v. Blu Murray Ins. Agency, Inc.*, 939 So. 2d 1098, 1105 (Fla. 5th DCA 2006) (“[t]he equitable defenses of waiver and laches require clean hands”). But even if Morgan Stanley could properly invoke the waiver doctrine, there was no waiver here. CPH either lacked the ability or was not required to take the various actions that Morgan Stanley suggests it should have taken at earlier points in this case.⁵

Morgan Stanley contends that prior to the appeal CPH should have moved for rehearing or otherwise sought additional relief from the trial court. But CPH did not have the benefit of Morgan Stanley’s December 2006 Notice until 18 months after entry of the judgment — and that Notice is critically important to CPH’s arguments because it was the first time that Morgan Stanley admitted (albeit even then indirectly) that its in-house lawyers likely knew that the June 23, 2004 e-mail certification was false when made. And the ambiguous phrasing of the

⁴ Morgan Stanley relies upon *Airvac, Inc. v. Ranger Insurance Co.*, 330 So. 2d 467, 469 (Fla. 1976), for the proposition that the law-of-the-case doctrine is much broader and bars any argument that “could have been raised and decided on appeal.” MS Opp’n at 19. That is incorrect, and *Airvac* is no longer good law, as *Juliano* makes clear. *See Juliano*, 801 So. 2d at 106-07 (expressly receding from *Airvac*, 330 So. 2d at 469).

⁵ Morgan Stanley cloaks some of its waiver arguments in “law of the case” language. MS Opp’n at 19. But as shown above (*see supra* pages 12 to 13 and note 4), the law-of-the-case doctrine does not apply here because it bars only those arguments that the appellate court actually considered and decided.

December 2006 Notice (“prior to July 2004”) also suggests that Morgan Stanley’s in-house lawyers may have known that the Morgan Stanley corporate representative lied in his February 2004 deposition testimony about the e-mail archive and that Morgan Stanley lied in its December 2003 statements to this Court about the erasure of e-mail backup tapes.

As for the June 2005 Notice, it admitted only a small part of Morgan Stanley’s malfeasance and did not come until a month after the trial was over and the jury had been excused. And when CPH brought a petition to show cause why Morgan Stanley and its in-house counsel should not be held in criminal contempt, the trial court ruled that it did not want to alter the record to explore additional wrongdoing that might have supported a punitive order until such time as the appeal of the existing remedial order was concluded. *See* Ex. A, 11/10/2005 Crim. Contempt Order at 7. Morgan Stanley can hardly be permitted to lie to and defraud the Court (and CPH), take steps to cover up those lies, and then fault CPH for not realizing the full extent of the lies until after the trial-court proceedings terminated.

Morgan Stanley next contends that CPH should have argued for more serious sanctions during the appeal itself — by cross-appealing, by arguing that Morgan Stanley’s additional misconduct was an alternative reason for a new damages trial, or by moving for relinquishment of jurisdiction. That is wrong on every score. Cross-appeals are not required unless the appellee seeks to modify the judgment in some way to obtain greater relief than the trial court afforded it. *See, e.g., City of Coral Gables v. Puiggros*, 376 So. 2d 281, 284 n.3 (Fla. 3d DCA 1979); *Credit Indus. Co. v. Remark Chem. Co.*, 67 So. 2d 540, 540-41 (Fla. 1953). Here, no cross-appeal was necessary — or proper — because the result reflected in the judgment from which Morgan Stanley appealed was wholly favorable to CPH, and CPH was not seeking to modify the judgment in any way. Morgan Stanley’s December 2006 Notice could not have triggered an

obligation to cross-appeal in any event, because the time for filing a cross-appeal had expired long before the Notice was filed. *See Fla. R. App. P. 9.110(g)*. Furthermore, although parties with wholly favorable judgments *may* file a “conditional” or “contingent” cross-appeal as to errors that would be reached only if the appellate court reversed or modified the judgment, failure to file such a contingent cross-appeal *does not* waive any argument in subsequent proceedings. *See, e.g., Allington Towers N., Inc. v. Weisberg*, 452 So. 2d 1122, 1123 (Fla. 4th DCA 1984) (appellee was not required to file “what would be tantamount to a contingent cross appeal” and therefore “should not be barred from exercising his indemnification claim because he failed to appeal from an order which entirely vindicated him”); *see also Mosher v. Speedstar Div. of AMCA Int’l, Inc.*, 52 F.3d 913, 917 & n.2 (11th Cir. 1995).

For similar reasons, CPH also was in no position to urge additional sanctions as an alternative ground for the Fourth District to grant a new trial; nor was it under any obligation to do so. Morgan Stanley did not file its December 2006 Notice until six months after the appeal was argued and submitted. The timing of this “disclosure” by Morgan Stanley was surely no accident. But even if CPH had possessed the necessary facts at an earlier stage, it could not have pressed in the Fourth District an argument that the trial court had not had any opportunity to pass on. The Fourth District is not, after all, in the business of finding facts. The result of such a futile gesture would likely have been the same as in *Analyte Diagnostics*, in which the Fourth District held that it could not rule on appeal on a question involving fraud on the court that “had neither been considered nor ruled upon below,” and that a subsequent Rule 1.540(b) motion was the proper procedural mechanism. 792 So. 2d at 1272.

The assertion that CPH waived its arguments by failing to ask the Fourth District to relinquish jurisdiction after the filing of the December 2006 Notice is equally fanciful. As with

not cross-appealing the June 2005 Notice, there was no reason to consider the extraordinary step of seeking relinquishment when the judgment entered by the trial court was entirely adequate. And Morgan Stanley cites no authority suggesting that not seeking the extraordinary remedy of relinquishment results in a waiver. Morgan Stanley relies on *Molinos Del S.A. v. E.I. DuPont De Nemours & Co.*, 947 So. 2d 521 (Fla. 4th DCA 2006), to show that relinquishment of jurisdiction is possible. See MS Opp'n at 18-19. But the holding of *Molinos* is that a Rule 1.540(b) motion may be brought within one year of a substantive change in a judgment on appeal. 947 So. 2d at 525. Here, the judgment was reversed on appeal, a new judgment was entered pursuant to the Fourth District's mandate, and CPH filed its Rule 1.540(b) motion within days. CPH has therefore followed exactly the procedure that the Fourth District endorsed in *Molinos*.

IV. CPH Is Entitled to Discovery and an Evidentiary Hearing.

Because CPH has demonstrated a "colorable entitlement" to relief under Rule 1.540(b), this Court must "permit full discovery and thereafter . . . conduct a new evidentiary hearing on [the Rule 1.540(b)] motion." *Pelekis v. Florida Keys Boys Club*, 302 So. 2d 447, 449 (Fla. 3d DCA 1974); see also, e.g., *Pearlman v. Pearlman*, 425 So. 2d 666, 666 (Fla. 3d DCA 1983) (based on colorable claim, defendant is entitled to "full discovery of the plaintiff, her attorneys and any other party relative to the defendant's rule 1.540(b) motion"); *Southern Bell Tel. & Tel. Co.*, 483 So. 2d at 489 ("[W]here the moving party's allegations raise a colorable entitlement to rule 1.540(b)(3) relief, a formal evidentiary hearing on the motion, as well as permissible discovery prior to the hearing, is required."); *Dynasty Express Corp.*, 675 So. 2d at 239; *Smith v. Smith*, 903 So. 2d 1044, 1045 (Fla. 5th DCA 2005) ("A motion for relief from judgment should not be summarily dismissed without an evidentiary hearing unless its allegations and

accompanying affidavits fail to allege ‘colorable entitlement’ to relief.”); *Schleger*, 957 So. 2d at 73 (same) (citing *Smith*, 903 So. 2d at 1045).

The need for discovery is particularly acute in this case because Morgan Stanley controls all evidence relating to its in-house lawyers’ fraud — and Morgan Stanley has made no effort, in its response to the Rule 1.540(b) motion or otherwise, to clarify the remaining ambiguities regarding this remarkable misconduct. Indeed, the opposite is the case. Morgan Stanley has declined to explain the precise meaning of its deliberately vague assertion that its in-house lawyers knew that the backup tapes contained e-mail “prior to” July 2004. Although Morgan Stanley clearly knows, it has steadfastly refused to say precisely when — “prior to July 2004” — its attorneys acquired this knowledge. There must be a reason why Morgan Stanley has chosen to treat that information as top secret. In any event, discovery and a subsequent hearing are the only available means of finding out the true extent of Morgan Stanley’s bad acts. *See, e.g., Florida Keys Boys Club, Inc. v. Pelekis*, 327 So. 2d 804, 806 (Fla. 3d DCA 1976) (permitting document requests); *Pelekis*, 302 So. 2d at 448 (permitting document requests and depositions).

Aside from the arguments discussed above regarding CPH’s “colorable entitlement” to relief, Morgan Stanley makes no independent argument that CPH lacks a right to further discovery and an evidentiary hearing, except perhaps to suggest that such proceedings are appropriate only in a narrow set of circumstances. *See MS Opp’n* at 16-17. But as demonstrated by the cases cited above, discovery and an evidentiary hearing are not optional where, as here, a party has established a colorable entitlement to relief.

CONCLUSION

For the foregoing reasons, CPH respectfully requests that this Court rule that CPH has raised a colorable entitlement to relief, grant CPH the right to take discovery, schedule an evidentiary hearing, and provide such other relief as the Court deems just and proper.

Dated: April 7, 2008

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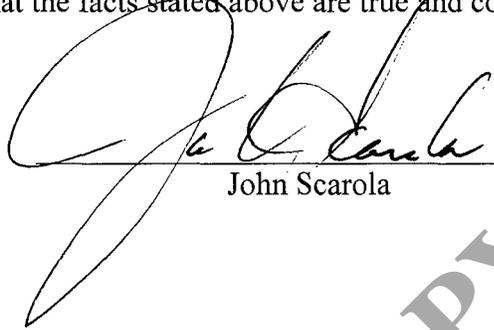
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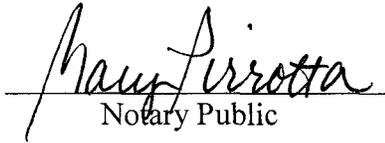
VERIFICATION

I hereby swear under penalty of perjury that the facts stated above are true and correct.

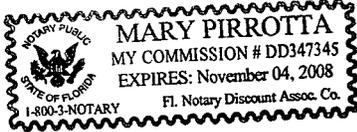


John Scarola

Sworn before me this 7th day of
April, 2008.



Notary Public



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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

**ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S VERIFIED PETITION
FOR A SHOW-CAUSE ORDER REGARDING MORGAN STANLEY'S CRIMINAL
CONTEMPT OF COURT**

THIS CAUSE came before the Court November 3, 2005 on CPH's Verified Petition for a Show-Cause Order Regarding Morgan Stanley's Criminal Contempt of Court, with counsel for CPH, MS & Co., and non-party respondents Donald G. Kempf, Jr., James P. Cusick, Soo-Mi Lee, and James F. Doyle present.

CPH sued MS & Co. for aiding and abetting and conspiring with Sunbeam Corporation to perpetrate a fraud. Early in the case, CPH was concerned that MS & Co. was not thoroughly looking for emails responsive to its discovery requests. On April 16, 2004, the Court entered an Agreed Order that required MS & Co. to search its oldest full backup tapes for emails subject to certain search parameters and certify compliance ("Agreed Order"). MS & Co. served a certificate of compliance signed by Arthur Riel, an Executive Director of Technology, on June 23, 2004 ("Certificate of Compliance").

On November 17, 2004 CPH learned that MS & Co. had found some backup tapes that had not been searched. Over the next ten weeks it sought more information about both how and when the tapes were found and when they would be searched. When MS & Co. failed to provide meaningful responses, on January 26, 2005 CPH served its Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Agreed Order ("Adverse Inference Motion.")

EXHIBIT A

16div-031615

On January 31, 2005, MS & Co. served the Declaration of James F. Doyle ("Doyle Declaration"), an Executive Director in its Law Division, in support of its opposition to the Adverse Inference Motion. The Doyle Declaration was signed under penalty of perjury. In it, Doyle averred that "(a)t the end of October 2004, I learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data on those tapes had not been restored or searched prior to Morgan Stanley's May 14, 2004 e-mail production."

The court held an evidentiary hearing on the Adverse Inference Motion on February 14, 2005. In preparation for that hearing, on February 3, 2005 the court ordered MS & Co. to produce by noon on February 8, 2005 all documents within its "care, custody, or control, addressing or related to the additional email back up tapes, including matters relating to the time or manner in which they were discovered; by whom they were discovered; who else learned of their discovery and when; and the manner and timetable by which they were to be restored and made searchable . . ." ("February 3, 2005 Order"). The court issued its ruling on the Adverse Inference Motion March 1, 2005 ("Adverse Inference Order"), finding MS & Co. had engaged in discovery abuses and shifting the burden of proof on two elements of CPH's claims.

Thereafter, CPH discovered that MS & Co. had not been candid with it or the court at the February 14, 2005 hearing, prompting it to serve its Renewed Motion for Entry of Default Judgment ("Renewed Motion"). The court held an evidentiary hearing on the Renewed Motion on March 14 and 15, 2005. On March 23, 2005 it issued its Order on CPH's Renewed Motion for Entry of Default Judgment ("Default Order"), which built on the Adverse Inference Order. The Default Order found that MS & Co. had deliberately violated numerous discovery requests and orders, to the permanent prejudice of CPH. The violations included MS & Co.'s failure to timely notify CPH and the court that Riel's Certificate of Compliance was false because, among other deficiencies, 1,423 tapes found in a store room in Brooklyn (the "Brooklyn tapes") and 738 8 millimeter backup tapes ("8 millimeter tapes") had not been searched. The Default Order removed certain facts to

which the discovery had been directed from dispute and provided that a statement of MS & Co.'s failures would be read to the jury to consider in determining the propriety of a punitive damage award. The Default Order left the exact wording and content of the statement to be read open and invited counsel to submit proposals.

Kempf was general counsel for MS & Co. at all pertinent times. Cusick was Co-Head of Global Litigation. Lee was an Executive Director in MS & Co.'s Law Division and Doyle's supervisor. In May of 2005 in connection with the court's consideration of the litigation misconduct statement to be read to the jury, MS & Co. filed Offers of Proof for Lee, Doyle, and Cusick. In general, the Offers asserted that each first learned¹ there was email on the Brooklyn tapes in late October 2004 and on the 8 millimeter tapes in November 2004. Cusick and Lee asserted that each knew of no one in the Law Division who knew the information earlier.²

Based on the Offers of Proof, counsel for MS & Co. asked the court to instruct the jury that MS & Co.'s counsel did not know there was email on the Brooklyn and 8 millimeter tapes until October 2004. CPH contends that Kempf was sitting in the courtroom at the time of those arguments on May 16 and 18, 2005. The jury returned verdicts in CPH's favor for compensatory and punitive damages. The court rendered its Final Judgment in CPH's favor based on the verdicts on June 23, 2005. MS & Co. served its Notice of Appeal and posted a supersedeas bond June 27, 2005.

On June 17, 2005 MS & Co. served a document entitled "Notice".³ The Notice

¹Lee's Offer qualifies her statements by asserting they are based on recollection.

²The Offer of Proof for Doyle stated that if called to testify he would state that he did not learn of the existence of email on the Brooklyn tapes until late October 2004 and that he "did not learn of the existence of 8 millimeter tapes containing emails until November 2004." It is unclear whether Doyle's proffered testimony is that he was unaware of the existence of the 8 millimeter tapes until November 2004, when he learned both that they existed and that some contained email, or that he may or may not have been aware of the tapes' existence, but was not aware that they contained email, prior to November 2004. Unlike Cusick and Lee, Doyle's Offer did not state that he knew of no one in the Law Division who knew that tapes contained email before he did.

³The Notice's legal effect, if any, on the proceedings is unclear to the court.

stated that

1. In the listed offers of proof and related statements, Morgan Stanley asserted that its Law Division was not aware that any of the Brooklyn Tapes contained e-mail until October 2004 and was not aware of certain 8-mm tapes until November 2004.
2. As a result of a review of emails discovered by a new email search, Morgan Stanley has determined that the offers of proof and related statements should be corrected to state that the Law Division was aware⁴ in July 2004 that some of the Brooklyn Tapes contained email and that certain 8-mm tapes existed.
3. Morgan Stanley submits this Notice to: (a) correct Defendant's Offers of Proof from James P. Cusick, Soo-Mi Lee, and James Doyle (the first sentence of paragraph 4 and the entirety of paragraph 5);⁵ (b) withdraw the Declaration of James F. Doyle of January 31 2005; and (c) correct related statements that reference or were based on the foregoing submissions. (footnote omitted).
4. Morgan Stanley does not limit this notice and correction to the specific documents described or listed herein. Morgan Stanley retracts, withdraws and corrects any and all statements, written or oral, made or submitted on its behalf, to the effect that its Law Division was not aware that any of the Brooklyn Tapes contained email until

⁴The court asked MS & Co. to clarify whether the Notice was to be interpreted to state that MS & Co. first became aware that there was email on some of the Brooklyn tapes and that the 8 millimeter tapes existed in July 2004, or simply that MS & Co. knew those things in July 2004, without regard to whether it first learned them. While initially acknowledging that the Notice implied that MS & Co. first became aware of the items in July 2004, MS & Co. chose to stand on the language in the Notice, leaving unresolved whether it first learned of the items in July 2004 or simply knew of them as of that time.

⁵It would not be inconsistent for MS & Co. to assert that (i) Cusick, Lee, and Doyle did not know the Brooklyn tapes contained email or that the 8 millimeter tapes existed and contained email until late October and early November 2004, respectively; (ii) Cusick, Lee, and Doyle did not think any one else in the Law Division knew those facts before they did; and (iii) others in the Law Division did know those facts in July 2004. Counsel for MS & Co. clarified at the hearing that the Notice was intended to convey MS & Co.'s belief that Cusick, Lee, and Doyle themselves knew that some of the Brooklyn tapes had email and the 8 millimeter tapes existed in July 2004, though not convey that MS & Co. believes Cusick, Lee, or Doyle intentionally misstated their recollections when the Offers and Declaration were prepared.

October 2004 and was not aware of certain 8-mm tapes until November 2004.

In response to the Notice, CPH filed its Verified Petition for a Show-Cause Order Regarding Morgan Stanley's Criminal Contempt of Court, taking the position that by the Notice MS & Co. admitted it made false statements to the Court.

CPH filed, too, an Affidavit and Second Affidavit of Arthur Riel. Riel avers that in the first quarter of 2003 Cusick asked him to design the historical email archive; that Kempf approved the plan late in the second quarter of 2003; that MS & Co. knew of the Brooklyn tapes by May of 2004; that he believes that MS & Co. knew of the existence of the 8 millimeter tapes in the fall of 2003; that he knew by July 2, 2004 that the Brooklyn and 8 millimeter tapes had email dating back to at least 1998; that he told an attorney in MS & Co.'s Compliance of the Law Division and others within the division in a meeting on July 8, 2004 that the Brooklyn tapes contained email; that he told MS & Co.'s counsel on or about April 28, 2005 that he had told the Law Division that there was email on the Brooklyn tapes on July 8, 2004; that he told Cusick and others that the 8 millimeter tapes existed no later than January 2004; that Doyle asked him to sign the Certificate of Compliance after first asking a college student who performed data entry functions to sign it; and, finally, that MS & Co. had monthly reports and meeting minutes which could show when people within MS & Co. were notified of the existence of the tapes and the fact that some contained email.

CPH seeks to have this court initiate criminal contempt proceedings against MS & Co., Kempf, Cusick, Lee, and Doyle. It contends that MS & Co. is in contempt of court for (i) offering the Declaration and Offers of Proof with knowledge they contained false information; (ii) repeatedly arguing for favorable rulings based on the allegedly false information; and (iii) failing to comply with the Court's discovery orders. It contends Kempf is in contempt for failing to correct the misrepresentations of fact made to the Court in his presence on May 16 and 18, 2005. It contends Lee and Cusick are in contempt for

proffering allegedly false statements to the court with the intention the court rely on them. Finally, it contends Doyle is in contempt for the same, together with signing the allegedly false Declaration with knowledge it would be submitted to the court. It contends each of these acts was intended to and did obstruct the administration of justice.⁶

Here, the allegedly contemptuous acts fall within two general classes. First, CPH contends that MS & Co. failed to comply with the court's orders to produce documents relating to the email issue, including the February 3, 2005 Order requiring it to produce all documents addressing or related to the backup tapes. It asserts that Riel's affidavit would allow a reasonable person to conclude that reports and minutes were generated that were responsive to the court's February 3, 2005 Order and that MS & Co. deliberately failed to produce those items.⁷ Second, CPH contends that MS & Co.'s assertions in the Notice together with Riel's affidavits would allow a reasonable person to conclude that Kempf, Cusick, Lee, and Doyle knew that Law Division personnel were aware of the existence of email on some of the Brooklyn tapes and the 8 millimeter tapes in July 2004 and that representations to the contrary were intended to mislead the Court and obstruct the administration of justice. As a subcategory, CPH contends that Doyle's Declaration was perjurious.

It is reasonable to assume that on appeal MS & Co. will question both the factual findings in the Default Order and the sanctions imposed. This will, of necessity, implicate the Offers and the assertions of counsel, which were used in argument about the jury statement given as a result of the Default Order; the Declaration, which was used to oppose the Adverse Inference Motion; and the propriety of and level of compliance with the

⁶See, e.g., Milian v. State, 764 So. 2d 860 (Fla. 4th DCA 2000), rev. den. 786 So. 2d 579 (Fla. 2001); M.W. v. Lafthiem, 855 So. 2d 683 (Fla. 2d DCA 2003); Murrell v. State, 595 So. 2d 1049 (Fla. 4th DCA 1992); see, also, Duff v. Southern Bell Telephone and Telegraph Co., 386 So. 2d 253 (Fla. 5th DCA 1980) (action can be obstructionist even if ultimate outcome unaffected); Milian; Thomson v. State, 398 So. 2d 514 (Fla. 2d DCA 1981).

⁷CPH argues, too, that the Notice itself refers to yet other emails responsive to the February 3, 2005 Order not timely produced.

February 3, 2005 Order, among others, violation of which were used to support the Default Order.

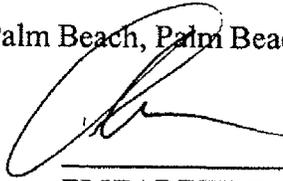
Once an appellate court's jurisdiction attaches the trial court is divested of jurisdiction to consider matters that may affect the matters on appeal. See Willey v. W.J. Hoggson Corp., 89 Fla. 446, 105 So. 126 (1925); Waltham A. Condominium Association v. Village Management, Inc., 330 So. 2d 227 (Fla. 4th DCA 1976). While post-judgment proceedings collateral to and independent of the subject matter may proceed while a judgment is on appeal, the trial court lacks jurisdiction where the matter is "directly intertwined" with the matter on appeal. Amlan, Inc. v. Detroit Diesel Corporation, 651 So. 2d 701, 706 (Fla. 4th DCA 1995); Publix Supermarkets, Inc. v. Griffin, 837 So. 2d 1139 (Fla. 2d DCA 2003); cf. Miseveth v. Stafford, 667 So. 2d 1012 (Fla. 3d DCA 1996).

If the court were to pursue criminal contempt as requested,⁸ it could alter the current record of what MS & Co. knew and when it knew it. It could add to the judicial response to MS & Co.'s litigation misconduct. The current record of MS & Co.'s litigation misconduct, and the propriety and correctness of this court's rulings based on it, are presently before the appellate court. Indeed the argument that the appeal divested in court of jurisdiction to consider contempt of court based on discovery violations is stronger here than in Amlan. In Amlan, all requested documents were eventually produced, albeit at extraordinary cost, thus the record before the appellate court on the point was complete. Here, CPH argues all discovery was not made and, therefore, pursuit of the contempt allegations could result in a separate record of discovery abuses, perhaps one inconsistent with the record currently before the appellate court. The court determines, then, that the allegedly contemptuous conduct is directly intertwined with the matters on appeal, and that this court lacks jurisdiction to consider CPH's Verified Petition for a Show-Cause Order Regarding Morgan Stanley's Criminal Contempt of Court. Based on the foregoing, it is

⁸The Court has made no determination that it could or should. MS & Co. and the non-party respondents vigorously contend that they are not guilty of contempt.

ORDERED AND ADJUDGED that this court declines to rule on CPH's Verified Petition for a Show-Cause Order Regarding Morgan Stanley's Criminal Contempt of Court pending disposition of the primary action on appeal.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 10th day of November, 2005.



ELIZABETH T. MAASS
Circuit Court Judge

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

**MORGAN STANLEY OPPOSITION TO
CPH'S REQUEST FOR DEFAULT JUDGMENT**

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EXHIBIT B

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Coleman (Parent) Holdings Inc.'s ("CPH's") request for a default judgment should be denied because this extraordinary relief is not warranted, and cannot be squared with Florida Supreme Court precedent. CPH has not, and cannot, show that Morgan Stanley willfully and deliberately disregarded this Court's authority. CPH has also failed to show that its case has been prejudiced on the merits. And CPH has offered no credible reason why less onerous sanctions are inappropriate. Finally, CPH's own failure to retain evidence, including emails, as well as its failure to produce documents evidencing both the value of the Sunbeam warrants and the Sunbeam stock CPH received as part of the Sunbeam-Coleman transaction, bar the relief requested here as a matter of equity.

I. FLORIDA LAW DOES NOT PERMIT DEFAULT JUDGMENTS EXCEPT UNDER EXTRAORDINARY CIRCUMSTANCES NOT PRESENT IN THIS CASE.

A default judgment "is the most severe of all sanctions" and "should be employed *only* in *extreme circumstances*." *Ham v. Dunmire*, No. SC03-2038, 2004 WL 2973857, at *2 (Fla. Dec. 23, 2004) (internal quotations & citation omitted; emphasis added); *Wallraff v. TGI Friday's Inc.*, 490 So. 2d 50, 51 (Fla. 1986). Default judgments are strongly disfavored under Florida law because "the right of access to [Florida] courts is constitutionally protected" and, except under the most extraordinary circumstances, may not be denied. *USB Acquisition Co. v. U.S. Block Corp.*, 564 So. 2d 221, 222 (Fla. 4th DCA 1990) (emphasis added) (citing Art. I, § 21 Fla. Const.). The Florida Supreme Court has held that if any other sanction "appears to be a viable alternative, the trial court should employ such an alternative." *Ham*, 2004 WL 2973857, at *3 (internal quotations & citation omitted); *see also id.* at *6 (dismissal is unwarranted where more appropriate sanctions are available).

Rule 1.380(b) governs sanctions for failure to comply with discovery orders. Florida courts have recognized that default judgments, like dismissals with prejudice, should be used "as

a discovery sanction only as a last resort.” *Muhtar v. Aetna Ins. Co.*, 456 So. 2d 586, 587 (Fla. 3d DCA 1984) (abuse of discretion to dismiss suit as a sanction for failure to comply with discovery order where plaintiffs, while not responding as quickly or fully as parties to litigation might like, made a good-faith effort to, and in fact did, substantially comply with the discovery order) (per curiam). CPH asserts that the ultimate sanction of default judgment is appropriate because (1) Morgan Stanley has allegedly engaged in a pattern of discovery abuses; and (2) Morgan Stanley has allegedly destroyed evidence that may have been useful to its case. Neither allegation provides grounds for relieving CPH of its burden of proving the merits of its claims.

Rather, to justify the severe sanction of default under Rule 1.380(b), the moving party — here CPH — bears the heavy burden of proving with clear and conclusive evidence: (i) that discovery violations were made in deliberate disregard of the court’s authority, and; (ii) that the moving party has been prejudiced in a meaningful way. *See Beaver Crane Serv., Inc. v. National Surety Corp.*, 373 So. 2d 88, 89 (Fla. 3d DCA 1979) (default judgment held to be inappropriate where party “ha[s] not demonstrated [that it was] prejudiced in any meaningful way by” discovery abuses). CPH can prove neither.

II. CPH HAS NOT PRESENTED EVIDENCE THAT WOULD JUSTIFY THE SANCTION OF DEFAULT FOR ALLEGED DISCOVERY VIOLATIONS

A. CPH Has Not Shown That Morgan Stanley Deliberately And Contumaciously Disregarded The Court’s Authority.

A default judgment or dismissal with prejudice is justified only when the court finds by clear and conclusive evidence that a party has shown “[a] *deliberate and contumacious disregard of the court’s authority.*” *Ham*, 2004 WL 2973857, at *2 (internal quotations & citation omitted; alteration in original; emphases added). Before imposing such extreme sanctions, the Court must make “express written findings of fact supporting the conclusion that the failure to obey the court order demonstrated willful or deliberate disregard.” *Id.* As the

Second District Court of Appeal observed recently in *Smith Original Homes, Inc. v. Carpet King Carpets, Inc.*, imposing the ultimate sanction of a default judgment on “[a]nything short of this standard is an abuse of discretion.” No. 2D03-4759, 2005 WL 415082, at *2 (Fla. 2d DCA Feb. 23, 2005).

A party’s negligent failure to respond to discovery requests does not justify a default judgment. As even CPH concedes, “[m]ere negligence does not suffice” to justify the sanction of a default judgment. *Baja Village Markets, Inc. v. Baja Supermarket, Inc.*, 712 So. 2d 465, 466 (Fla. 3d DCA 1998) (per curiam). Likewise, the mere fact that a party exhibits “a continuing and repeated failure to comply” with a court’s pre-trial orders is not enough to warrant the ultimate sanction. *See Kelley v. Schmidt*, 613 So. 2d 918, 919-21 (Fla. 5th DCA 1993).

CPH nonetheless argues that the Court should enter default judgment against Morgan Stanley for its “[r]epeated and prolonged failures to carry out a thorough search for back-up tapes.” (Feb. 24, 2005 CPH’s Outline in Supp. of its Pending Mot. to Strike Morgan Stanley’s Answer at 2.) CPH further suggests that this extreme sanction is justified because Morgan Stanley supposedly engaged in a “conscious avoidance of discovery” and a “cover-up effort[.]” (*Id.*) The record does not support CPH’s contentions. The record evidence shows just the opposite. Morgan Stanley disclosed the existence of both the additional tapes and the potential problems with the search scripts and set about correcting them. In fact, Morgan Stanley has gone to extraordinary lengths — and expense — to make whatever relevant, non-privileged information exists on those tapes available to CPH.

CPH argues that Morgan Stanley discovered the additional tapes and script problems because Morgan Stanley “was facing independent third-party verification of the production that had been made.” (Feb. 23, 2005 Hrg. at 1325-26.) That is not correct. The record shows that

months before the Court suggested in the February 2, 2005 hearing that a third-party vendor be hired to review the additional tapes, Morgan Stanley had notified CPH that (1) additional e-mail backup tapes had been discovered; (2) additional responsive e-mails had been identified; and (3) e-mail backup tapes were still being restored. (Nov. 17, 2004 T. Clare Letter to M. Brody (Ex. 1).) Likewise, Morgan Stanley's IT group had been working on discovering and correcting errors with the "scripts" well before the Court suggested that a third-party vendor might be an appropriate sanction. (Feb. 14, 2003 Hrg. at 52-53; Feb. 9, 2005 L. Gorman Dep. at 70-71 Ex. 2).)

In the end, CPH's motion must be denied because Morgan Stanley has never deliberately disregarded this Court's authority. To the contrary, Morgan Stanley is working diligently and expending huge resources to bring prompt closure to this issue. There is not one shred of evidence in the record that Morgan Stanley's finding of additional backup tapes or errors in the script program amount to a "cover-up" or a "conscious avoidance of discovery" as CPH suggests. *See In re Southeast Banking Corp.*, 204 F.3d 1322, 1332 (11th Cir. 2000) (If a litigant's alleged discovery violation is "caused by simple negligence, misunderstanding, or inability to comply" a default judgment is not appropriate) (internal quotations & citation omitted).

B. CPH Has Not Shown That It Has Been Prejudiced On The Merits Of Its Case.

The motion for default judgment should also be denied because CPH has not shown that it suffered any significant prejudice on the merits as a result of the alleged discovery abuses. As the Florida Supreme Court has recognized, default judgments are generally not appropriate unless the moving party has suffered substantial prejudice. *See Ham*, 2004 WL 2973857, at *6 ("[D]ismissal is far too extreme as a sanction in those cases where discovery violations have no

absolutely prejudice to the opposing party.”); *but see USB Acquisition Co., Inc.*, 564 So. 2d 221, 222 (Fla. 4th DCA 1990) (“Lack of prejudice is irrelevant” in determining whether a plaintiff’s complaint should be dismissed for discovery abuse.). Florida courts have therefore held that in sanctioning discovery abuses the trial court’s discretion “should be guided largely” by whether such abuses “will prejudice the opposing party.” *Green v. Shoop*, 240 So. 2d 85, 86 (Fla. 3d DCA 1970); *see also Fuller v. Rinebolt*, 382 So. 2d 1239, 1241 (Fla. 4th DCA 1980) (holding that trial court, in absence of showing of prejudice, should not exclude testimony of witness whose name had not been disclosed to opposing party).

This rule reflects the core principle that the Court’s “authority to sanction is not unbridled; the sanction imposed must be commensurate with the offense.” *Kelley*, 613 So. 2d at 920. Because the “purpose of reposing in the trial court the authority to enter a default is to ensure compliance with its order, not to punish or penalize,” *Garden-Aire Vill. Sea Haven, Inc. v. Decker*, 433 So. 2d 676, 677 (Fla. 4th DCA 1983) (per curiam), it is “imperative that trial courts strike the appropriate balance between the severity of the infraction and the impact of the sanction when exercising their discretion to discipline parties to an action.” *Ham*, 2004 WL 2973857, at *6. Accordingly, unless discovery abuses prevent a part from proving its prima facie case the ultimate sanction of default is not appropriate.

1. CPH Has Not Suffered Any Prejudice Demonstrable Prejudice By Morgan Stanley’s Recent Discovery Of Additional E-Mail Tapes.

CPH argues that Morgan Stanley: (1) failed to disclose the existence of 738 8-millimeter tapes when they were found; (2) failed to disclose the Brooklyn tapes when they were found; (3) made false representations to the Court about when the Brooklyn tapes were found; and (4) made false representations to the Court about when the first time anyone knew that there was recoverable e-mail data on the Brooklyn tapes. None of these allegations, even if true, supports

the issuance of a default judgment because CPH has not shown that any of these hotly-contested “facts” prejudiced the merits of its case.

First, the Brooklyn tapes, no matter when they were found, have been searched, and responsive non-privileged documents have been produced to CPH. In addition, the Brooklyn tapes have been turned over to a third-party vendor to run its own searches for responsive e-mails. CPH has not identified any e-mails from the Brooklyn tapes that CPH claims are needed to establish its prima facie case. As a result, the late production of the Brooklyn tapes cannot support the relief CPH requests.

Second, the 738 8-millimeter tapes have likewise been searched and responsive non-privileged documents have been produced to CPH. These tapes have been given to the same third-party vendor to run its own searches for responsive e-mails. Again, CPH has not identified any e-mails from these tapes that it claims are needed to establish its prima facie case.

Third, CPH’s claim that Morgan Stanley made “false representations” about when the Brooklyn tapes were found is wrong, and irrelevant to the issue of a default. The fact that the Brooklyn Tapes were located in May 2004 and not the summer of 2004 does not rebut the evidence that the Brooklyn Tapes have been searched and responsive documents have been produced to CPH. CPH has therefore suffered no prejudice. *See Muhtar*, 456 So. 2d at 587 (default judgment is an abuse of discretion because of the lack of prejudice to complaining party when opposing party substantially complies with order, albeit not as quickly or fully as the Court would have liked).

Fourth, Morgan Stanley has consistently contended that no one in its Law Division knew of the existence of *additional recoverable e-mail data on the tapes before October 2004*. Morgan Stanley has previously submitted an affidavit of the individual attorney with

responsibility for the Coleman case, attesting that it was at the end of October 2004 when he first “learned that additional e-mail backup tapes had been located within Morgan Stanley, and that the data insert on those tapes had not been restored or searched prior to Morgan Stanley’s May 14, 2004 e-mail production.” (Jan. 31, 2005, Doyle Decl. ¶ 3 (Ex. 3).) That attorney has further testified that “[u]pon learning that information, I directed that the electronic searches described in the April 16, 2004 Agreed Order be conducted for any backup tapes that had not been restored and made searchable at that point, and that the process of restoring the remaining backup tapes continue as expeditiously as possible.” (*Id.* ¶ 3.) To the extent CPH relies on an out-of-context statement at the February 2, 2005 hearing to support its assertion that Morgan Stanley somehow misrepresented to the Court about the first time someone knew that there was recoverable e-mail data on the Brooklyn tapes, CPH’s motion should be denied because Morgan Stanley has repeatedly clarified any alleged ambiguity in the statement. (*See* Feb. 14, 2005 Hrg. at 213-15.) And CPH cannot show that it suffered any prejudice as a result of the representation.

Finally, the comprehensive e-mail restoration and review process that Morgan Stanley began on its own initiative, separate and apart from this litigation, has been a success despite the many issues encountered by Morgan Stanley along the way in organizing and searching a massive amount of electronic information. Approximately 35,000 backup e-mail tapes have been searched, and the process has resulted in the production of thousands of pages of e-mail messages in this litigation. Morgan Stanley does not dispute that the tapes found in the Brooklyn security room and the 8-millimeter tapes should have been found and produced earlier, but when they were found they were disclosed and searched for responsive email. CPH simply has not suffered any prejudice because the tapes were not found before May 14, 2004.

2. **CPH Has No Demonstrable Evidence Of Prejudice Resulting From A Purported “Pattern Of Conduct”**

CPH has combed the record and assembled every “historic” discovery disagreement between the parties in an effort to cobble together what it deems to be a “well-established pattern of disregard for [Morgan Stanley’s] litigation related obligations.” (CPH Outline at 6.) The eighteen-month discovery period is now closed, and it is a matter of record that the parties engaged in hard-fought discovery battles *going both ways* and that *both sides* lost motions to compel and produced evidence not previously-produced. These other disputes hardly rise to the level of “deliberate and contumacious disregard of this Court’s authority.” Moreover, none of these disputes have irreparably prejudiced CPH’s prima facie case.

In its outline and argument on this issue, CPH focuses on two categories of purported discovery misconduct (apart from the e-mail tapes) from which it urges the Court to conclude that there is no alternative but to grant judgment in CPH’s favor. The first category is PC Docs data that Morgan Stanley searched for and produced in response to the Court’s February 3, 2005 Order. Morgan Stanley did not disregard the Court’s order as CPH must show — Morgan Stanley *fully complied* with the Court’s order and CPH does not claim otherwise. Nor does CPH have any credible claim of prejudice with respect to these documents which relate solely to the authenticity and admissibility of six documents. In fact, the Court has already ruled on that issue in CPH’s favor and imposed the costs of additional discovery leading to the PC Docs profiles on Morgan Stanley.

The second category of alleged misconduct relates to documents regarding the Italian charge against William Strong. Again, Morgan Stanley did not *disregard this Court’s authority* but rather *complied* with the Court’s order to produce these documents. These documents are not relevant or admissible at trial (for the reasons set forth in Morgan Stanley’s Motion in Limine

No. 23), but even if they were, CPH has no credible claim of prejudice because it is in possession of the documents.¹

Tacitly conceding that it cannot show prejudice with respect to any specific category of documents, as it is required to do under the law, CPH has resorted to two last-ditch prejudice arguments, neither of which hold water. The first is that Morgan Stanley's purported misconduct has made it necessary to "start the discovery process from the beginning" and re-do "almost all of the discovery that has already been completed":

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9 Based upon the fragmentary production to
10 date, documents disclosed after the close of
11 discovery would require that almost all of the
12 discovery that has already been completed be
13 redone, because the disclosures that have been
14 made to date implicate in one way or another the
15 key testimony of almost every witness from whom
16 deposition testimony has been taken.
17 We would need to start this discovery
18 process from the beginning. I provided the
19 Court with a list of the new witnesses we would
20 need to depose. That in and of itself is a
21 lengthy list.

(Feb. 23, 2005 Hrg. at 1337.) This argument is disingenuous. The "list of new witness" are word processing employees and temp secretaries employed by Morgan Stanley in 1997-1998. There is no dispute that they typed keystrokes on some of the six documents at issue. But their typing is not an issue. Morgan Stanley has never denied that the documents were resident on

¹ CPH has not, and cannot, claim that the other out-of-context, unrelated incidents cited by CPH in its attempt to "pile on" grievances (Morgan Stanley's purported disclosure of a document already in the public record, a witnesses taking a break from a deposition in frustration from being asked the same question repeatedly, or a witness' verification of interrogatory responses his best knowledge as of the time of the verification) resulted in any prejudice to CPH's ability to make its claims. Moreover, CPH cannot show that Morgan Stanley violated any Court orders.

Morgan Stanley's document management system. Rather the issue is whether the documents are objectionable for the reasons before the Court. In short, the issue is the admissibility in evidence of the documents — nothing more.²

CPH's final argument is that default judgment is warranted because CPH simply does not trust Morgan Stanley, and that CPH has no confidence in the "integrity of the pretrial process" or the integrity of the individual lawyers in the case. (Feb. 23, 2005 Hrg. at 1345-46, 1425-26.) Morgan Stanley respectfully submits that if the standard for granting default judgment in Florida was that opponents in litigation must have complete confidence in each other then no major litigation would ever get to a jury. Moreover, Morgan Stanley, too, would be entitled to default judgment on liability, on the basis of, among other things, CPH's purposeful non-disclosure and subsequent wrongful redaction of arguably the most damaging documents in the case. Because Florida law requires willful disregard of the Court and specific prejudice to impose the "death penalty" sanction of default, and because CPH has not made any showing of either requirement, its motion must be denied.

III. CPH CANNOT JUSTIFY A DEFAULT FOR PURPORTED EVIDENCE SPOILATION BECAUSE CPH HAS NOT SHOWN THAT MORGAN STANLEY DELIBERATELY DESTROYED RELEVANT EVIDENCE.

Florida courts have recognized that the sanction of a default judgment is not appropriate unless missing evidence has been intentionally destroyed maliciously and in bad faith. *See Federal Ins. Co. v. Allister Mfg. Co.*, 622 So. 2d 1348, 1351 (Fla. 4th DCA 1993) ("except

² Notably, the *only* outstanding discovery predicated on discovery misconduct is the additional document and deposition discovery *Morgan Stanley* must now take in the midst of trial preparation as a result of CPH's admitted non-disclosure and improper redaction of documents that alter its claimed damages by hundreds of millions of dollars. (Feb. 17, 2005 Order on MS's Mot. to Compel Prod. of Docs.)

perhaps where there has been a malicious destruction of evidence, the ultimate sanction should be avoided if possible”) (discussing *Headley v. Chrysler Motor Corp.*, 141 F.R.D. 362 (D. Mass. 1991)). “Mere negligence in losing or destroying the records is not enough for an adverse inference as it does not sustain an inference of consciousness of a weak case.” *Bashir v. Amtrak*, 119 F.3d 929, 931 (11th Cir. 1997); *see also Vick v. Texas Employment Comm’n*, 514 F.2d 734, 737 (5th Cir. 1975). In fact, as recognized by the Fourth Circuit Court of Appeals, “the vast weight of authority ... holds that **absent bad-faith conduct** applying a rule of law that results in dismissal on the grounds of spoliation of evidence **is not authorized.**” *Cole v. Keller Indus.*, 132 F.3d 1044, 1047 (4th Cir. 1998). If the moving party does not come forward with extrinsic evidence proving that missing materials would have been unfavorable to the opposing party or relevant to the issues in the lawsuit, there can be no sanctions. *See id.* (finding that dismissal was improper where “there is no evidence that [the plaintiff’s] actions were undertaken in an effort to prevent the defendant from inspecting and testing the [evidence]”).

Here, CPH has no evidence that Morgan Stanley maliciously and purposefully destroyed evidence related to the Sunbeam-Coleman transaction. As a substitute for clear and convincing evidence, CPH asks the Court to choose between three hypothetical “possible constructions” for Morgan Stanley’s over-writing of e-mail tapes, ranging from negligence on Morgan Stanley’s part to an intentional destruction of tapes to conceal incriminating evidence in this case. (CPH Outline at 1.) Again, having no evidence that Morgan Stanley intended to conceal any evidence related to this case, CPH asks the Court **simply to assume** that this was Morgan Stanley’s “actual intent” for two reasons: (1) Morgan Stanley’s routine over-writing of e-mail tapes was the subject of an SEC inquiry and settlement; and (2) Morgan Stanley purportedly failed to preserve or gather e-mail relating to the Sunbeam transaction in connection with this case. (*Id.*)

First, contrary to CPH's representation, the SEC settlement was an industry-wide SEC proceeding that addressed the failure of certain registered broker-dealers, of which Morgan Stanley was one, to comply with regulatory requirements that broker-dealers preserve certain electronic communications for three years in a readily accessible place.³ Nothing in the SEC settlement — in which none of the broker-dealers admitted any wrongdoing — supports an inference that any Sunbeam-related e-mails were ever destroyed with malicious intent.⁴ And CPH has provided nothing but lawyer hyperbole to show that Sunbeam-related e-mails existed and were destroyed, and that those tapes would have contained damning evidence against Morgan Stanley. The inference is just as likely that any overwritten tapes contained e-mail evidencing that CPH knew about Sunbeam's slow first quarter sales and yet decided not to do any financial due diligence of Sunbeam including reading its interim financial statements. There is no evidence that Morgan Stanley did anything other than routinely overwrite tapes as was common in the industry at the time, and as *CPH itself did and continues to do to this day*. (Jan. 21, 2004 Fasman Dep. at 41-43, 68-69, 131-33 (Ex. 5).)

Second, CPH argued in writing to the Court that Morgan Stanley "issued specific instructions to gather hard copies of Sunbeam-related documents but failed to include any effort to preserve or gather e-mail." (CPH Outline at 1.) CPH reiterated this assertion at the February 23 hearing:

³ The recycling of e-mail tapes at Morgan Stanley ended in January 2001, (Feb. 10, 2004 Saunders Dep. at 57-60, 82-83 (Ex. 4)), over two years before CPH filed suit against Morgan Stanley.

⁴ The Court took judicial notice of the SEC proceeding without considering Morgan Stanley response to the plaintiff's request. Morgan Stanley respectfully suggests the Court erred in doing so for the reasons stated in Morgan Stanley's submission on February 21, 2005.

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13 I remind the Court that the record has
14 already established the fact that Morgan Stanley
15 issued specific instructions to gather hard
16 copies of Sunbeam related documents, but clearly
17 excluded from its instructions to its own staff
18 any instructions to preserve electronic data,
19 specifically any instructions to preserve any
20 e-mail.

(Feb. 23, 2005 Hrg. at 1323.) CPH provided no record cite for this alleged “already established fact.” The record squarely contradicts this assertion. John Plotnick, Morgan Stanley’s corporate representative for document collection in this case, testified in no uncertain terms that he contacted all of the Morgan Stanley bankers who worked on the Sunbeam transaction and directed them “over and over again” to send him “all their electronic documents, including e-mail”:

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6 Q. With respect to any of the
7 employees who -- Morgan Stanley employees who
8 had any involvement with Sunbeam, have you
9 determined whether any of them backed up
10 information residing on the hard drives of
11 their PC's?

12 A. I called *all of the bankers that*
13 *worked on the Sunbeam transaction and directed*
14 *them to send me all of their hard copy and*
15 *printouts of all their electronic documents,*
16 *including e-mail,* anything that would be on
17 their PC's.

18 Q. Okay, did you refer specifically to
19 any backup that they may have made from their
20 hard drives from that time period?

21 A. *I directed them over and over, all*
22 *hard copy and all electronic files.*

(Sept. 9, 2003 Plotnick Dep. at 54 (emphasis added) (Ex. 6).) Indeed, before the November 24, 2004 close of discovery, Morgan Stanley had produced over 9,400 pages of e-mail related to the Sunbeam transaction. (See May 14, 2004 K. DeBord Letter to M. Brody and Nov. 18, 2004 M.

Occhuizzo Letter to M. Brody (Ex. 7).) CPH, in contrast, has produced *less than forty e-mails* from its files.

Third, CPH is not entitled to a default judgment also is not justified because CPH has not shown — and cannot show — that there is any specific “missing evidence” that is essential to its prima facie case. Indeed, Florida courts have held that even an instruction for an adverse inference — a sanction far less serious than default — is not warranted unless the missing evidence is absolutely “necessary to prove a prima facie case.” *Jordan v. Masters*, 821 So. 2d 342, 347 (Fla. 4th DCA 2002) (a jury instruction for an adverse inference is not appropriate when nonmoving party has failed to produce nonessential evidence); *see also Public Health Trust of Dade County v. Valcin*, 507 So. 2d 596, 599 (Fla. 1987) (holding that to obtain an adverse inference, the plaintiff must “establish to the satisfaction of the court that the absence of the records hinders his ability to establish a prima facie case”).

Nonetheless, CPH would have this Court eliminate altogether the requirement that prejudice is a necessary condition of any default judgment. Not once in its written submission does CPH mention the prejudice requirement — let alone make any effort to demonstrate that the hypothetical missing evidence somehow “hinders [CPH’s] ability to establish a prima facie case.” *Id.* Nor could CPH make that showing given the size of the discovery record, which includes over eighty witness depositions, over 450,000 pages of documents and numerous additional CDs containing additional electronic information.

In any event, the claim of prejudice here is not supported by the record. As noted above, Morgan Stanley has already produced responsive e-mails from the files of the Brooklyn tapes and the “738 8-millimeter tapes.” Likewise, Morgan Stanley is reviewing whether there are any script errors remaining in its e-mail archive system. If there are, Morgan Stanley will re-run the

agreed-upon searches against the entirety of the e-mail archive system and produce all remaining non-privileged responsive materials, if any exist. Further, Morgan Stanley has provided each of the “additional tapes” to a third-party vendor so that it can run searches independent of Morgan Stanley’s work. Consequently, CPH cannot realistically claim that it is somehow prejudiced when it either has already received responsive e-mails or will receive them as soon as they are available.

New York State National Organization for Women v. Cuomo, No. 93 Civ. 7146 (RLC) JCF, 1998 WL 395320 (S.D.N.Y. July 14, 1998) is analogous to the situation here. In that case, the plaintiff sought sanctions against New York’s governor for failing to preserve computer database evidence that included letters and reports, internal memoranda, monthly summary reports, and electronic mail. Although the Court determined that the Governor’s obligation to preserve evidence arose when the plaintiff filed its complaint, sanctions were not appropriate even though the computer database, including its e-mail, had been destroyed. *Id.* at *2. The Court explained that sanctions were not warranted because there was no evidence that defendants “deleted computer databases or destroyed monthly summary reports in order to impede [the] litigation.” *Id.* Moreover, the plaintiffs had not demonstrated “that they were prejudiced by the loss of the records.” *Id.* at *3. In fact, the plaintiffs had not identified “with any specificity what information they would have been reasonably likely to find.” *Id.* The Court refused to impose the requested sanctions because plaintiffs’ only prejudice in that case, as here, was that “the defendants’ conduct deprived them of a pond in which they would like to have gone on a fishing expedition.” *Id.*

IV. THE CASES RELIED ON BY CPH ARE READILY DISTINGUISHED AND DO NOT SUPPORT A DEFAULT

In the fourteen cases cited in CPH's motion, not one resembles the procedural posture of this case: a motion for default judgment *after* discovery has closed and *after* the plaintiff has prevailed on summary judgment. And, as noted above, in the few cases that have actually found default warranted, discovery had come to a virtual halt because of repeated failures to comply with court orders and no communication on the part of the defaulting party with the court or opposing party about the status of discovery requests. Discovery in this case, by contrast, was extensive and is now complete with the exception of e-mail backup tapes currently in the collection and production process.

CPH purports to cite three "cases whose fact patterns more closely resemble those at issue here." (Feb. 24, 2005 Plf's Mem. of Law in Supp. Of Its Pending Mot. To Strike Morgan Stanley's Answer at 3-4 (citing *Precision Tune Auto Care, Inc. v. Radcliffe*, 804 So. 2d 1287 (Fla. 4th DCA 2002); *HZJ, Inc. v. Wysocki*, 511 So. 2d 1088, 1089 (Fla. 3d DCA 1987); *Weck v. Weck*, 464 So. 2d 619 (Fla. 4th DCA 1985) (per curiam).) The comparison lacks all merit.

In *Wysocki*, the trial court order lacked any factual discussion and referred in the abstract to the defendant "thwarting the discovery process and this Court's Orders requiring the production of documentation and witnesses in this cause." 511 So. 2d at 1089. This thin opinion suggests at the very least that discovery had come to a halt in light of the defendant's willful failure to comply with specific court orders — a holding that would not justify default here. Similarly, in *Weck*, the *entire opinion* consists of nine lines of text, at least two of which are citations. There is no discussion of the underlying conduct at issue other than an off-hand reference to an "intentional delay and abuse of the system." 464 So. 2d at 618 (internal quotations & citation omitted). Once again, there is no basis whatever for inducing some

connection between the facts of that case and this one. Furthermore, both *Wysocki* and *Weck* pre-date *Tabero*, in which the Supreme Court held that any default judgment must be based upon an explicit written finding of willful noncompliance. Neither opinion can survive that standard.

The final case, *Precision Tune Auto Care*, 807 So. 2d 1287, is more recent but equally inapposite. There, after the plaintiff had moved for sanctions on three separate occasions, the court ordered the defendant to produce three witnesses for deposition, set “an exact deadline,” and specifically admonished the defendant that if it did not comply its pleadings would be struck. *Id.* at 1291. The defendant did not produce the witnesses and “simply disregarded the order of trial court because it was inconvenient to the company’s officer.” *Id.* at 1291. As the Fourth District emphasized, no attempt was even made to contact opposing counsel to explain why witnesses could not appear; instead, the defendant and its attorney “had a cavalier attitude regarding the necessity to comply with the court’s order.” *Id.*

Here, by contrast, Morgan Stanley initiated this whole sequence of discovery hearings because it notified the plaintiff of the discovery of additional tapes that needed to be searched for e-mail, and then produced its corporate representative and its Information Technology employees to give testimony in Florida. Morgan Stanley is financing the expedited processing of all remaining backup tapes and has repeatedly expressed its willingness to work with CPH and the Court to set a reasonable “drop dead date” for ensuring that all remaining responsive e-mails, if any exist, are produced. There is no evidence that Morgan Stanley has refused to comply with the Court’s orders because they have been “inconvenient to the company’s officers.” *Id.* at 1291. Rather, Morgan Stanley has spent significant amounts of money and employee time to attempt to ensure compliance with the Court’s orders.

V. **CPH'S OWN FAILURE TO RETAIN EVIDENCE AND ITS OWN DISCOVERY ABUSES PRECLUDE ENTERING A DEFAULT JUDGMENT.**

CPH's request for a default judgment should also be denied because CPH has itself engaged in flagrant discovery abuses. *See Fayemi v. Hambrecht & Quist, Inc.*, 174 F.R.D. 319, 326 (S.D.N.Y. 1997) (employer disqualified under unclean hands doctrine from obtain sanctions because he had himself acted "unconscionabl[y]"). As courts have long recognized, a court "considering sanctions can and should consider the equities involved before rendering a decision." *Schlaifer Nuance & Co., v. Estate of Warhol*, 194 F.3d 323, 341 (2d Cir. 1999).

Here, by its own admission, CPH has never enacted or enforced a document retention policy to prevent the destruction of relevant documents, including e-mails. (Sept. 15, 2003 Fasman Dep. at 31 (Ex. 5).) When CPH undertook its first document collection related to the Sunbeam matter in 1999 or 2000, it did not search its electronic servers for documents, nor did it instruct employees who provided documents to provide electronic documents. (*Id.* at 84-85, 96, 107-08.) Indeed, even after CPH threatened Sunbeam with a lawsuit, even after its executives became named parties to litigation related to the Sunbeam/Coleman transaction, even after it sued Arthur Andersen, and even after the onset of litigation in the present case, CPH continued to override its backup tapes. (*Id.* at 31, 49, 63; MS 1 (Ex. 8).)

Unlike Morgan Stanley, CPH systematically and intentionally destroyed *all* of its e-mail tapes related to the Sunbeam acquisition in the face of threatened and *pending litigation*. It is fundamentally unfair to impose outcome-determinative sanctions on Morgan Stanley — when Morgan Stanley has gone to unprecedented lengths to locate, upload, and produce thousands of pages of e-mails in this case — when CPH, through identical conduct, has deprived Morgan Stanley of *all e-mail evidence* relating to what its executives and employees knew and what they did.

Moreover, CPH — not Morgan Stanley — is the party who has been shown to have deliberately withheld “smoking gun” documents that require re-opening of fact and expert discovery. (Feb. 17, 2005 Order on MS’s Mot. to Compel Prod. of Docs.) Despite Morgan Stanley’s efforts to pursue such discovery for over a year and a half, CPH withheld its internal valuations which seriously undercut CPH’s claimed damages and expose that CPH is seeking a windfall of hundreds of millions of dollars more than what it actually believed that it lost prior to filing this lawsuit. (See Feb. 23, 2005 Morgan Stanley’s Motion for Additional Discovery Regarding MAFCO’s Internal Valuation of Sunbeam Stock.) Even more troubling, the documents revealed for the first time that CPH’s representatives misrepresented the value of the warrants it received as a result of the Sunbeam settlement by tens of millions of dollars, stated under oath that CPH had not performed any valuation at their issuance date when CPH had done such a valuation, and then attempted to conceal the valuation by redacting portions of the documents once the Court ordered them produced. (See Feb. 22, 2005 Morgan Stanley’s Motion for Sanctions and Additional Discovery Concerning Plaintiffs’ Improper Concealment of the Value of the Sunbeam Warrant.) For these reasons, even if CPH had met the requirements under Florida law for the extraordinary sanction of default judgment, which it has not, its own “unclean hands” make such a sanction unfair and inappropriate in this case.

WHEREFORE, CPH has failed to carry its burden of showing willful disobedience of this Court's orders, deliberate and malicious destruction of evidence relating to this case, or any evidence of prejudice beyond monetary sanctions, which the Court has already imposed. Therefore, CPH's motion for default judgment should be denied.

CERTIFICATE OF SERVICE

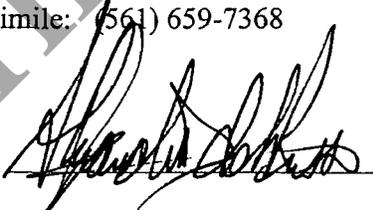
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**FILED UNDER SEAL
BY MORGAN STANLEY**

Morgan Stanley's Opposition to
CPH's Motion for a Default Judgment
(Corrected Version)

Dated March 13, 2005

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EXHIBIT C

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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND
FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 03 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

VOLUME 121

MORGAN STANLEY & CO., INC.,
Defendant.

TRANSCRIPT OF THE PROCEEDINGS BEFORE
THE HONORABLE ELIZABETH T. MAASS

West Palm Beach, Florida
Wednesday, May 18, 2005
9:28 a.m. - 12:38 p.m.

EXHIBIT D

1 misconduct statement does not say that people in
2 Morgan Stanley's law division knew of e-mail on
3 the backup tapes the end of October 2004.
4 There's evidence they knew of backup tapes but
5 not that the backup tapes contained e-mail. And
6 it's undisputed that they learned that these
7 contained e-mail in October 2004 which set these
8 events in motion basically.

9 THE COURT: It turned out they did contain
10 e-mail.

11 MS. BEYNON: They didn't know it, Your
12 Honor. It's inaccurate for plaintiffs to be
13 able to use a slide --

14 THE COURT: I understand the point. We'll
15 come back to it. It would be falsely --

16 MR. SCAROLA: I have edited as follows.

17 THE COURT: Go ahead.

18 MR. SCAROLA: "Morgan Stanley presented a
19 sworn declaration intended to mislead CPH and
20 the Court indicating that Morgan Stanley's
21 in-house lawyers did not know about unsearched
22 e-mail backup tapes when they did know."

23 THE COURT: Can you change it "...did not
24 know about unsearched backup tapes later found
25 to contain e-mail" or something? I think that

1 the problem is, to make it clear to the jury --
2 well, frankly, I don't know whether they knew
3 they had e-mail or not when the declaration was
4 made. They certainly knew they existed.

5 MR. SOLOVY: I don't know why we have to be
6 tarnished with all the caveats for a
7 certification made by them.

8 MS. BEYNON: Your Honor, it's undisputed in
9 the record that the lawyers at Morgan Stanley
10 learned that e-mail was on these tapes in
11 October 2004. There's been no contrary evidence
12 to this. And to say as a fact they falsely
13 misrepresented --

14 THE COURT: There's no contrary evidence,
15 but we also know the in-house attorneys knew
16 about the tapes in June.

17 MS. BEYNON: They knew about the tapes in
18 June, but they didn't know they contained
19 e-mail.

20 THE COURT: We don't know if they knew they
21 contained e-mail.

22 MR. SOLOVY: They never put them on the
23 stand.

24 THE COURT: I was going to say the first
25 we -- again, I don't think the absence of

#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

FILED
08 APR -9 PM 1:48
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

ORDER SPECIALLY SETTING HEARING

Pursuant to this Court's Order dated March 31, 2008, a Special Set Hearing is scheduled in this matter on Thursday, May 22, 2008 at 1:00 p.m. before the Hon. Robin Rosenberg, Circuit Court Judge, Palm Beach County Courthouse, 205 N. Dixie Highway, Courtroom 10-A, West Palm Beach, Florida. Three Hours have been reserved. The matters to be heard at that time are:

1. Defendant's Entitlement to Trial and Appellate Fees and Costs;
2. Whether Plaintiff's Motion for New Trial is Legally Sufficient, and, if so, Whether Plaintiff Shall Be Permitted To Conduct Discovery and the Scope of any Discovery Regarding Plaintiff's Motion for New Trial;
3. Status Conference on Plaintiff's Petition for Show Cause Order Regarding Morgan Stanley's Criminal Contempt of Court.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 9th day of April, 2008.


ROBIN L. ROSENBERG
CIRCUIT COURT JUDGE

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IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AJ

vs.

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

**COLEMAN (PARENT) HOLDINGS INC.'S OPPOSITION
ON THE ISSUE OF ENTITLEMENT
TO MORGAN STANLEY & CO. INCORPORATED'S
AMENDED MOTION TO TAX APPELLATE COSTS FOR MAIN APPEAL,
MOTION TO TAX APPELLATE COSTS RELATING TO COST APPEAL, AND
AMENDED MOTION TO TAX TRIAL COSTS**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully submits this combined opposition, on the issue of entitlement, to Morgan Stanley & Co. Incorporated's

- (1) Amended Motion to Tax Appellate Costs for Main Appeal ("Main-Appeal Motion");
- (2) Motion to Tax Appellate Costs Relating to Cost Appeal ("Costs-Appeal Motion"); and
- (3) Amended Motion to Tax Trial Costs ("Trial-Costs Motion").

In this case, CPH sued Morgan Stanley for the damage CPH sustained due to Morgan Stanley's participation in the largest stock fraud in Florida history. The trial court found that during the pretrial phase of the litigation Morgan Stanley "deliberately and contumaciously" disobeyed Court orders, made false statements to the Court and to CPH, coached witnesses to mislead the Court, and caused CPH incurable prejudice. 3/23/05 Remedial Order at 16; *see also* 3/2/05 Remedial Order. CPH nonetheless prevailed at trial. On appeal, the Fourth District reversed the judgment based on a damages issue, but left undisturbed all of the trial court's

litigation-misconduct findings. As more fully explained in CPH's verified Rule 1.540(b) motion (filed March 25, 2008), Morgan Stanley has *admitted* that it engaged in serious misconduct — misconduct that was not known at the time of trial and that has not been addressed previously by any court. Nevertheless, Morgan Stanley has filed three motions seeking more than \$11 million in costs from CPH, the established victim of both Morgan Stanley's fraud and its egregious litigation misconduct. CPH respectfully submits that these motions should not be granted.

First, the Court should defer ruling on Morgan Stanley's entitlement to costs until after it rules on CPH's pending Rule 1.540(b) motion — a motion that calls into question Morgan Stanley's right to any judgment in its favor. If this Court grants CPH's motion, there will be a new trial at which, we believe, CPH will prevail. Then CPH, not Morgan Stanley, will be entitled to costs. *See infra* Part I.

Second, in the event the Court chooses not to defer ruling on the entitlement issue, the Court should exercise its discretion to deny Morgan Stanley's requests for costs. The Court has discretion to determine whether Morgan Stanley is entitled to its claimed costs (as well as to determine the proper amount of any such costs). The equities in this case militate strongly against an award of these extraordinary amounts to a party that admittedly has engaged in extensive and gross misconduct. Contrary to Morgan Stanley's assertions, this Court is permitted to take such equitable considerations into account, and to exercise its discretion to strike Morgan Stanley's multi-million-dollar request for costs. *See infra* Part II.

Consistent with this Court's March 31, 2008 Scheduling Order, CPH is addressing only Morgan Stanley's lack of entitlement to costs. CPH does not, of course, waive any argument as to the amount of Morgan Stanley's claimed costs, including challenges to specific items or

categories of costs. Nor is CPH waiving its rights to discovery and an evidentiary hearing in the event that this Court rules that Morgan Stanley is entitled to some costs. *See infra* Part III.

ARGUMENT

I. This Court Should Defer Ruling on Morgan Stanley's Entitlement to Costs.

CPH respectfully suggests that the Court should defer any ruling on Morgan Stanley's entitlement to costs until CPH's Rule 1.540(b) motion has been decided. *See* CPH's Verified Rule 1.540(b) Motion. In the event that CPH ultimately prevails, CPH, rather than Morgan Stanley, will be entitled to its costs, and this Court will have spent a substantial amount of time and effort deciding questions that have become moot.

Trial costs are awarded to the party that ultimately prevails in the case. *See Mulato v. Mulato*, 734 So. 2d 477, 478 (Fla. 4th DCA 1999) (“[W]here the judgment on which a cost judgment is predicated is reversed, the original cost judgment also cannot stand.”); *Fraser-Watson v. Maxim Healthcare Servs.*, 849 So. 2d 1201, 1201 (Fla. 4th DCA 2003); *Higgs v. Klock*, 873 So. 2d 591, 592 (Fla. 3d DCA 2004) (“determination of entitlement to costs must await final judgment”) (citing *Lake Region Paradise Island, Inc. v. Graviss*, 323 So. 2d 610, 612 (Fla. 2d DCA 1975)).

At present, it is not known whether Morgan Stanley will ultimately prevail. If this Court grants CPH's Rule 1.540(b) motion and CPH prevails in a new trial, then Morgan Stanley will not be entitled to its costs. There is thus no reason to award Morgan Stanley those costs now.

The result is no different for appellate costs. Appellate costs are ordinarily awarded to the party that prevails on appeal, regardless of whether that party ultimately prevails in the case. *See, e.g., Stringer v. Katzell*, 695 So. 2d 369, 369-70 (Fla. 4th DCA 1997). But Morgan Stanley's status as “prevailing party” at the appellate level is premised on the egregious fraud

that it perpetrated on the Court and on CPH. If the trial court had known the full extent of that misconduct and had entered a sanction corresponding to the magnitude of Morgan Stanley's litigation fraud, the whole basis for Morgan Stanley's appeal would have been eliminated. That is so because a sanction commensurate with Morgan Stanley's bad acts would have required more than "leveling the playing field" and likely would have included a default on the fact of damage and a determination that Morgan Stanley bore the burden to prove "negative causation" — *i.e.*, that some factors other than the securities fraud caused CPH's Sunbeam stock to decline in value. *See* CPH's Verified Rule 1.540(b) Motion at 40-45 (discussing these options in greater detail). Moreover, the Court might well have entered contempt sanctions, which Morgan Stanley would have had to purge before pursuing an appeal. *See id.* at 24-25 n.3 (citing cases).

Morgan Stanley should not be permitted to obtain appellate costs if this Court ultimately determines that the judgment was procured by fraud. In any event, there is no need to decide these issues now, when subsequent developments in connection with CPH's Rule 1.540(b) motion may render a present disposition moot.

II. Morgan Stanley Is Not Entitled to Recover Costs After Conspiring to Commit a Massive Securities Fraud and Then Engaging in Egregious Litigation Misconduct to Cover up the Conspiracy.

If the Court decides to reach the entitlement issue now, it should deny Morgan Stanley's motions for costs for two compelling reasons — one relating to Morgan Stanley's securities fraud, the other to Morgan Stanley's fraud on the Court.

First, Morgan Stanley obtained a judgment in its favor solely because CPH failed to prove the amount of damages under the methodology ultimately articulated by the Fourth District. The jury's determination that Morgan Stanley conspired to commit a massive securities

fraud in connection with Sunbeam Corporation's purchase of CPH's interest in The Coleman Company, Inc. remains undisturbed.

The circumstances here are far more egregious than those in *USM Corp. v. SPS Technologies, Inc.*, 102 F.R.D. 167 (N.D. Ill. 1984), a federal case in which costs were denied altogether. In that case, the appellate court declined to review the trial court's finding that the defendant had procured its patent by fraud; instead, the appellate court awarded the defendant a victory based on *res judicata*. The trial court explained that a prevailing party may be denied costs if it would be "inequitable under all the circumstances in the case to put the burden of costs upon the losing party," and found that awarding costs to the defendant would be inequitable given its fraud. *Id.* at 172 (quoting *Lichter Found., Inc. v. Welch*, 269 F.2d 142, 146 (6th Cir. 1959)). Here, too, the findings of Morgan Stanley's involvement in a massive fraud were not overturned, and a result similar to that in *USM Corp.* is therefore warranted.

Second, to cover up its role in the Sunbeam fraud, Morgan Stanley engaged in egregious litigation misconduct in this case, including violating multiple Court orders, abusing the discovery process, and repeatedly lying to the Court. *See* 3/23/05 Remedial Order (recounting Morgan Stanley's violations); 3/2/05 Remedial Order (same). That misconduct continued even after the trial court's March 2005 remedial decisions, as CPH's verified Rule 1.540(b) motion extensively details. *See id.* While CPH is aware of no Florida decision specifying the effect of litigation misconduct on a request for costs, federal courts have found that far less serious litigation misconduct has justified denying or reducing costs, or even awarding costs *against* the prevailing party.

For example, in *Remington Products, Inc. v. North American Philips Corp.*, 763 F. Supp. 683 (D. Conn. 1991), the court denied costs to the prevailing party because that party, acting in

bad faith, initially had refused to provide discovery. The court explained that “[t]he presumption in favor of awarding costs to the prevailing party can . . . be overcome by a showing of bad faith or misconduct during the litigation.” *Id.* at 687-88. Similarly, in *McFarland v. Gregory*, 425 F.2d 443 (2d Cir. 1970), the Second Circuit upheld an order denying costs to the prevailing defendant where the trial court concluded that the defense had been conducted “in the tradition of old fashioned total warfare.” *Id.* at 449. In *Sheets v. Yamaha Motors Corp., U.S.A.*, 891 F.2d 533 (5th Cir. 1990), the Fifth Circuit upheld an order taxing costs *against* the prevailing defendants where, among other things, the defendants “unjustifiably refused to produce documents” in violation of an order to compel and made false statements to the trial court. *Id.* at 539-40. And in *Thompson v. Sun Oil Co.*, 523 F.2d 647 (8th Cir. 1975), the Eighth Circuit upheld an order taxing appellate costs *against* the prevailing defendant because the defendant was “evasive throughout the discovery process.” *Id.* at 650 & n.4.

Morgan Stanley claims, however, that under *Florida* law the taxation of costs is automatic, mandatory, and nondiscretionary. *See, e.g.*, Costs-Appeal Motion at 3. That is incorrect. Although the cases cited above did not emanate from Florida, their outcomes comport with the Florida courts’ long-standing recognition that judicial discretion must play a central role in deciding whether certain appellate and trial costs are taxable.

The Fourth District has emphasized that the trial court *must* exercise discretion and consider “a myriad of factors” when determining the costs to be taxed under Florida Rule of Appellate Procedure 9.400(a). *Am. Med. Int’l, Inc. v. Scheller*, 484 So. 2d 593, 594 (Fla. 4th DCA 1985); *see also Fla. Power & Light Co. v. Polackwich*, 705 So. 2d 23, 25 (Fla. 2d DCA 1997) (“trial court’s decision on issues involved in a motion to tax appellate costs is largely discretionary”); *Lone Star Indus., Inc. v. Liberty Mut. Ins. Co.*, 688 So. 2d 950, 952 (Fla. 3d

DCA 1997) (“trial courts are vested with discretion to award certain enumerated appellate costs such as bond premiums to the prevailing party on appeal”). Accordingly, Morgan Stanley errs in asserting that it is “‘automatically entitled’ to an award of its appellate costs.” Costs-Appeal Motion at 3 (citation omitted).¹

The Fourth District likewise has recognized trial courts’ discretion in taxing trial costs. *See, e.g., Nasser v. Nasser*, 975 So. 2d 531, 532 (Fla. 4th DCA 2008) (noting trial court’s discretion to deny costs not “reasonably necessary to defend the case”); *Wyatt v. Milner Document Prods., Inc.*, 932 So. 2d 487, 489 (Fla. 4th DCA 2006) (“A trial court’s ruling on a motion to tax costs is reviewed for abuse of discretion.”); *Deleuw, Cather & Co. v. Grogis*, 655 So. 2d 240, 241 (Fla. 4th DCA 1995) (noting “the well-established principle that the taxation of costs is ‘traditionally within the discretion of the trial court’”) (quoting *del Real v. Dawson*, 320 So. 2d 20, 21 (Fla. 4th DCA 1975)); *Thomas v. Sports Car Club of Am., Inc.*, 386 So. 2d 272, 274 (Fla. 4th DCA 1980) (finding no abuse of discretion in trial court’s ruling on motion to tax costs); *see also In re Amendments to Uniform Guidelines for Taxation of Costs*, 915 So. 2d 612, 614 (Fla. 2005) (“the appropriate assessment of costs in any particular proceeding remains within the discretion of the trial court”). Hence, contrary to Morgan Stanley’s assertions, there is nothing mandatory or automatic about an award of any particular claimed category of trial costs.²

¹ Morgan Stanley bases this contention on *Schoettle v. Department of Administration*, 522 So. 2d 962, 962 (Fla. 1st DCA 1988), and *Di Teodoro v. Lazy Dolphin Development Co.*, 432 So. 2d 625, 626 (Fla. 3d DCA 1983). But Morgan Stanley’s reliance on these two cases is misplaced, because neither one addressed a trial court’s discretion to determine whether certain costs appropriately could be taxed under Rule 9.400(a). Indeed, the case law clearly demonstrates that not all costs that may appear to fall within the ambit of Rule 9.400(a) are recoverable. *See, e.g., Rehman v. ECC Int’l Corp.*, 707 So. 2d 752, 753 (Fla. 5th DCA 1998) (interest that appellant lost in connection with the cash bond that he posted on appeal was not a taxable cost).

² The cases on which Morgan Stanley relies, *see* Trial-Costs Motion at 3-4, are not to the contrary. For instance, in *Oriental Imports, Inc. v. Alilin*, 559 So. 2d 442 (Fla. 5th DCA 1990), the Fifth District ruled that it is the task of the trial court to determine “the amount and type of

The fundamental principle embodied in these Florida cases — that the taxation of costs always implicates a trial court’s discretion — strongly suggests that this Court should reject Morgan Stanley’s alleged entitlement to automatic and immediate taxation of costs. Like the federal cases, the Florida cases are grounded in the same principle of judicial discretion that informs Florida’s case law on taxation of costs.

Morgan Stanley’s repeated violations of Court orders, discovery abuses, and lies to this Court dwarf the misconduct involved in those cases in which the trial courts denied costs to the prevailing parties. This Court, too, should deny Morgan Stanley the costs it seeks. No other result would fairly take account of Morgan Stanley’s role as a co-conspirator in the massive Sunbeam fraud, as well as the fraud it perpetrated on the Court to cover up that role.

III. CPH Reserves Its Rights to Challenge Specific Costs Claimed by Morgan Stanley.

Morgan Stanley’s three motions, as well as the attached exhibits, are largely devoted to summaries of specific claimed costs, which total more than \$11 million. Pursuant to this Court’s March 31, 2008 Scheduling Order, CPH reserves its right to address all these specific costs at an appropriate time. Even a cursory glance at Morgan Stanley’s filings, however, shows that there will be numerous issues relating to the amount of costs, including whether certain categories of costs are taxable under the relevant Florida statutes or rules and whether various items that Morgan Stanley lists were reasonable and necessary to the resolution of this case. In any event,

costs that are appropriate for the action in which they were incurred.” *Id.* at 443. Likewise, in *Weitzer Oak Park Estate, Ltd. v. Petto*, 573 So. 2d 990 (Fla. 3d DCA 1991), the Third District instructed a trial court to “carefully scrutinize the costs incurred [by a prevailing party] before entering an appropriate cost award.” *Id.* at 991. In both *Connell v. City of Plantation*, 901 So. 2d 317 (Fla. 4th DCA 2005), and *Warren Hunnicutt, Jr., Inc. v. Gleason*, 462 So. 2d 878 (Fla. 2d DCA 1985), the appellate courts remanded the cases to the trial courts to determine appropriate cost awards in the exercise of their discretion.

as paragraph 6 of this Court's Scheduling Order suggests, none of these costs could properly be taxed without first conducting discovery and an evidentiary hearing.

CONCLUSION

CPH respectfully suggests that the Court defer ruling on the issue of Morgan Stanley's entitlement to costs until the Court has resolved CPH's pending Rule 1.540(b) motion. In the alternative, Morgan Stanley's motions should be denied outright.

Dated: April 11, 2008

Respectfully submitted,

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

CASE NO: 2003 CA-005045 AJ

v.

MORGAN STANLEY & CO. INC.,

Defendant.

**MORGAN STANLEY & CO. INCORPORATED'S
REPLY TO COLEMAN (PARENT) HOLDINGS INC.'S OPPOSITION ON THE ISSUE
OF ENTITLEMENT TO MORGAN STANLEY'S AMENDED MOTION TO TAX
APPELLATE COSTS FOR MAIN APPEAL, MOTION TO TAX APPELLATE COSTS
RELATING TO COST APPEAL, AND AMENDED MOTION TO TAX TRIAL COSTS**

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley") respectfully submits this reply to Plaintiff, Coleman (Parent) Holdings Inc.'s ("CPH") opposition to Morgan Stanley's motions for trial and appellate costs.

INTRODUCTION

CPH argues it would be inequitable for Morgan Stanley to recover its trial and appellate costs, complaining of pretrial discovery misconduct that was previously sanctioned by Judge Maass. In a rush of accusations, CPH disregards the Florida authorities holding that purported equitable setoffs and adjustments to an award of costs are not available and that Morgan Stanley is clearly entitled to an award of its taxable trial and appellate costs. The Court should reject CPH's request to delay proceedings relating to Morgan Stanley's cost motions, order that Morgan Stanley is entitled to its trial and appellate costs, and require CPH to specifically identify those costs that it is challenging as not taxable or unreasonable under the Florida rules.

PROCEDURAL BACKGROUND

In opposing the standard taxation of prevailing party costs, CPH again reaches back to discovery misconduct before trial. Not only was Morgan Stanley sanctioned monetarily for discovery violations, the imposed default sanctions had a profound impact on Morgan Stanley's defense at trial and gave CPH an immense advantage in prosecuting its case. Even with the sanctions, however, CPH was obligated to present competent evidence establishing the amount of its own damages. CPH failed to do so. *See Morgan Stanley & Co. Inc. v. Coleman (Parent) Holdings Inc.*, 955 So. 2d 1124, 1127 (Fla. 4th DCA 2007).

In addition to the damages issue that Morgan Stanley asserted on appeal, Morgan Stanley also argued that the sanctions entered by the trial court were too severe. The Fourth District determined that it did not need to reach the sanctions issues because Morgan Stanley was entitled to judgment in its favor since CPH failed to prove an essential element of its claim. Now, CPH claims that Morgan Stanley's costs should be denied based on misconduct that was supposedly not known at the time of trial and that has not been addressed by any court. (CPH Opp. at 2). That is simply wrong.

CPH's argument, like its Rule 1.540(b) motion, rests on discovery conduct that served as the basis for drastic sanctions already imposed against Morgan Stanley. Indeed, Judge Maass declared that the June 2005 notice, which CPH offers here for much of its argument, did not appear to contain anything that she had not already found in her orders. (6/20/05 Tr. at 15778:14-15779:4). Nor does the alleged discovery misconduct have anything to do with CPH's failure to prove its own damages. CPH's pending Rule 1.540(b) motion does not change the fact of the Fourth District's mandates in the main appeal or the cost appeal, and the 1.540(b) motion cannot override the duties imposed by the mandates.

In compliance with the main appeal mandate, final judgment in Morgan Stanley's favor has now been entered by this Court. CPH argues that it is not known whether that final judgment will be vacated or reversed via its 1.540(b) motion. But future proceedings cannot alter present obligations. A prevailing party is entitled to recover its costs based upon the judgment that has been entered. CPH's own trial cost judgment, which it obtained at the conclusion of the trial, has now been vacated by the Fourth District. Now Morgan Stanley is the prevailing party in both the trial court and the appellate court. Therefore, it is entitled under Florida law to an award of its appellate and trial costs.

ARGUMENT

I. This Court Should Not Defer Ruling on Morgan Stanley's Entitlement to Costs.

CPH asks the Court to defer any ruling on appellate or trial costs until it rules on CPH's pending 1.540(b) motion. The invitation to defer taxation of costs to the prevailing party should be declined.

Morgan Stanley's claim for appellate costs is primarily made up of over nine million dollars (\$9,000,000.00) in bond premiums and other bond costs that Morgan Stanley incurred because CPH insisted upon a supersedeas bond. There is no reason to delay a determination of Morgan Stanley's entitlement to the clearly reasonable appellate costs. CPH concedes that the Fourth District has held that appellate costs are awarded to the party that prevails in the appellate proceeding, regardless of whether the party ultimately prevails after the completion of all litigation. (CPH Opp. at 3, citing *Stringer v. Katzell*, 695 So. 2d 369, 369-70 (Fla. 4th DCA 1997)). So the appellate cost recovery is undeniable.

CPH fails to note the holdings from each of Florida's other district courts of appeal that have rejected CPH's contentions. For example, in *Centennial Mortgage, Inc. v. SG/SC, Ltd.*, 864

So. 2d 1258, 1260 (Fla. 1st DCA 2004), that Court specifically stated: “[t]he case law construing Rule 9.400 persuades us that an award of costs after a successful appeal may not be conditioned upon the ultimate outcome of the case.” It continued: “[t]he prevailing party in an appeal is entitled to then recover his cost judgment and enjoy an immediate writ of execution.” *Id.* (internal quotes and citation omitted). The Court held: “Rule 9.400 contains no provision for equitable setoff or adjustment after a case is concluded, and the case law construing the rule uniformly defines ‘prevailing party’ as the party who prevailed on the appeal, not in the underlying case.” *Id.* at 1261.¹ CPH fails to provide any contrary Florida authority indicating that an award of appellate costs should await the results of a later filed 1.540(b) motion. Since Morgan Stanley was unquestionably the prevailing party on appeal, it is entitled to immediate award of its taxable appellate costs.

The same is true of trial court costs. Florida Statutes section 57.041 is mandatory in providing that “[t]he party recovering judgment *shall* recover all his or her legal costs and charges” (emphasis added). “This provision *requires* the trial court to award costs to the prevailing party.” *Connell v. City of Plantation*, 901 So. 2d 317, 320 (Fla. 4th DCA 2005). *See also Weitzer Oak Park Estate, Ltd. v. Petto*, 573 So. 2d 990, 991 (Fla. 3d DCA 1991) (“[E]very party who recovers a judgment in a legal proceeding is entitled as a matter of right to recover

¹ *See also Florida Power & Light Co. v. Polackwich*, 705 So. 2d 23, 25 (Fla. 2d DCA 1997) (holding award of costs due prior to retrial); *Di Teodoro v. Lazy Dolphin Development Co.*, 432 So. 2d 625, 625 (Fla. 3d DCA 1983) (holding that prevailing party on appeal was entitled to recover appellate costs judgment and enjoy immediate execution without awaiting disposition of case on remand); *Swan v. Wisdom*, 392 So. 2d 987, 987 (Fla. 5th DCA 1981) (reversing circuit court's refusal to make appellate costs order a judgment subject to execution prior to outcome of new trial); and *Yost v. Congress International Development Corp.*, 383 So. 2d 732, 732 (Fla. 3d DCA 1980) (holding that prevailing party on appeal entitled to immediate award of appellate costs without stay of execution).

lawful court costs, and a trial judge has no discretion to deny costs to the parties recovering judgment.").

CPH does not seriously dispute those authorities (or the other authorities cited in Morgan Stanley's motion on these points); instead, CPH notes that these cases also allow the trial court some discretion to determine the reasonable amount of costs. (CPH Opp. at 7, n.1 & 2). But the only issue now before the Court is entitlement to costs, not the amount of costs.

In opposing Morgan Stanley's entitlement to its prevailing party costs, CPH also relies on cases stating that the party entitled to costs is the one that ultimately prevails in the case and that a cost judgment must be reversed if the judgment on which it is predicated is reversed. Those cases do not aid CPH because here, based upon the Fourth District's mandates, a final judgment has been entered in favor of Morgan Stanley; a judgment that has not been reversed or vacated. CPH has not offered a single case stating that a party with a final judgment in its favor needs to wait for resolution of a Rule 1.540(b) motion before it is entitled to an award of its taxable trial costs.

CPH did not defer recovery of its own trial costs while Morgan Stanley appealed to the Fourth District. Instead, CPH demanded, and obtained, a cost judgment in its favor, forcing Morgan Stanley to incur costs to separately appeal and separately post a supersedeas bond for that cost judgment. When CPH's own costs were at issue, counsel for CPH took the same position that Morgan Stanley takes here: "As the party recovering judgment under the statute, we are entitled to a recovery of costs." (11/22/05 Tr. at 4). Just as CPH was entitled to trial costs then, Morgan Stanley has the same entitlement, now that it is the party recovering judgment under Florida Statute section 57.041.

II. Morgan Stanley is Entitled to Its Appellate and Trial Costs Based Upon the Binding Mandates of the Fourth District Court of Appeal.

Seeking to avoid Morgan Stanley's clear entitlement to its appellate and trial costs, CPH relies almost exclusively on federal cases decided under Federal Rule of Civil Procedure 54(d). Those cases hold, unlike Florida authorities based on a different rule, that the decision of whether a party is entitled to prevailing party costs is discretionary. Those federal decisions are the product of the language of Rule 54(d), which states that "costs shall be allowed as of course to the prevailing party unless the court otherwise directs." *See e.g., USM Corp. v. SPS Technologies*, 102 F.R.D. 167, 172 (D.C. Ill. 1984) (quoting that portion of the rule).

Florida's trial cost statute, section 57.041, has no qualifier with regard to entitlement to trial costs. Although Appellate Rule 9.400(a) has similar language, Florida courts have held that does not give the trial court discretion to negate a prevailing party's entitlement to an award of its appellate costs. The Fourth District has specifically held that "the court" referenced in Rule 9.400(a) is the appellate court -- in this situation the Fourth District itself -- not the trial court. *American Medical International, Inc. v. Scheller*, 484 So. 2d 593, 594 (Fla. 4th DCA 1985).

The Fourth District entered no order in this case limiting the amount of appellate costs that Morgan Stanley may recover. Nor did CPH ever ask the Fourth District to do so. The time for CPH to challenge Morgan Stanley's entitlement to appellate costs was prior to entry of the Fourth District's mandate. *See Polackwich*, 705 So. 2d at 25 n. 1. (noting failure of party, who received an unfavorable outcome on appeal, to file motion for rehearing with district court requesting deferral of taxation of costs.). Having failed to do so, CPH has waived any challenge to Morgan Stanley's entitlement to such costs.

Contrary to CPH's attempt to recast Morgan Stanley's arguments, Morgan Stanley is not suggesting that this Court has no discretion in the matter of costs. Obviously, this Court may

utilize its discretion to make findings as to a reasonable amount of costs, and Morgan Stanley does not quarrel with CPH's citation to generic Florida cases describing a trial court's discretion to determine the amount of fees or costs.² But both section 57.041 and Rule 9.400(a) clearly mandate that Morgan Stanley is entitled to an award of its reasonable trial and appellate costs. *See Oriental Imports, Inc. v. Alilin*, 559 So. 2d 442, 442 (Fla. 5th DCA 1990) (“[t]he determination of the amount and type of costs that are appropriate . . . is the task of the trial court rather than the initial determination of whether the successful litigant is entitled to costs.”) (emphasis in original); *American Medical*, 484 So. 2d at 595 (holding that trial court may not disregard categories of costs set forth in Rule 9.400, but still retains discretion on the reasonable amount of such costs based upon competent evidence in the record).

III. CPH Should Identify Those Costs It Is Challenging And Agree to Those Costs It Is Not Challenging.

CPH should be required to identify for Morgan Stanley and the Court what specific costs, if any, it is challenging as not taxable under Florida law. There is no reason to delay. CPH cannot seriously argue that some costs, such as the bond premiums and bond costs (for a bond specifically required by CPH), were not reasonably incurred, especially when that category of cost is specifically allowed by Rule 9.400(a). If the parties can resolve those disputed costs now, they should. Otherwise, after the presentation of evidence and an evidentiary hearing, this Court should decide the amount of reasonable taxable costs and award them.

² Since the Fourth District issued its mandate requiring that this Court enter a final judgment in Morgan Stanley's favor, this case does not involve the need for the trial court to determine what party was the “prevailing party” after a mixed result at trial or on appeal. *Compare Polackwich*, 705 So. 2d at 25 (recognizing trial court's discretion to determine prevailing party where each party filed a notice of appeal and prevailed on significant issues in that appeal). Morgan Stanley unequivocally prevailed on appeal and has now prevailed in this Court based on the Fourth District's mandate.

WHEREFORE, Morgan Stanley requests that the Court enter an order finding that Morgan Stanley is entitled to an award of its trial court and appellate costs, with the amount of those costs to be determined at a subsequent hearing.

Respectfully submitted,

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INC.,

Defendant.

NOTICE OF ADDRESS CHANGE

TO: **SEE ATTACHED SERVICE LIST**

YOU ARE NOTIFIED that the undersigned attorney and law firm for MORGAN STANLEY & CO. INCORPORATED has changed its address to:

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The firm's post office box, telephone numbers, facsimile number, web site, and individual e-mail addresses will remain unchanged.

CERTIFICATE OF SERVICE

I HERBY CERTIFY that a true and correct copy hereof has been served on the person(s) named above by U.S. Mail delivery on this 21st day of May, 2008.

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

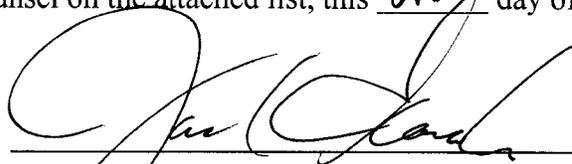
MORGAN STANLEY & CO., INC.,

Defendant,

MOTION FOR LEAVE TO SUBMIT POST-HEARING BRIEF

Plaintiff, COLEMAN (PARENT) HOLDINGS, INC., moves this Honorable Court for leave to submit the attached post-hearing brief and in support would show that issues arose during the course of the hearing on Plaintiff's motion pursuant to Rule 1.540(b) which Plaintiff is concerned were not adequately addressed in either the previously submitted memoranda or the oral presentations of counsel. Given the significance of the issues involved, a thorough assessment and analysis is essential to serve the ends of justice.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail and Federal Express to all counsel on the attached list, this 28th day of May, 2008.



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IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AJ

vs.

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

COLEMAN (PARENT) HOLDINGS INC.'S VERIFIED POST-HEARING BRIEF
IN SUPPORT OF ITS
VERIFIED MOTION TO VACATE THE JUDGMENT

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") respectfully submits this verified post-hearing brief to clarify and supplement its answers to certain questions that the Court raised at the May 22, 2008 hearing on CPH's verified Rule 1.540(b) motion to set aside the judgment.

QUESTIONS ABOUT FRAUD ON THE COURT

1. **Intrinsic and Extrinsic Fraud:** Under *Parker v. Parker*, 950 So. 2d 388 (Fla. 2007), and *DeClaire v. Yohanan*, 453 So. 2d 375 (Fla. 1984), is CPH alleging an "intrinsic" fraud or an "extrinsic" fraud? What is the significance of that distinction? See Transcript of May 22, 2008 Hearing at 28, 45-46, 56-57, 92-93 [hereinafter "Tr."], attached as Ex. A.

CPH has alleged both an "intrinsic fraud," which "pertains to the issues in the case that have been tried or could have been tried," *DeClaire*, 453 So. 2d at 377, and an "extrinsic fraud," which is a "fraud on the court" that "'interfere[d] with the judicial system's ability impartially to adjudicate'" this case and to properly calibrate the sanctions for Morgan Stanley's litigation

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Judge Rosenberg

16div-031678

wrongdoing, *Andrews v. Palmas De Majorca Condo.*, 898 So. 2d 1066, 1069 (Fla. 5th DCA 2005).

Morgan Stanley has conceded for purposes of this motion that it committed fraud on the Court. Tr. 73, 78, 92. Thus, CPH need not further allege (or prove) “prejudice,” that is, that the fraud affected the judgment. CPH’s motion and reply brief cited five federal cases holding that no showing of prejudice is required in order to set aside a judgment for fraud on the court. Morgan Stanley cited no case to the contrary.¹ And the federal cases CPH has cited are authoritative here because the Florida Supreme Court looks to federal decisions to “harmonize our rules with the federal rules.” *Gleneagle Ship Mgmt. Co. v. Leondakos*, 602 So. 2d 1282, 1283-84 (Fla. 1992) (citations omitted); *see, e.g., DeClaire*, 453 So. 2d at 377 (noting that Florida Rule 1.540(b) is substantially identical to Federal Rule 60(b), and therefore relying on federal cases interpreting the latter rule).

2. ***Flemenbaum***: Under *Flemenbaum v. Flemenbaum*, 636 So. 2d 579 (Fla. 4th DCA 1994), isn’t CPH required to “explain why the fraud, if it exists, would entitle [CPH] to have the judgment set aside”? *See* Tr. 26-27, 56-57, 92-93.

Flemenbaum is not a case about fraud on the court. Although captioned as a “*pro se* motion for new trial based upon fraud upon the court Rule 1.540,” the husband’s motion merely alleged an intrinsic fraud — his wife had lied about her “cohabitation with another.” 636 So. 2d at 580. CPH has established, and Morgan Stanley does not contest, that the type of fraud at issue

¹ At oral argument (Tr. 73-74), Morgan Stanley cited two cases not mentioned in its brief; but neither case refutes CPH’s argument. *Ashland Oil v. Pickard*, 289 So. 2d 781 (Fla. 3d DCA 1974), did not involve an extrinsic fraud on the court. And *Robinson v. Weiland*, 936 So. 2d 777, 782 (Fla. 5th DCA 2006), reversed the trial court’s denial of an evidentiary hearing in a case where the movant had alleged that the fraud affected the judgment.

here is fraud on the court. Accordingly, CPH has established its colorable entitlement to relief from the judgment. *Flemenbaum* does not say otherwise.

The day before this Court's May 22 hearing, the Third District cited *Flemenbaum* in a case that supports CPH's request for discovery and an evidentiary hearing. In *Hinson v. Hinson*, ___ So. 2d ___, No. 3D07-2586 (Fla. 3d DCA May 21, 2008), the Third District reversed the trial court's decision not to hold an evidentiary hearing on a motion for relief from judgment alleging fraud, after stating that "fraud allegations are ordinarily not suitable for summary disposition because determining fraud generally requires a full explanation of the facts and circumstances of the alleged wrong." Slip Op. at 3.

QUESTIONS ABOUT ACTUAL PREJUDICE

- Total Default on Liability: If the trial court had granted CPH's Rule 1.380(b)(2)(C) motion for a total default on liability but had not shifted the burden of proof on damages, and CPH's expert had then used the same incorrect measure of damages, wouldn't the Fourth District have reached the exact same result — directing entry of judgment for Morgan Stanley? See Tr. 28, 53-56.**

No. Under that scenario, the Fourth District would have remanded for a new trial where CPH could have presented expert testimony calculating the amount of compensatory damages using the correct method. And the Fourth District also would have allowed CPH to pursue punitive damages.

Retrial on Compensatory Damages: By definition, a total default on liability would have included a default as to every essential element of liability, including the "fact of damage"

(which is distinct from the “amount of compensatory damages”²), and therefore would have required a retrial applying the correct measure of damages. A total default on liability “admits . . . the plaintiff’s right to recover on the cause of action.” *Talucci v. Matthews*, 960 So. 2d 9, 10 (Fla. 4th DCA 2007) (citing *Watson v. Seat*, 8 Fla. 446 (1859)). Therefore, the Florida Supreme Court has required a new trial on damages where the finding of liability is affirmed but the trial court’s judgment is reversed because the plaintiff used an incorrect measure of damages. *See, e.g., Allied Van Lines, Inc. v. Bratton*, 351 So. 2d 344, 348 (Fla. 1977); *see also Ballard & Ballard v. Pelala*, 73 So. 2d 840, 842 (Fla. 1954). The district courts likewise have remanded for a new trial where the trial court had properly found liability but had erred as to the measure of damages. *See, e.g., City of Key West v. Duck Tours Seafari, Inc.*, 972 So. 2d 901, 903 (Fla. 3d DCA 2007); *Levitt-Ansca Towne Park Partnership v. Smith & Co.*, 873 So. 2d 392, 397 (Fla. 4th DCA 2004); *Nystrom v. Cabada*, 652 So. 2d 1266, 1268 (Fla. 2d DCA 1995).

Morgan Stanley has now flatly contradicted itself on this issue. At the May 22 hearing before this Court, Morgan Stanley said that “even if the ultimate sanction [of a total default on liability] was given,” there could be no retrial because CPH “still had to go on and prove . . . the fact of damage.” Tr. 86. In making that argument to this Court, Morgan Stanley took the position that a total default on liability would not have included the fact of damage. Previously, however, Morgan Stanley had argued to the Supreme Court that the fact of damage was an essential element of liability. Morgan Stanley argued that CPH was not entitled to a new trial

² Black-letter tort law distinguishes between the fact of damage (singular) and the specific quantum, or amount, of damages (plural). *See American Stevedores, Inc. v. Porello*, 330 U.S. 446, 450 n.6 (1947). The former term speaks to liability, the latter to remedy. The fact of damage — the fact that plaintiff suffered some (perhaps unquantified) injury or loss — is an essential element of a fraud claim. *See Johnson v. Davis*, 480 So. 2d 625, 627 (Fla. 1985); *Lance v. Wade*, 457 So. 2d 1008, 1011 (Fla. 1984). But the quantum of damages — that is, the specific sum required to compensate plaintiff for its injury — is not an element of a fraud claim.

because it had failed to prove “damage,” which it called “an essential element” of CPH’s fraud claim, and thus Morgan Stanley had “no liability for fraud.” CPH App. 32 at 1-2 (citations omitted); *see id.* at 7. And Morgan Stanley similarly argued to the Fourth District that CPH should be denied a retrial precisely because it had failed “to prove actual damages,” an “essential element” of CPH’s fraud claim. CPH App. 31 at 6, 11. Morgan Stanley cannot have it both ways.

Punitive Damages: The trial court’s entry of a total default on liability also would have required the Fourth District to affirm the punitive-damages award even if it had reversed the compensatory award. In *Ault v. Lohr*, 538 So. 2d 454 (Fla. 1989), the Supreme Court held that the necessary prerequisite for punitive damages is not an award of compensatory or nominal damages, but rather a “finding of liability.” *Id.* at 454-56. The Fourth District distinguished *Ault* on the ground that CPH’s failure either to obtain a total default on liability or properly to prove the amount of compensatory damages was tantamount to a failure to prove the “fact of damage” and thus a failure to establish liability. If the trial court had entered a default as to all elements of liability, including the “fact of damage,” *Ault* would control, and CPH could recover punitive damages. *See, e.g., Russin v. Richard F. Greminger, P.A.*, 563 So. 2d 1089, 1089 (Fla. 4th DCA 1990) (finding liability and affirming punitive damages without compensatory damages).

4. **Shifting the Burden of Proof on Damages: What is the legal authority for a trial court to alter the burden of proof and require Morgan Stanley to prove negative causation?** *See* Tr. 67-70.

Under Florida Rule of Civil Procedure 1.380(b)(2), sanctions for willful litigation misconduct can extend beyond the liability phase of a proceeding and into the remedial phase. *See, e.g., Delta Info. Servs., Inc. v. Joseph R. Jannach M.D. & Assocs.*, 569 So. 2d 1353, 1354 n.4, 1355 (Fla. 3d DCA 1990) (barring certain damages evidence, as a sanction).

Requiring a defendant to prove “negative causation” — that is, to show that something other than fraud caused a decline in the value of the plaintiff’s stock — is not a novel idea, but one that is grounded in both Florida and federal securities law. *See E.F. Hutton & Co. v. Rousseff*, 537 So. 2d 978, 978-81 (Fla. 1989) (plaintiff not required to prove loss causation under FLA. STAT. §§ 517.211(4), 517.301); *see also* 15 U.S.C. § 77k(e); *Akerman v. Oryx Communications, Inc.*, 810 F.2d 336, 340-43 (2d Cir. 1987); *In re WorldCom, Inc. Sec. Litig.*, No. 02 Civ. 3288, 2005 WL 375314, at *5-*6 (S.D.N.Y. Feb. 17, 2005). It would have been an appropriate additional sanction in this case.

CONCLUSION

CPH respectfully asks this Court to rule that CPH has raised a colorable entitlement to relief from the judgment.

Dated: May 28, 2008

Respectfully submitted,

By: 

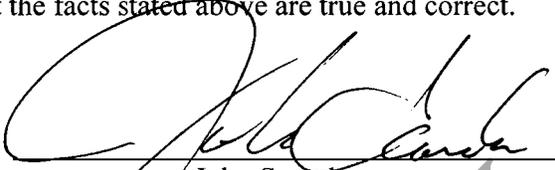
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VERIFICATION

I hereby swear under penalty of perjury that the facts stated above are true and correct.

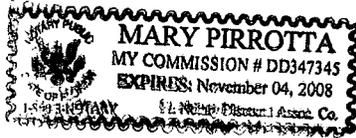


John Scarola

Sworn before me this 28th day of
MAY, 2008.



Notary Public



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IN THE CIRCUIT COURT FOR THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA
CASE NO. 03 CA 005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

PROCEEDINGS BEFORE THE HONORABLE ROBIN L. ROSENBERG

Thursday, May 22, 2008
Palm Beach County Courthouse
Courtroom 10-A
205 North Dixie Highway
West Palm Beach, Florida 33401
1:00 p.m. to 4:00 p.m.

NOT A CERTIFIED COPY

EXHIBIT A

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By: BRUCE S. ROGOW, ESQ.

Counsel for Defendant

Also present: Barry Schwartz
Steven Fasman

1 same law firm the law firm of Jenner and Block
2 is Mr. Sam Hirsch. And our corporate
3 representatives today are the same as those
4 introduced to you earlier. We have Mr. Steven
5 Fasman with us and also Mr. Schwartz.

6 THE COURT: Okay. Thank you.

7 MR. ROGOW: Bruce Rogow and Joe Ianno for
8 Morgan Stanley.

9 THE COURT: Okay. How would counsel suggest
10 that the time be allocated in this three-hour
11 allotment of time for this hearing as between
12 the three matters that I've outlined, which were
13 set forth in the Court's April 9th order?

14 And I'll hear from both of you.

15 MR. SCAROLA: Thank you. Your Honor, I
16 think clearly the matter of most substance and
17 requiring the greatest attention on the part of
18 the Court is the matter with regard to the Rule
19 1.540(b) motion.

20 And my suggestion to Your Honor is that we
21 allocate a full two hours of the three-hour time
22 to that issue.

23 I really think that the matters with regard
24 to costs can be dealt with rather summarily.

25 We'll begin with a concession with regard to one

1 PROCEEDINGS

2 THE COURT: Good afternoon. Be seated.

3 We're here today pursuant to the Court's
4 order specially setting hearing dated April 9th,
5 2008 in the matter of Coleman Holdings, Inc.
6 versus Morgan Stanley and Company, Inc., case
7 number 2003 CA 005045. Three hours have been
8 reserved for the following matters. Defendant's
9 entitlement to trial and appellate fees and
10 costs. Whether Plaintiff's motion for new trial
11 is legally sufficient. And, if so, whether
12 plaintiff shall be permitted to conduct
13 discovery. And the scope of any discovery
14 regarding Plaintiff's motion for new trial. And
15 a status conference on Plaintiff's petition for
16 show cause order regarding Morgan Stanley's
17 criminal contempt of court.

18 So if I could please ask all counsel who are
19 here to state their appearance for the record.

20 MR. SCAROLA: Good afternoon, again, Your
21 Honor. Jack Scarola on behalf of the Plaintiff,
22 Coleman (Parent) Holding Company. With me at
23 counsel table are Mr. Gerald Solovy and Mr. Ron
24 Marmer. Also present in the courtroom from the

1 aspect of the cost motion. And I also think
2 that because we're only dealing with scheduling
3 issues with regard to the criminal contempt that
4 that can probably be handled rather quickly as
5 well.

6 My suggestion in terms of the order in which
7 these matters be taken is that because there are
8 many lawyers present in the courtroom who are
9 only here for purposes of the status conference
10 with regard to the criminal contempt issues that
11 it might make sense, for their convenience, to
12 deal with that issue first.

13 I would then suggest that we move on to the
14 Rule 1.540 motion and leave the cost issues to
15 last. And the reason why I think that's
16 appropriate is because I believe that a
17 substantial portion of the argument that relates
18 to the Rule 1.540 motion is relevant to the cost
19 motion, whereas the converse is really not true.

20 So I think that it makes most sense to deal
21 with them in that order and with that time
22 allotment.

23 THE COURT: Thank you.

24 Mr. Rogow.

25 MR. ROGOW: And I think we should follow the

1 Court's scheduling order. And I know I can
2 speak on behalf of the lawyers for the
3 individuals, because we have met, and they have
4 no objection to being here during the course of
5 the other proceedings.

6 But I think the first thing is entitlement
7 to costs. That's a logical step to take first.
8 Then move to the 1.540. I do agree that
9 probably will take most of the time. And I
10 think we can get through the cost issue very
11 quickly, because I think it is pretty simple.

12 THE COURT: Okay. Well, if you're
13 representing that on behalf of those who are
14 here only for the third issue, which is the
15 status conference only as to the motion for the
16 criminal contempt, that they are willing --
17 ready, willing and able to stay, then I will
18 trust that representation and, therefore, will
19 not move that to the front of the hearing.

20 I will then, with all due respect to both
21 points of view, proceed in the order then that
22 was set forth in the Court's order and hear the
23 argument first by the Defendant's counsel as to
24 entitlement to the trial and appellate fees.
25 There were three motions. There was Defendant's

1 amended motion to tax trial costs as to the
2 issue of entitlement. There was Defendant's
3 amended motion to tax appellate costs for the
4 main appeal as to the issue of entitlement. And
5 Defendant's motion to tax appellate costs for
6 cost appeal as to the issue of entitlement.

7 Do you want to argue all three at once and
8 then allow for a response and then rebuttal?

9 MR. ROGOW: I do, Your Honor. And may I ask
10 since there is a concession that I've just
11 heard, it might be helpful if I knew what the
12 concession was and that might save some time.

13 MR. SCAROLA: I agree, Your Honor. I'll be
14 happy to address that first if I could.

15 Just to inform the Court, by agreement of
16 the parties and pursuant to Your Honor's
17 scheduling order, issues relating to costs have
18 been bifurcated, both with regard to trial costs
19 and appellate costs, as you may remember.

20 We are dealing only with entitlement today.
21 And we will defer until after discovery is taken
22 with regard to any recoverable costs a final
23 determination as to the amount of costs to be
24 recovered.

25 The amount of taxable costs recoverable by

1 Morgan Stanley as prevailing party at both
2 levels is reserved for a later determination.
3 In dealing with the issue with regard to
4 entitlement it's our position that there is a
5 different standard that applies to appellate
6 costs than to trial costs. Our concession
7 relates to appellate costs.

8 And based upon the extensive research
9 reflected in the memoranda that have been
10 exchanged between the parties and provided to
11 Your Honor, we are reluctantly obliged to
12 concede that Morgan Stanley is entitled to
13 recover some amount of appellate costs. And so
14 with regard to that issue, we concede Morgan
15 Stanley's entitlement.

16 I don't want to mislead either opposing
17 counsel or the Court with regard to the scope of
18 that concession. We will intend to argue -- we
19 do intend to argue at the time of the later
20 proceedings that the only entitlement they have
21 under the unusual circumstances of this case,
22 and considering both Florida and federal case
23 law, the only entitlement that they have is to a
24 nominal recovery.

25 That's not an issue for today, but we do

1 concede that issue that is before the Court.
2 Morgan Stanley is entitled to recover appellate
3 costs.

4 THE COURT: As to both the -- let's see
5 here, the appellate costs for the main appeal --
6 both of -- there were two motions.

7 MR. SCAROLA: There are two motions, Your
8 Honor. One relates to taxable appellate costs.
9 The other relates to taxable trial costs. The
10 concession is with regard to appellate costs
11 only.

12 It is our position that the Court has
13 discretion to deny costs in their entirety and,
14 indeed, even to tax costs against the prevailing
15 party with regard to trial costs. But I'll
16 reserve my argument in that regard until after
17 we have heard from defense counsel.

18 THE COURT: Okay. Thank you.

19 So then you'll be arguing the amended motion
20 to tax trial costs for the main appeal?

21 MR. IANNO: No.

22 MR. ROGOW: No. As I understand the
23 concession, Mr. Scarola has conceded that we are
24 entitled to appeal costs for the main appeal and
25 for the cost appeal. What he is reserving is

1 the issue of what those costs should be.

2 MR. SCAROLA: That's correct, Your Honor.

3 So the contested issue now is the
4 Defendant's entitlement to the recovery of
5 taxable costs incurred in the trial court.

6 THE COURT: Right:

7 MR. SCAROLA: Appellate court issues are off
8 the table. Trial court issues are to be
9 discussed.

10 THE COURT: Right. That's what I just said.
11 As to the trial court costs, that's what you're
12 arguing?

13 MR. ROGOW: That's the only issue.

14 THE COURT: Exactly. Yes.

15 MR. ROGOW: And we think that issue is very
16 clear, too, under 57.041, Your Honor, that the
17 statute says, "The party recovering judgment
18 shall recover all his or her legal costs and
19 charges, which shall be included in the
20 judgment."

21 And as a result of this Court's judgment
22 entered in January, based upon the mandate of
23 the Fourth DCA, we now have a judgment in our
24 favor. And we are entitled to the trial costs.
25 So the only issue that we're talking about is

1 THE COURT: Thank you.

2 Response.

3 MR. SCAROLA: Thank you, Your Honor.

4 Your Honor, it is obvious that the language
5 of 57.041, subsection 1, appears to be mandatory
6 because of the use of the word "shall."

7 "The party recovering judgment shall recover
8 all of his or her legal costs and charges which
9 shall be included in the judgment." However,
10 what opposing counsel has failed to acknowledge
11 is that in amending the uniform guidelines for
12 taxation of costs, the Florida Supreme Court
13 expressly ruled that, and I am quoting from the
14 Court's opinion, "The appropriate assessment of
15 costs in any particular proceeding remains
16 within the discretion of the trial court."

17 The Fourth DCA has addressed this issue and
18 stated that they follow the, "Well established
19 principle that the taxation of costs is
20 traditionally within the discretion of the trial
21 court."

22 That's the Deleuw Kather and Company case,
23 D-E-L-E-U-W, Kather and Company, a Fourth DCA
24 decision in 1995.

25 There's another relevant Fourth DCA

1 entitlement, as I understand it from
2 Mr. Scarola's concession.

3 So our argument is a simple statutory
4 argument. The case law which we've set forth in
5 our memorandum, the Oriental Imports case in
6 1990 talks very clearly about this. "57.041
7 mandates that every party who recovers a
8 judgment in a legal proceeding is entitled as a
9 matter of right to recover lawful court costs
10 and a trial judge has no discretion under the
11 statute to deny court costs to the party
12 recovering the judgment."

13 The judgment is your judgment in January
14 2008. We are the prevailing party. We are
15 entitled under 57.041 to have costs.

16 THE COURT: Okay, now, when you say costs,
17 are you also talking about attorneys' fees?

18 MR. ROGOW: No, just costs.

19 THE COURT: Just costs.

20 MR. ROGOW: Regular costs set forth in the
21 rules regarding what costs are recoverable. But
22 that is a question for later on when we have the
23 discussion with Mr. Scarola, if the Court finds
24 that we are, as I believe it should, entitled to
25 our trial costs.

1 decision, it's the Schumacher case. And I'm not
2 providing Your Honor with complete citations
3 because they're all in the materials that have
4 been provided to the Court already.

5 Schumacher was a 1982 Fourth DCA opinion.
6 The Court there said, "Regardless of the
7 apparently mandatory language of the statute,
8 however, the requirement that costs be related
9 to a useful and meaningful purpose is not
10 altered."

11 In Wilkins, an even earlier Fourth DCA case,
12 the Fourth District said, "Although the language
13 of the present statute appears mandatory on the
14 trial judge, rather than discretionary, as its
15 predecessor, nevertheless the significance of
16 cost being related to a useful and meaningful
17 purpose is not altered."

18 The cases cited by Morgan Stanley, Your
19 Honor, simply are not on point. In their brief
20 they rely upon the Connell decision, a Fourth
21 DCA decision, but Connell was dealing with an
22 issue as to whether 57.041 dealt with
23 arbitration proceedings. This is clearly not an
24 arbitration.

25 The Drag Stream case relied upon by the

1 defense was a case in which the Court held that
2 the Plaintiff's claim that the Defendant was not
3 entitled to costs was denied because it was
4 untimely. Other language in that opinion that
5 is quoted by the defense is outside the holding
6 and is strictly dicta.

7 The Oriental Imports case is one that also
8 recognizes that "The determination of the amount
9 and type of costs that are appropriate for the
10 action in which they were incurred is the task
11 of the trial court." And that, again, is a
12 direct quote.

13 It's our position that the Court clearly
14 does have discretion with regard to an award of
15 costs. And it's for that reason that we
16 suggested to Your Honor that the argument with
17 regard to this cost issue be deferred until
18 after Your Honor has not only heard argument
19 with regard to the Rule 1.540 motion, but
20 considered all of the facts ultimately developed
21 in discovery in relation to that motion.

22 There are a number of federal court
23 decisions that we believe are persuasive with
24 regard to these issues because of the similarity
25 between the federal rules and statutes with

1 misconduct, to further reward that party beyond
2 the reward that it has already received by
3 virtue of a judgment in its favor as a
4 consequence of that fraud, by allowing it the
5 recovery of millions of dollars from the victim
6 of those frauds would be entirely unjust.

7 Our suggestion to Your Honor is that you
8 take this matter under advisement pending the
9 arguments on the Rule 1.540(b) motion, pending
10 Your Honor's complete review of the facts
11 developed with respect to that motion and make
12 the determination after that has been done.

13 Obviously, if this Court were to decide that
14 it was appropriate to vacate the underlying
15 judgment, then Morgan Stanley is no longer the
16 prevailing party. And the award of prevailing
17 party taxable costs would need to await the
18 outcome of the subsequent proceedings of the
19 later trial.

20 It is not disputed in the submissions to the
21 Court that even if Morgan Stanley were to be
22 awarded trial costs at this point in time and
23 the judgment in Morgan Stanley's favor were to
24 be vacated and it does not ultimately prevail in
25 the underlying action, Morgan Stanley would be

1 regard to the recovery of costs and the Florida
2 rules upon which -- which are modeled on those
3 federal rules. And there are a number of
4 federal cases where litigation misconduct has
5 led appellate courts not only -- excuse me, has
6 led trial courts and confirmed by appellate
7 courts not only to reduce the recovery of
8 taxable costs, but to deny the recovery of
9 taxable costs and in some circumstances even to
10 tax costs against the prevailing party.

11 I'm not going to take the time to go through
12 each of those. They are referenced very clearly
13 in the submission that we have provided to Your
14 Honor.

15 And it is our suggestion that because of the
16 extraordinary nature of the misconduct in which
17 Morgan Stanley engaged and the fact that Morgan
18 Stanley procured its favorable judgment through
19 fraud on the court that it would compound the
20 injustice that has occurred thus far to award
21 the party that has been found guilty of an
22 egregious underlying fraud, the party that has
23 not contested the fact and, indeed, has
24 acknowledged the fact that it was responsible
25 for extraordinarily egregious litigation

1 obliged to pay back all of the costs that it had
2 recovered and be responsible for compensating
3 the Plaintiff for all of its taxable costs from
4 the beginning of the litigation to the final
5 conclusion of the litigation.

6 In light of those facts, it really makes no
7 sense to proceed with a determination as to the
8 amount of costs or entitlement to costs until
9 after Your Honor has had an opportunity to
10 consider and rule on the 1.540(b) motion.

11 That's the relief that we request today. We
12 request that Your Honor defer ruling. And we
13 suggest that a deferral at least until you have
14 had an opportunity to consider the 1.540
15 submission so that Your Honor may appropriately
16 exercise your discretion by considering the
17 level of misconduct in which Morgan Stanley has
18 engaged, which the case law, again, points out
19 to be a relevant factor in making a
20 determination as to how equitably to balance the
21 burden of costs incurred at the trial court
22 level. We suggest that that's the way Your
23 Honor ought to proceed.

24 Thank you very much.

25 THE COURT: Thank you.

1 Reply.
 2 MR. ROGOW: Your Honor, when Morgan Stanley
 3 lost its trial judgment, costs were assessed
 4 against it. And we had to bond those costs.
 5 And it went up on appeal. They have lost. A
 6 judgment has now been entered against them. And
 7 under the statute "shall" means "shall."
 8 There's no other way to read it. And so Morgan
 9 Stanley is entitled to costs right now as it
 10 result of the statutory language of "shall."
 11 The Federal Rule is quite different, 54(d)
 12 allows some discretion in the trial court,
 13 that's not this case at all.
 14 We're not talking about the amount. The
 15 amount and type is different from entitlement.
 16 And Mr. Scarola has conflated these concepts a
 17 bit in his discussion. And when he offers the
 18 Deleuw case, which is number 5 in his booklet of
 19 cases to make it a little easier for the Court
 20 to just flip to it, the Deleuw case talks about
 21 "Appellant does not argue that Plaintiff did not
 22 incur these costs, but rather there should be a
 23 hard and fast rule that costs are assessed from
 24 the same percentage as fault because that would
 25 be consistent with 76881."

1 the Court has discretion in determining which of
 2 the costs will be incorporated in the final cost
 3 judgment, but it does not take from the Court
 4 the obligation to decide entitlement to costs
 5 once a judgment has been entered.
 6 THE COURT: Okay. Just a couple of
 7 questions procedurally.
 8 First of all, with respect to the two
 9 motions that the Plaintiff has represented in
 10 the nature of the concession, could you prepare
 11 a proposed order or orders on that?
 12 MR. SCAROLA: We'd be happy to do that, Your
 13 Honor, certainly.
 14 THE COURT: With respect to a hearing on
 15 amount, we'll talk first about the two that have
 16 been conceded as to entitlement.
 17 Does Plaintiff wish to file a supplemental,
 18 or did you intend to file a supplemental
 19 memorandum that would specifically address the
 20 costs that are being sought? I think they were
 21 outlined in some detail in the motion, but the
 22 memo by the Plaintiff didn't go to the
 23 particular costs. So would that be something
 24 you would be anticipating doing prior to a
 25 hearing?

1 Deleuw says nothing about the Court having
 2 discretion to deny costs and deny entitlement to
 3 costs. We, obviously, agree that the Court will
 4 have the final say about the costs that are
 5 sought and whether or not they're appropriately
 6 sought, but that's not the issue that's before
 7 the Court.
 8 And this notion of waiting until you decide
 9 the 1,540 is kind of an interesting concept,
 10 because what it does is it completely ignores
 11 the fact that there's a judgment outstanding now
 12 in favor of Morgan Stanley and the plain,
 13 statutory language of "shall be entitled to
 14 costs," and that's all we're talking about.
 15 We're not arguing amount. We're not talking
 16 which costs are recoverable. We're not talking
 17 which costs are reasonably related to the
 18 litigation. All we're talking about is
 19 entitlement.
 20 And the suggestion that the Court delay the
 21 entitlement ruling has no precedent at all in
 22 Florida. In fact, there's no case that has been
 23 cited that suggests anything other than the fact
 24 that there shall be an entitlement to costs.
 25 And the Supreme Court rule talks about of course

1 MR. SCAROLA: Yes, Your Honor. But what was
 2 contemplated and still is contemplated is that
 3 it will be necessary to take some discovery
 4 before we can submit a legal memorandum to Your
 5 Honor. There are issues that need to be
 6 resolved by way of discovery before we're in a
 7 position to present that information to the
 8 Court.
 9 THE COURT: Do both sides agree? Does
 10 defense agree as well that discovery is
 11 contemplated in anticipation of the hearing on
 12 the amount of fees?
 13 MR. ROGOW: I can't agree, because I have no
 14 idea what he's talking about with regard to the
 15 discovery. So I'm certainly open to discussing
 16 this with Mr. Scarola --
 17 THE COURT: Sorry to interrupt. Such
 18 discussions have not taken place yet then?
 19 MR. SCAROLA: They have not, Your Honor.
 20 THE COURT: Would it be something that
 21 counsel could talk about and see if you can come
 22 to terms on a proposed briefing, discovery
 23 schedule that would then reveal to the Court at
 24 what point you would be prepared to come to
 25 court for a hearing and, of course, how much

1 time would be needed? And if there is any
2 intervention that you need from the Court, you
3 can presumably come before the Court on a short
4 hearing and try to work that out.

5 Now, I would say that it would be useful, as
6 long as you're commencing those discussions, at
7 least to address the issue as well, recognizing
8 of course that the Court has not ruled on the
9 entitlement issue as relates to the trial costs,
10 but nevertheless, as long as you're engaging in
11 the discussion relating to the appellate costs,
12 I would ask that you do that as well and
13 contemplate that in your proposed schedule. It
14 can be extracted if it's not something that the
15 Court is ordering, but it will be there if the
16 Court does grant the motion as to entitlement of
17 the trial cost.

18 MR. SCAROLA: We'd be happy to do that, Your
19 Honor.

20 THE COURT: Okay, I will leave it in your
21 hands. I'll wait to get something back, then
22 we'll know where you proceed as to the next
23 phase of this issue.

24 Okay, so is that everything that -- and you
25 can contemplate as well whether defense wants to

1 itself is instructive, because it focuses
2 attention on the purpose of this rule. 1.540(b)
3 is derived from and modelled on Federal Rule
4 60(b). And Moore's Federal Practice describes
5 the purpose of 60(b) in a way that is entirely
6 applicable to our consideration of our purpose
7 here today. It says that the purpose of the
8 rule is to provide relief for judgments that
9 were unfairly obtained, not those that are
10 factually inaccurate.

11 And we cannot, by virtue of the mandate that
12 has been issued in this case, challenge the
13 factual accuracy of the appellate court's
14 findings. And we are not attempting to do that.

15 Moore's goes on to say that the rule is an
16 escape valve to protect the fairness and
17 integrity of litigation.

18 And I suggest that it is very important
19 during the course of our discussions this
20 afternoon to keep the purpose of Rule 1.540(b)
21 very clearly in front of us.

22 We are seeking to protect justice. We are
23 seeking to assure a fair result and we are
24 seeking to safeguard the integrity of the
25 judicial process.

1 file any kind of a reply in a supplemental memo
2 pointing out which costs are being objected to.
3 So I'll, again, trust that that would be
4 encompassed in a proposed order that you can
5 submit to the Court either if it's agreed to
6 through correspondence with the Court or
7 otherwise on a short hearing.

8 Is there anything more that the Court needs
9 to hear today on the cost issue?

10 MR. ROGOW: No.

11 THE COURT: Okay. Let me move this aside.
12 We'll proceed next with the issue of whether
13 the Plaintiff's verified motion to vacate the
14 judgment and grant a new trial on damages is
15 legally sufficient.

16 And I will hear from Plaintiff's counsel
17 first.

18 MR. SCAROLA: Thank you very much, Your
19 Honor.

20 Your Honor, with the Court's permission,
21 Mara Ponzi Hatfield is going to be assisting me
22 because we have some visual aids that I hope
23 will be of some assistance to the Court.

24 Your Honor, we are before the Court today on
25 a Rule 1.540(b)(3) motion. And the language

1 And we suggest that if we keep those
2 objectives in mind that there's only one
3 conclusion that can be reached with regard to
4 this motion ultimately. And that the conclusion
5 that we are called upon to reach today, that is,
6 whether there is a colorable claim for relief
7 under 1.540(b), that that conclusion is a very
8 easy conclusion to draw.

9 The purpose of today's hearing is limited.
10 We're here to determine only whether Coleman
11 (Parent) Holding has raised a colorable claim
12 for relief. If we have, if we have raised a
13 colorable claim for relief, then Coleman
14 (Parent) is entitled to conduct discovery
15 regarding the allegations that Morgan Stanley
16 committed a fraud on the court and we are
17 entitled subsequently to an evidentiary hearing
18 on those matters.

19 This is not a hearing with regard to our
20 entitlement to the ultimate relief, but only a
21 hearing with regard to our entitlement to
22 further discovery and a hearing as to whether we
23 will be able to obtain that ultimate relief.

24 The Fourth District Court of Appeal has
25 expressly held that discovery and a hearing are

1 required. It is mandatory if the Rule 1.540(b)
2 motion raises a colorable entitlement.

3 Now, the meaning of colorable entitlement
4 does not appear to be contested. The language in
5 the submissions to Your Honor is a little bit
6 different in describing what colorable
7 entitlement means, but the bottom line test is
8 basically the same, although also expressed in
9 slightly different language.

10 The test is: Do the moving papers lay out a
11 prima facie case of fraud? If they do, we have
12 made our colorable claim and we are then
13 entitled to the discovery and hearing that we
14 ultimately seek.

15 THE COURT: Let me ask you a question on
16 that point.

17 MR. SCAROLA: Surely.

18 THE COURT: You refer to the Dynasty case
19 and you also cite in your memo on page 38 the, I
20 think it's the Schleger versus Dabelsky case.
21 And the question I have is the seminal case of
22 Flemenbaum versus Flemenbaum at 636 So.2d 579,
23 Fourth DCA 1994, which appears to require that
24 the movant, in addition to pleading fraud with
25 specificity, explain why the fraud, if it

1 the court. And the source of that
2 misrepresentation is also significant. The fact
3 that the misrepresentations that are the primary
4 focus of our discussion this afternoon are
5 misrepresentations that were made by officers of
6 the court is an important factor that I'll deal
7 with in my presentation to Your Honor.

8 THE COURT: Okay, and I have questions about
9 those issues as well. But I just wanted to make
10 sure when you were talking about colorable
11 entitlement that seemed to be a good point. Let
12 me see if I had any other questions relating to
13 that standard. Let me just look for a moment.

14 Okay, I think you'll get into it, but if you
15 don't, I have the follow-up questions which
16 really go to, you know, you'll discuss those
17 line of cases that seem to require prejudice and
18 some I think in the federal circuit that don't
19 require prejudice. As to shows that require
20 prejudice, I am interested to hear more fully
21 how Plaintiff was prejudiced, carrying it
22 through to its logical end knowing what we know
23 now about why the Fourth DCA did what it did.

24 MR. SCAROLA: Your Honor, Your Honor has
25 anticipated a significant portion of our

1 exists, would entitle the movant to have the
2 judgment set aside.

3 So my question is: Do you see -- you didn't
4 cite Flemenbaum, I don't believe, in your memo.
5 Do you understand there to be a difference
6 between the cases that you cited and, for
7 example, the Flemenbaum case?

8 MR. SCAROLA: I don't think there is a
9 difference, Your Honor. And we acknowledge that
10 in order to meet the burden that we have at this
11 stage of the proceedings, part of our colorable
12 entitlement obligation is, or part of our
13 obligation to make out a colorable claim is to
14 make out a claim not only that there were
15 fraudulent misrepresentations made, but that the
16 nature of the fraudulent misrepresentations are
17 such that we should be relieved of the
18 consequences of those fraudulent
19 representations.

20 Now, I say that, but there is also a very
21 important distinction when the nature of the
22 fraud is fraud on the Court. Because a
23 presumption arises under those circumstances
24 that there is prejudice as a consequence of any
25 material misrepresentation that has been made to

1 argument. We do, indeed, believe that it is not
2 our obligation to show that the fraud was
3 outcome determinative to show that we were
4 prejudiced by the fraud, but nonetheless, we,
5 even if the Court were to find that such a
6 burden exists are confident that we could
7 satisfy it. And I will get to that during my
8 presentation.

9 The elements of a common law fraud, Your
10 Honor, are well known to the Court. There must
11 be a material misrepresentation made with intent
12 to induce reliance, which in fact is relied upon
13 to the detriment of the victim. And here,
14 because we are talking about fraud on the court,
15 we are really talking about the Court itself,
16 the judicial system as the victim of the
17 fraudulent misrepresentations on which we are
18 going to focus. Although Coleman (Parent)
19 Holding has been a victim as well.

20 As we'll later point out, these elements are
21 modified flightily slightly on the context of
22 the fraud on the court because materiality and
23 prejudice are presumed to exist when the
24 integrity of the judicial system has been
25 assaulted.

1 I want to begin with a brief overview of
 2 just some of the fraud that we have alleged in
 3 our motion and point out the fact that we are
 4 dealing with a verified pleading. What we have
 5 before the Court are allegations that have been
 6 verified. They are indeed very specific. And I
 7 may not take the time to go through even those
 8 few that I've sampled here in the outline, but
 9 let me talk about some of them at least.

10 On December 17, 2003 Morgan Stanley lied to
 11 the Court stating that all of its pre-2000
 12 e-mail backup tapes had been erased. That
 13 statement was absolutely false. And we know it
 14 to be absolutely false as a result of subsequent
 15 concessions made, not voluntarily, but after
 16 extensive discovery disclosed the falsity of
 17 those representations.

18 Morgan Stanley made those December '03
 19 fraudulent statements to persuade the Court to
 20 deny then pending discovery motions. And,
 21 indeed, they were successful. The Court's
 22 decision was altered as a consequence of the
 23 misrepresentations that were made at that time.

24 In February of 2004 Morgan Stanley's
 25 corporate representative lied under oath at a

1 this is discovery that was obtained post
 2 verdict, Mr. Doyle inappropriately attempted to
 3 have this certification signed by a college
 4 student who performed data entry functions and
 5 who really had no idea what was going on.
 6 Another Morgan Stanley employee intervened and
 7 said, you can't have him sign that. I'll sign
 8 it. But what he was given to sign he refused to
 9 sign, because it contained false statements that
 10 he was unwilling to swear to. Nonetheless, we
 11 know, as a consequence of post-verdict
 12 discovery, we know that others were willing to
 13 swear and did swear to those same false
 14 statements.

15 Those misrepresentations in June of 2004
 16 enabled Morgan Stanley to avoid the search and
 17 disclosure of millions of pages of electronic
 18 data.

19 Morgan Stanley made at least six admittedly
 20 fraudulent statements from late March to May of
 21 2005 to successfully persuade the Court either
 22 to alter its jury instructions or to bar certain
 23 demonstrative exhibits during the trial's
 24 punitive damage phase. Again, the fraudulent
 25 misrepresentations, unknown to be false at the

1 deposition, testifying that Morgan Stanley's
 2 e-mail archive did not contain e-mail from the
 3 1990s, the relevant time period during which the
 4 underlying transaction regarding Sunbeam and
 5 Coleman (Parent) Holding took place, the period
 6 of time during which Morgan Stanley was serving
 7 as the investment banker with regard to this
 8 transaction on Sunbeam's behalf.

9 Morgan Stanley admitted that that sworn
 10 deposition testimony was false a year later at
 11 the February 14, 2005 evidentiary hearing that
 12 was focusing upon Morgan Stanley's misconduct.
 13 But that admission came only after it had
 14 obviously been caught in the web of its own
 15 deceptions.

16 On June 23, 2004 Morgan Stanley falsely
 17 certified that it had found and produced all
 18 relevant e-mails pursuant to an express order
 19 requiring that certification. Obtaining the
 20 certification itself was a significant problem.
 21 But, ultimately, when the certification was
 22 made, Morgan Stanley says, you've got everything
 23 we have. We've searched. You've got it all.

24 Later discovery revealed that Morgan
 25 Stanley's inhouse lawyer James F. Doyle, and

1 time of trial, successfully altered the course
 2 of the proceedings at trial and enabled Morgan
 3 Stanley to obtain relief that it otherwise would
 4 not have obtained had the Court not been
 5 deceived.

6 In May of 2005 is when the Court did not
 7 give the jury the litigation misconduct
 8 instruction that Coleman (Parent) Holding had
 9 requested, because although some Morgan Stanley
 10 employees were discovered to have known about
 11 e-mail on the Brooklyn tapes, the Court was not
 12 persuaded that Morgan Stanley's inhouse lawyers
 13 knew in June of 2004 that the Brooklyn tapes
 14 contained e-mail.

15 Now, let me begin by telling the Court that
 16 I may assume, because of the fact that we have
 17 been living with these circumstances for a long
 18 time, that Your Honor will recall from the
 19 submissions that have been made to the Court
 20 more than you actually do recall.

21 I know that Your Honor is careful in terms
 22 of your advanced preparation that these
 23 materials have been read, but if I start moving
 24 too fast and start talking about Brooklyn tapes
 25 and you don't know what I'm talking about,

1 please don't hesitate to stop me so I can make
2 sure that these comments are understood in
3 context.

4 It was in May of 2005 that the Court did not
5 allow Coleman (Parent) to use the demonstrative
6 exhibit it wanted to use in its closing
7 argument. And it was for the same reason,
8 because the Court expressly stated that she was
9 not satisfied that Morgan Stanley's inhouse
10 lawyers had any knowledge with regard to the
11 misrepresentations that had been made concerning
12 the presence of e-mail on these late-found
13 tapes.

14 On June 6, 2005, just 11 days before Morgan
15 Stanley files its first notice withdrawing a
16 lengthy list of false statements, Morgan Stanley
17 filed a post-trial motion repeating its false
18 assertions as to when its inhouse counsel
19 learned of e-mail on the tapes.

20 That's just 11 days before the retraction of
21 statements that had been going on for months and
22 months and months, during which Morgan Stanley
23 was repeatedly professing the innocence of its
24 inhouse legal staff.

25 Morgan Stanley made that fraudulent

1 Is that what you're attempting to tell the
2 Court? And Morgan Stanley refused to directly
3 respond to the Court's inquiries.

4 For six more months that ambiguity remained.
5 Until the notice was filed in December of '05 --
6 excuse me -- December of '06.

7 In December of '06, 18 months later, after
8 the verdict has been rendered, after the
9 judgment is in, after the appellate briefs have
10 been submitted, after oral argument on the
11 appellate briefs, for the very first time Morgan
12 Stanley files another notice, which it claims to
13 be filing in order to resolve ambiguity in the
14 June 17, '05 notice. And that notice says, the
15 law division was aware prior to July of '04. It
16 does not say when prior to July of '04. It
17 significantly does not state whether in June of
18 '04, when the false certification by Morgan
19 Stanley was filed, its law division knew that
20 that certification was indeed false. And as we
21 stand here today we still don't know with
22 certainty, although reasonable inferences
23 clearly suggest, that Morgan Stanley's refusal
24 to be specific is because of the enormous
25 implications involved in acknowledging outright

1 statement on June 6th, 2005 in an attempt to
2 persuade the Court to grant its post trial
3 motion challenging the jury verdict. And it was
4 only after this attempt was unsuccessful that
5 Morgan Stanley retracted its lies.

6 However, it not only failed to tell the
7 Court what the truth was, it steadfastly refused
8 to tell the Court what the truth was.

9 If Your Honor remembers, there is a whole
10 series of statements in which Morgan Stanley
11 repeatedly takes the position that its inhouse
12 legal staff was unaware of the existence of
13 e-mail on the Brooklyn tapes, and a series of
14 8-millimeters tapes that were also later
15 disclosed to exist, that the inhouse lawyers
16 were unaware of the existence of e-mails on
17 those tapes until October and November of 2005
18 respectively -- 2004. Thank you.

19 That remained their position until the
20 filing of the June 2005 notice. When that
21 notice was filed, the story then became that the
22 law division was aware in July of '04. The
23 trial court expressly focused on that language
24 and wanted to know, what does that mean? Does
25 that mean that you first learned in July of '04?

1 that the law division knew in June of '04, when
2 the false certification was filed, that the
3 certification was indeed false.

4 In November of '05 -- I'm going to skip
5 ahead to there -- the Court acknowledged that
6 its findings of fact in its remedial orders
7 could have been different had the June 17, 2005
8 notice and the questions that that notice
9 triggered surfaced three months earlier in March
10 of '05 when the Court was considering the issue
11 of appropriate sanctions.

12 The June 17, '05 notice that Morgan Stanley
13 filed was misleading in several respects,
14 especially in the use of the ambiguous phrase
15 "In July of 2004" to mean, we now know, in or
16 before July of 2004.

17 While we believe that the case law clearly
18 supports our position that we have no obligation
19 in the context of a Rule 1.540(b)(3) motion
20 based on fraud on the court to prove that Morgan
21 Stanley's fraud was outcome determinative, this
22 carefully considered, written statement by the
23 trial court that was entered in response to our
24 then and still pending motion for rule to show
25 cause why Morgan Stanley and various inhouse

1 lawyers should not be held in contempt, the
 2 statement by Judge Maass that she would decline
 3 at that point to consider the implications of
 4 Morgan Stanley's new revelations because they
 5 could change and add to the sanctions that had
 6 previously been imposed by the Court when the
 7 Court had been misled. That written
 8 acknowledgment from Judge Maass satisfies as
 9 clearly and unequivocally as can reasonably be
 10 expected our burden to demonstrate that the
 11 Court was indeed influenced by these lies and
 12 that the outcome would have been different had
 13 the Court been fully informed of the true
 14 circumstances. And that's a subject that I'll
 15 revisit shortly.

16 THE COURT: You're referring to the order on
 17 Coleman's verified petition for a show cause
 18 order?

19 MR. SCAROLA: Yes, Your Honor.

20 THE COURT: And which language in that order
 21 are you referring to?

22 MR. SCAROLA: It's specifically quoted a
 23 little bit later in my presentation.

24 THE COURT: Okay. That's fine. I have the
 25 order here.

1 or more of the motion's essential allegations.

2 Or, secondly, they can show as a matter of
 3 law that relief from the judgment would be
 4 unjust even if the alleged facts are true.

5 Morgan Stanley has not raised a factual
 6 challenge.

7 The brief, the memorandum that it filed in
 8 opposition to Morgan Stanley -- excuse me, to
 9 Coleman's motion is not verified. No affidavits
 10 and no documentary evidence has been presented
 11 to the Court.

12 Indeed, no facts are even challenged by way
 13 of argument. Morgan Stanley has effectively
 14 conceded its egregious misconduct, just as the
 15 earlier less complete, substantially less
 16 complete picture of Morgan Stanley's misconduct
 17 was conceded before the appellate court.

18 We now have a significantly clearer picture
 19 of the nature and scope of the misconduct in
 20 which Morgan Stanley, including in particular
 21 its inhouse lawyers engaged, but we still don't
 22 have the whole picture. It is better, but it is
 23 not yet everything.

24 For purposes of this hearing, nonetheless,
 25 it is presumed as alleged as follows.

1 MR. SCAROLA: I might point out at this
 2 point also, Your Honor, that it was in October
 3 of '05 that the affidavit of Arthur Reil that we
 4 are discussing was filed where Mr. Reil talks
 5 about the fact that an effort was made to have
 6 this college student intern sign the
 7 certification. He intervened and precluded
 8 that. But it's also in that same affidavit
 9 where Mr. Reil discloses for the first time that
 10 there were misrepresentations with regard to the
 11 lack of knowledge of inhouse counsel with regard
 12 to the existence of e-mail on the backup tapes
 13 that he had been asked to swear to. And he
 14 refused to. He said, that's not accurate. And
 15 that's going to become a very significant point
 16 in terms of the ultimate determination as to
 17 when inhouse counsel actually was made aware of
 18 the existence of e-mail on those backup tapes.

19 Having reviewed just some of the verified
 20 allegations of fraud, I want to focus on the
 21 possible defenses at this stage of the
 22 proceeding.

23 Morgan Stanley can defeat a claim of
 24 colorable entitlement in either of two ways.
 25 One, they can disprove as a matter of fact one

1 Morgan Stanley and its inhouse counsel
 2 flatly and repeatedly lied to the Court
 3 regarding inhouse counsel's knowledge of the
 4 existence of undisclosed e-mails. The full
 5 extent to which Morgan Stanley deceived the
 6 Court has yet to be disclosed. And that is why
 7 discovery is necessary in this case.

8 The known lies were relevant and material to
 9 the Court's response to Morgan Stanley's
 10 egregious litigation misconduct. It influenced
 11 decisions of the Court throughout the litigation
 12 on multiple occasions during the course of the
 13 discovery phase of the case, specifically with
 14 regard to the nature of the sanctions that the
 15 Court was asked to impose, specifically with
 16 regard to the sanctions that the Court
 17 ultimately determined to impose. And the
 18 influence on the Court as a consequence of these
 19 misrepresentations has been clearly established
 20 based upon the unopposed allegations in the
 21 motion. The lies repeatedly influenced the
 22 Court's decisions in ways that were favorable to
 23 Morgan Stanley and were unquestionably adverse
 24 to Coleman (Parent) Holding.

25 The Court expressly acknowledged that

1 post-verdict disclosures of additional
 2 deceptions by Morgan Stanley could warrant the
 3 imposition of additional sanctions against
 4 Morgan Stanley. And this is the language to
 5 which I had previously referred, Your Honor. It
 6 appears at page 7 of Judge Maass' contempt order
 7 where the Court expressly states, New
 8 information, quote, could add to the judicial
 9 response to Morgan Stanley's litigation
 10 misconduct.

11 And it is on that basis, because the Court
 12 recognized the significance of the
 13 misrepresentations that had been made and the
 14 fact that it could, indeed, bolster the
 15 necessary response to Morgan Stanley's
 16 misconduct that the Court expressly declined to
 17 consider any further evidence of Morgan
 18 Stanley's misconduct at that stage.

19 The colorable entitlement defenses that
 20 Morgan Stanley has raised are not factual, but
 21 they are confined solely to legal issues.

22 Morgan Stanley attempts to show that relief
 23 from judgment against Coleman would be unjust
 24 even if all the alleged facts are true. And
 25 their arguments in that regard fall into three

1 categories.

2 First they argue that CPH's motion fails to
 3 allege that the Morgan Stanley
 4 misrepresentations disclosed post trial were
 5 material and were relied upon by the Court.

6 Second, they argue, that the motion is
 7 foreclosed by the Fourth DCA's mandate.

8 And, lastly, they argue that CPH has waived
 9 any entitlement to additional sanctions.

10 Every one of those arguments, we will show
 11 to the Court, is contrary to clearly established
 12 precedent and not one of them has any analogous
 13 case law support, not a single case supporting a
 14 single one of those arguments.

15 First defense, lack of materiality and
 16 prejudice. Our response to that is, as I have
 17 already mentioned to the Court, that when a
 18 judgment is challenged based upon fraud on the
 19 court, prejudice is presumed as a matter of law.
 20 But even if we were obliged to prove prejudice,
 21 the un rebutted factual allegations established
 22 that Morgan Stanley's misrepresentations were
 23 material and clearly prejudicial.

24 THE COURT: This is where I'll ask the
 25 question I have.

1 MR. SCAROLA: Yes.

2 THE COURT: The nature of the fraud that is
 3 presented in the motion speaks to attorney
 4 misconduct. There appear to be no Florida cases
 5 that would define attorney misconduct as fraud
 6 upon the court, fraud on the court. Do you
 7 agree with that?

8 MR. SCAROLA: There is at least one case
 9 that I think is instructive, Your Honor. And
 10 that case is Andrews versus Palmas DeMajorca.
 11 It's a Fifth DCA decision. And it's one that I
 12 was just about to get to. Because it is in that
 13 case that the Fifth District described fraud on
 14 the court as fraud that one defiles the court
 15 itself or, two -- and this is where I think the
 16 answer to your Your Honor's question is -- fraud
 17 that is perpetrated by officers of the court who
 18 calculate to interfere with the judicial
 19 system's ability impartially to adjudicate the
 20 matter.

21 So I think we do have some appellate court
 22 guidance in Florida. I acknowledge that the
 23 more helpful cases are the cases that we have
 24 cited. And I think there are seven of them.
 25 And we'll get to review at least a few of those

1 from other jurisdictions including, principally,
 2 the federal courts including the U.S. Supreme
 3 Court.

4 THE COURT: There seems to be a split, is
 5 there not, as to whether prejudice is required
 6 with a showing or not in those cases that dealt
 7 with attorney misconduct and perhaps --

8 MR. SCAROLA: To the contrary, Your Honor,
 9 not a single case that either side has
 10 apparently been able to find, because none is
 11 cited in the defense brief and none was revealed
 12 to us, not a single case involving fraud on the
 13 court ever reaches the conclusion that a showing
 14 of prejudice is necessary in that context. The
 15 defense has cited cases where there is a
 16 discussion of a necessity to show prejudice, but
 17 none of those cases is a case that involves
 18 fraud on the Court.

19 THE COURT: What about the line of cases in
 20 Florida, I believe Parker, if I'm remembering
 21 correctly, and Declair, which seem to talk about
 22 the distinction between extrinsic and intrinsic.
 23 Fraud upon the Court is extrinsic. There seems
 24 to be a distinction that's brought out in the
 25 Parker case and the Declair case as the

1 difference between intrinsic and extrinsic.
2 What do you -- and why would this type of
3 fraud not fit more squarely, as defined by the
4 Florida courts, as intrinsic fraud? And if it
5 is, what relevance is that? What significance
6 does that have?

7 MR. SCAROLA: Let me answer your question
8 with a confession of a substantial degree of
9 ignorance. My attempt to try to understand,
10 from the review of the cases, the distinction
11 between intrinsic and extrinsic fraud tied my
12 mind in knots.

13 I was not able, Your Honor, to find a
14 coherent pattern in the cases that distinguished
15 between intrinsic and extrinsic fraud. And so I
16 was satisfied to fall back upon the language of
17 Rule 1.540(b)(3) which basically says, it
18 doesn't make any difference whether it's
19 intrinsic or extrinsic fraud. And then to look
20 to the cases that draw a distinction not between
21 intrinsic and extrinsic fraud, but between fraud
22 on the party and fraud on the court. And I
23 think that's where the focus really needs to be.

24 It is an important distinction and one that
25 makes logical sense as to whether the

1 perpetrator of the fraud, or in this case the
2 perpetrators of the fraud, were officers of the
3 court.

4 Officers of the court are entrusted with a
5 responsibility to safeguard the integrity of the
6 judicial process. It is anticipated that
7 litigants themselves may seek to bend the rules,
8 may intentionally break the rules, but the
9 system relies upon officers of the court, the
10 lawyers involved in the process, to safeguard
11 the integrity of the process itself.

12 When those guardians of the system seek to
13 fulfill their responsibility to safeguard the
14 integrity of the system and join in the assault
15 upon the system, that's the circumstance in
16 which prejudice is and must be presumed.
17 Because we don't know how far the implications
18 of that abandonment of their responsibility has
19 taken them.

20 Once we demonstrate that they are no longer
21 serving their appropriate function as guardians,
22 but have now become assailants against the
23 system, that's all we need to show. And the
24 U.S. Supreme Court has told us that. The Ninth
25 Circuit has said that repeatedly. The Fifth

1 Circuit has said that. And it makes sense.

2 Nonetheless, we think that we can in this
3 case and have in this case demonstrated that
4 there has been actual outcome-determinative
5 prejudice. And we point to the language in
6 Judge Maass' contempt order to demonstrate that.
7 But keep in mind what was going on here. Judge
8 Maass is faced with an incredible record of
9 litigation misconduct that went far beyond
10 issues as to whether e-mail tapes had been
11 appropriately searched for, whether they had
12 been identified, whether disclosures were made
13 when they were supposed to be made, whether we
14 ever knew all the backup tapes that contained
15 e-mail and what the contents of any of those
16 many millions of pages of internal
17 communications within Morgan Stanley were.

18 THE COURT: Is any of the -- I didn't see in
19 any of the briefing that the content of the
20 e-mails was at the heart of the motion for new
21 trial as much as it was the alleged failure to
22 be forthcoming and, therefore, the misconduct of
23 the attorneys; is that correct?

24 MR. SCAROLA: Yes, Your Honor. We never got
25 to the point of being able to find out what the

1 content was. The misconduct was such that the
2 tapes remained unexamined right up through the
3 time of trial.

4 THE COURT: So no argument is being put
5 forth that the e-mails could have said certain
6 things that would have been outcome
7 determinative?

8 MR. SCAROLA: No, no, Your Honor, that's not
9 correct. The e-mails clearly could have said
10 many things that were outcome determinative.
11 There could have been concessions in the e-mails
12 with regard to the valuation of Sunbeam and the
13 valuation of Coleman (Parent) Holding and a
14 comparison of the valuations. There could have
15 been admissions in those e-mails with regard to
16 the impact of the accounting fraud in which
17 Sunbeam had engaged and was aided by Morgan
18 Stanley that would have drawn a causal
19 connection between the subsequent failure of
20 Sunbeam and the accounting fraud that had taken
21 place.

22 There are all sorts of things that could
23 have and very likely would have been included in
24 those internal communications under the existing
25 circumstances.

1 THE COURT: The status of these e-mails
2 today are to the best of your knowledge what?

3 MR. SCAROLA: Unknown.

4 THE COURT: So you don't know whether they
5 exist or they don't exist?

6 MR. SCAROLA: As a consequence of the fraud,
7 of which the Court was a victim, the Court could
8 never make a determination as to whether the
9 e-mail sources had all been identified or hadn't
10 been identified, had been searched or hadn't
11 been searched, did contain e-mail or didn't
12 contain e-mail, did contain e-mail from the
13 relevant time period or didn't contain e-mail
14 from the relevant time period. Those were all
15 matters that the Court was never able to
16 determine because it could not get straight
17 answers.

18 The Court knew what it did not know, but it
19 never knew the truth. And this is where we get
20 to the outcome determinative portion of our
21 argument. And I'll skip right ahead to that if
22 I may.

23 What Judge Maass decided to do, faced with
24 the overwhelming evidence of misconduct that she
25 had, but at that point not aware that there had

1 levelling the playing field, but she had no idea
2 of the extent to which the playing field had
3 been imbalanced by the participation in this
4 fraudulent conduct by Morgan Stanley's inhouse
5 legal staff.

6 Had she known that, had she known that, she
7 has told us herself that the implications are
8 that it would have added to her response against
9 Morgan Stanley. It would have to. If the
10 imbalance is greater than what she perceived it
11 to be, she needs to do something more to correct
12 that imbalance in the scales, to level the
13 playing field, if it is more imbalanced, more
14 unlevel than she had perceived it to be to begin
15 with.

16 Most significantly, what Morgan Stanley
17 accomplished by lying about the innocence of its
18 inhouse legal staff, the bottom line of what it
19 accomplished was to defeat Coleman (Parent)
20 Holding's motion for a complete default on
21 liability.

22 A complete default on liability would have
23 included a judicial determination as a matter of
24 law of the fact of damage.

25 One of the elements of liability, as the

1 been any involvement by inhouse counsel, and
2 accepting Morgan Stanley's repeated
3 representations that drew a sharp line
4 distinction between alleged negligence on the
5 part of information technology staffers, on the
6 one hand, and total innocence on the part of
7 inhouse counsel who knew nothing about this,
8 they were ignorant, they were innocent. Faced
9 with that, what the Court decided to do was not
10 to punish Morgan Stanley, but to level the
11 playing field, to impose what Judge Maass
12 herself repeatedly characterized as the least
13 egregious -- or the least severe response to the
14 facts as known to the Court. I'm not going to
15 punish Morgan Stanley, but I must level the
16 playing field. And the order that I am crafting
17 is intended to level the playing field.

18 What we now know is that what Judge Maass
19 attempted to do was impossible. Because you
20 can't level the playing field, you can't add
21 more weight on one side to balance the scales
22 unless you know how severely imbalanced they are
23 to begin with. You don't know how much bad
24 weight is placed on this side.

25 So Judge Maass thought that she was

1 Fourth DCA has clearly told us in this case, was
2 the fact of damage. Had the fact of damage been
3 established by the granting of a complete
4 default, had that occurred, the judgment would
5 have had to have been affirmed at least with
6 regard to nominal damages, which would have
7 supported a recovery of punitive damages at the
8 very least.

9 THE COURT: All right. Let me make -- as I
10 understand the Fourth DCA opinion, it went to
11 the theory that the expert utilized in proving
12 the amount of damages and the failure to -- a
13 lot of papers here -- but the failure to utilize
14 I believe it was an event study.

15 MR. SCAROLA: Correct, for the first time in
16 Florida's judicial history, a tort feisor was
17 relieved of the general common law principles of
18 causation, and the Plaintiff was obliged to
19 prove not only that some of its damages were
20 caused by the tort feisor, but that all of its
21 damages were caused by the tort feisor.

22 THE COURT: So if a default judgment as to
23 damages was, hypothetically, contemplated or
24 would have been contemplated by the judge in the
25 face of this information, the fact of damages,

1 how is it that the Plaintiff -- what is the
2 Plaintiff's argument as to why the strategy and
3 theory employed by its expert in putting forth
4 amount of damages would have been different such
5 that the Fourth would not have done what it did?

6 MR. SCAROLA: I have two responses to Your
7 Honor's question. The first is that even if it
8 were not different, even had the Plaintiff
9 pursued exactly the same damage strategy with
10 the express approval of the trial court, because
11 clearly the damage theory was a subject of
12 extensive pretrial argument. And it was in
13 accordance with the Court's pretrial rulings
14 that this damage theory was advanced.

15 So even if we had advanced exactly the same
16 damage theory, had there been a complete default
17 with regard to liability issues, the fact of
18 damage would have been established as a matter
19 of law. That means that even if we adduced no
20 proof as to the amount, we are entitled to one
21 dollar, a token amount, a peppercorn in damages
22 as a consequence of the intentional violation of
23 our rights once there is a finding that some
24 damage has occurred.

25 THE COURT: What case law do you point to

1 MR. SCAROLA: The amount.

2 THE COURT: -- damages, the amount. But I
3 have not seen, if you can point it out, the
4 distinction between the fact of damages and the
5 amount of damages.

6 MR. SCAROLA: It is an issue that we have
7 dealt with in the memorandum, Your Honor. And
8 I'll try to point the Court to the specific
9 pages. I'm sure that the staff behind me is
10 scurrying as we speak to be able to identify it.

11 THE COURT: And on that issue of, if that's
12 the case, that even if the Fourth were to --
13 well, and the Fourth did what it did in finding
14 the presentation by the expert to be
15 inappropriate that nevertheless there must be a
16 determination of a nominal amount of damages as
17 opposed to no damages, which is what the Court
18 said in this instance.

19 MR. SCAROLA: Surely. I don't want to lose
20 sight in focusing upon this argument, to the
21 extent we have, that our position is we need not
22 show any prejudice.

23 THE COURT: Well, that brings me to another
24 question, which is -- and it kind of dovetails
25 with the intrinsic and extrinsic and does it

1 to, first, show that a form of default judgment
2 goes beyond a finding of liability, a default
3 judgment as to liability, but is contemplated as
4 to the fact of damage?

5 And, secondly, what legal authority is there
6 as to assuming there was such a finding by the
7 trial court of a default or an imposition of a
8 default judgment as to the fact of damage as
9 well as liability that even if the Fourth were
10 to find the theory and strategy employed was
11 inappropriate, that nevertheless there, by law,
12 must be a determination of a nominal amount of
13 damages? Is there a legal authority for those
14 two principles?

15 MR. SCAROLA: Your Honor, there are cases
16 that are cited in our memorandum with regard to
17 those issues. And, I'm sorry, but I don't
18 recall them off the top of my head. When I have
19 an opportunity to address the Court with some
20 brief rebuttal, I'll try to have those available
21 to Your Honor. I just can't respond right now.

22 THE COURT: Because I'm familiar with the
23 body of law that speaks to default judgments.
24 And if it's an unliquidated amount of money,
25 there is always the issue to having establish --

1 really make a difference or not and what do the
2 different courts say about the finding of
3 prejudice, but doesn't it all come back to
4 Flemenbaum and what I call or consider the, this
5 third prong of Flemenbaum, there's the stating
6 the fraud with specificity and particularity and
7 then there's this language, in addition to
8 specifying the fraud, the motion should explain
9 why the fraud, if it exists, would entitle the
10 movant to have the judgment set aside.

11 And that language has been cited and that
12 case has been cited, you know, repeatedly since
13 it was decided in 1994, actually as recently as
14 yesterday there was an opinion that came out
15 citing Flemenbaum in another circuit.

16 So I guess prejudice or no prejudice as it
17 relates to fraud on the Court or fraud in
18 general or fraud as to CPH coming back to that
19 prong of Flemenbaum.

20 MR. SCAROLA: And our response is that that
21 prong of Flemenbaum is satisfied when there is a
22 demonstrated fraud on the court. Because the
23 integrity of the system is so important that
24 when you have demonstrated that the nature of
25 the fraud is an attack on the integrity of the

1 Court, you have given rise to a presumption that
 2 there has been prejudice. And that's exactly
 3 what the U.S. Supreme Court said in the
 4 Hazel-Atlas Glass Company case. They said that
 5 a litigant who attempts to defraud the Court
 6 cannot deny the effectiveness of its fraud after
 7 the fact.

8 The multiple federal cases that we've cited
 9 to Your Honor specifically state, prejudice is
 10 not an element of fraud on the court. And
 11 Flemenbaum, my recollection is, is not a fraud
 12 on the court case. It is talking about fraud
 13 generally, but not specifically dealing with
 14 fraud in the context of fraud on the court.

15 Those federal cases also say that the
 16 inquiry as to whether a judgment should be set
 17 aside for fraud on the court focuses not on
 18 prejudice, but rather on whether the alleged
 19 fraud harms the integrity of the judicial
 20 process.

21 And I don't think there can be any question
 22 when we look at the specified litany of
 23 misconduct on Morgan Stanley's part and the
 24 impact that it had throughout these proceedings,
 25 particularly with regard to its having been able

1 determinations. And we know that's the case
 2 because when she found out she had been misled
 3 in that regard, she clearly acknowledged the
 4 fact that this makes a big difference to me.

5 The trial court's November 10, 2005 order in
 6 which Judge Maass declined to rule on the
 7 pending criminal contempt motions, as CPH had
 8 expressly requested, clearly recognizes in a way
 9 that relieves us of any obligation to try to
 10 speculate about how Judge Maass -- how important
 11 Judge Maass thought these matters were, because
 12 she says that these revelations could alter the
 13 current record of what Morgan Stanley knew and
 14 when it knew it and could add to the judicial
 15 response to Morgan Stanley's litigation
 16 misconduct. There's only one direction in which
 17 to go and that direction was in the direction of
 18 a complete default.

19 Under Rule 1.380(b)(2) there are three
 20 purposes that may be served by the imposition of
 21 discovery sanctions. Judge Maass focused on one
 22 and one only and that was levelling the playing
 23 field.

24 Morgan Stanley has not been punished and
 25 deterred, they have been rewarded.

1 to avoid the entry of a complete default, I
 2 don't think there's any question about the fact
 3 that we've got to conclude that this was a
 4 highly successful assault on the integrity of
 5 the judicial process.

6 The three cases that Morgan Stanley cites,
 7 there are three Florida cases that they cite.
 8 And not one of them involves allegations of
 9 fraud on the court. That's an important
 10 distinction. And as I said earlier, it's a
 11 distinction that I suggest makes logical sense.

12 I'm going to provide the Court with an
 13 outline that I hope will be helpful to you.

14 This is what we have described as a sampling
 15 of Morgan Stanley's now admitted
 16 misrepresentations to the Court. And I don't
 17 think that it's possible to go through this to
 18 any extent at all and not recognize how material
 19 Morgan Stanley itself understood the distinction
 20 between non-lawyer misconduct and lawyer
 21 misconduct to be.

22 It is an argument that they made over and
 23 over and over again. It is an argument that
 24 they made very successfully to the trial court.
 25 It clearly had an influence on Judge Maass'

1 The integrity of the judicial system has not
 2 been vindicated, it stands as of now severely
 3 crippled.

4 This motion gives the Court the opportunity
 5 to appropriately punish Morgan Stanley and to
 6 vindicate the Court's integrity, to do justice
 7 under circumstances where as of now a great
 8 injustice has been done and remains uncorrected.

9 The Court had the full authority to impose a
 10 total default. And we suggest that when this
 11 judgment is vacated, pursuant to the provisions
 12 of Rule 1.540(b)(3), that that would be
 13 appropriate relief. But we're not there yet and
 14 that's not an issue that we yet need to deal
 15 with.

16 Morgan Stanley's second defense -- we've
 17 been dealing with the first defense. Their
 18 second defense is that CPH's motion is
 19 foreclosed by the Fourth DCA's mandate.

20 Our response to that is that the fact that a
 21 case has been the subject of an appeal does not
 22 alter the trial court's authority to grant Rule
 23 1.540(b) motion.

24 There are three cases that we have cited to
 25 Your Honor, two of those are Fourth DCA cases.

1 They are Native Hammock, Molinos and Analyte
2 Diagnostics.

3 And it is the Molinos case and the Analyte
4 Diagnostics case that I think are most
5 instructive in terms of responding to this
6 argument by Morgan Stanley.

7 I'm not going to go through the facts of
8 those cases except to say that the Fourth DCA
9 has clearly indicated in facts very similar to
10 those before Your Honor right now that the fact
11 that an appellate court has affirmed a judgment
12 in favor of a Defendant, or has reversed a
13 Plaintiff's judgment and directed the entry of
14 judgment in favor of the Defendant does not in
15 any way preclude the consideration of a motion
16 based upon fraud pursuant to Rule 1.540.

17 The law of the case doctrine upon which
18 Morgan Stanley attempts to rely applies only
19 where the issue was actually argued and decided,
20 not where it merely could have been argued and
21 decided, so said the Florida Supreme Court in
22 its decision in the Juliano case in 2001. And
23 that is a principle that the Fourth DCA has
24 expressly cited to in arriving at the conclusion
25 that the issuance of a mandate does not preclude

1 consideration of Rule 1.540 relief.

2 The last argument that Morgan Stanley makes
3 is one of waiver. And we respond in two ways.
4 We could not waive that which we lacked the
5 ability to pursue. And waiver is an equitable
6 defense and it requires clean hands.

7 Morgan Stanley does not have clean hands.

8 Coleman had no reason, ability or obligation
9 to act sooner than it did to address Morgan
10 Stanley's fraud until the reversal of the
11 favorable judgment that Coleman had received.

12 It appeared that Morgan Stanley's fraud on
13 the court, while successful in avoiding a
14 complete liability default, had not been
15 successful in evading an adverse judgment.

16 As Molinos and Analyte, the two Fourth DCA
17 cases that I referenced, demonstrate, the Fourth
18 District would not have addressed fraud issues
19 that had not been presented to the trial court.
20 Factual findings needed to be made at the trial
21 court level before the Fourth district would
22 deal with issues relating to allegations of
23 fraud.

24 As Molinos further demonstrates, the Fourth
25 DCA might very well have declined in this case,

1 as it expressly did in Molinos, to relinquish
2 jurisdiction back to the trial court to consider
3 issues with regard to allegations of fraud, even
4 if the Fourth DCA had been asked to do so. That
5 happened in Molinos, the Fourth DCA declined to
6 relinquish jurisdiction.

7 The unsuccessful litigant at that point,
8 after an adverse judgment was entered against
9 it, filed a Rule 1.540 motion. The trial court
10 said, no, sorry, you're precluded by the
11 issuance of the mandate. The Fourth DCA said,
12 oh, no, that's not the case. We did not deal
13 with that issue, even though it was presented in
14 that circumstance to the appellate court in the
15 briefs submitted by the parties. Fourth DCA
16 said, we did not deal with that issue, it wasn't
17 dealt with by the trial court. The trial court
18 does have the authority and the obligation to
19 deal with the Rule 1.540 motion allegations.

20 As the trial court's order on the criminal
21 contempt motion proves, this trial court was not
22 prepared to disturb the appellate record as it
23 existed until the appeal was concluded.

24 So we are here before Your Honor doing
25 exactly what the Fourth DCA told us we ought to

1 do, following the guidance of Molinos and
2 Analyte. We are before the trial court asking
3 the trial court to make the findings necessary
4 to determine our entitlement to relief.

5 This is a case in which Morgan Stanley's
6 hands are very dirty. The magnitude of its
7 litigation misconduct is rivaled only by the
8 magnitude of the misconduct in which it engaged
9 in the underlying, massive underlying Sunbeam
10 fraud.

11 The June 17, 2005 retraction notice was
12 delayed until a month after the trial was
13 concluded. It's vague. It's ambiguous. It's
14 woefully incomplete. It's actively misleading.
15 It fails to include any details as to who knew
16 what, when it was learned, how it was learned,
17 whether, why and to what extent disclosures of
18 the misrepresentations it acknowledges was
19 delayed.

20 The December 21, 2006 notification is little
21 better. It's characterized as a clarification.
22 It's filed six months after the appeal was
23 argued. And it does very little to correct the
24 deficiencies in the June 2005 notice and does
25 nothing to tell anyone what the truth is, only

1 to attempt to shield Morgan Stanley from the
2 consequences of some of the lies in which it had
3 been caught.

4 In conclusion, Your Honor, the main focus of
5 Morgan Stanley's defense against the imposition
6 of a complete default on liability, which we
7 contend would have included a default finding on
8 the fact of damage, was to distinguish between
9 the allegedly negligent, simply negligent acts
10 of the IT staff and the professed lack of
11 knowledge, innocence and diligence on the part
12 of Morgan Stanley's inhouse legal staff.

13 As Morgan Stanley's trial counsel described
14 it, the innocence of the lawyers was the
15 headline of Morgan Stanley's efforts to resist
16 the imposition of a complete default that had
17 been requested.

18 That entire theme, separating inhouse
19 counsel from the negligence of the IT staff, was
20 built on a series of what we now know were flat
21 out lies. The real headline is that those who
22 were charged with protecting the integrity of
23 the system had joined in the assault on the
24 system.

25 The outcome of this case clearly would have

1 mentioned earlier and you said maybe some staff
2 are looking into it in response to my question
3 about perhaps a default judgment as to liability
4 and the fact of damages. Here you speak about
5 altering the burden of proof as to damages.

6 MR. SCAROLA: There are two --

7 THE COURT: Is that a different concept?

8 MR. SCAROLA: It is a different concept,
9 Your Honor. There are two different things that
10 could have happened. A complete default could
11 have been entered in which the fact of damage
12 was established. Or the court could have
13 reversed the burden of proof and required Morgan
14 Stanley to prove non-causation, required Morgan
15 Stanley to demonstrate that the damages that
16 Coleman suffered were not attributable to Morgan
17 Stanley's involvement in the fraud.

18 THE COURT: And the question I had was: Do
19 you have any legal authority for any court that
20 has altered that burden of proof as to damages?

21 MR. SCAROLA: I know that such authority
22 exists. I don't remember whether we've included
23 it in our moving papers. But I do remember that
24 one of the issues that was expressly addressed
25 before Judge Maass was a reversal of the burden

1 been different had the Court known about the
2 full extent and nature of Morgan Stanley's
3 misconduct. But whether it would have made a
4 difference to Judge Maass or not, and she's told
5 us it would have, but whether it would or not,
6 it makes a difference to this Court, it makes a
7 difference that the process that has taken place
8 up to this point in time was so grossly infected
9 with misconduct that it cannot reasonably be
10 said to anyone that Coleman (Parent) Holding has
11 had its fair day in court.

12 Give us the opportunity to conduct
13 additional discovery and we will demonstrate to
14 Your Honor that the egregiousness of Morgan
15 Stanley's conduct is even far worse than what we
16 now know it to be and didn't know it to be
17 before.

18 Thank you very much, Your Honor.

19 THE COURT: Two clarifying questions before
20 you sit down. On page 36 of your memo you say
21 that it would have been appropriate for the
22 Court to have imposed a total default as to
23 liability and to have altered the burden of
24 proof as to damages. Are you saying something
25 different there than you said in court? You

1 of proof. Indeed, the first order that Judge
2 Maass entered, the first of the two sanction
3 orders, was an order that basically reversed the
4 burden of proof. It was the second order that
5 established specified facts as uncontestable.
6 But initially Judge Maass simply reversed the
7 burden of proof.

8 THE COURT: Are you saying there was an
9 order that she entered?

10 MR. SCAROLA: Yes, Your Honor. Not with
11 regard -- it did not specifically deal with the
12 damage issue. It was limited to other issues of
13 liability. The Court entered a first response
14 to Morgan Stanley's misconduct.

15 Again, these disclosures came in
16 progression. At one point in time, based upon
17 the information then available to the Court, the
18 Court concluded that the appropriate response
19 was, in effect, to reverse the burden of proof.
20 And there's clearly case law that allows the
21 Court to do that.

22 And, subsequently, after additional
23 disclosures were made of further misconduct on
24 Morgan Stanley's part, the Court took the
25 further step not simply of reversing the burden

1 of proof, but establishing certain facts as
2 deemed established that the jury was required to
3 accept, without the necessity of proof or the
4 ability to contest them.

5 THE COURT: Then when you speak about
6 negative causation then on page 44 of your memo,
7 are you -- is that the same as what you speak
8 about as altering the burden of proof as to
9 damages?

10 MR. SCAROLA: Yes, Your Honor, yes.

11 THE COURT: Okay. Thank you very much.

12 MR. SCAROLA: You're welcome. Thank you. I
13 appreciate your attention, Your Honor.

14 THE COURT: I would ask, do you want a break
15 before you go into your response?

16 MR. ROGOW: I'm ready.

17 THE COURT: How about our court reporter?

18 COURT REPORTER: I'm fine.

19 MR. ROGOW: I just need to gather a few
20 things here, Your Honor.

21 MR. SCAROLA: Your Honor, if I may, I have
22 for both opposing counsel and the Court a copy
23 of the visual aids that we have provided, which
24 I'll give Your Honor.

25 MR. ROGOW: Your Honor, this is the case you

1 of finality. These are extraordinary remedies
2 and so the showing of colorable entitlement is
3 critical to a court's decision. And what does
4 that mean? It means affecting the judgment.

5 When we talk about affecting the judgment,
6 it's the judgment of this Court and basically
7 what they're saying is, because this Court
8 followed what the Fourth DCA's mandate required
9 it to do. There was no right to a second bite
10 at the apple. It's meant that the proving of
11 damages was deficient. And now we have a
12 judgment.

13 And they're saying, basically, and you heard
14 at the end of his comments, that it would have
15 been different; we wouldn't have had to prove
16 damages. Well, that's certainly not so. As
17 Your Honor pointed out, there is an obligation,
18 even if a total default were entered, there's an
19 obligation to prove damages. And the Fourth DCA
20 found that they failed in their method of
21 proving damages and that was the end of the
22 case.

23 So when we talk about affecting the
24 judgment, we're talking about whether any of
25 these things that they're talking about, the

1 were talking about yesterday from the Third
2 District, the Hinson versus Hinson case.

3 THE COURT: Right, I think I have that.

4 MR. ROGOW: I've just given copies to the
5 other side, too. So there's another copy.

6 The case that mentions Flemenbaum.

7 THE COURT: Yes, that's the -- right, out of
8 the Third District, 2008.

9 MR. ROGOW: Let me start with a comment that
10 Mr. Scarola made that I think is really at the
11 heart of what we're talking about and some of
12 your Your Honor's questions, I think, address
13 this issue.

14 And that's the question of what is a
15 colorable entitlement? And when Your Honor
16 referred to Flemenbaum, Flemenbaum, of course,
17 has a language with regard to, in addition to
18 specifying the fraud, the motion is to explain
19 why the fraud, if it exists, would entitle the
20 movant to have the judgment set aside.

21 And the judgment in this case, of course, is
22 the judgment that you entered in January based
23 upon the mandate of the Fourth District Court of
24 Appeal. And when we look at the 1.540(b), I
25 think we also have to be cognizant of the notion

1 long litany of misdeeds that they've ascribed to
2 Morgan Stanley, whether or not accepting all of
3 those as true, as we do for the purpose of this
4 motion, whether or not that could affect the
5 judgment, the fact that they failed to use a
6 method for establishing damages that was
7 required.

8 Case number 28 in their collection of cases,
9 Robinson versus Wyland uses the language that
10 I've mentioned to the Court. The motion must
11 show that the fraud affected the judgment. And
12 Robinson versus Wyland actually says it twice at
13 page 777, I think it is, the case is 936 So.2d
14 777, a Fifth DCA case, September 2006. Under
15 1.540 if you plead fraud or misrepresentation
16 with particularity, that's fine. And you have
17 to show how that fraud or misrepresentation
18 affected the judgment. And if it affected the
19 judgment, then the trial court is required to
20 conduct an evidentiary hearing.

21 Later on in the same paragraph the Court
22 writes, "The motion filed by Robinson
23 sufficiently alleges fraud and demonstrates how
24 it affected the judgment, thereby satisfying the
25 requirement for an evidentiary hearing under

1 Rule 1.530."

2 So the answer to the question of what
3 colorable entitlement means is it means
4 affecting the judgment.

5 And there's another case Ashland Oil versus
6 Picard, a 1974 case from the Third District in
7 which the same kind of statement is made, it's
8 at headnote 3 in the body of the case, "We have
9 carefully considered the briefs and arguments of
10 counsel and have concluded that the appellants
11 have failed to make a prima facia showing of
12 fraud which affected the judgment in the case."

13 So I'm trying to give substance to this more
14 amorphous concept of affecting the judgment.

15 And Mr. Scarola said, if there is no
16 colorable claim, there is no entitlement to
17 discovery. And so the thrust of our argument is
18 that there is no colorable claim, because
19 nothing that they have complained about in this
20 case affected the judgment, affected what the
21 first -- what the Fourth DCA said.

22 And if you take a look at the decision in
23 Morgan Stanley, the language is very clear.
24 "Because there was no proof presented at trial
25 on the correct measure of damages, the trial

1 things in the e-mails that might have been
2 helpful to them in the damage case, but helpful
3 or not isn't the standard here. The question
4 is: When they put on proof, even if there were
5 things in the e-mails that said, gee, we know
6 that they weren't worth anything, that Sunbeam
7 wasn't worth anything, they still have an
8 obligation to come forward with some measure of
9 proof of the damages at the time of the
10 transaction.

11 So really no matter what might have been in
12 the e-mails, it did not change the decision, it
13 could not change the decision that they made
14 about how they were going to prove it. They
15 started with zero. And even if we had e-mails
16 that were helpful to them with regard to what
17 Sunbeam was worth, they still had to put on
18 damage evidence. And they chose to put on
19 damage evidence that was completely faulty in
20 terms of what the Fourth DCA required.

21 So there's nothing in there. And certainly
22 when, because that's really, if you take a look
23 at papers that CPH has filed, what they're
24 saying is the issue is: What did the inhouse
25 lawyers know and when did they know it? That is

1 court should have granted Morgan Stanley's
2 motion for directed verdict. We, therefore,
3 reverse the final judgment for compensatory
4 damages and remand for entry of a judgment for
5 Morgan Stanley."

6 And so what the Court has done has said that
7 at the end of the Plaintiff's case where they
8 chose to put on the method of damage proof that
9 they wanted to put on, at the end of that case,
10 the directed verdict should have been granted,
11 because they failed to provide the proper
12 measure of damages under the law.

13 THE COURT: So what about, hypothetically,
14 if there was something contained on the e-mail
15 that went to issues relating to damages. And
16 based on that, the Plaintiff made a different
17 decision as to how it would have its expert
18 present damages?

19 MR. ROGOW: They instructed their expert to
20 assume no value at the beginning. Nothing that
21 these e-mails would have related to could have
22 changed the decision that they made. They made
23 the decision to go with zero damages. They had
24 an obligation to show damages. Even if, and I
25 heard Mr. Scarola say, there might have been

1 something different from what the question is
2 that Your Honor asked me. Their whole thrust
3 this afternoon is: What did the inhouse lawyers
4 know and when did they know it? And the simple
5 answer to that is it doesn't make any difference
6 with regard to the way that they decided to
7 prove their damage case.

8 And Mr. Scarola said the test is: Do the
9 moving papers layout a prima facia case of
10 fraud? And that is short, too, in terms of its
11 analysis. The question is a prima facie case of
12 fraud affecting the judgment in order to get to
13 the kind of discovery that they want to do.

14 He talks about it altering the course of
15 proceedings; what you really heard from him is
16 that Judge Maass might have done something else.
17 That's what he's talking about. It would have
18 been a different sanction. And the different
19 sanction that he's talking about is a different
20 sanction of default. That's seemingly the
21 ultimate kind of sanction that could be imposed.

22 And as the Court pointed out, even if it was
23 a total default, even if Morgan Stanley had
24 never even answered the complaint, they would
25 have had to prove damages. And their method of

1 proving damages was faulty.
 2 But let me get back to this affecting the
 3 judgment. Because it really is what this case
 4 is all about, whether or not accepting these
 5 papers as true, all the allegations as true is
 6 kind of like a motion to dismiss a complaint.
 7 In a motion to dismiss a complaint, you accept
 8 all the allegations as true. The question is:
 9 Does it state a cause of action? Does it state
 10 a claim upon which relief can be granted?
 11 Actually, it's even a heightened inquiry here, I
 12 think, because of the finality of the judgment.
 13 When you take a look at each one of the
 14 cases that they have cited in their papers, and
 15 I'm going to go down through them and refer
 16 again to the number in their book, because it is
 17 helpful, and you mentioned one of these before,
 18 or two of them, and they're the first two that I
 19 have DeClaire versus Johanna from the Florida
 20 Supreme Court. A false financial affidavit and
 21 the net worth went to the issue that was being
 22 tried. So that affects the judgment.
 23 And Palmas DeMajorca, number 4. There there
 24 was a forged and altered check. And that, too,
 25 was fraud that affected the judgment.

1 the Court, that's the kind of misconduct.
 2 Venture Industries, which is a 60(b) case, a
 3 different result would have occurred. A
 4 different result would have occurred because of
 5 the allegations, because there was falsified
 6 information in a financial statement.
 7 And their two biggest cases which Your Honor
 8 mentioned, Dynasty Express and Schleger, number
 9 8 in their reply book and number 21 in their
 10 reply book.
 11 In Dynasty the doctor lied about whether or
 12 not he was going to continue practicing
 13 medicine. And based upon that lie, he obtained
 14 a judgment. So that lie affected the judgment.
 15 Schleger is the same thing. She defeated
 16 the jurisdiction of the courts in a custody
 17 support case by saying that she lived in New
 18 York, there was no jurisdiction in Florida.
 19 Fourth DCA said she lied about that, it affected
 20 the judgment.
 21 Another case, number 32, Southern Bell. A
 22 woman lied about her eye injury and she got
 23 moneys from Southern Bell based upon the fraud.
 24 Every one of the cases that they have cited
 25 involves a situation where the specific fraud

1 They cited, and this is an out of state
 2 case, Chewning versus The Ford Motor Company, a
 3 South Carolina Supreme Court case. Ford's
 4 attorneys hired an expert to testify falsely
 5 regarding Broncos. Affected the judgment,
 6 affected the presentation of evidence at trial.
 7 Number 27, Humphrey, another case that they
 8 cited. Company vice-president lied about gun
 9 tests. It went on and on.
 10 Hazel-Atlas, the one Supreme Court that was
 11 mentioned in passing, I think, by Mr. Scarola.
 12 There the lawyers lied about securing the
 13 patent. They had somebody do a phony document
 14 in order to secure a patent and then brought a
 15 patent infringement case and even lied to the
 16 Court of Appeals. And the Supreme Court
 17 ultimately said, we're not going to tolerate
 18 this. But that affected the judgment. The
 19 whole case was built upon the fraud that had
 20 been obtained by the lawyers' misconduct.
 21 And you go through all of those cases,
 22 number 3, Anderson versus Cryovac, suppressed
 23 report of contamination in wells in Boston where
 24 there was contamination because of a tannery.
 25 Report suppressed, that's the kind of fraud upon

1 that they're talking about affected the
 2 judgment. The judgment would not have occurred
 3 but for the fraud.
 4 And what they're saying here is that Morgan
 5 Stanley's inhouse counsel knew before June 2004
 6 or before July 2004, but there's nothing, based
 7 on that, that would have affected the judgment.
 8 They're really talking about a super
 9 sanction. That's the default that they're
 10 talking about. Even the notion of shifting the
 11 burden of proof. And Mr. Scarola is right that
 12 there was a shifting with regard only to the
 13 liability. There was no shifting or anything
 14 like that with regard to damages.
 15 So he wants a total default. And he's
 16 saying that if there had been a total default,
 17 then he wouldn't have lost the case in the
 18 Fourth DCA. That's really the heart of what
 19 he's saying.
 20 First of all, it's highly speculative in
 21 terms of this discussion about what Judge Maass
 22 might have done, what Judge Maass would have
 23 done or what Judge Maass should have done. I
 24 don't think that's the perspective that this
 25 Court should use in looking at this.

1 I think you have to look at it and say based
 2 upon the papers that you have in front of you,
 3 would this have affected the judgment? The fact
 4 that Morgan Stanley's lawyers knew before July
 5 2004 about the missing e-mails. If there had
 6 been, as I said earlier, if there had been a
 7 complete failure to answer and a total default
 8 entered, it still requires a trial on damages.
 9 Talucci versus Matthew, which we've cited, a
 10 960 So 2d where the Court said right here in the
 11 Fourth DCA, "For more than a century the law in
 12 Florida is that a defaulted defendant has the
 13 right to contest the amount of unliquidated
 14 damages. They would have had to put on evidence
 15 of damages."
 16 And, oddly enough, in the Morgan Stanley
 17 decision itself the Court writes, It is
 18 fundamental that, quote, actual damages and the
 19 measure thereof are essential as a matter of law
 20 in establishing a claim of fraud. And it has a
 21 whole host of cites. It's at headnote 89. And
 22 then the last sentence in that paragraph is,
 23 "Thus to prevail in an action for fraud, a
 24 plaintiff must prove its actual loss or injury
 25 from acting in reliance on the false

1 them from using the right measure of damages,
 2 precluded them from using the right measure of
 3 damages.
 4 They cite three cases to try to back into
 5 the notion that somehow or other they could have
 6 gotten away without having to put on any damage
 7 evidence. There's number 29, number 11 and
 8 number 18 in their book, Rose, Delta Information
 9 and the Harlass case.
 10 And the two of those cases, Rose and Delta
 11 Information, dealt with accounting situations
 12 where the production that was necessary for the
 13 accounting was not produced by the party. But
 14 even there in the Rose case the Plaintiff still
 15 had to prove its damages. The Defendant
 16 couldn't contest it, but the Plaintiff still had
 17 to prove it.
 18 And Delta Information is an accounting case
 19 also.
 20 And the first case they cite, I think, in
 21 that portion of their argument, in their motion,
 22 the Harlass case, which dealt with comparative
 23 negligence and the issue was whether or not you
 24 could preclude a defaulted defendant from
 25 showing comparative negligence. But that is not

1 representation."
 2 So at that moment they had the obligation to
 3 put on evidence that was sufficient under the
 4 law to establish actual damage. This is not
 5 about some notion of presuming some kind of
 6 damage.
 7 And even if, and by the way, the Morgan
 8 Stanley decision even addresses that, it says
 9 that "Even if CPH established the fact," and
 10 that is at headnote 10 and 11, "Even if CPH
 11 established the fact of some unquantified
 12 damage, which, theoretically, could have
 13 supported a nominal damage award, this is not
 14 enough to justify a punitive damage award in a
 15 fraud case. Punitive damages cannot be based on
 16 nominal damages alone in a fraud case."
 17 The bottom line is that the Morgan Stanley
 18 opinion itself really sounds the death knell for
 19 the argument that they're making here.
 20 So what are the cases that they have cited
 21 for the notion that somehow or other they could
 22 get over the obligation to have proven damages
 23 correctly? And that I think is the key to this.
 24 They've got to be able to show to the Court that
 25 there was some fraudulent conduct that precluded

1 this question, because even in that case the
 2 Court said that the Plaintiff still has to prove
 3 damages. There is no Florida case that they can
 4 produce to show that there is a way for the
 5 Plaintiff in a fraud case to avoid putting on
 6 the proper measure of proof for damages.
 7 So when we come to the issue of did it
 8 affect the judgment, not strategies, not
 9 choices, not changes, is there something; every
 10 case that they have pointed to involved conduct
 11 that absolutely affected the judgment. You
 12 could look at that conduct, if it were true,
 13 then the judgment was affected. But that's not
 14 what they're saying here.
 15 The question they're asking, and Mr. Scarola
 16 has said it many times this afternoon, he
 17 said -- he asked, did it alter the course of the
 18 proceedings? Maybe it altered the course of the
 19 proceedings in their mind about what Judge Maass
 20 would have done, but it didn't alter the course
 21 of proceedings with regard to the method of
 22 proving damages. That's what you talk about.
 23 If you're going to talk about altering the
 24 course of the proceedings, the question to ask
 25 is: Did it alter the course of proceedings with

1 regard to your choice about proving damages?

2 Mr. Scarola said, the lies influence the
3 decisions of the Court specifically with regard
4 to the sanctions. But even if the ultimate
5 sanction was given, the default sanction was
6 given, then they still had to go on and prove
7 damages.

8 So you cannot have a default of damages.
9 Had the fact of damage been established
10 properly, this would be a much different case.
11 But the fact of damage was not properly
12 established. And the judgment was entered as a
13 result of that. So there is no default as to
14 the damages under Florida law.

15 Now, what else have they talked about?
16 They've talked about this notion of shifting the
17 burden, negative causation. The Court asked,
18 are there any cases? And there isn't. The only
19 cases they've cited are federal cases under
20 federal securities statute.

21 So this notion, which is their last gasp
22 effort to show that something different could
23 have happened, has no bases in Florida law.

24 Their next to last gasp effort, maybe we
25 would have gotten a total default also. Still

1 leaves them holding the duty to prove damages,
2 which they simply didn't do. And the Fourth DCA
3 made that clear.

4 I'm not arguing law of the case. I don't
5 see this as law of the case. I don't think that
6 this is really foreclosed by the Fourth DCA
7 opinion, but I think there is a waiver issue
8 here. And I think talking about the waiver
9 issue is very helpful. Because it ties into the
10 timing. And I've given the Court a timeline. I
11 think I -- did I pass the Court the timeline of
12 chronology? I think I gave the Court the case,
13 but not the timeline.

14 THE COURT: If you have a copy and want to
15 give it to me.

16 MR. ROGOW: Here's what's interesting about
17 this. There's the June notice that you heard so
18 much about from Mr. Scarola, the June 17, 2005
19 notice. So at that point they get this notice,
20 which had a lot of specificity about what
21 statements were being retracted. It's after the
22 trial, but the judgment hasn't been entered yet.
23 They don't do anything about that then. They
24 don't say, judge, we should have a super
25 sanction at this point now that we have this

1 June 17 notice that backs away from all the
2 prior statements.

3 The notice of appeal is filed by Morgan
4 Stanley. They don't cross appeal. Should they
5 have cross appealed? You know, if I were in
6 their position and thought that I should have
7 gotten a bigger sanction, a better sanction, a
8 default sanction because of the June 17 notice,
9 I probably would have filed a notice of cross
10 appeal. Do they have to? I'm not so sure that
11 they have to, but they didn't. And that part is
12 undisputed.

13 The briefing is done.

14 The argument occurs June 28, 2006, almost
15 two years ago.

16 And then 12-21-2006 we filed a second notice
17 with the Fourth DCA, the notice that Mr. Scarola
18 talked about clarifying the prior one, that was
19 prior to July 2004 that inhouse counsel knew.
20 And the question really in my mind is, so what?
21 The first notice said they knew in July, the
22 second notice they said knew about it prior to
23 that. So what, in terms of affecting the
24 judgment in this case.

25 They don't do anything in response to that

1 notice except embrace it. They file a notice to
2 the Court. We filed that notice on 12-21 with
3 the DCA and with the Circuit Court. And what do
4 they say to the DCA? They say, well, this just
5 confirms that the sanctions that were imposed
6 were properly imposed. They don't say to the
7 DCA, oh, now we have this new notice in December
8 that says, well, prior to July 2004 inhouse
9 counsel knew. They don't say, relinquish
10 jurisdiction, send it back, maybe we need to do
11 something more now that we know this new fact.
12 Nothing except really to embrace it and use it
13 as an argument in favor of affirming the
14 decision.

15 In fact, it's interesting, if one reads
16 their brief, their answer brief at pages 11 to
17 16, they have gone through the whole litany of
18 misconduct and, in fact, they mention the June
19 notice at pages 11 and pages 15 of their answer
20 brief as examples of how poorly, how badly
21 Morgan Stanley had acted.

22 So there's nothing new here. They knew the
23 June 17. Now they've got the 12-21 notice. The
24 Court has already heard the arguments in the
25 case. There's no decision. They do nothing but

1 embrace it.
 2 Then the decision comes down in March 2006.
 3 And when the decision comes down, they move for
 4 rehearing, rehearing en banc certification. Not
 5 a word is said about the June notice, about the
 6 December notice. They're not saying, oh, wow.
 7 They do say, how can you let Morgan Stanley get
 8 away with this and not give us a new trial, but
 9 they don't say a word about the June and the
 10 December notice.

11 And let me focus on the December notice,
 12 because that is -- that is there in front of the
 13 DCA. So they make no mention of it.

14 Now, does that constitute waiver as a matter
 15 of law? Again, just like I talked about, I'm
 16 not going to rest my argument on waiver, because
 17 I think they fail in terms of the colorable
 18 entitlement to begin with, but I think it sets
 19 the stage for how we look at it. This is a last
 20 gasp effort, a late night concept that came to
 21 them at some point when they realized, because
 22 even they went to the Florida Supreme Court,
 23 they didn't say anything in the Florida Supreme
 24 Court either about maybe it should go back.
 25 They didn't ask the DCA for relinquishment of

1 put on evidence of the value on the date of the
 2 transaction. And no matter what else is out
 3 there, they utterly failed to do that.
 4 And having failed to do that, and then
 5 having lost in the Fourth DCA with an order that
 6 judgment gets entered for us, because they tried
 7 their case on their basis and they lost it,
 8 nothing that they have alleged now gives them a
 9 right to seek to undo the judgment that this
 10 Court entered based upon the Fourth DCA mandate.

11 So our position, Mr. Scarola is right, we're
 12 not saying it's unjust. We're not -- he's given
 13 three arguments, I think, that he thinks we
 14 made. We're making a strictly legal argument.
 15 Accepting all of the allegations as true, all of
 16 the facts of their verified petition as true,
 17 nothing in that shows that it would have
 18 affected the judgment on the unique
 19 circumstances of this case and the Fourth DCA
 20 decision about their utter failure. And every
 21 case they've cited goes to something that
 22 happened that affected the judgment.

23 THE COURT: Is it your position that fraud
 24 on the court and fraud on the court argument, I
 25 guess you really hadn't spoken to that, but to

1 jurisdiction, they didn't ask the DCA for
 2 rehearing or rehearing en banc based upon the
 3 December and the June notices, nothing.
 4 Complete silence with regard to that.

5 And now they come back here and they say,
 6 ah-ha, we think we have a colorable entitlement.
 7 It is creative. I give them credit for that.
 8 But it does not comply with the strict legal
 9 requirement that colorable entitlement means it
 10 affected the judgment. Not that it might, not
 11 that it could have, not that it might have done
 12 something different. And the only issue and
 13 they say, I think, at pages 12 and 14 of their
 14 motion, is it's all about what they think might
 15 have happened had Judge Maass known. And
 16 Mr. Scarola has mentioned the two comments she
 17 made that it might add to the judicial response.
 18 You know, there are other judicial responses
 19 other than what they're suggesting. When she
 20 says it might add to the judicial response, that
 21 doesn't mean that she would have given them the
 22 super sanction or anything else along that line.

23 But the bottom line is that no matter what,
 24 the best sanction they could get, the default,
 25 they're still left having to get up to bat and

1 the extent that that is one of the arguments
 2 they're making, that that is still subject to
 3 the same analysis of whether it would result or
 4 lead to any relief from the judgment, or should
 5 it be analyzed differently?

6 MR. ROGOW: Judge, it still has to affect
 7 the judgment, fraud on the court, it would still
 8 have to affect the judgment. There are other
 9 sanctions available. Of course, they have their
 10 contempt motion pending for what they say were
 11 misrepresentations to the Court. And there's
 12 the possibility of referring lawyers to the Bar
 13 if it is lawyer misrepresentation or lawyer
 14 misconduct.

15 But I don't care what you call it, how you
 16 describe it, unless they can, in their
 17 complaint, on their pleading show how it
 18 affected the judgment, the judgment entered
 19 against them because of their failure to have
 20 proven damages by the proper method of damages,
 21 there is no relief they can get.

22 I'm not admitting any of the terrible things
 23 that they've said, but I am accepting them for
 24 the purpose of this 1.540(b) motion, which as I
 25 said at the beginning, has to be decided -- and

1 I'm troubled by this, the looseness of colorable
 2 entitlement. Because when I first saw it I kept
 3 wondering, what is it? What does it mean? It
 4 doesn't say very much. But then when I found
 5 these cases that talk about affecting judgment,
 6 then it all made sense.

7 When you look at the cases, really almost
 8 each one, and I'm looking at another one of
 9 their cases which talks about hampering the
 10 presentation of the parties' claim. Well,
 11 nothing hampered the presentation of their claim
 12 for damages. It was their choice to put on
 13 damages that way. Nothing that we did
 14 interfered with the choice that they made in
 15 choosing to prove damages the way they did.

16 And in the DeClaire case it talks about
 17 fraud, as this Court has defined extrinsic
 18 fraud, and DeClaire does talk about the
 19 extrinsic/intrinsic issue that Your Honor
 20 raised, as the prevention of an unsuccessful
 21 party from presenting his case by fraud or
 22 deception.

23 Nothing prevented them from presenting their
 24 case. Their error was their choice, to present
 25 their case in a wrong way, in a way that was

1 But this case does not meet that standard.
 2 And for those reasons, the motion for 1.540
 3 should be denied and there should be no
 4 entitlement to discovery in the case.

5 THE COURT: Thank you.
 6 Did you want to make a reply?
 7 MR. SCAROLA: I would like to, Your Honor,
 8 but I'd like a short recess before we do.
 9 THE COURT: How long do you need?
 10 MR. SCAROLA: Ten minutes.
 11 THE COURT: Go into a 10-minute recess,
 12 resume at 3:15.
 13 (A recess was taken.)
 14 THE COURT: You may proceed.
 15 MR. SCAROLA: Your Honor, defense counsel
 16 wants to ignore in its argument, as the
 17 Defendant did in its submission to the Court,
 18 the distinction that the case law recognizes
 19 with regard to fraud on the court. And it is
 20 not a distinction that exists only in the case
 21 law. If Your Honor looks at the language of
 22 1.540(b)(3) itself, if you look at the last
 23 sentence, the rule itself recognizes that there
 24 is a difference with respect to fraud on the
 25 court.

1 fatal to their whole claim.
 2 So no matter how you call this fraud, and
 3 when you talk about prejudice, prejudice equals
 4 affecting the judgment. That's got to be the
 5 only way to define prejudice under 1.540(b) or
 6 under colorable entitlement, because otherwise,
 7 you'd have cases that were finalized, over, done,
 8 tried and people would make some allegations
 9 about there's some misconduct somewhere along
 10 the way, I want an opportunity to do discovery.
 11 You don't get discovery unless you show
 12 colorable entitlement.

13 It's just like a civil action with a
 14 complaint, nobody says, Your Honor, I know my
 15 complaint fails to state a cause of action, but
 16 give me a chance to do some discovery and maybe
 17 I can make it better. It doesn't work that way.

18 And the case that Your Honor saw from
 19 yesterday that I just presented to the Court,
 20 Mr. Scarola, same thing, fraud in the heart of
 21 the case. A fraudulent affidavit I think it was
 22 in that family law case. And that affected the
 23 judgment. And so, therefore, in that situation
 24 there was a, quote, colorable entitlement, and,
 25 therefore, there was a right to have a hearing.

1 This rule does not limit the power of the
 2 Court to set aside a judgment or decree for
 3 fraud upon the court. We cited seven cases that
 4 very clearly stand for the proposition that no
 5 prejudice need be shown in the context of a
 6 motion to set aside a judgment based upon fraud
 7 on the court. Those cases were ignored in the
 8 responsive memorandum filed by the defense. No
 9 effort to distinguish them. No argument against
 10 them. No argument addressing the principle for
 11 which they stand, the principles on which they
 12 are based, and that is that an assault on the
 13 integrity of the judicial system cannot be
 14 countenanced. And once it is established,
 15 prejudice is presumed.

16 A typical circumstance addressed in
 17 discussions of fraud on the court would be the
 18 bribery of a judge or the bribery of a juror.
 19 Could anybody seriously argue that a Defendant
 20 who is caught bribing a judge or juror can
 21 defend against a motion for a new trial to set
 22 aside the judgment that was fraudulently
 23 procured through that bribery by saying, hey,
 24 listen, we'd have won anyway, no harm, no foul,
 25 you can't show any prejudice. And the answer

1 is, no, that kind of argument could not
2 reasonably be made.

3 And that's the basis upon which, the
4 foundation of, those unrebutted cases that
5 clearly establish the principle that where there
6 is fraud on the Court, prejudice need not be
7 shown.

8 Mr. Rogow says, quote, fraud on the court
9 still has to affect the judgment. Where's the
10 case that says fraud on the court still has to
11 affect the judgment? The answer is, it's not in
12 the memorandum. And the answer is, we haven't
13 heard about it during the course of this
14 argument. And the answer is, it doesn't exist.
15 It isn't there. The cases that do exist, every
16 case that discusses fraud on the court and
17 whether it includes a requirement, an element
18 that prejudice be demonstrated holds that it
19 need not be demonstrated.

20 Their brief studiously avoids addressing
21 that issue. And the unsupported oral argument
22 does not overcome what the cases clearly say,
23 the well-reasoned cases clearly say.

24 Flemenbaum says that part of our prima facie
25 case is to show why the movant -- why the fraud

1 What might those e-mails have said? Well, there
2 could have been one Morgan Stanley executive who
3 sent an e-mail to another Morgan Stanley
4 executive. And that e-mail could have said, you
5 know, if we participate in this Sunbeam fraud,
6 the way we are being asked to participate in
7 this Sunbeam fraud, we are going to cause
8 Coleman half a billion dollars in damages at
9 least. Are you really sure you want to do this?

10 One e-mail might very well have said, boy,
11 did we pull one over on them. When that stock
12 was transferred, it was worthless. The
13 accounting fraud that old Al Dunlap had pulled
14 off had destroyed the value of this company and
15 they never even knew it.

16 Those admissions on the part of Morgan
17 Stanley's executives would have satisfied every
18 possible causation burden that anyone could have
19 imagined to have existed. And they would have
20 been the central focus of the Plaintiff's damage
21 proof under any imagined circumstances.

22 Our choice was to have those e-mails. We
23 didn't get them because Morgan Stanley lied
24 about their non-existence. They did everything
25 they could to try to hide them and successfully

1 would entitle the movant to have the judgment
2 set aside. And there is a clear answer to that
3 question. The fraud entitles the movant to have
4 the judgment set aside in this case because the
5 fraud is fraud on the court. Because this fraud
6 was perpetrated by officers of the court.
7 Because in this case those circumstances give
8 rise to an unrebuttable presumption of
9 prejudice. But whether rebuttable or
10 unrebuttable, no effort has been made to rebut
11 it under the circumstances of this case.

12 But let's deal with the hypothetical
13 circumstance that we are obliged to demonstrate
14 prejudice. Mr. Rogow says that we made the
15 choice, we chose how to present our damages.
16 The choice we made was a choice for a complete
17 default. We were fraudulently deprived of the
18 benefits of that choice.

19 Our first choice was to have all of the
20 relevant e-mail. We were fraudulently deprived
21 of the benefit of that choice.

22 And what difference did that make? Well, it
23 doesn't take a whole lot of imagination to
24 hypothesize what it was that Morgan Stanley was
25 willing to lie in order to avoid disclosing.

1 hid them long enough so that we never got them.
2 Still don't have them today. Don't know what
3 all the e-mails say.

4 Those were our choices. Were we then
5 compelled to make other choices? Yes. And with
6 the guidance of the Court, did we make a wrong
7 choice in the opinion of the Fourth District
8 Court of Appeal? Yes, we did. But if we had
9 those e-mails, that choice never would have
10 mattered.

11 If we had a complete default, we would at
12 the very least, because all of the elements of
13 liability would have been established, we would
14 at the very least have been entitled to a new
15 trial on damages and not have suffered the
16 complete reversal that we did suffer.

17 How do we know that? Morgan Stanley said
18 so. Their argument before the Fourth DCA was,
19 because there was no entry of a complete
20 default, the burden rested upon the Plaintiff to
21 prove the fact of damage. They failed to do
22 that. Their argument before the Florida Supreme
23 Court was, because Coleman failed to get a
24 complete default, did not get a complete
25 default, they failed to prove an essential

1 element of liability and, therefore, they are
 2 not entitled to a new trial.

3 Those were the arguments upon which they
 4 prevailed. How can they stand before this Court
 5 at this time and say, it really wouldn't have
 6 made any difference if they had gotten a
 7 complete default. They argued exactly contrary
 8 to that before the appellate courts of this
 9 state.

10 Ballard versus Pelaia, P-E-L-A-I-A, Florida
 11 Supreme Court decision, 1954, held that a new
 12 trial on damages is required where injury and
 13 liability were established, but proof of damages
 14 was found to be deficient on appeal. Under that
 15 standard, had we had a complete default, we
 16 would have been entitled at the very least to a
 17 new trial.

18 Mercer versus Rain is the main case allowing
 19 a total default on liability for discovery
 20 misconduct.

21 We cited pages 42 and 43 of our verified
 22 motion, the Delta Information Services case and
 23 the Rose versus Clinton case. Those are the
 24 cases that allow discovery sanctions to go
 25 beyond liability issues and to affect damage

1 entitled to had the Court known the full truth,
 2 it is impossible to read Judge Maass' order on
 3 the motion for contempt and to conclude that
 4 Coleman (Parent) was not prejudiced by the
 5 total, complete disregard for the truth by the
 6 assault upon the system in which Morgan
 7 Stanley's own inhouse lawyers were active
 8 participants.

9 The integrity of this system requires a
 10 response. What that response should be is not a
 11 question for today. But unless we get to phase
 12 two, there can be no response. The only way
 13 that this Court is empowered to appropriately
 14 address in the context of this litigation what
 15 Morgan Stanley did to procure the result it
 16 procured, what Morgan Stanley did to assault the
 17 system in the way in which the system has been
 18 insulted, assaulted is to make the determination
 19 that is clearly required, that there is a
 20 colorable claim presented by our moving papers
 21 and that we are entitled to take discovery and
 22 find out what the whole truth is, who knew what,
 23 when and why did they not disclose it to the
 24 Court, why did they persist, instead, in
 25 repeatedly deceiving the Court?

1 issues also.

2 The fact of damage as established in the
 3 Morgan Stanley opinion itself, the appellate
 4 decision in this case, the fact of damage is an
 5 element of liability. And the Florida Supreme
 6 Court, contrary to the arguments made by
 7 opposing counsel, the Florida Supreme Court in
 8 Ault versus Lohr, 538 So.2d 454, 1989, Florida
 9 Supreme Court is the case that expressly holds
 10 that you get nominal and punitive damages even
 11 if you don't properly prove the amount of
 12 damages so long as you have proven all of the
 13 elements of liability.

14 I asked the Court at the beginning of this
 15 argument to remain focused on the purpose of
 16 this rule. The purpose of this rule is to avoid
 17 injustice and to protect the integrity of the
 18 judicial system. It is impossible to review the
 19 chronology of events that the Defendants
 20 themselves have provided to Your Honor, to
 21 review the list of admitted fraudulent
 22 representations, to examine the response that
 23 the Court made, after having been deceived time
 24 after time after time and granting to Morgan
 25 Stanley concessions that they were clearly not

1 This ought not to be the end of the line.
 2 This ought to be the beginning of the
 3 vindication of this judicial system.

4 Thank you very much, Your Honor.

5 THE COURT: Thank you. Okay. We'll move to
 6 the third matter.

7 And if there are others who need to come
 8 forward, feel free to do so as it relates to the
 9 third matter, which is the verified motion for a
 10 show cause order regarding Morgan Stanley's
 11 criminal contempt of court.

12 The motion appears to be directed at or to
 13 Morgan Stanley and Company, Incorporated; Donald
 14 G. Kempf, Junior; James P. Cusick; Sue Mi Lee;
 15 and James F. Doyle.

16 Now, I have received and reviewed the
 17 verified petition. The purpose of today's
 18 hearing is not to address the merits of the
 19 petition, but rather to conduct a status
 20 conference. Correct?

21 MR. ROGOW: Correct, Your Honor.

22 THE COURT: As I had noted, there were three
 23 issues that were raised or presented at the
 24 March 18th hearing. Number one, whether there
 25 was a sufficient basis to issue an order to show

1 cause. Number two, assuming that the Court
2 finds probable cause and issues an order to show
3 cause, who will serve as the prosecuting
4 attorney. And then to schedule a hearing on the
5 merits.

6 Counsel for Morgan Stanley had noted that it
7 had not, that is Morgan Stanley had not
8 responded yet to the verified motion and at
9 least indicated at that hearing that it would
10 need 30 days to respond to the motion.

11 I have some questions that relate to how we
12 go forward from here, but I'm happy to hear from
13 counsel first. And perhaps you agree on a
14 procedure that should be followed from this
15 point forward, given the posture of the matter,
16 which is simply that the Court has before it
17 this petition. And really nothing more at this
18 point. Unless something has been filed and I'm
19 not aware of it.

20 MR. SCAROLA: I don't believe that there
21 have been any new filings since the last
22 hearing, Your Honor.

23 And if I may begin by making a practical
24 suggestion to the Court.

25 As I hope is apparent from the argument that

1 after Your Honor has made the determination as
2 to whether we will be going forward with
3 discovery on the Rule 1.540 motion.

4 If we are going to go forward, we do the
5 work of whomever the prosecutor -- whoever the
6 prosecutor may be. Your Honor may decide that
7 you choose to appoint us. You may decide that
8 you are going to appoint some third party. And,
9 of course, the Court has the discretion, if you
10 choose to, although it's hard for me to imagine
11 that it's a choice you would want to make, to
12 proceed unassisted by a prosecuting authority.

13 But it makes most sense to let us do the
14 work, to let us generate whatever we are able to
15 generate at our expense, to hand over the
16 results of that work either to Your Honor or to
17 a third party, if that's who's going to be doing
18 the work, and let them decide what, if anything,
19 they choose to do with it. You know, they may
20 decide it's not helpful to them. They may
21 decide that nothing else needs to be done. But
22 to try to bring somebody in at this point who is
23 unacquainted with the lengthy and detailed
24 history of this matter and impose upon them the
25 burden of attempting to conduct discovery in

1 Your Honor has already heard and the materials
2 that have been submitted with regard to the Rule
3 1.540(b) motion, while there is much known in
4 regard to the misconduct that forms the basis
5 for the contempt motion, there is much left yet
6 to be discovered.

7 If Your Honor were to make the determination
8 that a colorable claim has been stated in
9 connection with the Rule 1.540 motion, then
10 clearly the responsibility for conducting the
11 further discovery to which we are entitled under
12 the law rests with us. We need to provide the
13 manpower. We need to finance the effort. And
14 we know from past experience that it will be
15 both a substantial and costly effort, but we are
16 fully prepared to do all that is necessary in
17 order to be sure that the whole truth is
18 uncovered.

19 There is substantial overlap, if not a
20 complete identity, between the issues that we
21 will be exploring in the context of the Rule
22 1.540 motion and the issues that will be
23 presented with regard to the contempt motion.

24 I suggest that it makes sense to defer
25 ruling with regard to the contempt motion until

1 support of a criminal prosecution just doesn't
2 seem to make much practical sense.

3 I don't believe that anybody is prejudiced
4 by that delay. And it may wind up being an
5 extremely short delay if Your Honor were to
6 decide that there is no discovery going forward
7 on the 1.540 motion. But if there is discovery
8 going forward on that motion, it seems to me it
9 would make the most sense to let us do it and
10 conserve the resources that would otherwise be
11 expended in that process. And to then make a
12 determination as to what happens from that point
13 forward.

14 So that's our suggestion. And I don't
15 believe that there would be any prejudice to any
16 of the respondents on this motion by proceeding
17 in that fashion, but I'll obviously let them
18 address that themselves.

19 MR. ROGOW: I'm the authorized
20 representative for the individuals and their
21 lawyers.

22 I think deferral makes sense, but not for
23 the reason that Mr. Scarola has given. Because
24 if the Court denies the 1.540(b) discovery, then
25 we're back to where we are right now, what do we

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1 do with that? I think it's all right if we want
2 to wait to get a ruling from Your Honor, as I
3 presume Your Honor will take some time and make
4 the ruling on this issue one way or the other.
5 So if Your Honor decides that there is no
6 colorable entitlement, therefore, no discovery,
7 then we're back where we are this afternoon,
8 what do we do with the pending petition?

9 And the pending petition, I don't know if
10 Mr. Scarola has thought about this, but I don't
11 know if there will be any supplementing that
12 would be done to that. If the Court denied
13 their 1.540 attempt to get discovery, would we
14 then be ready to move forward for a hearing on
15 whether or not the petition is legally
16 sufficient? I don't know what Mr. Scarola's
17 position is on that.

18 MR. SCAROLA: If Your Honor were to deny us
19 discovery with regard to the 1.540 motion, I do
20 not anticipate amending the presently pending
21 motion for contempt. I think that we would need
22 to address the adequacy of that motion on the
23 basis of what has already been presented to the
24 Court.

25 If we are permitted discovery, it may very

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1 well alter the nature of the motion itself. It
2 may be supplemented by virtue of whatever new
3 information we learn.

4 MR. ROGOW: So I think our position --

5 MR. SCAROLA: Or withdrawn for that matter.
6 While I think that's highly unlikely, discovery,
7 at least in theory, in the pending 1.540 motion
8 could result in a decision to withdraw the
9 motion.

10 MR. ROGOW: So I think our position would be
11 that if the Court denies the 1.540 discovery,
12 then all the Court would need to do would be to
13 set a date for oral argument on the pending
14 papers that have been filed with regard to
15 whether or not it states enough to show probable
16 cause to issue an order to show cause.

17 THE COURT: Would the Defendant be -- or --
18 would the parties named in the petition intend
19 to file responses to the petition?

20 MR. ROGOW: I think they've already filed
21 responses. My recollection is that it has been
22 briefed.

23 THE COURT: That was my question. It has
24 been briefed?

25 MR. SCAROLA: Nothing new has been filed

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1 since the last hearing, which I thought was the
2 Court's question, but there has been responses
3 filed.

4 THE COURT: By each individual as well as by
5 Morgan Stanley?

6 MR. ROGOW: It was a joint submission, as I
7 recall.

8 Individual? It was individual.

9 THE COURT: So I would look for five
10 responses, Morgan Stanley and the four
11 individuals?

12 MR. ROGOW: They're already there.

13 THE COURT: I have everything else in front
14 of me, but that's actually not something I have
15 in front of me, so I apologize for not having
16 that.

17 MR. ROGOW: Mr. Marmer has an outline of
18 this.

19 MR. MARMER: Your Honor, in addition to the
20 verified petition, there was an opposition filed
21 by Morgan Stanley, also individual responses
22 filed by Mr. Cusick, Mr. Doyle, Mr. Kempf and
23 Ms. Lee.

24 We then filed a verified reply brief.

25 We then filed an affidavit of Arthur Reil.

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1 We then filed a second affidavit of Arthur
2 Riel.

3 Then Morgan Stanley filed a further
4 opposition to our petition.

5 Mr. Cusick, Mr. Kempf, Mr. Doyle and Ms. Lee
6 filed additional memoranda regarding our
7 verified petition.

8 MR. SCAROLA: Your Honor, I am reminded by
9 Mr. Solovy, appropriately, that there may be one
10 significant supplement to the motion and that is
11 the inclusion of the December withdrawal notice
12 or clarification or whatever they want to call
13 it, which was not, obviously, in existence at
14 the time the initial pleadings were filed. With
15 that sole exception, at least at this point, I
16 don't anticipate any other supplement.

17 MR. MARMER: So there's a substantial amount
18 of briefing. And maybe it would make sense,
19 obviously, at some point to assemble a notebook.

20 THE COURT: Right, maybe I'm spoiled.

21 Because you've assembled everything else. I
22 didn't have an assembled package on that, so I
23 guess I drew a conclusion that perhaps it wasn't
24 there, because I have come to rely upon what you
25 have provided me rather than going first to the

1 214 volumes that I think exist in the case.
 2 Okay. So that answers that.
 3 So then the next question would be, given
 4 it's fully briefed with the exception of perhaps
 5 a supplement, and if and when we were to get to
 6 a stage of a hearing, have you given thought to
 7 how much time you would need for that hearing?
 8 Or would you want the opportunity to participate
 9 in another hearing to schedule that hearing?
 10 MR. ROGOW: I think that we could do by
 11 telephone, especially with the out-of-town
 12 counsel. I would presume an hour, hour and a
 13 half would be sufficient, by my advice, probably
 14 an hour, but I know sometimes these things go on
 15 a little longer.
 16 MR. SCAROLA: I would think, Your Honor,
 17 that we may need a little longer than that. I
 18 assume we're really talking about the probable
 19 cause.
 20 THE COURT: I was going to seek
 21 clarification. That's what I'm assuming. You
 22 have your petition. The standard is probable
 23 cause. And while I don't see that a hearing is
 24 required, if the parties want a hearing, then
 25 I'm certainly amenable to having a hearing on it

1 those --
 2 THE COURT: I can take care of the orders,
 3 but just given the service list just would like
 4 to have a set or two or three perhaps of the
 5 full range of envelopes.
 6 And is it fair to say that as to some orders
 7 that don't apply to certain persons they should
 8 or should not be copied? I know everybody was
 9 copied on this hearing because there were those
 10 other than the primary parties who were
 11 involved, mainly the individuals. There will be
 12 certain orders coming out of the Court based on
 13 this hearing today that I suppose don't
 14 necessarily apply to the individuals. Is there
 15 a preference as to whether they're included?
 16 MR. SCAROLA: Your Honor, with regard to
 17 both the motion to tax costs and the Rule
 18 1.540(b) motion, I think that if Your Honor were
 19 to provide copies of your orders to Mr. Ianno
 20 and to me, we'll take care of making sure that
 21 all parties interested in those issues are
 22 appropriately notified. Make it a little bit
 23 easier for the Court.
 24 THE COURT: So I'll rely upon those
 25 envelopes that you give me. And while the

1 to understand the positions through the oral
 2 argument in addition to reading the submissions,
 3 which I surely will have read before that
 4 hearing should we get to that date. And from
 5 that hearing, the Court would make its
 6 determination as to whether it is going to issue
 7 an order to show cause. And, if so, to whom or
 8 to what and on what basis, which would be
 9 outlined. And then there would be procedures,
 10 of course, that would flow from that stage,
 11 which we presumably could address at that
 12 juncture.
 13 MR. SCAROLA: It seems, surprisingly, that
 14 we are in agreement that that's not something
 15 that we should reach now, but we should wait
 16 until after Your Honor has made a determination
 17 on today's substantive issues. And then
 18 re-address those issues with the Court in the
 19 context of whatever decision Your Honor has
 20 made.
 21 THE COURT: Okay. Well, there is one thing
 22 I'm going to ask for and that is envelopes. Did
 23 anybody come with a set of envelopes that I
 24 could take?
 25 MR. SCAROLA: No, Your Honor, but we'll have

1 service list might be more extensive, it's with
 2 the understanding that if the envelopes don't
 3 include those individuals and they feel that
 4 they should be included, that you will mail
 5 copies to them.
 6 MR. SCAROLA: Yes.
 7 THE COURT: And so I will expect that a
 8 proposed order from both of you, possibly agreed
 9 upon, but if not, you'll come back on a short
 10 hearing, UMC or something of that nature, to
 11 address your schedule as it relates to the
 12 amount of the reasonableness of the costs, the
 13 amount of the costs as to at least the two
 14 appellate matters, but I think you're going to
 15 include the trial matter as well, costs as to
 16 trial so at least you've done that work in the
 17 event that the Court grants the motion for
 18 entitlement. If it doesn't, we can easily work
 19 to remove that. And that will project out,
 20 presumably, when we would have a hearing based
 21 on what you put forth as far as your schedule.
 22 MR. ROGOW: We agree. As long as we're
 23 meeting, we might as well cover all three areas.
 24 THE COURT: I agree. If you want to put it
 25 in two different orders or if you want to put it

1 in one, whatever you think easiest. So the next
2 time I will hear from you will be with that
3 information.

4 Is there anything further that anyone needs
5 to address today?

6 MR. ROGOW: That's it, Your Honor.

7 THE COURT: Well, thank you very much for
8 your presentations and preparation and patience
9 through a very long afternoon.

10 (The proceedings concluded at 4:00 p.m.)
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1 REPORTER'S CERTIFICATE
2

3 STATE OF FLORIDA
4 COUNTY OF PALM BEACH
5

6 I, TRACEY S. LOCASTRO, RPR, certify that I
7 was authorized to and did stenographically report the
8 foregoing proceedings; and that the foregoing
9 transcript, pages 1 through 119, is a true record of my
10 stenographic notes.

11
12 I FURTHER CERTIFY that I am not a relative,
13 employee, attorney, or counsel of any of the parties,
14 nor am I a relative or employee of any of the parties'
15 attorney or counsel connected with the action, nor am I
16 financially interested in the action.

17
18 Dated this day of , 2008,
19 at Palm Beach County, Florida.
20
21
22

23 TRACEY S. LOCASTRO, RPR, FPR
24
25

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION: "AJ"

CASE NO.: 2003 CA 005045

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

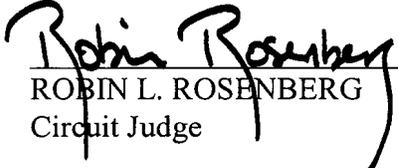
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CIVIL DIVISION 2

**ORDER ON PLAINTIFF COLEMAN (PARENT) HOLDINGS, INC.'s MOTION FOR
LEAVE TO SUBMIT POST-HEARING BRIEF**

THIS CAUSE came before the Court, in Chambers, on Plaintiff COLEMAN (PARENT) HOLDINGS, INC.'S Motion for Leave to Submit Post-Hearing Brief. Based on a review of the aforementioned Motion, it is

ORDERED AND ADJUDGED that Plaintiff COLEMAN (PARENT) HOLDINGS, INC.'S Motion for Leave to Submit Post-Hearing Brief is GRANTED. Defendants are permitted to submit a post-hearing brief, if needed.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 2nd day of June, 2008.


ROBIN L. ROSENBERG
Circuit Judge

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

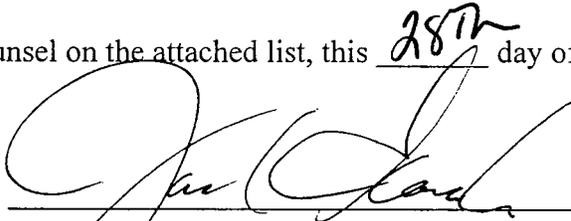
MORGAN STANLEY & CO., INC.,

Defendant,

MOTION FOR LEAVE TO SUBMIT POST-HEARING BRIEF

Plaintiff, COLEMAN (PARENT) HOLDINGS, INC., moves this Honorable Court for leave to submit the attached post-hearing brief and in support would show that issues arose during the course of the hearing on Plaintiff's motion pursuant to Rule 1.540(b) which Plaintiff is concerned were not adequately addressed in either the previously submitted memoranda or the oral presentations of counsel. Given the significance of the issues involved, a thorough assessment and analysis is essential to serve the ends of justice.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail and Federal Express to all counsel on the attached list, this 28th day of May, 2008.



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COLEMAN (PARENT) HOLDING, INC.,

CASE NO: 2003 CA-005045 AJ

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

**MORGAN STANLEY'S RESPONSE
TO CPH'S POST-HEARING BRIEF**

CPH's Motion to Vacate the Judgment should be denied. CPH's Post-Hearing Brief does not support the relief it seeks. Nothing it asserts affected the judgment.

1. Intrinsic and Extrinsic Fraud

The distinction is irrelevant here because Rule 1.540(b)(3) speaks of "fraud (whether heretofore denominated intrinsic or extrinsic)" The definition of each type is set forth in *Greenwich Association, Inc. v. Greenwich Apartments, Inc.*, 2008 WL 942663 at *2 (Fla. 3d DCA May 15, 2008). Extrinsic fraud "occurs where a party is prevented from 'trying an issue before the court and the prevention itself becomes a collateral issue to the cause.'" *Id.* (internal citation omitted). Intrinsic fraud is "the presentation of misleading information on an issue before the court that was tried or could have been tried." *Id.* (internal citation omitted).

Neither species is presented here. After the March 2005 sanction order, the only issues tried, or which could have been tried, were reliance and damages. Morgan Stanley's statements relating to what in-house counsel knew, and when they knew, about e-mail back-up tapes did not prevent

CPH from presenting evidence of its reliance or its damages under the correct measure of damages. CPH purposely used the wrong measure of damages and, as the Fourth District said: “CPH cannot complain about rulings that it urged the [trial] court to make in accordance with its damages theory.” *Morgan Stanley & Co. Incorporated v. Coleman (Parent) Holdings, Inc.*, 955 So. 2d 1124, 1131 (Fla. 4th DCA 2007).

Thus, under Rule 1.540(b)(3), CPH’s “fraud” allegations do not support relief, however denominated. Most telling is *Greenwich*’s citation to *Alexander v. First Nat’l Bank of Titusville*, 275 So. 2d 272, 274 (Fla. 4th DCA 1973) for the principle that the power to set aside a judgment for fraud upon the court “must be narrowly applied” in order to not “frustrate the law’s policy favoring the termination of litigation and finality of judgments.” *Greenwich*, 2008 WL 942663 at *2.

CPH’s view that “fraud on the court” relieves it of the need to show “‘prejudice,’ that is, that the fraud affected the judgment” (CPH Post-Hearing Brief, p. 2), is incorrect. See e.g. *Robinson v. Weiland*, 936 So. 2d 777, 781 (Fla. 5th DCA 2006); *Flemenbaum v. Flemenbaum*, 636 So. 2d 579, 580 (Fla. 4th DCA 1994). “Affecting the judgment” is the *sine qua non* for colorable entitlement to 1.540(b)(3) relief, and CPH has failed to meet that standard.

2. Flemenbaum v. Flemenbaum

CPH’s attempt to distinguish *Flemenbaum* by saying it is “not a case about fraud on the court” (CPH Post-Hearing Brief, p. 2) misses the point of the case. *Flemenbaum* requires a showing of fraud affecting the judgment even if the claim is styled “fraud on the court.” *Flemenbaum*, 636 So. 2d at 581 (denying evidentiary hearing when alleged fraud had “no effect on the final judgment.”). Nor is *Flemenbaum* distinguishable on the grounds that it involved intrinsic fraud. The court was addressing “1.540(b)(3) fraud,” which, as we have pointed out, draws no distinction

between intrinsic or extrinsic fraud.

CPH's attempt to finesse *Flemenbaum* is without merit, as is its attempt to evade the *Hinson v. Hinson*, 2008 WL 2120835 (Fla. 3d DCA May 21, 2008) recognition that affecting the judgment (by submitting fraudulent financial affidavits) is essential to showing colorable entitlement.

3. and 4. Total Default on Liability and Shifting the Burden on Damages

CPH continues to speculate regarding what Judge Maass might have done differently in sanctioning Morgan Stanley. But the purpose of Rule 1.540(b)(3) is to grant relief from a judgment obtained by fraud, and this judgment was not obtained or affected by the alleged false statements during discovery regarding Morgan Stanley's in-house counsel's knowledge about back-up tapes.

CPH asserts that Judge Maass could have entered a total default judgment, including the *fact* of damages. But under any default construct, CPH still had to prove the *amount* of those damages under the correct measure of damages for the theory it elected to pursue, and that is what the Fourth District held CPH did not do.¹ The cases cited by CPH for the proposition that it is entitled to a new trial on damages are the same type of cases that CPH argued on appeal established conflict on that point with *Morgan Stanley* and *Teca*. CPH's argument was rejected then and should be rejected now.

And, as to punitive damages, CPH ignores the Fourth District's statement that "[e]ven if CPH established the *fact* of some unquantified damage (which theoretically could have supported a nominal damage award), this is not enough to justify a punitive damage award in a fraud case."

¹ Morgan Stanley has not "contradicted itself" nor is it seeking to have it "both ways." CPH Post-Hearing Brief, pp. 4-5. Morgan Stanley's position throughout the appeal was that CPH's failure to prove damages by the proper measure was fatal. The Fourth District agreed and the Florida Supreme Court denied review.

Morgan Stanley, 955 So. 2d at 1132 (emphasis in original). CPH's reliance now on *Ault v. Lohr*, 538 So. 2d 454 (Fla. 1989) and *Russin v. Greminger, P.A.*, 563 So. 2d 1089 (Fla. 4th DCA 1990) is of no avail since both those cases were a basis for rehearing which was denied, and *Ault* was the foundation for CPH's failed attempt to secure Florida Supreme Court review.

CPH's post-hearing argument for shifting the burden of proof/negative causation adds nothing to its earlier submissions. No Florida case supports negative causation in a common law fraud case. CPH's cases involve specific statutory claims under federal or state law. CPH did not sue on any statutory claims and never sought negative causation as a sanction. Indeed, it accepted the severe sanctions imposed on Morgan Stanley, never sought on appeal or rehearing or rehearing *en banc* to strengthen those sanctions, willingly went to trial with the benefit of a sanction order that relieved Morgan Stanley of the obligation to continue to search for e-mails, and relied upon the December 2006 notice filed in the Fourth District and in this Court as a reason for affirming the sanctions that had been imposed. There is no basis for CPH's attack upon this Court's January 2008 judgment.

CONCLUSION

Nothing CPH has now offered changes the outcome. The Motion to Vacate the Judgment should be denied.

Respectfully submitted,

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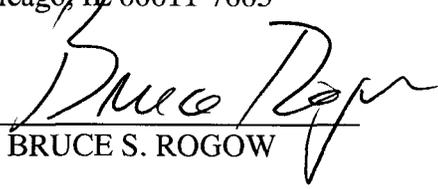
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CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 502003CA005045XXOCAI

FOURTH DISTRICT CASE NO. 4D05-4756

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MORGAN STANLEY & CO

VS.

COLEMAN (PARENT) HOLDINGS INC

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CONFIDENTIAL MATERIALS				
08/04/2005	00002391	A ORDER SETTING HEARING (SPECIAL SET) 10/21/05 @ 8:00 AM ON CPH'S VERIFIED PETITION FOR A SHOW-CAUSE ORDER REGARDING MORGAN STANLEY'S CRIMINAL CONTEMPT OF COURT	303	304
08/25/2005	00002395	A NOTICE (JOINT) THAT THEY RESOLVED ALL CLAIMS RELATING TO COSTS & ATTYS FEES	305	306
08/29/2005	00002397	ORDER AND RENOTICE OF HEARING. THE STATUS CONFERENCE SET FOR 8/26/05 IS CANCELED & RESET FOR 9/13/05 @ 3:30PM	307	308
09/06/2005	00002399	AGREED ORDER GRANTING EXTENSION OF TIME FOR MORGAN STANLEY TO FILE & SERVE ITS OPPOSITION TO CPH'S VERIFIED PETITION FOR A SHOW CASUE ORDER REGARDING MORGAN STANLEY'S CRIMINAL CONTEMPT OF COURT - UP TO & INCLUDING 9/13/05	309	310
09/08/2005	00002401	NOTICE OF APPEARANCE (SPECIAL) OF ROBERT CRITTON JR ESQ, OBO JAMES P CUSICK	311	313
09/12/2005	00002402	STIPULATION AND ORDER REGARDING BRIEFING SCHEDULE FOR M/FOR AN ORDER TO SHOW CAUSE - SEE ORDER FOR DETAILS	314	321
09/13/2005	00002403	NOTICE OF APPEARANCE (SPECIAL) OF DOUGLAS DUNCAN ESQ, OBO DONALK KEMPF	322	323
09/14/2005	00002404	NOTICE OF OPPOSITION TO VERIFIED PETITION FOR A SHOW CAUSE ORDER	324	333
09/15/2005	00002405	STIPULATION REGARDING BRIEFING SCHEDULE FOR M/FOR AN ORDER TO SHOW CAUSE ** DOWN FROM JUDGE W/ORDER NOT SIGNED **	334	341
09/20/2005	00002406	MOTION (VERIFIED) FOR ADMISSION PRO HAC VICE AS TO JOHN S SIFFERT ESQ	342	346

Case Description: COLEMAN PARENT HOLDINGS INC V MORGAN STANLEY & CO

Filing Date	Doc No	Description	Page Range
09/20/2005	00002407	MOTION (VERIFIED) FOR ADMISSION PRO HAC VICE AS TO JOHN PELLETTIERI ESQ	347 351
09/20/2005	00002408	NOTICE OF NON PARTY RESPONDENT SOO-MI LEE'S OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S VERIFIED PETITION SEEKING ORDER TO SHOW CAUSE - W/ATTACHMENTS	352 370
09/20/2005	00002409	NOTICE OF NON PARTY RESPONDENT JAMES F DOYLE'S OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S VERIFIED PETITION FOR A SHOW CAUSE ORDER - W/ATTACHMENTS	371 383
09/20/2005	00002410	NOTICE OF NON PARTY RESPONDENT DONALD KEMPF'S OPPOSITION TO VERIFIED PETITION FOR A SHOW CAUSE ORDER	384 393
09/20/2005	00002410 A	NOTICE OF NON PARTY RESPONDENT JAMES P CUSICK'S OPPOSITION TO CPH'S VERIFIED PETITION FOR A SHOW CAUSE ORDER - W/ATTACHMENTS *** EXHIBIT 1 UNSEALED PER ORDER DTD 9/27/05 ****	394 400
VOLUME NUMBER THREE			
09/20/2005	00002410 A	NOTICE CONTINUED FROM PREVIOUS VOLUME	401 600
VOLUME NUMBER FOUR			
09/20/2005	00002410 A	NOTICE CONTINUED FROM PREVIOUS VOLUME	601 645
09/22/2005	00002411 A	MOTION (VERIFIED) FOR LEAVE TO SPECIALLY APPEAR PRO HAC VICE (SCOTT W MULLER ESQ)	646 653

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09/22/2005	00002411	B MOTION (VERIFIED) FOR LEAVE TO SPECIALLY APPEAR PRO HAC VICE (ROBERT B FISKE JR ESQ)	654	661
09/22/2005	00002411	C ORDER NON PARTY RESPONDENT SOO-MI LEE'S UNOPPOSED VERIFIED M/FOR THE ADMISSION OF ATTY AUDREY STRAUSS TO APPEAR PRO HAC VICE IS GRANTED ON PAYMENT OF THE CLERKS FEE	662	663
09/22/2005	00002411	D ORDER NON PARTY RESPONDENT SOO MI LEE'S UNOPPOSED VERIFIED M/FOR THE ADMISSION OF ATTY ANDREW GARDNER TO APPEAR PRO HAC VICE IS GRANTED ON THE PAYMENT OF THE CLERKS FEE	664	665
09/22/2005	00002411	E ORDER NON PARTY RESPONDENT SOO-MI LEE'S UNOPPOSED VERIFIED M/FOR THE ADMISSION OF ATTY SLOAN JOHNSTON TO APPEAR PRO HACE VICE IS GRANTED ON PAYMENT OF THE CLERKS FEE	666	667
09/22/2005	00002411	F ORDER NON PARTY RESPONDENT SOO-MI LEE'S UNOPPOSED VERIFIED M/FOR THE ADMISSION OF ATTY LISA BEBCHICK TO APPEAR PRO HAC VICE IS GRANTED UPON PAYMENT OF CLERKS FEE	668	669
09/23/2005	00002414	MOTION (UNOPPOSED VERIFIED) OF NON PARTY RESPONDENT SOO-MI LEE, FOR THE ADMISSION OF ATTY AUDREY STRAUSS TO APPEAR PRO HAC VICE	670	675
09/23/2005	00002415	MOTION (UNOPPOSED VERIFIED) OF NON PARTY RESPONDENT SOO-MI LEE, FOR THE ADMISSION OF ATTY ANDREW T GARDNER TO APPEAR PRO HAC VICE	676	681
09/23/2005	00002416	MOTION (UNOPPOSED VERIFIED) OF NON PARTY RESPONDENT SOO-MI LEE, FOR THE ADMISSION OF ATTY SLOAN JOHNSTON TO APPEAR PRO HAC VICE	682	687
09/23/2005	00002417	MOTION (UNOPPOSED VERIFIED) OF NON PARTY RESPONDENT SOO-MI	688	693

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		LEE, FOR THE ADMISSION OF ATTY LISA BEBCHICK TO APPEAR PRO HAC VICE		
09/23/2005	00002418	AGREED ORDER ADMITTING SCOTT W MULLER ESQ TO APPEAR PRO HAC VICE ON PAYMENT OF THE CLERKS FEE	694	696
09/23/2005	00002419	AGREED ORDER ADMITTING ROBERT B FISKE JR ESQ TO APPEAR PRO HAC VICE ON PAYMENT OF THE CLERKS FEE	697	699
09/23/2005	00002420	AGREED ORDER GRANTING EXTENSION OF TIME FOR COLEMAN (PARENT) HOLDINGS INC TO FILE & SERVE ITS REPLY TO MORGAN STANLEY'S OPPOSITION TO CPH'S VERIFIED PETITION FOR A SHOW CAUSE ORDER REGARDING MORGAN STANLEY'S CRIMINAL CONTEMPT OF COURT. CPH SHALL HAVE UP TO & INCLUDING 10/11/05 TO FILE & SERVE ITS REPLY TO MORGAN STANLEY'S OPPOSITION TO CPH'S VERIFIED PETITION	700	701
09/27/2005	00002421	STIPULATION AND ORDER CLERK IS DIRECTED TO UNSEAL EXHIBIT "1" TO NON PARTY RESPONDENTS JAMES P CUSICK, OPPOSITION TO CPH'S VERIFIED PETITION FOR A SHOW CAUSE ORDER, BY REMOVING EXHIBIT "1" FROM THE ENVELOPE IN WHICH IT WAS FILED & RE-ATTACHING IT TO THE PLEADING IN THE COURT FILE	702	705
09/28/2005	00002422	ORDER VERIFIED M/FOR ADMISSION PRO HAC VICE OF JOHN PELLETTIERI IS DENIED W/OUT PREJUDICE TO RENEWAL ON FILING A MOTION CONTAINING THE INFORMATION REQUIRED BY RULE 2.061(B)(3)	706	706
09/28/2005	00002423	ORDER VERIFIED M/FOR ADMISSION PRO HAC VICE OF JOHN S SIFFERT IS DENIED W/OUT PREJUDICE TO RENEWAL ON FILING A MOTION CONTAINING THE INFORMATION REQUIRED BY RULE 2.061(B)(3)	707	707
09/30/2005	00002424	MOTION (AMENDED VERIFIED) OF JOHN PELLETTIERI ESQ, FOR LEAVE TO SPECIFICALLY APPEAR PRO HAC VICE ***NO FEE PER COURT ORDER***	708	713

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09/30/2005	00002425	MOTION (AMENDED VERIFIED) OF JOHN S SIFFERT ESQ, FOR LEAVE TO SPECIFICALLY APPEAR PRO HAC VICE ***NO FEE PER COURT ORDER***	714 719
10/05/2005	00002426	AGREED ORDER ADMITTING JOHN SIFFERT ESQ TO APPEAR PRO HACE VICE.	720 722
10/05/2005	00002427	AGREED ORDER ADMITTING JOHN PELLETTIERI ESQ TO APPEAR PRO HACE VICE.	723 725
10/07/2005	00002428	LETTER FROM JOEL D. EATON TO CLERK'S OFFICE DTD 10/6/05 INRE: 4DCA STAYED THE APPEAL CASE NO. 4D05-2936 W/COPY OF 4DCA ORDER DTD 8/25/05 ATTACHED THERETO.	726 727
10/11/2005	00002429	BRIEF (VERIFIED REPLY) IN SUPPORT OF CPH'S VERIFIED PETITION FOR A CRIMINAL CONTEMPT SHOW CAUSE ORDER - W/ATTACHMENTS	728 800
VOLUME NUMBER FIVE			
10/11/2005	00002429	BRIEF	801 808
10/12/2005	00002430	CONTINUED FROM PREVIOUS VOLUME MOTION (VERIFIED UNOPPOSED) FOR LEAVE TO SPECIALLY APPEAR PRO HAC VICE ALAN LEVINE BY RICHARD G LUBIN AS CO COUNSEL FOR NON PARTY DOYLE	809 813
10/12/2005	00002431	MOTION (VERIFIED UNOPPOSED) FOR LEAVE TO SPECIALLY APPEAR PRO HAC VICE OF IAN SHAPIRO BY RICHARD G LUBIN ESQ AS CO COUNSEL FOR NON PARTY DOULE	814 818
10/12/2005	00002432	MOTION (VERIFIED UNOPPOSED) FOR LEAVE TO SPECIALLY APPEAR PRO HAC VICE OF STEVEN M COHEN ESQ BY RICHARD G LUBIN ESQ AS CO COUNSEL FOR NON PARTY DOULE	819 823

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		Text/Notes	Range	
10/17/2005	00002433	ORDER ADMITTING STEVEN M COHEN TO APPEAR PRO HAC VICE.	824	824
10/17/2005	00002434	ORDER ADMITTING ALAN LEVINE TO APPEAR PRO HAC VICE.	825	825
10/17/2005	00002435	ORDER ADMITTING IAN SHAPIRO TO APPEAR PRO HAC VICE.	826	826
10/19/2005	00002436	MOTION (VERIFIED) FOR LEAVE TO FILE A SUPPLEMENTAL AFFID FROM ARTHUR RIEL, MORGAN STANLEY'S FORMER EXECUTIVE DIRECTOR OF TECHNOLOGY - W/ATTACHMENTS	827	872
10/20/2005	00002437 A	MOTION TO SEAL CPH'S VERIFIED M/FOR LEAVE & REQUEST FOR EXPEDITED CONSIDERATION	873	875
10/20/2005	00002437 B	ORDER HEARING ON CPH'S VERIFIED PETITION FOR SHOW CAUSE ORDER SET 10/21/05 IS CANCELLED & RESET TO 11/3/05 @ 3:00 PM. HEARING ON CPH'S VERIFIED M/FOR LEAVE TO FILE SUPPLEMENTAL AFFID FROM ARTHUR RIEL SHALL BE HELD 10/25/05 @ 8:45 AM	876	878
10/20/2005	00002437 C	ORDER HEARING ON DEFS M/TO SEAL CPH'S VERIFIED M/FOR LEAVE SHALL BE HELD ON 10/21/05 @ 8:30 AM	879	881
10/20/2005	00002437 D	ORDER SETTING STATUS HEARING 10/20/05 @ 9:30 AM	882	883
10/20/2005	00002437 E	ORDER SETTING STATUS HEARING (AMENDED) 10/19/05 @ 4:00 PM	884	885
10/21/2005	00002438	ORDER MORGAN STANLEY & CO INC'S M/TO SEAL CPH'S VERIFIED FOR LEAVE IS DENIED	886	889
10/31/2005	00002440	RETURNED MAIL TO DOUGLAS DUNCAN ESQ	890	893

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10/31/2005	00002441	MOTION (VERIFIED) FOR LEAVE TO FILE A SECOND SUPPLEMENTAL AFFID FROM ARTHUR RIEL, MORGAN STANLEY'S FORMER EXECUTIVE DIRECTOR OF TECHNOLOGY - W/ATTACHMENTS	894	922
11/01/2005	00002446	RESPONSE TO: OF NON PARTY RESPONDENT DONALD KEMPF'S RESPONSE TO ARTHUR RIEL'S SUPPLEMENTAL AFFIDAVITS	923	928
11/01/2005	00002447	NOTICE OF FILING AFFID OF ARTHUR RIEL - ATTACHED	929	941
11/01/2005	00002448	NOTICE OF FILING SECOND AFFID OF ARTHUR RIEL - ATTACHED	942	948
11/02/2005	00002449	NOTICE OF FURTHER OPPOSITION TO CPH'S PETITION FOR A SHOW CAUSE ORDER	949	959
11/02/2005	00002450	ORDER COLEMAN (PARENT) HOLDINGS INC'S VERIFIED M/FOR LEAVE TO FILE A SUPPLEMENTAL AFFID FROM ARTHUR RIEL IS GRANTED. PLTF MAY FILE THE SUPPLEMENTAL AFFID. DEF & NON PARTY RESPONDENTS SHALL SERVE ANY RESPONSIVE ARGUMENT BY 11/1/105	960	961
11/02/2005	00002451	ORDER COLEMAN (PARENT) HOLDINGS INC'S VERIFIED M/FOR LEAVE TO FILE A SECOND SUPPLEMENTAL AFFID FROM ARTHUR RIEL, MORGAN STANLEY'S FORMER EXECUTIVE DIRECTOR OF TECHNOLOGY IS GRANTED. PLTF MAY FILE THE SECOND SUPPLEMENTAL AFFID. DEF & NON PARTY RESPONDENTS SHALL SERVE RESPONSIVE ARGUMENT BY 11/1/05	962	964
11/02/2005	00002452	MEMORANDUM OF NON PARTY RESPONDENT SOO-MI LEE, REGARDING COLEMAN (PARENT) HOLDINGS INC'S VERIFIED MOTIONS FOR LEAVE TO FILE SUPPLEMENTAL AFFIDAVITS FROM ARTHUR RIEL	965	968
11/02/2005	00002453	COPY OF NON PARTY RESPONDENT JAMES F DOYLE'S RESPONSE TO ARTHUR RIEL'S SUPPLEMENTAL AFFIDAVITS	969	977

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11/02/2005	00002454	COPY OF NON PARTY RESPONDENT JAMES P CUSICK'S SUPPLEMENTAL BRIEF IN OPPOSITION TO CPH'S VERIFIED PETITION FOR A SHOW CAUSE HEARING	978	982
11/03/2005	00002455	BRIEF (SUPPLEMENTAL) OF NON PARTY RESPONDENT JAMES P CUSICK, IN OPPOSITION TO CPH'S VERIFIED PETITION FOR A SHOW CAUSE ORDER	983	987
11/14/2005	00002456	ORDER COURT DECLINES TO RULE ON CPH'S VERIFIED PETITION FOR A SHOW CAUSE ORDER REGARDING MORGAN STANLEY'S CRIMINAL CONTEMPT OF COURT PENDING DISPOSITION OF THE PRIMARY ACTION ON APPEAL	988	996
11/16/2005	00002457	MOTION FOR ENTRY OF JUDGMENT ON CPH'S M/TO TAX COSTS	997	1000
VOLUME NUMBER SIX				
11/18/2005	00002459	ORDER COURT DECLINES TO RULE ON CPH'S VERIFIED PETITION FOR A SHOW CAUSE ORDER REGARDING MORGAN STANLEY'S CRIMINAL CONTEMPT OF COURT PENDING DISPOSITION OF THE PRIMARY ACTION ON APPEAL	1001	1009
11/22/2005	00002460	JUDGMENT ON CPH'S M/TO TAX COSTS. PLTF SHALL RECOVER FROM DEF MORGAN STANLEY THE SUM OF \$950,000. EXECUTION OF THIS JUDGMENT SHALL BE STAYED FOR 30 DAYS TO ALLOW MORGAN STANLEY THE OPPORTUNITY TO POST AN APPROPRIATE BOND	1010	1011
12/08/2005	00002461	NOTICE OF UNAVAILABILITY	1012	1013
12/16/2005	00002462	NOTICE OF APPEAL TO 4DCA ORDER RENDERED ON 11/22/05	1014	1018
12/16/2005	00002463	NOTICE OF SERVICE ITS CIVIL SUPERSEDEAS BOND	1019	1020

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12/16/2005	00002464	BOND (CIVIL SUPERSEADEAS) MORGAN STANLEY & CO INC, AS PRINCIPAL, & SAFECO INS CO OF AMERICA AS SURETY ARE HELD & FIRMLY BOUND UNTO COLEMAN (PARENT) HOLDINGS INC IN THE PRINCIPAL SUM OF \$1,083,000 - W/ATTACHMENTS	1021 1024

01/17/2006 CERTIFICATE OF CLERK - MAILING INDEX
*** END OF REPORT ***
Number of records printed: 81

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Case ID : 2003CA005045 - COLEMAN PARENT HOLDINGS INC V MORGAN
STANLEY & CO

UCN : 502003CA005045XXOCAI

Docket Date : From 22-Jul-2005

Case Filed : 08-May-2003

Status : RO - REOPEN

Case Type	Court	Location	Division	Jury
OC - OTHER CIRCUIT	CA	MB	AI	J

Type	Party Name	Represented by
ATTORNEY	CRITTON JR, ROBERT DEWEESE	
ATTORNEY	DUNCAN, DOUGLAS NELS	
JUDGE	MAASS, JUDGE ELIZABETH T.	
PLAINTIFF	COLEMAN PARENT HOLDINGS INC	SCAROLA, JOHN
APPELLANT	MORGAN STANLEY & COMPANY INC	WARNER, THOMAS E. IANNO, JR, JOSEPH WARNER, THOMAS E.
DEFENDANT	MORGAN STANLEY & COMPANY INC	IANNO, JR, JOSEPH
APPELLANT	CLARE, THOMAS A.	HILL III, BENJAMIN H.
ATTORNEY	WEINBERG, MORRIS	

Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
22-Jul-2005			CAFF/NOA/	801FF			
22-Jul-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$56.50 was made on receipt CAMB84508.		
22-Jul-2005	2,380	4	NOTICE OF APPEAL	NOA	ORDER RENDERED JUNE 23 2005 COPY ATTACHED		
25-Jul-2005	2,381		MOTION	MOT	TO TAX COST W/ATTACHMENTS		
26-Jul-2005	2,382		MOTION	MOT	TO REMOVE CONFIDENTIALITY DESIGNATION		
26-Jul-2005	2,383		NOTICE OF HEARING	NOH	8/2/05 @ 8:45 AM ON MORGAN STANLEY'S MTO REMOVE CONFIDENTIALITY DESIGNATION		
27-Jul-2005	2,384		PETITION	PET	(VERIFIED) FOR A SHOW-CAUSE ORDER REGARDING MORGAN STANLEY CRIMINAL CONTEMPT OF COURT - W/ATTACHMENTS		

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Docket Date : From 22-Jul-2005

Case Filed : 08-May-2003

Status : RO - REOPEN

Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
28-Jul-2005	2,385		NOTICE OF FILING	NOF	PROPOSED PHASE I VERDICT FORMS SUBMITTED 5/5/05 & 5/12/05 - ATTACHED		
29-Jul-2005	2,386		ACKNOWLEDGMENT OF NEW CASE	ACKC	APPEAL FILED 7/22/05 CASE NO. 4D05-2936		
01-Aug-2005	2,387		NOTICE OF HEARING	NOH	8/4/05 @ 8:45 AM ON VERIFIED PETITION FOR A SHOW CAUSE ORDER REGARDING MORGAN STANLEY'S CRIMINAL CONTEMPT OF COURT		
01-Aug-2005	2,388		RESPONSE TO:	RESP	IN OPPOSITION TO MORGAN STANLEY'S MTO REMOVE CONFIDENTIALITY DESIGNATION		
02-Aug-2005	2,389		DIRECTIONS TO CLERK	DCLK	ONLY THE ITEMS LISTED		
02-Aug-2005	2,390		STATEMENT-JUDICIAL ACTS	SJACT	TO BE REVIEWED.		
02-Aug-2005	2,391		ORDER	ORD	MORGAN STANLEY & CO INC'S MTO CLARIFY IS GRANTED. THE STIP CONFIDENTIALITY ORDER IS CLARIFIED TO PROVIDE THAT ATTYS RETAINED AS EXPERTS OR CONSULTANTS IN CONNECTION WITH CPH'S PETITION FO RATTYS FEES & COSTS ARE DEEMED EXPERTS OR CONSULTANTS UNDER PARAGRAPH 9(H) THEREOF. COURT DEFERS RULING ON MORGAN STANLEY & CO INC'S CONTENTION THAT THE PETITION DOES NOT CONTAIN CONFIDENTIAL MATERIALS		
04-Aug-2005	2,391 - A		ORDER SETTING HEARING	ORSH	(SPECIAL SET) 10/21/05 @ 8:00 AM ON CPH'S VERIFIED PETITION FOR A SHOW-CAUSE ORDER REGARDING MORGAN STANLEY'S CRIMINAL CONTEMPT OF COURT		
05-Aug-2005	2,392	1	INVOICE	INVO	TO: THOMAS WARNER AMT \$7262.50(4D05-2606)		
05-Aug-2005	2,393	200	INDEX TO RECORD ON APPEAL	IROA	COPIES MAILED TO ALL PARTIES 4D05-2606		
12-Aug-2005	2,394		INDEX TO RECORD ON APPEAL	IROA	4D05-2606 ONE SUPPLEMENTAL VOLUME -COPIES MLD TO ALL PARTIES-		

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Docket Date : From 22-Jul-2005

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12-Aug-2005	2,395		INVOICE	INVO	(COST MEMO) TO JOSEPH IANNO, JR. FOR SUPP INDEX/PREP IN THE AMT OF \$5.50		
15-Aug-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$7,262.50 was made on receipt CAMB86829.		
25-Aug-2005	2,395 - A		NOTICE	NOT	(JOINT) THAT THEY RESOLVED ALL CLAIMS RELATING TO COSTS & ATTYS FEES		
29-Aug-2005	2,396		TRUE COPY	TCPY	4D05-2936 8/25/05 APPELLEE'S MOTION FILED 8/2/05, TO DISMISS APPEAL IS HEREBY DENIED; FURTHER APPELLANT'S MOTION FILED TO STAY APPEAL PENDING COURT'S RESOLUTION OF HIS PETITION FOR WRIT OF CERTIORARI IN CASE NO. 4D05-1575 IS HEREBY GRANTED.		
29-Aug-2005	2,397		ORDER	ORD	AND RENOTICE OF HEARING. THE STATUS CONFERENCE SET FOR 8/26/05 IS CANCELED & RESET FOR 9/13/05 @ 3:30PM		
01-Sep-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$5.50 was made on receipt CAMB88479.		
06-Sep-2005	2,398		TRUE COPY	TCPY	4D05-2606 9/2/05 THAT APPELLEE COLEMAN (PARENT) HOLDINGS, INC'S VERIFIED MOTIONS FILED 8/19/05 & 8/25/05, TO PERMIT FOREIGN ATTYS TO APPEAR ARE GRANTED. RONALD L. MARMER, JEFFREY T. SHAW, JEROLD S. SOLOVY AND PAUL M. SMITH SHALL EACH TENDER THE \$100.00 APPEARANCE FEE REQUIRED W/IN 10 DAYS OF THIS ORDER. FURTHER APPELLANT'S MOTION FILED, FOR EXTENSION OF TIME IS GRANTED. (BRIEF)		

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Docket Date : From 22-Jul-2005

Case Filed : 08-May-2003

Status : RO - REOPEN

Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
06-Sep-2005	2,399		AGREED ORDER	AGOR	GRANTING EXTENSION OF TIME FOR MORGAN STANLEY TO FILE & SERVE ITS OPPOSITION TO CPH'S VERIFIED PETITION FOR A SHOW CAUSE ORDER REGARDING MORGAN STANLEY'S CRIMINAL CONTEMPT OF COURT - UP TO & INCLUDING 9/13/05		
08-Sep-2005	2,400		TRUE COPY	TCPY	4D05-2606 9/6/05 THAT APPELLANT'S 8/18/05, MOTION TO ENFORCE AUTOMATIC STAY PROVISION OF RULE 9.310(B)(1) AND FOR EXPEDITED CONSIDERATION IS GRANTED.		
08-Sep-2005	2,401		NOTICE OF APPEARANCE	NOAP	(SPECIAL) OF ROBERT CRITTON JR ESQ, OBO JAMES P CUSICK		
12-Sep-2005	2,402		STIPULATION AND ORDER	STOR	REGARDING BRIEFING SCHEDULE FOR M/FOR AN ORDER TO SHOW CAUSE - SEE ORDER FOR DETAILS		
13-Sep-2005	2,403		NOTICE OF APPEARANCE	NOAP	(SPECIAL) OF DOUGLAS DUNCAN ESQ, OBO DONALK KEMPF		
14-Sep-2005	2,404		NOTICE	NOT	OF OPPOSITION TO VERIFIED PETITION FOR A SHOW CAUSE ORDER		
15-Sep-2005	2,405		STIPULATION	STIP	REGARDING BRIEFING SCHEDULE FOR M/FOR AN ORDER TO SHOW CAUSE ** DOWN FROM JUDGE W/ORDER NOT SIGNED **		
20-Sep-2005			FEE/PRO HAC VICE (\$100.00)	OPRHV	PD FOR NON PARTY ***GOES W/MOTION DE#2406*****		
20-Sep-2005			FEE/PRO HAC VICE (\$100.00)	OPRHV	FOR NON PARTY ****GOES W/MOTION DE#2407*****		
20-Sep-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$200.00 was made on receipt CAMB90165. ***GOES W/MOTIONS DE#2406 & 2407*****		
20-Sep-2005	2,406		MOTION	MOT	(VERIFIED) FOR ADMISSION PRO HAC VICE AS TO JOHN S SIFFERT ESQ		

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Case Filed : 08-May-2003

Status : RO - REOPEN

Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
20-Sep-2005	2,407		MOTION	MOT	(VERIFIED) FOR ADMISSION PRO HAC VICE AS TO JOHN PELLETTIERI ESQ		
20-Sep-2005	2,408		NOTICE	NOT	OF NON PARTY RESPONDENT SOO-MI LEE'S OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S VERIFIED PETITION SEEKING ORDER TO SHOW CAUSE - W/ATTACHMENTS		
20-Sep-2005	2,409		NOTICE	NOT	OF NON PARTY RESPONDENT JAMES F DOYLE'S OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC'S VERIFIED PETITION FOR A SHOW CAUSE ORDER - W/ATTACHMENTS		
20-Sep-2005	2,410		NOTICE	NOT	OF NON PARTY RESPONDENT DONALD KEMPF'S OPPOSITION TO VERIFIED PETITION FOR A SHOW CAUSE ORDER		
20-Sep-2005	2,410 - A		NOTICE	NOT	OF NON PARTY RESPONDENT JAMES P CUSICK'S OPPOSITION TO CPH'S VERIFIED PETITION FOR A SHOW CAUSE ORDER - W/ATTACHMENTS *** EXHIBIT 1 UNSEALED PER ORDER DTD 9/27/05 ****		
21-Sep-2005	2,410 - B		EXHIBIT CHECK OUT RECEIPT	EXCOR	TO APPEALS FROM EVIDENCE CLERK		
22-Sep-2005			FEE/PRO HAC VICE (\$100.00)	0PRHV	***GOES W/MOTION DE#2411A*****		
22-Sep-2005			FEE/PRO HAC VICE (\$100.00)	0PRHV	*****GOES W/MOTION DE#2411B*****		
22-Sep-2005	2,411	27	NOTICE TRANSMIT RECORD APPEAL	NTRA	4D05-2606 FIVE HUNDRED AND FIFTY-THREE VOLUMES, ONE SUPPLEMENT VOLUME, 10 BOXES OF EXHIBITS AND 22 BOXES OF SEALED ITEMS SHIPPED 9/20/05 THROUGH 9/22/05		
22-Sep-2005	2,411 - A		MOTION	MOT	(VERIFIED) FOR LEAVE TO SPECIALLY APPEAR PRO HAC VICE (SCOTT W MULLER ESQ)		
22-Sep-2005	2,411 - B		MOTION	MOT	(VERIFIED) FOR LEAVE TO SPECIALLY APPEAR PRO HAC VICE (ROBERT B FISKE JR ESQ)		

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Filing Date	Docket No	Pages	Docket Description	Docket Code	Docket Text	Book No	Page No
22-Sep-2005	2,411 - C		ORDER	ORD	NON PARTY RESPONDENT SOO-MI LEE'S UNOPPOSED VERIFIED M/FOR THE ADMISSION OF ATTY AUDREY STRAUSS TO APPEAR PRO HAC VICE IS GRANTED ON PAYMENT OF THE CLERKS FEE		
22-Sep-2005	2,411 - D		ORDER	ORD	NON PARTY RESPONDENT SOO MI LEE'S UNOPPOSED VERIFIED M/FOR THE ADMISSION OF ATTY ANDREW GARDNER TO APPEAR PRO HAC VICE IS GRANTED ON THE PAYMENT OF THE CLERKS FEE		
22-Sep-2005	2,411 - E		ORDER	ORD	NON PARTY RESPONDENT SOO-MI LEE'S UNOPPOSED VERIFIED M/FOR THE ADMISSION OF ATTY SLOAN JOHNSTON TO APPEAR PRO HAC VICE IS GRANTED ON PAYMENT OF THE CLERKS FEE		
22-Sep-2005	2,411 - F		ORDER	ORD	NON PARTY RESPONDENT SOO-MI LEE'S UNOPPOSED VERIFIED M/FOR THE ADMISSION OF ATTY LISA BEBCHICK TO APPEAR PRO HAC VICE IS GRANTED UPON PAYMENT OF CLERKS FEE		
23-Sep-2005			FEE/PRO HAC VICE (\$100.00)	0PRHV	****GOES W/DE#2414 (STRAUSS)*****		
23-Sep-2005			FEE/PRO HAC VICE (\$100.00)	0PRHV	****GOES W/MOTION DE#2415 (GARDNER)****		
23-Sep-2005			FEE/PRO HAC VICE (\$100.00)	0PRHV	***GOES W/MOTION DE#2416 (JOHNSTON)*****		
23-Sep-2005			FEE/PRO HAC VICE (\$100.00)	0PRHV	****GOES W/MOTION DE#2417 (BEBCHICK)*****		
23-Sep-2005	2,412	1	INVOICE	INVO	4D05-2936 TO BENJAMIN H. HILL, III FOR PREPARATION OF RECORD ON APPEAL \$8.50		
23-Sep-2005	2,413		INDEX TO RECORD ON APPEAL	IROA	4D05-2936 ONE VOLUME COPIES ML'D TO ALL PARTIES		

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23-Sep-2005	2,414		MOTION	MOT	(UNOPPOSED VERIFIED) OF NON PARTY RESPONDENT SOO-MI LEE, FOR THE ADMISSION OF ATTY AUDREY STRAUSS TO APPEAR PRO HAC VICE		
23-Sep-2005	2,415		MOTION	MOT	(UNOPPOSED VERIFIED) OF NON PARTY RESPONDENT SOO-MI LEE, FOR THE ADMISSION OF ATTY ANDREW T GARDNER TO APPEAR PRO HAC VICE		
23-Sep-2005	2,416		MOTION	MOT	(UNOPPOSED VERIFIED) OF NON PARTY RESPONDENT SOO-MI LEE, FOR THE ADMISSION OF ATTY SLOAN JOHNSTON TO APPEAR PRO HAC VICE		
23-Sep-2005	2,417		MOTION	MOT	(UNOPPOSED VERIFIED) OF NON PARTY RESPONDENT SOO-MI LEE, FOR THE ADMISSION OF ATTY LISA BEBCHICK TO APPEAR PRO HAC VICE		
23-Sep-2005	2,418		AGREED ORDER	AGOR	ADMITTING SCOTT W MULLER ESQ TO APPEAR PRO HAC VICE ON PAYMENT OF THE CLERKS FEE		
23-Sep-2005	2,419		AGREED ORDER	AGOR	ADMITTING ROBERT B FISKE JR ESQ TO APPEAR PRO HAC VICE ON PAYMENT OF THE CLERKS FEE		
23-Sep-2005	2,420		AGREED ORDER	AGOR	GRANTING EXTENSION OF TIME FOR COLEMAN (PARENT) HOLDINGS INC TO FILE & SERVE ITS REPLY TO MORGAN STANLEY'S OPPOSITION TO CPH'S VERIFIED PETITION FOR A SHOW CAUSE ORDER REGARDING MORGAN STANLEY'S CRIMINAL CONTEMPT OF COURT. CPH SHALL HAVE UP TO & INCLUDING 10/11/05 TO FILE & SERVE ITS REPLY TO MORGAN STANLEY'S OPPOSITION TO CPH'S VERIFIED PETITION		

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27-Sep-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$200.00 was made on receipt CMB90781. ***GOES W/MOTIONS DE#2411A & DE# 2411B*****		
27-Sep-2005	2,421		STIPULATION AND ORDER	STOR	CLERK IS DIRECTED TO UNSEAL EXHIBIT "1" TO NON PARTY RESPONDENTS JAMES P CUSICK, OPPOSITION TO GPH'S VERIFIED PETITION FOR A SHOW CAUSE ORDER, BY REMOVING EXHIBIT "1" FROM THE ENVELOPE IN WHICH IT WAS FILED & RE-ATTACHING IT TO THE PLEADING IN THE COURT FILE		
28-Sep-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$400.00 was made on receipt CMB90937. ***GOES W/MOTIONS DE#2414 THRU 2417*****		
28-Sep-2005	2,422		ORDER	ORD	VERIFIED M/FOR ADMISSION PRO HAC VICE OF JOHN PELLETTIERI IS DENIED W/OUT PREJUDICE TO RENEWAL ON FILING A MOTION CONTAINING THE INFORMATION REQUIRED BY RULE 2.061(B)(3)		
28-Sep-2005	2,423		ORDER	ORD	VERIFIED M/FOR ADMISSION PRO HAC VICE OF JOHN S SIFFERT IS DENIED W/OUT PREJUDICE TO RENEWAL ON FILING A MOTION CONTAINING THE INFORMATION REQUIRED BY RULE 2.061(B)(3)		
30-Sep-2005	2,424		MOTION	MOT	(AMENDED VERIFIED) OF JOHN PELLETTIERI ESQ, FOR LEAVE TO SPECIFICALLY APPEAR PRO HAC VICE ***NO FEE PER COURT ORDER***		
30-Sep-2005	2,425		MOTION	MOT	(AMENDED VERIFIED) OF JOHN S SIFFERT ESQ, FOR LEAVE TO SPECIFICALLY APPEAR PRO HAC VICE ***NO FEE PER COURT ORDER***		
03-Oct-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$8.50 was made on receipt CMB91361.		

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03-Oct-2005			VOIDED RECEIPT	VOID	Receipt Number CAMB91361 has been voided.		
03-Oct-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$8.50 was made on receipt CAMB91365.		
05-Oct-2005	2,426		AGREED ORDER	AGOR	ADMITTING JOHN SIFFERT ESQ TO APPEAR PRO HAC VICE.		
05-Oct-2005	2,427		AGREED ORDER	AGOR	ADMITTING JOHN PELLETTIERI ESQ TO APPEAR PRO HAC VICE.		
07-Oct-2005	2,428		LETTER	LTR	FROM JOEL D. EATON TO CLERK'S OFFICE DTD 10/6/05 INRE: 4DCA STAYED THE APPEAL CASE NO. 4D05-2936 W/COPY OF 4DCA ORDER DTD 8/25/05 ATTACHED THERETO.		
11-Oct-2005	2,429		BRIEF	BRF	(VERIFIED REPLY) IN SUPPORT OF CPH'S VERIFIED PETITION FOR A CRIMINAL CONTEMPT SHOW CAUSE ORDER - W/ATTACHMENTS		
12-Oct-2005			FEE/PRO HAC VICE (\$100.00)	0PRHV	FOR NON PARTY **GOES W/MOTION DE#2430***		
12-Oct-2005			FEE/PRO HAC VICE (\$100.00)	0PRHV	FOR NON PARTY ***GOES W/MOTION DE#2431*****		
12-Oct-2005			FEE/PRO HAC VICE (\$100.00)	0PRHV	FOR NON PARTY ***GOES W/MOTION DE#2432***		
12-Oct-2005			FEE/PRO HAC VICE (\$100.00)	0PRHV	FOR NON PARTY ***GOES W/MOTION DE#2431*****		
12-Oct-2005	2,430		MOTION	MOT	(VERIFIED UNOPPOSED) FOR LEAVE TO SPECIALLY APPEAR PRO HAC VICE ALAN LEVINE BY RICHARD G LUBIN AS CO COUNSEL FOR NON PARTY DOYLE		
12-Oct-2005	2,431		MOTION	MOT	(VERIFIED UNOPPOSED) FOR LEAVE TO SPECIALLY APPEAR PRO HAC VICE OF IAN SHAPIRO BY RICHARD G LUBIN ESQ AS CO COUNSEL FOR NON PARTY DOULE		

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12-Oct-2005	2,432		MOTION	MOT	(VERIFIED UNOPPOSED) FOR LEAVE TO SPECIALLY APPEAR PRO HAC VICE OF STEVEN M COHEN ESQ BY RICHARD G LUBIN ESQ AS CO COUNSEL FOR NON PARTY DOULE		
13-Oct-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$100.00 was made on receipt CAMB92324. ***GOES W/MOTION DE#2430****		
13-Oct-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$100.00 was made on receipt CAMB92326. *****GOES W/MOTION DE#2431****		
13-Oct-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$100.00 was made on receipt CAMB92327. ***GOES W/MOTION DE#2432***		
17-Oct-2005	2,433		ORDER	ORD	ADMITTING STEVEN M COHEN TO APPEAR PRO HAC VICE.		
17-Oct-2005	2,434		ORDER	ORD	ADMITTING ALAN LEVINE TO APPEAR PRO HAC VICE.		
17-Oct-2005	2,435		ORDER	ORD	ADMITTING IAN SHAPIRO TO APPEAR PRO HAC VICE.		
19-Oct-2005	2,436		MOTION	MOT	(VERIFIED) FOR LEAVE TO FILE A SUPPLEMENTAL AFFID FROM ARTHUR RIEL, MORGAN STANLEY'S FORMER EXECUTIVE DIRECTOR OF TECHNOLOGY - W/ATTACHMENTS		
19-Oct-2005	2,437		NOTICE OF HEARING	NOH	10/21/05 @ 8:00 AM ON CPH'S VERIFIED M/FOR LEAVE TO FILE A SUPPLEMENTAL AFFID FROM ARTHUR RIEL, MORGAN STANLEY'S FORMER EXECUTIVE DIRECTOR OF TECHNOLOGY		
20-Oct-2005	2,437 - A		MOTION	MOT	TO SEAL CPH'S VERIFIED M/FOR LEAVE & REQUEST FOR EXPEDITED CONSIDERATION		

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20-Oct-2005	2,437 - B		ORDER	ORD	HEARING ON CPH'S VERIFIED PETITION FOR SHOW CAUSE ORDER SET 10/21/05 IS CANCELLED & RESET TO 11/3/05 @ 3:00 PM. HEARING ON CPH'S VERIFIED MFOR LEAVE TO FILE SUPPLEMENTAL AFFID FROM ARTHUR RIEL SHALL BE HELD 10/25/05 @ 8:45 AM		
20-Oct-2005	2,437 - C		ORDER	ORD	HEARING ON DEFS MTO SEAL CPH'S VERIFIED MFOR LEAVE SHALL BE HELD ON 10/21/05 @ 8:30 AM		
20-Oct-2005	2,437 - D		ORDER SETTING STATUS HEARING	OSSH	10/20/05 @ 9:30 AM		
20-Oct-2005	2,437 - E		ORDER SETTING STATUS HEARING	OSSH	(AMENDED) 10/19/05 @ 4:00 PM		
21-Oct-2005	2,438		ORDER	ORD	MORGAN STANLEY & CO INC'S MTO SEAL CPH'S VERIFIED FOR LEAVE IS DENIED		
21-Oct-2005	2,439		RE-NOTICE OF HEARING	RNOH	10/26/05 @ 8:45 AM ON CPH'S VERIFIED MFOR LEAVE TO FILE A SUPPLEMENTAL AFFID FROM ARTHUR RIEL, MORGAN STANLEY'S FORMER EXECUTIVE DIRECTOR OF TECHNOLOGY		
31-Oct-2005	2,440		RETURNED MAIL	RMAL	TO DOUGLAS DUNCAN ESQ		
31-Oct-2005	2,441		MOTION	MOT	(VERIFIED) FOR LEAVE TO FILE A SECOND SUPPLEMENTAL AFFID FROM ARTHUR RIEL, MORGAN STANLEY'S FORMER EXECUTIVE DIRECTOR OF TECHNOLOGY - W/ATTACHMENTS		
31-Oct-2005	2,442		NOTICE OF HEARING	NOH	11/1/05 @ 8:45 AM ON CPH'S VERIFIED MFOR LEAVE TO FILE A SECOND SUPPLEMENTAL AFFID FROM ARTHUR RIEL, MORGAN STANLEY'S FORMER EXECUTIVE DIRECTOR OF TECHNOLOGY		

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31-Oct-2005	2,443		RE-NOTICE OF HEARING	RNOH	11/1/05 @ 8:45 AM ON CPH'S VERIFIED M/FOR LEAVE TO FILE A SUPPLEMENTAL AFFID FROM ARTHUR RIEL, MORGAN STANLEY'S FORMER EXECUTIVE DIRECTOR OF TECHNOLOGY		
31-Oct-2005	2,444		RE-NOTICE OF HEARING	RNOH	11/1/05 @ 9:30 AM ON CPH'S VERIFIED M/FOR LEAVE TO FILE A SUPPLEMENTAL AFFID FROM ARTHUR RIEL, MORGAN STANLEY'S FORMER EXECUTIVE DIRECTOR OF TECHNOLOGY		
31-Oct-2005	2,445		RE-NOTICE OF HEARING	RNOH	11/1/05 @ 9:30 AM ON CPH'S VERIFIED M/FOR LEAVE TO FILE A SECOND SUPPLEMENTAL AFFIDAVIT FROM ARTHUR RIEL, MORGAN STANLEY'S FORMER EXECUTIVE DIRECTOR OF TECHNOLOGY		
01-Nov-2005	2,446		RESPONSE TO:	RESP	OF NON PARTY RESPONDENT DONALD KEMPF'S RESPONSE TO ARTHUR RIEL'S SUPPLEMENTAL AFFIDAVITS		
01-Nov-2005	2,447		NOTICE OF FILING	NOF	AFFID OF ARTHUR RIEL - ATTACHED		
01-Nov-2005	2,448		NOTICE OF FILING	NOF	SECOND AFFID OF ARTHUR RIEL - ATTACHED		
02-Nov-2005	2,449		NOTICE	NOT	OF FURTHER OPPOSITION TO CPH'S PETITION FOR A SHOW CAUSE ORDER		
02-Nov-2005	2,450		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S VERIFIED M/FOR LEAVE TO FILE A SUPPLEMENTAL AFFID FROM ARTHUR RIEL IS GRANTED. PLTF MAY FILE THE SUPPLEMENTAL AFFID. DEF & NON PARTY RESPONDENTS SHALL SERVE ANY RESPONSIVE ARGUMENT BY 11/1/105		

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02-Nov-2005	/ 2,451		ORDER	ORD	COLEMAN (PARENT) HOLDINGS INC'S VERIFIED M/FOR LEAVE TO FILE A SECOND SUPPLEMENTAL AFFID FROM ARTHUR RIEL, MORGAN STANLEY'S FORMER EXECUTIVE DIRECTOR OF TECHNOLOGY IS GRANTED. PLTF MAY FILE THE SECOND SUPPLEMENTAL AFFID. DEF & NON PARTY RESPONDENTS SHALL SERVE RESPONSIVE ARGUMENT BY 11/1/05		
02-Nov-2005	/ 2,452		MEMORANDUM	MEMO	OF NON PARTY RESPONDENT SOO-MI LEE, REGARDING COLEMAN (PARENT) HOLDINGS INC'S VERIFIED MOTIONS FOR LEAVE TO FILE SUPPLEMENTAL AFFIDAVITS FROM ARTHUR RIEL		
02-Nov-2005	/ 2,453		COPY	CPY	OF NON PARTY RESPONDENT JAMES F DOYLE'S RESPONSE TO ARTHUR RIEL'S SUPPLEMENTAL AFFIDAVITS		
02-Nov-2005	/ 2,454		COPY	CPY	OF NON PARTY RESPONDENT JAMES P CUSICK'S SUPPLEMENTAL BRIEF IN OPPOSITION TO CPH'S VERIFIED PETITION FOR A SHOW CAUSE HEARING		
03-Nov-2005	/ 2,455		BRIEF	BRF	(SUPPLEMENTAL) OF NON PARTY RESPONDENT JAMES P CUSICK, IN OPPOSITION TO CPH'S VERIFIED PETITION FOR A SHOW CAUSE ORDER		
14-Nov-2005	/ 2,456		ORDER	ORD	COURT DECLINES TO RULE ON CPH'S VERIFIED PETITION FOR A SHOW CAUSE ORDER REGARDING MORGAN STANLEY'S CRIMINAL CONTEMPT OF COURT PENDING DISPOSITION OF THE PRIMARY ACTION ON APPEAL		
16-Nov-2005	/ 2,457		MOTION	MOT	FOR ENTRY OF JUDGMENT ON CPH'S MTO TAX COSTS		
16-Nov-2005	2,458		NOTICE OF HEARING	NOH	11/22/05 @ 8:45 AM ON M/FOR ENTRY OF JUDGMENT ON CPH'S MTO TAX COSTS		

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18-Nov-2005	2,459		ORDER	ORD	COURT DECLINES TO RULE ON CPH'S VERIFIED PETITION FOR A SHOW CAUSE ORDER REGARDING MORGAN STANLEY'S CRIMINAL CONTEMPT OF COURT PENDING DISPOSITION OF THE PRIMARY ACTION ON APPEAL		
22-Nov-2005	2,460	2	JUDGMENT	JUD	ON CPH'S MTO TAX COSTS. PLTF SHALL RECOVER FROM DEF MORGAN STANLEY THE SUM OF \$950,000. EXECUTION OF THIS JUDGMENT SHALL BE STAYED FOR 30 DAYS TO ALLOW MORGAN STANLEY THE OPPORTUNITY TO POST AN APPROPRIATE BOND	19597	0950
08-Dec-2005	2,461		NOTICE OF UNAVAILABILITY	NOUN			
16-Dec-2005			CAFF/NOA/	801FF			
16-Dec-2005			RECEIPT FOR PAYMENT	RCPT	A Payment of -\$57.50 was made on receipt CAMB97643.		
16-Dec-2005	2,462	5	NOTICE OF APPEAL	NOA	TO 4DCA ORDER RENDERED ON 11/22/05	19690	0484
16-Dec-2005	2,463		NOTICE OF SERVICE	NOS	ITS CIVIL SUPERSEDEAS BOND		
16-Dec-2005	2,464		BOND	BOND	(CIVIL SUPERSEADEAS) MORGAN STANLEY & CO INC, AS PRINCIPAL, & SAFECO INS CO OF AMERICA AS SURETY ARE HELD & FIRMLY BOUND UNTO COLEMAN (PARENT) HOLDINGS INC IN THE PRINCIPAL SUM OF \$1,083,000 - W/ATTACHMENTS		
19-Dec-2005	2,465	1	NOTICE TRANSMIT RECORD APPEAL	NTRA	4D05-2606 FOUR HUNDRED FITY THREE VOLUMES AND ONE SUPPLEMENT		
19-Dec-2005	2,466		INDEX TO RECORD ON APPEAL	IROA	4D05-2606 CORRECTED FOUR HUNDRED FIFTY-THREE ML'D TO ALL PARTIES		
22-Dec-2005	2,467		ACKNOWLEDGMENT OF NEW CASE	ACKC	APPEAL FILED 12/16/05 CASE NO. 4D05-4756		

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29-Dec-2005	2,468	1	ACKNOWLEDGEMENT	ACK	4D05-2606 FROM THE 4DCA OF RECEIPT OF RECORD ON APPEAL FOUR HUDRED FIFTY THREE VOLUMES ONE SUPPLEMENT VOLUME 12/21/05		
09-Jan-2006	2,469	1	NOTICE TRANSMIT RECORD APPEAL	NTRA	4D05-2936 ONE VOLUME		
11-Jan-2006	2,470	1	ACKNOWLEDGEMENT	ACK	FROM 4DCA OF RECEIPT OF RECORD ON APPEAL ONE VOLUMES 1/10/06 4D05-2936		
13-Jan-2006	2,471	1	TRUE COPY	TCPY	ORDER FROM 4DCA DTD 1/11/06 4D05-2606 APPELLEE'S MOTION FOR EXTENSION OF TIME IS GRANTED APPELLEE HAS W/IN 30 DAYS TO FILE BRIEF. MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE BY THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IS DENIED. VERIFIED MOTIONS TO APPEAR PRO HAC VICE IS DENIED		

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Last Activity :

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*** end of report czezdk ***

CERTIFICATE OF CLERK

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

I, SHARON R. BOCK, Clerk of Circuit Court for the County of Palm Beach, State of Florida, do hereby certify that the foregoing pages 1 to 1024, inclusive, consists of original papers and proceedings in Civil Action Case Number: 502003CA005045XXOCAI COLEMAN VS. MORGAN STANLEY & CO. 4D05-4756 MORGAN STANLEY & CO. VS. COLEMAN (PARENT) HOLDINGS as appears from the records and files of my office which have been directed to be included in said Record, pursuant to Florida Rules of Appellate Procedure, 9.200(a)(1).

IN WITNESS WHEREOF,
I have hereunto set my hand and affixed the
of said Court this 17th day of January, 2006 A.D.

SHARON R. BOCK, Clerk of Circuit Court
Palm Beach County, Florida

By: 
(Circuit Court Seal) SHERI PAIGE Deputy Clerk

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION "AJ"
CASE NO.: 502003CA005045XXXXMB

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

**ORDER GRANTING DEFENDANT'S AMENDED MOTION TO TAX TRIAL COURT
COSTS AS TO THE ISSUE OF ENTITLEMENT**

THIS CAUSE came before the Court on May 22, 2008 on Defendant Morgan Stanley & Co., Inc.'s ("MS") Amended Motion to Tax Trial Court Costs ("Motion"). This Court, having reviewed the case file, considered memoranda of law, heard argument of counsel and being otherwise advised in the premises, finds:

BACKGROUND AND PROCEDURAL HISTORY

1. On June 23, 2005, a Final Judgment was entered in favor of Plaintiff Coleman (Parent) Holdings, Inc. ("CPH"). On June 27, 2005, MS timely appealed this Final Judgment.
2. On March 21, 2007, the Fourth District Court of Appeal reversed the Final Judgment, and remanded the case with instructions for this Court to enter judgment in favor of MS. Morgan Stanley & Co. Inc. v. Coleman (Parent) Holdings, Inc., 955 So. 2d 1124 (Fla. 4th DCA 2007).
3. On April 20, 2007, CPH filed motions for rehearing, rehearing en banc, clarification, and certification in the Fourth District Court of Appeal. These motions were denied on June 4, 2007.

4. On June 22, 2007, the Fourth District Court of Appeal issued its mandate in the Main Appeal returning jurisdiction to this Court.

5. On March 18, 2008, this Court entered a Final Judgment in MS's favor pursuant to the Fourth District Court of Appeal's mandate and reserved jurisdiction to award costs to MS. Based upon this Final Judgment, MS is the prevailing party in this action.

6. MS has filed affidavits in support of its Motion that itemize the trial costs it seeks to recover.

7. CPH first argues that this Court should defer ruling on the issue of MS's entitlement to trial costs pending the outcome of CPH's Florida Rule of Civil Procedure 1.540(b) ("Rule 1.540(b)") motion because "it is not known whether [MS] will ultimately prevail." Secondly, CPH argues that MS is not entitled to recover costs based on the undisturbed findings, with the exception of damages, that MS conspired to commit securities fraud and MS's litigation misconduct. In response, MS maintains that there is no precedent in Florida law for undertaking such deferral and that while this Court may have discretion in determining the amount of MS's recoverable trial costs, this Court has no discretion as to the issue of MS's entitlement to trial costs.

LEGAL CONCLUSIONS

8. Rule 1.540(b) states that "[a] motion under this subdivision does not affect the finality of a judgment or decree or suspend its operation." Accordingly, CPH's pending Rule 1.540(b) motion for relief from final judgment does not affect the finality of this Court's March 18, 2008 Final Judgment entered pursuant to the Fourth District Court of Appeal's mandate. Thus, this Court cannot defer ruling on MS's entitlement to trial costs on the basis that CPH might succeed on its Rule 1.540(b) motion.

9. Section 57.041 of the Florida Statutes, provides that the “party recovering judgment *shall* recover all his or her legal costs and charges which shall be included in the judgment.” § 57.041(1), Fla. Stat. (2007) (emphasis added). The mandatory language of this statutory provision requires the trial court to award costs to the prevailing party in a civil action. Id.; see also Wyatt v. Milner Document Prods., Inc., 932 So. 2d 487, 490 (Fla. 4th DCA 2006) (a determination of entitlement to costs under section 57.041 is governed by the “prevailing party” standard; the ‘prevailing party for purposes of taxing costs is the party who prevailed on the significant issues below’) (citing cases); Oriental Imports, Inc. v. Allin, 559 So. 2d 442, 443 (Fla. 5th DCA 1990) (section 57.041 mandates that every party who recovers a judgment in a legal proceeding is entitled as a matter of right to recover lawful court costs and a trial court has no “discretion to deny recovery of costs to the prevailing party”). It is undeniable that MS is the prevailing party in this case because the Fourth District Court of Appeal mandated that judgment be entered in its favor and a Final Judgment has been so entered.

10. While a trial court has discretion in awarding some categories of costs such as whether certain costs incurred were reasonable and necessary, the trial court does not have discretion to deny recovery of costs to a prevailing party. Oriental Imports, 559 So. 2d at 443 (“The determination of the amount and type of costs that are appropriate . . . is the task of the trial court rather than the initial determination of whether the successful litigant is entitled to costs”). CPH’s arguments that a reduction in MS’s recoverable costs is warranted based upon the undisturbed portion of the underlying securities fraud case and MS’s litigation misconduct are premature, as they are irrelevant for evaluating MS’s *entitlement* to trial costs. Those arguments can only be considered when this Court determines the *reasonableness* of such costs at a later date.

11. CPH relies on federal cases, and acknowledges a dearth of Florida cases, which generally stand for the proposition that a party may be denied costs if it would be inequitable under the circumstances to place the burden of costs on the aggrieved party. See, e.g., USM Corp. v. SPS Techs., Inc., 102 F.R.D. 167 (N.D. Ill. 1984); Remington Prods., Inc. v. North American Philips Corp., 763 F. Supp. 683 (D. Conn. 1991); McFarland v. Gregory, 425 F.2d 443 (2d Cir. 1970); Sheets v. Yamaha Motors Corp., U.S.A., 891 F.2d 533 (5th Cir. 1990). Conversely, one Florida case has stated that because section 57.041 absolutely entitles the prevailing party to receive costs, the trial court properly disregarded a claim of inequity. Dragstrem v. Butts, 340 So. 2d 416 (Fla. 1st DCA 1979).

Based on the foregoing, it is **ORDERED AND ADJUDGED** that the Amended Motion to Tax Trial Costs is **GRANTED** as to the issue of entitlement. This Court reserves ruling on the reasonable amount of trial costs incurred and recoverable by MS pending an evidentiary hearing.

DONE AND ORDERED in Chambers at Palm Beach County, Florida this 11th day of June, 2008.


ROBIN L. ROSENBERG
Circuit Judge

Copies have been furnished to all counsel on the attached service list.

SERVICE LIST

JACK SCAROLA, ESQ. Searcy Denney Scarola Barnhart & Shipley, P.A. 2139 Palm Beach Lakes Boulevard West Palm Beach, FL 33409	JEROLD SOLOVY, ESQ. RONALD MARMER, ESQ. Jenner & Block, LLC 330 North Wabash Avenue, Suite 4400 Chicago, IL 60611
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IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AJ

vs.

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

PALM BEACH COUNTY, FL
CIRCUIT CIVIL 8

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**AGREED ORDER ON PROCEDURE FOR CONSIDERING
PLAINTIFF'S VERIFIED PETITION FOR A SHOW-CAUSE ORDER REGARDING
MORGAN STANLEY'S CRIMINAL CONTEMPT OF COURT**

THIS MATTER was before the Court on May 22, 2008 on Plaintiff's request for a status conference as to Plaintiff's Verified Petition for a Show-Cause Order Regarding Morgan Stanley's Criminal Contempt of Court ("the Petition").

Pursuant to the parties' agreement, the Court will defer ruling, or setting a further hearing, on the Petition until after the Court has ruled on whether Plaintiff's Verified Motion to Vacate the Judgment and Grant a New Trial on Damages is legally sufficient.

DONE AND ORDERED ^{in chambers} at West Palm Beach, Palm Beach County, Florida, this 24th day of June, 2008.


ROBIN L. ROSENBERG
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 03-5045 AJ

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

NOTICE OF VIDEOTAPED DEPOSITION

To:

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lakeview Ave.
Suite 1400
West Palm Beach, FL 33401

Bruce S. Rogow
BRUCE S. ROGOW, P.A.
Broward Financial Centre
Suite 1930
500 East Broward Boulevard
Fort Lauderdale, FL 33394

Faith E. Gay
QUINN EMANUEL
URQUHART OLIVER &
HEDGES, LLP
51 Madison Avenue,
22nd Floor
New York, NY 10010

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings, Inc. ("CPH") requests the deposition upon oral examination of the following witness pursuant to Florida Rule of Civil Procedure 1.310 on the date and at the time set forth below:

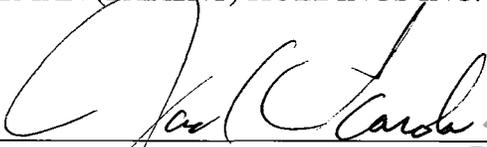
Theresa A. Pilosi

[Date and time to be
determined]

The deposition will be recorded by stenographic and videographic means at the offices of Searcy Denney Scarola Barnhart & Shipley, P.C., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 25th day of July, 2008.

COLEMAN (PARENT) HOLDINGS INC.

By: 

One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmor
JENNER & BLOCK LLP
330 N. Wabash Ave.
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

NOT A CERTIFIED COPY

SERVICE LIST

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51 Madison Avenue, 22nd Floor
New York, NY 10010

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 03-5045 AJ

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

NOTICE OF VIDEOTAPED DEPOSITION
AND SUBPOENA DUCES TECUM

To:

Joseph Ianno, Jr.
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222 Lakeview Ave.
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Faith E. Gay
QUINN EMANUEL
URQUHART OLIVER &
HEDGES, LLP
51 Madison Avenue,
22nd Floor
New York, NY 10010

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings, Inc. ("CPH") shall take the deposition upon oral examination of the following non-party witness pursuant to Florida Rule of Civil Procedure 1.310 on the date and at the time set forth below:

Safeco Insurance Co.

[Date and time to be
determined]

The deposition will be recorded by stenographic and videographic means at Regus Business Center, 701 5th Avenue, 42nd Floor, Seattle, Washington. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

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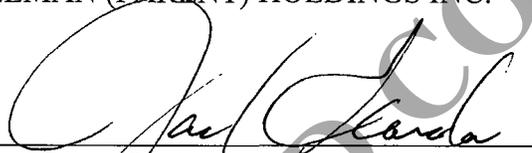
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The deposition is being taken with respect to the topics described on the attached Exhibit A. The witness also will be requested to bring to the deposition the documents specified in Exhibit B.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 25th day of July, 2008.

COLEMAN (PARENT) HOLDINGS INC.

By:



One of Its Attorneys

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& HEDGES, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

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CORPORATE DEPOSITION TOPICS

All terms in the following corporate deposition topics shall be defined according to the definitions set forth in Exhibit B hereto.

1. The bond securing the judgment entered against Morgan Stanley on November 22, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

2. Any amount billed, paid, or refunded, or any consideration of any kind exchanged, in connection with such a bond, and the identity of any party involved in such a transaction.

3. Any amount billed, paid, or refunded, or any consideration of any kind exchanged, relating to the bond discussed in the Surety Bond Report attached hereto as Exhibit 1, and the identity of any party involved in such a transaction.

4. Any inquiry made by or on behalf of Morgan Stanley to Safeco relating to securing the judgment entered against Morgan Stanley on June 23, 2005, or the judgment entered against Morgan Stanley on November 22, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

5. Any communication between Safeco and Morgan Stanley or its representatives relating to securing either of those judgments.

6. Any and all alternatives considered, offered, or investigated as a means of securing any judgment entered or expected to be entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

7. Any document produced by Safeco in response to the document requests set forth in Exhibit B.

DOCUMENTS

1. All documents relating to a bond securing a judgment against Morgan Stanley in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.), including but not limited to documents relating to:
 - a. the amount charged in connection with the Costs Appeal Bond;
 - b. the amount paid in connection with the Costs Appeal Bond;
 - c. the identity of the payor and the recipient of any such payment;
 - d. any discount, rebate, refund, trade-off, barter, or other exchange of consideration of any kind in connection with the Costs Appeal Bond;
 - e. any inquiry or investigation undertaken by or on behalf of Morgan Stanley relating to the cost or amount of fees quoted, estimated, or charged by Safeco in connection with an escrow account, bond, or other form of security relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment;
 - f. any quote or estimate received by or on behalf of Morgan Stanley from Safeco of the cost or amount of fees associated with an escrow account, bond, or other form of security relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment.
2. All documents relating to any communication between Morgan Stanley and any other person or entity, including but not limited to any communication between Morgan Stanley and Safeco, relating to:
 - a. a bond, escrow account, or other form of security relating to the Costs Judgment or the Main Judgment;

- b. the Costs Appeal Bond;
 - c. the Main Appeal Bond; or
 - d. the Escrow Account.
3. All documents relating to the release, discharge, or cancellation of the Costs Appeal Bond, including but not limited to documents sufficient to show the date on which Morgan Stanley first requested such release, discharge, or cancellation and documents sufficient to show the date on which such release, discharge, or cancellation was effected.
4. All documents relating to the consideration, offer, or investigation of any means by which to secure any judgment entered or expected to be entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

DEFINITIONS

1. "Communication" means the transmittal of information, opinion, question, or other form of data exchange by letter, memorandum, facsimile, e-mail, orally, or otherwise.
2. "Costs Appeal Bond" means the bond securing the judgment entered against Morgan Stanley on November 22, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).
3. "Costs Judgment" means the judgment entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.), on November 22, 2005.
4. "Documents" means documents whether fixed in tangible medium or electronically stored. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles,

bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not. "Documents" includes all non-identical copies of all electronic data as well as application metadata and system metadata.

5. "Escrow Account" means the escrow account at The Bank of New York established in connection with securing the judgment entered against Morgan Stanley on June 23, 2005, in *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.*, CA 03-5045 (Fl.).

6. "Main Appeal Bond" means the bond securing the judgment entered against Morgan Stanley on June 23, 2005, in *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.*, CA 03-5045 (Fl.).

7. "Main Judgment" means the judgment entered in *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.*, CA 03-5045 (Fl.), on June 23, 2005.

8. "Morgan Stanley" means Morgan Stanley & Co., Inc., or any of its subsidiaries, divisions, parents, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

9. "Safeco" means Safeco Insurance Co. or any of its subsidiaries, divisions, parents, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

10. "Relating" means reflecting, concerning, referring to, describing, evidencing, relating to, or constituting.

11. "You" or "Your" means Safeco and/or any of its subsidiaries, divisions, parents, predecessors, successors, present or former employees, representatives, agents, attorneys, accountants, advisors, or anyone acting or purporting to act on its behalf.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other as kept should not be separated.

2. All documents shall be produced in the file folder, envelope, or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from May 1, 2005, to the present, and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated, or received prior or subsequent to that period. You shall supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any respect.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that

describes the withheld material sufficiently to allow CPH to test the privilege or protection asserted.

5. The following rules of construction apply:
 - a. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside of their scope;
 - b. The term “including” shall be construed to mean “without limitation”; and
 - c. The use of the singular form of any word includes the plural and vice versa.

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SURETY BOND TRANSACTION REPORT
 Safeco Insurance Company
 PO Box 34526, Seattle, WA 98124-1526

NO. 6342410 - 0000

PRINCIPAL	NAME STREET. CITY	MORGAN STANLEY & CO. INCORPORATED 1585 BROADWAY NEW YORK	STATE. NY	ZIP: 10036
ACCOUNT	MORGAN STANLEY	NO: EE0V	STMT CODE:	
OBLIGEE	NAME STREET CITY	COLEMAN (PARENT) HOLDINGS INC./CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY FLORIDA	STATE. FL	ZIP:
BOND	TYPE: COMPANY: DESCRIPTION: BOND AMOUNT:	COURT AND FIDUCIARY SAFECO INSURANCE COMPANY OF AMERICA CIVIL SUPERSEDEAS BOND CASE NO. CA 03-5045 AI \$1,083,000	RATE STATE: FL	FORM: 0 CANCEL DAYS 000
RATING SUMMARY	EFFECTIVE DATE: RENEWAL METHOD COLLATERAL: CLASS BOND AMOUNT	12/07/2006 1 CONTINUOUS, NON-CANCELABLE NONE 257 Appeal-Def/Plaint \$0	EXPIRATION DATE: REIN CODE: PREMIUM COMM %	12/07/2007 A \$.00 .000
REMARKS	PAR BILLING		PRODUCT LINE: CML	INCP: 12/07/2005
ATTORNEY	IN-FACT: GERRY SALVATORE			
AGENT	ZN-AGENT: MASTER:	58-7459 58-4507	NAME: STREET: CITY	E G BOWMAN COMPANY INC 97 WALL ST NEW YORK STATE: NY ZIP: 10005-3518
LOCATION	SERVICE CENTER:	MAHWAH	CLERK:	DAIHAB DIVISION: CIN
PREMIUM BILLING	TRANS- NOTE	CANCELLATION CN EFF 6/11/07 PER AGENT EMAIL 6/12/07 & DISCHARGE LTR DATED 6/11/07	CHG DATE	06/11/2007 ENTRY DATE: 06/15/2007
SEQ NO. 003	RETURN AMOUNT	\$2,124.00- COMMISSION: \$531.00- RETURN PREMIUM NOT DUE IF TERM PREMIUM HAS NOT BEEN PAID.		

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 03-5045 AJ

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

FILED
2008 JUL 25 PM 4:22
CLERK OF COURT
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

**COLEMAN (PARENT) HOLDINGS INC.'S JULY 25, 2008
REQUEST FOR PRODUCTION OF DOCUMENTS
TO MORGAN STANLEY & CO., INC.**

Coleman (Parent) Holdings Inc., by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block LLP, hereby serves its July 25, 2008 Request for Production of Documents to Morgan Stanley & Co., Inc.

DEFINITIONS

1. "Action" means Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045.
2. "Communication" means the transmittal of information, opinion, question, or other form of data exchange by letter, memorandum, facsimile, e-mail, orally, or otherwise.
3. "Costs Appeal Bond" means the supersedeas bond referred to in paragraphs 7 and 8 of the Costs Appeal Motion.
4. "Costs Appeal Motion" means Morgan Stanley & Co. Inc.'s Motion to Tax Appellate Costs Relating to Costs Appeal, including its supporting affidavits and exhibits, filed in this Action on April 1, 2008.

5. "Costs Motions" means the Costs Appeal Motion, the Main Appeal Motion, and the Trial Motion, individually or collectively, including their supporting affidavits and exhibits.

6. "Costs Judgment" means the judgment entered in this Action on November 22, 2005, taxing costs in favor of CPH.

7. "CPH" means Coleman (Parent) Holdings Inc., Coleman Worldwide Corporation, CLN Holdings, Inc., or any of their present and former officers, directors, employees, representatives, agents, and all other persons acting or purporting to act on their behalf.

8. "Documents" means documents whether fixed in tangible medium or electronically stored. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the

foregoing, and all versions or drafts thereof, whether used or not. "Documents" includes all non-identical copies of all electronic data as well as application metadata and system metadata.

9. "Escrow Account" means the escrow account at The Bank of New York referred to on page 2 of the Amended Affidavit of Joseph Ianno, Jr. in Support of Morgan Stanley's Amended Motion to Tax Appellate Costs.

10. "Main Appeal Bond" means the supersedeas bond referred to in paragraphs 4 and 5 of the Main Appeal Motion.

11. "Main Appeal Motion" means Morgan Stanley & Co. Incorporated's Amended Motion to Tax Appeal Costs, including its supporting affidavits and exhibits, filed in this Action on April 1, 2008.

12. "Main Judgment" means the judgment entered in this Action on June 23, 2005, in favor of CPH.

13. "Morgan Stanley" means Morgan Stanley & Co., Inc., or any of its subsidiaries, divisions, parents, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

14. "Relating" means reflecting, concerning, referring to, describing, evidencing, relating to, or constituting.

15. "Trial Motion" means Morgan Stanley & Co. Incorporated's Amended Motion to Tax Trial Costs, including its supporting affidavits and exhibits, filed in this Action on April 1, 2008.

16. "You" or "Your" means Morgan Stanley & Co., Inc. and/or any of its subsidiaries, divisions, parents, predecessors, successors, present or former employees,

representatives, agents, attorneys, accountants, advisors, or anyone acting or purporting to act on its behalf.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other as kept should not be separated.

2. All documents shall be produced in the file folder, envelope, or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from May 8, 2003, to the present, and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated, or received prior or subsequent to that period. You shall supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any respect.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow CPH to test the privilege or protection asserted.

5. The following rules of construction apply:

a. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside of their scope;

b. The term “including” shall be construed to mean “without limitation”; and

- c. The use of the singular form of any word includes the plural and vice versa.

DOCUMENTS REQUESTED

1. All documents that were a source of information used in preparing the Costs Motions.
2. All documents relating to payment of or any reimbursement for payment of the costs detailed in the Costs Motions, including but not limited to invoices, canceled checks, wire confirmations, bank statements, receipts, ledger entries, and accounting records.
3. All documents relating to Morgan Stanley's claim for taxation of the cost of premiums, including but not limited to documents relating to:
 - a. the amount of premiums charged to Morgan Stanley, or any person or entity acting on Morgan Stanley's behalf, in connection with the Costs Appeal Bond or the Main Appeal Bond;
 - b. the amount of premiums paid by or on behalf of Morgan Stanley in connection with the Costs Appeal Bond or the Main Appeal Bond;
 - c. the identity of each payor and each recipient of any such payment;
 - d. any refund of premiums in connection with the Costs Appeal Bond or the Main Appeal Bond;
 - e. any inquiry or investigation undertaken by or on behalf of Morgan Stanley or any insurance broker relating to the cost or amount of premiums quoted, estimated, or charged by any insurance company, financial institution, or other entity in connection with a bond or other form of security relating to the Costs Judgment or the Main Judgment.

- f. any quote or estimate received by or on behalf of Morgan Stanley or any insurance broker from any insurance company, financial institution, or other entity of the cost or amount of premiums associated with a bond or other form of security relating to the Costs Judgment or the Main Judgment; or
 - g. any comparison or other analysis undertaken by or on behalf of Morgan Stanley or any insurance broker of any such quote or estimate.
4. All documents relating to Morgan Stanley's claim for taxation of the cost of broker commissions, including but not limited to documents relating to:
- a. the amount of broker commissions charged to Morgan Stanley, or any person or entity acting on Morgan Stanley's behalf, in connection with the Costs Appeal Bond or the Main Appeal Bond;
 - b. the amount of broker commissions paid by or on behalf of Morgan Stanley in connection with the Costs Appeal Bond or the Main Appeal Bond;
 - c. the identity of each payor and each recipient of any such payment;
 - d. any refund of broker commissions in connection with the Costs Appeal Bond or the Main Appeal Bond;
 - e. any inquiry or investigation undertaken by or on behalf of Morgan Stanley relating to the cost or amount of broker commissions quoted, estimated, or charged by any insurance company or agency or any other entity in connection with a bond or other form of security relating to the Costs Judgment or the Main Judgment;

- f. any quote or estimate received by or on behalf of Morgan Stanley from any insurance company or agency or any other entity of the cost or amount of broker commissions associated with a bond or other form of security relating to the Costs Judgment or the Main Judgment;
- g. any comparison or other analysis undertaken by or on behalf of Morgan Stanley of any such quote or estimate; or
- h. all communications and all documents referencing communications relating to discounts, rebates, refunds, trade-offs, barter, or other exchange of consideration of any kind concerning commissions, bond premiums, or any other payment sent or received in relation to the Costs Judgment, the Main Judgment, the Costs Appeal Bond, the Main Appeal Bond, the Escrow Account, or any other bond, escrow account, or other security for the payment of the Costs Judgment or the Main Judgment.
5. All documents relating to Morgan Stanley's claim for taxation of the cost of the Escrow Account, including but not limited to documents relating to:
- a. the amount charged to Morgan Stanley, or any person or entity acting on Morgan Stanley's behalf, in connection with the Escrow Account;
- b. the amount paid by or on behalf of Morgan Stanley in connection with the Escrow Account;
- c. the identity of each payor and each recipient of any such payment;
- d. any discount, rebate, refund, trade-off, barter, or other exchange of consideration of any kind in connection with the Escrow Account;
- e. any amount held in the Escrow Account;

- f. any request or demand by or on behalf of Morgan Stanley, the Bank of New York, or any other person or entity for the creation of an escrow account relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment;
- g. any discussion or analysis of such a request or demand;
- h. any communication concerning and any description or discussion of how the costs associated with the Escrow Account were calculated or derived;
- i. any inquiry or investigation undertaken by or on behalf of Morgan Stanley relating to the cost or amount of fees quoted, estimated, or charged by any financial institution or other entity in connection with an escrow account relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment;
- j. any quote or estimate received by or on behalf of Morgan Stanley from any financial institution or other entity of the cost or amount of fees associated with an escrow account relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment; or
- k. any comparison or other analysis undertaken by or on behalf of Morgan Stanley of any such quote or estimate.

6. All documents relating to any communication between Morgan Stanley (or any person or entity acting on Morgan Stanley's behalf) and any other person or entity, including but not limited to any communication between Morgan Stanley and E.G. Bowman Co., Inc., The Bank of New York, Safeco Insurance Co., or AIG, relating to:

- a. a bond, escrow account, or other form of security relating to the Costs Judgment or the Main Judgment;
 - b. the Costs Appeal Bond;
 - c. the Main Appeal Bond; or
 - d. the Escrow Account.
7. All documents relating to the release, discharge, closing, or cancellation of the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account, including but not limited to documents sufficient to show the date on which Morgan Stanley first requested such release, discharge, closing, or cancellation and documents sufficient to show the date on which such release, discharge, closing, or cancellation was effected.
8. All documents relating to any consideration or analysis by or on behalf of Morgan Stanley of forms or sources of security for the Costs Judgment or the Main Judgment other than the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account.
9. All documents relating to Morgan Stanley's claim for taxation of the cost of mediation, including but not limited to:
- a. the amount and nature of mediation costs charged to Morgan Stanley or any person or entity acting on Morgan Stanley's behalf; or
 - b. the amount and nature of mediation costs paid by or on behalf of Morgan Stanley.
10. All documents relating to Morgan Stanley's claim for taxation of the cost of expert fees, excluding copies of expert reports and expert deposition transcripts, and including but not limited to documents relating to:

- a. the amount and nature of expert fees charged to Morgan Stanley or any person or entity acting on Morgan Stanley's behalf;
- b. the amount and nature of expert fees paid by or on behalf of Morgan Stanley;
- c. any communication between Morgan Stanley (or any person or entity acting on Morgan Stanley's behalf) and any other person or entity relating to the amount, nature, or payment of expert fees;
- d. whether any of the expert fees for which costs are claimed by Morgan Stanley are attributable to expert depositions;
- e. the purpose for which any such expert deposition was used in this Action;
- f. whether any of the expert fees for which costs are claimed by Morgan Stanley are attributable to the preparation of a court-ordered report; or
- g. the purpose for which any such court-ordered report was used in this Action.

11. All documents relating to Morgan Stanley's claim for taxation of the cost of hearing and trial transcripts, excluding copies of such transcripts, and including but not limited to documents relating to:

- a. the amount of hearing or trial transcript costs charged to Morgan Stanley or any person or entity acting on Morgan Stanley's behalf; or
- b. the amount of hearing or trial transcript costs paid by or on behalf of Morgan Stanley.

12. All documents relating to Morgan Stanley's claim for taxation of the cost of deposition transcripts and videotapes, excluding copies of such transcripts and videotapes, and including but not limited to documents relating to:

- a. the amount of deposition transcript or videotape costs charged to Morgan Stanley or to any person or entity acting on Morgan Stanley's behalf; or
- b. the amount of deposition transcript or videotape costs paid by or on behalf of Morgan Stanley.

13. All documents relating to Morgan Stanley's claim for taxation of the cost of discovery imaging and coding or document production and management, excluding copies of the documents that were imaged, coded, produced, or managed, and including but not limited to documents relating to:

- a. the amount and nature of the discovery imaging or coding or document production and management costs charged to Morgan Stanley or to any person or entity acting on Morgan Stanley's behalf;
- b. the amount and nature of the discovery imaging or coding or document production and management costs paid by or on behalf of Morgan Stanley;
- c. any communication between Morgan Stanley (or any person or entity acting on Morgan Stanley's behalf) and any other person or entity, including but not limited to any communication between Morgan Stanley and Compulit, relating to the amount, nature, or payment of discovery imaging or coding or document production and management costs;

- d. whether any of the documents as to which such costs were incurred were actually filed with the court in the Action;
- e. whether, for each document as to which such costs were incurred, such document was actually produced to CPH;
- f. whether any of the claimed discovery imaging or coding or document production and management costs constituted the actual cost of copies obtained in discovery;
- g. whether there were discounts, based on volume or otherwise, available to or used by Morgan Stanley or its lawyers or law firms relating to discovery imaging or coding or document production and management (including but not limited to copying of documents); or
- h. whether any effort was made by or on behalf of Morgan Stanley to determine whether lower prices for the discovery- or document-related tasks for which costs are claimed were available from vendors other than those who were used to carry out the tasks.

14. All documents, excluding copies of deposition transcripts, deposition videotapes, trial transcripts, and documents produced or obtained in prior discovery in the Action, relating to costs claimed by Morgan Stanley relating to electronic discovery, including but not limited to costs relating to any search for electronically stored documents, any review or production of such documents, or any outside experts or consultants involved in any tasks relating to electronic discovery.

15. All documents relating to any effort to obtain, the results of any effort to obtain, or the receipt of any economic benefit, consideration, or other advantage of any kind in

exchange for agreeing to or having agreed to do business with any person or entity to whom payment was made for which Morgan Stanley now seeks reimbursement in the form of a costs award.

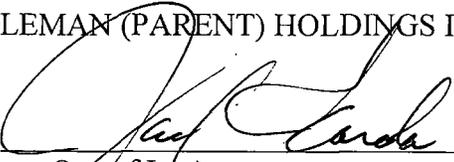
16. All documents relating to any gift received by Morgan Stanley from any person or entity to whom payment was made for which Morgan Stanley now seeks reimbursement in the form of a costs award.

17. All documents, excluding copies of deposition transcripts, deposition videotapes, trial transcripts, and documents produced or obtained in prior discovery in the Action, that may tend to support or refute the assertion in the Costs Motions and supporting affidavits that the claimed costs were reasonable and necessary to the defense of the Action.

Dated: July 25, 2008

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: 

One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
JENNER & BLOCK LLP
330 N. Wabash Ave.
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and hand delivery to counsel listed below on this 25th day of July, 2008:

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Bruce S. Rogow
BRUCE S. ROGOW, P.A.
Broward Financial Centre, Suite 1930
500 East Broward Boulevard
Fort Lauderdale, FL 33394

Faith E. Gay
QUINN EMANUEL URQUHART OLIVER
& HEDGES, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

By: 

NOT A CERTIFIED COPY

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 03-5045 AJ

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

NOTICE OF VIDEOTAPED DEPOSITION
AND SUBPOENA DUCES TECUM

To:

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lakeview Ave.
Suite 1400
West Palm Beach, FL 33401

Bruce S. Rogow
BRUCE S. ROGOW, P.A.
Broward Financial Centre
Suite 1930
500 East Broward Boulevard
Fort Lauderdale, FL 33394

Faith E. Gay
QUINN EMANUEL
URQUHART OLIVER &
HEDGES, LLP
51 Madison Avenue,
22nd Floor
New York, NY 10010

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings, Inc. ("CPH") shall take the deposition upon oral examination of the following non-party witness pursuant to Florida Rule of Civil Procedure 1.310 on the date and at the time set forth below:

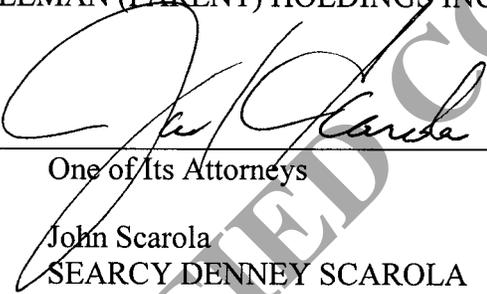
American International Group, [Date and time to be
Inc. (AIG) determined]

The deposition will be recorded by stenographic and videographic means at David Feldman Worldwide, 805 Third Avenue, 8th Floor, New York, New York. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

The deposition is being taken with respect to the topics described on the attached Exhibit A. The witness also will be requested to bring to the deposition the documents specified in Exhibit B.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 25th day of July, 2008.

COLEMAN (PARENT) HOLDINGS INC.

By: 

One of Its Attorneys

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

SERVICE LIST

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Bruce S. Rogow
BRUCE S. ROGOW, P.A.
Broward Financial Centre, Suite 1930
500 East Broward Boulevard
Fort Lauderdale, FL 33394

Faith E. Gay
QUINN EMANUEL URQUHART OLIVER
& HEDGES, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

NOT A CERTIFIED COPY

CORPORATE DEPOSITION TOPICS

All terms in the following corporate deposition topics shall be defined according to the definitions set forth in Exhibit B hereto.

1. The bond securing the judgment entered against Morgan Stanley on June 23, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

2. Any amount billed, paid, or refunded, or any consideration of any kind exchanged, in connection with such a bond, and the identity of any party involved in such a transaction.

3. Any amount billed, paid, or refunded, or any consideration of any kind exchanged, relating to bond number DBG 00-295-501, and the identity of any party involved in such a transaction. (A copy of a summary and invoice relating to bond number DBG 00-295-501, and a copy of invoice Div 60-1, are attached as Group Exhibit 1 hereto.)

4. Any inquiry made by or on behalf of Morgan Stanley to AIG relating to securing the judgment entered against Morgan Stanley on June 23, 2005, or the judgment entered against Morgan Stanley on November 22, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

5. Any communication between AIG and Morgan Stanley or its representatives relating to securing either of those judgments.

6. Any and all alternatives considered, offered, or investigated as a means of securing any judgment entered or expected to be entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

7. Any document produced by AIG in response to the document requests set forth in Exhibit B.

DOCUMENTS

1. All documents relating to a bond securing a judgment against Morgan Stanley in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.), including but not limited to documents relating to:

- a. the amount charged in connection with the Main Appeal Bond;
- b. the amount paid in connection with the Main Appeal Bond;
- c. the identity of the payor and the recipient of any such payment;
- d. any discount, rebate, refund, trade-off, barter, or other exchange of consideration of any kind in connection with the Main Appeal Bond;
- e. any inquiry or investigation undertaken by or on behalf of Morgan Stanley relating to the cost or amount of fees quoted, estimated, or charged by AIG in connection with an escrow account, bond, or other form of security relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment;
- f. any quote or estimate received by or on behalf of Morgan Stanley from AIG of the cost or amount of fees associated with an escrow account, bond, or other form of security relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment.

2. All documents relating to any communication between Morgan Stanley and any other person or entity, including but not limited to any communication between Morgan Stanley and AIG, relating to:

- a. a bond, escrow account, or other form of security relating to the Costs Judgment or the Main Judgment;

- b. the Costs Appeal Bond;
- c. the Main Appeal Bond; or
- d. the Escrow Account.

3. All documents relating to the release, discharge, or cancellation of the Main Appeal Bond, including but not limited to documents sufficient to show the date on which Morgan Stanley first requested such release, discharge, or cancellation and documents sufficient to show the date on which such release, discharge, or cancellation was effected.

4. All documents relating to the consideration, offer, or investigation of any means by which to secure any judgment entered or expected to be entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

DEFINITIONS

1. "AIG" means American International Group, Inc. or any of its subsidiaries, divisions, parents, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

2. "Communication" means the transmittal of information, opinion, question, or other form of data exchange by letter, memorandum, facsimile, e-mail, orally, or otherwise.

3. "Costs Appeal Bond" means the bond securing the judgment entered against Morgan Stanley on November 22, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

4. "Costs Judgment" means the judgment entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.), on November 22, 2005.

5. "Documents" means documents whether fixed in tangible medium or electronically stored. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not. "Documents" includes all non-identical copies of all electronic data as well as application metadata and system metadata.

6. "Escrow Account" means the escrow account at The Bank of New York established in connection with securing the judgment entered against Morgan Stanley on June 23, 2005, in *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.*, CA 03-5045 (Fl.).

7. "Main Appeal Bond" means the bond securing the judgment entered against Morgan Stanley on June 23, 2005, in *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.*, CA 03-5045 (Fl.).

8. "Main Judgment" means the judgment entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.), on June 23, 2005.

9. "Morgan Stanley" means Morgan Stanley & Co., Inc., or any of its subsidiaries, divisions, parents, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

10. "Relating" means reflecting, concerning, referring to, describing, evidencing, relating to, or constituting.

11. "You" or "Your" means AIG and/or any of its subsidiaries, divisions, parents, predecessors, successors, present or former employees, representatives, agents, attorneys, accountants, advisors, or anyone acting or purporting to act on its behalf.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other as kept should not be separated.

2. All documents shall be produced in the file folder, envelope, or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from May 1, 2005, to the present, and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated, or received prior or subsequent to that period. You shall supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any respect.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow CPH to test the privilege or protection asserted.

5. The following rules of construction apply:

- a. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside of their scope;
- b. The term “including” shall be construed to mean “without limitation”; and
- c. The use of the singular form of any word includes the plural and vice versa.

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Member Companies of
American International Group

TRANSACTION:
Adjustment

Surety Bond Summary & Invoice

BOND NO: DBG 00-295-501

ISSUING COMPANY:
165-NATIONAL UNION FIRE INS.CO.

BILLING DATE:
06-18-2007

ACCOUNT: D&B# 7130
Morgan Stanley & Co. Inc
1585 Broadway
New York, NY 10036-

PRODUCER: PRODUCER#: 04414
E.G. Bowman Co., Inc.
97 Wall Street
New York, NY 10005-

PRINCIPAL:
Morgan Stanley & Co. Inc
1585 Broadway
New York, NY 10036-

OBLIGEE:
15th Judicial Circuit
West Palm Beach, FL 33401-

REGIONAL U/W: TODD ROBINSON
PHONE NO: 212-458-1631

DESCRIPTION: Appeal Bond Coleman Holdings vs Morgan Stanley

Contract Amount: Bond Amount: Bond Type: Class Code: Credited Branch Code & Name:
-NA- \$1,798,573,640.00 Commercial 257 34-H.O. SPECIAL

POLICY PERIOD	PREMIUM	COMM %	COMM AMT	NET PREMIUM DUE
FROM TO				
06/24/06 06/24/07	\$-160,147.00	3.0	\$-4,804.00	\$-155,343.00
INCEPTION DATE	START DATE	DUE & PAYABLE DATE		SURCHARGES & TAXES
06/24/05	-NA-	08/18/07		\$0.00

COMMENTS: Appeal Bond released as of 6/11/07. Pro-Rata R/P due principal

PLEASE RETURN A COPY OF THE INVOICE WITH YOUR PAYMENT.



REMIT TO :

FOR INFO REGARDING AI CREDIT CORP. PREMIUM FINANCING, CALL 212-428-5474

TOTAL PREMIUM/SURCHARGE: \$-160,147.00

Print Date: 06/18/07



AMERICAN INTERNATIONAL COMPANIES®

SURETY DIVISION
ATTN: TODD ROBINSON
175 WATER STREET, 27TH FLOOR
NEW YORK, NEW YORK 10038

INVOICE NO.: Div 60 - 1

INVOICE DATE: June 22, 2005

PRINCIPAL: Morgan Stanley
1585 Broadway
New York, NY 10036

DESCRIPTION: Supersedeas Bond

CASE: Coleman Holdings, Inc. v. Morgan Stanley & Co., Inc. (Case No. CA03-5045 AI)

SURETY: NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

BILLING OFFICE: New York, NY

FEE AMOUNT: \$5,000,000.00

Please call 212.458.1631 with any questions.

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 03-5045 AJ

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

NOTICE OF VIDEOTAPED DEPOSITION
AND SUBPOENA DUCES TECUM

To:

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lakeview Ave.
Suite 1400
West Palm Beach, FL 33401

Bruce S. Rogow
BRUCE S. ROGOW, P.A.
Broward Financial Centre
Suite 1930
500 East Broward Boulevard
Fort Lauderdale, FL 33394

Faith E. Gay
QUINN EMANUEL
URQUHART OLIVER &
HEDGES, LLP
51 Madison Avenue,
22nd Floor
New York, NY 10010

2009 JUL 25 PM 4:21

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings, Inc. ("CPH") shall take the deposition upon oral examination of the following non-party witness pursuant to Florida Rule of Civil Procedure 1.310 on the date and at the time set forth below:

The Bank of New York Mellon Corporation [Date and time to be determined]

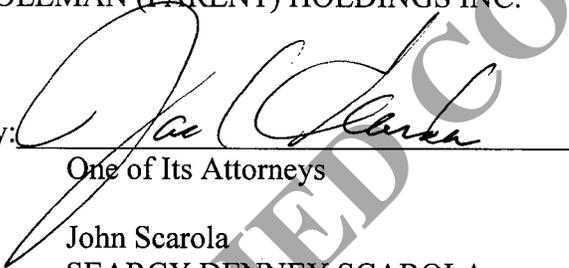
The deposition will be recorded by stenographic and videographic means at the offices of Jenner & Block, 919 Third Avenue, 37th Floor, New York, New York. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

The deposition is being taken with respect to the topics described on the attached Exhibit A. The witness also will be requested to bring to the deposition the documents specified in Exhibit B.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 25th day of July, 2008.

COLEMAN (PARENT) HOLDINGS INC.

By:


One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
JENNER & BLOCK LLP
330 N. Wabash Ave.
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

SERVICE LIST

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Bruce S. Rogow
BRUCE S. ROGOW, P.A.
Broward Financial Centre, Suite 1930
500 East Broward Boulevard
Fort Lauderdale, FL 33394

Faith E. Gay
QUINN EMANUEL URQUHART OLIVER
& HEDGES, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

NOT A CERTIFIED COPY

CORPORATE DEPOSITION TOPICS

All terms in the following corporate deposition topics shall be defined according to the definitions set forth in Exhibit B hereto.

1. The escrow account established at The Bank of New York in connection with securing the judgment entered against Morgan Stanley on June 23, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).
2. Any amount billed, paid, or refunded, or any consideration of any kind exchanged, in connection with such an account, and the identity of any party involved in such a transaction.
3. Any amount billed, paid, or refunded, or any consideration of any kind exchanged, in 2005, 2006, or 2007 relating to account number 2806 or invoice numbers [REDACTED] 0901509, 0948303, 743 [REDACTED] [REDACTED] [REDACTED] or 1171077, and the identity of any party involved in such a transaction. (Copies of those invoices are attached as Group Exhibit 1 hereto.)
4. Any inquiry made by or on behalf of Morgan Stanley to The Bank of New York relating to securing the judgment entered against Morgan Stanley on June 23, 2005, or the judgment entered against Morgan Stanley on November 22, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).
5. Any communication between The Bank of New York and Morgan Stanley or its representatives relating to securing either of those judgments.
6. Any and all alternatives considered, offered, or investigated as a means of securing any judgment entered or expected to be entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

7. Any document produced by The Bank of New York in response to the document requests set forth in Exhibit B.

NOT A CERTIFIED COPY

DOCUMENTS

1. All documents relating to the Escrow Account, including but not limited to documents relating to:

- a. the amount charged in connection with the Escrow Account;
- b. the amount paid in connection with the Escrow Account;
- c. the identity of the payor and the recipient of any such payment;
- d. any discount, rebate, refund, trade-off, barter, or other exchange of consideration of any kind in connection with the Escrow Account;
- e. any amount held in the Escrow Account;
- f. any request or demand by or on behalf of Morgan Stanley, the Bank of New York, or any other person or entity for the creation of an escrow account relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment;
- g. any discussion or analysis of such a request or demand;
- h. any description or discussion of how the costs associated with the Escrow Account were calculated or derived;
- i. any inquiry or investigation undertaken by or on behalf of Morgan Stanley relating to the cost or amount of fees quoted, estimated, or charged by The Bank of New York in connection with an escrow account, bond, or other form of security relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment;
- j. any quote or estimate received by or on behalf of Morgan Stanley from The Bank of New York of the cost or amount of fees associated with an

escrow account, bond, or other form of security relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment.

2. All documents relating to any communication between Morgan Stanley and any other person or entity, including but not limited to any communication between Morgan Stanley and The Bank of New York, relating to:

- a. a bond, escrow account, or other form of security relating to the Costs Judgment or the Main Judgment;
- b. the Costs Appeal Bond;
- c. the Main Appeal Bond; or
- d. the Escrow Account.

3. All documents relating to the closing or cancellation of the Escrow Account, including but not limited to documents sufficient to show the date on which Morgan Stanley first requested such closing or cancellation and documents sufficient to show the date on which such closing or cancellation was effected.

4. All documents relating to the consideration, offer, or investigation of any means by which to secure any judgment entered or expected to be entered in *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.*, CA 03-5045 (Fl.).

DEFINITIONS

1. "The Bank of New York" means The Bank of New York Mellon Corporation or any of its subsidiaries, divisions, parents, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

2. "Communication" means the transmittal of information, opinion, question, or other form of data exchange by letter, memorandum, facsimile, e-mail, orally, or otherwise.

3. "Costs Appeal Bond" means the bond securing the judgment entered against Morgan Stanley on November 22, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

4. "Costs Judgment" means the judgment entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.), on November 22, 2005.

5. "Documents" means documents whether fixed in tangible medium or electronically stored. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not. "Documents" includes all non-identical copies of all electronic data as well as application metadata and system metadata.

6. "Escrow Account" means the escrow account at The Bank of New York established in connection with securing the judgment entered against Morgan Stanley on June 23, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

7. "Main Appeal Bond" means the bond securing the judgment entered against Morgan Stanley on June 23, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

8. "Main Judgment" means the judgment entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.), on June 23, 2005.

9. "Morgan Stanley" means Morgan Stanley & Co., Inc., or any of its subsidiaries, divisions, parents, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

10. "Relating" means reflecting, concerning, referring to, describing, evidencing, relating to, or constituting.

11. "You" or "Your" means The Bank of New York and/or any of its subsidiaries, divisions, parents, predecessors, successors, present or former employees, representatives, agents, attorneys, accountants, advisors, or anyone acting or purporting to act on its behalf.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other as kept should not be separated.

2. All documents shall be produced in the file folder, envelope, or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from May 1, 2005, to the present, and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated, or received prior or subsequent to that period. You shall supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any respect.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow CPH to test the privilege or protection asserted.

5. The following rules of construction apply:

a. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside of their scope;

b. The term “including” shall be construed to mean “without limitation”; and

c. The use of the singular form of any word includes the plural and vice versa.



The BANK
of NEW YORK.

Third Notice

1

MORGAN STANLEY & CO
ATTN: MICHAEL LIMERI
ONE PIERREPONT PLAZA
BROOKLYN, NY 11201

15-Aug-05

MORGAN STANLEY / AIG	Invoice Number:	0872371
	Account Number:	2806
	Due Date:	15-Aug-05
	Billing Period:	01-May-05 to 31-Jul-05
	Administrator:	Stephen Bruce (WS4E10B)
	Center Name:	Insurance Trust
	Phone Number:	212-815-4868
	Currency:	USD

	Quantity	Rate	Proration	Subtotal	Total
Variables					
Book Entry P&I Payments - Variable					0.10
Fee	1.00	@ 0.10		0.10	
Market Value					37,403.25
Fee	1,000,000,000.00	@		21,250.00	
Fee		@		16,153.25	
	1,861,506,719.80			37,403.25	
US Depository Trades DTC - Variable					17.50
Fee	7.00	@ 2.50		17.50	

Subtotal:	37,420.85
Satisfied To Date:	0.00
Balance Due:	37,420.85

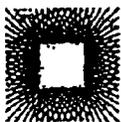
Terms: Payable upon receipt. Please reference the invoice and account number with your remittance.
Our Tax ID Number [REDACTED] Please fax Taxpayer Certification requests to (212) [REDACTED]

Check Payment Instructions:
The Bank of New York
Financial Control Billing Department
P.O. [REDACTED]
Newark, NJ [REDACTED]

Wire Payment Instructions:
The Bank of New York
0018
Account: 1-565
For further credit: TAS # [REDACTED]

Please enclose billing stub.

Please reference invoice and account numbers.



The BANK of NEW YORK.

Third Notice

2

MORGAN STANLEY & CO
ATTN: MICHAEL LIMERI
ONE PIERREPONT PLAZA
BROOKLYN, NY 11201

18-Nov-05

MORGAN STANLEY / AIG	Invoice Number:	0901509
	Account Number:	2806
	Due Date:	18-Nov-05
	Billing Period:	01-Aug-05 to 31-Oct-05
	Administrator:	Stephen Bruce (WS4E10B)
	Center Name:	Insurance Trust
	Phone Number:	212-815-4868
	Currency:	USD

	Quantity	Rate	Proration	Subtotal	Total
Variables					
Market Value					37,607.50
Fee	1,000,000,000.00	@	0.000000	21,250.00	
Fee	872,400,165.20	@	0.000075	16,357.50	
	1,872,400,165.20			37,607.50	
US Depository Trades DTC - Variable					122.50
Fee	49.00	@	2.50	122.50	

Subtotal:	37,730.00
Satisfied To Date:	0.00
Balance Due:	37,730.00

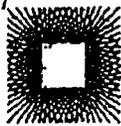
Terms: Payable upon receipt. Please reference the invoice and account number with your remittance.
Our Tax ID Number [REDACTED] Please fax Taxpayer Certification requests to (212) [REDACTED]

Check Payment Instructions:
The Bank of New York
Financial Control Billing Department
P.O. Box [REDACTED]
Newark, NJ [REDACTED]

Wire Payment Instructions:
The Bank of New York
0018
Account: 1-565
For further credit: TAS # [REDACTED]

Please enclose billing stub.

Please reference invoice and account numbers.



The BANK of NEW YORK.

INVOICE

3

MORGAN STANLEY & CO
ATTN: MICHAEL LIMERI
ONE PIERREPONT PLAZA
BROOKLYN, NY 11201

24-Feb-06

MORGAN STANLEY / AIG	Invoice Number:	0948303
	Account Number:	2806
	Due Date:	24-Feb-06
	Billing Period:	01-Nov-05 to 31-Jan-06
	Administrator:	Stephen Bruce (WS4EIOB)
	Center Name:	Insurance Trust
	Phone Number:	212-815-4868
	Currency:	USD

	Quantity	Rate	Proration	Subtotal	Total
Variables					
Market Value					37,499.67
Fee	1,000,000,000.00	@ 0.000085		21,250.00	
Fee	866,648,917.20	@ 0.000075		16,249.67	
	1,866,648,917.20			37,499.67	
Physical P&I Payments - Variable					9.00
Fee	3.00	@ 3.00		9.00	
US Depository Trades DTC - Variable					270.00
Fee	108.00	@ 2.50		270.00	
Wire Transfer Fee					6.00
Fee	2.00	@ 3.00		6.00	

Subtotal: 37,784.67
 Satisfied To Date: 0.00
 Balance Due: 37,784.67

Terms: Payable upon receipt. Please reference the invoice and account number with your remittance.
 Our Tax ID Number [REDACTED] Please fax Taxpayer Certification requests to (212) [REDACTED]

NOT A CERTIFIED COPY

Check Payment Instructions:
 The Bank of New York
 Financial Control Billing Department
 P.O. Box [REDACTED]
 Newark, NJ [REDACTED]

Wire Payment Instructions:
 The Bank of New York
 0018
 Account: 1-565
 For further credit: TAS # [REDACTED]

Please enclose billing stub. Please reference invoice and account numbers.

FiRRe

SUNGARD
INVESTOR ACCOUNTING
SYSTEMS

Invoice Detail

Tuesday, June 13, 2006

Morgan Stanley & CO
Attn: Christine Cochet
750 7th Avenue Floor 29
New York, NY 10019

2806
MORGAN STANLEY / AIG
MORGAN STANLEY / AIG

Invoice Number: 74382-977879
Due Date: 5/17/2006
Posting Period: 2/1/2006 to 4/30/2006
Fixed / Expected Fee Period: 2/1/2006 to 4/30/2006
Administrator: Stephen Bruce (WS4E10B)
Phone Number: 212-815-4868
Bill Date: 5/18/2006
Bill Type: Regular
Bill Method: Mail

Amount: 38,004.79 USD

Status	Amount Collected	Date	Amount Write Off	Date	Balance Due
First Notice	0.00		0.00		38,004.79 USD

Bill Components

Market Value

Quantity	Rate	Subtotal
Breakpoint Rates Prorated (D) (30 / 360) (90 / 360) .25		
1,000,000,000.00	@ 0.000085	21,250.00
878,762,207.10	@ 0.000075	16,476.79
1,878,762,207.10		37,726.79

Amount Billed	Amount Collected	Date	Amount Write Off	Date	Balance Due
37,726.79	0.00		0.00		37,726.79

US Depository Trades DTC - Variable

Quantity	Rate	Subtotal
110.00	@ 2.50	275.00
110.00		275.00

Amount Billed	Amount Collected	Date	Amount Write Off	Date	Balance Due
275.00	0.00		0.00		275.00

US Depository Trades FRB - Variable

Amount Billed	Amount Collected	Date	Amount Write Off	Date	Balance Due
0.00	0.00	5/1/2006	0.00		0.00



INVOICE

MORGAN STANLEY & CO
 ATTN: MICHAEL LIMERI
 ONE PIERREPONT PLAZA
 BROOKLYN, NY 11201

29-Aug-06

MORGAN STANLEY / AIG	Invoice Number: 1040391 Account Number: 2806 Due Date: 29-Aug-06 Billing Period: 01-May-06 to 31-Jul-06 Administrator: Stephen Bruce Center Name: Insurance Trust Phone Number: 212-815-4868 Currency: USD
----------------------	---

	<u>Quantity</u>	<u>Rate</u>	<u>Proration</u>	<u>Subtotal</u>	<u>Total</u>
Variables					
Book Entry P&I Payments - Variable					0.40
Fee	4.00	@ 0.10		0.40	
Market Value					37,438.06
Fee	1,000,000,000.00	@ [REDACTED]		21,250.00	
Fee	863,363,349.60	@ [REDACTED]		16,188.06	
	1,863,363,349.60			37,438.06	
US Depository Trades DTC - Variable					240.00
Fee	96.00	@ 2.50		240.00	
Wire Transfer Fee					6.00
Fee	2.00	@ 3.00		6.00	

Subtotal:	37,684.46
Satisfied To Date:	0.00
Balance Due:	37,684.46

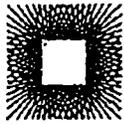
Terms: Payable upon receipt. Please reference the invoice and account number with your remittance.
 Our Tax ID Number is [REDACTED] Please fax Taxpayer Certification requests to (212) [REDACTED]

Check Payment Instructions:
 The Bank of New York
 Financial Control Billing Department
 P.O. Box 19445
 Newark, NJ 07195-0445

Wire Payment Instructions:
 The Bank of New York
 0018
 Account 1-565
 For further credit: TAS # [REDACTED]

Please enclose billing stub.

Please reference invoice and account numbers.



The BANK
of NEW YORK.

INVOICE

MORGAN STANLEY & CO
ATTN:CHRISTINE COCHET
750 7th ave 29th Floor
New York, NY 10019

16-Nov-06

		Quantity	Rate	Proration	Subtotal	Total
Variables						
Market Value						
Fec		1,000,000,000.00	@ 0.000085		21,250.00	37,513.22
Fec		867,371,950.70	@		16,263.22	
		1,867,371,950.70			37,513.22	
Physical P&I Payments - Variable						
Fec		4.00	@ 3.00		12.00	12.00
US Depository Trades DTC - Variable						
Fec		120.00	@ 2.50		300.00	300.00
Wire Transfer Fee						
Fec		1.00	@ 3.00		3.00	3.00

Subtotal: 37,828.22
Satisfied To Date: 0.00
Balance Due: 37,828.22

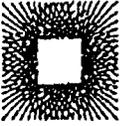
Terms: Payable upon receipt. Please reference the invoice and account number with your remittance.
Our Tax ID Number [REDACTED] Please fax Taxpayer Certification requests to (212) [REDACTED]

Check Payment Instructions:
The Bank of New York
Financial Control Billing Department
P O [REDACTED]
Newark, NJ [REDACTED]

Wire Payment Instructions:
The Bank of New York
0018
Account: 1-565
For further credit: TAS # [REDACTED]

Please enclose billing stub.

Please reference invoice and account numbers.



The BANK of NEW YORK.

INVOICE

000453 XBFSDB01
MORGAN STANLEY & CO
ATTN:CHRISTINE COCHET
750 7TH AVE 29TH FLOOR
NEW YORK, NY 10019

000453

Invoice Date
07-Feb-07

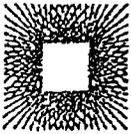
FIRRe Account:
MORGAN STANLEY / AIG

Invoice Number:
Account Number:
Due Date:
Billing Period:
Administrator:
Center Name:
Phone Number:
Currency:

2806
07-Feb-07
01-Nov-06 to 31-Jan-07
Stephen Bruce
Insurance Trust
212-815-4868
USD

	<u>Quantity</u>	<u>Rate</u>	<u>Subtotal</u>	<u>Total</u>
Variables				
Market Value				37,097.32
	Rate Prorated 90 / 360		0 00	
	0.0000 @	0 000085	21,250 00	
	845,190,578.8 @	0 000075	15,847 32	
	1,845,190,579.8		37,097.32	
US Depository Trades DTC - Variable	39 0000 @	2 5000	97 50	97.50
Physical P&I Payments - Variable	2 0000 @	3 0000	6 00	6.00
Wire Transfer Fee	10 0000 @	3 0000	30 00	30.00
			Subtotal:	37,230.82
			Satisfied To Date:	0.00
			Balance Due:	37,230.82

NOT A CERTIFIED COPY



The BANK of NEW YORK.

INVOICE

000158 XBFS0801
MORGAN STANLEY & CO
ATTN:CHRISTINE COCHET
750 7TH AVE 29TH FLOOR
NEW YORK, NY 10019

000158

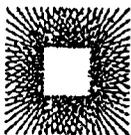
Invoice Date
16-May-07

FiRRe Account:
MORGAN STANLEY / AIG

Invoice Number: [REDACTED]
Account Number: 2806
Due Date: 16-May-07
Billing Period: 01-Feb-07 to 30-Apr-07
Administrator: Stephen Bruce
Center Name: Insurance Trust
Phone Number: 212-815-4868
Currency: USD

	<u>Quantity</u>	<u>Rate</u>	<u>Subtotal</u>	<u>Total</u>
Variables				
Market Value				37,097.32
	Rate Prorated 90 / 360		0.00	
	0.0000 @	0.000085	21,250.00	
	845,190,579.8 @	0.000075	15,847.32	
	1,845,190,579.8		37,097.32	
Wire Transfer Fee				12.00
	4.0000 @	3.0000	12.00	
			Subtotal:	37,109.32
			Satisfied To Date:	0.00
			Balance Due:	37,109.32

NOT A CERTIFIED COPY



The BANK of NEW YORK.

INVOICE

Invoice Number:
Account Number:
Due Date:
Billing Period:

2806
16-May-07
01-Feb-07 to 30-Apr-07

Terms Payable Upon Receipt. Please reference the invoice and account number with your remittance.
Our Tax ID Number [REDACTED] Please fax Taxpayer Certification requests to (212) [REDACTED].

Check Payment Instructions:
The Bank Of New York
Financial Control Billing Department
PO Box 19445
Newark, NJ 07195-0445

Wire Payment Instructions:
The Bank Of New York
0018
Accou 1-565
For further credit TAS [REDACTED]

Please enclose the billing stub.

Please reference invoice and account numbers.

Please return the Billing Stub with your check payment.

BILLING STUB

MORGAN STANLEY / AIG

Invoice Number :
Account Number :
Due Date :
Billing Period :
Administrator :
Center Name :
Phone Number :
Amount :

[REDACTED]
2806
16-May-07
01-Feb-07 to 30-Apr-07
Stephen Bruce
Insurance Tru-
212-815-481
37,109.32 USL

[REDACTED] 9329

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 03-5045 AJ

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

NOTICE OF VIDEOTAPED DEPOSITION
AND SUBPOENA DUCES TECUM

To:

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lakeview Ave.
Suite 1400
West Palm Beach, FL 33401

Bruce S. Rogow
BRUCE S. ROGOW, P.A.
Broward Financial Centre
Suite 1930
500 East Broward Boulevard
Fort Lauderdale, FL 33394

Faith E. Gay
QUINN EMANUEL
URQUHART OLIVER &
HEDGES, LLP
51 Madison Avenue,
22nd Floor
New York, NY 10010

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings, Inc. ("CPH") shall take the deposition upon oral examination of the following non-party witness pursuant to Florida Rule of Civil Procedure 1.310 on the date and at the time set forth below:

E.G. Bowman Co., Inc.

[Date and time to be
determined]

The deposition will be recorded by stenographic and videographic means the offices of Jenner & Block, 919 Third Avenue, 37th Floor, New York, New York. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

The deposition is being taken with respect to the topics described on the attached Exhibit A. The witness also will be requested to bring to the deposition the documents specified in Exhibit B.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 25th day of July, 2008.

COLEMAN (PARENT) HOLDINGS INC.

By: 

One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
JENNER & BLOCK LLP
330 N. Wabash Ave.
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

SERVICE LIST

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Bruce S. Rogow
BRUCE S. ROGOW, P.A.
Broward Financial Centre, Suite 1930
500 East Broward Boulevard
Fort Lauderdale, FL 33394

Faith E. Gay
QUINN EMANUEL URQUHART OLIVER
& HEDGES, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

NOT A CERTIFIED COPY

CORPORATE DEPOSITION TOPICS

All terms in the following corporate deposition topics shall be defined according to the definitions set forth in Exhibit B hereto.

1. The bond securing the judgment entered against Morgan Stanley on June 23, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.), and the bond securing the judgment entered against Morgan Stanley on November 22, 2005, in that same action.

2. Any amount billed, paid, or refunded, or any consideration of any kind exchanged, in connection with any such bond, and the identity of any party involved in such a transaction.

3. Any commissions relating to any such bond, and any amount billed, paid, or refunded, or any consideration of any kind exchanged, in connection with such commissions.

4. The escrow account established at The Bank of New York in connection with securing the judgment entered against Morgan Stanley on June 23, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

5. Any amount billed, paid, or refunded, or any consideration of any kind exchanged, in connection with such an account, and the identity of any party involved in such a transaction.

6. Any commissions relating to such an account, and any amount billed, paid, or refunded, or any consideration of any kind exchanged, in connection with such commissions.

7. Any inquiry made by or on behalf of Morgan Stanley relating to securing the judgment entered against Morgan Stanley on June 23, 2005, or the judgment entered against

Morgan Stanley on November 22, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

8. Any communication between E.G. Bowman and Morgan Stanley or its representatives relating to securing either of those judgments.

9. Any communication between E.G. Bowman and AIG, Safeco Insurance Co., The Bank of New York, or any other person or entity relating to securing either of those judgments.

10. Any and all alternatives considered, offered, or investigated as a means of securing any judgment entered or expected to be entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

11. Any document produced by E.G. Bowman in response to the document requests set forth in Exhibit B.

NOT A CERTIFIED COPY

DOCUMENTS

1. All documents relating to a bond securing a judgment against Morgan Stanley in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.), including but not limited to documents relating to:
 - a. the amount charged in connection with the Main Appeal Bond, the Costs Appeal Bond, or the Escrow Account;
 - b. the amount paid in connection with the Main Appeal Bond, the Costs Appeal Bond, or the Escrow Account;
 - c. any commission charged or paid in connection with the Main Appeal Bond, the Costs Appeal Bond, or the Escrow Account;
 - d. the identity of the payor and the recipient of any payment made in connection with the Main Appeal Bond, the Costs Appeal Bond, or the Escrow Account;
 - e. any discount, rebate, refund, trade-off, barter, or other exchange of consideration of any kind in connection with the Main Appeal Bond, the Costs Appeal Bond, or the Escrow Account;
 - f. any inquiry or investigation undertaken by or on behalf of Morgan Stanley or E.G. Bowman relating to the cost or amount of fees quoted, estimated, or charged by any insurance company, financial institution, or other person or entity in connection with an escrow account, bond, or other form of security relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment;

- g. any quote or estimate received by or on behalf of Morgan Stanley or E.G. Bowman of the cost or amount of fees associated with an escrow account, bond, or other form of security relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment.
- h. any comparison or other analysis undertaken by or on behalf of Morgan Stanley or E.G. Bowman of any such quote or estimate.
2. All documents relating to any communication, including but not limited to any communication between Morgan Stanley and E.G. Bowman or any communication between E.G. Bowman and AIG, Safeco Insurance Co., or The Bank of New York, relating to:
- a. a bond, escrow account, or other form of security relating to the Costs Judgment or the Main Judgment;
 - b. the Costs Appeal Bond;
 - c. the Main Appeal Bond; or
 - d. the Escrow Account.
3. All documents relating to the release, discharge, closing, or cancellation of the Main Appeal Bond, the Costs Appeal Bond, or the Escrow Account, including but not limited to documents sufficient to show the date on which Morgan Stanley first requested such release, discharge, closing, or cancellation and documents sufficient to show the date on which such release, discharge, closing, or cancellation was effected.
4. All documents relating to the consideration, offer, or investigation of any means by which to secure any judgment entered or expected to be entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

DEFINITIONS

1. "Communication" means the transmittal of information, opinion, question, or other form of data exchange by letter, memorandum, facsimile, e-mail, orally, or otherwise.
2. "Costs Appeal Bond" means the bond securing the judgment entered against Morgan Stanley on November 22, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).
3. "Costs Judgment" means the judgment entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.), on November 22, 2005.
4. "Documents" means documents whether fixed in tangible medium or electronically stored. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not. "Documents" includes all non-identical copies of all electronic data as well as application metadata and system metadata.

5. "E.G. Bowman" means E.G. Bowman Co., Inc. or any of its subsidiaries, divisions, parents, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

6. "Escrow Account" means the escrow account at The Bank of New York established in connection with securing the judgment entered against Morgan Stanley on June 23, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

7. "Main Appeal Bond" means the bond securing the judgment entered against Morgan Stanley on June 23, 2005, in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).

8. "Main Judgment" means the judgment entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.), on June 23, 2005.

9. "Morgan Stanley" means Morgan Stanley & Co., Inc., or any of its subsidiaries, divisions, parents, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

10. "Relating" means reflecting, concerning, referring to, describing, evidencing, relating to, or constituting.

11. "You" or "Your" means E.G. Bowman and/or any of its subsidiaries, divisions, parents, predecessors, successors, present or former employees, representatives, agents, attorneys, accountants, advisors, or anyone acting or purporting to act on its behalf.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other as kept should not be separated.

2. All documents shall be produced in the file folder, envelope, or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from May 1, 2005, to the present, and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated, or received prior or subsequent to that period. You shall supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any respect.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow CPH to test the privilege or protection asserted.

5. The following rules of construction apply:

- a. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside of their scope;
- b. The term “including” shall be construed to mean “without limitation”; and
- c. The use of the singular form of any word includes the plural and vice versa.

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 03-5045 AJ

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

FILED
2008 JUL 25 PM 4:21
CLERK OF COURT
PALM BEACH COUNTY, FLORIDA

NOTICE OF VIDEOTAPED DEPOSITIONS

To:

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lakeview Ave.
Suite 1400
West Palm Beach, FL 33401

Bruce S. Rogow
BRUCE S. ROGOW, P.A.
Broward Financial Centre
Suite 1930
500 East Broward Boulevard
Fort Lauderdale, FL 33394

Faith E. Gay
QUINN EMANUEL
URQUHART OLIVER &
HEDGES, LLP
51 Madison Avenue,
22nd Floor
New York, NY 10010

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings, Inc. ("CPH") requests the depositions upon oral examination of the following witnesses pursuant to Florida Rule of Civil Procedure 1.310 on the dates and at the times set forth below:

Thomas A. Clare

[Date and time to be determined]

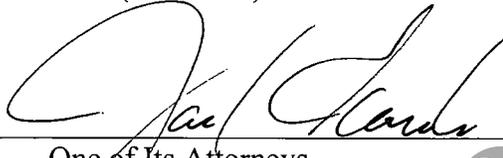
Joseph Ianno, Jr.

[Date and time to be determined]

The depositions will be recorded by stenographic and videographic means at the offices of Searcy Denney Scarola Barnhart & Shipley, P.C., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida. The depositions will be taken before a person authorized to administer oaths and will continue day to day until completed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 25th day of July, 2008.

COLEMAN (PARENT) HOLDINGS INC.

By: 

One of Its Attorneys

John Scarola

SEARCY DENNEY SCAROLA

BARNHART & SHIPLEY P.A.

2139 Palm Beach Lakes Blvd.

West Palm Beach, Florida 33402-3626

(561) 686-6300

NOT A CERTIFIED COPY

SERVICE LIST

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Bruce S. Rogow
BRUCE S. ROGOW, P.A.
Broward Financial Centre, Suite 1930
500 East Broward Boulevard
Fort Lauderdale, FL 33394

Faith E. Gay
QUINN EMANUEL URQUHART OLIVER
& HEDGES, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 03-5045 AJ

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

FILED
2008 JUL 25 PM 4:22
SCAROLA BARNHART & SHIPLEY
P.C. PALM BEACH, FLORIDA

NOTICE OF VIDEOTAPED DEPOSITION

To:

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lakeview Ave.
Suite 1400
West Palm Beach, FL 33401

Bruce S. Rogow
BRUCE S. ROGOW, P.A.
Broward Financial Centre
Suite 1930
500 East Broward Boulevard
Fort Lauderdale, FL 33394

Faith E. Gay
QUINN EMANUEL
URQUHART OLIVER &
HEDGES, LLP
51 Madison Avenue,
22nd Floor
New York, NY 10010

PLEASE TAKE NOTICE that Plaintiff Coleman (Parent) Holdings, Inc. ("CPH") requests the deposition upon oral examination of Defendant Morgan Stanley & Co., Inc. pursuant to Florida Rule of Civil Procedure 1.310 on the date and at the time set forth below:

Morgan Stanley & Co., Inc. [Date and time to be determined]

The deposition will be recorded by stenographic and videographic means at the offices of Searcy Denney Scarola Barnhart & Shipley, P.C., 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

The deposition is being taken with respect to the topics described on the attached Exhibit
A. Please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 25th day of July, 2008.

COLEMAN (PARENT) HOLDINGS INC.

By: 
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
JENNER & BLOCK LLP
330 N. Wabash Ave.
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

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Faith E. Gay
QUINN EMANUEL URQUHART OLIVER
& HEDGES, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

NOT A CERTIFIED COPY

CORPORATE DEPOSITION TOPICS

1. Payment of or any reimbursement for payment of the costs detailed in the Costs Motions.
2. Morgan Stanley's claim for taxation of the cost of bond premiums.
3. Morgan Stanley's claim for taxation of the cost of broker commissions.
4. Morgan Stanley's claim for taxation of the cost of the Escrow Account.
5. Any consideration or analysis by or on behalf of Morgan Stanley of forms or sources of security for the Costs Judgment or the Main Judgment other than the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account.
6. Any and all alternatives considered, offered, or investigated as a means of securing any judgment entered or expected to be entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).
7. Morgan Stanley's claim for taxation of the cost of mediation.
8. Morgan Stanley's claim for taxation of the cost of expert fees.
9. Morgan Stanley's claim for taxation of the cost of hearing and trial transcripts.
10. Morgan Stanley's claim for taxation of the cost of deposition transcripts and videotapes.
11. Morgan Stanley's claim for taxation of the cost of discovery imaging and coding or document production and management.
12. Morgan Stanley's claim for the taxation of costs relating to electronic discovery, including but not limited to costs relating to any search for electronically stored

documents, any review or production of such documents, or any outside experts or consultants involved in any tasks relating to electronic discovery.

13. Any effort to obtain, the results of any effort to obtain, or the receipt of any economic benefit, gift, consideration, or other advantage of any kind in exchange for agreeing to or having agreed to do business with any person or entity to whom payment was made for which Morgan Stanley now seeks reimbursement in the form of a costs award.

14. Any document produced by Morgan Stanley in response to CPH's July 25, 2008 Request for Production of Documents.

DEFINITIONS

1. "Costs Appeal Bond" means the supersedeas bond referred to in paragraphs 7 and 8 of the Costs Appeal Motion.

2. "Costs Appeal Motion" means Morgan Stanley & Co. Inc.'s Motion to Tax Appellate Costs Relating to Costs Appeal, including its supporting affidavits and exhibits, filed in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.), on April 1, 2008.

3. "Costs Motions" means the Costs Appeal Motion, the Main Appeal Motion, and the Trial Motion, individually or collectively, including their supporting affidavits and exhibits.

4. "Costs Judgment" means the judgment entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.), on November 22, 2005, taxing costs in favor of CPH.

5. "Documents" means documents whether fixed in tangible medium or electronically stored. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda,

telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the foregoing, and all versions or drafts thereof, whether used or not. "Documents" includes all non-identical copies of all electronic data as well as application metadata and system metadata.

6. "Escrow Account" means the escrow account at The Bank of New York referred to on page 2 of the Amended Affidavit of Joseph Ianno, Jr. in Support of Morgan Stanley's Amended Motion to Tax Appellate Costs.

7. "Main Appeal Bond" means the supersedeas bond referred to in paragraphs 4 and 5 of the Main Appeal Motion.

8. "Main Appeal Motion" means Morgan Stanley & Co. Incorporated's Amended Motion to Tax Appeal Costs, including its supporting affidavits and exhibits, filed in *Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc.*, CA 03-5045 (Fl.), on April 1, 2008.

9. “Main Judgment” means the judgment entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.), on June 23, 2005, in favor of CPH.

10. “Morgan Stanley” means Morgan Stanley & Co., Inc., or any of its subsidiaries, divisions, parents, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

11. “Relating” means reflecting, concerning, referring to, describing, evidencing, relating to, or constituting.

12. “Trial Motion” means Morgan Stanley & Co. Incorporated’s Amended Motion to Tax Trial Costs, including its supporting affidavits and exhibits, filed in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.), on April 1, 2008.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

August 17, 2007

CASE NO.: 4D05-4756

L.T. No. : CA 03-5045 AI

MORGAN STANLEY & CO.
INCORPORATED

v. COLEMAN (PARENT) HOLDINGS
INC.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that appellee's motion filed July 19, 2007, to continue stay is granted. The stay of the above-styled appeal is continued pending the Supreme Court of Florida's determination whether to accept jurisdiction.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

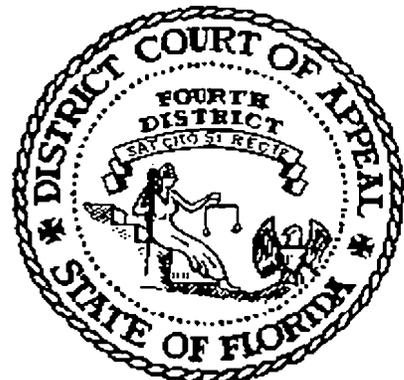
Sharon R. Bock, Clerk
Joseph Ianno, Jr.
Joel D. Eaton

Sylvia H. Walbolt
Jack Scarola
Michael Brody

Bruce S. Rogow
Jerold S. Solovy

cd

Marilyn Beuttenmuller
Marilyn BEUTTENMULLER, Clerk
Fourth District Court of Appeal



IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AJ

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

PLAINTIFF'S MOTION TO APPOINT COMMISSION

Plaintiff Coleman (Parent) Holdings, Inc. ("CPH"), pursuant to Florida Statutes § 92.251, files this Motion to Appoint Commission so that it can subpoena for deposition and documents a witness in another jurisdiction. CPH states as follows:

CPH requests that this Court appoint a commission so that it may subpoena the following witness:

AIG
Member Company of American International Group
Surety Division
175 Water Street, 27th Floor
New York, NY 10038

CPH seeks to have the following commission appointed for the purpose of obtaining documents and a deposition from the above-listed witness:

Ira Brad Matetsky
Ganfer & Shore, LLP
360 Lexington Avenue, 14th Floor
New York, NY 10017

or any person duly authorized by him and able to administer oaths pursuant to the laws of New York.

WHEREFORE, CPH respectfully requests the entry of an order appointing the above as a commission in the listed jurisdiction for purposes of this case.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 20th day of August, 2008.

COLEMAN (PARENT) HOLDINGS INC.

By: 

One of Its Attorneys

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

NOT A CERTIFIED COPY

SERVICE LIST

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401.

Bruce S. Rogow
BRUCE S. ROGOW, P.A.
Broward Financial Centre, Suite 1930
500 East Broward Boulevard
Fort Lauderdale, FL 33394

Faith E. Gay
QUINN EMANUEL URQUHART OLIVER
& HEDGES, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AJ

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

PLAINTIFF'S MOTION TO APPOINT COMMISSIONS

Plaintiff Coleman (Parent) Holdings, Inc. ("CPH"), pursuant to Florida Statutes § 92.251, files this Motion to Appoint Commissions so that it can subpoena for depositions and documents witnesses in other jurisdictions. CPH states as follows:

CPH requests that this Court appoint commissions so that it may subpoena the following witnesses:

The Bank of New York Mellon Corporation
One Wall Street
New York, NY 10286

E.G. Bowman Co., Inc.
97 Wall Street
New York, NY 10005

Safeco Insurance Company
Safeco Plaza
1001 Fourth Ave.
Seattle, WA 98154

CPH seeks to have the following commissions appointed for the purpose of obtaining documents and depositions from the above-listed witnesses:

Ira Brad Matetsky
Ganfer & Shore, LLP
360 Lexington Avenue, 14th Floor
New York, NY 10017

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03 AUG 20 PM 3:40
CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 4

or any person duly authorized by him and able to administer oaths pursuant to the laws of New York.

Donald S. Cohen
Michelle A. Menely

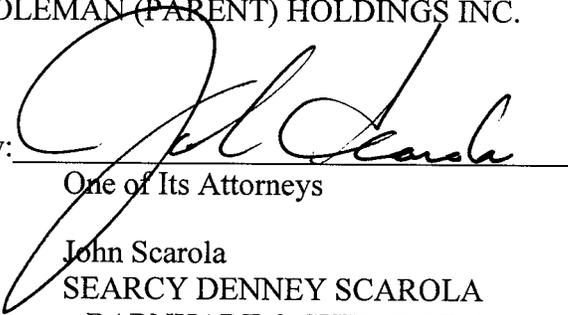
Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP
One Union Square, 600 University Street, Suite 2100
Seattle, Washington 98101

or any person duly authorized by him and able to administer oaths pursuant to the laws of Washington.

WHEREFORE, CPH respectfully requests the entry of an order appointing the above as commissions in the listed jurisdictions for purposes of this case.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 26th day of August, 2008.

COLEMAN (PARENT) HOLDINGS INC.

By: 

One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
JENNER & BLOCK LLP
330 N. Wabash Ave.
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

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Broward Financial Centre, Suite 1930
500 East Broward Boulevard
Fort Lauderdale, FL 33394

Faith E. Gay
QUINN EMANUEL URQUHART OLIVER
& HEDGES, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO.: CA 03-5045 (AJ)

vs.

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

FILED
03 AUG 25 PM 5:14
CLERK
CIRCUIT COURT
PALM BEACH COUNTY, FL

**MORGAN STANLEY & CO. INC.'S RESPONSE TO COLEMAN
(PARENT) HOLDINGS INC.'S REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Defendant, Morgan Stanley & Co. Incorporated (“Morgan Stanley”), by and through its undersigned attorneys, pursuant to Fla. R. Civ. P. 1.350, hereby responds to Plaintiff Coleman (Parent) Holdings Inc.’s (“CPH’s”) Requests For Production of Documents as follows:

By making these responses, Morgan Stanley does not concede that the information sought or provided is relevant to the subject matter of this or any action or reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley’s responses are made intending to preserve and preserving:

- (a) The right to object, on any grounds, to the use of the responses in any subsequent proceedings in this or any action;
- (b) The right to object to introduction into evidence of these responses or documents provided in response to the Requests; and
- (c) The right to object, on any grounds at any time, to other requests or discovery demands involving documents produced in response to the Requests.

GENERAL OBJECTIONS

1. Morgan Stanley objects to the Requests including, without limitation, the instructions and definitions therein, to the extent they purport to impose on Morgan Stanley obligations beyond those imposed by the Florida Rules of Civil Procedure, and any other applicable law or rule.

2. Morgan Stanley objects to the Requests to the extent they seek documents and/or information that are not within Morgan Stanley's possession, custody or control; that are already available to CPH; that are available from public, court, or agency records, or otherwise in the public domain and accessible to all parties.

3. Morgan Stanley objects to the Requests to the extent they seek identification and disclosure of information that is irrelevant, immaterial, or not reasonably calculated to lead to the discovery of admissible evidence.

4. Morgan Stanley objects to the Requests to the extent they are oppressive, overbroad, unreasonably cumulative, duplicative, and unduly burdensome, particularly to the extent that they seek "all" documents relating to a particular subject matter.

5. Morgan Stanley objects to the Requests to the extent they seek the disclosure of information protected by the attorney-client privilege, the attorney work-product doctrine, or any other privilege or protection from disclosure. Morgan Stanley hereby claims such privileges and protections to the extent implicated by each Request and excludes privileged and protected information from its responses to the Requests. Inadvertent production of any such information shall not constitute a waiver of any privilege or protection from disclosure as to that information or any related information. As set forth in this Response, Morgan Stanley objects to the overbroad nature of these requests especially since the only issue before the Court is the amount of taxable costs to be awarded to Morgan Stanley. Pursuant to the Fourth District's decision in *Gosman v. Luzinski*, 937 So. 2d 293 (Fla. 4th DCA 2006), Morgan Stanley hereby requests an extension of thirty (30) days to prepare its privilege log from the date on which the Court, if

necessary, resolves Morgan Stanley's other objections to the Requests. Further, Morgan Stanley objects to the production of a privilege log for clearly privileged communications between Morgan Stanley's attorneys (including both its in-house counsel and outside counsel) and Morgan Stanley employees that may "relate" in some way to the claimed costs. In fact, the parties previously agreed, and the Court ordered, that the parties were "not required to provide a privilege log listing otherwise responsive documents where those documents involved privileged communications between the parties and their lawyers in connection with litigation arising from the transaction at issue in this case." 9/4/2003 Agreed Order Regarding Enlargement of Time to Prepare Privilege Log. Morgan Stanley also objects to the production of a privilege log for clearly privileged materials such as work product created by in-house counsel or outside counsel while preparing the cost motions. Such materials may "relate" in some way to the claimed costs, but are clearly protected by the work product doctrine. To require a privilege log of these categories of materials would be unduly burdensome and harassing, especially in the context of the narrow issue before the Court, and would necessarily reveal the work product of counsel for Morgan Stanley.

6. Morgan Stanley objects to the definitions of the terms "Morgan Stanley," "You," and "Your" contained in the Requests to the extent they purport to define an entity other than Morgan Stanley and/or purport to impose obligations on Morgan Stanley beyond providing information that is in the possession, custody, or control of Morgan Stanley. Morgan Stanley further objects to the definitions of these terms to the extent they purport to refer to actions taken by "any person or entity acting on Morgan Stanley's behalf" that were not taken at the direction of Morgan Stanley.

7. The responses to the Requests shall not be construed in any way as an admission that any definition provided by CPH is either factually correct or legally binding upon Morgan Stanley, or as a waiver of any of Morgan Stanley's objections.

8. Morgan Stanley's Specific Responses and Objections to the individual Requests shall be deemed to incorporate, and shall not be deemed a waiver of, these General Objections.

9. Morgan Stanley objects to the Requests, definitions, and instructions to the extent they are compound, phrased disjunctively or conjunctively, and include subparts in such a manner that they are unduly burdensome, confusing, or cannot be reasonably answered.

10. Morgan Stanley objects to the Requests, definitions, and instructions to the extent they seek information that is not known or reasonably available to Morgan Stanley.

11. Morgan Stanley's objection to a Request or agreement to produce responsive documents in response to a Request is not and should not be construed as an admission that any particular information or category of information exists.

12. Morgan Stanley objects to the Requests to the extent they seek a legal theory or conclusion or seek documents relating to Morgan Stanley's entitlement to, as opposed to the reasonableness of, its trial costs. See J. Robin L. Rosenberg's 6/11/08 Order granting Morgan Stanley's Amended Motion to Tax Trial Costs as to the issue of entitlement and reserving ruling on the issue of reasonableness.

13. Morgan Stanley objects to the Requests to the extent they are harassing in the context of the narrow issue before the Court and seek information that is not reasonably calculated to lead to the discovery of admissible evidence relevant to the cost motions presently pending before the Court. Morgan Stanley will conduct a reasonable search for and produce non-privileged documents sufficient to support the amount of costs that Morgan Stanley is entitled to recover in this action as the prevailing party. CPH's attempt in the Requests to obtain every piece of paper that "relates" to the claimed costs is overbroad and harassing.

14. Morgan Stanley objects to the Requests to the extent that they do not contain any time period limitation. With respect to requests seeking communications concerning the determination of the premiums and costs associated with the Main Appeal Bond, the Cost Appeal Bond and the Escrow Account, Morgan Stanley will conduct a reasonable search for responsive (as limited by the specific responses and objections below) non-privileged communications sent or received between January 1, 2005 and June 30, 2005. With respect to trial costs, Morgan Stanley will conduct a reasonable search for responsive (as limited by the

specific responses and objections below) non-privileged communications sent or received between May 8, 2003 and March 31, 2006.

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1

All documents that were a source of information used in preparing the Costs Motions.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Morgan Stanley objects to this Request on the ground that it is overbroad. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents that were used to substantiate the individual line item costs contained in the affidavits filed in support of the Cost Motions.

REQUEST FOR PRODUCTION NO. 2:

All documents relating to payment of or any reimbursement for payment of the costs detailed in the Costs Motion, including but not limited to invoices, canceled checks, wire confirmations, bank statements, receipts, ledger entries, and accounting records.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents

sufficient to show the payment of the costs detailed in the Costs Motions. Specifically, Morgan Stanley will produce invoices, checks or check stubs, and wire transfer confirmations sufficient to show payments made by Morgan Stanley or its counsel for costs itemized in the affidavits filed in support of the Cost Motions. Coleman's attempt to obtain categories of documents like "ledger entries" and "accounting records" is not only vague, ambiguous, and overbroad, but also goes well beyond a reasonable calculation of what is necessary to contest the claimed costs. To the extent that this request seeks further categories of documents, it is simply an attempt to harass Morgan Stanley.

REQUEST FOR PRODUCTION NO. 3:

All documents relating to Morgan Stanley's claim for taxation of the cost of premiums, including but not limited to documents relating to:

- a. the amount of premiums charged to Morgan Stanley, or any person or entity acting on Morgan Stanley's behalf, in connection with the Costs Appeal Bond or the Main Appeal Bond;
- b. the amount of premiums paid by or on behalf of Morgan Stanley in connection with the Costs Appeal Bond or the Main Appeal Bond;
- c. the identity of each payor and each recipient of any such payment;
- d. any refund in premiums in connection with the Costs Appeal Bond or the Main Appeal Bond;
- e. any inquiry or investigation undertaken by or on behalf of Morgan Stanley or any insurance broker relating to the cost or amount of premiums quoted, estimated, or charged by any insurance company, financial institution, or other entity in connection with a bond or other form of security relating to the Costs Judgment or the Main Judgment.
- f. any quote or estimate received by or on behalf of Morgan Stanley or any insurance broker from any insurance company, financial institution, or other entity of the cost or amount of premiums associated with a bond or

other form of security relating to the Costs Judgment or the Main Judgment; or

- g. any comparison or other analysis undertaken by or on behalf of Morgan Stanley or any insurance broker of any such quote or estimate.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of the bond premiums claimed by Morgan Stanley in the Cost Motions. Specifically, Morgan Stanley will produce invoices and wire transfer information sufficient to show the cost of the bond premiums, the payment of the bond premiums, and the refund of certain bond premiums. However, Morgan Stanley objects to producing “all” documents “relating” to the bond premiums because it is simply an attempt to harass Morgan Stanley with overbroad requests that will force Morgan Stanley to incur additional costs. Further, Morgan Stanley has undertaken a reasonable investigation regarding non-privileged documents sufficient to show its efforts to obtain a supersedeas bond in this matter and will produce the documents it has located after a reasonable search.

REQUEST FOR PRODUCTION NO. 4:

All documents relating to Morgan Stanley’s claim for taxation of the cost of broker commissions, including but not limited to documents relating to:

- a. the amount of broker commissions charged to Morgan Stanley, or any person or entity acting on Morgan Stanley’s behalf, in connection with the Costs Appeal Bond or the Main Appeal Bond;

- b. the amount of broker commissions paid by or on behalf of Morgan Stanley in connection with the Costs Appeal Bond or the Main Appeal Bond;
- c. the identity of each payor and each recipient of any such payment;
- d. any refund of broker commissions in connection with the Costs Appeal Bond or the Main Appeal Bond;
- e. any inquiry or investigation undertaken by or on behalf of Morgan Stanley relating to the cost or amount of broker commissions quoted, estimated, or charged by any insurance company or agency or any other entity in connection with a bond or other form of security relating to the Costs Judgment or the Main Judgment;
- f. any quote or estimate received by or on behalf of Morgan Stanley from any insurance company or agency or any other entity of the cost or amount of broker commissions associated with a bond or other form of security relating to the Costs Judgment or the Main Judgment;
- g. any comparison or other analysis undertaken by or on behalf of Morgan Stanley of any such quote or estimate; or
- h. all communications and all documents referencing communications relating to discounts, rebates, refunds, trade-offs, barters, or other exchange of consideration of any kind concerning commissions, bond premiums, or any other payment sent or received in relation to the Costs Judgment, the Main Judgment, the Costs Appeal Bond, the Main Appeal Bond, the Escrow Account, or any other bond, escrow account, or other security for the payment of the Costs Judgment or the Main Judgment.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan

Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of the broker commissions claimed by Morgan Stanley in the Cost Motions. Further, Morgan Stanley will make reasonable efforts to identify and produce communications between it and EG Bowman discussing or referring to the supersedeas bonds filed in this action. Coleman's attempt to obtain a broader range of documents is simply a fishing expedition designed to harass Morgan Stanley and add to the costs of this limited cost proceeding.

REQUEST FOR PRODUCTION NO. 5:

All documents relating to Morgan Stanley's claim for taxation of the cost of the Escrow Account, including but not limited to documents relating to:

- a. the amount charged to Morgan Stanley, or any person or entity acting on Morgan Stanley's behalf, in connection with the Escrow Account;
- b. the amount paid by or on behalf of Morgan Stanley in connection with the Escrow Account;
- c. the identity of each payor and each recipient of any such payment;
- d. any discount, rebate, refund, trade-off, barter, or other exchange of consideration of any kind in connection with the Escrow Account;
- e. any amount held in the Escrow Account;
- f. any request or demand by or on behalf of Morgan Stanley, the Bank of New York, or any other person or entity for the creation of an escrow account relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment;
- g. any discussion or analysis of such a request or demand;

- h. any communication concerning and any description or discussion of how the costs associated with the Escrow Account were calculated or derived;
- i. any inquiry or investigation undertaken by or on behalf of Morgan Stanley relating to the cost or amount of fees quoted, estimated, or charged by any financial institution or other entity in connection with an escrow account relating to the Costs Appeal Bond, the Main Appeals Bond, the Costs Judgment, or the Main Judgment;
- j. any quote or estimate received by or on behalf of Morgan Stanley from any financial institution or other entity of the cost or amount of fees associated with an escrow account relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment; or
- k. any comparison or other analysis undertaken by or on behalf of Morgan Stanley of any such quote or estimate.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of the escrow account costs claimed by Morgan Stanley in the Cost Motions. Further, Morgan Stanley will make reasonable efforts to identify and produce communications between it and the Bank of New York relating to the costs of the Escrow Account. Morgan Stanley will also produce documents sufficient to show how the Bank of New York was selected as an escrow agent. However, Coleman's attempt to obtain every piece of paper relating to the Escrow Account is simply overbroad and not reasonably calculated to lead

to the discovery of admissible evidence in this limited cost proceeding. The only relevant information about the Escrow Account in this limited cost proceeding is the amount of the fees paid to the Bank of New York so they could manage the Escrow Account required to obtain the supersedeas bond.

REQUEST FOR PRODUCTION NO. 6:

All documents relating to any communication between Morgan Stanley (or any person or entity acting on Morgan Stanley's behalf) and any other person or entity, including but not limited to any communication between Morgan Stanley and E.G. Bowman Co., Inc., The Bank of New York, Safeco Insurance Co., or AIG, relating to:

- a. a bond, escrow account, or other form of security relating to the Costs Judgment or the Main Judgment;
- b. the Costs Appeal Bond;
- c. the Main Appeal Bond;
- d. the Escrow Account.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce documents constituting communications between the entities referred to in this request that discuss or refer to the determination of the amount of the bond premiums and escrow account fees claimed by Morgan Stanley in the affidavits supporting its Cost Motions.

REQUEST FOR PRODUCTION NO. 7:

All documents relating to the release, discharge, closing, or cancellation of the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account, including but not limited to documents sufficient to show the date on which Morgan Stanley first requested such release, discharge, closing, or cancellation and documents sufficient to show the date on which such release, discharge, closing, or cancellation was affected.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the date on which Morgan Stanley first requested a release, discharge, closing, or cancellation of the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account and documents sufficient to show the date on which such release, discharge, closing, or cancellation was affected.

REQUEST FOR PRODUCTION NO. 8:

All documents relating to any consideration or analysis by or on behalf of Morgan Stanley of forms or sources of security for the Costs Judgment or the Main Judgment other than the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 9:

All documents relating to Morgan Stanley's claim for taxation of the cost of mediation, including but not limited to:

- a. the amount and nature of mediation costs charged to Morgan Stanley or any person or entity acting on Morgan Stanley's behalf; or
- b. the amount and nature of mediation costs paid by or on behalf of Morgan Stanley.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley further objects to this Request to the extent it seeks information that is already available to CPH regarding the "nature" of mediation costs that Coleman itself claimed when it was the prevailing party. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of mediation costs claimed by Morgan Stanley in the Cost Motions.

REQUEST FOR PRODUCTION NO. 10:

All documents relating to Morgan Stanley's claim for taxation of the cost of expert fees, excluding copies of expert reports and expert deposition transcripts, and including but not limited to documents relating to:

- a. the amount and nature of expert fees charged to Morgan Stanley or any person or entity acting on Morgan Stanley's behalf;
- b. the amount and nature of expert fees paid by or on behalf of Morgan Stanley;
- c. any communication between Morgan Stanley (or any person or entity acting on Morgan Stanley's behalf) and any other person or entity relating to the amount, nature, or payment of expert fees;
- d. whether any of the expert fees for which costs are claimed by Morgan Stanley are attributable to expert depositions;
- e. the purpose for which any such expert deposition was used in this Action;
- f. whether any of the expert fees for which costs are claimed by Morgan Stanley are attributable to the preparation of a court-ordered report; or
- g. the purpose for which any such court-ordered report was used in this Action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley further objects to this Request to the extent it seeks information that is already available to CPH regarding the "nature" of the expert costs incurred by Morgan Stanley. After years of litigation, Coleman is well aware of the purpose to which the expert reports and testimony were used by Morgan Stanley. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents

sufficient to show the amount of expert fees claimed by Morgan Stanley in the Cost Motions in the form of the expert witness invoices paid on behalf of Morgan Stanley.

REQUEST FOR PRODUCTION NO. 11:

All documents relating to Morgan Stanley's claim for taxation of the cost of hearing and trial transcripts, excluding copies of such transcripts, and including but not limited to documents relating to:

- a. the amount of hearing or trial transcript costs charged to Morgan Stanley or any person or entity acting on Morgan Stanley's behalf; or
- b. the amount of hearing or trial transcript costs paid by or on behalf of Morgan Stanley.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley further objects to this Request to the extent it seeks information that is already available to CPH. CPH was present for all the hearings in this case as well as the trial. In fact, CPH sought recovery for the costs of trial transcripts and hearing transcripts when it was the prevailing party. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of hearing and trial transcript costs claimed by Morgan Stanley in the Cost Motions in the form of the hearing and trial transcript invoices paid on behalf of Morgan Stanley.

REQUEST FOR PRODUCTION NO. 12:

All documents relating to Morgan Stanley's claim for taxation of the cost of deposition transcripts and videotapes, excluding copies of such transcripts and videotapes, and including but not limited to documents relating to:

- a. the amount of deposition transcript or videotape costs charged to Morgan Stanley or to any person or entity acting on Morgan Stanley's behalf; or
- b. the amount of deposition transcript or videotape costs paid by or on behalf of Morgan Stanley.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley further objects to this Request to the extent it seeks information that is already available to CPH. CPH was present for the depositions reflected in the materials supporting Morgan Stanley's Cost Motions. In fact, CPH sought recovery for the costs of depositions when it was the prevailing party. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of deposition transcript and videotape costs claimed by Morgan Stanley in the Cost Motions in the form of the deposition invoices paid on behalf of Morgan Stanley.

REQUEST FOR PRODUCTION NO. 13:

All documents relating to Morgan Stanley's claim for taxation of the cost of discovery imaging and coding or document production and management, excluding copies of the documents that were imaged, coded, produced, or managed, and including but not limited to documents relating to:

- a. the amount and nature of the discovery imaging or coding or document production and management costs charged to Morgan Stanley or to any person or entity acting on Morgan Stanley's behalf;
- b. the amount and nature of the discovery imaging or coding or document production and management costs paid by or on behalf of Morgan Stanley;
- c. any communication between Morgan Stanley (or any person or entity acting on Morgan Stanley's behalf) and any other person or entity, including but not limited to any communication between Morgan Stanley and Compulit, relating to the amount, nature, or payment of discovery imaging or coding or document production and management costs;
- d. whether any of the documents as to which such costs were incurred were actually filed with the court in this Action;
- e. whether, for each document as to which such costs were incurred, such document was actually produced to CPH;
- f. whether any of the claimed discovery imaging or coding or document production and management costs constituted the action cost of copies obtained in discovery;
- g. whether there were discounts, based on volume or otherwise, available to or used by Morgan Stanley or its lawyers or law firms relating to discovery imaging or coding or document production and management (including but not limited to copying of documents); or
- h. whether any effort was made by or on behalf of Morgan Stanley to determine whether lower prices for the discovery- or document-related tasks for which costs are claimed were available from vendors other than those who were used to carry out the tasks.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Morgan Stanley objects to this Request on the grounds that it is overbroad and to the extent it seeks information that is already available to CPH. CPH is aware of what documents it produced and the copying, imaging and coding arrangement with Compulit. Further, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. In addition, Morgan Stanley objects to this Request on the ground that it seeks irrelevant documents not reasonably calculated to lead to the discovery of admissible evidence since Morgan Stanley's claim only seeks to recoup those costs associated with discovery imaging and coding.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of discovery imaging and coding costs claimed by Morgan Stanley in the Cost Motions in the form of the invoices paid by Morgan Stanley for such costs.

REQUEST FOR PRODUCTION NO. 14:

All documents, excluding copies of deposition transcripts, deposition videotapes, trial transcripts, and documents produced or obtained in prior discovery in the Action, relating to costs claimed by Morgan Stanley relating to electronic discovery, including but not limited to costs relating to any search for electronically stored documents, any review or production of such documents, or any outside experts or consultants involved in any tasks relating to electronic discovery.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Morgan Stanley objects to this Request on the grounds that it is overbroad to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. In addition, Morgan Stanley objects to this Request on the ground that it seeks irrelevant documents not reasonably calculated to lead to the

discovery of admissible evidence because Morgan Stanley is not claiming electronic discovery costs in the Cost Motions. To the extent that this Request targets the Compulit costs claimed by Morgan Stanley, Morgan Stanley objects to it as duplicative of Request 13.

REQUEST FOR PRODUCTION NO. 15:

All documents relating to any effort to obtain, the results of any effort to obtain, or the receipt of any economic benefit, consideration, or other advantage of any kind in exchange for agreeing to or having agreed to do business with any person or entity to whom payment was made for which Morgan Stanley now seeks reimbursement in the form of a costs award.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley responds that it is not aware of any documents that are responsive to this Request.

REQUEST FOR PRODUCTION NO. 16:

All documents relating to any gift received by Morgan Stanley from any person or entity to whom payment was made for which Morgan Stanley now seeks reimbursement in the form of a costs award.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley responds that it is not aware of any documents that are responsive to this Request.

REQUEST FOR PRODUCTION NO. 17:

All documents, excluding copies of deposition transcripts, deposition videotapes, trial transcripts, and documents produced or obtained in prior discovery in the Action, that may tend to support or refute the assertion in the Costs Motions and supporting affidavits that the claimed costs were reasonable and necessary to the defense of the Action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley further objects to the extent that this Request seeks a legal theory or conclusion and to the extent it seeks information that is already available to CPH. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Lastly, Morgan Stanley objects to the term “refute” as vague and ambiguous because it can have very different meanings to CPH and Morgan Stanley in this context.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents that Morgan Stanley believes are sufficient to support the costs itemized in the affidavits filed in support of the Cost Motions.

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By: 

BRUCE S. ROGOW
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided to the following counsel listed below, by Federal Express and U.S. Mail this 22 day of August, 2008:

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BRUCE S. ROGOW

NOT A CERTIFIED COPY

#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

FILED

SEP 02 2008

SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

AGREED ORDER ON PLAINTIFF'S MOTION TO APPOINT COMMISSIONS

THIS CAUSE came before the Court on Plaintiff's Motion to Appoint Commissions so that it can subpoena for depositions and documents witnesses in other jurisdictions. After reviewing the pleadings, and otherwise being advised in the premises, it is ORDERED AND ADJUDGED that Commissions are appointed so that Plaintiff may subpoena depositions and documents from the following witnesses:

The Bank of New York Mellon Corporation
One Wall Street
New York, NY 10286

E.G. Bowman Co., Inc.
97 Wall Street
New York, NY 10005

Safeco Insurance Company
Safeco Plaza
1001 Fourth Avenue
Seattle, WA 98154

The following commissions are appointed for the purposes of obtaining depositions and documents from the above listed witnesses, and other witnesses whose discovery is sought in the commissions' jurisdiction:

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AJ
Order on Plaintiff's Motion to Appoint Commissions
Page 2 of 3

Ira Brad Matetsky
Ganfer & Shore, LLP
360 Lexington Avenue, 14th Floor
New York, NY 10017

or any person duly authorized by him and able to administer oaths pursuant to the laws of New York.

Donald S. Cohen
Michelle A. Menely
Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP
One Union Square, 600 University Street, Suite 2100
Seattle, WA 98101

or any person duly authorized by them and able to administer oaths pursuant to the laws of Washington.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this 2nd
day of September, 2008.


ROBIN ROSENBERG
Circuit Judge

Copies furnished to all counsel on the attached list.

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AJ
Order on Plaintiff's Motion to Appoint Commissions
Page 3 of 3

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New York, NY 10010

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#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

08 SEP -2 PM 4: 58
CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 2

AGREED ORDER ON PLAINTIFF'S MOTION TO APPOINT COMMISSION

THIS CAUSE came before the Court on Plaintiff's Motion to Appoint Commission so that it can subpoena for depositions and documents a witness in another jurisdiction. After reviewing the pleadings, and otherwise being advised in the premises, it is ORDERED AND ADJUDGED that the Commission is appointed so that Plaintiff may subpoena depositions and documents from the following witness:

AIG
Member Company of American International Group
Surety Division
175 Water Street, 27th Floor
New York, NY 10038

The following commission is appointed for the purpose of obtaining depositions and documents from the above listed witness, and other witnesses whose discovery is sought in the commissions' jurisdiction:

Ira Brad Matetsky
Ganfer & Shore, LLP
360 Lexington Avenue, 14th Floor
New York, NY 10017

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AJ
Order on Plaintiff's Motion to Appoint Commission
Page 2 of 3

or any person duly authorized by him and able to administer oaths pursuant to the laws of New York.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this 2nd
day of September, 2008.


ROBIN ROSENBERG
Circuit Judge

Copies furnished to all counsel on the attached list.

NOT A CERTIFIED COPY

#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

FILED

SEP 02 2008

SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

AGREED ORDER ON PLAINTIFF'S MOTION TO APPOINT COMMISSIONS

THIS CAUSE came before the Court on Plaintiff's Motion to Appoint Commissions so that it can subpoena for depositions and documents witnesses in other jurisdictions. After reviewing the pleadings, and otherwise being advised in the premises, it is ORDERED AND ADJUDGED that Commissions are appointed so that Plaintiff may subpoena depositions and documents from the following witnesses:

The Bank of New York Mellon Corporation
One Wall Street
New York, NY 10286

E.G. Bowman Co., Inc.
97 Wall Street
New York, NY 10005

Safeco Insurance Company
Safeco Plaza
1001 Fourth Avenue
Seattle, WA 98154

The following commissions are appointed for the purposes of obtaining depositions and documents from the above listed witnesses, and other witnesses whose discovery is sought in the commissions' jurisdiction:

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AJ
Order on Plaintiff's Motion to Appoint Commissions
Page 2 of 3

Ira Brad Matetsky
Ganfer & Shore, LLP
360 Lexington Avenue, 14th Floor
New York, NY 10017

or any person duly authorized by him and able to administer oaths pursuant to the laws of New York.

Donald S. Cohen
Michelle A. Menely
Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP
One Union Square, 600 University Street, Suite 2100
Seattle, WA 98101

or any person duly authorized by them and able to administer oaths pursuant to the laws of Washington.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this 2nd
day of September, 2008.


ROBIN ROSENBERG
Circuit Judge

Copies furnished to all counsel on the attached list.

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AJ
Order on Plaintiff's Motion to Appoint Commissions
Page 3 of 3

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#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

FILED
08 SEP 10 PM 3:34
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 3

MOTION FOR EXTENSION OF DISCOVERY CUT-OFF

Plaintiff, Coleman (Parent) Holdings, Inc., by and through its undersigned attorneys, moves this Honorable Court for entry of an Order extending the discovery cut-off on matters relating to the Defendant, Morgan Stanley's, pending motions to tax costs, and in support of this motion, Coleman (Parent) Holdings, Inc. would show:

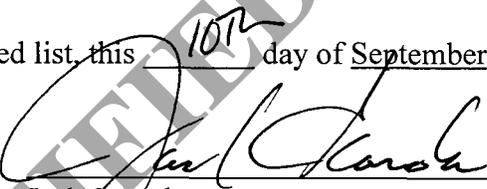
1. the existing discovery cut-off date established pursuant to the agreement of the parties requires the completion of depositions by September 22, 2008;
2. it was intended that document discovery would precede the taking of depositions and extensive document discovery has been conducted; however, disputes have arisen concerning various production requests made by the Plaintiff as more particularly described in Plaintiff's pending Motion to Compel Production of Costs-Related Documents;
3. the Plaintiff anticipates that to conclude the taking of depositions (including out-of-state depositions requiring the issuance of commissions and service of out-of-state subpoenas)

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AI
Motion for Extension of Discovery Cut-Off

60 days will be needed following the Court's disposition of the referenced Motion to Compel and the completion of production, if any, ordered in response to that motion.

WHEREFORE, Plaintiff requests the entry of an Order extending the costs-related discovery cut-off from September 22, 2008 to 60 days following the Defendant's certification that document discovery has been completed including the production of documents, if any, that may be ordered produced in response to Plaintiff's Motion to Compel Costs-Related Documents.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and U.S. Mail to all Counsel on the attached list, this 10th day of September, 2008.



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Searcy Denney Scarola
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Attorney for Plaintiff

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AI
Motion for Extension of Discovery Cut-Off

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#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

NOTICE OF CANCELLATION OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has cancelled the hearing on the following date:

DATE: Thursday, September 18, 2008

TIME: 8:45 a.m.

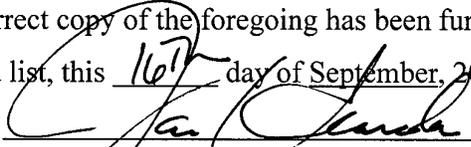
JUDGE: Honorable Robin Rosenberg

PLACE: Palm Beach County Courthouse, 205 N. Dixie Highway, West Palm Beach, FL

ROOM #: 10-A

MATTERS TO BE HEARD: Plaintiff's Motion for Extension of Discovery Cut-Off

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and U.S. Mail to all Counsel on the attached list, this 16th day of September, 2008.



JACK SCAROLA
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Attorney for Plaintiff

FILED
08 SEP 18 PM 3:41
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 9

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Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AJ
Notice of Hearing

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 03-5045 AJ

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

FILED
08 SEP 11 PM 3:38
SHARON R. BOCKA CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 3

**COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL
PRODUCTION OF COSTS-RELATED DOCUMENTS**

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an order directing Morgan Stanley & Co., Inc. ("Morgan Stanley") to produce all documents responsive to CPH's request for production concerning Morgan Stanley's motions to tax appellate and trial costs. In support of this motion, CPH states as follows:

Introduction & Background

1. This motion has been necessitated by Morgan Stanley's refusal to produce documents that are directly relevant to the \$11+ million in appellate and trial costs Morgan Stanley currently seeks. As discussed in detail below, in response to CPH's requests for documents concerning the amount and reasonableness of those costs, Morgan Stanley has declared that it will produce only those documents that it unilaterally deems "sufficient" to prove its costs, and it essentially refuses to provide a meaningful privilege log. For the reasons set forth below, however, Morgan Stanley's responses to CPH's discovery are far from "sufficient."

2. By way of background, CPH sued Morgan Stanley for its participation in the largest stock fraud in Florida history. The trial court found that during the course of the litigation Morgan Stanley "deliberately and contumaciously violated numerous discovery orders," made

false statements to the Court and to CPH, coached witnesses, and caused CPH incurable prejudice. *See* Ex. 1, March 23, 2005 Order at 16. Among other things, the Court found that Morgan Stanley knowingly submitted false certifications of compliance with CPH's document requests, failed to conduct a "good faith search" for electronic documents, submitted a declaration "intended to mislead CPH and the Court" about its discovery conduct, "improperly withheld" documents required to be produced, made false representations to the Court regarding its document management system, and routinely asserted unfounded privilege claims. (*Id.* at 5, 9, 13, 15-16.) The Fourth District left all of those conclusions regarding Morgan Stanley's blatant discovery misconduct undisturbed. In addition, as explained in detail in the verified Rule 1.540 motion that CPH filed with this Court on March 25, 2008, revelations of Morgan Stanley's lack of candor with the Court continued after the trial, when it was revealed that Morgan Stanley's in-house legal department was directly involved in the discovery misconduct.

3. Against that backdrop, it becomes obvious why CPH resists Morgan Stanley's current attempt to manipulate the discovery needed to test its request to recover more than \$11 million in alleged costs from CPH, the established victim of Morgan Stanley's fraud and egregious litigation misconduct. Those costs consist of the following:

- Morgan Stanley seeks \$9.1 million on the main appeal, including \$8.8 million in a category that Morgan Stanley entitles "bond premiums," which according to Morgan Stanley are "gross premium[s]" that include "broker commissions." Am. Aff. of Joseph Ianno, Jr. in Supp. of Def. Morgan Stanley & Co. Inc.'s Am. Mot. to Tax Appellate Costs ¶ 4 ("Ianno Aff. re Main Appeal"). It also includes more than \$300,000 in a category that Morgan Stanley entitles "bond costs," which consists entirely of what Morgan Stanley describes as "fees for required escrow account." *Id.*
- With respect to the costs appeal, Morgan Stanley seeks \$6,600. That amount includes \$6,009 in so-called "bond premiums" – *i.e.*, "gross premium[s]" that include "broker commissions." Aff. of Joseph Ianno, Jr. in Supp. of Def. Morgan Stanley & Co. Inc.'s Mot. to Tax Appellate Costs Relating to Cost Appeal ¶ 4 ("Ianno Aff. re Costs Appeal").
- With respect to the trial, Morgan Stanley seeks more than \$2 million. That amount includes more than \$591,000 in expert witness fees; nearly \$784,000 for "imaging and

coding for discovery materials”; nearly \$88,000 in costs associated with mediation; \$147,000 for deposition transcripts and videotapes; and \$400,000 for hearing and trial transcripts. *See* Aff. of Theresa A. Pilosi in Supp. of Def. Morgan Stanley & Co. Inc.’s Am. Mot. to Tax Trial Costs (“Piloski Aff.”); Aff. of Joseph Ianno, Jr. in Supp. of Def. Morgan Stanley & Co. Inc.’s Am. Mot. to Tax Trial Costs (“Ianno Aff. re Trial Costs”); Aff. of Thomas A. Clare, P.C. in Supp. of Def. Morgan Stanley & Co. Inc.’s Am. Mot. to Tax Trial Costs (“Clare Aff.”).

4. To allow CPH discovery into the necessity and the reasonableness of the aforementioned \$11+ million in alleged costs, this Court entered an Order on June 27, 2008 permitting CPH to serve written discovery and to take depositions concerning those issues. The Court ordered CPH to serve all such written discovery by July 25, 2008, and to complete all depositions by September 22, 2008. *See* June 27, 2008 Order. Because Morgan Stanley has refused to provide the discovery sought, CPH also has filed a motion to extend the cost discovery cutoff.

5. Pursuant to the Court’s Order, on July 25, 2008, CPH served Morgan Stanley with its Request for Production of Documents, seeking 17 categories of documents relating to Morgan Stanley’s alleged costs. *See* CPH’s Request for Production, attached hereto as Exhibit 2. In response, on August 22, 2008, Morgan Stanley served its written response to those requests. As discussed more fully below, however, Morgan Stanley’s responses are riddled with objections and effective refusals to provide documents relating to the reasonableness of its asserted costs. *See* Morgan Stanley’s Response to Requests for Production, attached hereto as Exhibit 3. In short, following an exhaustive list of general and specific objections to just about every request, Morgan Stanley essentially advises that it will produce documents “sufficient to show” matters related to each item of inquiry. While such a qualified response would be unacceptable in any case, given Morgan Stanley’s extensive history of established litigation misconduct *in this action*, Morgan Stanley’s declaration that it will produce what it unilaterally deems to be

“sufficient” is particularly troubling. Further, Morgan Stanley’s self-appointment as the sole arbiter of the sufficiency of its own production is even less comforting in light of the fact that Morgan Stanley, as discussed below, also is refusing to proffer any meaningful privilege log. The Court already has found that Morgan Stanley “routinely assert[ed] unfounded privilege claims,” and, because of that history, Morgan Stanley should not be permitted to withhold allegedly privileged documents without logging them. *See* Ex. 1 at 16.

Morgan Stanley’s Discovery Responses Are Deficient

6. Under established Florida law, a prevailing party may be reimbursed only for those costs that were “necessary and reasonable.” *See Am. Med. Int’l, Inc. v. Scheller*, 484 So. 2d 593, 594 (Fla. 4th DCA 1985); *see also Fla. Power & Light Co. v. Polackwich*, 705 So. 2d 23, 25 (Fla. 2d DCA 1997) (“trial court’s decision on issues involved in a motion to tax appellate costs is largely discretionary”). On the record thus far before this Court, however, Morgan Stanley has not established that its \$11+ million in asserted taxable costs were necessary or reasonable, and, instead of providing full discovery into that information, Morgan Stanley is stonewalling. Set forth below is a brief summary of Morgan Stanley’s deficient discovery responses.

7. **Morgan Stanley’s Responses To CPH’s Request For Production Nos. 3-7 Concerning Bond Costs Are Deficient:** CPH’s Request for Production Nos. 3-7 seek documents concerning the \$9+ million in bond fees, broker commissions, and escrow fees that Morgan Stanley allegedly incurred in connection with its procurement of the *supersedeas* appeal bond and the costs appeal bond. In particular, those requests call for information regarding other bond alternatives that were available to Morgan Stanley, the costs associated with those alternate arrangements, and why Morgan Stanley elected the bond structure for which it now

seeks reimbursement. In its written responses to CPH's requests, however, Morgan Stanley essentially declares that instead of producing all responsive materials, it will produce only what Morgan Stanley believes is "sufficient." For instance:

- In response to Request No. 3 seeking documents concerning the bond premiums, Morgan Stanley states that it "objects to producing 'all' documents 'relating' to the bond premiums because it is simply an attempt to harass Morgan Stanley with overbroad requests," and instead, Morgan Stanley declares that it will produce "documents sufficient to show its efforts to obtain a supersedeas bond" and "sufficient to show the cost of the bond premiums, the payment of the bond premiums, and the refund of certain bond premiums." *See* Morgan Stanley Response to Request For Production at 7.
- In response to Request No. 4 regarding the broker commissions, Morgan Stanley states that it "will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of the broker commissions claimed by Morgan Stanley," as well as its communications with E.G. Bowman regarding the bonds, but that "Coleman's attempt to obtain a broader range of documents simply is a fishing expedition designed to harass Morgan Stanley and add to the costs of this limited costs proceeding." *Id.* at 9.
- In response to Request No. 5 relating to the escrow account fees, Morgan Stanley states that it "will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of the escrow account costs," and will produce its communications with The Bank of New York, as well as documents "sufficient to show how the Bank of New York was selected as escrow agent," but that "Coleman's attempt to obtain every piece of paper relating to the Escrow Account is simply overbroad and not reasonably calculated to lead to the discovery of admissible evidence in this limited cost proceeding." *Id.* at 10-11.
- Request No. 6 seeks all communications between Morgan Stanley and non-parties relating to methods to secure the judgment, but Morgan Stanley is limiting its production to communications between it and E.G. Bowman Co., Inc., The Bank of New York, Safeco Insurance Co., and AIG "that discuss or refer to the determination of the amount of the bond premiums and escrow account fees." *Id.* at 11. In other words, Morgan Stanley not only is refusing to provide communications with additional non-parties relating to its investigation of alternative -- and perhaps less costly -- methods of securing the judgment, but Morgan Stanley also is limiting its production of third-party communications concerning the bond structure to include only those documents that relate to the costs of the bonds it ultimately obtained.
- Request No. 7 seeks all documents relating to the cancellation of the bonds and the closing of the escrow account, but Morgan Stanley agrees to produce only "documents sufficient to show" the date on which Morgan Stanley first requested a release, discharge, closing, or cancellation of the bonds and escrow account and "documents sufficient to show" the date that the request was effected. *Id.* at 12.

Accordingly, as shown above and in Morgan Stanley's attached discovery responses, Morgan Stanley improperly is limiting its document production to include only those materials that Morgan Stanley unilaterally deems "sufficient to show" that its \$9+ million in bond costs were necessary, and it is entirely unwilling to produce documents that would shed light on whether such costs were reasonable. Significantly, Morgan Stanley is refusing to provide all documents relating to its investigation and analyses, if any, of other bond alternatives, even though no proper investigation of reasonableness would be complete without them.

8. Morgan Stanley should not be the only litigant in Florida permitted to pick and choose among its records, and thereafter produce only those materials that it believes support its version of events. That is particularly true in light of Morgan Stanley's established history of failing to produce responsive documents that are damaging to its case. By way of example taken from the underlying proceedings, with respect to CPH's prior request for personnel records, the Court ordered Morgan Stanley to produce documents referring to the truthfulness or moral turpitude of certain key employees, including a managing director named Bill Strong. Ex. 1 at 14-15. In response to that order, Morgan Stanley produced some internal evaluations, but failed to produce documents in its possession relating to criminal charges that were brought against Mr. Strong. *Id.* When CPH independently uncovered evidence of the indictment, Morgan Stanley argued that the documents concerning the criminal proceedings against Mr. Strong were not responsive to the Court's order because they were not physically contained in his "personnel file." *Id.* In sanctioning Morgan Stanley for its failure to produce those records, the Court noted that Morgan Stanley's excuse for not producing those damaging files was "about as convincing as its argument that, since it has a corporate directive not to keep drafts of documents once they are in final form, document drafts cannot be business records exempt from hearsay" *Id.*

Therefore, given Morgan Stanley's propensity to withhold critical documents, this Court should order Morgan Stanley to produce the requested materials concerning the bond structure, why it chose that structure, the associated costs, and the alternative structures that it rejected.

9. Morgan Stanley's Responses To CPH Request For Production Nos. 9-13 Concerning Trial Costs Are Deficient: Just as it does in response to CPH's requests concerning the bond costs, Morgan Stanley also is refusing to provide its records relating to its \$2+ million in alleged trial costs. In particular, Morgan Stanley will not provide all documents supporting its transcript and videotaping costs, mediation costs, document production expenses, and expert fees. Instead, as set forth below, Morgan Stanley agrees to provide only those documents that Morgan Stanley unilaterally deems to be "sufficient to show" these costs:

- In response to Request No. 9 concerning mediation costs, Morgan Stanley states that it will produce documents "sufficient to show" the amount of those costs, but Morgan Stanley refuses to produce documents regarding the nature of those costs. *Id.* at 13.
- In response to Request No. 10 relating to the amount and nature of the claimed expert fees, Morgan Stanley agrees to provide only documents "sufficient to show the amount of the expert fees," and therefore is refusing to produce materials concerning the nature of those expenses. *Id.* at 14-15.
- In response to Request No. 11 seeking documents concerning the hearing and trial transcript costs, Morgan Stanley states that it will produce only documents "sufficient to show" the amount of the hearing and trial transcript invoices, but Morgan Stanley refuses to produce its records regarding payment of those invoices. *Id.* at 15.
- In response to Request No. 12 relating to the costs of the deposition transcripts and videos, Morgan Stanley limits its response to documents "sufficient to show" the amount of those costs "in the form of the deposition invoices," and therefore Morgan Stanley refuses to produce its records regarding payment of those invoices. *Id.* at 16.
- In response to Request No. 13 concerning the claimed costs for copying, imaging, and coding its document productions, Morgan Stanley refuses to produce records relating to whether those materials actually were produced to CPH, and will provide documents only "sufficient to show" the amount of the claimed discovery imaging and coding costs. *Id.* at 17.

Morgan Stanley should be ordered to produce *all* requested documents concerning its claimed trial costs, and not just those that Morgan Stanley unilaterally deems “sufficient” to show the amount of its alleged costs. CPH should not be required to accept Morgan Stanley’s selection of what documents to produce, particularly in light of Morgan Stanley’s established history of discovery misconduct with respect to its document productions in this case, including instances where the Court found that Morgan Stanley improperly withheld documents required by Court orders to be produced (Ex. 1 at 13). Accordingly, this Court should order full compliance with Request for Production Nos. 9-13.

10. Morgan Stanley’s Response To CPH Request For Production No. 17 Is Deficient: Request for Production No. 17 seeks documents that “support or refute [Morgan Stanley’s] assertion” that its claimed costs were “reasonable and necessary.” In response to that request, Morgan Stanley proffers several objections, and then agrees to provide only those documents that “are sufficient to support the costs itemized in the affidavits.” *Id.* at 20. The obvious import of that response is that if Morgan Stanley has documents indicating that the claimed costs were not necessary or reasonable, Morgan Stanley will not produce them. Given Morgan Stanley’s aforementioned proclamations that it will produce only documents “sufficient to show” the amount of its costs, Morgan Stanley’s objection to Request for Production No. 17 is particularly troubling. If Morgan Stanley possesses documents indicating that its claimed costs were either not necessary or not reasonable, then Morgan Stanley should be ordered to produce them. If Morgan Stanley does not have such documents, then Morgan Stanley should just say so. By proffering objection after objection followed by qualified responses, Morgan Stanley once again appears to be hiding something. This Court should order full compliance with Request No. 17.

11. **Morgan Stanley's General Objections Taint Its Responses To All Of The Requests:** In addition to Morgan Stanley's agreement to provide only documents that Morgan Stanley deems "sufficient," Morgan Stanley also makes all of its responses "subject to" its expansive General Objections. Because of that, CPH is unsure what documents, if any, are being withheld on the basis of those General Objections. For instance, Morgan Stanley objects generally to producing documents that it unilaterally deems "irrelevant, immaterial, or not reasonably calculated to lead to the discovery of admissible evidence." *See* General Objection No. 3. In addition, Morgan Stanley objects to the requests "to the extent they are oppressive, overbroad . . . and unduly burdensome, particularly to the extent that they seek 'all' documents relating to a particular subject matter." *See* General Objection No. 4. Although such objections, in other circumstances, might be understood as simply preserving arguments, CPH cannot accept that ambiguity here. In this very case, Morgan Stanley has been found to have withheld documents that the Court ordered Morgan Stanley to produce. *See, e.g.,* Ex. 1 at 13, 15-16. Accordingly, because of those and the other General Objections proffered by Morgan Stanley, CPH cannot determine if Morgan Stanley has produced all of the documents responsive to its requests. Therefore, CPH respectfully requests that this Court order Morgan Stanley to identify each and every document that it withholds pursuant to its General Objections.

12. **Morgan Stanley Improperly Objects To Providing Privilege Log:** In its General Objection No. 5, Morgan Stanley refuses to provide a complete privilege log. Specifically, Morgan Stanley asserts:

Morgan Stanley objects to the production of a privilege log for clearly privileged communications between Morgan Stanley's attorneys (including both its in-house counsel and outside counsel) and Morgan Stanley employees that may 'relate' in some way to the claimed costs. In fact, the parties previously agreed, and the Court ordered, that the parties were 'not required to provide a privilege log listing otherwise responsive documents where those documents involved privileged

communications between the parties and their lawyers in connection with litigation arising from the transaction at issue in this case.’ 9/4/2003 Agreed Order Regarding Enlargement of Time to Prepare Privilege Log. Morgan Stanley also objects to the production of a privilege log for clearly privileged materials such as work product created by in-house counsel or outside counsel while preparing the cost motions.

Id. at 3. In refusing to provide a complete privilege log relating to its costs production, Morgan Stanley improperly is relying on an order that governed merits discovery, and that was entered long before Morgan Stanley’s litigation misconduct was revealed. As further explained below, Morgan Stanley’s reliance on the September 4, 2003 Agreed Order is misplaced and improper.

13. *First*, the September 4, 2003 Agreed Order was entered long before both the Court and CPH learned of Morgan Stanley’s extensive discovery misconduct, including Morgan Stanley’s routine assertion of unfounded privilege claims. *See, e.g.*, March 10, 2005 Order Following In Camera Inspection (Strong), attached hereto as Exhibit 4; *see also* March 23, 2005 Order, attached hereto as Exhibit 1 at 16 (Morgan Stanley “routinely assert[ed] unfounded privileged claims”). Indeed, with respect to the Bill Strong indictment documents discussed above, Morgan Stanley’s discovery misconduct was not limited to its initial failure to produce those materials. In fact, once the existence of those documents was discovered by CPH, and Morgan Stanley subsequently was ordered to produce them, Morgan Stanley improperly asserted privilege as to at least 460 of them: the Court found that Morgan Stanley “produced over 260 documents dealing with the Strong investigation over which it had previously claimed privilege once the Court announced its intention to conduct an in camera review; [and] the Court found another 200 documents were not privileged after conducting its review.” *See* Ex. 1 at 16. Accordingly, Morgan Stanley’s history of abusing claims of privilege demonstrates why Morgan Stanley must be required to submit a complete privilege log.

14. *Second*, the September 4, 2003 Agreed Order concerned merits discovery in the underlying case. Unlike that situation, the discovery here is limited to Morgan Stanley's asserted costs incurred in the underlying case, and necessarily involves communications relating to this litigation. Morgan Stanley should not be permitted to invoke an order that should have no application in this setting.

15. *Third*, Morgan Stanley's lawyers were themselves involved in incurring the asserted costs that Morgan Stanley seeks. Indeed, in response to CPH's Rule 1.310 Notice of Deposition to Morgan Stanley requesting testimony on 14 specific topics relating to Morgan Stanley's costs motions, Morgan Stanley has designated two of its outside counsel to provide corporate representative testimony on all but three of those topics. *See* Ex. 5, Morgan Stanley's Rule 1.310 designations. As those corporate representative designations confirm, the lawyers often will be at the center of many relevant communications. That fact alone demonstrates the necessity of a privilege log here. Thus, CPH respectfully requests that this Court order Morgan Stanley to produce a privilege log describing every document withheld on the basis of any privilege.

16. In sum, Morgan Stanley has proved time and time again in this very litigation that it cannot be trusted to participate in discovery in good faith, and thus it should not be permitted to produce only what it deems to be "sufficient" to prove that its costs were necessary and reasonable. Moreover, given Morgan Stanley's established history of improperly asserting privilege, this Court should require Morgan Stanley to produce a full and complete privilege log.

17. Counsel for CPH contacted counsel for Morgan Stanley in an attempt to resolve this discovery dispute without a hearing, but was unable to do so.

WHEREFORE, CPH respectfully requests that this Court direct Morgan Stanley: (1) to produce all documents responsive to Request Nos. 3-7, 9-13, and 17; (2) to identify any responsive documents that are being withheld on the basis of Morgan Stanley's General Objections; and (3) to produce a log of all responsive documents withheld from the production on the basis of any privilege.

Dated: September 11, 2008

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: 

One of Its Attorneys

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Ronald L. Marmer
JENNER & BLOCK LLP
330 N. Wabash Ave.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and hand delivery to counsel listed below on this 11 day of September, 2008:

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NOT A CERTIFIED COPY

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

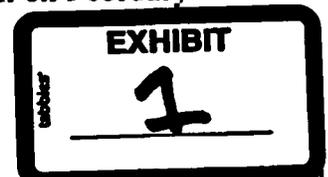
MORGAN STANLEY & CO., INC.,
Defendant(s).

**ORDER ON CPH'S RENEWED MOTION FOR ENTRY OF DEFAULT
JUDGMENT**

THIS CAUSE came before the Court March 14 and 15, 2005, on CPH's Renewed Motion for Entry of Default Judgment, with both parties well represented by counsel.

Coleman (Parent) Holdings, Inc. ("CPH"), has sued Morgan Stanley & Co., Inc. ("MS & Co."), for aiding and abetting and conspiring with Sunbeam to perpetrate a fraud. Early in the case, CPH was concerned that MS & Co. was not thoroughly looking for emails responsive to its discovery requests. On April 16, 2004, the Court entered an Agreed Order ("Agreed Order") that required MS & Co. to search its oldest full backup tapes for emails subject to certain parameters and certify compliance. MS & Co. certified compliance with the Agreed Order on June 23, 2004. On November 17, 2004, CPH learned that MS & Co. had found some backup tapes that had not been searched. On January 26, 2005 it served its Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order ("Adverse Inference Motion"), claiming that MS & Co.'s violation of the Agreed Order, coupled with its systematic overwriting of emails after 12 months, justified an adverse inference against it. The Court ordered certain limited discovery. Responses to that discovery prompted CPH to orally amend its Adverse Inference Motion to seek more severe sanctions.

The Court held an evidentiary hearing on the Adverse Inference Motion on February



14, 2005. On March 1, 2005 it issued its Amended Order on Coleman (Parent) Holdings Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destruction of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order ("Adverse Inference Order"). In its current Motion, CPH argues that it has since learned that the discovery abuses addressed in the Adverse Inference Motion and Order represent only a sampling of discovery abuses perpetrated by MS & Co. and that the abuses have continued, unabated. It claims that these abuses, when taken as a whole, infect the entire case. To understand CPH's argument, it is necessary to go back to the beginning.

This case arises out of an acquisition transaction that was negotiated and consummated in late 1997 and early 1998, in which CPH sold its 82% interest in the Coleman Company, Inc., to Sunbeam Corporation. MS & Co. served as financial advisor to Sunbeam for parts of the acquisition transaction and served as the lead underwriter for a \$750,000,000.00 debenture offering that Sunbeam used to finance the cash portion of the deal.

CPH's Complaint¹ alleged claims against MS & Co. arising from this transaction for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy, and sought damages of at least \$485 million.

On May 12, 2003, MS & Co. was served with the Complaint and CPH's First Request for Production of Documents ("Request"). The Request sought, in essence, all documents connected with the Sunbeam deal. "Documents" was broadly defined, and specifically included items electronically stored. Concerned that, out of more than 8,000 pages of documents produced, it had received only a handful of emails, CPH on October 29, 2003, served its Motion to Compel Concerning E-Mails. That motion sought an order requiring MS & Co. to make a full investigation for email messages, including a search of magnetic tapes and hard drives; produce within 10 days all emails located; and produce a Rule 1.310 witness.

¹On February 17, 2005, CPH served its First Amended Complaint, which dropped the claims against MS & Co. for fraudulent and negligent misrepresentation, leaving only the aiding and abetting and conspiracy claims.

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within 20 days "to describe the search that was conducted, identify any gaps in Morgan Stanley's production, and explain the reasons for any gaps."

In its Opposition to Coleman (Parent) Holdings, Inc.'s Motion to Compel served November 4, 2003, MS & Co. argued that CPH wanted "this Court to order a massive safari into the remote corners of MS & Co.'s email backup systems" and represented that "(t)he restoration efforts demanded by CPH would *cost at least hundreds of thousands of dollars* and require several months to complete (emphasis in original). MS & Co. argued that CPH's "true" motive was to "harass and burden MS & Co. with unnecessary and costly discovery demands and attempt to smear MS & Co. with out-of-context recitations from other proceedings" because "CPH *concedes* that MS & Co. is only able to restore email from backup tapes from January 2000 and later - *more than a year and a half after the events that allegedly gave rise to CPH's claims,*" (emphasis in original).

CPH's "concession" was based on representations like the kind made to it by MS & Co.'s counsel in a March 11, 2004 letter that suggested "(t)he burden on Morgan Stanley from . . . a wholesale restoration [of email back up tapes], both in terms of dollars and manpower would be enormous. Regardless of who performs the initial restoration, it would require hundreds (perhaps thousands) of attorney-hours to review millions of irrelevant and non-responsive e-mails . . ." ²

In response to CPH's Motion to Compel, the parties agreed to reciprocal corporate

²Complaints about MS & Co.'s tactics are not new. See Ex. 196 [February 26, 2004, letter from EEOC to Hon. Ronald L. Ellis in EEOC/Schieffelin v. Morgan Stanley & Co., Inc., et al., 01-CV-8421 (RMB) (RLE) (S.D.N.Y.): "(w)hen EEOC received [Morgan Stanley's] January 27, 2004 Responses to EEOC's Fifth Requests for Production of Documents which did not contain any e-mails, the parties communicated further. At that time, Morgan Stanley took the position that searching for e-mails would be burdensome both in regards to expense and the time it would take to respond. While the parties were in the process of attempting to work out these disputes, EEOC for the first time learned that [Morgan Stanley has] an easy, systematic ability to search for relevant documents. In a February 16, 2004, conversation with an IT representative of [Morgan Stanley], EEOC learned that [Morgan Stanley has] an e-mail system, which, while not yet fully comprehensive, was easily searchable on February 18, 2004, the close of discovery . . . which is certain to produce discoverable information highly relevant to EEOC's and Plaintiff-Intervenor's claims . . . After disclosing their state-of-the-art system to EEOC, [Morgan Stanley] dropped [its] assertion that the process was too expensive, but maintained that they refuse to search for e-mails because it is burdensome for attorneys to review large numbers of documents prior to production.")

depositions on the email issue. CPH deposed Robert Saunders on February 10, 2004.³ After completion of the corporate representative depositions, and unable to obtain MS & Co.'s agreement to a mutual email restoration protocol, CPH served its Motion for Permission to have Third Party Retrieve Morgan Stanley E-Mail and Other Responsive Documents, proposing that a third party vendor be given access to both parties' email systems for restoration at each party's expense. At the hearing on that Motion, CPH offered to split the expenses evenly. MS & Co. refused.

MS & Co.'s continued assertions that the email searches could be conducted only at enormous cost and would be fruitless because there were not backup tapes with email from 1997 and 1998 were confirmed to the Court by MS & Co.'s counsel, Thomas Clare of Kirkland & Ellis, at a hearing held March 19, 2004:

Mr. Scarola: Electronic records of e-mails that have been exchanged.

The Court: Do we agree that there has been such a request outstanding?

Mr. Clare: There has been a request outstanding.

The Court: And have you all objected?

Mr. Clare: From the beginning.

The Court: And what's the basis of the objection?

Mr. Clare: We objected to the breadth of the request that they're making. And to answer Your Honor's question directly – and the burden that is associated with it – that given the particular e-mail back-up tapes that are in existence five, six years after the fact of these transactions, that the scope of the e-mail request that they are seeking is improperly and unduly burdensome given the enormous costs that would be required, given the fact that the time period for which we have back-up tapes post dates the events by several years.

Unable to resolve the email issue, on April 9, 2004, CPH served its Motion to Compel

³Saunders provided misleading information in his deposition. See footnote 12, infra.

Concerning E-Mails and Other Electronic Documents. On the eve of the hearing on CPH's Motion to Compel, the parties reached an accommodation, and on April 16, 2004 the Court entered the Agreed Order. Under the Agreed Order, MS & Co. was required to (1) search the oldest full backup tape for each of 36 MS & Co. employees involved in the Sunbeam transaction; (2) review emails dated from February 15, 1998, through April 15, 1998, and emails containing any of 29 specified search terms such as "Sunbeam" and "Coleman" regardless of their date; (3) produce by May 14, 2004, all nonprivileged emails responsive to CPH's document requests; (4) give CPH a privilege log; and (5) certify its full compliance with the Agreed Order.

As required by the Agreed Order, MS & Co. produced about 1,300 pages of emails on May 14, 2004. It did not, however, certify compliance with the Agreed Order. After prompting by CPH, on June 23, 2004, MS & Co. served a certificate of compliance signed by Arthur Riel, an Executive Director and manager of its Law/Compliance IT Group.⁴

CPH got its first indication that the Agreed Order may have been violated in the late fall of 2004.

On November 17, 2004, Clare wrote Michael Brody of Jenner & Block, CPH's outside counsel, that MS & Co. had "discovered additional e-mail backup tapes . . ."; that "(t)he data on some of [the] newly discovered tapes has been restored;" that "we have re-run the searches described in [the Agreed Order]"; that "some responsive e-mails have been located as a result of that process"; and that "(w)e will produce the responsive documents to you as soon as the production is finalized."

On December 14, 2004, Brody wrote Clare back:

in [your November 17, 2004 letter], you state that Morgan Stanley located additional email backup tapes, and that you

⁴Though CPH would not learn for months that the certificate was false, and even then the magnitude of MS & Co.'s misrepresentations would not be admitted, MS & Co. personnel, including in-house counsel, knew the certification of compliance was false when made.

would be producing documents soon. Within two days of that letter, you produced some emails to us. In your November 17, 2004 letter, however, you also indicated that "some of the backup tapes are still being restored." Have those backup tapes been restored? Have you found additional responsive emails? If so, when will Morgan Stanley produce those emails? How is it that the tapes were only recently located?

On December 17, 2004, Clare wrote back, telling Brody "(n)o additional responsive e-mails have been located since our November production."⁵

Brody wrote back to Clare December 30, 2004, noting the deficiencies in Clare's correspondence:

You do not inform us whether the review of the recently-located backup tapes still is ongoing. Please confirm that all email backup tapes from the relevant time period have been reviewed and all responsive emails have been produced. If the review still is proceeding, please let us know when the review will be completed.

Clare wrote back on January 11, 2005, telling Brody that the "restoration of e-mail backup tapes is ongoing. Restoration of the next set of backup tapes is estimated to be completed at the end of January. We intend to re-run the searches described in the agreed order at that time."

Concerned about Clare's lack of candor, on January 19, 2005 Brody wrote again:

I write in response to your January 11, 2005 letter concerning e-mails back-up tapes. Unfortunately, your letter raises more questions than it answers. As I requested in my December 14, 2004 letter, please explain the circumstances under which Morgan Stanley located these backup tapes and advise us of the date on which the tapes were located.

⁵Not only does this letter fail to answer Brody's legitimate questions, it implies that MS &Co. was still processing and reviewing emails from the newly found tapes. As we now know, though, no additional information was migrated to the archives between approximately August 18, 2004 and January 15, 2005. *Of course* "no additional responsive e-mails [would have been] located."

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Further, please explain your statement that "the next set of backup tapes" is scheduled to be restored "at the end of January." How many tapes will be restored by the end of January? When exactly in January will Morgan Stanley complete the process of restoring and searching these tapes for responsive documents? Are there other backup tapes that are not yet in the process of being restored? If so, please advise us of (a) the number of tapes that are not yet in the process of being restored; (b) the time period of the data contained on those tapes; and (c) Morgan Stanley's timetable for restoring and searching those tapes. In addition, please explain why those tapes are not yet in the process of being restored. Please also explain why Morgan Stanley cannot complete the restoration and searching of all remaining backup tapes before "the end of January." As you know, our trial is scheduled to begin on February 22, 2005.

We look forward your complete response to these questions no later than January 21, 2005 so that we can bring this matter to the Court's attention, if necessary.

Conforming to what was by now his usual stonewall tactic, Clare responded by letter dated January 21, 2005:

I write in response to your January 19, 2005 letter regarding Morgan Stanley's production of e-mails restored from backup tapes.

Morgan Stanley completed its initial production of restored e-mail messages on May 14, 2005. The May 2004 production was conducted in accordance with the agreed-upon order governing, and the searches that resulted in that production encompassed data from all of the backup tapes known to exist at the time. Subsequent to the May 2004 production, additional tapes were found in various locations at Morgan Stanley. The discovered tapes were not clearly labeled as to their contents, were not found in locations where e-mail backup tapes customarily were stored, and many of the tapes

were in a different format than other e-mail backup tapes. In November 2004, once it was determined at least some of the discovered tapes contained recoverable e-mail data, Morgan Stanley re-ran the searches described in the agreed-upon order. Those searches resulted in Morgan Stanley's November 2004 production.

Morgan Stanley's efforts to restore the backup tapes discovered after the May 2004 production are ongoing. It is a time-consuming and painstaking process and, given the absence of clear labels or other index information for the backup tapes, there is no way for Morgan Stanley to know or accurately predict the type or time period of data that might be recovered from tapes that have yet to be restored. While Morgan Stanley cannot accurately estimate when all of the tapes will be restored or whether any recoverable data will be found on the remaining tapes, we understand from Morgan Stanley that, when the agreed-upon searches are run again at the end of January, those searches will include approximately one terabyte of additional data restored since the prior production.

On January 26, 2005, CPH served its Adverse Inference Motion, seeking sanctions based on MS & Co.'s disclosure of the newly found tapes. Hearing was scheduled for February 14, 2005. In preparation for that hearing, on February 3, 2005 the Court ordered MS & Co. to produce by noon on February 8, 2005 "(i) all documents to be referred to or relied on by any of the witnesses in his or her testimony; and (ii) all documents within MS & Co.'s care, custody, or control, addressing or related to the additional email backup tapes, including matters relating to the time or manner in which they were discovered; by whom they were discovered; who else learned of their discovery and when; and the manner and timetable by which they were to be restored and made searchable, including any correspondence to or from outside or prospective outside vendors."

The Adverse Inference Order outlined the discovery abuses shown at the February 14, hearing. They included MS & Co.'s undisclosed discovery of the 1,423 "Brooklyn" tapes no

later than May of 2004; the undisclosed discovery of the 738 8-millimeter backup tapes in 2002; the presence of unsearched data in the staging area; the discovery of 169 DLT tapes in January 2005; the discovery of more than 200 additional tapes on February 11 and 12, 2005; the discovery of a script error that had prevented MS & Co. from locating responsive email attachments; and discovery of another script error that had infected the ability to gather emails from Lotus Notes platform users.

In response to these deficiencies, the Court issued the Adverse Inference Order. That Order reversed the burden of proof on the aiding and abetting and conspiracy elements and included a statement of evidence of MS & Co.'s efforts to hide its emails to be read to the jury, as relevant to both its consciousness of guilt and the appropriateness of punitive damages. It specifically provided that "MS & Co. shall continue to use its best efforts to comply with the April 16, 2004 Agreed Order and . . . February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s ore tenus Motion to Participate in Search of Additional E-Mail Back Up Tapes or Appoint Third Party to Conduct Search."⁶

It is now clear why MS & Co. was so unwilling to provide CPH with basic information about how and when the tapes were found or when production would be complete. First, candor would have required MS & Co. to admit that it had not done a good faith search for the oldest full backup tapes, and that Riel's certificate of compliance was false. Some unsearched tapes had been found by 2002; others had been found no later than May, 2004. Together, over 2,000 tapes had been found which were not searched prior to the May production. It is untrue that the tapes were "not in locations where e-mail backup tapes customarily were stored."

⁶Concerned that MS & Co. had been less than candid with both CPH and the Court, on February 4, 2004, the Court entered its Order on Coleman (Parent) Holding's ore tenus Motion to Participate in Search of Additional E-Mail Backup Tapes or Appoint Third Party to Conduct Search, ordering MS & Co. to pay for a third party vendor to check its compliance with the Agreed Order. The Court previously found that the two scripts errors testified to by Allison Gorman at the February 14, 2005, hearing would not have been discovered or revealed without the threat that the third-party vendor would discover the errors. Given Ms. Gorman's testimony at the March 14, 2005, hearing, though, it now appears MS & Co. knew about the errors before the appointment of the third-party vendor. Consequently, the errors were only revealed, but not discovered, in response to the February 4, 2004, Order.

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Second, MS & Co. desperately wanted to hide an active SEC inquiry into its email retention practices.^{7 8 9 10} Finally, MS & Co. did not want to admit the existence of the historical email archive, which would expose the false representations it had made to the Court and used to induce CPH to agree to entry of the Agreed Order.^{11 12}

⁷On December 17, 2003, CPH served its Third Request for Production seeking "(a)ll materials and documents submitted to the United States Securities and Exchange Commission ("SEC"), received from the SEC, or reflecting communications with the SEC in connection with any investigation, inquiry, or examination concerning or relating to Morgan Stanley's policies and/or procedures with regard to the retention, storage, deletion, and/or back-up of electronic mail (emails) . . ." On October 12, 2004, CPH served its Request for Supplemental Documents seeking to bring MS & Co.'s document production current, requesting "(a)ll documents not previously provided by MS & Co. that are responsive to any Request for Production of Documents that CPH previously has served upon MS & Co. in the litigation, including documents obtained by MS & Co. or its counsel after the date of MS & Co.'s prior productions." No SEC documents were produced in response to either request; no privilege log was generated. On other privilege logs generated in response to court orders, MS & Co. did not show the SEC on the distribution portion of the log. See March 9, 2005 Order Following in Camera Inspection (Riel/SEC Documents) footnotes 1, 2. See also, footnote 15, *infra*. Kirland & Ellis, outside counsel for MS & Co. in this litigation, represents MS & Co. in the SEC's inquiry into its email retention practices.

⁸MS & Co. manipulated the unhinging of the SEC's email investigation from the IPO litigation in January, 2005, to conceal the email issues as long as possible.

⁹It is now apparent that MS & Co. chose deliberately to keep its affidavits concerning the informal SEC inquiry submitted to support its privilege claims vague, despite two requests from the Court seeking specific information. See February 28, 2005 Order (Release of Exhibits).

¹⁰See February 25, 2005 Order on Morgan Stanley's Objections to Coleman (Parent) Holding Inc.'s Notice to Produce at Hearing and Motion for Protective Order and March 4, 2005 Order on Plaintiff's ore tenus Motion to Compel Additional Production.

¹¹While MS & Co. contends that its representations to the Court that it would cost "hundreds of thousands of dollars" to search the backup tapes and that there was no pre-2000 backup tapes were not false, they were deliberately misleading: MS & Co. never had an intention to search the back up tapes to respond to the requests and some of the year 2000 backup tapes backed up email back to 1997.

In 2001, MS & Co. decided to create the email archive. By June 2003, it had decided that the archive should have two components. First, MS & Co. wanted to create an archive that captured and stored email as it was generated. Second, MS & Co. wanted to add historical data to the archive. That task involved searching for all email backup tapes containing historical emails; sending those tapes to an outside processor; loading the processed tapes into a staging area; and migrating the stored data from the staging area onto the archive. As we now know, archive searches are quick and inexpensive. They do not cost "hundreds of thousands of dollars" or "take several months." The restrictions imposed by the Agreed Order were not needed.

¹²On February 10, 2004, Robert Saunders, an executive director of IT for MS & Co., was deposed. He testified that in January, 2003, MS & Co. had put into effect the email archive system. When specifically asked whether the new email archive system would include prior backups or only going forward backups, he testified that "(t)he way it was built was for going forward backup." He was next asked whether "(w)ith respect to backup dated January 2001 and previously, does Morgan Stanley have any new capabilities to restore and search e-mail?" After counsel interposed a vagueness objection, he answered "(t)here are no new capabilities to search that e-mail." That testimony was so misleading as to be false. As Saunders well knew, since he was on the team responsible, the "live" email capture portion of the archive was already operational. The migration of the historical data to the archive was expected to be completed by April of 2004, just two months after his deposition.

MS & Co.'s wrongful conduct has continued unabated.¹³ Since the February 14, 2005, hearing, it has come to light that:

- Only two whole and four partial tapes from the Brooklyn tapes had been migrated to the archive and were thus searched for the November, 2004, production. MS & Co. sought to hide this information to create the impression that all the produced documents came from the Brooklyn tapes, rather than reveal that the production came from material that had migrated from the staging area to the archive since the May, 2004, production or some other, as yet undisclosed, source.¹⁴
- Contrary to MS & Co.'s counsel's November 17, 2004, letter to CPH, *none* of the November, 2004 production came from the "newly found" tapes. MS & Co. carefully crafted its responses to inquiries about the November, 2004, production to avoid both disclosure of the existence of the archive and outright lying.
- The scripts MS & Co. used to process emails into its archive caused the bodies of some messages to be truncated. MS & Co. discovered this problem on February 13, 2005, but did not tell the Court about it until March 14, 2005.
- A migration issue caused about 5% of email harvested by NDCI from the backup tapes not to be captured in the archive, based on testing of a representative sample of tapes. MS & Co. told the SEC about this problem on February 24, 2005, but failed to tell CPH or the Court.
- As of June 7, 2004, only 120 out of 143 SDLT tapes had been processed into the archive.
- An analysis requested by the SEC showed that, based on a representative sample, 10% of backup tapes were overwritten after January, 2001.

¹³MS & Co. sought to use the entry of the Adverse Inference Order as a shield against further inquiry into its email abuses, arguing that the matter was closed by the Adverse Inference Order. It previously used this tactic with the SEC, arguing that the December 3, 2003 Cease and Desist Order shielded it from other sanctions for email retention failures. See Ex. 14 [February 10, 2005 letter from outside counsel for MS & Co. to SEC]

¹⁴MS & Co. argued at the March 14 and 15, 2005 hearing that there were only 13 unique, new emails contained in the November 2004 production when compared to the May 2004 production. Nine of those emails, however, were originally given to MS& Co.'s lawyers for responsiveness review by the IT staff for the May 2004 production. No explanation of why they were not produced in May was offered. This is particularly concerning given the large number of documents Ms. Gorman testified the search parameters found compared with the relatively small number found responsive and produced after review by counsel.

- A software error caused blind carbon copies not to be captured in the archive process. MS & Co. told the SEC about this problem on February 24, 2005. MS & Co. did not tell CPH or the Court.
- A software error caused the searches to be hyper case-sensitive, resulting in a failure to capture all emails. MS & Co. knew of the problem as of December, 2004, but did not tell CPH or the Court. The problem was not purportedly fixed until March, 2005.
- A script error caused the archive to have problems pulling group email in Lotus Notes.
- MS & Co. provided sworn testimony at the February 14, 2005, hearing that it had located 600 gigabytes of data, while contemporaneously telling the SEC it had located a terabyte of data. A gigabyte represents 20,000 to 100,000 pages. Incredibly, MS & Co.'s witness on this point, Allison Gorman, testified on March 14, 2005, that it was simply a "terminology" issue that she did not choose to correct because it could cause "confusion."
- CPH requested MS & Co. to produce responses it had made to third-parties in civil, criminal, or administrative proceedings describing limitations on MS & Co.'s ability to produce emails and all notices in such proceedings that MS & Co. had newly discovered backup tapes containing email. MS & Co. objected, arguing that there were over 300 separate proceedings, involving over 70 outside law firms, and that the cost of compliance would be too great. On March 2, 2005, the Court ordered the production, after shortening the time period involved, and required production within 12 hours after counsel's review of each item for responsiveness but, in any event, within 10 days. At the time MS & Co. objected to CPH's request as unduly burdensome, it knew of its Wells submission to the SEC made on February 10, 2005. Kirkland and Ellis, co-counsel here, was co-counsel for MS & Co. in that SEC proceeding. Consequently, it appears MS & Co.'s real concern was not that expressed to the Court, but was based on its realization that compliance would reveal the existence of the SEC inquiry into its email retention policy and MS & Co.'s efforts to keep the existence of that investigation secret. MS & Co. violated the Court's March 2, 2005, Order on Morgan Stanley's Responses and Objections to Coleman (Parent) Holdings Inc.'s Notice to Produce at Hearing requiring it to disclose items responsive to CPH's Request for Production within 12 hours of review for responsiveness by waiting *days*, not hours, to produce the Wells submission.

- MS & Co.'s failure to produce or log the SEC documents violated the Court's February 3, 2005, Order.¹⁵
- James Doyle's, the Executive Director of MS & Co.'s Law Division, declaration that he did not learn of additional unsearched backup tapes until the end of October, 2004, was intended to mislead CPH and the Court. Obviously, MS & Co. sought to create the implication in the declaration that *no one* in the Law Division knew of the backup tapes before then. Instead, both Soo-Mi Lee, Doyle's associate, and James Cusick, Doyle's superior, knew of the tapes no later than June 7, 2004.
- In-house counsel for MS & Co. knew as of June 7, 2004, that nearly a third of the restored backup tapes did not contain email, implying they may have been recycled in violation of the December 3, 2002 Cease and Desist Order. They did not tell CPH or the Court.
- MS & Co.'s searches looked for only two types of emails. There are other types of emails that were not included in the searches. CPH did not learn of this deficiency until March 13, 2005.
- MS & Co. improperly failed to produce 125 documents required to be produced by the Court's February 3, 2005, Order Specially Setting Hearing which required limited discovery be made in connection with the February 14, 2005, hearing on the Adverse Inference Motion.
- MS & Co. improperly withheld 13 documents required to be produced by the Court's March 4, 2005, Order on Plaintiff's ore tenus Motion to Compel Additional Production.
- An additional 282 tapes were found on February 23 and 25, 2005; CPH was not told of the discovery until March 13, 2005.
- An additional 3,536 tapes were discovered on February 23, 2005, in a security room.
- An additional 2,718 tapes were found at Recall, MS & Co.'s third party off-site storage vendor, on March 3, 2005.
- An additional 389 tapes were found March 2 through March 5, 2005. CPH was not told

¹⁵The Court previously rejected MS & Co.'s argument that the January 14, 2005, email exchange between its outside and in-house counsel was not required to be produced under the February 3, 2005, Order Specially Setting Hearing because it referred to the "documents issue" and not specifically to the backup tapes. See March 16, 2005 Order on Morgan Stanley's Motion to Disqualify Plaintiff's Counsel Searcy, Denney, Scarola, Barnhart & Shipley, P.A. and Jenner & Block, LLC. MS & Co.'s insistence on a narrow interpretation of the February 3, 2005, Order is not particularly sympathetic, when the only reason that Order confined production to the backup tape issue was because MS & Co. had failed to notify the Court of the other deficiencies in its certificate of compliance.

until March 13, 2005.

- On March 4, 2005, the Court entered its Order on Plaintiff's ore tenus Motion to Compel Additional Production, which ordered MS & Co. to produce by 3:00 p.m. on March 7, 2005, all items within its care, custody, or control dealing with the Riel/SEC investigation, other than documents representing communications between or among MS & Co. inside and outside counsel that were not copied to anyone other than counsel. MS & Co. sought to discredit Riel and thus distance itself from the false June 23, 2004 certificate of compliance; in doing so, it sought to hide Riel's whistle blower status and the existence of an SEC investigation into whether MS & Co. employees sought kick backs from third party vendors; whether MS & Co. employees were improperly pressured into dealing with third-party vendors who may provide business to MS & Co.; and whether MS & Co. continued to overwrite backup tapes contrary to the SEC's December 3, 2002, Cease and Desist Order.
- A script error prevented the insertion of some emails into the archive. MS & Co. produced over 4,600 pages of emails on March 21, 2005, some of which it suggested may have been located on correction of the error; alternatively, it suggested the emails may have been located by NDCI as part of its efforts to verify MS & Co.'s searches.

MS & Co.'s discovery abuses have not been confined to its email production.

William Strong is a MS & Co. managing director and was one of the principal players for it in the Sunbeam deal. He took credit for the fees generated. On May 9, 2003, CPH requested a copy of "(a)ll documents concerning employment contracts, performance evaluations, and/or personnel files (including without limitation any documents that describe or discuss [his] training, experience, competence, and accomplishments) . . ." MS & Co. asserted that the requested documents were not relevant and that production "would unnecessarily infringe on the privacy interests of [Strong]." On March 15, 2004, the Court ordered MS & Co. to produce "(a)ll references (positive or negative) to [Strong's] truthfulness, veracity, or moral turpitude." Some portions of Strong's evaluations were produced in response to that order. Those evaluations noted Strong's colleagues' reservations about his candor and ethics. Two of his evaluators, Joseph Perella and Tarek Abdel-Meguid, were deposed, when some relatively vague testimony about the bases for those conclusions was offered. It now appears Strong was facing criminal prosecution in Italy for complicity in bribery while he was working on the Sunbeam transaction, which his evaluators knew, and that MS & Co. purposely

withheld that information from CPH and the Court.¹⁶

Even once CPH independently discovered evidence of Strong's indictment in Italy, MS & Co. sought to shield its files from discovery. It claimed that virtually *all* of the documents it had were privileged under joint defense agreements in place between it, Strong, and Saloman Brothers, Strong's employer at the time of the incident. As the Court's March 10, 2005 Order Following In Camera Inspection (Strong) details, the documents MS & Co. relied on to support that position, and sought to prevent CPH from obtaining, reflect no such agreement.

The other discovery abuses and misrepresentations by MS & Co. other than those involving its email production practices are outlined in CPH's Chronology of Discovery Abuses by Defendant served March 1, 2005, and would take a volume to recite. They include:

- failing to provide the information retained by MS & Co.'s internal document management system pertaining to MS & Co.'s work for Sunbeam; falsely representing to the Court that no useful information was contained in that information; and producing a Rule 1.310 representative who had made an insufficient inquiry into authenticity, business record status, and authorship of documents; see February 28, 2005 Order on CPH's Motion to Deem Certain Documents Admissible and for Sanctions due to Morgan Stanley's Disregard of Court Order;
- when faced with contempt proceedings for violating the Stipulated Confidentiality Order by providing a copy of a settlement agreement between CPH and Arthur Andersen to other counsel, representing to the Court that the law firm of Kellogg, Huber was retained to handle the "Andersen aspects" of this litigation because of a conflict between Andersen and Kirkland & Ellis; Mark Hansen, a partner at Kellogg, Huber, testified that his firm was hired as co-counsel for all aspects of the case;
- providing answers to interrogatories signed by a corporate representative who performed insufficient verification of the responses;

¹⁶MS & Co. originally argued that documents concerning the Italian proceedings were not in Strong's "personnel file" and so were not required to be produced in response to CPH's initial request. MS & Co.'s practice of filing damaging information about an employee other than in his personnel file and then claiming it was not included in the request is about as convincing as its argument that, since it has a corporate directive not to keep drafts of documents once they are in final form, document drafts cannot be business records exempt from hearsay because they are not "kept in the course of a regularly conducted business activity." See Fla. Stat. §90.803 (6) (a). In any event, there was *no excuse* for not producing its records of the Italian proceedings once the Court's March 15, 2004 Order was entered.

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- routinely asserting unfounded privilege claims,¹⁷ and
- failing to timely comply with the Court's orders; for example, MS & Co. did not produce Strong's 1994 Performance Evaluation until the afternoon of March 15, 2005, though it was obviously included in the Court's March 15, 2004 Order. The failure cannot be excused as oversight since, when CPH specifically asked for the 1994 evaluation in the spring of 2004, MS & Co.'s counsel said it was withheld as non-responsive; see, also, Ex. 197, 198.

In sum, MS & Co. has deliberately and contumaciously violated numerous discovery orders, including the April 16, 2004 Agreed Order; February 3, 2005 Order Specially Setting Hearing; and the March 4, 2005 Order on Plaintiff's ore tenus Motion to Compel Additional Production. At the February 14, 2005, hearing on CPH's Adverse Inference Motion, it chose to hide information about its violations and coach witnesses to avoid any mention of additional, undisclosed problems with its compliance with the Agreed Order. Implicit in the requirement that MS & Co. certify compliance with the Agreed Order was the requirement to disclose impediments to its ability to so certify. As outlined in this Order, MS & Co. employees, and not just counsel, have participated in the discovery abuses. The prejudice to CPH from these failings cannot be cured. Even if all the script errors have been located and corrected, and MS & Co. has failed to show they have, and even if all of the email backup tapes have now been located, and MS & Co. has failed to show they have, the searches cannot be completed in time. The other discovery abuses outlined call into doubt all of MS & Co.'s discovery responses. *The judicial system cannot function this way.* Based on the foregoing and on the Court's March 1, 2005 Amended Order on Coleman (Parent) Holdings, Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, it is

ORDERED AND ADJUDGED that CPH's Renewed Motion for Entry of Default Judgment is Granted, in part. See Robinson v. Nationwide Mut. Fire Ins. Co., 887 So. 2d 328 (Fla. 2004); Mercer v. Raine, 443 So. 2d 944 (Fla. 1983); Precision Tune Auto Care, Inc. v.

¹⁷For example, MS & Co. produced over 260 documents dealing with the Strong investigation over which it had previously claimed privilege once the Court announced its intention to conduct an in camera review; the Court found another 200 documents were not privileged after conducting its review, by its March 10, 2005 Order.

Radcliffe, 804 So. 2d 1287 (Fla. 4th DCA 2002); Rule 1.380 (b) (2) (C), Fla. R. Civ. P. Paragraphs 2 (excluding the last sentence thereof); 3 (excluding the portion of the last sentence beginning with “in order to close . . .”); 8-10, 11 (excluding everything after the first sentence); 12 (excluding all parts following “June 1998”); 13 (excluding the last sentence thereof); 14-27; 28 (excluding everything after “firm” in the second to last sentence thereof); 29-39; 41-52; 53 (excluding the second sentence thereof); 54-57; 58 (excluding “CPH and” in the second line thereof); 59-63; 64 (excluding the third line thereof); 65 (excluding the last sentence thereof); 66 (excluding the last sentence thereof); 67-70; 71 (excluding the first word of the last sentence and the remainder of that sentence after “material”); 72; 73 (excluding the first sentence thereof); 74 (excluding the words “CPH and” in the second to last sentence thereof); 75-81; 85; 86; 87 (excluding (g)); 90, and 91 (excluding (g)) of Plaintiff’s Amended Complaint, as amended by the Court’s Amended Order on Morgan Stanley’s Motion to Dismiss, Motion to Strike, and Motion for More Definite Statement, shall be read to the jury and the jury instructed that those facts are deemed established for all purposes in this action. A copy of a redacted Amended Complaint is attached as Exhibit A. It is further

ORDERED AND ADJUDGED that the Court shall read to the jury a Statement similar to that attached as Exhibit A to the Amended Order on Coleman (Parent) Holdings, Inc.’s Motion for Adverse Inference Instruction Due to Morgan Stanley’s Destructions of E-Mails and Morgan Stanley’s Noncompliance with the Court’s April 16, 2004 Agreed Order, but incorporating the relevant additional findings of this Order, and the jury will be instructed that it may consider those facts in determining whether MS & Co. sought to conceal its offensive conduct when determining whether an award of punitive damages is appropriate. See General Motors Corp. v. McGee, 837 So. 2d 1010 (Fla. 4th DCA 2002), rev. den. 851 So. 2d 728 (Fla. 2003). Counsel are each invited to submit proposed Statements. It is further

ORDERED AND ADJUDGED that CPH shall be entitled to an award of reasonable fees and costs incurred as a result of the Renewed Motion for Entry of Default Judgment and the violations of Court orders recited herein. The amount shall be determined at an evidentiary hearing following trial. It is further

ORDERED AND ADJUDGED that MS & Co. is relieved of any future obligation to

comply with the April 16, 2004 Agreed Order and the February 4, 2005 Order on Coleman (Parent) Holdings Inc.'s Motion to Participate in Search of Additional E-Mail Back-Up Tapes or Appoint Third Party to Conduct Search. It is further

ORDERED AND ADJUDGED that the pro hac vice admission of Thomas Clare is revoked. It is further

ORDERED AND ADJUDGED that the portions of CPH's Motion for Correction and Clarification of Order on CPH's Motion for Adverse Inference that seek to amend the body of that Order to correct clerical and spelling errors, as agreed to by counsel, is Granted, and the corrections deemed made to the body of the Amended Order on Coleman (Parent) Holdings, Inc.'s Motion for Adverse Inference Instruction Due to Morgan Stanley's Destructions of E-Mails and Morgan Stanley's Noncompliance with the Court's April 16, 2004 Agreed Order, by interlineation. In all other respects the remainder of the Motion for Correction and Clarification is declared moot.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 23rd day of March, 2005.



ELIZABETH T. MAASS
Circuit Court Judge

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In April 1997, Morgan Stanley began serving as Sunbeam's investment banker. Morgan Stanley originally attempted to find someone to buy Sunbeam. When Morgan Stanley was unable to find a buyer, Morgan Stanley developed a strategy for Sunbeam to use its fraudulently-inflated stock to acquire a large company that Sunbeam would own and operate. Then, trading on Morgan Stanley's relationships with CPH's senior officers, Morgan Stanley found

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Exhibit A

Coleman for Sunbeam. At the time of the sale to Sunbeam, Coleman was a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market, with annual revenues in excess of \$1 billion.

on shares

After Sunbeam announced plans to acquire Coleman, Morgan Stanley agreed to underwrite a \$750 million debenture offering for Sunbeam. Sunbeam needed the proceeds of that debenture offering to complete the acquisition of Coleman. As Sunbeam's investment banker and as the sole underwriter for the \$750 million debenture offering, Morgan Stanley received detailed and specific information concerning Sunbeam's financial condition and performance. Morgan Stanley received information that directly contradicted Sunbeam's and Morgan Stanley's assertions to CPH that Sunbeam had undergone a successful turnaround and that its financial performance had dramatically improved. By no later than March 18, 1998, Morgan Stanley knew that Sunbeam's January and February 1998 sales were only 50% of January and February 1997 sales, and Morgan Stanley also knew that the shortfall was caused by Sunbeam's practice of accelerating sales which otherwise would have occurred in 1998 in order to boost Sunbeam's income in 1997. Although Morgan Stanley and Sunbeam previously had advised CPH that Sunbeam's sales were running ahead of analysts' expectations for the first quarter, Morgan Stanley decided not to correct those material misrepresentations. Instead, in March 1998, Morgan Stanley assisted Sunbeam in concealing the problems with Sunbeam's first quarter 1998 sales

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Plaintiff Coleman (Parent) Holdings Inc. ("CPH") directly or indirectly owned 44,067,520 shares — or approximately 82% — of Coleman prior to the transactions at issue. On March 30, 1998, Sunbeam acquired CPH's interest in Coleman. Sunbeam paid for the Coleman shares with 14.1 million shares of Sunbeam common stock and other consideration.

Defendant Morgan Stanley & Co., Inc. ("Morgan Stanley") is a highly sophisticated investment banking firm that provides a wide range of financial and securities services. Among other things, Morgan Stanley provides advice on mergers and acquisitions and raises capital in the equity and debt markets. Morgan Stanley served as Sunbeam's investment banker and as the underwriter of securities issued by Sunbeam in connection with the events at issue herein.

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Sunbeam Corporation ("Sunbeam") was a publicly-traded company headquartered in Delray Beach, Florida. Sunbeam designed and manufactured small household appliances and outdoor consumer products, which it marketed under the Sunbeam and Oster brand names. Sunbeam filed a bankruptcy petition under Chapter 11 of the Bankruptcy Code in February 2001.

Albert Dunlap ("Dunlap") was the Chief Executive Officer of Sunbeam from July 1996 until June 1998 when he was terminated by Sunbeam's Board of Directors.

Russell Kersh ("Kersh") was the Executive Vice President of Sunbeam from July 1996 until June 1998 when he was terminated by Sunbeam's Board of Directors.

Arthur Andersen LLP ("Andersen") provided outside accounting services to Sunbeam through its West Palm Beach, Florida office. Andersen auditors provided information concerning Sunbeam's first quarter 1998 sales and earnings to Morgan Stanley.

Sunbeam designed and manufactured outdoor and household consumer products, which it marketed under the Sunbeam and Oster brand names. Sunbeam's products included small kitchen appliances, humidifiers, electric blankets, and grills. Many of the country's leading retail stores, including Wal-Mart, Target, and Home Depot, were among Sunbeam's major customers.

Despite Sunbeam's well-known brands and strong customer base, its financial performance was disappointing. In 1994, Sunbeam earned \$1.30 per share. In 1995, Sunbeam's earnings declined to \$0.61 per share. In 1996, Sunbeam's earnings continued to suffer. On March 22, 1996, Sunbeam issued an early warning that its first quarter earnings would be well under analysts' expectations and down from first quarter 1995. Shortly after issuing the March 22 earnings warning, Sunbeam's Chief Executive Officer and two of Sunbeam's directors announced their resignations. Less than a week later, Sunbeam announced that its first quarter 1996 earnings had plunged 42% from first quarter 1995 levels. Sunbeam also announced that its second quarter 1996 earnings would be lower than its second quarter 1995 earnings.

Sunbeam's disappointing earnings caused its stock price to plummet. During 1995, the price at which Sunbeam's stock traded fell 40%, from a high of \$25-1/2. In 1996, Sunbeam's stock price continued to decline until it reached a low of \$12-1/4 in July.

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On July 18, 1996, Sunbeam's board of directors hired Albert Dunlap as Sunbeam's new Chief Executive Officer. Based upon brief terms as Chief Executive Officer of other publicly traded companies, including Scott Paper Company ("Scott Paper"), Dunlap was viewed as a "turnaround specialist" — that is, someone who could take a poorly performing company and significantly increase its value by "turning around" its financial performance. Because Dunlap touted the benefits from firing large numbers of employees and closing large numbers of plants, Dunlap became widely known as "Chainsaw Al." Dunlap lived in Boca Raton, Florida, and one of his first tasks at Sunbeam was to consolidate the company's six headquarters into one located in Delray Beach, Florida.

Immediately after joining Sunbeam, Dunlap hired Kersh as Sunbeam's Chief Financial Officer. Kersh had teamed with Dunlap for over 15 years, serving as a senior executive with Dunlap at other companies, including Scott Paper. Dunlap also brought in several other hand-picked executives to make up his senior management team.

Dunlap and his senior management team entered into employment agreements with Sunbeam. Under those agreements, Dunlap and his senior management team stood to make tens of millions of dollars if they were able to boost Sunbeam's apparent value and then sell Sunbeam to another company at a premium.

In order to convince other companies that they should want to purchase Sunbeam, Dunlap needed to improve Sunbeam's reported financial performance quickly and dramatically. It was, of course, no small task to transform Sunbeam from a poorly performing company, with weak sales and declining profits, into a strong company with growing sales and

soaring profits. In fact, as the world later learned, Dunlap did not achieve that change in Sunbeam's fortunes. Instead, Dunlap created the illusion of a dramatic turnaround at Sunbeam by engaging in what SEC officials subsequently described as a "case study" in financial fraud.

Dunlap had a three-step plan at Sunbeam. In the first step, Dunlap overstated Sunbeam's financial problems so that Sunbeam appeared to be in worse shape than it really was. After making Sunbeam look worse, Dunlap moved to step two, where he made Sunbeam look more valuable than it really was by inflating Sunbeam's sales and engaging in other earnings manipulations. In step three, Dunlap planned to sell Sunbeam to another company before it became apparent that the "improved" results were fictional. By doing so, Dunlap would make tens of millions of dollars and would be free to blame his successor for any subsequent problems.

Dunlap began implementing his strategy soon after his arrival at Sunbeam in 1996. Claiming to be engaged in a clean-up of Sunbeam's financial problems, Dunlap recorded artificially high reserves and booked expenses that should not have been recorded until later periods. Both of those actions made Sunbeam's financial condition appear worse than it really was, thus lowering the benchmark for measuring Sunbeam's performance in future years.

The overstated reserves also provided Dunlap a means by which he could inflate Sunbeam's future results during the second step of his plan. Dunlap later could "re-evaluate" and release millions of dollars from the overstated reserves to boost income in later periods. The income from released reserves contributed to the illusion of a rapid turnaround in Sunbeam's performance. Using inflated reserves to enhance income in future periods is a fraudulent practice and overstated reserves are commonly called "cookie jar" reserves.

After making Sunbeam look worse than it really was in 1996, Dunlap manipulated Sunbeam's sales and expenses in 1997 to create the false appearance of quarter after quarter improvement in financial performance. For example, Dunlap caused Sunbeam to inflate its sales by engaging in phony "bill and hold" sales. Under this practice, Sunbeam recognized revenues from "sales," even though customers did not actually pay for or even take delivery of the products, which continued to sit in Sunbeam's own warehouses. Although Sunbeam recorded the "bill and hold" sales as if they were current sales, they were, in reality, simply sales stolen from future quarters. In 1997, phony "bill and hold" sales added approximately \$29 million in sales and \$4.5 million in income.

Throughout 1997, Sunbeam also engaged in a sales practice known as "channel stuffing" — accelerating sales that otherwise would occur in a later period, sometimes by offering steep discounts or other extraordinary customer inducements. On the grand scale employed by Sunbeam, channel stuffing inevitably leads to major sales shortfalls in later periods when "stuffed" customers simply stop buying. Sunbeam's senior sales officer referred to Sunbeam's unsustainable practice of inflating performance through accelerated sales as the "doom loop."

Dunlap further "enhanced" Sunbeam's income in 1997 by causing Sunbeam to record a "profit" of \$10 million from a sham sale of its warranty and spare parts business. Dunlap also made Sunbeam appear to be more successful than it really was by reaching into the "cookie jar," reversing inflated reserves, and recording \$35 million as income. Sunbeam's 1997 profit margins also looked better than they really were because Dunlap already had recorded millions of dollars of 1997 expenses in 1996.

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In October 1997, Dunlap announced that Sunbeam's "turnaround" was complete. Compared to the third quarter of 1996, Sunbeam's third quarter 1997 performance was remarkable. In the third quarter of 1996, Sunbeam had reported a loss of \$18.1 million. In the third quarter of 1997, however, Sunbeam reported earnings of \$34.5 million — an extraordinary turnaround from substantial losses to hefty profits. Sunbeam's combined results for the first three quarters showed dramatic improvement as well. Sunbeam reported that its profits for the first nine months were up tenfold over the same period the year before — from \$6.5 million in 1996 to \$67.7 million in 1997. Sunbeam's reversal of fortune caused a spectacular increase in the price of its stock. In July 1996, when Dunlap was hired, Sunbeam's shares traded at \$12-1/4. By October 1997, Sunbeam's shares had risen to \$49-13/16.

With steps one and two successfully completed, Dunlap was more than eager to complete the final step of his scheme: to sell Sunbeam to another company and collect tens of millions of dollars for himself before the outside world could learn the truth about Sunbeam's phony "turnaround." To accomplish that third and final step, Dunlap needed an investment banking firm

When Dunlap announced in early 1997 that he would begin interviewing investment bankers, Morgan Stanley immediately began pursuing the job. Although Morgan Stanley had no previous relationship with Sunbeam, one of Morgan Stanley's senior executives, William Strong, had worked closely with Dunlap on other large transactions between 1986 and 1993, when Strong was employed by Salomon Brothers.

Morgan Stanley knew that it was competing with other investment bankers, including Mark Davis, for Dunlap's business. Davis was the head of the mergers and acquisitions department at Chase Securities and had worked previously with Strong at Salomon Brothers. Davis had a very strong relationship with Dunlap, and Davis had served as Dunlap's investment advisor on numerous transactions, including Dunlap's sale of Scott Paper. Shortly after arriving at Sunbeam, Dunlap hired Davis to handle the sale of Sunbeam's furniture business.

Morgan Stanley put together a team headed by its Vice Chairman, Bruce Fiedorek, and Strong. Beginning in April 1997, Morgan Stanley's personnel traveled to Sunbeam's offices in Delray Beach, Florida to study Sunbeam and woo Dunlap. After months of uncompensated work, in September 1997, Morgan Stanley finally persuaded Dunlap to name Morgan Stanley as Sunbeam's exclusive investment banker. Dunlap instructed Morgan Stanley to find a buyer for Sunbeam. Morgan Stanley knew that if it failed to deliver a major transaction, Morgan Stanley would not be compensated for the extensive work it had performed for Sunbeam. Morgan Stanley also knew that Davis and Chase Securities were standing by — ready and willing to reclaim their position as Dunlap's investment banker of choice.

Throughout the fall of 1997, Morgan Stanley aggressively searched for a buyer for Sunbeam. Morgan Stanley put together extensive and detailed materials to use in marketing Sunbeam to potential buyers. Morgan Stanley pitched the transaction to more than 10 companies — including Gillette, Colgate, Sara Lee, Rubbermaid, Whirlpool, and Black & Decker — that Morgan Stanley hoped might have an interest in acquiring Sunbeam. Morgan Stanley, however, was not able to find a buyer.

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As 1998 approached, the pressure on Dunlap increased. Dunlap was aware that Sunbeam would be unable to sustain the appearance of a successful turnaround in 1998 because Sunbeam had stolen sales from 1998 to boost 1997's numbers and the "cookie jar" reserves had been depleted. Dunlap needed a way to conceal Sunbeam's phony turnaround until a buyer could be found. Morgan Stanley provided the solution to Dunlap's problem.

Morgan Stanley knew that its failure to find a buyer for Sunbeam could prove fatal to the relationship it had worked so hard to establish with Dunlap. As the pressure on Dunlap increased, the pressure on Morgan Stanley increased as well. Although Morgan Stanley was not able to find a buyer for Sunbeam, Morgan Stanley responded with a plan that would allow Dunlap to conceal his fraud. Morgan Stanley recommended that Sunbeam acquire other companies, using Sunbeam's stock, which was fraudulently inflated, as the "currency" that would be used to pay for the acquisitions.

Morgan Stanley's strategy was doubly deceptive. First, Morgan Stanley's acquisition strategy would allow Dunlap to consolidate Sunbeam's results with those of the newly-acquired companies. That would help Dunlap camouflage Sunbeam's results and make it difficult to detect any shortfall in Sunbeam's performance. Dunlap simply could label any problems that were detected as attributable to the poor performance of the acquired companies or as a temporary "blip" caused by the distraction of integrating the acquired companies with Sunbeam. Second, Morgan Stanley's strategy would allow Dunlap to take new massive restructuring charges (purportedly relating to the acquisitions) and thus create more "cookie jar" reserves that could be tapped to bolster the future earnings of the combined companies.

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Morgan Stanley identified Coleman as one of the key potential acquisition targets. CPH owned 82% of Coleman's stock. Morgan Stanley searched the ranks of its investment bankers to locate those with the best access to CPH. Drawing on relationships between some of Morgan Stanley's investment bankers and senior CPH officers, Morgan Stanley set about trying to persuade CPH to sell its interest in Coleman to Sunbeam — and, most importantly, to accept Sunbeam stock as consideration.

Morgan Stanley laid the groundwork for a meeting to take place in December 1997 in Palm Beach, Florida between Dunlap and Kersh and representatives of CPH. In advance of the Palm Beach meeting, Morgan Stanley provided materials to Sunbeam to prepare Sunbeam for the meeting. Morgan Stanley also met with Kersh and other Sunbeam personnel to prepare for the Palm Beach meeting. However, Dunlap nearly scuttled Morgan Stanley's carefully crafted plan at the outset. During the December 1997 Palm Beach meeting, when CPH rejected Dunlap's initial all-stock offer, Dunlap became so angry that he cursed and ranted at the CPH representatives and stormed out.

Dunlap's tantrum appeared to kill any chance that CPH would sell its interest in Coleman to Sunbeam. Morgan Stanley, however, worked to revive the discussions. Drawing again on Morgan Stanley's relationships with CPH officers, Morgan Stanley was able to restart the discussions with CPH with the promise that Dunlap would be kept away from the negotiating table. Thereafter, Morgan Stanley, through Managing Directors Strong, James Stynes, and Robert Kitts, led the discussions with CPH on Sunbeam's behalf.

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Morgan Stanley knew that it had to persuade CPH not only to sell Coleman, but also to accept Sunbeam stock — ultimately, 14.1 million shares of Sunbeam stock — as a major part of the purchase price. During the course of negotiations, Morgan Stanley prepared and provided CPH with false financial and business information about Sunbeam designed to create the appearance that Sunbeam was prospering and that Sunbeam's stock had great value. For example, Morgan Stanley provided CPH with false 1996 and 1997 sales and revenue figures, as well as false projections that Sunbeam could not expect to achieve. Together, in face-to-face discussions, Morgan Stanley and Sunbeam assured CPH that (a) Sunbeam would meet or exceed its first quarter 1998 earnings estimates; (b) analysts' 1998 earnings estimates for Sunbeam were correct; and (c) Sunbeam's plan to earn \$2.20 per share in 1998 was easily achievable and probably low. Morgan Stanley and Sunbeam also falsely assured CPH that Sunbeam's "early buy" sales program would not hurt Sunbeam's future revenues. However, the "early buy" program was one of Sunbeam's revenue acceleration programs — and the devastating effects of Sunbeam's revenue acceleration programs already had begun to materialize at Sunbeam. Sunbeam's January and February 1998 sales were down drastically, although those results were not disclosed to CPH or the public. To the contrary, Morgan Stanley and Sunbeam together specifically advised CPH that Sunbeam's first quarter 1998 sales were "tracking fine" and running ahead of analysts' estimates.

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On February 27, 1998, Sunbeam's Board of Directors met at Morgan Stanley's offices to consider the purchase of Coleman, as negotiated by Morgan Stanley.

At the February 27, 1998 meeting, Morgan Stanley made an extensive presentation to Sunbeam's Board concerning the proposed transaction. Numerous Morgan Stanley representatives, including Managing Directors Strong, Kitts, Stynes, Ruth Porat, and Vikram Pandit, attended the meeting.

Morgan Stanley presented Sunbeam's board with Morgan Stanley's opinion on the value of Coleman. Using a discounted cash flow analysis, which Morgan Stanley represented was the best gauge of stand-alone economic value and the best method of capturing the unique value of Coleman, Morgan Stanley valued CPH's Coleman stock at a range of \$31.06 to \$53.24 per Coleman share. CPH's 44,067,520 Coleman shares were worth, therefore, between \$1.369 billion and \$2.346 billion.

Following Morgan Stanley's presentation, Sunbeam's Board of Directors voted to acquire Coleman on the very favorable terms that Morgan Stanley had negotiated.

Morgan Stanley spent the following weekend developing Sunbeam's public relations strategy to announce the Coleman transaction. Morgan Stanley scripted the points for Dunlap to make in a conference call with analysts. Morgan Stanley also crafted a list of "key media messages" for Dunlap to use in his communications with the press. On Sunday, March 1, 1998, Morgan Stanley spoke with a reporter for the Wall Street Journal to inform him that Sunbeam would announce its acquisition of Coleman the following morning.

Sunbeam announced its acquisition of Coleman on Monday, March 2, 1998, prior to the opening of the financial markets. Consistent with Morgan Stanley's valuation, investors viewed Sunbeam's purchase of Coleman — and the price that Sunbeam had paid — very favorably. The day before the acquisition was announced, Sunbeam's stock closed at \$41-3/4. In the days following Sunbeam's announcement of the transaction, Sunbeam's stock rose approximately 25%, to a high of \$52.

Dunlap knew that Sunbeam needed to raise funds to pay the cash portion of the acquisition consideration. Dunlap also knew that Sunbeam needed cash to purchase two other smaller companies in addition to Coleman. Morgan Stanley recommended that Sunbeam raise funds through a \$500 million offering of convertible subordinated debentures. To assure the offering's success, Morgan Stanley lent its name to the offering. Indeed, Morgan Stanley agreed to serve as the sole underwriter for the offering.

The money raised from the sale of the debentures was used by Sunbeam to complete the acquisition of Coleman.

Unbeknownst to CPH or the public, Sunbeam's first quarter 1998 sales were a small fraction of the financial community's expectations for the quarter. If Dunlap could consolidate Sunbeam's sales with Coleman's sales, Dunlap knew that he could obscure Sunbeam's actual first quarter sales. As a result, Dunlap was especially anxious to complete the acquisition of Coleman before Sunbeam announced its first quarter 1998 sales. Indeed, the success of the scheme depended upon Sunbeam's ability to complete the Coleman acquisition before Sunbeam's first quarter results

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were announced. To satisfy Dunlap's objectives, Morgan Stanley moved up the launch date of the offering.

The debentures were marketed to investors at a series of "road show" meetings and conference calls arranged by Morgan Stanley. Morgan Stanley prepared and distributed a memorandum for its sales force to use in marketing the debentures to investors. Morgan Stanley also developed the script for Dunlap and Kersh to deliver during the road show. In those materials, Morgan Stanley misrepresented Sunbeam's financial performance and emphasized Dunlap's purported "turnaround" accomplishments.

Morgan Stanley launched the debenture offering with a research analyst presentation to the Morgan Stanley sales force. As part of Morgan Stanley's growing relationship with Sunbeam, one of Morgan Stanley's top-rated research analysts planned to initiate equity coverage of Sunbeam. That Morgan Stanley analyst had modeled values for Sunbeam's acquisition of Coleman that were higher than even Sunbeam's management had predicted.

Although Morgan Stanley initially planned to sell \$500 million worth of debentures, Morgan Stanley's efforts were so successful that the size of the offering was increased to \$750 million on March 19, 1998 — the day of the last road show. The debentures were sold to investors nationwide, including investors based in Florida.

As Sunbeam's investment banker and the sole underwriter for the debenture offering, Morgan Stanley had a duty to investigate Sunbeam's finances and business operations.

Morgan Stanley, which had been working hand-in-hand with Sunbeam for

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almost a year and had traveled to Sunbeam's Florida offices, repeatedly asserted that it had satisfied that duty.

Strong, who was one of the senior Morgan Stanley investment bankers involved, has admitted in sworn testimony that he may have had more than 100 telephone conversations with Dunlap and Kersh (whose offices were in Sunbeam's Delray Beach headquarters) and that Strong was "sure" that he would have been apprised of Sunbeam's financial performance during the first two months of 1998.

With the \$750 million debenture offering and the Coleman transaction set to close at the end of March 1998, Sunbeam's Florida-based outside auditors were shocked that Morgan Stanley had not asked them about Sunbeam's financial performance for first quarter 1998. Sunbeam's auditors were alarmed because Sunbeam's first quarter results were a disaster, but Dunlap, Kersh, and Morgan Stanley were telling CPH and the investing public,

that Sunbeam's turnaround was a success, that Sunbeam's sales for the first quarter of 1998 were ahead of the expectations of outside financial analysts, and that Sunbeam was poised for record sales.

On March 17, Sunbeam's auditors forced the issue. From their Florida offices, Sunbeam's auditors sent Morgan Stanley a letter reporting that Sunbeam's net sales through January 1998 were down 60% — \$28 million in January 1998, as compared to \$73 million in January 1997. The March 17 letter explained that the decline was "primarily due to the . . . new early buy program for grills which accelerated grill sales into the fourth quarter of fiscal 1997."

The next day, Morgan Stanley was faxed a schedule from Sunbeam's Florida office that showed that Sunbeam's January and February 1998 net sales totaled \$72 million, an amount that was 50% lower than Sunbeam's January and February 1997 net sales of \$143.5 million.

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Based on information that Sunbeam and Morgan Stanley had disseminated, Wall Street analysts were anticipating that Sunbeam's first quarter 1998 net sales would be in the range of \$285 million to \$295 million. Sales in that range would have been approximately 15% higher than first quarter 1997 sales. Sunbeam's January and February 1998 sales, however, totaled barely 25% of \$285 million. As Sunbeam's outside auditors advised Morgan Stanley in writing, the sales drop-off was caused by Sunbeam's sales acceleration program. The information put into Morgan Stanley's hands on March 17 and March 18 showed that Morgan Stanley's and Sunbeam's assertions to CPH and other investors were false. Contrary to what Morgan Stanley and Sunbeam had represented, Sunbeam had not undergone a successful turnaround, Sunbeam's financial performance had not dramatically improved, and Sunbeam's performance in 1998 was not better than Wall Street analysts' expectations. It was imperative, therefore, that the truth be kept from CPH until the Coleman transaction closed at the end of March 1998.

Morgan Stanley did not disclose Sunbeam's disastrous first quarter, Morgan Stanley did not insist that Sunbeam disclose its disastrous first quarter, Morgan Stanley did not correct any of the false and misleading statements it and Sunbeam had made to CPH about Sunbeam's business or performance, and Morgan Stanley did not suspend any of the critical transactions that were scheduled to close in the next two weeks. Instead, with Morgan Stanley's knowledge and assistance, Sunbeam prepared and issued a false press release on March 19, 1998 that affirmatively misstated and concealed Sunbeam's true condition.

The March 19, 1998 press release stated: "Sunbeam Corporation . . . said today that it is possible that its net sales for the first quarter of 1998 may be lower than the range of

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Wall Street analysts' estimates for \$285 million to \$295 million, but net sales are expected to exceed 1997 first quarter net sales of \$253.4 million. . . . The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the Company's major retail customers. The Company further stated that based on the strength of its new product offerings and powerful brand names, it remains highly confident about the overall sales outlook for its products for the entire year."

As Morgan Stanley was fully aware, the March 19, 1998 press release was false, misleading, and failed to disclose material information. The March 19, 1998 press release failed to disclose Sunbeam's actual January and February 1998 sales or the true reasons for the poor results. Instead, the press release held out the false possibility that Sunbeam still could achieve sales of \$285 million to \$295 million and suggested that, if any shortfall occurred, that shortfall would be due to the fact that certain retailers had decided to defer first quarter purchases to the second quarter.

The press release also assured that Sunbeam at least would exceed first quarter 1997 net sales of \$253.4 million.

Based on information that Morgan Stanley had in its hands on March 18, 1998, it was obvious that Sunbeam would not achieve sales of \$285 million to \$295 million and that Sunbeam's first quarter 1998 sales would be below its first quarter 1997 numbers. To simply meet 1997 first quarter sales, Sunbeam needed sales of \$123.3 million over the 12 remaining days of the quarter — an average of \$10.28 million per day. Sales of \$10.28 million per day would be 306% more than the average per day sales in March 1997, and 281% more than the average per day sales for the first 17 days of March 1998. Furthermore, Morgan Stanley knew that the shortfall from analysts' estimates was not caused by retailers' deciding to defer purchases from the first quarter of 1998 to the second quarter, as the press release indicated. Rather, as Sunbeam's outside auditors had

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advised Morgan Stanley in writing, the collapse in first quarter sales was caused by Sunbeam's acceleration of 1998 sales into the fourth quarter of 1997.

After Sunbeam's false press release was issued, Morgan Stanley stood arm-in-arm with Sunbeam while Dunlap and Kersh told CPH, analysts, and investors that the March 19, 1998 release was a purely cautionary statement because some first quarter 1998 sales might simply "spillover" into the second quarter and that Sunbeam still believed that it actually would meet analysts' estimates of \$285 million to \$295 million in first quarter 1998 sales.

Morgan Stanley knew that a full and truthful disclosure of Sunbeam's first quarter sales would doom the debenture offering, which was scheduled to close on March 25, 1998,

As Morgan Stanley was fully aware, the written contract between CPH and Sunbeam gave CPH the express legal right to refuse to close the sale if there was a material adverse change in Sunbeam's "business, results of operation or financial condition."

Furthermore, if the transactions did not close, Morgan Stanley would not be paid its \$10.28 million fee for the Coleman acquisition or its \$22.5 million fee for underwriting the subordinated debenture offering. Morgan Stanley also knew that Sunbeam would promptly replace Morgan Stanley with another investment banking firm – such as the Chase Securities team led by Mark Davis.

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Sunbeam's outside auditors already had made it perfectly clear to Morgan Stanley that Sunbeam's first quarter 1998 sales were a disaster,

One of Sunbeam's senior outside auditors, Lawrence Bornstein, has testified under oath that on March 19, 1998, he told Morgan Stanley's John Tyree that the statement in Sunbeam's March 19, 1998 press release — that Sunbeam would at least exceed first quarter 1997 sales of \$253.4 million — was not credible: "Just do the math . . . they've done a million dollars in sales the first 70 days of the year and now they need to do \$10 million worth of sales for the next . . . I think it was 11 days . . . I mean, something ridiculous." Bornstein also told Tyree: "I've been to every shipping dock domestically, I've been to Hattiesburg, I've been to Neosho, I've been to Mexico City, and I don't think these guys can physically ship this much stuff."

Morgan Stanley knew that the March 19 press release was false and misleading. Despite that knowledge and Bornstein's explicit statements, Morgan Stanley continued with its preparations to close the debenture offering on March 25, 1998 and the Coleman acquisition on March 30, 1998.

As part of those preparations, on March 24, 1998, Morgan Stanley's Tyree spoke by telephone with Sunbeam's Kersh, who was located in Sunbeam's Delray Beach offices, to obtain an updated report concerning Sunbeam's first quarter performance. By the time of that March 24, 1998 call, Sunbeam had fallen even further behind first quarter 1997 sales. As of March 18, 1998, Sunbeam needed to achieve average sales of \$10.28 million per day, over 12 days, to reach

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first quarter 1997 sales. Sunbeam's sales between March 18 and March 24, 1998 had averaged only \$6.81 million per day — well short of the \$10.28 million per day that Sunbeam needed to achieve. Sunbeam's March 18 through March 24, 1998 sales were further proof that Sunbeam's March 19, 1998 press release was false and that Sunbeam would not achieve first quarter 1998 sales in excess of first quarter 1997 sales.

Morgan Stanley also knew no later than March 25, 1998, if not much earlier, that Sunbeam's earnings for the first quarter of 1998 were going to miss Wall Street analysts' earnings expectations, which were in the range of \$0.28 to \$0.31 per share (excluding one-time charges). Sunbeam's outside auditors advised Morgan Stanley on March 25 that Sunbeam had suffered a \$41.19 million loss during the first two months of 1998, including a one-time charge of \$30.2 million. Even excluding that one-time charge, Sunbeam's loss for the first two months was \$0.13 per share. To achieve first quarter 1998 operating earnings of \$0.28 per share, which were at the low end of analyst expectations, Sunbeam needed to realize a profit of \$35.5 million during March 1998 alone. A net profit of \$35.5 million in March was 500% more than Sunbeam's net profit for the entire first quarter of 1997. In fact, Sunbeam's first quarter 1998 earnings fell far short of Wall Street's expectations. Sunbeam's first quarter earnings were material,

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Having directly participated in misleading CPH Morgan Stanley had a duty to disclose the true facts before the closing of the debenture offering and the Coleman acquisition. Morgan Stanley also could have required Sunbeam to postpone the closings of

those transactions until the necessary disclosures were made. Morgan Stanley did neither. Instead, Morgan Stanley marched forward and closed the \$750 million debenture offering on March 25, 1998, which was needed to close the Coleman transaction, and assisted Sunbeam in closing the acquisition of Coleman on March 30, 1998.

Morgan Stanley received \$22.5 million for the subordinated debenture offering and \$10.28 million for the Coleman acquisition. Morgan Stanley would have received nothing if the transactions had failed to close.

On April 3, 1998 — just four days after the Coleman transaction closed — Sunbeam announced that sales for the first quarter of 1998 would be approximately 5% below the \$253.4 million in sales that Sunbeam reported in the first quarter of 1997. In other words, Sunbeam was expecting sales in the range of \$240 million. That sales shortfall was shocking news, particularly in view of assurances provided by Sunbeam both in and after its March 19, 1998 press release that \$285 million to \$295 million of sales was still a real possibility. The April 3, 1998 press release also disclosed that Sunbeam expected to show a loss for the quarter, although the release did not disclose the magnitude of the loss or how much of the loss was attributable to operating earnings as opposed to one-time charges. Sunbeam's news stunned . . . the market. On April 3rd, Sunbeam's stock price dropped 25% — from \$45-9/16 to \$34-3/8.

... Sunbeam's actual first quarter 1998 performance was even worse than Sunbeam disclosed on April 3, 1998. The April 3, 1998 release indicated that Sunbeam's first quarter sales were in the range of \$240 million. In fact, Sunbeam's first quarter sales were \$224.5

million. Sunbeam obscured the true shortfall by extending its quarter from March 29 to March 31, 1998 — thereby adding two more days of Sunbeam sales. Sunbeam also failed to disclose that it had included two days of Coleman sales after the Coleman transaction closed on March 30. Further, Sunbeam inflated first quarter 1998 sales with \$29 million of new phony “bill and hold” sales.

75. Just as Sunbeam’s first quarter 1998 sales had been a disaster, so, too, were Sunbeam’s first quarter 1998 earnings. Morgan Stanley and Sunbeam had represented to CPH that Sunbeam would achieve or exceed analyst first quarter 1998 earnings estimates. At the time of that representation, the consensus among analysts was that Sunbeam would enjoy first quarter 1998 earnings of \$0.33 per share. However, on May 9, 1998, Sunbeam disclosed that it would record a first quarter loss of \$0.09 per share (excluding one-time charges) — more than \$0.40 per share lower than CPH had been told to expect.

Within weeks, Dunlap’s fraudulent scheme began to unravel. In June 1998, after a number of news articles critical of Sunbeam’s practices, Sunbeam’s Board of Directors launched an internal investigation. That investigation led quickly to the firing of Dunlap and Kersh, and, subsequently, to a restatement of Sunbeam’s financial statements for 1996, 1997, and the first quarter of 1998.

76. As detailed above, Morgan Stanley participated in a scheme to mislead CPH and others and cover up the massive fraud at Sunbeam until Morgan Stanley and Sunbeam could close the purchase of Coleman. Morgan Stanley provided CPH with false information concerning Sunbeam’s 1996 and 1997 financial performance, its business operations, and the value of Sunbeam’s stock. Morgan Stanley also actively assisted Sunbeam in concealing Sunbeam’s

disastrous first quarter 1998 sales and earnings and the true reasons for Sunbeam's poor performance.

Morgan Stanley knew that its statements to CPH were materially false and misleading and omitted the true facts.

Morgan Stanley intended that CPH rely on Morgan Stanley's representations concerning Sunbeam.

As detailed above, Dunlap engaged in a fraudulent scheme to inflate the price of Sunbeam's stock by improperly manipulating Sunbeam's 1996 and 1997 performance, by falsely asserting that Sunbeam had successfully "turned around," and by concealing the collapse of Sunbeam's first quarter 1998 sales and earnings and the reasons for Sunbeam's first quarter 1998 performance.

86 As detailed above, Morgan Stanley knew of Dunlap's fraudulent scheme and helped to conceal it until after Sunbeam could close the purchase of Coleman.

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As detailed above, Morgan Stanley provided substantial assistance to Dunlap and Sunbeam, including: concealing Sunbeam's first quarter 1998 sales collapse; assisting with the false March 19, 1998 press release; arranging road shows and meetings with prospective debenture purchasers at which Morgan Stanley, Dunlap, and others made false statements concerning Sunbeam's financial condition and business operations; preparing and disseminating the preliminary and final offering memoranda for the subordinated debenture offering, both of which contained false information concerning Sunbeam's financial condition and business operations; providing CPH with false financial and business information concerning Sunbeam; scripting Dunlap's false public statements concerning Sunbeam's acquisition of Coleman;

and underwriting the \$750 million convertible debenture offering, proceeds from which were used to fund Sunbeam's purchase of Coleman.

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As detailed above, Morgan Stanley conspired with Dunlap and other senior Sunbeam executives to conceal the truth about Sunbeam's financial performance and business operations.

As detailed above, Morgan Stanley committed overt acts in furtherance of the conspiracy, including: concealing Sunbeam's first quarter 1998 sales collapse; assisting with the false March 19, 1998 press release; arranging road shows and meetings with prospective debenture purchasers at which Morgan Stanley, Dunlap, and others made false statements concerning Sunbeam's financial condition and business operations; preparing and disseminating the preliminary and final offering memoranda for the subordinated debenture offering, both of which contained false information concerning Sunbeam's financial condition and business operations; providing CPH with false financial and business information concerning Sunbeam; scripting Dunlap's false public statements concerning Sunbeam's acquisition of Coleman;

and underwriting the \$750 million convertible debenture offering, proceeds from which were used to fund Sunbeam's purchase of Coleman.

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 03-5045 AJ

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

COLEMAN (PARENT) HOLDINGS INC.'S JULY 25, 2008
REQUEST FOR PRODUCTION OF DOCUMENTS
TO MORGAN STANLEY & CO., INC.

Coleman (Parent) Holdings Inc., by its attorneys Searcy Denney Scarola Barnhart & Shipley P.A. and Jenner & Block LLP, hereby serves its July 25, 2008 Request for Production of Documents to Morgan Stanley & Co., Inc.

DEFINITIONS

1. "Action" means Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045.
2. "Communication" means the transmittal of information, opinion, question, or other form of data exchange by letter, memorandum, facsimile, e-mail, orally, or otherwise.
3. "Costs Appeal Bond" means the supersedeas bond referred to in paragraphs 7 and 8 of the Costs Appeal Motion.
4. "Costs Appeal Motion" means Morgan Stanley & Co. Inc.'s Motion to Tax Appellate Costs Relating to Costs Appeal, including its supporting affidavits and exhibits, filed in this Action on April 1, 2008.



5. "Costs Motions" means the Costs Appeal Motion, the Main Appeal Motion, and the Trial Motion, individually or collectively, including their supporting affidavits and exhibits.

6. "Costs Judgment" means the judgment entered in this Action on November 22, 2005, taxing costs in favor of CPH.

7. "CPH" means Coleman (Parent) Holdings Inc., Coleman Worldwide Corporation, CLN Holdings, Inc., or any of their present and former officers, directors, employees, representatives, agents, and all other persons acting or purporting to act on their behalf.

8. "Documents" means documents whether fixed in tangible medium or electronically stored. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings and transcriptions thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes for meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, computer tapes, computer drives or memories, computer diskettes or disks, e-mail, CD-ROMs, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic, or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies, or other unique copies of the

foregoing, and all versions or drafts thereof, whether used or not. "Documents" includes all non-identical copies of all electronic data as well as application metadata and system metadata.

9. "Escrow Account" means the escrow account at The Bank of New York referred to on page 2 of the Amended Affidavit of Joseph Ianno, Jr. in Support of Morgan Stanley's Amended Motion to Tax Appellate Costs.

10. "Main Appeal Bond" means the supersedeas bond referred to in paragraphs 4 and 5 of the Main Appeal Motion.

11. "Main Appeal Motion" means Morgan Stanley & Co. Incorporated's Amended Motion to Tax Appeal Costs, including its supporting affidavits and exhibits, filed in this Action on April 1, 2008.

12. "Main Judgment" means the judgment entered in this Action on June 23, 2005, in favor of CPH.

13. "Morgan Stanley" means Morgan Stanley & Co., Inc., or any of its subsidiaries, divisions, parents, predecessors, successors, present and former employees, representatives, agents, attorneys, accountants, advisors, or all other persons acting or purporting to act on its behalf.

14. "Relating" means reflecting, concerning, referring to, describing, evidencing, relating to, or constituting.

15. "Trial Motion" means Morgan Stanley & Co. Incorporated's Amended Motion to Tax Trial Costs, including its supporting affidavits and exhibits, filed in this Action on April 1, 2008.

16. "You" or "Your" means Morgan Stanley & Co., Inc. and/or any of its subsidiaries, divisions, parents, predecessors, successors, present or former employees,

representatives, agents, attorneys, accountants, advisors, or anyone acting or purporting to act on its behalf.

INSTRUCTIONS

1. Documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request. Documents attached to each other as kept should not be separated.

2. All documents shall be produced in the file folder, envelope, or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

3. The relevant period, unless otherwise indicated, shall be from May 8, 2003, to the present, and shall include all documents and information that relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated, or received prior or subsequent to that period. You shall supplement or correct your responses to these requests if, at any time, you become aware that your responses are incomplete or incorrect in any respect.

4. If you claim the attorney-client privilege, or any other privilege or work-product protection for all or any portion of a document, you shall provide a privilege log that describes the withheld material sufficiently to allow CPH to test the privilege or protection asserted.

5. The following rules of construction apply:

- a. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be outside of their scope;
- b. The term "including" shall be construed to mean "without limitation"; and

- c. The use of the singular form of any word includes the plural and vice versa.

DOCUMENTS REQUESTED

1. All documents that were a source of information used in preparing the Costs Motions.
2. All documents relating to payment of or any reimbursement for payment of the costs detailed in the Costs Motions, including but not limited to invoices, canceled checks, wire confirmations, bank statements, receipts, ledger entries, and accounting records.
3. All documents relating to Morgan Stanley's claim for taxation of the cost of premiums, including but not limited to documents relating to:
- a. the amount of premiums charged to Morgan Stanley, or any person or entity acting on Morgan Stanley's behalf, in connection with the Costs Appeal Bond or the Main Appeal Bond;
 - b. the amount of premiums paid by or on behalf of Morgan Stanley in connection with the Costs Appeal Bond or the Main Appeal Bond;
 - c. the identity of each payor and each recipient of any such payment;
 - d. any refund of premiums in connection with the Costs Appeal Bond or the Main Appeal Bond;
 - e. any inquiry or investigation undertaken by or on behalf of Morgan Stanley or any insurance broker relating to the cost or amount of premiums quoted, estimated, or charged by any insurance company, financial institution, or other entity in connection with a bond or other form of security relating to the Costs Judgment or the Main Judgment.

- f. any quote or estimate received by or on behalf of Morgan Stanley or any insurance broker from any insurance company, financial institution, or other entity of the cost or amount of premiums associated with a bond or other form of security relating to the Costs Judgment or the Main Judgment; or
- g. any comparison or other analysis undertaken by or on behalf of Morgan Stanley or any insurance broker of any such quote or estimate.
4. All documents relating to Morgan Stanley's claim for taxation of the cost of broker commissions, including but not limited to documents relating to:
- a. the amount of broker commissions charged to Morgan Stanley, or any person or entity acting on Morgan Stanley's behalf, in connection with the Costs Appeal Bond or the Main Appeal Bond;
 - b. the amount of broker commissions paid by or on behalf of Morgan Stanley in connection with the Costs Appeal Bond or the Main Appeal Bond;
 - c. the identity of each payor and each recipient of any such payment;
 - d. any refund of broker commissions in connection with the Costs Appeal Bond or the Main Appeal Bond;
 - e. any inquiry or investigation undertaken by or on behalf of Morgan Stanley relating to the cost or amount of broker commissions quoted, estimated, or charged by any insurance company or agency or any other entity in connection with a bond or other form of security relating to the Costs Judgment or the Main Judgment;

- f. any quote or estimate received by or on behalf of Morgan Stanley from any insurance company or agency or any other entity of the cost or amount of broker commissions associated with a bond or other form of security relating to the Costs Judgment or the Main Judgment;
- g. any comparison or other analysis undertaken by or on behalf of Morgan Stanley of any such quote or estimate; or
- h. all communications and all documents referencing communications relating to discounts, rebates, refunds, trade-offs, barter, or other exchange of consideration of any kind concerning commissions, bond premiums, or any other payment sent or received in relation to the Costs Judgment, the Main Judgment, the Costs Appeal Bond, the Main Appeal Bond, the Escrow Account, or any other bond, escrow account, or other security for the payment of the Costs Judgment or the Main Judgment.
5. All documents relating to Morgan Stanley's claim for taxation of the cost of the Escrow Account, including but not limited to documents relating to:
- a. the amount charged to Morgan Stanley, or any person or entity acting on Morgan Stanley's behalf, in connection with the Escrow Account;
- b. the amount paid by or on behalf of Morgan Stanley in connection with the Escrow Account;
- c. the identity of each payor and each recipient of any such payment;
- d. any discount, rebate, refund, trade-off, barter, or other exchange of consideration of any kind in connection with the Escrow Account;
- e. any amount held in the Escrow Account;

- f. any request or demand by or on behalf of Morgan Stanley, the Bank of New York, or any other person or entity for the creation of an escrow account relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment;
- g. any discussion or analysis of such a request or demand;
- h. any communication concerning and any description or discussion of how the costs associated with the Escrow Account were calculated or derived;
- i. any inquiry or investigation undertaken by or on behalf of Morgan Stanley relating to the cost or amount of fees quoted, estimated, or charged by any financial institution or other entity in connection with an escrow account relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment;
- j. any quote or estimate received by or on behalf of Morgan Stanley from any financial institution or other entity of the cost or amount of fees associated with an escrow account relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment; or
- k. any comparison or other analysis undertaken by or on behalf of Morgan Stanley of any such quote or estimate.

6. All documents relating to any communication between Morgan Stanley (or any person or entity acting on Morgan Stanley's behalf) and any other person or entity, including but not limited to any communication between Morgan Stanley and E.G. Bowman Co., Inc., The Bank of New York, Safeco Insurance Co., or AIG, relating to:

- a. a bond, escrow account, or other form of security relating to the Costs Judgment or the Main Judgment;
 - b. the Costs Appeal Bond;
 - c. the Main Appeal Bond; or
 - d. the Escrow Account.
7. All documents relating to the release, discharge, closing, or cancellation of the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account, including but not limited to documents sufficient to show the date on which Morgan Stanley first requested such release, discharge, closing, or cancellation and documents sufficient to show the date on which such release, discharge, closing, or cancellation was effected.
8. All documents relating to any consideration or analysis by or on behalf of Morgan Stanley of forms or sources of security for the Costs Judgment or the Main Judgment other than the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account.
9. All documents relating to Morgan Stanley's claim for taxation of the cost of mediation, including but not limited to:
- a. the amount and nature of mediation costs charged to Morgan Stanley or any person or entity acting on Morgan Stanley's behalf; or
 - b. the amount and nature of mediation costs paid by or on behalf of Morgan Stanley.
10. All documents relating to Morgan Stanley's claim for taxation of the cost of expert fees, excluding copies of expert reports and expert deposition transcripts, and including but not limited to documents relating to:

- a. the amount and nature of expert fees charged to Morgan Stanley or any person or entity acting on Morgan Stanley's behalf;
- b. the amount and nature of expert fees paid by or on behalf of Morgan Stanley;
- c. any communication between Morgan Stanley (or any person or entity acting on Morgan Stanley's behalf) and any other person or entity relating to the amount, nature, or payment of expert fees;
- d. whether any of the expert fees for which costs are claimed by Morgan Stanley are attributable to expert depositions;
- e. the purpose for which any such expert deposition was used in this Action;
- f. whether any of the expert fees for which costs are claimed by Morgan Stanley are attributable to the preparation of a court-ordered report; or
- g. the purpose for which any such court-ordered report was used in this Action.

11. All documents relating to Morgan Stanley's claim for taxation of the cost of hearing and trial transcripts, excluding copies of such transcripts, and including but not limited to documents relating to:

- a. the amount of hearing or trial transcript costs charged to Morgan Stanley or any person or entity acting on Morgan Stanley's behalf; or
- b. the amount of hearing or trial transcript costs paid by or on behalf of Morgan Stanley.

12. All documents relating to Morgan Stanley's claim for taxation of the cost of deposition transcripts and videotapes, excluding copies of such transcripts and videotapes, and including but not limited to documents relating to:

- a. the amount of deposition transcript or videotape costs charged to Morgan Stanley or to any person or entity acting on Morgan Stanley's behalf; or
- b. the amount of deposition transcript or videotape costs paid by or on behalf of Morgan Stanley.

13. All documents relating to Morgan Stanley's claim for taxation of the cost of discovery imaging and coding or document production and management, excluding copies of the documents that were imaged, coded, produced, or managed, and including but not limited to documents relating to:

- a. the amount and nature of the discovery imaging or coding or document production and management costs charged to Morgan Stanley or to any person or entity acting on Morgan Stanley's behalf;
- b. the amount and nature of the discovery imaging or coding or document production and management costs paid by or on behalf of Morgan Stanley;
- c. any communication between Morgan Stanley (or any person or entity acting on Morgan Stanley's behalf) and any other person or entity, including but not limited to any communication between Morgan Stanley and Compulit, relating to the amount, nature, or payment of discovery imaging or coding or document production and management costs;

- d. whether any of the documents as to which such costs were incurred were actually filed with the court in the Action;
- e. whether, for each document as to which such costs were incurred, such document was actually produced to CPH;
- f. whether any of the claimed discovery imaging or coding or document production and management costs constituted the actual cost of copies obtained in discovery;
- g. whether there were discounts, based on volume or otherwise, available to or used by Morgan Stanley or its lawyers or law firms relating to discovery imaging or coding or document production and management (including but not limited to copying of documents); or
- h. whether any effort was made by or on behalf of Morgan Stanley to determine whether lower prices for the discovery- or document-related tasks for which costs are claimed were available from vendors other than those who were used to carry out the tasks.

14. All documents, excluding copies of deposition transcripts, deposition videotapes, trial transcripts, and documents produced or obtained in prior discovery in the Action, relating to costs claimed by Morgan Stanley relating to electronic discovery, including but not limited to costs relating to any search for electronically stored documents, any review or production of such documents, or any outside experts or consultants involved in any tasks relating to electronic discovery.

15. All documents relating to any effort to obtain, the results of any effort to obtain, or the receipt of any economic benefit, consideration, or other advantage of any kind in

exchange for agreeing to or having agreed to do business with any person or entity to whom payment was made for which Morgan Stanley now seeks reimbursement in the form of a costs award.

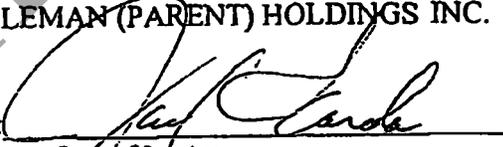
16. All documents relating to any gift received by Morgan Stanley from any person or entity to whom payment was made for which Morgan Stanley now seeks reimbursement in the form of a costs award.

17. All documents, excluding copies of deposition transcripts, deposition videotapes, trial transcripts, and documents produced or obtained in prior discovery in the Action, that may tend to support or refute the assertion in the Costs Motions and supporting affidavits that the claimed costs were reasonable and necessary to the defense of the Action.

Dated: July 25, 2008

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: 

One of Its Attorneys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and hand delivery to counsel listed below on this 25th day of July, 2008:

Joseph Ianno, Jr.
CARLTON FIELDS, P.A.
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New York, NY 10010

By: 

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IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO.: CA 03-5045 (AJ)

vs.

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

**MORGAN STANLEY & CO. INC.'S RESPONSE TO COLEMAN
(PARENT) HOLDINGS INC.'S REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its undersigned attorneys, pursuant to Fla. R. Civ. P. 1.350, hereby responds to Plaintiff Coleman (Parent) Holdings Inc.'s ("CPH's") Requests For Production of Documents as follows:

By making these responses, Morgan Stanley does not concede that the information sought or provided is relevant to the subject matter of this or any action or reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley's responses are made intending to preserve and preserving:

- (a) The right to object, on any grounds, to the use of the responses in any subsequent proceedings in this or any action;
- (b) The right to object to introduction into evidence of these responses or documents provided in response to the Requests; and
- (c) The right to object, on any grounds at any time, to other requests or discovery demands involving documents produced in response to the Requests.



GENERAL OBJECTIONS

1. Morgan Stanley objects to the Requests including, without limitation, the instructions and definitions therein, to the extent they purport to impose on Morgan Stanley obligations beyond those imposed by the Florida Rules of Civil Procedure, and any other applicable law or rule.
2. Morgan Stanley objects to the Requests to the extent they seek documents and/or information that are not within Morgan Stanley's possession, custody or control; that are already available to CPH; that are available from public, court, or agency records, or otherwise in the public domain and accessible to all parties.
3. Morgan Stanley objects to the Requests to the extent they seek identification and disclosure of information that is irrelevant, immaterial, or not reasonably calculated to lead to the discovery of admissible evidence.
4. Morgan Stanley objects to the Requests to the extent they are oppressive, overbroad, unreasonably cumulative, duplicative, and unduly burdensome, particularly to the extent that they seek "all" documents relating to a particular subject matter.
5. Morgan Stanley objects to the Requests to the extent they seek the disclosure of information protected by the attorney-client privilege, the attorney work-product doctrine, or any other privilege or protection from disclosure. Morgan Stanley hereby claims such privileges and protections to the extent implicated by each Request and excludes privileged and protected information from its responses to the Requests. Inadvertent production of any such information shall not constitute a waiver of any privilege or protection from disclosure as to that information or any related information. As set forth in this Response, Morgan Stanley objects to the overbroad nature of these requests especially since the only issue before the Court is the amount of taxable costs to be awarded to Morgan Stanley. Pursuant to the Fourth District's decision in *Gosman v. Luzinski*, 937 So. 2d 293 (Fla. 4th DCA 2006), Morgan Stanley hereby requests an extension of thirty (30) days to prepare its privilege log from the date on which the Court, if

necessary, resolves Morgan Stanley's other objections to the Requests. Further, Morgan Stanley objects to the production of a privilege log for clearly privileged communications between Morgan Stanley's attorneys (including both its in-house counsel and outside counsel) and Morgan Stanley employees that may "relate" in some way to the claimed costs. In fact, the parties previously agreed, and the Court ordered, that the parties were "not required to provide a privilege log listing otherwise responsive documents where those documents involved privileged communications between the parties and their lawyers in connection with litigation arising from the transaction at issue in this case." 9/4/2003 Agreed Order Regarding Enlargement of Time to Prepare Privilege Log. Morgan Stanley also objects to the production of a privilege log for clearly privileged materials such as work product created by in-house counsel or outside counsel while preparing the cost motions. Such materials may "relate" in some way to the claimed costs, but are clearly protected by the work product doctrine. To require a privilege log of these categories of materials would be unduly burdensome and harassing, especially in the context of the narrow issue before the Court, and would necessarily reveal the work product of counsel for Morgan Stanley.

6. Morgan Stanley objects to the definitions of the terms "Morgan Stanley," "You," and "Your" contained in the Requests to the extent they purport to define an entity other than Morgan Stanley and/or purport to impose obligations on Morgan Stanley beyond providing information that is in the possession, custody, or control of Morgan Stanley. Morgan Stanley further objects to the definitions of these terms to the extent they purport to refer to actions taken by "any person or entity acting on Morgan Stanley's behalf" that were not taken at the direction of Morgan Stanley.

7. The responses to the Requests shall not be construed in any way as an admission that any definition provided by CPH is either factually correct or legally binding upon Morgan Stanley, or as a waiver of any of Morgan Stanley's objections.

8. Morgan Stanley's Specific Responses and Objections to the individual Requests shall be deemed to incorporate, and shall not be deemed a waiver of, these General Objections.

9. Morgan Stanley objects to the Requests, definitions, and instructions to the extent they are compound, phrased disjunctively or conjunctively, and include subparts in such a manner that they are unduly burdensome, confusing, or cannot be reasonably answered.

10. Morgan Stanley objects to the Requests, definitions, and instructions to the extent they seek information that is not known or reasonably available to Morgan Stanley.

11. Morgan Stanley's objection to a Request or agreement to produce responsive documents in response to a Request is not and should not be construed as an admission that any particular information or category of information exists.

12. Morgan Stanley objects to the Requests to the extent they seek a legal theory or conclusion or seek documents relating to Morgan Stanley's entitlement to, as opposed to the reasonableness of, its trial costs. See J. Robin L. Rosenberg's 6/11/08 Order granting Morgan Stanley's Amended Motion to Tax Trial Costs as to the issue of entitlement and reserving ruling on the issue of reasonableness.

13. Morgan Stanley objects to the Requests to the extent they are harassing in the context of the narrow issue before the Court and seek information that is not reasonably calculated to lead to the discovery of admissible evidence relevant to the cost motions presently pending before the Court. Morgan Stanley will conduct a reasonable search for and produce non-privileged documents sufficient to support the amount of costs that Morgan Stanley is entitled to recover in this action as the prevailing party. CPH's attempt in the Requests to obtain every piece of paper that "relates" to the claimed costs is overbroad and harassing.

14. Morgan Stanley objects to the Requests to the extent that they do not contain any time period limitation. With respect to requests seeking communications concerning the determination of the premiums and costs associated with the Main Appeal Bond, the Cost Appeal Bond and the Escrow Account, Morgan Stanley will conduct a reasonable search for responsive (as limited by the specific responses and objections below) non-privileged communications sent or received between January 1, 2005 and June 30, 2005. With respect to trial costs, Morgan Stanley will conduct a reasonable search for responsive (as limited by the

specific responses and objections below) non-privileged communications sent or received between May 8, 2003 and March 31, 2006.

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1

All documents that were a source of information used in preparing the Costs Motions.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Morgan Stanley objects to this Request on the ground that it is overbroad. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents that were used to substantiate the individual line item costs contained in the affidavits filed in support of the Cost Motions.

REQUEST FOR PRODUCTION NO. 2:

All documents relating to payment of or any reimbursement for payment of the costs detailed in the Costs Motion, including but not limited to invoices, canceled checks, wire confirmations, bank statements, receipts, ledger entries, and accounting records.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents

sufficient to show the payment of the costs detailed in the Costs Motions. Specifically, Morgan Stanley will produce invoices, checks or check stubs, and wire transfer confirmations sufficient to show payments made by Morgan Stanley or its counsel for costs itemized in the affidavits filed in support of the Cost Motions. Coleman's attempt to obtain categories of documents like "ledger entries" and "accounting records" is not only vague, ambiguous, and overbroad, but also goes well beyond a reasonable calculation of what is necessary to contest the claimed costs. To the extent that this request seeks further categories of documents, it is simply an attempt to harass Morgan Stanley.

REQUEST FOR PRODUCTION NO. 3:

All documents relating to Morgan Stanley's claim for taxation of the cost of premiums, including but not limited to documents relating to:

- a. the amount of premiums charged to Morgan Stanley, or any person or entity acting on Morgan Stanley's behalf, in connection with the Costs Appeal Bond or the Main Appeal Bond;
- b. the amount of premiums paid by or on behalf of Morgan Stanley in connection with the Costs Appeal Bond or the Main Appeal Bond;
- c. the identity of each payor and each recipient of any such payment;
- d. any refund in premiums in connection with the Costs Appeal Bond or the Main Appeal Bond;
- e. any inquiry or investigation undertaken by or on behalf of Morgan Stanley or any insurance broker relating to the cost or amount of premiums quoted, estimated, or charged by any insurance company, financial institution, or other entity in connection with a bond or other form of security relating to the Costs Judgment or the Main Judgment.
- f. any quote or estimate received by or on behalf of Morgan Stanley or any insurance broker from any insurance company, financial institution, or other entity of the cost or amount of premiums associated with a bond or

other form of security relating to the Costs Judgment or the Main Judgment; or

- g. any comparison or other analysis undertaken by or on behalf of Morgan Stanley or any insurance broker of any such quote or estimate.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of the bond premiums claimed by Morgan Stanley in the Cost Motions. Specifically, Morgan Stanley will produce invoices and wire transfer information sufficient to show the cost of the bond premiums, the payment of the bond premiums, and the refund of certain bond premiums. However, Morgan Stanley objects to producing "all" documents "relating" to the bond premiums because it is simply an attempt to harass Morgan Stanley with overbroad requests that will force Morgan Stanley to incur additional costs. Further, Morgan Stanley has undertaken a reasonable investigation regarding non-privileged documents sufficient to show its efforts to obtain a supersedeas bond in this matter and will produce the documents it has located after a reasonable search.

REQUEST FOR PRODUCTION NO. 4:

All documents relating to Morgan Stanley's claim for taxation of the cost of broker commissions, including but not limited to documents relating to:

- a. the amount of broker commissions charged to Morgan Stanley, or any person or entity acting on Morgan Stanley's behalf, in connection with the Costs Appeal Bond or the Main Appeal Bond;

- b. the amount of broker commissions paid by or on behalf of Morgan Stanley in connection with the Costs Appeal Bond or the Main Appeal Bond;
- c. the identity of each payor and each recipient of any such payment;
- d. any refund of broker commissions in connection with the Costs Appeal Bond or the Main Appeal Bond;
- e. any inquiry or investigation undertaken by or on behalf of Morgan Stanley relating to the cost or amount of broker commissions quoted, estimated, or charged by any insurance company or agency or any other entity in connection with a bond or other form of security relating to the Costs Judgment or the Main Judgment;
- f. any quote or estimate received by or on behalf of Morgan Stanley from any insurance company or agency or any other entity of the cost or amount of broker commissions associated with a bond or other form of security relating to the Costs Judgment or the Main Judgment;
- g. any comparison or other analysis undertaken by or on behalf of Morgan Stanley of any such quote or estimate; or
- h. all communications and all documents referencing communications relating to discounts, rebates, refunds, trade-offs, barbers, or other exchange of consideration of any kind concerning commissions, bond premiums, or any other payment sent or received in relation to the Costs Judgment, the Main Judgment, the Costs Appeal Bond, the Main Appeal Bond, the Escrow Account, or any other bond, escrow account, or other security for the payment of the Costs Judgment or the Main Judgment.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan

Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of the broker commissions claimed by Morgan Stanley in the Cost Motions. Further, Morgan Stanley will make reasonable efforts to identify and produce communications between it and EG Bowman discussing or referring to the supersedeas bonds filed in this action. Coleman's attempt to obtain a broader range of documents is simply a fishing expedition designed to harass Morgan Stanley and add to the costs of this limited cost proceeding.

REQUEST FOR PRODUCTION NO. 5:

All documents relating to Morgan Stanley's claim for taxation of the cost of the Escrow Account, including but not limited to documents relating to:

- a. the amount charged to Morgan Stanley, or any person or entity acting on Morgan Stanley's behalf, in connection with the Escrow Account;
- b. the amount paid by or on behalf of Morgan Stanley in connection with the Escrow Account;
- c. the identity of each payor and each recipient of any such payment;
- d. any discount, rebate, refund, trade-off, barter, or other exchange of consideration of any kind in connection with the Escrow Account;
- e. any amount held in the Escrow Account;
- f. any request or demand by or on behalf of Morgan Stanley, the Bank of New York, or any other person or entity for the creation of an escrow account relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment;
- g. any discussion or analysis of such a request or demand;

- h. any communication concerning and any description or discussion of how the costs associated with the Escrow Account were calculated or derived;
- i. any inquiry or investigation undertaken by or on behalf of Morgan Stanley relating to the cost or amount of fees quoted, estimated, or charged by any financial institution or other entity in connection with an escrow account relating to the Costs Appeal Bond, the Main Appeals Bond, the Costs Judgment, or the Main Judgment;
- j. any quote or estimate received by or on behalf of Morgan Stanley from any financial institution or other entity of the cost or amount of fees associated with an escrow account relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment; or
- k. any comparison or other analysis undertaken by or on behalf of Morgan Stanley of any such quote or estimate.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of the escrow account costs claimed by Morgan Stanley in the Cost Motions. Further, Morgan Stanley will make reasonable efforts to identify and produce communications between it and the Bank of New York relating to the costs of the Escrow Account. Morgan Stanley will also produce documents sufficient to show how the Bank of New York was selected as an escrow agent. However, Coleman's attempt to obtain every piece of paper relating to the Escrow Account is simply overbroad and not reasonably calculated to lead

to the discovery of admissible evidence in this limited cost proceeding. The only relevant information about the Escrow Account in this limited cost proceeding is the amount of the fees paid to the Bank of New York so they could manage the Escrow Account required to obtain the supersedeas bond.

REQUEST FOR PRODUCTION NO. 6:

All documents relating to any communication between Morgan Stanley (or any person or entity acting on Morgan Stanley's behalf) and any other person or entity, including but not limited to any communication between Morgan Stanley and E.G. Bowman Co., Inc., The Bank of New York, Safeco Insurance Co., or AIG, relating to:

- a. a bond, escrow account, or other form of security relating to the Costs Judgment or the Main Judgment;
- b. the Costs Appeal Bond;
- c. the Main Appeal Bond;
- d. the Escrow Account.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce documents constituting communications between the entities referred to in this request that discuss or refer to the determination of the amount of the bond premiums and escrow account fees claimed by Morgan Stanley in the affidavits supporting its Cost Motions.

REQUEST FOR PRODUCTION NO. 7:

All documents relating to the release, discharge, closing, or cancellation of the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account, including but not limited to documents sufficient to show the date on which Morgan Stanley first requested such release, discharge, closing, or cancellation and documents sufficient to show the date on which such release, discharge, closing, or cancellation was affected.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the date on which Morgan Stanley first requested a release, discharge, closing, or cancellation of the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account and documents sufficient to show the date on which such release, discharge, closing, or cancellation was affected.

REQUEST FOR PRODUCTION NO. 8:

All documents relating to any consideration or analysis by or on behalf of Morgan Stanley of forms or sources of security for the Costs Judgment or the Main Judgment other than the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 9:

All documents relating to Morgan Stanley's claim for taxation of the cost of mediation, including but not limited to:

- a. the amount and nature of mediation costs charged to Morgan Stanley or any person or entity acting on Morgan Stanley's behalf; or
- b. the amount and nature of mediation costs paid by or on behalf of Morgan Stanley.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley further objects to this Request to the extent it seeks information that is already available to CPH regarding the "nature" of mediation costs that Coleman itself claimed when it was the prevailing party. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of mediation costs claimed by Morgan Stanley in the Cost Motions.

REQUEST FOR PRODUCTION NO. 10:

All documents relating to Morgan Stanley's claim for taxation of the cost of expert fees, excluding copies of expert reports and expert deposition transcripts, and including but not limited to documents relating to:

- a. the amount and nature of expert fees charged to Morgan Stanley or any person or entity acting on Morgan Stanley's behalf;
- b. the amount and nature of expert fees paid by or on behalf of Morgan Stanley;
- c. any communication between Morgan Stanley (or any person or entity acting on Morgan Stanley's behalf) and any other person or entity relating to the amount, nature, or payment of expert fees;
- d. whether any of the expert fees for which costs are claimed by Morgan Stanley are attributable to expert depositions;
- e. the purpose for which any such expert deposition was used in this Action;
- f. whether any of the expert fees for which costs are claimed by Morgan Stanley are attributable to the preparation of a court-ordered report; or
- g. the purpose for which any such court-ordered report was used in this Action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley further objects to this Request to the extent it seeks information that is already available to CPH regarding the "nature" of the expert costs incurred by Morgan Stanley. After years of litigation, Coleman is well aware of the purpose to which the expert reports and testimony were used by Morgan Stanley. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents

sufficient to show the amount of expert fees claimed by Morgan Stanley in the Cost Motions in the form of the expert witness invoices paid on behalf of Morgan Stanley.

REQUEST FOR PRODUCTION NO. 11:

All documents relating to Morgan Stanley's claim for taxation of the cost of hearing and trial transcripts, excluding copies of such transcripts, and including but not limited to documents relating to:

- a. the amount of hearing or trial transcript costs charged to Morgan Stanley or any person or entity acting on Morgan Stanley's behalf; or
- b. the amount of hearing or trial transcript costs paid by or on behalf of Morgan Stanley.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley further objects to this Request to the extent it seeks information that is already available to CPH. CPH was present for all the hearings in this case as well as the trial. In fact, CPH sought recovery for the costs of trial transcripts and hearing transcripts when it was the prevailing party. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of hearing and trial transcript costs claimed by Morgan Stanley in the Cost Motions in the form of the hearing and trial transcript invoices paid on behalf of Morgan Stanley.

REQUEST FOR PRODUCTION NO. 12:

All documents relating to Morgan Stanley's claim for taxation of the cost of deposition transcripts and videotapes, excluding copies of such transcripts and videotapes, and including but not limited to documents relating to:

- a. the amount of deposition transcript or videotape costs charged to Morgan Stanley or to any person or entity acting on Morgan Stanley's behalf; or
- b. the amount of deposition transcript or videotape costs paid by or on behalf of Morgan Stanley.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley further objects to this Request to the extent it seeks information that is already available to CPH. CPH was present for the depositions reflected in the materials supporting Morgan Stanley's Cost Motions. In fact, CPH sought recovery for the costs of depositions when it was the prevailing party. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of deposition transcript and videotape costs claimed by Morgan Stanley in the Cost Motions in the form of the deposition invoices paid on behalf of Morgan Stanley.

REQUEST FOR PRODUCTION NO. 13:

All documents relating to Morgan Stanley's claim for taxation of the cost of discovery imaging and coding or document production and management, excluding copies of the documents that were imaged, coded, produced, or managed, and including but not limited to documents relating to:

- a. the amount and nature of the discovery imaging or coding or document production and management costs charged to Morgan Stanley or to any person or entity acting on Morgan Stanley's behalf;
- b. the amount and nature of the discovery imaging or coding or document production and management costs paid by or on behalf of Morgan Stanley;
- c. any communication between Morgan Stanley (or any person or entity acting on Morgan Stanley's behalf) and any other person or entity, including but not limited to any communication between Morgan Stanley and Compulit, relating to the amount, nature, or payment of discovery imaging or coding or document production and management costs;
- d. whether any of the documents as to which such costs were incurred were actually filed with the court in this Action;
- e. whether, for each document as to which such costs were incurred, such document was actually produced to CPH;
- f. whether any of the claimed discovery imaging or coding or document production and management costs constituted the action cost of copies obtained in discovery;
- g. whether there were discounts, based on volume or otherwise, available to or used by Morgan Stanley or its lawyers or law firms relating to discovery imaging or coding or document production and management (including but not limited to copying of documents); or
- h. whether any effort was made by or on behalf of Morgan Stanley to determine whether lower prices for the discovery- or document-related tasks for which costs are claimed were available from vendors other than those who were used to carry out the tasks.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Morgan Stanley objects to this Request on the grounds that it is overbroad and to the extent it seeks information that is already available to CPH. CPH is aware of what documents it produced and the copying, imaging and coding arrangement with Compulit. Further, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. In addition, Morgan Stanley objects to this Request on the ground that it seeks irrelevant documents not reasonably calculated to lead to the discovery of admissible evidence since Morgan Stanley's claim only seeks to recoup those costs associated with discovery imaging and coding.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of discovery imaging and coding costs claimed by Morgan Stanley in the Cost Motions in the form of the invoices paid by Morgan Stanley for such costs.

REQUEST FOR PRODUCTION NO. 14:

All documents, excluding copies of deposition transcripts, deposition videotapes, trial transcripts, and documents produced or obtained in prior discovery in the Action, relating to costs claimed by Morgan Stanley relating to electronic discovery, including but not limited to costs relating to any search for electronically stored documents, any review or production of such documents, or any outside experts or consultants involved in any tasks relating to electronic discovery.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Morgan Stanley objects to this Request on the grounds that it is overbroad to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. In addition, Morgan Stanley objects to this Request on the ground that it seeks irrelevant documents not reasonably calculated to lead to the

discovery of admissible evidence because Morgan Stanley is not claiming electronic discovery costs in the Cost Motions. To the extent that this Request targets the Compulit costs claimed by Morgan Stanley, Morgan Stanley objects to it as duplicative of Request 13.

REQUEST FOR PRODUCTION NO. 15:

All documents relating to any effort to obtain, the results of any effort to obtain, or the receipt of any economic benefit, consideration, or other advantage of any kind in exchange for agreeing to or having agreed to do business with any person or entity to whom payment was made for which Morgan Stanley now seeks reimbursement in the form of a costs award.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley responds that it is not aware of any documents that are responsive to this Request.

REQUEST FOR PRODUCTION NO. 16:

All documents relating to any gift received by Morgan Stanley from any person or entity to whom payment was made for which Morgan Stanley now seeks reimbursement in the form of a costs award.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley responds that it is not aware of any documents that are responsive to this Request.

REQUEST FOR PRODUCTION NO. 17:

All documents, excluding copies of deposition transcripts, deposition videotapes, trial transcripts, and documents produced or obtained in prior discovery in the Action, that may tend to support or refute the assertion in the Costs Motions and supporting affidavits that the claimed costs were reasonable and necessary to the defense of the Action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley further objects to the extent that this Request seeks a legal theory or conclusion and to the extent it seeks information that is already available to CPH. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Lastly, Morgan Stanley objects to the term "refute" as vague and ambiguous because it can have very different meanings to CPH and Morgan Stanley in this context.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents that Morgan Stanley believes are sufficient to support the costs itemized in the affidavits filed in support of the Cost Motions.

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By: 

BRUCE S. ROGOW
Counsel for Defendant

NOT A CERTIFIED COPY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided to the following counsel listed below, by Federal Express and U.S. Mail this 22 day of August, 2008:

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IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

FILED
05 MAR 10 AM 11:29
FIFTEENTH JUDICIAL CIRCUIT CIVIL 9
PALM BEACH COUNTY, FL

ORDER FOLLOWING IN CAMERA INSPECTION (STRONG)

THIS CAUSE came before the Court, in Chambers, on MS & Co.'s filings pursuant to the Court's February 23, 2005 Order for In Camera Inspection and on Plaintiff's Motion for Order Declaring Attorney-Client Privilege Waived for Certain Documents Relating to William Strong, and following hearing on March 7, 2005.

William H. Strong played an important role for MS & Co. in the transaction under review here. In 1992 he was employed by Soloman Brothers International Limited ("SBIL"). He left SBIL and moved to MS & Co. in 1993. By 1995 there were potential legal proceedings in Italy against both Mr. Strong and SBIL relating to a proposed life insurance joint venture between Ente Nazionale Idrocarburi and Societa Assicurazioni Industriali Sp A. CPH seeks access to documents withheld by MS & Co. as privileged related to those proceedings, documents the Court has previously found should have been disclosed under its March, 2004 order requiring MS & Co. to produce documents containing references to Strong's, as well as other MS & Co. employees', truthfulness, veracity, and moral turpitude. MS & Co. contends that it received or prepared the documents in its possession as a result of its participation in a common defense with SBIL. CPH refutes that contention.

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Communications between MS & Co. and its counsel are subject to an attorney-client

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EXHIBIT
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privilege, unless waived by publication to third parties or dissemination beyond those in the corporate structure with a need to know. See Southern Bell Telephone and Telegraph Co. v. Deasan, 632 So. 2d 1377 (Fla. 1994). Further, communications between counsel for SBIL or Strong and MS & Co. may be protected by a work-product privilege if part of a common defense or interest.

The relationships between SBIL, Strong, and MS & Co. are reflected in three letters. A review of those letters reveals that most information was shared with MS & Co. for MS & Co.'s business, not legal, purposes.

On April 20, 1995, Royce Miller, for SBIL, wrote Monroe Sonnenborn, for MS & Co., confirming that Solomon would indemnify Strong for his defense, within certain parameters. The letter specifically noted that "(i)f you believe that Morgan Stanley requires separate legal representation on this matter, we believe that it would be appropriate for Morgan Stanley to pay the expenses of such representation." Thus, SBIL knew that MS & Co. and Strong's interests were distinct. The letter closed,

(f)inally, we believe that it is likely that [Mr. Strong's] and Morgan Stanley will have access to confidential information relating to Solomon Brothers' consideration of the proposed ENI/SAI joint venture and the defense strategies of other potential defendants and therefore believe that it would be appropriate to put a confidential agreement in place.

Thus, MS & Co. and SBIL *agreed* to confidentiality. The letter did not attempt to predicate the duty of confidentiality on a common defense theory; indeed, nowhere in the letter does it imply that SBIL believed it shared a common *litigation* interest with MS & Co.

On May 11, 1995, Monroe Sonneborn, for MS & Co., wrote SBIL. That letter acknowledges a common legal interest between Strong and SBIL; it does not reference any common legal interest between MS & Co. and either Strong or SBIL. The letter, which was counter-signed by Strong, includes MS & Co.'s agreement to hold information it receives

036453

confidential. MS & Co.'s business, not legal, purpose in receiving confidential information is established by the letter's terms: MS & Co. was permitted to use the confidential information "to brief senior management concerning the Milan Proceedings;" Soloman agreed it would not make any disclosures for the purpose of harming Strong or MS & Co.'s reputation; and "Strong and Morgan Stanley may also discuss confidential information with Morgan Stanley public relations personnel, who shall not distribute, refer to or comment on such confidential information without the consent of both our legal departments."

Also on May 11, 1995, John P. Cooney, Jr., of Davis, Polk and Wardwell, as "Counsel for William H. Strong", wrote David W. Mayhew of Clifford Chance representing SBIL memorializing their agreement to exchange "confidential attorney client privileged and work product materials" and hold it in confidence "for the limited and restricted purpose of assisting Mr. Strong and SBIL in preparing for possible litigation." The letter agreement further required "Mr. Strong and SBIL . . . to return all documents, notes, memoranda or other records of this information . . ." Though Mr. Cooney by affidavit avers he was representing both Strong and MS & Co. in the matter, his legal bills were paid by SBIL. MS & Co. knew, however, by virtue of the April 20, 1995 Miller letter that SBIL expected MS & Co. to pay its own legal bills. Further, his May 11, 1995 letter to Mayhew confirms his belief that Strong, not MS & Co., was his client for purposes of a joint defense agreement with SBIL.

These letters reflect the obvious: MS & Co. had no common *legal* interest with Strong or SBIL in the *defense* of the Italian proceedings. Indeed, the proceedings could have no legal effect on MS & Co. until they were concluded. It did, however, have a *business* interest. MS & Co. did have a legal interest in *monitoring* and *understanding* the Italian proceedings, so that it could determine the timing and contents of regulatory filings. Obviously, though, that was not an interest shared by SBIL. Consequently, the Court has attempted, to the extent possible, to isolate work-product and attorney-client privileged communications created or made to advise MS & Co. of the status and timing of the Italian

036454

proceedings, provided that information was not published outside the group of attorneys representing MS & Co. for this limited purpose.

Based on the foregoing, it is

ORDERED AND ADJUDGED that MS & Co.'s objections are sustained, in part, and overruled, in part. The Court concludes that those items attached as Exhibit 1 are not privileged. The sealed items reviewed shall not be unsealed or released from the Clerk's custody absent further Order of this or an appellate court.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 10th day of March, 2005.


ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:

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Washington, DC 20036

036455

WITNESSES FOR CPH'S CORPORATE DEPOSITION TOPICS

NO.	CORPORATE DEPOSITION TOPICS	WITNESS(ES)
1.	Payment of or any reimbursement for payment of costs detailed in the Costs Motions.	Theresa Pilosi Joe Ianno Thomas Clare
2.	Morgan Stanley's claim for taxation of the cost of bond premiums	Zakia Campbell Joe Ianno
3.	Morgan Stanley's claim for taxation of the cost of broker commissions.	Zakia Campbell Joe Ianno
4.	Morgan Stanley's claim for taxation of the cost of the Escrow Account.	Zakia Campbell Joe Ianno
5.	Any consideration or analysis by or on behalf of Morgan Stanley of forms or sources of security for the Costs Judgment or the Main Judgment other than the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account.	Zakia Campbell
6.	Any and all alternatives considered, offered, or investigated as a means of securing any judgment entered or expected to be entered in Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., CA 03-5045 (Fl.).	Zakia Campbell
7.	Morgan Stanley's claim for taxation of the cost of mediation.	Joe Ianno Thomas Clare Theresa Pilosi
8.	Morgan Stanley's claim for taxation of the cost of expert fees.	Thomas Clare Joe Ianno Theresa Pilosi
9.	Morgan Stanley's claim for taxation of the cost of hearing and trial transcripts.	Joe Ianno
10.	Morgan Stanley's claim for taxation of the cost of deposition transcripts and videotapes.	Joe Ianno Thomas Clare
11.	Morgan Stanley's claim for taxation of the cost of discovery imaging and coding or document production and management.	Thomas Clare Theresa Pilosi
12.	Morgan Stanley's claim for the taxation of costs relating to electronic discovery, including but not limited to costs relating to any search for electronically stored documents, any review or production of such documents, or any outside experts or consultants involved in any tasks relating to electronic discovery.	MS is not seeking costs related to electronic discovery.
13.	Any effort to obtain, the results of any effort to obtain, or the receipt of any economic benefit, gift, consideration, or other advantage of any kind in exchange for agreeing to or having agreed to do business with any person or entity to whom payment was made for which Morgan Stanley now seeks reimbursement in the form of a costs award.	Joe Ianno Thomas Clare Zakia Campbell



WITNESSES FOR CPH'S CORPORATE DEPOSITION TOPICS

14.	Any documents produced by Morgan Stanley in response to CPH's July 25, 2008 Request for Production of Documents.	Joseph Ianno Thomas Clare Zakia Campbell Theresa Pilosi
-----	--	--

NOT A CERTIFIED COPY

#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).

NOTICE OF CANCELLATION OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has cancelled the hearing on the following date:

DATE: Thursday, September 18, 2008

TIME: 8:45 a.m.

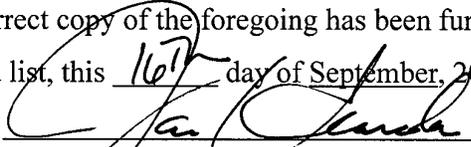
JUDGE: Honorable Robin Rosenberg

PLACE: Palm Beach County Courthouse, 205 N. Dixie Highway, West Palm Beach, FL

ROOM #: 10-A

MATTERS TO BE HEARD: Plaintiff's Motion for Extension of Discovery Cut-Off

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and U.S. Mail to all Counsel on the attached list, this 16th day of September, 2008.



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Phone: (561) 686-6300
Fax: (561) 684-5816
Attorney for Plaintiff

FILED
08 SEP 18 PM 3:41
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 9

NOT A CERTIFIED COPY

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AJ
Notice of Hearing

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#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AI

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

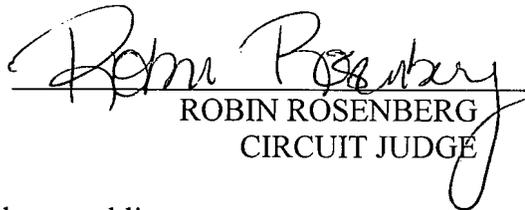
Defendant(s).

AGREED ORDER ON PLAINTIFF'S MOTION FOR
EXTENSION OF DISCOVERY CUT-OFF

THIS CAUSE having come to be considered upon PLAINTIFF'S MOTION FOR EXTENSION OF DISCOVERY CUT-OFF, and the Court having been advised of the stipulation of the parties to the granting of the relief described herein, it is hereby,

ORDERED and ADJUDGED; that the costs-related discovery cut-off of September 22, 2008 is hereby extended to November 22, 2008. This extension is without prejudice to an application for further extension should the need for such extension be demonstrated to the satisfaction of the Court.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 17th day of September, 2008.


ROBIN ROSENBERG
CIRCUIT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

16div-032004

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AI
Agreed Order on Plaintiff's Motion for Extension of Discovery Cut-Off

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#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

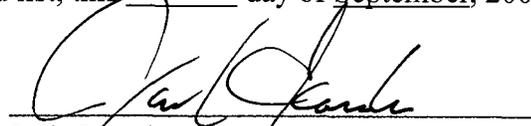
Defendant(s).

FILED
08 SEP 24 PM 4:02
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 3

PLAINTIFF'S MOTION FOR STATUS CONFERENCE

Plaintiff, Coleman (Parent) Holdings, Inc., moves this Honorable Court to conduct a brief status conference to identify outstanding issues and schedule their resolution.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and U.S. Mail to all Counsel on the attached list, this 24th day of September, 2008.



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Attorney for Plaintiff

NOT A CERTIFIED COPY

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.
Case No.: 2003 CA 005045 AJ
Plaintiff's Motion for Status Conference

COUNSEL LIST

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#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

08 SEP 24 PM 4:02
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 3

FILED

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: October 1, 2008

TIME: 8:45 a.m.

JUDGE: Hon. Robin Rosenberg

PLACE: Palm Beach County Courthouse, 205 N. Dixie Highway, West Palm Beach, FL

ROOM #: 10-A

SPECIFIC MATTERS TO BE HEARD:

Plaintiff's Motion for Status Conference

***In accordance with the Americans with Disabilities Act, persons in need of a special accommodation to participate in this proceeding, contact the Court Administrator's office not later than seven (7) days prior to the proceedings. If hearing impaired, contact (TDD) 1-800-955-8771, or (V) 1-800-955-8770 via Florida Relay.**

Case No.: 2003 CA 005045 AI
Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by
Fax and U.S. Mail to all Counsel on the attached list, this 24th day of September, 2008.



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Attorney for Plaintiff

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Case No.: 2003 CA 005045 AI
Notice of Hearing

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New York, NY 10010

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 03 CA-005045 AJ

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO. INC.,

Defendant.

FILED
08 SEP 26 PM 3:57
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 3

NOTICE OF TELEPHONIC APPEARANCE

YOU ARE NOTIFIED that attorney Bruce Rogow, co-counsel for Defendant, will appear by telephone at Plaintiff's Motion for Status Conference hearing. This hearing has been set by the Plaintiff to be heard at Uniform Motion Calendar (8:45 a.m.) on October 1, 2008. The Court can reach Mr. Rogow at the following telephone number at that time: (828) 966-██████████

CERTIFICATE OF SERVICE

I HERBY CERTIFY that a true and correct copy hereof has been served by facsimile and U.S. Mail on this 26 day of September, 2008 to all those listed on the attached Service List.

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BY: 
JOSEPH IANNO, JR.
Florida Bar No: 655351
SYLVIA WALBOLT
Florida Bar No. 033604

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY

CIVIL DIVISION "AJ"
Case No. 502003CA005045XXXXMB

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff/Appellant,

v.

MORGAN STANLEY & CO. INC.,

Defendant/Appellee.

NOTICE OF APPEAL
OF A NON-FINAL
ORDER

FILED
COURT - 1 PM 3:46
CIVIL DIVISION
PALM BEACH COUNTY, FL
SEP 2 2008

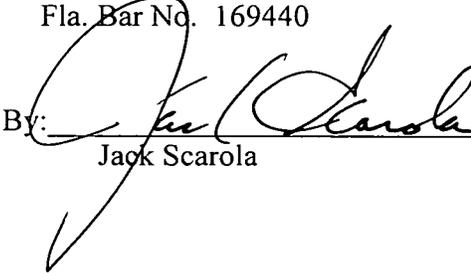
NOTICE IS GIVEN that Coleman (Parent) Holdings Inc., Plaintiff/Appellant, appeals to the Fourth District Court of Appeal of Florida, the Order of this Court rendered September 2, 2008. The nature of the order is a non-final order denying, without discovery or an evidentiary hearing, Plaintiff/Appellant's Florida Rule of Civil Procedure 1.540(b) motion for relief from the final judgment.

Respectfully submitted,

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By: 
Jack Scarola

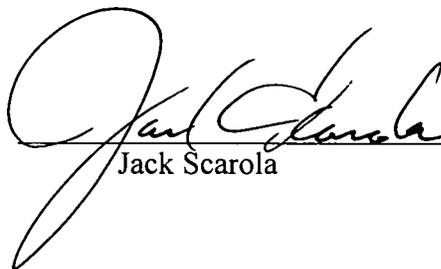
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to counsel of record for Morgan Stanley on the following service list by U.S. Mail on this 1st day of October, 2008:

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Jack Scarola

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION "AJ"
CASE NO.: 502003CA005045XXXXMB

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

**ORDER FINDING THAT PLAINTIFF HAS NOT RAISED
A COLORABLE ENTITLEMENT TO RULE 1.540(B) RELIEF
AND DENYING PLAINTIFF'S VERIFIED MOTION TO VACATE
THE JUDGMENT AND GRANT A NEW TRIAL ON DAMAGES**

THIS CAUSE came before the Court on May 22, 2008 on a Verified Motion to Vacate the Judgment and Grant a New Trial on Damages ("Motion") filed by Plaintiff Coleman (Parent) Holdings, Inc. ("CPH"). This Court, having reviewed the case file, considered memoranda of law, heard argument of counsel and being otherwise advised in the premises, finds:

I. INTRODUCTION

The Motion, filed by CPH on March 18, 2008, invokes Florida Rule of Civil Procedure 1.540 ("Rule 1.540") and asks the Court to vacate the final judgment in favor of Morgan Stanley & Co. Incorporated ("MS"), enter a default judgment as to all elements of CPH's liability claims, and order a new trial on damages. The parties agreed that, as a preliminary matter, the Court must first determine if CPH has raised a colorable entitlement to Rule 1.540(b) relief. For reasons discussed more fully *infra*, this Court finds that CPH is not entitled to an evidentiary hearing because the Motion alleges matters that, even if true, have no effect on the new final judgment and, thus, CPH has failed to raise a colorable entitlement to Rule 1.540 relief.

II. FACTUAL BACKGROUND

A. **The Discovery Phase of CPH's Lawsuit Against MS**

CPH sued MS for conspiring with Sunbeam Corporation to perpetrate a securities fraud in connection with Sunbeam's purchase of CPH's interest in the Coleman Company, Inc. During discovery, CPH became concerned that MS was not adequately searching for e-mails responsive to its discovery requests. On April 16, 2004, the Court entered an Agreed Order requiring MS to produce certain electronic discovery and certify compliance. On May 14, 2004, MS produced about 1,300 pages of e-mails, but did not certify compliance until June 23, 2004. The certificate of compliance was signed by Arthur Riel, Executive Director of MS's information technology group. It was not until over four months later, on November 17, 2004, that CPH learned MS had violated the Agreed Order upon discovering that MS knew of hundreds of backup tapes in a MS-owned Brooklyn warehouse containing e-mails that MS had not yet searched or produced to CPH.

B. **Pre-Trial Remedial Rulings Based On MS Discovery Abuses**

I. March 1, 2005 Order Imposing Adverse-Inference Jury Instruction

In response to MS's failures to comply with court-ordered discovery, CPH filed a motion asking the Court to instruct the jury that MS's non-compliance with discovery orders could give rise to an adverse inference that the contents of the missing e-mails would be harmful to MS's defense ("Adverse Inference Motion"). In support of MS's opposition to the Adverse Inference Motion, MS filed a declaration of James F. Doyle, Executive Director of MS's Law Division, which averred that at "the end of October 2004, I learned that additional e-mail backup tapes had been located within [MS], and that data on those tapes had not been restored or searched prior to [MS's] May 14, 2004 e-mail production."

On March 1, 2005, the Court granted CPH's Adverse Inference Motion after finding that MS "and its counsels' lack of candor [had] frustrated the Court and opposing counsel's ability to be fully and timely informed." (3/1/05 Order, at 9.) The Court cited MS's numerous failures to conduct proper discovery as having been done "knowingly, deliberately, and in bad faith," such that sanctions were warranted in the form of (1) requiring MS to bear the burden of proving to the jury that it lacked knowledge of the fraud and did not aid and abet or conspire to defraud CPH, and (2) reading to the jury a statement of evidence concerning MS's efforts to hide its e-mails. (*Id.* at 10, 14.) The Court further ordered MS to "continue to use its best efforts to comply with" the court-ordered discovery. (*Id.* at 13.)

2. March 23, 2005 Entry of Partial Default Order

On March 15, 2005, CPH moved for further sanctions based on continued discovery abuses by MS after learning that MS had not been candid with CPH or the Court at the evidentiary hearing on CPH's Adverse Inference Motion. After outlining MS's discovery abuses that, in the Court's words, would "take a volume to recite," the Court found that MS had "deliberately and contumaciously violated numerous discovery orders." (3/23/05 Order, at 11-16.) Among the violations cited by the Court was MS's failure to timely notify CPH and the Court that its Certificate of Compliance was false because 1,423 tapes found in a MS-owned Brooklyn store room ("Brooklyn Tapes") and 738 8-millimeter backup tapes ("8-Millimeter Tapes") had not been searched at the time of MS's certified compliance. Based on this, the Court built on its prior March 1, 2005 order by entering a partial default against MS and ordering that several portions of CPH's Amended Complaint be read into evidence at trial and deemed established for all purposes. (*Id.* at 17.) By virtue of this order, CPH bore only the burden of proving the elements of reliance and damages at trial, which were held to be "independent of the

[MS] e-mails.” (Id. at 12.)

Further, the Court stated that the adverse inference instruction could be amended to include the newly established evidence, *i.e.* a description of MS’s e-mail misconduct. The jury would be instructed that “it may consider those facts in determining whether [MS] sought to conceal their offensive conduct when determining whether an award of punitive damages is appropriate.” (Id.) The Court described its purpose in imposing these additional sanctions as “level[ing] the playing field” and justified the scope of its sanctions by explaining that “the sanctions chosen are the most conservative available to the Court to address the spoliation of evidence and willful violation of the Agreed Order.” (Id. at 11-12.)

C. Discovery-Misconduct Statement To Be Used By Jury In Determining The Propriety Of Punitive Damages

In mid-May 2005, the Court held a hearing to finalize the exact wording and content of the Discovery-Misconduct Statement. A disagreement arose as to what knowledge regarding the “newly discovered” backup tapes should be attributed to MS’s in-house legal team; more specifically, if the jury should be instructed that MS’s in-house legal team merely knew of the *existence* of the tapes (MS’s position), or if they knew that the tapes *contained e-mails* (CPH’s position). MS filed Offers of Proof by four members of MS’s in-house legal team generally asserting that each first learned there was e-mail on the Brooklyn Tapes in late October 2004 and that there was e-mail on the 8-Millimeter Tapes in November 2004. Based on these Offers of Proof, the court instructed the jury that MS’s in-house legal team did not know there was e-mail on the tapes until October 2004.

D. Final Verdict and Judgment for CPH

After trial, the jury returned a verdict in CPH’s favor for \$604,334,000 in compensatory damages and \$850,000,000 in punitive damages. On June 23, 2005, the Court rendered a Final

Judgment for CPH based on the verdicts, and on June 27, 2005, MS served its Notice of Appeal.

E. Post-Verdict Notices Filed By MS

1. June 17, 2005 Notice and Subsequent Criminal Contempt Proceedings

On June 17, 2005, after the jury rendered its verdict, but before MS served its Notice of Appeal, MS filed a brief, four-page "Notice." The Notice retracted several statements previously made by MS's in-house legal team members about their knowledge of the e-mails. The Notice asserted that as "a result of a review of e-mails discovered by a new e-mail search, Morgan Stanley has determined that the offers of proof and related statements should be corrected to state that the Law Division was aware in July 2004 that some of the Brooklyn Tapes contained e-mail and that certain 8-mm tapes existed." Accordingly, MS expressly retracted, withdrew, and corrected any and all statements (*i.e.* not limited to those expressly mentioned in the Notice), written or oral, made or submitted on its behalf, to the contrary.

2. December 21, 2006 Notice

MS later filed a second "Notice" that purported to resolve any ambiguity concerning the meaning of the first "Notice." Specifically, while the first Notice states that MS's in-house legal team knew that the Brooklyn and 8²Millimeter Tapes contained e-mails *in* July 2004, the second Notice states that "[MS's] Law Division was aware of the existence of the referenced e-mail back-up tapes and the presence of e-mail on some of those tapes *prior to* July 2004." (emphasis added). The brief two-page second Notice offered no explanation of this new change in information.

F. Fourth District Court of Appeal Ruling

On appeal, the Fourth District reversed "both the compensatory and punitive damage awards and remand[ed] this cause with directions to enter judgment for [MS]." Morgan Stanley

& Co. Inc. v. Coleman (Parent) Holdings Inc., 955 So. 2d 1124, 1133 (Fla. 4th DCA 2007). In reaching this conclusion, the Fourth District focused exclusively on CPH's failure to prove a correct measure of its amount of damages, finding it to be a dispositive issue warranting reversal. Id. at 1126. Specifically, the Fourth District found that CPH failed to meet its burden of proving the actual, "fraud-free" value of the Sunbeam stock at the time of purchase, as required by settled Florida law. Id. at 1131. The Fourth District faulted CPH for not having its expert conduct an event study to account for certain non-fraud related factors that may have contributed to the stock's decline. Id. The Fourth District further concluded that because CPH failed to prove any legally cognizable damage resulting from the alleged fraud, the punitive damages award could not stand. Id. at 1132-33.

The Fourth District reversed the judgment for CPH on the sole ground that CPH had failed to present legally sufficient proof of damages. Finding that the damages error had resulted from CPH's choice of damages theory, the Fourth District expressly denied CPH a new trial, and issued a mandate directing this Court to enter judgment in favor of MS. The Fourth District denied CPH's request for rehearing and the Florida Supreme Court denied review. This Court entered final judgment in favor of MS.

G. CPH's Motion to Vacate the Final Judgment

In its Motion, CPH asks the Court to vacate the final judgment of dismissal in favor of MS, enter a total default as to all elements of CPH's claims, and order a new trial on damages. (CPH Mot. 1.) The Motion asserts that it is properly brought under Rule 1.540 because MS perpetrated both a fraud upon the Court *and* a fraud upon CPH.

First, CPH asserts that the Motion was timely filed within one year from the date this Court entered the new final judgment pursuant to the Fourth District's mandate.

Second, CPH argues that “[b]ecause this case involves a fraud upon the Court, the law does not require that actual prejudice be established.” CPH claims that MS and its attorneys committed a fraud upon the Court by telling the Court in pleadings, arguments, offers of proof, and sworn statements that its in-house legal team did not know of unsearched and unproduced e-mails until late October 2004, after the June 23, 2004 certification of compliance. CPH supports this claim by referring to the two Notices filed by MS after the jury rendered its verdict. According to CPH, these Notices showed that MS’s in-house legal team “knew of unsearched emails, and thus knew that the June 23, 2004, certification was false, at the time the certification was made.” CPH claims that MS’s assertions about what knowledge its in-house legal team had regarding discovery misconduct, when the Court was determining which sanctions to impose, constituted fraud upon the court. CPH asserts that such fraud upon the court warrants relief under Rule 1.540 without a showing of prejudice. After noting that Florida courts have not yet addressed a situation identical to this case, CPH relied on a series of out-of-state and federal cases in which judgments have been set aside based on fraud upon the court.

Third, CPH argues that even if proof of prejudice were required, MS perpetrated a fraud that prejudicially affected CPH’s ability to fully and fairly present its case. According to CPH, had the Court known about the extent of MS’s noncompliance with its discovery order, it may have imposed greater sanctions up to and including a total default as to liability and a shifting of the burden of proof as to damages. CPH further asserts that had it known the extent of MS’s alleged fraud, it would have sought a remedial order with respect to damages. CPH also claims that MS’s alleged fraud impacted the jury’s deliberations because the Court required CPH to change its closing presentation based on MS’s representations that its in-house legal team did not know the unsearched Brooklyn tapes had e-mail until October 2004. Since MS’s post-verdict

notices revealed that this information was not true, CPH argues that MS improperly impacted what the jury heard, which offers additional proof of prejudice.

Fourth, CPH asserts that because it has presented a colorable entitlement to relief, it should be afforded permissible discovery prior to the evidentiary hearing.

Fifth and lastly, CPH maintains that this Court should vacate its new final judgment in MS's favor and instead (1) enter a complete default on all elements of liability, including reliance and the fact of damage, (2) shift the burden of proof on damages, and (3) order a new trial on compensatory and punitive damages. It argues that such action can be taken under the Court's authority to act based on a party's willful and contumacious discovery misconduct. CPH argues that this Court should place the burden on MS to prove what portion of the Sunbeam's stock collapse can be attributed to non-fraud-related causes.

H. MS's Opposition to CPH's Motion

In its Opposition to Motion to Vacate the Judgment and Grant a New Trial ("Opposition"), MS claims that new trial proceedings under Rule 1.540(b) are only appropriate in a narrow set of circumstances, none of which apply in the instant case.

First, MS states that CPH's request to retry its damages case is foreclosed by the Fourth District's decision and mandate. MS argues that CPH is attempting to circumvent the appellate decision by filing this Rule 1.540(b) motion and that the law of the case doctrine should apply.

Second, MS argues that CPH's "new evidence" is not "new" and does not justify the extraordinary relief CPH seeks because the contents of the June 2005 and December 2006 Notices did not materially alter the facts which CPH and the Court relied on in sanctioning MS. MS asserts that since CPH cannot show that the information in the Notices would have produced a different sanction or judgment that would have cured its flawed presentation of damages at

trial, CPH cannot demonstrate a prima facie case of fraud under Rule 1.540(b).

As a first sub-issue, MS asserts that there is no basis for finding that a damages default would have been imposed based on the contents of the Notices. MS points to the fact that the trial judge, during post-trial criminal contempt proceedings, stated that she was not sure the June 2005 Notice told her anything that she had not already found. Further, the default order specifically referenced misconduct by MS's in-house legal team and the litigation misconduct statement read to the jury likewise referred to such misconduct. MS states that the Notices had no bearing on CPH's failure to properly prove damages.

As a second sub-issue, MS asserts that the sanctions that CPH seeks are not obtainable because even if a total default had been entered against CPH, it would have only been to the *fact*, not the *amount*, of damages, meaning that MS would have still ultimately prevailed due to CPH's flawed proof of damages.

As a third sub-issue, MS asserts that CPH cannot show that the jury would have rendered a materially different verdict had they known about the contents of the Notices, because the misrepresentations were not relevant to the jury's deliberations on compensable damages. MS argues that it would have been error for the jury to consider the misconduct in determining anything except punitive damages.

As a fourth sub-issue, MS asserts that CPH is not entitled to further discovery or an evidentiary hearing based on the Fourth District's clear mandate for this court to enter final judgment in MS's favor. MS states that CPH's Motion is not facially sufficient to establish grounds for relief, and that CPH lost because it failed to prove its amount of damages, not because of MS's failure to produce all of the emails.

Third, MS argues that CPH waived its ability to seek further sanctions. MS claims that

CPH “held back” its arguments regarding the basis for its 1.540(b) argument because it wanted to wait and see how the Fourth District case was decided (*i.e.*, if the case was affirmed, then CPH would not have sought a new trial). To support its argument, MS sets forth four different scenarios: CPH could have (1) sought to renew its sanctions motion prior to MS’s appeal; (2) cross-appealed on grounds that the Court’s sanctions decision was too lenient; (3) asked the Fourth District for a new trial on damages; and (4) moved the Fourth District to relinquish jurisdiction for this Court to develop a record regarding the Notices.

I. CPH’s Reply Brief

In its Reply Brief, CPH first notes that MS never addressed CPH’s fraud upon the court claims. CPH maintains that by its silence, MS concedes that it committed fraud upon the Court, and that prejudice need not be shown as a matter of law. Second, CPH re-asserts that even if a showing of prejudice were required, the prejudice is manifest in this case in that the substantive fraud by MS materially misled the Court and CPH. CPH alleges that MS’s conduct caused it to avoid the more severe sanction of total default as to all elements of liability, including the fact of damage. CPH goes on to explain that if the Court had entered total default against MS, then the Fourth District could not have ruled as it did. Thus, CPH concludes, it has clearly demonstrated a colorable claim of prejudice. Third, CPH argues that MS’s procedural arguments lack merit and that its Rule 1.540(b) motion is both timely and proper. CPH asserts that MS erred in attempting to apply the law of the case doctrine because the Fourth District never considered and ruled on MS’s litigation misconduct and, instead, decided the case on other dispositive grounds. Fourth, CPH denies waiving its right to further sanctions by not first taking various other actions. CPH contends that it either lacked the ability or was not required to take such actions. Fifth, CPH restates that it has presented a colorable entitlement to relief and, as such, it is also

entitled to further discovery in order to uncover the extent of MS's bad acts.

III. LEGAL ANALYSIS

Rule 1.540(b) governs post-judgment relief from a final judgment and lists five categories of substantive grounds that can be used to support an order vacating a final judgment. One such ground is based upon a showing of "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." Fla. R. Civ. P. 1.540(b)(3).

A. **An Evidentiary Hearing on CPH's Motion is Not Required Because CPH Has Failed to Raise a Colorable Entitlement to Rule 1.540(b) Relief**

A trial court has broad discretion in evaluating a Rule 1.540(b) motion seeking relief from final judgment. Crowley v. Crowley, 678 So. 2d 435, 438 (Fla. 4th DCA 1996). Such motion should not be summarily dismissed without an evidentiary hearing unless its allegations and accompanying affidavits fail to allege a colorable entitlement to relief. Schleger v. Stebelsky, 957 So. 2d 71, 73 (Fla. 4th DCA 2007); Dynasty Exp. Corp. v. Weiss, 675 So. 2d 235, 239 (Fla. 4th DCA 1996); Crowley, 678 So. 2d at 437-38.

To warrant an evidentiary hearing, a Rule 1.540(b) motion must 1) be filed within a reasonable time and within one year of the final judgment, 2) plead fraud with particularity, and 3) explain why the fraud, if it exists, would entitle the movant to have the judgment set aside. Fla. R. Civ. P. 1.540(b); Flemenbaum v. Flemenbaum, 636 So. 2d 579 (Fla. 4th DCA 1994). The purpose of requiring such motion to plead fraud with specificity is to permit the court to determine if the movant "has made a prima facie showing which would justify relief from judgment," and is not merely rehashing matters explored at trial. Id. at 580. If a motion does not set forth a basis for relief on its face, then an evidentiary hearing is unnecessary, the time and expense of needless litigation is avoided, and the policy of preserving the finality of judgments is

enhanced. Id. at 579.

While CPH's Motion is timely and pleads fraud with particularity, the major point of contention is whether CPH has explained why it is entitled to have the new final judgment set aside. Specifically, CPH asserts that it has explained its entitlement by characterizing MS's alleged misconduct as fraud upon the court and, thus, that it need not show how such conduct prejudiced the final judgment. After a careful evaluation of Florida's jurisprudence addressing "fraud upon the court," this Court disagrees with CPH's assertions as this Order will discuss in detail.

1. *CPH's Motion is Timely and Properly Brought At This Time*

Generally, the one-year time limit for filing Rule 1.540(b) motions begins to run from the entry of a final judgment, not from resolution of an appeal from judgment. Fla. R. Civ. P. 1.540(b); see also Molinos v. E.I. Dupont De Nemours & Co., 947 So. 2d 521, 524 (4th DCA 2006). If, however, a prior judgment that is favorable to one party is reversed on appeal, that party may file a Rule 1.540(b) motion within one year from the date the new judgment was entered pursuant to the appellate court's mandate. Molinos, 947 So. 2d at 525. That is clearly what occurred in this case.

In Molinos, trial court judgments in the plaintiffs' favor were reversed on appeal. Id. at 523. The plaintiffs then sought Rule 1.540(b) relief from the new judgment based on newly discovered evidence. Id. The trial court denied plaintiffs' Rule 1.540(b) motions as untimely because they were filed more than one year after the original judgments had been entered. Id. at 524. As a matter of first impression, the Fourth District reversed, holding that the Rule 1.540(b) motions were timely because the relevant judgments "were those entered after [the defendant's] successful appeals." Id. at 525. The Fourth District explained that the new judgments caused a

substantive change in the parties' legal rights and obligations which, by the prior judgments, had been settled with finality. Id. (quoting Simon v. Navon, 116 F.3d 1, 3 (1st Cir. 1997)). Thus, the plaintiffs' time to file their Rule 1.540(b) motions ran from the date the new judgments were entered. Id.

Molinos is directly on point. Molinos makes clear that CPH's Motion is timely because it is this Court's new final judgment from which CPH is seeking Rule 1.540(b) relief. CPH filed the Motion within days of the new final judgment entered by this Court pursuant to the Fourth District's mandate, well within the one year time limit as described in Rule 1.540 and Molinos.

MS seeks to avoid this conclusion by claiming that CPH should or could have taken other actions such as 1) seeking renewed sanctions at trial and before MS's appeal, 2) cross-appealing on grounds that the trial court's sanctions were too lenient, or 3) asking the Fourth District to relinquish jurisdiction upon first learning of the Notices. These arguments are unpersuasive because CPH either lacked the ability or was not required to take such actions. CPH could not have sought additional sanctions or relief at the trial court level because the Notices containing the new information were not filed until after the trial was over. Further, CPH was not required to cross-appeal because cross-appeals are not required unless the appellee seeks to modify the judgment to obtain greater relief than that afforded by the trial court. Credit Indus. Co. v. Remark Chem. Co., 67 So. 2d 540, 540-41 (Fla. 1953). Here, it was unnecessary for CPH to cross-appeal because the original judgment was favorable to CPH and, thus, CPH had no need to seek a modified judgment. Lastly, no legal authority suggests that CPH was required to ask the Fourth District to relinquish jurisdiction after learning of the December 2006 Notice filed by MS as a prerequisite to filing its Motion. Rather, CPH followed the proper procedure endorsed in Molinos by filing its Motion within days of this Court's new final judgment.

2. CPH's Motion Pleads Fraud With Particularity

Fraud must be pled with particularity. Fla. R. Civ. P. 1.120(b) (allegations of fraud must “be stated with such particularity as the circumstances may permit”); Thompson v. Bank of New York, 862 So. 2d 768, 770 (Fla. 4th DCA 2003) (where fraud exists, “it is not so subtle a concept that it cannot be described with precision”). This same requirement applies to a motion for relief under Rule 1.540(b), which must clearly and concisely set forth the essential facts that constitute fraud and not mere legal conclusions. Flemenbaum, 636 So. 2d at 580. The reason for this requirement is to allow the court an opportunity to determine whether the movant “has made a prima facie showing which would justify relief from judgment.” Id. As observed in Flemenbaum, the term “fraud” is often loosely used by a party that is displeased with the opposing party’s conduct or simply unhappy with the results. Flemenbaum, 636 So. 2d at 580; see also Regalado v. Cabezas, 959 So. 2d 282, 286 (Fla. 3d DCA 2007); Quittner v. Quittner, 725 So. 2d 1168, 1169 (Fla. 3d DCA 1998).

The elements of fraud are: (1) a false statement concerning a material fact; (2) knowledge by the person making the statement that the representation is false; (3) the intent by the person making the statement that the representation will induce another to act on it; and (4) reliance on the representation to the injury of the other party. Hollywood Lakes Country Club, Inc. v. Cmty. Ass'n Servs., Inc., 770 So. 2d 716, 718 (Fla. 4th DCA 2000).

CPH’s Motion thoroughly alleges how and why MS misrepresented the fact of when its legal team learned about the e-mails. CPH points to the post-verdict Notices MS filed as evidence that it knew that this fact was misrepresented during litigation and at trial, and argues that MS made these misrepresentations to purposely deceive CPH as well as the Court. CPH

further alleges it relied on these misrepresentations in drafting its closing arguments. As such, this case does not fall into the category of cases where litigants loosely use the term “fraud” without supporting their claim with facts. Conversely, CPH has amply pointed out facts in support of its fraud claim. In sum, CPH’s Motion sufficiently pleads fraud with particularity.

3. *CPH Failed to Explain Why MS’s Alleged Conduct Entitles CPH to Have the Judgment Set Aside*

Since CPH timely filed its Motion and pled fraud with particularity, the only remaining issue is whether CPH clearly explained why MS’s alleged conduct, if true, entitles it to have the final judgment set aside, which is the final threshold requirement to obtaining an evidentiary hearing. Flemenbaum, 636 So. 2d at 580. An evidentiary hearing is unnecessary if a Rule 1.540(b) motion merely undertakes to rehash matters previously litigated at trial or raises inconsequential “de minimis” matters. Id.; cf. Crowley, 678 So. 2d at 438.

Flemenbaum involved an ex-husband’s “*pro se* motion for new trial based upon fraud upon the court under Rule 1.540,” which alleged that his ex-wife lied about cohabitating with another man at trial. Id. The trial court did not afford the husband an evidentiary hearing. Id. On appeal, the Fourth District affirmed after finding that the husband’s motion did not state facts that constituted fraud and, instead, sought to rehash matters fully explored at trial and “raised *de minimis* matters which had no effect on the final judgment.” Id. The court cited examples of sufficiently pled Rule 1.540(b) motions that invoked the evidentiary hearing requirement. See, e.g., Stella v. Stella, 418 So. 2d 1029 (Fla. 4th DCA 1982) (if proven, wife’s assertions that husband had testified that a statue was worth \$100, while knowing that its true value was \$35,000, would have changed the court’s equitable distribution and, thus, entitled wife to an evidentiary hearing); Ross v. Bandi, 566 So. 2d 55 (Fla. 4th DCA 1990) (evidentiary hearing required where husband alleged that he learned of an IRS tax lien after the final hearing, which

rendered his interest in a corporation worthless).

In Crowley, a husband was entitled to an evidentiary hearing on his Rule 1.540(b) motion seeking relief from a dissolution judgment. Crowley, 678 So. 2d at 438. The husband's motion, filed one week after the entry of the dissolution judgment, claimed entitlement to relief based upon "fraud...committed by [his] wife and her counsel on the Court;" specifically, the motion claimed that the wife and her counsel had lied by omission about the fact that, unknown to the husband, he would soon be terminated from his job, which would dramatically change his financial condition and, in turn, the final judgment. Id. at 437-38. The Fourth District noted that, in contrast to Flemenbaum, the husband's motion was not "a mere undertaking to 'rehash' matters previously litigated at trial or an effort to raise inconsequential 'de minimis' matters." Id. at 438. Instead, "the core of the husband's motion, if true, would undermine the very foundation upon which the dissolution judgment and order were built." Id.

In this case, CPH's Motion delves into MS's discovery misconduct, a topic that was extensively explored and affirmatively and unambiguously addressed by the Court at trial. For example and as noted in the Court's March 23, 2005 order granting partial default, the Court expressly considered MS's failure to timely notify CPH and the Court that its Certificate of Compliance was false. The only additional revelation raised in the post-verdict Notices is the date on which MS's in-house counsel knew that certain backup tapes contained e-mails that may have been responsive to CPH's discovery requests. While the Court does not consider the discovery abuses and misconduct by MS, up to and including the alleged misconduct perpetrated by its legal team, as *de minimis* when viewed through the lens of attorney professionalism, when viewed through the lens of a Rule 1.540(b) motion, it cannot be said that the additional attorney conduct revealed by the Notices affected the new final judgment, especially considering the

rationale behind the Fourth District's mandate, *i.e.* CPH's failure to prove damages at trial. In this strict sense, the conduct revealed by the Notices fits squarely within Flemenbaum's *de minimis* language.¹

Even considering as true all of CPH's allegations regarding MS's in-house legal team's knowledge, *i.e.*, that the undisclosed backup tapes had potentially responsive e-mails, CPH is not entitled to have the new final judgment set aside. The Fourth District resolved the appeal in MS's favor on one sole ground – CPH failed to adequately prove its damages at trial. Any information about what MS's in-house legal team knew or did not know about e-mails on the backup tapes has no bearing whatsoever on this legal conclusion. Unlike Stella, Ross, and Crowley where the parties' assertions, if true, would have altered the final judgments from which relief was sought, CPH's assertions, even if true, would not have altered the legal course leading to the issuance of the new final judgment.

CPH sets forth two theories that unsuccessfully attempt to refute this conclusion. First, CPH argues that, had the Court known about MS's fraud, it would have affected the resolution of the sanctions motions. This argument assumes the Court would have meted out sanctions even more severe than the partial default in the first place; second, it assumes that the Court would have entered a total default against MS on all elements including reliance and damages; and third, it assumes that the Court would have "altered the burden of proof as to damages," which would have affected what the Fourth District reviewed on appeal. Building assumption upon assumption in such a manner has not been the basis of any successful Rule 1.540 motion in other

¹ A Rule 1.540(b) motion is not the appropriate vehicle for handling attorney misconduct that does not prejudice the final judgment, as is the case here. Rather, such misconduct is more appropriately vindicated via criminal contempt proceedings and/or grievances filed with the Florida Bar. See generally Pugliese v. Pugliese, 347 So. 2d 422, 424 (Fla. 1977); Smith v. State, 954 So. 2d 1191 (3d DCA 2007) (defining purpose of criminal contempt as being "to punish assaults or aspersions upon the authority and dignity of the court or judge"). Indeed, CPH has already filed a motion for criminal contempt in this case.

cases this Court has reviewed.

There is no legal precedent supporting CPH's claim that the Court would or could have ordered MS to disprove the amount of damages. Indeed,

[i]t is well settled in Florida that a default judgment only admits to a plaintiff's entitlement to liquidated damages. 'Damages are liquidated when the proper amount to be awarded can be determined with exactness from the cause of action as pleaded, *i.e.*, from a pleaded agreement between parties, by an arithmetical calculation or by application of definite rules of law...However, damages are not liquidated if the ascertainment of their exact sum requires the taking of testimony to ascertain facts upon which to base a value judgment.'

U.S. Fire Ins. Co. v. C&C Beauty Sales, Inc. 674 So. 2d 169, 171 (Fla. 3d DCA 1996) (citations omitted). This securities fraud case clearly involves unliquidated damages. The Fourth District reversed due to insufficient expert testimony proving the "benefit of the bargain" amount of damages. Even if the Court had had the benefit of the information in the Notices, a trial on *the amount of damages* was inevitable. The best case scenario for CPH would have been a default as to reliance and *the fact of damages*. Thus, the relief CPH asserts it would have received had the Court known this information is without any legal basis.

As a second theory, CPH argues that MS's alleged misconduct affected the jury's deliberations. Any effect was rendered moot. The only relevant import that MS's newly revealed conduct could have had would have been to alter the Discovery Misconduct Statement used by the jury for the sole purpose of determining the propriety of awarding punitive damages. Such a change has no impact on the issue of compensatory damages, which is a prerequisite to any award of punitive damages as found by the Fourth District on appeal. See Morgan Stanley & Co. Inc. v. Coleman (Parent) Holdings Inc., 955 So. 2d 1124 (Fla. 4th DCA 2007).

At the hearing, CPH articulated an argument that had the Court entered a total default, it would have established the fact of damages and would, thus, have entitled CPH to an award of

nominal damages. In turn, an award of nominal damages would have entitled CPH to an award of punitive damages. In addition to being highly speculative, this argument directly contradicts the Fourth District's express findings in the appeal of this case:

Even if CPH established the *fact* of some unquantified damage (which theoretically could have supported a nominal damage award), this is not enough to justify a punitive damage in a fraud case. Punitive damages for fraud cannot be based on nominal damages alone.

Morgan Stanley, 955 So. 2d at 1132-33. Thus, this second theory also lacks merit.

In sum, the new final judgment entered in favor of MS followed a clear mandate from the Fourth District accompanied by an opinion explaining that CPH failed to prove its compensatory damages. The Fourth District found that CPH's strategy included instructing its damages expert to assume a "zero" value on the date of closing. *Id.* at 1127. It is inconceivable how the newly found information in the Notices would have affected this choice of strategy for proving damages; whatever information MS's in-house legal counsel told CPH and the Court, deceitful or not, was ultimately irrelevant as to this choice.

B. CPH's Fraud Upon the Court Claims Should Be Evaluated Under the Flemenbaum Framework

While this Court finds that an evidentiary hearing is not warranted under Florida law, CPH has raised arguments invoking out-of-state and federal cases finding that certain attorney misconduct can constitute "fraud upon the court," such that there is no requirement of showing that the misconduct prejudiced the outcome as a prerequisite to relief from final judgment. In light of Florida's jurisprudence addressing "fraud upon the court," Flemenbaum, and policy considerations, this Court finds it unnecessary to rely on extrajurisdictional authority.

1. MS's Alleged Misconduct is "Intrinsic Fraud" Under Current Florida Law

Florida jurisprudence defining "fraud upon the court" arises from the distinction between

a Rule 1.540 motion and an independent action. There are two distinctions between these two actions. First, a Rule 1.540(b) motion must be brought within one year of the final judgment, whereas an independent action for fraud may be brought at any time. Parker v. Parker, 950 So. 2d 388, 391 (Fla. 2007). Second, a Rule 1.540 motion may allege intrinsic or extrinsic fraud, whereas an independent action may only allege extrinsic fraud. Id.

Significantly, “fraud upon the court” is defined as being *only* extrinsic fraud. DeClaire v. Yohanan, 453 So. 2d 375, 377 (Fla. 1984) *superseded by rule on other grounds*, see Lefler v. Lefler, 776 So. 2d 319, n. 1 (Fla. 4th DCA 2001)² (noting the need to distinguish extrinsic from intrinsic fraud because “only extrinsic fraud may constitute fraud on the court”). Florida courts maintain that while “fraud on the court is a somewhat elusive concept,” it should not be given too broad of an application in order to avoid frequent attacks by independent actions and to preserve finality of judgments. DeClaire, 453 So. 2d at 379 (citing Alexander v. First Nat’l Bank of Titusville, 275 So.2d 272, 274 (Fla. 4th DCA 1973)).

In Parker, the Florida Supreme Court explained the distinction between extrinsic and intrinsic fraud as follows:

In essence, extrinsic fraud is conduct which prevents a party from trying an issue before the court, and the prevention itself becomes a collateral issue to the cause; whereas intrinsic fraud is the presentation of misleading information on an issue before the court that was tried or could have been tried.

Parker, 950 So. 2d at 391. Extrinsic fraud is the prevention of an unsuccessful party from presenting his or her case, by fraud or deception practiced by his adversary, keeping an opponent away from court, falsely promising a compromise, ignorance of the adversary about the existence of the suit or the plaintiff’s acts, fraudulent representation of a party without his or her

² Specifically, DeClaire has been superseded by amendments to Rule 1.540(b) and Florida Family Law Rule 12.540, which eliminate the one year rule for cases of false financial affidavits in marital and paternity cases. DeClaire remains authoritative under the circumstances of this case.

consent, and connivance in his or her defeat. Id. at 391 (citing Fair v. Tampa Elec. Co., 27 So. 2d 514, 515 (Fla. 1946)). In other words, extrinsic fraud occurs where a defendant has somehow been prevented from participating in a cause. Id.

On the other hand, intrinsic fraud is fraudulent conduct arising within a proceeding and pertaining to issues in the case that have or could have been tried. Id. For example, when a judgment is obtained upon false testimony or a fraudulent instrument and the parties were heard, the evidence submitted to and received consideration by the court, then it may be said that the matter has been actually tried, or was so in issue that it might have been tried. Id. (citing Johnson v. Wells, 73 So. 188, 191 (Fla. 1916)).

The Parker court affirmed the Fourth District's reasoning and conclusion that a wife's false misrepresentation regarding paternity was intrinsic fraud because it "concerned an issue that *could have been* raised in the dissolution proceedings, rather than an issue collateral to those proceedings." Id. at 392-93 (emphasis in original). CPH alleges that MS "committed fraud on the Court...by repeatedly telling the Court, in pleadings, arguments, offers of proof, and sworn statements, that its in-house lawyers were not aware of the existence of unsearched and unproduced emails...until 'late October 2004[,]'" which was after its June 2004 certification of compliance. (CPH Mot. 27.) Consistent with Parker's definition of intrinsic fraud, CPH alleges MS's conduct resulted in a final judgment premised upon false information submitted to and considered by the Court. Like Parker, such alleged false misrepresentations constituted issues that could have been raised in the trial proceedings, rather than an issue collateral to those proceedings. Indeed, the Court unambiguously considered and addressed sanctionable discovery misconduct at trial in entering the partial default. Thus, it can be said that such matters were tried or were so in issue that they might have been tried. MS's alleged actions therefore

constitute intrinsic fraud under Florida law and cannot be categorized as “fraud upon the court.” See DeClaire, 453 So. 2d at 377 (Fla. 1984) (“only extrinsic fraud may constitute fraud on the court”).

In DeClaire, the Florida Supreme Court explained the procedural significance of the substantive distinction between extrinsic and intrinsic fraud as follows:

The concept of fraud on the court has historically been limited in its application to ensure the finality of judgments and to avoid frequent attacks against final judgments. Prior to the adoption of Florida Rule of Civil Procedure 1.540(b), only what was defined as “extrinsic fraud” could, in reality, form the basis for relief from a judgment. Further, such relief could be obtained only by an independent action in equity. There was no practical basis for relief from a judgment obtained by intrinsic fraud.

DeClaire, 453 So. 2d at 377-78 (citations omitted). The DeClaire Court also cautioned:

It should be clearly understood that rule 1.540(b) broadened the grounds upon which a final judgment could be attacked, but created a one-year limitations period within which such an attack must be made. *The rule does not change the existing definitions of intrinsic and extrinsic fraud or change the type of conduct which constitutes fraud on the court.*

Id. at 379 (emphasis added).

Turning next to policy considerations, the Florida Supreme Court has clearly delineated the inherent dangers of broadening the definition of “fraud upon the court” in order to effectuate the policy favoring preservation of the finality of judgments. DeClaire, 453 So. 2d at 378 (the “concept of fraud on the court has historically been limited in its application to ensure the finality of judgments and to avoid frequent attacks against final judgments”); Alexander, 275 So.2d at 274 (a broad application of fraud upon the court would frustrate the law's policy favoring the termination of litigation and finality of judgments). These cases suggest that maintaining the intrinsic/extrinsic distinction for independent actions is key to effecting such policy considerations by cautioning that a court's power to set aside judgments for fraud upon the court must be narrowly applied so as to further the law's policy favoring the termination of litigation

and finality of judgments. See id.

CPH cites one Florida case, Andrews v. Palmas De Majorca Condo., 898 So. 2d 1066 (Fla. 5th DCA 2005), in support of its argument that MS committed fraud upon the court. In Andrews, a condominium association sued two owners for failure to pay assessments. Id. at 1067. The association prevailed after concluding that the owners acquiesced to the assessment by tendering a check for \$1,000. Id. The owners appealed. Id. After filing an initial brief, the owners asked the Fifth District to relinquish jurisdiction based on “newly discovered evidence demonstrat[ing] fraud, misrepresentation and misconduct” by the association during trial. Id. The owners claimed that they discovered a copy of the check with the words “Under Protest,” and alleged that the association had altered the original check to remove these words. Id. The owners alleged that this conduct constituted fraud on the court warranting relief under Rule 1.540(b). Id. at 1068. The Fifth District temporarily relinquished jurisdiction based on their accusations to allow the owners to seek relief under Rule 1.540(b). Id.

Prior to the hearing on the Rule 1.540(b) motion, the owners’ counsel withdrew the motion and stated that he could not ethically present the “newly discovered” check. Id. Further investigation showed that the owners had written “Under Protest” on a copy of the check *after* trial. Id. In turn, the association moved for sanctions based on the owners’ “fraud upon the court,” which the trial court granted. Id. at 1069. When jurisdiction returned to the Fifth District, the association moved to dismiss the appeal as a sanction under Florida Rule of Appellate Procedure 9.410, based on “fraud upon the court.” Id. The Fifth District dismissed the appeal with prejudice after concluding that the owners’ “perpetrated a fraud upon this Court in filing their Motion for Relief from Judgment which attempted to use falsified evidence to vacate the Final Judgment entered against them.” Id. In reaching this conclusion, the Fifth District

relied exclusively on a definition of fraud on the court set forth by the First Circuit federal case of Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989). Id.

Andrews is inapposite to the instant case. Andrews involved an interpretation of “fraud upon the court” within the context of a motion for dismissal. The Fifth District granted the motion to dismiss as a sanction pursuant to Florida Rule of Appellate Procedure 9.410 for the Andrews’ misconduct. Although a Rule 1.540(b) motion was in the Andrews procedural history, the alleged “fraud upon the court” was not analyzed in that context. Conversely, this case requires the interpretation of “fraud upon the court” in the context of a Rule 1.540(b) motion. Such interpretation is amply provided for in the Florida Supreme Court cases of Parker and DeClaire. It is unnecessary to rely on a Fifth District case relying on a First Circuit federal case when there is binding case law defining fraud upon the court, as discussed supra.

CPH also has cited federal and out-of-state cases for the proposition that litigation misconduct involving attorneys, as opposed to witnesses and parties, is especially egregious conduct rising to the level of fraud on the court. See, e.g., Chewing v. Ford Motor Co., 579 S.E.2d 605 (S.C. 2003); Synanon Foundation, Inc. v. Bernstein, 502 A.2d 1254 (D.C. 1985); Pumphrey v. K.W. Thompson Tool Co., 62 F.3d 1128 (9th Cir. 1995). CPH further relies on extrajurisdictional cases for the proposition that a showing of prejudice is not required to evaluating a claim of fraud on the court. See, e.g., Chewing, 579 S.E.2d at 611 n.7; Pumphrey, 62 F.3d at 1132-33; Dixon v. C.I.R., 316 F.3d 1041, 1046 (9th Cir. 2003); In re Intermagnetics America, Inc., 926 F.2d 912 (9th Cir. 1991). Based on these cases, CPH asserts that MS committed fraud upon the court and that CPH is not required to prove they were prejudiced by MS’s actions.

A common thread running through these non-Florida cases is the revelation of detailed,

orchestrated efforts by attorneys to conceal information going to the substance of the entire litigation. For instance, Chewning involved a party's claims that opposing counsel paid an expert for untruthful testimony favorable to his client regarding the products liability claims litigated in the case. The court concluded that subornation of perjury or the intentional concealment of documents *by counsel* constitutes "extrinsic fraud" that allows a judgment to be set aside for fraud upon the court because such conduct precludes the opposing party from "having his day in court." Chewning, 579 S.E.2d at 610-611.

Synanon involved numerous perjurious and false statements by a real estate buyer's executives and counsel in order to prevent seller's discovery of certain archived tapes that were relevant to the litigated issues. The Synanon court affirmed the trial court's pre-trial dismissal of the real estate buyer's complaint after finding that counsel's conduct amounted to a fraud on the court. Synanon, 502 A.2d at 1264. Specifically, the evidence was found to reveal a carefully planned scheme designed to deceive the court, which was the type of misconduct warranting dismissal of the complaint. Id. at 1263.

Pumphrey involved a wrongful death action against a gun manufacturer after a man was killed by a dropped gun. At trial, the manufacturer relied on a video showing that the gun in question did not fire when dropped in testing. Pumphrey, 62 F.3d at 1129. A jury found the decedent contributorily negligent. Id. In a later, unrelated lawsuit against the same manufacturer, a second video was produced during discovery showing the same gun fired when dropped during testing. Id. As it turned out, the second video was made on the same day as the video shown in the prior action, but it was never produced in that action. Id. The trial court set aside the prior verdict and ordered a new trial under the federal rule counterpart to Florida's Rule 1.540(b) after finding that the manufacturer's in-house counsel had committed fraud on the

court. Id. The appellate court affirmed this conclusion after finding that undisputed facts revealed that in-house counsel “engaged in a scheme to defraud the jury, the court, and [the opposing party], through the use of misleading, inaccurate, and incomplete responses to discovery requests[,]” which constituted ample evidence of fraud upon the court. Id. at 1132.

As a preliminary matter, this Court notes a circuit split of authority as to whether prejudice is a necessary element of fraud on the Court. Compare Dixon v. C.I.R., 316 F.3d at 1046 (9th Cir. 2003), *rev’g* T.C. Memo.1999-101 (fraud on the court occurs regardless of whether the opposing party is prejudiced), with Drobny v. C.I.R., 113 F.3d 670 (7th Cir.1997), *aff’g* T.C. Memo.1995-209 (proof of fraud on the court requires a showing that the alleged misconduct actually affected the outcome of the case to the taxpayer's detriment, *i.e.* prejudice need be shown).

Florida courts have not yet addressed whether misconduct which would otherwise be intrinsic fraud becomes extrinsic fraud when it is committed by an attorney, as was held in Chewning. Even if this Court accepts CPH’s argument that attorney misconduct is fraud on the court, it declines to follow the Ninth Circuit’s reasoning that prejudice is not required. This Court finds the Seventh Circuit’s reasoning in Drobny compelling:

We are of the opinion that the petitioners were required to demonstrate, not only that the respondent engaged in conduct that was *intended* to mislead the court, but-of paramount importance-that the actual conduct affected the outcome of their case.

Drobny, 113 F. 3d at 678. The court further stated:

We disagree with the Drobny’s argument that a “fraud upon the court” can occur even if the allegedly improper conduct does not affect the outcome of the court’s deliberations. Under the common law of fraud, a misrepresentation *in and of itself* (i.e., one that is not relied upon to the detriment of the defrauded party) is not actionable. In Illinois, for example, “the elements of common law fraud are: (1) a false statement of material fact; (2) by one who knows or believes it to be false; (3) made with the intent to induce action by another in reliance on the statement;

(4) action by the other in reliance on the truthfulness of the statement; and (5) injury to the other resulting from that reliance.”

Id. at 678 n.14 (emphasis in original). This Court notes that the elements of fraud in Illinois are substantially similar to those in Florida. See Hollywood Lakes, 770 So. 2d at 718. As described *supra*, CPH cannot show that it was injured by relying on MS's alleged false statements. Significantly, the Fourth District case of Crowley highlights the necessity that the alleged fraud “undermine the very foundation upon which [the final judgment] and order” are built. As such, the Crowley analysis, which binds this court, comports more fully with that set forth in Drobny. For this reason, it is unnecessary to choose between following Drobny or Dixon, because the Fourth District has already adequately addressed this issue in Crowley.

In sum, there is no indication that fraud and fraud upon the court claims in a Rule 1.540(b) motion are to be evaluated differently. Rule 1.540(b) specifically contemplates “fraud (whether heretofore denominated intrinsic or extrinsic),” and consequently encompasses fraud upon the court since it is well-established that it is extrinsic fraud. Fla. R. Civ. P. 1.540(b)(3); see DeClaire v. Yohanan, 453 So. 2d 375, 377 (Fla. 1984). As an example, Crowley involved a claim that a party and her attorney committed fraud upon the court, and that case was evaluated under the Flemenbaum framework. Similarly, this case, which involves claims of fraud upon the court, likewise must be examined under Flemenbaum. As no Florida court has carved out an exception to the established Flemenbaum requirements for application to Rule 1.540 claims of fraud upon the court, this Court follows Flemenbaum and its progeny.

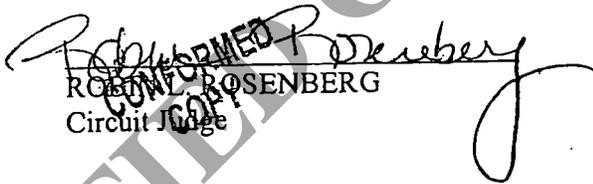
C. CPH is Not Entitled to Discovery

If the allegations in a moving party's motion “raise a colorable entitlement to Rule

1.540(b) relief, a formal evidentiary hearing on the motion, as well as permissible discovery prior to the hearing, is required.” Dynasty, 675 So. 2d at 239 (citing Southern Bell Tel. & Tel. Co. v. Welden, 483 So. 2d 487, 489 (Fla. 1st DCA 1986)). Since CPH has failed to allege a colorable entitlement to relief under Flemenbaum, it is not entitled to a formal evidentiary hearing, and consequently is not entitled to any discovery.

Accordingly, it is **ORDERED** and **ADJUDGED** that CPH’s Motion is **DENIED**.

DONE AND ORDERED in Chambers at Palm Beach County, Florida this 2nd day of September, 2008.


ROBERT L. ROSENBERG
Circuit Judge

Copies have been furnished to all counsel on the attached service list.

NOT A CERTIFIED COPY

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#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

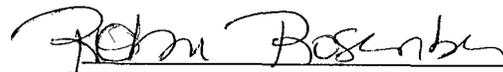
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Palm Beach County, Florida
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ORDER SPECIALLY SETTING HEARING

A Special Set Hearing is scheduled in this matter on Tuesday, November 18, 2008 at 9:30 a.m. before the Hon. Robin Rosenberg, Circuit Court Judge, Palm Beach County Courthouse, 205 N. Dixie Highway, Courtroom 10-A, West Palm Beach, Florida. Thirty Minutes has been reserved. The matters to be heard at that time are:

Coleman (Parent) Holdings, Inc.'s Motion to Compel Production of Costs-Related Documents filed 9/11/08

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 7TH day of OCTOBER, 2008.


ROBIN ROSENBERG
CIRCUIT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

COUNSEL LIST

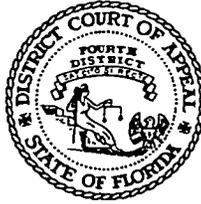
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Fourth District Court of Appeal
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West Palm Beach, Florida 33401
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ACKNOWLEDGMENT OF NEW CASE

DATE: October 14, 2008

STYLE: COLEMAN (PARENT) v. MORGAN STANLEY &
HOLDINGS, INC. CO. INC.

4DCA#: 4D08-4022

The Fourth District Court of Appeal has received the Notice of Appeal reflecting a filing date of 10/1/08

The county of origin is Palm Beach.

The lower tribunal case number provided is 502003CA005045XXXXMB

The filing fee is Paid In Full - \$300.

Case Type: Civil Other Case Nature: Non-Final

The Fourth District Court of Appeal's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

Please review and comply with any handouts enclosed with this acknowledgment.

RECEIPT

COLEMAN (PARENT)
HOLDINGS, INC.

v. MORGAN STANLEY &
CO. INC.

4DCA#: 4D08-4022

Receipt # R2 [REDACTED]

Method of Payment: CK

Check # 211043

PAYER: Jack Scarola

Filing Fee: \$300.00

Total: \$300.00

cc: Joel D. Eaton
Sylvia H. Walbolt
Faith Gay

Jack Scarola
Bruce S. Rogow
Ronald L. Marmer

Joseph Ianno, Jr.
Jerold S. Solovy

16div-032046

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IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO.: CA 03-5045 (AJ)

vs.

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

**DEFENDANT MORGAN STANLEY & CO. INCORPORATED'S
OPPOSITION TO COLEMAN (PARENT) HOLDINGS INC.'S MOTION
TO COMPEL PRODUCTION OF COST-RELATED DOCUMENTS**

INTRODUCTION

CPH claims its Motion to Compel “has been necessitated by Morgan Stanley’s refusal to produce documents that are directly relevant to the \$11+ million in appellate and trial costs Morgan Stanley currently seeks.” (Motion at 1). Not so. Morgan Stanley has produced over 7,500 pages of documents that are directly relevant to the reasonableness and necessity of those costs and establish that they were incurred and paid.

The only relevant inquiry here is whether the trial and appellate costs are “reasonable” and “necessary.” CPH agrees. (Motion at 3, citing *Am. Med. Int’l, Inc. v. Scheller*, 484 So. 2d 593, 594 (Fla. 4th DCA 1985)). Morgan Stanley has objected to the demand for additional materials that are not probative of what is “reasonable and necessary.” CPH’s overbroad requests for “All documents . . . including but not limited to . . .” (CPH Request for Production (Ex. 2 to CPH Motion to Compel)) has caused the dispute. CPH literally seeks the irrelevant minutiae of things like e-mails confirming a court reporter’s attendance, notes authorizing the payment of an invoice, accounting

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records tracking payment and ledgering to internal accounts, etc. -- documents that have nothing to do with reasonableness and necessity. But thousands of pages already produced by Morgan Stanley *are* responsive and they establish both necessity and reasonableness.

There is some irony in CPH's submission. CPH insisted upon the supersedeas bond, necessitating the expenses that generated over \$9 million in appellate costs. Most of Morgan Stanley's trial costs mirror the trial costs sought by CPH when it was the prevailing party. *See* Ex. A (chart comparing trial costs). The major difference relates to document production and imaging costs. That difference stems from Morgan Stanley having to image and create bibliographic "coding" for a substantial portion of CPH's document production, leading to over \$500,000 in "coding" costs. A significant portion of Morgan Stanley's production to CPH was electronic and included bibliographic "metadata." In the expert witness category, Morgan Stanley's claim is \$200,000 less than CPH's. *See* Ex. A. The total difference in the CPH/Morgan Stanley trial costs motions is \$702,418.06. Thus the trial costs at issue are really in one or two categories.

We do not question CPH's right to documents relating to the necessity and reasonableness of costs, but its overbroad approach is troubling. Morgan Stanley's responses to CPH's discovery requests were proper and provided the documents relevant to, and leading to, admissible evidence of the reasonableness and necessity of the claimed costs.

ARGUMENT

Courts in Florida and other jurisdictions have recognized that categorical requests for "all documents" may be unreasonable. *See, e.g., Cherenfant v. Nationwide Credit,*

Inc., 2004 WL 5313965, at *7 (S.D. Fla. May 10, 2004) (finding request that called for “all documents that refer, relate or pertain to” the number of individuals employed by Defendant would pose an undue burden on Defendant “when all that is relevant is a numerical figure”); *In re Urethane Antitrust Litig.*, 2008 WL 110896, at *1 (D. Kan. Jan. 8, 2008) (holding that “A request that seeks all documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’” (internal citation omitted)).

Rather than say why it needs “all documents” relating to costs, CPH misstates the substance of Morgan Stanley’s responses and ignores its comprehensive production of documents.

I. Morgan Stanley Has Produced Documents Concerning The Reasonableness and Necessity of Its Bond Costs, Including Documents Regarding Potential Alternatives

The appellate supersedeas bond was necessary because CPH rejected Morgan Stanley’s request that it waive the bond requirement and attempted to attach Morgan Stanley’s assets following entry of judgment. CPH’s challenge to the sufficiency of the discovery responses regarding the reasonableness of the nearly \$9 million bond costs is marked by misstatements.

First, CPH wrongly asserts that Morgan Stanley is “entirely unwilling to produce documents that would shed light on whether such costs were reasonable . . . [by] refusing to provide all documents relating to its investigation and analyses, if any, of other bond alternatives” (Motion at 6). In fact, Morgan Stanley confirmed to CPH, prior to the

filing of its Motion to Compel, that it had agreed to produce, and in fact had already produced, documents relating to potential alternative bond arrangements.

In response to CPH's Request for Production No. 8 for "documents relating to any consideration or analysis by or on behalf of Morgan Stanley of forms or sources of security for the Costs Judgment or the Main Judgment *other than* the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account," Morgan Stanley agreed to "make reasonable efforts to identify and produce non-privileged documents responsive to [that] Request." *See* Ex. B (Morgan Stanley's Response to CPH's Requests for Production at 12-13 (emphasis supplied)). Similarly, Morgan Stanley agreed to produce "communications between [Morgan Stanley and its insurance broker] EG Bowman discussing or referring to the supersedeas bonds." *Id.* at 9 (Response to Request for Production No. 4). Thus, in at least two responses, Morgan Stanley agreed to produce documents relating to alternative security arrangements. That is confirmed by the documents produced, which include: (1) surety proposals and surveys of the market's capacity to bond CPH's judgment; (2) emails between E.G. Bowman and AIG, Liberty Mutual, Chubb, St. Paul/Travelers and Safeco regarding the surety providers' proposals to insure the supersedeas bond; (3) meeting notices demonstrating that Morgan Stanley consulted with numerous providers before ultimately choosing AIG; (4) internal Morgan Stanley emails regarding available escrow agents, including the Bank of New York and JPMorgan Chase; (5) internal Morgan Stanley communications concerning other options such as utilizing a letter of credit, collateral pool or cash reserves. *See* Exs. C-G.

Second, Morgan Stanley's bond-related expense responses were not improperly limited by its use of "sufficient to show." For example, Morgan Stanley provided the

documents showing the amount it claimed for bond premiums, broker commissions, and escrow fees, as well as the timing of the release of the bond and escrow accounts and the documents reflecting payment. *See* Ex. B at 5-7, 9, 10, 12 (Responses to Request Nos. 2, 3, 4, 5, and 7). That all relates to the actual amount and payment of bond-related costs and is “sufficient to show” the information that allows CPH to assess the reasonableness and necessity of those costs. Accounting documents, internal tracking records and escrow transaction memos do not relate to reasonableness and necessity.

The few “sufficient to show” responses pose no real limitation on Morgan Stanley’s overall response. *See* Ex. B at 7 (Morgan Stanley Response to Request for Production No. 3, stating that it will produce, among other things, “documents sufficient to show its efforts to obtain a supersedeas bond in this matter”); *id.* at 10 (Morgan Stanley’s Response to Request for Production No. 5, stating that it would produce documents “sufficient to show how the Bank of New York was selected as an escrow agent.”). Because Morgan Stanley agreed, in its Response to Request for Production No. 8, discussed above, to make a reasonable effort to identify and produce documents relating to any “consideration or analysis . . . of forms or sources of security” other than the bonds and escrow account ultimately utilized (*id.* at 12-13), CPH has, or will have, the necessary documents. CPH has received voluminous documents relating to deliberations and communications with third parties concerning alternative security arrangements, as well as those concerning the security Morgan Stanley actually obtained.

There is no principled basis to claim that Morgan Stanley has improperly withheld documents concerning that issue and the demand for additional documents in response to Requests for Production Nos. 3-7 should be denied.

II. Morgan Stanley Has Produced Responsive Documents Concerning The Reasonableness and Necessity of Its Trial Costs, Most of Which Mirror Costs Previously Claimed by CPH

The demands for “all” documents concerning trial costs are devoid of merit. Documents reflecting requests to secure transcription and copying services, correspondence transmitting invoices, records tracking invoices or payments, and queries regarding payment status are irrelevant to reasonableness or necessity. And in order to collect and produce “all” such materials, Morgan Stanley would have to search the records of dozens of outside attorneys, paralegals, and accounting employees. The documents already produced show the trial costs, their payment and their obvious necessity.

First, CPH contends that Morgan Stanley has refused to produce documents concerning the “nature” of mediation costs and expert witness fees because it has agreed to produce only documents “sufficient to show” the amount of those costs. (Motion at 7 (discussing Request for Production Nos. 9 and 10)). Morgan Stanley has produced invoices regarding both categories of expenses, *see* Exs. H, I (selected invoices), and CPH knows the “nature” of the charges because CPH participated in mediation, shared the expenses equally, and sought to recover nearly the identical amount in mediation costs from Morgan Stanley. *See* Ex. A.

Similarly, CPH knows the nature of Morgan Stanley’s expert witness fees. In addition to having received the expert invoices identifying the fees, *see* Ex. I, CPH received expert reports from and deposed Morgan Stanley’s experts. CPH does not identify any particular expert cost for which it needs additional information. Indeed,

CPH sought almost \$200,000 more in expert witness fees than Morgan Stanley is now seeking. *See* Ex. A.

Second, CPH incorrectly claims that Morgan Stanley has refused to produce records regarding the payment of trial and deposition transcript expenses because it has limited its responses to documents “sufficient to show” the amount of those costs. (Motion at 7 (discussing Request for Production Nos. 11 and 12)). Morgan Stanley has produced hundreds of pages of payment confirmations for such expenses, including copies of checks and accounting records confirming payment. *See* Ex. J (selected payment records for deposition and trial transcripts). The contention that there is a refusal to produce shows a failure to review Morgan Stanley’s production, or disregard for what was actually produced. In either case, CPH is wrong to assert that such documents were withheld, and fails to show why “all documents,” even those that have nothing to do with reasonableness or necessity, are required.

Finally, CPH complains that Morgan Stanley has refused to produce records relating to whether costs for “copying, imaging, and coding” documents related to “materials actually . . . produced to CPH.” (Motion at 7 (discussing Request for Production No. 13)). Wrong again. The copying, imaging and coding costs relate to the processing of documents produced by CPH and third parties. And CPH has knowledge of its own and third party document productions, and the format in which CPH chose to produce its documents. It knows that some costs were incurred pursuant to an agreement early in the litigation to share certain photocopying costs through a joint vendor. *See* Ex. K (Compulit cost sharing agreement). Thus, while claiming it requires “all” documents regarding Morgan Stanley’s trial costs, CPH provides no reason for “all” and fails to

acknowledge the thousands of pages of documents it has received. CPH's demand for the production of "all documents" in response to Requests for Production Nos. 9-13 should also be denied.

III. Morgan Stanley Is Not Hiding Documents

CPH says that that Morgan Stanley "appears to be hiding something[,] again invoking the "sufficient to show" response. (Motion at 8 (discussing Request for Production No. 17)). There is no "hiding." Morgan Stanley has searched to identify documents regarding the reasonableness and necessity of the incurred costs and has produced thousands of pages of such documents. CPH's overbroad discovery requests should not create manufactured discovery disputes, especially where the parties shared trial experience and the similarity of costs support the necessity and reasonableness of Morgan Stanley's costs.

IV. Morgan Stanley's General Objections Are Appropriate

CPH's position that all of Morgan Stanley's responses are "taint[ed]" by its "General Objections" is also without basis. (Motion at 9). Where Morgan Stanley responded to a specific request for production "subject to" its General Objections it has, in each instance, specified the scope of its response. CPH does not claim any actual confusion as a result of this formulation. Indeed, prior to CPH filing its Motion to Compel, Morgan Stanley offered to clarify any perceived ambiguity, stating in a letter: "[t]o the extent there are specific responses where CPH believes it needs clarification as to the scope, we are happy to address such inquires." CPH did not seek any clarification.

CPH's position now is at odds with its own discovery practice of offering "Initial Objections" and then responding "Subject to and without waiving the foregoing initial

objections.” *See, e.g.*, Ex. L (CPH’s May 12, 2004 Responses and Objections to Morgan Stanley’s Seventh Request for Production of Documents). As CPH concedes, both by its own practice and its motion, this is a common (and proper) approach to preserving objections to document requests. (Motion at 9).

Having failed to identify any actual “ambiguity” created by Morgan Stanley’s assertion of General Objections, and having failed to seek clarification as the spirit of the rules require, CPH has no basis to insist that Morgan Stanley identify categories of documents that it has declined to search for and produce.

V. Morgan Stanley Is Not Required to Produce A Privilege Log for Clearly Privileged Communications At This Point

CPH’s complaint that Morgan Stanley does not intend to identify in its privilege log “clearly privileged communications,” is at odds both with CPH’s prior practice and a prior order of the Court. But to begin with, any discussion of a privilege log is premature.

A party is required to file a log only if the information is “otherwise discoverable.” Where a party claims that the production of the documents is burdensome and harassing, such as was done here, the scope of the discovery is at issue. Until the court rules on the request, the party responding to the discovery does not know what will fall into the category of discoverable documents

* * *

Once the objection is ruled upon and the court determines what information is “otherwise discoverable,” then the party must file a privilege log reciting which documents are privileged.

Gosman v. Luzinski, 937 So. 2d 293, 296 (Fla. 4th DCA 2006); *see also Life Care Centers of America v. Reese*, 948 So. 2d 830, 833 (Fla. 5th DCA 2007) (quoting *Gosman*).

Beyond that, CPH's prior discovery responses routinely included an "Initial Objection" that excluded outside counsel for CPH from Morgan Stanley's definitions, enabling CPH to limit the scope of its privilege logs so as to exclude material from its counsel. *See e.g.*, Ex. M (CPH's April 9, 2004 Objections to Morgan Stanley's Sixth Request for Production of Documents). Indeed, the parties previously agreed, with the Court's consent, that the types of clearly privileged communications Morgan Stanley has identified would not be included in privilege logs. *See* Ex. N (Sept. 4, 2003 Agreed Order Regarding Enlargement of Time to Prepare Privilege Log).

Morgan Stanley's position is particularly appropriate given the limited scope of the matter now before the Court and CPH's overbroad discovery requests which encompass unquestionably privileged material. For example, under CPH's "all documents" regime, Morgan Stanley would have to log a host of privileged communications with and among its counsel relating to the process, timing and necessity of securing a bond. Those privileged communications are not probative because the necessity and timing for securing a bond cannot be disputed by CPH.

CONCLUSION

The issues are simple. Were the costs reasonable? Were they necessary? Were they paid? Morgan Stanley agreed to provide, and has provided, the documents that address those issues. The Court should deny CPH's Motion to Compel Production of Cost-Related Documents.

Respectfully submitted,

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By:



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Counsel for Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided to the following counsel listed below, by E-mail and Federal Express this 29th day of October, 2008:

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Exhibit A

Comparison of Costs Sought by Morgan Stanley
and CPH in Their Respective Motions for Trial
Costs

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Exhibit A

**COMPARISON OF COSTS SOUGHT BY MORGAN STANLEY
AND CPH IN THEIR RESPECTIVE MOTIONS FOR TRIAL COSTS**

Costs	Amount Requested in CPH's Trial Costs Motion	Amount Requested in Morgan Stanley's Trial Costs Motion
Expert Witness Fees	\$790,310.05	\$591,760.00
Deposition and Transcription Services	\$136,598.53	\$147,470.21
Mediation Fees	\$88,448.60	\$87,997.69
Service and Filing Fees	\$10,664.43	\$5,360.00
Court Transcript Costs	\$211,059.57	\$400,796.62
Witness Fees	\$321.89	\$1,461.82
Document Production and Imaging	\$79,361.96	\$784,336.75

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Exhibit B

Morgan Stanley & Co. Inc.'s Response to Coleman
(Parent) Holdings Inc.'s Requests for Production of
Documents

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IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO.: CA 03-5045 (AJ)

vs.

MORGAN STANLEY & CO. INCORPORATED,
Defendant.

**MORGAN STANLEY & CO. INC.'S RESPONSE TO COLEMAN
(PARENT) HOLDINGS INC.'S REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), by and through its undersigned attorneys, pursuant to Fla. R. Civ. P. 1.350, hereby responds to Plaintiff Coleman (Parent) Holdings Inc.'s ("CPH's") Requests For Production of Documents as follows:

By making these responses, Morgan Stanley does not concede that the information sought or provided is relevant to the subject matter of this or any action or reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley's responses are made intending to preserve and preserving:

- (a) The right to object, on any grounds, to the use of the responses in any subsequent proceedings in this or any action;
- (b) The right to object to introduction into evidence of these responses or documents provided in response to the Requests; and
- (c) The right to object, on any grounds at any time, to other requests or discovery demands involving documents produced in response to the Requests.

GENERAL OBJECTIONS

1. Morgan Stanley objects to the Requests including, without limitation, the instructions and definitions therein, to the extent they purport to impose on Morgan Stanley obligations beyond those imposed by the Florida Rules of Civil Procedure, and any other applicable law or rule.

2. Morgan Stanley objects to the Requests to the extent they seek documents and/or information that are not within Morgan Stanley's possession, custody or control; that are already available to CPH; that are available from public, court, or agency records, or otherwise in the public domain and accessible to all parties.

3. Morgan Stanley objects to the Requests to the extent they seek identification and disclosure of information that is irrelevant, immaterial, or not reasonably calculated to lead to the discovery of admissible evidence.

4. Morgan Stanley objects to the Requests to the extent they are oppressive, overbroad, unreasonably cumulative, duplicative, and unduly burdensome, particularly to the extent that they seek "all" documents relating to a particular subject matter.

5. Morgan Stanley objects to the Requests to the extent they seek the disclosure of information protected by the attorney-client privilege, the attorney work-product doctrine, or any other privilege or protection from disclosure. Morgan Stanley hereby claims such privileges and protections to the extent implicated by each Request and excludes privileged and protected information from its responses to the Requests. Inadvertent production of any such information shall not constitute a waiver of any privilege or protection from disclosure as to that information or any related information. As set forth in this Response, Morgan Stanley objects to the overbroad nature of these requests especially since the only issue before the Court is the amount of taxable costs to be awarded to Morgan Stanley. Pursuant to the Fourth District's decision in *Gosman v. Luzinski*, 937 So. 2d 293 (Fla. 4th DCA 2006), Morgan Stanley hereby requests an extension of thirty (30) days to prepare its privilege log from the date on which the Court, if

necessary, resolves Morgan Stanley's other objections to the Requests. Further, Morgan Stanley objects to the production of a privilege log for clearly privileged communications between Morgan Stanley's attorneys (including both its in-house counsel and outside counsel) and Morgan Stanley employees that may "relate" in some way to the claimed costs. In fact, the parties previously agreed, and the Court ordered, that the parties were "not required to provide a privilege log listing otherwise responsive documents where those documents involved privileged communications between the parties and their lawyers in connection with litigation arising from the transaction at issue in this case." 9/4/2003 Agreed Order Regarding Enlargement of Time to Prepare Privilege Log. Morgan Stanley also objects to the production of a privilege log for clearly privileged materials such as work product created by in-house counsel or outside counsel while preparing the cost motions. Such materials may "relate" in some way to the claimed costs, but are clearly protected by the work product doctrine. To require a privilege log of these categories of materials would be unduly burdensome and harassing, especially in the context of the narrow issue before the Court, and would necessarily reveal the work product of counsel for Morgan Stanley.

6. Morgan Stanley objects to the definitions of the terms "Morgan Stanley," "You," and "Your" contained in the Requests to the extent they purport to define an entity other than Morgan Stanley and/or purport to impose obligations on Morgan Stanley beyond providing information that is in the possession, custody, or control of Morgan Stanley. Morgan Stanley further objects to the definitions of these terms to the extent they purport to refer to actions taken by "any person or entity acting on Morgan Stanley's behalf" that were not taken at the direction of Morgan Stanley.

7. The responses to the Requests shall not be construed in any way as an admission that any definition provided by CPH is either factually correct or legally binding upon Morgan Stanley, or as a waiver of any of Morgan Stanley's objections.

8. Morgan Stanley's Specific Responses and Objections to the individual Requests shall be deemed to incorporate, and shall not be deemed a waiver of, these General Objections.

9. Morgan Stanley objects to the Requests, definitions, and instructions to the extent they are compound, phrased disjunctively or conjunctively, and include subparts in such a manner that they are unduly burdensome, confusing, or cannot be reasonably answered.

10. Morgan Stanley objects to the Requests, definitions, and instructions to the extent they seek information that is not known or reasonably available to Morgan Stanley.

11. Morgan Stanley's objection to a Request or agreement to produce responsive documents in response to a Request is not and should not be construed as an admission that any particular information or category of information exists.

12. Morgan Stanley objects to the Requests to the extent they seek a legal theory or conclusion or seek documents relating to Morgan Stanley's entitlement to, as opposed to the reasonableness of, its trial costs. See J. Robin L. Rosenberg's 6/11/08 Order granting Morgan Stanley's Amended Motion to Tax Trial Costs as to the issue of entitlement and reserving ruling on the issue of reasonableness.

13. Morgan Stanley objects to the Requests to the extent they are harassing in the context of the narrow issue before the Court and seek information that is not reasonably calculated to lead to the discovery of admissible evidence relevant to the cost motions presently pending before the Court. Morgan Stanley will conduct a reasonable search for and produce non-privileged documents sufficient to support the amount of costs that Morgan Stanley is entitled to recover in this action as the prevailing party. CPH's attempt in the Requests to obtain every piece of paper that "relates" to the claimed costs is overbroad and harassing.

14. Morgan Stanley objects to the Requests to the extent that they do not contain any time period limitation. With respect to requests seeking communications concerning the determination of the premiums and costs associated with the Main Appeal Bond, the Cost Appeal Bond and the Escrow Account, Morgan Stanley will conduct a reasonable search for responsive (as limited by the specific responses and objections below) non-privileged communications sent or received between January 1, 2005 and June 30, 2005. With respect to trial costs, Morgan Stanley will conduct a reasonable search for responsive (as limited by the

specific responses and objections below) non-privileged communications sent or received between May 8, 2003 and March 31, 2006.

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1

All documents that were a source of information used in preparing the Costs Motions.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Morgan Stanley objects to this Request on the ground that it is overbroad. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents that were used to substantiate the individual line item costs contained in the affidavits filed in support of the Cost Motions.

REQUEST FOR PRODUCTION NO. 2:

All documents relating to payment of or any reimbursement for payment of the costs detailed in the Costs Motion, including but not limited to invoices, canceled checks, wire confirmations, bank statements, receipts, ledger entries, and accounting records.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents

sufficient to show the payment of the costs detailed in the Costs Motions. Specifically, Morgan Stanley will produce invoices, checks or check stubs, and wire transfer confirmations sufficient to show payments made by Morgan Stanley or its counsel for costs itemized in the affidavits filed in support of the Cost Motions. Coleman's attempt to obtain categories of documents like "ledger entries" and "accounting records" is not only vague, ambiguous, and overbroad, but also goes well beyond a reasonable calculation of what is necessary to contest the claimed costs. To the extent that this request seeks further categories of documents, it is simply an attempt to harass Morgan Stanley.

REQUEST FOR PRODUCTION NO. 3:

All documents relating to Morgan Stanley's claim for taxation of the cost of premiums, including but not limited to documents relating to:

- a. the amount of premiums charged to Morgan Stanley, or any person or entity acting on Morgan Stanley's behalf, in connection with the Costs Appeal Bond or the Main Appeal Bond;
- b. the amount of premiums paid by or on behalf of Morgan Stanley in connection with the Costs Appeal Bond or the Main Appeal Bond;
- c. the identity of each payor and each recipient of any such payment;
- d. any refund in premiums in connection with the Costs Appeal Bond or the Main Appeal Bond;
- e. any inquiry or investigation undertaken by or on behalf of Morgan Stanley or any insurance broker relating to the cost or amount of premiums quoted, estimated, or charged by any insurance company, financial institution, or other entity in connection with a bond or other form of security relating to the Costs Judgment or the Main Judgment.
- f. any quote or estimate received by or on behalf of Morgan Stanley or any insurance broker from any insurance company, financial institution, or other entity of the cost or amount of premiums associated with a bond or

other form of security relating to the Costs Judgment or the Main Judgment; or

- g. any comparison or other analysis undertaken by or on behalf of Morgan Stanley or any insurance broker of any such quote or estimate.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of the bond premiums claimed by Morgan Stanley in the Cost Motions. Specifically, Morgan Stanley will produce invoices and wire transfer information sufficient to show the cost of the bond premiums, the payment of the bond premiums, and the refund of certain bond premiums. However, Morgan Stanley objects to producing "all" documents "relating" to the bond premiums because it is simply an attempt to harass Morgan Stanley with overbroad requests that will force Morgan Stanley to incur additional costs. Further, Morgan Stanley has undertaken a reasonable investigation regarding non-privileged documents sufficient to show its efforts to obtain a supersedeas bond in this matter and will produce the documents it has located after a reasonable search.

REQUEST FOR PRODUCTION NO. 4:

All documents relating to Morgan Stanley's claim for taxation of the cost of broker commissions, including but not limited to documents relating to:

- a. the amount of broker commissions charged to Morgan Stanley, or any person or entity acting on Morgan Stanley's behalf, in connection with the Costs Appeal Bond or the Main Appeal Bond;

- b. the amount of broker commissions paid by or on behalf of Morgan Stanley in connection with the Costs Appeal Bond or the Main Appeal Bond;
- c. the identity of each payor and each recipient of any such payment;
- d. any refund of broker commissions in connection with the Costs Appeal Bond or the Main Appeal Bond;
- e. any inquiry or investigation undertaken by or on behalf of Morgan Stanley relating to the cost or amount of broker commissions quoted, estimated, or charged by any insurance company or agency or any other entity in connection with a bond or other form of security relating to the Costs Judgment or the Main Judgment;
- f. any quote or estimate received by or on behalf of Morgan Stanley from any insurance company or agency or any other entity of the cost or amount of broker commissions associated with a bond or other form of security relating to the Costs Judgment or the Main Judgment;
- g. any comparison or other analysis undertaken by or on behalf of Morgan Stanley of any such quote or estimate; or
- h. all communications and all documents referencing communications relating to discounts, rebates, refunds, trade-offs, barbers, or other exchange of consideration of any kind concerning commissions, bond premiums, or any other payment sent or received in relation to the Costs Judgment, the Main Judgment, the Costs Appeal Bond, the Main Appeal Bond, the Escrow Account, or any other bond, escrow account, or other security for the payment of the Costs Judgment or the Main Judgment.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan

Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of the broker commissions claimed by Morgan Stanley in the Cost Motions. Further, Morgan Stanley will make reasonable efforts to identify and produce communications between it and EG Bowman discussing or referring to the supersedeas bonds filed in this action. Coleman's attempt to obtain a broader range of documents is simply a fishing expedition designed to harass Morgan Stanley and add to the costs of this limited cost proceeding.

REQUEST FOR PRODUCTION NO. 5:

All documents relating to Morgan Stanley's claim for taxation of the cost of the Escrow Account, including but not limited to documents relating to:

- a. the amount charged to Morgan Stanley, or any person or entity acting on Morgan Stanley's behalf, in connection with the Escrow Account;
- b. the amount paid by or on behalf of Morgan Stanley in connection with the Escrow Account;
- c. the identity of each payor and each recipient of any such payment;
- d. any discount, rebate, refund, trade-off, barter, or other exchange of consideration of any kind in connection with the Escrow Account;
- e. any amount held in the Escrow Account;
- f. any request or demand by or on behalf of Morgan Stanley, the Bank of New York, or any other person or entity for the creation of an escrow account relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment;
- g. any discussion or analysis of such a request or demand;

- h. any communication concerning and any description or discussion of how the costs associated with the Escrow Account were calculated or derived;
- i. any inquiry or investigation undertaken by or on behalf of Morgan Stanley relating to the cost or amount of fees quoted, estimated, or charged by any financial institution or other entity in connection with an escrow account relating to the Costs Appeal Bond, the Main Appeals Bond, the Costs Judgment, or the Main Judgment;
- j. any quote or estimate received by or on behalf of Morgan Stanley from any financial institution or other entity of the cost or amount of fees associated with an escrow account relating to the Costs Appeal Bond, the Main Appeal Bond, the Costs Judgment, or the Main Judgment; or
- k. any comparison or other analysis undertaken by or on behalf of Morgan Stanley of any such quote or estimate.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of the escrow account costs claimed by Morgan Stanley in the Cost Motions. Further, Morgan Stanley will make reasonable efforts to identify and produce communications between it and the Bank of New York relating to the costs of the Escrow Account. Morgan Stanley will also produce documents sufficient to show how the Bank of New York was selected as an escrow agent. However, Coleman's attempt to obtain every piece of paper relating to the Escrow Account is simply overbroad and not reasonably calculated to lead

to the discovery of admissible evidence in this limited cost proceeding. The only relevant information about the Escrow Account in this limited cost proceeding is the amount of the fees paid to the Bank of New York so they could manage the Escrow Account required to obtain the supersedeas bond.

REQUEST FOR PRODUCTION NO. 6:

All documents relating to any communication between Morgan Stanley (or any person or entity acting on Morgan Stanley's behalf) and any other person or entity, including but not limited to any communication between Morgan Stanley and E.G. Bowman Co., Inc., The Bank of New York, Safeco Insurance Co., or AIG, relating to:

- a. a bond, escrow account, or other form of security relating to the Costs Judgment or the Main Judgment;
- b. the Costs Appeal Bond;
- c. the Main Appeal Bond;
- d. the Escrow Account.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce documents constituting communications between the entities referred to in this request that discuss or refer to the determination of the amount of the bond premiums and escrow account fees claimed by Morgan Stanley in the affidavits supporting its Cost Motions.

REQUEST FOR PRODUCTION NO. 7:

All documents relating to the release, discharge, closing, or cancellation of the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account, including but not limited to documents sufficient to show the date on which Morgan Stanley first requested such release, discharge, closing, or cancellation and documents sufficient to show the date on which such release, discharge, closing, or cancellation was affected.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the date on which Morgan Stanley first requested a release, discharge, closing, or cancellation of the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account and documents sufficient to show the date on which such release, discharge, closing, or cancellation was affected.

REQUEST FOR PRODUCTION NO. 8:

All documents relating to any consideration or analysis by or on behalf of Morgan Stanley of forms or sources of security for the Costs Judgment or the Main Judgment other than the Costs Appeal Bond, the Main Appeal Bond, or the Escrow Account.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 9:

All documents relating to Morgan Stanley's claim for taxation of the cost of mediation, including but not limited to:

- a. the amount and nature of mediation costs charged to Morgan Stanley or any person or entity acting on Morgan Stanley's behalf; or
- b. the amount and nature of mediation costs paid by or on behalf of Morgan Stanley.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley further objects to this Request to the extent it seeks information that is already available to CPH regarding the "nature" of mediation costs that Coleman itself claimed when it was the prevailing party. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of mediation costs claimed by Morgan Stanley in the Cost Motions.

REQUEST FOR PRODUCTION NO. 10:

All documents relating to Morgan Stanley's claim for taxation of the cost of expert fees, excluding copies of expert reports and expert deposition transcripts, and including but not limited to documents relating to:

- a. the amount and nature of expert fees charged to Morgan Stanley or any person or entity acting on Morgan Stanley's behalf;
- b. the amount and nature of expert fees paid by or on behalf of Morgan Stanley;
- c. any communication between Morgan Stanley (or any person or entity acting on Morgan Stanley's behalf) and any other person or entity relating to the amount, nature, or payment of expert fees;
- d. whether any of the expert fees for which costs are claimed by Morgan Stanley are attributable to expert depositions;
- e. the purpose for which any such expert deposition was used in this Action;
- f. whether any of the expert fees for which costs are claimed by Morgan Stanley are attributable to the preparation of a court-ordered report; or
- g. the purpose for which any such court-ordered report was used in this Action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley further objects to this Request to the extent it seeks information that is already available to CPH regarding the "nature" of the expert costs incurred by Morgan Stanley. After years of litigation, Coleman is well aware of the purpose to which the expert reports and testimony were used by Morgan Stanley. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents

sufficient to show the amount of expert fees claimed by Morgan Stanley in the Cost Motions in the form of the expert witness invoices paid on behalf of Morgan Stanley.

REQUEST FOR PRODUCTION NO. 11:

All documents relating to Morgan Stanley's claim for taxation of the cost of hearing and trial transcripts, excluding copies of such transcripts, and including but not limited to documents relating to:

- a. the amount of hearing or trial transcript costs charged to Morgan Stanley or any person or entity acting on Morgan Stanley's behalf; or
- b. the amount of hearing or trial transcript costs paid by or on behalf of Morgan Stanley.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley further objects to this Request to the extent it seeks information that is already available to CPH. CPH was present for all the hearings in this case as well as the trial. In fact, CPH sought recovery for the costs of trial transcripts and hearing transcripts when it was the prevailing party. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of hearing and trial transcript costs claimed by Morgan Stanley in the Cost Motions in the form of the hearing and trial transcript invoices paid on behalf of Morgan Stanley.

REQUEST FOR PRODUCTION NO. 12:

All documents relating to Morgan Stanley's claim for taxation of the cost of deposition transcripts and videotapes, excluding copies of such transcripts and videotapes, and including but not limited to documents relating to:

- a. the amount of deposition transcript or videotape costs charged to Morgan Stanley or to any person or entity acting on Morgan Stanley's behalf; or
- b. the amount of deposition transcript or videotape costs paid by or on behalf of Morgan Stanley.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley further objects to this Request to the extent it seeks information that is already available to CPH. CPH was present for the depositions reflected in the materials supporting Morgan Stanley's Cost Motions. In fact, CPH sought recovery for the costs of depositions when it was the prevailing party. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of deposition transcript and videotape costs claimed by Morgan Stanley in the Cost Motions in the form of the deposition invoices paid on behalf of Morgan Stanley.

REQUEST FOR PRODUCTION NO. 13:

All documents relating to Morgan Stanley's claim for taxation of the cost of discovery imaging and coding or document production and management, excluding copies of the documents that were imaged, coded, produced, or managed, and including but not limited to documents relating to:

- a. the amount and nature of the discovery imaging or coding or document production and management costs charged to Morgan Stanley or to any person or entity acting on Morgan Stanley's behalf;
- b. the amount and nature of the discovery imaging or coding or document production and management costs paid by or on behalf of Morgan Stanley;
- c. any communication between Morgan Stanley (or any person or entity acting on Morgan Stanley's behalf) and any other person or entity, including but not limited to any communication between Morgan Stanley and Compulit, relating to the amount, nature, or payment of discovery imaging or coding or document production and management costs;
- d. whether any of the documents as to which such costs were incurred were actually filed with the court in this Action;
- e. whether, for each document as to which such costs were incurred, such document was actually produced to CPH;
- f. whether any of the claimed discovery imaging or coding or document production and management costs constituted the action cost of copies obtained in discovery;
- g. whether there were discounts, based on volume or otherwise, available to or used by Morgan Stanley or its lawyers or law firms relating to discovery imaging or coding or document production and management (including but not limited to copying of documents); or
- h. whether any effort was made by or on behalf of Morgan Stanley to determine whether lower prices for the discovery- or document-related tasks for which costs are claimed were available from vendors other than those who were used to carry out the tasks.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Morgan Stanley objects to this Request on the grounds that it is overbroad and to the extent it seeks information that is already available to CPH. CPH is aware of what documents it produced and the copying, imaging and coding arrangement with Compulit. Further, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. In addition, Morgan Stanley objects to this Request on the ground that it seeks irrelevant documents not reasonably calculated to lead to the discovery of admissible evidence since Morgan Stanley's claim only seeks to recoup those costs associated with discovery imaging and coding.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents sufficient to show the amount of discovery imaging and coding costs claimed by Morgan Stanley in the Cost Motions in the form of the invoices paid by Morgan Stanley for such costs.

REQUEST FOR PRODUCTION NO. 14:

All documents, excluding copies of deposition transcripts, deposition videotapes, trial transcripts, and documents produced or obtained in prior discovery in the Action, relating to costs claimed by Morgan Stanley relating to electronic discovery, including but not limited to costs relating to any search for electronically stored documents, any review or production of such documents, or any outside experts or consultants involved in any tasks relating to electronic discovery.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Morgan Stanley objects to this Request on the grounds that it is overbroad to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. In addition, Morgan Stanley objects to this Request on the ground that it seeks irrelevant documents not reasonably calculated to lead to the

discovery of admissible evidence because Morgan Stanley is not claiming electronic discovery costs in the Cost Motions. To the extent that this Request targets the Compulit costs claimed by Morgan Stanley, Morgan Stanley objects to it as duplicative of Request 13.

REQUEST FOR PRODUCTION NO. 15:

All documents relating to any effort to obtain, the results of any effort to obtain, or the receipt of any economic benefit, consideration, or other advantage of any kind in exchange for agreeing to or having agreed to do business with any person or entity to whom payment was made for which Morgan Stanley now seeks reimbursement in the form of a costs award.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley responds that it is not aware of any documents that are responsive to this Request.

REQUEST FOR PRODUCTION NO. 16:

All documents relating to any gift received by Morgan Stanley from any person or entity to whom payment was made for which Morgan Stanley now seeks reimbursement in the form of a costs award.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley responds that it is not aware of any documents that are responsive to this Request.

REQUEST FOR PRODUCTION NO. 17:

All documents, excluding copies of deposition transcripts, deposition videotapes, trial transcripts, and documents produced or obtained in prior discovery in the Action, that may tend to support or refute the assertion in the Costs Motions and supporting affidavits that the claimed costs were reasonable and necessary to the defense of the Action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Morgan Stanley objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Morgan Stanley further objects to the extent that this Request seeks a legal theory or conclusion and to the extent it seeks information that is already available to CPH. In addition, Morgan Stanley objects to this Request to the extent it requires the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Lastly, Morgan Stanley objects to the term "refute" as vague and ambiguous because it can have very different meanings to CPH and Morgan Stanley in this context.

Subject to and without waiving the foregoing objections and the General Objections, Morgan Stanley will make reasonable efforts to identify and produce non-privileged documents that Morgan Stanley believes are sufficient to support the costs itemized in the affidavits filed in support of the Cost Motions.

SYLVIA H. WALBOLT
Florida Bar No. 033604
JOSEPH IANNO, JR.
Florida Bar No. 655351
CARLTON FIELDS, P.A.
525 Okeechobee Blvd., Suite 1200
West Palm Beach, FL 33401
Ph: (561) 659-7070
Fax: (561) 659-7368

FAITH E. GAY
Florida Bar No. 0129593
QUINN EMANUEL et. al.
51 Madison Avenue, 22nd Floor
New York, NY 101010
Ph: (212) 849-7220
Fax: (212) 849-7100

BRUCE S. ROGOW
Florida Bar No. 067999
BRUCE S. ROGOW, P.A.
Broward Financial Centre, Suite 1930
500 East Broward Blvd.
Fort Lauderdale, FL 33394
Ph: (954) 767-8909
Fax: (954) 767-1530

By: 

BRUCE S. ROGOW
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided to the following counsel listed below, by Federal Express and U.S. Mail this 22 day of August, 2008:

JACK SCAROLA, ESQ.
SEARCY, DENNEY, SCAROLA, et. al.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33402

JEROLD S. SOLOVY, ESQ.
JENNER & BLOCK, LLP
330 N. Wabash Ave.
Chicago, IL 60611



BRUCE S. ROGOW

Exhibit C

Surety Proposals and Surveys of the Surety Market's
Capacity to Bond CPH's Judgement

NOT A CERTIFIED COPY

Survey of Surety Market Capacity

Insurer	Capacity Offered (MM)	Collateral	Rate	Comments
Safeco	\$250	No	TBD	Confirmed
St Paul Travelers	\$500	No	TBD	Need New Indemnity
Chubb	\$300	No	2.50 - \$5w/o; \$1 - \$2.50 w	Will go higher with Collateral
AIG	\$4,000	Yes	TBD	100% Collateral
Liberty Mutual	\$1,000	Yes	TBD	100% Collateral
Hartford	\$100	Yes	TBD	100% Collateral
C.N.A.	\$25	No	TBD	In-House Limit
Zurich	\$0	N/A	TBD	Interested
ACE	\$100	Yes	\$1 - \$10	100% Collateral

Total **\$6,275**

NOT A CERTIFIED COPY

DRAFT

Surety Market Capacity as of May 10, 2005

Insurer	Capacity Offered (MM)	Collateral	Rate per Thousand	Cost	Comments
ACE	\$75 x/s \$25	Yes	\$7.50/k	\$750,000	\$75MM collateral
	\$25	No	\$10/k	\$250,000	No collateral (Confirmed)
AIG	\$4,000	Yes	\$2.5/k	\$10,000,000 plus Bank Escrow Charges (TBD by MS)	100% collateral (Escrow)
Hartford	\$50	Yes	\$5.20/k	\$260,000	100% collateral (LOC)
Liberty Mutual	\$460 x/s \$50	Yes	TBD	TBD	Will go higher w/collateral (Cost of collateral including fee not Determined)
	\$50	No	\$6.50/k	\$250,000	No collateral (Confirmed)
Safeco	\$200	No	\$5/k - \$7.50/k	\$1,000,000 - \$1,500,000	No collateral (Confirmed)

Total Capacity \$4,860MM

Total Non-AIG

Capacity \$860MM

MS_COSTMNTN 00163

16div-032086

DRAFT

Surety Market Capacity as of May 10, 2005

Insurer	Capacity Offered (MM)	Collateral	Rate per Thousand	Cost	Comments
ACE	\$75 x/s \$25	Yes	\$7.50k	\$750,000	\$75MM collateral
	\$25	No	\$10/k	\$250,000	No collateral (Confirmed)
AIG	\$4,000	Yes	\$2.5/k	\$10,000,000 plus Bank Escrow Charges (TBD by MS)	100% collateral (Escrow)
Hartford	\$100 \$50	Yes	\$5/k - \$7/k	\$500,000 - \$700,000	100% collateral (TBD)
Liberty Mutual) <i>AS per email Asked on 4/6/05 was opposed to 1.45 bn - Treasury limits</i>	\$460 x/s \$50	Yes	TBD	TBD	Will go higher w/collateral (Cost of collateral including fee not Determined)
	\$50	No	\$6.50/k	\$250,000	No collateral (Confirmed)
Safeco <i>OK</i>	\$200	No	\$5/k - \$7.50/k	\$1,000,000 - \$1,500,000	No collateral (Confirmed)

Zurich - No Response

Total Capacity \$4,875MM - \$4,950MM

Total Non-AIG

Capacity \$875MM - \$950MM

4,080,000,000

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*200 - Safeco
50 - Liberty
25 - ACE

275 w/collateral*

Survey of Surety Market Capacity

Insurer	Capacity Offered (MM)	Collateral	Rate	Comments
Safeco	\$250	No	TBD	Confirmed
St Paul Travelers	\$500	No	TBD	Need New Indemnity
Chubb	\$300	No	2.50 - \$5w/o; \$1 - \$2.50 w	Will go higher with Collateral
AIG	\$4,000	Yes	TBD	100% Collateral
Liberty Mutual	\$1,000	Yes	TBD	100% Collateral
Hartford	\$100	Yes	TBD	100% Collateral
C.N.A.	\$25	No	TBD	In-House Limit
Zurich	\$0	N/A	TBD	Interested
ACE	\$100	Yes	\$1 - \$10	100% Collateral

Total

\$5,525
\$ 6,250

(Bob Gilbert) 561-650-8007

• Are you committed for full Am
Need to know what type of Collateral

• Dept. CMA's with AIG

• Whose letter do you want - Single letter of
Credit from 1 bank or 2/3 letters to spread
Risk. 25

• Work 250 on Indemnities (AIG Liberty)

500
300
100
100
1275
5000
6275

George's Boss
Just for Indication
Running Analysis.

2:30pm Wednesday
April 18th.
Conference Call

Survey of Surety Market Capacity

Insurer	Capacity Offered (MM)	Collateral	Rate per Thousand	Full Cost	Comments
Safeco	\$200 ✓	No	\$5/k to \$7.50/k	\$1MM to \$1.5MM	Confirmed
St Paul Travelers	^{Handwritten: will get back} \$500 ✓	No	TBD		Need New Indemnity
AIG	^{Handwritten: 2.5} \$4,000	Yes	TBD		100% Collateral
Liberty Mutual	^{Handwritten: rec'd info} \$50	No	\$5/k net of Comm \$6.50/k Gross	\$250,000 \$325,000	No Collateral for this level of capacity (Confirmed) Will go higher w/Collateral
Hartford	\$100	Yes	5-7.50		100% Collateral
ACE	\$100 \$25	Yes	\$7.50k \$10/k	\$750,000 \$250,000	\$75MM Collateral No Collateral Confirmed

Total \$4,875 - \$4,950

\$2.5

~~Escrow~~
~~Prm~~
~~Comm.~~
~~Fee~~

Bank
 Escrow
 General Mgmt.

Todd @ AIG
 7-10

Will get back to us on Hartford & Ace.
 Clarify fees on Escrow Agreement - Does it include everything or just the Bank charges
 Total Cost of Bond
 & Breakdown of Cost.

Survey of Surety Market Capacity

Sully
West

Insurer	Capacity Offered (MM)	Collateral	Rate per Thousand	Comments
Safeco	\$200	No	\$5/k to \$7.50/k	Confirmed
St Paul Travelers	\$500	No	TBD	Need New Indemnity
AIG	\$4,000	Yes	TBD	100% Collateral
Liberty Mutual	\$50	No	\$5/k net of Comm \$6.50/k Gross	No Collateral for this level of capacity (Confirmed)
Hartford	\$100	Yes	TBD	100% Collateral
C.N.A. <i>OTF</i>	\$25	No	TBD	In-House Limit
ACE	\$100	Yes	\$1/k - \$10/k	100% Collateral (Unconfirmed)

Total \$4,975

Myrna update: 5/6/05

- Do a conference call w/AIG
 - Will they consider other Escrow other than Bony etc.
 - Fee in Escrow Agreement covers Bank & AIG or just AIG.
- AIG is reviewing CO questions and will respond shortly.
- Pushing St. Paul for rates today.
- ACE, no response, OTF dist.
- Hartford reviewing, doing due diligence.
- AIG coming up with something re: LOC
 - LOC would be about 40 banks.
 - Myrna requested both for our review.
 - Doing that will prolong process, so eliminate LOC
 - Got Escrow today (AIG) - will focus on Escrow.
- Todd - AIG (telephone)
 - Other Escrow - yes
 - JP Morgan
 - Citic
 - Top Banks.
 - Done similar deals through Bof NY

Survey of Surety Market Capacity

Insurer	Capacity Offered (MM)	Collateral	Rate	Comments
Safeco	\$250	No	TBD	Confirmed
St Paul Travelers	\$500	No	TBD	Need New Indemnity
Chubb	\$300	No	2.50 - \$5w/o; \$1 - \$2.50 w	Will go higher with Collateral
AIG	\$4,000	Yes	TBD	100% Collateral
Liberty Mutual	\$1,000	Yes	TBD	100% Collateral
Hartford	\$100	Yes	TBD	100% Collateral
C.N.A.	\$25	No	TBD	In-House Limit
Zurich	\$0	N/A	TBD	Interested
ACE	\$100	Yes	\$1 - \$10	100% Collateral

Total **\$6,275**

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Survey of Surety Market Capacity

Cbst

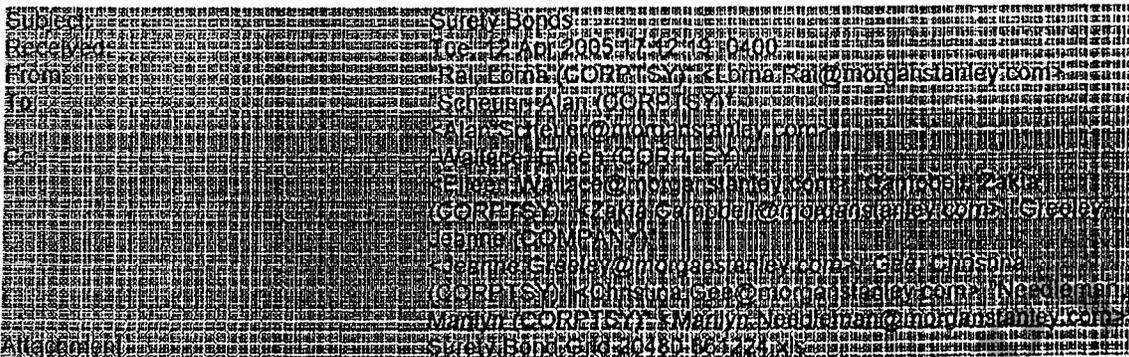
Insurer	Capacity Offered (MM)	Collateral	Rate per Thousand	Comments
Safeco	\$200	No	\$5/k to \$7.50/k	Confirmed
St Paul Travelers	\$500	No	TBD	Need New Indemnity
AIG	\$4,000	Yes	TBD	100% Collateral
Liberty Mutual	\$50	No	\$5/k net of Comm \$6.50/k Gross	No Collateral for this level of capacity (Confirmed)
Hartford	\$100	Yes	TBD	100% Collateral
CNA	\$25	No	TBD	In-House Limit
ACE	\$100	Yes	\$1/k - \$10/k	100% Collateral (Unconfirmed)

Total \$4,975

NOT A CERTIFIED COPY

Insurer	Confidentiality Agreement	Indemnity	LOC
ACE	Existing Agreement	Comments provided by Law 4.30.05 Comments sent to EG Bowman 5.3.05	Reviewed and signed off by Law 4.28.05
AIG	Signed 4.20.05	Comments provided by Law 4.25.05 Comments on Escrow and Addtl Comments on Indemnity provided by Law 4.30.05 Comments on Indemnity Agreement sent to EG Bowman 5.3.05 <i>Waiting for comments on Escrow from Law</i>	Reviewed and signed off by Law 4.30.05
Chubb	Has not signed	Awaiting confidentiality agreement	Have not received
Hartford	Existing Agreement	Comments provided by Law 4.30.05 Comments sent to EG Bowman 5.3.05	Have not received
Liberty Mutual	Signed 3.29.05	Comments provided by Law 4.25.05 Comments sent to EG Bowman 5.3.05 Offered capacity of \$50mm for a rate of net \$5/k or gross of \$6.50/k. They need additional information to offer more capacity. Rec'd 5.5.05	Reviewed and signed off by Law 4.25.05
Safeco	Signed 4.25.05	Agreement in place but addendum suggested; comments provided by Law 4.30.05 Comments sent to EG Bowman 5.3.05 Agreement for Specific Bonds received & sent to Jeanne Greeley for comments 5.4.05 Offered capacity of \$200mm for a rate between \$5/k to \$7.50/k.	Have not received No Collateral Required
Travelers	Existing Agreement	Comments provide by Law 4.29.05 Comments sent to EG Bowman 5.3.04	Have not received
Zurich	Existing Agreement	Have not received	Have not received
E.G. Bowman (Broker)	Signed 4.15.05	N/A	N/A

¹ Form of Corporate Authorization authorizing Treasurer to sign on behalf of MS Parent forwarded 4.29.05



Alan:

With reference to your telephone conversation today with Zakia Campbell, attached is the grid showing various Insurance Companies bond capacity as per E.G. Bowman's survey of the surety bond market. We will keep you updated with respect to other markets and rates.

Please feel free to call me should you have any questions.

Sincerely,

Lorna Rai
Analyst
Morgan Stanley
750 7th Avenue, 33rd Floor
New York, NY 10020
Tel: (212)762-4136
Fax: (212)762-0700
lorna.raai@morganstanley.com

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Survey of Surety Market Capacity

Insurer	Capacity Offered (MM)	Collateral	Rate	Comments
Sales				
St Paul Travelers	\$250	No	TBD	Confirmed
Chubb	\$500	No	TBD	Need New Underwriting
ARI	\$300	No	TBD	Will go higher with Collateral
Liberty Mutual	\$4,100	Yes	TBD	100% Collateral
Liberty	\$1,000	Yes	TBD	100% Collateral
CNA	\$100	Yes	TBD	100% Collateral
Zurich	\$100	Yes	TBD	100% Collateral
ACE			TBD	Awaiting Response
			TBD	Awaiting Response
			TBD	Awaiting Response
Total	\$5,400			

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MS_COSTMIN 03556

Survey of Surety Market Capacity

Insurer	Capacity Offered (MM)	Collateral	Rate	Comments
Safeco	\$250	No	TBD	Confirmed
St Paul Travelers	\$500	No	TBD	Need New Indemnity
Chubb	\$300	No	2.50 - \$5w/o: \$1 - \$2.50 w	Will go higher with Collateral
AIG	\$4,000	Yes	TBD	100% Collateral
Liberty Mutual	\$1,000	Yes	TBD	100% Collateral
Hartford	\$100	Yes	TBD	100% Collateral
C.N.A.	\$25	No	TBD	In House Limit
Zurich	\$0	N/A	TBD	Interested
ACE	\$100	Yes	\$1 - \$10	100% Collateral

Total \$6,275

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MS_COSTMTN 03598

Exhibit D

Emails Between E.G. Bowman and AIG, Liberty
Mutual, Chubb, St. Paul/Travelers and Safeco
Regarding the Surety Providers' Proposals to Insure
the Supersedeas Bond

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Rai, Lorna (CORPTSY)

From: Myrna Gaskin [MGaskin@egbowman.com]
Sent: Tuesday, June 07, 2005 3:08 AM
To: Campbell, Zakia (CORPTSY)
Cc: Gee, Christina (CORPTSY); Rai, Lorna (CORPTSY)
Subject: Fw: Morgan Stanley - Large Appeal Bond
Attachments: ILOC-TRAVELERS (S-2428)02-05.doc; MS Addendum to GCI-B and GCI-B.pdf

Zakia,

Below and attached is the response from St. Paul/Travelers for your review. The delay in response was due to the fact that the underwriters were awaiting Home office approval.

----- Original Message -----

From: Gonsalves, Bernadette R
To: mgaskin@egbowman.com
Sent: Monday, June 07, 2005 11:53 AM
Subject: Morgan Stanley - Large Appeal Bond

Myrna,

Per our phone conversation, we are prepared to write 1) a \$750mm stand-alone, sole surety appeal bond (no co-surety or reinsurance arrangement) fully collateralized with an escrow type arrangement through Smith Barney. There are no set-up fees and there are investment elections such as a Smith Barney Money Market Fund, U.S. Treasuries or Government Agencies as well as two other options. Rate will be \$3/m net. 2) As an alternative, we are also willing to write a \$150mm sole surety appeal bond (again, no co-surety or reinsurance arrangement) fully collateralized in the form of a Letter of Credit. The Letter of Credit format is attached and it must be drawn on an approved bank acceptable to the St. Paul Travelers. Rate will be \$2.50/m net. If this option is elected, you will need to let us know ahead of time which bank MS is planning to use. If the Smith Barney route is preferred, we will put MS in touch with the Smith Barney representative.

<<ILOC-TRAVELERS (S-2428)02-05.doc>>

This, of course, is subject to a completed General Contract of Indemnity (Form B) to which MS made some changes via an Addendum. Our legal department has reviewed these changes and has accepted items 1, 2 and 6. However, they would like items 3 and 4 removed and the following wording in item 5 removed "and 12 and the last sentence of paragraph 7". In other words, item 5 should be modified as follows: "The second sentence of the Paragraph 2(b) in the "Representations of Fact" and Paragraphs 4(a)(1), 4(a)(2), 4 (b), 10 in the "Promises and Agreements" of the Agreement are deleted. As a further condition to agreeing to remove paragraph 10 from the Promises and Agreement section of the GCI-B (which item 5 in the Addendum does) we must receive 100% collateral in the form of an acceptable Letter of Credit. A copy of the GCI-B and the Addendum are attached for easy referencing.

<<MS Addendum to GCI-B and GCI-B.pdf>>

Please discuss these options with MS and let us know which is preferred.

I want to take this opportunity to personally thank you and MS for your patience while this was being reviewed by senior management.

6/7/2005

MS_COSTMTN 00040

16div-032098

Regards,

Bernie

This communication, together with any attachments hereto or links contained herein, is for the sole use of the intended recipient(s) and may contain information that is confidential or legally protected. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, dissemination, distribution or use of this communication is **STRICTLY PROHIBITED**. If you have received this communication in error, please notify the sender immediately by return e-mail message and delete the original and all copies of the communication, along with any attachments hereto or links herein, from your system.

The St. Paul Travelers e-mail system made this annotation on 06/06/05, 17:32:57.

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6/7/2005

MS_COSTMTN 0004

16div-032099

Rai, Lorna (CORPTSY)

From: Myrna Gaskin [MGaskin@ogbowman.com]
Sent: Wednesday, May 11, 2005 2:59 PM
To: Gee, Christina (CORPTSY)
Cc: Rai, Lorna (CORPTSY)
Subject: Fw: Morgan Stanley- Appeal Bond

Christina,
Below for your review is the response from The Hartford.

----- Original Message -----

From: "Macdonald, John A (Bond, Garden State/RO)"
<john.macdonald@thehartford.com>
To: <mgaskin@ogbowman.com>
Sent: Wednesday, May 11, 2005 8:52 AM
Subject: Morgan Stanley- Appeal Bond

> Myrna:
> The Hartford is in a position to offer Morgan Stanley capacity of
> \$50,000,000 in several liability for their potentially large appeal bond
> subject to the following terms and conditions:
>
> * Full collateral in the form of an irrevocable letter of credit from
> a pre-approved bank on the Hartford's form.
> * Full corporate indemnity of Morgan Stanley.
> * Our bond form with several liability.
> * The pricing will be \$5.20 per thousand per annum with EG Bowman
> receiving 20% commission.
> * Review and understanding of all the participating sureties.
>
> John A. Macdonald
> Commercial Surety Manager
> Hartford Bond
> Phone: 973-607-5379
> Fax: 973-607-5108
> email: john.macdonald@thehartford.com
>
>
>
> *****
> PRIVILEGED AND CONFIDENTIAL: This communication, including attachments, is
> for the exclusive use of addressee and may contain proprietary,
> confidential and/or privileged information. If you are not the intended
> recipient, any use, copying, disclosure, dissemination or distribution is
> strictly prohibited. If you are not the intended recipient, please notify
> the sender immediately by return e-mail, delete this communication and
> destroy all copies.
> *****
>

Rai, Lorna (CORPTSY)

From: Myrna Gaskin [MGaskin@egbowman.com]
Sent: Wednesday, April 20, 2005 12:58 PM
To: Campbell, Zakia (CORPTSY); Gee, Christina (CORPTSY); Rai, Lorna (CORPTSY)
Subject: Fw: Morgan Stanley - Potential \$4 Billion Court bond
Attachments: Revised form Escrow Agreement.doc

Zakia, Christina, Lorna,

Below for your review is another option offered by AIG for the above.

----- Original Message -----

From: Robinson, Todd
To: 'MGaskin@EGBowman.com'
Sent: Wednesday, April 20, 2005 12:33 PM
Subject: Morgan Stanley - Potential \$4 Billion Court bond

Another option Morgan Stanley should consider is placing the collateral in escrow. We traditionally use The Bank of New York as our escrow agent. There would be a general fee which Morgan Stanley would pay directly to the escrow agent and a management fee paid to AIG (management fee would be based on a % of assets held in trust). However, this may better suit Morgan Stanley's needs due to the size of the obligation.

Attached is a sample escrow agreement.

NOT A CERTIFIED COPY

9/2005

MS_COSTMTN 00296

16div-032101

Rai, Lorna (CORPTSY)

From: Myma Gaskin [MGaskin@egbowman.com]
Sent: Wednesday, April 13, 2005 11:00 AM
To: Campbell, Zakia (CORPTSY); Rai, Lorna (CORPTSY)
Subject: Fw: Morgan Stanley - Potential \$4 Billion Court bond

Zakia, Lorna

Below is the response from AIG regarding the above.

----- Original Message -----

From: Maroney, Kevin
To: 'mgaskin@egbowman.com'
Cc: Maroney, Kevin
Sent: Wednesday, April 13, 2005 10:54 AM
Subject: FW: Morgan Stanley - Potential \$4 Billion Court bond

Dear Ms. Gaskin:

Thank you for considering the services of AIG Surety with respects to the captioned potential bond.

In our discussions you informed that the principal, Morgan Stanley, is testing the surety marketplace to see if there is enough capacity to underwrite a \$4 billion obligation. The short answer is, in theory, yes there is sufficient capacity, however the obligation would require a minimum of 100% in collateral. The collateral required would be in the form of an irrevocable letter of credit. Deviations from this form of collateral may cause the collateral requirement to exceed 100% of the bonded obligation.

Prior to the approval or issuance of any bond, a full underwriting review would need to be conducted. This review would include, but may not be limited to, a financial review and credit worthiness review of the principal, a review of the associated court documents, an acceptable bond form, etc.

Kevin M. Maroney

IMPORTANT NOTICE:

The information in this email (and any attachments) is confidential. If you are not the intended recipient, you must not read, use or disseminate the information. If you have received this e-mail in error, please immediately notify me by "Reply" command and permanently delete the original and any copies or printouts thereof. Although this email and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by American International Group, Inc. or its subsidiaries or affiliates either jointly or severally, for any loss or damage arising in any way from its use.

4/13/2005

MS_COSTMTN 0030!

16div-032102

Gee, Christina (CORPTSY)

From: Rai, Lorna (CORPTSY)
Sent: Tuesday, April 12, 2005 5:20 PM
To: Campbell, Zakia (CORPTSY); Gee, Christina (CORPTSY)
Subject: FW: Morgan Stanley Appeal Bond

FYI

*Lorna Rai
Analyst
Morgan Stanley
750 7th Avenue, 33rd Floor
New York, NY 10020
Tel: (212)762-4136
Fax: (212)762-0700
lorna.raii@morganstanley.com*

From: Myrna Gaskin [mailto:MGaskin@egbowman.com]
Sent: Tuesday, April 12, 2005 11:41 AM
To: Rai, Lorna (CORPTSY)
Subject: Fw: Morgan Stanley Appeal Bond

Lorna,
As promised, here is Liberty's response.

----- Original Message -----

From: Ostrin, Kimberly
To: MGaskin@egbowman.com
Sent: Tuesday, April 12, 2005 10:30 AM
Subject: Morgan Stanley Appeal Bond

Myrna:

As we discussed, in the past, for companies with very strong credit profiles, we've been able to offer capacity up to \$1BB for an appeal bond, on a fully collateralized basis. We advise you of this simply to give you an idea of what Liberty could be capable of. In the specific case of Morgan Stanley, we'd of course need to perform our standard underwriting, assess the company's overall current position, and have a meeting, before we could commit to being able to provide any capacity.

If you have any questions, please call me. Also, please advise whether we should move forward to begin our underwriting process.

Thank you.

Kim Ostrin
Liberty-NY

4/15/2005

MS_COSTMTN 0079;

16div-032103

Campbell, Zakia (CORPTSY)

From: Gee, Christina (CORPTSY)
Sent: Thursday, May 05, 2005 4:46 PM
To: Campbell, Zakia (CORPTSY)
Subject: FW: Safeco Indemnity Agreement - New Addendum

Z,

Safeco's response.

-Chris

From: Myrna Gaskin [mailto:MGaskin@egbowman.com]
Sent: Thursday, May 05, 2005 4:42 PM
To: Gee, Christina (CORPTSY)
Cc: Rai, Loma (CORPTSY)
Subject: Fw: Safeco Indemnity Agreement - New Addendum

Christina,

Below is Safeco response regarding the capacity and rate. Also, note that they are reluctant to sign a new indemnity agreement.

----- Original Message -----

From: SALVATORE, GERARDO
To: Myrna Gaskin
Sent: Thursday, May 05, 2005 4:38 PM
Subject: FW: Safeco Indemnity Agreement - New Addendum

Myrna,

I spoke with my H.O about capacity and rate. While it's hard to say exactly where we will end up (which is why I have been reluctant to speak on this issue), we do want to provide whatever guidance we can. That said, we can imagine our comfort level may be in the area of \$200mm with a rate range of maybe \$5/m to 7.50 /m. This will depend on overall size of the obligation and other issues.

As for indemnity, we are reluctant to do a separate indemnity for this bond. We already have a valid one that would apply to this bond and we feel that a second one would confuse our indemnity picture. What exactly is it about the one we have in effect that concerns them on this large obligation?

Gerry Salvatore, CPCU
Commercial Manager, Mahwah Service Center
Safeco Surety
(201) 327-6542 FAX (201) 327-5238
gesalv@safeco.com

-----Original Message-----

From: Myrna Gaskin [mailto:MGaskin@egbowman.com]
Sent: Thursday, May 05, 2005 11:31 AM
To: SALVATORE, GERARDO

5/5/2005

MS_COSTMTN 01092

16div-032104

Subject: Fw: Safeco Indemnity Agreement - New Addendum

Gerry,
Per the below, attached is the new addendum for the GAI.

----- Original Message -----

From: Gee, Christina (CORPTSY)

To: Myma Gaskin

Cc: Raj, Lorna (CORPTSY) ; Gee, Christina (CORPTSY)

Sent: Thursday, May 05, 2005 11:15 AM

Subject: Safeco Indemnity Agreement - New Addendum

Myma,

Please find attached the new addendum to be added to the Safeco Agreement of Indemnity for Specific Bonds. Please forward to Safeco for their review.

Also, please advise as to the rate and capacity from Safeco.

Regards,

Christina Gee

Vice President

Risk and Insurance Management

212-762-4137

NOTICE: If received in error, please destroy and notify sender. Sender does not waive confidentiality or privilege, and use is prohibited.

5/5/2005

MS_COSTMTN 01093

16div-032105



Lorna,
Chubb is still interested in participating in the process. Below is a CA for review. Their GAI was sent to you on 4/7/05

----- Original Message -----
From: <msimmons@chubb.com>
To: <mgaskin@egbowman.com>
Sent: Tuesday, May 03, 2005 3:44 PM
Subject: Morgan Stanley

Myrna,

I have attached a Confidentiality Agreement that we have executed in the past. If we were able to sign anything, it would be this form or something similar. Please pass this on to Morgan Stanley for their review. We are willing to offer approximately \$300,000,000 without collateral, a higher amount with collateral. As far as rate, that is something we would consider after reviewing the case and obligation. In the past we have supported similar type obligations for A rated customers using a \$3-4 rate (uncollateralized).

Thanks,

(See attached file: Confidentiality Agreement- Standard Nov 2001.doc)

Michael P. Simmons
Sr. Underwriter
Chubb Surety
908.903.7909

MS_COSTMTN 04352

16div-032106

Exhibit E

Meeting Notices Demonstrating that Morgan Stanley
Consulted with Numerous Providers Before
Ultimately Choosing AIG

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Rai, Lorna (CORPTSY)

From: Myrna Gaskin [MGaskin@egbowman.com]
Sent: Friday, April 22, 2005 4:07 PM
To: Rai, Lorna (CORPTSY)
Subject: Re: Surety Bond

Lorna,
Below are the responses next to each company.

----- Original Message -----

From: Rai, Lorna (CORPTSY)
To: Myrna Gaskin
Cc: Gee, Christina (CORPTSY)
Sent: Friday, April 22, 2005 10:53 AM
Subject: RE: Surety Bond

Hello Myrna,

I have scheduled meetings with the insurers as follows:

Monday, April 25th, 2p.m. – 750 7th Avenue, 33rd Floor, Conference Room A

- 3- Liberty - attending- Kimberly Ostrin and Craig Gortner
- 4- Chubb- conference call- Michael Simmons and Chris Parker
- 5- Travellers- attending Richard Garone and Bernadette Gonsalves-Leitch
- 4- Safeco - attending Vito Sancillia
- ACE - still awaiting a response
- 2- Hartford - conference call John MacDonald
- 6- Zurich

Wednesday, April 27th, 3p.m. – 750 7th Avenue, 29th Floor, Conference Room 1
AIG

Although we prefer the insurers to attend in person, should anyone find themselves unable to do so, the call in numbers for these meetings are:

866-367-6769 (National)
646-441-1005 (International)
866335 - Passcode

Please note, **AIG will be the only insurer to attend the Wednesday meeting.** All other insurers will be attending the Monday meeting. For security purposes, can you kindly send me a list of the individuals who will be attending both meetings. Besides yourself, please feel free to invite Donna Payne should you find it necessary for her to be there. Also, it may be a good idea, for the Monday meeting, if you could arrive at least a half hour early, so we can have a mini meeting before the big meeting.

Please feel free to call me with any questions.

Thank you

Lorna Rai
Analyst
Morgan Stanley
750 7th Avenue, 33rd Floor

4/22/2005

New York, NY 10020
Tel: (212)762-4136
Fax: (212)762-0700
lorna.rae@morganstanley.com

From: Rai, Lorna (CORPTSY)
Sent: Thursday, April 21, 2005 3:51 PM
To: 'Myrna Gaskin'
Subject: RE: Surety Bond

Hi Myrna,

Please forgive me, the correct spelling of his name is Alan Scheuer. Also, the location of the meeting is: Morgan Stanley, 750 7th Avenue, 33rd Floor, Conference Room A.

Thank you,

Lorna Rai
Analyst
Morgan Stanley
750 7th Avenue, 33rd Floor
New York, NY 10020
Tel: (212)762-4136
Fax: (212)762-0700
lorna.rae@morganstanley.com

From: Myrna Gaskin [mailto:MGaskin@egbowman.com]
Sent: Thursday, April 21, 2005 3:40 PM
To: Rai, Lorna (CORPTSY)
Subject: Re: Surety Bond

Lorna,
Where is the meeting to be held, at 750 Seventh Avenue?

----- Original Message -----

From: Rai, Lorna (CORPTSY)
To: Myrna Gaskin
Cc: Gee, Christina (CORPTSY)
Sent: Thursday, April 21, 2005 3:29 PM
Subject: Surety Bond

Myrna,

As per our telephone conversation this afternoon, can you kindly arrange a sit down meeting with the Underwriters who have given us quotations for the Florida surety bond. This meeting will consist of a presentation by Alan Scheurer, Treasurer, on Morgan Stanley's financial condition, and to answer any questions the insurers may have. If possible, please have them forward their list of questions to you by Friday so Mr. Scheurer will be able to address them at the meeting.

Mr. Scheurer is available between noon and four, so 2p.m. may be a good time for the meeting. Of course, should this time be difficult, we do have the flexibility of choosing a time in the noon to four time frame.

Can you also please send me the names of the underwriters, their insurance company and location? Besides needing this information for security purposes when they attend the meeting, I will need this information to set up a conference line should anyone be unable to attend in person. As this matter is urgent, I would appreciate it if you can give me some indication as to the insurers availability by early afternoon on Friday.

4/22/2005

Please feel free to call me with any questions.

Thank you,

Lorna Rai
Analyst
Morgan Stanley
750 7th Avenue, 33rd Floor
New York, NY 10020
Tel: (212) 762-4136
Fax: (212) 762-0700
lorna.ra1@morganstanley.com

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4/22/2005

Rai, Lorna (CORPTSY)

From: Rai, Lorna (CORPTSY)
Sent: Thursday, April 21, 2005 5:36 PM
To: Campbell, Zakia (CORPTSY)
Cc: Gee, Christina (CORPTSY)
Subject: Surety Bond

Hi Zakia,

Myrna got back to me this afternoon regarding the insurers availability to meet with Alan.

- AIG - Cannot meet Monday, They are still reviewing material and the team to meet with Alan is not available then. Would like to reschedule to Wednesday.
- Zurich ^{\$0} - Cannot do Monday. Myrna is awaiting a call back for available dates.
- CNA ^{\$2.5} - Is not available Monday. Still working on limits and will not commit to a meeting.
- Hartford - Left message, awaiting their response
- Liberty - Available
- Chubb - Available
- Travellers - Available
- Safeco - Available
- ACE - Available

Is Wednesday too late? If it is not, I will try to reschedule for Wednesday at 2p.m. Please let me know.

Thanks,

Lorna Rai
Analyst
Morgan Stanley
750 7th Avenue, 33rd Floor
New York, NY 10020
Tel: (212)762-4136
Fax: (212)762-0700
lorna.raai@morganstanley.com

Ask who you are speaking

4/22/2005

Morgan Stanley
Surety Insurers Meeting

Date: Wednesday, April 27, 2005
Time: 3:00 p.m.
Location: Morgan Stanley
1585 Broadway
40th Floor – VIP Room

Attendees

Morgan Stanley
Alan Scheuer
Eileen Wallace
Marilyn Needleman
Zakia Campbell
Jeanne Greeley
Christina Gee

E.G. Bowman Co., Inc.
Myna Gaskin
Donna Payne

Insurers

AIG
Vin Forte - SVP Surety / Chief Underwriting Officer
Art Jameison - VP Surety / Chief Credit Officer
Hutch Ganson - DBG Chief Credit Officer
Todd Robinson

Morgan Stanley
Surety Insurers Meeting

Date: Monday, April 25, 2005
Time: 2:00 p.m.
Location: Morgan Stanley
750 7th Avenue
33rd Floor, Conference Room A
New York, NY 10036

Attendees

Morgan Stanley
Alan Scheuer
Eileen Wallace
James Cusick
Marilyn Needleman
Zakia Campbell
Jeanne Greeley
Christina Gee

E.G. Bowman Co., Inc.
Myrna Gaskin
Donna Payne

Insurers

Hartford (via phone)
John MacDonald

Liberty
Kimberly Ostrin
Craig Gortner

Safeco
Vito Sancillia

Travellers (via phone)
Richard Garone
Bernadette Gonsalves-Leitch

Zurich (via phone)
George James
Barbara Russo

ACE (via phone)
John Guglielmo
Alfred Wright
Chad Anderson

Morgan Stanley

1

Morgan Stanley
Surety Insurers Meeting

Date: Monday, April 25, 2005
Time: 2:00 p.m.
Location: Morgan Stanley
750 7th Avenue
33rd Floor, Conference Room A
New York, NY 10036

Attendees

Morgan Stanley
Alan Scheuer
Eileen Wallace
James Cusick
Marilyn Needleman
Zakia Campbell
Jeanne Greeley
Christina Gee
Lorna Rai

E.G. Bowman Co., Inc.
Myrna Gaskin
Donna Payne

Insurers

Chubb (via phone)
Michael Simmons
Chris Parker

Hartford (via phone)
John MacDonald

Liberty
Kimberly Ostrin
Craig Gortner

Safeco
Vito Sancillia

Travellers
Richard Garone
Bernadette Gonsalves-Leitch

Zurich
TBD

Morgan Stanley

1

Morgan Stanley Surety Insurers Meeting

Date: Monday, April 25, 2005
Time: 2:00 p.m.
Location: Morgan Stanley
 750 7th Avenue
 33rd Floor, Conference Room A
 New York, NY 10036

Attendees

Morgan Stanley
 Alan Scheuer
 Eileen Wallace
 James Cusick
 Marilyn Needleman
 Zakia Campbell
 Jeanne Greeley
 Christina Gee
 Lorna Rai

E.G. Bowman Co., Inc.
 Myrna Gaskin
 Donna Payne

Insurers

CIA: w/d

Chubb (via phone)
 Michael Simmons
 Chris Parker

and NO electronic agreements

*Jeanne Greeley
Indemnity Agreement?
Suggestions - later
today! Liberty + more*

Hartford (via phone)
 John MacDonald

*L: Surety bond: { LLC fine } ok
standards
mtg. attendees
Rt 04/05
big excess
agreement.*

Liberty
 Kimberly Ostrin
 Craig Gortner

Safeco
 Vito Sancillia

CIA - send to Seattle

Travellers (via phone)
 Richard Garone
 Bernadette Gonsalves-Leitch

calling in

*- big focused
Special surety
relating to Superfund
Bonds - litigation.*

Zurich
 TBD • George James

Morgan Stanley

ACE - conference call
 John Guglielmo Alfred Wright
 - regional mgr. Chad Anderson

Morgan Stanley
Surety Insurers Meeting

Date: Monday, April 25, 2005
Time: 2:00 p.m.
Location: Morgan Stanley
750 7th. Avenue
33rd Floor, Conference Room A
New York, NY 10036

Host – Zakia Campbell
Contact – Carmen Gonzalez 212-762-4135

E.G. Bowman Co., Inc.
Myrna Gaskin
Donna Payne

Insurers

Chubb (via phone)
Michael Simmons
Chris Parker

Hartford (via phone)
John MacDonald

Liberty
Kimberly Ostrin
Craig Gortner

Safeco
Vito Sancillia

Travellers
Richard Garone
Bernadette Gonsalves-Leitch

Zurich
TBD

Morgan Stanley

Greeley, Jeanne (COMPANY)

From: Rai, Lorna (CORPTSY)
It: Friday, April 22, 2005 4:52 PM
To: Greeley, Jeanne (COMPANY); Needleman, Marilyn (CORPTSY); Gee, Christina (CORPTSY); Campbell, Zakia (CORPTSY)
Cc: Abbott-Barr, Marisha (CORPTSY); Eustache, Sandra (CORPTSY)
Subject: Alan Scheuer's Presentation to Insurers re: Florida Surety Bond

A meeting on the above has been scheduled as follows:

Jim Kusick

Monday, April 25th at 2p.m. – 750/33/Conference Room A

Attendees:

Liberty Mutual	✓ Kimberly Ostrin and Craig Gortner
Chubb	Michael Simmons and Chris Parker (via phone)
Travellers	Richard Garone and Bernadette Gonsalves-Leitch
Safeco	✓ Vito Sancillia
Hartford	John MacDonald
Zurich	✓ TBD
E.G. Bowman	✓ Myrna Gaskin and Donna Payne

Wednesday, April 27th at 3p.m. – 750/29/1

Attendees:

AIG	TBD
E.G. Bowman	Myrna Gaskin and Donna Payne

A conference line is also available for those who are unable to attend in person. The conference call-in numbers are:

1-800-367-6769 (National)
646-441-1005 (International)
866335 - Passcode

Thank you,

*Lorna Rai
Analyst
Morgan Stanley
750 7th Avenue, 33rd Floor
New York, NY 10020
Tel: (212)762-4136
Fax: (212)762-0700
lorna.raid@morganstanley.com*

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Exhibit F

Internal Morgan Stanley Emails Regarding
Available Escrow Agents, Including the Bank of
New York and JPMorgan Chase

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Gee, Christina (CORPTSY)

From: Mooney, Kevin (CORPTSY)
Sent: Monday, May 09, 2005 6:20 PM
To: Greeley, Jeanne (COMPANY); Brody, Jacqueline (CORPTSY); Mendez, Eduardo (CORPTSY); Cochet, Christine (CORPTSY); Campbell, Zakia (CORPTSY); Gee, Christina (CORPTSY)
Cc: Mooney, Kevin (CORPTSY)
Subject: FW: Sample Agreement
Attachments: litigationescrow.doc



litigationescrow.
doc (45 KB)

You may recall from my email on Friday that JPMC had sent over a litigation escrow agreement. I now understand from Eduardo that a direct agreement negotiated with the Plaintiff could be a possibility once a judgment is determined so I wanted to circulate their agreement to this group for comment.

Separately, I heard from JPMC today that the fees they would charge on such an arrangement would be as low as zero. Under a straight cash deposit option, they would pay us a rate of Effective Fed Funds minus 3 basis points as they are able to generate an acceptable spread gain with this setup. No other fees would apply. If we deposited securities instead of cash, an escrow account fee would apply but is likely to be in the 2 to 3 bps range.

If you have any questions, please let me know.

Regards,

Kevin

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LITIGATION ESCROW AGREEMENT

Escrow Agreement dated as of the effective date (the "Effective Date") set forth on schedule 1 attached hereto ("Schedule 1") by and among the Plaintiff identified on Schedule 1 (the "Plaintiff"), the Defendant identified on Schedule 1 (the "Defendant") and JPMorgan Chase Bank, as escrow agent hereunder (the "Escrow Agent").

WHEREAS, the Plaintiff and the Defendant pursuant to [Describe Litigation] have agreed to deposit in escrow certain funds and wish such deposit to be subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. **Appointment.** The Plaintiff and Defendant hereby appoint the Escrow Agent as their escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein.

2. **Escrow Fund.** Simultaneous with the execution and delivery of this Escrow Agreement, the Defendant is depositing with the Escrow Agent the sum indicated as the escrow deposit on Schedule 1 (the "Escrow Deposit"). The Escrow Agent shall hold the Escrow Deposit and, subject to the terms and conditions hereof, shall invest and reinvest the Escrow Deposit and the proceeds thereof (the "Escrow Fund") as directed in Section 3.

3. **Investment of Escrow Fund.** During the term of this Escrow Agreement, the Escrow Fund shall be invested and reinvested by the Escrow Agent in the investment indicated on Schedule 1 or such other investments as shall be directed in writing by the Plaintiff and the Defendant and as shall be acceptable to the Escrow Agent. All investment orders involving U.S. Treasury obligations, commercial paper and other direct investments will be executed through JPMorgan Fleming Asset Management (JPMFAM), in the investment management division of JPMorgan Chase. Subject to principles of best execution, transactions are effected on behalf of the Escrow Fund through broker-dealers selected by JPMFAM. In this regard, JPMFAM seeks to attain the best overall result for the Escrow Fund, taking into consideration quality of service and reliability. An agency fee will be assessed in connection with each transaction. Periodic statements will be provided to Plaintiff and Defendant reflecting transactions executed on behalf of the Escrow Fund. The Plaintiff and Defendant, upon written request, will receive a statement of transaction details upon completion of any securities transaction in the Escrow Fund without any additional cost. The Escrow Agent shall have the right to liquidate any investments held in order to provide funds necessary to make required payments under this Escrow Agreement. The Escrow Agent shall have no liability for any loss sustained as a result of any investment in an investment indicated on Schedule 1 or any investment made pursuant to the instructions of the parties hereto or as a result of any liquidation of any investment prior to its maturity or for the failure of the parties to give the Escrow Agent instructions to invest or reinvest the Escrow Fund.

4. **Disposition and Termination.** The Escrow Agent shall deliver the Escrow Fund upon, and pursuant to, either:
i. An court order certified by counsel to the presenting party to be final and non-appealable, or
ii. The joint written instructions of Plaintiff and Defendant.

Upon delivery of the Escrow Fund by the Escrow Agent, this Escrow Agreement shall terminate, subject to the provisions of Section 8.

5. **Escrow Agent.** The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. The Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Escrow Agreement. The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document. The Escrow Agent shall have no duty to solicit any payments which may be due it or the Escrow Fund. The Escrow

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Agent shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the primary cause of any loss to the Plaintiff or Defendant. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through agents or attorneys (and shall be liable only for the careful selection of any such agent or attorney) and may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Escrow Agent shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons. In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any party hereto which, in its opinion, conflict with any of the provisions of this Escrow Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in writing by all of the other parties hereto or by a final order or judgment of a court of competent jurisdiction. Anything in this Escrow Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

6. **Succession.** The Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving 10 days advance notice in writing of such resignation to the other parties hereto specifying a date when such resignation shall take effect. The Escrow Agent shall have the right to withhold an amount equal to any amount due and owing to the Escrow Agent, plus any costs and expenses the Escrow Agent shall reasonably believe may be incurred by the Escrow Agent in connection with the termination of the Escrow Agreement. Any corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all the escrow business of the Escrow Agent's corporate trust line of business may be transferred, shall be the Escrow Agent under this Escrow Agreement without further act.

7. **Fees.** The Plaintiff and Defendant agree jointly and severally to (i) pay the Escrow Agent upon execution of this Escrow Agreement and from time to time thereafter reasonable compensation for the services to be rendered hereunder, which unless otherwise agreed in writing shall be as described in Schedule 1 attached hereto, and (ii) pay or reimburse the Escrow Agent upon request for all expenses, disbursements and advances, including reasonable attorney's fees and expenses, incurred or made by it in connection with the preparation, execution, performance, delivery, modification and termination of this Escrow Agreement.

8. **Indemnity.** The Plaintiff and the Defendant shall jointly and severally indemnify, defend and save harmless the Escrow Agent and its directors, officers, agents and employees (the "indemnitees") from all loss, liability or expense (including the fees and expenses of in house or outside counsel) arising out of or in connection with (i) the Escrow Agent's execution and performance of this Escrow Agreement, except in the case of any indemnitee to the extent that such loss, liability or expense is due to the gross negligence or willful misconduct of such indemnitee, or (ii) its following any instructions or other directions from the Plaintiff or the Defendant, except to the extent that its following any such instruction or direction is expressly forbidden by the terms hereof. The parties hereto acknowledge that the foregoing indemnities shall survive the resignation or removal of the Escrow Agent or the termination of this Escrow Agreement. The parties hereby grant the Escrow Agent a lien on, right of set-off against and security interest in the Escrow Fund for the payment of any claim for indemnification, compensation, expenses and amounts due hereunder.

9. **TINs.** The Plaintiff and the Defendant each represent that its correct Taxpayer Identification Number ("TIN") assigned by the Internal Revenue Service ("IRS") or any other taxing authority is set forth in Schedule 1. Upon execution of this Agreement, the Plaintiff and Defendant shall provide the Escrow Agent with a fully executed W-8 or W-9 IRS form, which shall include the Plaintiff's and Defendant's TIN. In addition, all interest or other income earned under the Escrow Agreement shall be allocated and/or paid as directed in a joint written direction of the Plaintiff and the Defendant and reported by the recipient to the Internal Revenue Service or any other taxing authority. Notwithstanding such written directions, Escrow Agent shall report and, as required withhold any taxes as it determines may be required by any law or regulation in effect at the time of the distribution. In the absence of timely direction, all proceeds of the Escrow Fund shall be retained in the Escrow Fund and reinvested from time to time by the Escrow Agent as provided in Section 3. In the event that any earnings remain undistributed at the end of any calendar year, Escrow Agent shall report to the Internal Revenue Service or such other authority such earnings

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as it deems appropriate or as required by any applicable law or regulation or, to the extent consistent therewith, as directed in writing by the Plaintiff and the Defendant. In addition, Escrow Agent shall withhold any taxes it deems appropriate and shall remit such taxes to the appropriate authorities.

10. **Notices.** All communications hereunder shall be in writing and shall be deemed to be duly given and received:

- (i) upon delivery if delivered personally or upon confirmed transmittal if by facsimile;
- (ii) on the next Business Day (as hereinafter defined) if sent by overnight courier; or
- (iii) four (4) Business Days after mailing if mailed by prepaid registered mail, return receipt requested, to the appropriate notice address set forth on Schedule 1 or at such other address as any party hereto may have furnished to the other parties in writing by registered mail, return receipt requested.

Notwithstanding the above, in the case of communications delivered to the Escrow Agent pursuant to (ii) and (iii) of this Section 10, such communications shall be deemed to have been given on the date received by the Escrow Agent. In the event that the Escrow Agent, in its sole discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of communication as the Escrow Agent deems appropriate. "Business Day" shall mean any day other than a Saturday, Sunday or any other day on which the Escrow Agent located at the notice address set forth on Schedule 1 is authorized or required by law or executive order to remain closed.

11. **Security Procedures.** In the event funds transfer instructions are given (other than in writing at the time of execution of this Escrow Agreement, as indicated in Schedule 1 attached hereto), whether in writing, by telecopier or otherwise, the Escrow Agent is authorized to seek confirmation of such instructions by telephone call-back to the person or persons designated on schedule 2 hereto ("Schedule 2"), and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in a writing actually received and acknowledged by the Escrow Agent. If the Escrow Agent is unable to contact any of the authorized representatives identified in Schedule 2, the Escrow Agent is hereby authorized to seek confirmation of such instructions by telephone call-back to any one or more of your executive officers, ("Executive Officers"), which shall include the titles of _____, as the Escrow Agent may select. Such "Executive Officer" shall deliver to the Escrow Agent a fully executed Incumbency Certificate, and the Escrow Agent may rely upon the confirmation of anyone purporting to be any such officer. The Escrow Agent and the beneficiary's bank in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by the Plaintiff or the Defendant to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank. The Escrow Agent may apply any of the escrowed funds for any payment order it executes using any such identifying number, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank designated. The parties to this Escrow Agreement acknowledge that these security procedures are commercially reasonable.

12. **Miscellaneous.** The provisions of this Escrow Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by all of the parties hereto. Neither this Escrow Agreement nor any right or interest hereunder may be assigned in whole or in part by any party, except as provided in Section 6, without the prior consent of the other parties. This Escrow Agreement shall be governed by and construed under the laws of the State of New York. Each party hereto irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of the courts located in the State of New York. The parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Escrow Agreement. No party to this Escrow Agreement is liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Escrow Agreement because of, acts of God, fire, floods, strikes, equipment or transmission failure, or other causes reasonably beyond its control. This Escrow Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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13. **Account Opening Information.**

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

For accounts opened in the US:

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. When an account is opened, we will ask for information that will allow us to identify relevant parties.

For non-US accounts:

In order to fight against the funding of terrorism and money laundering activities we are required along with all financial institutions to obtain, verify, and record information that identifies each person who opens an account. When you open an account, we will ask for information that will allow us to identify you.

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IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the date set forth in Schedule 1.

JPMORGAN CHASE BANK, N.A.
as Escrow Agent

By: _____

PLAINTIFF

By: _____

DEFENDANT

By: _____

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Schedule 1

Effective Date:

Name of Plaintiff:
Plaintiff Notice Address:
Plaintiff TIN:
Wiring Instructions:

Name of Defendant:
Defendant Notice Address:
Defendant TIN:
Wiring Instructions:

Escrow Deposit: \$ Formatted

Investment: [specify]

- JPMorgan Chase Bank Money Market Account;
- A trust account with JPMorgan Chase Bank;
- A money market mutual fund, including without limitation the JPMorgan Fund or any other mutual fund for which the Escrow Agent or any affiliate of the Escrow Agent serves as investment manager, administrator, shareholder servicing agent and/or custodian or subcustodian, notwithstanding that (i) the Escrow Agent or an affiliate of the Escrow Agent receives fees from such funds for services rendered, (ii) the Escrow Agent charges and collects fees for services rendered pursuant to this Escrow Agreement, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Escrow Agreement may at times duplicate those provided to such funds by the Escrow Agent or its affiliates.

Fund

- Such other investments as Plaintiff, Defendant and Escrow Agent may from time to time mutually agree upon in a writing executed and delivered by the Plaintiff and the Defendant and accepted by the Escrow Agent.

Escrow Agent notice address: JPMorgan Chase Bank, N.A.
Institutional Trust Services
(street address)
(City, state [country], zip [postal code])
Attention:
Fax No.:

Escrow Agent's compensation:

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Schedule 2

**Telephone Number(s) for Call-Backs and
Person(s) Designated to Confirm Funds Transfer Instructions**

If to Plaintiff:

	<u>Name</u>	<u>Telephone Number</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

If to Defendant:

	<u>Name</u>	<u>Telephone Number</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Telephone call-backs shall be made to each Plaintiff and Defendant if joint instructions are required pursuant to this Escrow Agreement.

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	Currently Contemplated Alternatives					Dependant on Post-Judgment Negotiations with the Plaintiff				
	BONY Options			JPMC Options		BONY Options			JPMC Options	
	Cash MMMF	Cash Unique Deposit	Securities	Cash MMMF	Securities	Cash MMMF	Cash Unique Deposit	Securities	Cash MMMF	Securities
Supersedes Bond Fee and Broker Commission	0.25%	0.25%	0.25%	0.25%	0.25%	0.00%	0.00%	0.00%	0.00%	0.00%
Cost of Raising Funds										
CP = Open FF+8bps (5/11/05)	3.08%	3.08%	3.08%	3.08%	3.08%	3.08%	3.08%	3.08%	3.08%	3.08%
LT Debt = 3 month LIBOR+55bps (5/2/05)	3.76%	3.76%	3.76%	3.76%	3.76%	3.76%	3.76%	3.76%	3.76%	3.76%
Investment Return										
Interest Income	??	??	n/a	-2.97%	N/A	??	??	n/a	-2.97%	N/A
Collateral Pool Yield - Open FF-8bps (5/11/05) *	N/A	N/A	-2.92%	N/A	-2.92%	N/A	N/A	-2.92%	N/A	-2.92%
Bank Charge (on a/c-operational structure) TBD	0.00%	0.00%	?			0.00%	0.00%	?	0.00%	0.02%
Total Cost if Funded with CP	3.33%	3.33%	0.41%	0.36%	0.41%	3.08%	3.08%	0.16%	0.11%	0.18%
Total Cost if Funded with LT Debt	4.01%	4.01%	1.09%	1.04%	1.09%	3.76%	3.76%	0.84%	0.79%	0.86%
* Collateral pool rate assumes ability to substitute collateral daily										
LVGCR/Coleman Secured Funding Cost Implications 5-11-05										

LVGCR/Coleman Secured Funding Cost Implications 5-11-05

Subject: RE: Escrow Update
Received: Friday, May 06, 2005 9:51 AM
From: Kevin Mooney (CORPTSY)
To: Brody, Jacqueline (CORPTSY); Cochet, Christine (CORPTSY); Mendez, Eduardo (CORPTSY); Greeley, Jeanne (COMPANY); Mooney, Kevin (CORPTSY)
Cc: Campbell, Zakia (CORPTSY)
Subject: Escrow Update

fyi...Zakia just called and confirmed that the AIG escrow fees of 7-10 bps (or lower) do include fees for BONY so we would not be subjected to anything additional. Also, she mentioned that AIG could work with any large escrow agent but prefers to work with BONY. Given these two pieces of information, I don't see a need to solicit comments on JPMC's escrow agreement at this time.

If you have any questions, please let me know.

Regards,

Kevin

From: Mooney, Kevin (CORPTSY)
Sent: Friday, May 06, 2005 9:51 AM
To: Campbell, Zakia (CORPTSY)
Cc: Brody, Jacqueline (CORPTSY); Cochet, Christine (CORPTSY); Mendez, Eduardo (CORPTSY); Greeley, Jeanne (COMPANY); Mooney, Kevin (CORPTSY)
Subject: Escrow Update

Zakia,

When you speak to AIG today, can you also ask them whether they would be willing to use an alternate Escrow Agent to BONY (JPMorgan Chase, for example)? Perhaps they already work with JPMC as well.

Would you also be able to find out if the fees in AIG's agreement (currently the 7-10 bps) cover them as well as BONY or if we would be subject to additional charges from BONY for collateral and custody services?

The reason that we ask is that in speaking to JPMC yesterday, they quoted an Escrow

Agent rate of 5 bps (and I think they would go lower) which would cover all custody services, reporting, etc. They sent us a copy of their standard litigation escrow agreement but I will not circulate it for comments unless we find that it is a viable alternative. It doesn't contemplate using AIG (or any other insurance company) so it probably won't work but perhaps we can use their fee information to help get a better price with AIG / BONY.

If you have any questions, please let me know.

Thank you.

Kevin

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Subject: FW: Request for expected rates
Received: Tuesday, May 17, 2005 11:47 AM
From: Christine Cochet (CORPTS)
To: Christine Cochet@morganstanley.com
Cc: Kevin Mooney (CORPTS); Kevin Mooney@morganstanley.com; Eduardo Mendez (CORPTS); Eduardo Mendez@morganstanley.com
Attachments: pic033211356-2089582.doc

From BONY Asset Management team..

Christine Cochet - Executive Director
Morgan Stanley | Corporate Treasury
750 7th Avenue | Floor 29
New York, N.Y. 10019
Phone: +1 212 762-3963
Fax: +1 212 507-3366
Christine.Cochet@morganstanley.com

-----Original Message-----

From: vbailey@bankofny.com [mailto:vbailey@bankofny.com]
Sent: Tuesday, May 17, 2005 11:47 AM
To: Cochet, Christine (CORPTS)
Cc: apfenning@bankofny.com; evonsauers@bankofny.com
Subject: Request for expected rates

Christine,

It was good to speak with you today. I am taking the liberty of responding to your questions to Andrea directly, since she is out of the office till noon and I am leaving for a lunch at 11:45am today. Since I expect you are under some time pressure, I wanted to give you some feedback.

First, the expect rates before fees are not impacted by size, since all the markets we are investing in are very liquid. Therefore it does not matter if it is 1 or 4 billion.

Second, however, fees are impacted by size and the product. The fees we quoted you were for \$4 billion of standard escrow cash, which is almost always limited to repo, overnight or treasury bills. As you move into smaller size, and into assignments with longer average maturities and complexity, the fees will go up because you are moving from passive cash to active fixed income management. Still we will be very competitive, and the fees we quote will include the costs of the bank's escrow facility, plus custody of the account. I will cover fees at the end of this email.

Third, to return to the basic question from yesterday, we have reviewed the "Qualified Assets" section of the escrow and feel that since 90 day CP, auction rates securities, AAA asset backs under 10 years and some other paper is allowed, we are confident that a portfolio combined of 1 to 3 month paper will yield 3.10% to 3.20% before fees. This will

significantly outperform any AAA rated money market fund which has essentially the same average maturity, which is likely in the 2.75% to 2.90% range. This is our recommended solution for your situation, whether you manage it internally or externally.

Next, with regards to the longer assignments, here you are hampered by both the AA minimum rating on corporates and the 10 year maximum maturity. This essentially eliminates most corporate bonds, mortgage backed and longer asset backs from consideration. Given that the yield curve is so flat, corporate spreads for AAA and AA so tight and rates likely to rise both in the shorter and longer end, we would not recommend these options unless you expect a long litigation and or appeal. Following are some rates against various benchmarks, and figure you would be in the middle of each range before fees for the ML 1-3 and 1-5, and closer to the gov only indices for the LB intermediate and total because of the limits on A and BBB rated corporates, mortgages and longer dated asset backs.

A portfolio with a 6 month average maturity, which we call Enhanced Cash, would be 3.30% to 3.35% based on your guidelines.

A portfolio managed against the ML 1-3 gov and gov/corp index has a yield between 3.52% and 3.65% with an average duration between 1.60 and 1.65 years.

A portfolio managed against the ML 1-5 gov and gov/corp index has a yield between 3.61% and 3.80% with an average duration around 2.3 years.

A portfolio managed against the LB intermediate gov and gov/corp index has a yield between 3.88% and 4.13% with an average duration around 3.35 years.

A portfolio managed against the LB gov and gov/corp index has a yield between 3.98% and 4.32% with an average duration around 4.90 to 5.30 years.

Again, because of the limits on A and BBB rated corporates, mortgages and longer dated asset backs.

As for fees, here is the sliding scale we used to give you the fees on 4bp. We would honor this for any size over half a billion for the 3 month STMM or 6 month Enhanced Cash portfolio. These fees would cover the Escrow account as well. Fees for fixed income assignments against the ML or LB indices would be higher.

(Embedded image moved to file: pic01832.pcx)

I hope this is acceptable. Good luck.

Vincent J. Bailey, Jr.
Managing Director
BNY Asset Management
The Bank of New York
1-212-641-7995

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Exhibit G

Internal Morgan Stanley Communications
Concerning Other Security Options Such as
Utilizing a Letter of Credit, Collateral Pool or Cash
Reserves

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Greeley, Jeanne (COMPANY)

From: Cochet, Christine (CORPTSY)
Sent: Monday, May 02, 2005 4:33 PM
To: Greeley, Jeanne (COMPANY)
Subject: FW: Secured Funding Cost implications
Attachments: Coleman Secured Funding Cost Implications 5-2-05.xls

Hi Jeanne...

As an FYI, Kevin, Eduardo and I circled round to try and get our hand around what there is to do. Jacqueline was out but we hope to get the attached questions to her/Alan ASAP to get moving on the issues. I just wanted you to see where our minds are after meeting to talk about the escrow account.

At a certain point an all parties meeting will make most sense b/c we (me, Kevin, Eduardo) are missing pieces of information. We are also concerned about bringing others into the loop unless we are given the ok to do so (e.g. - FID ops).

Christine Cochet - Executive Director

Morgan Stanley | Corporate Treasury
 750 7th Avenue | Floor 29
 New York, N.Y. 10019
 Phone: +1 212 762-3963
 Fax: +1 212 507-3366
Christine.Cochet@morganstanley.com

From: Cochet, Christine (CORPTSY)
Sent: Monday, May 02, 2005 3:18 PM
To: Mooney, Kevin (CORPTSY); Mendez, Eduardo (CORPTSY)
Subject: Secured Funding Cost implications

Attached please find a draft template for tracking potential costs.

In looking at costing out the three options (cash, LC, escrow) here are the **open questions** that I had noted from our meeting this morning (did I miss any points we discussed)?

Collateral Pool

- Assuming that a collateral pool will be established no matter which option is chosen, will we have right of daily substitution? "Term" collateral will be more expensive and harder to source.
- What structure will it take on? Reverse repo? Outright purchase of the securities?
 - Who/what group will manage the interest rate and P&L risk?
- Is the pool to be in MS&Co's name?
- What is the duration, possible amount of pool?
- Has FID already been looking at options here? Pricing/ hedging?
- Have to take cost of sourcing collateral into account across the LC/Escrow options.

Letter of Credit

- We are assuming that these will be secured.
- Amount/Tenor?
- What amounts/costs have been quoted so far by each bank? BONY, Citi, JPMC? Are there any additional bank costs that need to be accounted for (e.g., cost in opening an account with the bank)?

5/2/2005

- What structure will the banks expect (how will they take collateral) - tri-party?
 - Aside from existing LC reimbursement agreements we have in place with these banks, do they require any additional documentation - e.g., tri-party agreement, pledge agreement?
 - Will Treasury's LC desk manage the LC as they do all other LCs? Who/what groups pays for it?

Escrow Arrangement (AIG)

- Any room for negotiation? Locking up collateral might be an issue for us. Is there any possibility of daily right of substitution?
- Can we confirm proposed haircuts with FID (pg 5)?
- Who/what group will manage this escrow account? FID/Treasury?
- Is AIG's "administrative services fee" (pg 15) incremental to whatever they charge us on the supersedes bond itself?
- What is BONY's proposed fee?

Cash

- If cash is pledged/deposited, what will the bank pay us?

Christine Cochet - Executive Director
Morgan Stanley | Corporate Treasury
750 7th Avenue | Floor 29
New York, N.Y. 10019
Phone: +1 212 762-3963
Fax: +1 212 507-3366
Christine.Cochet@morganstanley.com

5/2/2005

MS_CQ6JMT0321353

REDACTED

From: Cochet, Christine (CORPTSY)
Sent: Tuesday, May 17, 2005 12:01 PM
To: Daula, Thomas (FIRMMKTRSK); Gonfiantini, Fred (MSBank); Wipf, Thomas (FID); LoCosa, Laura (IIS); Russo, David (FIRMMKTRSK); Sengupta, Sam (FCG)
Cc: Brody, Jacqueline (CORPTSY); Mooney, Kevin (CORPTSY); Mendez, Eduardo (CORPTSY); Greeley, Jeanne (COMPANY)
Subject: Coleman Summary

In anticipation of our 12:15 meeting/call, attached please find a brief summary of the options related to the Coleman collateral deposit. We would like to address accounting implications of the different options.

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8/18/2008

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Coleman Options

- Treasury, Risk and Insurance and Legal are close to finalizing the negotiations on the Escrow Agreement with AIG and BONY
- Per the Legal department, as the jury has found the Firm guilty in the compensatory stage, the punitive damage stage is commencing
- Once the final compensatory and punitive damages are determined, Legal may be able to negotiate a "collateral" alternative directly with Perelman whereby the Firm may not need to post a supersedeas bond thereby eliminating the 25 bps fee
 - For example the Firm may be able to directly pledge an escrow account to Perelman
 - There is no indication or guarantee that the Plaintiff would be amenable to this

Current Status / Decisions made to Date

- AIG would be issuing a supersedeas bond on Morgan Stanley & Co. Incorporated's behalf
- AIG is the only insurance company that can provide sufficient capacity for a potential \$4 billion plus judgment
- To secure their position, AIG is requiring that Morgan Stanley collateralize their exposure through assets pledged in an escrow account
 - As a result, placing securities or cash with an escrow agent (likely BONY) is the working alternative
 - Under the proposed Escrow Agreement, maturities over one year require over-collateralization
 - The lack of certainty on the duration of the obligation and the potential impact to P&L associated with an early unwind (or transfer to trading book) of this collateral appear to make the zero to one year maturity range most appropriate

Alternatives

- Morgan Stanley to deposit cash in Institutional Money Market Mutual Funds
 - Deposit in multiple Money Market Mutual Funds – each Fund would require AIG approval
 - Standard 20-25bp management fee applicable
- Morgan Stanley to deposit cash in a "unique" BONY managed account
 - Similar yield to Institutional Money Market Fund
 - Substantially cheaper fee structure (2bps)
- Morgan Stanley to manage a pool of qualified securities
 - Fee negotiations with BONY currently ongoing

Morgan Stanley

MS_COSTMTN 01391

Corporate Treasury

Coleman – Investment Options Cost Estimates

Current Alternatives

	BONY Money Market Mutual Fund ⁽¹⁾	BONY Managed Deposit 6 Mth Avg. Mat	BONY Managed Deposit 2 Year Avg. Mat	BONY Managed Deposit 4 Year Avg. Mat	BONY Managed Deposit 6 Year Avg. Mat	Morgan Stanley Managed Deposit 6 Mth Avg. Mat
Supersedeas Bond Fee and Broker Commission	-0.2500%	-0.2500%	-0.2500%	-0.2500%	-0.2500%	-0.2500%
Cost of Raising Funds						
Funding Cost ⁽²⁾	-3.0800%	-3.0800%	-3.7600%	-3.7600%	-3.7600%	-3.0800%
Investment Return						
Interest Income	2.6300%	3.1000%	3.5600%	3.6800%	3.8500%	3.1000%
Money Management Fee	??	-0.0200%	-0.0200%	-0.0200%	-0.0200%	N/A
Bank Charge (on a/c-operational structure) ⁽³⁾	N/A	N/A	N/A	N/A	N/A	-0.0085%
Total Cost if Funded with LT Debt	-0.7000%	-0.2500%	-0.4700%	-0.3500%	-0.1800%	-0.2385%

Notes

1. AAA rated Government Fund.
2. LTD rate used except in the cases of the Money Market Mutual Fund and 6 month average deposit maturity, where the CP rate was used.
3. Bank of New York rate is tiered at .65 bps on the first \$1 billion, .75 bps on the next \$1 billion and .85 bps on the remaining balance. Certain additional fees, such as per cusip charges, will also apply.

MS_COSTMTN 01392

Morgan Stanley

16div-032138

In looking at costing out the three options (cash, LC, escrow) here are the **open questions** that noted from our meeting on Monday:

Collateral Pool

- Assuming that a collateral pool will be established no matter which option is chosen, will we have right of daily substitution? "Term" collateral will be more expensive and harder to source.
- What structure will it take on? Reverse repo? Outright purchase of the securities?
 - Who/what group will manage the interest rate and P&L risk?
- Is the pool to be in MS&Co's name?
- What is the duration, possible amount of pool?
- Has FID already been looking at options here? Pricing/ hedging?
- Have to take cost of sourcing collateral into account across the LC/Escrow options.

Letter of Credit

- We are assuming that these will be secured.
- Amount/Tenor?
- What amounts/costs have been quoted so far by each bank? BONY, Citi, JPMC? Are there any additional bank costs that need to be accounted for (e.g., cost in opening an account with the bank)?
- What structure will the banks expect (how will they take collateral) - tri-party?
 - Aside from existing LC reimbursement agreements we have in place with these banks, do they require any additional documentation - e.g., tri-party agreement, pledge agreement?
 - Will Treasury's LC desk manage the LC as they do all other LCs? Who/what groups pays for it?

Escrow Arrangement (AIG)

- Any room for negotiation? Locking up collateral might be an issue for us. Is there any possibility of daily right of substitution?
- Can we confirm proposed haircuts with FID (pg 5)?
- Who/what group will manage this escrow account? FID/Treasury?
- Is AIG's "administrative services fee" (pg 15) incremental to whatever they charge us on the supersedes bond itself?
- What is BONY's proposed fee?

Cash

- If cash is pledged/deposited, what will the bank pay us?
- Where does the cash need to go?
- Who/what group moves the cash?
- Does Treasury raise the amount, or is it taken from our existing Liquidity Reserve and down streamed to MS&Co? If it is taken from the LR, what would Treasury's plans be to restore the amount?
- Who/what group "pays" for this?

Exhibit H

Documents Concerning the "Nature" of Mediation
Costs

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Morgan Stanley

Law and Compliance Department Check Request

REMIT TO: Vendor Name: MARKSADR LLC
Address: 4833 RUGBY AVENUE SUITE 301
BETHESDA MD 20814-

Vendor Number: on way

Purpose: COLEMAN MEDIATION

Invoice Date: 12/16/2004

Invoice Number: 121604

MER:

Requested By: THERESA PILOSI (41463)

Approved By: JAMES CUSICK (51007)

Approved Date: 01/18/2005

Currency: US DOLLAR

Distribution Amount	Account Number	Cost Center	Employee	Description
48,935.00	0631611	9625	SOOMI LEE	COLEMAN

Total: 48,935.00

Approved By:

CUSICK

1/25/05
3/8/2008

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MS_COSTMTN 01405

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

855 Fifteenth Street, N.W.
Washington, D.C. 20005

202 879-5000

www.kirkland.com

Lawrence P. Bemis
To Call Writer Directly:
202-879-5132
lbemis@kirkland.com

Facsimile:
202 879-5200
Dir. Fax: 202-879-5200

December 20, 2004

VIA FACSIMILE AND MAIL

James F. Doyle
Morgan Stanley & Company
1221 Avenue of the Americas
New York, NY 10020

Re: Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Incorporated

Dear Jim:

The mediator is requesting a retainer from each side of \$48,935. This is based on his total budget for the mediation, which is between \$70,900 and \$97,870. Each side is being assessed 50 percent of the higher amount. The mediator said he would not exceed the higher estimate without the prior approval of the clients. The retainer has to be paid by January 17, 2005. I am enclosing a complete copy of the Agreement with MarksADR, LLC for your files.

Please call me if you have any questions.

Best regards.

Sincerely,

Lawrence P. Bemis

Lawrence P. Bemis

LPB/cmj

Enclosure

cc: Kim Chervenak (for file)

Chicago

London

Los Angeles

New York

San Francisco

MS_COSTMTN 01739

16div-032142

MARKSADR, LLC

Jonathan B. Marks
William A. Baten

Suman Kapur
Nicole K. Baker
Tammy L. Nantz

4833 Rugby Avenue
Suite 301
Bethesda, MD 20814
(main) 301-907-4712
(fax) 301-907-4719
www.marksadr.com

RECEIVED
DEC 16 2004
L.P.B., PA.

TO: Lawrence Benis, Esquire (p) 213-680-8413 (f) 213-680-8580	Jerold Solovy, Esquire (p) 312-222-9350 (f) 312-527-0484
CC: Thomas Yannucci, Esquire (p) 202-879-5000 (f) 202-879-5200	Deirdre Connell, Esquire (p) 312-923-2661 (f) 312-840-7661

FROM: Tammy Nantz, Case Manager for Jonathan Marks
tnantz@marksadr.com

DATE: December 16, 2004

THIS FACSIMILE IS 102 PAGES (INCLUDING COVER PAGE).
IF THERE IS A PROBLEM WITH THE TRANSMISSION, PLEASE CALL 202-628-9890

Re: Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.

Attached you will find a budget memo, our standard mediation agreement, retainer invoice and Rate Summary Sheets for Jonathan Marks and Bill Baten.

It is important that the agreement be signed and faxed to me by December 20, 2004 and that the retainer be paid by January 17, 2005.

Also, please note the specific details (notated on Attachment A of the Mediation Agreement) regarding the locations and start times for our mediation session.

If I may be of further assistance, please contact me.

WARNING: The information contained in this facsimile may be attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via U.S. Postal Service. Thank you.

MS_COSTMTN 01740

16div-032143

MARKSADR, LLC

Jonathan B. Marks
William A. Baten

Suman Kapur
Nicole K. Baker
Tammy L. Nantz

Writer's Direct Dial: 301-907-4715
Writer's Email: tnantz@marksadr.com

MEMORANDUM

TO: Lawrence Bemis, Esquire
Jerold Solovy, Esquire

CC: Deirdre Connell, Esquire
Thomas Yannucci, Esquire

FROM: Tammy Nantz, Case Assistant for Jonathan Marks and Bill Baten

DATE: December 16, 2004

RE: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*
Budget memo, Mediation agreement and Retainer Invoice

Thank you for asking MarksADR to help resolve your dispute.

In this memo, I provide you with a budget for the mediation process up to and including the January 27-28, 2005 mediation session. Should further work be agreed on, I will provide you with an additional budget. In addition, enclosed is our standard mediation agreement, along with a proposed schedule, retainer invoice and a Rate Summary Sheet for each Mediator.

Because this case involves pre-mediation meetings with Bill Baten and a mediation session in Washington, D.C., we will bill at the following rates:

- \$4,500 per day for pre-mediation meetings with Bill Baten.
- \$4,500 per day for mediation session with Bill Baten.
- \$7,500 per day for mediation session with Jonathan Marks.
- \$375 per hour for Bill Baten's preparation and/or follow-up work.
- \$475 per hour for Jonathan Marks' preparation and/or follow-up work.

Without having a better sense of the amount of case materials Jonathan and Bill will need to review, it's hard to be precise about the amount of time that they

will need properly to prepare and conduct the mediation up until January 28, 2005. Therefore, we have estimated the following in budgeting for this case:

- Initial preparation: Review of mediation submissions and other background materials and separate confidential meetings with counsel prior to the mediation dates.
 - Jonathan Marks: 20 to 40 hours at \$475 per hour.
 - Bill Baten: 60 to 100 hours at \$375 per hour.
- Pre-mediation meetings and mediation session:
 - Jonathan Marks- 2 days at \$7,500 per day.
 - Bill Baten- 4 days at \$4,500 per day.
- Case management fee: Six percent (6%) of the Mediators' professional services.
- Expenses: travel, hotel, meals, etc. - \$2,000 - \$3,000.

Based on these numbers, we can estimate that the total budget for this mediation up until January 28, 2005 including professional fees, out of pocket expenses, and case management fees will be between \$70,900 and \$97,870.

Based on this budget, attached please find a \$48,935 retainer invoice for each party. We will not exceed this amount without prior approval.

We would appreciate prompt payment. Please sign and return the last page of the Mediation Agreement to indicate your agreement to our budget.

Any additional fees or expenses not covered by the retainer will be billed at a later time. Any unused retainer amount will be promptly refunded.

If I may be of further assistance, please call me at 301-907-4715.

For your records, Jonathan's cell number is 202-413-9812 and his home number is 301-263-9810. Please call Jonathan at either one these numbers if you can't reach him at the office.

MARKSADR, LLC'S MEDIATION AGREEMENT

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.

1. Purpose

The purpose of the mediation is to attempt to arrive at a mutually acceptable resolution of the dispute in a cooperative and informal, rather than a legal and formal, manner.

2. Mediation Process

The Mediators will:

- Review written information submitted by the Parties.
- Have private, confidential conversations with the participants to develop information about the Parties' contentions and objectives.
- Conduct a mediation session with representatives of the Parties and their counsel.

To facilitate a resolution, the Mediators and the Parties and their Counsel will work to ensure that each Party appreciates the strengths and weaknesses of each side's factual and legal contentions. Both in the exchange of information and opinions, and in the evaluation of that information, each Party will have the opportunity and responsibility candidly to disclose to the Mediators the facts, theories, and opinions on which it intends to rely with regard to the matters in dispute.

In addition, the mediation process will focus on the interests and objectives of the Parties and possible solutions that the Parties believe would be fair, equitable, and mutually beneficial. Accordingly, each Party will be asked to work with the Mediators in considering and evaluating solutions that would satisfy its own interests and those of the other Party.

The mediation session will be attended by representatives of the Parties with full settlement authority and by Counsel. The Parties will follow the recommendation of the Mediators regarding the agenda most likely to resolve the dispute. During the session, the Mediators may have joint and separate meetings with the Parties and their Counsel. Private meetings will be confidential. If a Party informs the Mediators that information is conveyed by the Party to the Mediators in confidence, the Mediators will not disclose the information.

At the discretion of the Mediators or upon the request of the Parties, the Mediators will provide an evaluation of the Parties' cases and of the likely resolution of the dispute if not settled. The Parties agree that the Mediators are not acting as an attorney or providing legal advice on behalf of any Party.

If necessary and if such discussions seem likely to be useful, the Parties will make themselves available for further discussions or meetings after the mediation session.

MS_COSTMTN 01743

16div-032146

3. **Confidentiality**

This entire mediation process is an off-the-record compromise negotiation. All offers, promises, conduct and statements, whether oral or written made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the Mediators' and MARKSADR, LLC employees, who are the Parties' joint agents and Mediators' for purposes of these compromise negotiations, are confidential and off-the-record. Such offers, promises, conduct, and statements will not be disclosed to third parties, except persons associated with the participants in the process (e.g., a Party's agent, employee, attorney, or immediate family member), and are privileged and inadmissible for any purpose, including impeachment. If this matter does not settle in mediation, the parties may report to a court that mediation has been unsuccessfully attempted under the auspices of MarksADR, LLC, but no party may provide any details or otherwise disclose what happened in the mediation. However, evidence previously disclosed or known to a Party, or that is otherwise admissible or discoverable shall not be rendered confidential, inadmissible or not discoverable solely as a result of its use in the mediation.

4. **Disqualification of Mediator and Exclusion of Liability**

The Parties agree not to call the Mediators or any MARKSADR, LLC employee as a witness or as an expert in any pending or subsequent litigation or arbitration involving the Parties and relating in any way to the dispute which is the subject of the mediation. The Parties and MARKSADR, LLC agree that the Mediators and any MARKSADR, LLC employee will be disqualified as a witness or as an expert in any pending or subsequent proceeding relating to the dispute which is the subject of the mediation. The Parties agree to defend the Mediators and MARKSADR, LLC from any subpoenas from outside parties arising out of this Agreement or mediation. The Parties agree that neither MARKSADR, LLC nor any Mediator it provides is a necessary Party in any arbitral or judicial proceedings relating to the mediation or to the subject matter of the mediation. Neither MARKSADR, LLC nor its employees or agents, including the Mediators shall be liable to any Party for any act or omission in connection with any mediation conducted under this Agreement.

5. Miscellaneous

This is a voluntary, non-binding mediation process. The parties agree to participate in good faith in the entire mediation process, but any Party may terminate its participation for any reason by written notification to MARKSADR, LLC and the other Parties.

The Parties agree to comply with the schedule in Attachment A to this Agreement. The Parties agree to pay MARKSADR, LLC as set forth in Attachment B to this Agreement.

BY: _____
FOR: Coleman (Parent) Holdings, Inc.
DATED: _____

BY: _____
FOR: Morgan Stanley & Company, Inc.
DATED: _____

BY: _____
FOR: MARKSADR, LLC
DATED: _____

NOT A CERTIFIED COPY

PLEASE REVIEW THIS AGREEMENT, EXECUTE AND DATE IT ON BEHALF OF YOUR CLIENT, AND FORWARD VIA FAX (301-907-4719) WITHIN FORTY-EIGHT (48) HOURS OF RECEIPT. PLEASE MAIL THE ORIGINAL MEDIATION AGREEMENT. THE RETAINER CHECK MUST BE RECEIVED PRIOR TO YOUR SCHEDULED MEDIATION SESSION

MARKSADR, LLC - MEDIATION AGREEMENT

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.

Attachment A
Schedule

- For delivery on January 7, 2005, initial submissions plus pertinent exhibits (documents and case law) and a list of people who will be attending the mediation will be provided to each Mediator and the opposing party.
 - Please send hard copies of the submissions and exhibits for Jonathan Marks to the MarksADR office (4833 Rugby Ave., Suite 301, Bethesda, MD 20814) and hard copies of the submissions and exhibits for Bill Baten to 111 Monument Circle, Suite 302 Bank One Center, Indianapolis, IN 46204.
 - Please email the submissions plus "copies" of the case law exhibits *in word doc format* to Jonathan Marks at jmarks@marksadr.com and Bill Baten at bbaten@marksadr.com with a copy to Tammy Nantz at mantz@marksadr.com.
 - Optional: please include CDs with exhibits in PDF format.
- Bill Baten will have *ex-parte* meetings with counsel based on the following schedule:
 - 10:00 am EST, Monday, January 10, 2005 in Chicago, IL: Jerold Solovy, Esquire *et al.*
 - 9:30 am EST, Tuesday, January 11, 2005 in Washington, DC: Thomas Yarnucci, Esquire *et al.*
- Following the *ex parte* meetings, the Mediators and Counsel will make further decisions about additional pre-mediation work, including whether to exchange reply mediation submissions. The agenda for the mediation session will be determined by mid-January.

The mediation session will be held on January 27-28, 2005 in Washington, DC at Kirkland and Ellis (655 15th St. NW, Suite 1200) on January 27, 2005 and at Jenner and Block (601 13th St. NW, Suite 1200) on January 28, 2005. The session will start at 10:00 a.m. on the first day and at 9:00 am on the second day. The mediation will continue as late into the evening on each day as the Mediators and the parties deem appropriate.

MS_COSTMTN 01746

16div-032149

MARKSADR, LLC - MEDIATION AGREEMENT

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.

**Attachment B
Pricing**

Mediators selected: Jonathan B. Marks and William A. Baten

Jonathan Marks and Bill Baten will undertake their work based on the budget submitted to the parties in MARKSADR, LLC's memorandum of December 16, 2004.

Fees:

The Mediators' professional fees are based on a combination of a daily rate for the pre-mediation meetings and mediation sessions and an hourly rate for preparation and follow-up. The pre-mediation meetings and mediation session will be billed at \$4,500 per day for Bill Baten and the mediation days will be billed at \$7,500 per day for Jonathan Marks. Preparation and follow-up will be billed at \$375 per hour for Bill Baten and \$475 per hour for Jonathan Marks.

Additional Fees:

- *Case management fee* of six percent (6%) of the Mediators' professional services.
- *Rescheduling* -- No rescheduling fee will be charged if the mediation session is rescheduled up to 60 days before the date of the session; a rescheduling fee of 50% of the applicable fee will be charged if the session is rescheduled within 60 days of the session, unless the professional time can be rescheduled for another matter.
- *Cancellation*
 - * If the mediation session is canceled more than 60 days before a session, professional fees are fully refundable, except where preparation or other professional time has already been incurred.
 - * The Parties are charged for booked time in cases canceled less than 60 days before the session unless the Professionals' time can be rescheduled for another matter. Otherwise the daily fee for the scheduled mediation or arbitration day will be billed.
- *Early Completion*
 - * If a booked mediation or arbitration session is completed in less than the booked time, the actual time reserved but not used by the Parties will be billed unless the Professionals' time can be used to work on another matter.
- *Actual expenses* are billed at cost.

MS_COSTMTN 01747

16div-032150

- *Travel time -- if required and not included in a package rate, is billed at the Mediators' hourly rates (\$375 for Bill Baten and \$475 for Jonathan Marks).*
- *Additional services agreed to by the Parties and provided by the Mediators after the Mediation session will be billed at the Mediators' hourly rates of \$375 for Bill Baten and/or \$475 for Jonathan Marks or at the appropriate daily rate.*

Payment:

All fees are due and payable upon receipt of retainer invoice and must be paid in advance of the mediation or arbitration.

The Parties have agreed to divide the mediation fees and expenses as follows:

Coleman (Parent) Holdings, Inc. will pay one half of the mediation fees and expenses.

Morgan Stanley & Company, Inc. will pay one half of the mediation fees and expenses.

A retainer equal to each Party's share of the estimated fees and expenses is payable prior to the mediation.

Interest at the rate of 1% per month will be charged on any unpaid invoice over 30 days past due.

NOT A CERTIFIED COPY

MARKSADR, LLC

4833 Rugby Avenue
Suite 301
Bethesda, MD 20814
(main) 301-907-4712
(fax) 301-907-4719
www.marksadr.com

Retainer Invoice -- December 16, 2004

Jerold Solovy, Esquire Jenner & Block LLP One IBM Plaza, Suite 4400 Chicago, IL 60611 On behalf of Coleman (Parent) Holdings, Inc.	Lawrence Bemis, Esquire Kirkland & Ellis 777 South Figueroa Street Los Angeles, CA 90017 On behalf of Morgan Stanley & Company, Inc.
--	--

This is the retainer amount for MarksADR professional services, expenses and case management fees in connection with the mediation in the matter involving Coleman (Parent) Holdings, Inc. and Morgan Stanley & Company, Inc. This retainer amount is based on the budget provided in the mediation agreement dated December 16, 2004.

Total Retainer: \$ 97,870.00

Amounts owed:

Due from Coleman (Parent) Holdings, Inc. \$ 48,935.00
Due from Morgan Stanley & Company, Inc. \$ 48,935.00

INVOICE TOTAL IS BASED ON THE FEE SPLIT AS AGREED UPON BY ALL PARTIES
AND IS DUE AND PAYABLE UPON RECEIPT.

PLEASE MAKE CHECKS PAYABLE TO: MARKSADR, LLC
FEDERAL ID # [REDACTED]
PLEASE SEND CHECKS TO:
4833 Rugby Avenue; Suite 301;
Bethesda, MD 20814

For proper credit, return copy of invoice with payment.

MS_COSTMTN 01749

16div-032152

MARKSADR, LLC

Rate Summary – U.S. Cases

Professional Fees (generally divided by the parties)

Professional fees include:	
• Case convening	• Mediation and arbitration sessions
• Preparation	• Pre-mediation and pre-arbitration conferences
• Follow-up	
<p>Mr. Marks' fees differ depending on whether mediation and arbitration sessions are held in Washington, D.C. or elsewhere. Mr. Marks is prepared to conduct mediation and arbitration sessions at the location most convenient for all participants. However, he has a strong preference to hold sessions in Washington, D.C. To provide an incentive for parties to come to Washington, Mr. Marks charges substantially less for such sessions.</p>	
<p>Jonathan Marks' professional fees are agreed to on a case-by-case basis, taking account of the nature and stakes of the case, as well as required time and travel commitments.</p> <ul style="list-style-type: none"> • In most cases, fees are based on the actual time required, measured on a daily and hourly basis, and based on an agreed budget. • In some cases, fees are based on an agreed "project fee," or on a combination of a project fee and daily and hourly fees, plus actual expenses. 	<p>Where fees are set based on level of effort, the following charges apply:</p> <ul style="list-style-type: none"> • For mediation and arbitration sessions, as well as pre-mediation and pre-arbitration conferences, scheduled in Washington, D.C.: \$7,500 per day, with a two-day minimum. • For mediation and arbitration sessions, as well as pre-mediation and pre-arbitration conferences, scheduled in any other United States location: \$10,000 per day, with a two-day minimum. • Fees for cases held outside the United States are set on a case-by-case basis. • For preparation and follow-up: \$475 per hour. • Actual expenses are billed at cost.

Case Management Fee (generally divided by the parties)

The Case Management Fee covers certain costs associated with the mediation or arbitration, including:	
• Case scheduling and administration	• Use of MARKSADR, LLC conference facilities.
• Document handling, copying and fax	• Regular telephone usage
Case Management Fee for Jonathan Marks' cases: 6% of total professional fees.	

Cancellation and Payment Policies

Cancellation and Rescheduling	<ul style="list-style-type: none"> • If mediation sessions are canceled more than 60 days before a session, professional fees are fully refundable, except where preparation or other professional time has already been incurred. • The parties are charged for booked time in mediations canceled less than 60 days before the session unless the time can be rescheduled for another matter. Otherwise the daily fee per scheduled mediation day will be billed. • No rescheduling fee will be charged if the mediation sessions are rescheduled up to 60 days before the date of the session; a rescheduling fee of 50% of the applicable fee will be charged if sessions are rescheduled within 60 days of the session, unless the time can be rescheduled for another matter. • Cancellation and rescheduling fees for arbitrations are the same as for mediations. • If a booked mediation or arbitration session is completed in less than the booked time, the actual time reserved but not used by the parties will be billed unless the time can be used to work on another matter.
Payment	<ul style="list-style-type: none"> • All fees are due and payable upon receipt of retainer invoice and must be paid in advance of the mediation session or arbitration hearing.
<p>Budget and Retainer Invoice: In all Mr. Marks' cases, a budget for fees and expenses is prepared after consultation with the parties, and retainer invoices are sent based on the budget.</p>	

MARKSADR, LLC

Rate Summary – William A. Baten, Esquire

Professional Fees (generally divided by the parties)

Professional fees include:

- Case convening
- Preparation
- Pre-mediation and pre-arbitration conferences
- Mediation and arbitration sessions
- Follow-up

William Baten's professional fees are agreed to on a case-by-case basis, taking account of the nature and stakes of the case, as well as required time and travel commitments.

- In most cases, fees are based on the actual time required, measured on a daily and hourly basis, and based on an agreed budget.
- In some cases, fees are based on an agreed "project fee," or on a combination of a project fee and daily and hourly fees, plus actual expenses.

Where fees are set based on level of effort, the following charges apply:

- For mediation and arbitration sessions, as well as pre-mediation and pre-arbitration conferences: \$4,500 per day.
- For preparation and follow-up: \$375 per hour.
- For one-day mediations outside of Washington, D.C., actual travel time is billed at \$375 per hour. For mediations outside of Washington, D.C. lasting two or more days, travel time is usually included in the daily rate.
- Actual expenses are billed at cost.

Case Management Fee (generally divided by the parties)

The Case Management Fee covers certain costs associated with the mediation or arbitration, including:

- Case scheduling and administration
- Document handling, copying and fax
- Use of MARKSADR, LLC conference facilities.
- Regular telephone usage

Case Management Fee for William Baten's cases: 6% of total professional fees.

Cancellation and Payment Policies

Cancellation and Rescheduling

- If mediation or arbitration sessions are canceled more than 30 days before a session, professional fees are fully refundable, except where preparation or other professional time has already been incurred.
- The parties are charged for booked time in cases canceled less than 30 days before the session unless the time can be rescheduled for another matter. Otherwise the daily fee per scheduled mediation or arbitration day will be billed.
- No rescheduling fee will be charged if the sessions are rescheduled up to 30 days before the date of the session; a rescheduling fee of 50% of the applicable fee will be charged if sessions are rescheduled within 30 days of the session, unless the time can be rescheduled for another matter. Fee will be paid by Party or Parties requesting rescheduling.
- If a booked mediation or arbitration session is completed in less than the booked time, the actual time reserved but not used by the parties will be billed unless the time can be used to work on another matter.
- All fees are due and payable upon receipt of retainer invoice and must be paid in advance of the mediation session or arbitration hearing.

Payment

Budget and Retainer Invoice: In all Mr. Baten's cases, a budget for fees and expenses is prepared after consultation with the parties, and retainer invoices are sent based on the budget.

REMIT TO: Vendor Name: THE FEINBERG GROUP, LLP
Address: 1455 PENNSYLVANIA AVE., NW SUITE 390
WASHINGTON DC 20004-1008

Vendor Number: 246503

Purpose: NONBINDING MEDIATION - COLEMAN

Invoice Date: 09/06/2005

Invoice Number: 12579

MER: 9MEH9J4

Requested By: THERESA PILOSI (41463)

Approved By: JAMES CUSICK (51007)

Approved Date: 10/24/2005

Currency: US DOLLAR

Distribution Amount	Account Number	Cost Center	Employee	Description
---------------------	----------------	-------------	----------	-------------

39,062.69	0631611	B158	ROBIN ROGER	COLEMAN
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Total: 39,062.69

Approved By:



10/24/2005

CUSICK

MS_COSTMTN 01595

Barry F. Schwartz, Esquire
MacAndrews & Forbes Holdings Inc.

September 06, 2005

20

Robin Roger, Esquire
Morgan Stanley

THE FEINBERG GROUP, LLP

1495 PENNSYLVANIA AVENUE, N.W., SUITE 390, WASHINGTON, D.C. 20004 1001

FEDERAL ID: [REDACTED] TELEPHONE (202) 371-1110 FAX (202) 962-9290

FOR PROFESSIONAL SERVICES RENDERED

In Reference To: For services rendered in connection with the voluntary, nonbinding and confidential mediation of a legal fees dispute conducted in Chicago on August 8-9, 2005, including preparation for, and attendance at, a mediation session and subsequent meetings and telephone conversations; this invoice is submitted pursuant to an agreement entered into between the mediation participants and the Mediator.

Invoice # 12579

	<u>Amount</u>
For Professional Services Rendered	\$75,000.00
Expenses	
\$Air/train fare	2,306.00
\$Hotel	700.00
\$Other Travel	115.00
\$Telephone/Fax	4.38
Total costs	<u>\$3,125.38</u>
Total Amount of this Bill	<u>\$78,125.38</u>

1/2 Payable by Each Party:

\$39,062.69

*Hi Terry,
Robin would only
like to pay
the amount
owed.
That
figure*

*please pay
Robin Roger
B158
MEF: 9MEH9J4
10/21/05*

MS_COSTMTN 01596



Citi Check Image Delivery

- Print
- Close Window
- Check Image Inquiry Results

Account #	Check #	Amount	Paid Date
[REDACTED]	773902	\$39,062.69	11/21/2005

Morgan Stanley
 Morgan Stanley & Co. Inc.
 1455 PENNSYLVANIA AVE NW
 WASHINGTON DC 20004

Check # 773902
 One Penny War
 New York DE 19720

62.50
 311

CHECK DATE 11/21/2005
 CHECK NUMBER 00773902

PAY IN U.S. DOLLARS
 THIRTY NINE THOUSAND SIXTY TWO AND 69/100 DOLLARS

TO THE ORDER OF THE FEINBERG GROUP LLP
 1455 PENNSYLVANIA AVE NW
 STE 380
 WASHINGTON, DC 20004-1008

CHECK AMOUNT \$39,062.69

Alan Schuman
 MORGAN STANLEY & CO., INC.
 WASHINGTON DC 20004

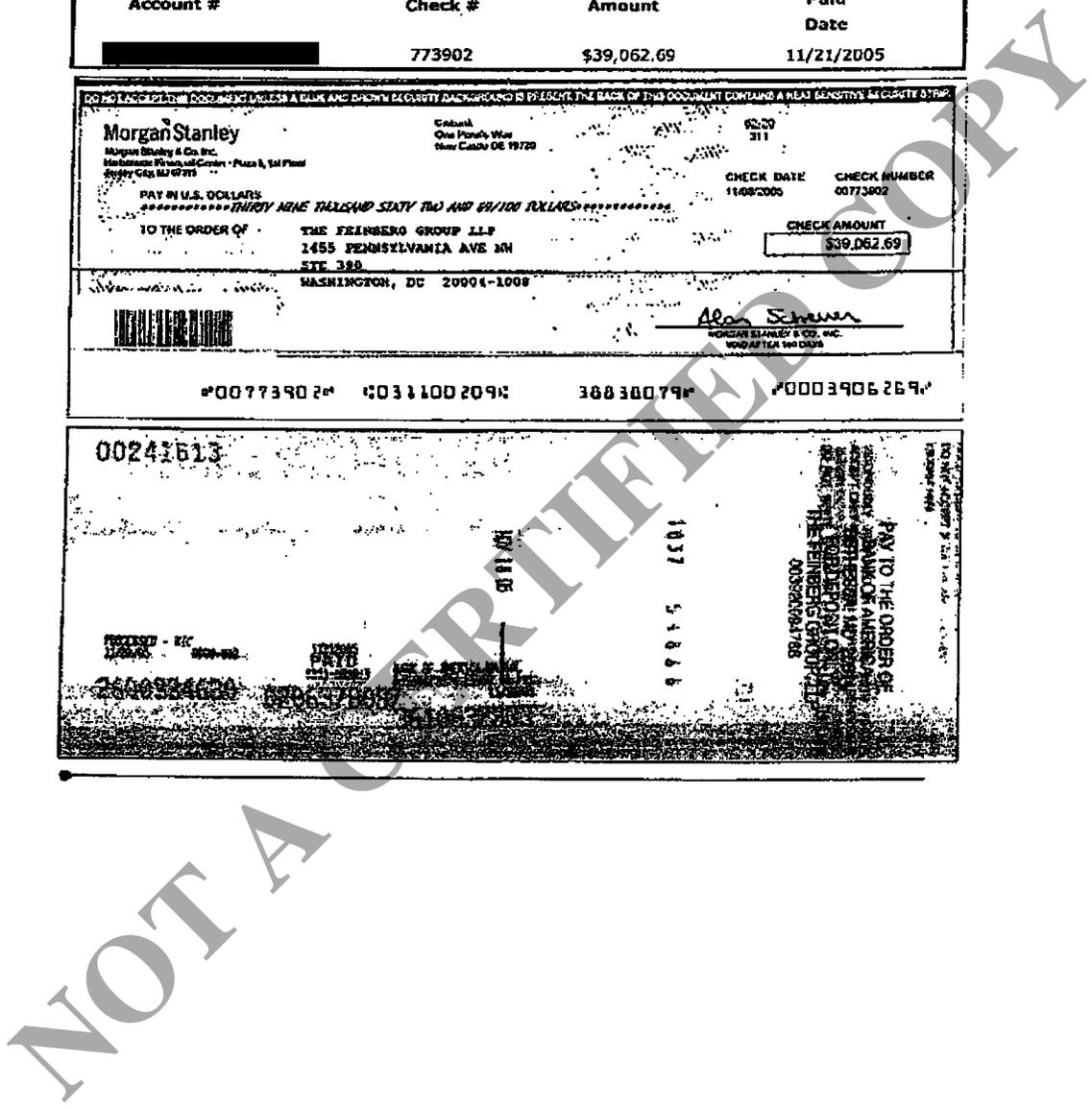
⑆00773902⑆ ⑆031100209⑆ 38830079⑆ ⑆000390269⑆

00241613

NOV 18 10 57 54 AM '05

FOR DEPOSIT ONLY
 THE FEINBERG GROUP LLP
 00382921788

PAY TO THE ORDER OF
 THE FEINBERG GROUP LLP
 00382921788



MS_COSTMTN 02970

16div-032157

Exhibit I

Documents Concerning the "Nature" of Expert
Witness Fees

NOT A CERTIFIED COPY

REMIT TO:

Vendor Name: CFC CAPITAL LLC
Address: 950 THIRD AVENUE 27TH FLOOR
NEW YORK NY 10022-2850

Vendor Number: on way

Purpose: COLEMAN

Invoice Date: 12/01/2004

Invoice Number: 120104

MER:

Requested By: JOSEPHINE BUCKMASTER (D2127)

Approved By: JAMES CUSICK (51007)

Approved Date: 02/17/2005

Currency: US DOLLAR

NOT A CERTIFIED COPY

Distribution Amount	Account Number	Cost Center	Employee	Description
---------------------	----------------	-------------	----------	-------------

7,500.00	0631611	9625	JAMES DOYLE	COLEMAN
----------	---------	------	-------------	---------

Total: 7,500.00

Approved By:



CUSICK

2/17/2005

MS_COSTMTN 01530



CFC Capital LLC 950 Third Avenue, 27th Floor, New York, NY 10022-2850

Tel: 212.584.2400
Fax: 212.584.2401
www.cfccapital.com

December 1, 2004

INVOICE # 120104 per CFC

INVOICE

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, DC 20005

Project Name: Coleman (Parent) Holdings, Inc., v Morgan Stanley & Co., Inc.
Project Number: 0412

Description of Services	Amount
Billable Hours This Invoice	
▪ Arthur H. Rosenbloom 12.5 hours @\$600 p/hr.	\$ 7,500.00
Total Billable Hours:	\$ 7,500.00
Out-Of-Pocket Expenses	
• Courier (FedEx, Messenger)	\$ 0.00
Total Out-of-Pocket Expenses:	\$ 0.00
TOTAL AMOUNT INVOICED:	\$ <u>7,500.00</u>

NOT A CERTIFIED COPY

*OK to pay
SFO
2/17/05*

Please make check payable to:
CFC Capital LLC
950 Third Avenue, 27th Floor
New York, NY 10022-2850
Tax Id # [REDACTED]

Wire Transfer:
First & Citizens Bank
Account # [REDACTED]
SunTrust ABA/Routing Number: 061000104
Customer Account # [REDACTED]

Corporate Financial Consulting and Investment Banking

Jorgan Stanley

Law and Compliance Department Check Request

REMIT TO: Vendor Name: CFC CAPITAL LLC
Address: 950 THIRD AVENUE 27TH FLOOR
NEW YORK NY 10022-2860

Vendor Number: on way
Purpose: COLEMAN
Invoice Date: 01/03/2005
Invoice Number: 0412

MER:
Requested By: THERESA PILOSI (41463)
Approved By: PETER VOGELSANG (31914)
Approved Date: 01/14/2005
Currency: US DOLLAR

Distribution Amount	Account Number	Cost Center	Employee	Description
41,771.68	0631611	9625	JAMES DOYLE	COLEMAN

Total: 41,771.68

Approved By:  1/14/2005

VOGELSANG

1/14/2005 8:09:26 AM

Page 1

MS_COSTMTN 01674

16div-032161



CFC Capital LLC 950 Third Avenue, 27th Floor, New York, NY 10022-2850

Tel: 212 564 2400
Fax: 212 564 2401
www.cfcapital.com

January 3, 2005.

INVOICE

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, DC 20005

Project Name: Coleman (Parent) Holdings, Inc. v Morgan Stanley & Co., Inc.
Project Number: 0412

Description of Services	Amount
Balance Outstanding as of December 1, 2004 Invoice:	\$ 7,500.00
Billable Hours This Invoice:	
• Arthur H. Rosenbloom 62.75 hours @ \$600 p/hr.	\$ 37,650.00
• Bradley M. Rapp 9 hours @ \$450 p/hr.	4,050.00
Total Billable Hours:	\$ 41,700.00
Out-Of-Pocket Expenses	
• Courier (FedEx, Messengers)	\$ 71.68
Total Out-of-Pocket Expenses:	\$ 71.68
TOTAL AMOUNT INVOICED:	\$ 41,771.68
TOTAL AMOUNT NOW DUE:	\$ 49,271.68

*OK to pay
JFD
1/11/05*

Please make check payable to:
CFC Capital LLC
950 Third Avenue, 27th Floor
New York, NY 10022-2850
Tax ID # [REDACTED]

Wire Transfer:
First & Citizens Bank
Account # at SunTrust: 0991015
SunTrust ABA/Routing Number: 061001014
Customer Account F1577235

Corporate Financial Consulting and Investment Banking

JAN 11 2005 15:38

PAGE 03

NOT CERTIFIED COPY

Billable Hours
Arthur H. Rosenbloom

Coleman (Parent) Holdings, Inc. v Morgan Stanley & Co. Inc.

Client	Date	Hours	Purpose	
0412	12/01	2.5	Draft report	
	12/02	2.5	Draft report	
	12/06	1.45	Draft report revision	
	12/07	3.5	Draft report revision	
	12/08	1.5	First review of expert report	
		1.0	Second review of expert report	
		2.5	File review	
	12/09	.5	Phonecon w/ RPhair	
		1.5	Review expert report	
		1.5	Review of depositions	
		1.5	Review expert report	
	12/10	1.0	Phonecon w/ counsel (RPhair/TClare)	
		4.5	Review of materials; begin draft report	
	12/11	8.5	Report drafting	
	12/12	3.0	Report drafting	
	12/13	4.5	Report drafting	
	12/14	3.5	Report drafting	
	12/15	4.5	Report drafting; phonecon w/ counsel	
	12/17	.15	Phonecons w/ counsel	
		2.0	Report review	
		.15	Phonecons w/ counsel	
	12/24	1.5	Research	
	12/29	1.5	Phonecon w/ TClare	
	12/30	1.0	Review of Horton report	
		1.5	Review of Horton rebuttal report and AHR report	
		1.5	Phonecon w/ TClare	
	12/31	4.0	Deposition review	
			62.75	

NOT A
CERTIFIED COPY

12/11/2005 16:38

PAGE 01

Billable Hours
Bradley M. Rap

Coleman (Parent) Holdings, Inc. v Morgan Stanley & Co. Inc.

Client	Date	Hours	Purpose
0412	12/11/04	2.0	Library research
	12/28-12/31	7.0	Review of AHR and Horton Reports
		9.0	

NOT A CERTIFIED COPY



CFC Capital LLC 950 Third Avenue, 27th Floor, New York, NY 10022-2850

Tel: 212.584.2400
Fax: 212.584.2401
www.cfcapital.com

January 31, 2005

INVOICE

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, DC 20005

Project Name: Coleman (Parent) Holdings, Inc., v Morgan Stanley & Co., Inc.
Project Number: 0412

Description of Services	Amount
Billable Hours This Invoice:	
▪ Arthur H. Rosenbloom 62.3 hours @\$600 p/hr.	\$ 37,380.00
Total Billable Hours:	\$ 37,380.00
Out-Of-Pocket Expenses	
• Travel (AHR NY-Chicago 1/4 - 1/5/05)	\$ 1,600.70
• Cabfare	111.00
• Hotel (Fairmont, Chicago 1/4 - 1/5/05)	269.61
• Meals (1/12 meeting w/ T. Clare)	40.00
• Courier (FedEx, Messenger)	\$ 109.18
Total Out-of-Pocket Expenses:	\$ 2,130.49
TOTAL AMOUNT DUE:	\$ 39,510.49

Please make check payable to:
CFC Capital LLC
950 Third Avenue, 27th Floor
New York, NY [REDACTED]
Tax Id # [REDACTED]

Wire Transfer:
First & Citizens Bank
Account # [REDACTED]
SunTrust ABA/Routing Number: 061000104
Customer Account: #1577255

Corporate Financial Consulting and Investment Banking

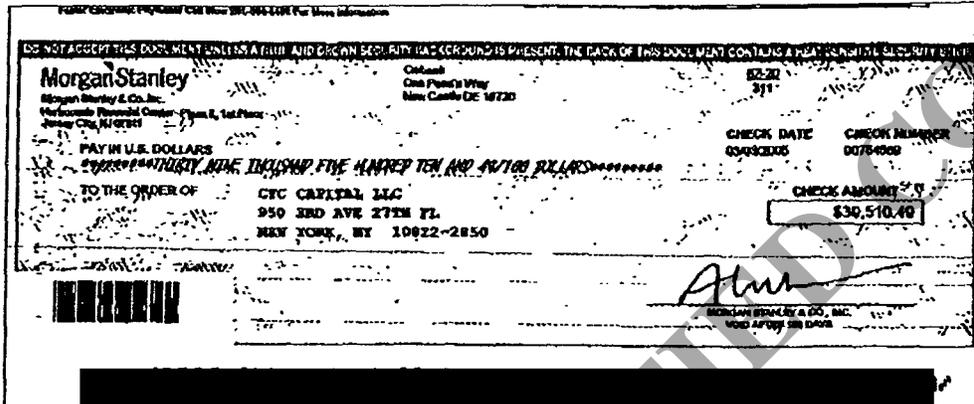


Citi Check Image Delivery

Print Close Window

CheckImage Inquiry Results

Account#	Check #	Amount	Paid Date
00000038838079	754569	\$39,510.49	03/11/2005



NOT

REMIT TO: Vendor Name: CFC CAPITAL LLC
Address: 950 THIRD AVENUE 27TH FLOOR
NEW YORK NY 10022-2850

Vendor Number: 393632

Purpose: COLEMAN

Invoice Date: 03/01/2005

Invoice Number: 0301-0412

MER: 9MEH9J4

Requested By: THERESA PILOSI (41463)

Approved By: JAMES CUSICK (51007)

Approved Date: 05/03/2005

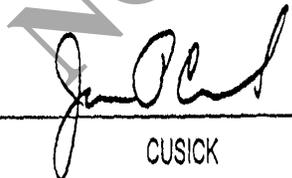
Currency: US DOLLAR

Distribution Amount	Account Number	Cost Center	Employee	Description
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6,837.59	0631611	1278	JAMES DOYLE	COLEMAN
7,044.79	0631611	0000	JAMES DOYLE	COLEMAN

8033

Total: 20,719.98

Approved By:


CUSICK

5/3/2005



CFC Capital LLC

950 Third Avenue, 27th Floor, New York, NY 10022-2850

Tel: 212.584.2400
Fax: 212.584.2401
www.cfccapital.com

March 1, 2005

INVOICE

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, DC 20005

Project Name: Coleman (Parent) Holdings, Inc., v Morgan Stanley & Co., Inc.
Project Number: 0412
Invoice Number: 0301-0412

Description of Services	Amount
Balance Outstanding as of January 31, 2005 Invoice:	\$ 39,510.49
Billable Hours This Invoice:	
▪ Arthur H. Rosenbloom 30.4 hours @\$600 p/hr.	\$ 18,240.00
▪ Bradley M. Rapp 2 hours @\$450 p/hr.	900.00
Total Billable Hours:	\$ 19,140.00
Out-Of-Pocket Expenses	
• Barnes & Noble book purchase	\$ 358.52
• Amazon.com book purchase	1,188.96
• Courier (FedEx, Messenger)	32.50
Total Out-of-Pocket Expenses:	\$ 1,579.98
Total Amount Due This Invoice:	\$ 20,719.98
TOTAL AMOUNT NOW DUE:	\$ 60,230.47

OK to pay
g. Doyle



CFC Capital LLC 950 Third Avenue, 27th Floor, New York, NY 10022-2850

Tel: 212.584.2400
Fax: 212.584.2401
www.cfccapital.com

March 1, 2005

INVOICE

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, DC 20005

Project Name: Coleman (Parent) Holdings, Inc., v Morgan Stanley & Co., Inc.,
Project Number: 0412
Invoice Number: 0301-0412

Description of Services	Amount
Balance Outstanding as of January 31, 2005 Invoice:	\$ 39,510.49 - rec'd 3/7/05
Billable Hours This Invoice:	
▪ Arthur H. Rosenbloom 30.4 hours @\$600 p/hr.	\$ 18,240.00
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Out-Of-Pocket Expenses	
• Barnes & Noble book purchase	\$ 358.52
• Amazon.com book purchase	1,188.96
• Courier (FedEx, Messenger)	32.50
Total Out-of-Pocket Expenses:	\$ 1,579.98
Total Amount Due This Invoice:	\$ 20,719.98
TOTAL AMOUNT NOW DUE:	\$ 60,230.47

Please make check payable to:
CFC Capital LLC
950 Third Avenue, 27th Floor
New York, NY [REDACTED]
Tax Id # [REDACTED]

Wire Transfer:
First & Citizens Bank
Account # [REDACTED]
SunTrust ABA/Routing Number: 061000104
Customer Account: #1577255

Corporate Financial Consulting and Investment Banking



Citi Check Image Delivery

- Print
- Close Window
- Check Image Inquiry Results

Account #	Check #	Amount	Paid Date
[REDACTED]	760728	\$20,719.98	05/27/2005

DO NOT ACCEPT THIS DOCUMENT UNLESS A BLUE AND BROWN SECURITY BACKGROUND IS PRESENT. THE BACK OF THIS DOCUMENT CONTAINS A HEAT SENSITIVE SECURITY STRIP

Morgan Stanley
 Morgan Stanley & Co. Inc.
 HarborSide Financial Center - Plaza II, 1st Floor
 Jersey City, NJ 07311

CityBank
 One Penn's Way
 New Castle, DE 19720

CHECK DATE: 05/27/2005
 CHECK NUMBER: 00760728

PAY IN U.S. DOLLARS
 *****TWENTY THOUSAND SEVEN HUNDRED NINETEEN AND 98/100 DOLLARS*****

TO THE ORDER OF: **CPC CAPITAL, LLC**
 950 3RD AVE 27TH FL
 NEW YORK, NY 10022-2850

CHECK AMOUNT: **\$20,719.98**

Alm
 MORGAN STANLEY & CO. INC.
 YORK & 152ND STS
 NEW YORK, NY 10039

[REDACTED] 0002071998

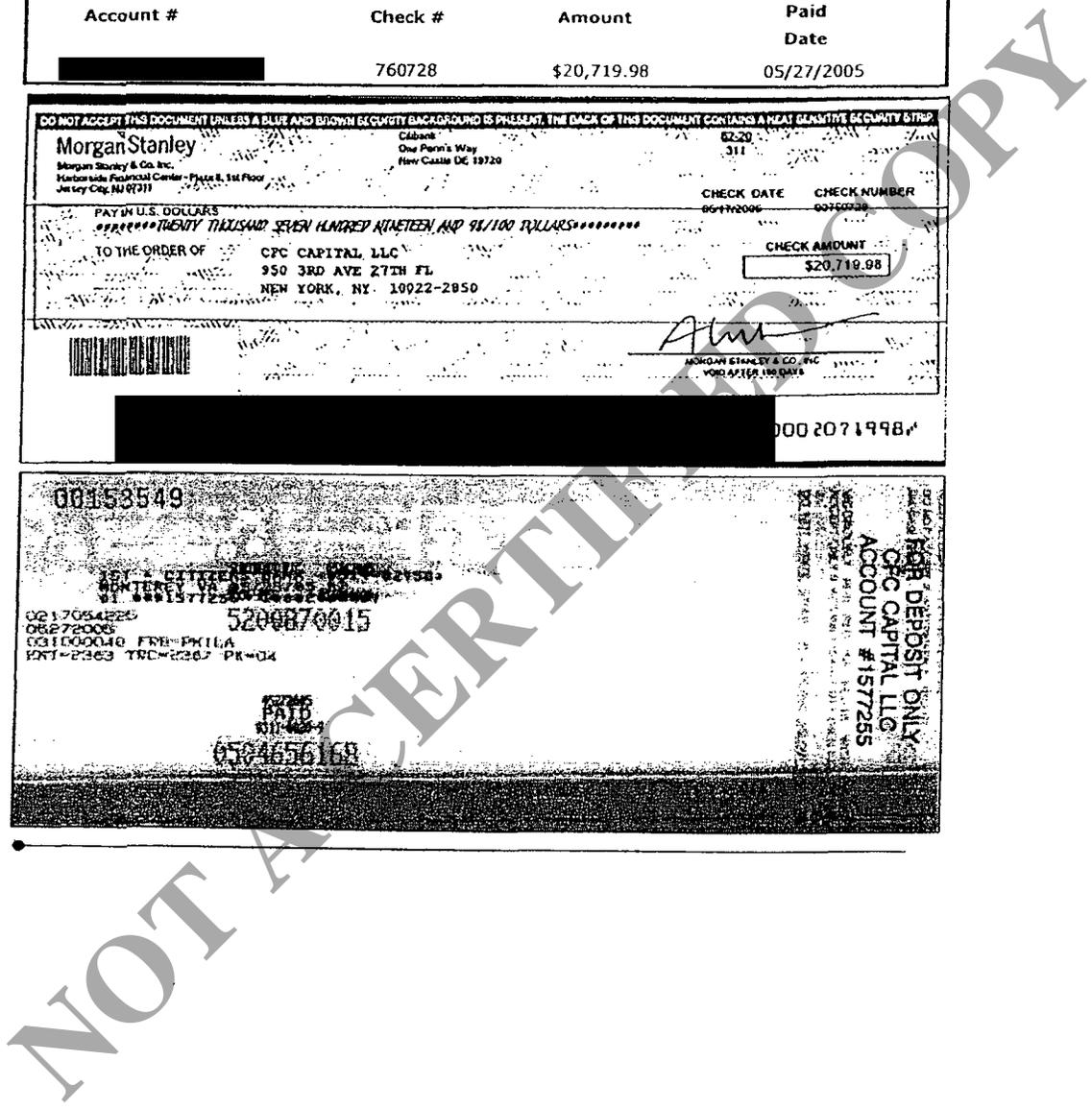
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 06272006
 031000040 FRB-PHILA
 1001-2363 TRC=2267 PK=04

5200870015

PAID
 0504656169

FOR DEPOSIT ONLY
 CPC CAPITAL LLC
 ACCOUNT #157255



REMIT TO

Vendor Name: CFC CAPITAL LLC
Address: 950 THIRD AVENUE 27TH FLOOR
NEW YORK NY 10022-2850

Vendor Number: on way

Purpose: COLEMAN

Invoice Date: 04/01/2005

Invoice Number: 0401-0412

MER:

Requested By: JOSEPHINE BUCKMASTER (D2127)

Approved By: JAMES CUSICK (51007)

Approved Date: 04/13/2005

Currency: US DOLLAR

Distribution Amount	Account Number	Cost Center	Employee	Description
37,528.72	0631611	9625	JAMES DOYLE	COLEMAN

Total: 37,528.72

Approved By:



CUSICK

4/13/2005

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Page 1

16div-032171



CFC Capital LLC 950 Third Avenue, 27th Floor, New York, NY 10022-2850

Tel: 212.584.2400
Fax: 212.584.2401
www.cfcapital.com

April 1, 2005

INVOICE

Rebecca Beynon, Esq.
Kellogg Huber Hansen Todd Evans & Figel PLLC
1615 M Street, N.W.
Washington, DC 20036

Project Name: Coleman (Parent) Holdings, Inc. v Morgan Stanley & Co., Inc.
Project Number: 0412
Invoice Number: 0401-0412

Description of Services	Amount
Balance Outstanding as of March 1, 2005 Invoice:	\$ 20,719.98
Billable Hours This Invoice:	
• Arthur H. Rosenbloom 50.25 hours @\$600 p/hr.	\$ 30,150.00
• Bradley M. Rapp 16.3 hours @\$450 p/hr.	7,335.00
Total Billable Hours:	\$ 37,485.00
Out-Of-Pocket Expenses	
• Courier (FedEx, Messenger)	43.72
Total Out-of-Pocket Expenses:	\$ 43.72
Total Amount Due This Invoice:	\$ 37,528.72
TOTAL AMOUNT NOW DUE:	\$ 56,248.70

Oct 19/04
4/11/06

Please make check payable to:
CFC Capital LLC
950 Third Avenue, 27th Floor
New York, NY [REDACTED]
Tax Id # [REDACTED]

Wire Transfer
First & Citizens Bank
Account # at SunTrust [REDACTED]
SunTrust ABA/Routing Number: 061000104
Customer Account: #1577255

Corporate Financial Consulting and Investment Banking

Billable Hours
Arthur H. Rostbloom

Coleman (Parent) Holdings, Inc. v Morgan Stanley & Co. Inc.

Client	Date	Hours	Purpose
0412	03/02/05	3.0	Deposition review
	03/03/05	2.45	Deposition review
	03/04/05	.30	Comparative transaction review
		1.5	Deposition review
		1.15	Deposition review
	03/06/05	1.15	Deposition review
	03/07/05	.20	Phonecon w/ BRapp
		.30	Phonecon w/ JLevy
		.30	Review of two 13-Ds
	03/08/05	.15	Phonecon b/ BRapp
		2.0	Public filing review
		1.0	Dep review
	03/09/05	3.0	Report drafting
		2.5	Dep review
	03/10/05	2.5	Dep review
		1.0	Report drafting
	03/11/05	3.5	Report drafting
	03/14/05	2.0	Report drafting
	03/17/05	.40	Dep review
	03/18/05	4.55	Dep review
	03/19/05	1.15	Dep review
	03/20/05	1.5	Dep review
	03/21/05	4.75	Dep review
		.30	Textbook authority review
	03/22/05	1.0	Prep of memo to counsel
		2.0	Trial prep
	03/23/05	1.45	Deposition review
		2.0	Trial prep
		.15	Review of Horton deposition
	03/24/05	2.0	Deposition reading
	1.0	Reading of court order	
		50.15	

Billable Hours
Bradley M Rapp

Coleman (Parent) Holdings, Inc. v Morgan Stanley & Co. Inc.

Client	Date	Hours	Purpose
	03/01/05	3.0	Library research
	03/03/05	4.0	Library research
	03/04/05	3.0	
	03/07/05	.20	Phonecon w/AHR
	03/08/05	.15	Phonecon b/AHR
	03/09/05	2.2	Library research
	03/10/05	3.75	Public doc review; library research
		16.3	

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CFC Capital LLC

950 Third Avenue, 27th Floor, New York, NY 10022-2850

Tel: 212.584.2400
Fax: 212.584.2401
www.cfccapital.com

November 22, 2004

INVOICE

Thomas A. Clare, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, DC 20005

Project Name: Coleman (Parent) Holdings, Inc., v Morgan Stanley & Co., Inc.
Project Number: 0412

Description of Services	Amount
Billable Hours This Invoice	
▪ Arthur H. Rosenbloom 48.9 hours @\$600 p/hr.	\$ 29,340.00
▪ Bradley M. Rapp 3 hours @\$450 p/hr.	1,350.00
Total Billable Hours:	\$ 30,690.00
Out-Of-Pocket Expenses	
• Courier (FedEx, Messenger)	\$ 33.52
Total Out-of-Pocket Expenses:	\$ 33.52
TOTAL AMOUNT INVOICED:	\$ 30,723.52

NOT A CERTIFIED COPY

26-0000937

CFC CAPITAL LLC

11/23/2004 0412

NT-SERVICE RENDERED

02 -01

-01010-00201

30,723.52

11/24/2004 000183766

30,723.52

000183766 11/24/2004

*****30,723.52

Thirty Thousand Seven Hundred Twenty Three and 52/100 Dollars

CFC CAPITAL LLC
950 THIRD AVENUE, 27TH FLOOR
NEW YORK, NY 1002-2850

Paul J. Jacobson
Paul Jacobson

CFC CAPITAL LLC

11/23/2004 0412

NT-SERVICE RENDERED

02 -01

-01010-00201

30,723.52

11/24/2004 000183766

FILE COPY

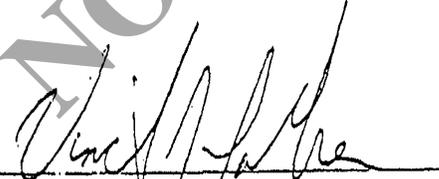
30,723.52

REMIT TO: Vendor Name: MARK GRINBLATT
 Address: 1309 EL HITO CIRCLE
 PACIFIC PALISAD CA 90272
 Vendor Number: 815891
 Purpose: COLEMAN
 Invoice Date: 03/11/2005
 Invoice Number: 31105
 MER: 9MEH9J4
 Requested By: THERESA PILOSI (41463)
 Approved By: VINCENT LAGRECA (77666)
 Approved Date: 05/02/2005
 Currency: US DOLLAR

Distribution Amount	Account Number	Cost Center	Employee	Description
54,780.00	0631611	9601	JAMES DOYLE	COLEMAN
54,780.00	0631611	1278	JAMES DOYLE	COLEMAN
56,440.00	0631611	8033 8033	JAMES DOYLE	COLEMAN

Total: 166,000.00

Approved By:


 LAGRECA

5/2/2005

MS_COSTMTN 01542

Lawrence Bemis
Kirkland and Ellis, LLP
777 South Figueroa St.
Los Angeles, CA 90017

RECEIVED

MAR 14 2005

L.P.B., P.A.

Re: Morgan Stanley litigation
March 11, 2005

mail payments to:

Mark Grinblatt
1309 El Hito Circle
Pacific Palisades, CA 90272

Date	Hours	Details
2/11	.75	9:55-10:10AM, 4:30-5PM message from BS, get bills to RP, email exchange with RP
2/12	.5	9:15-9:30, 11:20-11:35AM emails with BS, RP, Xerox depo
2/14	.25	2:15-2:30PM Fed ex depo
2/15	.25	3:50-4:05PM Talk to BS
2/16	.25	1-1:15PM Scheduling with BS
2/19	0.5	3:45-4:15 message from RP, billing request, read WSJ article
2/20	1.25	3-3:15 PM, 8:40-9:40 review docs, scheduling with VO
2/21	10	10-4:30, 5-6:30, 9-11PM conference call, talk to VO, BS, billing, analyze data, report
2/22	1	2:15-3:15PM conference call, data analysis
2/23	4	4:45-8:45PM talk to VO, emails, work on report
2/25	7	1:30-6:30PM, 7:30-9:30PM materials, work on report, scheduling with BS
2/26	3	11-1:30PM, 5-5:30 materials, work on report
2/27	6.5	12noon-6:30PM, materials, work on report
2/28	13	7:30AM-1PM, 3-6:30, 7-11PM materials, report, conference call
3/1	9.5	9-11AM, 12:15-5:30PM, 8:45-11PM report, materials, JS email, report
3/2	7.5	8:15-8:45, 9:30-10am, 3:15-3:30, 4-5:15pm, 6:45-12mid talk to JS, report, file mgt
3/3	12	7:15-7:30, 8-8:15, 12-6PM, 6:30-12mid BS messages conference call, work on report
3/4	5.5	12-12:15AM, 8:15-9:15AM, 1:15-5:30, 6:15-6:30PM report, email, analyze data, talk BS
3/5	10	7:35-8:35AM, 11AM-5:30, 9:30-12mid review analysis, emails, work on draft, mail w/BW
3/6	15.5	12-1AM, 7-7:30, 9:30AM-4PM, 4:30-12m work on draft, BW comm, slotkin mat, texts
3/7	11.75	12-3am, 8-8:15, 8:45-12, 3:20-3:35PM, 7-12mid work on draft, slotkin mat, BW comm
3/8	17	12-3AM, 8:30-4:30, 4:45-5:15, 6:30-12mid review docs, work on draft, BW comm
3/9 am	4.5	12mid-3, 5-5:15, 7:40-8:10, 9-9:30, 11:40-11:55am draft, sign page, BW comm
3/9 pm	7.25	1:30pm-1:45, 2:40-3:40, 4:20-10:20PM draft, sig page, BW com, WSJ, Nye depo.
3/10	12	6-6:15am, 9:45-10am, 12:30-12mid comm. BW, slotkin, depositions, review material, report
3/11	5.25	12m-3:45, 7:45-8, 9-9:15, 9:55-10:25, 1:15-1:45PM save reports, email BS/BW, billing

Hours Total Feb. 11-Mar. 11 166 hrs

@ \$1000 per hour

Current Bill

Amount Past Due, Late Fees from Oct. 2004, Jan 2005 (attached):

\$166,000
\$15,403

OK to pay
JFD 3/17/05

Total Amount Due: \$181,403

Morgan: Doyle

Law and Compliance Department () Request

REMIT TO: Vendor Name: MARK GRINBLATT
Address: 1309 EL HITO CIRCLE
PACIFIC PALISAD CA 90272-

Vendor Number: 815891

Purpose: COLEMAN

Invoice Date: 04/01/2005

Invoice Number: TBA (3/12-3/31)

MER:

Requested By: JOSEPHINE BUCKMASTER (D2127)

Approved By: JAMES CUSICK (51007)

Approved Date: 04/06/2005

Currency: US DOLLAR

Distribution Amount	Account Number	Cost Center	Employee	Description
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105,761.00	0631611	9625	JAMES DOYLE	COLEMAN
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Total: 105,761.00

Approved By:



CUSICK

4/6/2005



MS_COSTMTN 01544

4/1/05
 Robert Klinck
 Kellogg Huber Hansen Todd Evans & Figel, PLLC
 1615 M St. NW
 Washington, DC 20036-3206

Re: Morgan Stanley litigation billing
 for expert witness Mark Grinblatt
 March 12-31, 2005

mail payments to:

Mark Grinblatt
 1309 El Hito Circle
 Pacific Palisades, CA 90272

Date	Hours	Details
3/12	.75	8-8:15am, 5:10-5:40pm email from VO, scan and send backup material
3/13	.25	12:05-12:20pm, download backup binder
3/14	1.25	8:15-8:45, 9-9:15am, 12:15-12:30pm, 8-8:15, 8:30-8:45pm scheduling with VO
3/15	6	8-10, 2:30-3:45, 4:15-5:00, 8:30-10:30pm travel arrange, confcall, email RP talk BW, J
3/16	14.25	6:45am-4, 4:15-8, 8:15-9:30pm travel to dc, read depos, meet with BW
3/17	17	6:15am-8:45pm, 9-11:30pm Meet BW, KE, review material
3/18	15	4:15am-7:15pm, Meet BW, KE, review material, travel to LA
3/19	11.5	5:30-10am, 11-1PM, 6-11PM depo reading, comm. w/VO
3/20	9.25	9:30am-1:45PM, 6-11PM depo reading, talk to BS
3/21	6	7-9am, 11-1PM, 5-6PM, 7:30-8:30PM, review material, talk to VO
3/22	11	8-11am, 2pm-3:30, 3:45-6:45, 6:55-7:10, 8:30-11:45PM rev mat, LB comm, view video
3/23	2	8:45-9:45am, 5:45-6, 10-10:45PM, organize material, KC request, bill, LBemail, JS msg
3/24	1.5	7:30-7:45, 9:30-10:15am, 4:45-5, 5:30-5:45PM KC email, send mat to KC, email LB
3/30	.25	6:15-6:30PM Scheduling w BS
3/31	5.75	7:10-7:25, 8:30-8:45, 11:30-12:15, 7-11:30PM, comm. w/ BK, read depos

Hours Total Mar. 12-31 101.75 hrs
 @1000 per hr. \$101,750
 Fed Ex \$70
 Travel Expenses March 16-18 \$3,941

Current Bill \$105,761

Amount Past Due, Feb. 11-Mar. 11: \$166,000

Total Amount Due: \$271,761

Retainer reserved for credit to final bill: \$75,000

JFD approved via email

Robert Klinck
 Kellogg Huber Hansen Todd Evans & Figel, P.L.L.C.
 1615 M St. NW
 Washington, DC 20036-3206
 April 7, 2005

Re: Morgan Stanley litigation billing
 mail payments to:

Mark Griblatt
 1309 El Hito Circle
 Pacific Palisades, CA 90272

Date	Hours	Details
4/13	2.75	10:45-11, 11:45-12, 2:30-4, 4:10-4:55PM fax, talk to BK, laptop setup, bill, travel arrange
4/15	1.5	10:15-10:30, 1:30-2:15PM, 5:30-6 Travel Arrange, talk to BK, testimony calcs
4/20	1.5	8-8:15, 11:50-12:05, 1:30-1:45PM, 3:05-3:50PM ups, calls emails to BK, travel arrange
4/25	.25	4:45-5PM call BK
4/27	.75	3:35-3:50PM, 8:30-9PM scheduling with BK, travel arrange
4/30	.5	5:10PM-5:25, 6:05-6:20PM talk to BK, email
5/1	.75	11:55-12:25pm, 6:45-7 talk to BK, travel arrange, bills, email
5/2	1.75	12:20-12:35pm, 8:45-10:15PM email, travel prep
5/3	10.5	8:45-9:15am, 11:30am-9:30pm, fed ex, read depo, travel
5/4	11.5	6:30-3pm, 3:30-4:30, 5:15-7pm, 8:45-9:00pm car rental, prep, read material, calls w/BK
5/5	9.25	6am-3pm, 6:30-6:45pm, out of town day, call from BK
5/6	10.25	4:35-4:50, 6am-3pm, 3:20-3:35, 4:45-5, 5:10-5:40 ot day, 2 calls BK, arrange travel, billing
5/7	9	6am-3pm out of town day
5/8	9	6am-3pm out of town day
5/9	18	6am-12mid out of town day, travel to LA
5/10	.5	12-12:30am travel to LA
5/11	1	12:45pm-1:45pm, billing
5/12	.25	8-8:15AM email BK
5/16	.5	8:05-8:20AM, 3:45-4PM talk to BK, email BK
5/31	.75	11:10-11:55 bill

Hours Total April 12-May 31 90.25 hrs
 @1000 per hr. \$90,250

Travel Expenses
 May 3-10 (balance not previously billed) \$642
 Cell Phone Overage 2005 from this matter (not previously billed) \$543

Subtotal Before Credits (April 12-May 31) \$91,435

Credits: Retainer Credit Applied to Final Bill \$75,000
 Spa charged to Kellogg Huber Hotel Master \$240
 Subtotal Credits: \$75,240

Current Bill Net of Credits (April 12-May 31) \$16,195

Amount Past Due, April 1- April 11: \$75,407

Total Amount Due:

OK to pay JFD 7/27/05

\$91,602

Robert Klinck
Kellogg Huber Hansen Todd Evans & Figel, PLLC
1615 M St. NW
Washington, DC 20036-3206
April 11, 2005

Re: Morgan Stanley litigation billing

mail payments to:

Mark Grinblatt
1309 El Hito Circle
Pacific Palisades, CA 90272

Date	Hours	Details
4/1	3.5	9:10-9:55, 1:15-2:30pm, 8-10PM talk to BK, BS, travel arrange billing, depo read
4/2	17.25	4:35AM-9:50PM travel to FL, meet attorneys, read material
4/3	18	5AM-9PM, 9:30-11:30PM pre dep meetings in FL, read material
4/4	12	5:15AM-5:15PM depo
4/5	17	6AM-11PM travel to LA
4/6	1.75	12:15-12:30PM, 9-10PM, 11-11:30PM 3 calls for doc request, travel arrange
4/7	2	7:45-8AM, 8:45-10:30AM talk to BK, billing records, fax attempts email
4/8	.25	10:25-10:40AM talk to BK
4/9	1.75	11:15am-1pm talk to BK, rearrange travel schedule

Hours Total April 1-11 73.5 hrs
@1000 per hr. \$73,500

Travel Expenses
April 2-5 \$397
April 14-21 (partial) \$1510

Current Bill (April 1-11) \$75,407

Amount Past Due, Feb. 11-Mar. 11: \$166,000
Mar. 12-Mar. 31 \$105,761

Total Amount Due: \$347,168

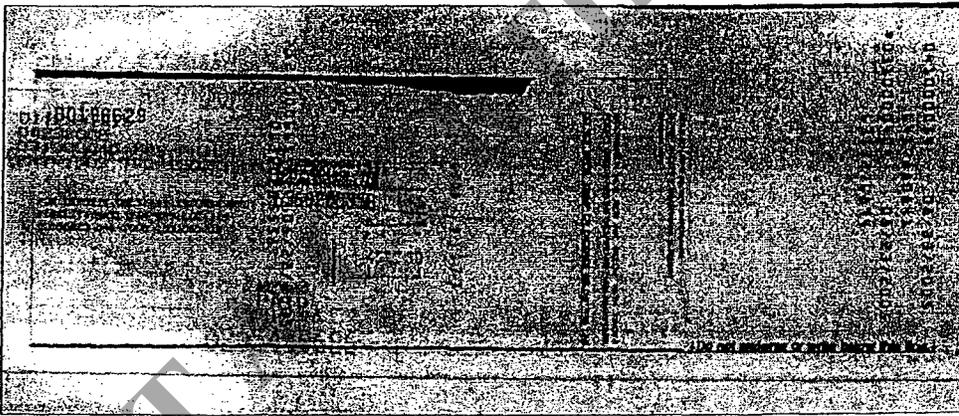
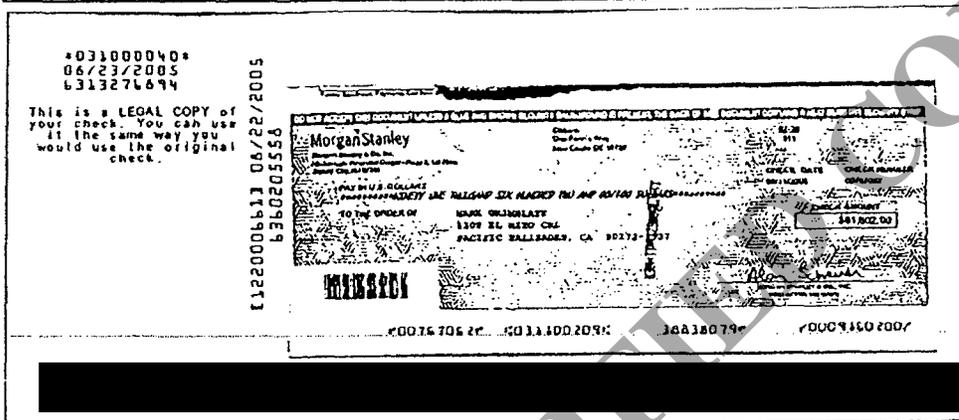
Retainer reserved for credit to final bill: \$75,000



Citi Check Image Delivery

- Print
- Close Window
- Check Image Inquiry Results

Account #	Check #	Amount	Paid Date
00000038838079	767062	\$91,602.00	08/23/2005



NOT

Exhibit J

Records Regarding the Payment of Trial and
Deposition Transcript Expenses

NOT A CERTIFIED COPY

INVOICE

spherionSM

ATTN: Zhonette Brown, Esq.
Kirkland & Ellis
655 15th Street, N.W.
Suite 1200
Washington, DC 20005

Invoice #	Invoice Date
5378106081	9/26/2003

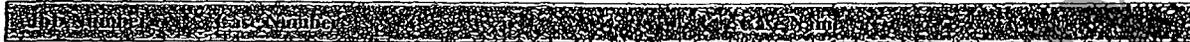
REMIT TO:

P.O. Box 100186

Atlanta, GA 30384-0186

Firm ID: kirk02 Client Ref:

Please make check payable to: Spherion Corporation



3034 03CA005165AJ

Morgan Stanley v. MacAndrews

Fasman, Steven L.

Job Date(s): 9/15/2003

ORIGINAL & ONE COPY OF THE TRANSCRIPT (297 Pgs. @ 4.95 / PAGE) <i>expedited 3 day delivery</i>	\$1,024.65
ASCII DISKETTE - UNIT <i>no charge</i>	\$0.00
CONDENSED TRANSCRIPT - UNIT <i>no charge</i>	\$0.00
VIDEOTAPE SERVICES <i>set up, first hour</i>	\$200.00
VIDEOTAPE SERVICES <i>6 additional hours</i>	\$540.00
EXHIBITS (25 Pgs. @ 0.25 / PAGE) <i>pdf on CD</i>	\$6.25
SHIPPING & HANDLING	\$25.00

Total Sales Tax: \$0.00

Total Amount Due: \$1,795.90

Due Upon Receipt



Service provided by: Henderson Legal Services

(202) 220-4158

Spherion Corporation Federal Tax ID [REDACTED]

v. 4.10.00

MS_COSTMTN01792
16div-032188



ESQUIRE™
DEPOSITION SERVICES
A HOBART WEST COMPANY

Esquire Deposition Services, LLC - ECC
A Hobart West Company

Tax ID [REDACTED]
155 North Wacker Drive, 10th Floor
Chicago, IL 60606
(312) 782-8087 Fax (312) 704-4950

123602 ESQU001

To: Kirkland & Ellis -DC
655 Fifteenth Street, NW
Washington, DC 20005

INVOICE NUMBER	DATE
158269ECG	10/08/03

ATTN : THOMAS A. CLARE, ESQ.

		Due Upon Receipt	AMOUNT DUE	ENCL.
YOUR REFERENCE NUMBER: 2003 CA 005045AI				
CAPTION: COLEMAN VS MORGAN STANLEY				
SERVICES PROVIDED ON 09/15/03:				
John Tyree				
Copy Transcript	295 @	\$2.55	752.25	
Rough ASCII	295 @	\$1.50	442.50	
Delivery/Shipping & Handling			33.90	
BALANCE DUE		TOTAL	1,228.65	Thank You!

(We accept VISA, MasterCard & American Express cards)

For Invoice Questions,
Please Call
(312) 782-8087
Fax (312) 704-4950

Please detach and send with payment

Remit To:

Esquire Deposition Services, LLC
P.O. Box 17303
Baltimore, MD 21297-1303
Tax ID [REDACTED]

JOB: 123602 TOT: \$1228.65
INVOICE #: 158269ECG
DATE: 10/08/03

Kirkland & Ellis -DC
Attn: THOMAS A. CLARE, ESQ.
655 Fifteenth Street, NW
Washington, DC 20005



ESQUIRE™
DEPOSITION SERVICES
A HOBART WEST COMPANY

LINKING TESTIMONY, TRADITION AND TECHNOLOGY



Esquire Deposition Services, LLC ECG
A Hobart West Company
Tax ID [REDACTED]
155 North Wacker Drive, 10th Floor
Chicago, IL 60606
(312) 782-8087 Fax (312) 704-4950

123601 ESQUD01

To: Kirkland & Ellis -DC
655 Fifteenth Street, NW
Washington, DC 20005

INVOICE NUMBER	DATE
158271ECG	10/08/03

ATTN : THOMAS A. CLARE, ESQ.

Due Upon Receipt

		AMOUNT DUE	ENCL.
YOUR REFERENCE NUMBER: 2003 CA 005045AI			
CAPTION: COLEMAN VS MORGAN STANLEY			
SERVICES PROVIDED ON 09/15/03:			
John Tyree			
Videotape Copies	4 @ \$57.50	230.00	
Delivery/Shipping & Handling		30.90	
BALANCE DUE		TOTAL 260.90	Thank You!

(We accept VISA, MasterCard & American Express cards)

For Invoice Questions,
Please Call
(312) 782-8087
Fax (312) 704-4950

Please detach and send with payment

Remit To:

Esquire Deposition Services, LLC
P.O. Box 17303
Baltimore, MD 21297-1303
Tax ID [REDACTED]

JOB: 123601 TOT: \$260.90
INVOICE #: 158271ECG
DATE: 10/08/03

Kirkland & Ellis -DC
Attn: THOMAS A. CLARE, ESQ.
655 Fifteenth Street, NW
Washington, DC 20005



LINKING TESTIMONY, TRADITION AND TECHNOLOGY



Esquire Deposition Services, LLC - ECG
A Hobart West Company
Tax ID # 22 3779684
155 North Wacker Drive, 10th Floor
Chicago, IL 60606
Fax (312) 704-4950

123030 ESQUID01

To: Kirkland & Ellis -DC
655 Fifteenth Street, NW
Washington, DC 20005

INVOICE NUMBER	DATE
158273ECG	10/08/03

ATTN : THOMAS A. CLARE, ESQ.

Due Upon Receipt

	AMOUNT DUE	ENCL.
<p>YOUR REFERENCE NUMBER: 2003 CA 005045AI</p> <p>CAPTION: COLEMAN VS MORGAN STANLEY</p> <p>SERVICES PROVIDED ON 09/09/03:</p> <p>John Plotnick</p> <p>Videotape Copies 2 @ \$57.50 115.00</p> <p>Delivery/Shipping & Handling 27.90</p>		
BALANCE DUE	TOTAL 142.90	Thank You!

(We accept VISA, MasterCard & American Express cards)

For Invoice Questions,
Please Call
(312) 782-8087
Fax (312) 704-4950

Please detach and send with payment

Remit To:

Esquire Deposition Services, LLC
P.O. Box 17303
Baltimore, MD 21297-1303
Tax ID # [REDACTED]

JOB: 123030 TOT: \$142.90
INVOICE #: 158273ECG
DATE: 10/08/03

Kirkland & Ellis -DC
Attn: THOMAS A. CLARE, ESQ.
655 Fifteenth Street, NW
Washington, DC 20005



LINKING TESTIMONY, TRADITION AND TECHNOLOGY



Esquire Deposition Services, LLC - ECG
A Hobart West Company
Tax ID [REDACTED]
155 North Wacker Drive, 10th Floor
Chicago, IL 60606
(312) 782-8087 Fax (312) 704-4950

123031 ESQUD01

To: Kirkland & Ellis -DC
655 Fifteenth Street, NW
Washington, DC 20005

INVOICE NUMBER	DATE
158288ECG	10/08/03

ATTN : THOMAS A. CLARE, ESQ.

		Due Upon Receipt	AMOUNT DUE	ENCL.
YOUR REFERENCE NUMBER: 2003 CA 005045AI				
CAPTION: COLEMAN VS MORGAN STANLEY				
SERVICES PROVIDED ON 09/09/03:				
John Plotnick				
Copy Transcript	170 @ \$2.55		433.50	
Rough ASCII	170 @ \$1.50		255.00	
Exhibit Reproduction	112 @ \$0.40		44.80	
Delivery/Shipping & Handling			30.90	
BALANCE DUE		TOTAL	764.20	Thank You!

(We accept VISA, MasterCard & American Express cards)

For Invoice Questions,
Please Call
(312) 782-8087
Fax (312) 704-4950

Please detach and send with payment

Remit To:

Esquire Deposition Services, LLC
P.O. Box 17303
Baltimore, MD 21297-1303
Tax ID [REDACTED]

JOB: 123031 TOT: \$764.20
INVOICE #: 158288ECG
DATE: 10/08/03

Kirkland & Ellis -DC
Attn: THOMAS A. CLARE, ESQ.
655 Fifteenth Street, NW
Washington, DC 20005



LINKING TESTIMONY, TRADITION AND TECHNOLOGY



Esquire Deposition Services, LLC
A Hobart West Company
Tax ID # 22-3779684
155 North Wacker Drive, 10th Floor
Chicago, IL 60606
Fax (312) 704-4950

127354 ESQUID01

To: Kirkland & Ellis -IL
200 East Randolph Street
Chicago, IL 60601

INVOICE NUMBER	DATE
16331SECG	11/25/03

12/03/03

ATTN : Thomas Clare, Esq.

		AMOUNT DUE	ENCL.
YOUR REFERENCE NUMBER:			
CAPTION: COLEMAN VS MORGAN STANLEY			
SERVICES PROVIDED ON 11/14/03:			
John Tyree New York, NY			
Copy Transcript - 3rd Day	322 @ \$3.50	1,127.00	
Rough ASCII/No Computer Hookup	322 @ \$1.25	402.50	
Administrative Fee		30.00	
Delivery/Shipping & Handling		25.00	
====> SEE CREDIT MEMO 164028			
CREDIT MEMOS		-30.00	
BALANCE DUE		1,554.50	
TOTAL		1,554.50	Thank You!

Any amounts not paid within 30 days of the invoice will be considered past due and a late charge will accrue on any unpaid balance at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law.

For Invoice Questions,
Please Call
(312) 782-8087
Fax (312) 704-4950

Please detach and send with payment

Remit To:

Esquire Deposition Services, LLC
P.O. Box 17303
Baltimore, MD 21297-1303
Tax ID # [REDACTED]

JOB: 127354 TOT: \$1554.50
INVOICE #: 16331SECG
DATE: 12/03/03

Kirkland & Ellis -IL
Attn: Thomas Clare, Esq.
200 East Randolph Street
Chicago, IL 60601



LINKING TESTIMONY, TRADITION AND TECHNOLOGY



Esquire Deposition Services, LLC
A Hobart West Company
Tax ID [REDACTED]
155 North Wacker Drive, 10th Floor
Chicago, IL 60606
(312) 782-8087 Fax (312) 704-4950

128593 BILL01

TO: Kirkland & Ellis -DC
655 Fifteenth Street, NW
Washington, DC 20005

INVOICE NUMBER	DATE
165182ECG	12/16/03

ATTN : THOMAS A. CLARE, ESQ.

Due Upon Receipt

YOUR REFERENCE NUMBER:

CAPTION: COLEMAN VS MORGAN STANLEY

SERVICES PROVIDED ON 12/04/03:

William Strong

Copy Transcript - 3rd Day	367 @ \$2.86	1,049.62
Rough ASCII/No Computer Hookup	367 @ \$1.30	477.10
Delivery/Shipping & Handling		25.00

BALANCE DUE

TOTAL

1,551.72

Thank You

Any amounts not paid within 30 days of the invoice will be considered past due and a late charge will accrue on any unpaid balance at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law.

For Invoice Questions,
Please Call
(312) 782-8087
Fax (312) 704-4950

Please detach and send with payment

Remit To:

Esquire Deposition Services, LLC
P.O. Box 17303
Baltimore, MD 21297-1303
Tax ID [REDACTED]

JOB: 128593 TOT: \$1551.72
INVOICE #: 165182ECG
DATE: 12/16/03

Kirkland & Ellis -DC
Attn: THOMAS A. CLARE, ESQ.
655 Fifteenth Street, NW
Washington, DC 20005



LINKING TESTIMONY, TRADITION AND TECHNOLOGY



Esquire Deposition Services, LLC
 A Hobart West Company
 Tax ID [REDACTED]
 155 North Wacker Drive, 10th Floor
 Chicago, IL 60606
 (312) 782-8087 Fax (312) 704-4950

127353 ESQUD01

To: Kirkland & Ellis -DC
 655 Fifteenth Street, NW
 Washington, DC 20005

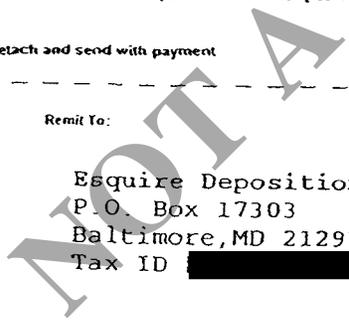
INVOICE NUMBER	DATE
166587ECG	01/06/04

ATTN : THOMAS A. CLARE, ESQ.		Due Upon Receipt	AMOUNT DUE	ENCL.
YOUR REFERENCE NUMBER:				
CAPTION: COLEMAN VS MORGAN STANLEY				
SERVICES PROVIDED ON 11/14/03:				
John Tyree New York, NY				
Videotape Copies 4 @ \$44.00 176.00				
Delivery/Shipping & Handling 11.70				
BALANCE DUE			TOTAL	187.70
				Thank You

Any amounts not paid within 30 days of the invoice will be considered past due and a late charge will accrue on any unpaid balance at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law.

For Invoice Questions,
 Please Call
 (312) 782-8087
 Fax (312) 704-4950

Please detach and send with payment



Remit To:
 Esquire Deposition Services, LLC
 P.O. Box 17303
 Baltimore, MD 21297-1303
 Tax ID [REDACTED]

JOB: 127353 TOT: \$187.70
 INVOICE #: 166587ECG
 DATE: 01/06/04

Kirkland & Ellis -DC
 Attn: THOMAS A. CLARE, ESQ.
 655 Fifteenth Street, NW
 Washington, DC 20005



LINKING TESTIMONY, TRADITION AND TECHNOLOGY



Esquire Deposition Services, LLC
A Hobart West Company
Tax ID [REDACTED]
155 North Wacker Drive, 10th Floor
Chicago, IL 60606
(312)782-8087 Fax (312)704-4950

128592 ECG-B02

To: Kirkland & Ellis -DC
655 Fifteenth Street, NW
Washington, DC 20005

INVOICE NUMBER	DATE
16662SECG	01/06/04

		AMOUNT DUE	ENCL.
ATTN : THOMAS A. CLARE, ESQ.			
YOUR REFERENCE NUMBER:			
CAPTION:			
COLEMAN VS MORGAN STANLEY			
SERVICES PROVIDED ON 12/04/03:			
William Strong			
Videotape Copies		4 @ \$44.00	176.00
Delivery/Shipping & Handling			7.28
BALANCE DUE		TOTAL	183.28

Any amounts not paid within 30 days of the invoice will be considered past due and a late charge will accrue on any unpaid balance at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law.

For Invoice Questions,
Please Call
(312)782-8087
Fax (312)704-4950

Please detach and send with payment

Remit to:

Esquire Deposition Services, LLC
P.O. Box 17303
Baltimore, MD 21297-1303
Tax ID [REDACTED]

JOB: 128592 TOT: \$183.28
INVOICE #: 16662SECG
DATE: 01/06/04

Kirkland & Ellis -DC
Attn: THOMAS A. CLARE, ESQ.
655 Fifteenth Street, NW
Washington, DC 20005



LINKING TESTIMONY, TRADITION AND TECHNOLOGY



Esquire Deposition Services, LLC
 A Hobart West Company
 Tax ID # 22-3779684
 155 North Wacker Drive, 10th Floor
 Chicago, IL 60606

126554 ESQUID29

(3) [REDACTED] 50

To: Kirkland & Ellis -DC
 655 Fifteenth Street, NW
 Washington, DC 20005

INVOICE NUMBER	DATE
167267ECG	01/14/04

ATTN : THOMAS A. CLARE, ESQ.

Due Upon Receipt

YOUR REFERENCE NUMBER:

CAPTION: COLEMAN VS MORGAN STANLEY

SERVICES PROVIDED ON 10/29/03:

Vance Kistler
 West Palm Beach, FL

Copy Transcript - 2nd Day	95 @ \$4.80	456.00
Exhibit Reproduction	176 @ \$0.25	44.00
Delivery/Shipping & Handling		25.00

AMOUNT DUE	UNCL
456.00	
44.00	
25.00	
TOTAL	525.00

BALANCE DUE

TOTAL 525.00 *Thank You!*

Any amounts not paid within 30 days of the invoice will be considered past due and a late charge will accrue on any unpaid balance at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law.

For Invoice Questions,
 Please Call
 (312) 782-8087
 Fax (312) 704-4950

Please detach and send with payment

Remit To:

Esquire Deposition Services, LLC
 P.O. Box 17303
 Baltimore, MD 21297-1303
 Tax ID [REDACTED]

JOB: 126554 TOT: \$525.00
 INVOICE #: 167267ECG
 DATE: 01/14/04

Kirkland & Ellis -DC
 Attn: THOMAS A. CLARE, ESQ.
 655 Fifteenth Street, NW
 Washington, DC 20005



LINKING TESTIMONY, TRADITION AND TECHNOLOGY



Esquire Deposition Services, LLC
A Hobart West Company
Tax ID [REDACTED]
155 North Wacker Drive, 10th Floor
Chicago, IL 60606
(312) 782-8087 Fax (312) 704-4950

130477 ESQUD03

To:
Kirkland & Ellis -DC
655 Fifteenth Street, NW
Washington, DC 20005

INVOICE NUMBER	DATE
168520ECG	01/28/04

		01/28/04	
		AMOUNT DUE	ENCL.
ATTN : THOMAS A. CLARE, ESQ.			
YOUR REFERENCE NUMBER: 2003 CA 005045AI			
CAPTION: COLEMAN VS MORGAN STANLEY			
SERVICES PROVIDED ON 01/08/04:			
Tyrone Chang Los Angeles, CA			
Videotape Copies	3 @ \$44.00	132.00	
Delivery/Shipping & Handling		25.00	
BALANCE DUE		TOTAL 157.00	Thank You!

Any amounts not paid within 30 days of the invoice will be considered past due and a late charge will accrue on any unpaid balance at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law.

For Invoice Questions,
Please Call
(312) 782-8087
Fax (312) 704-4950

Please detach and send with payment

Remit To:

Esquire Deposition Services, LLC
P.O. Box 17303
Baltimore, MD 21297-1303
Tax ID [REDACTED]

JOB: 130477 TOT: \$157.00
INVOICE #: 168520ECG
DATE: 01/28/04

Kirkland & Ellis -DC
Attn: THOMAS A. CLARE, ESQ.
655 Fifteenth Street, NW
Washington, DC 20005



LINKING TESTIMONY, TRADITION AND TECHNOLOGY



Esquire Deposition Services, LLC
 A Hobart West Company
 Tax ID [REDACTED]
 155 North Wacker Drive, 10th Floor
 Chicago, IL 60606
 (312) 782-8087 Fax (312) 704 4950

130464 MARUR01

To: Kirkland & Ellis -DC
 655 Fifteenth Street, NW
 Washington, DC 20005

INVOICE NUMBER	DATE
168976ECG	02/03/04

ATTN : THOMAS A. CLARE, ESQ.

		Due Upon Receipt	AMOUNT DUE	ENCL.
YOUR REFERENCE NUMBER:				
CAPTION: COLEMAN VS MORGAN STANLEY				
SERVICES PROVIDED ON 01/22/04:				
Andrew Savarie				
Copy Transcript	265 @	\$2.86	757.90	
Delivery/Shipping & Handling			25.00	
BALANCE DUE		TOTAL	782.90	Thank You!

Any amounts not paid within 30 days of the invoice will be considered past due and a late charge will accrue on any unpaid balance at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law.

For Invoice Questions,
 Please Call
 (312) 782-8087
 Fax (312) 704-4950

Please detach and send with payment

Remit To:

Esquire Deposition Services, LLC
 P.O. Box 827829
 Philadelphia, PA 19182-7852
 Tax ID [REDACTED]

JOB: 130464 TOT: \$782.90
 INVOICE #: 168976ECG
 DATE: 02/03/04

Kirkland & Ellis -DC
 Attn: THOMAS A. CLARE, ESQ.
 655 Fifteenth Street, NW
 Washington, DC 20005



LINKING TESTIMONY, TRADITION AND TECHNOLOGY



Esquire Deposition Services, LLC
A Hobart West Company
Tax ID # 22-3779684
155 North Wacker Drive, 10th Floor
Chicago, IL 60606
(312) [REDACTED] (312) 704-4950

130473 ESQUD25

Kirkland & Ellis -DC
655 Fifteenth Street, NW
Washington, DC 20005

INVOICE NUMBER	DATE
169098ECG	02/04/04

ATTN : Zhonette, Brown, Esq.

Due Upon Receipt

AMOUNT DUE ENCL.

YOUR REFERENCE NUMBER:

CAPTION: COLEMAN VS MORGAN STANLEY

SERVICES PROVIDED ON 01/12/04:

Dennis Pastrana
Miami, FL

Copy Transcript - 3rd Day	198 @ \$3.05	603.90
Rough ASCII/No Computer Hookup	198 @ \$1.50	297.00
Delivery/Shipping & Handling		37.80

BALANCE DUE

TOTAL 938.70 *Thank You!*

Any amounts not paid within 30 days of the invoice will be considered past due and a late charge will accrue on any unpaid balance at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law.

For Invoice Questions,
Please Call
(312) 782-8087
Fax (312) 704-4950

Please detach and send with payment

Remit To:

Esquire Deposition Services, LLC
P.O. Box 827829
Philadelphia, PA 19182-7852
Tax ID [REDACTED]

JOB: 130473 TOT: \$938.70
INVOICE #: 169098ECG
DATE: 02/04/04

Kirkland & Ellis -DC
Attn: Zhonette, Brown, Esq.
655 Fifteenth Street, NW
Washington, DC 20005



LINKING TESTIMONY, TRADITION AND TECHNOLOGY

MS_CDSM-0322004



Esquire Deposition Services, LLC
A Hobart West Company
Tax ID [REDACTED]
155 North Wacker Drive, 10th Floor
Chicago, IL 60606
(312) 782-8087 Fax (312) 704-4950

127061 ESQUD25

To: Kirkland & Ellis -DC
655 Fifteenth Street, NW
Washington, DC 20005

INVOICE NUMBER	DATE
169102ECG	02/04/04

ATTN : Zhonette, Brown, Esq.

		Due Upon Receipt	AMOUNT DUE	ENCL.
YOUR REFERENCE NUMBER:				
CAPTION: COLEMAN VS MORGAN STANLEY				
SERVICES PROVIDED ON 11/06/03:				
Donald Denkhaus Miami, FL				
Copy Transcript - 3rd Day	141 @	\$4.80	676.80	
Exhibit Reproduction	255 @	\$0.25	63.75	
Rough ASCII	141 @	\$2.00	282.00	
Delivery/Shipping & Handling			25.00	
BALANCE DUE			TOTAL	1,047.55 <i>Thank You!</i>

Any amounts not paid within 30 days of the invoice will be considered past due and a late charge will accrue on any unpaid balance at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law.

For Invoice Questions,
Please Call
(312) 782-8087
Fax (312) 704-4950

Please detach and send with payment

Remit To:

Esquire Deposition Services, LLC
P.O. Box 827829
Philadelphia, PA 19182-7852
Tax ID [REDACTED]

JOB: 127061 TOT: \$1047.55
INVOICE #: 169102ECG
DATE: 02/04/04

Kirkland & Ellis -DC
Attn: Zhonette, Brown, Esq.
655 Fifteenth Street, NW
Washington, DC 20005



LINKING TESTIMONY. TRADITION AND TECHNOLOGY



Esquire Deposition Services, LLC
A Hobart West Company
Tax ID [REDACTED]
155 North Wacker Drive, 10th Floor
Chicago, IL 60606
(312) 782-8087 Fax (312) 704-4950

130474 ESQUD25

To: Kirkland & Ellis -DC
655 Fifteenth Street, NW
Washington, DC 20005

INVOICE NUMBER	DATE
169205ECG	02/04/04

ATTN : Zhonette, Brown, Esq.

Due Upon Receipt

		AMOUNT DUE	ENCL.
YOUR REFERENCE NUMBER:			
CAPTION: COLEMAN VS MORGAN STANLEY			
SERVICES PROVIDED ON 01/13/04:			
William Pruitt Miami, FL			
Copy Transcript - 3rd Day	86 @ \$4.80	412.80	
Delivery/Shipping & Handling		25.00	
BALANCE DUE		437.80	<i>Thank You!</i>
		TOTAL	

Any amounts not paid within 30 days of the invoice will be considered past due and a late charge will accrue on any unpaid balance at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law.

For Invoice Questions,
Please Call
(312) 782-8087
Fax (312) 704-4950

Please detach and send with payment

Remit To:

Esquire Deposition Services, LLC
P.O. Box 827829
Philadelphia, PA 19182-7852
Tax ID [REDACTED]

JOB: 130474 TOT: \$437.80
INVOICE #: 169205ECG
DATE: 02/04/04

Kirkland & Ellis -DC
Attn: Zhonette, Brown, Esq.
655 Fifteenth Street, NW
Washington, DC 20005



LINKING TESTIMONY, TRADITION AND TECHNOLOGY

SPHERION CORPORATION

10/05/2003 5378106160	TA-(3320.80)JOB#3066	02	-01	-01010-00201	3,511.74
09/05/2003 5378106160	TA-(3320.80)JOB#3066	02	-01	-02002-01050	-190.94
09/24/2003 5378106067	TA-(946.10)JOB#3033	02	-01	-01010-00201	1,000.50
09/24/2003 5378106067	TA-(946.10)JOB#3033	02	-01	-02002-01050	-54.40
09/26/2003 5378106081	TA-(1795.90)JOB#3034	02	-01	-01010-00201	1,899.16
09/26/2003 5378106081	TA-(1795.90)JOB#3034	02	-01	-02002-01050	-103.26

11/07/2003 000177838

6,062.80

000177838

11/07/2003

*****6,062.80

Six Thousand Sixty Two and 80/100 Dollars

SPHERION CORPORATION
 BOX 847872
 1401 ELM STREET, 5TH FLOOR
 DALLAS, TX 75202

Dogla G. Johnson
Paul. Vandenberg

SPHERION CORPORATION

10/05/2003 5378106160	TA-(3320.80)JOB#3066	02	-01	-01010-00201	3,511.74
10/05/2003 5378106160	TA-(3320.80)JOB#3066	02	-01	-02002-01050	-190.94
09/24/2003 5378106067	TA-(946.10)JOB#3033	02	-01	-01010-00201	1,000.50
09/24/2003 5378106067	TA-(946.10)JOB#3033	02	-01	-02002-01050	-54.40
09/26/2003 5378106081	TA-(1795.90)JOB#3034	02	-01	-01010-00201	1,899.16
09/26/2003 5378106081	TA-(1795.90)JOB#3034	02	-01	-02002-01050	-103.26

11/07/2003 000177838

FILE COPY

6,062.80

ESQUIRE DEPOSITION SERVICES-ECG

10/08/2003 158288ECG	TA-(764.20)PER INVOICE	02	-01	-01010-00201	808.14
10/08/2003 158288ECG	TA-(764.20)PER INVOICE	02	-01	-02002-01050	-43.94
10/08/2003 158273ECG	TA-(142.90)PER INVOICE	02	-01	-01010-00201	151.12
10/08/2003 158273ECG	TA-(142.90)PER INVOICE	02	-01	-02002-01050	-8.22
10/08/2003 158271ECG	TA-(260.90)PER INVOICE	02	-01	-01010-00201	275.90
10/08/2003 158271ECG	TA-(260.90)PER INVOICE	02	-01	-02002-01050	-15.00
10/08/2003 158269ECG	TA-(1228.65)PER IVOICE	02	-01	-01010-00201	1,299.29
10/08/2003 158269ECG	TA-(1228.65)PER IVOICE	02	-01	-02002-01050	-70.64

11/07/2003 000177786

2,396.65

000177786 11/07/2003

*****2,396.65

Two Thousand Three Hundred Ninety Six and 65/100 Dollars

ESQUIRE DEPOSITION SERVICES-ECG
 P.O. BOX 17303
 BALTIMORE, MD 21297-1303

John G. McKinnon
 DEPUTY CLERK
 NON-NEGOTIABLE

ESQUIRE DEPOSITION SERVICES-ECG

10/08/2003 158288ECG	TA-(764.20)PER INVOICE	02	-01	-01010-00201	808.14
10/08/2003 158288ECG	TA-(764.20)PER INVOICE	02	-01	-02002-01050	-43.94
10/08/2003 158273ECG	TA-(142.90)PER INVOICE	02	-01	-01010-00201	151.12
10/08/2003 158273ECG	TA-(142.90)PER INVOICE	02	-01	-02002-01050	-8.22
10/08/2003 158271ECG	TA-(260.90)PER INVOICE	02	-01	-01010-00201	275.90
10/08/2003 158271ECG	TA-(260.90)PER INVOICE	02	-01	-02002-01050	-15.00
10/08/2003 158269ECG	TA-(1228.65)PER IVOICE	02	-01	-01010-00201	1,299.29
10/08/2003 158269ECG	TA-(1228.65)PER IVOICE	02	-01	-02002-01050	-70.64

11/07/2003 000177786

FILE COPY

2,396.65

ESQUIRE DEPOSITION SERVICES ECG

1/25/2003 163315ECG
1/25/2003 163315ECG

TA-(1554.50)PER INVOICE 02 -01 -01010-00201 1,643.88
TA-(1554.50)PER INVOICE 02 01 -02002-01050 -89.38

12/19/2003 000178503

1,554.50

000178503 12/19/2003

*****1,554.50

One Thousand Five Hundred Fifty Four and 50/100 Dollars

ESQUIRE DEPOSITION SERVICES-ECG
P.O. BOX 17303
BALTIMORE, MD 21297-1303

Douglas G. Wickman
Paul. Verbonck

ESQUIRE DEPOSITION SERVICES-ECG

11/25/2003 163315ECG
11/25/2003 163315ECG

TA-(1554.50)PER INVOICE 02 -01 -01010-00201 1,643.88
TA-(1554.50)PER INVOICE 02 -01 -02002-01050 -89.38

12/19/2003 000178503

FILE COPY

1,554.50

ESQUIRE DEPOSITION SERVICES-ECG

12/16/2003 165182ECG

TA-(1551.72)PER INVOICE

1,551.72

12/29/2003 000178673

1,551.72

000178673

12/29/2003

*****1,551.72

One Thousand Five Hundred Fifty One and 72/100 Dollars

ESQUIRE DEPOSITION SERVICES-ECG
P.O. BOX 17303
BALTIMORE, MD 21297-1303

DUPLICATE
NON-NEGOTIABLE

ESQUIRE DEPOSITION SERVICES-ECG

12/16/2003 165182ECG

TA-(1551.72)PER INVOICE

1,551.72

12/29/2003 000178673

FILE COPY

1,551.72

ESQUIRE DEPOSITION SERVICES-ECG

01/06/2004 166587ECG	TA-(187.70)PER INVOICE	02	-01	-01010-00201	198.49
01/06/2004 166587ECG	TA-(187.70)PER INVOICE	02	-01	02002-01050	-10.79
01/06/2004 166625ECG	TA-(183.28)PER INVOICE	02	-01	-01010-00201	193.81
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01/14/2004 167267ECG	TA-(525)PER INVOICE	02	-01	-02002-01050	-30.18

01/30/2004 000179183

895.98

000179183

01/30/2004

*****895.98

Eight Hundred Ninety Five and 98/100 Dollars

ESQUIRE DEPOSITION SERVICES-ECG
 P.O. BOX 17303
 BALTIMORE, MD 21297-1303

Douglas G. Johnson
Paul. J. Johnson

ESQUIRE DEPOSITION SERVICES-ECG

01/06/2004 166587ECG	TA-(187.70)PER INVOICE	02	-01	-01010-00201	198.49
01/06/2004 166587ECG	TA-(187.70)PER INVOICE	02	-01	-02002-01050	-10.79
01/06/2004 166625ECG	TA-(183.28)PER INVOICE	02	-01	-01010-00201	193.81
01/06/2004 166625ECG	TA-(183.28)PER INVOICE	02	-01	-02002-01050	-10.53
01/14/2004 167267ECG	TA-(525)PER INVOICE	02	-01	-01010-00201	555.18
01/14/2004 167267ECG	TA-(525)PER INVOICE	02	-01	-02002-01050	-30.18

01/30/2004 000179183

FILE COPY

895.98

ESQUIRE DEPOSITION SERVICES ECG

01/28/2004 168520ECG	TA-(157)PER INVOICE	02	-01	-01010-00201	166.02
01/28/2004 168520ECG	TA-(157)PER INVOICE	02	-01	-02002-01050	-9.02

02/18/2004 000179438 157.00

000179438 02/18/2004 *****157.00
One Hundred Fifty Seven and 00/100 Dollars

ESQUIRE DEPOSITION SERVICES-ECG
P.O. BOX 17303
BALTIMORE, MD 21297-1303

Theresa G. Johnson
Paul. Jacobson

ESQUIRE DEPOSITION SERVICES-ECG

01/28/2004 168520ECG	TA-(157)PER INVOICE	02	-01	-01010-00201	166.02
01/28/2004 168520ECG	TA-(157)PER INVOICE	02	-01	-02002-01050	-9.02

02/18/2004 000179438 157.00

FILE COPY

ESQUIRE DEPOSITION SERVICES, LLC

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02/04/2004 169102ECG	TA-(1022.55)PER INVOICE	02	-01	-01010-00201	1,106.35
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02/27/2004 000179743

5,666.35

000179743

02/27/2004

*****5,666.35

Five Thousand Six Hundred Sixty Six and 35/100 Dollars

ESQUIRE DEPOSITION SERVICES, LLC
 PO BOX 785751
 PHILADELPHIA, PA 19178-5751

Tyler G. Johnson
Paul Jacobson

ESQUIRE DEPOSITION SERVICES, LLC

02/06/2004 169350ECG	TA-(918)PER INVOICE	02	-01	-01010-00201	970.79
02/06/2004 169350ECG	TA-(918)PER INVOICE	02	-01	-02002-01050	-52.79
02/04/2004 169229ECG	TA-(1541.40)PER INVOICE	02	-01	-01010-00201	1,630.03
02/04/2004 169229ECG	TA-(1541.40)PER INVOICE	02	-01	-02002-01050	-88.63
02/04/2004 169098ECG	TA-(938.70)PER INVOICE	02	-01	-01010-00201	992.68
02/04/2004 169098ECG	TA-(938.70)PER INVOICE	02	-01	-02002-01050	-53.98
02/03/2004 168976ECG	TA-(782.90)PER INVOICE	02	-01	-01010-00201	827.92
02/03/2004 168976ECG	TA-(782.90)PER INVOICE	02	-01	-02002-01050	-45.02
02/04/2004 169102ECG	TA-(1022.55)PER INVOICE	02	-01	-01010-00201	1,106.35
02/04/2004 169102ECG	TA-(1022.55)PER INVOICE	02	-01	-02002-01050	-58.80
02/04/2004 169205ECG	TA-(412.80)PER INVOICE	02	-01	-01010-00201	461.54
02/04/2004 169205ECG	TA-(412.80)PER INVOICE	02	-01	-02002-01050	-23.74

02/27/2004 000179743

FILE COPY

5,666.35

Exhibit K

Compulit Cost Sharing Agreement

NOT A CERTIFIED COPY

JENNER & BLOCK

August 19, 2003

Jenner & Block, LLC Chicago
 One IBM Plaza Dallas
 Chicago, IL 60611-7603 Washington, DC
 Tel 312 222-9350
 www.jenner.com

By Facsimile

Zhonette Brown, Esq.
 KIRKLAND & ELLIS LLP
 655 Fifteenth Street, N.W.
 Suite 1200
 Washington, D.C. 20005

Michael T. Brody
 Tel 312 923-2711
 Fax 312 840-7711
 mbrody@jenner.com

Re: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co.*

Dear Zhonette:

As we discussed, we propose that Morgan Stanley & Company and CPH share certain costs involved in the production of documents in *Coleman (Parent) Holdings, Inc., v. Morgan Stanley & Co., Inc.*, No. CA 03-005045 AJ (Fla. 15th Jud. Cir.), and *Morgan Stanley Senior Funding, Inc. v. MacAndrews & Forbes Holdings, Inc. and Coleman (Parent) Holdings Inc.*, No. 03 CA-005165 AG (Fla. 15th Jud. Cir.). We propose the following:

1. ***Documents produced by Jenner & Block, LLC in paper form only.***

Compulit, under a joint contract with (1) Morgan Stanley & Co.; and (2) Jenner & Block, LLC ("J&B") or Coleman (Parent) Holdings Inc. will pick up the documents J&B has produced in paper form, assign a production number and confidential designation, and image the documents. Compulit will produce two identical sets of copies of the images and will provide one set of images to Kirkland & Ellis LLP ("K&E") in Washington, D.C., and a second set of images to J&B in Chicago, Illinois simultaneously. Compulit will reassemble the original documents in the manner in which they were produced and will return the documents to J&B in the same files and boxes in which they were produced. The parties will enter into a separate contract with Compulit, which contract will more fully describe the services Compulit will perform. Compulit will perform its services on a schedule that is acceptable to the parties. Compulit will issue separate bills to J&B and Morgan Stanley. With the exception of delivery and pickup charges, the costs of Compulit's services will be split equally.

2. ***Documents that have been imaged.***

J&B production. J&B has produced documents to K&E that have already been imaged. K&E wishes to obtain copies of those images, which J&B agrees to provide. For those documents that K&E obtains in image form, Morgan Stanley will pay J&B \$0.08 per page. The payment will be made within 15 days of delivery of the images. Morgan Stanley may set-off against this cost any amount due Morgan Stanley as a result of

Zhonette Brown, Esq.
August 19, 2003
Page 2

JENNER & BLOCK

providing imaged documents to J&B or CPH. In addition, Morgan Stanley will pay the costs associated with duplicating any media containing document images.

K&E production. K&E has produced documents to J&B in paper form that have been imaged. J&B wishes to obtain copies of those images, which K&E agrees to provide. For those documents that J&B obtains in image form, J&B or CPH will pay K&E \$0.08 per page. The payment will be made within 15 days of delivery of the images. J&B or CPH may set-off this cost against the amount due J&B as a result of providing imaged documents to K&E. In addition, J&B or CPH will pay the costs associated with duplicating any media containing document images.

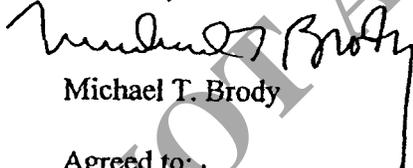
Each party will simultaneously provide to the other party disks containing the images described in this section. The parties agree that if the disks or other media are duplicated by one of the law firms, the cost charged for that law firm's duplication of the disks or other media will not exceed the cost of performing that service as charged by a vendor selected by the receiving party.

3. *Electronic documents.*

The parties have produced and will produce to each other various documents that exist in electronic form. Before using any of these electronic documents in this litigation, other than for purposes that are purely internal to the parties, the parties agree that they will assign production numbers to the electronic document consisting of the number assigned to the electronic medium followed by the file name of the document as found on the electronic medium.

Please indicate your agreement to this proposal by signing and returning this document to me.

Sincerely,


Michael T. Brody

Agreed to:

By 
Zhonette Brown, Esq

Exhibit L

CPH's May 12, 2004 Responses and Objections to
Morgan Stanley's Seventh Request for Production of
Documents

NOT A CERTIFIED COPY

**IN THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA**

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING,
INC.,
Plaintiff,

CASE NO. CA 03-5165 AI

vs.

MACANDREWS & FORBES HOLDINGS,
INC., ET AL.
Defendants.

**COLEMAN (PARENT) HOLDINGS INC.'S RESPONSES AND OBJECTIONS TO
MORGAN STANLEY & CO. INC.'S SEVENTH REQUEST FOR
PRODUCTION OF DOCUMENTS**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys and pursuant to Florida Rules of Civil Procedure 1.280 and 1.350, hereby responds and objects to Morgan Stanley & Co., Incorporated's ("Morgan Stanley") Seventh Request for Production of Documents ("Requests for Production"):

INITIAL OBJECTIONS

1. CPH objects to the Requests for Production, including all Definitions and Instructions, to the extent that they purport to impose upon CPH any requirements that exceed or are inconsistent with the requirements of the Florida Rules of Civil Procedure or any other applicable rule or court order. For example, CPH will not comply with Instructions Nos. 3, 4, 5,

6, 7, 8, 9, 10, 11, and 16 or Definitions No. 6 to the extent that they purport to impose on CPH obligations that are not required by Florida rules and case law. CPH will comply with the applicable rules and law.

2. CPH objects to the Requests for Production to the extent that they seek the production of any documents or information protected from discovery by reason of the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity, or rule. CPH reserves the right to assert any and all privileges to which CPH is entitled under the law. CPH will provide a log of documents withheld from production on the basis of the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity, or rule.

3. CPH objects to the definition of "Coleman Transaction" because Morgan Stanley's definition mischaracterizes the transaction that closed on March 30, 1998 and because the definition is vague and ambiguous to the extent it includes "all related communications, agreements, and transactions." CPH will construe the term "Coleman Transaction" to mean the transaction by which CPH transferred its interest in The Coleman Company to Sunbeam Corporation ("Sunbeam").

4. CPH objects to the extent that any Request for Production seeks documents that are in the public domain and accessible to all parties. In responding to the Requests for Production, CPH will produce publicly available documents to the extent that copies exist in CPH's files of otherwise non-public information responsive to these requests.

5. CPH objects to the definitions of "CPH" and "MAFCO" to the extent they include CPH's and MAFCO's counsel in this litigation. CPH interprets these definitions to exclude

Jenner & Block LLP and Searcy Denney Scarola Barnhart & Shipley P.A., and their respective attorneys.

6. By stating that CPH will produce documents responsive to a particular document request, CPH does not represent that any such documents exist. Rather, CPH is responding that to the extent such documents are located, they will be produced.

7. By stating that CPH will produce responsive documents, CPH does not concede the relevance of any of the produced documents to the subject matter of this litigation or to the admissibility of those documents at trial.

8. CPH's objections and responses are based on a good-faith search for documents within CPH's possession, custody, and control. CPH expressly reserves the right to amend and/or modify its objections and responses.

9. CPH responds to Morgan Stanley's document requests without waiving the Initial Objections. CPH incorporates, as though fully set forth therein, these Initial Objections into each of the Responses and Objections set forth below.

RESPONSES TO REQUESTS FOR PRODUCTION

1. All documents concerning any sale, transfer, pledge, agreement or other disposition of Sunbeam stock by CPH, MAFCO or any of their affiliates, as described in Article VII, Section 7.1 of the Agreement and Plan of Merger among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and CPH dated as of February 27, 1998 and any amendments thereto.

RESPONSE: Subject to and without waiving the foregoing initial objections, CPH will produce documents responsive to this request.

2. All documents concerning the MAFCO Tax Sharing Agreement.

RESPONSE: CPH objects to this request as overbroad, burdensome, and not reasonably calculated to call for the discovery of admissible evidence. Documents relating to MAFCO's tax sharing agreement are not relevant to the issues in this case and their production would require the disclosure of highly confidential information that has no bearing on the issues in this case. Subject to and without waiving the foregoing initial objections, CPH will produce the tax sharing agreement and SEC filings relating to that agreement.

3. All documents listed on the Holdings Disclosure Schedule, and all documents relating to the agreements, contracts, arrangements, payable, obligations and understandings reflected on the Holdings Disclosure Schedule.

RESPONSE: CPH objects to this request as overbroad, burdensome, and not reasonably calculated to call for the discovery of admissible evidence. In particular, CPH objects to the production of the following categories of documents because their production would be burdensome and the documents neither are relevant nor likely to lead to the discovery of admissible evidence: retirement plans; pension plans; medical and insurance plans; data processing services documents; documents relating to the repurchase of option shares and option exercise; and documents that are in the public domain and which are equally available to Morgan Stanley. In addition, for the reasons stated above in response to Request No. 2, CPH objects to the production of confidential IRS audit-related materials. Subject to and without waiving the foregoing objections, CPH will produce documents responsive to this request except as specified in this objection.

4. All drafts and executed copies of the Confidentiality Agreements.

RESPONSE: Subject to and without waiving the foregoing initial objections, CPH will produce documents responsive to this request.

Dated: May 12, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: Michael T. Brady
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza
330 N. Wabash, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc.

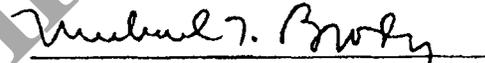
NOT A CERTIFIED COPY

CERTIFICATE OF SERVICE

I, Michael T. Brody, hereby certify that a true and correct copy of the foregoing COLEMAN (PARENT) HOLDINGS INC.'S RESPONSES AND OBJECTIONS TO MORGAN STANLEY & CO., INC.'S SEVENTH REQUEST FOR PRODUCTION OF DOCUMENTS has been served upon the parties listed below via facsimile and U.S. mail on this 12th day of May 2004.

Thomas A. Clare, Esq.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401



Michael T. Brody

1069726

NOT A CERTIFIED COPY

Exhibit M

CPH's April 9, 2004 Objections to Morgan Stanley's
Sixth Request for Production of Documents

NOT A CERTIFIED COPY

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH, COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

MORGAN STANLEY & CO., INC.,

Defendant(s).

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant(s).

**RESPONSE AND OBJECTIONS TO MORGAN STANLEY & CO. INCORPORATED'S
SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF**

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys and pursuant to Florida Rules of Civil Procedure 1.280 and 1.350, hereby responds and objects to Morgan Stanley & Co. Incorporated's ("Morgan Stanley") Sixth Request for Production of Documents to Plaintiff ("Requests for Production"):

INITIAL OBJECTIONS

1. CPH objects to the Requests for Production, including all Definitions and Instructions, to the extent that they purport to impose upon CPH any requirements that exceed or are inconsistent with the requirements of the Florida Rules of Civil Procedure or any other applicable rule or court order. For example, CPH will not comply with Instructions Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 16 or Definitions No. 9 to the extent that they purport to impose on CPH

obligations that are not required by Florida rules and case law. CPH will comply with the applicable rules and law.

2. CPH objects to the Requests for Production to the extent that they seek the production of any documents or information protected from discovery by reason of the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity, or rule. CPH reserves the right to assert any and all privileges to which CPH is entitled under the law. CPH will provide a log of documents withheld from production on the basis of the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity, or rule.

3. CPH objects to the definition of "Coleman Transaction" because Morgan Stanley's definition mischaracterizes the transaction that closed on March 30, 1998 and because the definition is vague and ambiguous to the extent it includes "all related communications, agreements, and transactions." CPH will construe the term "Coleman Transaction" to mean the transaction by which CPH transferred its interest in The Coleman Company to Sunbeam Corporation ("Sunbeam").

4. CPH objects to the extent that any Request for Production seeks documents that are in the public domain and accessible to all parties. In responding to the Requests for Production, CPH will produce publicly available documents to the extent that copies exist in CPH's files of otherwise non-public information responsive to these requests.

5. CPH objects to the definition of "CPH" to the extent it includes CPH's counsel in this litigation. CPH interprets these definitions to exclude Jenner & Block LLP and Searcy Denney Scarola Barnhart & Shipley P.A., and their respective attorneys.

6. By stating that CPH will produce documents responsive to a particular document request, CPH does not represent that any such documents exist. Rather, CPH is responding that to the extent such documents are located, they will be produced.

7. By stating that CPH will produce responsive documents, CPH does not concede the relevance of any of the produced documents to the subject matter of this litigation or to the admissibility of those documents at trial.

8. CPH's objections and responses are based on a good-faith search for documents within CPH's possession, custody, and control. CPH expressly reserves the right to amend and/or modify its objections and responses.

9. CPH responds to Morgan Stanley's document requests without waiving the Initial Objections. CPH incorporates, as though fully set forth therein, these Initial Objections into each of the Responses and Objections set forth below.

DOCUMENTS TO BE PRODUCED

1. All documents that evidence the recognition of revenue or loss of CPH, MAFCO or affiliate company, and the tax treatment or consequences thereof from the sale of Coleman common stock to Sunbeam, including any recognition of revenue concerning the settlement with Sunbeam.

ANSWER: CPH objects to this request as overbroad, burdensome, and not reasonably calculated to call for the discovery of admissible evidence. Documents showing the recognition of revenue or loss by CPH, Mafco, or any affiliated companies, or the tax treatment and consequences thereof, are not relevant issues in this case and their production would require the disclosure of highly confidential information that has no bearing on the issues in this case. Moreover, CPH has not placed its tax treatment of the Coleman Transaction at issue, and Morgan Stanley has failed to show that documents relating to CPH's tax treatment of the Coleman Transaction are likely to provide information that is unavailable from other sources.

2. All documents concerning Scott Paper, including internal or third party analysis of its financial performance and acquisition by Kimberly-Clark.

ANSWER: Subject to and without waiving the foregoing initial objections, CPH will produce documents responsive to this request.

3. All documents concerning Albert Dunlap, including documents referring to his professional employment history.

ANSWER: Subject to and without waiving the foregoing initial objections, CPH will produce documents responsive to this request.

4. All documents concerning the issuance of private placement notes by Revlon Escrow Corporation in February 1998.

ANSWER: CPH objects to this request as overbroad, burdensome, and not reasonably calculated to call for the discovery of admissible evidence. CPH further notes that Morgan Stanley has taken the position in this case that documents relating to transactions other than the Coleman Transaction are not relevant and need not be produced.

5. All documents concerning any transaction contemplated or consummated between October 1, 1997 and March 30, 1998 by or among CPH, MAFCO, or any subsidiary or affiliate regarding Aames Financial Corporation, Bushnell, Day International, Golden State Bancorp, Gucci, Panavision, Timber REITs, or any other transaction contemplated or consummated between October 1, 1997 and March 30, 1998 where the value of consideration offered or received was expected to, or did, exceed \$5 million.

ANSWER: CPH objects to this request as overbroad, burdensome, and not reasonably calculated to call for the discovery of admissible evidence. CPH further notes that Morgan Stanley has taken the position in this case that documents relating to transactions other than the Coleman Transaction are not relevant and need not be produced.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 9th day of April, 2004.

Dated: April 9, 2004

COLEMAN (PARENT) HOLDINGS INC.

By: Michael T. Brody
One of Its Attorneys

John Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Jerold S. Solovy
Ronald L. Marmer
Michael T. Brody
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

NOT A CERTIFIED COPY

SERVICE LIST

Thomas A. Clare, Esq.
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS
222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401

NOT A CERTIFIED COPY

Exhibit N

Sept. 4, 2003 Agreed Order Regarding Enlargement
of Time to Prepare Privilege Log

NOT A CERTIFIED COPY

214

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLFMAN (PARENT) HOLDINGS INC.,)
)
 Plaintiffs,)
)
 vs.)
)
 MORGAN STANLEY & CO., INC.,)
)
 Defendant.)

2003 CA 005045 AI
Judge Elizabeth T. Maass

AGREED ORDER REGARDING ENLARGEMENT
OF TIME TO PREPARE PRIVILEGE LOG

THIS CAUSE, having come before the Court on the agreement of the parties, and the Court having reviewed the pleadings on file and otherwise being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. This Order shall apply to all current and future document discovery requests served by the parties in this action.
2. Upon review of the document requests served by the parties in this action, certain documents may be within the scope of the request that are protected by the attorney-client or work product privileges.
3. If any documents are withheld from production on the basis of privilege, the Court orders that each party provide a privilege log listing those documents pursuant to Florida Rule of Civil Procedure 1.280(b)(5). The parties have indicated that they expect to produce documents on a "rolling" basis. Accordingly, the privilege log also shall be provided on a rolling basis within thirty (30) days after each portion of the party's production of documents

from which the documents have been withheld on the basis of privilege. For any production of documents made prior to the date of this Order, the producing party shall provide the privilege log within thirty (30) days after the entry of this Order.

4. To the extent privilege logs were created in connection with other proceedings, the parties may use those privilege logs in this action, supplementing those logs as necessary to identify each individual document withheld on the basis of privilege.

5. The privilege log shall include, without limitation, any otherwise responsive documents that were created by the parties' lawyers in connection with the underlying transactions.

6. The parties are not required to provide a privilege log listing otherwise responsive documents where those documents involve privileged communications between the parties and their lawyers in connection with litigation arising from the transactions at issue in this case. For purposes of this paragraph, such litigation shall include, without limitation, this action and antecedent litigation involving the same transactions.

DONE AND ORDERED at Palm Beach County, Florida, this _____ day of _____, 2003.

SIGNED AND DATED
SEP 04 2003
ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Coleman v. Morgan Stanley
2003 CA 005045 AJ
Agreed Order Regarding Enlargement of Time
To Prepare Privilage Log

Copies furnished to:

Joseph Ianno, Jr., Esquire
Carlton Fields, P.A.
222 Lakeview Avenue, Suite 1400
West Palm Beach, FL 33401
561-659-7070 - Phone
561-659-7368 - Fax

John Scarola, Esquire
Searcy Denney Scarola Barnhart & Shipley P.A.
2139 Palm Beach Lakes Blvd.
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#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

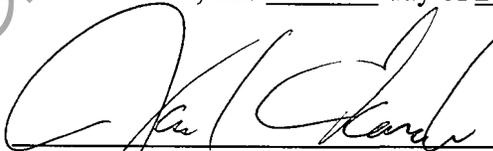
Defendant,

FILED
08 DEC 17 PM 3:00
CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 4

NOTICE OF UNAVAILABILITY

Plaintiff hereby states that the law offices of Searcy Denney Scarola Barnhart & Shipley, P.A. will be closed from December 25, 2008 through and including January 2, 2009, and respectfully request that no hearings, depositions, trials or any other matter involving the above-styled cause be scheduled during this time.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and U.S. Mail to all counsel on the attached list, this 17th day of December, 2008.



Jack Scarola
Florida Bar No.: 169440
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409
Phone: (561) 686-6300
Fax: (561) 383-9451
Attorneys for Plaintiff

NOT A CERTIFIED COPY

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500 E Broward Boulevard, Suite 1930
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Faith E. Gay, Esq.
Quinn Emanuel Urguhart Oliver & Hedges
51 Madison Avenue, 22nd Floor
New York, NY 10010

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDING, INC.,

CASE NO: 2003 CA-005045 AJ

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

REQUEST FOR ADMISSION

Defendant, Morgan Stanley & Co. Incorporated, by and through undersigned counsel, hereby requests, pursuant to Rule 1.370 of the Florida Rules of Civil Procedure, that Plaintiff, Coleman (Parent) Holding, Inc., respond to the following request for admission within 30 days after service.

REQUEST

1. Please admit that CPH does not currently own assets sufficient to allow Morgan Stanley & Co. Incorporated to collect a cost judgment between an amount of \$5 million and \$10 million dollars.

Respectfully submitted,

SYLVIA WALBOLT
Florida Bar No. 033604
JOSEPH IANNO, JR.
Florida Bar No. 655351
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Ph: (212) 849-7220
Fax: (212) 849-7100

By: 
BRUCE ROGOW
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided to the following counsel listed below, by U.S. Mail this 30 day of December, 2008:

JACK SCAROLA, ESQ.
SEARCY, DENNEY, SCAROLA, et.al.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

JEROLD S. SOLOVY, ESQ.
JENNER & BLOCK, LLP
330 N. Wabash Avenue
Chicago, IL 60611-7603


BRUCE S. ROGOW

#230580/mep

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH, COUNTY,
FLORIDA

CASE NO. CA 03-5045 *AV*

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

2009 JAN 14 PM 4:06
SHARON N. BUCK, CLERK
PALM BEACH COUNTY, FL
CIVIL 5

ED

**ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL
PRODUCTION OF COSTS-RELATED DOCUMENTS**

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings Inc.'s Motion to Compel Costs-Related Documents, it is hereby

ORDERED and ADJUDGED:

1. Coleman (Parent) Holdings Inc.'s motion is granted in its entirety.
2. Morgan Stanley & Co., Inc. will produce all non-privileged documents that are responsive to Coleman (Parent) Holdings Inc.'s July 25, 2008 Requests for Production Nos. 3-7, 9-13, and 17 on or before **March 24, 2009**.
3. For each document produced in response to Coleman (Parent) Holdings Inc.'s July 25, 2008 Requests for Production of Documents, Morgan Stanley & Co., Inc. shall identify the individual Request for Production, and, if applicable, each sub-part of each request, to which each document relates. This applies both to future productions, as well as retroactively to prior costs-related productions. Such identifications shall be made on or before **March 24, 2009**.
4. On or before **March 24, 2009**, Morgan Stanley & Co., Inc. will produce a full and complete privilege log of all documents withheld from production on the basis of privilege.

5. All discovery relating to Morgan Stanley & Co., Inc.'s pending costs motions shall be completed by **May 29, 2009**.

DONE AND ORDERED at West Palm Beach County, Florida, this 14th day of January, 2009.


Circuit Court Judge

ROBIN L. ROSENBERG

copies furnished to:

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SEARCY DENNEY SCAROLA
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51 Madison Avenue, 22nd Floor
New York, NY 10010

#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

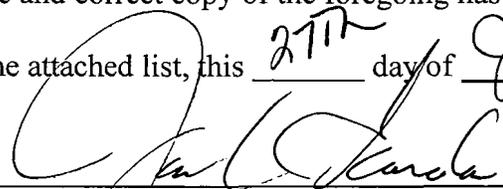
09 JAN 27 PM 3:11
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 9

PLAINTIFF'S RESPONSE TO DEFENDANT'S REQUEST FOR ADMISSION

Plaintiff, COLEMAN (PARENT) HOLDINGS, INC., by and through undersigned counsel, hereby responds to the Defendant's Request for Admission dated December 30, 2008 as follows:

1. The request seeks information that is not reasonably calculated to lead to admissible evidence. Accordingly, Coleman (Parent) Holdings, Inc. objects. Without waiving its objection, Coleman (Parent) Holdings, Inc. states that it has an unliquidated chose in action which it expects to have a value far in excess of \$10 million.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Email and U.S. Mail to all counsel on the attached list, this 27th day of Jan., 2009.



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Phone: 561-686-6300
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Attorneys for Plaintiff

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New York, NY 10010

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDING, INC.,

CASE NO: 2003 CA-005045 AJ

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

**MORGAN STANLEY & CO. INCORPORATED'S, NOTICE
OF VOLUNTARY WITHDRAWAL OF ALL COST CLAIMS
AND MOTION TO VACATE AS MOOT COURT'S ORDER
OF JANUARY 14, 2009**

A. The Withdrawal of the Costs Motions

Morgan Stanley & Co. Incorporated voluntarily withdraws the three cost motions presently pending before this Court: (1) the April 1, 2008 Amended Motion to Tax Appellate Costs for Main Appeal (4th DCA Case No. 4D05-2606); (2) the April 1, 2008 Motion to Tax Appellate Costs relating to Cost Appeal (4th DCA Case No. 4D05-4756); (3) the April 1, 2008 Amended Motion to Tax Trial Costs.

Morgan Stanley withdraws each of those cost motions and no longer seeks any costs for the two appeals or the trial proceedings. The withdrawal of the cost motions is prompted by CPH's January 27, 2009 Response to Defendant's Request for Admission. The Request to Admit (Exhibit A) sought to determine whether Coleman (Parent) Holdings, Inc. (CPH) had assets sufficient to satisfy a cost judgment. That information was sought because the extraordinary effort and expense of litigating the cost motions would be meaningless if there were no assets to satisfy the ultimate

judgment.

CPH's Response to the request to admit was:

The request seeks information that is not reasonably related to lead to admissible evidence. Accordingly, Coleman (Parent) Holdings, Inc. Objects. *Without waiving its objection, Coleman Parent Holdings, Inc. states that it has an unliquidated chose in action which it expects to have a value far in excess of \$10 million.*

Exhibit B (emphasis supplied).

A "chose in action" is "[t]he right to bring an action to recover a debt, money, or thing." Black's Law Dictionary, Pocket Edition (1996). Morgan Stanley can only guess what the chose in action may be, but it is apparent that whatever the action may be, and whoever may be the subject of the chose in action, CPH has no present, or reasonably foreseeable asset that makes it worthwhile for Morgan Stanley to pursue the effort and expense necessary to obtain a cost judgment against CPH. Therefore Morgan Stanley withdraws any claim for costs for its two successful appeals (4D05-2606 and 4D05-4756) and for the judgment entered in its favor in this Court – Case No. 2003CA005045-AJ.

B. The Motion to Vacate the January 14, 2009 Order on Coleman (Parent) Holdings, Inc.'s Motion to Compel Production

This Court entered its Order on Coleman (Parent) Holdings, Inc.'s Motion to Compel Production of Costs-Related Documents on January 14, 2009 (Exhibit C). That Order created a time schedule for discovery on the costs motions, stating that "[a]ll discovery relating to Morgan Stanley & Co., Inc.'s pending costs motions shall be completed by May 29, 2009." Exhibit C, p. 2.

Since the pending costs motions have been withdrawn by the filing of this Notice of

Voluntary Withdrawal, there is no need for discovery on those motions and the January 14, 2009 Order should be vacated as moot, relieving both parties of any duties or obligations set forth in that Order.

CONCLUSION

The Court should vacate its January 14, 2009 Order on Coleman (Parent) Holdings, Inc.'s Motion to Compel Production of Costs-Related Documents and, given the Final Judgment entered on March 18, 2008, order that the case be closed.

Respectfully submitted,

SYLVIA WALBOLT
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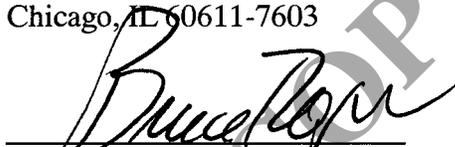
By: 
BRUCE ROGOW
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided to the following counsel listed below, by U.S. Mail this 3rd day of February, 2009:

JACK SCAROLA, ESQ.
SEARCY, DENNEY, SCAROLA, et.al.
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West Palm Beach, FL 33409

JEROLD S. SOLOVY, ESQ.
JENNER & BLOCK, LLP
330 N. Wabash Avenue
Chicago, IL 60611-7603



BRUCE S. ROGOV

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDING, INC.,

CASE NO: 2003 CA-005045 AJ

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

REQUEST FOR ADMISSION

Defendant, Morgan Stanley & Co. Incorporated, by and through undersigned counsel, hereby requests, pursuant to Rule 1.370 of the Florida Rules of Civil Procedure, that Plaintiff, Coleman (Parent) Holding, Inc., respond to the following request for admission within 30 days after service.

REQUEST

1. Please admit that CPH does not currently own assets sufficient to allow Morgan Stanley & Co. Incorporated to collect a cost judgment between an amount of \$5 million and \$10 million dollars.



Respectfully submitted,

SYLVIA WALBOLT
Florida Bar No. 033604
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Florida Bar No. 655351
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Fax: (212) 849-7100

By: 

BRUCE ROGOW

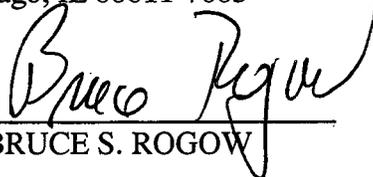
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided to the following counsel listed below, by U.S. Mail this 30 day of December, 2008:

JACK SCAROLA, ESQ.
SEARCY, DENNEY, SCAROLA, et.al.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

JEROLD S. SOLOVY, ESQ.
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330 N. Wabash Avenue
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BRUCE S. ROGOW

#230580/mep

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 005045 AJ

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

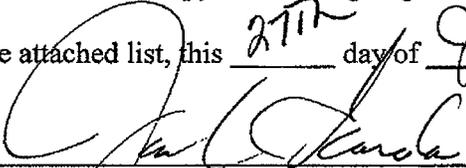
Defendant,

PLAINTIFF'S RESPONSE TO DEFENDANT'S REQUEST FOR ADMISSION

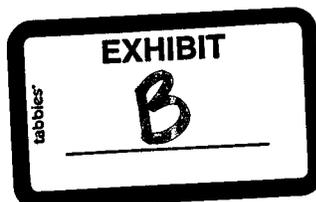
Plaintiff, COLEMAN (PARENT) HOLDINGS, INC., by and through undersigned counsel, hereby responds to the Defendant's Request for Admission dated December 30, 2008 as follows:

1. The request seeks information that is not reasonably calculated to lead to admissible evidence. Accordingly, Coleman (Parent) Holdings, Inc. objects. Without waiving its objection, Coleman (Parent) Holdings, Inc. states that it has an unliquidated chose in action which it expects to have a value far in excess of \$10 million.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Email and U.S. Mail to all counsel on the attached list, this 27th day of Jan., 2009.



JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
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Fax: 561-684-5816
Attorneys for Plaintiff



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Faith E. Gay, Esq.
Quinn Emanuel Urguhart Oliver & Hedges
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New York, NY 10010

NOT A CERTIFIED COPY

#230580/mep

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH, COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

**ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL
PRODUCTION OF COSTS-RELATED DOCUMENTS**

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings Inc.'s Motion to Compel Costs-Related Documents, it is hereby

ORDERED and ADJUDGED:

1. Coleman (Parent) Holdings Inc.'s motion is granted in its entirety.
2. Morgan Stanley & Co., Inc. will produce all non-privileged documents that are responsive to Coleman (Parent) Holdings Inc.'s July 25, 2008 Requests for Production Nos. 3-7, 9-13, and 17 on or before **March 24, 2009**.
3. For each document produced in response to Coleman (Parent) Holdings Inc.'s July 25, 2008 Requests for Production of Documents, Morgan Stanley & Co., Inc. shall identify the individual Request for Production, and, if applicable, each sub-part of each request, to which each document relates. This applies both to future productions, as well as retroactively to prior costs-related productions. Such identifications shall be made on or before **March 24, 2009**.
4. On or before **March 24, 2009**, Morgan Stanley & Co., Inc. will produce a full and complete privilege log of all documents withheld from production on the basis of privilege.



5. All discovery relating to Morgan Stanley & Co., Inc.'s pending costs motions shall be completed by **May 29, 2009**.

DONE AND ORDERED at West Palm Beach County, Florida, this _____ day of January, 2009.

SIGNED & DATED
JAN 14 2009
Chambers of Judge
ROBIN L. ROSENBERG

Circuit Court Judge

copies furnished to:

John Scarola, Esq.
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
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Faith E. Gay
QUINN EMANUEL URGUHART
OLIVER & HEDGES, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDING, INC.,

CASE NO: 2003 CA-005045 AJ

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

FILED
09 FEB 13 PM 3:51
JACK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 2

**AGREED ORDER VACATING
JANUARY 14, 2009 ORDER AND CLOSING CASE**

This matter came before the Court on Morgan Stanley & Co. Incorporated's Notice of Voluntary Withdrawal of All Cost Claims And Motion to Vacate as Moot, Court's Order of January 14, 2009.

On March 18, 2008, the Court previously entered Final Judgment in favor of Morgan Stanley in this matter. In doing so, the Court expressly reserved jurisdiction to consider Morgan Stanley's claims for costs and Plaintiff's pending Verified Petition for a Show Cause Order Regarding Morgan Stanley's Criminal Contempt of Court. Since the date of that Final Judgment, Morgan Stanley has withdrawn all of its claims for costs and Plaintiff has appealed this Court's September 2, 2008 Order on Plaintiff's Verified Motion to Vacate the Judgment and Grant a New Trial on Damages. Accordingly, the Court hereby modifies its March 18, 2008 Final Judgment Order and reserves jurisdiction to consider: (1) Plaintiff's Verified Petition for Show Cause Order Regarding Morgan Stanley's Criminal Contempt of Court; and (2) any further proceedings relating to or following Plaintiff's appeal to the Fourth District Court of Appeal of the September 2, 2008 Order on Plaintiff's Verified Motion to Vacate the Judgment and Grant a New Trial on Damages.

With regard to the January 14, 2009 Order, the Court acknowledges Morgan Stanley's right to withdraw its pending cost motions and it is hereby

ORDERED AND ADJUDGED that the Court's January 14, 2009 Order on Coleman (Parent) Holdings, Inc.'s Motion to Compel Production of Costs-Related Documents is vacated as moot and both parties discharged from any obligations under that Order.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 13th day of February, 2009.


ROBIN L. ROSENBERG
Circuit Judge

cc: All Counsel

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDING, INC.,

CASE NO: 2003 CA-005045 AJ

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

**AGREED AMENDED ORDER VACATING
JANUARY 14, 2009 ORDER**

This matter came before the Court on Morgan Stanley & Co. Incorporated's Notice of Voluntary Withdrawal of All Cost Claims And Motion to Vacate as Moot, Court's Order of January 14, 2009.

On March 18, 2008, the Court previously entered Final Judgment in favor of Morgan Stanley in this matter. In doing so, the Court expressly reserved jurisdiction to consider Morgan Stanley's claims for costs and Plaintiff's pending Verified Petition for a Show Cause Order Regarding Morgan Stanley's Criminal Contempt of Court. Since the date of that Final Judgment, Morgan Stanley has withdrawn all of its claims for costs and Plaintiff has appealed this Court's September 2, 2008 Order on Plaintiff's Verified Motion to Vacate the Judgment and Grant a New Trial on Damages. Accordingly, the Court hereby modifies its March 18, 2008 Final Judgment Order and reserves jurisdiction to consider: (1) Plaintiff's Verified Petition for Show Cause Order Regarding Morgan Stanley's Criminal Contempt of Court; and (2) any further proceedings relating to or following Plaintiff's appeal to the Fourth District Court of Appeal of the September 2, 2008 Order on Plaintiff's Verified Motion to Vacate the Judgment and Grant a New Trial on Damages.

FILED FEB 20 PM 3:52
CLERK OF COURT
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

With regard to the January 14, 2009 Order, the Court acknowledges Morgan Stanley's right to withdraw its pending cost motions and it is hereby

ORDERED AND ADJUDGED that the Court's January 14, 2009 Order on Coleman (Parent) Holdings, Inc.'s Motion to Compel Production of Costs-Related Documents is vacated as moot and both parties discharged from any obligations under that Order.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 20th day of February, 2009.


ROBIN L. ROSENBERG
Circuit Judge

cc: All Counsel

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA.
CIVIL ACTION

CASE NO.: CA-03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

_____ /

NOTICE OF CHANGE OF ADDRESS

The undersigned hereby notifies the Court and all counsel of record that the law offices of Burman, Critton, Luttier & Coleman will be moving. The new address as of Monday, August 24, 2009, will be as follows:

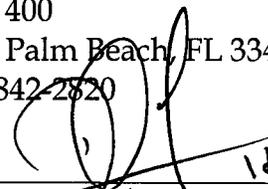
Burman, Critton, Luttier & Coleman
303 Banyan Boulevard, Suite 400
West Palm Beach, FL 33401
1-561-842-2820 (Phone)
1-561-253-0164 (Fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S.

Mail to all counsel on the attached list on this 20TH day of August, 2009.

BURMAN, CRITTON, LUTTIER & COLEMAN
515N. Flagler Drive
Suite 400
West Palm Beach, FL 33401
561/842-2820

By:  1249d
for ROBERT D. CRITTON, JR., ESQ.
Florida Bar No. 224162
(Attorneys for Non-Party James P.
Cusick)

Counsel List

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(Attorneys for Plaintiff, Coleman (Parent) Holdings, Inc.)

Joseph Ianno, Jr., Esq.
Carlton Fields, et al.
222 Lakeview Avenue
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(Attorneys for Defendant, Morgan Stanley & Co. Incorporated)

Mark C. Hansen, Esq.
Kellogg, Huber, Hansen,
Todd, Evans & Figel, P.L.L.C.
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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 03-5045 AJ

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

NOTICE OF CHANGE OF ADDRESS

PLEASE TAKE NOTICE that the law offices of Jenner & Block LLP has moved. The new address, effective immediately, is as follows:

**Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654-3456**

All telephone and fax numbers will remain unchanged.

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PALM BEACH COUNTY, FL
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Change of Address has been furnished by U.S. Mail to all counsel on the attached list on this 20th day of November, 2009.



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M A N D A T E

from

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT**

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable Robert M. Gross, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

DATE: December 18, 2009

CASE NO.: 4D08-4022

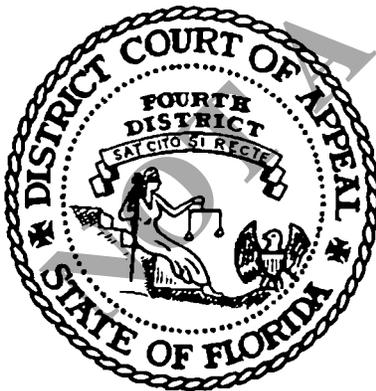
COUNTY OF ORIGIN: Palm Beach

T.C. CASE NO.: 502003CA005045XXXXMB

STYLE: COLEMAN (PARENT)
HOLDINGS, INC.

v. MORGAN STANLEY
CO. INC.

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CLERK OF DISTRICT COURT
FOURTH DISTRICT
WEST PALM BEACH, FLORIDA



Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

ORIGINAL TO: Sharon R. Bock, Clerk

cc:

Joel D. Eaton
Bruce S. Rogow
Barry Sullivan

Jack Scarola
Sylvia H. Walbolt
Cynthia E. Gunther

Joseph Ianno, Jr.
Jerold S. Solovy
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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

December 2, 2009

CASE NO.: 4D08-4022

L.T. No. : 502003CA005045XXXX
MB

COLEMAN (PARENT)
HOLDINGS, INC.

v.

MORGAN STANLEY &
CO. INC.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that appellant's consolidated motion filed October 21, 2009, for rehearing and motion for rehearing en banc is hereby denied; further,

ORDERED that appellant's motion filed October 21, 2009, for certification is hereby denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

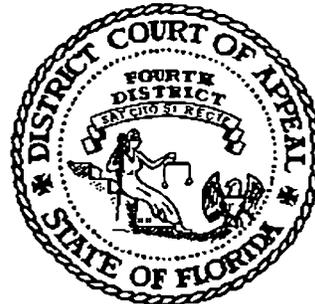
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Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal



DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2009

COLEMAN (PARENT) HOLDINGS, INC.,
Appellant,

v.

MORGAN STANLEY & CO. INC.,
Appellee.

No. 4D08-4022

[October 7, 2009]

TAYLOR, J.

Coleman (Parent) Holdings, Inc. (CPH) appeals the trial court's order denying its motion to set aside judgment under Florida Rule of Civil Procedure 1.540(b). The judgment that CPH sought to set aside was entered in favor of Morgan Stanley, pursuant to our mandate in *Morgan Stanley & Co., Inc. v. Coleman (Parent) Holdings, Inc.*, 955 So. 2d 1124 (Fla. 4th DCA 2007). In that appeal, we reversed compensatory and punitive damage awards for CPH because CPH had failed to present legally sufficient proof of damages at trial. In its Rule 1.540(b) motion, CPH sought a new trial based upon its claim that Morgan Stanley committed a fraud upon the court in discovery sanction hearings held before trial. We affirm the order denying the motion.

This case arose from an alleged conspiracy between defendant Morgan Stanley and the now-defunct Sunbeam Corp. CPH purchased Sunbeam, allegedly in reliance on misrepresentations of Sunbeam's investment banker, Morgan Stanley. Sunbeam went bankrupt within about two years and CPH sued Morgan Stanley for fraudulent conspiracy to misrepresent Sunbeam's financial health at the time of sale. See *Morgan Stanley*, 955 So. 2d at 1125-26.

Before trial, the trial court entered a partial default against Morgan Stanley as a sanction for discovery misconduct in responding to requests for e-mails about the transaction.¹ Morgan Stanley kept old e-mails on certain backup tapes stored at various locations. The trial court held extensive hearings regarding Morgan Stanley's non-compliance with discovery orders for e-mail

¹ A different circuit judge, the Honorable Elizabeth Maass, presided over the trial.

production, as well as misrepresentations by Morgan Stanley's in-house counsel concerning when they learned that e-mails existed on certain back-up tapes. Ultimately, the court entered a partial default against Morgan Stanley on all elements of CPH's claim except reliance and damages. It also ordered that portions of CPH's Amended Complaints be read into evidence and deemed established facts. Thus, CPH needed to prove only that it relied on the established misrepresentations and to prove its damages. The jury awarded CPH nearly \$1.5 billion in compensatory and punitive damages.

We reversed the award solely because CPH failed to prove its damages. CPH failed to establish the actual fraud-free value of Sunbeam on the date of purchase, in accordance with settled Florida law. We further held that CPH's failure to establish actual damage, which is an essential element of fraud, rendered the punitive damage award invalid. Because the law in our district does not allow a "second bite at the apple" to prove damages, we reversed and ordered judgment for the defendant. *Morgan Stanley*, 955 So. 2d at 1131. The Florida Supreme Court denied review. *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc.*, 973 So. 2d 1120 (Fla. Dec. 12, 2007) (Table).

In its motion brought under Rule 1.540(b), CPH requested the trial court to set aside the judgment and grant a new trial on damages. It alleged that Morgan Stanley perpetrated a fraud upon the court, which was revealed during post-verdict notices filed by Morgan Stanley. The notices purported to correct earlier representations made by Morgan Stanley during discovery sanction hearings regarding when its in-house lawyers first knew about the existence of e-mails stored on backup tapes. CPH asserted that this discovery misconduct constituted a fraud on the court, entitling it to have the judgment set aside without having to show any prejudice.

The trial court denied the Rule 1.540(b) motion. In a thorough, detailed, and well-reasoned order, the trial court ruled that an evidentiary hearing was not required because the motion failed to show colorable entitlement to relief under Rule 1.540(b). We agree with the trial court and quote extensively from its order below:

Rule 1.540(b) governs post-judgment relief from a final judgment and lists five categories of substantive grounds that can be used to support an order vacating a final judgment. One such ground is based upon a showing of "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." Fla. R. Civ. P. 1.540(b)(3).

...

A trial court has broad discretion in evaluating a Rule 1.540(b) motion seeking relief from final judgment. *Crowley v. Crowley*,

678 So. 2d 435, 438 (Fla. 4th DCA 1996). Such motion should not be summarily dismissed without an evidentiary hearing unless its allegations and accompanying affidavits fail to allege a colorable entitlement to relief. *Schlegar v. Stebelsky*, 957 So. 2d 71, 73 (Fla. 4th DCA 2007); *Dynasty Exp. Corp. v. Weiss*, 675 So. 2d 235, 239 (Fla. 4th DCA 1996); *Crowley*, 678 So. 2d at 437-38.

To warrant an evidentiary hearing, a Rule 1.540(b) motion must ... 2) plead fraud with particularity, and 3) explain why the fraud, if it exists, would entitle the movant to have the judgment set aside. Fla. R. Civ. P. 1.540(b); *Flemenbaum v. Flemenbaum*, 636 So. 2d 579 (Fla. 4th DCA 1994). The purpose of requiring such motion to plead fraud with specificity is to permit the court to determine if the movant "has made a prima facie showing which would justify relief from judgment," and is not merely rehashing matters explored at trial. *Id.* at 580. If a motion does not set forth a basis for relief on its face, then an evidentiary hearing is unnecessary, the time and expense of needless litigation is avoided, and the policy of preserving the finality of judgments is enhanced. *Id.* at 579.

Since CPH timely filed its Motion and pled fraud with particularity, the only remaining issue is whether CPH clearly explained why MS's alleged conduct, if true, entitles it to have the final judgment set aside, which is the final threshold requirement to obtaining an evidentiary hearing. *Flemenbaum*, 636 So. 2d at 580. An evidentiary hearing is unnecessary if a Rule 1.540(b) motion merely undertakes to rehash matters previously litigated at trial or raises inconsequential "de minimis" matters. *Id.*; cf. *Crowley*, 678 So. 2d at 438.

Flemenbaum involved an ex-husband's "pro se motion for new trial based upon fraud upon the court under Rule 1.540," which alleged that his ex-wife lied about cohabitating with another man at trial. *Id.* The trial court did not afford the husband an evidentiary hearing. *Id.* On appeal, the Fourth District affirmed after finding that the husband's motion did not state facts that constituted fraud and, instead, sought to rehash matters fully explored at trial and "raised *de minimis* matters which had no effect on the final judgment." *Id.* The court cited examples of sufficiently pled Rule 1.540(b) motions that invoked the evidentiary hearing requirement. See, e.g., *Stella v. Stella*, 418 So. 2d 1029 (Fla. 4th DCA 1982) (if proven, wife's assertions that

husband had testified that a statue was worth \$100, while knowing that its true value was \$35,000, would have changed the court's equitable distribution and, thus, entitled wife to an evidentiary hearing); *Ross v. Bandi*, 566 So. 2d 55 (Fla. 4th DCA 1990) (evidentiary hearing required where husband alleged that he learned of an IRS tax lien after the final hearing, which rendered his interest in a corporation worthless).

In *Crowley*, a husband was entitled to an evidentiary hearing on his Rule 1.540(b) motion seeking relief from a dissolution judgment. *Crowley*, 678 So. 2d at 438. The husband's motion, filed one week after the entry of the dissolution judgment, claimed entitlement to relief based upon "fraud ... committed by [his] wife and her counsel on the Court;" specifically, the motion claimed that the wife and her counsel had lied by omission about the fact that, unknown to the husband, he would soon be terminated from his job, which would dramatically change his financial condition and, in turn, the final judgment. *Id.* at 437-38. The Fourth District noted that, in contrast to *Flemenbaum*, the husband's motion was not "a mere undertaking to 'rehash' matters previously litigated at trial or an effort to raise inconsequential 'de minimis' matters." *Id.* at 438. Instead, "the core of the husband's motion, if true, would undermine the very foundation upon which the dissolution judgment and order were built." *Id.*

In this case, CPH's motion delves into MS's discovery misconduct, a topic that was extensively explored and affirmatively, unambiguously addressed by the Court at trial. For example and as noted in the Court's March 23, 2005 order granting partial default, the Court expressly considered MS's failure to timely notify CPH and the Court that its Certificate of Compliance was false. The only additional revelation raised in the post-verdict notices is the date on which MS's in-house counsel knew that certain backup tapes contained e-mails that may have been responsive to CPH's discovery requests. While the Court does not consider the discovery abuses and misconduct by MS, up to and including the alleged misconduct perpetrated by its legal team as *de minimis* when viewed through the lens of attorney professionalism, when viewed through the lens of a Rule 1.540(h) motion, it cannot be said that the additional attorney conduct revealed by the notices affected the new final judgment, especially considering the rationale behind the Fourth District's mandate, i.e. CPH's failure to prove damages at trial. In this strict sense, the conduct

revealed by the notices fits squarely within *Flemenbaum's de minimis* language... .

Even considering as true all of CPH's allegations regarding MS's in-house legal team's knowledge, i.e., that the undisclosed backup tapes had potentially responsive e-mails, CPH is not entitled to have the new final judgment set aside. The Fourth District resolved the appeal in MS's favor on one sole ground — CPH failed to adequately prove its damages at trial. Any information about what MS's in-house legal team knew or did not know about e-mails on the backup tapes has no bearing whatsoever on this legal conclusion. Unlike *Stella*, *Ross*, and *Crowley* where the parties' assertions, if true, would have altered the final judgments from which relief was sought, CPH's assertions, even if true, would not have altered the legal course leading to the issuance of the new final judgment.

CPH sets forth two theories that unsuccessfully attempt to refute this conclusion. First, CPH argues that, had the Court known about MS's fraud, it would have affected the resolution of the sanctions motions. This argument assumes the Court would have meted out sanctions even more severe than the partial default in the first place; second, it assumes that the Court would have entered a total default against MS on all elements including reliance and damages; and third, it assumes that the Court would have "altered the burden of proof as to damages," which would have affected what the Fourth District reviewed on appeal. Building assumption upon assumption in such a manner has not been the basis of any successful Rule 1.540 motion in other cases this Court has reviewed.

There is no legal precedent supporting CPH's claim that the Court would or could have ordered MS to disprove the amount of damages. Indeed,

[ilt is well settled in Florida that a default judgment only admits to a plaintiffs entitlement to liquidated damages. "Damages are liquidated when the proper amount to be awarded can be determined with exactness from the cause of action as pleaded, i.e., from a pleaded agreement between parties, by an arithmetical calculation or by application of definite rules of law ... However, damages are not liquidated if the ascertainment of their exact sum requires the

taking of testimony to ascertain facts upon which to base a value judgment.”

U.S. Fire Ins. Co. v. C & C Beauty Sales, Inc., 674 So. 2d 169, 171 (Fla. 3d DCA 1996) (citations omitted). This securities fraud case clearly involves unliquidated damages. The Fourth District reversed due to insufficient expert testimony proving the "benefit of the bargain" amount of damages. Even if the Court had had the benefit of the information in the notices, a trial on *the amount of* damages was inevitable. The best case scenario for CPU would have been a default as to reliance and *the fact of* damages. Thus, the relief CPH asserts it would have received had the Court known this information is without any legal basis.

As a second theory, CPH argues that MS's alleged misconduct affected the jury's deliberations. Any effect was rendered moot. The only relevant import that MS's newly revealed conduct could have had would have been to alter the Discovery Misconduct Statement used by the jury for the sole purpose of determining the propriety of awarding punitive damages. Such a change has no impact on the issue of compensatory damages, which is a prerequisite to any award of punitive damages as found by the Fourth District on appeal. See *Morgan Stanley & Co, Inc. v. Coleman (Parent) Holdings Inc.*, 955 So. 2d 1124 (Fla. 4th DCA 2007).

At the hearing, CPH articulated an argument that had the Court entered a total default, it would have established the fact of damages and would, thus, have entitled CPH to an award of nominal damages. In turn an award of nominal damages would have entitled CPH to an award of punitive damages. In addition to being highly speculative, this argument directly contradicts the Fourth District's express findings in the appeal of this case:

Even if CPH established the *fact* of some unquantified damage (which theoretically could have supported a nominal damage award), this is not enough to justify a punitive damage in a fraud case. Punitive damages for fraud cannot be based on nominal damages alone.

Morgan Stanley, 955 So. 2d at 1132-33. Thus, this second theory also lacks merit.

In sum, the new final judgment entered in favor of MS followed a clear mandate from the Fourth District accompanied by an opinion explaining that CPH failed to prove its compensatory damages. The Fourth District found that CPH's strategy included instructing its damages expert to assume a "zero" value on the date of closing. *Id.* at 1127. It is inconceivable how the newly found information in the notices would have affected this choice of strategy for proving damages; whatever information MS's in-house legal counsel told CPH and the Court, deceitful or not, was ultimately irrelevant as to this choice.

Essentially, the trial court ruled that the alleged fraud, even if true, did not affect the outcome because it had no bearing upon CPH's failure to prove damages by the proper legal measure. The court rejected CPH's argument that it was not required to show prejudice because Morgan Stanley's in-house lawyers committed a fraud on the court.

In *Parker v. Parker*, 950 So. 2d 388, 392 (Fla. 2007), the Florida Supreme Court discussed fraud as a basis for relief from judgment and used the terms "fraud on the court" and "extrinsic fraud" interchangeably. The court distinguished extrinsic fraud from intrinsic fraud, quoting from its opinion in *DeClaire v. Yohanon*, 453 So. 2d 375, 377 (Fla. 1984):

In essence, extrinsic fraud is conduct which prevents a party from trying an issue before the court, and the prevention itself becomes a collateral issue to the cause; whereas intrinsic fraud is the presentation of misleading information on an issue before the court that was tried or could have been tried.

950 So. 2d at 391-92. *DeClaire* explained that only what was defined as "extrinsic fraud" could be considered "fraud on the court."

The trial court determined that the discovery misconduct committed by Morgan Stanley's in-counsel constituted intrinsic fraud under Florida law, rather than extrinsic fraud or "fraud upon the court." Finding that the discovery misconduct did not prevent CPH from participating in the cause and trying issues before the court, the court stated: "Indeed, the court unambiguously considered and addressed sanctionable discovery misconduct at trial in entering the partial default. Thus, it can be said that such matters were tried or were so in issue that they might have been tried."

In the final analysis, however, the court concluded that the intrinsic/extrinsic distinction was not significant, because a fraud claim of any

type brought under Rule 1.540(b) is subject to the *Flemenbaum* requirement to show the effect of the fraud on the final judgment.

CPH relied mainly on federal cases for its argument that litigation misconduct involving attorneys, as opposed to witnesses and parties, constitutes fraud of the court, for which no showing of prejudice is necessary. *See Dixon v. Comm’r of Internal Revenue*, 316 F.3d 1041, 1046 (9th Cir. 2003) (declaring that, “[f]raud on the court occurs when the misconduct harms the integrity of the judicial process, regardless of whether the opposing party is prejudiced.”).

However, the trial court, noting a split of authority among the federal circuits, sided with the Seventh Circuit’s reasoning that prejudice is required. *See Drobny v. Comm’r of Internal Revenue*, 113 F.3d 670, 678 (7th Cir. 1997). There, the court stated:

We are of the opinion that the petitioners were required to demonstrate, not only that the respondent engaged in conduct that was intended to mislead the court, but – of paramount importance – that the actual conduct affected the outcome of their case. ... We do not agree with the petitioner’s argument that a final judgment of the Tax Court should be subject to attack (possibly, as in this case, many years later) when the allegedly improper conduct had no effect on the outcome of the decision. The rule of finality lends stability to our legal system, and it is especially important in this litigious era when adversely affected parties seize upon almost any opportunity to prolong litigation.

The Seventh Circuit’s position is more consistent with Florida policy considerations favoring the finality of judgments and with Florida law requiring a prejudicial effect on the outcome of a case. Without doubt, the public interest in the fairness and integrity of the judicial process in an important policy concern. But, as the trial court pointed out in its order, “[a] Rule 1.540(b) motion is not the appropriate vehicle for handling attorney misconduct that does not prejudice the final judgment ... Rather, such misconduct is more appropriately vindicated via criminal contempt proceedings and/or grievances filed with the Florida Bar.” Because the trial court correctly determined that CPH was unable to show that the fraud affected the outcome of the case, it did not abuse its discretion in denying the motion for relief from judgment.

Affirmed.

MAY, J., and GARCIA-WOOD, MARINA, Associate Judge, concur.

* * *

Appeal of non-final order from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Robin L. Rosenberg, Judge; L.T. Case No. 502003CA005045XXXXMB.

Jerold S. Solovy, Ronald L. Marmer and Barry Sullivan of Jenner & Blocker LLP, Chicago, Jack Scarola of Searcy Denny Scarola Barnhart & Shipley, P.A., West Palm Beach, and Joel D. Eaton of Podhurst Orseck, P.A., Miami, for appellant.

Sylvia H. Walbolt and Joseph Ianno of Carlton Fields, P.A., West Palm Beach, and Bruce S. Rogow and Cynthia E. Gunther of Bruce S. Rogow, P.A., Fort Lauderdale, for appellee.

Not final until disposition of timely filed motion for rehearing.

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Supreme Court of Florida

TUESDAY, MAY 18, 2010

CASE NO.: SC10-44

Lower Tribunal No(s): 4D08-4022,

502003CA005045XX *AJ*

COLEMAN (PARENT) HOLDINGS vs. MORGAN STANLEY & CO.,
INC. INC.

Petitioner(s)

Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d)(2).

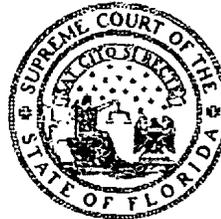
QUINCE, C.J., and PARIENTE, LEWIS, CANADY, and PERRY, JJ., concur.

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Test:



Thomas D. Hall
Clerk, Supreme Court



ab

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10 MAY 21 PM 3:12
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STATE OF FLORIDA
TALLAHASSEE, FL